

Schapiro Exhibit 148

Redacted at the request of Plaintiffs pending a meet and confer and,
if applicable, further action of the Court.

Schapiro Exhibit 149

From: "Mullarkey, Kristen" <Kristen.Mullarkey@mtvn.com>
Date: Tue, 6 Mar 2007 12:25:48 -0500
To: "McGrath, Judy" <Judy.McGrath@mtvstaff.com>
Subject: SNL Clip

This is the piece you wanted.
I will also get the whole show and make copies on DVD.

><http://www.youtube.com/watch?v=Z4vpT4UrY1M>
>
>

Schapiro Exhibit 150

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,)

vs.) NO. 07-CV-2103

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

Defendants.)

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

Plaintiffs,)

vs.) NO. 07-CV-3582

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

Defendants.)

VIDEOTAPED DEPOSITION OF THEODORA MICHAELS
SAN FRANCISCO, CALIFORNIA
SEPTEMBER 24, 2009

JOB NO. 17764

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

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

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Attorneys for Plaintiff and Witness

250 Hudson Street

8th Floor

New York, New York 10013-1413

BY: ANNIKA K. MARTIN, ESQ.

MAYER BROWN, LLP

Attorneys for Defendant

1675 Broadway

New York, New York 10019-5820

BY: CHRISTINE M. HERNANDEZ, ESQ.

AND

JASON KIRSCHNER, ESQ.

ALSO PRESENT:

NICHOLAS GUZMAN, Videographer

1 13:27:17 A. Yes.

2 13:27:18 Q. Okay.

3 13:27:18 Is this a true and correct copy of the

4 13:27:25 way the Theodora Michaels YouTube channel appears

5 13:27:29 on YouTube?

6 13:27:29 A. Yes. With the exception that my baby

7 13:27:32 niece looks such cuter on the original.

8 13:27:36 Q. Fair enough, fair enough.

9 13:27:38 And then, if you look on the third page

10 13:27:40 of this exhibit --

11 13:27:41 A. Yes.

12 13:27:41 Q. -- it says, "Videos (11)," and then

13 13:27:47 there is 11, sort of thumbnail images of videos.

14 13:27:52 Have you ever posted any videos to

15 13:27:55 YouTube -- first -- let me strike that.

16 13:27:58 The videos that are shown here on the

17 13:28:01 third page of this exhibit, are they, in fact, all

18 13:28:04 the videos that you uploaded?

19 13:28:05 A. Yes.

20 13:28:05 Q. Have you ever hosted any videos to

21 13:28:08 YouTube that are not shown on the third page of

22 13:28:10 this exhibit?

23 13:28:10 A. No.

24 13:28:10 Q. And you see the thumbnail image and the

25 13:28:20 title, "Best of the View"; do you see that?

1 13:28:23 A. Yes.

2 13:28:23 Q. And it states, "one month ago," is that

3 13:28:28 correct, in indicating that you posted that video

4 13:28:31 about a month ago?

5 13:28:32 A. Yes.

6 13:28:33 Q. And is this video, "Best of the View",

7 13:28:39 the one you referenced earlier, with your husband

8 13:28:42 in the audience?

9 13:28:43 A. Yes.

10 13:28:43 Q. Okay.

11 13:28:44 MS. HERNANDEZ: I am going to mark as

12 13:28:59 Exhibit 11, again, two pages printed from the

13 13:29:02 YouTube web site, of a video posted by user

14 13:29:07 name Theodora Michaels, the user name for

15 13:29:11 Miss Michaels, and these were printed on

16 13:29:12 September 18th.)

17 13:29:14 (Printouts of Miss Michael's channel on

18 10:16:23 YouTube marked Carlin Exhibit 11 for

19 10:16:23 identification.)

20 13:29:14 THE WITNESS: Okay.

21 13:29:49 BY MS. HERNANDEZ:

22 13:29:49 Q. Have you had a chance to look at it?

23 13:29:51 A. Yes.

24 13:29:51 Q. And Miss Michaels, is this a true and

25 13:29:53 correct copy of the YouTube web page for the "Best

1 13:29:57 of The View" video that you testified you
2 13:30:00 uploaded?
3 13:30:00 A. Yes.
4 13:30:00 Q. Okay.
5 13:30:01 And this is a clip from the TV show,
6 13:30:05 "The View," from an episode that aired on
7 13:30:09 August 5th, 2009; that is right?
8 13:30:11 A. Yes.
9 13:30:13 Q. And "The View" plays on the network ABC,
10 13:30:16 right?
11 13:30:16 A. Yes.
12 13:30:16 Q. How did you come to have, in your
13 13:30:19 possession, the video clip that you uploaded as
14 13:30:22 "Best of the View"?
15 13:30:22 A. I downloaded it from -- from either the
16 13:30:29 official ABC web site or the official web site for
17 13:30:32 "The View." I forget which one.
18 13:30:35 Q. And you write, in the top right-hand
19 13:30:46 box, "I've never seen the show, but that is my
20 13:30:49 Kevin in the red shirt, dancing with the cast of
21 13:30:52 Hair, on 8/5/09."
22 13:30:57 A. I zoomed in on him as much as iMovie
23 13:31:06 allows.
24 13:31:06 Q. "Smiley Face," did you write that?
25 13:31:11 A. Yes.

1 13:31:11 Q. What is iMovie?

2 13:31:13 A. iMovie is a program that came with our

3 13:31:20 Macintosh computer that allows video editing.

4 13:31:24 Q. And so you manipulated the video that

5 13:31:32 you downloaded, from either ABC or "The View"'s

6 13:31:35 web site, into the format that you then ultimately

7 13:31:38 uploaded to YouTube; that is right?

8 13:31:39 A. Yes.

9 13:31:39 Q. Do you know who owns the copyright to

10 13:31:41 this August 5th, 2009, episode of "The View"?

11 13:31:45 A. No.

12 13:31:45 Q. Did you attempt to discern the copyright

13 13:31:50 owner before you downloaded the video from ABC or

14 13:31:54 "The View"'s web site?

15 13:31:55 A. No.

16 13:31:55 Q. I am sorry?

17 13:31:56 A. No.

18 13:31:56 Q. Okay. Did you attempt to discern the

19 13:32:02 copyright owner before you manipulated the video

20 13:32:05 using iMovie?

21 13:32:06 A. No.

22 13:32:07 Q. Did you attempt to discern its copyright

23 13:32:09 owner before you uploaded the clip?

24 13:32:11 A. No.

25 13:32:11 Q. Do you have authorization from ABC to

1 13:32:15 post this video?

2 13:32:16 A. No.

3 13:32:17 Q. Do you have authorization from the

4 13:32:20 producers of "The View"?

5 13:32:20 A. No.

6 13:32:21 Q. Did you have authorization from anyone

7 13:32:24 else?

8 13:32:24 A. No.

9 13:32:24 Q. Did you attempt to secure authorization

10 13:32:27 from anyone before you uploaded it?

11 13:32:29 A. No.

12 13:32:30 Q. Why not?

13 13:32:31 A. Because I believe it to be fair use.

14 13:32:34 Q. Why; why do you believe it to be fair

15 13:32:40 use?

16 13:32:40 A. Actually, let me amend that.

17 13:32:42 I believe it either to be fair use, or,

18 13:32:44 if it isn't fair use, "The View" is unlikely to

19 13:32:47 care very much -- or the copyright owners, rather,

20 13:32:50 are unlikely to care very much.

21 13:32:53 Q. Let's do those in parts.

22 13:32:57 Why do you believe that it is

23 13:32:59 potentially a fair-use?

24 13:33:00 A. Several factors. One is, if I recall

25 13:33:05 correctly, the original show was approximately

1 13:33:09 40 minutes; of that, I took only 40 seconds.
2 13:33:12 That 40 seconds, I used approximately 50 percent
3 13:33:17 of the original image, and I didn't use any of
4 13:33:22 their audio.

5 13:33:23 So I used only a small fraction of the
6 13:33:28 original work.

7 13:33:31 MS. MARTIN: I actually don't want you
8 13:33:34 to continue this testimony. That is your
9 13:33:35 legal opinion, as to why you did this.

10 13:33:36 A. Okay.

11 13:33:37 Q. I am sorry.

12 13:33:38 MS. MARTIN: I am objecting. This is
13 13:33:41 her legal opinion, about her own actions, she
14 13:33:43 is making.

15 13:33:44 MS. HERNANDEZ: Under what privilege is
16 13:33:45 that?

17 13:33:45 Is that a proper instruction, not to
18 13:33:49 answer?

19 13:33:49 She was acting as an attorney when she
20 13:33:55 uploaded a clip of "The View."

21 13:33:56 MS. MARTIN: Okay, continue. I think it
22 13:33:58 is, her fair use is --

23 13:34:01 MS. HERNANDEZ: I am not sure where
24 13:34:03 anticipation of litigation fits into this,
25 13:34:06 either.

Schapiro Exhibit 151

From: "Clayman, Greg" <Gregory.Clayman@mtvn.com>
Date: Tue, 17 Jul 2007 10:43:04 -0400
To: "Salmi, Mika" <Mika.Salmi@mtvn.com>
Subject: FW: Digital LRP Deck For Review

FYI

Want to start getting this issue in front of Viacom from all sides. Glad Erik brings it up in his pres. Hoping he'll hammer it home a little. If he doesn't I'm sure you will!

- G

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

From: Clayman, Greg
Sent: Tuesday, July 17, 2007 10:42 AM
To: Flannigan, Erik
Subject: RE: Digital LRP Deck For Review

Thx. Read this last night - I liked your section a lot. Spot on.

Quick thought you might want to address:

Your point on Rights Issues around UGC I think is a HUGE one. It's not just that taking all questionable content off iFilm has hurt it (which it clearly has) but that MTVN really stands alone regarding our position here.

I think it will be very difficult to build a thriving community if we need to monitor every uploaded clip and link for IP issues and are more hard-line than any other site on the web (which is the current direction we're going.) It's like when I tried to upload the video of me dancing to AddictingClips and iFilm and I couldn't do it. I gave up and went to DailyMotion. I think that must happen 1,000 times a day.

Another point on this is that we are also restricted to the sites that we allow our clips to live on. Even using our own player we won't allow distribution of our clips to any sites that don't conform to our "stronger than the DMCA" filtering requirements. I really do fear it will hobble us going forward if we don't resolve this issue.

- G

(oh, and thanks for taking 90/10 to 70/30! :-)

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

From: Flannigan, Erik
Sent: Tuesday, July 17, 2007 10:32 AM
To: Salmi, Mika; Holt, Courtney; Youngwood, Stephen; Bierer, Gideon; Stirratt, Nada; Clayman, Greg
Subject: RE: Digital LRP Deck For Review

Attached is the Entertainment Group digital deck.

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

From: Salmi, Mika
Sent: Monday, July 16, 2007 5:39 PM
To: Holt, Courtney; Youngwood, Stephen; Flannigan, Erik; Bierer, Gideon; Stirratt, Nada; Clayman, Greg
Subject: Fw: Digital LRP Deck For Review
Importance: High

Fyi

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

From: Leventman, Leslie

To: Salmi, Mika; Stirratt, Nada; Kang, Richard
Cc: McGrath, Judy; Robinson, Carole; Eigendorff, Rich; Bakish, Robert; Hurvitz, Lauren; Zelanko, Marc; Turner, Tori
- MTVN; Mast, Tory; Clayman, Greg; Goldman, Dan; Everson, Carolyn
Sent: Mon Jul 16 17:31:51 2007
Subject: Digital LRP Deck For Review

Hi Mika, Nada and Richard--

Attached please find your final Digital LRP deck. We've incorporated all of your changes, and are ready to release the file to the printer to meet the deadline. We've carefully rechecked your slides, but given the magnitude of this project, we would like to have your eyes on it before it goes to print.

We plan to forward your deck to the printer by 6:30PM. Thanks for your timely response.

Here's to a successful presentation!

Thanks,

Leslie

<<06 Digital Media v9.pdf>>

Schapiro Exhibit 152

From: He, Zuobin <Zuobin.He@mtvstaff.com>
Date: Wed, 3 Oct 2007 13:41:01 -0400
To: Flannigan, Erik <Erik.Flannigan@mtvstaff.com>, Salmi, Mika <Mika.Salmi@mtvn.com>, Sollecito, John <John.Sollecito@mtvn.com>, Miller, Kenny <Kenny.Miller@mtvn.com>, Youngwood, Stephen <Stephen.Youngwood@nick.com>, Holt, Courtney <Courtney.Holt@mtvstaff.com>
Cc: Fahey Rush, Colleen <Colleen.FaheyRush@mtvstaff.com>, Giles, David <David.Giles@vh1staff.com>, Giles, Tanya <Tanya.Giles@mtvn.com>, Geraci, Ron <Ron.Geraci@nick.com>
Subject: RE: traffic

Got it.

Thanks.

Zuobin He (Peter)
Online Distribution and Partnerships
MTV Networks | Global Digital Media Group
1515 Broadway, New York NY 10036
Tel: 212-846-5886

From: Flannigan, Erik
Sent: Wednesday, October 03, 2007 1:40 PM
To: Salmi, Mika; He, Zuobin; Sollecito, John; Miller, Kenny; Youngwood, Stephen; Holt, Courtney
Cc: Fahey Rush, Colleen; Giles, David; Giles, Tanya; Geraci, Ron
Subject: RE: traffic

Sadly, yes, especially as we have pulled WAY back on what content is allowed on the site post You Tube lawsuit.

From: Salmi, Mika
Sent: Wednesday, October 03, 2007 1:38 PM
To: He, Zuobin; Sollecito, John; Miller, Kenny; Youngwood, Stephen; Holt, Courtney; Flannigan, Erik
Cc: Fahey Rush, Colleen; Giles, David; Giles, Tanya; Geraci, Ron
Subject: RE: traffic

That is a planned/expected result as we merge it into Spike.

From: He, Zuobin
Sent: Wednesday, October 03, 2007 1:37 PM
To: Sollecito, John; Miller, Kenny; Youngwood, Stephen; Salmi, Mika; Holt, Courtney; Flannigan, Erik
Cc: Fahey Rush, Colleen; Giles, David; Giles, Tanya; Geraci, Ron
Subject: RE: traffic

Mika,

One callout of our overall traffic performance is the trend of iFilm. It declined by nearly 40% since Nov. 06.

Zuobin He (Peter)

Online Distribution and Partnerships
MTV Networks | Global Digital Media Group
1515 Broadway, New York NY 10036
Tel: 212-846-5886

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

From: Sollecito, John
Sent: Wednesday, October 03, 2007 1:05 PM
To: Miller, Kenny; Youngwood, Stephen; Salmi, Mika; He, Zuobin; Holt, Courtney; Flannigan, Erik
Cc: Fahey Rush, Colleen; Giles, David; Giles, Tanya; Geraci, Ron
Subject: RE: traffic

Across MTV Networks, seasonality and the timing of initiatives are playing the largest role in the recent declines.

For the Music & Youth group, the major players are seeing their traffic normalize following much recent success (MTV VMA's, VH1's abundance of programming – recent declines are similar to that seen following the initial success of Flavor of Love and Web Junk 20). For the college based sites, traffic is trending as expected (RMP is heavily dependent on open registration for class, CMN is heavily dependent on happenings on campus).

The recent declines across the Kids & Family group can be largely attributed to seasonality (beginning of the 2008 school year). Trending is in line with last year. The-N varies quite a bit from the other Kids & Family sites, with traffic being heavily dependent on cross-promotion with Addicting Games. Over the past few months, a majority of the record highs that The-N has achieved has been a result of such integration. The recent declines can be attributed to no new games being posted on the AG homepage.

Within the Games & Entertainment group, many of the sites are coming off of record highs. In August, Comedy Central had many initiatives driving traffic to the site (Flavor Flav Roast, cross-promotion w/ Addicting Games, 'Sign Colbert's Cast' and Barack Obama on The Daily Show). Following these initiatives, traffic dipped as a result of 'dark weeks of The Colbert Show and The Daily Show, however quickly bounced back when the shows came back on (cross-promotion with AG helped drive traffic at this time as well). The success of TV Land is heavily tied to its programming, which is evident from the success of the month long Elvis promotion (August). Traffic started to dip; however, it has bounced back as a result of the recent addition of full episodes to the site (Andy Griffith Show and Gunsmoke). In regards to Gametrailers, records keep being broken as they provide more and more coverage of gaming events.

A majority of the declines that we have recently seen appear to be more of us being a victim of our own success. The normalization of traffic is usually more drawn out when the success pertains to an on-air initiative.

Let me know if you have any questions/comments.

_Js

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

From: Miller, Kenny
Sent: Wednesday, October 03, 2007 6:53 AM
To: Youngwood, Stephen; Salmi, Mika; Sollecito, John; He, Zuobin; Holt, Courtney; Flannigan, Erik
Subject: Re: traffic

Also coming off vma event traffic compounds back to school drop off.

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

From: Youngwood, Stephen
To: Salmi, Mika; Miller, Kenny; Sollecito, John; He, Zuobin; Holt, Courtney; Flannigan, Erik

Sent: Wed Oct 03 00:44:24 2007
Subject: Re: traffic

I am hoping it is the bts effect

Sent from my BlackBerry Wireless Handheld

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

From: Salmi, Mika

To: Miller, Kenny; Sollecito, John; He, Zuobin; Holt, Courtney; Youngwood, Stephen; Flannigan, Erik

Sent: Tue Oct 02 13:59:01 2007

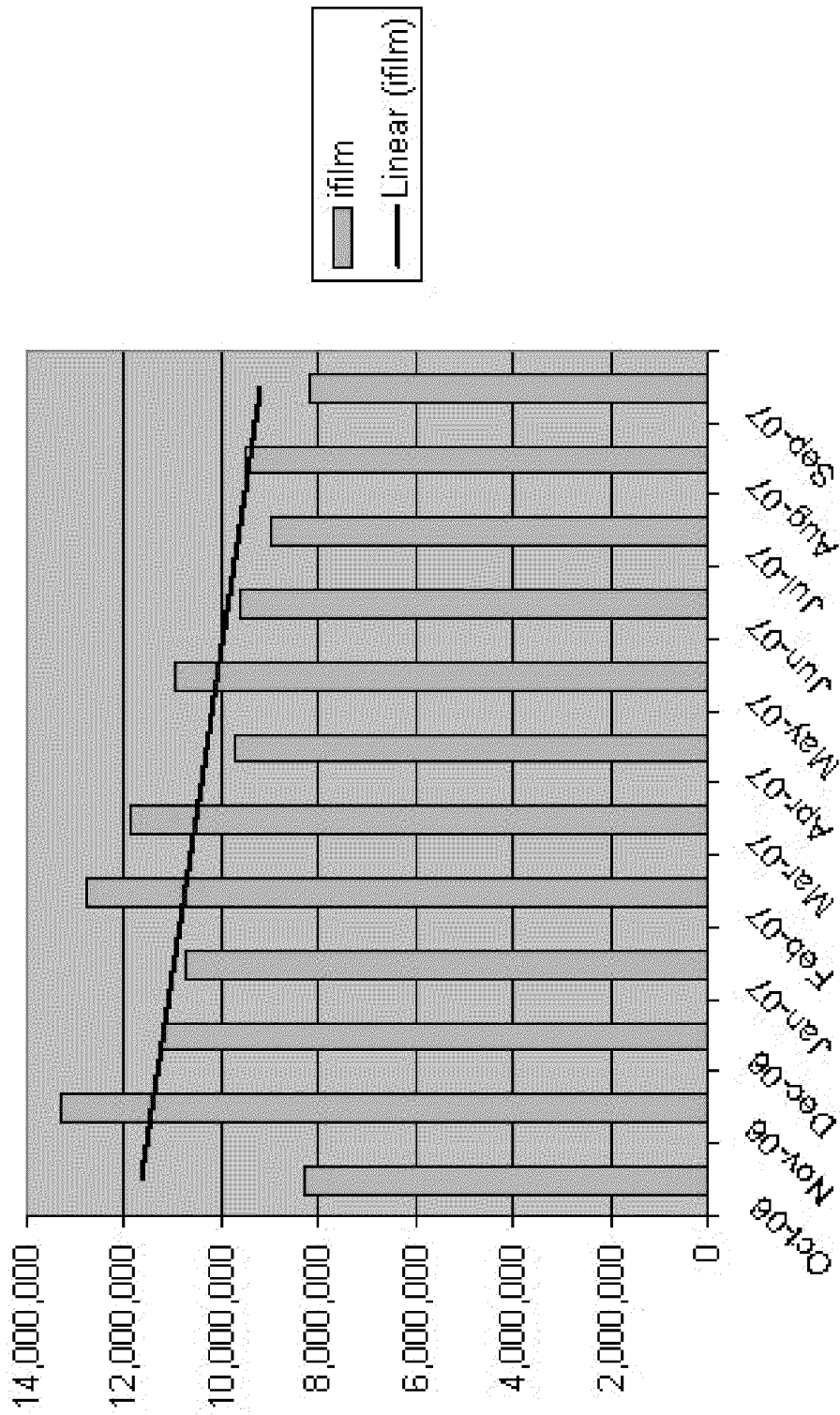
Subject: traffic

It looks like traffic has been down on most of our sites the past few weeks. Is this true? Is it down for mtvn as an aggregate? Any clues as to why?

List of attachments:

image001.jpg

ifilm Monthly Uniques



Schapiro Exhibit 153

Subject: Ifilm/youtube
From: "Ganeless, Michele" <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=USER ACCOUNTS/CN=USER/CN=COM_WEB MIGRATED USERS DONOTTOUCH/CN=GANELESM>
To: Herzog, Doug
Cc: Date: Wed, 14 Mar 2007 17:25:16 +0000

Clearly other people are noticing the youtube/ifilm conundrum that's been created. (from thestreet.com)

Of course, YouTube may have gotten a big boost from Viacom's content in the early days. Widely popular and produced for short bursts, Viacom titles such as The Daily Show and The Colbert Report presented ideal draws for an emerging medium where viewers would not be comfortable watching feature-length material. But Viacom didn't seem to have a problem with this at the onset. Back then, YouTube's cult-like success may well have helped create a buzz around Viacom's content and grow its popularity. It wasn't until February, after YouTube started to eclipse Viacom's own Web presence and found a deep-pocketed backer in Google, that Viacom took the gloves off.

That won't change Google's position that it's protected by the Digital Millennium Copyright Act and, in accordance with it, removed clips when told to do so by its owners. Viacom should know all about the DMCA, wrote Emerging Media Dynamics analyst Cynthia Brumfield in a blog posting Tuesday. The company cites the act to absolve itself of responsibility for illegal material uploaded to its own film-sharing sites, iFilm and Atom Films. Even if Viacom argues that there is much more copyright-infringing material on YouTube than its own sites, there is no set proportional measure that would clearly put YouTube in the wrong while vindicating Viacom, says Daniel Schecter, a partner at the law firm Latham Watkins.

Schapiro Exhibit 154

Subject: RE: Viral Internet Marketing Clips
From: Kadetsky, Deborah <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=USER
ACCOUNTS/CN=USER/CN=KADETSKD>
To: Hallie, Michelena
Cc: Morales, Cindy, Carbone, Tony, Imm, Tina
Date: Fri, 27 Oct 2006 22:35:10 +0000

I can only speak to youtube, but cc'ing tony carbone to address google.

It would be great if you guys could sweep based on username, because we are consisntely only adding youtube videos under the "vh1staff" username. There MAY be future instances where we are posting outside of that, and can alert you to leave it posted. But it would be a significant task to keep you updated on each and every clip we post ongoing...

Let me know if the username concept is one you can consider.

Thanks!
deb

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

From: Hallie, Michelena
Sent: Friday, October 27, 2006 6:25 PM
To: Kadetsky, Deborah
Cc: Morales, Cindy
Subject: RE: Viral Internet Marketing Clips

And in answer to your question on frequency, it's going to be pretty constant and actually expanding to myspace, google video and yahoo video. Could you send any other/future approved clips on any of these sites to Cindy so that she can make sure they are not removed?

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

From: Kadetsky, Deborah
Sent: Friday, October 27, 2006 6:07 PM
To: Cheeks, George; Maxwell, Tony
Cc: Wilson, Adam; Hallie, Michelena; Imm, Tina
Subject: RE: Viral Internet Marketing Clips

George, are you able to do your sweep of clips according to who's posted them?
If that is the case, the clips that we've authorized to be posted are under the usernames "vh1staff" and "reaction2006"

If you need specific links, here is a list of what we've posted as approved clips to date:

<http://www.youtube.com/watch?v=qVVG7Rfrvk>
<http://www.youtube.com/watch?v=jFoQNdwaGys>
http://www.youtube.com/watch?v=_5vjL2stAz0
http://www.youtube.com/watch?v=M-G_NQZb1II
<http://www.youtube.com/watch?v=qvUzUOSbs9Y>
<http://www.youtube.com/watch?v=xPftPn-eGKk>
<http://www.youtube.com/watch?v=3saVMo96328>
<http://www.youtube.com/watch?v=PjiZqOOAipw>
<http://www.youtube.com/watch?v=x1ycbHjePjM>
<http://www.youtube.com/watch?v=hFoCygnKOaA>
<http://www.youtube.com/watch?v=4CtHP6Ut-zM>
<http://www.youtube.com/watch?v=Dy9IYAELqIE>
<http://www.youtube.com/watch?v=kihSHIoW-Tg>
http://www.youtube.com/watch?v=yZ1SEdh_JPc

http://www.youtube.com/watch?v=ia_pl6rVg_k
<http://www.youtube.com/watch?v=zlbL-zhMK8k>
<http://www.youtube.com/watch?v=ynJmXSht2jI>

<http://www.youtube.com/watch?v=uXnx5QxpIRc>
<http://www.youtube.com/watch?v=zgBl1BKpwjQ>
http://www.youtube.com/watch?v=pAkp_Hr5rN4
<http://www.youtube.com/watch?v=BRbM2qfD08U>
<http://www.youtube.com/watch?v=QQxyhtYk3CI>

Do you have a sense of how frequently we'll be doing this takedown sweep? I want to make sure than any future postings through our current process don't get removed accidentally.

Thanks,
deb

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

From: Cheeks, George
Sent: Friday, October 27, 2006 1:33 PM
To: Kadetsky, Deborah; Maxwell, Tony
Cc: Wilson, Adam
Subject: Re: Viral Internet Marketing Clips

If you could send a copy directly to Michelina Hallie and copy me that would be great!

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

From: Kadetsky, Deborah
To: Cheeks, George; Maxwell, Tony
CC: Wilson, Adam
Sent: Fri Oct 27 09:48:26 2006
Subject: RE: Viral Internet Marketing Clips

Hi George,

Did you get my list via Tina Imm? I can send to you directly if not...

Deb

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

From: Cheeks, George
Sent: Friday, October 27, 2006 8:47 AM
To: Maxwell, Tony
Cc: Wilson, Adam; Kadetsky, Deborah
Subject: Re: Viral Internet Marketing Clips

We need everything that you have seeded thusfar as we are engaging an outside service to send take down notices for full episodes and clips in excess of 2 minutes and 30 seconds and we don't want to have notices sent for content we seeded. That said, if that is too big a task I would at least hit the stuff that we seeded over the past several months.

Thanks.

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

From: Maxwell, Tony
To: Cheeks, George
CC: Wilson, Adam; Kadetsky, Deborah
Sent: Wed Oct 25 11:10:26 2006

Subject: Viral Internet Marketing Clips

Hello George,

Nigel asked me to follow up with you about your request for a list of viral clips we are currently supplying to websites like youtube.com. Are you looking for a monthly figure or total amount since a certain date.

Please inform.

Many thanks,
Tony

--

Tony Maxwell
VP Vh1 On Air Promotions
212-846-7867
tony.maxwell@vh1staff.com

Schapiro Exhibit 155



A S C A P

January 26, 2006

MATTHEW J. DeFILIPPIS
Assistant Vice President
New Media & Technology

Adam Lovingood, Esq.
Senior Licensing Counsel
Atom Entertainment, Inc.
225 Bush Street, Suite 1200
San Francisco, CA 94104

Re: Atom-ASCAP License Fee Settlement

Dear Adam:

This letter sets forth the terms of the agreement between the American Society of Composers, Authors & Publishers ("ASCAP") and Atom Entertainment, Inc. ("Atom") with respect to non-dramatic public performances of musical compositions in the ASCAP repertory, or musical compositions as to which ASCAP has the right to grant performing rights licenses ("ASCAP works"), that took place on <http://www.atomfilms.com> (the "AtomFilms site"), during the period September 1, 2005 through December 31, 2005 (the "settlement period").

In consideration for the right to make such performances via the AtomFilms site during the settlement period, Atom has agreed to pay to ASCAP, and ASCAP has agreed to accept, the sum of \$13,108.00 to be paid to ASCAP contemporaneously with the execution of this letter agreement. ASCAP's acceptance of such sum shall operate as a full and final release of all claims ASCAP or its members have or may have against Atom with respect to license fees and any other claims arising out of non-dramatic public performances of ASCAP works via the AtomFilms site during the settlement period.

If the foregoing correctly states the terms of our agreement, please sign and return to me the enclosed copy of this letter with Atom's payment of \$13,108.00.

AMERICAN SOCIETY of COMPOSERS,
AUTHORS & PUBLISHERS

By: Matthew J. DeFilippis
Matthew J. DeFilippis

Accepted and agreed to this

30th day of January, 2006

Atom Entertainment, Inc.

By: Adam Lovingood, Esq.

cc: Richard Reimer, Esq.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS & PUBLISHERS
ASCAP Building, One Lincoln Plaza 6th Fl New York, New York 10023
212.621.6338 Fax: 212.621.6096 E-Mail: MDeFilippis@ascap.com
Web Site: <http://www.ascap.com>

ASCAP EXPERIMENTAL LICENSE AGREEMENT
FOR INTERACTIVE SITES & SERVICES RELEASE 2.0

1. **Parties:** This is an agreement between the American Society of Composers, Authors and Publishers ("we," "us" or "ASCAP"), located at One Lincoln Plaza, New York, New York 10023 and

ATOM ENTERTAINMENT, INC. ("you" or "Licensee"), located at
Licensee Name

225 BUSH STREET, SUITE 1200, SAN FRANCISCO, CA 94104
Street Address or P.O. Box City State ZIP Code

2. **Experimental Agreement:** This is an experimental agreement which applies for its term only and is entered into without prejudice to any position you or we may take for any period subsequent to its termination.

3. **Definitions:**

- (a) Your "**Interactive Site or Service**" is a site or service accessible via the Internet or a similar transmission facility from which audio content is transmitted to "Users" and from which "Users" may download or otherwise select particular musical compositions, and that is generally known as:

ATOM FILMS®

with the principal Universal Resource Locator (URL) of:

http://www.atomfilms.com

- (b) "**Internet Transmissions**" are all transmissions of content to "Users" from or through your Interactive Site or Service, or from any other site or service pursuant to an agreement between you and the operator of the other site or service, when accessed by means of any connection from your Interactive Site or Service.
- (c) "**Users**" are all those who access Internet Transmissions.
- (d) Our "**Repertory**" consists of all copyrighted musical compositions written or published by our members or by the members of affiliated foreign performing rights societies, including compositions written or published during the term of this agreement, and of which we have the right to license non-dramatic public performances.

4. **Grant of License:** We grant you a license to publicly perform, by means of Internet Transmissions, non-dramatic renditions of the separate musical compositions in our Repertory.

MAZ 2/9/06

5. **Term of License:** The license granted by this agreement commences on 01/01/06 the "Effective Date"), and ends on December 31 of the same calendar year, and continues after that for additional terms of one year each unless you or we terminate it by giving the other party notice at least thirty (30) days prior to the end of a calendar year.

6. Limitations on License:

- (a) This license extends only to you and your Interactive Site or Service and is limited to performances presented by means of Internet Transmissions, and by no other means; provided, however, that (i) nothing in this agreement authorizes such performances when transmitted from your Interactive Site or Service pursuant to an agreement between you and any other site or service operator, when accessed by means of a connection from that other site or service, even if such performances fall within the definition of Internet Transmissions; and provided further, that (ii) if you are an Internet access provider, nothing in this agreement authorizes such performances when transmitted from or through any homepage(s) hosted on your Interactive Site or Service for those for whom you provide Internet access.
- (b) This license may not be assigned without our written consent. We will not unreasonably withhold or delay our consent to an assignment of the license. No such consent is required in the event of (i) sale of substantially all of the stock of Licensee; or (ii) an internal corporate restructuring to an affiliated entity or subsidiary.
- (c) This license is limited to the United States and to transmissions originating from the United States, its territories and possessions, and the Commonwealth of Puerto Rico.
- (d) Nothing in this agreement grants you, or authorizes you to grant to any User, or to anyone else, any right to reproduce, copy or distribute by any means, method or process whatsoever, any of the musical compositions licensed by this agreement, including, but not limited to, transferring or downloading any such musical composition to a computer hard drive, or otherwise copying the composition onto any other storage medium.
- (e) Nothing in this agreement grants you, or authorizes you to grant any User, or to anyone else, any right to reproduce, copy, distribute or perform publicly by any means, method or process whatsoever, any sound recording embodying any of the musical compositions licensed under this agreement.
- (f) Nothing in this agreement grants, or authorizes you to grant to any User, or to anyone else, any right to perform publicly by any means, method or process whatsoever, any of the musical compositions licensed under this agreement, including, but not limited to, any transmission, retransmission, or further transmission of any of those compositions.
- (g) This license is limited to non-dramatic performances, and does not authorize any dramatic performances; nor does it extend to or include the public performance of any opera, operetta, musical comedy, play, or like production, as such, in whole or in part.

7. License Fees: For each year during any term of this agreement you agree to pay us the license fee calculated in accordance with the Rate Schedules applicable for that year.

8. License Fee Report Form: There are three alternative Rate Schedules, (Schedules "A," "B" and "C") attached to and made a part of this agreement. For each calendar year, you may choose any one of the three schedules we offer and for which you can provide the required information, using either your own technology, or technology supplied by an industry acknowledged technology company.

9. Reports and Payments: You agree to furnish license fee reports and payments to us as follows:

- (a) **Initial License Fee Report.** Upon entering into this agreement, you will submit an Initial License Fee Report based on good faith estimates of "Interactive Site/Service Revenue" and "Interactive Site/Service Sessions" for the period from the Effective Date of this agreement until December 31 of the same year.
- (b) **Annual License Fee Reports.** You will submit an Annual License Fee Report Form ("A," "B" or "C") for each year that we will provide to you.
- (c) **License Fee Payments.** You will submit license fee payments quarterly on or before January 1, April 1, July 1 and October 1 of each year. Each such payment shall be equal to one-fourth (1/4) of the license fee for the preceding calendar year; provided, however, that in any year for which your estimated license fee is less than one thousand dollars (\$1,000.00), you will submit payments of two hundred fifty dollars (\$250.00) each, or the balance of the license fee due for that year, whichever is less.
- (d) **Late Report Payments.** If we do not receive your Annual License Fee Report Form when due, you will submit quarterly license fee payments that are twenty-four percent (24%) higher than the quarterly payments due for the preceding year, and payments will continue at that increased rate until we receive the late report.
- (e) **Annual Adjustment.** With each Annual License Fee Report Form you will submit payment of any license fees due over and above all amounts that you paid for the year to which the report pertains. If the fee due is less than the amount you paid, we will apply the excess to the next quarterly payment due under this agreement. If the excess is greater than one (1) quarterly payment, we will refund the excess over and above the amount of one (1) quarterly payment to you at your written request.
- (f) **Late Payment Charge.** You will pay a finance charge of one and one half percent (1-1/2%) per month, or the maximum rate permitted by state law, whichever is less, from the date due, on any required payment that is not made within thirty (30) days of its due date.
- (g) **Music Use Reports.** You agree to provide us with reports regarding the musical compositions contained in your Internet Transmissions. If the annual license fee payable to ASCAP is less than ten thousand dollars (\$10,000.00), you will submit such reports for no more than the first three (3) days of each calendar quarter or for such other periods of time as we may reasonably request. If the annual license fee payable to ASCAP is ten thousand dollars (\$10,000.00) or greater, you will submit such reports for at least one (1) week in each calendar quarter. Our requests for such reports will be sent to you in writing at least thirty (30) days prior to the commencement of the period to be covered by the report. Your reports must be in the form attached hereto ("ASCAP Music Use Report Format"). You will make good faith efforts to furnish the information requested by us in electronic form, employing such commercially practicable technology as may be available for monitoring music use on your Interactive Site or Service, or such other means or methods upon which you and we will agree, provided that nothing in this agreement will obligate you to incur substantial additional expense to furnish such information.

10. Report Verification:

- (a) We have the right to examine your books and records, and you agree to obtain for us the right to examine the books and records of any partner in, or co-publisher of, your Interactive Site or Service, in order to verify any required report. We may exercise this right by giving you thirty (30) days written notice of our intention to conduct an examination. You agree to furnish all pertinent books and records, including electronic records, to our authorized representatives, during customary business hours. We will consider all data and information derived from our examination as completely confidential. We will not disclose such confidential data and information without your prior written consent, except as may be required by law or legal process, and then only upon prior written notice to you.
- (b) If our examination shows that you underpaid license fees, you agree to pay a finance charge of one and one half percent (1-1/2%) per month, or the maximum rate permitted by state law, whichever is less, on the license fees due from the date we bill you for that amount or, if the underpayment is five percent (5%) or more, from the date or dates that the license fees should have been paid.
- (c) You may dispute all or part of our claim for additional fees. You may do so by advising us in writing within thirty (30) days from the date we bill the additional fees to you of the basis for your dispute, and by paying the undisputed portion of our claim with the applicable finance charges. If there is a good faith dispute between us concerning all or part of our claim, we will defer finance charges on the disputed amount until sixty (60) days after we have responded to you, and will pro rate finance charges based on our resolution of the dispute.

11. Breach or Default: If you fail to perform any of the terms or conditions required of you by this agreement, we may terminate your license by giving you thirty days written notice to cure your breach or default. If you do not do so within that thirty (30) day period, your license will automatically terminate at the end of that period without any further notice from us.

12. Interference with ASCAP's Operations: We have the right to terminate this license, effective immediately upon written notice, if there is any major interference with, or substantial increase in the cost of, our operation as a result of any law in the state, territory, dependency, possession or political subdivision in which you or your Interactive Site or Service is located which is applicable to the licensing of performing rights. In the event of such a termination, we will immediately upon termination refund to you any license fees paid in advance, pro rata to the remainder of the license term.

13. Indemnification: We will indemnify you from any claim made against you with respect to the non-dramatic performance licensed under this agreement of any composition(s) in our Repertory, and we will have full charge of the defense against the claim. You agree to notify us immediately of any such claim, furnish us with all the papers pertaining to it, and cooperate fully with us in its defense. If you wish, you may engage your own counsel, at your expense, who may participate in the defense. Our liability (including defense costs and attorneys) under this paragraph is strictly limited to the amount of license fees that you actually paid us under this agreement for the calendar year(s) in which the performance(s) which are the subject of the claim occurred. The Indemnification provided herein shall survive the term of this agreement and apply to any performances covered by this agreement, subject to any applicable statute of limitations.

14. Covenant Not to Sue:

- (a) ASCAP, on its own behalf and on behalf of our members, covenants not to make any claim against you for unauthorized public performances of any of our members' compositions in

our Repertory which would have been licensed under this agreement except for the limitation set forth in subparagraph 6(a)(i), provided that the agreement between you and the operator of the other site or service referred to in subparagraph 6(a)(i) expressly requires that the operator of the other site or service obtain needed authorization for performances of copyrighted musical compositions on or through its site or service, and provided further, that within twenty-four (24) hours of receipt of notice from us that the operator of the other site or service does not have such needed authorization, you will remove or block the connection from that other site or service to your Interactive Site or Service, using commercially practicable efforts to do so.

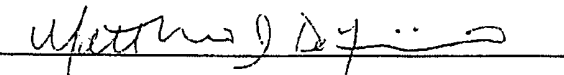
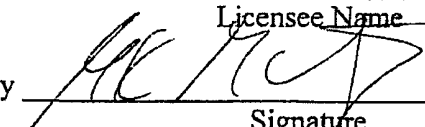
- (b) ASCAP, on its own behalf and on behalf of our members, covenants not to make any claim against you for unauthorized public performances of any of our members' compositions in our Repertory which would have been licensed under this agreement except for the limitation set forth in subparagraph 6(a)(ii), provided that the agreement between you and the owner of the homepage referred to in subparagraph 6(a)(ii) expressly requires that such owner obtain needed authorization for performances of copyrighted musical compositions on or through its homepage, and provided further, that within twenty-four (24) hours of receipt of notice from us that the owner of the homepage does not have such needed authorization, you will remove that homepage from your Interactive Site or Service.

15. **Notices:** We or you may give any notice required by this agreement by sending the notice to the other party's last known address by United States Mail or by generally recognized same-day or overnight delivery service. We each agree to inform the other in writing of any change of address.

16. **Governing Law:** This agreement will be governed by and construed in accordance with the laws of the state of New York.

17. **Entire Agreement:** This agreement constitutes the entire agreement between you and ASCAP, and may only be modified, or any rights under this agreement may be waived, by a written document executed by both you and ASCAP.

IN WITNESS WHEREOF, this Agreement has been duly executed by ASCAP and Licensee this 8th day of February, 2006.

<p style="text-align: center;">AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS</p> <p>By _____</p> <p style="text-align: center;"></p> <p style="text-align: center;">Assistant Vice President New Media & Technology</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Title</p>	<p style="text-align: center;"><u>ATOM ENTERTAINMENT, INC.</u></p> <p style="text-align: center;">Licensee Name</p> <p>By _____</p> <p style="text-align: center;"></p> <p style="text-align: center;">Signature</p> <p style="text-align: center;"><u>MK MCCARTHY</u></p> <p style="text-align: center;">Print Your Name</p> <p style="text-align: center;"><u>CFO</u></p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Title</p> <p>(Fill in capacity in which signed: (a) If corporation, state corporate office held; (b) If partnership, write word "partner" under printed name of signing partner; (c) If individual owner, write "individual owner" under printed name.)</p>
--	---

RATE SCHEDULE "C"

REPORT FORM ASCAP EXPERIMENTAL LICENSE AGREEMENT FOR INTERACTIVE SITES & SERVICES – RELEASE 2.0

PART I. ACCOUNT INFORMATION

REPORT PERIOD: 1-1-06 THRU 12/31/ 06

LICENSEE NAME: ATOM ENTERTAINMENT, INC.

POSTAL ADDRESS: 225 BUSH STREET, SUITE 1200

INTERNET SITE URL: http://www.atomfilms.com E-MAIL: alovingood@atom.com

PHONE NUMBER: 415-503-2534 FACSIMILE NUMBER: 415-503-2555

PART II. DEFINITIONS

- (a) The terms "Interactive Site or Service," "Internet Transmissions" and "Users" are defined in subparagraphs 3(a), (b) and (c) of the license agreement.
- (b) "Sponsor Revenue" means all payments made by or on behalf of sponsors, advertisers, program suppliers, content providers, or others for use of the facilities of your Interactive Site or Service including, but not limited to, payments associated with syndicated selling, on-line franchising and associates programs. "Sponsor Revenue" also means all payments from whatever source derived upon your sale or other disposition of goods or services you received as barter for use of the facilities of your Interactive Site or Service including, but not limited to, payments for the sale of advertising time or space.
- (c) "Adjustment to Sponsor Revenue" means advertising agency commissions not to exceed fifteen percent (15%) actually allowed to an advertising agency that has no direct or indirect ownership or managerial connection with you or your Interactive Site or Service.
- (d) "User Revenue" means all payments made by or on behalf of Users to access Internet Transmissions including, but not limited to, subscriber fees, connect time charges, and any other access fees.
- (e) "Site/Service Revenue" includes all specified payments and expenditures whether made directly to you or to any entity under the same or substantially the same ownership, management or control as you, or to any other person, firm or corporation including, but not limited to, any partner or co-publisher of your Interactive Site or Service, pursuant to an agreement or as directed or authorized by you or any of your agents or employees.

(f) "Session Value" is the value derived from the number of "Internet Site/Service Sessions" that an Interactive Site or Service generates.

(g) "Site/Service Session" is an individual visit and/or access to your Interactive Site or Service by a User. If any such visit or access exceeds one (1) hour in duration, each period of one (1) hour, or portion in excess thereof, shall be treated as a single "Site/Service Session." For example, if a User visits or accesses your Site or Service twice in one (1) day, once for fifteen (15) minutes and a second time for forty (40) minutes, that User has generated two (2) "Site/Service Sessions." If a User visits or accesses your Site or Service for an uninterrupted period of two and a half (2.5) hours, that User has generated three (3) "Site/Service Sessions."

(h) "Music Session" is a Site/Service Session in which a User receives any Internet Transmission that includes any performance(s) of music.

(i) "Performance of Music" is any performance of music contained in any Internet Transmission.

(j) "Performance of ASCAP Music" is any performance of music that is of a musical work in the ASCAP repertory not otherwise licensed.

**PART III. REVENUE BASED
LICENSE FEE CALCULATION FOR RATE SCHEDULE "C"**

SITE/SERVICE REVENUE

1.	Sponsor Revenue	\$ 2,490,880
2.	Adjustment to Sponsor Revenue	\$ -
3.	Net Sponsor Revenue (subtract line 2 from line 1)	\$ 2,490,880
4.	User Revenue	\$ -
5.	Site/Service Revenue (add lines 3 and 4)	\$ 2,490,880

VALUE ATTRIBUTABLE TO PERFORMANCES OF MUSIC

6.	Number of Site/Service Sessions	63,784,374
7.	Number of Music Sessions	57,405,937
8.	Ratio (divide line 7 by line 6 to three decimal points)	0.906
9.	Site/Service Revenue (from line 5).....	\$ 2,490,880
10.	Value Attributable to Performances of Music (multiply line 8 by line 9)	\$ 2,241,792

VALUE ATTRIBUTED TO PERFORMANCES OF ASCAP MUSIC

11.	Number of Performances of Music	57,405,937
12.	Number of Performances of ASCAP Music	11,000,000
13.	Ratio (divide line 12 by line 11 to 3 decimals)	0.192
14.	Value Attributable to Performances of Music (from line 10)	\$ 2,241,792
15.	Value Attributable to Performances of ASCAP Music (multiply line 13 by line 14)	\$ 430,424
16.	Rate Based on Revenue	x 0.065
17.	Revenue Based License Fee (multiply line 15 by line 16).....	\$ 27,978

**PART IV. SESSION BASED
LICENSE FEE CALCULATION FOR RATE SCHEDULE "C"**

SESSION VALUE

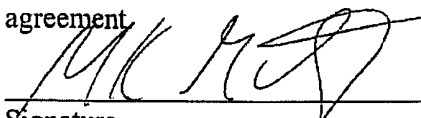
18.	Number of Site/Service Sessions (from line 6).....	<u>63,784,374</u>
19.	Number of Music Sessions (from line 7).....	<u>57,405,937</u>
20.	Number of Performances of Music (from line 11).....	<u>57,405,937</u>
21.	Number of Performances of ASCAP Music (from line 12).....	<u>11,000,000</u>
22.	Ratio (divide line 21 by line 20).....	<u>0.192</u>
23.	Sessions Attributable to Performances of ASCAP Music (multiply line 19 by line 22).....	<u>11,021,940</u> 0.192
24.	Rate Based on Sessions	x <u>0.0025</u>
25.	Session Based License Fee (multiply line 23 by line 24)	\$ <u>27,555</u>

PART V. LICENSE FEE CALCULATION FOR RATE SCHEDULE "C"

26.	Licensee Fee (enter line 17 or line 25, whichever is greater)	\$ <u>27,978</u>
27.	Minimum License Fee (not subject to pro-ration)	\$ <u>340.00</u>
28.	LICENSE FEE DUE (enter amount from line 26 or line 27, whichever is greater)	\$ <u>27,978</u>

PART VI. CERTIFICATION

We certify that this report is true and correct and that all books and records necessary to verify this report are now and will continue to be available for your examination in accordance with the terms of the license agreement

<p><u></u> Signature</p> <p><u>MK MCCARTHY, CFO</u> Print Name and Title</p>	<p><u>Jan 19, 2006</u> Date</p>
---	-------------------------------------

LAW OFFICES
KEKER & VAN NEST
LLP

710 SANSOME STREET
SAN FRANCISCO, CA 94111-1704
TELEPHONE (415) 391-5400
FAX (415) 397-7188
WWW.KVN.COM

MICHAEL H. PAGE
MPAGE@KVN.COM

May 16, 2006

VIA FACSIMILE

Matthew J. DeFilippis
AVP, Director of New Media & Technology
American Society of Composers, Authors &
Publishers (ASCAP)
1 Lincoln Plaza, 6th Floor
New York, NY 10023

Re: AddictingClips.com

Dear Mr. DeFilippis:

I write to follow up on your recent correspondence and discussions with our client, Atom Entertainment ("Atom"), concerning its website addictingclips.com. As I believe was explained in those discussions, addictingclips.com consists almost entirely of user-selected and user-posted content, over which Atom exercises no control. Some of that content is posted by users on the addictingclips.com website, while other content is hosted by the users themselves, with only links to that content being posted to addictingclips.com. In the former case, the infringements you allege are covered by 17 U.S.C. 512(c), while in the latter case they are covered by 17 U.S.C. 512(d). In either case, the alleged infringement is the responsibility of the user, not Atom. The DMCA limits Atom's liability to cases in which it fails to implement a DMCA-compliant "notice and takedown" procedure.

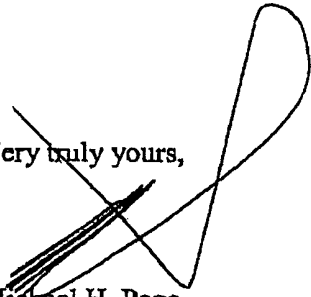
Atom has implemented such a procedure. Instructions for submitting notices of infringement may be found by clicking the highlighted "Notice of Infringement" link on the addictingclips.com home page, or by going directly to http://www.atomentertainment.com/asw_legal_infringement.htm. Atom scrupulously adheres to its obligations under the DMCA and the Copyright Act, and responds promptly to all notices of infringement. I am advised, however, that ASCAP has to date not submitted any such notices to Atom. I encourage you to do so if you become aware of alleged infringement, so that we may assist you in policing your members' rights. It would also assist us in our ongoing efforts to deter infringement if you could provide me with any details you may have regarding past or current alleged infringements.

373182.01

Matthew J. DeFilippis
May 16, 2006
Page 2

I look forward to hearing from you.

Very truly yours,



Michael H. Page

MHP/nsn

373182.01

Matthew J. DeFilippis
May 16, 2006
Page 3

bcc: Victoria Libin
Steve Mitra

373182.01

LAW OFFICES
KEKER & VAN NEST
LLP

710 SANSOME STREET
SAN FRANCISCO, CA 94111-1704
TELEPHONE (415) 391-8400
FAX (415) 397-7188
WWW.KVN.COM

MICHAEL H. PAGE
MPAGE@KVN.COM

May 4, 2006

VIA FACSIMILE

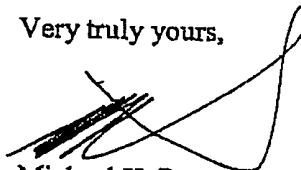
Matthew J. DeFilippis
AVP, Director of New Media & Technology
American Society of Composers, Authors &
Publishers (ASCAP)
1 Lincoln Plaza, 6th Floor
New York, NY 10023

Re: AddictingClips.com

Dear Mr. DeFilippis:

This office has been retained by AddictingClips.com, concerning ASCAP's claims of infringement. Once we have had a chance to familiarize ourselves with the relevant facts, we will contact you in response to your recent communications. We appreciate your patience in this regard, and look forward to working with you toward resolution of your claims.

Very truly yours,



Michael H. Page

MHP/nsn

372442.01

Matthew J. DeFilippis
May 4, 2006
Page 2

bcc: Victoria Libin
Steve Mitra

372442.01

Victoria Libin

From: Adam Lovingood
Sent: Tuesday, April 25, 2006 12:14 PM
To: Victoria Libin; Hurst, Annette L.
Subject: FW: AddictingClips.com

ASCAP's response...

Adam Lovingood
Sr. Manager of Legal Affairs
CA Registered In-house Counsel

WE MOVED and CHANGED OUR NAME
Atom Entertainment, Inc. (formerly AtomShockwave Corp.)
225 Bush Street, Suite 1200
San Francisco, CA 94104
Ph: 415-503-2534
Fax: 415-503-2425

Visit our sites!

www.atomfilms.com
www.shockwave.com
www.gameblast.com
www.addictingclips.com
www.addictinggames.com

This e-mail and any attachments may contain confidential information that is legally privileged. If you are not the intended recipient, any use, copying or transmission of this information is strictly prohibited. If you received this email in error, please delete all copies and notify us at 415-503-2534.
Thank you.

-----Original Message-----
From: MDeFilippis@ascap.com [mailto:MDeFilippis@ascap.com]
Sent: Tuesday, April 25, 2006 11:45 AM
To: Adam Lovingood
Subject: AddictingClips.com

Dear Adam,

I am writing to follow up on our phone call of April 19, 2006.

ASCAP does not agree with Atom Entertainment's assessment that, as the operator of AddictingClips.com (the "Site"), it may avoid liability for unauthorized public performances of copyrighted musical works in the ASCAP repertory, either as an "Internet Service Provider" under the DMCA, or any other provision of the Copyright Law. When we access AddictingClips.com, we observe public performances of our members' music. Whether or not your Site's content is provided by third parties, or "shared" among others as is the case with what are known generally known as "peer-to-peer" services, the music that is audible on your Site is, nevertheless, a public performance for which Atom Entertainment bears direct responsibility. Put another way, so long as Atom Entertainment makes available performances of our members' music to anyone who simply accesses the AddictingClips.com Internet Site, whether or not Atom Entertainment is also a "Service Provider" as that term is used in the DMCA, is irrelevant.

Accordingly, until such time as Atom Entertainment enters into an ASCAP license agreement or obtains authorization directly from our members, any performances of music in the ASCAP repertory at AddictingClips.com are infringements of copyright for which Atom Entertainment may be held liable.
For this reason, I hope you will reconsider your rejection of my offer of a license set forth in my e-mail dated March 31, 2006.

Feel free to contact me if you would like to discuss this matter further.

Sincerely,

-Matt DeFilippis

Matthew J. DeFilippis
AVP, Director of New Media & Technology
American Society of Composers, Authors & Publishers (ASCAP)
1 Lincoln Plaza, 6th Floor
New York, NY 10023
T: (212) 621-6338
F: (212) 621-6096
E: mdefilippis@ascap.com

***** A S C A P *****

The ASCAP "I Create Music" EXPO
The First and Only National Conference
100% Dedicated to Songwriting and Composing
April 20-22, 2006 - Los Angeles, CA

NOW SOLD OUT!

For updates: <http://www.ASCAP.com/EXPO>

This message, including any attachments, is intended solely for the person or entity to which it is addressed and may contain information that is legally privileged, confidential or otherwise protected from disclosure.
If you are not the intended recipient, please contact sender immediately by reply email and destroy all copies.

Victoria Libin

From: Adam Lovingood
Sent: Tuesday, April 18, 2006 3:43 PM
To: Hurst, Annette L.
Cc: Victoria Libin
Subject: FW: AddictingClips.com

Attachments: ASCAP License Agreement-Interactive Release 2.0.pdf; pic22075.gif



ASCAP License Agreement-Intera...
pic22075.gif (329 B)

Hi Annette,

As preparation for tomorrow's call, I am forwarding the email from ASCAP regarding a license for addictingclips.

Thanks,
Adam

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

From: MDeFilippis@ascap.com [mailto:MDeFilippis@ascap.com]
Sent: Friday, March 31, 2006 8:56 AM
To: Adam Lovingood
Subject: AddictingClips.com

Hi Adam. I hope this finds you well.

I was intrigued by the news piece below and Atom Entertainment's entry into the new and growing "home video" business. As you know, music plays a prominent role in many of the entertainment videos being submitted by the general public to sites like AddictingClips and YouTube. I observed several such videos today containing music in the ASCAP repertory. These performances are, of course, public performances that require authorization from the copyright owners. For ASCAP members, such authorization is obtained through an ASCAP license agreement, as we achieved for AtomFilms.

Accordingly, I am attaching a copy of the ASCAP Experimental License Agreement for Interactive Sites & Service (Release 2.0), which I believe to be an appropriate form of ASCAP license agreement for AddictingClips.com.

I look forward to hearing from you.

Regards,

-Matt DeFilippis

(See attached file: ASCAP License Agreement-Interactive Release 2.0.pdf)

Matthew J. DeFilippis
AVP, Director of New Media & Technology
American Society of Composers, Authors & Publishers (ASCAP)
1 Lincoln Plaza, 6th Floor
New York, NY 10023
T: (212) 621-6338
F: (212) 621-6096
E: mdefilippis@ascap.com

----- Forwarded by Matthew DeFilippis/ASCAP on 03/31/2006 11:32 AM -----

Donal Fergusson
03/31/2006 08:18
AM

To: Matthew DeFilippis/ASCAP@ASCAP
cc: Chris Amenita/ASCAP@ASCAP
Subject: Eye on rival YouTube, Atom

overhauls video site

Eye on rival YouTube, Atom overhauls video site

By Reuters
http://news.com.com/Eye+on+rival+YouTube%2C+Atom+overhauls+video+site/2100-1032_3-6056023.html

Story last modified Thu Mar 30 12:16:25 PST 2006

(Embedded image moved to file: pic22075.gif)

Online video and game company Atom Entertainment on Thursday unveiled a new service to let people upload their own videos and footage taken on mobile phones.

Privately held Atom, formed 5 years ago by the merger of Atom Films and Shockwave.com, hopes the new features on its AddictingClips Web site will draw more users and close the gap with YouTube, a popular site for sharing homemade video clips.

Atom Chief Executive Mika Salmi said YouTube probably receives more than 10 times the number of unique visitors than his site does, but added: "With all these new features we think it's a bit of a horse race."

Salmi said he expected the Atom site's traffic to grow fairly quickly. "Our goal would be to get to the size of YouTube," Salmi told Reuters, "but realistically, we think that in the next three to four months, we're going to be nipping at their heels."

Atom would highlight the best videos on AtomFilms, its Web site for showing independent short films, Salmi said. The new features add to the semiprofessional films and short films currently shown on the site.

That would help draw advertisers, many of whom have been reluctant to sponsor video Web sites because of the racy or mature content that often appears on them, Salmi said.

"We have AtomFilms, so we immediately have a place where we can elevate the best stuff," Salmi said. "We have carved out a kind of advertising-safe area."

Atom's video service also competes with an offering from Web search leader Google, which aims to let video producers sell their clips online.

***** A S C A P *****