

HIGHLY CONFIDENTIAL - THOMAS DONOHUE

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., COMEDY)	
PARTNERS, COUNTRY MUSIC)	
TELEVISION, INC., PARAMOUNT)	
PICTURES CORPORATION, and BLACK)	
ENTERTAINMENT TELEVISION LLC,)	
Plaintiffs,)	
vs.)	Case No.
YOUTUBE, INC., YOUTUBE, LLC,)	07CV-2103
and GOOGLE, INC.,)	
Defendants.)	
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THE FOOTBALL ASSOCIATION PREMIER)	
LEAGUE LIMITED, BOURNE CO., et al.,)	
on behalf of themselves and all)	
others similarly situated,)	
Plaintiffs,)	
vs.)	Case No.
YOUTUBE, INC., YOUTUBE, LLC, and)	07CV-3582
GOOGLE, INC.,)	
Defendants.)	
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*****HIGHLY CONFIDENTIAL*****
 DEPOSITION OF THOMAS DONOHUE
 NEW YORK, NEW YORK
 FRIDAY, OCTOBER 30, 2009
 9:46 a.m.

BY: REBECCA SCHAUMLOFFEL
 JOB NO. 17991

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

FOR THE PLAINTIFFS VIACOM INTERNATIONAL,
INC.:

SHEARMAN & STERLING, LLP.
599 Lexington Avenue
New York, New York 10022
By: KIRSTEN CUNHA, ESQ.
Kirsten.cunha@shearman.com

FOR THE DEFENDANT, GOOGLE, INC.
WILSON SONSINI GOODRICH & ROSATI
650 Page Mill Road
Pal Alto, CA 94304
By: MAURA L. REES, ESQ.
Mrees@wsgr.com

FOR THE WITNESS, TOM DOOLEY
THOMAS M. MULLANEY, ESQ.
708 Third Avenue
New York, New York 10017

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FEDERAL STIPULATIONS

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

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

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

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T O M D O N O H U E, called as a
witness, having been duly sworn,
testified as follows:

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6

EXAMINATION BY

7

MS. REES:

8

Q. Could you please state your
full name for the record.

9

09:47:29

10

A. Thomas H. Donohue.

11

Q. Do you understand that you
are testifying under oath today, the
same as if you were in a courtroom?

12

13

14

A. Yes.

09:48:13

15

THE COURT REPORTER: Off the
record.

16

17

(Whereupon, a recess was

18

held.)

19

BY MS. REES:

09:48:15

20

Q. Have you ever had your
deposition taken before?

21

22

A. No.

23

Q. So I am going to go over a
few ground rules about the deposition

24

09:48:34

25

procedure. The first is that the court

1 THOMAS DONOHUE

2 purposes of marketing campaigns on
3 behalf of our clients.

12:48:45 4 Q. And is it fair to say that
5 this conversation followed on the heels
6 of this introductory E-mail, which is
7 Exhibit 24?

8 A. Yes.

12:49:01 9 Q. In this E-mail from Mr.
10 Johmann at the bottom of the first page
11 of Exhibit 25, he states, "As you
12 mention, we did sign up for the
13 Director's account."

12:49:10 14 Are you aware in the
15 Director's account was something that
16 Kevin Donahue of YouTube suggested that
17 Wiredset sign up for?

12:49:24 18 A. I believe he did. I can't
19 recall specifically when that was
20 introduced, that concept, or who was
21 eligible for it, but it was my
22 understanding it was something that
23 enabled companies like Wiredset to have
24 more features. Some of which were
12:49:37 25 marketing features for the account on

1 THOMAS DONOHUE

2 YouTube.

12:49:46 3 Q. The account name that
4 Wiredset used for its Director account
5 was Wiredset?

6 A. That's correct, yes.

12:49:59 7 Q. And you see at the top of
8 that E-mail chain on Exhibit 25, Mr.
9 Johmann sends Mr. Donahue a link to a
10 funny spot with Jessica Alba for the
11 MTV Movie Awards. Do you see that?

12 A. Um-hum.

12:50:10 13 Q. Are you aware if there are
14 other instances in which Mr. Johmann,
15 or anyone else at Wiredset, sent URL
16 links to YouTube reflecting content
17 that had been posted by Wiredset on
18 behalf of MTV?

12:50:26 19 A. It is possible and likely
20 there are other links that we sent
21 because of the opportunity with YouTube
22 to feature some of the content.

12:50:55 23 Q. If I could ask you to pull
24 out of your pile of exhibits in front
25 of you, Exhibit 10 from this morning,

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2 A. Oh, sorry. It is to
3 Wiredset from Courtney Nieman.

4 Q. Again, who is
12:57:29 5 Bryanm@wiredset.com?

6 A. Bryan M. is a former intern,
7 Bryan Munson, who was interning for us
8 at the time of this E-mail.

9 Q. In this E-mail, Miss Nieman
12:57:47 10 states that "With more than 100,000
11 unauthorized clips that needed to be
12 removed from the site, unfortunately,
13 there were isolated errors."

14 Do you see that?

12:57:56 15 A. Um-hum.

16 Q. Is that consistent with your
17 recollection at the time that when
18 Viacom took down content from YouTube,
19 there were a few errors that were made?

12:58:07 20 MS. REES: Objection. Lacks
21 foundation.

22 A. That they had identified
23 incorrectly, content?

24 Q. Correct. That there were
12:58:21 25 errors made in the takedown that Viacom

1 THOMAS DONOHUE

2 issued to YouTube.

3 A. Yes.

4 Q. Is it your recollection that
12:58:28 5 those matters were resolved
6 expeditiously?

7 A. That was often the case,
8 yes.

9 Q. You testified earlier about
12:59:12 10 a -- I believe you called it a
11 corporate policy of transparency.

12 Did Wiredset ever try to
13 disguise or hide its identity to
14 YouTube?

12:59:24 15 A. No. We have always been
16 very transparent as to the fact that we
17 are a marketing agency that is working
18 on behalf of our clients.

19 Q. And did Wiredset ever try to
12:59:37 20 hide from YouTube the identity of any
21 of its clients when it was posting
22 content on YouTube?

23 A. No, the content that we were
24 posting would be very easily
12:59:50 25 identifiable and clear as to who

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2 ultimately would -- it was associated
3 with.

4 Q. Why is that?

12:59:56

5 A. Because we either made that
6 clear that -- well, it was clear that
7 we didn't produce content. It was
8 clear that we made it clear that we
9 were working on behalf of our clients.

13:00:19

10 And I don't know how it was
11 communicated that we -- we did not
12 actually own these clips, but we were
13 uploading these clips on behalf of our
14 clients. I don't know how that was
15 communicated exactly, but I think there
16 was -- that was implied.

13:00:29

17 Q. Were there ever -- have you
18 ever heard of the phrase, "a call to
19 action."

13:00:39

20 A. I have heard that phrase,
21 yes.

22 Q. Did the marketing material
23 that Wiredset uploaded to YouTube on
24 behalf of Viacom occasionally contain a
25 call to action?

13:00:48

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