

MEGAN WAHTERA - 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 MEGAN WAHTERA
SAN FRANCISCO, CALIFORNIA
FRIDAY, DECEMBER 4, 2009

JOB NO. 18262

DAVID FELDMAN WORLDWIDE, INC.

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

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 DECEMBER 4, 2009

3 10:27 A.M.

4

5 HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF MEGAN

6 WAHTERA, at WILSON SONSINI GOODRICH & ROSATI, 1 Market

7 Plaza, San Francisco, California, pursuant to notice,

8 before me, KATHERINE E. LAUSTER, CLR, CRR, RPR, CSR

9 License No. 1894.

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1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

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

3 FOR THE PLAINTIFFS, VIACOM INTERNATIONAL, INC., and
4 the WITNESS:

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9 Washington, DC 20001
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11 F.202.661.4832
12 swilkens@jenner.com

13 and

14 PARAMOUNT PICTURES MOTION PICTURE GROUP
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22 FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC, and
23 GOOGLE, INC.:

24 WILSON, SONSINI, GOODRICH & ROSATI
25 By: MICHAEL H. RUBIN, ESQ.
CAROLINE WILSON, ESQ.
650 Page Mill Road
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Also Present: JOSEPH SKORMAN, Videographer

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1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 SAN FRANCISCO, CALIFORNIA

3 FRIDAY, DECEMBER 4, 2009; 10:27 A.M.

4

10:27:10 5 THE VIDEOGRAPHER: Today's videotaped

10:27:11 6 deposition of Megan Wahtera --

10:27:16 7 THE WITNESS: Correct.

10:27:17 8 THE VIDEOGRAPHER: -- is taken on

10:27:18 9 December 4th, 2009, at 1 Market Plaza, Spear Tower,

10:27:24 10 Suite 3 -- I'm sorry -- 3000 -- 3300, San Francisco,

10:27:28 11 California, in the matter of Viacom International,

10:27:36 12 Inc., et al., versus YouTube, Inc., et al., and also

10:27:42 13 the Football Association Premier, et al., versus

10:27:48 14 YouTube, Inc., et al. The Case Number is 07-CV-2103

10:27:55 15 and for the second it is 07-CV-3582, in the court of

10:28:03 16 the Southern District of New York.

10:28:07 17 My name is Joseph Skorman. I represent

10:28:10 18 David Feldman Worldwide, located at 600 Anton

10:28:14 19 Boulevard, Suite 1100, Costa Mesa, California.

10:28:21 20 We are now commencing at 10:27 a.m.

10:28:28 21 Will all present please identify

10:28:30 22 themselves, beginning with the witness.

10:28:35 23 THE WITNESS: Megan Wahtera.

10:28:37 24 MR. WILKENS: Scott Wilkens, Jenner and

10:28:39 25 Block, LLP, for the Viacom plaintiffs and the

DAVID FELDMAN WORLDWIDE, INC.

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

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
10:28:43 2 witness.
10:28:44 3 MR. KOENIG: Paul Koenig, Paramount
10:28:45 4 Pictures, for the Viacom plaintiffs and the
10:28:45 5 witness.
10:28:46 6 MR. RUBIN: Michael Rubin, Wilson,
10:28:49 7 Sonsini, Goodrich & Rosati, for defendants YouTube
10:28:50 8 and Google.
10:28:54 9 MS. WILSON: Caroline Wilson, also FROM
10:28:54 10 Wilson, Sonsini, Goodrich & Rosati, for the
10:28:55 11 defendants.
10:28:57 12 THE VIDEOGRAPHER: Thank you.
10:28:57 13 Would the court reporter please swear in
10:28:57 14 the witness.
10:28:57 15 THE REPORTER: Will you raise your right
10:28:57 16 hand, please.
10:28:57 17 Do you solemnly state, under penalty of
10:28:57 18 perjury, the testimony you are about to give will be
10:28:57 19 the truth, the whole truth, and nothing but the
10:28:57 20 truth?
10:29:07 21 THE WITNESS: I do.
10:29:07 22
10:29:07 23 MEGAN WAHTERA,
10:29:07 24 having been sworn as a witness,
10:29:07 25 testified as follows:

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
10:51:37 2 BY MR. RUBIN:
10:51:37 3 Q. But in fact you are sure, based on what
10:51:38 4 you just said, that you didn't tell YouTube every
10:51:41 5 time; isn't that right?
10:51:42 6 A. Are we talking about a great pick clip
10:51:44 7 specifically, or. . . .
10:51:45 8 Q. You just testified that you didn't tell
10:51:46 9 YouTube at the time you uploaded that video, didn't
10:51:49 10 you?
10:51:49 11 A. No, I told them a few days later.
10:51:51 12 Q. All right. Why did you tell them a few
10:51:53 13 days later?
10:51:55 14 A. From what I recall, the clip was a
10:51:57 15 failure, so we were trying to get their help to
10:52:01 16 garner views and keep it up.
10:52:23 17 Q. Do you have a -- have you ever registered
10:52:26 18 for a gmail.com account?
10:52:28 19 A. Not that I can recall.
10:52:30 20 Q. But you do recall registering for the
10:52:32 21 Yahoo e-mail address?
10:52:34 22 A. I recall, yes, using Yahoo for that one.
10:52:40 23 Q. For that one?
10:52:41 24 A. Yes.
10:52:42 25 Q. For the "Heartbreak Kid" clip --

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

12:03:00 2 A. That's it.

12:03:01 3 Q. Just videos for "The Heartbreak Kid"?

12:03:03 4 A. Oh, no, videos.

12:03:06 5 Q. Videos related to what?

12:03:08 6 A. Our films.

12:03:08 7 Q. What types of videos related to Paramount

12:03:10 8 Picture films?

12:03:12 9 A. Lots of different types of videos.

12:03:13 10 Trailers, clips, EPK materials, you name it.

12:03:18 11 Q. What's an "EPK"?

12:03:19 12 A. An electronic press kit.

12:03:22 13 Q. So the Isolon drive houses all manner of

12:03:26 14 promotional materials?

12:03:28 15 A. No, not necessarily. We have a video

12:03:31 16 encoder, so the person who digitized our videos,

12:03:34 17 it's his -- it's his folder.

12:03:35 18 Q. Who is your video encoder?

12:03:37 19 A. We don't have one currently, actually.

12:03:40 20 Q. Who was your video encoder?

12:03:43 21 A. Les Hidvegi.

12:03:44 22 Q. Les Hidvegi?

12:03:47 23 A. Yes.

12:03:49 24 Q. Where does he store the videos that he

12:03:51 25 encoded?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

13:21:01 2 A. There is no origin. I made it up.

13:21:04 3 Q. Why did you make up that name?

13:21:06 4 A. I wanted this piece of video to appear to
13:21:09 5 the end user as something that was not from the
13:21:13 6 studio.

13:21:14 7 Q. Why?

13:21:16 8 A. This particular film and clips in general
13:21:19 9 were not doing very well, if I recall correctly, and
13:21:22 10 so I -- we took a different -- we experimented with
13:21:25 11 our approach in getting success.

13:21:35 12 Q. You wanted this film not to appear as if
13:21:38 13 it was from the studio to whom?

13:21:41 14 A. To the people watching it.

13:21:42 15 Q. And to YouTube; right?

13:21:44 16 A. No. That was never my intent.

13:21:48 17 Q. Why did you register a unique e-mail
13:21:50 18 address in connection with the upload of this video?

13:21:52 19 A. Because a lot of people who watch clips,
13:21:55 20 like an audience -- and just general audiences or, I
13:21:58 21 don't know, specific audiences -- it's very easy for
13:22:02 22 them to find out through technical ways who uploaded
13:22:06 23 the clip, so I didn't want it to be from Paramount's
13:22:10 24 e-mail.

13:22:10 25 Q. How is it possible for a user of the

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
13:38:35 2 creating the Yahoo account --
13:38:37 3 A. Uh-huh.
13:38:37 4 Q. -- because you didn't want the video to be
13:38:40 5 associated with Paramount; isn't that right?
13:38:43 6 A. That is correct.
13:38:46 7 Q. You didn't want anyone to be able to tell
13:38:49 8 that the video was Paramount content; right?
13:38:52 9 MR. WILKENS: Objection to the form.
13:38:53 10 THE WITNESS: I didn't want the people
13:38:54 11 viewing the content to be able to tell that it was
13:38:59 12 from Paramount, the -- the audience that we were
13:39:02 13 looking --
13:39:02 14 BY MR. RUBIN:
13:39:02 15 Q. You didn't --
13:39:02 16 A. -- to get.
13:39:02 17 Q. You didn't want the audience to be able to
13:39:05 18 tell that Paramount had uploaded the content to
13:39:08 19 YouTube?
13:39:08 20 A. Correct.
13:39:08 21 Q. You didn't want anyone to know that the
13:39:10 22 content -- that Paramount had uploaded the content
13:39:13 23 to YouTube; right?
13:39:14 24 A. I was mostly concerned with the audience.
13:39:16 25 Q. But you were also interested in making

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
13:39:18 2 sure nobody knew; right?
13:39:20 3 A. No, that wasn't my objective.
13:39:21 4 Q. You went to great lengths to hide the fact
13:39:24 5 that Paramount wasn't the uploader of that content;
13:39:27 6 right?
13:39:27 7 A. I did, so that audience would see it as
13:39:29 8 cool.
13:39:30 9 Q. You created a new Yahoo e-mail account;
13:39:33 10 correct?
13:39:33 11 A. Correct.
13:39:33 12 Q. And you created a brand new YouTube
13:39:36 13 account; right?
13:39:37 14 A. Correct.
13:39:37 15 Q. From separate locations; correct?
13:39:41 16 A. (Nods head.)
13:39:42 17 Q. And you uploaded the account from off lot
13:39:44 18 at Paramount; right?
13:39:46 19 A. That is correct.
13:39:46 20 Q. All in an effort to obscure the source of
13:39:49 21 the content; right?
13:39:50 22 A. That is correct.
13:39:54 23 Q. Was that video successful?
13:39:57 24 A. If I recall correctly, it was not.
13:40:14 25 Q. What do you recall about that video?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
13:53:45 2 A. I don't know.
13:53:46 3 Q. You've never -- you've never investigated
13:53:49 4 whether Paramount owned a copyright to a film?
13:53:52 5 A. No, it's not part of my job
13:53:55 6 responsibility.
13:53:56 7 Q. Have you ever delegated that to someone
13:53:59 8 else and had them return results to you?
13:54:02 9 A. Not that I'm aware of.
13:54:05 10 MR. RUBIN: I'd like to introduce Wahtera
13:54:07 11 16.
13:54:07 12 (Wahtera Deposition Exhibit Number 16 was
13:54:07 13 marked for identification.)
13:54:17 14 THE WITNESS: Thank you.
13:54:21 15 BY MR. RUBIN:
13:54:22 16 Q. Miss Wahtera, Exhibit 16 is a document
13:54:24 17 produced by Viacom in this action, bearing Bates
13:54:27 18 number VIA12603576.
13:54:34 19 Do you recognize this document?
13:54:35 20 A. I recognize it.
13:54:39 21 Q. You sent this e-mail to Joanna Ging at
13:54:40 22 YouTube on September 28, 2007; right?
13:54:49 23 A. It appears so, yes.
13:54:50 24 Q. And that was the same date of the e-mail
13:54:52 25 we were looking at in Exhibit 15, wasn't it?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

13:54:56 2 A. Okay. Yes.

13:55:03 3 Q. And you'd called Miss Ging prior to

13:55:07 4 sending her this e-mail, didn't you?

13:55:10 5 A. It appears that I did.

13:55:12 6 Q. You were contacting Miss Ging to bring the

13:55:16 7 appropriate -- pardon me.

13:55:18 8 You were contacting Miss Ging to bring the

13:55:21 9 inappropriate clip notice on "The Heartbreak Kid"

13:55:24 10 clip we've been discussing to her attention; right?

13:55:27 11 A. Yes.

13:55:28 12 Q. That was the purpose of your contacting

13:55:30 13 her; isn't it?

13:55:31 14 A. Yes.

13:55:31 15 Q. There was no other reason why you were

13:55:33 16 contacting her, was there?

13:55:35 17 A. Not that I'm aware of.

13:55:37 18 Q. And what was the -- Miss Ging's response

13:55:40 19 to you?

13:55:41 20 A. (Reading:)

13:55:41 21 "Hi Megan.

13:55:43 22 "I just left you a voicemail -- VM -- but

13:55:45 23 looks like the clip is copyrighted

13:55:49 24 material.

13:55:49 25 "Please let me know if this is the case

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
13:55:52 2 and I can escalate to the content team for
13:55:54 3 takedown.
13:55:55 4 Q. What was Miss Ging saying to you?
13:55:58 5 A. She was saying it was copyrighted.
13:55:59 6 Q. And what was her proposed solution?
13:56:03 7 A. A takedown.
13:56:04 8 Q. What was your response to Miss Ging?
13:56:06 9 A. I essentially told her, no, that we didn't
13:56:09 10 want it removed.
13:56:10 11 Q. That's not what you said here, is it?
13:56:11 12 A. I said:
13:56:12 13 "It is not copyrighted. We will call you
13:56:14 14 momentarily. Please do not remove."
13:56:17 15 Q. Was that "Heartbreak Kid" clip
13:56:19 16 copyrighted?
13:56:21 17 MR. WILKENS: Objection to the form.
13:56:21 18 THE WITNESS: I don't know, to be fair. I
13:56:22 19 don't know.
13:56:23 20 BY MR. RUBIN:
13:56:23 21 Q. What was the basis of your representation
13:56:25 22 of the copyright status of that "Heartbreak Kid"
13:56:28 23 clip to Miss Ging?
13:56:29 24 A. Joanna was going to escalate having it
13:56:32 25 removed, and we were telling them that we didn't

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
13:56:35 2 want it removed.
13:56:36 3 Q. I didn't ask you why you said it.
13:56:38 4 A. Oh.
13:56:38 5 Q. I asked you what the basis was for your
13:56:40 6 statement.
13:56:45 7 A. I don't know, because I don't remember --
13:56:48 8 I don't remember what was in my -- what was going on
13:56:51 9 when I wrote this.
13:56:52 10 Q. You didn't know, one way or the other, at
13:56:54 11 the time you sent this e-mail, whether "The
13:56:56 12 Heartbreak Kid" clip was copyrighted, did you?
13:56:58 13 MR. WILKENS: Objection to the form.
13:57:00 14 THE WITNESS: No.
13:57:01 15 BY MR. RUBIN:
13:57:01 16 Q. And you didn't do any investigation as to
13:57:04 17 the copyright status of the "The Heartbreak Kid"
13:57:06 18 movie or that clip prior to sending this e-mail to
13:57:10 19 Miss Ging, did you?
13:57:10 20 A. I did not.
13:57:11 21 Q. In fact --
13:57:12 22 A. I was there more as --
13:57:14 23 Q. And in fact, you've never, to your
13:57:16 24 knowledge, ever done such investigation for any
13:57:18 25 film; right?