

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VIACOM INTERNATIONAL INC., ET)	
AL.,)	
)	
Plaintiffs,)	
)	ECF Case
v.)	
)	Civil No. 07-CV-2103 (LLS)
YOUTUBE, INC., ET AL.,)	
)	
Defendants.)	
<hr/>		
THE FOOTBALL ASSOCIATION)	
PREMIER LEAGUE LIMITED, ET AL.,)	
on behalf of themselves and all others)	
similarly situated,)	
)	ECF Case
Plaintiffs,)	
)	Civil No. 07-CV-3582 (LLS)
v.)	
)	
YOUTUBE, INC., ET AL.,)	
)	
Defendants.)	
<hr/>		

**SUPPLEMENT TO
THE DECLARATION OF ANDREW H. SCHAPIRO
IN SUPPORT OF DEFENDANTS’ OPPOSITION TO
PLAINTIFFS’ MOTIONS FOR PARTIAL SUMMARY
JUDGMENT AND DEFENDANTS’ OBJECTIONS TO
EVIDENCE AND MOTION TO STRIKE MATERIAL
FROM VIACOM’S SUMMARY JUDGMENT
SUBMISSIONS AND PUTATIVE CLASS PLAINTIFFS’
RULE 56.1 STATEMENT**

Schapiro Exhibit 238

Utt - A lot of clips.
Difficult to compile a list

Hallie, Michelena

From: Farrell, Steve
Sent: Tuesday, October 10, 2006 2:24 PM
To: Kim, Clara; Hallie, Michelena; Cheeks, George; West, Joella
Cc: Shapiro, Andra; Weinstein, Caleb; Spina, Dario
Subject: RE: Youtube Bay Tsp Initial Analysis

We have a SpikeTV channel set up (<http://www.youtube.com/spiketv>), which is predominantly Scream Awards clips right now, but has some promos. Next week we will programming them with a minimum of four clips a week pulled from the selection of clips that we run on our wireless and broadband platforms.

As far as purging other clips from the service, the next steps we are working on is providing a keyword listing of content to be flagged for review and potential removal.

Steve

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

From: Kim, Clara
Sent: Tuesday, October 10, 2006 2:01 PM
To: Hallie, Michelena; Cheeks, George; West, Joella
Cc: Shapiro, Andra; Farrell, Steve; Weinstein, Caleb; Spina, Dario
Subject: Re: Youtube Bay Tsp Initial Analysis

Yes- as I said on the all hands call re: filtering week before last, Spike provides Youtube with clips to promote varioius network initiatives. Youtube is a powerful marketing platform that most networks are using for promotion. As far as I know, there is no formal agreement with youtube concerning the promotional clips, so we really need to reach out to our marketing/online people.

Steve + Dario, Do we have a list of the clips we've given youtube? Can one be prepared?

CLARA

Sent from my BlackBerry Wireless Handheld

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

From: Hallie, Michelena
To: Cheeks, George; Kim, Clara; West, Joella
CC: Shapiro, Andra
Sent: Tue Oct 10 11:38:03 2006
Subject: RE: Youtube Bay Tsp Initial Analysis



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

From: Cheeks, George
Sent: Tuesday, October 10, 2006 11:24 AM
To: Hallie, Michelena; Kim, Clara; West, Joella
Cc: Shapiro, Andra
Subject: RE: Youtube Bay Tsp Initial Analysis

I spoke to the VH1 senior management team yesterday and they told me there are A LOT of clips they have seeded to you tube.

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

From: Hallie, Michelena
Sent: Tuesday, October 10, 2006 11:03 AM
To: Cheeks, George; Kim, Clara; West, Joella
Cc: Shapiro, Andra
Subject: Fw: Youtube Bay Tsp Initial Analysis

Hi guys. Any info on programs we've licensed to youtube? Thanks.

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

From: Hallie, Michelena
To: Cheeks, George; Kim, Clara; Shapiro, Andra; West, Joella
CC: Matthews, Beth; Sussman, David
Sent: Mon Oct 09 09:20:08 2006
Subject: FW: Youtube Bay Tsp Initial Analysis

we need to identify any uploads of MTVN content onto youtube which we have authorized. It is my understanding that several such deals have been struck most probably through channel marketing and development groups. Please check within your channels and let us know as soon as possible today whether your group has authorized such postings, and a description of such authorized material.

As always, call with any questions. Michelena

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

From: Hallie, Michelena
Sent: Friday, October 06, 2006 7:15 PM
To: Matthews, Beth; Norman, Christina; Toffler, Van; Zarghami, Cyma; Philips, Brian - CMT; Calderone, Tom; Ascheim, Tom; Herzog, Doug
Cc: Sussman, David; Bakish, Robert; Fricklas, Michael; Cheeks, George; Kim, Clara; Shapiro, Andra; West, Joella; Browning, Nicole - MTVN; Ashendorf, Sandy - MTVN; Witt, Jason; Cahan, Adam; Cucci, John; Wolf, Michael; Simon, Joe; McGrath, Judy; Harrison, Blair - iFilm; Weinstein, Caleb; Kirshbaum Levy, Sarah; Eigendorff, Rich; Hurvitz, Lauren
Subject: Re: Youtube Bay Tsp Initial Analysis

I have authorized take down notices on the following full episodes:

VIA	Andy Milonakis -Full Episode	137
VIA	Avatar the Last Airbender - Full Episode	15
VIA	Backyardigans - Full Episode	10
CMT	Crossroads - Full Episode	4
VIA	Drake & Josh - Full Episode	17
VIA	Fairly Odd Parents - Full Episode	30
VIA	Jack's Big Show - Full Episode	3
VIA	Real World - Full Episode	7
COM	SouthPark - Full Episode	46
VIA	Spongebob Squarepants - Full Episode	198
VIA	South of Nowhere - Full Episode	42
COM	The Colbert Report - Full Episode	77
VIA	Wonder Pets - Full Episode	1
VIA	Zoey 101 - Full Episode	33

VIA = VIACOM CMT = COUNTRY MUSIC TELEVISION COM = COMEDY CENTRAL

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

From: Matthews, Beth
To: Norman, Christina; Toffler, Van; Zarghami, Cyma; Philips, Brian - CMT; Calderone, Tom; Ascheim, Tom; Herzog, Doug
CC: Hallie, Michelena; Sussman, David; Bakish, Robert; Fricklas, Michael; Cheeks, George; Kim, Clara; Shapiro, Andra; West, Joella; Browning, Nicole - MTVN; Ashendorf, Sandy - MTVN; Witt, Jason; Cahan, Adam; Cucci, John; Wolf, Michael; Simon, Joe; McGrath, Judy; Harrison, Blair - iFilm; Weinstein, Caleb; Kirshbaum Levy, Sarah; Eigendorff, Rich; Hurvitz, Lauren
Sent: Fri Oct 06 17:59:51 2006
Subject: Youtube Bay Tsp Initial Analysis

ATTORNEY CLIENT PRIVILEGED COMMUNICATION

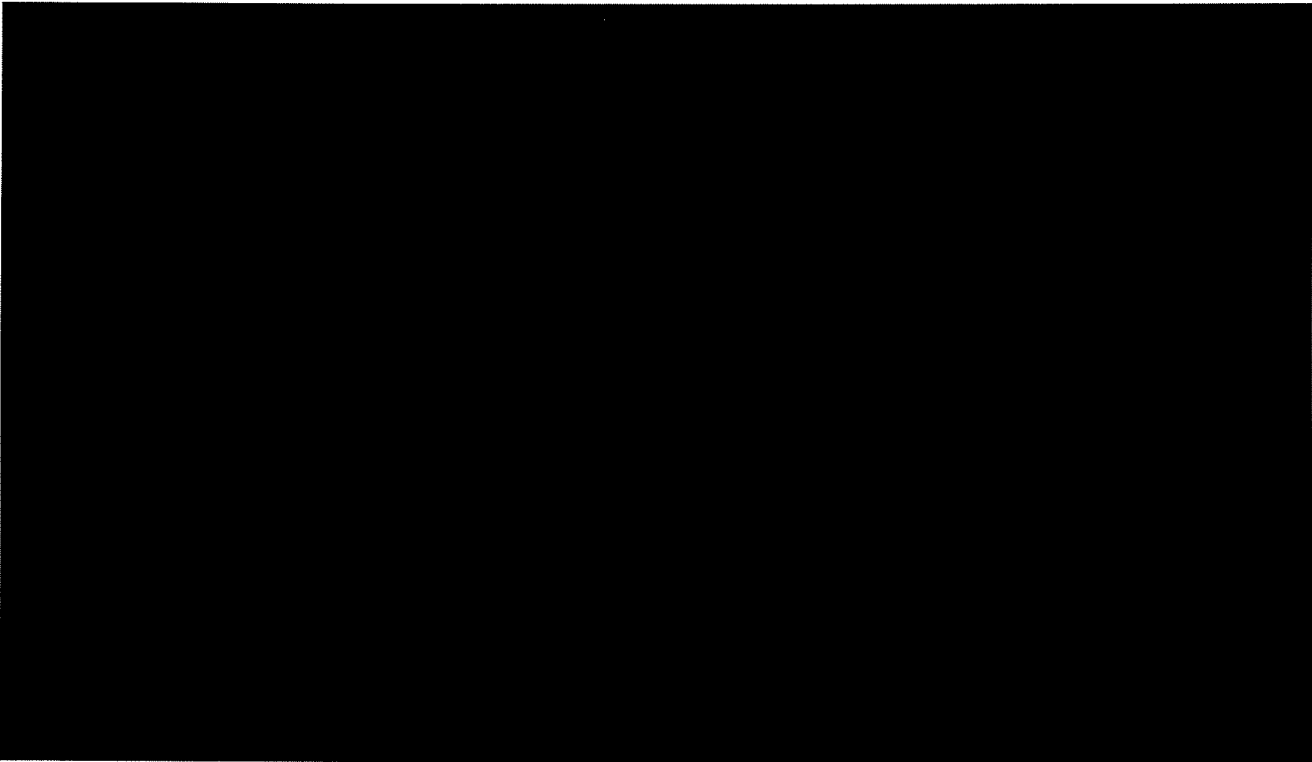
Hi,

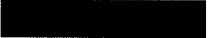
Thanks,

Beth

From: Hallie, Michelena
Sent: Thursday, October 05, 2006 3:59 PM
To: Ashendorf, Sandy - MTVN; Cheeks, George; Dominguez, Chris - iFilm; Fricklas, Michael; Harrison, Blair - iFilm; Herzog, Doug; Hurvitz, Lauren; Kim, Clara; Matthews, Beth; Moosnick, Heather - MTVN; Shapiro, Andra; Simon, Joe; Sussman, David; Weinstein, Caleb; Wen, Pauline; West, Joella; Williams, Reggie; Wolf, Michael
Cc: Morales, Cindy; Rodriguez, Roxelana
Subject: Youtube Bay Tsp Initial Analysis
Importance: High

PRIVILEGED AND CONFIDENTIAL



Michelena Hallie
Senior Vice President
Deputy General Counsel, Intellectual Property MTV Networks, Business and Legal Affairs
1515 Broadway, 34th Floor
New York, New York 10036


Schapiro Exhibit 239

Subject: RE: The Hills / Wired Set
From: "Exarhos, Tina" <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=EXAROST
>
To: Armenia, Joe
Cc: Date: Tue, 22 Aug 2006 17:18:07 +0000

Ugh again. Let's discuss when I'm back.

From: Armenia, Joe
Sent: Mon 8/21/2006 11:16 PM
To: Exarhos, Tina
Subject: Re: The Hills / Wired Set

Long story short; the producers thought it would be easier to have an ftp site for us to give wired set when we need content uploaded. In this case they were distributing "next on...." clips. Lo and behold, accidentally a full segment was uploaded to ftp site and wired sent it online. So someone from disantos world called todd and said "wired set should have told you. You should never hire them again". Blah blah. Drama. Their fault, but wired should have caught it

-----Original Message-----
From: Exarhos, Tina
To: Armenia, Joe
Sent: Mon Aug 21 22:39:38 2006
Subject: Fw: The Hills / Wired Set

Ugh. What happened?

-----Original Message-----
From: Apmann, Todd
To: DiSanto, Tony
CC: Exarhos, Tina; Armenia, Joe; DiVello, Adam; Whyte, Catherine
Sent: Mon Aug 21 16:54:48 2006
Subject: The Hills / Wired Set

Hi Tony-

Just speaking to Catherine and found out that Wired Set mistakenly uploaded act 3 of The Hills season finale onto YouTube. I called Wired Set and they confirmed they did it, though said that the clip was on the ftp site where they went to get the "Next On" and simply assumed it was something they should upload to promote the show. Wired Set apologized and I told them they need to check with me anytime there's a question.

That said, we have hired Wired Set to work on Laguna Beach. I understand that you have concerns about using them for Laguna, however we have a long history with Wired Set and Tina has them on retainer as online marketing advisors. They did a really good job with The Hills in general and they'll do a great job on Laguna. We can certainly work with your team to identify a more secure distribution method that we're all comfortable with.

Let me know if you wanna chat further. I'll send you a recap of all the promotion we did for The Hills later this week.

Thanks,

Todd

Todd Apmann
Director, Program Promotion
MTV: Music Television

212.846.6942
todd.apmann@mtvstaff.com

Schapiro Exhibit 240

From: "Amy Powell/Marketing" [REDACTED]
Date: Mon, 2 Oct 2006 19:23:39 -0700
To: "Perry, Alfred - Paramount" <Alfred_Perry@Paramount.com>
Cc: "Martin, Scott - Paramount" <Scott_Martin@paramount.com>, "
Derwin-Weiss, Nancy - Paramount" <Nancy_Derwin-Weiss@paramount.
com>, "Salter, John - Paramount" <John_Salter@Paramount.com>
Subject: Re: FW: Proposed links to take down

all of the clips that we syndicated have the official "warning" before the clip. any clip without the warning was not sent out by our dept. However, i need to speak to the publicity dept before confirming which should be taken down. I will follow up first thing in the AM. thanks.

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

-----Alfred Perry@exchange wrote: -----

To: [REDACTED]
From: Alfred Perry@exchange
Date: 10/02/2006 07:01PM
cc: Scott Martin/Business Affairs/MP/Paramount_Pictures@Paramount_Pictures, Nancy Derwin-Weiss/Business Affairs/MP/Paramount_Pictures@Paramount_Pictures, John Salter@exchange
Subject: FW: Proposed links to take down

Amy, please confirm that these should be taken down (our guy thinks that these are not your clips).

We await your confirmation before proceeding.

From: Dennis L. Wilson[mailto:dwilson@kwmwlaw.com]
Sent: Monday, October 02, 2006 6:33 PM
To: Perry, Alfred - Paramount
Subject: Proposed links to takedown

Al,

There are a lot of questionable Jackass 2 videos on youtube that we cannot act on tonight without risking taking down unauthorized content.

However, there are some videos that we believe we could request be taken down. Perhaps these videos could be forwarded to the appropriate executives for review, including the following:

<http://www.youtube.com/watch?v=3r66byYRFm4>

<http://www.youtube.com/watch?v=dtSu3lJZTA;>

<http://www.youtube.com/watch?v=2brTtAYReE;>

<http://www.youtube.com/watch?v=G7EAM8f929o;>

http://www.youtube.com/watch?v=m5_1fgW2_k;

<http://www.youtube.com/watch?v=nASITzMoKE8>;

<http://www.youtube.com/watch?v=TKJMvpc0VtI>;

<http://www.youtube.com/watch?v=d4KtR6yoPAY>;

<http://www.youtube.com/watch?v=mQJ6LoeCQeY?> .

Each of these is a fairly long clip and/or has language indicating that it is not legitimate (e.g., "Here is the first 3 minutes of the movie?").

Please let me know what action you would like me to take on these, if any.

Dennis

From: Perry, Alfred -Paramount [mailto:Alfred_Perry@Paramount.com]
Sent: Monday, October 02, 2006 5:23 PM
To: Powell, Amy - Paramount
Cc: Derwin-Weiss, Nancy - Paramount; Martin, Scott - Paramount; Saker, John - Paramount; Christiansen, Mark - Paramount
Subject: FW: Illegal Jackass 2 Footage Online

Amy, when you refer to many authorized clips are you able to provide identifiers of them? Apparently, what is being found are stunt/skit clips rather than the full feature broken up into 10 minute pieces (as is the case with other films from other studios).

From: Mark M. Ishikawa [mailto:marki@baytsp.com]
Sent: Monday, October 02, 2006 5:03 PM
To: Perry, Alfred - Paramount; dwilson@kmlaw.com
Cc: Martin, Scott - Paramount; Saker, John - Paramount; Christiansen, Mark - Paramount; Evelyn Espinosa; Courtney Nieman; Leland Woo; Richard Kawasaki; Deana Arizala
Subject: RE: Illegal Jackass 2 Footage Online

Al,

We have started getting results back from our High Priority Radar system and we're seeing something different than our usual clips of 10 minute segments uploaded to YouTube. The pirates are submitting the content to YouTube broken down by individual stunt/skit. We are attempting to identify the content that appears to be camcordered, and is of the individual stunt/skit for takedown. Can you pls confirm that none of the stunts/skits are authorized by the studio?

Mark

From: Perry, Alfred -Paramount [mailto:Alfred_Perry@Paramount.com]
Sent: Monday, October 02, 2006 4:44 PM
To: dwilson@kmlaw.com; Mark M. Ishikawa
Cc: Scott Martin; John Saker; Christiansen, Mark - Paramount
Subject: FW: Illegal Jackass 2 Footage Online

Ok, err on the side of leaving some infringing material up rather than being overly aggressive and taking down one of the many approved clips?

Again, my direction would be to take down linked segments which comprise all or nearly all of the motion picture and is presumably camcorded (based on appearance, for example).

Either of you know of other social networking sites such as YouTube which we might also devote our special kind of love??

Please advise.

Thank you.

From: Amy Powell [redacted]
Sent: Monday, October 02, 2006 4:22 PM
To: Perry, Alfred - Paramount
Cc: <mailto:dwilson@kmwlaw.com> dwilson@kmwlaw.com; Saker, John - Paramount; <mailto:marki@baytsp.com> marki@baytsp.com; Derwin-Weiss, Nancy - Paramount; Martin, Scott - Paramount; Worsnup, Mickey - Paramount; <mailto:rob.moore@paramount.com> rob.moore@paramount.com
Subject: Illegal Jackass 2 Footage Online

Thanks, Alfred. Please only remove camcorded content (which is clearly pirated footage). There are many approved film clips online which should not be removed. Feel free to call with any questions or concerns.

amy

Amy Powell

Senior Vice President

Interactive Marketing

Paramount Pictures

----- Replied by Amy Powell on 10/2/2006 4:20:31 PM -----

From: Alfred Perry@exchange
10/02/2006 03:04 PM
To: [redacted]
cc: Scott Martin, John Saker@exchange, Nancy Derwin-Weiss, <mailto:dwilson@kmwlaw.com> dwilson@kmwlaw.com, <mailto:marki@baytsp.com> marki@baytsp.com
Subject:

We are going after the camcorded versions of JackAss Number Two on YouTube, but would like to know if you have content you have authorized or if you are aware of other content which should not be taken down.

Thanks, in the first instance we are going after obviously camcorded content.

Thank you.

Schapiro Exhibit 241

Subject: RE: Viral Thing with Kathy Griffin
From: Kadetsky, Deborah <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=USER
ACCOUNTS/CN=USER/CN=KADETSKD>
To: Ocasio, Sonia
Cc: Date: Fri, 01 Dec 2006 20:25:12 +0000

good question, i have no idea!

From: Ocasio, Sonia
Sent: Fri 12/1/2006 2:34 PM
To: Kadetsky, Deborah
Subject: RE: Viral Thing with Kathy Griffin

Who do you think is <<http://youtube.com/user/PJoseph73>> PJoseph73 - he puts up all of our VH1 promos.

From: Kadetsky, Deborah
Sent: Friday, December 01, 2006 1:16 PM
To: Baumgardner, Jeff
Cc: Ocasio, Sonia
Subject: RE: Viral Thing with Kathy Griffin

done!

<http://youtube.com/watch?v=8ge95RnKgbs>

From: Baumgardner, Jeff
Sent: Thu 11/30/2006 10:04 PM
To: Kadetsky, Deborah
Subject: Viral Thing with Kathy Griffin


What up mama?

Just got a call from Lee Rolontz. She's going to send me a file that they would love for us, and when I say "us" I mean your dept... And when i say, "your dept." I mean you... to post on YOUTUBE and any other outlets we can. From what I've heard it's a 1 minute bit from Kathy Griffin on divorce, and it's pretty funny... essentially, it's a promo for the show.

Tom C alerted Lee to a new, or current, law suit YOUTUBE is facing, and he just wanted to "us" to double check that it'd be cool if we post it on ye ole YOUTUBE.

I'll send you the file as soon as I recieve it!

jeff

PS- Call me if you have any Q's or concerns. 

Schapiro Exhibit 242

From: Rinzel, Mike <Mike.Rinzel@vh1staff.com>
Date: Wed, 6 Dec 2006 20:52:30 -0500
To: Kadetsky, Deborah <Deborah.Kadetsky@vh1staff.com>, Carbone, Tony
<Tony.Carbone@mtvn.com>, Feie, Tom <Tom.Feie@vh1staff.com>
Cc: Zurier, Ben - VH1 <Ben.Zurier@vh1staff.com>
Subject: RE: NY Casting Tape special on Youtube/BWE

Yeah. The fact that it is there on youtube is not that surprising to me, though I've never seen something just on VSPOT appear on youtube before. I guess i was curious to Deb's point if something like this finds its way out there, it'd be cool to control the messaging whenever possible. Like cutting them short with an endframe calling out VOD and VSPOT.

MR

From: Kadetsky, Deborah
Sent: Wed 12/6/2006 6:43 PM
To: Carbone, Tony; Feie, Tom; Rinzel, Mike
Cc: Zurier, Ben - VH1
Subject: RE: NY Casting Tape special on Youtube/BWE

hey there, just talked to mike about this. it didn't get posted from marketing or press (checked with lori H), so it is likely a renegade snag from vspot.

because of our relationship with youtube, i can certainly request that this is removed. let me know...

interest in this clip may mean that we create a provocative teaser clip from the auditions show that we CAN post legitimately to youtube and blogs can grab it. it would be great to have it throw to all clips in vspot. thoughts?

deb

From: Carbone, Tony
Sent: Wednesday, December 06, 2006 6:31 PM
To: Feie, Tom; Rinzel, Mike
Cc: Zurier, Ben - VH1; Kadetsky, Deborah
Subject: RE: NY Casting Tape special on Youtube/BWE

deb, know if anyone internally posted this? posting is part of marketing support?

From: Feie, Tom
Sent: Wed 12/6/2006 6:08 PM
To: Rinzel, Mike; Carbone, Tony
Cc: Zurier, Ben - VH1
Subject: RE: NY Casting Tape special on Youtube/BWE

Do you think someone at 51 Minds did it? Being that we haven't premiered any of these except one, I think we should probably pull them down.

From: Rinzel, Mike
Sent: Wednesday, December 06, 2006 4:57 PM

To: Rinzel, Mike; Carbone, Tony; Feie, Tom
Subject: RE: NY Casting Tape special on Youtube/BWE

Come to think of it...

<<http://www.youtube.com/watch?v=WbSnwLsWwXk&eurl=>> <http://www.youtube.com/watch?v=WbSnwLsWwXk&eurl=>

24,000 views. Who do we think posted this. Looks internal because the account has all episode sneaks of sort.


MR

From: Rinzel, Mike
Sent: Wednesday, December 06, 2006 4:51 PM
To: Carbone, Tony; Feie, Tom
Subject: NY Casting Tape special on Youtube/BWE

Not sure how we feel about this. We certainly didn't give them this to put on youetube.

<<http://www.bestweekever.tv/2006/12/05/do-you-heart-new-york-well-she-dont-heart-you/>> <http://www.bestweekever.tv/2006/12/05/do-you-heart-new-york-well-she-dont-heart-you/>

MR

Mike Rinzel
Senior Producer, VSPOT
VH1 Digital
1515 Broadway 8th FL - 

Schapiro Exhibit 243

From: "Gurney, Michelle" <Michelle.Gurney@mtvstaff.com>
Date: Sat, 10 Feb 2007 09:52:25 -0500
To: "Courtney Nieman" <courtney@baytsp.com>, "Solow, Warren" <Warren.Solow@viacom.com>, "Morales, Cindy" <Cindy.Morales@mtvstaff.com>, "Michelena Hallie" <michelena.hallie@mtvn.com>
Cc: "Cahan, Adam" <Adam.Cahan@mtvn.com>, "Mark M. Ishikawa" <marki@baytsp.com>, "Evelyn Espinosa" <evelyn@baytsp.com>, "Eric Antze" <erica@baytsp.com>
Subject: RE: MTV2AllThatRocks

i do not know for sure

Michelle Gurney
Manager, MTVN Music & Media Licensing
Business & Legal Affairs
t: [REDACTED]
NEW FAX: [REDACTED]
email: <mailto:michelle.gurney@mtvstaff.com> michelle.gurney@mtvstaff.com

From: Courtney Nieman [mailto:courtney@baytsp.com]
Sent: Fri 2/9/2007 6:59 PM
To: Solow, Warren; Morales, Cindy; Michelena Hallie; Gurney, Michelle
Cc: Cahan, Adam; Mark M. Ishikawa; Evelyn Espinosa; Courtney Nieman; Eric Antze
Subject: MTV2AllThatRocks

Is this one of your "approved" names: MTV2AllThatRocks

Courtney Nieman
Manager Client Services
BayTSP, Inc.
[REDACTED]
AIM: [REDACTED]
Have you checked out BayTSP's Piracy news web log?
<http://www.baytsp.com/weblog>

The information contained in this email message may be confidential and is intended only for the parties to whom it is addressed. If you are not the intended recipient or an agent of same, please notify us of the mistake by telephone (408-341-2300) or email and delete the message from your system. Please do not copy the message or distribute it to anyone.

Schapiro Exhibit 244

From: Lowell Goss <lgoss@ifilm.com>
Date: Mon, 05 Mar 2007 15:25:31 -0800
To: Blair Harrison <bharrison@ifilm.com>
Subject: FW: Rejected UGC

This is the problem with the guidelines. Pro accounts will help.

L

----- Forwarded Message

From: Doug Hammond <dhammond@ifilm.com>
Date: Mon, 5 Mar 2007 15:21:39 -0800
To: "Goss, Lowell" <lgoss@ifilm.com>, Matthew Klauschie <mklauschie@ifilm.com>, David Benjamin <dbenjamin@ifilm.com>
Conversation: Rejected UGC
Subject: Rejected UGC

I noticed a video clip in User Video that was rejected, presumably b/c it's TV content and it's longer than 2 1/2 minutes...the problem is that it was uploaded by someone I know at FOX (username is newmedia01). I've set it live for now (#2829333) but this could be a big problem going forward if we cannot differentiate between uploads that are legit and those that are not.

Doug Hammond
Producer
IFILM | An MTV Networks Company
1024 North Orange Drive | Hollywood, CA 90038
email: dhammond@ifilm.com
<http://www.ifilm.com> <<http://www.ifilm.com>> <<http://www.ifilm.com>>

----- End of Forwarded Message

Schapiro Exhibit 245

Subject: RE: Promotion/syndication
From: "Cahan, Adam" <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=CAHANA>
To: Flannigan, Erik
Cc: Date: Mon, 05 Mar 2007 18:00:32 +0000

Ugh oh...you need to have them tell baytsp what the names are on the accounts - michelena hallie is the right internal contact. Crap - we definitely took down the perexhilton ones

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

From: Flannigan, Erik
Sent: Monday, March 05, 2007 9:59 AM
To: Cahan, Adam
Subject: Re: Promotion/syndication

The show is not on the air yet so everything up there the show placed.

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

From: Cahan, Adam
To: Flannigan, Erik
Sent: Mon Mar 05 12:45:54 2007
Subject: RE: Promotion/syndication

Oops - I think I hit them for a takedown...ouch...but if the user name is registered with bay they won't take em down.

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

From: Flannigan, Erik
Sent: Monday, March 05, 2007 9:45 AM
To: Cahan, Adam
Subject: Re: Promotion/syndication

Check again. If they are spade doing these doll plays the url ends everyclip.

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

From: Cahan, Adam
To: Flannigan, Erik
Sent: Mon Mar 05 12:33:56 2007
Subject: RE: Promotion/syndication

Hmm the clips I saw did not have a url

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

From: Flannigan, Erik
Sent: Monday, March 05, 2007 9:33 AM
To: Cahan, Adam
Subject: Re: Promotion/syndication

Spade's folks have a direct relationship with Perez which partially explains this. But we have to talk to Spade about the use of the youtube player. He is using it in the purest promotional sense (show site url at the end of each clip) but that's not good longterm.

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

From: Cahan, Adam
To: Flannigan, Erik
Sent: Mon Mar 05 12:17:37 2007
Subject: RE: Promotion/syndication

K. let's get into it with Don S. I can show him how to use the google tool. Also Perez Hilton is doing TRL this week I

believe. Anyway that blog gets about 2M and I see CC content there every day from David Spade etc.

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

From: Flannigan, Erik
Sent: Monday, March 05, 2007 9:16 AM
To: Cahan, Adam
Subject: Re: Promotion/syndication

Agree. We are doing a lot of direct outreach to key blogs to move them from youtube player to ours quite successfully. Don Steele in CC marketing is leading this. Regardless a more tactical overarching program makes sense.

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

From: Cahan, Adam
To: Flannigan, Erik; Salmi, Mika
Sent: Mon Mar 05 10:58:03 2007
Subject: Promotion/syndication

Once we are happy with the embedded player we should do an outreach to related blogs and get them to come directly to us.

What we've found is that folks the perezhilton.com and others still embed comedy content almost daily. It's important for us to get the influencers moving.

There is a tool in google's adsense front end that let's you identify sites by keywords etc. We just need to come up with an outreach plan. And assume anything we write to these guys will become public.

In the background if there are high priority blogs that embed a lot of comedy content from youtube we can also take it down from yt in an expedited way. (Erik I can give you access to yt direct takedown).

Think it's a worthwhile effort as we seek to retrain the audience a bit. Same goes for our other sites once we feel they are good on searching and embeds.

Thoughts?

Schapiro Exhibit 246

From: "Miller, Kenny" <Kenny.Miller@the-n.com>
Date: Sun, 1 Apr 2007 22:22:17 -0400
To: "Salmi, Mika" <Mika.Salmi@mtvstaff.com>, "West, Denmark" <Denmark.West@mtvstaff.com>, "Witt, Jason" <Jason.Witt@mtvstaff.com>
Subject: RE: hmmm....i wonder who is doing this.

nope...

just found it.

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

From: Salmi, Mika
Sent: Sun 4/1/2007 10:13 PM
To: Miller, Kenny; West, Denmark; Witt, Jason
Subject: Re: hmmm....i wonder who is doing this.

Hmmm - did you send it to courtney or others?

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

From: Miller, Kenny
To: West, Denmark; Witt, Jason; Salmi, Mika
Sent: Sun Apr 01 22:04:07 2007
Subject: hmmm....i wonder who is doing this.

<http://www.youtube.com/profile?user=AcceptableTV>

Schapiro Exhibit 247

From: "Miller, Kenny" <Kenny.Miller@the-n.com>
Date: Sun, 1 Apr 2007 23:04:56 -0400
To: "Salmi, Mika" <Mika.Salmi@mtvstaff.com>
Subject: RE: acceptable tv on YouTube

lets see what happens...the account name is acceptable tv. and there is a bunch of tune in info.

Yes i agree, there will be some pain here.

Decentralization is not always good.

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

From: Salmi, Mika
Sent: Sun 4/1/2007 10:47 PM
To: Miller, Kenny
Subject: Re: acceptable tv on YouTube

I hope they are not doing it. Philippe won't be happy.

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

From: Miller, Kenny
To: Holt, Courtney; Graver, Fred - VH1
Cc: Salmi, Mika; Witt, Jason; West, Denmark
Sent: Sun Apr 01 22:26:58 2007
Subject: acceptable tv on YouTube

hey guys what is up with this?

<http://www.youtube.com/profile?user=AcceptableTV>

Schapiro Exhibit 248

Subject: Fw: acceptable tv on YouTube
From: "Salmi, Mika" <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=SALMIM>
To: Hurvitz, Lauren; Robinson, Carole
Cc: Date: Mon, 02 Apr 2007 14:17:54 +0000

It is an insider and we asked Fred to them to pull it down asap.

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

From: Graver, Fred - VH1
To: Miller, Kenny; Holt, Courtney
Cc: Salmi, Mika; Witt, Jason; West, Denmark
Sent: Mon Apr 02 05:16:24 2007
Subject: RE: acceptable tv on YouTube

(I'm adding Maggie Malina (the vh1 exec on the show) onto this thread.)

This looks to me (and it's the first I'm seeing) like someone who had access to the pilot has put the shows from the pilot (which didn't air) up on youtube. Probably someone just trying to promote the show. Let us know how you want to handle -- we can send the word out that we want them to take it down. I think it'd probably be misdirected to insist that youtube take it down, since it seems like an "inside job"

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

From: Miller, Kenny
Sent: Sun 4/1/2007 10:26 PM
To: Holt, Courtney; Graver, Fred - VH1
Cc: Salmi, Mika; Witt, Jason; West, Denmark
Subject: acceptable tv on YouTube

hey guys what is up with this?

<http://www.youtube.com/profile?user=AcceptableTV>

Schapiro Exhibit 249

From: Mark M. Ishikawa
Sent: Wednesday, November 08, 2006 9:19 PM
To: Perry, Alfred - Paramount
Cc: Evelyn Espinosa; Scott Martin; John Salter; Arielle Kim
Subject: RE: Bay TSP - Clips
Importance: High

Al, Scott, & John,

I have no idea what this is about other than the fact that Amy Powel does not like me or my company and is attempting to ruin my relationship with the studios. Nancy sent us links with a "White List" of places the clips are authorized to be on. A normal person would draw the conclusion that since she provided an authorized location list that any other place would be considered infringing, otherwise she should have said leave these clips alone.

All we did was send a clarification e-mail confirming the actions that we believe they have asked us to take. We have *NOT* taken any actions, just asking for clarification, and now we see this e-mail from Nancy. I believe her reactions are unwarranted and unjustified.

If we make a mistake I'm the first one to admit it and make it right. In this case I believe that BayTSP is being treated unfairly. We have been a long time partner with Paramount and this series of reactions is causing me great concern.

I would appreciate it if Scott could give me a call on my cell phone [REDACTED] to discuss this situation.

Thx

mark

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

From: Perry, Alfred - Paramount [mailto:Alfred_Perry@Paramount.com]
Sent: Wed 11/8/2006 12:14 PM
To: Mark M. Ishikawa
Cc: Evelyn Espinosa; Scott Martin; John Salter
Subject: Fw: Bay TSP - Clips

Mark, what is this about?

[Sent wirelessly from my BlackBerry device]

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

From: Derwin-Weiss, Nancy
To: Martin, Scott; Perry, Alfred - Paramount
CC: Powell, Amy - Paramount
Sent: Wed Nov 08 12:12:06 2006
Subject: FW: Bay TSP - Clips

What will it take for Bay TSP? to understand that they are not to initiate takedown actions without our express written approval?

Amy asked us to research other companies who perform competitive services that we can meet with.

Do you have a list of vendors...I will be happy to set up the initial meetings.

6/20/2008

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BAYTSP 003742450

Nancy Derwin-Weiss | VP Interactive Marketing Legal | Paramount Pictures | direct [REDACTED]

From: Derwin-Weiss, Nancy
Sent: Wednesday, November 08, 2006 12:03 PM
To: Evelyn Espinosa
Cc: Deana Arizala; Warren Kim; Richard Kawasaki; Mark M. Ishikawa; Powell, Amy - Paramount; Perry, Alfred - Paramount; Martin, Scott; Magid, Karen - Paramount
Subject: RE: Bay TSP - Clips

If you find the Perfume clip on other sites, please send us the links to the sites and we will decide whether or not to pursue a take down action. Please do not initiate takedown actions without express prior written approval from us.

Nancy Derwin-Weiss | VP Interactive Marketing Legal | Paramount Pictures | direct [REDACTED]

From: Evelyn Espinosa [mailto:evelyn@baytsp.com]
Sent: Wednesday, November 08, 2006 11:38 AM
To: Derwin-Weiss, Nancy
Cc: Deana Arizala; Warren Kim; Richard Kawasaki; Mark M. Ishikawa
Subject: RE: Bay TSP - Clips

Hi Nancy,

Thanks for heads up for clips below. Just to make sure:

The perfume clip is exclusive and should only be available to view on aintitcool.com.

If we find it on youtube/google video/or any other site we will send a take down notice.

The bee movie clip is ok to stay up regardless of where it is found.

From: Derwin-Weiss, Nancy [mailto:Nancy_Derwin-Weiss@Paramount.com]
Sent: Wednesday, November 08, 2006 11:13 AM
To: Evelyn Espinosa
Cc: Perry, Alfred - Paramount; Powell, Amy - Paramount; Scott Martin; Magid, Karen - Paramount; Tipton, Kristina; Teifeld, Tamar; Mark M. Ishikawa
Subject: Bay TSP - Clips

Hi Evelyn:

Set forth below are links to two approved clips going out this week. Please exclude these clips from your search for pirated content on YouTube and other sites.

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BAYTSP 003742451

Perfume Exclusive Clip – “Don’t Touch Anything” – Exclusive to AintItCool.com

http://www.perfumemovie.com/public/video_files/perfume_dont_touch_anything_large.mov

Bee Movie Trailer – wide distribution

http://www.beemovie.com/public/video_files/bee_movie_trailer1_large.mov

I will be sending you links to Freedom Writers clips and Flushed Away Featurettes when they become available.

Feel free to contact me with any questions.

Nancy

6/20/2008

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BAYTSP 003742452

Schapiro Exhibit 250

From: Al Perry
Sent: Tuesday, February 06, 2007 11:04 PM
To: Pacacha, Margie - Paramount; Amy Powell; Arkin, Michael - Paramount
Cc: Scott Martin; Mark M. Ishikawa
Subject: RE: Variety stories:Privileged and Confidential

Thanks, Michael (assuming you will be placing clips online for YouTube) please have your viral marketing facilitator get in touch with me so that we can make sure that we get to BayTSP the identifiers it needs. I will set up a time for us all to speak.

From: Pacacha, Margie - Paramount
Sent: Tuesday, February 06, 2007 3:01 PM
To: Perry, Alfred - Paramount; Powell, Amy - Paramount; Arkin, Michael - Paramount
Cc: Martin, Scott - Paramount; 'marki@bayTSP.com'
Subject: RE: Variety stories:Privileged and Confidential

Al:

Can you explain the Bay TSP requirement as our guys may not know what to do.

Thanks

| Marguerite A. Pacacha | Senior Vice President, Business Affairs & Legal | Paramount Pictures Worldwide Home Entertainment|
| 5555 Melrose Avenue | Hollywood, California 90038 |

| (direct (323) 956-8864 | 6 fax (323) 862-2232|

From: Perry, Alfred - Paramount
Sent: Tuesday, February 06, 2007 2:56 PM
To: Powell, Amy - Paramount; Arkin, Michael - Paramount
Cc: Martin, Scott - Paramount; Pacacha, Margie - Paramount; 'marki@bayTSP.com'
Subject: FW: Variety stories:Privileged and Confidential

It's official. Please continue to "place" authorized clips on YouTube, but make sure that prior to doing so BayTSP has received the user name/other identifiers necessary to detect and therefore not send notices for the authorized content. Please reach out to those with whom you work and make sure that they have the same understanding on how to proceed.

Thank you.

From: Martin, Scott - Paramount
Sent: Tuesday, February 06, 2007 2:47 PM
To: Perry, Alfred - Paramount; Morril, Mark; Hallie, Michelena
Cc: Prentice, Rebecca - Paramount; Cahan, Adam; Fricklas, Michael
Subject: RE: Variety stories:Privileged and Confidential

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BAYTSP 003724542

[REDACTED]

| Scott Martin | Executive Vice-President, Intellectual Property |
| Paramount Pictures Corporation |
| 5555 Melrose Avenue | Lubitsch 324 | Hollywood, CA 90038 |
| (phone 323.966-5570 | & fax 323.862-0964 |

From: Perry, Alfred - Paramount
Sent: Tuesday, February 06, 2007 2:38 PM
To: Morril, Mark; Hallie, Michelena; Martin, Scott - Paramount
Cc: Prentice, Rebecca - Paramount; Cahan, Adam; Fricklas, Michael
Subject: RE: Variety stories:Privileged and Confidential

Ok, we have the direction from Scott and Rebecca, which I think was discussed with Amy. Thanks, to all.

From: Morril, Mark
Sent: Tuesday, February 06, 2007 2:36 PM
To: Hallie, Michelena; Perry, Alfred - Paramount; Martin, Scott - Paramount
Cc: Prentice, Rebecca - Paramount; Cahan, Adam; Fricklas, Michael
Subject: RE: Variety stories:Privileged and Confidential

[REDACTED]

From: Hallie, Michelena
Sent: Tuesday, February 06, 2007 4:37 PM
To: Perry, Alfred - Paramount; Morril, Mark; Martin, Scott - Paramount
Cc: Prentice, Rebecca - Paramount
Subject: RE: Variety stories:Privileged and Confidential

[REDACTED] As
of now, we are posting clips and providing ip addresses to Bay so they know not to take them down. [REDACTED]
[REDACTED]

From: Perry, Alfred - Paramount
Sent: Tuesday, February 06, 2007 4:08 PM
To: Morril, Mark; Martin, Scott - Paramount; Hallie, Michelena
Cc: Prentice, Rebecca - Paramount
Subject: FW: Variety stories:Privileged and Confidential

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BAYTSP 003724543

Thanks.

From: Powell, Amy - Paramount
Sent: Tuesday, February 06, 2007 12:56 PM
To: Anderson, Jon - PPI
Cc: Heath Tyldesley/PPI/MP/Paramount_Pictures@Paramount_Pictures; Perry, Alfred - Paramount
Subject: RE: Variety stories

Hi Jon,

Great to see you too. I am cc'ing Al Perry who can give you more information re: the YouTube position.

Thanks.

Amy Powell
Senior Vice President
Interactive Marketing
Paramount Pictures

From: Jon Anderson/PPI/MP/Paramount_Pictures@PARAMOUNT_PICTURES
Sent: Monday, February 05, 2007 6:48 AM
To: Powell, Amy - Paramount
Cc: Heath Tyldesley/PPI/MP/Paramount_Pictures@Paramount_Pictures
Subject: Fw: Variety stories

Hi Amy,

Good to see you last week.

Below is an article (scan down) on Youtube and Viacom's position.

Can you clarify Paramount's position on dealing with Youtube at a local level - are we able to work with them if we are using our own approved material - or is this a blanket ruling that we should not be dealing with Youtube at all.

Kind regards

Jon

----- Forwarded by Jon Anderson/PPI/MP/Paramount_Pictures on 05/02/2007 14:45 -----

From: Jaakko Niemela
05/02/2007 08:49
To:
cc:
Subject: Variety stories

'Pursuit' shows Will power overseas

'Happyness' tops 'Museum,' 'Diamond'

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BAYTSP 003724544

By DAVE MCNARY

Showing the worldwide drawing power of Will Smith, "The Pursuit of Happyness" topped a healthy weekend at the international box office with \$16 million at 3,100 playdates in two dozen markets.

"The Pursuit of Happyness" beat "Night at the Museum" and "Blood Diamond" by more than \$2 million in a three-way battle for the top slot. The race would have been far closer had many Brit chains not banished "Museum" due to Fox's decision to shorten the DVD release window, but "Pursuit" would have likely still won.

The frame also saw "Casino Royale" continue to mint money overseas, thanks mostly to a boffo Chinese launch, while "Dreamgirls" posted a decent Brit launch but stumbled in its German debut.

"Pursuit" prevailed thanks to a combo of solid openings plus respectable holdover perfs as Sony took advantage of Smith's ongoing star power plus his Oscar nom. Best figures came from pic's second-place Spanish launch with \$2.4 million at 286; its Japanese soph sesh of \$2.3 million at 271, down 21%; its French launch of \$2.2 million at 322, losing narrowly to the "Blood Diamond" debut; and its German second weekend with \$1.7 million at 521, off 19%. "Pursuit" also opened respectably in Mexico with \$1.3 million at 300.

Despite the Brit ban, "Night at the Museum" showed plenty of pop elsewhere with \$13.5 million at 4,500 in 50 markets, led by a socko first-place Italian launch of \$4.7 million at 536 and a solid Spanish soph sesh of \$3.6 million at 481, down 34%.

But Brit biz nearly vanished for "Museum," plunging 87% to \$274,000 at 190 in its sixth weekend as the number of locations -- including many top destinations -- dropped from 458 in the previous frame. "Museum" still managed to hit the \$40 million mark in U.K. grosses, the leading overseas market for a pic that's cumed \$212 million internationally and \$438 million worldwide.

It was the first time in six seshes that "Night at the Museum" didn't top the foreign charts.

Overall biz exceeded the same frame a year ago, when "Munich" led with \$13.3 million.

Warner's "**Blood Diamond**" continued to turn up solid rather than spectacular overseas returns with \$13.2 million from 3,200 prints in 51 markets, led by its first-place French opening of \$2.5 million at 459.

"Blood Diamond," which opens next weekend in Mexico and Spain, has cumed \$45.5 million offshore and should go well past the \$54 million domestic total.

Sony's sturdy "**Casino Royale**" generated plenty of B.O. heat in its first six days in China with \$6.9 million at 468, including \$4 million for the weekend as the first James Bond pic ever to play in that market. Weekend launch was the third best for a non-Chinese pic, trailing only those of "The Da Vinci Code" and "Harry Potter and the Goblet of Fire."

"Casino" has cumed \$416.8 million overseas and \$582 million worldwide -- No. 34 of all time.

BVI kicked in an impressive launch in Germanic markets for local family comedy "**Wild Bunch 4**" with \$5.5 million at 700, including \$4.7 million at 600 in Germany, where it easily topped the "Saw III" opening with \$3 million at 439.

"**Rocky Balboa**" continued to punch in decent numbers with \$5.4 million at 2,300 in 21 territories, led by its third Brit frame with \$1.7 million and its French soph sesh of \$1.5 million. The sixth "Rocky" pic has grossed \$47 million overseas and \$116 million worldwide.

With its eight Oscar noms, Paramount's "**Dreamgirls**" doubled its foreign gross with \$4.7 million at 1,188 in 11 markets, led by a Brit launch of \$2.5 million at 271.

"**Babel**," with seven Oscar noms, remained an international contributor with \$3.6 million at 1,126 to lift foreign come to nearly \$59 million.

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Fox's Brit launch of **"Notes on a Scandal,"** with Oscar noms for Cate Blanchett and Judi Dench, nearly matched "Dreamgirls" with \$2.3 million at 300 in its first foreign outing. And its **"The Last King of Scotland"** pulled in \$1.4 million at 378 in 15 markets to push foreign gross to \$8.3 million.

Warner's **"The Departed"** continued to shake down more foreign coin with \$1.8 million at 1,200 in 31 markets for a foreign cumc of \$142.4 million and a worldwide total of \$271 million.

Fox saw **"Apocalypto"** grab \$3.1 million at 600, led by a South Korean launch of \$1 million at 157, while Warner's **"Happy Feet"** kicked up \$2.8 million at 2,700 for a foreign total of \$165.2 million. BVI's **"Deja Vu"** materialized with \$2.5 million at 1,857 to cross the \$100 million foreign mark -- the 11th Jerry Bruckheimer film to hit the milestone for BVI.

Scorsese wins at DGA Awards

'Departed' director takes Feature Film prize

Martin Scorsese has scored the top feature award from the Directors Guild of America for his work on Warner Bros.' gangster thriller "The Departed."

It was the first victory in seven DGA nominations for Scorsese, who topped Alejandro Gonzalez Inarritu for "Babel," Bill Condon for "Dreamgirls," Jonathan Dayton and Valerie Faris for "Little Miss Sunshine" and Stephen Frears for "The Queen."

"I just wanted to make a good film and people would go see it and enjoy the film and God willing I'd get another picture and that's it," Scorsese told the audience of about 1,000 at the Century Plaza Hotel. "I did not think I'd be standing here tonight, I'll tel you that."

The award, presented by Steven Spielberg on Saturday night in ceremonies at the Century Plaza Hotel, places Scorsese as a front-runner for the Best Director Oscar. The DGA winner, based on voting by 13,400 Guild members, has matched the Oscar winner in 52 of its 58 awards, including last year when Ang Lee won both for "Brokeback Mountain."

In his acceptance speech, Scorsese paid tribute to genre film directors such as Don Seigel, Samuel Fuller, Anthony Mann and Robert Aldrich. And he noted that the grosses were especially strong in such organized crime centers as Las Vegas and Boca Raton, Fla.

Scorsese now faces Frears and Inarritu for the Oscar along with Clint Eastwood for "Letters From Iwo Jima" and Paul Greengrass for "United 93." It's his sixth Oscar directing nomination along with "Raging Bull," "The Last Temptation of Christ," "Good Fellas" "Gangs of New York" and "The Aviator."

"The Departed" has taken in the highest gross among the nominated films with \$127 million domestically and nearly \$270 million worldwide. Scorsese won the Golden Globe for Best director three weeks ago; since then, "Little Miss Sunshine" won both the top feature film awards from the PGA and SAG.

Scorsese's previous DGA nominations were for "The Aviator," "Gangs of New York," "The Age of Innocence," "Goodfellas," "Raging Bull" and "Taxi Driver." He won the DGA's Lifetime Achievement Award in 2003.

Richard Shepard won the DGA trophy for comedy series for ABC's pilot of "Ugly Betty" and Jon Cassar won the drama series award for Fox's "24." Rob Marshall took the musical variety award for NBC's "Tony Bennett: An American Classic" and Walter Hill won for TV movies for AMC's "Broken Trail."

Marshall won the DGA feature award four years ago for "Chicago" while Hill won the drama award two years ago for the "Deadwood pilot."

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Lithuanian filmmaker Arunas Matelis won for feature documentary award for "Before Flying Back to the Earth," centered on children hospitalized with leukemia, topping Oscar nominees, "Deliver Us From Evil" and "Iraq in Fragments."

YouTube to remove Viacom clips

Conglom wants over 100K videos taken down

By BEN FRITZ

The simmering tension between Hollywood and the new Google/YouTube combination exploded on Friday as Viacom demanded that the viral video giant take down every single clip of its copyrighted content after talks about a revenue sharing and distribution deal between the two companies broke down.

YouTube said it will comply with the request, though it will likely be a long process as Viacom identified more than 100,000 clips from MTV, Comedy Central, BET, Paramount, and its other properties.

After more than a year of tolerating huge amounts of its content being illegally uploaded onto the site, Viacom is now issuing the massive legal takedown notice in an attempt to pressure Google and YouTube to bend its way in negotiations. Thus far, companies have been unable to reach terms on a formula to give Viacom a portion of the advertising money generated by its clips.

Conglom also expressed frustration that YouTube has not yet fully implemented a long-promised content identification system that would allow it to identify and automatically delete copyrighted clips, or let media partners share in the revenue from ads around the content they own, regardless of who posted it.

Viacom apparently concluded that private talks wouldn't go its way and took the dispute public, issuing a hostile public statement saying that Google and YouTube are "unwilling to come to a fair market agreement that would make Viacom content available to YouTube users."

While no other congloms are currently joining Viacom, all are in some stage of active negotiations with YouTube and many are also believed to be frustrated by their inability to reach a deal.

All are hoping to get a big payout from YouTube's new owner, Google, which bought the website for \$1.65 billion last fall. Search giant ended 2006 with nearly \$4 billion cash and has a market cap of close to \$150 billion.

In the meantime, however, all are passively allowing YouTube to keep up many clips of their content. By not issuing takedown notices, as Viacom did, they're demonstrating they think the video site has some promotional value, or that they don't want to alienate its users.

Viacom previously had the same strategy. Even in October, when it asked the Netco to take down only about 10,000 of the longest clips of its shows, it allowed tens of thousands of shorter ones to stay online.

News Corp., which has its own Web properties like MySpace and isn't as dependent on YouTube to distribute its content online, also hasn't been getting along well with the video site recently. Last week it demanded that YouTube not only take down episodes of "24" and "The Simpsons," but identify the users who uploaded them.

If other traditional media companies aren't able to find common ground to forge an agreement with Google and YouTube, then there will likely be more public disputes and takedown requests.

In a worse case scenario, there could potentially be copyright infringement lawsuits, like those Universal Music already filed against video websites Grouper and Bolt.com.

"With the News Corp. issue and now this, you're seeing the first sparks of something that could ignite in the future,"

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IDC research manager Rachel Happe said.

Several big media congloms have also been talking about launching a YouTube competitor with all of their content pooled together. But insiders say that while the talks aren't dead, it's unlikely there will be an agreement anytime soon.

CBS is the only network to have pacted with YouTube, along with record labels Universal, Warner, and Sony BMG.

However, all four agreements, reached in the fall, included YouTube rolling out the content identification system as a key provision.

Though it was promised by the end of last year, YouTube is still working on deploying it.

"Content identification architecture is not one single component, but rather a collection of tools for our partners, some of which are already in use," YouTube co-founder Chad Hurley told *Daily Variety* in a statement. "We will continue to evolve these tools and roll out additional components over time."

Big media execs have been increasingly friendly toward websites that are earning money off their content, recognizing that ignoring or attacking them could alienate young consumers.

In fact, Viacom itself even pacted with Google Video last summer for a test of an ad-supported video syndication service.

But it was clear that the seas between Hollywood and Silicon Valley may be getting choppy again in the two companies' public statements issued on Friday.

"Filtering tools promised repeatedly by YouTube and Google have not been put in place, and they continue to host and stream vast amounts of unauthorized video," Sumner Redstone-led conglomerate said. "YouTube and Google retain all of the revenue generated from this practice, without extending fair compensation to the people who have expended all of the effort and cost to create it."

By the afternoon, YouTube shot back that "It's unfortunate that Viacom will no longer be able to benefit from YouTube's passionate audience which has helped to promote many of Viacom's shows."

Conglomerate noted that it has a broad array of Web properties that feature its content. However, none match the availability and ease-of-use of YouTube.

MTV-owned iFilm, for instance, legally posts full episodes of shows like "The Colbert Report" and "Laguna Beach," but doesn't have nearly as many clips. In addition, YouTube users often cut up episodes to show only the exact moments that are most popular.

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BAYTSP 003724548

Schapiro Exhibit 251

From: Mark M. Ishikawa
Sent: Friday, November 03, 2006 9:56 PM
To: Courtney Nieman
Cc: Evelyn Espinosa
Subject: RE: Thoughts on the last 12 hours and 5 months

I would like a meeting between you Richard and Evelyn where I will make the appropriate calls,. Today

From: Courtney Nieman
Sent: Friday, November 03, 2006 9:42 AM
To: Mark M. Ishikawa
Subject: Thoughts on the last 12 hours and 5 months

Mark,

This is an email that would be a topic of conversation I might have with you in the shop over a cigar. Just food for thought between two friends, not necessarily between boss and employee. These are just a few questions that I have thought about in the last 12 hours...

1. What is a mash up?
2. What defines a clip?
3. Is setting any time limit arbitrary?
4. Is anything with "commentary" seen as fair use?
5. Should anyone other than a lawyer be taking down streaming video property?
6. Have we stumbled into a quagmire?

Courtney Nieman
Manager Client Services
BayTSP, Inc.
408-341-2314
AIM: BayTSPCanne
Have you checked out BayTSP's Piracy news web log? <http://www.baytsp.com/weblog>

The information contained in this email message may be confidential and is intended only for the parties to whom it is addressed. If you are not the intended recipient or an agent of same, please notify us of the mistake by telephone (408-341-2300) or email and delete the message from your system. Please do not copy the message or distribute it to anyone.

Schapiro Exhibit 252

From: Mark M. Ishikawa
Sent: Wednesday, May 16, 2007 9:26 PM
To: Scott Martin
Cc: Alfred Perry; John Salter; Evelyn Espinosa
Subject: Instructions from Paramount - Fairly Urgent
Importance: High

Scott,

We seem to be having the same issues cropping up again with Amy and her group again. We continue to get differing instructions from her and people at the UK regarding who should have authorization to issue takedowns. Our latest dilemma is that Amy wants to control every takedown with regards to marketing material. The guys in the UK say that since it was a leak from the International group they have control and want us to have everything taken down immediately.

There is also this mis-conception that we (BayTSP) can instruct the ISP not to take down the entire site when we send out the DMCA takedown notices. As you know, all we can do is inform the ISP that the web site is hosting infringing material and that we would like to have access to the infringing material removed.

I will be in London from June 4 – June 9 and will be having meetings with Heath Tyldesley and Philip Solomon and crew to discuss whether watermarking the content is a viable solution. We're also going to have a conversation with Alan Bell to make sure that he knows that we're going to be discussing watermarking with the UK guys.

Can you please help us solve the who's really in control issue? It's impossible for us to serve multiple masters especially when they give us differing instructions. Al wants me to get the instructions directly from the man (You) ☺

Thanks

Mark

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BAYTSP 004183405

Schapiro Exhibit 253

From: Oliver Weingarten
Sent: Tuesday, August 07, 2007 5:09 PM
To: Tammy Knox
Subject: FW: meeting
YT

From: Phil Lines
Sent: 07 August 2007 17:09
To: Oliver Weingarten
Subject: FW: meeting

fyi

From: Phil Lines
Sent: 03 August 2007 11:17
To: 'Patrick Walker'
Subject: RE: meeting

Patrick

Thank you for your note. Your lawyers in the lawsuit have listed you as a witness to speak about our negotiations. They have also listed Trevor Callaghan. That surprised us greatly, especially the use of the word negotiations. If you wish to meet with us and explain where you are or where you are going, that of course is fine. But what your lawyers have done compels us to insist that the meeting be attended by Oliver (which I know you have no issue with) and the meeting not be used by your side, directly or indirectly, as part of the litigation. If that is acceptable, please let us know and we can schedule a meeting.

Rgds

Phil

From: Patrick Walker [mailto:pjwalker@google.com]
Sent: 02 August 2007 10:37
To: Phil Lines
Subject: Re: meeting

Hi Phil.

Just back from 10 days in Japan. I spoke to my legal team last night and they assured me there was nothing specific mentioned regarding our talks. Do you know specifically what your legal team was referring to? We are working on a video fingerprinting trial starting soon with companies such as Warner Bros and Disney, and general statements were made.

I think it would still be a very good idea to discuss these technologies with you, and in a way that would

not interfere with the actions you are taking. You are free to bring your legal team of course.

Any thoughts on this? I hope we'll find a way to have this discussion as it's most important you are aware of the current state of our work on fingerprinting and content management technologies regardless of legal proceedings.

Best regards,
Patrick

On 7/31/07, **Phil Lines** <PLines@premierleague.com> wrote:

Patrick

Our legal team has advised that, since Google/YouTube appear to be trying to introduce into the legal proceedings the discussions that you have been having with us, you leave us no choice but to have any meeting under the auspices of the case, which cannot be arranged without the presence of the lawyers for the parties. I therefore suggest we cancel the meeting scheduled for Friday.

Regards

Phil

Phil Lines

Head of International Broadcasting & Media Operations

T +44 (0) 20 7864 9000

D +44 (0) 20 7864 9113

F +44 (0) 20 7864 9213

M [REDACTED]


www.premierleague.com

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Registered Office: 30 Gloucester Place, London W1U 8PL. No. 2719699 England

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Patrick Walker
Head of Video Partnerships
Europe, Middle East & Africa

Google/YouTube
Belgrave House
76 Buckingham Palace Road
London SW1W 9QT


pjwalker@google.com
pjwalker@youtube.com

This email and the information it contains are confidential and may be privileged. If you have received this email in error please notify me immediately and do not copy it for any purpose, or disclose its contents to any other person. Internet communications are not secure and, therefore, Google does not accept legal responsibility for the contents of this message as it has been transmitted over a public network. If you suspect the message may have been intercepted or amended please call me.

Schapiro Exhibit 254

From: Courtney Nieman
Sent: Wednesday, November 29, 2006 6:05 PM
To: Mark M. Ishikawa
Cc: Evelyn Espinosa
Subject: FW: South Park Studios

Mark,

This is the email that prompted us to take down the clips yesterday. If you read it from bottom top you will see the entire email thread starting with our email about the South Park Studios account.

Courtney Nieman

From: Michelena.hallie@mtvn.com
Sent: Tuesday, November 28, 2006 4:07 PM
To: Courtney Nieman
Cc: Morales, Cindy; Weinstein, Caleb
Subject: Fw: South Park Studios

Please send takedowns on the clips you've noted below.

-----Original Message-----
From: Weinstein, Caleb
To: Weinstein, Caleb; Morales, Cindy
CC: Hallie, Michelena
Sent: Tue Nov 28 18:13:18 2006
Subject: RE: South Park Studios

Cindy -

Spoke to Doug, let's pull them ASAP. MTVN is the exclusive copyright holder, not them.

Thanks,
Caleb

caleb.weinstein@mtvn.com
Office: +1 212 767 4086

-----Original Message-----
From: Weinstein, Caleb
Sent: Tuesday, November 28, 2006 5:51 PM
To: Morales, Cindy
Cc: Hallie, Michelena
Subject: RE: South Park Studios

Hi -

Yes SPS.com is associated with the show so let's hold off on sending notices right now.

Obviously this is an issue and has not been run by anyone at the channel so we will reach out to the show and address.

Can they take down the clips when we are ready or do we then need to send a C&D?

Thanks,
Caleb

6/11/2008

caleb.weinstein@mtvn.com
Office: +1 212 767 4086

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

From: Morales, Cindy
Sent: Tuesday, November 28, 2006 4:33 PM
To: Weinstein, Caleb
Cc: Hallie, Michelena
Subject: FW: South Park Studios
Importance: High

Caleb - Can you see the email below and tell me whether you or anyone else within your group has ever authorized or heard of these people posting South Park episodes??

Thanks.

Cindy

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

From: Hallie, Michelena
Sent: Tuesday, November 28, 2006 4:30 PM
To: Molko, Joseph - MTVN; Morales, Cindy
Subject: Fw: South Park Studios

Have you heard of this group?

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

From: Courtney Nieman <courtneyni@baytsp.com>
To: Hallie, Michelena
CC: Mark M. Ishikawa <marki@baytsp.com>; Evelyn Espinosa <evelyn@baytsp.com>; Deana Arizala <deanaa@baytsp.com>; Sarah Cruz <sarahc@baytsp.com>
Sent: Tue Nov 28 16:26:41 2006
Subject: South Park Studios

Michelena,

We have some full episodes being posted on YouTube by a director "South Park Studios". They claim to be part of the Comedy Central brand and authorized to post videos. This doesn't feel legitimate, but I want to double check this before taking any action. These are the links from YouTube:

http://www.youtube.com/watch?v=-cFjW6MF_3A <http://www.youtube.com/watch?v=-cFjW6MF_3A>
<http://www.youtube.com/watch?v=PglUrbPQHkA> <<http://www.youtube.com/watch?v=PglUrbPQHkA>>
<http://www.youtube.com/watch?v=o9S6yAaSYSc> <<http://www.youtube.com/watch?v=o9S6yAaSYSc>>
<http://www.youtube.com/watch?v=JBxsJdWdm0Q> <<http://www.youtube.com/watch?v=JBxsJdWdm0Q>>
<http://www.youtube.com/watch?v=Ao1gRY5Thas> <<http://www.youtube.com/watch?v=Ao1gRY5Thas>>

This is their website:

<http://www.southparkstudios.com/> <<http://www.southparkstudios.com/>>

Courtney Nieman
Manager Client Services
BayTSP, Inc.
408-341-2314
AIM: BayTSPCanne
Have you checked out BayTSP's Piracy news web log? <http://www.baytsp.com/weblog> <<http://www.baytsp.com/weblog>>

The information contained in this email message may be confidential and is intended only for the parties to whom it is addressed. If you are not the intended recipient or an agent of same, please notify us of the mistake by telephone (408-341-2300) or email and delete the message from your system. Please do not copy the message or distribute it to anyone.

6/11/2008

HIGHLY CONFIDENTIAL

BAYTSP 004381248

Schapiro Exhibit 255

From: Christy Wise.

Sent: 2/10/2009 2:22 AM.

To: [-] Allie Wester.

Cc: [-]

Bcc: [-]

Subject: YouTube Vids.

Melissa had a thought – one that I think is worth a try. When we upload videos for clients – maybe in the description section we include “with permission from MTV/VIZ media/etc.”, or something similar. Though we know it likely won't make a huge difference, it may stop someone from yanking it right away before checking in with their boss or marketing co. to verify. I see that we currently put official next to ABDC videos – so it's really more or less the same idea.

Let me know what you think.

-Christy

Christy Wise

VP, Marketing, Fanscape, Inc.

360 N. La Cienega Blvd. 3rd Fl.

Los Angeles, CA 90048

p. 323.785.7789 | f. 323.785.7101 | aim. og glitter

ChristyW@fanscape.com | www.Fanscape.com

This email and any attached files contain confidential information and are intended only for the individual or entity named. If you are not the named addressee, you are notified to not disseminate, disclose, print, distribute or copy this e-mail and any such action in reliance upon the information contained herein is strictly prohibited. Please notify the sender immediately by e-mail if you have received this e-mail in error and delete this e-mail from your system.

Schapiro Exhibit 256

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From: Richard Stumpf
Sent: Wednesday, June 27, 2007 2:24 PM
To: Dan Rosenbaum
Subject: Fw: YouTube Malibu Rum Contest using Day O!

Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Richard Stumpf
To: Keith Hauprich; Philip Cialdella
CC: Mike Connelly
Sent: Wed Jun 27 09:24:02 2007
Subject: Re: YouTube Malibu Rum Contest using Day O!

Not sure, but would want to engage the ad agency of the brand in an extended dialog RE more use. We have leverage and could evolve this into a fat synch. Dan, please check into who this is. Keith / Phil, any prob with the first reach out being innocuous and from Dan? We can always drop the hammer later.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Keith Hauprich
To: Philip Cialdella; Richard Stumpf
CC: Mike Connelly
Sent: Wed Jun 27 08:56:58 2007
Subject: YouTube Malibu Rum Contest using Day O!

Did we authorize this?

Schapiro Exhibit 257

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 TODD APMANN
NEW YORK, NEW YORK
THURSDAY, July 23, 2009

JOB NO. 17255

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

FOR THE PLAINTIFFS VIACOM
INTERNATIONAL, INC.:

JENNER & BLOCK, LLP
BY: SCOTT B. WILKENS, ESQ.
Swilkens@jenner.com
1099 New York Avenue, NW,
Suite 900
Washington, D.C. 20001
(202) 639-6000

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

WILSON, SONSINI, GOODRICH & ROSATI, LLP
ROSATI, ESQ.
BY: BART E. VOLKMER, ESQ.
Bvolkmer@wsgr.com
650 Page Mill Road
Palo Atlo, California 94304

ALSO PRESENT:

Carlos King, Videographer

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TODD APMANN

A. No, I did not.

Q. Do you know who at MTV, when
you were employed there, was
10:28:23 responsible for directly uploading
clips to YouTube to promote MTV
programming?

MR. WILKENS: Objection.

Lacks foundation.

10:28:30 A. I do not recall. Even if
there -- I don't -- I don't know.

Q. Did you ever have any
conversations with anyone at YouTube
about possibly uploading promotional
10:28:49 material to YouTube?

A. Honestly, I do not recall.

Q. Did you ever have any
conversations or E-mail correspondence
with Kevin Donahue at YouTube about
10:29:17 potentially uploading MTV material to
YouTube to promote MTV content?

A. I do not recall.

Q. Did you ever create a
YouTube account with the user name,
10:29:48 MTV?

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TODD APMANN

A. I do not recall.

Q. Did you ever create a
YouTube account with the user name,
10:30:02 MTV2?

A. Do not recall.

Q. Did MTV or its agents ever
upload full episodes of MTV shows to
YouTube?

10:30:23 A. I cannot speak for MTV in
general. Again, I can only speak to
the projects that I worked on, and I do
not recall for the projects that I
worked on.

10:30:39 Q. You don't recall if any MTV
employee ever uploaded full episodes of
programs to YouTube to promote the MTV
programming?

MR. WILKENS: Objection.

10:30:57 Asked and answered.

A. Again, I can't speak to all
of MTV. I can only speak to the
projects that I worked on. I do not
recall for the projects that I worked
10:31:08 on.

1 TODD APMANN

2 Q. Did MTV agents or employees
3 ever upload full episodes of its
4 programming to other EGC websites apart
5 10:31:49 from YouTube?

6 A. Again, I cannot speak for
7 MTV. I can only speak for the projects
8 that I worked on, and I do not recall
9 for the projects that I worked on.

10 10:32:01 Q. Why do you keep saying "I
11 can only speak to the projects I worked
12 on"?

13 MR. WILKENS: Objection.

14 A. Because I cannot speak for
15 10:32:15 the others at MTV who -- and their
16 projects and responsibilities because I
17 do not have knowledge.

18 Q. Do you understand, sir, if
19 you have percipient knowledge of a fact
20 10:32:26 that occurred outside of the projects
21 that you worked on and you have a
22 memory of that fact, you need to
23 disclose those facts because you are
24 testifying under oath?

25 10:32:34 MR. WILKENS: Objection.

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TODD APMANN

And I move to strike the
argumentative portion of that.

A. Yes.

10:32:38 Q. You understand that that's
your obligation when you are testifying
under oath, to give full and complete
testimony about percipient facts that
you are aware of?

10:32:46 A. Yes.

MR. VOLKMER: I would like
to mark Exhibit 2.

(Whereupon, the
aforementioned E-mail dated
February 15, 2006 was marked as
Apmann Exhibit 2 for
identification as of this date by
the Reporter.)

MR. VOLKMER: Exhibit 2 is
10:33:58 an E-mail exchange -- E-mail
message, I should say, produced in
litigation by Google. It is Todd
Apmann to Kevin Donahue. The date
is February 15, 2006.

10:34:14 Q. What is this document, Mr.

1 TODD APMANN

2 Apmann?

3 A. This document appears to be
4 an E-mail.

5 10:34:29 Q. Do you recognize it?

6 A. I recognize my name. I do
7 not recall this E-mail.

8 Q. Did you send it?

9 MR. WILKENS: Objection.

10 10:34:45 A. Again, I do not recall.

11 Q. Todd.Apmann@mtvstaff.com was
12 your E-mail address when you were
13 working at MTV in February of 2006,
14 correct?

15 10:35:02 A. Yes, it was.

16 Q. This is a message that
17 appears to have been written by you to
18 Kevin Donahue, correct?

19 A. It does appear as that, yes.

20 10:35:17 Q. Do you have any reason to
21 doubt that this is, in fact, an E-mail
22 you sent to Mr. Donahue at YouTube?

23 A. Again, doubt or not, I don't
24 recall the details of around this time

25 10:35:43 from what it says on this E-mail.

1 TODD APMANN

2 Q. Do you have any reason to
3 doubt this is an E-mail you sent to Mr.
4 Donahue in February of 2006?

5 10:35:49 A. Again, you know, I don't
6 recall from that time period.

7 Q. That is not responsive to
8 the question that I asked. The
9 question that I asked is: Do you have
10 10:36:05 any reason to doubt that this is an
11 E-mail you sent to Mr. Donahue in
12 February of 2006?

13 MR. WILKENS: Objection.

14 Asked and answered and I move to
15 10:36:12 strike the argumentative portion
16 of that.

17 A. Again, I don't recall from
18 that time period. Therefore, I can't
19 really give an answer as to a doubt or
20 10:36:25 not.

21 Q. This E-mail message starts
22 off, "Great talking to you,"
23 exclamation mark.

24 Does that appear to be a
25 10:36:46 greeting that you normally use in an

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TODD APMANN

E-mail communication in the scope of
your job?

10:36:57 A. Again, I can't speak to that
time period. And, you know, I respond
on E-mails and conversant in different
ways. So I can't give whether it is
typical or not.

10:37:25 Q. Mr. Apmann, testifying under
oath, under penalty of perjury, do you
believe you wrote the E-mail that I
marked as Exhibit 1?

10:37:38 A. Again, you know, I cannot
recall from that time period. So I
cannot testify as to if I think I wrote
this E-mail or not.

MR. VOLKMER: Let's take a
break.

10:37:51 THE VIDEOGRAPHER: The time
is 10:38 a.m. We are off the
record.

(Whereupon, an
off-the-record discussion was
held.)

10:51:55 THE VIDEOGRAPHER: The time

1 TODD APMANN

2 you said that?

3 A. Again, I do not recall the
4 subject matter of this E-mail or even
5 10:52:59 if I sent such an E-mail. That's my
6 E-mail address. You know, I don't
7 recall.

8 Q. You write, "I'm very excited
9 about all the different possibilities
10 10:53:24 of working with YouTube for MTV2 and
11 MTV."

12 What were all the different
13 possibilities that you were referencing
14 there?

15 10:53:30 A. Again, I do not recall
16 sending this E-mail. I do not recall a
17 lot from this time period. Again, I
18 don't, you know, recall sending this
19 E-mail.

20 10:53:47 Q. Do you recall having E-mail
21 correspondence with Mr. Donahue?

22 A. I do not recall.

23 Q. Given Exhibit 2, which is an
24 E-mail message produced in this
25 10:54:09 litigation from Google's files, it is

TODD APMANN

1
2 an E-mail message with your E-mail
3 address in the "from" line. Do you
4 think that you had E-mail
5 10:54:21 correspondence with Mr. Donahue?

6 A. Again, this is my E-mail
7 address, and I do not recall E-mail
8 exchanges with Kevin Donahue.

9 Q. You don't remember talking
10 10:54:38 with Mr. Donahue?

11 A. I do not recall.

12 Q. You don't remember having
13 any conversations with Mr. Donahue?

14 A. I do not recall.

15 10:54:46 Q. You write, "Wanted to give
16 you a heads up that MSN may come in as
17 a national sponsor of the Andy
18 Milonakis contest."

19 What were you referring to
20 10:54:58 when you talked about MSN potentially
21 coming in as a sponsor of the Andy
22 Milonakis contest?

23 A. Again, I do not recall
24 sending this E-mail. That is my E-mail
25 10:55:10 address, but I do not recall sending

1 TODD APMANN

2 this E-mail.

3 Q. Do you recall MSN
4 potentially coming in as a sponsor of
5 10:55:23 the Andy Milonakis contest?

6 A. I do not recall.

7 Q. Do you recall working on a
8 marketing campaign for the Andy
9 Milonakis show?

10 10:55:37 A. I remember the Andy
11 Milonakis show and I remember -- I
12 remember discussions about Andy
13 Milonakis. I do not recall the
14 specifics.

15 10:55:56 Q. As part of your job
16 responsibilities at MTV, were you
17 involved in promoting the Andy
18 Milonakis show?

19 A. I don't recall which channel
20 10:56:14 Andy Milonakis was on, but I do
21 remember a conversation about promoting
22 Andy Milonakis. Again, I worked on
23 various show priorities, and I remember
24 conversations about Andy Milonakis or
25 10:56:34 having conversations about Andy

1 TODD APMANN

2 Milonakis. But I don't remember what
3 the subject matter was specifically.

4 Q. Who was -- who was
5 10:56:41 responsible for viral marketing with
6 respect to the Andy Milonakis show?

7 A. I do not recall.

8 Q. Who else did you work with
9 at MTV or MTV2 to market the Andy
10 10:57:00 Milonakis show?

11 A. Again, I remember having
12 discussions about the Andy Milonakis
13 show. I don't recall specifics.

14 Q. Who were the people that you
15 10:57:11 worked with in your day-to-day job
16 responsibilities in February of 2006?

17 A. In my departments, again,
18 this time period is -- you know, I
19 don't recall a lot of details. Joe
20 10:57:36 Armenia was my boss. Tina Exarhos was
21 his boss.

22 Q. Who else did you work with
23 around this time frame, February of
24 2006?

25 10:58:02 A. Let's see. In my

1 TODD APMANN

2 about Human Giant.

3 Q. Are you familiar with the
4 YouTube account, Gwhite799?

5 12:07:28 A. I am not familiar with that
6 account. I do not recall that account.

7 Q. Do you know whose account
8 that is?

9 A. I do not recognize that
10 12:07:46 account.

11 MR. WILKENS: Sorry, that
12 was GY --

13 MR. VOLKMER: Gwhite799.

14 MR. WILKENS: Can you spell
15 12:08:01 that?

16 MR. VOLKMER: G-W-H-I-T-E
17 799.

18 Q. Mr. Apmann, did you work
19 with anyone at MTV that you would
20 12:08:11 associate with that handle, Gwhite799?

21 A. I don't recall that handle.
22 I don't -- I don't recall, you know,
23 working with anyone on that handle. I
24 don't recognize it.

25 12:08:29 Q. Is there anyone in the world

1 TODD APMANN

2 you would associate with that handle,
3 Gwhite799?

4 A. No, there is not.

5 12:08:39 Q. If there were Human Giant
6 videos on YouTube that were uploaded by
7 that user, Gwhite799, would you think
8 they were authorized?

9 MR. WILKENS: Objection as
10 12:08:51 to form.

11 A. I don't recall or recognize
12 that handle, and I don't recall
13 specifics about Human Giant.

14 Q. Right. But if you saw Human
15 12:09:01 Giant clips on YouTube today that were
16 uploaded by that user, Gwhite799, would
17 you think they were authorized by MTV
18 to be on YouTube?

19 A. I wouldn't know either way.
20 12:09:15 I wouldn't have any --

21 Q. What about the YouTube
22 account, Clelltickle,
23 C-L-E-L-L-T-I-C-K-L-E, are you familiar
24 with that account?

25 12:09:25 A. No, I am not familiar with

1 TODD APMANN

2 that account.

3 Q. Did you work with anyone at
4 MTV who you would associate with that
5 12:09:31 handle?

6 A. Not -- nobody. I don't
7 recall that handle and I don't recall
8 who -- you know, associating anyone
9 with that.

10 12:09:42 Q. There is no one in the world
11 who you would associate with that
12 handle, Clelltickle?

13 A. Not that I can think of
14 offhand.

15 12:09:51 Q. If there were Human Giant
16 videos on YouTube that were uploaded by
17 that user, Clelltickle, would you say
18 those videos were authorized to be on
19 YouTube by MTV?

20 12:10:08 MR. WILKENS: Objection to
21 form.

22 A. I wouldn't have an opinion
23 either way.

24 Q. What about the account name,
25 12:10:27 Humangiant, all one word, do you have

1 TODD APMANN

2 any familiarity with that YouTube
3 account name?

4 A. I don't have -- I don't
5 12:10:39 recall familiarity with it, but it does
6 have the name, Humangiant, in it.

7 Q. Do you know whose account --
8 YouTube account that was Humangiant,
9 all one word?

10 12:10:49 A. I do not recall. I do not
11 know.

12 Q. Did you work with anyone at
13 MTV or any third-party marketing agency
14 who you would associate with that
15 12:10:57 handle, Humangiant?

16 A. Humangiant, the handle, I
17 mean, it sounds like, you know, the
18 show. So I would associate it with the
19 show, but, you know, that's a name.

20 12:11:11 Q. If there were Human Giant
21 videos on YouTube that were uploaded by
22 the user, Humangiant, all one word, do
23 you think that they were authorized by
24 MTV to be on YouTube?

25 12:11:22 MR. WILKENS: Objection to

1 TODD APMANN

2 form.

3 A. I wouldn't have an opinion
4 either way. I could not know that.

5 12:11:31 Q. Why wouldn't you have an
6 opinion? What would you need to know
7 to make that determination?

8 A. I can't speak to what is
9 authorized or what is not authorized.

10 12:11:45 So I just don't know.

11 Q. Are you familiar with the
12 YouTube account, Hgiantvid?

13 A. I don't recall that account.

14 Q. Did you work with anyone at
15 12:12:12 MTV or any third-party marketing agency
16 with whom you would associate that
17 handle?

18 A. Well, it is Hgiant so it
19 sounds like the show, but there is no
20 12:12:24 one I would associate with that handle.

21 Q. If there were Human Giant
22 videos uploaded by the user, Hgiantvid,
23 would you think they were authorized by
24 MTV to be uploaded on YouTube?

25 12:12:41 MR. WILKENS: Objection to

1 TODD APMANN

2 form.

3 A. Again, I don't have an
4 opinion either way. I can't speak to
5 12:12:45 authorization.

6 Q. We discussed a number of
7 YouTube accounts; Gwhite799,
8 Clelltickle, Humangiant and Hgiantvid.
9 You didn't create any of those YouTube
10 12:13:08 accounts, did you, Mr. Apmann?

11 A. No, no -- no, I did not.

12 Q. You don't know who created
13 those accounts?

14 A. I can't -- I don't know.
15 12:13:25 Not familiar with it so I can't speak
16 to who might have created them.

17 Q. You don't know if those
18 accounts were created by people who had
19 authorization to upload MTV content
20 12:13:57 from the Human Giant program to
21 YouTube?

22 A. I don't know. They are not
23 familiar to me so I don't know who
24 created them.

25 12:14:24 MR. WILKENS: Is this a good

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TODD APMANN

identification as of this date by
the Reporter.)

MR. VOLKMER: Exhibit 4 is
12:49:41 an E-mail that Viacom produced in
this litigation. Bears the Bates
number VIA0030126 to '127.

Q. Mr. Apmann, do you recognize
this document?

12:49:59 A. I recognize my name and my
E-mail address and my title.

Q. This is an E-mail from
August 9, 2006 that you sent to Tina
Exarhos and Joe Armenia, correct?

12:50:24 A. Again, I do not recall
specifics of Human Giant, but it is my
name and E-mail address on the E-mail.

Q. It is an internal Viacom
E-mail produced in this litigation sent
12:50:44 to Tina Exarhos and cc'd to Joe
Armenia, and Joe Armenia was your boss,
right?

A. At that time, yes.

Q. And Tina Exarhos was Mr.
12:50:56 Armenia's boss, correct?

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TODD APMANN

A. Yes.

Q. And this was an E-mail you sent in the ordinary course of your business, right?

A. Again, I don't remember specifics with Human Giant, but this does have my name and my E-mail address on here.

Q. And you believe you wrote this E-mail, right?

A. I can't speak to if I sent it or not. I do not recall this E-mail, but that is my name on there.

Q. Do you think there was any possibility that you didn't write this E-mail?

A. You know, again, I can't say if I did or I didn't. I don't recall this E-mail.

Q. Do you think there is any possibility that you didn't draft this E-mail?

A. Again, I don't recall this E-mail so I don't -- I can't say if I

1 TODD APMANN

2 sent it or did not.

3 Q. So you think there is a
4 possibility you didn't draft this
5 12:51:56 E-mail?

6 A. Again, I don't recall this
7 E-mail. So -- and, you know, my name
8 is on there. So that's all I can
9 really speak to. I don't recall this
10 12:52:10 E-mail.

11 Q. Giving your best testimony
12 and recognizing that you are testifying
13 under penalty of perjury, do you
14 believe that you drafted the E-mail
15 12:52:27 that I have marked as Exhibit 4?

16 A. No. Again, I don't recall
17 this E-mail. My name is on there. It
18 is a possibility. I don't recall this
19 E-mail.

20 12:52:38 Q. Given the contents of the
21 E-mail, the recipients, given the fact
22 that this E-mail was produced by Viacom
23 in litigation, isn't it a near
24 certainty, sir, that you drafted this
25 12:52:52 E-mail?

1 TODD APMANN

2 A. Again, no, I don't recall
3 this E-mail. That is my name on there.
4 That's Joe's name on there. So it is a
5 12:53:06 possibility that I sent it. But,
6 again, I don't recall.

7 Q. It is more than a
8 possibility, isn't it? Isn't it a near
9 certainty that you drafted this E-mail,
10 12:53:14 Mr. Apmann?

11 A. Again, I don't recall this
12 E-mail. I can only say that is my name
13 and my E-mail address on there. That
14 is my boss and my boss' boss on there
15 12:53:25 as well.

16 Q. You write, "Attached is a
17 list of sites to which I recommend
18 linking the Human Giant clips."

19 Do you remember providing
20 12:53:37 Miss Exarhos or Mr. Armenia with a list
21 of sites to which you were seeking to
22 leak clips of the Human Giant?

23 A. Again, I don't recall
24 specifics about Human Giant.

25 12:53:49 Q. But have you had a chance to

1 TODD APMANN

2 review Exhibit 4?

3 A. Yes.

4 Q. Having had a chance to

5 12:54:11 review Exhibit 4, does that refresh
6 your recollection about whether you
7 were involved with a marketing campaign
8 regarding the Human Giant program?

9 A. Honestly, it doesn't refresh
10 12:54:22 my memory. You know, I remember
11 discussions about Human Giant. I don't
12 remember the nature of those
13 discussions so it does not refresh my
14 E-mail -- my memory other than what I
15 12:54:32 have said before; my name is on there
16 and my boss and my boss' boss.

17 Q. And you are recommending to
18 your boss and your boss' boss, a list
19 of sites to which Human Giant clips
20 12:54:44 should be made?

21 A. Again, I do not recall
22 sending this E-mail so I can't speak to
23 the subject matter.

24 Q. Did you make recommendations
25 12:54:55 to Miss Exarhos and Mr. Armenia about

1 TODD APMANN

2 A. Again, since I don't
3 remember the E-mail, I can't foreclose
4 the possibility one way or another.

5 13:08:16 Q. If you can't foreclose the
6 possibility that you were the author of
7 the attachment to Exhibit 4, isn't the
8 natural consequence of that fact that
9 you may very well have been the author?

10 13:08:34 A. Again, I can't foreclose the
11 possibility of having been the author
12 one way or the other.

13 Q. In this attachment, there is
14 a list of user-generated sites
15 13:08:48 appearing at Roman Numeral II. The
16 second one is www.YouTube.com. It
17 appears the author of this attachment
18 was seeking to seed Human Giant clips
19 on the YouTube website; is that
20 13:09:05 correct?

21 A. I can't speak to the nature
22 of what the author intended for the
23 attachment.

24 Q. Isn't that the most natural
25 13:09:17 reading of this attachment, that there

1 TODD APMANN

2 are a list of sites to which Human
3 Giant clips would be seeded and YouTube
4 is one of them?

5 13:09:24 MR. WILKENS: Objection to
6 form.

7 A. Again, depends on one's
8 perspective. Depends on the
9 perspective.

10 13:09:36 Q. How does it depend on one's
11 perspective? How can one read this
12 document as not being a plan to seed
13 clips from the Human Giant program to a
14 number of sites, including YouTube?

15 13:09:48 A. I mean, that's what it looks
16 like the attachment is. Again, you
17 know, I can't speak to anyone else's
18 interpretation other than mine.

19 Q. Would that be inconsistent
20 13:10:07 with MTV's marketing practices, to seed
21 clips to various user-generated content
22 websites for marketing purposes?

23 A. Can you restate the
24 question, please?

25 13:10:18 Q. Sure. Would it have been

1 TODD APMANN

2 inconsistent with MTV's marketing
3 practices to seed clips to various
4 user-generated content websites for
5 13:10:26 marketing purposes?

6 A. I can't speak to all of MTV.
7 I can only speak to the projects that I
8 worked on and what I recall. MTV's
9 marketing practices for -- depended on
10 13:10:39 the show and what, you know, was
11 thought would be the most effective
12 promotion for the show.

13 Q. Were you aware of any shows
14 in 2006 for which MTV did not engage in
15 13:10:53 online and viral marketing?

16 A. I don't recall.

17 Q. Are you aware of any shows
18 in 2006 for which MTV, or its agents,
19 did not upload clips to YouTube to
20 13:11:06 promote those shows?

21 A. I don't recall. Again -- I
22 don't recall.

23 Q. Do you know when MTV signed
24 a contract with Human Giant for the
25 13:11:32 Human Giant program to appear on MTV?

1 TODD APMANN

2 A. I do not know.

3 Q. When you write that you were
4 attaching a list of sites to which you
5 13:11:52 recommend leaking the Human Giant
6 clips, when you say "leak," you mean
7 that you were not planning on having
8 MTV's affiliation with the program
9 disclosed, correct?

10 13:12:04 A. Again, you know, I do not
11 recall this E-mail. That is my name
12 and my boss' boss -- my boss and my
13 boss' boss on the E-mail.

14 Q. But you wrote this E-mail,
15 13:12:19 Exhibit 4?

16 A. I do not recall this E-mail.

17 Q. You didn't write Exhibit 4?

18 A. I do not recall this
19 exhibit.

20 13:12:34 Q. You say that you want to
21 start leaking clips from the Human
22 Giant to a number of websites. And you
23 say that "This can get started as soon
24 as we receive the clips."

25 13:13:08 Did you ever receive clips

1 TODD APMANN

2 from Mr. DiSanto?

3 A. Again, I do not recall this
4 E-mail, nor the attachment, and I do
5 13:13:16 not recall specifics about Human Giant.

6 Q. Did you receive clips from
7 Mr. DiSanto?

8 A. Regarding Human Giant?

9 Q. Regarding Human Giant.

10 13:13:33 A. I do not recall.

11 Q. Might have?

12 A. I do not recall.

13 Q. Did you upload any clips
14 from the Human Giant to YouTube?

15 13:13:40 A. I do not recall. I did not
16 personally.

17 Q. You do recall that, though,
18 that you personally did not upload any
19 clips to YouTube?

20 13:13:48 A. Yes, I do recall.

21 Q. You recall that?

22 A. Regarding Human Giant?

23 Q. Yes, regarding Human Giant.

24 A. I don't recall that
25 13:13:57 specifically, but I recall not

1 TODD APMANN

2 uploading, personally, videos to
3 YouTube.

4 Q. From the Human Giant?

5 13:14:06 A. Well, Human Giant -- I don't
6 recall specifically for Human Giant.

7 Q. What else do you remember
8 about the Human Giant campaign besides
9 not uploading -- not personally
10 13:14:15 uploading clips to YouTube?

11 A. I told you, I don't remember
12 specifics.

13 Q. But you remember that you
14 didn't upload clips from the Human
15 13:14:22 Giant to YouTube, right?

16 MR. WILKENS: Objection.

17 That mischaracterizes his
18 testimony.

19 MR. VOLKMER: Does not.

20 13:14:26 MR. WILKENS: It does.

21 A. Well, I mean, I did not
22 upload personally any video to YouTube.

23 Q. You did not -- you remember
24 specifically not uploading any Human
25 13:14:38 Giant clips to YouTube, correct?

1 TODD APMANN

2 A. I don't recall specifically.

3 I mean, I just know that I did not
4 personally upload video to YouTube or
5 13:14:51 any other sites.

6 Q. Aside from that fact, which
7 is that you personally did not upload
8 any Human Giant clips to YouTube, do
9 you remember any other aspects of the
10 13:15:00 Human Giant marketing campaign?

11 A. I don't remember specifics
12 about Human Giant.

13 Q. You say, "This can get
14 started as soon as we receive the
15 13:15:13 clips."

16 When you say "this," you are
17 referring to leaking Human Giant clips
18 on the Internet? Did you go ahead and
19 start up a program of releasing clips
20 13:15:20 on the Internet of the Human Giant
21 program?

22 A. Again, I do not recall this
23 E-mail, and I do not recall specifics
24 about Human Giant.

25 13:15:28 Q. Is there someone who would

1 TODD APMANN

2 be more knowledgeable about the Human
3 Giant online marketing campaign than
4 you?

5 13:15:37 A. I do not recall specifics
6 about Human Giant. I can't think of
7 who would be more knowledgeable.

8 Q. But you were involved with
9 the Human Giant marketing campaign,
10 13:15:46 correct?

11 A. I remember discussions about
12 Human Giant. I don't remember
13 specifics about Human Giant.

14 Q. You can't remember -- you
15 13:15:52 can't tell me anyone who would have
16 more knowledge of the Human Giant
17 campaign than you, correct?

18 A. Offhand, I cannot.

19 Q. Why did you want to have the
20 13:16:16 branding, the Human Giant or
21 www.thehumangiant.com, stamped on the
22 clips that you were going to seed for
23 promotional purposes?

24 MR. WILKENS: Objection to
25 13:16:25 form.

1 TODD APMANN

2 A. I don't remember specifics
3 about Human Giant, nor do I remember
4 this E-mail nor the attachment.

5 13:16:31 Q. Why did you want that
6 branding on the clips from Mr. DiSanto?

7 MR. WILKENS: Same
8 objection.

9 A. Again, I don't remember
10 13:16:38 specifics about Human Giant, and I do
11 not recall this E-mail nor the
12 attachment.

13 Q. You don't know why you
14 wanted that branding, the Human Giant
15 13:16:57 or thehumangiant.com, for clips you
16 were going to seed for promotional
17 purposes?

18 MR. WILKENS: Objection as
19 to form.

20 13:17:03 A. I don't recall specifics
21 about Human Giant, nor do I recall this
22 E-mail nor the attachment.

23 Q. As part of the marketing
24 campaign for the Human Giant television
25 13:17:19 program, did anyone upload clips to

1 TODD APMANN

2 YouTube to promote that program?

3 A. I don't recall specifics
4 about Human Giant.

5 13:17:26 Q. Do you know if anyone
6 uploaded clips of the Human Giant to
7 YouTube to promote that program?

8 A. I do not recall specifics
9 about the Human Giant.

10 13:17:36 Q. Is it a fair inference that
11 clips appearing on YouTube that are
12 stamped with that message,
13 www.thehumangiant.com, were authorized
14 by MTV to appear on YouTube?

15 13:18:07 MR. WILKENS: Objection as
16 to form.

17 A. I don't recall specifics
18 about Human Giant.

19 Q. So you don't know one way or
20 13:18:14 the other whether that's a fair
21 inference?

22 A. I don't know one way or the
23 other.

24 Q. Clips on YouTube branded,
25 13:18:24 www.thehumangiant.com, may well have

1 TODD APMANN

2 YouTube?

3 A. I do not recall specifics
4 about Human Giant.

5 13:33:07 Q. Miss Exarhos responds in the
6 next E-mail, "Given the current state
7 of affairs with YouTube, we need to
8 discuss."

9 Do you know what she is
10 13:33:26 referring to when she says, "the
11 current state of affairs with YouTube"?

12 A. I do not.

13 Q. Were you aware of a
14 potential lawsuit between MTV and
15 13:33:41 YouTube around this time frame,
16 February of 2007?

17 A. I do not recall.

18 Q. Were you -- when you were
19 working at MTV, were you ever aware of
20 13:33:52 a potential lawsuit between MTV or
21 Viacom and YouTube?

22 A. Not that I can recall.

23 Q. Were you ever told that
24 there would be litigation between the
25 13:34:03 parties?

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TODD APMANN

A. Not that I can recall.

Q. Were you ever told to
preserve documents in connection with
13:34:11 any potential litigation between
YouTube and MTV or Viacom?

A. Not that I can recall.

Q. Were you aware of a massive
Takedown Request that Viacom sent to
13:34:31 YouTube in February of 2007?

A. Not that I can recall.

Q. You don't remember that?

A. I don't recall.

Q. You testified earlier that
13:34:53 you left MTV in February of 2007; is
that correct?

A. Yes.

Q. And after you left the
company, did you have access to your
13:35:01 MTV E-mails?

A. No.

Q. Do you know what happened to
your MTV E-mails after you left the
company?

13:35:08 A. I deleted my E-mails, but I

1 TODD APMANN

2 do not know what happened to them.

3 Q. When did you delete your
4 E-mails?

5 13:35:15 A. In February of 2007.

6 Q. Why did you delete your
7 E-mails in February of 2007?

8 A. I don't recall. I was
9 leaving. So I deleted my E-mails.

10 13:35:33 Q. Did you delete all your
11 E-mails or just delete selective
12 E-mails?

13 A. All of my E-mails.

14 Q. Is that on your last day at
15 13:35:46 MTV?

16 A. I don't recall exactly. I
17 think it was the last couple of days.
18 I don't recall exact dates or exactly
19 when I did it.

20 13:35:56 Q. Did anyone instruct you to
21 delete those E-mails or did you do it
22 on your own?

23 A. No, no one instructed me to
24 delete it.

25 13:36:09 Q. What motivated you to want

1 TODD APMANN

2 to delete all your E-mails before
3 leaving MTV?

4 A. I don't recall specifically.

5 13:36:15 I was leaving. So I deleted them.

6 Q. Before you deleted them, had
7 anyone ever told you, you need to hold
8 onto your E-mails because there might
9 be litigation between YouTube and

10 13:36:46 Viacom and MTV?

11 MR. WILKENS: Objection to
12 form.

13 A. Not that I recall.

14 Q. If you look in the first
15 13:37:15 page of Exhibit 5, there is an E-mail
16 from Julie Riven to Tina Exarhos, Lisa
17 Preston, Joe Armenia, to you, Todd
18 Apmann, and Damon Burrell and Miss
19 Riven as well. "We should definitely

20 13:37:28 discuss our plans to leak this. Todd
21 and I have The Illustrator clip, but
22 the producers need to make a few
23 changes before we can leak it."

24 Do you know what she was
25 13:37:37 referring to when she said that "Todd

1 TODD APMANN

2 and I have The Illustrator Clip"?

3 A. I don't remember specifics
4 about Human Giant.

5 13:37:43 Q. Do you know what The
6 Illustrator clip is?

7 A. I do not recall specifics.

8 Q. Was that a sketch from the
9 Human Giant program?

10 13:37:50 A. I do not recall specifics
11 about Human Giant.

12 Q. Why would the producers have
13 needed to make changes to the clip
14 before it could be leaked?

15 13:37:56 A. I don't recall specifics
16 about Human Giant.

17 Q. Who were the producers of
18 Human Giant?

19 A. I do not recall that.

20 13:38:12 Q. You don't know the names of
21 any of the creators of Human Giant?

22 A. I do not recall their names.

23 Q. Do you know Aziz Ansari?

24 A. The name sounds familiar. I
25 13:38:35 don't recall specifically.

Schapiro Exhibit 258

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.
) 1:07-CV-2103
YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)
)
Defendants.)
-----)

VIDEOTAPED DEPOSITION OF NICOLE BROWNING

New York, New York

Wednesday, October 7th, 2009

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 17867

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October 7, 2009
10:30 a.m.

VIDEOTAPED DEPOSITION OF NICOLE
BROWNING, held at the offices of Skadden
Arps Slate Meagher & Flom, LLP, 4 Times
Square, 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
MARK MORELL, Viacom

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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.

BROWNING

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A. Yes.

Q. Approximately how many videos
would you say you've watched?

11:03:08 A. I have no idea.

Q. Hundreds?

A. No.

Q. Less than a hundred?

A. Far less than a hundred.

11:03:23 Q. And what types of videos have
you watched on YouTube?

A. Just a various mix.

Q. Do you locate videos on YouTube
yourself, or do others send you links?

11:03:40 MS. KOHLMANN: Objection.

You can answer.

A. Others send me links.

Q. One thing I should have
mentioned at the beginning, for the ease
11:03:47 of the court reporter, and I will try and
refrain from doing it, too, we should try
and make sure that we don't talk over each
other, so that the record can be
transcribed accurately.

11:04:01 Prior to January 2007, did you

BROWNING

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sign up for a YouTube account?

A. I don't remember.

Q. You don't recall signing up for
11:04:12 a YouTube account?

A. No.

Q. Have you ever uploaded a clip to
YouTube?

A. No.

11:04:17 Q. Have you ever watched what you
understood to be unauthorized copyrighted
content on YouTube?

MS. KOHLMANN: Objection.

Answer, if you can.

11:04:35 A. I don't know.

Q. You are not sure if what you
viewed on YouTube was authorized or not?

A. Right.

MS. KOHLMANN: Objection.

11:04:45 You can answer.

Q. Ms. Browning, you are familiar
with the term MSO, right?

A. Yes.

Q. What does MSO stand for?

11:05:05 A. Multiple system operator.

1 BROWNING

2 Q. So cable companies are MSOs,
3 correct?

4 A. Yes.

5 11:05:11 Q. Does the term MSO include
6 satellite companies as well?

7 A. No.

8 Q. And in MTVN's agreements with
9 MSOs and satellite companies, what MTVN
10 11:05:45 programming was included in such
11 agreements?

12 MS. KOHLMANN: Objection.

13 At any time?

14 Q. Generally, when you were
15 11:05:56 negotiating with MSOs and satellite
16 companies for the carriage of MTVN
17 programming, what programming was included
18 in those negotiations?

19 A. Any of the networks that at the
20 11:06:06 time were either expiring or existed in
21 our portfolio, you know, at the time.

22 Q. Okay. And what networks were in
23 MTVN's portfolio? Let's use the time
24 period of 2006, when you were president of
25 11:06:21 affiliates.

Schapiro Exhibit 259

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

x

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.

x

THE FOOTBALL ASSOCIATION PREMIER
LEAGUE LIMITED, BOURNE CO., et al.,
On behalf of themselves and all
Others similarly situated,

Plaintiffs,

vs.

NO. 07-CV-3582

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

Defendants.

x

VIDEOTAPED DEPOSITION OF DAMON BURRELL
NEW YORK, NEW YORK
TUESDAY, APRIL 14, 2009
JOB NO.: 16730

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APRIL 14, 2009

10:09 a.m.

VIDEOTAPED DEPOSITION OF DAMON
BURRELL, held at the offices of WILSON
SONSINI GOODRICH & ROSATI, PC, 1301 Avenue of
the Americas, New York, New York, pursuant to
notice, before JENNIFER OCAMPO-GUZMAN, a
Shorthand Reporter and Notary Public of the
State of New York.

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

FOR THE PLAINTIFFS VIACOM INTERNATIONAL,
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By: SCOTT B. WILKENS, Esq.

1099 New York Avenue, NW, Suite 900

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(202) 639-6000 swilkens@jenner.com

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

WILSON SONSINI GOODRICH & ROSATI, PC

BY: BART E. VOLKMER, ESQ.

650 Page Mill Road

Palo Alto, California 94304-1050

650-565-3508 bvolkmer@wsgr.com

ALSO PRESENT:

MARCELO RIVERA, Videographer

1

10:09:39 2 THE VIDEOGRAPHER: This is tape

10:10:04 3 number 1 of the videotaped deposition of

10:10:07 4 Damon Burrell, in the matter Viacom

10:10:10 5 International Inc. et al., versus

10:10:13 6 YouTube Inc. et al., in the United

10:10:17 7 States District Court, for the Southern

10:10:20 8 District of New York.

10:10:20 9 This deposition is being held at

10:10:23 10 the law offices of Wilson Sonsini

10:10:25 11 Goodrich & Rosati on April 14, 2009, at

10:10:30 12 approximately 10:09 a.m. My name is

10:10:35 13 Marcelo Rivera, and I am from the --

10:10:38 14 from David Feldman Worldwide.

10:10:41 15 Will present counsel please

10:10:44 16 introduce themselves, for the record.

10:10:45 17 MR. VOLKMER: Bart Volkmer, from

10:10:48 18 Wilson Sonsini Goodrich & Rosati,

10:10:49 19 representing the defendants, YouTube and

10:10:51 20 Google.

10:10:52 21 MR. WILKENS: Scott Wilkens, from

10:10:54 22 Jenner & Block, representing the

10:10:55 23 plaintiffs Viacom.

10:10:56 24 THE VIDEOGRAPHER: Will the court

10:10:58 25 reporter please swear in the witness.

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1

2 D A M O N B U R R E L L , called as a
3 witness, having been duly sworn by a Notary
4 Public, was examined and testified as
5 follows:

6 EXAMINATION BY

10:11:11 7 MR. VOLKMER:

10:11:11 8 MR. WILKENS: Before we get
10:11:12 9 started, I just want to note one thing
10:11:13 10 for the record, that the parties have a
10:11:15 11 dispute regarding the number of
10:11:16 12 deposition hours that the defendants
10:11:19 13 have under the Rule 16(b) order, and
10:11:22 14 we're going to allow this deposition to
10:11:24 15 proceed, but it's without prejudice to
10:11:26 16 the parties' dispute regarding the
10:11:28 17 number of hours the defendants have
10:11:30 18 remaining under the Rule 16(b) order.

10:11:33 19 MR. VOLKMER: Is it the position
10:11:34 20 that we don't have hours to take.

10:11:35 21 MR. WILKENS: I -- well, I think
10:11:37 22 that's being discussed between lead
10:11:39 23 counsel, but I just want to note that
10:11:40 24 there is a dispute, and this deposition
10:11:42 25 is without prejudice to the discussions

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1 Burrell

10:11:44 2 that are going on in that dispute.

10:11:46 3 MR. VOLKMER: Well, we obviously
10:11:47 4 disagree that there is any dispute. The
10:11:49 5 position of the defendants is that Judge
10:11:51 6 Stanton has ruled on this issue and that
10:11:53 7 we certainly have the hours to proceed.
10:11:54 8 And we will note the dispute and go
10:11:57 9 forward with the deposition.

10:11:59 10 BY MR. VOLKMER:

10:11:59 11 Q. Good morning, Mr. Burrell. Could
10:12:01 12 you please state your name and job title, for
10:12:03 13 the record?

10:12:03 14 A. Damon Burrell, vice president,
10:12:06 15 consumer marketing MTV.

10:12:08 16 Q. And have you ever given any
10:12:11 17 testimony at trial before?

10:12:12 18 A. No.

10:12:14 19 Q. Have you ever given sworn testimony
10:12:15 20 in the form of an affidavit or a declaration?

10:12:18 21 A. No.

10:12:21 22 Q. Have you ever been deposed before?

10:12:24 23 A. No.

10:12:26 24 Q. Okay. I would like to go over a
10:12:29 25 few ground rules for the deposition today.

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1 Burrell

10:12:31 2 The court reporter is taking down
10:12:33 3 everything that we say, so you are going to
10:12:35 4 have to answer audibly, instead of nodding
10:12:38 5 the head or shaking your head.

10:12:41 6 Your attorney from time to time is
10:12:42 7 going to make objections throughout the
10:12:43 8 course of this deposition, but you still have
10:12:45 9 to answer the questions that I have, unless
10:12:47 10 your attorney specifically tells you not to
10:12:49 11 answer a question.

10:12:50 12 If you need to take any breaks
10:12:52 13 during the deposition today, just let me
10:12:54 14 know; the only caveat being we probably don't
10:12:57 15 want to take a break when there's a question
10:12:59 16 pending.

10:13:01 17 And is there anything that would
10:13:03 18 prevent you from giving your best testimony
10:13:06 19 today?

10:13:07 20 A. No.

10:13:08 21 Q. And you understand that you are
10:13:11 22 testifying under oath, under penalty of
10:13:14 23 perjury?

10:13:15 24 A. Yes.

10:13:16 25 Q. And what did you do to prepare for

1 Burrell

10:13:18 2 the deposition today?

10:13:24 3 A. Nothing that I can remember.

10:13:26 4 MR. WILKENS: And I'm just going to
10:13:28 5 instruct the witness not to divulge
10:13:30 6 attorney-client conversations beyond
10:13:32 7 meeting with counsel.

10:13:33 8 Q. Did you have any meetings with
10:13:35 9 counsel to prepare for this deposition today?

10:13:38 10 A. I met with Scott.

10:13:40 11 Q. When did you meet with Scott?

10:13:47 12 MR. WILKENS: You can answer.

10:13:48 13 A. Yesterday and -- I can't remember
10:13:56 14 the exact date, maybe a week ago.

10:14:03 15 Q. So on two occasions you met with
10:14:06 16 Mr. Wilkens to prepare for the deposition?

10:14:08 17 A. Yes.

10:14:08 18 Q. And how long did those sessions
10:14:10 19 last?

10:14:15 20 A. I don't recall how long, the exact
10:14:17 21 time.

10:14:17 22 Q. Do you have an approximate guess?

10:14:25 23 A. The first session, a couple of
10:14:29 24 hours; the second session, same thing, a
10:14:35 25 couple of hours.

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1 Burrell

10:14:36 2 Q. Besides meeting with Mr. Wilkens,
10:14:42 3 did you do anything else to prepare for the
10:14:44 4 deposition today?

10:14:48 5 A. No.

10:14:53 6 Q. And can you explain what your
10:14:54 7 current job responsibilities are?

10:14:59 8 A. I'm responsible for developing
10:15:03 9 marketing plans for the promotion of
10:15:05 10 television shows and events, for MTV.

10:15:10 11 Q. And for the television shows, what
10:15:14 12 types of marketing does MTV employ to promote
10:15:17 13 those shows?

10:15:23 14 A. Multiple tactics. Never the same
10:15:26 15 thing for any show.

10:15:27 16 Q. What are some of those multiple
10:15:31 17 tactics?

10:15:32 18 A. Television campaigns, print
10:15:38 19 campaigns, radio campaigns, events, online
10:15:47 20 campaigns.

10:15:48 21 Q. And who do you report to?

10:15:56 22 A. I report to Tina Exarhos.

10:16:02 23 Q. How many direct reports do you
10:16:03 24 have?

10:16:05 25 A. Six.

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1 Burrell

10:16:12 2 Q. And can you list them out for me,
10:16:15 3 please?

10:16:16 4 A. Wendy Perez, Amie Esler, Jolina
10:16:30 5 Hoang, Julie Sun, Lauren Weinstein; and Amy
10:16:42 6 Strube, who has just left, so I'm looking to
10:16:45 7 replace her.

10:16:46 8 Q. Why did Ms. Strube leave the
10:16:54 9 company?

10:16:56 10 A. Career opportunity.

10:16:58 11 Q. Can you be any more specific than
10:17:00 12 that?

10:17:02 13 A. I wouldn't -- I wouldn't know any
10:17:04 14 other reason besides additional career
10:17:07 15 opportunity for her.

10:17:07 16 Q. She didn't tell you where she was
10:17:11 17 going?

10:17:12 18 A. Yes.

10:17:12 19 Q. Where was she going?

10:17:14 20 A. She is now employed at Music
10:17:17 21 Choice.

10:17:17 22 Q. The five individuals that you just
10:17:24 23 listed who are still at the company, which
10:17:26 24 individuals have, as part of their job
10:17:33 25 responsibilities, online marketing in their

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1 Burrell

10:17:36 2 portfolio of work?

10:17:37 3 A. All of them.

10:17:41 4 Q. All of them engage in online

10:17:44 5 marketing for MTV?

10:17:45 6 A. Yes.

10:17:58 7 Q. What jobs have you previously held

10:18:00 8 at MTV?

10:18:01 9 A. Director of marketing for MTV.com.

10:18:12 10 Q. Any others?

10:18:16 11 A. That's it.

10:18:17 12 Q. Do you know if MTV ever bought

10:18:23 13 advertising space on the YouTube website?

10:18:32 14 A. I don't remember.

10:18:44 15 MR. VOLKMER: I would like to mark

10:19:00 16 Burrell Exhibit 1.

10:19:02 17 (Exhibit Burrell-1, E-mail dated

10:19:02 18 1/9/07, Bates No. VIA00183065, marked

10:19:02 19 for identification, this date.)

10:19:02 20 Q. This is an e-mail from January 9,

10:19:05 21 2007, from Tina Exarhos to Damon Burrell.

10:19:08 22 The subject is "confidential," and the text

10:19:10 23 of the e-mail says, "Carole thinks we

10:19:13 24 shouldn't buy YouTube right now."

10:19:15 25 Mr. Burrell, do you know what

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10:19:17 2 Ms. Exarhos is referring to in this e-mail,
10:19:19 3 when she says, "Carole thinks we shouldn't
10:19:22 4 buy YouTube right now"?

10:19:26 5 A. I'm not sure what she intended to
10:19:29 6 mean, when she wrote the e-mail.

10:19:31 7 Q. How did you interpret that in your
10:19:34 8 day-to-day-job responsibilities?

10:19:38 9 A. I don't remember how I interpreted
10:19:40 10 it at the time.

10:19:41 11 Q. And as you sit here today, how do
10:19:43 12 you interpret that message?

10:19:55 13 A. I don't have -- I have multiple
10:20:01 14 interpretations. I mean out of context, I
10:20:03 15 don't -- it could be many things.

10:20:05 16 Q. This is your boss sending you an
10:20:07 17 e-mail reporting that a woman named Carole
10:20:10 18 doesn't think you should buy YouTube in
10:20:12 19 January 2007.

10:20:13 20 You don't have any idea what
10:20:15 21 Ms. Exarhos is talking about?

10:20:17 22 MR. WILKENS: Objection.

10:20:23 23 Q. You can't say?

10:20:24 24 A. I'm not sure what she intended.

10:20:26 25 Q. What is your best guess for what

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1 Burrell

10:20:28 2 this message is meant to convey?

10:20:30 3 MR. WILKENS: Objection.

10:20:33 4 You can answer.

10:20:34 5 A. It could be multiple things.

10:20:43 6 Honestly, I'm not sure.

10:20:44 7 Q. Okay. So what are some of the
10:20:51 8 possibilities?

10:20:52 9 A. It could be an acquisition. It
10:20:59 10 could be ad space. It could be -- I don't
10:21:09 11 know, again, you know, multiple -- maybe
10:21:12 12 there's other things going on that she knows
10:21:15 13 about that I didn't know about.

10:21:17 14 Q. What did you mean, when you said
10:21:20 15 "head space"?

10:21:24 16 MR. WILKENS: Objection. I think
10:21:25 17 he said "ad space."

10:21:27 18 MR. VOLKMER: Oh, I must have
10:21:28 19 misheard.

10:21:29 20 Q. So it could mean ad space in the
10:21:31 21 sense of MTV buying advertising space on the
10:21:36 22 YouTube website; is that right?

10:21:38 23 A. Potentially.

10:21:39 24 Q. But do you have any firsthand
10:21:44 25 knowledge of MTV ever purchasing advertising

1 Burrell

10:21:47 2 space on the YouTube site?

10:21:55 3 A. Not that I can remember.

10:21:56 4 Q. Do you have any recollection of
10:22:00 5 there being conversations about whether MTV
10:22:03 6 should or should not purchase advertising
10:22:05 7 space on the YouTube website?

10:22:07 8 A. Not that I can remember.

10:22:17 9 Q. If MTV had bought ad space on the
10:22:30 10 YouTube website, would that be something that
10:22:33 11 you would have been aware of in your
10:22:34 12 day-to-day job responsibilities?

10:22:36 13 MR. WILKENS: Objection, as to
10:22:37 14 form.

10:22:37 15 You can answer.

10:22:38 16 A. Not necessarily.

10:22:45 17 Q. So it could be the case that MTV
10:22:50 18 purchased advertising space on the YouTube
10:22:53 19 website, and you simply did not know about
10:22:55 20 it?

10:22:55 21 MR. WILKENS: Objection as to form.

10:22:59 22 A. I don't think I understand the
10:23:00 23 question.

10:23:01 24 Q. Sure. I'll try to rephrase it.

10:23:04 25 The -- it could be the case that

1 Burrell

10:23:06 2 MTV in fact purchased advertising space on
10:23:09 3 the YouTube website; it's just that you are
10:23:11 4 not aware of that fact; is that correct?

10:23:14 5 MR. WILKENS: Same objection.

10:23:16 6 A. I don't recall buying any ad space
10:23:20 7 on YouTube.

10:23:21 8 Q. And under oath, can you testify
10:23:29 9 that MTV, unequivocally, did not purchase ad
10:23:34 10 space on the YouTube website?

10:23:36 11 MR. WILKENS: Objection.

10:23:37 12 A. I can't recall ever buying any ad
10:23:42 13 space on YouTube.

10:23:43 14 Q. Right. And the question was: Can
10:23:46 15 you testify under oath that MTV, as an
10:23:51 16 organization, did not purchase any
10:23:52 17 advertising space on the YouTube website?

10:23:54 18 MR. WILKENS: Objection, asked and
10:23:55 19 answered.

10:23:55 20 A. I can't -- I can't recall.

10:24:14 21 Q. Do you know if MTV purchased
10:24:32 22 advertising space on any other user-generated
10:24:36 23 content websites, other than YouTube?

10:24:43 24 A. I can't remember any specific
10:24:46 25 sites.

1 Burrell

10:24:47 2 Q. Do you think that that's something
10:24:49 3 that MTV probably did?

10:24:50 4 MR. WILKENS: Objection.

10:24:53 5 A. I can't remember any specific sites
10:25:01 6 that MTV bought.

10:25:05 7 Q. And what is the goal of the
10:25:17 8 marketing department at MTV?

10:25:26 9 A. There are multiple goals. It
10:25:28 10 depends on the objectives and what it is that
10:25:32 11 we're promoting.

10:25:34 12 Q. For the television programs that
10:25:43 13 appear on the MTV Network, when you engage in
10:25:47 14 marketing with respect to those programs,
10:25:50 15 what is the goal?

10:25:56 16 A. It depends on, it depends on the
10:25:57 17 show.

10:25:58 18 Q. Does MTV ever upload clips to
10:26:23 19 YouTube, as part of its marketing efforts?

10:26:41 20 A. Nothing that I can remember.

10:26:42 21 Q. You're not aware of any
10:27:07 22 circumstances in which MTV or any of its
10:27:09 23 agents uploaded clips to YouTube, for
10:27:12 24 marketing purposes?

10:27:13 25 MR. WILKENS: Objection.

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1 Burrell

10:27:15 2 A. Can you repeat the question again?

10:27:21 3 Q. Sure. You're not aware of any
10:27:22 4 circumstances in which MTV or any of its
10:27:24 5 agents uploaded clips to YouTube, for
10:27:26 6 marketing purposes?

10:27:28 7 MR. WILKENS: Same objection.

10:27:29 8 A. I can't -- I can't remember.

10:27:35 9 Q. Do you think it's likely that that
10:27:38 10 happened, that MTV or its agents uploaded
10:27:41 11 marketing materials to YouTube, to promote
10:27:44 12 its television programs?

10:27:45 13 MR. WILKENS: Objection.

10:27:47 14 A. Again, I can't -- I can't remember.

10:27:52 15 Q. And the question is: Do you think
10:28:01 16 that it's likely that that occurred?

10:28:02 17 MR. WILKENS: Objection, asked and
10:28:03 18 answered.

10:28:03 19 A. Again, I can't remember.

10:28:12 20 Q. Does MTV ever allow user-submitted
10:28:33 21 MTV content to remain on YouTube, for
10:28:35 22 marketing purposes?

10:28:37 23 MR. WILKENS: Objection.

10:28:39 24 A. Repeat the question?

10:28:40 25 Q. Sure. Does MTV ever allow

1 Burrell

10:28:42 2 user-submitted content from MTV to remain on
10:28:46 3 YouTube, for marketing purposes?

10:28:48 4 MR. WILKENS: Objection.

10:28:49 5 A. Nothing that I can recall.

10:29:05 6 Q. Are you aware of third-party
10:29:35 7 marketing agencies uploading MTV content to
10:29:40 8 YouTube, for promotional purposes?

10:29:44 9 A. I can't -- I can't remember
10:29:54 10 specifically.

10:29:54 11 Q. Haven't you engaged the services of
10:29:59 12 companies like Wiredset and Fanscape?

10:30:03 13 A. Yes.

10:30:06 14 Q. And don't those marketing agencies
10:30:09 15 upload materials to YouTube?

10:30:13 16 MR. WILKENS: Objection.

10:30:14 17 A. I can't remember specific sites.

10:30:22 18 Q. Would it be your estimation that
10:30:33 19 they have done so, or best guess that they
10:30:37 20 have not?

10:30:37 21 MR. WILKENS: Objection.

10:30:38 22 A. I can't remember any specific
10:30:45 23 sites.

10:30:45 24 Q. You can't remember a single
10:30:48 25 specific site that Wiredset or Fanscape

1 Burrell

10:30:53 2 uploaded MTV marketing materials to?

10:31:00 3 A. I can't remember any specific
10:31:01 4 sites.

10:31:01 5 Q. You can't remember a single
10:31:05 6 specific site that Wiredset or Fanscape
10:31:11 7 uploaded MTV marketing material to?

10:31:14 8 MR. WILKENS: Objection, asked and
10:31:17 9 answered.

10:31:17 10 A. I can't remember any specific
10:31:18 11 sites.

10:31:18 12 Q. You can't tell me a single specific
10:31:21 13 site that Fanscape or Wiredset used to
10:31:25 14 promote the MTV marketing material?

10:31:29 15 MR. WILKENS: Objection, asked and
10:31:31 16 answered.

10:31:31 17 A. I can't remember any specific
10:31:39 18 sites.

10:31:39 19 Q. So under oath, you can't -- you
10:31:42 20 can't tell me a single site that Fanscape or
10:31:45 21 Wiredset used to promote MTV content?

10:31:48 22 MR. WILKENS: Objection, asked and
10:31:51 23 answered several times.

10:31:56 24 A. I can't remember any specific
10:31:57 25 sites.

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1 Burrell

10:31:58 2 Q. Don't you have supervisory
10:32:03 3 responsibilities over Wiredset and Fanscape?

10:32:11 4 A. Sometimes.

10:32:13 5 Q. When do you have supervisory
10:32:21 6 responsibilities over companies like Wiredset
10:32:24 7 and Fanscape?

10:32:26 8 A. It varies. Depends on the show.

10:32:35 9 Q. Do you engage those companies on a
10:32:38 10 show-by-show basis, or do you engage them on
10:32:45 11 a more general retainer?

10:32:49 12 A. It varies.

10:32:50 13 Q. Sometimes you engage a company like
10:32:56 14 Wiredset or Fanscape to market a particular
10:32:59 15 show, and sometimes you engage them to do a
10:33:02 16 number of shows?

10:33:03 17 A. I can't recall specifically with
10:33:12 18 Wiredset.

10:33:13 19 Q. What about Fanscape?

10:33:15 20 A. I can't recall specifically with
10:33:22 21 Fanscape.

10:33:23 22 Q. So what sort of online promotions
10:33:34 23 has Wiredset done for MTV?

10:33:39 24 A. Repeat the question again?

10:33:40 25 Q. What sorts of online promotions has

1 Burrell

10:33:44 2 Wiredset done for MTV?

10:33:50 3 A. Various campaigns.

10:33:53 4 Q. Can you give me some examples?

10:34:00 5 A. I can't remember any specifics.

10:34:04 6 Q. You have no recollection of
10:34:10 7 anything that Wiredset has ever done in the
10:34:14 8 online space to market MTV content?

10:34:16 9 MR. WILKENS: Objection.

10:34:17 10 A. I can't remember any specifics.

10:34:22 11 Q. What are the generalities that you
10:34:24 12 remember?

10:34:35 13 A. Online marketing. Event marketing.

10:34:44 14 Q. Online marketing for which shows?

10:34:49 15 A. I can't remember any specific
10:34:52 16 shows.

10:34:52 17 Q. Who is the point person at MTV for
10:35:05 18 the Wiredset relationship?

10:35:09 19 A. It varies.

10:35:17 20 Q. Who are the people -- who are the
10:35:25 21 people that would be on point for the
10:35:27 22 Wiredset relationship?

10:35:32 23 MR. WILKENS: Objection.

10:35:36 24 A. Any one of my team members.

10:35:39 25 Q. Specifically, who are the people

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1 Burrell

10:35:44 2 that are -- that would be on point for the
10:35:47 3 Wiredset relationship, their names, please?

10:35:52 4 A. Wendy Perez, Jolina Hoang, Amie
10:36:09 5 Esler, Julie Sun; and Amy Strube, but she --
10:36:24 6 she left, so I'm replacing her.

10:36:26 7 Q. And sometimes you're on point for
10:36:31 8 the Wiredset relationship?

10:36:38 9 A. Sometimes.

10:36:39 10 Q. In instances where you have been on
10:36:41 11 point for the relationship, what programs
10:36:45 12 were being marketed by Wiredset?

10:36:49 13 A. I can't -- I can't remember any
10:36:54 14 specific shows.

10:36:55 15 Q. Do MTV employees ever themselves
10:37:24 16 upload clips to YouTube for promotional --
10:37:31 17 for promotional purposes?

10:37:34 18 A. Not that I'm aware of.

10:37:35 19 Q. But that might have happened,
10:37:39 20 right, MTV employees uploading clips to
10:37:45 21 YouTube, for promotional purposes?

10:37:47 22 MR. WILKENS: Objection.

10:37:48 23 A. I'm not aware.

10:37:51 24 Q. Right. So if you are not aware,
10:37:53 25 that's something that could have happened,

1 Burrell

10:37:54 2 right?

10:37:54 3 MR. WILKENS: Objection.

10:37:55 4 A. I'm not aware.

10:37:59 5 Q. Right. And I'm asking whether you

10:38:01 6 can foreclose the possibility that MTV

10:38:04 7 employees uploaded clips to the YouTube

10:38:06 8 service, for promotional purposes.

10:38:08 9 MR. WILKENS: Objection, asked and

10:38:09 10 answered.

10:38:09 11 A. I'm not aware.

10:38:16 12 Q. Right. I'm not asking for your

10:38:18 13 particular awareness. I'm asking whether you

10:38:19 14 can testify, under oath, that no MTV

10:38:23 15 employees ever uploaded video clips to

10:38:27 16 YouTube, for promotional purposes.

10:38:28 17 MR. WILKENS: Objection.

10:38:34 18 A. I'm not aware.

10:38:38 19 Q. Can you testify under oath that no

10:38:46 20 MTV employees ever uploaded clips to YouTube

10:38:49 21 for promotional purposes? That's the

10:38:51 22 question.

10:38:51 23 MR. WILKENS: Objection, asked and

10:38:53 24 answered.

10:38:53 25 A. I'm not aware.

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1 Burrell

10:39:01 2 Q. You keep saying "I'm not aware,"
10:39:05 3 but that's not responsive to the question.

10:39:06 4 The question is, can you testify
10:39:08 5 under oath that no MTV employees ever
10:39:10 6 uploaded clips to YouTube, for promotional
10:39:10 7 purposes?

10:39:14 8 MR. WILKENS: Objection, and I move
10:39:15 9 to strike the argumentative portion of
10:39:19 10 that.

10:39:19 11 You can answer.

10:39:20 12 A. Again, I'm not aware.

10:39:25 13 Q. So the natural consequences of you
10:39:28 14 not being aware of that is that it could have
10:39:30 15 happened, but it's just not, it's not
10:39:34 16 something that you are aware of, right?

10:39:36 17 MR. WILKENS: Objection, asked and
10:39:39 18 answered.

10:39:39 19 A. Again, I'm not aware.

10:39:40 20 Q. Is there a list somewhere that
10:39:56 21 would provide an answer to this question
10:40:00 22 about whether MTV employees have ever
10:40:03 23 uploaded clips to YouTube?

10:40:08 24 A. I can't remember.

10:40:15 25 Q. You can't remember if there's a

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1 Burrell

10:40:20 2 list somewhere that would set forth whether
10:40:24 3 MTV employees ever uploaded clips to YouTube?

10:40:36 4 MR. WILKENS: Objection.

10:40:37 5 A. I can't remember.

10:40:46 6 Q. Have you ever uploaded any MTV
10:41:11 7 materials to YouTube, for promotional
10:41:13 8 purposes?

10:41:13 9 A. Not that I remember.

10:41:24 10 Q. You think that's something that you
10:41:35 11 would remember, if you'd ever uploaded clips
10:41:38 12 to YouTube?

10:41:39 13 MR. WILKENS: Objection.

10:41:39 14 A. I don't understand your question.

10:41:43 15 Q. Sure. If had you done that,
10:41:45 16 uploaded clips to YouTube for promotional
10:41:47 17 purposes, do you think that's something you
10:41:49 18 would remember?

10:41:49 19 MR. WILKENS: Objection.

10:41:50 20 A. I don't -- I don't know.

10:41:56 21 Q. Is that something that might have
10:42:14 22 happened, that you personally uploaded clips
10:42:17 23 to YouTube, for promotional purposes?

10:42:20 24 MR. WILKENS: Objection.

10:42:23 25 A. Repeat your question?

1 Burrell

10:42:25 2 Q. Sure. Is that something that might
10:42:27 3 have happened, that you personally uploaded
10:42:29 4 MTV clips to YouTube, for promotional
10:42:33 5 purposes?

10:42:33 6 MR. WILKENS: Objection.

10:42:34 7 A. Not that I remember.

10:42:40 8 Q. But it might have happened?

10:42:47 9 MR. WILKENS: Objection.

10:42:47 10 A. Not that I myself remember.

10:42:57 11 Q. What about the Andy Milonakis Show,
10:43:21 12 did MTV employees ever upload clips of that
10:43:24 13 show to YouTube, for promotional purposes?

10:43:28 14 A. Which show?

10:43:34 15 Q. Andy Milonakis?

10:43:42 16 A. I'm not sure. I don't remember
10:43:47 17 working on that campaign.

10:43:48 18 Q. Has MTV ever uploaded full episodes
10:43:58 19 of shows to YouTube?

10:44:00 20 A. Not that I'm aware of.

10:44:19 21 Q. Has MTV ever uploaded full episodes
10:44:28 22 of its shows to other UGC services other than
10:44:32 23 YouTube?

10:44:32 24 MR. WILKENS: Objection.

10:44:34 25 A. I can't remember.

1 Burrell

10:44:47 2 Q. Can you tell me which third-party
10:45:07 3 marketing agencies MTV has engaged to upload
10:45:12 4 materials to YouTube?

10:45:13 5 MR. WILKENS: Objection.

10:45:17 6 A. I can't recall.

10:45:22 7 Q. Why does MTV sometimes engage
10:45:38 8 third-party agencies to engage in viral
10:45:40 9 marketing, and sometimes MTV does that work
10:45:43 10 in-house; why the difference?

10:45:45 11 MR. WILKENS: Objection.

10:45:47 12 A. I don't understand your question.

10:45:48 13 Q. Okay. Sometimes MTV will engage
10:45:52 14 third-party viral marketing companies like
10:45:57 15 Wiredset and Fanscape to promote MTV
10:46:01 16 materials, and sometimes MTV does that
10:46:03 17 internally.

10:46:03 18 And the question is, why does MTV
10:46:06 19 sometimes choose to engage third parties, and
10:46:08 20 sometimes it chooses to do the work in-house?

10:46:10 21 MR. WILKENS: Objection, lack of
10:46:16 22 foundation.

10:46:16 23 A. We use third-party agencies due to
10:46:21 24 lack of resources.

10:46:22 25 Q. Any other reasons?

1 Burrell

10:46:34 2 A. Not that I can recall.

10:46:36 3 Q. Can you name for me the third-party
10:47:02 4 agencies that MTV has hired to engage in
10:47:06 5 viral marketing?

10:47:10 6 A. Wiredset, Fanscape, M80, Red
10:47:27 7 Interactive, Carat Fusion, Deep Focus.
10:47:52 8 That's all I can remember.

10:47:53 9 Q. After M80, you said Red
10:47:58 10 Interactive?

10:47:58 11 A. I don't know if I said it before or
10:47:59 12 after, but that's one.

10:48:00 13 Q. And the other one was Carat Fusion;
10:48:03 14 can you spell that for me?

10:48:05 15 A. C-A-R-A-T.

10:48:10 16 Q. Is there someone at MTV who is the
10:48:21 17 person in charge of the relationship with
10:48:26 18 Fanscape, currently?

10:48:29 19 A. It varies.

10:48:34 20 Q. Who are those people, as you sit
10:48:43 21 here today, that are in charge of the
10:48:44 22 relationship with Fanscape?

10:48:48 23 A. The people on my team.

10:48:52 24 Q. There's not one person who is
10:49:00 25 responsible for the relationship?

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1 Burrell

10:49:02 2 MR. WILKENS: Objection.

10:49:05 3 A. The people on my team.

10:49:10 4 Q. They all share equally in the
10:49:15 5 responsibilities in managing that
10:49:17 6 relationship?

10:49:19 7 A. Yes.

10:49:20 8 Q. Do you know who signed the most
10:49:26 9 recent contract with Fanscape?

10:49:28 10 MR. WILKENS: Objection.

10:49:29 11 A. I can't remember.

10:49:38 12 Q. What would be your best guess as to
10:49:44 13 who that person is that would have signed the
10:49:46 14 contract with Fanscape?

10:49:47 15 MR. WILKENS: Objection.

10:49:48 16 A. Again, I can't remember.

10:49:52 17 Q. Right, but you have a lot more
10:49:55 18 intimate knowledge of the department than I
10:49:57 19 do, and the question is: Who, in your
10:49:59 20 estimation, in your best guess, would be the
10:50:01 21 person who signed that contract with
10:50:03 22 Fanscape?

10:50:04 23 MR. WILKENS: Objection. And I
10:50:05 24 move to strike the argumentative part of
10:50:08 25 that.

1 Burrell

10:50:10 2 A. I can't remember.

10:50:13 3 Q. Who do you think it was who signed
10:50:29 4 the contract with Fanscape?

10:50:30 5 MR. WILKENS: Objection.

10:50:33 6 Q. If you had to guess, you're under
10:50:35 7 oath, sir.

10:50:35 8 MR. WILKENS: Objection.

10:50:36 9 A. Again, I can't remember.

10:50:42 10 Q. Right, and the -- to be very clear,
10:50:44 11 the question isn't a factual one. It's a
10:50:47 12 question of, given your experience and given
10:50:48 13 your position, who do you think would be the
10:50:51 14 person who would have signed that contract,
10:50:53 15 knowing what you know?

10:50:54 16 MR. WILKENS: Objection.

10:50:55 17 A. I can't remember.

10:51:03 18 Q. You're unable to give testimony on
10:51:23 19 this point, who you think would be the most
10:51:25 20 likely person was who signed the contract
10:51:27 21 with Fanscape?

10:51:28 22 MR. WILKENS: Objection.

10:51:34 23 A. I can't remember.

10:51:36 24 Q. Right, and my question is, are you
10:51:38 25 unable to give testimony on this point?

1 Burrell

10:51:40 2 MR. WILKENS: Objection, asked and
10:51:42 3 answered.

10:51:43 4 A. I can't remember.

10:51:49 5 Q. This isn't a memory test. This is
10:51:51 6 not asking for a particular piece of factual
10:51:56 7 data. It's a question of, given your
10:51:59 8 experience and given your position, who do
10:52:00 9 you think the most likely person was who
10:52:02 10 signed the contract with Fanscape.

10:52:05 11 MR. WILKENS: Objection, asked and
10:52:06 12 answered.

10:52:06 13 A. Again, still, I can't remember.

10:52:15 14 Q. Who are the people who might have
10:52:26 15 signed the contract?

10:52:27 16 A. It varies.

10:52:39 17 Q. Does Ms. Perez ever sign contracts
10:52:41 18 with third-party marketing agencies, on MTV's
10:52:51 19 behalf?

10:52:51 20 A. I can't recall if she signed or
10:52:52 21 not.

10:52:53 22 Q. Does Ms. Hoang ever sign contracts
10:53:01 23 with third-party marketing agencies, on MTV's
10:53:04 24 behalf?

10:53:05 25 A. I can't recall if she has or not.

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1 Burrell

10:53:06 2 Q. What about Ms. Esler?

10:53:19 3 A. I can't recall if she has or not.

10:53:24 4 Q. Ms. Sun?

10:53:27 5 A. I can't recall if she has or not.

10:53:38 6 Q. Ms. Strube?

10:53:41 7 A. Again, I can't recall if she has
10:53:53 8 not either.

10:53:54 9 Q. Ms. Exarhos?

10:53:57 10 A. Can't -- can't recall.

10:54:01 11 Q. Have you ever signed a contract
10:54:03 12 with a third-party marketing agency?

10:54:06 13 A. With who?

10:54:07 14 Q. With a third-party marketing
10:54:09 15 agency?

10:54:11 16 A. Yes.

10:54:19 17 Q. Which ones?

10:54:24 18 A. I can't recall.

10:54:30 19 THE WITNESS: I need to take a
10:54:32 20 break. I need to go to the bathroom.

10:54:35 21 MR. VOLKMER: Sure. Let's take a
10:54:36 22 break.

10:54:37 23 THE VIDEOGRAPHER: The time is
10:54:38 24 10:53 a.m. We're going off the record.

10:54:41 25 (A brief recess was taken.)

1 Burrell

11:07:29 2 I go about finding that out?

11:07:38 3 A. Best way would be to ask all of the
11:07:50 4 individual agencies that we've used.

11:07:57 5 People's computers.

11:08:06 6 Q. Does MTV ever use viral marketing
11:08:10 7 to promote DVD sales?

11:08:23 8 A. I can't -- I can't remember.

11:08:31 9 I don't oversee DVD promotions.

11:08:36 10 Q. Do you oversee on-air promotions?

11:08:39 11 A. No, I do not.

11:08:40 12 Q. I'm sorry. We will just back up.

11:08:43 13 What do you oversee?

11:08:45 14 A. I'm responsible for the promotion
11:08:47 15 of our television shows and our events to
11:08:52 16 consumers off of MTV.

11:08:55 17 Q. Do you know who heads up viral
11:09:07 18 marketing efforts at Comedy Central?

11:09:15 19 A. I don't.

11:09:16 20 Q. Do you know anybody at Comedy
11:09:20 21 Central who works with viral marketing
11:09:21 22 agencies?

11:09:28 23 A. I can't, I can't remember.

11:09:30 24 Q. What about Nickelodeon?

11:09:44 25 A. What's your question?

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1 Burrell

11:09:45 2 Q. Do you know who heads up viral
11:09:48 3 marketing efforts at Nickelodeon?

11:09:51 4 A. No, I don't.

11:09:51 5 Q. Do you know anyone who works in
11:09:57 6 viral marketing -- who works at viral
11:10:02 7 marketing efforts at Nickelodeon?

11:10:03 8 A. No, I don't.

11:10:09 9 Q. What about at VH1, do you know
11:10:16 10 anyone who works on viral marketing efforts
11:10:19 11 at VH1?

11:10:21 12 A. Yes, I do.

11:10:29 13 Q. And who is that?

11:10:30 14 A. Debra Kadetsky.

11:10:42 15 Q. Do you know anyone else at VH1 who
11:10:45 16 works on viral marketing efforts?

11:10:47 17 A. I do not.

11:10:52 18 Q. Are you familiar with a company
11:11:14 19 called BayTSP?

11:11:16 20 A. Not that I can recall.

11:11:17 21 Q. Have you ever been asked to review
11:11:24 22 video clips, before they are taken down from
11:11:27 23 the YouTube service, to determine whether
11:11:28 24 they were uploaded for marketing purposes?

11:11:35 25 A. Nothing that I can remember.

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1 Burrell

11:14:01 2 promotional purposes?

11:14:02 3 A. I can't recall. I didn't work on
11:14:06 4 Little Talent Show.

11:14:06 5 Q. Do you know if a marketing agency
11:14:17 6 was used for the promotion of the Little
11:14:21 7 Talent Show?

11:14:21 8 A. I can't, I can't recall.

11:14:24 9 Q. Did you respond to Ms. Exarhos'
11:14:38 10 e-mail about responding to Lois?

11:14:45 11 A. I don't remember.

11:14:45 12 Q. But this wasn't your
11:14:51 13 responsibility, the marketing for the Little
11:14:54 14 Talent Show; is that right?

11:14:54 15 A. I don't recall working on Little
11:15:04 16 Talent Show.

11:15:04 17 Q. And Ms. Curren wanted to upload
11:15:21 18 clips from The Little Talent Show onto
11:15:24 19 YouTube.

11:15:25 20 Do you know if that ever happened?

11:15:27 21 MR. WILKENS: Objection.

11:15:27 22 A. I'm not sure what her intent was,
11:15:33 23 or what her thought process was for this
11:15:35 24 e-mail.

11:15:36 25 Q. Right. Do you know if that ever

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1 Burrell

11:15:37 2 happened, though?

11:15:38 3 Or -- she says, "We would love to
11:15:41 4 put up daily, unedited clips of the most
11:15:41 5 ridiculous performances from Little Talent
11:15:48 6 Show on YouTube with a tune-in message." And
11:15:50 7 the question is, do you know if that ever
11:15:53 8 happened?

11:15:53 9 A. I can't recall.

11:15:55 10 Q. Would there have been any problems
11:16:03 11 executing Ms. Curren's request?

11:16:07 12 A. I can't recall at the time.

11:16:13 13 Q. Would there have been any reasons
11:16:19 14 why someone from marketing would not have
11:16:21 15 followed up and executed what Ms. Curren was
11:16:25 16 requesting?

11:16:25 17 MR. WILKENS: Objection.

11:16:26 18 A. I'm -- I'm unsure.

11:16:36 19 Q. Can you think of any reasons why
11:16:41 20 someone from marketing would not have
11:16:43 21 followed up on this request from Ms. Curren?

11:16:53 22 A. Maybe someone didn't agree with
11:16:56 23 what she was asking, possibly. I don't know.

11:17:22 24 MR. VOLKMER: Let's mark Exhibit 3.

11:17:37 25 (Exhibit Burrell-3, E-mail chain,

1 Burrell

11:17:37 2 Bates Nos. VIA01107876 through
11:17:37 3 VIA01107878, marked for identification,
11:17:47 4 this date.)

11:17:47 5 Q. This is an e-mail that Viacom
11:18:34 6 produced in this litigation. The
11:18:36 7 last-in-time e-mail is from Damon Burrell to
11:18:39 8 Tina Exarhos, on October 5, 2006, cc'ing
11:18:48 9 Vivian Castelo.

11:19:52 10 A. Okay.

11:19:52 11 Q. And if I could just turn your
11:19:55 12 attention to the heading that says
11:19:58 13 "Two-A-Days." It's the third heading down.

11:20:00 14 What was Two-A-Days?

11:20:04 15 A. A television show.

11:20:06 16 Q. On MTV?

11:20:12 17 A. Yes.

11:20:14 18 Q. And it states here that a full
11:20:17 19 episode of Two-A-Days was released on UGC
11:20:21 20 sites, including YouTube, prior to linear.

11:20:24 21 Can you describe what the term
11:20:26 22 "linear" means here?

11:20:32 23 A. I'm not sure what Todd meant, when
11:20:36 24 he wrote that.

11:20:38 25 Q. Do you have an independent

1 Burrell

11:20:41 2 understanding of the term "linear"?

11:20:43 3 A. My understanding of "linear" is the
11:20:45 4 television screen.

11:20:47 5 Q. And so in this e-mail, which you
11:20:52 6 forwarded on to Ms. Exarhos and edited, Mr.
11:20:59 7 Apmann was reporting that full episodes had
11:21:02 8 been -- of the program Two-A-Days had been
11:21:06 9 posted to YouTube; is that right?

11:21:08 10 MR. WILKENS: Objection,
11:21:09 11 mischaracterizes the document.

11:21:12 12 A. I'm not sure what Todd's intent was
11:21:17 13 when he wrote this e-mail.

11:21:18 14 Q. But that's what you understood him
11:21:20 15 to be saying, right?

11:21:22 16 MR. WILKENS: Objection.

11:21:23 17 A. I can't remember what I was
11:21:28 18 thinking at the time.

11:21:29 19 Q. And that second bullet point under
11:21:36 20 Two-A-Days, you think that -- who do you
11:21:38 21 think wrote that?

11:21:39 22 A. Which bullet point are you
11:21:40 23 referring to?

11:21:41 24 Q. Under the heading "Two-A-Days," the
11:21:43 25 second bullet point, which says, "Full

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1 Burrell

11:23:09 2 of the project, so I wouldn't --

11:23:11 3 Q. So he may have -- Mr. Apmann may
11:23:13 4 have been lying?

11:23:14 5 A. -- I wouldn't know.

11:23:15 6 MR. WILKENS: Objection.

11:23:16 7 A. I wouldn't, I wouldn't know. I
11:23:21 8 didn't work on it, on that part of the
11:23:24 9 project.

11:23:24 10 Q. But full episodes of MTV programs
11:23:34 11 had been uploaded to YouTube and were
11:23:37 12 authorized to be on the service, right?

11:23:39 13 MR. WILKENS: Objection, lack of
11:23:42 14 foundation.

11:23:42 15 A. That I cannot recall.

11:23:45 16 Q. You can't recall, one way or the
11:23:48 17 other, whether full episodes of MTV programs
11:23:51 18 were uploaded to YouTube, for promotional
11:23:54 19 purposes?

11:23:54 20 A. I can't recall.

11:23:55 21 Q. Do you know if MTV used a
11:24:01 22 third-party marketing agency for the
11:24:04 23 Two-A-Days promotion?

11:24:05 24 A. I would not know.

11:24:07 25 Q. The last-in-time e-mail lists out a

1 Burrell

11:24:17 2 number of shows, Two-A-Days, The Duel, Laguna
11:24:20 3 Beach, Twentyfourseven, Adventures in
11:24:23 4 Hollywood, Human Giant, Yo Mama, Real World
11:24:28 5 Denver.

11:24:29 6 Did you work on any of these
11:24:30 7 programs?

11:24:33 8 A. I can't remember which ones I
11:24:46 9 worked on and which ones I didn't.

11:24:48 10 Q. Is it fair to assume that the
11:24:57 11 marketing efforts for these shows all
11:24:59 12 included uploading clips to YouTube?

11:25:02 13 MR. WILKENS: Objection.

11:25:02 14 A. No.

11:25:07 15 Q. Why is that?

11:25:11 16 A. From what I know, viral marketing
11:25:19 17 is a small part of our marketing initiatives.

11:25:27 18 Q. Right, and my question was: Is it
11:25:34 19 fair to assume that for all these programs,
11:25:36 20 as part of the marketing efforts, uploading
11:25:41 21 to YouTube was employed?

11:25:42 22 MR. WILKENS: Objection.

11:25:47 23 A. I don't assume that, no.

11:25:48 24 Q. Do you know of any of these
11:25:51 25 programs where you can tell me definitively

1 Burrell

11:25:54 2 that there was no marketing done on YouTube?

11:25:58 3 A. I can't -- I can't recall what was
11:25:59 4 done to promote these shows at the time.

11:26:01 5 Q. So for all these programs that are
11:26:06 6 listed here, you can't tell me definitively,
11:26:10 7 for any single program, that YouTube was not
11:26:12 8 part of the marketing strategy, right?

11:26:14 9 MR. WILKENS: Objection.

11:26:14 10 A. I can't recall what was used to
11:26:19 11 promote these shows at the time.

11:26:21 12 Q. It could have been YouTube, right?

11:26:22 13 MR. WILKENS: Objection.

11:26:23 14 A. I can't recall any of the specific
11:26:28 15 tactics that were used to promote the show at
11:26:31 16 the time.

11:26:31 17 Q. Was there any direction around this
11:26:32 18 time not to use YouTube to promote the MTV
11:26:35 19 programs?

11:26:53 20 A. I don't know. I can't recall.

11:26:54 21 Q. So you're not sure one way or the
11:27:01 22 other whether there was a directive not to
11:27:03 23 use YouTube around this time frame, which is
11:27:07 24 October of 2006?

11:27:08 25 MR. WILKENS: Objection.

1 Burrell

11:27:09 2 A. Again, I don't know. I can't -- I
11:27:13 3 can't recall.

11:27:13 4 Q. Do you know if any of these shows
11:27:21 5 that are listed in this e-mail, whether clips
11:27:24 6 from the shows were in fact uploaded to
11:27:27 7 YouTube?

11:27:30 8 MR. WILKENS: Objection.

11:27:32 9 A. I cannot recall what was used, the
11:27:38 10 tactics that were used to promote these shows
11:27:41 11 at the time.

11:27:41 12 Q. Are you familiar with peer-to-peer
11:27:48 13 file sharing networks?

11:27:52 14 A. Yes.

11:27:52 15 Q. Can you describe how they work for
11:27:54 16 me?

11:28:00 17 A. Technically I don't know the back
11:28:02 18 end of how it works, but.

11:28:03 19 Q. Can you give me the general --

11:28:05 20 A. The general term, files are shared
11:28:08 21 from one peer to the next, over the internet.

11:28:12 22 Q. And does MTV ever use peer-to-peer
11:28:21 23 file-sharing networks to promote its content?

11:28:27 24 A. Nothing that I can remember.

11:28:34 25 MR. VOLKMER: Mark Exhibit 4.

1 Burrell

11:28:54 2 (Exhibit Burrell-4, E-mail dated
11:28:54 3 10/24/07, Bates No. VIA01293224, marked
11:29:01 4 for identification, this date.)

11:29:01 5 Q. This is an October 24, 2007, e-mail
11:29:10 6 that was sent from Damon Burrell to Tina
11:29:14 7 Exarhos. The subject is "Kaya Marketing
11:29:17 8 Plans."

11:29:39 9 A. Okay.

11:30:17 10 Q. And what is Kaya?

11:30:19 11 A. Kaya was a television show on MTV.

11:30:23 12 Q. Were you responsible for the
11:30:25 13 marketing efforts associated with Kaya?

11:30:30 14 A. I was responsible for a portion of
11:30:32 15 the marketing efforts for Kaya.

11:30:33 16 Q. Which portion?

11:30:35 17 A. I can't recall specifically which
11:30:39 18 -- which ones.

11:30:40 19 Q. Online promotions?

11:30:42 20 A. I can't remember.

11:30:47 21 Q. Is Kaya a show that Viacom is suing
11:31:00 22 YouTube over?

11:31:03 23 A. I do not know.

11:31:03 24 Q. Do you think that it is?

11:31:08 25 MR. WILKENS: Objection.

1 Burrell

11:31:09 2 A. I do not know.

11:31:13 3 Q. In this e-mail you write, "We
11:31:15 4 already have multiple established places on
11:31:18 5 the web where we've seeded content and can
11:31:22 6 add full eps instantaneously."

11:31:25 7 And eps, you are meaning episodes,
11:31:29 8 right?

11:31:29 9 A. Yes.

11:31:29 10 Q. And did you add full episodes of
11:31:32 11 the Kaya program to the internet?

11:31:38 12 A. I cannot recall.

11:31:39 13 Q. So that might have occurred, full
11:31:46 14 episodes of the Kaya program being seeded on
11:31:50 15 the internet?

11:31:51 16 MR. WILKENS: Objection.

11:31:52 17 A. Again, I can't -- I can't recall.

11:32:00 18 Q. And at the bottom of the e-mail
11:32:01 19 there's a list of peer-to-peer networks,
11:32:05 20 including Limewire, PirateBay, Torrentspy,
11:32:10 21 Isohunt, TorrentPortal, LegalTorrents,
11:32:12 22 MiniNova, Torrentz and BitTorrent.

11:32:16 23 Did you use those peer-to-peer
11:32:18 24 networks to market the Kaya show?

11:32:22 25 A. I can't recall.

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1 Burrell

11:32:26 2 Q. Is that something that might have
11:32:28 3 occurred, uploading of episodes of the Kaya
11:32:32 4 program to these various peer-to-peer
11:32:37 5 file-sharing networks that are listed in
11:32:39 6 Exhibit 4?

11:32:40 7 MR. WILKENS: Objection.

11:32:40 8 A. I can't recall. Maybe, maybe not.
11:32:44 9 I don't know.

11:32:44 10 Q. Can you tell me if other programs
11:32:52 11 were marketed by uploading clips to
11:32:56 12 peer-to-peer file sharing networks?

11:33:02 13 A. Other -- other -- other MTV shows?

11:33:04 14 Q. Other programs.

11:33:05 15 We've established that Kaya is a
11:33:07 16 program that may have been subjected to
11:33:09 17 uploading to peer-to-peer file-sharing
11:33:12 18 networks. And the question is, do you know
11:33:14 19 of any other programs that MTV used -- where
11:33:18 20 MTV used peer-to-peer file-sharing networks
11:33:22 21 to market the programs?

11:33:22 22 MR. WILKENS: Objection,
11:33:28 23 mischaracterizes the testimony.

11:33:30 24 A. I don't -- I don't recall the
11:33:37 25 marketing efforts for any, any other shows.

1 Burrell

11:40:14 2 11:39 a.m., and we're back on the
11:40:16 3 record.

11:40:30 4 MR. VOLKMER: Exhibit 5 is an
11:40:31 5 e-mail from October 24, 2007, to John
11:40:36 6 MacDonald, sent to Tina Exarhos; and the
11:40:38 7 e-mail was forwarded to Damon Burrell on
11:40:40 8 that day, with the message, "Let's talk
11:41:03 9 fast..."

11:41:03 10 A. Okay.

11:41:03 11 Q. And Ms. Exarhos had said in this
11:41:06 12 message, "Let's talk fast..."

11:41:08 13 Did you end up having a
11:41:09 14 conversation with her regarding
11:41:17 15 Mr. MacDonald's message?

11:41:20 16 A. I can't recall.

11:41:20 17 Q. Did you -- do you recall having a
11:41:28 18 conversation with Ms. Exarhos about Kaya in
11:41:34 19 any way?

11:41:34 20 A. I don't remember.

11:41:40 21 Q. You don't remember ever speaking
11:41:41 22 with Ms. Exarhos about the program Kaya?

11:41:43 23 A. I can't remember.

11:41:58 24 Q. Mr. -- well, first, who is John
11:42:08 25 McDonald?

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1 Burrell

11:42:11 2 A. He's an MTV employee.

11:42:12 3 Q. In which department?

11:42:14 4 A. Programming.

11:42:15 5 Q. Mr. McDonald writes, "We're looking

11:42:19 6 for ways to get episodes other than episodes

11:42:22 7 1 of Kaya out there and even considering

11:42:25 8 sneaking some episodes this weekend.

11:42:28 9 Question: Are there any sensitivity issues

11:42:30 10 on getting episodes on MySpace? I'm aware of

11:42:33 11 the YouTube stuff, but don't want to step in

11:42:36 12 anything else."

11:42:37 13 Do you what he's referring to, when

11:42:39 14 he says, "I'm aware of the YouTube stuff"?

11:42:48 15 A. I'm not -- I'm not sure what he

11:42:50 16 intended to mean, when he wrote this.

11:42:52 17 Q. You don't know what he means when

11:42:53 18 he says, "I'm aware of the YouTube stuff, but

11:42:55 19 don't want to step in anything else"?

11:43:03 20 A. I'm not sure what his intention

11:43:05 21 was, when he wrote this.

11:43:06 22 Q. How did you read that?

11:43:13 23 A. I don't recall how I interpreted it

11:43:15 24 at the time.

11:43:16 25 Q. How do you interpret it, as you sit

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1 Burrell

11:43:22 2 here today?

11:43:28 3 A. There could be many, many reasons;
11:43:33 4 many interpretations, multiple
11:43:36 5 interpretations.

11:43:36 6 Q. And what are those?

11:43:49 7 A. Interpreting it as of today, it
11:43:51 8 could mean other stuff that's already out
11:43:55 9 there. It could be competitive stuff. There
11:44:01 10 could be, again, multiple -- it could be
11:44:10 11 referring to multiple things.

11:44:12 12 I don't know what his intent was
11:44:13 13 for this.

11:44:13 14 Q. Do you know if there were any
11:44:18 15 sensitivities about getting episodes of Kaya
11:44:21 16 on MySpace?

11:44:24 17 A. I definitely don't remember.

11:44:29 18 Q. Were there any sensitivities about
11:44:31 19 putting episodes of Kaya on YouTube?

11:44:37 20 A. The same thing, I don't remember.

11:44:39 21 Q. In this time frame, which is
11:44:45 22 October of 2007, did you feel at all
11:44:47 23 constrained in your job from using YouTube?

11:44:52 24 MR. WILKENS: Objection.

11:44:54 25 A. I don't, I don't remember.

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1 Burrell

11:45:00 2 Q. Have you ever felt constrained from
11:45:09 3 using YouTube in your job at MTV?

11:45:20 4 A. Nothing that I can recall.

11:45:22 5 Q. Did the marketing department at MTV
11:45:33 6 change its practices with respect to YouTube,
11:45:36 7 after this litigation was filed?

11:45:38 8 MR. WILKENS: Objection.

11:45:40 9 A. I can't -- I can't remember that
11:45:46 10 either.

11:45:46 11 Q. As you sit here today, are you
11:45:57 12 restrained at all from using YouTube in your
11:46:00 13 job?

11:46:13 14 A. Nothing that I can think of.

11:46:14 15 Q. So MTV still uses YouTube to
11:46:32 16 promote its programming?

11:46:34 17 MR. WILKENS: Objection.

11:46:45 18 A. I'm not sure. Nothing that I can
11:46:50 19 recall.

11:46:52 20 Q. But there's nothing preventing MTV
11:46:56 21 from using YouTube to promote its
11:47:00 22 programming, correct?

11:47:00 23 MR. WILKENS: Objection.

11:47:01 24 A. I didn't understand the question.

11:47:03 25 Q. If you wanted to place a

1 Burrell

11:47:06 2 promotional clip on YouTube today, there is
11:47:09 3 nothing preventing you from doing that,
11:47:09 4 correct?

11:47:16 5 A. I can't -- I can't recall.

11:47:18 6 Q. Well, I'm not asking for
11:47:19 7 recollections or memory. I'm talking about
11:47:22 8 today, in your job, is there anything
11:47:25 9 preventing you from uploading promotional
11:47:27 10 materials to YouTube?

11:47:31 11 A. I'm not -- I'm not sure if there's
11:47:34 12 anything in place. I'm not sure.

11:47:36 13 Q. Wouldn't you need to know that to
11:47:43 14 be able to do your job effectively?

11:47:45 15 MR. WILKENS: Objection.

11:47:46 16 A. No.

11:47:52 17 Q. You wouldn't need to know which
11:48:00 18 sites you can post materials to and which
11:48:02 19 sites you can't, in order to do your job?

11:48:06 20 A. I'm not sure if there's anything in
11:48:23 21 place for YouTube. I'd have to ask.

11:48:27 22 Q. So you are not aware of anything
11:48:33 23 preventing you, personally, from using
11:48:36 24 YouTube in your day-to-day job
11:48:40 25 responsibilities?

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1 Burrell

11:48:40 2 A. I would have to ask.

11:48:47 3 Q. But as you sit here today, you are
11:48:49 4 not aware of anything like that, right?

11:49:01 5 A. Nothing that I can think of.

11:49:08 6 MR. VOLKMER: I would like to mark
11:49:11 7 Exhibit 6.

11:49:11 8 (Exhibit Burrell-6, E-mail chain,
11:49:11 9 Bates No. VIA02359391, marked for
11:49:36 10 identification, this date.)

11:49:36 11 Q. This is an e-mail thread from
11:49:55 12 September 16, 2007, that Viacom produced in
11:49:58 13 this litigation. Subject line is "Perez,"
11:50:03 14 P-E-R-E-Z.

11:50:31 15 A. Okay.

11:50:31 16 Q. And this e-mail is describing viral
11:50:35 17 marketing efforts related to the program
11:50:40 18 Celebrity Rap Superstar; is that right?

11:50:42 19 A. I don't know.

11:50:42 20 MR. WILKENS: Objection. And the
11:50:45 21 objection, I believe Mr. Burrell is only
11:50:47 22 on the very first-in-time e-mail.

11:50:49 23 MR. VOLKMER: That's not an
11:50:51 24 objection, Scott.

11:50:52 25 MR. WILKENS: Well, your question

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1 Burrell

11:50:53 2 was ambiguous as to which e-mail you
11:50:56 3 were referring to.

11:50:56 4 MR. VOLKMER: Scott, come on, let's
11:50:58 5 keep the speaking objections to a
11:50:59 6 minimum, and let's get through this.

11:51:03 7 Q. The question was, this e-mail
11:51:05 8 thread is describing the viral marketing
11:51:08 9 efforts related to the program Celebrity Rap
11:51:12 10 Superstar, correct?

11:51:14 11 MR. WILKENS: Objection, asked and
11:51:15 12 answered.

11:51:15 13 A. I don't know what it's referring
11:51:17 14 to.

11:51:17 15 Q. This YouTube URL that's set forth
11:51:29 16 in the last-in-time e-mail, do you know what
11:51:31 17 that clip was of?

11:51:32 18 MR. WILKENS: Objection, lack of
11:51:39 19 foundation.

11:51:39 20 A. I don't recall.

11:51:40 21 Q. In Mr. DiSanto's e-mail he says
11:51:46 22 there's a clip of him pissed off backstage.

11:51:48 23 Do you recall that YouTube clip?

11:51:50 24 MR. WILKENS: Objection, lack of
11:51:51 25 foundation. He's not on the e-mail.

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1 Burrell

11:51:54 2 He's not a recipient.

11:51:58 3 A. I don't know.

11:51:58 4 Q. You don't know what this e-mail
11:52:07 5 thread is referring to, you don't know which
11:52:10 6 video it's referring to?

11:52:11 7 A. I don't know.

11:52:20 8 Q. Are you familiar with promotional
11:52:30 9 materials for the program Celebrity Rap
11:52:34 10 Superstar that were uploaded to YouTube?

11:52:37 11 A. Nothing that I can recall.

11:52:43 12 Q. Do you recall any of the
11:52:50 13 promotional efforts for that program,
11:53:00 14 Celebrity Rap Superstar?

11:53:06 15 A. Again, nothing -- nothing that I
11:53:16 16 can remember.

11:53:17 17 Q. The last e-mail in this thread is
11:53:27 18 from Mr. DiSanto to a number of people,
11:53:31 19 including yourself.

11:53:33 20 Do you know what Mr. DiSanto's
11:53:35 21 e-mail is referencing?

11:53:39 22 A. I don't remember.

11:53:40 23 Q. He's talking about, "Are we ready
11:53:43 24 to move into phase 2 of this plan," and the
11:53:47 25 subject line is "Perez."

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1 Burrell

11:53:51 2 Do you know what that refers to?

11:53:55 3 A. I do not remember.

11:53:56 4 Q. Are you familiar with YouTube user
11:54:12 5 Gossip Girl 40?

11:54:19 6 A. I am not.

11:54:20 7 Q. Is that a Fanscape account,
11:54:24 8 Gossip Girl 40?

11:54:25 9 MR. WILKENS: Objection.

11:54:27 10 A. I can't remember.

11:54:35 11 Q. It might have been a Fanscape
11:54:40 12 account, Gossip Girl 40?

11:54:42 13 MR. WILKENS: Objection.

11:54:42 14 A. Again, I can't -- I can't remember.

11:54:47 15 Q. Do you know whether or not
11:54:59 16 Gossip Girl 40 is a Fanscape YouTube account?

11:55:01 17 MR. WILKENS: Objection.

11:55:02 18 A. Again, I can't, I can't remember.

11:55:09 19 Q. You can't say that it is, or you
11:55:17 20 can't say that it's not; is that right?

11:55:19 21 MR. WILKENS: Objection.

11:55:19 22 A. I can't remember.

11:55:23 23 Q. You think it's likely that's the
11:55:32 24 case, that Gossip Girl 40 is a Fanscape
11:55:36 25 account?

1 Burrell

11:55:36 2 MR. WILKENS: Objection.

11:55:41 3 A. Again, I can't, I can't remember.

11:55:43 4 I don't know.

11:55:43 5 Q. What about the YouTube user name
11:55:43 6 snack ord, are you familiar with that account
11:55:47 7 name?

11:55:47 8 A. Repeat that for me?

11:55:50 9 Q. Snack ord?

11:55:53 10 A. Again, I can't, I can't remember
11:55:55 11 that either.

11:55:55 12 Q. Do you know if that's a Fanscape
11:55:57 13 account?

11:56:02 14 A. I wouldn't know.

11:56:03 15 Q. You can't tell from that
11:56:06 16 description, snack ord, that it's a Fanscape
11:56:11 17 account?

11:56:13 18 A. I wouldn't know.

11:56:13 19 Q. Do you recall the video clip of
11:56:45 20 Perez Hilton backstage being uploaded to the
11:56:50 21 YouTube service for promotional purposes, by
11:56:52 22 MTV or its agents?

11:57:02 23 A. I can't recall. I can't remember.

11:57:04 24 Q. Do you remember any marketing
11:57:10 25 materials that included Perez Hilton that

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1 Burrell

11:57:16 2 were uploaded to YouTube?

11:57:21 3 A. Again, I can't -- I can't remember.

11:57:51 4 MR. VOLKMER: Let's mark Exhibit 7.

11:57:54 5 (Exhibit Burrell-7, E-mail chain,

11:57:54 6 Bates No. VIA00857333, marked for

11:58:13 7 identification, this date.)

11:58:13 8 Q. This is an e-mail thread from

11:58:28 9 June 7, 2006 that was forwarded from Tina

11:58:37 10 Exarhos to Joe Armenia, Todd Apmann and Damon

11:58:42 11 Burrell on June 8, 2006.

11:58:46 12 A. Okay.

11:58:46 13 Q. And in the first-in-time e-mail,

11:58:49 14 Rod Aissa writes, "Jamie and Warner Brothers

11:58:52 15 just called me to hype how the show and

11:58:54 16 Jamie's music is blowing up on the internet.

11:58:57 17 They're wondering if we could consider

11:58:57 18 leaking the next episode on YouTube. It

11:58:59 19 might help spread word of mouth."

11:59:02 20 Do you know what television program

11:59:04 21 is being referenced in that e-mail?

11:59:07 22 A. No.

11:59:10 23 Q. No? You don't know what the

11:59:24 24 reference to Jamie is?

11:59:26 25 A. No, I do not.

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1 Burrell

11:59:29 2 Q. That's not a reference to Jamie
11:59:32 3 Kennedy?

11:59:41 4 A. I -- I don't know.

11:59:41 5 Q. It says, "They're wondering if we
11:59:54 6 could consider leaking the next episode on
12:00:04 7 YouTube."

11:59:58 8 Do you know what "the next episode"
12:00:00 9 refers to?

12:00:03 10 A. I do not know.

12:00:04 11 Q. Do you know if anyone at MTV ended
12:00:09 12 up leaking the next episode of the program
12:00:11 13 being referenced in this e-mail onto YouTube?

12:00:14 14 MR. WILKENS: Objection.

12:00:14 15 A. Nothing that I can recall.

12:00:24 16 Q. You don't recall that one way or
12:00:26 17 the other?

12:00:28 18 A. I don't know.

12:00:29 19 Q. Did you execute a plan to leak an
12:00:39 20 episode of Jamie Kennedy's show onto YouTube?

12:00:50 21 A. I don't remember.

12:00:51 22 Q. Did you have a discussion with
12:01:03 23 Ms. Exarhos about the subject of Mr. Aissa's
12:01:07 24 e-mail?

12:01:13 25 A. Again, I don't -- I don't remember.

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1 Burrell

12:01:33 2 MR. VOLKMER: I would like to mark
12:01:42 3 Exhibit 8.

12:01:43 4 (Exhibit Burrell-8, Document
12:02:01 5 entitled, "MTV Dancelife Digital
12:02:04 6 Marketing Recap, January 16, 2007,"
12:02:04 7 Bates Nos. VIA00830846 through
12:02:04 8 VIA00830852, marked for identification,
12:01:55 9 this date.)

12:01:55 10 Q. This is a document produced by
12:01:59 11 Viacom in this litigation, with the title
12:02:01 12 "MTV Dancelife Digital Marketing Recap,
12:02:05 13 January 16, 2007."

12:02:10 14 And my question is: Do you
12:02:15 15 recognize this document?

12:02:18 16 A. I do not.

12:02:19 17 Q. Have you ever seen a document like
12:02:22 18 this before, from Wiredset?

12:02:31 19 A. I believe so.

12:02:32 20 Q. Do you know what the reference to
12:02:37 21 "digital marketing recap" is?

12:02:38 22 A. I don't understand your question.

12:02:43 23 Q. Do you know what that reference is
12:02:44 24 to? Digital marketing recap, do you know
12:02:48 25 what that is?

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1 Burrell

12:05:27 2 A. I don't recall.

12:05:40 3 Q. If I could turn your attention to
12:05:52 4 the fifth page of this report, under the
12:05:55 5 heading, "On-line Video Channels."

12:06:04 6 It appears that Wiredset seeded
12:06:08 7 clips from Dancelife to a number of UGC
12:06:11 8 sites; is that right?

12:06:12 9 MR. WILKENS: Objection.

12:06:12 10 A. I'm not sure what they ended up
12:06:24 11 doing to promote this campaign.

12:06:26 12 Q. They're reporting here that they've
12:06:32 13 uploaded the clip, clips from Dancelife to a
12:06:34 14 number of online video channels; is that
12:06:36 15 right?

12:06:36 16 A. Again, I don't know what they did
12:06:39 17 to promote this campaign. I don't recall --

12:06:44 18 Q. This document doesn't refresh your
12:06:47 19 recollection at all, what they did to market
12:06:49 20 this campaign?

12:06:50 21 A. I don't remember working on this
12:06:52 22 campaign. I don't remember what was done to
12:06:54 23 promote the show.

12:06:55 24 Q. You don't remember what was done to
12:06:58 25 promote the show Dancelife, is that the

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1 Burrell

12:07:01 2 testimony?

12:07:02 3 MR. WILKENS: Asked -- objection.

12:07:06 4 A. I don't remember working on this
12:07:32 5 show.

12:07:32 6 Q. Who at MTV would have been the
12:07:39 7 point person on this particular campaign with
12:07:44 8 Wiredset for the Dancelife program?

12:07:54 9 A. It could have been -- there were a
12:08:01 10 number of people that could have been point
12:08:05 11 on this campaign, with Wiredset.

12:08:08 12 Q. But it wasn't you?

12:08:13 13 A. I don't remember.

12:08:13 14 Q. Do you have any reason to doubt the
12:08:17 15 accuracy of the data that Wiredset provided
12:08:21 16 in this report?

12:08:22 17 MR. WILKENS: Objection.

12:08:31 18 A. I don't remember working on it.

12:08:32 19 Q. Do you have any reason to doubt the
12:08:39 20 accuracy of the data that's contained in this
12:08:43 21 report from Wiredset?

12:08:44 22 MR. WILKENS: Objection.

12:08:45 23 A. I don't know, because I don't
12:08:46 24 remember working on it.

12:08:47 25 Q. But you've received reports like

1 Burrell

12:08:50 2 this from Wiredset, in your capacity as an
12:08:56 3 employee in the marketing department at MTV,
12:08:56 4 correct?

12:09:02 5 A. I've received reports from multiple
12:09:04 6 agencies in my capacity.

12:09:05 7 Q. Including Wired --

12:09:06 8 A. Including reports from Wiredset.

12:09:08 9 Q. Including records from Wiredset.

12:09:11 10 Have you ever had any reason to
12:09:13 11 doubt the accuracy of the data that Wiredset
12:09:15 12 was providing you?

12:09:18 13 A. I can't remember if that's ever
12:09:21 14 come up or not.

12:09:22 15 Q. This report states that Wiredset
12:09:39 16 uploaded a trailer from Dancelife to YouTube
12:09:44 17 and received 11,623 views. It's on page 5.

12:09:53 18 And I presume that that's an
12:09:55 19 accurate report from Wiredset, right?

12:09:57 20 MR. WILKENS: Objection.

12:09:59 21 A. I don't remember working on this
12:10:05 22 campaign, so I wouldn't -- I wouldn't know.

12:10:09 23 Q. Wiredset did use YouTube to promote
12:10:12 24 MTV materials, though, right?

12:10:14 25 MR. WILKENS: Objection.

1 Burrell

12:10:15 2 A. I personally don't remember working
12:10:23 3 on this campaign, so I wouldn't know.

12:10:24 4 Q. You wouldn't know if Wiredset used
12:10:28 5 YouTube to promote MTV content?

12:10:35 6 A. Again, I didn't -- I didn't work on
12:10:37 7 this campaign. I don't remember working on
12:10:40 8 this campaign, so I wouldn't know.

12:10:41 9 Q. Setting aside this campaign, do you
12:10:44 10 know if Wiredset used YouTube to promote MTV
12:10:48 11 content?

12:10:49 12 MR. WILKENS: Objection, asked and
12:10:49 13 answered.

12:10:50 14 A. I can't remember specific sites
12:10:59 15 that we've used to promote shows.

12:11:01 16 Q. Do you think it's more likely or
12:11:09 17 less likely that Wiredset used YouTube to
12:11:13 18 promote MTV programs?

12:11:15 19 MR. WILKENS: Objection.

12:11:22 20 A. I don't know. It can go either
12:11:25 21 way. I don't know.

12:11:25 22 Q. It could go either way. The
12:11:27 23 reporting that Wiredset is providing at page
12:11:31 24 5 could be a fabrication; is that right?

12:11:35 25 MR. WILKENS: Objection,

1 Burrell

12:11:37 2 mischaracterizes his testimony.

12:11:39 3 A. I don't remember working on this
12:11:42 4 campaign, so I don't know what was done to
12:11:45 5 promote the show.

12:11:46 6 Q. And so this line item here where it
12:11:50 7 talks about 11,623 views, that could be a
12:11:55 8 fabrication; is that right?

12:11:56 9 MR. WILKENS: Objection, asked and
12:11:57 10 answered.

12:12:02 11 A. So, since I don't remember working
12:12:11 12 on this campaign, I don't know what was done
12:12:15 13 or used to promote the show.

12:12:18 14 Q. Do you think that's within the
12:12:20 15 realm of possibility, that Wiredset provided
12:12:23 16 you with data that was completely made up?

12:12:29 17 MR. WILKENS: Objection.

12:12:32 18 A. Without remembering working on the
12:12:38 19 campaign, I wouldn't -- I wouldn't know.

12:12:41 20 Q. You have a professional
12:12:43 21 relationship with Wiredset, correct?

12:12:46 22 A. Yes, I do.

12:12:47 23 Q. And you -- and MTV pays Wiredset
12:12:53 24 money to engage in viral marketing, right?

12:12:59 25 A. Correct.

1 Burrell

12:14:37 2 campaign, so I'm not sure what was used to
12:14:43 3 promote the show or how, how that
12:14:47 4 relationship worked out.

12:14:48 5 Q. Did you -- were there any campaigns
12:14:53 6 where you did work with Wiredset?

12:14:56 7 A. Yes, I have worked with Wiredset on
12:15:00 8 campaigns.

12:15:00 9 Q. Which shows?

12:15:06 10 A. I can't remember any specific
12:15:08 11 shows.

12:15:08 12 Q. And in those circumstances in which
12:15:14 13 you were working with Wiredset on a campaign,
12:15:16 14 would you tell Wiredset which sites to upload
12:15:22 15 clips to, or would Wiredset make that
12:15:25 16 determination?

12:15:25 17 A. I can't remember.

12:15:26 18 Q. As a general practice when you're
12:15:44 19 working with third-party marketing agencies,
12:15:46 20 do you specify which sites the marketing
12:15:49 21 agency should upload clips to, or do you
12:15:52 22 grant discretion to those sites to upload?

12:15:57 23 MR. WILKENS: Objection.

12:15:57 24 A. It varies.

12:16:14 25 Q. In circumstances where you were

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1 Burrell

12:16:17 2 specifying which sites to upload clips to,
12:16:20 3 would you include YouTube as a site that
12:16:24 4 should be used, when performing viral
12:16:26 5 marketing?

12:16:26 6 MR. WILKENS: Objection.

12:16:27 7 A. I can't remember.

12:16:32 8 Q. So you might have instructed
12:16:38 9 third-party marketing agencies to upload
12:16:42 10 clips to YouTube; is that right?

12:16:43 11 MR. WILKENS: Objection.

12:16:44 12 A. I can't remember.

12:16:59 13 MR. VOLKMER: I would like to mark
12:17:08 14 Exhibit 9.

12:17:33 15 (Exhibit Burrell-9, Document
12:17:46 16 entitled, "MTV, The Hills Season 2
12:17:49 17 Digital Marketing Recap, January 16,
12:17:49 18 2007," Bates Nos. VIA00830853 through
12:17:49 19 VIA00830860, marked for identification,
12:17:42 20 this date.)

12:17:42 21 MR. WILKENS: And this is a
12:17:43 22 document produced by Viacom in this
12:17:44 23 litigation, with the title, "MTV, The
12:17:46 24 Hills Season 2 Digital Marketing Recap,
12:17:52 25 January 16, 2007."

1 Burrell

12:18:16 2 A. Okay.

12:18:17 3 Q. Do you recognize this document?

12:18:21 4 A. No.

12:18:21 5 Q. Have you ever seen this document
12:18:25 6 before?

12:18:25 7 MR. WILKENS: Objection.

12:18:26 8 A. Not that I remember.

12:18:28 9 Q. And were you involved at all with
12:18:35 10 promotion of the program, The Hills Season 2?

12:18:42 11 A. I don't remember what my
12:18:43 12 involvement was in the promotion of The Hills
12:18:46 13 Season 2.

12:18:47 14 Q. Do you remember any programs that
12:18:54 15 you have been involved in the marketing
12:18:56 16 efforts for?

12:19:02 17 A. Yes.

12:19:02 18 Q. Which programs?

12:19:05 19 A. I'm working on a campaign right now
12:19:11 20 for The Phone.

12:19:13 21 Q. Any others?

12:19:21 22 A. The movie awards right now.

12:19:23 23 Q. Any other programs?

12:19:38 24 A. None that I can think of right now.

12:19:39 25 Q. Over the -- your entire employment

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1 Burrell

12:19:43 2 at MTV, you can only recall two programs that
12:19:46 3 you worked on, with respect to marketing
12:19:48 4 efforts by MTV?

12:19:50 5 A. It's all I can think of right now.

12:19:53 6 Q. If you could turn to the fifth
12:20:11 7 page. And again, it looks like Wiredset
12:20:23 8 uploaded clips of The Hills Season 2 to
12:20:26 9 numerous online video websites, including
12:20:33 10 YouTube; Is that your understanding?

12:20:36 11 MR. WILKENS: Objection.

12:20:37 12 A. I don't remember working on this
12:20:38 13 campaign, so I'm not sure what was done to
12:20:45 14 promote it.

12:20:45 15 Q. But Wiredset is saying that they
12:20:48 16 uploaded clips from The Hills Season 2 to
12:20:50 17 various online video channels, right?

12:20:52 18 MR. WILKENS: Objection.

12:20:54 19 A. I didn't work on this campaign, so
12:20:58 20 I'm not sure what was done to promote it.

12:21:00 21 Q. Right. But whether or not you have
12:21:02 22 firsthand knowledge, Wiredset, in this
12:21:04 23 document, is reporting that it placed The
12:21:08 24 Hills Season 2 clips on various online video
12:21:12 25 channels, right?

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1 Burrell

12:22:46 2 that message grow exponentially, on its own.

12:22:51 3 Q. Okay. Using that definition, can
12:22:54 4 you think of any shows in which MTV did not
12:22:58 5 engage in online viral marketing?

12:23:00 6 A. I can't think of anything right
12:23:11 7 now.

12:23:11 8 Q. You can't think of any specific
12:23:17 9 shows where MTV did not engage in online
12:23:20 10 viral marketing; is that right?

12:23:20 11 A. I don't remember.

12:23:24 12 Q. And you can't think of any shows in
12:23:26 13 which MTV did not engage in viral marketing
12:23:30 14 on YouTube; is that right?

12:23:32 15 MR. WILKENS: Objection.

12:23:35 16 A. Repeat your question?

12:23:37 17 Q. Sure. You can't think of any shows
12:23:42 18 for which MTV did not engage in viral
12:23:45 19 marketing on YouTube; is that right?

12:23:47 20 MR. WILKENS: Objection.

12:23:47 21 A. I can't remember.

12:23:56 22 Q. Can you name a single show where
12:23:59 23 MTV did not engage in viral marketing on
12:24:03 24 YouTube?

12:24:03 25 MR. WILKENS: Objection.

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1 Burrell

12:24:04 2 A. I can't remember.

12:24:18 3 THE VIDEOGRAPHER: Counsel.

12:24:19 4 MR. VOLKMER: Let's go off the
12:24:20 5 record.

12:24:21 6 THE VIDEOGRAPHER: The time is
12:24:22 7 12:23 p.m. We're going off the record.

12:24:22 8 (Lunch recess taken at 12:23 p.m.)

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1 Burrell

12:24:22 2 A F T E R N O O N S E S S I O N

13:10:31 3 (Time noted: 1:09 p.m.)

13:10:31 4 THE VIDEOGRAPHER: The time is

13:10:42 5 1:09 p.m., and this is tape number 2 of

13:10:45 6 the continued videotaped deposition of

13:10:46 7 Mr. Damon Burrell.

13:44:39 8 D A M O N B U R R E L L , resumed.

13:44:39 9 EXAMINATION (Cont'd.)

13:10:49 10 BY MR. VOLKMER:

13:10:49 11 Q. Good afternoon, Mr. Burrell.

13:10:51 12 A. Good afternoon.

13:10:51 13 Q. You know that you are still

13:10:53 14 testifying under oath, correct?

13:10:53 15 A. Yes.

13:10:54 16 Q. And testifying under oath, do you

13:10:57 17 believe that MTV or its agents have ever

13:11:00 18 uploaded promotional materials to YouTube?

13:11:03 19 MR. WILKENS: Objection.

13:11:04 20 A. I can't recall.

13:11:11 21 Q. What is your belief?

13:11:18 22 MR. WILKENS: Objection.

13:11:18 23 A. I can't, I can't recall.

13:11:22 24 Q. Would it surprise you to learn that

13:11:32 25 Ms. Exarhos stated that using YouTube for

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1 Burrell

13:14:45 2 Q. And do you oversee viral marketing
13:14:55 3 initiatives that MTV conducts internally?

13:15:00 4 A. I don't understand what you mean.

13:15:01 5 Q. When I say "internal" --

13:15:05 6 A. Internal viral.

13:15:06 7 Q. "Internal" meaning the viral
13:15:10 8 marketing efforts that MTV engages in, by its
13:15:15 9 own employees, as opposed to using a
13:15:17 10 third-party marketing agency, do you oversee
13:15:23 11 those initiatives?

13:15:24 12 A. My responsibilities include the
13:15:26 13 promotion of television shows and events,
13:15:30 14 using multiple tactics, viral marketing being
13:15:36 15 one of those tactics.

13:15:38 16 Q. And do you oversee viral marketing
13:15:42 17 that is conducted by MTV employees?

13:15:46 18 A. I can't recall any viral marketing
13:15:55 19 activities by MTV employees.

13:15:56 20 Q. Ms. Exarhos testified that you do,
13:16:09 21 in fact, oversee marketing initiatives that
13:16:12 22 MTV conducts internally.

13:16:14 23 Is she mistaken?

13:16:15 24 MR. WILKENS: I object, for the
13:16:17 25 same reasons I objected earlier.

1 Burrell

13:18:44 2 uploaded clips from those shows to YouTube.

13:18:47 3 A. Okay.

13:18:47 4 Q. And you can just answer whether you
13:18:49 5 know or not, yes, no, or if you don't know,
13:18:51 6 you don't know.

13:18:52 7 The show 52 Bands/52 Weeks, do you
13:18:58 8 know if MTV agents or employees ever uploaded
13:19:02 9 clips from that show to YouTube?

13:19:03 10 A. I don't know.

13:19:04 11 Q. What about True Life?

13:19:06 12 A. I wouldn't be able to remember.

13:19:09 13 Q. You don't remember, as you sit here
13:19:15 14 today?

13:19:15 15 A. I don't remember.

13:19:16 16 Q. That's Amore?

13:19:19 17 A. That's Amore? I definitely don't
13:19:24 18 remember.

13:19:24 19 Q. America's Best Dance Crew?

13:19:28 20 A. And the question is?

13:19:32 21 Q. Have, have MTV employees or its
13:19:36 22 agents ever uploaded clips from these
13:19:40 23 programs to YouTube?

13:19:40 24 A. I don't -- I don't know.

13:19:43 25 Q. The Paper?

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	1	Burrell
13:19:48	2	A. I don't know.
13:19:50	3	Q. Rock The Cradle?
13:19:56	4	A. I can't remember.
13:19:58	5	Q. Yo! MTV Raps?
13:20:02	6	A. Do not know.
13:20:03	7	Q. Hottest MCs In The Game?
13:20:13	8	A. Definitely do not know.
13:20:14	9	Q. From G's to Gents?
13:20:20	10	A. I can't remember.
13:20:24	11	Q. Legally Blonde The Musical?
13:20:28	12	A. I can't remember.
13:20:36	13	Q. American Mall?
13:20:38	14	A. Do not know.
13:20:44	15	Q. Buzzin'?
13:20:52	16	A. Sorry, I can't remember.
13:20:53	17	Q. How about Busted?
13:20:54	18	A. Do not know.
13:20:55	19	Q. Video Music Awards?
13:20:57	20	A. Can't remember.
13:21:28	21	Q. Paris BFF?
13:21:33	22	A. Cannot remember.
13:21:36	23	Q. Man and Wife?
13:21:40	24	A. Can't remember.
13:21:48	25	Q. I'm From Rolling Stone?

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1 Burrell

13:21:51 2 A. Do not know.

13:21:52 3 Q. Wonder Showzen?

13:21:54 4 A. Do not know.

13:21:56 5 Q. Dancelife?

13:21:58 6 A. Do not know.

13:21:59 7 Q. Robin Big?

13:22:06 8 A. Can't remember.

13:22:08 9 Q. Bam's Unholy Union?

13:22:12 10 A. Do not know.

13:22:13 11 Q. A Shot At Love?

13:22:15 12 A. I can't remember on that one

13:22:24 13 either.

13:22:24 14 Q. Call To Greatness?

13:22:25 15 A. Do not know.

13:22:26 16 Q. Brooke Knows Best?

13:22:29 17 A. Do not know.

13:22:32 18 I don't think that's an MTV show.

13:22:34 19 Q. There's a program, a reality show

13:22:36 20 with Brooke Hogan.

13:22:38 21 Is that not Brooke Knows Best?

13:22:41 22 A. That's on VH1.

13:22:44 23 I only work on MTV.

13:22:45 24 Q. Okay. FN MTV?

13:22:48 25 A. Can't remember.

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	1	Burrell
13:22:51	2	Q. Where My Dog's At?
13:22:55	3	A. Do not know.
13:22:57	4	Q. Two-A-Days?
13:22:59	5	A. Can't remember.
13:23:02	6	Q. Yo! Mama?
13:23:19	7	A. I can't remember.
13:23:20	8	Q. Pimp My Ride?
13:23:22	9	A. Do not know.
13:23:23	10	Q. Engaged & Underage?
13:23:25	11	A. Do not know.
13:23:26	12	Q. Beavis And Butthead?
13:23:31	13	A. Can't remember.
13:23:36	14	Q. Wild 'N Out?
13:23:38	15	A. Cannot remember.
13:23:51	16	Q. Human Giant?
13:23:54	17	A. Can't remember.
13:24:04	18	Q. Adventures in Hollywood?
13:24:08	19	A. Do not know.
13:24:10	20	Q. Exposed?
13:24:12	21	A. Don't know.
13:24:18	22	Q. Final Fu?
13:24:24	23	A. Do not know.
13:24:25	24	Q. Homewrecker?
13:24:28	25	A. Do not know.

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	1	Burrell
13:24:29	2	Q. Cribs?
13:24:30	3	A. Do not know.
13:24:33	4	Q. Maui Fever?
13:24:37	5	A. Can't remember on that one.
13:24:42	6	Q. Daria?
13:24:50	7	A. The name of the show is Daria?
13:24:52	8	Q. D-A-R-I-A?
13:24:55	9	A. Do not know.
13:24:56	10	Q. Wild Boys?
13:24:58	11	A. Definitely do not know.
13:25:00	12	Q. Run's House?
13:25:06	13	A. Can't remember specifically.
13:25:08	14	Q. Do you remember generally?
13:25:11	15	A. I do not.
13:25:12	16	Q. Jackass?
13:25:16	17	A. I can't remember.
13:25:18	18	Q. Andy Milonakis Show?
13:25:25	19	A. Do not know.
13:25:26	20	Q. Cheyenne?
13:25:28	21	A. I can't remember.
13:25:34	22	Q. Punk'd?
13:25:37	23	A. I wouldn't know. I don't know.
13:25:41	24	Q. Kenny versus Spenny?
13:25:45	25	A. I do not know.

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1 Burrell

13:25:46 2 Q. Short Circuits?

13:25:51 3 A. Just -- the question is --

13:26:11 4 Q. Whether MTV's employees or agents

13:26:14 5 ever uploaded clips from these shows to

13:26:17 6 YouTube for marketing purposes.

13:26:22 7 A. I do not know.

13:26:23 8 Q. The Hills?

13:26:24 9 A. I can't remember.

13:26:28 10 Q. Celebrity Deathmatch?

13:26:33 11 A. I do not know.

13:26:34 12 Q. The Duel?

13:26:40 13 A. I can't remember.

13:26:41 14 Q. Laguna Beach?

13:26:46 15 A. Definitely cannot remember.

13:26:50 16 Q. Twentyfourseven?

13:26:51 17 A. Definitely cannot remember.

13:26:52 18 Q. Real World?

13:26:53 19 A. Which one?

13:26:54 20 Q. Any of them.

13:26:56 21 A. I can't, I can't remember here.

13:27:11 22 Q. Celebrity Rap Superstar?

13:27:16 23 A. Do not remember.

13:27:17 24 Q. My Super Sweet 16?

13:27:21 25 A. I wouldn't know.

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1 Burrell

13:27:24 2 Q. Making The Band?

13:27:25 3 A. I cannot remember.

13:27:31 4 Q. Little Talent Show?

13:27:32 5 A. I do not know.

13:27:33 6 Q. Life of Ryan?

13:27:34 7 A. Can't remember.

13:27:45 8 MR. VOLKMER: Okay. Let's go off
13:27:48 9 the record for one second.

13:27:49 10 THE VIDEOGRAPHER: The time is
13:27:52 11 1:27 p.m., and we're going off the
13:27:54 12 record.

13:28:06 13 (A brief recess was taken.)

13:30:36 14 THE VIDEOGRAPHER: The time is
13:30:53 15 1:30 p.m., we are back on the record.

13:30:55 16 Q. Mr. Burrell, we just went over a
13:30:57 17 list of shows, and I asked whether MTV's
13:31:02 18 employees or agents had ever uploaded clips
13:31:05 19 from those shows to YouTube for marketing
13:31:06 20 purposes. And you were unable to answer for
13:31:10 21 any of those shows whether that practice had
13:31:12 22 occurred, and I'm curious if there is anyone
13:31:15 23 else at MTV who might be in a better position
13:31:16 24 to answer those questions.

13:31:20 25 A. I don't know if there is anyone

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1 Burrell

13:34:04 2 this date.)

13:34:04 3 Q. This is an e-mail that Viacom

13:34:33 4 produced in this litigation. It's a thread

13:34:36 5 from January 19, 2007.

13:35:27 6 A. Okay.

13:35:27 7 Q. If you turn to the third e-mail

13:35:31 8 down, which is from Joe Armenia, and in the

13:35:35 9 parentheses he says, "Even though Capitol did

13:35:39 10 it through Cornerstone," and he's asking

13:35:43 11 whether it's bad to attach YouTube links to

13:35:46 12 our release.

13:35:47 13 Do you know what Mr. Armenia is

13:35:49 14 referring to, when he says "Even though

13:35:50 15 Capitol did it through Cornerstone?

13:35:53 16 A. I don't remember what Joe intended

13:36:00 17 to mean in this e-mail.

13:36:01 18 Q. But you did respond to the e-mail,

13:36:05 19 didn't you?

13:36:07 20 A. Yes.

13:36:08 21 Q. So at the time you understood what

13:36:11 22 Mr. Armenia meant, correct?

13:36:21 23 MR. WILKENS: Objection.

13:36:22 24 A. I don't remember what my

13:36:29 25 understanding of the e-mail was at the time.

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1 Burrell

13:36:31 2 Q. Do you know what Capitol and

13:36:36 3 Cornerstone he's referring to?

13:36:38 4 A. No, I do not know for sure.

13:36:47 5 Q. What is your best guess?

13:36:50 6 A. My best guess is Cornerstone is an
13:36:53 7 agency.

13:36:56 8 Q. And Capitol?

13:37:01 9 A. I don't know who he's referring to.
13:37:04 10 Give me a minute, and I'll read the
13:37:06 11 rest of the e-mail.

13:37:56 12 I didn't work on this campaign, so
13:38:04 13 I wouldn't know who he's referring to, when
13:38:06 14 he says Capitol.

13:38:07 15 Q. Is it Capitol Records?

13:38:13 16 A. Maybe.

13:38:14 17 Q. And then you respond, "Is it
13:38:17 18 linking to our content on YouTube?"

13:38:20 19 And when you say "our content," are
13:38:23 20 you referring to MTV content?

13:38:32 21 A. I don't remember what my intent was
13:38:34 22 at the time when I responded to the e-mail.

13:38:35 23 Q. Right. And as you sit here and
13:38:41 24 read this e-mail today, what is your
13:38:42 25 understanding of that term, "our content"?

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1 Burrell

13:38:59 2 A. It could be multiple things.

13:39:02 3 Q. What could it be?

13:39:06 4 A. If I were to assume, it could -- it
13:39:13 5 could be content from Lily Allen, it could be

13:39:21 6 content from MTV's Discover & Download. It

13:39:25 7 could be content from a tour. It could

13:39:28 8 potentially be content from Cornerstone.

13:39:40 9 Q. But you're asking whether it's
13:39:41 10 linking to "our content," correct?

13:39:49 11 A. What I wrote in the e-mail was, "Is
13:39:52 12 it linking to our content on YouTube?"

13:39:58 13 That's what I wrote.

13:39:58 14 Q. Right. And what were you referring
13:40:00 15 to, when you said "our content"?

13:40:02 16 Are you talking about MTV
13:40:03 17 television programs?

13:40:05 18 MR. WILKENS: Objection.

13:40:05 19 A. Unfortunately, I can't remember
13:40:12 20 what, what I meant at the time when I wrote
13:40:13 21 this.

13:40:14 22 Q. And then you say, "If not, I don't
13:40:16 23 see any issues."

13:40:20 24 Why would there be issues linking
13:40:22 25 to MTV content on YouTube in an MTV press

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1 Burrell

13:40:25 2 release?

13:40:35 3 A. I can't remember what my thought
13:40:39 4 process was at the time when I wrote this and
13:40:40 5 what those issues, potential issues could
13:40:43 6 have, could have been; what I was thinking.

13:40:55 7 Q. That content that was being linked
13:41:08 8 to, in this press release on YouTube, that
13:41:14 9 was authorized to be on YouTube, right?

13:41:16 10 MR. WILKENS: Objection.

13:41:17 11 A. I didn't work on this, so I
13:41:24 12 wouldn't know.

13:41:25 13 Q. You don't know whether the
13:41:29 14 content -- the YouTube links, I should say,
13:41:33 15 that were referenced in this press release,
13:41:36 16 whether those clips were authorized to be on
13:41:38 17 the YouTube service?

13:41:41 18 A. I didn't work on this campaign, so
13:41:43 19 I don't know what was done to promote the
13:41:45 20 show.

13:41:45 21 Q. If you could turn to the second
13:41:53 22 page of this exhibit, it says "YouTube
13:41:57 23 links," and it has a number of YouTube clips
13:42:01 24 that are referenced in this press release.

13:42:04 25 You don't know whether those clips

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1 Burrell

13:42:07 2 were authorized to be on YouTube?

13:42:12 3 A. Again, I didn't work on this
13:42:13 4 campaign, so I don't know what was done to
13:42:20 5 promote this campaign.

13:42:22 6 Q. Setting aside your relationship to
13:42:28 7 this particular campaign, as you sit here
13:42:31 8 today, do you know, one way or the other,
13:42:33 9 whether these clips that are referenced in
13:42:34 10 the second page of this exhibit are
13:42:36 11 authorized to be up on YouTube?

13:42:38 12 A. I don't know.

13:43:07 13 MR. VOLKMER: I would like to mark
13:43:08 14 Exhibit 11.

13:43:22 15 (Exhibit Burrell-11, E-mail chain,
13:43:22 16 Bates Nos. VIA00830895 and VIA00830896,
13:44:15 17 marked for identification, this date.)

13:44:15 18 Q. This is an e-mail thread that was
13:44:17 19 forwarded to Mr. Burrell and Mr. Armenia and
13:44:20 20 Ms. Preston from Tina Exarhos on December 29,
13:44:27 21 2006. And if you could turn to the fourth
13:44:30 22 e-mail from the top, which is at 11:07 a.m.
13:44:39 23 Ms. Exarhos asks, "Does this also mean that
13:44:42 24 we need to pull down content that we uploaded
13:44:44 25 to YouTube for marketing purposes?"

1 Burrell

13:44:46 2 Do you see that?

13:44:47 3 A. Yes, I see, I see that in the
13:44:49 4 e-mail.

13:44:49 5 Q. And at that time there was content
13:44:51 6 on YouTube that MTV had uploaded for
13:44:55 7 marketing purposes, correct?

13:44:58 8 A. I don't remember.

13:44:59 9 Q. But that's what Ms. Exarhos is
13:45:06 10 reporting?

13:45:12 11 A. I don't know what her intent was
13:45:14 12 when she -- when she wrote this, when she
13:45:18 13 wrote this e-mail.

13:45:19 14 Q. Setting aside her intent, she's
13:45:24 15 reporting that there is content that's been
13:45:26 16 uploaded to YouTube for marketing purposes;
13:45:27 17 is that how you read this e-mail?

13:45:29 18 A. I don't know what she intended to
13:45:49 19 mean, when she wrote this.

13:45:50 20 Q. She asked, "Does this also mean we
13:46:01 21 need to pull down content that we've uploaded
13:46:03 22 to YouTube for marketing purposes?"

13:46:06 23 She's reporting that there's
13:46:08 24 content on the YouTube service that MTV has
13:46:12 25 uploaded for marketing purposes; isn't that

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1 Burrell

13:49:04 2 MTV had uploaded marketing materials to
13:49:11 3 YouTube to promote its content, and you said
13:49:13 4 you didn't know if it had or not.

13:49:17 5 Does this alter in any way that
13:49:21 6 testimony?

13:49:35 7 A. I still can't remember.

13:49:36 8 Q. This doesn't refresh your
13:49:41 9 recollection?

13:49:41 10 MR. WILKENS: Objection.

13:49:42 11 A. What's your question?

13:49:45 12 Q. Does this refresh your recollection
13:49:47 13 about whether MTV's employees or agents had
13:49:51 14 ever uploaded marketing materials to YouTube?

13:49:57 15 A. I can't remember.

13:49:59 16 Q. Is the answer no, it does not
13:50:01 17 refresh your recollection?

13:50:01 18 MR. WILKENS: Objection.

13:50:09 19 A. My answer is I can't remember.

13:50:10 20 Q. There's an e-mail where your boss
13:50:14 21 is saying, "Does this mean we need to pull
13:50:15 22 down content that we've uploaded to YouTube
13:50:19 23 for marketing purposes," and your testimony
13:50:23 24 is that you don't know one way or the other
13:50:25 25 whether MTV had, in fact, uploaded materials

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1 Burrell

13:51:38 2 A. I can't remember.

13:51:39 3 Q. The question is whether reading
13:51:45 4 this e-mail affects the previous testimony
13:51:48 5 you gave that you weren't sure whether or not
13:51:50 6 MTV employees or agents had ever uploaded
13:51:53 7 materials to YouTube for marketing purposes.

13:51:56 8 MR. WILKENS: Same objection.

13:51:57 9 A. I can't remember if any employees
13:52:04 10 or agents uploaded content to YouTube.

13:52:07 11 Q. Isn't the most natural reading of
13:52:10 12 Ms. Exarhos' e-mail from December 29th of
13:52:15 13 2006 that MTV employees or agents had, in
13:52:22 14 fact, uploaded materials to YouTube for
13:52:25 15 marketing purposes?

13:52:25 16 A. Without me being a part of the
13:52:37 17 conversation, I don't know what her intent
13:52:40 18 was when she wrote this.

13:52:42 19 Q. So you wouldn't agree with me that
13:52:44 20 that's the most natural reading of that
13:52:47 21 sentence?

13:52:55 22 A. Again, I don't know what her intent
13:52:57 23 was when she wrote it.

13:52:58 24 Q. How could this sentence not be read
13:53:02 25 to indicate that MTV had engaged in online

1 Burrell

13:53:06 2 marketing by uploading clips to YouTube?

13:53:10 3 MR. WILKENS: Objection.

13:53:11 4 A. Again, me not being a part of the
13:53:20 5 conversation, I don't know what the intent
13:53:25 6 was, when this was written by Tina Exarhos.

13:53:31 7 Q. She's reporting that there's
13:53:50 8 content that we've uploaded to YouTube for
13:53:53 9 marketing purposes. You would agree that
13:53:55 10 that's what she's saying, correct?

13:53:56 11 MR. WILKENS: Objection.

13:53:57 12 A. Me not being a part of this
13:54:05 13 conversation, and I'll also add, me not
13:54:11 14 remembering being a part of this project, I
13:54:15 15 don't know what she intended to mean when she
13:54:21 16 said this.

13:54:22 17 Q. Do you think that Ms. Exarhos was
13:54:33 18 being untruthful, when she reported that MTV
13:54:36 19 had uploaded materials to YouTube for
13:54:40 20 marketing purposes?

13:54:40 21 MR. WILKENS: Objection.

13:54:43 22 A. Given that I don't remember working
13:54:47 23 on this project, I wouldn't know.

13:54:51 24 Q. She may have been misreporting the
13:54:54 25 truth?

1 Burrell

13:54:54 2 MR. WILKENS: Objection.

13:54:55 3 A. Me not working on this project and
13:55:01 4 not being a part of this conversation, I
13:55:05 5 wouldn't know.

13:55:06 6 Q. But the only natural reading of
13:55:08 7 this e-mail is that MTV had uploaded
13:55:11 8 materials to YouTube for marketing purposes.
13:55:14 9 It's the only interpretation that makes any
13:55:16 10 sense.

13:55:17 11 And I'm wondering whether you think
13:55:20 12 that Ms. Exarhos might have been not telling
13:55:25 13 the truth, when she made that statement.

13:55:27 14 MR. WILKENS: Objection, and I move
13:55:28 15 to strike the argumentative portion of
13:55:30 16 that question.

13:55:33 17 A. I'm not sure what her intent was.
13:55:42 18 I didn't -- I wasn't a part of this
13:55:45 19 conversation, nor do I remember even working
13:55:50 20 on this project.

13:55:51 21 Q. Presuming that the most natural
13:56:04 22 reading of this e-mail is correct and that
13:56:06 23 Ms. Exarhos is in fact reporting that MTV had
13:56:09 24 uploaded content to YouTube for marketing
13:56:11 25 purposes, do you think there's any chance

1 Burrell

13:56:15 2 that she was being untruthful when she made
13:56:18 3 that report?

13:56:21 4 MR. WILKENS: Objection.

13:56:21 5 A. Without knowing the context and the
13:56:34 6 project and her intent when writing this, I
13:56:38 7 don't know.

13:56:38 8 Q. So it's possible that she was being
13:56:40 9 untruthful when she reported that there was
13:56:44 10 content uploaded by MTV to YouTube for
13:56:47 11 marketing purposes?

13:56:48 12 MR. WILKENS: Objection.

13:56:49 13 A. My answer to you is I don't know.

13:56:56 14 Q. Okay. Fair enough.

13:57:27 15 Do you recall that in February of
13:57:28 16 2007, Viacom sent YouTube a take-down notice
13:57:32 17 for more than 100,000 clips?

13:57:39 18 A. I don't recall.

13:57:49 19 MR. VOLKMER: Let's mark
13:57:51 20 Exhibit 12.

13:57:52 21 (Exhibit Burrell-12, E-mail chain,
13:57:52 22 Bates No. VIA00853644, marked for
13:57:52 23 identification, this date.)

13:58:30 24 MR. VOLKMER: This is an e-mail
13:58:31 25 that Viacom produced in this litigation.

1 Burrell

13:58:34 2 It's a forward from Ms. Exarhos to Damon
13:58:38 3 Burrell on February 2, 2007, and then
13:58:44 4 there are messages between Mr. Burrell
13:58:47 5 and Ms. Exarhos also on that date.

13:59:24 6 A. Okay.

13:59:25 7 Q. And do you recall this e-mail
13:59:30 8 exchange with Ms. Exarhos?

13:59:33 9 A. I don't remember it. I see it on
13:59:39 10 here, but I don't remember it.

13:59:40 11 Q. And the message that you wrote and
13:59:43 12 that Ms. Exarhos wrote, you have no reason to
13:59:46 13 doubt that these e-mails were actually sent
13:59:48 14 by you and Ms. Exarhos?

13:59:49 15 A. I would assume so.

13:59:56 16 Q. In the second-to-last e-mail you
14:00:01 17 said, "Bad move in my opinion."

14:00:03 18 You're referring to the decision to
14:00:05 19 send a take-down notice to YouTube of 100,000
14:00:10 20 MTV clips; is that right?

14:00:11 21 A. I don't -- I don't remember what my
14:00:25 22 intent was at the time when I wrote that
14:00:28 23 statement.

14:00:28 24 Q. You were disagreeing with the
14:00:33 25 decision to send the 100,000 take-down to

1 Burrell

14:00:36 2 YouTube, right?

14:00:37 3 A. I said I don't remember what my
14:00:41 4 intent was when I wrote that statement.

14:00:43 5 Q. Right, but you said, "Bad move in
14:00:47 6 my opinion."

14:00:48 7 How else could one read that
14:00:50 8 statement?

14:00:50 9 MR. WILKENS: Objection.

14:00:51 10 A. Again, I don't -- I don't remember
14:00:57 11 what my intent was at the time when I wrote
14:00:59 12 that.

14:01:00 13 Q. Setting aside what your intent was,
14:01:10 14 you reported to Ms. Exarhos that you thought
14:01:12 15 it was a bad move, right?

14:01:15 16 MR. WILKENS: Objection.

14:01:16 17 A. I wrote "Bad move in my opinion."
14:01:22 18 That's what I wrote in the e-mail.

14:01:24 19 Q. And what were you referring to when
14:01:26 20 you wrote that?

14:01:28 21 A. That's the part I don't remember.

14:01:29 22 Q. You could have been referring to
14:01:31 23 anything?

14:01:36 24 A. Yes. It could have been referring
14:01:38 25 to multiple things.

1 Burrell

14:04:09 2 this, "Bad move in my opinion," I can't
14:04:16 3 remember what I was referring to when I wrote
14:04:19 4 that.

14:04:21 5 Q. Right. And my question is, you may
14:04:23 6 have thought that was a bad move to remove
14:04:25 7 the 100,000 clips, because you recognized
14:04:28 8 that MTV was gaining an enormous promotional
14:04:32 9 benefit by having those clips on YouTube?

14:04:36 10 MR. WILKENS: Objection.

14:04:36 11 A. That's the part I can't remember.
14:04:43 12 I can't remember what my intent was when I
14:04:45 13 wrote "Bad move in my opinion," what I was
14:04:49 14 referring to. I can't remember that part.

14:04:52 15 Q. So that could have been part of
14:04:55 16 your thought process, that you wanted those
14:04:57 17 clips to remain up on YouTube, because you
14:05:00 18 thought it was a great promotional benefit to
14:05:04 19 MTV.

14:05:06 20 MR. WILKENS: Objection.

14:05:12 21 A. As I read this e-mail and I read my
14:05:25 22 response, I don't remember what my intent was
14:05:27 23 when I wrote "Bad move in my opinion," nor do
14:05:32 24 I remember what I was referring to in the
14:05:34 25 e-mail below, if anything.

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1 Burrell

14:05:41 2 Q. Right. And not being able to
14:05:43 3 remember what your intent was, you can't
14:05:45 4 foreclose the possibility that you thought it
14:05:47 5 was a bad move to remove the 100,000 clips
14:05:50 6 from YouTube, because you thought the
14:05:52 7 presence of those clips on YouTube provided
14:05:55 8 an enormous promotional benefit to MTV,
14:05:59 9 right?

14:05:59 10 MR. WILKENS: Objection.

14:06:00 11 A. I can't remember what I was
14:06:09 12 referring to, when I wrote that.

14:06:13 13 Q. Right. You may have been referring
14:06:14 14 to the fact that it was a bad move to remove
14:06:17 15 the 100,000 clips, because MTV was reaping an
14:06:21 16 enormous promotional benefit by having the
14:06:24 17 clips up on YouTube?

14:06:25 18 MR. WILKENS: Objection, asked and
14:06:26 19 answered.

14:06:26 20 A. Did you ask me a question?

14:06:37 21 Q. Sure. You may have been referring
14:06:39 22 to the fact that it was a bad move to remove
14:06:41 23 the 100,000 clips from YouTube, because MTV
14:06:44 24 was reaping an enormous promotional benefit
14:06:48 25 by having the clips up on YouTube?

1 Burrell

14:06:50 2 A. I don't remember.

14:06:54 3 Q. But you can't foreclose that
14:06:58 4 interpretation, correct?

14:07:00 5 A. I can't remember what I was
14:07:01 6 referring to, when I wrote that.

14:07:03 7 Q. Isn't that the most likely
14:07:05 8 interpretation?

14:07:14 9 A. No.

14:07:14 10 Q. What is the most likely
14:07:17 11 interpretation?

14:07:18 12 A. It's too vague. I don't think
14:07:29 13 there is one.

14:07:29 14 Q. But you just said that the
14:07:38 15 characterization that I gave was not the most
14:07:40 16 likely, correct?

14:07:46 17 A. I said I don't remember.

14:07:47 18 Q. So it may have been the case that
14:08:01 19 this e-mail, where you write "Bad move in my
14:08:05 20 opinion," is referring to the decision to
14:08:08 21 send a take-down notice to YouTube of 100,000
14:08:11 22 clips in February of 2007; is that right?

14:08:14 23 MR. WILKENS: Objection.

14:08:22 24 A. I don't remember what I was
14:08:23 25 referring to.

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1 Burrell

14:08:23 2 Q. And the reason you thought it was a
14:08:26 3 bad move was because you recognized that the
14:08:29 4 presence of those clips on YouTube provided
14:08:32 5 an enormous promotional benefit for MTV,
14:08:37 6 right?

14:08:37 7 MR. WILKENS: Objection, asked and
14:08:37 8 answered.

14:08:38 9 A. Reading this e-mail exchange, I
14:09:03 10 don't remember what I was referring to, when
14:09:06 11 I said, "Bad move in my opinion." I don't
14:09:14 12 remember.

14:09:14 13 Q. As you sit here today, testifying
14:09:23 14 under oath, under penalty of perjury, your
14:09:27 15 testimony is you do not know what you were
14:09:29 16 referring to, when you wrote, "Bad move in my
14:09:31 17 opinion"?

14:09:31 18 MR. WILKENS: Objection.

14:09:32 19 A. I don't remember what I was
14:09:38 20 referring to, when I wrote, "Bad move in my
14:09:41 21 opinion."

14:09:44 22 Q. And I'm asking, as you sit here
14:09:46 23 today, do you know what you meant when you
14:09:48 24 wrote, "Bad move in my opinion," and you are
14:09:50 25 testifying under oath, under penalty of

1 Burrell

14:09:52 2 perjury?

14:09:55 3 MR. WILKENS: Objection, asked and
14:09:56 4 answered.

14:09:57 5 A. I don't remember what I was
14:09:58 6 referring to when I wrote, "Bad move in my
14:10:01 7 opinion."

14:10:02 8 Q. And you currently don't remember
14:10:04 9 what that phrase means, as you sit here
14:10:14 10 today?

14:10:14 11 MR. WILKENS: Objection.

14:10:15 12 A. I don't remember what I was
14:10:17 13 referring to.

14:10:20 14 Q. When you said, "Bad move in my
14:10:45 15 opinion," could you have been referring to
14:10:46 16 anything else other than the e-mail below
14:10:49 17 that references a 100,000 clip take-down
14:10:53 18 notice that was going to be sent to YouTube?

14:11:25 19 A. Yes.

14:11:25 20 Q. Okay. What else could you have
14:11:31 21 been referring to?

14:11:33 22 A. It could have been multiple,
14:11:35 23 multiple things.

14:11:35 24 Q. For example?

14:11:37 25 A. Just as an example, I may have

1 Burrell

14:11:46 2 thought it was a bad move in my opinion with

14:11:50 3 the messaging that she was referring to.

14:12:04 4 I don't remember.

14:12:05 5 Q. Mr. Burrell, do you have a YouTube
14:12:10 6 account?

14:12:17 7 A. Not that I can recall.

14:12:19 8 Q. Have you ever uploaded videos to
14:12:25 9 YouTube?

14:12:25 10 A. No.

14:12:27 11 Q. Do you know any MTV employees that
14:12:29 12 have uploaded video clips to YouTube?

14:12:35 13 A. Not that I can remember.

14:12:36 14 Q. How many videos have you watched on
14:12:44 15 YouTube?

14:12:46 16 A. Ever?

14:12:47 17 Q. Ever.

14:12:49 18 A. About five to seven.

14:12:54 19 Q. Five to seven videos?

14:12:56 20 A. In total.

14:12:57 21 Q. What were those video clips?

14:13:06 22 A. I cannot remember.

14:13:07 23 Q. But you remember the number five to
14:13:11 24 seven?

14:13:13 25 A. That's a guess. It's a very low

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1 Burrell

14:13:17 2 number.

14:13:17 3 Q. You can't think of -- you can't
14:13:19 4 recall a single video that you've watched on
14:13:24 5 YouTube?

14:13:40 6 A. Not specifically, no. Not any
14:13:43 7 specific pieces of video content, no.

14:13:46 8 Q. The videos that you have watched on
14:13:49 9 YouTube, do you think that they were
14:13:51 10 infringing anyone's copyrights?

14:13:55 11 A. I don't -- I don't remember. I
14:13:56 12 don't know.

14:13:57 13 Q. Do you think you were infringing
14:14:02 14 anyone's copyrights by watching the videos on
14:14:05 15 YouTube that you did view?

14:14:06 16 MR. WILKENS: Objection.

14:14:07 17 A. I don't remember. I don't remember
14:14:08 18 the videos.

14:14:09 19 Q. Have you continued to watch videos
14:14:17 20 on YouTube, after this lawsuit was filed?

14:14:25 21 A. I don't remember the last time I
14:14:29 22 saw a video on YouTube.

14:14:31 23 Q. Do you know anyone who has uploaded
14:14:36 24 video clips to YouTube that infringe
14:14:40 25 third-party copyrights?

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1 Burrell

14:14:41 2 MR. WILKENS: Objection.

14:14:41 3 A. Not that I can recall.

14:14:47 4 Q. Did you agree with Viacom's
14:14:57 5 decision to file this lawsuit?

14:15:08 6 A. I don't -- I don't know either way
14:15:10 7 or the other. I don't have a --

14:15:13 8 Q. You don't have an opinion?

14:15:14 9 A. I don't have a solid understanding
14:15:16 10 of the lawsuit.

14:15:17 11 Q. When did you -- I'm sorry.

14:15:19 12 When you first hear about the
14:15:21 13 lawsuit?

14:15:22 14 A. That I do not remember.

14:15:23 15 Q. Did you receive an e-mail alerting
14:15:28 16 you to the fact that a lawsuit had been filed
14:15:30 17 between Viacom and YouTube?

14:15:34 18 A. I can't remember if it were an
14:15:37 19 e-mail.

14:15:37 20 Q. Have you heard anyone at MTV or
14:15:43 21 Viacom express views that were critical of
14:15:47 22 the Viacom decision to sue YouTube?

14:15:50 23 A. I can't remember. I can't remember
14:15:52 24 that.

14:15:53 25 Q. You may have heard people being

1 Burrell

14:15:56 2 critical of Viacom's decision to file a
14:15:58 3 copyright infringement lawsuit against
14:16:01 4 YouTube?

14:16:01 5 A. I can't remember that.

14:16:02 6 Q. So that could have happened?

14:16:09 7 A. My response to you is I can't
14:16:11 8 remember.

14:16:11 9 Q. There is a difference between not
14:16:19 10 being able to remember it and being able to
14:16:21 11 foreclose the possibility.

14:16:23 12 And my question is: Can you
14:16:23 13 foreclose that possibility that people were
14:16:26 14 critical of Viacom's decision to file a
14:16:27 15 copyright infringement lawsuit against
14:16:28 16 YouTube?

14:16:29 17 MR. WILKENS: Objection.

14:16:32 18 A. I can't remember.

14:16:34 19 Q. And if you can't remember, you
14:16:36 20 can't foreclose that possibility, right?

14:16:40 21 A. I can't remember.

14:16:51 22 MR. VOLKMER: Let's go off the
14:16:53 23 record.

14:16:54 24 THE VIDEOGRAPHER: The time is
14:16:56 25 2:15 p.m., and we're going off the

1 Burrell

14:16:58 2 record.

14:16:59 3 (A brief recess was taken.)

14:25:57 4 THE VIDEOGRAPHER: The time is

14:26:12 5 2:25 p.m. and we're back on the record.

14:26:16 6 Q. This morning, Mr. Burrell, you had
14:26:18 7 testified about several viral marketing
14:26:20 8 companies that MTV has hired to engage in
14:26:24 9 marketing on its behalf, And I just want to
14:26:27 10 go through them and have a quick discussion
14:26:29 11 about them.

14:26:31 12 You had mentioned Wiredset as being
14:26:33 13 one of the agencies that MTV uses. Do you
14:26:37 14 know which programs Wiredset has engaged in
14:26:40 15 marketing on MTV's behalf?

14:26:42 16 A. Yeah, I can't remember specific
14:26:47 17 shows.

14:26:48 18 Q. Can you think of certain campaigns
14:26:51 19 that Wiredset did on behalf of MTV?

14:27:16 20 A. They worked on Dog After Dark,
14:27:22 21 Snoop Dog Show recently, and a Get Yourself
14:27:33 22 Tested, a pro social campaign recently.

14:27:38 23 I can't think of anything else off
14:27:40 24 the top of my head.

14:27:42 25 Q. And what about Fanscape, can you

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1 Burrell

14:27:44 2 think of the shows that Fanscape engaged in
14:27:48 3 viral marketing on MTV's behalf?

14:27:59 4 A. They're currently working on The
14:28:05 5 Phone. I can't remember the last campaign
14:28:07 6 they worked on before that.

14:28:08 7 Q. You can't think of any other shows
14:28:12 8 that Fanscape has marketed on behalf of MTV?

14:28:16 9 A. I can't think of right now, no.

14:28:19 10 Q. What about M80, do you know which
14:28:23 11 programs M80 engaged in, while marketing on
14:28:27 12 behalf of MTV's behalf?

14:28:29 13 A. I can't remember specific shows.

14:28:31 14 Q. Can you think of any M80 campaigns
14:28:33 15 or programs or any of the details regarding
14:28:35 16 the M80 relationship?

14:28:41 17 A. I cannot remember.

14:28:41 18 Q. What about Red Interactive, what
14:28:47 19 shows did Red Interactive engage in marketing
14:28:52 20 on MTV's behalf?

14:28:57 21 A. I can't, I can't remember.

14:28:58 22 Q. You can't think of any shows or any
14:29:00 23 campaigns that Red Interactive ran?

14:29:04 24 A. No.

14:29:07 25 Q. What about Carat Fusion, can you

1 Burrell

14:29:12 2 think about any programs or campaigns that

14:29:14 3 they engaged in, on behalf of MTV?

14:29:20 4 A. Yes. Carat has worked on the Movie
14:29:29 5 Awards. They've worked on the Video Music
14:29:32 6 Awards.

14:29:32 7 I can't -- I can't remember any
14:29:41 8 other specific shows.

14:29:42 9 Q. And when you say the Movie Awards,
14:29:45 10 what are you referring to?

14:29:46 11 A. It's not a television show, but
14:29:50 12 it's a -- it's a two-hour televised event.

14:29:54 13 Q. That appears on MTV?

14:29:56 14 A. Correct.

14:29:57 15 Q. Is that something that appears
14:29:58 16 annually, or is it one time?

14:30:00 17 A. Annually.

14:30:00 18 Q. And then what about Deep Focus, do
14:30:06 19 you know of any campaigns or television
14:30:08 20 programs that Deep Focus has worked on for
14:30:13 21 MTV?

14:30:13 22 A. Yeah, I can't remember any specific
14:30:15 23 shows or campaigns.

14:30:20 24 MR. VOLKMER: Okay. That's all I
14:30:21 25 have.

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