

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

VIACOM INTERNATIONAL INC., ET AL.,)
)
Plaintiffs,) ECF Case
v.)
) Civil No. 07-CV-2103 (LLS)
YOUTUBE, INC., ET AL.,)
)
Defendants.)
)
THE FOOTBALL ASSOCIATION)
PREMIER LEAGUE LIMITED, ET AL., on)
behalf of themselves and all others similarly) ECF Case
situated,)
) Civil No. 07-CV-3582 (LLS)
Plaintiffs,)
v.)
)
YOUTUBE, INC., ET AL.,)
)
Defendants.)
)

**SUPPLEMENT TO
DECLARATION OF ANDREW H. SCHAPIRO
IN FURTHER SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Schapiro Exhibit 92

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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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.

-----X

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.

-----X

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF MEGAN WAHTERA
SAN FRANCISCO, CALIFORNIA
FRIDAY, DECEMBER 4, 2009

JOB NO. 18262

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 DECEMBER 4, 2009

3 10:27 A.M.

4

5 HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF MEGAN

6 WAHTERA, at WILSON SONSINI GOODRICH & ROSATI, 1 Market

7 Plaza, San Francisco, California, pursuant to notice,

8 before me, KATHERINE E. LAUSTER, CLR, CRR, RPR, CSR

9 License No. 1894.

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1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 A P P E A R A N C E S:

3 FOR THE PLAINTIFFS, VIACOM INTERNATIONAL, INC., and
the WITNESS:

4 JENNER & BLOCK, LLP
5 By: SCOTT B. WILKENS, ESQ.
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6 Suite 900
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9 and

10 PARAMOUNT PICTURES MOTION PICTURE GROUP
INTERACTIVE MARKETING
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15 FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC, and
GOOGLE, INC.:

16 WILSON, SONSINI, GOODRICH & ROSATI
17 By: MICHAEL H. RUBIN, ESQ.
CAROLINE WILSON, ESQ.
18 650 Page Mill Road
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20 mrubin@wsgr.com
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21
22 Also Present: JOSEPH SKORMAN, Videographer

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 SAN FRANCISCO, CALIFORNIA

3 FRIDAY, DECEMBER 4, 2009; 10:27 A.M.

4

5 10:27:10 THE VIDEOGRAPHER: Today's videotaped

6 10:27:11 deposition of Megan Wahtera --

7 10:27:16 THE WITNESS: Correct.

8 10:27:17 THE VIDEOGRAPHER: -- is taken on

9 10:27:18 December 4th, 2009, at 1 Market Plaza, Spear Tower,

10 10:27:24 Suite 3 -- I'm sorry -- 3000 -- 3300, San Francisco,

11 10:27:28 California, in the matter of Viacom International,

12 10:27:36 Inc., et al., versus YouTube, Inc., et al., and also

13 10:27:42 the Football Association Premier, et al., versus

14 10:27:48 YouTube, Inc., et al. The Case Number is 07-CV-2103

15 10:27:55 and for the second it is 07-CV-3582, in the court of

16 10:28:03 the Southern District of New York.

17 10:28:07 My name is Joseph Skorman. I represent

18 10:28:10 David Feldman Worldwide, located at 600 Anton

19 10:28:14 Boulevard, Suite 1100, Costa Mesa, California.

20 10:28:21 We are now commencing at 10:27 a.m.

21 10:28:28 Will all present please identify

22 10:28:30 themselves, beginning with the witness.

23 10:28:35 THE WITNESS: Megan Wahtera.

24 10:28:37 MR. WILKENS: Scott Wilkens, Jenner and

25 10:28:39 Block, LLP, for the Viacom plaintiffs and the

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:28:43 witness.

3 10:28:44 MR. KOENIG: Paul Koenig, Paramount

4 10:28:45 Pictures, for the Viacom plaintiffs and the

5 10:28:45 witness.

6 10:28:46 MR. RUBIN: Michael Rubin, Wilson,

7 10:28:49 Sonsini, Goodrich & Rosati, for defendants YouTube

8 10:28:50 and Google.

9 10:28:54 MS. WILSON: Caroline Wilson, also FROM

10 10:28:54 Wilson, Sonsini, Goodrich & Rosati, for the

11 10:28:55 defendants.

12 10:28:57 THE VIDEOGRAPHER: Thank you.

13 10:28:57 Would the court reporter please swear in

14 10:28:57 the witness.

15 10:28:57 THE REPORTER: Will you raise your right

16 10:28:57 hand, please.

17 10:28:57 Do you solemnly state, under penalty of

18 10:28:57 perjury, the testimony you are about to give will be

19 10:28:57 the truth, the whole truth, and nothing but the

20 10:28:57 truth?

21 10:29:07 THE WITNESS: I do.

22 10:29:07

23 10:29:07 MEGAN WAHTERA,

24 10:29:07 having been sworn as a witness,

25 10:29:07 testified as follows:

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:29:07 EXAMINATION

3 10:29:07 BY MR. RUBIN:

4 10:29:10 Q. Good morning.

5 10:29:11 A. Good morning.

6 10:29:13 Q. As I just said, my name is Michael Rubin.

7 10:29:16 I represent YouTube in this litigation.

8 10:29:19 Could you please state your full name for

9 10:29:21 the record?

10 10:29:23 A. Megan Louise Wahtera.

11 10:29:26 Q. Ms. Wahtera, what's your birth date?

12 10:29:30 [REDACTED]

13 10:29:31 [REDACTED]

14 10:29:34 A. Correct.

15 10:29:34 Q. What's your home address?

16 10:29:35 [REDACTED]

17 10:29:38 [REDACTED]

18 10:29:39 Q. Is that near Ventura, California?

19 10:29:42 A. Ventura? Is it near?

20 10:29:44 Q. Yes.

21 10:29:44 A. How -- how near?

22 10:29:45 Q. How far is it from Ventura, California?

23 10:29:48 A. I'm not sure. Maybe an hour driving.

24 10:29:53 Q. Can you please state the name of your

25 10:29:55 current employer and your job title?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:29:59 A. Paramount Pictures, vice-president

3 10:30:00 creative marketing, interactive.

4 10:30:04 Q. And what is the address at which you work?

5 10:30:07 A. 5555 Melrose Avenue, Hollywood,

6 10:30:10 California, 90038.

7 10:30:13 Q. Have you ever provided testimony at a

8 10:30:14 trial before?

9 10:30:15 A. No.

10 10:30:15 Q. Have you ever provided sworn written

11 10:30:18 testimony in the form of an affidavit or declaration

12 10:30:21 before?

13 10:30:21 A. No.

14 10:30:22 Q. Have you ever sat for a deposition before?

15 10:30:24 A. No.

16 10:30:27 Q. So is it fair to say this is the first

17 10:30:29 time you've given sworn testimony?

18 10:30:31 A. Yes.

19 10:30:31 Q. In that case, I'd like to go over a few

20 10:30:34 ground rules.

21 10:30:35 A. (Nods head.)

22 10:30:35 Q. First, about the form in which you're

23 10:30:37 giving sworn testimony today. We're in a deposition

24 10:30:44 today. As you can see, there is some formality to

25 10:30:48 the way we're having this interaction that's not

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:30:51 present in a normal conference room.

3 10:30:53 First of all, there's a videographer here.

4 10:30:57 That's a pretty easy formality to comply with.

5 10:31:00 There's videotape being made of this interaction.

6 10:31:03 Second of all, there's a court reporter

7 10:31:05 here, taking down, stenographically, what I say and

8 10:31:08 what you say, and, if your counsel chooses to

9 10:31:11 object, what your counsel says.

10 10:31:14 It's important, therefore, that we speak
11 10:31:17 audibly, in words that can be recorded in writing.

12 10:31:20 Shaking of heads, nodding, and grunts and "oohs" and

13 10:31:28 "ahs," are hard to understand in written form. If

14 10:31:33 you answer that way, I may ask you what you mean and

15 10:31:35 ask you to provide a -- a word.

16 | 10:31:38 A. I understand.

17 10:31:39 Q. It's also ver

18 10:31:41 over each other. It's a miracle, what the court

19 10:31:44 reporter can do already. It's incredibly

20 10:31:47 challenging when we talk over each other ;

21 10:31:51 parse who is saying what and what was said.

22 10:31:53 If that happens I will try to res

23 10:31:56 myself and I'll ask that you do the same. Make

24 | 10:31:59 | sense?

25 | 10:31:59 A Makes sense

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:32:01 Q. Great.

3 10:32:04 As I mentioned a second ago, you may hear

4 10:32:07 your attorney object from time to time. That

5 10:32:11 doesn't mean that you shouldn't answer the question

6 10:32:12 I've asked you. The only occasion in which you

7 10:32:17 shouldn't answer the question I've asked you is if

8 10:32:19 you don't understand it, or is -- or if your

9 10:32:22 attorney instructs you not to.

10 10:32:24 If you don't understand the question I've

11 10:32:25 asked you, please ask me to clarify it, and I will

12 10:32:29 do my best to do so. It's no help if you're

13 10:32:32 answering questions and you don't understand them.

14 10:32:35 But if you don't ask me for clarification,

15 10:32:36 I'm going to assume you have understood them. Make

16 10:32:40 sense?

17 10:32:41 A. Makes sense.

18 10:32:41 Q. Great.

19 10:32:42 Also, if you need to take a break, just

20 10:32:45 let me know. I may need to break -- take a break,

21 10:32:47 and I'll let you know too. My only request is that,

22 10:32:51 if there's a question pending, you answer it prior

23 10:32:53 to taking the break.

24 10:32:57 Is there anything today that you can think

25 10:32:58 of that would keep you from giving your best

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:33:01 testimony?

3 10:33:01 A. No.

4 10:33:01 Q. Are you on any medication?

5 10:33:03 A. I'm on Sudafed.

6 10:33:05 Q. Do you think that's --

7 10:33:07 A. Cold medicine.

8 10:33:07 Q. Your -- you mentioned having a lingering

9 10:33:10 illness; is that right?

10 10:33:11 A. Yes.

11 10:33:11 Q. Do you think the Sudafed is going to keep

12 10:33:13 you from providing good testimony today?

13 10:33:16 A. No.

14 10:33:16 Q. Good.

15 10:33:17 Other than Sudafed, are you on any other

16 10:33:20 medication?

17 10:33:20 A. No.

18 10:33:21 Q. Did you prepare for today's deposition?

19 10:33:23 A. No.

20 10:33:25 Q. Did you have any discussion with counsel

21 10:33:27 prior to walking into the room for today's

22 10:33:31 deposition?

23 10:33:31 A. Yes.

24 10:33:32 Q. And you don't consider that preparation

25 10:33:34 for the deposition?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:33:35 A. I did not prepare. I answered their

3 10:33:38 questions yesterday.

4 10:33:39 Q. Okay. So let's -- let's be clear about

5 10:33:42 definitions. When I say prepare --

6 10:33:44 A. Uh-huh.

7 10:33:45 Q. -- did you do anything prior to sitting in

8 10:33:46 the chair you're sitting in?

9 10:33:48 A. I met with counsel yesterday.

10 10:33:50 Q. Okay. With whom did you meet yesterday?

11 10:33:53 A. Paul and Scott.

12 10:33:56 Q. Paul Koenig and Scott Wilkens, the two

13 10:34:00 gentlemen that are to your left?

14 10:34:02 A. Correct.

15 10:34:03 Q. And how long did you meet with them

16 10:34:04 yesterday?

17 10:34:04 A. A few hours.

18 10:34:05 Q. Three hours?

19 10:34:06 A. Two to three, I would say.

20 10:34:08 Q. Where did you meet with them?

21 10:34:09 A. The address was 525 Market Street.

22 10:34:12 Q. Here in San Francisco?

23 10:34:14 A. Correct.

24 10:34:19 Q. Did you review any documents?

25 10:34:21 A. No.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:34:21 Q. Did you watch any videos?

3 10:34:23 A. No.

4 10:34:31 Q. What is your educational background,

5 10:34:33 Miss Wahtera?

6 10:34:36 A. I attended Henry School in Hamilton,

7 10:34:39 Massachusetts, and Scripps College in Carmel,

8 10:34:44 California.

9 10:34:46 Q. Did you obtain a degree from Scripps

10 10:34:49 College?

11 10:34:49 A. Yes.

12 10:34:49 Q. When did you graduate from Scripps

13 10:34:49 College?

14 10:34:49 A. In 1999.

15 10:34:49 Q. And in what did you obtain your degree?

16 10:34:50 A. Latin American studies.

17 10:34:52 Q. Do you speak Spanish?

18 10:34:53 A. Barely anymore.

19 10:34:57 Q. Did you at one time?

20 10:34:58 A. Yes. I've taken it since I was in

21 10:35:00 kindergarten, but I'm not fluent.

22 10:35:04 Q. When did you first join Paramount

23 10:35:07 Pictures?

24 10:35:10 A. I believe it was in 2005. I'm not

25 10:35:13 certain.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:35:14 Q. How did you come to work at Paramount

3 10:35:15 Pictures?

4 10:35:16 A. I was employed at DNA studio, whose client

5 10:35:21 was Sony Pictures, who is a client with Sony

6 10:35:22 Pictures. Sony Pictures employed Amy Powell, and

7 10:35:27 since I was working for Amy Powell on the client and

8 10:35:31 agency side.

9 10:35:33 Q. And how did that translate into a job for

10 10:35:36 Paramount Pictures?

11 10:35:36 A. I knew Amy Powell when she came to

12 10:35:41 Paramount Pictures. I don't think we had a very --

13 10:35:43 we had a working -- a client/agency relationship.

14 10:35:47 She knew who I was.

15 10:35:50 Q. And how, through your personal

16 10:35:52 relationship with Amy Powell, did you come to work

17 10:35:55 at Paramount Pictures?

18 10:35:56 A. I --

19 10:35:57 MR. WILKENS: Objection to the form.

20 10:35:59 You can answer it.

21 10:35:59 THE WITNESS: I didn't have a personal

22 10:36:01 relationship with Amy Powell.

23 10:36:02 BY MR. RUBIN:

24 10:36:03 Q. How, through your business relationship

25 10:36:04 with Amy Powell, did you come to work at Paramount

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:36:08 Pictures?

3 10:36:09 A. She knew of my work, and we met for an
4 10:36:11 interview.

5 10:36:12 Q. Did you inquire of her, or did she inquire
6 10:36:15 of you, regarding a job at Paramount Pictures?

7 | 10:36:18 A. I don't remember.

8 10:36:21 Q. What was the specific position for which
9 10:36:25 you met for an interview with Amy Powell?

10 10:36:30 A. Producer, but freelance, not a fully
11 10:36:33 salaried employee.

12 10:36:35 0. Producer of what?

13 10:36:36 A. Interactive marketing. The title was
14 10:36:39 producer

15 | 10:36:40 Q what is interactive marketing?

16 | 10:36:43 A Online marketing

17 | 10:36:44 0 What is online marketing?

18 10:36:46 A. It's a very general -- do you want me to
19 10:36:49 define it?

20 10:36:50 Q. You -- I just want to get an understanding
21 10:36:53 of what you mean. You just used the term

22 | 10:36:55 A IIb b,ub

23 10:36:55 Q. -- "online marketing" to define the other
24 10:36:57 term "interactive marketing."

25 10:36:59 A Wh hah

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:37:00 Q. I'd like to get an understanding of what

3 10:37:02 you mean when you use that term.

4 10:37:03 A. The way that I would define, personally,

5 10:37:05 "interactive marketing" is anything -- not

6 10:37:08 anything -- a marketing of our films online.

7 10:37:15 Q. And what particular marketing activities

8 10:37:17 on line --

9 10:37:18 A. Uh-huh.

10 10:37:18 Q. -- would be encompassed within interactive

11 10:37:22 marketing?

12 10:37:23 A. Within interactive marketing, or my role?

13 10:37:26 Q. Broadly.

14 10:37:27 A. Broadly? Interactive marketing for our

15 10:37:30 group at Paramount Pictures consists of online

16 10:37:33 editorial, online creative, online technology group,

17 10:37:37 and online media.

18 10:37:39 Q. And what is your role?

19 10:37:41 A. I am a VP of creative, but I support the

20 10:37:44 other areas that I just mentioned.

21 10:37:46 Q. And what sort of activities online --

22 10:37:48 A. Uh-huh.

23 10:37:49 Q. -- result from what your group does?

24 10:37:53 A. What kind of activities online result in

25 10:37:56 what my group does?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:37:58 Q. Correct.

3 10:37:58 A. I couldn't define it.

4 10:38:00 Q. Can you give me an example of anything

5 10:38:02 that occurs on the Internet in a marketing capacity

6 10:38:05 from a result of what you and your group does?

7 10:38:08 MR. WILKENS: Objection to the form.

8 10:38:12 THE WITNESS: An example?

9 10:38:13 BY MR. RUBIN:

10 10:38:14 Q. Yes.

11 10:38:18 A. Seeing our content, whether it be a

12 10:38:20 website, an ad. . . .

13 10:38:22 Q. Did you say "seeing"?

14 10:38:24 A. Uh-huh, correct. Viewing.

15 10:38:28 Q. Viewing. Could you explain that to me?

16 10:38:30 A. In an example?

17 10:38:31 Q. Sure.

18 10:38:32 A. If you go to theupintheairmovie.com, I

19 10:38:37 created that website.

20 10:38:38 Q. So you create promotional websites for

21 10:38:41 Paramount motion pictures?

22 10:38:43 A. That's one thing I do, correct.

23 10:38:45 Q. What else do you do?

24 10:38:46 A. I -- as a role in creative, the things

25 10:38:51 that I tend to do are create websites, banner ads as

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
2 10:38:55 a part of our media campaigning, do copy writing for
3 10:38:58 newsletters, e-mail blasts -- that's just some of my
4 10:39:06 duties.
5 10:39:08 Q. Are you involved in the selection of
6 10:39:09 promotional videos that are used to promote
7 10:39:13 Paramount motion pictures?
8 10:39:15 MR. WILKENS: Objection to the form.
9 10:39:19 THE WITNESS: I'm not as high up as to --
10 10:39:23 I am not high enough -- high enough up that I would
11 10:39:28 be creative selecting these clips.
12 10:39:31 BY MR. RUBIN:
13 10:39:31 Q. That wasn't my question.
14 10:39:32 A. Okay.
15 10:39:33 Q. Are you involved in the selection?
16 10:39:35 A. Yes.
17 10:39:36 Q. How are you involved in the selection?
18 10:39:38 A. I review clips and give my opinion on
19 10:39:41 which I think might work for our films from a group
20 10:39:47 of -- on any given movie, you know, five to twenty
21 10:39:53 clips that might be in the running.
22 10:40:01 Q. Were the job responsibilities that are
23 10:40:03 associated with your current job --
24 10:40:06 A. Uh-huh.
25 10:40:06 Q. -- the same job responsibilities that were

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:40:09 associated with the job that you first had when you

3 10:40:12 began working with Paramount Pictures?

4 10:40:18 A. My responsibilities have increased.

5 10:40:20 Q. How have they increased?

6 10:40:21 A. Taking on more head counts that my agency

7 10:40:21 fills, supporting the different groups that I

8 10:40:25 mentioned previously.

9 10:40:26 Q. Who do you manage?

10 10:40:27 A. My direct reports are Stephanie Simard and

11 10:40:28 Sungmi Choi.

12 10:40:33 Q. Was there a time in which you managed no

13 10:40:36 one?

14 10:40:36 A. Yes.

15 10:40:37 Q. Do you know Tamar Teifeld?

16 10:40:40 A. Yes.

17 10:40:41 Q. Do you know Megan Crowell?

18 10:40:44 A. Yes.

19 10:40:44 Q. Do you know Kristina Tipton?

20 10:40:47 A. Yes.

21 10:40:47 Q. In what capacity did you work with those

22 10:40:49 individuals?

23 10:40:50 A. The teams that I just outlined previously,

24 10:40:54 they were part of online editorial. Not Megan

25 10:40:57 Crowell. She was part of online media. Previous to

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
2 10:41:01 that she was Amy Powell's assistant. So I supported
3 10:41:04 the online editorial groups with whatever creative
4 10:41:08 responsibilities I had, and the same with Megan
5 10:41:10 Crowell when she was part of online media.
6 10:41:14 Q. The three individuals I just named --
7 10:41:16 A. Uh-huh.
8 10:41:16 Q. -- do you think they're good at their
9 10:41:19 jobs?
10 10:41:19 MR. WILKENS: Objection to the form.
11 10:41:20 THE WITNESS: Do I think they're good at
12 10:41:23 their jobs?
13 10:41:23 BY MR. RUBIN:
14 10:41:23 Q. Yes.
15 10:41:24 A. I think it's subjective.
16 10:41:25 Q. I'm asking you for your subjective opinion
17 10:41:27 of whether you think they're good at their jobs.
18 10:41:30 MR. WILKENS: Objection to form.
19 10:41:33 THE WITNESS: Um, yes, I think they're
20 10:41:35 good at my jobs and I think it's -- their jobs, but
21 10:41:37 I think it's subjective. Other people may not.
22 10:41:40 BY MR. RUBIN:
23 10:41:40 Q. I'm asking you for your opinion today.
24 10:41:42 MR. WILKENS: Objection. Asked and
25 10:41:43 answered.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:41:45 THE WITNESS: Yes.

3 10:41:46 BY MR. RUBIN:

4 10:41:47 Q. Have you heard anyone else at Paramount

5 10:41:49 suggest that they're not good at their jobs?

6 10:41:52 A. No.

7 10:41:53 Q. Kristina Tipton no longer works at

8 10:41:55 Paramount, does she?

9 10:41:57 A. Correct.

10 10:41:58 Q. Was she fired for not being good at her

11 10:42:01 job?

12 10:42:01 A. No.

13 10:42:01 Q. She left of her own accord; right?

14 10:42:03 A. Correct.

15 10:42:04 Q. And she was in good standing with the

16 10:42:05 company when she left; right?

17 10:42:08 A. I don't know.

18 10:42:09 Q. Have you ever heard anyone say that

19 10:42:11 Kristina Tipton was not good at her job?

20 10:42:15 MR. WILKENS: Objection. Asked and

21 10:42:15 answered.

22 10:42:15 THE WITNESS: I don't know.

23 10:42:16 BY MR. RUBIN:

24 10:42:16 Q. You don't know whether you've ever heard

25 10:42:18 anyone else say that?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:42:19 A. Correct.

3 10:42:20 Q. You don't know or you don't recall?

4 10:42:21 A. I don't know.

5 10:42:24 Q. As you sit here today, you simply don't

6 10:42:27 know whether you heard --

7 10:42:29 MR. WILKENS: Objection. Asked and

8 10:42:29 answered.

9 10:42:30 THE WITNESS: Correct.

10 10:42:38 BY MR. RUBIN:

11 10:42:38 Q. Are you familiar with the phrase "viral

12 10:42:41 marketing"?

13 10:42:41 A. Yes.

14 10:42:42 Q. What is viral marketing?

15 10:42:44 A. To me?

16 10:42:45 Q. Yes.

17 10:42:45 A. I would define it as something that is put

18 10:42:48 on -- is put out there in the hopes of passing

19 10:42:52 something along. So viral, to me, is a pass-along.

20 10:42:57 Q. In your answer you used the word

21 10:42:59 "something."

22 10:42:59 A. Uh-huh.

23 10:43:00 Q. What type of thing would be put out there

24 10:43:03 in the hopes that it would be passed along?

25 10:43:05 A. A photo, a film clip, a video, an e-card,

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 | 10:43:16 a newsletter.

3 10:43:17 Q. Okay. So let's focus on videos or film

4 | 10:43:20 clips.

5 | 10:43:20 A. Okay.

6 10:43:21 Q. So you can imagine a scenario in which

7 10:43:24 Paramount would want a video or a film clip of a

8 10:43:28 Paramount movie to be placed on the Internet in the

9 10:43:31 hopes that it would be further distributed; is that

10 10:43:35 right?

11 | 10:43:35 MR

12 10:43:37 speculation.

13 | 10:43:39 THE

14 | 10:43:40 BY MR. RUBIN:

15 | 10:43:40 Q. Yes.

16 | 10:43:41 A. I C

17 10:43:43 Q. You can imagine that; right?

18 10:43:44 A. Uh-huh.

19 | 10:43:45 Q. In fact,

20 10:43:47 occurs. doesn't it?

21 | 10:43:48 A. Yes.

22 | 10:43:49 Q Can

23 | 10:43:52 occurring?

24 | 10:44:02 A

25 | 10:44:04 THE REPORTER:

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:44:05 THE WITNESS: I'm thinking. An example of

3 10:44:07 a viral clip or a video?

4 10:44:09 BY MR. RUBIN:

5 10:44:10 Q. Yes.

6 10:44:12 A. Yes. Off the top of my head, we created,

7 10:44:15 with talent from our film "Hot Rod," some videos

8 10:44:22 that we hoped would be passed along.

9 10:44:24 Q. Could you please tell me more about that

10 10:44:26 example?

11 10:44:27 A. What --

12 10:44:28 MR. WILKENS: Objection to the form.

13 10:44:30 BY MR. RUBIN:

14 10:44:32 Q. Who is the "we" in your answer? Who

15 10:44:34 created the vid- -- the content?

16 10:44:36 A. Actually, the person in that specific

17 10:44:39 instance who created that was, um, talent.

18 10:44:43 Q. And how did you go about attempting to get

19 10:44:46 the content passed along?

20 10:44:48 A. I don't remember.

21 10:44:50 Q. Did you upload it to YouTube?

22 10:44:54 A. Yes.

23 10:44:56 Q. Do you recall the account name to which

24 10:44:57 you uploaded it?

25 10:44:59 A. I don't.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:45:02 Q. By uploading it to YouTube, you attempted

3 10:45:05 to get it passed along?

4 10:45:08 A. I don't remember.

5 10:45:12 Q. By uploading it to YouTube you hoped

6 10:45:15 others would view it; is that right?

7 10:45:17 A. Yes.

8 10:45:17 Q. And you viewed that as a good thing,

9 10:45:19 didn't you?

10 10:45:19 A. I don't remember. To -- yes.

11 10:45:26 Q. "Yes," by uploading a video to YouTube,

12 10:45:29 you -- the goal was that others would watch it --

13 10:45:32 A. Yes.

14 10:45:32 Q. -- right?

15 10:45:33 You wouldn't have uploaded a video to

16 10:45:38 YouTube in the hopes that others wouldn't watch it,

17 10:45:41 would you have?

18 10:45:41 A. Correct.

19 10:45:42 Q. In fact, when you uploaded content to

20 10:45:44 YouTube, the goal was to have as many people watch

21 10:45:48 it as possible; right?

22 10:45:49 MR. WILKENS: Objection to the form.

23 10:45:51 THE WITNESS: Not always.

24 10:45:51 BY MR. RUBIN:

25 10:45:52 Q. Can you give me an example of a video that

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:45:54 you uploaded to YouTube in the hopes that people

3 10:45:57 wouldn't watch it?

4 10:45:59 A. No, we would always want people to watch

5 10:46:01 it. It's just not as cut and dried as -- as "many

6 10:46:05 people." We were actually pretty strategic, so we

7 10:46:09 would want the right people to see it, versus as

8 10:46:12 many as possible.

9 10:46:14 Q. Please explain to me how you attempted to

10 10:46:16 target your audience.

11 10:46:17 A. With specific -- the specific "Hot Rod"

12 10:46:20 video?

13 10:46:21 Q. Let's start with that specific video, and

14 10:46:22 then we --

15 10:46:23 A. I don't remember.

16 10:46:23 Q. How -- then why don't you explain to me

17 10:46:26 more broadly how you target the specific audience of

18 10:46:29 YouTube viewers --

19 10:46:30 A. Uh-huh.

20 10:46:30 Q. -- of the videos you upload to YouTube?

21 10:46:34 MR. WILKENS: Objection to the form.

22 10:46:40 THE WITNESS: Can you give me, like a

23 10:46:41 specific instance?

24 10:46:42 BY MR. RUBIN:

25 10:46:43 Q. I'm asking you to explain --

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:46:45 A. Okay.

3 10:46:45 Q. -- your answer.

4 10:46:47 A. I don't know. It varies per each film, or

5 10:46:51 each piece of video, and each clip.

6 10:46:56 Q. Please provide me with an example.

7 10:46:58 A. For "Hot Rod," if I recall correctly, we

8 10:47:01 worked with YouTube to try to identify people who

9 10:47:03 were interested in cars or motorcycles, to try to

10 10:47:07 get those types of people to look at that specific

11 10:47:10 piece of video.

12 10:47:11 Q. But you don't always work with YouTube

13 10:47:13 when you upload content to the service, do you?

14 10:47:16 A. When I uploaded content to YouTube,

15 10:47:19 pretty -- more -- I mean, as far as I can remember,

16 10:47:23 we had a pretty open relationship with YouTube, that

17 10:47:27 they knew what we were uploading, so yes.

18 10:47:30 Q. It's your testimony --

19 10:47:32 A. I can't say always.

20 10:47:32 Q. It's your testimony, as you sit here

21 10:47:34 today, that every single video you personally

22 10:47:36 uploaded to YouTube in the course of your

23 10:47:38 employment --

24 10:47:39 A. Uh-huh.

25 10:47:39 Q. -- YouTube knew about when you uploaded

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:47:42 it?

3 10:47:43 A. I can't be sure.

4 10:47:43 Q. Right, because you're under oath,

5 10:47:44 Miss Wahtera.

6 10:47:47 MR. WILKENS: Objection --

7 10:47:48 THE WITNESS: I understand.

8 10:47:48 MR. WILKENS: -- to the form of the

9 10:47:49 question.

10 10:47:49 BY MR. RUBIN:

11 10:47:50 Q. You know that; right?

12 10:47:50 A. Yes.

13 10:47:50 MR. WILKENS: Objection.

14 10:47:50 BY MR. RUBIN:

15 10:47:50 Q. So I want to get clear clarity in your

16 10:47:51 testimony --

17 10:47:51 A. Uh-huh.

18 10:47:52 Q. -- as we sit here right now.

19 10:47:54 A. Uh-huh.

20 10:47:54 Q. You have uploaded content owned by

21 10:47:56 Paramount Pictures to YouTube; correct?

22 10:47:58 A. Correct.

23 10:47:59 Q. Is it your testimony that you have always

24 10:48:01 done so to accounts that YouTube knew?

25 10:48:04 A. I can't be sure.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:48:05 Q. You can't be sure.

3 10:48:05 A. (Witness nods head.)

4 10:48:06 Q. Why can't you be sure?

5 10:48:07 A. Because I just don't remember every piece

6 10:48:10 of content I uploaded.

7 10:48:12 Q. How many pieces of Paramount content have

8 10:48:14 you uploaded to YouTube?

9 10:48:15 A. I don't know.

10 10:48:16 Q. More than one?

11 10:48:17 A. Yes.

12 10:48:17 Q. More than five?

13 10:48:19 A. Yes.

14 10:48:20 Q. More than ten?

15 10:48:21 A. I don't know.

16 10:48:21 Q. Where would you go to find that

17 10:48:23 information out?

18 10:48:24 A. Probably look back on my e-mails.

19 10:48:32 Q. Who else in your department uploads

20 10:48:34 content to YouTube?

21 10:48:37 A. That I'm certain about?

22 10:48:39 Q. Yes.

23 10:48:41 A. Tamar Teifeld, Kyle Bennicci, Kristina

24 10:48:47 Tipton, Stephanie Simard, and that's all I can be

25 10:48:54 sure about at the moment.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:48:55 Q. Where would you go to find out with

3 10:48:57 certainty the list of people in your department that

4 10:49:00 upload content to YouTube?

5 10:49:02 A. There is no list that I would -- that I

6 10:49:04 have.

7 10:49:06 Q. Paramount Pictures does not keep a list of

8 10:49:08 the people who upload content to YouTube --

9 10:49:10 A. Not that I --

10 10:49:10 Q. -- in the course of their employment?

11 10:49:10 A. Not that I'm aware of.

12 10:49:15 Q. Who would be aware of that?

13 10:49:17 A. I don't know.

14 10:49:27 Q. You indicated that you had two direct

15 10:49:29 reports; right?

16 10:49:30 A. I currently do, yes.

17 10:49:31 Q. Correct.

18 10:49:32 A. Uh-huh.

19 10:49:33 Q. Do you have any direct superiors?

20 10:49:34 A. Yes.

21 10:49:34 Q. Who is your direct superior?

22 10:49:35 A. I'm reporting to Amy Powell.

23 10:49:37 Q. Do you know who Amy Powell reports to?

24 10:49:38 A. Amy Powell currently reports in to Megan

25 10:49:44 Colligan.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:50:00 Q. In the course of your employment at

3 10:50:02 Paramount --

4 10:50:03 A. Uh-huh.

5 10:50:03 Q. -- what e-mail addresses have you used?

6 10:50:07 A. Megan_wahtera@paramount.com.

7 10:50:14 Q. Any others?

8 10:50:14 A. No.

9 10:50:16 Q. Do you have a hotmail.com e-mail

10 10:50:19 address --

11 10:50:19 A. Yes.

12 10:50:19 Q. -- that you have ever used in the course

13 10:50:22 of your employment?

14 10:50:23 A. Yes.

15 10:50:23 Q. So does that make you reconsider the

16 10:50:25 answer you just gave?

17 10:50:26 A. Yes. Apologies.

18 10:50:28 Q. What is that e-mail address?

19 10:50:30 A. Mwahtera@hotmail.com.

20 10:50:35 Q. Do you have any other e-mail addresses

21 10:50:37 that you use?

22 10:50:37 A. That I have used in the course of my

23 10:50:39 employment?

24 10:50:39 Q. That you use or have used in the course of

25 10:50:41 your employment.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:50:42 A. I know I have created an e-mail account

3 10:50:45 that I used once to upload a clip.

4 10:50:49 Q. And what video -- what -- what e-mail

5 10:50:51 address was that?

6 10:50:52 A. I don't know.

7 10:50:54 Q. On what service was the account created?

8 10:50:57 A. I think it was Yahoo.

9 10:51:00 Q. And what clip was that that you uploaded?

10 10:51:04 A. It was one for the "Heartbreak Kid."

11 10:51:07 Q. And did you tell YouTube about that clip

12 10:51:09 at the time you uploaded it?

13 10:51:10 A. At the time I uploaded it, no.

14 10:51:13 Afterwards, yes.

15 10:51:14 Q. So does that make you question the answer

16 10:51:18 you gave earlier about whether or not you told

17 10:51:21 YouTube about every clip that you uploaded to the

18 10:51:24 service at the time you uploaded it?

19 10:51:27 A. Yes, I --

20 10:51:27 MR. WILKENS: Objection to the form.

21 10:51:28 Mischaracterizes her earlier testimony.

22 10:51:31 THE WITNESS: I believe I corrected myself

23 10:51:33 and said I can't be sure I told YouTube every time

24 10:51:36 it was done.

25

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:51:37 BY MR. RUBIN:

3 10:51:37 Q. But in fact you are sure, based on what

4 10:51:38 you just said, that you didn't tell YouTube every

5 10:51:41 time; isn't that right?

6 10:51:42 A. Are we talking about a great pick clip

7 10:51:44 specifically, or. . . .

8 10:51:45 Q. You just testified that you didn't tell

9 10:51:46 YouTube at the time you uploaded that video, didn't

10 10:51:49 you?

11 10:51:49 A. No, I told them a few days later.

12 10:51:51 Q. All right. Why did you tell them a few

13 10:51:53 days later?

14 10:51:55 A. From what I recall, the clip was a

15 10:51:57 failure, so we were trying to get their help to

16 10:52:01 garner views and keep it up.

17 10:52:23 Q. Do you have a -- have you ever registered

18 10:52:26 for a gmail.com account?

19 10:52:28 A. Not that I can recall.

20 10:52:30 Q. But you do recall registering for the

21 10:52:32 Yahoo e-mail address?

22 10:52:34 A. I recall, yes, using Yahoo for that one.

23 10:52:40 Q. For that one?

24 10:52:41 A. Yes.

25 10:52:42 Q. For the "Heartbreak Kid" clip --

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:52:43 A. Correct.

3 10:52:44 Q. -- that you uploaded?

4 10:52:45 A. Yes, correct.

5 10:52:47 Q. Do you recall a Paramount film by the name

6 10:52:52 of "The Last Kiss"?

7 10:52:53 A. Yes.

8 10:52:54 Q. Did you work on the marketing campaign for

9 10:52:56 that film?

10 10:52:57 A. Yes.

11 10:52:59 Q. Approximately when did that campaign take

12 10:53:01 place?

13 10:53:07 A. This is awful, but I've worked on so many

14 10:53:09 films, I don't remember the year that that one was.

15 10:53:12 I want to say a few years ago, but I can't be

16 10:53:14 certain.

17 10:53:15 Q. Do you tend to work on most Paramount

18 10:53:18 films?

19 10:53:18 A. My job is that I split titles with three

20 10:53:21 different creative executives, so I work on a third

21 10:53:26 of them. But my -- outside of -- I do more things,

22 10:53:32 so I -- I assist other groups with -- sometimes when

23 10:53:36 it's not my specific film.

24 10:53:37 Q. You pitch in on the --

25 10:53:38 A. Correct.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:53:39 Q. On the two thirds you're not --

3 10:53:41 A. Correct.

4 10:53:41 Q. -- specifically assigned to?

5 10:53:43 A. Correct.

6 10:53:43 Q. Who are the other two creative directors?

7 10:53:48 A. Mickey Warsnup and Bryan Warman.

8 10:53:51 Q. And you don't know if they've uploaded

9 10:53:53 content to YouTube?

10 10:53:55 A. I don't know.

11 10:53:56 Q. "The Last Kiss" was released in September

12 10:54:10 of 2006; right?

13 10:54:11 A. I don't know.

14 10:54:14 Q. What was your role in that campaign?

15 10:54:18 A. I think I was a director at that point, my

16 10:54:22 title, so it was overseeing the creatives for "The

17 10:54:27 Last Kiss" that went online.

18 10:54:33 Q. And by -- by your answer, you mean

19 10:54:36 overseeing the Paramount content --

20 10:54:39 A. Correct.

21 10:54:39 Q. -- from the film that was placed onto the

22 10:54:42 Internet; right?

23 10:54:43 A. The content from the film --

24 10:54:45 Q. Correct.

25 10:54:45 A. -- or the content that we created for the

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:54:48 film?

3 10:54:49 Q. Both.

4 10:54:50 A. It wasn't my responsibility to oversee

5 10:54:52 content from the film, but to help place

6 10:54:56 strategically online, yes.

7 10:54:59 Q. You were involved with the placement of

8 10:55:00 content from the film --

9 10:55:03 A. Correct.

10 10:55:03 Q. -- onto the Internet; right?

11 10:55:05 A. Correct.

12 10:55:06 Q. Actual clips of the movie; right?

13 10:55:11 A. I don't remember, specifically, "The Last

14 10:55:13 Kiss," but that does fall into my realm of

15 10:55:18 responsibility. But I don't specifically remember

16 10:55:20 "The Last Kiss."

17 10:55:22 MR. RUBIN: I'd like to introduce Wahtera

18 10:55:23 1.

19 10:55:25 (Wahtera Exhibit Number 1 was marked for

20 10:55:25 identification.)

21 10:55:37 THE WITNESS: Thank you.

22 10:55:38 BY MR. RUBIN:

23 10:55:41 Q. Miss Wahtera, Exhibit 1 is a document

24 10:55:46 Viacom produced in this litigation bearing Bates

25 10:55:49 number VIA00366904 through -05.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:55:55 A. Uh-huh.

3 10:56:02 Q. Do you recognize this document?

4 10:56:03 A. No.

5 10:56:05 Q. Please take a moment to look it over.

6 10:56:18 A. Okay.

7 10:56:20 Q. Having now reviewed it, do you recognize

8 10:56:22 this document?

9 10:56:23 A. No.

10 10:56:25 Q. Do you see that it includes e-mails sent

11 10:56:29 and received by the e-mail address you described?

12 10:56:32 A. Yes.

13 10:56:34 Q. Do you doubt that you sent and received

14 10:56:36 these e-mails?

15 10:56:37 A. No, I don't.

16 10:56:39 Q. So you agree that these are authentic

17 10:56:42 e-mails sent and received by you?

18 10:56:44 A. Yes --

19 10:56:44 MR. WILKENS: Objection to the form.

20 10:56:45 THE WITNESS: Yes.

21 10:56:45 BY MR. RUBIN:

22 10:56:48 Q. You simply don't recall it?

23 10:56:50 A. Correct.

24 10:57:00 Q. I'd like to bring your attention to the

25 10:57:02 second page of the document. It's an e-mail

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
2 10:57:06 exchange between you and Amy Powell, and this is --
3 10:57:11 earlier starts with Amy Powell at an e-mail address,
4 10:57:14 bleep6@mac.com?
5 10:57:19 A. Yes.
6 10:57:20 Q. Are you familiar with that e-mail address?
7 10:57:24 A. Yes.
8 10:57:24 Q. Well, whose e-mail address is that?
9 10:57:26 A. Zach Braff's.
10 10:57:27 Q. Who is Zach Braff?
11 10:57:29 A. An actor.
12 10:57:30 Q. Is he an actor that was in the movie "The
13 10:57:32 Last Kiss"?
14 10:57:34 A. Yes, he's also a writer and a producer. I
15 10:57:35 don't know -- I cannot recall if he was on this
16 10:57:38 film.
17 10:57:47 Q. Do you see that on June 15th, 2006, Amy
18 10:57:51 Powell wrote to Zach Braff and said:
19 10:57:57 "I just wanted to know if you're okay with
20 10:57:59 us posting the LK montage to your profile
21 10:58:02 on YouTube, or do you want us to post from
22 10:58:05 an anonymous source?
23 10:58:08 A. Yes, I see that.
24 10:58:10 Q. What does it mean "to post from an
25 10:58:12 anonymous source"?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:58:15 A. In this instance, or --

3 10:58:17 Q. In this instance.

4 10:58:18 A. I'm not sure.

5 10:58:19 Q. What does it mean to post from an

6 10:58:21 anonymous source generally at Paramount Pictures?

7 10:58:26 MR. WILKENS: Objection to form.

8 10:58:27 THE WITNESS: I don't know.

9 10:58:27 BY MR. RUBIN:

10 10:58:28 Q. Have you ever posted from an anonymous

11 10:58:31 source?

12 10:58:31 A. Yes. Do you want me to describe that

13 10:58:33 instance?

14 10:58:34 Q. Yes, but I'd also like to be clear that,

15 10:58:36 if you've posted from an anonymous source, and you

16 10:58:41 work at Paramount Pictures, you do understand my

17 10:58:41 question.

18 10:58:42 MR. WILKENS: Objection. Argumentative.

19 10:58:43 MR. RUBIN: Scott, you've been wasting my

20 10:58:44 time with specious form objections. That objection

21 10:58:46 was specious. Let's move on. We've already been

22 10:58:50 delayed today.

23 10:58:50 MR. WILKENS: It wasn't specious.

24 10:58:51 MR. RUBIN: Let's move on.

25 10:58:51 MR. WILKENS: It wasn't specious and I

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:58:52 will make proper objections. That was an

3 10:58:55 argumentative statement.

4 10:58:56 MR. RUBIN: You're entitled to make proper

5 10:58:59 objections all day. You've not made one yet.

6 10:59:02 MR. WILKENS: I disagree.

7 10:59:02 MR. RUBIN: And I know you do. You've

8 10:59:03 wasted multiple hours of our deposition time

9 10:59:03 throughout the course of this case with specious

10 10:59:03 objections, specious instructions. This deposition

11 10:59:07 is not going to be another one of them.

12 10:59:10 MR. WILKENS: I disagree with that too.

13 10:59:11 MR. RUBIN: Disagree all you want, Scott.

14 10:59:14 MR. WILKENS: You're right --

15 10:59:14 MR. RUBIN: The record --

16 10:59:14 MR. WILKENS: -- I can.

17 10:59:15 MR. RUBIN: The record speaks for itself

18 10:59:17 and it's voluminous.

19 10:59:19 MR. WILKENS: And the judge will find that

20 10:59:20 that was an argumentative statement.

21 10:59:22 MR. RUBIN: I believe Judge Stanton can

22 10:59:24 read the transcript.

23 10:59:26 BY MR. RUBIN:

24 10:59:27 Q. Ms. Wahtera, you indicated a moment ago

25 10:59:30 that you yourself have uploaded from an anonymous

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 10:59:32 source.

3 10:59:35 A. Yes, I have.

4 10:59:36 Q. What do you think -- what does -- what

5 10:59:36 does that mean? What is your understanding of what

6 10:59:37 that means, to upload from an anonymous source?

7 10:59:41 A. In that instance I created an e-mail

8 10:59:43 account, which I believe was Yahoo, and uploaded a

9 10:59:47 clip from the "Heartbreak Kid."

10 10:59:49 Q. What's anonymous about that?

11 10:59:52 A. It didn't have Paramount associated with

12 10:59:56 it.

13 10:59:56 Q. And it's the only instance in which you

14 10:59:58 are aware of anyone at Paramount ever uploading a

15 11:00:01 clip from an anonymous source?

16 11:00:03 A. That I can recall right now.

17 11:00:05 Q. Or that you're aware of, ever.

18 11:00:07 MR. WILKENS: Objection to the form.

19 11:00:07 THE WITNESS: That I can recall.

20 11:00:08 BY MR. RUBIN:

21 11:00:16 Q. That wasn't my question. I'm asking

22 11:00:17 whether you're aware of anyone ever uploading a

23 11:00:21 video from an account that wasn't associated with

24 11:00:24 Paramount Pictures.

25 11:00:25 MR. WILKENS: Objection. Asked and

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 11:00:25 answered.

3 11:00:26 THE WITNESS: I'm only aware of what I did

4 11:00:28 on this one.

5 11:00:28 BY MR. RUBIN:

6 11:00:29 Q. You're not aware of what anyone else did

7 11:00:31 at Paramount Pictures?

8 11:00:32 MR. WILKENS: Objection to the form.

9 11:00:33 THE WITNESS: Not in that -- without --

10 11:00:34 with regard to uploading from an anonymous source --

11 11:00:38 anonymous sources, no, not that I can recall.

12 11:00:47 BY MR. RUBIN:

13 11:00:48 Q. Apparently Amy Powell is, according to

14 11:00:50 this question; right?

15 11:00:51 A. Uh-huh.

16 11:00:57 Q. And according to this e-mail, Amy Powell

17 11:01:05 sent the e-mail to you, asking you to have Zach --

18 11:01:12 pardon me -- asking you to "have Kirk --

19 11:01:14 A. Uh-huh.

20 11:01:15 Q. -- post to Zach Braff's YouTube page

21 11:01:20 tonight." Do you see that?

22 11:01:21 A. Yes.

23 11:01:22 Q. What do you understand that to mean?

24 11:01:25 A. Kirk ran Zach Braff's website and YouTube

25 11:01:29 pages.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 11:01:30 Q. Who is Kirk?

3 11:01:31 A. He works for Real Pie Media. It is a

4 11:01:34 third-party vendor.

5 11:01:35 Q. What is Real Pie Media?

6 11:01:41 A. An interactive agency who we contracted to

7 11:01:42 create the website throughout this.

8 11:01:43 Q. Did you also contract with Real Pie Media

9 11:01:46 to upload content to YouTube?

10 11:01:48 A. No, Zach Braff and Kirk have an existing

11 11:01:52 relationship, and this is hence why we worked with

12 11:01:52 Kirk for the web page.

13 11:01:59 Q. Any content then uploaded by Real Pie to

14 11:02:05 YouTube would not have been authorized by Paramount

15 11:02:08 Pictures?

16 11:02:10 MR. WILKENS: Objection to form.

17 11:02:11 THE WITNESS: I don't know. I would have

18 11:02:12 to know a specific instance. In this instance?

19 11:02:15 BY MR. RUBIN:

20 11:02:15 Q. I'm talking about this particular

21 11:02:17 instance, yes.

22 11:02:17 A. Oh, okay. From reading the e-mail, I can

23 11:02:19 tell that -- I can just read that it's legit,

24 11:02:22 according to what he said, but I don't recall the

25 11:02:25 actual piece of content, or instance.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 11:02:29 Q. If you provide a Paramount video to Real

3 11:02:36 Pie Media to upload to YouTube --

4 11:02:39 A. Uh-huh.

5 11:02:40 Q. -- does that mean the author -- the upload

6 11:02:42 to YouTube is authorized?

7 11:02:44 MR. WILKENS: Objection to the form.

8 11:02:46 THE WITNESS: Can you repeat it?

9 11:02:48 BY MR. RUBIN:

10 11:02:48 Q. Sure. If you provide a clip --

11 11:02:52 A. Uh-huh.

12 11:02:52 Q. -- of a Paramount Pictures film --

13 11:02:54 A. Uh-huh.

14 11:02:54 Q. -- to Real Pie Media to upload to YouTube,

15 11:02:58 for example, on behalf of --

16 11:02:59 A. Uh-huh.

17 11:03:00 Q. -- Zach Braff, is that upload to YouTube

18 11:03:03 authorized?

19 11:03:04 MR. WILKENS: Objection to the form.

20 11:03:05 Calls for speculation.

21 11:03:06 THE WITNESS: What you just described is

22 11:03:08 something that, yes, if -- if that's what happened

23 11:03:11 when -- as you described, then yes, that is the

24 11:03:14 given content upload.

25

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 11:03:15 BY MR. RUBIN:

3 11:03:16 Q. And that is what happened here; right?

4 11:03:17 A. It appears so, from the e-mail, but I'm

5 11:03:19 not sure, because I just can't remember the piece of

6 11:03:22 content.

7 11:03:25 Q. Can you imagine any piece of content that

8 11:03:28 you could have provided to Real Pie Media that

9 11:03:33 wouldn't have been authorized?

10 11:03:36 A. No.

11 11:03:36 MR. WILKENS: Objection to the form, calls

12 11:03:37 for speculation.

13 11:03:38 BY MR. RUBIN:

14 11:03:39 Q. So is there any conclusion to draw from

15 11:03:40 this e-mail, other than the fact the content was

16 11:03:42 authorized to be on YouTube?

17 11:03:45 MR. WILKENS: Objection to the form.

18 11:03:45 THE WITNESS: No, I don't -- from reading

19 11:03:47 this e-mail, I can't think of any reason why it

20 11:03:50 wouldn't be approved content, but I can't recall

21 11:03:54 this -- I cannot recall what happened on this

22 11:03:58 e-mail. I can only read the e-mail.

23 11:04:00 BY MR. RUBIN:

24 11:04:06 Q. Do you doubt the authenticity or the

25 11:04:08 accuracy of your words in Exhibit 1?

MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

1 11:04:12 A. No, I don't.

2 11:04:13 Q. Do you have any reason to question what

3 11:04:15 you wrote in Exhibit 1?

4 11:04:16 A. I don't.

5 11:04:17 Q. Do you have any reason to question what

6 11:04:19 Amy Powell wrote in Exhibit 1?

7 11:04:20 A. I don't.

8 11:04:22 Q. Do you have any reason to question what

9 11:04:24 Zach Braff wrote in Exhibit 1?

10 11:04:26 A. No, except for that Zach Braff had a

11 11:04:29 history of uploading content himself that was not

12 11:04:32 always approved.

13 11:04:33 Q. So if Zach Braff uploaded content to

14 11:04:37 YouTube --

15 11:04:38 A. Uh-huh.

16 11:04:38 Q. -- it was not authorized content?

17 11:04:40 A. I'd have to -- to definitively say yes or

18 11:04:43 no, I'd have to know the circumstance, but there was

19 11:04:46 an occasion that I can recall, I just can't remember

20 11:04:49 exactly what it was, but he did upload content, as

21 11:04:52 he had access to the film that had not gone through

22 11:04:54 the normal approval process.

23 11:04:56 Q. What would you need to know --

24 11:04:57 A. Uh-huh.

MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

1 11:04:58 Q. -- about the video clip that Zach Braff

2 11:05:00 uploaded --

3 11:05:01 A. Uh-huh.

4 11:05:02 Q. -- to determine whether or not it was

5 11:05:04 approved content?

6 11:05:05 A. In what I just described or in this

7 11:05:06 e-mail?

8 11:05:07 Q. What you just described.

9 11:05:09 A. Music licensing rate, whether the talent

10 11:05:11 had agreed that they could be featured in a clip for

11 11:05:15 promotional uses, and whether it had just internal

12 11:05:18 sign-off from higher executives. Or -- there's an

13 11:05:22 array of approval processes that usually take place.

14 11:05:26 Q. An array of internal Paramount approval

15 11:05:29 processes that take place?

16 11:05:31 A. Internal and external, yes.

17 11:05:33 Q. But to a third party --

18 11:05:34 A. Uh-huh.

19 11:05:34 Q. -- how would a third party distinguish

20 11:05:37 between a clip that you, Megan Wahtera, or --

21 11:05:42 A. Uh-huh.

22 11:05:43 Q. -- another Paramount individual authorized

23 11:05:45 for upload and one that Zach Braff selected for the

24 11:05:49 film and uploaded.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 11:05:51 MR. WILKENS: Objection to the form.

3 11:05:52 THE WITNESS: What third party?

4 11:05:53 BY MR. RUBIN:

5 11:05:54 Q. YouTube, for example.

6 11:05:55 MR. WILKENS: Objection to the form, calls

7 11:05:56 for speculation.

8 11:05:57 THE WITNESS: I don't know YouTube -- I

9 11:05:58 don't know their practices and how they

10 11:06:00 differentiate between what's approved and what's

11 11:06:03 not.

12 11:06:04 BY MR. RUBIN:

13 11:06:04 Q. I'm asking, though, if YouTube doesn't

14 11:06:06 have access to the internal policies that Paramount

15 11:06:09 has to distinguish between an -- one approved clip

16 11:06:11 from another --

17 11:06:13 A. Uh-huh.

18 11:06:13 Q. -- how would YouTube be in a position to

19 11:06:15 even make the decision?

20 11:06:16 MR. WILKENS: Objection to the form, calls

21 11:06:17 for speculation.

22 11:06:19 THE WITNESS: Again, it's just my opinion,

23 11:06:20 but we were in contact with YouTube pretty

24 11:06:24 regularly. We had a long-standing relationship with

25 11:06:27 them, so I would just call and ask about it.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 11:09:29 or -- you know, TV shows, or what have you, where

3 11:09:33 others, they -- they play miserably. So it's highly

4 11:09:37 strategic based on the piece of content.

5 11:09:44 Q. Thank you.

6 11:09:45 A. Sure.

7 11:09:46 Q. Looking at Exhibit 1 again, which you said

8 11:09:53 you don't recall, but you also don't question the

9 11:09:56 accuracy of --

10 11:09:57 A. Correct.

11 11:09:57 Q. -- if you look at the

12 11:09:59 second-to-last-in-time e-mail --

13 11:10:02 A. I'm sorry. Which one?

14 11:10:04 Q. The first page.

15 11:10:05 A. Uh-huh.

16 11:10:05 Q. Second to last in time.

17 11:10:08 A. Okay.

18 11:10:09 Q. Goes in reverse chronological order. It

19 11:10:13 says "It's up."

20 11:10:14 A. Yes.

21 11:10:14 Q. What do you understand that to mean?

22 11:10:16 A. I understand it to mean, by reading this

23 11:10:19 e-mail, that -- that something was posted on this

24 11:10:25 URL.

25 11:10:27 Q. Posted to YouTube?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 11:10:29 A. Correct.

3 11:10:30 Q. And when you say "this URL," you're

4 11:10:33 referring to the YouTube URL that's listed right

5 11:10:36 below the words "It's up"; right?

6 11:10:38 A. Correct.

7 11:10:39 Q. Great.

8 11:10:39 And it has a video ID listed there,

9 11:10:42 doesn't it?

10 11:10:43 A. It does.

11 11:10:43 Q. Could you read that video ID, please?

12 11:10:46 A. From beginning of "watch"?

13 11:10:47 Q. Just the "watch" -- after the equal sign.

14 11:10:49 A. "2mjTCXMWsf8."

15 11:10:54 MR. RUBIN: Thank you.

16 11:10:56 I'd like to introduce Wahtera 2.

17 11:11:13 (Wahtera Deposition Exhibit Number 2 was

18 11:11:13 marked for identification.)

19 11:11:19 BY MR. RUBIN:

20 11:11:26 Q. Ms. Wahtera, Exhibit 2 is a screen shot --

21 11:11:29 A. Uh-huh.

22 11:11:29 Q. -- of the video ID you just read into the

23 11:11:33 record --

24 11:11:33 A. Okay.

25 11:11:34 Q. -- that we printed from the YouTube

MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

1 11:11:36 website yesterday.

2 11:11:37 A. Okay.

3 11:11:37 Q. Do you see in the address line on the

4 11:11:42 browser bar the video ID that you just read into the

5 11:11:45 record?

6 11:11:46 A. Yes.

7 11:11:50 Q. To what account was this video uploaded,

8 11:11:52 based on the screen shot you're looking at?

9 11:11:55 A. This video matches the URL in the e-mail.

10 11:11:59 Q. To what account was it uploaded?

11 11:12:01 A. Looks like it was zachbraff.com.

12 11:12:05 Q. How many views has this video had?

13 11:12:10 A. You said you printed this yesterday?

14 11:12:11 Q. Yeah.

15 11:12:11 A. As of yesterday then 41,692, 41,692.

16 11:12:16 Q. And what video is this?

17 11:12:18 A. By the title, it says: "The Last Kiss

18 11:12:21 Teaser."

19 11:12:22 Q. And was this video approved by Paramount

20 11:12:25 when it was uploaded?

21 11:12:27 A. I don't remember this piece of video.

22 11:12:30 Q. When you look at it right now, can you

23 11:12:32 tell whether it's approved or not?

24 11:12:33 A. It looks to me it is, but that's

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2 11:12:36 speculation. This looks like the -- the teaser

3 11:12:40 trailer from "The Last Kiss" movie.

4 11:12:42 Q. What about it, by looking at it, leads you

5 11:12:45 to believe that it is approved Paramount content?

6 11:12:47 MR. WILKENS: Objection to the form.

7 11:12:48 THE WITNESS: The screen shot.

8 11:12:49 BY MR. RUBIN:

9 11:12:49 Q. You can tell that it's approved by looking

10 11:12:51 at the screen shot?

11 11:12:52 A. Actually, I can't. I mean -- so in

12 11:12:55 this -- like -- gosh. This scene is in our teaser

13 11:13:00 trailer from -- or trailer, one of them, I don't

14 11:13:03 remember -- from "The Last Kiss," but this scene is

15 11:13:05 also in many other videos, so I'm not sure.

16 11:13:10 Q. So you can't tell, just by looking at

17 11:13:12 the --

18 11:13:13 A. Correct, I guess I can't tell.

19 11:13:14 Q. -- picture, whether or not it's an

20 11:13:16 authorized clip or not; is that right?

21 11:13:19 MR. WILKENS: Objection to the form.

22 11:13:20 THE WITNESS: I can't be certain. Based

23 11:13:21 on --

24 11:13:24 THE REPORTER: One at a time.

25 11:13:25 THE WITNESS: I'm sorry. Based on the

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 11:13:27 title of this -- the title and the content, I -- I

3 11:13:31 can --

4 11:13:34 BY MR. RUBIN:

5 11:13:34 Q. Excuse me?

6 11:13:35 A. Based on the title and what I'm seeing

7 11:13:37 here right in this current moment, it looks approved

8 11:13:40 to me, but I can't be sure. I mean, I'm not looking

9 11:13:44 at the video.

10 11:13:57 Q. You're aware that certain videos that

11 11:14:01 Paramount's marketing department has authorized to

12 11:14:05 be on YouTube have been taken down from YouTube by

13 11:14:08 Paramount; right?

14 11:14:09 A. I'm sorry. Can you repeat that?

15 11:14:11 Q. You're aware --

16 11:14:12 A. Uh-huh.

17 11:14:12 Q. -- that certain videos that Paramount's

18 11:14:17 marketing department --

19 11:14:18 A. Okay.

20 11:14:19 Q. -- has authorized to be on YouTube have

21 11:14:21 been taken down from YouTube by Paramount; right?

22 11:14:24 A. Yes, I recall instances where that has

23 11:14:27 happened, yes.

24 11:14:29 Q. Including videos uploaded directly by

25 11:14:31 Paramount?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 11:14:31 A. I don't recall.

3 11:14:32 Q. And including videos uploaded by

4 11:14:34 Paramount's third party marketing agents, like Real

5 11:14:38 Pie, for instance?

6 11:14:39 A. I don't recall specifically.

7 11:14:41 Q. But you do recall instances of this

8 11:14:43 happening; right?

9 11:14:44 A. Yes.

10 11:14:44 Q. Why would Paramount send takedown notices

11 11:14:49 for videos that Paramount itself uploaded or

12 11:14:52 authorized others to upload?

13 11:14:54 MR. WILKENS: Objection to the form.

14 11:14:55 THE WITNESS: I don't know. I have to

15 11:14:57 have a specific instance to make a judgment.

16 11:14:59 BY MR. RUBIN:

17 11:14:59 Q. Can you think of any reason why it would

18 11:15:01 ever make sense to do that?

19 11:15:03 A. I'm not sure. I don't know.

20 11:15:05 Q. If Paramount itself uploaded a video --

21 11:15:08 A. Uh-huh.

22 11:15:08 Q. -- or Paramount authorized a third party

23 11:15:10 to upload a video --

24 11:15:12 A. Uh-huh.

25 11:15:12 Q. -- can you think of any reason why it

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2 13:18:39 A. I don't know, but yes, that makes sense.

3 13:18:41 Q. Well, you know how to write a lower case

4 13:18:44 J; right?

5 13:18:44 A. I do.

6 13:18:45 Q. And lower case Js go below the line;

7 13:18:48 right?

8 13:18:49 A. Yes.

9 13:18:49 Q. And capital Js don't go below the line;

10 13:18:52 right?

11 13:18:52 A. I'm just telling you what I see, but --

12 13:18:54 Q. Right, but --

13 13:18:54 A. -- I don't have any reason to doubt that

14 13:18:56 this isn't correct.

15 13:18:57 Q. No, but you see a J in -- in Exhibit 9 in

16 13:18:59 the video ID that goes below the line; correct?

17 13:19:03 A. Yes, I do.

18 13:19:04 Q. So you agree that this is the same video

19 13:19:05 ID; correct?

20 13:19:06 A. Yes.

21 13:19:07 Q. This is the video ID that you uploaded;

22 13:19:09 right?

23 13:19:10 A. I don't know.

24 13:19:11 Q. Okay. You said you uploaded a video from

25 13:19:15 "The Heartbreak Kid."

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2 13:19:17 A. Oh, I'm sorry. Can I take a step back?

3 13:19:20 Q. Sure.

4 13:19:20 A. This -- if this is accurate, because I

5 13:19:22 know from other information that is on this piece of

6 13:19:25 paper, then, yes, this is the video I uploaded.

7 13:19:28 Q. The information in Exhibit 11 is

8 13:19:31 information that was pulled from the YouTube

9 13:19:32 system --

10 13:19:33 A. Okay.

11 13:19:33 Q. -- that reflects information that was

12 13:19:35 collected when it was input by users or collected

13 13:19:39 for -- relative --

14 13:19:40 A. Okay.

15 13:19:40 Q. -- to the video upload.

16 13:19:42 A. Then, yes, this is accurate.

17 13:19:44 Q. This was the video --

18 13:19:45 A. Yes.

19 13:19:46 Q. -- that you uploaded; correct?

20 13:19:48 A. I don't remember, but based on this video

21 13:19:50 ID and the information surrounding it, yes.

22 13:19:53 Q. And this is the video you referenced

23 13:19:55 earlier; right?

24 13:19:55 A. That --

25 13:19:56 Q. As being the one from "The Heartbreak Kid"

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:19:58 that you uploaded?

3 13:19:59 A. Yes.

4 13:20:02 Q. Do you recall when you uploaded this

5 13:20:03 video?

6 13:20:04 A. I don't know.

7 13:20:11 Q. If we look at the video title, it says

8 13:20:18 "The Heartbreak Kid," on Exhibit 11?

9 13:20:20 A. Yes.

10 13:20:22 Q. You typed that information into the

11 13:20:24 YouTube system when you uploaded this video;

12 13:20:27 correct?

13 13:20:27 A. Knowing the way that YouTube works, yes.

14 13:20:30 Q. And do you see video keywords?

15 13:20:32 A. Yes.

16 13:20:33 Q. You typed those keywords into the YouTube

17 13:20:36 system when you uploaded this video, didn't you?

18 13:20:39 A. Knowing the way the system works, yes.

19 13:20:42 Q. And you typed in "The Heartbreak Kid" as

20 13:20:44 the video description as well, didn't you?

21 13:20:47 A. Yes.

22 13:20:49 Q. What is "mysticalgirl8"?

23 13:20:53 A. It's a user name that I created.

24 13:20:56 Q. What is the origin of the name

25 13:21:00 "mysticalgirl8"?

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2 13:21:01 A. There is no origin. I made it up.

3 13:21:04 Q. Why did you make up that name?

4 13:21:06 A. I wanted this piece of video to appear to

5 13:21:09 the end user as something that was not from the

6 13:21:13 studio.

7 13:21:14 Q. Why?

8 13:21:16 A. This particular film and clips in general

9 13:21:19 were not doing very well, if I recall correctly, and

10 13:21:22 so I -- we took a different -- we experimented with

11 13:21:25 our approach in getting success.

12 13:21:35 Q. You wanted this film not to appear as if

13 13:21:38 it was from the studio to whom?

14 13:21:41 A. To the people watching it.

15 13:21:42 Q. And to YouTube; right?

16 13:21:44 A. No. That was never my intent.

17 13:21:48 Q. Why did you register a unique e-mail

18 13:21:50 address in connection with the upload of this video?

19 13:21:52 A. Because a lot of people who watch clips,

20 13:21:55 like an audience -- and just general audiences or, I

21 13:21:58 don't know, specific audiences -- it's very easy for

22 13:22:02 them to find out through technical ways who uploaded

23 13:22:06 the clip, so I didn't want it to be from Paramount's

24 13:22:10 e-mail.

25 13:22:10 Q. How is it possible for a user of the

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2 13:22:12 YouTube service --

3 13:22:13 A. Uh-huh.

4 13:22:14 Q. -- to determine the e-mail address of the

5 13:22:16 uploader of the video?

6 13:22:18 A. I actually don't know, but it's happened

7 13:22:20 to us before.

8 13:22:21 Q. When has it happened to you before?

9 13:22:23 A. I can't name instances, but, from my

10 13:22:27 understanding, there are technical ways that I'm

11 13:22:29 unaware of. I don't know if it's like just looking

12 13:22:32 into it more closely, but that people can tell.

13 13:22:35 Q. You claim to be aware of it, but you can't

14 13:22:37 --

15 13:22:37 A. I can't --

16 13:22:38 Q. -- cite a single example of it, can you?

17 13:22:41 A. Correct.

18 13:22:41 MR. WILKENS: Let him finish the question.

19 13:22:43 BY MR. RUBIN:

20 13:22:43 Q. I'll repeat the question. You claim

21 13:22:46 you're aware of some unknown way third parties are

22 13:22:49 able to determine the e-mail address of the YouTube

23 13:22:52 user simply by viewing videos on the external

24 13:22:55 website, but you have no idea how that's done;

25 13:22:59 right?

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2 13:27:02 A. I'm just giving you my opinion. I don't

3 13:27:04 know how YouTube figures out what is and isn't

4 13:27:07 authorized.

5 13:27:08 Q. Do you think it's YouTube's job to figure

6 13:27:10 out what is and isn't authorized?

7 13:27:12 A. I don't know. It's not my place to say.

8 13:27:15 Q. What is your opinion?

9 13:27:17 MR. WILKENS: Objection to the form.

10 13:27:17 THE WITNESS: I don't have an opinion.

11 13:27:18 BY MR. RUBIN:

12 13:27:18 Q. You don't have an opinion?

13 13:27:19 A. I really don't. I would prefer not to

14 13:27:21 have an opinion. I don't -- I -- I do not work at

15 13:27:23 YouTube. I do not police content. It's not in my

16 13:27:26 responsibility.

17 13:27:27 Q. This isn't -- this -- I don't mean to be

18 13:27:29 argumentative --

19 13:27:29 A. I understand.

20 13:27:30 Q. -- and I'm not trying to be, but today is

21 13:27:32 not about whether you choose to have an opinion or

22 13:27:35 not. I'm asking what your opinion is.

23 13:27:38 A. I don't have one.

24 13:27:39 Q. Do you believe it's YouTube's ob- --

25 13:27:41 YouTube's obligation to police the content on that

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:27:45 service?

3 13:27:45 MR. WILKENS: Objection to the form of the

4 13:27:45 question.

5 13:27:45 THE WITNESS: I do not have an opinion. I

6 13:27:47 do not know if it is their responsibility. I have

7 13:27:47 no idea.

8 13:27:48 BY MR. RUBIN:

9 13:27:48 Q. Do you think they should?

10 13:27:49 A. I have no idea, don't have an opinion.

11 13:27:53 Q. Do you think Paramount should police the

12 13:27:55 content on the YouTube service?

13 13:27:57 MR. WILKENS: Objection to the form.

14 13:27:58 THE WITNESS: I don't know. It's not my

15 13:28:00 job to say so.

16 13:28:01 BY MR. RUBIN:

17 13:28:01 Q. And you have no opinion on it?

18 13:28:02 A. I do not have an opinion.

19 13:28:12 Q. From where did you upload this video?

20 13:28:15 A. I uploaded this video off site, so off

21 13:28:19 lot, Paramount, to -- from an IP address. I believe

22 13:28:23 it was like a FedEx, or a Kinko's, or one of those

23 13:28:24 types of places.

24 13:28:25 Q. Why would you have done that?

25 13:28:27 A. For the same reason I just referenced with

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
2 13:28:29 registering an e-mail account. Often, I have heard,
3 13:28:32 or -- I can't prove that -- but that there's ways to
4 13:28:35 tell different IP addresses in uploading a clip,
5 13:28:38 where it's coming from.
6 13:28:40 Q. Is there any evidence in your possession
7 13:28:41 that you can think of -- any documents, any e-mails,
8 13:28:44 anything that would support your belief -- your
9 13:28:47 statement that you believe that third parties can
10 13:28:49 discern the e-mail address or the IP address from
11 13:28:52 which a video is uploaded --
12 13:28:54 A. I don't know.
13 13:28:55 Q. -- by simply viewing the video?
14 13:28:57 A. I don't know.
15 13:28:58 Q. You don't know.
16 13:28:59 A. I don't know if I've ever gotten e-mail on
17 13:29:03 that.
18 13:29:04 Q. You don't know whether you've ever
19 13:29:06 discussed it with anyone else?
20 13:29:08 A. I don't know.
21 13:29:09 Q. It's a rumor you heard?
22 13:29:15 A. I work in an interac- -- interactive
23 13:29:17 marketing, so I know like my tech team can tell me
24 13:29:20 what IP address is -- stuff is being uploaded from
25 13:29:23 all the time. So it's just something -- a practice

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:29:26 that I'm aware of. Do you know what I mean? But I

3 13:29:29 don't know the specifics of it.

4 13:29:30 Q. You believe your tech team has the ability

5 13:29:33 to tell you what -- where any individual YouTube

6 13:29:36 video has been uploaded to?

7 13:29:37 A. Oh, no, I'm not saying that. I'm just

8 13:29:39 saying it's a practice that -- on YouTube. I don't

9 13:29:42 know, but on other sites, or what have you, they

10 13:29:46 have been able to do that for me before.

11 13:29:48 Q. On YouTube they've been able to do that?

12 13:29:51 A. No, I'm not saying YouTube. I'm not sure.

13 13:29:53 Q. You can't recall?

14 13:29:54 A. I'm not sure if I've ever asked them to

15 13:29:57 look into something like that on YouTube.

16 13:29:59 Q. Have you ever asked them to?

17 13:30:00 A. Not that I'm aware of.

18 13:30:14 Q. Where do you -- where were you when you

19 13:30:16 created the mysticalgirl8 account?

20 13:30:18 A. The Yahoo e-mail account or the YouTube

21 13:30:21 account?

22 13:30:23 Q. The YouTube account.

23 13:30:24 A. I believe I was at the Kinko's, FedEx,

24 13:30:28 whatever it might have been. I'm not sure.

25 13:30:31 Q. Where is that Kinko's location?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:30:33 A. I believe it was the one located on Vine

3 13:30:35 in Hollywood, right below Sunset. I think that's

4 13:30:39 the one I was at. I can't be certain.

5 13:30:42 Q. Have you ever uploaded -- pardon me. Have

6 13:30:42 you ever uploaded any other videos to YouTube from

7 13:30:45 that Kinko's?

8 13:30:46 A. I have not.

9 13:30:47 Q. Has anyone else from Paramount ever

10 13:30:49 uploaded any videos --

11 13:30:51 A. Not that I --

12 13:30:52 Q. -- from that -- from that -- strike that.

13 13:30:53 You have to wait until I'm done with my

14 13:30:55 question, Miss Wahtera.

15 13:30:57 Are you aware of any other Paramount

16 13:30:59 employee uploading any videos to YouTube from that

17 13:31:03 Kinko's location?

18 13:31:05 A. I am not aware.

19 13:31:06 Q. Are you aware of any Paramount employee

20 13:31:09 uploading any videos to YouTube from any other

21 13:31:12 location other than the Paramount offices?

22 13:31:14 A. I am not aware.

23 13:31:17 Q. You just don't know, one way or the other,

24 13:31:20 do you?

25 13:31:20 A. Correct.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:31:22 Q. Where were you when you registered the

3 13:31:24 Yahoo e-mail address?

4 13:31:26 A. I believe I was in the same Kinko's

5 13:31:29 location -- Kinko's, FedEx -- if I'm remembering

6 13:31:32 correctly.

7 13:31:33 MR. RUBIN: I'd like to introduce Wahtera

8 13:31:35 12.

9 13:31:35 (Wahtera Deposition Exhibit Number 12 was

10 13:31:35 marked for identification.)

11 13:32:08 BY MR. RUBIN:

12 13:32:09 Q. Miss Wahtera, Exhibit 12 is a subpoena

13 13:32:12 response in the form of a declaration that Yahoo

14 13:32:17 supplied in this litigation, executed by Yu Jin Kang

15 13:32:24 on November 24th, 2008.

16 13:32:28 Have you ever seen this subpoena before?

17 13:32:30 A. No.

18 13:32:35 Q. If you turn, please, to the third page of

19 13:32:38 the Exhibit, do you see it says "Yahoo! Account

20 13:32:46 Management Tool" at the top?

21 13:32:47 A. Yes.

22 13:32:48 Q. Do you see it refers to "mysticalgirl8" as

23 13:32:50 the login name?

24 13:32:51 A. Yes.

25 13:32:52 Q. Is that the login name you created?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:35:31 BY MR. RUBIN:

3 13:35:31 Q. Miss Wahtera, Exhibit 13 is the WHOIS

4 13:35:35 information that identifies the holder of the IP

5 13:35:40 address that is associated with the registration for

6 13:35:43 the YouTube account mysticalgirl8.

7 13:35:45 A. Okay.

8 13:35:45 Q. I created this yesterday, from the

9 13:35:49 NetworkSolutions.com website.

10 13:35:52 Do you see this?

11 13:35:53 A. Yes.

12 13:35:54 Q. Who does it identify as the holder of IP

13 13:35:57 address 63.164.145.198?

14 13:36:04 A. Kinko's.

15 13:36:05 Q. Does this confirm your recollection that

16 13:36:07 you created the mysticalgirl8 account at Kinko's?

17 13:36:10 A. Yes.

18 13:36:16 MR. RUBIN: I'd like to introduce Exhibit

19 13:36:18 14.

20 13:36:21 (Wahtera Deposition Exhibit Number 14 was

21 13:36:21 marked for identification.)

22 13:36:51 BY MR. RUBIN:

23 13:36:51 Q. Miss Wahtera, Exhibit 14 is the WHOIS

24 13:36:56 information for the IP address 204.110.112.2 that I

25 13:37:03 printed out from the NetworkSolutions.com website

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:37:07 yesterday.

3 13:37:07 Do you recognize this?

4 13:37:09 A. I do.

5 13:37:09 Q. Who is the holder of that IP address,

6 13:37:12 based on this document?

7 13:37:13 A. Paramount Pictures.

8 13:37:16 Q. What is the address listed for Paramount

9 13:37:18 Pictures listed on this document?

10 13:37:22 A. 5555 Melrose.

11 13:37:28 Q. Where do you work?

12 13:37:28 A. 5555 Melrose.

13 13:37:29 Q. Does this refresh your recollection as to

14 13:37:30 where you created the mysticalgirl8 Yahoo account

15 13:37:35 and associated e-mail address?

16 13:37:37 A. It doesn't reflect my -- refresh my

17 13:37:39 recollection, but it tells me where I did it.

18 13:37:41 Q. Where does it tell you you created the

19 13:37:43 account?

20 13:37:43 A. At my office, or my work.

21 13:38:17 Q. And you didn't upload the video by

22 13:38:21 creating the mysticalgirl8 account on YouTube at

23 13:38:25 YouTube -- sorry.

24 13:38:27 And you didn't upload the video from "The

25 13:38:30 Heartbreak Kid" from Paramount's offices after

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:38:35 creating the Yahoo account --

3 13:38:37 A. Uh-huh.

4 13:38:37 Q. -- because you didn't want the video to be

5 13:38:40 associated with Paramount; isn't that right?

6 13:38:43 A. That is correct.

7 13:38:46 Q. You didn't want anyone to be able to tell

8 13:38:49 that the video was Paramount content; right?

9 13:38:52 MR. WILKENS: Objection to the form.

10 13:38:53 THE WITNESS: I didn't want the people

11 13:38:54 viewing the content to be able to tell that it was

12 13:38:59 from Paramount, the -- the audience that we were

13 13:39:02 looking --

14 13:39:02 BY MR. RUBIN:

15 13:39:02 Q. You didn't --

16 13:39:02 A. -- to get.

17 13:39:02 Q. You didn't want the audience to be able to

18 13:39:05 tell that Paramount had uploaded the content to

19 13:39:08 YouTube?

20 13:39:08 A. Correct.

21 13:39:08 Q. You didn't want anyone to know that the

22 13:39:10 content -- that Paramount had uploaded the content

23 13:39:13 to YouTube; right?

24 13:39:14 A. I was mostly concerned with the audience.

25 13:39:16 Q. But you were also interested in making

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:39:18 sure nobody knew; right?

3 13:39:20 A. No, that wasn't my objective.

4 13:39:21 Q. You went to great lengths to hide the fact

5 13:39:24 that Paramount wasn't the uploader of that content;

6 13:39:27 right?

7 13:39:27 A. I did, so that audience would see it as

8 13:39:29 cool.

9 13:39:30 Q. You created a new Yahoo e-mail account;

10 13:39:33 correct?

11 13:39:33 A. Correct.

12 13:39:33 Q. And you created a brand new YouTube

13 13:39:36 account; right?

14 13:39:37 A. Correct.

15 13:39:37 Q. From separate locations; correct?

16 13:39:41 A. (Nods head.)

17 13:39:42 Q. And you uploaded the account from off lot

18 13:39:44 at Paramount; right?

19 13:39:46 A. That is correct.

20 13:39:46 Q. All in an effort to obscure the source of

21 13:39:49 the content; right?

22 13:39:50 A. That is correct.

23 13:39:54 Q. Was that video successful?

24 13:39:57 A. If I recall correctly, it was not.

25 13:40:14 Q. What do you recall about that video?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:40:18 A. I recall what we just talked about. And
3 13:40:24 to be clear, I don't recall a lot -- I didn't even
4 13:40:27 remember what video it was. I knew it was from "The
5 13:40:29 Heartbreak Kid." So what I recall about the video
6 13:40:32 is more the circumstances surrounding it, not the
7 13:40:35 actual video, but I recall what we just discussed.

8 13:40:38 I recall the video being flagged for some
9 13:40:41 nature, and I'm not quite sure why.

10 13:40:44 I recall at some point, and I'm not sure
11 13:40:47 when, talking to our contact at YouTube about this
12 13:40:51 video and letting her know that it was up.

13 13:40:54 And that's all I remember at the moment.
14 13:40:59 I remember probably trying to -- actually, I don't
15 13:41:02 even remember that, so I'm not going to speculate.
16 13:41:05 That's what I remember.

17 13:41:07 Q. When you created the mysticalgirl8 YouTube
18 13:41:09 account, do you recall taking all of the steps that
19 13:41:11 one needs to take to create a YouTube account?

20 13:41:14 A. I don't recall.

21 13:41:15 Q. Do you recall agreeing to the YouTube
22 13:41:17 terms of service?

23 13:41:18 A. I don't recall.

24 13:41:19 Q. But you did agree to the YouTube terms of
25 13:41:22 service when you created that account; right?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:53:03 Q. -- to "The Heartbreak Kid"?

3 13:53:06 A. I truly don't know. I would assume so,

4 13:53:08 but I -- I can't be sure.

5 13:53:13 I don't know the agreements on the film.

6 13:53:16 Do you know what I'm saying? I don't know if there

7 13:53:18 were production companies involved that own rights.

8 13:53:21 I don't know.

9 13:53:21 Q. What would you have to look at to

10 13:53:23 determine whether or not Paramount owned the

11 13:53:25 copyright to "The Heartbreak Kid"?

12 13:53:26 MR. WILKENS: Objection to the form.

13 13:53:27 THE WITNESS: I don't know. I would talk

14 13:53:28 to a different -- a whole different department.

15 13:53:30 It's not my skill set. I don't know.

16 13:53:34 BY MR. RUBIN:

17 13:53:35 Q. What department would you talk to to

18 13:53:36 determine whether or not --

19 13:53:38 A. I don't even know that.

20 13:53:42 Q. -- Paramount --

21 13:53:42 THE REPORTER: One at a time, please.

22 13:53:42 BY MR. RUBIN:

23 13:53:42 Q. What department would you talk to at

24 13:53:42 Paramount to determine whether or not Paramount

25 13:53:42 owned the copyright to "The Heartbreak Kid"?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:53:45 A. I don't know.

3 13:53:46 Q. You've never -- you've never investigated

4 13:53:49 whether Paramount owned a copyright to a film?

5 13:53:52 A. No, it's not part of my job

6 13:53:55 responsibility.

7 13:53:56 Q. Have you ever delegated that to someone

8 13:53:59 else and had them return results to you?

9 13:54:02 A. Not that I'm aware of.

10 13:54:05 MR. RUBIN: I'd like to introduce Wahtera

11 13:54:07 16.

12 13:54:07 (Wahtera Deposition Exhibit Number 16 was

13 13:54:07 marked for identification.)

14 13:54:17 THE WITNESS: Thank you.

15 13:54:21 BY MR. RUBIN:

16 13:54:22 Q. Miss Wahtera, Exhibit 16 is a document

17 13:54:24 produced by Viacom in this action, bearing Bates

18 13:54:27 number VIA12603576.

19 13:54:34 Do you recognize this document?

20 13:54:35 A. I recognize it.

21 13:54:39 Q. You sent this e-mail to Joanna Ging at

22 13:54:40 YouTube on September 28, 2007; right?

23 13:54:49 A. It appears so, yes.

24 13:54:50 Q. And that was the same date of the e-mail

25 13:54:52 we were looking at in Exhibit 15, wasn't it?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:54:56 A. Okay. Yes.

3 13:55:03 Q. And you'd called Miss Ging prior to

4 13:55:07 sending her this e-mail, didn't you?

5 13:55:10 A. It appears that I did.

6 13:55:12 Q. You were contacting Miss Ging to bring the

7 13:55:16 appropriate -- pardon me.

8 13:55:18 You were contacting Miss Ging to bring the

9 13:55:21 inappropriate clip notice on "The Heartbreak Kid"

10 13:55:24 clip we've been discussing to her attention; right?

11 13:55:27 A. Yes.

12 13:55:28 Q. That was the purpose of your contacting

13 13:55:30 her; isn't it?

14 13:55:31 A. Yes.

15 13:55:31 Q. There was no other reason why you were

16 13:55:33 contacting her, was there?

17 13:55:35 A. Not that I'm aware of.

18 13:55:37 Q. And what was the -- Miss Ging's response

19 13:55:40 to you?

20 13:55:41 A. (Reading:)

21 13:55:41 "Hi Megan.

22 13:55:43 "I just left you a voicemail -- VM -- but

23 13:55:45 looks like the clip is copyrighted

24 13:55:49 material.

25 13:55:49 "Please let me know if this is the case

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:55:52 and I can escalate to the content team for

3 13:55:54 takedown.

4 13:55:55 Q. What was Miss Ging saying to you?

5 13:55:58 A. She was saying it was copyrighted.

6 13:55:59 Q. And what was her proposed solution?

7 13:56:03 A. A takedown.

8 13:56:04 Q. What was your response to Miss Ging?

9 13:56:06 A. I essentially told her, no, that we didn't

10 13:56:09 want it removed.

11 13:56:10 Q. That's not what you said here, is it?

12 13:56:11 A. I said:

13 13:56:12 "It is not copyrighted. We will call you

14 13:56:14 momentarily. Please do not remove."

15 13:56:17 Q. Was that "Heartbreak Kid" clip

16 13:56:19 copyrighted?

17 13:56:21 MR. WILKENS: Objection to the form.

18 13:56:21 THE WITNESS: I don't know, to be fair. I

19 13:56:22 don't know.

20 13:56:23 BY MR. RUBIN:

21 13:56:23 Q. What was the basis of your representation

22 13:56:25 of the copyright status of that "Heartbreak Kid"

23 13:56:28 clip to Miss Ging?

24 13:56:29 A. Joanna was going to escalate having it

25 13:56:32 removed, and we were telling them that we didn't

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:56:35 want it removed.

3 13:56:36 Q. I didn't ask you why you said it.

4 13:56:38 A. Oh.

5 13:56:38 Q. I asked you what the basis was for your

6 13:56:40 statement.

7 13:56:45 A. I don't know, because I don't remember --

8 13:56:48 I don't remember what was in my -- what was going on

9 13:56:51 when I wrote this.

10 13:56:52 Q. You didn't know, one way or the other, at

11 13:56:54 the time you sent this e-mail, whether "The

12 13:56:56 Heartbreak Kid" clip was copyrighted, did you?

13 13:56:58 MR. WILKENS: Objection to the form.

14 13:57:00 THE WITNESS: No.

15 13:57:01 BY MR. RUBIN:

16 13:57:01 Q. And you didn't do any investigation as to

17 13:57:04 the copyright status of the "The Heartbreak Kid"

18 13:57:06 movie or that clip prior to sending this e-mail to

19 13:57:10 Miss Ging, did you?

20 13:57:10 A. I did not.

21 13:57:11 Q. In fact --

22 13:57:12 A. I was there more as --

23 13:57:14 Q. And in fact, you've never, to your

24 13:57:16 knowledge, ever done such investigation for any

25 13:57:18 film; right?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:57:19 A. No, not that I'm aware of.

3 13:57:21 Q. What did you under- -- what did you expect

4 13:57:23 Mrs. Ging's reaction to be to this clip -- rather,

5 13:57:26 to this e-mail?

6 13:57:27 A. I didn't have any expectations of it.

7 13:57:30 Q. Did you expect her to leave the clip up,

8 13:57:33 or to take it down?

9 13:57:34 A. I honestly can't remember if it ended up

10 13:57:37 coming down or stayed up. I don't know. I don't

11 13:57:40 know the answer to that question.

12 13:57:42 Q. Well, again, I want to be clear that

13 13:57:44 you're answering my precise question.

14 13:57:46 A. Okay.

15 13:57:47 Q. I'm asking you what your expectation was

16 13:57:49 of Miss Ging's reaction to this e-mail.

17 13:57:52 A. I didn't have an expectation.

18 13:57:54 Q. You had no idea how she would react when

19 13:57:57 you sent this to her?

20 13:57:59 A. I did not.

21 13:58:00 Q. You thought it was equally likely that --

22 13:58:02 that Miss Ging would respond by taking the video

23 13:58:04 down, or by leaving the video up?

24 13:58:07 MR. WILKENS: Objection to the form of the

25 13:58:08 question.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:58:09 THE WITNESS: I don't know.

3 13:58:09 BY MR. RUBIN:

4 13:58:14 Q. I'd like you to re-read the e-mail, and

5 13:58:17 then try to answer that question again.

6 13:58:20 A. From the bottom up?

7 13:58:22 Q. Sure.

8 13:58:22 A. (Reading:)

9 13:58:23 "Hi Joanna,

10 13:58:24 Left you" --

11 13:58:25 "Hi, Joanna,

12 13:58:25 "Left you a voicemail, but can you call us

13 13:58:27 about the inappropriate clip notice that

14 13:58:29 is up here?" YouTube link.

15 13:58:32 "Thanks!"

16 13:58:33 "Hi Megan,

17 13:58:34 "I just left you a voice message but looks

18 13:58:36 like the clip is copyrighted material.

19 13:58:39 "Please let me know if this is the case

20 13:58:40 and I can escalate to the content team for

21 13:58:43 takedown.

22 13:58:44 "Thanks."

23 13:58:45 "It is not copyrighted. I will call you

24 13:58:47 momentarily. Please do not remove."

25 13:58:49 Q. Having reread it, does that change your

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:58:51 opinion on whether you had an expectation, one way

3 13:58:54 or the other, on what Joanna would do upon receipt

4 13:58:58 of your e-mail?

5 | 13:58:58 A. No.

6 13:58:58 Q. You thought it was likely that she might

7 13:59:00 take it down?

8 13:59:01 A. I don't know.

9 13:59:02 Q. Would you have thought it inappropriate

10 13:59:06 for her to take it down?

11 13:59:08 MR. WILKENS: Objection to the form.

12 13:59:08 THE WITNESS: I'm not able to judge on

13 13:59:10 what Joanna's job is or isn't.

14 13:59:13 BY MR. RUBIN:

15 13:59:14 Q. Would you have been pleased if she had

16 13:59:16 taken it down?

17 | 13:59:17 A. No.

18 13:59:17 Q. You wanted her to leave it up; right?

19 | 13:59:19 A. Correct.

20 13:59:21 Q. Did you tell her that you uploaded it?

21 13:59:23 A. I don't recall.

22 13:59:24 Q. It doesn't say that you uploaded it in

23 13:59:27 this e-mail, does it?

24 13:59:28 A. I didn't -- it doesn't say that. You a

25 13:59:31 correct.

1. **What is the primary purpose of the study?** (e.g., to evaluate the effectiveness of a new treatment, to explore the relationship between two variables, to describe a population, etc.)

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:59:58 MR. RUBIN: I would like to take a

3 14:00:00 five-minute break.

4 14:00:01 MR. WILKENS: Okay.

5 14:00:02 THE VIDEOGRAPHER: We are going off the

6 14:00:03 record. The time now is 1:59.

7 14:00:06 (Short break.)

8 14:13:17 THE VIDEOGRAPHER: We are going back on

9 14:13:17 the record. The time now is 2:12.

10 14:13:23 BY MR. RUBIN:

11 14:13:24 Q. Welcome back, Miss Wahtera.

12 14:13:29 Were you, at any time, told to preserve

13 14:13:32 documents of possible relevance to the litigation

14 14:13:36 between Viacom and YouTube and Google?

15 14:13:39 A. I don't recall.

16 14:13:40 Q. You don't recall, one way or the other,

17 14:13:42 whether you were ever told to preserve documents of

18 14:13:45 potential relevance?

19 14:13:46 A. I don't recall.

20 14:13:47 Q. Have you been preserving documents of

21 14:13:49 potential relevance to the litigation?

22 14:13:52 A. Yes.

23 14:13:52 Q. How have you been preserving those

24 14:13:54 documents?

25 14:13:57 A. I sent the e-mails, so I store anything

Schapiro Exhibit 93

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Viacom International, Inc., et al.,

Plaintiff,

v.
Youtube, Inc., et al.,

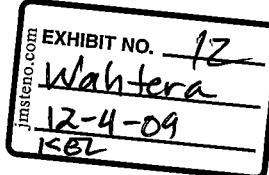
Defendant.

No. 1:07-cv-02103 (LLS)(FM)

DECLARATION OF
YU JIN KANG

I, Yu Jin Kang, declare:

1. I am a Custodian of Records for Yahoo! Inc. ("Yahoo!"), located in Sunnyvale, California. I am authorized to submit this declaration on behalf of Yahoo!. I make this declaration pursuant to the Federal Rules of Evidence Rule 902 (11) and in response to a Subpoena dated October 21, 2008. I have personal knowledge of the following facts, except as noted, and could testify competently thereto if called as a witness.
2. Attached hereto are true and correct copies of data pertaining to the Yahoo! subscriber identified in the Subpoena. Yahoo! servers record this data automatically at the time, or reasonably soon after, it is entered or transmitted, and this data is kept in the course of this regularly conducted activity and was made by regularly conducted activity as a regular practice. Yahoo! provides most of its

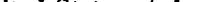


1 services to its subscribers free of charge. As such, Yahoo! does not collect billing
2 information or verified personal information from the majority of our users.

3

4 3. Pursuant to the federal Electronic Communications Privacy Act, 18 U.S.C. §§
5 2701, et seq., we have redacted information, including removing certain data
6 fields, that exceeds the scope of this request, is protected from disclosure or is
7 otherwise not subject to production.

8

9 I declare under penalty of perjury under the laws of the United States of America that the
10 foregoing is true and correct. 

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DATED: November 24, 2008

A handwritten signature in black ink, appearing to read "Yu Jin Kang", is positioned at the bottom left of the page. The signature is fluid and expressive, with a large, sweeping loop on the left side.

YAHOO! ACCOUNT MANAGEMENT TOOL

Login Name: **mysticalgirl8**
GUID: **UGWKJLJU3KA5XSZ7LRCYV7I3LA**
Yahoo Mail Name: **mysticalgirl8@yahoo.com**
(Alternate) Email Address: **mwahtera@hotmail.com**
Registration IP address: **204.110.112.2**
Account Created (reg): **Mon Sep 24 23:00:22 2007 GMT**
Other Identities: **mysticalgirl8 (Yahoo! Mail)**
Full Name **Ms Karaoke Girl**
Address1:
Address2:
City:
State, territory or province:
Country: **United States**
Zip/Postal Code: **01945**
Phone:
Time Zone:
Birthday: **October 8, 1976**
Gender: **Female**
Occupation:
Business Name:
Business Address:
Business City:
Business State:
Business Country: **us**
Business Zip:
Business Phone:
Business Email:

Login Tracker

Total Results: 0

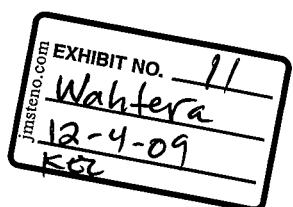
Search for **mysticalgirl8**

[\[Main Menu\]](#)

Schapiro Exhibit 94

YouTube Video ID: 49zOwm8ojD4

Metadata Field	Value
video id	49zOwm8ojD4
video title	The Heartbreak Kid Clip
video upload time	1190731640
video url	http://www.youtube.com/watch?v=49zOwm8ojD4
video keywords	The HeartbreakKid Clip Movie Comedy BenStiller Farrelly Brothers Queef Fart
video description	The Heartbreak Kid Clip
username of video uploader	mysticalgirl8
registration email	mysticalgirl8@yahoo.com
time of username registration	1190730855
IP Address from which username was registered	63.164.145.198



Schapiro Exhibit 95

Subject: RE: HBK - Farrelly Clips - For Youtube
From: "Teifeld, Tamar - Paramount" <EX:/O=VIACOM/OU=PARAMOUNT/CN=RECIPIENTS/CN=TEIFELTA>
To: Wahtera, Megan - Paramount
Cc: Date: Thu, 04 Oct 2007 16:09:04 +0000

Thank you

-----Original Message-----

From: Wahtera, Megan - Paramount
Sent: Thursday, October 04, 2007 9:07 AM
To: Teifeld, Tamar - Paramount
Subject: FW: HBK - Farrelly Clips - For Youtube
Importance: High

Fyi - I spoke to her and she's fine with parracount from here given this clip is on the epk.

-----Original Message-----

From: Wahtera, Megan - Paramount
Sent: Thursday, October 04, 2007 8:43 AM
To: Teifeld, Tamar - Paramount; Powell, Amy - Paramount
Subject: RE: HBK - Farrelly Clips - For Youtube
Importance: High

Hi Amy & Tamar,

I have to send youtube our video link by noon today.

That said, I am personally thinking it's fine to upload it from here via the paraccount (or I can make one up so its less obvious) given there is nothing under the radar about this clip.

The clip is one from the EPK, and will be featured on the homepage of youtube tomorrow with our corresponding ad unit and Farrelly intro. The clip has already been up on Yahoo! sans intro.

Let me know your thoughts, otherwise I have to head to Kinko's asap!

Thanks!
Megan

-----Original Message-----

From: Teifeld, Tamar - Paramount
Sent: Wednesday, October 03, 2007 4:50 PM
To: Wahtera, Megan - Paramount; Powell, Amy - Paramount
Cc: Worsnup, Mickey - Paramount
Subject: RE: HBK - Farrelly Clips

True - it will be from us anyway and if it is from our account, it will just live with the rest of our trailers. Amy - what do you think?

-----Original Message-----

From: Wahtera, Megan - Paramount
Sent: Wednesday, October 03, 2007 4:48 PM
To: Teifeld, Tamar - Paramount; Powell, Amy - Paramount
Cc: Worsnup, Mickey - Paramount
Subject: RE: HBK - Farrelly Clips

FYI - this goes with an ad unit on youtube on Friday - so to me, its apparent it's us.

Similar to what you see with Lions for Lambs today.

<http://youtube.com/>

-----Original Message-----

From: Teifeld, Tamar - Paramount
Sent: Wednesday, October 03, 2007 4:47 PM
To: Powell, Amy - Paramount; Wahtera, Megan - Paramount
Cc: Worsnup, Mickey - Paramount
Subject: RE: HBK - Farrelly Clips

Should I have Scott H upload?

-----Original Message-----

From: Powell, Amy - Paramount
Sent: Wednesday, October 03, 2007 4:46 PM
To: Wahtera, Megan - Paramount
Cc: Teifeld, Tamar - Paramount; Worsnup, Mickey - Paramount
Subject: Re: HBK - Farrelly Clips

I think it should be from off lot.....

What do you guys think about the tags?

----- Original Message -----

From: Wahtera, Megan - Paramount
To: Wahtera, Megan - Paramount; Powell, Amy - Paramount
Cc: Teifeld, Tamar - Paramount; Worsnup, Mickey - Paramount
Sent: Wed Oct 03 16:37:51 2007
Subject: RE: HBK - Farrelly Clips

It's OK to upload this one here from Parracount, correct?

Here are my tags:

The Heartbreak Kid Movie Ben Stiller Carlos Mencia Farrelly Brothers Comedy Funny Clip

From: Wahtera, Megan - Paramount
Sent: Wednesday, October 03, 2007 4:08 PM
To: Powell, Amy - Paramount
Cc: Teifeld, Tamar - Paramount; Worsnup, Mickey - Paramount
Subject: RE: HBK - Farrelly Clips

On it now!

From: Powell, Amy - Paramount
Sent: Wednesday, October 03, 2007 4:04 PM
To: Wahtera, Megan - Paramount
Cc: Teifeld, Tamar - Paramount; Worsnup, Mickey - Paramount
Subject: RE: HBK - Farrelly Clips

I say we do it now... gain some traction?

We should be very careful about what tags we use.

And, I'm assuming scott can help us dramatically....

Amy Powell

Senior Vice President

Interactive Marketing

Paramount Pictures

[REDACTED]

From: Wahtera, Megan - Paramount
Sent: Wednesday, October 03, 2007 4:02 PM
To: Powell, Amy - Paramount
Cc: Teifeld, Tamar - Paramount; Worsnup, Mickey - Paramount
Subject: RE: HBK - Farrelly Clips

We will get myspace one up asap!

Youtube is for our Friday buy - but I can upload now so it's live in advance if you prefer?

Let me know!

From: Powell, Amy - Paramount
Sent: Wednesday, October 03, 2007 3:59 PM
To: Wahtera, Megan - Paramount
Cc: Teifeld, Tamar - Paramount; Worsnup, Mickey - Paramount
Subject: RE: HBK - Farrelly Clips

Approved. When can we get live?

Amy Powell

Senior Vice President

Interactive Marketing

Paramount Pictures

[REDACTED]

From: Wahtera, Megan - Paramount
Sent: Wednesday, October 03, 2007 3:13 PM
To: Powell, Amy - Paramount
Cc: Teifeld, Tamar - Paramount; Worsnup, Mickey - Paramount
Subject: HBK - Farrelly Clips

Hi Amy,

At long last, here are the clips.

These are web friendly versions for filmmakers to review.

http://downloads.paramount.com/mp/heartbreak_kid/myspace_final.mov

http://downloads.paramount.com/mp/heartbreak_kid/youtube_final.mov

These are not the versions I am uploading to YouTube or MySpace.

I have higher quality ones that would take too long for approvers to load which we will use for the actual sites.

Let us know when we can do so – YouTube needs by 12pm tomorrow and MySpace needs asap.

BIG thanks to Mickey for helping us out on this one!!

Thanks!

Megan Wahtera
Executive Director
Interactive Marketing
Paramount Pictures
P: 323.956.8516 | F: 323.862.1101