

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, ) Case No. 1  
 )  
 vs. ) 07CV02103  
 )  
 YOUTUBE, INC., YOUTUBE, LLC, )  
 and GOOGLE, INC., )  
 )  
 Defendants. )

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 THE FOOTBALL ASSOCIATION PREMIER )  
 LEAGUE LIMITED, BOURNE CO., et al., )  
 on behalf of themselves and all )  
 others similarly situated, )  
 )  
 Plaintiffs, ) Case No. 2  
 )  
 vs. ) 07CV3582  
 )  
 YOUTUBE, INC., YOUTUBE, LLC, and )  
 GOOGLE, INC., )  
 Defendants. )

DEPOSITION OF DAVID EUN  
NEW YORK, NEW YORK  
THURSDAY, AUGUST 7, 2008

REPORTED BY:  
ERICA RUGGIERI, CSR, RPR  
JOB NO. 15377

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August 7, 2008  
9:36 a.m.

VIDEOTAPED DEPOSITION OF DAVID EUN,  
held at the offices of Jenner & Block,  
919 Third Avenue, New York, New York,  
pursuant to notice, before before Erica L.  
Ruggieri, Registered Professional Reporter  
and Notary Public of the State of New  
York.

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21  
22 ALSO PRESENT:

23  
24 MANUEL ABREU, Videographer  
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But let's, for now, go on to what you did after you left Time Warner.

A. Okay.

Q. Where did you go to work next?

A. Google.

Q. And you are currently employed by Google, correct?

A. Yes.

Q. And you started there when?

A. February 2006.

Q. And has your position -- have your responsibilities at Google changed or evolved over time?

A. No, I still hold the same position.

Q. And what is that position?

A. I'm vice president of content partnerships.

Q. And what responsibilities do you have as vice president of content partnerships at Google?

A. I manage groups that are responsible for negotiating deals and managing partnerships with owners of

1 D. EUN

2 Video.

3 Remind me again when you first  
4 began working for Google.

5 A. February 2006.

6 Q. And at that time one of your  
7 areas of responsibility was content for  
8 Google Video, correct?

9 A. Content partnerships for Google  
10 Video, yes.

11 Q. And at that time, Google did not  
12 own YouTube, correct?

13 A. Yes.

14 Q. Google Video and YouTube were  
15 competitors at that time?

16 MR. MANCINI: Objection to form.

17 A. Yes, very much so.

18 Q. So you had no responsibility for  
19 managing what Google -- strike that.

20 So you had no responsibility for  
21 managing what YouTube was doing in  
22 February 2006, when you first went to  
23 Google?

24 A. I had never heard of YouTube,  
25 initially. And then they became the

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2 archenemy.

3 Q. And then there came a time when  
4 Google acquired YouTube; is that correct?

5 A. Yes.

6 Q. And when was that?

7 A. I think we announced it like the  
8 fall of 2006, I think. Right. Yeah,  
9 around the fall. And then it was approved  
10 in November. I think it was right before  
11 Thanksgiving.

12 Q. November 2006 it was approved?

13 A. Yeah. I think it was 2006.  
14 Yes, yes.

15 Q. Okay. Let's start by focusing  
16 on Google Video at the time you first went  
17 to Google.

18 A. Okay.

19 Q. Can you describe the services,  
20 the service or services, that Google Video  
21 provided when you first began working at  
22 Google?

23 A. The primary business objective,  
24 you mean, of Google Video?

25 Q. Yes.

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2 A. Google Video had relationships  
3 with owners of content to provide what was  
4 referred to as a DTO, download to own,  
5 service, where you could, as a user, you  
6 could buy individual, let's say, Charlie  
7 Rose episodes for a price that the owner  
8 would determine, using Google proprietary  
9 DRM and a Google proprietary player.

10 Q. And what is DRM?

11 A. Digital rights management.

12 Q. And can you explain what digital  
13 rights management means?

14 A. Well, I'm not an engineer, but I  
15 guess my, the layman's way of looking at  
16 it is, if a content owner gives us content  
17 to sell on their behalf, as a technology  
18 partner, they would be concerned that only  
19 the people who bought it would have --  
20 would be able to actually view it. So the  
21 DRM is basically an engineering system.  
22 It's a protection scheme to fulfill that.

23 Q. It prevents additional copies,  
24 above a certain number from being made?

25 A. Well, I mean those types of



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2 process is resolved, the treatment  
3 will continue as designated.

4 MR. HOHENGARTEN: We are going  
5 to continue to honor the "highly  
6 confidential" designation. We don't  
7 think it's proper, but we are going to  
8 continue to honor it, pending meet and  
9 confer.

10 MR. MANCINI: Of course, we  
11 dispute your position that you don't  
12 think it's proper, but we will meet  
13 and confer.

14 BY MR. HOHENGARTEN:

15 Q. Okay. Mr. Eun, have you had a  
16 chance to look at Eun Exhibit 1?

17 A. I have started reading it.

18 Q. Okay. Let me know when you've  
19 had a chance to look over it.

20 A. Okay.

21 Q. Okay. And just for your  
22 background, the documents that have this  
23 number on the bottom which I'm calling a  
24 Bates number that begins with G, in the  
25 lower right-hand corner, are documents

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2 that were produced to us by Google in  
3 connection with this case, so they came  
4 from Google originally.

5 And Exhibit 1 is a thread of  
6 e-mails, correct?

7 A. Yes.

8 Q. And the top e-mail is from you  
9 to another Google employee.

10 Can you pronounce his or her  
11 name?

12 A. Which one?

13 Q. Bhanu. There's two, I'm sorry.  
14 Yeah, both of them.

15 A. I don't know how to pronounce  
16 Bhanu's last name, but it is Bhanu  
17 Narasimhan, and the second person is  
18 Nikesh Arora.

19 Q. And who were they?

20 A. Bhanu worked in the ops group at  
21 Google, and her team provided review of  
22 video at Google Video.

23 Nikesh Arora is currently  
24 president of our Europe, Middle East and  
25 Africa region.

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2 Q. And you said Bhanu, I'll use the  
3 first name in this case, responsibilities  
4 included review of video for Google Video,  
5 correct?

6 A. She didn't work for me. I don't  
7 know what all her responsibilities were.

8 But I do know that part of her  
9 responsibilities were to review videos.

10 Q. And on Eun Exhibit 1, the lower  
11 e-mail, which would have been the first in  
12 time, is an e-mail from Bhanu describing  
13 that review of video process; is that  
14 correct?

15 MR. MANCINI: Objection. The  
16 document speaks for itself.

17 A. I don't specifically recall  
18 this, but that's what it looks like.

19 Q. On the second page of Exhibit 1,  
20 Bates page 923211, under "Content reviewed  
21 in U.S. only," it says, "We disapprove for  
22 policy, (porn, violence, et cetera) or  
23 copyright," correct.

24 MR. MANCINI: Objection. The  
25 document speaks for itself.

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2 A. Yes, that's what the e-mail  
3 says.

4 Q. Is that consistent with your  
5 understanding of Google Video's video  
6 review process at the time of this e-mail?

7 MR. MANCINI: Objection to form.

8 A. Yes, it is.

9 Q. What is your understanding of  
10 Google Video's process for disapproving  
11 videos for copyright reasons --

12 MR. MANCINI: Objection to form.

13 Q. -- in March 2006?

14 MR. MANCINI: So Objection to  
15 form, and objection to the extent it's  
16 seeking legal opinion that is not  
17 discoverable in this deposition.

18 I don't think you are asking for  
19 that.

20 MR. HOHENGARTEN: I'm asking for  
21 the process, a description of the  
22 process.

23 A. So what was the question? My  
24 understanding of the process at the time,  
25 for a review?

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2 supervisor, who is my peer, saying, hey,  
3 you know, we have got to figure this out.

4 Q. Okay. Just to clarify one thing  
5 on the record. You referred to "our CEO,"  
6 and that's Eric Schmidt, right?

7 A. That's right.

8 Q. And in your e-mail response,  
9 which is at the top of the first page of  
10 Exhibit 6, to Susan Wojcicki --

11 A. Yes.

12 Q. -- can you read the second  
13 paragraph down?

14 A. In my e-mail?

15 Q. Yes.

16 A. Yes. "I also ran into Peter,  
17 and he had this idea to 'beat YouTube' by  
18 calling quits on our copyright compliance  
19 standards."

20 Q. Was that what you were just  
21 referring to as the divide in policy?

22 A. It was sort of how much over  
23 DMCA compliant do we want to be? You  
24 know, what's the best business decision?

25 Q. Peter here is Peter Chane, whom

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2 you mentioned before, right?

3 A. That's right. So he was in the  
4 product -- he was the product manager for  
5 Google Video.

6 Q. And he reported to Susan  
7 Wojcicki?

8 A. Yes.

9 Q. You referred to going above what  
10 your lawyer said you needed to do for DMCA  
11 compliance, right?

12 MR. MANCINI: Objection to the  
13 characterization of testimony.

14 A. That was always the presumption.

15 Q. Okay. And in your answer  
16 previously you said, I think, that the  
17 argument that we were using was, it's, you  
18 know, it's not a question, with all due  
19 respect to our lawyers, about what's legal  
20 or not, because we are all talking about  
21 within the realm of legality.

22 What was your understanding  
23 about what was within the realm of  
24 legality?

25 DIR MR. MANCINI: Objection, to the

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2 thinking about the legal, because that was  
3 never the question about whether we  
4 shouldn't be legal. In fact, the article  
5 also talks about, you know, I think Google  
6 has failed to take off for the simple  
7 reason, because it's more annoying to use  
8 than YouTube. They talked about how  
9 YouTube was just easy to use.

10 So at the time, it's very much a  
11 product of the Google culture, we are  
12 focusing on the user to try to make it  
13 simple and intuitive to use. And so our  
14 focus was really on how do we create the  
15 best experience for the consumers. But I  
16 think, I don't know if I'm being clear,  
17 but that was really the focus of the back  
18 and forth.

19 Q. And going back to what you wrote  
20 in your e-mail in Exhibit 6, which you  
21 read aloud before, which says, "I also ran  
22 into Peter and he had this idea to 'beat  
23 YouTube' by calling quits on our copyright  
24 compliance standards."

25 How would "calling quits on our

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2 copyright compliance standards" help  
3 Google Video beat YouTube?

4 A. Well --

5 MR. MANCINI: Objection.

6 A. I believe -- I believe, if I  
7 recall at the time, sometimes, you know,  
8 we make the lawyers the bad cops and --  
9 you know, in the company. And I think the  
10 feeling was that they had put so many  
11 extra, like, things for the product people  
12 to do, including reviewing and taking  
13 time; and so the, I think the feeling was,  
14 because we are complying with these  
15 standards, these, you know, standards that  
16 our lawyers are adding on, it's affecting  
17 our ability to provide the best service  
18 possible to our users. And in fact,  
19 Susan's original e-mail to Eric here talks  
20 about an instant upload which will be  
21 faster than YouTube.

22 So I think there was a -- I  
23 don't remember, I don't recall it  
24 specifically. I think there was,  
25 generally there was this uneasiness about



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2 the fact that YouTube was able to share,  
3 have people upload their videos and share  
4 it much more quickly, and our lawyers were  
5 preventing us from being able to do that.

6 But again, it was -- I mean  
7 honestly it was never a question of like,  
8 you know, whether something would be  
9 illegal or not. In fact, Peter is not a  
10 lawyer, I wasn't. I didn't really become  
11 familiar with this until we got closer to  
12 the YouTube acquisition.

13 Q. Okay. And let me follow up on  
14 the instance live point you made.

15 You are referring to something,  
16 I believe, that Susan Wojcicki --

17 A. She writes, she writes, "We are  
18 working on the instant upload."

19 Q. And which page is that on, just  
20 so we are on the same page?

21 A. 749.

22 Q. 749, okay. And so, one, if I  
23 understood correctly, one of the  
24 competitive advantages of YouTube was that  
25 videos would be uploaded very quickly?

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A. Well, more quickly than we would upload it.

Q. And I'm trying to understand if Google's copyright compliance standards affected the upload time of videos.

A. It absolutely did.

MR. MANCINI: Objection to form.

Q. How did Google's copyright compliance standards affect the upload time for videos?

A. Well, at least the view, that was the perception at the time. The perception was, because Google Video had this group, Bhanu's group, proactively viewing stuff, you know, whether it was for a hate crime or porn or, you know, copyright stuff, you know, it was an extra -- it would take more time.

Q. So when a user went to upload a video to Google Video, would it get -- the video would be reviewed by Bhanu's group, before the upload would be complete?

MR. MANCINI: Objection to form.

A. Yeah, I think so.

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2 A. Yes.

3 So to be clear, we did do  
4 proactive screening of copyright, from  
5 what it says here. So -- you had asked me  
6 about that earlier, but. I mean I wasn't  
7 involved with this, but we obviously did.

8 Q. Okay. So the existing policy at  
9 the time of this draft document was a zero  
10 tolerance on copyright as well as porn,  
11 violence and hate. And that was enforced  
12 with proactive screening before the video  
13 went live, correct?

14 A. Yeah. I have no reason to  
15 dispute that what this is is the current  
16 policy was not, you know, was not anything  
17 but the current policy back then.

18 Q. Okay. And the proposal is to  
19 keep rejecting full works -- to keep  
20 rejecting all porn, violence and hate, but  
21 to accept partial works up to ten minutes  
22 long and respond to take-down requests,  
23 correct?

24 A. That's what it says, yes.

25 Q. And was that proposal ever

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THE WITNESS: Would it be possible to take a bio break?

MR. HOHENGARTEN: Absolutely.

THE VIDEOGRAPHER: The time is 2:20 p.m. We are going off the record.

(Whereupon, there is a recess in the proceedings.)

THE VIDEOGRAPHER: The time is 2:33 p.m. We are back on the record.

MR. HOHENGARTEN: We will mark Exhibit 13, which is G00001-00925742 through 43.

(Eun Exhibit 13, document, Bates stamped G00001-00925742 through 43, marked for identification, as of this date.)

A. Okay.

Q. Exhibit 13 is an e-mail from Hunter Walker to the video team, dated May 17th, 2006.

Who is Hunter Walker?

A. It's Hunter Walk.

Q. I'm sorry, you're right. Who is

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2 Hunter Walk?

3 MR. MANCINI: Objection to  
4 characterization of the document.

5 A. He used to be in the product  
6 group on Google Video and has since become  
7 the head of product at YouTube.

8 Q. And what does being the head of  
9 product at YouTube entail, just briefly?

10 A. Basically, the role that Peter  
11 Chane had at Google Video, Hunter now has  
12 that for YouTube.

13 Q. And this e-mail describes Google  
14 Video rolling out a web-based video  
15 uploader with instant live, correct?

16 MR. MANCINI: Objection. The  
17 document speaks for itself.

18 A. Apparently, yes.

19 Q. Do you recall that rollout of a  
20 web-based video uploader with instant  
21 live?

22 A. I don't.

23 Q. At the time, May 17th, 2006,  
24 would the rollout of a web-based video  
25 uploader with instant live be something

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2 we want to conduct our business? Is this  
3 Googley?"

4 Q. And Sergey Brin --

5 A. Sergey.

6 Q. Sergey Brin is one of the  
7 co-founders of Google, correct?

8 A. That's correct.

9 Q. What is GPS?

10 A. It's a product review where the  
11 different functions come in and where you  
12 make a presentation to EMG. So some of  
13 the slides that we -- that you showed me  
14 before would have, might have been  
15 discussed at a GPS.

16 Q. Okay. And in this point 6 you  
17 are describing a point that Sergey Brin  
18 made at the last GPS, correct?

19 A. I don't recall the e-mail, and I  
20 don't recall the particular GPS. In fact,  
21 I don't recall Sergey talking that much  
22 about video.

23 Q. Well, do you believe you didn't  
24 author this e-mail?

25 A. No, no, no.

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2 News.

3 Q. And what about video, do you  
4 also let content owners choose to opt out  
5 of having their videos included on Google  
6 Video?

7 MR. MANCINI: Objection to form.

8 A. So -- I don't work directly with  
9 Google Video anymore, but on Google Video  
10 it is now a search engine for video, and  
11 anyone can always opt out.

12 Q. Okay.

13 A. So if they don't want to be  
14 searched, they don't have -- they won't.

15 Q. And we will actually skip ahead  
16 in time a little bit from what we have  
17 been talking about, to after Google  
18 acquired YouTube.

19 Can video content owners opt out  
20 of participating, having their content  
21 uploaded to YouTube?

22 MR. MANCINI: Objection to form.

23 A. Well, we have content  
24 partnerships agreements. So they are the  
25 ones who decide which content they want to

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2 Q. Do you know whether other people  
3 in the Google Video team were included in  
4 the decision-making at an earlier date?

5 MR. MANCINI: Objection to form.

6 A. Well, when I went to the, to do  
7 the due diligence, I recall going over  
8 with Susan Wojcicki. So she was on the  
9 Google Video team.

10 Q. But did she learn about the  
11 acquisition plans before you did?

12 A. I don't know.

13 Q. Did it strike you as strange  
14 that you didn't learn about the plans  
15 earlier than that?

16 MR. MANCINI: Objection to form.

17 A. No. Because again, it's --  
18 Google's functionally run, and this was  
19 something that our corporate development  
20 group, it's sort of like the internal M&A  
21 group was driving.

22 Personally, I wish that I had  
23 been included a little bit sooner, but.

24 MR. HOHENGARTEN: Let's mark

25 Exhibit 17, which is G00001-00498728



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2 that you control as a partner.

3 And on those pages, again, if  
4 the partner elects to, because you can  
5 still be a partner and say, I don't want  
6 you to monetize, and a lot of non-profits,  
7 for example, do that. You can also put  
8 ads on the channel partner pages.

9 Q. Okay. But so there's the  
10 partner pages or partner channel pages?

11 A. Yes.

12 Q. The watch pages?

13 A. Yes.

14 Q. And there's also the search  
15 page, search results page and home results  
16 page of YouTube; is that right?

17 A. That's right. That's a good  
18 point, yes.

19 Q. And when the users come looking  
20 for content, whether it's from one of your  
21 content partners or somebody else, if they  
22 go to those pages in the process of  
23 looking for that content, they receive ads  
24 on those pages, correct?

25 MR. MANCINI: I just want to

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2 object, counsel, because the witness  
3 has testified that he's not the most  
4 knowledgeable about this subject. But  
5 I'll allow to you ask the questions.

6 A. If we have sold an ad, they  
7 could see advertising, yes.

8 Q. And when you say -- when this  
9 chart says, "Monetizable, no," next to  
10 "Content uploaded by general users," it's  
11 not saying that somebody who searches for  
12 that content wouldn't see an ad on the  
13 search results page?

14 A. That's right.

15 Q. Now, for the content that is  
16 monetizable, just still looking at  
17 page 351, obviously, according to this  
18 chart, the vast majority of views,  
19 600 million compared to 4 million, are for  
20 videos that are uploaded by general users;  
21 is that right?

22 A. That's right.

23 Q. But those 600 million videos are  
24 not monetizable, correct?

25 MR. MANCINI: Objection, asked