

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,	)	Case No.
	)	1:07CV02103
Plaintiffs,	)	
	)	
vs. )	)	
	)	
YOUTUBE, INC., YOUTUBE, LLC,	)	
and GOOGLE, INC.,	)	
	)	
Defendants.	)	
_____	)	

VIDEOTAPED DEPOSITION OF TOM FRESTON

New York, New York

Friday, September 11th, 2009

REPORTED BY:  
ERICA RUGGIERI, CSR, RPR  
JOB NO: 17617

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September 11, 2009  
9:52 a.m.

VIDEOTAPED DEPOSITION OF TOM  
FRESTON, held at the offices of Mayer  
Brown, 1675 Broadway, New York, New York,  
pursuant to notice, before Erica L.  
Ruggieri, Registered Professional Reporter  
and Notary Public of the State of New  
York.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

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FOR THE WITNESS

KENDALL BRILL KLIEGER, LLP  
BY: RICHARD B. KENDALL, ESQ.  
10100 Santa Monica Blvd., Suite 1725  
Los Angeles, California 90067

ALSO PRESENT:

MARK C. MORRIL, ESQ., Viacom  
SALLIANNE BROWN, Videographer

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212)705-8585

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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.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212)705-8585

09:35:32

09:36:04

09:36:30

09:53:18

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THE VIDEOGRAPHER: This is tape number one of the videotape deposition of Tom Freston, in the matter of Viacom International, Inc., et al. versus YouTube, Inc., et al., in the United States District Court, for the Southern District of New York, case number 07CV2103.

This deposition is being held at the law firm of Mayer Brown, LLP, 1675 Broadway, New York, New York, on Friday, September 11, 2009, at approximately 9:52 a.m.

My name is Sallieann Brown from David Feldman Worldwide, and I am the legal video specialist. The court reporter is Erica Ruggieri, in association with David Feldman Worldwide.

Will counsel please introduce themselves.

MR. SCHAPIRO: Andrew Schapiro for the defendants. With me is Christine Hernandez.

1 FRESTON

2 MR. KENDALL: Richard Kendall,  
3 for the witness.

09:53:26

4 MS. KOHLMANN: Susan Kohlmann,  
5 for the Viacom plaintiffs.

6 MR. MORRIL: Mark Morrill, for  
7 Viacom.

09:53:33

8 THE VIDEOGRAPHER: Will the  
9 court reporter please swear in the  
10 witness.

11 T O M F R E S T O N , called as a  
12 witness, having been duly sworn by a  
13 Notary Public, was examined and  
14 testified as follows:

15 EXAMINATION BY

16 MR. SCHAPIRO:

09:53:56

17 Q. Mr. Freston, my name is Andy  
18 Schapiro. I'm defending YouTube against  
19 the lawsuit that Viacom has filed against  
20 them.

21 A. Good morning.

22 Q. So a few preliminaries before we  
23 get started.

09:54:02

24 Have you ever been deposed  
25 before?

1 FRESTON

2 review recommendations about significant  
3 acquisition targets, correct?

4 A. Definitely.

11:08:30 5 Q. And do you recall receiving that  
6 recommendation?

7 A. Yes.

8 Q. What was the recommendation?

11:08:43 9 A. I can't tell you what the -- the  
10 recommendation would be we should buy  
11 YouTube, if the price was right. There  
12 was a modeling done, I'm sure. I can't  
13 remember what it said.

11:08:53 14 But I'm sure they arrived at  
15 some sort of price ceiling at which they  
16 thought we could afford to purchase it.

17 Q. Fair enough. Let's take a look  
18 at Exhibit 9.

11:10:21 19 (Freston Exhibit 9, Monday,  
20 July 10th e-mail attaching a  
21 Powerpoint presentation, marked for  
22 identification, as of this date.)

23 (Witness reviews document.)

11:10:09 24 MR. KENDALL: You want the  
25 witness to --

1 FRESTON

2 Q. And did you ever express any  
3 doubt that you would be able to reach such  
4 a comfort level with YouTube?

11:42:03

5 A. That I can't recall.

6 To my knowledge, we never really  
7 had a thorough legal review of the YouTube  
8 acquisition.

11:42:41

9 Q. Did Ms. McGrath ever express  
10 disappointment to you about the fact that  
11 Viacom had not purchased or not been able  
12 to purchase YouTube?

13 A. She would have loved YouTube to  
14 have been purchased.

11:43:24

15 Q. Mr. Freston, what are MSOs?

16 A. Multiple system operators.  
17 Cable companies that own many different  
18 cable systems in different locations.

11:43:44

19 Q. And when you were CEO of Viacom,  
20 did you sometimes oversee negotiations  
21 with MSOs?

22 A. Yes.

23 Q. Now, Viacom owns -- sorry.

11:44:07

24 Sometimes an issue that was the  
25 subject of those negotiations would be how