

VIACOM INTERNATIONAL INC., ET
AL.,

Plaintiffs,

V.

YOUTUBE, INC., ET AL.,

Defendants.

ECF Case

Civil No. 07-CV-2103 (LLS)

THE FOOTBALL ASSOCIATION
PREMIER LEAGUE LIMITED, ET AL.,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

V.

YOUTUBE, INC., ET AL.,

Defendants.

ECF Case

Civil No. 07-CV-3582 (LLS)

Dockets.Justia.com

Schapiro Exhibit 116

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 BRENT HURLEY
SAN FRANCISCO, CALIFORNIA
TUESDAY, AUGUST 26, 2008

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
CSR LICENSE NO. 9830
JOB NO. 15688

AUGUST 26, 2008

11:02 a.m.

VIDEOTAPED DEPOSITION OF BRENT HURLEY

SHEARMAN & STERLING, 525 Market Street,

San Francisco, California, pursuant to notice,

before ANDREA M. IGNACIO HOWARD, CLR, RPR, CSR

License No. 9830.

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

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KELLY TRUELOVE, Ph.D., Consultant

KEN REESER, Videographer.

---oOo---

1 HURLEY

2 12:28:32 inappropriate content we've described in the prior

3 12:28:35 questions, even in situations where a user had not

4 12:28:39 flagged the content as inappropriate; correct?

5 12:28:41 MR. INGBER: Objection; asked and answered.

6 12:28:43 THE WITNESS: Yes.

7 12:28:45 MR. VERRILLI: Okay.

8 12:28:46 Q And that continued through the end of 2005;

9 12:28:49 correct?

10 12:28:50 A No.

11 12:28:51 Q When did you stop?

12 12:28:53 A I don't recall specifically, but generally I

13 12:29:01 think it was the end of November where it just became

14 12:29:06 that we couldn't -- we couldn't get through the queue.

15 12:29:10 There were just too many videos, and it was just

16 12:29:13 impractical.

17 12:29:14 Q And until the end of November were you --

18 12:29:16 MR. INGBER: Wait. Did you finish your

19 12:29:20 answer? Did you finish your answer?

20 12:29:21 MR. VERRILLI: I thought you had. I'm sorry.

21 12:29:23 MR. INGBER: No. If you had, that's fine. I

22 12:29:24 thought he was interrupting your answer.

23 12:29:26 THE WITNESS: No; I was finished.

24 12:29:27 MR. VERRILLI: So okay.

25 12:29:28 Q Through the end of November 2005, were you

HURLEY

12:29:31 reviewing the videos before they were uploaded?

12:29:34 A Not before. They would immediately go live

12:29:38 to the site, and that was actually one of the reasons

12:29:43 that we introduced the community flagging, is that

12:29:48 they may upload -- I would go to bed at night. I was

12:29:51 the only guy doing this. Somebody may upload a video

12:29:54 in the middle of the night that was inappropriate, and

12:29:56 then in the morning this video may show up on one of

12:30:00 the most viewed pages, but there wasn't an easy way to

12:30:04 -- I would have to work through all the way back until

12:30:06 the middle of the night to be able to find that and

12:30:08 take that video down.

12:30:12 So the community flagging was an ability for

12:30:15 people to flag it and that it would automatically go

12:30:18 into a queue.

12:30:21 Q But you -- you were reviewing -- I just want

12:30:24 to get the facts clear. Until the end of

12:30:28 November 2005 you were reviewing every video that was

12:30:34 unloaded onto the site?

12:30:35 A Well, it depends. Reviewing, I would look at

12:30:38 thumbnails of videos. I wasn't actually watching

12:30:41 videos. It was -- it would be impossible to do that.

12:30:44 Q Did you review a thumbnail of every video

12:30:47 that was uploaded to the site?

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HURLEY

12:30:52 A Yeah, I would do my best. I was the only one
12:30:54 doing it.

12:30:55 Q It must have been an -- must have been a real
12:30:57 job, but -- but I just want to get clear.

12:31:02 That's what you were attempting to do, was to
12:31:03 review a thumbnail of every video uploaded to the
12:31:07 site?

12:31:07 A It was very ad hoc. Again, just looking at
12:31:10 thumbnails, and if I saw some bare flesh, then I would
12:31:14 remove it, but outside of sort of spotting porn,
12:31:18 trying to catch other kind of inappropriate videos was
12:31:21 very difficult to do. They would go through if they
12:31:25 were, you know, violence videos, stuff like that.

12:31:31 You can't see that with just a thumbnail, so
12:31:33 it would go live. Again, that's why we started
12:31:37 building these tools so that the community could help
12:31:39 police it.

12:31:40 So we looked to other sites, similar to
12:31:44 online sites, like Craigslist and sort of these open
12:31:48 forums and what they had done is sort of best
12:31:50 practices to -- to rely on the community to be able to
12:31:55 help keep -- keep the community itself safe.

12:31:58 Q Did you look at Google Video's practices as a
12:32:01 model?

HURLEY

12:32:01 A Yeah, I'm sure we looked at Google Video. We
12:32:08 looked at all the video sites, but again, we were
12:32:12 really focused on just our -- our user experience, our
12:32:15 product.

12:32:17 Q And you think Craigslist is a closer -- a
12:32:23 closer analog to YouTube's than Google Video is?

12:32:28 MR. INGBER: Objection to form.

12:32:29 THE WITNESS: Yeah. Well, I mean, the guys
12:32:32 that started the company had used Craiglist and all
12:32:38 these other websites. Google Video is just getting
12:32:40 started, so looking at them wouldn't give us any kind
12:32:44 of clarity of like what would be the best way to do
12:32:46 something or not.

12:32:49 MR. VERRILLI: Q. So you didn't look at
12:32:50 them?

12:32:51 A No, I told you, we look at all sites in
12:32:53 general, but we were focused on our own experience.

12:33:00 Q When you look at these thumbnails before the
12:33:03 end of November 2005, would you also get the tag
12:33:07 information?

12:33:09 A Yeah.

12:33:09 Q So you were able to look at the tags as well?

12:33:12 A Uh-huh.

12:33:12 Q When you were engaging in this review before

1 HURLEY

2 15:16:24 MR. VERRILLI: Q. So users couldn't flag

3 15:16:26 private videos as inappropriate; right?

4 15:16:34 A Actually, I'm not sure. The private sharing

5 15:16:40 feature or watching a private video is very clunky and

6 15:16:47 hard to use, and even me being a member of the YouTube

7 15:16:51 team, I never successfully shared a private video.

8 15:16:57 It required you creating the YouTube account,

9 15:17:00 uploading the videos, and then if you wanted to share

10 15:17:03 it with someone, they would have to create a YouTube

11 15:17:05 account, but they would have to give you a call or

12 15:17:10 send you a separate e-mail and say, "Hey, my YouTube

13 15:17:13 user name is Kaizen Amazen." They couldn't just

14 15:17:18 search for Brent Hurley, find me, friend me.

15 15:17:21 And even once they did find you and they

16 15:17:24 friended you, I'm not sure the process as far as --

17 15:17:29 but I believe you had to e-mail them through the

18 15:17:31 YouTube messaging system. They could click on that

19 15:17:34 and then watch the video, but it was just a very kind

20 15:17:39 of poor feature.

21 15:17:42 It wasn't -- it wasn't easy to use at all,

22 15:17:46 but now that you're talking about that, yeah, I'm not

23 15:17:51 sure. Because again, I didn't ever really share

24 15:17:54 private videos, but I assume it was the exact same

25 15:17:57 watch page which --

1 HURLEY

2 15:17:58 MR. INGBER: Hold on. I don't want you to

3 15:18:00 guess.

4 15:18:00 THE WITNESS: Oh, sorry. Yeah. Yeah, I'm

5 15:18:04 not sure. It may or might -- may not actually be part

6 15:18:08 of private videos.

7 15:18:10 MR. VERRILLI: Q. The fact is that YouTube

8 15:18:15 proactively reviewed every private video uploaded to

9 15:18:18 make sure there was no inappropriate content; correct?

10 15:18:20 MR. INGBER: Objection; vague as to time.

11 15:18:24 THE WITNESS: Initially we reviewed any

12 15:18:26 video.

13 15:18:26 MR. VERRILLI: Q. And after YouTube stopped

14 15:18:28 reviewing any video, it continued to review all

15 15:18:31 private videos uploaded to ensure there was no

16 15:18:34 inappropriate content; correct?

17 15:18:39 A Again, I'm not sure as far as timing. I

18 15:18:43 transitioned those duties over to Heather and the

19 15:18:46 other team members.

20 15:18:49 Q But you created a document that specifically

21 15:18:51 says that all private videos will be screened for

22 15:18:54 inappropriate content; didn't you?

23 15:18:56 MR. INGBER: Objection.

24 15:18:57 Show him the document if you feel it will

25 15:19:02 refresh his recollection.

1 HURLEY

2 15:19:03 MR. VERRILLI: He hasn't said he doesn't

3 15:19:05 remember, so stop the speaking objections.

4 15:19:08 MR. INGBER: My objection stands.

5 15:19:09 MR. VERRILLI: It's totally inappropriate.

6 15:19:11 Now, I've tried to be patient about this,

7 15:19:13 Matthew, but the speaking objections have got to stop.

8 15:19:16 A minute ago you coached him and cut off an answer

9 15:19:18 without making any objection, and then you just made a

10 15:19:22 speaking objection. It's totally inappropriate, and

11 15:19:24 it needs to stop.

12 15:19:24 MR. INGBER: It's not a speaking objection.

13 15:19:26 It's not inappropriate, and the record speaks for

14 15:19:28 itself.

15 15:19:29 MR. VERRILLI: Q. Now, did you or did you

16 15:19:30 not create a document saying that all private videos

17 15:19:36 would be screened for inappropriate content?

18 15:19:41 A I don't recall. If you have the document,

19 15:19:43 I'd be happy to look at it.

20 15:19:45 Q Well, do you recall whether, in fact, after

21 15:19:48 the end of November 2005, all private videos were

22 15:19:51 proactively screened at YouTube for inappropriate

23 15:19:53 content?

24 15:19:56 A Again, I transitioned the majority of those

25 15:20:00 duties over to other team members, so I can't be

1 HURLEY

2 15:55:14 screened after this feature was implemented; do you?

3 15:55:16 MR. INGBER: Objection; lacks foundation.

4 15:55:18 You can answer.

5 15:55:19 THE WITNESS: Again, I don't recall

6 15:55:24 specifically, but I don't have any reason to believe

7 15:55:27 that -- that it wasn't.

8 15:55:30 MR. VERRILLI: Q. Well, to your knowledge,

9 15:55:33 were the other elements of the changes in practice

10 15:55:40 identified in this document actually implemented?

11 15:55:44 MR. INGBER: Objection to form.

12 15:56:13 THE WITNESS: I can't recall specifically. I

13 15:56:20 know you have to confirm your e-mail address, so I

14 15:56:23 can -- I know that is a feature that's on the site

15 15:56:25 now.

16 15:56:27 I don't ever recall having an e-mail alert

17 15:56:30 for flagged at YouTube, so I can't recall, so I can't

18 15:56:38 really give specifics on all this stuff. Again,

19 15:56:41 because I wasn't directly --

20 15:56:41 MR. VERRILLI: Q. And --

21 15:56:44 THE WITNESS: -- involved in the day-to-day.

22 15:56:45 MR. VERRILLI: Q. Sorry. I didn't mean to

23 15:56:47 interrupt you.

24 15:56:47 Under "Scope," the first item is "Screening

25 15:56:50 of Only Flagged/Private Video"; do you see that?

HURLEY

15:56:54 A I see that.

15:56:55 Q Okay. So is one of the changes that this

15:57:01 feature described in this exhibit bringing about is an

15:57:10 end to the review on a proactive basis of all of

15:57:15 the -- of thumbnails of all of the videos that are

15:57:19 being uploaded to YouTube?

15:57:21 MR. INGBER: Objection to form.

15:57:24 THE WITNESS: It's -- I don't recall the

15:57:41 specific timetable, but I believe we stopped reviewing

15:57:44 all videos earlier around that Thanksgiving time

15:57:49 period because it was -- it was impossible to do, so

15:57:57 that's why we were creating these tools.

15:58:01 MR. VERRILLI: Q. Well, was the decision to

15:58:08 stop reviewing all videos based on the advice that

15:58:14 your lawyers gave you?

15:58:18 MR. INGBER: Objection; that question in

15:58:21 itself may call for the disclosure of privileged

15:58:26 attorney-client communications. So I'm going to

15:58:29 instruct the witness not to answer.

15:58:30 MR. VERRILLI: Okay. I'm not trying to be

15:58:32 difficult about this. We have an issue about advice

15:58:34 of counsel.

15:58:35 MR. INGBER: I understand.

15:58:35 MR. VERRILLI: I'm going to make a record,

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HURLEY

15:58:38 okay, and you can instruct the witness not to answer,
15:58:40 and it will be fine.

15:58:41 Q So what I'm trying to get at here,
15:58:43 Mr. Hurley, is whether you relied on the advice of
15:58:47 counsel in shaping the policies set forth in this
15:58:51 document?

15:58:52 MR. INGBER: Is that a question?

15:58:55 MR. VERRILLI: Yes.

15:58:55 MR. INGBER: Okay. I instruct you not to
15:58:58 answer to the extent that it will reveal privileged
15:59:01 attorney-client communications.

15:59:09 Actually, strike that. I instruct you not to
15:59:12 answer the question on the ground that it will reveal
15:59:14 attorney-client communications.

15:59:16 MR. VERRILLI: Okay.

15:59:20 Q Tell me the names of the attorneys with whom
15:59:23 you were conferring during the process that led up to
15:59:27 these policy changes?

15:59:30 A Brian Knapp and Kathy Kirkman.

15:59:34 Q And were they lawyers at the Wilson, Sonsini
15:59:37 firm?

15:59:37 A Yes.

15:59:37 Q Okay. Anyone else?

15:59:40 A Not that I recall.

HURLEY

17:01:55 problem. One of these was that this copyright flag
17:02:01 that we had but then quickly realized that it was
17:02:06 completely ineffective, there was -- people could flag
17:02:13 things that they, you know, weren't the copyright
17:02:15 owner. They might be upset with one of their friends
17:02:21 and flag a video.

17:02:23 There was just a whole host of things, and we
17:02:25 were in no position to know who -- if -- if the
17:02:32 content was -- was authorized and also whoever was
17:02:36 flagging the video, if they were authorized to make
17:02:39 the judgment call to have it removed or request to
17:02:42 have it removed.

17:02:44 MR. VERRILLI: Q. Well, the user who flagged
17:02:47 it didn't make a judgment call to remove it; correct?

17:02:49 MR. INGBER: Objection; calls for
17:02:51 speculation.

17:02:54 MR. VERRILLI: Q. Let me rephrase it.

17:02:55 A Yeah.

17:02:55 Q YouTube made the decision whether to remove
17:02:57 the flagged videos, not the user; correct?

17:03:01 A Remove this copyright flag?

17:03:03 Q Any flagged video. YouTube made the decision
17:03:06 to remove a flagged video, not the user; correct?

17:03:10 MR. INGBER: Objection; argumentative.

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HURLEY

17:03:11 THE WITNESS: After a video is flagged, we
17:03:16 review it to, you know, use our best efforts to -- to
17:03:19 see if the video violates the terms of use, and then
17:03:23 yes, we remove it from the site.

17:03:25 MR. VERRILLI: Right.

17:03:25 Q The flagging by the user does not
17:03:27 automatically result in the removal?

17:03:29 A No.

17:03:30 Q The removal occurs when YouTube makes a
17:03:33 judgment that the video should be removed; correct?

17:03:37 A That is correct.

17:03:37 Q And for --

17:03:38 A And I'd just like to add that, you know,
17:03:41 things like porn are -- are easy to sort of see that
17:03:44 they violated the terms of use. You look at the
17:03:47 video, you know all the information you need is
17:03:49 contained in that video, so we can remove those in
17:03:56 confidence that they are, in fact, violations of the
17:03:58 Terms of Use.

17:04:01 Again, other pieces of content which may be
17:04:04 unauthorized, we have no way of knowing if, in fact,
17:04:09 the content owner did authorize and did see the site
17:04:13 with their videos.

17:04:15 One example that's pointed to a lot is the

HURLEY

17:04:18 Nike Role de Nino soccer video which at the outset
17:04:24 looks like a very user-generated grainy video that was
17:04:27 created by some user.

17:04:30 There was no Nike symbol reference to Nike,
17:04:35 and it then -- after the video became very popular on
17:04:42 the site, various news agencies recorded that, in
17:04:45 fact, Nike had uploaded that video themselves, and
17:04:48 they've actually, you know, taken this as a new way to
17:04:53 effectively market their image as a cool company
17:04:57 they've created.

17:04:58 Kobe Bryant jumping over a moving car, and
17:05:03 it's -- it's a whole new category of this kind of
17:05:06 marketing messaging, but it's -- it's stealth
17:05:09 marketing.

17:05:11 So again we have -- we can watch the video.
17:05:14 We can say, "Hey, this -- this looks like a soccer
17:05:17 video," or -- but we don't know if -- if Nike is the
17:05:23 one that actually uploaded that video or if they're
17:05:27 the ones that are actually now just flagging this
17:05:30 generic flag which it doesn't show who flagged the
17:05:33 video. It provides no data about who actually flagged
17:05:33 it.

17:05:37 To then make that judgment call to say that,
17:05:39 "Okay. This person is SVP at Nike. They're

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HURLEY

17:05:44 requesting to take it down, so we should take it

17:05:47 down."

17:05:50 Q In fact, YouTube employees often made the

17:05:55 judgment that a clip was likely to be an unauthorized

17:06:02 upload of a copyrighted work and took the clip down;

17:06:06 correct?

17:06:06 MR. INGBER: Objection; vague.

17:06:09 THE WITNESS: Again, I -- I'd like to go back

17:06:10 to the fact that that site is growing very rapidly.

17:06:16 We're getting thousands and thousands of videos. We

17:06:20 did, during this time, after receiving notices and

17:06:24 realizing this was a problem try to bootstrap and do

17:06:28 these kind of ad hoc ways to try to control it, but

17:06:33 then realizing that it was an impossible task for us

17:06:37 to undertake, so then we relied on creating these

17:06:41 tools to help them empower the content owners to do

17:06:44 what they want with their content, to take down their

17:06:48 content or to leave it up and promote.

17:06:50 MR. INGBER: Don, I'd like to take a break

17:06:53 when you find --

17:06:53 MR. VERRILLI: Let's take a break now.

17:06:54 MR. INGBER: Okay.

17:06:55 THE VIDEOGRAPHER: The time is 5:06 p.m.

17:07:05 We are off the record.

HURLEY

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2 17:07:06 (Recess taken.)
3 17:17:44 THE VIDEOGRAPHER: The time is 5:17 p.m.
4 17:17:47 We are back on the record.
5 17:17:49 MR. VERRILLI: Q. Mr. Hurley, let's go back
6 17:17:51 to Exhibit 3, please.
7 17:17:53 A Okay.
8 17:17:55 Q Just to remind you, this is an e-mail that
9 17:17:58 you wrote; right?
10 17:18:02 A A response back to an e-mail I received, yes.
11 17:18:04 Q And this is to Jawed Karim; right?
12 17:18:15 A Correct.
13 17:18:15 Q Who is Mr. Karim?
14 17:18:18 A He was one of the three original founding
15 17:18:19 members.
16 17:18:20 Q Of YouTube?
17 17:18:22 A Of YouTube.
18 17:18:22 Q Okay. And he asked this question as we
19 17:18:28 discussed about the copyright flagging feature; right?
20 17:18:31 A Yes.
21 17:18:31 Q And that was a feature that YouTube had in
22 17:18:34 place at one point; right?
23 17:18:36 A Yes.
24 17:18:36 Q And that YouTube disabled --
25 17:18:40 A Yes.

HURLEY

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17:39:07 Q Do you remember how long after you sent this
17:39:11 document to Ms. Dunton you actually launched the
17:39:14 program?

17:39:16 A I don't recall specifically. I believe that
17:39:21 it would be rolled out there. There are a number of
17:39:23 features listed here, so I don't think it's one day we
17:39:27 turned everything on. It was probably over a series
17:39:29 of pushes.

17:39:32 Q Well, when did you start pushing the features
17:39:37 out?

17:39:38 A This -- this is at a time where I was
17:39:42 transitioning again over to the finance and operation
17:39:47 roles. This was sort of my last project with the
17:39:51 reviewing of videos. So I worked on the spec sheet in
17:39:56 conjunction with -- with counsel, but then I sort of
17:40:02 dropped off, and -- and then the actual product people
17:40:06 and engineers then executed and actually created this,
17:40:11 but by that -- by that time I rolled off onto other
17:40:15 duties.

17:40:16 Q So you're not aware that you launched the
17:40:20 Content Verification Program approximately ten days
17:40:24 after this e-mail was sent?

17:40:25 A I don't recall.

17:40:29 Q This was a program that you were in charge

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HURLEY

17:40:30 of?

17:40:31 A Again, it wasn't -- there's a distinction. I
17:40:34 helped brainstorm about these tools and -- and things
17:40:38 that we could do. Again, there -- there weren't any
17:40:41 other video sites that were employing these things, so
17:40:44 I was -- I was -- I was looking at other sites like
17:40:48 eBay. You can see the URLs that reference eBay's sort
17:40:53 of similar program that I was looking at.

17:40:56 But again, I wasn't the -- the "product
17:40:59 manager" for this. I had been transitioning over, so
17:41:04 this is -- these are the -- the brainstorming of these
17:41:08 tools that I interjected and passed over to folks like
17:41:13 Maryrose and then the other engineers to actually
17:41:14 implement.

17:41:15 Q Who -- who was the project manager?

17:41:17 A I believe it was Maryrose.

17:41:19 Q And do you know which engineers worked with
17:41:22 her?

17:41:22 A I don't recall, no.

17:41:25 Q Okay. So in Phase I of this plan that you
17:41:30 came up with, you notice the last bullet says "Ability
17:41:35 to save searches and have newly added video results
17:41:42 emailed to you on a user-defined frequency"; do you
17:41:44 see that?

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HURLEY

17:41:45 A Yes.

17:41:45 Q Can you describe to me what that feature was
17:41:47 intended to be?

17:41:48 MR. INGBER: Hold on a second. I just want
17:41:50 to caution the witness that to the extent your
17:41:53 testimony will reveal privileged attorney-client
17:41:56 communications, don't answer, but otherwise you can go
17:41:58 ahead and answer.

17:41:59 THE WITNESS: Again, this was a feature
17:42:05 directed primarily at the content owners making it
17:42:08 easier for them to monitor their content so it
17:42:13 would -- they could define at their direction what --
17:42:18 what keywords that they would like to save as sort of
17:42:22 a predefined search, and then could e-mail to them so
17:42:27 they could just look at -- look at -- they could --
17:42:31 the vision was that they could define the searches,
17:42:35 the frequency that they receive these e-mails so they
17:42:38 could get them daily, weekly, monthly, but it would
17:42:42 be, again, at their direction.

17:42:44 Q So I just want to get clarity on how this
17:42:47 worked. I'm going to give you a hypothetical, and you
17:42:49 tell me if this is accurate.

17:42:51 A Okay.

17:42:52 Q Okay.

1 HURLEY

2 17:42:52 So I'm a content owner, and I am using this

3 17:42:59 CVP tool to take down clips of The Daily Show.

4 17:43:06 A Okay.

5 17:43:06 Q And to -- as part of my effort in the search

6 17:43:11 that I have to undergo to find these clips on YouTube

7 17:43:14 and get them taken down, I use a keyword search, and I

8 17:43:20 search for the key words "Daily Show."

9 17:43:24 So does this feature then provide that

10 17:43:29 whenever a video is subsequently uploaded with the tag

11 17:43:35 that includes the words "Daily Show," I can get an

12 17:43:40 e-mail telling me that that's happened?

13 17:43:42 MR. INGBER: Objection to form.

14 17:43:43 You can answer it.

15 17:43:45 THE WITNESS: I believe that was the -- the

16 17:43:48 vision, but I don't believe this was ever a feature

17 17:43:54 that ever came to life.

18 17:43:55 MR. VERRILLI: Right.

19 17:43:56 Q Never happened; correct?

20 17:43:57 A Yeah.

21 17:43:57 Q Okay. Do you know why?

22 17:44:00 MR. INGBER: Again, don't answer if you're

23 17:44:04 going to reveal any communications with counsel.

24 17:44:06 THE WITNESS: Again, after submitting these

25 17:44:13 suggestions for -- for tools that we could create, I

Schapiro Exhibit 117

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

Schapiro Exhibit 118

HIGHLY CONFIDENTIAL
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

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.

-----X

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.

-----X

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF RANDY ST. JEAN
SAN FRANCISCO, CALIFORNIA
MONDAY, OCTOBER 19, 2009
JOB NO. 17945-B

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RANDY ST. JEAN

OCTOBER 19, 2009

1:00 P.M.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF RANDY
ST. JEAN, at WILSON, SONSINI, GOODRICH & ROSATI, 1
Market Street, San Francisco, California, pursuant to
notice, before me, KATHERINE E. LAUSTER, CLR, CRR, RPR,
CSR License No. 1894.

RANDY ST. JEAN

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Also Present: ARMANDO CARRASCO, Videographer

1 RANDY ST. JEAN

2 13:05:53 From time to time, your attorney or the

3 13:05:55 attorney from Viacom may object. That doesn't mean

4 13:05:57 you shouldn't answer the question. They may in- --

5 13:06:01 your attorney may instruct you not to answer. In

6 13:06:03 that case, they -- they're telling you not to

7 13:06:06 answer, you should follow the instructions of your

8 13:06:09 counsel.

9 13:06:12 Does that all make sense?

10 13:06:14 A. Sure.

11 13:06:15 Q. Do you understand it?

12 13:06:16 A. Yes.

13 13:06:17 Q. We're going to be here for a few hours

14 13:06:20 today. You may want to take a break at some point.

15 13:06:22 I may want to take a break at some point. Someone

16 13:06:26 else in the room may want to take a break at some

17 13:06:27 point. That's all fine.

18 13:06:29 A. Uh-huh.

19 13:06:30 Q. Anyone should feel free to take a break

20 13:06:32 whenever they want it. This is not intended to be

21 13:06:35 an endurance -- sort of an endurance test. The only

22 13:06:37 thing I ask is that if there is a question pending,

23 13:06:39 if I've asked you a question at the time you want to

24 13:06:42 take a break, to just provide the answer.

25 13:06:45 A. Okay.

1 RANDY ST. JEAN

2 13:06:45 Q. Unless the break is to discuss some

3 13:06:48 element of the question that you're unfamiliar with

4 13:06:51 on a -- for a legal reason with your lawyer, in

5 13:06:55 which case we can discuss that nature of the break

6 13:06:57 before it happens.

7 13:06:58 A. Okay.

8 13:06:58 Q. Does that all make sense?

9 13:06:59 A. Yes.

10 13:07:00 Q. Is there any reason that you can think of

11 13:07:02 why you wouldn't be able to give your best testimony

12 13:07:04 today?

13 13:07:04 A. None.

14 13:07:05 Q. Are you under the influence of any alcohol

15 13:07:07 right now?

16 13:07:07 A. No.

17 13:07:08 Q. Have you taken any drugs -- any drugs

18 13:07:09 today?

19 13:07:09 A. No.

20 13:07:10 Q. Are you on any other form of medication?

21 13:07:12 A. None.

22 13:07:12 Q. Good.

23 13:07:13 And do you understand that you're

24 13:07:15 testifying today under oath?

25 13:07:17 A. Yes.

1 RANDY ST. JEAN

2 13:07:17 Q. And under the penalty of perjury?

3 13:07:20 A. Yes.

4 13:07:21 Q. Okay. Did you do anything to prepare for

5 13:07:26 your deposition today?

6 13:07:27 A. Spoke to my lawyer, and that's it.

7 13:07:30 Q. When did you speak to your lawyer?

8 13:07:35 A. Friday for five minutes, and today for

9 13:07:37 five or ten minutes.

10 13:07:38 Q. And who is your lawyer?

11 13:07:41 A. Michael Kelleher.

12 13:07:44 Q. Did you meet with any other lawyers?

13 13:07:46 A. No.

14 13:07:49 Q. Did you review any documents?

15 13:07:51 A. Nope.

16 13:07:56 Q. What's your educational background?

17 13:07:59 A. I have an EE in electrical engineering

18 13:08:03 from the University of Connecticut.

19 13:08:05 Q. Do you have any other technical

20 13:08:06 educational history?

21 13:08:08 A. No.

22 13:08:10 Q. What's your current position at Reality

23 13:08:12 Digital?

24 13:08:13 A. Chief technical officer.

25 13:08:15 Q. You're also the cofounder of the company,

1 RANDY ST. JEAN

2 13:18:43 Q. And Atom ultimately accepted that

3 13:18:45 proposal; right?

4 13:18:46 A. Yes.

5 13:18:47 Q. And Atom and Reality Digital ultimately

6 13:18:49 entered into a relationship; right?

7 13:18:52 A. Yes.

8 13:18:53 Q. Pursuant to that relationship, which party

9 13:18:56 was responsible for designing the Addicting Clips

10 13:19:01 website?

11 13:19:04 A. Ex- -- expand on "designing."

12 13:19:07 Q. What do you understand "designing" to

13 13:19:10 mean?

14 13:19:10 A. It can mean the UI, user interface; it can

15 13:19:16 mean the back end engine; database structure. Can

16 13:19:20 be any of those two pieces.

17 13:19:21 Q. Who was responsible for -- for designing

18 13:19:24 the UI of the --

19 13:19:28 A. Atom --

20 13:19:28 Q. -- Addicting Clips?

21 13:19:28 A. AtomFilms.

22 13:19:28 THE REPORTER: One at a time.

23 13:19:28 THE WITNESS: I'm sorry.

24 13:19:33 MR. RUBIN: I knew someone would do that.

25

1 RANDY ST. JEAN

2 13:19:35 BY MR. RUBIN:

3 13:19:36 Q. Pursuant to the agreement between Atom and

4 13:19:38 Reality Digital, who was responsible for designing

5 13:19:40 the user interface of the Addicting Clips website?

6 13:19:46 A. AtomFilms.

7 13:19:47 Q. And did they do that?

8 13:19:48 A. Yes.

9 13:19:48 Q. And they provided those instructions to

10 13:19:50 Reality Digital for implementation?

11 13:19:51 A. Yes.

12 13:19:52 Q. And who was responsible for designing the

13 13:19:54 back end requirements?

14 13:19:56 A. Reality Digital.

15 13:19:56 Q. And did you do that in conjunction with

16 13:19:59 Atom?

17 13:20:03 MR. WILKENS: Objection to the form.

18 13:20:08 THE WITNESS: No, I don't -- I -- I think

19 13:20:09 they took it -- like I said, I -- I believe it -- as

20 13:20:12 I recall, they took our white label as was. We

21 13:20:15 didn't -- built nothing new at the time of that

22 13:20:18 contract signing.

23 13:20:19 MR. RUBIN: Mark this St. Jean 1.

24 13:20:19 (St. Jean Deposition Exhibit Number 1 was

25 13:20:19 marked for identification.)

1 RANDY ST. JEAN

2 13:20:30 BY MR. RUBIN:

3 13:20:50 Q. I'd like to ask, Mr. St. Jean -- am I

4 13:20:55 pronouncing your name correctly?

5 13:20:57 A. Yes.

6 13:20:57 Q. I'll pause for a moment.

7 13:20:57 A. Depends where you are. If you're in

8 13:20:59 France it would be a little different.

9 13:21:03 Q. Okay. We're all stuck in San Francisco

10 13:21:05 today.

11 13:21:06 A. Yes.

12 13:21:06 Q. I just introduced a document as Exhibit 1,

13 13:21:10 which was produced by Reality Digital in response to

14 13:21:12 a subpoena that YouTube served in this case,

15 13:21:12 produced bearing Bates numbers -- those are the

16 13:21:16 numbers in the right-hand corner. In the case of

17 13:21:18 this document the Bates numbers are RD017043 through

18 13:21:24 -64.

19 13:21:27 Do you recognize this document,

20 13:21:28 Mr. St. Jean?

21 13:21:31 A. It looks like one of our documents, yes.

22 13:21:35 Q. What is it? What -- what -- which one of

23 13:21:36 your documents does it look like?

24 13:21:38 A. It looks like our soft -- our service

25 13:21:40 agreement, and our -- our -- basically our -- you

1 RANDY ST. JEAN

2 13:21:41 know, our MSAs.

3 13:21:43 Q. Is this the Reality Digital software and

4 13:21:45 services agreement that was entered into between

5 13:21:47 Reality Digital and Atom Entertainment on

6 13:21:52 February 7, 2006?

7 13:21:54 A. I believe so.

8 13:21:56 Q. Do you have any reason to --

9 13:21:58 A. I don't have any reason to believe it's

10 13:22:00 not. So

11 13:22:03 Q. And have you seen this agreement before?

12 13:22:05 A. I don't recall if I have, but I'm sure I

13 13:22:08 have. Let's put it that way. If it was signed I

14 13:22:11 saw it.

15 13:22:16 Q. If I could ask you to turn to page 20 of

16 13:22:18 this document, which ends in Bates number -62,

17 13:22:23 Exhibit F to the agreement.

18 13:23:26 Exhibit F sets forth some of the

19 13:23:28 functionality of the Opus system at the time this

20 13:23:30 agreement was entered into, doesn't it?

21 13:23:33 A. Yep. Yes, it does.

22 13:23:35 Q. I'd like to talk to you about some of the

23 13:23:37 functionality it describes.

24 13:23:39 A. (Nods head.)

25 13:23:41 Q. It talks about two bolded functions,

1 RANDY ST. JEAN

2 13:23:44 "Application Interface" and "Business Logic." Do

3 13:23:48 you see that?

4 13:23:48 A. Yes.

5 13:23:51 Q. I'd actually like to -- to discuss some of

6 13:23:54 the other functions below. Exhibit F indicates that

7 13:23:59 the Reality Digital Opus "performs the following

8 13:24:03 functions: Ingest" -- what is meant by "Ingest"?

9 13:24:07 A. The ability to accept videos, audio,

10 13:24:11 images, documents, and then create a browsable

11 13:24:15 version of that content, and then display it in the

12 13:24:18 website.

13 13:24:19 Q. On a technical level, how did that occur?

14 13:24:23 A. How did that occur? Browser uploaded

15 13:24:28 through HTTP. They were -- we had written an ingest

16 13:24:33 application that would take the video -- typically

17 13:24:35 it would be video or photos; very rarely did we do

18 13:24:40 audio or documents at that time -- and then we would

19 13:24:43 then crack open the file, or open the file,

20 13:24:46 determine what file it was, and then pass it on to

21 13:24:50 an encoding service, if it was video, or rip a

22 13:24:54 browsable if it was a -- a photo, and then store

23 13:24:58 that metadata information in the database, and then

24 13:25:01 store the asset with the original asset and the

25 13:25:05 browsable asset in the file system, and then build a

1 RANDY ST. JEAN

2 13:25:08 UI for it, display it.

3 13:25:10 Q. The encoder that you're describing, was

4 13:25:13 that an encoder built by Reality Digital?

5 13:25:15 A. No.

6 13:25:16 Q. What encoder was used?

7 13:25:18 A. We used two encoders. One was open source

8 13:25:20 FFM.peg, and the other was onto Flix engine.

9 13:25:27 Q. So the encodings that Reality Digital used

10 13:25:34 were industry standard encoding systems?

11 13:25:38 A. Absolutely.

12 13:25:39 Q. Readily available industry standard?

13 13:25:39 A. Absolutely.

14 13:25:39 Q. Why did Reality Digital encode the video

15 13:25:42 files being uploaded by users?

16 13:25:46 A. So they could be displayed in a Flash

17 13:25:49 player. Otherwise you would have to support

18 13:25:52 multiple different players, if it was Windows Media,

19 13:25:54 QuickTime, Real. The Flash was becoming the

20 13:25:58 standard for displaying video on the web at the

21 13:26:02 time.

22 13:26:02 Q. And what was the benefit of supporting a

23 13:26:05 single standard?

24 13:26:09 A. The benefit at the time was that most PCs

25 13:26:12 or Macs have Flash already installed on it. You

1 RANDY ST. JEAN

2 13:26:16 didn't have to install a player, which you would

3 13:26:19 have to have done with Windows Media or -- or

4 13:26:24 RealNetworks, or QuickTime for Mac.

5 13:26:31 Q. If you look at the bottom of the page on

6 13:26:33 Exhibit F --

7 13:26:34 A. Uh-huh.

8 13:26:34 Q. -- under the section "File Type Support"

9 13:26:37 there's a video bullet.

10 13:26:39 A. Right.

11 13:26:40 Q. Does that accurately reflect the types of

12 13:26:42 videos that users could upload that would be

13 13:26:45 accepted for encoding into Flash?

14 13:26:48 A. At the time, yes.

15 13:26:49 Q. Has that expanded over time?

16 13:26:52 A. Yes.

17 13:26:57 Q. You indicated, I believe, that as part of

18 13:27:00 the ingestion process the -- both the encoded and

19 13:27:04 the original uploaded file were retained?

20 13:27:07 A. Correct.

21 13:27:07 Q. Why was the original uploaded file

22 13:27:10 retained?

23 13:27:13 A. Well, it was originally retained so that

24 13:27:16 if there was a shift away from Flash, we could

25 13:27:20 re-encode to the new standard that came about. And

1 RANDY ST. JEAN

2 13:27:25 it became a -- a selling point for us at the time.

3 13:27:35 Q. The second bullet point under the -- "It

4 13:27:40 also performs following functions" section of

5 13:27:43 Exhibit F --

6 13:27:44 A. Uh-huh.

7 13:27:44 Q. -- is "Brows-able Creation"?

8 13:27:47 A. Uh-huh.

9 13:27:47 Q. Is this what you describe as the encoded

10 13:27:49 version?

11 13:27:50 A. Correct.

12 13:27:50 Q. Could you describe the next bullet,

13 13:27:52 "Indexing"?

14 13:27:53 A. This would allow us to be able to -- to be

15 13:27:55 able to search on the content. We would index what

16 13:27:58 we called at that point a "tag cloud," so that it

17 13:28:02 could be indexed by user or by site, so that quickly

18 13:28:06 you'll find content.

19 13:28:08 Q. What do you mean by "tag" and "cloud"?

20 13:28:11 A. Content were allowed to have tag words

21 13:28:15 associated with them so they could easily be -- it

22 13:28:17 was a -- a -- a quick way of cheating from

23 13:28:20 searching. Anyway, a cloud would be created. The

24 13:28:22 term "cloud" is, you know, very loosely used. It

25 13:28:25 was more a list of words that a user could click on,

1 RANDY ST. JEAN

2 13:28:28 and that's what they would search on immediately.

3 13:28:31 They wouldn't have to type anything in.

4 13:28:34 Q. Is a tag cloud the graphical

5 13:28:37 representation of words, some bigger and some

6 13:28:40 smaller, representing --

7 13:28:42 A. Could be. Ours was, yeah.

8 13:28:44 Q. And how did the tags that were being

9 13:28:47 indexed get input into the system to be indexed in

10 13:28:51 the first place?

11 13:28:52 A. Users would type that in upon upload.

12 13:28:55 Q. And what types of tags could users type

13 13:28:58 in?

14 13:28:59 A. Basically, anything they wanted to.

15 13:29:01 Q. Did the tags that users typed in

16 13:29:05 necessarily correlate to the videos they were

17 13:29:07 uploading?

18 13:29:08 A. No.

19 13:29:10 Q. Why not?

20 13:29:13 A. They had control over that.

21 13:29:14 Q. The users could type in anything they

22 13:29:18 wanted?

23 13:29:18 A. Anything they wanted, sure. There was no

24 13:29:20 preformatted list that they could choose from.

25 13:29:25 Q. Could you describe the next bullet,

1 RANDY ST. JEAN

2 13:29:28 "Search"?

3 13:29:29 A. Search is just the -- the action upon

4 13:29:31 having it indexed. So we would be able to do a -- a

5 13:29:35 basic SQL search or full text on all the text in the

6 13:29:41 system, both the description, the title, the tags,

7 13:29:45 and a natural language engine if they so choose

8 13:29:51 to -- to put that in place.

9 13:29:52 Q. What search algorithm was utilized on the

10 13:29:57 Addicting Clips website?

11 13:29:58 A. Just pure full text. There is no waiting,

12 13:30:01 no anything.

13 13:30:02 Q. Do you know if that changed ever?

14 13:30:04 A. Never -- not to my knowledge.

15 13:30:06 Q. But it may have?

16 13:30:07 A. Not on our site. I don't believe we ever

17 13:30:10 changed that for them.

18 13:30:11 Q. Perhaps -- perhaps after they migrated off

19 13:30:14 the site?

20 13:30:15 A. Perhaps.

21 13:30:16 Q. The next bullet point, "Distribution" --

22 13:30:18 A. Uh-huh.

23 13:30:18 Q. -- could you describe that?

24 13:30:21 A. This would allow the individuals to upload

25 13:30:23 the files. They could actually download the files,

1 RANDY ST. JEAN

2 13:30:27 as well as e-mail the URLs to the assets via an

3 13:30:32 e-mail notification to their users or their friends

4 13:30:35 that they wanted to.

5 13:30:37 Q. Could you explain the download process?

6 13:30:41 A. The download was basically you click on

7 13:30:43 it, and you right click on it and you select

8 13:30:46 "download" and it would download the FLV.

9 13:30:51 Q. So any user could download any video that

10 13:30:54 had been uploaded by any other user in the FLV

11 13:31:01 format?

12 13:31:02 A. If they chose to do that, you -- the

13 13:31:03 client, right. This is -- remember this -- this --

14 13:31:04 this is describing Opus.

15 13:31:05 Q. Sure.

16 13:31:05 A. Right. Most customers did not do it.

17 13:31:08 Q. But the Opus platform allowed for that

18 13:31:11 functionality?

19 13:31:11 A. Absolutely, yeah.

20 13:31:12 Q. Do you know whether or not, even if that

21 13:31:16 functionality of the Opus system was not selected by

22 13:31:18 the client, there were means by which an end user

23 13:31:23 might be able to -- to download a copy of the Flash

24 13:31:26 file anyway?

25 13:31:27 MR. WILKENS: Objection to the form.

1 RANDY ST. JEAN

2 13:33:35 the video created?

3 13:33:36 A. Ingest.

4 13:33:37 Q. And how did that process work?

5 13:33:39 A. We would open up the file and use

6 13:33:42 DirectShow or QuickTime to seek to the center of the

7 13:33:45 video and grab the center frame, 30 seconds. If

8 13:33:49 it's a minute video, we'd go to 30 seconds and grab

9 13:33:54 a frame.

10 13:33:56 Q. And if it was a two-minute video you'd go

11 13:33:58 to the --

12 13:33:59 A. We'd go to one minute.

13 13:34:00 THE REPORTER: One at a time.

14 13:34:00 THE WITNESS: We would go to a minute,

15 13:34:00 yeah.

16 13:34:00 BY MR. RUBIN:

17 13:34:00 Q. So just as I predicted at the outset, we

18 13:34:01 do need to make very sure that we don't talk over

19 13:34:04 each other.

20 13:34:04 A. She can't type if we do that.

21 13:34:07 Q. Exactly. She can work magic, and she is.

22 13:34:10 A. I hear you.

23 13:34:10 Q. But it's very hard.

24 13:34:12 A. Sorry.

25 13:34:12 Q. No worries.

1 RANDY ST. JEAN

2 13:34:14 And where were the -- the thumbnails

3 13:34:18 stored?

4 13:34:18 A. In the user directory in the file system.

5 13:34:23 Q. And of the features that we've just talked

6 13:34:26 about, do you know which of -- which features were

7 13:34:31 not implemented, if any, by Addicting Clips?

8 13:34:37 A. All the features we talked about were

9 13:34:39 implemented by Addicting Clips.

10 13:34:40 Q. With the exception of the download

11 13:34:42 feature?

12 13:34:43 A. With the exception of the download

13 13:34:44 feature. Correct. Sorry.

14 13:34:46 Q. No need to apologize.

15 13:34:48 The asset repository --

16 13:34:50 A. Uh-huh.

17 13:34:50 Q. -- could you describe the asset

18 13:34:52 repository?

19 13:34:53 A. The asset repository was basically a

20 13:34:56 Windows 2003 file system running on a EMC/Dell SAN,

21 13:35:02 fiber connected.

22 13:35:23 Q. If I can have you turn back to page 2 of

23 13:35:25 the agreement, please. If you look at 2.2,

24 13:35:39 "Additional Services" -- do you see that?

25 13:35:43 A. Uh-huh. Yes, I do.

1 RANDY ST. JEAN

2 13:35:45 Q. It states that:

3 13:35:45 "Customer may request that Reality Digital

4 13:35:48 perform additional services at any time

5 13:35:51 during the term of this Agreement by

6 13:35:53 providing a member of the Reality Digital

7 13:35:55 Account Team with a written work request

8 13:35:57 in the form of a work" -- pardon me -- "in

9 13:36:01 the form of a statement of work attached

10 13:36:04 hereto as Exhibit G ('Statement of

11 13:36:07 Work')."

12 13:36:07 Do you see that?

13 13:36:08 A. Yes.

14 13:36:08 Q. Do you recall, from time to time, that

15 13:36:12 Atom would provide Reality Digital with statements

16 13:36:13 of work to be performed?

17 13:36:16 A. Yes.

18 13:36:17 Q. Did Atom ask Reality Digital to perform

19 13:36:21 work other than via statements of work?

20 13:36:26 MR. KELLEHER: Objection to the form.

21 13:36:28 THE WITNESS: I'm sure they did. I -- I

22 13:36:32 believe they did, before the formal process actually

23 13:36:36 kicked in.

24 13:36:36 BY MR. RUBIN:

25 13:36:37 Q. But once the formal process kicked in --

1 RANDY ST. JEAN

2 13:48:44 A. Yes, it is.

3 13:48:44 Q. Do you receive and send e-mail from that

4 13:48:47 address?

5 13:48:48 A. Yes, I do.

6 13:48:49 Q. Do you read the e-mail that is sent to

7 13:48:50 that address?

8 13:48:52 A. Yes, I do.

9 13:49:15 MR. RUBIN: Let's mark St. Jean 4.

10 13:49:18 (St. Jean Deposition Exhibit Number 4 was

11 13:49:18 marked for identification.)

12 13:49:19 BY MR. RUBIN:

13 13:49:21 Q. Mr. St. Jean, Exhibit 4 is another

14 13:49:23 document that's a statement of work issued by Atom

15 13:49:32 and entered into between Atom and Reality Digital.

16 13:49:35 It was produced to us by Reality Digital in this --

17 13:49:39 in response to the subpoena issued by YouTube, bears

18 13:49:43 Bates numbers RD004334 through -4335.

19 13:49:51 Do you recognize this document?

20 13:49:56 A. I don't recognize it. I'm sure it's one

21 13:49:59 of ours, but I don't remember it and. . . .

22 13:50:03 Q. Do you have any -- any -- any reason to

23 13:50:05 question its authenticity?

24 13:50:07 A. No.

25 13:50:08 Q. Do you have any reason to believe that the

1 RANDY ST. JEAN

2 13:50:09 work described in here wasn't completed?

3 13:50:12 A. It may not have.

4 13:50:14 Q. What makes you think that?

5 13:50:16 A. I believe there were times we did receive

6 13:50:18 some statements of work that we did not fully

7 13:50:22 complete, or start at all.

8 13:50:27 Q. Why would that have been?

9 13:50:28 A. They changed their mind.

10 13:50:31 Q. Did it often happen that Atom would give

11 13:50:33 you instructions to begin down a road, and then

12 13:50:37 change their mind?

13 13:50:38 MR. WILKENS: Objection to the form.

14 13:50:41 THE WITNESS: Occasionally. Just like any

15 13:50:45 other work environment.

16 13:50:51 MR. RUBIN: Sure.

17 13:51:01 THE WITNESS: Yeah.

18 13:51:01 MR. RUBIN: I'd like to introduce Exhibit

19 13:51:05 5.

20 13:51:05 (St. Jean Deposition Exhibit Number 5 was

21 13:51:05 marked for identification.)

22 13:51:28 BY MR. RUBIN:

23 13:51:29 Q. Mr. St. Jean, Exhibit 5 is another

24 13:51:33 statement of work also produced by Reality Digital,

25 13:51:36 bearing Bates number RD004338 through -4339. This

1 RANDY ST. JEAN

2 13:51:46 statement of work is regarding Audible Magic

3 13:51:50 implementation.

4 13:51:52 Do you recall this statement of work?

5 13:51:53 A. Yes.

6 13:51:55 Q. What do you recall about this statement of

7 13:51:57 work?

8 13:52:01 A. That we were to implement a third-party

9 13:52:04 solution for determining if a site -- a piece of

10 13:52:09 content was copyrighted.

11 13:52:13 Q. So is it fair to say that prior to the

12 13:52:18 implementation of Audible Magic pursuant to this

13 13:52:21 statement of work there was no such technology

14 13:52:24 available on the Audible Magic system?

15 13:52:28 MR. WILKENS: Objection --

16 13:52:29 BY MR. RUBIN:

17 13:52:29 Q. Pardon me. On the Addicting Clips system?

18 13:52:32 MR. WILKENS: Objection to the form.

19 13:52:32 BY MR. RUBIN:

20 13:52:33 Q. Let me restate the question. Is it fair

21 13:52:35 to say that prior to the implementation of the

22 13:52:38 statement of work embodied by Exhibit 5 there was no

23 13:52:49 copyright filtration technology available on the

24 13:52:52 Addicting Clips website?

25 13:52:53 MR. WILKENS: Objection to the form.

1 RANDY ST. JEAN

2 13:52:56 THE WITNESS: There was none.

3 13:52:57 BY MR. RUBIN:

4 13:52:57 Q. Do you recall any discussions with anyone

5 13:53:02 at Atom about implementation of Audible Magic or any

6 13:53:11 similar type of third party solution prior to

7 13:53:24 receiving Statement of Work Number 8?

8 13:53:29 A. Well, yeah, there was discussions before

9 13:53:32 we built the statement of work, just to make sure we

10 13:53:35 had everything down, what we were going to build.

11 13:53:39 But there was -- I don't recall, or there was no

12 13:53:41 discussion of anything -- other technology other

13 13:53:47 than Audible Magic until they brought it up.

14 13:53:50 Q. And when did they bring it up?

15 13:53:51 A. I don't recall.

16 13:53:53 Q. Did they bring it up when they approached

17 13:53:55 Reality Digital in November of 2005?

18 13:53:57 A. No.

19 13:53:58 Q. Did they bring it up any time in 2006?

20 13:54:05 A. I would have to say no.

21 13:54:07 Q. Did they bring it up only after they were

22 13:54:09 required by Viacom?

23 13:54:13 MR. WILKENS: Objection to the form.

24 13:54:15 THE WITNESS: I don't recall the timing.

25

1 RANDY ST. JEAN

2 13:54:20 BY MR. RUBIN:

3 13:54:20 Q. Did they bring it up within a couple of

4 13:54:23 months of the issuance of Statement of Work Number

5 13:54:25 8?

6 13:54:29 A. I would have to say yes. I mean, if this

7 13:54:31 is a -- a statement of work, we would have to have

8 13:54:34 discussed it -- discussed it for a while, at least,

9 13:54:38 you know, a few weeks.

10 13:54:42 Q. Who specifically would you have discussed

11 13:54:45 it with at Atom?

12 13:54:47 MR. WILKENS: Objection to the form.

13 13:54:50 THE WITNESS: It either had been Brendan

14 13:54:53 Jackson or Joel Sanders.

15 13:55:01 BY MR. RUBIN:

16 13:55:02 Q. And Statement of Work Number 8 embodied in

17 13:55:07 Exhibit 5, which you indicated you would have

18 13:55:10 discussed with either Brendan Jackson or Joel

19 13:55:13 Sanders, indicates that the requested date for the

20 13:55:16 implementation of Audible Magic to be completed was

21 13:55:20 July 6th, 2007.

22 13:55:25 Do you see that? It's on the first

23 13:55:27 page --

24 13:55:28 A. Yes, I do.

25 13:55:31 Q. Do you know what -- if Audible Magic was

1 RANDY ST. JEAN

2 14:15:49 work station of the user. It could be on a remote

3 14:15:53 site if they have mapped the drive to a remote

4 14:15:58 location -- pretty much anywhere, but in -- in most

5 14:16:02 cases it's their local system.

6 14:16:06 Q. So this -- so the stand- -- the standard

7 14:16:08 use case for file upload would be a user uploading

8 14:16:11 the video from their local computer, their desktop

9 14:16:17 or laptop computer?

10 14:16:18 A. I'd have to agree with that.

11 14:16:20 Q. But if they wanted to they could point the

12 14:16:22 uploader to some ran- -- some remote location that

13 14:16:25 they specify?

14 14:16:26 A. Correct.

15 14:16:29 Q. Did the site, at launch, support uploads

16 14:16:35 via mobile phone?

17 14:16:38 A. Through e-mail only, I believe.

18 14:16:42 Q. Do you know if the site ever supported

19 14:16:46 uploads through mobile phone in any other way?

20 14:16:50 A. I don't recall if we ever implemented

21 14:16:54 that.

22 14:16:56 Q. Were there any technical limitations on

23 14:17:02 the file that a user could upload?

24 14:17:07 MR. WILKENS: Objection to form.

25 14:17:09 THE WITNESS: Explain "technical

1 RANDY ST. JEAN

2 14:17:11 limitation."

3 14:17:12 BY MR. RUBIN:

4 14:17:13 Q. Well, we discussed earlier that the system

5 14:17:16 would only support certain file types for video.

6 14:17:19 A. Correct.

7 14:17:21 Q. Would you understand that to be a

8 14:17:22 technical limitation on the type of file that a user

9 14:17:26 could upload to the system?

10 14:17:28 A. Yes. We -- we impose restrictions upon

11 14:17:31 file type extensions. So that we would not accept

12 14:17:36 a -- a dot -- an executable .exe or -- or something

13 14:17:43 that we didn't support, we would throw up an error

14 14:17:47 on the web page saying that this was not a supported

15 14:17:50 file type.

16 14:17:51 Q. In the circumstance of a supported file

17 14:17:55 type, were there any other limitations placed on

18 14:17:57 either the size, or the length, or attributes like

19 14:18:04 that on the file that could be uploaded?

20 14:18:09 A. On the Addicting Clips site I believe --

21 14:18:13 I'm -- I'm just guessing. I think they had a

22 14:18:17 100-megabyte file size limitation, but I don't

23 14:18:22 believe they had a time limitation, a duration.

24 14:18:27 MR. RUBIN: I'd like to introduce St. Jean

25 14:18:31 8.

1 RANDY ST. JEAN

2 14:18:31 (St. Jean Deposition Exhibit Number 8 was

3 14:18:31 marked for identification.)

4 14:18:48 BY MR. RUBIN:

5 14:18:49 Q. Exhibit 8 is a document produced by

6 14:18:53 Reality Digital in response to YouTube's subpoena,

7 14:18:57 bearing Bates number RD016293. And it's an e-mail

8 14:19:05 from Joel Sanders to you, and cc'd to Ed Klein, and

9 14:19:10 it was sent on March 30th, 2006 at 3:41 in the

10 14:19:17 morning.

11 14:19:20 Do you recognize this e-mail?

12 14:19:22 A. No.

13 14:19:28 Q. As you look at it now, do you have any

14 14:19:30 doubt that you received it?

15 14:19:32 A. I'd have to say no.

16 14:19:36 Q. Do you see what the title is?

17 14:19:39 A. The "Subject"?

18 14:19:40 Q. Yeah.

19 14:19:41 A. Yep. Yes, I do.

20 14:19:42 Q. What is the "Subject"?

21 14:19:44 A. (Reading:)

22 14:19:44 "We have our first 25-minute plus

23 14:19:47 clips. . ."

24 14:19:50 Q. Is this -- the e-mail in Exhibit 8 is

25 14:19:52 consistent with your recollection that there was no

1 RANDY ST. JEAN

2 14:41:23 BY MR. RUBIN:

3 14:41:24 Q. In other words, in which it would remain

4 14:41:26 in the database, but not visible to the user?

5 14:41:30 MR. WILKENS: Same objection.

6 14:41:35 THE WITNESS: Legal reasons. They wanted

7 14:41:37 to keep track of every file that's ever been

8 14:41:39 uploaded to the system.

9 14:41:41 BY MR. RUBIN:

10 14:41:50 Q. In the instance in which the video is

11 14:41:55 permanently deleted from the system, is both the

12 14:42:03 original copy, and any subsequently trans- -- any

13 14:42:07 copies created during the transcoding process also

14 14:42:12 deleted?

15 14:42:13 A. Yes. All browsables are deleted,

16 14:42:17 thumbnails keep -- story boards, any browsable that

17 14:42:22 was created.

18 14:42:24 Q. How was that process effectuated on the

19 14:42:27 technical level?

20 14:42:28 A. The -- our web app makes a call to the

21 14:42:30 file system to -- to delete it, and we know all the

22 14:42:34 files' browsable extensions that we have, and we

23 14:42:37 just remove them from the directory that -- of the

24 14:42:41 user.

25 14:42:50 Q. At the time the Addicting Clips service

1 RANDY ST. JEAN

2 14:42:52 launched, was the video that the user uploaded

3 14:43:00 immediately made available on the service?

4 14:43:05 A. I believe so.

5 14:43:23 Q. When users visited the main page on

6 14:43:27 Addicting Clips, were they presented with a search

7 14:43:32 option?

8 14:43:33 A. Yes.

9 14:43:36 Q. And was there a means by which they could

10 14:43:38 have thumbnails returned --

11 14:43:40 A. Yes.

12 14:43:41 Q. -- as search results?

13 14:43:43 A. Yes.

14 14:43:44 Q. And could users click on these thumbnails

15 14:43:47 to initiate video playback?

16 14:43:49 A. Yes.

17 14:43:51 Q. And the thumbnails were extracted from the

18 14:43:54 videos through the ripping process you described

19 14:43:58 earlier today; correct?

20 14:43:59 A. Correct.

21 14:44:14 Q. Could users comment on videos --

22 14:44:16 A. Yes.

23 14:44:16 Q. -- that had been uploaded to the Addicting

24 14:44:17 Clips website?

25 14:44:19 A. Yes.

1 RANDY ST. JEAN

2 14:44:19 Q. Did users have the abilities to send

3 14:44:22 messages to one another?

4 14:44:26 A. Describe "messages."

5 14:44:31 Q. Um --

6 14:44:32 A. It's just -- just -- there's -- we have

7 14:44:33 different ways. There's e-mail, and then there's an

8 14:44:37 internal message system.

9 14:44:39 Q. Did users have ways of e-mailing each

10 14:44:41 other?

11 14:44:42 A. Through the share function. Not directly.

12 14:44:45 It wasn't an e-mail system, but they could share

13 14:44:48 that video with their friends through a -- an e-mail

14 14:44:51 system we had on the -- on the Opus platform.

15 14:44:57 Q. And this was part of the system that was

16 14:45:00 in place for the Addicting Clips website?

17 14:45:03 A. Yes.

18 14:45:05 Q. You described an internal message system

19 14:45:10 as well.

20 14:45:10 A. Yes.

21 14:45:11 Q. Could you describe that in more detail?

22 14:45:13 A. It's a system that you could message other

23 14:45:17 users on the system. I don't recall if it was

24 14:45:22 implemented on Addicting Clips at the time. I doubt

25 14:45:26 it was during -- for launch.

1 RANDY ST. JEAN

2 14:45:28 Q. Do you know if it was ever implemented --

3 14:45:30 A. I don't.

4 14:45:31 Q. -- on Addicting Clips?

5 14:45:32 A. Yeah, I don't recall. It was a --

6 14:45:33 subsequently added to the Opus platform, but I don't

7 14:45:36 know if they implemented it on uploads or Addicting

8 14:45:39 Clips, you know, and -- I don't know.

9 14:45:47 Q. The share functionality for videos, on a

10 14:45:54 technical level, how did a video get shared, the

11 14:45:58 e-mail, from one user to another?

12 14:46:00 A. Well, they would click a button for share.

13 14:46:03 They would bring up a form that would allow them to

14 14:46:06 fill in the e-mail addresses of their friends, or

15 14:46:09 family, whoever. They could add a description, and

16 14:46:18 then you would hit "send," and we would then send an

17 14:46:21 e-mail to those individuals with a thumbnail and a

18 14:46:25 link back to the site to play the video.

19 14:46:30 Q. Am I to understand that the only actual

20 14:46:33 content from the video that was sent via e-mail was

21 14:46:38 the thumbnail?

22 14:46:39 A. Correct.

23 14:46:40 Q. But there was a link sent that would bring

24 14:46:41 the visitor directly to the watch page for the video

25 14:46:47 upon clicking the link?

1 RANDY ST. JEAN

2 14:46:52 A. Correct.

3 14:46:56 Q. Did Addicting Clips ever implement a user

4 14:47:00 rating system?

5 14:47:04 A. I don't recall.

6 14:47:05 Q. Or a video rating system?

7 14:47:08 A. Video rating, yes.

8 14:47:09 Q. How did the video rating system work?

9 14:47:12 A. I believe it was between one and five,

10 14:47:15 could be stars -- I think it was stars -- that the

11 14:47:17 users could rate the video.

12 14:47:25 Q. Could users flag videos for review?

13 14:47:28 A. Yes.

14 14:47:31 Q. Do you know if there were different types

15 14:47:34 of flags?

16 14:47:35 A. I believe there was.

17 14:47:38 Q. Do you know who established the different

18 14:47:40 types of flags?

19 14:47:47 A. On the Addicting Clips site, I'm not -- I

20 14:47:50 don't recall. It could have been us. It could have

21 14:47:52 been them.

22 14:47:55 Q. Didn't Addicting Clips allow users also to

23 14:47:58 personalize their experience on the service in

24 14:48:01 certain ways?

25 14:48:03 MR. WILKENS: Objection to the form.

1 RANDY ST. JEAN

2 14:48:04 THE WITNESS: Yeah, explain. Put detail.

3 14:48:07 BY MR. RUBIN:

4 14:48:08 Q. For example, they could create their own

5 14:48:11 profiles; right?

6 14:48:13 A. Yes.

7 14:48:16 Q. And they had their own home page --

8 14:48:18 A. Yes.

9 14:48:18 Q. -- on Addicting Clips; right?

10 14:48:20 A. Correct.

11 14:48:21 Q. And they could upload a -- a picture or

12 14:48:24 avatar for their -- for their page; right?

13 14:48:29 A. Yes.

14 14:48:33 Q. Do you know what other functionality

15 14:48:35 was -- was associated with the customization for

16 14:48:38 user accounts?

17 14:48:40 A. No. I don't recall for that site.

18 14:48:51 Q. The Addicting Clips, later AtomUploads

19 14:48:56 site, also had -- strike that.

20 14:49:02 The Addicting Clips site also provided

21 14:49:06 users with the option to upload videos and mark them

22 14:49:10 private, didn't --

23 14:49:12 A. Correct, yes.

24 14:49:13 Q. What's a private video in that context?

25 14:49:16 A. It would not be in the general public and

1 RANDY ST. JEAN

2 14:49:18 viewable by -- only viewable by people that were

3 14:49:22 friends on their site, they deemed friends.

4 14:49:27 Q. Only viewable by the individuals --

5 14:49:30 A. Themselves.

6 14:49:31 Q. The uploader and the individuals the

7 14:49:33 uploader allowed to view the video?

8 14:49:39 A. Correct.

9 14:49:41 Q. Was that a common feature on video --

10 14:49:44 pardon me -- a common feature on UGC video sites at

11 14:49:48 the time the Addicting Clips service launched?

12 14:49:52 MR. WILKENS: Objection to the form.

13 14:49:52 THE WITNESS: I'm not familiar with --

14 14:49:54 with all of them. I think it was an option on --

15 14:50:01 on -- on some of them.

16 14:50:10 BY MR. RUBIN:

17 14:50:10 Q. Did Addicting Clips provide users with the

18 14:50:14 ability to view clips based on categories?

19 14:50:18 A. Yes.

20 14:50:19 Q. And along the lines of which videos had

21 14:50:22 been most viewed?

22 14:50:25 A. Yes.

23 14:50:27 Q. And most discussed?

24 14:50:29 A. Yes.

25 14:50:29 Q. And most highly rated?

1 RANDY ST. JEAN

2 14:50:31 A. Yes.

3 14:50:32 Q. And other statistical --

4 14:50:34 A. Yeah, other save queries of that nature.

5 14:50:38 Q. Yeah.

6 14:50:52 We talked earlier about certain

7 14:50:54 information that users were prompted to enter when

8 14:50:57 they uploaded videos. I believe you indicated tags

9 14:51:01 being one of them?

10 14:51:02 A. Yes.

11 14:51:02 Q. Were users prompted to enter any other

12 14:51:05 information when they were uploading videos to the

13 14:51:08 Addicting Clips websites?

14 14:51:11 A. A description; title if they wanted to

15 14:51:17 rename the file; what topic or channel or category

16 14:51:24 they wanted to place the -- the video in; public or

17 14:51:28 private or friends only. I think that's about it

18 14:51:33 for them.

19 14:51:39 Q. Would you refer to that information as

20 14:51:42 metadata associated with the video?

21 14:51:45 A. Yes.

22 14:51:47 Q. And did Addicting Clips index that

23 14:51:50 metadata?

24 14:51:51 A. Yes.

25 14:51:51 Q. And was that indexed metadata then made

1 RANDY ST. JEAN

2 14:51:55 searchable for users visiting the service to locate

3 14:51:58 videos to watch?

4 14:52:00 A. Yes.

5 14:52:02 Q. And you indicated earlier that the tags

6 14:52:05 that users could input were entirely user-defined.

7 14:52:14 A. Correct.

8 14:52:14 Q. Does that also apply to the titles of the

9 14:52:17 videos?

10 14:52:18 A. Yes.

11 14:52:19 Q. And the descriptions?

12 14:52:20 A. Yes.

13 14:52:38 Q. Could videos uploaded to the Addicting

14 14:52:39 Clips website also be embedded on other websites?

15 14:52:51 A. I believe so.

16 14:52:53 Q. Could you explain what that means, to

17 14:52:55 embed something from one website onto another?

18 14:52:59 A. Yeah, with the Flash players, there's a

19 14:53:04 code that's generated that allows you to place it

20 14:53:08 into a web page, a blog, basically anything that's

21 14:53:15 web-based, that will then embed a player into that

22 14:53:19 page, that you could play back from that page or

23 14:53:22 that blog or -- and it would play back from the

24 14:53:26 site.

25 14:53:27 Q. Is it a standard feature of Flash players

1 RANDY ST. JEAN

2 14:53:30 to be embeddable?

3 14:53:34 MR. WILKENS: Objection to the form.

4 14:53:35 THE WITNESS: I'd assume so, yeah, in most

5 14:53:38 cases.

6 14:53:38 BY MR. RUBIN:

7 14:53:39 Q. Do you know what language the embed code

8 14:53:42 is written in?

9 14:53:43 A. It's typically ActionScript code.

10 14:53:47 Q. Is there anything unique to how it would

11 14:53:50 be written for embedding to -- or strike that.

12 14:53:57 Is there anything unique about how the

13 14:53:59 embed code would be written for Addicting Clips,

14 14:54:02 versus how you might write an embed code for another

15 14:54:06 website other than the actual URL contained in the

16 14:54:09 script?

17 14:54:10 A. Yes.

18 14:54:10 Q. What would be different?

19 14:54:12 A. Just player functionality, what the player

20 14:54:14 could do. You could have Flash vars that would

21 14:54:19 allow the player to do other things that another

22 14:54:22 player on another site didn't have. So they are all

23 14:54:26 unique to each site, in most cases.

24 14:54:29 Q. But the concept of embedding is not

25 14:54:31 unique --

1 RANDY ST. JEAN

2 14:54:32 A. No.

3 14:54:32 Q. -- to Addicting Clips?

4 14:54:33 A. Correct.

5 14:54:34 Q. It was a standard functionality?

6 14:54:36 A. Yes.

7 14:54:49 Q. Mr. St. Jean, are you familiar with the

8 14:54:51 term "CDN"?

9 14:54:57 A. Yes.

10 14:54:57 Q. What do you understand the letters "CDN"

11 14:55:00 to stand for?

12 14:55:01 A. Content distribution network.

13 14:55:03 Q. And based on your experience, what is your

14 14:55:05 understanding of how the -- of what the role of a

15 14:55:08 CDN plays in the context of the Internet?

16 14:55:11 A. To provide local delivery to content

17 14:55:14 that's remote.

18 14:55:16 Q. Would you agree that CDNs are often used

19 14:55:21 in the delivery of video content over the Internet?

20 14:55:24 MR. WILKENS: Objection to the form.

21 14:55:31 THE WITNESS: I don't know about "often,"

22 14:55:33 but it is used.

23 14:55:34 BY MR. RUBIN:

24 14:55:35 Q. What's the purpose of -- of -- for using a

25 14:55:38 CDN?

1 RANDY ST. JEAN

2 14:55:38 A. So that you could -- the user experience

3 14:55:43 is optimized where -- the location of where they

4 14:55:46 are. As opposed to getting a file all the way back

5 14:55:49 from San Francisco if you're playing from New York,

6 14:55:53 the file would be cached in a CDN farm in New York

7 14:55:57 or an east coast location, so that the file would be

8 14:56:02 delivered in an optimal format and quickly.

9 14:56:06 Q. Based on your experience, are CDNs -- is

10 14:56:11 the use of C- -- strike that.

11 14:56:15 Based on your experience, is the use of

12 14:56:18 CDN for the delivery of Internet content

13 14:56:21 commonplace?

14 14:56:23 MR. WILKENS: Objection to the form.

15 14:56:28 THE WITNESS: Are you talking now?

16 14:56:29 Currently, I would say yes. At the time we launched

17 14:56:34 Addicting Clips, no.

18 14:56:35 BY MR. RUBIN:

19 14:56:36 Q. So between the time that Addicting Clips

20 14:56:37 launched and today --

21 14:56:39 A. Right.

22 14:56:39 Q. -- the use of CDN went from being not

23 14:56:42 commonplace to being commonplace?

24 14:56:45 A. Correct.

25 14:56:45 Q. Would you agree that applies to many

1 RANDY ST. JEAN

2 14:56:48 features of the Internet between 2006 and 2009?

3 14:56:55 A. Correct.

4 14:56:58 Q. Has Reality Digital ever used a CDN in

5 14:57:02 connection with any of the services they've provided

6 14:57:05 to any of their clients?

7 14:57:07 A. Yes.

8 14:57:09 Q. Why?

9 14:57:12 A. Just for that fact I mentioned earlier, to

10 14:57:16 get better optimal user experience in the region

11 14:57:21 that they're located.

12 14:57:24 Q. Is it done -- strike that.

13 14:57:27 When Reality Digital utilizes a CDN in

14 14:57:31 conjunction with the services it provides to its

15 14:57:35 clients, is that done at the request of its clients?

16 14:57:39 A. Currently, no.

17 14:57:42 Q. You --

18 14:57:43 A. Currently everything is going through the

19 14:57:46 CDN now. That -- that's pretty new for 2009.

20 14:57:50 Before, anything that predated 2009, that was on

21 14:57:53 request from the customer.

22 14:57:58 Q. Which CDNs -- let's -- let's -- let's put

23 14:58:01 2009 out of the picture.

24 14:58:03 A. Okay.

25 14:58:04 Q. The -- when CDNs were everywhere.

1 RANDY ST. JEAN

2 14:58:08 A. Uh-huh.

3 14:58:08 Q. And -- and commonplace. Prior to 2009,

4 14:58:12 which CDNs had Reality Digital worked with?

5 14:58:16 A. Akami and Limelight.

6 14:58:19 Q. What do you know about Limelight?

7 14:58:26 A. They're a CDN company.

8 14:58:28 Q. Are they a major CDN --

9 14:58:30 A. Yes.

10 14:58:31 Q. -- company?

11 14:58:32 A. Yes.

12 14:58:33 Q. Do they work with all sorts of companies?

13 14:58:35 MR. WILKENS: Objection to the form.

14 14:58:37 THE WITNESS: I would assume they do.

15 14:58:40 BY MR. RUBIN:

16 14:58:41 Q. Do you know if Atom ever instructed

17 14:58:44 Reality Digital to use a CDN in connection with a

18 14:58:48 server of videos that were being served in

19 14:58:51 connection with Addicting Clips or AtomUploads?

20 14:58:55 A. Yes.

21 14:58:56 Q. When did that first occur?

22 14:58:59 A. I don't have a recollection of the date --

23 14:59:02 exact date.

24 14:59:19 MR. RUBIN: Let's take a break. We need

25 14:59:20 to change the video.

1 RANDY ST. JEAN

2 14:59:27 THE WITNESS: Oh, I thought that meant ten

3 14:59:29 minutes left.

4 14:59:30 MR. RUBIN: No such luck. Off the record.

5 14:59:32 THE VIDEOGRAPHER: This -- this is the end

6 14:59:34 of tape number 1 of the video deposition of Randy

7 14:59:37 St. Jean. We're now going off the record. The time

8 14:59:40 is 2:59.

9 15:10:05 (Short break.)

10 15:12:04 THE VIDEOGRAPHER: This is the beginning

11 15:12:05 of recording number 2 of the video deposition of

12 15:12:08 Randy St. Jean. The time is 3:11 p.m. We are now

13 15:12:15 back on the record.

14 15:12:17 BY MR. RUBIN:

15 15:12:19 Q. Mr. St. Jean, we now have a new videotape

16 15:12:22 in the player. We can get back to business here.

17 15:12:25 We were talking about, before the break,

18 15:12:27 the time at which Atom approached Reality Digital

19 15:12:32 concerning implementing a CDN for the serving of

20 15:12:39 videos from the site it was using through Reality

21 15:12:41 Digital. Do you recall that?

22 15:12:43 A. Yes.

23 15:12:44 Q. I had asked you if you remembered when

24 15:12:46 that was.

25 15:12:47 A. (Nods head.)

1 RANDY ST. JEAN

2 15:12:48 Q. Do you recall?

3 15:12:49 A. I don't recall.

4 15:12:53 MR. RUBIN: I'd like to introduce Exhibit

5 15:12:55 12.

6 15:12:56 (St. Jean Deposition Exhibit Number 12 was

7 15:12:56 marked for identification.)

8 15:13:12 THE WITNESS: Thank you.

9 15:13:12 BY MR. RUBIN:

10 15:13:13 Q. Mr. St. Jean, Exhibit 12 is a document

11 15:13:16 produced by Reality Digital, bearing Bates number

12 15:13:19 RD003895.

13 15:13:22 A. Uh-huh.

14 15:13:22 Q. It's an e-mail string of two e-mails from

15 15:13:27 just about two years ago.

16 15:13:29 A. Okay.

17 15:13:29 Q. The first one is from Joel Sanders to you

18 15:13:32 and Ed Klein, "Subject: Limelight. . .";

19 15:13:37 "Importance: High," dated October 15th, 2007.

20 15:13:43 Could you read what Mr. Sanders wrote in

21 15:13:49 that e-mail to you?

22 15:13:50 A. (Reading:)

23 15:13:50 "Randy, could you verify when we -- we'll

24 15:13:54 have the featured videos and all future

25 15:13:58 new uploaded videos pushed out to

1 RANDY ST. JEAN

2 15:14:00 Limelight?

3 15:14:02 "Thanks! Joel."

4 15:14:04 Q. What did you understand Mr. Sanders to be

5 15:14:07 asking you in that e-mail?

6 15:14:14 A. To basically -- anything that was

7 15:14:15 currently in their featured list on the Addicting --

8 15:14:21 AtomUploads, I believe, at this point, site -- and

9 15:14:24 any future video that was uploaded to be pushed and

10 15:14:28 stored on Limelight, and delivered from Limelight;

11 15:14:31 no longer delivered from our system.

12 15:14:35 Q. What did it mean, the tail end of -- of

13 15:14:39 Mr. Sanders' e-mail, "videos pushed out"? I suppose

14 15:14:46 he meant to Limelight, by pushed out" --

15 15:14:48 A. Yeah.

16 15:14:48 Q. -- "to Limelight."

17 15:14:49 A. Yes, FTP for CD- -- file transfer protocol

18 15:14:52 to the CDN provider.

19 15:14:54 Q. Does that mean --

20 15:14:55 A. Or --

21 15:14:55 Q. Does that mean copied from where they were

22 15:14:56 on Reality Digital's system over to Limelight's

23 15:15:00 system?

24 15:15:06 A. Yes.

25 15:15:07 Q. Do you know -- strike that.

1 RANDY ST. JEAN

2 15:15:09 You testified earlier that you thought

3 15:15:10 there was, in the normal use case, one copy of the

4 15:15:13 encoded file on the Reality Digital system?

5 15:15:17 A. Correct.

6 15:15:18 Q. Do you know, once -- do you know how many

7 15:15:21 copies were made, once the first copy of the video

8 15:15:25 was made on the Limelight system?

9 15:15:28 A. No idea. That's the Limelight CDN network

10 15:15:32 after that.

11 15:15:33 Q. Did you ever discuss that issue with

12 15:15:34 Limelight?

13 15:15:35 A. Never.

14 15:15:35 Q. Did Limelight ever disclose to you what it

15 15:15:38 did with the video after the video was copied onto

16 15:15:42 their system?

17 15:15:43 A. No. There's different methods.

18 15:15:46 Q. What do you mean by that?

19 15:15:47 A. There's -- you could store the file on the

20 15:15:49 system permanently, on Lime- -- on Limelight, till

21 15:15:53 you delete it, or there's an option called "customer

22 15:15:57 origin," which CDNs will pull from our storage

23 15:16:01 anything that's been new or updated and then cached

24 15:16:05 onto the CDN, and after a certain amount of time

25 15:16:08 that cache will expire and the files will be

Schapiro Exhibit 119

**Amendment to Exhibit C of Reality Digital Software and Services Agreement of February 7, 2006
Signed and Dated October 12, 2007 ("Amendment Effective Date")**

The following serves as an amendment to the agreement between Atom Entertainment, Inc, a subsidiary of Viacom International Inc. and Reality Digital, Inc signed on February 7, 2006 ("Original Agreement"). The purpose of this Amendment is to replace the bandwidth provider for a majority of the bandwidth hosting from ColoServe to Limelight Networks, a Content Delivery partner of both Viacom and Reality Digital.

The following amendment replaces in its entirety the section titled "Bandwidth Charges" in Attachment B in the Original Agreement. .

Bandwidth Charges	<p>As billed by data center, Reality Digital will create an invoice and pass through the media upload and non-video delivery expenses to Customer. The price of bandwidth shall not exceed \$60.00 per MBPS at the 95th Percentile Rule as defined below, as long as this pricing is available through the co-location hosting facility. Any discounting Reality Digital receives by renegotiating bandwidth pricing will be passed through to Customer.</p> <p>Delivery of the video to the end-user will be provided as per the Viacom negotiated contract with Limelight Networks for CDN services (see below), plus 8% Reality Digital management fee. Billing will be as charged by Limelight plus 8% and passed through to Atom Entertainment for payment.</p>
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Atom Uploads - Viacom ("Customer")				Issue Date:		October 15, 2007	
SERVICES AND PRODUCTS				Number of Units	Unit Price	Monthly Charge	One-Time Charge
Streaming Media Flash On Demand "atomfilms"				150 Mbps	\$19.00	\$2,850.00	Waived
LUX – Limelight Networks Web Reporting Tool				1	\$250.00	Waived	Waived
Network Storage				500GB	\$5.00	\$500.00	Waived
Reality Digital Management fee				8% of total charged			
Term:	to February 29, 2008	BURSTABLE RATE:		TOTALS:		\$3,350. plus 8% (\$268)	Waived
		\$19.00 Mbps					
NOTES:							
➤ Burstable bandwidth (anything over your committed level) is available at \$19.00 per Mbps.							
➤ First 2 GB of storage will free of charge. Additional storage (in 1GB increments) will be priced at \$1.00/GB.							
➤ Limelight Networks is extending specially discounted Mbps pricing for Content Delivery (HTTP) services as specified in this order form to Customer for the purposes of resale on a one time basis. This pricing is not eligible to Customer for resale, internal use, or for any other reason except as explicitly stated here within.							

Amendment to Exhibit C - continued

Highly Confidential

Company's Policy Regarding "95th Percentile" Bandwidth Utilization

On a monthly basis, Customer purchases a minimum amount of committed bandwidth for each Service for the full specified term. To account for the instances that Customer's traffic bursts over the minimum committed amount of bandwidth, the Company utilizes a billing method referred to as the "95th Percentile Rule" as defined below.

1. Company shall invoice Customer on a monthly basis in advance for the minimum committed bandwidth at the rate set by this Order Form. The Company's SNMP bandwidth monitoring will sample (record a data point reflecting how much bandwidth Customer is utilizing at that particular instance) the inbound and outbound for each Service connection every 5 minutes and store those samples for a period of one month.
2. At the end of the month, all the data samples for the inbound and outbound are collected and sorted from highest to lowest individually. The highest 5% of each the inbound and outbound are discarded, and the next highest remaining data sample on either the inbound or outbound is the "95th Percentile" number. This number is used as the basis for computation of any additional charges for that particular month of Service over the minimum committed bandwidth. If the 95th Percentile number falls below the monthly minimum committed amount, no additional charges will be assessed.

Example:

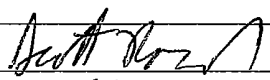
Customer has committed to 20.0 Mbps per month. Company gathers all data samples for the month of Service and sorts them from highest to lowest discarding the top 5%. For purpose of example the 95th Percentile for the month of Service was 75 Mbps. Company will bill Customer for the additional charges of 75 Mbps less the previously invoiced 20 Mbps of contractually committed bandwidth, or 55 Mbps. The 55Mbps of "over usage" will be billed at the rate stated in this Order Form. Further, if the 95th Percentile calculation resulted in a number less than 20Mbps no additional charges would occur for that month.

The following is the formula based on a thirty (30)-day month:

$$\frac{1 \text{ Sample}}{5 \text{ Min}} * \frac{12}{1 \text{ Hour}} * \frac{24}{1 \text{ Day}} * \frac{30}{1 \text{ Month}} = 8,640 \text{ Maximum Total Samples/Month}$$

5% of 8640 Maximum Samples/Month = 432 Samples/Month discarded. The highest remaining data sample in the inbound or outbound would be the 95th Percentile.

Except as expressly set forth herein, all terms and conditions of the Original Agreement shall remain in full force and effect and may not be changed unless in writing signed by all parties. In the event of a conflict between the terms of this Amendment and the Original Agreement, this Amendment shall control.

Atom Entertainment, Inc.	Reality Digital, Inc
225 Bush Street, Suite 1200	600 Townsend St, Suite 170e
San Francisco, CA	San Francisco, CA 94103
Signature: 	Printed Name:
Title: VP & GM	Signature:
Date: 10/12/07	Title:
	Date:

Scott Roesch
Vice President & General Manager
AtomFilms

Highly Confidential

Confidential

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Signed and Dated October 12, 2007 ("Amendment Effective Date")**

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5% of 8640 Maximum Samples/Month = 432 Samples/Month discarded. The highest remaining data sample in the inbound or outbound would be the 95th Percentile.

Except as expressly set forth herein, all terms and conditions of the Original Agreement shall remain in full force and effect and may not be changed unless in writing signed by all parties. In the event of a conflict between the terms of this Amendment and the Original Agreement, this Amendment shall control.

Atom Entertainment, Inc.	Reality Digital, Inc
225 Bush Street, Suite 1200	600 Townsend St, Suite 170e
San Francisco, CA	San Francisco, CA 94103
	Printed Name:
Signature: <i>Scott Roesch</i>	Signature:
Title: VP & GM	Title:
Date: 10/12/07	Date:

Scott Roesch
Vice President & General Manager
AtomFilms

Highly Confidential

Confidential

Amendment to Reality Digital Software and Services Agreement of February 7, 2006 Signed and Dated January 10, 2008 ("Amendment Effective Date")

The following serves as an amendment to the agreement between Atom Entertainment, Inc. (formerly known as AtomShockwave Corp.), a subsidiary of Viacom Inc. and Reality Digital, Inc signed on February 7, 2006 ("Original Agreement").

WHEREAS the parties wish to extend the contract by extending the term to April 30, 2008, unless the parties revisit the contract term, and to increase the hourly development fee;

NOW THEREFORE, in consideration of the promises and of the covenants and agreements hereinafter set forth, the parties hereby agree as follows:

1. The following amendment replaces in its entirety section 9.1 in the original agreement:

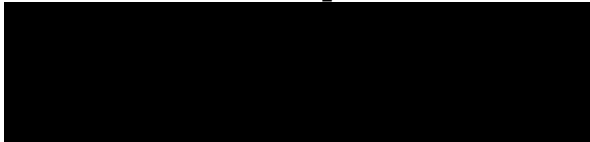
Term. This Agreement shall commence on the Effective Date and shall continue until April 30, 2008 (the "**Initial Term**"). This Agreement shall then automatically renew for monthly periods, unless otherwise terminated by either party with at least thirty (30) days prior written notice notifying the other party of the terminating party's intention to terminate.

2. The following amendment replaces the rate for Additional **software or UI development** (special features or projects over and above initial development or regular maintenance or product development) in Exhibit B, FEES:

Hourly fee for development will be \$150/hour.

Except as expressly set forth herein, all terms and conditions of the Original Agreement shall remain in full force and effect and may not be changed unless in writing signed by all parties. In the event of a conflict between the terms of this Amendment and the Original Agreement, this Amendment shall control for the sections noted.

Atom Entertainment, Inc.	Reality Digital, Inc
225 Bush Street, Suite 1200	600 Townsend St, Suite 170e
San Francisco, CA	San Francisco, CA 94103
Printed Name: <i>Scott Rorsch</i>	Printed Name: <i>Anthony J. Francis</i>
Signature: <i>[Signature]</i>	Signature: <i>[Signature]</i>
Title: <i>VP & GM</i>	Title: <i>CEO</i>
Date: <i>1/10/08</i>	Date: <i>1/10/08</i>

*Highly
Confidential***Escrow Termination Agreement**

As per the NCC Escrow agreement dated April 13, 2006 between NCC, Reality Digital (Licensor) and Atom Entertainment, Inc. (Licensee), all parties agree that we would like to terminate the current code escrow number noted above.

Please consider this written notification of release of code and termination of the contract.

Upon termination, please return all escrowed source materials and confidential information to Reality Digital, Inc. at the address below. Notwithstanding the above, no terms in the Reality Digital Software and Services Agreement are affected by this Escrow Termination Agreement.

Thank you for the excellent service during the term of this escrow.

In Witness Whereof, the parties have caused this Termination Notification to be signed as of the date indicated at their signature:

Reality Digital (Licensor):

Atom Entertainment, Inc. (Licensee):

Signed: *Cynthia J. Frances*

Signed: *Scott Roesch*

Name: CYNTHIA J. FRANCES

Name: Scott Roesch

Title: CEO

Title: VP + GM

Date: 4/21/08

Scott Roesch
Vice President & General Manager
AtomFilms

*Highly
Confidential*



May 14, 2008

Cynthia Francis
CEO
Reality Digital
600 Townsend Street, Suite 170e
San Francisco, CA 94103

Re: Software and Services Agreement

Dear Cynthia

Pursuant to the Agreement dated February 7, 2006, as amended January 10, 2008 ("Agreement") between Reality Digital, Inc. ("Reality Digital") and Atom Entertainment Inc. (formerly known as AtomShockwave Corp) ("Atom") for software and services in connection with user generated content, Atom hereby provides thirty (30) days written notice of termination. The term of the Agreement will therefore terminate as of June 30, 2008.

It has been a pleasure to work with you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Debbie Spaner".
Debbie Spaner
Vice President

cc: Scott Roesch
Jason Jordan
Joel Sanders

225 Bush Street, Suite 1200, San Francisco, CA 94104
Main Line: 415-503-2400
Fax line: 415-503-2401

Highly Confidential
**Atom Entertainment
Inc.**

Fax

To: Cynthia Francis

From: Joel Sanders

Pages: 3

Date: 10/12/2007

Re: Limelight Amendment

CC: none

☐ Urgent ☒ For Review ☐ Please Comment ☒ Please Reply ☐ Please Recycle

• **Comments:**

Cynthia:

Here is the LL amendment – could you sign and fax back? I'll send the originals via mail.

Sincerely,



Joel Sanders

→ 415-503-2555

October 12, 2007

HIGHLY CONFIDENTIAL

RD017092

Amendment to Exhibit C - continued

Highly Confidential

Company's Policy Regarding "95th Percentile" Bandwidth Utilization

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Atom Entertainment, Inc.	Reality Digital, Inc
225 Bush Street, Suite 1200	600 Townsend St, Suite 170e
San Francisco, CA	San Francisco, CA 94103
Signature: <i>[Signature]</i>	Printed Name: <i>Cynthia J. Francis</i>
Title: <i>VP & GM</i>	Signature: <i>[Signature]</i>
Date: <i>10/12/07</i>	Title: <i>CEO</i>
	Date: <i>10/12/07</i>

Scott Roesch
Vice President & General Manager
AtomFilms

Schapiro Exhibit 120

To: "David Eun" <deun@google.com>
From: "Chris Maxcy" <maxcy@google.com>
Cc:
Bcc:
Received Date: 2007-08-01 09:55:32 CST
Subject: TW Summary - Encoding to H.264

Dave,

Here is the summary we discussed today on the H.264 encoding question.
Please let me know if this is the format you are looking for.

Thanks!

Chris

Summary:

In an effort to support our strategy of making YouTube available anytime, on any screen, YouTube has been building partnerships with leading mobile carriers, handset manufacturers and CE device manufacturers worldwide. At the same time we've also launched a WAP site so users can access YouTube content from mobile phones. In order to deliver content through the WAP site and through IP connected devices like the Apple TV we made the decision to re-encode YouTube files into the H.264 (MPEG-4) format. This is an industry standard format for mobile delivery.

To date the YouTube engineering team has re-encoded approximately 30,000 of the top watched videos on YouTube. The re-encoding process is completely automated - we look for the most watched content and prioritize this for re-encoding. By October 2007 the goal is to have the entire YouTube video catalog encoded into the H.264 format to support our broad Mobile/IPTV efforts.

When we license content from a media company or identify & license content through the Content Management System (audio/video fingerprinting, or text search tool) the partner has the option to disable distribution of their content off of the YouTube.com site. This includes blocking content from the YouTube WAP site or from being displayed on the Apple TV/iPhone. Regardless of where consumers access YouTube (website, Apple TV or the WAP site) all content is delivered in a streaming only format - no downloads are permitted. Content that is removed from the main YouTube site is simultaneously removed from our IPTV and Mobile channels to ensure we protect the rights of content owners.

--

Chris Maxcy
YouTube.com
chris@youtube.com

Schapiro Exhibit 121

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.)
-----)

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF CUONG DO
SAN FRANCISCO, CALIFORNIA
FRIDAY, FEBRUARY 13, 2009

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CCRR, CLR
JOB NO. 16417

FEBRUARY 13, 2009

9:01 a.m.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF
CUONG DO, SHEARMAN & STERLING, LLP 525 Market
Street, San Francisco, California, pursuant to
notice, before ANDREA M. IGNACIO HOWARD, CLR,
CCRR, RPR, CSR License No. 9830.

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

FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

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SARAH A. MAGUIRE, Esq.

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GOOGLE, INC.:

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

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

WILSON SONSINI GOODRICH & ROSATI

By: MICHAEL H. RUBIN, Esq.

650 Page Mill Road

Palo Alto, California 94304-1050

(650) 493-9300 mrubin@wsgr.com

ALSO PRESENT:

Adam Barea, Google, Inc.

Kelly Truelove, Consultant

Lou Meadows, Videographer.

---oOo---

1 DO

2 11:03:50 (Document marked Do Exhibit 2

3 11:03:58 for identification.)

4 11:03:58 MR. DESANCTIS: Q. I ask that you give it a

5 11:03:59 quick read while I note for the record that this is a

6 11:04:02 one-page document marked GOO001-2482760.

7 11:04:28 A Okay.

8 11:04:28 Q Do you recognize this as an e-mail exchange

9 11:04:30 between you and others at YouTube?

10 11:04:36 A Yes.

11 11:04:36 Q Okay. In the middle of the page -- in the

12 11:04:41 middle of the page, Colin Corbett -- am I pronouncing

13 11:04:53 that right?

14 11:04:54 A Corbett.

15 11:04:54 Q Corbett writes "Ten minutes is not going down

16 11:04:57 too well," and you responded.

17 11:05:00 What -- what does "ten minutes" mean in this

18 11:05:03 context? What are -- what were you and Colin talking

19 11:05:07 about here?

20 11:05:08 A To my recollection, ten minutes was the

21 11:05:13 policy where the YouTube system did not allow end

22 11:05:19 users to upload videos that were -- that its playback

23 11:05:26 length was longer than ten minutes.

24 11:05:29 Q Okay. And you wrote back that "I'm not a fan

25 11:05:35 of this policy either."

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11:05:36 So what was it that you weren't a fan of?

11:05:47 A My main objection was that there are -- there
11:05:51 are so many different cases where a user should be
11:05:55 able to upload a video longer than ten minutes. You
11:06:02 know, for example, you know, you know wedding videos
11:06:05 are -- unless things go very badly, it's longer than
11:06:10 ten minutes, right. So generally on -- on the range
11:06:13 of hours, and that -- you know, that is some -- that
11:06:18 is something where the uploader is, you know, very
11:06:22 likely to own the copyright to that and should be able
11:06:25 to upload that.

11:06:27 Q Okay. And you go on in that paragraph to
11:06:30 say, quote, "Review before making public," end quote,
11:06:36 "for > than 10 minute videos seems to be the right
11:06:40 thing to do." And it continues, which we'll get to in
11:06:43 a minute.

11:06:44 What do you mean by "Review before making
11:06:46 public"?

11:06:47 A So it was -- back then, it was, you know, my,
11:06:52 you know, relatively sort of naive assumption that we
11:06:59 could -- you know, prior to the video being made
11:07:04 public to the, you know, YouTube users, that we
11:07:07 could -- that the YouTube -- some subset of the
11:07:10 YouTube employees, you know, could actually review,

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11:07:13 you know, these videos that were longer than ten
11:07:16 minutes that were being uploaded to the website.

11:07:18 Q Okay. Why do you say that was naive?

11:07:27 A It was -- I was -- my focus, at that point,
11:07:33 was still on scalability of the website. I hadn't put
11:07:36 into, like, sort of -- you know, I hadn't really
11:07:39 thought through and put into human terms what that --
11:07:43 you know, how many people that would require, and --
11:07:46 and I did not know all the, you know, legal
11:07:49 complexities of, you know, a situation, and I still
11:07:53 don't, you know, to this day.

11:07:55 So, you know, I didn't -- you know, I had no
11:07:58 idea what was entailed in that.

11:08:00 Q Okay. It then -- to finish this sentence, it
11:08:06 says, "Review -- review before making public for > ten
11:08:09 minute videos seems to be the right thing to do,
11:08:12 especially considering the army of content reviewers
11:08:15 we seem to have now."

11:08:18 What were you referring to as the "army of
11:08:21 content reviewers"?

11:08:24 A I was referring to a set of, I believe --
11:08:26 what I believe to have been about somewhere in the
11:08:31 range of three to five people who -- who I believe to
11:08:35 have been full-time content reviewers, or I shouldn't

Schapiro Exhibit 122

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ATTORNEYS EYES ONLY

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. 07CV03582
YOUTUBE, INC., YOUTUBE LLC, and)
GOOGLE, INC.,)
Defendants.)
_____)

Deposition of VARUN KACHOLIA

Palo Alto, California

Friday, January 8, 2010

JOB NO. 18544

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January 8, 2010

9:35 a.m.

VIDEOTAPED DEPOSITION OF VARUN KACHOLIA,
held at the offices of Wilson Sonsini Goodrich
& Rosati, 601 South California Avenue, Palo Alto,
California, pursuant to Notice before Peppina Rayna
Thompson, Certified Shorthand Reporter of the State
of California.

A P P E A R A N C E S .

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WILSON, SONSINI, GOODRICH & ROSATI

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650.493.9300
mrubin@wsgr.com

ALSO PRESENT:

WILLIAM TRUELOVE

ARMANDO CARRASCO, Videographer

1 13:02:29 Would -- Beyonce's would be higher because [REDACTED]
2 [REDACTED]
3 [REDACTED] Is
4 that correct?
5 MR. RUBIN: Objection, vague, calls for
6 speculation, incomplete hypothetical.
7 [REDACTED]
8 [REDACTED]
9 MS. MAGUIRE: Okay.
10 Q What are some other inputs?
11 A Some other inputs to rank --
12 Q Mm-hmm.
13 A -- to order this list?
14 Q Mm-hmm.
15 13:03:24 A One other input is [REDACTED]
16 [REDACTED].
17 Q Okay.
18 A So kind of like the [REDACTED].
19 Q So that newer queries are [REDACTED]
20 [REDACTED]?
21 A (Witness nods head)
22 Q Okay. Are there more?
23 A No, not that I can think of.
24 Q Okay. I'm sorry. Just for the sake of the
25 record:

1 13:03:52 The [REDACTED] ?

2 A It's -- it's a function of [REDACTED]
3 [REDACTED]
4 [REDACTED] and I am not deeply familiar with the
5 exact ordering them.

6 (Telephonic interruption in the proceedings)

7 (Record read)

8 THE WITNESS: The exact function that is used
9 that does the ordering.

10 MS. MAGUIRE:

11 Q Okay. You had said it is a function of [REDACTED]
12 [REDACTED]. What do you mean by
13 that?

14 A It -- [REDACTED]

15 13:05:16 [REDACTED]

16 [REDACTED]

17 Q [REDACTED] okay. I'm sorry. I was just not
18 understanding.

19 Are the suggested terms [REDACTED]

20 [REDACTED] ?

21 MR. RUBIN: Objection, vague.

22 THE WITNESS: "Suggested terms" [REDACTED]

23 [REDACTED].

24 MS. MAGUIRE: Okay. And I'm going to hand you
25 a document.

1 13:06:26

Is it 8?

2

(Plaintiff's Exhibit 8 marked for

3

identification)

4

MS. MAGUIRE: Please have a look at this,

5

and -- just so you know -- I'm not going to ask you any

6

questions about the comments on the post.

7

While you're looking at it, I'm just going to

8

note for the record that this document is a page print

9

from the official YouTube log printed on January 6th,

10

2010. The date of the blog entry is May 16th, 2008.

11

The URL for the post is http colon slash slash

12

YouTube dash global dot blogspot.com slash 2008 slash 05

13

slash new dash features dash four dash search dash

14

contacts dash end dash HTML.

15 13:07:34

Please let me know when you're ready.

16

MR. RUBIN: I'd like to restate my objection

17

for the record to this document as to all other

18

printouts that were not produced in this case that

19

you've used during this deposition.

20

MS. MAGUIRE: Okay.

21

Q Are you familiar with the YouTube blog?

22

A Yes, I read it. Occasionally.

23

Q You said? I'm sorry?

24

A I read it occasionally.

25

Q Okay. Does this appear to be a page from the

1 13:36:29 Q Okay. Does every search typed in generate Also
2 Try suggestions?
3 MR. RUBIN: Objection.
4 THE WITNESS: I don't know.
5 MS. MAGUIRE: You don't know.
6 THE WITNESS: No.
7 Okay. I think I'm still a little confused on
8 the super string that you mentioned.
9 Katt Williams is one of the suggested terms?
10 A Mm-hmm.
11 Q How does that overlap with Comedy Central?
12 MR. RUBIN: Objection, vague.
13 A It doesn't.
14 Q Okay. So the how -- how is this word Katt
15 13:37:19 Williams generated as an Also Try term?
16 MR. RUBIN: Objection, vague, calls for
17 speculation.
18 THE WITNESS: Because users searching for
19 Comedy Central then subsequently search for Katt
20 Williams.
21 MS. MAGUIRE:
22 Q So there's been a search for?
23 A Katt Williams.
24 Q Okay.
25 A That is one other mechanism in which Also Try

1 13:37:52 is generated.

2 Q Okay. Okay.

3 Mr. Kacholia, are you familiar with a feature
4 called Related Videos?

5 A Yes.

6 Q Okay. What is it?

7 A These are the videos on the YouTube watch pages
8 which has shown on the right-hand side under the related
9 videos tag.

10 Q And how does the feature determine if one video
11 is related to another video?

12 MR. RUBIN: Objection, vague, calls for a
13 narrative.

14 THE WITNESS: It uses -- one of the approaches
15 13:39:08 is to use the metadata in the original video and
16 identify how much it overlaps with the related video.
17 And, based on that...

18 MS. MAGUIRE:

19 Q Based on that, what?

20 A [REDACTED]
21 [REDACTED]

22 Q Okay. What do you mean by overlap?

23 A If they have [REDACTED].

24 Q If the metadata -- if the metadata have [REDACTED]
25 [REDACTED]?

1 13:39:44 A [REDACTED].

2 Q Does YouTube use a Google system to make this

3 determination?

4 MR. RUBIN: Objection, vague.

5 THE WITNESS: What do you mean by this?

6 MS. MAGUIRE: Sorry.

7 Q Does YouTube use Google technology to power

8 other-related-videos matching?

9 MR. RUBIN: Objection, vague.

10 THE WITNESS: Google algorithms and systems are

11 generating related videos.

12 MS. MAGUIRE: Okay.

13 Q Do you know if there are different systems for

14 coming up with related videos also acting?

15 13:40:43 MR. RUBIN: Objection, vague.

16 THE WITNESS: Yes.

17 MS. MAGUIRE:

18 Q Do you know what those are?

19 A Related videos also -- the related videos tab

20 also contains promoted videos at times, promoted videos.

21 And they are generated by a separate system.

22 Q What system is that?

23 A The Google promoted videos, YouTube promoted

24 video system.

25 Q Okay. Are you aware of any other systems?

1 13:41:35 A I can't think of any other right now.

2 Q Okay. Are you familiar with the system called
3 the awesome system?

4 MR. RUBIN: Objection, vague.

5 THE WITNESS: I've heard the term awesome, but
6 I don't know what you mean by Awesome System.

7 MR. MAGUIRE: Okay.

8 Q Are you familiar with the collaborative filter
9 system?

10 A Yes.

11 Q Can you -- what is the collaborative filter
12 system?

13 A It's not a Google specific system. And
14 collaborative filtering is a computer science technology
15 13:42:16 or computer science algorithm.

16 All it means is it, in an aggregate, looks at
17 items visited by users who are watch -- who are at the
18 same item as the current user.

19 Q I see. Okay. Okay. And that system is in
20 place today?

21 MR. RUBIN: Objection, vague.

22 It -- if you want to ask questions about these
23 types of issues that you -- I'm going to need you to
24 ground it in the scope of notice and not just general
25 questions about computer science principles as applied

1 13:42:54 and whether they are in place today generically. It's
2 not clear what you mean, what you're asking about. So I
3 can't tell whether you're asking a question that is
4 within the scope of the notice or not.

5 THE WITNESS: Can you define the system?

6 MS. MAGUIRE:

7 Q I'm trying to ask if that -- if this
8 collaborative filter, collaborative filtering part of
9 the Google map -- the Google system that's doing the
10 "related video" work?

11 A I'm sorry. I lost you.

12 Q The collaborative filter that you just
13 described to me.

14 A Mm-hmm.

15 13:43:28 Q Is that a component of the Google system that's
16 doing the related-video work?

17 MR. RUBIN: Objection, misstates the witness'
18 testimony.

19 I don't believe Mr. Kacholia described a
20 collaborative system to you. He described the concept
21 of collaborative filtering to you.

22 MS. MAGUIRE: That's fair. That's what I was
23 trying to get at.

24 MR. RUBIN: If you have a specific question,
25 please ask it. But I want to make sure that there's no

1 13:43:53 misascribing of testimony to the witness to generate a
2 new question from.

3 MS. MAGUIRE: Okay. Let's actually strike
4 that.

5 Q Do related videos appear on the watch page for
6 all videos on YouTube?

7 MR. RUBIN: Objection.

8 THE WITNESS: I don't know what you mean by
9 "all".

10 MS. MAGUIRE:

11 Q Are you aware of any videos on YouTube not
12 having "related videos"?

13 MR. RUBIN: Objection, vague as to time.

14 THE WITNESS: I don't know.

15 13:45:04 MS. MAGUIRE: Okay. Let's look at a document.
16 (Plaintiff's Exhibit 12 marked for
17 identification)

18 MS. MAGUIRE: This is Exhibit 12, Mr. Kacholia.

19 While you're looking at it I will note
20 for the record this is a page print from a YouTube watch
21 page printed on January 5th, 2010 at 7:57 p.m. The
22 title of the video is Alicia Keys, Stephen Colbert.
23 Quote, Empire state of mind, quote, not Jay-Z.

24 So the URL of this video is http colon slash
25 slash www dot youtube.com slash watch question mark v

1 13:46:19 equals capital Q capital N capital X, three. Capital U
2 seven capital Q capital W small n small y small x.

3 And this is -- excuse me. Please let me know
4 when you are ready to talk about this document.

5 MR. RUBIN: I'd like to restate my objections
6 to this type of exhibit being introduced in this
7 deposition. There is insufficient foundational
8 information being provided.

9 THE WITNESS: Okay.

10 MS. MAGUIRE: Okay.

11 Q Does this appear to be a YouTube watch page to
12 you?

13 A It appears to be.

14 Q Okay. Could you please take a look at the
15 13:47:22 Related Videos box on the right side of the page?

16 A Yes.

17 Q Are the videos in this box ranked in any way?

18 MR. RUBIN: Objection, calls for speculation.

19 THE WITNESS: Yes.

20 MS. MAGUIRE:

21 Q How?

22 MR. RUBIN: Objection, calls for speculation.

23 THE WITNESS: They ranked based on [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 13:48:04 [REDACTED].

2 MS. MAGUIRE: Okay.

3 Q Are there related videos ranked in any way to

4 [REDACTED]

5 [REDACTED]?

6 MR. RUBIN: Objection, vague.

7 THE WITNESS: [REDACTED]

8 MS. MAGUIRE: Okay.

9 THE WITNESS: I'll just point out the first

10 video that you see there is being generated by a

11 separate system. It's not a related video, it's a

12 featured video as it says underneath it.

13 MS. MAGUIRE: Okay.

14 Q And what system is generating that?

15 13:48:47 A The featured video.

16 Q Okay. So that's completely separate from the

17 related videos feature?

18 A Yes, it's --

19 Q So the Code for the related videos feature --

20 A Mm-hmm.

21 Q -- would have some logic that says look to

22 featured videos?

23 A Featured videos are generated separately.

24 Q Okay.

25 A And it's just the fact that they are under the

1 13:50:07 featured video would come up in this related videos
2 panel that's not simply a related video?

3 A Yes.

4 Q What else?

5 A Promoted videos.

6 Q Promoted videos?

7 A Yes.

8 Q Okay. Anything else?

9 A I -- I don't know the exhaustive list, but
10 those two off the top of my head.

11 Q Okay. One example of something are shorter,
12 one of these videos is 30 seconds long. Does the
13 related videos feature take into account [REDACTED]

14 [REDACTED] when it's deciding whether to rank a video as
15 13:50:56 related and where to rank it?

16 MR. RUBIN: Objection vague.

17 THE WITNESS: [REDACTED] It -- it uses [REDACTED]
18 [REDACTED] as a component as well.

19 MS. MAGUIRE:

20 Q And how? How does it use [REDACTED]?

21 A Sim -- it's similar to the search system where
22 all these -- the [REDACTED]
23 [REDACTED] is put together into a
24 function to produce a final measure of how related it
25 is.

1 13:51:30 Q Sure.

2 A So it's hard for me to tell you is the 32nd
3 video at position 4 because it's 32nd or because it's
4 something else. I don't...

5 Q Is it possible -- I don't know if it is. Is it
6 possible to say that -- I actually don't know which way
7 it would go. It -- is it possible to say that because a
8 video is [REDACTED] -- excuse me, strike that. Let me
9 think about this for a second.

10 Is it possible to say that because a video is
11 [REDACTED] it's less likely to be returned as a highly
12 prioritized result?

13 A [REDACTED]

14 Q It's --

15 13:52:07 A [REDACTED]

16 Q Okay. And is -- [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 Q Okay. In identifying related videos for a
21 user, does the related videos feature draw on all videos
22 in YouTube?

23 MR. RUBIN: Objection, vague.

24 THE WITNESS: Can you clarify "all"?

25 MS. MAGUIRE: Sure.

1 13:52:51 Q When the system looks to see what videos to
2 recommend as related to this video --

3 A Mm-hmm.

4 Q -- does it look at every video in the YouTube
5 library, or are there some videos that are not looked
6 at?

7 A [REDACTED]
8 [REDACTED].

9 Q Okay.

10 A So "all" is ambiguous here.

11 Q Okay. What about -- what about the racey
12 videos?

13 MR. RUBIN: Objection, vague.

14 THE WITNESS: [REDACTED]

15 13:53:36 [REDACTED].

16 MS. MAGUIRE: Okay.

17 Q So there is no -- is it correct that there's --
18 whereas Suggested Search wouldn't necessarily suggest
19 racey -- excuse me. Strike that.

20 Where Suggested Search would not suggest [REDACTED]
21 [REDACTED] is there anything like that going on in Related
22 Videos or no?

23 MR. RUBIN: Objection.

24 THE WITNESS: Related video is not based on
25 terms, actually related video is based on videos.

1 13:54:09 MS. MAGUIRE: Mm-hmm.

2 THE WITNESS: So your question would be...

3 MS. MAGUIRE:

4 Q There is metadata that indicates whether a

5 video is [REDACTED] though?

6 A Yes.

7 Q So the -- does the related-video feature

8 consider the metadata for example that says the video is

9 [REDACTED] when it's considering whether to return a

10 suggestion?

11 MR. RUBIN: Objection.

12 MS. MAGUIRE:

13 Q And what affect does that have?

14 A If the original video is [REDACTED], then we strive

15 13:54:38 [REDACTED].

16 Q So if the original video is [REDACTED]?

17 A Yes.

18 Q Then you strive not to --

19 A [REDACTED]. Sorry. Yes.

20 Q Okay. So if the original video [REDACTED]

21 [REDACTED]

22 o [REDACTED], right?

23 A Yes, that is one of the inputs through the

24 algorithm.

25 Q Are there any other things like that?

1 13:55:05 A Like what?

2 Q Strike that, actually.

3 Do you -- is there a limit on how many videos

4 a -- let me try that again.

5 Is there a limit on how many videos can be

6 related to the video a user is watching?

7 MR. RUBIN: Objection, vague, calls for

8 speculation.

9 THE WITNESS: I don't understand the

10 question.

11 MS. MAGUIRE: Okay.

12 Q This box [indicating]?

13 A Yes.

14 Q Is there a limit to how many videos can go in

15 13:55:37 the Related Videos box?

16 MR. RUBIN: Objection.

17 MS. MAGUIRE:

18 Q Like does it only suggest 15 videos or could it

19 suggest an infinite number of videos?

20 MR. RUBIN: Objection.

21 THE WITNESS: [REDACTED].

22 I don't know off the top of my head what is the [REDACTED]

23 there, what is the [REDACTED]. But I think one of

24 the things missing here is the scroll bar here that

25 tells you.

1 13:56:03 MS. MAGUIRE: Okay.

2 MR. RUBIN: Would now be a good time to take a

3 break, or are you almost done?

4 MS. MAGUIRE: I'm actually very close to being

5 done.

6 MR. RUBIN: Okay.

7 MS. MAGUIRE:

8 Q Are you familiar with a feature called "What's

9 Being Watched Right Now"?

10 A No.

11 Q Okay. Okay.

12 (Plaintiff's Exhibit 13 marked for

13 identification)

14 MS. MAGUIRE: This is Exhibit 13. And I'm just

15 13:56:58 going to go note for the record that this is an email

16 from Hunter Walk to Quando Mary Rose Duncan and Erik

17 Klein.

18 The subject of the document is Fine-tuning the

19 Logic on What's Being Watched Right Now, and the date is

20 June 14th, 2007. The Bates number is GOO 001-00248454.

21 Would you please let me know when you're

22 ready?

23 MR. RUBIN: I'm going to object to this

24 exhibit. It is outside the scope of this deposition,

25 and the witness has testified he's not personally

1 16:00:00 MR. GALDSTON: (Nods head)

2 Q So there's --

3 A They do not consult each other. They work in

4 parallel.

5 Q Very good, that's helpful.

6 Similarly, on the right-hand side occasionally

7 you see advertisements that are returned in response to

8 a query. And I'd ask the same question: Is there some

9 functional connection between the search functionality

10 and the advertising that's returned?

11 A It's -- do you mean advertising which is not

12 Promoted Videos?

13 Q Correct.

14 A What kind of advertising?

15 16:00:00 Q Well, I can show you an example if that would

16 be helpful.

17 A Sure.

18 Q Okay.

19 MR. RUBIN: Again, this is beyond the scope of

20 the deposition.

21 MR. GALDSTON: Sir, I'll hand you what's been

22 previously marked in the deposition of Susie Ryder

23 Exhibit 13.

24 (Plaintiffs' Exhibit 15 marked for

25 identification)

1 16:00:00 MR. GALDSTON: If you would just take a moment
2 to look at that, I will represent to you that my
3 questions will only concern the advertisement on the
4 right-hand side.

5 MR. RUBIN: Are you done with 14?

6 MR. GALDSTON: I am done with 14, right.

7 MR. RUBIN: And 4?

8 MR. GALDSTON: Correct.

9 THE WITNESS: Sir, what is your question here?

10 MR. GALDSTON:

11 Q It's really the same question that I was asking
12 about the promoted videos.

13 When the user inputs a term, in this case
14 English Premier League 2008, is there functional
15 16:00:00 connection between the search engine technology and the
16 functionality that displays advertising on the
17 right-hand side?

18 MR. RUBIN: Objection, vague, outside the scope
19 of the deposition. I'm going to allow the witness to
20 answer to establish that.

21 THE WITNESS: Okay. Our advertising system is
22 a completely separate system.

23 MR. GALDSTON: Okay.

24 THE WITNESS: It runs independent of search.
25 And search runs independent to advertising.

1 16:00:00 MR. GALDSTON: Okay. What I'm trying to
2 understand is if within the search functionality is
3 there a component when a user inputs a term like
4 "English Premier League 2008" where the search
5 functionality says let's go capture some promoted videos
6 that are relevant or responsive to these search terms
7 and put them on the right-hand side margin of the
8 screen.

9 MR. RUBIN: Objection, asked and answered with
10 respect to prior exhibit. The witness testified that
11 that was not the case, and I'm not going to allow him to
12 answer that question again.

13 It's well outside the scope of the deposition.
14 Mr. Kacholia is here to testify about selecting and
15 16:00:00 ranking videos in response to search queries. He's
16 testified --

17 MR. GALDSTON: Michael, it's really a
18 foundational question.

19 MR. RUBIN: Let me finish.

20 MR. GALDSTON: If there's no foundations to be
21 laid, it's beyond the scope. I'm just getting a yes or
22 no.

23 MR. RUBIN: Let me finish the objection.

24 He's testified with respect to a prior exhibit
25 that you are now were visiting that the other system is

1 16:00:00 separate, and he just testified that this system is
2 separate.

3 MR. GALDSTON: Okay.

4 MR. RUBIN: Okay. He already -- he already --
5 you already established -- you already
6 established that the foundation didn't exist and you
7 have gone further.

8 MR. GALDSTON: I don't believe I have. But I'd
9 like the witness to answer the question as opposed to
10 your testimony.

11 MR. RUBIN: He did. He already did and you are
12 asking the question again.

13 MR. GALDSTON: No, it's a different question.

14 THE WITNESS: You have asked the same question
15 16:00:00 five times now. You know, You can ask her to repeat the
16 same thing for you.

17 MR. GALDSTON: Indulge me on this one last
18 question, and we'll put the document away.

19 THE WITNESS: Sure. Please ask it again.

20 MR. GALDSTON: Sure.

21 Q When a user inputs a search term like "English
22 Premier League 2008" does the search functionality have
23 any functionality that determines whether, for example,
24 a promoted video is displayed on the right-hand side
25 versus an advertisement?

1 16:00:00 MR. RUBIN: Objection, vague, calls for
2 speculation, outside the scope of the deposition.

3 THE WITNESS: Search functionality is
4 independent to promoted videos or any ads shown on the
5 right. It does not know what promoted videos will be
6 shown, neither the promoter videos knows what searches
7 are.

8 MR. GALDSTON: Thank you, that's very helpful.
9 You may put that document away.

10 THE WITNESS: Am I revisiting?

11 MR. GALDSTON: I'm sorry?

12 THE WITNESS: That's okay.

13 MR. GALDSTON: I will not revisit the question
14 again.

15 16:00:00 Okay. I have two more documents to show you.
16 Looks like three.

17 MR. RUBIN: 16, so rare that I'm the one
18 getting it right.

19 MR. GALDSTON: I'll represent to you, counsel,
20 this blank 14 is a printout of the YouTube web page I
21 created yesterday where I went on the YouTube website
22 and typed into the search panel English space p-r-e.

23 MR. RUBIN: I will repeat my objections to the
24 printout of the YouTube website or the alleged printouts
25 to the YouTube website that have appeared in a number of

1 16:00:00 the exhibits today that have lacked sufficient
2 foundation. And this one, like some of the earlier
3 ones, have indicia of inauthenticity with, for example,
4 this box of auto completes that are askew from the
5 search box.

6 MR. GALDSTON: Sir, out of respect for your
7 time and patience, I'll let you know that I am only
8 going to ask questions about the Suggested Search box on
9 this documents. So --

10 THE WITNESS: I'd like to look at the document.

11 (Discussion off the record)

12 MR. GALDSTON: Let's mark it with that
13 clarified.

14 (Plaintiffs' Exhibit 16 marked for

15 16:00:00 identification)

16 (Discussion off the record)

17 MR. GALDSTON:

18 Q Sir, let me know when you're ready to go on
19 this document.

20 A I am done.

21 Q So in this Suggested Search there are series of
22 phrases that are returned in response to my query,
23 English, quote -- or, sorry, "English space p-r-e".

24 Is it fair to say, then, that this first phrase
25 that's returned "English Premier League Highlights

Schapiro Exhibit 123

Subject: RE: Notice of Copyrighted Material Posted on Shockwave.com/Daily
Jigsaws
From: Victoria Libin <EX:/O=ATOMSHOCKWAVE/OU=SAN FRANCISCO/CN=RECIPIENTS/CN=VLIBIN>
To: Adam Kessel
Cc: Date: Tue, 22 Feb 2005 19:14:43 +0000

Dear Mr. Kessel,

We are in receipt of your notice and are in the process of removing the photograph from our daily jigsaw feature. The photograph should be completely removed by the end of business today if not sooner. Photographs for the daily jigsaw puzzle are user submitted and in their submission process they warrant that they have all necessary rights to the image. In the event that a user's warranties are false, and we receive an infringement notice, our policy is to remove the image within the next business day from the receipt of notice.

I would greatly appreciate it if you could tell us how you found out our web site producer's private email (Ms. Galbraith) and how you found out the name and email of the user that submitted the photo as none of that information can be located on our web site and it makes it appear as if you had prior knowledge of the fact that the user was submitting the photo in question.

Please let me know if I can be of further assistance.

Sincerely,

Victoria Libin
Director of Legal Affairs
AtomShockwave Corp.
114 Sansome Street, 10th Floor
San Francisco, CA 94104
Tel: 415-503-2593
Fax: 415 503-2555
Check out our award winning sites:
www.shockwave.com
www.atomfilms.com

This e-mail and any attachments may contain confidential information that is legally privileged. If you are not the intended recipient, any use, copying or transmission of this information is strictly prohibited. If you received this email in error, please delete all copies and notify us at 415-503-2593.
Thank you.

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

From: Adam Kessel [mailto:ajkessel@alumni.princeton.edu]
Sent: Saturday, February 19, 2005 12:16 PM
To: megan@media.mit.edu
Cc: businessaffairs@shockwave.com
Subject: Notice of Copyrighted Material Posted on Shockwave.com/Daily
Jigsaws

(resending the following note--apparently my cryptographic signature did not appear in the first transmission)

To Ms. Galbraith and the Designed DMCA Agent of AtomShockwave Corp.:

I am an attorney representing Jonah Kessel, a photographer whose work currently appears on the Daily Jigsaw page at gameblast.shockwave.com. Apparently, without my client's permission or knowledge, his photograph

"Auckland by Night" was submitted and selected as the Daily Jigsaw feature for February 18, 2005. The photograph was submitted by 'Rhannon Hinck' <grendel96@hotmail.com>, who does not have any rights in the photograph in question and thus had no power to convey such rights or a license to AtomShockwave Corp. for use of the photograph as per your terms and conditions. In fact, if you examine the email message enclosing the copyrighted image, you will notice that my client is named as the creator of the work, and furthermore that there is no representation that the sender of the email was authorized to submit the image.

My client is concerned about his copyrighted work being used for financial gain by AtomShockwave Corp. without his permission, and apparently with no attribution whatsoever. Accordingly, he requests that the image be removed presently. We hope this matter can be resolved without further complications.

Please consider this a notice of copyright infringement under the Digital Millenium Copyright Act, Title 17 of the United States Code, Section 512(c)(2). My client is currently travelling in Australia and thus has no permanent address, however, I am authorized to act on his behalf, and I can be contacted at this email address or at the following physical address and phone number:

Adam Kessel
36 Taft Hill Park
Boston, MA 02131
(617) 230-9260

Moreover, I note that AtomShockwave Corp. may not satisfy the safe harbor conditions of 17 USC 512(c)(1) in that, contrary to the requirement of 512(c)(1)(B), AtomShockwave Corp. does in fact receive a financial benefit directly attributable to the infringing activity.

I hereby certify that this notification is accurate under penalty of perjury. I am signing this message with my PGP personal key, which I believe should satisfy the electronic signature requirement for this notice.

Thank you for your prompt response to this matter.

Adam Kessel, Esq.

Schapiro Exhibit 124

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.)
-----)

H I G H L Y C O N F I D E N T I A L
VIDEOTAPED DEPOSITION OF VICTORIA LIBIN
PALO ALTO, CALIFORNIA
WEDNESDAY, DECEMBER 2, 2009
JOB NO. 18256

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DECEMBER 2, 2009

10:14 a.m.

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

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

FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

JENNER & BLOCK, LLP

By: SCOTT WILKENS, Esq.

1099 New York Avenue, NW, Suite 900

Washington, D.C., 20001

(202) 637-6357

swilkens@jenner.com

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

WILSON SONSINI GOODRICH & ROSATI

By: BART VOLKMER, Esq.

650 Page Mill Road

Palo Alto, California 94304-1050

(650) 849-3311

bvolkmer@wsgr.com

10:15:02 ALSO PRESENT: Stanley Pierre-Louis, Viacom.

10:15:02 Armando Carrasco, Videographer.

10:15:02

10:14:11

---oOo---

1 LIBIN, VICTORIA

2 12:06:36 A I did.

3 12:06:36 Q And what was the "Daily Jigsaw" that's being

4 12:06:39 referenced there?

5 12:06:40 A It -- it is a game and we allow users to

6 12:06:46 e-mail or otherwise submit photographs that get

7 12:06:50 converted into a jigsaw puzzle for people to play

8 12:06:53 with.

9 12:06:53 Q And when users submitted photographs to the

10 12:06:57 Daily Jigsaw, Atom thought it was reasonable to rely

11 12:07:04 on their warranties that they had rights to the

12 12:07:06 submitted photographs; is that right?

13 12:07:07 MR. WILKENS: Objection to the form of the

14 12:07:10 question.

15 12:07:11 THE WITNESS: I'm not sure how I can answer

16 12:07:21 whether it was reasonable or not reasonable without

17 12:07:25 potentially getting into attorney-client privileged

18 12:07:28 communications.

19 12:07:29 MR. VOLKMER: Q. Isn't that what you're

20 12:07:31 suggesting to Mr. Kessell, though, that the policy of

21 12:07:36 relying on representations and warranties from users

22 12:07:38 was reasonable?

23 12:07:45 A From this e-mail, it appears to be a legal

24 12:07:47 position that -- that we took at the time, but whether

25 12:07:51 it's reasonable or not, I can't answer without getting

1 LIBIN, VICTORIA

2 12:07:54 into potential attorney-client communications.

3 12:07:57 Q So the legal position of Atom Entertainment,

4 12:08:02 at the time, was to rely on the representations and

5 12:08:04 warranties from users that they had the rights to

6 12:08:06 photographs that they uploaded in connection with the

7 12:08:09 Daily Jigsaw?

8 12:08:12 MR. WILKENS: Objection to the form.

9 12:08:18 You can answer.

10 12:08:19 THE WITNESS: I -- I believe it was.

11 12:08:29 MR. VOLKMER: Q. And -- and you -- and the

12 12:08:31 legal position of Atom Entertainment, at the time, was

13 12:08:35 that if those warranties were false, that content

14 12:08:39 owners should rely on the notice and takedown

15 12:08:41 provisions of the DMCA to have that content removed;

16 12:08:44 correct?

17 12:08:44 MR. WILKENS: Objection to the form.

18 12:08:48 THE WITNESS: Not entirely.

19 12:08:50 MR. VOLKMER: Q. Why is that not entirely

20 12:08:53 correct?

21 12:08:53 A Because we would often remove content that we

22 12:08:56 would encounter prior to receiving any notices.

23 12:08:59 Q I'm not sure I understand what you mean by

24 12:09:12 "we would encounter."

25 12:09:13 Can you explain that to me?

1 LIBIN, VICTORIA

2 12:09:14 A We -- often employees would encounter

3 12:09:18 content, such as, for example, photographs submitted

4 12:09:21 for the daily jigsaws, that look like they weren't

5 12:09:26 submitted by an amateur photographer, and the content

6 12:09:30 would either not be posted in the first place or would

7 12:09:32 be removed prior to receiving any actual notice.

8 12:09:38 Q And setting aside those circumstances, Atom

9 12:09:42 would rely on the notice and takedown provisions of

10 12:09:44 the -- of the DMCA if the users warranties about their

11 12:09:48 rights and the content turned out to be false; is that

12 12:09:53 right?

13 12:09:53 A I believe that calls for me to give a legal

14 12:09:55 conclusion as to whether or not the DMCA, you know,

15 12:10:02 allows companies to rely on the representations and

16 12:10:05 warranties of users, and I can't really speak to -- to

17 12:10:08 a legal conclusion on that matter.

18 12:10:10 Q I'm not asking for a legal conclusion. There

19 12:10:12 is a circumstance that you -- start that over.

20 12:10:30 I'm not asking for a legal conclusion. There

21 12:10:31 was a circumstance that you referenced earlier that

22 12:10:34 Atom employees might remove content submitted to the

23 12:10:38 Daily Jigsaw without receiving a DMCA notice; is that

24 12:10:44 correct?

25 12:10:46 A That's correct.

Schapiro Exhibit 125

EXHIBIT A

premier league
uk football
uk soccer
manchester united
man united
man utd
chelsea
arsenal
aston villa
blackburn
bolton
everton
fulham
hull city
liverpool
portsmouth
stoke city
sunderland
tottenham
west ham
wigan
french open
roland garros
federer
nadal
sharapova
ivanovic
jankovic
safina
williams
hantuchova
monfils
gulbis
henin
blake
djokovic
kuerten
ancic
kuznetsova
nestor
la riots
reginald denny
north hollywood shootout
madonna wedding
sean penn wedding
tank chase
tank pursuit
bus chase

bus pursuit
motorcycle chase
motorcycle pursuit
dangerous pursuits
Beating of man in white panel truck
Beating of Man in Brown Hatchback with Rescue
motorcycle into bus
michael jackson burned
Black Magic Woman
Far Away Places
I Hadn't Anyone Til You
I'm Confessin' (That I Love You)
Inka Dinka Doo
Let's Fall In Love
Popcorn
San Antonio Rose
Smile
The Object of My Affection
Them There Eyes
Sharing The Night Together
If You're Going Through Hell
GOD BLESS THE CHILD
I GET THE SWEETEST FEELING
I WOULD DO ANYTHING FOR LOVE BUT I WON'T DO THAT
THE REVOLUTION WILL NOT BE TELEVISED
OBJECTS IN THE REAR VIEW MIRROR MAY APPEAR CLOSER THAN THEY ARE
EVERYTHING LOUDER THAN EVERYTHING ELSE
BAT OUT OF HELL
HEAVEN CAN WAIT
ALL REVVED UP WITH NO PLACE TO GO
TWO OUT OF THREE AIN'T BAD
PARADISE BY THE DASHBOARD LIGHT

I'M GONNA LOVE HER FOR BOTH OF US
READ 'EM AND WEEP
DEAD RINGER FOR LOVE
GRACEFUL GHOST
FINE AND MELLOW
LOLLIPOP
YOU TOOK THE WORDS RIGHT OUT OF MY MOUTH
Afternoon Delight
American Beauty
Soul Bossa Nova
Strawberry Letter #23
Thank God I'm a Country Boy
Stuck on You
What You Won't Do For Love
Climb Ev'ry Mountain
South Pacific
The King and I.
Do-Re-Mi
Edelweiss
The Carousel Waltz
Bali Ha'i
Getting to Know You
MY FAVORITE THINGS
OH, WHAT A BEAUTIFUL MORNIN'
OKLAHOMA
SHALL WE DANCE?
SIXTEEN GOING ON SEVENTEEN
SO LONG, FAREWELL
SOME ENCHANTED EVENING
SOUND OF MUSIC, THE
YOU'LL NEVER WALK ALONE
16 MILITARY WIVES
SIXTEEN MILITARY WIVES
A BETTER MAN
A FOOL FOR YOUR STOCKINGS
ADAM'S APPLE
ARRESTED FOR DRIVING WHILE BLIND

BACK IN THE SADDLE
BAKER STREET
BAR-B-Q
SOME BAR-B-Q
BEER DRINKERS AND HELL RAISERS
BIG FUN
BLUE JEAN BLUES
BRIGHT LIGHT FRIGHT
BROWN SUGAR
CHEAP SUNGLASSES
CHEVROLET
COMBINATION
DREAM ON
DOUBLEBACK
DRAW THE LINE
FOREVER MAN
GIMME ALL YOUR LOVIN'
GIVE IT UP
GOOD LIFE
GOT ME UNDER PRESSURE
HEARD IT ON THE X
I GOT THE SIX
I NEED YOU TONIGHT
I'M BAD, I'M NATIONWIDE
INTELLIGANTACTILE 101
JAGER YOGA
JESUS JUST LEFT CHICAGO
JUST GOT BACK FROM BABY'S
JUST GOT PAID
KILLIN' TIME
KINGS AND QUEENS
LA GRANGE
LAST CHILD
LEGS
LET THE MUSIC DO THE TALKING
LET'S MAKE LOVE AND LISTEN TO DEATH
LORD OF THE THIGHS
MAKE IT
MAMA KIN (aka MAMMA KIN, MOMMA KIN)
MEXICAN BLACKBIRD
MONEY
MOVIN' OUT
MUSIC IS MY HOT HOT SEX
MY HEAD'S IN MISSISSIPPI
NO MORE, NO MORE
NO SURPRIZE
NOBODY'S FAULT

NOBODY'S HOME
NOTHING'S NEWS
O VALENCIA!
OF ANGELS AND ANGLES
OFF THE HOOK
OH YEAH
PANDORA'S BOX
PLANET OF WOMEN
PRECIOUS AND GRACE
PRETENDING
PUT YOURSELF IN MY SHOES
RATS IN THE CELLAR
REEFER HEADED WOMAN
REEFER HEAD WOMAN
RIGHT DOWN THE LINE
ROCK AND ROLL QUEEN
ROCK ON
ROUGH BOY
ROUND AND ROUND
S.O.S.
SAME OLD SONG AND DANCE
SEASONS OF WITHER
SHANKILL BUTCHERS
SHARP DRESSED MAN
SICK AS A DOG
SLEEPING BAG
SONS & DAUGHTERS
STAGES
STUCK IN THE MIDDLE
SUMMERSONG
SURE GOT COLD AFTER THE RAIN FELL
SWEET EMOTION
THE CRANE WIFE 1 & 2
THE CRANE WIFE 3
THE INFANTA
THE ISLAND: 1) COME AND SEE
THE PERFECT CRIME #2
THE SPORTING LIFE
THUNDERBIRD
TOYS IN THE ATTIC
TUBE SNAKE BOOGIE
TUSH
TV DINNERS
UNCLE SALTY
UNDERGROUND ARMY
WAITIN' FOR THE BUS
WALK THIS WAY
WE TELL OURSELVES

WHEN MY SHIP COMES IN
WHEN THE WAR CAME
WOKE UP WITH WOOD
YANKEE BAYONET (I WILL BE HOME THEN)
YOU SEE ME CRYIN'
Here Comes The King
Dethroned
Santana
Peter Green
Quincy Jones
John Denver
South Pacific
The King and I
Clint Black
ZZ Top
Aerosmith
Decemberists
Cansei de Ser Sexy
CSS
Subways
dr. hook and the medicine show
Rodney Atkins
X-Ray Dog
Bobby Caldwell
Aeon Flux
Airbender
Almighty Tallest Red
Anchorman
Avatar
Beavis
BET Awards
Blame Canada
Braveheart
Butters
Butthead
Butt-head
Cartman
Celebrity Deathmatch
Chappelle
Classic nick
Colbert
Comedy Central
Cornholio
Daily Show
Daily Show
Dangle
Daria
David Spade
Dib
Drake and Josh
Drawn Together

Gary
Gaz
Gir
Gladiator
Godfather
Human Giant
iCarly
Indecision 2000
Indecision 2004
Indecision 2008
Indiana Jones
Invader Zim
Iron Man
Jackass
John Oliver
Jon Stewart
logo.com
Mean Girls
Midterm Midtacular
Mind of Mencia
Mr. Hankey
Mr. Krabs
Mr. Mackey
Ms. Bitters
Nick at Nite
Nick@nite
Nickelodeon
Nickjr.
Nicktoons
Nicktropolis
Noggin
Patrick Star
Professor Membrane
Punk'd
Ren&Stimpy
Reno 911
Samantha Bee
Sandy Cheeks
Showbiz Show
South of Nowhere
South Park
SP
spike.com
Sponge Bob
Squarepants
Squidward
T C R
T D S
TCR
TD5
TDS
Terrance and Philip

The Hills
Transformers
Tropic Thunder
Truthiness
Turbonick
TV Land
VMA
Wiegel buds
Wildboyz
Wonder Showzen
Zim
Zita
Zoolander

Schapiro Exhibit 126

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

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.

-----X

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.

-----X

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF MARK ISHIKAWA
PALO ALTO, CALIFORNIA
THURSDAY, JANUARY 14, 2010
JOB NO. 18548

MARK ISHIKAWA PALO ALTO, CA JANUARY 14, 2010

JANUARY 14, 2010

10:07 A.M.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF MARK
ISHIKAWA, at WILSON, SONSINI, GOODRICH & ROSATI, 650
Page Mill Road, Palo Alto, California, pursuant to
notice, before me, KATHERINE E. LAUSTER, CLR, CRR, RPR,
CSR License No. 1894.

MARK ISHIKAWA PALO ALTO, CA JANUARY 14, 2010

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

FOR THE PLAINTIFFS, VIACOM INTERNATIONAL, INC.:

JENNER & BLOCK, LLP

BY: JAMES C. COX, ESQ.

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

MAYER BROWN, LLP

BY: JOHN MANCINI, ESQ.

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MARK ISHIKAWA PALO ALTO, CA JANUARY 14, 2010

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

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Also Present:

Armando Carasco, Videographer

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2 13:55:46 on YouTube during this time?

3 13:55:48 A. Human verification of videos.

4 13:55:50 Q. Since inception of the project?

5 13:55:52 A. Yes.

6 13:55:52 Q. Did that ever -- did that aspect -- or did

7 13:55:55 that rule ever change?

8 13:55:56 A. No.

9 13:55:57 Q. So it's always been a combination of

10 13:55:59 keywords and human review?

11 13:56:02 A. It's been a combination of metadata,

12 13:56:05 keywords, and human review. The human review

13 13:56:08 process has always been in place.

14 13:56:10 MR. MANCINI: Okay. Let me next show you

15 13:56:19 a -- and mark for the witness's identification as

16 13:56:26 BayTSP Exhibit Number 10, a two-page document

17 13:56:30 bearing the Bates stamp label BayTSP 003723655

18 13:56:36 through -56, and ask the witness to briefly review

19 13:56:38 it.

20 13:56:39 (BayTSP Deposition Exhibit Number 10 was

21 13:56:39 marked for identification.)

22 13:56:46 THE REPORTER: Number 10.

23 13:56:47 MR. MANCINI: Yes.

24 13:57:51 THE WITNESS: Okay.

25 13:57:51 //

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2 13:57:51 BY MR. MANCINI:

3 13:57:52 Q. Turning your attention -- sorry. Are you

4 13:57:54 familiar with the e-mail communication that is

5 13:57:57 between yourself and Michelena Hallie on

6 13:58:00 November 17th, 2006, and is expressed herein -- is

7 13:58:06 contained herein on BayTSP Exhibit Number 10?

8 13:58:14 A. Yeah, I don't recall every e-mail ever

9 13:58:16 sent, but I do recall this conversation.

10 13:58:19 Q. What was the substance of this

11 13:58:20 conversation?

12 13:58:21 A. The substance of the conversation was to

13 13:58:23 clear the customer's perception of what keyword

14 13:58:27 searching meant in the yield based on keyword. So

15 13:58:31 in the event that we would put in a keyword such as

16 13:58:34 "Jack Ass," you would get a lot of videos and a lot

17 13:58:38 of items that may or may not have been the

18 13:58:40 copyrighted material, and we had to explain to them

19 13:58:44 what that -- what that really meant.

20 13:58:45 Q. And per this document, you state to

21 13:58:48 Miss Hallie that something like 80 percent plus are

22 13:58:51 not the content or do not meet the selection

23 13:58:54 filtering criteria as a result of these keyword

24 13:58:58 searches; is that correct?

25 13:59:00 MR. COX: Objection. Mischaracterizes the

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2 13:59:05 document.

3 13:59:06 THE WITNESS: I'm sorry, I didn't --

4 13:59:08 MR. COX: I said, "Objection.

5 13:59:08 Mischaracterizes the document." Sorry.

6 13:59:12 THE WITNESS: I'm giving Miss Hallie what

7 13:59:15 we believe is the yield of videos that match

8 13:59:19 copyrighted content based on -- on title or

9 13:59:22 keywords.

10 13:59:24 BY MR. MANCINI:

11 13:59:24 Q. And are you telling her that 80 percent

12 13:59:26 are false positives -- 80 percent plus are false

13 13:59:29 positives?

14 13:59:30 A. 80 percent come back as not the infringing

15 13:59:34 material.

16 13:59:35 Q. And the document refers, you'll see on

17 13:59:39 -3656 that you prepared a spreadsheet that you sent

18 13:59:43 to her at 6:00 p.m. the day before?

19 13:59:47 A. Yes.

20 13:59:47 Q. Did that spreadsheet contain the

21 13:59:49 information you just testified to?

22 13:59:51 A. I would have to see the spreadsheet.

23 13:59:53 Q. Okay. I'll rephrase.

24 13:59:56 At some -- on or about November 17th,

25 13:59:59 2006, or the date prior, you prepared a spreadsheet

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2 14:00:05 that showed that 80 percent plus of the results were

3 14:00:09 either not the content, or did not meet the

4 14:00:12 selection filtering criteria for the content;

5 14:00:15 correct?

6 14:00:16 A. I would have to see the spreadsheet. To

7 14:00:21 know what's -- is -- what's stated in the e-mail

8 14:00:23 versus what was actually sent, I would have to see

9 14:00:26 the document.

10 14:00:27 Q. Leaving aside the spreadsheet or the

11 14:00:29 e-mail, I believe you testified before that this

12 14:00:31 document refreshed your recollection as to these

13 14:00:33 events; correct?

14 14:00:34 A. Yes.

15 14:00:34 Q. Were you doing this analysis because, on

16 14:00:36 or about November 2006, MTVN was still considering

17 14:00:41 to use only keywords to search into?

18 14:00:47 A. Keyword searching has always been a method

19 14:00:51 that we've used. And keyword enforcement is

20 14:00:54 something that we as a company would never employ,

21 14:00:56 because it would create a series of false positives.

22 14:01:02 Q. And so my question, sir, is -- is -- was

23 14:01:04 this exchange, and whatever spreadsheets or data

24 14:01:08 were prepared as a result of this exchange -- was

25 14:01:12 this communication and exchange done in order to

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2 14:01:18 explain to MTVN just that point, that keyword

3 14:01:24 searches alone are not a verifiable way to take down

4 14:01:29 content off of YouTube?

5 14:01:31 A. This conversation, to the best of my

6 14:01:32 knowledge, or best of my recollection, was based on

7 14:01:35 the fact that you could put in a search term, and

8 14:01:38 you would see a large number of results. And I

9 14:01:40 thought that those -- that -- you know, files that

10 14:01:43 came back on the search term or the number of

11 14:01:46 searches -- the results that came back would -- you

12 14:01:50 know, were infringing. So, we had to explain why

13 14:01:54 you would get 500 -- 500 counts for "South Park,"

14 14:01:56 and the yield would only be, you know, X.

15 14:02:04 Q. And were they satisfied after you gave

16 14:02:07 this explanation?

17 14:02:07 A. The --

18 14:02:08 MR. KENDALL: Calls for speculation.

19 14:02:10 THE WITNESS: Yeah, I can't tell you

20 14:02:11 whether they were satisfied.

21 14:02:12 BY MR. MANCINI:

22 14:02:13 Q. Did they express their -- did they express

23 14:02:15 satisfaction after you gave this explanation?

24 14:02:18 A. At this point in the project they had

25 14:02:20 accepted that as a -- as a viable answer.

Schapiro Exhibit 127

From: Leland Woo
Sent: Friday, November 17, 2006 4:32 PM
To: Mark M. Ishikawa
Cc: Evelyn Espinosa; Courtney Nieman; Travis Hill; Deana Arizala
Subject: RE: Infringements pending by Protocol & Time

I think our terminology is confusing her. We should just illustrate something like "When we use the keyword <INSERT HERE>, we get <INSERT HERE> postings to review. After we reviewed all the postings, we find that 80%+ is not the content or does not meet our selection/filtering criteria"

The last sentence should eliminate most questions.

LW

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

From: Michelena.hallie@mtvn.com
Sent: Fri 11/17/2006 8:02 AM
To: Mark M. Ishikawa
Cc: Evelyn Espinosa; Courtney Nieman; Leland Woo; Travis Hill; Deana Arizala
Subject: RE: Infringements pending by Protocol & Time

I got your voicemail. This is helpful though I still have a couple of questions:

What do you mean that many of the results do not contain the actual asset 80%+? How many of these are we leaving on the table? We have to figure out if we want to tweak that.

Have the number of takedowns gone up since yesterday? E.g. is the episode my son found down now? And did you figure out why that, and I assume others, was missed in earlier rounds?

We may be coming back to you with new titles to add and others to delete. At that point I'll need to know how quickly we can start takedowns on the new ones.

Thanks.

From: Mark M. Ishikawa [mailto:marki@baytsp.com]
Sent: Friday, November 17, 2006 3:06 AM
To: Hallie, Michelena
Cc: Evelyn Espinosa; Courtney Nieman; Leland Woo; Travis Hill; Deana Arizala
Subject: Infringements pending by Protocol & Time
Importance: High

Michelena,

The Paramount_cc distribution list is an internal e-mail distribution group. We have the same Customer Support Staff on both accounts, and it was just laziness that I was using the Paramount_cc group. The distribution group was : Arielle Kim; Courtney Nieman; Deana Arizala; Evelyn Espinosa; Mark M. Ishikawa; Richard Kawasaki; Warren Kim

I think this is what you're looking for. These are the fully reviewed infringements (someone has verified that these do meet the criteria for infringing material) and have not been sent because the length of the posting was too short, or did not meet the takedown rules. The previous spreadsheet I sent at around 6pm your time was a spreadsheet showing the total number of postings on YouTube that were either Approved (contained appropriate content), or Declined (did not contain infringing content, or was less than 20 seconds on length). You will see that a large percentage of what is returned as results for the asset keywords does not contain the actual asset 80%+.

The spreadsheet attached in this e-mail will help you determine the number of clips posted by time segment. We will work on being able to show you number of new postings by week. Our engineering team will give me an estimate on when we can expect this feature to be added early next week.

I hope this is what you're looking for.

Mark