

Schapiro Exhibit 216



PROJECT BEAVALLE

VIA01474688

Project Beagle Model 0 22

Summary

Scenarios	
Baseline	0
Cost per View	1
Pre-Roll Companion	2
Professional Content	3
Other	4
Use Scenario	0

Scenario 0 1 2 3
 Cost per View New Unit Pro Content

2006 2007 2008 2009 2010

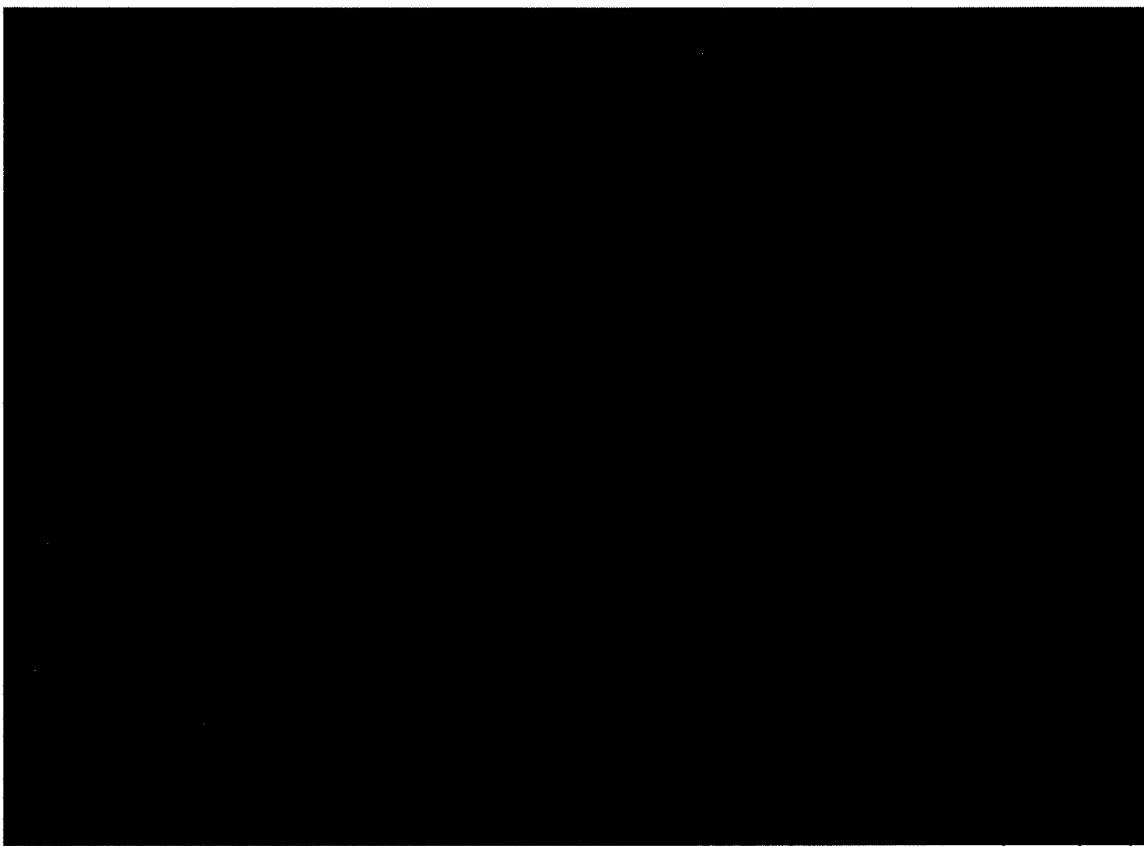
	2006	2007	2008	2009	2010
Revenue					
Video Pre-Roll - Total					
Premium - Total					
Cost per View - Total					
Paid Search / Ad Network - Total					
Revenue - Total					
Expenses					
Cost of Goods					
Bandwidth					
Storage					
Ad Serving					
Web Analytics					
Cost of Goods - Total					
Gross Margin					
General Expenses					
Operations					
Service & Support					
Engineering					
Sales					
Marketing					
G&A					
Content Licensing					
General Expenses - Total					
Net Profit / (Loss)					
Average Annual Head Count					

NewSite P&L - Summary
(\$000s)

NON-BINDING - FOR DISCUSSION ONLY

VIA Base Case

Year 1 Year 2 Year 3 Year 4 Year 5 CAGR



Average Monthly Unique Users

Revenue

- Video Programming
- Ad-Supported
- Electronic Sell Thru
- VOD - Rental
- Subscription

Total Programming Revenue

Plus: Run of Site Revenue

Total Revenue

Video Programming Costs

- Ad-Supported
- Electronic Sell Thru
- VOD - Rental
- Subscription
- Exclusivity Fee

Total Programming Costs

Gross Profit

- Ad-Supported
- Electronic Sell Thru
- VOD - Rental
- Subscription
- Exclusivity Fee

Total Video Programming

Plus: Run of Site Revenue

Total Gross Profit

% of Video Programming Revenue
% of Total Revenue

Less: Operating Expenses

- Affiliate distribution fee
- Infrastructure/Network
- Research & Development
- Marketing
- G&A

Total Expenses

% of Total Revenue

Operating Profit

% Margin
Partner Share @ 50%

VIA Base Case

Year 1 Year 2 Year 3 Year 4 Year 5 CAGR

Average Monthly Unique Users

Revenue

- Video Programming
- Ad-Supported
- Electronic Sell Thru
- VOD - Rental
- Subscription

Total Programming Revenue

Plus: Run of Site Revenue

Total Revenue

Video Programming Costs

- Ad-Supported
- Electronic Sell Thru
- VOD - Rental
- Subscription
- Exclusivity Fee

Total Programming Costs

Gross Profit

- Ad-Supported
- Electronic Sell Thru
- VOD - Rental
- Subscription
- Exclusivity Fee

Total Video Programming

Plus: Run of Site Revenue

Total Gross Profit

% of Video Programming Revenue

% of Total Revenue

Less: Operating Expenses

- Affiliate distribution fee
- Infrastructure/Network
- Research & Development
- Marketing
- G&A

Total Expenses

% of Total Revenue

Operating Profit

% Margin

Partner Share @.50%

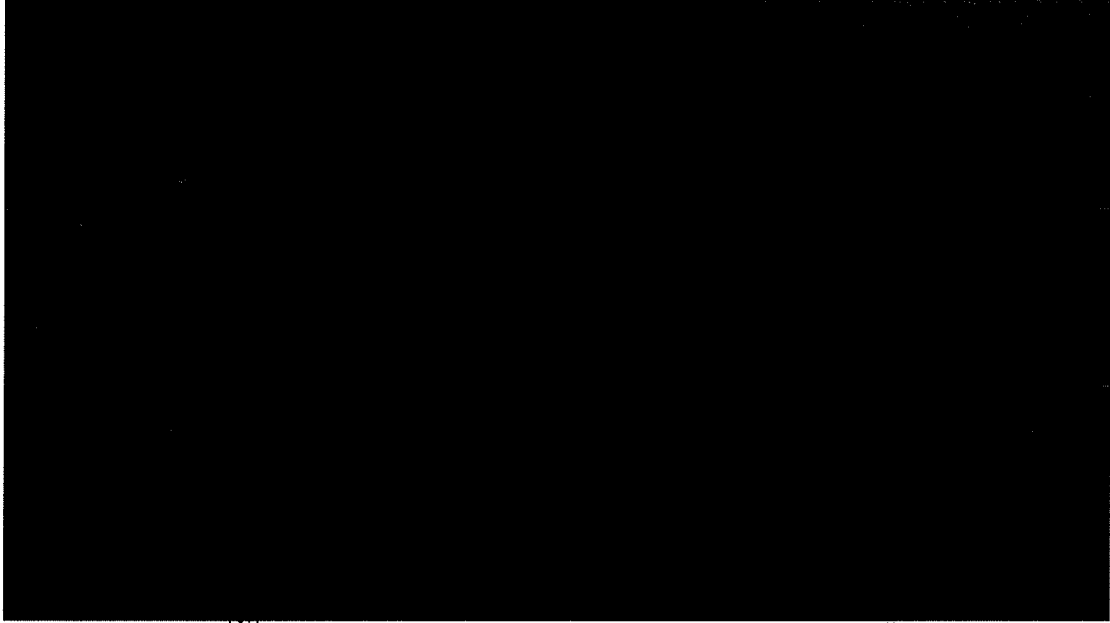
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NewSite - Content Holder P&L
 (\$000s)
 VIA Base Case

NON-BINDING - FOR DISCUSSION ONLY

	Year 1	Year 2	Year 3	Year 4	Year 5
Content Holder Revenue					
Ad Revenue					
- Revenue share from NewCo					
- Net revenue sold by Content Holder					
Subtotal					
Other Revenue					
- Electronic Sell Thru					
- VOD - Rental					
- Subscription					
- Exclusivity Fee					
Total Content Holder Rev					
% Revenue breakdown					
- Fox					
- Viacom					
- Other					
\$ Revenue breakdown					
- Fox					
- Viacom					
- Other					
Affiliate distribution cost					
- Fox					
- Viacom					
Bandwidth costs					
- Fox					
- Viacom					
Gross Profit					
- Fox					
- Viacom					
Plus: Share of NewCo Operating Profit					
- Fox					
- Viacom					
Total Incremental Value					
- Fox					
- Viacom					

TV & film revenue share
 TV inventory sold by content holders
 License fee for exclusive TV content



High speed
→ Traffic vortex that can be used for something else.
→

→ Must believe that they can be used
for other purposes.
→
.....
.....

Project Beagle Model 0.18 Model

Assumptions	
Description	
Traffic	
Visitors	
Page Views per Visitor	
Page Views	
Film Views per Visitor	
Film Views	
Traffic Composition	
US/UK/CDN	
Balance of International	
Page Composition / Usage	
Home Page	
List Page - Non-Search	
List Page - Search Results	
Other Pages - Utility (login, Help, Upload, etc)	
Page Views	
Home Page	
List Page - Non-Search	
List Page - Search Results	
Content Pages - Utility (login, Help, Upload, etc)	
Cost of Goods	
Bandwidth	
Film Length Average	
Film Encode Rate	
Film Download Completion Rate	
Transportation Methodology	
Peak Hour Load	
Cost of Bandwidth	
Peak to Mean Ratio	
Cost of Bandwidth	
Delivery Billing Methodology	
Cost of Bandwidth	
Cost of Bandwidth	
Cost of Bandwidth (Average of Methodologies)	
Storage	
Users who Upload	
Uploads per Day	
Bandwidth Return	
Encoded File Size	
Source File / Encoded File Size Ratio	
Source File Size	
Source File Retention	
Storage Per Upload	
Average New Storage per Month	
Cumulative Storage at Year-End	
Cost of Storage (Redundant Network Storage)	
Cost of Storage	
Ad Serving	
Cost per Ad Server Call	
Ad Server Call Rate	
Ad Server Call Rate	
Pages Served	
Pages Served	
Ad Server Calls	
Ad Server Calls	
Cost of Ad Serving	
Web Analytics	
Cost per Web Analytics Call	
Pages Served	
Pages Served	
Web Analytics Calls	
Web Analytics Calls	
Cost of Analytics	

Description
 Cost of Goods - Total

Units
 \$/Month

2006 1,451,692

2007 2,019,252

2008 2,629,946

2009 3,242,796

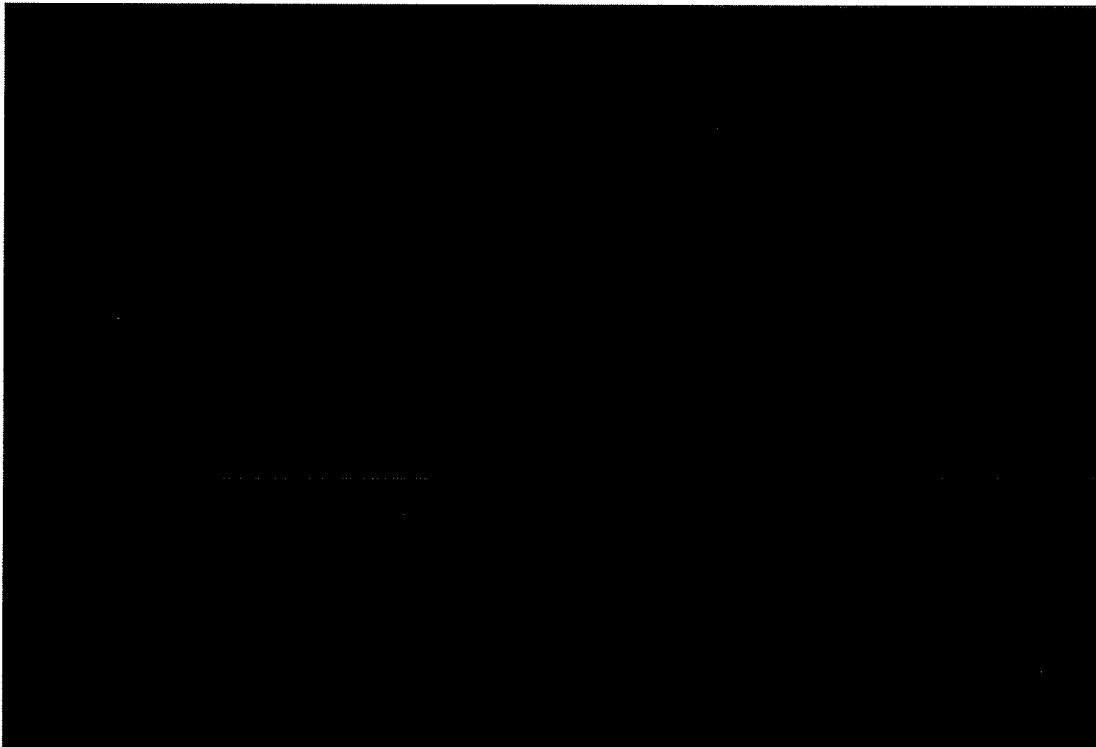
2010 3,801,762

CAGR
 27.2%

Revenue Performance by Ad Type	Units	2006	2007	2008	2009	2010	CAGR
Video Inventory - Pre Roll	\$/Month	1,451,692	2,019,252	2,629,946	3,242,796	3,801,762	27.2%
Video Inventory - Pre Roll							
Serving Ratio							
Inline - Premium, Branded Display Ads							
ROS (ex Home Page)							
Home Page							
Cost per View (CPV) Ads							
Revenue per Page							
Inline - Paid Search / Ad Network							
ROS (incl Home Page) - US/UK/CDN							
ROS (incl Home Page) - Non-US/UK/CDN							
Ad Network / Paid Search Availability - US/UK/CDN							
Ad Network / Paid Search Availability - Non-US/UK/CDN							
Select by Ad Type							
US/UK/CDN							
Video Inventory - Pre Roll							
Inline - Premium, Branded Display Ads - Home Page							
Inline - Premium, Branded Display Ads - ROS (ex Home Page)							
Cost per View (CPV) Ads							
Inline - Paid Search / Ad Network - Home Page							
Inline - Paid Search / Ad Network - ROS (ex Home Page)							
Balance of International							
Video Inventory - Pre Roll							
Inline - Premium, Branded Display Ads - Home Page							
Inline - Premium, Branded Display Ads - ROS (ex Home Page)							
Cost per View (CPV) Ads							
Inline - Paid Search / Ad Network - Home Page							
Inline - Paid Search / Ad Network - ROS (ex Home Page)							
Sold Inventory							
Video Inventory - Pre Roll							
US/UK/CDN							
Other Views							
US/UK/CDN - Sold Inventory							
Balance of International							
Other Pages - Utility (Dnld, Help, Upload, etc)							
Balance of International - Sold Inventory							
Sold Inventory - Total Video Inventory - Pre Roll							
Inline - Premium, Branded Display Ads							
US/UK/CDN							
Home Page							
List Page - Non-Search							
List Page - Search Results							
Content Pages							
Other Pages - Utility (Dnld, Help, Upload, etc)							
US/UK/CDN - Sold Inventory							
Balance of International							
Home Page							
List Page - Non-Search							
List Page - Search Results							
Content Pages							
Other Pages - Utility (Dnld, Help, Upload, etc)							
Balance of International - Sold Inventory							
Sold Inventory - Total Inline - Premium, Branded Display Ads							
US/UK/CDN							
Home Page							
List Page - Non-Search							
List Page - Search Results							
Content Pages							
Other Pages - Utility (Dnld, Help, Upload, etc)							
US/UK/CDN - Sold Inventory							

UNITS 2005 2006 2007 2008 2009 2010 CAGR

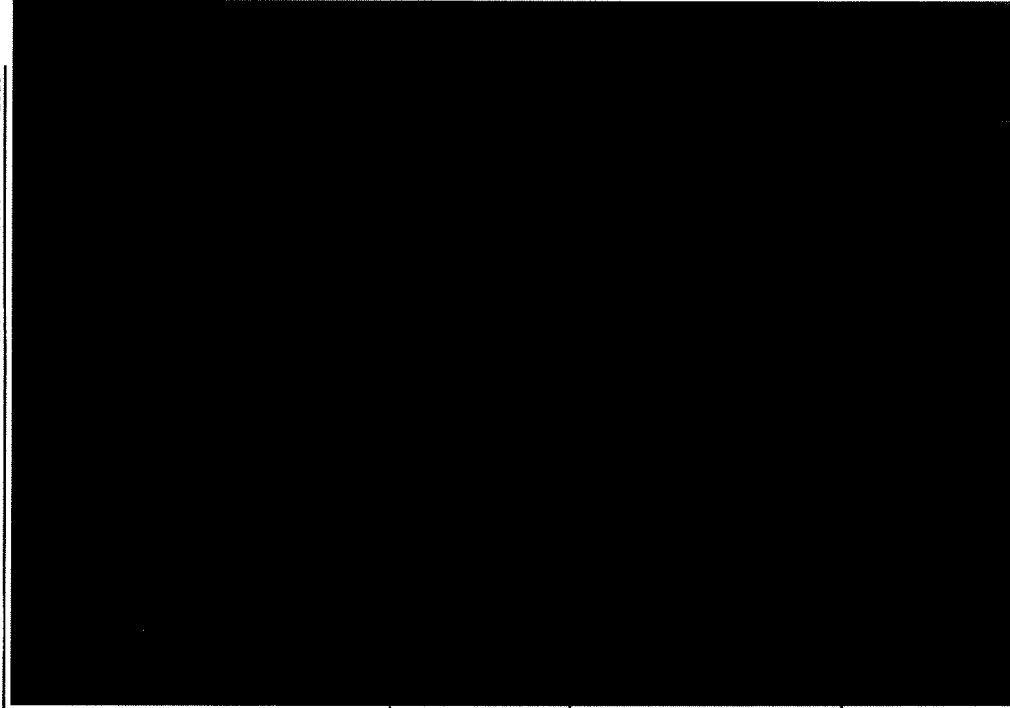
Description	2005	2006	2007	2008	2009	2010	CAGR
Balance of International							
Home Page							
List Page - Non-Search							
List Page - Search Results							
Content Pages							
Other Pages - Utility (Login, Help, Upload, etc)							
Balance of International - Sold Inventory							
Sold Inventory - Total Cost Per View							
Inline - Paid Search / Ad Network							
US/JUK/CDN							
Home Page							
List Page - Non-Search							
List Page - Search Results							
Content Pages							
Other Pages - Utility (Login, Help, Upload, etc)							
US/JUK/CDN - Sold Inventory							
Balance of International							
Home Page							
List Page - Non-Search							
List Page - Search Results							
Content Pages							
Other Pages - Utility (Login, Help, Upload, etc)							
Balance of International - Sold Inventory							
Sold Inventory - Total Inline - Paid Search / Ad Network							
Inventory - Total							
Revenue							
Video Inventory - Pre Roll							
US/JUK/CDN							
Films							
Advertising Revenue (Month)							
Balance of International							
Films							
Advertising Revenue (Month)							
Revenue - Total Video Inventory - Pre Roll							
US/JUK/CDN							
Home Page							
List Page - Non-Search							
List Page - Search Results							
Content Pages							
Other Pages - Utility (Login, Help, Upload, etc)							
Advertising Revenue (Month)							
Balance of International							
Home Page							
List Page - Non-Search							
List Page - Search Results							
Content Pages							
Other Pages - Utility (Login, Help, Upload, etc)							
Advertising Revenue (Month)							
Revenue - Total Inline - Premium, Branded Display Ads							
Cost Per View							
US/JUK/CDN							
Home Page							
List Page - Non-Search							
List Page - Search Results							
Content Pages							
Other Pages - Utility (Login, Help, Upload, etc)							
Advertising Revenue (Month)							
Balance of International							
Home Page							
List Page - Non-Search							
List Page - Search Results							



Description
Content Pages Other Pages - Utility (login, help, upload, etc) Advertising Revenue (Month)
Revenue - Total Cost Per View
Inline - Paid Search / Ad Network US/UK/CDN
Home Page
List Page - Non-Search
List Page - Search Results
Other Pages - Utility (login, help, upload, etc)
Other Pages - Search Results
Other Pages - Utility (login, help, upload, etc)
Advertising Revenue (Month)
Balance of International
Home Page
List Page - Non-Search
List Page - Search Results
Other Pages - Utility (login, help, upload, etc)
Other Pages - Search Results
Other Pages - Utility (login, help, upload, etc)
Advertising Revenue (Month)
Revenue - Total Inline - Paid Search / Ad Network
Revenue - Total

Project Beagle Model 0 18 Summary

2006 2007 2008 2009 2010



Visitors (million/month)					
Global					
US/UK/CDN					
Page Views (million)					
Global					
US/UK/CDN					
Film Views (million)					
Global					
US/UK/CDN					
Revenue					
Video Pre-Roll - Total					
Premium - Total					
Cost per View - Total					
Paid Search / Ad Network - Total					
Revenue - Total					
Expenses					
Cost of Goods					
Bandwidth					
Storage					
Ad Serving					
Web Analytics					
Cost of Goods - Total					
Gross Margin					
General Expenses					
Operations					
Service & Support					
Engineering					
Sales					
Marketing					
G&A					
Content Licensing					
General Expenses - Total					
Net Profit / (Loss)					
Average Annual Head Count					

Project Beagle Model 0 18 Financial

	2006P	2007P	2008P	2009P	2010P
Key Model Drivers					
Total Revenue					
Average # Users					
COGS					
Bandwidth					
Storage					
Ad Serving					
Web Analytics					
Total COGS					
% of Revenue					

Project Beagle Model 0 18

Financial

	2006P	2007P	2008P	2009P	2010P
Operations					
Collocation Space & Related Changes					
Average Monthly Cost					
Serving Capacity Cost Growth					
Annual Cost					
Site Operations Team					
Headcount @ YE					
Burdened Cost/EE @ YE					
% Increase in Burdened Cost/EE					
Total Cost					
Content Servicing & Customer Support					
# Reps					
Burdened Cost/Rep					
% Increase in Burdened Cost/EE					
Total Cost					
Depreciation Expense					
Operations					
% of Revenue					
Engineering					
Actual Employees Required (Manual Adjustment)					
Burdened Cost/Employee					
% Increase in Burdened Cost/EE					
Total Research & Development Cost					
Engineering					
% of Revenue					

Project Beagle Model 0 18 Financial

2006P 2007P 2008P 2009P 2010P

Sales & Marketing
Sales & Sales Support
Employee Related Cost

Sales Repts
Brand Advertising Revenue
Revenue Burden per Rep
Branded Repts Headcount
Branded Repts Loaded Cost per Employee

Total - Branded Repts

Cost per View Advertising Revenue
Revenue Burden per Rep
Inside Repts Headcount
Inside Repts Loaded Cost per Employee

Total - Inside Sales Repts

Sales Support & Ad Ops
Ad ops/client services/field management to reps ratio
Ad ops/client services headcount
Branded Sales Support Headcount
Inside Repts Support Headcount

Burdened Cost per Support Headcount

Total - Support

Management and Overhead
Management and Overhead Headcount
Burdened Cost per Support Headcount

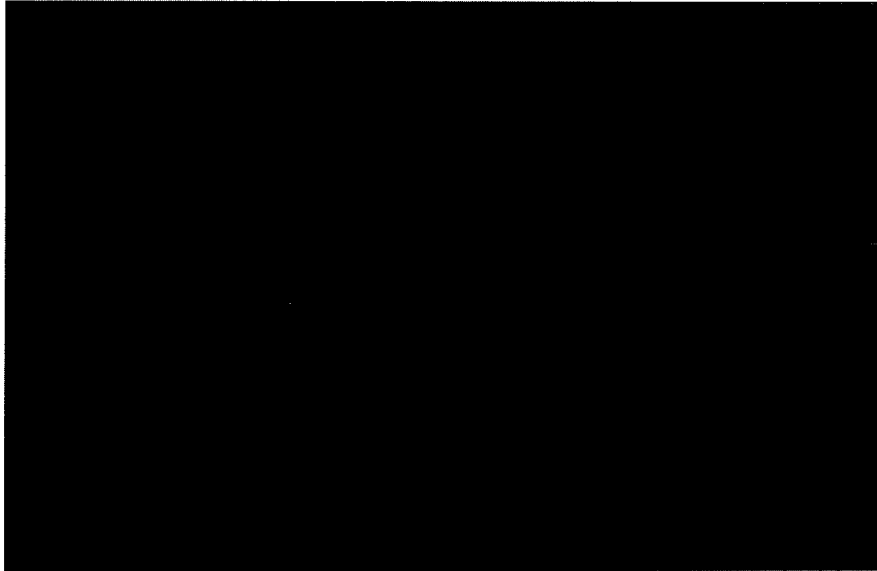
Total - Management & Overhead

Total Sales

Marketing & BD
Employee Related Cost
Employees
Burdened Cost/Employee
% Increase Cost/EE
Total Employee Related Cost

Outside Marketing % of Revenue
Outside Marketing Expense
Total Marketing

Sales & Marketing
% of Revenue



Project Beagle Model 0 18

Financial

2006P 2007P 2008P 2009P 2010P

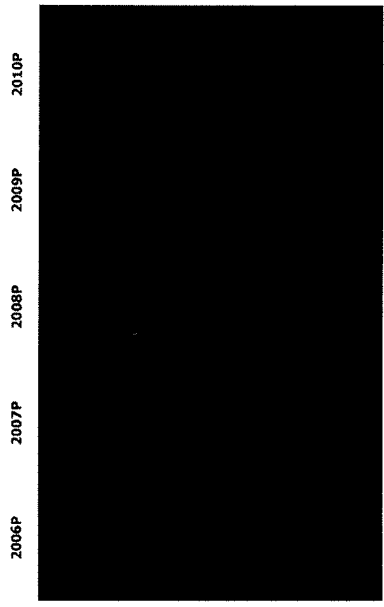


G&A	Employee Related Costs
	# Employees
	Burdened Cost/Employee
	% Increase in Burdened Cost/EE
	Total Employee Related Cost
	Recruiting Cost:
	\$ Per New Hire -- non-support
	# New Hires
	\$ Per New Hire -- support
	# New Hires
	Total Recruiting Cost
	Overhead / Facilities
	Headcount
	Space per Person (sq. ft)
	Price per Square Foot
	Bad Debt Expense
	% Revenue from National & Inside Sales
	Total Bad Debt Expense
G&A	% of Revenue
Content Licensing	Content Licensing Fee Rate
	Content Licensing Expense
Content Licensing	
CAPEX	Total Incremental Capex
Total Employees	Operations
	Service & Support
	Engineering
	Sales
	Marketing
	G&A
Total Employees	Revenue per employee

Project Beagle Model 0 18 Financial

Total Spendings
COGS
Operations
Service & Support
Engineering
Sales
Marketing
G&A
Content Licensing

Spending as % of Revenue
COGS
Operations
Service & Support
Engineering
Sales
Marketing
G&A



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Project Beagle
Discussion with Judy McGrath and Michael Wolf

July 10, 2006

Today's Objective

- **Quickly bring you up to speed on the last few days of work looking at YouTube**
- **Find a time to go through some numbers later today**
- **Jointly explore what this means to all of us**
- **Agree on next steps, including the nature of dialog with the rest of the Viacom decision makers**

YouTube Overview

YouTube at a Glance

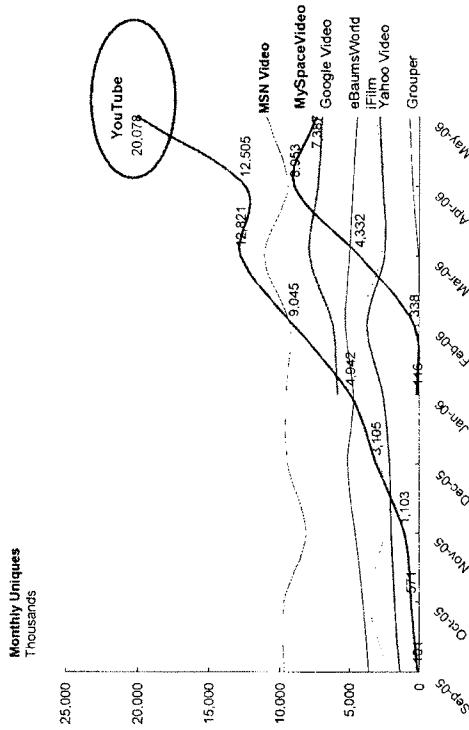
- Founded February 2005
- Site motto: "Broadcast Yourself" -- Features and usage
 - Users can instantly upload, watch, tag and share videos.
 - Getting to comprehensive - search millions of videos uploaded by community members
 - Personalize the experience by subscribing to member videos, saving favorites, and creating playlists. Developing a persona on YouTube
 - Embed YouTube videos on websites using video implants or APIs
 - Users can make their posted videos public or private
 - Ability to watch and share videos from mobile phones or PDAs
- Headquarters: San Mateo, CA
- Management:
 - Chad Hurley – CEO & co-founder – prior Paypal
 - Steve Chen – CTO & co-founder – Prior Paypal
 - Sales and bus dev. mostly x-Yahoo! (Chris Maxcy)
- Investors:
 - YouTube announced its first round of funding in November 2005 for \$3.5 million from venture-capital firm Sequoia Capital.
 - In April 2006, YouTube received an additional \$8 million in a second round of funding from Sequoia – investment led by Roelof Botha, former CFO of PayPal

YouTube is a “Video Utility” -- Serving an Extremely “Longtail” of Content

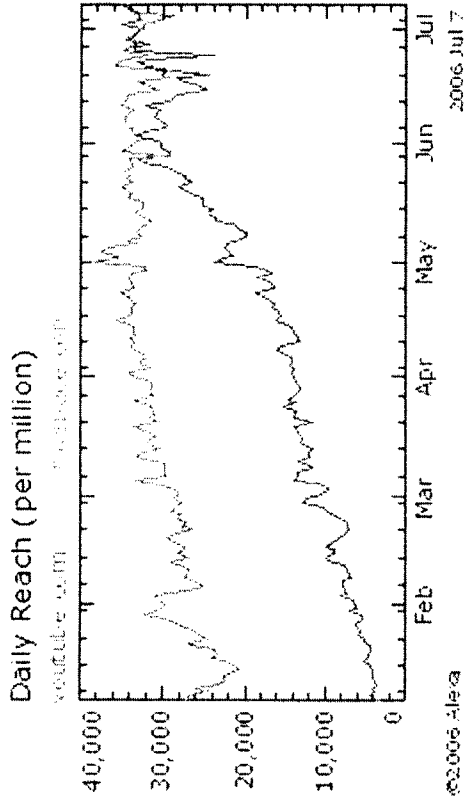
- YouTube is a utility people use to contribute, share and consume video
 - Users currently upload ~70K videos per day and invest in tagging, cataloging and sharing their videos
- Consumption of “branded” content on YT is low
 - There are no movie trailers in the top 30, nor are there any clips from popular TV shows
 - Only four of the top 30 most watched videos of all time on YouTube are music videos, one of which is in German
- In fact, in the “branded area,” Ifilm does significantly more streams than YouTube, even though Ifilm is much smaller from a user base perspective
 - o *Pirates of the Caribbean 2* trailers consumption on YT = 250k; consumption on IFILM = 1m
 - o Even the much-discussed SNL “Lazy Sunday” sketch and its myriad spoofs have been seen more times on IFILM than on YouTube
- Net-net, YouTube is much closer to video search than VOD

YouTube is Showing Break Out Growth

NIELSEN NETRATINGS MONTHLY UNIQUES



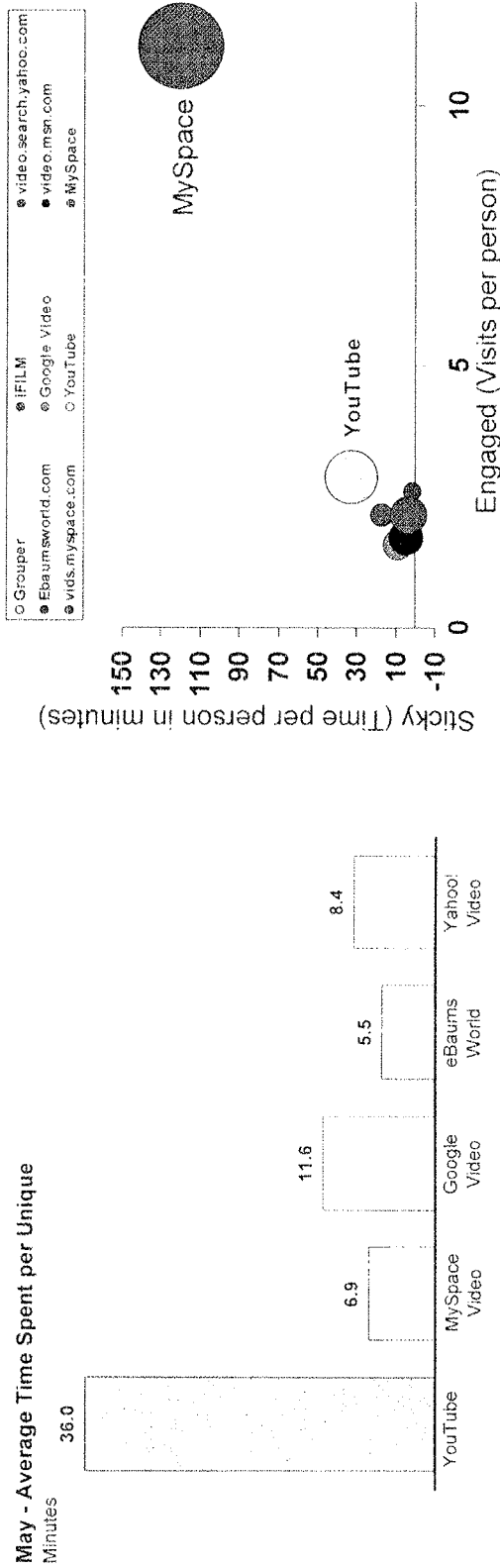
NetRatings – May 2006
(US Only)



Alexa Rankings – July 2006

- In video, YouTube is a clear leader with **20M** uniques (NetRatings) growing 100% month-on-month
- YouTube has a massive global reach:
 - A top 10 site in 8 countries, a top 20 site in 18 countries, and a top 50 site in 49 countries
 - Alexa ranks the site 19th in the world; Implies 4% global audience reach
 - Approximately 80% of traffic is non-US

The Site is Extremely “Sticky” -- Particularly vs. Competitive Sites



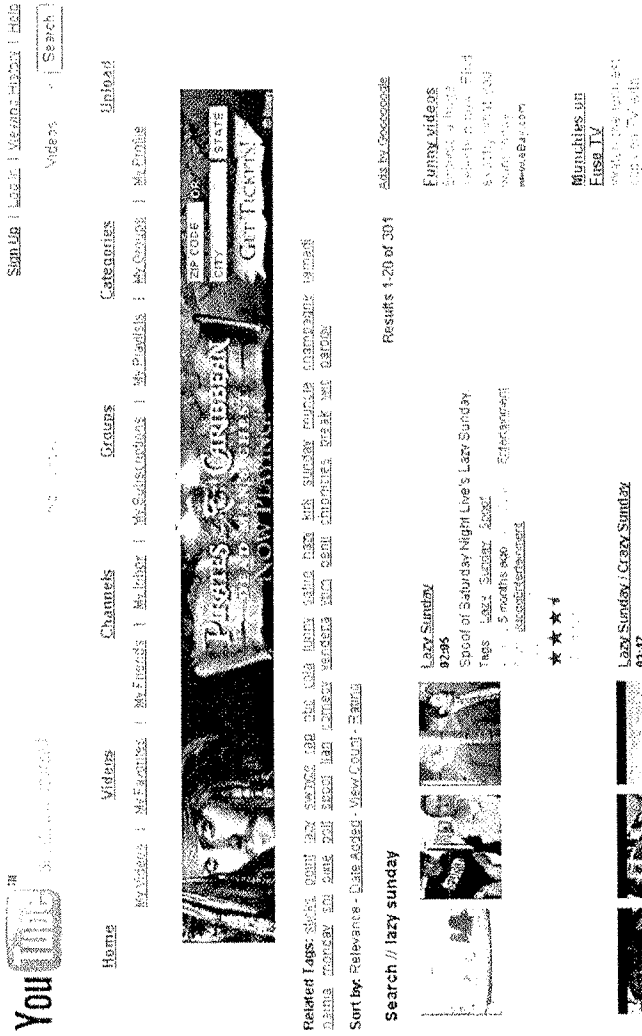
- Relative to the competition it is experiencing 3-5X time spent with an average of 36 minutes per unique per month (MediaMetrix)

YouTube's Audience is a Strong Fit with MTVN

- **MTVN's primary demos are strongly represented on YouTube:**
 - P12 – 34 = 39% of YouTube's audience and 67% of the site's page views
 - P18-49 = 59% of YouTube audience and 53% of page views
- **MTVN / YouTube unduplicated audience would be 35MM uniques – an active reach of 23%**
 - >40% of the unique audience on each MTV.com, CMT.com, Gametrailers, iFilm, and The-N.com are also on YouTube
 - By comparison, only 9% of YouTube's uniques overlap with MTV.com – representing a significant opportunity to grow our audiences
- **The potential competitive threat of a combined MySpace / YouTube would reach 51MM unduplicated uniques**

However, YouTube's Advertising Business is in its Infancy

- We do not believe YouTube has any significant ad business
- The company has (correctly) been focused on the user experience and has not implemented any invasive advertising
 - Focuses on Banners
 - No “pre-roll” video inventory
- However, it has recently done business with Disney, NBC, and Weinstein Co.
- Also using ad networks Google AdSense to monetize traffic



Fit With MTVN/Viacom

As Video Consumption Moves to the Web, YouTube has Emerged As a First Choice Asset for the Company

- YouTube is the dominant platform for consumers as they migrate to using video to express themselves
 - It is quickly becoming a “video social network”
 - There is currently no other asset that approaches this position
- YouTube would be a transformative acquisition for MTV Networks / Viacom in the internet space; we would:
 - Immediately become the leading global deliverer of video online, with dominance in almost every country
 - Own the world’s largest repository of digital video that is relevant to our audiences

Four Key Success Factors for YouTube as Part of MTVN/Viacom...

- 1. Maintain consumer leadership position**
- 2. Crack the ad model**
- 3. Evolve the content model to fully incorporate
“branded content”**
- 4. Maintain “technology company” status**

...Each is Discussed in turn

1) Consumer Leadership: While YouTube is Number One, the Space is Competitive, Meaning its Position Cannot Be Taken for Granted

- A range of companies – including the portals, the social networks and pure-play start-ups are aggressively pursuing this space, creating alternatives for consumers
- Therefore, YouTube must focus not only on continuing to attract new consumers, but maintaining existing ones -- The key here will likely be to increase “switching costs”
 - Today, YouTube has a “limited audience lock-in”
 - Unlike MySpace, there is less investment in personal profiles and personalities
 - YouTube will have to focus on adding features which make it harder to move
 - With limited switching costs audiences are likely to migrate to other sources should the site’s appeal be diminished – ad integration will be a particularly sensitive issue

2) Advertising: Success Will Require Tapping the Branded and Ad Network Spaces as Well as Creating A New “Ad Sense-Like” Product

- YouTube’s traffic is fragile with respect to attempts to monetize it through traditional “inserted” video advertising.
- Audience tolerance for pre and post-roll video advertising will be low compared to websites that are used predominantly for the consumption of professional programming that is not available elsewhere (e.g. IFILM, Overdrive)
- The model we have built assumes three revenue generation models, two of which already exist and are well understood, one of which is new and therefore untested.
- The proposed monetization mechanisms are:
 - Branded Premium Advertising & Sponsorships
 - Cost per View / “Video Ad Sense” Model
 - Run Of Site / Advertising Network

The Markets We Know – Branded and Ad Networks

- “Branded” revenue will be generated from key real estate, and will likely be in the form of auctioned premium advertising and sponsorships
 - Paid Placement – home page based sponsored video (i.e. one block where film studios bid for placement of their trailers)
 - Premium Content – over time the use of ad supported premium clips/content in a separate section (i.e., Movie of the week, first looks, releases, film trailers, etc).
 - That said, there is some concerns surrounding generation of significant revenue from entertainment advertisers (e.g. studios) include:
 - Likely lack of ability to *drive* traffic to home page and other destinations within the site,
 - Most popular and therefore valuable content – such as huge movie releases (trailers, etc.) – will likely be available freely anyway.
- In addition, we assume the use of advertising networks for yield management – initially domestically and over time internationally

The “Video Ad Sense-Like” Opportunity

- Users have so much freedom of choice for the consumption of media that marketers can no longer assume they can “buy time” within it.
- Advertisers are becoming obliged to offer compelling content and services. Google’s advertising model made this clear, whereby advertisers not only bid for the privilege of real estate but advertising that does not make good use of available real estate is penalized.
- We propose a revenue model for YouTube that treats advertising and content as near-equals, as in Google’s “natural vs. sponsored” search results. Cost per view paid video advertising would appear throughout the YouTube site, alongside the programming.
- Advertisers would bid for keyword-space, and could ultimately upload their own creative.
- Audiences would be receptive to the advertisers’ content because it would never be forced upon them but offered more as a service or as additional content to them, and advertising content that doesn’t perform (is not watched) would be automatically discounted and would ultimately disappear.

3) Evolve the content model to fully incorporate “branded content

- Today, YouTube incorporates some branded content
- However, the experience is not maximized and the business model is not fully defined
- On a going forward basis, YouTube needs to evolve to deal with both of these issues

4) Maintain “Technology Company” status

KEY SUCCESS FACTORS

- Ability to hire and retain technical talent: requires significant technical talent to develop targeted advertising and search related competencies. E.g., developing cost per play models that match categories of video to advertisers. As a corporately owned company it will be more challenging to incentivize new hires
- Ongoing investment in infrastructure: YouTube is at an early stage of infrastructure development and will require ongoing investments in storage/caching, and servers to maintain speed and effectiveness
- Investment in innovation: As a platform, YouTube requires ongoing investment in innovation to maintain the relevance of its searches and sharing technology

Viacom / YouTube – Sources of Value Added

- **Provide users with fame on television** i.e., The crowd decides, we put it on air - best of appears weekly on Comedy Central and MTVN, provides additional incentive for users to upload, vote and promote themselves on YouTube
- **Brands/ editorial fit** enables us to both source talent, innovative content for consumption across platforms. We are one of the few providers willing to put edgier content on TV. ie. User generated music video, user generated ads on television
- **Video content** – breadth and depth can power YouTube to the next level of relevance. By providing all of our clip based video in raw form – i.e. non branded editorial experience- simple search and obtain. We can push YouTube to become a more comprehensive destination and source for broader syndication
- **Promotion** – fit with our target audience and demo. We can reinforce and drive traffic/ promotion between YouTube and other MTVN sites
- **User Registration information** – Breadth of user information will increase our ability to target advertising to the user base across the MTVN network

Financial Model

- We currently are in the midst of finalizing out operating projections
 - Advertising revenue
 - Video storage and delivery costs
 - General company management costs
- In addition, the Viacom M&A team is on board and waiting to overlay the requisite financial items
- We anticipate having something for you to review later day

Summary and Next Steps

- Integrate your input
- Refine operating model
- Build valuation model
- Socialize the opportunity with other key members of the Viacom management team
- Depending on the outcome of these steps, potentially engage with the controlling VC this week

Schapiro Exhibit 217

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.)
 -----)

VIDEOTAPED DEPOSITION OF JUDY McGRATH
New York, New York
Wednesday, July 29th, 2009

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 17161

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July 29, 2009

8:09 a.m.

VIDEOTAPED DEPOSITION OF JUDY

McGRATH, 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 PLAINTIFFS:

JENNER & BLOCK, LLP

BY: SUSAN KOHLMANN, ESQ.

1099 New York Avenue, NW

Washington, DC 20001

(202) 639-6000

Skohlmann@jenner.com

FOR THE DEFENDANTS:

MAYER BROWN, LLP

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1675 Broadway

New York, New York 10019

(212) 506-2146

Jmancini@mayerbrown.com

FOR THE DEFENDANTS

WILSON SONSINI GOODRICH & ROSATI PC

BY: DAVID H. KRAMER, ESQ.

MICHAEL H. RUBIN, ESQ.

650 Page Mill Road

Palo Alto, California 94304

Dkramer@wsgr.com

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A P P E A R A N C E S: (Cont'd)

ALSO PRESENT:

MICHELINA HALLEY, MTV Networks

ANDRA SHAPIRO, MTV Networks

CARLOS KING, Videographer

1 McGRATH

2 operating with respect for copyright
3 owners.

4 Q. Well --

5 12:28:31 A. Things like that.

6 (McGrath Exhibit 11, e-mail
7 thread, subject, Regarding YouTube,
8 marked for identification, as of
9 this date.)

10 12:28:49 Q. Exhibit 11, Ms. McGrath, is an
11 e-mail thread, the last few messages of
12 which are between you and Wade Davis, on
13 July 5th and July 6th, with the subject,
14 Regarding YouTube.

15 12:29:20 You, yourself, were writing to
16 the head of mergers and acquisition for
17 all of Viacom on July 6, 2006, saying, all
18 caps, "I want to own YouTube."

19 Do you see that?

20 12:29:30 A. Uh-hum.

21 Q. Why did you put that in all
22 caps?

23 A. I don't know why I put it in all
24 caps.

25 12:29:50 Q. Why do you typically put things

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McGRATH

in all caps, Ms. McGrath?

MS. KOHLMANN: Objection.

A. I would put it in all caps so
12:29:58 that it would stand out, and the reader
would read it.

Q. For emphasis, right?

A. Right.

Q. You put the phrase, "I want to
12:30:05 own YouTube" in all caps, in communicating
with Viacom's head of mergers and
acquisitions to convey to him your strong
opinion that Viacom should acquire
YouTube, right?

12:30:16 MS. KOHLMANN: Objection.

You can answer.

A. I emphasized that I wanted to
own YouTube, yes.

Q. You had a strong view that
12:30:26 Viacom should acquire YouTube, did you
not?

A. I believed that owning YouTube
in the video space, if the deal made
sense, would be a very good acquisition
12:30:59 for Viacom.

1 McGRATH

2 Q. In fact, you thought it was
3 critical for Viacom to own YouTube, didn't
4 you?

5 12:31:06 A. I said I think it's critical.

6 Q. And you meant it, right?

7 MS. KOHLMANN: Objection.

8 A. Again, language in an e-mail is
9 not the kind of language you would use in
10 12:31:29 a presentation for an acquisition. So in
11 talking to Wade Davis, I said I think it's
12 critical, and I would not like to see it
13 go to a competitor.

14 Q. You don't say things that are
15 12:31:44 untrue, just because you are communicating
16 through e-mail rather than a formal
17 presentation, do you?

18 MS. KOHLMANN: Objection.

19 A. I said I think it's critical.

20 12:31:53 Q. And you thought it was critical
21 to acquire YouTube, correct?

22 MS. KOHLMANN: Objection. Asked
23 and answered.

24 A. I thought it was critical at
25 12:32:14 this point in time to own YouTube,

1 McGRATH

2 according to this e-mail.

3 Q. And according to your
4 recollection, right?

5 12:32:26 A. According to my recollection,
6 yes.

7 Q. You thought it was critical for
8 Viacom to own YouTube, even though you
9 were fully aware at this point that some
10 12:32:37 media interests had expressed copyright
11 concerns about YouTube, correct?

12 MS. KOHLMANN: Objection.

13 A. I would never say to own YouTube
14 with -- under any circumstance, with no
15 12:32:50 condition.

16 Q. Ms. McGrath, in your e-mail to
17 Mr. Davis you don't lay out conditions on
18 owning YouTube, do you?

19 MS. KOHLMANN: Objection.

20 12:33:01 A. I suggested I'm sending him a
21 deck.

22 Q. In your message to Mr. Davis,
23 when you say "I want to own YouTube," in
24 all caps, "I think it's critical," you
25 12:33:13 don't lay out conditions for Viacom to

1 McGRATH

2 acquire YouTube, do you?

3 MS. KOHLMANN: Well --

4 A. Well, I --

5 12:33:20 MS. KOHLMANN: -- objection.

6 You can answer.

7 A. I suggest one potential issue,
8 buying it with a partner to keep it below
9 the line --

10 12:33:30 Q. What does that mean?

11 A. -- which suggests a cost issue.

12 Q. What does that mean, "even if we
13 have to buy it with a partner to keep it
14 below the line"?

15 12:33:39 A. That is a way to share the risk
16 and reward of an acquisition with someone
17 else.

18 Q. What does it mean, "below the
19 line"?

20 12:33:52 A. That means if it's -- it's not
21 consolidated onto our company's P&L
22 completely. It's a separate company or
23 joint venture, something like that.

24 Q. Your message has roughly 15
25 12:34:12 exclamation points after the sentence "I

1 McGRATH

2 want to own YouTube. I think it's
3 critical and if it goes to a competitor."

4 Do you see that?

5 12:34:19 A. Uh-hum.

6 Q. That was your way of emphasizing
7 in the strongest possible terms that you
8 wanted to own YouTube and that it was
9 critical, correct?

10 12:34:28 MS. KOHLMANN: Objection.

11 A. I'd like to take a break.

12 Q. Actually, can you answer that
13 question first?

14 A. No.

15 12:34:40 THE WITNESS: I'd like to just
16 take a break for a minute.

17 Q. It's typically --

18 A. I believe I have answered it
19 like 15 times. I don't know what you are
20 12:34:49 asking me.

21 Q. Well, I asked the question
22 whether, with --

23 A. I said I thought it was
24 critical.

25 12:34:55 Q. With 15 exclamation points?

1 McGRATH

2 A. And a good idea to acquire
3 YouTube.

4 Q. And my question, then, was
5 12:35:00 whether, in light of the 15 exclamation
6 points at the end of the sentence, you
7 were stating those points in the strongest
8 possible terms to Mr. Davis?

9 MS. KOHLMANN: Objection. Asked
10 12:35:11 and answered.

11 A. I said "I think it's critical"
12 to Mr. Davis.

13 MS. KOHLMANN: Why don't we take
14 a break.

15 12:35:22 MR. KRAMER: Sure.

16 THE VIDEOGRAPHER: The time is
17 12:35 p.m., and we are off the record.

18 (Whereupon, there is a recess in
19 the proceedings.)
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1 McGRATH

2 A F T E R N O O N S E S S I O N

3 (Time noted: 1:23 p.m.)

4 THE VIDEOGRAPHER: The time is

5 01:22:49 1:23 p.m., and we are back on the
6 record.

7 J U D Y M c G R A T H , resumed.

8 EXAMINATION BY (Cont'd)

9 MR. KRAMER:

10 01:22:52 Q. Ms. McGrath, back on Exhibit 11
11 we were talking about your comment to
12 Mr. Davis that you thought an acquisition
13 of YouTube was critical for Viacom.

14 Why was it critical for Viacom
15 01:23:04 to own YouTube?

16 A. At the time we were -- we
17 believed we were -- that video was an
18 important space on-line. We had very
19 publicly been kind of pilloried for not
20 01:23:33 acquiring MySpace. And it felt like
21 acquiring a company with this skill, as
22 opposed to trying to build one, would be a
23 better way to go, if we were going to get
24 into the space on-line.

25 01:23:44 Q. You say in your message to

1 McGRATH

2 Q. Does that description --

3 A. -- some of which is used by
4 fewer people, as opposed to most people.

5 02:17:06 Q. Does that description in this
6 presentation comport with your
7 understanding of the YouTube service
8 around this time?

9 MS. KOHLMANN: Object to the
10 02:17:27 form of the question.

11 A. Could you restate or reframe
12 that question.

13 Q. Sure. Does that description of
14 YouTube on the title of this page comport
15 02:17:35 with your understanding of the YouTube
16 service at around this time, July 2006?

17 A. I'm not sure.

18 Q. Why are you unsure?

19 A. I'm not sure what I thought in
20 02:17:59 2006, specifically, about YouTube.

21 I didn't write this document.

22 Q. But you may have well presented
23 it to the Viacom senior executives, right?

24 MS. KOHLMANN: Objection.

25 02:18:12 A. I'm not sure I presented this

1 McGRATH

2 document.

3 MR. KRAMER: Let's have this one
4 marked as 18.

5 02:18:21 (McGrath Exhibit 18, July 9,
6 2006 e-mail from Mr. Harrison to
7 Ms. McGrath, Mr. Wolf and Mr. Cahan,
8 with attachments, marked for
9 identification, as of this date.)

10 02:18:39 Q. Ms. McGrath?

11 A. Yes.

12 Q. Exhibit 18 is an e-mail from
13 Mr. Harrison to you, the day before
14 Exhibit 17. It's July 9, 2006. It's to
15 02:18:51 you and Mr. Wolf and Mr. Cahan. The
16 subject is Beagle Project For Discussion.

17 If you could turn, please, to
18 the fourth page of Exhibit 18, bearing
19 Bates number VIA02046014, with a slide
20 02:19:12 entitled "Key Risks and Observations."

21 You recall, I should ask first,
22 having received this document, right?

23 A. I don't recall this particular
24 document.

25 02:19:45 Q. Let me just ask you, back on

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McGRATH

Exhibit 17, then, the second bullet point of the Project Beagle discussion with Judy McGrath and Michael Wolf document on this page says, "Consumption of branded content on YouTube is low."

02:20:06

It's the same page we were looking at.

02:20:18

MS. KOHLMANN: Which exhibit are you on?

MR. KRAMER: 17.

Q. You are open to it right there, that one right in your left hand.

A. This one?

02:20:24

Q. Correct, that page. The second bullet point down says, "Consumption of branded content on YouTube is low."

Do you see that?

A. I see it.

02:20:37

Q. What is your understanding of "branded content"?

A. Content with some brand recognition.

02:20:59

Q. Movies, television shows, that kind of thing?

1 McGRATH

2 A. (Witness nods.)

3 Q. So the people who you had asked
4 to work up a report on a YouTube
5 02:21:06 acquisition, who Mr. Wolf labeled the best
6 minds of MTVN, reported to you that
7 consumption of branded content on YouTube
8 is low.

9 Do you see that?

10 02:21:15 A. I see that.

11 Q. Do you have any reason to
12 believe that was untrue at the time?

13 A. No.

14 Q. Do you have any reason to
15 02:21:24 believe that there were no movie trailers
16 in the top 30 of most watched videos on
17 YouTube?

18 A. Do I have reason to believe?

19 Q. Do you have any reason to doubt
20 02:21:35 that there were no movie trailers in the
21 top 30 videos on YouTube, at the time this
22 presentation was prepared for you?

23 MS. KOHLMANN: Objection.

24 A. I'm going to go to the one
25 02:21:49 that's sent to me.

1 McGRATH

2 Q. Okay. Same page, page 4.

3 VIA0204014.

4 A. 04 --

5 02:22:10 Q. In this version of the
6 presentation, second bullet point is the
7 same as the one we were just looking at in
8 Exhibit 17, which says the same thing.

9 "Consumption of branded content on YouTube
10 02:22:21 is relatively low."

11 Do you see that?

12 A. I see it.

13 Q. It's slightly different. The
14 word "relatively" is there. It's not in
15 02:22:31 the one that's Exhibit 17.

16 But under the subbullet point it
17 says, "There are no movie trailers in the
18 top 30."

19 Do you see that?

20 02:22:43 A. I see it.

21 Q. Do you have any reason to
22 believe that wasn't true at the time?

23 A. No.

24 Q. Do you have any reason to
25 02:22:49 believe that there were clips from popular

Schapiro Exhibit 218

Subject: RE: WSJ- YouTube to Test Software To Ease Licensing Fights;
VIACOM/GOOGLE mention
From: "Bell, Alan - Paramount" <EX:/O=VIACOM/OU=PARAMOUNT/CN=RECIPIENTS/CN=ABELL>
To: Lesinski, Thomas - Paramount
Cc: Date: Tue, 12 Jun 2007 15:48:03 +0000

Google Video fingerprinting; No, but we are invited to join the test – Viacom is working on the agreement. Audible Magic, quite familiar,

alan

From: Lesinski, Thomas - Paramount
Sent: Tuesday, June 12, 2007 8:09 AM
To: Bell, Alan - Paramount
Subject: FW: WSJ- YouTube to Test Software To Ease Licensing Fights; VIACOM/GOOGLE mention

Do you know about the specifics of this technology

----- Forwarded Message

From: "Brisbois, Mike - Paramount" <Mike_Brisbois@Paramount.com>
Date: Tue, 12 Jun 2007 06:27:39 -0700
To: "Grey, Brad - Paramount" <bag@paramount.com>, "Moore, Rob - Paramount" <rsm@paramount.com>, "Rich, Gerry - Paramount" <Gerry_Rich@paramount.com>, "Rovins, Jessica - Paramount" <Jessica_Rovins@paramount.com>, "Lesinski, Thomas - Paramount" <Thomas_Lesinski@paramount.com>, "Yamada, Sarah - Paramount" <Sarah_Yamada@paramount.com>, "Badagliacca, Mark - Paramount" <Mark_Badagliacca@paramount.com>, "Leshner, John - Paramount Vantage" <JHL@paramountvantage.com>, "Weston, Brad - Paramount" <Brad_Weston@paramount.com>, "Bannister, Nancy - Paramount" <Nancy_Bannister@paramount.com>, "Hill, Janet - Paramount" <Janet_Hill@paramount.com>, "Sheldon, Monica - Paramount" <Monica_Sheldon@paramount.com>, "Martin Kelley, Katie - Paramount Vantage" <kmk@paramountvantage.com>, "Huntsberry, Frederick - Paramount" <FH@paramount.com>, "Kaufman, Louise - Paramount" <Louise_Kaufman@paramount.com>, "McKee, Colleen - Paramount" <Colleen_McKee@paramount.com>, "Geller, Rona - Paramount" <Rona_Geller@paramount.com>, "Avery, Kelley - Paramount" <Kelley_Avery@paramount.com>, "Rehling, Tim - Paramount" <Tim_Rehling@paramount.com>, "Cicccone, Brenda - Paramount" <Brenda_Cicccone@paramount.com>, "Knittel, Marta - Paramount" <Marta_Knittel@paramount.com>, "Burrows, Meagan - Paramount" <Meagan_Burrows@paramount.com>, "Meyer, Nick - Paramount Vantage" <nm@paramountvantage.com>, <tpress@dreamworks.com>, "Batista, Christine - Paramount" <Christine_Batista@paramount.com>, "Vollman, Michael - Paramount" <Michael_Vollman@paramount.com>, "Waldman, David - Paramount" <David_Waldman@paramount.com>, "Feola, Louis - Paramount" <LF@paramount.com>, "Tharp, Jim - Paramount" <jct@paramount.com>, "Rich, Victoria - Paramount" <Victoria_Rich@paramount.com>, "Agulnek, Michael - Paramount" <Michael_Agulnek@paramount.com>, "Gottesman, Stuart - Paramount" <Stuart_Gottesman@paramount.com>, "Wright, Susan - Paramount" <Susan_Wright@paramount.com>, "Prentice, Rebecca - Paramount" <Rebecca_Prentice@paramount.com>, "Anderson, Jon - Paramount" <Jon_Anderson@paramount.com>, "Cripps, Andrew - Paramount" <Andrew_Cripps@paramount.com>, "Spendlove, Randy - Paramount" <Randy_Spendlove@paramount.com>, "Bartok, Mike - Paramount" <Mike_Bartok@paramount.com>, "Pinto, Charlie - Paramount" <Charlie_Pinto@paramount.com>, "Davidson, Eben - Paramount" <Eben_Davidson@paramount.com>
Cc: "Wilson, Shaleek - Paramount" <Shaleek_Wilson@paramount.com>, "Bosari, Louie - Paramount" <Louie_Bosari@paramount.com>, "Ostensen, Justin - Paramount" <Justin_Ostensen@paramount.com>, "cpark@dreamworks.com" <'cpark@dreamworks.com'>, "Salvato, Laura - Paramount" <Laura_Salvato@paramount.com>, "Martinez, Claudia - Paramount Vantage" <Claudia.Martinez@paramountvantage.com>, "Summey, Chelsey - Paramount Vantage" <Chelsey.Summey@paramountvantage.com>, "Kolker, Samantha - Paramount" <Samantha_Kolker@paramount.com>, "Timmerman, Jody - Paramount" <Jody_Timmerman@paramount.com>, "cschweitz@dreamworksanimation.com" <'cschweitz@dreamworksanimation.com'>, "dstromer@dreamworks.com"

<dstromer@dreamworks.com>, "Essel, Chris - Paramount" <Chris_Essel@Paramount.com>, "Woerner, Anita - Paramount" <Anita_Woerner@Paramount.com>, "Witte, Joan - Paramount" <Joan_Witte@Paramount.com>, "Nguyen, Ngoc - Paramount" <Ngoc_Nguyen@Paramount.com>, "Godocik, John - Paramount" <John_Godocik@Paramount.com>, "Sumpter, Andrea - Paramount" <Andrea_Sumpter@paramount.com>, "Chu, Corie - Paramount" <Corie_Chu@Paramount.com>, "Arnold, Riki Leigh - Paramount" <Riki_Leigh_Arnold@paramount.com>, "David, Elizabeth - Paramount" <Elizabeth_David@Paramount.com>, "Knudsen, Henrik A - Paramount" <Henrik_A_Knudsen@paramount.com>, "Todd, Newell - Paramount" <Newell_Todd@paramount.com>, "Giovanni, Gina - Paramount" <Gina_Giovanni@Paramount.com>, "Styron, Amanda - Paramount" <Amanda_Styron@Paramount.com>, "Valentino, Venessia - Paramount" <Venessia_Valentino@Paramount.com>, "Feinerman, Debbie - Paramount" <Debbie_Feinerman@Paramount.com>
Conversation: WSJ- YouTube to Test Software To Ease Licensing Fights; VIACOM/GOOGLE mention
Subject: WSJ- YouTube to Test Software To Ease Licensing Fights; VIACOM/GOOGLE mention

YouTube to Test Software
To Ease Licensing Fights
By KEVIN J. DELANEY
June 12, 2007; Page B2

SAN FRANCISCO -- Google Inc.'s YouTube says it will begin testing advanced video identifying technology to spot clips on the video-sharing site with media companies including Time Warner Inc. and Walt Disney Co. starting in a month.

YouTube Partner Development Director Chris Maxcy in an interview said the company was building its own video-fingerprinting technology, after concluding that existing technology from other providers wouldn't meet its needs. Video fingerprinting is based on the premise that any video content has unique attributes that allow it to be identified even from a short clip -- just as a human fingerprint identifies a person.

YouTube and other video-sharing sites hope the technology will spot television shows and films posted by consumers without the content owners' permission, so the sites can remove them or share advertising revenue. Google Chief Executive Eric Schmidt has said that fingerprinting technology is key to resolving copyright battles between media and technology companies over online video, such as Viacom Inc.'s \$1 billion suit against Google filed in March. Some media executives have accused YouTube of dragging its feet in implementing such technology in order to profit from copyright infringement as long as possible, a charge the video site has denied.

A Disney spokeswoman confirmed its involvement in YouTube's planned video-fingerprinting test and said it is encouraged by the action. Time Warner declined to comment.

Mr. Maxcy said YouTube has been using audio-fingerprinting technology from closely held Audible Magic Corp. of Los Gatos, Calif., to identify songs in clips uploaded by consumers since the beginning of the year in conjunction with its music-label partners. When a user tries to upload a video to YouTube, the fingerprinting technology checks to see whether its audio matches the fingerprint of music its partners have identified to Audible Magic. Mr. Maxcy said "the overwhelming majority of the time" when there's a match, the labels license the music to YouTube, which then can sell advertising when the clip appears and shares any ad revenue with the copyright holders.

Mr. Maxcy said that YouTube uses audio fingerprinting to automatically block a clip from ever appearing on the site when a user tries to upload one that contains music the partner copyright holders don't want to appear. That blocking is known in the industry as "filtering," and some media companies have alleged in the past that YouTube was unwilling to filter.

YouTube Product Manager David King said that it also intends to use video fingerprinting to automate the filtering or licensing of video clips.

YouTube officials said they have already been testing their homegrown video fingerprinting technology in their labs. The test with content owners including Time Warner and Disney beginning in a month would also be in their labs, so it would not affect videos that users might see on the main YouTube site. YouTube CEO Chad Hurley has said the company intends to make the fingerprinting technology available to all content owners in the fall.

--Merissa Marr in Los Angeles and Matthew Karnitschnig in New York contributed to this article.

Write to Kevin J. Delaney at kevin.delaney@wsj.com

URL for this article:
<http://online.wsj.com/article/SB118161295626932114.html> <<http://online.wsj.com/article/SB118161295626932114.html>> <<http://online.wsj.com/article/SB118161295626932114.html>>

----- End of Forwarded Message

Schapiro Exhibit 219

Subject: Re: WSJ- YouTube to Test Software To Ease Licensing Fights;
VIACOM/GOOGLE mention
From: "Bell, Alan - Paramount" <EX:/O=VIACOM/OU=PARAMOUNT/CN=RECIPIENTS/CN=ABELL>
To: Morril, Mark
Cc: Date: Tue, 12 Jun 2007 22:17:22 +0000

Thanks mark!

What is the next step in initiating contact? Us there a tehcnical contact? I suggest that we also find a way to have a Viacom wide interaction so Joe and I should coordinate

Alan
Sent from my blackberry

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

From: Morril, Mark
To: Bell, Alan - Paramount
Sent: Tue Jun 12 15:08:43 2007
Subject: Re: WSJ- YouTube to Test Software To Ease Licensing Fights; VIACOM/GOOGLE mention

Agreement is fully negotiated and should be signed tomorrow.

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

From: Bell, Alan - Paramount
To: Fricklas, Michael; Morril, Mark
Sent: Tue Jun 12 12:46:58 2007
Subject: RE: WSJ- YouTube to Test Software To Ease Licensing Fights; VIACOM/GOOGLE mention

Great!

From: Fricklas, Michael
Sent: Tuesday, June 12, 2007 9:45 AM
To: Bell, Alan - Paramount; Morril, Mark
Subject: RE: WSJ- YouTube to Test Software To Ease Licensing Fights; VIACOM/GOOGLE mention

I think mark hopes to close the agreement today

From: Bell, Alan - Paramount
Sent: Tuesday, June 12, 2007 11:52 AM
To: Fricklas, Michael; Morril, Mark
Subject: RE: WSJ- YouTube to Test Software To Ease Licensing Fights; VIACOM/GOOGLE mention

Mike and Mark,

Apparently other studios are already on board, so do you have an estimate for when we can start working with Google on this test? I would like to use the test to see if we can get a closer relationship in other technology areas like search, metrics and ad insertion.

alan

From: Lesinski, Thomas - Paramount
Sent: Tuesday, June 12, 2007 8:09 AM
To: Bell, Alan - Paramount
Subject: FW: WSJ- YouTube to Test Software To Ease Licensing Fights; VIACOM/GOOGLE mention

Do you know about the specifics of this technology

----- Forwarded Message

From: "Brisbois, Mike - Paramount" <Mike_Brisbois@Paramount.com>

Date: Tue, 12 Jun 2007 06:27:39 -0700

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Conversation: WSJ- YouTube to Test Software To Ease Licensing Fights; VIACOM/GOOGLE mention
Subject: WSJ- YouTube to Test Software To Ease Licensing Fights; VIACOM/GOOGLE mention

YouTube to Test Software

To Ease Licensing Fights

By KEVIN J. DELANEY

June 12, 2007; Page B2

SAN FRANCISCO -- Google Inc.'s YouTube says it will begin testing advanced video identifying technology to spot clips on the video-sharing site with media companies including Time Warner Inc. and Walt Disney Co. starting in a month.

YouTube Partner Development Director Chris Maxcy in an interview said the company was building its own video-fingerprinting technology, after concluding that existing technology from other providers wouldn't meet its needs. Video fingerprinting is based on the premise that any video content has unique attributes that allow it to be identified even from a short clip -- just as a human fingerprint identifies a person.

YouTube and other video-sharing sites hope the technology will spot television shows and films posted by consumers without the content owners' permission, so the sites can remove them or share advertising revenue. Google Chief Executive Eric Schmidt has said that fingerprinting technology is key to resolving copyright battles between media and technology companies over online video, such as Viacom Inc.'s \$1 billion suit against Google filed in March. Some media executives have accused YouTube of dragging its feet in implementing such technology in order to profit from copyright infringement as long as possible, a charge the video site has denied.

A Disney spokeswoman confirmed its involvement in YouTube's planned video-fingerprinting test and said it is encouraged by the action. Time Warner declined to comment.

Mr. Maxcy said YouTube has been using audio-fingerprinting technology from closely held Audible Magic Corp. of Los Gatos, Calif., to identify songs in clips uploaded by consumers since the beginning of the year in conjunction with its music-label partners. When a user tries to upload a video to YouTube, the fingerprinting technology checks to see whether its audio matches the fingerprint of music its partners have identified to Audible Magic. Mr. Maxcy said "the overwhelming majority of the time" when there's a match, the labels license the music to YouTube, which then can sell advertising when the clip appears and shares any ad revenue with the copyright holders.

Mr. Maxcy said that YouTube uses audio fingerprinting to automatically block a clip from ever appearing on the site when a user tries to upload one that contains music the partner copyright holders don't want to appear. That blocking is known in the industry as "filtering," and some media companies have alleged in the past that YouTube was unwilling to filter.

YouTube Product Manager David King said that it also intends to use video fingerprinting to automate the filtering or licensing of video clips.

YouTube officials said they have already been testing their homegrown video fingerprinting technology in their labs. The test with content owners including Time Warner and Disney beginning in a month would also be in their labs, so it would not affect videos that users might see on the main YouTube site. YouTube CEO Chad Hurley has said the company intends to make the fingerprinting technology available to all content owners in the fall.

--Merissa Marr in Los Angeles and Matthew Karnitschnig in New York contributed to this article.

Write to Kevin J. Delaney at kevin.delaney@wsj.com

URL for this article:

<http://online.wsj.com/article/SB118161295626932114.html> <<http://online.wsj.com/article/SB118161295626932114.html>>

----- End of Forwarded Message

Schapiro Exhibit 220

From: "heather gillette" <heather@youtube.com>
Date: Mon, 17 Apr 2006 12:19:52 -0700
To: <donna.cooper@bet.net>
Subject: YouTube Content Verification Tool login and instructions...

Dear Donna,

Thank you for signing up for our content verification tool! I have created an account for you.

The username is: t1e1b

The password is: XXXXXXXXXX

The password and email address for this content verification account can be changed by you at anytime. Simply login to the account and click on the 'my profile' link in the navigation bar. Once on this page, click on the 'edit' link next to the 'hello, I'm t1e1b'. On this next page you will see fields for email address and password that can be changed.

Also, attached is a short tutorial so you have everything you need to get started!

Thank you again!

Heather Gillette

Copyright Agent

YouTube, Inc.

List of attachments:

Instructions for the CVT.doc

Instructions for the YouTube Content Verification Tool

In order to use the tool, you must have cookies, JavaScript, and popup windows enabled for youtube.com in your web browser.

1) First, go to <http://www.youtube.com> and click "Log In" in the upper-right-hand corner of the page.

2) Enter the username and password provided to you by YouTube.

You should now be logged in and see your username in the upper-right-hand corner.

3) Next, enter one or more keywords into the text box at the top of the page and click the "Search" button.

Videos related to your search will be displayed in an index listing. To the immediate left of each video's listing is a small white square checkbox.

4) Select the checkbox next to each video you wish to report.

If you wish to report the majority of videos on a page, it may be quicker to click the "Check All" link at the top of the results and then deselect only the videos you do not wish to include.

If there are many results, they will be displayed on several Results pages. You can switch between these pages by clicking the numbers at the bottom of the search results, or clicking the word "Next."

5) When you are finished checking off videos throughout the various pages of results, click the "Add to List" button at the bottom of the page. This will add all of the checkmarks across all of the pages to your list.

You will then see a new pop-up window listing the Video ID and Video Title for each of the videos you selected.

6) Select any videos listed that you do not wish to report and click the "Remove from List" button. When you are done reviewing the list, check all of the videos you wish to report and click the "Flag Videos" button at the bottom of the list.

A confirmation message will be displayed, and you will receive an email receipt with the list of videos you flagged. You may now close the pop-up window.

At this point, you may choose to return to searching for videos on the YouTube site. If you continue selecting videos where you left off, without starting a new search, all of your check marks from the previous search will persist and be added to your list again. To clear these check marks, simply click the "Search" button and start a new search.

Schapiro Exhibit 221

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,)

vs.)

NO. 07-CV-2103

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

Defendants.)

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

Plaintiffs,)

vs.)

NO. 07-CV-3582

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

Defendants.)

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

JOB NO. 18304

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

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

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WILSON, SONSINI, GOODRICH & ROSATI

BY: MICHAEL H. RUBIN, ESQ.

650 Page Mill Road, Palo Alto, CA 94304

650-849-3311

MRUBIN@wsgr.com

1 VIDEOGRAPHER: This is DVD No. 1
2 of the video deposition of Warren Solow
3 in the matter of Viacom International
4 Inc., et al, versus The Football
5 09:25:06 Association Premier League Limited, et
6 al versus YouTube, Inc., et al.

7 This deposition is being held at
8 1301 Avenue of the Americas, New York,
9 New York on December 18, 2009 at
10 09:27:05 approximately 9:51 a.m.

11 My name is Manuel Abreu from the
12 firm of David Feldman Worldwide and I
13 am the legal video specialist. The
14 court reporter is Maureen Ratto, in
15 09:27:27 association with David Feldman
16 Worldwide.

17 Will counsel please introduce
18 themselves?

19 MR. RUBIN: Michael Rubin from
20 09:52:16 Wilson, Sonsini, Goodrich & Rosati for
21 defendants YouTube and Google.

22 MS. KOHLMANN: Susan Kohlmann,
23 Jenner & Block for the Viacom
24 plaintiffs.

25 * * *

1 and other than reviewing the binder of
2 24-ish documents that was provided to
3 you, did you review any other materials
4 in connection with your preparation for
5 11:22:16 today's deposition?

6 A. No.

7 Q. Did you access any systems in
8 connection with today's deposition?

9 A. No.

10 11:23:05 MS. KOHLMANN: I'm going to
11 object.

12 THE WITNESS: Sorry.

13 MS. KOHLMANN: It's okay.

14 Q. Did you access any systems at
15 11:23:12 BayTSP in connection with your
16 preparation for today's deposition?

17 A. No.

18 Q. But you have the ability to do
19 so, don't you?

20 11:23:22 MS. KOHLMANN: Objection.

21 A. Not personally.

22 Q. You don't have a log-in and
23 password to any system at BayTSP?

24 A. If I do, I no longer remember
25 11:23:45 it.

1 Q. When did Viacom first begin
2 sending DMCA takedown notices to
3 YouTube?

4 A. I'm not aware of the date of the
5 11:24:47 first notice sent to YouTube.

6 Q. Did Viacom hire any third
7 parties to assist in locat- -- strike
8 that.

9 Did Viacom hire any third
10 11:25:06 parties to assist in locating content
11 on YouTube?

12 MS. KOHLMANN: Objection as to
13 form.

14 A. Yes.

15 11:25:22 Q. Which third parties did Viacom
16 hire to assist in locating Viacom
17 content on YouTube?

18 A. BayTSP.

19 Q. Any others?

20 11:25:43 A. Auditude.

21 Q. Any others?

22 A. Staffing agencies.

23 Q. Can you identify the name of any
24 staffing agencies that were hired for
25 11:26:25 that purpose?

1 A. Not as I sit here now.

2 Q. When did Viacom hire BayTSP to
3 assist in locating Viacom content on
4 YouTube?

5 11:26:49 A. I'm not sure of the exact day
6 that -- that that engagement began.

7 Q. When did Viacom hire Auditudo to
8 assist in locating Viacom content on
9 YouTube?

10 11:27:14 A. In 2007.

11 Q. By October of 2006 Viacom was
12 working with BayTSP to locate and send
13 DMCA takedown notices regarding Viacom
14 content that had been located on

15 11:27:45 YouTube, right?

16 MS. KOHLMANN: Objection as to
17 form. You can answer.

18 A. By October of 2006 Viacom had
19 hired BayTSP to monitor and send out
20 11:28:05 takedown notices.

21 Q. So the answer to my question is
22 yes, right?

23 A. Yes.

24 Q. Several Viacom entities work
25 11:28:21 with BayTSP to locate their content on

1 that they would be, but we want to
2 avoid any claim that they might be. I
3 think the most reasonable approach is
4 to move expeditiously through this. We
5 11:32:04 are, of course, willing to discuss
6 anything with you as we always are.
7 But I don't think it's going to be a
8 significant concern.

9 MS. KOHLMANN: Okay. Well, as I
10 11:32:15 said, I will allow Mr. Solow to testify
11 generally but if it goes too much --
12 into too much depth and beyond the
13 scope of the number 5 of the 30(b)(6),
14 I'm going to have to discuss it again.

15 11:32:29 You can answer.

16 A. Would you mind repeating the
17 question?

18 Q. Be more than happy to. You
19 can't recall it after that colloquy?

20 11:32:39 A. I don't want to attempt to.

21 Q. I think I'll just ask the
22 question again.

23 It's my tes- -- it's my
24 recollection of your testimony, and
25 11:32:50 please correct me if I'm wrong, that

1 you indicated that the individual or
2 individuals at MTV who -- who were
3 responsible for directing BayTSP's
4 activities changed over time. Is that
5 11:33:09 right?

6 A. The primary point of contact
7 between Viacom and -- and BayTSP
8 changed over time, in some instances.

9 Q. Is there a distinction with
10 11:33:30 regard to the BayTSP Viacom
11 relationship between primary point of
12 contact and the individual at Viacom or
13 MTVN who directed BayTSP's activities?

14 MS. KOHLMANN: Objection as to
15 11:33:43 form. You can answer.

16 A. The person who articulated
17 direction to BayTSP changed over time,
18 as did the, potentially the makeup of
19 the people who had input into the
20 11:34:20 specifications that were provided to --
21 to Bay.

22 Q. At the beginning of the
23 relationship with BayTSP who at Viacom
24 had input into the specifications that
25 11:34:42 were provided to BayTSP?

1 A. Primarily members of the legal
2 department.

3 Q. Can you identify them by name,
4 please?

5 11:35:10 A. I don't have direct knowledge,
6 specific knowledge, who those people
7 would be at a point in time.

8 Q. In October of 2006 who were
9 those people?

10 11:35:42 A. I hesitate because there would
11 be some level of assumption in my
12 answer.

13 Q. Was Michelena Hallie one of
14 those people?

15 11:35:56 A. Yes.

16 Q. Was Cindy Morales one of those
17 people?

18 A. Can you, again, define what one
19 of those people are, the definition of
20 11:36:16 that?

21 Q. Someone at Viacom or MTVN who
22 was providing specifications to BayTSP?

23 A. I don't believe Cindy would have
24 been one of those people.

25 11:36:38 Q. Was Adam Cahan one of those

1 people?

2 A. Yes.

3 MS. KOHLMANN: Just to be clear,
4 you're talking October of 2006?

5 11:36:49 MR. RUBIN: October, 2006.

6 A. I would expect so, yes.

7 Q. Adam Cahan was not a member of
8 the legal department, was he?

9 A. No.

10 11:36:57 Q. And he wasn't a lawyer either,
11 was he?

12 A. No.

13 Q. A few moments ago you
14 articulated a distinction between those
15 11:37:09 who provided input into specifications
16 and those who served as points of
17 contact for BayTSP at MTV or at Viacom.
18 Other than Michelena Hallie and Adam
19 Cahan, who you've identified as people

20 11:37:27 who provided specifications to BayTSP
21 in the October 2006 time frame, can you
22 identify anyone else who either
23 provided specifications in that time
24 frame or served as a point of contact?

25 11:37:37 MS. KOHLMANN: Objection as to

1 form.

2 A. I was considering the provision
3 of specifications as somebody who was
4 having point of contact. My separate
5 11:38:02 lives distinctions were there are
6 people who interacted with Bay directly
7 and then there were other people who
8 may have had input in what the
9 messaging to Bay would be.

10 11:38:16 Q. Okay. Thank you for the
11 clarification. So Ms. Hallie and
12 Mr. Cahan were points of contact
13 directly with BayTSP in that time
14 period?

15 11:38:36 A. I believe both of them had some
16 direct contact with BayTSP.

17 Q. Who at MTVN or Viacom more
18 broadly had input into what those
19 individuals were communicating to
20 11:38:51 BayTSP with regard to specifications?
21 In other words, where was the direction
22 actually coming from within Viacom?

23 MS. KOHLMANN: Again, I'll allow
24 Warren to answer the questions but it
25 11:39:06 does seem like we're way beyond the

1 scope of the 30(b)(6).

2 You can answer.

3 A. I believe that there would be --
4 there were numerous people who would
5 11:39:28 have had input into the conversation
6 with BayTSP, but I do not have specific
7 knowledge of any moment where that
8 collaborative process took place and
9 who was at the table. Again, it would
10 11:39:49 be -- there would be some speculation
11 in my answer.

12 Q. You can't identify a single
13 individual at MTVN or Viacom other than
14 Ms. Hallie and Mr. Cahan who were
15 11:40:01 involved in the process in any way?

16 A. Involved in the process in any
17 way, yes, I can identify.

18 Q. Please do so.

19 A. Michael Fricklas.

20 11:40:19 Q. Was he providing direction?

21 A. I don't know that I could
22 characterize what he was providing.

23 Q. Michael Fricklas is the general
24 counsel of Viacom, is he not?

25 11:40:35 A. Yes, he is.

1 Q. Please continue.

2 MS. KOHLMANN: Is there a
3 question pending?

4 MR. RUBIN: Yes.

5 11:40:46 Q. Please continue listing the
6 individuals that you're aware of
7 participating in contact or having
8 input into specifications with BayTSP
9 in the October, 2006 time frame?

10 11:40:58 A. Limiting it to the October time
11 frame, I'm not sure that I could -- I
12 think that there would be too much
13 speculation to list names of people.

14 Q. The mass takedown that
15 11:41:47 ultimately took place on February 2nd,
16 2007 resulted from a series of
17 directives that were provided by Viacom
18 to BayTSP. Isn't that right?

19 MS. KOHLMANN: Objection, vague.

20 11:42:03 A. Can you repeat that question,
21 please?

22 Q. Sure. The mass takedown that
23 ultimately took place on February 2nd,
24 2007 resulted from a series of
25 11:42:14 directives that were provided by Viacom

1 to BayTSP. Isn't that right?

2 A. The mass takedown was
3 facilitated by instructions provided to
4 BayTSP.

5 11:42:46 Q. What do you mean facilitated by,
6 Mr. Solow?

7 A. They assisted in the -- the
8 work, the effort that resulted in the
9 takedown.

10 11:43:06 Q. BayTSP was acting at the express
11 direction of Viacom, right?

12 A. Yes.

13 Q. Every action they took with
14 regard to the mass takedown was at
15 11:43:17 Viacom's express direction, right?

16 MS. KOHLMANN: Objection.

17 A. That would certainly be Viacom's
18 assumption or hope.

19 Q. And the rules that led to what
20 11:43:38 content was included or excluded from
21 that takedown were set by Viacom, isn't
22 that right?

23 MS. KOHLMANN: Objection as to
24 form. You can answer.

25 11:43:48 A. Yes.

1 Q. BayTSP did not determine the set
2 of rules that led to which content was
3 included or excluded from the mass
4 takedown on its own, did it?

5 11:44:06 A. That's correct.

6 Q. And the directives that
7 ultimately led to the February 2nd,
8 2007 mass takedown changed over time,
9 didn't they?

10 11:44:23 A. Yes.

11 Q. I'd like to introduce Exhibit 2.
12 (Exhibit 2 is received and
13 marked for identification.)

14 Q. Mr. Solow, Exhibit 2 is a
15 11:44:59 document BayTSP produced in this action
16 pursuant to YouTube's subpoena bearing
17 Bates number BAYTSP 004306300. Do you
18 see that?

19 A. Yes.

20 11:45:19 Q. I would describe the Bates
21 number process at the lower right-hand
22 corner, but you're well aware of it.
23 Do you recognize this document?

24 A. I do not.

25 11:45:37 Q. Have you seen it before?

1 A. I do not recall seeing this
2 document before.

3 Q. This document represents
4 instructions from Paramount to BayTSP
5 11:45:54 on how to search for one of their
6 properties called "Jack Ass." Isn't
7 that right?

8 MS. KOHLMANN: I'm going to
9 object and also note that the document
10 11:46:05 is from October, 2006 and outside the
11 scope of this 30(b)(6).

12 Q. Mr. Solow, please take a moment
13 to review the document.

14 MR. RUBIN: Ms. Kohlmann, again,
15 11:46:20 there are important foundational issues
16 with respect to how the mass takedown
17 occurred. This is well within the
18 scope of the mass takedown and I
19 reiterate, if you allow the deposition
20 11:46:31 to proceed, I think it will all become
21 very clear.

22 MS. KOHLMANN: Here I'm going to
23 object because I think first you have
24 to establish that anything that
25 11:46:38 happened in October, 2006 relates to

1 the takedown by asking our corporate
2 representative and then you can
3 determine whether or not this is
4 something that is within the scope.

5 11:46:48 MR. RUBIN: You're -- you're
6 entitled to make any objection you
7 want. I've provided you my -- my
8 answer. I --

9 MS. KOHLMANN: I'm going to
10 11:46:53 allow him -- you can ask him a few
11 questions on this and then I'm going to
12 direct him not to answer, so go ahead.

13 MR. RUBIN: I think that would
14 be an exceptionally unwise move.

15 11:47:04 MS. KOHLMANN: It wouldn't be
16 the first time that I did something you
17 thought was unwise.

18 MR. RUBIN: No, and those are.
19 And you resulted in blocking relevant
20 11:47:10 testimony at the outset of this case
21 that was overruled by Judge Stanton
22 multiple times.

23 MS. KOHLMANN: That is incorrect
24 and I am --

25 11:47:17 MR. RUBIN: I would remind you

1 to read Mr. Housley's deposition
2 transcripts and then you can review the
3 stimulated order on the questions
4 related to stealth marketing.

5 11:47:28 MS. KOHLMANN: I think that is
6 completely incorrect and irrelevant to
7 the deposition and you're going to have
8 Mr. Solow as a fact witness. You can
9 ask him what you want as a fact witness
10 11:47:37 as we've painstakingly gone through the
11 30(b)(6) as directed to question 5A
12 through F and I think that you are well
13 beyond the scope of the 30(b)(6).

14 MR. RUBIN: I recognize that is
15 11:47:52 your position, Susan. But we disagree
16 with you.

17 Q. Mr. Solow, have you had an
18 opportunity to review the document?

19 A. I -- I still am. I'm sorry. I
20 11:48:05 was -- I was eavesdropping on your
21 conversation and not focusing on what I
22 was asked to do.

23 I've read it.

24 Q. Do you see that the first in
25 11:48:30 time e-mail subject line is "Jack Ass"

1 YouTube search procedures?

2 A. Yes.

3 Q. And the intro is procedure for
4 determining whether to approve or
5 11:48:43 decline?

6 A. Yes.

7 Q. Do you understand what that
8 means?

9 MS. KOHLMANN: Objection.

10 11:48:53 Document speaks for itself.

11 A. In general terms, yes.

12 Q. In this context what does it
13 mean to approve?

14 MS. KOHLMANN: In what context?

15 11:49:04 In the context of the document?

16 Q. In the context of this document,
17 Mr. Solow, what does it mean to
18 approve, as it's written in the first
19 in time e-mail?

20 11:49:16 A. I believe approve means --
21 approve means a designation of a -- of
22 a -- that a clip is infringing, is --
23 is not an authorized upload.

24 Q. Approved means that BayTSP was
25 11:50:36 authorized to send a DMCA takedown

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

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

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

1 will be case-wide from now on.

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

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

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

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

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

15 11:55:41 A. Yes.

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

18 A. Yes.

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

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

21 Misstates the record.

22 A. I -- if I were testifying as to
23 the, you know, the substance of crime
24 and punishment, I would hope that I

25 11:56:04 would not be asked to recite crime and

1 punishment verbatim from memory.

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

7 MS. KOHLMANN: Objection.

8 A. It could be for some people.

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

11 MS. KOHLMANN: Objection.

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

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

18 MS. KOHLMANN: Objection, lacks
19 foundation.

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

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

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

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

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

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

9 A. No.

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

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

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

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

1 that -- that use the term.

2 Q. In fact, Mr. Solow, you first
3 saw that term at least in connection
4 with this deposition in September of
5 13:39:50 this year when you reviewed the
6 deposition notice for this deposition,
7 didn't you?

8 A. Yes.

9 Q. And you discussed that term
10 13:39:59 extensively with the individuals with
11 whom you prepared for this deposition,
12 didn't you?

13 MS. KOHLMANN: Objection.
14 Misstates the record. You can answer.

15 13:40:12 A. I don't know that I discussed
16 the definition of that term
17 extensively. That term was -- was
18 discussed and it's -- yes. I did see
19 the deposition notice in September and
20 13:40:24 at that time I didn't know that I would
21 be the -- the designee.

22 Q. And you explained at the outset
23 of this deposition that you understood
24 the term to refer to the takedown of
25 13:40:39 100,000 plus clips in a DMCA takedown

1 notice that was transmitted on Viacom's
2 behalf by BayTSP to YouTube on February
3 2nd, 2007?

4 A. I -- I will let the record stand
5 13:40:54 for whatever I said, but I do know that
6 throughout the course of this
7 deposition I have and perhaps I've
8 articulated some discomfort or
9 ambiguity around the definition of a
10 13:41:07 term that has -- is not or has not been
11 part of my personal lexicon.

12 Q. Do you understand there was a
13 takedown sent by BayTSP on Viacom's
14 behalf for in excess of 100,000 clips
15 13:41:21 on February 2, 2007?

16 A. Yes.

17 Q. That is what I am referring to
18 by the mass takedown.

19 A. Yes.

20 13:41:29 Q. Okay?

21 A. Okay.

22 Q. Does that clear it up?

23 A. Perhaps but perhaps not in
24 relation to the question that led to
25 13:41:41 this attempt at clarity around the term

1 BayTSP -- around mass takedown.

2 Q. The question regarded Exhibit 4
3 and the purpose of Exhibit 4 and
4 particularly language indicating what
5 13:41:58 the circumstances of Exhibit 4 are.

6 A. Mm-hmm.

7 Q. Exhibit 4, a document created by
8 BayTSP titled BayTSP streaming video
9 project, that describes a project that
10 13:42:13 started on September 18, 2006.

11 MS. KOHLMANN: Sorry. I think
12 it December.

13 MR. RUBIN: Pardon me. Did I
14 misspeak?

15 13:42:20 Q. That describes a project that
16 started on December 18, 2006, refers to
17 the -- the accumulation of clips that
18 were ultimately included in the DMCA
19 takedown notice sent to YouTube on
20 13:42:38 February 2nd, 2007. Isn't that right?

21 MS. KOHLMANN: Objection.
22 Misstates the document. You can
23 answer.

24 A. This is a document that I'm
25 13:42:49 assuming memorializes BayTSP's

1 form.

2 A. That was a component of -- of
3 those decisions.

4 Q. It wasn't in order to increase
5 16:21:54 the clip count that would be included
6 in the takedown?

7 A. It was --

8 MS. KOHLMANN: Objection as to
9 form. You can answer.

10 16:22:00 A. Sorry. It was to more
11 comprehensively identify our content on
12 the YouTube service.

13 Q. Some -- a comprehensive
14 identification that had not been
15 16:22:13 theretofore taking place, right?

16 A. A comprehensive identification
17 that gets better as a project matures.

18 Q. In fact, the content had been
19 identified, it just had not been taken
20 16:22:33 down because the rules were different
21 at that time. Isn't that right?

22 MS. KOHLMANN: Objection.

23 A. I think there were a number of
24 factors around why that content hadn't
25 16:22:45 been taken down earlier.

1 Q. One of which is that based on
2 clip length Viacom had advised BayTSP
3 not to issue takedown notices, isn't
4 that right?

5 16:22:55 MS. KOHLMANN: Objection. Asked
6 and answered.

7 A. Based in part on a lack of
8 experience and understanding of the
9 nature of the infringement that they
10 16:23:08 would be seeing.

11 Q. And based on the clip length,
12 isn't that right?

13 MS. KOHLMANN: Objection. Asked
14 and answered.

15 16:23:17 A. Right. As I said earlier, it
16 is -- one can be more confident in the
17 identification of a clip that is longer
18 than one that is shorter. If I --

19 Q. I understand. Eventually BayTSP
20 16:23:39 was instructed to take down any clip
21 with a Viacom related logo on it, isn't
22 that right?

23 MS. KOHLMANN: Objection as to
24 form.

25 16:23:47 A. I believe the instruction was to

1 take down clips that included the -- a
2 Viacom or Viacom entity chiron.

3 Q. Is another word for chiron bug?

4 A. Yes.

5 16:24:03 Q. Did you perceive any problems in
6 requesting that clips identified as
7 alleged infringement to be taken down
8 based from YouTube -- strike that.

9 Did you perceive any problems in
10 16:24:15 requesting that clips be taken down --
11 of alleged infringements to be taken
12 down from YouTube based only on the
13 presence of a MTVN related bug or
14 chiron on the clip?

15 16:24:25 MS. KOHLMANN: Objection as to
16 form.

17 A. No.

18 Q. No? That instruction led to a
19 lot of music videos to be included in
20 16:24:44 the mass takedown request sent on
21 February 2nd, 2007, didn't it?

22 MS. KOHLMANN: Objection as to
23 form.

24 A. There were music videos in the
25 16:24:58 February 2nd notice.

1 Q. Was there ever any concern that
2 Viacom did not actually own the rights
3 to the music videos that it instructed
4 BayTSP to include on the list of clips
5 16:25:09 included in the February 2nd, 2007 DMCA
6 takedown notice sent to YouTube?

7 MS. KOHLMANN: Objection.

8 A. Viacom had a good faith believe
9 that they had sufficient rights to take
10 16:25:23 down those clips.

11 Q. Viacom had a good faith belief
12 that it owns the copyright in those
13 clips?

14 MS. KOHLMANN: Objection. Asked
15 16:25:32 and answered.

16 A. Viacom has a good faith belief
17 that they have a -- a trademark
18 interest in the clips that included our
19 chiron.

20 16:25:46 Q. And does Viacom believe that a
21 trademark interest is a sufficient
22 basis for issuing a takedown notice
23 pursuant to the DMCA?

24 MS. KOHLMANN: Objection to the
25 16:25:56 extent it calls for a legal conclusion.

1 You can answer.

2 A. I don't know the answer to that.

3 Q. What is the basis for Viacom's
4 belief that it has a trademark interest
5 16:26:10 in those clips?

6 MS. KOHLMANN: Same objection.

7 A. I don't know.

8 Q. Does Viacom have a good faith
9 belief that it has a copyright interest
10 16:26:24 in music videos?

11 A. In some music videos.

12 Q. Does Viacom believe it has a
13 copyright interest in the music videos
14 that it requested YouTube take down in
15 16:26:36 the February 2nd, 2007 DMCA takedown
16 notice sent by BayTSP?

17 MS. KOHLMANN: Objection. You
18 can answer.

19 A. Viacom has a belief that it had
20 16:26:45 sufficient rights to take down those --
21 the clips that it took down.

22 Q. And you identified in your
23 response that the rights for the music
24 videos that it believed it had were
25 16:26:55 trademark rights, isn't that so?

1 A. In some cases.

2 Q. In the cases in which that was
3 the basis for the takedown, did Viacom
4 also believe it had sufficient
5 16:27:04 copyright rights to issue the takedown?

6 MS. KOHLMANN: Objection. Asked
7 and answered.

8 A. I don't believe Viacom took
9 those clips down on the basis of a
10 16:27:21 copyright claim. It was a trademark
11 claim.

12 Q. And do you believe issuing a
13 takedown notice pursuant to the DMCA
14 based on trademark rights is a valid
15 16:27:42 use of the DMCA takedown mechanism?

16 MS. KOHLMANN: Objection. Calls
17 for legal conclusion.

18 A. I don't know.

19 MR. RUBIN: I'd like to
20 16:28:43 introduce Exhibit 15.

21 (Exhibit 15 is received and
22 marked for identification.)

23 Q. Mr. Solow, Exhibit 15 is a
24 document produced by BayTSP bearing the
25 16:29:16 Bates number BAYTSP 003717001 -- pardon

1 me. This is an e-mail BayTSP sent to
2 representatives of Paramount, including
3 Al Perry, dated January 17, 2007 with
4 the subject Team America. Do you see
5 16:29:46 that?

6 A. Yes.

7 Q. Do you know who Courtney Nieman
8 is?

9 A. Yes.

10 16:29:52 Q. Who is Courtney Nieman?

11 A. Courtney was an employee of
12 BayTSP.

13 Q. Did Ms. Nieman work on MTVN and
14 Viacom related projects at BayTSP?

15 16:30:07 A. Yes.

16 Q. Did you believe she was
17 competent in her job?

18 A. Well, she's a vendor and, you
19 know -- from the client's critique, but
20 16:30:18 she did a -- she did a fine job.

21 Q. In this e-mail Ms. Nieman wrote
22 "MTVN is asking permission to gather
23 any clips regardless of the type on the
24 YouTube protocol" -- I believe she
25 16:30:36 wrote it YT -- "then use them as part

Schapiro Exhibit 222

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 ROELOF BOTHA
MENLO PARK, CALIFORNIA
WEDNESDAY, AUGUST 5, 2009

JOB NO. 17298

AUGUST 5, 2009

9:04 a.m.

VIDEOTAPED DEPOSITION OF ROELOF BOTHA,
SHEARMAN & STERLING LLP, 1080 Marsh Road,
Menlo Park, California, pursuant to notice, and
before me, ANDREA M. IGNACIO HOWARD, CLR, RPR,
CRR, CSR License No. 9830.

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

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

FOR THE WITNESS ROELOF BOTHA:

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ALSO PRESENT: Lou Meadows, Videographer.

---oOo---

1 R. BOTHA

2 13:09:44 section for this type of content; do you see that?

3 13:09:48 A I see that I pose a question here in the

4 13:09:50 e-mail to the founders saying, "Should we create a

5 13:09:56 mature section for this content or -- or should we put

6 13:09:59 in the equivalent of safe search function, just like

7 13:10:04 Google image -- well, just as Google has for its image

8 13:10:08 search.

9 13:10:08 Q And do you know if either of those were ever

10 13:10:10 adopted by YouTube?

11 13:10:13 MR. KRAMER: Objection; vague.

12 13:10:15 Either of what?

13 13:10:17 THE WITNESS: I don't recall whether the

14 13:10:18 company -- so subsequent -- I believe subsequent to

15 13:10:26 this e-mail, the company made a strategic decision

16 13:10:33 that the image of YouTube was not consistent with

17 13:10:38 pornographic material, that it was a service aimed at

18 13:10:42 user-generated content and that we wanted it to be a

19 13:10:45 safe place for people to upload personal videos of,

20 13:10:48 you know, their families and content of that nature.

21 13:10:51 And there was belief that if the neighborhood

22 13:10:55 was tainted by material that was pornographic, it

23 13:10:59 would alienate those types of users, and so we felt

24 13:11:05 that we should portray an image that YouTube does not

25 13:11:08 stand -- YouTube does not represent a service

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R. BOTHA

13:11:11 purporting to service users who want to upload and
13:11:15 view pornographic material.

13:11:17 MS. CUNHA: Q. And was there also a concern
13:11:20 that such material might alienate potential
13:11:24 advertisers on the website?

13:11:27 MR. TANGRI: Objection; ambiguous.

13:11:29 MR. KRAMER: Vague as to time.

13:11:33 THE WITNESS: I don't recall whether at the
13:11:37 time we made -- we, the company, YouTube made a
13:11:41 decision not to -- not to -- I don't know what the
13:11:48 right word is -- let me think about this.

13:11:51 At the time we -- YouTube made the decision
13:11:53 that it did not want to have pornographic material
13:11:56 displayed on its website, I don't recall whether we
13:12:02 had a specific conversation about whether that was
13:12:04 advertiser related. In other words, that advertisers
13:12:07 would not want to advertise because there is
13:12:10 pornographic material. I believe -- I -- I do
13:12:15 remember that we were motivated by a desire not to
13:12:19 alienate the user base that we were aiming to attract,
13:12:24 as referenced in this e-mail, don't alienate the moms
13:12:28 that are uploading videos on the site.

13:12:30 MS. CUNHA: Q. And do you know if any
13:12:31 mechanisms were put in place to keep the pornographic

R. BOTHA

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13:12:33 material off the site?

13:12:37 A Could you just repeat the question for a
13:12:39 second?

13:12:39 Q Sure.

13:12:40 Do you know if any mechanisms or processes
13:12:43 were put in place to try to keep the pornographic
13:12:46 material off the site once YouTube decided that that
13:12:50 wasn't the direction it wanted to go?

13:12:52 A I do recall certain processes implement --
13:12:55 implemented by the company, and I can -- the -- the
13:13:06 principle -- well, there are a few different
13:13:08 mechanisms. The first is that we spelled it out in
13:13:11 the company's Terms of Service, so whenever a user
13:13:15 creates an account, which, at that time, I believe was
13:13:17 necessary in order to upload a video.

13:13:20 By opening the account, you had to agree with
13:13:23 the company's Terms of Service and, as I recall, the
13:13:26 Terms of Service would have spelled out that the
13:13:29 company does not allow the uploading of explicit or
13:13:33 pornographic material.

13:13:37 I don't recall this for certain, but I
13:13:40 suspect that the upload process on the site, after
13:13:45 you'd created an account, the process by which you
13:13:47 upload a video may also have had additional