

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 FRANCK CHASTAGNOL

SAN FRANCISCO, CALIFORNIA

WEDNESDAY, DECEMBER 10, 2008

1 DECEMBER 10, 2008

2 9:57 a.m.

3
4 VIDEOTAPED DEPOSITION OF FRANCK CHASTAGNOL,
5 SHEARMAN & STERLING, 525 Market Street,
6 San Francisco, California, pursuant to notice,
7 before ANDREA M. IGNACIO HOWARD, CLR, CCRR, RPR,
8 CSR License No. 9830.
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1 A P P E A R A N C E S:
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3 FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

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

2
3 FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and
4 GOOGLE, INC.:

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19 ALSO PRESENT:

20 ADAM L. BAREA, Litigation Counsel, Google

21 KELLY TRUELOVE, Consultant

22 KEN REESER, Videographer.

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CHASTAGNOL

11:34:19 Q But if -- if the future -- if the piece of
11:34:23 content in the future instance is in any way different
11:34:28 from the original piece of content, then it would have
11:34:33 its own hash code; correct?

11:34:35 MR. INGBER: Objection to form.

11:34:37 THE WITNESS: What I know is that -- what I
11:34:49 know is that the hash code is -- is a unique
11:34:57 identifier of a particular video file, and that if the
11:35:09 file is slightly different, the hash code will be
11:35:13 different.

11:35:16 MR. DESANCTIS: Q. And, therefore, the --
11:35:17 the hash code that was assigned to the initial piece
11:35:21 of content would not be useful in finding the
11:35:24 subsequent piece of content that is a little bit
11:35:27 different; correct?

11:35:29 MR. INGBER: Objection; vague.

11:35:33 THE WITNESS: So if you take one file and you
11:35:35 generate a hash code, then you take the second file,
11:35:38 which is slightly different, and you generate a hash
11:35:40 code, then the hash code won't -- won't match.

11:35:44 MR. DESANCTIS: Okay.

11:35:45 THE WITNESS: That's -- that's the way I
11:35:47 understand hash code to -- to work.

11:35:50 MR. DESANCTIS: Q. Are there other tools

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2 12:28:34 But this document, which comes from Kevin
3 12:28:38 Donahue and Chris Maxcy, who are part of the business
4 12:28:41 development team, states "The goal of this feature is
5 12:28:46 to encourage content partners to leave more of their
6 12:28:48 content on the site."
7 12:28:50 Q My question to you is, do you recall ever
8 12:28:55 hearing or being told that the goal of the feature was
9 12:29:00 to encourage content partners to leave more of their
10 12:29:03 content on the site?
11 12:29:14 A It -- that was one of the goal when we
12 12:29:26 launch, one of the goal.
13 12:29:28 Q Okay. Thank you. That was the question.
14 12:29:33 You said this was one of the goals. Were
15 12:29:36 there other goals that were discussed at the time of
16 12:29:38 launch?
17 12:29:41 A Yes.
18 12:29:41 Q What were those?
19 12:29:46 A So I will walk -- walk you through the -- I
20 12:29:53 think the -- the -- the best way from -- you know,
21 12:29:58 again, I'm on the engineering side, you know.
22 12:30:00 Q Yes.
23 12:30:01 A And I -- my -- my view is only on the
24 12:30:05 engineering side, and when I look at the Claim Your
25 12:30:09 Content tool that, you know, that -- that my team and

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CHASTAGNOL

12:42:43 specific time?

12:42:43 MR. DESANCTIS: In -- at the -- at the launch

12:42:47 in 2007.

12:42:48 THE WITNESS: So --

12:42:49 MR. DESANCTIS: Let me -- let me withdraw the

12:42:50 question.

12:42:50 THE WITNESS: So what is the question again?

12:42:52 MR. DESANCTIS: Yeah, let me withdraw the

12:42:53 question. It was confusing.

12:42:54 Q I'm not talking about specific to YouTube.

12:42:56 In general, how does a fingerprint -- how does an

12:42:59 audio fingerprint system compare two pieces of

12:43:05 content? How does it do it?

12:43:06 MR. INGBER: Objection to form; it's

12:43:08 overbroad.

12:43:08 You can try to answer.

12:43:10 THE WITNESS: I mean, so it -- you know,

12:43:17 first of all, every single system is -- you know, is

12:43:21 different, but at a high level, you know, a

12:43:23 fingerprinting system would extract characteristics of

12:43:29 the reference content and characteristics of the probe

12:43:38 and use these characteristics and would compare these

12:43:45 characteristics to determine the likeliness of -- of a

12:43:52 match.

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16:18:06 2 Audible Magic.

16:18:06 3 A Uh-huh.

16:18:07 4 Q Were you coordinating with the business
16:18:08 5 development team as you were doing that?

16:18:10 6 A We had some discussions.

16:18:11 7 Q Okay. So with whom?

16:18:14 8 A So a number of people. Probably Chris Maxcy.

16:18:18 9 Q Okay.

16:18:21 10 A And a number of other people in the team. I
16:18:28 11 don't -- I -- I don't recall, you know, the -- you
16:18:31 12 know, the -- who was or the list of people who were
16:18:36 13 involved, but yeah there were -- there were a number
16:18:41 14 of BD, you know, BD folks involved in the -- in these
16:18:48 15 deals.

16:18:49 16 Q Let's look at this. 68.

16:19:18 17 (Document marked Chastagnol Exhibit 13
16:19:19 18 for identification.)

16:19:19 19 MR. DESANCTIS: Let me show you what's been
16:19:20 20 marked -- being mark as Chastagnol Exhibit 13. This
16:19:29 21 is a document Bates labeled AM 001241 through 1244,
16:19:43 22 and the cover e-mail, the top e-mail, is from you to
16:19:48 23 Jim Schrempp dated Friday December 22nd, 2006, and I'd
16:20:14 24 like to direct your attention to the bottom of page
16:20:16 25 one.

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16:20:25 2 Actually, let me back up. On page one you're
16:20:35 3 sending an e-mail to Jim Schrempp and below your
16:20:39 4 e-mail is the heading "Requirements for integration
16:20:42 5 with Audible Magic," and that's the document that goes
16:20:46 6 on for the next four pages.

16:20:51 7 Q Are these the terms of the deal between
16:20:53 8 YouTube and Audible Magic as they existed at that --
16:20:56 9 on that date?

16:20:58 10 A I don't remember.

16:21:01 11 Q Okay. I'd like to direct your attention to
16:21:23 12 the bottom of page one. It's under the heading
16:21:29 13 "Requirements for integration with Audible Magic,
16:21:35 14 Phase 1." Next line, "Database setup," and the text
16:21:43 15 reads, "AM should host and setup 2 reference
16:21:48 16 fingerprint databases: One populated with Warner
16:21:50 17 content (referenced as 'WarnerDB' hereafter)," and
16:21:56 18 "One populated by YouTube via the new fingerprint add
16:22:00 19 API (this DB is referenced as 'YouTubeDB' hereafter)."

16:22:08 20 Were you involved in negotiating these terms
16:22:14 21 with Audible Magic?

16:22:17 22 A I was involved on the engineering side.

16:22:21 23 Q What is -- can you describe what that
16:22:26 24 involvement was?

16:22:28 25 A Making sure that the requirements would meet

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16:22:32 2 the needs that we had for -- for our product. So
16:22:38 3 meeting the needs on the engineering side of what I
16:22:42 4 was tasked with building.

16:22:43 5 Q Okay. So why, then, did or how did a
16:22:52 6 database populated with Warner content satisfy the
16:22:57 7 needs? Well, actually, there's two databases here.
16:23:00 8 One is populated with Warner content. One is
16:23:03 9 populated by YouTube.

16:23:05 10 Can you describe what the database populated
16:23:08 11 by YouTube was and what YouTube was populating it
16:23:12 12 with?

16:23:12 13 MR. INGBER: Objection to form; vague as
16:23:19 14 to -- as to time and compound.

16:23:24 15 MR. DESANCTIS: At the time -- at the time of
16:23:25 16 this document, which is September 22nd, 2006.

16:23:31 17 THE WITNESS: Yes, I can describe the ad API.

16:23:34 18 MR. DESANCTIS: Yeah.

16:23:35 19 Q Well, right. I'm -- I'm wondering, yes, can
16:23:40 20 you please describe the database that was populated by
16:23:41 21 YouTube and what it was populated with?

16:23:45 22 A Okay.

16:23:51 23 MR. INGBER: Same objections.

16:23:52 24 Go ahead.

16:23:54 25 THE WITNESS: So -- so this -- I mean, first

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16:23:57 2 of all, this was the -- the design of the system. So
16:24:01 3 these are the requirements for designing the system.
16:24:04 4 The system wasn't in place yet, and so, yeah, the --
16:24:12 5 the idea of this add API which, by the way, was
16:24:17 6 something that Audible Magic didn't have and that we
16:24:20 7 specifically requested for our needs as an addition to
16:24:25 8 the standard solution, was the ability for YouTube to
16:24:30 9 generate reference fingerprints and submit them to
16:24:35 10 Audible Magic, and these fingerprints would get stored
16:24:41 11 in what is referred here in this document as YouTube
16:24:45 12 DB. That's -- so that's what it was.

16:24:50 13 MR. DESANCTIS: Q. Well, why was YouTube
16:24:52 14 submitting reference fingerprints to Audible Magic?
16:24:55 15 What purpose did that serve?

16:24:57 16 MR. INGBER: Objection to form; lacks
16:24:59 17 foundation.

16:25:00 18 MR. DESANCTIS: Sorry.

16:25:01 19 Q Does it serve any purpose?

16:25:04 20 MR. INGBER: Same objection.

16:25:06 21 THE WITNESS: Yes. I mean, it -- I mean, on
16:25:12 22 the engineering side, it served a purpose of being
16:25:18 23 able to, itself, add fingerprints to the Audible Magic
16:25:22 24 database without relying on the -- the content owner
16:25:25 25 having any sort of relationship with Audible Magic.

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16:25:31 2 We wanted to be in control of being able to augment
16:25:35 3 this database.

16:25:38 4 MR. DESANCTIS: I see.

16:25:39 5 Q So -- so what -- what fingerprints were -- it
16:25:47 6 sounds to me like YouTube was generating its own
16:25:50 7 fingerprints that it was submitting to Audible Magic
16:25:53 8 for inclusion in this YouTube database; is that
16:25:56 9 correct?

16:25:57 10 A That's correct.

16:25:57 11 Q So what was YouTube generating fingerprints
16:26:01 12 of that it was submitting to Audible Magic for
16:26:04 13 inclusion in the reference database?

16:26:08 14 A So again, it -- yeah.

16:26:11 15 MR. INGBER: Go ahead. You can answer.

16:26:13 16 THE WITNESS: So again, the system wasn't in
16:26:15 17 place at that time, but when we launched the system,
16:26:19 18 content owners were able to -- to provide content
16:26:24 19 directly to -- to YouTube and -- and we would -- we
16:26:36 20 would, ourselves, generate fingerprints and add them to
16:26:38 21 the Audible Magic database as opposed to content
16:26:44 22 owner.

16:26:44 23 It was the choice of the content owner;
16:26:46 24 right. I mean, giving them options. You want to work
16:26:53 25 with Audible Magic to augment, you know, to -- to put

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16:26:55 2 your reference in their database. You can, you know,
16:26:59 3 either work directly with them, if it's more
16:27:01 4 convenient for you, or you can do it with us. It's --
16:27:05 5 you have a choice.

16:27:08 6 We just, you know, on the engineering side,
16:27:11 7 you know, I -- I wanted to make sure that we had this
16:27:15 8 ability to -- to put this -- this data in Audible
16:27:21 9 Magic database and not relying on them to -- to add
16:27:24 10 the data.

16:27:31 11 MR. DESANCTIS: Q. So I still want to stay
16:27:32 12 on this notion of the -- of what YouTube was
16:27:37 13 fingerprinting for inclusion in the YouTube database.

16:27:40 14 A Uh-huh.

16:27:41 15 Q Was it all videos on YouTube?

16:27:49 16 A No.

16:27:50 17 Q How did -- therefore, it's some subset of all
16:27:57 18 videos on YouTube; is that correct?

16:27:59 19 A Yes.

16:27:59 20 Q How is the decision made what would be
16:28:04 21 fingerprinted and what would not be fingerprinted?

16:28:06 22 MR. INGBER: Objection to form; lacks
16:28:08 23 foundation.

16:28:09 24 THE WITNESS: The content which was
16:28:19 25 fingerprinting was the content provided to YouTube by

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16:28:24 2 content owners as opposed to we didn't want to
16:28:29 3 generate reference fingerprints of user-uploaded
16:28:34 4 content, which we didn't know what it was and didn't
16:28:38 5 have any idea of a policy associated with.

16:28:43 6 MR. DESANCTIS: I see.

16:28:43 7 Q So if a -- if a content owner itself posts
16:28:52 8 its own content to YouTube for monetization purposes,
16:28:59 9 it could -- it could have asked YouTube to generate a
16:29:03 10 fingerprint for the Audible Magic reference database?

16:29:14 11 A This is not correct.

16:29:15 12 Q Okay. Please tell me how, because I must not
16:29:18 13 have understood your last answer.

16:29:21 14 A The system was designed in such a way that a
16:29:27 15 content owner could provide content to YouTube whether
16:29:31 16 it's -- if it's for monetization, whether it's for
16:29:35 17 track or for block -- could provide content to YouTube
16:29:41 18 and we would generate reference fingerprint regardless
16:29:45 19 of the -- the policy.

16:29:52 20 Q I see.

16:29:53 21 Okay. I'm told we need to change the tape,
16:30:06 22 so let's break and change the tape.

16:30:09 23 MR. INGBER: Okay.

16:30:10 24 THE VIDEOGRAPHER: This is the end of DVD

16:30:15 25 No. 3 in the continuing deposition of Franck

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17:14:34 MR. INGBER: Video fingerprinting technology

17:14:37 or are you talking about the Video ID tool?

17:14:39 MR. DESANCTIS: Video fingerprinting

17:14:40 technology.

17:14:44 THE WITNESS: I don't recall the specific

17:14:48 dates. It -- the time frame was Q1 2007, to my

17:14:58 recollection.

17:14:59 MR. DESANCTIS: Okay.

17:15:07 Q And at that time there were a number of

17:15:12 third-party companies who were providing video

17:15:16 fingerprinting solutions; correct?

17:15:22 MR. INGBER: Objection; lacks foundation.

17:15:24 THE WITNESS: That might be, yeah. Yes.

17:15:31 MR. DESANCTIS: Q. You don't --

17:15:32 A There may be some companies.

17:15:34 Q You don't know if there were?

17:15:35 A I -- I know there were some companies working

17:15:39 on -- on building a -- a video fingerprinting system.

17:15:46 I -- yeah.

17:15:48 Q But you didn't use any of them; did you?

17:15:52 A No, we did not.

17:15:53 Q Why not?

17:15:56 MR. INGBER: Objection; lacks foundation.

17:16:00 MR. DESANCTIS: You can answer the question.

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17:31:14 answer your questions.

17:31:16 Q No, that's okay.

17:31:37 Do you recall that part of the reason that --

17:31:47 that you and I -- now I mean you, Franck Chastagnol,

17:31:52 didn't want your team researching the video

17:31:58 fingerprinting technologies that existed in early 2007

17:32:04 was because you wanted your own development to be sort

17:32:09 of untainted by the other technologies that are out

17:32:12 there?

17:32:16 MR. INGBER: Objection to the extent the

17:32:17 first part of your question mischaracterizes the

17:32:20 witness's prior testimony.

17:32:22 You can answer.

17:32:30 THE WITNESS: Right.

17:32:30 So in early 2007, my entire team was focusing

17:32:38 on building the Video ID tool, and so I had several

17:32:42 things in my mind. I wanted them to, you know, focus

17:32:46 on that, get it done. I knew we could build the best

17:32:51 system in the world with the type of outstanding

17:32:53 Google engineers that just joined us. I wanted to go

17:32:58 full speed. We have to get it done.

17:33:01 I mean, many thoughts I was, you know, being

17:33:02 very aggressive with the deadlines for my team, and

17:33:07 first -- sorry, excuse me -- first thing.

CHASTAGNOL

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2 17:33:10 Second thing is at that time literally nobody
3 17:33:15 had a system out there; right. You know, to my
4 17:33:19 recollection, there was no -- nobody having, you know,
5 17:33:23 scalable production ready system, you know, being used
6 17:33:28 by any website or any serious -- serious company.
7 17:33:34 So I had all the reasons to -- to believe
8 17:33:40 that what we -- that -- that was reinforcing --
9 17:33:42 reinforcing my belief that we had to focus on our own,
10 17:33:46 right. Competition is still, you know, working on it.
11 17:33:48 They don't have a product; right. Let's not look in
12 17:33:51 the mirror. Let's get it done; right.
13 17:33:53 And so -- so, yeah, what I recall is me
14 17:33:58 giving clear priority that was -- you know, at that
15 17:34:02 time, I was tech lead for several engineers, and I had
16 17:34:05 to tell them, okay, to be clear on the priorities.
17 17:34:08 Like we have our priority number one is to --
18 17:34:12 to get this product done. We -- we might have been
19 17:34:15 approached by different video ID vendors in the
20 17:34:18 process of developing their own tool and wanting us
21 17:34:21 to, you know, evaluate or use it; and, you know, and
22 17:34:26 my guidelines were very clear to -- to my team.
23 17:34:29 let's -- let's get it done. Let's get our solution
24 17:34:33 done.
25 17:34:33 MR. DESANCTIS: Okay.

CHASTAGNOL

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2 17:34:38 Q And within the context of telling your team
3 17:34:40 to get the solution done, isn't it the case that you
4 17:34:48 didn't even research the extent to which some of the
5 17:34:54 companies -- some of the third-party companies that
6 17:34:58 were providing video fingerprinting solutions would
7 17:35:00 have worked as an interim solution for Google?
8 17:35:03 MR. INGBER: Objection to form.
9 17:35:05 THE WITNESS: So, you know, in addition to
10 17:35:11 the points, you know, I made earlier, and -- and to
11 17:35:14 your point, you know, one other consideration is IP
12 17:35:17 tainting; right. You don't want, you know, your --
13 17:35:20 your team to be exposed with technology from third
14 17:35:24 party, because then you could end up in a lawsuit and
15 17:35:26 have to do depositions.
16 17:35:31 And so that was -- you know, yeah, that was
17 17:35:34 one -- one consideration, and the other consideration,
18 17:35:40 again, is priority. Doing research, evaluating,
19 17:35:43 testing, you know, look at Audible Magic. It -- it
20 17:35:46 took a while.
21 17:35:47 I knew it would take a while to look at these
22 17:35:50 guys. I mean like, you know, who knows how many out
23 17:35:54 there, you know, were claiming to have a solution.
24 17:35:56 Evaluating every single one of them would have been
25 17:35:59 just, you know, major engineering time investment, and

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17:36:05 at that point, you know, I had several engineers, but
17:36:09 it was still -- you know, I still wanted to -- to make
17:36:12 sure they all focus on -- on -- on this one goal,
17:36:15 clear priority, you know, everyone get this done;
17:36:19 right.

17:36:19 MR. DESANCTIS: Okay.

17:36:21 Q You said it would have been -- hold on.

17:36:40 Talking about third-party video fingerprint
17:36:42 companies that existed at that time, you just said
17:36:46 that "Evaluating every single one of them would have
17:36:49 been just, you know, major engineering time
17:36:51 investment."

17:36:53 Did you investigate any of them?

17:36:58 MR. INGBER: Objection; asked and answered.

17:37:04 MR. DESANCTIS: Q. I'm asking about you,
17:37:06 Franck Chastagnol.

17:37:07 A Me personally, no.

17:37:11 Q Okay. You said you commissioned someone to
17:37:13 look into Vobile, but you did not remember what you
17:37:17 had asked them to do.

17:37:20 How about a company called Avestigo? Did
17:37:27 your team research the capabilities -- the video
17:37:30 fingerprinting capabilities of a company called
17:37:33 Avestigo?

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CHASTAGNOL

17:37:34 A Not that I remember.

17:37:35 Q Okay. A company called Auditude?

17:37:42 A Not that I remember in this time frame.

17:37:44 Q Okay. Did you look at Gracernote for their

17:37:49 video fingerprinting offerings the way you had with

17:37:53 their audio finger -- fingerprinting offerings?

17:37:57 A Not that --

17:37:58 MR. INGBER: Object to form.

17:38:00 THE WITNESS: No, I don't -- I don't remember

17:38:01 looking at Gracernote video fingerprinting solution at

17:38:05 that time.

17:38:05 MR. DESANCTIS: Okay.

17:38:05 Q How about -- are there any others? Any --

17:38:09 any others that -- any besides Vobile that you

17:38:15 researched or had someone on your team research?

17:38:19 MR. INGBER: Objection to form.

17:38:21 THE WITNESS: So -- so just to be clear on

17:38:22 Vobile, I -- my -- my memory, I don't -- I don't

17:38:28 recall any details on Vobile, so I'd like to take this

17:38:31 out of the question, what you asked.

17:38:34 MR. DESANCTIS: Okay.

17:38:38 THE WITNESS: I -- I'm just being very

17:38:39 confused at this point which Vobile, so I don't want

17:38:42 to make any statement because --

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17:38:43 MR. DESANCTIS: Well, I'm sorry.

17:38:44 THE WITNESS: -- I'm not able to, so can you
17:38:46 rephrase?

17:38:47 MR. DESANCTIS: Q. I want to make sure I --

17:38:48 I want to make sure I understand. You -- you're not

17:38:49 clear now as to what company -- what Vobile is?

17:38:56 A Yes. At this point on the -- in the

17:38:58 deposition, I'm not.

17:38:59 Q Okay.

17:39:04 A So could you please rephrase your question,

17:39:07 which was perfectly fine, without Vobile in it; right?

17:39:11 Q Sure. Actually, I think I did, but I'll do

17:39:16 it again.

17:39:19 A Sorry.

17:39:19 MR. INGBER: There was an assumption in your

17:39:20 question about Vobile, I think, that made the witness

17:39:24 uncomfortable.

17:39:38 MR. DESANCTIS: Q. Well, I think it would go

17:39:40 like this: Do you recall researching or having

17:39:49 someone on your team research any third-party provider

17:39:57 of video fingerprinting?

17:40:01 A I don't remember engineers in my team doing

17:40:05 research on video fingerprinting solutions. There

17:40:08 might have been, you know, business development guys

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17:40:14 or product managers doing that. That's entirely
17:40:17 possible.

17:40:19 Q But not the engineering team?

17:40:20 A But not on the -- not on the engineering
17:40:22 team. We didn't spend time, significant amount of
17:40:26 time on doing research in 2000 -- in Q1 of 2007
17:40:32 research on other -- on -- on third-party video ID
17:40:35 vendor, for the reason I mentioned previously.

17:40:39 Q Okay. Let's go ahead and mark 30. Actually,
17:41:09 wait.

17:42:10 Do you recall, Mr. Chastagnol, a time when
17:42:16 Viacom or Paramount conducted tests of the YouTube
17:42:27 video fingerprinting solution?

17:42:29 A Yes, I do.

17:42:30 Q When was that?

17:42:33 A It was in summer 2007.

17:42:36 Q Do you remember what the results of those
17:42:38 tests were?

17:42:39 MR. INGBER: Objection to form.

17:42:40 THE WITNESS: No, I don't recall the result
17:42:44 of the testing of Paramount.

17:42:48 MR. DESANCTIS: Q. Do you recall whether you
17:43:05 were -- whether you -- well, actually, let me take
17:43:09 that back.