

Schapiro Exhibit 105



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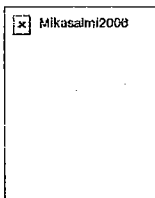
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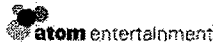
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ITV INTERVIEW: MIKA SALMI, FOUNDER AND CEO, ATOM ENTERTAINMENT

Submitted by [itvt](#) on May 31, 2006 - 8:26pm

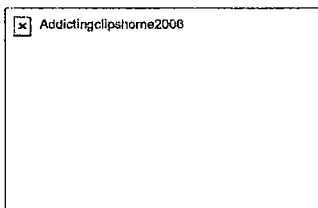


Multiplatform VOD and games company, Atom Entertainment (note: the company—which was founded in 2001 via the merger of AtomFilms and Shockwave.com—offers short films and animated titles on its AtomFilms.com broadband VOD portal and a range of games on its Shockwave.com portal;



it claims that AtomFilms attracts a monthly audience of 5 million consumers, recently revamped its AddictingClips Web site to support uploads of user-generated content, including videos, animation and Flash-based games. Atom founder and CEO, Mika Salmi, recently spoke to [itvt]'s Tracy Swedlow about the company's strategy for user-generated content, about the emerging importance of user-generated and short-form video, about the company's future plans, and more.

[itvt]: You recently revamped your AddictingClips Web site to allow uploads of user-generated content...



Salmi: That's correct. Actually, AtomFilms has taken user-submitted content since we were founded. We just haven't always had an automated way to do it, and we've always filtered the content we've gotten. Over our history, we've taken less than 1% of what we've received—of course, we also proactively go and look for content, too. But AddictingClips is now basically another avenue for content to get to AtomFilms. We pick the best stuff from AddictingClips, and make it available on AtomFilms. In some ways, AddictingClips is like a farm system for AtomFilms. It also allows you to upload games—so it's also serving as a farm system for AddictingGames and Shockwave.com.

User-generated content is a great fit for AtomFilms. This is because it's not in a silo for us. A lot of these user-generated content Web sites are just standalone propositions, and they're still trying to figure out how to make money out of what they do. But our user-generated content Web site actually feeds our other Web sites—whether it be with content or traffic. And it could also work the other way around: our other sites could maybe feed traffic and advertisers to AddictingClips. So it's very synergistic with our other Web sites. In some ways, I would question the value of it. If it were just a standalone user-generated content

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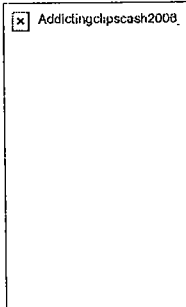
Salmi, M
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10.16.09
A. IGNACIO HOWARD CSR 9830

site. But we've actually made it very much a part of our ecosystem of entertainment sites.

[itvt]: What's the business model for AddictingClips? It's advertising-supported, correct?

Salmi: Like I said, primarily it's a feeder. So advertising wasn't the main reason we created it, and we aren't necessarily banking on advertising to fund it. Having said that, though, advertisers really love user-generated content. But they can't figure out what to do with it. Advertisers seem to feel comfortable with AddictingClips, because of the way that we've positioned it—and also because of how we've placed the ads on there. So we're getting a lot of interest, and actually, we're going to start putting more and more ads up there. But we didn't start off thinking of it primarily as a way to generate more advertising. Nevertheless, as I said, it's actually been panning out quite well as an ad-supported site. It's producing quite a bit of revenue from advertising.

[itvt]: Content from AddictingClips has already been tapped by AtomFilms, correct?



Salmi: Yes. If you go to AddictingClips, you'll see that there's a box on the site promoting a program called "Cash for Clips." If you click on that box, you'll see a list of clips that have been chosen for AtomFilms: if you click on the links next to those clips, you can watch them on AtomFilms, and visitors to AtomFilms are now reviewing them. The makers of the clips that have been chosen for AtomFilms get \$250 each: we're also making their clips available for the various distribution deals we've done; so we're probably doing to program some of them on Verizon's V CAST service and on the various VOD platforms where our content is available.

[itvt]: And the makers of those clips will only get a one-off payment of \$250, however widely their clips are used?

Salmi: No. At AtomFilms, we always pay our content creators something upfront and then royalties on top of that. So, if we want to use a user-generated clip from AddictingClips on AtomFilms, we convert the content creator's AddictingClips upload license into an AtomFilms contract, and the content creator makes at least \$250 and potentially more. So AddictingClips users whose clips are chosen become part of the AtomFilms system, as it were.

[itvt]: How do you determine how much money content creators get for their clips on AtomFilms?

Salmi: We like the idea of people marketing themselves, so with AtomFilms, the way we pay our royalties is by popularity. The more popular your clip is, the more money you stand to make. We put all of our advertising revenue into a pool, and the content creators share in that pool by popularity. So back when we had JibJab, which got something like 80 million plays over a few months, they got the bulk of that pool, because they were the most popular, by far. Normally, though, you can actually influence how much money you make by marketing your content on AtomFilms. If your content is being watched more, you will make more money.

[itvt]: How do you distribute that money?

Salmi: In quarterly checks. We tally up all the revenue we made in that quarter, put it into a pool, and share that revenue with the content creators according to their popularity.

[itvt]: Are you doing anything to make it easier for content creators to market their offerings?

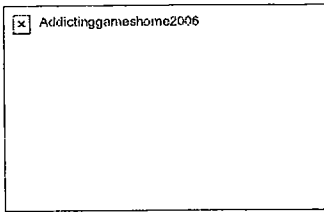
Salmi: Yes. A lot of our filmmakers already market their own content, and we want to make it even easier for them to do so in the next version of AtomFilms. So, among other things, we'll be making it easier for them to send out links...there are lots of ways to do it.

[itvt]: Why did you decide to call your user-generated content site "AddictingClips" rather than by a name that was some kind of variation of the AtomFilms brand?

in "South Park" http://bit.ly/3mJE17_2.5evz.808

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Salmi: Well, we bought a company called AddictingGames last fall. Addicting Games has about 8 or 9 million unique visitors a month. It's basically a directory of games, plus some hosted games. It's a Web site where there are a lot of people who happily link out to other Web sites, so it's just an incredible traffic engine. We thought that the way AddictingGames worked made it a better sister-brand to AddictingClips than to AtomFilms. As you probably know, you can post games, as well as films, on AddictingClips; and so we're also looking at AddictingClips as a feeder farm for games on AddictingGames. Also, the AtomFilms brand--as far as our advertisers and our distribution partners and Hollywood and everyone else is concerned--has a very high-level image. So we didn't necessarily want to associate that too closely with the kind of chaotic image that user-generated content has. However, we do obviously talk about AtomFilms on AddictingClips, so it's not as if we're shying away from associating them. But we simply thought that, as far as brands are concerned, AddictingClips was a better match with AddictingGames than with AtomFilms.

[itvt]: Now AddictingClips allows you to upload video directly from your mobile phone, correct?

Salmi: Yes. We've started doing more and more with mobile. As you probably know, we have a deal with Verizon's V CAST now, and we have other mobile deals in the works. So we wanted to position ourselves as a company that's on multiple screens. We thought that it was important to allow people to upload video from their mobile phones, because a lot of people are shooting video on their phones, now. We thought it would be advantageous for us to take the lead on that.

[itvt]: Are you planning to offer a user-generated content service on V CAST?

Salmi: It depends on Verizon. They have a very controlled channel there--for AtomFilms and everything else. We've definitely had discussions with them and other phone companies about user-generated content elements. But right now, they prefer to have professionally produced channels.

However, we are definitely planning on putting some of the content we've accrued through AddictingClips' "Cash for Clips" program onto the AtomFilms channel on Verizon. So you will see some of those things making their way over there. But I don't think at this stage that you're going to see the full raft of thousands of clips that have been uploaded to AddictingClips appearing on V CAST or on another mobile phone service. However, I wouldn't doubt that it may happen at a later stage.

[itvt]: What were the challenges involved in allowing people to upload video from their mobile phones to AddictingClips?

Salmi: There definitely were some challenges in figuring out how to allow users to send videos. Because some mobile operators don't allow you to upload your videos, and there's also the question of how you can do it so that as many users as possible can have access to this functionality. However, once we cracked those problems and figured out some of the transcoding elements--because the format coming from a phone is very different than the format used on your PC--it was pretty easy after that. This is something that we expect other companies will figure out, too--it's not a proprietary, patented thing. We were just the first ones to figure it out and launch it.

[itvt]: Could you talk us through how the process works?

Salmi: The transcoding takes place on our Web site: you just send in raw video in whatever format your phone took it in; we receive it on AddictingClips; and then we have to transcode it into Flash. It's an automatic process. If you have an account with us and you want to upload movies, you're presented with an "Upload a mobile video" option, which gives you an email address to which you can send video from your phone. It's quite seamless: if you were to take a video right now of whatever room you're in, you'd simply put that email address in there and hit "Send." Within moments, it would be on our Web site.

[itvt]: Did you develop this capability in-house or was it provided by a vendor?

Salmi: It's kind of a hybrid. We developed all the specs and the features and a lot of the technical stuff having to do with email, but we used some outside consultants from a company called Reality Digital to help us put it all together.

[itvt]: You also provide people with the ability to embed video into their Web sites, correct?

Salmi: Yes. When your video has been uploaded, it gets its own page. You can see how many views it has gotten, and see the various comments that people have made. Also on

that page is a box that says, "Embed on your Web page" It gives you the HTML code, and you just have to cut-and-paste that. You just highlight it, copy it and past it in. It will then embed that exact video onto your page. Then, when it's embedded, if you're good at HTML, you can actually choose what size you want it to be: small, big or huge.

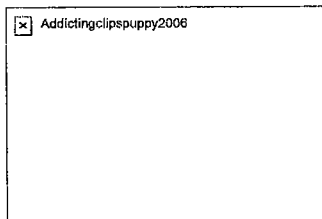
Once it's on there, all you see is our video box. It's a very plain, white box. You see a little AddictingClips logo in the right-hand corner, but other than that, it's a very plain box and it's very simple. It actually looks really good on pages, because it's so simple.

[itvt]: Now, AddictingClips also allows users to get feedback on the content they upload, correct?

Salmi: Yes. Users can easily track the performance of their clips. If you click on a screenshot of a clip to watch it, underneath the video window it says how many views there were—so you can see in real time how many times it's been watched—and there's also a place for people to make comments about your clip.

[itvt]: How are consumers using the site's comments feature? Are communities forming around the site's content?

Salmi: Well, with the games, for example, people will say what their high score was. They like to compare high scores. Then, with the clips, they offer up comments like "Good job!" or "Is there any more of this?" So people often tend to have little conversations going on around the clips. Sometimes, if a clip is controversial, you'll see a back-and-forth conversation with five to 10 people talking about it.



Here's a good example of how community plays into the content we offer: we have an unusual game on AddictingClips, called "Don't Shoot the Puppy," which for a long time was a real conundrum for people. They simply could not figure out how to play the game. So people used our comments feature to talk about how to play it. Basically, it's a trick-game where, once you hit "Start," you don't touch anything: if you move your mouse or you touch your keyboard, it shoots the dog. And, of course, the game continually tries to lure you into touching something. People are going to love it or hate it, because it's kind of an evil-Zen game. But, for a long time, people couldn't figure it out, and when they did, they were all asking, "Where did this thing come from?" It generated a lot of discussion.

[itvt]: Are you seeing content uploaded to AddictingClips by international users?

Salmi: Yes. We've seen quite a few Japanese clips, and also a lot of content from Latin America. What's interesting is how, if you go to the site in the middle of the night—or some other time when people in the US are asleep, but when it's the middle of the day in some different time zone—you'll see all the different types of clips getting posted from the countries in that time zone.

[itvt]: What are your thoughts in general on the user-generated content phenomenon?

Salmi: I think user-generated content somewhat mirrors the reality- television craze. I think it is the ultimate reality TV—it's like personal reality television.

[itvt]: But you're getting all kinds of content—humorous clips, scripted amateur movies, and the like—that don't seem very similar to reality television...

Salmi: Yes. But reality television tends to be voyeuristic, and watching user-generated content—seeing what your fellow users can come up with—is voyeuristic in a sense.

I also think that the user-generated content phenomenon reflects the fact that people simply have a huge appetite for interesting video content—an appetite that's so huge, that the content doesn't have to be professionally produced. I think that a lot of people in Hollywood and in the major media companies are quite perplexed by this, and are asking themselves, "Does this mean that we shouldn't be spending so much money on production values?" They're trying to figure out how the phenomenon fits into the landscape of high production values and big budgets that they've carved out over the years. People definitely seem happy to watch less polished video content, provided it's interesting.

[itvt]: Are you seeing any interest from Hollywood in what you're doing?

Salmi: Yes, more than ever. What's interesting is that, when we first started, everyone in Hollywood and a lot of other people said, "What's the deal with all this short-form content? No-one wants to watch short-form content?" I think they had a pre-conception of short-form as being some kind of arty medium that wouldn't be appealing to a mass audience. We would respond that short-form could be anything from a music video to a short animation, but they just couldn't get their head around it.

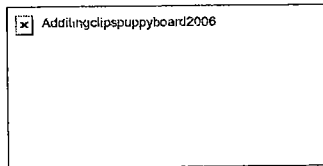
But then, about six months ago, I heard Peter Chernin say—and I'm paraphrasing here—something along the lines of: "Consumers are jonesing for short-form content." Of course, I have to say that I thought it was quite funny that he used the word "jonesing." But I also thought, "Well that's great." Because what it meant was that short-form is finally no longer relegated to the dustbin, and is finally front-and-center. Everyone's talking about short-form.

Actually, the reason we're called Atom Entertainment is because atoms are small, but powerful. All the content we have is atom-like—even our games are short. Everything we have is in quick, bite-sized snacks. Of course, now that everyone has come around to doing what we've been doing all along, we're obviously in a much more competitive environment—whether the competition is News Corp. or the latest user-generated content site du jour.

[itvt]: Do you plan to give people content-creation tools on AddictingClips—editing tools, for example? Are you interested in being in the service business as well as in the content-hosting business?

Salmi: I'm definitely very interested to see how some of these online video-editing tools do—to see if they garner some interest. I think that simple editing online would be a great tool for people. If those kinds of tools prove successful, I think we could easily add that feature to AddictingClips. However, I don't see it as a be-all-and-end-all: more as a feature.

Actually, I do think we need to have a feature on AddictingClips that would provide users with tips on shooting and editing video. We've talked about it. We just haven't gotten around to putting it up yet.



[itvt]: The comments on AddictingClips don't appear to be moderated. Why is that?

Salmi: Well, according to the Digital Millennium Copyright Act, a site like ours has to be a passive conduit. We cannot be monitoring it or actively moderating it. We do have some filters set up, to stop people swearing. And if users tell us that they see something they don't like—whether it be a comment or a video—we'll take a look at it. But we take a hands-off approach in order to let the site just live its own life.

[itvt]: Can you talk about the new features you'll be rolling out on AddictingClips over the next six to 12 months?

Salmi: The reality is that we have a massive number of features in the works, and we have a lot of ideas. The question for us is, "What are we going to do first?" I think that's going to be the challenge for us. I can tell you that this site is going to be continually evolving. Six months from now, it won't look the way it does today.

[itvt]: The projects you're working on right now, are they more marketing-oriented or technology-oriented?

Salmi: Both. We're talking to partners. We're looking at technologies. We really want to build what we're doing across all our different brands: we don't think of our sites as standalone propositions, so it's very important for us to think about how AddictingClips, for example, fits in with Shockwave.com or AtomFilms.com or AddictingGames.com.

URL: <http://www.addictingclips.com>

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Hi All,

As you know we recently launched the Addicting Clips service. This is a “service site” for content creators and a very new type of website for us! Addicting Clips is our first effort providing an Internet service for users to upload, host, and share their own content. The service is there to give budding and amateur filmmakers and flash authors an inexpensive means for sharing their original and unique content with a large audience. Unlike AtomFilms.com or Shockwave.com, we do not have a content acquisition team picking and choosing the clips. We do not edit or manage content on the site or in any other way control or program the site. That is all up to our filmmakers and flash authors contributing to the site and our users watching clips on the site. In legal lingo you may hear often—AddictingClips is a “passive conduit.”

The AddictingClips service must comply with the Digital Millennium Copy Right Act (“DMCA”). The DMCA prohibits content hosting companies like us from actively monitoring content or exercising editorial control over the content that gets hosted. Think of it as a similar to a telephone service—the phone company does not control what you say on the phone and we do not control what folks put on the site. Actively monitoring the site or exercising editorial control over the content that gets uploaded violates the DMCA and has tremendously bad implications for the company and employees at Atom Entertainment.

The DMCA also requires us to provide a method for any copyright owners or users on the site to report any piece of content they see on our site that they believe infringes on their own or someone else's work.. If we get a notice, we must review the content and rapidly remove it IF it is infringing. We have such a reporting mechanism on the Addicting Clips service. On each content landing page, there is a link labeled “Report a content violation” for users to report infringing content—and also content that violates our Terms of Service (described below). The link features a pull down menu listing the various types of violations, e.g. infringement, pornography, illegal activity, etc.). The Customer Support team receives all notices and follows set procedures to either remove or approve the content (often working with Adam and Victoria). Employees of Atom Entertainment should not be watchdogs about the type of content that gets uploaded onto the Addicting Clips service.

What can employees do at the Addicting Clips site? Enjoy it as a user. If you have content to share that does NOT violate our Terms of Service, please upload it! If you want to surf the site for amusement, please do! Some of you will also have jobs requiring frequent visits to the site for Q/A purposes or testing purposes. Please do your jobs! BUT--please remember that if any of you ever see any content that you think infringes or otherwise violates our Terms of Service, YOU MUST REPORT IT BY FLAGGING IT ON THE SITE. If you are not positive it violates but you think it might, report it anyway.

TERMS OF SERVICE

The Addicting Clips Terms of Service specifically states that users cannot upload User Materials (clips) that 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...[or] infringe the copyright, trademark, publicity/privacy right or other intellectual property right of any third party.” In other words, users cannot upload clips that they took from a TV show, that contain music that they did not create (both are examples of copyright infringement), clips that are pornographic, or clips that otherwise violate any areas of the law listed above. All users—but specially employees who decide to create user accounts on Addicting Clips—must abide by the terms of service. In the event that we encounter a user who is repeat offender, we will terminate his/her account.

If we do not follow all the DCMA requirements mentioned in this email, we will be held responsible for all the content hosted on Addicting Clips and the liability would be enormous. Therefore, we need everyone's help to ensure our compliance.

Thanks!
Mika

Schapiro Exhibit 107

From: "Salmi, Mika" <Mika.Salmi@mtvstaff.com>
Date: Mon, 22 Jan 2007 23:25:52 -0500
To: "McGrath, Judy" <Judy.McGrath@mtvstaff.com>, "Toffler, Van" <Van.Toffler@mtvstaff.com>, "Zarghami, Cyma" <Cyma.Zarghami@nick.com>, "Herzog, Doug" <Doug.Herzog@comedycentral.com>
Subject: Fw: How Search Turned MTV Into MySpace

This is a pretty good read and it also validates the way we are approaching consumers and digital. It is not entirely negative on us so don't grimace (yet).

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

From: Salmi, Mika
To: Holt, Courtney; Youngwood, Stephen; Stirratt, Nada; Flannigan, Erik; Bierer, Gideon; Rockwell, Nick; Lehman, Nicholas; West, Denmark; Clayman, Greg; Miller, Kenny; Stephenson, James - Atom Shockwave; Podduturi, Anil; Selden, Lisa; Gorke, Thomas - MTVN
Cc: Witt, Jason
Sent: Mon Jan 22 23:23:24 2007
Subject: Fw: How Search Turned MTV Into MySpace

I don't know if Jason sent this to everyone but it is a good read.

I didn't realize we had actually stolen Thomas Friedman's "the world is flat" tagline and consumer search behavior with our "open and flat" platform concept. I like the phrase "open and flat" a whole lot better now.!

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

From: Witt, Jason
To: Salmi, Mika; Miller, Kenny; Cunningham, Todd
Sent: Mon Jan 22 16:26:03 2007
Subject: How Search Turned MTV Into MySpace

How Search Turned MTV Into MySpace <http://blogs.mediapost.com/search_insider/?p=448>

Jan 22, 2007 18:30:39 GMT

For last week's pronouncement that shook the new media world — but didn't particularly surprise it — look to MySpace co-founder Tom Anderson. MySpace, Anderson informed German mag Der Spiegel <<http://www.spiegel.de/international/spiegel/0,1518,459685,00.htm>> , has "replaced MTV."

The point is debatable. Between its acquisition of 10-million visitor RateMyProfessors.com <<http://www.ratemyprofessors.com/index.jsp>> and a rumored investment in social networking site TagWorld <<http://www.tagworld.com/-/Main.aspx>> , MTV is clearly gunning for a return to empire. But at least for now, it does look as if the world's sixth most popular site has stolen the lead from the suddenly presidentless <http://publications.mediapost.com/index.cfm?fuseaction=Articles.showArticleHomePage&art_aid=53804> MTV.

But the MTV versus MySpace competition is a bit more complex than just the old replaced by the new. That's because MySpace isn't as much the usurper of MTV, as it's an evolution of MTV's basic concept: a horizontal channel in which glamorous stars, the common folk, and the channel itself are all on surprisingly equal footing. And, like MTV, MySpace is a channel that's built on reaching out to a youth generation who's the first to have really grown up with a new medium. So MySpace hasn't replaced MTV, as much as MTV has evolved into MySpace. And none of this evolution would have been possible without search.

Let's start with MTV. MTV was first built around the '80s generation, the first generation to really grow up with television — and even color television — as a given in the home. Their baby- boomer parents also grew up with TV, but the boomers often weren't born into a TV household.

MTV also introduced horizontal media in 1992, when "The Real World" spawned reality TV a full 8 years before "Survivor." And "The Real World" entirely changed the rules of how television works. Now, instead of a medium in

which lofty stars appear on the screen while couch potatoes watch them, MTV's invention of reality creates a model in which the stars and the mere mortals occupy the same space. MTV showed us how media can become horizontal. MySpace isn't so different. MySpace is also built on capturing, and capitalizing on, the first generation of youth who's grown up with new media — in this case, the Internet and mobile. In Anderson's own words to Der Spiegel: "If you are 23 now, you probably started using the AOL Instant Messenger ten years ago. It's totally natural for you to talk to your friends that way. A few years after that you started text messaging. I think the MySpace generation is these people who just have this experience. It's perfectly natural."

MySpace is also a truly horizontal medium, with everybody vying for the same attention: Madonna, Jamie Foxx, and the Honda Element <<http://www.myspace.com/hondaelement>> all have to go head to head with your 12-year-old cousin to get noticed.

And so, again, while MySpace may have replaced MTV, it's also just an evolution of the MTV model, brought online. Both MTV and MySpace gained success by providing young people with the opportunity to just be themselves, while understanding that technology had made young people "just being themselves" into something fundamentally different than it had ever been before. And they both did that while creating a new kind of horizontal channel.

It was search that allowed the MTV-MySpace evolution to happen. As New York Times columnist Thomas Friedman <<http://www.thomasfriedman.com/worldisflat.htm>> points out, search is the Web's great flattening force: by offering a single window through which to jump to the Web's billions of disconnected pages, search pulls the entire Internet together. |

Instead of developing a relationship with just one site at a time — in the way that viewers watch one TV channel at a time — search turns the Internet into a single, unified Web. That puts all Web pages on equal footing, all Web pages at the mercy of the user, and all Web pages in direct competition with one another. (A similar point could be made about the effect of remote controls on TV, but search gives way more user control than remotes do, across billions of pages rather than just dozens of channels.) Search made the Web horizontal, and that horizontality enabled MySpace to use the Web to take MTV's horizontality to a whole new plane.

This means a tremendous amount for those of us in search. If search is a driving force behind the new horizontality, then those of us in SEM — the first industry to make business sense of a horizontal universe — can drive unique value in the new horizontal world.

That's also a challenge. As communications evolve — and search, and elements of search, become just one piece of a much larger media picture — SEM needs to turn its insights into ideas that can provide value, regardless of the directions that media take. And if we can't make that happen, it won't just be MTV that's facing replacement.

Schapiro Exhibit 108

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,)

vs.)

NO. 07-CV-2203)

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

Defendants.)

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

Plaintiffs,)

vs.)

NO. 07-CV-3582)

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

Defendants.)

VIDEOTAPED DEPOSITION OF BRIAN K. BRADFORD
SAN FRANCISCO, CALIFORNIA
THURSDAY, MARCH 12, 2009

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
JOB NO. 16590

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MARCH 12, 2009

9:53 A.M.

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

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

2

3 FOR THE PLAINTIFFS CAL IV ENTERTAINMENT:

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9

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

12 MAYER BROWN LLP

13 By: GREGORY FRANTZ, Esq.

14 ILANA D. GOLANT, Esq.

15 1675 Broadway

16 New York, New York 10019-5820

17 (212) 506-2423 gfrantz@mayerbrown.com;

18 igolant@mayerbrown.com

19

20 ALSO PRESENT: Lou Meadows, Videographer.

21

22 ---oOo---

23

24

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1 BRADFORD

11:02:39 2 A No.

11:02:45 3 Are we done with this exhibit?

11:02:48 4 Q Yes.

11:02:49 5 Are you generally aware of the process by
11:02:52 6 which your company obtained the copyrights to the two
11:02:57 7 Works In Suit?

11:03:00 8 A Yes.

11:03:00 9 Q Can you describe that process in general
11:03:02 10 terms.

11:03:03 11 MS. SHARP: Form.

11:03:05 12 THE WITNESS: For which composition?

11:03:09 13 MR. FRANTZ: For both.

11:03:11 14 Q We can start with -- what's the first one?
11:03:13 15 "If You're Going Through Hell."

11:03:15 16 A Okay. "If You're Going Through Hell."

11:03:16 17 MS. SHARP: I'll note for the record that's
11:03:18 18 not a reference to today's deposition.

11:03:20 19 THE WITNESS: "If You're Going Through Hell
11:03:26 20 Before The Devil Even Knows," which is the full title
11:03:28 21 that, I believe, that we went with, was written by a
11:03:33 22 writer under contract with us through an exclusive
11:03:37 23 songwriter agreement, and part of the process of -- or
11:03:45 24 part -- part of the obligations of the writer within
11:03:48 25 the ESA is to execute an assignment of copyright for

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1 BRADFORD

11:03:57 2 compositions created during the term of his contract,
11:04:04 3 and that's pretty much the extent of that one.

11:04:09 4 MR. FRANTZ: Okay. Let's mark Exhibit 5,
11:04:11 5 please.

11:04:11 6 (Document marked Bradford Exhibit 5
11:04:14 7 for identification.)

11:04:14 8 MS. GOLANT: And, Counsel, I would ask that
11:04:15 9 you keep the marked exhibit in a separate file so we
11:04:18 10 can give it to the court reporter at the end.

11:04:19 11 MS. SHARP: Is that --

11:04:26 12 MS. GOLANT: The marked version with the
11:04:27 13 stickers.

11:04:28 14 MS. SHARP: I'm just going to -- yeah, we're
11:04:30 15 keeping it right here.

11:04:31 16 MR. FRANTZ: I'll note for the record that
11:04:33 17 the Exhibit 5 is Cal '3783 through '3784.

11:04:46 18 Q Can you identify this document.

11:04:47 19 A This is a certificate of registration from
11:04:50 20 the copyright office for the song "If You're Going
11:04:56 21 Through Hell."

11:04:57 22 Q And let me direct your attention down to the
11:05:01 23 "Copyright Claimant" section towards the bottom where
11:05:03 24 the big No. 4 is.

11:05:05 25 Do you see that there appear to be three

1 BRADFORD

11:05:06 2 different names listed as copyright claimants? Do you
11:05:09 3 see that?

11:05:10 4 A Yes.

11:05:10 5 Q Can you explain who each claimant is?

11:05:13 6 A Gravitron Music and Whaddayadef Music are the
11:05:28 7 copyright claimants on behalf of Sam Tate and Kathleen
11:05:34 8 Wright, person known as Annie Tate, and Cal IV is
11:05:39 9 the rep- -- the claimant on behalf of Dave Berg.

11:05:43 10 Q Are Gravitron Music and Whaddayadef Music,
11:05:46 11 are those the same company or are they different
11:05:49 12 companies?

11:05:49 13 A I'm not completely sure because that's -- you
11:05:53 14 know, that -- that's a third party. From what my
11:05:56 15 understanding is, Gravitron Music is the SESAC
11:06:01 16 publisher for a company called Carnival Music Company
11:06:06 17 based in Nashville. And Sam Tate and Annie Tate were
11:06:14 18 under contract with that company when they wrote the
11:06:23 19 song and -- and it appears that part of their deal
11:06:27 20 included co-publishing interest, which, I believe,
11:06:30 21 is -- that's where the Whaddayadef Music is probably
11:06:32 22 the name of their co-publishing interest.

11:06:35 23 Q And at the time this registration was filed,
11:06:38 24 which, as you'll note, was June 19th, 2006, did your
11:06:42 25 company, in fact, have an ownership interest in this

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11:06:44 2 copyright?

11:06:44 3 MS. SHARP: The question may call for a legal
11:06:46 4 conclusion.

11:06:48 5 Answer to the extent you know the answer.

11:06:52 6 THE WITNESS: Yes.

11:06:55 7 MR. FRANTZ: Q. And why do you say your
11:06:56 8 company had an ownership interest?

11:06:59 9 MS. SHARP: Again, legal conclusion.

11:07:01 10 THE WITNESS: As I discussed earlier, Dave
11:07:05 11 Berg was under contract with us at the time of writing
11:07:09 12 this composition.

11:07:16 13 MR. FRANTZ: Q. And when did your company
11:07:17 14 acquire the ownership interest?

11:07:19 15 A Upon creation of the work.

11:07:20 16 Q What percent ownership in the -- in the
11:07:23 17 overall work did your company acquire?

11:07:25 18 MS. SHARP: Same objection.

11:07:26 19 THE WITNESS: Our -- our controlled
11:07:30 20 administrative interest is one-third.

11:07:33 21 MR. FRANTZ: Q. And was it one-third the
11:07:35 22 whole time or did that change at some point?

11:07:38 23 A Initially, Dave Berg had a co-publishing
11:07:44 24 arrangement with -- with Cal IV. The name of his
11:07:52 25 co-publisher was Berg -- BergBrain Music, and at the

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11:08:02 2 time the -- the contractual split between Cal IV and
11:08:05 3 his co-pub was of -- of the controlled administered
11:08:12 4 share, Cal IV had two-thirds, and BergBrain Music had
11:08:17 5 one-third, but that -- the BergBrain Music pur- --
11:08:23 6 catalog was purchased by Cal IV, and, thus, the full
11:08:26 7 share became Cal IV's share.

11:08:35 8 Q And with respect to the overall copyright
11:08:37 9 today, what percentage of the copyright does Cal IV
11:08:40 10 own?

11:08:41 11 MS. SHARP: Same objection.

11:08:49 12 THE WITNESS: Today it's one-third.

11:08:58 13 MR. FRANTZ: Okay.

11:08:58 14 Q Now, look at the second page.

11:08:59 15 Do you see at the bottom of the second page
11:09:01 16 in -- in Section No. 9 is a reference to "Bluewater
11:09:04 17 Music Services Corp/Attn: Dan Ekback"? Do you see
11:09:12 18 where I'm looking?

11:09:14 19 A Yes.

11:09:14 20 Q Okay. Do you know who Dan Ekback of
11:09:17 21 Bluewater Music Services Corp is?

11:09:23 22 A Yes.

11:09:23 23 Q Who is he?

11:09:24 24 A At the time, he was -- I'm not sure exactly
11:09:28 25 what his title was, but he was an upper-level

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11:09:36 2 administrative specialist with Bluewater Music

11:09:40 3 Services Corp.

11:09:43 4 Q And who's Bluewater Music Services Corp, if

11:09:48 5 you know?

11:09:48 6 A Bluewater is -- I -- well, I -- I'm not

11:09:52 7 completely sure what all they do. Obviously, that's a

11:09:57 8 third party, but from my understanding is they are --

11:10:06 9 and a -- a copyright administration service for other

11:10:10 10 publishers.

11:10:12 11 Q And if you look at Section 8, just above

11:10:16 12 where we're looking, very small box that's checked

11:10:20 13 that says "Authorized agent of Gravitron Music,

11:10:29 14 Whaddayadef Music," does that mean that this copyright

11:10:33 15 was filed by Bluewater on behalf of Gravitron Music

11:10:38 16 and Whaddayadef Music?

11:10:42 17 A Dan Ekback, from -- from my understanding of

11:10:45 18 this, Dan Ekback of Bluewater Music Services was --

11:10:50 19 was/is the administrator for Gravitron, Whaddayadef,

11:10:57 20 and they filed the copyright registration.

11:10:59 21 Q Did Cal IV have any involvement in the filing

11:11:02 22 of the copyright registration?

11:11:04 23 A No.

11:11:06 24 Q Did Cal IV know about the filing of the

11:11:10 25 copyright registration?

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11:49:30 2 the copyright being registered in Cal IV's name back
11:49:32 3 in 2006, because Cal IV had already acquired the
11:49:36 4 copyright immediately upon its creation; is that
11:49:38 5 correct?

11:49:38 6 A Correct.

11:49:39 7 Q Okay. Now, are there co- -- other co-owners
11:49:44 8 of the work "If You're Going Through Hell"?

11:49:48 9 A We discussed that earlier. The publishers
11:49:51 10 for Sam Tate and Annie Tate, Gravitron Music and
11:49:55 11 Whaddayadef Music.

11:49:57 12 Q And how do you know about those co- -- other
11:50:01 13 co-owners?

11:50:03 14 MS. SHARP: Form.

11:50:04 15 THE WITNESS: Well, how -- how do I know that
11:50:10 16 they are the co-owners, or how do I know about the
11:50:13 17 co-owners?

11:50:15 18 MR. FRANTZ: Q. Well, how do you know that
11:50:17 19 they are the co-owners of that work?

11:50:22 20 A Because when Dave Berg turned the song in to
11:50:26 21 us, on our -- in our process of deliveries and, you
11:50:33 22 know, we -- we need to know who he wrote songs with,
11:50:37 23 he told us that Sam Tate and Annie Tate co-wrote the
11:50:41 24 song with him, and we knew that they were contracted
11:50:46 25 writers with Carnival Music Company, which is, you

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11:50:53 2 know, the -- you know, the -- their SESAC company is
11:50:57 3 Gravitron Music. That's a subsidiary of Carnival, so
11:51:01 4 they were under agreement with them.

11:51:05 5 Q And if there were some change in the
11:51:08 6 ownership status with respect to the other co-owners
11:51:11 7 of this work, would you be notified of that?

11:51:15 8 A Not necessarily.

11:51:23 9 Q Do you agree that the other co-owners of the
11:51:26 10 work are entitled to grant licenses with respect to
11:51:30 11 the work?

11:51:34 12 A As -- as the -- controlling and administering
11:51:41 13 their exclusive rights, I would say yes.

11:51:43 14 Q Do you know whether any of the co-owners, the
11:51:46 15 other co-owners have, in fact, granted any such
11:51:49 16 licenses with respect to "If You're Going Through
11:51:52 17 Hell"?

11:51:55 18 A I honestly -- I -- I wouldn't know what kind
11:51:57 19 of licenses they grant. I don't have access to their
11:52:02 20 documents.

11:52:04 21 Q Could you acquire such information?

11:52:10 22 A Probably not.

11:52:12 23 Q When you say "Probably not," why do you say
11:52:15 24 that?

11:52:18 25 A Because they would have no reason to give me

1 BRADFORD

11:52:23 2 copies of their licenses.

11:52:24 3 MR. FRANTZ: Let's mark a new exhibit,

11:52:27 4 Exhibit 10, please.

11:52:28 5 (Document marked Bradford Exhibit 10

11:52:38 6 for identification.)

11:52:38 7 THE WITNESS: Are we done with these

11:52:40 8 exhibits? Can I get them out of my way?

11:52:42 9 MR. FRANTZ: We are for the most part, but

11:52:43 10 there is a chance I may come back to them.

11:52:46 11 THE WITNESS: Okay.

11:52:52 12 MS. SHARP: There you go, sir.

11:52:54 13 I'm sorry. Exhibit?

11:52:55 14 MR. FRANTZ: 10.

11:53:04 15 THE WITNESS: Okay.

11:53:05 16 MR. FRANTZ: Can you identify -- let me just

11:53:07 17 note for the record that its -- the Bates No. is CAL

11:53:14 18 '1593 through '97.

11:53:15 19 Q Can you identify the document?

11:53:18 20 A This is a "Lyric Reprint License Agreement"

11:53:24 21 between Cal IV and Country Music Media Group for "If

11:53:28 22 You're Going Through Hell."

11:53:28 23 Q All right.

11:53:28 24 And when you look at the first page of the

11:53:30 25 document, do you see that it says Cal IV controls

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17:09:32 2 to this.

17:09:32 3 To the extent you feel you can, you can go

17:09:35 4 ahead, Brian.

17:09:36 5 THE WITNESS: Like I've said, that's for

17:09:38 6 YouTube to figure out. Use their -- their vast

17:09:41 7 financial and technical resources to figure that out.

17:09:45 8 MR. FRANTZ: Q. Has your company sent DMCA

17:09:47 9 notices to other sites besides YouTube?

17:09:51 10 A I'm not aware of any.

17:09:52 11 Q Is it your position that YouTube should have

17:10:15 12 been aware of the Works In Suit having been posted on

17:10:18 13 YouTube before receiving a takedown notice?

17:10:26 14 A As I've stated, I believe if YouTube is gonna

17:10:30 15 provide a service, they need to make sure that

17:10:32 16 copyrighted content is legitimately posted on YouTube.

17:10:36 17 Q But you don't have any way for YouTube to

17:10:38 18 figure that out?

17:10:39 19 A I already answered that question.

17:10:41 20 Q And the answer is, no?

17:10:43 21 MS. SHARP: Asked and answered.

17:10:44 22 THE WITNESS: The answer is, no.

17:10:46 23 MR. FRANTZ: Q. Does your company track its

17:10:51 24 works on the Internet?

17:10:55 25 A We don't directly.

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17:10:57 2 Q Do you do it indirectly?

17:10:59 3 A Yes.

17:10:59 4 Q How?

17:11:01 5 A Our attorney has arranged for an independent
17:11:05 6 monitoring firm to monitor on our behalf.

17:11:09 7 Q And what's that monitoring firm called?

17:11:12 8 A I believe they're called BayTSP.

17:11:15 9 Q And before you retained BayTSP, did you have
17:11:20 10 any way to track works on the Internet?

17:11:22 11 A No, not that I'm aware of.

17:11:24 12 Q Did your company do anything to track its
17:11:26 13 works on the Internet before retaining BayTSP?

17:11:32 14 A No, that's -- that's something that we don't
17:11:35 15 have the resources to do.

17:11:42 16 Q And so how was it that you located the works
17:11:55 17 identified in the first takedown notice?

17:11:58 18 A Well, we discussed that earlier. Our
17:12:02 19 attorneys did that on our behalf.

17:12:09 20 MR. FRANTZ: Let's mark 27.

17:12:10 21 (Document marked Bradford Exhibit 27
17:12:13 22 for identification.)

17:12:13 23 MR. FRANTZ: This is CAL '294 -- I'm sorry.
17:12:25 24 I said that wrong.

17:12:27 25 CAL '2964 through '2966.

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1 BRADFORD

17:12:42 2 THE WITNESS: All right.

17:12:43 3 MR. FRANTZ: Q. Have you seen this document
17:12:43 4 before?

17:12:44 5 A Yes.

17:12:44 6 Q When?

17:12:49 7 A During our prep for this deposition.

17:12:51 8 Q Have you seen it on any other occasion?

17:12:58 9 A No.

17:12:58 10 Q And this is the -- the takedown notice sent
17:13:02 11 by BayTSP on your company's behalf; correct?

17:13:07 12 A Let me -- let me review this, please.

17:13:25 13 Yes, it appears to be a takedown notice by
17:13:28 14 BayTSP on Cal IV's behalf.

17:13:34 15 Q Are you aware of any other takedown notices
17:13:37 16 BayTSP sent on your company's behalf?

17:13:41 17 A I'm -- I'm out of the loop on this one.

17:13:46 18 Q And who would know about this?

17:13:51 19 A Our attorneys, possibly Daniel Hill.

17:14:00 20 Q But you knew about BayTSP; didn't you?

17:14:05 21 A As a result of our prep for this deposition,
17:14:07 22 yes.

17:14:07 23 Q Before you prepped for this deposition, you
17:14:10 24 never heard of BayTSP?

17:14:12 25 A Correct.

DAVID FELDMAN WORLDWIDE, INC.

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

Schapiro Exhibit 109

UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK

_____)
THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., et al.,)
on behalf of themselves and all)
others similarly situated,)
)
	Plaintiffs,)
	vs.)
)
)
YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE, INC.,)
)
	Defendants.)
_____)

Case No.
 07-CV-3582

VIDEOTAPED DEPOSITION OF:

MARYANN SLIM

NEW YORK, NEW YORK

FRIDAY, OCTOBER 23, 2009

BY: REBECCA SCHAUMLOFFEL
 JOB NO. 17852

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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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MARYANN SLIM

2003, correct?

MR. STELLINGS: The document
speaks for itself.

11:41:47 You can answer, if you know.

A. 2005, doesn't say at the top
here, on the cover sheet?

Q. If you can turn to page
'72466 --

11:42:01 A. Sorry.

Q. -- the actual assignment of
copyright, it says, "Executed this 3rd
day of June 2003."

Do you see that?

11:42:10 A. Yes, I do.

Q. And do you recognize this
exhibit?

A. Yes.

Q. You have seen it before?

11:42:19 A. Yes, I have.

Q. Do you know if the Jerry
Lynn Williams compositions, that have
been assigned under this Agreement, are
covered by either of the Stage Three
internal Sub-publishing Agreements that

MARYANN SLIM

we discussed earlier?

MR. STELLINGS: Objection.

Calls for a legal conclusion.

11:42:45 You can answer, if you know.

A. I would imagine they are,
but I don't know because I haven't seen
them, the documents.

Q. Do you know who would know?

11:42:59 A. Jeff Duncan, Alan Kading.

Q. Okay. If you can turn to
page '72467, you will see a schedule of
compositions. Do you see that?

A. I do.

11:43:30 Q. And there is a column that
lists the percentage of total copyright
of entire composition to be assigned?

A. I see that.

11:43:45 Q. And you can see there is a
list of percentages. And I will
represent to you that all of them on
the schedule are less than 100 percent.

A. That's correct.

11:43:57 Q. So does that mean that there
are other third parties that own a

MARYANN SLIM

percentage of the copyright for these compositions?

MR. STELLINGS: Object to

11:44:03 the form of the question.

You can answer.

A. Yes, it does.

Q. So for -- let's just take an example. The first one, A Woman Has

11:44:17 Her Way, the percentage owned or assigned to Stage Three UK is 11.25%.

Do you see that?

A. I do.

Q. Do you know how many other co-owners there are for that song?

11:44:28 A. No. I would have to look in our system to see.

Q. And what system would you look at?

11:44:36 A. Music Maestro Counterpoint. It is the system I referred to previously.

Q. It is called Music Maestro Counterpoint?

11:44:46 A. Yes.

MARYANN SLIM

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Q. And that system would have a database -- would include a database that has all the co-owners for compositions owned by Stage Three?

11:44:55

A. Where information is available on co-owners, it is in there. Otherwise, it will be down as unknown.

Q. So sometimes you don't have information about the other co-owners?

11:45:06

A. Correct.

Q. Do you have any idea how many different co-owners there are for this song?

A. This particular song, no. I would have to check our system.

11:45:22

Q. Are you familiar with the writer, Gerry Rafferty?

A. Yes, I am.

Q. And is he a UK or US writer?

11:45:45

A. He is a UK writer.

Q. Do you know if the Gerry Rafferty songs are subject to internal Sub-publishing Agreements we discussed earlier?

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MARYANN SLIM

MR. STELLINGS: Objection.

You can answer, if you know.

A. Again, I haven't seen
11:46:02 documentation of it, but I would think
that they are, yes.

Q. And would Jeff Duncan know
that?

A. Yes, he would.

11:46:12 Q. David Essex, is he a US or
UK writer?

A. He is a UK writer.

Q. Do you know if David Essex's
songs are subject to any of the
11:46:25 internal Sub-publishing Agreements?

MR. STELLINGS: Same
objection.

You can answer.

A. Same answer. I haven't seen
11:46:30 documentation, but I would take it that
they are.

Q. The Subways, are they a US
or UK writer?

A. They are a UK writer.

11:46:38 Q. I take it you don't know

MARYANN SLIM

1
2 provide this to our sub-publishers in
3 the other territories when they come to
4 us trying to clear a song for sync
5 11:54:17 license use. Because often, they come
6 to us and they give us minimal
7 information. So this is, again, to
8 speed up the process, help them to help
9 us. If they can answer as many of
10 11:54:29 these questions as possible, then the
11 whole process goes more quickly rather
12 than toeing and frowning with the whole
13 process to get this information.

14 Q. Is Connie Ashton your
15 11:54:39 counterpart in the US?

16 A. She is.

17 Q. Is there any other written
18 guidelines on sync licensing other than
19 those contained in this document?

20 11:54:46 A. No.

21 Q. Are there any unwritten
22 guidelines on sync licensing?

23 A. No.

24 Can I just amend that
25 11:55:06 answer?

MARYANN SLIM

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Q. Sure.

A. Other than the Aerosmith document that I referred to earlier on this morning.

11:55:10

Q. Okay. You mentioned earlier that a number of songs administered by Stage Three are co-owned by other third parties; is that right?

11:55:25

A. That's correct.

Q. Do you ever consult with those other co-owners on licensing matters?

11:55:33

A. Only insofar as to ascertain that they do own the other share. For instance, if someone comes to me to approve the song that we don't control 100 percent, I want to help them find the correct other publisher to go to.

11:55:52

11:56:02

So if I have the information or don't have the information, I might ring up and say, do you have the writer X and do you control his share. Can I -- I am going to send this person to you because they are trying to clear

MARYANN SLIM

1
2 this song.

3 Q. And you testified that
4 sometimes you don't have that
5 11:56:06 information on the other co-owners?

6 A. Um-hum. Sometimes we don't.

7 Q. What would you do in that
8 case?

9 A. In that case, I would ask
10 11:56:14 Alan Kading to see if he could find
11 out, from the MCPS, who should have
12 full registrations of all songs, if he
13 can find out who the co-owners are.

14 Q. MCPS is what?

15 11:56:29 A. It is the MCPS PRS. In the
16 United Kingdom, it is a collecting
17 society for performance royalties.
18 Plus, it does various licensing on
19 behalf of all the publishers in the UK,
20 11:56:49 which is standard industry blankets
21 that we have no control over.

22 Q. Are you ever required to
23 consult with the other co-owners of a
24 song before licensing -- doing any sync
25 11:57:03 licensing?

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MARYANN SLIM

MR. STELLINGS: Objection to

the extent it calls for a legal
conclusion.

11:57:05 You can answer, if you know.

A. I don't really understand
the question how it is different from
the previous question.

Q. Does Stage Three UK have any
11:57:17 other agreements --

A. No.

Q. -- with the other co-owners
with regard to licensing?

A. No.

11:57:22 Q. You mentioned that Stage
Three UK has a database to keep track
of licensing information; is that
right?

A. We have the Music Maestro,
11:57:44 which I was talking about earlier.

That's not to keep track of licensing.
That Music Maestro is the admin side of
the company's system for registering
songs and seeing -- putting in all the
11:57:58 song information. So that when

Schapiro Exhibit 110

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 ALEX ELLERSON

NEW YORK, NEW YORK

Friday, May 22, 2009

JOB NO: 16902

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May 22, 2009

9:28 a.m.

VIDEOTAPED DEPOSITION OF ALEX
ELLERSON, held at the offices of Proskauer
Rose, LLP, 1585 Broadway, New York,
New York, pursuant to notice, before Erica
L. Ruggieri, Registered Professional
Reporter and Notary Public of the State of
New York.

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A P P E A R A N C E S

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ALSO PRESENT:

CARLOS KING, Videographer

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A. ELLERSON

Q. And in your view, did YouTube benefit if content owners made use of the Claim Your Content tool?

11:43:01 MR. WILLEN: Objection to the form.

A. I don't really know what that means, does YouTube benefit from people using various tools.

11:43:09 I know what my job was, which was to license content for the service.

Q. Did YouTube financially benefit, if content partners you were negotiating with agreed to make use of the Claim Your Content tool?

11:43:39 MR. WILLEN: Objection to the form.

A. I have no -- I don't know how I could answer that question.

11:43:44 What I know is that my job was to license content, and I was very focused on trying to do that.

Q. Do you recall offering content owners or potential content owners better financial terms, if they made use of the

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A. ELLERSON

Claim Your Content tool?

11:44:18

A. My best recollection is that we tried to make -- so the primary -- what do you mean by "financial terms"? Let me ask that question first.

11:44:58

Q. Let's step back a bit.

What kinds of deals were you negotiating with content owners at this time when you were working for YouTube?

MR. WILLEN: Objection to the form.

11:45:11

A. So for the, pretty much the entirety of my time working for YouTube, my primary job responsibility was to secure licenses to video content so that YouTube could make that content available.

11:46:14

Q. And then in trying to secure licenses to video content from content owners, what sorts of financial terms was YouTube offering to the content owners?

MR. WILLEN: Objection to the form.

11:46:29

A. I don't know what YouTube was offering.

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A. ELLERSON

I can tell you, in deals that I worked on to secure licenses to video content, as a general matter, the quid pro quo in those proposed deals was some quantity of content in exchange for a share of advertising revenue from advertisements that would be run against that content, when it was displayed on the YouTube service.

11:46:42
11:46:57
Q. And when you say, "a share of advertising revenue," does that mean that the content owner would get some part of the advertising revenue, and YouTube would get the other part?

11:47:08
11:47:22
A. So advertising revenue sharing means pretty much exactly what you just said. So someone sells ads, and it brings in \$10, and that \$10 is associated with one owner's content. And the owner takes a piece of that \$10, or YouTube would take a piece of that \$10.

11:49:12
Q. Do you recall offering content owners higher revenue shares, if they agreed to make use of the Claim Your

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A. ELLERSON

Content tool?

11:49:25

A. In deals that I worked on, am I aware of us ever offering the type of revenue shares, in the event that a potential partner agreed to use the Claim Your Content tools?

11:49:40

I don't know whether I did or did not. I might have. I don't recall doing it, but that's possible.

11:50:03

Q. Do you recall if anyone on your team, anyone who reported to you, ever offered content, potential content partners higher revenue shares, if they agreed to make use of the Claim Your Content tool?

A. I don't recall.

11:50:33

MR. GITTERMAN: Let's mark this as Exhibit 2, please.

(Ellerson Exhibit 2, document bearing Bates numbers GOO001-01030250 through 1030256, marked for identification, as of this date.)

11:51:16

MR. GITTERMAN: Exhibit 2, I'm

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A. ELLERSON

interested in doing.

Q. Mr. Ellerson, can you explain to us why you wanted as much content as possible from content owners?

A. That was my job.

Q. Why was that your job?

MR. WILLEN: Objection to form.

A. I was hired by Google and YouTube to license as much content as possible.

Q. And why did Google and YouTube want as much content as possible licensed?

MR. WILLEN: Objection. Calls for speculation.

A. I don't know what you mean by Google and YouTube, why did these entities.

I can tell you why I wanted to license content.

Q. Okay.

A. I wanted to license as much content as possible, because that's what I was hired to do.

Q. And do you know what -- in your

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A. ELLERSON

view, what was the benefit to YouTube in licensing as much content as possible?

12:46:10 A. So there's a number of things that would benefit YouTube in having lots of content available from the site. Users would come to the site. They would use the site. If there was advertising on the site, that could be sold, and so the company could make money from that.

12:46:22

MR. FRANKS: Is this a good time for a break? I don't want to interrupt your flow, if you are still on this document or not.

12:47:05

MR. GITTERMAN: Give me one second. Let's see, because I see there's lunch down there also.

12:47:05

MR. FRANKS: Okay.

12:47:16

MR. WILLEN: We don't have to take a long lunch break.

12:47:16

MR. GITTERMAN: I prefer to take a short one. So why don't we do that now.

12:47:24

MR. FRANKS: Okay, great.

12:47:24

MR. GITTERMAN: The shorter the

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A. ELLERSON

better.

THE VIDEOGRAPHER: The time is
12:47 p.m., and we are off the record.

(Luncheon recess taken at
12:47 p.m.)

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A. ELLERSON

to the extent that your answer would disclose any communications you had with Google's counsel about that issue.

01:35:31

A. In which case I won't answer that question.

Q. Is it the case that -- is it the case that you were told by legal counsel --

01:35:57

MR. GITTERMAN: Let me strike that.

Q. Did you have any conversations with Google or YouTube's counsel about identifying clips for CBS?

01:36:26

MR. WILLEN: Objection to the form.

MR. FRANKS: Let me think about that.

01:36:50

I think I'll let you answer that just yes or no.

A. And could you repeat it, please.

Q. Sure. Did you have any conversations with Google or YouTube's counsel about identifying clips for CBS?

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A. ELLERSON

A. With counsel.

MR. FRANKS: You mean here CBS specifically, as opposed to identifying longer clips in general?

Are you asking specifically with regard to CBS?

MR. GITTERMAN: Right now I'm asking specifically about CBS.

01:37:25 MR. FRANKS: Okay.

A. So specifically with respect to CBS, I don't recall.

Q. Were you instructed by legal counsel not to identify clips on YouTube yourself?

MR. FRANKS: I'm going to object and instruct the witness not to answer that question on the grounds of attorney-client privilege.

01:38:31 MR. GITTERMAN: You know, it's our position that we are entitled to know the general subject matter of conversations he had and with whom and when.

01:38:40 MR. FRANKS: But your question

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A. ELLERSON

asked him was he instructed not to do something. That's asking for the content of the advice, and that's why I objected.

01:38:48

Q. Did you ever talk with YouTube or Google legal counsel about identifying clips -- let me say that again.

01:38:58

Did you ever communicate with Google or YouTube legal counsel about identifying clips, whether CBS's or anyone else's, on YouTube?

MR. WILLEN: Objection to the form.

01:39:07

MR. FRANKS: You can answer that yes or no.

MR. WILLEN: If you understand what he's asking you.

01:39:12

A. Yeah. Could you repeat it for me.

Q. Did you have any communications with Google or YouTube's counsel about identifying content owners's clips on YouTube?

01:39:35

MR. FRANKS: You can answer that

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A. ELLERSON

yes or no.

A. Yes.

Q. And when did you have those
conversations?

01:39:44

A. I have no idea.

Q. Do you know how many
conversations you had?

A. I have no idea.

01:39:53

Q. Do you know if you had such a
conversation around the time you sent this
e-mail?

A. I don't recall sending the
e-mail, so I can't answer that.

01:40:04

Q. Do you know if you had any
conversations around December 2006?

A. I think you asked me, do I
remember the time of those conversations,
and I said I had no idea when they were.

01:40:19

Q. Do you remember who you spoke
with?

A. I can tell you who YouTube's and
Google's lawyers were, but I can't tell
you which I might have spoken to about
this.

01:40:34

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A. ELLERSON

Q. Can you tell me all of the people you might have spoken to about this?

01:40:42 A. I can tell you those lawyers names I recall at Google and YouTube.

Q. Okay.

A. David Estrada, Zahava Levine, Glenn Brown, Arron Hawthorne Thwaite. Those are the only names I can recall.

Q. Mr. Ellerson, did you have conversations with YouTube or Google counsel about --

MR. GITTERMAN: Let me rephrase that.

Q. Did you have -- did you have any communications with Google or YouTube counsel about whether identifying clips on YouTube would risk the loss of YouTube's DMCA safe harbor protections?

MR. FRANKS: You can answer that yes or no.

A. That, specifically, as you phrased it, I don't recall.

01:42:38 Q. So if you --

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A. ELLERSON

that sort of thing. The specifications
for the video files.

Q. And in the context of this
02:31:57 e-mail here, do you understand spec to
refer to information about how the video
fingerprinting program was going to work?

A. I really don't know what it
means. I mean my guess is that maybe it
02:32:13 was referring to some details about how
the beta test would work, but I'm just
guessing. I don't know.

Q. Do you see under that, the
following language: "We will not generate
02:32:30 rev fingerprint upon claiming of partner
of UGC video through DESC search. The
reason we will no longer allow this
feature is because we are going to open up
CYC to nonpartners who we do not think we
02:32:46 can trust to review the content carefully
enough."

Do you see that language?

A. I do.

Q. And then in the e-mail above it,
02:32:58 in the "from" line, is that your e-mail

1 A. ELLERSON

2 address?

3 A. Yes, it is.

4 Q. And in the "to" line, is that

5 02:33:08 Philippe Inghelbrecht's e-mail address?

6 A. Yes, it is.

7 Q. Do you have any reason to think

8 you did not send this e-mail back to

9 Philippe Inghelbrecht?

10 02:33:14 A. No reason to think I did not

11 send this.

12 Q. And when you responded to

13 Philippe, "I understand the logic but

14 appreciate the issues," what did you mean?

15 02:33:28 A. I honestly have no idea what I

16 meant by that.

17 Q. Was it your understanding that

18 at the time of this e-mail, YouTube was

19 considering opening up Claim Your Content

20 02:33:41 to nonpartners?

21 A. Not a question of consideration.

22 The beta test of the CYC tools was

23 absolutely going to be made available to

24 both partners who were licensing content

25 02:33:57 to YouTube, might license to YouTube and

1 A. ELLERSON

2 those who were not and had expressed no
3 interest in licensing content to YouTube.

4 Q. And so before this particular
5 02:34:12 tool was going to be made available, is it
6 the case, then, that CYC was not available
7 to nonpartners?

8 A. So again, CYC referred to a
9 suite of tools that ultimately included
10 02:34:29 this video identification system. It was
11 always the policy that the suite of tools
12 would be made available to anyone who
13 requested them. There was certainly
14 internal debate about whether or not that
15 02:34:42 should be the case, but it was always the
16 policy that this suite of tools should be
17 made available to anyone who wanted to use
18 them, whether they were licensing content
19 to YouTube or not.

20 Q. Putting aside whether content
21 was licensed or not, was -- at the time of
22 this e-mail, was CYC being made available
23 to content owners who did not want to be
24 partners with YouTube?

25 02:35:39 MR. WILLEN: Objection, vague,

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A. ELLERSON

ambiguous.

A. In May of 2007, I do not know who was or wasn't using CYC tools.

02:36:01 Q. Do you have any reason to think that this statement in Philippe Ingelbrecht's e-mail that, "We are going to open up CYC to nonpartners" is inaccurate?

02:36:18 A. I don't know exactly what he means by that, so I can't speak to its accuracy.

Q. When you were working at YouTube, did you ever use the term "content partners"?

02:36:46 A. During the course of my tenure, did I use the term "content partners," I'm sure with some frequency.

Q. And what did you generally use that term to mean?

02:36:57 MR. WILLEN: Are you asking him, Alex Ellerson personally, or generally?

Q. I'm asking you, when you were at YouTube, what you were using the term to

02:37:07

1 A. ELLERSON

2 mean.

3 A. So I was part of the content
4 partnerships group. Our job was to
5 02:37:19 license content of various types for
6 Google and YouTube. That included
7 licensing content from maps and content
8 from books and content from videos. So we
9 referred to the content partner community
10 02:37:38 as a shorthand for anyone who owned
11 copyrighted materials or anyone who owned
12 media of any kind that we might want to
13 license. We would refer to as a content
14 partner.

15 02:37:50 Q. Even if they did not want to
16 license content from you?

17 A. Yeah. We used it pretty
18 broadly. Again, the name of the group was
19 content partnerships.

20 02:37:58 Q. How could -- could we
21 actually -- could you turn back -- I don't
22 know if you still have it in front of you.

23 Exhibit 1, is it still there?

24 A. Yeah.

25 02:40:29 Q. Can you turn to page 89506.

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A. ELLERSON

Do you see at the top in the heading it says, "Claim Your Content, CYC"?

02:40:50 A. Yes.

Q. Can you read the sentence below that?

02:40:57 A. "Claim Your Content allows you to embrace user uploaded videos instead of take down."

Q. Do you have any reason to disagree with that description of Claim Your Content?

MR. WILLEN: Objection to form.
02:41:09 A. It's one way to describe CYC tools.

Q. Sitting here -- sitting here today, can you think of any reason why YouTube would have wanted content owners to use Claim Your Content?

MR. WILLEN: Objection to the form. Calls for speculation.

A. Why YouTube would have wanted content owners to use CYC tools?

02:42:00 Q. Uh-hum.

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A. ELLERSON

A. I don't know that YouTube wanted them to use them or not use them.

02:43:30

Q. Mr. Ellerson, when you were at YouTube, what did you use the term "premium content" to mean?

A. I used --

MR. WILLEN: Objection to the form.

02:43:47

THE WITNESS: I'm sorry.

MR. WILLEN: Objection to the form.

02:43:53

A. When I was at YouTube, I used the term "premium content" to mean any content, video content, that I might want to try to license so that we can make it available for the YouTube service.

02:44:06

Q. And what type of content was it that you wanted to license?

A. Video content.

Q. So when you were at YouTube, is it the case that "premium content" referred to any video content?

02:44:23

MR. WILLEN: Objection.

Mischaracterizes his testimony.

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A. ELLERSON

MR. GITTERMAN: I'm just trying
to understand.

02:44:33 A. Any video content that I was
potentially interested in licensing to
make it part of the video platform.

Q. When you were working at
YouTube, you were interested in licensing
any content at all?

02:44:43 MR. WILLEN: Objection to the
form.

A. Video content.

Q. Uh-hum.

02:44:50 A. I was interested in licensing
video content. Lots, lots of video
content.

MR. FRANKS: Don't tell me those
are more cookies.

02:45:39 THE WITNESS: It's a whole plate
of them.

MR. GITTERMAN: Sorry. I just
have to find a document. Just hold on
one sec.

02:48:36 (Ellerson Exhibit 8, document
bearing Bates number G00

1 A. ELLERSON
2 001-00721100, marked for
3 identification, as of this date.)
4 I'd like to put Exhibit 8 into
5 02:47:08 the record.
6 (Witness reviews document.)
7 A. Okay.
8 MR. GITTERMAN: Putting Exhibit
9 8 into the record with the document
10 02:48:35 number GOO 001-00721100.
11 Q. Is this an e-mail from you to
12 Patrick Walker?
13 A. It says that it's from me to
14 Patrick Walker.
15 02:48:57 Q. Do you remember sending it?
16 A. I do not remember sending this
17 specific e-mail, but I do remember the
18 circumstances around the discussion that
19 the e-mail describes.
20 02:49:09 Q. And what were those
21 circumstances?
22 A. So Patrick, I believe, reported
23 to David as well. But even if he didn't,
24 he was doing video deals for YouTube
25 02:49:25 outside the U.S.

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A. ELLERSON

02:49:39

And every quarter at Google all employees have to set goals for the quarter. Google likes those goals to be numeric, so, as a deal team, they wanted our numeric deals to be a number of closed for the quarter. So I had a goal for number of deals closed. My compensation was, to some degree, tied to meeting those goals.

02:49:54

02:50:21

Patrick also had similar numeric deal goals. In Patrick's deal goals, in his OKRs, I can't recall the specific time that it was July, but I recall Patrick -- David, my boss, thinking Patrick was doing a much better job than me and my team, because he was closing more deals.

02:50:35

02:50:50

And when I spoke to Patrick about that, through that conversation it appeared that what he was calling a deal is not something that we in the U.S. would call a deal. So what he was closing were these things called branded partners. In the number 1 there, which was, frankly, he was just talking to someone who owns

1 A. ELLERSON

2 content, telling them to use the upload
3 tool, and frankly I didn't consider that a
4 deal. I didn't want to look bad in front
5 02:51:01 of my boss for not closing as many deals,
6 because we described a deal in a different
7 way than Patrick did. So because my
8 compensation was tied to this issue, you
9 can imagine that it was of some moment to
10 02:51:13 me.

11 Q. And what was the difference
12 between the kinds of deals Patrick was
13 closing and the kinds you were closing?

14 MR. WILLEN: Objection.

15 02:51:24 Mischaracterizes the testimony.

16 A. I think what I said was in
17 talking to Patrick, he was doing something
18 that he called a deal that in the U.S. I
19 did not consider a deal.

20 02:51:35 Q. And what did you consider a
21 deal?

22 A. I considered a deal getting
23 someone to sign an agreement or come to
24 commercial terms with us.

25 02:51:46 Q. And how did that differ from

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A. ELLERSON

it.

Q. Sitting here today, if you were going to do such an analysis, how would you go about doing it?
03:50:07

MR. WILLEN: Objection. Calls for speculation.

MR. GITTERMAN: No, it doesn't.

Q. If you were doing it now, how would you do it?
03:50:15

MR. WILLEN: You are asking him as an employee of Howcast, how would he going analyzing query stream data on YouTube? Is that what you are asking him?
03:50:23

MR. GITTERMAN: No, that's not what I asked.

If you are going to force me to ask it again --

MR. WILLEN: Okay.
03:50:32

MR. GITTERMAN: -- I will and waste more time.

Q. Mr. Ellerson, if you were going to conduct a query stream data analysis like the one you did here, how would you
03:50:48

1 A. ELLERSON
2 go about doing it?
3 A. If I were a YouTube employee
4 today, and I wanted to perform an analysis
5 03:51:01 like this one --
6 Q. Uh-hum.
7 A. -- how would I gather the query
8 stream data to perform that analysis?
9 Q. Yeah.
10 03:51:08 A. I would ask an engineer who I
11 thought had access to query stream data if
12 he or she could provide some of that data
13 to me.
14 Q. And can you describe for us what
15 03:51:19 query stream data is, or are?
16 A. So my general understanding of
17 query stream data is that it is -- well,
18 for this analysis, this would be aggregate
19 query stream data. But raw query stream
20 03:51:42 data is just a stream of the keywords that
21 users are entering into a search engine to
22 look for something.
23 Q. Is query stream data data that
24 users enter into the YouTube search
25 03:52:02 function to look for videos on YouTube?

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A. ELLERSON

03:52:15

A. So search operates by a user entering one or more keywords that they are hoping will describe what it is that they are looking for.

03:52:30

Q. And the query stream data that you analyzed for this memo were searches that users inputted into the YouTube search box to look for YouTube videos?

A. My best recollection is that, is that this data reflects queries that were aggregate queries that were entered into the Youtube search engine, yes.

03:52:50

Q. And how did you decide -- how did you categorize --

MR. GITTERMAN: Let me rephrase that.

03:53:06

Q. How did -- how were the queries aggregated in this analysis?

MR. WILLEN: Objection to the form.

03:53:24

A. This analysis -- so just to be clear, I looked at top hundred queries, so that's already an aggregation of query stream data. And then I further

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A. ELLERSON

aggregated it into these broad buckets,
music, nonmusic, premium, adult, other.

03:53:38

Q. And how did you aggregate it
into those buckets?

03:53:53

A. My best recollection is that I
was making a best guess. So that if I saw
the name -- if I saw a query of Bruce
Springstein, I would use my understanding
of the music world to know that that was a
musical artist, and I would put it in the
music bucket.

03:54:12

Q. How did you aggregate queries
into the premium bucket?

03:54:28

A. So in a similar fashion to what
I just described, I provided examples in
this query stream report. If I saw the
query "family guy," I would know -- you
know, users might mean lot of things by
the term "family guy." They might mean
they are looking for information about,
you know, good dads, because they are
having a kid or something.

03:54:38

But I made my best guess that it
probably was referring to Fox's television

1 A. ELLERSON

2 index. I'm not an engineer, so some of
3 this is just sort of my passing
4 understanding. It might be very wrong.

5 04:15:38 But I believe that the main search engine
6 finds text, could be written newspaper
7 articles, could be metadata that a website
8 owner has somehow made available on its
9 web page, and shoves all of that text into
10 04:15:58 the search engine -- search index.

11 And then when a user runs a
12 query, that query is run against the
13 index; and the engine surfaces what its
14 algorithm believes is the most relevant
15 04:16:15 content or web pages that correspond to
16 that specific user query.

17 Q. And could users search for
18 YouTube video content through Google web
19 search --

20 04:16:29 MR. WILLEN: Objection.

21 Q. -- on YouTube?

22 MR. WILLEN: Objection. Calls
23 for speculation.

24 Q. If you know.

25 04:16:34 A. I don't know the answer to that.

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A. ELLERSON

Q. If you could turn back to your analysis at page 65465.

Under the heading of "The Top 100 Playback Queries," you write, [REDACTED] [REDACTED] "

Does that mean -- was your conclusion, as part of this analysis, that --

04:16:59
04:17:18 MR. GITTERMAN: Actually, strike that.

Q. Can you explain for us what, what that means in the context of this analysis?

04:17:33 A. I believe that means that of the top 100 user queries, so a user did a query, got a search result page and then watched a video as a result of running that query and finding the search result page, that [REDACTED] [REDACTED].

04:17:48
04:18:01 It doesn't mean that the video that the user watched was music. It means that the keywords that they typed in, it was my guess that that was a music-related

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A. ELLERSON

keyword.

04:18:14

Q. And how were you able to determine that it was a music-related keyword?

MR. WILLEN: Objection. I think we have asked this already.

04:18:23

A. Yeah. My recollection is we were talking about this before, and I was describing that I was drawing on my personal knowledge that a keyword like, for example, Bruce Springstein, that -- I mean maybe a user had a family member named Bruce Springstein that they were trying to find something about, but I used my judgment to determine that that meant that the user's interest was in videos related to the Bruce Springstein.

04:18:38

04:18:50

And frankly, I was also making a leap of faith that -- that that meant that they were looking for Bruce Springstein performing music, but I don't know that to a certainty. This is a very

04:19:02

nonscientific -- they could have been looking for Bruce Springstein news

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A. ELLERSON

interviews. They could have been looking for Bruce Springstein blooper reels. I wouldn't know. So again, I was merely making a back-of-the-envelope guess.

04:19:13

Q. Now, you relied on this data analysis to conclude that there was an enormous demand for premium content on the YouTube website; isn't that right?

04:19:29

A. I think what I wrote was something along those lines, yes, that there was -- how was the memo phrased? Yeah. Our opinion is that the query stream analysis is that there's interest, and the challenge is we haven't licensed it, and --

04:20:00

Q. And do you --

MR. WILLEN: Let him finish his answer.

04:20:08

A. -- the reason for that is, the reason I would come to that conclusion is looking at these, to me, what's more interesting here is the search query data which indicates that someone did a, ran a search looking for something and

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A. ELLERSON

presumably did not find it, because there was no subsequent video playback.

04:20:32 And it indicates that our users in large numbers were looking for pornography and did not find it. It also indicates that they were looking for nonmusic premium content, a very large, what I consider a large percentage, nearly 04:20:45 [REDACTED], and did not find it.

And from that I concluded that we had not -- because they could not find it, because we had not yet licensed it or, if we had licensed it, we were not doing a good job of surfacing it so that it could be found. 04:21:01

Q. And isn't it the case that you were also confident enough in this analysis you did to recommend to your boss, David Eun, that there is an enormous demand for premium content? 04:21:15

MR. WILLEN: Objection.

Mischaracterizes the document.

A. I think one of the things that we were just talking about, as I said, I 04:21:29

1 A. ELLERSON

2 believed that this query stream data
3 indicated that there was strong user
4 demand for premium content. And that
5 04:21:40 demand was not being filled, because we'd
6 either not licensed it or, to the extent
7 we had licensed it, were not making it
8 easily discoverable by our users.

9 Q. Turning back to page 654 --
10 04:22:00 turning back to page 65465, your query
11 stream data analysis.

12 Do you know if YouTube had
13 licensed any content from the Fox
14 television network at the time you did
15 04:22:33 this analysis?

16 A. At the time that this memo is
17 dated, which is, I think -- what was it,
18 June? In June of '07, was I aware of any
19 license between YouTube and Fox?

20 04:22:51 I don't recall one, but that
21 doesn't mean that there wasn't one.

22 Q. Do you know of anyone working at
23 YouTube who would have negotiated with Fox
24 other than you or someone on your team?

25 04:23:06 A. Sure. Fox is a big company,

1 A. ELLERSON

2 does a lot of things. I believe Google
3 had a very large deal with My Space, which
4 is a website owned by Newscorp, Newscorp
5 04:23:17 and Fox essentially being the same thing.

6 So all those -- that deal was
7 done by someone other than my team. I'm
8 sure we had -- I'm guessing, I don't know
9 this, I'm guessing that Google probably
10 04:23:29 had various types of advertising
11 relationships with Fox, and that would not
12 have been my team to instruct that
13 relationship.

14 Q. Isn't it the case that your
15 04:23:44 team, that one of the priorities for your
16 team was negotiating with -- was
17 negotiating licensing deals with the big
18 six, which includes the Fox network?

19 A. Subsequent to the YouTube
20 04:23:58 acquisition, we identified what we were
21 referring to as the big six. One of those
22 big six companies was Fox. So immediately
23 subsequent to the YouTube acquisition,
24 getting a deal done with Fox was
25 04:24:11 definitely a priority.

1 A. ELLERSON
2 document number ending in 1167.
3 (Witness reviews document.)
4 MS. KOHLMANN: That's a
5 04:59:17 different document.
6 MR. GITTERMAN: That's not 10.
7 How did that happen?
8 MR. FRANKS: Here you go. This
9 is what 10 is here. What you gave the
10 04:59:25 witness and what you gave me is
11 received -- from Alex Ellerson,
12 received date 5/30/07, at 1649 CST.
13 That's what's been marked as 10, with
14 attachment minimum guarantee
15 04:59:46 recommendation memo.
16 You want to go to a number 11?
17 MS. KOHLMANN: No. Go ahead.
18 MR. GITTERMAN: We will stick
19 with number 10, but I read the wrong
20 05:00:02 Bates number.
21 MR. WILLEN: Can I get my copy
22 back, then.
23 MS. KOHLMANN: Sorry.
24 MR. WILLEN: That's all right.
25 05:00:08 Thanks.

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A. ELLERSON

MR. GITTERMAN: So document 10 starts with Bates number GOO 00102519867 and ends in 02519873.

05:00:31 MR. FRANKS: That appears to be what we got.

MR. GITTERMAN: Sorry about that.

Q. Mr. Ellerson, if you can turn to page 9868, it's the second page. I don't think you need to read the whole thing.

A. I'd like to at least know --

Q. I just have a couple questions.

A. -- what the -- at least skim through it.

05:01:05

Q. Okay. Turning to the second page of the document, do you recognize this as an earlier draft of the memo we were just discussing?

A. It appears to be an earlier draft of the memo we were just discussing, yes.

05:02:04

Q. And by just discussing, I'm referring to Exhibit 9.

05:02:18

And if you turn to page 9871,

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A. ELLERSON

which is headed "Analysis of Query Stream Data."

A. Yes.

05:02:29

Q. And is that the same analysis that was attached to the Exhibit 9 memorandum?

A. So it appears to be identical.

05:03:06

Q. If you turn to page 9869, which is the second page of the memo. In the second paragraph from the top, in the second sentence, do you see it says, "This data suggests that our users do want to watch professional content, but we either haven't yet licensed the content that they are looking for, or, for content that we have licensed, we are not doing the best job that we can to service that content for users who are searching for it."

05:03:31

A. I see it, yes.

05:03:43

Q. Do you have any reason, sitting here now, to disagree with that conclusion?

05:03:54

A. I believe that that conclusion is saying that as a result of looking at

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A. ELLERSON

this query stream data, that I had concluded that there was unmet demand for nonmusic premium content.

05:04:07

Q. Isn't it the case that you concluded that there was unmet demand for professional content?

05:04:20

A. That's what this says. And I'm guessing now, because I don't recall specifically, but I'm guessing -- I'm guessing I used the word "professional," because that was the term that Chad had used in this quote that was taken from USA Today.

05:04:40

Q. And is it the case that based on your analysis of the query stream data, that Chad's conclusion was incorrect?

MR. WILLEN: Objection to the form.

05:05:05

A. Appears Chad is making a number of conclusions in this statement. One is that users want to watch themselves. So there was certainly an abundance of evidence on YouTube that users want to watch themselves.

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A. ELLERSON

As we were discussing earlier,
there's a number of ways in which users
can find videos. They can find them
through search, they were Bruce, they can
be sent links, there are recommended video
links. If you look again, my recollection
is at the time that I was at YouTube, if
you looked at the most viewed videos, many
of those would be things that are loosely,
I would describe as users wanting to watch
themselves.

So I think to the extent that he
was concluding, by use of the phrase, they
don't want to watch professionally
produced content, to the extent that I
understood him to be referring to content
of the type that I was interested in
licensing, I disagreed with that
conclusion.

Q. Well, what did you understand
him to mean, when he said professionally
produced content?

A. Content that was not of the type
that would be described as users wanting

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A. ELLERSON

to watch themselves.

05:06:48

Q. So is it a fair characterization to say that premium content is also, as you were using the term at the time, not content of the type where users want to watch themselves?

MR. WILLEN: Objection to the

form.

05:07:00

A. I know what I meant when I used the term "premium content." And I meant content that I was interested in licensing to make available from the YouTube platform.

05:07:10

Q. Were you interested in licensing content of the type where you --

MR. GITTERMAN: Let me rephrase

that.

05:07:35

Q. Were you interested in licensing content of the type whereby users want to watch themselves?

MR. WILLEN: Objection to form

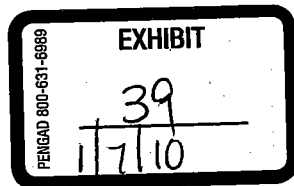
and also --

MR. FRANKS: Objection, asked

05:07:41

and answered.

Schapiro Exhibit 111



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Last Updated: MAY 19, 2008

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- [Governing Law and Jurisdiction](#)
- [Termination](#)

[Logos / Licensed Marks](#)

About ASCAP

ASCAP WEB SITE TERMS OF USE, RESTRICTIONS, LEGAL NOTICES, ONLINE PRIVACY STATEMENT

Introduction: Agreement

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If you believe a third party has posted material that infringes your copyright through any ASCAP portal that permits the posting of third-party content, you must report such claimed infringement to ASCAP's [copyright agent](#). If you believe a copyright infringement notice has been wrongly filed with ASCAP's copyright agent against you as a result of a mistake or misidentification, you should file a counter notification with ASCAP's copyright agent. The following sets out the required content of a [notification of infringement](#) and [counter-notification](#) under the Digital Millennium Copyright Act.

- [Notification of Claimed Copyright Infringement](#)
- [Counter Notification to Claimed Copyright Infringement](#)
- [Policy Regarding Repeat Infringers](#)
- [ASCAP Copyright Agent Contact Information](#)

TOP**Notification of Claimed Copyright Infringement**

If you believe that your copyrighted work has been used and made available through the ASCAP website in a manner that constitutes copyright infringement please provide notice to ASCAP's copyright agent, the contact information for whom is set forth below.

As required by the Digital Millennium Copyright Act of 1998 ("DMCA"), this notice must include the following information (see 17 U.S.C. 512(c)(3)):

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;

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- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material;
- Information reasonably sufficient to permit the service provider to contact the complaining party, such as address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;
- A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
- A statement that the information in the notification is accurate and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

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Counter Notification to Claimed Copyright Infringement

If you believe that a copyright infringement notice has been wrongly filed against you as a result of mistake or a misidentification of the material, you may file a counter notification with our Copyright Agent, the contact information for whom is set forth below. As required by the DMCA, the counter notification must include the following information (see 17 U.S.C. 512(g)(3)):

- A physical or electronic signature of the subscriber;
- 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;
- 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;
- 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 or an agent of such person.

[TOP](#)

Repeat Infringers

ASCAP respects the intellectual property rights of others, is committed to complying with U.S. intellectual property laws including the DMCA, and will terminate all users who are repeat infringers of intellectual property laws.

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ASCAP Copyright Agent

Howard Girao
One Lincoln Plaza, 6th Floor
New York, NY 10023
Telephone: (212) 621-6269
Fax: (212) 787-1381
Email: WebSupport@ascap.com

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Special Use Conditions and Restrictions Regarding ACE

Description of ACE

ASCAP created the dial-up ACE System in 1993 as a useful tool for music professionals. It was a well-received industry innovation then, and now we are extremely proud to make an enhanced World Wide Web version of this Database available.

The Database contains information on all compositions in the ASCAP repertory which have appeared in any of ASCAP's domestic surveys, including foreign compositions licensed by ASCAP in the United States. As ASCAP's new registration format is rolled out, all works registered since November 1990, whether surveyed or unsurveyed, will be available for viewing via ACE. In the meantime, if you are a member and your composition does not appear on ACE, please [check with ASCAP](#) to verify that it has been registered with the Society.

Please note the following with respect to Writer information:

- The ACE database contains the names of ASCAP writer members and the names of their co-writers who are either affiliated with other performing rights organizations, or not affiliated with any other organization.
- ASCAP writer members' names may be accessed directly on ACE, appear initially in blue, and change to red when you click on the member's name; the names of writers affiliated with other U.S. performing rights organizations cannot be accessed directly using ACE.
- When you click on the title of a song, the names of ASCAP writers, and writers affiliated with foreign performing rights organizations whose works are licensed through ASCAP for performances in the United States, appear in blue; the names of co-writers affiliated with other U.S. performing rights organizations, or not affiliated with any other organization, appear in black and only under the listings for their titles.
- As noted above, the ACE database contains the titles of works written and published by members and affiliates of foreign performing rights organizations and licensed by than 60 foreign societies. The names of the writers of such titles also appear in blue and change to red when you click on the writer's name. The listing for the title may if a publisher with an interest in the work that controls U.S. performing rights is also affiliated with a foreign society.
- Occasionally, members resign from ASCAP and ASCAP continues to license performances of the resigned members' works -- these resigned members' names also appear in black in ACE under the listings for titles of works that remain in the ASCAP repertory.

Please note the following with respect to Publisher Information:

- ACE provides publisher information for ASCAP publishers when a work is co-published with a non-ASCAP entity.
- ACE also provides direction to the affiliated society of the other entities.
- The publisher contact addresses in the ACE database are intended for music users within the United States *only*. Music users outside the U.S. should contact their local performance or mechanical rights organizations for publisher contact information applicable to them.
- The publisher name and address that ACE provides as the result of a publisher address query or song title query is the **contact publisher or administrator** for a synchronization license, grand right, etc. This is not necessarily the copyright owner, who thus may not be represented on the ACE system.
- THIS PUBLISHER INFORMATION THUS SHOULD *NOT* BE USED FOR RECORD LABEL PURPOSES.

In certain circumstances, ACE advises the viewer to contact ASCAP's Repertory Clearance staff (212) 621-6160) for additional information or assistance. This may occur if a work is not in the ASCAP repertory; if the publisher or administrator of a work is a publisher represented by a foreign performing rights organization; if the work is a collaborated work (that is, a work written by an ASCAP writer and a writer affiliated with another performing rights organization); if a publisher is a former ASCAP member; or if there is a dispute as to ownership or other rights pending with respect to the work.

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However, there may be times when we seek to collect personal information from you. It is our intent to inform you before we do that and to tell you what we intend to do with the information. You will have the option not to provide the information, and in the future you will be able to "opt out" of certain uses of the information. If you choose not to provide the information we request, you can still visit most of ASCAP's Site, but you may be unable to access certain options, offers, and services or certain secure pages used for licensee reporting and payment and accessing and sending other information.

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A Special Word To Our Members

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Schapiro Exhibit 113

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 VANCE IKEZOYE
PALO ALTO, CALIFORNIA
THURSDAY, SEPTEMBER 10, 2009

JOB NO. 17619

SEPTEMBER 10, 2009

9:40 a.m.

VIDEOTAPED DEPOSITION OF VANCE IKEZOYE,
WILSON SONSINI GOODRICH & ROSATI,
650 Page Mill Road, Palo Alto, California,
pursuant to notice, and before me,
ANDREA M. IGNACIO HOWARD, CLR, RPR, CRR, CSR
License No. 9830.

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

2
3 FOR THE PLAINTIFFS VIACOM INTERNATIONAL, INC.:

4 JENNER & BLOCK, LLP

5 By: MICHAEL DeSANCTIS, Esq.

6 LUKE PLATZER, Esq.

7 1099 New York Avenue, NW, Suite 900

8 Washington, D.C. 20001

9 (202) 639-6000 mdesanctis@jenner.com

10
11 FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

12 BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

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

FOR THE DEPONENT:

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ALSO PRESENT: Kelly Truelove, Consultant

Armando Carrasco, Videographer.

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IKEZOYE, V.

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2 09:48:53 Q Okay. Can you explain a little how it was
3 09:49:01 that the two of you came to found Audible Magic.
4 09:49:04 A I've known Jim for -- from Hewlett-Packard
5 09:49:08 for many years, and we -- we had kept in touch. Jim
6 09:49:16 had an idea about using technology to identify content
7 09:49:21 on broadcast radio. We started developing a business
8 09:49:25 plan and later on founded the company and got the
9 09:49:29 company funded.
10 09:49:30 Q Okay. And when was it that you founded the
11 09:49:32 company?
12 09:49:34 A Originally, in July of 1999, but it was a
13 09:49:38 different company name at the time. That was called
14 09:49:40 Wired Air. We changed the name to Audible Magic
15 09:49:43 Corporation in December of 1999.
16 09:49:47 Q Mr. Ikezoye, generally speaking, what types
17 09:50:18 of services does Audible Magic provide to its
18 09:50:20 customers?
19 09:50:22 A We provide copyright identification services
20 09:50:27 to a variety of different kinds of classes of
21 09:50:32 customers. We -- some of our customers are
22 09:50:37 university -- universities who buy a product and
23 09:50:42 service from us to identify content on their networks.
24 09:50:46 We have a service called Replicheck that we
25 09:50:51 sell to the CD manufacturing industry to identify

IKEZOYE, V.

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2 09:50:54 copyrighted music, and then we also sell services to
3 09:50:59 various digital media companies, like Web 2.0 social
4 09:51:04 networks, to identify copyrighted content that is
5 09:51:07 being uploaded by users.

6 09:51:16 Q Looking at the last of the services that you
7 09:51:27 just mentioned, the digital -- the work that you do
8 09:51:30 for digital media services, when did YouTube --
9 09:51:33 sorry -- when did Audible Magic begin providing those
10 09:51:36 kinds of services?

11 09:51:41 A To Web 2.0 companies or to just anybody in
12 09:51:45 the space?

13 09:51:46 Q Let's just start generally with anybody in
14 09:51:47 the space.

15 09:51:48 A We started providing some of the services to
16 09:51:52 the peer-to-peer companies in, I believe, 2004, in the
17 09:52:00 2004 time frame, and for those companies we helped the
18 09:52:11 peer-to-peer companies identify content that their
19 09:52:14 users were introducing into their networks.

20 09:52:18 Q Okay. In the 2004 time frame that you're
21 09:52:24 talking about, was your client base primarily
22 09:52:28 peer-to-peer services?

23 09:52:29 A Yes.

24 09:52:29 Q Can you describe -- well, actually strike
25 09:52:33 that.

IKEZOYE, V.

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2 09:52:33 Can you identify who some of those
3 09:52:35 peer-to-peer services were? Who were your customers
4 09:52:38 in the 2004 time frame?
5 09:52:42 A Yes. Yeah, iMesh was one of our customers
6 09:52:50 who was a peer-to-peer company, and later we had --
7 09:52:54 Kaza was a customer of ours.
8 09:52:56 Q And what exactly is a peer-to-peer service?
9 09:53:00 A A peer-to-peer service is a peer-to-peer --
10 09:53:02 it's an application that allows the sharing and
11 09:53:08 transmittal of -- of copyrighted files between users.
12 09:53:15 Similar to Naps- -- the way Napster originally was.
13 09:53:20 So users could download this application, download
14 09:53:24 files, copyrighted movie and music files, and then
15 09:53:28 also they can make those available to other users.
16 09:53:34 Q Did there come a time when Audible Magic
17 09:53:37 began providing these -- these copyright
18 09:53:47 identification services to digital media services
19 09:53:49 other than peer-to-peer networks?
20 09:53:51 A Yes, we did do that.
21 09:53:53 Q Okay. Can you describe how or the type of
22 09:53:58 customer that Audible Magic next started servicing?
23 09:54:03 A We started servicing some of the more -- the
24 09:54:06 classic Web 2.0 social network companies, where some
25 09:54:12 people call it user-generated content, where users may

1 IKEZOYE, V.

2 09:54:19 have audio or video files, and they upload these files

3 09:54:22 to websites, and these websites then allow other users

4 09:54:27 to stream and to view or listen to the content.

5 09:54:32 Q Do you recall who Audible Magic's first

6 09:54:41 customer was in the social networks base?

7 09:54:44 MS. REES: Objection; vague and ambiguous.

8 09:54:46 THE WITNESS: Our first customer that we

9 09:54:49 announced was MySpace.

10 09:54:59 MR. DESANCTIS: Q. Do you recall when that

11 09:55:00 announcement was?

12 09:55:01 A The -- the first quarter of 2007.

13 09:55:09 Q Did additional customers -- actually, when I

14 09:55:24 say "customer" -- do you prefer customer or client?

15 09:55:26 A Customer is fine.

16 09:55:28 Q Okay. Did additional customers follow

17 09:55:30 MySpace?

18 09:55:31 A Yes.

19 09:55:31 Q And who -- what was the next customer in this

20 09:55:34 space that Audible Magic began providing services to?

21 09:55:38 MR. BLY: Objection to the extent that it

22 09:55:39 calls for confidential information.

23 09:55:41 You can talk about the ones that are publicly

24 09:55:44 announced.

25 09:55:44 THE WITNESS: Right.

1 IKEZOYE, V.

2 09:55:45 Other customers were YouTube, Sony Pictures

3 09:55:53 had a website called Grouper. Microsoft had Soapbox,

4 09:56:03 was a customer. In total, I believe we had over --

5 09:56:10 over the period of 30 plus customers.

6 09:56:15 MR. DESANCTIS: Q. When you say "over the

7 09:56:16 period," what period are you talking about?

8 09:56:18 A From -- from 2006 through today.

9 09:56:26 Q And when you say "30 plus customers," do you

10 09:56:29 mean 30 plus customers in the social network space

11 09:56:34 that you were describing, or are you now talking about

12 09:56:38 a broader space of clients?

13 09:56:41 A No, the Web 2.0 social networking space.

14 09:56:47 Q Okay. Who are Audible -- Audible Magic's

15 09:57:04 primary competitors for content identification

16 09:57:07 services in the Web 2.0 space?

17 09:57:12 A It changed over time, but some of the

18 09:57:16 people -- some of the companies that were in the space

19 09:57:17 were Gracenote, Volvo, Auditude, and there are

20 09:57:26 probably other customers that I can't remember names

21 09:57:34 of.

22 09:57:35 Q Do you know whether Audible Magic does more

23 09:57:38 business in the Web 2.0 space than any of the

24 09:57:41 competitors you named?

25 09:57:43 A It's my belief. I'm not aware of anybody

IKEZOYE, V.

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10:07:00 submitted -- or why you submitted this declaration in
10:07:03 that case?

10:07:06 A Because we, again, we wanted to make -- grow
10:07:12 awareness of our services and our capabilities to the
10:07:16 market.

10:07:17 Q If you could flip to the last page. It's
10:07:28 dated February 2, 2006, and is that your signature
10:07:31 underneath it?

10:07:32 A Yes, it is.

10:07:33 Q Okay. I'm going to ask you the same question
10:07:36 that I asked you about the last document, which is, is
10:07:39 there -- as you sit here today, is there any reason to
10:07:42 think that anything in this declaration was inaccurate
10:07:46 at the time it was submitted? And if you want to take
10:07:50 a minute to look through it again, feel free.

10:08:40 A Okay.

10:08:49 Q Then, as you sit here today, Mr. Ikezoye, is
10:08:52 there any reason to -- that you know of why anything
10:08:54 in this -- or let me withdraw that and rephrase.

10:08:59 As you sit here today, do you have any reason
10:09:07 to believe, Mr. Ikezoye, that anything in that
10:09:10 declaration was inaccurate at the time it was
10:09:12 submitted?

10:09:12 A No.

IKEZOYE, V.

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10:09:17 Q Direct your attention to paragraph 18 of the
10:09:29 exhibit, which is on page five. The last sentence of
10:09:39 that paragraph states, "The Audible Magic iMesh filter
10:09:44 has scaled seamlessly to 5 million lookups per day and
10:09:50 easily could scale to meet the needs of any network in
10:09:52 use today."

10:09:53 Can you first explain what the Audible Magic
10:09:57 iMesh filter was that you were talking about here in
10:09:59 this paragraph?

10:10:01 A We had provided iMesh a -- software and
10:10:09 services that they integrated in their software
10:10:14 application that users used, and so the service was to
10:10:21 identify content that was being uploaded or downloaded
10:10:25 within this network.

10:10:27 Q And iMesh -- is iMesh an example of one of
10:10:34 the Web 2.0 sites that we were talking about earlier
10:10:36 this morning?

10:10:37 A No, it's a peer-to-peer network, file sharing
10:10:40 network provider.

10:10:42 Q Okay. And what does it mean or what did you
10:10:46 mean when you said "the filter has scaled seamlessly
10:10:50 to 5 million lookups per day"?

10:10:56 Actually, let me break that down. Let's
10:10:58 start with, what does "5 million lookups per

IKEZOYE, V.

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10:11:02 day" mean?

10:11:04 A It means a lookup is when we have -- we're
10:11:08 presented with an unknown file and we're looking that
10:11:11 up and trying to match the characteristics against a
10:11:14 database of known content. So one lookup is one
10:11:18 unknown file being -- trying to be identified.

10:11:22 Q Okay. Let me just try to make sure I
10:11:24 understand that.

10:11:25 Who submits the unknown file to Audible
10:11:29 Magic?

10:11:31 A The iMesh application. So millions of users
10:11:35 had the iMesh application, piece of software running
10:11:38 on their computers. Our library was integrated in
10:11:43 that piece of software that users used, and so the
10:11:49 application automatically, when a file was gonna be
10:11:54 shared or was downloaded, we would take measurements
10:11:59 and then the application itself would automatically go
10:12:02 do a lookup against our servers. So users didn't have
10:12:07 to operate -- it was all operated within --
10:12:09 automatically within the software itself.

10:12:13 Q So when measurements were taken of -- of a
10:12:40 file to be downloaded on iMesh, does that mean -- is
10:12:44 that the same way of saying a fingerprint was made of
10:12:46 the file?

IKEZOYE, V.

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2 10:12:47 A Yeah, a fingerprint was taken, as well as
3 10:12:49 other information about the file --
4 10:12:51 Q Okay.
5 10:12:52 A -- and we --
6 10:12:53 Q What other information was taken?
7 10:12:55 A I believe we would take the -- the metadata
8 10:12:59 title of the -- the file, and I also believe that we
9 10:13:03 would take a -- a -- information -- a hash of the
10 10:13:08 file.
11 10:13:08 Q Okay. An MD5 hash?
12 10:13:12 A Yes.
13 10:13:12 Q And what then, if anything, would Audible
14 10:13:17 Magic compare that fingerprint and additional
15 10:13:19 information against?
16 10:13:21 A We had a database of -- of fingerprints, as
17 10:13:28 well as associated MD5 hashes, and so we would compare
18 10:13:35 that against known hashes and then also known
19 10:13:39 fingerprints.
20 10:13:42 Q And at that time, what fingerprints were in
21 10:14:01 your database of fingerprints?
22 10:14:09 A At the time, according to this, it looks like
23 10:14:11 we had about 6 million copyrighted songs in our
24 10:14:15 database. So fingerprints were about that many songs.
25 10:14:18 Q And from whom were those fingerprints

IKEZOYE, V.

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2 10:38:25 Q So if my math is correct, does that mean that
3 10:38:33 there are far -- far more false negatives than there
4 10:38:36 are false positives?
5 10:38:39 A Yes.
6 10:38:39 Q Okay. Do you know why that is?
7 10:38:44 A We've optimized the technology to minimize
8 10:38:48 the false positives, because we -- some of the
9 10:38:53 identifications are used for rights or royalty
10 10:38:56 purposes. And so if you incorrectly identify
11 10:38:59 something, then you can -- you are attributing
12 10:39:03 something to somebody who may not -- may or may not --
13 10:39:08 you may misidentify a piece of content, apply the
14 10:39:14 wrong business rules or pay the wrong person, versus
15 10:39:17 no ID is much better; and so we optimize for false --
16 10:39:25 minimizing false positives, and that's why a little of
17 10:39:28 that -- that -- those ratios.
18 10:39:32 Q I'd like to change gears for a minute, you
19 10:40:01 can put that declaration aside, and ask you some
20 10:40:03 questions about the databases in which Audible Magic
21 10:40:09 stores its reference fingerprints.
22 10:40:13 Let me just start by asking, so again that
23 10:40:15 we're on the same page: Is it the case that Audible
24 10:40:19 Magic stores its reference fingerprints in databases?
25 10:40:22 A Yes.

IKEZOYE, V.

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- 2 10:40:23 Q Okay. Are they all in one big database or
- 3 10:40:25 are there different databases?
- 4 10:40:29 A We have a -- a -- a main database that
- 5 10:40:33 contains all of the content submitted by copyright
- 6 10:40:37 holders, so we have one master database. We also have
- 7 10:40:44 other smaller databases that are -- contain subsets of
- 8 10:40:51 that master database that are used in different
- 9 10:40:54 applications or with different customers.
- 10 10:41:01 Q Does that master database or main database
- 11 10:41:03 have a particular name that I should use so that we
- 12 10:41:06 know we're talking about the same thing?
- 13 10:41:08 A We can call it a "master database."
- 14 10:41:10 Q Okay. Is there something called a commercial
- 15 10:41:29 music database or commercial music library?
- 16 10:41:32 A Yes. It's -- we refer to our -- all of our
- 17 10:41:40 fingerprints or registrations of -- from the music
- 18 10:41:44 labels as our commercial music database.
- 19 10:41:47 Q Okay. So what fingerprints populate -- what
- 20 10:41:50 types of fingerprints would populate the commercial
- 21 10:41:53 music database?
- 22 10:41:54 A They are fingerprints of commercially
- 23 10:41:56 available musical sound recordings received from
- 24 10:42:03 record companies, majors and independents.
- 25 10:42:07 Q Approximately how many fingerprints -- or

IKEZOYE, V.

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2 10:42:12 unique fingerprints are in that database? Do you
3 10:42:15 know?
4 10:42:16 A Today, it's over 7 million fingerprints in
5 10:42:19 our database.
6 10:42:24 Q Is there something called a commercial TV and
7 10:42:39 movie library or database at Audible Magic?
8 10:42:45 A Yes. We have also a -- we refer to all the
9 10:42:50 fingerprints from -- that we receive from film and TV
10 10:42:58 studios as our film and TV database.
11 10:43:13 Q Do you know, approximately, how many
12 10:43:18 fingerprints populate the film and TV database today?
13 10:43:22 A I believe the number is over 80,000
14 10:43:29 works/titles, that includes both full-length movies,
15 10:43:34 TV shows, as well as clips that some of the studios
16 10:43:42 also make available.
17 10:43:48 Q Now, are those audio or video fingerprints
18 10:43:52 that populate the film and TV database?
19 10:44:00 A A majority -- all of the 80,000 are audio
20 10:44:04 fingerprints, but we have also begun to register video
21 10:44:11 fingerprints, as well, of content.
22 10:44:14 Q When did that begin?
23 10:44:17 A Probably within the last year.
24 10:44:21 Q Can you describe how it is that an audio
25 10:44:54 fingerprint can identify a piece of film or video?

IKEZOYE, V.

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2 10:45:03 A Yes. Film and television shows all have
3 10:45:07 audio soundtracks that, in general, are very unique to
4 10:45:12 those programs and those titles. So a movie has a
5 10:45:17 unique soundtrack, TV shows have unique soundtracks,
6 10:45:22 so our technology can be used to identify the
7 10:45:26 soundtrack and hence identify the piece of content.
8 10:45:30 Q And describe what you mean by "soundtrack"?
9 10:45:35 A The audio track of a movie or television
10 10:45:42 show. The sound of -- of -- the dialogue, the music,
11 10:45:46 all of the sound that is synced up with the video.
12 10:45:51 Q Okay. So when you say "soundtrack," you're
13 10:45:53 not just talking about the theme sound?
14 10:45:55 A No.
15 10:45:55 Q You're talking about the -- the dialogue and
16 10:46:00 all of the sound in a particular movie or TV show?
17 10:46:04 A That's correct. We identify -- we take a
18 10:46:05 fingerprint of the entire audio track attached to the
19 10:46:15 video, the TV show, or the movie.
20 10:46:25 Q We've talked about the commercial music
21 10:46:58 database or library, and the commercial film and TV
22 10:47:04 library.
23 10:47:05 Are there any other libraries of that type
24 10:47:12 that Audible Magic maintains of that breadth, or are
25 10:47:17 those the -- or does it break down into those two

IKEZOYE, V.

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2 14:21:40 database, to -- for Google Video as well.
3 14:21:46 Q Okay.
4 14:22:15 A Can I make one thing -- going back?
5 14:22:17 Q Yes.
6 14:22:18 A The Google Video contract seems to be 20,000,
7 14:22:21 but I don't know that for sure.
8 14:22:23 Q Okay. Is there a separate written contract
9 14:22:26 between Audible Magic and Google Video?
10 14:22:29 A Yes; there was an amendment to this contract.
11 14:22:34 Q Okay. Then -- then putting the Google Video
12 14:22:56 contract aside and just looking at the Audible Magic
13 14:22:58 relationship, can you -- can -- can you tell us what
14 14:23:06 the fees are -- what they were and what they are today
15 14:23:12 that YouTube is paying Audible Magic?
16 14:23:16 A When we originally did the agreement for the
17 14:23:19 first period, the original term, it was [REDACTED] per
18 14:23:24 month, and then there's a period of -- from
19 14:23:32 January 1st, 2008, through December 31st, 2008, where
20 14:23:36 the fees went up to [REDACTED] a month, and then there
21 14:23:40 was an extension for 2009 and there is an option on an
22 14:23:47 extension for 2010.
23 14:23:50 Q And was there a -- any sort of one-time lump
24 14:23:59 sum additional fee owed to Audible Magic from YouTube
25 14:24:03 at the beginning of the contract?

IKEZOYE, V.

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- 2 14:24:05 A Yeah, there was a [REDACTED] amount due that
- 3 14:24:14 needed to be paid on execution.
- 4 14:24:16 Q Okay. So -- and did YouTube actually pay
- 5 14:24:19 Audible Magic [REDACTED] on execution of the contract?
- 6 14:24:22 A I believe so.
- 7 14:24:23 Q Okay. Is YouTube still using Audible Magic
- 8 14:24:31 content ID services today?
- 9 14:24:34 A Yes.
- 10 14:24:34 Q Is it still being governed by this same
- 11 14:24:37 contract?
- 12 14:24:38 A Yes.
- 13 14:24:38 Q Okay. Do you know what it would cost YouTube
- 14 14:25:05 to include in its custom database fingerprints from
- 15 14:25:15 Audible Magic's film and TV reference database?
- 16 14:25:24 A Not specifically, because the way our pricing
- 17 14:25:27 would go for this would be, we would need to
- 18 14:25:29 understand the transaction volume, and so
- 19 14:25:34 understanding the transaction volume, I could give you
- 20 14:25:37 a price.
- 21 14:25:38 Q Okay. If you assumed that the transaction
- 22 14:25:41 volume -- volume was the same as the transaction
- 23 14:25:47 volume covered in the existing contract that we're
- 24 14:25:50 looking at now, can you approximate what that price
- 25 14:25:55 would be?

IKEZOYE, V.

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2 14:25:56 A My guess would be at least [REDACTED] the price
3 14:25:59 that's listed here.
4 14:26:00 Q Okay. Does that mean [REDACTED] the monthly fees
5 14:26:19 and double the one-time start-up fee? In other words,
6 14:26:22 would there be a new one-time start-up fee?
7 14:26:25 A It's all subject to negotiation, but we
8 14:26:27 probably wouldn't have a start-up fee, that one-time
9 14:26:30 fee. We would [REDACTED] the monthly fee.
10 14:26:34 Q I -- I'm sorry. You said you probably would
11 14:26:36 not have --
12 14:26:36 A Would not.
13 14:26:36 Q -- a start-up fee?
14 14:26:37 A We probably would not have a start-up fee.
15 14:26:40 Q But you would [REDACTED] the monthly fee?
16 14:26:45 A Right.
17 14:26:45 Q Okay. Do you recall whether YouTube's
18 14:27:24 testing of Audible Magic's content ID services began
19 14:27:30 at the time this contract was executed or whether it
20 14:27:33 began prior to that?
21 14:27:35 A I believe it was prior to the execution of
22 14:27:37 this contract.
23 14:28:14 MR. DESANCTIS: Okay. Can we go off the
24 14:28:15 record for two minutes and just take a very short
25 14:28:21 break.

1 IKEZOYE, V.

2 14:28:21 THE VIDEOGRAPHER: We are now going off the

3 14:28:22 record.

4 14:28:23 The time is approximately 2:24 p.m.

5 14:28:25 (Recess taken.)

6 14:41:42 THE VIDEOGRAPHER: We are now going back on

7 14:41:43 the record.

8 14:41:44 The time is approximately 2:37 p.m.

9 14:41:47 MR. DESANCTIS: Q. Mr. Ikezoye, before we

10 14:41:51 broke, we were looking at what's been marked as

11 14:41:57 Ikezoye Exhibit 9. Do you still have that in front of

12 14:42:01 you?

13 14:42:01 A Yes.

14 14:42:01 Q And that is the -- that is the e-mail with

15 14:42:06 the YouTube/Audible Magic contract attached; correct?

16 14:42:10 A Correct.

17 14:42:10 Q I want you to consider the services that were

18 14:42:18 contracted for in the agreement and that -- that

19 14:42:23 YouTube actually agreed to provide -- that Audible

20 14:42:28 Magic agreed to provide to YouTube.

21 14:42:30 Was -- was Audible Magic capable of providing

22 14:42:37 those services in October of 2006 when this contract

23 14:42:44 was signed?

24 14:42:45 A Which services?

25 14:42:46 Q The services that were contracted for in the

IKEZOYE, V.

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2 17:37:43 content and how it's used, in general, it means how,
3 17:37:47 if rights change, for example, allow it to block or
4 17:37:52 block to allow, that's what -- how rights are changed,
5 17:37:57 what it refers to.
6 17:37:58 MS. REES: Okay.
7 17:38:05 Q And do you understand the author of this
8 17:38:06 e-mail to be Nick Rockwell, who was an MTVN employee?
9 17:38:12 A Yes.
10 17:38:12 Q Okay. Exhibit 31.
11 17:38:45 (Document marked Ikezoye Exhibit 31
12 17:38:46 for identification.)
13 17:38:46 MS. REES: Q. Can you identify Exhibit 31?
14 17:39:17 A Well, it looks like an e-mail between some
15 17:39:20 people at -- in MTV Viacom.
16 17:39:25 Q And in the, I guess, third e-mail down,
17 17:39:31 there's a statement, "AM is examining our mpeg files
18 17:39:36 to figure out why they cannot get an audio
19 17:39:40 fingerprint, still a software issue"; do you see that?
20 17:39:44 A Yes.
21 17:39:44 MR. DESANCTIS: Objection.
22 17:39:45 MS. REES: Q. Do you recall an issue in or
23 17:39:46 about April 2007 where Audible Magic was having
24 17:39:46 difficulty getting an audio fingerprint on some Viacom
25 17:39:51 content?

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IKEZOYE, V.

17:39:51 MR. DESANCTIS: Objection to the form and
17:39:52 foundation.

17:39:55 THE WITNESS: There may have been. I don't
17:39:57 recall the specific problem, though.

17:39:59 MS. REES: Q. And looking at the very top
17:40:02 e-mail in this chain, there's a statement in response
17:40:08 to the question, "So has anything been fingerprinted
17:40:10 and loaded onto their database just the CC online
17:40:14 content"; do you see that?

17:40:16 A Yes.

17:40:16 Q Do you have any understanding as to what the
17:40:18 CC online content refers to?

17:40:20 MR. DESANCTIS: Objection to form and
17:40:21 foundation.

17:40:22 THE WITNESS: Yes. The online content were
17:40:24 clips that were -- that they provided access to us
17:40:29 that were on some of the MTV sites.

17:40:35 MS. REES: Exhibit 32.
17:40:54 (Document marked Ikezoye Exhibit 32
17:41:07 for identification.)

17:41:07 MS. REES: Q. Can you identify Exhibit 32?

17:42:06 A Yes. It is the -- a service agreement to
17:42:10 MTVN -- MTV Networks with Audible Magic for content
17:42:17 identification services.

IKEZOYE, V.

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- 2 17:42:17 Q And was this for content identification
- 3 17:42:20 services to be run against the UGC services operated
- 4 17:42:26 by Viacom where users could upload videos?
- 5 17:42:30 A Yes.
- 6 17:42:30 MR. DESANCTIS: Objection to form.
- 7 17:42:31 THE WITNESS: Sorry.
- 8 17:42:31 Yes.
- 9 17:42:32 MS. REES: Q. Do you know which online
- 10 17:42:40 services belonging to Viacom were -- under this
- 11 17:42:43 agreement would be -- would have Audible Magic
- 12 17:42:47 filtering performed on them?
- 13 17:42:50 A I don't know which services specifically
- 14 17:42:53 these service -- we -- we provided services to, but
- 15 17:42:56 this agreement provided for, I believe, all of MTVN
- 16 17:43:02 UGC properties to be able to be utilized.
- 17 17:43:08 Q And if you turn to the page numbered AM3831,
- 18 17:43:18 is that your signature at the bottom of the page?
- 19 17:43:20 A Yes, it is.
- 20 17:43:20 Q And this agreement was entered into on
- 21 17:43:23 March 5th, 2007; is that correct?
- 22 17:43:26 A It appears so.
- 23 17:43:28 Q Now, Audible Magic had entered into a filter
- 24 17:43:32 agreement with YouTube in October of 2006; correct?
- 25 17:43:35 A That is correct.

IKEZOYE, V.

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2 18:20:32 Q And so the press release says that "HFA and
3 18:20:37 AM will work together to combine AM's ability to
4 18:20:41 identify sound recordings with HFA's capacity to
5 18:20:46 identify musical compositions embodied in those sound
6 18:20:50 recordings along with the associated music publishing
7 18:20:53 rights holders"; do you see that?
8 18:20:56 A Yes.
9 18:20:56 Q What, if anything, was done in order to
10 18:20:59 accomplish what's described in that sentence?
11 18:21:01 A We've needed to match databases between our
12 18:21:08 sound recording and Harry Fox's database of
13 18:21:13 compositions and publishers.
14 18:21:17 Q And has that happened?
15 18:21:19 A Yes.
16 18:21:20 Q And how is that accomplished?
17 18:21:23 A We provide some of our database metadata with
18 18:21:33 an identifier and we send that to Harry Fox, and then
19 18:21:37 they do a process of automated and manual matching to
20 18:21:43 their database.
21 18:21:43 Q And what's the result of that process of
22 18:21:50 automated and manual matching that Harry Fox does?
23 18:21:54 MR. DESANCTIS: Objection to form.
24 18:21:55 THE WITNESS: We have a link, then when we --
25 18:22:00 when we have a sound recording, we have a link that

1 IKEZOYE, V.

2 18:22:02 goes into the Harry Fox database that can say here are
3 18:22:06 the -- here are the -- here's the composition and here
4 18:22:11 are some of the music publishers.

5 18:22:14 MS. REES: Q. And does this allow Audible
6 18:22:17 Magic to be able to identify compositions, as well as
7 18:22:22 sound recordings, when it's doing matches?

8 18:22:27 A Audible Magic in comp- -- in combination with
9 18:22:30 Harry Fox, yes, it does allow us to identify
10 18:22:34 compositions.

11 18:22:37 Q And for -- if you can characterize, for what
12 18:22:41 percentage of the sound recordings that are in Audible
13 18:22:45 Magic's database is there also composition information
14 18:22:49 available?

15 18:22:49 MR. DESANCTIS: Objection to form;
16 18:22:51 foundation; and calls for speculation.

17 18:22:54 THE WITNESS: Can you repeat the question?

18 18:22:56 MS. REES: Sure.

19 18:22:58 Q If you can characterize it, for what
20 18:23:01 percentage of the sound recordings that are in Audible
21 18:23:04 Magic's music database is there also composition
22 18:23:08 information available through Harry Fox?

23 18:23:11 MR. DESANCTIS: Same objection.

24 18:23:12 THE WITNESS: It is a -- a minority of the
25 18:23:17 sound recordings in our database, and the way -- but

IKEZOYE, V.

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2 18:23:22 the way we have gone about it is we have -- we provide
3 18:23:27 to Harry Fox the most frequently identified sound
4 18:23:34 recordings and we start that way, and so we -- of the
5 18:23:37 identifications we have, we have a great majority of
6 18:23:39 them, but from the -- the number of sheer titles in
7 18:23:43 our database, it's probably a -- a small percentage.

8 18:23:50 MS. REES: Q. Has Audible Magic received any
9 18:23:51 composition information directly from music
10 18:23:55 publishers, so not from HFA, but from a music
11 18:23:59 publisher directly?

12 18:24:01 A I believe we have.

13 18:24:02 Q Which music publishers, if you know?

14 18:24:06 A They're some of the smaller music publishers.
15 18:24:12 I can't remember some of the names right now.

16 18:24:17 Q Is there a type of written agreement between
17 18:24:20 Harry Fox Agency and Audible Magic concerning this
18 18:24:23 collaboration?

19 18:24:24 A Yes, there's a high-level collaboration
20 18:24:27 agreement.

21 18:24:41 Q So with respect to Audible Magic's master
22 18:24:49 database of all the fingerprints that Audible Magic
23 18:24:52 has, how many of them are -- well, strike that.

24 18:25:00 So earlier you had mentioned a commercial
25 18:25:03 music database --

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2 18:25:04 A Yes.
3 18:25:05 Q -- do you recall that?
4 18:25:07 Approximately how many fingerprints are in
5 18:25:09 the commercial database?
6 18:25:10 A Today?
7 18:25:11 Q Yes.
8 18:25:13 A I think over 7 million.
9 18:25:16 Q And approximately how many fingerprints are
10 18:25:20 in Audible Magic's master database, including all
11 18:25:24 fingerprints?
12 18:25:26 A More than music?
13 18:25:27 Q Yes, the -- assuming I -- earlier I think we
14 18:25:31 had defined the master database to be all of the
15 18:25:34 Audible Magic fingerprints.
16 18:25:36 A Right.
17 18:25:36 Q So the question would be, how many
18 18:25:39 fingerprints are in that master database?
19 18:25:41 A So it's -- you know, in music database we
20 18:25:46 have over 7 million; in the film and television
21 18:25:48 database, I said over 80,000; and looking at the
22 18:25:51 report, it looks like it's over 120,000.
23 18:25:54 Q So something around in the area of 7,120,000?
24 18:25:59 A It's higher than that, but yes.
25 18:26:02 Q So that means that out of all the

IKEZOYE, V.

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- 2 18:49:29 Q Sure.
- 3 18:49:30 A Repeat the question.
- 4 18:49:31 Q Sure.
- 5 18:49:31 As of November 2006, when a number of the
- 6 18:49:34 content owners were added to the database, according
- 7 18:49:36 to the second page of Exhibit 12, Audible Magic didn't
- 8 18:49:41 have any fingerprints in the film and TV database that
- 9 18:49:45 it could have added, did it?
- 10 18:49:47 A No, I think we did have some. If on, you
- 11 18:49:50 know, Exhibit 4A we said that, 2006, we did have some
- 12 18:49:57 fingerprints in the database. It said nine.
- 13 18:49:59 Q Okay. So there were nine --
- 14 18:50:00 A Yeah.
- 15 18:50:00 Q -- film and TV fingerprints that could have
- 16 18:50:03 been added at that time?
- 17 18:50:08 A Right.
- 18 18:50:08 Q Earlier you testified that Audible Magic
- 19 18:50:13 could and would have added the film and TV database
- 20 18:50:17 fingerprints to the YouTube contract if YouTube had
- 21 18:50:21 asked; do you recall that testimony?
- 22 18:50:23 A Yes, and yes.
- 23 18:50:24 Q But it could only have done that to the
- 24 18:50:30 extent that it had fingerprints in its TV and film
- 25 18:50:34 database; correct?

IKEZOYE, V.

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18:50:34 MR. DESANCTIS: Objection to form.

18:50:36 THE WITNESS: That is correct. We would need
18:50:38 the fingerprints to deploy them in the database.

18:50:43 MS. REES: Q. During the time frame from --

18:51:36 during the 2004 and 2005 time frame, did Audible Magic

18:51:42 offer to any UGC or Web 2.0 online services, did

18:51:48 Audible Magic offer filtering services to any

18:51:52 companies in that space?

18:51:53 MR. DESANCTIS: Objection to form.

18:51:55 MS. REES: Q. 2004 and 2005 time frame.

18:51:55 A No.

18:52:03 Q Why not?

18:52:07 A First, I don't believe there were many Web

18:52:09 2.0 UGC sites during that time frame, and second, we

18:52:13 hadn't been -- we had -- we didn't sign a customer

18:52:16 during that period of time, and...

18:52:20 Q And UM -- and Audible Magic had not actually

18:52:26 deployed its filtering technology for any Web 2.0 or

18:52:31 UGC sites in the 2004 and 2005 time frame?

18:52:36 MR. DESANCTIS: Objection to form and the use

18:52:37 of "filtering technology"?

18:52:43 THE WITNESS: We didn't have any customers

18:52:44 during that time, so we wouldn't have deployed -- we

18:52:44 wouldn't have any customers in the UGC Web 2.0 space

IKEZOYE, V.

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2 18:52:47 and so we wouldn't have deployed a system for that.

3 18:53:20 MS. REES: Q. During the time frame between
4 18:53:45 October 2006 when Audible Magic signed this agreement
5 18:53:48 with YouTube in the first quarter of 2007 when the
6 18:53:50 Audible Magic filtering actually went live, were you
7 18:53:55 aware of any problems that YouTube was having with
8 18:53:57 getting the record labels to provide updated and
9 18:54:01 correct metadata for use in the filtering service?

10 18:54:05 MR. DESANCTIS: Objection to form.

11 18:54:06 THE WITNESS: I'm sure there was some
12 18:54:07 confusion regarding getting the content and rules,
13 18:54:13 fingerprints, and determining which fingerprints to
14 18:54:15 put in the database during that period of time.

15 18:54:17 MS. REES: Q. And do you know how that
16 18:54:19 confusion was resolved, if it was?

17 18:54:22 A No, I don't.

18 18:54:39 Q If you could turn back to Exhibit 17, and
19 18:54:59 this was the document relating to at least a potential
20 18:55:05 proposal regarding the MPAA filtering pilot test; is
21 18:55:10 that right?

22 18:55:11 A Yes.

23 18:55:11 Q So as of the date of this document,
24 18:55:22 October 9, 2006, Audible Magic didn't actually have
25 18:55:26 any film and TV fingerprints in its database; right?

IKEZOYE, V.

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2 18:55:31 A Correct.
3 18:55:31 Q So one of the things that would have had to
4 18:55:35 have been done in order to do the type of pilot tests
5 18:55:38 that's contemplated in this proposal would be to
6 18:55:43 obtain such fingerprints from film and TV companies?
7 18:57:04 A Yes.
8 18:57:04 Q So earlier you testified, and, again, correct
9 18:57:08 me if I'm wrong, don't mean to mischaracterize, that
10 18:57:12 audio fingerprinting is effective in identifying video
11 18:57:16 files; does that sound right?
12 18:57:19 A Yes.
13 18:57:19 Q And then you also said as long as Audible
14 18:57:22 Magic had the reference fingerprint in its database
15 18:57:25 corresponding to that video file; right?
16 18:57:27 A That's correct. Sorry.
17 18:57:31 Q Now, as of 2006, I think we said there were,
18 18:57:37 what, nine fingerprints in the TV film database; was
19 18:57:42 that right?
20 18:57:43 A Yes.
21 18:57:43 Q Ask -- and then even today the total is
22 18:57:50 approximately 129,000, according to Exhibit 4A?
23 18:57:59 A Yes.
24 18:57:59 Q If you could turn back to Exhibit 24.
25 18:58:58 And this was an e-mail from Lou Kvitek to

Schapiro Exhibit 114

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.
YOUTUBE, INC., YOUTUBE, LLC,) 1:07CV02103
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.
YOUTUBE, INC., YOUTUBE, LLC, and) 07CV3582
GOOGLE, INC.,)
Defendants.)

DEPOSITION OF LAUREN APOLITO
NEW YORK, NEW YORK
THURSDAY, January 7, 2010

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 18448

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January 7, 2010

10:03 a.m.

VIDEOTAPED DEPOSITION OF LAUREN
APOLITO, held at the offices of WILSON
SONSINI GOODRICH & ROSATI, 1301 Avenue of
the Americas, New York, New York, pursuant
to notice, before before Erica L.
Ruggieri, Registered Professional Reporter
and Notary Public of the State of New
York.

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

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

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THE WITNESS:

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ALSO PRESENT:

MANUEL ABREU, Videographer

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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.

1 APOLITO

2 A. Yes.

3 Q. The Harry Fox Agency did not end
4 up entering into any type of collaboration
5 10:46:31 agreement with Auditude; is that right?

6 A. Correct.

7 Q. Do you recall why there was no
8 collaboration agreement with Auditude?

9 A. I recall Auditude does have
10 10:47:01 fingerprinting technology; however they
11 were not interested in working with
12 user-generated content sites.

13 Q. Have there been any discussions
14 between Auditude and Harry Fox Agency
15 10:47:23 after the 2007 time frame?

16 A. I believe we sent them the press
17 release of our Audible Magic collaboration
18 and asked them if they would like to
19 continue conversations.

20 10:47:46 Q. And were there continued
21 conversations after that?

22 A. Not that I recall.

23 Q. What is the purpose of the
24 collaboration agreement that Harry Fox
25 10:48:07 Agency has with Audible Magic?

1 APOLITO

2 A. Audible Magic has a database of
3 sound recording information. They use
4 that information to create codes,
5 10:48:21 fingerprint of the audio, and then they
6 help sites in identifying content through
7 the fingerprints.

8 Although a site may use Audible
9 Magic and determine that it's a particular
10 10:48:33 sound recording, there's still a missing
11 link, which is the publisher information.
12 Harry Fox was hoping to facilitate
13 licensing by also combining the publishing
14 information with the Audible Magic
15 10:48:46 information so that somebody who wanted to
16 license could get both sets of
17 information.

18 Q. What's the current status of the
19 Harry Fox's collaboration with Audible
20 10:49:00 Magic?

21 A. We continue to match our data
22 sets to ensure that tracks that Audible
23 Magic has have corresponding Harry Fox
24 song codes.

25 10:49:29 MS. REES: Exhibit 9.

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APOLITO

(Apolito Exhibit 9, potential
business model, marked for
identification, as of this date.)

10:50:09 (Witness reviews document.)

Q. Can you identify Exhibit 9?

A. This is one potential business
model that was developed.

Q. When you say a "potential
10:50:16 business model," what do you mean by that?

A. Different ways that we could
work together with, whether it be Audible
Magic or a similar party and a potential
licensee and Harry Fox.

10:50:26 Q. Is the business model that's
reflected in Exhibit 9 something that
Harry Fox has since implemented?

A. No.

MS. REES: Exhibit 10.

10:51:06 (Apolito Exhibit 10, document
regarding relationship between HFA
and Audible Magic, marked for
identification, as of this date.)

(Witness reviews document.)

10:52:32 Q. Can you identify Exhibit 10?

Schapiro Exhibit 115

Redacted at the request of Plaintiffs pending a meet and confer and,
if applicable, further action of the Court.