

**SCHAPIRO DECLARATION  
EXHIBITS CONTINUED**

# **Schapiro Exhibit 27**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

PLAINTIFFS, )

CASE NO.  
07-CV-2103

VS. )

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

DEFENDANTS. )

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

PLAINTIFFS, )

CASE NO.  
07-CV-3582

VS. )

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

DEFENDANTS. )

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VIDEOTAPED DEPOSITION OF AMY POWELL  
TAKEN ON TUESDAY, DECEMBER 15, 2009

JOB NO. 18310

UNITED STATES DISTRICT COURT  
FOR THE 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, )  
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Videotaped deposition of AMY HOWELL, taken on  
behalf of the Defendants, at 350 South Grand Avenue,  
Suite 2500, Los Angeles, California, on Tuesday,  
December 15, 2009, at 9:25 a.m., before NIKKI ROY,  
CSR. No. 3052.

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APPEARANCES:

FOR THE PLAINTIFFS:

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ALSO PRESENT:

PAUL KOENIG, Paramount  
REBECCA PRENTICE, General Counsel, Paramount  
SCOTT McNAIR, Videographer

1 09:41:29 MS. KOHLMANN: Objection as to form.

2 09:41:31 You can answer.

3 09:41:31 THE WITNESS: For the film Transformers we

4 09:41:40 uploaded the official approved trailer to YouTube.

5 09:41:44 BY MR. VOLKMER:

6 09:41:48 Q. Did you upload any other materials besides

7 09:41:50 the official trailer to YouTube?

8 09:41:52 A. We always only upload approved materials

9 09:41:56 that have been routed through the marketing

10 09:41:59 executives, talent and filmmakers VIA approved upload

11 09:42:04 account.

12 09:42:08 MR. VOLKMER: Move to restrike the response

13 09:42:10 as nonresponsive.

14 09:42:11 Q. Did you upload any other materials besides

15 09:42:13 the official trailer to YouTube with respect to the

16 09:42:16 Transformers promotional campaign?

17 09:42:19 MS. KOHLMANN: Objection.

18 09:42:20 You can answer.

19 09:42:24 THE WITNESS: For Transformers 2, which is

20 09:42:26 the film I was referencing, we uploaded the official

21 09:42:31 trailer and the official approved clips from the EPK.

22 09:42:37 BY MR. VOLKMER:

23 09:42:37 Q. What about for the original Transformers

24 09:42:40 movie, did Paramount's interactive marketing

25 09:42:43 department engage in any viral marketing of that film

1 09:42:46 using YouTube?

2 09:42:47 A. I don't recall.

3 09:43:00 Q. How long ago did Paramount upload the

4 09:43:03 Transformers 2 trailer to YouTube?

5 09:43:09 A. The Transformers 2 final trailer was earlier

6 09:43:16 this year. I don't recall specifically.

7 09:43:20 Q. So Paramount's interactive marketing

8 09:43:25 department has continued to use YouTube for

9 09:43:28 promotional purposes after this lawsuit was filed; is

10 09:43:31 that correct?

11 09:43:31 MS. KOHLMANN: Objection as to form.

12 09:43:33 You can answer.

13 09:43:34 THE WITNESS: Can you repeat the question,

14 09:43:37 please.

15 09:43:37 BY MR. VOLKMER:

16 09:43:37 Q. Sure. Paramount's interactive marketing

17 09:43:39 department has continued to use YouTube for

18 09:43:41 promotional purposes after this lawsuit was filed; is

19 09:43:44 that correct?

20 09:43:45 A. We use YouTube as we do any other website

21 09:43:48 that we're in business with, which is to upload

22 09:43:51 approved materials for the marketing of our films.

23 09:43:55 Q. Right. And my question was, did Paramount's

24 09:43:59 interactive marketing department continue to use

25 09:43:59 YouTube for promotional purposes after this lawsuit

1 09:44:01 was filed?

2 09:44:02 MS. KOHLMANN: Objection; asked and

3 09:44:02 answered.

4 09:44:12 You can answer.

5 09:44:13 THE WITNESS: As I said, YouTube is one of

6 09:44:15 many websites that we use to market our films with

7 09:44:17 approved materials.

8 09:44:19 BY MR. VOLKMER:

9 09:44:22 Q. That doesn't respond to the question though.

10 09:44:24 The question was, after this lawsuit was filed, did

11 09:44:28 Paramount continue to use YouTube to promote its

12 09:44:31 films?

13 09:44:31 MS. KOHLMANN: Objection; asked and answered

14 09:44:33 and getting argumentative.

15 09:44:35 You can answer.

16 09:44:36 THE WITNESS: We use YouTube to upload

17 09:44:41 approved marketing materials as we do any other

18 09:44:44 website that we're in business with.

19 09:44:46 BY MR. VOLKMER:

20 09:44:46 Q. And that practice of using YouTube to upload

21 09:44:49 approved marketing materials has taken place after

22 09:44:53 the filing of this lawsuit which is in March of 2007?

23 09:44:57 A. That is correct.

24 09:44:58 Q. The materials that Paramount's employees and

25 09:45:19 agents have uploaded to YouTube for promotional



1 09:45:22 purposes, those materials are authorized to be on the

2 09:45:25 YouTube service; is that right?

3 09:45:27 MS. KOHLMANN: Objection as to form.

4 09:45:33 BY MR. VOLKMER:

5 09:45:33 Q. You can answer.

6 09:45:34 A. I can only speak on behalf of my team.

7 09:45:37 Q. Sure. So the materials that were uploaded

8 09:45:41 by your team or by agents of Paramount at the

9 09:45:45 direction of your team, those materials that have

10 09:45:48 been uploaded to YouTube, they are authorized to be

11 09:45:51 on the YouTube service, correct?

12 09:45:52 MS. KOHLMANN: Objection as to form.

13 09:45:55 You can answer.

14 09:45:55 THE WITNESS: To the best of my knowledge,

15 09:45:58 my team has always had the direction of only

16 09:46:02 uploading approved materials.

17 09:46:06 BY MR. VOLKMER:

18 09:46:07 Q. Would you say that everything that your team

19 09:46:09 has uploaded or has approved to be uploaded, that set

20 09:46:14 of materials are authorized?

21 09:46:15 MS. KOHLMANN: Objection; vague.

22 09:46:19 You can answer.

23 09:46:20 THE WITNESS: I'm not sure I know what you

24 09:46:21 mean by "authorized."

25

1 10:19:04 A. Uh-huh.

2 10:19:05 Q. Were there any other instances in which a

3 10:19:08 Paramount marketing employee or agent uploaded clips

4 10:19:12 from that film to YouTube to promote the film?

5 10:19:15 MS. KOHLMANN: Objection.

6 10:19:17 THE WITNESS: To the best of my knowledge,

7 10:19:18 all materials were uploaded VIA the same destination

8 10:19:22 within YouTube.

9 10:19:23 BY MR. VOLKMER:

10 10:19:28 Q. And how about the film Blades of Glory, did

11 10:19:31 Paramount use YouTube to promote that film?

12 10:19:33 MS. KOHLMANN: Objection.

13 10:19:34 THE WITNESS: I believe so.

14 10:19:36 BY MR. VOLKMER:

15 10:19:36 Q. And how did Paramount use YouTube to promote

16 10:19:40 that film?

17 10:19:40 A. Uploading approved materials, clips, trailer

18 10:19:45 to YouTube.

19 10:19:45 Q. Was there a promotion or marketing campaign

20 10:19:59 on YouTube that you thought was more successful than

21 10:20:03 the others?

22 10:20:03 MS. KOHLMANN: Objection as to form; vague.

23 10:20:05 You can answer.

24 10:20:06 THE WITNESS: Not necessarily.

25

1 10:20:07 BY MR. VOLKMER:

2 10:20:18 Q. Are you aware of all the account names and  
3 10:20:21 user names that Paramount has used to upload  
4 10:20:23 materials to YouTube?

5 10:20:26 MS. KOHLMANN: Objection as to form.

6 10:20:30 THE WITNESS: No, I wouldn't say that I am.

7 10:20:32 BY MR. VOLKMER:

8 10:20:36 Q. Is there anyone in your department that  
9 10:20:38 would know all of the account names and user names  
10 10:20:41 that Paramount has used to upload materials to  
11 10:20:44 YouTube?

12 10:20:44 MS. KOHLMANN: Objection as to form.

13 10:20:46 THE WITNESS: No, it's a large company.

14 10:20:48 BY MR. VOLKMER:

15 10:21:07 Q. In the ordinary course of your job, would  
16 10:21:09 you or someone working for you keep a list of all the  
17 10:21:13 user names that have been used to upload materials to  
18 10:21:16 YouTube?

19 10:21:16 MS. KOHLMANN: Objection as to form.

20 10:21:21 THE WITNESS: For my specific department the  
21 10:21:26 team member who is leading a campaign would have  
22 10:21:31 knowledge of the accounts that he or she is using.

23 10:21:34 BY MR. VOLKMER:

24 10:21:43 Q. So is the answer to that question no?

25 10:21:45 MS. KOHLMANN: Objection.

1 10:21:47 THE WITNESS: Can you repeat the question?

2 10:21:48 BY MR. VOLKMER:

3 10:21:48 Q. Sure. In the ordinary course of your job,  
4 10:21:50 would you or someone who worked for you keep a list  
5 10:21:53 of all the YouTube user names or account names that  
6 10:21:57 have been used to upload materials to the YouTube  
7 10:22:00 service?

8 10:22:01 MS. KOHLMANN: Objection as to form.

9 10:22:04 You can answer.

10 10:22:04 THE WITNESS: My team members would keep  
11 10:22:07 track of the user names that they specifically would  
12 10:22:10 use.

13 10:22:15 BY MR. VOLKMER:

14 10:22:15 Q. And you said that Paramount was a big  
15 10:22:16 company earlier. Are there circumstances in which  
16 10:22:20 there were uploads of Paramount material to YouTube  
17 10:22:23 for promotional reasons that occurred outside of the  
18 10:22:28 purview of your department?

19 10:22:30 MS. KOHLMANN: Objection as to form.

20 10:22:32 THE WITNESS: I wouldn't know.

21 10:22:33 BY MR. VOLKMER:

22 10:22:42 Q. You never heard of any other departments at  
23 10:22:46 Paramount uploading materials to YouTube for  
24 10:22:51 promotional or marketing purposes?

25 10:22:53 MS. KOHLMANN: Objection as to form.

1 10:22:56 THE WITNESS: No.

2 10:22:56 BY MR. VOLKMER:

3 10:23:03 Q. Didn't you have occasion to view materials

4 10:23:05 on YouTube and make determinations about whether they

5 10:23:07 were authorized marketing material or not?

6 10:23:12 MS. KOHLMANN: Objection.

7 10:23:14 You can answer.

8 10:23:14 THE WITNESS: Can you repeat the question?

9 10:23:15 BY MR. VOLKMER:

10 10:23:15 Q. Sure. Didn't you have occasion in the

11 10:23:17 course of your employment to view materials on

12 10:23:20 YouTube and make determinations about whether they

13 10:23:22 were authorized marketing materials or not?

14 10:23:24 MS. KOHLMANN: Same objection.

15 10:23:25 You can answer.

16 10:23:25 THE WITNESS: In specific instances, yes.

17 10:23:28 BY MR. VOLKMER:

18 10:23:29 Q. In the course of performing that task, did

19 10:23:31 you ever come across marketing material that had been

20 10:23:37 uploaded to YouTube by Paramount but did not emanate

21 10:23:40 from your department?

22 10:23:42 A. No, I don't recall so.

23 10:23:50 MS. KOHLMANN: Bart, we've been going about

24 10:23:52 an hour. So if you get to a point you think we can

25 10:23:56 break, can we do that?

1 02:01:17 BY MR. VOLKMER:

2 02:01:25 Q. Didn't your frustrations with BayTSP

3 02:01:28 removing approved Paramount marketing material from

4 02:01:31 YouTube continue for some lengthy period of time?

5 02:01:35 MS. KOHLMANN: Objection as to form; vague.

6 02:01:37 You can answer.

7 02:01:38 THE WITNESS: No, I don't know that I would

8 02:01:41 say that.

9 02:01:42 BY MR. VOLKMER:

10 02:01:43 Q. Didn't that frustration last for months that

11 02:01:46 Bay continued to remove material that your department

12 02:01:51 had either uploaded or approved to be on the YouTube

13 02:01:53 service?

14 02:01:54 MS. KOHLMANN: Objection; asked and

15 02:01:54 answered.

16 02:01:56 You can answer.

17 02:01:56 THE WITNESS: I don't recall the specific

18 02:01:59 amount of time we had the disagreement.

19 02:02:04 BY MR. VOLKMER:

20 02:02:19 Q. As a result of BayTSP mistakenly removing

21 02:02:25 marketing material from the YouTube service you asked

22 02:02:27 that you have an opportunity to review material

23 02:02:33 before it was taken down from YouTube; is that right?

24 02:02:36 MS. KOHLMANN: Objection; lacks foundation;

25 02:02:39 form.

1 02:02:39 You can answer.

2 02:02:40 THE WITNESS: Can you repeat the question?

3 02:02:43 BY MR. VOLKMER:

4 02:02:44 Q. Sure. As a result of BayTSP mistakenly

5 02:02:47 removing marketing material from the YouTube service

6 02:02:51 you asked that you have an opportunity to review

7 02:02:54 material before it was taken down from YouTube; is

8 02:02:57 that right?

9 02:02:58 A. As part of our -- as part of determining how

10 02:03:02 our partnership would work, we did put several

11 02:03:05 practices in place that would help us both be able to

12 02:03:29 intelligently identify approved materials, one of

13 02:03:13 which was for them to call me and ask me, just as we

14 02:03:16 would ask any other party to call and ask me if

15 02:03:19 content was questionable.

16 02:03:42 Q. The reason that you would be called would be

17 02:03:43 to make a determination as to whether the material

18 02:03:45 that was proposed for removal, whether or not that

19 02:03:49 material was approved Paramount marketing?

20 02:03:53 MS. KOHLMANN: Objection as to form.

21 02:03:58 You can answer.

22 02:03:58 THE WITNESS: The process was put in place

23 02:04:00 not only to determine if content should be removed or

24 02:04:03 not, but to identify what our approved marketing

25 02:04:07 materials were so we could all be on the same page in

1 02:04:13 terms of what that material consisted of.

2 02:04:15 BY MR. VOLKMER:

3 02:04:19 Q. Did any other parties besides BayTSP ever

4 02:04:22 call you and ask whether material on online

5 02:04:29 video-sharing services was authorized or

6 02:04:34 unauthorized?

7 02:04:35 A. Yes.

8 02:04:35 Q. Who else called you?

9 02:04:37 A. Either call or e-mail, I should clarify.

10 02:04:40 Q. Sure.

11 02:04:40 A. Many -- all the time webmasters, different

12 02:04:44 websites, end-users, happens frequently.

13 02:04:49 Q. End-users would contact you and ask you

14 02:04:52 whether or not material on the Internet was approved

15 02:04:55 Paramount marketing material?

16 02:04:56 A. Yes.

17 02:04:57 MS. KOHLMANN: Objection; asked and

18 02:04:58 answered.

19 02:04:58 THE WITNESS: Pardon me, yes.

20 02:04:59 BY MR. VOLKMER:

21 02:05:03 Q. And that would take usually an e-mail

22 02:05:06 format; is that right?

23 02:05:07 MS. KOHLMANN: Objection.

24 02:05:08 THE WITNESS: Either e-mail or phone call,

25 02:05:15 depending on how a person could track me down.



1 02:05:33 MR. VOLKMER: Let's mark Exhibit 16.

2 02:05:34 (Powell Exhibit 16, document bearing

3 02:05:34 Bates number VIA 003724421, marked for

4 02:05:46 identification, as of this date.)

5 02:05:46 MS. KOHLMANN: Thank you.

6 02:05:47 BY MR. VOLKMER:

7 02:06:04 Q. Exhibit 16 is a document that was produced

8 02:06:06 by BayTSP in this litigation. It's an e-mail

9 02:06:11 exchange from June 26th and 27th, 2006. Al Perry

10 02:06:21 John Salter, Mark Ishikawa appear in this e-mail

11 02:06:25 thread.

12 02:06:25 Do you know who Mr. Perry is?

13 02:06:27 A. Yes.

14 02:06:29 Q. And what is his role at Paramount?

15 02:06:31 A. He works on Scott Martin's team, which is

16 02:06:36 the Paramount legal team.

17 02:06:39 Q. And who is Mr. Salter?

18 02:06:43 A. I'm not sure.

19 02:06:48 Q. And Mark Ishikawa ran BayTSP; is that right?

20 02:06:51 A. He works at BayTSP. I'm not sure of his

21 02:06:56 position.

22 02:06:56 Q. In Mark Ishikawa's e-mail to Mr. Salter he

23 02:07:08 writes:

24 02:07:08 Need to discuss how we get the

25 02:07:10 marketing people to let us know what

1 02:45:41 In light of all of the additional  
2 02:45:43 focus on infringement on YouTube, I'm  
3 02:45:45 checking with Scott to see if we are  
4 02:45:46 taking down clips.  
5 02:45:49 Do you know what the additional focus on  
6 02:45:50 infringement that Mr. Perry references is?  
7 02:45:54 MS. KOHLMANN: Objection. Are you asking  
8 02:45:57 her as she sits here today?  
9 02:46:00 MR. VOLKMER: Yeah, I'm asking her if she  
10 02:46:02 has any understanding as to what Mr. Perry was  
11 02:46:05 talking about.  
12 02:46:05 MS. KOHLMANN: Objection; it's not on this  
13 02:46:09 document; lacks foundation.  
14 02:46:10 You can answer.  
15 02:46:11 THE WITNESS: I am not clear on what he's  
16 02:46:14 talking about.  
17 02:46:33 MR. VOLKMER: Let's mark Exhibit 20.  
18 02:46:36 (Powell Exhibit 20, document bearing  
19 02:46:36 Bates number VIA 00431656, marked for  
20 02:46:40 identification, as of this date.)  
21 02:46:40 MS. KOHLMANN: Thanks.  
22 02:46:48 BY MR. VOLKMER:  
23 02:47:03 Q. Exhibit 20 is an e-mail exchange produced by  
24 02:47:05 Viacom in this litigation. The e-mail thread took  
25 02:47:11 place on October 15th and 16th, 2006. And the first

1 02:47:18 message in the thread you write to Tamar Teifeld and  
2 02:47:23 Mickey Worsnup and you say:  
3 02:47:26 Is this one of our approved  
4 02:47:27 clips, question mark.  
5 02:47:28 There's a YouTube URL and the subject line  
6 02:47:32 is Flags of Our Fathers.  
7 02:47:34 Do you know why you reached out to  
8 02:47:39 Ms. Teifeld and Mr. Worsnup about the authorization  
9 02:47:43 status of this clip?  
10 02:47:44 A. I don't know specifically. I presume I was  
11 02:47:46 in a meeting and asking them if they were in front of  
12 02:47:49 a computer.  
13 02:47:51 Q. And Ms. Teifeld responds:  
14 02:47:55 Yes, these are clips from the  
15 02:47:56 EPK.  
16 02:47:57 A. Uh-huh.  
17 02:47:57 Q. What is the EPK?  
18 02:47:59 A. Electronic press kit.  
19 02:48:00 Q. And are clips that are included in the EPK  
20 02:48:06 that are uploaded to YouTube authorized to be on  
21 02:48:09 YouTube?  
22 02:48:09 MS. KOHLMANN: Objection.  
23 02:48:11 THE WITNESS: On each specific film we put  
24 02:48:14 together what's known as an EPK, which is a  
25 02:48:18 collection of approved clips and content for any said

1 02:48:21 film. Those are the clips that are approved for  
2 02:48:23 distribution online.

3 02:48:28 BY MR. VOLKMER:

4 02:48:31 Q. So if there's an EPK clip that's appearing  
5 02:48:34 on YouTube, it's authorized to be on the YouTube  
6 02:48:39 service, correct?

7 02:48:39 MS. KOHLMANN: Objection; misstates the  
8 02:48:41 record.

9 02:48:42 THE WITNESS: Not necessarily.

10 02:48:43 BY MR. VOLKMER:

11 02:48:44 Q. Why is that?

12 02:48:45 A. Only the final approved locked color  
13 02:48:50 corrected sound mixed final version of the EPK clips  
14 02:48:53 are approved for distribution across YouTube and  
15 02:48:59 other websites.

16 02:49:00 Q. But all the final versions meeting all the  
17 02:49:10 criteria you just listed, those EPK clips are  
18 02:49:13 authorized to be on the YouTube service, correct?

19 02:49:15 MS. KOHLMANN: Objection as to form.

20 02:49:16 THE WITNESS: Presumably, yes.

21 02:49:21 BY MR. VOLKMER:

22 02:49:28 Q. This is the same YouTube URL that's  
23 02:49:32 referenced in the previous exhibit, Exhibit 19. Do  
24 02:49:38 you know if you told Mr. Perry whether or not this  
25 02:49:43 clip was authorized to be on YouTube?

1 02:49:45 A. I don't recall.

2 02:50:08 Q. The clip that's referenced in the e-mail on

3 02:50:11 Exhibit 20, that's a clip that was authorized to be

4 02:50:14 on YouTube, correct?

5 02:50:15 MS. KOHLMANN: Objection.

6 02:50:18 THE WITNESS: I would have to review the

7 02:50:19 clip to tell you.

8 02:50:20 BY MR. VOLKMER:

9 02:50:24 Q. Ms. Teifeld says, where you wrote to

10 02:50:27 Ms. Teifeld "Is this one of our approved clips?" And

11 02:50:30 she wrote back "Yes, these clips are from the EPK."

12 02:50:33 Based on this e-mail, isn't the most logical

13 02:50:40 inference that the clip being referenced here is one

14 02:50:43 that was approved by Paramount to appear on YouTube?

15 02:50:45 MS. KOHLMANN: Objection as to form.

16 02:50:47 THE WITNESS: Based on Tamar's e-mail she's

17 02:50:51 saying, yes, these clips are from the EPK, and hence

18 02:50:53 we would assume that, yes, they are approved clips.

19 02:50:57 BY MR. VOLKMER:

20 02:50:57 Q. And you had no reason to question

21 02:51:00 Ms. Teifeld's assessment, correct?

22 02:51:02 A. Correct.

23 02:51:13 Q. You did not ask that this clip be removed

24 02:51:16 from the YouTube service, did you?

25 02:51:18 A. I don't recall.

1 02:51:19 Q. Based on this e-mail in which Ms. Teifeld  
2 02:51:24 says that they are approved clips that came from the  
3 02:51:29 EPK, do you think that you asked anyone that these --  
4 02:51:33 that this clip be removed?  
5 02:51:34 MS. KOHLMANN: Objection.  
6 02:51:39 THE WITNESS: I do not believe I would have  
7 02:51:41 requested it to be removed, with the understanding it  
8 02:51:43 was an approved clip from the EPK.  
9 02:52:22 MR. VOLKMER: Let's mark Exhibit 21.  
10 02:52:23 (Powell Exhibit 21 VIA11786487,  
11 02:52:23 document bearing Bates number VIA11786487,  
12 02:52:40 marked for identification, as of this date.)  
13 02:52:40 BY MR. VOLKMER:  
14 02:52:56 Q. This is an e-mail exchange from May 8th and  
15 02:52:58 9th, 2007 produced by Viacom in this litigation.  
16 02:53:04 In the first message in this thread Kristina  
17 02:53:08 Tipton asked whether Paramount should leave up a  
18 02:53:13 Transformers clip that appeared on the Ellen  
19 02:53:17 Degeneres show; is that right?  
20 02:53:18 A. Yes.  
21 02:53:18 Q. And it says -- the message from Ms. Tipton  
22 02:53:23 says:  
23 02:53:24 Publicity wouldn't let us post  
24 02:53:26 the clip officially online.  
25 02:53:28 Why wouldn't publicity allow Paramount to

1 03:56:26 down.

2 03:56:28 Why did you need to speak with the publicity

3 03:56:29 department?

4 03:56:30 A. I don't recall.

5 03:56:31 Q. Who would you have checked with in the

6 03:56:35 publicity to determine -- in the publicity department

7 03:56:37 to make determinations about whether materials should

8 03:56:41 be removed from YouTube?

9 03:56:42 MS. KOHLMANN: Objection; calls for

10 03:56:42 speculation.

11 03:56:43 You can answer.

12 03:56:44 THE WITNESS: I would have asked whoever the

13 03:56:48 publicist handling that movie was.

14 03:56:49 BY MR. VOLKMER:

15 03:56:50 Q. And who was the publicist for the film

16 03:56:55 that's being discussed here, Jackass 2?

17 03:56:58 A. I don't recall.

18 03:56:59 Q. So were the publicists for Paramount films

19 03:57:08 engaged in the upload of materials to promote the

20 03:57:14 films?

21 03:57:16 MS. KOHLMANN: Objection.

22 03:57:17 You can answer.

23 03:57:17 THE WITNESS: No, not to the best of my

24 03:57:19 knowledge.

25

1 03:57:20 BY MR. VOLKMER:

2 03:57:22 Q. So why would you need to check with someone  
3 03:57:24 in publicity before confirming which videos should be  
4 03:57:28 taken down?

5 03:57:30 A. On certain films with unique circumstances,  
6 03:57:33 as with the film Jackass, certain clips were approved  
7 03:57:37 for different usages. Some were only approved for  
8 03:57:41 online and some were only approved to live in the  
9 03:57:45 offline world.

10 03:57:47 Q. Are you saying that you needed to check with  
11 03:57:57 publicity to determine whether clips were permitted  
12 03:58:04 to be marketed in the online world in the case of  
13 03:58:07 Jackass 2?

14 03:58:11 MS. KOHLMANN: Objection to form.

15 03:58:12 You can answer.

16 03:58:13 THE WITNESS: To the best of my knowledge,  
17 03:58:16 yes. In the film Jackass 2 we had specific  
18 03:58:21 strategies put in place as to where clips would be  
19 03:58:25 positioned and distributed.

20 03:58:28 BY MR. VOLKMER:

21 03:58:29 Q. And the publicity department was in charge  
22 03:58:30 of that decision?

23 03:58:32 A. I don't know that I would say they were in  
24 03:58:35 charge of it. They were -- it was a collaboration  
25 03:58:38 with the publicity department to make those



1 03:58:40 determinations.

2 03:58:41 Q. But here Jackass 2 clips had been syndicated

3 03:58:45 by the interactive marketing department, right?

4 03:58:48 MS. KOHLMANN: Objection.

5 03:58:49 THE WITNESS: As the e-mail indicates, some

6 03:58:51 of the clips were. All of the clips that we

7 03:58:55 syndicated had an official warning before the clips.

8 03:59:00 BY MR. VOLKMER:

9 03:59:07 Q. Right. So what was the purpose of checking

10 03:59:09 with the publicity department if you knew that your

11 03:59:12 department had engaged in online viral marketing of

12 03:59:18 Jackass 2?

13 03:59:18 MS. KOHLMANN: Objection; asked and

14 03:59:18 answered.

15 03:59:20 You can answer.

16 03:59:21 THE WITNESS: We did not have a viral

17 03:59:23 marketing campaign for Jackass 2. All we had was the

18 03:59:27 syndication of a very specific set of clips, all of

19 03:59:30 which had a warning in front of them.

20 03:59:34 BY MR. VOLKMER:

21 03:59:34 Q. Why did you need to check with publicity if

22 03:59:36 you had engaged in a syndication marketing strategy

23 03:59:42 online with respect to Jackass 2?

24 03:59:44 A. With --

25 03:59:44 MS. KOHLMANN: Objection; asked and

# **Schapiro Exhibit 28**

To: "Kevin Donahue" <kevin@youtube.com>  
From: "Julie Supan" <julie@youtube.com>  
Cc:  
Bcc:  
Received Date: 2006-05-10 23:00:18 GMT  
Subject: Fw: wiredset - working together

---

Sounds like another Deep Focus opp except paid ;)

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

From: "Grant Johmann" <grant@wiredset.com>  
Date: Wed, 10 May 2006 17:19:33  
To: <julie@youtube.com>  
Subject: wiredset - working together

Hi Julie,

My name is Grant - I work over at Wiredset - an online marketing agency in NYC. We are all huge fans of YouTube and we upload many of our clients videos to the service. Our best performing videos of the moment are a music video from Flyleaf (over 400,000 views) and weekly clips from the new MTV show - Call to Greatness.

My purpose for this email is to introduce myself, say hi, and hopefully get to know you better and work with YouTube at a higher level. We work with every major label and have clients all over the entertainment industry - and we always get video from them specifically for YouTube.

I'd love to chat over the phone about all possibilities of working together. We are a forward thinking company like yours and have limitless potential for marketing ideas.

I'm mostly free on Thursday and Friday - pls let me know what day/time works best for you.

Look forward to hearing from you.

Thanks,

Grant

--

[Grant M. Johmann]  
Wiredset LLC  
grant@wiredset.com: <mailto:grant@wiredset.com>  
212-242-3400

Wiredset  
425 W 13th St.  
Suite 504  
New York, NY 10014

Eighteen  
Visions: <<http://myspace.com/eighteenvisions>>

Call to Greatness

As Fast As

Jamie  
Foxx: <<http://myspace.com/jamiefoxx>>

---

# **Schapiro Exhibit 29**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs, )

vs. )

NO. 07-CV-2203

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

Defendants. )

---

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

Plaintiffs, )

vs. )

NO. 07-CV-3582

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

Defendants. )

---

VIDEOTAPED DEPOSITION OF KYLE BONICI  
SAN FRANCISCO, CALIFORNIA  
WEDNESDAY, APRIL 22, 2009

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR  
JOB NO. 16739

APRIL 29, 2009

9:13 a.m.

VIDEOTAPED DEPOSITION OF KYLE BONICI,  
held at the offices of WILSON, SONSINI,  
GOODRICH & ROSATI, One Market Street,  
Spear Tower, San Francisco, California,  
pursuant to notice, before ANDREA M. IGNACIO  
HOWARD, CLR, CCRR, RPR, CSR License No. 9830.

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## 1           A P P E A R A N C E S:

2  
3           FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

4                   SHEARMAN &amp; STERLING, LLP

5                   By:   KIRSTEN CUNHA, Esq.

6                   599 Lexington Avenue

7                   New York, New York 10022-6069

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

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

12                   WILSON SONSINI GOODRICH &amp; ROSATI, LLP

13                   By:   MICHAEL H. RUBIN, Esq.

14                           NEMA MILANINIA, Esq.

15                   650 Page Mill Road

16                   Menlo Park, California 94304

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

18  
19           ALSO PRESENT:

20                   PARAMOUNT PICTURES

21                   By:   PAUL KOENIG, Esq.

22                   5555 Melrose Avenue

23                   Hollywood, California 90038-3197

24                   (323) 956-5882 paul\_koenig@paramount.com

25



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

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ALSO PRESENT: Ken Reeser, Videographer.

---oOo---

KYLE BONICI

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09:49:41 A I don't know.

09:49:42 Q You don't know?

09:49:45 A Huh-uh.

09:49:46 Q Do you know how you would find that out?

09:49:53 A I could, you know, educate myself and go in  
09:49:55 and try to, but I don't -- I don't know currently.

09:49:58 Q Has anyone at Paramount ever expressed  
09:50:02 concern over negative comments appearing around  
09:50:06 Paramount content on the YouTube service?

09:50:13 A Not that I recall. Possibly, but not that I  
09:50:18 recall.

09:50:18 Q How many videos have you uploaded to the  
09:50:23 Paraccount?

09:50:24 A I don't recall the amount.

09:50:25 Q Roughly.

09:50:26 A I couldn't give an accurate estimation. I'm  
09:50:30 sorry. I couldn't give an accurate estimation, I'm  
09:50:38 sorry. I'd have to see, like, what's been uploaded,  
09:50:40 and I could tell you if I uploaded those, but...

09:50:46 MR. RUBIN: I'd like to mark Exhibit 4.

09:50:47 (Document marked Bonici Exhibit 4  
09:51:04 for identification.)

09:51:04 THE WITNESS: Thank you.

09:51:05 MR. RUBIN: Q. Mr. Bonici, this Exhibit 4 is

KYLE BONICI

1  
2 09:51:07 a document that someone in my office printed out also  
3 09:51:13 on April 28th. This is a listing of all of the videos  
4 09:51:17 currently active in the Paraccount in order of most  
5 09:51:22 viewed.  
6 09:51:24 A Uh-huh. Would you like me to go in --  
7 09:51:30 Q Do you recognize this?  
8 09:51:31 MS. CUNHA: There's no question yet.  
9 09:51:32 THE WITNESS: Sorry.  
10 09:51:33 MR. RUBIN: Q. Do you see it says there are  
11 09:51:35 "96" videos active in the Paraccount?  
12 09:51:38 A Yes.  
13 09:51:39 Q Have you ever removed a video from the  
14 09:51:42 Paraccount?  
15 09:51:46 A I can't recall.  
16 09:51:46 Q Do you know if anyone else has ever removed a  
17 09:51:49 video from the Paraccount?  
18 09:51:51 A I don't know.  
19 09:51:52 Q Do you know if anyone else other than you  
20 09:52:03 have uploaded videos to the Paraccount?  
21 09:52:08 A Not that I recall.  
22 09:52:09 Q Have you ever given third parties access to  
23 09:52:12 the account credentials for the Paraccount?  
24 09:52:15 A I don't know.  
25 09:52:17 Q You don't know if you've done that?

KYLE BONICI

1

2 09:52:19 A Oh, personally me? No, I don't recall me

3 09:52:22 ever doing it.

4 09:52:22 Q Do you know if anyone else at Paramount has

5 09:52:25 ever done that?

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

7 09:52:27 Q Do you believe that the uploading of

8 09:52:37 Paramount content to the Paraccount has been an

9 09:52:40 effective marketing tool for Paramount?

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

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

12 09:52:43 MR. RUBIN: Q. Do you believe the uploading

13 09:52:44 of Paramount content to the Paraccount has been an

14 09:52:49 effected -- effective marketing tool for Paramount?

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

16 09:52:53 THE WITNESS: I don't know. I'm -- I don't

17 09:52:56 know. I'm unaware if it's been effective or not.

18 09:53:02 MR. RUBIN: Q. You continue to do it to this

19 09:53:05 day; is that right?

20 09:53:05 A Uh-huh.

21 09:53:06 Q Does Paramount continue to engage in

22 09:53:09 promotional strategies it believes to be ineffective?

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

24 09:53:14 THE WITNESS: We're not sure it's

25 09:53:15 ineffective, or we're not sure it's effective either.

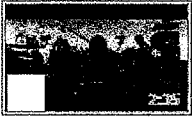
# **Schapiro Exhibit 30**

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**Freedom Writers Trailer - YouTube...**  
2 years ago  
1,146,601 views



**See SHOOTER, Now In Theaters!**  
2 years ago  
771,420 views



**The Heartbreak Kid Trailer**  
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**Hot Rod Now in Theaters!!**  
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677,228 views



**The Ruins Trailer**  
1 year ago  
668,111 views



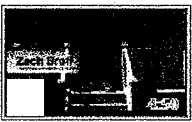
**The Heartbreak Kid - Now Playing!**  
1 year ago  
658,255 views



**Hot Rod In Theaters August 3!!!**  
1 year ago  
644,908 views



**Stardust Trailer 1**  
1 year ago  
605,637 views



**The Last Kiss - Now Playing in T...**  
2 years ago  
411,542 views



**New Star Trek Trailer (2009) - O...**  
5 months ago  
402,624 views



**Bee Movie Trailer 5**  
1 year ago  
327,362 views



**Bee Movie Trailer 1**  
1 year ago  
228,956 views



**Last Kiss: A Day In the Life of ...**  
2 years ago  
158,639 views



**Bee Movie Featurette 1**  
1 year ago  
155,512 views



**Last Kiss: A Day in the Life of ...**  
2 years ago  
154,179 views



**Spiderwick Chronicles**  
1 year ago  
149,667 views



**Perfume - Trailer #1**  
2 years ago  
147,887 views



**Will's Humps!**  
2 years ago  
134,764 views

DATE: 4.29.09 EXHIBIT# 4  
DEPONENT: Bonici, K  
CASE: Viacom, et al., v. YouTube, et al., The Football Association Premier League, et al., v. YouTube, et al., Case Nos. 07-CV-2203 and 07-CV-3582

A. Ignacio Howard, CSR, RPR, CCRR, CLR, No. 9830

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Norbit: Meet Rasputia

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Drillbit Taylor Trailer

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115,714 view s



Indiana Jones:  
Kingdom of the Cr...

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96,811 view s



Charlotte's Web - Gag  
Reel

2 years ago  
74,999 view s



Bee Movie Trailer 3

1 year ago  
73,553 view s



See Disturbia This  
Weekend! New...

2 years ago  
69,500 view s



Shine A Light Trailer

1 year ago  
54,798 view s



Bee Movie Trailer 2

1 year ago  
49,519 view s



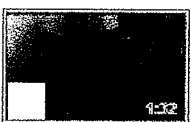
Spiderwick  
Chronicles Trailer 2

1 year ago  
48,420 view s



I Love You Man,  
Trailer (2009) -...

4 months ago  
34,527 view s



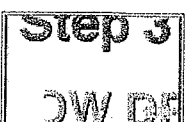
Broken Bridges  
Trailer

2 years ago  
31,981 view s



Eddie Murphy Make-  
Up Sequence

2 years ago  
31,354 view s



Last Kiss: A Day in  
the Life of ...

2 years ago  
30,721 view s



Beyonce at the  
premiere of Dream...

2 years ago  
28,934 view s



Norbit Clip: "Don't  
Adjust My Seat"

2 years ago  
27,152 view s



Last Kiss: A Day in  
the Life of ...

2 years ago  
24,450 view s



Anika Noni Rose at  
the premiere ...

2 years ago  
24,263 view s



Norbit Gag Reel

2 years ago  
21,991 view s



Things We Lost in the  
Fire Trailer

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21,765 view s



Jennifer Hudson at  
the premiere ...

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21,669 view s

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19,837 views



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18,669 views



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1 year ago  
18,420 views



**Hot Rod - Trailer 2**  
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15,937 views



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3 months ago  
15,871 views



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13,729 views



**Monsters vs Aliens Teaser Traile...**  
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13,561 views



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2 years ago  
13,519 views



**Last Kiss: A Day In the Life of ...**  
2 years ago  
11,796 views



**Last Kiss: A Day in the Life of ...**  
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11,246 views



**Hotel for Dogs - Teaser Trailer**  
10 months ago  
10,733 views



**Iron Man Trailer**  
1 year ago  
10,169 views



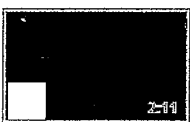
**Last Kiss: Day in the Life with ...**  
2 years ago  
9,837 views



**Shooter Trailer**  
2 years ago  
9,288 views



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2 years ago  
8,397 views



**Cloverfield Trailer 2 1-18-08**  
1 year ago  
7,247 views



**Jamie Foxx at the premiere of Dr...**  
2 years ago  
7,100 views



**Last Kiss: Day in the Life with ...**  
2 years ago  
6,770 views



**Madagascar: Escape 2 Africa**  
10 months ago  
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2 years ago  
5,940 views



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1 year ago  
5,694 views



**Beowulf Trailer**  
1 year ago  
5,677 views



**Strange Wilderness Trailer**  
1 year ago  
5,583 views



**Transformers Trailer**  
2 years ago  
5,413 views



**Stop-Loss Trailer**  
1 year ago  
5,248 views



**Monsters vs Aliens - 3/27/09**  
3 months ago  
4,872 views



**Transformers tv spot Discovery30**  
1 year ago  
4,636 views



**Last Kiss: A Day in the Life of ...**  
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4,465 views



**Last Kiss: A Day in the Life of ...**  
2 years ago  
4,235 views



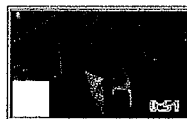
**Shrek the Third Trailer**  
2 years ago  
4,019 views



**The Ruins "Skin" TV Spot**  
1 year ago  
4,018 views



**Eagle Eye - Theatrical Trailer 1**  
10 months ago  
3,122 views



**Danny Glover at the premiere of ...**  
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2,553 views



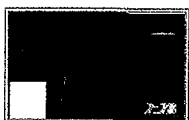
**Transformers Trailer - Hidden**  
1 year ago  
1,921 views



**Transformers: Revenge of the Fal...**  
1 month ago  
1,664 views



**Dreamgirls director Bill Condon ...**  
2 years ago  
1,445 views



**Dance Flick Trailer - 8/14/09**  
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**Eagle Eye - Teaser Trailer**  
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**Transformers Trailer**  
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First Look -...**  
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911 view s



**Indiana Jones:  
KOTCS TVSpot4**  
11 months ago  
845 view s



**The Soloist - Trailer**  
1 month ago  
734 view s



**G.I. Joe - Big Game TV  
Spot**  
1 month ago  
660 view s



**Indiana Jones  
TVSpot8 - RETURN**  
11 months ago  
652 view s



**Indiana  
Jones TVSpot9**  
11 months ago  
516 view s



**Star Trek - Big Game  
TV Spot**  
1 month ago  
499 view s



**Transformers:  
Revenge of the Fal...**  
1 month ago  
439 view s



**Transformers Trailer  
- Destiny**  
1 year ago  
337 view s



**Indiana Jones  
TVSpot3 - LEGEND**  
11 months ago  
303 view s



**Indiana Jones  
TVSpot6 - RESTING ...**  
11 months ago  
239 view s



**Indiana Jones  
TVSpot5 - WAITING**  
11 months ago  
224 view s



**Indiana Jones  
TVSpot7 - CONTROL**  
11 months ago  
197 view s  
no rating



**Eddie Murphy in  
Imagine That: TV...**  
2 weeks ago  
167 view s



**Eddie Murphy in  
Imagine That: TV...**  
2 weeks ago  
160 view s

# **Schapiro Exhibit 31**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs, )

vs. )

CASE NO.  
07-CV-2203

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

Defendants. )

---

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

Plaintiffs, )

vs. )

CASE NO.  
07-CV-3582

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

Defendants. )

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VIDEOTAPED DEPOSITION OF CUONG LAM  
New York, New York  
Thursday, August 6, 2009

JOB NO: 17462

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

FOR THE VIACOM PLAINTIFFS:

JENNER & BLOCK, LLP  
BY: SCOTT B. WILKENS, ESQ.  
1099 New York Avenue, NW, Suite 900  
Washington, D.C. 20001  
202-639-6072  
swilkens@jenner.com

FOR DEFENDANT GOOGLE:

WILSON SONSINI GOODRICH & ROSATI, PC  
BY: BART E. VOLKMER, ESQ.  
650 Page Mill Road  
Palo Alto, California 94304-1050  
650-493-9300  
bvolkmer@wsgr.com

ALSO PRESENT:

AYDALINE GARCIA, VIDEOGRAPHER

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C. LAM

Did you create that account?

MR. WILKENS: Objection to the form of  
the question.

13:22:52 You can answer.

A. The agency that we hired created that  
account.

Q. Which agency?

A. Deep Focus.

13:23:27 Q. I'd like to mark Exhibit 1.

(Lam Exhibit 1, E-mail, dated October  
16, 2006, with attachment, Bates Numbered  
VIA 10390550 to VIA 10390552 marked for  
identification.)

13:23:56 (Document review.)

Q. And Exhibit 1 is an e-mail message  
that was sent from Cuong Lam to Tina Exarhos,  
Lisa Preston and Joe Armenia on Monday, October  
16, 2006.

13:24:28 Do you recognize this document,

Mr. Lam?

A. Yeah.

Q. And this is an e-mail message that you  
sent to Ms. Exarhos, correct?

13:24:40 A. It looks that way, yes.

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C. LAM

Q. And the message says:

"Attached is the MTV2 digital assets distribution chart starting with Andy/Wonder Showzen"?

13:24:55

A. That's correct.

Q. And Wonder Showzen is also a program that appeared on MTV2, is that right?

A. Yes, that is correct.

13:25:06

Q. If you could turn to the attachment, which is on the next page.

The attachment is entitled, "MTV2 Program Promotion Digital Assets Distribution 2006 (10-13-06)."

13:25:19

Did you create this chart?

A. Yes.

Q. And do you believe that the data contained in this chart is accurate?

A. It's pretty accurate, yes.

13:25:35

Q. And this chart shows that a number of clips were uploaded to YouTube for various MTV2 programs, including Andy Milonakis Show, Wonder Showzen and Celebrity Death Match, Where My Dogs At?, Chico & Guapo, Final Fu, and All That Rocks.

13:26:03

Did MTV2 upload materials to YouTube

C. LAM

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to promote those programs?

MR. WILKENS: Objection to the form.

A. Yes.

13:26:19 Q. And the clips from those programs were  
uploaded to YouTube with MTV2's authorization,  
correct?

MR. WILKENS: Objection to the form.

A. They were uploaded to the MTV2 account  
13:26:30 on YouTube as they were across the Internet.

Q. And by uploading the materials to the  
MTV2 account, MTV2 was authorizing those  
materials to appear on the YouTube service, is  
that right?

13:26:52 MR. WILKENS: Objection to the form.

A. Yes.

Q. And the purpose of uploading clips  
from those shows to YouTube was to promote the  
underlying programming, right?

13:27:05 MR. WILKENS: Objection to the form.

A. The purpose of uploading clips onto  
YouTube, as well as various sites listed on this  
document, was to use these sites outside of MTV  
universe as platforms to promote our shows.

13:27:24 Q. Who is Jeff Castaneda.



C. LAM

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A. Jeff Castaneda, I believe, is a director in PR, public relations communications. I don't know what the official title is.

13:27:36

Q. And Mr. Castaneda uploaded clips from Wonder Showzen and the Andy Milonakis Show to various Internet Web sites to promote those programs, right?

13:27:52

MR. WILKENS: Objection to the form.

A. I'm not sure if he uploaded it himself or what. I'm not sure.

Q. Did you ever communicate with Mr. Castaneda by instant message?

13:28:02

A. I don't think so. I'm pretty -- no.

Q. Earlier you said that you weren't sure if Mr. Castaneda uploaded certain materials himself.

Which materials were you referring to?

13:28:22

MR. WILKENS: Objection.

Mischaracterizes the testimony.

A. I'm not -- I'm not sure. I am not sure as to what Jeff did or did not do. I'm not aware of his work.

13:28:44

Q. Do you recall Mr. Castaneda being

# **Schapiro Exhibit 32**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs, )

vs. ) Case No.

) 07CV3582

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

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VIDEOTAPE DEPOSITION OF STEPHEN FARRELL  
NEW YORK, NEW YORK  
TUESDAY, JULY 14, 2009

JOB NO. 17249

DAVID FELDMAN WORLDWIDE, INC.  
450 7th Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

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July 14, 2009  
10:09 a.m.

VIDEOTAPED DEPOSITION OF STEPHEN  
FARRELL, held at the offices of Mayer Brown,  
LLP, 1675 Broadway, New York, New York,  
pursuant to notice, before Rebecca  
Schaumloffel, Registered Professional  
Reporter and Notary Public of the State of  
New York.

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A P P E A R A N C E S

FOR THE PLAINTIFFS VIACOM  
INTERNATIONAL, INC.:

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By: KIRSTEN CUNHA, ESQ.  
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FOR THE DEFENDANTS:

MAYER BROWN, LLP  
BY: A. JOHN MANCINI, ESQ.  
ARIC S. JACOVER, ESQ.  
1675 Broadway  
New York, New York 10019  
Jmancini@mayerbrown.com  
Asjacover@mayerbrown.com

ALSO PRESENT:

Carlos King, Videographer  
Emily Nash

1 FARRELL

13:50:37

2 A. In my current position, I  
3 sometimes suggest that, though the  
4 actual determination is not made by me,  
5 it is usually made by the media  
6 department.

13:50:49

7 Q. I understand. In your  
8 current company, do you have written  
9 materials that you provide to clients  
10 about the marketing potential for these  
11 types of activities?

13:51:17

12 A. Specifically for stealth  
13 placement of these kinds of things, I  
14 am not aware of written materials on  
15 that.

13:51:28

16 Q. Okay. And by the way, is  
17 Viacom a current client of your company  
18 in your current position?

19 A. No.

20 Q. So you're not doing any work  
21 for Viacom today?

22 A. No.

23 Q. How about any Viacom  
24 entities?

13:51:35

25 A. Not that I am aware of, no.

1 FARRELL

2 Q. And Spike is not a current  
3 client of yours?

4 A. Nope.

13:51:42

5 Q. Were you involved in the  
6 effort to create an official channel  
7 for Spike on YouTube?

8 A. Yes.

13:52:23

9 Q. And when did you first  
10 become involved in that effort?

11 A. I don't recall specific  
12 dates.

13 Q. Whose idea was it to create  
14 a Spike channel on YouTube?

13:52:41

15 A. I don't recall specifically,  
16 but I know I was involved.

17 Q. It is fair to say, at some  
18 point, Spike channel was launched on  
19 YouTube, correct?

13:52:57

20 A. Yes.

21 Q. During your tenure?

22 A. Yes.

23 Q. Do you recall how long that  
24 Spike channel actually existed on the  
25 YouTube website, approximately?

13:53:04

1 FARRELL

2 A. Approximately, over  
3 six months, under a year.

13:53:19

4 Q. What type of content was  
5 posted to that Spike channel on  
6 YouTube?

7 A. Short, approved clips of  
8 Spike -- a variety of Spike  
9 programming.

13:53:30

10 Q. Who made the decision of  
11 which clips to feature on that channel?

12 A. Combination of folks from my  
13 group and digital and programming and  
14 legal.

13:53:46

15 Q. Was one of the reasons you  
16 wanted a Spike channel on YouTube, to  
17 drive traffic to your television and  
18 website presence for Spike?

13:54:02

19 A. To promote both properties,  
20 yes.

21 Q. Did you need any sign-off on  
22 that decision to launch this channel?

23 A. I don't recall.

13:54:16

24 Q. Was it your ultimate  
25 decision?

DAVID FELDMAN WORLDWIDE, INC.

450 7th Avenue - Ste 2803, New York, NY 10123 (212)705-8585



1 FARRELL

2 A. I don't recall whether I  
3 needed sign-off or it was my ultimate  
4 decision.

13:54:21

5 Q. Do you recall how much  
6 content was ultimately posted to the  
7 Spike channel on YouTube?

8 A. Not specifically, no.

13:54:46

9 Q. Do you recall ever  
10 monitoring the traffic to that channel,  
11 to that Spike channel on YouTube?

12 A. Yes.

13 Q. What is your recollection of  
14 the traffic to that channel on YouTube?

13:54:59

15 A. I recall we got a few  
16 thousand subscribers and then traffic  
17 was split up by, you know, whatever  
18 clips were up there. It wasn't like a  
19 whole number, you know, as far as what  
20 we got from that channel. It was  
21 usually broken up by clips and, you  
22 know, how many people we had coming.

13:55:24

23 Q. Some clips were more popular  
24 than others?

13:55:33

25 A. Yes.

# **Schapiro Exhibit 33**

**Marketing Meeting Minutes**  
**September 19, 2007**

**New Projects (Taylor, Kahner):**

- Honda Battle of the Bands (9/24 – 10/29)
- Event happens in GA every January. Never been a DVD in the past but there has been such a high demand in the past. This DVD has footage from January 2006 event.
- Client's goal to sell 30,000 DVDs.
- Working in conjunction with Flowers Communications (w/ Ron Childs).
- Campaign components: Online publicity, Promotions, and Grassroots

**Coming Up (Kahner):**

- Ignited/Bleach (10/1 – 10/31)
  - Video game. Also on Adult Swim. Anime.
  - Video game release date: October 9<sup>th</sup>
  - 4 weeks of grassroots. Also a Dedicated Email slated to be sent on October 9<sup>th</sup> (game release day)
- NBC/Talent Scout (TBD) - more info to come later

**Partner Update (Christy, My-lan, Michelle):**

**Funny Or Die** <http://www.funnyordie.com/> (Christy)

- Traffic: 775k (NetRatings), 1.8 million (Quantcast), 500k (Compete)
- Video upload site. Will Ferrell is co-owner. Infamous for Landlord Pearl video.
- Celebrities and comedies upload their videos to site. Now site wants more access to musicians and this is where we come in.
- Will write skits, film, edit, and produce everything. We just need to bring the artist to them
- Coming Up: MTV, Fall Out Boy
  - will be the first one from us. Premise = fake press release where they will only ask questions about Ashlee Simpson. Will also have MTV tie-in. Rap Superstars interview FOB asking them what it's like growing up in the 'hood.
- Early pitch to Bon Jovi. Premise = Jon Bon Jovi walks around reciting lyrics to his songs.
- They will allow us to do any promotion as long as there is a celebrity tie-in. Ex. Will not do Jig-A-Loo promo sans celebrity factor
- Please come to Christy if you have artists/clients in mind for this partnership

**XXL Magazine** <http://www.xxlmag.com/> (Ben)

- Traffic: 102k (NetRatings), 326k (Quantcast), 190k (Compete)
- New contest partner. Will be working our Vegoose promotion. Rotating contest on their front page. Contest went live this morning
- Hip-hop audience. Male leaning demographic.
- Better than Source or Vibe magazines
- They have a new marketing director who is great.

**Snorg Tee's** <http://www.snorgtees.com/> (Michelle)

- Traffic: 200k (NetRatings), 240k (Quantcast), 175k (Compete)
- T-shirt company. Somewhat similar to Threadless. Their shirts are the ones with weird slogans/phrases from movies, television, and popular culture.
- Early discussions. They have never done promotions or anything new before so they are a bit nervous. They haven't really known what to do with site since it has blown up.
- Company started by 4 guys right out of college 4 years ago. Site is very basic. Lots of potential for us to do promo.
- They have a newsletter (no stats on this yet) but it is pretty bland. Lots of room for us to work with this newsletter, too.
- Demographic = college student

- Pitched The Honorary Title. More pitches to come. Please speak to Michelle if you have any ideas

#### **Publicity Update (My-lan):**

##### **MTV Leak: Celebrity Rap Superstar**

- Perez Hilton threw a temper tantrum and MTV wanted the world to know about it
- "Leaked" video clip uploaded to IFILM and YouTube
  - covert operation. Noone can know that Fanscape or MTV is involved in this.
  - My-lan emailed gossip blogs with fake email address (gossipgirl40).
    - Not many sites picked it up except the smaller blogs (who pick up anything thrown their way)
    - TMZ picked up video but put it up on their media player, not our YouTube link. Same with iFilm.
    - By Saturday midnight there were 1,000 views on YouTube (that My-lan put up)
    - Gawker put up leak #2 yesterday at 1pm and today there have been 7,000 views
    - We should Digg the video. Also, should use Tube Mogul from start to be able to track views everywhere
    - Is this against WOMMA? Room feels WOMMA doesn't apply because this is the PR/gossip blog world and stunts/leaks/tips happen all the time.
    - Huge success with leaks for MTV. MTV will most likely do this more often. Our publicity team can only benefit from learning experience. See what works and what doesn't.

#### **Media Update (Lisa)**

##### **Fanscape Survey: Mobile**

- Results from a brief survey. Asked people whether or not they would be interested in receiving an EMAIL newsletter vs. newsletter on their CELL PHONES (about the latest mobile tech and promotions)
  - Almost 50% prefer email to mobile
  - Almost 75% said they were NOT interested in newsletters on their cells
- What's it all mean?
  - we should insert mobile info into newsletters.
  - people are still afraid of giving out their mobile number due to unexpected charges and the like. Odd because mobile technology is getting better. Stigma still lingers.
  - maybe reassure people that they will not get charged crazy fees. Also give them free prize for participating?

##### **Fanscape stats**

- Traffic analysis data report
- August 1 = 1 million in our database
- Fanscape newsletter open rate = 8.4%
- Dedicated email open rate = 23%
- Industry average for newsletter open rates = 8%
- Fanscape.com views for August = 160,820
- Contests page views = 19,990
- Blog page views = 5,000 (up from 815 views in May). Should update blog regularly with compelling content to continue to drive traffic
- Fanfeeds = 1.37 million views. Not sure which fanfeed is getting most views.
- Please ask Lisa Jenkins for more info regarding stats.
- JP and Lisa are working on benchmark grid for more conclusive data to compare to. More authority to our numbers.

# **Schapiro Exhibit 34**

---

Subject: RE: disturbia / paris  
From: "Powell, Amy - Paramount" [REDACTED]  
To: Wahtera, Megan - Paramount; Simard, Stephanie - Paramount;  
Chiang, Cat - Paramount; Teifeld, Tamar - Paramount  
Cc: Date: Mon, 11 Jun 2007 15:24:59 +0000

should definitely not be associated with the studio- should appear as if a fan created and posted it.

---

From: Wahtera, Megan - Paramount  
Sent: Mon 6/11/2007 7:34 AM  
To: Powell, Amy - Paramount; Simard, Stephanie - Paramount; Chiang, Cat - Paramount; Teifeld, Tamar - Paramount  
Subject: RE: disturbia / paris

hi amy -

we will definitely get this posted.  
we assume you want kt/tt to go out to webmasters, plus for us to upload to viral video sites.

for viral video sites - can you confirm you want us to post from random accnts that are not paramount related?

thanks!  
megan

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

From: Powell, Amy - Paramount  
Sent: Sun 6/10/2007 4:56 PM  
To: Simard, Stephanie - Paramount; Wahtera, Megan - Paramount; Chiang, Cat - Paramount; Teifeld, Tamar - Paramount  
Subject: disturbia / paris

see below... can you guys get this posted? it's funny.

---

From: Sauter, Jeremy - Paramount  
Sent: Fri 6/8/2007 7:00 PM  
To: Powell, Amy - Paramount; Rich, Gerry - Paramount; Waldman, David - Paramount; Vollman, Michael - Paramount  
Subject: Fw: Posted

Amy -  
Want to post this?  
J-

Jeremy Sauter  
Paramount Pictures

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

From: Mark Lipsky [REDACTED]  
To: Sauter, Jeremy - Paramount  
Sent: Fri Jun 08 18:56:45 2007  
Subject: Posted

Jeremy,  
We have posted Disturbia "Paris" :30 V.1 to our website. I have listed

---

log in information below.

Once you log in you will come to a page with a Disturbia Icon on it and it will bring you to another page with a file tree on the left hand side. Click the top file that will say Disturbia. This will bring you to another page with a thumbnail in the center of the page. To download the spot option click the download icon below the thumbnail. If you want to watch the spot on the website click the thumbnail then click the click here to play icon and wait for them to load. Give me a call with any questions.

Mark

link:

<http://secure.wiredrive.com/clients/buddhajonestrailers/wd/folder/55341/list>



# **Schapiro Exhibit 35**



---

Subject: RE: FW / YT  
From: "Powell, Amy - Paramount" [REDACTED]  
To: Tipton, Kristina - Paramount; Wahtera, Megan - Paramount;  
Simard, Stephanie - Paramount; Bordo, Sara - Paramount  
Cc: Date: Fri, 17 Nov 2006 17:52:12 +0000

Sorry, but I don't understand...?

Amy Powell  
Senior Vice President  
Interactive Marketing  
Paramount Pictures  
[REDACTED]

---

From: Tipton, Kristina - Paramount  
Sent: Friday, November 17, 2006 9:46 AM  
To: Powell, Amy - Paramount; Wahtera, Megan - Paramount; Simard, Stephanie - Paramount; Bordo, Sara - Paramount  
Subject: RE: FW / YT

Hi Amy,

To add it, it was temporarily added to our BeHeard favorites, but immediately taken off. There is no way to tell who submitted the video, or that the video was at one time listed under our favorites.

Let me know if you have any questions.

Kristina Tipton

Paramount Pictures

Interactive Coordinator, Promotions & Publicity

323-956-8453

---

From: Powell, Amy - Paramount  
Sent: Friday, November 17, 2006 9:22 AM  
To: Tipton, Kristina - Paramount; Wahtera, Megan - Paramount; Simard, Stephanie - Paramount; Bordo, Sara - Paramount  
Subject: RE: FW / YT

Grt. Lets just be super careful with how we're linking it, etc. I would have someone out of house be the conduit.

Amy Powell  
Senior Vice President  
Interactive Marketing  
Paramount Pictures  
[REDACTED]

---

From: Tipton, Kristina - Paramount  
Sent: Friday, November 17, 2006 9:21 AM  
To: Powell, Amy - Paramount; Wahtera, Megan - Paramount; Simard, Stephanie - Paramount; Bordo, Sara - Paramount  
Subject: RE: FW / YT

Yes, we have the LAPD video on our group, and I'll leave a post in the comments for the LAPD video linking back to our group.

Let me know if you have any questions.

Kristina Tipton

Paramount Pictures

Interactive Coordinator, Promotions & Publicity

323-956-8453

---

From: Powell, Amy - Paramount  
Sent: Friday, November 17, 2006 7:55 AM  
To: Wahtera, Megan - Paramount; Simard, Stephanie - Paramount; Tipton, Kristina - Paramount; Bordo, Sara - Paramount  
Subject: FW / YT  
Importance: High

i'm assuming we have the LAPD videos linking to ours and on our profile.. yes? if not, lets urgently get them loaded onto our profile- they could not be more relevant or viral right now. pls confirm.