

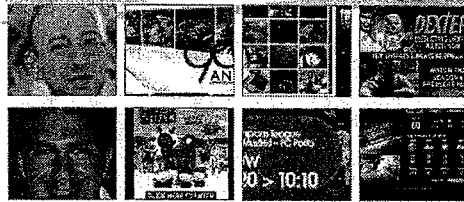
# Schapiro Exhibit 105



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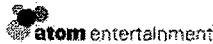
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## ITV INTERVIEW: MIKA SALMI, FOUNDER AND CEO, ATOM ENTERTAINMENT

Submitted by [itvt](#) on May 31, 2006 - 8:26pm

Mikasalmi2006

Multiplatform VOD and games company, Atom Entertainment (note: the company—which was founded in 2001 via the merger of AtomFilms and Shockwave.com—offers short films and animated titles on its AtomFilms.com broadband VOD portal and a range of games on its Shockwave.com portal;



it claims that AtomFilms attracts a monthly audience of 5 million consumers), recently revamped its AddictingClips Web site to support uploads of user-generated content, including videos, animation and Flash-based games. Atom founder and CEO, Mika Salmi, recently spoke to [itvt]'s Tracy Swedlow about the company's strategy for user-generated content, about the emerging importance of user-generated and short-form video, about the company's future plans, and more.

[itvt]: You recently revamped your AddictingClips Web site to allow uploads of user-generated content...

Addictingclipshome2006

Salmi: That's correct. Actually, AtomFilms has taken user-submitted content since we were founded. We just haven't always had an automated way to do it, and we've always filtered the content we've gotten. Over our history, we've taken less than 1% of what we've received—of course, we also proactively go and look for content, too. But AddictingClips is now basically another avenue for content to get to AtomFilms. We pick the best stuff from AddictingClips, and make it available on AtomFilms. In some ways, AddictingClips is like a farm system for AtomFilms. It also allows you to upload games—so it's also serving as a farm system for AddictingGames and Shockwave.com.

User-generated content is a great fit for AtomFilms. This is because it's not in a silo for us. A lot of these user-generated content Web sites are just standalone propositions, and they're still trying to figure out how to make money out of what they do. But our user-generated content Web site actually feeds our other Web sites—whether it be with content or traffic. And it could also work the other way around: our other sites could maybe feed traffic and advertisers to AddictingClips. So it's very synergistic with our other Web sites. In some ways, I would question the value of it. If it were just a standalone user-generated content

## TVOT2009 VIDEO & PHOTOS AVAILABLE



Please enjoy some fabulous new content from TVOT 2009. We now have a great [Intro video](#) online which gives a glimpse of the personalities and ideas from the show. We also have an updated [gallery](#) and [slideshow](#) of images - we will be adding even more images in the coming week.

## TV:OF:TOMORROW:SHOW



[itvt] is also pleased to offer full video coverage of the TV of Tomorrow Show 2009's [Addressable Advertising](#) panel free of charge.



We are also offering free video of [Arthur Orduna](#) of Canoe Ventures in conversation with Leslie Ellis, author of the popular column,

"Translation Please."

Click [here](#) to request a full list of video content available with pricing.

## [i]DATABASE



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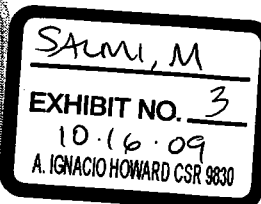


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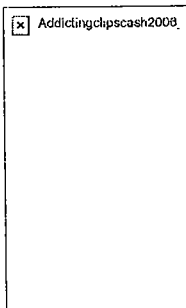


site. But we've actually made it very much a part of our ecosystem of entertainment sites.

[Itvt]: What's the business model for AddictingClips? It's advertising-supported, correct?

Salmi: Like I said, primarily it's a feeder. So advertising wasn't the main reason we created it, and we aren't necessarily banking on advertising to fund it. Having said that, though, advertisers really love user-generated content. But they can't figure out what to do with it. Advertisers seem to feel comfortable with AddictingClips, because of the way that we've positioned it--and also because of how we've placed the ads on there. So we're getting a lot of interest, and actually, we're going to start putting more and more ads up there. But we didn't start off thinking of it primarily as a way to generate more advertising. Nevertheless, as I said, it's actually been panning out quite well as an ad-supported site. It's producing quite a bit of revenue from advertising.

[Itvt]: Content from AddictingClips has already been tapped by AtomFilms, correct?



Salmi: Yes. If you go to AddictingClips, you'll see that there's a box on the site promoting a program called "Cash for Clips." If you click on that box, you'll see a list of clips that have been chosen for AtomFilms: if you click on the links next to those clips, you can watch them on AtomFilms, and visitors to AtomFilms are now reviewing them. The makers of the clips that have been chosen for AtomFilms get \$250 each; we're also making their clips available for the various distribution deals we've done; so we're probably doing to program some of them on Verizon's V CAST service and on the various VOD platforms where our content is available.

[Itvt]: And the makers of those clips will only get a one-off payment of \$250, however widely their clips are used?

Salmi: No. At AtomFilms, we always pay our content creators something upfront and then royalties on top of that. So, if we want to use a user-generated clip from AddictingClips on AtomFilms, we convert the content creator's AddictingClips upload license into an AtomFilms contract, and the content creator makes at least \$250 and potentially more. So AddictingClips users whose clips are chosen become part of the AtomFilms system, as it were.

[Itvt]: How do you determine how much money content creators get for their clips on AtomFilms?

Salmi: We like the idea of people marketing themselves, so with AtomFilms, the way we pay our royalties is by popularity. The more popular your clip is, the more money you stand to make. We put all of our advertising revenue into a pool, and the content creators share in that pool by popularity. So back when we had JibJab, which got something like 80 million plays over a few months, they got the bulk of that pool, because they were the most popular, by far. Normally, though, you can actually influence how much money you make by marketing your content on AtomFilms. If your content is being watched more, you will make more money.

[Itvt]: How do you distribute that money?

Salmi: In quarterly checks. We tally up all the revenue we made in that quarter, put it into a pool, and share that revenue with the content creators according to their popularity.

[Itvt]: Are you doing anything to make it easier for content creators to market their offerings?

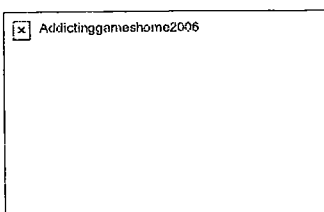
Salmi: Yes. A lot of our filmmakers already market their own content, and we want to make it even easier for them to do so in the next version of AtomFilms. So, among other things, we'll be making it easier for them to send out links...there are lots of ways to do it.

[Itvt]: Why did you decide to call your user-generated content site "AddictingClips" rather than by a name that was some kind of variation of the AtomFilms brand?

In "South Park" <http://bit.ly/3mIE172> says so

France Telecom's Orange Launches Interactive TV Advertising on its IPTV Platform <http://bit.ly/CPis82>

Media Storm Launches Dedicated Interactive TV Division, BOLT: --Has Signed on WE tv, Food Network and MLB Netwo. <http://bit.ly/3uAxc12> says so



**Salmi:** Well, we bought a company called AddictingGames last fall. Addicting Games has about 8 or 9 million unique visitors a month. It's basically a directory of games, plus some hosted games. It's a Web site where there are a lot of people who happily link out to other Web sites, so it's just an incredible traffic engine. We thought that the way AddictingGames worked made it a better sister-brand to AddictingClips than to AtomFilms. As you probably know, you can post games, as well as films, on AddictingClips; and so we're also looking at AddictingClips as a feeder farm for games on AddictingGames. Also, the AtomFilms brand—as far as our advertisers and our distribution partners and Hollywood and everyone else is concerned—has a very high-level image. So we didn't necessarily want to associate that too closely with the kind of chaotic image that user-generated content has. However, we do obviously talk about AtomFilms on AddictingClips, so it's not as if we're shying away from associating them. But we simply thought that, as far as brands are concerned, AddictingClips was a better match with AddictingGames than with AtomFilms.

**[Itvt]:** Now AddictingClips allows you to upload video directly from your mobile phone, correct?

**Salmi:** Yes. We've started doing more and more with mobile. As you probably know, we have a deal with Verizon's V CAST now, and we have other mobile deals in the works. So we wanted to position ourselves as a company that's on multiple screens. We thought that it was important to allow people to upload video from their mobile phones, because a lot of people are shooting video on their phones, now. We thought it would be advantageous for us to take the lead on that.

**[Itvt]:** Are you planning to offer a user-generated content service on V CAST?

**Salmi:** It depends on Verizon. They have a very controlled channel there—for AtomFilms and everything else. We've definitely had discussions with them and other phone companies about user-generated content elements. But right now, they prefer to have professionally produced channels.

However, we are definitely planning on putting some of the content we've accrued through AddictingClips' "Cash for Clips" program onto the AtomFilms channel on Verizon. So you will see some of those things making their way over there. But I don't think at this stage that you're going to see the full raft of thousands of clips that have been uploaded to AddictingClips appearing on V CAST or on another mobile phone service. However, I wouldn't doubt that it may happen at a later stage.

**[Itvt]:** What were the challenges involved in allowing people to upload video from their mobile phones to AddictingClips?

**Salmi:** There definitely were some challenges in figuring out how to allow users to send videos. Because some mobile operators don't allow you to upload your videos, and there's also the question of how you can do it so that as many users as possible can have access to this functionality. However, once we cracked those problems and figured out some of the transcoding elements—because the format coming from a phone is very different than the format used on your PC—it was pretty easy after that. This is something that we expect other companies will figure out, too—it's not a proprietary, patented thing. We were just the first ones to figure it out and launch it.

**[Itvt]:** Could you talk us through how the process works?

**Salmi:** The transcoding takes place on our Web site: you just send in raw video in whatever format your phone took it in; we receive it on AddictingClips; and then we have to transcode it into Flash. It's an automatic process. If you have an account with us and you want to upload movies, you're presented with an "Upload a mobile video" option, which gives you an email address to which you can send video from your phone. It's quite seamless: if you were to take a video right now of whatever room you're in, you'd simply put that email address in there and hit "Send." Within moments, it would be on our Web site.

**[Itvt]:** Did you develop this capability in-house or was it provided by a vendor?

**Salmi:** It's kind of a hybrid. We developed all the specs and the features and a lot of the technical stuff having to do with email, but we used some outside consultants from a company called Reality Digital to help us put it all together.

**[Itvt]:** You also provide people with the ability to embed video into their Web sites, correct?

**Salmi:** Yes. When your video has been uploaded, it gets its own page. You can see how many views it has gotten, and see the various comments that people have made. Also on

that page is a box that says, "Embed on your Web page" It gives you the HTML code, and you just have to cut-and-paste that. You just highlight it, copy it and past it in. It will then embed that exact video onto your page. Then, when it's embedded, if you're good at HTML, you can actually choose what size you want it to be: small, big or huge.

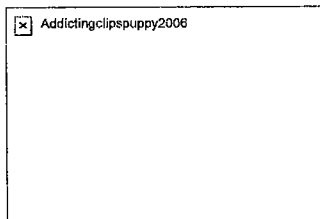
Once it's on there, all you see is our video box. It's a very plain, white box. You see a little AddictingClips logo in the right-hand corner, but other than that, it's a very plain box and it's very simple. It actually looks really good on pages, because it's so simple.

[itvt]: Now, AddictingClips also allows users to get feedback on the content they upload, correct?

Salmi: Yes. Users can easily track the performance of their clips. If you click on a screenshot of a clip to watch it, underneath the video window it says how many views there were—so you can see in real time how many times it's been watched—and there's also a place for people to make comments about your clip.

[itvt]: How are consumers using the site's comments feature? Are communities forming around the site's content?

Salmi: Well, with the games, for example, people will say what their high score was. They like to compare high scores. Then, with the clips, they offer up comments like "Good job!" or "Is there any more of this?" So people often tend to have little conversations going on around the clips. Sometimes, if a clip is controversial, you'll see a back-and-forth conversation with five to 10 people talking about it.



Here's a good example of how community plays into the content we offer: we have an unusual game on AddictingClips, called "Don't Shoot the Puppy," which for a long time was a real conundrum for people. They simply could not figure out how to play the game. So people used our comments feature to talk about how to play it. Basically, it's a trick-game where, once you hit "Start," you don't touch anything: if you move your mouse or you touch your keyboard, it shoots the dog. And, of course, the game continually tries to lure you into touching something. People are going to love it or hate it, because it's kind of an evil-Zen game. But, for a long time, people couldn't figure it out, and when they did, they were all asking, "Where did this thing come from?" It generated a lot of discussion.

[itvt]: Are you seeing content uploaded to AddictingClips by international users?

Salmi: Yes. We've seen quite a few Japanese clips, and also a lot of content from Latin America. What's interesting is how, if you go to the site in the middle of the night—or some other time when people in the US are asleep, but when it's the middle of the day in some different time zone—you'll see all the different types of clips getting posted from the countries in that time zone.

[itvt]: What are your thoughts in general on the user-generated content phenomenon?

Salmi: I think user-generated content somewhat mirrors the reality- television craze. I think it is the ultimate reality TV—it's like personal reality television.

[itvt]: But you're getting all kinds of content—humorous clips, scripted amateur movies, and the like—that don't seem very similar to reality television...

Salmi: Yes. But reality television tends to be voyeuristic, and watching user-generated content—seeing what your fellow users can come up with—is voyeuristic in a sense.

I also think that the user-generated content phenomenon reflects the fact that people simply have a huge appetite for interesting video content—an appetite that's so huge, that the content doesn't have to be professionally produced. I think that a lot of people in Hollywood and in the major media companies are quite perplexed by this, and are asking themselves, "Does this mean that we shouldn't be spending so much money on production values?" They're trying to figure out how the phenomenon fits into the landscape of high production values and big budgets that they've carved out over the years. People definitely seem happy to watch less polished video content, provided it's interesting.

[itvt]: Are you seeing any interest from Hollywood in what you're doing?

Salmi: Yes, more than ever. What's interesting is that, when we first started, everyone in Hollywood and a lot of other people said, "What's the deal with all this short-form content? No-one wants to watch short-form content?" I think they had a pre-conception of short-form as being some kind of arty medium that wouldn't be appealing to a mass audience. We would respond that short-form could be anything from a music video to a short animation, but they just couldn't get their head around it.

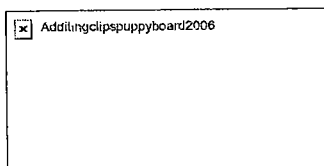
But then, about six months ago, I heard Peter Chernin say—and I'm paraphrasing here—something along the lines of: "Consumers are jonesing for short-form content." Of course, I have to say that I thought it was quite funny that he used the word "jonesing." But I also thought, "Well that's great." Because what it meant was that short-form is finally no longer relegated to the dustbin, and is finally front-and-center. Everyone's talking about short-form.

Actually, the reason we're called Atom Entertainment is because atoms are small, but powerful. All the content we have is atom-like—even our games are short. Everything we have is in quick, bite-sized snacks. Of course, now that everyone has come around to doing what we've been doing all along, we're obviously in a much more competitive environment—whether the competition is News Corp. or the latest user-generated content site du jour.

[itvt]: Do you plan to give people content-creation tools on AddictingClips—editing tools, for example? Are you interested in being in the service business as well as in the content-hosting business?

Salmi: I'm definitely very interested to see how some of these online video-editing tools do—to see if they garner some interest. I think that simple editing online would be a great tool for people. If those kinds of tools prove successful, I think we could easily add that feature to AddictingClips. However, I don't see it as a be-all-and-end-all: more as a feature.

Actually, I do think we need to have a feature on AddictingClips that would provide users with tips on shooting and editing video. We've talked about it. We just haven't gotten around to putting it up yet.



[itvt]: The comments on AddictingClips don't appear to be moderated. Why is that?

Salmi: Well, according to the Digital Millennium Copyright Act, a site like ours has to be a passive conduit. We cannot be monitoring it or actively moderating it. We do have some filters set up, to stop people swearing. And if users tell us that they see something they don't like—whether it be a comment or a video—we'll take a look at it. But we take a hands-off approach in order to let the site just live its own life.

[itvt]: Can you talk about the new features you'll be rolling out on AddictingClips over the next six to 12 months?

Salmi: The reality is that we have a massive number of features in the works, and we have a lot of ideas. The question for us is, "What are we going to do first?" I think that's going to be the challenge for us. I can tell you that this site is going to be continually evolving. Six months from now, it won't look the way it does today.

[itvt]: The projects you're working on right now, are they more marketing-oriented or technology-oriented?

Salmi: Both. We're talking to partners. We're looking at technologies. We really want to build what we're doing across all our different brands: we don't think of our sites as standalone propositions, so it's very important for us to think about how AddictingClips, for example, fits in with Shockwave.com or AtomFilms.com or AddictingGames.com.

URL: <http://www.addictingclips.com>

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# **Schapiro Exhibit 106**



Hi All,

As you know we recently launched the Addicting Clips service. This is a "service site" for content creators and a very new type of website for us! Addicting Clips is our first effort providing an Internet service for users to upload, host, and share their own content. The service is there to give budding and amateur filmmakers and flash authors an inexpensive means for sharing their original and unique content with a large audience. Unlike AtomFilms.com or Shockwave.com, we do not have a content acquisition team picking and choosing the clips. We do not edit or manage content on the site or in any other way control or program the site. That is all up to our filmmakers and flash authors contributing to the site and our users watching clips on the site. In legal lingo you may hear often—AddictingClips is a "passive conduit."

The AddictingClips service must comply with the Digital Millennium Copy Right Act ("DMCA"). The DMCA prohibits content hosting companies like us from actively monitoring content or exercising editorial control over the content that gets hosted. Think of it as a similar to a telephone service—the phone company does not control what you say on the phone and we do not control what folks put on the site. Actively monitoring the site or exercising editorial control over the content that gets uploaded violates the DMCA and has tremendously bad implications for the company and employees at Atom Entertainment.

The DMCA also requires us to provide a method for any copyright owners or users on the site to report any piece of content they see on our site that they believe infringes on their own or someone else's work.. If we get a notice, we must review the content and rapidly remove it IF it is infringing. We have such a reporting mechanism on the Addicting Clips service. On each content landing page, there is a link labeled "Report a content violation" for users to report infringing content—and also content that violates our Terms of Service (described below). The link features a pull down menu listing the various types of violations, e.g. infringement, pornography, illegal activity, etc.). The Customer Support team receives all notices and follows set procedures to either remove or approve the content (often working with Adam and Victoria). Employees of Atom Entertainment should not be watchdogs about the type of content that gets uploaded onto the Addicting Clips service.

What can employees do at the Addicting Clips site? Enjoy it as a user. If you have content to share that does NOT violate our Terms of Service, please upload it! If you want to surf the site for amusement, please do! Some of you will also have jobs requiring frequent visits to the site for Q/A purposes or testing purposes. Please do your jobs! BUT--please remember that if any of you ever see any content that you think infringes or otherwise violates our Terms of Service, YOU MUST REPORT IT BY FLAGGING IT ON THE SITE. If you are not positive it violates but you think it might, report it anyway.

#### TERMS OF SERVICE

The Addicting Clips Terms of Service specifically states that users cannot upload User Materials (clips) that are: "indecent, libelous, defamatory, obscene, threatening, invasive of privacy or publicity rights, abusive, illegal, harassing, contain expressions of hatred, bigotry, racism or pornography, or are otherwise objectionable, or that would constitute or encourage a criminal offense, violate the rights of any party or violate any law...[or] infringe the copyright, trademark, publicity/privacy right or other intellectual property right of any third party." In other words, users cannot upload clips that they took from a TV show, that contain music that they did not create (both are examples of copyright infringement), clips that are pornographic, or clips that otherwise violate any areas of the law listed above. All users—but specially employees who decide to create user accounts on Addicting Clips—must abide by the terms of service. In the event that we encounter a user who is repeat offender, we will terminate his/her account.

If we do not follow all the DCMA requirements mentioned in this email, we will be held responsible for all the content hosted on Addicting Clips and the liability would be enormous. Therefore, we need everyone's help to ensure our compliance.

Thanks!  
Mika

# **Schapiro Exhibit 107**

---

From: "Salmi, Mika" <Mika.Salmi@mtvstaff.com>  
Date: Mon, 22 Jan 2007 23:25:52 -0500  
To: "McGrath, Judy" <Judy.McGrath@mtvstaff.com>, "Toffler, Van" <Van.Toffler@mtvstaff.com>, "Zarghami, Cyma" <Cyma.Zarghami@nick.com>, "Herzog, Doug" <Doug.Herzog@comedycentral.com>  
Subject: Fw: How Search Turned MTV Into MySpace

This is a pretty good read and it also validates the way we are approaching consumers and digital. It is not entirely negative on us so don't grimace (yet).

----- Original Message -----

From: Salmi, Mika  
To: Holt, Courtney; Youngwood, Stephen; Stirratt, Nada; Flannigan, Erik; Bierer, Gideon; Rockwell, Nick; Lehman, Nicholas; West, Denmark; Clayman, Greg; Miller, Kenny; Stephenson, James - Atom Shockwave; Podduturi, Anil; Selden, Lisa; Gorke, Thomas - MTVN  
Cc: Witt, Jason  
Sent: Mon Jan 22 23:23:24 2007  
Subject: Fw: How Search Turned MTV Into MySpace

I don't know if Jason sent this to everyone but it is a good read.

I didn't realize we had actually stolen Thomas Friedman's "the world is flat" tagline and consumer search behavior with our "open and flat" platform concept. I like the phrase "open and flat" a whole lot better now.!

----- Original Message -----

From: Witt, Jason  
To: Salmi, Mika; Miller, Kenny; Cunningham, Todd  
Sent: Mon Jan 22 16:26:03 2007  
Subject: How Search Turned MTV Into MySpace

How Search Turned MTV Into MySpace <[http://blogs.mediapost.com/search\\_insider/?p=448](http://blogs.mediapost.com/search_insider/?p=448)>

Jan 22, 2007 18:30:39 GMT

For last week's pronouncement that shook the new media world — but didn't particularly surprise it — look to MySpace co-founder Tom Anderson. MySpace, Anderson informed German mag Der Spiegel <<http://www.spiegel.de/international/spiegel/0,1518,459685,00.htm>>, has "replaced MTV."

The point is debatable. Between its acquisition of 10-million visitor RateMyProfessors.com <<http://www.ratemyprofessors.com/index.jsp>> and a rumored investment in social networking site TagWorld <<http://www.tagworld.com/-/Main.aspx>>, MTV is clearly gunning for a return to empire. But at least for now, it does look as if the world's sixth most popular site has stolen the lead from the suddenly presidentless <[http://publications.mediapost.com/index.cfm?fuseaction=Articles.showArticleHomePage&art\\_aid=53804](http://publications.mediapost.com/index.cfm?fuseaction=Articles.showArticleHomePage&art_aid=53804)> MTV.

But the MTV versus MySpace competition is a bit more complex than just the old replaced by the new. That's because MySpace isn't as much the usurper of MTV, as it's an evolution of MTV's basic concept: a horizontal channel in which glamorous stars, the common folk, and the channel itself are all on surprisingly equal footing. And, like MTV, MySpace is a channel that's built on reaching out to a youth generation who's the first to have really grown up with a new medium. So MySpace hasn't replaced MTV, as much as MTV has evolved into MySpace. And none of this evolution would have been possible without search.

Let's start with MTV. MTV was first built around the '80s generation, the first generation to really grow up with television — and even color television — as a given in the home. Their baby- boomer parents also grew up with TV, but the boomers often weren't born into a TV household.

MTV also introduced horizontal media in 1992, when "The Real World" spawned reality TV a full 8 years before "Survivor." And "The Real World" entirely changed the rules of how television works. Now, instead of a medium in

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which lofty stars appear on the screen while couch potatoes watch them, MTV's invention of reality creates a model in which the stars and the mere mortals occupy the same space. MTV showed us how media can become horizontal. MySpace isn't so different. MySpace is also built on capturing, and capitalizing on, the first generation of youth who's grown up with new media — in this case, the Internet and mobile. In Anderson's own words to Der Spiegel: "If you are 23 now, you probably started using the AOL Instant Messenger ten years ago. It's totally natural for you to talk to your friends that way. A few years after that you started text messaging. I think the MySpace generation is these people who just have this experience. It's perfectly natural."

MySpace is also a truly horizontal medium, with everybody vying for the same attention: Madonna, Jamie Foxx, and the Honda Element <<http://www.myspace.com/hondaelement>> all have to go head to head with your 12-year-old cousin to get noticed.

And so, again, while MySpace may have replaced MTV, it's also just an evolution of the MTV model, brought online. Both MTV and MySpace gained success by providing young people with the opportunity to just be themselves, while understanding that technology had made young people "just being themselves" into something fundamentally different than it had ever been before. And they both did that while creating a new kind of horizontal channel.

It was search that allowed the MTV-MySpace evolution to happen. As New York Times columnist Thomas Friedman <<http://www.thomasfriedman.com/worldisflat.htm>> points out, search is the Web's great flattening force: by offering a single window through which to jump to the Web's billions of disconnected pages, search pulls the entire Internet together. I

Instead of developing a relationship with just one site at a time — in the way that viewers watch one TV channel at a time — search turns the Internet into a single, unified Web. That puts all Web pages on equal footing, all Web pages at the mercy of the user, and all Web pages in direct competition with one another. (A similar point could be made about the effect of remote controls on TV, but search gives way more user control than remotes do, across billions of pages rather than just dozens of channels.) Search made the Web horizontal, and that horizontality enabled MySpace to use the Web to take MTV's horizontality to a whole new plane.

This means a tremendous amount for those of us in search. If search is a driving force behind the new horizontality, then those of us in SEM — the first industry to make business sense of a horizontal universe — can drive unique value in the new horizontal world.

That's also a challenge. As communications evolve — and search, and elements of search, become just one piece of a much larger media picture — SEM needs to turn its insights into ideas that can provide value, regardless of the directions that media take. And if we can't make that happen, it won't just be MTV that's facing replacement.

# **Schapiro Exhibit 108**

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 BRIAN K. BRADFORD	
SAN FRANCISCO, CALIFORNIA	
THURSDAY, MARCH 12, 2009	
BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR	
JOB NO. 16590	

MARCH 12, 2009

9:53 A.M.

VIDEOTAPED DEPOSITION OF BRIAN K. BRADFORD  
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One Market Street, Spear Tower, San Francisco  
California, pursuant to notice, and before,  
ANDREA M. IGNACIO HOWARD, CLR, RPR, CSR  
License No. 9830.

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ALSO PRESENT: Lou Meadows, Videographer.

---oOo---

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11:02:39 2 A No.

11:02:45 3 Are we done with this exhibit?

11:02:48 4 Q Yes.

11:02:49 5 Are you generally aware of the process by  
11:02:52 6 which your company obtained the copyrights to the two  
11:02:57 7 Works In Suit?

11:03:00 8 A Yes.

11:03:00 9 Q Can you describe that process in general  
11:03:02 10 terms.

11:03:03 11 MS. SHARP: Form.

11:03:05 12 THE WITNESS: For which composition?

11:03:09 13 MR. FRANTZ: For both.

11:03:11 14 Q We can start with -- what's the first one?  
11:03:13 15 "If You're Going Through Hell."

11:03:15 16 A Okay. "If You're Going Through Hell."

11:03:16 17 MS. SHARP: I'll note for the record that's  
11:03:18 18 not a reference to today's deposition.

11:03:20 19 THE WITNESS: "If You're Going Through Hell  
11:03:26 20 Before The Devil Even Knows," which is the full title  
11:03:28 21 that, I believe, that we went with, was written by a  
11:03:33 22 writer under contract with us through an exclusive  
11:03:37 23 songwriter agreement, and part of the process of -- or  
11:03:45 24 part -- part of the obligations of the writer within  
11:03:48 25 the ESA is to execute an assignment of copyright for

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11:03:57 2 compositions created during the term of his contract,  
11:04:04 3 and that's pretty much the extent of that one.

11:04:09 4 MR. FRANTZ: Okay. Let's mark Exhibit 5,  
11:04:11 5 please.

11:04:11 6 (Document marked Bradford Exhibit 5  
11:04:14 7 for identification.)

11:04:14 8 MS. GOLANT: And, Counsel, I would ask that  
11:04:15 9 you keep the marked exhibit in a separate file so we  
11:04:18 10 can give it to the court reporter at the end.

11:04:19 11 MS. SHARP: Is that --

11:04:26 12 MS. GOLANT: The marked version with the  
11:04:27 13 stickers.

11:04:28 14 MS. SHARP: I'm just going to -- yeah, we're  
11:04:30 15 keeping it right here.

11:04:31 16 MR. FRANTZ: I'll note for the record that  
11:04:33 17 the Exhibit 5 is Cal '3783 through '3784.

11:04:46 18 Q Can you identify this document.

11:04:47 19 A This is a certificate of registration from  
11:04:50 20 the copyright office for the song "If You're Going  
11:04:56 21 Through Hell."

11:04:57 22 Q And let me direct your attention down to the  
11:05:01 23 "Copyright Claimant" section towards the bottom where  
11:05:03 24 the big No. 4 is.

11:05:05 25 Do you see that there appear to be three

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11:05:06 2 different names listed as copyright claimants? Do you  
11:05:09 3 see that?

11:05:10 4 A Yes.

11:05:10 5 Q Can you explain who each claimant is?

11:05:13 6 A Gravitron Music and Whaddayadef Music are the  
11:05:28 7 copyright claimants on behalf of Sam Tate and Kathleen  
11:05:34 8 Wright, person known as Annie Tate, and Cal IV is  
11:05:39 9 the rep- -- the claimant on behalf of Dave Berg.

11:05:43 10 Q Are Gravitron Music and Whaddayadef Music,  
11:05:46 11 are those the same company or are they different  
11:05:49 12 companies?

11:05:49 13 A I'm not completely sure because that's -- you  
11:05:53 14 know, that -- that's a third party. From what my  
11:05:56 15 understanding is, Gravitron Music is the SESAC  
11:06:01 16 publisher for a company called Carnival Music Company  
11:06:06 17 based in Nashville. And Sam Tate and Annie Tate were  
11:06:14 18 under contract with that company when they wrote the  
11:06:23 19 song and -- and it appears that part of their deal  
11:06:27 20 included co-publishing interest, which, I believe,  
11:06:30 21 is -- that's where the Whaddayadef Music is probably  
11:06:32 22 the name of their co-publishing interest.

11:06:35 23 Q And at the time this registration was filed,  
11:06:38 24 which, as you'll note, was June 19th, 2006, did your  
11:06:42 25 company, in fact, have an ownership interest in this

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11:06:44 2 copyright?

11:06:44 3 MS. SHARP: The question may call for a legal  
11:06:46 4 conclusion.

11:06:48 5 Answer to the extent you know the answer.

11:06:52 6 THE WITNESS: Yes.

11:06:55 7 MR. FRANTZ: Q. And why do you say your  
11:06:56 8 company had an ownership interest?

11:06:59 9 MS. SHARP: Again, legal conclusion.

11:07:01 10 THE WITNESS: As I discussed earlier, Dave  
11:07:05 11 Berg was under contract with us at the time of writing  
11:07:09 12 this composition.

11:07:16 13 MR. FRANTZ: Q. And when did your company  
11:07:17 14 acquire the ownership interest?

11:07:19 15 A Upon creation of the work.

11:07:20 16 Q What percent ownership in the -- in the  
11:07:23 17 overall work did your company acquire?

11:07:25 18 MS. SHARP: Same objection.

11:07:26 19 THE WITNESS: Our -- our controlled  
11:07:30 20 administrative interest is one-third.

11:07:33 21 MR. FRANTZ: Q. And was it one-third the  
11:07:35 22 whole time or did that change at some point?

11:07:38 23 A Initially, Dave Berg had a co-publishing  
11:07:44 24 arrangement with -- with Cal IV. The name of his  
11:07:52 25 co-publisher was Berg -- BergBrain Music, and at the

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11:08:02 2 time the -- the contractual split between Cal IV and  
11:08:05 3 his co-pub was of -- of the controlled administered  
11:08:12 4 share, Cal IV had two-thirds, and BergBrain Music had  
11:08:17 5 one-third, but that -- the BergBrain Music pur- --  
11:08:23 6 catalog was purchased by Cal IV, and, thus, the full  
11:08:26 7 share became Cal IV's share.

11:08:35 8 Q And with respect to the overall copyright  
11:08:37 9 today, what percentage of the copyright does Cal IV  
11:08:40 10 own?

11:08:41 11 MS. SHARP: Same objection.

11:08:49 12 THE WITNESS: Today it's one-third.

11:08:58 13 MR. FRANTZ: Okay.

11:08:58 14 Q Now, look at the second page.

11:08:59 15 Do you see at the bottom of the second page  
11:09:01 16 in -- in Section No. 9 is a reference to "Bluewater  
11:09:04 17 Music Services Corp/Attn: Dan Ekback"? Do you see  
11:09:12 18 where I'm looking?

11:09:14 19 A Yes.

11:09:14 20 Q Okay. Do you know who Dan Ekback of  
11:09:17 21 Bluewater Music Services Corp is?

11:09:23 22 A Yes.

11:09:23 23 Q Who is he?

11:09:24 24 A At the time, he was -- I'm not sure exactly  
11:09:28 25 what his title was, but he was an upper-level

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11:09:36 2 administrative specialist with Bluewater Music

11:09:40 3 Services Corp.

11:09:43 4 Q And who's Bluewater Music Services Corp, if  
11:09:48 5 you know?

11:09:48 6 A Bluewater is -- I -- well, I -- I'm not  
11:09:52 7 completely sure what all they do. Obviously, that's a  
11:09:57 8 third party, but from my understanding is they are --  
11:10:06 9 and a -- a copyright administration service for other  
11:10:10 10 publishers.

11:10:12 11 Q And if you look at Section 8, just above  
11:10:16 12 where we're looking, very small box that's checked  
11:10:20 13 that says "Authorized agent of Gravitron Music,  
11:10:29 14 Whaddayadev Music," does that mean that this copyright  
11:10:33 15 was filed by Bluewater on behalf of Gravitron Music  
11:10:38 16 and Whaddayadev Music?

11:10:42 17 A Dan Ekback, from -- from my understanding of  
11:10:45 18 this, Dan Ekback of Bluewater Music Services was --  
11:10:50 19 was/is the administrator for Gravitron, Whaddayadev,  
11:10:57 20 and they filed the copyright registration.

11:10:59 21 Q Did Cal IV have any involvement in the filing  
11:11:02 22 of the copyright registration?

11:11:04 23 A No.

11:11:06 24 Q Did Cal IV know about the filing of the  
11:11:10 25 copyright registration?

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11:49:30 2 the copyright being registered in Cal IV's name back  
11:49:32 3 in 2006, because Cal IV had already acquired the  
11:49:36 4 copyright immediately upon its creation; is that  
11:49:38 5 correct?

11:49:38 6 A Correct.

11:49:39 7 Q Okay. Now, are there co- -- other co-owners  
11:49:44 8 of the work "If You're Going Through Hell"?

11:49:48 9 A We discussed that earlier. The publishers  
11:49:51 10 for Sam Tate and Annie Tate, Gravitron Music and  
11:49:55 11 Whaddayadef Music.

11:49:57 12 Q And how do you know about those co- -- other  
11:50:01 13 co-owners?

11:50:03 14 MS. SHARP: Form.

11:50:04 15 THE WITNESS: Well, how -- how do I know that  
11:50:10 16 they are the co-owners, or how do I know about the  
11:50:13 17 co-owners?

11:50:15 18 MR. FRANTZ: Q. Well, how do you know that  
11:50:17 19 they are the co-owners of that work?

11:50:22 20 A Because when Dave Berg turned the song in to  
11:50:26 21 us, on our -- in our process of deliveries and, you  
11:50:33 22 know, we -- we need to know who he wrote songs with,  
11:50:37 23 he told us that Sam Tate and Annie Tate co-wrote the  
11:50:41 24 song with him, and we knew that they were contracted  
11:50:46 25 writers with Carnival Music Company, which is, you

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11:50:53 2 know, the -- you know, the -- their SESAC company is  
11:50:57 3 Gravitron Music. That's a subsidiary of Carnival, so  
11:51:01 4 they were under agreement with them.

11:51:05 5 Q And if there were some change in the  
11:51:08 6 ownership status with respect to the other co-owners  
11:51:11 7 of this work, would you be notified of that?

11:51:15 8 A Not necessarily.

11:51:23 9 Q Do you agree that the other co-owners of the  
11:51:26 10 work are entitled to grant licenses with respect to  
11:51:30 11 the work?

11:51:34 12 A As -- as the -- controlling and administering  
11:51:41 13 their exclusive rights, I would say yes.

11:51:43 14 Q Do you know whether any of the co-owners, the  
11:51:46 15 other co-owners have, in fact, granted any such  
11:51:49 16 licenses with respect to "If You're Going Through  
11:51:52 17 Hell"?

11:51:55 18 A I honestly -- I -- I wouldn't know what kind  
11:51:57 19 of licenses they grant. I don't have access to their  
11:52:02 20 documents.

11:52:04 21 Q Could you acquire such information?

11:52:10 22 A Probably not.

11:52:12 23 Q When you say "Probably not," why do you say  
11:52:15 24 that?

11:52:18 25 A Because they would have no reason to give me



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11:52:23 2 copies of their licenses.

11:52:24 3 MR. FRANTZ: Let's mark a new exhibit,

11:52:27 4 Exhibit 10, please.

11:52:28 5 (Document marked Bradford Exhibit 10

11:52:38 6 for identification.)

11:52:38 7 THE WITNESS: Are we done with these

11:52:40 8 exhibits? Can I get them out of my way?

11:52:42 9 MR. FRANTZ: We are for the most part, but

11:52:43 10 there is a chance I may come back to them.

11:52:46 11 THE WITNESS: Okay.

11:52:52 12 MS. SHARP: There you go, sir.

11:52:54 13 I'm sorry. Exhibit?

11:52:55 14 MR. FRANTZ: 10.

11:53:04 15 THE WITNESS: Okay.

11:53:05 16 MR. FRANTZ: Can you identify -- let me just

11:53:07 17 note for the record that its -- the Bates No. is CAL

11:53:14 18 '1593 through '97.

11:53:15 19 Q Can you identify the document?

11:53:18 20 A This is a "Lyric Reprint License Agreement"

11:53:24 21 between Cal IV and Country Music Media Group for "If

11:53:28 22 You're Going Through Hell."

11:53:28 23 Q All right.

11:53:28 24 And when you look at the first page of the

11:53:30 25 document, do you see that it says Cal IV controls

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17:09:32 2 to this.

17:09:32 3 To the extent you feel you can, you can go

17:09:35 4 ahead, Brian.

17:09:36 5 THE WITNESS: Like I've said, that's for

17:09:38 6 YouTube to figure out. Use their -- their vast

17:09:41 7 financial and technical resources to figure that out.

17:09:45 8 MR. FRANTZ: Q. Has your company sent DMCA

17:09:47 9 notices to other sites besides YouTube?

17:09:51 10 A I'm not aware of any.

17:09:52 11 Q Is it your position that YouTube should have

17:10:15 12 been aware of the Works In Suit having been posted on

17:10:18 13 YouTube before receiving a takedown notice?

17:10:26 14 A As I've stated, I believe if YouTube is gonna

17:10:30 15 provide a service, they need to make sure that

17:10:32 16 copyrighted content is legitimately posted on YouTube.

17:10:36 17 Q But you don't have any way for YouTube to

17:10:38 18 figure that out?

17:10:39 19 A I already answered that question.

17:10:41 20 Q And the answer is, no?

17:10:43 21 MS. SHARP: Asked and answered.

17:10:44 22 THE WITNESS: The answer is, no.

17:10:46 23 MR. FRANTZ: Q. Does your company track its

17:10:51 24 works on the Internet?

17:10:55 25 A We don't directly.

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17:10:57

2

Q Do you do it indirectly?

17:10:59

3

A Yes.

17:10:59

4

Q How?

17:11:01

5

A Our attorney has arranged for an independent

17:11:05

6

monitoring firm to monitor on our behalf.

17:11:09

7

Q And what's that monitoring firm called?

17:11:12

8

A I believe they're called BayTSP.

17:11:15

9

Q And before you retained BayTSP, did you have

17:11:20

10

any way to track works on the Internet?

17:11:22

11

A No, not that I'm aware of.

17:11:24

12

Q Did your company do anything to track its

17:11:26

13

works on the Internet before retaining BayTSP?

17:11:32

14

A No, that's -- that's something that we don't

17:11:35

15

have the resources to do.

17:11:42

16

Q And so how was it that you located the works

17:11:55

17

identified in the first takedown notice?

17:11:58

18

A Well, we discussed that earlier. Our

17:12:02

19

attorneys did that on our behalf.

17:12:09

20

MR. FRANTZ: Let's mark 27.

17:12:10

21

(Document marked Bradford Exhibit 27

17:12:13

22

for identification.)

17:12:13

23

MR. FRANTZ: This is CAL '294 -- I'm sorry.

17:12:25

24

I said that wrong.

17:12:27

25

CAL '2964 through '2966.

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17:12:42 2 THE WITNESS: All right.

17:12:43 3 MR. FRANTZ: Q. Have you seen this document  
17:12:43 4 before?

17:12:44 5 A Yes.

17:12:44 6 Q When?

17:12:49 7 A During our prep for this deposition.

17:12:51 8 Q Have you seen it on any other occasion?

17:12:58 9 A No.

17:12:58 10 Q And this is the -- the takedown notice sent  
17:13:02 11 by BayTSP on your company's behalf; correct?

17:13:07 12 A Let me -- let me review this, please.

17:13:25 13 Yes, it appears to be a takedown notice by  
17:13:28 14 BayTSP on Cal IV's behalf.

17:13:34 15 Q Are you aware of any other takedown notices  
17:13:37 16 BayTSP sent on your company's behalf?

17:13:41 17 A I'm -- I'm out of the loop on this one.

17:13:46 18 Q And who would know about this?

17:13:51 19 A Our attorneys, possibly Daniel Hill.

17:14:00 20 Q But you knew about BayTSP; didn't you?

17:14:05 21 A As a result of our prep for this deposition,  
17:14:07 22 yes.

17:14:07 23 Q Before you prepped for this deposition, you  
17:14:10 24 never heard of BayTSP?

17:14:12 25 A Correct.

# **Schapiro Exhibit 109**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

VIDEOTAPED DEPOSITION OF:

MARYANN SLIM

NEW YORK, NEW YORK

FRIDAY, OCTOBER 23, 2009

BY: REBECCA SCHAUMLOFFEL  
JOB NO. 17852

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ALSO PRESENT:

Carlos King, Videographer

FEDERAL STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED  
by and between the attorneys for the  
respective parties herein, that filing and  
sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED  
that all objections, except as to the form of  
the question, shall be reserved to the time  
of the trial.

IT IS FURTHER STIPULATED AND AGREED  
that the within deposition may be sworn to  
and signed before any officer authorized to  
administer an oath, with the same force and  
effect as if signed and sworn to before the  
Court.



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MARYANN SLIM

2003, correct?

MR. STELLINGS: The document  
speaks for itself.

11:41:47 You can answer, if you know.

A. 2005, doesn't say at the top  
here, on the cover sheet?

Q. If you can turn to page  
'72466 --

11:42:01 A. Sorry.

Q. -- the actual assignment of  
copyright, it says, "Executed this 3rd  
day of June 2003."

Do you see that?

11:42:10 A. Yes, I do.

Q. And do you recognize this  
exhibit?

A. Yes.

Q. You have seen it before?

11:42:19 A. Yes, I have.

Q. Do you know if the Jerry  
Lynn Williams compositions, that have  
been assigned under this Agreement, are  
covered by either of the Stage Three  
internal Sub-publishing Agreements that

MARYANN SLIM

we discussed earlier?

MR. STELLINGS: Objection.

Calls for a legal conclusion.

11:42:45 You can answer, if you know.

A. I would imagine they are,  
but I don't know because I haven't seen  
them, the documents.

Q. Do you know who would know?

11:42:59 A. Jeff Duncan, Alan Kading.

Q. Okay. If you can turn to  
page '72467, you will see a schedule of  
compositions. Do you see that?

A. I do.

11:43:30 Q. And there is a column that  
lists the percentage of total copyright  
of entire composition to be assigned?

A. I see that.

Q. And you can see there is a  
11:43:45 list of percentages. And I will  
represent to you that all of them on  
the schedule are less than 100 percent.

A. That's correct.

Q. So does that mean that there  
11:43:57 are other third parties that own a

MARYANN SLIM

percentage of the copyright for these  
compositions?

MR. STELLINGS: Object to

11:44:03 the form of the question.

You can answer.

A. Yes, it does.

Q. So for -- let's just take an  
example. The first one, A Woman Has

11:44:17 Her Way, the percentage owned or  
assigned to Stage Three UK is 11.25%.

Do you see that?

A. I do.

Q. Do you know how many other  
11:44:28 co-owners there are for that song?

A. No. I would have to look in  
our system to see.

Q. And what system would you  
look at?

11:44:36 A. Music Maestro Counterpoint.  
It is the system I referred to  
previously.

Q. It is called Music Maestro  
Counterpoint?

11:44:46 A. Yes.

MARYANN SLIM

1  
2 Q. And that system would have a  
3 database -- would include a database  
4 that has all the co-owners for  
5 11:44:55 compositions owned by Stage Three?

6 A. Where information is  
7 available on co-owners, it is in there.  
8 Otherwise, it will be down as unknown.

9 Q. So sometimes you don't have  
10 11:45:06 information about the other co-owners?

11 A. Correct.

12 Q. Do you have any idea how  
13 many different co-owners there are for  
14 this song?

15 11:45:22 A. This particular song, no. I  
16 would have to check our system.

17 Q. Are you familiar with the  
18 writer, Gerry Rafferty?

19 A. Yes, I am.

20 11:45:45 Q. And is he a UK or US writer?

21 A. He is a UK writer.

22 Q. Do you know if the Gerry  
23 Rafferty songs are subject to internal  
24 Sub-publishing Agreements we discussed  
25 11:45:59 earlier?

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MARYANN SLIM

MR. STELLINGS: Objection.

You can answer, if you know.

A. Again, I haven't seen  
11:46:02 documentation of it, but I would think  
that they are, yes.

Q. And would Jeff Duncan know  
that?

A. Yes, he would.

11:46:12 Q. David Essex, is he a US or  
UK writer?

A. He is a UK writer.

Q. Do you know if David Essex's  
songs are subject to any of the  
11:46:25 internal Sub-publishing Agreements?

MR. STELLINGS: Same  
objection.

You can answer.

A. Same answer. I haven't seen  
11:46:30 documentation, but I would take it that  
they are.

Q. The Subways, are they a US  
or UK writer?

A. They are a UK writer.

11:46:38 Q. I take it you don't know

MARYANN SLIM

provide this to our sub-publishers in  
the other territories when they come to  
us trying to clear a song for sync  
license use. Because often, they come  
to us and they give us minimal  
information. So this is, again, to  
speed up the process, help them to help  
us. If they can answer as many of

these questions as possible, then the  
whole process goes more quickly rather  
than toeing and frowning with the whole  
process to get this information.

Q. Is Connie Ashton your

counterpart in the US?

A. She is.

Q. Is there any other written  
guidelines on sync licensing other than  
those contained in this document?

A. No.

Q. Are there any unwritten  
guidelines on sync licensing?

A. No.

Can I just amend that

answer?

MARYANN SLIM

Q. Sure.

A. Other than the Aerosmith document that I referred to earlier on this morning.

Q. Okay. You mentioned earlier that a number of songs administered by Stage Three are co-owned by other third parties; is that right?

A. That's correct.

Q. Do you ever consult with those other co-owners on licensing matters?

A. Only insofar as to ascertain that they do own the other share. For instance, if someone comes to me to approve the song that we don't control 100 percent, I want to help them find the correct other publisher to go to.

So if I have the information or don't have the information, I might ring up and say, do you have the writer X and do you control his share. Can I -- I am going to send this person to you because they are trying to clear

MARYANN SLIM

this song.

Q. And you testified that  
sometimes you don't have that  
information on the other co-owners?

A. Um-hum. Sometimes we don't.

Q. What would you do in that  
case?

A. In that case, I would ask  
Alan Kading to see if he could find  
out, from the MCPS, who should have  
full registrations of all songs, if he  
can find out who the co-owners are.

Q. MCPS is what?

A. It is the MCPS PRS. In the  
United Kingdom, it is a collecting  
society for performance royalties.  
Plus, it does various licensing on  
behalf of all the publishers in the UK,  
which is standard industry blankets  
that we have no control over.

Q. Are you ever required to  
consult with the other co-owners of a  
song before licensing -- doing any sync  
licensing?



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MARYANN SLIM

MR. STELLINGS: Objection to  
the extent it calls for a legal  
conclusion.

11:57:05 You can answer, if you know.

A. I don't really understand  
the question how it is different from  
the previous question.

Q. Does Stage Three UK have any  
11:57:17 other agreements --

A. No.

Q. -- with the other co-owners  
with regard to licensing?

A. No.

11:57:22 Q. You mentioned that Stage  
Three UK has a database to keep track  
of licensing information; is that  
right?

A. We have the Music Maestro,  
11:57:44 which I was talking about earlier.  
That's not to keep track of licensing.  
That Music Maestro is the admin side of  
the company's system for registering  
songs and seeing -- putting in all the  
11:57:58 song information. So that when

# **Schapiro Exhibit 110**

## 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. ) Case No. 1:07CV02103  
 )

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. ) Case No. 07CV3582  
 )

YOUTUBE, INC., YOUTUBE, LLC, and )  
 GOOGLE, INC., )

Defendants. )  
 )

DEPOSITION OF ALEX ELLERSON

NEW YORK, NEW YORK

Friday, May 22, 2009

JOB NO: 16902

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4 May 22, 2009

5 9:28 a.m.  
6

7 VIDEOTAPED DEPOSITION OF ALEX

8 ELLERSON, held at the offices of Proskauer  
9 Rose, LLP, 1585 Broadway, New York,  
10 New York, pursuant to notice, before Erica  
11 L. Ruggieri, Registered Professional  
12 Reporter and Notary Public of the State of  
13 New York.  
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A P P E A R A N C E S

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ALSO PRESENT:

CARLOS KING, Videographer

1 A. ELLERSON

2 Q. And in your view, did YouTube  
3 benefit if content owners made use of the  
4 Claim Your Content tool?

5 11:43:01 MR. WILLEN: Objection to the  
6 form.

7 A. I don't really know what that  
8 means, does YouTube benefit from people  
9 using various tools.

10 11:43:09 I know what my job was, which  
11 was to license content for the service.

12 Q. Did YouTube financially benefit,  
13 if content partners you were negotiating  
14 with agreed to make use of the Claim Your  
15 11:43:39 Content tool?

16 MR. WILLEN: Objection to the  
17 form.

18 A. I have no -- I don't know how I  
19 could answer that question.

20 11:43:44 What I know is that my job was  
21 to license content, and I was very focused  
22 on trying to do that.

23 Q. Do you recall offering content  
24 owners or potential content owners better  
25 11:44:03 financial terms, if they made use of the

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A. ELLERSON

Claim Your Content tool?

11:44:18

A. My best recollection is that we tried to make -- so the primary -- what do you mean by "financial terms"? Let me ask that question first.

11:44:58

Q. Let's step back a bit.

What kinds of deals were you negotiating with content owners at this time when you were working for YouTube?

MR. WILLEN: Objection to the form.

11:45:11

A. So for the, pretty much the entirety of my time working for YouTube, my primary job responsibility was to secure licenses to video content so that YouTube could make that content available.

11:46:14

Q. And then in trying to secure licenses to video content from content owners, what sorts of financial terms was YouTube offering to the content owners?

MR. WILLEN: Objection to the form.

11:46:29

A. I don't know what YouTube was offering.

1 A. ELLERSON

2 I can tell you, in deals that I  
3 worked on to secure licenses to video  
4 content, as a general matter, the quid pro  
5 11:46:42 quo in those proposed deals was some  
6 quantity of content in exchange for a  
7 share of advertising revenue from  
8 advertisements that would be run against  
9 that content, when it was displayed on the  
10 11:46:57 YouTube service.

11 Q. And when you say, "a share of  
12 advertising revenue," does that mean that  
13 the content owner would get some part of  
14 the advertising revenue, and YouTube would  
15 11:47:08 get the other part?

16 A. So advertising revenue sharing  
17 means pretty much exactly what you just  
18 said. So someone sells ads, and it brings  
19 in \$10, and that \$10 is associated with  
20 11:47:22 one owner's content. And the owner takes  
21 a piece of that \$10, or YouTube would take  
22 a piece of that \$10.

23 Q. Do you recall offering content  
24 owners higher revenue shares, if they  
25 11:49:12 agreed to make use of the Claim Your



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A. ELLERSON

Content tool?

11:49:25 A. In deals that I worked on, am I aware of us ever offering the type of revenue shares, in the event that a potential partner agreed to use the Claim Your Content tools?

11:49:40 I don't know whether I did or did not. I might have. I don't recall doing it, but that's possible.

11:50:03 Q. Do you recall if anyone on your team, anyone who reported to you, ever offered content, potential content partners higher revenue shares, if they agreed to make use of the Claim Your Content tool?

A. I don't recall.

MR. GITTERMAN: Let's mark this as Exhibit 2, please.

11:50:33 (Ellerson Exhibit 2, document bearing Bates numbers GOO001-01030250 through 1030256, marked for identification, as of this date.)

11:51:16 MR. GITTERMAN: Exhibit 2, I'm

1 A. ELLERSON

2 interested in doing.

3 Q. Mr. Ellerson, can you explain to  
4 us why you wanted as much content as  
5 12:45:06 possible from content owners?

6 A. That was my job.

7 Q. Why was that your job?

8 MR. WILLEN: Objection to form.

9 A. I was hired by Google and  
10 12:45:19 YouTube to license as much content as  
11 possible.

12 Q. And why did Google and YouTube  
13 want as much content as possible licensed?

14 MR. WILLEN: Objection. Calls  
15 12:45:32 for speculation.

16 A. I don't know what you mean by  
17 Google and YouTube, why did these  
18 entities.

19 I can tell you why I wanted to  
20 12:45:43 license content.

21 Q. Okay.

22 A. I wanted to license as much  
23 content as possible, because that's what I  
24 was hired to do.

25 12:45:50 Q. And do you know what -- in your

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A. ELLERSON

view, what was the benefit to YouTube in  
licensing as much content as possible?

12:46:10           A.       So there's a number of things  
that would benefit YouTube in having lots  
of content available from the site.  Users  
would come to the site.  They would use  
the site.  If there was advertising on the  
site, that could be sold, and so the  
12:46:22           company could make money from that.

MR. FRANKS:  Is this a good time  
for a break?  I don't want to  
interrupt your flow, if you are still  
on this document or not.

12:47:05           MR. GITTERMAN:  Give me one  
second.  Let's see, because I see  
there's lunch down there also.

MR. FRANKS:  Okay.

MR. WILLEN:  We don't have to  
12:47:16           take a long lunch break.

MR. GITTERMAN:  I prefer to take  
a short one.  So why don't we do that  
now.

MR. FRANKS:  Okay, great.

12:47:24           MR. GITTERMAN:  The shorter the

1 A. ELLERSON

2 better.

3 THE VIDEOGRAPHER: The time is  
4 12:47 p.m., and we are off the record.

5 (Luncheon recess taken at  
6 12:47 p.m.)  
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A. ELLERSON

to the extent that your answer would  
disclose any communications you had  
with Google's counsel about that  
issue.

01:35:31

A. In which case I won't answer  
that question.

Q. Is it the case that -- is it the  
case that you were told by legal  
counsel --

01:35:57

MR. GITTERMAN: Let me strike  
that.

Q. Did you have any conversations  
with Google or YouTube's counsel about  
identifying clips for CBS?

01:36:26

MR. WILLEN: Objection to the  
form.

MR. FRANKS: Let me think about  
that.

01:36:50

I think I'll let you answer that  
just yes or no.

A. And could you repeat it, please.

Q. Sure. Did you have any  
conversations with Google or YouTube's  
counsel about identifying clips for CBS?

01:36:59

1 A. ELLERSON

2 A. With counsel.

3 MR. FRANKS: You mean here CBS  
4 specifically, as opposed to  
5 01:37:15 identifying longer clips in general?

6 Are you asking specifically with  
7 regard to CBS?

8 MR. GITTERMAN: Right now I'm  
9 asking specifically about CBS.

10 01:37:25 MR. FRANKS: Okay.

11 A. So specifically with respect to  
12 CBS, I don't recall.

13 Q. Were you instructed by legal  
14 counsel not to identify clips on YouTube  
15 01:38:03 yourself?

16 MR. FRANKS: I'm going to object  
17 and instruct the witness not to answer  
18 that question on the grounds of  
19 attorney-client privilege.

20 01:38:31 MR. GITTERMAN: You know, it's  
21 our position that we are entitled to  
22 know the general subject matter of  
23 conversations he had and with whom and  
24 when.

25 01:38:40 MR. FRANKS: But your question

1 A. ELLERSON

2 asked him was he instructed not to do  
3 something. That's asking for the  
4 content of the advice, and that's why  
5 01:38:48 I objected.

6 Q. Did you ever talk with YouTube  
7 or Google legal counsel about identifying  
8 clips -- let me say that again.

9 Did you ever communicate with  
10 01:38:58 Google or YouTube legal counsel about  
11 identifying clips, whether CBS's or anyone  
12 else's, on YouTube?

13 MR. WILLEN: Objection to the  
14 form.

15 01:39:07 MR. FRANKS: You can answer that  
16 yes or no.

17 MR. WILLEN: If you understand  
18 what he's asking you.

19 A. Yeah. Could you repeat it for  
20 01:39:12 me.

21 Q. Did you have any communications  
22 with Google or YouTube's counsel about  
23 identifying content owners's clips on  
24 YouTube?

25 01:39:35 MR. FRANKS: You can answer that

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A. ELLERSON

yes or no.

A. Yes.

Q. And when did you have those

01:39:44 conversations?

A. I have no idea.

Q. Do you know how many

conversations you had?

A. I have no idea.

01:39:53 Q. Do you know if you had such a  
conversation around the time you sent this  
e-mail?

A. I don't recall sending the  
e-mail, so I can't answer that.

01:40:04 Q. Do you know if you had any  
conversations around December 2006?

A. I think you asked me, do I  
remember the time of those conversations,  
and I said I had no idea when they were.

01:40:19 Q. Do you remember who you spoke  
with?

A. I can tell you who YouTube's and  
Google's lawyers were, but I can't tell  
you which I might have spoken to about  
01:40:34 this.



1 A. ELLERSON

2 Q. Can you tell me all of the  
3 people you might have spoken to about  
4 this?

5 01:40:42 A. I can tell you those lawyers  
6 names I recall at Google and YouTube.

7 Q. Okay.

8 A. David Estrada, Zahava Levine,  
9 Glenn Brown, Arron Hawthorne Thwaite.  
10 01:41:31 Those are the only names I can recall.

11 Q. Mr. Ellerson, did you have  
12 conversations with YouTube or Google  
13 counsel about --

14 MR. GITTERMAN: Let me rephrase  
15 01:42:07 that.

16 Q. Did you have -- did you have any  
17 communications with Google or YouTube  
18 counsel about whether identifying clips on  
19 YouTube would risk the loss of YouTube's  
20 01:42:19 DMCA safe harbor protections?

21 MR. FRANKS: You can answer that  
22 yes or no.

23 A. That, specifically, as you  
24 phrased it, I don't recall.

25 01:42:38 Q. So if you --

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A. ELLERSON

that sort of thing. The specifications  
for the video files.

Q. And in the context of this  
02:31:57 e-mail here, do you understand spec to  
refer to information about how the video  
fingerprinting program was going to work?

A. I really don't know what it  
means. I mean my guess is that maybe it  
02:32:13 was referring to some details about how  
the beta test would work, but I'm just  
guessing. I don't know.

Q. Do you see under that, the  
following language: "We will not generate  
02:32:30 rev fingerprint upon claiming of partner  
of UGC video through DESC search. The  
reason we will no longer allow this  
feature is because we are going to open up  
CYC to nonpartners who we do not think we  
02:32:46 can trust to review the content carefully  
enough."

Do you see that language?

A. I do.

Q. And then in the e-mail above it,  
02:32:58 in the "from" line, is that your e-mail

1 A. ELLERSON

2 address?

3 A. Yes, it is.

4 Q. And in the "to" line, is that

5 02:33:08 Philippe Inghelbrecht's e-mail address?

6 A. Yes, it is.

7 Q. Do you have any reason to think  
8 you did not send this e-mail back to  
9 Philippe Inghelbrecht?

10 02:33:14 A. No reason to think I did not  
11 send this.

12 Q. And when you responded to  
13 Philippe, "I understand the logic but  
14 appreciate the issues," what did you mean?

15 02:33:28 A. I honestly have no idea what I  
16 meant by that.

17 Q. Was it your understanding that  
18 at the time of this e-mail, YouTube was  
19 considering opening up Claim Your Content  
20 02:33:41 to nonpartners?

21 A. Not a question of consideration.  
22 The beta test of the CYC tools was  
23 absolutely going to be made available to  
24 both partners who were licensing content  
25 02:33:57 to YouTube, might license to YouTube and

1 A. ELLERSON

2 those who were not and had expressed no  
3 interest in licensing content to YouTube.

4 Q. And so before this particular  
5 02:34:12 tool was going to be made available, is it  
6 the case, then, that CYC was not available  
7 to nonpartners?

8 A. So again, CYC referred to a  
9 suite of tools that ultimately included  
10 02:34:29 this video identification system. It was  
11 always the policy that the suite of tools  
12 would be made available to anyone who  
13 requested them. There was certainly  
14 internal debate about whether or not that  
15 02:34:42 should be the case, but it was always the  
16 policy that this suite of tools should be  
17 made available to anyone who wanted to use  
18 them, whether they were licensing content  
19 to YouTube or not.

20 02:34:55 Q. Putting aside whether content  
21 was licensed or not, was -- at the time of  
22 this e-mail, was CYC being made available  
23 to content owners who did not want to be  
24 partners with YouTube?

25 02:35:39 MR. WILLEN: Objection, vague,

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A. ELLERSON

ambiguous.

A. In May of 2007, I do not know who was or wasn't using CYC tools.

02:36:01 Q. Do you have any reason to think that this statement in Philippe Inghelbrecht's e-mail that, "We are going to open up CYC to nonpartners" is inaccurate?

02:36:18 A. I don't know exactly what he means by that, so I can't speak to its accuracy.

Q. When you were working at YouTube, did you ever use the term "content partners"?

02:36:46 A. During the course of my tenure, did I use the term "content partners," I'm sure with some frequency.

Q. And what did you generally use that term to mean?

02:36:57 MR. WILLEN: Are you asking him, Alex Ellerson personally, or generally?

Q. I'm asking you, when you were at YouTube, what you were using the term to

02:37:07

1 A. ELLERSON

2 mean.

3 A. So I was part of the content  
4 partnerships group. Our job was to  
5 02:37:19 license content of various types for  
6 Google and YouTube. That included  
7 licensing content from maps and content  
8 from books and content from videos. So we  
9 referred to the content partner community  
10 02:37:38 as a shorthand for anyone who owned  
11 copyrighted materials or anyone who owned  
12 media of any kind that we might want to  
13 license. We would refer to as a content  
14 partner.

15 02:37:50 Q. Even if they did not want to  
16 license content from you?

17 A. Yeah. We used it pretty  
18 broadly. Again, the name of the group was  
19 content partnerships.

20 02:37:58 Q. How could -- could we  
21 actually -- could you turn back -- I don't  
22 know if you still have it in front of you.

23 Exhibit 1, is it still there?

24 A. Yeah.

25 02:40:29 Q. Can you turn to page 89506.

1 A. ELLERSON

2 Do you see at the top in the  
3 heading it says, "Claim Your Content,  
4 CYC"?

5 02:40:50 A. Yes.

6 Q. Can you read the sentence below  
7 that?

8 A. "Claim Your Content allows you  
9 to embrace user uploaded videos instead of  
10 02:40:57 take down."

11 Q. Do you have any reason to  
12 disagree with that description of Claim  
13 Your Content?

14 MR. WILLEN: Objection to form.

15 02:41:09 A. It's one way to describe CYC  
16 tools.

17 Q. Sitting here -- sitting here  
18 today, can you think of any reason why  
19 YouTube would have wanted content owners  
20 02:41:44 to use Claim Your Content?

21 MR. WILLEN: Objection to the  
22 form. Calls for speculation.

23 A. Why YouTube would have wanted  
24 content owners to use CYC tools?

25 02:42:00 Q. Uh-hum.

1 A. ELLERSON

2 A. I don't know that YouTube wanted  
3 them to use them or not use them.

4 Q. Mr. Ellerson, when you were at  
5 02:43:30 YouTube, what did you use the term  
6 "premium content" to mean?

7 A. I used --

8 MR. WILLEN: Objection to the  
9 form.

10 02:43:47 THE WITNESS: I'm sorry.

11 MR. WILLEN: Objection to the  
12 form.

13 A. When I was at YouTube, I used  
14 the term "premium content" to mean any  
15 02:43:53 content, video content, that I might want  
16 to try to license so that we can make it  
17 available for the YouTube service.

18 Q. And what type of content was it  
19 that you wanted to license?

20 02:44:06 A. Video content.

21 Q. So when you were at YouTube, is  
22 it the case that "premium content"  
23 referred to any video content?

24 MR. WILLEN: Objection.

25 02:44:23 Mischaracterizes his testimony.



1 A. ELLERSON

2 MR. GITTERMAN: I'm just trying  
3 to understand.

4 A. Any video content that I was  
5 02:44:33 potentially interested in licensing to  
6 make it part of the video platform.

7 Q. When you were working at  
8 YouTube, you were interested in licensing  
9 any content at all?

10 02:44:43 MR. WILLEN: Objection to the  
11 form.

12 A. Video content.

13 Q. Uh-hum.

14 A. I was interested in licensing  
15 02:44:50 video content. Lots, lots of video  
16 content.

17 MR. FRANKS: Don't tell me those  
18 are more cookies.

19 THE WITNESS: It's a whole plate  
20 02:45:39 of them.

21 MR. GITTERMAN: Sorry. I just  
22 have to find a document. Just hold on  
23 one sec.

24 (Ellerson Exhibit 8, document  
25 02:48:36 bearing Bates number G00

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A. ELLERSON

001-00721100, marked for  
identification, as of this date.)

I'd like to put Exhibit 8 into  
the record.

(Witness reviews document.)

A. Okay.

MR. GITTERMAN: Putting Exhibit  
8 into the record with the document  
number GOO 001-00721100.

Q. Is this an e-mail from you to  
Patrick Walker?

A. It says that it's from me to  
Patrick Walker.

Q. Do you remember sending it?

A. I do not remember sending this  
specific e-mail, but I do remember the  
circumstances around the discussion that  
the e-mail describes.

Q. And what were those  
circumstances?

A. So Patrick, I believe, reported  
to David as well. But even if he didn't,  
he was doing video deals for YouTube  
outside the U.S.

1 A. ELLERSON

2 And every quarter at Google all  
3 employees have to set goals for the  
4 quarter. Google likes those goals to be  
5 02:49:39 numeric, so, as a deal team, they wanted  
6 our numeric deals to be a number of closed  
7 for the quarter. So I had a goal for  
8 number of deals closed. My compensation  
9 was, to some degree, tied to meeting those  
10 02:49:54 goals.

11 Patrick also had similar numeric  
12 deal goals. In Patrick's deal goals, in  
13 his OKRs, I can't recall the specific time  
14 that it was July, but I recall Patrick --  
15 02:50:21 David, my boss, thinking Patrick was doing  
16 a much better job than me and my team,  
17 because he was closing more deals.

18 And when I spoke to Patrick  
19 about that, through that conversation it  
20 02:50:35 appeared that what he was calling a deal  
21 is not something that we in the U.S. would  
22 call a deal. So what he was closing were  
23 these things called branded partners. In  
24 the number 1 there, which was, frankly, he  
25 02:50:50 was just talking to someone who owns

1 A. ELLERSON

2 content, telling them to use the upload  
3 tool, and frankly I didn't consider that a  
4 deal. I didn't want to look bad in front  
5 02:51:01 of my boss for not closing as many deals,  
6 because we described a deal in a different  
7 way than Patrick did. So because my  
8 compensation was tied to this issue, you  
9 can imagine that it was of some moment to  
10 02:51:13 me.

11 Q. And what was the difference  
12 between the kinds of deals Patrick was  
13 closing and the kinds you were closing?

14 MR. WILLEN: Objection.

15 02:51:24 Mischaracterizes the testimony.

16 A. I think what I said was in  
17 talking to Patrick, he was doing something  
18 that he called a deal that in the U.S. I  
19 did not consider a deal.

20 02:51:35 Q. And what did you consider a  
21 deal?

22 A. I considered a deal getting  
23 someone to sign an agreement or come to  
24 commercial terms with us.

25 02:51:46 Q. And how did that differ from

1 A. ELLERSON

2 it.

3 Q. Sitting here today, if you were  
4 going to do such an analysis, how would  
5 03:50:07 you go about doing it?

6 MR. WILLEN: Objection. Calls  
7 for speculation.

8 MR. GITTERMAN: No, it doesn't.

9 Q. If you were doing it now, how  
10 03:50:15 would you do it?

11 MR. WILLEN: You are asking him  
12 as an employee of Howcast, how would  
13 he going analyzing query stream data  
14 on YouTube? Is that what you are  
15 03:50:23 asking him?

16 MR. GITTERMAN: No, that's not  
17 what I asked.

18 If you are going to force me to  
19 ask it again --

20 03:50:32 MR. WILLEN: Okay.

21 MR. GITTERMAN: -- I will and  
22 waste more time.

23 Q. Mr. Ellerson, if you were going  
24 to conduct a query stream data analysis  
25 03:50:48 like the one you did here, how would you

1 A. ELLERSON

2 go about doing it?

3 A. If I were a YouTube employee  
4 today, and I wanted to perform an analysis  
5 03:51:01 like this one --

6 Q. Uh-hum.

7 A. -- how would I gather the query  
8 stream data to perform that analysis?

9 Q. Yeah.

10 03:51:08 A. I would ask an engineer who I  
11 thought had access to query stream data if  
12 he or she could provide some of that data  
13 to me.

14 Q. And can you describe for us what  
15 03:51:19 query stream data is, or are?

16 A. So my general understanding of  
17 query stream data is that it is -- well,  
18 for this analysis, this would be aggregate  
19 query stream data. But raw query stream  
20 03:51:42 data is just a stream of the keywords that  
21 users are entering into a search engine to  
22 look for something.

23 Q. Is query stream data data that  
24 users enter into the YouTube search  
25 03:52:02 function to look for videos on YouTube?

1 A. ELLERSON

2 A. So search operates by a user  
3 entering one or more keywords that they  
4 are hoping will describe what it is that  
5 03:52:15 they are looking for.

6 Q. And the query stream data that  
7 you analyzed for this memo were searches  
8 that users inputted into the YouTube  
9 search box to look for YouTube videos?

10 03:52:30 A. My best recollection is that, is  
11 that this data reflects queries that were  
12 aggregate queries that were entered into  
13 the Youtube search engine, yes.

14 Q. And how did you decide -- how  
15 03:52:50 did you categorize --

16 MR. GITTERMAN: Let me rephrase  
17 that.

18 Q. How did -- how were the queries  
19 aggregated in this analysis?

20 03:53:06 MR. WILLEN: Objection to the  
21 form.

22 A. This analysis -- so just to be  
23 clear, I looked at top hundred queries, so  
24 that's already an aggregation of query  
25 03:53:24 stream data. And then I further

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A. ELLERSON

aggregated it into these broad buckets,  
music, nonmusic, premium, adult, other.

Q. And how did you aggregate it  
03:53:38 into those buckets?

A. My best recollection is that I  
was making a best guess. So that if I saw  
the name -- if I saw a query of Bruce  
Springstein, I would use my understanding  
03:53:53 of the music world to know that that was a  
musical artist, and I would put it in the  
music bucket.

Q. How did you aggregate queries  
into the premium bucket?

A. So in a similar fashion to what  
I just described, I provided examples in  
this query stream report. If I saw the  
query "family guy," I would know -- you  
know, users might mean lot of things by  
03:54:12 the term "family guy." They might mean  
they are looking for information about,  
you know, good dads, because they are  
03:54:28 having a kid or something.

But I made my best guess that it  
03:54:38 probably was referring to Fox's television



1 A. ELLERSON

2 index. I'm not an engineer, so some of  
3 this is just sort of my passing  
4 understanding. It might be very wrong.

5 04:15:38 But I believe that the main search engine  
6 finds text, could be written newspaper  
7 articles, could be metadata that a website  
8 owner has somehow made available on its  
9 web page, and shoves all of that text into  
10 04:15:58 the search engine -- search index.

11 And then when a user runs a  
12 query, that query is run against the  
13 index; and the engine surfaces what its  
14 algorithm believes is the most relevant  
15 04:16:15 content or web pages that correspond to  
16 that specific user query.

17 Q. And could users search for  
18 YouTube video content through Google web  
19 search --

20 04:16:29 MR. WILLEN: Objection.

21 Q. -- on YouTube?

22 MR. WILLEN: Objection. Calls  
23 for speculation.

24 Q. If you know.

25 04:16:34 A. I don't know the answer to that.

1 A. ELLERSON

2 Q. If you could turn back to your  
3 analysis at page 65465.

4 Under the heading of "The Top  
5 04:16:59 100 Playback Queries," you write, [REDACTED]

6 [REDACTED] "

7 Does that mean -- was your  
8 conclusion, as part of this analysis,  
9 that --

10 04:17:18 MR. GITTERMAN: Actually, strike  
11 that.

12 Q. Can you explain for us what,  
13 what that means in the context of this  
14 analysis?

15 04:17:33 A. I believe that means that of the  
16 top 100 user queries, so a user did a  
17 query, got a search result page and then  
18 watched a video as a result of running  
19 that query and finding the search result

20 04:17:48 page, that [REDACTED]  
21 [REDACTED].

22 It doesn't mean that the video  
23 that the user watched was music. It means  
24 that the keywords that they typed in, it  
25 04:18:01 was my guess that that was a music-related

1 A. ELLERSON

2 keyword.

3 Q. And how were you able to  
4 determine that it was a music-related  
5 04:18:14 keyword?

6 MR. WILLEN: Objection. I think  
7 we have asked this already.

8 A. Yeah. My recollection is we  
9 were talking about this before, and I was  
10 04:18:23 describing that I was drawing on my  
11 personal knowledge that a keyword like,  
12 for example, Bruce Springstein, that -- I  
13 mean maybe a user had a family member  
14 named Bruce Springstein that they were  
15 04:18:38 trying to find something about, but I used  
16 my judgment to determine that that meant  
17 that the user's interest was in videos  
18 related to the Bruce Springstein.

19 And frankly, I was also making a  
20 04:18:50 leap of faith that -- that that meant that  
21 they were looking for Bruce Springstein  
22 performing music, but I don't know that to  
23 a certainty. This is a very  
24 nonscientific -- they could have been  
25 04:19:02 looking for Bruce Springstein news

1 A. ELLERSON

2 interviews. They could have been looking  
3 for Bruce Springstein blooper reels. I  
4 wouldn't know. So again, I was merely  
5 04:19:13 making a back-of-the-envelope guess.

6 Q. Now, you relied on this data  
7 analysis to conclude that there was an  
8 enormous demand for premium content on the  
9 YouTube website; isn't that right?

10 04:19:29 A. I think what I wrote was  
11 something along those lines, yes, that  
12 there was -- how was the memo phrased?  
13 Yeah. Our opinion is that the query  
14 stream analysis is that there's interest,  
15 04:20:00 and the challenge is we haven't licensed  
16 it, and --

17 Q. And do you --

18 MR. WILLEN: Let him finish his  
19 answer.

20 04:20:08 A. -- the reason for that is, the  
21 reason I would come to that conclusion is  
22 looking at these, to me, what's more  
23 interesting here is the search query data  
24 which indicates that someone did a, ran a  
25 04:20:20 search looking for something and

1 A. ELLERSON

2 presumably did not find it, because there  
3 was no subsequent video playback.

4 And it indicates that our users  
5 04:20:32 in large numbers were looking for  
6 pornography and did not find it. It also  
7 indicates that they were looking for  
8 nonmusic premium content, a very large,  
9 what I consider a large percentage, nearly

10 04:20:45 [REDACTED], and did not find it.

11 And from that I concluded that  
12 we had not -- because they could not find  
13 it, because we had not yet licensed it or,  
14 if we had licensed it, we were not doing a  
15 04:21:01 good job of surfacing it so that it could  
16 be found.

17 Q. And isn't it the case that you  
18 were also confident enough in this  
19 analysis you did to recommend to your  
20 04:21:15 boss, David Eun, that there is an enormous  
21 demand for premium content?

22 MR. WILLEN: Objection.

23 Mischaracterizes the document.

24 A. I think one of the things that  
25 04:21:29 we were just talking about, as I said, I

1 A. ELLERSON

2 believed that this query stream data  
3 indicated that there was strong user  
4 demand for premium content. And that  
5 04:21:40 demand was not being filled, because we'd  
6 either not licensed it or, to the extent  
7 we had licensed it, were not making it  
8 easily discoverable by our users.

9 Q. Turning back to page 654 --  
10 04:22:00 turning back to page 65465, your query  
11 stream data analysis.

12 Do you know if YouTube had  
13 licensed any content from the Fox  
14 television network at the time you did  
15 04:22:33 this analysis?

16 A. At the time that this memo is  
17 dated, which is, I think -- what was it,  
18 June? In June of '07, was I aware of any  
19 license between YouTube and Fox?

20 04:22:51 I don't recall one, but that  
21 doesn't mean that there wasn't one.

22 Q. Do you know of anyone working at  
23 YouTube who would have negotiated with Fox  
24 other than you or someone on your team?

25 04:23:06 A. Sure. Fox is a big company,

1 A. ELLERSON

2 does a lot of things. I believe Google  
3 had a very large deal with My Space, which  
4 is a website owned by Newscorp, Newscorp  
5 04:23:17 and Fox essentially being the same thing.

6 So all those -- that deal was  
7 done by someone other than my team. I'm  
8 sure we had -- I'm guessing, I don't know  
9 this, I'm guessing that Google probably  
10 04:23:29 had various types of advertising  
11 relationships with Fox, and that would not  
12 have been my team to instruct that  
13 relationship.

14 Q. Isn't it the case that your  
15 04:23:44 team, that one of the priorities for your  
16 team was negotiating with -- was  
17 negotiating licensing deals with the big  
18 six, which includes the Fox network?

19 A. Subsequent to the YouTube  
20 04:23:58 acquisition, we identified what we were  
21 referring to as the big six. One of those  
22 big six companies was Fox. So immediately  
23 subsequent to the YouTube acquisition,  
24 getting a deal done with Fox was  
25 04:24:11 definitely a priority.

1 A. ELLERSON  
2 document number ending in 1167.  
3 (Witness reviews document.)  
4 MS. KOHLMANN: That's a  
5 04:59:17 different document.  
6 MR. GITTERMAN: That's not 10.  
7 How did that happen?  
8 MR. FRANKS: Here you go. This  
9 is what 10 is here. What you gave the  
10 04:59:25 witness and what you gave me is  
11 received -- from Alex Ellerson,  
12 received date 5/30/07, at 1649 CST.  
13 That's what's been marked as 10, with  
14 attachment minimum guarantee  
15 04:59:46 recommendation memo.  
16 You want to go to a number 11?  
17 MS. KOHLMANN: No. Go ahead.  
18 MR. GITTERMAN: We will stick  
19 with number 10, but I read the wrong  
20 05:00:02 Bates number.  
21 MR. WILLEN: Can I get my copy  
22 back, then.  
23 MS. KOHLMANN: Sorry.  
24 MR. WILLEN: That's all right.  
25 05:00:08 Thanks.



1 A. ELLERSON

2 MR. GITTERMAN: So document 10  
3 starts with Bates number GOO  
4 00102519867 and ends in 02519873.

5 05:00:31 MR. FRANKS: That appears to be  
6 what we got.

7 MR. GITTERMAN: Sorry about  
8 that.

9 Q. Mr. Ellerson, if you can turn to  
10 05:00:47 page 9868, it's the second page. I don't  
11 think you need to read the whole thing.

12 A. I'd like to at least know --

13 Q. I just have a couple questions.

14 A. -- what the -- at least skim  
15 05:01:05 through it.

16 Q. Okay. Turning to the second  
17 page of the document, do you recognize  
18 this as an earlier draft of the memo we  
19 were just discussing?

20 05:02:04 A. It appears to be an earlier  
21 draft of the memo we were just discussing,  
22 yes.

23 Q. And by just discussing, I'm  
24 referring to Exhibit 9.

25 05:02:18 And if you turn to page 9871,

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A. ELLERSON

which is headed "Analysis of Query Stream  
Data."

A. Yes.

05:02:29 Q. And is that the same analysis  
that was attached to the Exhibit 9  
memorandum?

A. So it appears to be identical.

05:03:06 Q. If you turn to page 9869, which  
is the second page of the memo. In the  
second paragraph from the top, in the  
second sentence, do you see it says, "This  
data suggests that our users do want to  
watch professional content, but we either  
05:03:31 haven't yet licensed the content that they  
are looking for, or, for content that we  
have licensed, we are not doing the best  
job that we can to service that content  
for users who are searching for it."

05:03:43 A. I see it, yes.

Q. Do you have any reason, sitting  
here now, to disagree with that  
conclusion?

A. I believe that that conclusion  
05:03:54 is saying that as a result of looking at

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A. ELLERSON

this query stream data, that I had  
concluded that there was unmet demand for  
nonmusic premium content.

05:04:07

Q. Isn't it the case that you  
concluded that there was unmet demand for  
professional content?

05:04:20

A. That's what this says. And I'm  
guessing now, because I don't recall  
specifically, but I'm guessing -- I'm  
guessing I used the word "professional,"  
because that was the term that Chad had  
used in this quote that was taken from USA  
Today.

05:04:40

Q. And is it the case that based on  
your analysis of the query stream data,  
that Chad's conclusion was incorrect?

MR. WILLEN: Objection to the  
form.

05:05:05

A. Appears Chad is making a number  
of conclusions in this statement. One is  
that users want to watch themselves. So  
there was certainly an abundance of  
evidence on YouTube that users want to  
watch themselves.

05:05:18

1 A. ELLERSON

2 As we were discussing earlier,  
3 there's a number of ways in which users  
4 can find videos. They can find them  
5 05:05:25 through search, they were Bruce, they can  
6 be sent links, there are recommended video  
7 links. If you look again, my recollection  
8 is at the time that I was at YouTube, if  
9 you looked at the most viewed videos, many  
10 05:05:38 of those would be things that are loosely,  
11 I would describe as users wanting to watch  
12 themselves.

13 So I think to the extent that he  
14 was concluding, by use of the phrase, they  
15 05:06:07 don't want to watch professionally  
16 produced content, to the extent that I  
17 understood him to be referring to content  
18 of the type that I was interested in  
19 licensing, I disagreed with that  
20 05:06:20 conclusion.

21 Q. Well, what did you understand  
22 him to mean, when he said professionally  
23 produced content?

24 A. Content that was not of the type  
25 05:06:29 that would be described as users wanting

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A. ELLERSON

to watch themselves.

05:06:48

Q. So is it a fair characterization to say that premium content is also, as you were using the term at the time, not content of the type where users want to watch themselves?

MR. WILLEN: Objection to the form.

05:07:00

A. I know what I meant when I used the term "premium content." And I meant content that I was interested in licensing to make available from the YouTube platform.

05:07:10

Q. Were you interested in licensing content of the type where you --

MR. GITTERMAN: Let me rephrase that.

05:07:35

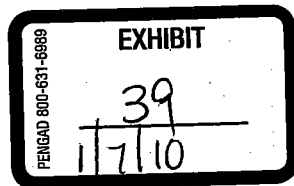
Q. Were you interested in licensing content of the type whereby users want to watch themselves?

MR. WILLEN: Objection to form and also --

05:07:41

MR. FRANKS: Objection, asked and answered.

# **Schapiro Exhibit 111**


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#### ACCESS AND AUTHORITY TO USE SONGFILE.

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**Your Songfile Username and Password.** You agree to use your Songfile username and password and access to Songfile only to conduct business on behalf of yourself or, if applicable, the organization you represent. You further agree that you will not transfer, assign or sell your username or password to any other person, even within your organization, or permit the use thereof by anyone else under any circumstance. HFA will not be liable in the event of the loss of a username or password or the misuse by anyone of a username or password. It is your sole responsibility to secure and maintain your username and password and to keep current any personal or business information provided to HFA. You agree that you will (1) log out and close down access to Songfile at the end of each Songfile



session; and (2) immediately notify HFA of your loss, or any unauthorized use of, your username and/or password, or any other breach of security. You have the option to change your password as often as you wish by creating a new password. It is recommended that you change your password at least once every 60 days.

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Certain services provided through the Public Portions may require payment by credit card (including without limitation licenses obtained through Songfile). If you wish to purchase such services, you will be asked by HFA to supply certain information applicable to your purchase, including, without limitation, credit card and other information. You understand that any such information will be treated by HFA in the manner described in our Privacy Policy, at [www.HarryFox.com](http://www.HarryFox.com). You agree that all information that you provide to HFA will be accurate, current and complete. You agree to pay all charges incurred by you or any users of your account and credit card (or other applicable payment mechanism) at the price(s) in effect when such charges are incurred. You will also be responsible for paying any applicable taxes relating to your purchases. (For additional information regarding pricing, see "Legal Notices Under California Law -- Pricing Information" below.)

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[Advantages of Membership](#)  
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[Board of Directors](#)  
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[International](#)  
[Job Postings](#)  
[Join ASCAP](#)  
[Membership Meetings](#)  
[Payment System](#)  
[Personnel](#)

**Terms of Use**

- [Introduction: Agreement](#)
- [Copyright](#)
- [Trademarks](#)
- [Reporting Third-Party Posting of Infringing Material on Website](#)
- [General Use Parameters and Restrictions](#)
- [Special Use Conditions and Restrictions Regarding ACE](#)
- [Use of Photographs](#)
- [Use of Software](#)
- [Submissions & Third-Party Content Disclaimer](#)
- [Disclaimer](#)
- [Indemnity](#)
- [External Links from the ASCAP Site - Generally](#)
- [Websites Seeking to Link](#)
- [No Endorsements](#)
- [Merchandise Sales](#)
- [Privacy Policy Generally](#)
- [ASCAP Privacy Policy for Online Membership Applicants](#)
- [A Special Word To Our Members](#)
- [Privacy With Respect to 18 and Under](#)
- [Cookies](#)
- [Local Laws and Export Controls](#)
- [Governing Law and Jurisdiction](#)
- [Termination](#)

[Logos / Licensed Marks](#)

## About ASCAP

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- [Notification of Claimed Copyright Infringement](#)
- [Counter Notification to Claimed Copyright Infringement](#)
- [Policy Regarding Repeat Infringers](#)
- [ASCAP Copyright Agent Contact Information](#)

[TOP](#)**Notification of Claimed Copyright Infringement**

If you believe that your copyrighted work has been used and made available through the ASCAP website in a manner that constitutes copyright infringement please provide notice to ASCAP's copyright agent, the contact information for whom is set forth below.

As required by the Digital Millennium Copyright Act of 1998 ("DMCA"), this notice must include the following information (see 17 U.S.C. 512(c)(3)):

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;

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- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material;
- Information reasonably sufficient to permit the service provider to contact the complaining party, such as address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;
- A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
- A statement that the information in the notification is accurate and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

[TOP](#)

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#### Counter Notification to Claimed Copyright Infringement

If you believe that a copyright infringement notice has been wrongly filed against you as a result of mistake or a misidentification of the material, you may file a counter notification with our Copyright Agent, the contact information for whom is set forth below. As required by the DMCA, the counter notification must include the following information (see 17 U.S.C. 512(g)(3)):

- A physical or electronic signature of the subscriber;
- Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;
- A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled;
- The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification or an agent of such person.

[TOP](#)

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#### Repeat Infringers

ASCAP respects the intellectual property rights of others, is committed to complying with U.S. intellectual property laws including the DMCA, and will terminate all users who are repeat infringers of intellectual property laws.

[TOP](#)

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#### ASCAP Copyright Agent

Howard Girao  
One Lincoln Plaza, 6th Floor  
New York, NY 10023  
Telephone: (212) 621-6269  
Fax: (212) 787-1381  
Email: [WebSupport@ascap.com](mailto:WebSupport@ascap.com)

[TOP](#)

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## [TOP](#)

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#### Description of ACE

ASCAP created the dial-up ACE System in 1993 as a useful tool for music professionals. It was a well-received industry innovation then, and now we are extremely proud to make an enhanced World Wide Web version of this Database available.

The Database contains information on all compositions in the ASCAP repertory which have appeared in any of ASCAP's domestic surveys, including foreign compositions licensed by ASCAP in the United States. As ASCAP's new registration format is rolled out, all works registered since November 1990, whether surveyed or unsurveyed, will be available for viewing via ACE. In the meantime, if you are a member and your composition does not appear on ACE, please [check with ASCAP](#) to verify that it has been registered with the Society.

Please note the following with respect to Writer information:

- The ACE database contains the names of ASCAP writer members and the names of their co-writers who are either affiliated with other performing rights organizations, or not affiliated with any other organization.
- ASCAP writer members' names may be accessed directly on ACE, appear initially in blue, and change to red when you click on the member's name; the names of writers affiliated with other U.S. performing rights organizations cannot be accessed directly using ACE.
- When you click on the title of a song, the names of ASCAP writers, and writers affiliated with foreign performing rights organizations whose works are licensed through ASCAP for performances in the United States, appear in blue; the names of co-writers affiliated with other U.S. performing rights organizations, or not affiliated with any other organization, appear in black and only under the listings for their titles.
- As noted above, the ACE database contains the titles of works written and published by members and affiliates of foreign performing rights organizations and licensed by than 60 foreign societies. The names of the writers of such titles also appear in blue and change to red when you click on the writer's name. The listing for the title may if a publisher with an interest in the work that controls U.S. performing rights is also affiliated with a foreign society.
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- ACE provides publisher information for ASCAP publishers when a work is co-published with a non-ASCAP entity.
- ACE also provides direction to the affiliated society of the other entities.
- The publisher contact addresses in the ACE database are intended for music users within the United States *only*. Music users outside the U.S. should contact their local performance or mechanical rights organizations for publisher contact information applicable to them.
- The publisher name and address that ACE provides as the result of a publisher address query or song title query is the **contact publisher or administrator** for a synchronization license, grand right, etc. This is not necessarily the copyright owner, who thus may not be represented on the ACE system.
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In certain circumstances, ACE advises the viewer to contact ASCAP's Repertory Clearance staff (212) 621-6160 for additional information or assistance. This may occur if a work is not in the ASCAP repertory; if the publisher or administrator of a work is a publisher represented by a foreign performing rights organization; if the work is a collaborated work (that is, a work written by an ASCAP writer and a writer affiliated with another performing rights organization); if a publisher is a former ASCAP member; or if there is a dispute as to ownership or other rights pending with respect to the work.

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[TOP](#)

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[TOP](#)

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[TOP](#)

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[TOP](#)

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[TOP](#)

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[TOP](#)

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[TOP](#)

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[TOP](#)

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[TOP](#)

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[TOP](#)

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However, there may be times when we seek to collect personal information from you. It is our intent to inform you before we do that and to tell you what we intend to do with the information. You will have the option not to provide the information, and in the future you will be able to "opt out" of certain uses of the information. If you choose not to provide the information we request, you can still visit most of ASCAP's Site, but you may be unable to access certain options, offers, and services or certain secure pages used for licensee reporting and payment and accessing and sending other information.

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[TOP](#)

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[TOP](#)

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[TOP](#)

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[TOP](#)

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[TOP](#)

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# **Schapiro Exhibit 113**



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

1 SEPTEMBER 10, 2009

2 9:40 a.m.

3  
4 VIDEOTAPED DEPOSITION OF VANCE IKEZOYE,  
5 WILSON SONSINI GOODRICH & ROSATI,  
6 650 Page Mill Road, Palo Alto, California,  
7 pursuant to notice, and before me,  
8 ANDREA M. IGNACIO HOWARD, CLR, RPR, CRR, CSR  
9 License No. 9830.  
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A P P E A R A N C E S:

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Los Angeles, California 90025

(888) 893-6189

ALSO PRESENT: Kelly Truelove, Consultant

Armando Carrassco, Videographer.

---oOo---

IKEZOYE, V.

1  
2 09:48:53 Q Okay. Can you explain a little how it was  
3 09:49:01 that the two of you came to found Audible Magic.  
4 09:49:04 A I've known Jim for -- from Hewlett-Packard  
5 09:49:08 for many years, and we -- we had kept in touch. Jim  
6 09:49:16 had an idea about using technology to identify content  
7 09:49:21 on broadcast radio. We started developing a business  
8 09:49:25 plan and later on founded the company and got the  
9 09:49:29 company funded.  
10 09:49:30 Q Okay. And when was it that you founded the  
11 09:49:32 company?  
12 09:49:34 A Originally, in July of 1999, but it was a  
13 09:49:38 different company name at the time. That was called  
14 09:49:40 Wired Air. We changed the name to Audible Magic  
15 09:49:43 Corporation in December of 1999.  
16 09:49:47 Q Mr. Ikezoye, generally speaking, what types  
17 09:50:18 of services does Audible Magic provide to its  
18 09:50:20 customers?  
19 09:50:22 A We provide copyright identification services  
20 09:50:27 to a variety of different kinds of classes of  
21 09:50:32 customers. We -- some of our customers are  
22 09:50:37 university -- universities who buy a product and  
23 09:50:42 service from us to identify content on their networks.  
24 09:50:46 We have a service called Replicheck that we  
25 09:50:51 sell to the CD manufacturing industry to identify

IKEZOYE, V.

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

Q Looking at the last of the services that you  
just mentioned, the digital -- the work that you do  
for digital media services, when did YouTube --  
sorry -- when did Audible Magic begin providing those  
kinds of services?

A To Web 2.0 companies or to just anybody in  
the space?

Q Let's just start generally with anybody in  
the space.

A We started providing some of the services to  
the peer-to-peer companies in, I believe, 2004, in the  
2004 time frame, and for those companies we helped the  
peer-to-peer companies identify content that their  
users were introducing into their networks.

Q Okay. In the 2004 time frame that you're  
talking about, was your client base primarily  
peer-to-peer services?

A Yes.

Q Can you describe -- well, actually strike  
that.

IKEZOYE, V.

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

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

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

09:53:00 A A peer-to-peer service is a peer-to-peer --  
09:53:02 it's an application that allows the sharing and  
09:53:08 transmittal of -- of copyrighted files between users.  
09:53:15 Similar to Naps- -- the way Napster originally was.

09:53:20 So users could download this application, download  
09:53:24 files, copyrighted movie and music files, and then  
09:53:28 also they can make those available to other users.

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

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

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

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

IKEZOYE, V.

09:54:19 have audio or video files, and they upload these files  
09:54:22 to websites, and these websites then allow other users  
09:54:27 to stream and to view or listen to the content.

Q Do you recall who Audible Magic's first  
customer was in the social networks base?

MS. REES: Objection; vague and ambiguous.

THE WITNESS: Our first customer that we  
announced was MySpace.

MR. DESANCTIS: Q. Do you recall when that  
announcement was?

A The -- the first quarter of 2007.

Q Did additional customers -- actually, when I  
say "customer" -- do you prefer customer or client?

A Customer is fine.

Q Okay. Did additional customers follow  
MySpace?

A Yes.

Q And who -- what was the next customer in this  
space that Audible Magic began providing services to?

MR. BLY: Objection to the extent that it  
calls for confidential information.

You can talk about the ones that are publicly  
announced.

THE WITNESS: Right.



IKEZOYE, V.

1  
2 09:55:45 Other customers were YouTube, Sony Pictures  
3 09:55:53 had a website called Grouper. Microsoft had Soapbox,  
4 09:56:03 was a customer. In total, I believe we had over --  
5 09:56:10 over the period of 30 plus customers.  
6 09:56:15 MR. DESANCTIS: Q. When you say "over the  
7 09:56:16 period," what period are you talking about?  
8 09:56:18 A From -- from 2006 through today.  
9 09:56:26 Q And when you say "30 plus customers," do you  
10 09:56:29 mean 30 plus customers in the social network space  
11 09:56:34 that you were describing, or are you now talking about  
12 09:56:38 a broader space of clients?  
13 09:56:41 A No, the Web 2.0 social networking space.  
14 09:56:47 Q Okay. Who are Audible -- Audible Magic's  
15 09:57:04 primary competitors for content identification  
16 09:57:07 services in the Web 2.0 space?  
17 09:57:12 A It changed over time, but some of the  
18 09:57:16 people -- some of the companies that were in the space  
19 09:57:17 were Gracenote, Volvo, Auditude, and there are  
20 09:57:26 probably other customers that I can't remember names  
21 09:57:34 of.  
22 09:57:35 Q Do you know whether Audible Magic does more  
23 09:57:38 business in the Web 2.0 space than any of the  
24 09:57:41 competitors you named?  
25 09:57:43 A It's my belief. I'm not aware of anybody

IKEZOYE, V.

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

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

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

10:07:32 A Yes, it is.

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

10:08:40 A Okay.

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

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

10:09:12 A No.

IKEZOYE, V.

1  
2 10:09:17 Q Direct your attention to paragraph 18 of the  
3 10:09:29 exhibit, which is on page five. The last sentence of  
4 10:09:39 that paragraph states, "The Audible Magic iMesh filter  
5 10:09:44 has scaled seamlessly to 5 million lookups per day and  
6 10:09:50 easily could scale to meet the needs of any network in  
7 10:09:52 use today."

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

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

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

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

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

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

IKEZOYE, V.

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10:11:02 day" mean?

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

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

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

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

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

IKEZOYE, V.

1  
2 10:12:47 A Yeah, a fingerprint was taken, as well as  
3 10:12:49 other information about the file --  
4 10:12:51 Q Okay.  
5 10:12:52 A -- and we --  
6 10:12:53 Q What other information was taken?  
7 10:12:55 A I believe we would take the -- the metadata  
8 10:12:59 title of the -- the file, and I also believe that we  
9 10:13:03 would take a -- a -- information -- a hash of the  
10 10:13:08 file.  
11 10:13:08 Q Okay. An MD5 hash?  
12 10:13:12 A Yes.  
13 10:13:12 Q And what then, if anything, would Audible  
14 10:13:17 Magic compare that fingerprint and additional  
15 10:13:19 information against?  
16 10:13:21 A We had a database of -- of fingerprints, as  
17 10:13:28 well as associated MD5 hashes, and so we would compare  
18 10:13:35 that against known hashes and then also known  
19 10:13:39 fingerprints.  
20 10:13:42 Q And at that time, what fingerprints were in  
21 10:14:01 your database of fingerprints?  
22 10:14:09 A At the time, according to this, it looks like  
23 10:14:11 we had about 6 million copyrighted songs in our  
24 10:14:15 database. So fingerprints were about that many songs.  
25 10:14:18 Q And from whom were those fingerprints

IKEZOYE, V.

1  
2 10:38:25 Q So if my math is correct, does that mean that  
3 10:38:33 there are far -- far more false negatives than there  
4 10:38:36 are false positives?  
5 10:38:39 A Yes.  
6 10:38:39 Q Okay. Do you know why that is?  
7 10:38:44 A We've optimized the technology to minimize  
8 10:38:48 the false positives, because we -- some of the  
9 10:38:53 identifications are used for rights or royalty  
10 10:38:56 purposes. And so if you incorrectly identify  
11 10:38:59 something, then you can -- you are attributing  
12 10:39:03 something to somebody who may not -- may or may not --  
13 10:39:08 you may misidentify a piece of content, apply the  
14 10:39:14 wrong business rules or pay the wrong person, versus  
15 10:39:17 no ID is much better; and so we optimize for false --  
16 10:39:25 minimizing false positives, and that's why a little of  
17 10:39:28 that -- that -- those ratios.  
18 10:39:32 Q I'd like to change gears for a minute, you  
19 10:40:01 can put that declaration aside, and ask you some  
20 10:40:03 questions about the databases in which Audible Magic  
21 10:40:09 stores its reference fingerprints.  
22 10:40:13 Let me just start by asking, so again that  
23 10:40:15 we're on the same page: Is it the case that Audible  
24 10:40:19 Magic stores its reference fingerprints in databases?  
25 10:40:22 A Yes.

IKEZOYE, V.

- 1  
2 10:40:23 Q Okay. Are they all in one big database or  
3 10:40:25 are there different databases?  
4 10:40:29 A We have a -- a -- a main database that  
5 10:40:33 contains all of the content submitted by copyright  
6 10:40:37 holders, so we have one master database. We also have  
7 10:40:44 other smaller databases that are -- contain subsets of  
8 10:40:51 that master database that are used in different  
9 10:40:54 applications or with different customers.  
10 10:41:01 Q Does that master database or main database  
11 10:41:03 have a particular name that I should use so that we  
12 10:41:06 know we're talking about the same thing?  
13 10:41:08 A We can call it a "master database."  
14 10:41:10 Q Okay. Is there something called a commercial  
15 10:41:29 music database or commercial music library?  
16 10:41:32 A Yes. It's -- we refer to our -- all of our  
17 10:41:40 fingerprints or registrations of -- from the music  
18 10:41:44 labels as our commercial music database.  
19 10:41:47 Q Okay. So what fingerprints populate -- what  
20 10:41:50 types of fingerprints would populate the commercial  
21 10:41:53 music database?  
22 10:41:54 A They are fingerprints of commercially  
23 10:41:56 available musical sound recordings received from  
24 10:42:03 record companies, majors and independents.  
25 10:42:07 Q Approximately how many fingerprints -- or

IKEZOYE, V.

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10:42:12 unique fingerprints are in that database? Do you  
10:42:15 know?

10:42:16 A Today, it's over 7 million fingerprints in  
10:42:19 our database.

10:42:24 Q Is there something called a commercial TV and  
10:42:39 movie library or database at Audible Magic?

10:42:45 A Yes. We have also a -- we refer to all the  
10:42:50 fingerprints from -- that we receive from film and TV  
10:42:58 studios as our film and TV database.

10:43:13 Q Do you know, approximately, how many  
10:43:18 fingerprints populate the film and TV database today?

10:43:22 A I believe the number is over 80,000  
10:43:29 works/titles, that includes both full-length movies,  
10:43:34 TV shows, as well as clips that some of the studios  
10:43:42 also make available.

10:43:48 Q Now, are those audio or video fingerprints  
10:43:52 that populate the film and TV database?

10:44:00 A A majority -- all of the 80,000 are audio  
10:44:04 fingerprints, but we have also begun to register video  
10:44:11 fingerprints, as well, of content.

10:44:14 Q When did that begin?

10:44:17 A Probably within the last year.

10:44:21 Q Can you describe how it is that an audio  
10:44:54 fingerprint can identify a piece of film or video?



IKEZOYE, V.

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2 10:45:03 A Yes. Film and television shows all have  
3 10:45:07 audio soundtracks that, in general, are very unique to  
4 10:45:12 those programs and those titles. So a movie has a  
5 10:45:17 unique soundtrack, TV shows have unique soundtracks,  
6 10:45:22 so our technology can be used to identify the  
7 10:45:26 soundtrack and hence identify the piece of content.  
8 10:45:30 Q And describe what you mean by "soundtrack"?  
9 10:45:35 A The audio track of a movie or television  
10 10:45:42 show. The sound of -- of -- the dialogue, the music,  
11 10:45:46 all of the sound that is synced up with the video.  
12 10:45:51 Q Okay. So when you say "soundtrack," you're  
13 10:45:53 not just talking about the theme sound?  
14 10:45:55 A No.  
15 10:45:55 Q You're talking about the -- the dialogue and  
16 10:46:00 all of the sound in a particular movie or TV show?  
17 10:46:04 A That's correct. We identify -- we take a  
18 10:46:05 fingerprint of the entire audio track attached to the  
19 10:46:15 video, the TV show, or the movie.  
20 10:46:25 Q We've talked about the commercial music  
21 10:46:58 database or library, and the commercial film and TV  
22 10:47:04 library.  
23 10:47:05 Are there any other libraries of that type  
24 10:47:12 that Audible Magic maintains of that breadth, or are  
25 10:47:17 those the -- or does it break down into those two

IKEZOYE, V.

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2 14:21:40 database, to -- for Google Video as well.  
3 14:21:46 Q Okay.  
4 14:22:15 A Can I make one thing -- going back?  
5 14:22:17 Q Yes.  
6 14:22:18 A The Google Video contract seems to be 20,000,  
7 14:22:21 but I don't know that for sure.  
8 14:22:23 Q Okay. Is there a separate written contract  
9 14:22:26 between Audible Magic and Google Video?  
10 14:22:29 A Yes; there was an amendment to this contract.  
11 14:22:34 Q Okay. Then -- then putting the Google Video  
12 14:22:56 contract aside and just looking at the Audible Magic  
13 14:22:58 relationship, can you -- can -- can you tell us what  
14 14:23:06 the fees are -- what they were and what they are today  
15 14:23:12 that YouTube is paying Audible Magic?  
16 14:23:16 A When we originally did the agreement for the  
17 14:23:19 first period, the original term, it was [REDACTED] per  
18 14:23:24 month, and then there's a period of -- from  
19 14:23:32 January 1st, 2008, through December 31st, 2008, where  
20 14:23:36 the fees went up to [REDACTED] a month, and then there  
21 14:23:40 was an extension for 2009 and there is an option on an  
22 14:23:47 extension for 2010.  
23 14:23:50 Q And was there a -- any sort of one-time lump  
24 14:23:59 sum additional fee owed to Audible Magic from YouTube  
25 14:24:03 at the beginning of the contract?

IKEZOYE, V.

1  
2 14:24:05 A Yeah, there was a [REDACTED] amount due that  
3 14:24:14 needed to be paid on execution.  
4 14:24:16 Q Okay. So -- and did YouTube actually pay  
5 14:24:19 Audible Magic [REDACTED] on execution of the contract?  
6 14:24:22 A I believe so.  
7 14:24:23 Q Okay. Is YouTube still using Audible Magic  
8 14:24:31 content ID services today?  
9 14:24:34 A Yes.  
10 14:24:34 Q Is it still being governed by this same  
11 14:24:37 contract?  
12 14:24:38 A Yes.  
13 14:24:38 Q Okay. Do you know what it would cost YouTube  
14 14:25:05 to include in its custom database fingerprints from  
15 14:25:15 Audible Magic's film and TV reference database?  
16 14:25:24 A Not specifically, because the way our pricing  
17 14:25:27 would go for this would be, we would need to  
18 14:25:29 understand the transaction volume, and so  
19 14:25:34 understanding the transaction volume, I could give you  
20 14:25:37 a price.  
21 14:25:38 Q Okay. If you assumed that the transaction  
22 14:25:41 volume -- volume was the same as the transaction  
23 14:25:47 volume covered in the existing contract that we're  
24 14:25:50 looking at now, can you approximate what that price  
25 14:25:55 would be?

IKEZOYE, V.

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2 14:25:56 A My guess would be at least [REDACTED] the price  
3 14:25:59 that's listed here.  
4 14:26:00 Q Okay. Does that mean [REDACTED] the monthly fees  
5 14:26:19 and double the one-time start-up fee? In other words,  
6 14:26:22 would there be a new one-time start-up fee?  
7 14:26:25 A It's all subject to negotiation, but we  
8 14:26:27 probably wouldn't have a start-up fee, that one-time  
9 14:26:30 fee. We would [REDACTED] the monthly fee.  
10 14:26:34 Q I -- I'm sorry. You said you probably would  
11 14:26:36 not have --  
12 14:26:36 A Would not.  
13 14:26:36 Q -- a start-up fee?  
14 14:26:37 A We probably would not have a start-up fee.  
15 14:26:40 Q But you would [REDACTED] the monthly fee?  
16 14:26:45 A Right.  
17 14:26:45 Q Okay. Do you recall whether YouTube's  
18 14:27:24 testing of Audible Magic's content ID services began  
19 14:27:30 at the time this contract was executed or whether it  
20 14:27:33 began prior to that?  
21 14:27:35 A I believe it was prior to the execution of  
22 14:27:37 this contract.  
23 14:28:14 MR. DESANCTIS: Okay. Can we go off the  
24 14:28:15 record for two minutes and just take a very short  
25 14:28:21 break.

IKEZOYE, V.

14:28:21 THE VIDEOGRAPHER: We are now going off the  
14:28:22 record.

14:28:23 The time is approximately 2:24 p.m.

14:28:25 (Recess taken.)

14:41:42 THE VIDEOGRAPHER: We are now going back on  
14:41:43 the record.

14:41:44 The time is approximately 2:37 p.m.

14:41:47 MR. DESANCTIS: Q. Mr. Ikezoye, before we  
14:41:51 broke, we were looking at what's been marked as  
14:41:57 Ikezoye Exhibit 9. Do you still have that in front of  
14:42:01 you?

14:42:01 A Yes.

14:42:01 Q And that is the -- that is the e-mail with  
14:42:06 the YouTube/Audible Magic contract attached; correct?

14:42:10 A Correct.

14:42:10 Q I want you to consider the services that were  
14:42:18 contracted for in the agreement and that -- that  
14:42:23 YouTube actually agreed to provide -- that Audible  
14:42:28 Magic agreed to provide to YouTube.

14:42:30 Was -- was Audible Magic capable of providing  
14:42:37 those services in October of 2006 when this contract  
14:42:44 was signed?

14:42:45 A Which services?

14:42:46 Q The services that were contracted for in the

IKEZOYE, V.

17:37:43 content and how it's used, in general, it means how,  
17:37:47 if rights change, for example, allow it to block or  
17:37:52 block to allow, that's what -- how rights are changed,  
17:37:57 what it refers to.

17:37:58 MS. REES: Okay.

17:38:05 Q And do you understand the author of this  
17:38:06 e-mail to be Nick Rockwell, who was an MTVN employee?

17:38:12 A Yes.

17:38:12 Q Okay. Exhibit 31.

17:38:45 (Document marked Ikezoye Exhibit 31  
17:38:46 for identification.)

17:38:46 MS. REES: Q. Can you identify Exhibit 31?

17:39:17 A Well, it looks like an e-mail between some  
17:39:20 people at -- in MTV Viacom.

17:39:25 Q And in the, I guess, third e-mail down,  
17:39:31 there's a statement, "AM is examining our mpeg files  
17:39:36 to figure out why they cannot get an audio  
17:39:40 fingerprint, still a software issue"; do you see that?

17:39:44 A Yes.

17:39:44 MR. DESANCTIS: Objection.

17:39:45 MS. REES: Q. Do you recall an issue in or  
17:39:46 about April 2007 where Audible Magic was having  
17:39:46 difficulty getting an audio fingerprint on some Viacom  
17:39:51 content?

1   IKEZOYE, V.

2       17:39:51                   MR. DESANCTIS:  Objection to the form and

3       17:39:52       foundation.

4       17:39:55                   THE WITNESS:  There may have been.  I don't

5       17:39:57       recall the specific problem, though.

6       17:39:59                   MS. REES:  Q.  And looking at the very top

7       17:40:02       e-mail in this chain, there's a statement in response

8       17:40:08       to the question, "So has anything been fingerprinted

9       17:40:10       and loaded onto their database just the CC online

10      17:40:14       content"; do you see that?

11      17:40:16           A    Yes.

12      17:40:16           Q    Do you have any understanding as to what the

13      17:40:18       CC online content refers to?

14      17:40:20                   MR. DESANCTIS:  Objection to form and

15      17:40:21       foundation.

16      17:40:22                   THE WITNESS:  Yes.  The online content were

17      17:40:24       clips that were -- that they provided access to us

18      17:40:29       that were on some of the MTV sites.

19      17:40:35                   MS. REES:  Exhibit 32.

20      17:40:54                   (Document marked Ikezoye Exhibit 32

21      17:41:07                   for identification.)

22      17:41:07                   MS. REES:  Q.  Can you identify Exhibit 32?

23      17:42:06           A    Yes.  It is the -- a service agreement to

24      17:42:10       MTVN -- MTV Networks with Audible Magic for content

25      17:42:17       identification services.

IKEZOYE, V.

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- 2 17:42:17 Q And was this for content identification
- 3 17:42:20 services to be run against the UGC services operated
- 4 17:42:26 by Viacom where users could upload videos?
- 5 17:42:30 A Yes.
- 6 17:42:30 MR. DESANCTIS: Objection to form.
- 7 17:42:31 THE WITNESS: Sorry.
- 8 17:42:31 Yes.
- 9 17:42:32 MS. REES: Q. Do you know which online
- 10 17:42:40 services belonging to Viacom were -- under this
- 11 17:42:43 agreement would be -- would have Audible Magic
- 12 17:42:47 filtering performed on them?
- 13 17:42:50 A I don't know which services specifically
- 14 17:42:53 these service -- we -- we provided services to, but
- 15 17:42:56 this agreement provided for, I believe, all of MTVN
- 16 17:43:02 UGC properties to be able to be utilized.
- 17 17:43:08 Q And if you turn to the page numbered AM3831,
- 18 17:43:18 is that your signature at the bottom of the page?
- 19 17:43:20 A Yes, it is.
- 20 17:43:20 Q And this agreement was entered into on
- 21 17:43:23 March 5th, 2007; is that correct?
- 22 17:43:26 A It appears so.
- 23 17:43:28 Q Now, Audible Magic had entered into a filter
- 24 17:43:32 agreement with YouTube in October of 2006; correct?
- 25 17:43:35 A That is correct.



IKEZOYE, V.

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18:20:32 Q And so the press release says that "HFA and  
18:20:37 AM will work together to combine AM's ability to  
18:20:41 identify sound recordings with HFA's capacity to  
18:20:46 identify musical compositions embodied in those sound  
18:20:50 recordings along with the associated music publishing  
18:20:53 rights holders"; do you see that?  
18:20:56 A Yes.  
18:20:56 Q What, if anything, was done in order to  
18:20:59 accomplish what's described in that sentence?  
18:21:01 A We've needed to match databases between our  
18:21:08 sound recording and Harry Fox's database of  
18:21:13 compositions and publishers.  
18:21:17 Q And has that happened?  
18:21:19 A Yes.  
18:21:20 Q And how is that accomplished?  
18:21:23 A We provide some of our database metadata with  
18:21:33 an identifier and we send that to Harry Fox, and then  
18:21:37 they do a process of automated and manual matching to  
18:21:43 their database.  
18:21:43 Q And what's the result of that process of  
18:21:50 automated and manual matching that Harry Fox does?  
18:21:54 MR. DESANCTIS: Objection to form.  
18:21:55 THE WITNESS: We have a link, then when we --  
18:22:00 when we have a sound recording, we have a link that

IKEZOYE, V.

18:22:02 goes into the Harry Fox database that can say here are  
18:22:06 the -- here are the -- here's the composition and here  
18:22:11 are some of the music publishers.

18:22:14 MS. REES: Q. And does this allow Audible  
18:22:17 Magic to be able to identify compositions, as well as  
18:22:22 sound recordings, when it's doing matches?

18:22:27 A Audible Magic in comp- -- in combination with  
18:22:30 Harry Fox, yes, it does allow us to identify  
18:22:34 compositions.

18:22:37 Q And for -- if you can characterize, for what  
18:22:41 percentage of the sound recordings that are in Audible  
18:22:45 Magic's database is there also composition information  
18:22:49 available?

18:22:49 MR. DESANCTIS: Objection to form;  
18:22:51 foundation; and calls for speculation.

18:22:54 THE WITNESS: Can you repeat the question?

18:22:56 MS. REES: Sure.

18:22:58 Q If you can characterize it, for what  
18:23:01 percentage of the sound recordings that are in Audible  
18:23:04 Magic's music database is there also composition  
18:23:08 information available through Harry Fox?

18:23:11 MR. DESANCTIS: Same objection.

18:23:12 THE WITNESS: It is a -- a minority of the  
18:23:17 sound recordings in our database, and the way -- but

IKEZOYE, V.

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2 18:23:22 the way we have gone about it is we have -- we provide  
3 18:23:27 to Harry Fox the most frequently identified sound  
4 18:23:34 recordings and we start that way, and so we -- of the  
5 18:23:37 identifications we have, we have a great majority of  
6 18:23:39 them, but from the -- the number of sheer titles in  
7 18:23:43 our database, it's probably a -- a small percentage.  
8 18:23:50 MS. REES: Q. Has Audible Magic received any  
9 18:23:51 composition information directly from music  
10 18:23:55 publishers, so not from HFA, but from a music  
11 18:23:59 publisher directly?  
12 18:24:01 A I believe we have.  
13 18:24:02 Q Which music publishers, if you know?  
14 18:24:06 A They're some of the smaller music publishers.  
15 18:24:12 I can't remember some of the names right now.  
16 18:24:17 Q Is there a type of written agreement between  
17 18:24:20 Harry Fox Agency and Audible Magic concerning this  
18 18:24:23 collaboration?  
19 18:24:24 A Yes, there's a high-level collaboration  
20 18:24:27 agreement.  
21 18:24:41 Q So with respect to Audible Magic's master  
22 18:24:49 database of all the fingerprints that Audible Magic  
23 18:24:52 has, how many of them are -- well, strike that.  
24 18:25:00 So earlier you had mentioned a commercial  
25 18:25:03 music database --

IKEZOYE, V.

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2 18:25:04 A Yes.  
3 18:25:05 Q -- do you recall that?  
4 18:25:07 Approximately how many fingerprints are in  
5 18:25:09 the commercial database?  
6 18:25:10 A Today?  
7 18:25:11 Q Yes.  
8 18:25:13 A I think over 7 million.  
9 18:25:16 Q And approximately how many fingerprints are  
10 18:25:20 in Audible Magic's master database, including all  
11 18:25:24 fingerprints?  
12 18:25:26 A More than music?  
13 18:25:27 Q Yes, the -- assuming I -- earlier I think we  
14 18:25:31 had defined the master database to be all of the  
15 18:25:34 Audible Magic fingerprints.  
16 18:25:36 A Right.  
17 18:25:36 Q So the question would be, how many  
18 18:25:39 fingerprints are in that master database?  
19 18:25:41 A So it's -- you know, in music database we  
20 18:25:46 have over 7 million; in the film and television  
21 18:25:48 database, I said over 80,000; and looking at the  
22 18:25:51 report, it looks like it's over 120,000.  
23 18:25:54 Q So something around in the area of 7,120,000?  
24 18:25:59 A It's higher than that, but yes.  
25 18:26:02 Q So that means that out of all the

IKEZOYE, V.

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2 18:49:29 Q Sure.  
3 18:49:30 A Repeat the question.  
4 18:49:31 Q Sure.  
5 18:49:31 As of November 2006, when a number of the  
6 18:49:34 content owners were added to the database, according  
7 18:49:36 to the second page of Exhibit 12, Audible Magic didn't  
8 18:49:41 have any fingerprints in the film and TV database that  
9 18:49:45 it could have added, did it?  
10 18:49:47 A No, I think we did have some. If on, you  
11 18:49:50 know, Exhibit 4A we said that, 2006, we did have some  
12 18:49:57 fingerprints in the database. It said nine.  
13 18:49:59 Q Okay. So there were nine --  
14 18:50:00 A Yeah.  
15 18:50:00 Q -- film and TV fingerprints that could have  
16 18:50:03 been added at that time?  
17 18:50:08 A Right.  
18 18:50:08 Q Earlier you testified that Audible Magic  
19 18:50:13 could and would have added the film and TV database  
20 18:50:17 fingerprints to the YouTube contract if YouTube had  
21 18:50:21 asked; do you recall that testimony?  
22 18:50:23 A Yes, and yes.  
23 18:50:24 Q But it could only have done that to the  
24 18:50:30 extent that it had fingerprints in its TV and film  
25 18:50:34 database; correct?

18:50:34 MR. DESANCTIS: Objection to form.

18:50:36 THE WITNESS: That is correct. We would need

18:50:38 the fingerprints to deploy them in the database.

18:50:43 MS. REES: Q. During the time frame from --

18:51:36 during the 2004 and 2005 time frame, did Audible Magic

18:51:42 offer to any UGC or Web 2.0 online services, did

18:51:48 Audible Magic offer filtering services to any

18:51:52 companies in that space?

18:51:53 MR. DESANCTIS: Objection to form.

18:51:55 MS. REES: Q. 2004 and 2005 time frame.

18:51:55 A No.

18:52:03 Q Why not?

18:52:07 A First, I don't believe there were many Web

18:52:09 2.0 UGC sites during that time frame, and second, we

18:52:13 hadn't been -- we had -- we didn't sign a customer

18:52:16 during that period of time, and...

18:52:20 Q And UM -- and Audible Magic had not actually

18:52:26 deployed its filtering technology for any Web 2.0 or

18:52:31 UGC sites in the 2004 and 2005 time frame?

18:52:36 MR. DESANCTIS: Objection to form and the use

18:52:37 of "filtering technology"?

18:52:43 THE WITNESS: We didn't have any customers

18:52:44 during that time, so we wouldn't have deployed -- we

18:52:44 wouldn't have any customers in the UGC Web 2.0 space

IKEZOYE, V.

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18:52:47 and so we wouldn't have deployed a system for that.

18:53:20 MS. REES: Q. During the time frame between  
18:53:45 October 2006 when Audible Magic signed this agreement  
18:53:48 with YouTube in the first quarter of 2007 when the  
18:53:50 Audible Magic filtering actually went live, were you  
18:53:55 aware of any problems that YouTube was having with  
18:53:57 getting the record labels to provide updated and  
18:54:01 correct metadata for use in the filtering service?

18:54:05 MR. DESANTIS: Objection to form.

18:54:06 THE WITNESS: I'm sure there was some  
18:54:07 confusion regarding getting the content and rules,  
18:54:13 fingerprints, and determining which fingerprints to  
18:54:15 put in the database during that period of time.

18:54:17 MS. REES: Q. And do you know how that  
18:54:19 confusion was resolved, if it was?

18:54:22 A No, I don't.

18:54:39 Q If you could turn back to Exhibit 17, and  
18:54:59 this was the document relating to at least a potential  
18:55:05 proposal regarding the MPAA filtering pilot test; is  
18:55:10 that right?

18:55:11 A Yes.

18:55:11 Q So as of the date of this document,  
18:55:22 October 9, 2006, Audible Magic didn't actually have  
18:55:26 any film and TV fingerprints in its database; right?

IKEZOYE, V.

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18:55:31 A Correct.

18:55:31 Q So one of the things that would have had to  
18:55:35 have been done in order to do the type of pilot tests  
18:55:38 that's contemplated in this proposal would be to  
18:55:43 obtain such fingerprints from film and TV companies?

18:57:04 A Yes.

18:57:04 Q So earlier you testified, and, again, correct  
18:57:08 me if I'm wrong, don't mean to mischaracterize, that  
18:57:12 audio fingerprinting is effective in identifying video  
18:57:16 files; does that sound right?

18:57:19 A Yes.

18:57:19 Q And then you also said as long as Audible  
18:57:22 Magic had the reference fingerprint in its database  
18:57:25 corresponding to that video file; right?

18:57:27 A That's correct. Sorry.

18:57:31 Q Now, as of 2006, I think we said there were,  
18:57:37 what, nine fingerprints in the TV film database; was  
18:57:42 that right?

18:57:43 A Yes.

18:57:43 Q Ask -- and then even today the total is  
18:57:50 approximately 129,000, according to Exhibit 4A?

18:57:59 A Yes.

18:57:59 Q If you could turn back to Exhibit 24.

18:58:58 And this was an e-mail from Lou Kvitek to



# **Schapiro Exhibit 114**

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.	)	Case No.
YOUTUBE, INC., YOUTUBE, LLC,	)	1:07CV02103
and GOOGLE, INC.,	)	
	)	
Defendants.	)	
<hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>		
THE FOOTBALL ASSOCIATION PREMIER	)	
LEAGUE LIMITED, BOURNE CO., et al.,	)	
on behalf of themselves and all	)	
others similarly situated,	)	
	)	
Plaintiffs,	)	
vs.	)	Case No.
YOUTUBE, INC., YOUTUBE, LLC, and	)	07CV3582
GOOGLE, INC.,	)	
	)	
Defendants.	)	
<hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>		

DEPOSITION OF LAUREN APOLITO  
NEW YORK, NEW YORK  
THURSDAY, January 7, 2010

REPORTED BY:  
ERICA RUGGIERI, CSR, RPR  
JOB NO: 18448

January 7, 2010

10:03 a.m.

VIDEOTAPED DEPOSITION OF LAUREN  
APOLITO, held at the offices of WILSON  
SONSINI GOODRICH & ROSATI, 1301 Avenue of  
the Americas, New York, New York, pursuant  
to notice, before before Erica L.  
Ruggieri, Registered Professional Reporter  
and Notary Public of the State of New  
York.

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

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

WILSON SONSINI GOODRICH & ROSATI, LLP

BY: MAURA REES, ESQ.

650 Page Mill Road

Palo Alto, California 94304-1050

(650) 493-9300

Mrees@wsgr.com

FOR THE HARRY FOX AGENCY AND  
THE WITNESS:

LIEFF CABRASER HEIMANN & BERNSTEIN

BY: DAVID S. STELLINGS, ESQ

ANNIKA K. MARTIN, ESQ.

250 Hudson Street, 8th Floor

New York, NY 10013-1413

(212) 355-9500

Dstellings@lchb.com

ALSO PRESENT:

MANUEL ABREU, Videographer

1  
2 IT IS HEREBY STIPULATED AND  
3 AGREED, by and between the attorneys  
4 for the respective parties herein,  
5 that filing and sealing be and the  
6 same are hereby waived.

7 IT IS FURTHER STIPULATED AND  
8 AGREED that all objections, except as  
9 to the form of the question, shall be  
10 reserved to the time of the trial.

11 IT IS FURTHER STIPULATED AND  
12 AGREED that the within deposition may  
13 be sworn to and signed before any  
14 officer authorized to administer an  
15 oath, with the same force and effect  
16 as if signed and sworn to before the  
17 Court.

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1 APOLITO

2 A. Yes.

3 Q. The Harry Fox Agency did not end  
4 up entering into any type of collaboration  
5 10:46:31 agreement with Auditude; is that right?

6 A. Correct.

7 Q. Do you recall why there was no  
8 collaboration agreement with Auditude?

9 A. I recall Auditude does have  
10 10:47:01 fingerprinting technology; however they  
11 were not interested in working with  
12 user-generated content sites.

13 Q. Have there been any discussions  
14 between Auditude and Harry Fox Agency  
15 10:47:23 after the 2007 time frame?

16 A. I believe we sent them the press  
17 release of our Audible Magic collaboration  
18 and asked them if they would like to  
19 continue conversations.

20 10:47:46 Q. And were there continued  
21 conversations after that?

22 A. Not that I recall.

23 Q. What is the purpose of the  
24 collaboration agreement that Harry Fox  
25 10:48:07 Agency has with Audible Magic?

1 APOLITO

2 A. Audible Magic has a database of  
3 sound recording information. They use  
4 that information to create codes,  
5 10:48:21 fingerprint of the audio, and then they  
6 help sites in identifying content through  
7 the fingerprints.

8 Although a site may use Audible  
9 Magic and determine that it's a particular  
10 10:48:33 sound recording, there's still a missing  
11 link, which is the publisher information.  
12 Harry Fox was hoping to facilitate  
13 licensing by also combining the publishing  
14 information with the Audible Magic  
15 10:48:46 information so that somebody who wanted to  
16 license could get both sets of  
17 information.

18 Q. What's the current status of the  
19 Harry Fox's collaboration with Audible  
20 10:49:00 Magic?

21 A. We continue to match our data  
22 sets to ensure that tracks that Audible  
23 Magic has have corresponding Harry Fox  
24 song codes.

25 10:49:29 MS. REES: Exhibit 9.

1 APOLITO

2 (Apolito Exhibit 9, potential  
3 business model, marked for  
4 identification, as of this date.)

5 10:50:09 (Witness reviews document.)

6 Q. Can you identify Exhibit 9?

7 A. This is one potential business  
8 model that was developed.

9 Q. When you say a "potential  
10 10:50:16 business model," what do you mean by that?

11 A. Different ways that we could  
12 work together with, whether it be Audible  
13 Magic or a similar party and a potential  
14 licensee and Harry Fox.

15 10:50:26 Q. Is the business model that's  
16 reflected in Exhibit 9 something that  
17 Harry Fox has since implemented?

18 A. No.

19 MS. REES: Exhibit 10.

20 10:51:06 (Apolito Exhibit 10, document  
21 regarding relationship between HFA  
22 and Audible Magic, marked for  
23 identification, as of this date.)

24 (Witness reviews document.)

25 10:52:32 Q. Can you identify Exhibit 10?



## **Schapiro Exhibit 115**

Redacted at the request of Plaintiffs pending a meet and confer and,  
if applicable, further action of the Court.