

VARUN KACHOLIA - ATTORNEYS EYES ONLY

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ATTORNEYS EYES ONLY

VIACOM INTERNATIONAL INC., COMEDY)
 PARTNERS, COUNTRY MUSIC)
 TELEVISION, INC., PARAMOUNT)
 PICTURES CORPORATION, and BLACK)
 ENTERTAINMENT TELEVISION, LLC,)
 Plaintiffs,)
 vs.) Case No 1:07CV02103
 YOUTUBE, INC., YOUTUBE, LLC,)
 and GOOGLE, INC.,)
 Defendants.)
)
 _____)
 THE FOOTBALL ASSOCIATION PREMIER)
 LEAGUE LIMITED, BOURNE CO., et al.)
 on behalf of themselves and all)
 others similarly situated,)
 Plaintiffs,)
 vs.) Case No. 07CV03582
 YOUTUBE, INC., YOUTUBE LLC, and)
 GOOGLE, INC.,)
 Defendants.)
 _____)

Deposition of VARUN KACHOLIA

Palo Alto, California

Friday, January 8, 2010

JOB NO. 18544

DAVID FELDMAN WORLDWIDE, INC.

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January 8, 2010

9:35 a.m.

VIDEOTAPED DEPOSITION OF VARUN KACHOLIA,
held at the offices of Wilson Sonsini Goodrich
& Rosati, 601 South California Avenue, Palo Alto,
California, pursuant to Notice before Peppina Rayna
Thompson, Certified Shorthand Reporter of the State
of California.

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A P P E A R A N C E S.

FOR THE VIACOM PLAINTIFFS:

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ALSO PRESENT:

WILLIAM TRUELOVE
ARMANDO CARRASCO, Videographer

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IT IS HEREBY STIPULATED AND AGREED, by
and between counsel for the respective parties
hereto, that the filing, sealing and
certification of the within deposition shall
be and the same are hereby waived;.

IT IS FURTHER STIPULATED AND AGREED that
all objections, except as to the form of the
question, shall be reserved to the time of the
trial;

IT IS FURTHER STIPULATED AND AGREED that
the within deposition may be signed before any
Notary Public with the same force and effect
as if signed and sworn to before the Court.

09:15:19

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THE VIDEOGRAPHER: Today's videotaped deposition of Varun Kacholia is taken on January [8], 2010 at Wilson Sonsini Goodrich and Rosati, 601 South California Avenue, Palo Alto, California in the matter of Viacom International versus YouTube, Inc.

The case numbers are 07 CV 2103 and 07 CV 3582 in court Southern district of New York.

My name is Armando Carrasco, I represent David Feldman Worldwide located at 600 Anton Boulevard, Suite 1100, Costa Mesa, California.

We are now commencing at 9:35 a.m.

Will all present please identify themselves beginning with the witness.

THE WITNESS: Varun Kacholia.

MR. RUBIN: Michael Rubin of Wilson Sonsini Goodrich & Rosati for defendants YouTube and Google.

MR. GALDSTON: Benjamin Galdston of Bernstein Litowitz Berger & Grossmann on behalf of plaintiff class, the English Premium League Action.

MR. TRUELOVE: William Truelove, consultant for Viacom plaintiffs.

MS. CROWE: Allison Crowe from Jenner & Block.

MS. MAGUIRE: Sarah Maguire from Jenner & Block

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09:51:11

1 A Sometimes.

2 MS. MAGUIRE: Okay.

3 Q Did you consult any formal design documents?

4 MR. RUBIN: Objection to form.

5 THE WITNESS: Consult design documents as part

6 of my work or to prepare --

7 MS. MAGUIRE: In preparation.

8 THE WITNESS: Not that I remember, no.

9 MS. MAQUIRE:

10 Q Okay. Did you speak with anyone other than
11 counsel to prepare for this deposition?

12 A No, I don't think so.

13 Q Okay. Okay. Mr. Kacholia, let's turn to
14 search and start of with some basics so that we are on
09:51:59 15 the same page.

16 There's a search engine on the YouTube service;
17 correct?

18 MR. RUBIN: Objection, vague.

19 THE WITNESS: Yes, YouTube allows searching
20 videos.

21 MS. MAGUIRE:

22 Q Okay. And is that search engine an in-house
23 search engine?

24 MR. RUBIN: Objection.

25 THE WITNESS: Can you clarify "in-house" more?

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09:52:20

1 MS. MAGUIRE: Sure.

2 Q Is it a Google or YouTube search engine as
3 opposed to some other commercially available search
4 engine?

5 MR. RUBIN: Objection, vague as to form and
6 vague as to time.

7 MS. MAGUIRE:

8 Q Today.

9 A It -- it was developed in Google.

10 Q It is a Google-developed search engine; is that
11 correct?

12 A Yes, we work on it in Google.

13 Q Okay. A user of the youtube.com site using the
14 search engine on the YouTube home page would input terms
15 into the search bar, right?

09:53:00

16 MR. RUBIN: Objection, vague and calls for
17 speculation; incomplete hypothetical.

18 THE WITNESS: As a user on home page, they can
19 do many things, but one of the things can be entering
20 terms in the search bars.

21 Is there something definitive that you have in
22 mind?

23 MS. MAGUIRE: No, I'm really just trying to
24 establish background to make sure we're talking about
25 the same thing.

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09:53:29

1 THE WITNESS: Okay.

2 MS. MAGUIRE: Thank you.

3 Q When a user enters a term into a search bar and
4 hits Enter, how does the search engine determine which
5 results to return?

6 And right now I'm talking about today.

7 MR. RUBIN: Objection, vague, calls for -- for
8 speculation.

9 THE WITNESS: Again, I -- I'll have to ask you:
10 Do you have -- this is a really broad question.
11 Is there something specific that you want to know?

12 Because the search engine returns results which
13 are most relevant for the user.

09:54:04

14 MS. MAGUIRE: Okay, okay. We're going to get
15 into the specifics. That's very helpful.

16 Q When the search engine returns results that are
17 most relevant for the user, how does the search engine
18 determine which video's map to return?

19 MR. RUBIN: Objection, vague. Calls for
20 speculation incomplete hypothetical.

21 THE WITNESS: Can you repeat that question,
22 sorry.

23 MS. MAGUIRE: Sure. Let's try and take it
24 piece by piece.

25 THE WITNESS: Yes.

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09:54:44

1 MS. MAGUIRE:

2 Q So if a user using the YouTube search engine
3 types in a term and hits the Enter button...

4 A Mm-hmm.

5 Q How does the search engine decide which results
6 to return?

7 MR. RUBIN: Objection, vague, incomplete
8 hypothetical, calls for speculation, and
9 mischaracterizes.

10 THE WITNESS: The search engine returns the
11 results with -- which match the terms user entered in
12 the search box.

13 MS. MAGUIRE: Okay.

14 Q How does the search engine -- strike that, I'm
15 sorry.

09:55:27

16 Are the results returned ranked in any way?

17 A Yes.

18 Q Using an algorithm?

19 A Yes.

20 MR. RUBIN: Objection.

21 THE WITNESS: Has. To be. Right.

22 MR. RUBIN: Objection, vague.

23 Varun, I'm just going to caution you to pause
24 to allow me an opportunity to object.

25 THE WITNESS: Sure.

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09:55:47

1 MS. MAGUIRE:

2 Q Can you tell me what factors that algorithm
3 takes into account?

4 MR. RUBIN: Objection, vague.

5 THE WITNESS: The factors to rank the results?

6 MS. MAGUIRE: Mm-hmm, correct.

7 THE WITNESS: Primarily how well the results
8 match the terms entered by the user.

9 MS. MAGUIRE:

10 Q Okay. Who designed the algorithm?

11 It doesn't need to be specific names.

12 MR. RUBIN: Objection. That's outside the
13 scope of the deposition.

14 THE WITNESS: Can you clarify? What do you

09:56:55

15 mean who designed the algorithm?

16 MS. MAGUIRE:

17 Q Did engineers at Google design the algorithm?

18 MR. RUBIN: Objection. It's outside the scope
19 of the deposition; it's not corporate testimony.

20 To the extent you know, you can answer.

21 But it has nothing to do with the functionality
22 of Search or any of the agreed-upon topics.

23 THE WITNESS: I -- I really don't know.

24 MS. MAGUIRE: Okay.

25 THE WITNESS: We work on it.

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09:57:22

1 MS. MAGUIRE:

2 Q The engineers work on the algorithm?

3 A Yes.

4 Q And does that algorithm ever change?

5 A Yes.

6 MR. RUBIN: Objection, vague.

7 MS. MAGUIRE:

8 Q Okay. Mr. Kacholia, earlier you testified that
9 the factors to rank search results are primarily how
10 well the terms match the request of the user. Does
11 that -- do you recall that testimony?

12 MR. RUBIN: Objection, misstates the witness'
13 prior testimony.

14 THE WITNESS: Yes, somewhere along those

09:58:45

15 lines.

16 MS. MAGUIRE:

17 Q Okay. Can you please describe more
18 specifically the factors that the algorithm takes into
19 account when it decides which factors match a video.

20 MR. RUBIN: Objection, vague.

21 MS. MAGUIRE: I'm sorry. Excuse me. Let me
22 clarify that.

23 Q Can you please describe more specifically the
24 factors taken into account when the algorithm decides
25 which factors match the search terms?

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09:59:15

1 A Okay. I'm just -- I'll have to ask you to
2 repeat. I'm sorry. It was a long question.

3 Q Sure. What factors does the algorithm take
4 into account when it's deciding if a result matches a
5 search term?

6 MR. RUBIN: Objection, vague.

7 MS. MAGUIRE: Mr. Kacholia, we --

8 THE WITNESS: It takes -- I'm sorry.

9 MS. MAGUIRE: I'm sorry. Go ahead.

10 THE WITNESS: It takes into account the terms
11 that the user entered and the text that was present in
12 the metadata for each video.

13 MS. MAGUIRE:

14 Q And how does that matching take place?

10:00:28

15 MR. RUBIN: Objection, vague.

16 THE WITNESS: Can you clarify more on what do
17 you mean by "how does that matching"?

18 MS. MAGUIRE: Sure.

19 Q Is there an index?

20 A (Nods head).

21 Q Okay.

22 MR. RUBIN: Objection, vague.

23 THE WITNESS: So --

24 MR. RUBIN: Is there a question?

25 THE WITNESS: Is --

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10:01:06

1 MR. RUBIN: Pending?

2 MS. MAGUIRE: "Is there an index".

3 MR. RUBIN: Okay.

4 THE WITNESS: All videos the -- metadata for
5 all videos is indexed.

6 MS. MAGUIRE:

7 Q Okay. What metadata is indexed?

8 A The [REDACTED]

9 [REDACTED]

10 Q Is there anything else?

11 A Those are some of the metadata that are
12 indexed.

13 Q Those are some. Are there -- are more metadata
14 indexed?

10:01:57

15 A [REDACTED]

16 Q [REDACTED] ?

17 A [REDACTED].

18 Q Do you mean -- I'm sorry, what do you mean by
19 [REDACTED] ?

20 A [REDACTED]

21 [REDACTED].

22 Q Okay.

23 A Yes.

24 Q And what [REDACTED] are indexed?

25 A [REDACTED]

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10:02:39

1

[REDACTED]

2

Q Who do you mean, who's "we" in that sentence?

3

A Sorry.

[REDACTED]

4

[REDACTED]

5

Q And how do -- how does the

[REDACTED]

6

[REDACTED]

?

7

A

[REDACTED]

8

[REDACTED]

9

Q I see. Just to make sure I understand, is this

10

trying to ensure that the

[REDACTED]

11

[REDACTED]

?

12

MR. RUBIN: Objection, vague and beyond the

13

scope of the deposition. Mr. Kacholia is not here to

14

testify about the purpose of any system. He's here to

10:03:59

15

talk about the functionality of the system.

16

MS. MAGUIRE: I guess I'm still fuzzy on the

17

functionality, how the --

18

MR. RUBIN: Well, you're more than welcome to

19

ask him questions about how it works.

20

MS. MAGUIRE: Okay.

21

Q What -- when the algorithm is looking for

22

[REDACTED], can you

23

give me an example of what it's looking for?

24

A It's looking for

[REDACTED]

25

[REDACTED]

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10:04:40

1 Q And what do you mean by [REDACTED]?

2 A How [REDACTED].

3 Q And that's based on [REDACTED]
4 [REDACTED]?

5 A Yes.

6 Q What other [REDACTED] is indexed?

7 MR. RUBIN: Objection, vague.

8 THE WITNESS: [REDACTED]
9 [REDACTED].

10 MS. MAGUIRE:

11 Q Okay. Is there anything else?

12 A That's what I can recall so far.

13 Q Okay. Can you tell me what a search index
14 is?

10:06:04

15 MR. RUBIN: Objection, vague and beyond the
16 scope.

17 If you want to ask Mr. Kacholia about the
18 search index or any search index used in connection with
19 the scope of this deposition, that's a permissible
20 question. But a broad-based question about search
21 indexes generally is beyond the scope of this
22 deposition.

23 THE WITNESS: Can you clarify what do you mean
24 by that?

25 MS. MAGUIRE: Sure.

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10:14:35

1 (Pause)

2 Did you answer? Is there anything else?

3 A Do you have anything specific?

4 Q Well, I guess I'm actually asking you what
5 other information the system indexes.

6 A Those are some of the ones I could think.

7 Q That you could think of?

8 A Off the top of my head.

9 Q Off the top of your head. Let's do another
10 document.

11 (Plaintiffs' Exhibit 2 marked for
12 identification)

13 MS. MAGUIRE: Exhibit 2.

10:15:20

14 Q Mr. Kacholia, the reporter is handing you a
15 document that has been marked Exhibit 2. Please take a
16 look at that, and, while you do, I will state
17 for the record that this document was introduced as
18 Exhibit 2 during the September 12 ESI deposition of Kwon
19 Do.

20 MR. RUBIN: Objection -- September 12, 2007?

21 MS. MAGUIRE: Excuse me. September 12, 2007.

22 Q Have you seen this document before?

23 A No.

24 Q Do you recognize it?

25 A No.

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10:15:56

1 Q Do you know what it is?

2 A I don't recognize it.

3 Q Would you agree that it is a list of
4 information the system indexes the search -- for
5 search?

6 MR. RUBIN: Objection. The witness testified
7 that he didn't know what the document was and he hadn't
8 seen it before. And it speaks for itself.

9 MS. MAGUIRE:

10 Q Do you have an answer to that? Does this look
11 to you like what that is?

12 A The -- the fields, the list of items on this
13 document are familiar, but I haven't seen this document
14 before.

10:16:52

15 Q Okay. Mr. Kacholia, I can represent to you
16 that Mr. Do testified that this is a list of
17 information -- fields a system indexes when it indexes a
18 video. So --

19 A Okay.

20 Q Okay. Does this help you to recall additional
21 information that is indexed?

22 A Sorry, I was just reading the document can you
23 repeat your question?

24 Q No, that's fine. Does this -- are these
25 additional fields that the system, the search system

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10:18:00

1 indexes?

2 A Yes, these -- these are some of the fields that
3 the search system indexes.

4 Q Okay. Does this help you to recall whether
5 there are any additional fields beyond the ones on this
6 list that are indexed?

7 MR. RUBIN: Objection, vague.

8 THE WITNESS: No.

9 MS. MAGUIRE:

10 Q No, it doesn't help you to recall, or, no,
11 there are no additional fields?

12 MR. RUBIN: Objection, compound.

13 THE WITNESS: Can you clarify? Do you mean are
14 there any more than these?

10:18:38

15 MS. MAGUIRE: Correct, yes.

16 THE WITNESS: No, not that I can recall.

17 MS. MAGUIRE: Not that you can recall. Okay.

18 Q Okay. So how is this index that we've been
19 talking about that has these various fields, how is that
20 created?

21 MR. RUBIN: Objection, calls for a narrative.

22 THE WITNESS: Can you ask more specific
23 question?

24 MS. MAGUIRE: Actually, no. I'm trying to
25 understand how --

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10:51:34

1 Q Is there a numerical limit as to how many
2 search results are returned?

3 MR. RUBIN: Objection, vague.

4 THE WITNESS: On the YouTube search page for a
5 regular user?

6 MS. MAGUIRE: Right.

7 THE WITNESS: Yes.

8 MS. MAGUIRE:

9 Q And what is that limit?

10 A I don't know.

11 Q Is it one thousand?

12 MR. RUBIN: Objection.

13 THE WITNESS: It -- it could be.

14 (Plaintiffs' Exhibit 5 marked for
15 identification)

10:52:45

16 MS. MAGUIRE: Okay. Please take a look at
17 Exhibit 5 which I just handed you.

18 And, while you look at it, I'll note that this
19 document is a page print from a YouTube search results
20 page printed on January 6, 2010. The query again
21 entered in the search bar is "dog".

22 Q Does this appear to be a search page -- a
23 search results page to you?

24 A Yes.

25 Q Please direct your attention to the top of the

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10:53:26

1 page between the two gray bars where is a statement,
2 "Sorry, YouTube does not serve more than
3 1,000 results for any query. You asked for
4 results starting from 1980," unquote.

5 Does that refresh your recollection?

6 MR. RUBIN: Objection. I'd also like to make
7 the same foundational objections to this exhibit.

8 MS. MAGUIRE: Mm-hmm.

9 THE WITNESS: I -- if it's stated here.

10 MS. MAGUIRE: Okay.

11 Q So, yes, you believe that YouTube is limited to
12 one thousand results per query?

13 A (Nods head)

14 MR. RUBIN: Objection, misstates the witness'
15 testimony.

10:54:13

16 MS. MAGUIRE:

17 Q Is that what you --

18 A Based on this document I see that YouTube does
19 limit to a thousand results per query.

20 Q Okay. Mr. Kacholia, when we first turned to
21 this questioning, you -- you said -- you asked for a
22 clarification and you said on the YouTube search page
23 for regular users. What did you mean by regular users?

24 Strike that, let's do it differently.

25 Are there limits, are there different limits in

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