

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

_____x

VIACOM INTERNATIONAL, INC., COMEDY
PARTNERS, COUNTRY MUSIC
TELEVISION, INC., PARAMOUNT
PICTURES CORPORATION, and BLACK
ENTERTAINMENT TELEVISION, LLC,

Plaintiffs,

vs. NO. 07-CV-2103

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

Defendants.

_____x

VIDEOTAPED DEPOSITION OF MICHAEL FRICKLAS
NEW YORK, NEW YORK
TUESDAY, SEPTEMBER 22, 2009

REPORTED BY: JENNIFER OCAMPO-GUZMAN
JOB NO.: 17742

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

SEPTEMBER 22, 2009
9:48 a.m.

VIDEOTAPED DEPOSITION OF MICHAEL D.
FRICKLAS, held at the offices of MAYER BROWN,
1675 Broadway, New York, New York, pursuant
to notice, before JENNIFER OCAMPO-GUZMAN,
Notary Public of the State of New York.

1

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

3 FOR THE PLAINTIFFS VIACOM INTERNATIONAL,

4 INC.:

5 SHEARMAN & STERLING, LLP

6 BY: STUART BASKIN, ESQ.

7 (212) 848-4000 sbaskin@shearman.com

8 -and-

9 BY: KIRSTEN CUNHA, ESQ.

10 (212) 848-4320 kirsten.cunha@shearman.com

11 599 Lexington Avenue

12 New York, New York 10022-6069

13 FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE,

14 LLC and GOOGLE, INC.:

15 MAYER BROWN, LLP

16 BY: ANDREW SCHAPIRO, Esq.

17 (212) 506-2279 aschapiro@mayerbrown.com

18 -and-

19 BY: JASON KIRSCHNER, Esq.

20 1675 Broadway

21 New York, New York 10019-5820

22 (212) 506-2115 jkirschner@mayerbrown.com

23 ALSO PRESENT:

24 NICHOLAS GUZMAN, Videographer

25 MARK C. MORRIL, ESQ. (Viacom)

DAVID FELDMAN WORLDWIDE, INC.

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

1

09:48:54 2 THE VIDEOGRAPHER: Good morning.

09:49:11 3 This begins tape number 1 in the

09:49:14 4 videotaped deposition of Michael

09:49:15 5 Fricklas on September 22, 2009, in the

09:49:19 6 matter of Viacom International Inc., et

09:49:21 7 al, plaintiffs versus YouTube, Inc., et

09:49:24 8 al, defendants. This case was filed in

09:49:24 9 the United States District Court,

09:49:24 10 Southern District of New York. Case

09:49:30 11 Number 07-CV-2003 (sic).

09:49:33 12 Today's deposition is taking place

09:49:35 13 at Mayer Brown LLP located at 1675

09:49:39 14 Broadway, New York, New York 10019.

09:49:42 15 The time on the record is now 9:48

09:49:46 16 a.m. My name is Nicholas Guzman. I

09:49:49 17 will be the legal video specialist on

09:49:51 18 behalf of David Feldman Court Reporting.

09:49:52 19 The certified court reporter today is

09:49:55 20 Jennifer Ocampo-Guzman, also on behalf

09:49:58 21 of the David Feldman Court Reporting.

09:50:00 22 At this time I will ask counsel to

09:50:02 23 please introduce themselves for the

09:50:03 24 record.

09:50:04 25 MR. SCHAPIRO: I'm Andrew Schapiro

1

09:50:06 2 for the defendants.

09:50:07 3 MR. KIRSCHNER: I'm Jason Kirschner
09:50:09 4 from Mayer Brown on behalf of the
09:50:11 5 defendants.

09:50:11 6 MR. BASKIN: I'm Stuart Baskin of
09:50:14 7 Shearman & Sterling for Viacom and Mr.
09:50:15 8 Fricklas.

09:50:16 9 MS. CUNHA: Kirsten Cunha from
09:50:19 10 Shearman & Sterling on behalf of the
09:50:19 11 witness and the Viacom plaintiff.

09:50:22 12 MR. MORRIL: Mark Morrill from
09:50:24 13 Viacom.

09:50:24 14 THE VIDEOGRAPHER: For the record
09:50:25 15 will the court reporter please swear in
09:50:27 16 the witness.

09:50:27 17 M I C H A E L D. F R I C K L A S,
09:50:27 18 called as a witness, having been duly sworn
09:50:27 19 by a Notary Public, was examined and
09:50:38 20 testified as follows:

09:50:38 21 THE VIDEOGRAPHER: Counsel, you may
09:50:40 22 proceed.

09:50:40 23 EXAMINATION BY

09:50:40 24 MR. SCHAPIRO:

09:50:40 25 Q. Good morning, Mr. Fricklas.

DAVID FELDMAN WORLDWIDE, INC.

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

1 Fricklas

10:16:36 2 rather than a series of takedown notices as
10:16:40 3 you learned of each clip's presence; that's
10:16:45 4 correct, right?

10:16:46 5 A. Yeah, I mean, I want to set one
10:16:48 6 thing correct, something that I said in
10:16:51 7 answer to an earlier, slightly earlier
10:16:53 8 question and it's also responsive to this
10:16:55 9 one, which is, I don't know that no takedown
10:16:58 10 notices were -- were -- were sent because at
10:16:59 11 various periods of time there were, you know,
10:17:02 12 for example, full motion pictures and full
10:17:06 13 television episodes that were posted and no
10:17:11 14 one -- and those would have been taken down
10:17:13 15 right away. But, otherwise, we were in the
10:17:17 16 midst of negotiations regarding the licensing
10:17:20 17 terms for those clips and determined not to
10:17:23 18 send a takedown notice.

10:17:28 19 Q. I just want to make sure I have the
10:17:41 20 final part of your answer correct.

10:17:45 21 You said you were in the midst of
10:17:48 22 negotiations with regard to licensing terms
10:17:50 23 for those clips and so determined not to send
10:17:53 24 takedown notices as to that?

10:17:55 25 A. In the -- in the period of time

DAVID FELDMAN WORLDWIDE, INC.

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