

SCHAPIRO DECLARATION EXHIBITS CONTINUED

Schapiro Exhibit 11

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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THE FOOTBALL ASSOCIATION)
PREMIER LEAGUE LIMITED AND)
BOURNE CO., ET AL., ON BEHALF)
OF THEMSELVES AND ALL OTHERS)
SIMILARLY SITUATED,,)

PLAINTIFFS,)

vs.)

07 CIV. 3582 (LLS)

YOUTUBE, INC., YOUTUBE, LLC)
AND GOOGLE, INC.,,)

DEFENDANTS.)

VIACOM INTERNATIONAL INC.,)
COMEDY PARTNERS, COUNTRY MUSIC)
TELEVISION, INC., PARAMOUNT)
PICTURES CORPORATION, AND)
BLACK ENTERTAINMENT)
TELEVISION, LLC,)

PLAINTIFFS,)

vs.)

07 CIV. 2103 (LLS)

YOUTUBE, INC., YOUTUBE, LLC)
AND GOOGLE, INC.,,)

DEFENDANTS.)

VIDEOTAPED DEPOSITION OF COURTNEY NIEMAN
WEDNESDAY, DECEMBER 16, 2009
PALO ALTO, CALIFORNIA

Job No. 18293

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VIDEOTAPED DEPOSITION OF COURTNEY NEIMAN,
TAKEN ON BEHALF OF THE DEFENDANTS, AT 9:28 A.M.,
WEDNESDAY, DECEMBER 16, 2009 AT 650 PAGE MILL ROAD,
PALO ALTO, CALIFORNIA BEFORE MARY JACKSON, CSR NO.
8688, PURSUANT TO NOTICE.

A P P E A R A N C E S

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ALSO PRESENT: OSAMA HUSSAIN, BayTSP Counsel

STUART PETTIGREW, Videographer

1 identification.)

2 12:08 MR. KRAMER: Q. Do you recognize

3 Exhibit 15?

4 12:08 A. Yes, I do.

5 12:08 Q. What is it?

6 12:08 A. It's a -- hang on. I'm getting to the

7 page where there's actually printing. Holy smokes.

8 We cut down a forest to do this one.

9 12:08 Q. Mm-hmm.

10 12:08 A. I don't recall this format of this report.

11 However, I do recall the report in general. It was

12 part of the weekly process of informing our clients

13 what we did based on their instructions.

14 12:08 Q. In Exhibit 15, there is an e-mail exchange

15 on the cover page between Bay and Viacom

16 representatives including Ms. Hallie, Mr. Cahan,

17 you're included as a cc. In the first in time

18 message, Ms. Arizala says, "Please review the

19 enclosed YouTube, Google Video, MySpace and Yahoo!

20 Video approved notice sent rule."

21 12:09 A. Mm-hmm.

22 12:09 Q. Do you know what that's a reference to?

23 12:09 A. It would be, here's the report for the

24 actions you told us to take.

25 12:09 Q. But I'm specifically asking about the

1 "approved notice sent rule," not the report itself.

2 12:09 A. I don't know what -- what Deana -- why she
3 chose that phrase. But in my dealings with Deana as
4 a manager, that's -- I would ask her what she meant
5 by that.

6 12:09 Q. The last four pages of Exhibit 15 --

7 12:09 A. Yeah.

8 12:09 Q. -- are one-page charts entitled MTV Agent
9 Asset Rule List for each of the four services
10 Ms. Arizala mentions in her message: YouTube,
11 MySpace, Google Video, and Yahoo! And there is a
12 list of shows in common among each of the four
13 lists. Do you see that?

14 12:10 A. Yes.

15 12:10 Q. Do you recognize this as the rules that
16 BayTSP was to follow with respect to each of those
17 services at the time?

18 12:10 A. I recall that this table was the
19 representation of what client services, Deana,
20 myself, understood as to how BayTSP was to enforce
21 these titles.

22 12:10 Q. Got it. You were involved in helping to
23 prepare these asset agent rule lists?

24 12:10 A. Inasmuch as the manager of client services
25 e-mails, phone calls, yeah, I'm sure it came up.

1 12:11 Q. Okay.

2 12:11 A. Please do this; please do that.

3 12:11 Q. If you take a look at the -- let me see if

4 I can do it this way. Can you explain to me what

5 these rules were looking at, these charts as of

6 November 6th, 2006?

7 12:11 A. Yes. We will take, for example, column

8 one would be the content order. So Spice TV, Comedy

9 Central, Viacom in general, Country Music

10 Television, blah, blah, blah. The second one would

11 be the specific network of that content holder that

12 those titles belong to. And then notices were to be

13 sent on the complete entire show versus a clip, some

14 subset, and, with God as my witness, I don't

15 remember what -- other than looking at it here, that

16 the rule would be to -- would be used to define what

17 is a clip.

18 12:12 Q. On which action should be taken, right?

19 12:12 A. Yeah. So full was fairly straightforward.

20 It's the whole episode. Whereas -- whether it had

21 commercials or not was irrelevant. It was, did you

22 have the whole show? Clip would have been anything

23 less than the whole show. So two and a half would

24 be in minutes as opposed to seconds or days or

25 greater.

1 12:12 Q. So these charts reflect that at this time,
2 the full episode rule was in effect at YouTube,
3 right?

4 12:12 MR. COX: Objection. Document speaks for
5 itself.

6 12:12 MS. COLEMAN-BISHOP: Mischaracterizes --
7 objection mischaracterizes the document.

8 12:13 THE WITNESS: Okay. I'm lost.

9 12:13 MR. KRAMER: Q. Sure.

10 12:13 A. Because I don't -- as I read this, these
11 rules for engagement were for -- "please review the
12 enclosed YouTube, Google Video, MySpace, Yahoo!
13 Video."

14 12:13 Q. We have one page for each of the four
15 services that you just mentioned, and on each page
16 there are the rules that you just described, but
17 they differ.

18 12:13 A. Oh, okay.

19 12:13 Q. So for the page entitled YouTube Approved
20 Notice Sent, which is the first of the four
21 charts --

22 12:14 A. Yes. There is full rule -- full assets is
23 the rule for the YouTube page; full assets is for
24 the Google page; full assets and some clips for
25 MySpace; and full assets and some clips for Yahoo!

1 That's what that tells me.

2 12:14 Q. And my question is, do you have any
3 insight into why the rules for YouTube and Google
4 Video were different than the rules for MySpace and
5 Yahoo! at the time?

6 12:14 A. No.

7 12:14 MS. COLEMAN-BISHOP: Objection. Calls for
8 speculation.

9 12:14 THE WITNESS: No, I do not.

10 12:14 MR. KRAMER: Q. Were you communicating
11 Viacom's takedown rules to YouTube at the time?

12 12:14 A. No.

13 12:14 Q. Why not?

14 12:14 A. We didn't communicate our practices to
15 anyone. To -- I mean inasmuch as I didn't tell
16 YouTube or MySpace or AT&T or Canada Net, I didn't
17 tell -- I and none of my staff would have
18 communicated any rules. We just sent the DMCA
19 notice.

20 12:15 Q. Were you under instructions not to reveal
21 Viacom's takedown rules to YouTube?

22 12:15 A. If it's in the -- if it's in my NDA or
23 work rules. I don't remember somebody giving me an
24 explicit instruction. I don't recall somebody
25 saying, don't tell, but --

1 12:15 Q. Do you think it would have helped YouTube
2 follow Viacom's wishes with respect to having its
3 content appear on YouTube --

4 12:15 MS. COLEMAN-BISHOP: Objection. Calls for
5 speculation. No matter where you go with the
6 question, it's going to call for speculation.

7 12:15 MR. KRAMER: Yeah, but you have to let me
8 get the question so the record's clear, and then
9 you can object. And if I think your objection --

10 12:16 MS. COLEMAN-BISHOP: Don't lecture me on
11 how to defend a --

12 12:16 MR. KRAMER: No, Counsel, it's not just
13 proper. It's just not proper. You have to let me
14 get the question out so we can make the record, and
15 then if you have an objection, you can make it. I
16 can decide whether I want to restate the question or
17 not. But if you object in the middle of the
18 question, we don't even know whether your objection
19 is going to be meritorious. So just wait until I
20 get the question out. That's all. Just courtesy.
21 Okay?

22 12:16 MR. KRAMER: Q. Do you think it would
23 have helped YouTube follow Viacom's wishes with
24 respect to having its content appear on YouTube if
25 Viacom had communicated these kinds of rules to

1 putting them together and creating a new -- a new
2 piece of art, a new whatever you want to call it,
3 putting a new voice stream over a clip for humor
4 sake. That's -- taking more than one piece of
5 original work and reworking it to come up with
6 something else.

7 1:11 And that's when I -- someone told me about
8 Andy Warhol. I mean I knew of the images. I just
9 didn't realize that was of consequence. He took
10 something everybody knew, an icon, and did something
11 to it and made it different. So Andy Warhol's
12 pictures, in my mind, were a mash-up.

13 1:11 What defines a clip? I don't know that I
14 ever got that answered. You know, let's go to the
15 clip. You know, in sports, I don't know. So I
16 don't know. It was -- it was struggling to
17 understand the process.

18 1:11 Q. So the next question on the list is one
19 about which I'd like to ask you. You asked
20 Mr. Ishikawa, "Is setting any time limit arbitrary?"
21 Sitting here today, do you believe that setting time
22 limits for the clips that should be taken down
23 versus the clips that should be left up was an
24 arbitrary process?

25 1:12 MS. COLEMAN-BISHOP: Object to form.

1 1:12 THE WITNESS: I don't have an opinion.

2 1:12 MR. KRAMER: Q. Okay. How about back
3 when you were a manager at BayTSP?

4 1:12 A. Same answer. I didn't have an opinion.
5 Did what I was told.

6 1:12 MR. COX: Same objection.

7 1:12 MR. KRAMER: Fair enough.

8 1:12 MS. COLEMAN-BISHOP: Can I ask a quick
9 question here?

10 1:12 MR. KRAMER: Sure.

11 1:12 MS. COLEMAN-BISHOP: Courtney, what
12 exactly is a mash-up? What is your understanding of
13 one?

14 1:12 THE WITNESS: Two or more pieces of
15 original work being put together to create a third.

16 1:12 MS. COLEMAN-BISHOP: Okay.

17 1:13 (Whereupon Exhibit No. 18 was marked for
18 identification.)

19 1:13 MR. KRAMER: Q. Okey doke. Exhibit 18
20 is an e-mail exchange between BayTSP and MTVN
21 representatives on which you were copied with the
22 subject line, Video Takedown 11/14/2006. And
23 contained within the e-mail exchange itself, there
24 is a report entitled MTV Network's Video Takedown
25 Update. That's at the bottom of the first page.

1 The title is on the bottom of the first page. Then
2 the report starts on page 2.

3 1:14 A. Yes.

4 1:14 Q. Let me ask you if you've seen reports like
5 this at BayTSP?

6 1:14 A. Yes.

7 1:14 Q. This is a report on the application of the
8 Viacom takedown effort through BayTSP on that day,
9 November 14th, 2006, right?

10 1:14 A. Yes.

11 1:14 Q. And in the chart at the top of page 2
12 there are the four services that we looked at
13 earlier: YouTube, MySpace, Yahoo! Video, and Google
14 Video, right?

15 1:14 A. Yes.

16 1:14 Q. So am I reading the chart correctly in
17 saying that it shows on that day BayTSP sent
18 takedown notices for 22 episodes and 36 clips on
19 YouTube?

20 1:14 A. Yes.

21 1:14 Q. Okay. In the next column it says, "Passed
22 on." Do you know what that means?

23 1:15 A. Means we determined what we saw didn't
24 fall within the rules that we had been given, too
25 long, too short, it wasn't the clip.

1 1:15 Q. So on that day, Bay found and sent
2 takedown notices to YouTube for 58 videos containing
3 what it thought was Viacom content?

4 1:15 A. Yes.

5 1:15 Q. And on that day, it also found and left
6 out or passed on 555 videos on the YouTube service,
7 right?

8 1:15 A. Of the ones they reviewed, yes.

9 1:15 Q. So 555 clips that were passed on because
10 they fell outside of Viacom's takedown rules, right?

11 1:15 MR. COX: Objection. Asked and answered.

12 1:15 THE WITNESS: Trying to make sure I
13 understand. I believe that is correct.

14 1:16 MR. KRAMER: Q. And the reason that
15 BayTSP left up on YouTube those 555 clips it found
16 was because Viacom directed BayTSP to leave them up,
17 right --

18 1:16 MR. COX: Objection. Calls for
19 speculation.

20 1:16 MR. KRAMER: Q. -- as part of its
21 instructions?

22 1:16 A. No, that would not be correct.

23 1:16 Q. Why is that not correct?

24 1:16 A. We were not given instructions, per se, of
25 what to leave up.

1 1:16 Q. Fair enough. The converse of an
2 instruction to take something down, however, is it
3 implicitly to leave it up, right?

4 1:16 A. Yes.

5 1:16 Q. Okay. In the next table down in the
6 document, there's a chart labeled P2P?

7 1:17 A. Yes.

8 1:17 Q. Can you explain what that shows?

9 1:17 A. Those were files that we found on those
10 three P2P networks: Gnutella, eDonkey and
11 BitTorrent.

12 1:17 Q. That you believed contained Viacom
13 content?

14 1:17 A. Yes.

15 1:17 Q. And so on that day, BayTSP representatives
16 identified 7,626 pieces of Viacom content on the
17 BitTorrent service, correct?

18 1:17 A. That's what this report would suggest.

19 1:17 Q. So Bay had found a far greater volume of
20 what it thought was Viacom content on P2P networks
21 that day than it had found on YouTube, right?

22 1:17 MR. COX: Object to the form.

23 1:18 THE WITNESS: It would be an inaccurate
24 comparison.

25 1:18 MR. KRAMER: Q. Hmm. Well, I suppose I

1 should ask you why that's an inaccurate comparison.

2 1:18 A. Why can't you make a Yugo go as fast as a
3 drag race rail car?

4 1:18 Q. I take it you're a fan of car racing. I'm
5 getting that sense.

6 1:18 A. It is not designed to do so. Why can't
7 you find bags of oranges that have counts of upwards
8 to 1,000 like you would if you bought a bag of
9 peanuts? It's apples and oranges. You can't make
10 that comparison.

11 1:18 The kind of things you can find on a P2P
12 network have a broader base, a global base, than you
13 would find on a particular video service regardless
14 of service. So --

15 1:19 Q. Can you elaborate on that?

16 1:19 A. There's no relationship between the number
17 we found or passed on a service -- on a single point
18 of source, MySpace server, than we would find on the
19 untold -- and I say that because I don't know -- the
20 untold number of BitTorrent servers that are out
21 there on the planet Earth. There's more
22 possibilities to find things on BitTorrent than you
23 would find on YouTube or MySpace or whatever just
24 because of the sheer number of source points.

25 1:19 Q. Okay. Let's -- let me come it at slightly

1 differently. In the chart beneath the P2P chart
2 there's a list by asset of Viacom content --

3 1:20 A. Mm-hmm.

4 1:20 Q. -- that rolls up into the 22 episodes, 36
5 clips and 556 clips passed on for the day, right?

6 1:20 A. Yes.

7 1:20 Q. And so on that given day Viacom
8 encountered 316 different pieces of content on the
9 YouTube service that appeared to contain content
10 from South Park, it took down one clip?

11 1:20 A. Yes.

12 1:20 Q. It took down one clip, and it passed on
13 315, correct?

14 1:20 A. Yes.

15 1:20 Q. So I'm reading that correctly. The counts
16 for the P2P services that appear in the chart above
17 the asset-by-asset breakdown --

18 1:20 A. Mm-hmm.

19 1:20 Q. -- those counts were for the same list of
20 assets that appear in the breakdown beneath it,
21 right?

22 1:20 MR. COX: Object to form, lacks
23 foundation.

24 1:21 THE WITNESS: I don't know in that -- the
25 start of this, I don't know if the P2P chart refers

1 to the assets below or the asset above, the European
2 Music Awards 2006 or to the asset list below. I
3 don't remember.

4 1:21 MR. KRAMER: Q. Take a look, if you
5 would, at the page that starts -- the page that ends
6 with the Bates No. BayTSP 522. See that's the topic
7 heading P2P Not Sent?

8 1:21 A. Excuse me. Yes.

9 1:21 Q. And there's a breakdown by asset which
10 matches the same assets in the --

11 1:21 A. Okay.

12 1:21 Q. -- prior YouTube chart, right?

13 1:21 A. Yes. Okay.

14 1:21 Q. So the totals in the P2P chart for each of
15 the three P2P services, Gnutella, eDonkey and
16 BitTorrent, those correspond to the specific list of
17 assets that BayTSP was charged with identifying for
18 YouTube as well, correct?

19 1:22 A. Yes.

20 1:22 MR. COX: Object to the form.

21 1:22 MR. KRAMER: Q. So am I reading the
22 chart correctly that on this day, November 14, 2006,
23 with respect to P2P services, BayTSP identified some
24 6500 pieces of content on P2P networks that it
25 believed contained content from Viacom's show South

1 1:34 A. No.

2 1:34 Q. Why not?

3 1:34 A. There were no rules at the time for a time
4 limitation -- when I first became aware of YouTube,
5 MySpace, video sharing, videos were five minutes,
6 videos were an hour, videos were two hours. There
7 was no rule that said, okay, you can't put up just
8 part of it. And there was nothing there -- from the
9 videos that I watched, I don't recall ever seeing an
10 entire movie, hundred and two minutes in its
11 entirety. But I can think of a number of times,
12 including now, where you can see whole content on
13 YouTube.

14 1:35 I like watching the Glenn Beck show. It
15 is approximately a 38-minute, sucking out
16 commercials, and some people put it up in two parts.
17 Some people put it up in six parts. Some people put
18 it up in -- so the point is, nothing about the clip
19 identifies its source.

20 1:35 Q. Okay. But couldn't you tell if it was a
21 full episode of South Park, that it wasn't
22 authorized to be there?

23 1:35 A. No.

24 1:35 Q. The whole thing was there. Doesn't that
25 give it away?

1 1:35 MR. COX: Object to the form.

2 1:36 THE WITNESS: No.

3 1:36 MR. KRAMER: Q. Do you think it's likely

4 that someone with authority to do it at Viacom was

5 uploading full episodes of South Park to YouTube?

6 1:36 MS. COLEMAN-BISHOP: Objection. Asked and

7 answered, argumentative. She's already said no.

8 She's not able to identify whether or not any one of

9 these full episodes had any authority to be posted

10 or did not.

11 1:36 MR. KRAMER: Okay.

12 1:36 MS. COLEMAN-BISHOP: There's no way to

13 tell from a full episode whether or not the person

14 that uploaded it had authority. No matter how many

15 times you ask the question, you're going to get the

16 same answer. The answer's no.

17 1:36 THE WITNESS: I'm with her.

18 1:36 MR. KRAMER: Q. You agree with the

19 sentiment your attorney just expressed?

20 1:36 A. Yeah. There is no connection between what

21 you see in YouTube, the person who posted it, and

22 the person who produced it. There is no

23 identifiable link.

24 1:36 Q. Meaning there's no way to tell --

25 1:36 A. Correct.

1 1:36 Q. -- whether it's authorized?

2 1:36 A. Correct.

3 1:37 (Whereupon Exhibit No. 21 was marked for
4 identification.)

5 1:37 MS. COLEMAN-BISHOP: Can we go off the
6 record just one second?

7 1:37 MR. KRAMER: Sure. Off the record.

8 1:37 THE VIDEOGRAPHER: The time is 1:38. Off
9 the record.

10 1:37 (Whereupon a recess was taken.)

11 1:37 THE VIDEOGRAPHER: Time is 1:38. On the
12 record.

13 1:37 MR. KRAMER: Q. Okay.

14 1:37 A. Okay.

15 1:37 Q. Ms. Nieman, Exhibit 21 is a similar e-mail
16 exchange you had with someone named Misty at YouTube
17 the same day as Exhibit 20, right?

18 1:38 A. Yes.

19 1:38 Q. Your message starts with the same list of
20 clips on YouTube and the same requests, "Please take
21 this down immediately." Misty responds that she
22 removed the videos but she, too, thought that the
23 account might have been set up by Comedy Central.
24 Do you see that?

25 1:38 MR. COX: Object to the characterization

1 of the document.

2 1:38 THE WITNESS: I don't know what Misty was
3 thinking. As I read this, she had some belief that
4 they may have come from a valid source.

5 1:38 MR. KRAMER: Q. And you wrote, "Referring
6 to this account, South Park Studios, they are
7 associated with Comedy Central, but MTVN has the
8 exclusive rights"?

9 1:38 A. Yes.

10 1:38 Q. So you thought at that point that the user
11 South Park Studios was associated with Comedy
12 Central, right?

13 1:38 A. I believe our client informed us of that.

14 1:39 Q. Do you recall who specifically?

15 1:39 A. No, I do not.

16 1:39 Q. Can you turn back to Exhibit 8, which is
17 the work digest for Project 1 for MTV?

18 1:39 A. Got it.

19 1:39 Q. And if you could look at the second page
20 of Exhibit 8 --

21 1:39 A. Yes.

22 1:39 Q. Under where it says, "Description of
23 Activity," it says, "YouTube is no longer an active
24 protocol in Project 1 because of the implementation
25 of Project 2." Do you know what that means?

1 1:49 Q. Then it has a description of activity
2 under the project details section in this digest?

3 1:50 A. Mm-hmm.

4 1:50 Q. Does that accurately reflect your
5 understanding of the project that BayTSP was tasked
6 with by Viacom?

7 1:50 A. Give me a moment.

8 1:50 MR. COX: Objection. Vague, ambiguous,
9 lacks foundation.

10 1:50 THE WITNESS: Yes, that is an accurate
11 description of what we were engaged to do.

12 1:50 MR. KRAMER: Q. Okay. Do you recall
13 Viacom giving BayTSP a specific instruction to
14 accumulate a large list of clips on the YouTube
15 service that BayTSP believed contained Viacom
16 content rather than send takedowns as BTS -- as
17 BayTSP became aware of those clips?

18 1:51 MR. COX: Object to the form.

19 1:51 THE WITNESS: Yes.

20 1:51 MR. KRAMER: Q. And who gave that
21 instruction?

22 1:51 A. I don't recall. My recollection, it would
23 have been Evelyn. Evelyn would have been the one
24 who informed me.

25 1:51 Q. Viacom instructed BayTSP to accumulate

1 clips it identified so that Viacom could send one
2 massive takedown request to YouTube instead of
3 sending takedowns as BayTSP became aware of clips,
4 right?

5 1:51 MR. COX: Objection. Calls for
6 speculation.

7 1:51 THE WITNESS: I don't know the motivation
8 for it. I don't -- I don't know.

9 1:51 MR. KRAMER: Q. Okay. So when BayTSP
10 would identify clips of content on the YouTube
11 service in the course of this project that BayTSP
12 believed contained Viacom content, BayTSP's
13 instructions were not to send a takedown notice
14 until 100,000 clips were accumulated, right?

15 1:52 MR. COX: Object to the form.

16 1:52 THE WITNESS: I believe the instruction
17 was to hold the clips. I don't remember a specific
18 number being conveyed to us initially. At some
19 point somebody may have said 50, 80, 100, 200. I
20 don't know. I know the instructions were to hold
21 those notices.

22 1:52 MR. KRAMER: Q. Well, the description of
23 the activity that is in the work digest for this
24 project says once 100,000 infringements have been
25 met, that was the --

1 1:52 A. Yes.

2 1:52 Q. That was the figure?

3 1:52 A. That's in February. This project began in
4 December. When this began, I don't remember anybody
5 giving us a target.

6 1:52 Q. Well, Exhibit 8, which is -- sorry. Not
7 Exhibit 8. Exhibit 22 also refers to 100,000 clip
8 figure, right?

9 1:53 A. It does, but I don't remember it.

10 1:53 Q. Hmm. You don't remember -- you do
11 remember that it was part of the project. You just
12 don't remember when the instruction to collect up
13 100,000 was given?

14 1:53 A. Yes.

15 1:53 Q. Okay. Don't you recall being informed
16 that Viacom was queuing up takedown notices as part
17 of a strategy for dealing with YouTube?

18 1:53 MR. COX: Object to the form.

19 1:53 THE WITNESS: No.

20 1:54 (Whereupon Exhibit No. 24 was marked for
21 identification.)

22 1:54 MR. KRAMER: Q. Exhibit 24 is an e-mail
23 exchange between Mr. Ishikawa, Bay's CEO, and Donna
24 Cooper of Black Entertainment Television, dated
25 January 24th, 2007, on which you are copied. Has

1 the subject BET Asset List.

2 1:54 A. Yes.

3 1:54 Q. In the last in time e-mail to Ms. Cooper,
4 which you received, Mr. Ishikawa writes that BayTSP
5 was, quote, queuing up the takedown notices as
6 instructed by Adam at MTVN. Do you see that?

7 1:54 A. Yes.

8 1:54 Q. You received this e-mail, did you not?

9 1:55 A. Well, yes, it came into my inbox.

10 1:55 Q. You were informed in this e-mail, were you
11 not, that BayTSP had been instructed by Adam at MTVN
12 to queue up takedown notices, right?

13 1:55 MR. COX: Objection. Document speaks for
14 itself.

15 1:55 THE WITNESS: I may have read this. It
16 didn't register. When I would receive e-mails
17 regarding things, I looked at: Does this matter to
18 me; are they giving me a different set of
19 instructions; what to take down; are we getting a
20 new asset; are we taking down an asset? Okay.
21 Nothing in this rings any bells to me other than
22 that there's a woman named Donna Cooper who has some
23 influence or direction over BET. But it doesn't
24 tell me to start or stop anything, so I wouldn't
25 have paid attention to it.

1 client services.

2 1:58 MR. KRAMER: Q. Okay.

3 1:58 A. BayTSP, whoever would be, would be the
4 head of that project. My role in that project,
5 would be to oversee Deana who was the Paramount and
6 Sarah who was Viacom. But beyond that, we didn't --
7 client services never dictated what was done, how it
8 was done, why it was done, when it was done.

9 1:59 Q. What did it do?

10 1:59 A. We were told, review the infringements,
11 send notices, build reports to inform our clients of
12 what was sent. That's it. That's what client
13 services did.

14 1:59 Q. The Sarah you're referring to is whom?

15 1:59 A. Cruz.

16 1:59 Q. And her job was what?

17 1:59 A. She was a client services manager.

18 1:59 Q. For what client?

19 1:59 A. I believe it was Viacom.

20 1:59 Q. And Deana Arizala was Paramount?

21 1:59 A. Yes.

22 1:59 Q. And they both reported to you?

23 1:59 A. Yes.

24 1:59 Q. So at this time, Viacom was learning of
25 the presence of clips on the YouTube service that

1 BayTSP believed contained its content, and BayTSP
2 was instructed not to send out notices for those
3 clips, right?

4 2:00 MR. COX: Object to form, asked and
5 answered.

6 2:00 THE WITNESS: I don't know what -- I don't
7 know what Viacom was doing. I don't know what
8 anybody at Viacom was doing. I just know, my level
9 on down, don't send notices, just hold them,

10 2:00 MR. KRAMER: Q. Okay. So BayTSP was
11 instructed to do that by Viacom, hold the notices
12 and not send them to YouTube?

13 2:00 MR. COX: Object to the form.

14 2:00 THE WITNESS: Based solely on the chain of
15 command, client tells service, do this; service does
16 that. So in this case Viacom is client, BayTSP is
17 service. Client tells services, don't send notices,
18 we don't send notices.

19 2:01 MR. KRAMER: Q. In the client contact
20 information section of the work digest --

21 2:01 A. Okay.

22 2:01 Q. That's Exhibit 23.

23 2:01 A. Got it.

24 2:01 Q. On the page that ends with the numbers
25 128.

1 2:01 A. Okay. Give me a second. I'm almost
2 there. Yes.

3 2:01 Q. There are two attorneys from Viacom's law
4 firm, Jenner & Block, listed, Mr. Hohengarten and
5 Ms. Tenney?

6 2:02 A. Mm-hmm.

7 2:02 Q. How were they involved in this mass
8 takedown project?

9 2:02 MS. COLEMAN-BISHOP: Objection.
10 Attorney-client privilege.

11 2:02 Anything that you may have any knowledge
12 as to any communications with these two attorneys,
13 instruct you not to answer the question so far as
14 they would have been involved in any legal advice
15 given to your former employer.

16 2:02 THE WITNESS: I don't know who they are.

17 2:02 MR. KRAMER: That takes care of that
18 instruction.

19 2:02 MR. KRAMER: Q. There was a group of
20 people in Washington, D.C. working on this project,
21 right?

22 2:02 A. Haven't a clue.

23 2:02 Q. Okay. Do you recognize the name Warren
24 Solow, other than the fact that it appears in this
25 document? Do you remember hearing the name?

1 3:06 Q. Okay.

2 3:06 A. More than one month.

3 3:06 Q. BayTSP finally executed on this strategy
4 of sending one mass takedown notice, right?

5 3:06 A. Yes.

6 3:06 Q. Do you remember the date?

7 3:06 A. No.

8 3:06 Q. I'll represent to you that it was
9 February 2nd, 2007. We'll come back to that. So
10 what happened on that date with respect to the
11 transmission of the notice?

12 3:06 A. They went out, I believe, in blocks. In
13 other words, we didn't -- we didn't have one e-mail
14 with 100,000 or whatever it was. I believe they
15 went out in blocks. I don't remember what the block
16 size was. And I believe they were all transmitted
17 within hours -- two, three -- I don't know for sure.

18 3:06 Q. Do you remember --

19 3:06 A. And then --

20 3:06 Q. Go ahead.

21 3:06 A. And then nothing else happened. Nobody
22 breathed a sigh of relief or tipped a glass or
23 anything. We just -- we sent notices, which is what
24 we were doing all along.

25 3:07 Q. This was just ordinary practice?

1 3:07 A. Yes.

2 3:07 Q. Really?

3 3:07 A. Yes, thousands of notices goes out of the

4 BayTSP every day, even as we speak.

5 3:07 Q. The transmission of this mass takedown

6 notice to YouTube was just standard ordinary

7 operating procedure for BayTSP?

8 3:07 MR. COX: Objection. Asked and answered.

9 3:07 THE WITNESS: No. The transmission of

10 notices is standard operating procedure.

11 3:07 MR. KRAMER: Q. But this was a big deal,

12 right?

13 3:07 A. For Viacom, I don't know.

14 3:07 Q. Was it a big deal for Bay?

15 3:07 A. No. It was different, but it wasn't a big

16 deal.

17 3:07 Q. How is it different?

18 3:07 A. Because normally we find and send. This

19 was a find, hold, send. That's all.

20 3:07 Q. Who from Viacom gave the launch command to

21 BayTSP?

22 3:07 A. I don't remember.

23 3:08 (Whereupon Exhibit No. 29 was marked for

24 identification.)

25 3:08 MR. KRAMER: Q. Exhibit 29 is a

1 transcript of an AOL Instant Message chat between
2 you and others on BayTSP on February 2nd, 2007,
3 right?

4 3:08 A. Mm-hmm.

5 3:08 Q. It's just a recording of a conversation
6 that people were having online at the time, right?

7 3:08 A. Yes.

8 3:08 Q. Your AOL Instant Message chat name is
9 BayTSP C-A-N-N-E, correct?

10 3:08 A. Correct.

11 3:08 Q. Who is BayTSP Spider?

12 3:08 A. I don't know.

13 3:08 Q. Bay Deana, is that Deana Arizala?

14 3:09 A. Yes.

15 3:09 Q. BayTSP Spider, Mark Ishikawa?

16 3:09 A. I can't remember. It could be. I don't
17 know.

18 3:09 Q. Did you regularly communicate using
19 Instant Message at BayTSP?

20 3:09 A. No.

21 3:09 Q. Did you regularly have joint conversations
22 with all of these people on Instant Messaging?

23 3:09 A. No. Instant Messaging was the -- was an
24 exception.

25 3:09 Q. Why was it that you were having a chat

Schapiro Exhibit 12

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)
PARTNERS, COUNTRY MUSIC.)
TELEVISION, INC., PARAMOUNT)
PICTURES CORPORATION, and BLACK)
ENTERTAINMENT TELEVISION, LLC,)

Plaintiffs,)

vs.)

NO. 07-CV-2103

YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)

Defendants.)

THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., et al.,)
on behalf of themselves and all)
others similarly situated,)

Plaintiffs,)

vs.)

NO. 07-CV-3582

YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE, INC.,)

Defendants.)

VIDEOTAPED DEPOSITION OF WARREN SOLOW
NEW YORK, NEW YORK
DECEMBER 18TH, 2009

JOB NO. 18304

1
2 VIDEOTAPED DEPOSITION OF WARREN
3 SOLOW, held at the offices of Wilson,
4 Sonsini, Goodrich & Rosati, PC, 1301
5 Avenue of the Americas New York, New
6 York, pursuant to notice, before
7 Maureen Ratto, Registered Professional
8 Reporter and Notary Public of the State
9 of New York on December 18, 2009, at
10 10:10 a.m.
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A P P E A R A N C E S

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1 statement. I am simply telling you
2 that you first need to establish that
3 something that occurred in October of
4 2006 relates to the February, 2007 mass
5 11:54:05 takedown request that is the subject of
6 the 30(b)(6). Once you do that, I will
7 not obstruct you from asking him
8 questions about it. But you are not
9 to -- allowed to ask him a series of
10 11:54:17 questions then ask that, perhaps
11 determine that it has nothing to do
12 with the mass takedown request and then
13 you will have been allowed to ask on
14 the record a series of questions that
15 11:54:28 have nothing to do with the scope of
16 this examination. So you have my
17 position.

18 If there is a question pending,
19 you can raise it and -- and we will go
20 11:54:37 from there. And I am more than happy
21 to have that be the way in which we are
22 going to conduct a 30(b)(6) because in
23 my belief that is the proper way to
24 conduct a 30(b)(6).

25 11:54:49 MR. RUBIN: That's fine. It

1 will be case-wide from now on.

2 Q. Mr. Solow, I'm sorry. I hope
3 you weren't distracted by that colloquy
4 as well.

5 11:54:58 A. No. I have nothing else to do.

6 Q. What was the rule in place for
7 which clips would be included in the
8 February 2nd, 2007 mass takedown?

9 A. I do not -- I -- I don't believe
10 11:55:24 that I could list out all the rules as
11 they existed for that mass takedown off
12 the top of my head.

13 Q. You were designated to testify
14 on that topic today, weren't you?

15 11:55:41 A. Yes.

16 Q. And you prepared to testify on
17 that topic today, didn't you?

18 A. Yes.

19 Q. And you're unable to do so?

20 11:55:47 MS. KOHLMANN: Objection.

21 Misstates the record.

22 A. I -- if I were testifying as to
23 the, you know, the substance of crime
24 and punishment, I would hope that I
25 11:56:04 would not be asked to recite crime and

1 punishment verbatim from memory.

2 Q. Is it your testimony that the
3 rule set for which clips will be
4 removed from YouTube in connection with
5 11:56:16 the February 2nd, 2007 mass takedown is
6 as complicated as crime and punishment?

7 MS. KOHLMANN: Objection.

8 A. It could be for some people.

9 Q. Would it that be complicated for
10 11:56:25 YouTube?

11 MS. KOHLMANN: Objection.

12 A. No. Because they would be able
13 to refer to a list of rules as opposed
14 to being asked to do it off the top of
15 11:56:36 their head.

16 Q. Has YouTube been provided the
17 list of rules?

18 MS. KOHLMANN: Objection, lacks
19 foundation.

20 11:56:41 A. I don't know.

21 Q. As you sit here testifying on
22 behalf of Viacom as a corporate
23 representative, you don't know whether
24 YouTube had been provided the list of
25 11:56:49 rules that governed which clips were

1 included and excluded from the February
2 2nd, 2007 mass takedown?

3 MS. KOHLMANN: Objection as to
4 form. You can answer.

5 11:57:01 A. I do not.

6 Q. Were the rules set forth in
7 Exhibit 2 the rules that governed the
8 February 2nd, 2007 mass takedown?

9 A. No.

10 11:57:19 Q. In what way did the rules in
11 Exhibit 2 differ from the rules that
12 established which clips would be
13 included in the February 2nd, 2007 mass
14 takedown?

15 11:57:33 A. I don't know specifically how
16 they differed. I do know that the fall
17 and winter of '06, going into '07, was
18 a time where with every day we were
19 acquiring additional knowledge as to
20 11:57:57 the characteristics of the massive
21 infringement going on at YouTube and we
22 learned at the time --

23 Q. I'm not asking for a speech
24 about Viacom's litigation position, I'm
25 11:58:08 actually asking for a very specific