

Schapiro Exhibit 117

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

vs.

No. 07-CV-2103

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

Defendants.

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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.

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HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF SCOTT PAUL ROESCH
PALO ALTO, CALIFORNIA
THURSDAY, SEPTEMBER 25, 2009

JOB NO. 17714

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SCOTT ROESCH

SEPTEMBER 25, 2009

8:42 A.M.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF SCOTT
PAUL ROESCH, at WILSON SONSINI GOODRICH & ROSATI, 601
California Avenue, Palo Alto, California, pursuant to
notice, before me, KATHERINE E. LAUSTER, CLR, CRR, RPR,
CSR License No. 1894.

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SCOTT ROESCH

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

FOR THE PLAINTIFFS, VIACOM INTERNATIONAL, INC.:

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FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC, and
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Also Present: ARMANDO CARRASCO, Videographer

1 SCOTT ROESCH
2 08:52:39 distributor of independent entertainment, and that
3 08:52:43 involved distribution of content on the web, and
4 08:52:45 through a number of other media channels, including
5 08:52:48 television, airlines, when -- various other
6 08:52:53 channels.

7 08:52:53 And so the -- the business model was
8 08:52:55 advertising on the website and distribution -- or,
9 08:52:59 actually, licenses to distribution partners.

10 08:53:04 Q. Can you describe how long that business
11 08:53:07 model was in place?

12 08:53:09 A. The business model is actually still in
13 08:53:12 place and of course it's evolved over time. The --
14 08:53:16 the web has become more central to the business
15 08:53:18 model, and the distribution efforts -- or
16 08:53:20 distribution channels have become, I would say,
17 08:53:22 secondary, but an important secondary business for
18 08:53:25 us.

19 08:53:26 Q. And over time you have added on
20 08:53:28 different types of businesses to that core business
21 08:53:34 model?

22 08:53:35 MR. WILKENS: Objection to the form of the
23 08:53:35 question.

24 08:53:41 THE WITNESS: Can you -- can you clarify?
25 08:53:42 I'm sorry. Can you repeat the question?

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SCOTT ROESCH

08:53:44 BY MR. RUBIN:

08:53:44 Q. I believe you testified a moment ago that
08:53:46 the original business model of the company was to
08:53:49 focus on original content, the acquisition and
08:53:53 distribution of original content; is that right?

08:53:55 A. I don't think I said that. We were --
08:53:59 we're a marketer and distributor of independent
08:54:02 entertainment.

08:54:03 Q. Okay. Let -- let me -- let me ask you a
08:54:04 different question. How did Atom Films acquire that
08:54:09 originally, at the inception of the company, go
08:54:13 about acquiring that content?

08:54:14 A. We primarily licensed from independent
08:54:17 creators.

08:54:18 Q. And how did Atom Films go about getting
08:54:21 rights and clearances to distribute that content?

08:54:23 MR. WILKENS: Objection to the form of the
08:54:25 question.

08:54:26 THE WITNESS: We would, through a variety
08:54:27 of means, find content that we liked and thought had
08:54:31 commercial distribution potential; for example, we
08:54:33 would go to film festivals, we would engage -- we
08:54:39 would meet the creator and -- and discuss a -- a
08:54:42 licensing arrangement with them. If we could reach

1 SCOTT ROESCH

2 08:54:45 terms, we would execute a contract, and we would

3 08:54:48 obtain clearances.

4 08:54:51 So we would get reps and warranties from

5 08:54:54 the creator, and we would obtain clearances from

6 08:54:58 them to affirm that they held the necessary rights

7 08:55:02 to distribute the material.

8 08:55:04 Q. And by "reps and warranties," what were

9 08:55:06 you referring to?

10 08:55:07 MR. WILKENS: Objection to the form of the

11 08:55:09 question.

12 08:55:10 You can answer.

13 08:55:12 BY MR. RUBIN:

14 08:55:12 Q. You can answer.

15 08:55:12 A. Oh. The creator would, in the text of the

16 08:55:16 contracts, affirm that they held the necessary

17 08:55:19 rights to the material and the -- and the content.

18 08:55:25 BY MR. RUBIN:

19 08:55:25 Q. Was that an involved process?

20 08:55:28 MR. WILKENS: Objection. Vague.

21 08:55:30 THE WITNESS: In- -- "involved" in what

22 08:55:32 sense? Can you --

23 08:55:33 BY MR. RUBIN:

24 08:55:33 Q. Was the process of clearing the rights and

25 08:55:35 obtaining representations and warranties from those

1 SCOTT ROESCH

2 08:55:38 involved in the creation of the content an involved

3 08:55:43 process? Was it time consuming?

4 08:55:46 MR. WILKENS: Same objection.

5 08:55:46 THE WITNESS: It actually would vary

6 08:55:47 greatly between -- from deal to deal.

7 08:55:49 BY MR. RUBIN:

8 08:55:50 Q. But in certain circumstances it could be

9 08:55:52 quite time -- time consuming?

10 08:55:53 A. Yes.

11 08:55:54 Q. How -- how long would you say an average

12 08:55:56 deal took to negotiate?

13 08:55:58 MR. WILKENS: Objection to form.

14 08:56:09 THE WITNESS: It's difficult for me to --

15 08:56:11 to estimate that, because there was a wide range in

16 08:56:14 variance, but I can say a couple of weeks.

17 08:56:16 BY MR. RUBIN:

18 08:56:16 Q. Why did -- did Atom feel it was necessary

19 08:56:21 to obtain representations and warranties from these

20 08:56:24 creators?

21 08:56:25 MR. WILKENS: Objection to the form. And

22 08:56:26 I'm going to caution the witness, to the extent that

23 08:56:29 calls for attorney-client privilege or legal advice,

24 08:56:32 I instruct you not to answer as to that.

25 08:56:34 But if you can answer otherwise, go right

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SCOTT ROESCH

08:56:38 ahead.

08:56:39 THE WITNESS: Can you repeat -- repeat the
08:56:40 question?

08:56:40 BY MR. RUBIN:

08:56:41 Q. Why did Atom feel it was necessary to
08:56:43 obtain representations and warranties from these
08:56:46 creators?

08:56:53 A. We -- we wanted to build a business on the
08:56:54 distribution of content, so we wanted to make sure
08:56:56 that -- that people that contributed to the creation
08:57:00 of the content were -- you know, that -- that --
08:57:12 that they were willing participants in the -- in the
08:57:15 creation and -- and distribution of the content.

08:57:18 Q. So you took copyright issues seriously,
08:57:21 and you wanted to make sure that you were -- you had
08:57:24 cleared the copyright issues with the creators
08:57:27 before you distributed their works?

08:57:29 MR. WILKENS: Objection. Mischaracterizes
08:57:30 his testimony and calls for a legal conclusion.

08:57:33 MR. RUBIN: I -- I didn't -- wasn't
08:57:34 attempting to characterize his testimony. I was
08:57:37 asking a question.

08:57:38 THE WITNESS: Can you repeat the
08:57:39 question?

1 SCOTT ROESCH

2 08:57:40 BY MR. RUBIN:

3 08:57:40 Q. Sure. Atom Films took copyright issues

4 08:57:44 seriously and wanted to ensure that it was clearing

5 08:57:47 copyright issues with its -- with the creators of

6 08:57:50 the content it was intending to distribute before it

7 08:57:56 distributed them?

8 08:57:57 MR. WILKENS: Objection. Vague.

9 08:57:58 THE WITNESS: Yes.

10 08:57:58 BY MR. RUBIN:

11 08:57:59 Q. And you would not have advocated a

12 08:58:03 business model for Atom Films unless you believed

13 08:58:08 that that business model would have been in the same

14 08:58:10 vein of supporting copyright interests of creators'

15 08:58:14 content --

16 08:58:16 MR. WILKENS: Objection --

17 08:58:16 BY MR. RUBIN:

18 08:58:16 Q. -- is that right?

19 08:58:16 MR. WILKENS: -- to the form of the

20 08:58:17 question.

21 08:58:18 THE WITNESS: I'm not sure I understand

22 08:58:19 that. You're asking me to speculate about a

23 08:58:21 different business model?

24 08:58:23 BY MR. RUBIN:

25 08:58:24 Q. No, not at all. I'm saying, you, as a

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SCOTT ROESCH

08:58:26 member of -- of maybe, if not the founding, the near
08:58:30 founding team of Atom, believed that the respect for
08:58:32 copyright was important to the Atom Films business;
08:58:36 isn't that right?

08:58:37 A. Yes.

08:58:38 Q. And you wouldn't have advocated a
08:58:39 direction for the business at any point that
08:58:42 deviated from that, would you?

08:58:44 MR. WILKENS: Objection to the form.

08:58:54 THE WITNESS: I don't think I did advocate
08:58:56 a direction for the business that deviated from it.

08:58:59 BY MR. RUBIN:

08:58:59 Q. So the answer to my question is: No,
08:59:01 you wouldn't have advocated a direction that
08:59:05 deviated from those core principles of respecting
08:59:07 copyright?

08:59:09 MR. WILKENS: Objection to the form, and
08:59:10 asked and answered.

08:59:10 MR. RUBIN: It hasn't been answered,
08:59:13 Scott. Stop interrupting.

08:59:15 MR. WILKENS: Objection. That same
08:59:16 objection.

08:59:17 THE WITNESS: I didn't advocate a model
08:59:19 that deviated from that. That's my belief.

1 SCOTT ROESCH

2 08:59:21 BY MR. RUBIN:

3 08:59:22 Q. Okay. That answers my question. All

4 08:59:23 right.

5 08:59:24 Did Atom Films ever obtain venture

6 08:59:27 financing?

7 08:59:27 A. Yes.

8 08:59:28 Q. From whom?

9 08:59:29 A. From a variety of sources, and I'm not

10 08:59:34 going to be able to give you an exhaustive list, but

11 08:59:38 one was Allen & Co., one was Arts Alliance.

12 08:59:49 And, you know, after the merger with Shock

13 08:59:52 Wave, you know, one of their venture capitalists had

14 08:59:58 been Sequoia, and there are a number of others.

15 09:00:02 Q. How many rounds of venture financing did

16 09:00:04 Atom films have, either before or after the Shock

17 09:00:08 Wave merger?

18 09:00:10 A. I'm not entirely sure.

19 09:00:12 Q. Do you know if Sequoia invested in the

20 09:00:15 company post merger with Shock Wave?

21 09:00:21 A. I'm not sure. I'd be -- I would -- I --

22 09:00:24 I'd be speculating.

23 09:00:27 Q. Do you know when the rounds were?

24 09:00:31 A. I know that there were -- there was some

25 09:00:33 angel funding of Atom in '98, and our first round

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SCOTT ROESCH

09:00:38 of -- or say "they," I guess -- was in early '99.

09:00:41 And then after that another -- I know there was at

09:00:46 least one additional round, but I -- I don't recall

09:00:48 when.

09:00:49 Q. So you don't -- you can't recall the

09:00:50 number of venture financing rounds that Atom had?

09:00:54 A. The number of rounds?

09:00:55 MR. WILKENS: Objection. Asked and

09:00:55 answered.

09:00:56 THE WITNESS: No.

09:00:57 BY MR. RUBIN:

09:00:59 Q. Do you know how much money was raised, in

09:01:01 total, through venture financing for Atom?

09:01:07 A. I -- I don't know the specific number.

09:01:10 Q. Do you have a rough number?

09:01:12 MR. WILKENS: Objection.

09:01:16 THE WITNESS: I -- I believe it was

09:01:17 20 million, possibly slightly higher for the Atom --

09:01:22 you know, for the pre Shock Wave merger atom Films,

09:01:27 and again, that's not -- that wasn't my area of

09:01:30 responsibility. So that's -- I'm doing that based

09:01:32 on memory.

09:01:33 BY MR. RUBIN:

09:01:33 Q. Sure.

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SCOTT ROESCH

09:12:43 I was asking you whether this e-mail is
09:12:46 representative of that instance.

09:12:49 A. This e-mail refers to the same creators.

09:12:59 Q. Megan O'Neill asked you to check out a
09:13:02 video clip in this e-mail. Do you see that?

09:13:04 A. I do.

09:13:05 Q. What was that clip?

09:13:08 A. I believe this was -- I remember this is
09:13:12 an episode of a -- of what they intended to be a
09:13:16 series called "Celebrity Bric-a-brac Theater."

09:13:22 Q. Did you view that clip?

09:13:25 A. I did.

09:13:25 Q. And did you believe that clip to infringe
09:13:27 any copyrights?

09:13:30 MR. WILKENS: Objection to the form.
09:13:30 Calls for a legal conclusion.

09:13:33 THE WITNESS: No, I -- I believed the --
09:13:35 the video to be all original material they'd
09:13:38 created.

09:13:38 BY MR. RUBIN:

09:13:41 Q. Did anyone actually reach out to them in
09:13:43 response to the discussion on this e-mail?

09:13:46 A. Yes.

09:13:47 Q. And was a deal ultimately consummated --

1 SCOTT ROESCH

2 09:13:50 A. Um --

3 09:13:51 Q. -- between Atom and the individuals

4 09:13:54 referenced in the e-mail?

5 09:13:55 A. Yes.

6 09:13:56 Q. And did Atom ultimately host and

7 09:13:59 distribute content created by these individuals?

8 09:14:01 A. Yes.

9 09:14:07 Q. In addition to looking to YouTube for

10 09:14:11 content, do you ever recall Atom looking to YouTube

11 09:14:17 for feature ideas --

12 09:14:19 MR. WILKENS: Objection to the form --

13 09:14:19 BY MR. RUBIN:

14 09:14:19 Q. -- for its service?

15 09:14:21 MR. WILKENS: Objection to the form.

16 09:14:32 THE WITNESS: Would you clarify what types

17 09:14:34 of features?

18 09:14:35 BY MR. RUBIN:

19 09:14:35 Q. Any features.

20 09:14:45 A. Website features?

21 09:14:47 Q. Sure.

22 09:14:47 A. Yes, YouTube was a -- a website that we

23 09:14:50 looked at and -- and we looked at the features

24 09:14:53 on the -- on that site.

25 09:14:54 Q. Can you recall any particular features

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2 09:14:57 that Atom might have looked at on YouTube in an

3 09:15:01 attempt to incorporate them into the AtomFilms

4 09:15:04 website?

5 09:15:05 MR. WILKENS: Objection to the form.

6 09:15:10 THE WITNESS: We -- hm. I think -- I

7 09:15:32 think -- I think one feature that YouTube had, in

8 09:15:35 addition to other sites at the time, was a feature

9 09:15:38 that allowed users to upload videos directly to a --

10 09:15:42 to the web side. So we -- we looked at that

11 09:15:46 feature.

12 09:15:47 Q. Is that a feature you ultimately

13 09:15:49 implemented?

14 09:15:50 A. We uploaded -- or we implemented an upload

15 09:15:53 feature on a -- initially on a -- another website

16 09:15:57 that we controlled.

17 09:16:05 Q. Do you -- did you, or anyone else at Atom,

18 09:16:07 ever conduct a competitive analysis of YouTube?

19 09:16:11 MR. WILKENS: Objection to the form.

20 09:16:30 THE WITNESS: We conducted analysis. I

21 09:16:34 believe the analysis was in the context of a -- of

22 09:16:38 potential vendors for -- to power a white label

23 09:16:43 website. I don't recall the specific competitive

24 09:16:48 analysis that we conducted, but we did analyze the

25 09:16:53 site.

1 SCOTT ROESCH

2 09:16:54 MR. RUBIN: I'd like to introduce Roesch

3 09:16:56 Exhibit Number 4.

4 09:16:57 (Roesch Deposition Exhibit Number 4 was

5 09:16:57 marked for identification.)

6 09:17:09 BY MR. RUBIN:

7 09:17:10 Q. Mr. Roesch, this is an e-mail that Cindy

8 09:17:17 Emch sent to M_ATOM_AtomFilms_Team@Viacom.com on

9 09:17:26 October 24th, 2007, and Viacom produced in this

10 09:17:33 litigation, bearing Bates number VIA 02478789.

11 09:17:42 Who is Cindy Emch?

12 09:17:46 A. Cindy Emch was a -- a member of my team.

13 09:17:49 Q. What was her role on your team?

14 09:17:52 A. She had a couple of different roles. I

15 09:17:56 believe her role at this time was promoting content

16 09:18:01 on Atom Films and AtomUploads or AddictingClips'

17 09:18:12 website.

18 09:18:16 Q. Did you receive this e-mail?

19 09:18:18 A. Yes.

20 09:18:19 Q. Did you --

21 09:18:20 A. Well, sorry. I believe that I did,

22 09:18:22 because I was a member of this Atom Films team list.

23 09:18:26 Q. Thank you.

24 09:18:30 Do you see the first line of this e-mail?

25 09:18:32 A. Yes.

1 SCOTT ROESCH

2 10:07:09 A. I've received additional e-mail addresses.

3 10:07:12 My previous e-mail addresses have not changed.

4 10:07:15 Q. What e-mail address do you use on a daily

5 10:07:17 basis for work?

6 10:07:18 A. I use ScottR@Atom.com or SROesch@Atom.com.

7 10:07:29 Q. Do the other e-mail addresses you just

8 10:07:32 referenced as having obtained following the Viacom

9 10:07:34 acquisition of Atom all point to one of those e-mail

10 10:07:39 addresses?

11 10:07:40 A. Yes, I believe so.

12 10:07:41 Q. When the switch to Viacom took place, do

13 10:07:45 you know what happened to the e-mails that you had

14 10:07:47 on the Viacom -- the Atom e-mail server?

15 10:07:51 A. No.

16 10:07:54 Q. Currently do you know the server on which

17 10:07:57 your e-mails are stored?

18 10:07:59 A. No.

19 10:08:02 Q. Generally speaking, as a practice, do you

20 10:08:04 save or do you delete your e-mail?

21 10:08:09 MR. WILKENS: Objection to the form.

22 10:08:13 THE WITNESS: It depends on the e-mail,

23 10:08:16 the specific e-mail.

24 10:08:17 BY MR. RUBIN:

25 10:08:18 Q. What criteria do you apply?

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SCOTT ROESCH

10:08:23 A. I may -- if -- if I think there's an
10:08:25 e-mail that I may want to refer to again in the
10:08:28 future, I would -- you know, I might save that in a
10:08:32 folder that's easily accessible to me.

10:08:36 Q. And what facts determine whether or not
10:08:39 you're likely to want to refer to an e-mail in the
10:08:42 future?

10:08:43 A. (Witness shrugs.) If it has information
10:08:46 in there that may be pertinent to an ongoing
10:08:50 initiative or a fact that I might need to retrieve.

10:08:55 Q. Job-related issues, then?

10:08:57 A. Yes.

10:09:02 Q. Are you familiar with a website known as
10:09:06 AddictingClips?

10:09:07 A. Yes.

10:09:09 Q. What was your involvement with that
10:09:11 website?

10:09:12 A. I was responsible for that website.

10:09:20 Q. Can you describe that website, generally?

10:09:23 A. Yes.

10:09:28 Q. Please do.

10:09:30 A. AddictingClips was a website where content
10:09:33 creators could upload their material directly to the
10:09:37 site.

1 SCOTT ROESCH

2 10:09:44 Q. How did AddictingClips limit the upload of

3 10:09:50 materials to content creators?

4 10:09:53 MR. WILKENS: Objection to the form.

5 10:10:00 THE WITNESS: The -- the site was -- was

6 10:10:02 available for anybody to upload.

7 10:10:05 BY MR. RUBIN:

8 10:10:12 Q. Was the functionality of the Ad- -- of the

9 10:10:15 AddictingClips website always such that anybody

10 10:10:18 could upload content to the service?

11 10:10:21 A. No.

12 10:10:23 Q. Can you describe the original

13 10:10:25 functionality of the Ad- -- of the AddictingClips

14 10:10:27 website?

15 10:10:28 A. Yes, the first version of AddictingClips

16 10:10:30 was a directory of links pointing out to

17 10:10:35 third-party -- to content on third-party websites.

18 10:10:44 Q. Why would Atom choose to launch

19 10:10:49 AddictingClips?

20 10:10:50 A. Well, we believed there was interesting

21 10:10:52 content on other sites that users would be

22 10:10:55 interested in, and that a -- a directory of some of

23 10:10:58 that content would be interesting to them.

24 10:11:02 Q. Who was involved in making that decision?

25 10:11:09 A. I was involved, along with a couple

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2 10:11:13 members of my team, and -- and some of the other

3 10:11:16 Atom Entertainment management.

4 10:11:18 Q. Who by name was involved in that decision?

5 10:11:22 A. Mika Salmi was involved; Peter Ignacio,

6 10:11:33 for the -- for whatever -- I think Mika and Peter

7 10:11:40 are probably the primary people involved.

8 10:11:43 Q. Would you say that anyone owned the idea?

9 10:11:45 MR. WILKENS: Objection to the form.

10 10:11:47 THE WITNESS: No.

11 10:11:49 BY MR. RUBIN:

12 10:11:49 Q. It was more collaborative then?

13 10:11:51 A. Yes.

14 10:11:52 Q. Could you pinpoint whose idea it was?

15 10:11:59 A. I can't recall.

16 10:12:03 MR. RUBIN: I'd like to introduce Roesch

17 10:12:06 Exhibit 10.

18 10:12:07 (Roesch Deposition Exhibit Number 10 was

19 10:12:07 marked for identification.)

20 10:12:24 BY MR. RUBIN:

21 10:12:25 Q. Mr. Roesch, Exhibit 10 is a document

22 10:12:29 Viacom produced in this case from your files

23 10:12:31 entitled:

24 10:12:33 "User-Generated Video (UGV) service

25 10:12:39 Recommendation, ScottR, 9/16/05,"

1 SCOTT ROESCH

2 10:12:44 bears Bates number VIA 02927282 through -84.

3 10:12:57 Do you recognize this document?

4 10:13:01 MR. WILKENS: Take your time to review it,

5 10:13:03 Scott.

6 10:14:01 THE WITNESS: I recognize the document.

7 10:14:02 BY MR. RUBIN:

8 10:14:04 Q. Did you draft it?

9 10:14:07 A. Yes.

10 10:14:09 Q. What is it?

11 10:14:13 A. It's a document that builds on internal

12 10:14:17 discussions and attempts to -- attempts to recommend

13 10:14:25 a course of action.

14 10:14:29 Q. What course of action does it recommend?

15 10:14:31 A. I'm going to take a minute and finish

16 10:14:34 reading it.

17 10:14:36 Q. Sure.

18 10:16:00 A. The document recommends expanding the

19 10:16:11 mission of Atom Films to include user-generated

20 10:16:15 video.

21 10:16:17 BY MR. RUBIN:

22 10:16:17 Q. On the first page, Mr. Roesch, do you see

23 10:16:23 number 1?

24 10:16:25 A. Yes.

25 10:16:33 Q. Do those points accurately reflect your

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SCOTT ROESCH

10:16:37 reasons for wanting to launch a UGC website in
10:16:43 September of 2005?

10:16:53 A. They -- they accurately reflect some of
10:16:57 the -- the reasons we wanted to do that.

10:17:01 Q. All of the reasons listed here are
10:17:03 accurate though, aren't they?

10:17:14 A. Yes.

10:17:15 Q. You just indicated there were others,
10:17:16 though?

10:17:17 A. Yeah, as indicated in -- in Section 2,
10:17:22 the -- we believed that it would be important as a
10:17:29 content destination, a content site.

10:17:40 Q. Your goal in launching this UGC site was
10:17:46 not to profit from infringing videos that might be
10:17:51 uploaded or linked from that site, was it?

10:17:55 A. No.

10:17:59 Q. Did you recognize that by allowing users
10:18:03 to upload material to the service directly, it might
10:18:06 be possible that they might upload infringing
10:18:12 material to the service?

10:18:14 MR. WILKENS: Objection to the form.

10:18:17 THE WITNESS: Yes.

10:18:18 BY MR. RUBIN:

10:18:19 Q. And before launching the site you vetted

1 SCOTT ROESCH

2 10:18:22 the legality of AddictingClips; right?

3 10:18:28 MR. WILKENS: Objection to the form.

4 10:18:29 You can answer that "yes" or "no."

5 10:18:31 THE WITNESS: Yes.

6 10:18:32 BY MR. RUBIN:

7 10:18:32 Q. And you thought it was operating within

8 10:18:34 the law; right?

9 10:18:36 MR. WILKENS: Objection to the form.

10 10:18:42 Calls for a legal conclusion.

11 10:18:44 You can answer "yes" or "no."

12 10:18:46 THE WITNESS: Yes.

13 10:18:49 BY MR. RUBIN:

14 10:18:56 Q. When did that site launch?

15 10:19:23 A. The first version of the site offering

16 10:19:26 upload functionality launched in the spring of 2006.

17 10:19:35 Q. There was a version before that though;

18 10:19:37 right?

19 10:19:37 A. Yes.

20 10:19:38 Q. When -- and what did the version before

21 10:19:42 the upload functionality version provide?

22 10:19:48 A. There was a directory of links to content

23 10:19:51 on other sites.

24 10:19:53 Q. And when did that version of the site

25 10:19:56 launch?

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SCOTT ROESCH

10:19:56 A. That launched in late 2005.

10:19:59 Q. Did it launch in December of 2005?

10:20:01 A. That's possible. That sounds about right.

10:20:03 Q. Can you describe how the links content

10:20:07 appeared on the AddictingClips website?

10:20:15 A. I rec- -- I recollect that it was a list
10:20:18 of links. Most of the home page was taken up with a
10:20:22 list of links.

10:20:23 Q. And what happened when a user clicked on
10:20:26 one of those links?

10:20:29 MR. WILKENS: Objection to the form.

10:20:32 THE WITNESS: A user would be taken to the
10:20:34 third party website with an AddictingClips frame on
10:20:42 the -- at the top of the screen.

10:20:45 BY MR. RUBIN:

10:20:45 Q. So the third-party website was framed by
10:20:47 an AddictingClips frame -- sorry. The third-party
10:20:49 content was framed by an Addicting Clips site?

10:20:54 A. The third-party web page appeared in its
10:20:58 entirety, with a very small AddictingClips,
10:21:01 quote-unquote, frame at the top of the page.

10:21:05 Q. Did Atom advertise on that iteration of
10:21:08 the AddictingClips website?

10:21:13 A. I believe there is -- there were

1 SCOTT ROESCH

2 10:21:15 advertisings on the -- advertisements on the home

3 10:21:20 page, and there were not advertisements on the

4 10:21:23 frames, and I don't recall if there were any other

5 10:21:27 advertisements on the service.

6 10:21:29 Q. When you say "the home page," are you

7 10:21:31 referring to the page with the directory of links?

8 10:21:34 A. Yes.

9 10:21:43 Q. Did Atom place the various clips it was

10 10:21:45 aggregating into categories?

11 10:21:47 MR. WILKENS: Objection to form.

12 10:21:52 THE WITNESS: I don't -- I don't recall.

13 10:21:54 BY MR. RUBIN:

14 10:22:00 Q. Did you provide descriptions of the

15 10:22:02 content?

16 10:22:04 MR. WILKENS: Objection to the form of the

17 10:22:05 question.

18 10:22:08 THE WITNESS: Yes.

19 10:22:09 BY MR. RUBIN:

20 10:22:14 Q. I see an error in one of my prior

21 10:22:18 questions. We were referring to iteration of the

22 10:22:21 site when it was linking to content. Did Atom place

23 10:22:24 the various links it was aggregating into

24 10:22:26 categories?

25 10:22:27 A. I -- I don't recall.

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SCOTT ROESCH

10:22:30 Q. And you don't recall whether Atom provided
10:22:33 any descriptions of those links either?

10:22:36 A. I do recall that, and we did provide
10:22:39 descriptions.

10:22:40 Q. How did those descriptions come into
10:22:44 being?

10:22:46 A. A member of our team would write the
10:22:48 descriptions.

10:22:51 Q. Who would write the descriptions?

10:22:55 A. I believe it was a variety of people. I
10:22:57 don't think it was limited to one person. I believe
10:23:01 I wrote some of the descriptions. Chris Albrecht, I
10:23:08 believe, wrote some of the descriptions, and I
10:23:11 believe Peter Ignacio wrote some of the
10:23:14 descriptions, possibly others.

10:23:16 Q. And how did you obtain the information on
10:23:19 which -- that you used to write the descriptions?

10:23:24 A. From viewing the content.

10:23:29 Q. Was all content that AddictingClips linked
10:23:36 to viewed prior to being linked to?

10:23:40 MR. WILKENS: Objection to the form.

10:23:44 THE WITNESS: Yes.

10:23:44 BY MR. RUBIN:

10:23:46 Q. Viewed by an Atom employee before being

1 SCOTT ROESCH

2 10:23:50 linked to?

3 10:23:51 A. Yes.

4 10:23:59 Q. How did Atom go about selecting the clips

5 10:24:02 that would be linked to on the AddictingClips

6 10:24:08 website?

7 10:24:11 A. By viewing other websites and looking for

8 10:24:15 clips that we found entertaining.

9 10:24:19 Q. Who was involved?

10 10:24:23 A. Peter Ignacio, I believe, found most of

11 10:24:27 those -- most of the links for that first version of

12 10:24:31 the service.

13 10:24:43 MR. RUBIN: I'd like to introduce Roesch

14 10:24:47 Exhibit 11.

15 10:24:47 (Roesch Deposition Exhibit Number 11 was

16 10:24:47 marked for identification.)

17 10:25:10 BY MR. RUBIN:

18 10:25:11 Q. Mr. Roesch, Exhibit 11 is an e-mail dated

19 10:25:22 November 30th, 2005. It was sent to Peter Ignacio

20 10:25:28 and Chris Albrecht by you, with an attachment

21 10:25:32 entitled "Pete Cut List," produced by Viacom in this

22 10:25:38 litigation, bearing Bates number VIA 08711358 to

23 10:25:45 -459. Do you recall this document?

24 10:26:07 A. Yes.

25 10:26:07 Q. And the cover e-mail, fourth -- fourth

1 SCOTT ROESCH

2 10:26:10 paragraph down, the one beginning with "Note," it

3 10:26:16 indicates that you standardized categories. Do you

4 10:26:22 see that?

5 10:26:23 A. Yes, I do.

6 10:26:24 Q. Does this refresh your recollection that

7 10:26:27 the links Atom employees were collecting to populate

8 10:26:32 the site were being categorized into links?

9 10:26:37 A. Yes, it does.

10 10:26:39 Q. Do you see that three other links were

11 10:26:41 "Jackass," "TV," and "Movies"?

12 10:26:46 A. Yes, I do.

13 10:26:47 Q. And there's another one, "Music"?

14 10:26:51 A. Yes.

15 10:27:06 Q. What were the criteria that were applied

16 10:27:10 in -- by Atom employees when selecting links for the

17 10:27:18 launch and subsequent edition of clips -- clips --

18 10:27:23 links to clips for the first version of the

19 10:27:28 AddictingClips service?

20 10:27:41 A. Entertainment value was a big criteria.

21 10:27:44 Q. Were there any clips -- any qualities that

22 10:27:49 made clips against policy to link to?

23 10:27:55 MR. WILKENS: Objection to the form. And

24 10:27:57 I'm going to caution the witness not to get into

25 10:28:00 attorney-client privilege.

1 SCOTT ROESCH

2 10:28:04 THE WITNESS: Yes.

3 10:28:05 BY MR. RUBIN:

4 10:28:05 Q. What types of links?

5 10:28:13 MR. WILKENS: That same -- same objection.

6 10:28:14 Same caution.

7 10:28:46 THE WITNESS: Clips that were highly

8 10:28:48 offensive were against policy, and clips that we --

9 10:28:53 that -- that appeared to be infringing were against

10 10:28:58 policy.

11 10:28:59 BY MR. RUBIN:

12 10:29:00 Q. How did you determine whether a clip was

13 10:29:04 infringing or not?

14 10:29:05 MR. WILKENS: Objection to the form. And

15 10:29:07 I'm going to caution the witness not to get into

16 10:29:12 attorney-client privilege.

17 10:29:15 THE WITNESS: We would -- we would have

18 10:29:17 conversation with counsel.

19 10:29:20 BY MR. RUBIN:

20 10:29:21 Q. I'm not asking, Mr. Roesch, for any

21 10:29:24 content of any communication you had with counsel.

22 10:29:27 What I'm asking is, when you, personally,

23 10:29:30 were engaged in looking at other services and other

24 10:29:34 sites out there on the Internet in an effort to

25 10:29:37 locate clips to link to from A- -- from

1 SCOTT ROESCH

2 10:51:25 BY MR. RUBIN:

3 10:51:26 Q. Any license deal for the distribution of

4 10:51:28 content.

5 10:51:31 A. I -- I don't believe so.

6 10:51:33 Q. How about with NBC?

7 10:51:40 A. I don't believe so.

8 10:51:41 MR. RUBIN: Okay. The videographer needs

9 10:51:43 to change the tape, so let's go off the record.

10 10:51:46 THE VIDEOGRAPHER: This is the end of tape

11 10:51:47 number 1 of the video deposition of Scott Roesch.

12 10:51:50 We're now going off the record. The time is

13 10:51:54 10:49 a.m.

14 10:54:22 (Short break.)

15 11:08:29 THE VIDEOGRAPHER: This is the beginning

16 11:08:30 of recording number 2 of video deposition of Scott

17 11:08:34 Roesch. The date is September 25th, 2009. The time

18 11:08:38 is 11:05 a.m. We're back on the record.

19 11:08:44 MR. RUBIN: I'd like to introduce Roesch

20 11:08:46 Exhibit 14.

21 11:08:47 (Roesch Deposition Exhibit Number 14 was

22 11:08:47 marked for identification.)

23 11:08:58 BY MR. RUBIN:

24 11:09:00 Q. Mr. Roesch, Exhibit 14 is a document I

25 11:09:04 printed from the Internet Archive. It reflects the

1 SCOTT ROESCH

2 11:09:08 links appearing on the AddictingClips website under

3 11:09:10 the "TV" category on or about January 13th, 2006.

4 11:09:17 MR. WILKENS: I'm just going to repeat

5 11:09:18 my earlier objection about the accuracy of the

6 11:09:23 Internet Archive. But we accept your representation

7 11:09:27 about when it was printed out and where it came

8 11:09:29 from.

9 11:09:30 BY MR. RUBIN:

10 11:09:32 Q. Based on your review of this document,

11 11:09:33 Mr. Roesch, do you see anything inaccurate about the

12 11:09:38 representation in the reflection of the links on

13 11:09:42 this exhibit about what would have been available

14 11:09:45 under the "TV" category of AddictingClips website on

15 11:09:51 or about January 13th, 2006?

16 11:09:54 MR. WILKENS: Take your time and look

17 11:09:55 through it.

18 11:10:18 THE WITNESS: No, I don't remember most of

19 11:10:20 these clips. It does not look inaccurate.

20 11:10:30 BY MR. RUBIN:

21 11:10:31 Q. There appear to be links to content from

22 11:10:33 "The Daily Show," "The Chappelle Show," "The Family

23 11:10:36 Guy," and "Saturday Night Live"; correct?

24 11:11:04 A. I see a link referring to "Chappelle" and

25 11:11:07 a link referring to "Family Guy" and a link that

1 SCOTT ROESCH

2 11:11:11 says it's from "SNL."

3 11:11:16 Q. Do you believe that AddictingClips was

4 11:11:18 engaged in copyright infringement when it linked to

5 11:11:25 these clips?

6 11:11:28 MR. WILKENS: Objection. Calls for a

7 11:11:31 legal conclusion, and I caution the witness not to

8 11:11:34 reveal attorney-client communications.

9 11:11:37 THE WITNESS: No.

10 11:11:37 BY MR. RUBIN:

11 11:11:38 Q. Why not?

12 11:11:41 MR. WILKENS: Mr. Roesch, I'm going to

13 11:11:42 caution you again not to reveal attorney-client

14 11:11:45 communications.

15 11:12:02 THE WITNESS: Because we -- we were

16 11:12:04 operating within guidelines that had been approved

17 11:12:10 by the legal team.

18 11:12:11 BY MR. RUBIN:

19 11:12:11 Q. Who was the legal team at the -- this

20 11:12:13 time?

21 11:12:17 A. Victoria Libin, Adam Lovingood, and the

22 11:12:27 assistant.

23 11:12:28 Q. And you respected their judgment?

24 11:12:33 MR. WILKENS: Objection to the form.

25 11:12:34 THE WITNESS: Yes.

1 SCOTT ROESCH

2 11:12:34 BY MR. RUBIN:

3 11:12:35 Q. Believed that they understood the

4 11:12:37 applicable area of law relevant to the issues that

5 11:12:42 governed the operation of the AddictingClips clip

6 11:12:47 link site?

7 11:12:49 MR. WILKENS: Objection to the form of the

8 11:12:50 question.

9 11:13:02 THE WITNESS: Yes.

10 11:13:25 BY MR. RUBIN:

11 11:13:25 Q. Did you ever have any discussions with

12 11:13:29 Victoria Libin about the DMCA?

13 11:13:33 MR. WILKENS: You can answer the question

14 11:13:34 "yes" or "no."

15 11:13:36 THE WITNESS: Yes.

16 11:13:36 BY MR. RUBIN:

17 11:13:37 Q. Did you understand the AddictingClips link

18 11:13:42 site to be protected by the DMCA?

19 11:13:46 MR. WILKENS: Objection to the form. And

20 11:13:48 I'm going to caution the witness not to answer the

21 11:13:50 question if it involves revealing attorney-client

22 11:13:55 communications.

23 11:14:02 THE WITNESS: Yes. I mean, since -- since

24 11:14:03 my knowledge wasn't formed by the legal

25 11:14:06 conversations, I'd -- I don't -- I can't answer that

1 SCOTT ROESCH

2 11:14:14 without revealing.

3 11:14:16 BY MR. RUBIN:

4 11:14:17 Q. Have you ever read Section 512 of the

5 11:14:19 DMCA?

6 11:14:21 A. I don't know.

7 11:14:23 Q. You don't know whether you've read the

8 11:14:25 DMCA?

9 11:14:28 MR. WILKENS: Objection. Asked and

10 11:14:28 answered.

11 11:14:36 THE WITNESS: I -- I've read parts of the

12 11:14:39 DMCA.

13 11:14:40 BY MR. RUBIN:

14 11:14:41 Q. Have you ever read Section 512(c) of

15 11:14:44 the DMCA, the -- the -- the portion of the

16 11:14:46 statute that's designed to protect service providers

17 11:14:51 who host material uploaded at the direction of

18 11:14:54 users?

19 11:14:55 MR. WILKENS: Objection. Asked and

20 11:14:55 answered.

21 11:14:56 MR. RUBIN: Hasn't been answered, Scott,

22 11:14:58 and hasn't been asked.

23 11:15:00 MR. WILKENS: I disagree.

24 11:15:02 THE WITNESS: I don't know if I've read

25 11:15:03 Section 512.

1 SCOTT ROESCH

2 11:15:04 BY MR. RUBIN:

3 11:15:05 Q. What sections have you read?

4 11:15:06 A. I don't -- I don't recall the section

5 11:15:08 numbers.

6 11:15:10 Q. Have you ever attempted to gain an

7 11:15:12 understanding of what the DMCA means, apart from

8 11:15:16 conversations with legal counsel?

9 11:15:29 A. I don't think so.

10 11:15:31 Q. So you have no independent basis for

11 11:15:34 determining whether or not the AddictingClips link

12 11:15:38 site was operating within the boundaries of the

13 11:15:41 DMCA?

14 11:15:42 MR. WILKENS: Objection to the form.

15 11:15:47 THE WITNESS: There -- does "independent

16 11:15:50 basis" -- what does "independent basis" mean?

17 11:15:52 BY MR. RUBIN:

18 11:15:53 Q. I believe you said you couldn't answer the

19 11:15:54 question of whether or not you believed the DMC- --

20 11:15:57 the clip -- the linked version of the AddictingClips

21 11:16:01 link site was operating within the confines of the

22 11:16:05 DMCA because it was informed by counsel.

23 11:16:08 I'm asking you whether you have any

24 11:16:10 independent basis to reach that conclusion. I'm not

25 11:16:14 asking what Miss Libin or anyone else told you. I'm

1 SCOTT ROESCH

2 11:16:19 asking what you understand yourself, based on the

3 11:16:21 operation of the service.

4 11:16:22 A. I believe we were operating it in a legal

5 11:16:26 manner.

6 11:16:27 Q. Including within the confines of the DMCA,

7 11:16:29 and consistent with that law?

8 11:16:31 MR. WILKENS: Objection to the form of the

9 11:16:32 question. And I instruct you not to answer if the

10 11:16:36 answer to the question would reveal the contents of

11 11:16:38 attorney-client communications.

12 11:16:58 THE WITNESS: Yeah, I -- I -- I don't have

13 11:16:59 an independent assessment on -- on that issue.

14 11:17:03 BY MR. RUBIN:

15 11:17:03 Q. Okay. So let's just be clear. I'm not

16 11:17:06 asking you whether you were told by someone else

17 11:17:09 that it was protected by the DMCA or not.

18 11:17:11 I'm asking based on your own view. If

19 11:17:15 someone told you, in order to be protected, you need

20 11:17:17 to do X, Y, and Z, I'm not asking you what that

21 11:17:22 statement was.

22 11:17:23 I'm asking you, based on your then

23 11:17:25 understanding of how it worked, did you come to the

24 11:17:29 conclusion that it -- that service was protected by

25 11:17:31 the DMC or not?

1 SCOTT ROESCH

2 11:17:33 MR. WILKENS: Mr. Roesch, if your

3 11:17:34 understanding is based on instructions with counsel,

4 11:17:36 I instruct you not to answer that question, but

5 11:17:39 if -- if -- if you have independent knowledge apart

6 11:17:42 from what you -- your discussions with counsel, you

7 11:17:44 can answer.

8 11:17:45 MR. RUBIN: Wildly overbroad instruction,

9 11:17:45 Scott, one not applied in our depositions, and this

10 11:17:47 is an absolutely improper instruction. It's

11 11:17:49 blocking important discovery.

12 11:17:51 MR. WILKENS: You're seeking to invade the

13 11:17:54 attorney-client privilege.

14 11:17:55 MR. RUBIN: Absolutely not. I have made

15 11:17:56 the record clear. I have no interest in hearing

16 11:17:57 anything that was transmitted between counsel.

17 11:17:59 I'm asking for Mr. Roesch's independent

18 11:18:02 understanding --

19 11:18:02 MR. WILKENS: He understands --

20 11:18:02 MR. RUBIN: -- based on the way the

21 11:18:04 company he was running was operating, and if he

22 11:18:06 cannot testify, as the general manager of the

23 11:18:09 company, whether he understood that it was operating

24 11:18:12 within the confines of the DMCA, based on his own

25 11:18:15 independent knowledge, then he can so state, but if

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SCOTT ROESCH

11:18:18 you're going to instruct him not to answer based on
11:18:21 a potential conversation he may have had, that is
11:18:24 improper.

11:18:25 MR. WILKENS: Michael, let's make the
11:18:26 record very clear. He's already testified, and if
11:18:29 you look back in the transcript, it's quite clear
11:18:31 that he doesn't have independent knowledge.

11:18:33 I'm instructing him not to answer if -- if
11:18:35 he -- if he's -- if what he would say would reveal a
11:18:37 conversation with an attorney. That's completely
11:18:40 proper.

11:18:40 You're asking about legal advice on the
11:18:43 DMCA, and I'm instructing him not to answer on that
11:18:46 basis only. If he has independent knowledge he can
11:18:49 answer. He's already testified he doesn't have that
11:18:58 knowledge.

11:19:00 THE WITNESS: I'm not clear on the
11:19:01 applicability of the relation of the DMCA to Version
11:19:05 1 of the AddictingClips service.

11:19:14 BY MR. RUBIN:

11:19:14 Q. But you were in charge of that service;
11:19:18 right?

11:19:19 A. I was.

11:19:19 Q. And you were comfortable that it was

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SCOTT ROESCH

11:19:21 operating in a legal manner?

11:19:23 A. Yes.

11:19:41 Q. Do you know if that -- if AddictingClips
11:19:46 had a registered DMCA agent with the copyright
11:19:52 office at that period of time?

11:19:55 A. I don't know.

11:19:56 Q. Do you know if AddictingClips had a DMCA
11:20:06 repeat infringer policy prominently displayed on its
11:20:12 website in that period of time?

11:20:15 MR. WILKENS: Objection to the form of the
11:20:16 question.

11:20:18 THE WITNESS: I don't know.

11:20:19 BY MR. RUBIN:

11:20:25 Q. Do you know what a DMCA repeat infringer
11:20:28 policy is?

11:20:36 A. I -- I believe it's a policy stating
11:20:40 consequences for misuse or for violating the DMCA.

11:20:47 BY MR. RUBIN:

11:20:47 Q. What was the repeat infringer policy of
11:20:53 the AddictingClips link site?

11:21:02 A. I -- I don't know. I -- I'm sorry.

11:21:04 Would -- could -- and what time period are we
11:21:07 talking about?

11:21:09 Q. The -- at launch of the clip link site,

1 SCOTT ROESCH

2 11:21:13 AddictingClips.

3 11:21:15 A. I -- I don't know.

4 11:21:16 Q. Do you know what it was at any point?

5 11:21:31 A. I -- I have probably some partial

6 11:21:34 recollection.

7 11:21:36 Q. Please explain.

8 11:21:47 A. Repeat offenders would have their

9 11:21:52 memberships removed from -- from the website in

10 11:21:55 later version -- in the later version of the

11 11:21:59 AddictingClips website.

12 11:22:00 Q. And how did you determine whether someone

13 11:22:02 was repeat or not?

14 11:22:05 A. (No audible response.)

15 11:22:05 Q. In the definition you just used.

16 11:22:09 A. If -- if we observed multiple violations

17 11:22:13 of a site policy.

18 11:22:20 Q. Is that more than one?

19 11:22:21 A. Yes.

20 11:22:23 Q. Do you know if exceptions were ever made

21 11:22:27 to that policy?

22 11:22:28 A. I don't know.

23 11:22:28 Q. Who would know that?

24 11:22:41 A. Legal may know that.

25 11:22:43 Q. Who in legal would know that?

1 SCOTT ROESCH

2 11:22:45 A. Victoria.

3 11:22:46 Q. Is that Victoria Libin?

4 11:22:52 A. Victoria Libin.

5 11:22:58 Q. Is it Libin?

6 11:23:01 A. It's Libin.

7 11:23:02 Q. Sorry. I've been pronouncing it wrong.

8 11:23:07 While you were operating the link site,

9 11:23:09 and taking clips to the first iteration, do you know

10 11:23:11 whether the company ever received a Notice of

11 11:23:13 Alleged Infringement pursuant to the DMCA?

12 11:23:18 A. I don't recall any.

13 11:23:19 Q. But it may have happened?

14 11:23:21 MR. WILKENS: Objection to the form.

15 11:23:55 THE WITNESS: What was the question?

16 11:23:56 BY MR. RUBIN:

17 11:23:56 Q. I asked you whether you recall whether or

18 11:23:59 not, during the operation of the Addicting Clips

19 11:24:01 link site, the company had received a Notice of

20 11:24:04 Alleged Infringement pursuant to the DMCA. And I

21 11:24:07 think your answer was you didn't recall one; is that

22 11:24:10 right?

23 11:24:10 A. Yes, that was the answer.

24 11:24:11 Q. But it may have happened?

25 11:24:13 A. I don't know.

1 SCOTT ROESCH

2 11:24:26 Q. Do you know what the "Lazy Sunday" clip

3 11:24:29 was?

4 11:24:29 A. Yes.

5 11:24:29 Q. What was it?

6 11:24:31 A. It was a parody music video from "Saturday

7 11:24:36 Night Live."

8 11:24:38 Q. Did AddictingClips ever link to that clip?

9 11:24:44 A. Yes.

10 11:24:47 MR. RUBIN: I'd like to mark Exhibit 15.

11 11:24:48 (Roesch Deposition Exhibit Number 15 was

12 11:24:48 marked for identification.)

13 11:25:00 BY MR. RUBIN:

14 11:25:01 Q. This is a December 22nd, 2005, e-mail

15 11:25:04 string between you and Jason Ament, produced by

16 11:25:13 Viacom in this litigation bearing Bates number VIA

17 11:25:19 08718888.

18 11:25:24 Do you recall this document?

19 11:25:29 A. Yes.

20 11:25:34 Q. Mr. Ament sent you a YouTube clip with the

21 11:25:39 subject line "chronic-les of narnia," and that --

22 11:25:42 that's a clip -- clip you just described?

23 11:25:45 A. I think so.

24 11:25:46 Q. And you responded:

25 11:25:48 "Er, might I refer you to the same clip

1 SCOTT ROESCH

2 11:25:50 with a different link?"

3 11:25:52 And you include a link to an AddictingClips URL with

4 11:25:56 the ID "snlnarnia." Do you see that?

5 11:26:01 A. I do.

6 11:26:03 Q. Did AddictingClips have an agreement with

7 11:26:08 NBC that allowed it to distribute the "Lazy Sunday"

8 11:26:15 clip?

9 11:26:15 A. Well, we aren't distributing it.

10 11:26:19 Q. Did -- did you have an agreement with NBC

11 11:26:21 that allowed you to link to it?

12 11:26:22 A. No.

13 11:26:25 Q. Was AddictingClips infringing NBC's

14 11:26:29 copyright by linking to it?

15 11:26:34 MR. WILKENS: Objection to the form.

16 11:26:36 Calls for a legal conclusion.

17 11:26:40 MR. RUBIN: Well, please don't answer the

18 11:26:41 question yet.

19 11:26:42 What's the basis for the instruc- -- the

20 11:26:44 objection, the legal conclusion objection?

21 11:26:45 MR. WILKENS: I think it's plain from the

22 11:26:46 question. You're asking him about -- asking him to

23 11:26:47 make a conclusion about infringement.

24 11:26:49 MR. RUBIN: And so that calls for a legal

25 11:26:50 conclusion?

1 SCOTT ROESCH

2 11:26:51 MR. WILKENS: It sounds to me like it

3 11:26:52 does.

4 11:26:52 MR. RUBIN: So are you --

5 11:26:52 MR. WILKENS: So are you not asking him

6 11:26:52 for a legal conclusion?

7 11:26:52 MR. RUBIN: I'm asking him to -- to

8 11:26:52 determine whether -- to ask whether -- asking him

9 11:26:52 whether he believed it was infringing or not. And I

10 11:26:52 believe your objection is that he'd be -- need to be

11 11:26:52 a lawyer to make that determination; is that right,

12 11:26:52 Scott?

13 11:26:56 MR. WILKENS: I'm objecting that you're

14 11:26:56 asking him to make a legal conclusion.

15 11:26:57 MR. RUBIN: Right. And -- and you're

16 11:26:57 objecting he'd need to be a lawyer to -- to make

17 11:26:57 that; is that right?

18 11:26:57 MR. WILKENS: That's not what I said. I

19 11:26:57 said your question calls for a legal conclusion.

20 11:27:12 MR. RUBIN: And so you believe the

21 11:27:12 question of infringement is a legal conclusion?

22 11:27:21 MR. WILKENS: Your -- I think your

23 11:27:22 question is -- your asking him to make a legal

24 11:27:23 determination. So --

25 11:27:24 MR. RUBIN: I'm asking -- it's very clear.

1 SCOTT ROESCH

2 11:27:25 Let's -- let's not -- let's cut the semantics.

3 11:27:27 I'm asking whether he believed that by

4 11:27:29 linking to the "SNL" clip in this Exhibit 15,

5 11:27:33 AddictingClips was engaged in copyright

6 11:27:42 infringement.

7 11:27:43 MR. WILKENS: Right, and he can answer the

8 11:27:44 question. I'm not instructing him not to answer.

9 11:27:47 I'm objecting to the question.

10 11:27:47 MR. RUBIN: I'm asking --

11 11:27:47 MR. WILKENS: It's a valid objection, and

12 11:27:47 we can move on.

13 11:27:48 MR. RUBIN: If you think it's valid, I'm

14 11:27:50 asking you to state the basis.

15 11:27:52 MR. WILKENS: I just explained the basis,

16 11:27:54 Michael. This is not a deposition of me. I've

17 11:27:56 stated the basis, and if you can -- he can answer

18 11:27:57 "yes" or "no."

19 11:27:58 MR. RUBIN: You can withdraw the objection

20 11:28:00 or you can state the basis. I'm trying to

21 11:28:02 understand the basis.

22 11:28:03 The basis is, as I understand it, that a

23 11:28:06 question about whether or not something is

24 11:28:08 infringing calls for a legal conclusion. Is that

25 11:28:10 the basis for your objection?

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SCOTT ROESCH

11:28:12 MR. WILKENS: The basis for my objection
11:28:14 is that you are asking -- by asking him whether or
11:28:16 not something is infringing, you are asking him to
11:28:18 draw a legal conclusion. It's very clear.

11:28:21 BY MR. RUBIN:

11:28:21 Q. Okay. You can answer the question,
11:28:23 Mr. Roesch.

11:28:28 A. Are you asking -- can I get a
11:28:30 clarification on time period? Are you asking as of
11:28:33 this date, December 22, '05.

11:28:36 BY MR. RUBIN:

11:28:37 Q. Yes.

11:28:38 A. I -- I did not believe that was
11:28:39 infringing.

11:28:40 Q. Did you ever remove this clip -- pardon
11:28:43 me. Did you ever remove this link from the
11:28:47 AddictingClips service?

11:28:48 A. I believe so.

11:28:49 Q. But you don't know?

11:28:50 A. Well, I -- I think we did. I'm -- I think
11:28:53 we did.

11:28:59 Q. At some point, I think we've touched on it
11:29:02 a few times already today, AddictingClips or Atom,
11:29:11 I'm not sure which -- the right way to refer to

1 SCOTT ROESCH

2 11:29:14 this, added the functionality of accepting user

3 11:29:17 uploads instead of merely linking to video clips;

4 11:29:21 right?

5 11:29:21 A. That's correct.

6 11:29:23 Q. When was that?

7 11:29:27 A. That was in March or April of 2006.

8 11:29:31 Q. And whose decision was that?

9 11:29:38 A. Well, I think, like the creation of the

10 11:29:40 initial service, it was a -- a collaboration, an

11 11:29:45 internal -- a few internal people.

12 11:29:48 Q. Who?

13 11:29:49 A. Myself, Mika Salmi, and Peter Ignacio was

14 11:30:04 involved in the decision to do that.

15 11:30:08 Q. Can you pinpoint whose idea it was that --

16 11:30:09 it was?

17 11:30:10 A. I don't think -- no, I don't think I can.

18 11:30:22 Q. Was it always the plan to expand the

19 11:30:27 offerings of the Addicting Clips site to include

20 11:30:29 user uploads, or was that something that developed

21 11:30:33 over time?

22 11:30:35 MR. WILKENS: Objection to the form of the

23 11:30:36 question.

24 11:30:37 THE WITNESS: I believe it developed over

25 11:30:39 time.

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SCOTT ROESCH

11:30:40 BY MR. RUBIN:

11:30:41 Q. Do you recall what spurred the idea?

11:30:52 A. I think it goes back to internal
11:30:53 discussions we'd had dating back to and before the
11:30:57 document we reviewed earlier, in which I
11:31:01 described -- outlined some thoughts on
11:31:05 user-generated video.

11:31:07 So I believe probably -- and, you know,
11:31:13 the -- the concept involved, you know, sort of
11:31:17 the -- the -- you know, date back probably to active
11:31:24 thought to mid '05, but, you know, we -- some
11:31:28 concepts that we discussed all the way back to the
11:31:32 original inception of Atom Films.

11:31:41 Q. And you didn't want to profit from
11:31:44 infringement with the addition of user uploads to
11:31:47 the Addicting Clips site, did you?

11:31:50 MR. WILKENS: Objection to the form.

11:31:52 THE WITNESS: No.

11:31:57 BY MR. RUBIN:

11:31:57 Q. Did you do any additional legal vetting
11:32:01 with respect to the addition of the ability by the
11:32:06 general public to upload videos to the service?

11:32:11 MR. WILKENS: You can answer that question
11:32:11 "yes" or "no."

1 SCOTT ROESCH

2 11:32:14 THE WITNESS: Yes.

3 11:32:14 BY MR. RUBIN:

4 11:32:16 Q. And you wouldn't have deployed this

5 11:32:20 feature if you had determined that it would have

6 11:32:23 exposed the company to a liability, would you have?

7 11:32:26 MR. WILKENS: Objection to the form.

8 11:32:49 THE WITNESS: I'm not sure how to answer

9 11:32:51 that with a simple "yes" or "no."

10 11:32:53 BY MR. RUBIN:

11 11:32:54 Q. Answer it however you want.

12 11:32:55 A. I think we understood there was some --

13 11:32:57 some -- some risk.

14 11:32:59 Q. What were the risks that you saw?

15 11:33:02 MR. WILKENS: You can answer that to the

16 11:33:03 extent it doesn't reveal conversations that you had

17 11:33:07 with legal counsel.

18 11:33:15 THE WITNESS: Then the -- those

19 11:33:16 conversations all involved legal counsel.

20 11:33:18 BY MR. RUBIN:

21 11:33:29 Q. Did you understand the upload version of

22 11:33:32 the site to be protected by the DMCA?

23 11:33:37 MR. WILKENS: I -- to the extent that the

24 11:33:40 answer to that question would reveal discussions you

25 11:33:44 had, or information you were provided by counsel,

1 SCOTT ROESCH

2 11:33:48 legal advice you were provided by counsel, I

3 11:33:51 instruct you not to answer. Otherwise, you can

4 11:34:00 answer the question.

5 11:34:15 THE WITNESS: Yes.

6 11:34:16 BY MR. RUBIN:

7 11:34:28 Q. Atom put out a request for a proposal for

8 11:34:32 a user-generated content site, didn't it?

9 11:34:36 A. We did.

10 11:34:37 MR. RUBIN: I'd like to mark Exhibit 16.

11 11:34:38 (Roesch Deposition Exhibit Number 16 was

12 11:34:38 marked for identification.)

13 11:34:51 BY MR. RUBIN:

14 11:34:52 Q. Before we get to this exhibit, I just want

15 11:34:54 to close the loop on something.

16 11:34:55 A. Uh-huh.

17 11:34:56 Q. Again, I'm not interested in the content

18 11:34:58 of your conversations with your counsel, but in the

19 11:35:01 discussions around the legality of extending the

20 11:35:04 feature set of the AddictingClips site from linking

21 11:35:07 to clips to allow user uploads, was that with the

22 11:35:11 same set of lawyers that you had been working with

23 11:35:15 internally -- Victoria Libin, Adam Lovingood, and

24 11:35:20 this third unknown -- that you had been working with

25 11:35:23 all along?

1 SCOTT ROESCH

2 11:35:24 A. I should clarify. The third unknown was

3 11:35:26 not involved in many conversations.

4 11:35:28 Q. Okay.

5 11:35:30 A. It was with the same legal team.

6 11:35:34 Q. And you -- and you thought their advice

7 11:35:36 was good, and you relied on it, and you were

8 11:35:39 comfortable with it?

9 11:35:40 MR. WILKENS: Objection to the form.

10 11:35:41 BY MR. RUBIN:

11 11:35:41 Q. Is that right?

12 11:35:51 A. Yes.

13 11:35:52 Q. Okay. Exhibit 16 is a document that I

14 11:35:54 believe is the Request for Proposal that Atom Films

15 11:36:01 circulated on or about November 16th, 2005, for a

16 11:36:06 user-generated content site, produced by Viacom in

17 11:36:10 this litigation. It's Bates numbered VIA 09280170

18 11:36:18 to -72.

19 11:36:21 Do you recognize this document,

20 11:36:23 Mr. Roesch?

21 11:36:47 A. I -- I do.

22 11:36:48 Q. Did you author this document?

23 11:36:58 A. I -- I contributed to this document. I

24 11:37:04 don't believe I authored it.

25 11:37:06 Q. Do you know who the lead author of this

1 SCOTT ROESCH

2 11:37:08 document was?

3 11:37:08 A. I believe that was Joel Sanders.

4 11:37:12 Q. Who is Joel Sanders?

5 11:37:14 A. He, at this time, was our -- our product

6 11:37:19 manager for the website.

7 11:37:22 Q. At some point did he stop being the

8 11:37:25 product -- the product manager of the website?

9 11:37:29 A. He -- no, he continues to be an Atom

10 11:37:33 employee today in a slightly higher management role.

11 11:37:36 Q. What role does he have now?

12 11:37:38 A. Senior director of site operations.

13 11:37:42 Q. When he transitioned from product manager

14 11:37:46 to his current role, did someone assume his product

15 11:37:49 manager role?

16 11:38:00 A. I'm having trouble remembering the

17 11:38:03 sequence of events. I don't recall exactly when he

18 11:38:08 was promoted and when other personnel changes on the

19 11:38:11 team happened.

20 11:38:13 Q. Fair enough.

21 11:38:16 Does this document accurately reflect --

22 11:38:17 or is it the Request for Proposal that Atom sent out

23 11:38:29 for the UGC site it wanted to launch as a component

24 11:38:34 to AddictingClips?

25 11:38:38 A. This either is the RFP or a version of it.

1 SCOTT ROESCH

2 11:38:42 MR. RUBIN: Okay. I'd like to mark

3 11:38:44 Exhibit 17.

4 11:38:50 BY MR. RUBIN:

5 11:38:50 Q. Did you receive any responses to that RFP?

6 11:38:54 A. We did.

7 11:38:55 Q. Do you know who responded to that RFP?

8 11:39:01 A. Reality Digital responded, as did several

9 11:39:06 other companies, not all of whom I can remember.

10 11:39:15 (Roesch Deposition Exhibit Number 17 was

11 11:39:15 marked for identification.)

12 11:39:16 BY MR. RUBIN:

13 11:39:16 Q. Exhibit 17 is a document Viacom produced

14 11:39:20 in this litigation, bearing Bates number VIA

15 11:39:24 01499561 to -73.

16 11:39:35 Do you recognize this document,

17 11:39:38 Mr. Roesch?

18 11:39:43 A. I do.

19 11:39:45 Q. What is this document?

20 11:39:47 MR. WILKENS: If you -- take your time and

21 11:39:49 read through it if you need to.

22 11:40:16 THE WITNESS: This is Reality -- this is

23 11:40:17 Reality Digital's response to our RFP.

24 11:40:23 BY MR. RUBIN:

25 11:40:26 Q. I'll note it's dated November 29th, 2005.

1 SCOTT ROESCH

2 11:40:33 On the front page, VIA 01499561, there is

3 11:40:38 handwriting and doodles of some sort. Is that your

4 11:40:42 handwriting?

5 11:40:42 A. I think so.

6 11:40:46 Q. So do you recall seeing this document

7 11:40:47 before?

8 11:40:50 A. Yeah, I have seen the document.

9 11:40:55 Q. Did Atom Films ultimately determine to use

10 11:41:01 a white label solution for its user-generated

11 11:41:05 content site?

12 11:41:06 A. Yes.

13 11:41:07 Q. Did it ultimately determine to use Reality

14 11:41:10 Digital?

15 11:41:11 A. Yes.

16 11:41:14 Q. What services did Reality Digital provide

17 11:41:17 to AddictingClips or Atom, as it were?

18 11:41:23 A. It provided software development, hosting,

19 11:41:28 website support. They managed a streaming vendor.

20 11:41:42 Q. What streaming vendor did they manage?

21 11:41:51 A. I don't -- I don't recall.

22 11:41:53 Q. What do you mean by "streaming vendor"?

23 11:41:57 A. I'm referring to a -- a third-party

24 11:42:00 company -- I believe it was a third-party company --

25 11:42:03 that would host the video files that end users

1 SCOTT ROESCH

2 11:42:09 accessed through the website.

3 11:42:13 Q. You don't recall the name of the company?

4 11:42:18 A. No, I -- I don't.

5 11:42:20 Q. What type of company was it? Do you know?

6 11:42:29 A. A technology company.

7 11:42:30 Q. Was it a content delivery network or CDN?

8 11:42:35 A. It -- I -- you know, I've heard that term

9 11:42:38 used, and I -- I know what it's -- I -- I -- I know

10 11:42:42 that we've used CDNs. I'm not exactly sure if this

11 11:42:47 particular company was a CDN. May have been.

12 11:42:50 Q. Is the name of the company Spidera?

13 11:42:53 A. Possibly.

14 11:43:04 Q. What components of the UGC site didn't

15 11:43:11 Reality Digital provide, pursuant to its arrangement

16 11:43:15 with AddictingClips or Atom?

17 11:43:21 MR. WILKENS: Objection to form.

18 11:43:30 THE WITNESS: What elements of the site?

19 11:43:31 BY MR. RUBIN:

20 11:43:32 Q. Uh-huh, or of the service in general.

21 11:43:34 A. They did not provide content. They did

22 11:43:36 not provide users. They did not design the website.

23 11:43:53 And I believe that they did not provide the web

24 11:43:58 search function. The web video search function.

25 11:44:02 Q. Who provided the content?

1 SCOTT ROESCH

2 11:44:05 A. End users.

3 11:44:11 Q. And who provided the users?

4 11:44:25 A. Atom Entertainment.

5 11:44:27 Q. In what way did Atom Entertainment provide

6 11:44:27 the users?

7 11:44:28 A. We promoted the service from Atom Films

8 11:44:31 and from our AddictingGames website.

9 11:44:34 Q. In fact, didn't users simply come to the

10 11:44:36 site and sign up?

11 11:44:40 MR. WILKENS: Objection to the form.

12 11:44:48 THE WITNESS: Not clear on the distinction

13 11:44:49 you're making.

14 11:44:50 BY MR. RUBIN:

15 11:44:50 Q. I just want to know, was there

16 11:44:52 pre-existing user base provided to Reality Digital

17 11:44:56 for the site --

18 11:44:57 A. Did --

19 11:44:58 Q. -- or did the site obtain users through

20 11:45:01 advertisements and other word of mouth?

21 11:45:06 MR. WILKENS: Objection to the form of the

22 11:45:06 question.

23 11:45:12 THE WITNESS: There was a pre-existing

24 11:45:14 user base from the first version of AddictingClips.

25 11:45:20 As I've stated, they were no registered members.

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SCOTT ROESCH

AFTERNOON SESSION

THURSDAY, SEPTEMBER 29, 2009; 12:32 P.M.

12:32:53 THE VIDEOGRAPHER: We are now going back
12:32:55 on the record. The time is 12:33 p.m.

12:32:56

12:32:56 EXAMINATION RESUMED

12:33:00 BY MR. RUBIN:

12:33:02 Q. Mr. Roesch, before lunch, I introduced a
12:33:07 number of exhibits that reflected some of the
12:33:09 project scope and textural language that was going
12:33:15 to go on to -- and form a part of the UGC site that
12:33:28 AddictingClips was launching. I think they were
12:33:29 Exhibits 18 and 19. Do you recall those?

12:33:33 A. Yes.

12:33:33 Q. You may need to refer to those in the
12:33:36 context of some of these question. If you do,
12:33:39 please do, if you feel it would be useful.

12:33:42 Did you ever upload a video to the
12:33:47 AddictingClips website once the functionality for
12:33:50 enabling that had been rolled out?

12:33:53 A. Yes.

12:33:56 Q. Could you walk us through the process or
12:34:00 the work flow for how a user, or for how you did

1 SCOTT ROESCH

2 12:34:04 that, what that process looked like?

3 12:34:07 A. Uh-huh.

4 12:34:09 Q. Let's start with the end user perspective.

5 12:34:12 How did it look like from the user sitting at

6 12:34:15 their -- their computer?

7 12:34:19 A. The user would visit the upload page on

8 12:34:24 AddictingClips and would select a file to upload

9 12:34:31 from their hard drive, would enter some text

10 12:34:39 associated with the video file, a title and a

11 12:34:45 description, and they would click "Upload."

12 12:34:50 And I believe there was a status indicator

13 12:34:54 that indicated the video was in the process of

14 12:34:57 uploading, after which they were taken to a -- some

15 12:35:04 kind of a confirmation page, or possibly it was a --

16 12:35:07 a profile page. I don't recall which.

17 12:35:12 Q. Was a user required to have a registered

18 12:35:14 account with AddictingClips prior to that upload

19 12:35:21 process?

20 12:35:22 A. Yes, and -- and the exhibit -- the flow

21 12:35:26 that I just described was in the event that a user

22 12:35:29 had previously registered.

23 12:35:33 Q. What, specifically, was a user prompted to

24 12:35:38 enter about the video for upload? You indicated, I

25 12:35:45 believe, title and tags?

1 SCOTT ROESCH

2 12:35:49 MR. WILKENS: Was there a time period that

3 12:35:50 you're asking about in particular?

4 12:35:52 BY MR. RUBIN:

5 12:35:53 Q. At launch.

6 12:35:53 A. I believe I indicated title and

7 12:35:57 description. Would you like -- I could -- if I

8 12:35:58 could refresh my memory.

9 12:36:01 Q. Sure.

10 12:36:02 A. Tags may have been on there.

11 12:36:04 Q. Which exhibit are you referring to,

12 12:36:06 Mr. Roesch?

13 12:36:06 A. I'm going to look through Exhibit 19.

14 12:37:08 Yes, I believe tags were another piece of

15 12:37:12 information entered in order to remember more or

16 12:37:17 other types of information.

17 12:37:18 I'm going to look at Exhibit 20.

18 12:37:21 Q. Okay.

19 12:37:22 A. If I may continue?

20 12:37:23 Q. Please do.

21 12:38:00 A. Okay. I -- based this on information in

22 12:38:04 Exhibit 20, and which strikes me as an accurate

23 12:38:10 representation of the -- of what ended up on the

24 12:38:12 page, users were asked for title, description, tags,

25 12:38:17 and they were able to select one to three channels

1 SCOTT ROESCH

2 12:38:21 from a predefined list of channels that would fit

3 12:38:24 their content.

4 12:38:25 Q. Are you looking at the bottom of page VIA

5 12:38:29 01049197?

6 12:38:33 A. (No audible response.)

7 12:38:34 Q. Which is the fifth page of this Exhibit?

8 12:38:37 A. Yes.

9 12:38:37 Q. If you turn back one page to the fourth

10 12:38:40 page -- pardon me. Turn back two pages to the third

11 12:38:44 page. Is that the list of channels, at the bottom,

12 12:38:48 from which the uploader had an opportunity to choose

13 12:38:52 one to three to associate with their video?

14 12:39:03 A. I believe so. I'm not 100 percent sure

15 12:39:05 if -- if it -- if all of these categories made it

16 12:39:08 onto the site. And it's possible that others were

17 12:39:11 added, but this -- it's close.

18 12:39:23 Q. Did the AddictingClips terms of service at

19 12:39:26 this time permit it to remove content from its

20 12:39:30 service?

21 12:39:35 A. Yes.

22 12:39:40 Q. Did the AddictingClips terms of service at

23 12:39:43 this time prohibit the upload of material that

24 12:39:46 infringed copyright?

25 12:39:49 A. Yes.

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SCOTT ROESCH

12:39:51 Q. Did the AddictingClips terms of service at
12:39:54 this time grant AddictingClips license to the
12:39:57 content that was being uploaded by users?

12:40:03 A. Yes.

12:40:06 THE REPORTER: Was that a "yes" --

12:40:07 THE WITNESS: Yes.

12:40:07 THE REPORTER: -- or a "no"?

12:40:08 THE WITNESS: Yes.

12:40:08 BY MR. RUBIN:

12:40:09 Q. Did the terms of service at this time give
12:40:12 AddictingClips the right to sublicense the clips
12:40:15 being uploaded by users?

12:40:21 A. I don't recall.

12:40:35 Q. Did AddictingClips transcode the videos
12:40:39 that were uploaded by users?

12:40:41 A. Yes.

12:40:43 Q. What does "transcode" mean?

12:40:47 A. My understanding is that it means taking a
12:40:51 digital video file and converting it into a -- you
12:40:55 know, another, or other forms of digital video for
12:40:59 playback to the end user.

12:41:07 Q. Following the transcoding of a video by --
12:41:13 pardon me. Following the transcoding of a video
12:41:16 that had been uploaded by an end user, do you know

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SCOTT ROESCH

12:41:18 what happens to the original video that was
12:41:21 uploaded?

12:41:22 A. I believe that it was archived or stored
12:41:28 at Reality Digital or a third party I had contracted
12:41:32 with.

12:41:32 Q. Do you know why it was archived or stored?

12:41:40 A. In case the original video file needed to
12:41:44 be retrieved later.

12:41:47 Q. Why would the original video file need to
12:41:50 be retrieved later?

12:41:52 MR. WILKENS: Objection to the form.

12:42:00 THE WITNESS: The -- you know, in the --
12:42:03 the process of transcoding sometimes would fail, and
12:42:08 that the video would need to be re-encoded.

12:42:13 BY MR. RUBIN:

12:42:14 Q. Do you know how many copies of the encoded
12:42:20 file were made during the transcoding process?

12:42:27 A. How many copies of one file were
12:42:29 made, such as one --

12:42:31 Q. Yes, in the context of the -- of the
12:42:34 upload of one video, in the process of the encoding
12:42:38 of that video -- pardon me -- the transcoding of
12:42:42 that video --

12:42:43 A. Uh-huh.

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SCOTT ROESCH

12:42:44 Q. -- do you know how many copies resulted
12:42:45 from that transcoding process?

12:42:48 A. No.

12:42:48 Q. Could it have been more than one?

12:42:50 MR. WILKENS: Objection to the form.

12:42:51 THE WITNESS: Yes.

12:42:55 BY MR. RUBIN:

12:42:55 Q. Did AddictingClips users instruct
12:43:01 AddictingClips to transcode the videos they were
12:43:04 uploading?

12:43:05 MR. WILKENS: Objection to the form.

12:43:13 THE WITNESS: I believe they authorized
12:43:14 it.

12:43:16 BY MR. RUBIN:

12:43:16 Q. What leads you to believe that?

12:43:19 A. I believe the terms of service gave --
12:43:24 give us the right to do that to files that we
12:43:26 received.

12:43:27 Q. Do you believe the terms of service used
12:43:31 the word "transcode"?

12:43:33 A. I don't know if they used that word.

12:43:35 Q. If they didn't use that word, but used
12:43:38 something more general, do you think it would still
12:43:41 authorize the transcoding?

1 SCOTT ROESCH

2 12:43:44 MR. WILKENS: Objection to the form.

3 12:43:45 THE WITNESS: I'd have to look at the

4 12:43:47 language.

5 12:44:04 BY MR. RUBIN:

6 12:44:04 Q. Did AddictingClips authorize the copying

7 12:44:07 of the videos to third parties, such as the

8 12:44:10 streaming provider you described earlier?

9 12:44:15 A. I believe that was authorized in the terms

10 12:44:17 of service.

11 12:44:21 Q. Do you know where in the terms of service?

12 12:44:24 A. No.

13 12:44:41 MR. RUBIN: I'd like to introduce Roesch

14 12:44:44 Exhibit 21.

15 12:44:45 (Roesch Deposition Exhibit Number 21 was

16 12:44:45 marked for identification.)

17 12:44:59 BY MR. RUBIN:

18 12:45:00 Q. Mr. Roesch, this is a version of the terms

19 12:45:02 of service from Atom Entertainment, but this was

20 12:45:12 linked to the AddictingClips website, that we

21 12:45:17 retrieved from the Internet Archive. These were the

22 12:45:20 versions that were in place on or about

23 12:45:22 January 25th, 2006.

24 12:45:39 MR. WILKENS: Repeat the same objection

25 12:45:41 about the previous exhibits from archive.org.

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SCOTT ROESCH

12:45:50 BY MR. RUBIN:

12:45:50 Q. Do you know if Atom Entertainment
12:45:54 maintains historical versions of its terms of
12:45:57 service anywhere within its possession, custody, or
12:46:00 control?

12:46:01 A. I don't know.

12:46:01 Q. How would you go about answering that
12:46:03 question?

12:46:04 A. I would ask our legal department.

12:46:08 Q. Who in your legal department would you
12:46:10 ask?

12:46:16 A. In this -- in this scenario, what time
12:46:20 period would I be interested in?

12:46:22 Q. The period starting December of 2006 to
12:46:27 the present.

12:46:31 A. I would -- I would ask Victoria Libin, and
12:46:54 I may ask the Comedy Central business and legal
12:46:57 team, which has taken over legal -- now -- now is
12:47:00 our legal counsel.

12:47:02 Q. Who in the Comedy Central legal team would
12:47:04 you ask?

12:47:05 A. I would ask Debbie Spander.

12:47:12 Q. How about during the 2005 period?

12:47:14 A. Victoria Libin.

1 SCOTT ROESCH

2 12:47:20 Q. Have you had an opportunity to look at

3 12:47:22 Exhibit 21?

4 12:47:25 A. No.

5 12:47:26 Q. Please do.

6 12:47:29 MR. WILKENS: Take your time and read

7 12:47:30 through it.

8 12:48:39 THE WITNESS: Okay.

9 12:48:40 BY MR. RUBIN:

10 12:48:40 Q. Have you now had an opportunity to review

11 12:48:42 the document?

12 12:48:42 A. Not in extensive detail, but I've skimmed

13 12:48:45 it.

14 12:48:45 Q. Well, but, generally speaking, you've

15 12:48:49 reviewed it now?

16 12:48:50 A. I've skimmed it.

17 12:48:51 Q. Does it appear to you to be the terms of

18 12:48:54 service that were in effect in the 2006 time period

19 12:48:58 for AddictingClips upload site?

20 12:49:02 A. Yeah, I'm -- I'm just reading the "Last

21 12:49:04 Updated on January 12th, 2006" date. I interpret

22 12:49:09 that to mean that this was in place from that date

23 12:49:12 until some date in the future.

24 12:49:14 Q. What portion of these terms of service do

25 12:49:20 you believe granted the right -- pardon me. Through

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SCOTT ROESCH

12:49:25 what portion of these terms of service do you
12:49:28 believe AddictingClips or Atom Entertainment was
12:49:35 granted the right to transcode videos uploaded by
12:49:39 the users?

12:49:39 A. I wouldn't --

12:49:41 MR. WILKENS: Object to the form of the
12:49:42 question.

12:49:43 THE WITNESS: I'm not sure if that is in
12:49:44 this document or not.

12:49:46 BY MR. RUBIN:

12:49:46 Q. Would it be in paragraph 8?

12:50:21 A. I'm not aware -- my -- my layman's reading
12:50:26 of that is that that paragraph might cover the right
12:50:30 to -- the ability to transcode.

12:50:35 BY MR. RUBIN:

12:50:35 Q. Would this paragraph -- might this
12:50:37 paragraph also cover the right to copy materials to
12:50:40 a third-party streaming system?

12:50:43 MR. WILKENS: Objection to the form.
12:50:44 Calls for a legal conclusion.

12:51:19 THE WITNESS: I think so.

12:51:21 BY MR. RUBIN:

12:51:21 Q. Okay. Were users able to rank video clips
12:51:29 that they watched on the AddictingClips upload

1 SCOTT ROESCH

2 12:51:36 sites?

3 12:51:38 A. Were -- in what time period?

4 12:51:41 Q. At any time period.

5 12:51:45 A. This -- it's not in relation to this

6 12:51:47 document?

7 12:51:48 Q. Sorry. Yeah. I'm moving on. You can set

8 12:51:50 that document aside for now.

9 12:51:53 A. To rank them. There -- there was a

10 12:52:03 ranking of clips. I don't recall whether individual

11 12:52:06 users were able to specify their own personal

12 12:52:09 ranking.

13 12:52:10 Q. Could users search for clips based on

14 12:52:13 ranking?

15 12:52:17 A. No.

16 12:52:18 Q. Could users rate clips?

17 12:52:21 A. Yes.

18 12:52:23 Q. Could users provide comments to clips?

19 12:52:26 A. Yes.

20 12:52:37 Q. What search functions did AddictingClips

21 12:52:46 have for the service?

22 12:52:49 A. There were two search functions. One was

23 12:52:52 a function to search the content hosted on the

24 12:52:57 website, or in -- in -- in -- hosted by Reality

25 12:53:05 Digital or its affiliates.

1 SCOTT ROESCH

2 12:53:07 THE REPORTER: I'm sorry. "Hosted by" --

3 12:53:07 THE WITNESS: Hosted by Reality Digital or

4 12:53:07 its affiliates.

5 12:53:07 And the other was a web search function to

6 12:53:11 search content on other websites.

7 12:53:14 Q. We discussed earlier Blinks, and Blinks

8 12:53:17 being a search provider for the AddictingClips link

9 12:53:23 site. Is that what you're referring to when you

10 12:53:25 mentioned the web search?

11 12:53:27 A. Yes.

12 12:53:34 Q. Who provided the search function for

13 12:53:38 the -- searching the clips that were uploaded by

14 12:53:43 users to the AddictingClips service?

15 12:53:47 A. Reality Digital.

16 12:53:48 Q. Do you know if it was an in-house search

17 12:53:51 function, or whether it was a third party search

18 12:53:54 function?

19 12:53:55 A. I believe it was an in-house function.

20 12:54:00 Q. Do you have any details about the nature

21 12:54:02 and implementation of that search function?

22 12:54:11 A. I don't believe so.

23 12:54:13 Q. What do you know about it?

24 12:54:18 A. About what?

25 12:54:19 Q. That search functionality.

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SCOTT ROESCH

12:54:21 A. I know that it enabled users to type a
12:54:23 keyword, submit the keyword, and it would return
12:54:29 content and pages from the AddictingClips website
12:54:34 that were associated with that keyword.

12:54:37 Q. Do you know if that -- by "keyword," what
12:54:42 you're referring to is a searching of metadata that
12:54:45 had been indexed based on the data populated by
12:54:49 users when they uploaded videos?

12:54:52 MR. WILKENS: Objection to the form.

12:54:52 BY MR. RUBIN:

12:54:53 Q. Do you understand the question,
12:54:55 Mr. Roesch?

12:54:55 A. Yes.

12:54:57 Q. Can you answer it?

12:54:59 A. Yes, I believe that's an accurate,
12:55:03 possibly partial description.

12:55:06 Q. Is there anything you can add to the
12:55:07 description?

12:55:08 A. The function may also have searched other
12:55:12 texts on AddictingClips web pages that users had not
12:55:17 contributed but might have been written by site
12:55:20 editors.

12:55:25 Q. Do you know if there was a limit to the
12:55:29 number of results that could -- that would -- could

1 SCOTT ROESCH

2 12:55:31 be returned in any given query to the search

3 12:55:35 function?

4 12:55:35 A. I don't know.

5 12:55:44 Q. Do you know if AddictingClips created

6 12:55:47 thumbnails of user-submitted videos?

7 12:55:50 A. Yes, it did.

8 12:55:55 Q. Did AddictingClips display those

9 12:55:57 thumbnails to users?

10 12:55:58 A. Yes.

11 12:56:01 Q. If a clip was removed from the service --

12 12:56:04 in other words, a user uploaded a video, and it's

13 12:56:10 subsequently removed -- was the thumbnail of that

14 12:56:13 video retained somewhere on the service, or was it

15 12:56:17 purged?

16 12:56:21 A. And are you referring to the publicly

17 12:56:23 accessible service?

18 12:56:25 Q. I am.

19 12:56:29 A. I believe the thumbnail was removed.

20 12:56:32 Q. Was there a non-publicly available

21 12:56:35 service?

22 12:56:37 A. No.

23 12:56:41 Q. So what did you mean in response to the

24 12:56:43 last question about whether I was referring to the

25 12:56:45 publicly available service?

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SCOTT ROESCH

12:56:47 A. I -- I was -- I was trying to clarify your
12:56:51 use of the word "purge," and whether that meant that
12:56:54 a thumbnail was no longer available to the user, or
12:56:58 whether it was also no longer available to Atom or
12:57:02 Reality Digital staff.

12:57:04 Q. Would there have been a way that you or
12:57:05 other Atom or Reality Digital staff would have been
12:57:10 able to find a thumbnail from a video that had been
12:57:12 removed?

12:57:25 A. I think so.

12:57:27 Q. How?

12:57:32 A. I believe that the material removed from
12:57:37 the website was archived somehow.

12:57:47 Q. Regardless of the reason for which it was
12:57:50 removed?

12:57:52 MR. WILKENS: Objection to the form.

12:58:01 THE WITNESS: I -- I don't know if there
12:58:03 was a -- I'm not sure if there was a distinction
12:58:06 based on a reason, or if the policy changed based on
12:58:09 that.

12:58:10 BY MR. RUBIN:

12:58:12 Q. Do you know if there was any ability for
12:58:17 Addict- -- AddictingClips users to customize their
12:58:21 profile?

1 SCOTT ROESCH

2 12:58:23 A. Yes.

3 12:58:24 Q. What degree of customization was there?

4 12:58:30 A. Users could include information about

5 12:58:35 themselves. They could link to videos they'd upload

6 12:58:47 on web -- the website. They could include a

7 12:58:51 photograph associated with their profile that would

8 12:58:55 display on their profile. There may have been

9 12:58:58 others, but I don't recall.

10 12:59:03 Q. Did AddictingClips employees feature

11 12:59:06 certain videos?

12 12:59:08 A. Yes.

13 12:59:10 Q. Was there a mobile upload functionality?

14 12:59:13 A. Yes.

15 12:59:14 Q. Did AddictingClips allow embeds?

16 12:59:24 A. In what -- in what sense do you mean

17 12:59:25 "allow"?

18 12:59:27 Q. Did AddictingClips permit the videos

19 12:59:31 hosted on their service to be embedded on

20 12:59:36 third-party websites?

21 12:59:38 A. Yes.

22 12:59:38 Q. Could users flag videos for later review

23 12:59:42 by Atom or AddictingClips' staff?

24 12:59:45 MR. WILKENS: Can you clarify the time

25 12:59:47 frame?

1 SCOTT ROESCH

2 12:59:47 BY MR. RUBIN:

3 12:59:47 Q. At any time.

4 12:59:49 A. Yes.

5 12:59:51 Q. At launch?

6 12:59:54 A. At launch of the Version 2 of the service,

7 12:59:57 yes.

8 12:59:58 Q. Version 2 -- just to be clear, you're

9 13:00:01 referring to the introduction of the user-uploaded

10 13:00:04 video portion of the service; correct?

11 13:00:07 A. Yes.

12 13:00:07 Q. Was there any change over time to the

13 13:00:10 nature and type of flags that a user could make to

14 13:00:14 the video for later review by Atom or other

15 13:00:26 AddictingClips staff?

16 13:00:27 A. I don't recall.

17 13:00:28 Q. But there may have been?

18 13:00:29 A. It's possible.

19 13:00:36 Q. Were users able to download videos from

20 13:00:39 the AddictingClips website?

21 13:00:44 A. There is no -- there was no download

22 13:00:47 function.

23 13:00:49 Q. So there was no download functionality

24 13:00:51 built into the AddictingClips website for users to

25 13:00:56 download videos with the sanction of AddictingClips;

1 SCOTT ROESCH

2 13:01:00 is that right?

3 13:01:01 A. Correct.

4 13:01:02 Q. Do you know if it occurred, nonetheless?

5 13:01:04 MR. WILKENS: Objection to the form.

6 13:01:06 THE WITNESS: I don't know if it occurred.

7 13:01:07 BY MR. RUBIN:

8 13:01:08 Q. Do you know if it was possible that it

9 13:01:10 occurred?

10 13:01:11 MR. WILKENS: Objection to the form.

11 13:01:18 THE WITNESS: I -- I think it was

12 13:01:20 possible.

13 13:01:20 BY MR. RUBIN:

14 13:01:21 Q. Are you aware of technology known as

15 13:01:25 stream ripping?

16 13:01:28 A. I don't think I'm familiar with that term.

17 13:01:31 Q. Do you know what I'm referring to when I

18 13:01:33 use it?

19 13:01:34 A. I'm not sure.

20 13:01:34 Q. Are you familiar with the ability, or a

21 13:01:37 technology that enables a user to download content

22 13:01:43 that is streamed over the Internet, even if download

23 13:01:51 functionality was not intended, or indeed, even if

24 13:01:55 it was expressly not intended to be a part of the

25 13:01:58 content that's being viewed?

1 SCOTT ROESCH

2 13:02:00 A. I'm aware that it exists.

3 13:02:02 Q. Are you aware of any means deployed by

4 13:02:07 AddictingClips to stop the use of stream rippers --

5 13:02:12 stream rippers or any functionalities like that by

6 13:02:16 end users?

7 13:02:32 A. Are you -- are you asking for,

8 13:02:36 specifically, technology that would prevent the

9 13:02:40 stream ripping from occurring, or just from any

10 13:02:43 unauthorized use of the content?

11 13:02:47 Q. Specifically the former.

12 13:02:49 A. I'm not sure.

13 13:03:01 Q. How about the latter?

14 13:03:04 A. We -- we may have implemented secure

15 13:03:09 streaming, some -- some kind of domain protection,

16 13:03:13 but I'm not 100 percent sure if -- if we did.

17 13:03:18 Q. Who would --

18 13:03:18 A. I know it was considered.

19 13:03:19 Q. Who would know more about that?

20 13:03:23 A. Reality Digital would probably know.

21 13:03:26 Q. And who at Reality Digital do you think

22 13:03:28 would know most about that?

23 13:03:35 A. Randy St. Jean.

24 13:03:46 Q. Did AddictingClips, Version 2, the upload

25 13:03:49 version -- may as well use that as a shorthand for

1 SCOTT ROESCH

2 13:03:55 it.

3 13:03:55 A. Okay.

4 13:03:56 Q. -- have private video functionality?

5 13:03:59 A. Yes.

6 13:04:00 Q. Was it always intended to have private

7 13:04:03 video functionality from the inception of the

8 13:04:05 concept?

9 13:04:07 MR. WILKENS: Objection to the form.

10 13:04:11 THE WITNESS: I don't recall. I mean, I

11 13:04:18 could check the documents, if you'd like.

12 13:04:20 BY MR. RUBIN:

13 13:04:21 Q. Let's compare.

14 13:04:21 A. Okay.

15 13:04:22 Q. If I could ask you to turn to Exhibit 18,

16 13:04:28 please, page 6 of the exhibit. 4.2.1. Would you

17 13:04:56 compare that with the same page, and indeed the same

18 13:05:02 section, 4.2.1, of Exhibit 19.

19 13:05:22 Have you had an opportunity to compare the

20 13:05:23 two exhibits?

21 13:05:25 A. Yes.

22 13:05:25 Q. Does that refresh your recollection as to

23 13:05:27 whether or not private video functionality was

24 13:05:31 always intended to be a -- a portion -- rather a

25 13:05:35 feature of the AddictingClips Version 2?

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SCOTT ROESCH

13:05:45 A. Doesn't refresh my recollection of that,
13:05:47 but I take the text at face value.

13:05:50 Q. What does the text, at face value, tell
13:05:54 you?

13:05:54 A. Tells me that on December 21 of '05 we
13:05:58 were not planning to launch with the feature, that
13:06:01 we were considering it for the future.

13:06:03 And on February 14, '06, we had updated
13:06:10 our plans to launch with the private clip feature
13:06:15 with the option to turn it off at a later time.

13:06:20 Q. Do you know what the reason is for that
13:06:23 change in plans?

13:06:26 MR. WILKENS: I'm going to just caution
13:06:27 the witness not to get into attorney-client
13:06:30 privileged communications. If you can answer
13:06:32 without doing that, please go ahead.

13:06:43 THE WITNESS: I don't recall.

13:06:43 BY MR. RUBIN:

13:06:44 Q. Did you have any discussions, Mr. Roesch,
13:06:46 with any lawyer about whether or not the service
13:06:48 could launch with or without private videos?

13:06:55 A. I -- I don't recall a conversation.

13:06:58 Q. You don't recall having a conversation
13:07:00 with a lawyer about that?

1 SCOTT ROESCH

2 13:10:37 Q. Okay. So Brendan Jackson was brought on

3 13:10:45 uniquely to work on AddictingClips?

4 13:10:48 A. That's right.

5 13:10:49 Q. Is he still with the company?

6 13:10:50 A. No.

7 13:10:50 Q. When did he leave?

8 13:10:52 A. He probably left in -- in late '07 or

9 13:10:55 maybe early '08.

10 13:10:56 Q. Do you know why he left?

11 13:11:01 A. He got another job opportunity.

12 13:11:03 Q. So he left by his own volition?

13 13:11:06 A. Yes.

14 13:11:08 Q. Have you spoken with him recently?

15 13:11:11 A. It's been a month or two, probably.

16 13:11:14 Q. But you still maintain some contact with

17 13:11:17 him?

18 13:11:17 A. A bit.

19 13:11:22 Q. How did a user go about making a video

20 13:11:26 private, versus publicly available, on the Version 2

21 13:11:33 AddictingClips site?

22 13:11:39 A. I believe it was an option they could

23 13:11:43 select during the upload process.

24 13:11:44 Q. Do you know if the public/private status

25 13:11:53 treatment changed post upload?

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SCOTT ROESCH

13:11:57 A. I think so.

13:11:58 Q. Do you know if there was a limit on the
13:12:00 number of videos that a user could set to private?

13:12:07 A. I don't know.

13:12:15 Q. Did AddictingClips superimpose any logos
13:12:19 on its video player?

13:12:31 A. I believe we -- hm. I believe it -- there
13:12:39 was a logo superimposed on the embedded video
13:12:43 player. I don't recall if there was one on the
13:12:46 player that was served on the website itself.

13:12:53 Q. Could users recommend videos to one
13:12:57 another?

13:12:57 A. Yes.

13:12:58 Q. Could users recommend videos to nonusers
13:13:01 of the site?

13:13:02 MR. WILKENS: Objection to the form.

13:13:06 THE WITNESS: Yes.

13:13:06 BY MR. RUBIN:

13:13:10 Q. Did AddictingClips advertise on the
13:13:13 website?

13:13:17 A. Did we allow advertisements on the
13:13:19 website?

13:13:21 Q. Yes.

13:13:24 A. Yes.

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SCOTT ROESCH

13:13:26 Q. What types of advertisements did you allow
13:13:29 on the website?

13:13:31 A. There were banner style display
13:13:33 advertisements, and I believe there were search --
13:13:41 there were text advertisements on the search pages.

13:13:46 Q. Where on -- was there any place on the
13:13:54 AddictingClips website, any given page, that did not
13:13:59 have advertising on it?

13:14:04 A. Yes.

13:14:05 Q. What page or pages were those?

13:14:08 A. Well, pages that framed third-party sites.
13:14:13 As I described earlier, when we would link out to
13:14:16 third-party sites we would include a thin frame at
13:14:20 the top of the page?

13:14:22 Q. Why wasn't -- why weren't advertisements
13:14:25 included on those pages in those frames?

13:14:30 MR. WILKENS: To the extent that that
13:14:31 would require you to reveal attorney-client
13:14:34 communications, I caution you -- I would instruct
13:14:36 you not to answer, but if you can answer otherwise,
13:14:39 please do.

13:14:40 THE WITNESS: We would believe -- we
13:14:42 believed it would require too large of a -- of a
13:14:46 frame, and it would irritate the third-party sites.

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SCOTT ROESCH

13:14:49 BY MR. RUBIN:

13:14:50 Q. So the -- the design element of it, too
13:14:55 large a frame, what do you mean by "irritate the
13:14:58 third-party sites"?,

13:14:59 A. You know, there -- it would -- it -- you
13:15:03 know, a large -- a large frame served at the top of
13:15:07 a third party's website made -- would make the
13:15:10 experience on the website less attractive, thus,
13:15:14 perhaps irritating to them.

13:15:17 Q. Is there any other consideration that led
13:15:20 to not using advertisements in the frames to a site
13:15:26 linked to from AddictingClips?

13:15:46 A. Yes.

13:15:47 Q. What were they?

13:15:48 MR. WILKENS: To the extent that would
13:15:49 require you to reveal attorney-client privilege, I
13:15:52 instruct you not to answer. Otherwise you can
13:15:54 answer.

13:15:55 THE WITNESS: Now, we -- we didn't have
13:15:58 sufficient demand for the advertisements to need to
13:16:02 serve them there.

13:16:03 BY MR. RUBIN:

13:16:03 Q. Any other reason?

13:16:05 MR. WILKENS: Same caution as I gave you a

1 SCOTT ROESCH

2 13:18:21 for rationales, number -- the number of rationales.

3 13:18:24 That's all.

4 13:18:25 If -- if you want to give an instruction,

5 13:18:26 you're entitled to, but you understand this -- that

6 13:18:29 this position is going to be attributed to your

7 13:18:31 client in this case, and it is inconsistent with

8 13:18:34 positions you've taken before in the questioning of

9 13:18:36 our witnesses.

10 13:18:37 And that's fine. You're entitled to do

11 13:18:39 whatever you want in this -- in this room, Scott,

12 13:18:41 but it has ramifications outside of that. That's

13 13:18:41 all.

14 13:18:43 MR. WILKENS: Quite apart from that

15 13:18:44 speech --

16 13:18:45 MR. RUBIN: I'm not making a speech. I'm

17 13:18:46 just noting for the record what's going on.

18 13:18:50 MR. WILKENS: Michael -- Michael --

19 13:18:50 MR. RUBIN: We're going to move on. If

20 13:18:50 you want to keep talking about it we can go off the

21 13:18:51 record. I'm not going to waste my deposition time

22 13:18:55 with this.

23 13:18:56 MR. WILKENS: Michael, I just want to note

24 13:18:57 that I disagree with what -- with your

25 13:18:59 characterization. That's all.

1 SCOTT ROESCH

2 13:19:00 MR. RUBIN: That's fine. You're going to

3 13:19:01 disagree with everything I say today, so that's

4 13:19:01 okay.

5 13:19:01 BY MR. RUBIN:

6 13:19:02 Q. With respect to any other page, was there

7 13:19:04 any other page on the AddictingClips service -- was

8 13:19:07 there any page on Version 2 of the Addictive Clips

9 13:19:12 service on which advertisements were not disclosed?

10 13:19:15 A. Yes.

11 13:19:16 Q. Which page was that?

12 13:19:18 A. The terms of service.

13 13:19:19 Q. Any others?

14 13:19:20 A. The privacy policy.

15 13:19:21 Q. Any others?

16 13:19:25 A. I don't think so.

17 13:19:34 Q. So ads were displayed on the search page?

18 13:19:38 A. Yes.

19 13:19:38 Q. And ads were displayed on the pages on

20 13:19:41 which videos were displayed?

21 13:19:43 A. Yes.

22 13:19:47 Q. On the search page, were the ads CPM or

23 13:19:51 CPC ads?

24 13:19:58 A. I believe there were both.

25 13:20:02 Q. And on the -- for lack of a better word

1 SCOTT ROESCH

2 13:20:07 I'll refer to them as "watch pages." On the watch

3 13:20:09 pages, were the ads CPM ads or CPC ads?

4 13:20:18 A. Typically, I believe they're CPM ads,

5 13:20:21 although I don't know the -- the deals behind every

6 13:20:24 advertisement that is on there.

7 13:20:36 Q. Was there any time at which, in the

8 13:20:39 Version 2 of the site, from the moment the company

9 13:20:44 allowed for the upload of videos by users to today,

10 13:20:49 that AddictingClips did not put ads on all watch

11 13:20:58 pages?

12 13:21:11 A. I don't think so.

13 13:21:22 Q. Was there administrative level access to

14 13:21:25 the AddictingClips website in Version 2?

15 13:21:28 A. Yes.

16 13:21:30 Q. How did that access differ from access

17 13:21:34 by -- than ordinary user, member of the public would

18 13:21:41 have?

19 13:21:41 A. It granted the person who had logged in

20 13:21:44 with administrative rights to be able to make

21 13:21:48 changes to the website that a non-user wouldn't be

22 13:21:52 able to make.

23 13:21:53 Q. What sorts of changes?

24 13:21:55 A. For example, banning a video.

25 13:22:00 Q. Removing a video?

1 SCOTT ROESCH

2 13:22:02 A. Yes.

3 13:22:03 Q. Could you remove a user?

4 13:22:07 A. I believe so, yes.

5 13:22:12 Q. Were these unique accounts, or were

6 13:22:15 certain permissions given to regular accounts to

7 13:22:19 make them admin-enabled?

8 13:22:30 MR. WILKENS: Objection to the form.

9 13:22:31 THE WITNESS: I'm sorry. Can you -- can

10 13:22:33 you repeat?

11 13:22:34 BY MR. RUBIN:

12 13:22:34 Q. Sure. You testified that -- to

13 13:22:36 administrative rights, and I'm trying to understand

14 13:22:39 if these were unique accounts, or whether they were

15 13:22:44 permissions, rights, granted to existing accounts

16 13:22:47 that -- that gave them the ability to do this?

17 13:22:50 MR. WILKENS: Objection to the form.

18 13:22:59 THE WITNESS: The -- these were accounts

19 13:23:01 with greater privileges. I don't know -- I'm not

20 13:23:06 sure I -- I understand the distinction.

21 13:23:07 BY MR. RUBIN:

22 13:23:07 Q. Do you have an admin-enabled account to

23 13:23:12 the AddictingClips, or the current version of the

24 13:23:16 service?

25 13:23:20 A. There is one. There is a -- there is a --

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SCOTT ROESCH

13:23:22 an admin account on the current Atom.com service.

13:23:30 Q. Do you have -- is it -- is it separate
13:23:31 from the account that you use to log into the
13:23:33 service?

13:23:34 A. Yes.

13:23:34 Q. It's a unique account, not associated with
13:23:34 any individual?

13:23:34 MR. WILKENS: Objection to the form.

13:23:34 THE WITNESS: Yes, it's a -- it's a unique
13:23:34 account.

13:23:48 BY MR. RUBIN:

13:23:48 Q. So then with the account that you, Scott
13:23:51 Roesch, use to log into the service, can you remove
13:23:54 a video from the service?

13:24:00 A. Speaking for today?

13:24:01 Q. Sure.

13:24:02 A. No.

13:24:02 Q. But you have access to the administrative
13:24:04 credentials to log in and do so; right?

13:24:14 A. I don't believe so, today.

13:24:16 Q. Who has access to those credentials?

13:24:33 A. Members of the -- well, the -- the
13:24:40 administration of accounts is -- is a more
13:24:44 centralized function now. It's members of the team

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SCOTT ROESCH

13:24:47 entitled Flux. The Flux team has access to that.

13:24:52 Q. What is Flux?

13:24:54 A. Flux is a -- it's a set of social
13:25:01 networking and community tools.

13:25:09 Q. When were those tools developed?

13:25:11 A. I don't know.

13:25:12 Q. Was there a time at which you had
13:25:15 administrative rights associated with your account
13:25:18 for the AddictingClips website?

13:25:25 A. I don't think so.

13:25:26 Q. Was there a time in which you had the
13:25:28 ability to remove videos from the AddictingClips
13:25:31 website?

13:25:32 A. Yes.

13:25:33 Q. How did you do that?

13:25:35 A. I would use the administrative account.

13:25:37 Q. So there was a -- a -- there was a special
13:25:40 administrative account, apart from your own personal
13:25:43 account?

13:25:45 A. Yes.

13:25:47 Q. Could that account approve videos for
13:25:51 publication to the service?

13:25:53 MR. WILKENS: Objection to the form.

13:26:00 THE WITNESS: I think so.

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SCOTT ROESCH

13:26:01 BY MR. RUBIN:

13:26:02 Q. Could that admin-enabled account view
13:26:07 videos that were not accessible to public users of
13:26:12 the website?

13:26:13 A. Yes.

13:26:14 Q. Could that admin-enabled account view
13:26:20 videos that had been removed from the website?

13:26:23 A. Yes.

13:26:23 Q. Could that admin account review private
13:26:28 videos?

13:26:29 A. I think so.

13:26:32 Q. Could that admin account flag a video for
13:26:35 further review?

13:26:40 A. I think so.

13:26:42 Q. Could that admin-enabled account remove a
13:26:47 flag from a video that had been applied by others?

13:26:50 A. I think it could.

13:26:54 Q. Could that admin-account apply a strike
13:26:58 for DMCA infringement purposes?

13:27:02 MR. WILKENS: Objection to the form of the
13:27:03 question.

13:27:15 THE WITNESS: I don't know.

13:27:16 BY MR. RUBIN:

13:27:16 Q. Who would know that?

1 SCOTT ROESCH

2 13:27:19 A. I think Reality Digital would know that.

3 13:27:22 Q. And who at Reality Digital?

4 13:27:24 A. Probably Randy St. Jean.

5 13:27:33 Q. Did AddictingClips engage in the same

6 13:27:39 rights clearance process in Version 2 that Atom

7 13:27:43 Films did before allowing user supplied clips to

8 13:27:54 appear on the service.

9 13:27:56 THE REPORTER: I'm sorry. "Before" --

10 13:27:56 MR. RUBIN: Allowing the user supplied

11 13:27:56 clips to appear on the service.

12 13:27:57 THE WITNESS: No.

13 13:27:58 BY MR. RUBIN:

14 13:27:58 Q. Why not?

15 13:28:00 MR. WILKENS: To the extent that that

16 13:28:02 question would -- your answering that question would

17 13:28:06 reveal attorney-client privilege, I'm instructing

18 13:28:10 you not to answer, but if you can do it without

19 13:28:12 referring to those communications, please go ahead.

20 13:28:19 THE WITNESS: Because the nature of the

21 13:28:22 method by which content went onto the website made

22 13:28:26 it impossible to -- eliminated the time needed to,

23 13:28:33 for example, sign a contract.

24 13:28:35 BY MR. RUBIN:

25 13:28:35 Q. Could you explain that?

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SCOTT ROESCH

13:28:36 A. Yes. So if -- if -- you know, as I
13:28:40 described, the user had the ability to upload a
13:28:43 video directly from their computer onto the website.

13:28:49 Q. And at that point it appeared
13:28:51 automatically onto the website; right?

13:28:53 A. Right.

13:28:54 Q. Okay. And then so -- what is it about
13:28:57 that that made doing the rights clearance process
13:29:08 impossible?

13:29:09 A. The -- the Atom staff was not involved in
13:29:12 the publication of -- of the video. It was -- the
13:29:14 end user published it themselves.

13:29:17 Q. Did you get any assurance from the end
13:29:19 user that they had the rights to upload it before
13:29:22 you allowed them to upload it?

13:29:24 A. Yes.

13:29:24 Q. What sort of assurances did you obtain?

13:29:27 A. The -- in the process of uploading the
13:29:30 video, the user needed to check a box indicating
13:29:35 that they had read and agreed to the terms of
13:29:40 service of the site.

13:29:44 Q. You think it would have been impractical,
13:29:47 though, to go beyond that?

13:29:48 MR. WILKENS: Objection to the form.

1 SCOTT ROESCH

2 13:29:58 THE WITNESS: I would need -- I would need

3 13:29:59 to know what unit, specifically -- what you'd

4 13:30:02 recommend -- what unit you would be referring to.

5 13:30:04 BY MR. RUBIN:

6 13:30:05 Q. I'm trying to get an understanding of what

7 13:30:07 you were testifying to earlier, actually.

8 13:30:10 We talked earlier, much earlier this

9 13:30:12 morning, about the process that Atom Films engaged

10 13:30:16 in, this rights clearance process. Do you think it

11 13:30:19 would be impractical in the context of the Version 2

12 13:30:23 AddictingClips site to engage in that process for

13 13:30:29 the upload of user generated content?

14 13:30:32 MR. WILKENS: Objection to the form.

15 13:30:34 THE WITNESS: It was -- it was a different

16 13:30:36 process.

17 13:30:37 BY MR. RUBIN:

18 13:30:37 Q. I understand that.

19 13:30:49 A. Yes.

20 13:30:56 Q. Did AddictingClips ever block the uploaded

21 13:31:00 videos based on keywords contained in the metadata

22 13:31:04 supplied by the users?

23 13:31:14 A. I don't -- I don't know.

24 13:31:18 Q. Did it have the technical ability to do

25 13:31:21 so?

1 SCOTT ROESCH

2 14:02:30 BY MR. RUBIN:

3 14:02:30 Q. Do you know if Audible Magic or any other

4 14:02:35 video identification technology can determine

5 14:02:38 whether a video constitutes fair use or not?

6 14:02:42 MR. WILKENS: Objection to the form.

7 14:02:43 THE WITNESS: I don't know.

8 14:02:43 BY MR. RUBIN:

9 14:02:43 Q. Did AddictingClips create md5 hashes of

10 14:02:48 uploaded videos?

11 14:02:50 A. I -- I don't know what that is.

12 14:02:51 Q. You don't know what an md5 hash is?

13 14:02:54 A. No.

14 14:02:55 Q. Okay. Did AddictingClips in any way block

15 14:02:58 users from submitting the identical video more than

16 14:03:03 once?

17 14:03:10 A. I don't know.

18 14:03:12 Q. Did AddictingClips deploy any technology

19 14:03:15 that would prevent users from submitting videos that

20 14:03:21 had been previously removed from the service for

21 14:03:23 terms of use violations or based on allegations of

22 14:03:29 copyright infringement?

23 14:03:40 A. I believe there -- we had the ability to

24 14:03:44 ban members who we believed were repeatedly, you

25 14:03:49 know, abusing the site, and by uploading material

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SCOTT ROESCH

14:03:53 they shouldn't be uploading, and so they -- we were
14:03:56 able to prevent them from re-uploading anything
14:04:00 from -- from those accounts.

14:04:02 Q. Could you prevent that same user from
14:04:04 registering again and uploading the same content in
14:04:07 a different account?

14:04:08 A. No, I don't believe so.

14:04:10 Q. Could you prevent a completely different
14:04:14 user, totally unconnected with that user, from
14:04:17 uploading the same account, or that -- pardon me --
14:04:19 the same content that you had previously removed?

14:04:23 A. I don't think so.

14:04:26 Q. Do you know if AddictingClips ever
14:04:29 developed any software tools that allowed content
14:04:32 owners to send notices of alleged infringement
14:04:37 pursuant to the DMCA in an electronic fashion?

14:04:42 MR. WILKENS: Objection to the form.

14:04:43 THE WITNESS: I don't know.

14:04:44 BY MR. RUBIN:

14:04:44 Q. Do you know if AddictingClips ever
14:04:46 included any copyright education manuals on its
14:04:52 website?

14:04:53 MR. WILKENS: Objection to the form.

14:05:00 THE WITNESS: I believe -- I believe we

1 SCOTT ROESCH

2 14:05:03 included -- we may have included some guidelines,

3 14:05:07 high level guidelines, and I wouldn't describe what

4 14:05:10 I'm recollecting as a -- as a manual.

5 14:05:13 BY MR. RUBIN:

6 14:05:13 Q. Okay. Do you know if AddictingClips ever

7 14:05:16 developed any proprietary software to help content

8 14:05:20 owners locate potentially infringing content on the

9 14:05:24 service?

10 14:05:24 MR. WILKENS: Objection to the form.

11 14:05:34 THE WITNESS: You know, given, you know,

12 14:05:35 we had had just a very low incidence of -- of any

13 14:05:39 takedown notices, so -- so, no, we didn't -- that

14 14:05:42 never rose to the top of our development list.

15 14:05:45 BY MR. RUBIN:

16 14:05:45 Q. Do you know if Atom ever developed any

17 14:05:49 proprietary technology or software to help content

18 14:05:52 owners locate potentially infringing content?

19 14:05:57 A. No, I don't believe we did.

20 14:05:59 Q. Do you know if any division of Viacom

21 14:06:03 ever developed, or considered developing, any

22 14:06:08 proprietary software to help content owners, such as

23 14:06:12 itself or others, locate potentially infringing

24 14:06:15 content --

25 14:06:16 MR. WILKENS: Objection to the form.

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SCOTT ROESCH

14:06:17 BY MR. RUBIN:

14:06:18 Q. -- on its services or others?

14:06:20 MR. WILKENS: Objection to the form.

14:06:24 THE WITNESS: Is your question about
14:06:26 technology that Viacom developed?

14:06:29 BY MR. RUBIN:

14:06:29 Q. Uh-huh.

14:06:31 A. I'm not aware of technology that the
14:06:33 company developed itself. However, it may have
14:06:35 licensed tools of that sort.

14:06:40 Q. Did AddictingClips have a duration limit
14:06:43 for uploaded clips?

14:06:54 A. I know we had a file size limit, and I am
14:06:57 unclear if we implemented a run-time limit.

14:07:02 Q. Do you know what the reason was for the
14:07:04 file size limit?

14:07:05 A. There were multiple reasons. One was a --
14:07:08 you know, wanting to limit band width costs, and
14:07:12 another was, you know, wanting to make it difficult
14:07:18 for people to distribute extremely long and possibly
14:07:25 infringing works.

14:07:38 MR. RUBIN: I'd like to introduce Roesch
14:07:41 Exhibit Number 23.

14:07:42 (Roesch Deposition Exhibit Number 23 was

1 SCOTT ROESCH

2 14:07:42 marked for identification.)

3 14:08:03 BY MR. RUBIN:

4 14:08:04 Q. Mr. Roesch, Exhibit 23 is a web page that

5 14:08:07 I printed out from the Internet Archive showing the

6 14:08:10 top-rated clips page on the AddictingClips website

7 14:08:14 on or around April 22nd, 2006. As with the other

8 14:08:22 printouts, the URL is reflected in the address line

9 14:08:29 of Internet Explorer.

10 14:08:31 Do these pages look like -- well, does

11 14:08:31 this page look like an accurate capture of the

12 14:08:35 AddictingClips website from that time frame?

13 14:08:37 MR. WILKENS: Before we get into the

14 14:08:38 exhibit, I'm going to make the same objection I made

15 14:08:41 to the other archive -- web archive exhibits that

16 14:08:44 have been used.

17 14:08:47 BY MR. RUBIN:

18 14:08:54 Q. I'll restate my question. Do these three

19 14:08:56 pages look like accurate captures of the

20 14:09:04 AddictingClips website in that time frame?

21 14:09:16 A. I think you referred to this first page as

22 14:09:19 the top-rated --

23 14:09:20 Q. Yeah, I think I miss -- misreferred to it.

24 14:09:22 I apologize. These are three various pages -- these

25 14:09:27 are various pages, three, that I printed out from

1 SCOTT ROESCH

2 14:14:47 THE WITNESS: I don't know what this clip

3 14:14:48 actually is, so I -- it's difficult to speculate on

4 14:14:56 what I would have done, given that I haven't seen

5 14:14:58 it.

6 14:14:58 BY MR. RUBIN:

7 14:14:58 Q. If -- if you had encountered a thumbnail

8 14:15:01 of a video with a title "Family Guy," and the

9 14:15:04 thumbnail was inconclusive in your view as to

10 14:15:07 whether it constituted a posting of a clip from "The

11 14:15:10 Family Guy" or not, what would you have done?

12 14:15:15 MR. WILKENS: Objection to the form.

13 14:15:18 THE WITNESS: I probably would have

14 14:15:21 watched it or asked somebody to watch it.

15 14:15:24 BY MR. RUBIN:

16 14:15:25 Q. And if it was, in fact, from "The Family

17 14:15:27 Guy," what would you have done?

18 14:15:30 MR. WILKENS: Objection to the form.

19 14:15:34 THE WITNESS: We would have e-mailed to

20 14:15:37 the legal team.

21 14:15:39 BY MR. RUBIN:

22 14:15:40 Q. And at this time, April of 2006, who was

23 14:15:48 on the legal team?

24 14:15:50 A. Victoria Libin and Adam Lovingood.

25 14:15:54 Q. Are they both still on the legal team?

1 SCOTT ROESCH

2 14:15:58 A. Adam is no longer with the company.

3 14:16:01 Victoria is still employed by MTV Networks, but is

4 14:16:05 not involved in the Atom business.

5 14:16:14 Q. Eventually, and we've hit upon this a

6 14:16:17 couple times today, the AddictingClips Version 2,

7 14:16:21 the entire site, in fact, was rebranded as

8 14:16:26 AtomUploads; is that right?

9 14:16:28 A. Did you specify a time period or --

10 14:16:31 Q. I didn't. I was going to ask you that

11 14:16:33 question.

12 14:16:34 A. It was later rebranded, yes.

13 14:16:36 Q. At some time it was. Do you know when

14 14:16:38 that took place?

15 14:16:39 A. I think it was in 2007.

16 14:16:41 Q. Do you know when in 2007?

17 14:16:47 A. I -- I -- I would be guessing, so no.

18 14:16:56 Q. Do you know why the change was made?

19 14:17:03 A. Yes.

20 14:17:04 Q. Why?

21 14:17:11 A. We wanted to associate the service with

22 14:17:17 the Atom brand, as opposed to the Addicting -- the

23 14:17:21 AddictingGames brand.

24 14:17:24 Q. Any other reasons?

25 14:17:35 A. I -- I don't think so.

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SCOTT ROESCH

14:17:38 Q. Was Brendan Jackson working for the
14:17:40 company at the time of the rebrand?

14:17:43 A. Yes.

14:17:53 Q. Was there a change to the upload process
14:17:58 for videos that occurred in conjunction with the
14:18:02 rebrand?

14:18:05 A. I don't think so.

14:18:11 Q. When we came back from lunch we discussed
14:18:13 the current aspects of the current upload process in
14:18:23 the version of the site that exists today.

14:18:26 A. (Nods head.)

14:18:27 Q. When Version 2 of the AddictingClips site
14:18:30 was launched, you testified earlier that videos were
14:18:33 published immediately after they were uploaded.

14:18:38 A. Yes.

14:18:39 Q. At some point that changed; right?

14:18:41 A. Right.

14:18:41 Q. When did that change?

14:19:02 A. It changed sometime in 2007.

14:19:12 MR. RUBIN: I'd like to introduce Roesch
14:19:15 Exhibit 25.

14:19:15 (Roesch Deposition Exhibit Number 25 was
14:19:15 marked for identification.)

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SCOTT ROESCH

14:19:23 BY MR. RUBIN:

14:19:24 Q. Mr. Roesch, this document was produced by
14:19:29 Viacom and bears Bates number VIA 00466749 through
14:19:36 -50.

14:19:41 Have you seen this document before?

14:19:43 A. Yes.

14:19:49 Q. What is this document?

14:19:51 MR. WILKENS: Take your time to look
14:19:52 through it if you need to.

14:20:08 THE WITNESS: This is a document that
14:20:09 describes changes in the service. I believe this
14:20:17 was distributed to employees.

14:20:19 BY MR. RUBIN:

14:20:21 Q. And does this indicate that the rebrand of
14:20:26 AddictingClips to AtomUploads occurred on or around
14:20:31 May 22nd?

14:20:33 A. This document indicates that.

14:20:39 Q. It doesn't say in 2007.

14:20:40 A. It doesn't state the year, but I believe
14:20:42 that it was in 2007.

14:20:44 Q. Do you see a section that says "What is
14:20:46 changing?"

14:20:48 A. Yes.

14:20:50 Q. Do you see number 3?

1 SCOTT ROESCH

2 14:20:56 Would you read that aloud, please.

3 14:20:58 A. (Reading:)

4 14:20:59 "3. Safe content: All uploads will be

5 14:21:03 screened before publishing. Content that

6 14:21:05 is approved will generally be published

7 14:21:08 within approximately 20 minutes. Content

8 14:21:10 with standards or legal problems will be

9 14:21:12 rejected (in other words -- no porn or

10 14:21:15 stolen content.)"

11 14:21:17 Q. So does this reflect -- refresh your

12 14:21:20 recollection that prior to the rebrand there was no

13 14:21:23 monitoring or pre-publication -- pardon me -- there

14 14:21:27 was no pre-publication review of the content of

15 14:21:30 AddictingClips?

16 14:21:31 A. Well, no. What it -- what it refreshes,

17 14:21:33 actually, is -- is my recollection that the

18 14:21:37 pre-screening of content occurred at the time of the

19 14:21:40 AtomUploads rebrand, which I had forgotten.

20 14:21:51 Q. Was it coincidental?

21 14:21:53 A. It's -- I don't know if it was

22 14:21:55 coincidental or not.

23 14:22:00 Q. Why did Atom begin proactively monitoring

24 14:22:04 content before it went live on the service around

25 14:22:08 this time?

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SCOTT ROESCH

14:22:09 MR. WILKENS: I'm going to caution the
14:22:10 witness at this time not to get into attorney-client
14:22:13 privilege. If you can answer without doing that,
14:22:15 please do.

14:22:18 THE WITNESS: Well, Atom Entertainment was
14:22:24 acquired by MTV Networks in 2006. And MTV Networks
14:22:28 had different approaches to users of content --
14:22:34 usage of content on its websites for, for example,
14:22:40 standards and practices reasons, and -- and
14:22:48 intellectual property reasons.

14:22:59 BY MR. RUBIN:

14:23:00 Q. The change to allowing user-generated
14:23:07 content to be published immediately to proactive
14:23:12 monitoring occurred sometime in the May 2007 time
14:23:17 frame, based on this document; is that right?

14:23:22 A. That's right.

14:23:22 Q. The acquisition occurred in 2006; isn't
14:23:25 that right?

14:23:26 A. Correct.

14:23:29 Q. Why was there a delay in bringing Atom in
14:23:35 line with the different approach, as you indicated
14:23:41 it was, at MTV Networks?

14:23:45 MR. WILKENS: I'm going to caution you not
14:23:47 to get into attorney-client communications. If you

1 SCOTT ROESCH

2 14:23:49 can answer without doing it, please do.

3 14:23:59 THE WITNESS: I think there were two basic

4 14:24:00 reasons. One was we -- AddictingClips was an

5 14:24:04 extremely small site with few resources. We were

6 14:24:10 unable to make significant changes very quickly.

7 14:24:16 And the other major reason, I think it

8 14:24:19 took the company some time to get to know us in a

9 14:24:24 way that -- and -- and get to know our policies to

10 14:24:27 the extent -- and discuss how they should be

11 14:24:30 evolved. So those two factors combined to affect

12 14:24:34 the timing.

13 14:24:37 Q. MTV was aware that content was being

14 14:24:40 immediately published with no review prior to its

15 14:24:44 acquisition of Atom Films of AddictingClips -- of

16 14:24:51 Atom Films and the AddictingClips site, wasn't it?

17 14:24:55 MR. WILKENS: Objection. No foundation.

18 14:24:56 THE WITNESS: I don't know.

19 14:24:57 BY MR. RUBIN:

20 14:24:58 Q. Did you have any discussions with anyone

21 14:25:00 at MTV Films prior to the acquisition regarding

22 14:25:05 monitoring of content on the AtomFilms website?

23 14:25:12 A. And to clarify, I didn't have any

24 14:25:14 discussion with MTV Films or anybody at MTV Networks

25 14:25:20 regarding that.

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SCOTT ROESCH

14:25:21 Q. Were you involved in the acquisition of
14:25:23 Atom Films in any way?

14:25:26 A. Yes.

14:25:27 Q. In what way were you involved?

14:25:30 A. I was responsible for a -- a group within
14:25:33 the company that was acquired.

14:25:35 Q. Did you have any interaction with MTV in
14:25:39 connection with the acquisition?

14:25:43 MR. WILKENS: Objection to the form.

14:25:45 THE WITNESS: Prior to the agreement, no.

14:25:47 BY MR. RUBIN:

14:25:48 Q. During the due diligence phase?

14:25:59 A. Yes.

14:26:01 Q. Do you know who was interacting -- who at
14:26:04 Atom was interacting with MTV Networks, and for
14:26:08 Viacom more broadly, prior to your involvement?

14:26:14 A. Yes, I -- I'm aware of at least some of
14:26:16 the people involved.

14:26:18 Q. Who would they have been?

14:26:19 A. Mika Salmi was involved.

14:26:23 Q. Who else?

14:26:24 A. Margaret McCarthy, our chief operating
14:26:28 officer.

14:26:28 Q. Who else?

1 SCOTT ROESCH

2 14:26:29 A. Victoria Libin.

3 14:26:33 Q. And who else?

4 14:26:34 A. And beyond that, I'm not sure.

5 14:27:15 Q. Okay. Were you involved in the review of

6 14:27:19 content on the AtomUploads site prior to it being

7 14:27:30 published to the service?

8 14:27:41 A. Not on any regular basis.

9 14:27:48 Q. Do you know how the user upload process

10 14:27:51 worked, following the transition to Atom Uploads?

11 14:28:00 A. What aspect of the upload process?

12 14:28:03 Q. What happened following the upload by the

13 14:28:05 user.

14 14:28:08 A. Yeah, at high level, I'm familiar with it.

15 14:28:10 Q. Could you please describe it?

16 14:28:12 A. The content was reviewed. The content was

17 14:28:21 viewable in an administrative -- in a -- on a page,

18 14:28:25 viewable by people with administrative access to the

19 14:28:29 website, where they would watch the content and

20 14:28:32 either approve it for publication, reject it, or

21 14:28:38 mark it for further review.

22 14:28:50 MR. RUBIN: I'd like to mark Exhibit 26.

23 14:28:52 (Roesch Deposition Exhibit Number 26 was

24 14:28:52 marked for identification.)

25 14:28:55 MR. RUBIN: Pardon me -- Exhibit 26?

1 SCOTT ROESCH

2 14:29:00 MS. WILSON: Uh-huh.

3 14:29:31 BY MR. RUBIN:

4 14:29:31 Q. Mr. Roesch, Exhibit 26 is an e-mail string

5 14:29:36 between you and Andrew Rosen dated February 1st,

6 14:29:43 2007, produced by Viacom in this litigation, bearing

7 14:29:47 Bates number VIA 01675542.

8 14:29:52 Do you recall this e-mail?

9 14:29:57 A. Yes, I do.

10 14:30:04 Q. Andrew wrote to you and -- and said he:

11 14:30:06 ". . . learned from Dave at Shockwave that

12 14:30:08 you have been getting up at 4:00 a.m. to

13 14:30:11 moderate."

14 14:30:12 Do you see that?

15 14:30:13 A. I do.

16 14:30:14 Q. Was that true?

17 14:30:15 A. I don't know if 4:00 a.m. was true, but we

18 14:30:18 were getting up pretty early.

19 14:30:20 Q. And you responded that:

20 14:30:22 ". . . a few of us are tackling the early

21 14:30:25 morning and late night shifts,"

22 14:30:26 and calling it porn patrol. Do you see that?

23 14:30:30 A. I do.

24 14:30:30 Q. You're smiling. Do you remember this

25 14:30:32 period of time fondly?

1 SCOTT ROESCH

2 14:30:39 A. I -- I -- the name "porn patrol" always

3 14:30:44 makes me laugh.

4 14:30:45 Q. Who came up with that name? Do you know?

5 14:30:47 A. I don't recall.

6 14:30:48 Q. Why was it called "porn patrol"?

7 14:30:52 A. Well, the -- in -- in the process of

8 14:30:59 executing these moderating responsibilities

9 14:31:01 described in this e-mail, we would, you know,

10 14:31:06 semi-regularly encounter pornographic material that

11 14:31:10 needed to be removed from the website. So we dubbed

12 14:31:13 it "porn patrol."

13 14:31:25 Q. And did all members of the porn patrol

14 14:31:27 have access to the administrative interface you

15 14:31:31 mentioned in your prior answer?

16 14:31:38 A. Yes, I -- I don't recall if there was only

17 14:31:41 one administrative -- sorry. There was one

18 14:31:45 administrative interface. There may have been

19 14:31:48 multiple log-ins for it.

20 14:31:50 Q. And when you were getting up early in the

21 14:31:53 morning, 4:00 a.m., whatever it was, were you coming

22 14:31:58 in to the office, or were you logging in from home?

23 14:32:01 A. We were logging in from home.

24 14:32:06 Q. Could you describe -- describe how the

25 14:32:14 porn patrol process worked?

1 SCOTT ROESCH

2 14:32:21 A. Yes. At predefined times, generally late

3 14:32:29 in the evening and early in the morning, the person

4 14:32:34 on duty would look at the thumbnails and metadata

5 14:32:40 associated with content that had been published on

6 14:32:43 the website after the last time somebody had been on

7 14:32:48 duty, and would look at problematic content. And if

8 14:32:57 there was a thumbnail or a text that suggested the

9 14:33:01 content may be problematic, the person on duty would

10 14:33:05 watch it and take further action as necessary.

11 14:33:17 Q. What would make a thumbnail or text

12 14:33:26 problematic?

13 14:33:26 A. Well, within the context of -- of --

14 14:33:28 keeping on the porn patrol theme, a thumbnail that

15 14:33:33 included nudity would -- would be problematic.

16 14:33:38 Q. Was the porn patrol only looking for

17 14:33:42 pornography?

18 14:33:43 A. No.

19 14:33:43 Q. What else were you looking for?

20 14:33:45 A. We were looking for content that was out

21 14:33:49 of step with our terms of service in any way.

22 14:33:54 Q. And what other type of content beyond

23 14:33:57 pornography did you consider to be out of step with

24 14:34:00 your terms of service?

25 14:34:02 A. The content that depicted illegal acts.

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SCOTT ROESCH

14:34:06 For example, I think it was -- I think that was
14:34:09 mentioned in the terms of service. And content that
14:34:14 was infringing, and probably more. Big paragraph in
14:34:19 there.

14:34:20 Q. And by "infringing," do you mean
14:34:21 infringing copyright?

14:34:23 A. Yes.

14:34:26 Q. Did you find it fairly easy to make
14:34:29 determinations about which clips should be rejected
14:34:32 for violating pornography guidelines?

14:34:37 MR. WILKENS: Objection to the form.

14:34:43 THE WITNESS: Generally, it was -- it was
14:34:44 fairly easy to figure out what needed -- you know,
14:34:48 what should be disqualified on pornographic grounds.

14:34:51 BY MR. RUBIN:

14:34:52 Q. What made that so easy?

14:34:55 MR. WILKENS: Objection to the form.

14:34:59 THE WITNESS: You know, there's a famous
14:35:00 line, "You know it when you see it."

14:35:02 BY MR. RUBIN:

14:35:02 Q. Uh-huh. Indeed there is.

14:35:07 A. And gen- -- I should also -- generally,
14:35:11 there -- I believe the policy was, if the -- if the
14:35:14 image or clip contained nudity, we would ban that.

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SCOTT ROESCH

14:35:20 Q. So you had all of the information at your
14:35:22 fingertips upon viewing the clip, or the fingernail
14:35:28 of the clip, to make the determination of whether it
14:35:31 should be approved or not?

14:35:32 MR. WILKENS: Objection to the form.

14:35:34 THE WITNESS: Did you mean we had -- did
14:35:36 we have the functionality to execute that, or --

14:35:39 BY MR. RUBIN:

14:35:40 Q. No, I mean, if the policy is no nudity,
14:35:44 you can tell simply by looking at the image whether
14:35:48 or not it contains nudity, and therefore determine
14:35:52 whether or not it should be approved or not; right?

14:35:54 A. Right.

14:35:55 Q. Did you have the functionality to approve
14:35:57 it or reject it right there, at your fingertips --
14:35:59 tips as well?

14:36:01 A. Yeah, I think we did.

14:36:02 Q. And that was through this administrative
14:36:04 interface you've referred to; right?

14:36:06 A. Yes.

14:36:08 Q. Did you find it just as easy to make
14:36:11 determinations about which clips should be rejected
14:36:15 or approved for out -- for being infringing on
14:36:20 copyright?

1 SCOTT ROESCH

2 14:36:21 MR. WILKENS: Objection to the form.

3 14:36:25 THE WITNESS: No.

4 14:36:25 BY MR. RUBIN:

5 14:36:26 Q. Why not?

6 14:36:37 A. Because we didn't always have access to

7 14:36:44 information about the uploader or the rights that

8 14:36:49 uploader might hold to the content.

9 14:36:55 BY MR. RUBIN:

10 14:36:55 Q. In the context of monitoring the content,

11 14:37:01 your role in porn patrol, did the length of a clip

12 14:37:06 ever play a role in whether or not you approved or

13 14:37:11 rejected it?

14 14:37:21 A. I'm not sure.

15 14:37:31 Q. Do you know if the materials that you were

16 14:37:36 reviewing were published on the AddictingClips

17 14:37:41 website and viewable to the public for any amount of

18 14:37:46 time prior to being approved or rejected?

19 14:37:49 A. At which time period?

20 14:37:51 Q. At any time period.

21 14:37:56 A. I'm sorry. Could you repeat the question?

22 14:37:59 Q. Sure. And I'll step back so we can get

23 14:38:02 some context.

24 14:38:03 There was a period of time when the

25 14:38:05 service was referred to as AddictingClips -- I think

1 SCOTT ROESCH

2 14:38:08 we've talked about it today as Version 2 -- when

3 14:38:10 users of the service could upload clips and they

4 14:38:14 were immediately published. There came a time when

5 14:38:20 those clips were reviewed.

6 14:38:26 I'm asking you whether there was ever a

7 14:38:29 time when that review period occurred after they

8 14:38:32 went live on the site, as opposed to occurring

9 14:38:35 before they went live on the site, such that you, as

10 14:38:40 a member of the porn patrol, for example, might have

11 14:38:43 ultimately determined that a clip should come down,

12 14:38:47 say for copyright infringement, but it would have

13 14:38:51 been a clip that actually had been live for some

14 14:38:55 period of time before you were able to make that

15 14:38:58 determination.

16 14:38:59 A. I understand.

17 14:39:00 Q. Yes. How long a period of time was that

18 14:39:02 the work flow?

19 14:39:09 A. Well, if the AtomUploads site went live in

20 14:39:15 May, and included moderation before the clips were

21 14:39:21 published, I believe we started moder- -- I believe

22 14:39:23 we started reviewing clips after they were published

23 14:39:26 possibly in late '06 or early '07. So that's the

24 14:39:31 general time frame.

25 14:40:32 MR. RUBIN: I'd like to introduce Roesch

1 SCOTT ROESCH

2 14:40:35 27.

3 14:40:36 (Roesch Deposition Exhibit Number 27 was

4 14:40:36 marked for identification.)

5 14:40:49 BY MR. RUBIN:

6 14:41:03 Q. Mr. Roesch, this is a document that Viacom

7 14:41:05 produced in this litigation. It's an e-mail string

8 14:41:07 from January 9th, 2007, in which you participated,

9 14:41:12 bears Bates number VIA 01959682 to -83.

10 14:41:21 Do you recognize this e-mail?

11 14:41:43 A. I recognize it.

12 14:41:48 Q. Do you see in the e-mail, last-in-time

13 14:41:51 e-mail, that you sent, the second paragraph:

14 14:41:57 "Important point"? Do you see that?

15 14:42:05 A. I do see that.

16 14:42:06 Q. Could you read that paragraph out loud,

17 14:42:08 please?

18 14:42:09 A. (Reading:)

19 14:42:12 "Important point -- if you find

20 14:42:15 problematic material, go ahead and remove

21 14:42:18 it from the site before sending Jesse the

22 14:42:20 notification. (This is different than the

23 14:42:22 past process, but we need to remove stuff

24 14:42:25 right away after seeing it.)"

25 14:42:27 Q. What was the "past process" being referred

1 SCOTT ROESCH

2 14:42:30 to in that e-mail?

3 14:42:34 A. I believe the process was to send -- was

4 14:42:40 to escalate the content question or issue to Jesse,

5 14:42:46 and have -- and -- and -- who was a member of the

6 14:42:54 legal team, and allow the legal team to take further

7 14:42:58 action.

8 14:42:58 Q. And the new process was to remove it right

9 14:43:04 away?

10 14:43:04 A. The new -- the complete new process was to

11 14:43:06 remove it from the site right away, and send Jesse

12 14:43:11 the notification.

13 14:43:12 Q. Do you know what the volume, roughly, of

14 14:43:14 uploads to the AddictingClips service was around

15 14:43:17 this time?

16 14:43:20 A. I -- I have a general recollection that it

17 14:43:22 may have been in the 50-to-100 uploads per day

18 14:43:26 range.

19 14:43:34 Q. And if you look at the earlier e-mail from

20 14:43:36 Carla Gaytan, is that a fairly typical

21 14:43:43 representation of work distribution for the -- for

22 14:43:48 monitoring the service?

23 14:43:53 A. Typical of -- of what?

24 14:43:55 Q. Of this time period for reviewing user

25 14:44:01 submissions.

1 SCOTT ROESCH

2 14:44:02 A. I don't recall, be- -- beyond just reading

3 14:44:05 this. I don't have any reason to doubt it.

4 14:44:20 MR. RUBIN: I'd like to introduce Roesch

5 14:44:22 28.

6 14:44:23 (Roesch Deposition Exhibit Number 28 was

7 14:44:23 marked for identification.)

8 14:44:31 THE WITNESS: Thank you.

9 14:44:33 BY MR. RUBIN:

10 14:44:49 Q. Mr. Roesch, this is a document that Viacom

11 14:44:51 produced from your files titled "Challenge." It

12 14:44:54 bears Bates number VIA 00155715 to 75- -- -716,

13 14:44:56 rather.

14 14:45:05 Do you recognize this document?

15 14:45:23 A. I don't recognize the document.

16 14:45:32 Q. If you can look at Arabic 2, "Short Term

17 14:45:38 Solution. Current solution."

18 14:45:47 MR. WILKENS: If we could just -- if we

19 14:45:49 could just go off the record for a second. I want

20 14:45:52 to check whether this document was drafted by a

21 14:45:55 lawyer.

22 14:46:00 MR. RUBIN: Okay. Let's go off the

23 14:46:02 record.

24 14:46:04 THE VIDEOGRAPHER: We are now going off

25 14:46:05 the record. The time is 2:46 p.m.

1 SCOTT ROESCH

2 14:46:10 (Short break.)

3 14:48:52 THE VIDEOGRAPHER: We are now back on the

4 14:48:53 record. The time is 2:49 p.m.

5 14:48:58 BY MR. RUBIN:

6 14:49:00 Q. Can I turn your attention back to Exhibit

7 14:49:02 28, please, Mr. Roesch?

8 14:49:04 A. Yes.

9 14:49:06 Q. Arabic 2.a.2. This is describing the

10 14:49:11 "Current solution." It's the one we were just

11 14:49:14 discussing. A con was that:

12 14:49:18 "It does not review clips before they were

13 14:49:21 posted, does not provide for 24-hour

14 14:49:24 monitoring, and is not very scalable."

15 14:49:27 Do you agree with that assessment?

16 14:49:29 A. Can you refresh my memory on the date of

17 14:49:32 this document?

18 14:49:49 MR. WILKENS: It's not dated -- it isn't

19 14:49:50 -- it's not dated, so I guess the question is

20 14:49:52 whether you're aware of a metadata date.

21 14:50:00 MR. RUBIN: I believe it -- yeah, I do

22 14:50:02 have it. January 20th, 2007.

23 14:50:04 THE WITNESS: Okay.

24 14:50:04 BY MR. RUBIN:

25 14:50:05 Q. So it is dated 11 days after the e-mail in

1 SCOTT ROESCH

2 14:50:11 Exhibit 27.

3 14:50:14 MR. WILKENS: We'll accept your

4 14:50:15 representation about what the metadata says.

5 14:50:18 MR. RUBIN: Sure. I'm -- I'm basing it on

6 14:50:19 information that you provided us.

7 14:50:21 THE WITNESS: Okay. I'm -- so what was

8 14:50:23 the question again?

9 14:50:24 BY MR. RUBIN:

10 14:50:24 Q. The question was whether you agree that

11 14:50:26 that was a con of the current solution.

12 14:50:33 A. Well, there are three cons listed here.

13 14:50:39 Q. I'm looking at -- let's just make sure

14 14:50:41 we're at the same place. 1 -- 1 is "Long term

15 14:50:44 solution"?

16 14:50:44 A. Yes.

17 14:50:44 Q. 2 is "Short Term Solution," and "a,"

18 14:50:48 "Current solution"?

19 14:50:49 A. Yeah.

20 14:50:49 Q. And then I'm looking at the little "2" of

21 14:50:51 that --

22 14:50:53 A. Are you --

23 14:50:53 Q. -- and I'm asking whether or not you

24 14:50:55 agree, at this particular point, is a con, it would

25 14:50:58 be -- or these three subpoints in this con?

1 SCOTT ROESCH

2 14:51:01 MR. WILKENS: He's trying to answer that

3 14:51:02 question.

4 14:51:03 MR. RUBIN: Great.

5 14:51:07 THE WITNESS: Well, I'll -- I'll -- I'll

6 14:51:09 take them in reverse order. I agree that it was not

7 14:51:12 very scalable. I agree that it did not provide for

8 14:51:16 24-hour monitoring. And I agree that it didn't --

9 14:51:24 the current practice didn't allow us to review clips

10 14:51:26 before they were posted, which was, at the time, our

11 14:51:30 objective. I -- I agree.

12 14:51:33 BY MR. RUBIN:

13 14:51:34 Q. Did you personally view the fact that

14 14:51:37 clips were not being reviewed before they were

15 14:51:40 posted as a con?

16 14:51:56 A. Yes.

17 14:51:57 Q. Why?

18 14:52:00 A. Because we had a business objective to

19 14:52:02 review clips, and this solution didn't meet it, so I

20 14:52:07 saw that as a con.

21 14:52:08 Q. It was a con in the context of meeting a

22 14:52:10 business objective?

23 14:52:11 A. Yes.

24 14:52:15 Q. And who set that business objective?

25 14:52:24 A. The legal -- legal team, I believe, set

1 SCOTT ROESCH

2 14:52:25 that objective -- or, I -- I'm sorry. I shouldn't

3 14:52:29 say -- MTV Networks set that objective, and I

4 14:52:33 believe it included people from the standards and

5 14:52:39 practices department and the legal team.

6 14:52:42 Q. Who is in -- who in particular from the

7 14:52:44 standards and practices team?

8 14:52:46 A. I don't recall.

9 14:52:48 Q. Do you know who was a member of that team?

10 14:52:50 A. No, not offhand.

11 14:53:20 MR. RUBIN: I'd like to introduce Roesch

12 14:53:22 Exhibit 29.

13 14:53:23 (Roesch Deposition Exhibit Number 29 was

14 14:53:23 marked for identification.)

15 14:53:39 BY MR. RUBIN:

16 14:53:40 Q. Mr. Roesch, Exhibit 29 is an e-mail that

17 14:53:49 you sent to Jesse Hollister and Brendan Jackson on

18 14:53:55 February 23rd, 2007. Viacom produced it in this

19 14:53:59 litigation, bearing Bates number VIA 00251028.

20 14:54:04 "Subject: Dawn patrol."

21 14:54:10 Do you recall this e-mail?

22 14:54:14 A. Yeah, I don't recall it.

23 14:54:16 Q. Do you recall generally sending e-mails

24 14:54:19 summarizing your early morning monitoring

25 14:54:22 activities?

1 SCOTT ROESCH

2 15:28:37 Flux moderation team is responsible for moderation?

3 15:28:42 A. I know some of them. I'm not sure I know

4 15:28:45 all of them.

5 15:28:46 Q. Could you list the ones that you are aware

6 15:28:48 of?

7 15:28:49 A. Yes. Atom.com, certain -- certain

8 15:28:55 MTV-related sites, and if -- if I named any more I'd

9 15:29:09 be speculating.

10 15:29:10 Q. Do you know --

11 15:29:11 A. There are others.

12 15:29:12 Q. Do you know if, today, there are any

13 15:29:16 Viacom-owned sites that allow for the upload of

14 15:29:20 user-generated content, that is published

15 15:29:23 automatically, without review at all, prior to

16 15:29:25 publication?

17 15:29:30 A. I don't believe so. But I -- I -- I can't

18 15:29:34 speak for the entire company.

19 15:29:49 Q. We talked earlier a little bit about

20 15:29:52 Audible Magic. When did you first hear of Audible

21 15:29:56 Magic?

22 15:30:06 A. Must have been sometime in 2006 or 2007.

23 15:30:09 Q. How did you hear about them?

24 15:30:27 A. I don't recall. From someone within the

25 15:30:32 company.

1 SCOTT ROESCH

2 15:30:36 Q. In what context did you hear about them?

3 15:30:40 A. I believe I heard the company was

4 15:30:44 considering using Audible Magic.

5 15:30:49 Q. Did you consider using Audible Magic in

6 15:30:51 connection with the UGC deployment for

7 15:30:57 AddictingClips, that is, AddictingClips Version 2?

8 15:31:11 A. I think we may have.

9 15:31:12 Q. Why didn't you?

10 15:31:13 MR. WILKENS: Objection to the form.

11 15:31:15 BY MR. RUBIN:

12 15:31:15 Q. I'll restate it. Why didn't Atom or

13 15:31:21 AddictingClips utilize Audible Magic in connection

14 15:31:27 with the user-generated content site it launched,

15 15:31:30 the -- what we've been referring to today as Version

16 15:31:31 2 of Addicting Clips, the one that was run as a

17 15:31:33 white label solution by Reality Digital?

18 15:31:39 A. Well, I'm not sure that, at the time when

19 15:31:42 we launched it, if we knew about it. There were a

20 15:31:50 lot of features we thought were interesting. We

21 15:31:53 just didn't have the time or resources to implement.

22 15:31:56 So some combination of those factors is -- explains

23 15:32:01 why it wasn't there at -- at the initial launch.

24 15:32:04 BY MR. RUBIN:

25 15:32:04 Q. Do you know if you investigated the

1 SCOTT ROESCH

2 15:32:07 options available for content filtering prior to the

3 15:32:10 launch of Version 2 of the AddictingClips site?

4 15:32:17 MR. WILKENS: Objection to the form.

5 15:32:19 THE WITNESS: I'd be -- I'd be happy to

6 15:32:20 look at the project document, if you would like me

7 15:32:25 to, but without that, I don't recall.

8 15:32:27 BY MR. RUBIN:

9 15:32:27 Q. You don't recall whether you did or not,

10 15:32:28 as you sit here today?

11 15:32:30 A. No.

12 15:32:31 Q. The RFP that is Exhibit 16 makes no

13 15:32:52 reference to any automated filtering service, makes

14 15:32:57 no reference to Audible Magic at all.

15 15:33:00 MR. WILKENS: Objection. Are you asking

16 15:33:01 the witness a question or testifying?

17 15:33:03 MR. RUBIN: I'm going to -- I'm about to

18 15:33:04 ask him a question, yes. Don't -- please don't

19 15:33:06 interrupt, Scott.

20 15:33:07 BY MR. RUBIN:

21 15:33:07 Q. Was it a conscious decision by Atom not to

22 15:33:13 seek to implement content filtering on the UGC

23 15:33:19 version -- site that it was deploying.

24 15:33:22 MR. WILKENS: Objection, assumes facts. I

25 15:33:24 move to strike the testimony that Mr. Rubin

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SCOTT ROESCH

15:33:29 attempted to give.

15:33:30 If you understand the question, you can

15:33:31 answer.

15:33:35 THE WITNESS: Are you -- are you referring

15:33:35 to November 2005, the period when the RFP was

15:33:39 issued?

15:33:39 BY MR. RUBIN:

15:33:39 Q. I'm referring to Exhibit 16, which will

15:33:42 speak for itself, Scott. I'm not testifying.

15:33:46 It does not contain anything about Audible

15:33:48 Magic. It does not contain anything about UCB

15:33:51 filtering. I'm asking whether it was a conscious

15:33:53 omission or whether you simply weren't aware of it

15:33:57 at the time?

15:34:01 MR. WILKENS: Same objection.

15:34:02 THE WITNESS: So Exhibit 16 is from

15:34:04 November 2005, and I don't think we knew about it at

15:34:11 the time, but I'm not 100 percent sure.

15:34:14 BY MR. RUBIN:

15:34:14 Q. And -- and do you recall whether any

15:34:16 investigation of the marketplace was undertaken by

15:34:19 anyone at Atom into the availability of filtering

15:34:24 technologies that could be used in connection with

15:34:26 the -- with the launch of a UGC service?

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SCOTT ROESCH

15:34:31 MR. WILKENS: Objection. Asked and
15:34:32 answered.

15:34:33 THE WITNESS: I don't know if that was
15:34:34 done.

15:34:34 BY MR. RUBIN:

15:34:34 Q. Did you do an investigation of the market
15:34:36 place?

15:34:36 A. The marketplace for filtering technologies
15:34:40 at the time we were preparing that service?

15:34:43 Q. Correct.

15:34:43 A. I did not.

15:34:44 Q. Do you know if Mika Salmi did?

15:34:47 A. I don't know if Mika did.

15:34:49 Q. Did you -- do you recall any discussions
15:34:51 with Mr. Salmi about that topic?

15:35:10 A. I don't recall it. It's possible that --
15:35:13 that we discussed it.

15:35:15 Q. Did Joel Sanders conduct any investigation
15:35:18 of that issue?

15:35:24 A. Joel or Brendan may have investigated it
15:35:26 at some point. I believe it was at some point after
15:35:31 that RFP period.

15:35:33 Q. At the time of the launch, in that
15:35:35 process, were they directed to investigate it,

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SCOTT ROESCH

15:35:39 either Mr. Sanders or Mr. Jackson?

15:35:41 A. I -- I don't -- I don't recall the timing,
15:35:44 and I -- obviously, I clearly don't recall if it was
15:35:48 actually done. There was, as time went on, some
15:35:51 discussion of these technologies, and we ultimately
15:35:54 did implement Audible, but the timing of when and
15:35:58 how we investigated that, I -- I don't know.

15:36:01 Q. But you did not have Audible Magic or any
15:36:05 other content filtering technology implemented by
15:36:09 the service at the time it was launched; isn't that
15:36:13 right?

15:36:13 A. That's right.

15:36:15 Q. Was the omission of that feature, or
15:36:20 availability on the service, designed to foster
15:36:24 infringement?

15:36:27 MR. WILKENS: Objection to the form.

15:36:32 THE WITNESS: No.

15:36:32 BY MR. RUBIN:

15:36:34 Q. You didn't purposely omit this content --
15:36:40 the Audible Magic content filtering, or any other,
15:36:45 in order to foster users uploading infringing
15:36:48 content, did you?

15:36:50 MR. WILKENS: Objection to the form.

15:36:52 THE WITNESS: No, we didn't do that.

1 SCOTT ROESCH

2 15:37:01 BY MR. RUBIN:

3 15:37:01 Q. And do you recall the specific time frame

4 15:37:04 when Audible Magic first began to consider deploying

5 15:37:11 Audible Magic?

6 15:37:12 MR. WILKENS: Object -- objection. I

7 15:37:13 think you might want to rephrase that question, if

8 15:37:16 you read the --

9 15:37:17 MR. RUBIN: Thank you.

10 15:37:17 BY MR. RUBIN:

11 15:37:18 Q. Do you recall the specific time frame when

12 15:37:22 AddictingClips began to consider deploying Audible

13 15:37:25 Magic for its service?

14 15:37:27 MR. WILKENS: Objection. Asked and

15 15:37:28 answered.

16 15:37:33 THE WITNESS: I -- I don't recall the

17 15:37:35 specific timing of that, no.

18 15:37:38 MR. RUBIN: I'd like to introduce Roesch

19 15:37:40 Exhibit 35.

20 15:37:40 (Roesch Deposition Exhibit Number 35 was

21 15:37:40 marked for identification.)

22 15:37:54 THE WITNESS: Thank you.

23 15:37:55 BY MR. RUBIN:

24 15:37:55 Q. Mr. Roesch, Exhibit 35 is a document

25 15:37:57 produced in this litigation by Viacom. It's an

1 SCOTT ROESCH

2 16:57:59 July 17th, 2007. Pardon me.

3 16:58:06 Do you recall this e-mail?

4 16:58:12 A. Yes.

5 16:58:14 Q. What was this e-mail about?

6 16:58:20 A. It relates to playback problems with video

7 16:58:25 on Atom Uploads.

8 16:58:28 Q. And does this e-mail look accurate to you?

9 16:58:32 A. "Accurate" in what sense?

10 16:58:38 Q. Accurate in the sense that the information

11 16:58:40 contained on it is correct, that you wrote it.

12 16:58:51 A. I -- yeah, I -- I wrote the parts of it

13 16:58:56 that's attributed to me. Yeah.

14 16:58:58 Q. Do you see the line where you say:

15 16:59:00 "We are in the process of upgrading the

16 16:59:02 streaming setup to Limelight and getting

17 16:59:04 off Reality Digital's internal setup"?

18 16:59:06 A. I do, yeah.

19 16:59:07 Q. Did that process of upgrading actually

20 16:59:11 occur?

21 16:59:12 A. Yes, it did.

22 16:59:14 Q. So are you no longer on Reality Digital's

23 16:59:18 internal setup?

24 16:59:20 A. We're no longer on any of Reality

25 16:59:22 Digital's systems at this point.

1 SCOTT ROESCH

2 16:59:24 Q. Is that what this is referring to?

3 16:59:26 A. No.

4 16:59:27 Q. What is this referring to?

5 16:59:31 A. My comment at 11:28:08?

6 16:59:35 Q. Indeed.

7 16:59:36 A. It's referring to changing the way our

8 16:59:42 streaming video content is delivered from Reality

9 16:59:46 Digital's internal setup to Limelight.

10 16:59:52 Q. What is Limelight?

11 16:59:53 A. Limelight is a third-party hosting

12 16:59:56 handler, streaming company.

13 16:59:59 Q. And you utilize them now, or have utilized

14 17:00:04 them in the past, to stream video content?

15 17:00:07 A. We have used them in the past. We may be

16 17:00:13 using them now. I'm not sure.

17 17:00:19 Q. When did Atom stop utilizing the white

18 17:00:24 label solution provided by Reality Digital for its

19 17:00:28 UGC service?

20 17:00:32 A. June 2008.

21 17:00:33 Q. Why did Atom stop using the Reality

22 17:00:38 Digital service?

23 17:00:41 A. We began using technology and systems

24 17:00:48 developed or controlled internally at MTVN.

25 17:00:52 Q. Were you involved in any way in the

1 SCOTT ROESCH

2 17:00:54 transition from Reality Digital internal to MTVN

3 17:01:02 systems?

4 17:01:03 A. Yes.

5 17:01:03 Q. Do you know if the information relating to

6 17:01:06 the services that Reality Digital provided has been

7 17:01:10 retained?

8 17:01:16 A. What information are you referring to?

9 17:01:19 Q. The information that was in the possession

10 17:01:21 of Reality Digital regarding the operation of their

11 17:01:24 service.

12 17:01:25 A. So --

13 17:01:26 Q. Pardon me. The information that was in

14 17:01:27 the possession of Reality Digital regarding the

15 17:01:28 services they were providing in connection with the

16 17:01:30 Atom, and previously the AddictingClips, service.

17 17:01:36 MR. WILKENS: Objection to the form.

18 17:01:42 THE WITNESS: Can you give me an example

19 17:01:44 of a specific -- of a specific type of information

20 17:01:45 you're interested in?

21 17:01:47 BY MR. RUBIN:

22 17:01:48 Q. Information relating to the design of

23 17:01:51 the -- the design or technical implementation of the

24 17:01:57 service that they provided for Atom.

25 17:02:01 A. We have some information in that -- in