

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.)
)
 _____)

VIDEOTAPED DEPOSITION OF CHRIS MAXCY
SAN FRANCISCO, CALIFORNIA
THURSDAY, AUGUST 28, 2008

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
CSR LICENSE NO. 9830
JOB NO. 15485

DAVID FELDMAN WORLDWIDE, INC.
805 Third Avenue, New York, New York 10022 (212) 705-8585

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AUGUST 28, 2008

10:04 a.m.

VIDEOTAPED DEPOSITION OF CHRIS MAXCY,
SHEARMAN & STERLING, 525 Market Street,
San Francisco, California, pursuant to notice,
before ANDREA M. IGNACIO HOWARD, CLR, RPR, CSR
License No. 9830.

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2

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

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20 By: JOHN MANCINI, Esq.

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

2

3 ALSO PRESENT:

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10 KELLY TRUELOVE, Ph.D., Consultant

11 LOU MEADOWS, Videographer

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10:53:31 2 A Warner Music Group.

10:53:38 3 Q I believe you testified YouTube seeks to
10:53:39 4 generate revenue from advertising; is that fair?

10:53:43 5 MR. MANCINI: Objection; asked and answered.

10:53:46 6 THE WITNESS: Yes.

10:53:47 7 MR. SHAFTEL: Q. And when you began in
10:54:03 8 December '05 or early '06, where was YouTube
10:54:14 9 displaying advertising on its site?

10:54:16 10 MR. MANCINI: Objection to form.

10:54:17 11 THE WITNESS: I don't recall the specifics.
10:54:25 12 I think you'd have to talk to somebody else about
10:54:28 13 that, but I do recall that we had advertising on the
10:54:33 14 home page.

10:54:34 15 MR. SHAFTEL: Q. Do you recall if there was
10:54:39 16 advertising anywhere else?

10:54:44 17 MR. MANCINI: Same objection.

10:54:45 18 THE WITNESS: At that time, I can't recall
10:54:47 19 exactly where it was, so I -- I don't want to
10:54:51 20 speculate.

10:54:52 21 MR. SHAFTEL: Q. Do you recall there came a
10:54:53 22 point in time when there was advertising beyond the
10:54:55 23 home page?

10:54:57 24 A Yes.

10:54:57 25 Q When? When was that?

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10:54:59 2 A I don't recall exact dates.

10:55:00 3 Q Where -- can -- can you approximate a time
10:55:07 4 frame when you can first recall advertising somewhere
10:55:09 5 other than the home page?

10:55:10 6 MR. MANCINI: Objection to form.

10:55:11 7 THE WITNESS: I can't recall specific dates,
10:55:13 8 no.

10:55:13 9 MR. SHAFTEL: Q. What do you mean by the
10:55:14 10 "home page" by the way?

10:55:16 11 A The youtube.com front page.

10:55:19 12 Q Well, you know today, am I correct, that
10:55:23 13 there's advertising beyond the home page?

10:55:25 14 A That's correct.

10:55:25 15 Q Now, does the home page display any content
10:55:34 16 that has been provided by a third party to YouTube?

10:55:43 17 MR. MANCINI: Objection to form.

10:55:44 18 THE WITNESS: All of the content that we have
10:55:49 19 on our site has been provided by a third-party,
10:55:51 20 uploaders.

10:55:52 21 MR. SHAFTEL: Q. Well, you described a home
10:55:54 22 page as a page, in essence, which said YouTube.com or
10:55:58 23 something like that.

10:55:59 24 A Right.

10:55:59 25 Q So what I'm trying to distinguish is on that,

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17:08:07 2 the status of their approval, whether they had
17:08:10 3 approved or not approved.

17:08:14 4 Q And after a contract is executed, does it
17:08:17 5 continue to reside within the Simba system?

17:08:19 6 A To my understanding, yes.

17:08:24 7 Q Are there any fields for comments within the
17:08:30 8 Simba system?

17:08:35 9 A Yes.

17:08:35 10 Q So somebody, for example, who's reviewing a
17:08:40 11 potential agreement that is captured within Simba is
17:08:44 12 able to relate comments that she or he has about the
17:08:49 13 proposed agreement?

17:08:51 14 A That's correct.

17:08:51 15 Q And is this something which is accessible
17:08:54 16 from your computer in your office?

17:08:55 17 A Yes.

17:08:56 18 Q Okay. Let me mark as Exhibit 21 the next
17:09:01 19 document, 10746.

17:09:01 20 (Document marked Maxcy Exhibit 21
17:09:23 21 for identification.)

17:09:32 22 MR. SHAFTEL: Q. Let me know when you've had
17:09:34 23 a chance to review it, Mr. Maxcy.

17:10:08 24 A Okay.

17:10:11 25 Q The top -- the only e-mail on this page,

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17:10:17 2 you're writing to Mr. Eun, and you're providing a
17:10:20 3 summary of apparently what you discussed on, quote,
17:10:28 4 the "H.264 encoding question." What are you referring
17:10:31 5 to by "H.264 encoding"?

17:10:36 6 A This is an e-mail describing how YouTube
17:10:46 7 encodes video. So there's different -- I have a very
17:10:52 8 basic understanding of this, but apparently there are
17:10:55 9 different formats that you can convert a file into
17:10:58 10 when it's been uploaded to YouTube, and H.264 is a
17:11:05 11 format that is compatible with viewing through mobile
17:11:11 12 devices and other devices.

17:11:12 13 Q So this process relates to YouTube's
17:11:19 14 syndication of content to third parties?

17:11:23 15 MR. MANCINI: Objection to form.

17:11:24 16 THE WITNESS: Could you rephrase?

17:11:25 17 MR. SHAFTEL: Yeah.

17:11:26 18 Q Am I correct that YouTube engages in the
17:11:30 19 H.264 encoding in order to then syndicate the content
17:11:35 20 to third parties?

17:11:41 21 A That is one reason. As far as I'm aware,
17:11:46 22 H.264 is also a higher quality format, even when video
17:11:50 23 is being delivered through a web page. And again,
17:11:54 24 from what I've been told, this was something that was
17:11:59 25 done to improve the viewing experience, not just on

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17:12:03 2 mobile and devices, but on the YouTube website.

17:12:09 3 Q So the content undergoes H.264 encoding even
17:12:19 4 when the content stays on the YouTube site, it is not
17:12:25 5 distributed or syndicated to third parties?

17:12:28 6 MR. MANCINI: Objection to the extent that
17:12:29 7 this witness has any knowledge of that technical --

17:12:32 8 THE WITNESS: I don't know the answer to
17:12:33 9 that.

17:12:33 10 MR. SHAFTEL: Q. Is that your understanding?

17:12:35 11 A I -- I don't want to speculate. I think the
17:12:39 12 best person to talk to would be the engineering team.

17:12:47 13 Q In your summary here, you refer to -- to
17:12:52 14 date, and this is August '07, "YouTube engineering
17:12:57 15 team has re-encoded approximately 30,000 of the top
17:13:00 16 watched videos on YouTube."

17:13:02 17 A Yes.

17:13:02 18 Q How was that 30,000 selected?

17:13:13 19 A I don't know.

17:13:13 20 Q Do you know who selected it? What person or
17:13:19 21 group of people?

17:13:22 22 A I don't. I think that the engineering team
17:13:24 23 would probably be the best to tell you. The way I
17:13:27 24 read this, it was probably an algorithm based on the
17:13:33 25 top viewed videos.

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17:13:34 2 Q Do you know how much of YouTube's content has
17:13:40 3 been H.264 encoded today?

17:13:44 4 A It's my understanding that the entire catalog
17:13:48 5 at this point has been converted.

17:13:49 6 Q Where does that -- where does that process
17:13:56 7 take place?

17:13:57 8 A I have no idea.

17:14:00 9 Q There's also a reference in your summary to a
17:14:05 10 WAP, in caps, site. What is that?

17:14:10 11 A That's an acronym standing for Wireless
17:14:13 12 Access Protocol or a mobile site, a mobile website
17:14:18 13 that would be viewable on a mobile device.

17:14:24 14 MR. SHAFTEL: I'm told we need to change
17:14:26 15 the -- the tape.

17:14:28 16 THE VIDEOGRAPHER: Okay. This marks the end
17:14:31 17 of videotape number three. Off the record.

17:14:33 18 The time is 5:14 p.m.

17:14:34 19 (Recess taken.)

17:26:40 20 THE VIDEOGRAPHER: On the record. This marks
17:26:42 21 the beginning of videotape number four in the
17:26:44 22 deposition of Chris Maxcy on August 28, 2008. The
17:26:47 23 time is 5:26 p.m.

17:26:48 24 Please continue.

17:26:50 25 MR. SHAFTEL: Q. Sticking with Exhibit 21,

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2 17:26:54 Mr. Maxcy, before the break for the video change, we
3 17:26:59 were talking about the re-encoding by August of '07 of
4 17:27:06 approximately 30,000 of the top watched videos on
5 17:27:11 YouTube, and you had mentioned that the engineers may
6 17:27:14 have applied some algorithm you were not -- you were
7 17:27:17 not sure of, I think was your testimony.

8 17:27:19 Were you involved or are you aware of what
9 17:27:23 directions anybody in the engineering department was
10 17:27:26 given in terms of selecting the 30,000?

11 17:27:31 MR. MANCINI: Objection to form.

12 17:27:33 THE WITNESS: No, I wasn't aware of how they
13 17:27:37 determined this or the directions they were given.

14 17:27:40 MR. SHAFTEL: Q. With regard to any of the
15 17:27:45 content syndicated by YouTube to third parties, are
16 17:27:50 you aware of any efforts by YouTube to either review
17 17:27:58 or select only a portion of content to provide to the
18 17:28:03 third party?

19 17:28:05 MR. MANCINI: Objection to form.

20 17:28:06 THE WITNESS: Could you be more specific?

21 17:28:11 MR. SHAFTEL: Q. In the deals where YouTube
22 17:28:14 is syndicating content, are you aware of any instances
23 17:28:17 where the third party received only a selection of the
24 17:28:26 content that had been encoded for transmittal?

25 17:28:33 MR. MANCINI: Objection to form.

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17:28:34 THE WITNESS: Yes.

17:28:41 MR. SHAFTEL: Q. What do you recall about
17:28:42 those instances? What was the selection criteria?

17:28:48 A We --

17:28:49 MR. MANCINI: Objection to form; compound
17:28:50 question.

17:28:52 THE WITNESS: We had a partnership, or we
17:28:55 have a partnership with Verizon VCAST in which we made
17:29:04 available videos that were featured on YouTube's
17:29:09 website for the VCAST platform. So any video that had
17:29:14 been featured by YouTube on its front page was
17:29:17 available for display on VCAST.

17:29:21 MR. SHAFTEL: Q. And other YouTube videos,
17:29:23 meaning videos displayed on YouTube, were not
17:29:26 accessible or available on the Verizon VCAST?

17:29:30 A That's correct.

17:29:30 Q Did you have discussions with Verizon about
17:29:34 that restriction?

17:29:37 A Yes.

17:29:37 Q And why did Verizon want that restriction?

17:29:42 A Verizon was concerned about the
17:29:45 appropriateness of the content. More specifically,
17:29:50 they were worried about pornography, child
17:29:55 pornography, or illegal acts.

1 MAXCY

2 17:29:58 Q And when you say that it was featured content
3 17:30:04 that was accessible or available on Verizon VCAST, did
4 17:30:10 YouTube personnel play a role in selecting that
5 17:30:13 content to put on the home page?

6 17:30:15 MR. MANCINI: Objection to form.

7 17:30:16 THE WITNESS: Yes. The YouTube site has a
8 17:30:21 functionality that allows users to notify YouTube of
9 17:30:29 content that they find interesting that says "Please
10 17:30:34 feature that content," and that content is then sent
11 17:30:39 to YouTube personnel, editorial personnel, for review
12 17:30:42 and consideration for featuring on the front page of
13 17:30:45 YouTube.

14 17:30:46 MR. SHAFTEL: Q. And do the YouTube
15 17:30:47 editorial personnel review for copyright issues?

16 17:30:51 A Not to my knowledge, no.

17 17:30:52 Q Did you speak to Verizon VCAST about this
18 17:30:58 limitation or the scope of content that would be
19 17:31:01 supplied to Verizon?

20 17:31:03 A Could you be more specific?

21 17:31:08 Q Yeah.

22 17:31:08 Did you yourself have a role in the
23 17:31:10 discussions with Verizon VCAST about the scope of
24 17:31:15 content being limited to featured content?

25 17:31:17 A Tangentially, I didn't complete the Verizon

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17:31:20 deal. Someone on my team did.

17:31:22 Q Who?

17:31:23 A Kelly Liang, L-I-A-N-G.

17:31:26 Q You said you didn't complete the deal. Were
17:31:29 you yourself involved in any discussions with Verizon
17:31:34 about the scope of content?

17:31:36 A Yes.

17:31:36 Q Who did you speak with at Verizon?

17:31:42 A I don't recall all the people, but there was
17:31:45 one individual named Jennifer Byrne at Verizon who is
17:31:51 a business development person there.

17:31:52 Q She was your principal contact there?

17:31:55 A Yes.

17:31:55 Q Were there any discussions about copyright
17:31:57 issues with Verizon that you were party to?

17:32:04 A I believe so, yes.

17:32:05 Q What do you recall about those?

17:32:10 A Honestly, I don't recall the details. I do
17:32:12 recall that there were conversations about copyright.

17:32:15 Q And Verizon expressed concerns about having
17:32:19 unauthorized copyrighted content displayed on Verizon
17:32:26 VCAST?

17:32:27 A Yes.

17:32:27 Q And did that factor into other interests as