

DEAN GARFIELD - HIGHLY CONFIDENTIAL

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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VIACOM INTERNATIONAL INC., COMEDY:
PARTNERS, COUNTRY MUSIC :
TELEVISION, INC., PARAMOUNT :
PICTURES CORPORATION, and BLACK :
ENTERTAINMENT TELEVISION LLC :
Plaintiffs, :
: :
v. : Case No.
: 07CV-2103
YOUTUBE, INC., YOUTUBE, LLC, :
and GOOGLE, INC., :
: :
Defendants. :
- - - - -x

THE FOOTBALL ASSOCIATION PREMIER :
LEAGUE LIMITED, BOURNE CO., :
et, al., on behalf of themselves :
and all others similarly situated: :
: :
Plaintiffs, :
: Case No.
v. : 07CV-3582
: :
YOUTUBE, INC., YOUTUBE, LLC, :
and GOOGLE, INC., :
: :
Defendants. :
- - - - -x

****HIGHLY CONFIDENTIAL****
Videotaped Deposition of DEAN GARFIELD
Washington, D.C.
Tuesday, November 2, 2009
10:24 a.m.

BY: Okeemah S. Henderson, LSR
JOB NO. 18039

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ALSO PRESENT:

Conway Barker, Videographer
Orit Michiel

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I-N-D-E-X

Deposition of DEAN GARFIELD

November 2, 2006

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1 P-R-O-C-E-E-D-I-N-G-S

2 (10:24 a.m.)

10:23 3 THE VIDEO OPERATOR: This is the
10:23 4 beginning of tape No. 1 in the videotape
10:23 5 deposition of Dean Garfield taken by Mr. Baskin
10:23 6 in the matter of Viacom International
10:23 7 Incorporated, et al versus YouTube,
10:23 8 Incorporated. Case No. 07-CV-2103 and the
10:23 9 Football Association Premier League Limited
10:24 10 Bourne Company, et al. versus YouTube
10:24 11 Incorporated, et al in the United States
10:24 12 District Court for the Southern District of New
10:24 13 York.

10:24 14 This deposition is being held at Jenner &
10:24 15 Block, LLP, 1099 New York Avenue, Northwest
10:24 16 Washington, D.C. on November 2nd, 2009. The
10:24 17 time is approximately 10:24. The Court
10:24 18 Reporter is Okeemah Henderson. The video
10:24 19 camera operator is Conway Barker, both on
10:24 20 behalf of David Feldman Worldwide. Will
10:24 21 counsel please identify yourselves and state
10:24 22 whom you represent.

10:24 23 MR. BASKIN: I am Stuart Baskin of
10:24 24 Shearman & Sterling, and I am counsel for
10:24 25 Viacom in this litigation.

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10:24 1 MR. PLATZER: Luke Platzer of Jenner
10:24 2 & Block, also counsel for Viacom in this
10:24 3 litigation.

10:24 4 MS. MCMILLEN: Lauren McMillen of
10:24 5 Bernstein Litowitz Berger & Grossmann, counsel
10:24 6 for the Football Association Premier League
10:25 7 Limited and other class plaintiffs in this
10:25 8 litigation.

10:25 9 MR. DESANCTIS: Michael DeSanctis of
10:25 10 Jenner & Block with the Viacom plaintiffs.

10:25 11 MR. MCGILL: David McGill from Mayer
10:25 12 Brown, here on behalf of YouTube and Google.

10:25 13 MR. KLAUS: Kelly Klaus from Munger
10:25 14 Tolles & Olsen appearing on behalf of the
10:25 15 witness, and with me is Orit Michiel of the
10:25 16 Motion Picture Association of America.

10:25 17 THE VIDEO OPERATOR: Would you please
10:25 18 swear in the witness.

19 Whereupon,

20 DEAN GARFIELD,
21 called as a witness, having been first duly
22 sworn to tell the truth, the whole truth, and
23 nothing but the truth, was examined and
24 testified as follows:

25

EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. BASKIN:

10:25 Q. Good morning, sir. Could you recite
10:25 your full name for the record?

10:25 A. Certainly. It is Dean, D-E-A-N,
10:25 Christopher Garfield, G-A-R-F-I-E-L-D.

10:25 Q. And which state do you reside in,
10:26 sir?

10:26 A. I reside in Washington, D.C.

10:26 Q. How are you currently employed?

10:26 A. I'm employed by the Information
10:26 Technology Industry Council.

10:26 Q. What is your position with the
10:26 Information Technology Industry Council?

10:26 A. We simply call it ITI. I'm the
10:26 president and CEO.

10:26 Q. And without belaboring, since this
10:26 is not of direct relevance to the suit, can you
10:26 tell us what the ITI does?

10:26 A. ITI is the premiere voice, advocate,
10:26 thought leader for the information
10:26 communications technology sector. We represent
10:26 the major household name brands before global
10:26 policymakers.

10:26 So our member companies include --

1 10:26 actually all of the technology in this room is
2 10:26 made by those companies. So IBM, HP, Dell,
3 10:26 Apple, Microsoft just to name a few. We have
4 10:26 43 members.

5 10:26 Q. How long have you been president and
6 10:27 CEO of ITI?

7 10:27 A. For about eight months.

8 10:27 Q. And prior to that -- strike that.
9 10:27 Can you just tell the ladies and gentlemen of
10 10:27 the jury a little bit about your educational
11 10:27 background and what degrees you hold?

12 10:27 A. I can. How far back do you want me
13 10:27 to go?

14 10:27 Q. I don't think we have to go to
15 10:27 kindergarten. Why don't we start with college.

16 10:27 A. College, I went to Middlebury
17 10:27 college and I received a BA. Post then went to
18 10:27 grad school and law school, so Woodrow Wilson
19 10:27 School at Princeton. I have a masters in
20 10:27 public administration international affairs and
21 10:27 jointly with that went to law school at NYU
22 10:27 where I received my JD.

23 10:27 Q. Just briefly again, can you walk us
24 10:27 through your employment crinology after you
25 10:27 received your educational degrees?

1 10:27 A. Post my law postgraduate degree, I
2 10:28 worked at a firm in New York, Kaye Scholer
3 10:28 Fierman Hays & Handler, worked there for six
4 10:28 and a half years approximately.

5 10:28 Q. That would be a law firm?

6 10:28 A. Yes. Correct. Post working at Kaye
7 10:28 Scholer both in New York and Washington, D.C.,
8 10:28 I worked at the Recording Industry Association
9 10:28 of America representing the major U.S. record
10 10:28 labels.

11 10:28 After that I moved on to working for the
12 10:28 Motion Picture Association of America
13 10:28 representing the major and motion picture
14 10:28 companies and then about nine months ago, left
15 10:28 there to work at ITI.

16 10:28 Q. Are you currently married, sir?

17 10:28 A. Yes, I am.

18 10:28 Q. Do you have any children?

19 10:28 A. Yes, I do. I have two children and
20 10:28 one wife.

21 10:28 Q. You mentioned that prior to working
22 10:28 for the Motion Picture Association, which we'll
23 10:28 get to in a few minutes, you worked for an
24 10:29 organization called the Recording Industry
25 10:29 Association. Did that go by initials also?

1 10:29 A. Yes, it does. It went by and it
2 10:29 still does go by RIAA.

3 10:29 Q. In brief again, what was your
4 10:29 position with the RIAA?

5 10:29 A. I think it changed over time but
6 10:29 essentially I was a litigator and at some
7 10:29 point, I think I was the head litigator or
8 10:29 something like that.

9 10:29 Q. How long did you remain with the RIA
10 10:29 RIAA?

11 10:29 A. Four years.

12 10:29 Q. During the course of this trial, the
13 10:29 jury will see some documents referencing
14 10:29 something called Grokster. Could you in brief
15 10:29 just tell the jury -- do you know what
16 10:29 Grokster, what the reference is a court case
17 10:29 named Grokster?

18 10:29 A. Yes, I do.

19 10:29 Q. Were you involved with that court
20 10:29 case?

21 10:29 A. Yes, I was.

22 10:29 Q. Can you just again, not belaboring
23 10:29 it, for 30 seconds just advise the ladies and
24 10:29 gentlemen of the jury what Grokster is so that
25 10:29 when they hear reference to it they know what

1 10:29 it means?

2 10:29 A. Grokster was a litigation that was

3 10:29 filed jointly by the Recording Industry

4 10:30 Association and the Motion Picture Association

5 10:30 against a company that developed a software

6 10:30 tool that encouraged users to engage in

7 10:30 copyright infringement.

8 10:30 Q. During your time as principal lawyer

9 10:30 for the RIAA, did you have responsibilities

10 10:30 include addressing issues of copyright

11 10:30 infringement and policy?

12 10:30 A. Yes, it did.

13 10:30 Q. Now, you mentioned after your four

14 10:30 years or so at the RIAI (sic) you moved over to

15 10:30 an organization called the Motion Picture

16 10:30 Association, correct?

17 10:30 A. Yes. I worked at the RIAA for about

18 10:30 four years and then moved to MPAA.

19 10:30 Q. MPAA and the acronym stands for

20 10:30 Motion Picture Association of America; is that

21 10:30 correct?

22 10:30 A. Correct.

23 10:30 Q. What companies comprise the MPAA?

24 10:30 A. The MPAA consists of the major U.S.

25 10:31 motion picture companies but they are also the

1 10:31 global leaders in developing and marketing

2 10:31 motion pictures.

3 10:31 Q. I think the jury may be familiar

4 10:31 with some of the names. Can you just recount

5 10:31 for us some of the names of members of the

6 10:31 MPAA?

7 10:31 A. Sure. So our members included

8 10:31 Disney, Sony, Warner Brothers, Universal, and I

9 10:31 suspect that I'm leaving out someone.

10 10:31 Q. Does Century Fox refresh your

11 10:31 recollection?

12 10:31 A. Thank you. Jim Gianapolis

13 10:31 (phonetic) and Peter Turner will be pleased

14 10:31 that I forgot their company, yes, so Fox is

15 10:31 also one of our members. And at some point in

16 10:31 time we had other members but some of those

17 10:31 companies (inaudible).

18 10:31 Q. Would it be fair to summarize it for

19 10:31 the jury that the constituency of the MPAA is

20 10:32 essentially the major film studios that create

21 10:32 movies and many TV shows?

22 10:32 A. Correct.

23 10:32 Q. And by the way, one studio that you

24 10:32 did mention was also Paramount, correct?

25 10:32 A. Yes.

1 10:32 Q. And that one you understand is owned
2 10:32 by my client, Viacom; is that correct?

3 10:32 A. Correct.

4 10:32 Q. What were your responsibilities --

5 10:32 A. That's why I said including just so
6 10:32 I wouldn't offend anyone.

7 10:32 Q. What was your position, sir, at the
8 10:32 MPAA?

9 10:32 A. My role at the MPAA also changed
10 10:32 over time, just as it did at the RIAA. When I
11 10:32 came into the MPAA, I was essentially the head
12 10:32 litigation attorney and then over time it
13 10:32 progressed, and when I left I was an executive
14 10:32 vice president and the chief strategic officer.

15 10:32 So I came in in a legal role. I continued
16 10:33 to have a legal role for much of my career
17 10:33 there but my title changed and I took on
18 10:33 broader responsibilities over time.

19 10:33 Q. Was one of your responsibilities at
20 10:33 the MPAA addressing issue of piracy of movies
21 10:33 and television shows on the internet?

22 10:33 A. Yes, it was.

23 10:33 Q. Now, can you just explain again
24 10:33 briefly, you need not belabor it but for the
25 10:33 ladies and gentlemen of the jury, why the film

1 10:33 studios that comprise the MPAA are concerned
2 10:33 with issues of piracy or legal content on the
3 10:33 internet?

4 10:33 A. Well, the in simplest terms,
5 10:33 creating a movie is a very expensive
6 10:33 investment. When I was at the MPAA, the
7 10:33 average cost for a movie was over \$105 million
8 10:33 and so it was a significant investment made and
9 10:33 certain expectations and plans for recouping
10 10:34 that investment over time through legitimate
11 10:34 channels.

12 10:34 So to the extent that those creative works
13 10:34 were being exploited in nonlegitimate channels,
14 10:34 it would reduce the likelihood of getting a
15 10:34 return on that investment.

16 10:34 Q. If I could direct your attention to
17 10:34 the year 2006, did you personally engage in
18 10:34 discussions with a company called YouTube?

19 10:34 A. Yes, I did. I know that I did in
20 10:34 2006 but the exact timing in 2006 is not
21 10:34 something that I recall.

22 10:34 MR. BASKIN: Now, let me hand you
23 10:34 just as a matter of dating the context. Let me
24 10:35 hand you what I would ask the Court Reporter to
25 10:35 mark as Garfield Exhibit 1.

1 10:35 (Garfield Deposition Exhibit No. 1 was marked
2 10:35 for identification.)

3 10:35 BY MR. BASKIN:

4 10:35 Q. It's a short document, Mr. Garfield.

5 10:35 So just if you take a second if you will and
6 10:35 look at Garfield Exhibit 1.

7 10:35 A. (The witness complies.) Okay.

8 10:35 Q. Now, first, sir, just for the record
9 10:36 can you identify for us and confirm that
10 10:36 Garfield Exhibit 1 consists of a document
11 10:36 reflecting an E-mail chain in which you were a
12 10:36 participant in or around April, 2006?

13 10:36 A. Correct.

14 10:36 Q. Does this document -- does Garfield
15 10:36 Exhibit 1 help to establish in your mind that
16 10:36 you were in discussions with YouTube at least
17 10:36 in and around April, 2006?

18 10:36 A. Yes, it does.

19 10:36 Q. Can you just tell briefly, the
20 10:36 ladies and gentlemen of the jury, what was
21 10:36 generally the topic of your discussions with
22 10:36 YouTube in and around April, 2006?

23 10:36 A. The discussion was about encouraging
24 10:37 YouTube to do two things; deal with content
25 10:37 that we identified on the site that was

1 10:37 copyrighted, infringement content from the
2 10:37 motion picture studios; and two, and relatedly
3 10:37 integrating filtering software that would
4 10:37 address that copyrighted content.

5 10:37 Q. Now, as of April, 2006 did the MPAA
6 10:37 find that a substantial amount of the film
7 10:37 studios copyrighted content was being exhibited
8 10:37 on the YouTube website?

9 10:37 MR. MCGILL: Objection. Leading.

10 10:37 A. In April, 2006 there was a lot of
11 10:37 copyrighted content on the site that was owned
12 10:37 or controlled by the motion picture studios and
13 10:37 that was one of the reasons I reached out the
14 10:37 YouTube.

15 10:37 BY MR. BASKIN:

16 10:37 Q. Now, you made reference two answers
17 10:37 ago to a desire to institute discussions
18 10:38 regarding filtering on the YouTube website. If
19 10:38 you look at Exhibit 1 for a second, you will
20 10:38 see on a couple of places, certainly in the
21 10:38 first on the top E-mail and on the very bottom
22 10:38 E-mail, you make reference to technical
23 10:38 discussions or technical folks, or instituting
24 10:38 technical folks into the dialogue.

25 10:38 Was that a reference to individuals'

10:38 1 knowledgeable of the issue of filtering and
10:38 2 fingerprinting technologies?

10:38 3 A. Correct.

10:38 4 MR. MCGILL: Objection to the
10:38 5 characterization of the document.

10:38 6 A. Correct. As I mentioned, there was
10:38 7 a two-fold purpose to the discussion and one of
10:38 8 the purposes was to talk about integrating
10:38 9 filtering technology software. And so I think
10:38 10 on that very first call, I was the only one
10:38 11 participating while YouTube had other folks and
10:38 12 I wanted to make sure folks from our side who
10:39 13 had the technical expertise were also part of
10:39 14 the discussion.

10:39 15 BY MR. BASKIN:

10:39 16 Q. Now, I think the second E-mail on
10:39 17 Garfield Exhibit 1 references at least three
10:39 18 participants of YouTube. Was one such
10:39 19 participant a man named Chris Maxcy, M-A-X-C-Y?

10:39 20 A. Correct. Yes.

10:39 21 Q. Do you recall what Mr. Maxcy's title
10:39 22 was at YouTube at the time or what his position
10:39 23 was?

10:39 24 A. I don't recall what his title was.
10:39 25 I was introduced to Chris as a result of Chris

10:39 1 wanting to build a stronger relationship with
10:39 2 the Motion Picture Association and
10:39 3 conversations he had with Dan Glickman, so I
10:39 4 followed up with him based on that.

10:39 5 Q. Then there was reference to two
10:39 6 other individuals, a Steven Chen. Do you see
10:39 7 that, sir?

10:39 8 A. Yes, I do.

10:39 9 Q. And a Zahavah Levine?

10:39 10 A. Yes, I do.

10:39 11 Q. Mr. Chen is denominated by Mr. Maxcy
10:39 12 as co-founder and chief technology officer of
10:40 13 YouTube. Was that your understanding in April
10:40 14 of 2006?

10:40 15 A. I don't recall if I had an
10:40 16 understanding in April, 2006.

10:40 17 Q. And Ms. Levine, Zahavah Levine is
10:40 18 identified as general counsel and vice
10:40 19 president of business affairs. Was that your
10:40 20 understanding in that time period?

10:40 21 A. I did have an understanding of
10:40 22 Zahavah's role because I knew Zahavah even
10:40 23 before this conversation.

10:40 24 Q. You knew her prior to her arrival at
10:40 25 YouTube?

10:40 1 A. Yes, I did.

10:40 2 Q. Now, you mentioned a concept which
10:40 3 you referred to as filtering or fingerprinting
10:40 4 and the jury may sometimes here it at copyright
10:40 5 identification tools. Based on your experience
10:40 6 at the RIAA and the MPAA, were you familiar
10:40 7 with many of the filtering technologies that
10:41 8 were available as of the middle of 2006?

10:41 9 A. Yes, I was.

10:41 10 Q. Was there one such company that
10:41 11 employed or deployed filtering technology
10:41 12 called Audible Magic?

10:41 13 A. Yes.

10:41 14 Q. Were you in 2006 familiar with
10:41 15 Audible Magic technology?

10:41 16 A. Very.

10:41 17 Q. In laymens term and briefly, can you
10:41 18 explain to the ladies and gentlemen of the jury
10:41 19 what these filtering and fingerprinting
10:41 20 technologies what they do? Assuming what they
10:41 21 did in 2006 and I'll just add if it's changed a
10:41 22 lot since then, then you can tell us. But
10:41 23 going back to 2006, can you explain to the
10:41 24 ladies and gentlemen of the jury what these
10:41 25 filtering technologies or fingerprinting

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10:41 1 technologies did?

10:41 2 A. Actually, fingerprinting
10:41 3 technologies is an apt way to describe it
10:41 4 because they work in a very similar fashion to
10:42 5 a human fingerprint. So just as can recognize
10:42 6 a human fingerprint, the way they would work
10:42 7 is they would take a digital stamp of a file,
10:42 8 in this context an audio-visual file, capture
10:42 9 that visual, that fingerprint and then in
10:42 10 subsequent occasions be able to tie the
10:42 11 fingerprint to the particular audio-visual
10:42 12 content.

10:42 13 So it's a way of identifying a piece of
10:42 14 content beyond just the name of the movie or
10:42 15 the song.

10:42 16 Q. I assume companies like Audible
10:42 17 Magic use computers and technology to do these
10:42 18 matches?

10:42 19 MR. MCGILL: Objection to form.

10:42 20 A. They do use computer and other
10:42 21 technologies in order to be able to align a
10:42 22 particular audio-visual work with its digital
10:43 23 fingerprint.

10:43 24 BY MR. BASKIN:

10:43 25 Q. Now, in and around 2006, had the

10:43 1 MPAA assessed the effectiveness of filtering on
10:43 2 fingerprint technologies in protecting the
10:43 3 movie industry's intellectual properties on
10:43 4 internet websites that deploy those
10:43 5 technologies?

10:43 6 MR. MCGILL: Objection to form.
10:43 7 Vague.

10:43 8 A. The MPAA did conduct an analysis. I
10:43 9 don't recall the exact timing of that analysis
10:43 10 and whether it were concluded in April of 2008.
10:43 11 I'm sorry 2006.

10:43 12 BY MR. BASKIN:

10:43 13 Q. In 2006 and for that matter into
10:43 14 2007, do you know what was the MPAA's
10:43 15 assessment of the effectiveness of
10:43 16 fingerprinting and filtering technologies in
10:43 17 protecting the movie industry's intellectual
10:44 18 property on websites that deploy those
10:44 19 technologies?

10:44 20 MR. KLAUS: If I can just interpose
10:44 21 it's not an objection but in the course of
10:44 22 answering the question, Mr. Garfield, if I
10:44 23 could just caution you to confine your
10:44 24 responses to matters that were publically
10:44 25 discussed or discussed with others and not to

10:44 1 reveal internal communications that may be work
10:44 2 product.

10:44 3 MR. BASKIN: I will strike the
10:44 4 question. That's a fair reservation on the
10:44 5 part of your counsel. Let me phrase it this
10:44 6 way:

10:44 7 In 2006 and 2007, from time to time you
10:44 8 discussed with the press the MPAA's assessment
10:44 9 of effectiveness of fingerprint technologies;
10:44 10 isn't that right sir?

10:44 11 MR. MCGILL: Objection. Leading.

10:44 12 A. I do have a recollection of speaking
10:44 13 to the press and generally publically about
10:44 14 fingerprinting technologies at some points in
10:44 15 2006. Yes.

10:44 16 BY MR. BASKIN:

10:44 17 Q. And again without belaboring the
10:45 18 deposition, can you tell the ladies and
10:45 19 gentlemen of the jury what you remember were
10:45 20 the positions you were expressing to the press
10:45 21 in and around that time period regarding the
10:45 22 effectiveness of these fingerprinting and
10:45 23 filtering technologies if websites chose to
10:45 24 deploy them?

10:45 25 MR. MCGILL: Objection. Vague.

10:45 1 A. In simplest terms, the technologies
10:45 2 were highly viable and were worthy of further
10:45 3 investment and integration into audio-visual
10:45 4 sites that have an interest in discerning
10:45 5 between content that's copyrighted and content
10:45 6 that's not.

10:45 7 BY MR. BASKIN:

10:45 8 Q. Now, let's return if we can to your
10:45 9 discussions with YouTube in 2006, and at first,
10:45 10 I want to focus on the time period before its
10:45 11 acquisition by Google. Do you have -- well,
10:45 12 let me show you some documents, maybe that
10:45 13 would help you differentiate between those two
10:46 14 time intervals. But in your discussions with
10:46 15 YouTube in 2006, you said you were you've
10:46 16 already testified you were tempting to discuss
10:46 17 with them their deploying filtering and
10:46 18 fingerprinting on their website; is that
10:46 19 correct?

10:46 20 MR. MCGILL: Objection to the
10:46 21 characterization.

10:46 22 A. It was one of the things that we
10:46 23 were talking about. Correct.

10:46 24 BY MR. BASKIN:

10:46 25 Q. And let me show you if I can just so

10:46 1 we can date it. Let me show you a document
10:46 2 that we'll mark as Garfield Exhibit 2, mostly
10:47 3 for the purpose of dating your discussions. I
10:47 4 understand your memory is not crisp on the
10:47 5 dates. Is that a fair way of characterizing
10:47 6 it?

10:47 7 A. That's a fair characterization. I
10:47 8 have a firm recollection of much of our
10:47 9 conversations but the exact dates I don't have
10:47 10 a strong grasp on.

10:47 11 MR. BASKIN: Let me hand you if I can
10:47 12 what we'll mark as Garfield No. 2.

10:47 13 (Garfield Deposition Exhibit No. 2 was marked
10:47 14 for identification.)

10:47 15 BY MR. BASKIN:

10:48 16 Q. Sir, first can you identify for us
10:48 17 Garfield Exhibit 2 as consisting of again an
10:48 18 E-mail chain of which you were a participant?

10:48 19 A. Yes, I can.

10:49 20 Q. Now, using Garfield Exhibit 2 as
10:49 21 really as a dating mechanism, is it accurate
10:49 22 that your discussions with YouTube regarding
10:49 23 instituting, filtering or fingerprinting on
10:49 24 their network, on their website persisted
10:49 25 certainly into August, 2006?

10:49 1 A. Yes, it did.

10:49 2 Q. Do you recall during this time
10:49 3 period whether the MPAA was discussing with
10:49 4 YouTube particular fingerprinting and filtering
10:49 5 vendors that YouTube might deploy on their
10:49 6 website to protect intellectual property of
10:49 7 movie studios?

10:50 8 A. My recollection is at some point in
10:50 9 these conversations we talked about a range of
10:50 10 technology companies that were competing in the
10:50 11 content recognition, fingerprinting phase, and
10:50 12 so yes, I don't recall discussing one company
10:50 13 with them. I recall talking to them about a
10:50 14 range of companies.

10:50 15 Q. And I'll show you some documents in
10:50 16 a few minutes that might help refresh your
10:50 17 memory but do you recall even absent some
10:50 18 documents whether one such company was Audible
10:50 19 Magic that you were discussing with them?

10:50 20 A. Yes, I do recall that.

10:50 21 Q. Let me show you and just so I
10:50 22 understand the protocol in the case.

10:50 23 David, I'm going to be showing him a
10:50 24 Google document now, which happens to be an
10:50 25 E-mail chain with him but because as I

10:50 1 understand that that's even though it's
10:50 2 denominated highly confidential for purpose of
10:51 3 the deposition, the stipulation allows us to
10:51 4 show witnesses documents, but I want to show it
10:51 5 to you to make sure you're comfortable in
10:51 6 showing it to him before I do. Okay?

10:51 7 MR. MCGILL: Sure. I appreciate
10:51 8 that.

10:51 9 MR. BASKIN: So why don't we mark as
10:51 10 Garfield Exhibit 3 the document in my hand.
10:51 11 I'm going to give YouTube's counsel a copy. I
10:51 12 will not give out any other copies until -- I
10:51 13 might give one to co-counsel.

10:51 14 MR. MCGILL: You can go ahead and
10:51 15 mark it. We have no objection.

10:51 16 (Garfield Deposition Exhibit No. 3 was marked
10:51 17 for identification.)

10:51 18 BY MR. BASKIN:

10:52 19 Q. Does Garfield Exhibit 3 help you
10:52 20 refresh your recollection when you have lunch?
10:52 21 But beyond that, can you identify Garfield
10:52 22 Exhibit 3, although it is not a document from
10:52 23 the MPAA, can you identify it again as a
10:52 24 document consisting of an E-mail chain in which
10:52 25 you are a participant in and around September,

10:53 1 2006?

10:53 2 A. Yes.

10:53 3 Q. And based on that, can you confirm
10:53 4 that your discussions with YouTube regarding
10:53 5 instituting possibly filtering systems
10:53 6 continued into September, 2006?

10:53 7 A. Yes, I can.

10:53 8 Q. Now, if you look at the very last
10:53 9 E-mail on the chain, you'll see that Mr. Maxcy,
10:53 10 Chris Maxcy, wrote to you on and about
10:53 11 September 25th. "We are very close to getting
10:53 12 our fingerprinting systems licensed and wanted
10:53 13 to take you up on your offer to do some testing
10:53 14 of your members." Do you see that?

10:53 15 A. It says testing for your members. I
10:53 16 don't know if that makes a difference but.

10:53 17 Q. You're right. Thank you for that.
10:53 18 But the question that I have for you, as you
10:53 19 sit here today, do you recall which
10:53 20 fingerprinting system Mr. Maxcy advised you
10:53 21 they were very close to licensing as of the end
10:54 22 of September, 2006?

10:54 23 MR. MCGILL: Objection to the
10:54 24 characterization of the document.

10:54 25 A. I don't recall.

10:54 1 BY MR. BASKIN:

10:54 2 Q. Now, I could represent to you that
10:54 3 YouTube, the acquisition of YouTube by Google
10:54 4 for approximately \$1.7 billion was announced in
10:54 5 early October, 2006 and my question for you is,
10:54 6 sir, am I correct that this testing described
10:54 7 by Mr. Maxcy on Garfield Exhibit 3 did not
10:54 8 occur as of October, 2006; is that correct,
10:54 9 sir?

10:54 10 MR. MCGILL: Objection. Lacks
10:54 11 foundation.

10:54 12 A. We did not engage in a testing with
10:55 13 them as of October, 2006.

10:55 14 BY MR. BASKIN:

10:55 15 Q. So just so the record is clear, for
10:55 16 the ladies and gentlemen of the jury, in the
10:55 17 six or seven months between April, 2006, which
10:55 18 was I believe the date on Garfield Exhibit 1
10:55 19 and October, 2006, did YouTube ever agree to
10:55 20 use available filtering technologies to protect
10:55 21 the film industry's content on its website?

10:55 22 MR. MCGILL: Objection to form. Also
10:55 23 lacks foundation.

10:55 24 A. I'm sorry. Could you read the
10:55 25 question back?

10:55 1 BY MR. BASKIN:

10:55 2 Q. In the six months between the time
10:55 3 you started the negotiations in April until the
10:55 4 acquisition by Google in October, and we're
10:55 5 going get to what happened post acquisition,
10:55 6 would it be fair to say that YouTube never
10:56 7 agreed to use available fingerprinting
10:56 8 technologies on its website to protect the
10:56 9 MPAA's members in intellectual property?

10:56 10 MR. MCGILL: Same objections.

10:56 11 A. To the best of my knowledge they had
10:56 12 not agreed to do that.

10:56 13 BY MR. BASKIN:

10:56 14 Q. Now, in fact in the course of your
10:56 15 negotiations with YouTube prior to the
10:56 16 acquisition by Google, did you have a
10:56 17 conversation with YouTube executives on the
10:56 18 topic of why they would not filter?

10:56 19 MR. MCGILL: Objection. Lacks
10:56 20 foundation.

10:56 21 A. We had multiple conversations about
10:56 22 that topic. Yes.

10:56 23 BY MR. BASKIN:

10:56 24 Q. And do you recall prior to October
10:56 25 2006 -- strike that. Can you describe to the

10:55 1 BY MR. BASKIN:

10:55 2 Q. In the six months between the time
10:55 3 you started the negotiations in April until the
10:55 4 acquisition by Google in October, and we're
10:55 5 going get to what happened post acquisition,
10:55 6 would it be fair to say that YouTube never
10:56 7 agreed to use available fingerprinting
10:56 8 technologies on its website to protect the
10:56 9 MPAA's members in intellectual property?

10:56 10 MR. MCGILL: Same objections.

10:56 11 A. To the best of my knowledge they had
10:56 12 not agreed to do that.

10:56 13 BY MR. BASKIN:

10:56 14 Q. Now, in fact in the course of your
10:56 15 negotiations with YouTube prior to the
10:56 16 acquisition by Google, did you have a
10:56 17 conversation with YouTube executives on the
10:56 18 topic of why they would not filter?

10:56 19 MR. MCGILL: Objection. Lacks
10:56 20 foundation.

10:56 21 A. We had multiple conversations about
10:56 22 that topic. Yes.

10:56 23 BY MR. BASKIN:

10:56 24 Q. And do you recall prior to October
10:56 25 2006 -- strike that. Can you describe to the

10:56 1 ladies and gentlemen of the jury as best you
10:57 2 can recall what reason you were given by
10:57 3 YouTube executives or executive, and we'll hash
10:57 4 out who that was in a second, as to why they
10:57 5 were not filtering in and around in 2006.

10:57 6 MR. MCGILL: Again objection. Lacks
10:57 7 foundation.

10:57 8 A. So just if I can disaggregate that a
10:57 9 bit. There were ups and flows in the
10:57 10 conversation with YouTube where they at various
10:57 11 points in time over that six-month period, I
10:57 12 think it was expressed an interest but never
10:57 13 came to a firm agreement on integrating any
10:57 14 content recognition or fingerprinting
10:57 15 technologies.

10:57 16 At some point in those discussions when
10:57 17 asked what's taking so long and why hasn't this
10:57 18 progressed to an actual agreement, there were a
10:58 19 range of reasons given including the fact that
10:58 20 the copyrighted content on YouTube was a major
10:58 21 lure for their users. I don't remember the
10:58 22 exact date of that conversation, but I firmly
10:58 23 recall that conversation and that being one of
10:58 24 the reasons offered.

10:58 25 I do also recall that there were

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10:58 1 additional reasons. I don't recall what all of
10:58 2 those other reasons were but that one stood out
10:58 3 in my mind.

10:58 4 BY MR. BASKIN:

10:58 5 Q. And who communicated to you as best
10:58 6 you can recall that a reason for not signing up
10:58 7 with filtering was because copyrighted content
10:58 8 on YouTube website was serving as a lure for
10:58 9 the users?

10:58 10 MR. MCGILL: Objection.
10:58 11 Mischaracterization.

10:58 12 A. My conversations with YouTube often
10:58 13 included multiple people, so I don't recall
10:58 14 specifically. I do recall that in that
10:58 15 conversation I think Zahavah Levine and Steve
10:59 16 Chen were a part of that discussion. And I
10:59 17 also recall that there was a third person who
10:59 18 was a technology, someone with a technology
10:59 19 expertise.

10:59 20 I don't recall which person specifically
10:59 21 said that but I do recall very strongly that
10:59 22 that was one of the reasons offered. It stood
10:59 23 out in my mind.

10:59 24 BY MR. BASKIN:

10:59 25 Q. Now, do you recall whether among the

10:59 1 other reasons that you mentioned being recited
10:59 2 to you was the notion that having copyrighted
10:59 3 content on their website provided YouTube with
11:00 4 a leverage in its negotiations with the movie
11:00 5 studios?

11:00 6 MR. MCGILL: Objection. Leading.

11:00 7 A. I don't recall.

11:00 8 BY MR. BASKIN:

11:00 9 Q. Now, after Google's acquisition of
11:00 10 YouTube, again I represent to you it happened
11:00 11 in October, 2006, it was announced at least I
11:00 12 think, the merger was consummated thereafter
11:00 13 but it was announced in early October, 2006.
11:00 14 Did you engage in discussions with
11:00 15 YouTube/Google on the topic of instituting,
11:00 16 filtering or fingerprinting on the YouTube
11:00 17 website?

11:00 18 A. Close to the acquisition or the
11:00 19 announcement yes. Absolutely.

11:00 20 MR. BASKIN: Just so we can date
11:00 21 things and put a little flesh on the bones, let
11:00 22 me show you what we will mark as Garfield
11:01 23 Exhibit 4.

11:01 24 (Garfield Deposition Exhibit No. 4 was marked
11:01 25 for identification.)

11:03 1 A. Okay.

11:03 2 BY MR. BASKIN:

11:03 3 Q. Mr. Garfield, first once again can
11:03 4 you identify for us Garfield Exhibit 4 as
11:03 5 consisting of an E-mail and attachment or an
11:03 6 adjunct of an E-mail that was sent by you to
11:03 7 Mr. Maxcy at YouTube in and around October 12,
11:03 8 2006?

11:03 9 A. Yes, I can.

11:03 10 Q. Now, by the way, did Mr. Maxcy ever
11:04 11 tell you how it felt to be rich?

11:04 12 A. I don't recall. I recall that we
11:04 13 had some phone conversation but it was largely
11:04 14 in jest.

11:04 15 Q. Now, you will see attached at the
11:04 16 bottom of Garfield Exhibit 4 there is something
11:04 17 called denominated as a proposal through
11:04 18 October 13, 2006 copyright identification and
11:04 19 filtering pilot test. Do you see that, sir?

11:04 20 A. I do.

11:04 21 Q. Was this a test and a proposal that
11:04 22 you were proffering to Google and YouTube in or
11:04 23 around October, 2006?

11:04 24 A. Yes.

11:04 25 Q. Can you in your own words maybe in

11:04 1 laymen's language explain to the ladies and
11:04 2 gentlemen of the jury what were the basic
11:05 3 content of this proposal that you proffered to
11:05 4 YouTube and Google in and around October, 2006?

11:05 5 MR. MCGILL: Objection. The document
11:05 6 speaks for itself?

11:05 7 A. As I mentioned before, the way
11:05 8 content recognition technologies generally work
11:05 9 at a high level is just like fingerprinting.
11:05 10 So with the fingerprint, you take a
11:05 11 fingerprint, that fingerprint is connected with
11:05 12 a particular person.

11:05 13 In simplified terms the same content works
11:05 14 with consent recognition which is take a
11:05 15 digital fingerprint of a file and that's
11:05 16 associated with that file, that has a name.
11:05 17 And the idea was integrating that same, those
11:05 18 same technologies into the publication process
11:05 19 at YouTube/Google.

11:05 20 So as we understood in advance of a file
11:05 21 making it up on the site after a user submits
11:05 22 it, YouTube engaged in certain processes and we
11:06 23 were suggesting simply integrating content
11:06 24 recognition into those processes as a way of
11:06 25 recognizing and then removing unless they were

11:06 1 otherwise licensed, copyrighted motion picture
11:06 2 content.

11:06 3 Q. Now, if I could direct your
11:06 4 attention in particular to the second page of
11:06 5 Garfield Exhibit 4, there's reference to MPAA
11:06 6 test. Do you see that, sir?

11:06 7 A. Correct.

11:06 8 Q. And in particular the proposed test
11:06 9 contemplated using Audible Magic's music
11:06 10 filtering service in the test. Had you learned
11:06 11 by then that that was the fingerprinting
11:06 12 technology that Google and YouTube were
11:06 13 instituting or had a license institute on the
11:07 14 site?

11:07 15 MR. MCGILL: Objection.
11:07 16 Mischaracterization of the document.

11:07 17 A. I did learn at some point in time
11:07 18 that Audible Magic and YouTube had a business
11:07 19 relationship and that YouTube was working with
11:07 20 Audible Magic. I don't recall the exact date
11:07 21 and this document doesn't help me to recall.

11:07 22 BY MR. BASKIN:

11:07 23 Q. Do you recall, it's not in the
11:07 24 document, maybe you have an independent
11:07 25 recollection, do you recall approximately the

11:06 1 otherwise licensed, copyrighted motion picture
11:06 2 content.

11:06 3 Q. Now, if I could direct your
11:06 4 attention in particular to the second page of
11:06 5 Garfield Exhibit 4, there's reference to MPAA
11:06 6 test. Do you see that, sir?

11:06 7 A. Correct.

11:06 8 Q. And in particular the proposed test
11:06 9 contemplated using Audible Magic's music
11:06 10 filtering service in the test. Had you learned
11:06 11 by then that that was the fingerprinting
11:06 12 technology that Google and YouTube were
11:06 13 instituting or had a license institute on the
11:07 14 site?

11:07 15 MR. MCGILL: Objection.
11:07 16 Mischaracterization of the document.

11:07 17 A. I did learn at some point in time
11:07 18 that Audible Magic and YouTube had a business
11:07 19 relationship and that YouTube was working with
11:07 20 Audible Magic. I don't recall the exact date
11:07 21 and this document doesn't help me to recall.

11:07 22 BY MR. BASKIN:

11:07 23 Q. Do you recall, it's not in the
11:07 24 document, maybe you have an independent
11:07 25 recollection, do you recall approximately the

11:07 1 cost of engaging in this test what it would
11:07 2 have cost YouTube and Google to use Audible
11:07 3 Magic's service for purposes of this test?

11:07 4 MR. MCGILL: Objection. Calls for
11:07 5 speculation.

11:07 6 A. I don't recall the call structure
11:07 7 for Audible Magic. I knew it at one point but
11:07 8 I don't recall what it was, but my recollection
11:07 9 was at some point we spoke to YouTube/Google
11:08 10 about us deferring the cost.

11:08 11 In fact in the memo one of the things that
11:08 12 it points out is minimizing the out-of-pocket
11:08 13 expense. So I know that I was always mindful
11:08 14 of not just with YouTube but with all of our
11:08 15 and my overtures to use a generated sites like
11:08 16 YouTube was to make sure that whatever we
11:08 17 propose were dealing with copyright
11:08 18 infringement was cost efficient for the site,
11:08 19 if you will. So not adding a significant, new
11:08 20 expense to their operating cost and that was
11:08 21 the same in this context with YouTube.

11:08 22 Q. And I'm going to show you in a
11:09 23 second a second iteration from this proposal
11:09 24 from about a month later. Do you recall
11:09 25 whether your offer to have the MPAA defray the

11:16 1 BY MR. BASKIN:

11:16 2 Q. Nothing further except for one line
11:16 3 in the document. If you turn in the middle of
11:17 4 the first page you will see that Mr. Kelly
11:17 5 Liang wrote, "We look forward to launching a
11:17 6 content filtering pilot with the MPAA some time
11:17 7 towards the end of the year." Do you see that,
11:17 8 Mr. Garfield?

11:17 9 MR. MCGILL: Objection. Document
11:17 10 speaks for itself.

11:17 11 A. Yes, I do see that.

11:17 12 BY MR. BASKIN:

11:17 13 Q. And do you remember who Mr. Liang
11:17 14 was at this point in time? I think he was
11:17 15 introduced in an earlier E-mail?

11:17 16 A. I do recall. My recollection was
11:17 17 that Chris transitioned some of the
11:17 18 conversation and his involvement to Kelly who
11:17 19 in addition to I think having some business
11:17 20 role also had some technical expertise and so
11:17 21 there were other folks from Google/YouTube who
11:17 22 continued to be a part of the conversation but
11:17 23 Kelly helped to drive a lot of it over this
11:18 24 ladder part of the year.

11:18 25 MR. BASKIN: Now, in that period, I'd

11:18 1 like to show you next what we will mark as
11:18 2 Garfield Exhibit 7.

11:18 3 (Garfield Deposition Exhibit No. 7 was marked
11:20 4 for identification.)

11:20 5 A. I traveled a lot when I worked at
11:20 6 the MPAA, that's clear from these E-mails. So
11:20 7 I'm ready. I have reviewed it.

11:20 8 MR. BASKIN: You mean you physically
11:20 9 traveled to --

11:20 10 A. Yes. Every evening it says I'm on
11:20 11 the road or I'm traveling here or traveling
11:20 12 there.

11:20 13 BY MR. BASKIN:

11:20 14 Q. First, can you identify for us
11:20 15 Garfield Exhibit 7 as an E-mail and
11:20 16 accompanying proposal that you E-mailed to
11:21 17 Kelly Liang in and around November 8, 2006?

11:21 18 A. Yes.

11:21 19 Q. Now, based on the E-mail paragraph
11:21 20 beginning Hi Kelly, it makes reference to "I am
11:21 21 attaching below a revised proposal based on our
11:21 22 last discussion as well as the RFI we
11:21 23 discussed." Do you see that, sir?

11:21 24 A. I do.

11:21 25 Q. Can you just explain, first of all

11:21 1 to the ladies and gentlemen of the jury, what
11:21 2 the reference to RFI is?

11:21 3 A. The reference to RFI is a reference
11:21 4 to a request for information and I don't know
11:21 5 if that's an apt term, it's a term that we used
11:21 6 at the time. It was really a request for
11:21 7 proposals in around that time the MPAA
11:22 8 sponsored and ran a request for proposals
11:22 9 around content recognition technologies.

11:22 10 Q. And as you sit here now, other than
11:22 11 the reference in that paragraph do you recall
11:22 12 the proposal dated November 9, 2006 was a
11:22 13 result of your discussions with Mr. Liang?

11:22 14 A. Yes. There were changes in the
11:22 15 document that reflect our conversation and some
11:22 16 of those changes are reflected in the end of
11:22 17 the document.

11:22 18 Q. For example, if you turn to page
11:22 19 that's Bates, the second page of the document,
11:22 20 it appears that the test period from the first
11:22 21 proposal to the second has grown from 30 to 45
11:22 22 days. Is that one of the changes that you were
11:22 23 just referring?

11:22 24 A. Yes, it is, as well as coming up
11:22 25 with Key Metrics, which I recall that YouTube

11:23 1 and Google were interested in and we are were
11:23 2 as well, so it wasn't a huge deal to agree
11:23 3 that's something that should be included.

11:23 4 Q. Can you tell again the ladies and
11:23 5 gentlemen of the jury what you mean by Key
11:23 6 Metrics, what that phrase refers to?

11:23 7 A. It was an attempt to have clarity
11:23 8 going into the pilot and how we would evaluate
11:23 9 whether the tests worked and were successful,
11:23 10 and so defining the measurements up front would
11:23 11 prevent misunderstandings midway or after the
11:23 12 pilot.

11:23 13 Q. Now, there is a reference under test
11:23 14 parameters one of the metrics was number
11:23 15 fingerprints generated from manual review
11:23 16 (blacklist and white list). Do you see that?

11:24 17 A. I do.

11:24 18 Q. The reference to blacklist or white
11:24 19 list was also found in a couple of bullet
11:24 20 points above that you'll see as well. Can you
11:24 21 explain to the ladies and gentlemen of the jury
11:24 22 what was meant by blacklist and white list?

11:24 23 MR. MCGILL: Objection. Calls for
11:24 24 speculation.

11:24 25 A. I was the one who was largely

11:24 1 drafting this document, so I can tell you how I
11:24 2 was using the terminology. So there I guess
11:24 3 there are multiple ways but two popular ways of
11:24 4 dealing with recognizing content and then
11:24 5 filtering it in or out. So the filtering
11:24 6 process is essentially like a strainer and so
11:24 7 you have content going through the strainer;
11:24 8 some things make it through the strainer and
11:24 9 some things end up being caught in the
11:25 10 strainer.

11:25 11 If you take a blacklist approach, then you
11:25 12 identify a list of stuff that should be
11:25 13 excluded out and that should be caught in the
11:25 14 strainer. If you take a white list approach,
11:25 15 you create a list of stuff that should make it
11:25 16 true as opposed to a list that should be kept
11:25 17 out. That's the blacklist versus white list.
11:25 18 Was that clear?

11:25 19 Q. Well, we're going to go into it a
11:25 20 little bit more but it was certainly a good
11:25 21 first articulation. So let's take it a little
11:25 22 bit further. If I understand your answer, you
11:25 23 were saying that the blacklist would consist of
11:25 24 fingerprints of videos which the studios would
11:25 25 disapprove for uploading and hence would be

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11:25 1 captured by the strainer; is that correct, sir?

11:25 2 A. Correct.

11:25 3 Q. And by contrast, the white list
11:25 4 would consist of fingerprints of videos which
11:26 5 the studios authorized or approved for
11:26 6 uploading and hence, they would pass through
11:26 7 the strainer; is that correct?

11:26 8 A. Correct.

11:26 9 Q. Why might a studio choose to have a
11:26 10 white list, have it placed on a white list --
11:26 11 strike that. Why might a studio choose to have
11:26 12 placed on a white list videos that were
11:26 13 authorized to be uploaded on the website?

11:26 14 A. Well, I can just tell you what I
11:26 15 knew based on my using the language which is
11:26 16 that there were, it was simply a recognition of
11:26 17 fact that the studios were authorizing and
11:27 18 doing deals with sites like YouTube, Google
11:27 19 where they would authorize certain content to
11:27 20 be used.

11:27 21 So in order for this to be effective so as
11:27 22 not to train out or eliminate content that the
11:27 23 studios actually wanted to make available on
11:27 24 any of these sites, we would have that approach
11:27 25 of having a white list.

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11:27 1 Q. So to sort of sum up for the jury,
11:27 2 the second proposal after your discussions with
11:27 3 Mr. Liang contemplated that this fingerprinting
11:27 4 and filtering technology would be used to
11:27 5 distinguish between videos that were uploaded
11:27 6 with authorization and videos that should be
11:27 7 blocked because they were uploaded without
11:27 8 authorization; is that correct?

11:27 9 MR. MCGILL: Objection to the
11:27 10 characterization and the leading nature.

11:27 11 A. I'm sorry. I just misheard you.
11:27 12 Could you just say it again? I just want to
11:28 13 make sure I heard you properly?

11:28 14 BY MR. BASKIN:

11:28 15 Q. This proposal as of November, 2006
11:28 16 contemplated using fingerprinting and filtering
11:28 17 technology to distinguish between videos that
11:28 18 were being uploaded with the permission of the
11:28 19 studios versus videos that were being uploaded
11:28 20 without authorization and permission?

11:28 21 MR. MCGILL: Same objection.

11:28 22 A. Yes. Correct. That was the
11:28 23 contemplation. Just one thing on Kelly Liang.
11:28 24 We've been saying mister. I don't recall if
11:28 25 Kelly is a man or a woman. Sorry.

11:37 1 pilot and their filtering processes would be
11:37 2 used for their business partners and those who
11:37 3 established a licensing relationship with
11:37 4 Google/YouTube but not with the studios
11:37 5 generally.

11:37 6 BY MR. BASKIN:

11:38 7 Q. The jury may not understand what you
11:38 8 mean or what they meant by the fact that the
11:38 9 technology, the filtering technology would be
11:38 10 reserved for their business or licensing
11:38 11 partners. Can you explain to the ladies and
11:38 12 gentlemen of the jury what that means, sir?
11:38 13 What was meant by licensing and business
11:38 14 partners?

11:38 15 A. The way I interpreted it was we were
11:38 16 having a conversation earlier about the white
11:38 17 list and the blacklist and filtering and
11:38 18 filtering out. The studios developed, marketed
11:38 19 movies, television shows, they then make a
11:38 20 decision on partners with whom they're going to
11:38 21 exploit those copyrighted works, so market and
11:38 22 distribute those copyrighted works.

11:39 23 So Google essentially conveyed that they
11:39 24 would work on getting authorization from the
11:39 25 studios and licenses from the studios and

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11:39 1 others and those who would license, they would
11:39 2 then in the context of that licensing
11:39 3 arrangement work in integrate filtering. But
11:39 4 for those companies who were not and did not
11:39 5 develop a licensing arrangement with Google,
11:39 6 they weren't going to be doing this sort of a
11:39 7 pilot initiative or filtering.

11:39 8 MR. BASKIN: I think we have to break
11:39 9 for the tape. Shall we break for the tape now?

11:39 10 THE VIDEO OPERATOR: This is the end
11:39 11 of tape 1. Off the record at 11:39.

11:49 12 This is the beginning of tape 2 in the
11:49 13 deposition of Mr. Garfield. On the record at
11:49 14 11:49.

11:49 15 BY MR. BASKIN:

11:50 16 Q. Sir, again to help you with the
11:50 17 dates a little bit. Let me show you what we
11:50 18 will mark as Garfield Exhibit 10.

11:50 19 (Garfield Deposition Exhibit No. 10 was marked
11:51 20 for identification.)

11:51 21 A. Okay. I have read it.

11:51 22 BY MR. BASKIN:

11:51 23 Q. Sir, first, again can you identify
11:51 24 for us Garfield Exhibit 10 as consisting of an
11:51 25 E-mail chain in which you were a participant

1 12:11 date?

2 12:11 A. Just to be clear, I left the MPAA in
3 12:11 at the end of 2008, so it was about a year, a
4 12:11 little over a year after the case was filed I
5 12:11 was gone. So we talked about it intermittently
6 12:11 but it wasn't a constant topic of conversation
7 12:11 and the MPAA wasn't involved in the litigation,
8 12:11 so there wasn't a reason for me to talk about
9 12:11 it a lot or frequently.

10 12:11 Q. I take it the reason that you have
11 12:11 spoken with him on occasion about it was
12 12:11 because Paramount pictures was one of the
13 12:11 member studios of the MPAA; is that correct?

14 12:11 A. Correct. Correct.

15 12:11 Q. And I think we established this
16 12:11 already, Paramount is owned by Viacom?

17 12:11 A. Correct.

18 12:11 Q. I think you testified earlier that
19 12:11 your position at the MPAA was executive vice
20 12:11 president but did you also hold the title of
21 12:11 chief strategic officer?

22 12:11 A. Yes, I did.

23 12:11 Q. And when did you get that title if
24 12:12 you can recall?

25 12:12 A. My recollection was that it was

1 12:12 late -- I would like to say it was late 2005

2 12:12 but I really don't recall. I'm sorry.

3 12:12 Q. Now, putting aside the specific

4 12:12 issue of this litigation I take it that in your

5 12:12 capacity as chief strategic officer for the

6 12:12 MPAA you were in regular communication with

7 12:12 Viacom about copyright enforcement issues; is

8 12:12 that fair to say?

9 12:12 A. Yes. That's fair to say.

10 12:12 Q. And what are some of the topics that

11 12:12 you would discuss within that overall framework

12 12:12 with Viacom?

13 12:12 MR. KLAUS: I would just caution you

14 12:12 that in the course of your communications with

15 12:12 Viacom, to the extent those reflect privileged

16 12:12 communications you should not reveal them and

17 12:12 if you have a question about how far down from

18 12:13 the very general topic of copyright enforcement

19 12:13 do some specific topics go, that's something we

20 12:13 can step outside and try to disentangle.

21 12:13 MR. MCGILL: Just to make sure the

22 12:13 record is clear, your position is that any

23 12:13 privileged information that was related to

24 12:13 Viacom from the MPAA would retain its

25 12:13 privileged nature?