

**SCHAPIRO DECLARATION  
EXHIBITS CONTINUED**

# **Schapiro Exhibit 11**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---o0o---

THE FOOTBALL ASSOCIATION )  
PREMIER LEAGUE LIMITED AND )  
BOURNE CO., ET AL., ON BEHALF )  
OF THEMSELVES AND ALL OTHERS )  
SIMILARLY SITUATED,, )

PLAINTIFFS, )

vs. )

07 CIV. 3582 (LLS)

YOUTUBE, INC., YOUTUBE, LLC )  
AND GOOGLE, INC.,, )

DEFENDANTS. )

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

PLAINTIFFS, )

vs. )

07 CIV. 2103 (LLS)

YOUTUBE, INC., YOUTUBE, LLC )  
AND GOOGLE, INC.,, )

DEFENDANTS. )

\_\_\_\_\_  
VIDEOTAPED DEPOSITION OF COURTNEY NIEMAN  
WEDNESDAY, DECEMBER 16, 2009  
PALO ALTO, CALIFORNIA

Job No. 18293

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

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---o0o---

THE FOOTBALL ASSOCIATION )  
PREMIER LEAGUE LIMITED AND )  
BOURNE CO., ET AL., ON BEHALF )  
OF THEMSELVES AND ALL OTHERS )  
SIMILARLY SITUATED,, )

PLAINTIFFS, )  
vs. )

07 CIV. 3582 (LLS)

YOUTUBE, INC., YOUTUBE, LLC )  
AND GOOGLE, INC.,, )

DEFENDANTS. )

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

PLAINTIFFS, )  
vs. )

07 CIV. 2103 (LLS)

YOUTUBE, INC., YOUTUBE, LLC )  
AND GOOGLE, INC.,, )

DEFENDANTS. )

VIDEOTAPED DEPOSITION OF COURTNEY NEIMAN,  
TAKEN ON BEHALF OF THE DEFENDANTS, AT 9:28 A.M.,  
WEDNESDAY, DECEMBER 16, 2009 AT 650 PAGE MILL ROAD,  
PALO ALTO, CALIFORNIA BEFORE MARY JACKSON, CSR NO.  
8688, PURSUANT TO NOTICE.

## A P P E A R A N C E S

1  
2 For the Plaintiff Viacom:

3 JENNER & BLOCK, LLP

4 1099 New York Avenue, NW, Suite 900

5 Washington, D.C. 20001

6 BY: JAMES COX, ESQ.

(202) 637-6361

7 jamescox@jenner.com

8 For the Plaintiffs The Football Association Premier  
9 League Limited:

10 PROSKAUER ROSE, LLP

2049 Century Park E, Suite 3200

11 Los Angeles, California 90067

12 BY: GIL PELES, ESQ.

(310) 284-5611

gpeles@proskauer.com

13  
14 For the Non-Party BayTSP:

15 KENDALL, BRILL & KLIEGER, LLP

10100 Santa Monica Boulevard, Suite 1725

16 Los Angeles, California 90067

17 BY: PHILIP KELLY, III, ESQ.

(310) 272-7908

pkelly@kbbkfirm.com

18  
19 For the Defendants Google and YouTube:

20 WILSON, SONSINI, GOODRICH & ROSATI

650 Page Mill Road

21 Palo Alto, California 94304

BY: DAVID KRAMER, ESQ.

BART VOLKMER, ESQ.

22 (650) 493-9300

dkramer@wsgr.com

23 bvolkmer@wsgr.com

24 ALSO PRESENT: OSAMA HUSSAIN, BayTSP Counsel

25 STUART PETTIGREW, Videographer

1 identification.)

2 12:08 MR. KRAMER: Q. Do you recognize

3 Exhibit 15?

4 12:08 A. Yes, I do.

5 12:08 Q. What is it?

6 12:08 A. It's a -- hang on. I'm getting to the

7 page where there's actually printing. Holy smokes.

8 We cut down a forest to do this one.

9 12:08 Q. Mm-hmm.

10 12:08 A. I don't recall this format of this report.

11 However, I do recall the report in general. It was

12 part of the weekly process of informing our clients

13 what we did based on their instructions.

14 12:08 Q. In Exhibit 15, there is an e-mail exchange

15 on the cover page between Bay and Viacom

16 representatives including Ms. Hallie, Mr. Cahan,

17 you're included as a cc. In the first in time

18 message, Ms. Arizala says, "Please review the

19 enclosed YouTube, Google Video, MySpace and Yahoo!

20 Video approved notice sent rule."

21 12:09 A. Mm-hmm.

22 12:09 Q. Do you know what that's a reference to?

23 12:09 A. It would be, here's the report for the

24 actions you told us to take.

25 12:09 Q. But I'm specifically asking about the

1 "approved notice sent rule," not the report itself.

2 12:09 A. I don't know what -- what Deana -- why she  
3 chose that phrase. But in my dealings with Deana as  
4 a manager, that's -- I would ask her what she meant  
5 by that.

6 12:09 Q. The last four pages of Exhibit 15 --

7 12:09 A. Yeah.

8 12:09 Q. -- are one-page charts entitled MTV Agent  
9 Asset Rule List for each of the four services  
10 Ms. Arizala mentions in her message: YouTube,  
11 MySpace, Google Video, and Yahoo! And there is a  
12 list of shows in common among each of the four  
13 lists. Do you see that?

14 12:10 A. Yes.

15 12:10 Q. Do you recognize this as the rules that  
16 BayTSP was to follow with respect to each of those  
17 services at the time?

18 12:10 A. I recall that this table was the  
19 representation of what client services, Deana,  
20 myself, understood as to how BayTSP was to enforce  
21 these titles.

22 12:10 Q. Got it. You were involved in helping to  
23 prepare these asset agent rule lists?

24 12:10 A. Inasmuch as the manager of client services  
25 e-mails, phone calls, yeah, I'm sure it came up.

1 12:11 Q. Okay.

2 12:11 A. Please do this; please do that.

3 12:11 Q. If you take a look at the -- let me see if

4 I can do it this way. Can you explain to me what

5 these rules were looking at, these charts as of

6 November 6th, 2006?

7 12:11 A. Yes. We will take, for example, column

8 one would be the content order. So Spice TV, Comedy

9 Central, Viacom in general, Country Music

10 Television, blah, blah, blah. The second one would

11 be the specific network of that content holder that

12 those titles belong to. And then notices were to be

13 sent on the complete entire show versus a clip, some

14 subset, and, with God as my witness, I don't

15 remember what -- other than looking at it here, that

16 the rule would be to -- would be used to define what

17 is a clip.

18 12:12 Q. On which action should be taken, right?

19 12:12 A. Yeah. So full was fairly straightforward.

20 It's the whole episode. Whereas -- whether it had

21 commercials or not was irrelevant. It was, did you

22 have the whole show? Clip would have been anything

23 less than the whole show. So two and a half would

24 be in minutes as opposed to seconds or days or

25 greater.



1 12:12 Q. So these charts reflect that at this time,  
2 the full episode rule was in effect at YouTube,  
3 right?

4 12:12 MR. COX: Objection. Document speaks for  
5 itself.

6 12:12 MS. COLEMAN-BISHOP: Mischaracterizes --  
7 objection mischaracterizes the document.

8 12:13 THE WITNESS: Okay. I'm lost.

9 12:13 MR. KRAMER: Q. Sure.

10 12:13 A. Because I don't -- as I read this, these  
11 rules for engagement were for -- "please review the  
12 enclosed YouTube, Google Video, MySpace, Yahoo!  
13 Video."

14 12:13 Q. We have one page for each of the four  
15 services that you just mentioned, and on each page  
16 there are the rules that you just described, but  
17 they differ.

18 12:13 A. Oh, okay.

19 12:13 Q. So for the page entitled YouTube Approved  
20 Notice Sent, which is the first of the four  
21 charts --

22 12:14 A. Yes. There is full rule -- full assets is  
23 the rule for the YouTube page; full assets is for  
24 the Google page; full assets and some clips for  
25 MySpace; and full assets and some clips for Yahoo!

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

That's what that tells me.

12:14 Q. And my question is, do you have any insight into why the rules for YouTube and Google Video were different than the rules for MySpace and Yahoo! at the time?

12:14 A. No.

12:14 MS. COLEMAN-BISHOP: Objection. Calls for speculation.

12:14 THE WITNESS: No, I do not.

12:14 MR. KRAMER: Q. Were you communicating Viacom's takedown rules to YouTube at the time?

12:14 A. No.

12:14 Q. Why not?

12:14 A. We didn't communicate our practices to anyone. To -- I mean inasmuch as I didn't tell YouTube or MySpace or AT&T or Canada Net, I didn't tell -- I and none of my staff would have communicated any rules. We just sent the DMCA notice.

12:15 Q. Were you under instructions not to reveal Viacom's takedown rules to YouTube?

12:15 A. If it's in the -- if it's in my NDA or work rules. I don't remember somebody giving me an explicit instruction. I don't recall somebody saying, don't tell, but --

1 12:15 Q. Do you think it would have helped YouTube  
2 follow Viacom's wishes with respect to having its  
3 content appear on YouTube --

4 12:15 MS. COLEMAN-BISHOP: Objection. Calls for  
5 speculation. No matter where you go with the  
6 question, it's going to call for speculation.

7 12:15 MR. KRAMER: Yeah, but you have to let me  
8 get the question so the record's clear, and then  
9 you can object. And if I think your objection --

10 12:16 MS. COLEMAN-BISHOP: Don't lecture me on  
11 how to defend a --

12 12:16 MR. KRAMER: No, Counsel, it's not just  
13 proper. It's just not proper. You have to let me  
14 get the question out so we can make the record, and  
15 then if you have an objection, you can make it. I  
16 can decide whether I want to restate the question or  
17 not. But if you object in the middle of the  
18 question, we don't even know whether your objection  
19 is going to be meritorious. So just wait until I  
20 get the question out. That's all. Just courtesy.  
21 Okay?

22 12:16 MR. KRAMER: Q. Do you think it would  
23 have helped YouTube follow Viacom's wishes with  
24 respect to having its content appear on YouTube if  
25 Viacom had communicated these kinds of rules to

1 putting them together and creating a new -- a new  
2 piece of art, a new whatever you want to call it,  
3 putting a new voice stream over a clip for humor  
4 sake. That's -- taking more than one piece of  
5 original work and reworking it to come up with  
6 something else.

7 1:11 And that's when I -- someone told me about  
8 Andy Warhol. I mean I knew of the images. I just  
9 didn't realize that was of consequence. He took  
10 something everybody knew, an icon, and did something  
11 to it and made it different. So Andy Warhol's  
12 pictures, in my mind, were a mash-up.

13 1:11 What defines a clip? I don't know that I  
14 ever got that answered. You know, let's go to the  
15 clip. You know, in sports, I don't know. So I  
16 don't know. It was -- it was struggling to  
17 understand the process.

18 1:11 Q. So the next question on the list is one  
19 about which I'd like to ask you. You asked  
20 Mr. Ishikawa, "Is setting any time limit arbitrary?"  
21 Sitting here today, do you believe that setting time  
22 limits for the clips that should be taken down  
23 versus the clips that should be left up was an  
24 arbitrary process?

25 1:12 MS. COLEMAN-BISHOP: Object to form.

1           1:12                   THE WITNESS: I don't have an opinion.

2           1:12                   MR. KRAMER: Q. Okay. How about back

3                               when you were a manager at BayTSP?

4           1:12                   A. Same answer. I didn't have an opinion.

5                               Did what I was told.

6           1:12                   MR. COX: Same objection.

7           1:12                   MR. KRAMER: Fair enough.

8           1:12                   MS. COLEMAN-BISHOP: Can I ask a quick

9                               question here?

10          1:12                   MR. KRAMER: Sure.

11          1:12                   MS. COLEMAN-BISHOP: Courtney, what

12                               exactly is a mash-up? What is your understanding of

13                               one?

14          1:12                   THE WITNESS: Two or more pieces of

15                               original work being put together to create a third.

16          1:12                   MS. COLEMAN-BISHOP: Okay.

17          1:13                   (Whereupon Exhibit No. 18 was marked for

18                               identification.)

19          1:13                   MR. KRAMER: Q. Okey doke. Exhibit 18

20                               is an e-mail exchange between BayTSP and MTVN

21                               representatives on which you were copied with the

22                               subject line, Video Takedown 11/14/2006. And

23                               contained within the e-mail exchange itself, there

24                               is a report entitled MTV Network's Video Takedown

25                               Update. That's at the bottom of the first page.

1 The title is on the bottom of the first page. Then  
2 the report starts on page 2.

3 1:14 A. Yes.

4 1:14 Q. Let me ask you if you've seen reports like  
5 this at BayTSP?

6 1:14 A. Yes.

7 1:14 Q. This is a report on the application of the  
8 Viacom takedown effort through BayTSP on that day,  
9 November 14th, 2006, right?

10 1:14 A. Yes.

11 1:14 Q. And in the chart at the top of page 2  
12 there are the four services that we looked at  
13 earlier: YouTube, MySpace, Yahoo! Video, and Google  
14 Video, right?

15 1:14 A. Yes.

16 1:14 Q. So am I reading the chart correctly in  
17 saying that it shows on that day BayTSP sent  
18 takedown notices for 22 episodes and 36 clips on  
19 YouTube?

20 1:14 A. Yes.

21 1:14 Q. Okay. In the next column it says, "Passed  
22 on." Do you know what that means?

23 1:15 A. Means we determined what we saw didn't  
24 fall within the rules that we had been given, too  
25 long, too short, it wasn't the clip.

1 1:15 Q. So on that day, Bay found and sent  
2 takedown notices to YouTube for 58 videos containing  
3 what it thought was Viacom content?

4 1:15 A. Yes.

5 1:15 Q. And on that day, it also found and left  
6 out or passed on 555 videos on the YouTube service,  
7 right?

8 1:15 A. Of the ones they reviewed, yes.

9 1:15 Q. So 555 clips that were passed on because  
10 they fell outside of Viacom's takedown rules, right?

11 1:15 MR. COX: Objection. Asked and answered.

12 1:15 THE WITNESS: Trying to make sure I  
13 understand. I believe that is correct.

14 1:16 MR. KRAMER: Q. And the reason that  
15 BayTSP left up on YouTube those 555 clips it found  
16 was because Viacom directed BayTSP to leave them up,  
17 right --

18 1:16 MR. COX: Objection. Calls for  
19 speculation.

20 1:16 MR. KRAMER: Q. -- as part of its  
21 instructions?

22 1:16 A. No, that would not be correct.

23 1:16 Q. Why is that not correct?

24 1:16 A. We were not given instructions, per se, of  
25 what to leave up.

1 1:16 Q. Fair enough. The converse of an  
2 instruction to take something down, however, is it  
3 implicitly to leave it up, right?

4 1:16 A. Yes.

5 1:16 Q. Okay. In the next table down in the  
6 document, there's a chart labeled P2P?

7 1:17 A. Yes.

8 1:17 Q. Can you explain what that shows?

9 1:17 A. Those were files that we found on those  
10 three P2P networks: Gnutella, eDonkey and  
11 BitTorrent.

12 1:17 Q. That you believed contained Viacom  
13 content?

14 1:17 A. Yes.

15 1:17 Q. And so on that day, BayTSP representatives  
16 identified 7,626 pieces of Viacom content on the  
17 BitTorrent service, correct?

18 1:17 A. That's what this report would suggest.

19 1:17 Q. So Bay had found a far greater volume of  
20 what it thought was Viacom content on P2P networks  
21 that day than it had found on YouTube, right?

22 1:17 MR. COX: Object to the form.

23 1:18 THE WITNESS: It would be an inaccurate  
24 comparison.

25 1:18 MR. KRAMER: Q. Hmm. Well, I suppose I



1 should ask you why that's an inaccurate comparison.

2 1:18 A. Why can't you make a Yugo go as fast as a  
3 drag race rail car?

4 1:18 Q. I take it you're a fan of car racing. I'm  
5 getting that sense.

6 1:18 A. It is not designed to do so. Why can't  
7 you find bags of oranges that have counts of upwards  
8 to 1,000 like you would if you bought a bag of  
9 peanuts? It's apples and oranges. You can't make  
10 that comparison.

11 1:18 The kind of things you can find on a P2P  
12 network have a broader base, a global base, than you  
13 would find on a particular video service regardless  
14 of service. So --

15 1:19 Q. Can you elaborate on that?

16 1:19 A. There's no relationship between the number  
17 we found or passed on a service -- on a single point  
18 of source, MySpace server, than we would find on the  
19 untold -- and I say that because I don't know -- the  
20 untold number of BitTorrent servers that are out  
21 there on the planet Earth. There's more  
22 possibilities to find things on BitTorrent than you  
23 would find on YouTube or MySpace or whatever just  
24 because of the sheer number of source points.

25 1:19 Q. Okay. Let's -- let me come it at slightly

1 differently. In the chart beneath the P2P chart  
2 there's a list by asset of Viacom content --

3 1:20 A. Mm-hmm.

4 1:20 Q. -- that rolls up into the 22 episodes, 36  
5 clips and 556 clips passed on for the day, right?

6 1:20 A. Yes.

7 1:20 Q. And so on that given day Viacom  
8 encountered 316 different pieces of content on the  
9 YouTube service that appeared to contain content  
10 from South Park, it took down one clip?

11 1:20 A. Yes.

12 1:20 Q. It took down one clip, and it passed on  
13 315, correct?

14 1:20 A. Yes.

15 1:20 Q. So I'm reading that correctly. The counts  
16 for the P2P services that appear in the chart above  
17 the asset-by-asset breakdown --

18 1:20 A. Mm-hmm.

19 1:20 Q. -- those counts were for the same list of  
20 assets that appear in the breakdown beneath it,  
21 right?

22 1:20 MR. COX: Object to form, lacks  
23 foundation.

24 1:21 THE WITNESS: I don't know in that -- the  
25 start of this, I don't know if the P2P chart refers

1 to the assets below or the asset above, the European  
2 Music Awards 2006 or to the asset list below. I  
3 don't remember.

4 1:21 MR. KRAMER: Q. Take a look, if you  
5 would, at the page that starts -- the page that ends  
6 with the Bates No. BayTSP 522. See that's the topic  
7 heading P2P Not Sent?

8 1:21 A. Excuse me. Yes.

9 1:21 Q. And there's a breakdown by asset which  
10 matches the same assets in the --

11 1:21 A. Okay.

12 1:21 Q. -- prior YouTube chart, right?

13 1:21 A. Yes. Okay.

14 1:21 Q. So the totals in the P2P chart for each of  
15 the three P2P services, Gnutella, eDonkey and  
16 BitTorrent, those correspond to the specific list of  
17 assets that BayTSP was charged with identifying for  
18 YouTube as well, correct?

19 1:22 A. Yes.

20 1:22 MR. COX: Object to the form.

21 1:22 MR. KRAMER: Q. So am I reading the  
22 chart correctly that on this day, November 14, 2006,  
23 with respect to P2P services, BayTSP identified some  
24 6500 pieces of content on P2P networks that it  
25 believed contained content from Viacom's show South

1 1:34 A. No.

2 1:34 Q. Why not?

3 1:34 A. There were no rules at the time for a time  
4 limitation -- when I first became aware of YouTube,  
5 MySpace, video sharing, videos were five minutes,  
6 videos were an hour, videos were two hours. There  
7 was no rule that said, okay, you can't put up just  
8 part of it. And there was nothing there -- from the  
9 videos that I watched, I don't recall ever seeing an  
10 entire movie, hundred and two minutes in its  
11 entirety. But I can think of a number of times,  
12 including now, where you can see whole content on  
13 YouTube.

14 1:35 I like watching the Glenn Beck show. It  
15 is approximately a 38-minute, sucking out  
16 commercials, and some people put it up in two parts.  
17 Some people put it up in six parts. Some people put  
18 it up in -- so the point is, nothing about the clip  
19 identifies its source.

20 1:35 Q. Okay. But couldn't you tell if it was a  
21 full episode of South Park, that it wasn't  
22 authorized to be there?

23 1:35 A. No.

24 1:35 Q. The whole thing was there. Doesn't that  
25 give it away?

1 1:35 MR. COX: Object to the form.

2 1:36 THE WITNESS: No.

3 1:36 MR. KRAMER: Q. Do you think it's likely  
4 that someone with authority to do it at Viacom was  
5 uploading full episodes of South Park to YouTube?

6 1:36 MS. COLEMAN-BISHOP: Objection. Asked and  
7 answered, argumentative. She's already said no.  
8 She's not able to identify whether or not any one of  
9 these full episodes had any authority to be posted  
10 or did not.

11 1:36 MR. KRAMER: Okay.

12 1:36 MS. COLEMAN-BISHOP: There's no way to  
13 tell from a full episode whether or not the person  
14 that uploaded it had authority. No matter how many  
15 times you ask the question, you're going to get the  
16 same answer. The answer's no.

17 1:36 THE WITNESS: I'm with her.

18 1:36 MR. KRAMER: Q. You agree with the  
19 sentiment your attorney just expressed?

20 1:36 A. Yeah. There is no connection between what  
21 you see in YouTube, the person who posted it, and  
22 the person who produced it. There is no  
23 identifiable link.

24 1:36 Q. Meaning there's no way to tell --

25 1:36 A. Correct.

1 1:36 Q. -- whether it's authorized?

2 1:36 A. Correct.

3 1:37 (Whereupon Exhibit No. 21 was marked for  
4 identification.)

5 1:37 MS. COLEMAN-BISHOP: Can we go off the  
6 record just one second?

7 1:37 MR. KRAMER: Sure. Off the record.

8 1:37 THE VIDEOGRAPHER: The time is 1:38. Off  
9 the record.

10 1:37 (Whereupon a recess was taken.)

11 1:37 THE VIDEOGRAPHER: Time is 1:38. On the  
12 record.

13 1:37 MR. KRAMER: Q. Okay.

14 1:37 A. Okay.

15 1:37 Q. Ms. Nieman, Exhibit 21 is a similar e-mail  
16 exchange you had with someone named Misty at YouTube  
17 the same day as Exhibit 20, right?

18 1:38 A. Yes.

19 1:38 Q. Your message starts with the same list of  
20 clips on YouTube and the same requests, "Please take  
21 this down immediately." Misty responds that she  
22 removed the videos but she, too, thought that the  
23 account might have been set up by Comedy Central.  
24 Do you see that?

25 1:38 MR. COX: Object to the characterization

1 of the document.

2 1:38 THE WITNESS: I don't know what Misty was  
3 thinking. As I read this, she had some belief that  
4 they may have come from a valid source.

5 1:38 MR. KRAMER: Q. And you wrote, "Referring  
6 to this account, South Park Studios, they are  
7 associated with Comedy Central, but MTVN has the  
8 exclusive rights"?

9 1:38 A. Yes.

10 1:38 Q. So you thought at that point that the user  
11 South Park Studios was associated with Comedy  
12 Central, right?

13 1:38 A. I believe our client informed us of that.

14 1:39 Q. Do you recall who specifically?

15 1:39 A. No, I do not.

16 1:39 Q. Can you turn back to Exhibit 8, which is  
17 the work digest for Project 1 for MTV?

18 1:39 A. Got it.

19 1:39 Q. And if you could look at the second page  
20 of Exhibit 8 --

21 1:39 A. Yes.

22 1:39 Q. Under where it says, "Description of  
23 Activity," it says, "YouTube is no longer an active  
24 protocol in Project 1 because of the implementation  
25 of Project 2." Do you know what that means?

1 1:49 Q. Then it has a description of activity  
2 under the project details section in this digest?

3 1:50 A. Mm-hmm.

4 1:50 Q. Does that accurately reflect your  
5 understanding of the project that BayTSP was tasked  
6 with by Viacom?

7 1:50 A. Give me a moment.

8 1:50 MR. COX: Objection. Vague, ambiguous,  
9 lacks foundation.

10 1:50 THE WITNESS: Yes, that is an accurate  
11 description of what we were engaged to do.

12 1:50 MR. KRAMER: Q. Okay. Do you recall  
13 Viacom giving BayTSP a specific instruction to  
14 accumulate a large list of clips on the YouTube  
15 service that BayTSP believed contained Viacom  
16 content rather than send takedowns as BTS -- as  
17 BayTSP became aware of those clips?

18 1:51 MR. COX: Object to the form.

19 1:51 THE WITNESS: Yes.

20 1:51 MR. KRAMER: Q. And who gave that  
21 instruction?

22 1:51 A. I don't recall. My recollection, it would  
23 have been Evelyn. Evelyn would have been the one  
24 who informed me.

25 1:51 Q. Viacom instructed BayTSP to accumulate



1 clips it identified so that Viacom could send one  
2 massive takedown request to YouTube instead of  
3 sending takedowns as BayTSP became aware of clips,  
4 right?

5 1:51 MR. COX: Objection. Calls for  
6 speculation.

7 1:51 THE WITNESS: I don't know the motivation  
8 for it. I don't -- I don't know.

9 1:51 MR. KRAMER: Q. Okay. So when BayTSP  
10 would identify clips of content on the YouTube  
11 service in the course of this project that BayTSP  
12 believed contained Viacom content, BayTSP's  
13 instructions were not to send a takedown notice  
14 until 100,000 clips were accumulated, right?

15 1:52 MR. COX: Object to the form.

16 1:52 THE WITNESS: I believe the instruction  
17 was to hold the clips. I don't remember a specific  
18 number being conveyed to us initially. At some  
19 point somebody may have said 50, 80, 100, 200. I  
20 don't know. I know the instructions were to hold  
21 those notices.

22 1:52 MR. KRAMER: Q. Well, the description of  
23 the activity that is in the work digest for this  
24 project says once 100,000 infringements have been  
25 met, that was the --

1 1:52 A. Yes.

2 1:52 Q. That was the figure?

3 1:52 A. That's in February. This project began in  
4 December. When this began, I don't remember anybody  
5 giving us a target.

6 1:52 Q. Well, Exhibit 8, which is -- sorry. Not  
7 Exhibit 8. Exhibit 22 also refers to 100,000 clip  
8 figure, right?

9 1:53 A. It does, but I don't remember it.

10 1:53 Q. Hmm. You don't remember -- you do  
11 remember that it was part of the project. You just  
12 don't remember when the instruction to collect up  
13 100,000 was given?

14 1:53 A. Yes.

15 1:53 Q. Okay. Don't you recall being informed  
16 that Viacom was queuing up takedown notices as part  
17 of a strategy for dealing with YouTube?

18 1:53 MR. COX: Object to the form.

19 1:53 THE WITNESS: No.

20 1:54 (Whereupon Exhibit No. 24 was marked for  
21 identification.)

22 1:54 MR. KRAMER: Q. Exhibit 24 is an e-mail  
23 exchange between Mr. Ishikawa, Bay's CEO, and Donna  
24 Cooper of Black Entertainment Television, dated  
25 January 24th, 2007, on which you are copied. Has

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

the subject BET Asset List.

1:54 A. Yes.

1:54 Q. In the last in time e-mail to Ms. Cooper, which you received, Mr. Ishikawa writes that BayTSP was, quote, queuing up the takedown notices as instructed by Adam at MTVN. Do you see that?

1:54 A. Yes.

1:54 Q. You received this e-mail, did you not?

1:55 A. Well, yes, it came into my inbox.

1:55 Q. You were informed in this e-mail, were you not, that BayTSP had been instructed by Adam at MTVN to queue up takedown notices, right?

1:55 MR. COX: Objection. Document speaks for itself.

1:55 THE WITNESS: I may have read this. It didn't register. When I would receive e-mails regarding things, I looked at: Does this matter to me; are they giving me a different set of instructions; what to take down; are we getting a new asset; are we taking down an asset? Okay. Nothing in this rings any bells to me other than that there's a woman named Donna Cooper who has some influence or direction over BET. But it doesn't tell me to start or stop anything, so I wouldn't have paid attention to it.

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

client services.

1:58 MR. KRAMER: Q. Okay.

1:58 A. BayTSP, whoever would be, would be the head of that project. My role in that project, would be to oversee Deana who was the Paramount and Sarah who was Viacom. But beyond that, we didn't -- client services never dictated what was done, how it was done, why it was done, when it was done.

1:59 Q. What did it do?

1:59 A. We were told, review the infringements, send notices, build reports to inform our clients of what was sent. That's it. That's what client services did.

1:59 Q. The Sarah you're referring to is whom?

1:59 A. Cruz.

1:59 Q. And her job was what?

1:59 A. She was a client services manager.

1:59 Q. For what client?

1:59 A. I believe it was Viacom.

1:59 Q. And Deana Arizala was Paramount?

1:59 A. Yes.

1:59 Q. And they both reported to you?

1:59 A. Yes.

1:59 Q. So at this time, Viacom was learning of the presence of clips on the YouTube service that

1 BayTSP believed contained its content, and BayTSP  
2 was instructed not to send out notices for those  
3 clips, right?

4 2:00 MR. COX: Object to form, asked and  
5 answered.

6 2:00 THE WITNESS: I don't know what -- I don't  
7 know what Viacom was doing. I don't know what  
8 anybody at Viacom was doing. I just know, my level  
9 on down, don't send notices, just hold them,

10 2:00 MR. KRAMER: Q. Okay. So BayTSP was  
11 instructed to do that by Viacom, hold the notices  
12 and not send them to YouTube?

13 2:00 MR. COX: Object to the form.

14 2:00 THE WITNESS: Based solely on the chain of  
15 command, client tells service, do this; service does  
16 that. So in this case Viacom is client, BayTSP is  
17 service. Client tells services, don't send notices,  
18 we don't send notices.

19 2:01 MR. KRAMER: Q. In the client contact  
20 information section of the work digest --

21 2:01 A. Okay.

22 2:01 Q. That's Exhibit 23.

23 2:01 A. Got it.

24 2:01 Q. On the page that ends with the numbers  
25 128.

1           2:01           A.    Okay.  Give me a second.  I'm almost  
2                           there.  Yes.

3           2:01           Q.    There are two attorneys from Viacom's law  
4                           firm, Jenner & Block, listed, Mr. Hohengarten and  
5                           Ms. Tenney?

6           2:02           A.    Mm-hmm.

7           2:02           Q.    How were they involved in this mass  
8                           takedown project?

9           2:02           MS. COLEMAN-BISHOP:  Objection.  
10                          Attorney-client privilege.

11          2:02           Anything that you may have any knowledge  
12                          as to any communications with these two attorneys,  
13                          instruct you not to answer the question so far as  
14                          they would have been involved in any legal advice  
15                          given to your former employer.

16          2:02           THE WITNESS:  I don't know who they are.

17          2:02           MR. KRAMER:  That takes care of that  
18                          instruction.

19          2:02           MR. KRAMER:  Q.    There was a group of  
20                          people in Washington, D.C. working on this project,  
21                          right?

22          2:02           A.    Haven't a clue.

23          2:02           Q.    Okay.  Do you recognize the name Warren  
24                          Solow, other than the fact that it appears in this  
25                          document?  Do you remember hearing the name?

1 3:06 Q. Okay.

2 3:06 A. More than one month.

3 3:06 Q. BayTSP finally executed on this strategy  
4 of sending one mass takedown notice, right?

5 3:06 A. Yes.

6 3:06 Q. Do you remember the date?

7 3:06 A. No.

8 3:06 Q. I'll represent to you that it was  
9 February 2nd, 2007. We'll come back to that. So  
10 what happened on that date with respect to the  
11 transmission of the notice?

12 3:06 A. They went out, I believe, in blocks. In  
13 other words, we didn't -- we didn't have one e-mail  
14 with 100,000 or whatever it was. I believe they  
15 went out in blocks. I don't remember what the block  
16 size was. And I believe they were all transmitted  
17 within hours -- two, three -- I don't know for sure.

18 3:06 Q. Do you remember --

19 3:06 A. And then --

20 3:06 Q. Go ahead.

21 3:06 A. And then nothing else happened. Nobody  
22 breathed a sigh of relief or tipped a glass or  
23 anything. We just -- we sent notices, which is what  
24 we were doing all along.

25 3:07 Q. This was just ordinary practice?

1 3:07 A. Yes.

2 3:07 Q. Really?

3 3:07 A. Yes, thousands of notices goes out of the  
4 BayTSP every day, even as we speak.

5 3:07 Q. The transmission of this mass takedown  
6 notice to YouTube was just standard ordinary  
7 operating procedure for BayTSP?

8 3:07 MR. COX: Objection. Asked and answered.

9 3:07 THE WITNESS: No. The transmission of  
10 notices is standard operating procedure.

11 3:07 MR. KRAMER: Q. But this was a big deal,  
12 right?

13 3:07 A. For Viacom, I don't know.

14 3:07 Q. Was it a big deal for Bay?

15 3:07 A. No. It was different, but it wasn't a big  
16 deal.

17 3:07 Q. How is it different?

18 3:07 A. Because normally we find and send. This  
19 was a find, hold, send. That's all.

20 3:07 Q. Who from Viacom gave the launch command to  
21 BayTSP?

22 3:07 A. I don't remember.

23 3:08 (Whereupon Exhibit No. 29 was marked for  
24 identification.)

25 3:08 MR. KRAMER: Q. Exhibit 29 is a



1 transcript of an AOL Instant Message chat between  
2 you and others on BayTSP on February 2nd, 2007,  
3 right?

4 3:08 A. Mm-hmm.

5 3:08 Q. It's just a recording of a conversation  
6 that people were having online at the time, right?

7 3:08 A. Yes.

8 3:08 Q. Your AOL Instant Message chat name is  
9 BayTSP C-A-N-N-E, correct?

10 3:08 A. Correct.

11 3:08 Q. Who is BayTSP Spider?

12 3:08 A. I don't know.

13 3:08 Q. Bay Deana, is that Deana Arizala?

14 3:09 A. Yes.

15 3:09 Q. BayTSP Spider, Mark Ishikawa?

16 3:09 A. I can't remember. It could be. I don't  
17 know.

18 3:09 Q. Did you regularly communicate using  
19 Instant Message at BayTSP?

20 3:09 A. No.

21 3:09 Q. Did you regularly have joint conversations  
22 with all of these people on Instant Messaging?

23 3:09 A. No. Instant Messaging was the -- was an  
24 exception.

25 3:09 Q. Why was it that you were having a chat

# **Schapiro Exhibit 12**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs, )

vs. )

NO. 07-CV-2103 )

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

Defendants. )

---

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

Plaintiffs, )

vs. )

NO. 07-CV-3582 )

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

Defendants. )

---

VIDEOTAPED DEPOSITION OF WARREN SOLOW  
NEW YORK, NEW YORK  
DECEMBER 18TH, 2009

JOB NO. 18304

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

VIDEOTAPED DEPOSITION OF WARREN  
SOLOW, held at the offices of Wilson,  
Sonsini, Goodrich & Rosati, PC, 1301  
Avenue of the Americas New York, New  
York, pursuant to notice, before  
Maureen Ratto, Registered Professional  
Reporter and Notary Public of the State  
of New York on December 18, 2009, at  
10:10 a.m.

## A P P E A R A N C E S

FOR THE PLAINTIFFS:

JENNER &amp; BLOCK, LLP

BY: SUSAN J. KOHLMANN, ESQ.

919 Third Avenue, New York, NY 10022

(212) 891-1690

skohlmann@jenner.com

FOR THE DEFENDANTS:

WILSON, SONSINI, GOODRICH &amp; ROSATI

BY: MICHAEL H. RUBIN, ESQ.

650 Page Mill Road, Palo Alto, CA 94304

650-849-3311

MRUBIN@wsgr.com

1 statement. I am simply telling you  
2 that you first need to establish that  
3 something that occurred in October of  
4 2006 relates to the February, 2007 mass  
5 11:54:05 takedown request that is the subject of  
6 the 30(b)(6). Once you do that, I will  
7 not obstruct you from asking him  
8 questions about it. But you are not  
9 to -- allowed to ask him a series of  
10 11:54:17 questions then ask that, perhaps  
11 determine that it has nothing to do  
12 with the mass takedown request and then  
13 you will have been allowed to ask on  
14 the record a series of questions that  
15 11:54:28 have nothing to do with the scope of  
16 this examination. So you have my  
17 position.

18 If there is a question pending,  
19 you can raise it and -- and we will go  
20 11:54:37 from there. And I am more than happy  
21 to have that be the way in which we are  
22 going to conduct a 30(b)(6) because in  
23 my belief that is the proper way to  
24 conduct a 30(b)(6).

25 11:54:49 MR. RUBIN: That's fine. It

1 will be case-wide from now on.

2 Q. Mr. Solow, I'm sorry. I hope  
3 you weren't distracted by that colloquy  
4 as well.

5 11:54:58 A. No. I have nothing else to do.

6 Q. What was the rule in place for  
7 which clips would be included in the  
8 February 2nd, 2007 mass takedown?

9 A. I do not -- I -- I don't believe  
10 11:55:24 that I could list out all the rules as  
11 they existed for that mass takedown off  
12 the top of my head.

13 Q. You were designated to testify  
14 on that topic today, weren't you?

15 11:55:41 A. Yes.

16 Q. And you prepared to testify on  
17 that topic today, didn't you?

18 A. Yes.

19 Q. And you're unable to do so?

20 11:55:47 MS. KOHLMANN: Objection.

21 Misstates the record.

22 A. I -- if I were testifying as to  
23 the, you know, the substance of crime  
24 and punishment, I would hope that I  
25 11:56:04 would not be asked to recite crime and

1 punishment verbatim from memory.

2 Q. Is it your testimony that the  
3 rule set for which clips will be  
4 removed from YouTube in connection with  
5 11:56:16 the February 2nd, 2007 mass takedown is  
6 as complicated as crime and punishment?

7 MS. KOHLMANN: Objection.

8 A. It could be for some people.

9 Q. Would it that be complicated for  
10 11:56:25 YouTube?

11 MS. KOHLMANN: Objection.

12 A. No. Because they would be able  
13 to refer to a list of rules as opposed  
14 to being asked to do it off the top of  
15 11:56:36 their head.

16 Q. Has YouTube been provided the  
17 list of rules?

18 MS. KOHLMANN: Objection, lacks  
19 foundation.

20 11:56:41 A. I don't know.

21 Q. As you sit here testifying on  
22 behalf of Viacom as a corporate  
23 representative, you don't know whether  
24 YouTube had been provided the list of  
25 11:56:49 rules that governed which clips were



1 included and excluded from the February  
2 2nd, 2007 mass takedown?

3 MS. KOHLMANN: Objection as to  
4 form. You can answer.

5 11:57:01 A. I do not.

6 Q. Were the rules set forth in  
7 Exhibit 2 the rules that governed the  
8 February 2nd, 2007 mass takedown?

9 A. No.

10 11:57:19 Q. In what way did the rules in  
11 Exhibit 2 differ from the rules that  
12 established which clips would be  
13 included in the February 2nd, 2007 mass  
14 takedown?

15 11:57:33 A. I don't know specifically how  
16 they differed. I do know that the fall  
17 and winter of '06, going into '07, was  
18 a time where with every day we were  
19 acquiring additional knowledge as to

20 11:57:57 the characteristics of the massive  
21 infringement going on at YouTube and we  
22 learned at the time --

23 Q. I'm not asking for a speech  
24 about Viacom's litigation position, I'm  
25 11:58:08 actually asking for a very specific