

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 ROELOF BOTHA  
MENLO PARK, CALIFORNIA  
WEDNESDAY, AUGUST 5, 2009

JOB NO. 17298

DAVID FELDMAN WORLDWIDE, INC.  
450 7th Avenue - Ste 2803, New York, NY 10123 (212)705-8585

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AUGUST 5, 2009

9:04 a.m.

VIDEOTAPED DEPOSITION OF ROELOF BOTHA,  
SHEARMAN & STERLING LLP, 1080 Marsh Road,  
Menlo Park, California, pursuant to notice, and  
before me, ANDREA M. IGNACIO HOWARD, CLR, RPR,  
CRR, CSR License No. 9830.

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1           A P P E A R A N C E S:

2

3           FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

4                     SHEARMAN & STERLING LLP

5                     By:   KIRSTEN NELSON CUNHA, Esq.

6                     599 Lexington Avenue

7                     New York, New York 10022-6069

8                     (212) 848-4000   kirsten.cunha@shearman.com

9

10           FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

11                     BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

12                     By:   BENJAMIN GALDSTON, Esq.

13                     12481 High Bluff Drive, Suite 300

14                     San Diego, California 92130-3582

15                     (858) 720-3188   beng@blbglaw.com

16

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

19                     WILSON SONSINI GOODRICH & ROSATI, LLP

20                     By:   DAVID H. KRAMER, Esq.

21                     650 Page Mill Road

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23                     (650) 493-9300   dkramer@wsgr.com

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

2

3           FOR THE WITNESS ROELOF BOTHA:

4                   DURIE TANGRI PAGE LEMLEY ROBERTS & KENT LLP

5                   By: RAGESH K. TANGRI, Esq.

6                   332 Pine Street, Suite 200

7                   San Francisco, California 94104

8                   (415) 362-6666   rtangri@durietangri.com

9

10           ALSO PRESENT: Lou Meadows, Videographer.

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1 R. BOTHA  
2 MENLO PARK, CALIFORNIA  
3 AUGUST 5, 2009  
4 9:04 a.m.

09:05:41

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09:05:41

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THE VIDEOGRAPHER: On the record.

09:05:44

8

This is today's videotaped deposition of

09:05:47

9

Roelof Botha, taken on August 5th, 2009, at Shearman &

09:05:54

10

Stearling, 1080 Marsh Road, Menlo Park, California.

09:05:59

11

In the matter of Viacom International vs. YouTube,

09:05:59

12

Inc., and The Football Association Premier League

09:06:07

13

Limited, et al., vs. YouTube, Inc., et al.

09:06:07

14

Case No. 07-CV-2103 and 07-CV-3582. In the

09:06:16

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United States District Court in the Southern District

09:06:18

16

of New York.

09:06:19

17

My name is Lou Meadows, and I represent David

09:06:23

18

Feldman Worldwide, located at 600 Anton Boulevard,

09:06:29

19

Suite 1100, in Costa Mesa, California.

09:06:31

20

We are now commencing at 9:04 a.m.

09:06:34

21

Will all present please identify yourselves

09:06:35

22

and state whom you represent for the record.

09:06:35

23

MS. CUNHA: Kirsten Cunha from Shearman &

09:06:40

24

Stearling on behalf of the Viacom plaintiffs.

09:06:41

25

MR. GALDSTON: Benjamin Galdston of Berstein,

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09:06:41 2 Litowitz, Berger & Grossmann on behalf of the class  
09:06:45 3 plaintiffs.

09:06:45 4 MR. KRAMER: I'm Dave Kramer from Wilson  
09:06:49 5 Sonsini representing the defendants Google and  
09:06:53 6 YouTube.

09:06:53 7 MR. TANGRI: Ragesh Tangri representing the  
09:06:55 8 witness.

09:06:55 9 THE VIDEOGRAPHER: Thank you.

09:06:55 10 If there are no stipulations, the court  
09:07:07 11 reporter may now administer the oath.

12

13 ROELOF BOTHA,

14 having been sworn as a witness,

15 testified as follows:

16

17

09:07:08 18 EXAMINATION BY MS. CUNHA

09:07:08 19 MS. CUNHA: Q. Good morning, Mr. Botha.

09:07:10 20 A Good morning.

09:07:11 21 Q Could you please state briefly your  
09:07:13 22 educational background?

09:07:13 23 A Sure.

09:07:14 24 I completed an undergraduate degree at the  
09:07:18 25 University of Cape Town and -- with majors in

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09:40:55 2 three cofounders established, I don't know the exact  
09:40:59 3 nature of the incorporation they sought, but I believe  
09:41:01 4 it was a -- a Nevada C Corp or S Corp that they  
09:41:07 5 established initially when they cofounded the company.

09:41:11 6 And when we made the decision to invest,  
09:41:14 7 there was a very long period that elapsed between our  
09:41:17 8 commitment to the company to invest and the actual  
09:41:20 9 closing of the investment, given that the company had  
09:41:24 10 to reincorporate as a Delaware Corporation and just  
09:41:26 11 all the paperwork associated with sort of cleaning up  
09:41:29 12 the financing documents, sorting out the founder of  
09:41:34 13 stock, founder basing, et cetera.

09:41:37 14 And as it's typical in our business, we get  
09:41:38 15 involved in the company after we make an investment  
09:41:42 16 decision and negotiate mutually agreeable terms. We  
09:41:46 17 typically start to work side by side with the company  
09:41:48 18 prior to the actual closing of the technically --  
09:41:50 19 technical closing of the financing, since time is of  
09:41:54 20 the essence for these companies, and we don't want to  
09:41:57 21 lose a month or two between our decision to invest and  
09:41:59 22 the actual closing of the financing.

09:42:01 23 And for that reason, that -- given the  
09:42:04 24 specifics of YouTube's sort of capital structure  
09:42:07 25 history, that time was unusually long in the context

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1 R. BOTHA

09:42:10 2 of this investment.

09:42:12 3 Q So let me make sure I -- I understand that.

09:42:15 4 So in the case of -- of YouTube, Sequoia made  
09:42:20 5 a decision to invest in the company, and then there  
09:42:24 6 was some period of time prior to the actual closing of  
09:42:28 7 the investment to -- to clean up these various issues  
09:42:31 8 that you've just discussed; correct?

09:42:33 9 A Correct.

09:42:34 10 Q And --

09:42:34 11 A I don't know the exact time that elapsed  
09:42:36 12 between -- so there are a couple of, I think, key  
09:42:39 13 events to highlight.

09:42:41 14 One is a -- is a decision to invest based on  
09:42:43 15 what we believe to be the merits of the investment. A  
09:42:48 16 negotiation and agreement on a set of terms for the  
09:42:51 17 investment between Sequoia and the cofounders and the  
09:42:55 18 signing of such term sheet. And then, the actual  
09:43:00 19 closing of the financing when money changed hands.

09:43:07 20 Q And if I understand your testimony, what  
09:43:09 21 you're saying is, in that period of time between the  
09:43:13 22 decision to invest and the closing of the investment,  
09:43:19 23 Sequoia started working with YouTube as if it were, in  
09:43:25 24 essence, already a portfolio company; is that -- is  
09:43:28 25 that fair to say?

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1 R. BOTHA

09:43:30 2 MR. TANGRI: Objection; ambiguous.

09:43:32 3 You can answer.

09:43:33 4 THE WITNESS: So let me make sure I just be  
09:43:37 5 very careful.

09:43:37 6 The -- when we initially made the decision to  
09:43:40 7 invest, I believe in early September, we -- I don't --  
09:43:47 8 I don't know how many other investment groups the  
09:43:50 9 company was still talking to, but I was starting to  
09:43:55 10 provide feedback to the cofounders about the company.  
09:43:58 11 It may have been product feedback about features on  
09:44:02 12 the site that I would personally find useful, and  
09:44:04 13 given that they were personal friends, I just had an  
09:44:07 14 interest in helping them.

09:44:10 15 Our initial negotiations with the company led  
09:44:15 16 to a set of terms that the company was not comfortable  
09:44:21 17 with, and they may have started discussions with other  
09:44:25 18 investment groups, and we subsequently did arrive at a  
09:44:33 19 formal agreement and signed that agreement. Sometime  
09:44:36 20 after that, the company took up office space at  
09:44:39 21 Sequoia Capital, prior to the actual closing of the  
09:44:42 22 investment.

09:44:49 23 Q Okay. So let me just make sure I understand.

09:44:52 24 As I understand it, there was a decision to  
09:44:57 25 invest in the company that was made by Sequoia

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1 R. BOTHA

09:45:01 2 sometime in the September 2005 time frame, and once  
09:45:04 3 that decision was made, you started providing some  
09:45:07 4 advice and feedback to the -- to the founders of the  
09:45:11 5 company, even though the investment had not yet been  
09:45:14 6 finalized and closed; correct?

09:45:16 7 MR. TANGRI: Objection to the extent it  
09:45:17 8 mischaracterizes his prior testimony.

09:45:21 9 THE WITNESS: Could you repeat the question,  
09:45:22 10 please?

09:45:23 11 MS. CUNHA: Sure. I'm just trying to unpack  
09:45:26 12 what -- what you've told me here and make sure I  
09:45:28 13 understand it. So if I get it wrong, I'm not trying  
09:45:30 14 to trip you up. I'm just trying to make sure I  
09:45:32 15 understand this.

09:45:32 16 Q As I understand it, you've kind of described  
09:45:36 17 three categories of events. There was a decision to  
09:45:38 18 invest, then there was a negotiation of terms of the  
09:45:41 19 agreement, and then there was the -- the closing of  
09:45:43 20 the financing.

09:45:44 21 And as I understand your testimony, once the  
09:45:47 22 decision to invest was made, you started providing  
09:45:50 23 some feedback and advice to the company, even though  
09:45:54 24 the investment had not yet closed; is that correct?

09:46:00 25 A So let me be very careful, though, because

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1 R. BOTHA

09:46:02 2 even before the company -- even before we reached an  
09:46:06 3 investment decision, given that these were personal  
09:46:09 4 friends of mine, I was providing them feedback on the  
09:46:11 5 service. At our first meeting at Sequoia Capital,  
09:46:14 6 when they showcased the website, we provided feedback  
09:46:19 7 ideas.

09:46:20 8 It -- it's the nature of the venture capital  
09:46:22 9 business that any time we interact with the company,  
09:46:24 10 part of establishing credibility with the founders,  
09:46:27 11 given that you're going to be an adviser to them,  
09:46:30 12 hopefully for years, over the course of the  
09:46:32 13 investment, you provide feedback. You provide advice  
09:46:35 14 on how to run a business, who to recruit, how to  
09:46:38 15 structure the company, which direction you should head  
09:46:41 16 strategically.

09:46:43 17 Q Okay. So let's take that point in time as  
09:46:46 18 the first point in time, which is the decision to  
09:46:48 19 invest, the time that Sequoia makes the decision to  
09:46:50 20 invest.

09:46:51 21 Prior to that point in time, do you recall  
09:46:55 22 any discussions with anyone internally at Sequoia or  
09:47:01 23 externally with YouTube or other third parties  
09:47:04 24 concerning copyright issues related to YouTube?

09:47:07 25 A Before we made the decision to invest?

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1 R. BOTHA

09:47:09 2 Q Correct.

09:47:10 3 MR. TANGRI: Objection; overbroad.

09:47:12 4 THE WITNESS: So I want to be careful because  
09:47:14 5 I don't remember the specific date. I don't have a  
09:47:16 6 calendar in front of me, but to the best that I can  
09:47:19 7 recall, we did not speak to anyone outside Sequoia  
09:47:25 8 Capital about copyright-related matters with regards  
09:47:32 9 to YouTube.

09:47:35 10 MS. CUNHA: Q. How about internally? Were  
09:47:37 11 there any discussions internally at Sequoia Capital,  
09:47:40 12 prior to the decision to invest, concerning copyright  
09:47:42 13 issues related to YouTube?

09:47:45 14 A As best I can recall, we did not have  
09:47:48 15 discussions internally to Sequoia, prior to the  
09:47:50 16 decision to invest, relating to copyright matters.

09:47:59 17 Q Now, just kind of moving the timeline  
09:48:01 18 forward, as I understand it, once the decision to  
09:48:03 19 invest was made, there was a period of time where  
09:48:07 20 there was a negotiation of terms, and it sounds like  
09:48:11 21 there were some matters involving changing the state  
09:48:15 22 of incorporation that needed to occur prior to the  
09:48:18 23 time the investment closed.

09:48:20 24 So my next question is, from the time that  
09:48:23 25 Sequoia made the decision to invest, to the time that

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1 R. BOTHA

09:48:28 2 the financing closed, do you recall in that time  
09:48:31 3 period any discussions internally or externally  
09:48:39 4 concerning copyright issues related to YouTube?

09:48:42 5 A I don't remember the precise closing dates,  
09:48:46 6 and so I -- I just candidly don't want to answer  
09:48:50 7 untruthfully, because I don't recall at which point a  
09:48:55 8 discussion may have occurred, given that I don't  
09:48:56 9 recall the specific closing date.

09:48:58 10 Q Okay. Is it fair to say you do recall at  
09:49:03 11 some point whether or not it took place before or  
09:49:05 12 after the closing? Is it fair to recall -- to say  
09:49:09 13 that at some point you do recall that there were  
09:49:11 14 conversations concerning copyright issues related to  
09:49:14 15 YouTube?

09:49:15 16 A Could you -- sorry. Can you --

09:49:17 17 Q Sure.

09:49:18 18 A -- repeat the question?

09:49:19 19 Q My question is, at any time in this 2005 time  
09:49:23 20 period, do you recall any conversations concerning  
09:49:27 21 copyright issues related to YouTube?

09:49:30 22 A At any time in 2005?

09:49:32 23 Q Uh-huh.

09:49:34 24 A So I do recall that in the fourth quarter of  
09:49:37 25 2005, we did have discussions at the company with

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1 R. BOTHA

09:49:51 2 regards to copyrighted matters.

09:49:54 3 Q Now, was this after the financing closed?

09:50:02 4 A I don't recall. As I mentioned before -- I'm  
09:50:03 5 sorry, I don't -- because it was such an unusual  
09:50:06 6 situation to have the reincorporation and just -- I  
09:50:10 7 don't recall the date. Normally, things are a lot  
09:50:14 8 smoother.

09:50:14 9 Q Now, tell me what you recall about these  
09:50:17 10 discussions in the fourth quarter of 2005 with regards  
09:50:20 11 to copyright matters.

09:50:22 12 MR. TANGRI: And I'm just going to caution  
09:50:25 13 you at this point that if any of those discussions  
09:50:26 14 were with or relayed advice or communications had with  
09:50:30 15 lawyers, exclude the substance of any legal  
09:50:35 16 communications from your answer as a privileged basis.

09:50:39 17 MR. KRAMER: Join.

09:50:39 18 THE WITNESS: I beg your pardon?

09:50:41 19 MR. KRAMER: I join in that instruction.

09:50:43 20 THE WITNESS: Oh, okay. But it's permissible  
09:50:46 21 you can identify a discussion, but not the content?

09:50:49 22 MR. TANGRI: Correct, correct.

09:50:50 23 THE WITNESS: I just want to make sure I  
09:50:51 24 understand.

09:50:51 25 MR. TANGRI: You -- you -- yes. If the

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1 R. BOTHA

09:50:51 2 answer -- yes, you can identify a discussion and the  
09:50:54 3 participants, but not to disclose the substance of the  
09:50:57 4 discussion, if the substance was --

09:50:59 5 THE WITNESS: Understood.

09:51:00 6 MR. TANGRI: -- infected with lawyer  
09:51:01 7 communications, for want of a better word.

09:51:04 8 THE WITNESS: Understood.

09:51:05 9 So at -- at some point in the fourth quarter  
09:51:10 10 of 2005, Chad Hurley and myself met with an attorney  
09:51:20 11 at Wilson Sonsini.

09:51:27 12 MS. CUNHA: Q. And who was that attorney?

09:51:29 13 A I believe it's Cathy Kirkman. I can't recall  
09:51:33 14 her -- I hope I got her last name correct.

09:51:37 15 Q And what was discussed at that meeting?

09:51:39 16 MR. TANGRI: And at this point, I'm going to  
09:51:43 17 instruct you not to answer the question based on  
09:51:45 18 attorney-client privilege.

09:51:46 19 MR. KRAMER: Join.

09:51:46 20 THE WITNESS: Understood.

09:51:47 21 MS. CUNHA: Q. And are you going to follow  
09:51:48 22 your attorney's advice and not answer the question?

09:51:51 23 A Yes.

09:51:52 24 Q Now, do you know how YouTube came to be  
09:51:59 25 represented by Cathy Kirkland and Wilson Sonsini?

1 R. BOTHA

09:52:05 2 A I don't recall the specific connection  
09:52:09 3 between -- so at the time that we invested -- or  
09:52:12 4 the -- at the time that I first met with the team,  
09:52:15 5 they had, I think, self-incorporated. Maybe they'd  
09:52:18 6 used, you know, a website or some other service to do  
09:52:21 7 their incorporation. They didn't have outside counsel  
09:52:25 8 representation, and so we suggested that, as a matter  
09:52:30 9 of good sort of standard practice, the company should  
09:52:35 10 seek company counsel in the same fashion that we would  
09:52:39 11 seek investor counsel when making an investment.

09:52:42 12 And I may have introduced them to a few  
09:52:46 13 different law firms. I don't recall specifically  
09:52:50 14 whether I was the one to introduce them to Stephen  
09:52:55 15 Wells, who ended up being the company's outside  
09:52:58 16 corporate counsel.

09:53:00 17 Q Did you know Ms. Kirkland prior to this time  
09:53:05 18 period?

09:53:05 19 A I did not know Ms. Kirk -- Mrs. Kirkland?

09:53:11 20 MR. KRAMER: Kirkman.

09:53:12 21 THE WITNESS: Kirkman.

09:53:13 22 MR. KRAMER: Yes, K-I-R-K-M-A-N.

09:53:17 23 THE WITNESS: Yeah, Kirkman.

09:53:19 24 I did not know Cathy Kirkman before this.

09:54:10 25 MS. CUNHA: Let's mark this as the first

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1 R. BOTHA

09:54:12 2 Exhibit.

09:54:24 3 (Document marked Botha Exhibit 1

09:55:01 4 for identification.)

09:55:01 5 MS. CUNHA: And while we're there, let's just

09:55:03 6 mark this as the second exhibit.

09:55:11 7 MR. TANGRI: Thank you.

09:55:12 8 (Document marked Botha Exhibit 2

09:55:18 9 for identification.)

09:55:18 10 MS. CUNHA: Q. Showing you what's been

09:55:33 11 marked as Exhibit 1 and 2, have you had an opportunity

09:55:37 12 to look at those documents?

09:55:39 13 A I have looked at the documents.

09:55:40 14 Q Okay. Do you recognize them?

09:55:45 15 A I do recall these documents.

09:55:45 16 Q And you --

09:55:48 17 A Well, I obviously saw them electronically as

09:55:52 18 e-mails, not these specific printouts, but...

09:55:54 19 Q But you recognize them as printouts of -- of

09:55:57 20 e-mail chains in which you were one of the recipients?

09:56:00 21 A I do recognize.

09:56:02 22 Q And does seeing these two documents refresh

09:56:07 23 your recollection as to when this meeting that you

09:56:11 24 described with Cathy Kirkman took place?

09:56:15 25 MR. KRAMER: Objection to the extent it

1 R. BOTHA

09:56:16 2 mischaracterizes the prior testimony, and it's vague.

09:56:23 3 THE WITNESS: As I mentioned before, I do not

09:56:25 4 recall the specific date of the meeting with Cathy

09:56:28 5 Kirkman, but these e-mails do specify the specific

09:56:32 6 date that was scheduled for a meeting.

09:56:34 7 I don't know whether the meeting actually

09:56:36 8 took place on that date without consulting a calendar.

09:56:42 9 It may have been rescheduled. I do not know.

09:56:43 10 MS. CUNHA: Q. And does seeing these two

09:56:45 11 documents refresh your recollection as to whether or

09:56:45 12 not that meeting took place prior to the closing of

09:56:50 13 Sequoia's investment in YouTube?

09:56:54 14 A Unfortunately, neither of these documents

09:56:57 15 cite the actual closing date of the investment in

09:57:01 16 YouTube, and as such, I cannot conclude whether or not

09:57:05 17 they occurred before or after.

09:57:16 18 Q Now, directing your attention to Exhibit 1,

09:57:21 19 there is an e-mail, the second from the top, from you

09:57:27 20 to Mr. Hurley, dated September 21st, 2005, at

09:57:32 21 2:54 p.m.; do you see that e-mail?

09:57:34 22 A I do see that.

09:57:35 23 Q And do you see you write to Mr. Hurley that,

09:57:38 24 "I will get you the contact information for two

09:57:40 25 different IP strategists, including the attorney at

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1 R. BOTHA

11:07:41 2 you see that?

11:07:41 3 A Give me a second, please. I do see that.

11:07:47 4 Q And I think you testified earlier that the  
11:07:49 5 company moved its headquarters to Sequoia's space; do  
11:07:55 6 you recall that testimony?

11:07:56 7 MR. TANGRI: Objection to the extent it  
11:07:58 8 mischaracterizes the prior testimony.

11:08:01 9 You can answer.

11:08:01 10 THE WITNESS: I do recall the prior testimony  
11:08:03 11 that YouTube took up space at Sequoia Capital for some  
11:08:06 12 time.

11:08:06 13 MS. CUNHA: Q. And is that what you're  
11:08:08 14 referring to as an incubation area --

11:08:11 15 A The --

11:08:11 16 Q -- in this investment memorandum?

11:08:14 17 A The incubation area at Sequoia Capital is a  
11:08:19 18 space we set aside for entrepreneurs working on new  
11:08:25 19 ideas, which you might refer to as an "entrepreneur  
11:08:28 20 residence," or for recent investments where companies  
11:08:29 21 do not yet have their own office space, and we can  
11:08:32 22 essentially provide them with office space for free to  
11:08:35 23 help them not deal with that friction as they're  
11:08:39 24 trying to work on their business.

11:08:40 25 Q And is that, in fact, where YouTube moved?

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11:08:45 2 A You -- YouTube didn't move --

11:08:47 3 MR. TANGRI: Objection.

11:08:47 4 THE WITNESS: Sorry.

11:08:49 5 MR. TANGRI: Go ahead.

11:08:49 6 THE WITNESS: YouTube did move to the Sequoia

11:08:51 7 Capital incubation area sometime following this, the

11:08:55 8 date of this investment memorandum, and before they

11:08:57 9 took up space in San Mateo later in the fourth quarter

11:09:01 10 of 2005.

11:09:02 11 MS. CUNHA: Q. Do you recall how long they

11:09:05 12 were in that space?

11:09:07 13 A Which space?

11:09:10 14 Q The Sequoia incubation space.

11:09:12 15 A I don't recall the specific duration. If I

11:09:14 16 had to estimate, it was probably four to six weeks, as

11:09:17 17 best I recall.

11:09:18 18 Q And that space is actually at Sequoia's

11:09:22 19 offices or at the same address of Sequoia's offices?

11:09:26 20 A It's at the same address as Sequoia's

11:09:28 21 offices.

11:09:29 22 Q So in that period of time that they were

11:09:31 23 there, were you working closely with YouTube while

11:09:34 24 they were in the incubation space?

11:09:36 25 A Could --

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11:37:08 2 mischaracterizes his prior testimony.

11:37:10 3 THE WITNESS: Yeah, I think I -- I'll stick  
11:37:13 4 to what I said the previous time. I gave a detailed  
11:37:15 5 explanation.

11:37:16 6 MS. CUNHA: Q. Now, other than the Nike  
11:37:19 7 video, do you recall if any of the other videos that  
11:37:23 8 were amongst the most -- the most viewed in this  
11:37:27 9 distribution analysis were professionally produced  
11:37:31 10 content?

11:37:31 11 MR. TANGRI: Objection; mischaracterizes his  
11:37:33 12 prior testimony and vague.

11:37:36 13 THE WITNESS: I recall the Nike video being a  
11:37:38 14 professionally produced video, because we went to meet  
11:37:41 15 with the people who produced and uploaded that video  
11:37:45 16 on YouTube.

11:37:47 17 MS. CUNHA: Q. When did you do that?

11:37:53 18 A I do not recall the specific date, but I  
11:37:58 19 believe -- I believe it was at the end of 2005.

11:38:01 20 Q So in 2005, you were aware that companies  
11:38:08 21 were creating content for promotional purposes and  
11:38:14 22 posting it on the YouTube website; is that fair to  
11:38:18 23 say?

11:38:19 24 A It's fair to say that I was aware that Nike  
11:38:22 25 had uploaded a video that they wanted to distribute

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11:38:25 2 for promotional purposes for a new shoe.

11:38:28 3 Q Were you aware of any other companies posting  
11:38:31 4 promotional content on the YouTube website in the 2005  
11:38:34 5 time period?

11:38:36 6 A I do not recall being aware of other  
11:38:40 7 companies.

11:38:40 8 Q At some point, did you become aware of other  
11:38:44 9 companies posting promotional content on the YouTube  
11:38:46 10 website?

11:38:47 11 A At some point, I did become aware of -- of  
11:38:52 12 other companies using YouTube for promotional purposes  
11:38:59 13 for uploading content.

11:38:59 14 Q And, in fact, early on when Sequoia first  
11:39:02 15 decided to invest, was part of the revenue model for  
11:39:10 16 YouTube the notion that companies would use the  
11:39:13 17 website to post promotional content?

11:39:17 18 A Sorry. Could you repeat the question,  
11:39:18 19 please?

11:39:19 20 Q Sure.

11:39:20 21 When Sequoia was deciding to invest in  
11:39:22 22 YouTube and was looking at potential revenue models,  
11:39:25 23 was part of what Sequoia envisioned for the website in  
11:39:29 24 the future was that the site would be used by  
11:39:31 25 companies who would post promotional content?

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13:26:29 2 Lazy Sunday gained a lot of popularity and significant  
13:26:37 3 video views. Chad Hurley noticed that this was a very  
13:26:39 4 popular video and sent a message to Saturday Night  
13:26:47 5 Live, or I don't know which specific media company  
13:26:52 6 parent to whom he sent the communication, notifying  
13:26:55 7 them that this video was on the service.

13:26:59 8 We, YouTube, did not know who the individual  
13:27:02 9 was who uploaded the video clip, nor whether that  
13:27:07 10 individual had the authority to upload that particular  
13:27:11 11 video, but we notified the owners of that show that  
13:27:17 12 this clip was available on YouTube and we didn't know  
13:27:21 13 if it was authorized and if it was not authorized,  
13:27:24 14 that they should please notify the company so that we  
13:27:28 15 could take it down in compliance with the company's  
13:27:31 16 takedown policies, and the company did not receive any  
13:27:34 17 reply for six weeks thereafter.

13:27:37 18 MS. CUNHA: Q. Were you copied on that  
13:27:38 19 communication?

13:27:40 20 A I do not believe I was copied on that  
13:27:42 21 communication.

13:27:42 22 Q But somebody told you about the  
13:27:45 23 communication?

13:27:47 24 A Chad Hurley reported this incident to me,  
13:27:50 25 yes.

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