

Klaus, Kelly

From: Klaus, Kelly
Sent: Thursday, January 14, 2010 10:32 PM
To: 'Volkmer, Bart'
Subject: RE: Viacom v. YouTube: Amended MPAA Subpoena
Bart:

My email accurately summarizes what you and I discussed and agreed to. I cannot correct all of the inaccuracies in your email the night before the deposition.

In any event, please give the following names to building security at 350 South Grand: Michael Robinson, Dan Robbins, Kelly Klaus. I understand that Viacom's counsel will be providing the name of the attorney attending the deposition separately.

Kelly

From: Volkmer, Bart [mailto:bvolkmer@wsgr.com]
Sent: Thursday, January 14, 2010 6:20 PM
To: Klaus, Kelly
Subject: RE: Viacom v. YouTube: Amended MPAA Subpoena

Kelly --

In response to YouTube's deposition subpoena, the MPAA initially refused to provide a witness at all based on, among others, relevance objections, and threatened a motion to quash. I noted that the MPAA would surely not prevail if it took that extreme position.

We then engaged in negotiations, but YouTube never agreed that topics would be "dropped" or "narrowed." For a number of topics, the MPAA refused to put up a witness on the topics as drafted. We were able to come to an agreement regarding a protocol under which the deposition would proceed without the parties engaging in motion practice notwithstanding the MPAA's (in our view, unjustifiable) refusal to seat a witness. For other topics, I clarified my understanding of the language of the topic and we were able to agree that the parties did not have a dispute.

Here is my understanding of our agreements:

1. This topic was drafted, and always intended to cover, high-level, foundational information about the MPAA. The MPAA will provide testimony accordingly.
2. This topic was drafted, and always intended to cover, high-level, foundational information about Viacom's relationship with the MPAA. The MPAA will provide testimony accordingly.
3. This topic was drafted, and always intended to cover, high-level, foundational information about the Class Plaintiffs' relationship with the MPAA. The MPAA will provide testimony accordingly.
4. It is the case that YouTube and the MPAA disagree about whether the MPAA should have to produce a witness to testify regarding this topic. YouTube maintains its position that the MPAA's refusal to produce discovery called for by this topic is not justified and will have collateral consequences in the main litigation.
5. We have no dispute about this topic.
6. As part of our negotiation regarding Topic No. 7, YouTube has agreed to forego seeking testimony on this topic.

7. You have accurately summarized our agreement on Topic No. 7.

8. Your summary of our agreement on Topic No. 8 is inaccurate. We did not, to my recollection, discuss multi-entity communications. If the communications at issue between the MPAA and Viacom are not privileged in the first place, the MPAA needs to be prepared to testify without restriction. If the communications between the MPAA and Viacom included other entities (and are, in your view, putatively privileged), the MPAA witness should be prepared to testify consistently with the August 25, 2009 stipulation and order in the SDNY.

9. This topic is limited to authentication of documents based on your representation that individuals with percipient knowledge of the topic are no longer employed by the MPAA.

10. This topic is limited to authentication of documents based on your representation that individuals with percipient knowledge of the topic are no longer employed by the MPAA.

11. See Topic No. 4 above.

12. See Topic No. 4 above.

13. See Topic No. 4 above.

14. This topic is limited to authentication of documents based on your representation that individuals with percipient knowledge of the topic are no longer employed by the MPAA.

15. See Topic No. 4 above.

16. We have no dispute about this topic.

Please send along this evening the names of the people from the MPAA who will be attending the deposition tomorrow.

Regards,

Bart

From: Klaus, Kelly [mailto:Kelly.Klaus@mto.com]
Sent: Tuesday, January 12, 2010 7:46 PM
To: Volkmer, Bart
Subject: RE: Viacom v. YouTube: Amended MPAA Subpoena

Bart:

The amended subpoena continues to state the topics set forth in your November 20, 2009 subpoena that MPAA objected to as overly broad, burdensome and invasive of privilege. You and I agreed in early December that the topics would be narrowed and/or dropped as follows (with the numbers below corresponding to the topic paragraph numbers in the subpoena attachment):

1. MPAA's witness will be prepared to provide a very high-level description of non-privileged information concerning the MPAA's purpose and will identify MPAA's members. You said you expected this topic, as narrowed, would be very high-level, foundational information that would not take up more than a few minutes of the deposition.
2. MPAA's witness will be prepared to provide non-privileged information regarding that Paramount is a member of the MPAA; that Viacom is Paramount's corporate parent; and that MPAA performs anti-piracy work on their behalf.
3. MPAA's witness will be prepared to testify to non-privileged information regarding MPAA's lack of a relationship with any of the named class plaintiffs that is akin to MPAA's relationship with its member companies.
4. YouTube and MPAA disagree whether MPAA should have to produce a witness to testify regarding this topic. Without either side waiving their respective positions concerning this disagreement, MPAA will not be producing a witness to testify on this topic, and YouTube will not be filing a motion or seeking any relief of any kind concerning this topic.

5. MPAA's witness will be prepared to testify to non-privileged, responsive information, if any, that is reasonably available to MPAA on this topic.
6. YouTube is dropping this topic.
7. MPAA's witness will be prepared to testify to non-privileged information, if any, about the following, to the extent that such information is reasonably available to the MPAA: (a) what fingerprinting or filtering technologies MPAA was aware had been deployed at UGC sites between February 14, 2005 and March 13, 2007; (b) which UGC sites MPAA was aware were using such technologies during that time; and (c) MPAA's high-level understanding, if any, at that time about the general efficacy of those technologies as deployed.
8. MPAA's witness will be prepared to testify to non-privileged information, if any, concerning communications with Viacom and Paramount only (i.e., not MPAA's communications with any other entity, including any multi-entity communications including Viacom and/or Paramount) regarding those matters within the scope of the August 25, 2009 Stipulation and Order Regarding Viacom's Copyright Monitoring Privilege Assertions in the Southern District of New York action.
9. MPAA's witness will be prepared only to authenticate any documents produced by MPAA within the scope of this topic, but there will be no questioning (and MPAA's witness will not be prepared to respond) regarding the substance of this topic.
10. MPAA's witness will be prepared only to authenticate any documents produced by MPAA within the scope of this topic, but there will be no questioning (and MPAA's witness will not be prepared to respond) regarding the substance of this topic.
11. YouTube and MPAA are proceeding on this topic as they are on Topic No. 4, as stated above.
12. YouTube and MPAA are proceeding on this topic as they are on Topic No. 4, as stated above.
13. YouTube and MPAA are proceeding on this topic as they are on Topic No. 4, as stated above.
14. MPAA's witness will be prepared only to authenticate any documents produced by MPAA within the scope of this topic, but there will be no questioning (and MPAA's witness will not be prepared to respond) regarding the substance of this topic.
15. YouTube and MPAA are proceeding on this topic as they are on Topic No. 4, as stated above.
16. MPAA's witness will be prepared to testify to non-privileged information, if any, reasonably available to MPAA, regarding the "Movies Everywhere" site on YouTube (<http://www.youtube.com/movieseverywhere>) and the single video posted to that site.

I will get you the names for MPAA's visitors for building security before the deposition. I will convey to Viacom's counsel your request that they get you the names they need for building security.

Regards,
Kelly

From: Volkmer, Bart [mailto:bvolkmer@wsgr.com]
Sent: Tuesday, January 12, 2010 11:04 AM
To: Klaus, Kelly
Subject: Viacom v. YouTube: Amended MPAA Subpoena

Kelly --

Please find attached an amended deposition subpoena reflecting the new date and time for the MPAA deposition: 1/15/2010 at 10:00 a.m.

For our building security list, could you please provide the names of the individuals who will be attending (including from Viacom if you know).

Regards,

Bart
Bart Volkmer
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6/3/2010

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