

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

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

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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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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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HURLEY, CHAD

SAN FRANCISCO, CALIFORNIA

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

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THE VIDEOGRAPHER: Good morning.
Today's videotaped deposition of Chad Hurley is taken on April 22nd, 2009, at 525 Market Street, 15th Floor, San Francisco, California.
In the matter of Viacom International, Incorporated, et al., and The Football Association Premier League Limited, et al., vs. YouTube, Incorporated.
Case Nos. 07-CV-2203 and 07-CV-3582. In the U.S. District Court, for the Southern District of New York.
My name is Ken Reeser. I represent David Feldman Worldwide, located at 600 Anton Boulevard, Suite 1100, Costa Mesa, California.
We are now commencing at 9:08 a.m.
Will all present please identify themselves, beginning with the witness.
THE WITNESS: I'm Chad Hurley.
MR. BROWNE: Good -- good morning. This is John Browne. I'm from Bernstein, Litowitz, Berger & 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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09:14:18 2 conclusion.

09:14:18 3 THE WITNESS: I don't know. You'd have to
09:14:19 4 ask the -- for, yeah, a legal opinion on that. I'm
09:14:20 5 not necessarily sure.

09:14:22 6 MR. BROWNE: Q. You don't have any
09:14:23 7 understanding, as you sit here today, what the
09:14:26 8 corporate relationship of YouTube is vis-a-vis Google?

09:14:29 9 MR. SCHAPIRO: Objection; asked and answered.

09:14:32 10 THE WITNESS: Yeah. Like -- like I said, I'm
09:14:34 11 not necessarily sure.

09:14:35 12 MR. BROWNE: Q. You say you're not
09:14:38 13 necessarily sure, but do you have some idea?

09:14:42 14 A No, I don't.

09:14:43 15 Q Do you -- do you consider yourself an
09:14:52 16 employee of Google?

09:14:53 17 A Yes, I do.

09:14:54 18 Q Now, you mentioned that -- or you started the
09:15:01 19 website in early of 2005; is that right?

09:15:03 20 A That's right.

09:15:04 21 Q Okay. And were you one of the founders of
09:15:07 22 the YouTube website?

09:15:08 23 A Yes.

09:15:08 24 Q Were there any other founders?

09:15:10 25 A Yeah, there were.

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09:15:10 2 Q Who were they?

09:15:12 3 A Steve Chen and Jawed Karim.

09:15:20 4 Q Do you -- can you recall an approximate month
09:15:23 5 when you founded YouTube?

09:15:26 6 A Well, we, you know, started discussing things
09:15:29 7 and registered the domain in February of 2005.

09:15:37 8 Q Now, did you personally invest any money into
09:15:40 9 the founding of YouTube?

09:15:44 10 MR. SCHAPIRO: Objection; vague.

09:15:45 11 THE WITNESS: Yeah, in -- in terms of --
09:15:47 12 of -- of -- of what? The formation, or what do you
09:15:50 13 mean?

09:15:50 14 MR. BROWNE: Yeah.

09:15:52 15 Q Did you put forward any capital to help start
09:15:54 16 the business, you personally?

09:15:55 17 A We didn't necessarily set anything aside. I
09:16:00 18 mean, I registered things like the domain. We just
09:16:02 19 had various roles before it was officially formed,
09:16:05 20 so...

09:16:06 21 Q Now, when you -- when you registered the
09:16:07 22 domain and did these other things to set up the
09:16:09 23 company, were you -- did you receive a stock in the
09:16:12 24 company?

09:16:15 25 A Not -- not initially. I -- I -- we went

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09:18:11 2 there, Jawed Karim?

09:18:17 3 A Jawed Karim.

09:18:18 4 Q I'm sorry. Jawed Karim.

09:18:19 5 Has he or, to your knowledge, did he, at any
09:18:21 6 point in time, invest any of his own personal funds
09:18:24 7 into YouTube?

09:18:25 8 A Again, I'm -- I'm not sure if there's any
09:18:26 9 miscellaneous things that he needed to pay for while
09:18:30 10 we were getting things up. I -- I don't think he
09:18:33 11 was -- he was paying for anything, but I can't
09:18:41 12 remember.

09:18:41 13 Q Now, how old were you when you founded
09:18:44 14 YouTube?

09:18:44 15 A Let's see. 20 -- 27, 28, yeah.

09:18:46 16 Q And how old are you today?

09:18:48 17 A I'm 32.

09:18:49 18 Q What did you do immediately prior to the time
09:18:53 19 that -- that you and others founded YouTube?

09:18:57 20 A Well, before YouTube, my last -- my last job
09:18:59 21 was at PayPal.

09:19:01 22 Q Okay. And what is PayPal?

09:19:03 23 A It's a payment service that was eventually
09:19:06 24 acquired by eBay and people use it to pay for -- for
09:19:10 25 auction listings and other services online.

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09:19:13 2 Q And where is -- where is PayPal located?

09:19:15 3 A I think in San Jose now where eBay is.

09:19:19 4 Q Where was it located during the time that you
09:19:22 5 were employed there?

09:19:23 6 A Originally, Palo Alto, and then we moved to
09:19:25 7 Mountain View at some point.

09:19:26 8 Q And -- and -- at what -- can you give me the
09:19:30 9 date when you left PayPal?

09:19:33 10 A I'm trying to remember the exact date. It
09:19:37 11 was maybe close to 2003 time frame.

09:19:42 12 Q Early 2003 or late? Do you have any sense?

09:19:45 13 A I can't remember. I just know that I was
09:19:47 14 away from PayPal for -- for some amount of time before
09:19:50 15 we started working on YouTube or I started working on
09:19:54 16 YouTube.

09:19:54 17 Q And during that gap period between the time
09:19:56 18 when you left PayPal and the time you founded YouTube,
09:19:59 19 were you employed anywhere?

09:20:01 20 A No; I was just -- just working on various
09:20:03 21 ideas and -- and I did some consulting, but then I
09:20:06 22 just took some time to relax, start a family, things
09:20:09 23 like that.

09:20:10 24 Q And what type of consulting did you do?

09:20:13 25 A Just some design work for friends and

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09:20:16 2 Internet companies and -- out in the West Coast.

09:20:20 3 Q Were you paid for any of that consulting?

09:20:23 4 A Yeah, I believe for some of it.

09:20:25 5 Q If you can list for me those that you
09:20:28 6 remember the consulting engagements during that period
09:20:31 7 for which you received some payment.

09:20:38 8 A I think the only one that actually was paid
09:20:41 9 for was just a logo for Space X, it's a space company.

09:20:46 10 Q And how do you spell Space X?

09:20:49 11 A Space and then the letter X.

09:20:52 12 Q Now, what was your -- and just to be clear,
09:20:55 13 can you -- can you recall any other consulting
09:20:57 14 engagements during that time period between PayPal and
09:21:00 15 Google that you were paid for?

09:21:01 16 A Yeah, I mean, I -- I did some work, but I
09:21:03 17 don't think I was ever paid for it. It was with
09:21:07 18 friends.

09:21:07 19 Q What was your title when you left PayPal?

09:21:14 20 A Just designer. I don't -- I don't know at
09:21:16 21 what level. I was just a designer at PayPal.

09:21:19 22 Q And why did you leave?

09:21:23 23 A Just to try new things. You know, I had
09:21:26 24 already spent about three-and-a-half years there. I
09:21:29 25 was just looking and ready to do something different,

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09:21:32 2 new, just kind of burned out.

09:21:34 3 Q When was PayPal acquired by eBay?

09:21:38 4 A I guess it was, you know, six months to a
09:21:41 5 year before I took off, so it was just a few months
09:21:45 6 kind of into that acquisition when I moved on.

09:21:47 7 Q What type of acquisition was it? Do you
09:21:53 8 know?

09:21:55 9 A I'm not sure if it was cash or stock or what,
09:21:59 10 what they used.

09:21:59 11 Q Did you -- did you yourself receive any money
09:22:02 12 as a result of eBay's acquisition of PayPal?

09:22:06 13 A I don't think I -- I received any -- anything
09:22:09 14 directly. We -- we were already a public company, so
09:22:12 15 I already had some stock within the company.

09:22:14 16 Q And when did PayPal become a public company?

09:22:19 17 A Again, I can't remember the specific date,
09:22:20 18 but I think it was a year previous to the acquisition.
09:22:23 19 Somewhere in that time frame.

09:22:24 20 Q So 2001, 2002, something like that?

09:22:29 21 A Something like that.

09:22:30 22 Q Okay. Now, at the time that you -- that
09:22:34 23 PayPal became public, I take it that at that time you
09:22:37 24 had stock in PayPal; is that right?

09:22:39 25 A That's right.

1 HURLEY, CHAD

09:22:39 2 Q Okay. And at the -- at the IPO price,
09:22:42 3 approximately how much was that stock worth, if you
09:22:44 4 know?

09:22:45 5 MR. SCHAPIRO: Objection.

09:22:47 6 THE WITNESS: Yeah, I -- I can't necessarily
09:22:48 7 remember in terms of stock price.

09:22:50 8 MR. BROWNE: Q. What was your highest salary
09:22:53 9 at PayPal.

09:22:55 10 A Again, I -- I can't remember what it was.

09:23:01 11 Q Was it more than [REDACTED] ?

09:23:04 12 A No, I don't believe it was.

09:23:05 13 Q Do you currently today own any PayPal stock?

09:23:12 14 A No, I don't.

09:23:12 15 Q And when did you dispose of that stock?

09:23:15 16 MR. SCHAPIRO: Objection; is this -- what are
09:23:19 17 you getting at with this? I mean, we're going to
09:23:21 18 be -- at some point, I think this is going to be, I
09:23:23 19 think, crossing into a line of personal information
09:23:25 20 that I might instruct him not to answer about.

09:23:27 21 It's just harassing, but if there's
09:23:29 22 somewhere -- some reason you want to know what his
09:23:31 23 assets consist of, let me have a hear at it.

09:23:35 24 MR. BROWNE: Well, if you want to instruct
09:23:37 25 him not to answer, you're welcome to do that, but

1 HURLEY, CHAD

09:23:39 2 that's my question.

09:23:40 3 Q When did you dispose of your PayPal stock?

09:23:43 4 MR. SCHAPIRO: You can answer this question.

09:23:44 5 THE WITNESS: Okay.

09:23:45 6 Again, I -- I -- I don't necessarily

09:23:47 7 remember. I don't remember calendar-wise.

09:23:48 8 MR. BROWNE: Okay.

09:23:49 9 Q Well, maybe to accommodate your counsel, what

09:23:51 10 was your approximate net worth at the time that you

09:23:53 11 left PayPal?

09:23:54 12 A Probably roughly around [REDACTED].

09:24:02 13 Q What's your approximate net worth now?

09:24:08 14 MR. SCHAPIRO: Objection; that one crosses

09:24:15 15 the line. I'm going to instruct you not to answer.

09:24:18 16 MR. BROWNE: How can it cross the line to

09:24:20 17 answer it now but not have crossed the line to answer

09:24:23 18 the same question for a period of three years prior?

09:24:26 19 I don't understand that.

09:24:26 20 MR. SCHAPIRO: Well, I'm not a mind reader,

09:24:29 21 but I assumed there was a basis for asking at PayPal,

09:24:31 22 because you're probably trying to suggest that there

09:24:35 23 was value to him in developing YouTube one way or

09:24:39 24 another, and you got to -- you have a line of

09:24:40 25 questioning here where you're going to talk about his

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09:24:42 2 incentives at YouTube, but what his net worth now is
09:24:46 3 has nothing to do with that.

09:24:47 4 Anyway, that's my instruction to him.

09:24:49 5 MR. BROWNE: Okay. Well, let me try to do
09:24:49 6 it -- maybe -- maybe we're misunderstanding each
09:24:52 7 other, but let me try it this way.

09:24:53 8 Q As a result of your founding of YouTube and
09:24:56 9 the subsequent sale back to Google, has that impact --
09:25:00 10 impacted your net worth?

09:25:02 11 A I'm sure it's increased.

09:25:04 12 Q Okay. Increased as a result of those things,
09:25:06 13 the things associated with YouTube? How much has your
09:25:10 14 net worth increased?

09:25:16 15 A Substantially, of course, yeah.

09:25:17 16 Q More than \$300 million?

09:25:24 17 A I'm not sure where the market stands today,
09:25:26 18 but probably around that ballpark.

09:25:31 19 Q Now, what did you do before PayPal?

09:25:39 20 A I was just coming out of school. That was my
09:25:43 21 first job out of school.

09:25:44 22 Q And by "school" you mean college?

09:25:45 23 A That's right.

09:25:45 24 Q Where did you go to college?

09:25:47 25 A Indiana University of Pennsylvania.

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11:47:50 2 Why don't we go off the record for one
11:47:52 3 second.

11:47:56 4 THE VIDEOGRAPHER: The time is 11:47 a.m.

11:47:59 5 We are off the record.

11:48:00 6 (Recess taken.)

11:48:00 7 (Document marked Hurley, C., Exhibit 12

11:53:26 8 for identification.)

11:53:26 9 THE VIDEOGRAPHER: The time is 11:52 a.m.

11:53:29 10 We are back on the record.

11:53:32 11 MR. BROWNE: Okay. And while we were off the

11:53:34 12 record, I -- I had a discussion with Mr. Hurley's

11:53:37 13 counsel about a video that we're about to mark as

11:53:40 14 Exhibit 11 and play, and -- I'm sorry. We're going to

11:53:44 15 mark it as Exhibit 12 and play for the witness.

11:53:47 16 The witness's counsel did have an opportunity

11:53:49 17 and took that opportunity to review the video, and we

11:53:55 18 agreed, I believe, that we were gonna mark as

11:53:58 19 Exhibit 12 for now a piece of paper that references

11:54:01 20 the Bates number of the video in the production, and

11:54:05 21 that Bates number is JKA00010387.

11:54:11 22 You may look at that.

11:54:12 23 MR. SCHAPIRO: We also agreed that because

11:54:14 24 the video, in the form that you have, contains much

11:54:17 25 more than -- additional clips beyond this 40-second

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11:54:20 2 clip, we would work together to produce some 40 --
11:54:24 3 some version that includes only the -- the particular
11:54:26 4 clip you're going to be asking about.

11:54:30 5 You've represented to me that this is
11:54:32 6 something that was part of the production that
11:54:34 7 Mr. Karim made. We, of course, reserve all rights to
11:54:38 8 challenge authenticity for foundation.

11:54:40 9 MR. BROWNE: Okay. Perfect.

11:54:41 10 Q Now, Mr. Hurley, I'm gonna play for you --
11:54:44 11 this is a very short video.

11:54:44 12 (Video Clip playing on laptop.)

11:54:44 13 (Unintelligible.)

11:54:49 14 SPEAKER 1: "It was like pretty impressed.
11:54:53 15 You're basically right. It's like anywhere
11:54:55 16 on the Internet you have a little that can
11:54:58 17 control and, you know, basically serve up
11:55:00 18 ads, and the whole of things with tags and,
11:55:06 19 you know, what our viewers have seen before
11:55:08 20 the flash. It's pretty --

11:55:10 21 SPEAKER 2: "So if we get them involved, at
11:55:13 22 what point would we tell them our dirty
11:55:16 23 little secret, which is that we actually just
11:55:19 24 want to sell out quickly?

11:55:19 25 SPEAKER 1: "Are you filming?"

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11:55:19 2 You're going to actually have to erase this.

11:55:22 3 SPEAKER 2: "No. It won't be released until

11:55:24 4 after the acquisition."

11:55:25 5 MR. BROWNE: Q. Now, Mr. -- stop that.

11:55:29 6 Now, Mr. Hurley, have you ever seen that

11:55:31 7 video before?

11:55:32 8 A I don't remember it.

11:55:33 9 Q Okay. Did you recognize the two individuals

11:55:37 10 that were on camera during that video?

11:55:40 11 A I recognize Steve and myself, and it sounded

11:55:43 12 like Jawed's voice.

11:55:45 13 Q Okay. And it sounded like -- and Mr. Karim's

11:55:51 14 voice on the video, you recognized that?

11:55:52 15 A It sounded like it.

11:55:53 16 Q Did you hear yourself say on -- on -- on that

11:55:58 17 video that -- that you have to -- something like

11:56:01 18 "we'll have to erase the file"?

11:56:04 19 A I mean, yeah, it seemed like a pretty

11:56:07 20 sarcastic remark to his sarcastic comment.

11:56:10 21 Q Okay. Now, when you were first in -- in

11:56:20 22 discussions with Sequoia Capital about the Series A

11:56:26 23 financing, did -- did Sequoia Capital value -- provide

11:56:30 24 you with a valuation that they had for YouTube?

11:56:34 25 A Yeah, through the -- negotiation they would

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12:02:02 2 Q And then farther over it says -- the final
12:02:04 3 column on the right says "earnings"; you see that?

12:02:07 4 A Yes.

12:02:07 5 Q This -- this spread spreadsheet is -- is --
12:02:09 6 is communicating how much YouTube is earning based on
12:02:16 7 ads sold on different types of web pages at different
12:02:20 8 dates; isn't that right?

12:02:21 9 MR. SCHAPIRO: Objection; calls for
12:02:22 10 speculation; mischaracterizes the document.

12:02:24 11 THE WITNESS: Yeah. Again, I -- I don't
12:02:25 12 remember what this -- this spreadsheet is referring
12:02:29 13 to, you know. To me, it potentially looks like it's,
12:02:34 14 you know, managing or tracking ad impressions.

12:02:38 15 MR. BROWNE: Q. Now, do you have an
12:02:40 16 understanding, though, as to what -- what is meant my
12:02:43 17 "channel watch," and it says -- like, look at the
12:02:45 18 first row. It says "Watch Top"; do you know what that
12:02:48 19 means?

12:02:48 20 A Uh-huh. Not specifically, you know, like --
12:02:54 21 you know, it may be referring to a page.

12:02:58 22 Q The Watch Page?

12:02:59 23 A It could be. I -- I don't remember the
12:03:02 24 document, but it could be.

12:03:02 25 Q What is -- what is -- what is the Watch Page?

1 HURLEY, CHAD

12:03:07 2 A Well, typically, we refer to Watch Pages
12:03:10 3 where a video is being watched where it's being
12:03:12 4 played.

12:03:13 5 Q On the YouTube website?

12:03:14 6 A Yes.

12:03:14 7 Q Okay. And this -- this document is
12:03:16 8 communicating that YouTube was selling advertisements
12:03:19 9 as of June 1st, 2006, on the Watch Page; isn't that
12:03:21 10 right?

12:03:23 11 A I guess. I guess that's what it's tracking.
12:03:25 12 I don't know. I don't remember again.

12:03:26 13 Q Aside from this document, as the CEO of
12:03:29 14 YouTube, in June of 2006, you -- you know that YouTube
12:03:33 15 was, in fact, selling advertisements on its Watch Page
12:03:37 16 at that time; right?

12:03:38 17 A You know, again, I don't call -- recall
12:03:41 18 specific dates. It looks like this -- this document
12:03:44 19 is implying that, but I -- I can't remember.

12:03:46 20 Q And then down a little bit further it says
12:03:49 21 "results"; do you see that?

12:03:51 22 A Uh-huh.

12:03:51 23 Q Is there a -- is there something called a
12:03:53 24 results page on YouTube?

12:03:55 25 A Typically, results, just like in a search

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12:03:58 2 engine, is the results -- it's a page that you get
12:04:01 3 when you're looking for something, searching for
12:04:03 4 something. It lists --

12:04:03 5 Q And as of -- as of June --

12:04:04 6 A -- results.

12:04:05 7 Q Oh, I'm sorry.

12:04:06 8 A Just a list of results.

12:04:07 9 Q And as of June 2006, YouTube was selling
12:04:10 10 advertisements on -- on its results page; isn't that
12:04:13 11 right?

12:04:13 12 MR. SCHAPIRO: Objection; lacks foundation.

12:04:15 13 THE WITNESS: I -- I don't know. I -- I
12:04:25 14 can't remember.

12:04:25 15 MR. BROWNE: Q. Do you have any reason to
12:04:27 16 believe that it wasn't?

12:04:32 17 A No, I mean, I can't remember, so I wouldn't
12:04:34 18 know why. Wouldn't have any reason not to.

12:04:38 19 Q And then a little bit down -- well, just the
12:04:43 20 next group down below, it says "browse" under that
12:04:47 21 channel column; do you see that?

12:04:49 22 A Yes.

12:04:49 23 Q Do you know what that's referring to?

12:04:54 24 A I think it's referring to -- probably to
12:04:57 25 the -- the browse pages, the pages where you have the

1 HURLEY, CHAD

12:04:59 2 ability to -- to browse. Not simply -- you know, not
12:05:03 3 search the result, but page of videos.

12:05:05 4 Q And -- and -- and how does that work? How do
12:05:07 5 the browse pages work at YouTube? At least how did
12:05:10 6 they work as of June 2006?

12:05:12 7 A I can't remember how they -- they -- they
12:05:14 8 worked at that time, but, typically, you can just look
12:05:17 9 at videos by category.

12:05:22 10 Q And in June of 2006, YouTube was selling
12:05:26 11 advertisements on its -- on its browse pages; isn't
12:05:28 12 that right?

12:05:29 13 A Again, I can't remember. It looks like a
12:05:33 14 spread shot -- spreadsheet is implying that, but I --
12:05:37 15 I don't know.

12:05:37 16 Q And then it says "channels" under the column
12:05:43 17 marked "channel."

12:05:44 18 A Uh-huh.

12:05:45 19 Q What -- what's channels?

12:05:48 20 A Typically, channels are, you know, the
12:05:51 21 profile page of a user. You know, representing
12:05:56 22 yourself within the YouTube community. It's kind of
12:05:59 23 how you express yourself, how you broadcast yourself.

12:06:02 24 Q And as of June 2006, YouTube was selling
12:06:04 25 advertisements on its channels pages; right?

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1 HURLEY, CHAD

12:06:08 2 A Again, I -- I don't know. I don't remember.
12:06:10 3 Again, the document looks like it's implying that.

12:06:13 4 Q Now, I'm just looking down the earnings
12:06:16 5 column on the right, and I see the largest earnings
12:06:19 6 numbers seem to equate to the Watch Pages. Why is
12:06:24 7 that?

12:06:24 8 MR. SCHAPIRO: Objection; document speaks for
12:06:25 9 itself.

12:06:26 10 THE WITNESS: Yeah, again, I -- I don't know
12:06:30 11 the reasons. I don't remember this document, but it
12:06:33 12 looks like the case in this -- in this spreadsheet.

12:06:37 13 MR. BROWNE: Q. Could YouTube make more
12:06:39 14 money selling advertisements on the Watch Pages than
12:06:43 15 elsewhere on its site?

12:06:45 16 A In -- in terms of what -- I mean, when?
12:06:47 17 What -- what are you implying here? Can you -- can
12:06:47 18 you --

12:06:50 19 Q I wasn't really implying anything.

12:06:52 20 A Can you restate the question?

12:06:53 21 Q Sure.

12:06:54 22 Did YouTube make more money selling
12:06:56 23 advertisements on its Watch Pages than it did selling
12:07:00 24 advertisements on other portions of the YouTube
12:07:02 25 website?

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14:27:39 2 they -- they thought about the clip, I guess. You
14:27:41 3 know, one through five. One being bad and five being
14:27:45 4 great.

14:27:46 5 Q Does that five stars there indicate that the
14:27:48 6 people were rank -- ranking it as five stars, or does
14:27:52 7 that indicate something else?

14:27:53 8 A It looks like I can't -- I can't tell the --
14:27:55 9 the color. It's either zero stars or all five stars.

14:27:59 10 Q Oh, okay. I have just one question about
14:28:03 11 this.

14:28:03 12 On the bottom right-hand corner it says
14:28:07 13 "featured videos."

14:28:08 14 How did it come to be that those particular
14:28:10 15 videos are featured on this Watch Page with the
14:28:12 16 Arsenal versus Manchester United video clip?

14:28:16 17 A Again, with -- with the name changes
14:28:20 18 recently, I'm not sure. I think -- well, it looks
14:28:21 19 like they're all partners. Expert Village, Blooms --
14:28:26 20 Bloomberg, Beyonce. They're all partner videos that
14:28:28 21 have been randomly selected.

14:28:29 22 Q And YouTube generates revenue from its
14:28:33 23 partner deals; right?

14:28:35 24 A Yeah, potentially, yes.

14:28:41 25 Q Now, the re- -- the related video -- I'm

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14:28:46 2 sorry.

14:28:46 3 On the right-hand corner, it also says

14:28:48 4 "related videos"; do you see that?

14:28:51 5 A Yep.

14:28:51 6 Q What -- what -- and then -- and then I think

14:28:53 7 it has a list of similar videos?

14:28:55 8 A Uh-huh.

14:28:55 9 Q How did that list come to be generated?

14:28:58 10 A Again, I think it's -- well, it's a technical

14:29:01 11 question that I don't know the answer for. Somehow

14:29:03 12 some kind of algorithm choosing what -- what's

14:29:06 13 appropriate to show.

14:29:08 14 Q So there's some algorithm at YouTube that --

14:29:12 15 that determined that the videos in this block were

14:29:15 16 related to the video that's playing on the watch

14:29:18 17 block?

14:29:18 18 MR. SCHAPIRO: Objection; calls for

14:29:20 19 speculation.

14:29:21 20 THE WITNESS: Yeah, I -- I -- again, I don't

14:29:26 21 know the details of how that actually works, but it's

14:29:29 22 trying to show related videos, however that is

14:29:32 23 determined.

14:29:32 24 MR. BROWNE: Okay. I have just one document

14:29:39 25 and then I'm done.

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14:45:51 2 cofounders --

14:45:52 3 A That's correct.

14:45:52 4 Q -- of YouTube; correct?

14:45:54 5 A That's correct.

14:45:54 6 Q And did you perceive the three of you as
14:45:55 7 being partners at the time?

14:45:57 8 MR. SCHAPIRO: Objection; vague.

14:46:01 9 THE WITNESS: Partners in -- in what way?

14:46:03 10 MR. BASKIN: Q. Well, did you perceive the
14:46:04 11 other two gentlemen as being your partners?

14:46:07 12 MR. SCHAPIRO: Objection; vague. Partners?

14:46:10 13 MR. BASKIN: Q. Do you understand the word
14:46:12 14 "partner"?

14:46:14 15 A Partner in -- in terms of, you know, a
14:46:17 16 corporate structure partner?

14:46:21 17 Q Well, did you view these two gentlemen as
14:46:22 18 your partners?

14:46:23 19 MR. SCHAPIRO: Same objection.

14:46:24 20 THE WITNESS: Yeah, I mean, we were a -- we
14:46:27 21 were a team trying to develop this.

14:46:30 22 MR. BASKIN: Q. Now, as I understand it --
14:46:34 23 let me ask you to put in front of you what I guess was
14:46:37 24 Hurley 7, and on the bottom of Hurley --

14:46:56 25 MR. SCHAPIRO: Hold on, Counsel. I don't

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14:46:58 2 have it yet.

14:47:00 3 MR. WILLEN: Here it is.

14:47:01 4 MR. SCHAPIRO: Okay. I got it.

14:47:08 5 MR. BASKIN: Okay.

14:47:08 6 Q If we go to the bottom of the first page of
14:47:10 7 Hurley 7, you have the paragraph that Mr. Browne
14:47:14 8 referred you to in the course of your earlier
14:47:16 9 testimony; do you remember that?

14:47:18 10 A Yeah, I think I recall that.

14:47:19 11 Q And in particular, in that paragraph, if I'm
14:47:23 12 reading it right, Mr. Chen is accusing your other
14:47:37 13 partner/colleague/cofounder of being a copyright thief
14:47:44 14 and dropping the copyrights or uploading the copy --
14:47:48 15 the stolen copyrighted materials onto the YouTube
14:47:53 16 website?

14:47:53 17 MR. SCHAPIRO: Objection; blatant
14:47:57 18 mischaracterization of the document.

14:47:59 19 MR. BASKIN: Q. Is that the way you read
14:47:59 20 that paragraph, sir?

14:48:02 21 A I don't think that's what he's trying to say.
14:48:03 22 I think Steve obviously saw some type of videos that
14:48:07 23 he thought may look professional. I -- I don't know
14:48:07 24 Steve -- what videos Steve was referring to.

14:48:09 25 Q Well, I didn't ask you what videos he was

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14:48:11 2 referring to.

14:48:12 3 What I'm asking you is, do you read that

14:48:13 4 paragraph as saying that "Jawed --" who is Jawed, sir?

14:48:18 5 A He was one of the cofounders of the site.

14:48:22 6 Q "Was putting stolen videos on the site."

14:48:24 7 Do you read that, sir?

14:48:29 8 A Yeah, well, Steve was saying "Please stop
14:48:33 9 putting stolen videos on the site."

14:48:34 10 Q And he -- in the last line of that paragraph,
14:48:39 11 if I'm reading it right, he's accusing one of the
14:48:43 12 cofounders of YouTube of blatantly stealing content
14:48:48 13 from another site and trying to get everyone to see
14:48:52 14 it; do you see that?

14:48:53 15 MR. SCHAPIRO: Objection to the
14:48:54 16 characterization of "accusing."

14:48:57 17 MR. BASKIN: Q. Do you see that, sir?

14:48:59 18 A Well, I see what Steve is saying. I think
14:49:03 19 maybe for -- for some of this, he's just referring --
14:49:06 20 you know, he's saying he's referring to content from
14:49:09 21 another site. I don't know if that -- you know, he
14:49:12 22 had authorized -- authorization to do that or what
14:49:14 23 type of content that was. I have no idea.

14:49:18 24 Q Well, I appreciate if you have no idea,
14:49:20 25 because you didn't ask; is that right, sir?

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14:49:21 2 MR. SCHAPIRO: Objection; argumentative.

14:49:24 3 MR. BASKIN: Q. Did you ask?

14:49:25 4 A Ask what?

14:49:25 5 Q Did you ask Mr. Chen what he meant by this
14:49:28 6 paragraph?

14:49:28 7 A I don't remember this e-mail. I --

14:49:29 8 Q Do you remember --

14:49:30 9 A I don't know.

14:49:30 10 Q Do you remember ever discussing with Mr. Chen
14:49:32 11 this paragraph?

14:49:33 12 A Potentially. I can't recall.

14:49:35 13 Q I didn't ask potentially what you can or
14:49:38 14 cannot do.

14:49:38 15 MR. SCHAPIRO: Objection.

14:49:39 16 MR. BASKIN: Q. Do -- do you recall
14:49:40 17 discussing this with Mr. Chen?

14:49:41 18 A I don't remember it.

14:49:43 19 Q Do you remember confronting Mr. Karim with
14:49:46 20 this, the accusation in this paragraph?

14:49:49 21 MR. SCHAPIRO: Objection to the
14:49:50 22 characterization.

14:49:51 23 THE WITNESS: I can't remember having a
14:49:53 24 discussion with him, no.

14:49:55 25 MR. BASKIN: Q. Do you remember consulting

1 HURLEY, CHAD

14:49:57 2 counsel regarding this paragraph, any legal counsel?

14:50:00 3 A I don't even know if we had counsel at the
14:50:03 4 time. I -- I don't remember at this time.

14:50:04 5 Q Is it your testimony that the first time you
14:50:10 6 have knowledge of this incident from this deposition
14:50:13 7 today?

14:50:14 8 MR. SCHAPIRO: Objection; lacks foundation;
14:50:16 9 mischaracterizes the testimony.

14:50:17 10 THE WITNESS: Like I said, I don't -- I don't
14:50:21 11 remember seeing this e-mail in the past, so I don't
14:50:24 12 remember it.

14:50:24 13 MR. BASKIN: Q. When you -- back in 2005,
14:50:33 14 when this incident happened, according to Mr. Chen,
14:50:39 15 were you reporting to work every day?

14:50:43 16 A Sure. We worked around the clock, yeah.

14:50:44 17 Q You were CEO of YouTube at the time; were you
14:50:47 18 not?

14:50:48 19 A Yes, I was.

14:50:48 20 Q And during the course of reporting to work
14:50:52 21 every day, did you see Mr. Chen virtually every
14:50:55 22 working day?

14:50:58 23 A I don't know about every day, but a fair
14:51:02 24 amount.

14:51:02 25 Q And did you see Mr. -- how do you pronounce

1 HURLEY, CHAD

14:51:05 2 it, Karim?

14:51:07 3 A Karim.

14:51:07 4 Q Did you see Mr. Karim virtually every day?

14:51:10 5 A No.

14:51:10 6 Q How frequently did you see Mr. Karim?

14:51:13 7 A I can't recall. I mean, early on he was
14:51:14 8 involved with a few things, but ultimately he ended up
14:51:18 9 deciding to go back to school, so we didn't really see
14:51:21 10 him very often at all.

14:51:22 11 Q And you had his telephone number, I take it;
14:51:25 12 did you not?

14:51:26 13 A I believe so.

14:51:27 14 Q Now, how far was Mr. Chen's office from yours
14:51:31 15 back in and around September 2005 or July 2005? How
14:51:38 16 many feet was his office from yours?

14:51:42 17 A I'm not sure. I can't remember where we sat.
14:51:44 18 If this was in Sequoia's office when we had little
14:51:48 19 incubator space, or if it was when we were in
14:51:52 20 San Mateo, we had our little -- little place there.

14:51:55 21 Q Okay. Well, assuming it's one or the other,
14:51:59 22 what was the furthest distance that Mr. Chen's office
14:52:02 23 was from yours back in September 2005?

14:52:04 24 A I mean, we were always close to each other.

14:52:06 25 I -- I don't know the distance, exactly, but I could

1

HURLEY, CHAD

14:52:09

2

see him.

14:52:09

3

Q And would it be fair to say that you were

14:52:13

4

e-mailing with Mr. Karim virtually every day during

14:52:15

5

this period?

14:52:18

6

A I -- I -- I don't remember. I -- I -- I

14:52:22

7

probably doubt it. I was more in touch with Steve

14:52:25

8

during this entire process.

14:52:26

9

Q Do you remember e-mailing with Mr. Karim

14:52:31

10

frequently during this period?

14:52:33

11

A Maybe in the beginning, but then, again, like

14:52:36

12

I was saying, he decided to go back to school and we

14:52:38

13

didn't stay in touch as much.

14:52:40

14

Q And I take it you don't remember sending him

14:52:43

15

an e-mail inquiring as to the validity of this

14:52:47

16

allegation on the part of Mr. Chen?

14:52:49

17

MR. SCHAPIRO: Objection to the

14:52:49

18

characterization.

14:52:50

19

THE WITNESS: I may have. I mean, this is

14:52:52

20

obviously not what we wanted him to do, if -- you

14:52:55

21

know, if, in fact, he didn't have authorization.

14:53:00

22

MR. BASKIN: Q. Are you saying you now have

14:53:01

23

a memory of doing it or you may have done it?

14:53:03

24

A I may have --

14:53:04

25

MR. SCHAPIRO: Objection; form.

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14:53:05 2 THE WITNESS: -- done it. I mean, I could
14:53:06 3 imagine. I mean, we wouldn't want him to -- to do
14:53:09 4 that, and so if --

14:53:12 5 MR. BASKIN: Q. Do you have any --

14:53:13 6 MR. SCHAPIRO: Can you let him finish his
14:53:15 7 answer?

14:53:16 8 MR. BASKIN: No, not at all.

14:53:17 9 MR. SCHAPIRO: No, you're not going to let
14:53:18 10 him finish his answer?

14:53:20 11 MR. BASKIN: I said not at all. He's welcome
14:53:22 12 to finish his answer.

14:53:23 13 Q Do you have any recollection --

14:53:23 14 MR. SCHAPIRO: Hold on.

14:53:25 15 Did you finish your answer?

14:53:25 16 THE WITNESS: I can't remember what I was
14:53:26 17 trying to say, so sorry.

14:53:29 18 MR. BASKIN: Q. Do you remember whether
14:53:32 19 these videos that Mr. Chen is alleging that Mr. Karim
14:53:41 20 stole were any of those Viacom videos, sir?

14:53:44 21 A I have no idea, but I don't remember.

14:53:47 22 Q Do you remember whether the videos that
14:53:55 23 Mr. Chen accuses Mr. Karim of stealing, whether they
14:54:00 24 were many or a few?

14:54:03 25 MR. SCHAPIRO: Same objection.

1 HURLEY, CHAD

14:54:04 2 THE WITNESS: Yeah, I don't -- I don't
14:54:05 3 remember. I can't recall the number.

14:54:06 4 MR. BASKIN: Q. And do you remember whether
14:54:10 5 he was being accused of stealing entire movies and
14:54:13 6 posting it on the website?

14:54:16 7 A Again, I don't -- I don't recall.

14:54:19 8 Q When -- in your life at YouTube, is it fair
14:54:33 9 to say that it was a -- an unusual event to have a
14:54:39 10 cofounder accused of being the copyright thief?

14:54:45 11 MR. SCHAPIRO: Objection to the
14:54:46 12 characterization.

14:54:47 13 THE WITNESS: Can you -- can you repeat the
14:54:48 14 question?

14:54:55 15 MR. BASKIN: Q. Well, is it an unusual event
14:54:58 16 during your time as CEO to have one of your cofounders
14:55:02 17 being accused of putting stolen videos on the YouTube
14:55:06 18 website?

14:55:06 19 MR. SCHAPIRO: Objection.

14:55:09 20 THE WITNESS: I would assume it's -- it's
14:55:11 21 unusual, because I -- you know, seeing this, I
14:55:13 22 don't -- I don't remember it and it's not what our
14:55:16 23 site was about.

14:55:17 24 MR. BASKIN: Q. Now, were you a frequent
14:55:24 25 user of e-mails back in this time period?

1 HURLEY, CHAD

14:55:26 2 A I can't remember to -- to what extent I
14:55:29 3 receive or send e-mails, no.

14:55:30 4 Q What about today? Are you a frequent user of
14:55:33 5 e-mails?

14:55:34 6 A I've never really enjoyed e-mail.

14:55:35 7 Q How many e-mails do you receive and send
14:55:39 8 during the course of a business day today?

14:55:42 9 A I don't know the exact number. Probably
14:55:43 10 receive a lot more than I respond to. That's for
14:55:46 11 sure.

14:55:46 12 Q You think you receive and send hundreds of
14:55:52 13 e-mails in the course of a day?

14:55:53 14 MR. SCHAPIRO: Objection; compound.

14:55:54 15 THE WITNESS: Again, I don't know the
14:55:56 16 specific numbers. I receive more than I send.

14:55:59 17 MR. BASKIN: Q. Back in 2005, do you have a
14:56:02 18 recollection when this event was happening how many
14:56:09 19 e-mails you receive and send during the course --
14:56:12 20 course of one of those business days?

14:56:14 21 A I can't --

14:56:14 22 MR. SCHAPIRO: Objection to the form.

14:56:23 23 Mr. Hurley, you got to wait until he finishes
14:56:26 24 asking his question to answer it.

14:56:29 25 THE WITNESS: Okay.

1 HURLEY, CHAD

14:56:30 2 MR. BASKIN: Q. Do you know what happened to
14:56:33 3 your e-mails from 2005?

14:56:39 4 A Well, like I said, during the -- you know,
14:56:42 5 the procedure to prepare for this case, I -- at one
14:56:44 6 point I tried to transition from POP to IMAP or IMAP
14:56:50 7 to pop. I mean, different ways to handle e-mail and
14:56:53 8 lost it.

14:56:54 9 Q Well, I didn't know that you lost e-mails
14:56:55 10 in -- when -- when did you lose e-mails, sir?

14:57:01 11 A I can't remember the specific date. We were
14:57:03 12 in the office in San Mateo. I just remember being
14:57:05 13 upset and having to go over to talk to Bradley to see
14:57:08 14 if he can recover it.

14:57:10 15 Q And you lost all of your e-mails?

14:57:11 16 A I believe so.

14:57:12 17 Q And who is Bradley, by the way?

14:57:22 18 A Bradley is one of the engineers.

14:57:24 19 Q And Bradley, you discussed -- strike that.

14:57:28 20 You discussed with Mr. Bradley the fact that
14:57:32 21 you lost almost all your e-mails?

14:57:35 22 A Yeah. I mean, I just remember getting up and
14:57:37 23 going over to talk to him to see if there's a way
14:57:41 24 to -- to recover it, and if there was a way, he was
14:57:43 25 trying to look into it.

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14:57:44 2 MR. SCHAPIRO: Is there a time frame?

14:57:46 3 THE WITNESS: Right, you know, when it

14:57:47 4 happened. I --

14:57:49 5 MR. BASKIN: Q. Is it fair to say that these

14:57:50 6 lost e-mails occurred during the summer of 2005 when

14:57:58 7 you and Mr. Karim and Mr. Chen were sending e-mails

14:58:03 8 back and forth to each other about copyright

14:58:06 9 compliance on the YouTube site?

14:58:09 10 MR. SCHAPIRO: Objection; vague; occurred?

14:58:12 11 THE WITNESS: You know, it just happened. It

14:58:13 12 didn't happen because of any kind of discussions we

14:58:16 13 were having. I was trying to be more efficient with

14:58:18 14 my e-mail and unfortunately didn't know what the hell

14:58:20 15 I was doing.

14:58:21 16 MR. BASKIN: Q. Well, do you recall if it

14:58:24 17 happened in 2005 or 2006 that you lost all these

14:58:28 18 e-mails, Mr. -- sir?

14:58:34 19 A I -- like I said, I can't recall a specific

14:58:36 20 day.

14:58:37 21 Q If I told you that as far as we can tell, for

14:58:43 22 July of 2005, you produced from your custodian account

14:58:48 23 33 e-mails, does that sound like a pretty scanty

14:58:53 24 number of e-mails for the course of a month, sir?

14:58:56 25 MR. SCHAPIRO: Objection; argumentative;

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14:58:57 2 calls for speculation; lacks foundation; testifying.

14:59:03 3 THE WITNESS: Again, I don't remember how
14:59:05 4 many e-mails I sent. I wouldn't be surprised, because
14:59:08 5 I -- like I said, I don't necessarily enjoy e-mail.

14:59:12 6 MR. BASKIN: Q. So you think it's possible
14:59:13 7 you only sent and received 33 e-mails in the month of
14:59:16 8 July of 2005?

14:59:20 9 A I have no idea. I don't -- I don't recall.

14:59:22 10 Q How about August 2005? You think it's
14:59:24 11 possible you sent and received three e-mails,
14:59:28 12 Mr. Hurley?

14:59:31 13 A I -- I have -- I have no idea.

14:59:32 14 Q Well, I'm asking you if -- knowing your own
14:59:35 15 practices, is it conceivable even that you sent and
14:59:40 16 received three e-mails for the entire month of August
14:59:42 17 of 2005?

14:59:44 18 MR. SCHAPIRO: Objection to the form.

14:59:45 19 THE WITNESS: You know, I can't recall.

14:59:50 20 MR. BASKIN: Q. How about the following
14:59:52 21 month, the month of September? Is it possible that
14:59:56 22 you sent and received five e-mails for the entire
15:00:00 23 month of September of 2005?

15:00:03 24 A I can't recall.

15:00:05 25 Q I didn't ask you if you recall it.

1 HURLEY, CHAD

15:00:07 2 I'm saying, is it possible, knowing your own
15:00:09 3 practices, that you sent and received only five
15:00:13 4 e-mails for the entire month of September, Mr. Hurley?

15:00:15 5 A You know, anything is possible, but I wasn't
15:00:18 6 keeping track of how I was sending and receiving
15:00:23 7 e-mails.

15:00:23 8 Q Would it be fair and true and honest to say
15:00:27 9 that you send more than five e-mails in an hour in the
15:00:30 10 course of a normal business day, sir?

15:00:32 11 MR. SCHAPIRO: Objection; speculative;
15:00:34 12 incomplete hypothetical; lacks time frame.

15:00:36 13 MR. BASKIN: Q. Mr. Hurley, is it fair and
15:00:37 14 true and accurate to say that you typically spent --
15:00:40 15 sent more than five e-mails in an hour back in 2005?

15:00:45 16 A I have no idea, but...

15:00:48 17 Q How about in October of 2005? Is possible
15:00:51 18 you only had five e-mails for that month also?

15:00:56 19 A Again, I -- I have no idea.

15:00:59 20 Q Okay. Now, let's talk about the lost e-mails
15:01:01 21 that you brought up with -- with -- what was his name,
15:01:04 22 Bradley?

15:01:05 23 A That's right.

15:01:05 24 Q This is Bradley who? What's his last name,
15:01:10 25 sir?

1 HURLEY, CHAD

15:01:12 2 A What's his last name? Something with an H, I
15:01:16 3 believe. I can't -- I can't remember.

15:01:16 4 Q How about Heilbrun? Does that sound right?

15:01:23 5 A Yes, that's it.

15:01:23 6 Q And you went to Mr. Heilbrun and you advised
15:01:26 7 him of the fact that you had lost some e-mail -- all
15:01:29 8 your e-mails for some period of time?

15:01:31 9 A To the best of my knowledge, yes.

15:01:33 10 Q And do you recall, was it a four-, five-,
15:01:37 11 six-month period? How long a period of time did you
15:01:42 12 lose all these e-mails, sir?

15:01:43 13 A I -- I don't know what the period was. I
15:01:45 14 just...

15:01:45 15 Q Well, as you sit here today, was it a week?
15:01:48 16 A day? A month? Two months? Three months?

15:01:51 17 A I mean, I thought I lost all my e-mail from
15:01:53 18 that date previous.

15:01:54 19 Q From that date from up to the start of when?
15:01:59 20 What? Previous to the start of YouTube?

15:02:01 21 A Whenever we started storing e-mails, I guess.
15:02:04 22 Yeah.

15:02:05 23 Q And did Mr. Heilbrun confirm to you that you
15:02:10 24 had lost all your e-mails?

15:02:12 25 A Yeah, it was my impression, but, yeah.

1 HURLEY, CHAD

15:02:14 2 Q Was he able to reproduce all of these lost
15:02:17 3 e-mails?

15:02:19 4 A I -- you know, kind of looking back at the
15:02:21 5 situation, I don't think he was able to get any of
15:02:23 6 them, but I don't remember.

15:02:24 7 Q There was no backup system, I take it, at
15:02:26 8 YouTube for these e-mails?

15:02:28 9 A No, unfortunately, no.

15:02:30 10 Q And were you the only unlucky sole who lost
15:02:35 11 all your e-mails at the company or did other people
15:02:37 12 lose them as well?

15:02:38 13 MR. SCHAPIRO: Objection to the argumentation
15:02:40 14 and sarcasm.

15:02:42 15 THE WITNESS: I -- I've -- I have no idea --

15:02:45 16 MR. BASKIN: Q. Did you ask --

15:02:46 17 A -- of other people's situations.

15:02:49 18 You know, it was never brought to my
15:02:52 19 attention. I don't know if I -- I can't remember if I
15:02:53 20 ever asked.

15:02:54 21 Q Did you ask Mr. Bradley whether all of
15:02:56 22 YouTube's e-mails from the start of YouTube's time to
15:02:59 23 that date were lost?

15:03:01 24 A I was just asking about mine.

15:03:03 25 Q Didn't inquire about anyone else's e-mails?

1 HURLEY, CHAD

15:03:07 2 A No, because it was something that I did
15:03:08 3 trying to change it myself.

15:03:10 4 Q And, by the way, where is Mr. Brad --
15:03:19 5 Mr. Heilbrun today? Is he still around at YouTube?

15:03:22 6 A I think so.

15:03:23 7 Q Now, what did he tell you you did or what do
15:03:30 8 you think you did that caused the loss of all these
15:03:33 9 e-mails, sir?

15:03:34 10 A I was just trying to move between two
15:03:36 11 different ways to handle e-mail. I don't know the
15:03:39 12 technical differences between POP and IMAP. I think
15:03:43 13 IMAP somehow allows you to manage e-mail more
15:03:46 14 effectively. I think that's what I was trying to move
15:03:48 15 to, but I didn't do it correctly.

15:03:51 16 Q And was everybody at YouTube also moving to
15:03:58 17 this new system or just you?

15:04:02 18 A I don't know. It was just different ways to
15:04:04 19 manage your e-mail.

15:04:08 20 Q Well, do you recall whether this was
15:04:09 21 universal at YouTube, that people were -- were
15:04:12 22 migrating to this new system, or was that just simply
15:04:16 23 what Chad Hurley was doing?

15:04:18 24 A I mean, others could have done it. It's
15:04:20 25 just -- like I said, it's different protocols or

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15:04:22 2 whatever you call it to -- to handle ways that you
15:04:26 3 manage your e-mail. I don't know. People could have
15:04:28 4 been doing both.

15:04:28 5 Q Now, have you advised counsel in connection
15:04:39 6 with this litigation that you have lost most of your
15:04:41 7 e-mails?

15:04:41 8 MR. SCHAPIRO: Objection. I'm going to
15:04:42 9 instruct him not to answer on the basis of privilege.

15:04:47 10 THE WITNESS: Okay.

15:04:48 11 MR. BASKIN: Q. Did this loss of e-mails
15:04:59 12 occur after Google acquired YouTube?

15:05:03 13 A I don't think so. I think it happened
15:05:05 14 before.

15:05:05 15 Q So it happened during the period of time from
15:05:09 16 2005 'til October of 2006?

15:05:14 17 A I guess. I don't know the specific dates.

15:05:15 18 Q And did you lose all of your personal e-mails
15:05:48 19 also or just the company e-mails?

15:05:50 20 A I'm not sure. I -- I think it was just -- it
15:05:52 21 was just trying to deal with the e-mail -- the -- the
15:05:55 22 company one.

15:06:06 23 Q When you heard about this lawsuit and that
15:06:13 24 your documents were being called for, what did you do?

15:06:18 25 A What do you mean what --

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1 HURLEY, CHAD

15:06:20 2 MR. SCHAPIRO: You can answer to the extent
15:06:22 3 that you're not revealing privileged conversations
15:06:24 4 with counsel.

15:06:25 5 Go ahead.

15:06:26 6 THE WITNESS: What do you mean what did --
15:06:28 7 what did I do?

15:06:29 8 MR. BASKIN: Q. What did you do to find
15:06:30 9 documents?

15:06:31 10 A What did I what?

15:06:32 11 Q What did you do to find documents?

15:06:34 12 A Well, nothing. I just handed over whatever I
15:06:38 13 had, my laptop, and let them go through my files
15:06:41 14 and...

15:06:41 15 Q Do you know whether Mr. Chen has lost a lot
15:06:44 16 of his documents also?

15:06:46 17 A I have no idea.

15:06:47 18 Q Did you discuss it with him, whether he lost
15:06:49 19 documents like you or...

15:06:52 20 A I don't think so.

15:06:52 21 Q You know if Mr. Karim -- I'm sorry. I'm
15:06:58 22 always mispronouncing that -- but whether he also --
15:07:01 23 Mr. Karim, whether he lost documents as well during
15:07:04 24 this time period?

15:07:06 25 A I -- I have no idea.

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1 HURLEY, CHAD

15:07:08 2 Q How long did you prepare for this deposition,
15:07:17 3 Mr. Hurley?

15:07:18 4 A Just the past two days, just sat down.

15:07:20 5 Q And were you shown documents?

15:07:23 6 A A few.

15:07:23 7 Q Less than 50? Fewer than 50?

15:07:28 8 MR. SCHAPIRO: Objection; I'm going to
15:07:30 9 instruct you not to answer.

15:07:31 10 MR. BASKIN: Q. Were you shown any documents
15:07:33 11 that you thought you had lost?

15:07:38 12 A I don't recall a lot of these e-mails. I
15:07:40 13 don't know if I lost them or not.

15:07:53 14 Q Well, just so the record is clear on it, why
15:08:00 15 don't you explain what you believe happened that
15:08:04 16 caused the loss of all these e-mails.

15:08:08 17 A Well, like I was saying, it was just a
15:08:10 18 transition between two ways to handle e-mail between
15:08:13 19 POP and IMAP, and somehow the system that handled it,
15:08:16 20 when I transitioned to one to the other, somehow on
15:08:20 21 the system they disappeared. I don't -- I can't go
15:08:24 22 into anymore technical explanation because I don't
15:08:27 23 necessarily know how it works.

15:08:28 24 Q Now, did you lose, as part of your lost
15:08:38 25 e-mails, the e-mails -- strike that.

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15:08:50 2 When you were shown this morning the e-mail
15:09:32 3 regarding the -- Mr. Chen's accusation regarding
15:09:39 4 Mr. Karim --

15:09:43 5 A Which one? This one?

15:09:44 6 Q Yes, the one before you now.

15:09:46 7 A Thank you.

15:09:48 8 Q Exhibit 7, early 7, is that the first time
15:09:50 9 you recall seeing this e-mail?

15:09:52 10 MR. SCHAPIRO: Same objection as to
15:09:54 11 "accusation."

15:09:55 12 You can answer to the extent that you can --
15:09:59 13 that -- excluding what you might have seen in
15:10:02 14 preparation for this deposition.

15:10:04 15 THE WITNESS: Okay.

15:10:06 16 Yeah, yeah, I -- I don't recall this e-mail.

15:10:08 17 MR. BASKIN: Q. Was anyone, other than
15:10:27 18 Mr. Heilburn, involved in investigating the loss of
15:10:32 19 your e-mails?

15:10:38 20 A I'm trying to think. Maybe other engineers
15:10:40 21 that were in the office. I can't particularly
15:10:43 22 remember who.

15:10:44 23 Q Okay. Now, let me move forward a little bit,
15:11:16 24 sir, to the period when you were negotiating your --
15:11:22 25 the acquisition by Google.

1 HURLEY, CHAD

15:11:24 2 Did -- did you -- did YouTube have a

15:11:26 3 financial advisor in connection with that?

15:11:31 4 A In -- in terms of what? What negotiation?

15:11:34 5 Q The sale of YouTube to Google.

15:11:39 6 A We had our CFO, Gideon Yu.

15:11:43 7 Q Did you have an external financial advisor?

15:11:47 8 A Not that I believe. Just board members as
15:11:50 9 well. I mean, just us as a team.

15:11:53 10 Q What about a firm called Allen & Company?

15:11:57 11 Were they involved with you in trying to sell YouTube?

15:12:01 12 A No, they -- they wanted to get involved, but
15:12:02 13 they weren't.

15:12:03 14 Q They were not retained?

15:12:04 15 A No.

15:12:05 16 Q They didn't prepare any analytical material
15:12:09 17 or any analysis of valuation for you?

15:12:13 18 MR. SCHAPIRO: Objection; calls for
15:12:14 19 speculation.

15:12:15 20 THE WITNESS: Not that I'm aware of.

15:12:17 21 MR. BASKIN: Q. Did anyone prepare -- on
15:12:21 22 your side at the transaction prepare any valuation
15:12:24 23 material?

15:12:29 24 A We probably did, but I -- I don't remember
15:12:31 25 what that was.

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1 HURLEY, CHAD

15:12:40 2 Q Did you see the valuation material in
15:12:42 3 preparation for your deposition today?

15:12:47 4 A I can't -- I can't remember. We reviewed a
15:12:49 5 lot of documents --

15:12:50 6 MR. SCHAPIRO: Objection; don't answer that.

15:12:51 7 THE WITNESS: Okay.

15:12:53 8 MR. BASKIN: Q. Do you recall when was the
15:12:54 9 last time you saw your internal valuation material?

15:12:59 10 MR. SCHAPIRO: Excluding in preparation for
15:13:00 11 this deposition.

15:13:03 12 THE WITNESS: I cannot.

15:13:06 13 MR. BASKIN: Q. Did you lose the internal
15:13:09 14 valuation material?

15:13:10 15 A Did I lose it? I -- I don't remember the
15:13:14 16 last time I saw it, so I don't know where -- where it
15:13:17 17 would be.

15:13:17 18 Q And was -- was that among the materials that
15:13:19 19 were lost that you discussed with Mr. Heilburn?

15:13:27 20 A I doubt it. It happened way before we ever
15:13:29 21 discussed anything. I don't know.

15:13:47 22 Q Do you recall the internal valuation material
15:13:51 23 that was generated by YouTube what value you believed
15:13:55 24 the business was worth?

15:13:59 25 A I can't recall a specific document. I don't

1 HURLEY, CHAD

15:14:02 2 remember.

15:14:02 3 Q Was it close to \$1.65 billion?

15:14:06 4 MR. SCHAPIRO: Objection; lacks foundation;
15:14:08 5 assumes facts not in evidence.

15:14:09 6 MR. BASKIN: Doesn't need it. I'm asking him
15:14:09 7 if he knows what it was.

15:14:13 8 Q Was it in range of \$1.65 billion?

15:14:14 9 MR. SCHAPIRO: You have to establish that
15:14:16 10 there was any valuation done.

15:14:17 11 THE WITNESS: Yeah, I -- I -- I don't know.
15:14:18 12 If there was a document, I don't remember the number.

15:14:20 13 MR. BASKIN: Q. Did you think \$1.65 billion
15:14:26 14 was a fair price for YouTube in and around
15:14:30 15 October 2006?

15:14:31 16 A Well, ultimately we settled on that number,
15:14:33 17 so...

15:14:34 18 Q Well, did you at the time think it was a fair
15:14:37 19 price?

15:14:39 20 MR. SCHAPIRO: Objection; vague.

15:14:40 21 THE WITNESS: Yeah. Well, again, assuming
15:14:42 22 there was valuation, you're always trying to negotiate
15:14:44 23 for more, but...

15:14:47 24 MR. BASKIN: Q. And do you recall how you
15:14:49 25 valued YouTube in and around October 2006?

1 HURLEY, CHAD

15:14:54 2 A I don't recall.

15:14:55 3 Q At that point, YouTube had generated losses
15:14:59 4 every single quarter; did it not?

15:15:01 5 A Probably.

15:15:02 6 Q So presumably a \$1.65 billion valuation was
15:15:07 7 not effectuated based on profit; correct?

15:15:13 8 MR. SCHAPIRO: Objection; calls for
15:15:14 9 speculation.

15:15:15 10 THE WITNESS: I don't know what factors went
15:15:16 11 into it.

15:15:17 12 MR. BASKIN: Q. Well, was the valuation
15:15:20 13 based upon the size of your user base and the
15:15:25 14 likelihood of advertising -- selling ads to that user
15:15:31 15 base in the future?

15:15:31 16 MR. SCHAPIRO: Same objection.

15:15:33 17 THE WITNESS: Again, I -- I don't know the
15:15:34 18 valuation. It could potentially be one of the
15:15:36 19 factors.

15:15:37 20 MR. BASKIN: Q. Well, do you recall if that
15:15:38 21 was one of the factors?

15:15:40 22 MR. SCHAPIRO: Same objection; asked and
15:15:42 23 answered.

15:15:42 24 THE WITNESS: Again, yeah, I don't remember
15:15:44 25 the document.

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15:15:46 2 MR. BASKIN: Q. Well, I'm asking whether you
15:15:47 3 remember, irrespective of remembering the document, in
15:15:51 4 terms of fixing a value on YouTube, in your mind, was
15:15:56 5 the value dependent upon the size of your user base
15:16:01 6 and the possibility of selling ads to that user base
15:16:04 7 in the future?

15:16:05 8 A Like I said, it could be one of the factors.

15:16:08 9 Q What other factors are there in your mind or
15:16:10 10 were there in your mind, other than the size of your
15:16:13 11 user base?

15:16:15 12 A Building a great community. Building a site
15:16:18 13 that would affect popular culture, would change
15:16:21 14 elections, would allow people to share their talents
15:16:24 15 around the world. I mean, the fact that we were able
15:16:26 16 to create a site that was easy to use the user
15:16:29 17 interface. The fact that anyone had a chance to use
15:16:32 18 it now have a chance to be heard.

15:16:34 19 Q And presumably all of those factors
15:16:37 20 materialized in a user base; correct?

15:16:39 21 A Yeah, ultimately you need to use the site,
15:16:43 22 the user.

15:16:44 23 Q And in order to generate money or to monetize
15:16:48 24 that user base, you have to sell advertisements to
15:16:51 25 them; correct?

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15:16:52 2 MR. SCHAPIRO: Objection.

15:16:54 3 MR. BASKIN: Q. Is that correct?

15:16:55 4 A Potentially one of the ways, yes.

15:16:57 5 Q Was there any other way to monetize your
15:16:59 6 website, other than selling advertisements?

15:17:05 7 A You know, I can't recall at the time. We
15:17:07 8 continued to look for ways to build a -- a business,
15:17:10 9 but primarily it's going to be supported by ads.

15:17:13 10 Q And the larger the user base, the higher
15:17:17 11 number of ads that could be sold; correct?

15:17:19 12 MR. SCHAPIRO: Objection; asked and answered.

15:17:20 13 THE WITNESS: Yeah, again, that could be the
15:17:21 14 case.

15:17:22 15 MR. BASKIN: Q. Well, that is the case; is
15:17:24 16 it not?

15:17:24 17 MR. SCHAPIRO: Objection; argumentative.

15:17:26 18 THE WITNESS: Like I said, it could be the
15:17:27 19 case.

15:17:28 20 MR. BASKIN: Q. Well, when you sell ads
15:17:30 21 today, do you sell it based on the user base? Likely
15:17:35 22 number of viewers?

15:17:36 23 A I -- I'm not sure exactly how we sell today.
15:17:39 24 Like -- like I said, the site continues to change.
15:17:42 25 You'd have to ask probably Suzie for -- for that

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15:17:45 2 specific answer. I don't know how we're selling it.

15:17:54 3 Q And Suzie is Ms. Reider; is that who it is?

15:17:59 4 A That's right.

15:18:02 5 Q Now, you were asked whether there were other
15:18:09 6 potential acquirers apart from Google this morning,
15:18:12 7 and you mentioned [REDACTED] also made an offer; is that
15:18:16 8 correct?

15:18:17 9 A That's correct.

15:18:17 10 Q And were you involved in the negotiation with
15:18:22 11 [REDACTED]?

15:18:23 12 A To some extent. I -- I don't remember if I
15:18:28 13 was involved with the -- the details of the offer. I
15:18:29 14 just -- like I mentioned before, I met with [REDACTED] and
15:18:32 15 [REDACTED] at Denny's.

15:18:34 16 Q And that was the extent of your involvement?

15:18:37 17 A Well, that's what I remember.

15:18:39 18 Q Do you remember negotiating price at all?

15:18:43 19 A There may have been e-mails back and forth.
15:18:45 20 I -- I don't -- I don't know the specifics. I can't
15:18:49 21 remember the specifics.

15:18:50 22 Q And do you still -- have you seen those
15:18:54 23 e-mails that may have happened, as you put it, that
15:18:57 24 may have been e-mails back and forth? Have you seen
15:18:59 25 those e-mails?

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15:19:00 2 A I don't remember them.

15:19:03 3 Q So you were speculating there may have been
15:19:06 4 e-mails?

15:19:07 5 A Well, there probably were, I just -- I don't
15:19:11 6 remember them.

15:19:11 7 Q Do you recall seeing them in preparation for
15:19:13 8 this deposition?

15:19:14 9 MR. SCHAPIRO: Objection.

15:19:14 10 Don't answer.

15:19:19 11 MR. BASKIN: Q. Do you recall seeing them in
15:19:22 12 the last year?

15:19:22 13 MR. SCHAPIRO: Excluding any preparation
15:19:26 14 regarding this deposition, you may answer.

15:19:30 15 THE WITNESS: Again, I -- I don't remember.

15:19:31 16 MR. BASKIN: Q. Now, in the course of the --
15:19:34 17 of the process of trying to sell YouTube, were both
15:19:39 18 [REDACTED] and Google performing due diligence?

15:19:43 19 A I assume. You'd have to ask them.

15:19:45 20 Q Well, did they ask you questions?

15:19:48 21 A I'm sure they did. I don't remember what
15:19:51 22 they were.

15:19:51 23 Q Do you remember being asked questions at all?

15:19:54 24 A Not specifically, no.

15:19:59 25 Q Do you remember instructing others to answer

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