

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 OMID KORDESTANI
SAN FRANCISCO, CALIFORNIA
THURSDAY, FEBRUARY 12, 2009

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CCRR, CLR
JOB NO. 16382

FEBRUARY 12, 2009

9:33 A.M.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF
OMID KORDESTANI, at SHEARMAN & STERLING,
525 Market Street, 15th Floor, San Francisco
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, LLP

5 By: SUSAN J. KOHLMANN, Esq.

6 ERIC HAREN, Esq.

7 919 Third Avenue, 27th Floor

8 New York, New York 10022-3908

9 (212) 891-1690 skohlmann@jenner.com
1011 FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and
12 GOOGLE, INC.:

13 MAYER BROWN, LLP

14 By: JOHN MANCINI, Esq.

15 1675 Broadway

16 New York, New York 10019

17 (212) 506-2146 jmancini@mayer.com
18

19 WILSON SONSINI GOODRICH & ROSATI

20 By: CAROLINE WILSON, Esq.

21 650 Page Mill Road

22 Palo Alto, California 94304-1050

23 (650) 320-4741 cwilson@wsgr.com
24
25

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

2

3 FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

4 BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

5 By: BENJAMIN GLADSTON, Esq.

6 12481 High Bluff Drive, Suite 300

7 San Diego, California 92130-3188

8 (858) 720-3188 beng@blbglaw.com

9

10 ALSO PRESENT: Adam Barea, Google, Inc.

11 Kelly Truelove, Consultant

12 Lou Meadows, Videographer.

13

14 ---oOo---

15

16

17

18

19

20

21

22

23

24

25

1 KORDESTANI

2
3 SAN FRANCISCO, CALIFORNIA

4 THURSDAY, FEBRUARY 12, 2009, 9:33 A.M.

5
6 09:34:16 THE VIDEOGRAPHER: On the record.
7 09:34:17 This is today's videotaped deposition of
8 09:34:22 Omid Kordestani, taken on February 12, 2009, at
9 09:34:28 Shearman & Sterling, 525 Market Street, 15th Floor, in
10 09:34:32 San Francisco, California. In the matter of Viacom
11 09:34:32 International, Inc., vs. YouTube, Inc., and The
12 09:34:32 Football Premier -- excuse me -- The Football
13 09:34:32 Association Premier League Limited, et al., vs.
14 09:34:44 YouTube, Inc., et al.
15 09:34:44 Case No. 07-CV-2103 and 07-CV-3582, in the
16 09:34:52 United States District Court, for the Southern
17 09:34:54 District of New York.
18 09:34:55 My name is Lou Meadows, and I represent
19 09:34:59 David-Feldman Worldwide. Located at 600 Anton
20 09:35:05 Boulevard, Suite 1100, in Costa Mesa, California.
21 09:35:07 We are now commencing at 9:33 a.m.
22 09:35:09 Will all present please identify themselves
23 09:35:13 and state whom you represent.
24 09:35:13 MS. KOHLMANN: Susan Kohlmann from Jenner &
25 09:35:18 Block, representing the Viacom plaintiffs.

KORDESTANI

1
2 09:35:20 MR. HAREN: Eric Haren from Jenner & Block,
3 09:35:21 representing the Viacom plaintiffs.

4 09:35:21 MR. GALDSTON: Benjamin Galdston of Bernstein
5 09:35:24 Litowitz, representing the Premier League and Class
6 09:35:28 plaintiffs.

7 09:35:28 MR. TRUELOVE: Kelly Truelove, consultants
8 09:35:29 for Viacom plaintiffs.

9 09:35:30 MR. MANCINI: John Mancini, Mayer Brown,
10 09:35:33 counsel for defendants Google and YouTube.

11 09:35:40 MS. WILSON: Caroline Wilson from Wilson
12 09:35:41 Sonsini, counsel for defendants Google and YouTube.

13 09:35:41 MR. BAREA: Adam Barea, Google, Inc.

14 09:35:44 THE VIDEOGRAPHER: Thank you.

15 09:35:45 We are getting a little bit of BlackBerry
16 09:35:49 transmission. Somebody forgot.

17 09:35:51 And will the court reporter please administer
18 09:35:52 the oath. Thank you.

19 09:35:52

20 09:35:52 OMID KORDESTANI,

21 09:35:53 having been sworn as a witness, testified as follows:

22 09:35:53

23 09:36:07 EXAMINATION BY MS. KOHLMANN

24 09:36:07 MS. KOHLMANN: Q. Good morning,

25 09:36:09 Mr. Kordestani.

KORDESTANI

1
2 09:43:46 Q 1999.
3 09:43:47 And were you vice president of business
4 09:43:50 development when you left Netscape in 1999?
5 09:43:53 A Yes.
6 09:43:53 Q And when you left Netscape, where did you go?
7 09:43:57 A Google.
8 09:43:58 Q Okay. Now, Mr. Kordestani, you're Google's
9 09:44:05 business founder; are you not?
10 09:44:07 A It's a --
11 09:44:07 MR. MANCINI: Objection to form.
12 09:44:09 THE WITNESS: It's a title that they've
13 09:44:12 affectionately given me.
14 09:44:13 MS. KOHLMANN: Q. It's on their website --
15 09:44:16 A Right.
16 09:44:16 Q -- isn't it, on your bio --
17 09:44:16 A Yes.
18 09:44:18 Q -- correct?
19 09:44:18 So as Google's business founder, what did --
20 09:44:21 what did you do to earn that title? Why did they call
21 09:44:24 you that?
22 09:44:27 A I was the first business executive, business
23 09:44:29 employee and responsible for building Google's
24 09:44:31 business operations.
25 09:44:32 Q In fact, they say you developed and

KORDESTANI

1

2 09:44:35 implemented the company's initial business model;

3 09:44:38 isn't that right?

4 09:44:39 A Yes.

5 09:44:39 Q Okay. What was the company's initial

6 09:44:41 business model?

7 09:44:42 A Licensing our search services and

8 09:44:51 advertising, search advertising.

9 09:44:53 Q Can you explain to me what you mean by

10 09:44:56 licensing your search services?

11 09:44:59 A We power search for companies, corporations,

12 09:45:03 and the other websites.

13 09:45:07 Q Okay. And the other part of the business

14 09:45:10 model that you developed and implemented was search

15 09:45:13 advertising; is that what you said?

16 09:45:15 A Yes.

17 09:45:15 Q So can you explain what search -- what you

18 09:45:18 mean by "search advertising"?

19 09:45:20 A It's related to advertise on search terms and

20 09:45:26 targets, advertising to users search queries.

21 09:45:38 Q So correct me if I'm wrong, did you say it's

22 09:45:44 the ability to advertise on search terms and targets?

23 09:45:48 A And target advertising to users' queries,

24 09:45:50 search queries.

25 09:45:52 Q Okay. Okay.

KORDESTANI

1
2 09:45:55 So -- and that was the company's initial
3 09:46:00 business model; is that correct?

4 09:46:02 A Yes.

5 09:46:02 Q And has that business model changed over
6 09:46:08 time?

7 09:46:08 MR. MANCINI: Objection; vague.

8 09:46:10 THE WITNESS: What do you mean by that?

9 09:46:11 MS. KOHLMANN: Q. What's the business model
10 09:46:12 today? Is it different?

11 09:46:13 A It's primary advertising still today.

12 09:46:15 Q Search advertising?

13 09:46:17 A Yes.

14 09:46:17 Q Advertising where -- on -- on the same --
15 09:46:23 with the same criteria, targeting, targeted
16 09:46:27 advertising with search terms?

17 09:46:30 MR. MANCINI: Objection; vague.

18 09:46:31 THE WITNESS: The question is? What is the
19 09:46:32 question again?

20 09:46:32 MS. KOHLMANN: Q. What is the business model
21 09:46:34 today? And how is it different?

22 09:46:36 A Majority of our revenue is still from search
23 09:46:38 advertising.

24 09:46:41 Q And has the way in which the revenue from
25 09:46:45 searches is derived changed at all from when you

1 KORDESTANI

2 09:46:48 initially created the -- the Google business model?

3 09:46:52 MR. MANCINI: Objection to form.

4 09:46:53 THE WITNESS: Has the way -- what do you mean

5 09:46:55 by that?

6 09:46:56 MS. KOHLMANN: Q. Are -- are there different

7 09:46:57 ways in which the advertising gets done and you

8 09:46:59 rec- -- you monetize value?

9 09:47:02 MR. MANCINI: Objection to form.

10 09:47:03 THE WITNESS: Algorithms and underlying

11 09:47:10 technology has evolved.

12 09:47:12 MS. KOHLMANN: Q. And how has it evolved?

13 09:47:16 A More sophisticated in the way we target

14 09:47:18 advertising, paying attention to quality of ads.

15 09:47:25 Q And in the time from when you arrived at

16 09:47:29 Google and today, the company acquired DoubleClick;

17 09:47:35 didn't it?

18 09:47:36 A Yes.

19 09:47:36 Q And DoubleClick has certain capabilities to

20 09:47:39 enhance the targeting of ads; doesn't it?

21 09:47:42 MR. MANCINI: Objection; lacks foundation.

22 09:47:43 THE WITNESS: Could you clarify the question?

23 09:47:47 MS. KOHLMANN: Q. Why don't you tell me what

24 09:47:49 DoubleClick added to the equation.

25 09:47:50 MR. MANCINI: Objection to form.

1 KORDESTANI

09:47:51 2 MS. KOHLMANN: You can answer.

09:47:52 3 THE WITNESS: DoubleClick provides an
09:47:58 4 advertising platform that helps both advertisers and
09:48:04 5 publishers manage their advertising campaigns and
09:48:11 6 advertising yield from their properties better.

09:48:14 7 MS. KOHLMANN: Q. How does it enable
09:48:16 8 advertisers to manage the advertising yield from their
09:48:19 9 properties better?

09:48:23 10 A It -- it -- it -- they have a suit of
09:48:26 11 products for both advertisers and publishers that
09:48:31 12 helps them manage their advertising campaigns online.

09:48:35 13 Q We'll come back to DoubleClick.

09:48:37 14 So in 1999, when you started at Google, what
09:48:40 15 was your title?

09:48:43 16 A It would be vice president of sales and
09:48:45 17 business development.

09:48:47 18 Q And what were your duties and
09:48:50 19 responsibilities?

09:48:52 20 A Establishing all the revenue operations and
09:48:56 21 customer relationships, partnerships.

09:49:00 22 Q And did there come a point in time when your
09:49:03 23 title changed?

09:49:06 24 A I -- I was promoted to senior vice president.

09:49:07 25 Q Do you know when that was?

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 KORDESTANI

09:49:10 2 A Don't remember the exact date.

09:49:11 3 Q Okay. Any other titles that you've held
09:49:15 4 while at Google?

09:49:19 5 A The title may have slightly changed to sales
09:49:22 6 and operations, but it's basically worldwide sales and
09:49:27 7 operations and business development.

09:49:29 8 Q Okay. Setting aside the titles --

09:49:31 9 A Yeah.

09:49:31 10 Q -- for a moment, how has your job changed
09:49:34 11 over the course of the last ten years?

09:49:37 12 MR. MANCINI: Objection to form.

09:49:38 13 THE WITNESS: Could you clarify the question?

09:49:40 14 MS. KOHLMANN: Q. Well, do you do today what
09:49:41 15 you did in 1999?

09:49:44 16 A Pretty much.

09:49:45 17 Q Are there any added responsibilities since
09:49:47 18 you started with the company in 1999?

09:49:51 19 A The company has got larger operations, have
09:49:54 20 become larger, but the fundamental job is the same.

09:49:58 21 Q Do you get involved in, for example,
09:50:00 22 acquisitions?

09:50:01 23 MR. MANCINI: Objection to form.

09:50:03 24 THE WITNESS: I'm not directly involved for
09:50:05 25 acquisitions.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 KORDESTANI

10:02:44 2 MS. KOHLMANN: Q. From the time you started
10:02:46 3 in 1999 'til three months ago when it became the
10:02:51 4 operating committee, what was the function of the
10:02:56 5 Executive Management Group?

10:02:57 6 A It's -- it's Eric Schmidt, senior of staff
10:03:03 7 meeting.

10:03:04 8 Q And how often did the Executive Management
10:03:08 9 Group meet?

10:03:09 10 A Once a week.

10:03:16 11 Q And was that an in-person meeting or a
10:03:18 12 telephone conference?

10:03:20 13 A Primarily in person. Some people travel,
10:03:23 14 sometimes call in.

10:03:24 15 Q And were agendas prepared for those meetings?

10:03:28 16 A Yes.

10:03:28 17 Q And were there sometimes presentations made
10:03:35 18 at the meetings?

10:03:37 19 A Yes.

10:03:37 20 Q And if there was an action to be taken at the
10:03:43 21 company, such as a change in policy, was that brought
10:03:47 22 before the Executive Management Group?

10:03:50 23 MR. MANCINI: Objection to form.

10:03:51 24 THE WITNESS: Depends how -- how -- if
10:03:58 25 they're important, the discussion of that policy was.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 KORDESTANI

10:04:00 2 MS. KOHLMANN: Okay.

10:04:01 3 Q Who prepared the agenda?

10:04:04 4 A Typically Eric, and others contributed to
10:04:08 5 items for discussion.

10:04:09 6 Q Did you, at times, contribute items for
10:04:12 7 discussion?

10:04:12 8 A Yes.

10:04:12 9 Q How were the agendas distributed? On e-mail?

10:04:16 10 A On e-mail.

10:04:17 11 Q And were notes taken of the EMG meetings?

10:04:24 12 A Typically it's -- I'm not an official note
10:04:29 13 taker, but typically, you know, you would take notes,
10:04:31 14 depending on your -- your interest, your area.

10:04:35 15 Q So each individual member --

10:04:37 16 A Yeah.

10:04:37 17 Q -- of the EMG took notes?

10:04:40 18 A Yeah.

10:04:40 19 Q But there were no notes taken of the meeting
10:04:42 20 that were saved in any particular way?

10:04:45 21 MR. MANCINI: Objection to characterization.

10:04:46 22 MS. KOHLMANN: Q. As far as you're aware?

10:04:48 23 A There -- there were not an official notes,
10:04:50 24 other than, you know, action items from the meeting.

10:04:52 25 Q And were the action items something that each

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 KORDESTANI

10:04:54 2 individual prepared or action items were prepared and
10:04:58 3 came out of the meeting?

10:05:00 4 MR. MANCINI: Objection to form.

10:05:01 5 THE WITNESS: What do you mean coming out of
10:05:05 6 the meeting?

10:05:05 7 MS. KOHLMANN: Q. When you say action
10:05:06 8 items --

10:05:06 9 A Yeah.

10:05:07 10 Q -- were generally prepared, who prepared the
10:05:09 11 action items?

10:05:10 12 A Discussed in the meeting, and Eric's
10:05:12 13 assistant would then keep track of those.

10:05:16 14 Q And would Eric's assistant typically e-mail
10:05:19 15 the action items to the participants in the meeting
10:05:23 16 after the meeting occurred?

10:05:26 17 A It would be typically in the next agenda as
10:05:32 18 a -- as a series of action logs.

10:05:34 19 Q And where are those agendas kept?

10:05:39 20 A They -- they -- I assume it was in -- in
10:05:45 21 e-mail form or in a document that was then printed.

10:05:48 22 Q So -- so, for example, you would have agendas
10:05:52 23 in your own e-mail box that you would have received
10:05:55 24 from any EMG meeting you attended?

10:05:57 25 A Yes.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1

KORDESTANI

10:05:58 2 Q It would be an attachment to an e-mail?

10:06:01 3 A It would be an attachment, or it would be an
10:06:04 4 online document.

10:06:05 5 Q Okay. And if they were printed, did you ever
10:06:07 6 print out the agendas?

10:06:10 7 A Yes.

10:06:10 8 Q And you would bring it to the meeting with
10:06:12 9 you?

10:06:13 10 A Typically, yes.

10:06:14 11 Q And what did you -- did you take notes on the
10:06:16 12 agendas sometimes?

10:06:18 13 A Yes.

10:06:18 14 Q And you have files in your office for those
10:06:22 15 agendas?

10:06:22 16 A No.

10:06:22 17 Q What do you do with the agendas?

10:06:24 18 A After I speak with my staff, I usually shred
10:06:29 19 them or put them in a shred box.

10:06:31 20 Q And that's when you -- sorry.

10:06:32 21 A Then I put them in a shred box, yeah.

10:06:34 22 Q Okay. That's been your practice for the last
10:06:36 23 several years?

10:06:37 24 A Yes.

10:06:37 25 Q Has that been your practice in the last year

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 KORDESTANI

10:06:40 2 as well?

10:06:42 3 A Absolutely.

10:06:42 4 Q Did you receive a litigation hold in
10:06:45 5 connection with this action, Mr. Kordestani?

10:06:47 6 A Yes.

10:06:47 7 Q And what did that say?

10:06:49 8 A That if there are any documents in my office
10:06:50 9 or filing cabinets or disks, computers, that all of
10:06:55 10 that has to be made available.

10:06:57 11 Q Does the litigation hold refer to any
10:07:04 12 obligation to not destroy documents?

10:07:07 13 A Yes.

10:07:07 14 Q What does it say with respect to that?

10:07:12 15 MR. MANCINI: Objection.

10:07:13 16 Are -- have we been allowing testimony about
10:07:16 17 the contents of the litigation hold in this case?

10:07:19 18 MS. KOHLMANN: Yes, I think so. I mean, you
10:07:23 19 can take a position one way or the other. I don't
10:07:26 20 think there's any -- anything privileged about what
10:07:30 21 the litigation hold says, and he's already testified
10:07:33 22 what it said with respect to --

10:07:35 23 MR. MANCINI: He's -- so I'll -- I'll allow
10:07:38 24 him to answer and preserve the objection.

10:07:40 25 MS. KOHLMANN: Okay.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 KORDESTANI

10:07:40 2 You can answer.

10:07:41 3 THE WITNESS: What's the question again?

10:07:47 4 MS. KOHLMANN: Q. Did the litigation hold
10:07:51 5 discuss the preservation of documents? Did the
10:07:59 6 litigation hold say anything about just not destroying
10:08:03 7 documents, to your recollection?

10:08:06 8 A I believe so, and I immediately inform my
10:08:09 9 assistant and IT folks that we're going to collect all
10:08:14 10 the documentation for our legal department, that all
10:08:15 11 of that be done according to the -- that document.

10:08:19 12 Q But -- but you nevertheless destroyed the
10:08:21 13 agendas for the EMG after you attended meetings?

10:08:25 14 MR. MANCINI: Objection. I think that's an
10:08:26 15 unfair mischaracterization. He also said --

10:08:28 16 MS. KOHLMANN: John --

10:08:29 17 MR. MANCINI: -- he had electronic copies.
10:08:30 18 That's an unfair charac- --

10:08:30 19 MS. KOHLMANN: -- you are allowed to say
10:08:31 20 objection.

10:08:31 21 MR. MANCINI: That's unfair.

10:08:32 22 MS. KOHLMANN: I've allowed you a lot of
10:08:33 23 latitude 'til now. You're coaching the witness.

10:08:35 24 MR. MANCINI: I'm not.

10:08:36 25 MS. KOHLMANN: Please just say "Objection."

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 KORDESTANI

10:08:37 2 MR. MANCINI: It is an unfair --

10:08:38 3 MS. KOHLMANN: It's going to be a long day.

10:08:40 4 MR. MANCINI: It's an unfair

10:08:41 5 characterization, Susan, of the testimony, and you

10:08:43 6 know it.

10:08:44 7 MS. KOHLMANN: I don't think so, and the

10:08:46 8 record will speak for itself.

10:08:50 9 Q So just -- do you have physical files in your
10:08:52 10 office in London, Mr. Kordestani?

10:08:56 11 A I have filing cab -- I have filing cabinets,
10:08:57 12 but no physical files. I don't take -- I don't like
10:09:00 13 to keep a lot of paper.

10:09:01 14 Q So the filing cabinets are empty?

10:09:04 15 A Pretty much.

10:09:05 16 Q Okay. And you have file cabinets in
10:09:07 17 California?

10:09:07 18 A Yes.

10:09:07 19 Q And your assistant maintains whatever files
10:09:11 20 you have in Cal- -- in -- in your office here in
10:09:13 21 Mountain View?

10:09:15 22 A Yes.

10:09:15 23 Q And do you -- how do you maintain your
10:09:20 24 e-mails? What system -- first of all, I assume you --
10:09:25 25 you use Google?

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 KORDESTANI

10:09:27 2 A Yes.

10:09:27 3 Q And do you -- is there a -- do you delete
10:09:34 4 e-mails regularly from your in-box?

10:09:38 5 A Mostly spam, but we use a version of the
10:09:48 6 Google e-mail system that doesn't require a lot of
10:09:51 7 deleting.

10:09:51 8 Q Why is that?

10:09:52 9 A It's just easier to search for documents than
10:09:56 10 file or delete.

10:09:57 11 Q So -- so it's just one big in-box and you can
10:10:00 12 search at -- at will basically and nothing gets
10:10:02 13 deleted?

10:10:03 14 A Some things get deleted, but -- but mostly I
10:10:06 15 delete spam, as I said.

10:10:08 16 Q So you would have -- would your -- would
10:10:10 17 there be on your e-mail, for example, e-mails
10:10:16 18 concerning the acquisition of YouTube?

10:10:24 19 A The -- any -- there -- there are documents
10:10:25 20 related to the YouTube, absolutely.

10:10:27 21 Q And are there also, for example, documents
10:10:30 22 relating to DoubleClick?

10:10:32 23 A Yes.

10:10:32 24 Q Okay. And those e-mails were collected for
10:10:37 25 the purposes of this litigation?

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

KORDESTANI

1

2 10:38:09 Q So if an advertiser wants to understand how
3 10:38:11 to advertise on Google, this explains the process;
4 10:38:15 isn't that right?

5 10:38:16 A Yes.

6 10:38:16 Q And there's -- in addition to AdWords, if you
7 10:38:32 go to the last page of this document, there is
8 10:38:35 something called "AdSense"; is that correct?

9 10:38:38 A Yes.

10 10:38:39 Q And how does AdSense differ from AdWords?

11 10:38:45 A AdSense is the program that website owners or
12 10:38:50 publishers who want to have Google advertisers appear
13 10:38:55 on their website use, so they earn money by using our
14 10:38:59 system to have our ads appear on their site.

15 10:39:03 Q And does Google earn revenue from
16 10:39:06 contextualized -- contextualized ads on third-party
17 10:39:12 sites?

18 10:39:12 MR. MANCINI: Objection to form.

19 10:39:13 THE WITNESS: Yes.

20 10:39:14 MS. KOHLMANN: Okay.

21 10:39:14 Q And how -- how exactly does AdSense work?
22 10:39:16 Can you describe the process to me?

23 10:39:18 A It's basically a website identifies an area
24 10:39:27 on their website where they like to have ads appear,
25 10:39:30 and ads are either targeted based on keywords, if they

KORDESTANI

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

10:39:33 have a search page, or if they have content on their
10:39:38 page, we have a system that identifies relevant ads to
10:39:42 the content on that page.

Q So, for example, if you go to the last page
10:39:46 of this Exhibit 2 that I've put in front of you, in
10:39:54 the middle of page it says, "AdSense for content
10:39:57 automatically crawls the content of your pages and
10:40:00 delivers text and image ads that are relevant to your
10:40:01 audience and your site content."

A Yes.

Q Is that what you were describing, it crawls
10:40:06 the content?

A Yes.

Q And what are the factors that go into an
10:40:21 AdSense for content determination about which ads to
10:40:25 display on a particular site?

MR. MANCINI: Objection to form.

THE WITNESS: What -- what do you mean by
10:40:34 that? What is the question?

MS. KOHLMANN: Q. So how -- what -- if I
10:40:39 understood your testimony, and I understand the last
10:40:42 page of Exhibit 2, there is a crawl of the content
10:40:46 which then generates an ad; correct?

A Is it --

KORDESTANI

1
2 11:36:07 to Google.
3 11:36:07 Do you recall seeing any documents where
4 11:36:09 "Yellow" would refer to YouTube and "Green" to
5 11:36:13 Google --
6 11:36:13 MR. MANCINI: Objection.
7 11:36:13 MS. KOHLMANN: Q. -- in the context of the
8 11:36:14 acquisition by Google of YouTube?
9 11:36:17 MR. MANCINI: Objection to form.
10 11:36:18 THE WITNESS: I don't recall the documents,
11 11:36:20 but I remember the keywords.
12 11:36:22 MS. KOHLMANN: Okay.
13 11:36:24 Q So turning to page nine, which is "Key
14 11:36:28 Yellow," that is revenue -- that is YouTube revenue
15 11:36:31 assumptions. You see the -- there's a column of "Key
16 11:36:38 Variable"; do you see that?
17 11:36:41 A Yes.
18 11:36:41 Q All the way on the right.
19 11:36:43 And those variables include "Videos Viewed,"
20 11:36:47 "Pages Viewed," "Premium Video," High Value
21 11:36:50 Non-Premium Video," Run of Site Ads," and Sponsored
22 11:36:54 Ads"; do you see that?
23 11:36:55 A Uh-huh.
24 11:36:56 Q And under "Premium Video," do you see -- next
25 11:36:59 to "Premium Video" there is a column

KORDESTANI

1
2 11:37:05 "Description/2007E Traffic Assumptions"; do you see
3 11:37:09 that?
4 11:37:11 A Where is that? Sorry.
5 11:37:13 Q The -- the -- the second column next to "Key
6 11:37:15 Variable."
7 11:37:16 A Yes.
8 11:37:16 Q You see that?
9 11:37:17 And under -- for the "Key Variable Premium
10 11:37:23 Video," you see where it says "60 percent of total
11 11:37:26 video streams on Yellow website are 'Premium'?"
12 11:37:29 A Yes.
13 11:37:29 Q What's your understanding of "Premium"?
14 11:37:33 MR. MANCINI: Objection to form.
15 11:37:34 THE WITNESS: I'm not sure what they were
16 11:37:36 using in this term. I've heard the use of "Premium"
17 11:37:40 before.
18 11:37:40 MS. KOHLMANN: Q. What's your understanding
19 11:37:41 of "Premium"?
20 11:37:43 A Professional content.
21 11:37:44 Q And just -- do you have any reason to believe
22 11:37:52 that that number is incorrect?
23 11:37:54 MR. MANCINI: Objection; lacks foundation.
24 11:37:57 THE WITNESS: I -- I have no idea where --
25 11:37:59 about that --

1 KORDESTANI

12:10:49 2 12.

12:10:50 3 Actually, you know what, let's do this one
12:10:55 4 first, so 18. Can you give me 12, too? Maybe I'll
12:11:39 5 just go to this. You got 12? Let's start with that.
12:11:54 6 Okay. Here you go. Sorry.

12:12:20 7 MS. WILSON: Thank you.

12:12:28 8 MR. HAREN: This is 12?

12:12:29 9 MS. KOHLMANN: Uh-huh.

12:12:33 10 (Document marked Kordestani Exhibit 8
12:12:44 11 for identification.)

12:12:44 12 MS. KOHLMANN: Q. Tell me when you've had a
12:12:45 13 chance to review it; okay?

12:13:07 14 A Okay.

12:13:07 15 Q Okay. Mr. Kordestani, I've marked as
12:13:09 16 exhibit -- what am I up to?

12:13:16 17 THE REPORTER: 8.

12:13:17 18 MS. KOHLMANN: 8.

12:13:18 19 Q A document, it's an e-mail exchange, and it
12:13:22 20 bears the Bates No. G00001-00496651 through 496654,
12:13:34 21 and this is an e-mail exchange.

12:13:39 22 First of all, this -- can you briefly
12:13:41 23 describe this document on the record?

12:13:43 24 A It's an e-mail exchange between Eric Schmidt,
12:13:47 25 David Eun, and me.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 KORDESTANI

12:13:48 2 Q And you?

12:13:49 3 A (Witness nods head.)

12:13:49 4 Q And what's the date?

12:13:51 5 A It's the 12th of May 2006.

12:13:55 6 Q And the subject?

12:13:58 7 A "Video GPS - Content."

12:13:59 8 Q Okay. And the first-in-time e-mail is an
12:14:10 9 e-mail from David to Eric in which you're copied; is
12:14:14 10 that right?

12:14:14 11 A Yeah.

12:14:17 12 Q And it refers to a video GPS that is going to
12:14:20 13 occur some time later; correct?

12:14:26 14 A Yes.

12:14:26 15 Q And at this point in time, you may have said
12:14:31 16 this earlier, what was Mr. Eun's duties and
12:14:32 17 responsibilities?

12:14:33 18 A He was working for me, in charge of content
12:14:37 19 partnerships.

12:14:38 20 Q And he states here that "The Video team --"
12:14:44 21 would that be the Google Video essentially?

12:14:48 22 A Yes.

12:14:48 23 Q "The Video team has focused on two questions
12:14:51 24 in preparation for the GPS: How we 'beat YouTube' in
12:14:57 25 the short term; and 2) how we went over time."

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 KORDESTANI

12:14:59 2 Do you see that?

12:15:01 3 A Yes.

12:15:01 4 Q Does that refresh your recollection that
12:15:05 5 Google Video did want to beat YouTube?

12:15:09 6 A Sure, yes. The team was in charge of video
12:15:13 7 service and felt competitive with YouTube.

12:15:15 8 Q And in the next paragraph, there's reference
12:15:22 9 to a heated debate about whether, quote, "we should
12:15:26 10 relax enforcement of our copyright policies in an
12:15:29 11 effort to stimulate traffic growth, despite the
12:15:31 12 inevitable damage it would cause to relationships with
12:15:35 13 content owners"; do you see that?

12:15:35 14 A Yes.

12:15:37 15 MR. MANCINI: Objection; the document speaks
12:15:39 16 for itself.

12:15:39 17 MS. KOHLMANN: Q. Do you recall a debate
12:15:40 18 about relaxing the enforcement of copyright policies?

12:15:45 19 A I don't know how big the debate was, but some
12:15:48 20 people had that opinion.

12:15:49 21 Q What was your opinion?

12:15:51 22 A That we -- we need to know the facts, and
12:15:53 23 these are opinions by teams that were under pressure
12:15:56 24 to build a service that works, and they had different
12:16:01 25 theories.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 KORDESTANI

12:16:01 2 Q Well, did -- was it -- did you disagree with
12:16:07 3 Mr. Eun, that -- where he says, "We should beat
12:16:13 4 YouTube - and all competitors - but not at all costs,"
12:16:16 5 and "A large part of their," referring to YouTube,
12:16:19 6 "traffic is from pirated content"?

12:16:27 7 A I don't --

12:16:27 8 MR. MANCINI: Objection to form.

12:16:28 9 THE WITNESS: This -- this -- essentially,
12:16:29 10 this was their opinions. They didn't have any facts,
12:16:31 11 and we always believed that it's important to be
12:16:35 12 comprehensive and also honor copyright holders' rights
12:16:40 13 so --

12:16:40 14 MS. KOHLMANN: So --

12:16:42 15 THE WITNESS: -- it was debating something
12:16:44 16 without facts and it was just opinions.

12:16:46 17 MS. KOHLMANN: Q. Well, he goes on in the
12:16:47 18 next sentence to say, we are comparing our traffic
12:16:50 19 numbers to their -- theirs. We would acknowledge that
12:16:52 20 we are comparing our, quote, "legal traffic," close
12:16:55 21 quote, "to their mix of traffic from legal and illegal
12:16:58 22 content"; do you see that?

12:16:59 23 A Yes, I see that.

12:17:00 24 MR. MANCINI: Objection; the document speaks
12:17:01 25 for itself.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 KORDESTANI

12:17:02 2 MS. KOHLMANN: Q. Did you agree with that?

12:17:04 3 MR. MANCINI: Objection to form.

12:17:07 4 THE WITNESS: We did not -- if you read
12:17:10 5 later, we believed there was a lot of also just noise
12:17:14 6 in the industry. That's what one senior media
12:17:18 7 executive told me, and there was no fact-based
12:17:21 8 information here. It was opinions.

12:17:23 9 MS. KOHLMANN: Q. But a media executive
12:17:26 10 would be a potential content owner; correct?

12:17:29 11 A Yes.

12:17:29 12 Q And you would listen if a media executive
12:17:32 13 said, as they say here, that they refer to YouTube as
12:17:35 14 a, quote, "Video Grokster"; correct?

12:17:37 15 A They were also --

12:17:37 16 MR. MANCINI: Objection to form.

12:17:38 17 THE WITNESS: Media -- media executives are
12:17:40 18 also doing deals with YouTube at the time, so this
12:17:44 19 is -- again, this was just one opinion here.

12:17:46 20 MS. KOHLMANN: Q. At the -- at the top of
12:17:54 21 the e-mail, Eric Schmidt says, "While I understand
12:18:01 22 your points and generally agree I don't see a winning
12:18:04 23 strategy from any of the video camps."

12:18:08 24 Did you have any discussions with Mr. Schmidt
12:18:10 25 about Mr. Eun's e-mail that you recall?

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 KORDESTANI

12:18:17 2 A There were lots of discussions. I don't
12:18:19 3 remember a specific discussion about this e-mail.

12:18:20 4 Q Yeah, okay.

12:18:38 5 To your knowledge, did Google Video ever
12:18:41 6 engage in pre-upload review of content?

12:18:45 7 MR. MANCINI: Objection to form.

12:18:46 8 THE WITNESS: I was not close enough to -- to
12:18:50 9 know that.

12:18:51 10 MS. KOHLMANN: Okay. Should have 12? No.
12:18:57 11 I'm sorry. Right.

12:19:25 12 MR. HAREN: Are you sure you don't have it?

12:19:27 13 MS. KOHLMANN: Oh, I'm sorry. What number is
12:19:28 14 it?

12:19:29 15 MR. HAREN: 11.

12:19:42 16 MS. KOHLMANN: Is it back here? No. I think
12:20:04 17 it's 150, maybe. 11. That one is 11. Actually, 11
12:20:13 18 is what I should do first. Okay. Is this the next
12:20:33 19 one?

12:20:34 20 (Document marked Kordestani Exhibit 9
12:20:37 21 for identification.)

12:20:37 22 MS. KOHLMANN: I'm going to show you what's
12:20:38 23 been marked as Kordestani Exhibit 9. Have you got it?
12:20:47 24 Okay. Should I -- yeah.

12:20:53 25 Q Mr. Kordestani, I've handed you a document

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

KORDESTANI

1
2 13:52:09 with anyone in particular?

3 13:52:10 MR. MANCINI: Objection to form.

4 13:52:13 THE WITNESS: Again, same -- part of the same
5 13:52:16 updates with David Eun with discussions at these
6 13:52:19 meetings.

7 13:52:20 MS. KOHLMANN: Q. And what -- do you
8 13:52:23 remember any specific conversation with David Eun?

9 13:52:29 A Again, general conversations about getting
10 13:52:33 ready for a product review or what happened at the
11 13:52:35 product review, briefings after meetings.

12 13:52:38 Q This is about copyright policy in particular,
13 13:52:40 I'm asking.

14 13:52:41 A No. One of --

15 13:52:42 MR. MANCINI: Objection to form.

16 13:52:43 THE WITNESS: -- copyright policy is one of
17 13:52:44 many items.

18 13:52:45 MS. KOHLMANN: Q. But you don't remember, as
19 13:52:45 you -- I'm trying to -- what I'm trying to determine
20 13:52:47 is whether you remember, as you sit here today, any
21 13:52:50 specific conversation -- let's start with Mr. Eun --
22 13:52:54 with Mr. Eun about copyright policy?

23 13:52:57 MR. MANCINI: Objection to form.

24 13:52:58 THE WITNESS: I remember having discussed it,
25 13:53:00 yes.

KORDESTANI

- 1
- 2 13:53:01 MS. KOHLMANN: Q. What do you remember about
- 3 13:53:02 those conversations?
- 4 13:53:04 A Same kinds of things you pointed to here,
- 5 13:53:07 that their theory is that different policy approaches
- 6 13:53:13 could result in different success rates in user
- 7 13:53:19 activity and adoption of video service.
- 8 13:53:22 Q How would you define "success rate"?
- 9 13:53:29 A Popularity of the service.
- 10 13:53:32 Q Revenue?
- 11 13:53:35 A No.
- 12 13:53:35 MR. MANCINI: Objection to form.
- 13 13:53:36 THE WITNESS: Never discussed revenue in that
- 14 13:53:37 context.
- 15 13:53:38 MS. KOHLMANN: Q. And how would a different
- 16 13:53:40 policy approach affect popularity of the service?
- 17 13:53:43 MR. MANCINI: Objection; lacks foundation.
- 18 13:53:47 THE WITNESS: It's what you pointed to in the
- 19 13:53:49 documents. I'm referring to those same conversations,
- 20 13:53:52 the theory that YouTube is different because some
- 21 13:53:55 people think there is a different policy to have.
- 22 13:54:00 MS. KOHLMANN: Q. Do you -- do you remember
- 23 13:54:01 any specific conversation with Mr. Eun about that
- 24 13:54:03 topic?
- 25 13:54:05 MR. MANCINI: Objection to form.

KORDESTANI

1

2 14:01:35 Q I'm sorry. I didn't hear you.

3 14:01:36 A It's not significant for Google right now.

4 14:01:38 Q It's not significant? I can't hear you. I'm

5 14:01:42 sorry.

6 14:01:42 A It's not a significant revenue contribution

7 14:01:45 to Google right now.

8 14:01:45 Q Right now? Is that what you said?

9 14:01:47 A Right.

10 14:01:48 Q I'm sorry.

11 14:01:49 What -- but they -- I believe you said it was

12 14:01:51 \$40 to \$50 million a quarter; correct?

13 14:01:53 A Right now.

14 14:01:53 Q How do they generate that revenue?

15 14:01:56 A Selling advertising on -- on Homepages, on

16 14:02:01 brand channels, experimenting with new formats, just

17 14:02:07 some on partner pages. Not significant enough yet.

18 14:02:11 Q Okay. Can -- can -- you said Homepages.

19 14:02:14 What other pages do they sell ads on?

20 14:02:17 A Brand channels they're called, where you make

21 14:02:21 a special page for advertisers, special content.

22 14:02:24 Q Is the Homepage the same as a search page?

23 14:02:28 A No.

24 14:02:28 Q Do they sell advertising on search pages?

25 14:02:31 A I think we're experimenting with that.

KORDESTANI

- 1
- 2 14:02:33 Q What other kind of pages are there?
- 3 14:02:38 A Watch Pages.
- 4 14:02:39 Q And do they sell advertising on Watch Pages?
- 5 14:02:42 A There are some, some advertising sold, and
- 6 14:02:47 some are sold by partners.
- 7 14:02:50 Q Do you know where the majority of -- of the
- 8 14:02:52 revenue that you have identified, the 40 to 50 million
- 9 14:02:58 a quarter, comes from with respect to each of these
- 10 14:03:00 pages?
- 11 14:03:01 A I think primarily, I believe, most of it is
- 12 14:03:03 still Homepages and these brand channels and so forth.
- 13 14:03:07 Q Who does the -- who -- do you know who did
- 14 14:03:23 the financial modeling at the time of the acquisition?
- 15 14:03:27 MR. MANCINI: Objection; asked and answered.
- 16 14:03:29 THE WITNESS: Probably a combination of our
- 17 14:03:31 finance team and corporate development team.
- 18 14:03:33 MS. KOHLMANN: Q. Would corporate
- 19 14:03:34 development be you?
- 20 14:03:34 A No, David Drummond.
- 21 14:03:36 Q David Drummond.
- 22 14:03:37 So what part of the acquisition of YouTube
- 23 14:03:41 did you analyze, if any?
- 24 14:03:44 MR. MANCINI: Objection; lacks foundation.
- 25 14:03:47 THE WITNESS: Just over -- I just -- as part

KORDESTANI

1
2 15:43:36 mischaracterize of the documents and that is not in
3 15:43:39 the record. We have not seen that, Susan. You are
4 15:43:41 offering testimony now by a question that is totally
5 15:43:43 improper.

6 15:43:44 MS. KOHLMANN: You can answer.

7 15:43:45 THE WITNESS: I agree with my attorney. I
8 15:43:46 never said anything like that. I didn't --

9 15:43:48 MS. KOHLMANN: I didn't say you did. You
10 15:43:49 wanna read -- should I repeat the question?

11 15:43:53 THE WITNESS: I don't know where that comment
12 15:43:54 comes from.

13 15:43:55 MS. KOHLMANN: Q. From the documents that
14 15:43:56 you saw, the term sheets and the signed agreements in
15 15:44:00 the fall of 2006, there were available fingerprinting
16 15:44:07 technologies which you did not offer content owners
17 15:44:12 who had not entered into negotiations; is that --

18 15:44:15 A I don't agree with that.

19 15:44:17 MR. MANCINI: Same objections.

20 15:44:18 MS. KOHLMANN: Q. You had offered it to
21 15:44:19 content owners?

22 15:44:20 A I don't know, and now you're asking me
23 15:44:21 specifics.

24 15:44:21 MR. MANCINI: Same objections.

25 15:44:22 MS. KOHLMANN: Q. Who at Google or YouTube