

**SCHAPIRO DECLARATION
EXHIBITS CONTINUED**

Schapiro Exhibit 130

09:38:33

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-2203
)
 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.)

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF DOUG HERZOG
PALO ALTO, CALIFORNIA
FRIDAY, JANUARY 16, 2009

JANUARY 16, 2009

9:40 a.m.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF
DOUG HERZOG, at WILSON SONSINI GOODRICH &
ROSATI, 601 South California, Palo Alto,
California pursuant to notice, before me,
ANDREA M. IGNACIO HOWARD, CLR, CCRR, RPR, CSR
License No. 9830.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 A P P E A R A N C E S:

2
3 FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

4 JENNER & BLOCK

5 By: SUSAN J. KOHLMANN, Esq.

6 919 Third Avenue, 27th Floor

7 New York, New York 10022-3908

8 (212) 891-1690 skohlmann@jenner.com

9
10 FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and
11 GOOGLE, INC.:

12 WILSON SONSINI GOODRICH & ROSATI

13 By: DAVID H. KRAMER, Esq.

14 BART E. VOLKMER, Esq.

15 650 Page Mill Road

16 Palo Alto, California 94304-1050

17 (650) 320-4741 dkramer@wsgr.com;

18 bvolkmer@wsgr.com

19
20 ALSO PRESENT:

21 Michelena Hallie, MTV Networks

22 Mark Morrill, Viacom

23 Jan Trudell, Videographer.

24
25 ---oOo---

HERZOG

1
2 09:54:26 A More than five.
3 09:54:26 Q Okay. More than 100?
4 09:54:30 A More than 100? Not sure.
5 09:54:32 Q How often do you view videos on the YouTube
6 09:54:37 service?
7 09:54:38 A Once or twice a week.
8 09:54:40 Q Do you view videos on the YouTube service
9 09:54:44 while you're at work?
10 09:54:47 A Occasionally.
11 09:54:48 Q While you're at home?
12 09:54:49 A Occasionally.
13 09:54:50 Q While you're on the road?
14 09:54:51 A Occasionally.
15 09:54:52 Q Why do you use YouTube to view videos as
16 09:54:58 opposed to some other online video sharing service?
17 09:55:01 MS. KOHLMANN: Objection as to form.
18 09:55:02 THE WITNESS: I use other video sharing, or
19 09:55:09 I -- I might watch video on the Internet in places
20 09:55:13 other than YouTube.
21 09:55:14 MR. KRAMER: Q. But why do you continue to
22 09:55:16 use YouTube today, given the existence of this
23 09:55:19 litigation?
24 09:55:20 MS. KOHLMANN: Objection as to form.
25 09:55:21 THE WITNESS: I don't know.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HERZOG

09:55:23 MR. KRAMER: Q. Do you find that the YouTube
09:55:29 video service has advantages over other online video
09:55:32 services?

09:55:36 A I find there's a lot of videos there.

09:55:40 Q Any other distinguishing characteristics of
09:55:45 the YouTube service vis-a-vis other online video
09:55:51 sharing services you've used?

09:55:52 A Couldn't say.

09:55:53 Q Okay. Do you consider your use of the
09:55:54 YouTube service to be legitimate?

09:55:56 MS. KOHLMANN: Objection as to form.
09:55:57 You can answer.

09:55:58 THE WITNESS: I -- I do.

09:55:59 MR. KRAMER: Q. For the videos that you've
09:56:04 watched on YouTube, did you consider them to be
09:56:06 infringing any third party's copyrights?

09:56:12 A I wouldn't know.

09:56:12 Q What do you mean you wouldn't know?

09:56:14 A I -- I -- I'm just not that clear on -- I
09:56:16 wouldn't know.

09:56:16 Q Why not?

09:56:17 A I'm not a lawyer. I don't necessarily
09:56:19 understand the ins and outs of copyright infringement.

09:56:25 Q So in order to make a determination as to

HERZOG

1
2 09:56:27 whether a video you've watched on the YouTube service
3 09:56:29 was infringing a third-party's copyrights, you'd need
4 09:56:34 to be a lawyer?
5 09:56:35 A I just --
6 09:56:35 MS. KOHLMANN: Objection to form.
7 09:56:36 THE WITNESS: -- wouldn't know.
8 09:56:37 MR. KRAMER: Right.
9 09:56:38 Q I'm asking you why you wouldn't know.
10 09:56:40 A Because I would not know.
11 09:56:40 Q Well, don't you have the ability to tell when
12 09:56:43 you're looking at a particular video whether that
13 09:56:46 video is authorized by the copyright holder?
14 09:56:49 MS. KOHLMANN: Objection as to form.
15 09:56:50 You can answer.
16 09:56:51 THE WITNESS: I wouldn't -- I -- I wouldn't
17 09:56:51 know unless it was my video.
18 09:56:53 MR. KRAMER: Q. Would you say you're a fan
19 09:57:06 of the YouTube service, Mr. Herzog?
20 09:57:09 A Yeah.
21 09:57:10 Q In fact, sir, you'd say you love YouTube;
22 09:57:15 right?
23 09:57:16 MS. KOHLMANN: Objection as to form.
24 09:57:18 You can answer.
25 09:57:19 THE WITNESS: I -- I would -- I would not.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HERZOG

10:40:01 MR. KRAMER: Q. What other properties,
10:40:31 Mr. Herzog, would you say your statement holds true
10:40:34 for, that the idea that you go to the store and
10:40:39 purchase DVDs is a different experience than going to
10:40:43 the web and snacking and sharing? Would it hold true
10:40:48 for Daily Show?

10:40:48 A No.

10:40:48 Q Would it hold true for the Colbert Report?

10:40:50 A You know, I don't know. Actually, no.

10:40:51 The Daily Show and Colbert are completely
10:40:52 different types of programs than South Park. So, you
10:40:54 know, I don't know the answer to that. I was speaking
10:40:56 specifically about South Park, and that's what I
10:40:58 believe to be the case in terms of South Park.

10:41:00 Q So do you believe that the availability of
10:41:02 the Colbert Report online has a negative impact on DVD
10:41:06 sales of the program?

10:41:06 MS. KOHLMANN: Objection as to form.

10:41:08 You can answer.

10:41:08 THE WITNESS: Colbert doesn't have a DVD
10:41:12 business of any -- you know, I mean, he -- we put out
10:41:14 DVDs, but it's -- it's a different type of program.
10:41:18 It's a timely, topical program and its value on DVD
10:41:22 is -- is minimal.

1 HERZOG

2 10:41:22 MR. KRAMER: How about --

3 10:41:23 THE WITNESS: -- versus a South Park, which

4 10:41:24 is something that we hope will live forever.

5 10:41:26 MR. KRAMER: Q. How about the Daily Show?

6 10:41:29 A The same thing.

7 10:41:30 Q Similar to the Colbert Report --

8 10:41:32 A Yes --

9 10:41:32 Q -- in that regard?

10 10:41:33 A -- timely, topical show, and those shows have

11 10:41:35 an expiration date on them.

12 10:41:36 Q Do you put out DVDs for Co- -- Daily Show?

13 10:41:40 A We -- like compilations.

14 10:41:41 Q And do you think the availability of the

15 10:41:43 Daily Show online has a positive or negative impact on

16 10:41:47 DVD sales of those Daily Show compilations?

17 10:41:54 A Couldn't say.

18 10:42:12 Q Mr. Herzog, you testified earlier that you

19 10:42:14 use the YouTube service; right?

20 10:42:16 A I do.

21 10:42:16 Q Are you familiar with the -- with content

22 10:42:18 owners creating channels on the YouTube service?

23 10:42:22 A I -- yeah, I mean, I -- I -- I feel like I

24 10:42:25 know -- I've heard about it. Know about it.

25 10:42:27 Q Hasn't one of your properties at MTV Networks

1 HERZOG

2 10:42:31 created a channel for YouTube?

3 10:42:33 A I don't know.

4 10:42:33 Q Aren't you aware that Spike TV had a channel

5 10:42:36 on YouTube?

6 10:42:37 A No.

7 10:42:37 Q Do you know whether Spike TV ever posted its

8 10:42:43 content to YouTube?

9 10:42:44 A I don't know for sure.

10 10:42:44 (Document marked Herzog Exhibit 3

11 10:43:24 for identification.)

12 10:43:24 MR. KRAMER: Q. Mr. Herzog, what's been

13 10:43:26 marked as Exhibit 3 to your deposition is a document

14 10:43:29 that is an e-mail thread produced to us in discovery

15 10:43:31 by Viacom bearing Bates No. VIA 00518503.

16 10:43:38 By the way, when I say "Bates No.," I'm

17 10:43:41 referring to the number on the bottom --

18 10:43:43 A Got it.

19 10:43:43 Q -- right-hand corner of the document.

20 10:43:45 The subject line of the e-mail is, "Blindfold

21 10:43:49 Kickboxing," and you are CCed on the last in time and

22 10:43:52 second to last in time e-mails in the thread.

23 10:43:55 I'll ask you, first, whether you recognize

24 10:43:57 this document?

25 10:43:59 A This one, I don't.

Schapiro Exhibit 131

English

Videos | Shows | Channels | Community | Upload

Sign Up | QuickList | Help | Sign In

Search

Videos | Favorites | Playlists | Groups | Friends | Subscribers | Subscriptions

theodoramichaels's Channel

Subscribe



theodoramichaels
Joined: November 06, 2008
Last Sign In: 1 day ago
Videos Watched: 468
Subscribers: 2
Channel Views: 437

Name: Theodora
Geeky vegetarian rock 'n' roll attorney.
City: Queens, NYC
Hometown: Queens, NYC
Country: United States
Website: <http://www.theodoramichaels.com>

Connect with theodoramichaels

Send Message

Add Comment

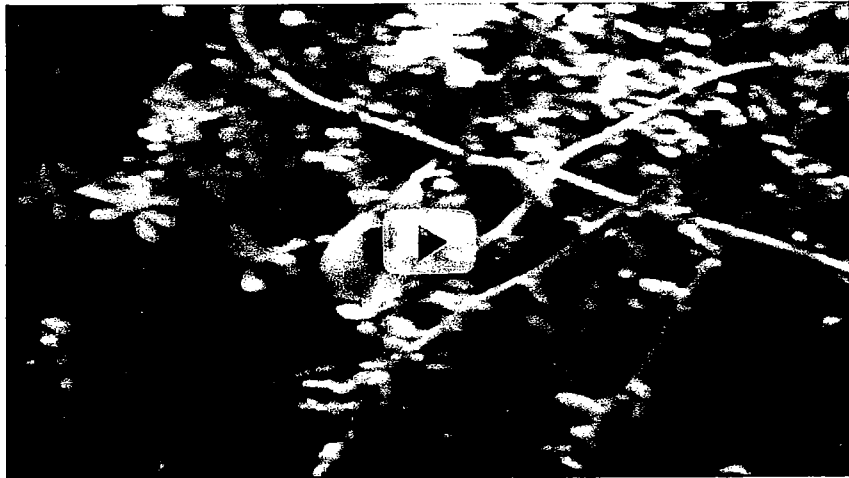
Share Channel

Add to Google

<http://www.youtube.com/theodoramichaels>

Embed This Channel:

<http://www.youtube.com/embed/channel/UC5p3g...>



A Goldfinch!

From: theodoramichaels
Views: 23
Comments: 1

Recent Activity

theodoramichaels became friends with JessicaLukes (1 day ago)

theodoramichaels subscribed to slaveshyfilms (1 week ago)

theodoramichaels uploaded a new video (1 month ago)



A Goldfinch!
A goldfinch eating chicory seeds, right in my own backyard! I never saw... more

theodoramichaels uploaded a new video (1 month ago)



Best of The View
I've never seen the show, but that's my Kevin in the red shirt, dancing... more

theodoramichaels subscribed to daddytapes (3 months ago)

Subscriptions (14)



tromskovin



Barack Obama...



Monty Python



pulse of m...



kinyahw...



hous ethub

see all

Friends (2)



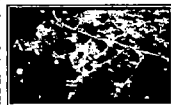
sir orlando...



JessicaLukes

Videos (11)

Videos | Most Viewed | Most Discussed



A Goldfinch!

1 month ago
23 views
no rating
theodoramichaels



Thelma dances

8 months ago
352 views

★★★★★
theodoramichaels



Thelma has a bath

9 months ago
305 views

★★★★★
theodoramichaels



Best of The View

1 month ago
28 views
no rating
theodoramichaels



Thelma wears a hat

8 months ago
80 views

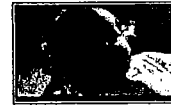
★★★★★
theodoramichaels



Tolkien v. New Line in plain Eng...

9 months ago
66 views

★★★★★
theodoramichaels



Thelma Garnett in: LOLbaby

8 months ago
151 views

★★★★★
theodoramichaels



Dramatic Thelma

9 months ago
137 views

★★★★★
theodoramichaels



Tolkien v. New Line in plain Eng...

9 months ago
59 views

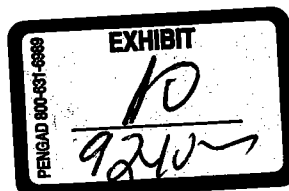
★★★★★
theodoramichaels

Search

see all

Favorites (7)

Subscribe To Favorites



Report background graphic.



Subscribers (2)



tomakewin



kathyhawkbeass

Channel Comments

There are no comments for this user.

[Add Comment](#)

English

Videos | Shows | Channels | Community | Upload

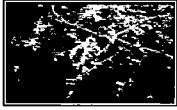
Sign Up | QuickList | Help | Sign In

Search

Channel | Videos | Favorites | Playlists | Groups | Friends | Subscribers | Subscriptions

Videos (11)

Videos | Most Viewed | Most Discussed



A Goldfinch!

1 month ago
24 views
no rating
theodoramichaels



Best of The View

1 month ago
30 views
no rating
theodoramichaels



Thehma Garnett in:
LOLbaby

8 months ago
151 views
★★★★★
theodoramichaels



Thehma dances

8 months ago
352 views
★★★★★
theodoramichaels



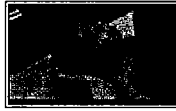
Thehma wears a hat

8 months ago
80 views
★★★★★
theodoramichaels



Dramatic Thehma

9 months ago
137 views
★★★★★
theodoramichaels



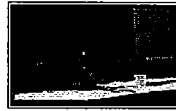
Thehma has a bath

9 months ago
306 views
★★★★★
theodoramichaels



Tolkien v. New Line in
plain Eng..

9 months ago
66 views
★★★★★
theodoramichaels



Tolkien v. New Line in
plain Eng..

9 months ago
59 views
★★★★★
theodoramichaels



Tolkien v. New Line in
plain Eng..

9 months ago
125 views
★★★★★
theodoramichaels



Sean Astin at
Dragon*Con, Aug. 3...

10 months ago
110 views
★★★★★
theodoramichaels

Subscribe to theodoramichaels's videos

Search

Search

Report background graphic.

Schapiro Exhibit 132

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

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.

-----X

HIGHLY CONFIDENTIAL

VIDEOTAPED DEPOSITION OF
NICHOLAS SEET/AUDITUDE, INC.
SAN FRANCISCO, CALIFORNIA
TUESDAY, NOVEMBER 24, 2009

JOB NO. 18254

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Nicholas Seet San Francisco, CA November 24, 2009

NOVEMBER 24, 2009

9:17 P.M.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF
NICHOLAS SEET, at WILSON, SONSINI, GOODRICH & ROSATI, 1
Market Plaza, Spear Tower, Suite 3400, San Francisco,
California, pursuant to notice, before me, KATHERINE E.
LAUSTER, CLR, CRR, RPR, CSR License No. 1894.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Nicholas Seet San Francisco, CA November 24, 2009

A P P E A R A N C E S:

FOR THE PLAINTIFFS, VIACOM INTERNATIONAL, INC.:

JENNER & BLOCK, LLP
BY: LUKE C. PLATZER, ESQ.
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
Telephone: 202.639.6000
fax: 202.661.4813
lplatzer@jenner.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC, and
GOOGLE, INC.:

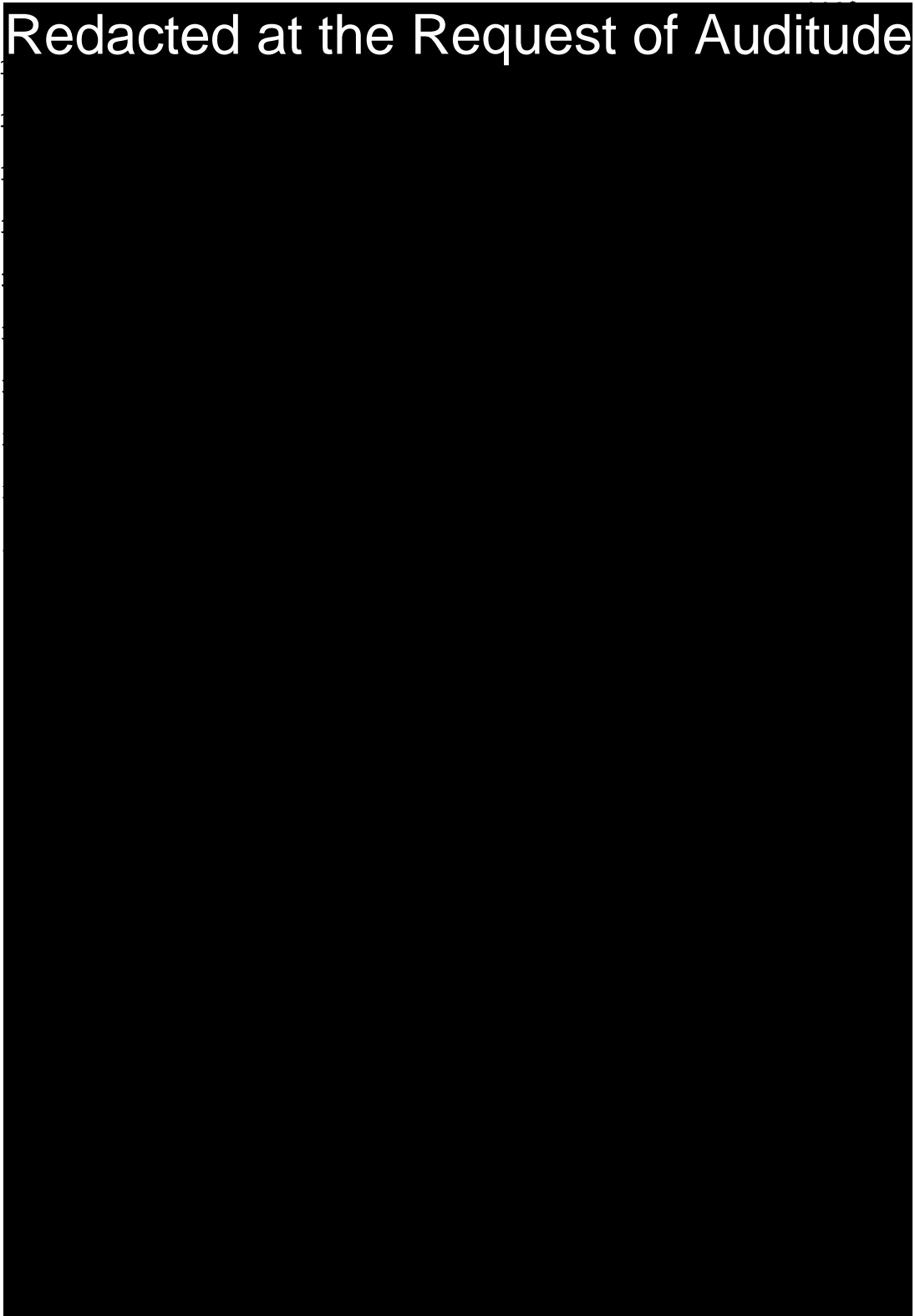
MAYER BROWN, LLP
BY: BRIAN M. WILLEN, ESQ.
1675 Broadway
New York, New York 10019-5820
Telephone: 212.506.2146
fax: 212.262.1910
bwillen@mayerbrown.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC, and
GOOGLE, INC.:

WILSON, SONSINI, GOODRICH & ROSATI
BY: NEMA MILANINIA, ESQ.
650 Page Mill Road
Palo Alto, California 94304-1050
Telephone: 650.493.9300
fax: 650.493.6811
nmlaninia@wsgr.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Redacted at the Request of Auditude



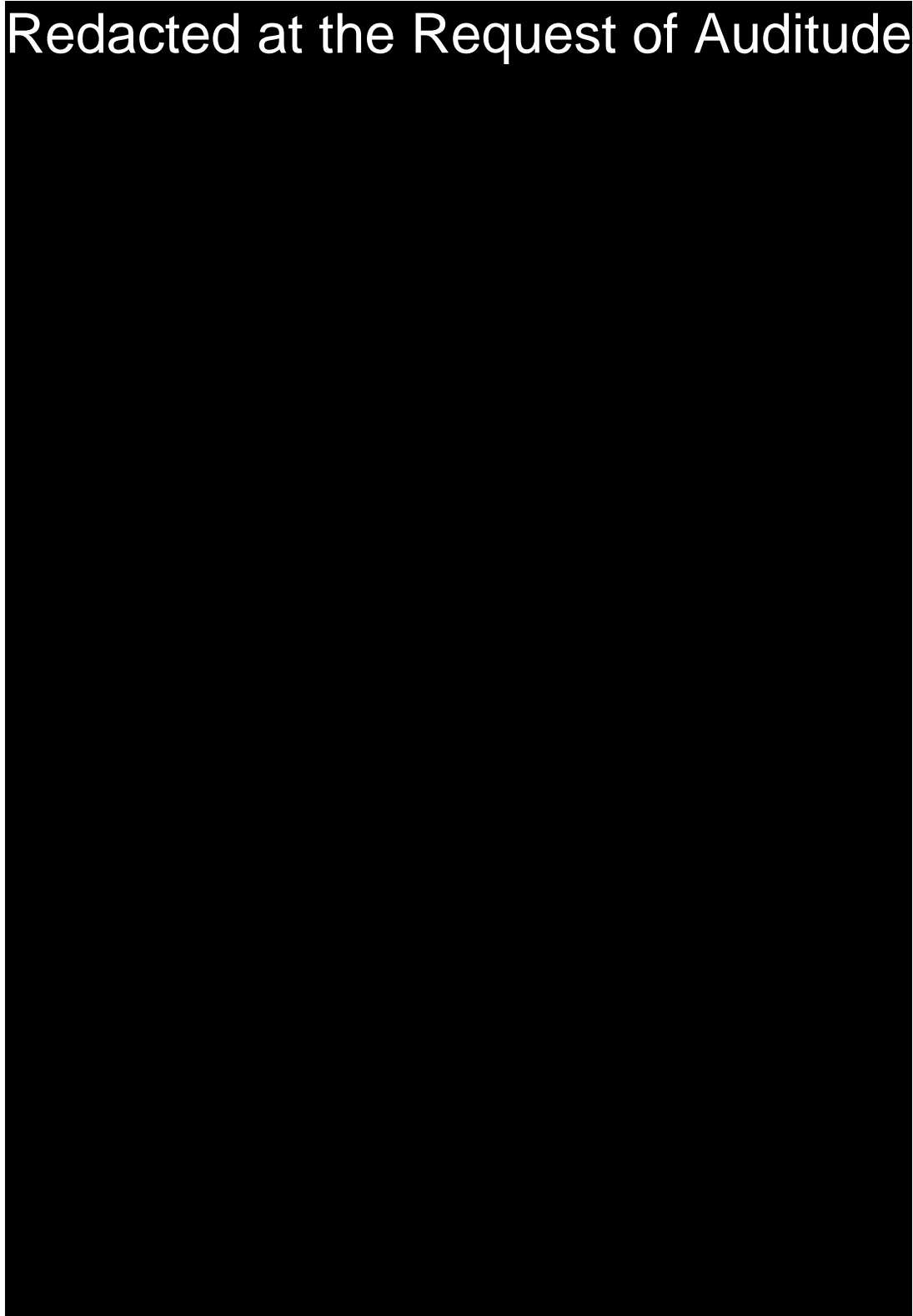
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Redacted at the Request of Auditude



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Redacted at the Request of Auditude



Schapiro Exhibit 133

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 MIKA SALMI
SAN FRANCISCO, CALIFORNIA
FRIDAY, OCTOBER 16, 2009

JOB NO. 17909

OCTOBER 16, 2009

9:30 a.m.

VIDEOTAPED DEPOSITION OF MIKA SALMI,
WILSON, SONSINI, GOODRICH & ROSATI, LLP,
One Market Street, Spear Street Tower,
San Francisco, California pursuant to notice,
and before, ANDREA M. IGNACIO HOWARD, CLR,
RPR, CRR, CSR License No. 9830.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S:

FOR THE PLAINTIFFS VIACOM INTERNATIONAL, INC.:

JENNER & BLOCK, LLP

By: SCOTT WILKENS, Esq.

1099 New York Avenue, NW, Suite 900

Washington, D.C. 20001

(202) 639-6000 swilkens@jenner.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and
GOOGLE, INC.:

WILSON SONSINI GOODRICH & ROSATI, LLP

By: DAVID KRAMER, Esq.

CAROLINE WILSON, Esq.

650 Page Mill Road

Palo Alto, California 94304-1050

(650) 320-4741 dkramer@wsgr.com

ALSO PRESENT: Michelena Hallie, MTV Networks.

Lou Meadows, Videographer.

---oOo---

1 SALMI, M.

2 10:04:52 analysis, and both from a technical and legal side

3 10:04:56 that I can't sit here and make an opinion on right

4 10:04:57 now.

5 10:04:58 MR. KRAMER: Q. When it launched

6 10:05:13 AddictingClips, did the service -- sorry. Strike

7 10:05:15 that.

8 10:05:15 When the AddictingClips service launched, did

9 10:05:19 it have human beings screening all videos that users

10 10:05:22 were uploading to the service for potentially

11 10:05:24 unauthorized copyrighted material?

12 10:05:26 A No.

13 10:05:26 Q Roughly how many videos per day were uploaded

14 10:05:32 to the service?

15 10:05:34 A I don't recall.

16 10:05:35 Q Is it in the hundreds? Thousands? Tens?

17 10:05:40 A It varied from when it launched to, you know,

18 10:05:43 a period of time, but...

19 10:05:45 Q How about at the start?

20 10:05:48 A Hundreds, I'd guess.

21 10:05:52 Q You said that AddictingClips didn't want to

22 10:05:55 have unauthorized copyrighted material appearing on

23 10:05:57 the service; right?

24 10:06:04 A I think I said it wasn't a stated intention

25 10:06:06 of ours to have it up there, but...

SALMI, M.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

10:06:08 Q Did -- did -- did AddictingClips want
10:06:10 unauthorized copyrighted material?

10:06:11 A No.

10:06:12 Q Wouldn't one way of keeping that material off
10:06:16 the service have been to have human beings review all
10:06:19 incoming videos and block those that weren't
10:06:22 authorized?

10:06:28 A AddictingClips was set up differently than
10:06:30 Atom Films, which was all about review.
10:06:32 AddictingClips was set up as a user-generated website
10:06:36 according to the legal parameters that our lawyer
10:06:38 provided us.

10:06:39 Q But wouldn't one way of keeping unauthorized
10:06:42 copyrighted material off the service have been to have
10:06:46 human beings screening all of the videos that users
10:06:48 sought to upload and block the upload of those that
10:06:50 were unauthorized copyrighted material?

10:06:52 MR. WILKENS: Objection to the form.

10:06:54 THE WITNESS: That would be one way to do it,
10:06:55 yes.

10:06:56 MR. KRAMER: All right.

10:06:56 Q So when I asked you earlier whether
10:06:59 AddictingClips could have done more to prevent the
10:07:02 upload by users of unauthorized copyrighted materials,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SALMI, M.

10:07:05 one thing it could have done was employ human beings
10:07:08 to screen all videos uploaded by users and block those
10:07:12 that were unauthorized; right?

10:07:16 A Then it would not have been a user-generated
10:07:19 website the way we had envisioned it to be if it would
10:07:24 have done that. It would also have been
10:07:26 cost-prohibitive to have human beings.

10:07:28 Q Why so?

10:07:29 A That's a lot of clips to...

10:07:32 Q Hundreds of clips a day is a lot of clips,
10:07:35 and it would be cost-prohibitive to have human beings
10:07:38 screen them; right?

10:07:38 MR. WILKENS: Objection to the form.

10:07:39 THE WITNESS: For a small company like ours,
10:07:41 yes.

10:07:41 MR. KRAMER: Okay.

10:07:48 Q Is it reasonable to conclude, based on Atom's
10:07:51 failure to employ human beings to screen videos
10:07:54 uploaded to the service, that Atom wanted users to
10:07:59 upload infringing material to AddictingClips?

10:08:03 MR. WILKENS: Objection to the form; asked
10:08:08 and answered.

10:08:08 THE WITNESS: Yeah, there was not a failure.
10:08:09 It was set up purposely in a certain methodology, so I

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SALMI, M.

10:08:16 would not call it a failure to do either one, your
10:08:20 statement.

10:08:20 MR. KRAMER: Okay.

10:08:21 Q Would it be reasonable to conclude, based on
10:08:23 AddictingClips's decision not to employ human beings
10:08:28 to screen videos uploaded to the service by users,
10:08:31 that AddictingClips wanted users to upload potentially
10:08:35 unauthorized copyrighted material?

10:08:37 A No, that's false. We -- we never -- we never
10:08:42 even had the decision not to have human beings. It
10:08:45 was -- it was always set up a different way.

10:08:48 Q It wouldn't be reasonable to conclude, that
10:08:50 is what you're saying?

10:08:51 A Correct, not reasonable to conclude that.

10:08:54 Q And Atom -- sorry -- AddictingClips -- I
10:08:58 guess it's -- Atom's choice not to have human beings
10:09:04 screening videos uploaded to the service by users
10:09:07 wasn't motivated by a desire to earn advertising
10:09:11 revenue from unauthorized copyrighted material on the
10:09:14 service; right?

10:09:14 MR. WILKENS: Objection to the form.

10:09:17 THE WITNESS: It was strictly done that way
10:09:21 as a -- on the advice of our legal counsel.

10:09:25 MR. KRAMER: Different question than I asked.

Schapiro Exhibit 134

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

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

Plaintiffs,

vs. NO. 07-CV-2203

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

Defendants.

-----X

VIDEOTAPED DEPOSITION OF JASON WITT

NEW YORK, NEW YORK

THURSDAY, SEPTEMBER 25, 2008

REPORTED BY:
JENNIFER OCAMPO-GUZMAN
JOB NO.: 15651

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SEPTEMBER 25, 2008
9:14 a.m.

VIDEOTAPED DEPOSITION OF JASON
WITT, held at the offices of WILSON SONSINI
GOODRICH & ROSATI, PC, 1301 Avenue of the
Americas, New York, New York, pursuant to
agreement of parties, before JENNIFER
OCAMPO-GUZMAN, a Real-Time Shorthand Reporter
and Notary Public of the State of New York.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S:

FOR THE PLAINTIFFS VIACOM INTERNATIONAL,
INC.:

JENNER & BLOCK, LLP

By: AMY L. TENNEY, Esq.

1099 New York Avenue, NW, Suite 900

Washington, D.C. 20001

(202) 639-6000 atteney@jenner.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE,
LLC and GOOGLE, INC.:

WILSON SONSINI GOODRICH & ROSATI, PC

BY: BART E. VOLKMER, ESQ.

-and-

CHRISTOPHER R. HOWALD, ESQ.

650 Page Mill Road

Palo Alto, California 94304-1050

650-565-3508 bvolkmer@wsgr.com

650-496-4064 chowald@wsgr.com

ALSO PRESENT:

MTV NETWORKS

By: HEATHER WINDT, ESQ., Senior Counsel

MANUEL ABRUE, Videographer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Witt

14:48:50 Q. Right. Do you know if anyone at
14:48:51 Viacom has ever uploaded videos to the
14:48:54 YouTube website?

14:48:55 MS. TENNEY: And I'll restate the
14:48:57 same objections.

14:48:58 A. You know, gosh, I don't know. I
14:49:18 remember Jason Hershorn (phonetic) at one
14:49:18 time, and I'm not sure if he was making a
14:49:20 joke or not, talked about uploading some Bar
14:49:24 Mitzvah videos.

14:49:27 Greg Clayman has uploaded some
14:49:29 videos of his kids and his wife, I think. My
14:49:52 guess is there is more, but those are the
14:49:54 ones I can think of.

14:49:55 Q. So besides Jason Hershorn and Greg
14:50:02 Clayman, you can't think of any other
14:50:04 instances where Viacom employees uploaded
14:50:06 videos to the YouTube website?

14:50:30 A. There may be others, but I can't
14:50:32 recall.

14:50:32 Q. Have you ever viewed video clips on
14:50:41 the YouTube website containing Viacom content
14:50:44 that you believed were not authorized by
14:50:47 Viacom?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Witt

14:50:48 MS. TENNEY: Objection. To the
14:50:51 extent that it calls for a legal
14:50:52 conclusion and also that it's vague.

14:50:56 A. By authorized, I've watched, I've
14:51:07 seen Viacom content on YouTube.

14:51:10 Q. And have you ever seen Viacom
14:51:12 content on YouTube that you thought was
14:51:14 unauthorized?

14:51:14 A. I'm not sure I know what
14:51:16 unauthorized means, in what sense?

14:51:20 Q. Whether Viacom was permitting that
14:51:22 content to be on YouTube?

14:51:25 MS. TENNEY: Objection.

14:51:27 A. I wouldn't know.

14:51:30 Q. What information would you need to
14:51:33 make that determination?

14:51:35 A. Probably someone from legal telling
14:51:38 me if it was -- I mean if it were authorized,
14:51:44 that would be a determination I imagine legal
14:51:48 would be able to answer.

14:51:49 THE WITNESS: Could I take a quick
14:51:51 bathroom break?

14:51:52 MR. VOLKMER: Break, yeah.

14:51:53 THE WITNESS: Yes.

1 Witt

2 14:51:54 MR. VOLKMER: We can go off the

3 14:51:56 record.

4 14:51:56 THE VIDEOGRAPHER: The time is

5 14:52:02 2:54 p.m. We're going off the record.

6 14:52:04 (A brief recess was taken.)

7 15:07:32 THE VIDEOGRAPHER: The time is

8 15:07:38 3:07 p.m. We're back on the record.

9 15:07:41 BY MR. VOLKMER:

10 15:07:41 Q. Before the break you had testified

11 15:07:44 that you had viewed Viacom content on the

12 15:07:46 YouTube website; correct?

13 15:07:46 A. Yes.

14 15:07:50 Q. And were there ever instances where

15 15:07:53 you viewed content that had been authorized

16 15:07:55 by Viacom?

17 15:07:56 MS. TENNEY: Objection, to the

18 15:07:57 extent it calls for a legal conclusion.

19 15:08:02 (Discussion off the record.)

20 15:08:04 MS. TENNEY: And that it's vague.

21 15:08:05 A. I suppose it's possible that Viacom

22 15:08:15 and YouTube had agreed to some kind of a deal

23 15:08:17 to authorize the content but not that I was

24 15:08:21 aware of.

25 15:08:22 Q. Not that you were aware of when you

Schapiro Exhibit 135

—

From: Mark M. Ishikawa
Sent: Monday, July 10, 2006 7:37 PM
To: Scott Martin
Cc: Alfred Perry; John Salter; Evelyn Espinosa; Arielle Kim
Subject: Anti-Piracy discussion topics for Wed.

Scott,

Thanks for the invite to the Wednesday meeting. I do believe that we need to sit down with Amy and Nancy to clear the air about the services that they require, and how to get their needs satisfied without having them create their own anti-piracy department. I also want to set Amy's expectations for what we can and cannot do for her. From our conversations and e-mails it would appear that they need some education as to how the DMCA works, and the level of response we can and cannot get from the ISP's in question.

Thx

Mark

=====
Topics:

1) Coordination between Online Marketing and BayTSP

- Advance notice of when and where marketing materials being posted online.
- Copies of material being posed so we can distinguish between authorized and un-authorized materials.
- Post-Mortum of the Transformers project.

2) Determination of takedown policy and procedures

- There seems to be a level of mis-understanding about the services BayTSP provides for Paramount and Viacom by the different groups within the studio. I would like to discuss exactly what we do, and how we do it with the Marketing group so they have a better understanding of the services we provide. I also believe that there is a lack of understanding as to what the Online Piracy program in place at the studio does and its capabilities.
- Determine if there is a different procedure required for the Marketing Department infringements, and define the EXACT procedures that are to be used when the Marketing Department is involved.
- Determine the Anti-Piracy needs of the Marketing Department.

6/20/2008

HIGHLY CONFIDENTIAL

BAYTSP 003722239

Schapiro Exhibit 136

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 ALFRED PERRY
NEW YORK, NEW YORK
DECEMBER 16TH, 2009

JOB NO. 18178

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

VIDEOTAPED DEPOSITION OF ALFRED
PERRY, held at the offices of Mayer
Brown, 1675 Broadway, New York, New
York, pursuant to notice, before
Maureen Ratto, Registered Professional
Reporter and Notary Public of the State
of New York on December 16, 2009, at
10:08 a.m.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE PLAINTIFFS:

JENNER & BLOCK, LLP

BY: SCOTT B. WILKENS, ESQ.

1585 Broadway, New York, NY 10036

(202) 639-6000

FOR THE DEFENDANTS:

MAYER BROWN, LLP

BY: JOHN MANCINI, ESQ.

CHRISTINE HERNANDEZ, ESQ

JASON KIRCHNER, ESQ.

1675 Broadway, New York, NY 10019

(212) 506-2146

jmancini@mayerbrown.com

1 MR. WILKENS: Objection to the
2 form of the question. You can answer.

3 A. As I think I said earlier, Bay
4 was to -- Bay is monitoring for
5 13:13:56 infringing content. If something is
6 authorized and they have to use some
7 judgment, otherwise it looks like there
8 was discussion that was trying to
9 impose on them this restrictions that
10 13:14:20 they need to check with Amy's group if
11 there's concerns or questions or
12 perhaps even only take down things that
13 look like they are these sort of clips
14 when requested to do so. That is what
15 13:14:41 it appears and that is my general
16 recollection where we might have been
17 at that time.

18 Q. Let me see if I can dive further
19 into this in the next e-mail string
20 13:14:50 from what we just read, you write to
21 Scott Martin, John Salter and Eric
22 Nancy Derwin-Weiss and Amy Powell,
23 forwarding this e-mail that you had
24 just received from Nancy Derwin-Weiss
25 13:15:03 "I'm calling BayTSP now" do you recall

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that reference?

A. Yes.

Q. A do you recall calling Bates after having received this e-mail from BayTSP Nancy Derwin-Weiss?

13:15:13

A. I don't recall it but.

Q. Do you recall what would have been said during this conversation?

MR. WILKENS: Objection to the form. (Check).

13:15:21

A. I don't, but -- I don't recall I don't recall making the call, but...

Q. Okay. In the next e-mail up Nancy Derwin-Weiss replies to you by saying "I spoke to Mark about the incident." She was referring to Mark Ishikawa, correct?

13:15:49

A. Yes.

Q. Continue with the e-mail, "he wasn't exactly apologetic about the incident. He said that from their perspective the Zack Braff footage appeared to be nothing more than pirated clips from the movie mashed together by an individual (who happens

13:16:04

13:16:15

1 to be Zack Braff). I asked why they
2 didn't put a call into us for before
3 issuing the take down notice since we
4 just had the meeting about the very
5 13:16:26 issue."

6 Just to break this down if I
7 may, does this sentence refresh your
8 recollection that as a result of July
9 2006 meeting part of the new protocols
10 13:16:39 was that BayTSP was to put a call into
11 the marketing department at Paramount
12 prior to issuing take down notices for
13 Paramount clips? Do you see that
14 sentence?

15 13:16:55 A. Yes. I do. Not taking down clips
16 -- well, I guess depends what you mean
17 by Paramount clips. If by Paramount
18 clips you define it to mean authorized
19 clips, then if they have some sense
20 13:17:19 that something is an authorized clip
21 they should put if a call -- or
22 communicate, I'm not sure if it has to
23 be a call, but some sort of
24 communication to Amy's group, to
25 13:17:32 clarify whether that particular clip of

1 all those clips that are out there is
2 of concern or authorized.

3 Q. So is it your text that the
4 instruction that was given at this July
5 13:17:48 meeting was that if they had some sense
6 that it was an unauthorized Paramount
7 clip they should put in a call prior to
8 issuing a take down notice?

9 A. Yes.

10 13:17:59 Q. And can you elaborate for me how
11 BayTSP, how it was defined for them
12 what it meant to have a sense as to
13 whether or not it was authorized or
14 not?

15 13:18:11 MR. WILKENS: Objection to the
16 form.

17 A. I don't recall the specifics of
18 how that was to be worked out between
19 Amy's team and Bay's team. On the
20 13:18:32 e-mail it just says they should put in
21 a call before issuing the take down
22 notice to something that appears to be
23 authorized. So it's not clear to me
24 what other directive that might have
25 13:18:47 been given.

1 Q. Or what definition was given to
2 that directive?

3 A. Correct.

4 Q. Ms. Derwin-Weiss goes onto
5 13:18:56 state, same paragraph, continuing. "He
6 said that they didn't have any reason
7 to believe that the material wasn't
8 pirated as we hadn't given them the
9 trailer in advance in this instance the
10 13:19:08 footage looked pirated. He said they
11 were simply operating under the
12 studio's directive to pull down
13 unauthorized clips and he said he was
14 going to direct BayTSP to stop
15 13:19:18 searching YouTube for a content since
16 it is creating too much of a headache
17 for everyone."

18 Do you see that reference?

19 A. Yes.

20 13:19:29 Q. When you spoke to Mr. Ishikawa
21 yourself which I think you said a
22 moment ago you testified you recall
23 having made the call did he indicate
24 this same concern to you that he was
25 13:19:47 going to direct BayTSP to stop

1 searching YouTube for Paramount's
2 content because it was quite creating
3 too much of a headache for everyone?

4 A. I think what I said was I don't
5 13:19:57 recall making the call but I imagine,
6 if I say I'm calling someone now, that
7 I did. But I don't recall specifically
8 making that call. But in this context
9 trying to be responsive, I'm certain I
10 13:20:11 made the call but I don't recall
11 actually making the call.

12 Q. I understand. All I'm asking,
13 sir, if in reading that sentence and
14 that comment which I think would stick
15 13:20:20 out to you, does that refresh your
16 recollection as to what Mr. Ishikawa
17 said in the conversation that they were
18 going to -- he was going to instruct
19 BayTSP to stop searching YouTube for
20 13:20:32 Paramount content because --

21 A. He did not tell me that.

22 Q. He did not tell you that?

23 A. No.

24 Q. When you received this e-mail
25 13:20:42 from Mr. Derwin-Weiss on July 25th,

Schapiro Exhibit 137

—

From: Mark M. Ishikawa
Sent: Wednesday, November 08, 2006 9:19 PM
To: Perry, Alfred - Paramount
Cc: Evelyn Espinosa; Scott Martin; John Salter; Arielle Kim
Subject: RE: Bay TSP - Clips
Importance: High

Al, Scott, & John,

I have no idea what this is about other than the fact that Amy Powel does not like me or my company and is attempting to ruin my relationship with the studios. Nancy sent us links with a "White List" of places the clips are authorized to be on. A normal person would draw the conclusion that since she provided an authorized location list that any other place would be considered infringing, otherwise she should have said leave these clips alone.

All we did was send a clarification e-mail confirming the actions that we believe they have asked us to take. We have *NOT* taken any actions, just asking for clarification, and now we see this e-mail from Nancy. I believe her reactions are unwarranted and unjustified.

If we make a mistake I'm the first one to admit it and make it right. In this case I believe that BayTSP is being treated unfairly. We have been a long time partner with Paramount and this series of reactions is causing me great concern.

I would appreciate it if Scott could give me a call on my cell phone [REDACTED] to discuss this situation.

Thx

mark

-----Original Message-----

From: Perry, Alfred - Paramount [mailto:Alfred_Perry@Paramount.com]
Sent: Wed 11/8/2006 12:14 PM
To: Mark M. Ishikawa
Cc: Evelyn Espinosa; Scott Martin; John Salter
Subject: Fw: Bay TSP - Clips

Mark, what is this about?

[Sent wirelessly from my BlackBerry device]

-----Original Message-----

From: Derwin-Weiss, Nancy
To: Martin, Scott; Perry, Alfred - Paramount
CC: Powell, Amy - Paramount
Sent: Wed Nov 08 12:12:06 2006
Subject: FW: Bay TSP - Clips

What will it take for Bay TSP to understand that they are not to initiate takedown actions without our express written approval?

Amy asked us to research other companies who perform competitive services that we can meet with.

Do you have a list of vendors...I will be happy to set up the initial meetings.

6/20/2008

HIGHLY CONFIDENTIAL

BAYTSP 003742450

Nancy Derwin-Weiss| VP Interactive Marketing Legal | Paramount Pictures| direct 323.956.5878

From: Derwin-Weiss, Nancy
Sent: Wednesday, November 08, 2006 12:03 PM
To: 'Evelyn Espinosa'
Cc: Deana Arizala; Warren Kim; Richard Kawasaki; Mark M. Ishikawa; Powell, Amy - Paramount; Perry, Alfred - Paramount; Martin, Scott; Magid, Karen - Paramount
Subject: RE: Bay TSP - Clips

If you find the Perfume clip on other sites, please send us the links to the sites and we will decide whether or not to pursue a take down action. Please do not initiate takedown actions without express prior written approval from us.

Nancy Derwin-Weiss| VP Interactive Marketing Legal | Paramount Pictures| direct 323.956.5878

From: Evelyn Espinosa [<mailto:evelyn@baytsp.com>]
Sent: Wednesday, November 08, 2006 11:38 AM
To: Derwin-Weiss, Nancy
Cc: Deana Arizala; Warren Kim; Richard Kawasaki; Mark M. Ishikawa
Subject: RE: Bay TSP - Clips

Hi Nancy,

Thanks for heads up for clips below. Just to make sure:

The perfume clip is exclusive and should only be available to view on aintitcool.com.

If we find it on youtube/google video/or any other site we will send a take down notice.

The bee movie clip is ok to stay up regardless of where it is found.

From: Derwin-Weiss, Nancy [mailto:Nancy_Derwin-Weiss@Paramount.com]
Sent: Wednesday, November 08, 2006 11:13 AM
To: Evelyn Espinosa
Cc: Perry, Alfred - Paramount; Powell, Amy - Paramount; Scott Martin; Magid, Karen - Paramount; Tipton, Kristina; Teifeld, Tamar; Mark M. Ishikawa
Subject: Bay TSP - Clips

Hi Evelyn:

Set forth below are links to two approved clips going out this week. Please exclude these clips from your search for pirated content on You Tube and other sites.

6/20/2008

HIGHLY CONFIDENTIAL

BAYTSP 003742451

Perfume Exclusive Clip – “Don’t Touch Anything” – Exclusive to AintItCool.com

http://www.perfumemovie.com/public/video_files/perfume_dont_touch_anything_large.mov

Bee Movie Trailer – wide distribution

http://www.beemovie.com/public/video_files/bee_movie_trailer1_large.mov

I will be sending you links to Freedom Writers clips and Flushed Away Featurettes when they become available.

Feel free to contact me with any questions.

Nancy

6/20/2008

HIGHLY CONFIDENTIAL

BAYTSP 003742452

Schapiro Exhibit 138

From: Michelena.hallie@mtvn.com
Sent: Tuesday, October 31, 2006 5:15 PM
To: Deana Arizala
Cc: Morales, Cindy; Mark M. Ishikawa; Evelyn Espinosa; Courtney Nieman
Subject: Re: Fwd: Viral Internet Marketing Clips

Got it. We should be able to authorize you to search a list soon

-----Original Message-----

From: Deana Arizala <deanaa@baytsp.com>
To: Hallie, Michelena
CC: Morales, Cindy; Mark M. Ishikawa <marki@baytsp.com>; Evelyn Espinosa <evelyn@baytsp.com>; Courtney Nieman <courtney@baytsp.com>
Sent: Tue Oct 31 12:11:05 2006
Subject: Fwd: Viral Internet Marketing Clips

Michelena,

I'm not sure if you received the email below, so just in case I am going to forward it.

Best Regards,

Deana Arizala

Deana Arizala
Client Services Manager, BayTSP, Inc
408.341.2365 (direct)
408.341.2300 (voice)
408.341.2399 (fax)

From: Deana Arizala
Sent: Monday, October 30, 2006 10:09 AM
To: Michelena.hallie@mtvn.com
Cc: Morales, Cindy; Mark M. Ishikawa; Evelyn Espinosa; Courtney Nieman
Subject: RE: Viral Internet Marketing Clips

6/11/2008

Michelena,

Below is a list of VH1 shows I'm gathered from the links below. I do not have these shows in my list. Please let me know if these titles should be added in Cims.

VH1

The Wendy Williams Experience

Totally Awesome

Flavor of Love

Hogan Knows Best

Freestyle 59

Thanks Michelena.

Best Regards,

Deana Arizala

Deana Arizala

Client Services Manager, BayTSP, Inc

408.341.2365 (direct)

408.341.2300 (voice)

408.341.2399 (fax)

6/11/2008

-----Original Message-----

From: Michelena.hallie@mtvn.com
Sent: Friday, October 27, 2006 3:23 PM
To: Deana Arizala
Cc: Morales, Cindy
Subject: FW: Viral Internet Marketing Clips

Is this sufficient information? If so, you can now take down VH1 clips
2 1/2 minutes or over, other than those noted below.

-----Original Message-----

From: Kadetsky, Deborah
Sent: Friday, October 27, 2006 6:07 PM
To: Cheeks, George; Maxwell, Tony
Cc: Wilson, Adam; Hallie, Michelena; Imm, Tina
Subject: RE: Viral Internet Marketing Clips

George, are you able to do your sweep of clips according to who's posted
them?

If that is the case, the clips that we've authorized to be posted are
under the usernames "vh1staff" and "reaction2006"

If you need specific links, here is a list of what we've posted as
approved clips to date:

<http://www.youtube.com/watch?v=qVVG7Rfrvk>

<http://www.youtube.com/watch?v=jFoQNdwaGys>

http://www.youtube.com/watch?v=_5vjL2stAz0

http://www.youtube.com/watch?v=M-G_NQZb1II

<http://www.youtube.com/watch?v=qvUzUOSbs9Y>

<http://www.youtube.com/watch?v=xPfTPn-eGKk>

<http://www.youtube.com/watch?v=3saVMo96328>

<http://www.youtube.com/watch?v=PjiZqOOAipw>

<http://www.youtube.com/watch?v=x1yebHjePjM>

6/11/2008

<http://www.youtube.com/watch?v=hFoCygnKOaA>

<http://www.youtube.com/watch?v=4CtHP6Ut-zM>

<http://www.youtube.com/watch?v=Dy9IYAELqIE>

<http://www.youtube.com/watch?v=kihSHIoW-Tg>

http://www.youtube.com/watch?v=yZ1SEdh_JPc

http://www.youtube.com/watch?v=ia_pl6rVg_k

<http://www.youtube.com/watch?v=zIbL-zhMK8k>

<http://www.youtube.com/watch?v=ynJmXSht2jI>

<http://www.youtube.com/watch?v=uXnx5QxpIRc>

<http://www.youtube.com/watch?v=zgB11BKpwjQ>

http://www.youtube.com/watch?v=pAkp_Hr5rN4

<http://www.youtube.com/watch?v=BRbM2qfD08U>

<http://www.youtube.com/watch?v=QQxyhtYk3CI>

Do you have a sense of how frequently we'll be doing this takedown sweep? I want to make sure than any future postings through our current process don't get removed accidentally.

Thanks,

deb

-----Original Message-----

From: Cheeks, George

Sent: Friday, October 27, 2006 1:33 PM

To: Kadetsky, Deborah; Maxwell, Tony

Cc: Wilson, Adam

Subject: Re: Viral Internet Marketing Clips

If you could send a copy directly to Michelina Hallie and copy me that would be great!

-----Original Message-----

From: Kadetsky, Deborah

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 001125472

To: Cheeks, George; Maxwell, Tony

CC: Wilson, Adam

Sent: Fri Oct 27 09:48:26 2006

Subject: RE: Viral Internet Marketing Clips

Hi George,

Did you get my list via Tina Imm? I can send to you directly if not...

Deb

-----Original Message-----

From: Cheeks, George

Sent: Friday, October 27, 2006 8:47 AM

To: Maxwell, Tony

Cc: Wilson, Adam; Kadetsky, Deborah

Subject: Re: Viral Internet Marketing Clips

We need everything that you have seeded thusfar as we are engaging an outside service to send take down notices for full episodes and clips in excess of 2 minutes and 30 seconds and we don't want to have notices sent for content we seeded. That said, if that is too big a task I would at least hit the stuff that we seeded over the past several months.

Thanks.

-----Original Message-----

From: Maxwell, Tony

To: Cheeks, George

CC: Wilson, Adam; Kadetsky, Deborah

Sent: Wed Oct 25 11:10:26 2006

Subject: Viral Internet Marketing Clips

Hello George,

6/11/2008

Nigel asked me to follow up with you about your request for a list of viral clips we are currently supplying to websites like youtube.com.

Are you looking for a monthly figure or total amount since a certain date.

Please inform.

Many thanks,

Tony

--

Tony Maxwell

VP Vh1 On Air Promotions

212-846-7867

tony.maxwell@vh1staff.com

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 001125474

Schapiro Exhibit 139

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.)	
)	
<hr/>	
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.)	
)	
<hr/>	

VIDEOTAPED DEPOSITION OF MICHELENA HALLIE
NEW YORK, NEW YORK
THURSDAY, DECEMBER 10, 2009
JOB NO. 18264

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S :

FOR THE PLAINTIFFS VIACOM INTERNATIONAL,
INC.:

JENNER & BLOCK
1099 New York Avenue, NW, Suite 900
Washington, D.C. 2000
(202) 639-6000
BY: SCOTT WILKENS, ESQ.
Swilkens@jenner.com

FOR DEFENDANTS, GOOGLE:
WILSON SONSINI GOODRICH & ROSATI
650 Page Mill Road
Palo Alto, CA 94304-1050
BY: MAURA L. REES, ESQ.
Mrees@wsgr.com

ALSO PRESENT:

Carlos King, Videographer

MICHELENA HALLIE

1 marked as Defendant's Exhibit
2 Hallie-45 for identification as of
3 this date by the Reporter.)
4

5 15:50:19 A. Okay.

6 Q. Can you identify Exhibit 45?

7 A. It appears to be an E-mail
8 chain between me, various people at
9 BayTSP, and then, ultimately, including
10 15:50:33 Cindy Morales.

11 Q. And in the very middle of
12 the first page, there is an E-mail from
13 you responding to a question from
14 Courtney Nieman. Well, first Courtney
15 15:50:46 Nieman's question at the bottom of the
16 page, it says, "A question came up from
17 the group of people that are
18 approving/declining the video clips.

19 What about commercials/trailers/promos,
20 15:50:58 should these be approved or declined."

21 And your response is "If
22 there are commercials/trailers/promos
23 for programs on the list, they should
24 be taken down, unless it is from the
25 15:51:09 addresses that Cindy sent to you that

MICHELENA HALLIE

1 are clips that we uploaded ourselves."

2
3 And it looks, at the very
4 top, you are asking Cindy if she has
5 15:51:19 the, "White List."

6 First of all, what is the
7 White List?

8 A. I am assuming from this,
9 that it is the list of clips that MTVN
10 15:51:41 authorized to be uploaded.

11 Q. And how was the White List
12 compiled?

13 A. People within MTVN were
14 directed to send any user names or
15 15:52:07 other identifying information to Cindy
16 Morales and/or Warren Solow's group,
17 depending on the time.

18 Q. And in your E-mail in the
19 middle of the page that starts, "If
20 15:52:24 there are commercials/trailers/promos,"
21 your instruction is, "they should be
22 taken down unless they are from the
23 addresses Cindy sent to you."

24 So was the policy, at that
25 15:52:33 time, that clips that appeared to be

MICHELENA HALLIE

1
2 commercials, trailers or promos should
3 be taken down if they were not uploaded
4 by Viacom or someone affiliated with
5 15:52:45 Viacom?

6 A. That would appear to be
7 correct. If we hadn't authorized their
8 upload, they should be taken down.

9 MR. WILKENS: Can we take
10 15:53:04 another, really quick, break?

11 MS. REES: Sure.

12 MR. WILKENS: Thanks.

13 THE VIDEOGRAPHER: The time
14 is 3:53 p.m. and we are off the
15 15:53:15 record.

16 (Whereupon, a recess was
17 held.)

18 THE VIDEOGRAPHER: The time
19 is 3:58 p.m. and we are back on
20 15:58:11 the record.

21 BY MS. REES:

22 MS. REES: Exhibit 46.

23 (Whereupon, the
24 aforementioned documents, VIA
25 15:58:18 11788096 and VIA 11787096, were

MICHELENA HALLIE

1
2 January '07 than it became in April of
3 '07.

4 Q. And do you have any
5 16:01:52 recollection of whether that's how the
6 policy evolved, at least between these
7 two dates?

8 A. I don't.

9 Q. Did the difference in policy
10 16:02:30 about whether to takedown or leave up
11 commercials and advertising clips for
12 MTVN programming, did it have to do
13 with the fact that January 2007 was
14 before the mass takedown and Viacom
15 16:02:48 wanted to take down as many clips as
16 possible, whereas April 2007 was after
17 the mass takedown and there was no
18 longer that goal?

19 MR. WILKENS: Objection to
20 16:03:01 the form.

21 A. I don't recall that being
22 the case. I recall all of these
23 decisions, as I think the documents
24 will back up, were evolving in part of
25 16:03:14 a legal analysis.

1 MICHELENA HALLIE

2 MS. REES: Exhibit 47.

3 (Whereupon, the

4 aforementioned document, BayTSP

5 16:03:49 004295197, was marked as

6 Defendant's Exhibit Hallie-47 for

7 identification as of this date by

8 the Reporter.)

9 A. Okay.

10 16:04:13 Q. Can you identify Exhibit 47?

11 A. It is an E-mail from

12 Courtney Nieman to Travis Hill with

13 copies to various people, including me.

14 Q. And is this the list of

15 16:04:26 account names that was described in a

16 previous E-mail as the White List?

17 A. It -- judging from the

18 timing, that E-mail that you are

19 referring to was January 3rd and this

20 16:04:49 is January 31st, so it is possible that

21 it is.

22 Q. And this was -- the purpose

23 of giving this list to BayTSP was so

24 that BayTSP would know not to take down

25 16:05:08 videos that Viacom had posted to

MICHELENA HALLIE

1
2 YouTube under the account names listed
3 in Exhibit 47?

4 A. Well, that they not take
5 16:05:19 down clips that Viacom had authorized
6 to be posted. I don't know if it was
7 Viacom itself or agents of Viacom.

8 Q. In the early 2007 timeframe,
9 were you familiar with a marketing firm
10 16:05:41 that Viacom was using called Fanscape?

11 A. I have heard of Fanscape. I
12 don't remember when I first heard of
13 it.

14 Q. Do you know why Fanscape is
15 16:05:52 not on this list? Because Fanscape was
16 posting videos on behalf of Viacom at
17 this time, right?

18 MR. WILKENS: Objection to
19 the form of the question.

20 16:05:59 A. I don't recall. I recall
21 hearing the name, Fanscape. I don't
22 even remember in what context.

23 Q. Looking at this list now, is
24 it your belief that this list is
25 16:06:15 incomplete, that even as of January 31,

MICHELENA HALLIE

2007, there are quite a few more
authorized clips that appear on this
list?

16:06:24 A. I don't know.

MS. REES: Exhibit 48.

(Whereupon, the
aforementioned documents, VIA
16669294 through '298, were marked
16:06:56 as Defendant's Exhibit Hallie-48
for identification as of this date
by the Reporter.)

A. Okay.

Q. Can you identify Exhibit 48?

16:10:10 A. It is an E-mail chain that
starts between the various people,
apparently, of Paramount Pictures.
Then Al Perry forwards it to Mark
Morril, Scott Martin and myself,
16:10:39 copying Rebecca Prentice. I respond
and Mike Fricklas appears to respond.

Q. In the second page, there
appears to be a question from
Paramount; "Can you clarify Paramount's
16:10:57 position on dealing with YouTube at a