

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-2203

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 CHAD HURLEY
SAN FRANCISCO, CALIFORNIA
WEDNESDAY, APRIL 22, 2009

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
JOB NO. 16789

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APRIL 22, 2009
9:08 a.m.

VIDEOTAPED DEPOSITION OF CHAD HURLEY,
held at the offices of SHEARMAN & STERLING,
525 Market Street, San Francisco, California,
pursuant to notice, before ANDREA M. IGNACIO
HOWARD, CLR, CCRR, RPR, CSR License No. 9830.

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

2

3 FOR THE PLAINTIFFS VIACOM INTERNATIONAL, INC.:

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10 FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

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24

25

1 A P P E A R A N C E S (Continued.)

2

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

5 MAYER BROWN, LLP

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12 ALSO PRESENT:

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18

19 KEN REESER, Videographer.

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1 HURLEY, CHAD

2 SAN FRANCISCO, CALIFORNIA

3 WEDNESDAY, APRIL 22, 2009, 9:08 A.M.

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09:08:12 5 THE VIDEOGRAPHER: Good morning.

09:08:15 6 Today's videotaped deposition of Chad Hurley

09:08:18 7 is taken on April 22nd, 2009, at 525 Market Street,

09:08:25 8 15th Floor, San Francisco, California.

09:08:27 9 In the matter of Viacom International,

09:08:27 10 Incorporated, et al., and The Football Association

09:08:27 11 Premier League Limited, et al., vs. YouTube,

09:08:39 12 Incorporated.

09:08:39 13 Case Nos. 07-CV-2203 and 07-CV-3582. In the

09:08:51 14 U.S. District Court, for the Southern District of

09:08:53 15 New York.

09:08:54 16 My name is Ken Reeser. I represent David

09:08:57 17 Feldman Worldwide, located at 600 Anton Boulevard,

09:09:02 18 Suite 1100, Costa Mesa, California.

09:09:05 19 We are now commencing at 9:08 a.m.

09:09:08 20 Will all present please identify themselves,

09:09:12 21 beginning with the witness.

09:09:13 22 THE WITNESS: I'm Chad Hurley.

09:09:16 23 MR. BROWNE: Good -- good morning. This is

09:09:18 24 John Browne. I'm from Bernstein, Litowitz, Berger &

09:09:23 25 Grossman. I represent the plaintiffs in the class

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09:09:24 2 action, including the lead plaintiffs, The English
09:09:26 3 Premier League.

09:09:26 4 MR. SCHAPIRO: Andrew Schapiro from Mayer
09:09:31 5 Brown for the defendants.

09:09:32 6 MR. WILLEN: Brian Willen from Mayer Brown,
09:09:33 7 also for the defendants.

09:09:33 8 MR. BAREA: Adam Barea, Google, Inc.

09:09:39 9 MR. WILKENS: Scott Wilkens, Jenner & Block,
09:09:48 10 for Viacom.

09:09:48 11 MR. BASKIN: And Stuart Baskin of Shearman &
09:09:48 12 Sterling for Viacom.

09:09:48 13 THE VIDEOGRAPHER: Thank you.

09:09:49 14 The court reporter may please swear in the
09:09:50 15 witness.

09:09:50 16 CHAD HURLEY,
09:09:50 17 having been sworn as a witness, testified as follows:

09:09:50 18

09:10:00 19 EXAMINATION BY MR. BROWNE

09:10:00 20 MR. BROWNE: Q. Good morning, Mr. Hurley.

09:10:01 21 A Good morning.

09:10:02 22 Q Have you ever been deposed before?

09:10:04 23 A No; this is the first time.

09:10:05 24 Q Okay. But you've given testimony under oath
09:10:07 25 before; is that right?

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10:23:02 2 is that right?

10:23:02 3 A Well, you know, I sense, again, a level of
10:23:07 4 sarcasm with, you know, what I was stating there,
10:23:09 5 and -- but then, you know, I say, "No, not really."
10:23:12 6 So I -- I -- I don't really know what was -- what came
10:23:15 7 of it.

10:23:16 8 Q Did you, in fact, disagree with Mr. Karim and
10:23:19 9 Mr. Chen on this topic?

10:23:20 10 MR. SCHAPIRO: Objection; what topic?

10:23:22 11 THE WITNESS: Yeah. What was -- what topic
10:23:24 12 do you mean in terms --

10:23:25 13 MR. BROWNE: Q. Well, specifically, for
10:23:27 14 starters, that Karim and Steve said that they agree
10:23:30 15 that YouTube should ease up on its strict policies.

10:23:35 16 A You know, I don't even remember what our
10:23:37 17 policies were. Again, we were trying to figure this
10:23:43 18 out. We -- we didn't know if, you know, something
10:23:51 19 that was professional looking in nature was up there
10:23:55 20 with authorization.

10:23:55 21 Q Did you have reason to believe that at this
10:23:57 22 time that news organizations were uploading their
10:24:01 23 content to YouTube?

10:24:02 24 A No, I can't remember at the time. I think
10:24:06 25 with -- with some of this material as well there's,

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10:25:10 2 you know, in the next -- following sentence, I said,
10:25:14 3 "No, really." I mean, but I don't think I was taking
10:25:18 4 myself seriously.

10:25:19 5 Q Right.

10:25:19 6 And you say, "No, really I guess we'll just
10:25:22 7 see what happens"; right?

10:25:24 8 A That's what it looks like I wrote, yeah.

10:25:25 9 Q What did happen?

10:25:28 10 A Be -- because of what? What happened because
10:25:30 11 of what? Because of this e-mail? This clip? What?

10:25:34 12 Q Did --

10:25:34 13 A I -- I don't know what happened to this clip.
10:25:35 14 I don't know what this -- this clip is.

10:25:37 15 Q Now, Mr. Karim writes there that Mr. Chen
10:25:40 16 agrees with him that they should ease up on their
10:25:44 17 strict policies for now; do you see that?

10:25:46 18 A Yes.

10:25:49 19 Q Why -- why ease up for now? Do you have an
10:25:52 20 understanding of what he meant by that?

10:25:54 21 MR. SCHAPIRO: Objection; omits part of the
10:25:56 22 text.

10:26:00 23 THE WITNESS: I -- I don't know what he was
10:26:00 24 referring to. I don't remember what our policies
10:26:03 25 were.

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10:29:44 2 Q I'm just directing your attention to the top
10:29:47 3 of Levine Exhibit 22. You write there, "Let's keep
10:29:52 4 short news clips for now. We can become stricter over
10:29:57 5 time, just overnight"; do you see that?

10:29:58 6 MR. SCHAPIRO: Objection; he didn't write
10:29:59 7 that.

10:30:00 8 MR BROWNE: Oh, I'm sorry. You're right.

10:30:01 9 Q Mr. Karim wrote that to you; do you see that?

10:30:05 10 A Yeah, yeah, I do. I see that.

10:30:07 11 Q Now, did you share Mr. Karim's view at this
10:30:10 12 time that -- that -- that YouTube could become
10:30:12 13 stricter over time, but just not overnight?

10:30:15 14 MR. SCHAPIRO: Objection; assumes facts.

10:30:17 15 THE WITNESS: Yeah, again, I don't -- I don't
10:30:19 16 remember this specific e-mail. I -- I can't speak
10:30:22 17 for -- for Jawed, you know. I -- I don't know, you
10:30:28 18 know, the situation that we were in at that time.

10:30:30 19 Like I've referred to, you know, discussing
10:30:32 20 here today, is we were trying to -- to figure out that
10:30:36 21 the -- that the -- the way to deal with these issues,
10:30:41 22 its fair use, with what we wanted the site to be
10:30:44 23 about, with us assuming some, just because it looked
10:30:48 24 professional, that it may not have authorization.

10:30:57 25 MR. BROWNE: Q. Well, were there advantages

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10:38:13 2 coming from.

10:38:14 3 Q If you turn -- if you turn to the next page
10:38:17 4 of that e-mail, there's an August 9th e-mail where you
10:38:22 5 write, "We need to start being diligent about
10:38:25 6 rejecting copyrighted -- copyrighted/inappropriate
10:38:27 7 content"; do you see that?

10:38:30 8 A Yes, I see that.

10:38:30 9 Q Now, do you think what Mr. Chen wrote in the
10:38:35 10 e-mail that we just looked about -- we just looked at,
10:38:37 11 do you think that was being diligent about rejecting
10:38:39 12 copyrighted content?

10:38:40 13 MR. SCHAPIRO: Objection to form.

10:38:41 14 THE WITNESS: I mean, again, you'd have to
10:38:49 15 ask Steve what he exactly meant by it, you know, what
10:38:53 16 he was trying to state there.

10:38:59 17 MR. BROWNE: Q. But you don't have any view
10:39:00 18 in your own mind as to whether -- what he did state
10:39:04 19 there was being diligent about rejecting copyrighted
10:39:07 20 material?

10:39:11 21 A No.

10:39:11 22 Q No opinion one way or the other?

10:39:18 23 A No, I mean, he's -- in -- you know, to me,
10:39:21 24 you know, I can't speak for Steve, but it just seems
10:39:24 25 like he was stating what may happen, and that -- you

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10:39:29 2 know, that's assuming that they -- they want it off
10:39:31 3 the site, and they -- they hadn't uploaded it to the
10:39:34 4 site, so I don't know. You'd have to ask Steve about
10:39:37 5 that.

10:39:37 6 Q Were you the CEO of YouTube as of -- was that
10:39:40 7 your title as of August 2005?

10:39:43 8 A That's correct.

10:39:43 9 Q Did Mr. Chen report to you at that time?

10:39:50 10 A Yeah, I guess, technically, but we worked as
10:39:52 11 a team.

10:40:03 12 Q Do you have a recollection of any discussions
10:40:05 13 with Mr. Chen or Mr. Karim about the topics set forth
10:40:12 14 in this e-mail?

10:40:13 15 MR. SCHAPIRO: Objection; overbroad; vague.

10:40:15 16 THE WITNESS: Yeah, I can't recall.

10:40:16 17 MR. BROWNE: Let's -- I guess we're on five,
10:40:22 18 right, so let's mark Exhibit 5.

10:40:32 19 THE WITNESS: Thanks.

10:40:33 20 (Document marked Hurley, C., Exhibit 5
10:40:41 21 for identification.)

10:40:41 22 MR. SCHAPIRO: Is there another page to this?

10:40:50 23 MR. BROWNE: No, I don't think there is; is
10:40:53 24 there?

10:40:53 25 MR. SCHAPIRO: I'll -- I'll represent to you

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11:04:00 2 MR. SCHAPIRO: Take as much time and read as
11:04:07 3 much as you want.

11:04:07 4 MR. BROWNE: Of course, you totally can.

11:04:57 5 THE WITNESS: All right.

11:04:58 6 MR. BROWNE: Okay.

11:04:59 7 Q And I -- just so if you turn to page two of
11:05:00 8 this document, it says near the -- near the top, on
11:05:03 9 July 19th, 2005, "Chad Hurley wrote."

11:05:06 10 A Uh-huh.

11:05:06 11 Q And is that -- is that an e-mail that you
11:05:09 12 wrote on or about July 19th, 2005?

11:05:13 13 A It looks like it, yeah. I don't remember it,
11:05:14 14 but yeah.

11:05:15 15 Q And it says there, a little bit further down,
11:05:18 16 "But the simplest way to start making money is to
11:05:21 17 place some AdWord text links on the site"; do you see
11:05:24 18 that?

11:05:24 19 A Yeah.

11:05:24 20 Q And is that something that you wrote on or
11:05:26 21 about July 19th, 2005, in this e-mail?

11:05:28 22 A It looks like it.

11:05:30 23 Q Okay. Now, if you turn back to the front
11:05:32 24 page, it says -- you've read the front page of this
11:05:38 25 e-mail; right?

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11:05:41 2 A Yeah.

11:05:41 3 Q Do you have a recollection of your cofounder
11:05:44 4 Jawed Karim putting stolen videos on the YouTube
11:05:47 5 website?

11:05:48 6 A No, I don't recall.

11:05:48 7 Q You don't have any -- any recollection, even
11:05:52 8 setting aside from this e-mail, Mr. Karim ever putting
11:05:55 9 stolen videos on the YouTube website?

11:06:00 10 A No, I can't remember.

11:06:03 11 Q That would be a serious thing; wouldn't it?

11:06:06 12 MR. SCHAPIRO: Objection; vague; form;
11:06:09 13 speculation.

11:06:10 14 THE WITNESS: Potentially it could be. I --
11:06:20 15 I don't know. I mean, that's assuming that, you know,
11:06:22 16 Jawed didn't have authorization. I don't -- I don't
11:06:24 17 know what videos that he's -- that Steve's
11:06:28 18 referencing, but...

11:06:29 19 MR. BROWNE: Q. But he's referencing stolen
11:06:32 20 videos on the YouTube website.

11:06:34 21 A Well, that seems like it's Steve's opinion,
11:06:36 22 but I don't -- I don't know what's -- what videos
11:06:39 23 Steve saw.

11:06:40 24 Q You were the CEO of YouTube at this time,
11:06:44 25 and -- and you were just informed by this e-mail that

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11:06:47 2 your cofounder -- one of your cofounders thought your
11:06:51 3 other cofounder was putting stolen videos on the
11:06:55 4 YouTube website.

11:06:56 5 Did you take any steps to discuss this
11:06:58 6 situation further?

11:06:58 7 MR. SCHAPIRO: Objection; he's not on this
11:07:00 8 e-mail.

11:07:03 9 MR. BROWNE: He is. It's on the top.

11:07:07 10 Q But regardless, just answer the question.

11:07:10 11 A Yeah.

11:07:13 12 Can you repeat the question again?

11:07:14 13 Q Yeah.

11:07:15 14 I said, you were the CEO of YouTube at this
11:07:16 15 time, and you were just informed in an e-mail from one
11:07:20 16 of your two other cofounders that one of the
11:07:22 17 cofounders was putting stolen videos on the YouTube
11:07:24 18 website.

11:07:24 19 Do you remember taking any steps to discuss
11:07:26 20 this issue?

11:07:27 21 A I -- I -- I can't remember. It doesn't look
11:07:29 22 like I responded, but I don't know. I may have
11:07:33 23 followed up with him directly. I don't -- I don't
11:07:37 24 know what happened. I can't remember the time.

11:07:37 25 Q You may have followed up with who directly?

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11:07:39 2 A Jawed. I don't know.

11:07:40 3 Q You don't have any memory at all of what
11:07:42 4 these stolen videos were?

11:07:45 5 MR. SCHAPIRO: Objection; lacks foundation.

11:07:46 6 THE WITNESS: Like I said, I can't -- I can't
11:07:49 7 remember this e-mail. I don't know what Steve's
11:07:52 8 referring to. I can't remember.

11:08:03 9 MR. BROWNE: Q. Do you see, then, under --
11:08:04 10 in this same e-mail where Mr. Chen writes that
11:08:08 11 Mr. Karim was putting stolen videos on the YouTube
11:08:12 12 website, he says under number two, "Our advertising
11:08:15 13 feature is less than a month away"; do you see that?

11:08:18 14 A Where is that?

11:08:18 15 Yeah, right there.

11:08:19 16 Q And do you know what advertising feature he
11:08:21 17 was referring to there?

11:08:22 18 A I don't know. We're, you know, again,
11:08:25 19 thinking about the various things that we're trying to
11:08:27 20 concentrate on within the company. Seems like we were
11:08:31 21 building some kind of advertising feature. You know,
11:08:35 22 to this day we continue to build more. I don't -- I
11:08:38 23 don't know what this one is in particular.

11:09:05 24 MR. BROWNE: So let's mark Exhibit 8.

11:09:20 25 ///

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