

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.)
)
 _____)

30(b)(6) VIDEOTAPED DEPOSITION OF STORM DUNCAN
SAN FRANCISCO, CALIFORNIA
WEDNESDAY, JULY 16, 2008

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
CSR LICENSE NO. 9830
JOB NO. 15373

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

JULY 16, 2008

9:14 a.m.

30(b)(6) VIDEOTAPED DEPOSITION OF STORM DUNCAN,
held at the offices of SHEARMAN & STERLING,
525 Market Street, San Francisco, California,
pursuant to notice, before ANDREA M. IGNACIO
HOWARD, CLR, RPR, CSR License No. 9830.

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

2

3 FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

4 JENNER & BLOCK, LLP

5 By: BILL HOHENGARTEN, Esq.

6 SCOTT B. WILKENS, Esq.

7 1099 New York Avenue, NW, Suite 900

8 Washington, D.C. 20001

9 (202) 639-6000 swilkens@jenner.com

10

11 FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

12 BERNSTEIN LITOWITZ BERGER & GROSSMANN, LLP

13 By: JOHN C. BROWNE, Esq.

14 1285 Avenue Of The Americas

15 New York, New York 10019

16 (212) 554-1533 johnb@blbglaw.com

17

18 FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and

19 GOOGLE, INC.:

20 WILSON SONSINI GOODRICH & ROSATI, LLP

21 By: BART E. VOLKMER, Esq.

22 650 Page Mill Road

23 Palo Alto, California 94304-1050

24 (650) 493-9300 bvolkmer@wsgr.com

25

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1 A P P E A R A N C E S: (Continued.)

2

3 FOR THE DEPONENT:

4 DUVAL & STACHENFELD, LLP

5 By: ALLAN N. TAFFET, Esq.

6 300 East 42nd Street

7 New York, New York 10017

8 (212) 692-5523 ataffet@dsl1p.com

9

10 ALSO PRESENT: Ken Reeser, Videographer.

11

12

---oOo---

13

14

15

16

17

18

19

20

21

22

23

24

25

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

09:18:46 1 A No.

09:18:46 2 Q Is there any reason why you cannot give
09:18:49 3 complete and accurate testimony today?

09:18:52 4 A No.

09:18:52 5 Q What is the highest degree you've obtained
09:18:59 6 educationally?

09:19:00 7 A A masters degree.

09:19:02 8 Q Is that an MBA or --

09:19:05 9 A Yes, MBA from University of Michigan.

09:19:08 10 Q And when was that awarded?

09:19:10 11 A 1994.

09:19:15 12 Q And who is your current employer?

09:19:17 13 A Credit Suisse.

09:19:17 14 Q And what is your job title?

09:19:19 15 A Managing director.

09:19:20 16 Q And is there a particular group or -- group
09:19:29 17 at Credit Suisse that you work in?

09:19:31 18 A I'm in the mergers and acquisitions group.

09:19:34 19 Q And within that group, is there any
09:19:38 20 subdivision technology or anything like that that
09:19:42 21 you're primarily located in?

09:19:45 22 A Yeah. I'd say most of my time is spent in
09:19:47 23 the technology arena.

09:19:48 24 Q And how long have you held that position?

09:19:52 25 A Of managing director?

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

09:19:54 1 Q Yes.

09:19:54 2 A I think it's been about four or five years

09:19:57 3 now.

09:19:57 4 Q And were you working for Credit Suisse before

09:20:04 5 that, before you became a managing director?

09:20:06 6 A Yes.

09:20:06 7 Q For how long?

09:20:08 8 A I've been with Credit Suisse since about the

09:20:10 9 end of 1999.

09:20:15 10 Q And what was your position before you became

09:20:17 11 a managing director?

09:20:19 12 A Director.

09:20:21 13 Q And did you focus on the same types of

09:20:24 14 matters that you focus on now, mergers and

09:20:27 15 acquisitions in the technology area?

09:20:30 16 A Yes.

09:20:30 17 Q And between receiving your MBA in 1994 and

09:20:39 18 moving to Credit Suisse in 1999, were you employed

09:20:43 19 somewhere else or other places?

09:20:45 20 A Yes.

09:20:45 21 Q Where?

09:20:48 22 A What is now UBS. It was a start of my

09:20:52 23 career. I was at Merrill Lynch and Lehman Brothers.

09:20:56 24 Q And were those all investment-banker-type

09:21:01 25 positions?

09:39:48 1 Q And can you tell me what this document is?

09:39:55 2 A It's a set of discussion materials
09:39:57 3 surrounding Project Yellow, I think, which is our code
09:40:02 4 name for YouTube that addresses a profile of Yellow
09:40:07 5 and sector overview, as well as some preliminary
09:40:09 6 financial analyses, and then there's some exhibits in
09:40:12 7 the back, but I think that's the primary gist of what
09:40:15 8 it's trying to accomplish.

09:40:16 9 Q Okay. And you said in your answer that
09:40:18 10 Yellow is the code name for YouTube?

09:40:23 11 MR. VOLKMER: Objection to the form of the
09:40:24 12 question.

09:40:25 13 THE WITNESS: Yes.

09:40:27 14 MR. HOHENGARTEN: Q. And is Green also used
09:40:31 15 in this documentation as a code name or alternative
09:40:35 16 name for Google?

09:40:38 17 MR. VOLKMER: Objection to the form of the
09:40:39 18 question.

09:40:42 19 THE WITNESS: Yes, it appears that's the case
09:40:56 20 as well.

09:40:58 21 MR. HOHENGARTEN: Q. And you stated that
09:41:12 22 this document begins with a profile of YouTube; is
09:41:17 23 that what -- is that correct?

09:41:19 24 MR. VOLKMER: Objection to the form of the
09:41:20 25 question.

09:41:21 1 THE WITNESS: The first table -- in the table
09:41:22 2 of contents, the first section is a profile of Yellow
09:41:25 3 and sector overview.

09:41:27 4 MR. HOHENGARTEN: Q. And which -- which
09:41:35 5 pages that follow constitute that part of the
09:41:38 6 document?

09:41:40 7 A The divider pages, page two, and then I think
09:41:43 8 the section ends on page 12.

09:41:57 9 Q And you're referring to Bates page 2231?

09:42:01 10 A So Bates --

09:42:02 11 Q The Bates numbers are those numbers on the
09:42:06 12 lower right.

09:42:07 13 A So the divider page is Bates 2221 as a
09:42:12 14 starter one for the divider page. The section begins
09:42:14 15 on 2222 and ends on 2231.

09:42:18 16 Q And then starting on Bates page 2232, is that
09:42:46 17 the beginning of a financial analysis, a preliminary
09:42:53 18 financial analysis?

09:42:55 19 A Yeah, the title page of 2232 is "Preliminary
09:42:57 20 Financial Analysis," and the subsection is
09:43:00 21 "Illustrative --" sorry "-- Illustrative Model."

09:43:02 22 Q And what is an "Illustrative Model" or what
09:43:06 23 is this "Illustrative Model"?

09:43:08 24 A The -- an "Illustrative Model" in the context
09:43:11 25 of how I'm viewing it here is that we didn't have any

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

11:03:27 1 Suisse that the purchase price they are paying is fair
11:03:29 2 to their shareholders from a financial point of view,
11:03:32 3 and actually I don't have the fairness opinion in
11:03:34 4 front of me, so it could be to the Board of Directors
11:03:37 5 or some other constituency, but to some constituency,
11:03:43 6 the transaction is fair from a financial perspective.

11:03:45 7 Q But it would be for an opinion provided to
11:03:48 8 Google or its Board of Directors, and you're doing
11:03:50 9 this for Google; correct?

11:03:51 10 A Yes, that's correct.

11:03:52 11 Q So is it fair to Google or for Google?

11:03:54 12 A Or Google's shareholders, and I'm sure we'll
11:03:57 13 get there at some point. I can answer that more
11:03:59 14 specifically who we addressed it to, but....

11:04:02 15 Q And had Credit Suisse been asked to begin its
11:04:16 16 analyses to provide a fairness opinion before the time
11:04:18 17 of this e-mail?

11:04:28 18 A It's not inherently obvious to me from this
11:04:32 19 e-mail that that's the case, but I would think it
11:04:34 20 would be odd to just get an e-mail with this snip of
11:04:38 21 information only, so I would assume there was a
11:04:41 22 conversation before this e-mail.

11:04:42 23 Q And as the corporate representative of Credit
11:04:46 24 Suisse, can you say when Credit Suisse's engagement
11:04:50 25 began on the project to provide a fairness opinion?

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

11:04:56 1 A So we had been engaged on -- engaged being a
11:05:00 2 very nonlegal term -- so actively involved on this
11:05:04 3 project for a number of months. I think even prior to
11:05:07 4 August we had conversations with Sequoia and with
11:05:10 5 Google trying to put the two companies together.

11:05:13 6 We had the August set of conversations which
11:05:15 7 we talked about, and then -- and your question might
11:05:19 8 be specifically referring to this. It appears as
11:05:22 9 though they came to some purchase price on this term
11:05:25 10 sheet on October 5th that was attached to the e-mail
11:05:28 11 on October 5th.

11:05:29 12 So I would assume somewhere very close to the
11:05:31 13 vicinity of October 5th they called us up and said,
11:05:34 14 "Hey, can you provide a fairness opinion?"

11:05:36 15 Q Okay. And you mentioned Sequoia in your
11:05:40 16 answer. What is that?

11:05:42 17 A Sure. Is there a date on this, too? It
11:05:46 18 might help clarify it.

11:05:48 19 The -- and just for the benefit, the date on
11:05:52 20 the term sheet has a draft of October 3rd. So if it's
11:05:55 21 a draft of October 3rd, you could probably interpolate
11:05:59 22 something between the 3rd and the 5th as being when
11:06:02 23 they would have called us to do the fairness opinion.

11:06:06 24 Sequoia is a venture capital firm, and I'm
11:06:09 25 going a little bit off of memory here, that's -- if my

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

11:06:14 1 memory is correct, it is one of the significant
11:06:16 2 investors in YouTube.

11:06:18 3 Q And from your prior answer, your prior answer
11:06:25 4 indicated that Credit Suisse had also talked to
11:06:29 5 Sequoia in connection with a possible purchase of
11:06:32 6 YouTube; is that right?

11:06:42 7 A I'm pretty sure that we had conversations
11:06:44 8 with Sequoia around YouTube that were beyond just or
11:06:49 9 specifically just an acquisition that were certainly
11:06:54 10 in advance of this, and I think actually when you
11:06:57 11 showed me a previous exhibit, we actually had been
11:07:00 12 asked to hold off on continuing those conversations,
11:07:06 13 Exhibit 6, to preserve the delicacy of Google's
11:07:13 14 approach.

11:07:18 15 Q And keep that exhibit handy, but we'll mark
11:07:49 16 also Exhibit 9.

11:07:53 17 (Document marked Duncan Exhibit 9
11:08:07 18 for identification.)

11:08:07 19 MR. HOHENGARTEN: Sorry.

11:08:08 20 Q Which is Bates Nos. CSSU 2908 through 2913.

11:09:16 21 A Okay.

11:09:16 22 Q And Exhibit 9 is a cover e-mail followed by a
11:09:27 23 letter and a term sheet; correct?

11:09:31 24 MR. VOLKMER: Object to the form of the
11:09:34 25 question.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

11:09:35 1 THE WITNESS: Exhibit 9 has three components
11:09:41 2 to it. It has an e-mail track record as page 2908.
11:09:46 3 As page 2909, it has a letter from David Drummond at
11:09:51 4 Google to Chad and Steve at YouTube, and then the
11:09:54 5 remaining pages appear to be a term sheet.

11:09:57 6 MR. HOHENGARTEN: Q. And as the corporate
11:10:03 7 representative of Credit Suisse, is it your
11:10:05 8 understanding that this term sheet is the final term
11:10:07 9 sheet for Google's acquisition of YouTube?

11:10:12 10 A On the first page there's a line from Matt
11:10:16 11 Sucherman to Salman Ullah and Sean Dempsey saying that
11:10:20 12 this is not the countersigned. It doesn't say what
11:10:24 13 this says. "It's not countersigned by target but it
11:10:27 14 is the final."

11:10:28 15 Q And as a recipient of this, you understood it
11:10:32 16 to be the final term sheet; correct?

11:10:35 17 A That's correct. I had -- I assumed that was
11:10:36 18 the truth.

11:10:37 19 Q And sitting here today, you have no reason to
11:10:39 20 doubt that; correct?

11:10:45 21 A That's right.

11:10:45 22 Q Is the term sheet provided to Credit Suisse
11:10:55 23 in connection -- is it being provided in connection
11:10:58 24 with the request for a fairness opinion about the
11:11:00 25 transaction?

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

11:11:07 1 A I think that's a fair assumption. The --
11:11:10 2 again, the next sentence on here says the
11:11:13 3 countersigned copies are in my office, and he asked
11:11:15 4 Salman if things are in motion for a fairness opinion.

11:11:19 5 So, you know, as -- I think that's fair to
11:11:22 6 assume that at this point that we're fully starting to
11:11:26 7 have a conversation with Google around doing a
11:11:28 8 fairness opinion, and that's starting to get supported
11:11:32 9 by some of these documents you've provided me.

11:11:34 10 Q Is the term sheet something that is typically
11:11:36 11 provided to Credit Suisse when it's asked to give a
11:11:38 12 fairness opinion?

11:11:41 13 A You know, the fairness opinion is dependent
11:11:46 14 upon knowing what the economics of the transaction
11:11:49 15 are, so we could get that from a definitive agreement
11:11:51 16 or a term sheet.

11:11:52 17 So to get the balls rolling, we'd probably
11:11:57 18 depend upon a term sheet at the end of the day that
11:11:59 19 the definitive agreement is going to have the final
11:12:03 20 term, which is what we would really rely upon.

11:12:10 21 Q When you say "the definitive agreement," do
11:12:12 22 you mean the final merger agreement or acquisition
11:12:16 23 agreement?

11:12:18 24 A That's right.

11:12:34 25 Q And under this term sheet, was the proposed

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

11:12:46 1 price, the agreed-to price at which Google would
11:12:52 2 purchase YouTube \$1.65 billion?

11:12:55 3 MR. VOLKMER: Object to the form of the
11:12:57 4 question.

11:13:02 5 THE WITNESS: The face value of that offer on
11:13:05 6 the term sheet is \$1.65 billion.

11:13:10 7 MR. HOHENGARTEN: Q. And is there some other
11:13:13 8 way of measuring the offer other than the face value?

11:13:18 9 A Sure.

11:13:18 10 So on Bates 2910, under "Acquisition
11:13:23 11 Consideration," there's a sentence in there that says
11:13:27 12 that that Google is going to issue a number of shares
11:13:30 13 of Google Class A Common Stock, the "Shares," in
11:13:34 14 quotes, equal to \$1,650,000,000 based on the average
11:13:41 15 daily closing price of the shares for 30 days
11:13:44 16 immediately preceding the closing of the acquisition.

11:13:49 17 So what that means is is that 1.65 billion is
11:13:53 18 an optical number. The value that they're actually
11:13:56 19 going to get is a number of shares equal to
11:13:58 20 \$1.65 billion divided, you know, a share price of \$30
11:14:03 21 on average divided into that 1.65 billion. So that
11:14:06 22 will be a number of shares they'll get, and that will
11:14:07 23 have a value that will be different than \$1.65 billion
11:14:12 24 by definition.

11:14:12 25 Q Based on variation of price per shares?

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

11:14:15 1 A That's right.

11:14:15 2 Q And again, Credit Suisse was retained in
11:14:18 3 order to provide an opinion that the purchase price
11:14:20 4 was fair; correct?

11:14:27 5 A Gosh, I'd have to see the fairness opinion to
11:14:30 6 see if that's the exact phraseology, because I
11:14:33 7 don't -- I'm not trying to parse your words. That's
11:14:36 8 not fair of me to do, but I think it's that the
11:14:38 9 acquisition consideration was fair, which would be the
11:14:42 10 shares that they issued, not the \$1.65 billion.

11:14:42 11 Q Okay. Thank you.

11:14:43 12 And what I want to know is whether -- do you
11:14:46 13 know what that consideration was in dollar value in
11:14:49 14 the end?

11:14:50 15 A The fairness opinion is given at the time of
11:14:53 16 execution of the definitive agreement. And as such,
11:14:56 17 we would have made an assumption as to the number of
11:14:58 18 shares that were issued that, in reality -- so to
11:15:01 19 answer your question specifically, I think the number
11:15:02 20 of shares declined substantially from signing to
11:15:05 21 closing, because I think Google's stock price went up,
11:15:08 22 so they were issued fewer shares.

11:15:10 23 I don't recall without going into some of the
11:15:12 24 books that you might provide to me what our fairness
11:15:15 25 opinion -- what shares our fairness opinion exactly

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

11:15:18 1 were based upon and what it actually ended up being at
11:15:20 2 the end of the day.

11:15:42 3 Q We'll come back to that.

11:15:44 4 A Okay. Sounds good. Thanks.

11:16:04 5 Q We'll mark Exhibit 10.

11:16:06 6 A Should I put these away?

11:16:08 7 Q Yes.

11:16:09 8 (Document marked Duncan Exhibit 10
11:16:10 9 for identification.)

11:16:10 10 MR. HOHENGARTEN: Q. Which is Bates Nos.
11:16:24 11 CSSU 28545 to 2852. Sorry. Let me -- it's CSSU 2845
11:16:37 12 to 2852.

11:16:47 13 A Thank you. Okay.

11:17:36 14 Q Can you describe what Exhibit 10 is?

11:17:39 15 MR. VOLKMER: Object to the form of the
11:17:41 16 question.

11:17:42 17 THE WITNESS: Exhibit 10 has a number of
11:17:45 18 pages. The first page of which is an e-mail chain.
11:17:48 19 Actually, the first two pages of which are an e-mail
11:17:52 20 chain, Bates 2845 and 2846; and then Bates 2847 to
11:18:00 21 Bates 2852 are an engagement letter between Credit
11:18:04 22 Suisse and Google.

11:18:05 23 MR. HOHENGARTEN: Q. And as the corporate
11:18:12 24 representative of Credit Suisse, can you tell me
11:18:14 25 whether this is the final engagement letter between

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

11:18:18 1 Credit Suisse and Google related to this fairness
11:18:20 2 opinion?

11:18:21 3 A It appears to be, yeah, the final executed
11:18:24 4 copy, yes.

11:18:25 5 Q In looking at Bates page 2847 of Exhibit 10,
11:18:35 6 under "Compensation," it provides that the company
11:18:40 7 agrees to pay Credit Suisse a fee of 2,000 -- sorry.
11:18:46 8 \$2,500,000 payable upon rendering of our opinion;
11:18:50 9 correct?

11:18:50 10 A That's correct.

11:18:50 11 Q And the company he's referring to is Google;
11:18:54 12 right?

11:18:56 13 A That's correct.

11:19:02 14 Q And Google was obligated to make that payment
11:19:07 15 upon the rendering of Credit Suisse's opinion
11:19:09 16 regardless of whether -- whether Credit Suisse said
11:19:12 17 the consideration for the transaction was fair or not
11:19:17 18 fair; correct?

11:19:18 19 A That's correct.

11:19:18 20 Q And at the bottom of that same page, 2847, it
11:19:32 21 says "In connection with Credit Suisse's engagement,
11:19:34 22 the Company will furnish, or cause to be furnished to
11:19:38 23 Credit Suisse all information concerning the Company
11:19:39 24 and, to the extent available to the Company, Target
11:19:43 25 that Credit Suisse reasonably deems necessary or

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

11:49:48 1 Q And having reviewed this e-mail as a
11:49:51 2 corporate representative of Credit Suisse, you
11:49:53 3 testified that Zach Maurus also went to Wilson Sonsini
11:49:58 4 for due diligence?

11:50:00 5 A He did. It helped refresh an additional
11:50:02 6 name. Thank you.

11:50:02 7 Q And having now been refreshed in that way, do
11:50:05 8 you recall anybody else who was there from Credit
11:50:06 9 Suisse?

11:50:09 10 A I don't think Chris Scarborough was there,
11:50:14 11 which is who sent the e-mail, so I think it was just
11:50:17 12 Zach and I and Jim Kim. Amrit Rao might have attended
11:50:23 13 at some point. I'm not sure, so that's another -- a
11:50:25 14 fourth possibility.

11:50:26 15 Q And can you spell that name?

11:50:28 16 A R-A-O.

11:50:28 17 Q And how is the first name spelled?

11:50:31 18 A A-M-R-I-T.

11:50:33 19 Q Thank you.

11:50:48 20 We'll mark Exhibit 13 which is CSSU 2686.

11:50:59 21 (Document marked Duncan Exhibit 13
11:51:18 22 for identification.)

11:51:18 23 THE WITNESS: Thank you. Okay.

11:52:01 24 MR. HOHENGARTEN: Q. Exhibit 13 is an e-mail

11:52:03 25 chain. The latest e-mail, top e-mail in the chain, is

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

11:52:07 1 from Sean Dempsey of Google to Zach Maurus, Storm
11:52:13 2 Duncan, and James Kim; correct?
11:52:15 3 A That's correct.
11:52:15 4 Q Dated October 6th, 2006; correct?
11:52:18 5 A That's correct.
11:52:18 6 Q And it's forwarding a Snowmass video
11:52:21 7 analysis; correct?
11:52:22 8 A That's correct.
11:52:23 9 Q And you testified earlier that Snowmass
11:52:28 10 referred to the transaction of Google acquiring
11:52:31 11 YouTube; correct?
11:52:32 12 A That's correct.
11:52:35 13 Q And the e-mail from Sean Dempsey is
11:52:38 14 forwarding an e-mail from Salman Ullah, also dated
11:52:43 15 October 6th; correct?
11:52:45 16 A Correct.
11:52:47 17 Q And it shows a breakdown of types of videos
11:52:52 18 on YouTube or some analysis of that; is that right?
11:52:57 19 MR. VOLKMER: Objection to the form of the
11:52:59 20 question.
11:52:59 21 MR. HOHENGARTEN: Actually, let me rephrase
11:53:00 22 that question.
11:53:01 23 Q Can you describe what this Snowmass video
11:53:05 24 analysis is?
11:53:06 25 MR. VOLKMER: Objection to the form of the

11:53:08 1 question.

11:53:08 2 THE WITNESS: The title of the e-mail is
11:53:12 3 "Snowmass video analysis" that was sent from Salman to
11:53:16 4 Salman, and within it there's a detail of videos, I
11:53:26 5 guess, which is -- includes 424, I guess 123 which
11:53:31 6 aren't valid URLs. I'm not sure what that means in
11:53:34 7 terms of the total quantity.

11:53:37 8 And then it says a subdivision of that 424 --
11:53:48 9 sorry. That 424 less the 123 describing them by two
11:53:53 10 -- three categories, a premium category, a removed
11:53:58 11 category, and a no category, which is no copyright but
11:54:02 12 includes commercials, trailers, public service promos
11:54:06 13 and true UGC.

11:54:09 14 Q That's the no category, what you were just
11:54:10 15 describing?

11:54:11 16 A That's right.

11:54:12 17 Q And the premium category, do you understand
11:54:15 18 what that is?

11:54:18 19 A Yeah. It says it's content that is
11:54:20 20 copyrighted either in whole or in substantial part,
11:54:23 21 and it also included, removed where links were -- that
11:54:28 22 were taken down.

11:54:31 23 Q Do you understand what removed where -- were
11:54:34 24 links that were taken down means?

11:54:36 25 A Probably not from a technical perspective,

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

11:55:36 1 MR. VOLKMER: And renew that objection.

11:55:39 2 THE WITNESS: No. The way I read it, it's
11:55:40 3 63 percent of the net total, not the gross total. So
11:55:43 4 the percentage of the total would be 189 over 424
11:55:47 5 which would be a smaller percentage than the 63.

11:55:50 6 MR. HOHENGARTEN: Okay. Let me step back.

11:56:02 7 Q As the corporate representative of Credit
11:56:04 8 Suisse, what is your understanding of the purpose of
11:56:07 9 providing this information to Credit Suisse?

11:56:09 10 MR. VOLKMER: Objection to the form of the
11:56:11 11 question.

11:56:11 12 THE WITNESS: This is more information
11:56:18 13 that -- that is being provided to us coincident with,
11:56:22 14 I think, with what we just discussed in Exhibit 11 to
11:56:29 15 help us facilitate doing some modeling around the
11:56:33 16 valuation or the financial performance first, and then
11:56:36 17 the valuation second of YouTube.

11:56:39 18 MR. HOHENGARTEN: Q. And it's a -- one way
11:56:41 19 of breaking down video content on YouTube into
11:56:45 20 categories; correct?

11:56:47 21 A Yes.

11:56:48 22 Q And it's relevant to the valuation insofar as
11:56:53 23 the ability to monetize these different categories may
11:56:58 24 be different; correct?

11:57:00 25 A That is one way they could be differentiated,

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

11:57:04 1 yes.

11:57:04 2 Q Do you know whether in your final valuation
11:57:08 3 models, which we'll get to, but at this point whether,
11:57:13 4 in fact, you differentiated between these categories
11:57:18 5 according to the ability to monetize them?

11:57:21 6 A It would probably be easier to answer that
11:57:22 7 question when I have that stuff in front of me.

11:57:25 8 Q Okay.

11:57:25 9 A You want me to guess?

11:57:27 10 Q No, I don't want you to guess.

11:57:28 11 A Okay.

11:57:29 12 Q But -- but having worked on this project, I
11:57:31 13 thought you might be able to give me a -- an answer
11:57:33 14 based on what you know right now.

11:57:34 15 A Okay. Yeah.

11:57:35 16 MR. VOLKMER: I'm going to object to the form
11:57:37 17 of this question --

11:57:37 18 THE WITNESS: Okay.

11:57:38 19 MR. VOLKMER: -- to the extent there's a
11:57:40 20 question pending.

11:57:41 21 MR. HOHENGARTEN: Well, it was my original
11:57:43 22 question, actually. I can read it.

11:57:51 23 Q Do you know whether in your final valuation
11:57:53 24 models, which we'll get to, but at this point whether,
11:57:58 25 in fact, you differentiated between these categories

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

11:58:01 1 according to the ability to monetize them?

11:58:06 2 MR. VOLKMER: I'm going to renew the

11:58:08 3 objection.

11:58:12 4 THE WITNESS: Thank you.

11:58:13 5 Let's wait until we get to those, and then

11:58:15 6 I'll give you a better answer.

11:58:16 7 MR. HOHENGARTEN: Q. Let's walk through the

11:58:17 8 breakdown here though --

11:58:19 9 A Sure.

11:58:19 10 Q -- still.

11:58:19 11 We started to talk about it but I want to try

11:58:22 12 to go through it a little more methodically to make

11:58:25 13 sure that I understand the information that's being

11:58:27 14 supplied here.

11:58:28 15 A Okay.

11:58:29 16 Q There is -- the first line gives a gross

11:58:30 17 total and it says "424"; correct?

11:58:36 18 A That's correct.

11:58:36 19 Q In parenthesis, and you mentioned this in a

11:58:40 20 prior answer, it says "Includes 123 that aren't valid

11:58:45 21 URLs"; correct?

11:58:47 22 A That's correct also.

11:58:47 23 Q Do you understand what the 424 refers to?

11:58:55 24 A My recollection of the 424 is that it's a --

11:58:59 25 it says at the top of the e-mail, "Some manual

11:59:02 1 analysis we did," was that it was a study that the
11:59:07 2 Google folks had performed studying, you know, a
11:59:10 3 number of randomly generated or chosen videos, and
11:59:16 4 that 424 is the number that they had randomly chosen
11:59:19 5 and -- and were able to categorize with these
11:59:25 6 subcategorizations.

11:59:27 7 Q Okay. And the "includes 123 that aren't
11:59:30 8 valid URLs," do you understand what the meaning of
11:59:36 9 that is?

11:59:38 10 A I would assume -- I don't know YouTube's
11:59:42 11 technology underpinnings well enough, but I would
11:59:46 12 assume that meant at one point there was a video that
11:59:49 13 had been put up and it kind of looks as though you can
11:59:52 14 click on it, but when you click on it, that video is
11:59:55 15 no longer there, so it's no longer valid. That would
11:59:58 16 be my understanding.

11:59:59 17 Q And that number is subtracted from -- the 123
12:00:03 18 that aren't valid URLs are -- are subtracted from the
12:00:07 19 gross total to provide a net total of videos of 301;
12:00:13 20 is that correct?

12:00:13 21 A That's correct.

12:00:14 22 Q And then that net total of 301 videos that's
12:00:18 23 regard -- that treated as 100 percent for purposes of
12:00:20 24 the analysis; right?

12:00:21 25 A That's correct, yes.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

12:00:22 1 Q And then that's divided into two categories.
12:00:26 2 The first category is called "No," and the second
12:00:29 3 category is called "Pram/Rem," which I believe means
12:00:37 4 premium/removed; correct?

12:00:40 5 A Yes.

12:00:40 6 MR. VOLKMER: Object to the form of the
12:00:41 7 question.

12:00:43 8 MR. HOHENGARTEN: Q. The first category is
12:00:44 9 "No"; correct?

12:00:46 10 A Yes.

12:00:46 11 Q And the second category is labeled here
12:00:48 12 "Prem/rem"; correct?

12:00:53 13 A There's actually just two labelings. So the
12:00:55 14 definition down below expands upon that to say that it
12:00:58 15 means premium/removed.

12:01:03 16 Q Okay. And that category of premium/removed
12:01:08 17 under this analysis is 63 percent of the net total of
12:01:12 18 videos sampled; correct?

12:01:15 19 MR. VOLKMER: Objection to the form of the
12:01:17 20 question.

12:01:37 21 (Whereupon, record read by the Reporter as
12:01:37 22 follows:

12:01:04 23 "Question: Okay. And that category of
12:01:05 24 premium/removed under this analysis is
12:01:11 25 63 percent of the net total of videos

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

12:01:14 1 sampled; correct?")

12:01:37 2 THE WITNESS: So the -- the premium/removed
12:01:40 3 category is 189 of the 424, and 189 of the 301. So
12:01:46 4 the percentage 63 percent is 63 percent of the net
12:01:49 5 total, so hopefully that answers your question, I
12:01:52 6 think.

12:01:52 7 MR. HOHENGARTEN: Q. It's 63 percent of the
12:01:54 8 net total which excludes the URLs that aren't valid?

12:01:58 9 A That's correct, which is, I think, the
12:02:00 10 definition of net total for purposes of this, which I
12:02:03 11 think you established as well, so sure.

12:02:08 12 Q And the "No" category is 37 percent of that
12:02:11 13 net total; correct?

12:02:14 14 A That's correct, yes.

12:02:15 15 Q So setting aside the URLs that aren't valid,
12:02:21 16 the remaining sample of videos, the net total, breaks
12:02:25 17 down into 63 percent that are premium removed and
12:02:28 18 37 percent that are no; correct?

12:02:30 19 A That's correct.

12:02:31 20 Q And the premium/removed category includes
12:02:37 21 content that is copyrighted in whole or substantial
12:02:42 22 part, plus removed, which are links that were taken
12:02:44 23 down; right?

12:02:48 24 A Yeah, that's how it's categorized here
12:02:51 25 from -- from the Google folks.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

12:02:56 1 Q And the no category is categorized here by
12:03:07 2 the people from Google as no copyright but includes
12:03:12 3 commercials, trailers, public service, promos, and
12:03:16 4 true UGC; right?

12:03:18 5 A That's correct.

12:03:18 6 Q What is -- what is your understanding of the
12:03:21 7 phrase "true UGC"?

12:03:23 8 MR. VOLKMER: Objection to the form of the
12:03:25 9 question.

12:03:26 10 THE WITNESS: I think that the initials UGC
12:03:30 11 probably stand for user-generated content.

12:03:33 12 MR. HOHENGARTEN: Q. And true UGC?

12:03:45 13 A I'm not sure. I mean, true UGC is just
12:03:50 14 honest UGC. Honestly, you know, user generated. I
12:03:55 15 would assume it's implying the users had generated
12:03:58 16 that content through their cell phones, or through a
12:04:01 17 video camera, or something along those lines.

12:04:03 18 Q Okay. And that true UGC is encompassed in
12:04:06 19 the no category; right?

12:04:07 20 A That's correct.

12:04:07 21 Q Now, the no category also includes
12:04:10 22 commercials, trailers, public service announcements,
12:04:13 23 and promotions; right?

12:04:15 24 A That's correct.

12:04:16 25 Q And together the true UGC, plus those other

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

12:04:19 1 categories, are 37 percent of the net total sample;
12:04:24 2 right?

12:04:24 3 A That's correct.

12:04:25 4 Q And the other 63 percent is either premium,
12:04:29 5 which is defined as copyrighted content or removed,
12:04:34 6 which is links taken down?

12:04:35 7 MR. VOLKMER: Objection to the form of the
12:04:37 8 question.

12:04:49 9 (Whereupon, record read by the Reporter as
12:04:49 10 follows:

12:04:26 11 "Question: And the other 63 percent is
12:04:28 12 either premium, which is defined as
12:04:31 13 copyrighted content or removed, which is
12:04:35 14 links taken down?")

12:04:49 15 MR. TAFFET: I'll join in that objection.

12:04:51 16 THE WITNESS: Yeah, I think that -- I think
12:04:53 17 we actually clarified what premium and removed was
12:04:56 18 earlier, and I think it's written explicitly on
12:04:59 19 Exhibit 13. So I just read it for your clarification,
12:05:02 20 not for your clarification, but for the clarification
12:05:03 21 of the answer.

12:05:04 22 The premium/removed means the content is
12:05:09 23 copyright either in whole or in substantial part, and
12:05:13 24 then also the second part is "and removed were links
12:05:16 25 that were taken down."

12:05:17 1 MR. HOHENGARTEN: Okay.

12:05:23 2 Q Did Credit Suisse itself review any YouTube
12:05:27 3 videos or sample of videos in connection with
12:05:30 4 providing a fairness opinion?

12:05:32 5 A No.

12:05:34 6 Q Do you know, as the corporate representative
12:05:38 7 of Credit Suisse, did you receive any other
12:05:42 8 information about a breakdown of video categories from
12:05:45 9 Google other than this e-mail, Exhibit 13, that we've
12:05:50 10 just been talking about?

12:05:52 11 MR. VOLKMER: Object to the form of the
12:05:54 12 question.

12:06:48 13 THE WITNESS: We might have received other
12:06:49 14 categorization. I guess when we go through more
12:06:53 15 documents, that might help refresh my memory. Sitting
12:06:55 16 here right now, I can't remember which documents might
12:06:58 17 have given us additional information.

12:06:59 18 Certainly there's some additional kind of
12:07:01 19 characterization of the videos in Exhibit 8 that you
12:07:04 20 showed me previously, but it wasn't re-categorizing it
12:07:12 21 any differently than had been shown here.

12:08:02 22 MR. HOHENGARTEN: Mark exhibit -- what was
12:08:04 23 that one?

12:08:05 24 THE WITNESS: 13 was the last one.

12:08:06 25 MR. HOHENGARTEN: Exhibit 14, which is CSSU

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

12:08:11 1 4069 through 4074.

12:08:22 2 (Document marked Duncan Exhibit 14

12:08:34 3 for identification.)

12:08:34 4 MR. HOHENGARTEN: Sorry.

12:10:29 5 THE WITNESS: Okay.

12:10:30 6 MR. HOHENGARTEN: Q. Exhibit 14 is an e-mail

12:10:39 7 chain with an attachment; correct?

12:10:48 8 A There were two attachments, it looks like,

12:10:50 9 but yes, at least on the attached line up top it says

12:10:54 10 there's two.

12:10:55 11 Q Yes, you're right.

12:10:57 12 The attachments at the top says "agua

12:11:00 13 model.xls" and "agua model.xls," the same names;

12:11:05 14 correct?

12:11:05 15 A They do say the same name.

12:11:09 16 Q Either with attachment or attachments.

12:11:18 17 A Sure. Absolutely. That's a little confusing

12:11:21 18 as well but yes, it looks like there are either one or

12:11:24 19 two attachments. There are definitely two

12:11:26 20 attachments. I'm not sure if they're different and

12:11:28 21 named the same or named the same and the same.

12:11:30 22 Q And the -- the e-mail is being sent by James

12:11:34 23 Kim of Credit Suisse to Salman Ullah of Google and

12:11:39 24 Storm Duncan and James Kim of -- of Credit Suisse;

12:11:43 25 right?

12:11:45 1 A And David Drummond.

12:11:46 2 Q Thank you, and David Drummond.

12:11:48 3 A And a whole bunch of people cced as well.

12:11:51 4 Q And the e-mail says "Attached please find the
12:11:54 5 latest version of the model"; correct?

12:11:57 6 A It does.

12:11:58 7 Q And do you know what's meant by "the
12:12:02 8 model" there?

12:12:05 9 A It appears to be the -- the beginning of a
12:12:12 10 model or more than the beginning. A substantial -- a
12:12:16 11 substantially further enhanced draft of a model
12:12:21 12 incorporating some monetization around YouTube.

12:12:30 13 Q And what kind of a model is this? Is it a
12:12:34 14 cash flow model?

12:12:47 15 A This has a -- what is the Bates numbers? Is
12:12:52 16 that the name again?

12:12:53 17 Q Yes, that's what those numbers at the bottom
12:12:56 18 are.

12:12:56 19 A Bates Nos. 4071 and 4072 seem to be a
12:13:01 20 projection model. 4073 has a valuation. Hard to tell
12:13:06 21 if that's a discounted cash flow model or not, but it
12:13:08 22 appears that it could be, and then 4074 is a further
12:13:17 23 projection model with again some valuation at the
12:13:23 24 bottom that -- hard to tell if it's a DCF or not.

12:13:27 25 Q When you say "DCF," you mean discounted cash

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

12:13:29 1 flow?

12:13:40 2 A Yes.

12:13:40 3 Q And looking at Bates page 4071 --

12:13:52 4 A Okay.

12:13:53 5 Q -- this is the first of the first two

12:13:55 6 pages -- of the two pages which you said were a

12:14:07 7 projection model; right?

12:14:10 8 A Yes.

12:14:10 9 Q And what's being projected here?

12:14:27 10 A The project of the financial performance of

12:14:35 11 YouTube, and I'm not sure if it's as part of Google or

12:14:41 12 not. It doesn't specifically say.

12:14:47 13 Q Okay. And so to do that projection, is it

12:14:52 14 looking at projecting revenue that YouTube would be

12:14:56 15 able to bring in in the future?

12:14:59 16 A Yes.

12:15:00 17 Q And then is it also looking at the cost of

12:15:03 18 that revenue or expenses to get net revenue measured

12:15:08 19 in a variety of ways?

12:15:12 20 A It does come to net revenues well, and then

12:15:15 21 also further costing that down to the EBIDTA level and

12:15:19 22 the EBIT level, and the net operating profit after tax

12:15:24 23 level free cash flow, which is NOPAT and then FCF at

12:15:28 24 the very bottom.

12:15:32 25 Q And for a layperson, are those different ways

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

13:17:29 1 for identification.)

13:17:29 2 THE WITNESS: Okay.

13:17:29 3 MR. HOHENGARTEN: Q. And Exhibit 17. First

13:17:39 4 page of Exhibit 17 is a cover e-mail with an

13:17:42 5 attachment; is that correct?

13:17:44 6 A Yes.

13:17:44 7 Q And it's being sent by Amrit Rao to Storm

13:17:53 8 Duncan, yourself, cc Chris Scarborough and James Kim;

13:17:57 9 right?

13:18:00 10 A Yes, that's correct.

13:18:01 11 Q On October 9th, 2006; correct?

13:18:07 12 A Yes.

13:18:07 13 Q And it -- subject is "Green Board Materials";

13:18:15 14 right?

13:18:16 15 A Correct.

13:18:16 16 Q And then there's an attachment which is

13:18:23 17 indicated that its file name is "Materials for Green

13:18:26 18 Board.pdf; correct?

13:18:30 19 A That's correct as well.

13:18:31 20 Q And the remainder of Exhibit 16 after the

13:18:35 21 e-mail, after the first page, is that attachment;

13:18:38 22 correct?

13:18:40 23 A Exhibit 17 --

13:18:42 24 Q I'm sorry.

13:18:42 25 A -- and yes.

13:18:48 1 Q Thank you for correctly identifying the
13:18:50 2 exhibit number as 17.

13:18:51 3 A Absolutely.

13:18:58 4 Q And is this presentation -- this is a
13:19:01 5 presentation to the Google board about the YouTube
13:19:07 6 acquisition; is that right?

13:19:09 7 MR. VOLKMER: Objection to the form of the
13:19:10 8 question.

13:19:11 9 THE WITNESS: This is a presentation to the
13:19:15 10 Google board, and I think it is our fairness
13:19:20 11 presentation.

13:19:22 12 MR. HOHENGARTEN: Q. Your fairness
13:19:24 13 presentation?

13:19:25 14 A Yes.

13:19:25 15 Q And what is a fairness presentation?

13:19:30 16 A It's a -- as you recall from the earlier
13:19:34 17 topics that we discussed, we were asked to provide a
13:19:37 18 fairness opinion, and this is the book that allows
13:19:41 19 them to understand how we came to our fairness
13:19:43 20 opinion.

13:19:49 21 Q In -- was this book or presentation actually
13:19:53 22 presented to the Google board?

13:19:55 23 A It was.

13:19:55 24 Q Were you present for that presentation?

13:20:10 25 A I was.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

13:20:10 1 Q Was this book or presentation presented to
13:20:13 2 other Google personnel at any other time?

13:20:18 3 MR. VOLKMER: Objection to the form of the
13:20:19 4 question.

13:20:24 5 (Whereupon, record read by the Reporter as
13:20:24 6 follows:

13:20:11 7 "Question: Was this book or presentation
13:20:12 8 presented to other Google personnel at any
13:20:16 9 other time?")

13:20:28 10 THE WITNESS: I don't recall. It wouldn't
13:20:36 11 surprise me if we also shared it with the operating
13:20:39 12 team of Salman Ullah, Sean Dempsey, but I don't recall
13:20:48 13 specifically if we did or didn't.

13:20:55 14 MR. HOHENGARTEN: Q. We'll also come back to
13:20:56 15 this --

13:20:57 16 A Okay.

13:20:57 17 Q -- but let's just get a couple more exhibits.

13:21:02 18 We'll mark Exhibit 18, which is CSSU 2882
13:21:10 19 through 2885.

13:21:24 20 (Document marked Duncan Exhibit 18
13:21:25 21 for identification.)

13:21:25 22 THE WITNESS: Thank you. Okay.

13:21:47 23 MR. HOHENGARTEN: Q. Exhibit 18 is a cover
13:21:49 24 e-mail from James Kim to Salman Ullah and Matthew --
13:21:57 25 matthew@google.com and Sean Dempsey; correct?

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

13:22:02 1 A Yes.

13:22:02 2 Q Do you know who matthew@google.com is?

13:22:09 3 A I don't recall off the top of my head. I
13:22:11 4 thought I saw him on the previous exhibit, but I don't
13:22:14 5 know if you want me to use your time looking for that
13:22:17 6 or not.

13:22:24 7 Q And the attachment to this e-mail is Credit
13:22:29 8 Suisse's final fairness opinion in connection with
13:22:32 9 Google's acquisition of YouTube; is that right?

13:22:35 10 A That's correct. It's the executed version.

13:22:38 11 Q And the opinion provides that -- let me start
13:23:12 12 that question over.

13:23:13 13 It's -- according to this opinion, it's
13:23:19 14 Credit Suisse's opinion that the aggregate
13:23:21 15 consideration to be paid by Google in the merger is
13:23:23 16 fair to Google from a financial point of view;
13:23:25 17 correct?

13:23:50 18 A Yes, and this opinion also outlines an answer
13:23:58 19 to an earlier question you had as to how the
13:24:02 20 consideration is defined.

13:24:03 21 Q I was just about to ask that, and what is
13:24:05 22 the -- how is the aggregate consideration defined
13:24:16 23 here?

13:24:16 24 A An aggregate number of shares of Class A
13:24:20 25 Common Stock of Google equal to the quotient of

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

13:24:24 1 1.65 billion divided by the average daily closing
13:24:29 2 price of a Google Class A Common Stock for the 30
13:24:32 3 consecutive trading day period ending two trading days
13:24:36 4 prior to the closing date of the merger.

13:24:40 5 Q So it's a certain number of shares of stock
13:24:43 6 determined by a formula set out there; is that right?

13:24:46 7 A That's correct.

13:24:46 8 Q And when providing this opinion, were you
13:24:52 9 able to estimate the -- the value of that stock --

13:24:57 10 MR. VOLKMER: Objection to the form of the
13:24:58 11 question.

13:24:58 12 MR. HOHENGARTEN: Q. -- and the date of the
13:25:00 13 transaction?

13:25:00 14 MR. VOLKMER: Sorry about that.

13:25:07 15 MR. HOHENGARTEN: Q. On the date of the
13:25:10 16 transaction?

13:25:13 17 A Can you define "date of the transaction"? Is
13:25:18 18 that --

13:25:21 19 Q The date that they would hand over the
13:25:23 20 shares.

13:25:23 21 A No, no.

13:25:24 22 Q You didn't -- you didn't make an attempt to
13:25:27 23 estimate what the value would be or projection to
13:25:30 24 provide this opinion?

13:25:31 25 A No.

13:25:31 1 Q In order to provide an opinion, do you assume
13:25:37 2 a value of \$1.65 billion of the stock on the date that
13:25:43 3 the aggregate consideration is paid?

13:25:46 4 MR. VOLKMER: Object to the form.

13:25:49 5 THE WITNESS: We would never project what
13:25:52 6 Google's stock -- any company's stock price would be
13:25:56 7 in the future, in addition to Google's.

13:25:57 8 MR. HOHENGARTEN: Q. How -- how are you able
13:26:13 9 to determine that a number of shares of stock -- let
13:26:21 10 me rephrase that.

13:26:22 11 What are you measuring the fairness of here?

13:26:26 12 MR. VOLKMER: Objection to the form of the
13:26:28 13 question.

13:26:30 14 THE WITNESS: We're measuring the fairness
13:26:31 15 of -- from a financial -- it's the first sentence,
13:26:31 16 actually.

13:26:36 17 The fairness from a financial point of view
13:26:37 18 of Google, Inc., of the aggregate consideration
13:26:40 19 provided for the agreement and plan of merger to be
13:26:42 20 entered into by Google and YouTube and certain
13:26:46 21 stockholders of YouTube.

13:26:48 22 MR. HOHENGARTEN: Q. And for an aggregate
13:26:49 23 consideration defined as a certain number of shares of
13:26:54 24 stock?

13:26:54 25 A That's correct, yeah. For the purposes of

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

13:26:55 1 how we do that, derive that analysis, we come up with
13:26:58 2 a certain number of -- or sorry -- it's based upon a
13:27:02 3 certain number of shares that is derived from that
13:27:05 4 formula that we gave.

13:27:34 5 Q And if you look back at Exhibit 17 --

13:27:44 6 A Sure.

13:27:45 7 Q -- which is the board presentation, Bates
13:27:53 8 page 3563, page two also, it's labeled as --

13:28:01 9 A Okay.

13:28:01 10 Q -- it shows the -- as a summary of financial
13:28:06 11 analyses of Yellow, it shows the aggregate
13:28:09 12 consideration as 1 -- \$1.65 billion; correct?

13:28:16 13 A Correct.

13:28:16 14 Q So I'm wondering if you -- that's the number
13:28:20 15 you used in performing your fairness evaluation?

13:28:23 16 A Yes. So it is, to answer your question
13:28:27 17 directly, and I think to clarify the distinction
13:28:29 18 between what you had been asking and what you're
13:28:31 19 getting at now, that is a proxy for what the
13:28:36 20 shareholders -- I shouldn't say a proxy -- that is the
13:28:40 21 value, if that transaction had closed right then, of
13:28:42 22 the consideration that they would receive in essence.

13:28:46 23 We can't predict what that will be in the
13:28:48 24 future, so we don't attempt to do that, and as it
13:28:51 25 correlates to the fairness opinion, our fairness

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

13:28:54 1 opinion is as of the date we give it.

13:28:56 2 So -- so we use the value on that date even
13:28:58 3 though we know full well that in the future that value
13:29:01 4 could change. It's no different than any other
13:29:03 5 transaction, I guess, to be fair. If we -- you know,
13:29:05 6 if you know Viacom bought Time Warner and issued
13:29:09 7 stock, the day of the announcement of that
13:29:11 8 transaction, we would do the analysis and say it's
13:29:14 9 fair knowing fully well that as soon as the
13:29:18 10 transaction is announced the Viacom stock would change
13:29:22 11 in value substantially.

13:29:23 12 Q Okay.

13:29:23 13 A And therefore the consideration is received
13:29:25 14 by, you know, the target company.

13:29:27 15 Q Then you say as a proxy you use the -- the
13:29:30 16 value on the date of the opinion, and that value was
13:29:37 17 \$1.65 billion?

13:29:39 18 A Yeah.

13:29:39 19 MR. VOLKMER: Object to the form of the
13:29:41 20 question.

13:29:41 21 THE WITNESS: Let me slow down.

13:29:42 22 I'd like to take back the word "proxy,"
13:29:44 23 because that's not a very good term here, because it's
13:29:47 24 not a proxy for what the value will be in the future.

13:29:49 25 The fairness opinion we're giving is opining

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

13:29:52 1 to the value on that day, and we use the 1.65 billion
13:29:55 2 as the value on that day knowing fully well it will
13:29:59 3 fluctuate up or down, as the case may be.

13:30:02 4 MR. HOHENGARTEN: Okay.

13:30:10 5 Q And returning to Exhibit 18, which is the
13:30:19 6 fairness opinion.

13:30:19 7 A Okay.

13:30:20 8 Q On page -- at the bottom of page 2883, going
13:30:25 9 on to 2884, the last paragraph, the second sentence,
13:30:31 10 let me read, "With respect to the financial forecasts
13:30:35 11 for YouTube that we have reviewed (including potential
13:30:38 12 synergies and strategic benefits anticipated by the
13:30:42 13 management of Google to result from the merger), the
13:30:44 14 management of Google has advised us, and we have
13:30:47 15 assumed, that such forecasts have been reasonably
13:30:50 16 prepared on bases reflecting the best currently
13:30:51 17 available estimates and judgments of the management of
13:30:54 18 Google as to the future financial performance of
13:30:56 19 YouTube after giving effect to the merger and that the
13:31:02 20 financial forecast reflected in the forecasts utilized
13:31:05 21 in our analyses will be utilized in the amounts and at
13:31:05 22 the times indicated thereby."

13:31:10 23 Did I read that correctly?

13:31:11 24 A I thought you had transcribed a few words on
13:31:13 25 the second half of that where it says "after giving

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

13:31:19 1 effect to the merger and that the financial results
13:31:21 2 reflect in the forecast utilized in our analyses will
13:31:25 3 be realized in the amounts and at the times indicated
13:31:27 4 thereby."

13:31:28 5 Q And that's correct.

13:31:29 6 Is that a correct statement?

13:31:42 7 A You might need to define that question. Is
13:31:44 8 it a correct statement that what you said is correct
13:31:47 9 or --

13:31:47 10 Q No.

13:31:48 11 A -- is it a correct statement that --

13:31:50 12 Q Is that sentence in that letter a correct
13:31:52 13 statement?

13:32:01 14 A Gosh, that's a very unusual question, because
13:32:04 15 the sentence says we're assuming that what you gave us
13:32:06 16 is accurate, and you're asking me if that's a correct
13:32:09 17 statement.

13:32:09 18 I think that's a question for Google, not for
13:32:13 19 us; right?

13:32:14 20 Q Well, let me focus on a couple of words in
13:32:17 21 this sentence where it says "The management of Google
13:32:21 22 has advised us, and we have assumed, that such
13:32:23 23 forecasts have been reasonably prepared," and it goes
13:32:26 24 on.

13:32:27 25 I want to know whether the management of

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

13:32:30 1 Google actually advised you to that effect.

13:32:32 2 A Great. Thank you for clarifying that. That
13:32:35 3 was the source of my confusion.

13:32:38 4 Yes, so they did advise us to use the set of
13:32:40 5 projections that we've identified in a previous
13:32:42 6 exhibit.

13:32:46 7 Q And they also advised you that those
13:32:54 8 forecasts reflected the best current estimates and
13:32:58 9 judgements of the management of Google as to the
13:33:00 10 future financial performance of YouTube after giving
13:33:03 11 effect to the merger?

13:33:05 12 MR. VOLKMER. Object to the form of the
13:33:06 13 question.

13:33:08 14 THE WITNESS: Yes, at the time of this
13:33:12 15 letter.

13:33:29 16 MR. HOHENGARTEN: Q. And you can set that
13:33:30 17 aside.

13:33:31 18 A Okay. Thanks.

13:33:35 19 Q We'll mark Exhibit 19, which is CSSU 2065
13:33:55 20 through 2093.

13:33:57 21 (Document marked Duncan Exhibit 19
13:33:59 22 for identification.)

13:34:17 23 THE WITNESS: Can I ask my counsel a question
13:34:19 24 or no off the record?

13:34:22 25 MR. TAFFET: Yeah.

13:34:23 1 THE VIDEOGRAPHER: Off the record?

13:34:25 2 MR. HOHENGARTEN: We'll go off the record.

13:34:27 3 THE VIDEOGRAPHER: The time is 1:34 p.m.

13:34:34 4 We are off the record.

13:34:35 5 (Recess taken.)

13:35:34 6 THE VIDEOGRAPHER: The time is 1:35 p.m.

13:35:42 7 We are back on the record.

13:35:43 8 MR. HOHENGARTEN: Okay.

13:35:44 9 Q Mr. Duncan, just before we took a break for

13:35:46 10 you to confer with your counsel, we handed you

13:35:49 11 Exhibit 19 which had been identified.

13:35:51 12 A Yes.

13:35:51 13 Q Have you had an opportunity to look at it?

13:36:07 14 A Okay.

13:36:09 15 Q And Exhibit 19 is a cover e-mail from

13:36:13 16 Amrit Rao attaching a number of materials; correct?

13:36:21 17 A Yes.

13:36:21 18 Q And the date of the e-mail is Sunday,

13:36:25 19 October 8th, 2007; correct?

13:36:27 20 A Yeah, 2006.

13:36:29 21 Q Thank you.

13:36:29 22 The date of the e-mail is Sunday,

13:36:32 23 October 8th, 2006; correct?

13:36:35 24 A Correct, yes.

13:36:35 25 Q Thank you.

13:36:36 1 A Absolutely.

13:36:38 2 Q The cover e-mail, could you -- could you read

13:36:46 3 the first three lines of the cover e-mail, the content

13:36:49 4 of it?

13:36:50 5 A Sure. Down.

13:36:51 6 Q Yeah.

13:36:51 7 A "Dear IBC Members: Attached please find

13:36:55 8 materials pertaining to project Snowmass in advance of

13:37:00 9 the Monday 9:00 a.m. Eastern, 6:00 a.m. Pacific call

13:37:05 10 October 9th."

13:37:07 11 Q Thank you.

13:37:08 12 And who are IBC members?

13:37:11 13 MR. TAFFET: You know, at this point, why

13:37:14 14 don't we go off the record a moment and see if we

13:37:16 15 can --

13:37:17 16 MR. HOHENGARTEN: We can go off the record.

13:37:18 17 THE VIDEOGRAPHER: Should we change tapes?

13:37:20 18 MR. HOHENGARTEN: Sure.

13:37:20 19 MR. TAFFET: Yeah.

13:37:22 20 THE VIDEOGRAPHER: Still have to get us off.

13:37:25 21 This is the end of videotape number two in

13:37:27 22 the continuing deposition of Storm Duncan on

13:37:31 23 July 16th, 2008. The time is 1:37 p.m.

13:37:35 24 We're off the record.

13:37:37 25 (Recess taken.)

14:32:13 1 A Correct.

14:32:15 2 Q The definition of "premium content" in
14:32:17 3 Exhibit 19 does not appear in the final version in
14:32:21 4 Exhibit 17; correct?

14:32:24 5 A Correct.

14:32:24 6 Q Do you have any reason to believe that the
14:32:26 7 definition changed between exhibit -- the draft in
14:32:31 8 Exhibit 19 and the final version in Exhibit 17?

14:32:34 9 MR. VOLKMER: Object to the form of the
14:32:35 10 question.

14:32:36 11 THE WITNESS: I guess a couple of things.
14:32:39 12 One is I'm not sure why it wasn't carried over so that
14:32:43 13 in and of itself might mean the definition changed. I
14:32:47 14 don't know the answer to that, and the second
14:32:48 15 supporting, I guess, statements or what I just said is
14:32:51 16 that this as an example on -- on Exhibit 19 says
14:32:57 17 "Copyrighted content such as movie/TV trailers, music
14:33:01 18 videos, etc.," my recollection is that in the early
14:33:03 19 document nonpremium content included trailers, if I
14:33:07 20 remember right, although we might want to go back
14:33:09 21 there and cross-reference, because I'm getting
14:33:11 22 definitioned out a little bit or definition confused a
14:33:15 23 little bit.

14:33:15 24 So that might be another reason it might have
14:33:18 25 changed between the two. I think, you know, it's --

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

14:33:20 1 on Exhibit 17, the premium video was stuff that
14:33:27 2 required providers to allow Yellow to monetize their
14:33:34 3 content. So I think that's how I would view the
14:33:36 4 definition on page nine in the absence of having
14:33:40 5 something specifically defining.

14:33:50 6 MR. HOHENGARTEN: Q. And now still sticking
14:33:51 7 with Exhibit 17, the final board model, you can set
14:33:54 8 Exhibit 19 aside.

14:33:56 9 A Okay.

14:33:57 10 Q Sticking with Exhibit 17, the final board
14:34:00 11 model on page 3570, just to confirm, the assumption of
14:34:08 12 the projection model there is that in 2007, 10 percent
14:34:12 13 of the premium content providers have given that
14:34:15 14 permission that's required for Yellow to monetize the
14:34:19 15 content; correct?

14:34:21 16 MR. VOLKMER: Object to the form.

14:34:41 17 (Whereupon, record read by the Reporter as
14:34:41 18 follows:

14:33:57 19 "Question: Sticking with Exhibit 17, the
14:33:59 20 final board model on page 3570, just to
14:34:07 21 confirm, the assumption of the projection
14:34:09 22 model there is that in 2007, 10 percent of
14:34:12 23 the premium content providers have given
14:34:15 24 that permission that's required for Yellow
14:34:17 25 to monetize the content; correct?")

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

15:43:55 1 my memory.

15:43:57 2 Q Let's turn to Exhibit 21.

15:43:59 3 A Okay.

15:44:05 4 Q Exhibit 21 consists of handwritten notes also
15:44:08 5 interspersed with some other pages. Just focusing on
15:44:12 6 that handwritten notes at the moment, are those your
15:44:16 7 notes?

15:44:17 8 A Looks like my handwriting, for lack of a
15:44:23 9 better way of putting it.

15:44:25 10 Q And this set of documents that we've labeled
15:44:35 11 Exhibit 21 was produced to us all as one set, I
15:44:39 12 believe. Would this be maintained as a single file by
15:44:49 13 you? Do you recall?

15:44:52 14 A No, I don't recall. My guess is it was
15:44:54 15 probably just a stack of stuff and somehow I think you
15:44:56 16 guys interpret it as one document. I think it's a
15:45:00 17 lot --

15:45:00 18 Q Okay.

15:45:00 19 A -- of documents that were probably sitting
15:45:02 20 together.

15:45:10 21 Q Looking at the first page of Exhibit 21 --

15:45:16 22 A Okay.

15:45:17 23 Q -- actually, do you know what these are notes
15:45:22 24 of on the first page -- notes from?

15:45:38 25 A It looks like notes on diligence, like asking

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

15:45:42 1 questions of them of what they're doing and how it's
15:45:44 2 going.

15:45:45 3 Q Would they be notes of the due diligence
15:45:49 4 meetings with YouTube personnel at Wilson Sonsini's
15:45:52 5 offices?

15:45:52 6 A That's highly possible, yeah. I don't know
15:45:54 7 the answer, but it seems like that's definitely a
15:45:57 8 possibility here.

15:45:58 9 Q When you take notes in a due diligence
15:46:01 10 setting, do you make every effort to accurately record
15:46:06 11 what's going on?

15:46:08 12 MR. VOLKMER: Objection to the form.

15:46:10 13 THE WITNESS: If this was done in the
15:46:13 14 context -- context of me doing due diligence, I try to
15:46:17 15 write as much as I can down.

15:46:20 16 MR. HOHENGARTEN: Q. And as accurately as
15:46:22 17 possible?

15:46:22 18 A Yeah. I wouldn't make up stuff. Yeah,
15:46:26 19 absolutely. Some of it might not be what I heard. It
15:46:29 20 might be my interpretation or might be other people's
15:46:32 21 interpretation that I don't agree with. So that
15:46:32 22 doesn't mean there's not much truth in here either
15:46:39 23 communicated to me or --

15:46:39 24 Q Okay.

15:46:39 25 A -- that's how it was, but....

15:46:42 1 Q Several lines -- just a few lines down from
15:46:44 2 the top there's a -- reads "Brent/Gideon"; correct?

15:46:49 3 A Uh-huh.

15:46:50 4 Q Does that indicate that you met with Brent
15:46:53 5 Hurley and Gideon Yu during due diligence?

15:46:57 6 A It could. Typically that's not what I would
15:47:00 7 put in my notes, but maybe because this was a while
15:47:03 8 ago, I had a different style back then. So it could
15:47:06 9 either mean that those were the two folks that were
15:47:08 10 giving me the information or could mean follow-up with
15:47:13 11 Brad and Gideon or something.

15:47:13 12 So I don't want to give you 100 percent
15:47:15 13 comfort on that, but it seems logical that it could
15:47:18 14 have been the two folks that were there.

15:47:20 15 Q And you say it's not what -- that's not what
15:47:21 16 you would normally write who you met with in your
15:47:25 17 notes. Where would you normally write?

15:47:26 18 A I probably normally have like -- you know,
15:47:27 19 although this is up at the top, but I probably have
15:47:30 20 like a category of like Credit Suisse people, you
15:47:32 21 know, lawyers, client people, et cetera, in different
15:47:35 22 columns, and I don't have it, but this was a while
15:47:38 23 ago. Maybe my style has changed since then. Maybe I
15:47:44 24 should go back to my old style.

15:47:52 25 Q If you could flip back a couple of pages --

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

15:47:55 1 A Okay.

15:47:56 2 Q -- to page 1865 --

15:47:59 3 A All righty.

15:48:01 4 Q -- in Exhibit 21. At the top of that page,
15:48:10 5 could you read the first two lines at the top of that
15:48:12 6 page, since it's your handwriting.

15:48:14 7 A Sure.

15:48:15 8 That doesn't mean it will be correct when I
15:48:18 9 read it either. "No copyright issues; DMCA (no
15:48:24 10 issues). Don't target because we can't profit from
15:48:29 11 these pages."

15:48:35 12 Q And do you know what "DMCA" is referring to
15:48:38 13 there?

15:48:40 14 MR. TAFFET: Just for point of clarity, if
15:48:43 15 it's -- there seems to be a 1, 2, and 3, if you go to
15:48:48 16 the prior page. This is a continuation of number two.
15:48:50 17 I don't know if that --

15:48:51 18 MR. HOHENGARTEN: Okay.

15:48:51 19 MR. TAFFET: -- changes the witness's answer,
15:48:53 20 but it's....

15:48:54 21 MR. HOHENGARTEN: Thank you, Mr. Taffet.

15:48:55 22 Q Why don't we, so we have the full context,
15:48:57 23 that's helpful, have you look at page 1864. The last
15:49:02 24 two lines have a number two circled.

15:49:09 25 Could you read those two lines?

15:49:12 1 A You mean the "Search Deal" and the
15:49:15 2 "Partnerships"?

15:49:16 3 Q I believe --

15:49:17 4 A The first two lines of two you're saying?
15:49:19 5 Yeah.

15:49:19 6 Q Look at the bottom two lines of the page.

15:49:21 7 A Okay. Yeah. Got it. My bad. I
15:49:23 8 misunderstood you.

15:49:23 9 So it says "Partnerships (Studio\Labels) most
15:49:31 10 aggressively monetized."

15:49:33 11 Q Is it your understanding that the next two
15:49:36 12 lines on that page are a part of the same set of notes
15:49:40 13 about point two?

15:49:40 14 A Yeah, it looks to be a carryover. That's
15:49:42 15 right. I think that's fair.

15:49:47 16 Q And in that context, what does "No copyright
15:49:54 17 issues DMCA refer to"?

15:49:56 18 MR. VOLKMER: Objection to the form of the
15:49:57 19 question.

15:49:58 20 THE WITNESS: I would assume it's under the
15:50:04 21 subcategory of "Partnerships (Studio/Labels)."

15:50:18 22 MR. HOHENGARTEN: Q. Do you recall whether
15:50:19 23 this was something that is notes of something you were
15:50:21 24 told?

15:50:23 25 A Yeah, I think that's what all of this is, is

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

15:50:25 1 the note. Oh, you're referring specifically to my
15:50:28 2 comment where I might put down my own opinion?

15:50:30 3 Q Yes. You asked -- exactly --

15:50:31 4 A Oh, sorry.

15:50:32 5 Q -- where you said a number, so....

15:50:34 6 A I would not have expressed my own opinion on
15:50:37 7 that statement, so it was definitely told to me by
15:50:39 8 someone else.

15:50:40 9 Q And do you recall who that person was?

15:50:45 10 A I don't.

15:50:45 11 Q And --

15:50:50 12 A Someone from YouTube.

15:50:51 13 Q And do you recall the significance of the
15:50:55 14 last line that we've been discussing, don't -- which
15:50:58 15 is on page 1865 -- that says "Don't target because we
15:51:03 16 can't profit from these pages"?

15:51:04 17 MR. VOLKMER: Object to the form of the
15:51:06 18 question.

15:51:15 19 (Whereupon, record read by the Reporter as
15:51:15 20 follows:

15:50:52 21 "Question: And do you recall the
15:50:54 22 significance of the last line that we've
15:50:56 23 been discussing, don't -- which is on page
15:51:00 24 1865 -- that says 'Don't target because we
15:51:03 25 can't profit from these pages'")

15:51:16 1 THE WITNESS: You good with that question?

15:51:20 2 MR. HOHENGARTEN: Q. If you understood it.

15:51:22 3 I'll rephrase it if you didn't.

15:51:24 4 A Yeah, if you could rephrase it. I think --

15:51:25 5 Q Okay. Looking at page 1865 --

15:51:27 6 A Yeah.

15:51:27 7 Q -- we've been discussing a number of lines.

15:51:30 8 The last one reads "Don't target because we can't

15:51:33 9 profit from these pages"; correct?

15:51:35 10 A Uh-huh.

15:51:35 11 Q Do you recall the significance of that

15:51:38 12 statement?

15:51:39 13 A I think by "significance" you mean the

15:51:41 14 importance of it?

15:51:42 15 Q What does it mean?

15:51:43 16 A Okay. The meaning of it. Sorry. Got it.

15:51:45 17 Thank you.

15:51:45 18 It -- my gut tells me that there's something

15:52:04 19 that I missed between the "No copyright issues DMCA

15:52:08 20 line," and "Don't target because we can't profit from

15:52:10 21 these messages --" I'm sorry "-- from these pages,"

15:52:13 22 because it seems as though what they're saying here is

15:52:15 23 that some of this stuff was monetized or there weren't

15:52:21 24 copyright issues, and then other stuff wasn't targeted

15:52:23 25 for revenue monetization, because they can't profit

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

15:52:25 1 from those pages.

15:52:27 2 Q And to the best of your recollection,
15:52:30 3 somebody from YouTube would have explained that to
15:52:32 4 you?

15:52:32 5 A Yes.

15:52:32 6 Q But you don't recall who specifically?

15:52:34 7 A No.

15:52:37 8 MR. HOHENGARTEN: I think we need to change
15:52:38 9 video tapes.

15:52:42 10 THE VIDEOGRAPHER: This is the end of video
15:52:44 11 tape number three in the continuing deposition of
15:52:47 12 Storm Duncan on July 16th, 2008. The time is
15:52:55 13 3:52 p.m.

15:52:56 14 We are off the record.

15:52:57 15 (Recess taken.)

16:04:54 16 THE VIDEOGRAPHER: This is the beginning of
16:04:57 17 video tape number four in the continuing deposition of
16:05:01 18 Storm Duncan on July 16th, 2008. The time is
16:05:06 19 4:05 p.m. We're off the record -- we're back on the
16:05:10 20 record.

16:05:11 21 MR. HOHENGARTEN: Okay.

16:05:12 22 Q Continuing with Exhibit 21, if you would turn
16:05:18 23 to Bates page 1957, and do you see roughly in the
16:05:32 24 middle of the page there's a line that begins with
16:05:35 25 "60 percent"?

16:05:35 1 A Uh-huh.

16:05:35 2 Q Can you read that line and the next line

16:05:38 3 please?

16:05:38 4 A Sure. "60 percent is 'Premium.'

16:05:42 5 Professionally produced. Legitimate and

16:05:49 6 illegitimate."

16:05:50 7 Q And do you recall what the significance or

16:05:52 8 meaning of those notes are?

16:05:57 9 MR. VOLKMER: Object to the form of the

16:05:58 10 question.

16:06:01 11 MR. HOHENGARTEN: Q. Did you understand my

16:06:02 12 question?

16:06:02 13 A The meaning of those notes are? So are you

16:06:05 14 asking what do I mean by "legitimate and

16:06:09 15 illegitimate," or --

16:06:09 16 Q That would be part of my question certainly.

16:06:11 17 A You want to break it down into parts then?

16:06:14 18 Q What do you mean by "legitimate,

16:06:17 19 illegitimate"?

16:06:18 20 A Okay. I think.

16:06:19 21 MR. VOLKMER: I'm going to object to the form

16:06:20 22 of that question.

16:06:22 23 You can proceed.

16:06:23 24 THE WITNESS: Can you read it back?

16:06:24 25 MR. HOHENGARTEN: Q. Actually. I'll just --

16:06:26 1 A Okay.

16:06:28 2 Q What is meant in these notes by "legitimate"
16:06:31 3 and "illegitimate"?

16:06:34 4 A Okay. Okay. My recollection is that there's
16:06:39 5 professionally produced content which is by, you know,
16:06:42 6 a studio or someone professional that would own that
16:06:46 7 content, and legitimate and illegitimate is whether it
16:06:51 8 was put up in agreement with YouTube and that producer
16:06:53 9 or put up by someone else without the agreement of
16:06:57 10 that producer.

16:06:58 11 Q Okay. And does -- does -- do those notes
16:07:02 12 reflect something that somebody told you as opposed to
16:07:04 13 your own thoughts?

16:07:09 14 A Definitely something that someone told me as
16:07:12 15 opposed to my own thoughts to your question.

16:07:16 16 Q And do you recall who?

16:07:32 17 A I don't.

16:07:34 18 Q Do you recall whether it was somebody from
16:07:36 19 YouTube?

16:08:07 20 A I don't.

16:08:07 21 Q Do you recall whether it was somebody from
16:08:10 22 Google?

16:08:10 23 A I don't.

16:08:10 24 Q And do you recall roughly when this
16:08:14 25 information was imparted to you?

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

16:08:20 1 MR. VOLKMER: Object to the form of the
16:08:21 2 question.
16:08:22 3 THE WITNESS: Somewhere between Thursday and
16:08:24 4 Monday of that weekend.
16:08:26 5 MR. HOHENGARTEN: Q. Some time during the --
16:08:28 6 during the due diligence process for your fairness
16:08:30 7 evaluation?
16:08:31 8 A That's correct.
16:08:31 9 Q Mr. Browne is now going to ask a few
16:08:37 10 questions.
16:08:38 11 A Okay.
16:08:38 12 Q He represents the class.
16:08:40 13 MR. BROWNE: Okay. Can we go off the record
16:08:43 14 for a few minutes? Thanks.
16:08:45 15 THE VIDEOGRAPHER: The time is 4:08 p.m.
16:08:47 16 We are off the record.
16:08:48 17 (Recess taken.)
16:10:41 18 (Document marked Duncan Exhibit 22
16:11:01 19 for identification.)
16:11:01 20 THE VIDEOGRAPHER: The time is 4:11 p.m.
16:11:04 21 We're back on the record.
16:11:06 22 EXAMINATION BY MR. BROWNE
16:11:06 23 MR. BROWNE: Q. Good afternoon, Mr. Duncan.
16:11:08 24 My name is John Browne. I represent the English
16:11:11 25 Premier League and the Class in this case, and I just

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

16:16:24 1 MR. BROWNE: Q. And then earlier when we
16:16:25 2 were talking about the meaning of IP issues in that
16:16:27 3 sentence, you -- you sort of had a definition in your
16:16:31 4 mind as what you thought of as IP issues, stealing
16:16:34 5 source code, something else you may have said.

16:16:36 6 Were you -- do you exclude from that phrase
16:16:38 7 IP issues, copyright issues?

16:16:41 8 MR. VOLKMER: Object to the form of the
16:16:42 9 question.

16:16:44 10 THE WITNESS: Yeah, when I -- when I think of
16:16:48 11 IP issues just, you know, when this e-mail crossed me
16:16:52 12 in a technology deal, my immediate reaction is
16:16:55 13 intellectual property issues, not copyright issues.

16:16:58 14 MR. BROWNE: Okay.

16:16:59 15 Q Do you know whether -- whether, in fact, you
16:17:02 16 guys decided to dive deeper into the IP issues in
16:17:09 17 connection with your due diligence?

16:17:12 18 MR. VOLKMER: Object to the form of the
16:17:13 19 question.

16:17:14 20 THE WITNESS: Zach attended the diligence
16:17:21 21 with me, so I would assume that if he had an issue
16:17:25 22 with it, and we had a chance to deal with it, which we
16:17:28 23 did that day but, you know, we would have vetted all
16:17:31 24 of our questions.

16:17:32 25 MR. BROWNE: Q. Other than the types of IP

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

16:17:36 1 issues that you -- that you described to me, were
16:17:39 2 aware in the time frame that you received this e-mail
16:17:41 3 of -- of copyright issues that were facing YouTube?

16:17:44 4 A Yeah, yes.

16:17:45 5 Q And what were those?

16:17:47 6 MR. VOLKMER: Object.

16:17:48 7 THE WITNESS: Sorry.

16:17:48 8 MR. VOLKMER: Object to the form of the
16:17:49 9 question.

16:17:50 10 THE WITNESS: I think we had just talked
16:17:52 11 about the primary copyright issue which is whether
16:17:56 12 something is put up on the site by a publisher. We
16:17:59 13 have an agreement with that publisher or that it was
16:18:02 14 put up by someone else that didn't have the permission
16:18:04 15 from that publisher to put it up.

16:18:07 16 MR. BROWNE: Q. Is that something that you
16:18:09 17 guys looked into, that Credit Suisse looked into in
16:18:12 18 connection with due diligence?

16:18:13 19 A I think -- I think that's what we spent a lot
16:18:16 20 of time earlier today on when we were going through
16:18:19 21 the model which is the percentage. You know, Google's
16:18:23 22 goal was to -- to -- you know, let's go back to
16:18:28 23 Exhibit 16 if that's -- that's what I remember.

16:18:32 24 You know, Google's goal on this premium video
16:18:35 25 content was to have the permission content which was

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

16:18:37 1 that 10 percent, 50 percent we spent so much time on
16:18:41 2 earlier to get the permission to have that content on
16:18:44 3 that legitimate side, the permission side, and that's
16:18:48 4 what I think the whole purpose of that entire
16:18:50 5 conversation was earlier today was how do you -- how
16:18:53 6 do they anticipate monetizing that.

16:18:55 7 MR. BROWNE: Right.

16:18:56 8 Q Other than that -- correct me if I'm wrong --
16:18:57 9 other than YouTube or, I'm sorry, Google giving you
16:18:59 10 some information about what was premium content and
16:19:02 11 how much was not premium content on the site, and then
16:19:06 12 Credit Suisse using that information to create the
16:19:09 13 model, what, if anything else, did Credit Suisse do to
16:19:16 14 diligence copyright issues?

16:19:17 15 MR. VOLKMER: Object to the form of the
16:19:18 16 question.

16:19:21 17 THE WITNESS: So we had a lot of
16:19:22 18 conversations. You know, we -- we aren't copyright
16:19:26 19 attorneys, so we didn't do copyright diligence, if
16:19:29 20 that's the specific answer to your question.

16:19:30 21 You know, we obviously spent a lot of time
16:19:32 22 that day with YouTube and with Google talking about
16:19:35 23 the monetization plan which is, I think, the source of
16:19:37 24 how this model came about.

16:19:39 25 MR. BROWNE: Okay.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

16:19:40 1 Q Did you spend a lot of time that day or any
16:19:42 2 other day talking with anyone at Google or YouTube
16:19:46 3 about specific copyright issues aside from the
16:19:50 4 monetization point?

16:19:56 5 A So is there a copyright issue where they're
16:20:00 6 not monetizing it you're saying?

16:20:02 7 Q Let me -- let me just start asking a
16:20:04 8 different way.

16:20:04 9 A Okay.

16:20:05 10 Q You -- you dealt with the monetization of the
16:20:07 11 copyright -- copyrighted material, is that correct, in
16:20:12 12 your valuation model?

16:20:13 13 MR. VOLKMER: Object to the --

16:20:14 14 MR. TAFFET: Objection to the form.

16:20:15 15 MR. VOLKMER: Object to the form of the
16:20:16 16 question.

16:20:18 17 MR. BROWNE: Q. Did you?

16:20:20 18 A No.

16:20:21 19 Q Okay. When you guys -- when -- when Credit
16:20:27 20 Suisse was conducting its due diligence, I'm just
16:20:32 21 going to try it in a very broad way --

16:20:34 22 A Sure.

16:20:35 23 Q -- what did you do? Tell me everything you
16:20:37 24 did with respect to copyright issues that were facing
16:20:40 25 YouTube.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585