

MARK ISHIKAWA - HIGHLY CONFIDENTIAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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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.

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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.

No. 07-CV-3582

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

Defendants.

-----X

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF MARK ISHIKAWA
PALO ALTO, CALIFORNIA
THURSDAY, JANUARY 14, 2010
JOB NO. 18548

DAVID FELDMAN WORLDWIDE, INC.

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

1 MARK ISHIKAWA PALO ALTO, CA JANUARY 14, 2010

2 JANUARY 14, 2010

3 10:07 A.M.

4

5 HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF MARK
6 ISHIKAWA, at WILSON, SONSINI, GOODRICH & ROSATI, 650
7 Page Mill Road, Palo Alto, California, pursuant to
8 notice, before me, KATHERINE E. LAUSTER, CLR, CRR, RPR,
9 CSR License No. 1894.

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2 A P P E A R A N C E S: (Continued)

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11 Also Present:

12 Armando Carasco, Videographer

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1 MARK ISHIKAWA PALO ALTO, CA JANUARY 14, 2010

2 PALO ALTO, CALIFORNIA

3 THURSDAY, JANUARY 14, 10:07 A.M.

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10:07:00 5 THE VIDEOGRAPHER: Today's videotaped
10:07:02 6 deposition of Mark Ishikawa is taken on
10:07:06 7 January 14th, 2010, at Wilson, Sonsini, Goodrich &
10:07:09 8 Rosati, 650 Page Mill Road, Palo Alto, California,
10:07:14 9 in the matter of Viacom, International versus
10:07:15 10 YouTube, Incorporated. Case Numbers are 07 CV 2103
10:07:25 11 and 07 CV 3582 in Court Southern District of New
10:07:29 12 York.

10:07:30 13 My name is Armando Carrasco. I represent
10:07:33 14 David Feldman Worldwide, located at 600 Anton
10:07:36 15 Boulevard, Suite 1100, Costa Mesa, California. We
10:07:42 16 are now commencing at 10:08 a.m.

10:07:42 17 Will all present please identify
10:07:44 18 themselves, beginning with the witness.

10:07:47 19 THE WITNESS: Mark Ishikawa.

10:07:50 20 MR. KENDALL: Richard Kendall of Kendall,
10:07:51 21 Brill & Klieger on behalf of the witness.

10:07:56 22 MR. KELLY: Bill Kelly at Kendall, Brill &
10:07:56 23 Klieger on behalf of the witness.

10:07:59 24 MR. HUSSAIN: Osama Hussain, In-House
10:07:59 25 Counsel, BayTSP.

1 MARK ISHIKAWA PALO ALTO, CA JANUARY 14, 2010
10:08:01 2 MR. COX: James Cox, Jenner & Block, on
10:08:03 3 behalf of the Viacom plaintiffs.
10:08:07 4 MR. PELES: Gil Peles from Proskauer &
10:08:07 5 Rose, on behalf of the class.
10:08:12 6 MR. MANCINI: John Mancini, Mayer Brown,
10:08:14 7 on behalf of defendants YouTube and Google.
10:08:16 8 MR. KIRSCHNER: Jason Kirschner, Mayer
10:08:16 9 Brown, on behalf of defendants.
10:08:16 10 MS. HERNANDEZ: Christine Hernandez, from
10:08:16 11 Mayer Brown, for defendants.
10:08:16 12 THE VIDEOGRAPHER: Thank you all.
10:08:16 13 Will the court reporter please swear in
10:08:16 14 the witness.
10:08:16 15 THE REPORTER: Will you raise your right
10:08:16 16 hand, please.
10:08:17 17 Do you solemnly state, under penalty of
10:08:17 18 perjury, the testimony you are about to give will be
10:08:17 19 the truth, the whole truth, and nothing but the
10:08:17 20 truth?
10:08:29 21 THE WITNESS: Yes.
10:08:29 22
10:08:29 23 MARK ISHIKAWA,
10:08:29 24 having been sworn as a witness
10:08:29 25 testified as follows:

1 MARK ISHIKAWA PALO ALTO, CA JANUARY 14, 2010

12:39:35 2 A. I guess the document does not reflect that
12:39:37 3 start date, so I would have to assume that it's
12:39:40 4 what's in front for the start date. We didn't -- we
12:39:44 5 must not have kept history from the beginning.

12:39:47 6 Q. Okay. So let me turn your attention now
12:39:49 7 back to -- but keep this document before you -- back
12:39:52 8 to BayTSP Exhibit Number 5.

12:39:59 9 A. Okay.

12:39:59 10 Q. About the second or third page in, Bates
12:40:02 11 stamped -7769.

12:40:05 12 A. Okay.

12:40:09 13 Q. In the section called "Special
12:40:11 14 Instructions: Rules on Notice Sending," fourth
12:40:14 15 paragraph down:

12:40:15 16 "There's no action taken for these assets
12:40:17 17 on YouTube because of the implementation
12:40:20 18 of Project 2. All infringements are kept
12:40:23 19 in."

12:40:25 20 Do you see that reference?

12:40:26 21 A. I do see the reference. I don't know what
12:40:29 22 was in that sentence. Appears to have been
12:40:31 23 redacted. Oh, no, I'm sorry. That -- it was kept
12:40:36 24 in a separate folder.

12:40:38 25 Q. Okay. So just to be clear, there does not

1 MARK ISHIKAWA PALO ALTO, CA JANUARY 14, 2010
12:40:41 2 appear to be any redaction?
12:40:43 3 A. Yes.
12:40:43 4 Q. Okay. So reviewing these two documents
12:40:47 5 together, does this refresh your recollection that,
12:40:49 6 for YouTube, BayTSP was not issuing any takedown
12:40:54 7 notices for any alleged infringements it may have
12:40:59 8 found between December 18th, 2006, and February 2nd,
12:41:04 9 2007?
12:41:04 10 A. I believe those were the instructions.
12:41:07 11 Q. And who gave those instructions?
12:41:09 12 A. I would have to go back to our -- our
12:41:12 13 records.
12:41:13 14 Q. And what was being done with these alleged
12:41:15 15 infringements that were found by BayTSP? They were
12:41:18 16 being accumulated where?
12:41:20 17 A. They were being accumulated within our
12:41:24 18 CIMS client information management system.
12:41:26 19 Q. CIMS, not BVM?
12:41:28 20 A. Correct.
12:41:32 21 Q. And were regular reports being provided to
12:41:35 22 MTVN about this accumulation?
12:41:38 23 A. Yes, they were.
12:41:38 24 Q. And how often were those reports provided?
12:41:42 25 A. They should have been daily, and I need to

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16:12:11 2 A. Yes.

16:12:12 3 Q. In the top of this document you state, on

16:12:14 4 January 24th, 2007:

16:12:16 5 "Donna, we are cueing up the takedown

16:12:18 6 notices as instruct by Adam at MTVN. He

16:12:21 7 wants to hold the notices as part of his

16:12:24 8 strategy. This instruction was for all

16:12:27 9 Viacom assets. Please let me know if you

16:12:30 10 want your assets differently."

16:12:33 11 See that reference?

16:12:34 12 A. Yes.

16:12:34 13 Q. And you are responding to an e-mail from

16:12:39 14 Donna Cooper where she asks you:

16:12:41 15 "Mark,

16:12:42 16 "I just want to confirm the YouTube

16:12:44 17 direction for BET. Are you searching and

16:12:46 18 sending take down notices with respect to

16:12:49 19 all occurrences of BET assets,

16:12:50 20 irrespective of duration or any other

16:12:53 21 parameter? If not, this is how we would

16:12:56 22 like -- how we would like to proceed."

16:12:59 23 See the reference?

16:13:00 24 A. Yes, I do.

16:13:01 25 Q. You refer here to the fact that you're

1 MARK ISHIKAWA PALO ALTO, CA JANUARY 14, 2010
16:13:04 2 cueing up takedown notices as instructed by Adam.
16:13:07 3 Was that referring to Adam Cahan?
16:13:10 4 A. Yes, it is.
16:13:11 5 Q. In fact, he's cc'd on your e-mail to Donna
16:13:16 6 Cooper?
16:13:17 7 A. Yes.
16:13:17 8 Q. What were his instructions with respect to
16:13:20 9 "cueing up" the takedown notices?
16:13:22 10 A. To not send takedown notices to YouTube at
16:13:25 11 this point.
16:13:25 12 Q. Rather, to cue them up?
16:13:27 13 A. To cue them up and hold them.
16:13:29 14 Q. And did he give you a date by which he
16:13:31 15 wanted you to send those out?
16:13:33 16 A. No, that was never conveyed to us.
16:13:35 17 Q. Did he tell you the reasons why you were
16:13:37 18 to cue them up and not send them out?
16:13:39 19 A. No.
16:13:40 20 Q. You go on to state:
16:13:41 21 "He wants to hold the notices as part of
16:13:44 22 his strategy."
16:13:45 23 See those words?
16:13:46 24 A. Yes, I do.
16:13:47 25 Q. What was his strategy he was conveying to