

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-2103))
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 VANCE IKEZOYE
PALO ALTO, CALIFORNIA
THURSDAY, SEPTEMBER 10, 2009

JOB NO. 17619

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

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SEPTEMBER 10, 2009

9:40 a.m.

VIDEOTAPED DEPOSITION OF VANCE IKEZOYE,
WILSON SONSINI GOODRICH & ROSATI,
650 Page Mill Road, Palo Alto, California,
pursuant to notice, and before me,
ANDREA M. IGNACIO HOWARD, CLR, RPR, CRR, CSR
License No. 9830.

1 A P P E A R A N C E S:

2

3 FOR THE PLAINTIFFS VIACOM INTERNATIONAL, INC.:

4 JENNER & BLOCK, LLP

5 By: MICHAEL DeSANCTIS, Esq.

6 LUKE PLATZER, Esq.

7 1099 New York Avenue, NW, Suite 900

8 Washington, D.C. 20001

9 (202) 639-6000 mdesanctis@jenner.com

10

11 FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

12 BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

13 By: BENJAMIN GALDSTON, Esq.

14 12481 High Bluff Drive, Suite 300

15 San Diego, California 92130-3582

16 (858) 720-3188 beng@blbglaw.com

17

18 FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and

19 GOOGLE, INC.:

20 WILSON SONSINI GOODRICH & ROSATI, LLP

21 By: MAURA REES, Esq.

22 650 Page Mill Road

23 Menlo Park, California 94304

24 (650) 493-9300 mrees@wsgr.com

25

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

2

3 FOR THE DEPONENT:

4 BLY LAW FIRM, PC

5 By: William Bly, Esq.

6 11601 Wilshire Boulevard, Suite 500

7 Los Angeles, California 90025

8 (888) 893-6189

9

10 ALSO PRESENT: Kelly Truelove, Consultant

11 Armando Carrasco, Videographer.

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1 IKEZOYE, V.
2 PALO ALTO, CALIFORNIA
3 THURSDAY, SEPTEMBER 10, 2009
4 9:40 A.M.

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THE VIDEOGRAPHER: Today's video deposition of Vance Ikezoye is taken on September 10th, 2009, at Wilson, Sonsini, Goodrich & Rosati, 601 South California Avenue, Palo Alto, California. In the Matter of Viacom International vs. YouTube, Incorporated, and The Football Association.

Case No. is 07-CV-2203 and 07-CV-3502, in the Court of Southern District of New York.

My name is Armando Carrasco. I represent David Feldman Worldwide located at 600 Anton Boulevard, Suite 1100, in Costa Mesa, California.

We are now commencing at 9:40 a.m.

Will all -- all present please identify themselves, beginning with the witness.

MR. IKEZOYE: Vance Ikezoye, CEO of Audible Magic Corporation.

MR. BLY: I'm Bill Bly of Bly Law Firm. I'm representing the witness and Audible Magic.

MS. REES: Maura Rees of Wilson, Sonsini,

1 IKEZOYE, V.

09:44:31 2 Goodrich & Rosati representing the YouTube defendants.

09:44:31 3 MR. GALDSTON: Good morning.

09:44:32 4 Benjamin Galdston of Bernstein, Litowitz,
09:44:35 5 Berger & Grossmann on behalf of the Plaintiffs in the
09:44:35 6 Class Action.

09:44:37 7 MR. TRUELOVE: Kelley Truelove, consultant
09:44:40 8 for Viacom plaintiffs.

09:44:42 9 MR. PLATZER: Luke Platzer of Jenner & Block
09:44:44 10 for the Viacom plaintiffs.

09:44:44 11 MR. DESANCTIS: I'm Michael DeSanctis of
09:44:47 12 Jenner & Block for the Viacom plaintiffs.

09:44:50 13 THE VIDEOGRAPHER: Thank you.

09:44:50 14 Will the court reporter please swear in the
09:44:52 15 witness.

09:45:01 16
09:45:01 17 VANCE IKEZOYE,
09:45:01 18 having been sworn as a witness,
09:45:01 19 testified as follows:

09:45:01 20
09:45:02 21 EXAMINATION BY MR. DESANCTIS

09:45:02 22 MR. DESANCTIS: Good morning.

09:45:04 23 Q Would you please state and spell your name
09:45:08 24 for the record.

09:45:10 25 A Vance Ikezoye, I-K-E-Z-O-Y-E.

1 IKEZOYE, V.

09:50:54 2 copyrighted music, and then we also sell services to
09:50:59 3 various digital media companies, like Web 2.0 social
09:51:04 4 networks, to identify copyrighted content that is
09:51:07 5 being uploaded by users.

09:51:16 6 Q Looking at the last of the services that you
09:51:27 7 just mentioned, the digital -- the work that you do
09:51:30 8 for digital media services, when did YouTube --
09:51:33 9 sorry -- when did Audible Magic begin providing those
09:51:36 10 kinds of services?

09:51:41 11 A To Web 2.0 companies or to just anybody in
09:51:45 12 the space?

09:51:46 13 Q Let's just start generally with anybody in
09:51:47 14 the space.

09:51:48 15 A We started providing some of the services to
09:51:52 16 the peer-to-peer companies in, I believe, 2004, in the
09:52:00 17 2004 time frame, and for those companies we helped the
09:52:11 18 peer-to-peer companies identify content that their
09:52:14 19 users were introducing into their networks.

09:52:18 20 Q Okay. In the 2004 time frame that you're
09:52:24 21 talking about, was your client base primarily
09:52:28 22 peer-to-peer services?

09:52:29 23 A Yes.

09:52:29 24 Q Can you describe -- well, actually strike
09:52:33 25 that.

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09:52:33 2 Can you identify who some of those
09:52:35 3 peer-to-peer services were? Who were your customers
09:52:38 4 in the 2004 time frame?

09:52:42 5 A Yes. Yeah, iMesh was one of our customers
09:52:50 6 who was a peer-to-peer company, and later we had --
09:52:54 7 Kaza was a customer of ours.

09:52:56 8 Q And what exactly is a peer-to-peer service?

09:53:00 9 A A peer-to-peer service is a peer-to-peer --
09:53:02 10 it's an application that allows the sharing and
09:53:08 11 transmittal of -- of copyrighted files between users.
09:53:15 12 Similar to Naps- -- the way Napster originally was.
09:53:20 13 So users could download this application, download
09:53:24 14 files, copyrighted movie and music files, and then
09:53:28 15 also they can make those available to other users.

09:53:34 16 Q Did there come a time when Audible Magic
09:53:37 17 began providing these -- these copyright
09:53:47 18 identification services to digital media services
09:53:49 19 other than peer-to-peer networks?

09:53:51 20 A Yes, we did do that.

09:53:53 21 Q Okay. Can you describe how or the type of
09:53:58 22 customer that Audible Magic next started servicing?

09:54:03 23 A We started servicing some of the more -- the
09:54:06 24 classic Web 2.0 social network companies, where some
09:54:12 25 people call it user-generated content, where users may

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09:54:32 5 Q Do you recall who Audible Magic's first
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09:54:59 10 MR. DESANCTIS: Q. Do you recall when that
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09:55:01 12 A The -- the first quarter of 2007.

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09:56:10 5 over the period of 30 plus customers.

09:56:15 6 MR. DESANCTIS: Q. When you say "over the
09:56:16 7 period," what period are you talking about?

09:56:18 8 A From -- from 2006 through today.

09:56:26 9 Q And when you say "30 plus customers," do you
09:56:29 10 mean 30 plus customers in the social network space
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09:57:59 5 2006, or was there a time when there was a competitor

09:58:02 6 who had a larger customer base in the 2.0 space than

09:58:06 7 Audible Magic had?

09:58:09 8 A I believe from the very beginning we were --

09:58:14 9 we were the leader in the space.

09:58:32 10 Q We'll obviously be talking more about this as

09:58:35 11 the day goes on, but can you describe, in a very

09:58:39 12 general sense, what it is Audible Magic does for its

09:58:44 13 digital media customers when you've said "identify

09:58:48 14 copyrighted content"?

09:58:50 15 A We use a technology called fingerprinting,

09:58:55 16 and what fingerprinting is, is a mechanism to uniquely

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09:59:06 18 There are -- these fingerprints are

09:59:09 19 measurements of the content that become unique to a

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1 IKEZOYE, V.

09:59:37 2 give them software to take measurements of unknown
09:59:40 3 content, and when -- after they take these
09:59:43 4 measurements, then we can compare it to our database
09:59:45 5 of known references and identify and match the
09:59:49 6 content.

09:59:50 7 The way we provide services to the Web 2.0
09:59:54 8 customers is, they do have software. Users may upload
09:59:58 9 content to these sites, and they use our services
10:00:02 10 to -- to identify the -- the -- the copyrighted
10:00:08 11 content using our services.

10:00:10 12 Q In your answer you spoke of Audible Magic and
10:00:23 13 the customer taking measurements of pieces of content.
10:00:28 14 Is that the fingerprint that you mentioned first, or
10:00:31 15 is the measurement something other than the
10:00:34 16 fingerprint?

10:00:35 17 I'm just trying to make sure we have the same
10:00:37 18 terminology.

10:00:38 19 A It's the fingerprint. The fingerprint is a
10:00:40 20 series of measurements of characteristics of a piece
10:00:43 21 of audio or video.

10:00:44 22 Q Okay. And are you familiar with the fact
10:00:53 23 that there are fingerprints referred to as "audio
10:01:00 24 fingerprints" and others referred to as "video
10:01:04 25 fingerprints"?

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1 IKEZOYE, V.

10:01:04 2 A Yes.

10:01:04 3 Q Could you explain what the difference is, not
10:01:07 4 in hypertechnical terms, but generally.

10:01:10 5 A Well, audio fingerprints are taking
10:01:12 6 measurements of the -- the sound -- the sound on a --
10:01:14 7 on a piece of content, whether it's music or speech or
10:01:18 8 silence or sound effects. Video fingerprints tend to
10:01:23 9 refer in -- in kind of, from my perspective, as
10:01:29 10 fingerprints of the images of the video image itself.

10:02:24 11 Q I'll show you, Mr. Ikezoye, a document that
10:02:26 12 we're going to be marking as Ikezoye Exhibit 1.

10:02:29 13 (Document marked Ikezoye Exhibit 1
10:02:40 14 for identification.)

10:02:40 15 MR. DESANCTIS: I'll ask you to take a quick
10:02:48 16 look at it.

10:02:52 17 Q Do you recognize this document?

10:02:53 18 A Yes.

10:02:54 19 Q What is it?

10:02:57 20 A It was a declaration that -- that I provided
10:03:02 21 for a case regarding Aimster.

10:03:08 22 Q On the last page of the exhibit, is that your
10:03:14 23 signature?

10:03:15 24 A Yes.

10:03:15 25 Q And this was signed by you on September 10th,

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1 IKEZOYE, V.

10:03:21 2 2002; is that correct?

10:03:22 3 A That's correct.

10:03:24 4 Q Was Audible Magic a party in the Aimster
10:03:30 5 litigation?

10:03:32 6 A No.

10:03:32 7 Q Do you recall why it was that you submitted
10:03:34 8 this declaration if Audible Magic was not a party?

10:03:36 9 A That we provide technology and services that
10:03:40 10 were relevant to the -- to the -- the technical issues
10:03:47 11 regarding this litigation, and so we provided this
10:03:52 12 information to make people aware of some of our
10:03:54 13 services.

10:03:55 14 Q And have you looked at this declaration since
10:04:10 15 you filed it in September of 2002?

10:04:13 16 A No.

10:04:13 17 Q Okay. I'm gonna ask you to just very quickly
10:04:18 18 review it and let me know if there is anything in here
10:04:22 19 that -- that you now think was not true or accurate
10:04:30 20 when it was submitted or whether you still think
10:04:33 21 everything in here was true at that time, to the best
10:04:38 22 of your recollection.

10:04:47 23 MR. BLY: You're asking whether it was true
10:04:49 24 at the time, not whether anything has changed since?

10:04:51 25 MR. DESANCTIS: Right. Obviously things

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1 IKEZOYE, V.

10:04:54 2 might have changed since, but...

10:05:08 3 THE WITNESS: Okay.

10:05:10 4 MR. DESANCTIS: Q. As you look at this
10:05:11 5 today, is there any reason that you believe that
10:05:15 6 anything in here was not accurate at the time it was
10:05:17 7 filed?

10:05:19 8 A No.

10:05:19 9 Q Okay. Just put that aside for the moment.
10:05:33 10 Showing you, Mr. Ikezoye, what I'm marking as
10:05:35 11 Ikezoye Exhibit 2.

10:05:42 12 (Document marked Ikezoye Exhibit 2
10:05:42 13 for identification.)

10:05:42 14 MR. DESANCTIS: I'd ask you to take a moment
10:05:53 15 to familiarize yourself with this document.

10:06:40 16 THE WITNESS: Okay.

10:06:41 17 MR. DESANCTIS: Q. Do you recognize this
10:06:41 18 document?

10:06:42 19 A Yes.

10:06:42 20 Q What is it?

10:06:43 21 A It's a declaration that we made in the
10:06:49 22 MGM vs. Grokster case.

10:06:52 23 Q And was Audible Magic a party in the case?

10:06:57 24 A No, we were not.

10:06:58 25 Q Do you recall, then, why Audible Magic

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10:02:52 17 Q Do you recognize this document?

10:02:53 18 A Yes.

10:02:54 19 Q What is it?

10:02:57 20 A It was a declaration that -- that I provided
10:03:02 21 for a case regarding Aimster.

10:03:08 22 Q On the last page of the exhibit, is that your
10:03:14 23 signature?

10:03:15 24 A Yes.

10:03:15 25 Q And this was signed by you on September 10th,

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10:03:21 2 2002; is that correct?

10:03:22 3 A That's correct.

10:03:24 4 Q Was Audible Magic a party in the Aimster
10:03:30 5 litigation?

10:03:32 6 A No.

10:03:32 7 Q Do you recall why it was that you submitted
10:03:34 8 this declaration if Audible Magic was not a party?

10:03:36 9 A That we provide technology and services that
10:03:40 10 were relevant to the -- to the -- the technical issues
10:03:47 11 regarding this litigation, and so we provided this
10:03:52 12 information to make people aware of some of our
10:03:54 13 services.

10:03:55 14 Q And have you looked at this declaration since
10:04:10 15 you filed it in September of 2002?

10:04:13 16 A No.

10:04:13 17 Q Okay. I'm gonna ask you to just very quickly
10:04:18 18 review it and let me know if there is anything in here
10:04:22 19 that -- that you now think was not true or accurate
10:04:30 20 when it was submitted or whether you still think
10:04:33 21 everything in here was true at that time, to the best
10:04:38 22 of your recollection.

10:04:47 23 MR. BLY: You're asking whether it was true
10:04:49 24 at the time, not whether anything has changed since?

10:04:51 25 MR. DESANCTIS: Right. Obviously things

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10:04:54 2 might have changed since, but...

10:05:08 3 THE WITNESS: Okay.

10:05:10 4 MR. DESANCTIS: Q. As you look at this
10:05:11 5 today, is there any reason that you believe that
10:05:15 6 anything in here was not accurate at the time it was
10:05:17 7 filed?

10:05:19 8 A No.

10:05:19 9 Q Okay. Just put that aside for the moment.
10:05:33 10 Showing you, Mr. Ikezoye, what I'm marking as
10:05:35 11 Ikezoye Exhibit 2.

10:05:42 12 (Document marked Ikezoye Exhibit 2
10:05:42 13 for identification.)

10:05:42 14 MR. DESANCTIS: I'd ask you to take a moment
10:05:53 15 to familiarize yourself with this document.

10:06:40 16 THE WITNESS: Okay.

10:06:41 17 MR. DESANCTIS: Q. Do you recognize this
10:06:41 18 document?

10:06:42 19 A Yes.

10:06:42 20 Q What is it?

10:06:43 21 A It's a declaration that we made in the
10:06:49 22 MGM vs. Grokster case.

10:06:52 23 Q And was Audible Magic a party in the case?

10:06:57 24 A No, we were not.

10:06:58 25 Q Do you recall, then, why Audible Magic

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10:07:00 2 submitted -- or why you submitted this declaration in
10:07:03 3 that case?

10:07:06 4 A Because we, again, we wanted to make -- grow
10:07:12 5 awareness of our services and our capabilities to the
10:07:16 6 market.

10:07:17 7 Q If you could flip to the last page. It's
10:07:28 8 dated February 2, 2006, and is that your signature
10:07:31 9 underneath it?

10:07:32 10 A Yes, it is.

10:07:33 11 Q Okay. I'm going to ask you the same question
10:07:36 12 that I asked you about the last document, which is, is
10:07:39 13 there -- as you sit here today, is there any reason to
10:07:42 14 think that anything in this declaration was inaccurate
10:07:46 15 at the time it was submitted? And if you want to take
10:07:50 16 a minute to look through it again, feel free.

10:08:40 17 A Okay.

10:08:49 18 Q Then, as you sit here today, Mr. Ikezoye, is
10:08:52 19 there any reason to -- that you know of why anything
10:08:54 20 in this -- or let me withdraw that and rephrase.

10:08:59 21 As you sit here today, do you have any reason
10:09:07 22 to believe, Mr. Ikezoye, that anything in that
10:09:10 23 declaration was inaccurate at the time it was
10:09:12 24 submitted?

10:09:12 25 A No.

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10:09:17 2 Q Direct your attention to paragraph 18 of the
10:09:29 3 exhibit, which is on page five. The last sentence of
10:09:39 4 that paragraph states, "The Audible Magic iMesh filter
10:09:44 5 has scaled seamlessly to 5 million lookups per day and
10:09:50 6 easily could scale to meet the needs of any network in
10:09:52 7 use today."

10:09:53 8 Can you first explain what the Audible Magic
10:09:57 9 iMesh filter was that you were talking about here in
10:09:59 10 this paragraph?

10:10:01 11 A We had provided iMesh a -- software and
10:10:09 12 services that they integrated in their software
10:10:14 13 application that users used, and so the service was to
10:10:21 14 identify content that was being uploaded or downloaded
10:10:25 15 within this network.

10:10:27 16 Q And iMesh -- is iMesh an example of one of
10:10:34 17 the Web 2.0 sites that we were talking about earlier
10:10:36 18 this morning?

10:10:37 19 A No, it's a peer-to-peer network, file sharing
10:10:40 20 network provider.

10:10:42 21 Q Okay. And what does it mean or what did you
10:10:46 22 mean when you said "the filter has scaled seamlessly
10:10:50 23 to 5 million lookups per day"?

10:10:56 24 Actually, let me break that down. Let's
10:10:58 25 start with, what does "5 million lookups per

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10:11:02 2 day" mean?

10:11:04 3 A It means a lookup is when we have -- we're
10:11:08 4 presented with an unknown file and we're looking that
10:11:11 5 up and trying to match the characteristics against a
10:11:14 6 database of known content. So one lookup is one
10:11:18 7 unknown file being -- trying to be identified.

10:11:22 8 Q Okay. Let me just try to make sure I
10:11:24 9 understand that.

10:11:25 10 Who submits the unknown file to Audible
10:11:29 11 Magic?

10:11:31 12 A The iMesh application. So millions of users
10:11:35 13 had the iMesh application, piece of software running
10:11:38 14 on their computers. Our library was integrated in
10:11:43 15 that piece of software that users used, and so the
10:11:49 16 application automatically, when a file was gonna be
10:11:54 17 shared or was downloaded, we would take measurements
10:11:59 18 and then the application itself would automatically go
10:12:02 19 do a lookup against our servers. So users didn't have
10:12:07 20 to operate -- it was all operated within --
10:12:09 21 automatically within the software itself.

10:12:13 22 Q So when measurements were taken of -- of a
10:12:40 23 file to be downloaded on iMesh, does that mean -- is
10:12:44 24 that the same way of saying a fingerprint was made of
10:12:46 25 the file?

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10:12:47 2 A Yeah, a fingerprint was taken, as well as
10:12:49 3 other information about the file --

10:12:51 4 Q Okay.

10:12:52 5 A -- and we --

10:12:53 6 Q What other information was taken?

10:12:55 7 A I believe we would take the -- the metadata
10:12:59 8 title of the -- the file, and I also believe that we
10:13:03 9 would take a -- a -- information -- a hash of the
10:13:08 10 file.

10:13:08 11 Q Okay. An MD5 hash?

10:13:12 12 A Yes.

10:13:12 13 Q And what then, if anything, would Audible
10:13:17 14 Magic compare that fingerprint and additional
10:13:19 15 information against?

10:13:21 16 A We had a database of -- of fingerprints, as
10:13:28 17 well as associated MD5 hashes, and so we would compare
10:13:35 18 that against known hashes and then also known
10:13:39 19 fingerprints.

10:13:42 20 Q And at that time, what fingerprints were in
10:14:01 21 your database of fingerprints?

10:14:09 22 A At the time, according to this, it looks like
10:14:11 23 we had about 6 million copyrighted songs in our
10:14:15 24 database. So fingerprints were about that many songs.

10:14:18 25 Q And from whom were those fingerprints

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10:14:19 2 provided?

10:14:24 3 A The music -- music labels, both the major
10:14:27 4 music labels -- Sony, BMG, Universal, Warner, and
10:14:34 5 EMI -- as well as a number of independent record
10:14:39 6 labels.

10:14:40 7 Q Okay. So continuing through the process,
10:14:52 8 what would happen if a file to be downloaded on iMesh
10:15:00 9 matched the fingerprint of a fingerprint that was in
10:15:03 10 your database having been supplied from a record
10:15:05 11 company?

10:15:08 12 A We would get the identification after the
10:15:11 13 fingerprint was submitted to our central servers, and
10:15:15 14 we would respond to that client with an identification
10:15:21 15 that said a -- with a block or allow rule, and for
10:15:28 16 everything in the database, at this time, everything
10:15:31 17 in the database had a block rule, and so we would tell
10:15:35 18 the -- the client to block that file from being
10:15:40 19 downloaded or uploaded.

10:15:41 20 Q Okay. When you said everything in the
10:15:49 21 database had a block rule, who made that rule?

10:15:51 22 A The record label themselves when they
10:15:53 23 submitted it.

10:15:54 24 Q Okay. So the record label would provide
10:15:56 25 instructions as to whether -- whether the file to be

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10:40:23 2 Q Okay. Are they all in one big database or
10:40:25 3 are there different databases?

10:40:29 4 A We have a -- a -- a main database that
10:40:33 5 contains all of the content submitted by copyright
10:40:37 6 holders, so we have one master database. We also have
10:40:44 7 other smaller databases that are -- contain subsets of
10:40:51 8 that master database that are used in different
10:40:54 9 applications or with different customers.

10:41:01 10 Q Does that master database or main database
10:41:03 11 have a particular name that I should use so that we
10:41:06 12 know we're talking about the same thing?

10:41:08 13 A We can call it a "master database."

10:41:10 14 Q Okay. Is there something called a commercial
10:41:29 15 music database or commercial music library?

10:41:32 16 A Yes. It's -- we refer to our -- all of our
10:41:40 17 fingerprints or registrations of -- from the music
10:41:44 18 labels as our commercial music database.

10:41:47 19 Q Okay. So what fingerprints populate -- what
10:41:50 20 types of fingerprints would populate the commercial
10:41:53 21 music database?

10:41:54 22 A They are fingerprints of commercially
10:41:56 23 available musical sound recordings received from
10:42:03 24 record companies, majors and independents.

10:42:07 25 Q Approximately how many fingerprints -- or

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10:53:20 2 show, those would each be unique titles in our
10:53:23 3 database.

10:53:54 4 Q Okay. Let's go back to the libraries we were
10:53:57 5 discussing a moment ago.

10:53:58 6 When did Audible Magic first create the
10:54:03 7 commercial music library?

10:54:06 8 A It probably started in -- where we acquired
10:54:10 9 most of the content in 2002 or 2003.

10:54:27 10 Q And when did Audible Magic begin populating
10:54:33 11 the TV movie database?

10:54:40 12 A Probably, early 2006 we started with -- we
10:54:46 13 started that effort.

10:54:52 14 Q Can you describe how that effort was started.

10:54:56 15 A We were working on a video fingerprinting
10:55:03 16 technology and needed some sample files to begin to
10:55:09 17 use to -- for testing, and so we used DVDs to generate
10:55:16 18 some of the fingerprints.

10:56:11 19 (Document marked Ikezoye Exhibit 4
10:56:12 20 for identification.)

10:56:12 21 MR. DESANCTIS: Let me show you, Mr. Ikezoye,
10:56:17 22 what has been marked as Ikezoye Exhibit 4.

10:56:21 23 MR. BLY: Michael, if I could interrupt here
10:56:23 24 for a moment. When we were prepping for the
10:56:26 25 deposition yesterday, we realized that there were a

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11:48:16 2 of the works deployed for a particular application or
11:48:19 3 a customer.

11:48:23 4 In some cases, certain customers, as an
11:48:27 5 example, might only want to search a music database
11:48:31 6 and not a film and television database, therefore we
11:48:35 7 only extract from the master database the music
11:48:39 8 fingerprints to be deployed.

11:48:47 9 Q When a customer submits a lookup fingerprint
11:48:55 10 for matching purposes, does the customer select or is
11:49:00 11 it up to the customer to dictate what fingerprints and
11:49:05 12 what databases that lookup will be matched against?

11:49:09 13 A Yes. In our business model, the customer,
11:49:12 14 the -- the site, the Web 2.0 customer, the UGC site
11:49:18 15 pays us, and in that -- in that agreement, we --
11:49:24 16 the -- the customer tells us what databases to deploy,
11:49:31 17 even what fingerprints, and what titles to deploy.

11:49:34 18 Q Are there some customers who instruct Audible
11:49:50 19 Magic when they submit a lookup fingerprint to -- to
11:49:55 20 run that fingerprint for matching purposes against the
11:49:58 21 entirety of the, say, the film and TV database?

11:49:58 22 A Yes.

11:50:23 23 (Document marked Ikezoye Exhibit 5
11:50:23 24 for identification.)

11:50:23 25 MR. DESANCTIS: Let me show you what's marked

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11:59:06 2 Do you recall when Audible Magic and YouTube
11:59:19 3 first discussed a -- a customer relationship?

11:59:25 4 A I believe the first contact between Audible
11:59:28 5 Magic and -- and YouTube were in the first half of
11:59:33 6 2006.

11:59:48 7 Q And do you recall whether YouTube first
11:59:52 8 reached out to Audible Magic or whether Audible Magic
11:59:55 9 first reached out to YouTube?

11:59:57 10 A I believe YouTube reached out to Audible
12:00:03 11 Magic as a -- and I think they were referred to us by
12:00:07 12 Warner, somebody from Warner Music Group.

12:00:12 13 Q Before your first contact with YouTube, had
12:00:14 14 you had any discussions with -- with others about --
12:00:23 15 about obtaining YouTube as a customer?

12:00:29 16 A With others?

12:00:30 17 Q Perhaps the MPAA. Did you have -- do you
12:00:31 18 recall any conversations with anyone at the MPAA
12:00:35 19 about --

12:00:37 20 A I don't recall. It could have happened, but
12:00:40 21 I don't recall.

12:00:40 22 Q Okay.

12:01:15 23 (Document marked Ikezoye Exhibit 6
12:01:16 24 for identification.)

12:01:16 25 MR. DESANCTIS: Q. Let me show you,

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12:01:17 2 Mr. Ikezoye, what's been marked as Ikezoye No. 6.

12:01:23 3 Take a moment to look this over, and I'll state for

12:01:26 4 the record, in the meantime, that this is a -- what

12:01:29 5 has been marked as Exhibit 6 is a two-page document

12:01:34 6 bearing the Bates Nos. AM2090 through 2091.

12:01:48 7 A Okay.

12:01:52 8 Q Do you recognize this, Mr. Ikezoye, as an

12:01:55 9 e-mail from Chris Maxcy to Michael McTeague and CCing

12:02:03 10 Jim Schrempp and you?

12:02:07 11 A Yes.

12:02:07 12 Q Do you recall this particular e-mail?

12:02:11 13 A Not specifically. Not specifically.

12:02:16 14 Q If you turn to the second page, it actually

12:02:21 15 begins at the very bottom of the first page, the

12:02:24 16 e-mail from Chris Maxcy dated April 4, 2006, to you.

12:02:31 17 It begins, "Hi, Vance. George White at Warner Music

12:02:34 18 forwarded your contact information to me. I had a

12:02:37 19 business development for YouTube and would be

12:02:39 20 interested in speaking with you or someone on your

12:02:41 21 team about partnership opportunities between Audible

12:02:43 22 Magic and YouTube."

12:02:45 23 As far as you recall, Mr. Ikezoye, was this

12:02:48 24 the first contact between Audible Magic and YouTube?

12:02:55 25 A Yes.

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12:05:06 2 At some point, YouTube did actually begin
12:05:09 3 using Audible Magic's content identification services;
12:05:12 4 correct?

12:05:13 5 A Yes.

12:05:14 6 Q Do you recall when it was that YouTube went
12:05:21 7 live with the service, so to speak, and actually
12:05:24 8 started using Audible Magic for content ID purposes?

12:05:28 9 A I believe early 2007.

12:05:31 10 Q Okay. And do you recall when it was or was
12:05:44 11 there a time between April 2006 and early 2007 when
12:05:50 12 YouTube began testing, in some way, the Audible Magic
12:05:57 13 service?

12:05:57 14 A Yes, I believe July or August of 2006 we had
12:06:05 15 issued a test license agreement to YouTube, and the
12:06:11 16 technical teams were doing some evaluation.

12:06:19 17 Q Do you recall -- do you recall what happened,
12:06:23 18 if anything, in between July 4th, 2006, and July or
12:06:29 19 August -- I'm sorry. Let me back up. I misspoke.

12:06:35 20 Do you recall what, if anything, happened
12:06:39 21 between Audible Magic and YouTube between April 4,
12:06:45 22 2006, the date of this e-mail, and July or August of
12:06:49 23 2006 when YouTube began testing Audible Magic's
12:06:52 24 services?

12:06:53 25 A I believe there were various meetings and

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12:14:36 2 Q Okay. And is it also the case that you don't
12:14:40 3 remember who any specific conversations would have
12:14:44 4 been with?

12:14:45 5 A My guess, it would be with George White.
12:14:48 6 George White was a general contact of -- of ours at
12:14:51 7 Warner Music related to these kinds of deals.

12:15:43 8 MR. DESANCTIS: Okay. Can I ask the court
12:15:45 9 reporter how much time is remaining on this tape?

12:15:48 10 THE VIDEOGRAPHER: We have 15 minutes.

12:15:52 11 MR. DESANCTIS: Okay.

12:16:05 12 (Document marked Ikezoye Exhibit 8
12:16:06 13 for identification.)

12:16:06 14 MR. DESANCTIS: Q. Let me show you what has
12:16:11 15 been marked, Mr. Ikezoye, as Ikezoye Exhibit No. 8.
12:16:15 16 This is a multi-page document beginning with Bates
12:16:19 17 No. AM917 through 928. I'll ask the witness to take a
12:16:50 18 look through the document, which I'll note for the
12:16:53 19 record he's doing.

12:16:54 20 A Yes.

12:16:54 21 Q Do you recognize this, Mr. Ikezoye, as a --
12:17:01 22 the topmost document, as an e-mail from Franck
12:17:07 23 Chastagnol to Jim -- Jim Schrempp, CCing you and
12:17:12 24 others, dated September 18th, 2006?

12:17:14 25 A Yes.

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12:17:14 2 Q Okay. Do you know who Franck Chastagnol is?

12:17:21 3 A I believe he was a -- the technical contact
12:17:24 4 at YouTube for the integration of Audible Magic into
12:17:31 5 their services.

12:17:34 6 Q Was he the principal contact for Audible
12:17:36 7 Magic at YouTube?

12:17:36 8 A I believe he was.

12:17:38 9 Q Okay. Did you have discussions directly with
12:17:44 10 Mr. Chastagnol about the integration of Audible Magic
12:17:48 11 with YouTube?

12:17:49 12 A No, he was -- he was our technical contact.

12:17:52 13 Q Okay. And who at Audible Magic would have
12:17:58 14 been -- would have had those discussions with
12:18:00 15 Mr. Chastagnol about the technical integration of the
12:18:05 16 two systems?

12:18:06 17 A Jim Schrempp, our VP of engineering at the
12:18:10 18 time, would have been the prime contact at this point
12:18:12 19 in the -- in the relationship with YouTube.

12:18:16 20 Q Okay. In about the middle of this page is a
12:18:22 21 bold heading that reads "Requirements for integration
12:18:24 22 with Audible Magic Phase I database set up."

12:18:33 23 And this appears to continue for -- onto the
12:18:37 24 third page. Do you know what this part of the
12:18:46 25 document is?

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12:18:47 2 A It appears to be a document that lays out
12:18:52 3 specifications for the integration of our services
12:18:59 4 with YouTube.

12:19:06 5 Q Let me direct your attention to the bottom of
12:19:33 6 the first page. There's a bold heading "Fingerprint
12:19:38 7 match API." What does "API" mean?

12:19:41 8 A Application Programming Interface.

12:19:42 9 Q And what is that?

12:19:44 10 A It is a definition for the way computer
12:19:49 11 programs communicate and interact, so it's an
12:19:54 12 interface, a program interface, so it's the -- the
12:19:57 13 definition of the way the calls and the programs
12:20:01 14 interact.

12:20:02 15 Q Okay. And the first bullet point says, "A
12:20:06 16 single match API call should have ability to query
12:20:10 17 against Warner DB and/or YouTube DB."

12:20:15 18 Can you explain what that means?

12:20:17 19 A It appears to say that when we get a -- when
12:20:21 20 a match -- when an unknown is sent, that -- that
12:20:30 21 the -- the way -- the API call should be defined. It
12:20:34 22 should be able to query against both -- be looked up
12:20:40 23 against both the Warner database and/or the YouTube
12:20:44 24 database.

12:20:44 25 Q Okay. Can you explain, I don't think we've

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12:20:46 2 discussed yet, what is the Warner database?

12:20:51 3 A In this context, it is -- in the Phase I

12:20:56 4 above, it has the Warner database, the database with
12:21:02 5 Warner Music content.

12:21:04 6 Q Was that a custom database developed

12:21:08 7 specifically for YouTube, or is that a database of
12:21:12 8 Audible Magic's that was for use with all of its
12:21:15 9 customers?

12:21:17 10 A As I talked about before, we have a master
12:21:20 11 database, and we can segment that database and set up
12:21:24 12 custom databases.

12:21:27 13 In this case, the Warner database would be we
12:21:32 14 would take out -- we would copy all of the
12:21:38 15 fingerprints of content that was owned by Warner --
12:21:44 16 registered by Warner Music and put that in a special
12:21:46 17 database.

12:21:47 18 So it would be -- had been a custom database
12:21:50 19 for this YouTube implementation.

12:21:51 20 Q Okay. And what is the YouTube DB?

12:22:02 21 A I -- I believe that the YouTube DB, in this
12:22:08 22 time frame, was a database that was specifically for
12:22:13 23 YouTube, and we, I believe, called it a submitted
12:22:18 24 content database. So it gave the capability of
12:22:25 25 YouTube to -- to take content and -- and generate

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12:22:29 2 fingerprints and put them into a separate database.

12:22:41 3 Q Okay. So that -- so is that another example
12:22:44 4 of a customized database designed specifically for one
12:22:48 5 customer, in this case YouTube?

12:22:52 6 A Yeah. In this case, actually, we -- in most
12:23:01 7 cases, our database is -- the content is supplied by a
12:23:08 8 copyright holder to us and then we deploy it in a
12:23:10 9 database. In this case, in a YouTube database or a
12:23:13 10 submitted content database, the site itself can submit
12:23:16 11 fingerprints into a database.

12:23:21 12 Q Okay. And is that -- is that what -- is that
12:23:23 13 how the YouTube database worked?

12:23:24 14 A I believe that is what this is referring to.

12:23:27 15 Q Okay. What kind of fingerprints would
12:23:31 16 YouTube submit into the YouTube database?

12:23:36 17 A We provided the -- the feature, the
12:23:40 18 functionality to let them register content. What they
12:23:45 19 registered, we -- we really didn't know why or what
12:23:50 20 was registered.

12:23:50 21 Q When you say "registered," I don't think
12:23:54 22 that's a term we discussed before.

12:23:55 23 A I mean, put in the database, deployed in the
12:23:57 24 database. So what content they deployed -- they
12:23:59 25 register -- they put in this database, we didn't know.

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1 IKEZOYE, V.

13:24:50 2 Q And it begins, "Gentleman, Vance has signed
13:24:55 3 the agreement. Enclosed is the final."

13:25:00 4 Do you see that?

13:25:00 5 A Yes.

13:25:00 6 Q Do you know what agreement this is talking
13:25:02 7 about?

13:25:02 8 A It's referring to the -- the service
13:25:05 9 agreement that we signed with YouTube.

13:25:07 10 Q Okay. And turning your attention to the
13:25:12 11 third page of the exhibit, is this the final version
13:25:18 12 of the agreement, the service agreement between
13:25:23 13 YouTube and Audible Magic?

13:25:25 14 A It appears to be, yes.

13:25:30 15 Q Okay. Okay.

13:25:37 16 Is it -- is it normal that when Audible Magic
13:25:43 17 gets a new customer, it would take a number of months
13:25:51 18 to negotiate a service agreement?

13:25:57 19 A Can you repeat that question? Is it --

13:25:58 20 Q Sure. Let me -- let me state it another way.

13:26:01 21 We had seen earlier that the first contact
13:26:03 22 between YouTube and Audible Magic was in April of '06;
13:26:07 23 correct?

13:26:09 24 A Yes.

13:26:09 25 Q This contract is dated October '06.

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1 IKEZOYE, V.

13:38:19 2 database that was getting transactions in the first
13:38:22 3 quarter of 2007.

13:38:26 4 Q And when the -- at that time, in the first
13:38:37 5 quarter 2007, when the Audible Magic service went live
13:38:43 6 on YouTube, do you recall what fingerprints YouTube
13:38:50 7 had requested that their custom database be populated
13:38:53 8 with?

13:38:54 9 A My recollection is that it was Universal
13:38:57 10 Music content that was populating the database.

13:39:01 11 Q Do you recall why it was Universal Music?

13:39:05 12 A No.

13:39:05 13 Q Okay. Do you know -- did it always -- did it
13:39:10 14 remain Universal Music or was -- were more
13:39:15 15 fingerprints ever added to that?

13:39:17 16 A Other fingerprints were added over time.

13:39:19 17 Q Okay.

13:39:38 18 (Document marked Ikezoye Exhibit 10
13:39:38 19 for identification.)

13:39:38 20 MR. DESANCTIS: Let me show you what's being
13:39:42 21 marked as Ikezoye Exhibit 10. I'll ask you to take a
13:39:47 22 quick look at it. This is a multi-page document
13:39:50 23 bearing the Bates No. AM836 through 844.

13:40:36 24 Q I'm just gonna ask you a couple of questions
13:40:39 25 about the first couple of pages.

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1 IKEZOYE, V.

13:40:41 2 A Okay.

13:40:42 3 Q Do you recognize this, Mr. Ikezoye, as the --
13:40:49 4 a chain of e-mails between people at Audible Magic and
13:40:54 5 people at YouTube?

13:40:55 6 A Yes.

13:40:55 7 Q And the topmost e-mail is from Franck
13:41:04 8 Chastagnol to Jim Schrempp, CC to Vance Ikezoye, dated
13:41:13 9 August 17th, 2006, correct?

13:41:17 10 A Yes.

13:41:17 11 Q I'd like to direct your attention to the
13:41:18 12 bottom of the first page. This is from Franck
13:41:22 13 Chastagnol to Jim Schrempp, CCed to you, dated
13:41:27 14 August 16, 2006.

13:41:37 15 At the bottom, Mr. Chastagnol writes,
13:41:37 16 "Initially we will ask you to populate the reference
13:41:46 17 fingerprint database with the catalog of only one of
13:41:48 18 those companies. By the way, I assume this is
13:41:51 19 something you can do; correct? But as we sign new
13:41:54 20 contracts, we will add catalogs from other companies."

13:42:07 21 Do you understand what is meant by "signing
13:42:10 22 new contracts"?

13:42:14 23 MS. REES: Objection; calls for speculation.

13:42:15 24 MR. DESANCTIS: Q. Well, I -- I'm asking --
13:42:16 25 I'm asking if you understood what is meant by this.

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1 IKEZOYE, V.

13:42:20 2 You were CCed on it.

13:42:22 3 A Yeah, I believe it was a great licensing
13:42:24 4 agreement between the companies.

13:42:25 5 Q Between what companies?

13:42:29 6 A YouTube and content owners.

13:42:30 7 Q Okay. So your understanding of the
13:42:31 8 arrangement -- is it your understanding of the
13:42:36 9 arrangement that as YouTube signed new contracts with
13:42:39 10 content owners, YouTube would then request that that
13:42:45 11 content owners' fingerprints be put into the YouTube
13:42:51 12 custom database?

13:42:52 13 MS. REES: Objection; calls for speculation;
13:42:53 14 hypothetical.

13:42:53 15 THE WITNESS: That was my understanding, and
13:42:56 16 yes.

13:42:57 17 MR. DESANCTIS: Okay.

13:43:00 18 Q Is that -- is that hypothetical, or is that
13:43:04 19 actually what happened, if you know?

13:43:06 20 MS. REES: Objection; calls for speculation.

13:43:14 21 THE WITNESS: I know, in general, that the
13:43:16 22 database was a subset. I don't know if every piece of
13:43:18 23 content in there was related to a company that had a
13:43:21 24 licensing agreement.

13:43:23 25 MR. DESANCTIS: Okay.

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1 IKEZOYE, V.

14:02:32 2 proposed that Audible Magic could also provide film
14:02:37 3 and TV fingerprinting services, in addition to the
14:02:42 4 music fingerprinting services, were you ever given an
14:02:46 5 explanation from Maxcy or others why they were
14:02:49 6 declining that offer?

14:02:51 7 A No.

14:02:51 8 Q Do you recall whether -- do you recall when
14:03:13 9 the first time it was -- actually, let me withdraw
14:03:19 10 that and ask it another way to be more clear.

14:03:21 11 When was the first time you recall Audible
14:03:31 12 Magic proposing to YouTube that Audible Magic could
14:03:34 13 include services for film and TV fingerprinting?

14:03:42 14 A I don't remember specifically when. My
14:03:46 15 recollection is more of phone conversations, trying to
14:03:55 16 sell and get some interest in using some of our other
14:04:00 17 services, and there might have been other proposals
14:04:08 18 more formally given. I can't remember the dates,
14:04:12 19 though.

14:04:14 20 Q Okay. So when YouTube would submit a lookup
14:04:27 21 fingerprint to Audible Magic, Audible Magic would then
14:04:33 22 run that fingerprint against the fingerprints in the
14:04:38 23 YouTube custom database; correct?

14:04:42 24 A Yes.

14:04:42 25 Q And only against the YouTube custom database?

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1 IKEZOYE, V.

14:04:49 2 A No, those transactions were run against the
14:04:51 3 YouTube custom database and the -- our YouTube
14:04:55 4 submitted database, or in the terminology before, the
14:04:58 5 YouTube database.

14:05:00 6 Q Okay. So it was run against the YouTube
14:05:03 7 custom database and what we'll call the YouTube
14:05:07 8 submitted content database?

14:05:09 9 A Yes.

14:05:09 10 Q Okay. And is the YouTube submitted content
14:05:22 11 database the database that you testified about earlier
14:05:25 12 that contained fingerprints submitted by YouTube?

14:05:30 13 A Yes.

14:05:30 14 Q Was YouTube the first to have such a
14:05:33 15 submitted content database, the first customer?

14:05:39 16 A I believe so.

14:05:41 17 Q Okay. What was the -- what -- what -- what
14:05:44 18 function does the submitted content database serve
14:05:49 19 where the customer is providing its own fingerprints?

14:05:53 20 A Well, I don't know specifically for YouTube,
14:05:57 21 but I can -- I know how certain other customers use
14:06:02 22 it.

14:06:02 23 Q And how is that?

14:06:05 24 A Some customers use it to -- to -- if -- if a
14:06:12 25 piece of content that the fingerprint isn't

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1 IKEZOYE, V.

14:17:20 2 Q Okay. Let me direct your attention,
14:18:17 3 Mr. Ikezoye, to what's already been marked as
14:18:20 4 Exhibit -- Ikezoye Exhibit 9.

14:18:28 5 Do you have that document?

14:18:29 6 A Yes, I do.

14:18:29 7 Q Can I ask you to turn to page five of the --
14:18:46 8 I'm sorry. This is the e-mail attached -- with
14:18:48 9 attached to it the final copy of the service agreement
14:18:51 10 between YouTube and Audible Magic; correct?

14:18:53 11 A Correct.

14:18:53 12 Q Can I ask you, please, to turn to page five
14:18:56 13 of that contract?

14:19:08 14 I'd ask you to read these terms in Section 4,
14:19:13 15 under the title "Fees," and I'm going to ask you some
14:19:23 16 questions about it.

14:19:39 17 A Okay.

14:19:39 18 Q Do these terms accurately reflect what
14:19:44 19 YouTube pays Audible Magic for the content ID services
14:19:49 20 Audible Magic renders?

14:19:52 21 A Yes.

14:19:52 22 Q Okay. Are there any additional fees or
14:19:55 23 payments that YouTube makes to Audible Magic that are
14:19:59 24 not listed here in Section 4 of the contract?

14:20:03 25 A There you -- there use -- there -- during the

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1 IKEZOYE, V.

14:20:07 2 whole period of our relationship, no. There were some
14:20:10 3 other fees that YouTube was paying us.

14:20:13 4 Q What were those?

14:20:15 5 A They were paying us for fees for services
14:20:18 6 for -- to add Google Video to the service.

14:20:25 7 Q Do you recall what -- the size of those fees,
14:20:33 8 approximately?

14:20:34 9 A I -- I -- they're around 20,000 -- \$20,000 to
14:20:37 10 \$30,000, I believe, a month, I think.

14:20:40 11 Q And is YouTube or Google still paying those
14:20:45 12 fees to -- to Audible Magic today?

14:20:53 13 A No.

14:20:53 14 Q When did it stop?

14:20:57 15 A Earlier this year, I believe.

14:20:59 16 Q Why did -- why did YouTube or Google stop
14:21:02 17 paying those Google Video fees to Audible Magic?

14:21:11 18 A I believe Google shut down Google Video.
14:21:16 19 That's my recollection.

14:21:18 20 Q Okay. So what -- what services was -- were
14:21:21 21 Audible Magic providing to Google Video for these
14:21:26 22 fees?

14:21:27 23 A Primarily, being able to use our -- to be
14:21:31 24 able to provide a similar kind of transaction from
14:21:36 25 YouTube for -- to our custom YouTube database, music

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1 IKEZOYE, V.

14:21:40 2 database, to -- for Google Video as well.

14:21:46 3 Q Okay.

14:22:15 4 A Can I make one thing -- going back?

14:22:17 5 Q Yes.

14:22:18 6 A The Google Video contract seems to be 20,000,
14:22:21 7 but I don't know that for sure.

14:22:23 8 Q Okay. Is there a separate written contract
14:22:26 9 between Audible Magic and Google Video?

14:22:29 10 A Yes; there was an amendment to this contract.

14:22:34 11 Q Okay. Then -- then putting the Google Video
14:22:56 12 contract aside and just looking at the Audible Magic
14:22:58 13 relationship, can you -- can -- can you tell us what
14:23:06 14 the fees are -- what they were and what they are today
14:23:12 15 that YouTube is paying Audible Magic?

14:23:16 16 A When we originally did the agreement for the
14:23:19 17 first period, the original term, it was \$20,000 per
14:23:24 18 month, and then there's a period of -- from
14:23:32 19 January 1st, 2008, through December 31st, 2008, where
14:23:36 20 the fees went up to \$25,000 a month, and then there
14:23:40 21 was an extension for 2009 and there is an option on an
14:23:47 22 extension for 2010.

14:23:50 23 Q And was there a -- any sort of one-time lump
14:23:59 24 sum additional fee owed to Audible Magic from YouTube
14:24:03 25 at the beginning of the contract?

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14:24:05 2 A Yeah, there was a \$200,000 amount due that
14:24:14 3 needed to be paid on execution.

14:24:16 4 Q Okay. So -- and did YouTube actually pay
14:24:19 5 Audible Magic \$200,000 on execution of the contract?

14:24:22 6 A I believe so.

14:24:23 7 Q Okay. Is YouTube still using Audible Magic
14:24:31 8 content ID services today?

14:24:34 9 A Yes.

14:24:34 10 Q Is it still being governed by this same
14:24:37 11 contract?

14:24:38 12 A Yes.

14:24:38 13 Q Okay. Do you know what it would cost YouTube
14:25:05 14 to include in its custom database fingerprints from
14:25:15 15 Audible Magic's film and TV reference database?

14:25:24 16 A Not specifically, because the way our pricing
14:25:27 17 would go for this would be, we would need to
14:25:29 18 understand the transaction volume, and so
14:25:34 19 understanding the transaction volume, I could give you
14:25:37 20 a price.

14:25:38 21 Q Okay. If you assumed that the transaction
14:25:41 22 volume -- volume was the same as the transaction
14:25:47 23 volume covered in the existing contract that we're
14:25:50 24 looking at now, can you approximate what that price
14:25:55 25 would be?

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14:25:56 2 A My guess would be at least double the price
14:25:59 3 that's listed here.

14:26:00 4 Q Okay. Does that mean double the monthly fees
14:26:19 5 and double the one-time start-up fee? In other words,
14:26:22 6 would there be a new one-time start-up fee?

14:26:25 7 A It's all subject to negotiation, but we
14:26:27 8 probably wouldn't have a start-up fee, that one-time
14:26:30 9 fee. We would double the monthly fee.

14:26:34 10 Q I -- I'm sorry. You said you probably would
14:26:36 11 not have --

14:26:36 12 A Would not.

14:26:36 13 Q -- a start-up fee?

14:26:37 14 A We probably would not have a start-up fee.

14:26:40 15 Q But you would double the monthly fee?

14:26:45 16 A Right.

14:26:45 17 Q Okay. Do you recall whether YouTube's
14:27:24 18 testing of Audible Magic's content ID services began
14:27:30 19 at the time this contract was executed or whether it
14:27:33 20 began prior to that?

14:27:35 21 A I believe it was prior to the execution of
14:27:37 22 this contract.

14:28:14 23 MR. DESANCTIS: Okay. Can we go off the
14:28:15 24 record for two minutes and just take a very short
14:28:21 25 break.

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1 IKEZOYE, V.

14:44:09 2 Q Okay.

14:44:09 3 A But it wasn't that the technology of the
14:44:11 4 systems had to be -- it wasn't rocket science or
14:44:15 5 anything. We would just have to have it deployed.

14:44:19 6 Q I see.

14:44:20 7 So the technology was in place, it just
14:44:22 8 hadn't been deployed?

14:44:24 9 A Right. Basically, yes.

14:44:26 10 Q Okay. And, well, what -- now I'm unclear.

14:44:35 11 Looking at the late 2005 time frame, to say
14:44:39 12 that the -- the technology was in place, but it hadn't
14:44:42 13 been deployed, what -- what does that mean exactly?

14:44:44 14 A It just means that we have the capability of
14:44:49 15 taking a fingerprint, using our content identification
14:44:53 16 fingerprinting technology to identify copyrighted
14:44:57 17 content and to do a lookup against an ID server and to
14:45:04 18 respond with an identification and business rules.
14:45:08 19 That core technology has been working for years before
14:45:14 20 that point.

14:45:15 21 Q Since when?

14:45:19 22 A That basic techno- -- that basic structure
14:45:24 23 and architecture, Replicheck, you know, 2003 or 2004,
14:45:33 24 it hadn't been deployed specifically to identify audio
14:45:40 25 on a video, but the technology is the same.

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14:45:45 2 Q Okay. Can you just clarify that very last
14:45:54 3 sentence by saying "the technology is the same"?

14:45:59 4 A Up until, you know, the 2000 -- late
14:46:04 5 2005/2006 time frame, the technology that had been
14:46:07 6 primarily used to identify audio files, MP3 files for
14:46:16 7 copyrighted content. All that we did in doing these
14:46:20 8 video files, was to take out the soundtrack, the audio
14:46:26 9 track of the video and apply the same technology,
14:46:30 10 which is identifying the audio.

14:46:32 11 So around that 2005/2006 time frame is when
14:46:37 12 we had implemented the capability to do that
14:46:41 13 soundtrack, take that soundtrack off and apply our
14:46:46 14 base technology.

14:46:47 15 Q I see.

14:46:48 16 And could you have implemented that
14:46:50 17 technology earlier, had a customer asked you to do so?

14:46:56 18 A Yes.

14:46:56 19 Q Okay. How much earlier in the history of
14:47:06 20 Audible Magic's development?

14:47:07 21 A My guess is that easily the beginning of 2005
14:47:11 22 and probably 2004 kind of time frame.

14:47:16 23 Q Okay.

14:47:58 24 (Document marked Ikezoye Exhibit 14
14:47:59 25 for identification.)

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1 IKEZOYE, V.

15:12:09 2 were removed before or after YouTube went live with
15:12:17 3 the Audible Magic -- Audible Magic services?

15:12:21 4 A No, I can't remember.

15:12:23 5 Q Okay. Can I direct your attention back to
15:12:38 6 Exhibit 14. On the second page, bearing the Bates No.
15:12:50 7 AM4625, could you look at the middle e-mail and tell
15:12:58 8 me if that refreshes your recollection?

15:13:00 9 A Well, reading this, it looks like David King
15:13:06 10 from YouTube directed Lou, who was building the
15:13:09 11 databases, to remove the Warner content from our --
15:13:12 12 the database build that we did for YouTube.

15:13:16 13 Q Okay. And do you recall why?

15:13:20 14 A No.

15:13:21 15 Q Okay. Mr. Ikezoye, I'm gonna change gears
15:15:05 16 here and ask you questions about a different period of
15:15:12 17 time and on -- and on a different topic.

15:15:14 18 Do you recall ever making a proposal to
15:15:19 19 YouTube proposing that Audible Magic implement tests
15:15:30 20 to fingerprint -- to look for fingerprint matches with
15:15:37 21 content from MPAA members?

15:15:42 22 A Yes, I -- I -- I remember a document that we
15:15:50 23 proposed that I don't remember the time frame of that.

15:15:52 24 Q Okay. When -- when -- I'm sorry.

15:15:53 25 I said MPAA. What's your understanding of

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1

IKEZOYE, V.

15:15:55

2

what MPAA is?

15:15:58

3

A The Motion Picture Association of America.

15:16:00

4

Q And its members are?

15:16:03

5

A The film studios.

15:16:06

6

Q Okay. Do you know if Paramount is a member?

15:16:09

7

A Through Viacom, yes.

15:16:10

8

Q Okay.

15:16:20

9

(Document marked Ikezoye Exhibit 17

15:16:21

10

for identification.)

15:16:21

11

MR. DESANCTIS: I'll show you, Mr. Ikezoye,

15:16:24

12

what is -- has been marked as Exhibit 17.

15:16:37

13

Q Is this the proposal that Audible Magic made

15:16:42

14

to YouTube concerning searches for content owned by

15:16:46

15

MPAA members?

15:16:48

16

A It is a proposal that we wrote about -- yes,

15:16:54

17

about a pilot test.

15:16:56

18

Q Okay. When you say "we wrote," were you

15:17:02

19

involved in writing this proposal?

15:17:03

20

A Most likely, yes.

15:17:04

21

Q Okay. And it's dated October 9th, 2006. Do

15:17:09

22

you have any reason to believe that that's not when

15:17:10

23

this proposal was created?

15:17:13

24

A No.

15:17:13

25

Q Okay. And do you recall ever making this

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15:20:32 2 was Chris Maxcy.

15:20:34 3 Q And what was the reception at YouTube to your
15:20:54 4 proposals for searching of content owned by MPAA
15:21:00 5 members?

15:21:01 6 MS. REES: Objection; mischaracterizes
15:21:03 7 testimony; lacks foundation.

15:21:04 8 THE WITNESS: While they were never accepted,
15:21:10 9 I don't believe there was much conversation regarding
15:21:12 10 it.

15:21:13 11 MR. DESANCTIS: Q. Is that because -- is
15:21:17 12 that because YouTube never showed much interest in the
15:21:20 13 proposals, or is there another reason?

15:21:23 14 MS. REES: Same objections.

15:21:24 15 THE WITNESS: Sorry.

15:21:26 16 MS. REES: Also vague.

15:21:34 17 THE WITNESS: My perception was -- is that
15:21:37 18 there was no -- there wasn't the interest in -- in
15:21:43 19 utilizing us for anything more than music.

15:21:46 20 MR. DESANCTIS: Okay.

15:21:48 21 Q Do you know why?

15:21:59 22 A No.

15:21:59 23 Q And has YouTube, in fact, ever used Audible
15:22:03 24 Magic for more than music?

15:22:04 25 MS. REES: Objection; asked and answered.

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1 IKEZOYE, V.

15:23:32 2 for -- related to searching Audible Magic's databases
15:23:37 3 for materials owned by MPAA members?

15:23:42 4 A Not that I'm aware of.

15:23:44 5 Q In Exhibit 17 that we've been looking at, the
15:24:16 6 sixth black bullet point down bears the header "MPAA
15:24:19 7 test."

15:24:19 8 Do you see that?

15:24:21 9 A Yes.

15:24:21 10 Q And the third white bullet point below that
15:24:28 11 reads, "Audible Magic will subsidize its development
15:24:32 12 cost for the modification of its service."

15:24:35 13 What does that mean?

15:24:38 14 A This kind of statement would mean that if we
15:24:41 15 had any development costs to implement the test and to
15:24:45 16 modify our existing service to YouTube, that we would
15:24:51 17 subsidize and pay for some of the development costs.

15:24:57 18 Q And not pass that cost on to YouTube?

15:25:01 19 A Correct.

15:25:02 20 Q Okay. Why was Audible Magic willing to
15:25:12 21 subsidize those development costs and not pass those
15:25:15 22 on to YouTube?

15:25:19 23 A Because we would hopefully be able to sell
15:25:22 24 the incremental -- the service and get more revenue
15:25:25 25 from YouTube longer term.

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15:25:27 2 Q And the next black bullet point down says,
15:25:40 3 "Test cost \$10,000"; do you see that?

15:25:44 4 A Yes.

15:25:44 5 Q Is that the cost to Audible Magic or to
15:25:49 6 YouTube?

15:25:53 7 A That would be the cost to somebody to help
15:25:56 8 pay for this, this whole process that we've outlined
15:26:00 9 above.

15:26:00 10 Q Okay. And would that be the total cost for
15:26:02 11 this process?

15:26:03 12 A That's what -- the costs that we wanted to
15:26:06 13 charge, yes.

15:26:07 14 Q Do you recall whether you ever communicated
15:26:16 15 to YouTube that such a test would cost \$10,000 and
15:26:23 16 that Audible Magic was willing to subsidize its
15:26:27 17 development costs?

15:26:29 18 A I don't know if this was communicated to
15:26:31 19 YouTube.

15:26:32 20 Q Okay. The -- that same bullet point we were
15:26:52 21 looking at previously that reads "Audible Magic will
15:26:54 22 subsidize its development costs for the modification
15:26:57 23 of its service," what type of modification might have
15:27:01 24 been required in October of 2006 in order to perform
15:27:06 25 this test?

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1 IKEZOYE, V.

15:27:09 2 A Well, in the -- in this overview, we were
15:27:11 3 talking about having fingerprint generation tools
15:27:18 4 available to the studios to generate fingerprints, and
15:27:22 5 there may have -- may or may not have been fingerprint
15:27:27 6 modifications necessary for that. We would have to
15:27:31 7 deploy other servers beyond the music database for
15:27:38 8 this, and so there -- there might have been some costs
15:27:43 9 with respect to that.

15:27:45 10 Q Okay. And would you -- would those
15:27:49 11 modifications have been extensive based on the state
15:27:53 12 of Audible Magic's technology in October 2006?

15:27:58 13 MS. REES: Objection; vague as to
15:28:01 14 "extensive."

15:28:02 15 THE WITNESS: No. They were small changes,
15:28:07 16 and so we could -- we could do all this.

15:28:10 17 MR. DESANCTIS: Q. Do you know whether
15:28:15 18 Audible Magic ever actually made those kinds of
15:28:18 19 changes, whether -- whether in the context of this
15:28:21 20 proposal or -- or anything else?

15:28:28 21 A Well, today we do offer services to identify
15:28:31 22 both music and film and television shows, and we
15:28:34 23 provide tools to -- to studios, film and television
15:28:41 24 studios and to fingerprint content and provide
15:28:44 25 those -- that fingerprints -- those fingerprints to

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1 IKEZOYE, V.

15:49:29 2 (Document marked Ikezoye Exhibit 18

15:49:33 3 for identification.)

15:49:33 4 MR. DESANCTIS: Q. Let me show you, sir,

15:49:34 5 what's been marked as Exhibit 18.

15:49:36 6 A Okay.

15:49:36 7 Q This is a two-page document --

15:49:41 8 A Okay.

15:49:42 9 Q -- bearing the -- take -- take a look at it,

15:49:46 10 and for the record I'll state that it bears the Bates

15:49:49 11 Nos. GOO001-739564 through '65.

15:49:59 12 And, Mr. Ikezoye, I'd like to direct your

15:50:06 13 attention to the last e-mail in this chain --

15:50:08 14 A Yep.

15:50:08 15 Q -- on page two.

15:50:13 16 A Okay.

15:50:14 17 Q Does this refresh your recollection of ever

15:50:16 18 having been introduced to Adam Cahan?

15:50:20 19 A Well, obviously, yes, but I did receive an

15:50:25 20 e-mail introduction to Adam at MT -- at MTV Viacom.

15:50:31 21 Q Okay. The e-mail at the bottom of the chain

15:50:38 22 with -- the last e-mail in this document, on page two,

15:50:42 23 is from Chris Maxcy to you, copied to Adam Cahan,

15:50:50 24 dated December 5th, 2006, and the second -- starting

15:50:54 25 with the second sentence, it reads, "We are

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1 IKEZOYE, V.

15:51:00 2 confidently talking to Adam and his team about a
15:51:06 3 partnership and wanted to get the two of you
15:51:09 4 connected. Adam has a number of questions regarding
15:51:12 5 how Viacom can get its content into the AM database."

15:51:19 6 Do you recall being involved in discussions
15:51:26 7 with Viacom and YouTube regarding a potential
15:51:32 8 partnership between Viacom and YouTube?

15:51:36 9 A I remember that -- that we were introduced to
15:51:41 10 Viacom and MTV about getting their content into our
15:51:46 11 database, and this refreshes my memory that, actually,
15:51:51 12 Chris at -- Maxcy at YouTube made the introduction.

15:51:55 13 I do know, subsequently, that we did start to
15:51:59 14 get their content in our database.

15:52:01 15 Q And was this introduction -- did this lead to
15:52:07 16 the first time that -- that Audible Magic had dealt
15:52:08 17 with Viacom, or had -- had you dealt with Viacom
15:52:11 18 previously?

15:52:15 19 A This might have been the first substantial
15:52:18 20 conversation with Viacom. I might have been in some
15:52:21 21 meetings where somebody from Viacom was in the
15:52:26 22 meeting, but this is probably the first -- the most
15:52:29 23 substantial introductions and discussions.

15:52:32 24 Q What, if anything, do you recall about the
15:52:37 25 dis- -- the discussions that you were involved in

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1 IKEZOYE, V.

15:52:40 2 regarding a potential partnership between Viacom and
15:52:44 3 YouTube?

15:52:51 4 A I don't know if I knew that much about
15:52:53 5 exactly what YouTube and Viacom were -- were talking
15:52:57 6 about, what kind of relationship. I think, from this
15:53:01 7 point on, it was mostly a focus between Audible Magic
15:53:05 8 and Viacom or MTV to start getting content into our
15:53:13 9 database. Chris might have backed out from that
15:53:20 10 point.

15:53:20 11 Q What do you mean Chris backed out?

15:53:23 12 A Out of the -- out of this -- in this point
15:53:27 13 about the conversation. He might have just left it to
15:53:29 14 us. I'm not sure he was copied after that.

15:53:33 15 Q I see.

15:53:36 16 This is dated December 5th, 2006.

15:53:42 17 Do you recall when it was that Viacom
15:53:45 18 ultimately provided finger- -- began providing
15:53:50 19 fingerprints to Audible Magic?

15:53:51 20 A In the late first quarter of 2007 or early
15:53:54 21 second quarter of 2007, I believe. We have a report.

15:54:04 22 Q Yeah, if you want to --

15:54:05 23 A Yeah.

15:54:05 24 Q -- refer to that report --

15:54:06 25 A Yeah.

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1 IKEZOYE, V.

15:54:06 2 Q -- that you reference, you -- you certainly
15:54:10 3 can.

15:54:11 4 A Yeah.

15:54:11 5 Q I think it was --

15:54:13 6 A 4A. Yeah, 4A kind of shows content
15:54:23 7 starting -- looks like April was the biggest load.
15:54:29 8 Yeah, April of 2007.

15:54:39 9 Q In April of 2007?

15:54:41 10 A Yes.

15:54:41 11 Q Okay.

15:54:42 12 A That's when the big bulk of fingerprints were
15:54:45 13 starting to get registered.

15:54:47 14 Q And do you recall who you were dealing with
15:54:49 15 at Viacom at that time? Was it Adam Cahan or someone
15:54:53 16 else?

15:54:53 17 A I believe we did -- I had a lot of
15:54:55 18 conversations with Nick Rockwell, and we had some on
15:54:58 19 and off conversations with -- with Joe Simon, but I
15:55:05 20 think Nick was the -- our prime contact.

15:55:07 21 Q And do you know if by that time, April 2007,
15:55:11 22 Viacom and YouTube had, in fact, entered into a
15:55:14 23 partnership together?

15:55:17 24 A No, I don't know that.

15:55:18 25 Q Okay. Do you know why Chris Maxcy introduced

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1 IKEZOYE, V.

16:01:32 2 indicated on that first e-mail on the first page of
16:01:37 3 this exhibit, and they're named Long -- Long From
16:01:42 4 Video Proposal 3-10-07.pdf, and Music Type 3 Proposal
16:01:49 5 3-9-07.pdf.

16:01:51 6 Do you know what those are?

16:01:54 7 A Yeah, their proposals look -- that are
16:01:58 8 attached here for identifying long-form video, as well
16:02:01 9 as a more intensive advanced search of music.

16:02:06 10 Q What does long-form video mean?

16:02:08 11 A Generally, long-form video refers to longer
16:02:13 12 pieces than just clips of a -- of a video. Whole
16:02:18 13 videos or whole TV shows are generally viewed --
16:02:21 14 described as long-form content.

16:02:23 15 Q Okay. And what was the "Music Type 3"? What
16:02:30 16 does that mean?

16:02:32 17 A We have a more advanced service for
16:02:38 18 identifying music. Again, where, instead of a file
16:02:45 19 being the whole song, if there was a subset of the
16:02:47 20 song, say, 30 or 40 seconds of the song, we could
16:02:55 21 still identify it.

16:02:55 22 Q And were these proposals that Audible Magic
16:03:07 23 made to YouTube?

16:03:11 24 A Yes. From the look of this, yes, we made the
16:03:13 25 formal proposal to them to do both.

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16:03:16 2 Q Okay. Other than this document, do you
16:03:18 3 recall those proposals? Do -- do you recall being
16:03:20 4 involved with those proposals?

16:03:21 5 A I think I was probably copied on it and --
16:03:26 6 and so, as I mentioned, we were always looking for
16:03:29 7 opportunities to sell more services to our customers
16:03:34 8 and YouTube also, and so, yes, this is one of the
16:03:39 9 times that we talked about it.

16:03:41 10 Q And do you know whether YouTube ever accepted
16:03:47 11 this proposal, these proposals?

16:03:50 12 A We are not providing any services today, so
16:03:53 13 we didn't sell them on these proposals.

16:03:56 14 Q Are you providing these services to any
16:03:59 15 customers?

16:04:02 16 A Yes.

16:04:02 17 Q Are you providing them to any UGC customers?

16:04:08 18 A Yes.

16:04:08 19 Q Can you testify as to which UG -- for which
16:04:42 20 UGC customers you're providing these services, the
16:04:46 21 long-form video, and the music type three?

16:04:49 22 MR. BLY: Objection to the extent that it
16:04:50 23 calls for the identity of customers that are subject
16:04:52 24 to a confidentiality agreement.

16:04:55 25 You can name the ones that have been publicly

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1 IKEZOYE, V.

16:04:59 2 announced.

16:05:00 3 THE WITNESS: Yeah.

16:05:05 4 Veoh was a customer of these services,
16:05:09 5 Microsoft was a -- Soapbox was a customer of these
16:05:12 6 services.

16:05:14 7 MR. DESANCTIS: Q. Any others that you're --
16:05:15 8 that you can discuss?

16:05:23 9 A For some of the services, the long -- I think
16:05:26 10 for the music, I think Nokia was a customer. I think
16:05:30 11 we had a report, actually, that indicated some of the
16:05:33 12 people that were using all these services.

16:05:36 13 Q Okay. And when you -- when you mention Veoh
16:05:42 14 and Microsoft, I think this is the first mention of
16:05:45 15 Veoh. What is Veoh?

16:05:46 16 A Veoh was a UGC site. Veoh was a video
16:05:48 17 sharing site very similar to YouTube.

16:05:51 18 Q And when you said Veoh was a customer of
16:06:00 19 these services, Microsoft Soapbox was a customer of
16:06:03 20 these services, do you mean both the long-form video
16:06:05 21 and the music type three?

16:06:10 22 A They were, for sure, the -- the video, and
16:06:17 23 I'm unsure about the music.

16:06:18 24 Q Do you recall when it was that Veoh began
16:06:20 25 using the long-form video service?

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16:06:26 2 A I believe they used it from the beginning,
16:06:28 3 and -- but I'm not sure when that was exactly started.

16:06:34 4 Q Yeah.

16:06:34 5 Do you mean the beginning of Audible Magic's
16:06:36 6 relationship with Veoh?

16:06:37 7 A Yes, from the -- from the -- the initial
16:06:39 8 service was using that.

16:06:41 9 Q Okay.

16:06:48 10 A Five, five.

16:07:06 11 So it was at least August 2007. I don't know
16:07:10 12 why this -- that's when all this started.

16:07:25 13 (Document marked Ikezoye Exhibit 20
16:07:25 14 for identification.)

16:07:25 15 MR. DESANCTIS: Show you, Mr. Ikezoye, what's
16:07:28 16 been marked as Exhibit 20.

16:07:34 17 Q Do you recognize this?

16:07:35 18 A Yes, it's a -- our content services agreement
16:07:39 19 with -- between Audible Magic and Veoh.

16:07:43 20 Q Okay. Do you recall, Mr. Ikezoye, when
16:07:55 21 Soapbox, which is owned by Microsoft, first began
16:08:00 22 using the long-form video service?

16:08:06 23 A No, I don't recall exactly when.

16:08:31 24 Q Okay.

16:09:03 25 ///

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1 IKEZOYE, V.

16:10:33 2 audio fingerprinting service?

16:10:34 3 A It was an audio fingerprinting service.

16:10:38 4 Q Okay. But it was used to find matches with
16:10:45 5 video files?

16:10:51 6 A Yes.

16:10:51 7 Q So how is it that a -- or why is it, if it's
16:10:59 8 true, that an audio fingerprint would be effective in
16:11:07 9 identifying a video file --

16:11:13 10 A Because --

16:11:13 11 Q -- if you agree that it is?

16:11:16 12 A It is.

16:11:16 13 Q Let me ask you that first.

16:11:18 14 Is it effective in identifying a video file?

16:11:21 15 A Yes, it is effective.

16:11:22 16 Q Why?

16:11:23 17 A Because you're just trying to identify a TV
16:11:25 18 show or a movie, and a -- and a movie or a TV show has
16:11:32 19 two components that can be used to identify it.

16:11:35 20 The video image or the soundtrack attached to
16:11:39 21 it, they both will really uniquely identify one of
16:11:45 22 those, that piece of content. And we use the
16:11:53 23 soundtrack, the audio track of the video or the movie
16:11:59 24 and it -- we found that it was doing a very good job
16:12:01 25 at identifying TV and film content.

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1 IKEZOYE, V.

16:27:29 2 (Document marked Ikezoye Exhibit 24
16:27:30 3 for identification.)

16:27:30 4 MR. DESANCTIS: Let me show you, Mr. Ikezoye,
16:27:32 5 what's been marked as Exhibit 24. This is a one-page
16:27:35 6 document bearing the Bates No. AM4623. Please take a
16:27:51 7 look at this document.

16:27:59 8 THE WITNESS: Okay.

16:28:03 9 MR. DESANCTIS: Q. Do you recognize this as
16:28:04 10 an e-mail from Lou Kvitek of Audible Magic to David
16:28:12 11 King of YouTube?

16:28:15 12 A Yes.

16:28:15 13 Q Dated February 16th, 2007?

16:28:17 14 A Yes.

16:28:17 15 Q In it Mr. Kvitek describes, to use his words,
16:28:23 16 "A summary of what we can do to address TV show
16:28:27 17 soundtrack lookup. The first being content owner
16:28:34 18 (i.e., Viacom) submit soundtracks with metadata to
16:28:38 19 Audible Magic for registration in our video clip
16:28:41 20 lookup database."

16:28:42 21 Do you see that?

16:28:43 22 A Yes.

16:28:43 23 Q He then offers additional -- additional
16:28:54 24 information of what Audible Magic can -- can do for
16:28:57 25 YouTube, and about three-quarters of the way to the

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1 IKEZOYE, V.

16:29:00 2 bottom of the text, he says, "We have this type of
16:29:04 3 lookup server ready to deploy. We need only order and
16:29:08 4 install the servers and get content from the owners."

16:29:12 5 As the CEO of Audible Magic, do you agree
16:29:16 6 that in February of 2007 Audible Magic had the type of
16:29:24 7 lookup servers ready to deploy that are described in
16:29:27 8 this e-mail?

16:29:28 9 MS. REES: Objection; lacks foundation.

16:29:31 10 THE WITNESS: We do -- did, at this time,
16:29:33 11 have the technology and software ready to deploy.

16:29:37 12 MR. DESANCTIS: Q. And what does it mean
16:29:38 13 that "we need only to order and install the servers"?

16:29:43 14 A That just means we needed to order and
16:29:48 15 install the hardware computers to run the software on.

16:29:50 16 Q And -- and -- and to get content from the
16:29:53 17 owners, what does that mean?

16:29:54 18 A And ensure that we got the reference
16:29:57 19 fingerprints and the reference content from the
16:29:59 20 copyright owners.

16:30:00 21 Q And, to your knowledge, did YouTube ever
16:30:12 22 pursue the proposed services in this e-mail from
16:30:17 23 Audible Magic?

16:30:20 24 A From its production -- putting it in
16:30:23 25 production point of view, no, they -- they did not.

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