

Rubin Reply Exhibit 186

Subject: RE: Viral clips
From: Lam, Cuong <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=USER
ACCOUNTS/CN=USER/CN=LAMC>
To: Cohn, David
Cc: Preston, Lisa, Castaneda, Jeff
Date: Fri, 03 Mar 2006 14:04:55 +0000

YouTube.com did not get anything more than any of the sites. Ifilm.com exclusively previewed all of the viral clips one day before it went wide. My list includes:

- CollegeHumor.com
- TV.com
- YouTube.com
- Ifilm.com

Other sites that were given access to clip, but did not post include: IGN.com, UGO.com, IMDB.com. I can get you a full list shortly.

From: Castaneda, Jeff
Sent: Fri 3/3/2006 8:55 AM
To: Cohn, David; Lam, Cuong
Cc: Preston, Lisa
Subject: RE: Viral clips

as far as i know from my discussion with cuong, i do not believe youtube.com got anything different than the rest.

here's a list of the folks that press sent clips to:

ebaumsworld.com, yofun.net, idontlikeyouinthatway.com. wwtd.com, gawker.com, dead-frog.com, newgrounds.com, humping frog.com, afunnysite.com, smithappens.com, paulkatcher.com; Kontraband.com; phun.org; bullzeye.com, hifiny.com; doubleagent.com, doubleviking.com. vidilife.com, savvy.com, collegehumor.com, coolbuddy.com, cityrag.blogs.com, slushfactory.com, littlefunny.com, yikers.com, gorillamask.net, stevesilver.net, milkandcookies.com, tv.com, popmatters.com, goyk.com, squidoo.com, slantmagazine.com, bofunk.com, revver.com, alldub.com, blogtelevision.net, buzzscope.com, alldumb.com, tvsquad.com, tvrage.com, drunkendelight.com, youtube.com, aintitcoolnews.com, boredatwork.com

From: Cohn, David
Sent: Fri 3/3/2006 8:48 AM
To: Lam, Cuong; Castaneda, Jeff
Cc: Preston, Lisa
Subject: Viral clips

I need a list of the sites we serviced Andy & Wonder clips to ASAP!!! And tell me as well, did youtube get anything different than the rest???

Sent from my BlackBerry Wireless Handheld

Rubin Reply Exhibit 187

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.)	
)	
<hr/>	
VIDEOTAPED DEPOSITION OF KYLE BONICI	
SAN FRANCISCO, CALIFORNIA	
WEDNESDAY, APRIL 22, 2009	
BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR	
JOB NO. 16739	

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APRIL 29, 2009

9:13 a.m.

VIDEOTAPED DEPOSITION OF KYLE BONICI,
held at the offices of WILSON, SONSINI,
GOODRICH & ROSATI, One Market Street,
Spear Tower, San Francisco, California,
pursuant to notice, before ANDREA M. IGNACIO
HOWARD, CLR, CCRR, 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 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 NEMA MILANINIA, Esq.

15 650 Page Mill Road

16 Menlo Park, 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.)

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3

4 ALSO PRESENT: Ken Reeser, Videographer.

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1 KYLE BONICI

09:29:13 2 Q Mr. Bonici if you'd take a moment to look
09:29:15 3 this over, and let me know once you've had an
09:29:17 4 opportunity to review it. I'd like to ask you some
09:29:21 5 questions about the document.

09:29:27 6 A Okay.

09:29:58 7 Q Would this be an example of you receiving a
09:30:03 8 work assignment via e-mail in the course of your
09:30:06 9 employment at Paramount?

09:30:10 10 A Yes.

09:30:10 11 Q Is this representative of the type of tasks
09:30:13 12 you were assigned during your internship period?

09:30:19 13 A One of the many, yes.

09:30:22 14 Q The first, for lack of a better word, bullet
09:30:28 15 point under Ms. Tipton's instruction of "Here's what
09:30:31 16 we need help with today," it says "Can you please
09:30:34 17 check back on Transformers trailer tracking to see if
09:30:38 18 there are more links (the more the better:-))."

09:30:42 19 What was Ms. Tipton referring to?

09:30:44 20 MS. CUNHA: Objection to form.

09:30:45 21 THE WITNESS: Can you please ask that
09:30:49 22 question a different way? I'm not sure I --

09:30:50 23 MR. RUBIN: Q. Do you not understand the
09:30:52 24 question?

09:30:52 25 A I don't understand.

1 KYLE BONICI

09:30:54 2 Q What do you understand "Transformer trailer
09:30:56 3 tracking" to mean?

09:30:58 4 A I don't recall from this e-mail exactly what
09:31:00 5 she meant.

09:31:02 6 Q Do you recall -- can you understand, sitting
09:31:04 7 here today, looking at those words, do you have any
09:31:06 8 understanding of what they mean?

09:31:11 9 MS. CUNHA: I'm going to object to form.

09:31:13 10 You're asking him if he -- if he has an
09:31:15 11 understanding of what that means, or if he can
09:31:17 12 interpret it from the document?

09:31:18 13 MR. RUBIN: Either.

09:31:19 14 MS. CUNHA: You can answer the question, but
09:31:21 15 he's asking you -- if you're interpreting it from the
09:31:23 16 document, you should make sure you say that you're
09:31:26 17 interpreting it from the document.

09:31:27 18 THE WITNESS: Uh-huh.

09:31:33 19 My interpretation of the document currently,
09:31:35 20 right now, is that "Transformers trailer tracking,"
09:31:38 21 meaning, what's currently available on the
09:31:40 22 Transformers trailer as to what's -- what's out there.

09:31:44 23 MR. RUBIN: Okay.

09:31:46 24 Q The next bullet states "Update trailers and
09:31:49 25 video in our viral video accounts"; do you see that?

1 KYLE BONICI

09:31:53 2 A Uh-huh.

09:31:53 3 Q What do you understand "our viral video
09:31:56 4 accounts" to mean?

09:31:59 5 A Viral video would be a video that is passed
09:32:02 6 along virally, and accounts obviously would be our
09:32:06 7 separate accounts.

09:32:07 8 Q And who -- what is the "our" referring to in
09:32:12 9 that sentence?

09:32:13 10 A Ours, Paramount Pictures. For example, you
09:32:19 11 can see it on the actual list, the accounts we're
09:32:21 12 talking about.

09:32:22 13 Q And which accounts are those?

09:32:26 14 A YouTube, Revver, Break, Veoh.

09:32:29 15 Q Have you uploaded videos to -- Paramount
09:32:33 16 videos to each of these accounts?

09:32:35 17 A I don't recall.

09:32:36 18 Q But you have to the YouTube account?

09:32:40 19 A Yes.

09:32:50 20 MR. RUBIN: I'd like to introduce another
09:32:51 21 exhibit.

09:32:52 22 (Document marked Bonici Exhibit 2
09:33:02 23 for identification.)

09:33:11 24 MS. CUNHA: Thanks.

09:33:13 25 THE WITNESS: Thank you.

1 KYLE BONICI

09:44:37 2 (Document marked Bonici Exhibit 3

09:44:42 3 for identification.)

09:44:42 4 MS. CUNHA: This is -- just so the record is
09:44:44 5 clear, this is something you or someone in your office
09:44:46 6 printed out yesterday from the website?

09:44:49 7 MR. RUBIN: Indeed.

09:45:02 8 THE WITNESS: Thank you.

09:45:03 9 MR. RUBIN: Q. Mr. Bonici, please take a
09:45:04 10 moment to look at it, and once you've had an
09:45:08 11 opportunity to review the document, let me know, and
09:45:10 12 I'd like to ask you a few questions about it.

09:45:12 13 A Okay. Okay. Ready.

09:45:39 14 Q Do you recognize this document?

09:45:40 15 A Yes.

09:45:40 16 Q What is it?

09:45:42 17 A It is our Paraccount, what I believe looks
09:45:50 18 like our Paraccount YouTube front page.

09:45:52 19 Q I think that's right.

09:45:53 20 Do you recall when you first logged in to the
09:45:56 21 Paraccount?

09:45:57 22 A Gosh, I don't recall.

09:45:58 23 Q Do you recall when you last logged in to the
09:46:02 24 Paraccount?

09:46:03 25 A I don't recall. Sorry.

1 KYLE BONICI

09:46:06 2 Q If you look on the document, it says --

09:46:09 3 A "Last Sign In."

09:46:10 4 Q -- "Last Sign In" was "17 hours ago." This
09:46:13 5 was printed yesterday.

09:46:16 6 A Uh-huh.

09:46:16 7 Q So that would have been on the 27th?

09:46:19 8 A Uh-huh.

09:46:19 9 Q Does anyone log into the account other than
09:46:21 10 you?

09:46:23 11 A Not that I'm aware of. I don't believe so,
09:46:27 12 but I'm not sure.

09:46:27 13 Q Did you log into this account two days ago?

09:46:31 14 A I might have. I don't know why I would have,
09:46:33 15 but I don't actually recall.

09:46:36 16 Q You don't recall what you did at work two
09:46:38 17 days ago?

09:46:40 18 MS. CUNHA: Objection to form; that's
09:46:42 19 argumentative.

09:46:42 20 THE WITNESS: Sorry. I don't.

09:46:44 21 MR. RUBIN: Q. How often do you log into the
09:46:49 22 Paraccount?

09:46:52 23 A It varies. When it's a new trailer,
09:46:57 24 you'll up -- we'll upload it usually, but if there's
09:47:02 25 no new trailers coming out, then, you know, it could

1 KYLE BONICI

09:47:05 2 be months.

09:47:06 3 Q How often does Paramount release new
09:47:10 4 trailers?

09:47:11 5 A Varies. Sometimes it's three in a month.
09:47:15 6 Sometimes it's zero in a month, et cetera.

09:47:23 7 Q Do you see it says "Videos Watched 1,176" in
09:47:36 8 the upper left of the document?

09:47:38 9 A Uh-huh.

09:47:40 10 Q Do you recall remaining logged in to the
09:47:45 11 Paraccount and watching other YouTube videos?

09:47:50 12 A I don't recall.

09:47:51 13 Q But it may have happened?

09:47:53 14 A I don't recall.

09:47:53 15 MS. CUNHA: Objection to form.

09:47:55 16 MR. RUBIN: Q. If you look in the next box
09:47:59 17 down in the left, it says "Connect with Paraccount."

09:48:02 18 A Uh-huh.

09:48:03 19 Q Send a message or, pardon me, "Send
09:48:07 20 Message"; do you see that?

09:48:08 21 A Uh-huh.

09:48:09 22 Q Mr. Bonici, I apologize, but you're going to
09:48:11 23 actually need to respond audibly.

09:48:13 24 A Yes. I apologize.

09:48:14 25 Q It's important --

1 KYLE BONICI

09:51:07 2 a document that someone in my office printed out also
09:51:13 3 on April 28th. This is a listing of all of the videos
09:51:17 4 currently active in the Paraccount in order of most
09:51:22 5 viewed.

09:51:24 6 A Uh-huh. Would you like me to go in --

09:51:30 7 Q Do you recognize this?

09:51:31 8 MS. CUNHA: There's no question yet.

09:51:32 9 THE WITNESS: Sorry.

09:51:33 10 MR. RUBIN: Q. Do you see it says there are
09:51:35 11 "96" videos active in the Paraccount?

09:51:38 12 A Yes.

09:51:39 13 Q Have you ever removed a video from the
09:51:42 14 Paraccount?

09:51:46 15 A I can't recall.

09:51:46 16 Q Do you know if anyone else has ever removed a
09:51:49 17 video from the Paraccount?

09:51:51 18 A I don't know.

09:51:52 19 Q Do you know if anyone else other than you
09:52:03 20 have uploaded videos to the Paraccount?

09:52:08 21 A Not that I recall.

09:52:09 22 Q Have you ever given third parties access to
09:52:12 23 the account credentials for the Paraccount?

09:52:15 24 A I don't know.

09:52:17 25 Q You don't know if you've done that?

1 KYLE BONICI

09:52:19 2 A Oh, personally me? No, I don't recall me
09:52:22 3 ever doing it.

09:52:22 4 Q Do you know if anyone else at Paramount has
09:52:25 5 ever done that?

09:52:26 6 A I don't know.

09:52:27 7 Q Do you believe that the uploading of
09:52:37 8 Paramount content to the Paraccount has been an
09:52:40 9 effective marketing tool for Paramount?

09:52:40 10 MS. CUNHA: Objection to form.

09:52:41 11 THE WITNESS: Please repeat the question.

09:52:43 12 MR. RUBIN: Q. Do you believe the uploading
09:52:44 13 of Paramount content to the Paraccount has been an
09:52:49 14 effected -- effective marketing tool for Paramount?

09:52:52 15 MS. CUNHA: Same objection.

09:52:53 16 THE WITNESS: I don't know. I'm -- I don't
09:52:56 17 know. I'm unaware if it's been effective or not.

09:53:02 18 MR. RUBIN: Q. You continue to do it to this
09:53:05 19 day; is that right?

09:53:05 20 A Uh-huh.

09:53:06 21 Q Does Paramount continue to engage in
09:53:09 22 promotional strategies it believes to be ineffective?

09:53:13 23 MS. CUNHA: Objection to form.

09:53:14 24 THE WITNESS: We're not sure it's
09:53:15 25 ineffective, or we're not sure it's effective either.

1 KYLE BONICI

09:53:18 2 MR. RUBIN: Q. But you continue to engage in
09:53:19 3 it; is that right?

09:53:20 4 A Yes.

09:53:23 5 Q And if you look at the first video, Tropic
09:53:26 6 Thunder, do you see that?

09:53:27 7 A Uh-huh.

09:53:28 8 Q How many views does that video have?

09:53:31 9 A 6,186,562.

09:53:36 10 MR. RUBIN: Okay. I'd like to introduce the
09:53:37 11 next exhibit.

09:53:43 12 (Document marked Bonici Exhibit 5
09:53:58 13 for identification.)

09:53:58 14 MR. RUBIN: Exhibit No. 5 is a document
09:53:59 15 produced by Viacom in this litigation marked
09:54:04 16 VIA01283483 through VIA01283486. It is an e-mail from
09:54:22 17 Kyle Bonici to Megan Wahtera, CCed to Tamar Teifeld,
09:54:29 18 dated September 14th, 2007.

09:54:37 19 Q Mr. Bonici, please take a moment to review
09:54:40 20 the document, and once you have, let me know, and we
09:54:43 21 can ask -- discuss it for a moment.

09:55:01 22 A Okay.

09:55:01 23 Q After you upload Paramount content to -- to
09:55:06 24 YouTube, do you monitor the content you've uploaded on
09:55:09 25 occasion?

1 KYLE BONICI

09:57:51 2 A I don't recall it.

09:57:53 3 Q Does it refresh your recollection that there
09:57:56 4 was concern at Paramount about negative comments on
09:57:59 5 clips that had been uploaded to YouTube?

09:58:02 6 MS. CUNHA: Objection to form.

09:58:03 7 You can answer.

09:58:03 8 THE WITNESS: Please refer to which -- do
09:58:07 9 you -- are you referring to Paraccount?

09:58:09 10 MR. RUBIN: Q. I don't know which account
09:58:11 11 this refers to; do you?

09:58:13 12 A Likely it's a Paraccount. I'm assuming, but
09:58:17 13 I'm making an assumption.

09:58:19 14 Q Have you ever deleted comments from the
09:58:21 15 Paraccount?

09:58:24 16 A I might have. I can't recall though.

09:58:26 17 Q Have you ever deleted comments from any
09:58:27 18 account on YouTube?

09:58:31 19 A I can't recall. Sorry.

09:58:35 20 Q You can't recall whether you've ever deleted
09:58:37 21 a comment on YouTube?

09:58:38 22 A I can't recall.

09:58:43 23 Q What's the subject line of this e-mail?

09:58:47 24 A It is "HBK/YouTube."

09:58:55 25 Q Do you know what "HBK" refers to?

1 KYLE BONICI

10:01:13 2 to do?

10:01:14 3 A I can't remember. I can't recall.

10:01:17 4 Q Do you know why she would ask you to do this?

10:01:19 5 MS. CUNHA: Objection to form.

10:01:21 6 THE WITNESS: I -- I don't know why she would
10:01:26 7 have -- she would ask me.

10:01:28 8 MR. RUBIN: Q. Do you know what the video
10:01:29 9 was?

10:01:29 10 A Huh-uh. Heartbreak Kid. No, I don't know.
10:01:36 11 I'm not sure.

10:01:38 12 Q Does Paramount have a practice of deleting
10:01:40 13 negative comments on YouTube?

10:01:42 14 A I don't know.

10:01:43 15 Q But you can't recall ever doing it?

10:01:47 16 A Personally, no. I -- I might have. I just
10:01:49 17 can't remember.

10:01:50 18 Q And you're the one who's responsible for the
10:01:52 19 Paraccount?

10:01:55 20 A Majority of it, yeah.

10:01:55 21 Q So presumably if Paramount did this
10:01:58 22 routinely, you would know about it?

10:01:59 23 MS. CUNHA: Objection to form.

10:02:01 24 THE WITNESS: No. I mean, I -- I would know
10:02:06 25 only what I did. I can't make that assumption.

DAVID FELDMAN WORLDWIDE, INC.

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

1 KYLE BONICI

10:05:32 2 A A list of the videos currently available?

10:05:34 3 Q I'm trying to get an understanding of what
10:05:37 4 your testimony is. You just said a list.

10:05:39 5 A Yeah, I could -- I could -- if you gave me a
10:05:43 6 list of stuff we uploaded, I could possibly tell you
10:05:45 7 the ones that I -- I think I've done. I'm not sure
10:05:48 8 about all of them.

10:05:49 9 Q That would be to the Paraccount?

10:05:52 10 A Yes, yeah.

10:05:53 11 Q And that would be assuming then that
10:05:55 12 Paramount hadn't uploaded content to any other
10:06:00 13 account?

10:06:00 14 MS. CUNHA: Objection to form.

10:06:02 15 THE WITNESS: Please re -- reword it, the
10:06:04 16 question.

10:06:04 17 MR. RUBIN: Q. My question is not, do you
10:06:07 18 recall all the Paramount content that you have
10:06:09 19 uploaded to the Paraccount. My question is, do you
10:06:12 20 recall all of the content that you have uploaded to
10:06:15 21 YouTube?

10:06:17 22 MS. CUNHA: In connection with your
10:06:19 23 employment at Paramount I think is what you're asking.

10:06:21 24 A Do I recall? No, not everything.

10:06:24 25 MR. RUBIN: Q. So as you sit here today, you

1 KYLE BONICI

10:06:25 2 cannot recall all the Paramount content that you have
10:06:29 3 uploaded to YouTube?

10:06:30 4 A No.

10:06:36 5 Q Was content ever uploaded to the Para2009 or
10:06:48 6 Para2010 accounts?

10:06:50 7 A It was an Eagle Eye trailer for both.

10:06:54 8 Q Do those accounts remain active?

10:07:04 9 A I don't know.

10:07:06 10 Q What e-mail address did you use to register
10:07:08 11 for those accounts?

10:07:10 12 A I can't recall.

10:07:12 13 Q Do you use a Paramount e-mail address?

10:07:17 14 A I can't recall.

10:07:19 15 Q Would there have been a reason that you
10:07:21 16 wouldn't have used a Paramount e-mail address?

10:07:24 17 MS. CUNHA: Objection; form.

10:07:25 18 THE WITNESS: I don't know. I can't recall.

10:07:31 19 If there's a reason why, if you guys have stipulations
10:07:35 20 where there's only a certain one e-mail address per
10:07:38 21 account, then it's possible, but I don't believe -- I
10:07:42 22 don't believe so.

10:07:48 23 MS. CUNHA: Michael, we've been going for
10:07:50 24 almost an hour, can we take a break soon?

10:07:53 25 MR. RUBIN: I'm happy to take a break

Rubin Reply Exhibit 188

January 19, 2010

Via Electronic Mail

Ms. Susan Kohlmann
Jenner & Block LLP
919 Third Avenue
37th Floor
New York, NY 10022

**Re: *Viacom International Inc., et al. v. YouTube, Inc., et al.*
*The Football Association Premier League Ltd., et al. v. YouTube, Inc., et al***

Dear Susan:

I write concerning certain highly relevant evidence that we just learned Viacom appears to have been withholding in direct contravention of its court-ordered obligations. Last Thursday at his deposition, Warren Solow testified that since prior to January 2007, Viacom has maintained a set of aggregated data reflecting the promotional video uploading activity of its many agents and subsidiaries, including the URL of the uploaded video, and often the username used and the Internet service to which the video was posted. Not only does this data fall squarely within discovery requests YouTube served on Viacom in July 2007, Viacom was also ordered to produce this very information pursuant to the August 24, 2009 Stipulation and Order requiring the production of "documents or portions of documents that reflect ... Viacom's decisions to upload or authorize the uploading of videos to the YouTube service." We have asked for this information on countless occasions and assumed from its absence from in Viacom's production, that it did not exist. Your apparent failure to produce all versions of this dataset is made all the more surprising by Mr. Solow's testimony that it was provided to both Jenner & Block and Sherman & Sterling.

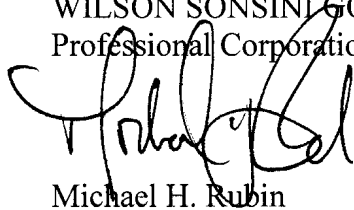
We therefore demand that Viacom immediately produce, for receipt by no later than Monday, January 25, 2010, each and every version of the dataset reflecting Viacom's attempt to track which videos its subsidiaries and agents have uploaded to the Internet, including to

Ms. Susan Kohlmann
January 19, 2010
Page 2

YouTube. If all such versions have already been produced, please identify the Bates Nos. for the materials by the end of this week. Be advised that if this issue is not promptly and satisfactorily resolved, we will raise it with the Court.

Regards,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

A handwritten signature in black ink, appearing to read "Michael H. Rubin", is written over the printed name and company name.

Michael H. Rubin

cc: All Counsel of Record

Rubin Reply Exhibit 189

January 25, 2010

Jenner & Block LLP
919 Third Avenue
37th Floor
New York, NY
Tel 212 891-1600
www.jenner.com

Chicago
Los Angeles
New York
Washington, DC

VIA E-MAIL

Michael H. Rubin
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304

Susan J. Kohlmann
Tel 212 891-1690
skohlmann@jenner.com

Re: *Viacom International, Inc., et al. v. YouTube, Inc., et al.*, 07 Civ. 02103

Dear Michael:

I write in response to your January 19, 2010 letter requesting the production of data referenced at Warren Solow's January 14 deposition. Your letter fundamentally mischaracterizes Mr. Solow's testimony and misstates Viacom's production obligations.

First, you state that Mr. Solow "testified that since prior to January 2007, Viacom has maintained a set of aggregated data reflecting the promotional video uploading of its many agents and subsidiaries." That is inaccurate in many ways. Mr. Solow testified that he does not personally maintain a list of the content Viacom does not seek to have taken down from the YouTube site but that he has asked Michael Housley to ensure that such a list is maintained. *See* Solow Rough Tr. at 144. He stated that he did not know where the list was kept. Indeed, he testified that, for at least part of 2007, Viacom sent the relevant data "directly to BayTSP" rather than maintaining an internal list, *see* Solow Rough Tr. at 162, and that he did not know when, if ever, that practice changed.

In fact, BayTSP continues to maintain the list. As Mr. Solow testified, Mr. Housley aggregates information regarding account names whose uploads Viacom does not seek to have removed. Mr. Housley then provides that information to BayTSP so that BayTSP can track and use it. Defendants have received numerous documents confirming this process, including Exhibits 8, 9, and 11 to Mr. Solow's deposition.

Second, you claim that Viacom's failure to provide whatever records exist was "in direct contravention of its court-ordered obligations." That is simply wrong. As Mr. Solow's testimony indicates, to the extent that Viacom (rather than BayTSP) kept copies of the "set of aggregated data" you request, they were maintained by Michael Housley and stored in his custodial files. Mr. Housley is not one of the 90 Priority or Additional Custodians whose records Defendants requested in this case. Viacom has no obligation to produce data from his files. Nor does the August 24, 2009 Stipulation you cited create such an obligation. In that Stipulation, Viacom agreed to "withdraw[] its claims of privilege and work product" as to certain classes of documents, not produce every document within those classes that might exist anywhere in its records. Your claim that Viacom shirked its discovery obligations is groundless.

Notwithstanding your distortions, and as a courtesy, we have located and are providing a recent email exchange between Mr. Housley and BayTSP taken from Mr. Housley's custodial files. It bears the Bates range VIA-SUPP000001 - VIA-SUPP000003. The intent of this document is to list YouTube account names from which Viacom does not wish to take down video uploads. The users whose account names appear on the document have not necessarily uploaded promotional materials to YouTube on behalf of Viacom and are not necessarily authorized by Viacom to do so.

Finally, Defendants have failed to provide the same type of information you inaccurately accused Viacom of withholding: documents listing content that should not be taken down from the YouTube or Google Video websites. *See, e.g.,* Narasimhan Tr. at 33 ("Our partner team decided to generate a list of e-mail addresses for us of partners that were—or content owners that were uploading videos."). We have requested production of that information before and once again demand that you provide it without delay.

Sincerely,

A handwritten signature in cursive script, reading "Susan J. Kohlmann / JCC".

Susan J. Kohlmann

Attachment, designated Highly Confidential

cc: Counsel for all parties

Housley, Michael

From: Andrea Cordone [andreac@baytsp.com]
Sent: Wednesday, April 16, 2008 7:23 PM
To: Housley, Michael
Cc: Sean Ray; Evelyn Espinosa; Elliott Kohtz
Subject: RE: Whitelist

Mike,

All of the following usernames are on the white-list in BVM and in the CIMS filters:

BAAFamily
BadBoyRecords
barelypolitical
BdubEtv
bestweekevertv
blacktreemedia
bpfrecords
bravenewfilms
BroadwayJoe
BroadwayJoe415
bullrunvideo
CBS
ChannelFrederator
cimatics
Damonjohnson
fanscapevideos
FanscapeVideos4U
FiveChemical
freeforlife112
FreshTakes
FutureWorld77
HGiantVid
irenemariemodels
Isitfridayyet
JackassWorldMTV
jerseymouth1
ladyfragment
Lakeshore Records
laurenceegibbs
LiberalViewer
Menudo
OfficialReno911
Paraccount
Paramount
Paramount Pictures
ParamountPictures
ParentsConnect
ParkMyVibe
PinkStrawberry
PinkStrawberry1
powermadeak47dotcom
powmadeak47
reaction2006
reno911miami
rollingoutTELEVISION
RunsHouseVideos
shishka
Snackboard

HIGHLY CONFIDENTIAL

VIA-SUPP000001

SpikeTV
TDSwriters
thatisalsofunny
thatsfunny
Thatsnotfunny
themoviemonkey
thesparksfly
TNAWrestling
tomato808
TVgasmdotcom
TXCANY
vh1staff
Victorweb
virtualmtv
VLogging
Wiredset

These usernames appear only in CIMS:

ArtisanNewsService
Digitalfilmmaker
MyDamnChannel
universalmusicgroup

Please let me know if you have any questions or if there any changes that should be made.

Best Regards,

Andrea Cordone
Client Services Manager
BayTSP, Inc.
408.341.2365
andreac@baytsp.com

**Save the date! Join us for "One World 2008: Managing Piracy in the Global Village" -
BayTSP's 5th Annual Anti-Piracy Conference September 15-17th! Join us!**

The information contained in this email message may be confidential and is intended only for the parties to whom it is addressed. If you are not the intended recipient or an agent of same, please notify us of the mistake by telephone (408-341-2300) or email and delete the message from your system. Please do not copy the message or distribute it to anyone. This message was prepared at the request of counsel.

From: Housley, Michael [<mailto:Michael.Housley@viacom.com>]
Sent: Wednesday, April 16, 2008 2:13 PM
To: Andrea Cordone
Cc: Sean Ray; Evelyn Espinosa; Elliott Kohtz
Subject: RE: Whitelist

Thanks, Andrea. Can you send me a list of all white-listed usernames?

From: Andrea Cordone [<mailto:andreac@baytsp.com>]
Sent: Wednesday, April 16, 2008 5:06 PM
To: Housley, Michael
Cc: Sean Ray; Evelyn Espinosa; Elliott Kohtz
Subject: RE: Whitelist

Mike,

The username "BAAFamily" has been added to the BVM white-list and the filters in CIMS.

Best Regards,

HIGHLY CONFIDENTIAL

VIA-SUPP000002

Andrea Cordone
Client Services Manager
BayTSP, Inc.
408.341.2365
andreatc@baytsp.com

**Save the date! Join us for "One World 2008: Managing Piracy in the Global Village" -
BayTSP's 5th Annual Anti-Piracy Conference September 15-17th! Join us!**

The information contained in this email message may be confidential and is intended only for the parties to whom it is addressed. If you are not the intended recipient or an agent of same, please notify us of the mistake by telephone (408-341-2300) or email and delete the message from your system. Please do not copy the message or distribute it to anyone. This message was prepared at the request of counsel.

From: Housley, Michael [mailto:Michael.Housley@viacom.com]
Sent: Wednesday, April 16, 2008 1:55 PM
To: Andrea Cordone
Cc: Sean Ray
Subject: Whitelist

Hello Andrea,

Please white-list the username, BAAFamily.

Thanks,

Mike

Rubin Reply Exhibit 190

January 26, 2010

Via Electronic Mail

Ms. Susan Kohlmann
Jenner & Block LLP
919 Third Avenue
37th Floor
New York, NY 10022

**Re: *Viacom International Inc., et al. v. YouTube, Inc., et al.*
*The Football Association Premier League Ltd., et al. v. YouTube, Inc., et al***

Dear Susan:

This letter responds to yours of yesterday and to our brief conversation following my receipt of it.

I am afraid you cannot resolve the matter of Viacom's failure to produce important evidence by mischaracterizing what Mr. Solow actually said in his deposition. Contrary to your assertions, Mr. Solow testified that Viacom's third-party marketing agents and "departments who are in the business of posting clips to websites . . . provide information as to their activities" to his department because "[i]t helps mitigate the removal of clips that some parts of the organization would prefer to stay in place." Solow Rough Tr. at 141; 145. Mr. Solow testified that the "[w]ebsite URL is the most material information that we ask for," and that the user ID of the uploading account and website to which the video was posted are also generally provided. Solow Rough Tr. at 142-43. Thus, the email you sent us listing some YouTube user accounts is plainly not what Mr. Solow testified that his department maintains, as it lacks the URL data Mr. Solow testified is the most material data Viacom aggregates.

Further, your reference to the fact that Mr. Solow has not always personally maintained that data, but instead for some time has tasked Mr. Housely with maintaining it for Viacom, does not render the data "custodial" nor somehow outside the reach of discovery or the Court's orders. And your suggestion that Mr. Housley does not maintain the data is flatly contradicted by Mr. Solow's sworn testimony. At his deposition, Mr. Solow specifically referenced "a document that Michael Housley maintains" containing this aggregated data. Solow Rough Tr. at 213. And while he disclaimed knowledge of "the application that is used to organize that data," Mr. Solow was confident that this "list that Michael Housley ha[d] created" exists and is stored in electronic form. Solow Rough Tr. at 154, 161. If your letter was meant to convey that Viacom's version of the data as maintained by Mr. Housely's now only exists in the form in which it was communicated to BayTSP, you should expressly say so and explain what happened to the version Viacom once had. And if that is the case, Viacom is obligated to produce that data in

Ms. Susan Kohlmann
Jenner & Block LLP
January 26, 2010
Page 2

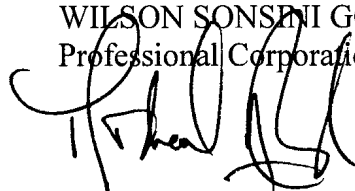
form sent to BayTSP by obtaining it from BayTSP. As Viacom has repeatedly expressed, BayTSP is Viacom's agent and is authorized to act on Viacom's behalf according to a series of rules that includes checking the aggregated data at issue before issuing takedown notices, which, as you admitted, "BayTSP continues to maintain." Jan. 25, 2010 Kohlmann letter to Rubin at 1. As such, Viacom cannot evade the Court's orders by hiding behind a claim that the data is in BayTSP's possession.

According to Mr. Solow, in fact, your firm has a version of this data that you apparently continue to withhold based on the unsupportable assertion that privilege protects the versions of this data because Viacom chose to share it with counsel. *See* Rough Tr. at 155. We do not see how this data could ever be privileged in the first place. But even if some plausible claim existed, "Viacom withdrew[] its claims of privilege and work product" as to "documents or portions of documents that reflect . . . Viacom's decisions to upload or authorize the uploading of videos to the YouTube service [and] Viacom's guidelines or policies for allowing videos to remain on YouTube for marketing, promotional, or other business reasons." August 24, 2009 Stipulation and Order regarding Viacom's Copyright Monitoring Guidelines. That plainly includes materials maintained by Mr. Solow's department in connection with its copyright monitoring protocol, regardless of whether or not they were shared with counsel.

We reiterate our demand that Viacom produce by no later than January 29, 2010, all versions of the data identified above and in Mr. Solow's deposition regarding the activities of Viacom's marketing agents and departments who are in the business of posting clips to websites, including all versions of that data provided by Viacom to BayTSP, Jenner & Block and/or Shearman & Sterling.

Regards,

WILSON SONSHI GOODRICH & ROSATI
Professional Corporation

A handwritten signature in black ink, appearing to read "Michael H. Rubin", is written over the printed name and firm name.

Michael H. Rubin

cc: All Counsel of Record

Rubin Reply Exhibit 191

JENNER & BLOCK

January 29, 2009

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Washington, DC

VIA E-MAIL

Michael H. Rubin
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304

Susan J. Kohlmann
Tel 212 891-1690
skohlmann@jenner.com

Re: *Viacom International, Inc., et al. v. YouTube, Inc., et al.*, 07 Civ. 02103

Dear Michael:

Your January 26 letter includes many statements that I do not agree with, see the relevance of, or in some cases even understand, but rather than arguing about each of them I will stick to the point. It is not productive for us to engage in an extended debate about what Mr. Solow did or did not say in his deposition. While I dispute your characterizations of his testimony, the bottom line is that those characterizations cannot change the fact that the documents you seek do not exist and have never existed. To the best of our knowledge, neither Viacom nor BayTSP has maintained a list of website URLs representing content not to be taken down from the YouTube site or other Internet video sites. Viacom is not intentionally withholding any lists of website URLs, usernames, or any other such identifiers kept for that purpose on privilege grounds, because they exist only in Michael Housley's custodial files, or for any other reason.

VIA-SUPP000001 - 03, the document we provided to you as an attachment to my January 25 letter, is an example of the type of information that Mr. Housley and BayTSP did maintain. It contains a list of YouTube usernames that may have been used to post content Viacom did not wish to have removed from the YouTube site. As I stated before, Defendants have received numerous documents containing various iterations of this information in discovery. We are not aware of any versions predating the parties' agreed-upon discovery cutoff that Defendants do not already have. Indeed, we provided VIA-SUPP000001 - 03 as a courtesy even though it postdates the cutoff. We cannot provide the information in any other form because, in our knowledge, we do not have it in any other form.

Sincerely,

A handwritten signature in cursive script that reads "Susan J. Kohlmann". To the right of the signature, the letters "AJC" are handwritten.

Susan J. Kohlmann

cc: Counsel for all parties