

Schapiro Exhibit 135

From: Hallie, Michelena [Michelena.Hallie@mtvn.com]
Sent: Wednesday, March 08, 2006 3:11 PM
To: Mark M. Ishikawa
Cc: Kaufman, Steve
Subject: FW: Titles I got

Mark, we've identified several titles that represent a cross section of MTVN properties:

Avatar
Pros v Joes (just premiered this week)
Noah's Ark
Best Week Ever
Andy Milonakis
8th and Ocean
Wonder Showzen

The first episode of 8th and Ocean aired on March 7 with the second episode airing on March 14. This may be a good show to track the immediacy of our programs hitting the internet.

One other point to keep in mind. MTVN does feed clips of our programs on to the internet as a marketing strategy, so it is quite probable that those clips will appear in the P2P realm. Since these are essentially authorized distributions, we would have to develop a mechanism to filter them out of our targets.

We look forward to our meeting in several weeks, and learning more about your company.

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 003724700

Schapiro Exhibit 136

To: 'Anna Nguyen' <anna@youtube.com>
From: Phoebe McDowell <pmcdowell@youtube.com>
Cc: 'Joanna Ging' <jging@youtube.com>
Bcc:
Received Date: 2006-12-20 19:27:31 GMT
Subject: Jackass 2 PVA 26th

Jackass 2 HP RB 26th is all set :-)

300x35 has been scheduled (attached).

728x90 Watch/Channel has been scheduled (attached) - Watch tag

Video has been scheduled

Homepage Clip w/ Bungee Jump
<http://www.youtube.com/watch?v=UtNKMRNI7r4>

Again, Joanna if you have time to double-check that would be great!

Thx,

Phoebe

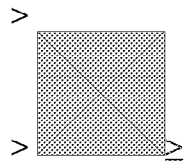
Attachments:

Jackass2 728x90 BONUS The Digital Edge - Paramount Home Entertainment Iframe Redirects for PHEV-PHE-124-01-DEN.htm
The Digital Edge - Paramount Home Entertainment Iframe Redirects for PHEV-PHE-124-01-DEN.htm

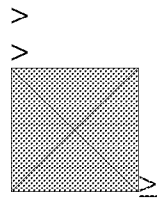
Company: The Digital Edge **Publisher:** YouTube
Branch: MEC Interaction - NYC **Media Plan Name:** Jackass: Number Two
Client: Paramount Home Entertainment **Media Plan Number:** PHEV-PHE-124-01-DEN
Advertiser: Paramount Home Entertainment **Media Plan Start Date:** Dec 26, 2006
Media Plan End Date: Jan 01, 2007

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Site Name: YouTube **Placement Size:** 300x35
Package: Homepage Video Takeover **Placement Start Date:** Dec 26, 2006
Placement Name: Homepage Video Takeover **Placement End Date:** Dec 26, 2006



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> If you do not see an image above, it is possible that the ad serving scheduler has not updated yet. The scheduler update occurs every 60 minutes. Please test your redirects at least 60 minutes after you have assigned ads to placements.



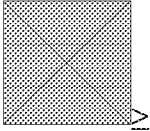
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Package: Standard Channel **Placement Start Date:** Dec 26, 2006
Page (video assets -
outtakes, spoofs,
spots etc)

Placement Name: Standard Channel **Placement End Date:** Jan 01, 2007
Page (video assets -
outtakes, spoofs,
spots etc)

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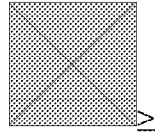
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> If you do not see an image above, it is possible that the ad serving scheduler has not updated yet. The scheduler update occurs every 60 minutes. Please test your redirects at least 60 minutes after you have assigned ads to placements.

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Schapiro Exhibit 137

From: Robin Bechtel <[REDACTED]>
Sent: Friday, July 7, 2006 1:22 PM
To: stone movement <[REDACTED]>; Jamie Kennedy <[REDACTED]>; Pam Kohl <[REDACTED]>; Danny Ostrow <[REDACTED]>
Cc: Chris Roletter <[REDACTED]>
Subject: Fwd: JKss player

JKss

how fun is this, and the intro is AMAZING

this is a little player that we get out to websites so that they can host the full album listening party

R

Begin forwarded message:

From: Jonathan Sulkow <[REDACTED]>
Date: July 7, 2006 1:12:25 PM PDT
To: Robin Bechtel <[REDACTED]>, PROD <[REDACTED]>
Cc: Kathlene Kiernan <[REDACTED]>, Jeff Watson <[REDACTED]>, Jessica Jones <[REDACTED]>, Mio Shibata <[REDACTED]>, stephanie Weinstein <[REDACTED]>, Taylor Brigode <[REDACTED]>, Ethan Kaplan <[REDACTED]>, Mio Shibata <[REDACTED]>
Subject: Re: JKss player

OK -- here's my latest --- I think there was one more video to add -- I will go thru the list.
All the links work -- the trax are correct, the email signup works.
We could launch this + update next week.
Jon

http://www.prod4ever.com/wbr/jamiekennedy/jkss_albumplayer.html

* * P R O D * *
<http://www.prod4ever.com>
306 dartmouth street
boston, ma 02116
[REDACTED]

On Jul 7, 2006, at 2:17 PM, Robin Bechtel wrote:

i want the main videos to show up

rollin w/ saget fcreeetus video
podcats
e 40 footage
cd now performance
them performing on kimmel

the main ones, taylor can email you the list

R

On Jul 7, 2006, at 7:32 AM, Jonathan Sulkow wrote:

Sounds good.

Robin do you want us to pull all the jkss videos from youtube? or do you just wanna give us more videos.

Also .. someone needs to send us the hidden track. It was not in our download.

Jon

_ P R O D *_*
<http://www.prod4ever.com>
306 dartmouth street
boston, ma 02116

On Jul 6, 2006, at 7:34 PM, Robin Bechtel wrote:

that is fine thanks

VIDEOS

can it be an entire page w/ videos
from you tube? there are so many podcasts
video, e 4o footage, etc.

something goes by kinda quick when you open
about in stores can that be on the home page of the player
pre order now, instores 7/11

add infomercial in there when its ready
next week

add jamie and stu my space pages
as links and jkssrecords.com as main links

buy links should go to the store that jeff is creating now

take out send to a friend
thx

make RINGTONE section
add shortcode informaton
include audio of how to buy ringtones which is on hidden
track on cd
link to cingular promotion what is my name, if still up
when will ringtone store be up?


make sure when you put the music in the player, the hidden
track is there

R

On Jul 6, 2006, at 3:35 PM, Kathlene Kiernan wrote:

here's the latest version of the JKSS player

http://prod4ever.com/wbr/jamiekennedy/jkss_albumplayer.html

warner


there will be more fun stuff with jamie and
stu as well
for launch and all functions will be working

let me know of any changes / additions
and jon will get it done first thing in the
mroming
+ have it ready for launch

thanks
- kk

--

No virus found in this incoming message.

Checked by AVG Free Edition.

Version: 7.1.394 / Virus Database: 268.9.10/383 - Release Date: 7/7/2006

Schapiro Exhibit 138

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

_____x

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

VIDEOTAPED DEPOSITION OF DAMON BURRELL
NEW YORK, NEW YORK
TUESDAY, APRIL 14, 2009
JOB NO.: 16730

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APRIL 14, 2009

10:09 a.m.

VIDEOTAPED DEPOSITION OF DAMON
BURRELL, held at the offices of WILSON
SONSINI GOODRICH & ROSATI, PC, 1301 Avenue of
the Americas, New York, New York, pursuant to
notice, before JENNIFER OCAMPO-GUZMAN, a
Shorthand Reporter and Notary Public of the
State of New York.

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A P P E A R A N C E S:
FOR THE PLAINTIFFS VIACOM INTERNATIONAL,
INC.:

JENNER & BLOCK, LLP
By: SCOTT B. WILKENS, Esq.
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
(202) 639-6000 swilkens@jenner.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE,
LLC and GOOGLE, INC.:

WILSON SONSINI GOODRICH & ROSATI, PC
BY: BART E. VOLKMER, ESQ.
650 Page Mill Road
Palo Alto, California 94304-1050
650-565-3508 bvolkmer@wsgr.com

ALSO PRESENT:
MARCELO RIVERA, Videographer

1 Burrell

11:03:45 2 THE VIDEOGRAPHER: The time is
11:03:46 3 11:03 a.m., and we're back on the
11:03:50 4 record.

11:03:52 5 A. So I just wanted to clarify, when
11:03:54 6 you had asked me earlier who I had met with
11:03:59 7 for prep sessions, it is both Scott and also
11:04:06 8 Stanley Pierre-Louis, for both sessions.

11:04:08 9 Q. Okay. Do you know if the
11:04:20 10 communications department at MTV ever engages
11:04:23 11 some of these third-party viral marketing
11:04:27 12 companies that we've been discussing today?

11:04:30 13 A. Yes.

11:04:31 14 Q. And do you know who in the
11:04:35 15 communications department at MTV would be
11:04:37 16 responsible for dealing with and managing the
11:04:42 17 third-party marketing agency relationships?

11:04:49 18 A. I know of multiple people.

11:04:52 19 Q. Can you name them for me, please?

11:04:53 20 A. Ariana Urbont. David French, he's
11:05:06 21 no longer there. He left recently. Emily
11:05:22 22 Yeomans.

11:05:34 23 Just give me a second, I have her
11:05:38 24 pictured. Marnie Black.

11:05:44 25 Q. And can you tell me the

1 Burrell

11:05:50 2 circumstances in which it would be the
11:05:52 3 communications department that is engaging
11:05:54 4 the third-party marketing agencies, instead
11:05:59 5 of the marketing department?

11:06:04 6 A. For press initiatives.

11:06:05 7 Q. So the communications department
11:06:12 8 would be used for press initiatives and, in
11:06:17 9 that circumstance, would be hiring
11:06:19 10 third-party agencies; is that right?

11:06:20 11 A. Correct.

11:06:21 12 Q. And does the communications
11:06:27 13 department at MTV ever use YouTube as part of
11:06:30 14 their press initiatives?

11:06:39 15 A. I wouldn't know.

11:06:40 16 Q. If I wanted to find out all of the
11:07:11 17 clips that MTV has authorized to be on
11:07:15 18 YouTube, for promotional purposes, how would
11:07:18 19 I go about finding that out?

11:07:20 20 MR. WILKENS: Objection, lack of
11:07:22 21 foundation.

11:07:22 22 A. Repeat your question again?

11:07:24 23 Q. Sure. If I wanted to find out all
11:07:26 24 the clips that MTV has authorized to be on
11:07:28 25 YouTube, for promotional purposes, how would

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1 Burrell

11:07:29 2 I go about finding that out?

11:07:38 3 A. Best way would be to ask all of the
11:07:50 4 individual agencies that we've used.

11:07:57 5 People's computers.

11:08:06 6 Q. Does MTV ever use viral marketing
11:08:10 7 to promote DVD sales?

11:08:23 8 A. I can't -- I can't remember.

11:08:31 9 I don't oversee DVD promotions.

11:08:36 10 Q. Do you oversee on-air promotions?

11:08:39 11 A. No, I do not.

11:08:40 12 Q. I'm sorry. We will just back up.

11:08:43 13 What do you oversee?

11:08:45 14 A. I'm responsible for the promotion
11:08:47 15 of our television shows and our events to
11:08:52 16 consumers off of MTV.

11:08:55 17 Q. Do you know who heads up viral
11:09:07 18 marketing efforts at Comedy Central?

11:09:15 19 A. I don't.

11:09:16 20 Q. Do you know anybody at Comedy
11:09:20 21 Central who works with viral marketing
11:09:21 22 agencies?

11:09:28 23 A. I can't, I can't remember.

11:09:30 24 Q. What about Nickelodeon?

11:09:44 25 A. What's your question?

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1 Burrell

11:09:45 2 Q. Do you know who heads up viral
11:09:48 3 marketing efforts at Nickelodeon?

11:09:51 4 A. No, I don't.

11:09:51 5 Q. Do you know anyone who works in
11:09:57 6 viral marketing -- who works at viral
11:10:02 7 marketing efforts at Nickelodeon?

11:10:03 8 A. No, I don't.

11:10:09 9 Q. What about at VH1, do you know
11:10:16 10 anyone who works on viral marketing efforts
11:10:19 11 at VH1?

11:10:21 12 A. Yes, I do.

11:10:29 13 Q. And who is that?

11:10:30 14 A. Debra Kadetsky.

11:10:42 15 Q. Do you know anyone else at VH1 who
11:10:45 16 works on viral marketing efforts?

11:10:47 17 A. I do not.

11:10:52 18 Q. Are you familiar with a company
11:11:14 19 called BayTSP?

11:11:16 20 A. Not that I can recall.

11:11:17 21 Q. Have you ever been asked to review
11:11:24 22 video clips, before they are taken down from
11:11:27 23 the YouTube service, to determine whether
11:11:28 24 they were uploaded for marketing purposes?

11:11:35 25 A. Nothing that I can remember.

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1 Burrell

13:16:18 2 A. Out of context, I don't know what
13:16:23 3 she intended to mean when she said that.

13:16:25 4 Q. Do you have any understanding as to
13:16:32 5 why she would have made a statement that you
13:16:34 6 oversee internal viral marketing efforts at
13:16:36 7 MTV?

13:16:37 8 MR. WILKENS: Same objection.

13:16:39 9 A. Again, out of -- out of context, I
13:16:48 10 don't know what she intended to mean when she
13:16:50 11 made that statement.

13:16:51 12 Q. The context is she said that you
13:16:54 13 oversaw those initiatives.

13:16:55 14 MR. WILKENS: Objection, for the
13:16:56 15 same reasons I said earlier. If you are
13:16:58 16 not going to show him the transcript, I
13:17:01 17 object.

13:17:02 18 Q. And my question is, is she
13:17:04 19 mistaken?

13:17:05 20 MR. WILKENS: Same objection.

13:17:06 21 A. What's your question now?

13:17:12 22 Q. Is -- was Ms. Exarhos mistaken when
13:17:17 23 she testified, under oath, that you oversaw
13:17:20 24 initiatives related to MTV's internal viral
13:17:24 25 marketing?

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13:17:24 2 MR. WILKENS: Objection to the
13:17:25 3 characterization of Ms. Exarhos'
13:17:27 4 testimony.

13:17:29 5 A. I'm not sure what she intended to
13:17:31 6 mean when she made that statement.

13:17:35 7 My responsibilities at MTV are to
13:17:39 8 market and promote our television shows and
13:17:42 9 events, utilizing multiple marketing tactics.
13:17:47 10 Viral marketing is included as one of those.

13:17:50 11 Q. Is it possible that all the MTV
13:17:54 12 clips that Viacom is suing YouTube over were
13:17:57 13 uploaded by MTV employees or its agents?

13:18:00 14 MR. WILKENS: Objection.

13:18:03 15 A. Your question is, is it possible?

13:18:05 16 Q. Yes. Is it possible that all of
13:18:07 17 the MTV clips that Viacom is suing YouTube
13:18:09 18 over were uploaded by MTV employees or its
13:18:14 19 agents?

13:18:14 20 MR. WILKENS: Objection.

13:18:14 21 A. I wouldn't know.

13:18:15 22 Q. I have a list of television
13:18:34 23 programs that appeared on MTV or MTV2, and
13:18:37 24 I'm going to ask you whether or not, for each
13:18:39 25 program, MTV's agents or employees ever

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13:18:44 2 uploaded clips from those shows to YouTube.

13:18:47 3 A. Okay.

13:18:47 4 Q. And you can just answer whether you
13:18:49 5 know or not, yes, no, or if you don't know,
13:18:51 6 you don't know.

13:18:52 7 The show 52 Bands/52 Weeks, do you
13:18:58 8 know if MTV agents or employees ever uploaded
13:19:02 9 clips from that show to YouTube?

13:19:03 10 A. I don't know.

13:19:04 11 Q. What about True Life?

13:19:06 12 A. I wouldn't be able to remember.

13:19:09 13 Q. You don't remember, as you sit here
13:19:15 14 today?

13:19:15 15 A. I don't remember.

13:19:16 16 Q. That's Amore?

13:19:19 17 A. That's Amore? I definitely don't
13:19:24 18 remember.

13:19:24 19 Q. America's Best Dance Crew?

13:19:28 20 A. And the question is?

13:19:32 21 Q. Have, have MTV employees or its
13:19:36 22 agents ever uploaded clips from these
13:19:40 23 programs to YouTube?

13:19:40 24 A. I don't -- I don't know.

13:19:43 25 Q. The Paper?

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	1		Burrell
13:19:48	2	A.	I don't know.
13:19:50	3	Q.	Rock The Cradle?
13:19:56	4	A.	I can't remember.
13:19:58	5	Q.	Yo! MTV Raps?
13:20:02	6	A.	Do not know.
13:20:03	7	Q.	Hottest MCs In The Game?
13:20:13	8	A.	Definitely do not know.
13:20:14	9	Q.	From G's to Gents?
13:20:20	10	A.	I can't remember.
13:20:24	11	Q.	Legally Blonde The Musical?
13:20:28	12	A.	I can't remember.
13:20:36	13	Q.	American Mall?
13:20:38	14	A.	Do not know.
13:20:44	15	Q.	Buzzin'?
13:20:52	16	A.	Sorry, I can't remember.
13:20:53	17	Q.	How about Busted?
13:20:54	18	A.	Do not know.
13:20:55	19	Q.	Video Music Awards?
13:20:57	20	A.	Can't remember.
13:21:28	21	Q.	Paris BFF?
13:21:33	22	A.	Cannot remember.
13:21:36	23	Q.	Man and Wife?
13:21:40	24	A.	Can't remember.
13:21:48	25	Q.	I'm From Rolling Stone?

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13:21:51 2 A. Do not know.

13:21:52 3 Q. Wonder Showzen?

13:21:54 4 A. Do not know.

13:21:56 5 Q. Dancelife?

13:21:58 6 A. Do not know.

13:21:59 7 Q. Robin Big?

13:22:06 8 A. Can't remember.

13:22:08 9 Q. Bam's Unholy Union?

13:22:12 10 A. Do not know.

13:22:13 11 Q. A Shot At Love?

13:22:15 12 A. I can't remember on that one

13:22:24 13 either.

13:22:24 14 Q. Call To Greatness?

13:22:25 15 A. Do not know.

13:22:26 16 Q. Brooke Knows Best?

13:22:29 17 A. Do not know.

13:22:32 18 I don't think that's an MTV show.

13:22:34 19 Q. There's a program, a reality show

13:22:36 20 with Brooke Hogan.

13:22:38 21 Is that not Brooke Knows Best?

13:22:41 22 A. That's on VH1.

13:22:44 23 I only work on MTV.

13:22:45 24 Q. Okay. FN MTV?

13:22:48 25 A. Can't remember.

	1		Burrell
13:22:51	2	Q.	Where My Dog's At?
13:22:55	3	A.	Do not know.
13:22:57	4	Q.	Two-A-Days?
13:22:59	5	A.	Can't remember.
13:23:02	6	Q.	Yo! Mama?
13:23:19	7	A.	I can't remember.
13:23:20	8	Q.	Pimp My Ride?
13:23:22	9	A.	Do not know.
13:23:23	10	Q.	Engaged & Underage?
13:23:25	11	A.	Do not know.
13:23:26	12	Q.	Beavis And Butthead?
13:23:31	13	A.	Can't remember.
13:23:36	14	Q.	Wild 'N Out?
13:23:38	15	A.	Cannot remember.
13:23:51	16	Q.	Human Giant?
13:23:54	17	A.	Can't remember.
13:24:04	18	Q.	Adventures in Hollywood?
13:24:08	19	A.	Do not know.
13:24:10	20	Q.	Exposed?
13:24:12	21	A.	Don't know.
13:24:18	22	Q.	Final Fu?
13:24:24	23	A.	Do not know.
13:24:25	24	Q.	Homewrecker?
13:24:28	25	A.	Do not know.

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	1		Burrell
13:24:29	2	Q.	Cribs?
13:24:30	3	A.	Do not know.
13:24:33	4	Q.	Maui Fever?
13:24:37	5	A.	Can't remember on that one.
13:24:42	6	Q.	Daria?
13:24:50	7	A.	The name of the show is Daria?
13:24:52	8	Q.	D-A-R-I-A?
13:24:55	9	A.	Do not know.
13:24:56	10	Q.	Wild Boys?
13:24:58	11	A.	Definitely do not know.
13:25:00	12	Q.	Run's House?
13:25:06	13	A.	Can't remember specifically.
13:25:08	14	Q.	Do you remember generally?
13:25:11	15	A.	I do not.
13:25:12	16	Q.	Jackass?
13:25:16	17	A.	I can't remember.
13:25:18	18	Q.	Andy Milonakis Show?
13:25:25	19	A.	Do not know.
13:25:26	20	Q.	Cheyenne?
13:25:28	21	A.	I can't remember.
13:25:34	22	Q.	Punk'd?
13:25:37	23	A.	I wouldn't know. I don't know.
13:25:41	24	Q.	Kenny versus Spenny?
13:25:45	25	A.	I do not know.

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1 Burrell

13:25:46 2 Q. Short Circuits?

13:25:51 3 A. Just -- the question is --

13:26:11 4 Q. Whether MTV's employees or agents

13:26:14 5 ever uploaded clips from these shows to

13:26:17 6 YouTube for marketing purposes.

13:26:22 7 A. I do not know.

13:26:23 8 Q. The Hills?

13:26:24 9 A. I can't remember.

13:26:28 10 Q. Celebrity Deathmatch?

13:26:33 11 A. I do not know.

13:26:34 12 Q. The Duel?

13:26:40 13 A. I can't remember.

13:26:41 14 Q. Laguna Beach?

13:26:46 15 A. Definitely cannot remember.

13:26:50 16 Q. Twentyfourseven?

13:26:51 17 A. Definitely cannot remember.

13:26:52 18 Q. Real World?

13:26:53 19 A. Which one?

13:26:54 20 Q. Any of them.

13:26:56 21 A. I can't, I can't remember here.

13:27:11 22 Q. Celebrity Rap Superstar?

13:27:16 23 A. Do not remember.

13:27:17 24 Q. My Super Sweet 16?

13:27:21 25 A. I wouldn't know.

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1 Burrell

13:27:24 2 Q. Making The Band?

13:27:25 3 A. I cannot remember.

13:27:31 4 Q. Little Talent Show?

13:27:32 5 A. I do not know.

13:27:33 6 Q. Life of Ryan?

13:27:34 7 A. Can't remember.

13:27:45 8 MR. VOLKMER: Okay. Let's go off
13:27:48 9 the record for one second.

13:27:49 10 THE VIDEOGRAPHER: The time is
13:27:52 11 1:27 p.m., and we're going off the
13:27:54 12 record.

13:28:06 13 (A brief recess was taken.)

13:30:36 14 THE VIDEOGRAPHER: The time is
13:30:53 15 1:30 p.m., we are back on the record.

13:30:55 16 Q. Mr. Burrell, we just went over a
13:30:57 17 list of shows, and I asked whether MTV's
13:31:02 18 employees or agents had ever uploaded clips
13:31:05 19 from those shows to YouTube for marketing
13:31:06 20 purposes. And you were unable to answer for
13:31:10 21 any of those shows whether that practice had
13:31:12 22 occurred, and I'm curious if there is anyone
13:31:15 23 else at MTV who might be in a better position
13:31:16 24 to answer those questions.

13:31:20 25 A. I don't know if there is anyone

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1 Burrell

13:31:27 2 that would know.

13:31:27 3 Q. You're the vice president of
13:31:30 4 consumer marketing at MTV, correct?

13:31:33 5 A. Correct.

13:31:33 6 Q. And is there anyone who has a job
13:31:36 7 title that you can think of that might be in
13:31:39 8 a better position to answer those questions
13:31:41 9 than you?

13:31:46 10 A. I don't think there is any one
13:31:47 11 person, no.

13:31:48 12 Q. Do you think there are groups of
13:31:50 13 people who might be in a better position to
13:31:52 14 answer those questions than you?

13:31:54 15 A. Yes.

13:31:54 16 Q. And who are those groups?

13:32:02 17 A. The agencies that we worked with to
13:32:05 18 promote our shows would have a record of what
13:32:08 19 we did to promote and the specific tactics we
13:32:12 20 used to promote our shows.

13:32:14 21 Q. When the agencies upload materials
13:32:24 22 to UGC websites, they do so with MTV's
13:32:31 23 authorization, correct?

13:32:38 24 A. We authorize agencies to utilize
13:32:41 25 multiple tactics to promote our shows.

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1 Burrell

13:32:46 2 Q. And one of those tactics includes
13:32:53 3 uploading materials to internet websites; is
13:32:55 4 that right?

13:32:55 5 A. That's correct.

13:32:56 6 Q. And when that occurs, those uploads
13:33:01 7 are authorized by MTV, right?

13:33:05 8 MR. WILKENS: Objection.

13:33:10 9 A. We authorize our agencies to
13:33:13 10 utilize multiple tactics to promote our
13:33:15 11 television shows. Viral marketing is one of
13:33:17 12 those tactics.

13:33:18 13 Q. When viral marketing is employed by
13:33:24 14 the agency, and the agency uploads materials
13:33:27 15 to websites, those uploads are authorized,
13:33:30 16 correct?

13:33:34 17 A. The agencies that we employ are
13:33:36 18 authorized to utilize multiple viral
13:33:38 19 marketing tactics to promote our shows.
13:33:45 20 Uploading is one of them.

13:33:50 21 MR. VOLKMER: I would like to mark
13:33:51 22 Exhibit 10.

13:33:53 23 (Exhibit Burrell-10, E-mail chain,
13:33:53 24 Bates Nos. VIA00830869 through
13:33:53 25 VIA00830873, marked for identification,

1 Burrell

13:38:59 2 A. It could be multiple things.

13:39:02 3 Q. What could it be?

13:39:06 4 A. If I were to assume, it could -- it
13:39:13 5 could be content from Lily Allen, it could be
13:39:21 6 content from MTV's Discover & Download. It
13:39:25 7 could be content from a tour. It could
13:39:28 8 potentially be content from Cornerstone.

13:39:40 9 Q. But you're asking whether it's
13:39:41 10 linking to "our content," correct?

13:39:49 11 A. What I wrote in the e-mail was, "Is
13:39:52 12 it linking to our content on YouTube?"
13:39:58 13 That's what I wrote.

13:39:58 14 Q. Right. And what were you referring
13:40:00 15 to, when you said "our content"?

13:40:02 16 Are you talking about MTV
13:40:03 17 television programs?

13:40:05 18 MR. WILKENS: Objection.

13:40:05 19 A. Unfortunately, I can't remember
13:40:12 20 what, what I meant at the time when I wrote
13:40:13 21 this.

13:40:14 22 Q. And then you say, "If not, I don't
13:40:16 23 see any issues."

13:40:20 24 Why would there be issues linking
13:40:22 25 to MTV content on YouTube in an MTV press

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1 Burrell

13:40:25 2 release?

13:40:35 3 A. I can't remember what my thought
13:40:39 4 process was at the time when I wrote this and
13:40:40 5 what those issues, potential issues could
13:40:43 6 have, could have been; what I was thinking.

13:40:55 7 Q. That content that was being linked
13:41:08 8 to, in this press release on YouTube, that
13:41:14 9 was authorized to be on YouTube, right?

13:41:16 10 MR. WILKENS: Objection.

13:41:17 11 A. I didn't work on this, so I
13:41:24 12 wouldn't know.

13:41:25 13 Q. You don't know whether the
13:41:29 14 content -- the YouTube links, I should say,
13:41:33 15 that were referenced in this press release,
13:41:36 16 whether those clips were authorized to be on
13:41:38 17 the YouTube service?

13:41:41 18 A. I didn't work on this campaign, so
13:41:43 19 I don't know what was done to promote the
13:41:45 20 show.

13:41:45 21 Q. If you could turn to the second
13:41:53 22 page of this exhibit, it says "YouTube
13:41:57 23 links," and it has a number of YouTube clips
13:42:01 24 that are referenced in this press release.

13:42:04 25 You don't know whether those clips

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1 Burrell

13:42:07 2 were authorized to be on YouTube?

13:42:12 3 A. Again, I didn't work on this
13:42:13 4 campaign, so I don't know what was done to
13:42:20 5 promote this campaign.

13:42:22 6 Q. Setting aside your relationship to
13:42:28 7 this particular campaign, as you sit here
13:42:31 8 today, do you know, one way or the other,
13:42:33 9 whether these clips that are referenced in
13:42:34 10 the second page of this exhibit are
13:42:36 11 authorized to be up on YouTube?

13:42:38 12 A. I don't know.

13:43:07 13 MR. VOLKMER: I would like to mark
13:43:08 14 Exhibit 11.

13:43:22 15 (Exhibit Burrell-11, E-mail chain,
13:43:22 16 Bates Nos. VIA00830895 and VIA00830896,
13:44:15 17 marked for identification, this date.)

13:44:15 18 Q. This is an e-mail thread that was
13:44:17 19 forwarded to Mr. Burrell and Mr. Armenia and
13:44:20 20 Ms. Preston from Tina Exarhos on December 29,
13:44:27 21 2006. And if you could turn to the fourth
13:44:30 22 e-mail from the top, which is at 11:07 a.m.
13:44:39 23 Ms. Exarhos asks, "Does this also mean that
13:44:42 24 we need to pull down content that we uploaded
13:44:44 25 to YouTube for marketing purposes?"

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1 Burrell

13:44:46 2 Do you see that?

13:44:47 3 A. Yes, I see, I see that in the
13:44:49 4 e-mail.

13:44:49 5 Q. And at that time there was content
13:44:51 6 on YouTube that MTV had uploaded for
13:44:55 7 marketing purposes, correct?

13:44:58 8 A. I don't remember.

13:44:59 9 Q. But that's what Ms. Exarhos is
13:45:06 10 reporting?

13:45:12 11 A. I don't know what her intent was
13:45:14 12 when she -- when she wrote this, when she
13:45:18 13 wrote this e-mail.

13:45:19 14 Q. Setting aside her intent, she's
13:45:24 15 reporting that there is content that's been
13:45:26 16 uploaded to YouTube for marketing purposes;
13:45:27 17 is that how you read this e-mail?

13:45:29 18 A. I don't know what she intended to
13:45:49 19 mean, when she wrote this.

13:45:50 20 Q. She asked, "Does this also mean we
13:46:01 21 need to pull down content that we've uploaded
13:46:03 22 to YouTube for marketing purposes?"

13:46:06 23 She's reporting that there's
13:46:08 24 content on the YouTube service that MTV has
13:46:12 25 uploaded for marketing purposes; isn't that

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Schapiro Exhibit 139

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., COMEDY)
 PARTNERS, COUNTRY MUSIC)
 TELEVISION, INC., PARAMOUNT)
 PICTURES CORPORATION, and BLACK)
 ENTERTAINMENT TELEVISION LLC,)
)
 Plaintiffs,)
 vs.) Case No. 07CV2203
 YOUTUBE, INC., YOUTUBE, LLC,)
 and GOOGLE, INC.,)
)
 Defendants.)

THE FOOTBALL ASSOCIATION PREMIER)
 LEAGUE LIMITED, BOURNE CO., et al.,)
 on behalf of themselves and all)
 others similarly situated,)
)
 Plaintiffs,)
 vs.) Case No. 07CV3582
 YOUTUBE, INC., YOUTUBE, LLC, and)
 GOOGLE, INC.,)
)
 Defendants.)

VIDEOTAPED DEPOSITION OF TINA EXARHOS

NEW YORK, NEW YORK

MONDAY, FEBRUARY 23, 2009

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 16507

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February 23, 2009

9:36 a.m.

VIDEOTAPED DEPOSITION OF TINA
EXARHOS, held at the offices of Wilson
Sonsini Goodrich & Rosati, 1301 Avenue of,
New York, New York, pursuant to notice,
before before Erica L. Ruggieri,
Registered Professional Reporter and
Notary Public of the State of New York.

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

JENNER & BLOCK, LLP
BY: SCOTT B. WILKENS, ESQ
1099 New York Avenue, NW
Washington, D.C. 20001
(202) 639-6000
Swilkens@jenner.com

FOR THE DEFENDANTS

WILSON SONSINI GOODRICH & ROSATI, PC
BY: BART E. VOLKMER, ESQ.
650 Page Mill Road
Palo Alto, CA 94304
(650) 493-9300
Bvolkmer@wsgr.com

- and -

MAYER BROWN, LLP
BY: JASON KIRSCHNER, ESQ.
1675 Broadway
New York, New York 10019
(212) 506-2500
Jkirschner@mayerbrown.com

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A P P E A R A N C E S: (Cont'd)

ALSO PRESENT:

MICHELENA HALLIE, MTV Networks
CARLOS KING, Videographer

* * *

1 T. EXARHOS

2 different.

04:27:33

3 I'd be interpreting what she's
4 referring to here. I don't think it's
5 necessarily referring to that, how the
6 other one was posted. Reading it back,
7 it's not exactly clear to me just who did
8 what.

04:27:46

9 I mean she's clearly saying she
10 thinks that we should post another one,
11 but the whole body of this is not -- I
12 mean how this all happened is not clear to
13 me.

04:27:58

14 Q. Right. But there was a plan --
15 whatever the origin of the first clip,
16 there was a plan by MTV to release a
17 second clip regarding the Celebrity Rap
18 Superstar program, right?

04:28:11

19 A. Yes.

20 MR. WILKENS: Objection.

21 A. It looks like that.

22 Q. Do you know from whom
23 Ms. Manning was waiting to receive another
24 clip to leak?

04:28:19

25 A. I don't know.

1 T. EXARHOS

2 Q. Do you know if the clip that's
3 being referenced in this e-mail contained
4 a call to action or a tune-in message?

04:28:45 5 A. I don't know.

6 MR. VOLKMER: I'd like to mark
7 Exhibit 34.

8 (Exarhos Exhibit 34, e-mail
9 thread, bearing Bates number
04:29:56 10 VIA02359230 to 9232, marked for
11 identification, as of this date.)

12 Q. This is an e-mail bearing the
13 Bates number VIA02359230 to 9232.

14 (Witness reviews document.)

04:30:04 15 A. Okay.

16 Q. Turning to the last e-mail in
17 the thread on September 19, 2007 at 12:23.
18 Ms. Manning writes, "The Perez Hilton
19 second leak video has 7,606 views in one
04:30:36 20 day. Gawker ran the YouTube video, which
21 led to most of the views."

22 That e-mail suggests that MTV
23 leaked a second video to YouTube,
24 featuring Perez Hilton, to promote
04:30:52 25 Celebrity Rap Superstar, right?

1 T. EXARHOS

2 MR. WILKENS: Objection.

3 A. Well, there was definitely video
4 of the show and on all the sites that she
04:31:17 5 listed.

6 Q. Including YouTube?

7 A. Yes.

8 Q. And MTV was responsible for the
9 leaking of that second Perez Hilton video,
04:31:31 10 correct?

11 MR. WILKENS: Objection.

12 A. It's not clearly stated. I'm
13 not sure.

14 Q. Isn't that the most reasonable
04:31:47 15 inference of this document, that MTV was
16 behind the leaking of the Perez Hilton
17 videos to promote the show Celebrity Rap
18 Superstar?

19 MR. WILKENS: Objection.

04:32:02 20 A. We were definitely in promotion
21 mode for this show.

22 See, again, I can't say
23 definitively based on this e-mail, because
24 I wasn't overseeing this specific
04:32:12 25 campaign. You could make that guess, but

1 T. EXARHOS

2 I can't tell you definitively.

04:32:23

3 Q. Right. But you have
4 considerable expertise in marketing,
5 especially the marketing practices at MTV.
6 There might be no one who is more
7 qualified to make a guess about what's
8 happening in this e-mail than you. And I
9 want to know what you think is the most
10 likely scenario here.

04:32:32

11 Is this clip being leaked to
12 YouTube with MTV's authorization?

13 MR. WILKENS: Objection.

04:32:50

14 A. Yeah. Well, I have expertise.
15 I just don't have the specifics around
16 this campaign. So again, my guess,
17 without the definitive knowledge, is that
18 it was; but it's a guess, because I don't
19 have the information.

04:33:03

20 Q. Okay. And if you could turn to
21 the last page.

22 A. Uh-hum.

23 Q. The title is More Perez Hilton
24 Freaking Out.

04:33:17

25 Do you know what that video was?

1 T. EXARHOS

2 A. It was, I believe it was from
3 the show Celebrity Rap Superstar. And
4 Perez Hilton was freaking out.

04:33:37

5 Q. And do you know if this
6 particular clip at 2359232 was authorized
7 to be on YouTube by MTV?

04:34:04

8 A. Again, I think this is the clip
9 that Andrea Manning is referring to, so --
10 yeah. Again, we were promoting the show
11 at that time. I don't remember the
12 specifics of that clip, so I can't tell
13 you definitively.

04:34:19

14 Q. You don't know one way or the
15 other whether this clip is authorized to
16 be on the YouTube service?

17 A. Around this specific clip, I
18 don't know.

04:34:30

19 Q. What would you need to find out?

20 A. I could easily -- I could have
21 called on Andrea and found out. I mean
22 whoever was responsible for that campaign,
23 I would have been able to find out.

04:34:42

24 Q. And the user, the YouTube user
25 here is gossip girl 40.

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1 T. EXARHOS

2 Are you familiar with that
3 YouTube user?

4 A. No.

04:34:48

5 Q. Have you ever heard that user
6 name before, gossipgirl40?

7 A. No.

8 Q. Do you know if that's somebody
9 at MTV?

04:34:59

10 A. I don't.

11 Q. Do you know if it's someone
12 working at MTV's direction?

13 MR. WILKENS: Objection.

14 A. I don't.

04:35:29

15 MR. WILKENS: Is this a good
16 time for a break?

17 MR. VOLKMER: It is. Let's take
18 a break.

04:35:34

19 THE VIDEOGRAPHER: The time is
20 4:36 p.m., and that's -- we are taking
21 a break.

22 (Whereupon, there is a recess in
23 the proceedings.)

04:49:42

24 THE VIDEOGRAPHER: The time is
25 4:50 p.m. and we are back on the

1 T. EXARHOS

2 record.

3 Q. Back on.

04:49:50

4 Does MTV engage in any marketing
5 for shows that are no longer on the air
6 and for which they, they have not put out
7 a DVD?

8 A. Not that I can think of, no.

9 Q. Do you know why that is?

04:50:05

10 A. Well, my primary goal, from a
11 marketing perspective, is to drive people
12 back to either watch our shows or go to
13 our website or buy our products. So if
14 there was no call to action like that,
15 then we wouldn't be actively marketing
16 anything.

04:50:23

17 Q. Because there's nothing to
18 market, right?

19 A. Yeah.

04:50:32

20 MR. WILKENS: Objection.

21 A. I can't think of an instance
22 where we would be.

23 Q. Okay. I'm going to read off a
24 list of shows that I have here, and I'd
25 like you to tell me whether MTV or its

04:50:43

1 T. EXARHOS

2 agents have ever uploaded clips from those
3 shows to YouTube.

4 Okay. Wonder Showzen?

04:50:53 5 A. Yes.

6 Q. Dancelife?

7 A. Yes.

8 Q. Rob and Big?

9 A. Yes.

04:51:00 10 Q. A Shot At Love?

11 A. I'm sorry, go back. The
12 question was whether or not uploaded video
13 in support of all these?

04:51:09 14 Q. Whether MTV or its agents have
15 ever uploaded clips --

16 A. Okay, sorry.

17 Q. -- from its -- for its shows to
18 YouTube.

04:51:19 19 I think you said yes for Rob and
20 Big?

21 A. I don't know, the question was
22 so specific. On YouTube. I'd have to go
23 back and look at each of those campaigns,
24 but I think, just based on that grid we
04:51:28 25 looked at, those would be yeses.

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1 T. EXARHOS

2 Q. A Shot At Love?

3 A. I think yes.

4 Q. FNMTV?

04:51:38 5 MR. WILKENS: Objection.

6 MR. VOLKMER: What's the
7 objection, Scott?

8 MR. WILKENS: It's speculative.

9 It calls for speculation. She just
04:51:45 10 said she doesn't know. She'd have to
11 see a list or something.

12 MR. VOLKMER: I don't think
13 that's the testimony.

14 Q. The question is whether MTV or
04:51:56 15 its agents have ever uploaded clips from
16 the shows that I'm listing to YouTube, and
17 we are on FN MTV.

18 A. I'm just not sure. You can go
19 through the list. I'm just not sure,
04:52:08 20 specifically, about YouTube on each count.
21 So I can look back on any of them and find
22 out, if I needed to, but I just don't know
23 offhand for each of them, specifically.

24 Q. Sure. So I just would like to
04:52:19 25 know whether you know one way or the

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1 T. EXARHOS

2 other. And if you don't know, that's
3 fine.

04:52:27

4 If you do know, under oath, you
5 need to tell me that MTV has uploaded
6 clips to YouTube, if you are aware of that
7 fact.

8 A. Okay.

9 Q. FN MTV?

04:52:36

10 A. I don't know.

11 Q. Where My Dog's At?

12 A. I don't know.

13 Q. Two-a-Days?

14 A. I believe so.

04:53:21

15 Q. Yo Momma?

16 A. I believe so.

17 Q. Pimp My Ride?

18 A. I don't know.

19 Q. Engaged and Underaged?

04:53:36

20 A. I don't know.

21 Q. Beavis and Butthead?

22 A. I don't know.

23 Q. Wild N Out?

24 A. I believe so.

04:53:50

25 Q. Human Giant?

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1 T. EXARHOS

2 A. Yes.

3 Q. Adventures in Hollywood?

4 A. I don't know.

04:53:59

5 Q. Exposed?

6 A. I don't know.

7 Q. Cribs?

8 A. I don't know.

9 Q. Maui Fever?

04:54:08

10 A. I believe so.

11 Q. Daria?

12 A. I don't know.

13 Q. Wild Boys?

14 A. Don't know.

04:54:23

15 Q. Run's house?

16 A. I believe so.

17 Q. Jackass?

18 A. I don't know.

19 Q. Andy Milonakis Show?

04:54:36

20 A. Yes.

21 Q. Cheyenne?

22 A. I believe so.

23 Q. Punked?

24 A. I don't know.

04:54:44

25 Q. The Hills?

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1 T. EXARHOS

2 A. Yes.

3 Q. Celebrity Death Match?

4 A. Yes.

04:54:53

5 Q. The Duel?

6 A. I believe so.

7 Q. Laguna Beach?

8 A. I believe so.

9 Q. 24/7?

04:55:04

10 A. I don't know.

11 Q. Real World?

12 A. I don't know.

13 Q. Celebrity Rap Superstar?

14 A. Yes.

04:55:18

15 Q. My Super Sweet 16?

16 A. I want to go back. Celebrity

17 Rap Superstar, I'm not sure.

18 Q. Okay. My Super Sweet 16?

19 A. I don't know.

04:55:31

20 Q. Making The Band?

21 A. I don't know.

22 Q. Little Talent Show?

23 A. I believe so.

24 Q. Life of Ryan?

04:55:41

25 A. I don't know.

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1 T. EXARHOS

2 Q. And when did you first become
3 aware of YouTube?

4 A. I think sometime in 2006.

04:55:57

5 Q. And how did you become aware of
6 YouTube for the first time?

7 A. I don't remember exactly.

8 Q. Do you have a YouTube account?

9 A. I don't.

04:56:11

10 Q. Have you ever uploaded videos to
11 YouTube?

12 A. No.

13 Q. Do you know of other MTV
14 employees who have YouTube user accounts?

04:56:23

15 A. Not that I'm aware of.

16 Q. Are you aware of MTV employees
17 uploading video clips to YouTube?

18 A. I don't have any specific
19 knowledge.

04:56:35

20 Q. Do you have any generalized
21 knowledge of that practice, MTV employees
22 uploading clips to YouTube?

23 A. No.

24 Q. We had discussed earlier that

04:56:49

25 MTV sometimes engages in viral marketing

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Schapiro Exhibit 140

Worldwide (All) | English

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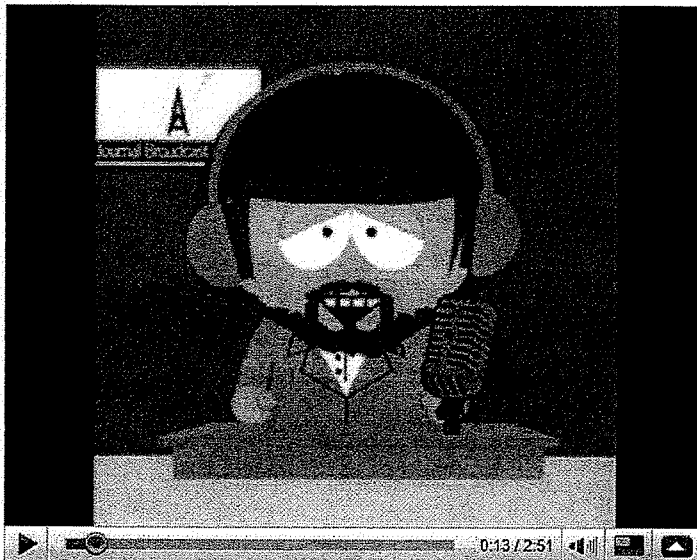
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DTR4IN (1 year ago) Reply 0

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is it those who made south park?

RubeMeek (1 year ago) Reply 0

I hope VH1 goes bankrupt. Flavor Flav seasons 1 and 2 then I love whose seasons 1 and 2. surreal life finale came down to a dyke deciding who can dance better between traci bingham and ron jeremy. mick jagers wives show was a joke, charm school = joke, fit club's harvey has no clue what a max heart rate grid is and will kill someone in the shows existence and finally the oh so annoying celeb critic shows where 2 homo's rate peoples style. Joke of a station and Marc Cronin can rot in hell!!!

TripOnTheDog (1 year ago) Reply 0

CBS as in Viacom who is probably going to make them take down this video any day now.

From: dickpayne [Subscribe](#)
 Added: November 19, 2006
 (more info)
 Syndicated radio show. Jeremy made it into this clip.
 URL: <http://www.youtube.com/watch?v=1HDRtaUG11w>
 Embed: `<object width="425" height="344"><param name="movie" |`

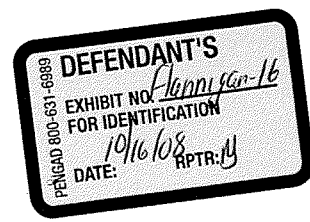
More From: dickpayne

Related Videos

- Todd n Tyler - Guy Bang'n Your Mom
02:00 From: dickpayne
Views: 31,075
- Britney Spears before MTV VMA Music Awards Secret Video
02:32 From: tonyfamous
Views: 45,270
- Todd and Tyler Revealed #2 on KMTV
05:36 From: LankBadly
Views: 4,836
- Todd N Tyler Morning Show - 4/12/2007: Bobcat Goldthwait
10:19 From: TheBobcatChannel
Views: 2,944
- 3 Doors Down - Here Without You: Rev 1 MTV/VH1 Cut
04:00 From: universalmusicgroup

Promoted Videos

- O.J.'s guilty, T.O.'s s...
04:35
statbeastp...
- New York Steak With Red...
01:18
expertvillage
- Unk "Sh ow Out"; official ...
03:41
KOCHRECORDSTheWeatherC...
- Oct. 4 The Eco-Enve lope
04:24



Pink2006Princess (1 year ago) [Reply](#) 0 / 0
 pretty gd, well done

jakefyfe (1 year ago) [Reply](#) 0 / 0
 Remember the band Konnektion? They made a horror movie called the Keyboardist. It's pretty bad....

View all 7 comments

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Favorites	Subscriptions	Safety Tips	Copyright Notices	TestTube	Contact
Playlists	more...	Developer APIs	Community Guidelines	Terms of Use	Blog
		Advertising	YouTube On Your Site	Privacy Policy	Jobs
		YouTube Handbook			

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Schapiro Exhibit 141

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)
PARTNERS, COUNTRY MUSIC.)
TELEVISION, INC., PARAMOUNT)
PICTURES CORPORATION, and BLACK)
ENTERTAINMENT TELEVISION, LLC,)

Plaintiffs,)

vs.)

NO. 07-CV-2203

YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)

Defendants.)

THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., et al.,)
on behalf of themselves and all)
others similarly situated,)

Plaintiffs,)

vs.)

NO. 07-CV-3582

YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE, INC.,)

Defendants.)

VIDEOTAPED DEPOSITION OF TAMAR TEIFELD
PALO ALTO, CALIFORNIA
WEDNESDAY, FEBRUARY 18, 2009

JOB NO. 16515

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FEBRUARY 18, 2009

9:12 a.m.

VIDEOTAPED DEPOSITION OF TAMAR TEIFELD,
WILSON SONSINI GOODRICH & ROSATI, LLP,
601 California Ave., Palo Alto, California,
pursuant to notice, and before me,
ANDREA M. IGNACIO HOWARD, CLR, RPR, CSR
License No. 9830.

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

2

3 FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

4 SHEARMAN & STERLING LLP

5 By: KIRSTEN NELSON CUNHA, Esq.

6 599 Lexington Avenue

7 New York, New York 10022-6069

8 (212) 848-4000 kirsten.cunha@shearman.com

9

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

11 GOOGLE, INC.:

12 WILSON SONSINI GOODRICH & ROSATI, LLP

13 By: MICHAEL H. RUBIN, Esq.

14 CAROLINE WILSON, Esq.

15 650 Page Mill Road

16 Palo alto, California 94304

17 (650) 493-9300 mrubin@wsgr.com

18

19 ALSO PRESENT:

20 PARAMOUNT PICTURES

21 By: PAUL KOENIG, Esq.

22 5555 Melrose Avenue

23 Hollywood, California 90038-3197

24 (323) 956-5882 paul_koenig@paramount.com

25

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

2

3 ALSO PRESENT: Lou Meadows, Videographer.

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1 TEIFELD

13:31:18 2 Q Do you recall trying to promote the viewing
13:31:21 3 of the video in Exhibit 34?

13:31:26 4 A Yes.

13:31:26 5 Q How did you do so?

13:31:28 6 A I reached out to online partners and websites
13:31:33 7 and asked them to promote it. I had communication
13:31:36 8 with YouTube about it.

13:31:38 9 Q Who at YouTube did you communicate about it?

13:31:41 10 A I don't recall.

13:31:42 11 Q What was the substance of your communication
13:31:44 12 with YouTube about it?

13:31:47 13 A I e-mailed them to see if they would feature
13:31:50 14 it.

13:31:50 15 Q Who at YouTube did you e-mail?

13:31:53 16 A I don't recall.

13:31:53 17 Q Did you e-mail anyone in particular or did
13:31:55 18 you e-mail a general editor inbox at YouTube?

13:32:00 19 A I believe I e-mailed Kevin, and then he
13:32:04 20 instructed me to e-mail to the editors of YouTube, but
13:32:08 21 I don't -- I don't recall the exact communication.

13:32:23 22 Q Do you know if any other videos were uploaded
13:32:25 23 in connection with this -- pardon me.

13:32:29 24 Do you know if Paramount uploaded any other
13:32:33 25 videos in connection with the online promotion of "The

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805 Third Avenue, New York, New York 10022 (212)705-8585

1 TEIFELD

13:32:36 2 Heartbreak Kid"?

13:32:36 3 MS. CUNHA: To YouTube?

13:32:38 4 MR. RUBIN: To YouTube.

13:32:41 5 THE WITNESS: I don't recall.

13:32:49 6 MR. RUBIN: 28.

13:33:13 7 (Document marked Teifeld Exhibit 35

13:33:14 8 for identification.)

13:33:14 9 MR. RUBIN: I'd like to introduce Exhibit

13:33:26 10 No. 35. Exhibit No. 35 is a document produced by

13:33:39 11 Viacom in this action bearing Bates No. VIA00378484.

13:33:47 12 Q Do you recognize this document?

13:33:48 13 A Yes.

13:33:48 14 Q What is this document?

13:33:50 15 A It's a document from me asking the ICED Media

13:33:55 16 team to get people to write to the editors at YouTube

13:34:00 17 to get this clip featured on the Homepage.

13:34:03 18 Q What clip is this referring to?

13:34:11 19 A I don't know.

13:34:12 20 Q Doesn't the document in fact say, "We need to

13:34:18 21 urgently have everyone we know write in to the editor

13:34:22 22 at YouTube requesting to get this clip as a 'Featured

13:34:26 23 Video' on the homepage"?

13:34:27 24 A Yes.

13:34:27 25 Q What was urgent about this?

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1 TEIFELD

13:34:33 2 A We wanted to get the clip viewed.

13:34:40 3 Q 21 and 22.

13:35:07 4 (Document marked Teifeld Exhibit 36
13:35:09 5 for identification.)

13:35:09 6 MR. RUBIN: I'd like to introduce Exhibit
13:35:11 7 No. 36. Exhibit 36 is a document produced by Viacom
13:35:38 8 in this action bearing Bates No. VIA00378497 through
13:35:45 9 VIA00378498.

13:35:52 10 Q Do you recognize this document, Ms. Teifeld?

13:35:57 11 A Yes.

13:35:57 12 Q Does this document refresh your recollection
13:35:58 13 as to the identity of the video referenced in
13:36:01 14 Exhibit 35?

13:36:02 15 A No, I don't know if that's the same -- the
13:36:07 16 same clip.

13:36:07 17 Q Let's see if we can solve this.

13:36:10 18 A Yeah.

13:36:14 19 (Document marked Teifeld Exhibit 37
13:36:15 20 for identification.)

13:36:15 21 MR. RUBIN: I'd like to introduce Exhibit
13:36:17 22 No. 37. Exhibit 37 is a screen capture as opposed to
13:36:34 23 a printout of the web page located at
13:36:37 24 <http://Latinoreview.com/news.php?id=2937>. It was
13:36:51 25 downloaded early this morning.

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1 TEIFELD

13:37:06 2 Q If you look, Ms. Teifeld, at Exhibit 36, it
13:37:09 3 references this particular URL --

13:37:11 4 A Yes.

13:37:11 5 Q -- for which Exhibit 37 is a screen shot.

13:37:14 6 A Yes.

13:37:14 7 Q There is a video, a YouTube video on
13:37:21 8 Exhibit 37.

13:37:23 9 A Yes.

13:37:23 10 Q Do you recognize that video now that you see
13:37:26 11 this opening page to it?

13:37:28 12 A Yes, but I still don't know if it's the same
13:37:31 13 video we're referring to in Exhibit 35.

13:37:35 14 Q Fair enough.

13:37:35 15 What is this video?

13:37:42 16 A It's a clip from the film.

13:37:44 17 Q From what film?

13:37:45 18 A From "The Heartbreak Kid."

13:37:47 19 Q What is it a clip of?

13:37:53 20 A It's a scene from the film.

13:37:58 21 Q Do you know what the clip is, what the
13:38:00 22 content of the clip is?

13:38:02 23 A Yes.

13:38:02 24 Q Do you know who uploaded this video?

13:38:10 25 A I don't know who uploaded it.

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1 TEIFELD

13:38:11 2 Q Do you know if it was uploaded by someone at
13:38:13 3 Paramount?

13:38:15 4 A I don't recall.

13:38:15 5 Q If you refer to Exhibit 36 --

13:38:34 6 A Uh-huh.

13:38:36 7 Q -- do you see the first-in-time e-mail from
13:38:41 8 Scott Hurwitz to you?

13:38:43 9 A Yes.

13:38:43 10 Q What is the subject line of that e-mail?

13:38:46 11 A "Who we've sent the queef clip to."

13:38:51 12 Q Is he referring to the clip in Exhibit 37?

13:38:55 13 A Yes.

13:38:56 14 Q And isn't that the very clip that you
13:39:03 15 e-mailed him about the day prior seeking him to write
13:39:08 16 in to the YouTube editors to get it featured?

13:39:12 17 A I don't know.

13:39:13 18 Q What would you need to do to confirm that?

13:39:16 19 A I don't know. I would need to compare the
13:39:19 20 clips.

13:39:19 21 Q How often do you write to Scott Hurwitz
13:39:25 22 asking him to urgently have everyone write in to the
13:39:28 23 editors at YouTube to feature a video?

13:39:33 24 A It depends. Each campaign is different.

13:39:36 25 I've had him urgently do a lot of things on a lot of

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1 TEIFELD

13:39:42 2 campaigns.

13:39:42 3 Q Okay. That really wasn't my specific

13:39:43 4 question.

13:39:44 5 How often do you urgently ask Scott Hurwitz

13:39:48 6 to write in to the editors at YouTube to feature a

13:39:54 7 video?

13:39:54 8 A I don't know.

13:39:54 9 Q You've done it more than once?

13:39:56 10 A I have done it more than once.

13:39:57 11 Q And you can't recall how many times you've

13:40:01 12 done that?

13:40:01 13 A No.

13:40:01 14 Q And you have no idea how this video was

13:40:11 15 uploaded?

13:40:12 16 A I don't remember.

13:40:13 17 Q Did Paramount use online marketing to promote

13:40:46 18 the film "Beowulf"?

13:40:49 19 A Yes.

13:40:50 20 Q What was your role in connection with the

13:40:51 21 online marketing of the film "Beowulf"?

13:40:55 22 A I handled the online publicity.

13:40:58 23 Q What did you do in connection with the online

13:41:00 24 publicity for the online promotion of the Paramount

13:41:00 25 film "Beowulf"?

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1 TEIFELD

13:41:04 2 A Syndication of content, arrange interviews
13:41:06 3 with talent.

13:41:14 4 Q What do you mean by "syndication of content"?

13:41:17 5 A Getting websites to promote our approved
13:41:20 6 content for the film.

13:41:26 7 Q Did your approved content for "Beowulf"
13:41:34 8 include clips from the film?

13:41:37 9 A Yes.

13:41:44 10 MR. RUBIN: 76.

13:41:44 11 (Document marked Teifeld Exhibit 38
13:42:03 12 for identification.)

13:42:03 13 MR. RUBIN: I'd like to introduce Exhibit
13:42:19 14 No. 38. Exhibit 38 is a document produced by Viacom
13:42:23 15 bearing Bates Nos. VIA00702736 through VIA00702738.

13:43:16 16 THE WITNESS: Okay.

13:43:18 17 MR. RUBIN: Q. Do you recognize this
13:43:18 18 document?

13:43:19 19 A Yes.

13:43:19 20 Q What is it?

13:43:23 21 A It is a plan from ICED Media for the film
13:43:30 22 "Beowulf."

13:43:30 23 Q Do you know if this plan was accepted?

13:43:32 24 A I do not know.

13:43:33 25 MS. CUNHA: I would just note for the record

Schapiro Exhibit 142

Subject: RE: Beo positive seeding
From: "Tipton, Kristina - Paramount" <EX:/O=VIACOM/OU=PARAMOUNT/CN=RECIPIENTS/CN=TIPTONKR>
To: Warman, Bryan - Paramount; Powell, Amy - Paramount; Teifeld, Tamar - Paramount; Lawson, Josh - Paramount
Cc: Date: Thu, 06 Sep 2007 18:55:00 +0000

Hi Amy,

Scott is sending us a list of links / reactions shortly. I'm calling Laura now to see how she can further push the positive messaging.

So far the sites that have helped us with pushing positive messaging are:

<http://www.firstshowing.net/2007/09/05/worth-watching-sept-5-bloody-red-band-beowulf-trailer-v2/>

<http://moviesblog.mtv.com/2007/09/05/the-dailies-september-5-2007/>

<http://www.chud.com/index.php?type=news> <<http://www.chud.com/index.php?type=news&id=11665>> &id=11665

<http://www.joblo.com/more-bloody-beowulf>

<http://www.canmag.com/nw/8869-beowulf-restricted-trailer>

<http://www.filmschoolrejects.com/news/new-restricted-beowulf-trailer-raises-eyebrows.php>

<http://www.latinoreview.com/news.php?id=2792>

<http://www.comingsoon.net/news/movienews.php?id=36902>

<http://www.movieweb.com/news/92/22492.php>

<http://www.bloody-disgusting.com/news/9819>

http://www.iesb.net/index.php?option=com_content <http://www.iesb.net/index.php?option=com_content&task=view&id=3180&Itemid=99> &task=view&id=3180&Itemid=99

<http://www.cinematical.com/2007/09/05/new-red-band-beowulf-trailer-hits-net/>

MSN will not direct to another website and so can't cover it. AOL's cinematical blog covered it (link above). Yahoo has posted it on Movies main with a great static promo image.

Scott's efforts are concentrated on trusted blogging sites, while we've been working with trusted film sites. Is there a specific area / site you'd like us to reach?

Attached is the trailer reaction document. Let us know if you need anything else.

Thanks!

Kristina Tipton

Interactive Marketing

Paramount Pictures

323-956-8453

-----Original Message-----

From: Warman, Bryan - Paramount

Sent: Thursday, September 06, 2007 10:56 AM

To: Powell, Amy - Paramount; Teifeld, Tamar - Paramount; Tipton, Kristina - Paramount; Lawson, Josh - Paramount

Subject: RE: Beo positive seeding

KT/TT,

Please let me know if, and how I can help also...

Bryan Warman

Executive Director

Interactive Marketing

Paramount Pictures

5555 Melrose Avenue - Marathon, 3203

Hollywood, CA 90038

P: 323.956.8275 | F: 323.862.1107

-----Original Message-----

From: Powell, Amy - Paramount

Sent: Thursday, September 06, 2007 10:50 AM

To: Teifeld, Tamar - Paramount; Tipton, Kristina - Paramount; Warman, Bryan - Paramount; Lawson, Josh - Paramount

Subject: Beo positive seeding

We need to step up the positive seeding on aicn, chud, joblo, etc....

Can someone pls discuss with both scott h + laura?

What is scott h currently doing on beo?

List of attachments:

image002.jpg

Beowulf Restricted Trailer Reactions 2007 09-06.doc

BEOWULF – Restricted Trailer Reactions – 9/6/07

<http://www.firstshowing.net/2007/09/05/worth-watching-sept-5-bloody-red-band-beowulf-trailer-v2/>

I'll admit - now I'm sold! Ever since the first clips we saw at Comic-Con and the other recent bloody red band trailer, I've been skeptical about Robert Zemeckis's **Beowulf**. Whether it would be violent enough, whether it would look good enough (the CGI), whether the story would be good enough... That's all changed - this one trailer alone has done it! It's bloody and exciting and damn does it make **Beowulf** look great! I really, really hope Zemeckis can pull off a damn good not-for-kids CGI film.

On a separate note, although the trailer itself looks like it should be rated-R, the guys at Rope of Silicon insist that it is PG-13 and nothing more. I guess CGI violence is looked at differently than real violence. For more info on the film, visit the official website: BeowulfMovie.com.

<http://www.idontlikeyouinthatway.com/2007/09/restricted-beowulf-trailer-is-online.html>

The R-rated trailer for **Beowulf** is showing up all over the place today, and if you and your W.O.W. buddies aren't too busy jacking off to Grendel ripping people in half, take a minute to look at the full frontal nude **Angelina Jolie**. I don't think I've wanted to get up in the middle of the night to watch a cartoon so bad in my life.

<http://moviesblog.mtv.com/2007/09/05/the-dailies-september-5-2007/>

Uncensored "Beowulf" trailer hits web, lots of violence and Angelina sexiness ensue. ([Official Site](#))

<http://www.chud.com/index.php?type=news&id=11665>

Still not sold on Robert Zemeckis's **Beowulf**? **Try this**. How're you feeling about it now?

The one thing the film's myriad online trailers cannot do is show off its brilliantly rendered 3-D environs - though you can definitely see how Zemeckis has tailored his compositions to take maximum advantage of the medium. Devin, Russ and I were blown away by the presentation at Comic Con in July; despite our "uncanny valley" caveats, there was no denying the film's immersiveness. The question now is whether Zemeckis can keep the viewer spellbound for a full two hours; this trailer goes a long way toward convincing me that this won't be another **Polar Express**.

At the very least, I'm relieved that Paramount has finally (albeit two months too late) decided to flaunt **Beowulf's** very adult content. In fact, there are glimpses of brutality in this red-band trailer that weren't shown to the press at Comic Con (e.g. Beowulf plunging his fist into Grendel's ear canal); these moments should put to rest any doubts about the movie risking an R-rating. This is rough stuff, folks.

Though I think Paramount blew it by not running a red-band trailer concurrently with the all-ages one back in July, they should be able to get all but the most cynical of fanboys (at least partially) back on board with this preview. I hope.

<http://www.joblo.com/more-bloody-beowulf>

Tired of all the slightly different teaser clips for BEOWULF? Feel like you need a little more... meat? How about Grendel tearing high holy hell out of a bunch of medieval dudes? Maybe more glimpses at a near-nekkid CG Angelina Jolie?

Yeah, Robert Zemeckis' "performance capture" movie is looking pretty tight... at least when people aren't speaking, because the awkward mouth animations look a bit too "id Software" to me. But I'll be slipping on the 3-D glasses for some poetic carnage when this hits theaters. Click the wet demonic buttocks to see!

Talk Backs:

- Now that's an awesome fucking trailer!!! Reminded me more of, GOD of War. I'm already there.
- "300" is what I thought of, and if this trailer came first people would probably be almost as hyped about this one. It seems almost like this movie is banking on violence and nudity (which would be great under any other circumstances), and maybe the MPAA is more lax than we give 'em credit for if they're showing all these R-rated trailers and whatnot.

I was definitely interested about this one before, but now I am totally stoked. As titillating as Jolie can be, she's not enough alone to make me wanna see this, I'm much more excited by Grendel. However problematic it is to watch them talk, I love Ray Winstone's voice in just about anything, and believe they knew what they were doing when they cast him, even if he's not the man they used to model Beowulf on.

- I'm even more excited for this movie now. although the fake looking blood reminds me of 300 as does "Tonight will be different!" (the way he says "tonight"). but the carnage and especially the look of Grendel have me psyched. but the cutting has me worried too. that ripping of bodies looks too cool to be taken out or masked with cgi.

<http://www.canmag.com/nw/8869-beowulf-restricted-trailer>

A second restricted trailer has popped up on the [official site](#) of **Beowulf**. In what looks like further proof that CG [animations](#) are far capable of creating eye-shutting gore, the trailer shows Grendel kicking ass as the monster splits people in half and later makes lovely ornaments out of them. Seriously, if body part ornaments were ever to become a fad, Grendel would be the dude to call. Artsy!

For those of you who are not into gore, the new restricted trailer also comes packaged with more footage of the dragon -- though not much -- and extended shots of [Angelina Jolie's](#) nude, CG-modeled body. No, there isn't any Havoc-like footage, but the gold skin er, stuff helps keep the CG-animation out of 'R' territory.

Though you are likely to be distracted by blood and breasts, you might also notice a nice chuck of new dialogue from [Ray Winstone's Beowulf](#).

<http://www.filmschoolrejects.com/news/new-restricted-beowulf-trailer-raises-eyebrows.php>

Whilst at Comic Con this year we were treated to a lovely night of wining and dining with the folks at Paramount. They were a great group of hosts, feeding us drinks and letting us hobnob with celebs like [Neil Gaiman](#) and Roger Avary. But besides the booze and the Sci-Fi novelists, we were also treated to some slick 3D footage from their upcoming flick *Beowulf*. And no, we are not talking about the very Icelandic version of the [Beowulf](#) saga that starred Gerard Butler. That was *Beowulf and Grendel*; no one saw that one. We are talking about *Beowulf*! A film that will become the widest ever 3D release in history and the first film to accomplish something that we've all been waiting to see: improve upon the glorious hotness that is [Angelina Jolie](#).

I know what you are thinking, "No fuckin' way!" It is true my friends, this film's animation effects, led by director [Robert Zemeckis](#) and the same team that made *The Polar Express*, has taken the curvaceous anomaly known as Ms. Jolie and digitized her. Remember how you were all secretly yearning for more of Aki from the *Final Fantasy* flick? This is the evolution of that. Check out the "Restricted" Trailer [here](#) or just click the image above to see what I am talking about.

Beowulf hits theaters November 16, 2007. Check out [BeowulfMovie.com](#) for more.

<http://madaboutmovies.net/?p=940>

Robert Zemeckis' motion capture adventure *Beowulf* is starting to pick up steam. From the initial buzz at the San Diego Comic con last month to the trailers, posters and pictures which have made their way online, the film promotion is shaping up nicely.

The film, has been adapted from the classic poem by the great Neil Gaiman and Roger Avary and stars Ray Winstone, Angelina Jolie, Anthony Hopkins, Robin Wright Penn, Crispin Glover and John Malkovich among many others, is looking really nice and I hadn't given much thought to the rating of the film until the red band trailer crawled across the web yesterday.

Everyone posted it but it wasn't until I read Vic's commentary over at [Screen Rant](#) that I noticed that there was a bit of a problem here. The promoters release this fancy and slightly bloodier red band trailer but the film is apparently going for a PG-13 rating. A bit tricky eh? The problem now is that we've seen these bloody bits and, the clips are (or should be) fairly important to the overall story. If this is what these scenes look like...I doubt they're going to succeed in getting that lowered rating.

Personally, I say leave it all in and let us enjoy the story for what it is. *Beowulf* was never meant to be a children's fairy tale and it shouldn't be turned into one now but if they're indeed going for the kid-friendly rating, then they're tricking viewers by enticing them with this new trailer which is chalk full of violence. Either way you cut it, someone has buggered up here. We'll just have to wait and see which way the wall crumbles.

<http://www.justpressplay.net/movies/beowulf/news/second-uncensored-trailer-for-beowulf-is-hardcore.html>

The *Beowulf* website was revamped today, and they added a new restricted content. While the first trailer was just the international trailer with the MPAA red band tacked on the front, this new one is truly worth the restriction. Check it out [here](#)

Some of the violence and nudity shots weren't even in the 20 minute clip I saw at the Comic Con screening, and I'm actually pretty surprised that this is getting a PG-13 rating (especially that shot of Grendel ripping a guy's torso in half). Especially since that rating would mean more likely for parents to take their kids to see it.

It is, however, pumps me up even more for this film's release. IMAX 3D, no question about it.

If you want to see an HD version of the trailer (which you should anyway), head over to the site. You'll have to enter your information to get to the restricted area.

<http://www.gearcritech.com/index.php/2007/09/04/beowulf-red-band.php>

Here goes yet another Red Band trailer. This time is for one of my personal most anticipated movies of the year. Robert Zemekis' CG master piece Beowulf. This movie just keeps looking better in my opinion. Sure there are a couple of things that look weird, like say the blood, but overall this will only advance what's done with CG in films. And for those of you out there that talk that whole "Uncanny Valley" shit... just save it. We will eventually get to a point where real life and CG is indistinguishable... BELIEVE!

You can checkout the trailer by entering your personal content on the site, or just click that lil' link i have down there.

<http://www.youtube.com/watch?v=K2s5O-c4U0k>

Comments:

- 4-star rating
- Wow this lloks amazing cant wait
- Uncanny valley never looked that good before.
- Fuckin hardcore. Looks great. Definitely going to see this on IMAX 3D.

<http://www.imdb.com/title/tt0442933/board/flat/84340967?p=1>

- That trailer was so much better than the first one, really need this in HD :D
- Thanks man. it looked awesome. I hope it's rated R because it won't be good if it's PG-13

Neutral Coverage:

<http://www.latinoreview.com/news.php?id=2792>

<http://www.comingsoon.net/news/movienews.php?id=36902>

<http://www.movieweb.com/news/92/22492.php>

<http://www.bloody-disgusting.com/news/9819>

http://www.iesb.net/index.php?option=com_content&task=view&id=3180&Itemid=99

MOVIES

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Coming Soon

Top Rated

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Box Office

Summer Movie Guide

3:10 to Yuma

Christian Bale and Russell Crowe talk to Yahoo! about what makes their rough-and-tumble flick different from most Westerns.

[Watch the Interview](#)

3:10 TO YUMA

Bale and Crowe Talk to Yahoo!

THE KINGDOM

Jamie Foxx in Exclusive Clips

Today's Features

"Stranglehold" the Game

John Woo and Chow Yun-Fat make a videogame sequel to "Hardbolloid".
[Read the Review](#)

"Bromulf" Restricted Trailer

Enter your name and age to watch the internet-only uncensored trailer.
[More on "Bromulf"](#)

Top Box Office

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2. **Superbad**
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4. **The Bourne Ultimatum**
5. **Push Hour 3**
6. **Mr. Bean's Holiday**
7. **The Nanny Diaries**
8. **Death Sentence**

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Browse by Title

Select Movie Title

Rent Movies From Netflix Only \$4.99/mo [Click here](#)

MOVIES NEWS AND GOSSIP

[National Parks Museum Link](#)

Schapiro Exhibit 143

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

VIACOM INTERNATIONAL, INC., COMEDY
PARTNERS, COUNTRY MUSIC TELEVISION,
INC., PARAMOUNT PICTURES CORPORATION,
and BLACK ENTERTAINMENT TELEVISION,
LLC,

Plaintiffs,

vs. NO. 07-CV-2203

YOUTUBE, INC., YOUTUBE, LLC,
and GOOGLE, INC.,

Defendants.

-----X

VIDEOTAPED DEPOSITION OF JASON WITT

NEW YORK, NEW YORK

THURSDAY, SEPTEMBER 25, 2008

REPORTED BY:
JENNIFER OCAMPO-GUZMAN
JOB NO.: 15651

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SEPTEMBER 25, 2008
9:14 a.m.

VIDEOTAPED DEPOSITION OF JASON
WITT, held at the offices of WILSON SONSINI
GOODRICH & ROSATI, PC, 1301 Avenue of the
Americas, New York, New York, pursuant to
agreement of parties, before JENNIFER
OCAMPO-GUZMAN, a Real-Time Shorthand Reporter
and Notary Public of the State of New York.

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

FOR THE PLAINTIFFS VIACOM INTERNATIONAL,
INC.:

JENNER & BLOCK, LLP

By: AMY L. TENNEY, Esq.

1099 New York Avenue, NW, Suite 900

Washington, D.C. 20001

(202) 639-6000 atteney@jenner.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE,
LLC and GOOGLE, INC.:

WILSON SONSINI GOODRICH & ROSATI, PC

BY: BART E. VOLKMER, ESQ.

-and-

CHRISTOPHER R. HOWALD, ESQ.

650 Page Mill Road

Palo Alto, California 94304-1050

650-565-3508 bvolkmer@wsgr.com

650-496-4064 chowald@wsgr.com

ALSO PRESENT:

MTV NETWORKS

By: HEATHER WINDT, ESQ., Senior Counsel

MANUEL ABRUE, Videographer

1 Witt

2 10:38:07 research?

3 10:38:10 A. That there were a number of views

4 10:38:12 of those clips on YouTube.

5 10:38:14 Q. And why did you ask him to do that

6 10:38:20 research?

7 10:38:21 A. She's actually --

8 10:38:22 Q. Oh, sorry. Why did you ask her to

9 10:38:26 do that research?

10 10:38:28 A. Because we were curious where those

11 10:38:30 clips were showing up. And how much traffic

12 10:38:33 they were getting.

13 10:38:35 Q. And where were they showing up?

14 10:38:38 A. On YouTube and some other video

15 10:38:42 sites. I believe, I don't remember any of

16 10:38:45 the others.

17 10:38:46 Q. And how much traffic?

18 10:38:49 MS. TENNEY: Objection.

19 10:38:50 A. I don't remember.

20 10:38:56 Q. Did you believe that Colbert

21 10:39:00 "Greenscreen" clips were receiving a

22 10:39:03 significant amount of traffic?

23 10:39:05 MS. TENNEY: Objection.

24 10:39:05 A. I recall it was in the millions,

25 10:39:19 vaguely, millions of views, I believe.

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Witt

10:39:21 Q. And what exactly was the
10:39:29 "Greenscreen Challenge"?

10:39:31 A. Stephen Colbert filmed himself in
10:39:35 front of a "Greenscreen" on television and
10:39:38 challenged his audience to create mashups.

10:39:41 Q. And his audience proceeded to
10:39:44 create mashups; correct?

10:39:46 A. Some audience did, yeah.

10:39:49 Q. And posted those videos on sites
10:39:51 like YouTube and other UGC sites?

10:39:55 MS. TENNEY: Objection.

10:39:56 A. That's my -- at least on YouTube,
10:39:56 yes.

10:40:03 Q. Is it your belief that those
10:40:05 "Greenscreen" videos that were created in
10:40:07 response to Mr. Colbert's challenge are
10:40:11 authorized on UGC sites?

10:40:14 MS. TENNEY: Objection.

10:40:17 A. I'm not sure, I don't understand
10:40:19 the question.

10:40:19 Q. Sure. I'll restate it. Do you
10:40:22 believe that the "Greenscreen" videos that
10:40:23 appeared on UGC sites are authorized?

10:40:27 MS. TENNEY: Objection.

1 Witt

2 10:40:27 A. Authorized by who?

3 10:40:29 Q. By Viacom?

4 10:40:30 A. Oh, I have no knowledge.

5 10:40:32 Q. You don't know if those videos are

6 10:40:35 authorized or not?

7 10:40:36 MS. TENNEY: Objection.

8 10:40:36 A. Can you -- I don't understand

9 10:40:39 authorized.

10 10:40:40 Q. Would it constitute copyright

11 10:40:43 infringement?

12 10:40:44 MS. TENNEY: Objection, calls for

13 10:40:46 legal conclusion.

14 10:40:47 MR. VOLKMER: Ms. Tenney, if you

15 10:40:48 could just wait until I finish the

16 10:40:51 question before you state your

17 10:40:52 objection.

18 10:40:52 Q. Would it constitute copyright

19 10:40:55 infringement for a user to have created a

20 10:40:57 mashup of the Colbert "Greenscreen" and post

21 10:41:00 that video to user generated content websites

22 10:41:03 like YouTube.

23 10:41:04 MS. TENNEY: Objection, calls for

24 10:41:05 legal conclusion.

25 10:41:07 A. I don't know.

1 Witt

2 10:41:07 Q. Do you have a personal opinion?

3 10:41:21 A. No.

4 10:41:21 Q. You don't have opinion one way or

5 10:41:25 another whether that constitutes copyright

6 10:41:27 infringement?

7 10:41:27 MS. TENNEY: Objection, calls for

8 10:41:28 legal conclusion.

9 10:41:31 A. No.

10 10:41:35 Q. Do you view that behavior of

11 10:41:37 creating mashups of the Colbert "Greenscreen"

12 10:41:40 as being positive?

13 10:41:42 MS. TENNEY: Objection.

14 10:41:42 A. I think it was consistent with what

15 10:41:51 Colbert wanted them to do, so.

16 10:41:54 Q. And consistent with what Viacom

17 10:42:00 wanted users to do too; correct?

18 10:42:04 MS. TENNEY: Objection.

19 10:42:04 A. I don't even know who would be able

20 10:42:08 to answer that question for Viacom.

21 10:42:10 Q. Did any Viacom employees create

22 10:42:17 mashups in response to the "Greenscreen

23 10:42:20 Challenge"?

24 10:42:20 MS. TENNEY: Objection, foundation.

25 10:42:21 A. I don't know.

1 Witt

2 10:42:22 Q. Did you create any videos in
3 10:42:26 response to the "Greenscreen Challenge"?

4 10:42:29 A. No.

5 10:42:49 Q. So aside from the instance where
6 10:42:52 you asked Alden Mitchell to ascertain some
7 10:42:56 data regarding the "Greenscreen Challenge,"
8 10:42:58 what other research did you do regarding
9 10:43:01 YouTube prior to Google's acquisition?

10 10:43:17 A. I can only recall one other piece
11 10:43:34 of research and I'm not sure that I requested
12 10:43:41 it.

13 10:43:41 Q. And what was that piece of
14 10:43:42 research?

15 10:43:44 A. Alden Mitchell had pointed out to
16 10:43:46 me at one point that the single most popular
17 10:43:50 clips on YouTube were largely user generated.

18 10:43:56 Q. So prior to Google's acquisition of
19 10:44:14 YouTube, who else at Viacom was involved in
20 10:44:17 negotiations with YouTube regarding a
21 10:44:18 potential deal?

22 10:44:22 A. To my knowledge, and, again, I'm
23 10:44:29 not sure they were negotiations, the people
24 10:44:33 who were participating were Bob Bakish and
25 10:44:37 Adam Cahan.

1 Witt

2 14:48:50 Q. Right. Do you know if anyone at

3 14:48:51 Viacom has ever uploaded videos to the

4 14:48:54 YouTube website?

5 14:48:55 MS. TENNEY: And I'll restate the

6 14:48:57 same objections.

7 14:48:58 A. You know, gosh, I don't know. I

8 14:49:18 remember Jason Hershorn (phonetic) at one

9 14:49:18 time, and I'm not sure if he was making a

10 14:49:20 joke or not, talked about uploading some Bar

11 14:49:24 Mitzvah videos.

12 14:49:27 Greg Clayman has uploaded some

13 14:49:29 videos of his kids and his wife, I think. My

14 14:49:52 guess is there is more, but those are the

15 14:49:54 ones I can think of.

16 14:49:55 Q. So besides Jason Hershorn and Greg

17 14:50:02 Clayman, you can't think of any other

18 14:50:04 instances where Viacom employees uploaded

19 14:50:06 videos to the YouTube website?

20 14:50:30 A. There may be others, but I can't

21 14:50:32 recall.

22 14:50:32 Q. Have you ever viewed video clips on

23 14:50:41 the YouTube website containing Viacom content

24 14:50:44 that you believed were not authorized by

25 14:50:47 Viacom?

1 Witt

2 14:50:48 MS. TENNEY: Objection. To the

3 14:50:51 extent that it calls for a legal

4 14:50:52 conclusion and also that it's vague.

5 14:50:56 A. By authorized, I've watched, I've

6 14:51:07 seen Viacom content on YouTube.

7 14:51:10 Q. And have you ever seen Viacom

8 14:51:12 content on YouTube that you thought was

9 14:51:14 unauthorized?

10 14:51:14 A. I'm not sure I know what

11 14:51:16 unauthorized means, in what sense?

12 14:51:20 Q. Whether Viacom was permitting that

13 14:51:22 content to be on YouTube?

14 14:51:25 MS. TENNEY: Objection.

15 14:51:27 A. I wouldn't know.

16 14:51:30 Q. What information would you need to

17 14:51:33 make that determination?

18 14:51:35 A. Probably someone from legal telling

19 14:51:38 me if it was -- I mean if it were authorized,

20 14:51:44 that would be a determination I imagine legal

21 14:51:48 would be able to answer.

22 14:51:49 THE WITNESS: Could I take a quick

23 14:51:51 bathroom break?

24 14:51:52 MR. VOLKMER: Break, yeah.

25 14:51:53 THE WITNESS: Yes.

1 Witt

2 14:51:54 MR. VOLKMER: We can go off the

3 14:51:56 record.

4 14:51:56 THE VIDEOGRAPHER: The time is

5 14:52:02 2:54 p.m. We're going off the record.

6 14:52:04 (A brief recess was taken.)

7 15:07:32 THE VIDEOGRAPHER: The time is

8 15:07:38 3:07 p.m. We're back on the record.

9 15:07:41 BY MR. VOLKMER:

10 15:07:41 Q. Before the break you had testified

11 15:07:44 that you had viewed Viacom content on the

12 15:07:46 YouTube website; correct?

13 15:07:46 A. Yes.

14 15:07:50 Q. And were there ever instances where

15 15:07:53 you viewed content that had been authorized

16 15:07:55 by Viacom?

17 15:07:56 MS. TENNEY: Objection, to the

18 15:07:57 extent it calls for a legal conclusion.

19 15:08:02 (Discussion off the record.)

20 15:08:04 MS. TENNEY: And that it's vague.

21 15:08:05 A. I suppose it's possible that Viacom

22 15:08:15 and YouTube had agreed to some kind of a deal

23 15:08:17 to authorize the content but not that I was

24 15:08:21 aware of.

25 15:08:22 Q. Not that you were aware of when you

1 Witt

2 15:08:23 were looking at the content; correct?

3 15:08:25 MS. TENNEY: Objection.

4 15:08:26 A. Not that I was aware of, period.

5 15:08:28 Q. And had you seen some content on

6 15:08:38 the YouTube web site owned by Viacom that had

7 15:08:42 not been authorized?

8 15:08:43 MS. TENNEY: Objection, to the

9 15:08:45 extent it calls for a legal conclusion

10 15:08:49 and that it's vague.

11 15:08:50 A. Again, with regard to the content

12 15:08:53 that I had seen, I don't know if there was a

13 15:08:56 deal between say YouTube and Comedy Central

14 15:09:00 with regard to the content that would have

15 15:09:01 made it authorized or unauthorized.

16 15:09:16 MR. VOLKMER: Let me mark Exhibit

17 15:09:16 13.

18 15:09:16 (Deposition Exhibit 13, E-mail

19 15:09:16 dated 9/12/06, Bates No. VIA00232702,

20 15:09:49 marked for identification, this date.)

21 15:09:49 MR. VOLKMER: This is Bates number

22 15:09:51 VIA00232702.

23 15:09:55 A. Uh-huh.

24 15:09:55 Q. And if you could review the

25 15:10:02 document and let me know when you've had a

1 Witt

2 15:10:05 chance to do so.

3 15:10:06 A. Okay.

4 15:10:55 Q. Have you had a chance to review the

5 15:10:58 document, Mr. Witt?

6 15:11:01 A. Almost.

7 15:11:01 Q. Almost there. Okay. Just let me

8 15:11:04 know.

9 15:11:09 A. Okay. I'm done.

10 15:11:13 THE WITNESS: Excuse me.

11 15:11:13 Q. Is this, does this e-mail of

12 15:11:19 September 12, 2006 refer to the analysis that

13 15:11:24 you had performed regarding the Stephen

14 15:11:28 Colbert "Greenscreen Challenge"?

15 15:11:29 MS. TENNEY: Objection, lack of

16 15:11:30 foundation.

17 15:11:30 A. I don't know if this is -- this is

18 15:11:38 an analysis, but this refers to the

19 15:11:44 "Greenscreen Challenge."

20 15:11:45 Q. And it says, "On YouTube there are

21 15:11:48 88 mashups," did you come to the

22 15:11:51 determination that there were 88 mashups on

23 15:11:55 YouTube of the Steve Colbert "Greenscreen

24 15:12:01 Challenge"?

25 15:12:01 MS. TENNEY: Objection, lack of

1 Witt

2 15:12:02 foundation.

3 15:12:02 A. I'm trying to recall.

4 15:12:12 I don't remember exactly how I came

5 15:12:14 to that conclusion.

6 15:12:16 Q. Did you perform this analysis

7 15:12:19 yourself or did you have someone do it for

8 15:12:21 you?

9 15:12:21 MS. TENNEY: Objection, lack of

10 15:12:22 foundation.

11 15:12:22 A. I'm reading the e-mail since I

12 15:12:29 don't recall exactly, but it looks like I did

13 15:12:31 it myself.

14 15:12:31 Q. And do you know if you did that at

15 15:12:34 work or at home?

16 15:12:35 MS. TENNEY: Objection, lack of

17 15:12:36 foundation.

18 15:12:36 A. I would guess at work, but I can't

19 15:12:40 recall.

20 15:12:40 Q. And do you know if you were logged

21 15:12:46 into your YouTube account when you were

22 15:12:48 performing this analysis?

23 15:12:51 A. I don't recall.

24 15:12:51 Q. The 88 mashups that you noted in

25 15:13:10 this September 12, 2006 e-mail, do you

1 Witt

2 15:13:13 believe that those mashups were authorized?

3 15:13:17 MS. TENNEY: Objection, lack of

4 15:13:19 foundation and calls for a legal

5 15:13:21 conclusion and vague.

6 15:13:22 A. I wouldn't know.

7 15:13:25 Q. Why wouldn't you know?

8 15:13:30 A. I don't know what it means to be

9 15:13:31 authorized.

10 15:13:31 Q. Permitted by the owner of the

11 15:13:33 copyright.

12 15:13:35 MS. TENNEY: Objection to the

13 15:13:36 extent it calls for a legal conclusion.

14 15:13:38 A. That would be a question I would

15 15:13:42 defer to.

16 15:13:42 Q. To who? To lawyers?

17 15:13:44 A. Uh-huh.

18 15:13:44 Q. Do you know one way or another

19 15:13:47 whether those 88 mashups infringed the

20 15:13:50 copyrights, any copyrights owned by Viacom?

21 15:13:52 MS. TENNEY: Objection to the

22 15:13:53 extent it calls for a legal conclusion.

23 15:13:54 A. Again, I would defer to the

24 15:13:56 lawyers.

25 15:13:56 Q. Do you have a personal view on

1 Witt

2 15:13:58 that?

3 15:13:58 A. No.

4 15:13:59 Q. You have no personal view on

5 15:14:00 whether it's permissible to create mashups?

6 15:14:03 MS. TENNEY: Objection to the

7 15:14:04 extent it calls for a legal conclusion.

8 15:14:05 A. Again, I would defer, it's a legal

9 15:14:09 matter, I would defer it to the lawyers.

10 15:14:11 Q. But you have a JD; correct?

11 15:14:12 A. Uh-huh.

12 15:14:13 Q. And you're still unable to form a

13 15:14:16 view regarding whether creating a mashup

14 15:14:21 infringes a copyright?

15 15:14:22 MS. TENNEY: Objection, to the

16 15:14:23 extent it calls for a legal conclusion.

17 15:14:25 A. To be honest, I didn't go to my

18 15:14:28 copyright class all that often.

19 15:14:29 Q. Do you have any personal views on

20 15:14:36 whether things like mashups should be

21 15:14:39 permitted?

22 15:14:40 MS. TENNEY: Objection, vagueness,

23 15:14:42 grounds and to the extent it calls for a

24 15:14:44 legal conclusion.

25 15:14:44 A. What do you mean by should be

1 Witt

2 15:14:48 permitted?

3 15:14:49 Q. Should be lawful?

4 15:14:50 MS. TENNEY: Objection to the
5 15:14:51 extent it calls for a legal conclusion.

6 15:14:53 A. No, I don't have an opinion.

7 15:14:54 Q. From a policy perspective, you
8 15:14:57 don't have a view one way or the other
9 15:14:58 regarding whether a user should be able to
10 15:15:00 create mashups?

11 15:15:04 A. Without the consent of --

12 15:15:09 Q. To take it out -- I'm sorry, if I
13 15:15:12 cut you off. But to take it out of
14 15:15:14 abstraction in this particular instance where
15 15:15:17 the, where an individual specifically
16 15:15:19 requested that users create mashups, do you
17 15:15:22 have any view whether users should then be
18 15:15:25 able to create mashups?

19 15:15:26 MS. TENNEY: Objection to the
20 15:15:27 extent it calls for a legal conclusion
21 15:15:29 and that it's vague.

22 15:15:30 A. Again, to me this would be a legal
23 15:15:33 conclusion.

24 15:15:33 Q. I'm not asking for a legal
25 15:15:44 conclusion. I'm asking for your own personal

Schapiro Exhibit 144

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., COMEDY)
 PARTNERS, COUNTRY MUSIC)
 TELEVISION, INC., PARAMOUNT)
 PICTURES CORPORATION, and BLACK)
 ENTERTAINMENT TELEVISION LLC,)
)
 Plaintiffs,)
 vs.) Case No.
 YOUTUBE, INC., YOUTUBE, LLC,) 1:07CV02103
 and GOOGLE, INC.,)
)
 Defendants.)

-----)
 THE FOOTBALL ASSOCIATION PREMIER)
 LEAGUE LIMITED, BOURNE CO., et al.,)
 on behalf of themselves and all)
 others similarly situated,)
)
 Plaintiffs,)
 vs.) Case No.
 YOUTUBE, INC., YOUTUBE, LLC, and) 07CV3582
 GOOGLE, INC.,)
)
 Defendants.)
 -----)

VIDEOTAPED DEPOSITION OF JUDY McGRATH
New York, New York
Wednesday, July 29th, 2009

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 17161

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July 29, 2009

8:09 a.m.

VIDEOTAPED DEPOSITION OF JUDY

McGRATH, held at the offices of Wilson
Sonsini, Goodrich & Rosati, 1301 Avenue of
the Americas, New York, New York, pursuant
to notice, before before Erica L.
Ruggieri, Registered Professional Reporter
and Notary Public of the State of New
York.

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

JENNER & BLOCK, LLP

BY: SUSAN KOHLMANN, ESQ.

1099 New York Avenue, NW

Washington, DC 20001

(202) 639-6000

Skohlmann@jenner.com

FOR THE DEFENDANTS:

MAYER BROWN, LLP

BY: JOHN P. MANCINI, ESQ.

1675 Broadway

New York, New York 10019

(212) 506-2146

Jmancini@mayerbrown.com

FOR THE DEFENDANTS

WILSON SONSINI GOODRICH & ROSATI PC

BY: DAVID H. KRAMER, ESQ.

MICHAEL H. RUBIN, ESQ.

650 Page Mill Road

Palo Alto, California 94304

Dkramer@wsgr.com

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A P P E A R A N C E S: (Cont'd)

ALSO PRESENT:

MICHELINA HALLEY, MTV Networks

ANDRA SHAPIRO, MTV Networks

CARLOS KING, Videographer

1 McGRATH

2 Q. Do you think that if this had
3 been a clip from the Daily Show rather
4 than Saturday Night Live, that you would
5 04:28:47 have been harming Viacom by forwarding it
6 to Mr. Herzog and saying, watch it right
7 now?

8 MS. KOHLMANN: Again, objection.

9 A. Well, if it were the Daily Show
10 04:28:56 and it were Mr. Herzog, I would say you
11 would be looking at a clip of the show or
12 from our own website, if it were the Daily
13 Show.

14 Q. Okay.

15 04:29:14 A. You are asking me to speculate,
16 so.

17 Q. Well, I guess I'm trying to
18 understand why you felt comfortable
19 forwarding this to other people.

20 04:29:24 A. I said I didn't think it was the
21 appropriate thing to do.

22 Q. In hindsight, in light of this
23 litigation, right?

24 MS. KOHLMANN: Objection.

25 04:29:30 Misstates the record.

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McGRATH

A. No. No, not in light of this litigation. In light of learning a lot more over the years.

04:29:45 Q. Ms. McGrath, in 2007, March 2007, how long had you been in the entertainment industry?

A. A long time.

Q. A long time is what?

04:29:59 A. Twenty plus years.

Q. And you had been the chairman and CEO of a major entertainment company, MTV Networks, for at least three years, right?

04:30:09 A. Yes.

Q. You had been at MTVN television for a couple of decades?

A. Yes.

Q. And you couldn't tell, by looking at this particular clip, whether it was authorized to be on YouTube or not?

MS. KOHLMANN: Objection. The record is clear.

A. I don't remember the clip. I don't remember what it was on -- what was

04:30:29

1 McGRATH

2 Q. Ms. McGrath, Exhibit 32 is an
3 e-mail you sent to Van Toffler, October 2,
4 2007, produced to us in discovery by
5 04:32:06 Viacom. I'll represent to you that it's
6 some six months after the onset of this
7 litigation. The subject line of the
8 message is Go To YouTube.

9 Do you recognize this?

10 04:32:20 A. What do you mean, do I remember
11 it? I don't remember it.

12 But I recognize the e-mail.

13 Q. Okay. In your message you give
14 Mr. Toffler instructions on how to find
15 04:32:37 the number of copyrighted clips on the
16 YouTube service, right?

17 MS. KOHLMANN: Objection.

18 A. I just said I couldn't tell
19 whether they were copyrighted or not.

20 04:32:46 Q. Well, you could tell they were
21 copyrighted. You couldn't tell whether
22 they were authorized or not, right?

23 MS. KOHLMANN: Objection.

24 Q. You understand there's a
25 04:32:54 difference between copyrighted and

1 McGRATH

2 authorized, correct?

3 A. No.

4 Q. Why were you sending Mr. Toffler

5 04:33:04 instructions on how to find these clips?

6 A. I don't recall.

7 Q. You had already watched the

8 clips you were suggesting Mr. Toffler

9 search for, right?

10 04:33:18 A. It sounds like I was.

11 Q. Sounds like you had?

12 A. Sounds like I had.

13 Q. The first clip that you

14 suggested he watch, "While My Guitar," is

15 04:33:38 a video of an Asian ukulele player playing

16 While My Guitar Gently Weeps, the Beatles

17 song, on his ukulele, right?

18 MS. KOHLMANN: Objection.

19 Q. That's what you are suggesting

20 04:33:52 Mr. Toffler watch?

21 A. Right.

22 Q. Pretty amazing clip, right?

23 A. Pretty amazing clip? I don't

24 remember it. I don't remember the clip.

25 04:34:09 Q. Did you own -- do you own any

1 McGRATH

2 publishing rights to the song, While My
3 Guitar Gently Weeps, by the Beatles?

4 A. No.

5 04:34:17 Q. Does Viacom?

6 A. Not to my knowledge.

7 Q. Does Mr. Toffler?

8 A. No.

9 Q. Was that clip authorized by the
10 04:34:25 holder of the copyright and the

11 composition to the song, While My Guitar
12 Gently Weeps, to be on YouTube?

13 MS. KOHLMANN: Objection.

14 A. I don't know.

15 04:34:32 Q. And you couldn't tell by
16 watching the video, right?

17 A. No.

18 MS. KOHLMANN: Objection.

19 Q. Why not?

20 04:34:40 A. Why not. I'm not sure why not.

21 Q. You are not sure why you
22 couldn't tell whether it was authorized to
23 be on YouTube?

24 A. I said I couldn't tell.

25 04:35:06 MS. KOHLMANN: Objection.

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McGRATH

A. I don't know why not. I just
couldn't tell.

Q. Do you think it was an
04:35:11 infringement of the musical composition,
the playing --

MS. KOHLMANN: Objection.

Q. -- of the composition on a
ukulele?

04:35:18 MS. KOHLMANN: Objection.

A. I'm not sure.

Q. You encouraged Mr. Toffler to
view it anyway, right?

A. I did.

04:35:25 Q. Not knowing whether it was
authorized to be on YouTube or not?

MS. KOHLMANN: Objection.

A. Right.

Q. And if it turns out that the
04:35:33 clip was not authorized to be on YouTube,
should you be liable for copyright
infringement for encouraging Mr. Toffler
to watch it?

MS. KOHLMANN: Objection. Calls
04:35:41 for a legal conclusion.

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McGRATH

A. I'm not sure.

Q. Should you be punished for encouraging Mr. Toffler to watch this video clip, if it turns out it wasn't authorized to be viewed on YouTube?

MS. KOHLMANN: Objection.

A. If the owner of the copyright determines that, I guess I would be.

Q. So should you have to pay the owner of the copyright \$150,000 for sending this clip -- for encouraging Mr. Toffler to watch this clip?

MS. KOHLMANN: Objection, misstates the record.

MR. KRAMER: Susan, it's not stating the record.

MS. KOHLMANN: You said send the clip. There's no reference to a clip.

MR. KRAMER: Susan, that's not the question.

MS. KOHLMANN: Okay, then ask the right question.

MR. KRAMER: Oh, my Gosh. Susan, that is totally disruptive of

Schapiro Exhibit 145

09:38:33

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)
PARTNERS, COUNTRY MUSIC.)
TELEVISION, INC., PARAMOUNT)
PICTURES CORPORATION, and BLACK)
ENTERTAINMENT TELEVISION, LLC,)

Plaintiffs,)

vs.)

NO. 07-CV-2203

YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)

Defendants.)

-----)
THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., et al.,)
on behalf of themselves and all)
others similarly situated,)

Plaintiffs,)

vs.)

NO. 07-CV-3582

YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE, INC.,)

Defendants.)

-----)
HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF DOUG HERZOG
PALO ALTO, CALIFORNIA
FRIDAY, JANUARY 16, 2009

JANUARY 16, 2009

9:40 a.m.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF
DOUG HERZOG, at WILSON SONSINI GOODRICH &
ROSATI, 601 South California, Palo Alto,
California pursuant to notice, before me,
ANDREA M. IGNACIO HOWARD, CLR, CCRR, RPR, CSR
License No. 9830.

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

2
3 FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

4 JENNER & BLOCK

5 By: SUSAN J. KOHLMANN, Esq.

6 919 Third Avenue, 27th Floor

7 New York, New York 10022-3908

8 (212) 891-1690 skohlmann@jenner.com

9
10 FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and
11 GOOGLE, INC.:

12 WILSON SONSINI GOODRICH & ROSATI

13 By: DAVID H. KRAMER, Esq.

14 BART E. VOLKMER, Esq.

15 650 Page Mill Road

16 Palo Alto, California 94304-1050

17 (650) 320-4741 dkramer@wsgr.com;

18 bvolkmer@wsgr.com

19
20 ALSO PRESENT:

21 Michelena Hallie, MTV Networks

22 Mark Morrill, Viacom

23 Jan Trudell, Videographer.

24
25 ---oOo---

1 HERZOG

2 09:54:26 A More than five.

3 09:54:26 Q Okay. More than 100?

4 09:54:30 A More than 100? Not sure.

5 09:54:32 Q How often do you view videos on the YouTube

6 09:54:37 service?

7 09:54:38 A Once or twice a week.

8 09:54:40 Q Do you view videos on the YouTube service

9 09:54:44 while you're at work?

10 09:54:47 A Occasionally.

11 09:54:48 Q While you're at home?

12 09:54:49 A Occasionally.

13 09:54:50 Q While you're on the road?

14 09:54:51 A Occasionally.

15 09:54:52 Q Why do you use YouTube to view videos as

16 09:54:58 opposed to some other online video sharing service?

17 09:55:01 MS. KOHLMANN: Objection as to form.

18 09:55:02 THE WITNESS: I use other video sharing, or

19 09:55:09 I -- I might watch video on the Internet in places

20 09:55:13 other than YouTube.

21 09:55:14 MR. KRAMER: Q. But why do you continue to

22 09:55:16 use YouTube today, given the existence of this

23 09:55:19 litigation?

24 09:55:20 MS. KOHLMANN: Objection as to form.

25 09:55:21 THE WITNESS: I don't know.

1 HERZOG

2 09:55:23 MR. KRAMER: Q. Do you find that the YouTube

3 09:55:29 video service has advantages over other online video

4 09:55:32 services?

5 09:55:36 A I find there's a lot of videos there.

6 09:55:40 Q Any other distinguishing characteristics of

7 09:55:45 the YouTube service vis-a-vis other online video

8 09:55:51 sharing services you've used?

9 09:55:52 A Couldn't say.

10 09:55:53 Q Okay. Do you consider your use of the

11 09:55:54 YouTube service to be legitimate?

12 09:55:56 MS. KOHLMANN: Objection as to form.

13 09:55:57 You can answer.

14 09:55:58 THE WITNESS: I -- I do.

15 09:55:59 MR. KRAMER: Q. For the videos that you've

16 09:56:04 watched on YouTube, did you consider them to be

17 09:56:06 infringing any third party's copyrights?

18 09:56:12 A I wouldn't know.

19 09:56:12 Q What do you mean you wouldn't know?

20 09:56:14 A I -- I -- I'm just not that clear on -- I

21 09:56:16 wouldn't know.

22 09:56:16 Q Why not?

23 09:56:17 A I'm not a lawyer. I don't necessarily

24 09:56:19 understand the ins and outs of copyright infringement.

25 09:56:25 Q So in order to make a determination as to

1 HERZOG

2 09:56:27 whether a video you've watched on the YouTube service

3 09:56:29 was infringing a third-party's copyrights, you'd need

4 09:56:34 to be a lawyer?

5 09:56:35 A I just --

6 09:56:35 MS. KOHLMANN: Objection to form.

7 09:56:36 THE WITNESS: -- wouldn't know.

8 09:56:37 MR. KRAMER: Right.

9 09:56:38 Q I'm asking you why you wouldn't know.

10 09:56:40 A Because I would not know.

11 09:56:40 Q Well, don't you have the ability to tell when

12 09:56:43 you're looking at a particular video whether that

13 09:56:46 video is authorized by the copyright holder?

14 09:56:49 MS. KOHLMANN: Objection as to form.

15 09:56:50 You can answer.

16 09:56:51 THE WITNESS: I wouldn't -- I -- I wouldn't

17 09:56:51 know unless it was my video.

18 09:56:53 MR. KRAMER: Q. Would you say you're a fan

19 09:57:06 of the YouTube service, Mr. Herzog?

20 09:57:09 A Yeah.

21 09:57:10 Q In fact, sir, you'd say you love YouTube;

22 09:57:15 right?

23 09:57:16 MS. KOHLMANN: Objection as to form.

24 09:57:18 You can answer.

25 09:57:19 THE WITNESS: I -- I would -- I would not.

1 HERZOG

2 09:57:20 MR. KRAMER: Q. Have you said you love

3 09:57:22 YouTube?

4 09:57:22 A I may have said that, yeah.

5 09:57:24 Q Okay. Any un- -- any uncertainty in your

6 09:57:26 mind as to whether it was said?

7 09:57:28 A No.

8 09:57:28 Q You did say it; right?

9 09:57:30 A I think I may have it.

10 09:57:31 Q Okay. Let's have this marked as Exhibit 1 to

11 09:57:44 Mr. Herzog's deposition.

12 09:57:57 (Document marked Herzog Exhibit 1

13 09:58:09 for identification.)

14 09:58:09 MS. KOHLMANN: I'm sorry. The exhibit, have

15 09:58:10 you marked it?

16 09:58:11 THE REPORTER: Yes.

17 09:58:12 MS. KOHLMANN: I just didn't see it; okay.

18 09:58:28 MR. KRAMER: Showing you what's been marked

19 09:58:29 as Exhibit 1 to your deposition, Mr. Herzog, it's a

20 09:58:33 three-page document produced to us by Viacom in

21 09:58:35 discovery, bearing Bates No. VIA02415511 to 13.

22 09:58:45 Q Let me ask you, as you look through it,

23 09:58:48 whether you recognize this document?

24 09:58:50 A Yes.

25 09:58:51 Q Okay. What is it?

1 HERZOG

2 17:05:44 potential relevance to this case?

3 17:05:45 A I'm not sure what would make it relevant to

4 17:05:47 the case. So if it didn't sort of scream to me this

5 17:05:51 has got something to do with YouTube and Viacom, I

6 17:05:55 probably would have thrown it away.

7 17:05:57 Q Have you ever had an occasion where you were

8 17:05:59 about to throw something away and it screamed to you

9 17:06:03 this has something to do with the case, I better not

10 17:06:04 throw it away?

11 17:06:05 A No.

12 17:06:05 MS. KOHLMANN: Objection.

13 17:06:12 MR. KRAMER: Q. On those rare occasions in

14 17:06:23 which you use instant messaging for purposes of work,

15 17:06:26 with whom do you instant message with?

16 17:06:27 A I think it's mostly people from the outside.

17 17:06:30 You know, there -- when you sign on your computer, the

18 17:06:31 AIM thing, for whatever reason, kind of comes up

19 17:06:35 first, and so it sort of signs you on automatically.

20 17:06:37 And so sometimes it's on and I don't know it, and all

21 17:06:38 of a sudden bling, and all of a sudden you see my name

22 17:06:42 up there and IME, and, you know, I might ding them

23 17:06:42 back for a few seconds and then, you know, get back to

24 17:06:46 work. It's generally people from the outside or my

25 17:06:48 daughter.

1 HERZOG

2 17:07:06 THE VIDEOGRAPHER: Counsel, your paper is on
3 17:07:07 your microphone.

4 17:07:24 MR. KRAMER: Let's just go off the record
5 17:07:26 just for a second.

6 17:07:27 THE VIDEOGRAPHER: Going off the record now
7 17:07:28 at 5:09.

8 17:07:31 (Recess taken.)

9 17:09:55 THE VIDEOGRAPHER: Okay. We're back on the
10 17:09:56 record now at 5:12.

11 17:09:58 MR. KRAMER: Q. Mr. Herzog, do you send a
12 17:10:02 group of your friends CDs containing a selection of
13 17:10:05 songs each year?

14 17:10:06 A I do.

15 17:10:06 Q Sort of a "Doug Herzog Songs of the Year" CD?

16 17:10:10 A Yes.

17 17:10:10 Q How many people would you say you send that
18 17:10:13 CD to each year?

19 17:10:14 A Oh, 50, 60.

20 17:10:15 Q Do you send your songs with your CDs to any
21 17:10:15 of your coworkers at Viacom?

22 17:10:20 A Yeah.

23 17:10:20 Q Who?

24 17:10:21 A Oh, gosh, Judy McGrath, Van Toffler, Michelle
25 17:10:25 Ganeless, Eric Flannigan.

1 HERZOG

2 17:10:27 Q And you've been doing this on an annual basis

3 17:10:30 since when?

4 17:10:32 A 2001.

5 17:10:32 Q About how many songs per year are on your

6 17:10:35 greatest hits CD that you circulate to your friends?

7 17:10:37 A Between 18 and 22, or something like that.

8 17:10:39 Q Do you have permission from the copyright

9 17:10:42 holders of the songs you include on the CD to make and

10 17:10:43 distribute copies of their content?

11 17:10:44 MS. KOHLMANN: Object.

12 17:10:46 You can answer.

13 17:10:47 THE WITNESS: I'm -- I'm not sure, but I buy

14 17:10:49 all the CDs.

15 17:10:51 MR. KRAMER: Q. So after you buy the CDs --

16 17:10:53 THE VIDEOGRAPHER: Counsel, your microphone.

17 17:10:53 MR. KRAMER: Q. -- after you buy all the

18 17:10:53 CDs, you feel you have the right to make copies and

19 17:10:56 distribute copies of the songs on those CDs to 50 of

20 17:10:56 your friends?

21 17:10:59 A I do.

22 17:10:59 Q You don't believe you're causing the

23 17:11:02 copyright holders of -- of those songs any harm when

24 17:11:05 you do that; right?

25 17:11:06 A I don't really --

1 HERZOG

2 17:11:06 MS. KOHLMANN: Objection.

3 17:11:07 THE WITNESS: -- don't really know.

4 17:11:08 MR. KRAMER: Q. I'm asking what you think.

5 17:11:10 A Well, I own -- I bought the CD, so it's mine.

6 17:11:16 Q So you think that gives you the right to send

7 17:11:19 them?

8 17:11:19 A I do.

9 17:11:20 Q You don't think the copyright holder for each

10 17:11:26 song -- song should be entitled to recover \$150,000 in

11 17:11:29 damages from you because you included their songs on

12 17:11:34 your CD; right?

13 17:11:34 A I wouldn't --

14 17:11:34 MS. KOHLMANN: Objection.

15 17:11:35 THE WITNESS: I wouldn't know.

16 17:11:35 MR. KRAMER: Q. You don't -- but you don't

17 17:11:36 think that's right?

18 17:11:36 A I wouldn't know.

19 17:11:37 Q You wouldn't do it if you thought you'd be

20 17:11:40 obligated to the copyright holders on the songs for

21 17:11:42 \$150,000 in damages for each song; would you?

22 17:11:48 A I -- I don't -- I don't know.

23 17:11:48 MS. KOHLMANN: Objection.

24 17:11:49 You can answer.

25 17:11:49 MR. KRAMER: Q. What were some of the songs

1 HERZOG

2 17:11:51 of the year for 2008?

3 17:11:51 A Um --

4 17:11:55 MS. KOHLMANN: Are you asking about his songs

5 17:11:57 of the year?

6 17:11:57 MR. KRAMER: Yes, Mr. Herzog's songs of the

7 17:12:00 year.

8 17:12:00 THE WITNESS: Let's see. There was Shaft.

9 17:12:03 There was American Boy. There was -- there was The

10 17:12:15 '59 Sound. Would you like some more?

11 17:12:19 MR. KRAMER: Q. That's a good start.

12 17:12:21 A They're good songs.

13 17:12:23 Q You have a blog on the Internet, don't you,

14 17:12:31 Mr. Herzog?

15 17:12:32 A Yes.

16 17:12:32 Q What's the URL for that blog?

17 17:12:34 A I think it's dherzogblog.blogspot.com.

18 17:12:41 Q You posted liner notes for your 2008 Songs of

19 17:12:41 the Year CD --

20 17:12:44 A I did.

21 17:12:44 Q -- to that blog very recently; isn't that

22 17:12:47 right?

23 17:12:48 A Yes.

24 17:12:48 Q When was that?

25 17:12:50 A Probably December, November.

1 HERZOG

2 17:15:01 sequence of the film on YouTube; do you?

3 17:15:04 MS. KOHLMANN: Objection.

4 17:15:05 THE WITNESS: I don't know.

5 17:15:05 MR. KRAMER: Q. You don't think that's

6 17:15:06 right; do you?

7 17:15:07 A I don't know.

8 17:15:07 MS. KOHLMANN: Objection.

9 17:15:08 MR. KRAMER: Q. Does that appeal to your

10 17:15:09 sense of equity?

11 17:15:10 A It's -- No. It's on YouTube.

12 17:15:11 MS. KOHLMANN: Objection.

13 17:15:11 MR. KRAMER: Right.

14 17:15:12 Q Does that make it -- does that mean that

15 17:15:12 it --

16 17:15:14 A YouTube thinks it's okay to show.

17 17:15:16 Q So you think it's okay to show?

18 17:15:19 A You -- YouTube --

19 17:15:19 MS. KOHLMANN: Objection.

20 17:15:20 THE WITNESS: -- thinks it's okay to show.

21 17:15:21 MR. KRAMER: Q. If YouTube thinks it's okay

22 17:15:24 to show --

23 17:15:24 A You'd have to ask YouTube.

24 17:15:25 Q Well, that's a good question, sir.

25 17:15:26 You can't tell whether it's authorized or

1 HERZOG

2 17:15:28 not; right?

3 17:15:29 A I -- I -- I -- I can't -- I --

4 17:15:29 Q Did you think --

5 17:15:32 A -- could I tell whether that's authorized?

6 17:15:33 No, I'm not sure whether I can or I can't, yeah. It's

7 17:15:36 not my -- it's not my -- I didn't put it up there, and

8 17:15:39 it's not -- it doesn't belong to anything that I've,

9 17:15:42 you know, quote, "been involved in the making of,"

10 17:15:44 like, you know, the MTV Viacom -- the MTV Networks

11 17:15:47 Viacom content so...

12 17:15:49 Q What would you need to know what -- in order

13 17:15:51 to determine whether it was authorized or not?

14 17:15:53 A I'm not sure.

15 17:15:53 Q Can you think of some things that would help?

16 17:15:59 A That would clarify copyright?

17 17:16:01 No. Only if it pertains to, you know,

18 17:16:09 something, again, that either I put up there

19 17:16:10 personally or that I knew my company was involved

20 17:16:12 with.

21 17:16:13 Q You couldn't tell otherwise?

22 17:16:14 A I'm not sure I could.

23 17:16:15 Q You don't think you could?

24 17:16:18 A I don't think I could.

25 17:16:19 MS. KOHLMANN: Objection.

1 HERZOG

2 17:16:19 MR. KRAMER: Q. One of the songs on the

3 17:16:22 Songs of the Year CD for 2008 was Down in the Hole by

4 17:16:28 Steve Earle; right?

5 17:16:29 A Yes.

6 17:16:30 Q Okay. What video on the YouTube service did

7 17:16:31 you link to from your blog in connection with that

8 17:16:33 song?

9 17:16:33 A I think a clip from the show.

10 17:16:34 Q Clip from the show The Wire?

11 17:16:36 A The Wire, right. Sorry, The Wire, yes.

12 17:16:39 Q On HBO; right?

13 17:16:40 A Yes.

14 17:16:40 Q Do you have any idea whether HBO authorized

15 17:16:42 that clip from its show The Wire to be on the YouTube

16 17:16:46 service?

17 17:16:46 A None.

18 17:16:46 Q Did you have permission from HBO to provide a

19 17:16:50 link to the clip from the show, The Wire, on YouTube?

20 17:16:54 A I didn't know.

21 17:16:54 Q Do you know who uploaded the clip?

22 17:16:56 A I don't.

23 17:16:57 Q Do you know if that person had authorization

24 17:16:58 to do so?

25 17:17:00 A I don't.

1 HERZOG

2 17:19:35 speculation.

3 17:19:39 THE WITNESS: I should be getting this by

4 17:19:40 now.

5 17:20:01 MR. KRAMER: Let's go off the record for one

6 17:20:03 second.

7 17:20:03 THE VIDEOGRAPHER: Going off the record now

8 17:20:04 at 5:22.

9 17:20:06 (Recess taken.)

10 17:21:13 THE VIDEOGRAPHER: We're back on the record

11 17:21:14 at 5:23.

12 17:21:16 MR. KRAMER: What number are we up to?

13 17:21:20 THE REPORTER: 28.

14 17:21:28 MR. KRAMER: There you go.

15 17:21:29 (Document marked Herzog Exhibit 28

16 17:21:36 for identification.)

17 17:21:36 MR. KRAMER: Q. Mr. Herzog, what's been

18 17:21:38 marked as Exhibit 28 to your deposition is a printout

19 17:21:40 of the website at the URL

20 17:21:49 <http://dherzogblog.blogspot.com>. I printed this off

21 17:21:50 the Internet yesterday.

22 17:21:50 Could you take a look at that and let me know

23 17:21:50 whether it is a printout from the blog that you

24 17:21:50 created?

25 17:21:54 A It looks like it is, yes.

1 HERZOG

2 17:21:55 Q This is the blog that we've been discussing;

3 17:21:57 right?

4 17:21:58 A Yes.

5 17:21:58 Q And you were responsible for creating the

6 17:22:00 contents of this blog; right?

7 17:22:02 A I am.

8 17:22:02 Q Are you aware of any video to which you

9 17:22:06 linked from on your blog that you know was not

10 17:22:09 authorized to be on YouTube by the copyright holder?

11 17:22:13 A Am I aware -- sorry.

12 17:22:14 Just repeat that.

13 17:22:15 Q Sure.

14 17:22:16 Are you aware of any video to which you

15 17:22:19 linked to from your blog that was not authorized to be

16 17:22:21 on YouTube by the copyright holder?

17 17:22:26 MS. KOHLMANN: Objection.

18 17:22:26 THE WITNESS: I am not.

19 17:22:27 MR. KRAMER: Q. Can you take a quick look

20 17:23:00 through the Exhibit No. 28, Mr. Herzog --

21 17:23:03 A Yes.

22 17:23:04 Q -- and let me know whether on your blog you

23 17:23:06 linked to any clips of content that you believe are

24 17:23:09 owned by Viacom?

25 17:23:11 A Any clips of content that I believe are owned

1 HERZOG

2 17:23:14 by Viacom. Maybe -- I think there's one.

3 17:23:24 Q Which is that?

4 17:23:26 A I think the American Boy clip might have come

5 17:23:33 off of an MTV Europe award show, if I remember

6 17:23:38 correctly.

7 17:23:38 Q Which number is that?

8 17:23:40 A I think that's No. 2.

9 17:23:56 Q Any others?

10 17:23:57 A That's the only one I can think of or that I

11 17:24:00 see that, you know, comes back to me in that regard.

12 17:24:03 Q Was the clip of the MTV award show that you

13 17:24:07 linked to from your blog authorized to be on YouTube?

14 17:24:10 A I have no idea. I don't believe so, if it's

15 17:24:13 one of ours. But I also believed that there was a

16 17:24:18 chance you go to that link and it's no longer there,

17 17:24:22 as often happens.

18 17:24:27 Q Did you ask that anybody remove the clip?

19 17:24:30 A I did not.

20 17:24:31 Q In fact, you actually sent people to see the

21 17:24:33 clip on YouTube?

22 17:24:35 A Yeah.

23 17:24:35 Q Was Viacom being damaged by virtue of the

24 17:24:39 fact that you were sending people to watch this clip

25 17:24:44 on YouTube?

1 HERZOG

2 17:24:44 A Well, they weren't getting paid for it, so --

3 17:24:48 but you'd have to ask -- you know, I don't run MTV.

4 17:24:53 I'm not sure what they think over there.

5 17:24:53 Q Who does run MTV?

6 17:24:56 A Van Toffler.

7 17:24:57 Q So you have no view as to whether or not

8 17:24:59 Viacom was being harmed by virtue of the presence of

9 17:25:00 this clip on YouTube?

10 17:25:01 A I know Viacom generally. I -- I believe, our

11 17:25:03 current position is we don't generally want our stuff

12 17:25:06 up on YouTube.

13 17:25:07 Q But rather than asking that this clip be

14 17:25:09 taken down, you actually sent people to see it?

15 17:25:12 A Yeah, as long as it was there. I also

16 17:25:15 under -- understood that, you know, they could go

17 17:25:16 there. There's a chance that they would go to an

18 17:25:19 empty link at some times and, again, I believe there's

19 17:25:22 an ongoing process where stuff goes up and comes down.

20 17:25:26 Q Why would you send people to something that

21 17:25:42 you thought might become an empty link?

22 17:25:45 A Because I liked that particular clip.

23 17:25:47 Q So you were happy to see that that clip was

24 17:25:50 up on YouTube?

25 17:25:51 MS. KOHLMANN: Objection.

Schapiro Exhibit 146

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)
PARTNERS, COUNTRY MUSIC TELEVISION,)
INC., PARAMOUNT PICTURES CORPORATION,)
AND BLACK ENTERTAINMENT TELEVISION,)
LLC,)

PLAINTIFFS,)

CASE NO.
07-CV-2203

vs.)

YOUTUBE, INC., YOUTUBE, LLC, AND)
GOOGLE, INC.,)

DEFENDANTS.)

-----)
THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., ET AL.,)
ON BEHALF OF THEMSELVES AND ALL)
OTHERS SIMILARLY SITUATED,)

PLAINTIFFS,)

CASE NO.
07-CV-3582

vs.)

YOUTUBE, INC., YOUTUBE, LLC, AND)
GOOGLE, INC.,)

DEFENDANTS.)

-----)
VIDEOTAPED DEPOSITION OF SUMNER REDSTONE
TAKEN WEDNESDAY, MAY 20, 2009
LOS ANGELES, CALIFORNIA

Reported by Audra E. Cramer, CSR No. 9901
Job No. 16817

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)
PARTNERS, COUNTRY MUSIC TELEVISION,)
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PLAINTIFFS,)

CASE NO.
07-CV-3582

vs.)

YOUTUBE, INC., YOUTUBE, LLC, AND)
GOOGLE, INC.,)

DEFENDANTS.)

VIDEOTAPED DEPOSITION OF SUMNER REDSTONE,
TAKEN ON BEHALF OF THE DEFENDANTS, AT 9:19 A.M.,
WEDNESDAY, MAY 20, 2009, AT 350 SOUTH GRAND AVENUE,
LOS ANGELES, CALIFORNIA, BEFORE AUDRA E. CRAMER,
CSR NO. 9901, PURSUANT TO NOTICE.

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APPEARANCES OF COUNSEL

FOR PLAINTIFFS:

SHEARMAN & STERLING, LLP
BY: STUART BASKIN, ESQ.
599 LEXINGTON AVENUE
NEW YORK, NEW YORK 10022-6069
(212) 848-4000
SBASKIN@SHEARMAN.COM

FOR DEFENDANT YOU TUBE:

MAYER BROWN LLP
BY: ANDREW H. SCHAPIRO, ESQ.
1675 BROADWAY
NEW YORK, NEW YORK 10019-5820
(212) 506-2672
aschapiro@mayerbrown.com

FOR DEFENDANT GOOGLE:

WILSON SONSINI GOODRICH & ROSATI
BY: BART E. VOLKMER, ESQ.
650 PAGE MILL ROAD
PALO ALTO, CALIFORNIA 94304-1050
(650) 565-3508
BVOLKMER@WSGR.COM

ALSO PRESENT:

TIMOTHY ALGER, DEPUTY GENERAL COUNSEL, GOOGLE

TOM CAVANAUGH, VIDEOGRAPHER

1 09:43 from?

2 A. First --

3 MR. BASKIN: Wait, wait, wait. First let me
4 record an objection in as far as it asks you to comment
5 09:43 on a legal conclusion on a legal basis.
6 Go ahead and answer the question --

7 THE WITNESS: Now I'd like to have the question
8 again.
9 BY MR. SCHAPIRO:

10 09:43 Q. Sure.
11 When Viacom material is placed on YouTube by
12 people or entities other than YouTube, so by some kid
13 down the street or by a marketing agency or whoever,
14 where does the obligation for YouTube to pay Viacom come
15 09:43 from?
16 MR. BASKIN: Same objection.
17 THE WITNESS: You have an obligation to protect
18 the intellectual property of everyone. That's standard
19 law. And to the extent that other people place material
20 09:44 on YouTube, it's your obligation to know it. And if
21 it's our material, it's your obligation either to
22 eliminate it or to pay us.
23 BY MR. SCHAPIRO:

24 Q. Do you know who SpongeBob SquarePants is?
25 09:44 A. I do. I have never met him in person, but I

1 09:44 have heard about him.

2 Q. What's his relationship with Viacom?

3 A. It's an animated product of Nickelodeon shown

4 all over of the world, including China.

5 09:44 Q. And Nickelodeon is part of Viacom; correct?

6 A. Yes, it is.

7 MR. SCHAPIRO: I'm going to show you a document

8 that, in the tradition of these depositions, I will

9 represent was printed from YouTube this morning, a

10 09:45 screenshot. I'd ask that it be marked -- I guess we're

11 at Exhibit 1.

12 (Whereupon, Exhibit 1 was marked

13 for identification.)

14 BY MR. SHAPIRO:

15 09:45 Q. I'd ask you to take a look at that, and as I

16 said, I'll represent these are YouTube search results.

17 This is a search conducted on YouTube using the term

18 "SpongeBob" this morning.

19 A. I'm not familiar with the document. I see a

20 09:46 long list with the name "SpongeBob." I have no idea --

21 Q. Yes. Correct. There is a long list with the

22 name "SpongeBob"; correct?

23 A. Yes.

24 Q. And next to the name "SpongeBob," do you see

25 09:46 any images?

1 09:46 A. Yes, there are images of SpongeBob.

2 Q. In fact, you mentioned that SpongeBob is now

3 showing in China. Do you see that the third item

4 down --

5 09:46 A. It's shown all over the world, to my knowledge.

6 Q. But even in China. Even this exhibit says

7 "SpongeBob SquarePants in China"; correct?

8 A. Yes. I made that deal.

9 Q. Are these authorized clips, or are they

10 09:46 infringing clips?

11 A. How can I tell you that? You show me a piece

12 of paper with the name "SpongeBob." I know nothing

13 about the piece of paper or the implications of

14 "SpongeBob." I know that in China I made the deal, it

15 09:47 was broadcast to hundreds of millions of homes, and we

16 were paid for it.

17 Q. But it's not possible to tell just by this

18 whether these clips are authorized or not?

19 MR. BASKIN: Objection.

20 09:47 THE WITNESS: I don't know. I haven't examined

21 the paper. But to the best of my knowledge, I can't see

22 any.

23 BY MR. SCHAPIRO:

24 Q. Do you think there are ways that someone else

25 09:47 by looking at this screenshot could tell?

1 09:47 A. Maybe. Maybe somebody more familiar with the
2 worldwide distribution of SpongeBob than I am could
3 answer your question.

4 Q. So people in your organization?

5 09:47 A. I would hope so.

6 Q. Would they be the best situated to answer that?

7 A. I don't know.

8 MR. BASKIN: Objection.

9 THE WITNESS: I can't answer those questions
10 09:47 because they are so hypothetical, particularly when you
11 start me with a piece of paper that I saw for the first
12 time this morning and have no idea what it is.

13 BY MR. SCHAPIRO:

14 Q. And if someone at YouTube saw this screen for
15 09:47 the first time in his life this morning, what should
16 that employee of YouTube do?

17 MR. BASKIN: Objection.

18 THE WITNESS: I have no idea because I don't
19 know what he's looking at. Is he looking at how this
20 09:47 product was distributed in Egypt? I guess he wouldn't
21 have any interest in that unless he put it on YouTube.

22 BY MR. SCHAPIRO:

23 Q. Since you've never been on YouTube, I'll
24 represent -- I think your lawyer won't dispute this --
25 09:48 that when a party searches on YouTube -- if a kid goes

1 09:48 to YouTube and types in "SpongeBob," he or she will get
2 a list of search results and thumbnail images that look
3 like this.

4 A. I see. I take your word for that.

5 09:48 Q. Knowing that, does it change your opinion about
6 whether this material should be on YouTube right now?

7 MR. BASKIN: Objection insofar as it calls for
8 him to render some legal conclusion or legal advice.

9 THE WITNESS: Look, it's the same answer. If
10 09:48 this is put on YouTube by a third party and YouTube does
11 nothing to take it off but uses it without our
12 permission, they are violating the law and our rights.

13 BY MR. SCHAPIRO:

14 Q. How would you like YouTube to determine whether
15 09:49 it's been put up by a third party without your
16 permission?

17 A. That's their obligation. You know, there's a
18 telephone. All they have to do is call and see whether
19 we authorized it, and they would probably hear the
20 09:49 answer no.

21 Q. Can you think of any other ways?

22 MR. BASKIN: Objection again insofar as it
23 calls for --

24 THE WITNESS: I would think that --

25 09:49 MR. BASKIN: Please. Please.

1 09:57 fair price for the product, then they would have sent
2 out a similar takedown.

3 BY MR. SCHAPIRO:

4 Q. Can you think of any other instances or do you
5 09:57 know of any other instances in which YouTube has allowed
6 its material to -- pardon me -- Viacom has allowed its
7 material to stay up on YouTube?

8 A. No. It may have been if they got paid for
9 that, I would think so, but I know of no such instance.

10 09:58 There may have been. I just don't know.

11 Q. Would there be any business reasons to do so?

12 A. How would I know if there is a business reason
13 if I don't know that they did it and what the
14 circumstances were? Obviously if it happened -- and I
15 09:58 have no knowledge -- they would have had a business
16 reason.

17 Q. And if they did, you wouldn't expect YouTube to
18 take it down, would you?

19 A. No. No. That's not a question --

20 09:58 MR. BASKIN: Objection again insofar as --

21 THE WITNESS: That's not a question I can
22 answer. You should ask that of the executive that you
23 think allowed material to be used. Ask him why. I'm
24 sure you'll get an intelligent answer. But I don't know

25 09:58 of any of the instances, so I can't answer your

1 09:58 question.

2 BY MR. SCHAPIRO:

3 Q. Do you know if, subsequent to the filing of

4 this lawsuit, Viacom has used YouTube for what's

5 09:59 sometimes described as stealth marketing?

6 Do you know what stealth marking is?

7 MR. BASKIN: Objection as to form.

8 MR. SCHAPIRO: It's a compound question. It's

9 a bad question. I'll withdraw the question.

10 09:59 THE WITNESS: I would rather you define --

11 BY MR. SCHAPIRO:

12 Q. As I'm using the term, it would be posting

13 material without being open about the fact that the

14 company itself was posting the material, trying to make

15 09:59 it look as if this were a viral or spontaneous spread of

16 material for marketing purposes.

17 A. I have no knowledge as to whether they did that

18 or not. I would assume they would use any legal

19 technique to determine who is stealing our product.

20 09:59 Q. You said a few minutes ago that SpongeBob is

21 easily recognizable. Everybody knows that Paramount

22 is --

23 A. Viacom.

24 Q. -- is part of Viacom.

25 10:00 Who or what is the Human Giant?

1 10:00 A. The Human Giant? Are you talking about a fairy
2 tale? No, I don't know what you're referring to. I
3 know we have a lot of giants, like Comedy Central, that
4 belong to Viacom, but I don't know the expression.

5 10:00 Q. You're not aware of a Viacom character called
6 Human Giant or a show?

7 A. May have heard of it, but it never rang a
8 particular bell, obviously.

9 Q. But you believe YouTube should recognize it?

10 10:00 MR. BASKIN: Again, objection insofar as it
11 calls for a legal or technical --

12 THE WITNESS: In the first place -- go ahead.
13 Make your objection. I'll allow you to do that.

14 MR. BASKIN: Thank you.

15 10:00 Object insofar as it calls for a legal or
16 technological conclusion on the part of Mr. Redstone.

17 THE WITNESS: The fact that I don't know every
18 single detailed product of Viacom does not mean that you
19 should be using it without our consent. And if you have
20 10:01 material that you don't know who it belongs to, you can
21 find out.

22 BY MR. SCHAPIRO:

23 Q. Tell me about that. How?

24 A. I just told you.

25 10:01 Q. Here's another hypothetical: Let's say I go on

1 10:01 to YouTube today and I see what's looks to be a
2 Slovenian soap opera.

3 A. Uh-huh.

4 Q. How should I find out whether that's
5 10:01 authorized, not authorized, and who owns it?

6 MR. BASKIN: Again, I object as far as it calls
7 for a legal or technological opinion on the part of
8 Mr. Redstone.

9 THE WITNESS: I have no way of answering your
10 10:01 question. If there were a known Slovenian opera
11 destination, you call them and find out. I can't answer
12 those questions. Why would you expect me to? They are
13 too hypothetical and too far related from the guts of
14 this case.

15 10:01 BY MR. SCHAPIRO:

16 Q. Do you know if you're suing YouTube for the
17 presence of Human Giant material on the site of YouTube?

18 A. Let me put it this way: If Human Giant is a
19 product of Viacom and you use it without our consent, we
20 10:02 should sue you for using it.

21 Q. Do you have any idea whether Human Giant is a
22 Viacom property?

23 A. I've already testified. Maybe I'm getting old
24 and my memory is not as good as it used to be, but I
25 10:02 don't profess to know every single product that Viacom

1 10:02 has.

2 Q. How about "Rick & Steve"? Is that a Viacom

3 product?

4 A. I've heard of that.

5 10:02 Q. What is it?

6 A. I don't know. I don't watch all of these

7 programs. I watch Paramount, of course, as you do. I

8 watch MTV. I watch Nickelodeon. I watch VH1. I watch

9 BET. I watch Spike. But do I know every piece of

10 10:02 material that each one of these distribution channels

11 owns or presents? Of course not.

12 Q. If someone put "Rick & Steve" material on

13 YouTube and YouTube doesn't pay you -- strike that

14 question.

15 10:03 How is it that although you wouldn't recognize

16 "Rick & Steve" if they walked into this room, how is it

17 that you think YouTube should?

18 MR. BASKIN: Objection as to form --

19 THE WITNESS: Can you make that as a general

20 10:03 objection so that I won't be interrupting?

21 MR. BASKIN: It's not the rules.

22 Objection as to form and in so far as it

23 assumes a fact not in evidence.

24 THE WITNESS: I assume that you're acting

25 10:03 appropriately --

1 10:03 MR. BASKIN: I hope so.

2 THE WITNESS: -- but you should know that you

3 interfere with my line of thought.

4 Can I have the question back again?

5 10:03 BY MR. SCHAPIRO:

6 Q. Sure.

7 How is it that although you wouldn't recognize

8 "Rick & Steve" if they walked into this room, you think

9 YouTube should recognize that as a Viacom property and

10 10:04 take it down?

11 A. Would you recognize "Rick & Steve" if they

12 walked into this room? Fair question.

13 Q. Although I'm the one asking questions, I

14 certainly wouldn't. I wouldn't.

15 10:04 A. Now, here is my point: It's the obligation of

16 YouTube, not me, to determine who that belongs to. If

17 it belongs to Viacom, they can determine that easily.

18 If it belongs to Viacom, they have no right to use it

19 without our consent. It's your obligation to determine

20 10:04 who this product that's shoved on your -- shoved on

21 YouTube, who it belongs to. It's not my obligation.

22 Q. You've said again and again that if it belongs

23 to Viacom, they, meaning YouTube, can determine that

24 easily.

25 10:04 A. I think they can.

1 10:04 Q. So far you've given us an example of calling
2 Viacom on the phone if they see something. What other
3 basis do you have for saying that?

4 A. Because your business --

5 10:05 MR. BASKIN: Wait. Wait. You've got to let me
6 record my objection.

7 Again, I object insofar as it's asking
8 Mr. Redstone to discuss either legal or technological
9 issues that are outside his bailiwick.

10 10:05 THE WITNESS: I didn't think it was a legal
11 problem. I thought it was a factual problem.

12 So go ahead again, please.

13 BY MR. SCHAPIRO:

14 Q. I first asked, "You've said again and again
15 10:05 that if it belongs to Viacom, they, meaning YouTube, can
16 determine that easily."

17 You answered, "I think they can."

18 A. I know they can.

19 Q. Then I said, "So far you've given us an example
20 10:05 of calling Viacom on the phone if they see unidentified
21 material, and they should ask Viacom maybe, 'Is this
22 yours?'"

23 Are there other mechanisms that you think
24 YouTube could use --

25 10:05 A. I'd like to make a general observation.

1 10:05 MR. BASKIN: Same objection.

2 THE WITNESS: Your people are in this business.

3 They are in the business of aggregating material to use

4 for their financial purposes. They are very, very smart

5 10:06 people, and I mean it. People at YouTube and at

6 Google -- I've met some of them -- are very smart, and

7 they would probably know what each piece of material --

8 who it belonged to. However, if they don't know it and

9 they really want to prevent unauthorized use -- which

10 10:06 obviously you didn't, because you used so much that you

11 did know -- they can find out one way or the other who

12 it belongs to. You have a search engine. You can

13 search it and find out in seconds.

14 BY MR. SCHAPIRO:

15 10:06 Q. Are you familiar with the phrase

16 "user-generated content"?

17 A. I assume that's content that a user generates.

18 Like, he makes a film, and he puts it on some Internet

19 space.

20 10:06 Q. Do you know of any Internet sites that host

21 user-generated content?

22 A. Well, I think we did once in something called

23 iFilm. I think that we -- that people send in their

24 films, people who thought they could make a movie, and

25 10:07 it was on iFilm, which is now out of business, by the

1 10:07 way.

2 Q. Do you have an understanding of how a site like

3 iFilm or YouTube or -- you also own a site called

4 AtomFilms; correct?

5 10:07 MR. BASKIN: Did you answer?

6 THE WITNESS: Yes.

7 MR. BASKIN: Okay.

8 Objection as to form, by the way.

9 BY MR. SCHAPIRO:

10 10:07 Q. -- can determine whether user-generated content

11 has been put up with authorization?

12 A. It's easy to find out. If you're running a

13 Paramount product, SpongeBob, you can find out if we

14 authorized it, and you know that we didn't.

15 10:08 Q. I apologize. My question wasn't clear.

16 A. Okay.

17 Q. I'm now talking about user-generated content,

18 which you said a moment ago was individual users making

19 maybe a short video and putting it out.

20 10:08 A. Right.

21 Q. Those people have rights too; correct?

22 MR. BASKIN: Objection insofar as it calls for

23 a legal --

24 THE WITNESS: Well, I don't know if they have

25 10:08 rights at all. I have no idea. But the fact is that