

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 ERIC SCHMIDT
SAN FRANCISCO, CALIFORNIA
WEDNESDAY, MAY 6, 2009

JOB NO. 16802

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MAY 6, 2009

9:14 a.m.

VIDEOTAPED DEPOSITION OF ERIC SCHMIDT,
held at the offices of WILSON, SONSINI,
GOODRICH & ROSATI, 601 California Avenue,
Palo Alto, California, pursuant to notice,
before ANDREA M. IGNACIO HOWARD, CLR, CCRR, RPR,
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: SUSAN J. KOHLMANN, Esq.

6 1099 New York Avenue, NW, Suite 900

7 Washington, D.C. 20001

8 (202) 639-6000 skohlmann@jenner.com

9

10 FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

11 PROSKAUER ROSE, LLP

12 By: TANYA L. FORSHEIT, Esq.

13 2049 Century Park East, Suite 3200

14 Los Angeles, California 90067-3206

15 (310) 284-4508 sforsheit@proskauer.com

16

17 FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

18 SHEARMAN & STERLING, LLP

19 By: STUART J. BASKIN, Esq.

20 SEAN T. STRAUSS, Esq. (San Francisco)

21 599 Lexington Avenue

22 New York, New York 10022-6069

23 (212) 848-4000 stuart.baskin@shearman.com

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SCHMIDT, ERIC

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

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

MAYER BROWN, LLP

By: JOHN MANCINI, Esq.

DAVID H. MCGILL, Esq.

1675 Broadway

New York, New York 10019-5820

(212) 506-2279 jmancini@mayerbrownrowe.com

ALSO PRESENT:

GOOGLE

By: KENT WALKER, Esq.

CATHERINE LACAVERA, Esq.

1600 Amphitheater Parkway

Mountain View, California 94043

(650) 214-4879

KEN REESER, Videographer.

---oOo---

1 SCHMIDT, ERIC
2 PALO ALTO, CALIFORNIA
3 WEDNESDAY, MAY 6, 2009, 9:14 A.M.
4
5

09:14:24 6 THE VIDEOGRAPHER: Good morning.

09:14:25 7 Today's videotaped deposition of Eric Schmidt
09:14:28 8 is taken on May 6th, 2009, at 601 California Avenue,
09:14:36 9 Palo Alto, California.

09:14:38 10 In the matter of Viacom International,
09:14:38 11 et al., vs. YouTube, Incorporated, et al., and The
09:14:38 12 Football Association Premier League Limited, et al.,
09:14:38 13 vs. YouTube, Incorporated.

09:14:49 14 Case Nos. 07-CV-2203 and 07-CV-3582. In the
09:15:01 15 U.S. District Court for the Southern District of
09:15:03 16 New York.

09:15:04 17 My name is Ken Reeser. I represent David
09:15:07 18 Feldman Worldwide, located at 600 Anton Boulevard,
09:15:13 19 Suite 1100, Costa Mesa, California.

09:15:15 20 We are now commencing at 9:14 a.m.

09:15:17 21 Will all present please identify themselves,
09:15:21 22 beginning with the witness.

09:15:22 23 THE WITNESS: Eric Schmidt.

09:15:24 24 MR. MANCINI: John Mancini, Mayer Brown, for
09:15:26 25 defendants Google and YouTube.

1 SCHMIDT, ERIC

09:15:29 2 MR. MCGILL: David McGill, also from Mayer
09:15:32 3 Brown, for the defendants.

09:15:33 4 MR. WALKER: Kent Walker, Google.

09:15:35 5 MS. LACAVERA: Catherine Lacavera, Google.

09:15:40 6 MR. BASKIN: Stuart Baskin, Shearman &
09:15:42 7 Sterling, for Viacom.

09:15:42 8 MR. STRAUSS: Sean Strauss, Shearman &
09:15:43 9 Sterling, for Viacom.

09:15:43 10 MS. KOHLMANN: Susan Kohlmann, Jenner &
09:15:45 11 Block, for Viacom.

09:15:48 12 MS. FORSHEIT: Tanya Forsheit, Proskauer
09:15:53 13 Rose, for The Premier League and The Class.

09:15:53 14 THE VIDEOGRAPHER: Thank you.

09:15:54 15 Would the court reporter please swear in the
09:15:56 16 witness.

09:15:56 17 ERIC SCHMIDT,
09:15:56 18 having been sworn as a witness testified as follows:

09:15:56 19

09:16:07 20 EXAMINATION BY MR. BASKIN

09:16:07 21 MR. BASKIN: Good morning, sir.

09:16:13 22 Q Did you have the opportunity to prepare for
09:16:15 23 this deposition?

09:16:16 24 A I did.

09:16:17 25 Q And how long did you prepare for the

1 SCHMIDT, ERIC

09:16:18 2 deposition?

09:16:21 3 A Yesterday, a few hours.

09:16:23 4 Q Now, I assume you have e-mail service on your
09:16:31 5 computer at Google?

09:16:32 6 A I do.

09:16:33 7 Q How many computers do you have, by the way?
09:16:36 8 I'm impressed with all the computers in the room. How
09:16:39 9 many computers do you have?

09:16:40 10 A Me personally, probably 30.

09:16:41 11 Q And over the course of these 30 computers, do
09:16:47 12 you frequently e-mail during the course of the day?

09:16:49 13 A I do.

09:16:52 14 Q Did you participate in gathering documents
09:16:56 15 for -- or your e-mails in connection with this
09:16:59 16 litigation?

09:17:01 17 MR. MANCINI: Objection to form.

09:17:03 18 MR. BASKIN: Q. Did you play any role in
09:17:04 19 collecting your e-mails or other documents for this
09:17:06 20 litigation?

09:17:07 21 MR. MANCINI: Objection to form.

09:17:08 22 THE WITNESS: I -- yes.

09:17:10 23 MR. BASKIN: Q. What did you do, sir?

09:17:17 24 A I was given what I believe is a protective
09:17:21 25 order, is what it's called, and I followed that.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

09:17:25 2 Q And did you make the selection yourself as to
09:17:29 3 what is produceable in this litigation?

09:17:31 4 MR. MANCINI: Objection to form.

09:17:32 5 THE WITNESS: No.

09:17:37 6 MR. BASKIN: Q. You made it in conjunction
09:17:38 7 with somebody else?

09:17:41 8 MR. MANCINI: Objection to form.

09:17:42 9 THE WITNESS: Yes.

09:17:42 10 MR. BASKIN: Okay.

09:17:43 11 Q And with whom did you make the decision as to
09:17:47 12 what is produceable in this litigation?

09:17:50 13 MR. MANCINI: Objection to form.

09:17:52 14 THE WITNESS: I'm not sure I understand the
09:17:54 15 question very well, because you're using a precise
09:17:57 16 word, which is jointly producing something.

09:18:00 17 MR. BASKIN: Okay. Well let me -- let me --
09:18:02 18 let me show you what -- let's mark as Schmidt
09:18:07 19 Exhibit 1.

09:18:07 20 (Document marked Schmidt Exhibit 1
09:18:10 21 for identification.)

09:18:10 22 MR. BASKIN: I'll pass these out to the gang.

09:18:21 23 MR. MANCINI: The court reporter will hand it
09:18:22 24 to you.

09:18:23 25 MR. BASKIN: And let me hand you Schmidt

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

09:28:36 2 related to this case but none that are related to this
09:28:40 3 case?

09:28:40 4 MR. MANCINI: Objection; lacks foundation.

09:28:42 5 THE WITNESS: Some people have permanent data
09:28:51 6 stores of all communications for their whole lives.
09:28:55 7 Other people over time either delete or lose some of
09:29:01 8 that e-mail.

09:29:03 9 It has been my practice for 30 years to not
09:29:05 10 retain my e-mails unless asked specifically.

09:29:11 11 There are other people who would have copies
09:29:13 12 of e-mails that I had sent, for example, in 2005, that
09:29:20 13 you might find an e-mail that I sent to them that
09:29:23 14 would not be in my copy but might be in their copy.

09:29:27 15 MR. BASKIN: Q. Now, do I understand that it
09:29:34 16 has been your practice for -- strike that.

09:29:37 17 For 30 years, for how long have you preserved
09:29:43 18 your e-mails before they are deleted?

09:29:47 19 MR. MANCINI: Objection to form; objection to
09:29:49 20 the characterization of the testimony.

09:29:50 21 THE WITNESS: That's not what I said, so...

09:29:53 22 MR. BASKIN: Okay.

09:29:53 23 Q I thought you told me if not -- I'm not
09:29:56 24 fencing with you. I just want to know the answer.
09:29:56 25 You said that --

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

09:29:58 2 A Yeah.

09:29:58 3 Q -- I thought you said that for 30 years it's
09:30:01 4 been your practice not to preserve or to delete
09:30:05 5 e-mails?

09:30:05 6 MR. MANCINI: Objection to form; objection to
09:30:07 7 the characterization of the testimony.

09:30:09 8 MR. BASKIN: Q. Is that accurate?

09:30:10 9 A Again, I'll answer the question previously
09:30:14 10 asked, which was it has been my practice to not keep
09:30:16 11 my e-mails.

09:30:17 12 Q And is this on some sort of automatic system
09:30:20 13 where they are deleted in the ordinary course over
09:30:24 14 some ordinary period of time?

09:30:25 15 MR. MANCINI: Objection to form; objection,
09:30:26 16 lacks foundation.

09:30:27 17 THE WITNESS: Depending on the e-mail system
09:30:29 18 and the company and so forth, the answer would vary.

09:30:32 19 MR. BASKIN: Okay.

09:30:32 20 Q Well, let's take Google in 2005. What was
09:30:41 21 your practice then as to the length of time in which
09:30:44 22 you preserved your e-mails before they were deleted?

09:30:47 23 MR. MANCINI: Objection to form.

09:30:48 24 THE WITNESS: It was my practice to delete or
09:30:52 25 otherwise cause the e-mails that I had read to go away

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

09:30:56 2 as quickly as possible.

09:30:57 3 MR. BASKIN: Q. Within days?

09:31:01 4 A Yes.

09:31:01 5 Q And I assume that practice carried over to
09:31:11 6 2006 and 2007 and 2008?

09:31:13 7 MR. MANCINI: Objection; lacks foundation.

09:31:14 8 THE WITNESS: In -- again, without the
09:31:21 9 specific dates, in principle, yes.

09:31:24 10 MR. BASKIN: Q. Now, when the lawsuit was
09:31:28 11 filed in February 2007, did anyone instruct you that
09:31:36 12 you should preserve your e-mails relevant to the
09:31:41 13 litigation?

09:31:44 14 Excuse me. As of -- excuse me. As of the
09:31:47 15 filing of this complaint, which is March of 2007, did
09:31:50 16 anyone instruct you to preserve your e-mails that
09:31:53 17 might be relevant to this litigation?

09:31:54 18 MR. MANCINI: Objection to the extent it
09:31:55 19 calls for a privileged communication.

09:31:58 20 THE WITNESS: I want to be careful not to
09:32:04 21 discuss a legal conversation that I had.

09:32:08 22 You used a precise month. A -- a clear -- a
09:32:14 23 clear and precise answer would be that I did change my
09:32:16 24 practice after this lawsuit was filed and I was
09:32:20 25 notified.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

10:26:34 2 MR. BASKIN: Q. And do you recall whether
10:26:36 3 Mr. Drummond's various numbers were reduced to writing
10:26:42 4 for the board or were they only communicated orally?

10:26:44 5 MR. MANCINI: Objection to form; objection to
10:26:46 6 the characterization of the testimony.

10:26:46 7 THE WITNESS: I have no recollection of how
10:26:48 8 they were communicated, but certainly verbally at a
10:26:53 9 minimum.

10:26:54 10 MR. BASKIN: Q. Now, you are aware, I
10:26:56 11 assume, that the acquisition agreement contains an
10:27:03 12 indemnification provision relating to copyright
10:27:06 13 lawsuits?

10:27:06 14 MR. MANCINI: Objection; lacks foundation.

10:27:08 15 THE WITNESS: I am aware of what I'm going to
10:27:14 16 call a holdback. I don't know the details of exactly
10:27:19 17 the terms of the holdback, but it is my understanding
10:27:22 18 that it includes areas of copyright.

10:27:25 19 MR. BASKIN: Q. And was that discussed by
10:27:29 20 the board in and around October 9, 2006?

10:27:32 21 A Yes.

10:27:32 22 MR. MANCINI: Objection to form.

10:27:33 23 THE WITNESS: Yes.

10:27:33 24 MR. BASKIN: Q. And do you remember that
10:27:34 25 discussion, sir?

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

10:27:35 2 MR. MANCINI: Objection to form.

10:27:36 3 THE WITNESS: No.

10:27:39 4 MR. BASKIN: Q. Was it a factor in your
10:27:45 5 mind, in recommending the transaction, that there was
10:27:47 6 a holdback provision to protect Google in the event of
10:27:52 7 copyright infringement lawsuits?

10:27:53 8 MR. MANCINI: Objection to form; and
10:27:54 9 objection to the extent it seeks communications from
10:27:58 10 counsel, to which I instruct the witness not to
10:28:00 11 answer.

10:28:00 12 THE WITNESS: It is common for us to have a
10:28:02 13 holdback, and this holdback was -- sorry. Let me say
10:28:10 14 it more concretely.

10:28:11 15 It is -- when we do -- we do loss of
10:28:15 16 acquisitions, it is common to have a holdback for
10:28:17 17 legal issues, surprises and what have you.

10:28:23 18 My judgment was this holdback was sort of in
10:28:26 19 the ballpark, and that's the level of conversation
10:28:28 20 that I recall.

10:28:29 21 MR. BASKIN: Q. Now, give me one second,
10:28:50 22 sir. I want to collect my thoughts, because we may be
10:28:52 23 able to jump ahead a little bit.

10:28:55 24 A Sure.

10:29:02 25 THE WITNESS: May I give this back to you?

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

10:38:05 2 MR. MCGILL: I'm fine. Thank you.

10:38:06 3 MR. BASKIN: Q. Most importantly, would you
10:38:06 4 like one, sir?

10:38:09 5 A I'm fine.

10:38:09 6 Q You okay? Okay.

10:38:09 7 A Thank you.

10:38:14 8 Q Prior to Google's purchase of YouTube, did
10:38:19 9 you ever hear a Google executive complain that YouTube
10:38:26 10 was competing unfairly because of the way it dealt
10:38:30 11 with copyrighted material on its site?

10:38:33 12 MR. MANCINI: Objection; lacks foundation;
10:38:35 13 and objection to the form to the extent it seeks a
10:38:37 14 legal conclusion.

10:38:38 15 THE WITNESS: I'm trying to think.

10:38:50 16 I don't recall. I mean, I may -- someone may
10:38:55 17 have said something, but it would have been in general
10:38:59 18 terms. It wouldn't have been with the specificity of
10:39:02 19 your question.

10:39:03 20 MR. BASKIN: Q. Well, did you ever hear any
10:39:08 21 Google executives criticize YouTube because of the way
10:39:11 22 it dealt with copyright issues --

10:39:15 23 MR. MANCINI: Same objections.

10:39:16 24 MR. BASKIN: Q. -- prior to your acquisition
10:39:17 25 of it?

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

10:39:17 2 MR. MANCINI: Same objections.

10:39:19 3 THE WITNESS: Again, I recall complaints
10:39:27 4 about YouTube having different policies, but not
10:39:31 5 specific in the way you asked your question.

10:39:36 6 MR. BASKIN: Q. Well, did you ever read an
10:39:39 7 internal Google document in which a Google executive
10:39:44 8 criticized YouTube because of the way it dealt with
10:39:47 9 copyright issues?

10:39:47 10 MR. MANCINI: Objection; lacks foundation;
10:39:50 11 calls for a legal conclusion; and objection to form.

10:39:52 12 THE WITNESS: I may have. I don't -- I don't
10:39:55 13 recall specifics.

10:39:56 14 MR. BASKIN: Q. Do you remember being told
10:40:12 15 by a senior Google executive that a large part of
10:40:20 16 YouTube's traffic is from pirated content?

10:40:24 17 MR. MANCINI: Objection; lacks foundation;
10:40:26 18 objection to form.

10:40:29 19 THE WITNESS: No specific recollection, no.

10:40:34 20 MR. BASKIN: Let me hand you what we will
10:40:36 21 mark as Schmidt 7. It was Drummond 17, I believe, and
10:40:47 22 Eun -- is that the way you pronounce it, E-U-N, Eun,
10:40:50 23 Eun 12?

10:40:51 24 THE WITNESS: Eun.

10:40:51 25 ///

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

10:40:51 2 (Document marked Schmidt Exhibit 7

10:40:51 3 for identification.)

10:40:51 4 MR. BASKIN: Q. Who is Mr. Eun, Mr. Schmidt?

10:40:52 5 A I assume you're referring to David Eun at UM?

10:40:58 6 Q Correct.

10:41:02 7 Who is he?

10:41:03 8 A An executive that we hired from Time Warner
10:41:05 9 who was doing media -- media partnerships. He -- he
10:41:13 10 became Jennifer Feikin's boss.

10:41:17 11 Q Was he, in the pecking order of things,
10:41:19 12 basically the senior executive dealing with
10:41:23 13 partnerships with content providers?

10:41:25 14 MR. MANCINI: Objection to form.

10:41:26 15 THE WITNESS: As I recall in the org chart,
10:41:31 16 he did content or media partnerships reporting, I
10:41:38 17 think, to Omid Kordestani, who was responsible for
10:41:41 18 overall partnerships.

10:41:43 19 MR. BASKIN: Okay. Fair enough.

10:41:44 20 Q Now, let me hand -- hand you Exhibit 7.

10:42:06 21 A Okay.

10:42:12 22 Q And Mister --

10:42:13 23 A What would -- what would you like me to focus
10:42:16 24 on?

10:42:16 25 Q Well, first, would it be fair to say that you

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

10:42:24 2 sent this e-mail and the chain that follows it --
10:42:30 3 strike that.

10:42:30 4 Is it fair to say the Eric Schmidt from whom
10:42:34 5 this e-mail was sent is you?

10:42:35 6 A That is correct.

10:42:36 7 Q And Mr. Kordestani, the cc, is the gentleman
10:42:40 8 you referred to a few seconds ago as Mr. Eun's direct
10:42:45 9 report; correct?

10:42:46 10 A That is correct.

10:42:46 11 Q And going down to Mr. Eun's e-mail, that
10:42:55 12 e-mail was sent to you in and around May 12th, 2006;
10:42:59 13 right, sir?

10:43:00 14 A Yes.

10:43:00 15 Q And that e-mail was sent to you prior to
10:43:02 16 something called the Video GPS; correct?

10:43:08 17 A That's correct.

10:43:08 18 Q And am I correct that GPS is a -- basically,
10:43:16 19 a quarterly review of product lines within Google that
10:43:16 20 you --

10:43:23 21 A No.

10:43:23 22 MR. MANCINI: Objection; lacks foundation.

10:43:24 23 THE WITNESS: No.

10:43:24 24 MR. BASKIN: Q. What was the Video GPS then?

10:43:27 25 A Well, GPS stands for Google product strategy,

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

10:43:30 2 and it's a series of meetings that occur on typically
10:43:35 3 Tuesdays on a rotating basis. And Video GPS would
10:43:39 4 have been a review of the video -- Google Video
10:43:43 5 product of some kind.

10:43:47 6 And I would read this as -- I read -- I read
10:43:52 7 this e-mail as he's briefing me ahead of the meeting.

10:44:00 8 Q And I take it you did in fact attend the
10:44:05 9 Video GPS, to your recollection?

10:44:06 10 A I normally attend them.

10:44:08 11 Q And in addition to you, would the executive
10:44:11 12 management committee of the company attend GPS
10:44:16 13 meetings?

10:44:16 14 MR. MANCINI: Objection; lacks foundation.

10:44:18 15 THE WITNESS: Approximately half of the
10:44:19 16 executives -- senior executives do, yes.

10:44:21 17 MR. BASKIN: Q. So would Mr. Kordestani have
10:44:23 18 attended in the ordinary course?

10:44:25 19 A Normally not.

10:44:27 20 Q Since this fell within his jurisdiction, is
10:44:30 21 it likely he attended?

10:44:31 22 MR. MANCINI: Objection to form.

10:44:34 23 THE WITNESS: He would have to tell you, but
10:44:37 24 it's again un -- I would be speculating to know -- to
10:44:39 25 know that. Again, normally Omid is not in the

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

10:44:42 2 meetings. Normally I am in the meetings.

10:44:43 3 MR. BASKIN: Q. What about Mr. Brin?

10:44:46 4 MR. MANCINI: Objection; lacks foundation.

10:44:48 5 THE WITNESS: Some percentage of the time.

10:44:51 6 MR. BASKIN: Q. Do you recall if Mr. Brin

10:44:53 7 attended --

10:44:54 8 A I do --

10:44:54 9 Q -- the Video GPS?

10:44:56 10 A -- I do not. I do not.

10:44:57 11 Q And what about Mr. Page?

10:45:02 12 A Again, no recollection.

10:45:03 13 Q In the ordinary course, does he tend to

10:45:08 14 attend Video GPS meetings?

10:45:09 15 MR. MANCINI: Objection to form.

10:45:13 16 THE WITNESS: Larry more than Sergey. But

10:45:17 17 their meetings -- the GPS's are built around me, so

10:45:20 18 the normal course of business, I'm there and the

10:45:23 19 others may or may not be there.

10:45:26 20 MR. BASKIN: Okay.

10:45:28 21 Q Now, you said -- I think you said that you

10:45:30 22 read Mr. Eun's -- am I pronouncing that right, by the

10:45:35 23 way?

10:45:36 24 A That's correct.

10:45:37 25 Q So it's E-U-N.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

10:45:38 2 You read Mr. Eun's e-mail as preparatory to
10:45:42 3 the Video GPS; correct?

10:45:45 4 A That is correct.

10:45:46 5 Q Now, he tells you that -- strike that.

10:46:00 6 Do you read this e-mail as focusing on the
10:46:03 7 issue of how to beat YouTube?

10:46:05 8 MR. MANCINI: Objection to the
10:46:06 9 characterization of the document.

10:46:07 10 THE WITNESS: Well, I haven't read the whole
10:46:12 11 e-mail, but it starts by saying, "We are preparing in
10:46:18 12 preparation for the GPS how we beat YouTube in the
10:46:23 13 short term and how we win over time."

10:46:25 14 So that would be consistent with your
10:46:25 15 assertion.

10:46:27 16 MR. BASKIN: Q. And do you recall that one
10:46:28 17 of the topics being discussed as a way of beating
10:46:32 18 YouTube was whether Google Video should relax
10:46:36 19 enforcement of our copyright policies in an effort to
10:46:41 20 stimulate traffic growth?

10:46:43 21 MR. MANCINI: Objection to the
10:46:43 22 characterization of the document.

10:46:45 23 THE WITNESS: You would have to point me to a
10:46:47 24 paragraph or a sentence here.

10:46:49 25 MR. BASKIN: Q. Well, first, do you -- do

1 SCHMIDT, ERIC

10:46:51 2 you recall this e-mail?

10:46:52 3 A I do not.

10:46:52 4 Q Have you seen this e-mail prior to today, to
10:46:55 5 the best of your recollection?

10:46:57 6 A I think --

10:46:58 7 MR. MANCINI: Objection.

10:46:58 8 THE WITNESS: Go ahead.

10:46:59 9 MR. MANCINI: Objection to the extent it
10:47:01 10 seeks communications with counsel.

10:47:02 11 MR. BASKIN: Okay. Fair enough.

10:47:03 12 Q Now, so let's go to the e-mail, sir, at the
10:47:05 13 bottom. You see it says -- the paragraph that reads
10:47:11 14 as follows, let me point it out to you, "there is a
10:47:17 15 chance of pursuing short-term goals with such
10:47:21 16 zealously that we develop blind spots that could
10:47:25 17 hurt us later. For example, there was heated debate
10:47:31 18 about whether we should relax enforcement of our
10:47:34 19 copyright policies in an effort to stimulate traffic
10:47:38 20 growth, despite the inevitable damage it would cause
10:47:43 21 to relationships with content owners."

10:47:48 22 Do you see that, sir?

10:47:50 23 A I do see that paragraph.

10:47:51 24 Q Do you remember reading that paragraph in and
10:47:53 25 around May 2006?

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

10:47:55 2 MR. MANCINI: Objection; lacks foundation.

10:47:56 3 THE WITNESS: As I indicated, I do not recall
10:47:58 4 the e-mail.

10:47:58 5 MR. BASKIN: Q. Do you recall being party to
10:48:00 6 a discussion as to whether Google Video should relax
10:48:04 7 its copyright policies --

10:48:05 8 MR. MANCINI: Objection to the extent it
10:48:06 9 seeks a leading conclusion.

10:48:06 10 MR. BASKIN: Excuse me. Excuse me. Let me
10:48:08 11 finish. Then you may register your objection.

10:48:11 12 Q Do you recall whether -- strike that.

10:48:17 13 Do you recall being involved in discussions
10:48:20 14 in and around May 2006 on the topic of whether Google
10:48:29 15 Video should relax enforcement of its copyright
10:48:31 16 policies in an effort to stimulate traffic growth?

10:48:34 17 MR. MANCINI: Objection to form; and
10:48:35 18 objection to the extent it seeks communications with
10:48:37 19 counsel, to which I instruct the witness not to
10:48:39 20 answer.

10:48:39 21 THE WITNESS: I only have a vague
10:48:43 22 recollection of their -- as I testified previously, I
10:48:48 23 have only a vague recollection of us talking about the
10:48:51 24 difference between their policies, "their" being
10:48:55 25 YouTube's and ours.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

10:48:57 2 MR. BASKIN: Q. So you do not have a
10:48:58 3 recollection of being party to a discussion about
10:49:01 4 whether Google Video should relax its policies to
10:49:03 5 comport with YouTube's?

10:49:05 6 MR. MANCINI: Same objections.

10:49:07 7 THE WITNESS: And again, I have no specific
10:49:08 8 recollection in that area.

10:49:11 9 MR. BASKIN: Q. Now, in the next paragraph,
10:49:16 10 Mr. Eun says, "I think we should beat YouTube - and
10:49:25 11 all competitors - but not at all costs. A large part
10:49:31 12 of their traffic is from pirated content."

10:49:34 13 Do you see that, sir?

10:49:35 14 A I see that.

10:49:36 15 Q Does -- do you recall reading that sentence
10:49:38 16 in and around May of 2006?

10:49:39 17 MR. MANCINI: Objection; lacks foundation.

10:49:40 18 THE WITNESS: As I previously said, I don't
10:49:43 19 recall this e-mail and, therefore, I don't recall this
10:49:44 20 sentence.

10:49:45 21 MR. BASKIN: Q. Do you recall a conversation
10:49:46 22 with Mr. Eun on the topic that a large part of
10:49:54 23 YouTube's traffic is from pirated content?

10:49:57 24 MR. MANCINI: Objection to form; lacks
10:49:59 25 foundation.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

12:39:01 2 companies to protect the -- their content on the
12:39:06 3 YouTube website?

12:39:07 4 MR. MANCINI: Objection; lacks foundation;
12:39:08 5 and objection to form.

12:39:09 6 THE WITNESS: Okay. There were a lot of
12:39:12 7 negatives in that question.

12:39:13 8 MR. BASKIN: Yeah. It was a lousy question.

12:39:15 9 THE WITNESS: Yeah.

12:39:16 10 MR. BASKIN: Let me withdraw it. That was a
12:39:16 11 real bad question. Let me try again.

12:39:18 12 MR. MANCINI: Good idea.

12:39:20 13 MR. BASKIN: Q. Did you ever reach the
12:39:22 14 conclusion, in your own mind, sir, that Google simply
12:39:29 15 couldn't afford the license fee necessary to make
12:39:35 16 Audible Magic technology available to content owners
12:39:39 17 who wanted it in the end of 2006 and the early parts
12:39:46 18 of 2007, irrespective of whether they entered into a
12:39:50 19 license agreement with YouTube?

12:39:51 20 MR. MANCINI: Objection; lacks foundation;
12:39:53 21 objection to form; and objection to the extent it's
12:39:56 22 seeking mental impressions.

12:39:57 23 THE WITNESS: I -- I have no recollection in
12:39:59 24 this area.

12:40:15 25 MR. BASKIN: Q. Let me ask you this: Based

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

12:40:37 2 on your -- strike that.

12:40:44 3 Q In 2006, can you tell us, for the record, the
12:41:00 4 name of even one large media company that was given
12:41:09 5 access to available fingerprint technologies on
12:41:15 6 YouTube in the absence of a revenue-sharing agreement?

12:41:19 7 MR. MANCINI: Objection to form.

12:41:21 8 THE WITNESS: I'm sorry. In 2006, I -- I
12:41:27 9 don't know.

12:41:28 10 MR. BASKIN: Q. And what about 2007? Can
12:41:32 11 you give me the name of one media company that was
12:41:37 12 given access to available fingerprint technologies in
12:41:45 13 the absence of a revenue deal?

12:41:46 14 MR. MANCINI: I just want to object --
12:41:48 15 continuing objection that the witness has indicated
12:41:49 16 his lack of recollection in this area.

12:41:52 17 THE WITNESS: Yeah. I just -- I don't know
12:41:54 18 the details, so I don't recall.

12:41:55 19 MR. BASKIN: Q. You don't recall the name of
12:41:57 20 one company, right, sir?

12:41:59 21 MR. MANCINI: Same objection.

12:42:01 22 THE WITNESS: Yeah.

12:42:04 23 MR. BASKIN: Q. Correct?

12:42:04 24 A That is correct.

12:42:05 25 Q Now, I just want to do five more minutes and

1 SCHMIDT, ERIC

13:47:46 2 Q Are you familiar that there's a segment of
13:47:49 3 the YouTube website that displays so-called private
13:47:53 4 videos?

13:47:55 5 MR. MANCINI: Objection to form.

13:47:56 6 THE WITNESS: I've heard the term, but I
13:47:58 7 don't know what "private videos" means.

13:48:00 8 MR. BASKIN: Q. So you have no idea how the
13:48:02 9 private videos sector of the website operates?

13:48:07 10 A No.

13:48:09 11 Q Okay. Would you know, as you sit here today,
13:48:20 12 whether a content company is capable of searching the
13:48:31 13 private sector of the website to ascertain whether any
13:48:36 14 of its copyrighted materials are contained in the
13:48:39 15 private sector of the website and to try to take it
13:48:41 16 down?

13:48:41 17 MR. MANCINI: Objection; the witness has
13:48:43 18 testified to his lack of knowledge in this area.

13:48:46 19 THE WITNESS: I don't know what private part
13:48:48 20 of the website is.

13:48:49 21 MR. BASKIN: Okay. Fair enough.

13:48:50 22 Q Now, in 2006 and early 2007, am I correct
13:48:59 23 that Viacom and Google were in a negotiation to try to
13:49:03 24 achieve a revenue-sharing deal between the companies?

13:49:07 25 MR. MANCINI: Objection to the

1 SCHMIDT, ERIC

13:49:07 2 characterization.

13:49:08 3 THE WITNESS: We were attempting to do a
13:49:12 4 business deal, so yes.

13:49:13 5 MR. BASKIN: Q. And -- and that negotiation
13:49:15 6 went on for several months; did it not?

13:49:19 7 A Yes, that's correct.

13:49:19 8 Q And you were personally involved in the
13:49:22 9 negotiations to some degree; weren't you?

13:49:25 10 A That's correct.

13:49:25 11 Q And from time to time, you and Mr. Dauman,
13:49:28 12 the Viacom -- your counterpart at Viacom, would be in
13:49:31 13 communication either by -- either orally or by e-mail;
13:49:34 14 is that correct?

13:49:35 15 A Well, and in person, yes.

13:49:37 16 Q And in person as well?

13:49:39 17 A Yes, absolutely.

13:49:39 18 Q In fact, you visited the Viacom premises at
13:49:42 19 one point to participate, in part, in the
13:49:44 20 negotiations; didn't you?

13:49:49 21 A I participated, I believe, twice with meeting
13:49:52 22 with Philippe in his office to discuss the business,
13:49:56 23 potential business deal.

13:49:57 24 Q And at the same time, you were also
13:50:01 25 negotiating with some of the other -- the chief

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585

1 SCHMIDT, ERIC

13:50:04 2 executives of other media companies; weren't you?

13:50:07 3 A Yes.

13:50:10 4 Q Now -- and I guess we already discussed as
13:50:14 5 part of the business review you were getting periodic
13:50:18 6 reports of the status of negotiations with the big
13:50:20 7 media companies; correct?

13:50:23 8 MR. MANCINI: Objection to the
13:50:23 9 characterization of the prior testimony.

13:50:25 10 THE WITNESS: That is correct.

13:50:34 11 MR. BASKIN: Q. Now, so the jury can
13:50:43 12 understand what a revenue deal like this is, am I
13:50:45 13 right that, as structured, these transactions provided
13:50:54 14 that the media companies' property, videos, would be
13:51:02 15 displayed on YouTube alongside advertisement?

13:51:05 16 MR. MANCINI: Objection; lacks foundation;
13:51:07 17 objection to form; and objection to the presence of a
13:51:10 18 nonexistent jury.

13:51:12 19 THE WITNESS: As a general statement about
13:51:13 20 the business deals, the copyright owner would enter
13:51:22 21 into a license agreement with Google where Google
13:51:27 22 would show the videos or music or what have you and
13:51:32 23 would be compensated on a per-play basis based on some
13:51:37 24 form of advertising product either then in existence
13:51:42 25 or one hoped for in the future.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212)705-8585