

**SCHAPIRO DECLARATION
EXHIBITS CONTINUED**

Schapiro Exhibit 13

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.)

Case No. 1:07CV02103

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.)

Case No. 07CV3582

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

Defendants.)
-----)

DEPOSITION OF MICHELE GANELESS
NEW YORK, NEW YORK
MONDAY, NOVEMBER 3, 2008

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Novemeber 3, 2008

9:49 a.m.

VIDEOTAPED DEPOSITION OF MICHELE
GANELESS, held at the offices of Wilson
Sonsini Goodrich & Rosati, LLP, 1301
Avenue of the Americas, New York,
New York, pursuant to notice, before Erica
L. Ruggieri, Registered Professional
Reporter and Notary Public of the State of
New York.

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A P P E A R A N C E S

FOR THE LEAD PLAINTIFFS AND PROSPECTIVE
CLASS:

JENNER & BLOCK, LLP
BY: SUSAN J. KOHLMANN, ESQ.
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FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE,
LLC and GOOGLE, INC.:

FOR THE DEFENDANTS YOUTUBE, INC.,
YOUTUBE, LLC and GOOGLE, INC.:
WILSON SONSINI GOODRICH & ROSATI, LLP
BY: DAVID H. KRAMER, ESQ.
BART E. VOLKMER, ESQ.
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ALSO PRESENT:
SALLIAN BROWN, Videographer
MICHELENA HALLIE, MTV Networks

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M. GANELESS

A. Again, I don't really understand the specifics of the joint venture.

Q. What about before the joint venture was created, is it the case that a Viacom-owned entity owned the rights to distribute South Park content online, prior to the creation of the joint venture, to your knowledge?

03:12:32 MS. KOHLMANN: I object to the question, to the extent, if I'm understanding it correctly, you are suggesting that she testified one way or the other what happened after the joint venture was formed.

03:12:57 But you can answer.

A. To the best of my understanding, a Viacom or Comedy Central entity owned the rights to South Park, the TV show, and how it was distributed on all platforms.

03:13:09 Q. And that's prior to the creation of the joint venture, right?

A. That is my understanding. But you'd have to check with the lawyers.

03:13:22 Q. Which lawyer would know?

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M. GANELESS

A. Joella West.

Q. To the best of your knowledge,
Ms. Ganeless, have Viacom senior
03:13:41 executives made any public statement with
respect to a correlation between the
traffic to Viacom's online sites and the
removal of content from YouTube in the
February 2007 take-down notice we talked
03:13:56 about?

MS. KOHLMANN: I'm sorry, can
you just read that back one more time?

(Record read.)

A. Yes. I believe they have. I
03:14:23 can't remember specifically when or where,
but I remember comments being made.

Q. Aren't you aware that Messrs.
Dooley and Dauman made statements
concerning the correlation between the
03:14:34 traffic to Viacom's online sites and the
removal of content from YouTube in the
February 2007 take-down notice, in
connection with a March 1st, 2007 earnings
call for Viacom?

03:14:48 MS. KOHLMANN: Objection.

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M. GANELESS

You can answer.

A. I remember them making comments
in the press. I can't remember where, but
03:14:55 it's very likely it was the earnings call.

Q. As you sit here today, do you
have any recollection of what those
statements were, correlating traffic to
the online sites owned by Viacom and the
03:15:11 removal of content from YouTube?

A. I remember there were increases.
I can't remember what the numbers were.

Q. You remember that they reported
that there were increases, right?

03:15:24 A. I remember that the Philippe and
Tom reported traffic increases, yes.

Q. You remember that they reported
substantial traffic increases to Viacom's
online sites, following the removal of
03:15:36 content from YouTube in February 2007,
right?

MS. KOHLMANN: Objection as to
form.

You can answer.

03:15:42 A. I don't remember the specific

1 M. GANELESS

2 numbers, but I do remember them reporting
3 increases in traffic. But I'd have to
4 look at the reports to remember the
5 03:15:52 numbers.

6 Q. I'm not asking you the specific
7 numbers yet. I'm asking you whether you
8 recall that they reported substantial
9 increases in traffic to Viacom's online
10 03:16:01 sites, following the take-down of content
11 from YouTube in February 2007.

12 MS. KOHLMANN: Objection as to
13 form.

14 You can answer.

15 03:16:10 A. I can't remember how big the
16 gains were, but I do remember gains.

17 Q. You remember that they reported
18 figures that you believed were inflated,
19 right?

20 03:16:20 MS. KOHLMANN: Objection.

21 A. It's possible. I don't
22 remember.

23 Q. You really have no recollection
24 of whether you believed that Mr. Dooley
25 03:16:30 overstated the increase in traffic to

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M. GANELESS

Viacom's online sites, following the
February 2007 take-down?

MS. KOHLMANN: Objection as to
03:16:37 form.

A. I don't remember.

MR. KRAMER: Let's go with that
as 18.

(Ganeless Exhibit 18, March 1,
03:18:57 2007 e-mail thread, bearing Bates
numbers VIA00183316 to 17, marked
for identification, as of this
date.)

MR. KRAMER: Before we get
03:17:12 there, hang onto that for one second.

Q. Do you recall communicating,
Ms. Ganeless, with anyone about the
accuracy of statements made by Mr. Dooley
and Mr. Dauman on the earnings call about
03:17:27 the increase in traffic to Viacom's online
sites, following the February 2007
take-down to YouTube?

MS. KOHLMANN: Objection as to
form.

03:17:35 You can answer.

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M. GANELESS

A. I am trying to remember that,
but I do not remember right now.

Q. Okay. Let's go with Exhibit 18.

03:17:55 MS. KOHLMANN: Do you have other
copies of that?

MR. KRAMER: Did I not give it
to you?

MS. KOHLMANN: Thanks.

03:18:03 Q. Ms. Ganeless, if Mr. Dooley or
Mr. Dauman made a misrepresentation of
fact on an earnings call, that would have
been a big deal, wouldn't it?

MS. KOHLMANN: Objection.

03:18:25 A. I'm sorry, I'm just reading.
Can you restate the question.

Q. Yeah. If Mr. Dooley or
Mr. Dauman made a misrepresentation of
fact on an earnings call, could that have
03:18:42 been a big deal to you?

MS. KOHLMANN: Objection.

You can answer.

A. Yes.

Q. Especially if that
03:18:46 misrepresentation of fact concerned Comedy

1 M. GANELESS

2 Central, correct?

3 A. Yes.

4 Q. So in Exhibit 18, Mr. Cucci --

5 03:18:56 sorry, Exhibit 18 is an e-mail thread
6 produced to us by Viacom, dated March 1st,
7 2007. It bears Bates number VIA00183316
8 to 17, and it starts with an e-mail
9 message from Mr. Cucci to you,

10 03:19:15 Ms. Ganeless, and Erik Flanagan at
11 9:32 a.m. on March 1, in which he states,
12 "On the earnings call Dooley mentioned
13 Comedy traffic is up 90 percent since
14 YouTube take-down."

15 03:19:26 Does that refresh your
16 recollection about a statement that a
17 Viacom senior executive made about the
18 correlation between the traffic to
19 Viacom's online Comedy site and the
20 03:19:36 removal of content from YouTube in
21 February 2007?

22 A. I remember this now.

23 Q. Okay. You remember that

24 Mr. Dooley stated, on an earnings call,
25 03:19:46 that Comedy traffic was up 90 percent

1 M. GANELESS

2 since the YouTube take-down on March 1st,
3 2007?

4 MS. KOHLMANN: Objection.

5 03:19:55 You can answer.

6 A. What I actually remember is that
7 after all of this, we -- it was clarified
8 that the 90 percent was -- that John had
9 heard it wrong, I believe; although again
10 03:20:11 my memory is sketchy. But that that
11 90 percent referred to year-over-year
12 gains, not -- that's why the number didn't
13 look familiar to me, I think.

14 Q. You don't recall Mr. Dooley
15 03:20:24 actually saying that Comedy traffic was up
16 90 percent since the YouTube take-down on
17 March 1st, 2007?

18 A. I didn't listen to the earnings
19 call, so I was -- I was investigating,
20 03:20:38 after John Cucci sent me this e-mail. And
21 I remember, the piece I remember is that
22 after we did all of the investigating
23 that, the 90 percent referred to a
24 year-over-year gain.

25 03:20:53 Q. So if Mr. Dooley had said that

1 M. GANELESS

2 it was up 90 percent since February
3 2000 -- sorry. If Mr. Dooley had said on
4 the earnings call that traffic to Viacom's
5 03:21:05 Comedy sites was up 90 percent from
6 February 2007 to March 2007, that would
7 have been a misrepresentation, correct?

8 MS. KOHLMANN: Objection.

9 A. Based on the data here, yes,
10 03:21:28 that would have been a misrepresentation.

11 Q. And in fact, when you heard that
12 Mr. Dooley had said that Comedy traffic
13 was up 90 percent since the YouTube
14 take-down on March 1st, 2007, you
15 03:21:39 recognized right away that that number
16 didn't jibe with any of your internal
17 data, right?

18 MS. KOHLMANN: Objection as to
19 form.

20 03:21:46 You can answer.

21 A. Yes, I believe I said here in
22 the e-mail that number doesn't jibe with
23 any of our internal data.

24 MR. KRAMER: Let's have this one
25 03:22:01 marked as 19, please.

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M. GANELESS

(Ganeless Exhibit 19, final transcript of Viacom's Q4 2006 earnings conference call on March 1, 2007, marked for identification, as of this date.)

THE WITNESS: Thank you.

Q. Ms. Ganeless, I'm not going to ask you to read the whole thing.

03:22:24 Exhibit 19 is the final transcript of Viacom's Q4 2006 earnings conference call on March 1, 2007 starting at 8:30 eastern time. And I'd ask you to turn to page 15 at the bottom, where a stock analyst named Imran Khan from JP Morgan is asking Viacom the following question: "Secondly, you said your traffic growth was significant, after you asked YouTube to take out your content. I was wondering if you can quantify what kind of video download you are seeing. Thank you."

Did I read that correctly?

A. I'm sorry, I wasn't following along specifically.

1 M. GANELESS

2 Q. At the bottom of page 15, Imran
3 Khan, an analyst with JP Morgan has some
4 questions during the earnings call. And
5 03:23:15 he says, "Secondly, you said that your
6 traffic growth was significant after you
7 asked Google to take out your content. I
8 was wondering if you can quantify what
9 kind of video download you are seeing.
10 03:23:29 Thank you."

11 Do you see that?

12 A. Yes, I do.

13 Q. Then, if you turn to page 16 of
14 the March 1st, 2007 transcript, do you see
15 03:23:38 where Tom Dooley, Viacom's chief financial
16 and administrative officer states, "In
17 terms of the kind of growth that we have
18 experienced on our online sites, Comedy is
19 up over 90 percent, Nickelodeon is up in
20 03:23:54 the 30s, and MTV.com was up in the mid-50
21 percentage growth, as a result -- in the
22 period after we did the take-down."

23 Do you see that?

24 A. I do.

25 03:24:07 Q. Do you recall discussing, via

1 M. GANELESS

2 e-mail or otherwise, Mr. Dooley's
3 statement that I just read?

4 A. I remember it from the e-mail
5 03:24:14 you just showed me.

6 Q. Do you recall whether you
7 believed Mr. Dooley's statement to be
8 accurate, the first time you heard it?

9 A. As I just said from the other
10 03:24:24 e-mail, I did not believe it to be
11 accurate, because it didn't jibe with any
12 of the numbers that had I seen.

13 Q. Now, you said that you believed
14 that Mr. Dooley had been referring to
15 03:24:34 year-over-year growth, when he said that
16 Comedy was up over 90 percent. But if you
17 read the transcript, that's not what he
18 was saying, right?

19 A. What I believe I testified to
20 03:24:44 was that I remembered, at the end of our
21 investigating, that 90 percent was
22 referring to year-over-year growth. I had
23 not seen a transcript of the earnings
24 report, so I didn't know if he had said it
25 03:24:58 correctly or not.

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M. GANELESS

Q. Well, Mr. Cucci told you that Mr. Dooley said that traffic on Viacom's Comedy sites was up 90 percent since the YouTube take-down. And he said that on March 1st, 2007, right?

A. Yes.

Q. So Mr. Cucci accurately reported Mr. Dooley's statements on the earnings call?

MS. KOHLMANN: I'm going to object, if you are suggesting that --

MR. KRAMER: Counsel, no speaking objections.

MS. KOHLMANN: I am going to --

MR. KRAMER: No speaking objections here counsel. That is improper.

MS. KOHLMANN: Do you want the record to be inappropriate?

I'm not coaching the witness.

MR. KRAMER: Just object, just object. Do not make a speaking objection at this point in the deposition.

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M. GANELESS

MS. KOHLMANN: I'm entitled to
object and state that you are
mischaracterizing what the statement
on page 15 says.

03:25:40

MR. KRAMER: That's coaching the
witness.

MS. KOHLMANN: It is not
coaching the witness.

03:25:45

MR. KRAMER: Do not make
speaking objections.

MS. KOHLMANN: It is not
coaching the witness.

Q. Mr. Dooley said that traffic was
up over 90 percent, after the YouTube
take-down on Viacom's Comedy sites, right?

03:26:05

MS. KOHLMANN: Objection.

A. In the earnings report that you
just showed me, Mr. Dooley said, "Comedy
is up over 90 percent, Nickelodeon is up
in the 30s, MTV.com was up in the mid-50
percentage growth as a result -- in the
period after we did the take-down."

03:26:22

Q. Right. So Mr. Dooley was
telling analysts on the earnings call that

03:26:37

1 M. GANELESS

2 Viacom's Comedy traffic increased
3 90 percent since the YouTube take-down,
4 right?

5 03:26:46 MS. KOHLMANN: Objection.

6 A. Based on what it says here, it
7 looks like he is saying Comedy traffic is
8 up 90 percent, since -- in the period
9 after we did the take-down.

10 03:27:11 Q. And that's how Mr. Cucci reports
11 it to you in his e-mail, which we looked
12 at as Exhibit 18, right?

13 A. That is correct.

14 Q. Okay. And you knew that that
15 03:27:21 was inaccurate at the time you heard it,
16 correct?

17 A. I knew that I had not seen that
18 number before.

19 Q. You knew that the notion that
20 03:27:30 traffic was up 90 percent since the
21 YouTube take-down did not jibe with any of
22 your internal data, right?

23 MS. KOHLMANN: Objection.

24 A. Yes, I knew -- I said in this
25 03:27:41 e-mail, the number doesn't jibe with any

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M. GANELESS

of our internal data.

Q. You knew Mr. Dooley's statement was false --

03:27:46 MS. KOHLMANN: Objection.

Q. -- right?

MS. KOHLMANN: Objection.

A. I knew that that 90 percent did not refer to the number after the YouTube take -- the time period after the YouTube take-down. I found out that it referred to an increase from a year ago.

Q. So you knew that Mr. Dooley, at the time he made the statements on the earnings call, had made a misrepresentation of fact about the growth in traffic on Comedy Central since the YouTube take-down, right?

MS. KOHLMANN: Objection.

03:28:17 You can answer.

A. I don't know if he was misrepresenting it or if he didn't understand it. I have no way of knowing what he -- why he said that.

03:28:30 Q. So he could have been lying?

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M. GANELESS

MS. KOHLMANN: Objection.

A. I have no reason to believe he was lying.

03:28:35 Q. Didn't you later tell Mr. Flanagan you didn't see how Mr. Dooley's statement could be accurate on any metric?

A. It is possible I said that. I still don't know what Tom Dooley was basing his comments on.

Q. It's possible that you said that, or you did say that?

A. I don't remember exact conversations from that time, but that sounds like something I likely said.

Q. Because you know it's not accurate, Mr. Dooley's statement, on any metric?

03:29:05 A. I remember there being a lengthy investigation about what the 90 percent was and that that 90 percent metric did not jibe with our internal data.

Q. Did you inform any -- well, let's talk about that investigation.

03:29:17

1 M. GANELESS

2 Who was involved in that
3 investigation?

4 A. I believe it was our research
5 03:29:24 group. From this e-mail, it was certainly
6 our research group. That's who I remember
7 looking into it.

8 Q. Did you inform any Viacom board
9 members that Mr. Dooley's statement on the
10 03:29:36 earnings call was untrue?

11 MS. KOHLMANN: Objection.

12 Misstates the record.

13 A. I had no conversations with
14 Viacom board members.

15 03:29:49 Q. So no, you didn't tell anyone
16 that you thought Mr. Dooley's statement
17 was false?

18 A. Again, having not seen -- having
19 not listened to or seen the transcript, I
20 03:29:58 only had John Cucci's recollection of what
21 he said to base it on, so I didn't know if
22 what John said about what Dooley said was
23 accurate. I merely looked into that 90
24 percent number, based on John's question.

25 03:30:09 Q. And after you recognized that

1 M. GANELESS

2 the number didn't jibe with any of your
3 internal, data did you take any action to
4 have Mr. Dooley's statement to analysts
5 03:30:28 corrected?

6 MS. KOHLMANN: Objection,
7 misstates the record.

8 A. I didn't know exactly what
9 Mr. Dooley said to the analysts. I only
10 03:30:34 had John Cucci's recollection.

11 Q. Did you have any reason to doubt
12 Mr. Cucci's recollection?

13 A. Specific data references, in
14 earnings calls he makes specific data
15 03:30:51 references to lots and lots of different
16 data. I had no idea whether or not -- and
17 until you showed me this just now, I had
18 no idea whether it was said correctly in
19 the earnings call or not said correctly.
20 03:31:02 I just knew exactly what that 90 percent
21 meant.

22 Q. Who is Mr. Cucci?

23 A. Cucci is the COO of the MTV
24 Entertainment group.

25 03:31:09 Q. So if the COO is reporting to

1 M. GANELESS

2 you that Mr. Dooley has just said that
3 traffic to Comedy sites is up 90 percent
4 since the YouTube take-down, wouldn't you
5 03:31:19 take that seriously?

6 MS. KOHLMANN: Objection.

7 A. I take it seriously. I looked
8 into what that 90 percent referred to, and
9 I got back to Mr. Cucci.

10 03:31:29 Q. And when Mr. Cucci reported it
11 to you, did you have any reason to doubt
12 that Mr. Cucci had reported accurately
13 what Mr. Dooley had said on the phone, on
14 the earnings call?

15 03:31:40 A. I remember having a conversation
16 with John Cucci, saying he must have been
17 referring to something else, because that
18 doesn't jibe with our internals. I have a
19 vague recollection of John saying he was
20 03:31:51 going to check.

21 I don't know how that all ended
22 up, other than the 90 percent number
23 referring to year over year. I don't know
24 if John misheard on the earnings call. I
25 03:32:07 never checked back to see the transcript

1 M. GANELESS

2 of the earnings call. All I did was check
3 to see what that 90 percent meant.

4 Q. Didn't you care about the fact
5 03:32:17 that a Viacom senior official might have
6 been making -- didn't you care that a
7 Viacom senior official was making a
8 misrepresentation on the earnings call to
9 stock analysts?

10 03:32:26 MS. KOHLMANN: Objection,
11 misstates the record.

12 A. I assumed that John Cucci
13 misheard what Dooley said.

14 Q. Why did you assume that
15 03:32:35 Mr. Cucci would mishear something that he
16 reported to you and asked you to
17 investigate?

18 MS. KOHLMANN: Objection.

19 A. I can't remember exactly why.
20 03:32:50 But I assumed John was listening to that
21 earnings call in the course of the day;
22 and when he heard that, it didn't jibe,
23 and so we looked into exactly why -- what
24 that 90 percent was referring to.

25 03:33:02 I don't know if John followed up

1 M. GANELESS

2 with, with any of the board members.

3 Q. Did you follow up with any of
4 the board members about the statement that
5 03:33:11 you believed Mr. Dooley had made on the
6 earnings call?

7 MS. KOHLMANN: Objection.

8 A. I didn't know exactly what
9 Mr. Dooley said on the earnings call. I
10 03:33:17 only had John Cucci's recollection.

11 Q. So based on John Cucci's
12 recollection, you knew -- sorry.

13 Based on what John Cucci
14 reported to you, you believed there was a
15 03:33:27 misrepresentation that was made on the
16 Viacom's earnings call by Mr. Dooley,
17 right?

18 MS. KOHLMANN: Objection.

19 Misstates the record.

20 03:33:33 A. I did not say that. I said I
21 believed that he must have -- that Tom
22 Dooley must have been referring to a
23 different metric, when he said 90 percent.

24 Now that you have shown me the
25 03:33:49 record, I know that to be false.

1 M. GANELESS

2 Q. Do you -- go ahead.

3 A. I didn't look at the transcript.

4 Q. Why not?

5 03:33:57 A. Not enough time in the day.

6 Q. Not enough time in the day to
7 address the fact that a Viacom senior
8 official may have been misrepresenting a
9 fact, in response to an analyst's question
10 03:34:07 on an earnings call?

11 MS. KOHLMANN: Objection.

12 A. No.

13 Q. Don't you think that should be a
14 priority?

15 03:34:13 MS. KOHLMANN: Objection.

16 A. In my day-to-day, the priority
17 is getting the best shows up on the air
18 and the many people as possible to watch
19 them.

20 03:34:21 Q. Well, you had enough time to
21 exchange a number of e-mails about that
22 representation by Mr. Dooley that day,
23 right?

24 A. I absolutely had time to make a
25 03:34:33 number of e-mail exchanges.

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M. GANELESS

I assumed the transcript of the earnings call would be quite long and so -- not in the habit of getting a transcript of earnings calls.

Q. So if all the information you had was Mr. Cucci's representation about what Mr. Dooley had said, and you knew that number didn't jibe with any of your internal data, what did you do to ensure that there was a correction?

MS. KOHLMANN: Other than what she's already testified to.

MR. KRAMER: Which is nothing.

MS. KOHLMANN: No, that misstates the record.

A. What I did was let John Cucci know and Colleen Fahey-Rush, who is the vice president of research for MTV Networks. I let them know that that number didn't jibe with any numbers that I had. I asked them to investigate it.

We discovered that that 90 percent represented a year-over-year growth, and that was the end of my

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M. GANELESS

involvement in it.

Q. You're sure?

A. That's my recollection.

03:35:43 Q. You responded to Mr. Cucci as if
his report was accurate, right?

MS. KOHLMANN: Objection.

A. I don't remember how I responded
to Mr. Cucci. I just forwarded it on to
03:35:56 the research group to say, can you find
out how that number was compiled.

MR. KRAMER: Let's have this one
marked as 23.

(Ganeless Exhibit 20, e-mail
03:37:32 thread, bearing Bates number
VIA00225061, marked for
identification, as of this date.)

MR. KRAMER: I'm sorry, what
number are we up to? 20.

03:37:09 THE WITNESS: Thank you.

Q. Ms. Ganeless, Exhibit 20 starts
with the same message from Mr. Cucci, and
your message follows. Then there's some
back and forth between you and others at
03:37:22 Viacom concerning the original message

1 M. GANELESS

2 from Mr. Cucci. It's a document produced
3 to us by Viacom, bearing Bates number
4 VIA00225061.

5 03:37:38 Do you see on March 1, 2007, at
6 10:04 a.m., you say to Mr. Flanagan, "We
7 will probably never know, but I don't see
8 how that can be accurate on any metric."
9 Right?

10 03:37:51 A. Yes.

11 Q. What you were saying is you
12 don't see how Mr. Dooley could report
13 accurately that traffic is up 90 percent
14 since the YouTube take-down on Viacom's
15 03:38:03 Comedy sites?

16 MS. KOHLMANN: Objection.

17 A. What I was saying is that
18 90 percent didn't reflect any of the data
19 that I had. I later found out it
20 03:38:14 reflected a year-over-year growth.

21 Q. But Mr. Dooley wasn't talking
22 about year-over-year growth, and no one
23 was talking about year-over-year growth
24 here. What we were talking -- what
25 03:38:25 Mr. Dooley was talking about, and what