

DAVID KING - 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.

-----X

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 DAVID KING
SAN FRANCISCO, CALIFORNIA
WEDNESDAY, JANUARY 13, 2010

JOB NO. 18545

DAVID FELDMAN WORLDWIDE, INC.

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

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 JANUARY 13, 2010

3 9:06 A.M.

4

5 HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF DAVID

6 KING, at WILSON SONSINI GOODRICH & ROSATI, One Market

7 Plaza, Spear Tower, Suite 3300, San Francisco,

8 California, pursuant to notice, before me, KATHERINE E.

9 LAUSTER, CLR, CRR, RPR, 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: ARMANDO ARASCO, Videographer

12 KELLY TRUELOVE, Viacom consultant

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1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 SAN FRANCISCO, CALIFORNIA

3 WEDNESDAY, JANUARY 13, 2010; 9:06 A.M.

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09:05:59 5 THE VIDEOGRAPHER: Today's videotaped
09:05:59 6 deposition of David King is taken on January 13th, 2010,
09:05:59 7 at Wilson, Sonsini, Goodrich & Rosati, One Market Plaza,
09:05:59 8 Spear Tower, Suite 3300, San Francisco, California in
09:05:59 9 the matter of Viacom, International, versus YouTube,
09:06:00 10 Incorporated, Case Numbers are 07-CV-2103 and 07-CV-3582
09:06:10 11 in Court Southern District of New York.

09:06:14 12 My name is Armando Carrasco. I represent
09:06:18 13 David Feldman Worldwide, located at 600 Anton Boulevard,
09:06:22 14 Suite 1100, Costa Mesa, California.

09:06:25 15 We are now commencing at 9:06 a.m. Will all
09:06:28 16 present please identify themselves, beginning with the
09:06:30 17 witness.

09:06:31 18 THE WITNESS: My name is David King, I work
09:06:34 19 for Google.

09:06:36 20 MR. WILLEN: Brian Willen, Mayer Brown for the
09:06:38 21 defendants.

09:06:41 22 MR. BAREA: Adam Barea, Google, Inc. and
09:06:41 23 You-Tube.

09:06:44 24 MR. GALDSTON: Benjamin Galdston, of
09:06:44 25 Bernstein, Litowitz, Berger & Grossman, on behalf of the

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09:06:46 2 plaintiffs in this class action.
09:06:49 3 MS. McMILLEN: Lauren McMillen, from
09:06:50 4 Bernstein, Litowitz, Berger & Grossman, also on behalf
09:06:50 5 of the plaintiffs in this class action.
09:06:54 6 MR. TRUELOVE: Kelly Truelove, consultant for
09:06:56 7 Viacom plaintiffs.
09:06:57 8 MR. PLATZER: Luke Platzer of Jenner & Block,
09:06:58 9 counsel for the plaintiffs in the Viacom action.
09:07:02 10 THE VIDEOGRAPHER: Thank you.
09:07:02 11 Will the court reporter please swear in the
09:07:02 12 witness.
09:07:02 13 THE REPORTER: Will you raise your right hand,
09:07:02 14 please.
09:07:02 15 Do you solemnly state, under penalty of
09:07:02 16 perjury, the testimony you are about to give will be the
09:07:02 17 truth, the whole truth, and nothing but the truth?
09:07:13 18 THE WITNESS: I do.
09:07:14 19 MR. PLATZER: Thanks.
09:07:14 20
09:07:14 21 DAVID KING,
09:07:14 22 having been sworn as a witness,
09:07:14 23 testified as follows:
09:07:14 24 EXAMINATION
25

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

13:53:09 2 A. We push more bits than any other website on
13:53:13 3 the planet.

13:53:15 4 Q. I'd like to shift gears for a little bit and
13:53:18 5 ask you about fingerprinting vendors other than Audible
13:53:21 6 Magic. Other than Audible Magic and Gracenote, did
13:53:29 7 YouTube test any fingerprinting vendors' technology in
13:53:34 8 2006?

13:53:35 9 A. Not to my knowledge.

13:53:38 10 Q. Other than its own in-house fingerprinting
13:53:41 11 technology, did YouTube test any fingerprinting vendors'
13:53:45 12 technology in 2007?

13:53:48 13 MR. WILLEN: Objection. Are we talking about
13:53:49 14 audio fingerprinting and video fingerprinting?

13:53:53 15 MR. PLATZER: All of the above.

13:53:54 16 MR. WILLEN: Okay.

13:53:57 17 THE WITNESS: No, we did not test other
13:54:00 18 fingerprinting technologies.

13:54:03 19 MR. PLATZER: Okay.

13:54:04 20 (King Deposition Exhibit Number 10 was marked
13:54:04 21 for identification.)

13:54:20 22 MR. PLATZER: 10?

13:54:22 23 THE REPORTER: Yes.

13:54:22 24 BY MR. PLATZER:

13:54:23 25 Q. The court reporter has handed you a document

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13:54:25 2 marked as King Exhibit 10. It's a December 5th, 2006,

13:54:29 3 e-mail from Stephen Cho to Franck Chastagnol, Bates

13:54:34 4 number Google 189308 through 189312.

13:55:05 5 And just let me know when you're ready.

13:55:10 6 A. Okay.

13:57:02 7 Q. Was YouTube approached by a fingerprinting

13:57:05 8 company called MAGIX in 2006?

13:57:09 9 A. I believe they were.

13:57:16 10 Q. And did YouTube ever end up testing their

13:57:20 11 technology?

13:57:21 12 A. No, they did not.

13:57:22 13 Q. And I'd like to ask you a question about the

13:57:24 14 second paragraph of King Exhibit 10. It says:

13:57:27 15 "Some of these external inbounds (Gracernote,

13:57:30 16 Aurix, MAGIX, Tunesat, Attributer,. . .) are

13:57:36 17 being handled as a matter of courtesy and just

13:57:39 18 keeping abreast of what's in the market.

13:57:42 19 (i.e., no one is thinking about any sort of

13:57:42 20 bake off with multiple 3rd party

13:57:42 21 fingerprinting vendors. . .)

13:57:47 22 Around this time frame, late 2006, did YouTube

13:57:54 23 have any interest in retaining a fingerprinting vendor

13:58:00 24 other than Audible Magic?

13:58:03 25 MR. WILLEN: Objection to the form.

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13:58:08 2 THE WITNESS: I think this e-mail thread is
 13:58:09 3 relatively clear in that the course of action that had
 13:58:13 4 been decided upon was to develop Google fingerprinting
 13:58:19 5 technology in-house, and that's even a -- slightly
 13:58:26 6 misstating it, in that Google had already built
 13:58:34 7 excellent fingerprinting technology, both audio and
 13:58:38 8 video fingerprinting technology, and really, the -- the
 13:58:41 9 work of implementing a system like this was two-fold.

13:58:48 10 One part was making it scale to the size of
 13:58:52 11 YouTube, a not -- a nontrivial exercise, and the second
 13:58:59 12 piece was harnessing it to all the -- the file flows
 13:59:05 13 of -- of YouTube and dealing with the rights, and --
 13:59:08 14 and -- and, you know, having a really strong policy
 13:59:12 15 framework around that.

13:59:15 16 So we had excellent technology to work from
 13:59:18 17 as -- as a raw match service, and the -- you know, as --
 13:59:26 18 as we looked at doing this type of work of integrating,
 13:59:31 19 we decided that we wanted to do that integration with
 13:59:34 20 our own technology, which was robust, and -- and that --
 13:59:41 21 that was a rational use of our -- of our resources.

13:59:48 22 I might also add that -- you asked if -- you
 13:59:52 23 know, if we had done technical evaluations of these
 13:59:56 24 companies, and I'm sure you can appreciate that a
 14:00:01 25 company like Google has to be very careful around patent

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14:00:07 2 issues and IP issues. And we weren't in a position to
14:00:17 3 announce the work that we were doing. We wanted to --
14:00:24 4 the -- the way of our company policy is to -- is to only
14:00:29 5 announce things when you launch them, as opposed to
14:00:32 6 pre-announce things that are under development.

14:00:36 7 So we didn't -- we weren't in a position to be
14:00:38 8 able to tell these companies that we had our own
14:00:40 9 in-house technology, so our feeling was we wouldn't be
14:00:44 10 able to put them on notice that they were talking to a
14:00:50 11 potential competitor.

14:00:52 12 And so as a -- as a matter of not wanting to
14:00:59 13 create IP taint, we felt that it was important not to do
14:01:07 14 deep technical evaluations of these technologies with
14:01:12 15 them being unaware that we had competitive technology
14:01:15 16 that we had developed at Google.

14:01:18 17 BY MR. PLATZER:

14:01:19 18 Q. Okay. So just to run through a couple of
14:01:22 19 the -- the vendors in this space, I just want to confirm
14:01:26 20 whether or not they had any kind of interaction with
14:01:29 21 YouTube in 2006-2007.

14:01:31 22 A. Uh-huh.

14:01:32 23 Q. Did Audible approach YouTube about its
14:01:42 24 fingerprinting technology?

14:01:43 25 A. Yes, I spoke to Auditude about their

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14:01:47 2 fingerprinting technology.

14:01:49 3 Q. And YouTube didn't end up testing that
14:01:53 4 technology in 2006 or 2007?

14:01:56 5 A. Yes.

14:01:57 6 Q. Is Vobel -- did they approach YouTube in 2006
14:02:03 7 about their fingerprinting technology?

14:02:04 8 A. They did.

14:02:05 9 Q. And YouTube didn't test their fingerprinting
14:02:08 10 technology in 2006-2007 either?

14:02:09 11 A. That is correct, but I'd just like to, once
14:02:11 12 again, just point out that -- two things. One, the
14:02:15 13 technology that we deployed was world class in its
14:02:19 14 performance. And secondly, that no matter which
14:02:23 15 matching engine we used, there were still many months of
14:02:27 16 work to make it work within YouTube's environment.

14:02:34 17 Q. Okay. But let's say --

14:02:35 18 A. So there were no shortcuts here.

14:02:37 19 Q. Okay. But at the point in time of February of
14:02:40 20 2007, YouTube wasn't testing Auditude; right?

14:02:47 21 MR. WILLEN: Objection to the form.

14:02:48 22 THE WITNESS: We did not test Auditude in
14:02:51 23 February of 2007.

14:02:52 24 BY MR. PLATZER:

14:02:53 25 Q. And it wasn't testing Gracenote any longer at

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

14:02:56 2 that point; right?

14:03:01 3 A. Testing is -- requires real resources, and I
14:03:05 4 outlined before some of the considerable issues around
14:03:09 5 IP taint if we were to do technical evaluations of all
14:03:14 6 these companies, which we eventually ended up competing
14:03:17 7 with.

14:03:18 8 Q. Okay. But the answer is that in February of
14:03:21 9 2007 YouTube had ceased its testing of Gracenote; right?

14:03:26 10 MR. WILLEN: Objection to the form.

14:03:34 11 THE WITNESS: We did not test Gracenote in
14:03:36 12 February of 2007.

14:03:36 13 BY MR. PLATZER:

14:03:37 14 Q. And YouTube also didn't test Audible Magic's
14:03:41 15 proposal for a video solution that we looked at earlier
14:03:44 16 in the deposition; correct?

14:03:49 17 A. So as a practical matter, if we couldn't come
14:03:54 18 to terms on financial matters and service level
14:04:00 19 agreements, there seemed to be little point in doing
14:04:04 20 technical evaluations of services that we weren't ready
14:04:09 21 to contract for.

14:04:11 22 Q. Okay. So if someone had made a representation
14:04:14 23 in -- in February of 2007 that YouTube was continuing to
14:04:17 24 test Gracenote, Audible Magic, and Auditude, that
14:04:21 25 wouldn't be an accurate representation, would it?