

HIGHLY CONFIDENTIAL

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

VIACOM INTERNATIONAL INC., ET)	
AL.,)	
)	ECF Case
Plaintiffs,)	
v.)	Civil No. 07-CV-2103 (LLS)
)	
YOUTUBE, INC., ET AL.,)	
)	
Defendants.)	
THE FOOTBALL ASSOCIATION)	
PREMIER LEAGUE LIMITED, ET AL.,)	
on behalf of themselves and all others)	ECF Case
similarly situated,)	
)	Civil No. 07-CV-3582 (LLS)
Plaintiffs,)	
v.)	
)	
YOUTUBE, INC., ET AL.,)	
)	
Defendants.)	

**DECLARATION OF ANDREW H. SCHAPIRO
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Andrew H. Schapiro, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I am a partner at the firm of Mayer Brown LLP, attorneys for Defendants YouTube, Inc., YouTube, LLC, and Google Inc. (collectively, "YouTube") in the above-captioned matters. I submit this Declaration in support of Defendants' Motion for Summary Judgment.

2. Attached hereto are true and correct copies of the following documents. Documents with the following Bates prefixes were produced by the following party or non-party in these actions:

HIGHLY CONFIDENTIAL

- Documents with the Bates prefix “GOO001” were produced by YouTube in these actions.
- Documents with the Bates prefixes “VIA” and “VIA-SUPP” were produced by plaintiffs Viacom International Inc., Comedy Partners, Country Music Television, Inc., Paramount Pictures Corporation and Black Entertainment Television LLC (collectively, “Viacom”) in these actions.
- Documents with the Bates prefix “CAL” were produced by named plaintiff Cal IV Entertainment, LLC.
- Documents with the Bates prefix “CH” were produced by named plaintiff Cherry Lane Music Publishing Company, Inc.
- Documents with the Bates prefix “FT” were produced by named plaintiff Fédération Française de Tennis.
- Documents with the Bates prefix “PL” were produced by named plaintiff The Football Association Premier League Limited (“Premier League”), and documents with the Bates prefix “PLC” were produced by the individual Clubs making up the Premier League.
- Documents with the Bates prefix “ST” were produced by named plaintiff Stage Three Music (US), Inc.
- Documents with the Bates prefix “TUR” were produced by named plaintiff Robert Tur d/b/a Los Angeles News Service.
- Documents with the Bates prefix “XD” were produced by named plaintiff X-Ray Dog Music, Inc.
- Documents with the Bates prefix “BAYTSP” were produced by non-party BayTSP, Inc. pursuant to a subpoena.
- Documents with the Bates prefix “FS” were produced by non-party Fanscape Inc. pursuant to a subpoena.
- Documents with the Bates prefix “ICED” were produced by non-party ICED Media Ltd. pursuant to a subpoena.
- Documents with the Bates prefix “JK” were produced by non-party Jawed Karim pursuant to a subpoena.

HIGHLY CONFIDENTIAL

Exhibit	Description
1	"Best Inventions 2006," <i>Time Magazine</i>
2	Compilation of Videos Appearing on the YouTube Website
3	Excerpts of the Deposition of Tom Freston (Sept. 11, 2009)
4	Excerpts of the Deposition of Michael Wolf (Apr. 17, 2009)
5	VIA00885981 – 00885982
6	VIA00258318 – 00258319
7	VIA00328256
8	VIA00613094 – 00613095
9	VIA00329729 – 00329730
10	VIA00173284
11	Excerpts of the Deposition of Courtney Nieman (Dec. 16, 2009)
12	Excerpts of the Rule 30(b)(6) Deposition of Viacom, by Warren Solow (Dec. 18, 2009)
13	Excerpts of the Deposition of Michele Ganeless (Nov. 3, 2008)
14	VIA00349674
15	VIA01129009 – 01129010
16	VIA01623231 – 01623233
17	Excerpts of the Rule 30(b)(6) Deposition of The Football Association Premier League Limited, by Oliver Weingarten (Dec. 15-16, 2009)
18	Excerpts of the Deposition of Michael Housley (Oct. 3, 2008)
19	<i>Perfect 10, Inc. v. Amazon</i> , CV-05-4753, slip op. (C.D. Cal. Nov. 4, 2008)
20	Excerpts of the Rule 30(b)(6) Deposition of Edward B. Marks Music Company, Freddy Bienstock Music Company d/b/a Bienstock Publishing Company and Alley Music Corporation, by Theodora Michaels (Sept. 24, 2009)
21	Excerpts of the Deposition of Theresa Torrance (Jan. 21, 2009)
22	The Rodgers & Hammerstein Organization's Responses and Objections to Defendants' First Set of Requests for Admission (Jan. 12, 2010)
23	"Garage Brand: With NBC Pact, YouTube Site Tries to Build a Lasting Business --- Internet Video Service Sketches A Path to Profitability," <i>The Wall Street Journal</i> , June 27, 2006
24	Excerpts of the Deposition of Andrew Lin (July 2, 2009)
25	Excerpts of the Deposition of Tina Exarhos (Feb. 23, 2009)
26	VIA00330333 – 00330334
27	Excerpts of the Deposition of Amy Powell (Dec. 15, 2009)
28	GOO001-05161257 – 05161258
29	Excerpts of the Deposition of Kyle Bonici (Apr. 22, 2009)
30	YouTube screenshot of paraccount channel
31	Excerpts of the Deposition of Cuong Lam (Aug. 6, 2009)
32	Excerpts of the Deposition of Stephen Farrell (July 14, 2009)
33	FS048715 – 048716
34	VIA00434221 – 00434222

HIGHLY CONFIDENTIAL

Exhibit	Description
35	VIA00429321 – 00429322
36	ICED000002 – 000031
37	VIA00353857 – 00353858
38	VIA00348985
39	VIA00398639
40	VIA00365701 – 00365722
41	VIA00397857 – 00397862
42	VIA00830861 – 00830863
43	VIA11660417 – 11660421
44	BAYTSP 001125131 – 00sdz1125133
45	Excerpts of the Deposition of Damon Burrell (Apr. 14, 2009)
46	VIA00455125
47	Excerpts of the Deposition of Megan Wahtera (Dec. 4, 2009)
48	VIA00374613 – 00374616
49	VIA00908729 – 00908732
50	VIA10406143
51	VIA11787096
52	VIA00431656
53	GOO001-01151179
54	BAYTSP 001093408 – 001093413
55	BAYTSP 003724704 – 003724735
56	Excerpts of the Deposition of Adam Cahan (Dec. 9, 2009)
57	BAYTSP 001125563 – 001125608
58	VIA01676948 – 01676949
59	BAYTSP 001125622 – 001125625
60	BAYTSP 001093577 – 001093578
61	“No Joke: ‘SouthPark’ Uploads Spared,” <i>Multichannel News</i> , Oct. 14, 2006
62	BAYTSP 001093517 – 001093523
63	BAYTSP 003732680 – 003732681
64	BAYTSP 003740975
65	BAYTSP 003718200 – 003718202
66	BAYTSP 003863202 – 003863203
67	BAYTSP 004283227 – 004283230
68	BAYTSP 004345611 – 004345612
69	BAYTSP 003733345
70	BAYTSP 004283955
71	BAYTSP 003727465 – 003727496
72	BAYTSP 003719298 – 003719299
73	VIA11788097
74	BAYTSP 003721230 – 003721233
75	BAYTSP 003723588
76	BAYTSP 001125759

HIGHLY CONFIDENTIAL

Exhibit	Description
77	VIA00235270
78	Excerpts of the Rule 30(b)(6) Deposition of The Rodgers & Hammerstein Organization, by Victoria Traube (Oct. 8, 2009)
79	Excerpts of the Rule 30(b)(6) Deposition of The Rodgers & Hammerstein Organization, by Victoria Traube (Dec. 18, 2009)
80	YouTube screenshot of Sound of Music
81	CAL00000219 – 00000220
82	CAL00000783 – 00000787
83	Stage Three Music (US), Inc.’s Responses and Objections to Defendants’ First Set of Requests for Admission (Jan. 11, 2010)
84	ST00097906 – 00097911
85	Excerpts of the Rule 30(b)(6) Deposition of Stage Three Music (US), Inc., by Maryann Slim (Oct. 23, 2009)
86	Cherry Lane’s Responses and Objections to Defendants’ First Set of Requests for Admission (Jan. 8, 2010)
87	CH00019803 – 00019806
88	TUR00000477 – 00000478
89	Bourne Co.’s Responses and Objections to Defendants’ First Set of Requests for Admission (Jan. 8, 2010)
90	Edward B. Marks’ Responses and Objections to Defendants’ First Set of Requests for Admission (Jan. 11, 2010)
91	Bienstock Publishing Company’s Responses and Objections to Defendants’ First Set of Requests for Admission (Jan. 11, 2010)
92	Excerpts of the Rule 30(b)(6) Deposition of X-Ray Dog Music, Inc., by Timothy Stithem (Dec. 8, 2009)
93	XD00063860 – 00063863
94	Excerpts of the Rule 30(b)(6) Deposition of Fédération Française de Tennis, by Michel Grach (Dec. 3, 2009)
95	FT00096512
96	FT00096491
97	FT00096527 – 00096528
98	The Music Force Media Group LLC, The Music Force LLC, and Sin-Drome Records, Ltd.’s Responses and Objections to Defendants’ First Set of Requests for Admission (Jan. 8, 2010)
99	Screenshot of YouTube account for grumpoM
100	PLC00000597 – 00000598
101	PLC00000237 – 00000238
102	Excerpts of the Rule 30(b)(6) Deposition of Stage Three Music (US), Inc., by Jeffrey Duncan (Nov. 12, 2009)
103	Cal IV Entertainment LLC’s Responses and Objections to Defendants’ First Set of Requests for Admission (Jan. 8, 2010)
104	Excerpts of the Deposition of Brian Bradford (Mar. 12, 2009)

HIGHLY CONFIDENTIAL

Exhibit	Description
105	PL00000458
106	PL00000574 – 00000575
107	Excerpts of the Rule 30(b)(6) Deposition of Fédération Française de Tennis, by Georgina Loth (Dec. 2, 2009)
108	Excerpts of the Rule 30(b)(6) Deposition of Cherry Lane Music Publishing Company, Inc., by Keith Hauprich (Sept. 24, 2009)
109	BAYTSP 004282799 – 004282800
110	GOO001-01855601 – 01855603
111	GOO001-01858440 – 01858443
112	Excerpts of the Deposition of Deborah Kadetsky (Aug. 18, 2009)
113	GOO001-00856030 – 00856031
114	VIA10405833 – 10405836
115	VIA10405976
116	VIA02088065
117	Excerpts of the Rule 30(b)(6) Deposition of Bourne Co., by Marco Berrocal (Nov. 5, 2009)
118	XD00063614 – 00063615
119	XD00063613
120	BAYTSP 002369678 – 002369679
121	BAYTSP 001125401 – 001125402
122	Excerpts of the Deposition of Warren Solow (Jan. 14, 2010)
123	BAYTSP 004282398
124	BAYTSP 004288622 – 004288623
125	VIA02090167
126	VIA02159159 – 02159177
127	Excerpts of the Deposition of Blair Harrison (Dec. 9, 2009)
128	Excerpts of the Deposition of Judy McGrath (July 29, 2009)
129	Excerpts of the Deposition of Erik Flannigan (Oct. 16, 2008)
130	Excerpts of the Deposition of Doug Herzog (Jan. 16, 2009)
131	YouTube screenshot of Theodoramichael's channel
132	Excerpts of the Rule 30(b)(6) Deposition of Auditude, Inc., by Nicholas Seet (Nov. 24, 2009)
133	Excerpts of the Deposition of Mika Salmi (Oct. 16, 2009)
134	Excerpts of the Deposition of Jason Witt (Sept. 25, 2008)
135	BAYTSP 003722239
136	Excerpts of the Deposition of Alfred Perry (Dec. 16, 2009)
137	BAYTSP 003742450 – 003742452
138	BAYTSP 001125469 – 001125474
139	Excerpts of the Deposition of Michelena Hallie (Dec. 10, 2009)
140	VIA-SUPP000001 – 000016
141	BAYTSP 003728192
142	VIA11918373 – 11918375

HIGHLY CONFIDENTIAL

Exhibit	Description
143	BAYTSP 003727194 – 003727195
144	VIA11786486
145	BAYTSP 001088445 – 001088448
146	BAYTSP 003728607 – 003728608
147	VIA 11786386
148	BAYTSP 003724925
149	VIA11562371 – 11562372
150	BAYTSP 004174398 – 004174400
151	CH00019822
152	Excerpts of the Deposition of Gregg Barron (Sept. 23, 2008)
153	Excerpts of the Rule 30(b)(6) Deposition of National Music Publishers Association, by Lauren Apolito (Jan. 7, 2010)
154	CAL00000747 – 00000748
155	Excerpts of the Deposition of Daniel Hill (Mar. 13, 2009)
156	ST00105023 – 00105026
157	ST00088238 – 00088239
158	Excerpts of the Deposition of Chad Hurley (Apr. 22, 2009)
159	Excerpts of the Rule 30(b)(6) Deposition of YouTube, by Varun Kacholia (Jan. 8, 2010)
160	GOO001-02757265 – 02757268
161	JK00005599 – 00005600
162	GOO001-02757231 – 02757232
163	JK00003225
164	GOO001-02548690
165	GOO001-02548740
166	GOO001-02123017 – 02123018
167	VIA00316614 – 00316658
168	VIA00857221 – 00857227
169	Excerpts of the Deposition of Alan Bell (Aug. 5, 2009)
170	Excerpts of the Deposition of Viacom, by Lee L'Archevesque (Feb. 18, 2010)
171	GOO001-02244041 – 02244057
172	Excerpts of the Deposition of Scott Roesch (Sept. 25, 2009)
173	VIA00613111
174	2006 CableFAX 100, Entry for Judy McGrath, <i>CableFAX Daily</i>
175	VIA10132342 – 10132363
176	Excerpts of the Deposition of Robert Tur (Nov. 12, 2009)
177	“The Man Who Could Kill YouTube,” <i>Esquire</i> , Nov. 9, 2009
178	Declaration of Michael Housley (Feb. 28, 2008)
179	Viacom Plaintiffs’ Objections and Responses to YouTube’s Third Set of Interrogatories (without attachments) (Jan. 8, 2010)

HIGHLY CONFIDENTIAL

Exhibit	Description
180	Complaint, <i>Robert Tur d/b/a Los Angeles News Serv. v. YouTube, Inc.</i> , CV06-4436 (C.D. Cal. July 14, 2006)

3. Defendants' Memorandum Of Law In Support Of Defendants' Motion For Summary Judgment refers to a number of videos that Plaintiffs have alleged as clips in suit in these actions. Attached hereto are true and correct copies of those videos. Version "A" of each video is provided in the "Flash Video," or ".flv," format, as stored on YouTube's servers. (See Declaration of Michael Solomon, submitted herewith, at ¶ 12, which explains the manner in which those videos were captured from YouTube's servers.) For the Court's convenience, we have also converted each video to the "MPEG-1" format, and include that format as version "B."

Exhibit	Description
181A	tBXNS9obErI (.flv format)
181B	tBXNS9obErI (MPEG-1 format)
182A	k4Ei7kSHCFM (.flv format)
182B	k4Ei7kSHCFM (MPEG-1 format)
183A	P5Hii42p8uA (.flv format)
183B	P5Hii42p8uA (MPEG-1 format)
184A	M9aninYQLdw (.flv format)
184B	M9aninYQLdw (MPEG-1 format)
185A	j0hF-i-bv7Q (.flv format)
185B	j0hF-i-bv7Q (MPEG-1 format)
186A	_oXsI2uabP8 (.flv format)
186B	_oXsI2uabP8 (MPEG-1 format)
187A	LL2SneogeUE (.flv format)
187B	LL2SneogeUE (MPEG-1 format)
188A	0BFCCGLZ_0k (.flv format)
188B	0BFCCGLZ_0k (MPEG-1 format)
189A	rIDQE5iotFg (.flv format)
189B	rIDQE5iotFg (MPEG-1 format)
190A	g56jaRx3RmE (.flv format)
190B	g56jaRx3RmE (MPEG-1 format)
191A	LA17VFiwRSM (.flv format)

HIGHLY CONFIDENTIAL

Exhibit	Description
191B	LA17VFiwRSM (MPEG-1 format)
192A	KmnHFYZXygk (.flv format)
192B	KmnHFYZXygk (MPEG-1 format)
193A	KA24Sg1K_Ys (.flv format)
193B	KA24Sg1K_Ys (MPEG-1 format)
194A	ZOLLbGGZgy4 (.flv format)
194B	ZOLLbGGZgy4 (MPEG-1 format)
195A	4hrdXObreII (.flv format)
195B	4hrdXObreII (MPEG-1 format)
196A	5lDGnGgR9JE (.flv format)
196B	5lDGnGgR9JE (MPEG-1 format)
197A	FKhEli0mSpk (.flv format)
197B	FKhEli0mSpk (MPEG-1 format)
198A	If9oyBH623s (.flv format)
198B	If9oyBH623s (MPEG-1 format)
199A	XbrWIKLJtuE (.flv format)
199B	XbrWIKLJtuE (MPEG-1 format)
200A	2F-tATkenkM (.flv format)
200B	2F-tATkenkM (MPEG-1 format)
201A	RMvxHd5gB4o (.flv format)
201B	RMvxHd5gB4o (MPEG-1 format)
202A	S6U_Z2BMkaY (.flv format)
202B	S6U_Z2BMkaY (MPEG-1 format)
203A	1hubX0wlTjQ (.flv format)
203B	1hubX0wlTjQ (MPEG-1 format)
204A	2UKkvEObQxM (.flv format)
204B	2UKkvEObQxM (MPEG-1 format)
205A	phFBa9AhC0A (.flv format)
205B	phFBa9AhC0A (MPEG-1 format)
206A	Y_0MEVbbQg8 (.flv format)
206B	Y_0MEVbbQg8 (MPEG-1 format)
207A	O9ht-qIMyu0 (.flv format)
207B	O9ht-qIMyu0 (MPEG-1 format)
208A	SzhaWJmoUWo (.flv format)
208B	SzhaWJmoUWo (MPEG-1 format)
209A	keR7kRN05Y (.flv format)
209B	keR7kRN05Y (MPEG-1 format)
210A	LmLgt8oGtuM (.flv format)
210B	LmLgt8oGtuM (MPEG-1 format)

HIGHLY CONFIDENTIAL

4. The Declaration of Hunter Walk, submitted herewith, describes a number of webpages appearing on the YouTube website, and identifies the corresponding URLs for those webpages. Attached hereto is a true and correct copy of a screenshot captured between February 25 and March 5, 2010 for each URL described in Mr. Walk's declaration and, where applicable, a true and correct copy of the video appearing on that webpage. Version "A" of each video is provided in the "Flash Video," or ".flv" format, as stored on YouTube's servers. (See Declaration of Michael Solomon, submitted herewith, at ¶ 12, which explains the manner in which those videos were captured from YouTube's servers.) For the Court's convenience, we have also converted each video to the "MPEG-1" format, and include that format as version "B."

Paragraph in Walk Declaration	URL	Corresponding YouTube Screenshot Exhibit No.	Corresponding Video File Exhibit No. (where applicable)
¶ 6	http://www.youtube.com/user/johnmccaindotcom?blend=3&ob=4&rclk=cti#p/f/25/JTL4jC1bKzY	211	315A/315B
¶ 6	http://www.youtube.com/user/barackobamadotcom?blend=1&ob=4&rclk=cth#p/u/781/vpmFd25tRqo	212	316A/316B
¶ 6	http://www.youtube.com/user/YTdebates#p/u/46/XWokI0NaGMc	213	317A/317B
¶ 6	http://www.youtube.com/user/whitehouse?blend=1&ob=4&rclk=cth#p/u/91/94RRh9qZGYc	214	318A/318B
¶ 6	http://www.youtube.com/watch?v=0pqzNJYzh7I	215	319A/319B
¶ 6	http://www.youtube.com/user/NancyPelosi	216	N/A

HIGHLY CONFIDENTIAL

Paragraph in Walk Declaration	URL	Corresponding YouTube Screenshot Exhibit No.	Corresponding Video File Exhibit No. (where applicable)
¶ 6	http://www.youtube.com/user/RepublicanLeader	217	N/A
¶ 6	http://www.youtube.com/user/senatehub	218	N/A
¶ 6	http://www.youtube.com/user/househub	219	N/A
¶ 7	http://www.youtube.com/user/MarineCorpsNews	220	N/A
¶ 7	http://www.youtube.com/user/soldiersmediacenter	221	N/A
¶ 7	http://www.youtube.com/user/UnitedStatesNavy	222	N/A
¶ 7	http://www.youtube.com/user/AFBlueTube	223	N/A
¶ 7	http://www.youtube.com/watch?v=mDUInYe8G2c	224	320A/320B
¶ 7	http://www.youtube.com/user/ReelNASA#p/a/3CD87307666C1B55/0/e16eXXAoisg	225	321A/321B
¶ 7	http://www.youtube.com/user/NASAtelevision#p/u/631/JgBgmw-2U8c	226	322A/322B
¶ 7	http://www.youtube.com/user/LibraryOfCongress	227	N/A
¶ 8	http://www.youtube.com/user/vatican	228	N/A
¶ 8	http://www.youtube.com/user/theroyalchannel	229	N/A
¶ 8	http://www.youtube.com/user/kremlin	230	N/A
¶ 8	http://www.youtube.com/user/Iraqigov	231	N/A
¶ 8	http://www.youtube.com/user/unitednations	232	N/A
¶ 8	http://www.youtube.com/peres	233	N/A
¶ 8	http://www.youtube.com/user/PresidentMBLee	234	N/A
¶ 9	http://www.youtube.com/watch?v=HgQd0K5W0vI	235	323A/323B

HIGHLY CONFIDENTIAL

Paragraph in Walk Declaration	URL	Corresponding YouTube Screenshot Exhibit No.	Corresponding Video File Exhibit No. (where applicable)
¶ 9	http://www.youtube.com/watch?v=I0MkATcn04M	236	324A/324B
¶ 9	http://www.youtube.com/watch?v=mcQ8zMpthis	237	325A/325B
¶ 10	http://www.youtube.com/watch?v=Og1bYPn8nW8	238	326A/326B
¶ 10	http://www.youtube.com/watch?v=7g9mOMQfY2s	239	327A/327B
¶ 10	http://www.youtube.com/watch?v=1B98PExsoXs	240	328A/328B
¶ 10	http://www.youtube.com/watch?v=OEEdVfyt-mLw	241	329A/329B
¶ 11	http://youtube-global.blogspot.com/2010/01/live-tonight-top-artists-perform-in.html	242	N/A
¶ 11	http://youtube-global.blogspot.com/2009/10/can-billion-views-help-billion-people.html	243	N/A
¶ 11	http://www.youtube.com/watch?v=6jSBW0BOPqM	244	330A/330B
¶ 11	http://www.youtube.com/watch?v=BDqs-OZWw9o	245	331A/331B
¶ 11	http://www.youtube.com/view_playlist?p=749732FFD312CA7F	246	N/A
¶ 12	http://www.youtube.com/channels?s=ytedu_mv	247	N/A
¶ 12	http://www.youtube.com/watch?v=S9WtBRNyds0	248	332A/332B
¶ 13	http://www.youtube.com/watch?v=tGn3-RW8Ajk	249	333A/333B
¶ 13	http://www.youtube.com/watch?v=SGJMoYcM8yY	250	334A/334B
¶ 14	http://www.youtube.com/watch?v=7jRE3xRm8Vk	251	335A/335B
¶ 14	http://www.youtube.com/watch?v=Phjw9dzHU-0	252	336A/336B
¶ 14	http://www.youtube.com/watch?v=msTLaSQFhrc	253	337A/337B

HIGHLY CONFIDENTIAL

Paragraph in Walk Declaration	URL	Corresponding YouTube Screenshot Exhibit No.	Corresponding Video File Exhibit No. (where applicable)
¶ 14	http://www.youtube.com/watch?v=pTHc5wB-u8w	254	338A/338B
¶ 15	http://www.youtube.com/user/reporterscenter	255	N/A
¶ 16	http://www.youtube.com/watch?v=dTAAsCNK7RA	256	339A/339B
¶ 16	http://www.youtube.com/watch?v=jmR0V6s3NKk	257	340A/340B
¶ 16	http://www.youtube.com/watch?v=EwTZ2xpQwpA	258	341A/341B
¶ 16	http://www.youtube.com/watch?v=-dadPWhEhVk	259	342A/342B
¶ 16	http://www.youtube.com/watch?v=p_YMigZmUuk	260	343A/343B
¶ 17	http://www.youtube.com/watch?v=-prfAENSh2k	261	344A/344B
¶ 17	http://www.youtube.com/watch?v=m56F4EKN9hg	262	345A/345B
¶ 17	http://www.youtube.com/watch?v=uHPg262Kr9c	263	346A/346B
¶ 17	http://www.youtube.com/watch?v=xLYWtjEUKa4	264	347A/347B
¶ 17	http://www.youtube.com/watch?v=JkUNGWH1Jzg	265	348A/348B
¶ 17	http://www.youtube.com/watch?v=-MIm5WgIepE	266	349A/349B
¶ 17	http://www.youtube.com/watch?v=Sh9E_JO3nV0	267	350A/350B
¶ 17	http://www.youtube.com/watch?v=FOqVpflq3EE	268	351A/351B
¶ 17	http://www.youtube.com/watch?v=f0IRXINcPjI	269	352A/352B
¶ 17	http://www.youtube.com/watch?v=NaGLVS5b_ZY	270	353A/353B
¶ 17	http://www.youtube.com/watch?v=6vQpW9XRiyM	271	354A/354B
¶ 17	http://www.youtube.com/user/foxnewschannel	272	N/A

HIGHLY CONFIDENTIAL

Paragraph in Walk Declaration	URL	Corresponding YouTube Screenshot Exhibit No.	Corresponding Video File Exhibit No. (where applicable)
¶ 17	http://www.youtube.com/user/CBSNewsOnline	273	N/A
¶ 17	http://www.youtube.com/user/ntvknya	274	N/A
¶ 17	http://www.youtube.com/show/star trek	275	N/A
¶ 17	http://www.youtube.com/show/macgyver	276	N/A
¶ 17	http://www.youtube.com/user/MontyPython	277	N/A
¶ 17	http://www.youtube.com/watch?v=vSYadh2xmcl	278	355A/355B
¶ 17	http://www.youtube.com/watch?v=Ye8mB6VsUHw	279	356A/356B
¶ 18	http://www.youtube.com/oprah	280	N/A
¶ 18	http://www.youtube.com/user/paulmccartney	281	N/A
¶ 18	http://www.youtube.com/user/andreaabocelli	282	N/A
¶ 18	http://www.youtube.com/user/u2official	283	N/A
¶ 18	http://www.youtube.com/user/joined	284	N/A
¶ 18	http://www.youtube.com/user/TeamRadioShack	285	N/A
¶ 18	http://www.youtube.com/watch?v=9S9vlggt264	286	357A/357B
¶ 18	http://www.youtube.com/user/aliciakeys	287	N/A
¶ 18	http://www.youtube.com/watch?v=dF6D7xs1qMY	288	358A/358B
¶ 19	http://www.youtube.com/watch?v=TwslagFWKlY	289	359A/359B
¶ 19	http://www.youtube.com/user/USDCINSD	290	N/A
¶ 20	http://www.youtube.com/watch?v=1JynBEX_kg8	291	360A/360B
¶ 20	http://www.youtube.com/watch?v=TZ860P4iTAM	292	361A/361B

HIGHLY CONFIDENTIAL

Paragraph in Walk Declaration	URL	Corresponding YouTube Screenshot Exhibit No.	Corresponding Video File Exhibit No. (where applicable)
¶ 20	http://www.youtube.com/watch?v=4PcL6-mjRNk	293	362A/362B
¶ 20	http://www.youtube.com/watch?v=xPxDw7ajfGE	294	363A/363B
¶ 20	http://www.youtube.com/watch?v=i mFTcjHIY_s	295	364A/364B
¶ 20	http://www.youtube.com/watch?v=LU8DDYz68kM	296	365A/365B
¶ 20	http://www.youtube.com/watch?v=Z-BzXpOch-E	297	366A/366B
¶ 20	http://www.youtube.com/watch?v=s7a9xCIAAdDU	298	367A/367B
¶ 20	http://www.youtube.com/watch?v=_OBlgSz8sSM	299	368A/368B
¶ 20	http://www.youtube.com/watch?v=E8aprCNnecU	300	369A/369B
¶ 20	http://www.youtube.com/watch?v=5P6UU6m3cqlk	301	370A/370B
¶ 20	http://www.youtube.com/watch?v=zlfKdbWwruY	302	371A/371B
¶ 20	http://www.youtube.com/watch?v=dMH0bHeiRNq	303	372A/372B
¶ 20	http://www.youtube.com/watch?v=eaRcWB3jwMo	304	373A/373B
¶ 20	http://www.youtube.com/watch?v=EMhUZAq5IxQ	305	374A/374B
¶ 20	http://www.youtube.com/watch?v=T7TI-AJi2O8	306	375A/375B
¶ 20	http://www.youtube.com/watch?v=hSvIOd7tfh0	307	376A/376B
¶ 20	http://www.youtube.com/watch?v=vPm27Wm-0tY	308	377A/377B
¶ 20	http://www.youtube.com/watch?v=4-94JhLEiN0	309	378A/378B
¶ 20	http://www.youtube.com/watch?v=cvj-0RUpteo	310	379A/379B
¶ 20	http://www.youtube.com/watch?v=pXD7rDgsL88	311	380A/380B

HIGHLY CONFIDENTIAL

Paragraph in Walk Declaration	URL	Corresponding YouTube Screenshot Exhibit No.	Corresponding Video File Exhibit No. (where applicable)
¶ 20	http://www.youtube.com/watch?v=i1azm1oNRbk	312	381A/381B
¶ 20	http://www.youtube.com/watch?v=iNQXAC9IVRw	313	382A/382B
¶ 21	http://www.youtube.com/watch?v=TPAO-lZ4_hU	314	383A/383B

5. The Declaration of Micah Schaffer, submitted herewith, also describes two URLs. Paragraph 2 of Mr. Schaffer's declaration references the URL <http://www.youtube.com/watch?v=KNwLn85I75Y>, which is currently available on the YouTube website. Attached hereto as Exhibit 384 is a true and correct copy of a screenshot captured on March 5, 2010 for that URL. Attached hereto as Exhibit 385A is a true and correct copy of the video appearing on that webpage in the "Flash Video," or ".flv" format, as stored on YouTube's servers. (See Declaration of Michael Solomon, submitted herewith, at ¶ 12, which explains the manner in which those videos were captured from YouTube's servers.) For the Court's convenience, attached hereto as Exhibit 385B is a true and correct copy of that video converted to the "MPEG-1" format. Paragraph 7 of Mr. Schaffer's declaration references a video which previously appeared on the YouTube website at the URL <http://www.youtube.com/watch?v=TUiP6dqPynE>. Attached hereto as Exhibit 386A is a true and correct copy of the video that appeared on that webpage in the "Flash Video," or ".flv" format, as stored on YouTube's servers. (See Declaration of Michael Solomon, submitted herewith, at ¶ 12, which explains the manner in which those

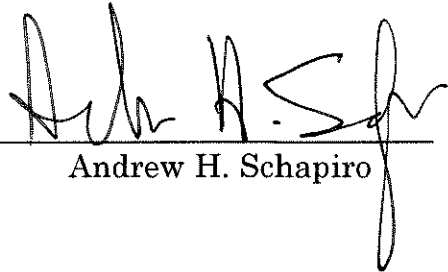
HIGHLY CONFIDENTIAL

videos were captured from YouTube's servers.) For the Court's convenience, attached hereto as Exhibit 386B is a true and correct copy of that video converted to the "MPEG-1" format.

6. The Declaration of Roelof Botha, submitted herewith, also describes the URL <http://www.youtube.com/watch?v=KNwLn85I75Y> at paragraph 11. Attached hereto as Exhibit 384 is a true and correct copy of a screenshot captured on March 5, 2010 for that URL. Attached hereto as Exhibit 385A is a true and correct copy of the video appearing on that webpage in the "Flash Video," or ".flv" format, as stored on YouTube's servers, and attached hereto as Exhibit 385B is a true and correct copy of that video converted to the "MPEG-1" format.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: New York, NY
March 11, 2010



Andrew H. Schapiro

Schapiro Exhibit 46

Subject: Disturbia / Paris
From: "Tipton, Kristina - Paramount" <EX:/O=VIACOM/OU=PARAMOUNT/CN=RECIPIENTS/CN=TIPTONKR>
To: Bonnici, Kyle - Paramount
Cc: Teifeld, Tamar - Paramount; Wahtera, Megan - Paramount
Date: Mon, 11 Jun 2007 20:57:34 +0000

Hi Kyle,

As soon as your back, we need help with uploading the below video to viral video sites.

- please create NON-PARAMOUNT accounts using email that can't be traced to Paramount (ie create an account)
- Upload video with following info:
 - o Title: Paris Hilton on house arrest
 - o Description: Ankle bracelets are hot
 - o Tags: Paris Hilton jail house arrest hot funny disturbia
 - o Post as video response to:
 - * <http://youtube.com/watch?v=k66epna2Sss>
 - * <http://youtube.com/watch?v=4yjRLrZfln8>
 - * <http://youtube.com/watch?v=EXFsxuUjGM>

Link:
<http://secure.wiredrive.com/clients/buddhajonestrailer/wd/folder/55341/list>

username: 
password: 

This is top priority, so please do this before media meeting prep. Thanks, Kyle!

Kristina Tipton

Interactive Marketing

Paramount Pictures

323-956-8453

Schapiro Exhibit 65

From: Mark M. Ishikawa
Sent: Tuesday, October 03, 2006 4:14 AM
To: Evelyn Espinosa; Courtney Nieman; Deana Arizala
Subject: FW: FW: Proposed links to take down

From: Perry, Alfred - Paramount [mailto:Alfred_Perry@Paramount.com]
Sent: Monday, October 02, 2006 7:44 PM
To: Amy Powell, [REDACTED]
Cc: Scott Martin; Derwin-Weiss, Nancy - Paramount; John Salter; dwilson@kmwlaw.com; Mark M. Ishikawa
Subject: RE: FW: Proposed links to take down

Thanks, we look forward to hearing from you.

From: Amy Powell/Marketing/MP/Paramount_Pictures@PARAMOUNT_PICTURES
Sent: Monday, October 02, 2006 7:24 PM
To: Perry, Alfred - Paramount
Cc: Martin, Scott - Paramount; Derwin-Weiss, Nancy - Paramount; Salter, John - Paramount
Subject: Re: FW: Proposed links to take down

all of the clips that we syndicated have the official "warning" before the clip. any clip without the warning was not sent out by our dept. However, i need to speak to the publicity dept before confirming which should be taken down. I will follow up first thing in the AM. thanks.

Amy Powell
Senior Vice President
Interactive Marketing
Paramount Pictures
[REDACTED]

-----Alfred Perry@exchange wrote: -----

To: [REDACTED]
From: Alfred Perry@exchange
Date: 10/02/2006 07:01PM
cc: Scott Martin/Business Affairs/MP/Paramount_Pictures@Paramount_Pictures, Nancy Derwin-Weiss/Business Affairs/MP/Paramount_Pictures@Paramount_Pictures, John Salter@exchange
Subject: FW: Proposed links to take down

Amy, please confirm that these should be taken down (our guy thinks that these are not your clips).

We await your confirmation before proceeding.

From: Dennis L. Wilson [mailto:dwilson@kmwlaw.com]
Sent: Monday, October 02, 2006 6:33 PM
To: Perry, Alfred - Paramount
Subject: Proposed links to be taken down

Al,

6/13/2008

There are a lot of questionable Jackass 2 videos on youtube that we cannot act on tonight without risking taking down unauthorized content. However, there are some videos that we believe we could request be taken down. Perhaps these videos could be forwarded to the appropriate executives for review, including the following:

<http://www.youtube.com/watch?v=3r66byYRFm4>
<http://www.youtube.com/watch?v=dtSu3lJZTA;>
<http://www.youtube.com/watch?v=2brTttAYReE;>
<http://www.youtube.com/watch?v=G7EAM8f929o;>
http://www.youtube.com/watch?v=m5_1figW2_k;
<http://www.youtube.com/watch?v=nASITzMokE8;>
<http://www.youtube.com/watch?v=TKjMvoc0VtI;>
<http://www.youtube.com/watch?v=d4KrR6yoPAY;>
[http://www.youtube.com/watch?v=mOJ61oeCQeY? .](http://www.youtube.com/watch?v=mOJ61oeCQeY?)

Each of these is a fairly long clip and/or has language indicating that it is not legitimate (e.g., "here is the first 3 minutes of the movie").

Please let me know what action you would like me to take on these, if any.

Dennis

From: Perry, Alfred -Paramount [mailto:Alfred_Perry@Paramount.com]
Sent: Monday, October 02, 2006 5:23 PM
To: Powell, Amy - Paramount
Cc: Derwin-Weiss, Nancy -Paramount; Martin, Scott - Paramount; Salter, John - Paramount; Christiansen, Mark - Paramount
Subject: FW: Illegal Jackass 2 Footage Online

Amy, when you refer to many authorized clips are you able to provide identifiers of them? Apparently, what is being found are stunt/skit clips rather than the full feature broken up into 10 minute pieces (as is the case with other films from other studios).

From: Mark M. Ishikawa [mailto:marki@baytsp.com]
Sent: Monday, October 02, 2006 5:03 PM
To: Perry, Alfred - Paramount; dwilson@kmlaw.com
Cc: Martin, Scott - Paramount; Salter, John - Paramount; Christiansen, Mark - Paramount; Evelyn Espinosa; Courtney Nieman; Leland Woo; Richard Kawasaki; Deana Arizala
Subject: RE: Illegal Jackass 2 Footage Online

Al,

We have started getting results back from our High Priority Radar system and we're seeing something different than our usual clips of 10 minute segments uploaded to YouTube. The pirates are submitting the content to YouTube broken down by individual stunt/skit. We are attempting to identify the content that appears to be camcordered, and is of the individual stunt/skit for takedown. Can you pls confirm that none of the stunts/skits are authorized by the studio?

Mark

From: Perry, Alfred -Paramount [mailto:Alfred_Perry@Paramount.com]
Sent: Monday, October 02, 2006 4:44 PM
To: dwilson@kmlaw.com; Mark M. Ishikawa
Cc: Scott Martin; John Salter; Christiansen, Mark - Paramount
Subject: FW: Illegal Jackass 2 Footage Online

Ok, err on the side of leaving some infringing material up rather than being overly aggressive and taking down one of the "many approved clips".

Again, my direction would be to take down linked segments which comprise all or nearly all of the motion picture and is presumably camcordered (based on appearance, for example).

Either of you know of other "social networking" sites such as YouTube which we might also devote our special kind of "love"?

6/13/2008

Please advise.

Thank you.

From: AmyPowell/[REDACTED]
Sent: Monday, October 02, 2006 4:22 PM
To: Perry, Alfred - Paramount
Cc: dwilson@kmlaw.com; Salter, John - Paramount; marki@baytsp.com; Derwin-Weiss, Nancy - Paramount; Martin, Scott - Paramount; Worsnup, Mickey - Paramount; rob_moore@paramount.com
Subject: Illegal Jackass 2 Footage Online

Thanks, Alfred. Please only remove camcorded content (which is clearly pirated footage). There are many approved film clips online which should not be removed. Feel free to call with any questions or concerns.

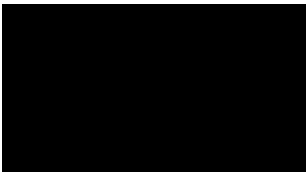
amy

Amy Powell

Senior Vice President

Interactive Marketing

Paramount Pictures



----- Replied by AmyPowell on 10/2/2006 4:20:31 PM -----

From: Alfred Perry@exchange
10/02/2006 03:04 PM
To: Amy Powell
cc: Scott Martin, John Salter@exchange, Nancy Derwin-Weiss, dwilson@kmlaw.com, marki@baytsp.com
Subject:

We are going after the camcorded versions of JackAss Number Two on YouTube, but would like to know if you have content you have authorized or if you are aware of other content which should not be taken down.

Thanks, in the first instance we are going after ?obviously? camcorded content.

Thank you.

No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.5.516 / Virus Database: 269.17.13/1207 - Release Date: 1/2/2008 11:29 AM

6/13/2008

HIGHLY CONFIDENTIAL

BAYTSP 003718202

Schapiro Exhibit 66

From: Hallie, Michelena [Michelena.Hallie@mtvn.com]
Sent: Thursday, October 05, 2006 10:25 PM
To: Deana Arizala
Cc: Mark M. Ishikawa; Morales, Cindy
Subject: FW: Scan from a Xerox WorkCentre Pro

Attachments: Scan001.PDF



Scan001.PDF (34
KB)

Deana:

Attached is a pdf of a signed authorization letter. It is on MTVN (which is a division of Viacom) letterhead though Viacom is the copyright owner of the copyrights. If you need it on Viacom letterhead, it will have to wait until Monday when my assistant returns.

Please note that this authorization is limited only to particular shows, uploads or protocols identified by Cindy, myself or a designee. As of now Viacom authorizes only the takedowns of full episodes of "Avatar" that appear on youtube.com.

You should also note that not all MTVN programming is owned by Viacom International so you will need additional authorizations for some of the programs we choose in the future to take down.

Thank you for your assistance.

Michelena Hallie
Senior Vice President
Deputy General Counsel, Intellectual Property MTV Networks, Business and Legal Affairs
1515 Broadway, 34th Floor
New York, New York 10036
(212)846-6849

MTV NETWORKS

A VIACOM COMPANY

Michelena Hallie
Senior Vice President
Deputy General Counsel, Intellectual Property

October 5, 2006

Mark Ishikawa, CEO
BayTSP.com
PO Box 1314
Los Gatos, CA 95031-1314
(408) 341-2300

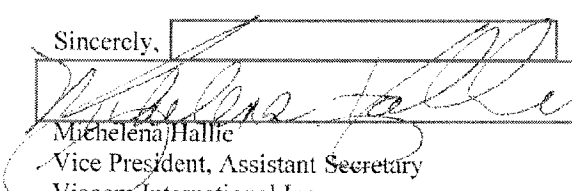
Dear Mark,

This letter acts as an official notification that I, Michelena Hallie, of Viacom International Inc, agent of its copyrighted material, authorize Mark Ishikawa, CEO of BayTSP.com to act as my agent for notification of detected infringements on the Internet pursuant to the Digital Millennium Copyright Act.

Nothing in this letter releases any exclusive rights that Viacom International Inc. has in the copyrights that I represent. This agent authorization is merely to facilitate the process of notifying Internet service providers for removal of detected infringements that I have been made aware of by BayTSP.com and its tracking service reports.

I reserve the right to terminate this agency relationship at any time for any reason by written notification, effective upon receipt at BayTSP.com.

Sincerely,



Michelena Hallie
Vice President, Assistant Secretary
Viacom International Inc.

1515 Broadway, New York, NY 10036
Email: michelena.hallie@mtvn.com

Schapiro Exhibit 79

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE FOOTBALL ASSOCIATION PREMIER
LEAGUE LIMITED, BOURNE CO., et al.,
on behalf of themselves and all
others similarly situated,

Plaintiffs,

-against-

Case No.
07-CV-3582

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

Defendants.

CONTINUED VIDEOTAPED DEPOSITION OF
VICTORIA G. TRAUBE
NEW YORK, NEW YORK
Friday, December 18, 2009

JOB NO: 18329
Reported by:
AYLETTE GONZALEZ

December 18, 2009
Time: 10:12 a.m.

CONTINUED VIDEOTAPED DEPOSITION
OF VICTORIA G. TRAUBE, held at the
offices of Mayer Brown, LLP., 1675
Broadway, New York, New York 10019,
pursuant to notice, before Aylette
Gonzalez, Certified LiveNote Reporter
and Notary Public of the State of New
York.

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

FOR THE PLAINTIFFS and WITNESS:

LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP.

BY: DAVID STELLINGS, ESQ.

EMAIL: dstellings@lchb.com

BY: ANNIKA MARTIN, ESQ.

EMAIL: akmartin@lchb.com

250 Hudson Street, 8th floor
New York, New York 10013-1413

PHONE NUMBER: (212) 355-9500

FOR THE DEFENDANTS:

MAYER BROWN, LLP.

BY: GREGORY A. FRANTZ, ESQ.

EMAIL: grantz@mayerbrown.com

BY: FIDELIS I. AGBAPURUONWU, ESQ.

EMAIL: fagbapuruonwu@mayerbrown.com

1675 Broadway
New York, New York 10016

PHONE NUMBER: (212) 506-2296

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

ALSO PRESENT:

TOM KRAUSE, Videographer

KATHRYN E. WAGNER,

National Music

Publishers' Association

1 VICTORIA G. TRAUBE

2 A. Yes.

3 Q. Who issued that license?

4 A. It was licensed by EMI Belgium

5 and the actual person is Guy Vanderhoven.

10:19:57

6 Q. What, if anything, is the
7 relationship between EMI Belgium and R&H?

8 A. They're our subpublisher.

9 Q. Was R&H aware that EMI licensed

10 the clip at the time the license was

10:20:21

11 issued?

12 A. Yes.

13 Q. Did the license issue before or

14 after or at the same time as the clip was

15 uploaded?

10:20:36

16 A. After.

17 Q. Do you have a sense of how long

18 after the clip was uploaded, the license

19 was issued?

20 A. You know, it took some period

10:20:45

21 of time, months perhaps.

22 Q. At the time the license was

23 issued by EMI Belgium, was R&H aware of it

24 immediately?

25 MR. STELLINGS: Object to the

10:21:11

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

VICTORIA G. TRAUBE

form of the question.

A. What's it in that sentence?

Q. It is the fact that the license
has been issued; was R&H aware that the
license had been issued at the time that
the license was issued?

10:21:18

A. Yes, but I need to take a break
to discuss a privilege question.

Q. Okay.

10:21:40

THE VIDEOGRAPHER: The time is
10:21 a.m. and we're going off the
record.

(Whereupon, an off-the-record
discussion was held.)

10:25:47

THE VIDEOGRAPHER: The time is
10:25 a.m. We're back on the record.

Q. I'm not sure if there was a
question pending, but you said you wanted
to consult with Counsel. Is there
something you wanted to add to the last
answer?

10:25:59

A. No, I believe I answered the
last question by saying yes.

Q. Now, if I could read back some

10:26:11

VICTORIA G. TRAUBE

of your earlier testimony from the first
part of the deposition. I'm referring to
page 50, starting at line 24, are you there
yet?

10:26:36

A. Yeah.

Q. So question: Has R&H ever had
difficulty in determining whether
particular use of license on the internet.
Mr. Stellings objects to the form of the
question. You can answer.

10:26:43

Answer: Not really a
difficulty. It is just -- let me give an
example. A clip from the television show
in Holland had turned up on the internet.
We had to determine -- first, we had to
determine if the television show was
licensed. That meant we had to go to the
foreign subpublisher and to the stage
producer, too and to our foreign subagent.
And ultimately, it just took a few steps to
discover that the use was in fact properly
licensed for television. So it's not
just -- it just sometimes takes a little
bit of work to determine whether a subagent

10:26:53

10:27:01

10:27:12

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

VICTORIA G. TRAUBE

has issued a license, that's what I meant
by difficulty.

Is this testimony in reference
to the same clip of a performance in the
train station in Belgium?

10:27:20

A. Yeah, yes.

Q. In the testimony, you seem to
suggest, do you not, that R&H was not
immediately aware of the license having
been issued; is that correct?

10:27:35

MR. STELLINGS: Object to the
form of the question; misstates the
witness' testimony. You can answer.

A. No, here's what happened. We
became aware that the clip was up on
YouTube. It was an unlicensed use. What
was licensed was the television program,
the name of which I cannot pronounce in
Dutch, but it was the Star Search program
for Maria, which had been licensed
previously through the London producers of
"The Sound of Music" and we had granted a
stage license for a production of "The
Sound of Music" and the television program

10:27:42

10:28:09

10:28:32

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

VICTORIA G. TRAUBE

was intended to choose the Maria for the
stage production.

We -- when we became aware of
the clip, what we had to find out was 10:28:44
whether it was related to the television
show. The television show was licensed.
The format was licensed by the really
useful group in London that created the
format for the Star Search program and the 10:29:13
right to use music from the show on the
Dutch television program is covered by what
is called a blanket license.

The blanket license belongs to
the Dutch television station. That was 10:29:28
what I had to figure out. It didn't -- it
took a little doing, not that much doing.
But what became clear is that the use of
that clip had not been licensed for
appearance on YouTube. 10:29:49

Q. Did there come a time that it
was licensed to be on YouTube?

A. Yes.

Q. That license was issued by EMI?

A. Yes. 10:30:01

1 VICTORIA G. TRAUBE

2 Q. And we've requested a copy of
3 the license, but we haven't received it.
4 Do you know if such a copy exist?

5 A. I do not have a copy of the 10:30:10
6 license. It is possible that all there was
7 was an invoice as opposed to a formal
8 license.

9 Q. Do you know the terms under
10 which it was licensed? 10:30:27

11 A. Yes.

12 Q. What were the terms?

13 A. Five hundred euros.

14 Q. Were there any restrictions on
15 the ability to use on YouTube? 10:30:36

16 A. The right granted was the right
17 to show what I will call the Antwerp video
18 on YouTube.

19 Q. Did EMI consult with R&H in
20 issuing this license? 10:30:54

21 A. Yes.

22 Q. Do you know what the date of
23 the license was, approximately?

24 MR. STELLINGS: If you know,
25 you can answer. I don't want you to 10:31:08

1 VICTORIA G. TRAUBE

2 document production, we'll produce
3 additional documents, but as of now,
4 without that agreement for the
5 bilateral document production
6 supplementation, we will not be
7 unilaterally supplementing our
8 document production.

10:40:51

9 MR. FRANTZ: I obviously
10 disagree with that. It clearly calls
11 for several document requests and
12 clear rather than in the scope and
13 rather than go on and on on the
14 record, we agree to talk about that
15 after the deposition.

10:41:01

10:41:11

16 MR. STELLINGS: Sure.

17 TO BE FURNISHED: _____

18 _____

19 Q. In this instance you just
20 referred to, why was it that you decided to
21 authorize this use on YouTube?

10:41:14

22 A. Because the theater really
23 wanted to be able to leave the clips up and
24 made a special plea.

25 Q. Did they express that they

10:41:43

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

VICTORIA G. TRAUBE

really wanted to leave these clips up to
you?

A. Not directly to me, through one
of my colleagues.

10:41:52

Q. Which colleague was that?

A. I think it may have been Bruce
Pammerhacker, our music director that was
down there for music rehearsals.

Q. Was anyone else involved in the
discussions regarding this requested
license for YouTube?

10:42:11

A. No.

Q. Did -- I can't say the last
name, so I'll say Bruce. Did Bruce express
a view to you as to whether this license,
this view should be authorized?

10:42:26

A. Not -- no, he didn't really
express a view. He simply conveyed to me a
message that the theater wanted the ability
to leave these clips up.

10:42:40

Q. Other than the instance we've
just been discussing, can you recall any
other instances in which R&H has authorized
it's contents to appear on YouTube?

10:42:58

1 VICTORIA G. TRAUBE

2 A. Yes.

3 Q. Can you describe that?

4 A. Fairly recently, a theater in

5 Philadelphia posted clips from it's

10:43:09

6 production of "Light in the Piazza" on

7 YouTube, again, not permitted by the

8 license.

9 The licensing agent at R&H

10 instructed the theater on the telephone

10:43:31

11 that they didn't have the right to do this

12 and that the clips needed to come down, but

13 the theater, as I understand it, and this

14 is just reported to me by Michelle who is

15 the licensing agent, the theater wanted to

10:43:50

16 leave the clips up and they -- and once

17 again, when a customer wants something, I

18 determine that it was all right to allow --

19 to actually license the usage.

20 Q. Did R&H issue a written license

10:44:10

21 in this instance?

22 A. Yes.

23 MR. FRANTZ: We request a copy

24 of that license. I know what you're

25 going to say.

10:44:21

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

VICTORIA G. TRAUBE

MR. STELLINGS: I'm not going
to say anything.
TO BE FURNISHED: _____

10:44:25

Q. Other than the two instances
we've just discussed, were there any other
instances in which R&H has authorized its
contents to appear on YouTube?

A. Well, we previously discussed
in my last deposition the Young Vic,
"Annie, Get Your Gun" use.

10:44:34

Q. Right. Just to be clear, I'm
excluding the five that we've discussed.

A. Okay. There is a current tour,
a first class tour of "South Pacific". It
was brought to my attention that the
promoter, that is to say the theater owner
in San Francisco where the show opened, had
links from its own page to YouTube where
they were showing clips from the show.

10:44:47

10:45:19

When I looked at the license
that we had issued, I discovered that the
license did not include what I considered
to be a customary clause for these kinds of

10:45:46

VICTORIA G. TRAUBE

first class licenses authorizing
promotional use of elements from the show
and radio television and the internet.

Accordingly, I am in the process of
amending the "South Pacific" license
agreement to permit use of clips from the
show for promotional purposes on radio,
television and the internet.

Q. And the internet would include
YouTube, correct?

A. It would.

Q. Do you have any concerns about
this or any of the other clips we've just
been discussing being on YouTube?

MR. STELLINGS: Object to the
form of the question. You can
answer.

A. Do I have any concerns, no.

MR. FRANTZ: Let's do the next
exhibit, please. This is an exhibit
that was previously marked as Exhibit
8, so we don't need to mark it, I
don't think.

Q. You have in front of you,

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

VICTORIA G. TRAUBE

Ms. Traube, a document previously marked as
Exhibit 8; do you recall this document?

A. I do.

Q. SP in this e-mail chain refers
to "South Pacific"; is that correct?

10:47:32

A. That's correct.

Q. You see in this e-mail chain,
Mr. Gaden is suggesting that "South
Pacific", that he might want to promote
"South Pacific" on YouTube; is that
correct?

10:47:51

A. That is correct.

Q. Did R&H, in fact, promote
"South Pacific" on YouTube in this
instance?

10:48:02

A. No.

Q. Did R&H promote it on any other
websites in connection with this e-mail?

A. Not in connection with this
e-mail.

10:48:08

Q. To clarify, I'm saying in
connection with this e-mail just to
distinguish from the previous testimony,
where you said that you're currently in the

10:48:19

VICTORIA G. TRAUBE

A F T E R N O O N S E S S I O N

(Time noted: 12:50 p.m.)

V I C T O R I A G . T R A U B E ,

resumed and testified as follows:

EXAMINATION BY (Cont'd.)

MR. FRANTZ:

THE VIDEOGRAPHER: The time is 12:51:15

12:50 p.m. and this is tape number

three of the videotaped deposition of

Victoria Traube.

Q. Welcome back, Ms. Traube.

A. Thank you. 12:51:56

Q. I wanted to actually read back
some testimony not from today, but from
October 8th. I'm referring to page 139,
line ten, starting there. If you're ready,
just look up? 12:52:19

A. How far am I supposed to read?

Q. I'm just going to do to the top
of the next page.

A. Okay, I'll just listen to you
read. 12:52:32

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

VICTORIA G. TRAUBE

Q. So, the testimony was,

Question: Besides that, are there other

third-party websites that sometimes R&H

permits works to be posed on. Answer: I'm

12:52:39

not sure. Let me give you a specific.

When synchronization rights are granted for

the use of a musical composition in a

commercial, the advertising agency or the

sponsor acquiring that's acquiring the

12:52:51

rights may want the right to post the

commercial on the internet as well as

showing it on the television and typically,

we have to agree. Well, we don't have to

agree, but we choose to agree to it and I

12:53:02

just plain don't know whether there are

ever third-party websites involved.

I was reading back that

testimony, because I was hoping it might

refresh your recollection as to sync

12:53:15

licenses for use in commercials and having

heard that earlier testimony, can you

recall any sync licenses for commercials

which R&H works were authorized to appear

on YouTube?

12:53:28

1 VICTORIA G. TRAUBE

2 A. There was a U.K. promotional
3 piece for Turner Classic Television and
4 that promotional piece, it was an
5 advertisement/promotional piece, but the
6 purpose was to promote the Turner service
7 and that it was my understanding that that
8 promotional piece was to appear on websites
9 including YouTube.

12:54:09

10 Q. And when was that; when did
11 that event occur?

12:54:26

12 A. I'm pretty sure that it was
13 recently, over the summer of 2009.

14 Q. In that Turner promotional
15 piece that appeared on YouTube, were there
16 any R&H musical compositions included in
17 the piece?

12:54:53

18 A. Yes.

19 Q. Do you know which ones?

20 A. I think -- I just can't
21 remember exactly. It was one song from
22 "The Sound of Music".

12:55:05

23 Q. Do you know whether it was
24 "Do-Re-Mi"?

25 A. I want to say it was "My

12:55:19

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

VICTORIA G. TRAUBE

Favorite Thing", but I could be wrong.

Q. Did you -- do you recall
issuing the license in this instance that
we're talking about right now?

12:55:41

A. I do not know whether the
license was ever, in fact, issued.

Q. Do you consider this particular
use to be authorized?

A. I don't know whether the use
actually took place. What I was telling
you about -- you know what, well, okay.
It's not -- I was consulted in my capacity
as Counsel about the possibility of this
particular promotional use, that is where
my knowledge of it comes from.

12:55:57

12:56:20

Q. Did R&H ultimately authorize
the promotional use?

A. I don't know.

Q. You don't know whether R&H
authorized it?

12:56:39

A. I don't know.

Q. Did you authorize it
personally?

A. Are we getting into privilege?

12:56:46

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

VICTORIA G. TRAUBE

MR. STELLINGS: You can testify
whether you authorized it or not.

A. I did not object to it.

Q. Who were you discussing this
with? 12:57:02

A. It would have been Nancy DeToro
who was doing sync licensing.

Q. Was the licensee or the party
that would have been the licensee, was that
party Turner Classic? 12:57:21

A. I don't know whether it was
Turner Classic or an advertising agency.

Q. Why is it that you did not
object to this particular use or
contemplated use? 12:57:32

MR. STELLINGS: You should
answer only to the extent that your
answer would not implicate work
product. 12:57:41

A. I can't answer without
implicating work product.

Q. The answer is simply because
the licensee was interested in it and R&H
seeks to please its licensee? 12:57:54

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

VICTORIA G. TRAUBE

exhibit, please.

(Defendants' Exhibit 29,
agreement, marked for identification,
as of this date.)

13:20:10

(Whereupon, at this time, a
short break was taken.)

THE VIDEOGRAPHER: The time is
1:19 p.m. and we're back on the
record.

13:20:15

Q. I believe you have Exhibit 28
in front of you?

A. 29.

Q. This is a subpublisher
agreement between Williamson Music and Cafe
Concerto, correct?

13:20:27

A. Um-hum.

Q. Williamson Music is affiliated
with R&H; correct?

A. They're the subpublisher for
Italy.

13:20:36

Q. Williamson Music is the
subpublisher?

A. No, Cafe Concerto is.

Q. My question is Williamson

13:20:44

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

VICTORIA G. TRAUBE

Music, what is the relationship between
Williamson Music and R&H?

A. Williamson Music is a division
of the Rodgers and Hammerstein
Organization, it's a nominee.

13:20:53

Q. If you look at the agreement,
looking at the Grant of Right, clause 1B,
does that include internet use?

A. Well, you can read it as well
as I can. It includes reproductions by
downloads through electronic media such as
internet, but only to the extent authorized
by SIAE, which is the Italian licensing
society.

13:21:26

13:21:47

Q. Do you know what it means only
to the extent authorized by SIAE?

A. I do not.

Q. Also looking at paragraph 1C,
again, does that indicate internet
authorization to you?

13:22:01

A. Only to the extent authorized
by the society and I do not know what that
extent is.

Q. Earlier you testified that

13:22:15

1 VICTORIA G. TRAUBE

2 subpublishers do not have the right to
3 authorize internet use, does anything in
4 this agreement make you question your
5 earlier testimony?

13:22:35

6 A. Obviously, but I don't. Number
7 one, I don't think I've actually ever read
8 the Cafe Concerto agreement before and
9 number two, I don't know what to the extent
10 authorized by SIAE means and I don't want
11 to speculate. I could find out.

13:23:01

12 Q. Earlier you testified that you
13 were not certain whether your Counsel had
14 checked with all of the subpublishers for
15 the works in suit before asserting these
16 clips in this action; is that correct?

13:23:17

17 MR. STELLINGS: Object to the
18 form of the question. You can
19 answer.

20 A. I was not -- I testified that I
21 was not certain that my Counsel had checked
22 with our subpublishers; I do not believe
23 our Counsel checked with our subpublishers.

13:23:25

24 Q. Did R&H itself or anyone else
25 acting on behalf of R&H consult with all of

13:23:42

1 VICTORIA G. TRAUBE

2 A. I don't know.

3 Q. What about the clip we
4 discussed earlier at length, the train
5 station in Belgium, would that be an
6 example of a clip that included R&H
7 contents, but R&H could not immediately
8 determine whether it was authorized or not?

13:37:56

9 MR. STELLINGS: Object to the
10 form. You can answer.

13:38:08

11 A. It did take me a couple of
12 e-mails and a couple of phone calls to
13 determine that that clip was not
14 authorized.

15 Q. Who did you send those e-mails
16 to?

13:38:30

17 A. Probably --

18 MR. STELLINGS: Don't
19 speculate, please.

20 A. Okay. I honestly don't
21 remember with any specificity.

13:39:01

22 Q. Have there been any instances
23 where a DMCA Takedown Notice sent on behalf
24 of R&H has been challenged or otherwise the
25 subject of dispute?

13:39:30

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

VICTORIA G. TRAUBE

A. No.

MR. FRANTZ: Why don't we take
a short break. I think I'm almost
done.

13:39:43

THE VIDEOGRAPHER: The time is
1:39 p.m. We're going off the
record.

(Whereupon, at this time, a
short break was taken.)

14:04:39

THE VIDEOGRAPHER: The time is
2:04 p.m. and this is tape number
four of the videotaped deposition of
Victoria Traube.

Q. I just wanted to do some
cleanup as to the authorized uses on
YouTube that I think I may have gotten it
wrong. Let me try to clarify it for the
record.

14:04:57

On October 8th, we talked about
three authorized uses on YouTube, "White
Christmas", the musical, Young Vic's
production of "Annie, Get Your Gun" and
"Do-Re-Mi" and the Belgium train station;
is that correct?

14:05:08

14:05:22

1 VICTORIA G. TRAUBE

2 A. Yes.

3 Q. Today, I believe, we talked

4 about an additional three, if not four.

5 Let me try to run through them, make sure I

14:05:28

6 have them right.

7 First new one was the June 2009

8 Lyric Stage Production in Texas; is that

9 correct?

10 A. Correct.

14:05:36

11 Q. Second new one was the

12 production of "Light in the Piazza" in

13 Philadelphia; is that correct?

14 A. Yes.

15 Q. Third new one was "The Tour of

14:05:44

16 South Pacific" in San Francisco that you

17 said was currently -- the paperwork is

18 currently being revised; is that correct?

19 A. Correct.

20 Q. A fourth one that you

14:05:53

21 referenced, which was Turner Classic, but I

22 think the testimony was that you weren't

23 certain if a license was ultimately issued;

24 is that correct?

25 A. Yes.

14:06:02

VICTORIA G. TRAUBE

Q. Starting with the 2009 Lyric
Stage Production in Texas, do you know what
compositions were included in the
particular use on YouTube?

14:06:12

A. No, they were from the King and
I.

Q. Do you know if any of the
compositions are works in suit?

A. I don't know.

14:06:31

Q. Do you know if any of them were
"Getting to Know You"?

A. I don't know.

Q. When did R&H first become aware
of this particular use on YouTube?

14:06:57

A. The Lyric Stages?

Q. Correct.

A. It was June of 2009.

Q. Approximately, when did R&H
issue the license?

14:07:09

A. In July of 2009.

Q. Does R&H ever inform YouTube of
this license?

A. No.

MR. FRANTZ: To the extent we

14:07:27

1 VICTORIA G. TRAUBE

2 haven't already, we request
3 production of all documents relating
4 to this particular subject.

5 TO BE FURNISHED: _____

14:07:32

6 _____
7 Q. The second, I'll call new use
8 for today, was the production of "Light in
9 the Piazza" in Philadelphia and I believe I
10 asked you if you could recall the
11 composition and I believe your testimony
12 was that you could not?

14:07:42

13 A. I can't, but I can tell you
14 they're not the works in suit.

15 Q. Do you recall when R&H first
16 became aware of this use on YouTube?

14:07:52

17 A. Recently, November possibly.

18 Q. November of 2009?

19 A. Yes.

20 Q. Has a license been issued
21 already?

14:08:11

22 A. It has.

23 Q. That license was issued by R&H
24 itself; is that right?

25 A. R&H Theatricals, the

14:08:27

1 VICTORIA G. TRAUBE

2 theatricals division.

3 MR. FRANTZ: We also call for

4 production for all documents relating

5 to this appearance of an R&H

14:08:36

6 composition on YouTube.

7 TO BE FURNISHED: _____

8 _____

9 Q. The third new use from today

10 was "The Tour of South Pacific" in San

14:08:45

11 Francisco, can you tell me when you became

12 aware of that existence of those clips on

13 YouTube?

14 A. Sometime in the summer.

15 Q. You're in the process of

14:09:04

16 issuing a license, but it hasn't happened

17 yet; is that correct?

18 A. It's been drafted and sent, but
19 not signed.

20 Q. Do you know which compositions
21 appear in the clips on YouTube?

14:09:13

22 A. I do not know.

23 Q. The compositions would be
24 compositions from the --

25 A. From the musical "South

14:09:24

1 VICTORIA G. TRAUBE

2 Pacific".

3 Q. Do you know if any of those
4 compositions are works in suit?

5 A. I don't know. 14:09:30

6 MR. FRANTZ: We'll call for
7 production of all documents relating
8 to this use on YouTube.

9 TO BE FURNISHED: _____

10 _____ 14:09:41

11 Q. The last new use that we
12 learned about today is the Turner Classic
13 use and again the same question, do you
14 recall which composition or compositions
15 from R&H are involved? 14:09:55

16 A. I'm pretty sure it was "My
17 Favorite Things".

18 Q. Do you know whether there are
19 other compositions involved?

20 A. I believe there was only one. 14:10:12

21 Q. When did R&H become aware of
22 the use?

23 A. Sometime this summer -- well,
24 no, I'm sorry, I take that back. This was
25 not a pre-existing use. This was a request 14:10:30

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

VICTORIA G. TRAUBE

for a license for use that had not yet
occurred.

Q. Do you know whether the clips
are currently on YouTube?

14:10:44

A. I do not -- I don't know. I
also don't know whether the license was in
fact issued.

MR. FRANTZ: We'll also request
production of all documents relating
to this particular use on YouTube or
contemplated use on YouTube.

14:10:54

TO BE FURNISHED: _____

Q. With respect to all seven of
the instances of uses on YouTube or at
least contemplated uses on YouTube, in any
of those cases, did R&H inform YouTube of
the licenses?

14:11:00

A. No.

14:11:19

MR. STELLINGS: Objection,
asked and answered.

Q. I think we're going to talk
about the purchase agreement briefly. The
purchase agreement, I believe, was

14:11:33

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

VICTORIA G. TRAUBE

previously marked as Exhibit 19. You have
it in front of you.

In paragraph 2.4, it list the
purchase price as [REDACTED]; do
you see that?

14:12:21

A. Yes, I do.

Q. Was that, in fact, the purchase
price for this transaction?

A. By contract, yes.

14:12:30

Q. Did this purchase price account
at all for the valuation of the R&H
copyrights?

MR. STELLINGS: Objection,
vague. You can answer.

14:12:47

A. Sure.

Q. How was, if at all, valuation
performed on the R&H copyrights?

MR. STELLINGS: Objection. You
can answer.

14:13:09

A. The custom in the industry is
to use a multiple of average earnings.

Q. Is that the process by which
the works were valued in this case?

A. That's my understanding.

14:13:30

Schapiro Exhibit 96

From: Lionel Dubois [ldubois@fft.fr]
Sent: Thursday, December 06, 2007 1:56 PM
To: Cristina Depalma Teresa Difolco
Cc: Christophe Schaefer
Subject: Envoi d'un message : descriptifs animations BNPPM 07

Attachments: Programme Prévisionnel BNP PM 2007 + Animations.pdf; descriptifs animations BNPPM 07.doc

Bonjour,

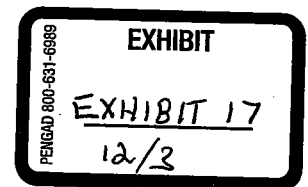
Je fais suite à notre conversation téléphonique, veuillez trouver ci-joint un descriptif des animations, un programme du tournoi avec les animations, et un lien youtube qui vous permettra de voir aussi les animations vidéos faites et l'ambiance.

http://fr.youtube.com/watch?v=lo_TZF1OAJY

Cordialement,

<<...>> <<...>>

Lionel Dubois



Confidential

FT00096491

From: Lionel Dubois [ldubois@fft.fr]
Sent: Thursday, December 06, 2007 1:56 PM
To: Cristina Depalma Teresa Difolco
Cc: Christophe Schaefer
Subject: Sending a message: descriptions, animations BNPPM 07

Attachments: Programme Previsionnel BNP PM 2007 + Animations.pdf; descriptifs animations BNPPM 07.doc

Hello,

I am following up on our telephone conversation, please find enclosed a description of the animations, a tournament program with the animations, and a YouTube link which will allow you to also see the video animations made and the ambiance.

<http://fr.youtube.com/watch?v=loTZF1OAJY>

Sincerely,

<<...>> <<...>>

Lionel Dubois

Confidential

FT00096491