

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. )Case No. 1:07CV02103  
)  
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. )Case No. 07CV3582  
)  
YOUTUBE, INC., YOUTUBE, LLC, and )  
GOOGLE, INC., )  
Defendants. )  
\_\_\_\_\_)

DEPOSITION OF MICAH SCHAFFER

SAN FRANCISCO, CALIFORNIA

WEDNESDAY, JULY 23, 2008

REPORTED BY:

YVONNE FENNELLY, CRP, CSR NO. 5495

JOB NO. 15376

DAVID FELDMAN WORLDWIDE, INC.  
805 Third Avenue, New York, New York 10022 (212)705-8585

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JULY 23, 2008

10:00 a.m.

VIDEOTAPED DEPOSITION OF MICAH SCHAFFER,  
held at the offices of SHEARMAN & STERLING,  
525 Market Street, San Francisco, California,  
pursuant to notice, before YVONNE FENNELLY, CRP,  
CSR License No. 5495.

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A P P E A R A N C E S

FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

PROSKAUER ROSE, LLP  
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FOR THE PLAINTIFF VIACOM INTERNATIONAL, INC.:

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FOR THE CLASS PLAINTIFFS:

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APPEARANCES (Continued):

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and  
GOOGLE, INC.:

MAYER BROWN, LLP  
BY: ANDREW H. SCHAPIRO, Attorney at Law  
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FOR GOOGLE, INC.:

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ALSO PRESENT: Kelly Truelove, consultant;  
Lou Meadows, Videographer

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10:11 2 THE VIDEOGRAPHER: On the record.

10:11 3 Today's videotaped deposition of Micah Schaffer  
10:11 4 is taken on July 23rd, 2008, at Shearman & Sterling, 525  
10:11 5 Market Street, 15th Floor in San Francisco, California,  
10:11 6 in the matter of Viacom International, Inc. versus  
10:11 7 YouTube Inc., et al., Case No. 107 CV 02103; and the  
10:12 8 Football Association Premier League, et al. versus  
10:12 9 YouTube Inc., et al, Case No. 07 CV 3582 in the United  
10:12 10 States District Court for the Southern District of New  
10:12 11 York.

10:12 12 My name is Lou Meadows, and I represent Dave  
10:12 13 Feldman Worldwide, located at 600 Anton Boulevard, Suite  
10:12 14 1100, in Costa Mesa, California.

10:12 15 We're now commencing at 10:12 a.m.

10:12 16 Counsel, would you please identify yourselves  
10:12 17 and state whom you represent for the record?

10:12 18 MR. SHAFTEL: Hal Shaftel, from the Proskauer  
10:12 19 Rose firm on behalf of the class plaintiffs in the  
10:12 20 Premier League action.

10:12 21 MR. COX: James Cox, from Jenner & Block on  
10:12 22 behalf of Viacom International.

10:12 23 MR. STELLINGS: David Stellings, Lief, &  
10:12 24 Cabraser Heimann & Bernstein, for the class plaintiffs.

10:12 25 MR. SCHAPIRO: Andrew Schapiro, Mayer Brown,

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10:12 2 for the defendants.

10:12 3 MR. MCGILL: David McGill, Mayer Brown, also

10:12 4 for the defendants.

10:12 5 MR. BAREA: Adam Barea, Google, Inc.

10:13 6 THE VIDEOGRAPHER: Thank you.

10:13 7 If there are no stipulations, the court

10:13 8 reporter may now administer the oath.

10:13 9 MICAH SCHAFFER,

10:13 10 having been duly sworn, testified as follows:

10:13 11 EXAMINATION

10:13 12 BY MR. SHAFTEL:

10:13 13 Q. Good morning, again, Mr. Schaffer. My name is  
10:13 14 Hal Shaftel; I'll be asking you questions during the  
10:13 15 course of the day.

10:13 16 Have you been deposed before?

10:13 17 A. No.

10:13 18 Q. A few basic ground rules that might be worthy  
10:13 19 of highlighting.

10:13 20 If I ask any questions and you're not certain  
10:13 21 what I'm asking, let me know; I'll do my best to  
10:13 22 reformulate or clarify somehow.

10:13 23 We should avoid speaking over each other so  
10:13 24 Yvonne can transcribe clearly and cleanly what each of  
10:13 25 us has to say.

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03:17 2 about sending mixed messages in that way and sort of  
03:17 3 giving sort of fair notice to users about, you know, how  
03:17 4 to tell if something is potentially going to be  
03:17 5 unauthorized and whether or not they should upload it.

03:17 6 And so what we worked out, I believe, so kind  
03:17 7 of our goal here -- and again, I don't want to get into,  
03:17 8 you know, conversations with attorneys. I think the  
03:17 9 goal that I'm discussing in here is, well, if the  
03:17 10 content owners agree that the notices that they're  
03:17 11 sending us are just removal requests, that we're  
03:17 12 voluntarily going to do under our terms of use, outside  
03:17 13 of the copyright terms of use, but just because our  
03:17 14 terms of use give us the discretion to remove our  
03:18 15 content when we think it's appropriate, but that they  
03:18 16 weren't going to be doing it as a formal DMCA notice,  
03:18 17 then we thought it restored some balance there; that  
03:18 18 users weren't going to be penalized or accounts weren't  
03:18 19 going to be terminated just because they had no way of  
03:18 20 knowing that Prince was the one UMG artist who didn't  
03:18 21 want their content up, even though all the other content  
03:18 22 is being permitted by UMG, so that was kind of the idea  
03:18 23 was, let's not penalize in the same way.

03:18 24 Q. Is it your testimony that the commercial  
03:18 25 agreements with CYC partners provides notice that their

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03:18 2 disclosures, the requests for removal under CYC do not  
03:18 3 trigger the repeat infringer policy? Is there a  
03:18 4 provision in those agreements?

03:18 5 A. I'm not aware of -- I don't have firsthand  
03:18 6 knowledge of those agreements and certainly not outside  
03:18 7 of discussions with attorneys. And again, I'm not  
03:19 8 testifying to the end implementation of it and how it  
03:19 9 worked; I am simply explaining the context of this  
03:19 10 discussion and the principles at work.

03:19 11 I believe some of those -- I believe that  
03:19 12 essential workflow is what was ultimately codified in  
03:19 13 our content ID program, and I would presume that that  
03:19 14 was done, you know, in partnership and in conjunction  
03:19 15 with the content owners who used that program. But,  
03:19 16 again, that's essentially the limits of my knowledge on  
03:19 17 the subject.

03:19 18 Q. You testified that attached to this e-mail is  
03:19 19 the generic notice that was sent to the uploader  
03:19 20 describing the repeat infringer policy; is that right?  
03:19 21 Is this a form notice that Mr. Liu attaches?

03:20 22 A. Yes, this appears to be what I would imagine  
03:20 23 was being sent at the time. I know -- I believe this  
03:20 24 e-mail has evolved over time as much of our messaging  
03:20 25 has.

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03:20 2 Q. This doesn't say that three incidents will  
03:20 3 result in deletion of your account. It says "repeat  
03:20 4 incidents"; do you see that?

03:20 5 A. Sure. Yes, I see it now.

03:20 6 Q. Where is it disclosed to -- let's take this  
03:20 7 over time.

03:20 8 Are you aware at any point in time when YouTube  
03:20 9 publicized to uploaders as part of the notices they  
03:20 10 would get when their content was removed on copyright  
03:20 11 grounds, that there was a three repeat policy?

03:21 12 A. A three strikes policy?

03:21 13 Q. Yes.

03:21 14 A. I know that changed over time. I don't recall  
03:21 15 specifically to this messaging in this particular form  
03:21 16 e-mail.

03:21 17 Q. Are you aware of any messaging where YouTube  
03:21 18 publicized to uploaders that you have three strikes or  
03:21 19 your account is deleted?

03:21 20 A. I think at one point our terms of use may have  
03:21 21 made reference to three strikes. I'm not sure if it was  
03:21 22 in a copyright context or not.

03:21 23 Q. Does it today?

03:21 24 A. I'd have to look it up. I don't believe so.

03:21 25 Q. And when strikes are allocated to a user for

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03:21 2 copyright reasons, what does the strike -- what is the  
03:22 3 strike imposed against? Is it a user ID? Is it a  
03:22 4 user --

03:22 5 A. E-mail address.

03:22 6 Q. So if my account is closed at a given e-mail  
03:22 7 address for repeat infringer reasons, what, if anything,  
03:22 8 blocks me from reopening an account at another e-mail  
03:22 9 address?

03:22 10 A. I think that would probably be possible to do  
03:22 11 for most people.

03:22 12 Q. You say "probably possible." Is there anything  
03:22 13 blocking me from doing that?

03:22 14 A. Well, you would have to know to create a new  
03:22 15 e-mail address and have the ability to do that. I  
03:22 16 imagine that's fairly -- yeah, I don't know how many  
03:23 17 people would figure that out, but one could.

03:23 18 Q. Are you aware of any discussions at YouTube  
03:23 19 about allocating the strikes in another fashion other  
03:23 20 than to an e-mail address, like an IP address?

03:23 21 A. Well, e-mail addresses are really the only  
03:23 22 unique identifier that I'm aware of that's associated  
03:23 23 with a YouTube account. Certainly I imagine someone  
03:23 24 that is indicated provided by the user. I'm sure there  
03:23 25 are some other kinds of IDs we assign. So I would think

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