

Schapiro Exhibit 92

PA 558 129

PA PAU
 EFFECTIVE DATE OF REGISTRATION

2 9 92
 Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

IT'S A WONDERFUL LIFE

PREVIOUS OR ALTERNATIVE TITLES ▼

IT'S A WONDERFUL LIFE

NATURE OF THIS WORK ▼ See instructions

MOTION PICTURE

NAME OF AUTHOR ▼

REPUBLIC PICTURES CORPORATION

DATES OF BIRTH AND DEATH
 Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
 Name of Country
 OR Citizen of U.S.A.
 OR Domiciled in U.S.A.

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
 Anonymous? Yes No
 Pseudonymous? Yes No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

COLORIZED VERSION OF BLACK & WHITE MOTION PICTURE

NAME OF AUTHOR ▼

AMERICAN FILM TECHNOLOGIES, INC.

DATES OF BIRTH AND DEATH
 Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
 Name of Country
 OR Citizen of U.S.A.
 OR Domiciled in U.S.A.

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
 Anonymous? Yes No
 Pseudonymous? Yes No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

PRODUCER OF MOTION PICTURE WITH COLORIZATION PROCESS

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
 Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
 Name of Country
 OR Citizen of _____
 OR Domiciled in _____

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
 Anonymous? Yes No
 Pseudonymous? Yes No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

1989 Year

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

August 21 1989
 United States

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

REPUBLIC PICTURES CORPORATION and AMERICAN FILM TECHNOLOGIES, INC.
 12636 Beatrice Street 12001 Ventura Pl., 3rd Fl
 Los Angeles, CA 90066 Studio City, CA 91604

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPL. CAT. ON RECEIVED
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 ONE DEPOSIT RECEIVED
 MAR 09 1992
 TWO DEPOSITS RECEIVED
 REMITTANCE NUMBER AND DATE

NOTE

Under the law, the "author" of a work made for hire is generally the employer or the individual who provides substantial contributions to the work. For any part of the work that was "made for hire," check "Yes" in the space provided, give the employer or other person for whom the work was prepared as author of that part and leave the space for date of birth and death blank.

048 385 731

MORE ON BACK ▶

- Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
- See detailed instructions.
- Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of 2 pages

* Amended by C.O. Authority of telephone call on March 20, 1992 with Beverly Hartmann.

EXAMINED BY

FORM PA

CHECKED BY

CORRESPONDENCE

FOR COPYRIGHT OFFICE USE ONLY

PA 558 129

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

[X] Yes [] No If your answer is "Yes," why is another registration being sought? (Check appropriate box.)

[] This is the first published edition of a work previously registered in unpublished form.

[] This is the first application submitted by this author as copyright claimant.

[] This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number

Year of Registration

1P833

February 6, 1947

DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates.

EXISTING BLACK AND WHITE MOTION PICTURE.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

COLORIZED VERSION OF BLACK AND WHITE MOTION PICTURE.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

N/A

CORRESPONDENCE Give name and address to which correspondence about this application should be sent.

REPUBLIC PICTURES CORPORATION, ATTENTION: BEVERLY HARTMANN

12636 BEATRICE STREET

LOS ANGELES, CALIFORNIA 90066

Area Code & Telephone Number DIRECT: (310) 302-1714

CERTIFICATION I, the undersigned, hereby certify that I am the

Check only one

[] author

[] other copyright claimant

[] owner of exclusive right(s)

[X] authorized agent of REPUBLIC PICTURES CORPORATION

Name of author or other copyright claimant or owner of exclusive right(s)

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date If this application gives a date of publication in space 3, do not sign and submit it before that date.

BEVERLY P. HARTMANN

date MARCH 2, 1992

Handwritten signature (X) Beverly P. Hartmann

MAIL CERTIFICATE TO

Certificate will be mailed in window envelope

Form with fields: Name (REPUBLIC PICTURES CORPORATION - BEVERLY R. HARTMANN), Number/Street/Apartment Number (12636 BEATRICE STREET), City/State/ZIP (LOS ANGELES, CALIFORNIA 90066)

Complete all necessary spaces. Fill in your application in space 9.

- 1. Application form
2. Non-refundable \$30 filing fee in cash or money order payable to Register of Copyrights
2. Deposit material

Register of Copyrights, Library of Congress, Washington, DC 20540

* 17 L.S.C. § 508(c): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409 or in any other statement filed in connection with the application, shall be fined not more than \$2,000.

Schapiro Exhibit 93

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
VIACOM INTERNATIONAL, INC., COMEDY
PARTNERS, COUNTY 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.

-----X
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.

-----X

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF ZAHAVAH LEVINE
SAN FRANCISCO, CALIFORNIA
THURSDAY, APRIL 2, 2009

BY: KATHERINE E. LAUSTER, CSR 1894, RPR, CRR, CLR

Job No. 16721

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LEVINE

APRIL 2, 2009

10:23 A.M.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF
ZAHAVAH LEVINE, at SHEARMAN & STERLING, 525 Market
Street, Suite 1500, San Francisco, California, pursuant
to notice, before me, KATHERINE E. LAUSTER, CLR, CRR,
RPR, CSR License No. 1894.

1 LEVINE

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LEVINE

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

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Also Present: Lou Meadows, Videographer

1 LEVINE

16:56:26 2 e-mails are not purporting to be the copyright
16:56:28 3 owner.

16:56:29 4 So, for example, what we marked as Exhibit
16:56:33 5 19 referred to the "Family Guy" clips. It says:

16:56:45 6 I received notice that my clips from
16:56:47 7 Family Guy have been deleted. I did a
16:56:50 8 search on Family Guy. Go ahead, do one
16:56:53 9 yourself.

16:56:53 10 Apparently, there are loads of other
16:56:55 11 videos that are infringing copyright. Go
16:56:58 12 ahead, delete all those too. Put a total
16:57:02 13 ban on Family Guy clips,
16:57:04 14 close quote.

16:57:06 15 To your knowledge, has YouTube ever acted
16:57:08 16 to investigate allegations such as these, or to
16:57:13 17 remove clips, once notified of the existence of
16:57:19 18 alleged infringements by reason of an e-mail like
16:57:23 19 Exhibit 19?

16:57:26 20 MR. KRAMER: Wow. There's a lot in there.
16:57:28 21 Let me just object to -- to this question as
16:57:34 22 mischaracterizing the documents, to the extent -- it
16:57:38 23 certainly mischaracterizes the documents that were
16:57:40 24 put before the witness, and otherwise object to that
16:57:43 25 question as to form, with the caveat that the --

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16:57:51 2 that the witness should not, in answering this
16:57:54 3 question, disclose communications of a confidential
16:57:57 4 nature between attorney and client. If you can
16:58:01 5 answer that question, answer that question.

16:58:04 6 THE WITNESS: The question is -- is way
16:58:06 7 too broad. I don't -- there have been many
16:58:15 8 instances that we've taken videos down outside of a
16:58:19 9 DMCA notice, if that's your question.

23:00:57 10 BY MR. HART:

16:58:24 11 Q. Okay. Can you tell me in what
16:58:26 12 circumstances you've done so?

16:58:29 13 A. There's been many, many circumstances.

16:58:32 14 Q. Can you give me some examples?

16:58:34 15 A. Sure. Well, for one, our content
16:58:39 16 identification system takes down probably thousands
16:58:42 17 every day, outside of the context of a DMCA notice.

16:58:46 18 Q. Okay. And that's what I referred to
16:58:49 19 earlier as "video ID"? Is that what you're talking
16:58:52 20 about?

16:58:52 21 A. Video ID.

16:58:55 22 Q. When you're talking about content ID --
16:58:55 23 I'm sorry. I apologize. I just want to make sure
16:58:58 24 that the record is clear.

16:58:59 25 When you're referring to "content ID,"

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16:59:01 2 what are you talking about?

16:59:02 3 A. You're right. We should be clear.

16:59:04 4 We have a video identification service
16:59:06 5 which removes things based on matches to audiovisual
16:59:10 6 references --

16:59:10 7 Q. Uh-huh.

16:59:10 8 A. -- without a DMCA notice.

16:59:12 9 We also have in place two different audio
16:59:15 10 identification services. We have our own
16:59:17 11 proprietary audio identification service, and we
16:59:21 12 also have Audible Magic, both of which remove files
16:59:24 13 every day without DMCA notices, based on audio only
16:59:29 14 matches.

16:59:29 15 Q. Uh-huh.

16:59:30 16 A. And we also have an MD5 fingerprint
16:59:33 17 technology in place --

16:59:34 18 Q. Uh-huh.

16:59:35 19 A. -- that prevents the upload of material
16:59:37 20 every single day --

16:59:38 21 Q. Uh-huh.

16:59:38 22 A. -- based on a kind of a fingerprint.

16:59:41 23 Q. Uh-huh. Let me just stop you there, if I
16:59:43 24 could --

16:59:44 25 A. Uh-huh.

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16:59:44 2 Q. -- without precluding you from giving more
16:59:47 3 to your answer, but I need clarification of one
16:59:50 4 thing. All of the things that you just mentioned so
16:59:52 5 far --

16:59:53 6 A. Yes.

16:59:53 7 Q. -- as other than a DMCA notice, are these
16:59:57 8 one form or another of fingerprint or hash?

16:59:59 9 A. The ones that I just mentioned?

17:00:01 10 Q. Uh-huh.

17:00:02 11 A. Yes.

17:00:02 12 Q. Okay. So go ahead, if you have anymore to
17:00:04 13 say in response.

17:00:06 14 MR. KRAMER: Well, just to -- for the sake
17:00:07 15 of the clarity of the record, can we -- can we ask
17:00:10 16 another question?

17:00:11 17 MR. HART: Of course.

17:00:12 18 MR. KRAMER: Thank you.

17:00:12 19 BY MR. HART:

17:00:13 20 Q. You said that there are plenty of examples
17:00:16 21 where YouTube has taken content down other than in
17:00:19 22 response to receiving a DMCA notice.

17:00:21 23 And I said "please give me some examples,"
17:00:24 24 and that was what led you to start describing some
17:00:27 25 of the services that you did. So that's the

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17:00:31 2 question.

17:00:32 3 A. Okay.

17:00:33 4 Q. That's where we are.

17:00:34 5 A. Okay.

17:00:34 6 Q. Do you have anything else to add to that?

17:00:37 7 A. Sure. Every time we delete the account of

17:00:41 8 a user who we've determined is a repeat infringer,

17:00:46 9 under our repeat infringer policy, we delete all of

17:00:51 10 the -- all of the videos in that user's account,

17:00:53 11 including those for which -- that were not subject

17:00:56 12 to a DMCA notice.

17:00:58 13 Q. Uh-huh.

17:00:59 14 A. And there have been many occasions of

17:01:02 15 someone bringing to our attention the apparent --

17:01:10 16 the upload of something that's apparently -- or I

17:01:14 17 don't want to use a legal conclusion, but I --

17:01:18 18 Q. Please.

17:01:18 19 A. -- something that gives us reason -- we

17:01:22 20 have some concern that something is infringing, or

17:01:26 21 uploaded without authorization which we've taken it

17:01:28 22 down.

17:01:28 23 So I've gotten many requests from content

17:01:32 24 owners that have just e-mailed me directly, asking

17:01:37 25 for that, which I have forwarded on to the team that

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1 LEVINE

17:01:46 2 does that, and have requested that it be removed.

17:01:50 3 And we have, in fact, removed it.

17:01:53 4 Q. Okay. Any instances where a user brings
17:01:56 5 to your attention something that appears to be
17:01:59 6 copyright infringing, and YouTube then investigates
17:02:02 7 and removes?

17:02:04 8 MR. KRAMER: Calls for speculation.

17:02:07 9 THE WITNESS: Well, a user. So all of the
17:02:09 10 media companies that are -- many -- I told you that
17:02:12 11 many times media companies reach out to me and have
17:02:15 12 asked me to remove things. And frequently those
17:02:18 13 media companies are also users of the site.

17:02:22 14 BY MR. HART:

17:02:22 15 Q. Okay. My -- let me -- let me be more
17:02:24 16 precise.

17:02:25 17 I'm talking about a user that is not
17:02:27 18 complaining about its own content, but rather
17:02:30 19 highlighting to you what it believes may be
17:02:33 20 infringement of someone else's content. Does
17:02:36 21 YouTube investigate that and remove?

17:02:39 22 MR. KRAMER: Calls for speculation --
17:02:40 23 "Does YouTube investigate that and remove?" Calls
17:02:47 24 for speculation. The question is vague. It's an
17:02:50 25 incomplete hypothetical.

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1 LEVINE

17:02:51 2 BY MR. HART:

17:02:52 3 Q. Uh-huh.

17:02:54 4 A. Yeah, I -- I would -- what -- if we take
17:02:59 5 something down without a DMCA notice --

17:03:02 6 Q. Uh-huh.

17:03:02 7 A. -- it's a case-by-case determination.

17:03:04 8 Q. Uh-huh.

17:03:05 9 A. So I would need you to ask, in the
17:03:07 10 specific case, did we/did we not, and I'll tell you
17:03:10 11 if I know or not.

17:03:11 12 Q. Okay. Go to what we've previously marked
17:03:16 13 as Exhibit 19.

17:03:18 14 A. Yes.

17:03:19 15 Q. Okay. User says, and I quote:

17:03:22 16 There are loads of other videos that are
17:03:26 17 infringing copyright,

17:03:28 18 close quote, referring to "Family Guy." To your
17:03:31 19 knowledge, did YouTube investigate those allegations
17:03:34 20 and remove any of those clips?

17:03:36 21 MR. KRAMER: Object to the premise as
17:03:40 22 mischaracterizing the document.

17:03:42 23 You can answer the question.

17:03:49 24 THE WITNESS: Your question, again, is
17:03:50 25 what?

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Schapiro Exhibit 94

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.) Case No. 1:07CV02103
)
 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. 07CV3582
)
 YOUTUBE, INC., YOUTUBE, LLC, and)
 GOOGLE, INC.,)
)
 Defendants.)

DEPOSITION OF MICAH SCHAFFER

SAN FRANCISCO, CALIFORNIA

WEDNESDAY, JULY 23, 2008

REPORTED BY:
 YVONNE FENNELLY, CRP, CSR NO. 5495
 JOB NO. 15376

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JULY 23, 2008

10:00 a.m.

VIDEOTAPED DEPOSITION OF MICAH SCHAFFER,
held at the offices of SHEARMAN & STERLING,
525 Market Street, San Francisco, California,
pursuant to notice, before YVONNE FENNELLY, CRP,
CSR License No. 5495.

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A P P E A R A N C E S

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ALSO PRESENT: Kelly Truelove, consultant;
Lou Meadows, Videographer

--oOo--

1

2 12:14 is an option to select something pertaining to -- I
3 12:14 believe the category is infringing my rights, and then
4 12:14 there is a sub-drop-down menu for infringing privacy
5 12:14 rights, and then one to the effect of infringing my
6 12:14 copyrights or something like that.

7 12:14 Q. Now, we've been using the terminology "flag" or
8 12:14 "flagging."

9 12:14 What do you understand that to mean? What's
10 12:14 the procedure?

11 12:14 A. Thank you for clarifying that because you'll
12 12:14 see it gets used, I think, a lot of different ways, and
13 12:14 sometimes it's a verb.

14 12:14 The technical meaning of, you know, what I mean
15 12:14 for flagging would be when a user goes to the flagging
16 12:15 menu on the watch page for a video and selects an option
17 12:15 which flags the video, causing it to go into our live
18 12:15 site admin queue for review.

19 12:15 Q. What is the admin site live queue?

20 12:15 A. I'm sorry. Live site is what we refer to
21 12:15 generally as the reviewers, the team of reviewers who
22 12:15 are reviewing videos that have been flagged, and so the
23 12:15 admin queue would be shorthand for basically the
24 12:15 administrative interface for seeing the videos that had
25 12:15 been flagged by users using that mechanism.

1

2 12:16 I should have lunch soon probably.

3 12:16 MR. SCHAPIRO: Another few minutes.

4 12:16 THE WITNESS: Yes, let's get through this line.

5 12:16 BY MR. SHAFTEL:

6 12:16 Q. You testified that today you can flag a video

7 12:16 for infringing content for which the flagger is

8 12:16 asserting copyrights; is that right?

9 12:16 A. No, I don't think that accurately characterizes

10 12:16 my testimony.

11 12:16 Q. How is the flagging for copyright grounds

12 12:16 described on the Web page?

13 12:17 A. I'm not sure I understand exactly what you're

14 12:17 asking.

15 12:17 Q. I wrote down that the copyright flag was under

16 12:17 a label concerning the flagger's rights.

17 12:17 Let me ask the question --

18 12:17 A. Presently?

19 12:17 Q. Yes.

20 12:17 A. So presently in the flagging menu under an

21 12:17 option that says "infringing my rights," there is a

22 12:17 submenu option referring to copyright.

23 12:17 Q. Is there any flag for a user to tick if the

24 12:17 infringement doesn't impact the user's rights, but

25 12:17 otherwise is recognized as infringing material?

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12:17 A. I don't know how a user would know whether or
12:18 not a third-party had authorized content to be uploaded
12:18 or who actually was in control of an account that
12:18 uploaded content, so no, I don't know how that would
12:18 work or how that would be.

12:18 Q. However it may work, I'm just trying to
12:18 understand, is there any flag for a user to identify
12:18 what appears to be copyrighted material, unauthorized
12:18 copyrighted material to bring it to YouTube's attention?

12:18 A. No, I don't believe that's -- no, that's not
12:18 how the flagging system works.

12:18 MR. SCHAPIRO: Is this a good time for lunch?

12:18 MR. SHAFTEL: Let me do a couple more minutes.

12:18 MR. SCHAPIRO: Feel free.

12:18 BY MR. SHAFTEL:

12:18 Q. So if I'm a user and I come across content
12:19 which I recognize as a TV show I watched the evening
12:19 before, and it's uploaded by another user that doesn't
12:19 appear to be the copyright owner, is there any flag that
12:19 I could tick to apprise YouTube of that situation?

12:19 A. Not precisely, no.

12:19 Q. You say "not precisely."

12:19 A. Not as I understand the question.

12:19 Q. If I'm not the copyright owner, but I recognize

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2 12:20 what I genuinely believe to be infringing material on
3 12:20 the site, is there any flag that I can tick to apprise
4 12:20 YouTube of that?

5 12:20 A. No.

6 12:20 Various of the menu options include text fields
7 12:20 where users are able to enter in comments and arbitrary
8 12:20 information, but that type of a report is not solicited
9 12:20 from that interface, from a user.

10 12:20 Q. And the text reports that you just mentioned,
11 12:20 where do those -- how do those get reviewed at YouTube?

12 12:20 A. So these would be comments that you could
13 12:20 attach to a flag that would appear alongside the video
14 12:21 in the admin review tool.

15 12:21 Q. I appreciate there are comments that appear by
16 12:21 the flag, but there is no flag?

17 12:21 A. Some flags.

18 12:21 Q. But there is no flag for the situation where a
19 12:21 user is recognizing somebody else's copyrighted
20 12:21 material --

21 12:21 MR. SCHAPIRO: Asked and answered; objection.

22 12:21 BY MR. SHAFTEL:

23 12:21 Q. -- as being displayed on YouTube; is that
24 12:21 right? There is no flag for that?

25 12:21 A. Right; I don't know how a user would presume to

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2 12:21 have that knowledge.

3 12:21 Q. So there is also no accompanying text message
4 12:21 that would relate to a situation where a user wants to
5 12:21 flag copyright infringement that he or she spots?

6 12:21 A. Well, I don't think a user with no relation to
7 12:21 the content or no knowledge of who uploaded the content
8 12:22 or what authorization they may have had would be in a
9 12:22 position to provide that information, and it is not
10 12:22 solicited from the interface you described.

11 12:22 MR. SHAFTEL: Why don't we take a break. I
12 12:22 think our tape's run out.

13 12:22 THE VIDEOGRAPHER: This marks the end of
14 12:22 videotape No. 1.

15 12:22 Off the record. The time is 12:22 p.m.
16 12:22 (Luncheon recess taken at 12:22 p.m.)
17 12:22 ---oOo---

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2 12:22 San Francisco, California; July 23, 2008
3 12:22 1:35 p.m.
4 01:35 EXAMINATION (Resumed)
5 01:35 THE VIDEOGRAPHER: On the record.
6 01:35 This marks the beginning of videotape No. 2 in
7 01:35 the deposition of Micah Schaffer on July 23rd, 2008.
8 01:35 The time is 1:35 p.m.
9 01:35 Please continue.
10 01:35 BY MR. SHAFTEL:
11 01:35 Q. Good afternoon, Mr. Schaffer.
12 01:35 You appreciate you remain under oath, as this
13 01:35 morning?
14 01:35 A. Yes.
15 01:35 Q. There was reference in the testimony earlier
16 01:35 today to the DMCA notice process.
17 01:35 What do you understand DMCA notice to be?
18 01:35 A. I assume you're referring to a DMCA takedown
19 01:35 notice?
20 01:35 Q. Yes, please.
21 01:36 A. A DMCA takedown notice generally would refer to
22 01:36 a, typically, written communication from someone
23 01:36 purporting to be a content owner that substantially
24 01:36 meets the requirements for a takedown notification as
25 01:36 outlined by the DMCA.

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2 02:01 actually, in effect, a signature on file for -- you
3 02:01 know, so they file basically one DMCA notice, and then
4 02:01 every time they use the tool, they're effectively
5 02:01 amending, I believe -- I don't know if that's legally
6 02:01 technically correct, but essentially updating the notice
7 02:01 to include the additional content.
8 02:01 Q. Are you aware that my client, the Premier
9 02:01 League, has sent DMCA notices for the removal of Premier
10 02:02 League content?
11 02:02 A. I believe so.
12 02:02 Q. And you understand that the Premier League does
13 02:02 not want its soccer content on YouTube?
14 02:02 A. I'm not personally familiar with their content,
15 02:02 but that's my understanding.
16 02:02 Q. What's YouTube doing to actively or proactively
17 02:02 scan for Premier League content?
18 02:02 A. So are you asking in the sense of the --
19 02:02 Q. What you were doing for --
20 02:02 A. For the RIAA?
21 02:02 Q. Correct.
22 02:02 A. I'm not aware of scans being done in this
23 02:03 fashion for the Premier League.
24 02:03 Q. Why do you think YouTube was proactively
25 02:03 scanning to remove RIAA-identified content, but not

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02:03 Premier League content?

02:03 A. These are very different times,
02:03 chronologically. This e-mail is from May 2006. Our
02:03 site was a very different size then, and we were a small
02:03 company still figuring out exactly what the appropriate
02:03 balance was and how to scale things like this.

02:03 So one of the things that we discovered as we
02:03 were doing this -- and of course we were doing this
02:03 because -- we were doing this for the RIAA because we
02:03 wanted to be helpful; right? We wanted to work with
02:03 content owners, and especially when they first signed up
02:03 for it, I imagine, you know, there was somewhat of a
02:04 backlog when they first began removing their content
02:04 from YouTube. There has got to be, you know, some extra
02:04 content that had been previously uploaded, and we
02:04 didn't -- you know, we felt that it would be a good
02:04 service to provide to them to, you know, to try to help
02:04 them with that burden.

02:04 But what we found over time was that, first, we
02:04 weren't very good at it. We couldn't tell, you know,
02:04 what was authorized or not. We really wouldn't know
02:04 necessarily who had uploaded it. We wouldn't know
02:04 whether particular videos were authorized or if, like,
02:04 NBC -- NBC is a great example of someone who was using

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2 02:04 our CVP tool and was sending us takedown notices on a
3 02:04 regular basis, but were being selective in their
4 02:05 removals. And when we would see this happening and see,
5 02:05 okay, well, they're engaged with us; they send us
6 02:05 notices every day, like the RIAA, which I believe at the
7 02:05 time was doing more or less, we could see those. And we
8 02:05 had to believe that, you know, we could see NBC is doing
9 02:05 a search for Saturday Night Live. If there are
10 02:05 particular sketches that they're declining to take down,
11 02:05 well, that's their prerogative, too. And sometimes we
12 02:05 would get it wrong and misidentify content, just as the
13 02:05 rights holders often would do as well. Only the
14 02:05 difference was, if we had taken it down in one of these
15 02:05 kind of a proactive scans for the -- if we had
16 02:05 proactively taken it down either because the content
17 02:05 came to -- maybe we weren't looking for it, but it came
18 02:05 to our attention and we took it down based on that, it
19 02:05 would be very awkward because, you know, the user would
20 02:05 think that the rights holder had asked that. And if we
21 02:06 made a mistake, you know, we're making them look bad as
22 02:06 well, and it wasn't really fair to the users because,
23 02:06 you know, the counter notice process kind of breaks down
24 02:06 because that's not sort of what the DMCA prescribes, and
25 02:06 so -- and then kind of the bottom line for it, with all

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2 02:06 those things, was that it didn't scale. As the site
3 02:06 grew, as the number of content owners became aware of
4 02:06 the site and became engaged with us and actively began
5 02:06 policing their own content, there was both less of a
6 02:06 need for us to do it, but also it just became
7 02:06 impractical.

8 02:06 Q. Was there a point in time when YouTube stopped
9 02:06 proactively scanning for content to take down on the
10 02:06 belief that the content --

11 02:07 A. I don't think there was any particular moment
12 02:07 where we decided overall, like, never do this. I think
13 02:07 it was -- I mean, we continued it for -- I think we do
14 02:07 it when circumstances are appropriate, and those changed
15 02:07 over time, and with particular, you know -- I think --
16 02:07 and with each incident, I guess you could say, with each
17 02:07 relationship.

18 02:07 Q. When is the last time you recall either
19 02:07 yourself or anyone else at YouTube being involved in
20 02:07 proactively scanning to remove content on copyright
21 02:07 grounds?

22 02:07 A. Do you mean like doing -- typing in search
23 02:07 terms to look for content based on those search terms,
24 02:07 but without specific content being sought?

25 02:08 Q. Well, here with Wheezer, you're referring to

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2 02:08 proactively scanning for the content.
3 02:08 How did you go about doing it in that case?
4 02:08 A. I think in this case it was just that, someone
5 02:08 entering in, you know, maybe the word "Wheezer" and
6 02:08 looking for their music videos or something like that.
7 02:08 Q. So using that methodology, when is the last
8 02:08 time you recall YouTube engaging in proactive removal?
9 02:08 A. I don't recall when that was.
10 02:08 Q. This year?
11 02:08 A. Not to my knowledge.
12 02:08 Q. Could you put it in any time frame?
13 02:08 A. Certainly around the time this e-mail was sent.
14 02:09 I don't know exactly the evolution.
15 02:09 And as I said earlier, I don't think it was a
16 02:09 bright line moment in time when the practices changed.
17 02:09 I think they evolved based on the needs of individual
18 02:09 rights holders and the scale of the site.
19 02:09 Q. Did you participate in any discussions or
20 02:09 communications within YouTube about whether or not to
21 02:09 continue the practice of proactively scanning for
22 02:09 content that appeared to infringe copyrights?
23 02:09 A. I'm not sure I would phrase it exactly as you
24 02:09 have, but I'm sure I was probably involved in some
25 02:09 discussions around our practices on these types of

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2 02:10 scans, sure.

3 02:10 Q. Do you recall any discussions about whether or
4 02:10 not to continue the practice?

5 02:10 A. I don't recall.

6 02:10 Q. You mentioned that one aspect of proactive
7 02:10 scanning involves the potential misidentifications or
8 02:10 incorrect decisions; is that right?

9 02:10 A. Absolutely.

10 02:10 Q. Were you involved in or aware of any analysis
11 02:10 that YouTube did as to the extent of misidentifications
12 02:10 from proactive scanning?

13 02:10 A. I don't recall any specifically.

14 02:10 Q. To be more particular about the point, do you
15 02:10 recall anybody at YouTube doing any analysis to see
16 02:11 quantitatively how often misidentifications occurred
17 02:11 from proactive scanning?

18 02:11 A. I think it was more anecdotal.

19 02:11 Q. You referred to difficulties with scalability
20 02:11 as videos on the site grew; is that correct?

21 02:11 A. Sure.

22 02:11 Q. Do you recall any analysis at YouTube as to the
23 02:11 viability of proactive scanning to remove content with
24 02:11 the increased traffic and number of videos at the site?

25 02:11 A. I think it was more of a general notion that

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2 02:12 sort of balancing and adapting our process as we evolved
3 02:12 and as -- and that as part of that growth also involved
4 02:12 working more closely with content owners, and more
5 02:12 content owners becoming aware of us, which certainly
6 02:12 contributed to factors of scale, but also gave us more
7 02:12 confidence that unauthorized content was being removed.
8 02:12 You know, there are thousands, and I'm sure,
9 02:12 you know, millions -- millions upon millions of content
10 02:12 owners in the world with vast amounts of content, and we
11 02:12 came to realize very quickly that they were in the best
12 02:12 position to know what was authorized. And there are
13 02:12 many more of them than there are of us, so they're also
14 02:13 in the best position to find the content and bring it to
15 02:13 our attention.
16 02:13 And what we discovered that we were really good
17 02:13 at was being responsive to those concerns and getting
18 02:13 down the content really fast when we had notice. But
19 02:13 even if -- so the benefit of focusing on those removals
20 02:13 where it's known -- where it's known that someone is
21 02:13 stating that it's unauthorized and doing so typically
22 02:13 under penalty of perjury and all the other things that
23 02:13 the DMCA requires, we saw the best use of our resources
24 02:13 was to react quickly to those and to provide a high
25 02:13 level of service to content owners who are providing

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2 02:13 those notices under the DMCA.

3 02:13 And occasionally, as you can see by these
4 02:13 scans, we would go above and beyond what the DMCA
5 02:14 required. And that was something that we thought was
6 02:14 good, and it helps and continues to help us build
7 02:14 goodwill and show content owners that we're -- you know,
8 02:14 that we're operating in good faith, that we want to work
9 02:14 with them, and we do, and we want to respect their
10 02:14 wishes, and we do. But it's a balancing thing, and it's
11 02:14 about efficiency and effectiveness, and we found that it
12 02:14 wasn't -- it wasn't necessarily the most effective way
13 02:14 to police content, and we could still, you know,
14 02:14 sometimes in appropriate circumstances if it's
15 02:14 necessary, do some things that are more on the proactive
16 02:14 side. And certainly if we believe something is
17 02:14 unauthorized and it comes to our attention, we want to
18 02:14 take action on that. But these scans are just, you
19 02:14 know, one part of what we were doing as we sort of, you
20 02:14 know, experimented and tried to figure out. No one has
21 02:14 ever, I don't think, tried to implement the DMCA on the
22 02:15 scale that we've had or for the amount of content that
23 02:15 YouTube contends with.

24 02:15 Q. Are you aware of anybody giving consideration
25 02:15 to how many staff people would be required to pursue

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02:15 proactive scanning for infringing content?

02:15 A. Well, I think there is a fundamental flaw in
02:15 that question because no number of staff people really
02:15 solve the underlying problem of us knowing what's
02:15 authorized or not without notice from content owners.

02:15 So you see in these circumstances this is
02:15 where, you know, there was an ongoing relationship with
02:15 the content owner, so we had some basis. But even with
02:15 those notices, we found that, you know, we weren't
02:16 certain what was authorized even as evidenced in this
02:16 e-mail, the Exhibit 6; right? You can see it's talking
02:16 about a video that's a cover band. I don't know what's
02:16 involved in publishing rights. I know there is
02:16 something different with cover bands. I think it would
02:16 probably have gotten removed in the next scan, but I
02:16 don't know if that's the correct conclusion. You can
02:16 see Steve is asking me whether or not it's fair use in
02:16 the thread next to that.

02:16 Now subsequently, you know, years later,
02:16 Wheezer just recently paid large sums of money to
02:16 YouTube in an advertising deal to promote their new
02:16 music video on the front page of YouTube. So it's
02:16 really impossible for us to, with a strong degree of
02:16 confidence, the kind of confidence we would want to

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2 02:17 have, to ascribe desires to other people and to know
3 02:17 what they probably feel about the content.

4 02:17 Q. Do you know how many videos were removed by
5 02:17 YouTube over the years based on proactive scanning
6 02:17 without a notification specific to the URL being
7 02:17 removed?

8 02:17 A. I don't know.

9 02:17 Q. Do you have a magnitude that you can
10 02:17 approximate?

11 02:17 A. No, I wouldn't want to speculate.

12 02:17 Q. Do you know how many mistakes in that process
13 02:17 where content was removed without a basis, how many
14 02:17 mistakes occurred?

15 02:17 A. I don't know if there is ever going to be a
16 02:17 really effective way to calculate that simply for no
17 02:17 other reason than users often don't reply back even if
18 02:18 the content was authorized.

19 02:18 Q. Did you ever try to look into it?

20 02:18 A. I'm not sure what kinds of reports we've run.

21 02:18 Q. Do you know if anyone at YouTube has tried to
22 02:18 look into any false -- the magnitude or extent of false
23 02:18 identifications from proactive scanning?

24 02:18 A. Possibly.

25 02:18 Q. I'm asking what you know.


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2 02:18 A. I'm not sure.
3 02:18 Q. By the way, has YouTube taken, in your time
4 02:18 with the company, any steps to try to quantify the
5 02:18 amount of infringing material on the YouTube site?
6 02:18 A. Well, I know we keep statistics on the number
7 02:18 of removals performed in response to takedown notices.
8 02:18 Q. You agree with me that there may be
9 02:19 unauthorized content that is not subject to a removal
10 02:19 notice?
11 02:19 A. I imagine that's possible. We receive takedown
12 02:19 notices on a daily basis, so I'd imagine in, you know,
13 02:19 clearly in the time between its posting and us removing
14 02:19 the notice it would be on the site.
15 02:19 And some of those removal notices, of course,
16 02:19 are also mistaken. And typically in those cases, the
17 02:19 content owners end up, if there is a counter notice
18 02:19 actually received, they end up retracting those claims.
19 02:19 I know we've had a number of retractions from Viacom.
20 02:19 But yes, I'm sure it's reasonable that there are going
21 02:19 to be some.
22 02:20 MR. SCHAPIRO: You want to take a break?
23 02:20 THE WITNESS: Yes, that would be great.
24 02:20 THE VIDEOGRAPHER: Off the record. The time is
25 02:20 2:19 p.m.

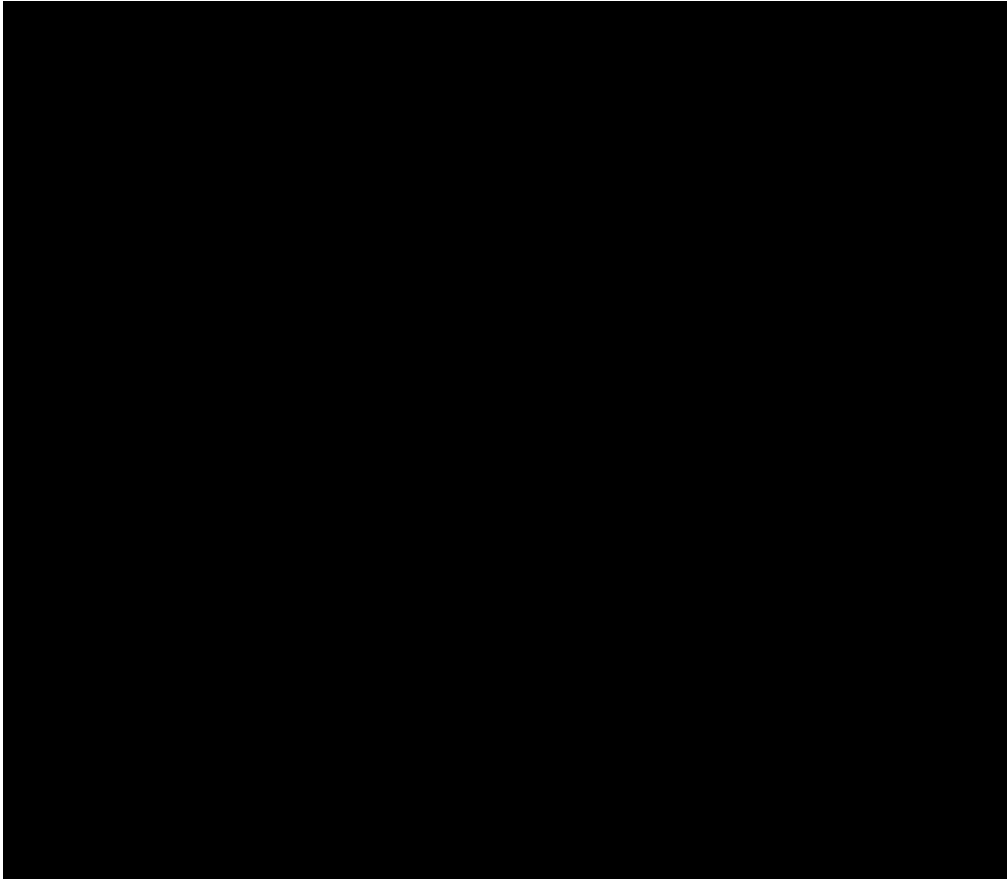
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02:53 some language in the interface about swearing under
02:53 penalty of perjury and those kinds of -- the kind of
02:53 DMCA language.

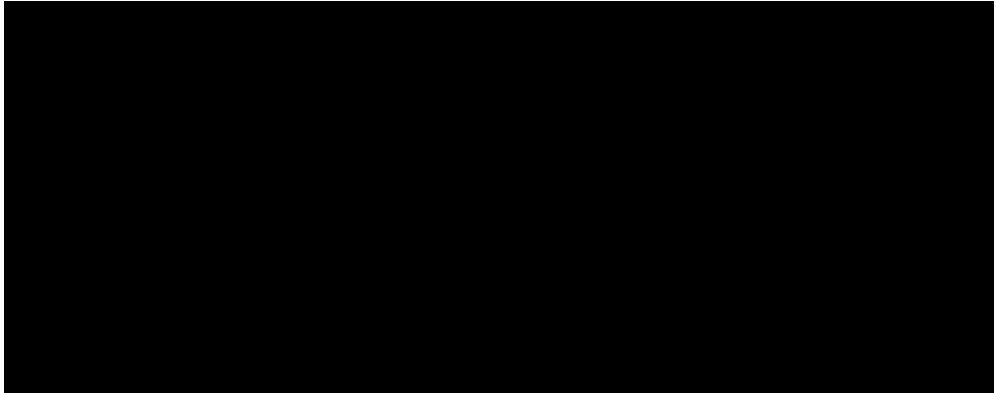
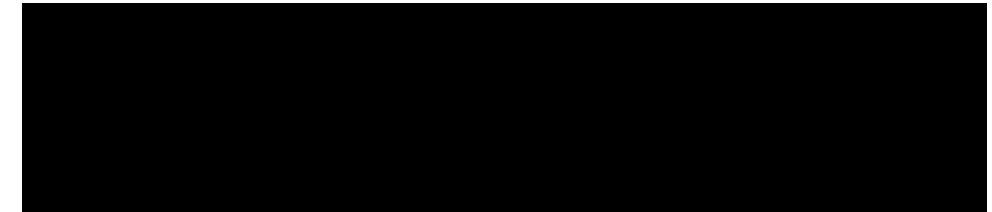
02:53 Q. And when selected, then what would happen at
02:53 the YouTube end?

02:53 A. So they would select them and hit "submit" or
02:53 click the "submit" button.

02:53 Our system would receive that and generate an
02:54 e-mail, and that e-mail would go as a receipt to the
02:54 submitter and would contain, you know, a list of URL's
02:54 that they had submitted. 

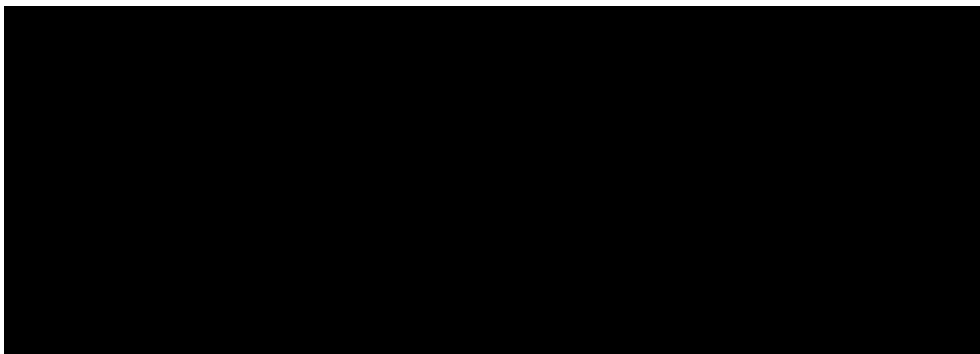


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02:57 Q. What else did the reviewers do?

02:57 Were the reviewers involved in other activities
02:57 during the course of the day other than CVP notices?

02:57 A. Sure. I'd imagine they were also, you know,
02:57 processing takedown requests that came through e-mail.
02:57 Probably sorting through and triaging incoming copyright
02:57 e-mails to make sure we don't miss any notices, whatever
02:57 other duties they may have had. And people may have
02:57 rotated between positions as well.

02:57 Q. If we look at the priorities list, which I
02:57 believe was Exhibit 8.

02:57 MR. COX: Seven.

02:57 MR. SHAFTEL: Seven.

02:58 BY MR. SHAFTEL:

02:58 Q. Do these 12 items -- or I guess, 14 items --
02:58 sorry -- reflect regular business activities that the
02:58 reviewers would be engaged?

02:58 A. I'm not sure I understand.

02:58 Q. Are the 14 items here on the priorities list

Schapiro Exhibit 95

To: Sharron Drake [REDACTED]
From: Micah Schaffer <micah@youtube.com>
Cc: 'heather gillette' <heather@youtube.com>
Bcc:
Received Date: 2006-08-02 22:46:46 GMT
Subject: Re: FW: STAR WARS DMCA's being sent out?

Hi Sharron,

Please find a copy of one of the notification we received from you attached to this email. It should shed light on any mysteries pertaining to the removal of unauthorized Lucas Films content.

We are pleased that you've chosen to allow this content to remain on YouTube.

Sincerely,

Micah Schaffer
YouTube, Inc.

Sharron Drake wrote:

> PLEASE SEE BELOW.

>

> Thanks!

>

> -----Original Message-----

> *From: * Sharron Drake

> *Sent: * Wednesday, August 02, 2006 10:56 AM

> *To: * 'heather@youtube.com'

> *Subject: * STAR WARS DMCA's being sent out?

> *Importance: * High

>

> Hi Heather:

>

> We have been receiving correspondence from some in the STAR WARS fan
> community about DMCA letters being sent by us to shut down their fan
> films. We do not have any record over here of sending out any such
> notices. Can you shed any light on this mystery?

>

> [_http://www.youtube.com/watch?v=wGV7e6vrhp4_](http://www.youtube.com/watch?v=wGV7e6vrhp4_)

>

> Please get back to me ASAP on this. Also, would you mind giving me your
> phone number? Mine is [REDACTED]

>

> Thanks, Heather!

>

> Sharron Drake

> Business Affairs, (antipiracy)

>

> [REDACTED]
> Antipiracy@lucasfilm.com

>

Attachments:

Unauthorized Use fo STAR WARS Copyrights and Trademarks on various websites

Schapiro Exhibit 96

To: "Misty@youtube.com" <Misty@youtube.com>, "Copyright Bulk" <copyright@youtube.com>
From: "YouTube Service" <service@youtube.com>, "Misty Ewing-Davis" <Misty@youtube.com>
Cc:
Bcc:
Received Date: 2006-08-01 08:09:03 GMT
Subject: Content Verification Program - Videos flagged by VeeDubMonkey

The following videos have been flagged as infringing by VeeDubMonkey (the content owner) and need to be reviewed for deletion:

http://www.youtube.com/watch?v=hXp_znzIacw&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=G7NDgj_MSN8&search=revenge%20of%20the%20sith
<http://www.youtube.com/watch?v=05BLotgqi5o&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=N5EtEGjVEd8&search=revenge%20of%20the%20sith>
http://www.youtube.com/watch?v=JQc-HzRd__A&search=revenge%20of%20the%20sith
<http://www.youtube.com/watch?v=XpU3ohze1dY&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=uHge3kEm3a0&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=voA-sNKfYiA&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=nLinhqhqCSQ&search=revenge%20of%20the%20sith>
http://www.youtube.com/watch?v=TJvLCQyj_-0&search=revenge%20of%20the%20sith
<http://www.youtube.com/watch?v=Npn83zaK2ME&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=ELU8W9mNuzY&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=lcbMrPhy8Uk&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=17DGq9oPqFg&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=NQoannmGznE&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=jNYV1yIVlQc&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=BvnaD23ndro&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=HFan3w5liG4&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=LfkRD8XsyA&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=OX2j903XZhk&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=lj3ho7YHLIs&search=revenge%20of%20the%20sith>
http://www.youtube.com/watch?v=cOo_c3PSO-o&search=revenge%20of%20the%20sith
<http://www.youtube.com/watch?v=LUzTwhngGpQ&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=0dACjFU9QQ8&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=UrvdiBlyX8g&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=nJsaBMSXRqE&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=wGV7e6vrhp4&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=36o-0DAgBU4&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=-RJg2ETQfMo&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=Cuy1hlQgcUU&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=xF8GPs5H1as&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=LyZ6tQP0kiY&search=revenge%20of%20the%20sith>
http://www.youtube.com/watch?v=ikThjDaf_uw&search=revenge%20of%20the%20sith
<http://www.youtube.com/watch?v=hufInmm7iKI&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=GZlkl2E6WiM&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=Tw7clkCr5js&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=ZUVVwCaAvTTI&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=ORSFnrtbc9A&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=jRCphmkll1w&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=2PTbAcmenFg&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=3dlM3sHiMT0&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=Y-qVaOjGvfl&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=b7Olkz55Lws&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=nuq14xaTkDA&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=yhuGLrlmslU&search=revenge%20of%20the%20sith>

http://www.youtube.com/watch?v=LsdjZfwECY0&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=0hyifYgHEKM&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=FHj_rt4twN8&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=IDvkCwTp0Tg&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=DaPyY2cniIMk&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=hxCKHbKR7fs&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=B7KIze766co&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=9_t_lI0J-JE&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=1CoLMke8Oca&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=Z5-MYF88TJw&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=ysWZ1G-MTzc&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=WEK0dkw5zns&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=q6pUVN-4nV0&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=7At2yv1H9IM&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=gitulL08ptg&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=zP_OycZUX2o&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=a04wHsPZWuH&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=VCTcHVw-kml&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=nurnb-5NKvs&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=95EdOMIAy1c&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=j3aybfisVpA&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=XyAF4HW89Rc&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=oBpDxQ3dLYQ&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=Cp8ezqj_vpY&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=E7M80wjJSuY&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=QVYMNnXpSLA&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=2pHqrea4Teo&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=997fHlhVqvY&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=11WRFdEXmnl&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=fQjemaNqVIM&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=0dUBGFH8hiw&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=Rf6PqgaGqJs&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=OW3o1iG11q4&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=3P3agxdjPfs&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=4KUCBLBmJpA&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=PU_2pa7wdzo&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=eA-6p-Qgw5Y&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=EQHSKRakA_Y&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=SvGq_5ethS0&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=ywotz76oS7s&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=6i94024TdfU&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=tomvM2hg9AU&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=dxv06ug6uNM&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=y63d_WfmoZs&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=Zga4AisAr3Q&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=iWOTNucJ_c0&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=Rk_sluc0H4&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=yHTto2DOOfA&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=_wsmhEO2vYQ&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=VhaXYPKNTZ4&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=FEjcfseBBX4&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=QOUPLq3pKvQ&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=zTGVr6Boall&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=UitiJjtOV_c&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=llbGD2-fDEI&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=HMpfpRJUXfM&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=cFIsD7oowXE&search=revenge%20of%20the%20sith
http://www.youtube.com/watch?v=81eebmQQ4V8&search=revenge%20of%20the%20sith

<http://www.youtube.com/watch?v=4pCaOcv6OOQ&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=W0xuKtvy28l&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=6hlismBwZ7U&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=rVW1c5QVeVc&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=t6zBSS5F57s&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=webrlyrAvO8&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=glz5Ch8GdfY&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=jjqPGPgGrNA&search=revenge%20of%20the%20sith>
http://www.youtube.com/watch?v=P6_qURCb7wE&search=revenge%20of%20the%20sith
<http://www.youtube.com/watch?v=Jjp50qQ6je0&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=L2hLG-NnovE&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=8YjVCMdC7Rk&search=revenge%20of%20the%20sith>
<http://www.youtube.com/watch?v=sNUOPfexsSA&search=revenge%20of%20the%20sith>
http://www.youtube.com/watch?v=KcfQEexHA_A&search=revenge%20of%20the%20sith

If you are the copyright holder, you are receiving this email as verification that we have received your deletion requests.

Schapiro Exhibit 97

To: "Micah Schaffer" <micah@youtube.com>
From: "Sharron Drake" [REDACTED]
Cc: "Chad@youtube.com" <Chad@youtube.com>, "Chris Carvalho" <[REDACTED]>
Bcc:
Received Date: 2006-08-03 00:32:41 CST
Subject: RE: STAR WARS Fan films: Sample letter to affected parties:

Hi Micah:

Your response to these users is not acceptable. Do not send this response. PLEASE CALL ME IMMEDIATELY [REDACTED] I am also copying Chad Hurley on this correspondence at Chris Carvalho's suggestion in case this needs to be discussed further.

Thanks,

Sharron Drake
Business Affairs, (Antipiracy)

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

From: Micah Schaffer [mailto:micah@youtube.com]
Sent: Wednesday, August 02, 2006 4:07 PM
To: Sharron Drake
Cc: 'heather gillette'
Subject: Re: STAR WARS Fan films: Sample letter to affected parties:

Hi Sharron,

We've identified the 1,029 videos involved. I'm currently waiting for engineering to restore the videos and compile a list of the user's email addresses.

We will be sending our users the following message:

Hi there,

A Star Wars related video was removed from your YouTube account as the result of a copyright and trademark related notice we received.

Lucasfilm Ltd. has since notified us that they did not intend for your content to be disabled, as such your video has now been restored.

We apologize for any inconvenience.

Thanks,

The YouTube Team

Sharron Drake wrote:

>

>

> Hi Micah:

> Thanks for your prompt assistance with all of this. As discussed on
> the
> phone this afternoon, in addition to your restoring the sites that we
> did not request to be taken down, our Director of Fan Relations would
> appreciate something sent from YouTube to notify the people affected
> by
> these shut downs. He has provided a sample letter for your
> consideration. Please see below. Feel free to call me ([REDACTED]

> to discuss.

>

> Thanks again,

>

> Sharron Drake

> Business Affairs, (Antipiracy)

> antipiracy@lucasfilm.com

> -----

>

> Dear Member:

> This is to notify you that we have restored or are about to restore

> your

> material that we recently removed pertaining to Star Wars. Lucasfilm

> Ltd. did not request that your piece be removed, but we inadvertently

> removed it because of a misunderstanding. We are sorry if this has

> caused you any inconvenience.

>

> YouTube Inc.

> PO Box 2503

> San Mateo, CA 94401

> Email: copyright@youtube.com <mailto:copyright@youtube.com>

>

From jenny@youtube.com Wed Aug 2 16:54:02 2006

Schapiro Exhibit 98

To: "heather gillette" <heather@youtube.com>, "Steve Chen" <steve@youtube.com>
From: "Micah Schaffer" <micah@youtube.com>
Cc:
Bcc:
Sent Date: 2006-02-16 23:21:11 GMT
Subject: American Idol "counter-notifications"

They aren't proper counter-notifications, but then again, we didn't get a proper takedown notice either.

Here's the first round summary:

[REDACTED]

I did not upload any American Idol Clips

[REDACTED]

I'm very confused. The footage contained no reference to American Idol: no graphics, no music, nothing. It was original footage shot at a news event in public on Hollywood Boulevard. We own the footage and all the rights to it.

[REDACTED]

Hello! I saw that the narutard video has been removed. This isn't an AMERICAN IDOL video, It's a casting of OPERACION TRIUNFO a SPANISH tv show.

[REDACTED]

Which video was removed? I don't remember having any American Idol videos uploaded.

[REDACTED]

my video had nothing to do with american idol


[REDACTED]

Most of the videos I uploaded were MY PERSONAL videos from my GOOD FRIEND RJ Heltons performances that *I* videotaped MYSELF with MY video camera. The American Idol thing is stupid and those videos should not have to be removed either but whatever. But I would like MY PERSONAL VIDEOS to be UNremoved because they are MINE, and also on RJ's official site for download, given to the site BY RJ to use on it. So the videos of mine that did not have to do with Idol I would like to be put back up. thank you.

[REDACTED]

Is this serious? Are you kidding me? Could you send this as a reply to whomever at American Idol claimed my stupid little movie was infringing?? I put as tags "American Idol Sucks" as a joke, is that copyright infringement? There is absolutely nothing copywritten from "American Idol" in my movie, watch it for yourself. I took out those tags, but apparently it's too late and someone at American Idol has lied to you that this was copyright infringement. If someone uses "Nathan Rollins Sucks" as tags can I write to you and have it banned for copyright infringement? Ridiculous. Sorry, I know it's not your fault, I just can't believe the actual TV show was childish enough to want something banned because of its tags.

Regards,
Nathan Rollins


You would think they have something better to do with their time. I am protected as this is clearly satire. The Onion and every late night comedy show is allowed to do it any time. I'll be happy to post it elsewhere, contact the idiots at American Idol, and advise them to kiss my white ass.

Schapiro Exhibit 99

To: "Steve Chen" <steve@youtube.com>
From: "Micah Schaffer" <micah@youtube.com>
Cc:
Bcc:
Sent Date: 2006-04-25 23:15:11 GMT
Subject: videos to restore

Please restore and remove strikes, etc. Thanks!!

American Juniors Interview
<http://www.youtube.com/watch?v=7ohsfe0sXA8>
Copyright Strike - proactive american idol

Mikemations 2
<http://youtube.com/watch?v=e-qu7lYWeYo>
Copyright Strike - proactive adult swim

edork
<http://www.youtube.com/watch?v=8jXstRjmqOQ>
Copyright Strike - proactive adult swim

Smallville
<http://youtube.com/watch?v=Ypzyurm9Dro>
Copyright Strike - proactive nbc

I-Dee - 2005 DMC Washington DC Regional
http://www.youtube.com/watch?v=oGX-B_a4VXY

Schapiro Exhibit 100

To: [REDACTED]
From: "Copyright Service" <copyright@youtube.com>
Cc:
Bcc:
Sent Date: 2006-07-29 00:12:21 CST
Subject: Re: Copyright Inquiry

Your video has been restored.

Hope this helps,

The YouTube Team

[REDACTED] wrote:

> User-Agent: Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; SV1; .NET CLR 1.1.4322)
> Username: lamorguedefanta Video: None
> Dear YOUTUBE:
> We do not understand why the video has been erased, we have all the rights of reproduction of the video
F.A.N.T.A. - BRUCE LEE.
> This video, and the music, is our property. We have composed the music and recorded the video. The
royalties of this song are registered by us. We do not understand who has been able to say that did not we have
the copyright, should try an error or a joke.
> My name is Oscar Lopez Valero, I am the author of that song and the video.
> As the owner of the rights of the song, registered in the General Company of authors of Spain (SGAE), I
authorize YOUTUBE to continue reproducing that video.
> They can verify that all it here written is certain writing to [REDACTED]
> We will consult this case with the lawyers of the SGAE, and we expect that all this have been a badly
understood.
>
> I remain at your service and expecting to enjoy again the advantages that Youtube.com offers the authors.
>
> Oscar Lopez Valero, member of the SGAE and Author of the video affected.
>
>
> DMCA Complaints <copyright_counternotice@youtube.com> escribiÃ³:
> YouTube
> Dear Member:
> This is to notify you that we have removed or disabled access to the following material as a result of a third-
party notification claiming that this material is infringing:
> F.A.N.T.A. - Bruce Lee: http://www.youtube.com/watch?v=ec54_zU60LA
> Please Note: Repeat incidents of copyright infringement will result in the deletion of your account and all videos
uploaded to that account. In order to avoid future strikes against your account, please delete any videos to which
you do not own the rights, and refrain from uploading additional videos that infringe on the copyrights of others.
For more information about YouTube's copyright policy, please read the Copyright Tips guide.
> If you elect to send us a counter notice, to be effective it must be a written communication provided to our
designated agent that includes substantially the following (please consult your legal counsel or see 17 U.S.C.
Section 512(g)(3) to confirm these requirements):
> (A) A physical or electronic signature of the subscriber.
> (B) Identification of the material that has been removed or to which access has been disabled and the location
at which the material appeared before it was removed or access to it was disabled.
> (C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was
removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.
> (D) The subscriber's name, address, and telephone number, and a statement that the subscriber consents to
the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the
subscriber's address is outside of the United States, for any judicial district in which the service provider may be
found, and that the subscriber will accept service of process from the person who provided notification under
subsection (c)(1)(C) or an agent of such person.

- > Such written notice should be sent to our designated agent as follows:
 - > DMCA Complaints
 - > YouTube, Inc.
 - > PO Box 2053
 - > San Mateo, CA 94401
 - > Email: copyright@youtube.com
 - > Please note that under Section 512(f) of the Copyright Act, any person who knowingly materially misrepresents that material or activity was removed or disabled by mistake or misidentification may be subject to liability.
 - > Sincerely,
 - > YouTube, Inc.
 - > Copyright © 2006 YouTube, Inc.
-

Schapiro Exhibit 101

To: "Misty@youtube.com" <Misty@youtube.com>, "Copyright Bulk" <copyright@youtube.com>
From: "YouTube Service" <service@youtube.com>, "Misty Ewing-Davis" <Misty@youtube.com>
Cc:
Bcc:
Received Date: 2006-07-27 07:21:35 GMT
Subject: Content Verification Program - Videos flagged by VeeDubMonkey

The following videos have been flagged as infringing by VeeDubMonkey (the content owner) and need to be reviewed for deletion:

<http://www.youtube.com/watch?v=bkEYVJ8fGpw&search=bruce%20lee>
<http://www.youtube.com/watch?v=PaRZb8ans5U&search=bruce%20lee>
<http://www.youtube.com/watch?v=CDK1hFko-3E&search=bruce%20lee>
<http://www.youtube.com/watch?v=wAtkwampx7U&search=bruce%20lee>
<http://www.youtube.com/watch?v=c1xfW3RS1hc&search=bruce%20lee>
<http://www.youtube.com/watch?v=e1Npy4mgH6c&search=bruce%20lee>
http://www.youtube.com/watch?v=_QHAuoKQpDM&search=bruce%20lee
<http://www.youtube.com/watch?v=qgfLcW6LI2Q&search=bruce%20lee>
<http://www.youtube.com/watch?v=n7PpKv6nYNM&search=bruce%20lee>
http://www.youtube.com/watch?v=JYJejr_UW00&search=bruce%20lee
http://www.youtube.com/watch?v=XgY_9fj1WiQ&search=bruce%20lee
<http://www.youtube.com/watch?v=Md760xen3Bl&search=bruce%20lee>
<http://www.youtube.com/watch?v=OXX2Nlwx7oU&search=bruce%20lee>
<http://www.youtube.com/watch?v=8TVAUakzEkU&search=bruce%20lee>
<http://www.youtube.com/watch?v=qzyOfm19RHg&search=bruce%20lee>
http://www.youtube.com/watch?v=ZzwGv2G_e5g&search=bruce%20lee
<http://www.youtube.com/watch?v=-UzaoZ7-qp4&search=bruce%20lee>
<http://www.youtube.com/watch?v=Szf8x1H--e8&search=bruce%20lee>
<http://www.youtube.com/watch?v=Sk0Px2Em21Q&search=bruce%20lee>
<http://www.youtube.com/watch?v=vjwCESiO4r4&search=bruce%20lee>
<http://www.youtube.com/watch?v=YXSd72vmfAk&search=bruce%20lee>
<http://www.youtube.com/watch?v=ILhOQK-VG9o&search=bruce%20lee>
<http://www.youtube.com/watch?v=fJ04HLDQ8kg&search=bruce%20lee>
<http://www.youtube.com/watch?v=vLqInirHoBQ&search=bruce%20lee>
<http://www.youtube.com/watch?v=5fZ9yZgBU40&search=bruce%20lee>
http://www.youtube.com/watch?v=tM_3hzZRslM&search=bruce%20lee
<http://www.youtube.com/watch?v=jn8HDRHalok&search=bruce%20lee>
<http://www.youtube.com/watch?v=eck4tFIQQNo&search=bruce%20lee>
<http://www.youtube.com/watch?v=epUIHPNEAv8&search=bruce%20lee>
<http://www.youtube.com/watch?v=ngQ7fjAHOn4&search=bruce%20lee>
<http://www.youtube.com/watch?v=Hp2LTZW0Tik&search=bruce%20lee>
<http://www.youtube.com/watch?v=OGN6obqpHLI&search=bruce%20lee>
<http://www.youtube.com/watch?v=N-RUZNdUPng&search=bruce%20lee>
<http://www.youtube.com/watch?v=c0GzU8yFqAA&search=bruce%20lee>
<http://www.youtube.com/watch?v=VVgaUOFYEI4&search=bruce%20lee>
<http://www.youtube.com/watch?v=S876VE9rorY&search=bruce%20lee>
http://www.youtube.com/watch?v=_OdeQc694b8&search=bruce%20lee
<http://www.youtube.com/watch?v=g2aHwUVpBGU&search=bruce%20lee>
<http://www.youtube.com/watch?v=RPWH-F7tU08&search=bruce%20lee>
<http://www.youtube.com/watch?v=nFUsJM9GLs&search=bruce%20lee>
<http://www.youtube.com/watch?v=JKQL7xBXkU4&search=bruce%20lee>
<http://www.youtube.com/watch?v=PtLnsPWmgRU&search=bruce%20lee>
<http://www.youtube.com/watch?v=U4XkPiMnfXc&search=bruce%20lee>
<http://www.youtube.com/watch?v=sBg2j4CFODg&search=bruce%20lee>
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Schapiro Exhibit 102

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,)
 NO. 07-CV-2203)
)
 vs.)
)
)
 YOUTUBE, INC., YOUTUBE, LLC,)
 and GOOGLE, INC.,)
)
 Defendants.)
 -----)

VIDEOTAPED DEPOSITION OF STANLEY PIERRE
LOUIS

NEW YORK, NEW YORK
TUESDAY, OCTOBER 14, 2008

BY: REBECCA SCHAUMLOFFEL, RPR, CLR
JOB NO. 15988

OCTOBER 14, 2008
9:23 a.m.

VIDEOTAPED DEPOSITION OF STANLEY PIERRE
LOUIS, taken at the offices of MAYER
BROWN, 1675 Broadway, New York, New
York, pursuant to notice, before REBECCA
SCHAUMLOFFEL, CLR, RPR.

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

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(212) 506-2295
aschapiro@mayerbrown.com

ALSO PRESENT:

MANUEL ABREU, Videographer

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FEDERAL STIPULATIONS

IT IS HEREBY STIPULATED AND
AGREED by and between the attorneys for
the respective parties herein, that
filing and sealing be and the same are
hereby waived.

IT IS FURTHER STIPULATED AND
AGREED that all objections, except as to
the form of the question, shall be
reserved to the time of the trial.

IT IS FURTHER STIPULATED AND
AGREED that the within deposition may be
sworn to and signed before any officer
authorized to administer an oath, with
the same force and effect as if signed
and sworn to before the Court.

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DIRECT - PIERRE-LOUIS

A. Yes, they were.

Q. How do you know that?

A. In part, because they sent
10:57:24 take-down notices prior to the filing
of the lawsuit.

Q. A large number of take-down
notices, correct?

A. Yes.

10:57:28 Q. Shortly before the filing of
the lawsuit?

A. Yes.

Q. Has BayTSP been provided
with a list of Viacom employees who are
10:57:55 authorized to post content on YouTube?

MR. HOHENGARTEN: You can
answer yes or no. Objection as to
form.

A. I believe so.

10:58:08 Q. And are there certain Viacom
employees who are authorized to upload
to YouTube?

MR. HOHENGARTEN: Objection
as to form. You can answer yes or
10:58:28 no.

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DIRECT - PIERRE-LOUIS

A. Yes.

Q. For what purposes do Viacom employees upload to YouTube?

10:58:37 MR. HOHENGARTEN: I am going to instruct the witness not to answer.

Q. Who is responsible for giving BayTSP the list of Viacom employees who are authorized to post to YouTube?

MR. HOHENGARTEN: Objection as to form.

A. I'm not certain.

10:59:09 Q. Who would we ask?

A. I would ask Warren Solow.

Q. Do you know approximately how many people are on that list?

A. I do not.

10:59:21 Q. Not even approximately?

A. I do not.

Q. Do you know if that list of employees has been provided to YouTube?

A. Not that I am aware of.

10:59:37 Q. Do you know of any way in

1 DIRECT - PIERRE-LOUIS

2 which YouTube would be able to
3 determine that a Viacom clip had been
4 posted by one of these authorized
5 10:59:54 individuals?

6 MR. HOHENGARTEN: Objection
7 as to form. I am concerned about
8 privileged information here, but I
9 can confer with Mr. Pierre-Louis
10 11:00:34 to find out whether he knows and
11 to find out if it is getting into
12 privileged information.

13 You are asking basically a
14 legal question and what he knows
15 11:00:45 and doesn't know as the director
16 of this litigation may stem
17 directly from privileged
18 communications.

19 MR. SCHAPIRO: So let me
20 11:00:54 clarify, because I am not meaning
21 to ask a legal question. I am
22 asking a factual question.

23 Q. What I want to get at is,
24 step one, we have established that
25 11:01:07 there is a list of Viacom employees who

1 DIRECT - PIERRE-LOUIS

2 as to how YouTube would or wouldn't. I
3 am just asking if you know of any
4 other, as to which YouTube does know?

5 11:15:53 MR. HOHENGARTEN: Objection
6 as to form.

7 A. I can't speculate on what
8 YouTube knows or doesn't know.

9 Q. Why is that list provided to
10 11:16:09 BayTSP?

11 MR. HOHENGARTEN: You can
12 answer that in a general way; if
13 you know.

14 A. I don't know that I can
15 11:16:43 answer that without getting into
16 privilege.

17 Q. Is it fair to say that if
18 you didn't provide BayTSP the list,
19 BayTSP would be taking down material
20 11:17:00 that was actually authorized, correct?

21 MR. HOHENGARTEN: Objection
22 as to form.

23 MR. SCHAPIRO: You may
24 answer.

25 11:17:10 A. The only thing, as I stated,

1 DIRECT - PIERRE-LOUIS

2 I am uncomfortable getting into this
3 area for reasons of privilege.

4 Q. Is the list of authorized
5 11:17:28 Viacom posters transmitted to BayTSP by
6 lawyers?

7 MR. HOHENGARTEN: Objection
8 as to form.

9 A. I am not sure.

10 11:17:45 Q. Do you know who maintains
11 the list?

12 A. I don't know specifically.

13 Q. Do you know whether the
14 identity of the people on the list has
15 11:18:05 ever changed?

16 A. I understand the list has
17 been supplemented.

18 Q. Do you know how many times?

19 A. I do not.

20 11:18:16 Q. By the way, when we were
21 talking about instructions being given
22 to the vendors about fair use earlier,
23 would this Mr. Solow be the person I
24 should ask about any such instructions?

25 11:18:49 MR. HOHENGARTEN: Objection

1 DIRECT - PIERRE-LOUIS

2 as to form.

3 A. Mr. Solow would be aware of
4 the instructions, I believe, that were
5 11:18:55 given to BayTSP.

6 Q. One other follow-up matter.
7 I asked you earlier whether, to your
8 knowledge, Viacom had sued end users,
9 people who watch infringing clips and
10 11:19:14 you gave me your answer to that.

11 Do you know if Viacom has
12 sued people who have uploaded
13 unauthorized clips?

14 MR. HOHENGARTEN: I am going
15 11:19:26 to object as misstating prior
16 testimony in terms of whether
17 anyone has ever been sued just for
18 watching clips.

19 MR. SCHAPIRO: Just to be
20 11:19:33 clear, I will restate while I
21 don't agree with that acquiesce in
22 that objection, I will separate
23 out the second part of the
24 question without the throat
25 11:19:43 clearing introduction.

1 DIRECT - PIERRE-LOUIS

2 Q. Are some clips that the
3 reviewers -- strike that.

4 Does every clip reviewed by
5 11:46:47 the reviewers become a work in suit?

6 MR. HOHENGARTEN: Objection
7 as to form. You can answer yes or
8 no; if you can.

9 A. No.

10 11:47:03 Q. Do you have a sense as to
11 how many or what percentage of works
12 pass through the reviewers and end up
13 as works in suit?

14 A. I do not.

15 11:47:14 Q. Any rough sense?

16 A. I do not.

17 Q. Can you tell us why the work
18 reviewed by the reviewers might not end
19 up as a work in suit?

20 11:47:31 MR. HOHENGARTEN: I am going
21 to instruct the witness not to
22 answer.

23 Q. Are any steps taken -- other
24 than what BayTSP does, are there any
25 11:47:58 steps taken to avoid identifying clips

1 DIRECT - PIERRE-LOUIS

2 that are subject to the fair use
3 defense?

4 MR. HOHENGARTEN: I will
5 11:48:15 instruct the witness not to
6 answer.

7 Q. Other than BayTSP using the
8 list we discussed earlier, are there
9 any steps taken to avoid identifying
10 11:48:29 clips that were uploaded to YouTube
11 with authorization from Viacom?

12 MR. HOHENGARTEN: I instruct
13 the witness not to answer.

14 Q. Are there any steps taken to
15 11:48:51 ensure that Viacom owns valid
16 copyrights for all works in suit?

17 MR. HOHENGARTEN: I am not
18 even certain what you are asking,
19 but I am going to instruct the
20 11:49:05 witness not to answer. To the
21 extent I understand it, it is the
22 process of determining what to do
23 to include the works in suit.

24 Q. To your knowledge, are there
25 11:49:20 any clips that have been determined to

1 DIRECT - PIERRE-LOUIS

2 be infringing but have not been
3 designated as works in suit?

4 MR. HOHENGARTEN: I instruct
5 11:49:31 you not to answer.

6 Q. To your knowledge, are there
7 any clips that have been determined not
8 to be infringing yet have been
9 designated as works in suit?

10 11:49:47 MR. HOHENGARTEN: I think
11 you can answer that.

12 A. I don't know. Not that I am
13 aware of. I don't even understand the
14 question to be honest with you. It had
15 11:49:59 a lot of do not not's on the emphasis.

16 Q. I will restate it.

17 To your knowledge, do the
18 works in suit include any material that
19 is actually non-infringing?

20 11:50:17 A. Not to my knowledge.

21 Q. Are you familiar with
22 something called video ID?

23 MR. HOHENGARTEN: You can
24 answer yes or no.

25 11:50:43 A. I think I have heard the

1 DIRECT - PIERRE-LOUIS

2 Q. At this time, Viacom has --
3 at least as of now, Viacom is not using
4 Vobile?

5 12:15:32 A. Viacom is not currently
6 using Vobile.

7 Q. But is it considering it?

8 A. Yes.

9 Q. If a company -- if a website
10 12:15:55 prescreens videos before they are
11 posted to the site, do you believe that
12 that provides the site with knowledge
13 and control for purposes of the DMCA?

14 MR. HOHENGARTEN: I instruct
15 12:16:11 you not to answer.

16 Q. Well, you've given CLE
17 presentations about the DMCA, correct?

18 A. I have given CLE
19 presentations about the DMCA.

20 12:16:22 Q. And you have described what
21 you called as a catch 22 that companies
22 like -- that companies that host video
23 space, correct?

24 MR. HOHENGARTEN: Objection
25 12:16:36 as to form. You can testify about

1 DIRECT - PIERRE-LOUIS

2 what you have said publicly.

3 A. During CLE presentations, I
4 have outlined for the attendees the
5 12:16:49 various arguments raised by each side
6 about these issues, not injecting any
7 personal or corporate view, but rather
8 outlining the issues so they are made
9 aware of the arguments.

10 12:17:09 Q. I am going to read a couple
11 of sentences and ask if you recall
12 saying this at a seminar on copyright
13 in May 2007 at PLI in New York City.

14 Quote, "There is no duty to
15 12:17:42 monitor your site's activities. So
16 that's been an interesting part of a
17 lot of these cases because if you have
18 no duty to look, you're not going to
19 look. Therefore, you have no
20 12:17:53 knowledge. But if you look and try to
21 make, you know, some kind of deterrence
22 policy, then you have knowledge. So
23 there is sort of a catch 22 that many
24 online service providers have sort of
25 12:18:05 thrown their hands up at and basically

1 DIRECT - PIERRE-LOUIS

2 said, you know, we are just not going
3 to look. Otherwise, we risk, you know,
4 being liable for some reason. So it is
5 12:18:13 kind of an odd result."

6 MR. HOHENGARTEN: I object
7 to reading a quotation from a
8 document which has not been given
9 to the witness to examine.

10 12:18:26 MR. SCHAPIRO: What I am
11 going to do, and we are at about
12 the lunch break, so this might
13 work out in terms of time. If you
14 wish, just play an excerpt from a
15 12:18:36 DVD recording of your presentation
16 and you can tell us whether it is
17 you or not and whether you agree.

18 MR. HOHENGARTEN: Do we have
19 copies of the DVDs to place on the
20 12:18:49 record?

21 MR. SCHAPIRO: Yes.

22 MR. HOHENGARTEN: So you
23 want to do it after the lunch
24 break?

25 12:18:53 MR. SCHAPIRO: Yes, we will

1 DIRECT - PIERRE-LOUIS
2 take a lunch break. We will set
3 it up. So no one has to wait
4 around while we deal with the
5 12:18:59 inevitable technical difficulties.

6 THE VIDEOGRAPHER: The time
7 is 12:19 p.m. We're going off the
8 record.

9 (Whereupon, a lunch recess
10 12:40:34 was held.)

11 (Whereupon a DVD was played
12 off the record.)

13 THE VIDEOGRAPHER: The time
14 is 1:06 p.m. We are back on the
15 13:06:01 record.

16 BY MR. SCHAPIRO:

17 Q. Just a moment ago, I think
18 we can stipulate that we, together,
19 watched a portion of a DVD from an
20 13:06:19 advanced seminar on copyright law given
21 by the Practicing Law Institute, 2007.
22 We watched a portion in which
23 Mr. Pierre-Louis was speaking.

24 Are we on agreement on that?

25 13:06:28 MR. HOHENGARTEN: Yes, I

1 DIRECT - PIERRE-LOUIS

2 stipulate to that and lodge an
3 objection to the extent we haven't
4 had a chance to view the entire
5 13:06:36 CD, but we don't do that at this
6 time.

7 Are you going to enter the
8 CD into the record as an exhibit?

9 MR. SCHAPIRO: Yes, but if
10 13:06:43 we can deal with the physical
11 aspect of this later, we will save
12 time. We will make that the next
13 defense exhibit. We are getting
14 copies of it. It actually turns
15 13:06:51 out, because we are scrupulous
16 about copyright, it turns out we
17 only have one copy. We ordered
18 other ones from BLI which was
19 supposed to be here today. We
20 13:07:02 will make the one we have here the
21 exhibit and we will get everyone
22 the exhibits from PLI.

23 MR. HOHENGARTEN: That's
24 fine.

25 13:07:08 Q. Mr. Pierre-Louis, is it --

1 DIRECT - PIERRE-LOUIS

2 would you like me to read, again, the
3 excerpt I read before we broke for
4 lunch. I note that I provided you with
5 13:07:21 a typed up copy of the excerpt during
6 the lunch break.

7 A. I have the excerpt.

8 MR. SCHAPIRO: Can I ask,
9 Andy, do you want to enter that as
10 13:07:28 an exhibit as well?

11 MR. HOHENGARTEN: Sure. We
12 will do that.

13 (Whereupon, the
14 aforementioned DVD was marked as
15 Pierre-Louis Exhibit 2 for
16 identification as of this date by
17 the Reporter.)

18 (Whereupon, the
19 aforementioned typed copy of an
20 excerpt was marked as Pierre-Louis
21 Exhibit 3 for identification as of
22 this date by the Reporter.)

23 Q. So when you said there is no
24 affirmative duty to monitor, that was
25 13:08:05 your interpretation of the description

1 DIRECT - PIERRE-LOUIS

2 of the DMCA, correct?

3 MR. HOHENGARTEN: Objection

4 as to form.

5 13:08:11 A. The presentation I gave
6 while I was at Kay Sholler was part of
7 an instructional seminar on copyright
8 meant to provide attendees with a
9 survey of emerging and timely areas of

10 13:08:31 copyright law and I was providing them
11 with various viewpoints to enable them
12 to understand the scope of arguments
13 being made by various sides. So in
14 that context, I made these statements.

15 13:08:46 Q. Well, you just watched the
16 discussion leading up to this excerpt;
17 am I correct?

18 A. Yes.

19 Q. And before that sentence
20 13:08:53 when you said there is no duty to
21 monitor your site's activities, you
22 didn't say some people think or it
23 could be claimed, you said -- you were
24 describing what the provisions of the
25 13:09:03 DMCA are, correct?

1 DIRECT - PIERRE-LOUIS

2 MR. HOHENGARTEN: Objection

3 as to form.

4 A. I was providing them with an
5 13:09:12 understanding that many have with
6 respect to the DMCA.

7 Q. Did you say that?

8 MR. HOHENGARTEN: Objection

9 as to form.

10 13:09:20 A. We watched eight minutes of
11 it, but with respect to the DMCA, I
12 think it speaks for itself. I was
13 providing information to the attendees.

14 Q. And you were there as a
15 13:09:33 teacher, correct? You were an
16 instructor?

17 A. I was the one of four
18 panelists speaking on copyright issues.

19 Q. And people were getting
20 13:09:42 continuing legal education credit for
21 attending, correct?

22 A. Yes.

23 Q. Do you believe there is a
24 duty to monitor the site's activities
25 13:09:52 under the DMCA?

1 DIRECT - PIERRE-LOUIS

2 MR. HOHENGARTEN: Now,
3 parting from what he said in the
4 public forum?

5 13:09:56 MR. SCHAPIRO: Yes, because
6 he just said he was recounting
7 what some people have said.

8 MR. HOHENGARTEN: I instruct
9 the witness not to answer.

10 13:10:03 Q. Do you believe a site that
11 engages in active monitoring and
12 becomes aware of infringement
13 automatically becomes liable for
14 infringement if it fails to remove that
15 13:10:14 content?

16 MR. HOHENGARTEN: Now, you
17 are --

18 MR. SCHAPIRO: Separate and
19 apart from the presentation.

20 13:10:22 MR. HOHENGARTEN: I instruct
21 you not to answer.

22 Q. Does Viacom have user
23 generated video websites?

24 MR. HOHENGARTEN: Objection
25 13:10:40 as to form. I think you can

1 DIRECT - PIERRE-LOUIS

2 provide a general answer.

3 A. Viacom owns sites that in
4 some instances permit users to upload
5 13:10:53 content.

6 Q. And in some instances can
7 that content be video?

8 A. Yes.

9 Q. I am going to ask that this
10 13:11:05 document be marked as Exhibit 4.

11 (Whereupon, the
12 aforementioned E-mail was marked
13 as Pierre-Louis Exhibit 4 for
14 identification as of this date by
15 13:11:25 the Reporter.)

16 Q. Am I correct that this
17 appears to be an E-mail from Susan
18 Kohlmann to the various parties in this
19 case stating, "This list represents the
20 13:13:04 Viacom online properties that support
21 or have" -- " or have supported
22 UGC/UGV"?

23 MR. HOHENGARTEN: Objection
24 as to form.

25 13:13:14 A. That is what the E-mail

1 DIRECT - PIERRE-LOUIS

2 states.

3 Q. And what -- do you have any
4 understanding of what the acronym UCG
5 13:13:21 or UGV stand for?

6 A. As I understand it, UCG
7 would be user generated content and UGV
8 would be user generated video.

9 Q. And could you take a look at
10 13:13:32 the list that's attached? Can you tell
11 us of the sites that are listed here,
12 are there any that -- do you know if
13 all of these sites support user
14 generated video?

15 13:13:57 A. I do not believe that all of
16 the sites on this list support the
17 upload of videos by users.

18 Q. Can you pick out some that
19 might be examples that do support the
20 13:14:21 upload of video? Are you familiar with
21 some that provide -- that allow a user
22 to upload a video?

23 A. The iFilm site permits users
24 to upload videos.

25 13:14:33 Q. And I see that the list

1 DIRECT - PIERRE-LOUIS

2 provided by Miss Kohlmann shows up
3 under the word "Spike." Do you have an
4 understanding of what Spike is?

5 13:14:42 A. Spike is one of the brand
6 channels that make up the MTV Networks,
7 so my film would fall within the
8 purview of the Spike brand.

9 Q. If you look further down the
10 13:14:57 page you see a heading "Nickelodeon."
11 Can you tell us what Nickelodeon is?

12 A. Nickelodeon is a brand --
13 branded channel within the MTV Networks
14 that primarily targets family-oriented
15 13:15:13 programming.

16 Q. Under the heading
17 Nickelodeon, do you see towards the
18 bottom it is written,
19 "www.addictingclips.com."

20 13:15:28 A. Yes, I see that.

21 Q. Do you know what that is or
22 was?

23 A. I don't know the specific
24 target audience or target company. I
25 13:15:43 know it was a company that we acquired,

Schapiro Exhibit 103

User Abuse Manual



**Atom Entertainment, Inc. for Addicting Clips and
Any Other Applicable Sites.**

2006

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Introduction

- User generated content should never be monitored

Something that can't bear enough repeating is that the User Abuse Team, and Atom Entertainment in general, does not, and should not, actively monitor any of its Web sites for content violations regarding content submitted or generated by its users. The Abuse Team reviews a site only after receiving a complaint from an outside party, or if alerted by an Atom Entertainment employee who encountered a seemingly objectionable website in the course of performing normal job duties.



- Implications of hit content

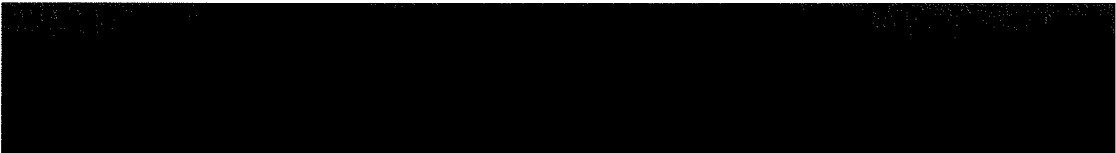


The need to avoid losing popular content needs to be balanced against the ramifications of potential bad publicity for hosting legal, yet objectionable, content.

Important: If none of the recommendations in this manual happen to apply to the case at hand, please don't hesitate to consult our legal counsel (Victoria Libin or Adam Lovingood), or Scott Roesch, or both. If legal counsel or Scott is not available to discuss the matter, then bring it to the attention of Margaret McCarthy.

- Removal of offending material: Site or account?

It's up to you to determine whether it's in our best interest to delete just the offending piece of content, or the account altogether.

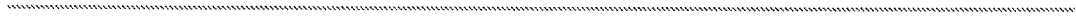


- Password protection

Addicting Clip's password protection feature for sharing content privately is a useful tool for keeping family, club, adult, and other content private.



Therefore, if we receive a complaint about content behind a password, it should be removed.



➤ Risk analysis



Messaging Procedure

➤ Maintaining the proper tone

One of the more difficult aspects of working in abuse administration is handling difficult correspondents – both complainants and abusers. A parent reporting pornography on a our site can be as difficult to placate as an advertiser demanding to know why his ad was shown next to offensive content. A number of correspondents will resort to the full range of abusive language, from profanity to promises of legal action.

If a message contains nothing but insults and obscenities, the best course of action is to simply not answer it. Occasionally, however, people get justifiably frustrated, and deserve a response despite the surface profanity.

Rule #1: Maintain an even tone at all times. Never escalate the tenor of the exchange, or match abuse for abuse. Make an effort to set limits. If you say too much or make excessive assurances

or concessions – or go overboard in admitting error – the complainant (or abusive user) will do his best to exploit the language you use to his benefit. Depending on the circumstances, the goal in abuse messaging is to strike the right balance between being specific and being vague, being receptive and being firm.

Rule #2: Never give legal advice. [REDACTED]

➤ The importance of notifying abusers

Make sure you notify all abusers of actions taken. [REDACTED]

Most deletion canned emails are deliberately vague, and simply state the following:

`It was brought to our attention that your content violated our terms of service. It was therefore removed from the AddictingClips web site.`

Some abusers will know exactly what we are referring to, and will not reply. Others will demand a more detailed explanation. In such cases, it is best to invoke the terms of service, for example:

`Thanks for your message. Our records indicate that your site content violated one or more terms of Section 4 of our Terms of Use, which states that users may not:`

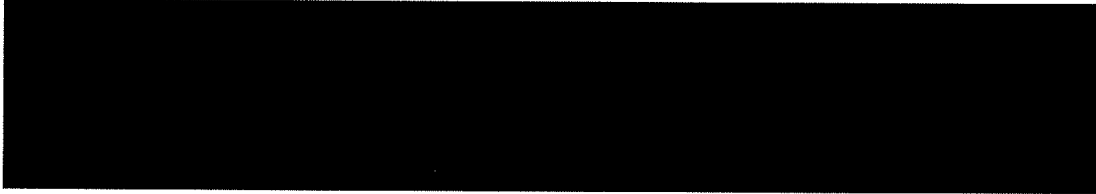
`create a user name or screen name or upload to, distribute through or otherwise publish through the Site any Materials which are indecent, libelous, defamatory, obscene, threatening, invasive of privacy or publicity rights, abusive, illegal, harassing, contain expressions of hatred, bigotry, racism or pornography, or are otherwise objectionable, or that would constitute or encourage a criminal offense, violate the rights of any party or violate any law.`

If the user demands more specific details of the violation, it is up to you whether to reply. [REDACTED]

➤ Ending an exchange

Some abusers are unusually tenacious in demanding to know why their accounts were closed. It is a bad idea to become ensnared into telling abusers exactly why you made your decision. Doing so will only guarantee sustained and ridiculous debate. Try not to let an exchange run to more than three messages total: Original notification, (their) response, and (our) clarification.

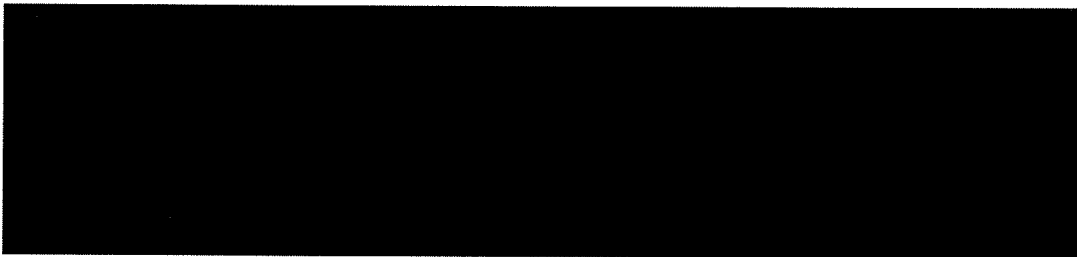
➤ Invoking the User Agreement



➤ The 'passive conduit' disclaimer

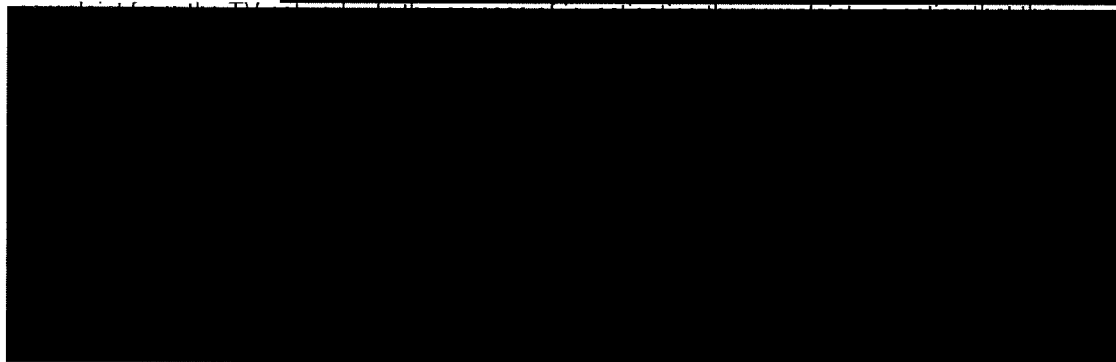
All responses to persons who send original complaints must contain the following disclaimer:

As a passive conduit, we cannot monitor user websites, but we respond to breaches of our Terms of Service when we learn of such behavior.



➤ The multiple-violation rule

If a user account has three or more content violations that separately might not warrant an outright account deletion, it may be desirable to terminate the account and delete all content submitted by the user.



➤ Messaging nuts and bolts

Theoretically, more than half of all abuse messages will be notices to users informing them that we deleted infringing content after receiving a complaint, and are therefore originated messages.

Please follow the procedures below when responding to the complainant and notifying the abusive user.

- All responses to the complainant should bear the subject line "Atom Entertainment Abuse Team"
- All account-deletion messages to the abusive user should also bear the subject line "Atom Entertainment Abuse Team", followed by the case number of the complainant's original message (ex.: Atom Entertainment Abuse Team [Case# 1654994])

(In short, all originated messages should have a case# in the subject line)

- Always begin the message to the complainant (and to the user who write back to complain) with "Thank you for your message"
- Always use the standard Abuse Team signature – no names, please! You can make an exception to this rule when messaging law-enforcement personnel, Better Business Bureau staffers, and select others.

Make sure you record all account deletions and reactivations on a spreadsheet that you keep in your user folder. You should have a number for the user's login, email, type of content, and type of abuse.

Dealing with the authorities

- Our privacy policy



Ordinary citizens, parents, students, school administrators, foreign law-enforcement officials and attorneys often assume that we will disclose the identity of users upon request. These parties must be informed that we will not release such information without a court order:

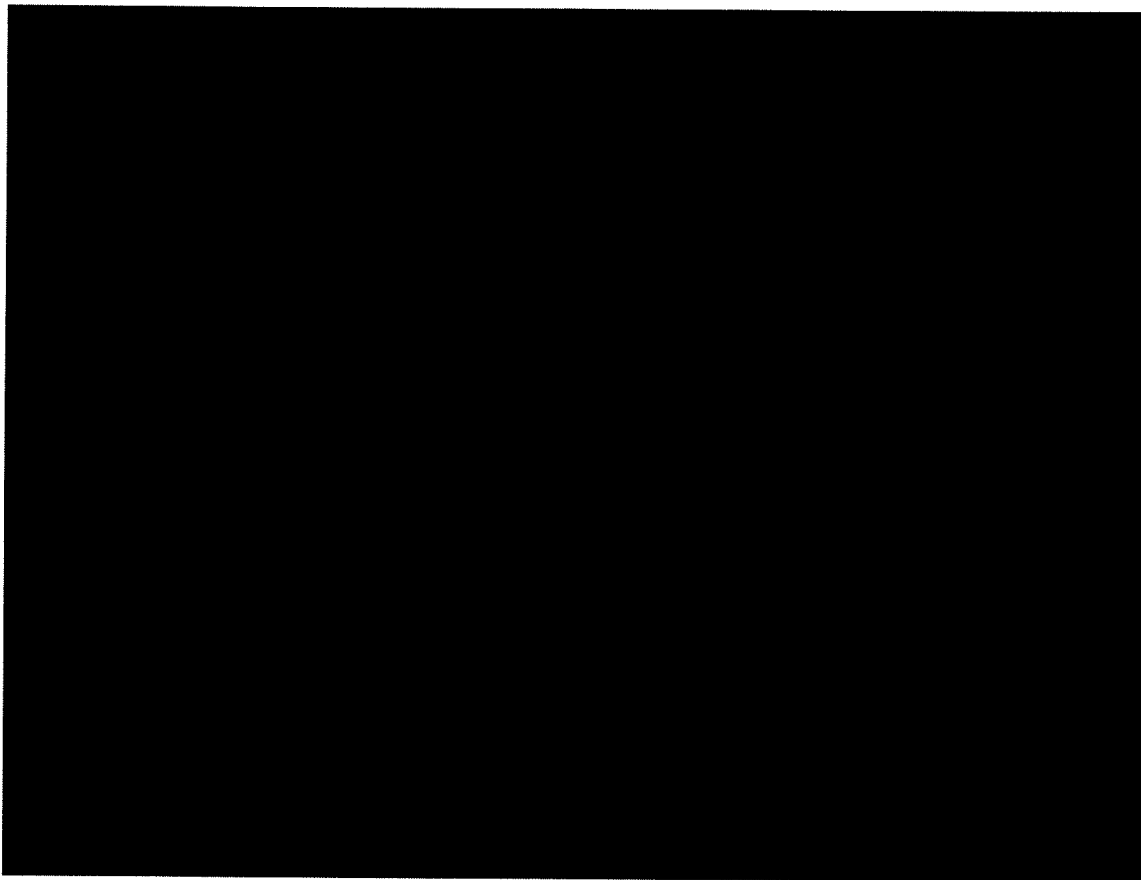
Atom Entertainment, Inc. acknowledges and has considered your request that we divulge the identity of the user in question. However, in light of our privacy policy, we are unable to comply with your request.

Atom Entertainment, Inc. will, however, disclose user account information upon receipt of a valid court order and we will notify the user of such order prior to any disclosures.

-
- Court orders


Sometimes law enforcement or other government Agencies will email demanding user information after the see porn or other illegal clips. In order for us to release basic user information, we require a subpoena, and to release more specific information, such as IP logs, we require a search warrant.

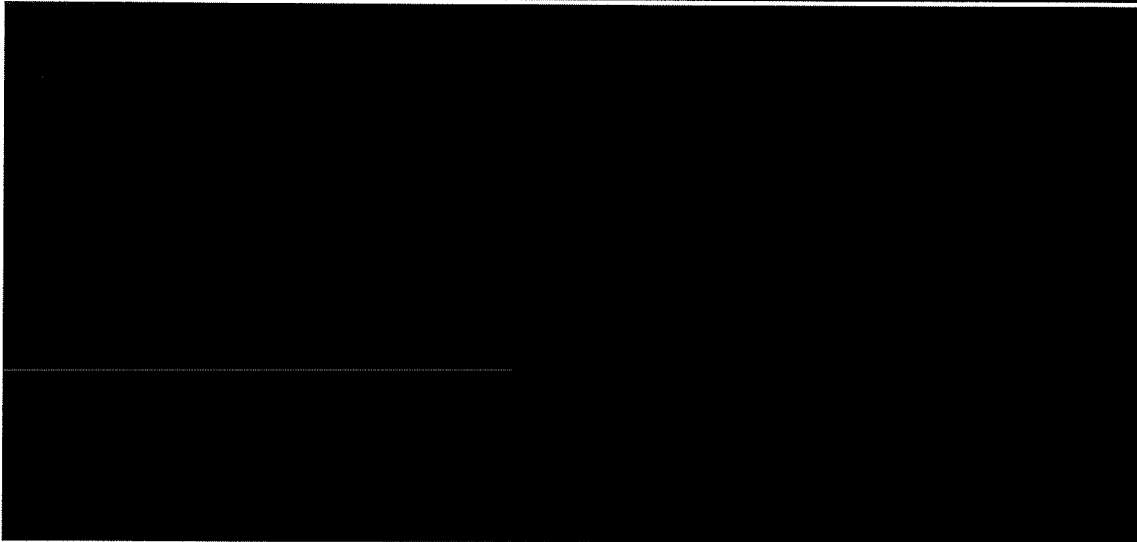
Something important to remember is that we are obligated by law to notify the user before disclosing any personal information. 




.....

➤ Procedure

When you receive a court order, whether it's a subpoena or search warrant, have our legal counsel review it. 



Following is an example of a letter responding to a court order:

April 15, 2005

IA Helen Ramirez
Federal Bureau of Investigation
2500 E. TC Jester
Houston, TX 77008

VIA FACSIMILE

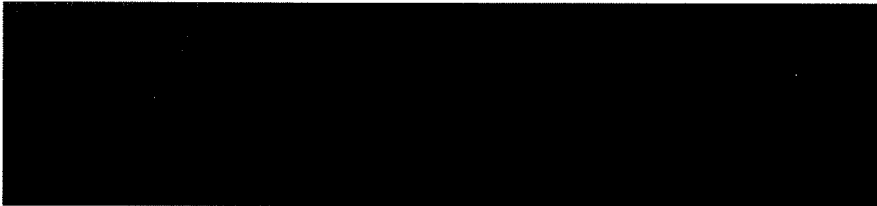
Case number 305A-BA-80998-AS6611-HO

Dear Investigator Ramirez,

The information supplied in this facsimile is in response to the subpoena requiring information for the account referenced as addictingclips.com/xxxxmachine.

Unfortunately, we have a policy of deleting content from accounts that have terminated.

Nevertheless, the account's registered e-mail address (which was supplied upon registration) is still intact in our records, as are the dates for the creation of the account, and the last login to the account. They are as follows:



Please let me know if you have any questions regarding the above information.

Regards,

Bob Tarter
Abuse Administrator
Atom Entertainment, Inc.

➤ Notifying the User about a warrant or subpoena

As mentioned earlier, we will need to notify the user that we have received a subpoena ordering us to disclose his identity (or his site content, or both). Unless the court order contains explicit language ordering us not to notify the user, we must contact him at his account's registered e-

mail address notifying him of the court order and giving him the opportunity to file a petition and obtain a protective order to block the disclosure.

Below is an example of such a notification, sent by e-mail:

Hello,

We have received a subpoena from the Hinterland County (Texas) Prosecutor's Office ordering us to disclose user information for your Addicting Clips account, which was referenced in the subpoena under the URL greatpyramid.addictingclips.com. The subpoena was dated March 19, 2006. We are providing this notification as a courtesy.

The Subpoena requires that responsive documents be produced no later than April 5, 2006. If you object to these documents being produced, you must obtain a protective order or other court order that relieves Atom Entertainment, Inc. of its legal obligation to respond to the Subpoena.

For further information concerning the Subpoena, you may contact the attorney who served the Subpoena:



Please let us know if you have any questions.

Regards,

Abuse Administrator
Atom Entertainment, Inc.

Cc Victoria Libin, Sr. Director of Legal Affairs

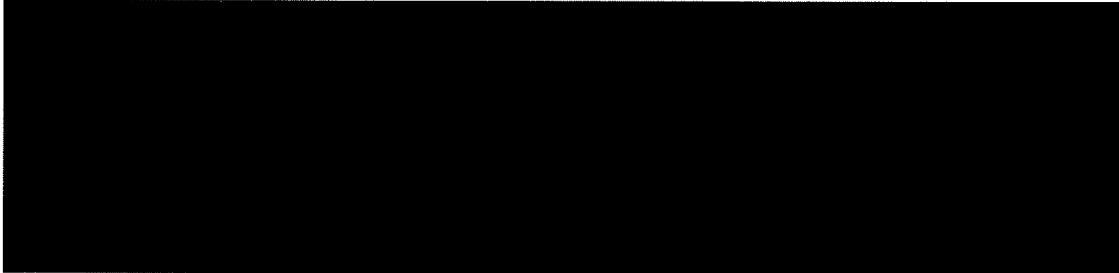
Note: The deadline for receiving the documents blocking our obligation to disclose user information should be ten working days after the date of the court order (as in the March 19 – April 5 example above). Always make sure that the original deadline in the subpoena or court order requesting disclosure is met. If it is not possible to meet the deadline, have legal counsel request an extension.

If you receive paperwork before the stated deadline that blocks disclosure, have our legal counsel review it. Once s/he has confirmed that the paperwork is legitimate, immediately contact the authorities who issued the subpoena. Write a cover letter detailing our Privacy Policy and procedure for notifying users about disclosure of their information, and fax along the paperwork you received from the user. Notify the user that you have received his documents, and have faxed copies to the authorities who issued the subpoena (Keep our legal counsel informed of what you are doing at all times; you will need assistance from her on the specifics).

Important:

- Make sure you keep copies (or originals) of all associated paperwork, including e-mails.
- In all correspondence, be as specific as possible about dates.

➤ Abusive discussion board entries or reviews



➤ Referring people to the police

Complainants who alert us to threatening site content that appears likely to cause physical harm or is evidence of a crime should be referred to the local authorities with the following response:

We are anxious to work with you to resolve this matter.

Atom Entertainment's privacy policy precludes us from giving out our registered user information except to legal authorities.

Therefore, please have your local police department (or other law enforcement agency) contact our legal department. Here is the contact information for our legal team:

Legal Department
c/o Atom Entertainment, Inc.

225 Bush, Suite 1200, San Francisco, CA 94104

FAX: (415) 503-2425

As a passive conduit, Atom Entertainment, Inc. cannot monitor user content, but we respond to breaches of our Terms of Service when we learn of such behavior.

➤ Dealing with parents

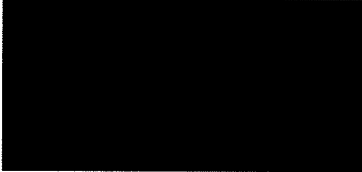
You may find it desirable to employ a more personal tone when dealing with parents of minors who are affected by user abuse – especially when the children are the objects of the abuse, which is often cruel.



➤ Threats to Atom Entertainment

All physical threats to our company, whether they involve hacking our network, bombing our offices, or inflicting physical harm on Mika, our board users, our management team, or our employees, must be reported immediately to a local field office of the FBI. If the threat is contained in a discussion board entry or a review, send the FBI the IP address obtained by our technical people; if the threat is contained in an e-mail, make sure you include the full header along with the message body.

Here is our contact information for the FBI:



Following is an example of a faxed letter to the FBI:

July 2, 2005

National Infrastructure Protection Center
J. Edgar Hoover Building
935 Pennsylvania Ave, NW
Washington, D.C. 20535-0001

VIA FACSIMILE

Hello,

Atom Entertainment, Inc. is a company providing user generated content and other short format entertainment through various websites, including www.addictingclips.com.

On the afternoon of Wednesday, June 27, a disgruntled user posted hacking and bombing threats on one of our community discussion boards.

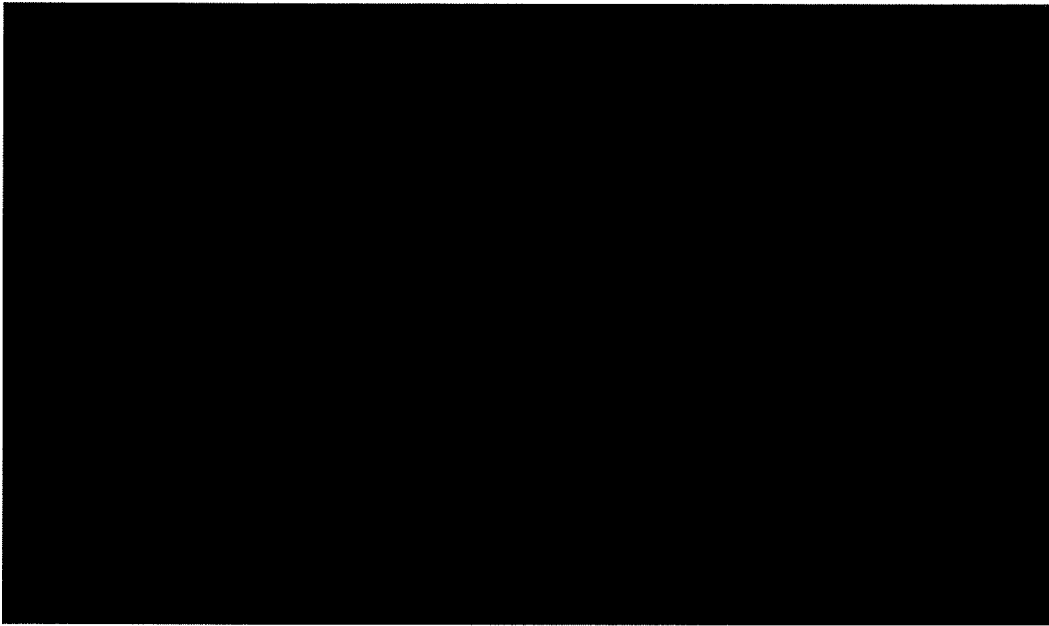
Here is the text of the post, with the threat highlighted in boldface:

This is not fair. I have not only spent alot of time submitting film clips to AddictingClips, as a fairly new user, but also spent over an hour reviewing various films, Atom Entertainment sites will get hacked on July the 9th, I plan to destroy Atom Entertainment, Inc.s headquarters on 07/09/01,



Following is the IP information we were able to obtain. (Please note that the the last IP is from an Inktomi cache server somewhere in London similar to the kind AOL uses):





Here is the personal information we have in our records regarding this user:



While we have reason to believe that the threat was simply an ill advised attention-grabbing scheme, we have decided, as a matter of policy, to report all physical threats to the FBI.

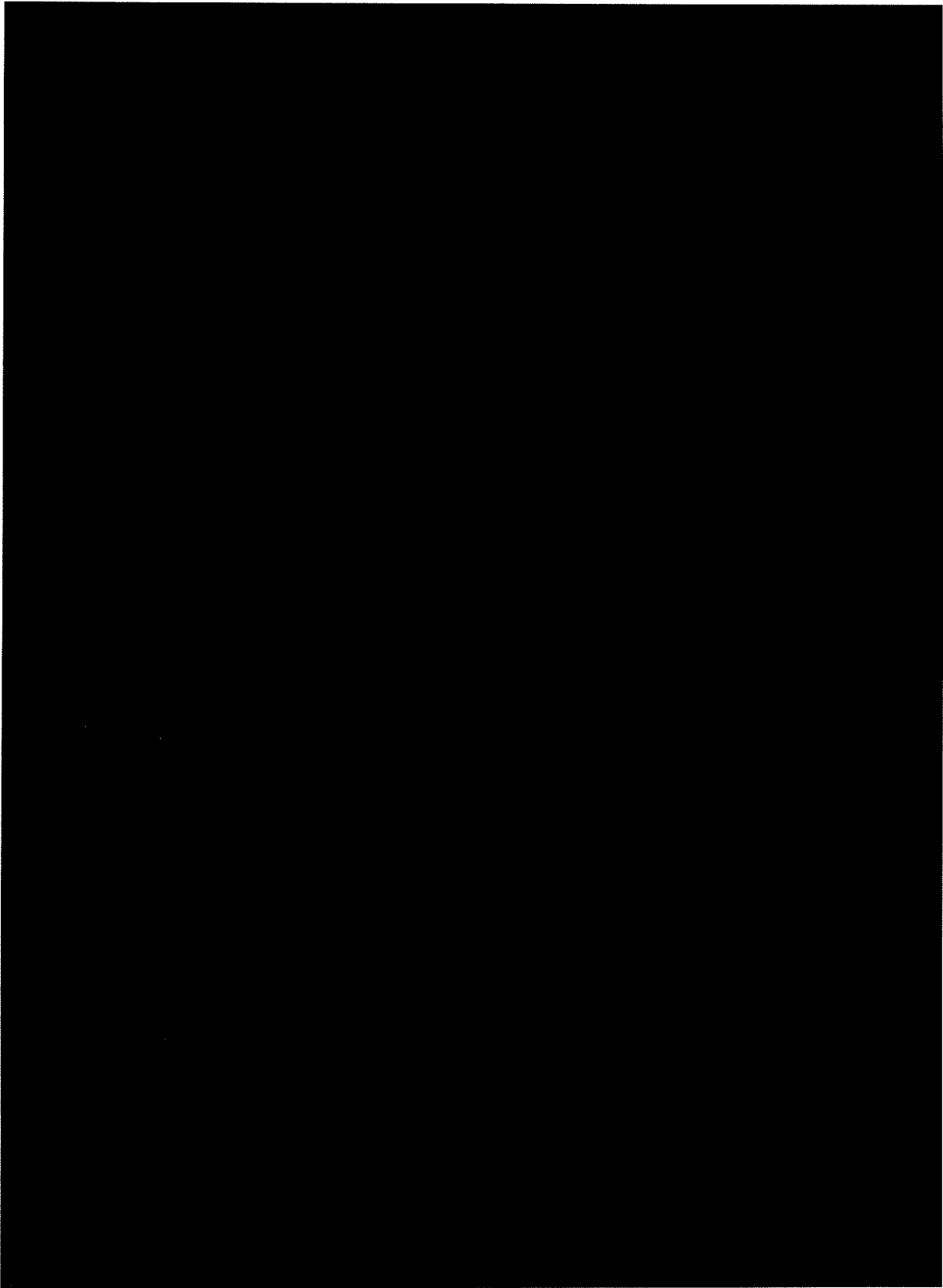
Because the threat against Atom Entertainment jeopardizes the integrity of our servers as well as the safety of our employees, thereby creating potential liability for Atom Entertainment, Inc., we in good faith believe that disclosure of the information we have provided in this letter is both necessary and appropriate.

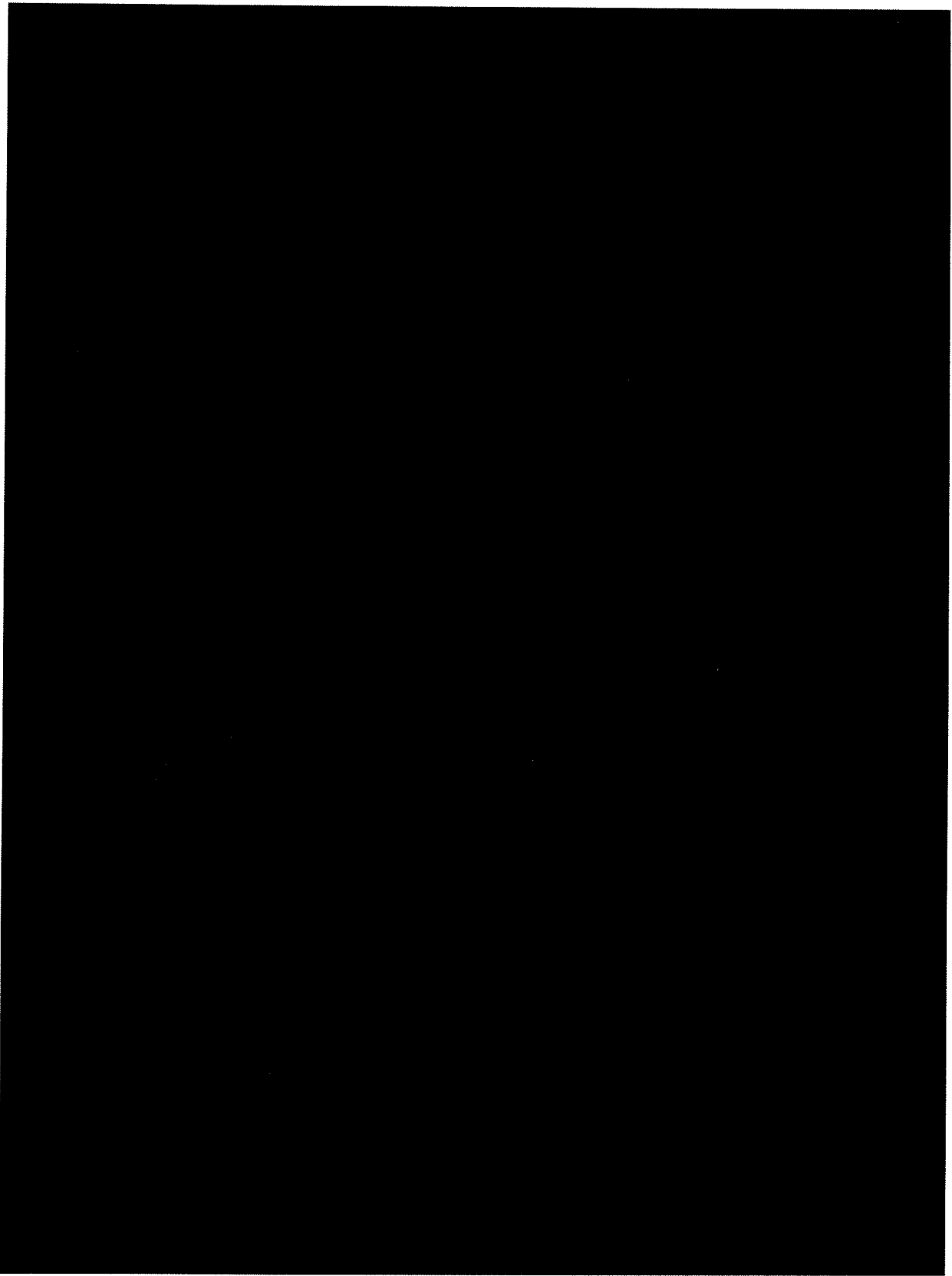
Regards,

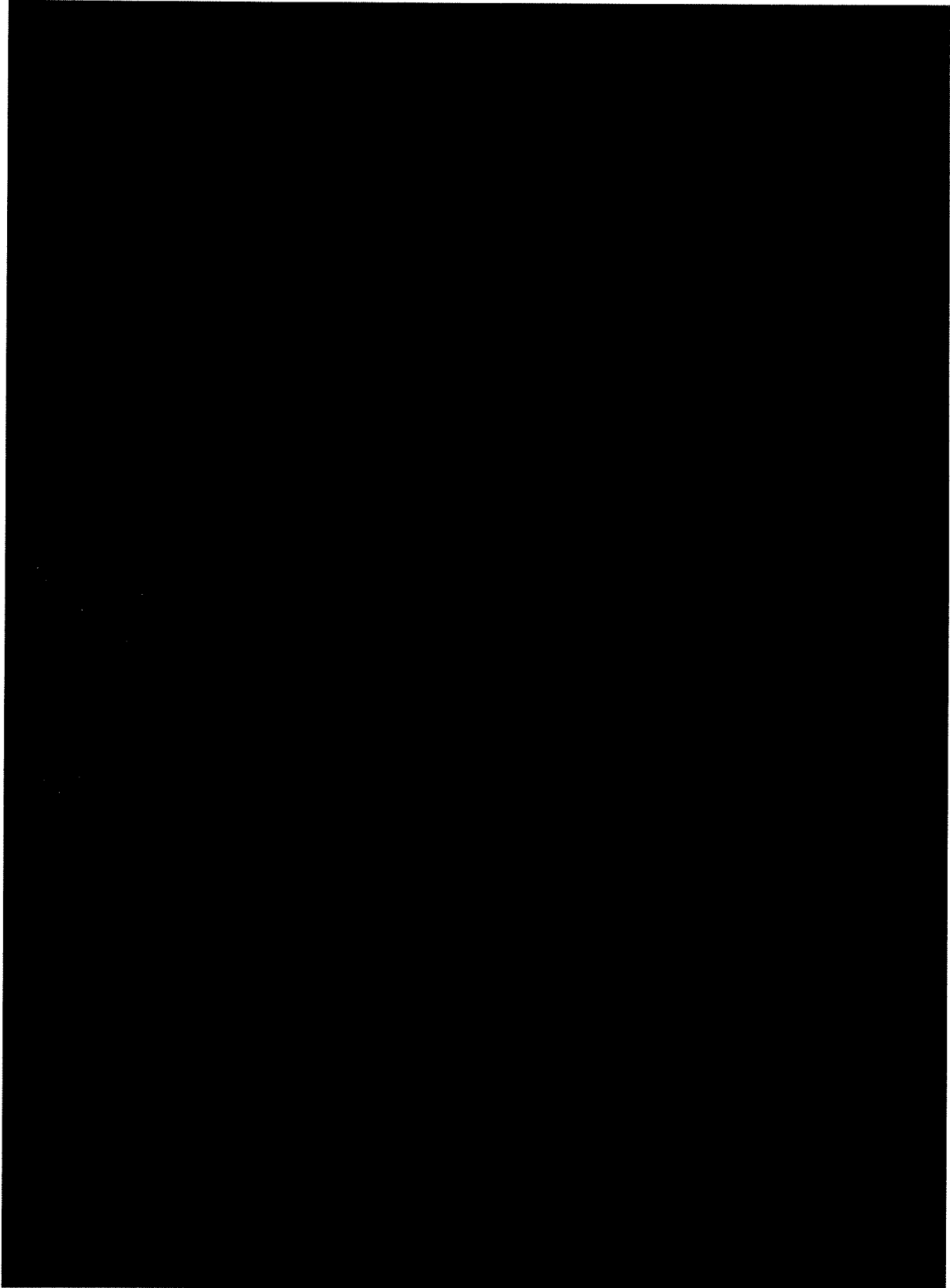
Bob Tarter
Abuse Administrator
Atom Entertainment, Inc.

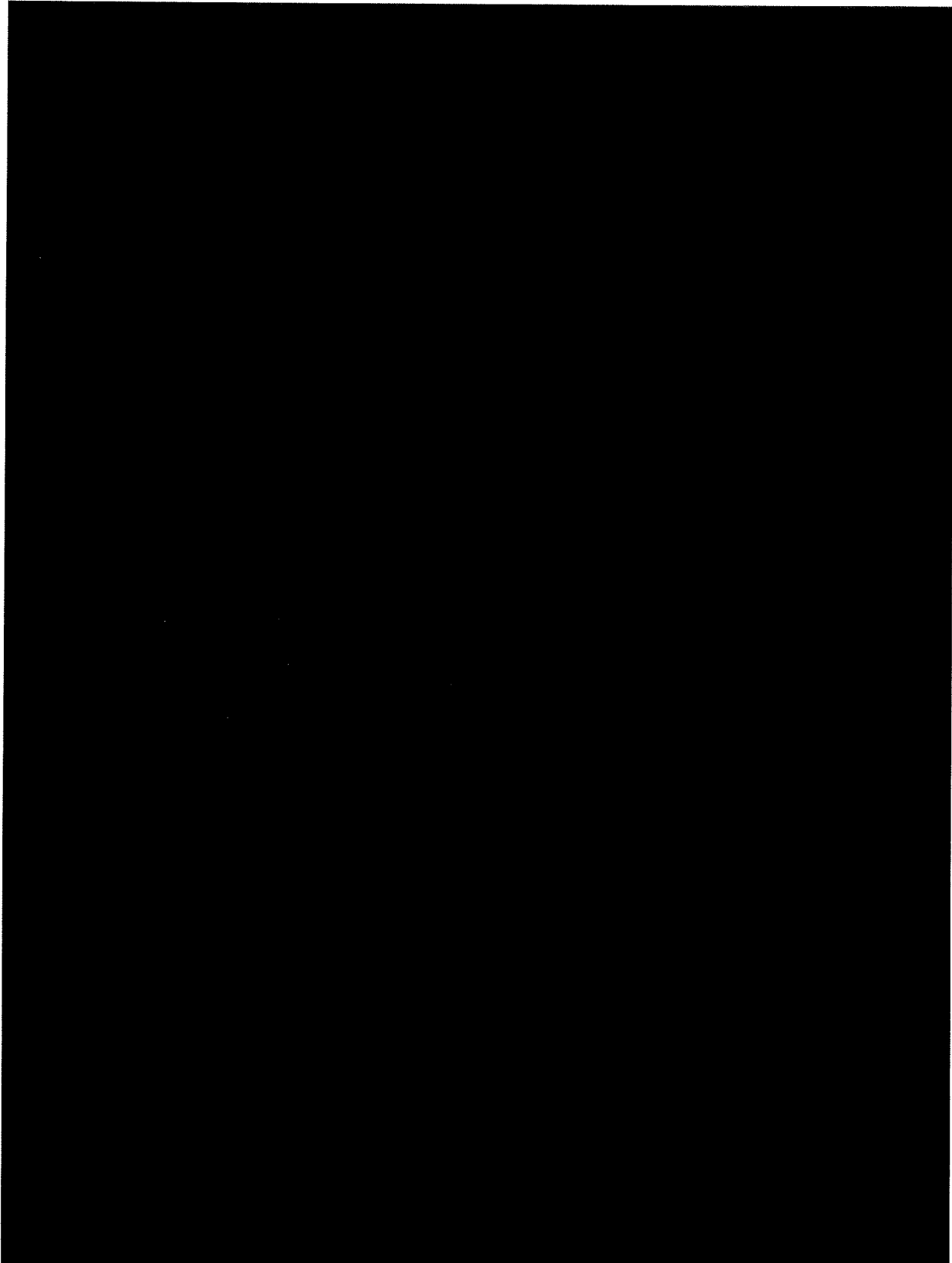
Copyright and other Intellectual Property Infringement

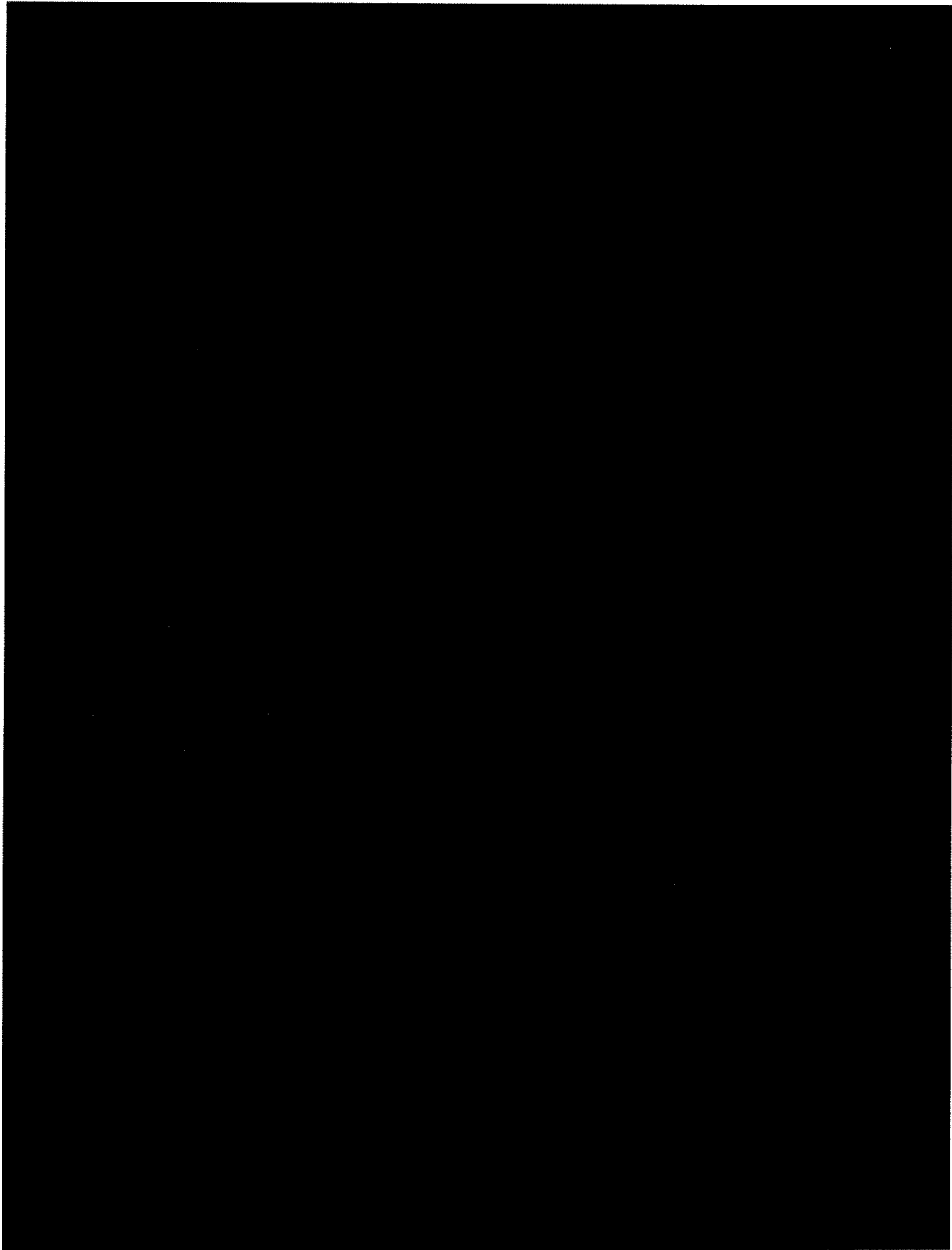


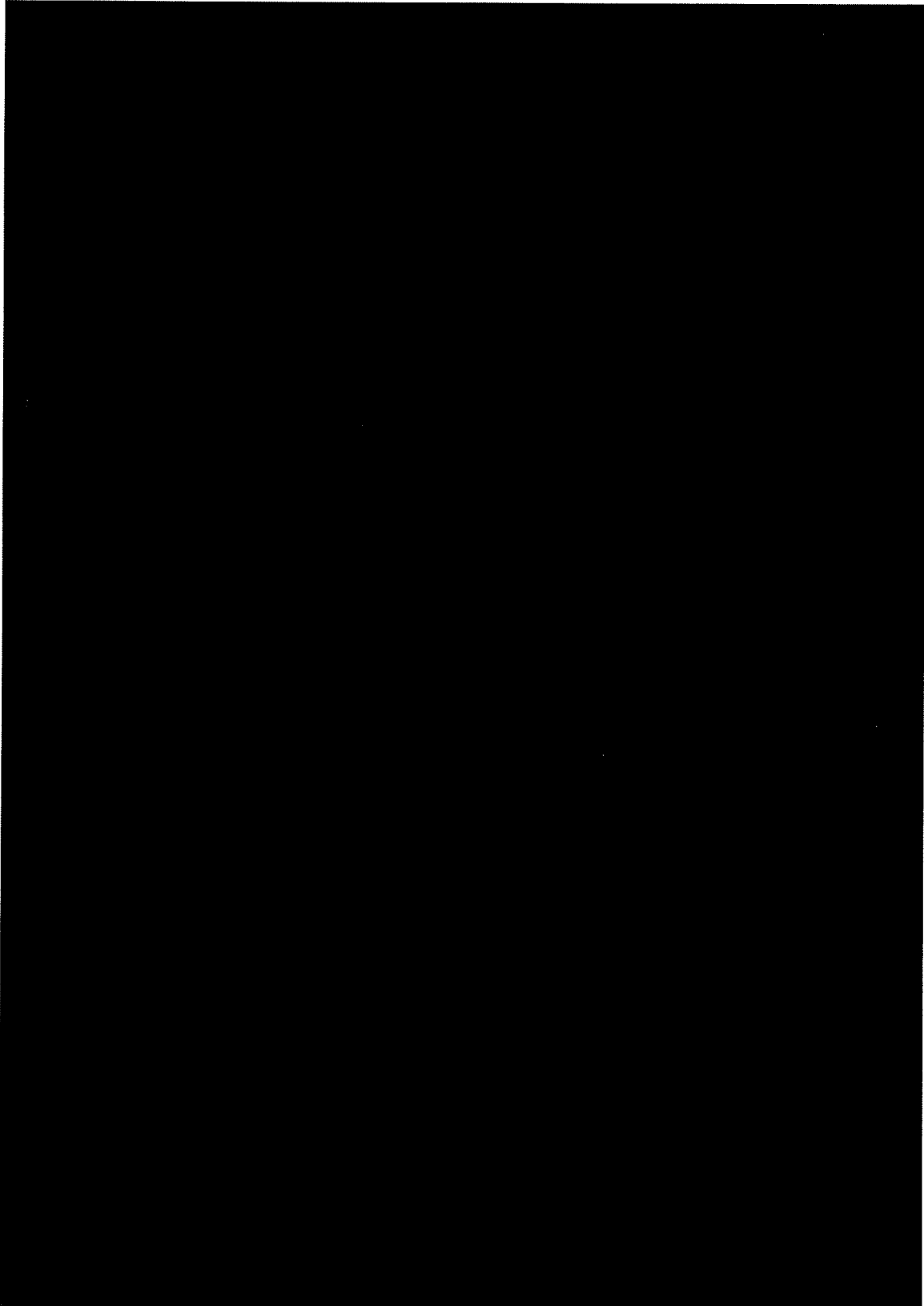


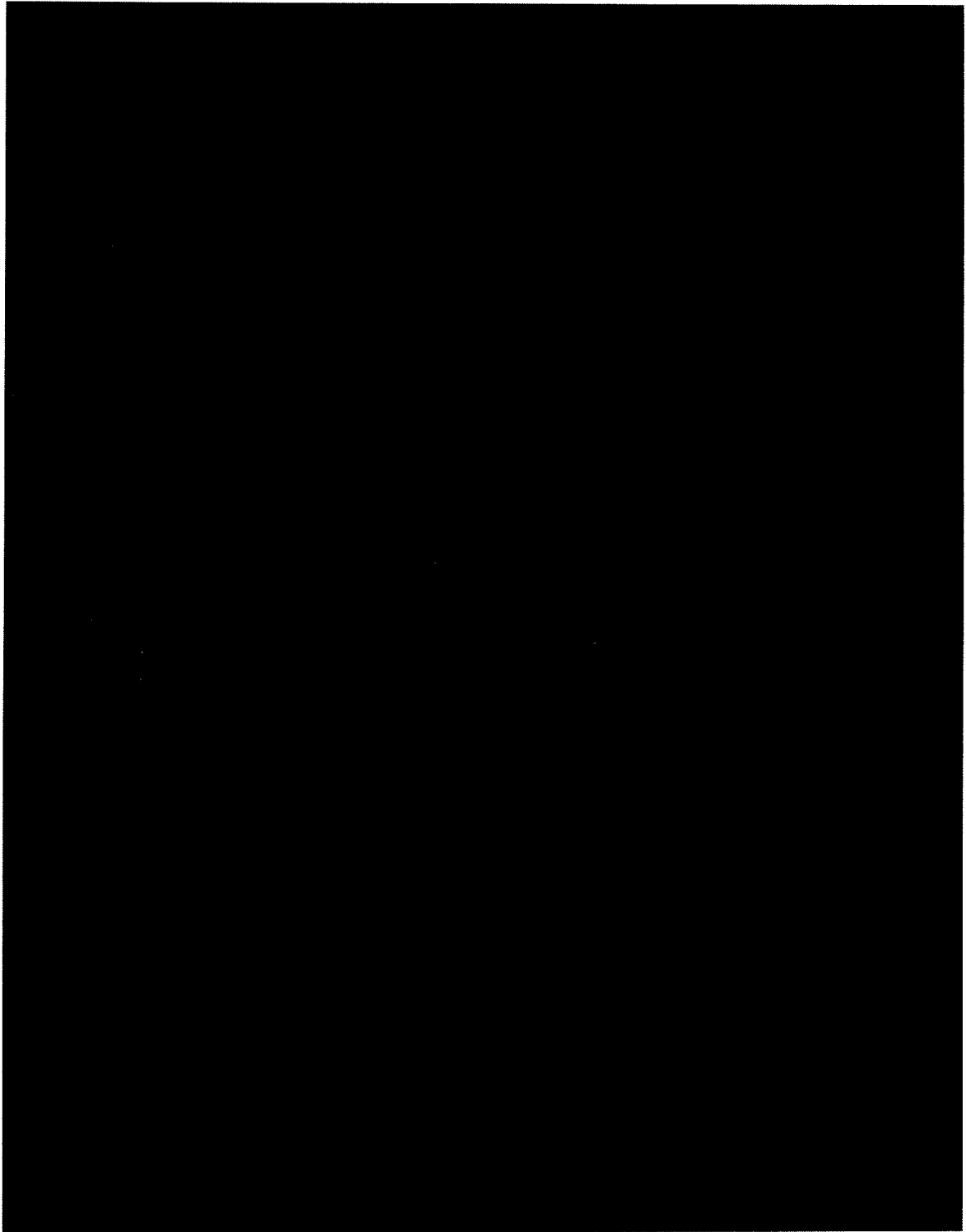


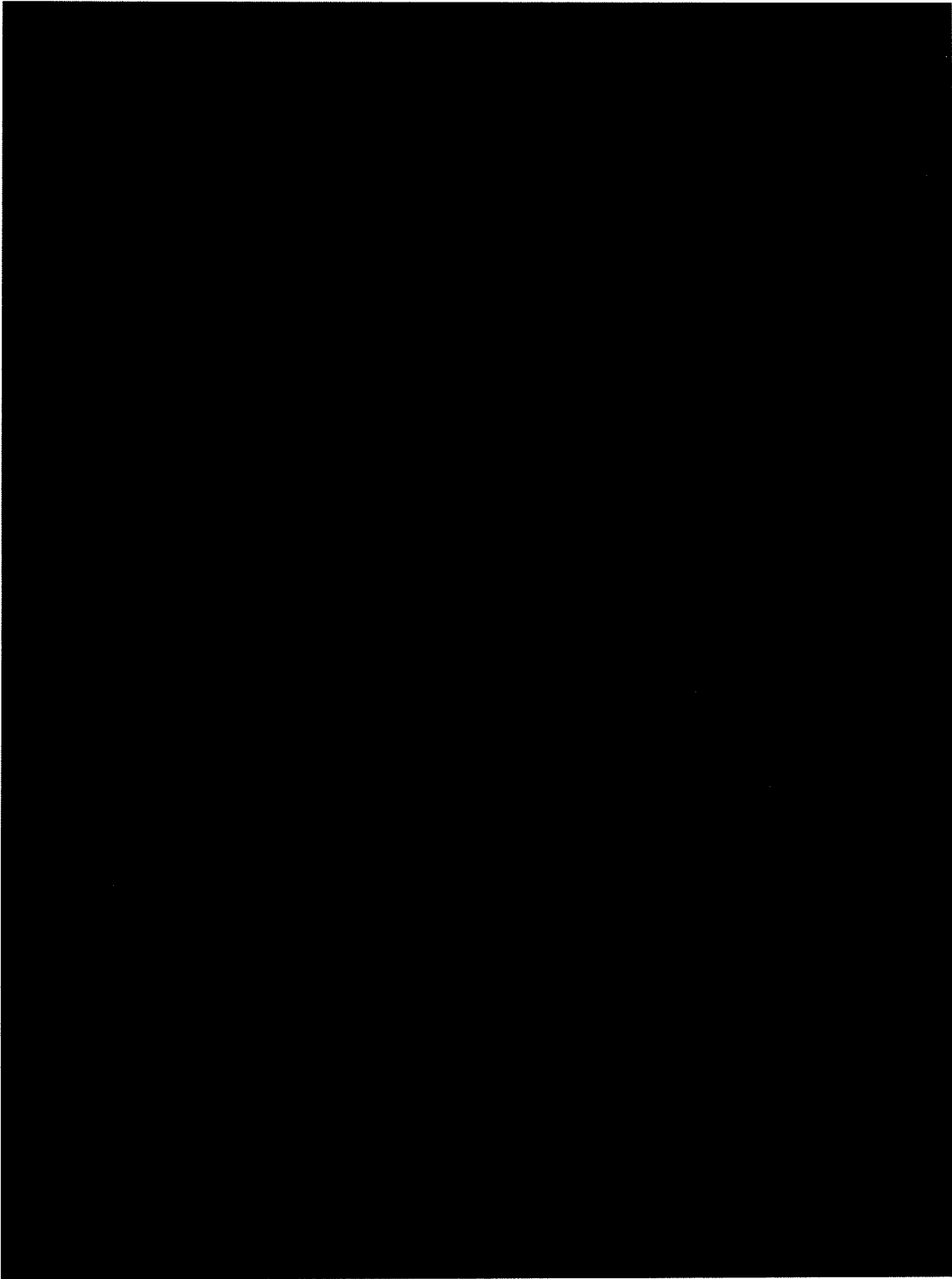




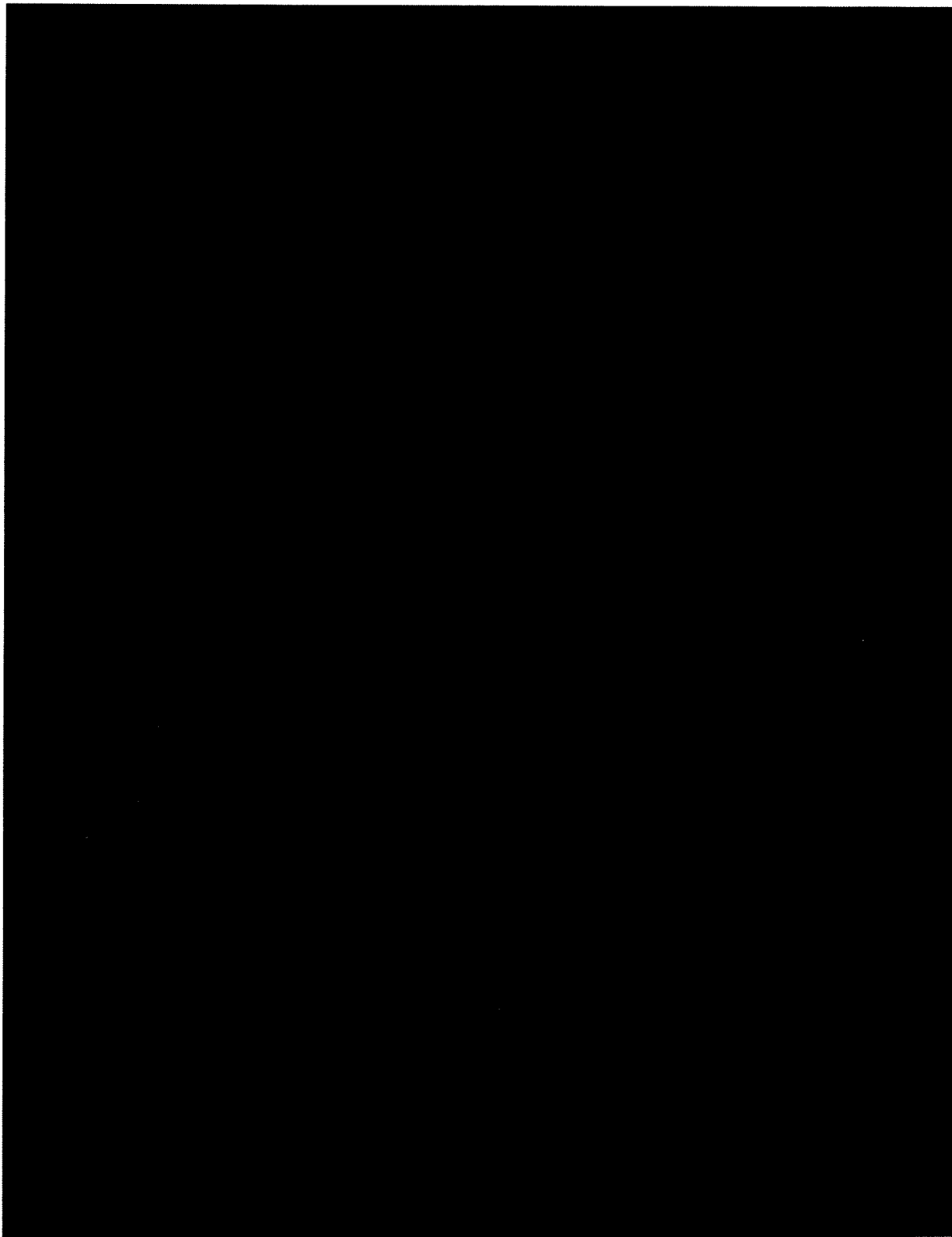


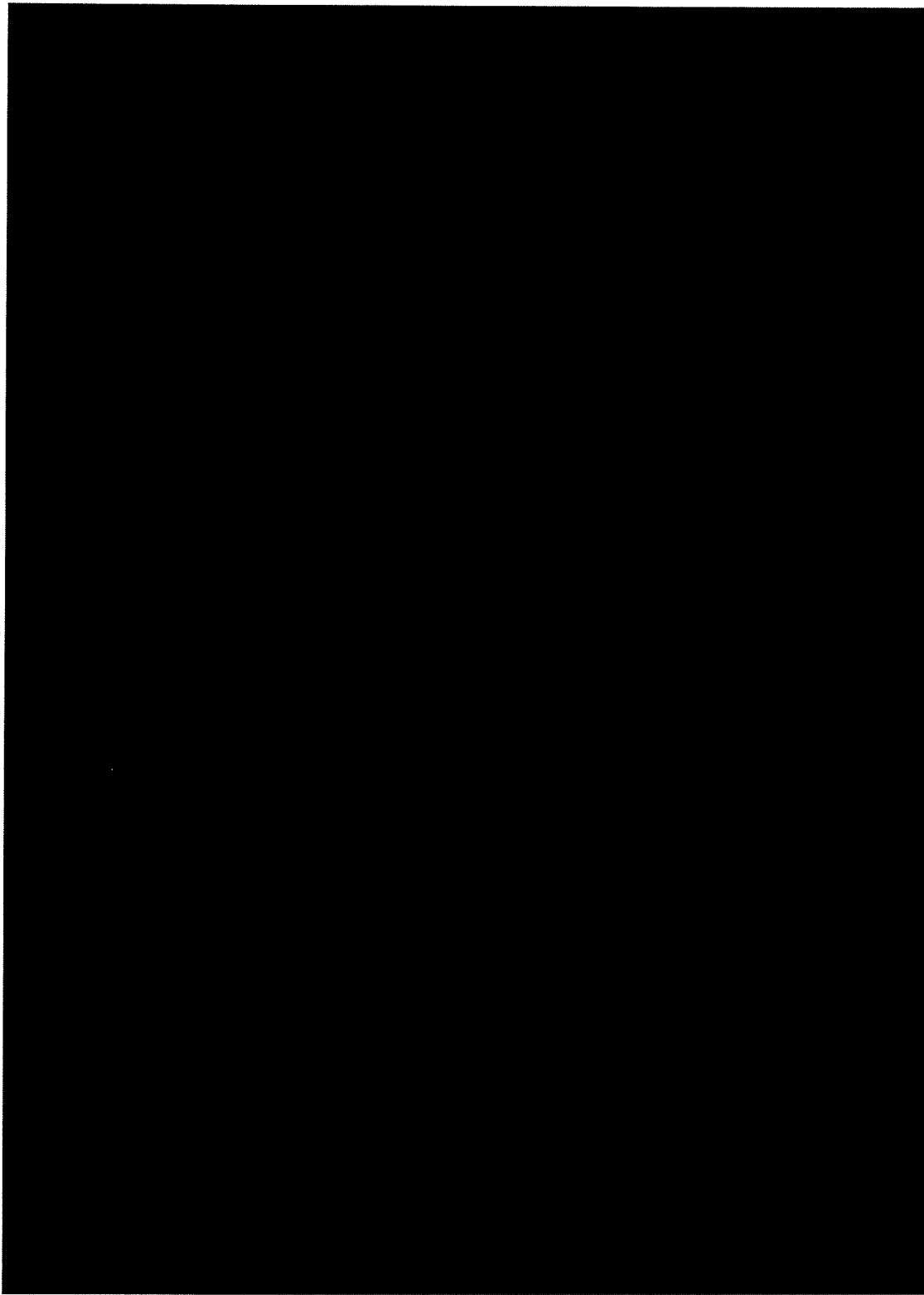


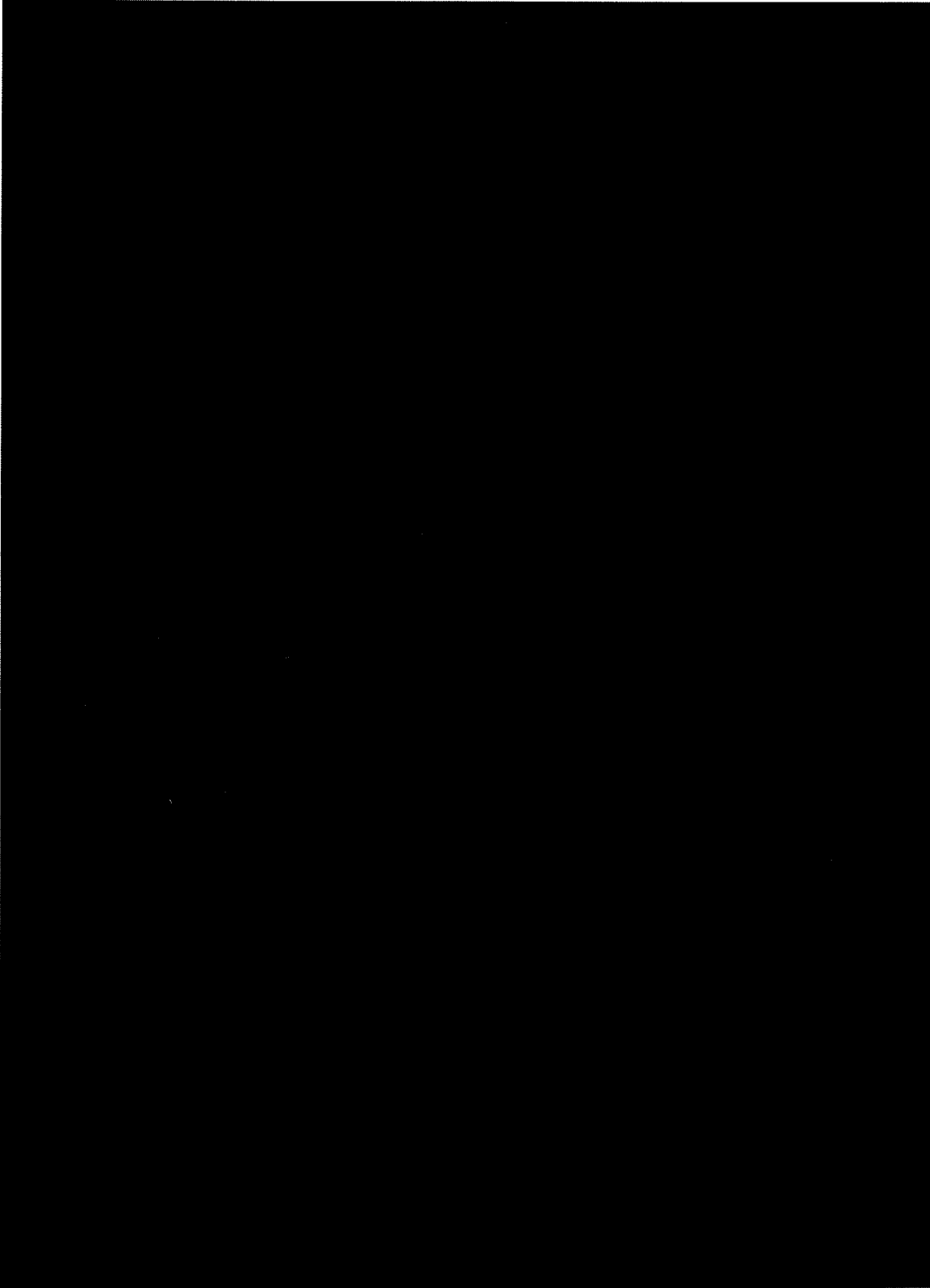


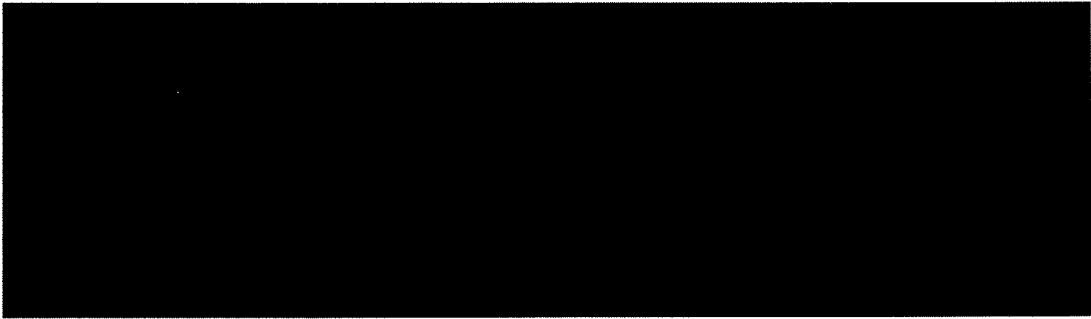


Obscenity

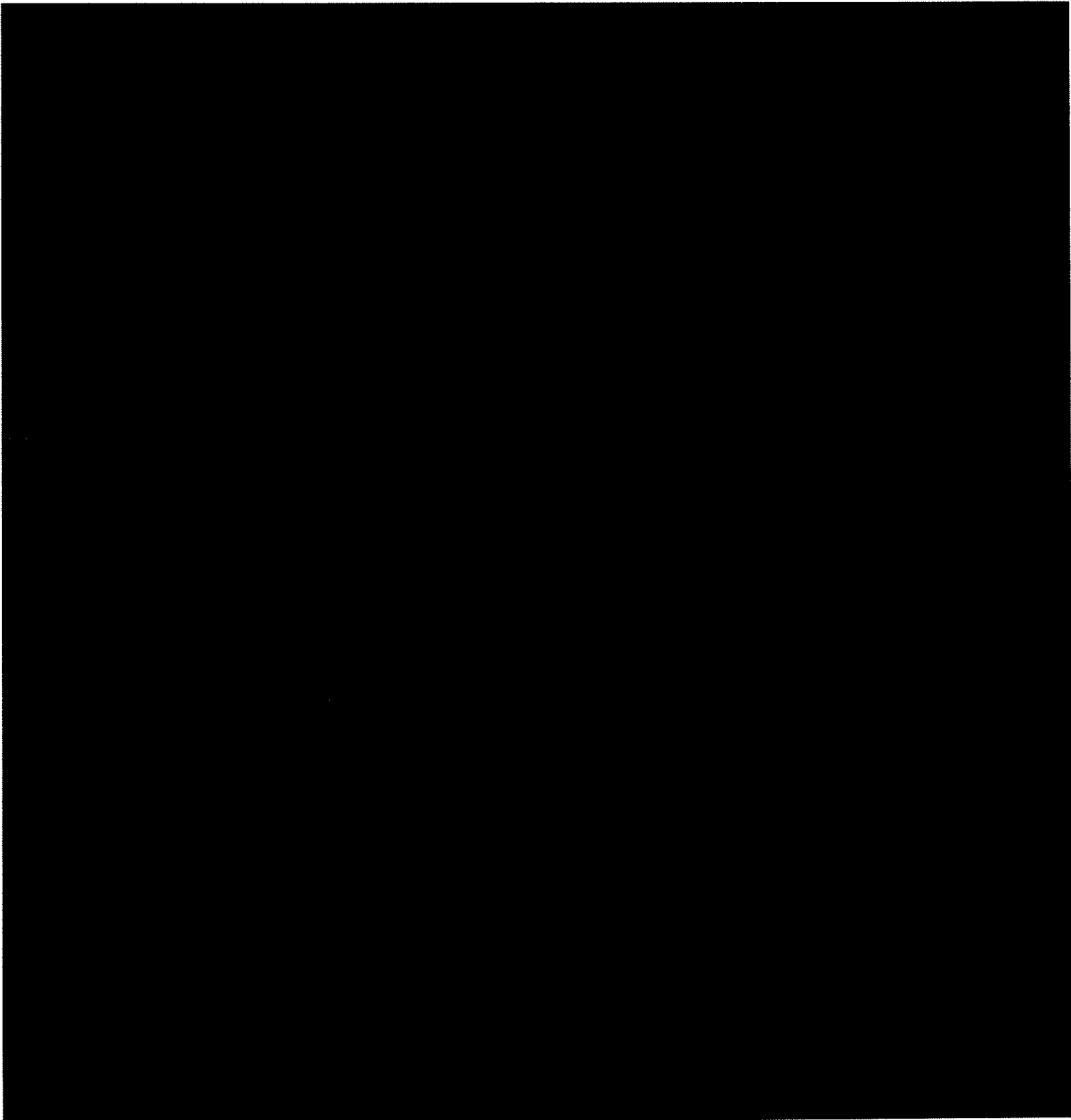


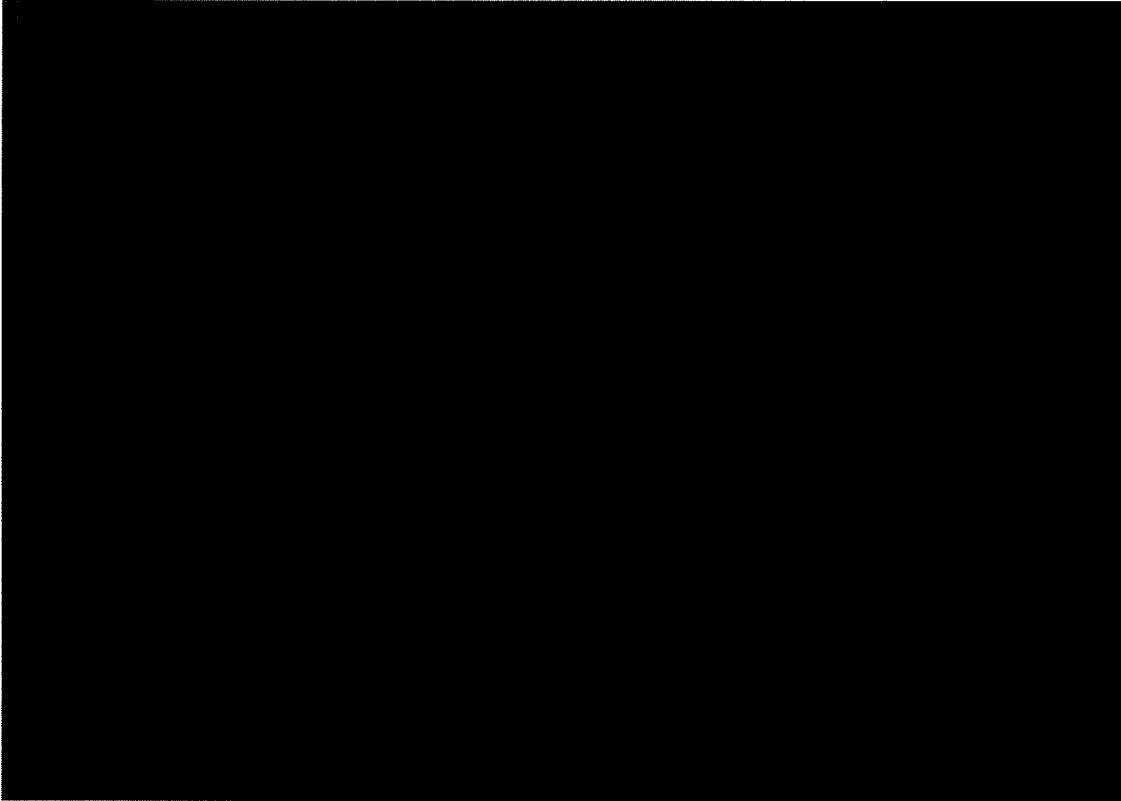




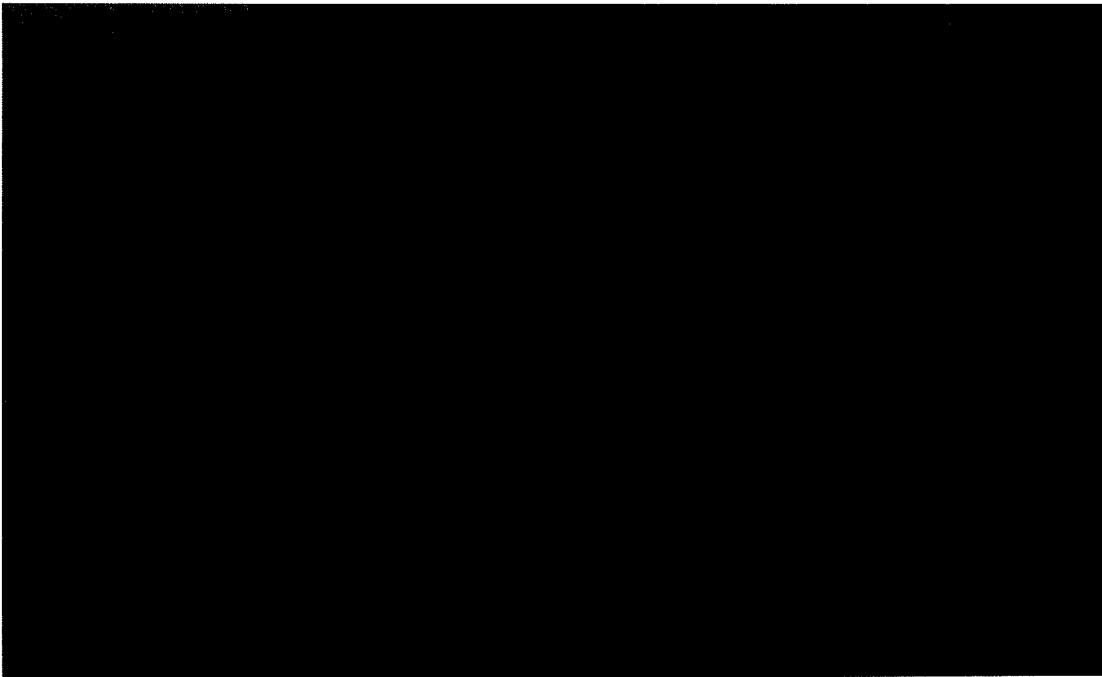


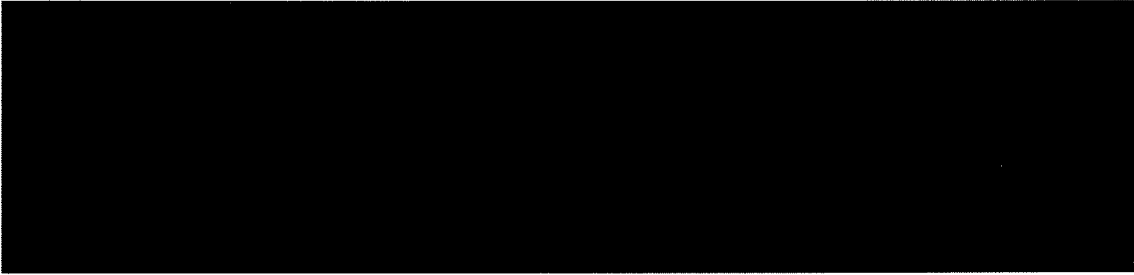
Hate





COPPA





Canned Response Cheat Sheet

Following is a list of the sections of this manual, along with brief descriptions of the canned responses mentioned in each. Since the Abuse can library contains as many as 80 canned responses, this list is not exhaustive. Please take some time to familiarize yourself with the Abuse category tree in Kana.

.....

Schapiro Exhibit 104

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 MIKA SALMI
SAN FRANCISCO, CALIFORNIA
FRIDAY, OCTOBER 16, 2009

JOB NO. 17909

OCTOBER 16, 2009

9:30 a.m.

VIDEOTAPED DEPOSITION OF MIKA SALMI,
WILSON, SONSINI, GOODRICH & ROSATI, LLP,
One Market Street, Spear Street Tower,
San Francisco, California pursuant to notice,
and before, ANDREA M. IGNACIO HOWARD, CLR,
RPR, CRR, CSR License No. 9830.

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

FOR THE PLAINTIFFS VIACOM INTERNATIONAL, INC.:

JENNER & BLOCK, LLP

By: SCOTT WILKENS, Esq.

1099 New York Avenue, NW, Suite 900

Washington, D.C. 20001

(202) 639-6000 swilkens@jenner.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and
GOOGLE, INC.:

WILSON SONSINI GOODRICH & ROSATI, LLP

By: DAVID KRAMER, Esq.

CAROLINE WILSON, Esq.

650 Page Mill Road

Palo Alto, California 94304-1050

(650) 320-4741 dkramer@wsgr.com

ALSO PRESENT: Michelena Hallie, MTV Networks.

Lou Meadows, Videographer.

---oOo---

1 SALMI, M.

2 09:45:13 impetuses for AddictingClips?

3 09:45:17 MR. WILKENS: Objection to the form.

4 09:45:19 MR. KRAMER: Let me rephrase it.

5 09:45:20 Q Is it fair to say that YouTube's success was

6 09:45:23 one of the impetuses for the launch of AddictingClips?

7 09:45:26 MR. WILKENS: Objection to the form.

8 09:45:32 THE WITNESS: I think the category "success"

9 09:45:34 was -- was -- was one reason, and they were the leader

10 09:45:38 in the category, so...

11 09:45:39 MR. KRAMER: Q. And the category is what,

12 09:45:41 sir?

13 09:45:42 A User-generated content. User-generated,

14 09:45:45 yeah.

15 09:45:45 Q You knew fairly early on in AddictingClips's

16 09:45:50 existence that YouTube had a substantial number of

17 09:45:52 users uploading their own creative content to the

18 09:45:55 service; right?

19 09:45:57 A Correct, yes.

20 09:45:59 Q Okay. Did Atom hope to make money from the

21 09:46:02 operation of AddictingClips?

22 09:46:06 A I don't think we -- I don't remember --

23 09:46:08 recall if we ever had a budget number for

24 09:46:10 AddictingClips, like a budget revenue target for it.

25 09:46:14 It was much more about getting the content and

1 SALMI, M.

2 09:46:17 learning from the experience.

3 09:46:18 Q Did, in fact, Atom seek to earn revenue from

4 09:46:22 AddictingClips?

5 09:46:26 A I think we would have hoped to have made

6 09:46:28 revenue from it. We needed to make revenue from

7 09:46:32 everything we made, so...

8 09:46:33 Q How did Atom attempt to generate revenue from

9 09:46:36 the AddictingClips service?

10 09:46:40 A I don't exactly recall, but I -- I think we

11 09:46:42 just had some standard ad units on the pages.

12 09:46:46 Q On what pages, sir?

13 09:46:51 A The -- if I recall, we had it on the home

14 09:46:54 page for sure, and then certain other pages. I don't

15 09:46:58 remember exactly which pages we had it on.

16 09:46:59 Q And so upon the display of advertising to

17 09:47:03 users, Atom would get paid money by -- sorry -- upon

18 09:47:07 the display of advertisements to users of the

19 09:47:09 AddictingClips service, Atom would get paid money by

20 09:47:12 the advertisers whose messages were shown; is that

21 09:47:15 correct?

22 09:47:17 A Say that again.

23 09:47:18 Q Sure.

24 09:47:18 Upon the display of advertisements to users

25 09:47:22 of the AddictingClips service, Atom would be paid by

1 SALMI, M.

2 09:47:28 the advertisers whose messages were displayed;

3 09:47:31 correct?

4 09:47:31 A Yes.

5 09:47:31 Q So, in general, the more people that came to

6 09:47:33 the AddictingClips service, the more money Atom could

7 09:47:38 earn from advertising on this service; right?

8 09:47:40 MR. WILKENS: Objection to the form.

9 09:47:42 THE WITNESS: Yes.

10 09:47:42 MR. KRAMER: Q. In launching the

11 09:47:44 AddictingClips video service, was Atom hoping to

12 09:47:49 generate revenue by virtue of having unauthorized

13 09:47:53 copyrighted materials uploaded to the service by

14 09:47:56 users?

15 09:47:56 MR. WILKENS: Objection to the form.

16 09:47:59 You can answer.

17 09:48:00 THE WITNESS: No.

18 09:48:00 MR. KRAMER: Q. Did Atom hope to draw users

19 09:48:02 to the service by allowing them to access unauthorized

20 09:48:07 copyrighted materials uploaded by others?

21 09:48:09 MR. WILKENS: Objection to the form; calls

22 09:48:11 for a legal conclusion.

23 09:48:14 THE WITNESS: No.

24 09:48:14 MR. KRAMER: Q. Did Atom hope to generate

25 09:48:16 revenue by showing advertisements on pages where

1 SALMI, M.

2 09:48:19 unauthorized copyrighted videos could be viewed?

3 09:48:24 A No.

4 09:48:24 Q Okay. Were you at all concerned, sir, that

5 09:48:27 users would upload to AddictingClips's service

6 09:48:31 copyrighted materials that they didn't have the

7 09:48:33 authority to share?

8 09:48:35 A Yes, I was concerned.

9 09:48:36 Q Why were you concerned?

10 09:48:44 MR. WILKENS: I'm just going to caution the

11 09:48:45 witness not to get into attorney-client

12 09:48:47 communications.

13 09:48:47 THE WITNESS: I was going to say our --

14 09:48:48 our -- because that was a concern that was brought up

15 09:48:50 by our lawyer and discussed with my lawyer at the

16 09:48:53 time.

17 09:48:53 MR. KRAMER: Q. Did you yourself have

18 09:48:55 concerns, sir?

19 09:48:57 A My concerns were based on what my lawyer was

20 09:48:58 telling me.

21 09:49:02 Q At the launch of AddictingClips, sir, did

22 09:49:04 you -- did the service take any steps to deter users

23 09:49:08 from uploading unauthorized copyrighted content to the

24 09:49:12 service?

25 09:49:12 MR. WILKENS: Objection to the form.

1 SALMI, M.

2 09:49:14 THE WITNESS: I don't recall if we took any
3 09:49:16 steps.

4 09:49:16 MR. KRAMER: Q. Did you believe, as CEO of
5 09:49:20 the company that was operating AddictingClips, that
6 09:49:22 the service was operating lawfully?

7 09:49:25 MR. WILKENS: Objection to the form.

8 09:49:28 THE WITNESS: Well, I relied on my lawyer's
9 09:49:31 opinion on that, and yes.

10 09:49:32 MR. KRAMER: Q. Did you believe, as CEO of
11 09:49:35 the company that was running AddictingClips, the
12 09:49:38 service was committing copyright infringement?

13 09:49:43 MR. WILKENS: Objection to the form; calls
14 09:49:45 for a legal conclusion.

15 09:49:46 THE WITNESS: Again, my lawyer told me that
16 09:49:48 we were not.

17 09:49:49 MR. WILKENS: Just want to caution you not to
18 09:49:51 get into lawyer --

19 09:49:52 THE WITNESS: Okay.

20 09:49:52 MR. WILKENS: -- conversations.

21 09:49:54 THE WITNESS: As far as I know -- okay.
22 09:49:56 Okay.

23 09:49:56 The -- no. That's the short answer.

24 09:50:01 MR. KRAMER: Q. Did you believe that
25 09:50:02 AddictingClips was encouraging others to commit

1 SALMI, M.

2 09:50:06 copyright infringement, sir?

3 09:50:08 A No.

4 09:50:08 Q Did you think, as CEO of the company running

5 09:50:12 AddictingClips, that the service had done what was

6 09:50:14 reasonable to prevent copyright infringement from

7 09:50:16 occurring on the service?

8 09:50:18 MR. WILKENS: Objection to the form; vague.

9 09:50:20 THE WITNESS: We did what our lawyer advised

10 09:50:26 us to do to run the service.

11 09:50:27 MR. KRAMER: Q. And did you think, as the

12 09:50:30 CEO of the company, that what you had done was

13 09:50:32 reasonable to prevent copyright infringement?

14 09:50:34 A My opinion was based on what my lawyer told

15 09:50:36 me, so...

16 09:50:36 Q I understand that.

17 09:50:36 A Right.

18 09:50:38 Q I'm asking you what your belief was.

19 09:50:39 Did you have a belief that the service had

20 09:50:40 done what was reasonable to prevent copyright

21 09:50:43 infringement from occurring on the service?

22 09:50:45 MR. WILKENS: Objection to the form, and you

23 09:50:46 can answer that "yes" or "no," if you can.

24 09:50:51 THE WITNESS: Was it reasonable?

25 09:51:07 Yes, I mean.

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SALMI, M.

09:51:10 MR. KRAMER: Q. At the time it launched,
09:51:14 sir, did AddictingClips engage in the same rights
09:51:17 clearing process that you described by which content
09:51:19 was cleared for use on Atom.com?

09:51:24 A We did the content rights clearance process
09:51:27 for clips that we wanted to license for Atom, not for
09:51:32 clips that were on AddictingClips.

09:51:33 Q So for clip -- ordinary clips uploaded by
09:51:37 ordinary users to AddictingClips, did you engage in a
09:51:41 rights clearance process?

09:51:44 A No.

09:51:44 Q Why not?

09:51:50 MR. WILKENS: And I'm going to caution the
09:51:51 witness not to get into attorney-client
09:51:53 communications.

09:51:54 THE WITNESS: Well, the -- it was a
09:51:57 user-generated website, and we followed the guidelines
09:52:01 according to what our lawyer said for that type of a
09:52:04 website.

09:52:05 MR. KRAMER: Q. Do you think, sir, that if
09:52:06 you had engaged in a rights clearance process for
09:52:10 content uploaded to the service, that is the
09:52:11 AddictingClips service, that it would have reduced the
09:52:15 incidence of unauthorized copyrighted material

1 SALMI, M.

2 09:52:18 appearing on the service?

3 09:52:18 MR. WILKENS: Objection to the form; assumes

4 09:52:20 facts.

5 09:52:22 THE WITNESS: That wasn't the purpose of the

6 09:52:23 website to have us do that, so I don't think so.

7 09:52:30 MR. KRAMER: Q. I appreciate that, sir, but

8 09:52:32 I'm asking a slightly different question, which is, if

9 09:52:35 you had engaged in a rights clearance process, do you

10 09:52:38 think it would have reduced the incidence of

11 09:52:39 unauthorized copyrighted material on the service?

12 09:52:42 A I don't --

13 09:52:42 MR. WILKENS: Same objections.

14 09:52:43 THE WITNESS: -- I don't know. We didn't do

15 09:52:44 it, so I can't make an opinion on what would happen.

16 09:52:47 MR. KRAMER: Q. Was it important for

17 09:52:48 AddictingClips to have user-uploaded videos

18 09:52:53 immediately available for public review?

19 09:52:57 MR. WILKENS: Objection to the form.

20 09:52:58 THE WITNESS: Yes.

21 09:53:00 MR. KRAMER: Q. Why?

22 09:53:01 A That was the standard for the hundreds of

23 09:53:03 user-generated websites out there, so you had to do it

24 09:53:06 like a lot of other websites did if you wanted to be

25 09:53:11 on par.

1 SALMI, M.

2 10:04:52 analysis, and both from a technical and legal side

3 10:04:56 that I can't sit here and make an opinion on right

4 10:04:57 now.

5 10:04:58 MR. KRAMER: Q. When it launched

6 10:05:13 AddictingClips, did the service -- sorry. Strike

7 10:05:15 that.

8 10:05:15 When the AddictingClips service launched, did

9 10:05:19 it have human beings screening all videos that users

10 10:05:22 were uploading to the service for potentially

11 10:05:24 unauthorized copyrighted material?

12 10:05:26 A No.

13 10:05:26 Q Roughly how many videos per day were uploaded

14 10:05:32 to the service?

15 10:05:34 A I don't recall.

16 10:05:35 Q Is it in the hundreds? Thousands? Tens?

17 10:05:40 A It varied from when it launched to, you know,

18 10:05:43 a period of time, but...

19 10:05:45 Q How about at the start?

20 10:05:48 A Hundreds, I'd guess.

21 10:05:52 Q You said that AddictingClips didn't want to

22 10:05:55 have unauthorized copyrighted material appearing on

23 10:05:57 the service; right?

24 10:06:04 A I think I said it wasn't a stated intention

25 10:06:06 of ours to have it up there, but...

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SALMI, M.

10:06:08 Q Did -- did -- did AddictingClips want
10:06:10 unauthorized copyrighted material?

10:06:11 A No.

10:06:12 Q Wouldn't one way of keeping that material off
10:06:16 the service have been to have human beings review all
10:06:19 incoming videos and block those that weren't
10:06:22 authorized?

10:06:28 A AddictingClips was set up differently than
10:06:30 Atom Films, which was all about review.
10:06:32 AddictingClips was set up as a user-generated website
10:06:36 according to the legal parameters that our lawyer
10:06:38 provided us.

10:06:39 Q But wouldn't one way of keeping unauthorized
10:06:42 copyrighted material off the service have been to have
10:06:46 human beings screening all of the videos that users
10:06:48 sought to upload and block the upload of those that
10:06:50 were unauthorized copyrighted material?

10:06:52 MR. WILKENS: Objection to the form.

10:06:54 THE WITNESS: That would be one way to do it,
10:06:55 yes.

10:06:56 MR. KRAMER: All right.

10:06:56 Q So when I asked you earlier whether
10:06:59 AddictingClips could have done more to prevent the
10:07:02 upload by users of unauthorized copyrighted materials,

1 SALMI, M.

2 10:07:05 one thing it could have done was employ human beings

3 10:07:08 to screen all videos uploaded by users and block those

4 10:07:12 that were unauthorized; right?

5 10:07:16 A Then it would not have been a user-generated

6 10:07:19 website the way we had envisioned it to be if it would

7 10:07:24 have done that. It would also have been

8 10:07:26 cost-prohibitive to have human beings.

9 10:07:28 Q Why so?

10 10:07:29 A That's a lot of clips to...

11 10:07:32 Q Hundreds of clips a day is a lot of clips,

12 10:07:35 and it would be cost-prohibitive to have human beings

13 10:07:38 screen them; right?

14 10:07:38 MR. WILKENS: Objection to the form.

15 10:07:39 THE WITNESS: For a small company like ours,

16 10:07:41 yes.

17 10:07:41 MR. KRAMER: Okay.

18 10:07:48 Q Is it reasonable to conclude, based on Atom's

19 10:07:51 failure to employ human beings to screen videos

20 10:07:54 uploaded to the service, that Atom wanted users to

21 10:07:59 upload infringing material to AddictingClips?

22 10:08:03 MR. WILKENS: Objection to the form; asked

23 10:08:08 and answered.

24 10:08:08 THE WITNESS: Yeah, there was not a failure.

25 10:08:09 It was set up purposely in a certain methodology, so I

1 SALMI, M.

2 10:08:16 would not call it a failure to do either one, your
3 10:08:20 statement.

4 10:08:20 MR. KRAMER: Okay.

5 10:08:21 Q Would it be reasonable to conclude, based on
6 10:08:23 AddictingClips's decision not to employ human beings
7 10:08:28 to screen videos uploaded to the service by users,
8 10:08:31 that AddictingClips wanted users to upload potentially
9 10:08:35 unauthorized copyrighted material?

10 10:08:37 A No, that's false. We -- we never -- we never
11 10:08:42 even had the decision not to have human beings. It
12 10:08:45 was -- it was always set up a different way.

13 10:08:48 Q It wouldn't be reasonable to conclude, that
14 10:08:50 is what you're saying?

15 10:08:51 A Correct, not reasonable to conclude that.

16 10:08:54 Q And Atom -- sorry -- AddictingClips -- I
17 10:08:58 guess it's -- Atom's choice not to have human beings
18 10:09:04 screening videos uploaded to the service by users
19 10:09:07 wasn't motivated by a desire to earn advertising
20 10:09:11 revenue from unauthorized copyrighted material on the
21 10:09:14 service; right?

22 10:09:14 MR. WILKENS: Objection to the form.

23 10:09:17 THE WITNESS: It was strictly done that way
24 10:09:21 as a -- on the advice of our legal counsel.

25 10:09:25 MR. KRAMER: Different question than I asked.

1 SALMI, M.

2 10:12:02 MR. WILKENS: Objection to the form.

3 10:12:04 THE WITNESS: That was kind of the essence of

4 10:12:07 a user-generated website, yes.

5 10:12:09 MR. KRAMER: Q. You thought that human

6 10:12:10 screening of videos would interfere with one of the

7 10:12:12 central purposes of the service; right?

8 10:12:14 MR. WILKENS: Objection to the form.

9 10:12:15 THE WITNESS: Central legal purposes of the

10 10:12:19 service.

11 10:12:19 MR. KRAMER: Q. What do you mean by that?

12 10:12:20 A A lawyer told us, you know, this is the way

13 10:12:22 we have to do it.

14 10:12:23 MR. KRAMER: Have this one marked as

15 10:12:27 Exhibit 2, please.

16 10:12:37 (Document marked Salmi Exhibit 2

17 10:12:38 for identification.)

18 10:12:38 MR. KRAMER: Q. Mr. Salmi, what's been

19 10:12:46 marked as Exhibit 2 to your deposition is a document

20 10:12:49 produced to us via Viacom in discovery. It's entitled

21 10:12:55 "AddictingClips Overview Updated 4/18/06."

22 10:13:01 After you've had a chance to look at it, I'm

23 10:13:04 going to ask you if you recognize it.

24 10:13:06 MR. WILKENS: Do you have another copy of

25 10:13:07 that by chance for --

1 SALMI, M.

2 10:13:08 MR. KRAMER: I don't.

3 10:13:09 MR. WILKENS: -- Michelena?

4 10:13:10 THE WITNESS: Who produced this document?

5 10:13:13 MR. KRAMER: Viacom did.

6 10:13:14 Q The number in the right-hand corner, sir,

7 10:13:16 just as we go along in the deposition, is a number

8 10:13:18 that is used by lawyers to --

9 10:13:21 A Who actually wrote the document?

10 10:13:22 Q This was -- this -- according to the

11 10:13:25 information that we were provided, this came from your

12 10:13:28 files.

13 10:13:38 For the record, Mr. Roesch testified about it

14 10:13:41 in his deposition.

15 10:14:13 A I don't recall the document, but it looks --

16 10:14:15 it looks familiar.

17 10:14:16 Q Okay. Turning your attention to the second

18 10:14:21 point in the document under "Content Operations," it

19 10:14:25 says "Content uploaded to AddictingClips is

20 10:14:28 immediately published on the public site without an

21 10:14:31 editorial review."

22 10:14:32 That's true; correct?

23 10:14:34 A Correct.

24 10:14:34 Q That was true as of April '06 as well;

25 10:14:38 correct?

1 SALMI, M.

2 10:14:38 A Correct.

3 10:14:38 Q It then goes on to say "AddictingClips is a

4 10:14:44 'passive conduit' which provides end users a platform

5 10:14:48 for self-expression and creativity without being

6 10:14:50 subject to editorial control by a third party."

7 10:14:53 Do you see that?

8 10:14:54 A Yes.

9 10:14:54 Q That's true, too; correct?

10 10:14:58 A These aren't my words, so I -- I have a hard

11 10:15:01 time saying if it's true or not.

12 10:15:03 Q Do you disagree with that statement, sir?

13 10:15:06 MR. WILKENS: Objection to the extent it

14 10:15:07 calls for a legal conclusion.

15 10:15:08 THE WITNESS: Yeah, I have a hard time

16 10:15:09 knowing if it's true or not. That's what someone

17 10:15:13 wrote, but...

18 10:15:14 MR. KRAMER: Q. Well, is that an accurate

19 10:15:16 description of the AddictingClips service as it

20 10:15:19 existed in April of '06?

21 10:15:21 MR. WILKENS: Same objection.

22 10:15:22 THE WITNESS: No. It's -- that is

23 10:15:23 someone's -- someone's statement on it, but it's not

24 10:15:29 necessarily the accurate one.

25 10:15:30 MR. KRAMER: Q. What's inaccurate about it,

SALMI, M.

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10:15:31 sir?

10:15:35 A The AddictingClips service, as this document,
10:15:38 you can see, has lots of different features. That's
10:15:40 just one sentence of something about it, so it's
10:15:43 not -- I wouldn't say that's -- I mean, it's -- it's
10:15:47 not inaccurate, but it's not like I wouldn't -- you
10:15:50 said it is -- you know, I don't know, it's...

10:15:54 Q Let's break that down.

10:15:55 A I don't -- I don't know what "passive
10:15:56 conduit" means, I guess. I'm not sure what they're
10:15:59 referring to there. That's why I can't.

10:16:00 Q Okay. Let's leave that out of the sentence
10:16:02 for a minute.

10:16:04 Did AddictingClips provide end users with a
10:16:06 platform for self-expression and creativity without
10:16:09 being subject to an editorial control by a third
10:16:13 party?

10:16:13 A Yes.

10:16:13 Q And you don't know what "passive conduit"
10:16:15 means?

10:16:15 A Not -- no.

10:16:17 Q Okay. And, in fact, it was an intention that
10:16:21 Addicting -- it was one of the intentions in setting
10:16:25 up the AddictingClips service that it provide end

1 SALMI, M.

2 10:16:28 users with a platform for self-expression and

3 10:16:30 creativity without being subject to editorial control

4 10:16:33 by a third party; right?

5 10:16:38 A In the -- in reference to it being a

6 10:16:41 user-generated website, yes.

7 10:16:58 Q Do you know when AddictingClips first began

8 10:17:00 to have human beings screening all videos on the

9 10:17:03 service for potential copyright infringement?

10 10:17:05 MR. WILKENS: Objection to the form; assumes

11 10:17:07 facts.

12 10:17:08 THE WITNESS: I -- I don't recall. I

13 10:17:12 don't -- I don't recall it happening, but yes. I

14 10:17:15 don't -- no, I don't recall.

15 10:17:16 MR. KRAMER: Q. You don't recall it ever

16 10:17:17 happening?

17 10:17:18 A Perhaps later, after -- after -- you know,

18 10:17:20 after I already moved away from there, but I don't

19 10:17:23 recall.

20 10:17:23 Q Long after the acquisition by Viacom?

21 10:17:26 A I believe --

22 10:17:26 MR. WILKENS: Objection to the form.

23 10:17:27 THE WITNESS: -- that's possible.

24 10:17:28 MR. KRAMER: Okay.

25 10:17:36 Q Prior to launching AddictingClips, do you

1 SALMI, M.

2 10:27:05 read -- read through the --

3 10:27:05 THE WITNESS: Okay.

4 10:27:08 MR. WILKENS: -- pre-interview before this

5 10:27:08 is...

6 10:27:08 THE WITNESS: Let's see what this is.

7 10:27:13 MR. KRAMER: Q. Most of this has nothing to

8 10:27:15 do with the topic I'm going to ask you about,

9 10:27:17 Mr. Salmi. But if you would like to read the whole

10 10:27:19 thing, perhaps we should -- I will focus your

11 10:27:23 attention on page four, five, and six.

12 10:27:27 A Okay. I -- I'm a fast reader.

13 10:27:29 Q If that's what you'd like to do.

14 10:27:29 A That's why I'm curious what my...

15 10:30:52 Okay. Which page was it?

16 10:30:56 Q Page five.

17 10:30:57 A Page five.

18 10:30:58 Q Have you reviewed the whole thing?

19 10:31:00 A Not quite --

20 10:31:01 Q Okay.

21 10:31:01 A -- but close enough, I think.

22 10:31:21 Okay.

23 10:31:21 Q Having reviewed this article, does it refresh

24 10:31:24 your recollection, sir, that you believe that

25 10:31:25 AddictingClips was an online service entitled to claim

1 SALMI, M.

2 10:31:28 the protections of the DMCA?

3 10:31:32 A I think I referred to the DMCA, but I don't

4 10:31:35 refer to my opinion. No, I think that was based on

5 10:31:40 what I heard from my lawyer.

6 10:31:42 Q So you were revealing to this reporter your

7 10:31:44 lawyer's views on what the DMCA --

8 10:31:46 A That's what I based my views on, so yes.

9 10:31:49 Q Okay. You said, "According to the DMCA, a

10 10:31:51 site alike ours has to be a passive conduit."

11 10:31:57 Do you see that?

12 10:31:58 A Yes.

13 10:31:58 Q That's an expression you didn't recognize

14 10:32:01 earlier. Does this refresh your recollection as to

15 10:32:03 what a "passive conduit" means?

16 10:32:05 A If I recall, as I look at it -- it was one of

17 10:32:07 those phrases that was being thrown around a lot, and

18 10:32:11 so I reused it.

19 10:32:13 Q And what's your understanding of it?

20 10:32:14 MR. WILKENS: Objection to the form; it calls

21 10:32:15 for a legal conclusion.

22 10:32:16 THE WITNESS: I don't remember in terms of

23 10:32:17 what -- when it was used, what we -- you know, what it

24 10:32:21 was referring to in that way. I think, again, it was

25 10:32:24 probably what our lawyer had said, "Hey, you have to

1 SALMI, M.

2 10:32:26 be a passive conduit." Said, "Okay. That's the buzz

3 10:32:29 phrase I'll use."

4 10:32:30 MR. KRAMER: Q. So you believe that in order

5 10:32:31 to satisfy the requirements of the DMCA,

6 10:32:34 AddictingClips couldn't monitor or moderate the

7 10:32:36 service; correct?

8 10:32:39 MR. WILKENS: Objection to the form; calls

9 10:32:40 for a legal conclusion.

10 10:32:41 THE WITNESS: Well, yeah, that's what I said

11 10:32:44 in this interview, but...

12 10:32:45 MR. KRAMER: Q. And you believed it; right?

13 10:32:46 You wouldn't have said it to a reporter if you --

14 10:32:49 A Yeah.

15 10:32:49 Q -- didn't believe it?

16 10:32:51 MR. WILKENS: Objection to the form.

17 10:32:53 THE WITNESS: I'd have to be in my brain at

18 10:32:56 that point to think what I was believing and not

19 10:32:58 believing and what I was trying to tell the reporter,

20 10:33:02 but yes. I'll say yes.

21 10:33:04 MR. KRAMER: Q. And your lawyers believed

22 10:33:05 that in order to comply with the DMCA, a service

23 10:33:08 couldn't be monitoring or moderating the content

24 10:33:08 uploaded to the service?

25 10:33:09 MR. WILKENS: Objection to the form, and I'm

1 SALMI, M.

2 10:40:02 DMCA; right?

3 10:40:02 MR. WILKENS: Again, objection, and it calls
4 10:40:05 for a legal conclusion.

5 10:40:06 THE WITNESS: Yeah, I -- I don't know -- I
6 10:40:10 don't know the legality of that or what the -- if that
7 10:40:14 was a key part of the DMCA or not. I have no idea.

8 10:40:20 MR. KRAMER: Q. As far as you knew, the fact
9 10:40:22 that AddictingClips was engaged in transcoding of
10 10:40:26 videos uploaded by users didn't cause AddictingClips
11 10:40:30 to lose its DMCA protection; right?

12 10:40:32 MR. WILKENS: Again, objection; calls for a
13 10:40:34 legal conclusion.

14 10:40:34 THE WITNESS: Again, the site was set up
15 10:40:37 to -- according to our lawyers' instruction, so if
16 10:40:41 that is -- if that's part of the site, then -- then
17 10:40:46 yes.

18 10:40:46 MR. KRAMER: Q. Users could search
19 10:40:47 AddictingClips for videos; right?

20 10:40:50 A I believe so.

21 10:40:51 Q And the fact that users could search the site
22 10:40:55 for videos -- I'm sorry. That was -- how did they go
23 10:41:00 about searching for videos? What was the mechanism?

24 10:41:04 A I don't recall, but I'm sure we had a search
25 10:41:05 box.

SALMI, M.

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10:41:06 Q And the search box -- the user could input a
10:41:10 query into the search box, and that query would be
10:41:13 matched up against the metadata that the user, who
10:41:16 upload the video, supplied with the upload?

10:41:19 A I don't recall how the search engine worked.

10:41:23 Q Users could tag videos with key words on the
10:41:28 service; right?

10:41:29 A I believe we had tags.

10:41:30 Q And the users who upload the video would
10:41:34 provide a title and key words to be associated with
10:41:36 that video?

10:41:37 A I don't recall the upload process, what the
10:41:42 user had to provide, so...

10:41:43 Q Even though users could search the
10:41:45 AddictingClips service for videos they wanted to
10:41:49 watch, you believed that the AddictingClips service
10:41:52 was entitled to the protections of the DMCA; right?

10:41:55 MR. WILKENS: Objection; calls for a legal
10:41:56 conclusion.

10:42:00 THE WITNESS: Yeah, again, it was set up
10:42:02 according to how our lawyers said it should be set up
10:42:05 for the DMCA.

10:42:05 MR. KRAMER: Q. So as far as you know, the
10:42:06 fact that -- as far as you were concerned, the fact

1 SALMI, M.

2 10:42:09 that users could search the service for clips that

3 10:42:13 they wanted to see didn't mean that AddictingClips

4 10:42:16 lost the DMCA --

5 10:42:17 A I don't know how --

6 10:42:17 Q -- protection?

7 10:42:18 A -- I don't know if -- I can't make a comment

8 10:42:21 on the search functionality, because it's -- it was

9 10:42:23 just part of the whole thing, so...

10 10:42:24 Q And the whole thing was set up to ensure that

11 10:42:27 AddictingClips could claim the protections of the

12 10:42:28 DMCA?

13 10:42:29 MR. WILKENS: Objection to the form; calls

14 10:42:30 for --

15 10:42:30 MR. KRAMER: Right.

16 10:42:30 MR. WILKENS: -- a legal conclusion. It

17 10:42:32 calls for a legal conclusion, and if your answer to

18 10:42:35 that is based on attorney-client communications --

19 10:42:37 THE WITNESS: I --

20 10:42:37 MR. WILKENS: -- instruct you --

21 10:42:40 THE WITNESS: -- relied on my lawyer how to

22 10:42:42 set it up, and what we followed, so I -- I can't make

23 10:42:43 a -- I can't make an opinion on that.

24 10:42:45 MR. KRAMER: Q. Did you believe your lawyers

25 10:42:49 were competent, sir?

1 SALMI, M.

2 10:42:52 A Yes.

3 10:42:52 Q And did you generally rely on their advice?

4 10:42:56 MR. WILKENS: Objection to the form.

5 10:42:57 THE WITNESS: Yes.

6 10:42:58 MR. KRAMER: Q. Do you recall discussing the

7 10:43:01 issue of the applicability of the DMCA to

8 10:43:04 AddictingClips -- to AddictingClips with your

9 10:43:06 attorneys?

10 10:43:07 A Yes.

11 10:43:07 MR. WILKENS: You can answer that -- yeah,

12 10:43:08 let me object.

13 10:43:08 THE WITNESS: Okay.

14 10:43:09 MR. WILKENS: You can answer that "yes" or

15 10:43:10 "no." I --

16 10:43:11 THE WITNESS: Yeah, yes.

17 10:43:13 MR. KRAMER: Q. Please tell me about the

18 10:43:14 conversations you had with your counsel --

19 10:43:14 MR. WILKENS: I --

20 10:43:16 MR. KRAMER: Q. -- about the applicability

21 10:43:18 of the DMCA to AddictingClips.

22 10:43:19 MR. WILKENS: I instruct you not to answer

23 10:43:20 that question.

24 10:43:21 THE WITNESS: I can't talk about that.

25 10:43:22 MR. KRAMER: Q. You're taking your counsel's

1 SALMI, M.

2 10:43:24 instruction?

3 10:43:25 A Correct.

4 10:43:25 Q Do you recall whether AddictingClips had a

5 10:43:29 repeat infringer policy?

6 10:43:32 A I don't recall.

7 10:43:33 Q Let's take a break.

8 10:43:45 THE VIDEOGRAPHER: Off the record.

9 10:43:46 The time is 10:42 a.m.

10 10:43:49 (Recess taken.)

11 10:55:24 THE VIDEOGRAPHER: On the record.

12 10:55:30 The time is 10:53 a.m.

13 10:55:32 Please continue.

14 10:55:33 MR. KRAMER: Q. Mr. Salmi, you were involved

15 10:55:36 in Viacom's acquisition of Atom Entertainment;

16 10:55:39 correct?

17 10:55:40 A Yes.

18 10:55:40 Q In fact, you were the main representative

19 10:55:42 from Atom Entertainment involved in negotiating the

20 10:55:42 acquisition; right?

21 10:55:45 A Yes.

22 10:55:45 Q You signed the merger agreement; didn't you?

23 10:55:47 A Yes.

24 10:55:47 Q Do you recall the merger agreement being

25 10:55:50 signed on August 9th, 2006?

1 SALMI, M.

2 10:55:55 A I recall that's the date, yes.

3 10:55:56 Q Okay. Prior to acquiring Atom Entertainment,

4 10:55:59 Viacom was aware that Atom operated the AddictingClips

5 10:56:05 website; right?

6 10:56:05 MR. WILKENS: Objection to the form.

7 10:56:06 THE WITNESS: Prior to the acquisition, yes,

8 10:56:09 it was one of our websites, so yes.

9 10:56:11 MR. KRAMER: Q. And Viacom knew that that

10 10:56:12 was one of your websites; right?

11 10:56:15 A Correct.

12 10:56:15 MR. WILKENS: Objection to the form.

13 10:56:15 THE WITNESS: Yes.

14 10:56:16 MR. KRAMER: Q. And Viacom was aware that

15 10:56:18 AddictingClips hosted user-generated content; right?

16 10:56:20 MR. WILKENS: Objection to the form.

17 10:56:22 THE WITNESS: That what -- what was user --

18 10:56:25 MR. KRAMER: That AddictingClips hosted

19 10:56:27 user-generated content.

20 10:56:28 MR. WILKENS: Same objection.

21 10:56:29 THE WITNESS: I believe so.

22 10:56:30 MR. KRAMER: Q. In fact, AddictingClips's

23 10:56:33 user-generated content was one of the means -- one of

24 10:56:36 the attractions for Viacom of buying Atom

25 10:56:39 Entertainment; right?

1 SALMI, M.

2 10:56:41 MR. WILKENS: Objection to the form.

3 10:56:42 THE WITNESS: No; the games business is what

4 10:56:44 they really wanted.

5 10:56:56 MR. KRAMER: Let's have this one marked

6 10:56:58 Exhibit 4.

7 10:56:59 Hang on one second. Hang on one second. Let

8 10:57:02 me ask you one more question.

9 10:57:03 Please, go ahead. Counsel.

10 10:57:09 (Document marked Salmi Exhibit 4

11 10:57:10 for identification.)

12 10:57:10 MR. KRAMER: Q. Exhibit 4, Mr. Salmi, is a

13 10:57:17 letter to you from Viacom's general counsel,

14 10:57:21 Mr. Fricklas, dated July 15th, 2006.

15 10:57:25 Do you recognize it?

16 10:57:28 A I do not.

17 10:57:29 Q Okay. Do you see in the middle of the first

18 10:57:35 page, Mr. Fricklas is saying that Viacom was

19 10:57:40 interested in acquiring Atom, in part, because of

20 10:57:44 AddictingClips and its user-generated content?

21 10:57:47 MR. WILKENS: If you look -- if you need to

22 10:57:48 read through the document, go ahead.

23 10:57:50 THE WITNESS: Yeah. Yeah, I'm trying to

24 10:57:51 figure out where he's looking here.

25 10:57:56 MR. KRAMER: The third paragraph down, sir.

1 SALMI, M.

2 11:30:08 THE WITNESS: I know we -- we felt we will --

3 11:30:10 you know, we follow what our lawyer said. We followed

4 11:30:13 the DMCA, so whether it's scrupulously or not, I don't

5 11:30:18 know. This is this lawyer's wording, but we

6 11:30:20 definitely followed what we were supposed to do.

7 11:30:22 MR. KRAMER: Q. Under the DMCA?

8 11:30:23 A Under the DMCA.

9 11:30:36 Q The lawyer representing Atom in this letter

10 11:30:39 states that the DMCA limits Atom's liability to cases

11 11:30:43 in which it fails to implement the DMCA compliant

12 11:30:45 notice and takedown procedure; do you see that

13 11:30:47 statement?

14 11:30:47 A Yes.

15 11:30:48 Q You agree with that statement; right?

16 11:30:49 MR. WILKENS: Objection to the form; the

17 11:30:50 document speaks for itself.

18 11:30:52 THE WITNESS: That's what our lawyers advised

19 11:31:00 us on, and yes.

20 11:31:03 MR. KRAMER: Q. Does this re- -- does this

21 11:31:24 letter, sir, refresh your recollection as to how the

22 11:31:25 dispute between ASCAP and AddictingClips was resolved?

23 11:31:31 A I remember it was -- became a nonissue for

24 11:31:34 some reason. I don't remember -- I don't remember it

25 11:31:36 ever escalating, so...

1 SALMI, M.

2 11:31:38 Q It's because ASCAP backed off, having been

3 11:31:41 told the site was protected by the DMCA?

4 11:31:44 A I don't know what happened.

5 11:32:18 Q Back on the merger agreement for a minute,

6 11:32:20 sir.

7 11:32:20 The merger agreement between Atom and Viacom

8 11:32:24 contained an escrow fund provision; right?

9 11:32:27 A Yes.

10 11:32:27 Q You're familiar with escrow funds generally;

11 11:32:29 right?

12 11:32:29 A Yes.

13 11:32:29 Q They're a standard provision in contracts for

14 11:32:32 large corporate acquisitions; aren't they?

15 11:32:34 A I believe so.

16 11:32:34 MR. WILKENS: Objection to the form.

17 11:32:35 MR. KRAMER: Q. You have a basic

18 11:32:36 understanding of how they operate?

19 11:32:38 A Basic understanding.

20 11:32:39 Q Can you share that with me, please?

21 11:32:41 A A portion of the purchase price of the funds

22 11:32:49 going to the seller are put aside for a period of

23 11:32:51 time, and during that period of time there's

24 11:32:56 stipulations on what needs to occur for those funds to

25 11:33:02 be released by the end of that period of time.

1 SALMI, M.

2 11:33:04 Q And as part of the acquisition of Atom Films,
3 11:33:07 there was a portion of the proceeds set aside and held
4 11:33:12 in the escrow funds and not paid out to the Atom
5 11:33:14 shareholders right away; right?

6 11:33:17 A Yes.

7 11:33:17 Q Okay. And Viacom was entitled to make a
8 11:33:22 claim for the money in the escrow fund in the event
9 11:33:25 that certain claims were made against Viacom after it
10 11:33:25 bought Atom; right?

11 11:33:27 MR. WILKENS: Objection; calls for a legal
12 11:33:28 conclusion.

13 11:33:29 THE WITNESS: Yeah, there were -- it was
14 11:33:31 spelled out what could have -- what had to occur for
15 11:33:36 them to make a claim. I can't -- I don't remember
16 11:33:38 what was --

17 11:33:39 MR. KRAMER: I'm not asking for a memory test
18 11:33:40 here, but I'm just asking for the way it worked.

19 11:33:43 Q And if no claims were made by Viacom against
20 11:33:45 the fund, then that remainder of the fund would be,
21 11:33:50 after the period of time elapsed, paid out to Atom's
22 11:33:54 shareholders; right?

23 11:33:55 A Yes, plus interest.

24 11:33:56 Q Do you remember -- do you remember what the
25 11:33:57 purchase price was that Viacom paid for Atom?

1 SALMI, M.

2 11:34:00 A \$200 million.

3 11:34:01 Q Okay. And what percentage of that purchase

4 11:34:04 price was set aside for the escrow fund?

5 11:34:07 A I believe it was 10 percent.

6 11:34:08 Q Okay. So Viacom was allowed to make a claim

7 11:34:12 for roughly \$20 million held in an escrow fund in the

8 11:34:18 event certain contingencies under the agreement

9 11:34:22 transpired; right?

10 11:34:23 MR. WILKENS: Objection to the form.

11 11:34:24 THE WITNESS: I don't remember how much they

12 11:34:25 can make a claim for. It was -- it was spelled out

13 11:34:28 and very detailed of the claims and how much and...

14 11:34:31 MR. KRAMER: Q. You understood, though, that

15 11:34:32 Viacom would be allowed to make a claim against the

16 11:34:34 money held in the escrow fund in the event that Viacom

17 11:34:39 was sued over Atom's breach of representations it made

18 11:34:42 in the contract; right?

19 11:34:43 MR. WILKENS: Objection to the form.

20 11:34:45 THE WITNESS: As I said before, I don't

21 11:34:46 remember exactly what was in the -- it was -- it was a

22 11:34:49 negotiated thing that -- what they could come after us

23 11:34:52 for. I don't remember exactly. I'm sure it's in this

24 11:34:56 contract, but...

25 11:34:56 MR. KRAMER: Q. It is. I'm just trying

1 SALMI, M.

2 11:34:56 to --

3 11:34:59 A I don't remember.

4 11:34:59 Q -- go back into this.

5 11:34:59 A I don't remember what it was, so...

6 11:35:04 Q Take a look, if you would, please, at

7 11:35:07 Section 1.8, which is on page six of the agreement.

8 11:35:28 A Okay.

9 11:35:28 Q Do you recognize that as the escrow fund

10 11:35:30 provision in this agreement, sir, in the merger

11 11:35:35 agreement between Atom and Viacom?

12 11:35:39 A Yes.

13 11:35:39 Q Did Viacom make a claim for any of the money

14 11:35:51 held in the escrow fund during the escrow period,

15 11:35:54 Mr. Salmi?

16 11:35:55 A No.

17 11:35:56 Q So that was ultimately all paid out to

18 11:35:58 Viacom -- to Atom's shareholders? Sorry.

19 11:36:02 A Yes.

20 11:36:02 Q Okay. At the time that you guys entered into

21 11:36:09 this merger agreement, sir, did Atom expect lawsuits

22 11:36:15 would be brought against Viacom after the acquisition

23 11:36:18 that arose out of Atom's operations?

24 11:36:21 MR. WILKENS: Objection to the form.

25 11:36:23 THE WITNESS: No.

1 SALMI, M.

2 11:36:24 MR. KRAMER: Q. Well, if -- if Atom didn't

3 11:36:25 expect that lawsuits would be brought against Viacom,

4 11:36:28 that claims would be asserted against Viacom arising

5 11:36:31 from Atom's operations, why did Atom agree to an

6 11:36:34 escrow provision?

7 11:36:36 MR. WILKENS: Objection to the form.

8 11:36:37 THE WITNESS: We didn't want to have an

9 11:36:42 escrow provision, but it was a negotiating point that

10 11:36:46 we had to concede.

11 11:36:47 MR. KRAMER: Q. Did Atom believe it was in

12 11:36:50 breach of the representations it was making in the

13 11:36:53 agreement?

14 11:36:53 A No.

15 11:36:53 Q Did Atom believe it would breach those

16 11:36:56 representations?

17 11:36:57 A No.

18 11:36:57 Q By agreeing to provide Viacom with an escrow,

19 11:37:01 was Atom indicating to Viacom that Atom expected to

20 11:37:05 breach representations in the agreement?

21 11:37:07 MR. WILKENS: Objection to the form.

22 11:37:08 THE WITNESS: No.

23 11:37:08 MR. KRAMER: Q. Do you know why Viacom asked

24 11:37:12 for this escrow provision?

25 11:37:16 A I think -- I'd be surprised there's any deal

1 SALMI, M.

2 11:37:23 of this size that doesn't have an escrow provision. I

3 11:37:30 think it's just a legal protection. Like a standard

4 11:37:30 checkbox.

5 11:37:43 Q To your knowledge, did Viacom expect that it

6 11:37:45 would be sued after the Atom acquisition on a claim

7 11:37:47 arising from Atom's operations?

8 11:37:50 A No.

9 11:37:51 Q Is it reasonable to assume, sir, that by

10 11:37:57 virtue of the presence of an escrow provision here,

11 11:37:59 that Atom expected Viacom would be sued in a lawsuit

12 11:38:03 arising from Atom's expectation -- operations?

13 11:38:07 A No.

14 11:38:07 Q Is it reasonable to assume by virtue of the

15 11:38:09 presence of an escrow provision here, that Atom --

16 11:38:12 that Atom believed Viacom would be sued and lose a

17 11:38:16 lawsuit arising out of Atom's operations?

18 11:38:19 MR. WILKENS: Objection to the form.

19 11:38:20 THE WITNESS: No.

20 11:38:21 MR. KRAMER: Q. Is it reasonable to assume,

21 11:38:24 sir, that by virtue of the presence of an escrow

22 11:38:27 provision here, that Atom expected Viacom would be

23 11:38:31 sued for copyright infringement arising from

24 11:38:34 AddictingClips's operations?

25 11:38:36 MR. WILKENS: Objection to the form.

1 SALMI, M.

2 11:38:38 THE WITNESS: No.

3 11:38:38 MR. KRAMER: Q. And is it reasonable to

4 11:38:40 assume, by virtue of the presence of an escrow

5 11:38:43 provision in the merger agreement between Atom and

6 11:38:46 Viacom, that Atom believed Viacom wouldn't lose a

7 11:38:48 lawsuit for copyright infringement arising from

8 11:38:50 AddictingClips's operations?

9 11:38:51 MR. WILKENS: Objection to the form.

10 11:38:52 THE WITNESS: No.

11 11:38:53 MR. KRAMER: Q. In fact, sir, the escrow

12 11:38:56 fund was intended to cover even frivolous claims

13 11:39:00 against Viacom arising from Atom's operations; wasn't

14 11:39:03 it?

15 11:39:03 MR. WILKENS: Objection to the form.

16 11:39:04 THE WITNESS: That's a legal reading of it.

17 11:39:06 I can't comment on that.

18 11:39:07 MR. KRAMER: We have to change the tape, so

19 11:39:15 let's take a quick break.

20 11:39:16 MR. WILKENS: Okay.

21 11:39:17 THE WITNESS: Okay.

22 11:39:18 THE VIDEOGRAPHER: This marks the end of DVD

23 11:39:19 1. We're off the record.

24 11:39:21 The time is 11:37 a.m.

25 11:39:23 (Recess taken.)

1 SALMI, M.

2 11:54:40 THE VIDEOGRAPHER: On the record.

3 11:54:42 This marks the beginning of DVD 2 in the

4 11:54:44 deposition of Mika Salmi on October 16th, 2009.

5 11:54:49 The time is 11:53 a.m.

6 11:54:51 Please continue.

7 11:54:52 MR. KRAMER: Q. Mr. Salmi, you're familiar

8 11:54:53 with a venture capital firm known at Sequoia Capital;

9 11:54:58 right?

10 11:54:59 A Yes.

11 11:54:59 Q They were investors in Atom Entertainment;

12 11:55:05 correct?

13 11:55:05 A Yes.

14 11:55:05 Q In fact, Sequoia Capital invested multiple

15 11:55:05 times in Atom; didn't it?

16 11:55:10 A It, yeah, invested in Shockwave, which we

17 11:55:13 merged with. Then it invested in the combined

18 11:55:16 company. So I think there were two times that they

19 11:55:18 put money in.

20 11:55:18 Q And a Sequoia Capital partner held a seat on

21 11:55:18 Atom Entertainment's Board of Directors; correct?

22 11:55:23 A Correct.

23 11:55:23 Q Who was that?

24 11:55:24 A Michael Mortiz.

25 11:55:26 Q Did anyone else have a board seat on

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SALMI, M.

14:38:10 Q Did anyone at Viacom ever tell you that
14:38:12 Viacom had to employ screening on its own UGC services
14:38:16 in order to appear -- in order to avoid appearing
14:38:21 hypocritical?

14:38:21 MR. WILKENS: Objection to the form, and
14:38:22 again I'm going to caution the witness not to get into
14:38:25 attorney -- any attorney-client communications.

14:38:27 THE WITNESS: Yeah, I don't recall that being
14:38:29 the basis of it.

14:38:31 MR. KRAMER: Okay.

14:38:49 (Document marked Salmi Exhibit 20
14:38:50 for identification.)

14:38:50 MR. KRAMER: Q. Mr. Salmi, this is another
14:39:05 e-mail exchange between you and others at Viacom dated
14:39:13 December 29th with the last-in-time message being
14:39:17 December 31st, 2006, and it's a message between --
14:39:21 message from Mr. West to you.

14:39:25 The subject line is "GooTube Action."
14:39:29 Mr. West says to you, quote, "We need to make sure we
14:39:33 are clean with respect to attacks we are making on
14:39:36 GooTube relative to copyright infringement so that we
14:39:38 do not expose ourselves to a 'double standard' (it's
14:39:43 ok when iFilm does it but not when anyone else does)
14:39:43 response from Google."

1 SALMI, M.

2 14:39:45 Do you see that?

3 14:39:46 A Yes.

4 14:39:46 Q So you did hear from someone at Viacom that

5 14:39:51 Viacom had to employ measures with respect to its own

6 14:39:55 UGC services in order to avoid appearing hypocritical

7 14:40:00 with respect to its claims against Google and YouTube;

8 14:40:03 right?

9 14:40:03 MR. WILKENS: Objection to the form, and you

10 14:40:04 should take your time and read through the document

11 14:40:06 before you testify about it.

12 14:40:07 THE WITNESS: Uh-huh.

13 14:40:08 Well, he used the word "double standard," not

14 14:40:36 "hypocritical," so I don't know if those are

15 14:40:38 equivalent or not.

16 14:40:40 So, in my mind, I think they're not exactly

17 14:40:43 equivalent, but if they're -- that's -- yes, obviously

18 14:40:46 I heard that from him in this case.

19 14:40:48 MR. KRAMER: Q. Did you hear it from others?

20 14:40:50 THE WITNESS: I don't recall if I did.

21 14:41:12 (Document marked Salmi Exhibit 21

22 14:41:13 for identification.)

23 14:41:13 MR. KRAMER: Q. Mr. Salmi, Exhibit 21 is a

24 14:41:15 message from you to Ms. McGrath dated January 16th,

25 14:41:20 2007, produced to us by Viacom in discovery with the

1 SALMI, M.

2 14:41:22 subject line "Forgot to mention on our call today...."

3 14:41:26 Do you recognize this message, sir?

4 14:41:32 A I don't recall it, but -- but there it is.

5 14:41:36 Q You say "Legal has put the kibosh on any pure

6 14:41:40 UGC efforts at MTVN. AddictingClips is now monitoring

7 14:41:46 everything and restricting posts. You have to wait

8 14:41:48 until we approve stuff so there's a delay. Same goes

9 14:41:49 for iFilm. Guess we can't help but be big media!"

10 14:41:54 First, does this help your recollection that

11 14:41:59 until about this time, mid-January 2007,

12 14:42:01 AddictingClips was not monitoring content uploaded to

13 14:42:05 the service for potential copyright infringement?

14 14:42:07 A Right. It looks like it was doing what it

15 14:42:09 was doing before, when I was running it.

16 14:42:11 Q What did you mean in this message by you have

17 14:42:14 to wait so there's a delay? "You have to wait until

18 14:42:20 we approve stuff, so there's a delay."

19 14:42:23 A Well, I think that -- that the consumer

20 14:42:26 behavior is that way, that they have to -- when you

21 14:42:29 upload it, they have to wait. I'm assuming this is

22 14:42:29 we're now monitoring everything and restricting the

23 14:42:32 posts, so it doesn't happen immediately like it did

24 14:42:34 before.

25 14:42:34 Q How long did it take at this point --

1 SALMI, M.

2 14:42:38 A I have no idea.

3 14:42:38 Q -- in January 2007?

4 14:42:39 A I don't know. I didn't use it. I was -- I

5 14:42:42 was told of this action. I was -- I wasn't the one

6 14:42:45 actually implementing it.

7 14:42:47 Q When you said there would no longer be pure

8 14:42:47 UGC efforts at MTVN, what did you mean?

9 14:42:52 A Well, the way UGC was defined beforehand,

10 14:42:56 which was kind of the unrestricted, unmonitored

11 14:43:00 uploads.

12 14:43:03 Q So as a result of some legal dictate in about

13 14:43:08 this time frame, there were no longer going to be any

14 14:43:11 pure UGC services at Viacom; right?

15 14:43:16 A That was the intent at this time.

16 14:43:18 Q And so from this point forward, every Viacom

17 14:43:22 service, including AddictingClips, would be subject to

18 14:43:26 Viacom's editorial control; right?

19 14:43:28 MR. WILKENS: Objection to the form.

20 14:43:28 THE WITNESS: I don't remember if it was from

21 14:43:30 this point forward or when exactly it was. You know,

22 14:43:32 I -- I think I had heard about it there, but I don't

23 14:43:35 remember exactly when the starting date was.

24 14:43:37 MR. KRAMER: Q. But for some time after

25 14:43:39 Viacom purchased Addicting -- purchased

1 SALMI, M.

2 14:43:42 AddictingClips, it continued to allow the site to run

3 14:43:44 in an unmoderated, unmonitored fashion; right?

4 14:43:48 MR. WILKENS: Objection to the form.

5 14:43:49 THE WITNESS: I believe so.

6 14:43:52 MR. KRAMER: Q. What did you mean by "Guess

7 14:43:54 we can't help but be big media"?

8 14:43:59 A I think that I felt that the unrestricted

9 14:44:05 world of UGC was difficult for a big media company

10 14:44:09 which creates their own content to understand and --

11 14:44:12 and --

12 14:44:12 Q Viacom just didn't get the new web; is that

13 14:44:15 what you're saying?

14 14:44:16 MR. WILKENS: Objection to the form.

15 14:44:17 THE WITNESS: No, I didn't say they get it.

16 14:44:19 They just -- it just wasn't -- it -- it wasn't what

17 14:44:22 they were prepared to do at the time.

18 14:44:25 MR. KRAMER: Q. You didn't want Viacom to be

19 14:44:26 seen as a big media company?

20 14:44:28 MR. WILKENS: Objection to the form.

21 14:44:30 THE WITNESS: No, I didn't say that. I

22 14:44:31 didn't say that the -- that's not what I said.

23 14:44:34 MR. KRAMER: Q. Guess -- well, what did --

24 14:44:38 "Guess we can't help but be big media." I mean,

25 14:44:41 all --

1 SALMI, M.

2 14:44:43 A We are what we are, I guess is what I'm

3 14:44:45 saying there.

4 14:44:49 Q You wanted the company to be something

5 14:44:52 different?

6 14:44:53 MR. WILKENS: Objection to the form.

7 14:44:54 THE WITNESS: I wanted to be more -- you

8 14:45:05 know, more progressive on the digital front.

9 14:45:07 MR. KRAMER: Q. You thought that monitoring

10 14:45:09 everything and restricting posts was a wrongheaded

11 14:45:12 decision; correct?

12 14:45:13 MR. WILKENS: Objection to the form.

13 14:45:14 THE WITNESS: No, I did not. I did not --

14 14:45:15 you know, despite my sarcasm, I did not think it was

15 14:45:19 the wrong decision at all, but it was -- it was

16 14:45:22 different than what we had been doing.

17 14:45:24 MR. KRAMER: Q. You said that the way the

18 14:45:31 legal decree came down was problematic; do you see

19 14:45:34 that?

20 14:45:35 A Yes.

21 14:45:35 Q How did the decree come down?

22 14:45:37 MR. WILKENS: I'm gonna caution the witness

23 14:45:39 not to get into the conversations with counsel about

24 14:45:44 this issue.

25 14:45:45 THE WITNESS: Right. I was going to say that

1 SALMI, M.

2 14:49:32 let's take a break.

3 14:49:34 THE WITNESS: Okay.

4 14:49:34 THE VIDEOGRAPHER: This marks the end of tape

5 14:49:36 number two.

6 14:49:37 Off the record.

7 14:49:37 The time is 2:47 p.m.

8 14:49:46 (Recess taken.)

9 15:03:53 THE VIDEOGRAPHER: On the record. This marks

10 15:03:55 the beginning of DVD 3 in the deposition of Mika Salmi

11 15:03:59 on October 16th, 2009.

12 15:04:01 The time is 3:02 p.m.

13 15:04:03 Please continue.

14 15:04:03 MR. KRAMER: Q. Mr. Salmi, can you describe

15 15:04:05 Viacom's Flux service for me?

16 15:04:10 A At what time period?

17 15:04:11 Q Has it changed in terms of its operational

18 15:04:14 functionality?

19 15:04:14 A There was a Flux in the UK in 2006, and then

20 15:04:21 we used the same name, and it superceded the Flux in

21 15:04:27 the UK. Actually, there was a Flux, I believe, in

22 15:04:31 Japan too, and then we superceded both of those with

23 15:04:33 our efforts out of the U.S., and I think we officially

24 15:04:41 changed Tag World and named it Flux in the fall of

25 15:04:46 2007.

1 SALMI, M.

2 15:04:46 Q Do you know -- so the service that was known

3 15:04:48 as Tag World became the service known as Flux?

4 15:04:52 A Some of the core stuff, but it -- the Tag

5 15:04:55 World service completely went away, but some of the --

6 15:04:58 some pieces of technology became -- the -- the team

7 15:05:01 that created Tag World or the team that created Flux

8 15:05:04 for us is probably a better explanation.

9 15:05:07 Q Okay.

10 15:05:07 A The Tag World went away completely.

11 15:05:09 Q Flux is a service today completely owned by

12 15:05:11 Viacom; correct?

13 15:05:12 A Yes.

14 15:05:12 Q Do you know when Viacom first acquired an

15 15:05:15 ownership interest in Flux?

16 15:05:17 A In Tag World, which was the parent company at

17 15:05:20 the time, it was a -- they acquired a -- I can't

18 15:05:26 remember what percentage -- a majority ownership in

19 15:05:30 November of 2006.

20 15:05:33 Q And do you know when Viacom bought out the

21 15:05:35 remaining investors in Flux?

22 15:05:41 A The fall of 2008. I don't remember exactly

23 15:05:44 the date.

24 15:05:45 Q Okay. After Viacom acquired an interest in

25 15:05:48 Flux in the fall of November of 2006, you became a

1 SALMI, M.

2 15:05:52 member of Flux's Board of Directors; right?

3 15:05:56 A Correct.

4 15:05:56 Q When it was still a separate standalone

5 15:05:58 company?

6 15:05:59 A Yes.

7 15:05:59 Q Okay. Back to the original question then,

8 15:06:03 the company on which -- whose board you sat, that

9 15:06:06 entity formally known as Tag World, then Flux, can you

10 15:06:09 describe how that service worked?

11 15:06:14 A It was a -- Tag World was a standalone social

12 15:06:18 network, a social networking website. We made Flux

13 15:06:23 into a social networking platform that would work

14 15:06:31 across multiple websites, some of our out websites and

15 15:06:35 some external websites. So it would have social

16 15:06:38 networking features which are profiles, friending,

17 15:06:41 messaging, some uploading of content.

18 15:06:43 Q Who at Viacom runs Flux today?

19 15:06:50 A I believe Jeremiah Zin oversees it today.

20 15:06:54 Q And you said something about Tag World having

21 15:06:57 completely gone away. Do you know that to be so, sir?

22 15:07:01 A I don't -- I'm not positive.

23 15:07:02 Q Okay. So from a users's perspective, can you

24 15:07:10 walk me through the experience of using Flux?

25 15:07:12 A It's changed quite a bit, I believe, in the