

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,) Case No.
 Plaintiffs,) 1:07CV02103
 vs.)
 YOUTUBE, INC., YOUTUBE, LLC,)
 and GOOGLE, INC.,)
 Defendants.)
 _____)

VIDEOTAPED DEPOSITION OF LEE L'ARCHEVESQUE
NEW YORK, NEW YORK
Thursday, February 18, 2010

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 18753

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

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February 18, 2010
9:22 a.m.

VIDEOTAPED DEPOSITION OF LEE
L'ARCHEVESQUE, held at the offices of
Mayer Brown, 1675 Broadway, New York,
New York, pursuant to notice, before Erica
L. Ruggieri, Registered Professional
Reporter and Notary Public of the State of
New York.

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A P P E A R A N C E S
FOR THE LEAD PLAINTIFFS AND PROSPECTIVE
CLASS:

JENNER & BLOCK, LLP

BY: LUKE C. PLATZER, ESQ.
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FOR THE DEFENDANTS YOUTUBE, INC.,
YOUTUBE, LLC and GOOGLE, INC.:

MAYER BROWN, LLP

BY: BRIAN WILLEN, ESQ.
JASON I. KIRSCHNER, ESQ.
1675 Broadway
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Bwillen@mayerbrown.com
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ALSO PRESENT:

MANUEL ABREU, Videographer

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IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing 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 sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

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09:03:57

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THE VIDEOGRAPHER: This is DVD 1 of the videotaped deposition of Lee L'Archevesque, in the matter Viacom International, Inc. et al., versus YouTube, Inc. et al., The Football Association and Premier League, et al.

This deposition is being held at 1675 Broadway, New York, New York, on February 18th, 2010, at approximately 9:04 a.m.

My name is Manuel Abreu, from the firm of David Feldman Worldwide, and I'm the legal video specialist. The court reporter is Erica Ruggieri, in association with David Feldman Worldwide.

Will counsel please introduce themselves.

MR. WILLEN: Brian Willen, from Mayer Brown, for the defendants.

MR. KIRSCHNER: Jason Kirschner, from Mayer Brown, for the defendants.

MR. PLATZER: Luke Platzer, from Jenner & Block, for the plaintiffs.

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1 L'ARCHEVESQUE

2 THE VIDEOGRAPHER: Will the
3 court reporter please swear in the
4 witness.

5 L E E L ' A R C H E V E S Q U E, called
6 as a witness, having been duly sworn by a
7 Notary Public, was examined and testified
8 as follows:

9 EXAMINATION BY

10 MR. WILLEN:

11 Q. Good morning,
12 Mr. L'Archevesque.

13 A. Good morning.

09:04:14

14 Q. Can you state your full name and
15 address for the record, please?

16 A. Lee L'Archevesque, [REDACTED]
17 [REDACTED]

18 Q. Have you ever been deposed
19 before?

09:04:21

20 A. Yes.

21 Q. What was the matter in which you
22 were deposed?

23 A. It was an employee matter at
24 Viacom.

09:04:27

25 Q. Just the one time?

1 L'ARCHEVESQUE

2 A. Q2, 2008.

3 Q. Is that when it launched, or was
4 that when Viacom started using it?

01:26:39 5 A. That's when Viacom started using
6 it.

7 Q. Are you aware that the
8 technology actually launched in October of
9 2007?

01:26:46 10 MR. PLATZER: Objection.
11 Foundation.

12 MR. WILLEN: I'm asking if he's
13 aware.

14 A. No.

01:26:54 15 Q. After the Viacom test was
16 completed, were there communications
17 between Viacom and Google about whether
18 Viacom would actually start using the
19 technology?

01:27:14 20 A. I believe there were certainly
21 conversations of that nature. It's my
22 recollection that the primary
23 conversations were around -- because the
24 YouTube approach to fingerprinting was
01:27:29 25 outside of our, kind of our standard work

1 L'ARCHEVESQUE

2 flow, as it relates to fingerprinting and
3 the other partnerships we had there, we
4 had a lot of conversations as far as,
01:27:38 5 okay, well, how are we going to -- this is
6 different. How are we going to make this
7 work? I recall those conversations more
8 so than, hey, are we going to use this.

9 Q. Those were internal Viacom
01:27:49 10 conversations or conversations between
11 Viacom and --

12 A. I believe they were both.

13 Q. When you say outside of Viacom's
14 standard work flow, what exactly do you
01:27:57 15 mean?

16 A. The work flows that we have --
17 the normal way of fingerprinting that we
18 had established was to create, you know,
19 these low res files, these flash files and
01:28:11 20 fingerprint them on-site and then ship out
21 the fingerprints; so the content would
22 stay in-house and, you know, within our
23 walls, if you will.

24 Because of the requirement with
01:28:23 25 the YouTube tool to fingerprint off of an

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1 L'ARCHEVESQUE

2 AVI file, that was outside of our kind of
3 standard approach, requiring us to, you
4 know, to try to come up with an
01:28:36 5 alternative which would, you know, allow
6 us to keep the content internally, which
7 was our preference to do that. But
8 ultimately it didn't work out that way.

9 Q. Why was it Viacom's preference
01:28:51 10 to keep the content internally?

11 A. We like to keep the content
12 close to our -- close to our, you know,
13 our infrastructure, our data center, you
14 know, our systems that maintain access
01:29:06 15 controls over that content and things of
16 that nature.

17 Q. So the normal work flows that
18 you were describing, those were the work
19 flows that Viacom had used with Auditude
01:29:18 20 at this time?

21 A. Aside from the DVD content,
22 which we talked about, we gave physical
23 media to them to fingerprint the DVDs.
24 Yes, it was the same approach.

01:29:40 25 When I'm speaking now, I'm

1 L'ARCHEVESQUE

2 speaking in production. They were
3 testing, there were other scenarios that,
4 you know, we may have taken different
5 approaches just to fast track testing or
6 things of that nature.

01:29:48

7 Q. When you say "production," you
8 are referring to the actual use of the
9 fingerprinting technology?

01:29:56

10 A. Yes.

11 Q. And at this time, this is 2007,
12 early 2008, I think your testimony was
13 that the only fingerprinting vendor that
14 Viacom was working with in a production
15 capacity at that time was Auditude?

01:30:09

16 A. Yes.

17 Q. Okay.

18 A. But -- but -- can I elaborate on
19 that a little bit?

01:30:23

20 Q. Sure.

21 A. Even though it was just
22 Auditude, it was obvious that we were
23 going to have other partners in this area.
24 We have a lot of different content work
25 flows. Content moves around the

01:30:30

1 L'ARCHEVESQUE

01:30:39

2 organization a lot. So what we did was
3 put a plan together to accommodate these
4 other -- you know, the possibility of
5 having these other partnerships. And that
6 approach is what I'm referring to as our
7 standard work flow.

01:30:49

8 Q. I see. But at this time that
9 work flow was really only being
10 implemented in a production capacity with
11 Auditude, correct?

12 A. Yes, that's correct.

01:31:07

13 Q. So I think you testified that
14 Viacom ultimately decided to start using
15 the YouTube fingerprinting technology in
16 Q2, '08?

17 MR. PLATZER: Objection.

18 Mischaracterizes the witness's prior
19 testimony.

01:31:19

20 Q. Okay. Let me ask it this way.

21 MR. WILLEN: That's a fair
22 objection.

23 Q. When did Viacom decide to start
24 using the fingerprinting technology?

01:31:25

25 A. I don't know specifically when

1 L'ARCHEVESQUE

2 that decision was made to start using the
3 YouTube technology.

01:31:42

4 Q. But regardless of when the
5 decision was made, YouTube -- Viacom,
6 started using the technology in Q2 '08?

7 A. Yes. That's when it was in full
8 implementation, yes.

01:32:02

9 Q. So as of Q2 '08, what was
10 Viacom's understanding of how the
11 fingerprinting technology worked?

12 A. Sorry. Restate that again.

01:32:12

13 Q. Sure. At the time that Viacom
14 started using the YouTube technology, how
15 did it work?

16 A. The general matching technology
17 seemed okay.

01:32:24

18 Q. Was it Viacom's understanding
19 that the technology was screening videos
20 on YouTube as they were being uploaded to
21 the system?

22 A. Yes.

23 Q. And did Viacom --

01:32:36

24 A. And they were also going to go
25 back and scan everything else that had

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