

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 HEATHER GILLETTE

SAN FRANCISCO, CALIFORNIA

TUESDAY, AUGUST 12, 2008

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR

CSR LICENSE NO. 9830

JOB NO. 15481

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GILLETTE

AUGUST 12, 2008

9:14 a.m.

VIDEOTAPED DEPOSITION OF HEATHER GILLETTE,
held at the offices of SHEARMAN & STERLING,
525 Market Street, San Francisco, California,
pursuant to notice, before ANDREA M. IGNACIO
HOWARD, CLR, RPR, CSR License No. 9830.

1 GILLETTE

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18 FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and
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20 MAYER BROWN

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GILLETTE

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

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GILLETTE

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2 10:12:32 Q Okay. Some other basic ground rules that
3 10:12:36 lawyers typically say for witnesses who haven't been
4 10:12:38 deposed before which might be useful, there's a
5 10:12:42 natural inclination to nod or shake your head rather
6 10:12:46 than vocalize a "yes" or "no" answer. But for the
7 10:12:47 court reporter to pick up -- pick up the answer and
8 10:12:50 record on the transcript, you actually have to say
9 10:12:52 "yes" or "no"; is that okay?
10 10:12:54 A I understand, yes.
11 10:12:55 Q Okay. Great.
12 10:12:58 Are you currently employed?
13 10:13:00 A Yes, I am.
14 10:13:00 Q Where at?
15 10:13:01 A At YouTube, Incorporated/Google,
16 10:13:04 Incorporated.
17 10:13:04 Q And what is your title there?
18 10:13:07 A Manager of YouTube User Ops.
19 10:13:15 Q And how long have you been employed at
20 10:13:18 YouTube?
21 10:13:19 A Since November 15th of 2005.
22 10:13:22 Q And at the time that you started at YouTube
23 10:13:28 in November 2005, was your title manager of YouTube
24 10:13:33 User Ops?
25 10:13:34 A No, it was not.

GILLETTE

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2 10:13:35 Q And what was your title at that time?
3 10:13:37 A Office manager.
4 10:13:39 Q And there came a time when that changed.
5 10:13:42 When did it change? When did your title change from
6 10:13:43 office manager?
7 10:13:47 A I don't recall the exact date. I could
8 10:13:53 estimate for you.
9 10:13:54 Q Okay. Could you do that, please?
10 10:13:56 A I believe three to four months after that.
11 10:14:00 Maybe shorter.
12 10:14:01 Q And what -- what did your title -- title
13 10:14:05 change to at that point?
14 10:14:07 A Director of customer support.
15 10:14:09 Q Was that a promotion?
16 10:14:19 A Yeah. I mean it -- yes.
17 10:14:21 Q And then I suppose your title changed again
18 10:14:26 at some point.
19 10:14:27 How long were you the director of customer
20 10:14:30 support?
21 10:14:31 A Until the Google acquisition.
22 10:14:32 Q And when was that, approximately?
23 10:14:37 A I actually believe it was middle of
24 10:14:46 November 2006; is that correct? I believe that's
25 10:14:49 correct. I may be wrong.

GILLETTE

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2 10:14:51 Q Okay. And at the time of the Google
3 10:14:56 acquisition, what -- what did your title change to?
4 10:14:59 A It became manager of, at that time, Con Ops.
5 10:15:07 YouTube Con Ops. Excuse me.
6 10:15:11 Q Is that Con like C-O-N?
7 10:15:13 A Correct. C-O-N, O-P-S.
8 10:15:15 Q Okay. I suppose your title changed one more
9 10:15:22 time at least, and when -- when did your title change
10 10:15:24 from manager of YouTube Con Ops?
11 10:15:31 A Again, I'm not sure and, you know, I could --
12 10:15:40 I could give a guess in this instance, but I'm really
13 10:15:43 not sure.
14 10:15:43 Q Roughly, what is your best sense?
15 10:15:49 A Probably seven or eight months, maybe. After
16 10:15:53 that, the -- we -- our department moved from Con Ops
17 10:15:58 to the greater OSO organization.
18 10:16:06 Q Okay. And at that time, what did your title
19 10:16:08 change to?
20 10:16:09 A Manager of YouTube OSO.
21 10:16:11 Q Okay. Now, going back in time to when you
22 10:16:20 first started at YouTube and your title was office
23 10:16:23 manager, what were your job responsibilities in that
24 10:16:25 role?
25 10:16:27 A I can list many of the duties I had. It may

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11:02:45 you did ask me this before, that I also headed up what
11:02:48 we called the Live Site Team, which was the team that
11:02:53 reviewed the videos that had been flagged by our
11:02:56 communities as being potentially inappropriate.

11:03:10 Q Okay. Now, back when you -- when you first
11:03:13 joined YouTube, did YouTube monitor all the videos on
11:03:18 its site for copyright violations?

11:03:21 MR. SHAPIRO: Objection; vague; ambiguous.

11:03:23 You may answer.

11:03:25 THE WITNESS: No.

11:03:25 MR. BROWNE: Q. It did not?

11:03:27 A I'm not quite clear on your question, but if
11:03:30 I'm understanding it correctly, no, but maybe you
11:03:33 could clarify your question.

11:03:34 Q Okay. Well, was there a time when YouTube
11:03:36 told -- well, are you familiar with an FAQ page on the
11:03:41 YouTube website?

11:03:44 A I don't know if that's what we called it, but
11:03:46 we had FAQ help for sure, yes.

11:03:48 Q Okay. At the time that you first joined
11:03:50 YouTube, you had FAQ help, just to be clear?

11:03:52 A I believe we did. I could be wrong, right.
11:04:02 We could have added that very soon after I joined.
11:04:05 Again, I wasn't doing user support when I joined.

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11:09:59 recall -- I don't even recall really what the wording

11:10:04 I had issue with was.

11:10:05 Q Well, were you in a position to know at that

11:10:12 time whether a statement like that was accurate?

11:10:14 MR. SHAPIRO: Objection; foundation.

11:10:20 You may answer.

11:10:21 THE WITNESS: Again, if -- because it is -- I

11:10:26 remember my concern with that was with regard to

11:10:29 copyright. The only thing that I could know for sure

11:10:33 that I was accurate about was the operational portion

11:10:36 of this, and I -- I know at that time we were not

11:10:40 reviewing everything for that reason.

11:10:46 MR. BROWNE: Q. For what reason?

11:10:47 A For copyright.

11:10:49 Q Was there any time when you were reviewing

11:10:56 everything for copyright?

11:10:57 A Everything, no. As far as I know, no, while

11:10:59 I was there.

11:11:04 Q Were there times where -- where you were

11:11:06 reviewing some things for copyright?

11:11:08 A Yes.

11:11:08 Q What times were those?

11:11:17 A At various stages pre-acquisition, I believe,

11:11:36 yes. I'm -- I'm fairly sure that pre-acquisition we

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2 11:11:42 did do -- we did scan portions of the site to try and
3 11:11:48 locate what we thought might be unauthorized content.

4 11:11:52 Q Who did that?

5 11:12:00 A That changed over time. The people that were
6 11:12:03 involved definitely changed over time.

7 11:12:10 Q What people were involved at any point in
8 11:12:18 time?

9 11:12:20 A So I can -- I can start from the point where
10 11:12:23 I joined the company. At that very early stage, I can
11 11:12:33 recall a few people helping, and there may have
12 11:12:35 definitely been more. Again, it was a small company,
13 11:12:38 so everyone helped with a little bit of everything,
14 11:12:40 but I helped. Brent Hurley helped.

15 11:12:56 I -- I think -- you know, I definitely know
16 11:13:09 that there were more people helping, but I think we
17 11:13:11 were the key players.

18 11:13:12 Q And how did you -- how did you scan the site
19 11:13:20 to try to locate unauthorized conduct -- content?

20 11:13:26 A I -- I believe at that time, again, very
21 11:13:30 early stage, we were really -- the content that
22 11:13:35 appeared to be most popular and shared at that stage
23 11:13:40 that we suspected could be unauthorized was really
24 11:13:43 just South Park.

25 11:13:47 Q So again though how did you scan the site to

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2 11:13:50 find that content?

3 11:13:52 A I'm sorry. A lot of it was if we happened to

4 11:13:58 come across it, of course, and I believe there --

5 11:14:07 there was key word searching to try to locate that

6 11:14:13 content, and if -- if in the early stages there were

7 11:14:22 other methods, I'm not aware. That's my firsthand

8 11:14:26 knowledge.

9 11:14:27 Q Were there other methods at later stages?

10 11:14:33 A For South Park specifically, I don't think

11 11:14:36 so. Again, I could be wrong. Things did change. Our

12 11:14:42 approach and our attempt at trying to help with --

13 11:14:45 with unauthorized content changed over time

14 11:14:49 definitely. So as it pertains to South Park, I don't

15 11:14:57 think so.

16 11:14:57 Q I didn't mean to confine it specifically to

17 11:15:00 South Park though.

18 11:15:01 A Okay.

19 11:15:02 Q If at later stages there were other methods

20 11:15:06 for searching the site for what you thought might be

21 11:15:09 unauthorized conduct -- content, what were those

22 11:15:12 methods?

23 11:15:13 A Yes. We had a -- at one time we had an

24 11:15:19 ability to review videos that were over ten minutes

25 11:15:22 long, and that lasted for a very short period of time.

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2 11:15:30 We were not capable of keeping up with the volume, and
3 11:15:37 at some point, and I don't remember when exactly, that
4 11:15:41 queue, we basically just removed it.

5 11:15:44 Also, I know that on occasion, again, because
6 11:15:53 the sheer volume on the site was, of course, growing
7 11:15:56 very quickly, on occasion we would ask engineering to
8 11:16:00 do queries. Yeah, I mean, again we're talking about a
9 11:16:07 large span of time, so....

10 11:16:13 Q But within that large span of time, were
11 11:16:15 there any other methods, other than the ones that
12 11:16:19 you've named, that you remember that were used to --
13 11:16:22 to scan the site to try and locate unauthorized
14 11:16:25 content?

15 11:16:31 A I mentioned key word searching. I'm not
16 11:17:03 thinking of any other methods. Although, again, I
17 11:17:07 could very well be forgetting something.

18 11:17:08 Q Well, now when you said that at least
19 11:17:12 sometimes engineering would -- would be asked to do
20 11:17:14 queries --

21 11:17:16 A Yes.

22 11:17:16 Q -- what did you -- what did you mean by that?

23 11:17:18 A One of the things that we noticed was content
24 11:17:30 owners definitely were interested in -- in videos that
25 11:17:36 where they had broken up something that was longer

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2 11:17:39 than the ten-minute limit. I should explain that we,
3 11:17:44 at some point, made -- created a ten-minute limit.
4 11:17:50 The -- so the -- they would do things like
5 11:17:54 put part one, part two, part three, and this -- this
6 11:18:00 definitely was something that we suspected could be an
7 11:18:05 indication of something that was unauthorized. Of
8 11:18:09 course, not always, and we would have engineering run
9 11:18:22 inquiries looking for, I think, the word "part" or
10 11:18:28 "part one," or there could have been other terms too.
11 11:18:33 As time went on too, users changed, you know,
12 11:18:39 their trends as well.
13 11:18:40 Q Why did you have engineering run those
14 11:18:42 inquiries as opposed to just doing them yourselves?
15 11:18:45 A Because the volume was massive. There was no
16 11:18:47 way we could in any way tackle that, so we were trying
17 11:18:50 to somehow find a subset that we might be able to
18 11:18:54 help.
19 11:18:59 Q Who was in the engineering department that
20 11:19:02 ran these queries?
21 11:19:06 A Oh, God. Well, of course, Steve was there.
22 11:19:10 Steve Chen was always there.
23 11:19:21 I think this is still pretty early on, and if
24 11:19:24 I'm right about that, you know, I could -- I could
25 11:19:28 list off the engineers that I -- I knew we had early

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2 11:19:31 on, although I don't know if they were directly
3 11:19:33 involved.
4 11:19:34 Q Why don't you just tell me approximately how
5 11:19:36 many there were?
6 11:19:37 A Engineers?
7 11:19:38 Q Uh-huh, involved in this.
8 11:19:39 A Involved.
9 11:19:44 Maybe two.
10 11:19:48 Q And when the engineers ran these queries, I
11 11:19:51 presume they came back with results; is that right?
12 11:19:55 A Yes.
13 11:19:55 Q And then -- and then what would the engineers
14 11:19:57 do with those results?
15 11:19:59 A They would give them to -- it may have been
16 11:20:04 me, it may have been a member on my team.
17 11:20:08 Q And then what -- what would you or your team
18 11:20:11 do with those results then?
19 11:20:14 A We would make an attempt. Although I'm
20 11:20:17 not -- first of all, I don't recall how many times we
21 11:20:20 did this, and I don't recall whether or not we did
22 11:20:24 this. We were able to actually successfully go
23 11:20:31 through these lists.
24 11:20:31 I don't -- I remember the scale of everything
25 11:20:32 was getting so big so fast that a lot of times we

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2 11:20:36 would intend on, you know, going forward with
3 11:20:39 something but, you know, the -- the numbers we're
4 11:20:41 talking about, and I'm talking about beyond copyright,
5 11:20:45 the numbers that we're talking about were big quickly.
6 11:20:48 So I know on at least one occasion we
7 11:20:53 attempted to look through those, and our intent was to
8 11:20:55 try and find unauthorized content to help content
9 11:21:01 owners. That was the bottom line.
10 11:21:03 Q And then on that occasion, do you -- that
11 11:21:07 you're thinking of, is that in reference to specific
12 11:21:10 work or more than one work?
13 11:21:11 A I don't recall a specific work, no.
14 11:21:13 Q And again this occasion, at least this one
15 11:21:16 occasion that you're thinking of, when was that,
16 11:21:18 approximately?
17 11:21:19 A I have no idea.
18 11:21:20 Q And when you -- were you, in fact, successful
19 11:21:30 in finding some things that you believe may have been
20 11:21:32 unauthorized content?
21 11:21:34 A We -- there's no way we could determine that.
22 11:21:37 There was no feedback, and definitely one thing we
23 11:21:40 were successful at was learning that we were not
24 11:21:44 qualified to be making these calls, but as -- as to
25 11:21:49 the success of actually locating unauthorized or

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2 11:23:02 counterclaims. We also became aware of the thousands
3 11:23:07 of mistakes we made for content producers where --
4 11:23:17 where it was original content, but even mainstream
5 11:23:20 media companies. There were -- there were many
6 11:23:26 different points of feedback basically that came our
7 11:23:29 way.

8 11:23:29 Q And you -- you removed thousands of instances
9 11:23:33 of stuff that you believe was unauthorized content?

10 11:23:37 A I can estimate for you, and again it's really
11 11:23:40 guessing. I do not have any record of the numbers. I
12 11:23:46 mean, actually I don't -- I don't -- I don't even know
13 11:23:48 a ballpark in this instance.

14 11:23:50 Q But you believe that you -- that you became
15 11:23:55 aware of thousands of mistakes that you made?

16 11:23:58 A Mistakes, my estimate is definitely
17 11:24:01 thousands. I mean, it's -- it's very likely many,
18 11:24:05 many thousands.

19 11:24:07 Q So then you would have had to remove -- maybe
20 11:24:09 I'm not understanding something, but to have made
21 11:24:12 thousands of mistakes, am I right that you would have
22 11:24:15 had to remove thousands of videos?

23 11:24:17 A Yes, I think that's a fair deduction.

24 11:24:22 Q And how did you become aware of these
25 11:24:28 mistakes? Actually, how were --

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2 11:24:31 A I just answered that.

3 11:24:32 Q I'm trying to ask it a little bit different.

4 11:24:34 I think you answered who told you, but I'm just saying

5 11:24:37 how, how did they tell you?

6 11:24:38 A Feedback, newspaper articles, direct e-mails

7 11:24:44 from content owners, telephone calls, reporters coming

8 11:24:49 to us on behalf of a content owner that wanted their

9 11:24:54 video to appear to be pirated and, in fact, it was a

10 11:24:59 very large media company. They wanted to seed the

11 11:25:01 site and make it look like it had been something that

12 11:25:03 was unauthorized.

13 11:25:08 Q What reporters came to you and said that?

14 11:25:10 A I do not recall names of -- and it wasn't

15 11:25:14 directly to me. Let me be very clear. This feedback

16 11:25:19 came to others as well. I mean, this was feedback

17 11:25:23 everyone was receiving.

18 11:25:26 Q Did any reporters come directly to you?

19 11:25:30 A No, I don't think so.

20 11:25:35 Q Whether they came directly to you or not, can

21 11:25:37 you remember the name or maybe the publication that --

22 11:25:41 that any -- of any reporter that -- that said this?

23 11:25:44 A That said specifically this, no, absolutely

24 11:25:46 not. I believe there were multiple instances by the

25 11:25:58 way. I don't think there was any one publication.

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2 11:26:01 Q Now, but -- but you're testifying that the
3 11:26:05 reporters came to you and said this, or are you saying
4 11:26:08 that you read it in the newspaper, I just want to be
5 11:26:10 clear, or a news publication?

6 11:26:13 A Okay. Let me be clear in that I don't recall
7 11:26:16 exactly how the reporter or the information from a
8 11:26:19 reporter came to us. I don't know. It's my
9 11:26:25 understanding that that took place, the details of
10 11:26:27 which I do not know.

11 11:26:28 Q How did you come to that understanding?

12 11:26:32 A Honestly, I don't recall. Probably talking
13 11:26:39 about it or hearing about it within the company or
14 11:26:42 yeah. I don't truly recall.

15 11:26:48 Q Do you know who at YouTube reporters
16 11:26:52 contacted about this issue?

17 11:26:54 A This issue, no, I do not.

18 11:26:56 Q And I think you said you also had some direct
19 11:27:04 contacts from media companies; is that right?

20 11:27:08 A I had direct contact?

21 11:27:10 Q Yeah.

22 11:27:11 A Yeah, I mean, there was also contact with
23 11:27:13 others, but yes. As it pertained to content that had
24 11:27:19 been -- that had been removed that they, in fact,
25 11:27:23 either through implied authorization or through an

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2 11:27:26 agent or that they were well aware that it was up here

3 11:27:30 even though they didn't upload it themselves --

4 11:27:30 Q Right.

5 11:27:32 A -- they would -- they would contact me, yes,

6 11:27:35 and ask me to have things reinstated.

7 11:27:38 Q And did you, in fact, have them restated at

8 11:27:40 that time?

9 11:27:40 A Yes, I did.

10 11:27:41 Q Who contacted -- what -- what media company

11 11:27:45 do you recall who specifically contacted you on this

12 11:27:47 issue?

13 11:27:48 A I mean almost any media company you could

14 11:27:51 think of we've reinstated content for.

15 11:27:55 Q But specifically on the issue of content that

16 11:28:01 YouTube removed because YouTube believed it may have

17 11:28:03 been unauthorized and then you had a media company

18 11:28:06 contact you and say no, it's one of these thousands of

19 11:28:09 mistakes --

20 11:28:10 A Yeah.

21 11:28:10 Q -- put it back up, can you remember any media

22 11:28:13 companies on that issue?

23 11:28:15 A I can't think of the specifics. I dealt with

24 11:28:26 media companies all the time.

25 11:28:30 Q Can you remember any of these thousands of

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2 11:28:32 mistakes that -- that YouTube removed and were then
3 11:28:37 notified that the content owner actually wanted it up
4 11:28:41 there? Can you name for me any of those?

5 11:28:44 A Any of the mistakes giving specifics? You
6 11:28:48 mean on -- from a media company, or just private party
7 11:28:51 or --

8 11:28:51 Q Any.

9 11:28:52 A I honestly do not recall the specifics. I
10 11:28:55 mean, if I could sit here and think about it for a
11 11:28:59 while, I -- nothing is coming to me at the front of
12 11:29:02 my -- my mind.

13 11:29:03 Q Are there any -- were there any reports
14 11:29:05 prepared within YouTube documenting any of these
15 11:29:10 instances of mistakes?

16 11:29:11 A Again, I want to be very clear that you are
17 11:29:14 talking -- you're asking me about one particular
18 11:29:18 incident where we had, or maybe a couple of incidents,
19 11:29:21 I'm not quite sure how many times it happened, where
20 11:29:26 we had engineering do a query for us. This is what
21 11:29:30 I'm speaking to, and to that, no, I do not recall the
22 11:29:32 specifics.

23 11:29:33 Q So let me -- let me be more clear myself.

24 11:29:35 You testified that you became aware through
25 11:29:38 various means of thousands of instances where YouTube

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2 11:29:42 had removed material that it believed was unauthorized
3 11:29:46 and later learned that that removal was done in
4 11:29:50 mistake -- by mistake because the content owner
5 11:29:52 actually wanted it up there; is that right?

6 11:29:55 A That's correct.

7 11:29:56 Q Okay. Out of those thousands of instances,
8 11:30:00 can you name for me -- how many of them can you -- can
9 11:30:05 you name for me with specificity?

10 11:30:08 A At this stage, I can't name any.

11 11:30:11 Q Out of --

12 11:30:12 MR. SHAPIRO: Sorry. Just to be clear, to
13 11:30:13 make sure, are you talking about the -- the fact that
14 11:30:22 engineering --

15 11:30:22 MR. BROWNE: No, we're not.

16 11:30:23 MR. SHAPIRO: -- or in the universe
17 11:30:25 generally?

18 11:30:25 MR. BROWNE: We're talking about the universe
19 11:30:28 generally.

20 11:30:28 THE WITNESS: I just said engineering.

21 11:30:28 MR. SHAPIRO: Okay. It seemed like you guys
22 11:30:30 might be missing each other.

23 11:30:30 THE WITNESS: Yeah, I think we're missing
24 11:30:32 each other.

25 11:30:32 MR. SHAPIRO: So his question is generally

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GILLETTE

11:30:34 can you think of instances of mistakes and takedowns
11:30:39 such as that?

11:30:39 THE WITNESS: Sure.

11:30:40 MR. BROWNE: Q. I want to ask the question,
11:30:41 and I do think it's clear, but in case it wasn't, let
11:30:45 me ask it again.

11:30:46 There are -- you testified, right, that there
11:30:51 were instances where YouTube would go and remove
11:30:53 material because YouTube believed it may have been
11:30:56 unauthorized, and you later learned that you had done
11:31:01 that by mistake thousands of times because the content
11:31:06 owner or someone else contacted you and said the
11:31:09 content owner wanted that material on the site; is
11:31:13 that fair to say you testified?

11:31:15 A That is -- that is fair to say. However,
11:31:19 when I mentioned that, I thought we were speaking
11:31:21 specifically about the engineering queries.

11:31:26 Now, if we're going to speak about that
11:31:29 number "thousands," again, if you want to know more
11:31:35 broadly the response to that beyond the engineering
11:31:38 queries, again, I can -- I -- I -- I can only estimate
11:31:42 the number, first of all. So I'd like to stop using
11:31:45 that number, because now we're speaking more broadly,
11:31:49 and I don't know what the number or even could

GILLETTE

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2 11:31:52 estimate what the number is.
3 11:31:53 Q Well, if -- if you think we're speaking more
4 11:31:56 broadly now, would the number be higher?
5 11:31:59 A Yes.
6 11:31:59 Q So more, more than many thousands?
7 11:32:02 A Yes, over the course of -- of -- yeah, over
8 11:32:06 the course of YouTube.
9 11:32:08 Q Okay. So out of these more than many
10 11:32:11 thousands of times that YouTube on its own took down
11 11:32:15 material --
12 11:32:16 A Yes.
13 11:32:16 Q -- and later found out that it was a
14 11:32:19 mistake --
15 11:32:19 A Yes.
16 11:32:20 Q -- I'm going to go back now, in case there
17 11:32:23 was some confusion -- in that broader group, can you
18 11:32:26 name for me any reporters who contacted you to say
19 11:32:30 that this was a mistake?
20 11:32:34 A The reporters, I cannot, no. I honestly
21 11:32:37 cannot recall a single name.
22 11:32:39 Q Okay. And setting aside where they contacted
23 11:32:41 you or not, can you recall the names of any reporters
24 11:32:43 who contacted anyone at YouTube --
25 11:32:46 A No.

GILLETTE

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2 11:32:46 Q -- on this issue?
3 11:32:47 A No.
4 11:32:47 Q Can you recall the name of any publication
5 11:32:50 that any reporter was associated with that contacted
6 11:32:53 YouTube on this issue?
7 11:32:57 A No, but I don't think they would have been in
8 11:33:00 contact with me anyway, right, so....
9 11:33:03 Q But whether they contacted you or not --
10 11:33:07 A Yeah.
11 11:33:07 Q -- do you know whether they contacted
12 11:33:09 YouTube? Did you learn?
13 11:33:10 A I can't definitively say. I wouldn't have
14 11:33:13 been the one there.
15 11:33:14 Q Right.
16 11:33:14 But someone could have told you. That's all
17 11:33:17 I'm saying. You could have learned even though you
18 11:33:19 weren't the one in the room. I'm saying, did you ever
19 11:33:21 come by that knowledge?
20 11:33:23 A I have heard that reporters have contacted us
21 11:33:25 and actually in a couple of instances that was how we
22 11:33:27 became aware of the fact that a particular media
23 11:33:30 company or even a private party had content removed
24 11:33:32 that they actually, whether it be specific
25 11:33:37 authorization or implied authorization, that they

GILLETTE

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2 11:33:42 weren't happy about.
3 11:33:42 Q And -- and can you remember the names of any
4 11:33:46 of those reporters?
5 11:33:48 A No.
6 11:33:49 Q Okay. Sorry to keep asking. I'm just not
7 11:33:53 sure sometimes whether we talked about it.
8 11:33:55 A I really cannot remember the names.
9 11:33:58 Q Okay. You said you had heard though that
10 11:34:00 reporters had done this.
11 11:34:02 A Yes.
12 11:34:02 Q How had you heard that?
13 11:34:04 MR. SHAPIRO: Objection; asked and answered.
14 11:34:05 THE WITNESS: Again, I -- yeah.
15 11:34:07 MR. BROWNE: Q. Can you answer it again for
16 11:34:08 me?
17 11:34:09 A Sure. I -- I don't recall how I heard. I
18 11:34:13 suspect and can only speculate, since I don't
19 11:34:16 remember, but it may have just been people talking in
20 11:34:18 the office.
21 11:34:21 Q Do you remember any of the people who were
22 11:34:23 talking?
23 11:34:23 A No.
24 11:34:25 Q Okay.
25 11:34:26 A It's a small team.

GILLETTE

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2 11:58:00 there was a guy, his shadow, literally holding up the
3 11:58:04 video camera in front of the movie the entire time.
4 11:58:09 Again, I can't recall if it -- it was
5 11:58:10 proactive or not. It may have been they themselves
6 11:58:12 that took it down, but it ended up later that we found
7 11:58:15 out that that was, in fact, uploaded intentionally by
8 11:58:18 the creator of the true movie with the intent to make
9 11:58:20 it look like it had been pirated to drive conversation
10 11:58:24 and traffic and excitement around the movie and
11 11:58:26 actually get them into the theater.
12 11:58:29 There were multiple, multiple private
13 11:58:31 parties, maybe not recognizable names, and I don't, in
14 11:58:35 fact, remember the individuals' names, but I can give
15 11:58:38 some examples.
16 11:58:40 American Idol, for example, we did a lot of
17 11:58:43 key word search in there, and we did a lot of
18 11:58:45 proactive removal there in an attempt to create
19 11:58:49 harmony with them and help them with unauthorized
20 11:58:54 content. And American Idol, in particular, a lot of
21 11:58:59 people would make their own homemade show, and they
22 11:59:02 compete with their friends, and they would hold
23 11:59:05 contests, and they videotape it, and they try to put
24 11:59:08 things around it that made it just like the show
25 11:59:10 itself, and there would be voting. The audience, the

1 GILLETTE

12:05:02 2 removed that movie from a -- a website?

12:05:07 3 A Again, I -- I believe -- I believe we did as
12:05:10 4 part of the scanning, yes.

12:05:11 5 Q And did there come a time when you learned
12:05:20 6 that the content owner for that movie actually wanted
12:05:23 7 that material up on its website?

12:05:26 8 A Yes, sorry, I did.

12:05:26 9 Q And how did you -- how did you learn that?

12:05:37 10 A They could have come directly to me. I may
12:05:42 11 have been told from another person within the company,
12:05:48 12 you know. These larger media companies were -- were
12:05:57 13 definitely communicating with many others within
12:05:59 14 our -- within YouTube. So it may have come to me
12:06:02 15 through someone else or directly.

12:06:05 16 Q Excuse me.

12:06:06 17 But is it your understanding that the content
12:06:08 18 owner for this movie we're talking about was a large
12:06:10 19 media company?

12:06:11 20 A That is my recollection, yes.

12:06:12 21 Q But -- but you don't remember which company?

12:06:14 22 A I don't. This -- frequency of these types of
12:06:19 23 incidents were daily.

12:06:21 24 Q Were you proactively scanning -- scanning for
12:06:29 25 potentially unauthorized copyrighted material on a

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1 GILLETTE

12:06:32 2 daily basis?

12:06:34 3 MR. SHAPIRO: Objection; time frame.

12:06:36 4 THE WITNESS: Yeah.

12:06:36 5 MR. BROWNE: Q. During any time frame?

12:06:40 6 A Yes. As I stated earlier, we did do

12:06:43 7 proactive scanning at various stages, yes.

12:06:46 8 Q And you did that on a daily basis?

12:06:48 9 A Not necessarily, no. I'm not quite sure.

12:06:52 10 Are you asking me if we did consecutive days?

12:06:56 11 Q I'm just asking you basically if every day,

12:06:59 12 was there any point in time that every day YouTube

12:07:03 13 would proactively scan for potentially unauthorized

12:07:06 14 material on its website?

12:07:09 15 A There were definitely days where people

12:07:12 16 were -- were tasked with that. Whether they were able

12:07:15 17 to get to that or not in that day, that was not always

12:07:19 18 the case, but -- but yes, there -- yes, that -- they

12:07:24 19 were tasked with it.

12:07:25 20 Q And during what time frame were they tasked

12:07:27 21 with that?

12:07:29 22 A I do not recall actually the -- the periods

12:07:31 23 where we did proactive scanning when -- when exactly

12:07:34 24 they were.

12:07:35 25 Q Do you recall when it -- well, did it ever

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2 12:36:44 for things that we suspected might be unauthorized, so

3 12:36:46 that's one reason why I can't agree with that

4 12:36:49 statement, and that's the only reason, actually.

5 12:36:53 Q Do you have an understanding of what was

6 12:36:59 meant in that FAQ by the phrase "obvious copyright

7 12:37:02 violations"?

8 12:37:03 A Yeah, I believe what we were saying there is

9 12:37:05 things that we suspected were unauthorized.

10 12:37:08 Q Okay. You mentioned -- you mentioned earlier

11 12:37:29 this term "Live Site."

12 12:37:33 A Yes.

13 12:37:33 Q What -- so what is that?

14 12:37:35 A So Live Site is our content review team.

15 12:37:40 They respond to videos that have been flagged by the

16 12:37:44 community as being potentially inappropriate under our

17 12:37:48 noncopyright terms of use.

18 12:37:49 Q And -- and forgive me if I -- if I didn't get

19 12:37:52 this the first time, but is Live Site part of the

20 12:37:56 SQUAD?

21 12:37:56 A Yes, it is.

22 12:37:57 Q Okay. And how many people are on the -- are

23 12:37:59 on the Live Site Team?

24 12:38:02 A Right now we have 13 full-time employees, not

25 12:38:14 including -- not including the management, of course,

GILLETTE

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2 12:38:18 with that.

3 12:38:19 Q And I assume that's grown over time; is that

4 12:38:21 right?

5 12:38:21 A It has. It's fluctuated over time. It's

6 12:38:26 gone up and down.

7 12:38:27 Q Right.

8 12:38:27 Well, at the time of the Google acquisition,

9 12:38:31 was there a Live Site Team at that time?

10 12:38:34 A Yes.

11 12:38:34 Q And how many people were on it then?

12 12:38:53 A I -- I'd estimate on this that it was

13 12:39:03 approximately 15 people.

14 12:39:04 Q Okay. And at the time, going back in time

15 12:39:11 once more, but when you joined YouTube, was there a

16 12:39:15 Live Site Team then?

17 12:39:17 A No.

18 12:39:17 Q When did the Live Site Team come into

19 12:39:20 existence?

20 12:39:21 A The Live Site Team, the date, I don't -- I

21 12:39:24 don't know.

22 12:39:27 Q Do you have a rough sense of when it likely

23 12:39:29 was?

24 12:39:29 A Pretty early on after my joining, I -- maybe

25 12:39:40 three, four months, approximately. Maybe less.

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GILLETTE

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12:39:43 Q Three or four -- approximately three or

3

12:39:45 four months after you joined is your best

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12:39:46 recollection?

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12:39:47 A Approximately.

6

12:39:48 Q Okay. And -- and when the Live Site Team was

7

12:39:52 initially formed, how many people did it have?

8

12:39:57 A Yeah, I -- we, of course, brought in people

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12:40:05 gradually. We -- we had one, and then we had two, and

10

12:40:13 then I think we got up to about five, approximately,

11

12:40:19 at -- at that early stage of development.

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12:40:27 Q And you mentioned, I think, that the Live

13

12:40:31 Site Team responded to videos that were, quote,

14

12:40:34 "flagged by the community"?

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12:40:36 A That's correct.

16

12:40:36 Q And what did you mean by that?

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12:40:38 A Our -- our users can flag a video as it's

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12:40:42 called on the site if they suspect that it's

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12:40:43 potentially inappropriate, and so flagging sends

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12:40:47 something to us. Basically our Live Site Team.

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12:40:50 Q And can -- can any YouTube user flag a video?

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12:40:56 A Yes, if they are logged in.

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12:40:58 Q And what is the process that a user would

24

12:41:04 actually go through to flag a video?

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12:41:06 A So from the page where you can watch an

GILLETTE

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2 12:41:13 individual video, there is a mechanism there in the
3 12:41:17 interface that you can select, and it's a button.
4 12:41:21 It's labeled "Flag as Inappropriate," and from there
5 12:41:25 you can -- you can narrow down your flag through a
6 12:41:29 decision through sort of a tree, and then hit
7 12:41:34 "Submit."
8 12:41:36 Q And then what happens after the user hits
9 12:41:40 "Submit"?
10 12:41:40 A It goes to my team virtually immediately.
11 12:41:44 Q To the Live Site Team?
12 12:41:47 A Correct, and by the way, I just said, "My
13 12:41:49 team," but as of Friday that's not my team anymore.
14 12:41:55 Sorry.
15 12:41:59 Q And then what does the Live Site Team do with
16 12:42:02 that flag that comes in from the user?
17 12:42:04 A They review those videos for terms of use
18 12:42:07 violation, noncopyright terms of use violation.
19 12:42:12 Q Do they review all the videos that are
20 12:42:19 flagged?
21 12:42:19 A Yes.
22 12:42:19 Q Do they review the videos in their entirety?
23 12:42:25 A No --
24 12:42:25 Q Okay.
25 12:42:26 A -- not necessarily.

GILLETTE

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2 12:42:27 Q For what reasons would they not review the
3 12:42:36 entire video?
4 12:42:40 A Volume and the pace at which we have to keep
5 12:42:42 up.
6 12:42:44 Q But they may, in certain instances, review an
7 12:42:47 entire video?
8 12:42:48 A They may have, correct.
9 12:42:49 Q In the instances that they don't review the
10 12:42:51 entire video, what do they do?
11 12:42:53 A They look at thumbnails. We now have up to
12 12:43:02 46 thumbnails that can represent the content in a
13 12:43:05 video. And then there, of course, is information, you
14 12:43:08 know, the user has also entered with regard to the
15 12:43:13 video, like meta tags, and then there's a description.
16 12:43:17 The flag in the information also shows many details
17 12:43:21 basically.
18 12:43:27 Q Can they also -- are they able to hear any
19 12:43:30 audio that's associated with it?
20 12:43:31 A If they choose to, yeah, when they watch it.
21 12:43:34 Q If they're just looking at the thumbnails,
22 12:43:36 can they also hear the audio?
23 12:43:38 A No.
24 12:43:38 Q So if a member of the Live Site Team reviews
25 12:43:47 the video in all or in part, for what purpose are

GILLETTE

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2 12:43:53 they -- they reviewing it?

3 12:43:55 A To determine if there is, in fact, a

4 12:43:58 noncopyright terms of use violation, or if it is

5 12:44:01 something that is not intended for anyone younger than

6 12:44:05 18 or not appropriate.

7 12:44:08 Q And what -- what would be examples of the

8 12:44:11 noncopyright terms of use violations that the Live

9 12:44:15 Site Team reviews for?

10 12:44:16 A Sure.

11 12:44:16 Child pornography, adult pornography, child

12 12:44:26 abuse, animal abuse, suicides, school shooting

13 12:44:36 threats, murder, snuff videos. Think of anything

14 12:44:44 horrible basically, and these are things that we come

15 12:44:48 across and also police.

16 12:44:51 Q Are there any members or at any time were

17 12:44:55 there members of -- sorry -- at any time, were there

18 12:44:58 employees of YouTube who would review videos and flag

19 12:45:01 them?

20 12:45:02 A Employees of YouTube who would review videos

21 12:45:04 and flag them?

22 12:45:05 Q As part of their job.

23 12:45:07 A Review videos and flag them?

24 12:45:09 Q As opposed to community. That's what I'm

25 12:45:11 getting at.

GILLETTE

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13:03:08 A I don't think so.

13:03:11 Q Why -- why was it not an acceptable way or

13:03:14 would it not be an acceptable way for users to contact

13:03:18 you about copyright violations through a flag?

13:03:22 A I'm -- I'm not a lawyer. So again this is --

13:03:25 my understanding is that a takedown notification needs

13:03:33 to have certain elements in it.

13:03:38 In most cases, it is important that we have

13:03:41 statements like "penalty of perjury," for example,

13:03:44 contact information, for example, such that the other

13:03:48 party could counterclaim, and we could therefore go

13:03:52 through the process of contacting the original

13:03:54 notifier. Various things like that. It's -- it's not

13:03:58 a proper form for a takedown notification.

13:04:04 Q When -- when -- when YouTube would -- the

13:04:19 instances that you proactively scanned for stuff and

13:04:23 took it down, would you sign a statement that you were

13:04:25 doing it under penalty of perjury?

13:04:31 A Ourselves, no.

13:04:32 Q Did you -- did you believe that or did you

13:04:35 have any reason to believe that it was unlawful for

13:04:37 you to take down material on your site for any reason

13:04:42 that you wanted?

13:04:44 A The terms of use states specifically we have

GILLETTE

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2 13:04:46 the right to remove content at our sole discretion for
3 13:04:50 any reason whatsoever.

4 13:04:52 Q Did you -- and you don't have any reason to
5 13:05:06 believe that the terms of use are wrong on that point;
6 13:05:09 do you?

7 13:05:10 A I'm not sure how our terms of use could be
8 13:05:13 wrong. It is what it is.

9 13:05:15 Q Okay. You take stuff down if you think it's
10 13:05:26 child pornography; right?

11 13:05:28 A Oh, absolutely, yes.

12 13:05:30 Q Do you take down stuff that might be a closer
13 13:05:34 call than child pornography that might be offensive to
14 13:05:37 people but maybe not offensive to everyone?

15 13:05:41 A Yes, we do.

16 13:05:42 Q Is there any procedure where the person who
17 13:05:51 put that material on the site can lodge a counterclaim
18 13:05:54 in that instance?

19 13:05:56 A For noncopyright terms, no. We do not have a
20 13:05:59 formal process.

21 13:06:00 Q Do you have an informal process?

22 13:06:04 A We've received e-mails where people have
23 13:06:06 said, hey, I don't understand why you took my video
24 13:06:08 down, and then we do look at that.

25 13:06:12 Q So if you -- if you removed stuff, stuff is

GILLETTE

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2 14:56:57 Q Okay. That number that you see there, that
3 14:57:02 66,782 number, do you know whether all of those videos
4 14:57:08 were removed pursuant to takedown requests?
5 14:57:13 A I believe at this time that we were no longer
6 14:57:16 doing any proactive scanning.
7 14:57:18 Q Okay. Why do you think you -- why is it that
8 14:57:30 you think you stopped the proactive scanning at this
9 14:57:32 point in time?
10 14:57:33 A Because this --
11 14:57:33 MR. SHAPIRO: Object. Objection; asked and
12 14:57:35 answered, unless I'm misunderstanding the question.
13 14:57:38 MR. BROWNE: Q. I'm just saying what about
14 14:57:40 this point in time makes you think that -- that
15 14:57:44 proactive scanning was no longer --
16 14:57:47 A This is post-acquisition.
17 14:57:49 Q Okay. Okay. If you don't mind,
18 14:58:08 Ms. Gillette, can you turn to the page that ends 979.
19 14:58:12 A Yes.
20 14:58:12 Q It says "Best Practices Community Policing."
21 14:58:16 A Yes.
22 14:58:16 Q It shows a picture of a big dog.
23 14:58:18 A That's my dog.
24 14:58:18 Q Oh, really?
25 14:58:19 A (Witness nods head.)

GILLETTE

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2 14:58:20 Q That's great.
3 14:58:22 There's a -- over top of your dog there
4 14:58:25 there's a pull-down menu.
5 14:58:27 A Yes.
6 14:58:27 Q What is that?
7 14:58:28 A This is the interface that one would see when
8 14:58:33 going to the first step of flagging a video for the
9 14:58:36 potentially inappropriate.
10 14:58:37 Q And when you say one would see that, do you
11 14:58:40 mean YouTube users?
12 14:58:41 A Yeah, or me. I mean, if I clicked on it, I'd
13 14:58:45 see it too.
14 14:58:46 Q It's not an internal tool only. It's
15 14:58:49 available for the entire community?
16 14:58:53 A Correct, yes.
17 14:58:53 Q And then over on the right there are some --
18 14:58:56 some statistics about flagging videos; do you see
19 14:58:58 that?
20 14:58:59 A Yes.
21 14:58:59 Q And you see it says "75% of all flagged
22 14:59:01 videos are reviewed within three minutes"?
23 14:59:03 A Yes.
24 14:59:03 Q How did you know that information?
25 14:59:07 A Again, this is also information that I

GILLETTE

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2 14:59:12 tracked weekly. In fact, this -- this statistic from
3 14:59:16 the Bizi tool.
4 14:59:19 Q And right above it it says "19,000 videos
5 14:59:24 flagged per day." Again, how did you come by that
6 14:59:27 information?
7 14:59:27 A Same tool.
8 14:59:28 Q Okay. And then -- and then it says
9 14:59:42 "Pornography is typically flagged and removed within
10 14:59:44 the first 100 views."
11 14:59:47 Same question really. How did you know that?
12 14:59:50 A That was not available in Bizi. I don't --
13 14:59:55 it was a one-off report that I had asked for.
14 14:59:58 Q Who did you ask for it from?
15 15:00:02 A I don't remember.
16 15:00:02 Q Were you confident that that report was
17 15:00:06 accurate?
18 15:00:07 A Yes.
19 15:00:07 Q If you could turn the page to -- to the page
20 15:00:16 that says -- the next page, the heading is "What
21 15:00:20 Happens to Reviewed Content"; do you see that?
22 15:00:23 A I do.
23 15:00:23 Q There's a bullet there that says "Approve,
24 15:00:28 restrict, reject or reject with strike"; do you see
25 15:00:31 that?

GILLETTE

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2 15:00:31 A Yes, I do.
3 15:00:32 Q What's that referring to?
4 15:00:34 A Those are the actions we can take on a video
5 15:00:39 once it's been flagged and reviewed.
6 15:00:40 Q And -- and by "you," you mean the Live Site
7 15:00:45 Team?
8 15:00:45 A Correct.
9 15:00:45 Q If -- if you select the -- if the Live Site
10 15:00:50 Team takes the approved action, what does that mean?
11 15:00:51 A It means that we did not find a terms of use
12 15:00:54 violation.
13 15:00:55 Q And the video would remain up on the site?
14 15:00:57 A That's correct.
15 15:00:58 Q Okay. If the -- if the Live Site Team takes
16 15:01:01 the restrict action, what -- what does that mean?
17 15:01:03 A That means that the video will then only be
18 15:01:06 available for viewers that are 18 or older.
19 15:01:11 Q And why -- what are some of the reasons why
20 15:01:13 the Live Site Team would take that restrict action?
21 15:01:18 A We had deemed -- we created policies for
22 15:01:24 content that we deemed not appropriate for all ages,
23 15:01:28 so it would be something that fell into that policy.
24 15:01:31 Q Were those policies available to the YouTube
25 15:01:33 users or were they internal?

GILLETTE

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2 15:04:04 potentially, predators. And because the video was not
3 15:04:10 uploaded to violator terms of use, there was nothing
4 15:04:14 wrong with it, because it was innocently posted, we
5 15:04:17 would remove it, but we didn't need to try to train
6 15:04:20 the users to change their behavior. The strikes were
7 15:04:25 to train behavior.

8 15:04:27 Q Was it possible on the YouTube site for users
9 15:04:39 to mark videos as private?

10 15:04:42 A The users, yes.

11 15:04:44 Q And what would happen if the user did that?

12 15:04:47 A Their video, once uploaded, would be not
13 15:04:50 available to the general public.

14 15:04:53 Q And if -- if another user, a member of the
15 15:04:59 general public, used the searched feature on the
16 15:05:03 YouTube page, could they find that private video?

17 15:05:08 A No.

18 15:05:08 Q Was there any way that a member of the
19 15:05:10 general public could locate private videos on the
20 15:05:15 YouTube site?

21 15:05:18 A I don't think so.

22 15:05:18 Q When -- during the times that you were
23 15:05:24 conducting proactive scans, would YouTube do proactive
24 15:05:30 scans of the -- the private site videos?

25 15:05:31 A Yes.

GILLETTE

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2 17:35:49 Q So did you have a review queue for videos

3 17:35:54 close to the ten-minute limit at some point?

4 17:35:56 A No.

5 17:35:56 Q Then why did you use the word

6 17:36:03 "removed" instead of --

7 17:36:04 A I didn't clarify in this e-mail, but the

8 17:36:07 queue that existed was videos ten minutes or over. It

9 17:36:11 was not videos that were close to the ten minutes.

10 17:36:14 That's why it was called "length too long."

11 17:36:18 Q Thank you.

12 17:36:19 In the sentence I just read, you gave two

13 17:36:29 reasons for not continuing with the "length too long"

14 17:36:37 queue. The first was there wasn't enough time to

15 17:36:39 review them all, which we've talked about, and the

16 17:36:43 second has to do with director accounts. Could you

17 17:36:46 talk about that for a bit?

18 17:36:48 A Yes. Director accounts had the ability to

19 17:36:58 upload videos longer than ten minutes.

20 17:37:12 Q Was there any mechanism you could have used

21 17:37:14 to exclude uploads from director accounts from this

22 17:37:18 kind of a filter?

23 17:37:24 MR. SHAPIRO: Objection; calls for

24 17:37:25 speculation; vague.

25 17:37:26 THE WITNESS: I still answer?

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GILLETTE

17:37:28 MR. SHAPIRO: Yes.

17:37:28 THE WITNESS: Actually, I'm not aware of
17:37:35 possible technical mechanisms.

17:37:37 MR. COX: Q. Besides those two reasons, were
17:37:41 there any other reasons why you thought that the
17:37:48 "length too long" queue was removed?

17:37:51 A Aside from these two reasons?

17:37:54 Q Yes.

17:38:07 A I do recall the -- the queue was building up
17:38:14 also, because we weren't able to keep up with it, and
17:38:17 I recall that it was creating -- it was making the
17:38:21 entire tool extremely slow for the other areas that we
17:38:24 needed.

17:38:31 Q Turning away from the "length too long" queue
17:38:34 as it existed and to the "just under ten minutes"
17:38:39 queue that Mr. Donahue suggested, did you ever
17:38:43 implement a queue like what Mr. Donahue suggested?

17:38:48 A No.

17:38:48 Q Did you ever talk about whether or not to
17:38:52 implement something like that?

17:38:53 MR. SHAPIRO: Objection; asked and answered.

17:38:58 MR. COX: Q. Could you indulge me and answer
17:39:01 it again?

17:39:02 A No, I did not.