

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-2103  
 )  
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 KENT WALKER  
PALO ALTO, CALIFORNIA  
THURSDAY, DECEMBER 17, 2009

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR  
CSR LICENSE NO. 9830  
JOB NO. 18312

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

DECEMBER 17, 2009

9:05 a.m.

VIDEOTAPED DEPOSITION OF KENT WALKER,  
MAYER BROWN, Two Palo Alto Square, Suite 300,  
Palo Alto, California, pursuant to notice, and  
before me, ANDREA M. IGNACIO HOWARD, CLR, RPR,  
CRR, CSR License No. 9830.

1           A P P E A R A N C E S:

2

3           FOR THE PLAINTIFFS VIACOM INTERNATIONAL, INC.:

4                   JENNER & BLOCK, LLP

5                   By:   MICHAEL DESANCTIS, Esq.

6                               SARAH MAGUIRE, Esq.

7                               1099 New York Avenue, NW, Suite 900

8                               Washington, D.C. 20001

9                               (202) 639-6000   mdesanctis@jenner.com

10

11           FOR THE ENGLISH PREMIER LEAGUE:

12                   PROSKAUER ROSE, LLP

13                   By:   GIL N. PELES, Esq.

14                               2049 Century Park East, Suite 3200

15                               Los Angeles, California 90067-3206

16                               (310) 284-5611   gpeles@proskauer.com

17

18           FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and

19           GOOGLE, INC.:

20                   MAYER BROWN, LLP

21                   By:   ANDREW H. SCHAPIRO, Esq.

22                               1675 Broadway

23                               New York, New York 10019

24                               (212) 506-2146   aschapiro@mayer.com

25

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

2

3           ALSO PRESENT:   Catherine Lacavera, Google, Inc.  
4                               Stewart Pettigrew, Videographer.

5

6                                       ---oOo---

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 WALKER, KENT  
2 PALO ALTO, CALIFORNIA

09:03:58 3 THURSDAY, DECEMBER 17, 2009

09:03:58 4 9:05 a.m.

09:03:59 5

09:04:07 6 THE VIDEOGRAPHER: Today's videotaped  
09:04:09 7 deposition of Kent Walker is taken on December 17,  
09:04:13 8 2009, at Mayer Brown, at Two Palo Alto Square,  
09:04:18 9 Suite 300, 3000 El Camino, Palo Alto, California.

09:04:22 10 In the matter of Viacom International, Inc.,  
09:04:22 11 and others, The Football Association Premier League,  
09:04:32 12 Ltd., and others versus YouTube, Inc., and others.

09:04:32 13 Cases No. 07-CV-2103 and 07-CV-3582 in the  
09:04:44 14 United States District Court for the Southern District  
09:04:46 15 of New York.

09:04:47 16 My name is Stewart Pettigrew. I represent  
09:04:50 17 David Feldman Worldwide, located at 600 Anton  
09:04:55 18 Boulevard, Suite 1100, Costa Mesa, California.

09:05:00 19 We are now commencing at approximately  
09:05:01 20 9:05 a.m.

09:05:02 21 Will all present please identify themselves,  
09:05:06 22 beginning with the witness.

09:05:06 23 THE WITNESS: I'm Kent Walker, general  
09:05:08 24 counsel of Google, Inc.

09:05:10 25 MR. SCHAPIRO: Andy Schapiro from Mayer Brown

1 WALKER, KENT

09:05:10 2 for the defendants.

09:05:10 3 MS. LACAVERA: Catherine Lacavera, in-house  
09:05:10 4 counsel at Google for Google and the witness.

09:05:10 5 MR. PELES: Gil Peles from Proskauer Rose on  
09:05:20 6 behalf of The Premier League plaintiffs.

09:05:20 7 MS. MAGUIRE: Sarah Maguire, Jenner & Block,  
09:05:22 8 on behalf of Viacom.

09:05:22 9 MR. DESANCTIS: And Michael DeSanctis,  
09:05:25 10 Jenner & Block for the Viacom plaintiffs.

09:05:27 11 THE VIDEOGRAPHER: Thank you.

09:05:28 12 Please swear in the witness.

09:05:28 13

09:05:28 14 KENT WALKER,  
09:05:28 15 having been sworn as a witness,

09:05:38 16 testified as follows:

09:05:38 17

09:05:39 18 THE VIDEOGRAPHER: Please begin.

09:05:39 19

09:05:40 20 EXAMINATION BY MR. DESANCTIS

09:05:40 21 MR. DESANCTIS: Q. Good morning.

09:05:41 22 A Good morning.

09:05:41 23 Q Could you please state and spell your name  
09:05:43 24 for the record?

09:05:43 25 A Sure.

1 WALKER, KENT

10:37:55 2 A It's approximately three years ago now, so  
10:37:58 3 the chronology, in my mind, is not as clear as it  
10:38:01 4 could be.

10:38:01 5 Q Understood.

10:38:02 6 A But I remember a couple of conversations with  
10:38:03 7 Mr. Fricklas about our continuing efforts to ensure  
10:38:08 8 that unauthorized content was not on the YouTube site.  
10:38:11 9 Our work to -- was ongoing at the time to implement  
10:38:14 10 both Audible Magic or continuing the implementation of  
10:38:17 11 Audible Magic and to develop our own tools to address  
10:38:21 12 these issues, which we thought would extend to -- to  
10:38:23 13 video content and be better than tools that are out  
10:38:27 14 there in the marketplace, and I remember him raising  
10:38:29 15 concerns about when this would happen. That was --  
10:38:31 16 that was the general back and forth of the  
10:38:32 17 conversation.

10:38:49 18 Q Just to be clear, are -- are you suggesting  
10:38:50 19 that you offered implementing Audible Magic for  
10:38:55 20 Viacom?

10:38:57 21 A No, I believe Audible Magic was already being  
10:38:59 22 implemented on the YouTube site at the time of this  
10:39:02 23 conversation, but that it was focused on audio  
10:39:06 24 content, rather than the video content that would have  
10:39:09 25 been most -- of most interest to Viacom.

DAVID FELDMAN WORLDWIDE, INC.

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

1 WALKER, KENT

10:39:11 2 Q Do you know whether you ever offered the  
10:39:13 3 Audible Magic feature to Viacom?

10:39:17 4 A The -- the conversation I had with  
10:39:18 5 Mr. Fricklas was about our development of video tools,  
10:39:21 6 which we had just started to put Google engineers  
10:39:25 7 against, and we had some very accomplished search  
10:39:28 8 engineers at Google, and this is essentially a search  
10:39:30 9 problem, because you're -- the creation of content  
10:39:33 10 identification requires a creation of a -- of a vast  
10:39:35 11 database of information against, which you need to  
10:39:39 12 search extraordinarily quickly, and in -- with regard  
10:39:41 13 to a lot of transmutations of content, so it's -- it's  
10:39:45 14 a remarkably complicated search, an algorithmic  
10:39:49 15 process.

10:39:49 16 We had some of the best people in the world  
10:39:51 17 doing that, and we were in the process of trying to  
10:39:54 18 really dig into the problem. The problem is -- is  
10:39:56 19 difficult for music and even harder for video content  
10:40:00 20 because video content, which typically also has audio  
10:40:04 21 content associated with it, is much richer and larger,  
10:40:08 22 so you have a -- an exponentially larger database that  
10:40:11 23 you need to search against essentially, and you need  
10:40:13 24 to do this in a remarkably short amount of time.

10:40:17 25 So that the -- the early assessments that we

DAVID FELDMAN WORLDWIDE, INC.

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



1 WALKER, KENT

10:40:18 2 were getting, as early as January and February that  
10:40:22 3 year, was that it might take days, hours -- hours or  
10:40:27 4 days to -- to run a search of a given piece of content  
10:40:30 5 against that database.

10:40:31 6 That astonishingly in the course of six  
10:40:34 7 months was reduced to a matter of seconds so that it  
10:40:37 8 wouldn't interfere with the user upload. So this was  
10:40:39 9 the conversation I was having with Mr. Fricklas and --  
10:40:41 10 and separately with Mr. Braverman, Allen Braverman,  
10:40:47 11 who is the general counsel of -- of The Walt Disney  
10:40:50 12 Company, with regard to our efforts to -- to implement  
10:40:53 13 these kinds of tools.

10:41:19 14 Q I'm sorry. You spoke about an assessment or  
10:41:24 15 Google getting assessments in early January, that it  
10:41:27 16 would take hours or days to run searches against a  
10:41:33 17 given piece of content.

10:41:34 18 A I don't want to be precise on the time. I'm  
10:41:36 19 not sure that's exactly what I said, or if it was, let  
10:41:40 20 me correct it.

10:41:41 21 My understanding was that we were reviewing  
10:41:42 22 in early 2007, and I don't know whether that was  
10:41:44 23 January or February, I need to look more closely,  
10:41:48 24 or -- or if there are other documents that would  
10:41:51 25 refresh a recollection, that would be great, but we

DAVID FELDMAN WORLDWIDE, INC.

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

1 WALKER, KENT

10:41:54 2 were starting to study the problem of very high volume  
10:41:59 3 search in video and how to implement Content ID in  
10:42:05 4 that framework. So when I say "we," it was primarily  
10:42:08 5 engineering teams from YouTube and Google or -- or a  
10:42:10 6 combined team working on this project.

10:42:12 7 The concern was that the existing products on  
10:42:15 8 the marketplace were -- would not scale to a platform  
10:42:19 9 of YouTube's size even then, and it's become  
10:42:22 10 significantly larger since, and would not do a very  
10:42:26 11 good job. Would -- there would be a lot of problems  
10:42:29 12 in separating wheat from chaff. It would  
10:42:32 13 substantially comprise or destroy the user experience  
10:42:35 14 if a user had to wait for hours or days before they  
10:42:38 15 could upload or see a video, and that the technology  
10:42:40 16 was -- was buggy, and we thought we could do a  
10:42:45 17 substantially superior job, both for -- for video and  
10:42:48 18 for audio.

10:42:50 19 Q And -- but during that time YouTube was using  
10:42:54 20 Audible Magic; correct?

10:42:55 21 A I believe that YouTube had been using Audible  
10:43:01 22 Magic, as of that time, and perhaps earlier. I don't  
10:43:04 23 know when they would have started doing that.

10:43:06 24 Q Audible Magic is an audio fingerprinting  
10:43:08 25 technology?

DAVID FELDMAN WORLDWIDE, INC.

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

1 WALKER, KENT

10:43:09 2 A It is. That's my understanding. Well, it --  
10:43:10 3 it's a -- I'm not sure whether that's the company or  
10:43:13 4 the -- the brand name for the company's tool, but  
10:43:15 5 generally, yes.

10:43:16 6 Q And do you recall, in these conversations, in  
10:43:19 7 early 2007 with Mr. Fricklas, whether you ever offered  
10:43:26 8 to implement the Audible Magic fingerprinting for  
10:43:30 9 Viacom?

10:43:33 10 A I don't remember one way or the other with  
10:43:34 11 regard to Audible Magic. What we did offer to  
10:43:36 12 implement was a much better audio and video content  
10:43:40 13 identification system for not just Viacom, but for all  
10:43:43 14 of the content providers.

10:43:44 15 Q Well, but that -- what you're calling a  
10:43:48 16 better solution didn't exist in February and January  
10:43:51 17 of 2007; did it?

10:43:53 18 A Not in the fully formed shape that it had six  
10:43:57 19 months later, no.

10:43:58 20 Q So Google was developing it at that time?

10:44:00 21 A Correct.

10:44:00 22 Q And while Google was developing that --  
10:44:03 23 while -- while Google was developing its own systems,  
10:44:10 24 it was also using Audible Magic at the time; correct?

10:44:15 25 MR. SCHAPIRO: Objection; asked and answered.

DAVID FELDMAN WORLDWIDE, INC.

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

1 WALKER, KENT

10:44:16 2 THE WITNESS: As I -- again, I -- I believe  
10:44:18 3 that YouTube had begun using Audible Magic for audio  
10:44:24 4 content, at some point in time, prior to the  
10:44:27 5 January/February date that we're talking about here.

10:44:29 6 MR. DESANCTIS: Q. And during that  
10:44:31 7 January/February time, you did not offer the Audible  
10:44:36 8 Magic solution to Viacom; correct?

10:44:40 9 A I --

10:44:40 10 MR. SCHAPIRO: Objection; asked and answered;  
10:44:41 11 mischaracterizes the testimony.

10:44:42 12 THE WITNESS: Yeah.

10:44:43 13 MR. DESANCTIS: Well, I -- I don't want to --  
10:44:44 14 I actually don't mean to be mischaracterizing the --

10:44:46 15 THE WITNESS: No, that's fine.

10:44:47 16 MR. DESANCTIS: -- testimony at all.

10:44:48 17 You said that you offered something better,  
10:44:50 18 which was still under development.

10:44:51 19 Q My question is, during that time of  
10:44:53 20 development, did you offer them the use of Audible  
10:44:54 21 Magic in the meantime?

10:44:55 22 A Right.

10:44:55 23 So there -- there are a number of layers  
10:44:57 24 there to peel back.

10:44:59 25 Q Sure.

DAVID FELDMAN WORLDWIDE, INC.

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

1 WALKER, KENT

10:44:59 2 A One, I have no idea what other people --  
10:45:01 3 there were a number of people in the company who were  
10:45:03 4 engaged with Viacom in a whole variety of context that  
10:45:07 5 I'm not familiar with.

10:45:08 6 Q Understood.

10:45:08 7 A So I don't know what they may or may not have  
10:45:11 8 offered. With regard to my conversation with  
10:45:13 9 Mr. Fricklas, I don't remember whether Audible Magic  
10:45:15 10 came up, I don't remember whether he asked for it, I  
10:45:18 11 don't remember whether I offered it or didn't offer  
10:45:19 12 it. I just don't recall.

10:45:20 13 The reason for that was that it was and still  
10:45:24 14 is my understanding that Audible Magic is more --  
10:45:28 15 while it's not a great tool, it relatively is more  
10:45:32 16 suited for audio content, music content, primarily,  
10:45:34 17 than is for video content. In part because of the --  
10:45:37 18 the reasons we talked about before, that video is much  
10:45:41 19 more information dense, it's a much harder search  
10:45:44 20 problem, and that the -- the Audible Magic technology  
10:45:49 21 hadn't evolved in a way that would make it usable or  
10:45:52 22 useful for Viacom to -- to implement.

10:45:55 23 There's another distinction as well, which  
10:45:58 24 is, music content is perhaps uniquely legally complex  
10:46:04 25 because of the number of overlapping and sometimes

DAVID FELDMAN WORLDWIDE, INC.

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

1 WALKER, KENT

10:46:08 2 inconsistent rights associated with it. There are a  
10:46:12 3 wide number of different rights that are owned by the  
10:46:15 4 performer, the creator, the -- the publishers, the  
10:46:18 5 labels, the collecting societies in Europe, et cetera,  
10:46:23 6 and each of those entities can own multiple rights,  
10:46:26 7 which sometimes align and sometimes do not.

10:46:29 8 As a result of that, there are complexities  
10:46:31 9 associated with that, which I believe the Audible  
10:46:34 10 Magic system had been optimized for, both in terms of  
10:46:36 11 the technological operation of the system and the  
10:46:40 12 assembly of a database, which was designed to track  
10:46:43 13 all of the -- the complex music rights associated with  
10:46:46 14 it.

10:46:47 15 As the name Audible Magic itself suggests, it  
10:46:50 16 was a music tool, at least that was my understanding.

10:46:53 17 MR. SCHAPIRO: Let's -- let's take a break  
10:46:56 18 for five minutes.

10:46:58 19 THE VIDEOGRAPHER: The time is 10:47.

10:47:00 20 Off the record.

10:47:01 21 (Recess taken.)

10:57:04 22 THE VIDEOGRAPHER: The time is 10:57.

10:57:10 23 On the record.

10:57:15 24 MR. DESANCTIS: Mr. Walker, before we just  
10:57:21 25 took a short break, you were describing for me certain

DAVID FELDMAN WORLDWIDE, INC.

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