

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-2103

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 MICHELENA HALLIE
NEW YORK, NEW YORK
THURSDAY, DECEMBER 10, 2009
JOB NO. 18264

DAVID FELDMAN WORLDWIDE, INC.

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

FOR THE PLAINTIFFS VIACOM INTERNATIONAL,
INC.:

JENNER & BLOCK
1099 New York Avenue, NW, Suite 900
Washington, D.C. 2000
(202) 639-6000
BY: SCOTT WILKENS, ESQ.
Swilkens@jenner.com

FOR DEFENDANTS, GOOGLE:
WILSON SONSINI GOODRICH & ROSATI
650 Page Mill Road
Palo Alto, CA 94304-1050
BY: MAURA L. REES, ESQ.
Mrees@wsgr.com

ALSO PRESENT:

Carlos King, Videographer

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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.

1 MICHELENA HALLIE

2 THE VIDEOGRAPHER: This is
3 tape number one of the videotaped
4 deposition of Michelena Hallie, in
10:09:05 5 the matter of Viacom
6 International, Inc. versus YouTube
7 Inc., the Football Association
8 Premier League Limited, Bourne
9 Company, et al., versus YouTube
10:09:15 10 Inc. et al., in the United States
11 District Court for the Southern
12 District of New York.

13 This deposition is being
14 held at the offices of Wilson
10:09:23 15 Sonsini, located at 1301 Avenue of
16 the Americas, New York, New York,
17 on December 10th, 2009, at
18 approximately 10:09 a.m.

19 My name is Carlos King, from
10:09:33 20 the firm of David Feldman
21 Worldwide, and I am the legal
22 video specialist. The court
23 reporter is Rebecca Schaumloffel,
24 in association with David Feldman
10:09:42 25 Worldwide.

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1 MICHELENA HALLIE

2 Will counsel please
3 introduce themselves.

10:09:45

4 MS. REES: Maura Rees, from
5 Wilson Sonsini, on behalf of the
6 YouTube defendants.

7 MR. WILKENS: Scott Wilkens,
8 from Jenner & Block LLP, on behalf
9 of the Viacom plaintiffs.

10:09:54

10 THE VIDEOGRAPHER: Will the
11 court reporter please swear in the
12 witness.

13

14 M I C H E L E N A H A L L I E,
15 called as a witness, having been first
16 duly sworn by a Notary Public of the
17 State of New York, was examined and
18 testified as follows:

19

20 DIRECT EXAMINATION

21 BY MS. REES:

22 Q. Good morning.

23 A. Good morning.

24 Q. Could you please state your
25 full name and home address for the

10:10:05

1 MICHELENA HALLIE

2 include Mind of Mencia for monitoring
3 and removal for full episodes only on
4 YouTube;" is that right?

11:46:42

5 A. That's what it looks like,
6 yep.

7 Q. And do you understand full
8 episodes only to mean that BayTSP was
9 only being authorized to take down full
10 episodes, as opposed to shorter clips,
11 from that show?

11:46:52

12 A. That's how I read this
13 E-mail.

14 Q. In this timeframe,
15 approximately October 17, 2006, why was
16 Viacom only authorizing full episodes
17 of takedowns, for example, for this
18 Mind of Mencia show, as opposed to
19 shorter clips?

11:47:02

20 A. Oh, I haven't had this on.

21 I feel comfortable only
22 testifying to general statements. If
23 we get into details, they might be
24 privileged, and I'd want to talk to

11:47:40

25 Mr. Wilkens. But my recollection, even

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1 MICHELENA HALLIE

2 though, as I said, I wasn't frontlining
3 these decisions, was that these
4 decisions were at least partly because
11:47:58 5 of negotiations with YouTube going on
6 at that time.

7 Q. When you say "negotiations
8 with YouTube," negotiations for what?

9 A. My understanding was that
11:48:15 10 Viacom was, during this general
11 timeframe, negotiating with YouTube for
12 a possible license agreement that would
13 authorize the Viacom material to appear
14 on YouTube.

11:48:33 15 Q. How does the distinction
16 between full episodes takedowns and
17 takedowns of shorter clips from
18 programs affect negotiations with
19 YouTube that were going on at that
11:49:02 20 time?

21 A. As I said, I wasn't directly
22 involved in those negotiations, but I
23 recall that full episodes, versus
24 taking down everything, was relevant in
11:49:21 25 the discussions and the goals.

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1 MICHELENA HALLIE

2 that Viacom, at some point, whether it
3 was December or not, some point prior
4 to the beginning of February 2007,
14:06:57 5 began asking BayTSP to start ramping up
6 to do a large single takedown event?

7 A. I know there was a ramp up
8 during our entire tenure with BayTSP.
9 Because they started off as a pretty
14:07:14 10 small company that never had an
11 assignment -- that hadn't had an
12 assignment nearly up to the scale we
13 were putting forward. But I know that
14 there were takedowns steadily during
14:07:32 15 that entire period from near the
16 beginning through. I don't even know
17 if BayTSP is still involved in it.

18 Q. So when did you stop having
19 involvement with BayTSP, if you did?

14:07:48 20 A. At some point in time --
21 actually, my involvement kind of
22 evolved over time and gradually, my
23 group was not frontlining the process
24 as much. I don't remember when the
14:08:12 25 transition happened.

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1 MICHELENA HALLIE

2 Q. Was there some directive at
3 Viacom, at that time, to try to
4 increase the infringing video counts
14:21:29 5 for the mass YouTube takedown?

6 A. I am not sure it was a
7 directive. The goal was to identify
8 all of the clips on YouTube that met
9 the criteria in place. And I do recall
14:22:00 10 that BayTSP was not fully equipped to
11 find all of the clips and confirm that
12 they were, in fact, our assets in as
13 effective way as we had hoped. It was
14 an evolution of technology.

14:22:34 15 Because as I said before,
16 this was a major assignment for BayTSP
17 in that they did have to ramp up.

18 Q. Did Viacom have a goal of
19 finding 100,000 allegedly infringing
14:22:51 20 clips for the mass takedown at YouTube?

21 A. I don't remember a goal of a
22 particular number.

23 MR. WILKENS: Can we just
24 take a short off-the-record for a
14:23:11 25 second?

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1 MICHELENA HALLIE

2 Did you understand this to
3 mean that the human reviewer had
4 mistakenly marked for takedown
16:35:01 5 something that didn't meet Viacom's
6 criteria for takedown?

7 A. This is a confusing E-mail
8 chain. Cindy's E-mail would suggest,
9 possibly, something different. So I
16:35:25 10 don't -- I don't recall where the
11 possible glitch was here.

12 Q. But it was ultimately
13 determined that the video uploaded by
14 Mr. Asch was taken down in error; is
16:35:45 15 that the case?

16 A. I don't remember.

17 Q. Do you know -- Mr. Ishikawa
18 refers to a change in procedures, and
19 "the procedures that will prevent this
16:36:06 20 from occurring again."

21 Do you know what the change
22 in procedures is that he is referring
23 to?

24 A. I don't remember the
16:36:12 25 specific change here. But this is

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1 MICHELENA HALLIE

16:36:23

2 consistent with my general recollection
3 that it was all part of a ramping up
4 process and that BayTSP was trying to
5 tweak their process to meet our needs.

6 Q. In fact, whatever change in
7 the procedures BayTSP made, didn't
8 prevent mistaken identifications from
9 occurring again, right?

16:36:42

10 MR. WILKENS: Objection to
11 the form of the question.

16:36:59

12 A. I recall that there were
13 erroneous takedowns. I don't know if
14 -- I can't attribute them directly to
15 procedures that BayTSP was
16 implementing. I just don't remember.

16:37:18

17 Q. After the mass takedown of
18 100,000 clips to YouTube that occurred
19 in early February, 2007, there were a
20 number of counter-notices that Viacom
21 received, right?

16:37:28

22 A. Counter-notices received. I
23 don't think I would characterize them
24 as a number. I think it was a very,
25 very small percentage to the 100,000.

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1 MICHELENA HALLIE

16:58:44

2 building up past 2,100 backlog. That
3 suggests to me that we are not
4 progressing effectively and you need to
5 reallocate accordingly."

16:58:57

6 Was it ever your
7 understanding that BayTSP made
8 misidentifications because, at least,
9 Adam Cahan from Viacom was telling them
10 to process videos more quickly?

11 MR. WILKENS: Objection to
12 the form of the question.

16:59:16

13 A. I don't think I ever knew or
14 even thought that that was the case. I
15 think -- when I saw these
16 misidentifications, to me, it was a
17 logical extension of the fact that we
18 were pushing BayTSP really, really
19 hard. That as a result of our

16:59:32

20 significant project, they had to
21 hire -- for some reason, the number 40
22 comes in, during the Christmas holidays
23 to help them to buy new equipment and
24 that it was almost inevitable in the
16:59:47 25 almost vertical ramping up that was

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1 MICHELENA HALLIE

2 happening during that time that
3 misidentifications would occur.

17:00:03

4 Q. You said earlier that you
5 believe that the number of
6 counter-notices that Viacom received
7 was a very small percentage of the
8 number of takedowns it sent. Am I
9 characterizing that correctly?

17:00:14

10 A. That's right.

11 Q. What do you believe to be
12 the percentage of counter-notices that
13 Viacom received as compared to the
14 number of takedowns it sent out?

17:00:28

15 A. All I can do is extrapolate
16 from a document that you showed me that
17 had something like 260 and compare that
18 to the something like 100,000.

17:00:38

19 I don't know if those were
20 the ultimate numbers that the analysis
21 would be, but that's what I gleaned
22 from the documents, at least at one
23 point in time.

17:00:52

24 Q. Is it the case that if a
25 user's video is taken down from YouTube

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