

Schapiro Exhibit 260

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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VIACOM INTERNATIONAL INC.,      :
COMEDY PARTNERS, COUNTRY MUSIC  :
TELEVISION, INC., PARAMOUNT     :
PICTURES CORPORATION, and       :
BLACK ENTERTAINMENT TELEVISION  :
LLC,                             :
                                   :
                Plaintiffs       :
                                   :
                vs.              :1:07-cv-03582 (LLS)
                                   :
YOUTUBE, INC., YOUTUBE, LLC,     :
and GOOGLE INC.,                :
                                   :
                Defendants      :
-----X

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The deposition of DONNA COOPER was held on Friday, October 31, 2008, commencing at 8:37 a.m., at the Law Offices of Mayer Brown, LLP, 1909 K Street, N.W., Washington, D.C., before Ronald E. Bennett, Notary Public.

Job No. 16092

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APPEARANCES :

WILLIAM HOHENGARTEN, ESQUIRE

Jenner & Block

1099 New York Avenue, N.W.

Washington, D.C. 20001

(202)639-6000

whohengarten@jenner.com

On behalf of Plaintiffs

REGINALD GOEKE, ESQUIRE

AMANDA HINE, ESQUIRE

Mayer, Brown

1909 K Street, N.W.

Washington, D.C. 20006

(202)263-3000

rgoeke@mayerbrown.com

On behalf of Defendant

1 14:22 BET Awards 2006.

2 14:22 A. Yes.

3 14:22 BY MR. GOEKE:

4 14:22 Q. Now, I'll represent to you that if you

5 14:22 were to click on that, you would actually see a

6 14:22 performance by Chris Brown at BET Awards. Do you

7 14:22 know whether that use by Chris Brown on this website

8 14:22 is authorized?

9 14:22 A. I don't know.

10 14:22 Q. Having now been made aware of it, would

11 14:22 BET plan to follow up and ask Chris Brown to remove

12 14:22 this from his website?

13 14:22 A. This is something currently on his

14 14:22 website?

15 14:22 Q. Yes. As the date on this, at the bottom

16 14:22 right you see is 10-30.

17 14:23 A. The way I would respond may be getting

18 14:23 into privilege.

19 14:23 MR. HOHENGARTEN: Why don't we confer for

20 14:23 a moment.

21 14:23 (Pause)

22 14:24 (Off the record)

23 14:24 VIDEOGRAPHER: The time is 2:25 p.m. We

24 14:24 are back on the record.

25 14:24 MR. HOHENGARTEN: Why don't you repeat the

1 14:24 question.

2 14:24 BY MR. GOEKE:

3 14:24 Q. I can repeat it for you. Having now been

4 14:24 made aware of this clip of BET Awards 2006 on the

5 14:24 Chrisbrownweb.com website, is this something that

6 14:24 you would send a take down notice to that website?

7 14:24 MR. HOHENGARTEN: You can answer generally

8 14:24 without revealing privileged information.

9 14:25 THE WITNESS: I would investigate the

10 14:25 matter.

11 14:25 BY MR. GOEKE:

12 14:25 Q. And what steps would you take to

13 14:25 investigate the matter?

14 14:25 MR. HOHENGARTEN: I instruct you not to

15 14:25 answer. She's been instructed.

16 14:25 BY MR. GOEKE:

17 14:25 Q. Can you tell by looking at this link here

18 14:25 whether or not this has been a licensed work that's

19 14:25 been licensed by BET?

20 14:25 A. No.

21 14:25 Q. Can you tell by looking at this link

22 14:25 whether or not he's authorized to have this work on

23 14:25 this site?

24 14:25 A. No.

25

1 14:25 (Deposition Exhibit Number 16 marked for
2 14:25 purposes of identification.)
3 14:25 BY MR. GOEKE:
4 14:26 Q. Ms. Cooper, I'm showing you the clip
5 14:26 from -- you see at the top from YouTube, this is not
6 14:26 on the active YouTube site. This is one of the
7 14:26 clips that BET asked to be taken down.
8 14:26 Can you tell me whether you're aware
9 14:26 whether or not that particular work was, in fact,
10 14:26 licensed by BET?
11 14:26 MR. HOHENGARTEN: I'm going to have to
12 14:26 confer with the witness again on privilege issues.
13 14:26 (Off the record)
14 14:36 VIDEOGRAPHER: The time is 2:37 p.m. We
15 14:36 are back on the record.
16 14:36 BY MR. GOEKE:
17 14:36 Q. I just note for the record counsel
18 14:36 conferred for ten minutes. So at the end of that,
19 14:36 can you tell me whether you are aware whether or not
20 14:36 the particular work that shows up in Exhibit 15 has
21 14:36 been licensed by BET?
22 14:37 A. I do not know whether or not it has been
23 14:37 licensed by BET.
24 14:37 Q. Looking at this, just as it's been
25 14:37 displayed here, there's nothing that would tell you

Schapiro Exhibit 261

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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VIACOM INTERNATIONAL, INC., COMEDY))
PARTNERS, COUNTRY MUSIC))
TELEVISION, INC., PARAMOUNT))
PICTURES CORPORATION, and BLACK))
ENTERTAINMENT TELEVISION, LLC,))
	)	) Case No.
Plaintiffs,	)	) 07-CV-2103
))
vs.))
))
))
YOUTUBE, INC., YOUTUBE, LLC,))
and GOOGLE, INC.,))
))
Defendants.))
-----)

VIDEOTAPED DEPOSITION OF

TOM DOOLEY
NEW YORK, NEW YORK
WEDNESDAY, SEPTEMBER 30, 2009

BY: REBECCA SCHAUMLOFFEL
JOB NO. 17746

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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: SUSAN KOHLMANN, ESQ.
919 Third Avenue
New York, New York
Susankohlmann@jenner.com

FOR THE LEAD PLAINTIFFS AND PROSPECTIVE
CLASS:

SHEARMAN & STERLING, LLP
BY: KIRSTEN CUNHA, ESQ.
599 Lexington Avenue
New York, New York 10036-8299
Kirsten.cunha@shearmansterling.com

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

MAYER BROWN, LLP
BY: ANDREW H. SCHAPIRO, ESQ.
CHRISTINE HERNANDEZ, ESQ.
1675 Broadway
New York, New York 10019
(212) 506-2146
Chernandez@mayerbrown.com
Aschapiro@mayerbrown.com

ALSO PRESENT:

Carlos King, Videographer

Michael D. Fricklas, Viacom

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FEDERAL STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED

By and between the attorneys for the
respective parties herein, that filing and
sealing be and the same are hereby waived.

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

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

1 TOM DOOLEY

2 account, for work-related topics?

3 A. No.

4 Q. How about instant messaging

5 12:28:28 or chatting, do you ever use that at
6 work?

7 A. I don't use it for work.

8 Just use it to talk to my wife.

9 Q. Do you use YouTube?

10 12:28:57 A. I have used it, yes.

11 Q. Have you sometimes viewed
12 clips that appear to be from the
13 Saturday Night Live television show on
14 YouTube?

15 12:29:23 A. Yes, I think I did.

16 Q. Do you know whether Saturday
17 Night Live clips that you viewed on
18 YouTube are authorized by the copyright
19 owners to be there?

20 12:29:39 A. I don't know.

21 Q. And do you care?

22 MS. KOHLMANN: Objection.

23 You can answer.

24 A. What do you mean by "care"?

25 12:29:47 Q. If you view something on

1 TOM DOOLEY

2 YouTube, do you care whether you are
3 viewing material that is authorized to
4 be there?

5 12:29:59 A. Yeah. Yes.

6 Q. Do you know how you would be
7 able to tell -- if you were looking at
8 a, let's say, a Chris Rock clip on
9 YouTube, do you know how you would be

10 12:30:12 able to tell if it is authorized or
11 not?

12 A. No.

13 Q. Do you know if you have a
14 YouTube account?

15 12:30:24 A. I don't think I do, but I
16 may -- I don't use it. I can watch
17 YouTube on my computer, but I am
18 assuming you can do that without an
19 account because I don't sign on
20 12:30:40 physically with a name.

21 Q. Have you ever uploaded
22 material to YouTube?

23 A. No.

24 Q. Have you ever uploaded
25 12:30:48 material to any other video hosting

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TOM DOOLEY

sites?

A. No.

MR. SCHAPIRO: Just a

12:30:56 moment.

I have no further questions.

THE WITNESS: Thank you.

THE VIDEOGRAPHER: The time

is 12:31 p.m. This ends the

12:31:07 videotaped deposition of Tom
Dooley.

(Whereupon, at 12:31 p.m.,

the Examination of this Witness

was concluded.)

TOM DOOLEY

Subscribed and sworn to before me
this ____ day of _____, 2009.

NOTARY PUBLIC

Schapiro Exhibit 262

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

vs.

No. 1:07CV02103

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

Defendants.

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

Plaintiffs,

vs.

No. 07CV3582

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

Defendants.

VIDEOTAPED DEPOSITION OF CINDY EMCH

WEDNESDAY, NOVEMBER 19TH, 2009

Job No.: 18228

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BE IT REMEMBERED that pursuant to Notice of Taking Deposition, and on Wednesday, November 18th, 2009, commencing at the hour of 1:26 o'clock p.m. thereof, at Wilson, Sonsini, Goodrich & Rosati, Spear Street Tower, One Market Plaza, Suite 3300, San Francisco, California, before me, KIMBERLEE SCHROEDER, a Certified Shorthand Reporter in and for the State of California, duly authorized to administer oaths pursuant to Section 2093(b) of the California Code of Civil Procedure, personally appeared

CINDY EMCH,

called as a witness by the Defendants who, having been first duly sworn, was examined and testified as follows:

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A P P E A R A N C E S

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FOR THE VIACOM PLAINTIFFS:

JENNER & BLOCK, LLP
BY: SCOTT B. WILKENS
Attorney at Law
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
(202) 639-6000
E-mail: swilkens@jenner.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC AND
GOOGLE, INC.

WILSON, SONSINI, GOODRICH & ROSATI
BY: MICHAEL H. RUBIN
Attorney at Law
650 Page Mill Road
Palo Alto, California 94304
(650) 493-9300
E-mail: mrubin@wsgr.com

ALSO PRESENT:

ARMANDO CARRASCO, Videographer

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CINDY EMCH

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A. I don't recall.

Q. You might have been; you just don't recall?

A. I don't recall.

Q. Were you provided any other versions of this
15:08:31 document that we see at Exhibit 6?

A. Not to my recollection.

Q. It's possible; you just don't recall?

A. Right.

Q. Who provided you with these guidelines?

15:08:46 A. I don't recall which person I received the
guidelines from.

Q. Do you recall the potential candidates of
people from whom you could have received it?

A. Yes.

15:09:04 Q. Would you please list those individuals for
me?

A. It could have been from Scott Roesch or
Brendan Jackson or Victoria Libin.

Q. Who is Victoria Libin?

15:09:21 A. She was counsel at Atom Entertainment.

Q. How often did you interact with Ms. Libin in
your capacity at Atom?

A. I would have conversations with Victoria
Libin more than twice a week.

CINDY EMCH

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Q. And what were the subject matter of those conversations at a very general level?

A. I would be asking, you know, for legal counsel on a clip that may have violated the terms of service.
15:09:56

Q. So your conversations with Ms. Libin related to your review of content on the AddictingClips website?

A. Yes.

Q. Did you ever have discussions with her about matters other than your review of content on the AddictingClips website?
15:10:06

A. Not in a professional capacity, that I recall.

Q. We don't need to go beyond the professional at this point, certainly not on that area I believe.
15:10:17

The review of videos by AddictingClips' staff members on the AddictingClips website, you indicated it was conducted by a small number of individuals; right?

A. That was my recollection. Yes.
15:10:41

Q. Was there a colloquial name given to that group of individuals?

A. Yes, there was.

Q. What was that name?

1 CINDY EMCH

2 A. It was the Porn Patrol.

3 Q. Why did you understand that to be the
4 colloquial name given to that group of individuals?

5 A. My understanding of the reason that slang was
6 15:11:06 used was that there was a large number of clips when we
7 began that monitoring that fell into the category of
8 pornographic material.

9 Q. What was the policy on the service with
10 regard to pornographic material?

11 15:11:23 A. Pornographic material violated our terms of
12 service.

13 Q. And what would the result be if a user
14 attempted to upload pornographic material?

15 A. In my capacity, I would escalate that clip to
16 15:11:38 legal immediately.

17 Q. So as you understand it or as you recall,
18 there were -- strike that.

19 As you recall, were there more than one tier
20 of reviewers in the Porn Patrol?

21 15:11:59 MR. WILKENS: Objection to form.

22 THE WITNESS: Not that I recall.

23 MR. RUBIN: Q. Do you recall ever rejecting
24 a video or directly removing a video from the
25 AddictingClips website?

1 CINDY EMCH

2 A. I actually don't recall if I performed those
3 administrative functions or not. My primary job was to
4 escalate to legal.

5 Q. Do you recall whether or not the
6 15:12:20 AddictingClips service had functionality that would
7 have enabled you to directly remove a video that was
8 live on the service?

9 A. The -- our admin did have the functionality
10 to reject the video, which is different than removing
11 15:12:38 it.

12 Q. I was asking a slightly different question.
13 We've established that through what you just
14 referred to as our admin --

15 A. Yes.

16 15:12:49 Q. -- which I assume is an administrative
17 interface to the AddictingClips service?

18 A. That is correct.

19 Q. Is that a correct assumption?

20 A. (Nods head.)

21 15:12:56 Q. Through that administrative interface, you or
22 -- strike that.

23 Through that administrative interface, did
24 you personally have credentials to reject a video?

25 A. I had the permissions in our admin to reject

CINDY EMCH

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a video.

Q. Did you have the permissions to remove a video that was already live?

A. I had the capacity to reject it so it would no longer be seen to the public.

Q. So just to make sure that we're using the same terminology. If a video were live today and through the administrative interface, you were to make it no longer visible?

A. That is correct.

Q. How would you reference that action?

A. As I stated earlier, my actual role, although I had the ability to reject a video, was to escalate it to legal so that they would take the action after reviewing the content.

Q. Sure. I'm actually asking a slightly different question. I'm asking more about terminology here to make sure we're talking about the same thing.

A. Understood.

Q. If a video were live on the service --

A. Yes.

Q. -- and you were effectuating it no longer being live, would you refer to that as removing it or rejecting it?

CINDY EMCH

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A. I would refer to that as rejecting it.

Q. And you would also refer to it as rejecting it if you were preventing it from ever going live; is that correct?

15:14:36 A. That is correct.

Q. But you understood from the exhibit we saw earlier, Exhibit 4, that the terminology "remove" was indicative of the fact that the videos were in fact being removed from live view at the time?

15:14:59 A. Yes.

Q. Okay. Let's return and look at Exhibit 6, the policy guidelines titled, "Copyright Guidelines for User Generated Content Sites."

A. Yes. I see that document.

15:15:16 Q. Do you recall reviewing this document when you received it?

A. Yes. I do recall that.

Q. Do you recall discussing this document with anyone when you received it?

15:15:27 A. My recollection is that I felt it was a fairly straightforward document. And I -- there was no need for discussion.

Q. Did you apply this document -- rather, did you apply the policies embodied in this document?

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A. Yes, I did.

Q. Did you understand the source of these policies?

A. Yes.

15:15:55 Q. What was the source of these policies?

A. In reading the document, MTV Networks is referenced in item one. That is what my understanding of the source of the document was.

Q. You understood these to be guidelines to be emanated not from Atom Entertainment itself but from Viacom or MTV Networks?

A. Yes.

Q. I would like to discuss the third point with you. Do you see that?

15:16:34 A. Yes.

Q. What did you understand 3(a) to mean?

A. I understood it to mean that if there was a user-uploaded video that was longer than two and a half minutes, if it violated any of the criteria outlined below, that it should not be on the site.

15:16:56 Q. How did 3(a) affect your review of videos on the AddictingClips website?

MR. WILKENS: Objection to the form.

THE WITNESS: My personal philosophy as the

CINDY EMCH

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2 content moderator for AddictingClips was that if I saw
3 anything that violated the terms of service in any
4 matter, whether it be two and a half minutes or
5 shorter, I would escalate it to legal or two and a half
6 15:17:33 minutes or longer. The time frame, I just played it
7 safe and always would escalate to legal if there was
8 any question in my mind that there was a copyright
9 violation.

10 MR. RUBIN: Q. So you didn't follow this
11 15:17:44 policy?

12 MR. WILKENS: Objection to the form.

13 THE WITNESS: I was -- in order to ensure
14 that I did not violate these policies, if I saw
15 anything that violated copyright at all, I forwarded it
16 15:17:56 to legal regardless of the length of time.

17 MR. RUBIN: Q. Do you know the actions that
18 legal took on every video that you forwarded to them?

19 A. No.

20 Q. And these policies applied to legal too;
21 15:18:07 didn't they?

22 A. I believe that these policies were
23 companywide and applied to all employees of MTV
24 Networks. That was my understanding.

25 Q. You testified that you played it safe?

1 CINDY EMCH

2 still forward it to legal. Is that answering your
3 question?

4 Q. I don't believe it is.

5 If you didn't recognize it as a still from a
6 15:26:36 motion picture, would you forward it to the legal
7 department?

8 MR. WILKENS: Objection to the form.

9 THE WITNESS: If I saw an image that I did
10 not believe violated copyright in any way, I did not
11 15:26:48 forward it to our legal team.

12 MR. RUBIN: Q. So if you -- if the still
13 were of a motion picture and you simply didn't
14 recognize it as being a still from a motion picture,
15 you wouldn't have forwarded it; correct?

16 15:27:00 A. That's correct.

17 Q. Same question for (a)(ii) which refers to
18 television programming including television
19 commercials. If you didn't recognize the content as
20 being a portion of a television program or television
21 15:27:18 commercial, you wouldn't have flagged it or forwarded
22 it or done anything with regard to it; would you have?

23 MR. WILKENS: Objection to the form.

24 THE WITNESS: In regards to television
25 content, it is actually very, very easy to recognize

1 CINDY EMCH

2 the video quality even in a thumbnail that television
3 programs have when they're uploaded online.

4 MR. RUBIN: Q. And what do you base that
5 statement on?

6 15:27:41 A. Having seen clips from television shows that
7 have been online.

8 Q. Have you seen clips from every television
9 show that's ever aired on television online?

10 A. No.

11 15:27:56 Q. So your statement is a bit of an
12 overgeneralization; isn't it?

13 MR. WILKENS: Objection to the form.

14 THE WITNESS: I don't believe it is. There
15 is a video quality to television broadcast that is easy
16 15:28:10 to recognize in online format.

17 MR. RUBIN: Q. You testified earlier that
18 you were familiar with the concept of viral marketing;
19 right?

20 A. That is correct.

21 15:28:18 Q. Have you ever known of companies that create
22 or market television programming to upload portions of
23 television programs to video websites for promotional
24 purposes?

25 A. Yes. I am familiar with that.

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CINDY EMCH

Q. In the context of a -- strike that.

In the context of a company that creates videos, television videos or markets them, uploading it to the video service, it would be authorized to be on the service; right?

MR. WILKENS: Objection to the form.

THE WITNESS: That is correct.

MR. RUBIN: Q. But in your review for AddictingClips, it would still have gotten flagged; right?

A. I would have forwarded it to legal, yes.

Q. Even though it was authorized?

A. Yes.

Q. Because your analysis didn't take into consideration whether or not the video was authorized to be on the AddictingClips service; did it?

MR. WILKENS: Objection to the form.

THE WITNESS: The question of whether or not the video was authorized was not my decision to make.

MR. RUBIN: Q. In fact, you didn't have the information you needed to make that decision; did you?

A. I personally did not.

Q. And you were personally the person doing the reviewing; right?

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A. Yes.

Q. The recognizable component of each of these guidelines applies with equal force as it does to (i) and (ii); right? If you weren't able to recognize the requirement, you wouldn't have flagged it; right?

MR. WILKENS: Objection to the form.

THE WITNESS: If I did not see something that appeared to be in copyright violation, there would have been no reason for me to flag it.

15:30:16 MR. RUBIN: Q. Based on your experience?

A. My professional opinion, that is correct.

Q. And you're not aware of what the follow-up actions were that were taken by the department to which you forwarded the videos; correct?

15:30:30 MR. WILKENS: Objection. Asked and answered.

THE WITNESS: I don't know what their specific policies were.

MR. RUBIN: Q. So as far as you know, the videos that you flagged may well have been left up on the service?

MR. WILKENS: Objection to the form.

THE WITNESS: I was usually informed whether or not a video was approved or rejected after I forwarded it to legal once they had made a

Schapiro Exhibit 263

**HIGHLY CONFIDENTIAL
FILED UNDER SEAL**

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<u>VIACOM INTERNATIONAL INC., ET AL.,</u>	)	ECF Case
)	
Plaintiffs,	)	Civil No. 07-CV-2103 (LLS)
v.)	
	)	DECLARATION OF
<u>YOUTUBE, INC., ET AL.,</u>	)	GEORGE F. SALEM IN SUPPORT OF
	)	DEFENDANTS' SURREPLY TO
Defendants.	)	PLAINTIFFS' JOINT MOTION TO
	)	COMPEL
)	
)	
<u>THE FOOTBALL ASSOCIATION</u>)	
<u>PREMIER LEAGUE LIMITED, ET AL.,</u> on)	
behalf of themselves and all others similarly	)	ECF Case
situated,)	
	)	Civil No. 07-CV-3582 (LLS)
Plaintiffs,)	
v.)	
)	
<u>YOUTUBE, INC., ET AL.,</u>)	
)	
Defendants.)	
)	

I, George F. Salem, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. As I explained in my opening declaration, YouTube has integrated various tools to assist copyright owners in identifying their content on the YouTube website into what is known as the Content Management System ("CMS"). CMS consists of a descriptive text search tool, audio matching technology and a video matching technology called Video ID. The Video ID portion of CMS compares video files uploaded by users with reference files provided by rights holders for potential matches. When a potential match is found between the reference file of a rights holder and a video uploaded by a user, the rights holder applies one of three usage policies: block, track or monetize.

2. Rights holders participating in the CMS system enter into a Content Identification and Management Agreement (“CIMA”) governing the relationship between YouTube and the rights holder. The CIMA provides that YouTube may establish procedures to resolve claims by a user that a rights holder has erroneously blocked the user’s video through the CMS system. Paragraph 4 of the CIMA with Viacom states that “[i]f, during the course of evaluating such claims, Rights Owner reviews content designated as private by the user, Rights Owner will not disclose the content to any third party except as necessary to complete its evaluation process or in contemplation of, or participation in, a judicial proceeding.”

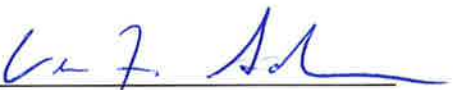
3. The dispute resolution process referenced in Paragraph 4 of the CIMA is triggered when a video is blocked by a rights holder using Video ID. In that circumstance, the user is provided with a web-based alert and with a mechanism to dispute the rights holder’s claim (e.g., in cases of misidentification, fair use and where the user has authorization to upload the material).

4. When a public video is subject to a dispute, the rights holder obviously has access to the subject video during the dispute resolution process. However, YouTube does not provide private videos to rights holders during the dispute resolution process unless it receives the express consent of the user who designated the video private to do so. If the user does not consent to the disclosure of his or her private video during the dispute resolution process, the user may not dispute the claim and the video at issue will remain blocked by the CMS system. YouTube notifies the user of the following: “Please note that if you protest the claim made against your video, we will make your video available for view to the alleged rights owner. This is necessary for the rights owner to review the dispute, and will happen regardless of the privacy settings you placed on your video. If your video is private and you are not willing to allow the alleged rights owner to view it, we unfortunately cannot accept a claim dispute. However, if your video is private, this will be clearly notified to the rights

owner at the time of viewing your video and they are required to respect the privacy and confidentiality of your video.” A true and correct copy of a screen shot reflecting this notification is attached hereto as Exhibit A.

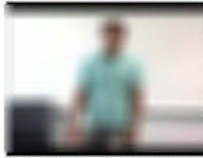
5. Accordingly, when a private video is subject to the dispute resolution process under CMS, the user may decline to proceed with a dispute if he or she does not wish to share that private video with the rights holder making a claim. If the user wishes to proceed with the dispute, he or she provides consent that the rights holder may view the private video in connection with the dispute resolution process, subject to the confidentiality and use restrictions contained in the CIMA. Under the CMS dispute resolution process, YouTube does not provide rights holders with access to private videos unless and until the user consents to such disclosure.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. Executed this 4th day of April, 2008 in San Bruno, California.



George F. Salem

[My Account](#) / **Copyright Notice**



[Takedown Test Video](#)

Your video ([Takedown Test Video](#)) has been identified as containing content that may be owned by someone else. The material identified in your video, the person claiming ownership of the material, and the policy they have designated for its use on YouTube are detailed below.

Material	Copyright Holder	Policy	Countries
Video from unknown content	PSO	Block	Everywhere

If the policy is listed as "Allow," the material will remain on YouTube and the Copyright Holder may receive data about the number of playbacks of your video. Additionally, advertising and a small brand logo or "badge" may appear next to your video. If the policy listed is "Block," your video will not be available in the countries noted.

You have the following options:

1. Remove Video

You can delete this video from YouTube.

2. Dispute Claim

If you believe that the video at issue is your original content, has been misidentified by our systems, or that you are otherwise authorized to use it without consent, you can file a dispute claim. You may use this option to dispute the video's association with the rights owner(s) listed above. You will be guided through a web-based form, and your dispute will be passed to them for review.

Please note that if you protest the claim made against your video, we will make your video available for view to the alleged rights owner. This is necessary for the rights owner to review the dispute, and will happen regardless of the privacy settings you placed on your video. If your video is private and you are not willing to allow the alleged rights owner to view it, we unfortunately cannot accept a claim dispute. However, if your video is private, this will be clearly notified to the rights owner at the time of viewing your video and they are required to respect the privacy and confidentiality of your video.

If upon review the rights owner(s) concludes that your video infringes their copyrights, the following actions will occur depending on whether they have elected to block or allow their content as detailed above:

If they have elected to allow their material to remain on YouTube, they may continue to include their brand and advertising on the video page and have access to playback data.

If they have elected to block their material on YouTube, they may submit a notification of alleged infringement under Section 512(c)(3) of the Digital Millennium Copyright Act. This will result in a strike against your account and may result in the permanent deletion of your account, so you should not file a dispute claim unless you are confident you are authorized to use the content at issue. For more information on this process, please see http://www.google.com/support/youtube/bin/answer.py?answer=59826&hl=en_US.

Please also take a few minutes to visit our [Help Center](#) section on [Policy and Copyright Guidelines](#), where you can learn more about copyright laws and our [Video Identification Service](#).

Schapiro Exhibit 264

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,)
NO. 07-CV-2203)

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

Defendants.)

VIDEOTAPED DEPOSITION OF ERIK FLANNIGAN
NEW YORK, NEW YORK
THURSDAY, OCTOBER 16, 2008

BY: REBECCA SCHAUMLOFFEL, RPR, CLR
JOB NO. 16002

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OCTOBER 16, 2008

9:30 a.m.

VIDEOTAPED DEPOSITION OF
ERIK FLANNIGAN, taken at the offices of
WILSON, SONSINI, GOODRICH & ROSATI, 1301
Avenue of the Americas, New York, New
York, pursuant to notice, before REBECCA
SCHAUMLOFFEL, CLR, RPR.

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

FOR THE PLAINTIFFS VIACOM
INTERNATIONAL, INC.:
SHEARMAN & STERLING LLP
By: JOHN GUELI, ESQ.
By: KRISTIN FITZMAURICE, ESQ.
599 Lexington Avenue
New York, New York 10022
(212) 848-4744
jgueli@shearman.com
kfitzmaurice@shearman.com

FOR THE DEFENDANTS YOUTUBE, INC.,
YOUTUBE, LLC and GOOGLE, INC.:
WILSON SONSINI GOODRICH & ROSATI
By: DAVID H. KRAMER, ESQ.
CAROLINE WILSON, ESQ.
650 Page Mill Road
Palo Alto, California 94304
(650) 849-3311
Dkramer@wsgr.com
Cwilson@wsgr.com

ALSO PRESENT:

Michelena Hallie, MTV Networks

Manuel Abreu, Videographer

1 FLANNIGAN

2 A. Yep.

3 Q. So I would be interested in
4 any information you have or any insight
5 10:31:46 you have on that process.

6 A. Okay. Okay.

7 MR. GUELI: If you have any.

8 A. I don't have any knowledge
9 as to if there -- I don't have any
10 10:32:06 knowledge as to why or why not because
11 I don't know if they did or did not
12 issue individual takedown notices
13 before the 100,000 list.

14 Q. Do you have any insight as
15 10:32:20 to how the clips were selected for
16 inclusion in the list that was sent to
17 YouTube in the early February, 100,000
18 list?

19 A. I don't -- yes, I assume
20 10:32:37 some criteria was given to the third
21 party. I was not privy to what that
22 criteria was.

23 Q. Do you know what, if
24 anything, was done to ensure that
25 10:32:48 Viacom had the rights to the content

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that it was including in this list?

10:33:10 A. I don't, in terms of the
legal rights. As I said earlier, I was
asked to sort of just sanity check the
list. I don't know if there was other,
more rigorous process applied. I am
not the right person to answer that.
Someone would know whether there was
10:33:24 more rigorous process applied.

Q. Who do you think that person
would be?

A. Adam Cahan, I presume, would
have an answer to that question.

10:33:30 Q. Do you know what, if
anything, was done to ensure that the
clips that were included on this
100,000 takedown list were clips that
had not been uploaded to the YouTube
10:33:45 service by Viacom itself?

A. I don't. The same answer
from the previous question probably
applies here. Although, I think part
of the sanity check that we were doing,
10:34:09 again, not comprehensively looking at

1 FLANNIGAN

2 what was on the list, but certainly one
3 of the criterias I was applying as I
4 looked at it was that one.

5 10:34:19 Q. Are these clips, clips that
6 Viacom may have uploaded?

7 A. Correct.

8 Q. Do you know if there was
9 anything done to ensure that the clips
10 10:34:25 that were included on the 100,000
11 takedown list were not fair uses of
12 Viacom content?

13 MR. GUELI: Object to the
14 form of the question to the extent
15 10:34:36 you are asking for a legal
16 analysis. But subject to that, go
17 on.

18 A. Again, I think I would have
19 to give the same answer. You know,
20 10:34:43 what -- there may have been several
21 tests those clips were put through by
22 someone other than me. Based on
23 criteria not given by me. So, I don't
24 know. It may have. It may not have.

25 10:34:55 Q. When you were looking at the

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list to do your sanity check, were you considering whether or not the clips that you were looking at could constitute fair uses of Viacom's content?

10:35:02

A. I guess I can only say based on what I saw, no.

Q. Based on what you saw, you saw no fair use or based on what you saw, you weren't looking for purposes of fair use?

10:35:28

A. I would say -- I didn't walk in necessarily with, I will check for this, this, and this. So, the clips I saw were, to the best of my recollection, all straight off our air uploads from users.

10:35:40

Q. In this dialogue back and forth about this February takedown, has that at all refreshed your recollection as to whether you identified any clips on the list that was sent to you that should have been or were removed from the list before it was sent to YouTube?

10:36:14

1 FLANNIGAN

2 content to multiple places.

3 Q. So I will rephrase the
4 question. It is a fair point.

5 11:17:37 When Viacom hires an agent
6 to market its content to various places
7 and that agent puts the content on
8 YouTube, the content is then authorized
9 to be on the YouTube service by Viacom,
10 11:17:47 right?

11 A. Correct.

12 Q. How would you go about
13 determining if a video clip you
14 encountered on the YouTube service that
15 11:17:57 contained Viacom content had been
16 uploaded with Viacom's authorization?

17 A. How would I go about it?

18 Q. Yes.

19 A. Well, probably in two ways.
20 11:18:20 One is I would ask our digital
21 marketing staff, whoever had the
22 relationship with the third party to
23 identify the sort of uploader or
24 uploader ID or whatever the user ID is
25 11:18:40 of the account they are using to post

1 FLANNIGAN

2 content. That would be one way.

3 The other way would be the
4 actual nature of what content was
5 11:18:46 posted and in many ways, the manner in
6 which it was posted.

7 Q. What about the manner in
8 which it was posted would tell you
9 whether it was authorized?

10 11:18:56 A. Did they spell Jon Stewart's
11 name right would be a great, easy sign
12 that it might not be something we put
13 up. Did it contain tune-in
14 information. Did it have our sort of
15 11:19:07 our boilerplate information. Was it,
16 you know -- so, around the nature of
17 the content itself and, again, maybe
18 what you might generally call the
19 metadata provided with it.

20 11:19:20 Q. Is there a list of YouTube
21 user accounts that your organization
22 maintains to identify those accounts
23 authorized to upload Viacom content to
24 auto YouTube?

25 11:19:45 A. I don't know.

1 FLANNIGAN

2 Q. You use the term
3 "boilerplate information" and then you
4 used, I think, the synonym metadata.

5 11:19:58 Am I correct that they are not
6 synonyms.

7 Okay. What boilerplate
8 information are you talking about then
9 in your last answer?

10 11:20:09 A. The majority of the viral
11 marketing we do is to drive awareness
12 of things that have not yet happened.
13 So, as such, most of those viral clips
14 are telling you, this is from a show
15 11:20:25 that is about to air. This is from an
16 event that is about to happen. This is
17 -- this is a preview of a DVD that's
18 about to be released, and it would
19 negate the purposes of putting it out
20 11:20:40 there if we didn't include the
21 boilerplate information about what it
22 was, where it came from, and what you
23 can do to see more of it.

24 Q. So, do you think then that
25 11:20:58 content that's uploaded to online

FLANNIGAN

1
2 is an E-mail from Adam Cahan to you
3 dated February 5, 2007. The subject
4 line, "ours?"

5 15:28:32 Do you recall receiving
6 this?

7 A. Not necessarily, no.

8 Q. This was an E-mail sent from
9 Mr. Cahan's work address to you and
10 15:28:42 Caleb Weinstein at your work addresses,
11 right?

12 A. Yes.

13 Q. And Mr. Cahan is wondering
14 if a particular clip on the YouTube
15 15:28:51 service is owned by Viacom, correct?

16 A. I presume that's what "ours"
17 means.

18 Q. That's the reasonable
19 interpretation of what he said there,
20 15:28:57 right?

21 A. Agreed.

22 Q. The URL refers to a video on
23 the YouTube service?

24 A. It would appear so, yes.

25 15:29:04 Q. Did you actually view this

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video?

A. Couldn't tell you.

MR. KRAMER: Let's have this
15:29:15 marked as Exhibit 16, please.

(Whereupon, the
aforementioned two-page document
was marked as Flannigan Exhibit 16
for identification as of this date
15:29:32 by the Reporter.)

Q. Mr. Flannigan, Exhibit 16 is
a screen shot of the page whose URL
matches the URL in the E-mail Mr. Cahan
sent you which is Exhibit 15. It is a
15:29:42 page on YouTube for the YouTube video
ID 1HDR, all caps, HDRtaUGG1lw. I
printed this off the internet a couple
of days ago.

Does viewing this screen
15:30:03 shot refresh your recollection of
viewing the video that Mr. Cahan sent
you to look at?

A. It does not.

Q. You were asked by Mr. Cahan
15:30:12 to view this video in the scope of your

1 FLANNIGAN

2 employment; is that correct?

3 A. As was Caleb Weinstein, yes.

4 Q. Do you recall making any

5 15:30:19 determinations as to whether the video

6 clip accessible through this web page

7 was Viacom work?

8 A. I honestly don't recall

9 doing such things.

10 15:30:28 Q. As you sit here today, does

11 it appear to be a Viacom work?

12 A. Is the actual video content

13 Viacom content?

14 Q. Yes.

15 15:30:38 A. It is clearly something from

16 South Park. That much I can tell you.

17 Q. And do you know whether this

18 clip was authorized to be on YouTube?

19 A. Based on the faulty aspect

20 15:30:51 ratio, I would guess no.

21 Q. What information would you

22 need to be conclusive about that?

23 A. I mean, conclusive is a high

24 bar. The fact that this is missing

25 15:31:04 references to South Park, the

FLANNIGAN

1
2 description that goes with the clip
3 makes no sense and doesn't appear to
4 come with it. It is sort of missing
5 15:31:19 the standard metadata of the things we
6 were trying to promote.

7 So my assessment of this,
8 just looking at it, I don't know what
9 Todd n Tyler is personally. I don't
10 15:31:33 know -- VH-1 classic, I am a little
11 curious as to what that means. So I
12 would probably need to find out what
13 the reference to VH-1 classic is here
14 because that is kind of a disconnect
15 15:31:44 with the fact that it is Comedy Central
16 content. But most of what I see here
17 suggests that is it is unauthorized.

18 Q. Okay. So can you explain to
19 me why, if you perceived this to be
20 15:31:58 unauthorized, it would remain up on the
21 YouTube service after Mr. Cahan sent
22 you an E-mail asking whether it was
23 yours in February of 2007?

24 MR. GUELI: Object to the
25 15:32:08 form.

1 FLANNIGAN

2 A. Yes, I don't know why.

3 Q. So if you saw Exhibit 16

4 today, would you send YouTube a

5 15:32:23 takedown notice for the video at

6 Exhibit 16?

7 MR. GUELI: Object to the

8 form.

9 A. Would I do that, no.

10 15:32:29 Q. Would you alert someone to

11 the presence of this seemingly

12 unauthorized video on YouTube?

13 A. I may or may not. I

14 generally assume that that work is

15 15:32:43 being done without me affirmatively

16 flagging videos.

17 Q. Can you tell me why

18 Mr. Cahan would have -- do you have any

19 idea as to why Mr. Cahan would have

20 15:32:55 sent you an E-mail asking you whether

21 to make a determination as to whether

22 this was Viacom content in February of

23 2007?

24 A. I have no idea why he picked

25 15:33:04 this clip out.

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15:33:32 Q. Do you know why Mr. Cahan would be asking you, though, in February of 2007, whether a particular piece of content on the YouTube service was Viacom's?

A. Me versus someone else?

Q. Yes. What knowledge do you have --

15:33:38 A. He is looking at purely that it is a South Park clip and that South Park is Comedy Central property, and I am the Comedy Central digital person. I doubt it would be any more than that.

15:33:48 Q. And why would he send it to Mr. Weinstein, if you know?

A. He works for Comedy Central.

Q. Okay. What was Mr. Weinstein's role at Comedy Central?

15:33:56 A. He ran our business development and strategy team.

Q. Is he still there?

A. No.

Q. Do you know where he is?

15:34:01 A. I believe he is at

1 FLANNIGAN

2 A. Because it was a sort of in
3 the pre-promotion window for that film.

4 Q. So you didn't know whether
5 15:36:38 it was or was not authorized at the
6 time that you forwarded it to
7 Mr. Herzog?

8 A. Correct.

9 Q. Was it a Viacom -- sorry,
10 15:36:46 was the -- does Paramount Pictures have
11 any rights to the movie I Am Not There?

12 MR. GUELI: Object to the
13 form.

14 A. I don't know. They might
15 15:36:59 have international distribution for all
16 I know. I am not sure.

17 Q. Do you know if this was
18 content uploaded to the YouTube service
19 by someone at Viacom?

20 15:37:06 A. I don't but it is extremely
21 unlikely that it was.

22 Q. Why do you say that?

23 A. Because it has nothing to do
24 with any of our properties, at least
25 15:37:17 domestically, or what I know about the

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film.

Q. So you did watch this video,
right?

15:37:22 A. Um-hum.

Q. And as you sit here today,
you don't know whether it was on
YouTube with the authorization of the
appropriate rights holder?

15:37:36 A. Yes, I don't know.

Q. You are just making an
assumption?

A. I told you the reasons why I
thought. You asked me if I thought it
was at that time. I did.

15:37:41 Q. So if the clip was
unauthorized, do you believe that you
engaged in copyright infringement by
watching this from your work computer
at Viacom?

MR. GUELI: Objection.

A. I have no idea.

Q. Do you believe you engaged
in copyright infringement by virtue of
forwarding this clip, assuming it was

1 FLANNIGAN

2 unauthorized, to Mr. Herzog?

3 MR. GUELI: Objection to
4 form.

5 15:38:14 A. Again, I have no idea.

6 Q. Weren't you -- strike that.

7 Did you have something you
8 wanted to add, Mr. Flannigan?

9 A. No thanks.

10 15:39:14 MR. KRAMER: Just hang on a
11 second before we give that to the
12 witness.

13 Q. Mr. Flannigan, are you aware
14 that Viacom has used the private video
15 15:39:23 functionality on YouTube?

16 MR. GUELI: Sorry, could you
17 read that question back?

18 (Whereupon, the
19 aforementioned question was read
20 15:39:34 back by the Court Reporter.)

21 MR. GUELI: Object to the
22 form.

23 Q. Are you aware of any people
24 at Viacom have used the private video
25 15:39:41 functionality tool at YouTube?

1 FLANNIGAN

2 A. Yes, it is a comedian.

3 Q. So you've subscribed to that
4 comedian's channel on YouTube?

5 16:21:51 A. Correct.

6 Q. Correct. And under the
7 favorites section under the [REDACTED]
8 channel page, those are videos that you
9 have watched on the YouTube service?

10 16:22:06 A. Correct.

11 Q. And those are videos that
12 you have favorited on the YouTube
13 service, correct?

14 A. Correct.

15 16:22:10 Q. So the "Radiohead play the
16 Smiths video, the Radiohead - Ceremony
17 video, the Arcade Fire - Neon Bible
18 Live in an elevator video, and the
19 Guided By Voices - Teenage FBI videos,
20 16:22:23 those are your favorites on YouTube?

21 A. Those are favorites on
22 YouTube.

23 Q. That you have identified as
24 favorites?

25 16:22:28 A. Yes.

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Q. Earlier I asked you how many views you believed the Amy Winehouse video received that you had uploaded.

16:22:37 Can you tell by looking at this Exhibit 19 how many views it was as of the date the page was printed?

A. 50,104.

Q. Do you have any reason to believe that the videos that you favorited in your [REDACTED] account were authorized -- were uploaded to the YouTube service with the authorization of the rights holders?

16:23:01 MR. GUELI: Objection to the form.

A. They may have been.

Q. Do you know one way or the other?

16:23:07 A. I don't.

Q. The channel page for the [REDACTED] account, your account, indicates that the account was created on May 16, 2006.

16:23:35 Do you see that?

1 FLANNIGAN

2 A. I do.

3 Q. Is that about when you
4 started using the YouTube service under

5 16:23:40 the name [REDACTED]

6 A. Yes.

7 Q. Do you know whether you used
8 the YouTube service prior to that time
9 without a user name?

10 16:23:50 A. I did.

11 Q. And I am sorry, it was
12 without a user name at the time prior
13 to --

14 A. You asked the question and I
15 16:23:57 said yes.

16 Q. So the reason you created
17 the [REDACTED] account was to upload
18 videos; is that correct?

19 A. No, I think the first use of
20 16:24:11 it was actually to subscribe to
21 Clelltickle.

22 MR. KRAMER: I need to take
23 a quick break and look back on
24 some of the questions that I asked
25 16:24:40 that were instructed not to answer

Schapiro Exhibit 265

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

VIDEOTAPED DEPOSITION OF MICHAEL FRICKLAS
NEW YORK, NEW YORK
TUESDAY, SEPTEMBER 22, 2009

REPORTED BY: JENNIFER OCAMPO-GUZMAN
JOB NO.: 17742

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SEPTEMBER 22, 2009

9:48 a.m.

VIDEOTAPED DEPOSITION OF MICHAEL D.
FRICKLAS, held at the offices of MAYER BROWN,
1675 Broadway, New York, New York, pursuant
to notice, before JENNIFER OCAMPO-GUZMAN,
Notary Public of the State of New York.

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

FOR THE PLAINTIFFS VIACOM INTERNATIONAL,
INC.:

SHEARMAN & STERLING, LLP

BY: STUART BASKIN, ESQ.

(212) 848-4000 sbaskin@shearman.com

-and-

BY: KIRSTEN CUNHA, ESQ.

(212) 848-4320 kirsten.cunha@shearman.com

599 Lexington Avenue

New York, New York 10022-6069

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

MAYER BROWN, LLP

BY: ANDREW SCHAPIRO, Esq.

(212) 506-2279 aschapiro@mayerbrown.com

-and-

BY: JASON KIRSCHNER, Esq.

1675 Broadway

New York, New York 10019-5820

(212) 506-2115 jkirschner@mayerbrown.com

ALSO PRESENT:

NICHOLAS GUZMAN, Videographer

MARK C. MORRIL, ESQ. (Viacom)

1 Fricklas

2 13:34:23 that would suggest that this was infringing
3 13:34:26 material.

4 13:34:32 (Video clip played.)

5 13:35:02 Q. Would you need to see any more to
6 13:35:05 reach a confident conclusion as to whether
7 13:35:07 this is infringing material?

8 13:35:12 MR. BASKIN: Objection.

9 13:35:13 A. Again, I would like to -- I would
10 13:35:17 like to see the whole clip, but so far I'm
11 13:35:19 seeing substantially more use of material
12 13:35:23 than I would ordinarily think was authorized.

13 13:35:26 Q. Let's take a look at the next one.
14 13:35:38 The next one will correspond to Exhibit 11
15 13:35:40 and if you look at Exhibit 11, the second one
16 13:35:46 is entitled, "SpongeBob SquarePants Squid's
17 13:35:54 Visit (Speedy)." And it was uploaded 4 days
18 13:35:58 ago. No, am I mistaken? Sorry.

19 13:36:05 SpongeBob -- further down,
20 13:36:07 "SpongeBob SquarePants Choir Boys (Speedy),"
21 13:36:13 on the next page, uploaded by the same person
22 13:36:16 2 days ago. Viewed by 49 people.

23 13:36:16 A. All right.

24 13:36:20 Q. Can you take a look and tell me if
25 13:36:22 you have thoughts about this.

1 Fricklas

2 13:36:25 MR. BASKIN: Objection.

3 13:36:30 (Video clip played.)

4 13:36:54 Q. Is that obviously infringing?

5 13:36:59 A. This looks pretty obviously

6 13:37:01 infringing as well.

7 13:37:02 Q. And that's because it's a SpongeBob

8 13:37:06 clip appears to be with super fast, indeed

9 13:37:13 incomprehensible, soundtrack?

10 13:37:15 A. But it looks like it's the original

11 13:37:18 sound track in some fashion speeded up.

12 13:37:21 Q. Transformed into a fast chipmunky

13 13:37:26 voice?

14 13:37:27 A. I don't know if I'd use the word

15 13:37:29 "transformed."

16 13:37:30 Q. All right. Next one is the Tagalog

17 13:37:33 clip.

18 13:37:33 A. Okay.

19 13:37:37 MR. BASKIN: Objection.

20 13:37:40 (Video clip played.)

21 13:38:45 Q. So is that one obviously

22 13:38:52 infringing?

23 13:38:52 A. I would have to think about that

24 13:38:54 one some more.

25 13:38:54 Q. Now, if you look over here it says

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Fricklas

13:38:56 that this was posted by "theLelouchOnline,"
13:39:02 but then it says "Copyright 2009 Associated
13:39:05 Broadcasting Company, MPB Primedia, Inc.,
13:39:10 Nickelodeon, Viacom International, Inc. All
13:39:12 Rights Reserved."

13:39:16 MR. SCHAPIRO: I'll introduce the
13:39:18 watch pages with the actual URLs in a
13:39:23 moment. I want to show you one other
13:39:25 video clip and see if you have an
13:39:28 opinion as to whether that violates any
13:39:32 copyright rules and whether it's posting
13:39:35 without any copyright rules.

13:39:37 MR. BASKIN: Objection.

13:39:43 THE VIDEOGRAPHER: Is this 13?

13:39:44 MR. SCHAPIRO: No. This one --
13:39:45 this has not been introduced yesterday.
13:39:48 We will call this Exhibit 14.

13:39:57 (Video clip played.)

13:39:59 Q. I stopped it at 14 seconds. Do you
13:40:01 have any idea whether anyone's copyrights are
13:40:04 infringed by the posting of this?

13:40:05 A. I do not.

13:40:06 Q. This appears to be a choir singing
13:40:10 a song, correct?

Schapiro Exhibit 266

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,)

vs.)

) NO. 07-CV-2103

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

Defendants.)

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

Plaintiffs,)

vs.)

) NO. 07-CV-3582

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

Defendants.)

VIDEOTAPED DEPOSITION OF MICHELENA HALLIE
NEW YORK, NEW YORK
THURSDAY, DECEMBER 10, 2009
JOB NO. 18264

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

FOR THE PLAINTIFFS VIACOM INTERNATIONAL,
INC.:

JENNER & BLOCK
1099 New York Avenue, NW, Suite 900
Washington, D.C. 2000
(202) 639-6000
BY: SCOTT WILKENS, ESQ.
Swilkens@jenner.com

FOR DEFENDANTS, GOOGLE:
WILSON SONSINI GOODRICH & ROSATI
650 Page Mill Road
Palo Alto, CA 94304-1050
BY: MAURA L. REES, ESQ.
Mrees@wsgr.com

ALSO PRESENT:

Carlos King, Videographer

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MICHELENA HALLIE

MS. REES: Exhibit 47.

(Whereupon, the

aforementioned document, BayTSP

16:03:49 004295197, was marked as

Defendant's Exhibit Hallie-47 for

identification as of this date by

the Reporter.)

A. Okay.

16:04:13 Q. Can you identify Exhibit 47?

A. It is an E-mail from

Courtney Nieman to Travis Hill with

copies to various people, including me.

Q. And is this the list of

16:04:26 account names that was described in a

previous E-mail as the White List?

A. It -- judging from the

timing, that E-mail that you are

referring to was January 3rd and this

16:04:49 is January 31st, so it is possible that

it is.

Q. And this was -- the purpose

of giving this list to BayTSP was so

that BayTSP would know not to take down

16:05:08 videos that Viacom had posted to

MICHELENA HALLIE

1
2 YouTube under the account names listed
3 in Exhibit 47?

4 A. Well, that they not take
5 16:05:19 down clips that Viacom had authorized
6 to be posted. I don't know if it was
7 Viacom itself or agents of Viacom.

8 Q. In the early 2007 timeframe,
9 were you familiar with a marketing firm
10 16:05:41 that Viacom was using called Fanscape?

11 A. I have heard of Fanscape. I
12 don't remember when I first heard of
13 it.

14 Q. Do you know why Fanscape is
15 16:05:52 not on this list? Because Fanscape was
16 posting videos on behalf of Viacom at
17 this time, right?

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

20 16:05:59 A. I don't recall. I recall
21 hearing the name, Fanscape. I don't
22 even remember in what context.

23 Q. Looking at this list now, is
24 it your belief that this list is
25 16:06:15 incomplete, that even as of January 31,

MICHELENA HALLIE

2007, there are quite a few more
authorized clips that appear on this
list?

16:06:24 A. I don't know.

MS. REES: Exhibit 48.

(Whereupon, the

aforementioned documents, VIA

16669294 through '298, were marked

16:06:56 as Defendant's Exhibit Hallie-48
for identification as of this date
by the Reporter.)

A. Okay.

Q. Can you identify Exhibit 48?

16:10:10 A. It is an E-mail chain that
starts between the various people,
apparently, of Paramount Pictures.

Then Al Perry forwards it to Mark
Morril, Scott Martin and myself,

16:10:39 copying Rebecca Prentice. I respond
and Mike Fricklas appears to respond.

Q. In the second page, there
appears to be a question from
Paramount; "Can you clarify Paramount's
16:10:57 position on dealing with YouTube at a

MICHELENA HALLIE

1
2 local level? Are we able to work with
3 them if we are using our own approved
4 material or is this a blanket ruling
5 16:11:08 that we should not be dealing with
6 YouTube at all?"

7 And then the request is
8 forwarded a couple of times and some of
9 it is redacted. On the first page in
10 16:11:15 the middle of the page, the portion of
11 your response that is not redacted is,
12 "As of now, we are posting clips and
13 providing IP addresses to Bay so they
14 know not to take them down."

15 16:11:27 So, first of all, as I think
16 you testified before, although tell me
17 if I am wrong, Viacom did not have any
18 policy of, you know, for example, after
19 the mass takedown in February of 2007,
20 16:11:46 of telling its employees to stop
21 putting clips on YouTube? That was not
22 a policy that Viacom adopted, right?

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

25 16:11:56 A. There was a policy regarding

Schapiro Exhibit 267

09:38:33

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.)

-----)

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF DOUG HERZOG
PALO ALTO, CALIFORNIA
FRIDAY, JANUARY 16, 2009

JANUARY 16, 2009

9:40 a.m.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF
DOUG HERZOG, at WILSON SONSINI GOODRICH &
ROSATI, 601 South California, Palo Alto,
California pursuant to notice, before me,
ANDREA M. IGNACIO HOWARD, CLR, CCRR, RPR, CSR
License No. 9830.

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

2
3 FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

4 JENNER & BLOCK

5 By: SUSAN J. KOHLMANN, Esq.

6 919 Third Avenue, 27th Floor

7 New York, New York 10022-3908

8 (212) 891-1690 skohlmann@jenner.com

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

12 WILSON SONSINI GOODRICH & ROSATI

13 By: DAVID H. KRAMER, Esq.

14 BART E. VOLKMER, Esq.

15 650 Page Mill Road

16 Palo Alto, California 94304-1050

17 (650) 320-4741 dkramer@wsgr.com;

18 bvolkmer@wsgr.com

19
20 ALSO PRESENT:

21 Michelena Hallie, MTV Networks

22 Mark Morrill, Viacom

23 Jan Trudell, Videographer.

24
25 ----oOo----

1 HERZOG

2 17:15:01 sequence of the film on YouTube; do you?

3 17:15:04 MS. KOHLMANN: Objection.

4 17:15:05 THE WITNESS: I don't know.

5 17:15:05 MR. KRAMER: Q. You don't think that's

6 17:15:06 right; do you?

7 17:15:07 A I don't know.

8 17:15:07 MS. KOHLMANN: Objection.

9 17:15:08 MR. KRAMER: Q. Does that appeal to your

10 17:15:09 sense of equity?

11 17:15:10 A It's -- No. It's on YouTube.

12 17:15:11 MS. KOHLMANN: Objection.

13 17:15:11 MR. KRAMER: Right.

14 17:15:12 Q Does that make it -- does that mean that

15 17:15:12 it --

16 17:15:14 A YouTube thinks it's okay to show.

17 17:15:16 Q So you think it's okay to show?

18 17:15:19 A You -- YouTube --

19 17:15:19 MS. KOHLMANN: Objection.

20 17:15:20 THE WITNESS: -- thinks it's okay to show.

21 17:15:21 MR. KRAMER: Q. If YouTube thinks it's okay

22 17:15:24 to show --

23 17:15:24 A You'd have to ask YouTube.

24 17:15:25 Q Well, that's a good question, sir.

25 17:15:26 You can't tell whether it's authorized or

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HERZOG

17:15:28 not; right?

17:15:29 A I -- I -- I -- I can't -- I --

17:15:29 Q Did you think --

17:15:32 A -- could I tell whether that's authorized?

17:15:33 No, I'm not sure whether I can or I can't, yeah. It's

17:15:36 not my -- it's not my -- I didn't put it up there, and

17:15:39 it's not -- it doesn't belong to anything that I've,

17:15:42 you know, quote, "been involved in the making of,"

17:15:44 like, you know, the MTV Viacom -- the MTV Networks

17:15:47 Viacom content so...

17:15:49 Q What would you need to know what -- in order

17:15:51 to determine whether it was authorized or not?

17:15:53 A I'm not sure.

17:15:53 Q Can you think of some things that would help?

17:15:59 A That would clarify copyright?

17:16:01 No. Only if it pertains to, you know,

17:16:09 something, again, that either I put up there

17:16:10 personally or that I knew my company was involved

17:16:12 with.

17:16:13 Q You couldn't tell otherwise?

17:16:14 A I'm not sure I could.

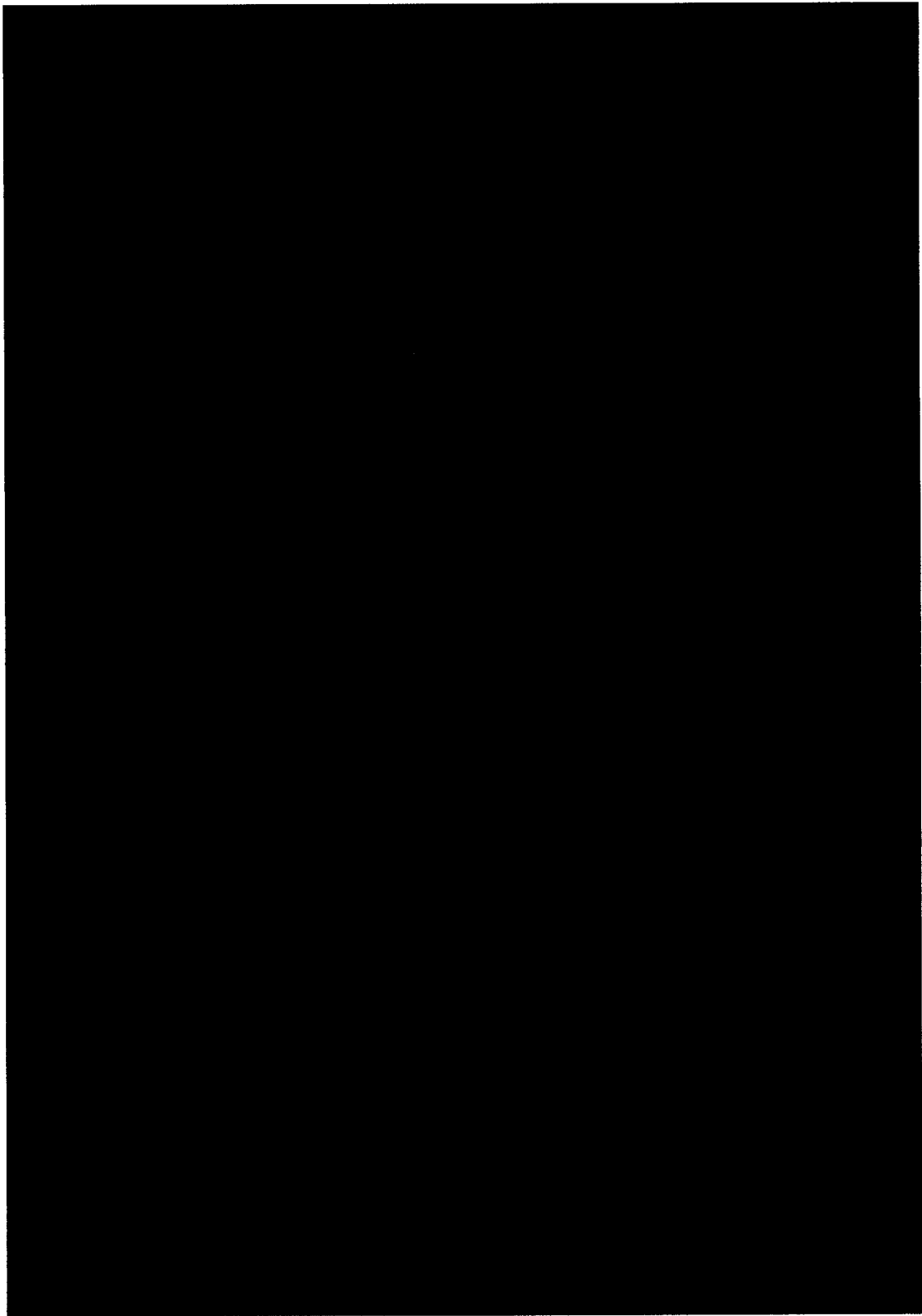
17:16:15 Q You don't think you could?

17:16:18 A I don't think I could.

17:16:19 MS. KOHLMANN: Objection.

HERZOG

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Schapiro Exhibit 268

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - -

VIACOM INTERNATIONAL	:	
INCORPORATED, et al.,	:	
	:	
Plaintiffs,	:	
-vs-	:	CASE NO. 07-CV-2103
	:	VIDEOTAPE DEPOSITION
YOUTUBE CORPORATION, et	:	
al.,	:	
	:	
Defendants.	:	

- - -

Deponent: BRENDAN DAVIS JACKSON

November 5, 2009

10:03 P.M.

Reported by: Jennifer K. Starner, RPR

Job No. 18105-A

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - -

VIACOM INTERNATIONAL	:
INCORPORATED, et al.,	:
	:
Plaintiffs,	:
-vs-	: CASE NO. 07-CV-2103
	:
YOUTUBE CORPORATION, et	:
al.,	:
	:
Defendants.	:

- - -

Videotape deposition of BRENDAN DAVIS JACKSON, a witness herein, taken by the Defendants as upon Cross-Examination and pursuant to the Federal Rules of Civil Procedure and Subpoena at the offices of Dinsmore & Shohl, 101 South Fifth Street, 2500 National Tower, Louisville, Kentucky, on November 5, 2009 at 10:03 A.M., before Michelle Ramey, video technician, and Jennifer K. Starner, RPR, a Notary Public within and for the Commonwealth of Kentucky.

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APPEARANCES:

On behalf of the Viacom Plaintiffs:

Scott Wilkens, Esq.
Jenner & Block, LLP
919 Third avenue
37th Floor
New York, New York 10017-2024
(212) 355-9500

On behalf of the Defendants, YouTube and Google:

Michael Rubin, Esq.
Wilson, Sonsini, Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304-1050
(650) 493-9300

- - -

S T I P U L A T I O N S

1
2 It is stipulated by and between counsel for the
3 respective parties that the deposition of BRENDAN DAVIS
4 JACKSON, a witness herein, called as upon Cross-Examination
5 by the Defendants may be taken at this time and place
6 pursuant to the Federal Rules of Civil procedure and
7 Subpoena as to the time and place of taking said deposition;
8 that the deposition was recorded in stenotypy by the court
9 reporter, Jennifer K. Starner, RPR, and transcribed out of
10 the presence of the witness; and that said deposition is to
11 be submitted to the witness for his examination and
12 signature, and that signature may be affixed out of the
13 presence of the Notary Public.

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I N D E X

WITNESS:

BRENDAN DAVIS JACKSON

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1 09:47:30 VIDEOGRAPHER: My name is Michelle
2 Ramey, videographer. I represent David Feldman
3 Worldwide in New York City, New York. I am a
4 notary. I am not financially interested in this
5 10:00:47 action nor am I a relative or employee of any
6 attorney or any of the parties. The date is
7 November 5th, 2009. The time is 10:06 a.m. This
8 deposition is taking place at the offices of
9 Dinsmore & Shohl, 101 South Fifth Street, 2500
10 10:01:09 National City Tower, Louisville, Kentucky. The
11 Case No. is 07-CV-2103 in the United States
12 District Court, Southern District of New York,
13 styled Viacom International Incorporated, et al.,
14 versus YouTube, Incorporated, et al.
15 10:01:32 This deposition is being taken on behalf
16 of the defendant. This begins the videotaped
17 deposition of Brendan Jackson. The court reporter
18 is Jennifer Starner. Will counsel now introduce
19 themselves and whom they represent.
20 10:01:50 MR. WILKENS: Scott Wilkens, Jenner &
21 Block, for the defendant -- for the witness.
22 MR. RUBIN: Michael Rubin of Wilson,
23 Sonsini, Goodrich and Rosati for defendants
24 YouTube and Google.

1 10:02:02 VIDEOGRAPHER: Please swear in the
2 witness.

3 BRENDAN DAVIS JACKSON
4 of lawful age, as having been duly sworn, as hereinafter
5 10:02:11 certified, was examined and testified as follows:

6 CROSS-EXAMINATION

7 BY MR. RUBIN

8 Q Good morning, Mr. Jackson.

9 A Good morning.

10 10:02:17 Q As I just stated, my name is Michael
11 Rubin. I represent YouTube and Google in the lawsuit
12 pending with Viacom. Could you please state your name and
13 job title for the record.

14 A Sure. Brendan Davis Jackson, director
15 10:02:31 of digital services for Creative Alliance.

16 Q Have you ever given testimony at a trial
17 before?

18 A No.

19 Q Have you ever provided sworn written
20 10:02:41 testimony in the form of an affidavit or declaration before?

21 A No.

22 Q Have you ever had your deposition taken
23 before?

24 A No.

1 10:02:48 Q A first for everything. Sorry for being
2 the first one.

3 A That's all right.

4 Q Let me go over a few ground rules it
5 10:02:56 being the first time. As you can tell, it's not just you
6 and me in this room. You have your attorney. I suspect
7 you've spoken to him before we walked in here. I'm going to
8 ask a few questions about that in a minute. But there also
9 is a videographer and a court reporter. The videographer
10 10:03:13 and what's going on at that end of the table is pretty
11 straightforward, videotape, digital in fact is being taken.
12 Not much we have to do to -- to make that happen.

13 The court reporter's job is complicated
14 and there are certain things we can do to make that a little
15 10:03:31 bit easier. One of them is to be clear in what we say. I
16 will certainly attempt to do that, not slurring words, not
17 mumbling. Sometimes that can be hard, particularly as the
18 day wanes on. I'm going to ask that you try to do the same
19 as well. If I notice that you said something that was a
20 10:03:49 little unclear, I may ask you to repeat it. If you notice
21 that a question I've asked is unclear, I ask you to let me
22 know that as well, because otherwise everyone is going to
23 assume that we've understood each other.

24 Also, because she's creating a written

1 10:04:04 record, it's very important that we speak audibly, yes, no,
2 as opposed to physical gestures and grunts and other --
3 other sounds. Very important. Does that make sense?

4 A Yes.

5 10:04:20 Q Great. A couple other ground rules to
6 go over. It's important that you actually answer the
7 questions that I pose to you. That said, your attorney will
8 object from time to time. He may object to the way I've
9 asked a question or the style of the question I've asked.

10 10:04:43 That's not a reason for not answering the question. He may
11 at certain times instruct you not to answer. If that's the
12 case, then if he instructs you to follow his advice you
13 should follow it. There's no other reason you shouldn't be
14 answering the questions today. If you want a break, feel

15 10:05:05 free to ask for one. In fact, I may ask for one from time
16 to time.

17 A Okay.

18 Q This isn't an endurance test at all.
19 The only request I make is that if I've asked you a question
20 10:05:15 we get through that before the break is taken. All make
21 sense?

22 A Yes. Yes.

23 Q Great. Is there any reason you can
24 think of why you wouldn't be able to given your best

1 10:05:27 testimony today?

2 A No.

3 Q You're not under the influence of any

4 medication this morning?

5 10:05:31 A No.

6 Q No alcohol?

7 A No.

8 Q No drugs?

9 A No.

10 10:05:36 Q And you understand you're testifying

11 under oath this morning?

12 A Yes.

13 Q Under penalty of perjury?

14 A Yes.

15 10:05:43 Q Great. Did you prepare for today's

16 deposition?

17 A Yes.

18 Q How did you prepare for today's

19 deposition?

20 10:05:54 A Mr. Wilkens and I met yesterday for a

21 bit and this morning as well.

22 Q How long did you meet for yesterday?

23 A I'd say approximately five hours.

24 Q And during those approximate five hours,

1 10:16:36 Entertainment?

2 A Through a job posting.

3 Q Do you recall where you saw that job

4 posting?

5 10:16:45 A I do not.

6 Q Do you recall your first interaction

7 with Adam Entertainment?

8 MR. WILKENS: Objection to form.

9 A I do.

10 10:16:56 Q Please describe it.

11 A I was called by Scott Roesch about my

12 résumé and we spoke on the telephone.

13 Q Had you submitted your résumé in

14 response to the job listing you had seen?

15 10:17:09 A Yes.

16 Q Who is Scott Roesch?

17 A Scott Roesch was my direct supervisor

18 and was, I believe, vice president and general manager at

19 Atom Films.

20 10:17:20 Q Are you still in contact with Scott

21 Roesch today?

22 A I am.

23 Q Do you consider him a friend of yours?

24 A Yes.

1 10:17:28 Q What did Scott Roesch say to you when he
2 contacted you?
3 A Spoke to me about the job position.
4 Q What did he say about the job position?
5 10:17:40 A It was a product manager for the
6 Addicting Clips website.
7 Q What was the Addicting Clips website?
8 A It was a UGC website that Atom
9 Entertainment had started.
10 10:17:52 Q What do you mean by UGC?
11 A User generated content.
12 Q And what is user generated content?
13 A Content that a user creates and then
14 shares online.
15 10:18:03 Q And then what is a UGC website?
16 A A website where people who create
17 content can then upload the content to that website.
18 Q And Addicting Clips was a UGC website?
19 A Correct.
20 10:18:18 Q Can you think of any other UGC websites?
21 A YouTube, Revver, Funny or Die, Daily
22 Motion, Vio.
23 Q And based on your conversation with
24 Scott Roesch, what happened next in the sequence of your

1 10:18:39 ultimately taking the job at Addicting Clips?

2 A I had an interview with him.

3 Q Did you interview with anyone else?

4 A I interviewed with Joel Sanders.

5 10:18:51 Q Who is Joel Sanders?

6 A Joel Sanders was, I believe, at that

7 time senior product manager. Worked on Scott's team, worked

8 for Scott.

9 Q Okay. Who else did you interview with?

10 10:19:02 A Kate Connolly.

11 Q Who is Kate Connolly?

12 A She was the VP of Addicting Games. I

13 don't recall who else I met with.

14 Q Do you meet with Mika Salmi?

15 10:19:17 A I don't recall.

16 Q Do you know who Mika Salmi is?

17 A I do.

18 Q Have you ever met with Mika Salmi?

19 A Yes.

20 10:19:24 Q Are you still in contact with Mika

21 Salmi?

22 A Yes.

23 Q Do you consider Mika Salmi your friend?

24 A No.

1 10:19:31 Q How long did the interview process take?

2 A I believe I had two interviews.

3 Q And ultimately Atom extended you a job

4 offer, correct?

5 10:19:41 A Correct.

6 Q And the offer was for product manager of

7 Addicting Clips?

8 A Correct.

9 Q And you accepted that offer?

10 10:19:49 A Yes.

11 Q During the course of these interviews,

12 were you ever told what the mission was for Addicting Clips?

13 A I don't recall.

14 Q Did you have an understanding of what

15 10:20:06 the mission was for Addicting Clips when you accepted the

16 job as product manager for the site?

17 A Yes.

18 Q What was your understanding?

19 A To grow the -- the website, traffic,

20 10:20:18 content.

21 Q Why would that have been the mission?

22 MR. WILKENS: Objection to form.

23 A Because we wanted to grow the business.

24 The more content, more traffic equals more advertising which

1 10:20:33 is more revenue for the company.

2 Q How did you plan on meeting that goal?

3 A Various strategies throughout my tenure

4 there to try to meet that goal.

5 10:20:56 Q Did you have any in mind before you

6 started?

7 A I don't recall.

8 Q Did you have any experience with UGC

9 before you started at Addicting Clips as product manager?

10 10:21:09 A Not in a professional capacity.

11 Q Only in a personal capacity.

12 A Correct.

13 Q What personal experience did you have

14 with UGC prior to starting Addicting Clips?

15 10:21:18 A Going to sites, watching videos.

16 Q What sites did you have experience with

17 prior to starting at Addicting Clips?

18 A Google Video and YouTube and Yahoo

19 Video.

20 10:21:29 Q You did not have personal experience

21 with Addicting Clips prior to discovering it on a job

22 posting?

23 A Correct.

24 Q How long did you work at Addicting

1 10:21:42 Clips?

2 A I've worked at Addicting Clips for a
3 little over two years.

4 Q And what were your day-to-day
5 10:21:50 responsibilities there?

6 A I was in charge of Addicting Clips as a
7 whole. So strategy, reporting, just ensuring the site was
8 up and running, working with different vendors and partners
9 we had and working with the rest of the Atom Films team.

10 10:22:14 Q Would you say you were familiar with
11 most aspects of how the Addicting Clips ran during your
12 tenure?

13 MR. WILKENS: Objection to form.

14 A During my time there, yes.

15 10:22:29 Q When did you leave Addicting Clips?

16 A September of 2007.

17 Q What occasioned your departure?

18 A My wife and I were looking to buy a
19 house and we're not going to be able to do that in San

20 10:22:44 Francisco and we thought about living somewhere else for a
21 little while. Louisville happened to be a town that I knew
22 and liked and a job offer came and went from Louisville, so
23 we decided to move.

24 Q Should have waited a couple years. What

1 10:26:29 Q Do you know if users could upload
2 anything other than videos to the service?
3 A Yes. You can upload flash games or
4 flash files.
5 10:26:37 Q What's a flash game?
6 A Flash is a technology that allows you to
7 create games, so game bated flash.
8 Q What is flash?
9 A Flash is a software program owned by
10 10:26:51 Adobe that is a -- sort of a moving base software program
11 that allows you to create programs and games, websites.
12 Q So a user could upload a game that they
13 had written in the flash programming language to this
14 service?
15 10:27:11 A Correct.
16 Q Could a user upload a game they had
17 written in a different programming language?
18 A Not that I know of.
19 Q Turning to the upload of videos, were
20 10:27:27 users limited to uploading videos they had recorded in the
21 flash language?
22 A Can you rephrase that? I don't
23 understand.
24 Q Let me ask it a different way.

1 10:27:43 A Sure.

2 Q When user visited the website to watch

3 videos, were the videos displayed to them or shown to them

4 in a certain format.

5 10:27:58 A Yes.

6 Q What format was used?

7 A I don't recall.

8 Q Was it a standard format at all times?

9 A Yes.

10 10:28:07 Q Did the video uploaded by the user have

11 to be uploaded in that format?

12 A No.

13 Q How did it work then, to your

14 understanding, to change it from the format uploaded by the

15 10:28:19 user to the format shown to -- to that user or any other

16 user coming to the surface?

17 A From my own knowledge, the user would

18 upload a video in one of the supported formats. That video

19 was then transcoded into the standard format that we used on

20 10:28:37 the site.

21 Q What do you mean by transcoded?

22 A It was taken from one format and put

23 into another.

24 Q Just so I can break that down a little

1 10:28:47 bit --

2 A Sure.

3 Q -- it was taken from one format and

4 copied into a different format so it could be displayed

5 10:28:53 properly on the service?

6 MR. WILKENS: Objection to the form.

7 A I'm not sure if it was copied, but it

8 was -- it was -- the format was changed.

9 Q And you don't understand on the

10 10:29:01 technical level how it was done?

11 A No.

12 Q Okay. Do you know if a user was

13 required to have an account in Addicting Clips to upload a

14 video?

15 10:29:15 A Yes, they were.

16 Q And do you know if a user was required

17 to agree to terms of service with Addicting Clips prior

18 to --

19 A Yes.

20 10:29:26 Q -- having an account?

21 A Yes.

22 Q And do you know if the Addicting Clips

23 terms of service prohibited the uploading of material that

24 infringed copyright?

1 10:29:39 A Yes.

2 Q And did they prohibit the uploaded

3 material that infringed copyright?

4 MR. WILKENS: Objection to form. "They"

5 10:29:45 meaning the guidelines, the terms of service?

6 Q Did Addicting Clips terms of service

7 prohibit the upload of material that infringed copyright?

8 A Yes.

9 Q And users of Addicting Clips were

10 10:29:58 required to agree to those terms of service before

11 completing registration for an account, right?

12 A Yes.

13 MR. WILKENS: Objection. Asked and

14 answered.

15 10:30:06 A Yes.

16 Q With regard to the transcoding you were

17 just referring to, do you know whether that was something

18 that occurred in your offices at Addicting Clips?

19 A It was not.

20 10:30:27 Q Where did it happen?

21 A Reality Digital did the transcoding.

22 Q What is Reality Digital?

23 A Reality Digital was the company who

24 provided the platform for the Addicting Clips website. They

1 10:30:43 were our vendor.

2 Q Can you explain that a little bit? What

3 do you mean by platform?

4 A The actual back end technology of the

5 10:30:55 site was recreated for us by Reality Digital.

6 Q Do you know if there was a contract that

7 governed the relationship between Atom and Reality Digital?

8 A Yes.

9 Q Was there?

10 10:31:19 A Yes, there was.

11 Q Did you interact with anyone at Reality

12 Digital in the context of your job as product manager for

13 Addicting Clips?

14 A Yes, I did.

15 10:31:31 Q With whom at Reality Digital did you

16 interact?

17 A Randy St. Jane, Ed Klein and their

18 president whose name at this moment escapes me. It's

19 Cynthia maybe.

20 10:31:44 Q Is it Cynthia Francis?

21 A That's correct.

22 Q Who did you interact with the most out

23 of those three?

24 A I would say it was equally split between

1 10:31:54 Ed Klein and Randy St. Jane.

2 Q And were they familiar with the platform

3 that they were providing to Addicting Clips to run the

4 service?

5 10:32:08 A I really can't speak to their

6 familiarity with it.

7 Q Based on your interactions with them,

8 did they appear familiar with the services they were

9 providing to you?

10 10:32:17 A Yes.

11 Q Were they able to answer the questions

12 that you posed to them?

13 A Yes.

14 Q Were they able to implement the features

15 10:32:21 that you asked them to implement?

16 A Some.

17 Q Typically?

18 A Typically, yes.

19 Q If you -- if your company was willing to

20 10:32:29 pay for them?

21 A Correct.

22 Q Do you have a specific recollection of

23 the services that Reality Digital provided to Addicting

24 Clips?

1 10:32:51 MR. WILKENS: Objection to form.

2 A I mean, the services was the -- the back

3 end technology that allowed the UGC site to run.

4 Q The entirety of the back end technology?

5 10:33:05 MR. WILKENS: Objection to form.

6 A To my knowledge, yes.

7 Q And in the context of providing the back

8 end technology for the Addicting Clips website to run, to

9 your understanding, Reality Digital was -- was operating as

10 10:33:28 Atom Entertainment's agent?

11 MR. WILKENS: Objection to the form.

12 Calls for a legal conclusion.

13 Q Isn't that right?

14 MR. WILKENS: Objection. Same

15 10:33:36 objection.

16 A What's the definition of agent?

17 Q They were operating at the direction of

18 Atom Entertainment?

19 MR. WILKENS: Objection to form.

20 10:33:49 A Yes.

21 Q Do you know what sort of data relating

22 to the use of the service Reality Digital stored?

23 A They would store the user information

24 that was required for registration, which I don't recall

1 10:34:13 exactly what that is, but your standard name, email address.

2 They would store the video that you uploaded. And we would

3 also track the user's IP address.

4 Q Do you know if they stored anything else

5 10:34:29 that you can recall?

6 A Not that I can recall.

7 Q Was that data accessible to you as

8 product manager at Addicting Clips from your offices?

9 A Yes.

10 10:34:44 Q How so?

11 A There was an administrative feature on

12 the site that I had access to.

13 Q What do you mean administrative feature?

14 A Typically in a software environment you

15 10:34:58 have different levels of access to data and a general users

16 just sees general information. As an administrator you

17 certainly have uber access to all information that a typical

18 user couldn't see.

19 Q And in your understanding based on your

20 10:35:13 jobs over time in the technology environment, that's a

21 standard approach to how services operate?

22 A Yes.

23 MR. WILKENS: Objection to form.

24 Q What types of information would you as

1 10:35:26 an administrative user or, I believe, as you said, uber
2 user, have access to in this context that a normal user -- a
3 normal user approaching the Addicting Clips public facing
4 website wouldn't have access to?

5 10:35:40 A We would be able to see the user's IP
6 address. We would be able to take a video down from view.
7 We would also be able to see a user's private videos.

8 Q Once the video had been taken down from
9 view, would you still be able to view it?

10 10:36:02 A Yes.

11 Q Why was that the case?

12 MR. WILKENS: Objection to form.

13 A I don't know why that specifically was
14 the case.

15 10:36:26 Q Did Addicting Clips have a search
16 functionality?

17 A We did.

18 Q Was it a in-house, custom-built search
19 functionality?

20 10:36:37 A When I joined Addicting Clips it was
21 part of the Reality Digital platform.

22 Q Did there come a time when you stopped
23 using the search functionality provided as a part of the
24 Reality Digital platform?

1 10:36:50 A Yes.

2 Q Why did you stop using the search

3 functionality provided as a part of the Reality Digital

4 platform?

5 10:36:59 A From my recollection we just weren't

6 happy with the -- weren't happy with the level of -- of the

7 service that was being provided from Reality Digital on the

8 search site.

9 Q In what sense were you unhappy with the

10 10:37:13 level of service being provided on the search site?

11 A We were unhappy with how the results

12 were showing up, relevance.

13 Q What do you mean by relevance in the

14 context of search results?

15 10:37:24 A If you type in the term "hot dog" you

16 want to make sure you're getting relevant information to

17 your search. I think in this case it wasn't as relevant as

18 we would have liked it to have been.

19 Q So over time one might change an

20 10:37:41 approach to how the search operates to -- to get a better

21 relevance result?

22 MR. WILKENS: Objection to the form.

23 A I'm not sure I understand the question.

24 Q Well, you're -- you're indicating that

1 10:46:35 A I do.

2 Q Could you read it out loud, please?

3 A "Viacom is pretty sensitive about

4 YouTube right now, so let's avoid doing YT features on the

5 10:46:43 home page until further notice. Will you rotate out the one

6 that's up there this morning?"

7 Q Does this -- let me ask you a different

8 question.

9 What was your understanding of

10 10:46:54 Mr. Roesch's statement that Viacom is pretty sensitive about

11 YouTube right now?

12 A I don't know.

13 Q You don't have any recollection of what

14 he meant by that?

15 10:47:06 A I don't.

16 Q You don't have any reason to know why in

17 February of 2007 Viacom might have been sensitive about

18 YouTube?

19 MR. WILKENS: Objection. Asked and

20 10:47:18 answered.

21 MR. RUBIN: Different question, Scott.

22 A I mean, I know that, you know,

23 eventually Viacom sued YouTube because we're sitting here

24 right now, but I don't recall if this was before or after

1 10:47:34 that. I wasn't -- so at that time, no, I don't know.

2 Q Who is Cindy Emch?

3 A Cindy Emch worked on the Atom Films
4 Addicting Clips team. She was editorial content person.

5 10:47:54 Q What does that mean, editorial content
6 person?

7 A So for the Atom Films team she would be
8 the person who would look at the upcoming content and decide
9 when to feature it, how to feature it. On the Addicting
10 10:48:07 Clips side she was a person who would look at some of our
11 content on Addicting Clips, decide what should be featured
12 as well as what the content from other sites we would like
13 to -- to be featured.

14 Q Did you -- was she a direct report of
15 10:48:26 yours or was she also a report to Scott Roesch?

16 A She was not a report of mine. I believe
17 she reported to Scott, but I'm not sure.

18 Q Could users post comments about videos
19 on Addicting Clips?

20 10:48:50 A Yes.

21 Q Could Addicting Clips employees feature
22 certain videos?

23 A Yes.

24 Q What was the purpose of the ability to

1 10:49:01 feature videos?

2 A The purpose was to showcase the best
3 content on our site to our users, the front page.

4 Q And to drive traffic, right?

5 10:49:12 MR. WILKENS: Objection.

6 A Correct.

7 Q Did you ever have disagreements with
8 anyone at Addicting Clips about which videos to feature?

9 A Can you be more specific.

10 10:49:34 Q I suppose. Do you ever recall wanting
11 to feature a video and being told that someone else thought
12 it was an inappropriate video to feature?

13 MR. WILKENS: Objection to the form.

14 A There were times when we were told we
15 10:49:49 could not feature certain videos, yes.

16 Q Can you recall a specific instance?

17 A I cannot recall a specific instance, but
18 I do know that it would happen from time to time.

19 Q What types of videos were you told you
20 10:50:05 could not feature?

21 MR. WILKENS: I'm going to caution the
22 witness not to get into attorney/client
23 communications. If you can testify without doing
24 that, you can go ahead and testify.

1 10:55:05 fourth one whose name I can't remember.

2 Q Did Viacom approve of the type of
3 content that FHM uploaded to the content being featured?

4 MR. WILKENS: Objection to form.

5 10:55:42 A I don't know.

6 Q Did Viacom standards and practice have
7 anything to do with the type of content that was featured to
8 the Addicting Clips?

9 A I don't think I ever was familiar with
10 10:55:53 what Viacom's standards and practices were.

11 Q Would there have been someone else at
12 Addicting Clips that interacted with Viacom to determine
13 what those standards and practices would have been?

14 MR. WILKENS: Objection to the form.

15 10:56:07 A There may have been, but I don't know
16 what they would have been.

17 Q And if that happened, it's possible you
18 wouldn't have known about it?

19 MR. WILKENS: Objection to the form.

20 10:56:15 A Yes, possible.

21 MR. RUBIN: I'd like to introduce
22 Exhibit 4.

23 (Whereupon, Defendants' Exhibit 4 was
24 marked for identification purposes.)

1 10:57:08 Q Exhibit 4 is a document produced by
2 Viacom in this action labeled VIA00848295. Have you had an
3 opportunity to review it?
4 A I have.
5 10:57:23 Q This is an email from December 2006.
6 Subject matter: "AC traffic." It's an email you sent to
7 Scott Roesch. Do you recall sending this?
8 A I don't.
9 Q Do you recognize the document now that
10 10:57:38 you looked at it?
11 A I do.
12 Q Do you see that you say, "AC traffic has
13 plummeted in the last week coinciding with removing the sexy
14 channel"?
15 10:57:51 A Yes.
16 Q What does that mean?
17 A We had various different channel
18 categories on the site and sexy was one of those channels.
19 Q Could you describe what the sexy channel
20 10:58:03 was?
21 A Various videos mostly of women.
22 Q Doing any specific thing in those
23 videos?
24 A No. There was no actual sex in those

1 10:58:23 videos, but any video that we deemed that, you know, had
2 attractive women we would probably put in the sexy channel.

3 Q Were videos classified into channels by
4 the users uploading them or by employees of Addicting Clips?

5 10:58:40 A By users, but we could also add channels
6 if we wanted to.

7 Q How did -- pardon me. How did users
8 uploading videos classify what channel the video should be
9 uploaded into?

10 10:58:53 A They were asked when they uploaded which
11 channel they thought the video should go into. It was self
12 selected.

13 Q But employees could override those
14 decisions if they felt the users had made the wrong choice?

15 10:59:06 MR. WILKENS: Objection to form.

16 A We could add to them.

17 Q Could you also override them?

18 A We could, yes.

19 Q Do you recall ever doing so?

20 10:59:23 A No, I don't recall.

21 Q Do you see you also state, "AC traffic
22 had plummeted in the last week"?

23 A Uh-huh. Yes.

24 Q And you correlated it in this email to

1 10:59:41 a -- to the removal of the sexy channel?

2 A Yes.

3 Q Do you recall that happening?

4 A I do recall the channel being taken

5 10:59:52 down, yes.

6 Q Do you recall that the following week's

7 traffic plummeted?

8 A I -- I don't recall that, no.

9 Q Do you have any reason to doubt that it

10 10:59:59 happened because you wrote it in this email?

11 A I have no reason to doubt that.

12 Q Do you see Scott Roesch's response to

13 you?

14 A I do.

15 11:00:09 Q What did he say?

16 A "Yeah - wonder if it's a loss of the

17 channel or loss of the various clips by getting weeded out,

18 interesting."

19 Q What do you think he means? He says

20 11:00:20 it's another possibility. Your email suggested that the

21 plummet of traffic was related to the removal of the sexy

22 channel?

23 A Uh-huh. Yes.

24 Q And in response he says he wonders if

1 11:00:33 it's that or the loss of various clips that are getting
2 weeded out?

3 A Yes.

4 Q What is -- what did he mean by "a loss
5 11:00:41 of the various clips that are getting weeded out"?

6 A I'm not sure.

7 Q You have no idea what he could have
8 meant?

9 A No.

10 11:00:48 Q In December of 2006 in what context were
11 clips getting weeded out?

12 MR. WILKENS: Objection to form.

13 A I don't recall. December of 2006?

14 Q Yes.

15 11:01:03 A I'm not sure. We -- we had our --
16 whatever -- our process was for rejecting clips, but I don't
17 know specifically in December 2006 what he meant by that or
18 what weeded out meant.

19 Q What do you mean your process for
20 11:01:23 rejecting clips?

21 A During different times at Addicting
22 Clips we had a different process for how we would look at
23 clips and decide what was going to stay on the site and
24 which was not appropriate for the site.

1 11:01:45 Q I'd like to get into that in a little
2 bit.
3 MR. RUBIN: Actually I'd like to take a
4 break for a second.
5 11:01:50 MR. WILKENS: Sure.
6 THE WITNESS: Sure.
7 VIDEOGRAPHER: We're going off the
8 record. The time is 11:07 a.m.
9 (Whereupon, a brief recess was taken.)
10 11:11:52 VIDEOGRAPHER: We now return to the
11 record. The time is 11:17 a.m.
12 Q Mr. Jackson, I want to ask you another
13 question about Exhibit 4.
14 A Okay.
15 11:12:06 Q Why was the sexy channel removed from
16 the site?
17 A I do not recall.
18 Q Would the removal of the channel had
19 been something within your discretion as product manager?
20 11:12:19 A Not entirely, no.
21 Q Who else would have been involved in
22 making a decision like that?
23 A Scott Roesch and Joel Sanders would have
24 been involved in that decision.

1 11:12:32 Q If your goal was to drive traffic and to
2 drive revenue, does it strike you as counterproductive to
3 remove a channel that had a coinciding result of causing
4 traffic to plummet?

5 11:12:51 MR. WILKENS: Objection to the form and
6 mischaracterizes the document.

7 A I don't remember the reasoning why it
8 was taken down, so I really can't make that judgment.

9 Q In the document you said you were
10 11:13:09 working with Cindy to develop a solution?

11 A Correct.

12 Q Who is Cindy?

13 A Cindy Emch.

14 Q What was the solution you were working
15 11:13:18 to develop?

16 A I don't recall.

17 Q Do you know if a solution was ever
18 implemented?

19 A I don't recall.

20 11:13:30 Q Do you know what it means to embed a
21 video?

22 A Yes.

23 Q What does it mean to embed a video?

24 A On Addicting Clips you could take a --

1 11:13:42 a -- a piece of code that was found on the video's page and
2 you could insert it into our website and that video would
3 then show up on your website.

4 Q As if it were a -- strike that. In the
5 11:14:00 context of embedding an Addicting Clips video, as you just
6 described, on your own website the video would then appear
7 as it was part of your website, although it was playing from
8 the Addicting Clips website?

9 A It would be on your website. It would
10 11:14:18 have Addicting Clips branding on it, but it would be on your
11 website.

12 Q What types of Addicting Clips branding
13 would be on the video?

14 A I believe we had our logo on the player
15 11:14:26 itself.

16 Q Addicting Clips superimposed some sort
17 of logo on the video that it displayed?

18 A Not on the video, but I think it was on
19 the actual physical borders of the player.

20 11:14:37 Q Okay. Have you ever encountered other
21 UGC websites that offered the ability to embed videos they
22 host?

23 A I mean, without making generalizations,
24 I believe every UGC website I've been to allows people to

1 11:14:55 embed their videos.

2 Q It's a pretty common functionality?

3 A Yes.

4 Q Do you know if YouTube offers that

5 11:15:05 functionality?

6 A They do.

7 Q Have you ever had occasions to use the

8 embed feature on the website?

9 A Yes, I have.

10 11:15:15 Q More than once?

11 A Maybe.

12 Q Were users able to upload private videos

13 on the Addicting Clips website?

14 A Yes.

15 11:15:34 Q Why was that functionality offered?

16 A I'm not sure. It was -- I believe that

17 functionality was part of the site before I joined the team.

18 Q Could a video that was uploaded and made

19 available publicly be later set to private?

20 11:15:54 A I don't recall.

21 Q Could a video that was uploaded as

22 private be later made public?

23 A Yes.

24 Q Do you know if that ever happened?

1 11:16:04 A Yes.

2 Q Do you know what percentage of videos
3 available in the Addicting Clips website were marked as
4 private?

5 11:16:17 A No, I don't.

6 Q Not at any time?

7 A Not that I can recall.

8 MR. RUBIN: I'd like to introduce
9 Exhibit 5.

10 11:16:26 (Whereupon, Defendants' Exhibit 5 was
11 marked for identification purposes.)

12 Q Mr. Jackson, Exhibit 5 is a document
13 produced by Viacom in this action bearing Bates No.
14 VIA01228819. Please take a moment to read it.

15 11:17:46 A Okay.

16 Q Exhibit 5 is an email chain of two
17 emails between you and Scott Roesch. It begins with an
18 email from Scott Roesch to you on March 7th at 2 -- rather
19 at 5:30 a.m. in the morning and then a response from you to
20 11:18:05 him the next afternoon on March 8th. Do you see that?

21 A I do.

22 Q Do you recall this email chain?

23 A I don't.

24 Q Does looking at it refresh your

1 11:18:14 recollection?

2 A Yes.

3 Q Does it refresh your recollection that
4 in March of 2007 25 percent of the videos available on the
5 11:18:30 Addicting Clips websites were set to private?

6 A Doesn't refresh my recollection. I can
7 see that that's the case, but I don't specifically remember
8 that.

9 Q You did write that in March of 2007?

10 11:18:43 A I did, yes.

11 Q Do you have any reason to doubt that it
12 was accurate when you wrote it?

13 A I have no reason to doubt that it was
14 not accurate.

15 11:18:51 Q If 25 percent of the volume was set to
16 private -- and you indicate that was 6,000 clips -- does
17 that mean that in March of 2007 there were about 24,000
18 clips in total on the Addicting Clips website?

19 A Based upon this that would be the
20 11:19:07 assumption.

21 Q Does that seem like a fair conclusion to
22 draw from the information you provided in that email?

23 A Yes.

24 Q Do you know if at any point Addicting

1 11:19:18 Clips stopped offering private video functionality?

2 A I don't recall.

3 Q How would you find out the answer to

4 that?

5 11:19:37 A I would probably ask Scott Roesch or

6 Joel Sanders.

7 Q Do you know if there was a limit to the

8 number of videos that a user could mark as private?

9 A I don't -- I don't know.

10 11:19:53 Q Was there a limit to the number of

11 videos the user could upload to the service in general?

12 A Not that I was aware of.

13 Q The purpose of the private video wasn't

14 to provide a haven for copyright infringement, was it?

15 11:20:13 A No.

16 Q We discussed earlier about the

17 administrative access to the system. You testified that an

18 administrative user could remove content from the service?

19 A From public view, yes.

20 11:20:52 Q From public view. Could an

21 administrative user permanently remove content from the

22 service, that is, delete content entirely from the service?

23 MR. WILKENS: Objection to the form.

24 A I don't know.

1 11:21:11 Q You don't recall ever doing so?

2 A No, I don't recall.

3 Q And just to -- to make this clear,

4 Mr. Jackson, you had administrative credentials to the

5 11:21:28 Addicting Clips website, correct?

6 A I did, yes.

7 Q Do you recall who else did?

8 A Joel Sanders, Cindy Emch, Scott Roesch,

9 Jesse Hollister, Victoria Libin. That's all I can recall.

10 11:21:53 Q Would you have been able to do your job

11 running the Addicting Clips service without the

12 administrative access that you had?

13 MR. WILKENS: Objection to the form.

14 A I could have done my job. I don't know

15 11:22:15 if I could have done it as well.

16 Q What hinderances would it have

17 prohibited?

18 MR. WILKENS: Objection to form.

19 A Reporting would have been difficult for

20 11:22:26 me if I was unable to go in and see the number of clips

21 uploaded and views and that sort of thing.

22 Q How would you have removed content from

23 the service if you needed to without the administrative

24 functionality?

1 11:22:40 A I would have contacted someone who had
2 the functionality to do it.

3 Q So someone needed to have the
4 administrative functionality to remove content?

5 11:22:48 A Correct.

6 Q So your particular job might have just
7 been made more difficult?

8 A Yes.

9 Q But the entirety of the operation was
10 11:22:55 dependent on somebody having the ability on an
11 administrative level to at least remove content if
12 necessary?

13 MR. WILKENS: Objection.

14 Q Isn't that right?

15 11:23:06 MR. WILKENS: Objection to the form.

16 A If a clip needed to be taken down, yes,
17 someone needed to be able to it take down.

18 Q And a user without out administrative
19 credentials didn't have the ability to take a video down,
20 11:23:19 did they?

21 A I don't know if users could take down
22 their own video. I'm not sure.

23 Q Other than their own video?

24 A They could not physically take someone

1 11:23:28 else's video down, no.

2 Q How could a user take someone else's
3 video down?

4 A You could flag a video at which case --
5 11:23:37 at which case that flag would -- I'm not sure where it got
6 sent, but it would be sent somewhere within Addicting Clips
7 and then that video would be viewed by the legal team and a
8 recommendation -- or action would be taken at that point.

9 Q And if the action taken in response to a
10 11:23:52 user flag was to remove a video, that would be effectuated
11 by someone with an administrative account, correct?

12 A That is correct.

13 Q So I return to the earlier question.
14 Someone at the company needed to have an administrative
15 11:24:07 account in order to be able to remove content?

16 A Correct.

17 Q Even if your job simply would have been
18 made more difficult without one?

19 A Correct.

20 11:24:19 Q And there may be other functions in
21 addition to removing content for which an administrative
22 account would have been necessary, right?

23 MR. WILKENS: Objection to the form.

24 A Right.

1 11:54:12 my tenure there. I don't know specifically which dates we
2 employed the different kind. So we were to some extent. I
3 don't know specifically which -- which period we were in at
4 that point.

5 11:54:22 Q Okay. Was there any point during your
6 employment at Addicting Clips when no filtering of any sort
7 was applied to videos uploaded by users?

8 MR. WILKENS: Objection to the form.

9 A Going to need to know what you mean by
10 11:54:44 filtering.

11 Q I mean by filtering any technological
12 filter?

13 A Okay.

14 Q Or any review by a human prior to the
15 11:54:55 publication of the video for viewing by the public at large?

16 A So do you mean viewing it previous to it
17 going public?

18 Q Sure.

19 A There were times while I was at
20 11:55:13 Addicting Clips where the videos went live prior to them
21 being reviewed either personally or by technology.

22 Q So just to clarify to make sure I
23 understand --

24 A Sure.

1 11:55:24 Q -- there was a little bit of back and
2 forth there?
3 A No problem.
4 Q There was a time at Addicting Clips
5 11:55:31 whether a user would upload a video that was neither
6 subjective to a technological filter nor reviewed by any
7 human prior to it going live for viewing by the public?
8 A That is correct.
9 Q How long did that period of time last?
10 11:55:47 A Well, it would have been from the time
11 that I got there. Honestly can't recall exact dates when --
12 when we started to do the -- the pre filtering.
13 Q It lasted for quite some time, though,
14 right?
15 11:56:08 MR. WILKENS: Objection to the form.
16 A Again, I don't -- I don't recall.
17 Q Do you recall when Viacom acquired
18 Addicting Clips?
19 A Very, very well, yes.
20 11:56:18 Q Was it in August of 2006?
21 A It was.
22 Q Were videos being filtered
23 technologically or by humans prior to publication at the
24 time of the Viacom acquisition?

1 11:56:32 A Not that I can recall.

2 Q What did you think of Viacom's

3 acquisition of Addicting Clips?

4 MR. WILKENS: Objection to form.

5 11:56:54 A I don't have an opinion. I think it

6 could be good in some ways, bad in others.

7 Q How do you think it turned out?

8 A During the time I was there I thought it

9 was very successful.

10 11:57:04 Q In retrospect?

11 A I think it was probably the right thing

12 for Atom Films at the time, definitely.

13 Q And today?

14 A Still do.

15 11:57:15 Q Why do you think it was the right thing

16 for them to do?

17 A It gave us access to a larger content

18 network, distribute content as well as a larger -- a larger

19 pool of content creators based upon being a part of Viacom.

20 11:57:31 Q Do you think there's a risk that Atom

21 would have run out of money and gone out of business had

22 they not been acquired?

23 A I wasn't aware of any of those

24 particulars.

1 11:57:47 Q So when you started at Addicting Clips,
2 there was no technological filtration being applied to
3 videos. Do you recall there being discussions about
4 implementing technological filtration for videos at the time
5 11:58:05 you took your job as product manager for Addicting Clips in
6 June of 2006?

7 A I don't recall.

8 Q But at some point technological filters
9 were implemented, correct?

10 11:58:19 A Correct.

11 Q When did the discussion about
12 implementation of the technological filters begin?

13 A I don't recall. Sorry. I don't recall.

14 Q Did it -- did those discussions begin
15 11:58:33 before or after Viacom acquired Addicting Clips?

16 A I don't recall.

17 Q Did they occur in the first two months
18 of your employment?

19 A I don't recall.

20 11:59:05 Q Wasn't it in March of 2007 that
21 Addicting Clips first sought to deploy technological
22 filtration to the service in the form of Audible Magic?

23 A I don't recall specifically when Audible
24 Magic was -- was -- the conversation began.

1 11:59:32 MR. RUBIN: I'd like to introduce
2 Exhibit 9.
3 (Whereupon, Defendants' Exhibit 9 was
4 marked for identification purposes.)
5 12:00:31 A Okay.
6 Q Do you recognize this document?
7 A I don't recognize it.
8 Q Looking at it today, do you doubt that
9 you received it on March 14th --
10 12:00:56 A No.
11 Q -- of 2007?
12 A I don't doubt that.
13 Q What is the -- let me step back one
14 second. Exhibit 9 -- Exhibit 10 is a document produced by
15 12:01:05 Viacom in this litigation bearing Bates No. VIA11748 --
16 A Is it 9 or 10?
17 Q 10, I believe.
18 A Oh, 9.
19 THE COURT REPORTER: 9.
20 12:01:17 MR. RUBIN: Is it 9?
21 MR. WILKENS: I think it's 9. I had 9.
22 MR. RUBIN: Pardon me. 9. Getting
23 ahead of myself. Thank you.
24 Q Exhibit 9 is a document produced by

1 12:01:25 Viacom in this litigation bearing Bates No. VIA11748626
2 through 27. And I believe you testified that you don't
3 doubt that you received it, but you don't recall it.

4 A That's correct.

5 12:01:50 Q Do you recall being involved in the
6 implementation of the Audible Magic for Addicting Clips?

7 A I do.

8 Q Does this email refresh your
9 recollection that the implementation didn't even begin to
10 12:02:04 get off the ground as a discussion until March of 2007?

11 MR. WILKENS: Objection.

12 Mischaracterizes the document.

13 A It would appear this is the first we
14 began talking about it.

15 12:02:29 Q Do you see the last email in the chain?

16 A Yes.

17 Q And the email between Nick Rockwell and
18 Glenn Goldstein and Luke Murphy?

19 A Yes.

20 12:02:40 Q Who's Nick Rockwell?

21 A I don't know.

22 Q Do you know who Luke Murphy is?

23 A Luke Murphy, I believe, was an IT or
24 technology on the MTVN side.

1 12:02:51 Q Was? Is he no longer there?

2 A I don't know. Is. Is/was.

3 Q He might not be, but you're not there

4 anymore?

5 12:02:58 A Correct.

6 Q Nick Rockwell sent an email to -- to

7 these folks, Luke Murphy, who was on the IT side. It says,

8 "Implementing Audible Magic for a Addicting Clips.com."

9 A Uh-huh.

10 12:03:15 Q This email was sent the afternoon of

11 March 14th, 2007?

12 A Correct.

13 Q Do you see that?

14 A I do.

15 12:03:19 Q It says, "Hi - so we need to do this.

16 How do you want to go about it? To be clear, this is to

17 screen user uploads against AM's database. Adrian has

18 implemented this at IFilm... and can give advice." And then

19 it says, "Google stuff increasing the pressure to get this

20 12:03:42 done."

21 Do you have any idea what Nick Rockwell

22 was talking about in that last sentence?

23 A Again, I'm not clear when the

24 Viacom/Google lawsuit occurred. So if it was after that, I

1 12:03:57 would assume it was referring to that.

2 Q I can tell you that the lawsuit was
3 filed on March 13th.

4 A Okay. So then I would assume he was
5 12:04:05 referring to that.

6 Q So your assumption is is that Viacom
7 felt it was important to implement Audible Magic on
8 Addicting Clips and the pressure was increasing because the
9 day before they had sued YouTube?

10 12:04:19 A I -- I don't know if that's the
11 assumption here. I can't really speak for Nick and for
12 Viacom.

13 Q But that's your reading of this?

14 A Yes.

15 12:04:33 Q And you were ultimately the point person
16 for the implementation of Audible Magic on the Addicting
17 Clips service, right?

18 A Myself working with the Reality Digital,
19 yes.

20 12:04:58 Q Did Addicting Clips ultimately deploy
21 Audible Magic in a working form?

22 A Yes.

23 Q Was it a quick process for deployment?

24 A I seem to recall that it was deployed

1 12:05:14 soon before I left, so it would have been August of that
2 same year.

3 Q I think that's right. March to --
4 March 2007 to August 2007, does that seem like a quick
5 12:05:29 deployment to you?

6 MR. WILKENS: Objection to the form.

7 A It depends on your definition of quick
8 in the software development world.

9 Q I'm asking for your opinion.

10 12:05:37 A Yeah. You know, I -- I can't speak to
11 it because I really don't remember exactly what all the
12 external factors were that were involved in it.

13 Q Do you recall whether or not it was
14 something that was highly prioritized by Viacom at the time?

15 12:05:53 MR. WILKENS: Objection to the form.

16 A I don't recall.

17 MR. RUBIN: I'd like to introduce
18 Exhibit 10.

19 (Whereupon, Defendants' Exhibit 10 was
20 12:06:05 marked for identification purposes.)

21 Q Mr. Jackson, Exhibit 10 is a document
22 produced by Viacom in this action bearing Bates No.
23 VIA11431530 through 531. It's an email you sent to Matt
24 Klauschie on August 13th, 2007.

1 12:07:07 A Okay.

2 Q Do you recall sending this email?

3 A I don't recall sending this email, no.

4 Q This jives with your recollection,

5 12:07:16 though, that Audible Magic was deployed and operating as of

6 August of 2007?

7 A Correct.

8 Q In fact, you said, "As of Friday" --

9 which would have been August 10th -- "we are running

10 12:07:30 everything through Audible Magic."

11 A Correct.

12 Q Is that right?

13 A That is correct.

14 Q What is the purpose of Audible Magic?

15 12:07:48 A The purpose of Audible Magic is to

16 discover -- to use the Audible Magic system to discover

17 whether or not the clip that's uploaded contains copyrighted

18 audio content.

19 Q But wasn't Addicting Clips a video UGC

20 12:08:09 website?

21 A I mean, our video -- video and audio,

22 correct.

23 Q So how would Audible Magic work to find

24 allegedly infringing video content?

1 12:08:23 A My understanding of the Audible Magic
2 system is that it was based on audio. So if video had no
3 audio, then my assumption is that the scan would not be
4 successful.

5 12:08:36 Q Or if the video and the audio weren't
6 matched properly -- weren't different, I suspect it wouldn't
7 match either?

8 MR. WILKENS: Objection. Objection to
9 form.

10 12:08:46 A My understanding of the Audible Magic
11 system is that it ships out audio only. So regardless of
12 whether it was matched up, I don't think that should have an
13 effect.

14 Q Do you know if Audible Magic was
15 12:09:21 100 percent effective once it was deployed in finding
16 allegedly infringing video and audio material uploaded to
17 the Addicting Clips website?

18 A I don't know.

19 Q Do you recall any instances when it
20 12:09:36 failed to match content?

21 A I don't recall.

22 MR. RUBIN: I'd like to introduce
23 Exhibit 11.

24 (Whereupon, Defendants' Exhibit 11 was

1 12:09:56 marked for identification purposes.)

2 Q Mr. Jackson, Exhibit 11 is a document

3 produced in this litigation by Viacom bearing Bates No.

4 VIA11429892. It's an email sent to you by Brian Kunz,

5 12:10:21 spelled K-U-N-Z, on August 22nd, 2007.

6 A Correct.

7 Q "Subject: Audible miss." This would

8 have been sent 12 days after Audible Magic was up and

9 running scanning content on the Addicting Clips website,

10 12:10:42 right?

11 A Correct.

12 Q What does he report to you?

13 A That there is a clip that the audible

14 scan failed to match that has copyrighted music in it.

15 12:11:00 MR. RUBIN: I'd like to introduce

16 Exhibit 12.

17 (Whereupon, Defendants' Exhibit 12 was

18 marked for identification purposes.)

19 Q Mr. Jackson, Exhibit 12 is a document

20 12:11:26 produced by Viacom in this litigation bearing Bates No.

21 VIA11428946. It's an email sent to you by Brian Kunz on

22 August 27th, 2007, 16 days after the Audible Magic went

23 system went into place. Or 17 days. Subject: Audible

24 Magic misses. What does Mr. Kunz report to you in the

1 12:11:54 email?

2 A That there are few more clips with
3 copyrighted music that his moderators caught that Audible
4 Magic did not.

5 12:12:09 Q Is that in fact what he reported to you
6 in this email?

7 A "Here are a couple more clips with music
8 that audible did not match," and then gave me the clips.

9 Q Okay. Sometime prior to the
10 12:12:53 implementation of the Audible Magic system in August of 2007
11 and indeed before the discussions began about the Audible
12 Magic system in March of 2007 following Viacom's litigation
13 against YouTube, did you have occasion to be involved in any
14 human review of videos being uploaded to the Addicting Clips
15 12:13:24 service?

16 A Yes.

17 Q Could you describe that review for me?

18 A At a very broad level, any clip we
19 viewed on the site that we felt was infringing that we would
20 12:13:47 report or take down. More specifically, we got to a point
21 where we were looking at clips throughout the day and then
22 once late in the evening and then once early in the morning
23 before the business day began on the east coast.

24 Q I'd like to focus on the second part of

1 12:14:08 your answer.

2 A Okay.

3 Q The more systematic review, I think,

4 would be a fair characterization of what you just described.

5 12:14:16 A Okay.

6 Q When did that systematic review begin?

7 A I don't recall a specific date.

8 Q Did it begin in January of 2007?

9 A Again, I don't recall a specifically

10 12:14:28 when it began.

11 Q Was there a colloquial name for this

12 review process?

13 A Yes.

14 Q What was the term that members of

15 12:14:48 Addicting Clips referred to this as?

16 A This was the "dawn porn patrol."

17 Q Was it sometimes also simply referred to

18 as the "porn patrol"?

19 A Yes.

20 12:15:04 Q Was that eponymous; in other words, was

21 that because you were patrolling for porn?

22 A The majority of the clips we would get

23 that violated our terms of services seemed to be

24 pornographic, so that's where the name came from.

1 12:15:22 Q And at the outset at least, were you
2 reviewing clips prior to their publication or were you
3 reviewing clips that had already been published on the
4 service?

5 12:15:37 A They were already published on the
6 service.

7 Q So if you determined that a video
8 violated the terms of service because, for instance, it was
9 pornographic or because, for instance, in your assessment it
10 12:15:52 might violate the intellectual rights after a third-party
11 and you removed it, it would have already been live on the
12 service at that point?

13 A At that point, yes.

14 Q Can you describe in general terms how
15 12:16:09 the porn patrol worked?

16 A We would take shifts -- and I'm not
17 exactly sure how we netted those out. But one of us would
18 do a -- a late evening check, I think around 11 or 12, and
19 one of us would do a morning check, 4:30 or 5:00.

20 12:16:44 MR. WILKENS: Do you want go off the
21 record for a second?

22 MR. RUBIN: Go off the record for one
23 second.

24 VIDEOGRAPHER: We're going off the

1 12:16:50 record. The time is 12:22 p.m.

2 (Off-the-record discussion.)

3 VIDEOGRAPHER: We now return to the

4 record. The time is 12:23 p.m.

5 12:18:12 Q We were talking just before we went off

6 the record about the porn patrol and how it worked.

7 A Yes.

8 Q Do you recall any shifts that you --

9 that you worked on the porn patrol?

10 12:18:25 A I worked shifts. I don't recall

11 specific shifts, but yes, I did work shifts on the porn

12 patrol.

13 Q And what did you do during the shifts on

14 the porn patrol?

15 12:18:35 A I would -- I believe at that point we

16 had -- well, see, if I was on the dawn porn patrol I would

17 look at videos that were posted after midnight when I knew

18 the last person had looked at them. I believe they would

19 have sent me an email telling me the last video they looked

20 12:18:57 at. And I would then look at thumbnails and titles to

21 determine if I needed to look at the videos or not. And if

22 the video infringed, then I would pull it down.

23 Q Did you use your own personal judgment

24 to determine whether or not you believe the video to be

1 12:19:18 infringing?

2 A I had my own personal judgment, plus
3 guidelines given to us by the legal team.

4 Q What were those guidelines?

5 12:19:29 MR. WILKENS: I'm going to instruct you
6 not to answer and reveal the guidelines that you
7 were provided by the legal department.

8 THE WITNESS: Okay.

9 MR. RUBIN: Scott, are you going to
10 12:19:39 instruct the witness not -- not to answer any
11 questions about the guidelines?

12 MR. WILKENS: Well, I can't -- it's a
13 hypothetical question, Mike. You asked what are
14 the guidelines. I'm instructing him not to tell
15 12:19:50 you what the guidelines are.

16 MR. RUBIN: Okay.

17 MR. WILKENS: If you have other
18 questions --

19 MR. RUBIN: We'll continue down this
20 12:19:53 road. I believe this is a different position than
21 you took at the Roesch deposition. It's very hard
22 to follow the lines that you're -- that you and
23 your clients have been drawing on privilege. They
24 don't seem to make any sense and they don't follow

1 12:20:05 or track the guidance that we received at court
2 very recently.

3 MR. WILKENS: Well, I think --

4 MR. RUBIN: Please let me finish. I'm
5 12:20:15 going to attempt to -- to follow this line of
6 inquiry. I suspect to the extent you're
7 instructing the witness not to answer these
8 questions, we're going to have to retread this
9 ground later this afternoon.

10 12:20:31 MR. WILKENS: Well, to be -- to be
11 clear, I think what you're asking him to reveal
12 is -- is -- is the subject of a scheduled
13 conference that we have with the court this
14 afternoon. And so we will have to address it with
15 12:20:43 the court and then -- and depending on the court's
16 ruling, then questions may follow that. But I
17 think it's got to be taken up with the court.

18 BY MR. RUBIN

19 Q Did -- strike that.

20 12:20:57 In your assessment of videos, at any
21 time did the length of the video factor into any of the
22 decisions you were instructed to make about whether or not
23 to remove it or not?

24 A I don't recall.

1 12:24:20 Q And you needed Joel to cover your
2 shifts?
3 A Correct.
4 Q From the looks of this email, it appears
5 12:24:25 as if Joel had never been involved in porn patrol before?
6 A I don't recall if he had or not.
7 Q Well, you give him some instruction on
8 what the job entails, don't you?
9 A I do.
10 12:24:41 Q What do you tell him?
11 A I tell him that he needs to look at the
12 clips uploaded in the past 12 hours, based upon the title or
13 the picon, anything that could be infringement you need to
14 look at it and apply the guidelines that were attached. If
15 12:24:59 it's a violation, reject it and send an email out to
16 everyone, Scott, Cindy, Jesse and myself, with the status
17 and include the links, titles, user names of anything that's
18 rejected.
19 Q All right. You told him to take a
20 12:25:10 cursory look at the clips and then do exactly what you just
21 described, right?
22 A Correct. Yes.
23 Q And he did that, didn't he?
24 A I would have to assume he did, yes.

1 12:25:23 Q The attachment to this email, do you
2 recall ever seeing that document?

3 A I'm sure I've seen it. I don't recall
4 the contents of it or --

5 12:25:40 Q But that was the company policy that
6 detailed the criteria the members of the porn patrol were to
7 apply when reviewing content, right?

8 A Yes.

9 Q And how were you apprised of that
10 12:25:53 policy?

11 A I don't recall.

12 Q Did you help develop it?

13 A I don't recall.

14 Q Seeing it might refresh your
15 12:26:17 recollection of whether or not you were involved in creating
16 it, right?

17 A Possibly.

18 Q Did you act in conformance with the
19 policy?

20 12:26:25 A I believe I did, yes.

21 Q And the policy was the same for all
22 members of the porn patrol, right?

23 A Correct.

24 Q Did the policy extend beyond porn

1 12:26:35 patrol, to your knowledge?

2 A Extend --

3 MR. WILKENS: Objection to form.

4 A Extend how?

5 12:26:39 Q Did it extend -- did it extend beyond

6 porn patrol by being a policy that was applied to other

7 reviewers in other segments of Viacom, for example?

8 A I don't know.

9 Q It's possible, you just don't know?

10 12:26:55 A I just -- I don't know.

11 Q And you don't recall any specific

12 parameters that the written policy set forth?

13 MR. WILKENS: You can answer that yes or

14 no.

15 12:27:11 THE WITNESS: I can answer yes or no.

16 A I don't know if the -- it's hard for me

17 to distinguish between what is in this document that I don't

18 remember versus the general guidelines I had been following

19 my entire employment at Addicting Clips.

20 12:27:25 Q What were the general guidelines you had

21 been following your entire employment at Addicting Clips?

22 A You know, if you come across pornography

23 or come across something that is, you know, via your

24 knowledge of popular music or movies or TV as an

1 12:27:37 infringement, then you need to take it down and report it to
2 legal.

3 Q And did you ever come across a policy
4 that modified that basic understanding that you had been
5 12:27:50 applying all along?

6 MR. WILKENS: Objection to the form.

7 A I don't recall.

8 Q It's possible?

9 A I don't recall.

10 12:28:19 MR. RUBIN: I'd like to introduce
11 Exhibit 14.

12 (Whereupon, Defendants' Exhibit 14 was
13 marked for identification purposes.)

14 Q Mr. Jackson, Exhibit 4 is a document
15 12:28:54 produced by Viacom in this litigation bearing Bates No.
16 VIA00842056 through VIA00842058. It's an email string that
17 was started by Joel Sanders sent to himself, Jesse
18 Hollister, Cindy Emch, Scotch Roesch and you on April 3rd,
19 2007 and it goes on for a few days. Do you see that?

20 12:29:27 A Okay. I do.

21 Q Is this the email that Joel Sanders was
22 asked to send at the end of Exhibit 13 reporting on what he
23 encountered on shifts during porn patrol that he was
24 covering while you were away on your birthday?

1 12:29:47 A I would have to assume so, yeah.

2 Q If I could ask you to turn to the second

3 page.

4 A Okay.

5 12:29:56 Q An email that was in the middle of the

6 page that Mr. Sanders sent on April 4th at 5:10 a.m.

7 A Okay.

8 Q Appears that he only rejected one clip.

9 A Yes.

10 12:30:16 Q What was the reason he rejected that

11 clip?

12 A Terms of service violation.

13 Q He goes into a bit more detail than

14 that, doesn't he?

15 12:30:25 A Uh-huh.

16 Q What is the more detailed reason? He

17 offers two more detailed reasons than that?

18 A "Music, copyright - over 2.5 minutes."

19 Q Right. What does that mean to you,

20 12:30:36 "copyright - over 2.5 minutes"?

21 A Well, it means it was copyrighted. The

22 two and a half minutes I'm not sure.

23 Q You have no recollection of why he would

24 be reporting the fact that it was over 2.5 minutes long to

1 12:41:15 and what was said at the hearing.

2 I'm going to let the witness answer the

3 question about what the policy was. However, to

4 the extent that legal counsel provided factors to

5 12:41:26 consider in determining whether something is

6 pornographic, I don't think that's appropriate for

7 the witness to get into. But if there's a general

8 policy, the witness can testify to that and

9 you're -- you're welcome to ask him whether or not

10 12:41:39 the policy came from legal which you haven't asked

11 him yet.

12 BY MR. RUBIN

13 Q I'm sorry, Mr. Jackson, to subject you

14 such legal back and forth.

15 12:41:52 A That's fine.

16 Q Happy that it was all captured on the

17 record, though.

18 Anyhow, I don't have a LiveNote

19 terminal, so I'm just going to ask the question again. I'm

20 12:42:05 hamstrung technology wise today. Was there a policy at

21 Addicting Clips with regard to the review of pornographic

22 material?

23 A I don't recall a specific policy. I

24 mean, to be honest, the day I started it was sort of common

1 12:42:30 sense. And if there was a borderline clip that you were
2 unsure of, you would take that up with -- with Victoria or
3 the legal team, but I don't remember specifically here is
4 our pornographic policy and here's what it entails.

5 12:42:49 Q Do you ever recall being involved in the
6 creation of any policy regarding pornography?

7 A I don't recall.

8 MR. RUBIN: I'd like to introduce
9 Exhibit 15.

10 12:43:04 (Whereupon, Defendants' Exhibit 15 was
11 marked for identification purposes.)

12 Q Mr. Roesch -- pardon me. I keep calling
13 you Mr. Roesch. I apologize.

14 Mr. Jackson, Exhibit 15 is a document
15 12:43:44 produced by Viacom in this litigation bearing Bates No.
16 VIA00556103. It's entitled "Atom Content Monitoring
17 Guidelines," dated May 24th, 2007, signed at the bottom
18 electronically by Jesse Hollister and you.

19 A Yes.

20 12:44:08 Q Do you recognize this document?

21 A Yes.

22 Q Were you involved in creating this
23 document?

24 A I do not recall.

1 12:44:15 MR. WILKENS: And I'm just going to ask
2 to go off the record to figure out whether -- how
3 this document was generated and whether we --
4 whether it's privileged.

5 12:44:26 VIDEOGRAPHER: We're going off the
6 record. The time is 12:58.
7 (Whereupon, a brief recess was taken.)
8 VIDEOGRAPHER: We're now back on the
9 record. The time is 1:44 p.m.

10 01:38:58 MR. RUBIN: Mr. Wilkens, I believe we
11 went off the record so you could determine whether
12 or not you were going to allow the witness to
13 testify regarding the document we've marked as
14 Exhibit 15, Bates No. VIA00556103, document
15 01:39:14 entitled "Atom Content Monitoring Guidelines."
16 What is your conclusion?

17 MR. WILKENS: Yes, we're going to allow
18 him to testify about this document.

19 MR. RUBIN: Could you please explain to
20 01:39:26 me the difference in your view between this
21 document and the document you have clawed back
22 that was attached as -- to Exhibit 13 and entitled
23 Copyright Guidelines for User Generated Content
24 Sites?

1 01:39:45 MR. WILKENS: No. I don't think it's an
2 appropriate time to do that in a deposition. I
3 think you should just proceed to ask the witness
4 question. And if we want to make arguments to the
5 01:39:53 court at some point we can do that, but this is a
6 deposition and I think you should proceed to ask
7 questions on the document.

8 MR. RUBIN: So you're -- so if I
9 understand you correctly, you're refusing to
10 01:40:00 explain the basis for why this document is not
11 privileged even though it sets forth a number of
12 factors but the other document is, which I
13 understand the basis of privilege on the other one
14 is that is because it sets forth a list of
15 01:40:13 factors?

16 MR. WILKENS: I don't think that's --
17 well, I think you're mischaracterizing the basis,
18 but I think -- I don't think this is the time to
19 get into it and I think -- I'm not refusing to
20 01:40:19 tell you the difference, but I'm refusing to do it
21 right now. I think the deposition should proceed
22 on this document.

23 MR. RUBIN: I'm happy to go off the
24 record if your -- your concern is doing it on the

1 01:40:26 record. I just need to get an understanding of
2 the difference.

3 MR. WILKENS: We can do that after -- we
4 can do that when we take the next break, but I
5 01:40:31 think you should ask the witness questions about
6 Exhibit 15.

7 MR. RUBIN: I'll take a break right now
8 and do it, Scott.

9 MR. WILKENS: Well, I -- I don't
10 01:40:37 think --

11 MR. RUBIN: I need to get an
12 understanding prior to proceeding down the line of
13 inquiry what the basis for why you don't believe
14 this is privileged but you believe the attachment
15 01:40:47 to Exhibit 13 is.

16 MR. WILKENS: I don't think -- I don't
17 think you need that information to be able to ask
18 the witness questions on this exhibit. I don't
19 understand why you need that information in order
20 01:40:55 to ask questions.

21 MR. RUBIN: I need to -- let's proceed
22 and we'll see where you intend to instruct not to
23 answer because I would expect, based on what
24 you've just described to me, there will be no

1 01:41:04 instructions not to answer based on this document?

2 MR. WILKENS: We'll see what happens.

3 MR. RUBIN: Do you have intentions to

4 instruct not to answer based on this document?

5 01:41:10 MR. WILKENS: I don't have any present

6 intentions, but I have no idea what questions

7 you're going to ask, so why don't we see what you

8 ask.

9 Q Mr. Jackson?

10 01:41:17 A Yes.

11 Q Again, I apologize for the amount of

12 delay that's been interjected into this deposition based

13 on your former employer's privilege claims.

14 MR. WILKENS: I object to that

15 01:41:24 characterization.

16 Q In any event, we're looking at a

17 document that's been marked as Exhibit 15.

18 A Uh-huh. Yes.

19 Q We had a very brief discussion about it

20 01:41:33 before going off the record. I believe I asked if you

21 recalled this document?

22 A And I don't specifically recall this

23 document.

24 Q But you do see that your name is signed

1 01:41:44 at the bottom of it?

2 A I do. Yes, electronically.

3 Q All right. And do you recall having any

4 input into the creation of Atom's monitoring guidelines?

5 01:41:56 A I don't recall specific meetings or

6 discussions, but I can assume being a product manager that

7 at some point I did have some discussions with Victoria

8 Libin and Scott Roesch about the guidelines.

9 Q Who else would have been involved in

10 01:42:11 such a set of guidelines?

11 A Jesse Hollister would have been involved

12 in those conversations and possibly Joel Sanders, but most

13 likely Jesse Hollister, Scott Roesch, Victoria Libin and

14 myself.

15 01:42:27 Q That is a mix of business and legal

16 personnel, correct?

17 A Correct.

18 Q And as I read this document, it sets --

19 it sets forth the types of content that are not allowed on

20 01:42:46 Atom's site unless exceptions are made by Atom staff; is

21 that right?

22 A Correct.

23 Q Which members of the Atom staff were

24 authorized to make exceptions to this policy?

1 01:42:58 A It would have been the legal team.

2 Q Were you as product manager authorized

3 to make an exception to this policy?

4 A No.

5 01:43:05 Q Was Scott Roesch, your superior,

6 authorized to make an exception to this policy?

7 A Not to my knowledge.

8 Q Was Mika Salmi authorized to make an

9 exception to this policy?

10 01:43:15 A I don't know the answer to that.

11 Q Do you know of any exceptions made to

12 this policy that were made other than by the legal team?

13 A Not to my knowledge.

14 Q Do you know of any exceptions made by

15 01:43:25 the legal team?

16 A I can't recall any specific exceptions.

17 Q You can't recall one way or the other?

18 A No.

19 Q If you look at the first bullet point?

20 01:43:44 A Yes.

21 Q What does the first bullet point say,

22 Mr. Jackson?

23 A "No content that violates MTVN's IP

24 guidelines as described in the current version of Copyright

1 01:43:54 Guidelines for User Generated Content sites."

2 Q What did you take that to mean?

3 A That any content that violates the

4 Copyright Guidelines For User Generated Content Sites is not

5 01:44:08 allowed.

6 Q And the Copyright Guidelines For User

7 Generated Content Sites, is this the same document that was

8 attached to Exhibit 13 that you sent to Joel Sanders on, I

9 believe, March 23rd, 2007?

10 01:44:26 A I can't be sure because they have

11 different names.

12 Q The file name as attached to the email

13 is different?

14 A It is "UGC Copyright Guidelines - ver 2

15 01:44:35 (clean).doc." I'm not sure if this is the same document or

16 not.

17 Q Of courses, I don't have the document to

18 present with you. It's possible the title on the document

19 is precisely the same as it is on here, right?

20 01:44:50 A It's possible.

21 Q What does it mean MTVN's IP guidelines?

22 A MTVN's intellectual property guidelines.

23 Q What is MTVN?

24 A MTV Networks.

1 01:45:02 Q Does this mean that there was a
2 corporate set of IP guidelines embodied in the Copyright
3 Guidelines For User Generated Content Sites?
4 A According to this document, yes.
5 01:45:14 Q Do you recall ever seeing such a set of
6 guidelines?
7 A I don't specifically recall that, no.
8 Q Do you recall there being such a set of
9 guidelines?
10 01:45:23 A I don't recall, no.
11 Q The guidelines embodied in Exhibit 15
12 were the guidelines that the porn patrol followed; is that
13 right?
14 A Yes, we did follow these guidelines.
15 01:45:41 Q And you as a member of the porn patrol
16 followed these guidelines, correct?
17 A Yes. Correct.
18 Q So if these Copyright Guidelines For
19 User Generated Content Sites existed, you would have
20 01:45:54 reviewed and followed them, right?
21 A That's correct.
22 Q Even if you can't remember it as you sit
23 here today?
24 A That's correct.

1 01:46:01 Q Do you have any reason to believe you
2 didn't review and follow those guidelines?

3 A No.

4 Q And other members of the porn patrol
5 01:46:08 would have also reviewed and followed those guidelines,
6 right?

7 A That's correct.

8 Q And we saw an example of that in
9 Exhibit 14, the email from Joel Sanders following up from
10 01:46:19 his shift that you requested him to cover on your birthday?

11 A Correct.

12 Q I asked you earlier whether Addicting
13 Clips had a specific policy regarding pornography on the
14 service. Do you recall that question?

15 01:46:45 A Yes.

16 Q If you look at bullet point 2, is this
17 the policy of Addicting Clips with regard to the pornography
18 on the service?

19 A It's the policy per this. Again, from
20 01:47:04 day one, you know, I don't think I can give you a clear
21 policy of what it was, but, you know, we used our own
22 judgment as to what we considered to be pornographic and, I
23 mean, there were vary -- there weren't any -- there were
24 very few cases where it was not obviously pornography.

1 01:49:32 sites?

2 A With direct links to those sites and

3 videos.

4 Q Okay. I think that's clear to me.

5 01:49:39 A Okay.

6 Q Those two factors. That also takes

7 care, I think, of the fourth factor, right?

8 A Correct.

9 Q Which is the get rich quick scheme?

10 01:49:49 A Correct.

11 Q Popular on the internet sometimes?

12 A Yes.

13 Q Not terribly successful, though,

14 usually. And then the fifth bullet point, if you could

15 01:49:59 review that for me and explain what that refers to, please.

16 A "As the Atom Terms of Service state, no

17 content that is indecent, libelous, defamatory, obscene,

18 threatening, invasive of privacy or publicity rights,

19 abusive, illegal, harassing, contains expressions of hatred,

20 01:50:11 bigotry, racism or pornogrpany --

21 THE COURT: You've got to slow down.

22 THE WITNESS: Sorry.

23 A -- or are otherwise objectionable, or

24 that would constitute or encourage a criminal offense,

1 01:50:22 violate the rights of any party or violate any law."

2 I mean, I don't know how I can explain
3 it better than what it says there.

4 Q You took this as a member of the porn
5 01:50:36 patrol and a general member of AddictedClips at face value
6 and applied this policy to reject videos that violated this,
7 correct?

8 A Correct.

9 Q And that in bold below this there is an
10 01:50:56 admonishment. What is that admonishment?

11 A "When in doubt, please do not publish -
12 instead, flag the content for further review by Atom."

13 Q And, again, this is signed by Jesse
14 Hollister, Legal Assistant, and Brendan Jackson, Senior
15 01:51:12 Product Manager?

16 A Yes.

17 Q And you don't have any specific
18 recollection of contributing to this, but you do recall that
19 these were guidelines and policies that you implemented as
20 01:51:33 an Atom employee, right?

21 A Yes.

22 MR. RUBIN: Let's break now and we'll
23 come back on the record in a little bit.

24 VIDEOGRAPHER: We're going off the

1 01:52:07 record. The time is 1:57 p.m.

2 (Whereupon, a brief recess was taken.)

3 VIDEOGRAPHER: We now return to the

4 record. The time is 3:06 p.m.

5 03:00:33 BY MR. RUBIN

6 Q Mr. Jackson, we're back on the record.

7 I apologize for the fits and starts today. It's not our

8 normal practice. As you may or may not know, we took a

9 break to have a brief conference with the judge who's

10 03:00:50 overseeing this matter in New York. The subject of the

11 conversation was whether or not the attachment to Exhibit 13

12 was properly withheld as privileged. The court has

13 determined that it was not. So we're going to be having

14 some questioning about that and some other lines of inquiry

15 03:01:11 to -- to be done during the deposition.

16 So if we could put Exhibit 13 in front

17 of you again just so we can reorient ourselves. As you look

18 at Exhibit 13, do you recall what it is?

19 A This is the email I sent to Joel

20 03:01:31 requesting that he cover for me on the porn patrol.

21 Q And you also asked him to look at some

22 attached guidelines, correct?

23 A Correct.

24 Q Right?

1 03:01:47 A Yes.

2 Q And you asked that if he found any
3 content that violated those guidelines that he reject that
4 content, right?

5 03:01:55 A Yes.

6 MR. RUBIN: I'd like to introduce
7 Exhibit 16.
8 (Whereupon, Defendants' Exhibit 16 was
9 marked for identification purposes.)

10 03:02:26 Q My papers are all messed up now.
11 Mr. Jackson, Exhibit 16 is a document produced by Viacom in
12 the litigation bearing Bates No. VIA00332215 through 16.
13 And if you'll note, that is the sequential Bates number
14 after Exhibit 13.

15 03:02:55 A Uh-huh.

16 Q Do you see that?

17 A I do.

18 Q Do you have any reason to doubt that
19 this was not the attachment to the email that you sent on
20 03:03:07 Exhibit -- at Exhibit 13?

21 A I don't doubt that.

22 Q Do you recognize the document at
23 Exhibit 16?

24 A I do.

1 03:03:30 Q The document is entitled "Copyright
2 Guidelines For User Generated Content (UGC) Sites," is it
3 not?

4 A That is correct.

5 03:03:39 Q How do you recognize this document?

6 A I recognize this document as the
7 document that we used for -- as our guidelines for rejecting
8 clips.

9 Q Who is "we" in that sentence?

10 03:03:52 A The folks at that time that were on the
11 dawn porn patrol which was myself, Cindy Emch, Scott Roesch
12 and I assume Jesse Hollister as well.

13 Q Do you recall there being other versions
14 of these Copyright Guidelines For User Generated Content
15 03:04:13 Sites?

16 A Do you mean other versions of -- of this
17 particular document or other versions that aren't like this
18 document?

19 Q Let's take that in order.

20 03:04:23 A Okay.

21 Q Other -- let's start with whether or not
22 there were other versions that looked like this document
23 but, for example, might have had one or two or three
24 particular criteria tweaked one way or the other.

1 03:04:37 A I don't recall.

2 Q Were there -- do you recall whether

3 there were other versions that didn't look like this

4 specific document?

5 03:04:43 A The one that we looked at earlier,

6 obviously.

7 Q When you say, "The one we looked at

8 earlier" --

9 A Sorry.

10 03:04:48 Q -- are you referring to Exhibit 15?

11 A Yes, I am.

12 Q Let's stop and look at Exhibit 15 for a

13 moment --

14 A Sure.

15 03:04:56 Q -- and compare. Exhibit 15, if you look

16 at the first bullet point --

17 A Yes.

18 Q -- states, "No content that violates

19 MTVN's IP guidelines as described in the current version of,

20 03:05:14 quote, "Copyright Guidelines For User Generated Content

21 Sites," close quote. Do you see that?

22 A I do.

23 Q That's the same title as the document in

24 Exhibit 16, isn't it?

1 03:05:26 A Yes.

2 Q Do you believe that the first bullet

3 point in Exhibit 15 is referring to the document in

4 Exhibit 16?

5 03:05:32 A Yes.

6 Q In Exhibit 15 it refers to the current

7 version of the Document at Exhibit 16. Do you see that?

8 A Yes.

9 Q What do you take that to mean?

10 03:05:48 A I take it to mean that whatever the

11 current version that's the one we should be using.

12 Q Did that suggest to you that the version

13 might have changed over time?

14 A Where it -- it could. It could also

15 03:06:07 suggest that there's --

16 THE COURT: I'm sorry. Could you repeat

17 that?

18 A I'm saying it could, but it could also

19 be suggesting that at some point it will change, you know,

20 03:06:16 please make sure you use the most current one. But I don't

21 know if it had changed between January 22nd and May 24th.

22 Q Do you know if it changed at any point?

23 A Not that I can recall.

24 Q But it may have?

1 03:06:27 A Again, it may have, but not to my
2 knowledge.
3 Q So let's turn our attention back to
4 Exhibit 16.
5 03:06:34 A Sure.
6 Q Exhibit 16 says on it "Draft." Do you
7 see that at the top?
8 A Yes.
9 Q It also has a date of January 22nd,
10 03:06:47 2007.
11 A Yes.
12 Q Do you see that?
13 A I do.
14 Q Despite the fact that it says "Draft,"
15 03:06:55 this is an actual policy that was applied by you and your
16 colleagues when reviewing content on the service, correct?
17 A Yes.
18 Q Do you know why it was labeled "Draft"?
19 A I do not.
20 03:07:08 Q And although it's dated January 22nd,
21 2007, this policy was in place in March and in fact was
22 applied in at least early April as well, correct?
23 A Correct.
24 Q Do you know how long this policy was in

1 03:07:23 place?

2 A I do not.

3 Q Do you know when this policy first went

4 into effect?

5 03:07:28 A I do not recall.

6 Q Did you have any involvement in the

7 creation of this policy?

8 A I reviewed the policy with Victoria and

9 Scott, but I don't -- I don't -- I wasn't involved in

10 03:07:42 actually writing this policy.

11 Q Do you know who created the first

12 version of this policy?

13 A I do not.

14 Q Do you know if Victoria Libin created

15 03:07:51 the first version of this policy?

16 A I do not.

17 Q Do you know if anyone outside of the

18 Atom Entertainment company created this document or

19 contributed to it in any way?

20 03:08:04 A I don't know.

21 Q Possible?

22 A Possible, but I don't know.

23 Q Do you see the second point in the

24 document?

1 03:08:19 A Yes.

2 Q What did you understand that point to

3 mean?

4 A I mean, it could mean any number of

5 03:08:42 things. From my perspective I think it was not encouraging

6 people to upload third-party site -- upload third-party

7 copyright or make it easier.

8 Q Could you read the second bullet

9 point -- second point out loud?

10 03:08:54 A Sure. "All MTVN owned websites should

11 use reasonable care to prevent the uploading of video

12 contents that clearly infringes third-party copyrights."

13 Q And you stated there were two reasons --

14 two understandings of that. That it should not be

15 03:09:15 encouraged was one of them?

16 A Correct.

17 Q And what was the other?

18 A Not making it easy for -- for people to

19 upload copyrighted content.

20 03:09:26 Q What would you understand to be

21 something that would make it easy for someone to upload

22 copyrighted content?

23 A I'm not sure.

24 Q How did you go about complying with

1 03:09:41 Section 2 of this set of guidelines?

2 A I don't think I did anything outside of
3 what we were doing from a -- you know, moderating the clips
4 standpoint.

5 03:10:05 Q At this point in time, there was no
6 technological filter to scan content being uploaded for
7 potentially infringing content, was there?

8 A January? No, there was not.

9 Q In fact, it wasn't even being discussed
10 03:10:22 until March based on testimony and the document we looked at
11 earlier, correct?

12 A According to those emails, yes. I don't
13 recall if we had any other the conversation between January
14 and March that aren't captured in the email or have the
15 03:10:36 documents.

16 Q And at least Audible Magic was never
17 implemented until, I believe, August 10th, 2007?

18 A Excuse me. That's correct.

19 Q Right?

20 03:10:45 A Yes.

21 Q Do you believe by failing to implement a
22 technological solution earlier Addicting Clips was making it
23 easier for people to upload infringing content and thereby
24 in violation of Section 2 of the set of guidelines?

1 03:11:02 MR. WILKENS: Objection to form.

2 A No, I don't.

3 Q Why not?

4 A I don't think we did anything on the

5 03:11:12 site itself that made it easier for people to upload

6 content.

7 Q But you don't believe Paragraph 2 here

8 was designed to impose affirmative obligations upon you,

9 simply it is designed to preclude you from fostering

10 03:11:35 infringement?

11 MR. WILKENS: Objection to the form.

12 And I'm just going to caution the witness not to

13 get into conversations with counsel about No. 2.

14 A Could you rephrase the question, please?

15 03:11:46 Q Sure. You've stated -- and please if

16 I'm mischaracterizing your testimony, that's not my

17 intention. I just want to make sure we're talking about the

18 same thing. You stated, as I understand it, that you

19 understood the import of Guideline No. 2 to mean do not

20 03:12:07 encourage the upload of infringing content and do not make

21 it easier for users to upload infringing content?

22 A Correct.

23 Q That strikes me as an exhortation not to

24 take action that would make it easier?

1 03:12:24 A Correct.

2 Q As opposed to a requirement to take an

3 affirmative action on your part as an Atom employee?

4 A As I understood it, correct.

5 03:12:33 Q And as you actually acted to effectuate

6 it, correct?

7 MR. WILKENS: Objection to form.

8 A I mean, we did act after this in, I

9 think, trying to make it more difficult in making all the

10 03:12:58 clips eventually be pre moderated before they went live even

11 before we implemented Audible Magic.

12 Q Do you believe that means that during

13 the period of time prior to moderation you would have been

14 in violation of this policy?

15 03:13:17 MR. WILKENS: Objection to the form.

16 A The period prior to moderation? No.

17 Q So you don't believe that moderation

18 would be required to meet the standards of No. 2 in this

19 guideline?

20 03:13:35 MR. WILKENS: Objection to the form.

21 A I think, you know, reasonable care is a

22 pretty broad statement and given the technological tools we

23 had at the time, I think we were doing everything we can to

24 follow No. 2.

1 03:13:48 Q When you say, "The technological tools,
2 we had at the time," are you referring to the technological
3 tools Addicting Clips actually had implemented on its site
4 at the time or are you referring to the technological tools
5 03:14:03 available in the marketplace to UGC websites at the time?

6 A The tools that we had to implement on
7 the site at the time.

8 Q If there were tools available in the
9 marketplace at the time that you had not implemented such
10 03:14:20 as, for example, Audible Magic --

11 A Uh-huh.

12 Q -- which you came to implement in
13 August, do you think your failure to implement them eight
14 months earlier in January would be evidence of a failure to
15 03:14:33 exercise reasonable care?

16 MR. WILKENS: Objection to the form.
17 Calls for a legal conclusion.

18 Q You can answer.

19 A No.

20 03:14:47 MR. RUBIN: And, Mr. Wilkens, could you
21 please explain the basis for your legal conclusion
22 of objection?

23 MR. WILKENS: Well, I think that --
24 that -- that you used the term "reasonable care"

1 03:14:57 and asked him to make a conclusion about that.

2 And I think can be construed as asking for a legal

3 conclusion. He answered the question.

4 MR. RUBIN: Is it your position,

5 03:15:09 Mr. Wilkens, that the reasonable care standards

6 set forth in Paragraph 2 is the legal reasonable

7 care standard?

8 MR. WILKENS: I don't know how you

9 intended to use the term.

10 03:15:18 MR. RUBIN: Mr. Wilkens, I'm asking a

11 question about a document your client prepared and

12 produced. I'm asking a question in the context of

13 that document. So I'm asking you is that what

14 this document is, it's a legal standard of

15 03:15:28 reasonable care?

16 MR. WILKENS: Michael, the question is

17 totally inappropriate. This is a deposition.

18 You're asking the witness questions. He answered

19 the question. Why don't you proceed with your

20 03:15:37 questions?

21 MR. RUBIN: Mr. Wilkens, I'm asking you

22 to explain the grounds for your objection.

23 MR. WILKENS: I explained the grounds

24 and if you don't like the grounds as I explained

1 03:15:43 them, that's fine, but -- but he answered the
2 question and you can continue.

3 MR. RUBIN: I don't like having
4 objections made that don't have grounds that are
5 03:15:51 supportable repeatedly over time in a -- in a
6 deposition. I believe that's continuing despite
7 the fact that we've had certain objections
8 overruled and I don't think it's appropriate. I
9 think we've spent enough time of Mr. Jackson's on
10 03:16:04 this issue throughout the course of the day.

11 MR. WILKENS: I don't agree.

12 MR. RUBIN: Well, then we can spend more
13 of his time, but I don't think I'm going to
14 indulge upon him in that way.

15 03:16:27 Q And we didn't cover No. 1 in the
16 guidelines. When you read it, do you understand it to be a
17 guideline or more a statement?

18 A I believe it to be both.

19 Q How do you understand it to be a
20 03:16:41 guideline?

21 A The guideline is that we respect
22 copyright laws, so that's -- you know, the guideline here is
23 to follow copyright laws.

24 Q And what did you to fulfill that

1 03:16:55 guideline?

2 A Follow the rest of the -- and I think
3 the -- you know, respects copyright laws, but, you know, I'm
4 not a copyright lawyer or expert. So I think that the
5 03:17:07 actual criteria listed in Section 3 are what I would assume
6 to be the copyright laws in this particular case.

7 Q Okay. So we've talked about 1, we've
8 talked about 2.

9 A Uh-huh.

10 03:17:20 Q Let's talk about 3.

11 A Okay.

12 Q A little bit more involved than the
13 first two. Could you read the preamble to 3 out loud?

14 A Sure. "The following are some
15 03:17:32 guidelines for determining whether video content is or
16 should be considered 'clearly infringing' or 'obviously
17 infringing' and thus, should not be posted on any MTVN UGC
18 site."

19 Q Do you understand why the two phrases
20 03:17:48 "clearly infringing" or "obviously infringing" are set off
21 in quotation marks?

22 A I do not.

23 Q And what was your understanding, Mr.
24 Jackson, of what you should do as a member of the porn

1 03:18:07 patrol or an employee of Addicting Clips more generally, if
2 you encountered content on the Addicting Clips service that
3 fell within one of the categories listed under Paragraph 3?

4 A My understanding was that we were
5 03:18:22 supposed to immediately take that clip out of public view,
6 take it down and contact the legal team with the
7 information, the link to the clip and why it was taken down.

8 Q And just to be clear, so I understand
9 your answer, at least as of January 22nd, 2007, the date of
10 03:18:44 this document, and I believe even in April when Joel Sanders
11 was applying these guidelines, as we saw in Exhibit 14 in
12 response to the request you made in Exhibit 13, these
13 guidelines were being applied to videos that had already
14 posted to the service, correct?

15 03:19:05 A Correct.

16 Q So in the category of videos that you
17 were instructed to automatically take down, there's a sub A
18 to Paragraph 3.

19 A Yes.

20 03:19:33 Q Could you read it out loud?

21 A "Any user uploading video content that
22 is longer than 2.5 minutes that meets any of the following
23 criteria."

24 Q Before we get into the sub criteria, I

1 03:19:45 want to focus on the run time listed in A.

2 A Sure.

3 Q Do you understand what I mean by run

4 time?

5 03:19:55 A I do.

6 Q What do you mean by run time?

7 A The length of the video.

8 Q And in this context that would be 2.5

9 minutes, right?

10 03:20:02 A Correct.

11 Q What did you understand to be meant by

12 3(a)?

13 MR. WILKENS: In answering that

14 questions, I'm going to just caution you not to

15 03:20:11 get into under -- your understanding if it's based

16 on a conversation with legal counsel of the

17 meaning of 3(a).

18 A If that's the case, I can't answer the

19 question.

20 03:20:29 Q Mr. Jackson?

21 A Yes.

22 Q I'm asking for your understanding of

23 what 3(a) means as you read it, not the sub 1, sub 2, sub 3.

24 A I understand what you're asking me.

1 03:20:39 Q You don't know what it means that any
2 user uploaded content that's longer than 2.5 minutes and
3 meets the following criteria?

4 A Oh, yeah. That particular sentence,
5 03:20:49 yes. It means that if it's longer than 2.5 minutes then you
6 apply the following criteria or that -- you know, then the
7 following criterias apply. Yes, I do understand that.

8 Q Okay. What question did you think that
9 I was asking that you wouldn't have been able to ask --
10 03:21:02 answer based on communications with counsel?

11 A Why -- the significance of two and a
12 half minutes as a run time.

13 Q That was not my question.

14 A All right.

15 03:21:11 Q But you did understand that -- that 2.5
16 minutes had some significance?

17 A Yes.

18 Q And you did apply this guideline as
19 written?

20 03:21:22 A Correct.

21 Q So let's look, for example, at A(1)?

22 A Okay.

23 Q It says that if the uploaded video
24 content is longer than 2.5 minutes and is a recognized copy

1 03:21:35 of or excerpt from any motion picture it should be rejected?

2 A Yes.

3 Q What happens if the clip was 1.5 minutes
4 long?

5 03:21:49 A We would not have reviewed the clip.

6 Q It simply would not have been presented
7 for review?

8 A Let me take that back. We would have
9 looked at it from a pornographic standpoint, from a content
10 03:22:00 standpoint. But if it did not meet criteria based upon

11 Exhibit 15 -- if it was not pornographic and it was less
12 than two and a half minutes, then we would not have -- we
13 wouldn't have reviewed it for this criteria.

14 Q So a recognized copy of or excerpt from
15 03:22:24 any motion picture that was less than 2.5 minutes long would
16 have been allowed to remain on the service?

17 A I mean, according to the guidelines set
18 forth in that document, yes.

19 Q Guidelines which you understood and
20 03:22:39 followed in your job on the porn patrol in reviewing
21 content, correct?

22 A Correct.

23 Q And that was regardless of the content
24 owner of the motion picture; isn't that right?

1 03:22:59 A Correct.

2 Q Whether it be Viacom, Fox or any other

3 entity, correct?

4 A It was -- yeah. Whoever the user was it

5 03:23:12 was irregardless.

6 Q And what happened if the video was five

7 minutes long and you didn't recognize it as being from a

8 motion picture?

9 A Then move down to the other pieces of

10 03:23:32 criteria.

11 Q So the application of this guideline was

12 dependent upon your ability to recognize the content?

13 A Correct?

14 Q So if you personally, Brendan Jackson or

15 03:23:50 Scott Roesch or Cindy Emch or Joel Sanders or whomever it

16 was that was reviewing clips that day, simply didn't

17 recognize the content for whatever reason, they didn't have

18 the cultural knowledge, they didn't see the movie, they

19 didn't recognize the people in it, that video would stay up

20 03:24:10 no matter how long it was?

21 A Correct.

22 Q Would you consider such a situation to

23 be a violation of these policies?

24 MR. WILKENS: Objection to form.

1 03:24:20 A A situation where the video stayed up?

2 Q Correct.

3 A It's tough to make that determination

4 based upon the -- they repeatedly say recognize. So as the

5 03:24:45 person looking at them and I don't recognize them, then I

6 don't think I'm in violation of the policy.

7 Q In that sense the policy was dependent

8 upon your ability to recognize the content, wasn't it?

9 A Correct.

10 03:24:58 Q Wouldn't any human based review policy

11 be dependent to some degree on the ability of the reviewer

12 to recognize content?

13 MR. WILKENS: Objection to form.

14 A I think that there's a difference

15 03:25:13 between recognizing actual content and recognizing

16 professional content. I think there's a difference there.

17 So I may not recognize a movie for its actual actors, but I

18 can recognize this is probably a movie, take it down for

19 further review.

20 03:25:31 Q So did you take down content when you

21 perceived it to be, to use your word, professional content?

22 A Yes.

23 Q Had you ever seen user generated content

24 that looked professional to use your word?

1 03:25:46 A At that time some, but not a lot.

2 Q But it existed, didn't it?

3 A It did, yes.

4 Q So in applying your criteria or at least

5 03:25:58 the criteria you just described, which is to utilize

6 professional as a proxy for recognized, there's a risk that

7 you are removing authorized UGC content, correct?

8 A That risk does exist. Our posture was

9 better safe than sorry. If it was actually owned by the

10 03:26:20 content provider and they -- you know, they came back with

11 that, they would go back on the site.

12 Q That's not what this policy says,

13 though, is it?

14 A No.

15 03:26:29 Q Do you know if everyone on the porn

16 patrol followed your personal policy of using professional

17 as a proxy for recognized?

18 A I don't -- I can't speak for them.

19 Q The same discussion we just had about

20 03:26:48 motion pictures could apply to television programming and

21 television commercials, couldn't it?

22 A I think it probably applied to all these

23 things.

24 Q Well, let's look at 4?

1 03:27:02 A Okay.

2 Q "Includes any recognizable popular

3 music."

4 A Sure.

5 03:27:11 Q There are two qualifiers -- qualifiers

6 on music, right?

7 A Recognizable and popular, yes.

8 Q So what if you recognize it, but it's

9 not popular? These guidelines don't tell you to take it

10 03:27:19 down, do they?

11 A They don't. Although any -- any

12 recognizable music from my perspective was taken down. I

13 don't mean the term "popular" applies to music. It goes

14 beyond just what's popular on the charts.

15 03:27:39 Q Well, what do you understand it to mean?

16 A You know, honestly I would take down

17 anything that was recognizable. We happen to have, you

18 know, Jesse Hollister on our legal team who is a music

19 expert and he went to music school and these things. And so

20 03:27:51 he was able to recognize a quite of bit of music that we had

21 never heard of. And so in this regard, again, I was more

22 safe than not taking down the majority of music I heard,

23 letting him hear it and see what he thought.

24 Q But that's not what this policy says,

1 03:28:09 though, is it?

2 A No.

3 MR. WILKENS: Objection to form.

4 Q No. 5, "Includes a third-party logo or

5 03:28:20 bug or copyright notice." Do you know what a bug is?

6 A Yes.

7 Q What's a bug?

8 A It's an industry term for when you're

9 watching NBC and they show the little peacock in the corner,

10 03:28:34 that's a bug. They do the same thing with online video as

11 well. It's the mark, the marker.

12 Q Have you ever known any companies to

13 authorize the upload of content that contains third-party

14 logos or bugs or copyright notices?

15 03:28:55 A To Addicting Clips or in general?

16 Q Let's start off in general.

17 A I don't -- I don't know.

18 Q You've never heard of that practice?

19 A I've heard of clips being uploaded and

20 03:29:07 they've got bugs on them, but I -- I can't be sure that

21 they're authorized by the owners.

22 Q Why can't you be sure?

23 A I just don't know. I don't have -- I'm

24 not privy to the information between the clip owners and the

1 03:29:20 site I'm looking at to know that this is authorized by them.

2 Q Well, what if there's no information
3 exchanged between the clip owner and the site? It might
4 still be authorized, right?

5 03:29:29 A I --

6 MR. WILKENS: Objection to the form.
7 Calls for speculation.

8 A I don't know.

9 Q When you were at Addicting Clips --

10 03:29:34 A Yes.

11 Q -- was there never an occasion when
12 content was uploaded with a copyright notice or a
13 third-party logo or a bug that was actuality authorized?

14 A There were cases, yes.

15 03:29:55 Q But it wasn't apparent on the face of
16 the content it had been authorized, was it?

17 A That's correct.

18 Q Let's move on to No. 6. Could you read
19 No. 6 out loud?

20 03:30:05 A "Is a copy of, or an excerpt from, any
21 Japanese television program; or."

22 Q Do you speak Japanese, Mr. Jackson?

23 A I do not.

24 Q Do you know why Japanese television

1 03:30:18 programs were singled out?

2 A We just had gotten an abundance of clips

3 on our site of Japanese game shows and other programs people

4 had been posting.

5 03:30:36 Q But it would be okay if other material

6 from other foreign countries was posted?

7 MR. WILKENS: Objection to the form.

8 A I don't know. Anything that seemed to

9 us, again, like I said, to be real television, movie,

10 03:30:50 professionally done regardless of language was taken down.

11 I don't know specifically why Japanese was here beside

12 that's the reason we had a lot of it.

13 Q But that's only if it was longer than

14 two and a half mins it was taken down, right?

15 03:31:05 A According to these guidelines, yes.

16 Q If it was less than two and a half

17 minutes long, it was allowed to stay up regardless of what

18 it was, right?

19 A According to these guidelines, yes.

20 03:31:16 Q Guidelines which you read, understood

21 and applied in the context of your job as a member of the

22 porn patrol and as an employee and product manager generally

23 of Addicting Clips, correct?

24 A Correct.

1 03:31:31 Q And you understood that others employed
2 these guidelines as well, didn't you?
3 A Yes.
4 Q In fact, you instructed others to employ
5 03:31:38 these guidelines, didn't you?
6 A I did.
7 Q Do you see No. 7?
8 A I do.
9 Q Can you read No. 7 out loud?
10 03:31:55 A "Combines excerpts from one or more
11 motion pictures, television programs and/or third party web
12 content and does not include any original creative elements
13 or commentary."
14 Q I believe you testified earlier -- and
15 03:32:12 correct me if I'm wrong -- that the way you conducted the
16 review as a member of the porn patrol is that you looked at
17 the thumbnail and then you looked at the title to determine
18 whether or not you needed to watch the video as the first
19 step during the review process; is that right?
20 03:32:34 A Correct.
21 Q And in Exhibit 13 you instructed
22 Mr. Sanders to take a cursory look at the videos; is that
23 right?
24 A Yes.

1 03:32:48 Q So is it fair to say that you weren't
2 watching every one of the videos from start to finish?

3 A That's fair to say.

4 Q How did you go about applying guideline
5 03:33:10 No. 3(a)vii?

6 A That was a tougher one to employ. You
7 know, the -- the non legal term of this would be a mash up.
8 And, you know, my understanding there is that it was kind of
9 a fine line between what you could and couldn't do. In
10 03:33:34 these cases we generally would send them to the legal team
11 to review to see if they -- you know, if they would be then
12 withheld to users or not.

13 Q Could you explain what you understand a
14 mash up to be?

15 03:33:47 A It's explained very well here. But, you
16 know, it's a combination of different creative elements,
17 music, movies, TV shows that are edited and strung together
18 to create a new piece of creative work.

19 Q And if I understand these guidelines
20 03:34:06 correctly, if the mash up was less than 2.5 minutes long it
21 probably wouldn't even be reviewed except potentially for
22 pornography?

23 A Correct.

24 Q So as long as it passed the pornography

1 03:34:18 screen it was allowed to stay up. Questions only arose, if
2 at all, if it was longer than 2.5 minutes long; is that
3 right.

4 A That is correct.

5 03:34:28 Q Could you read 3(b) out loud?

6 A "Any video content, of any length, that
7 is copied directly from any motion picture, television
8 programming or content from another website by an employee
9 of an MTVN UGC website, unless the copied content is
10 03:34:49 licensed to the MTVN UGC website."

11 Q What do you understand that to mean?

12 A Basically that we are not supposed to be
13 recording any other third-party content and putting it on
14 our site as an employee of MTVN.

15 03:35:08 Q Is that a practice that Addicting Clips
16 had engaged in?

17 A Not while I was there.

18 Q Had it engaged in it before you got
19 there?

20 03:35:17 A Not to my knowledge.

21 Q As far as you know, there was never an
22 occasion on which YouTube videos were posted to Addicting
23 Clips?

24 A Can you define posted?

1 03:35:36 Q Videos that were uploaded by users to
2 YouTube later being scraped or otherwise copied from the
3 YouTube website and then reposted onto Addicting Clips by
4 Addicting Clips personnel?

5 03:35:48 A Not scraped or downloaded or uploaded,
6 no.

7 Q In any context whatsoever, did videos
8 uploaded to the YouTube website ever make their way onto the
9 Addicting Clips website by actions taken by Addicting Clips
10 03:36:01 personnel?

11 A We would link to those videos from our
12 site, but we would link to the -- you know, link to the
13 actual YouTube page. We wouldn't take video down from
14 YouTube and take it to our site and put it back up.

15 03:36:17 Q Why would you do that?

16 A Why would we link to the content?

17 Q Correct?

18 A Because our goal was to be the best
19 place for UGC -- all UGC on the web. And so it was common
20 03:36:26 for us to link to other UGC sites including YouTube and
21 others if they had great content and we would feature it on
22 our website as well.

23 Q And YouTube had great content that you
24 wanted to feature?

1 03:36:42 A Occasionally, yes, there was content
2 they had we wanted to feature.

3 Q And did you watch the content before you
4 linked to it?

5 03:36:48 A Yes.

6 Q Always?

7 A Oh, yes.

8 Q How often did you link to the YouTube
9 website?

10 03:37:01 A It varied depending on content.

11 Q Varied in what degree?

12 A If there was great content every day we
13 could have linked to them every day. If there was not great
14 content for a week, we could not have linked to them for a
15 03:37:19 A week. It just depended on what content was there and what
16 was socially relevant at the time.

17 Q But there was occasion, sometimes every
18 day, sometimes every other week, where there was socially
19 relevant material on the YouTube website that you thought it
20 03:37:35 A was important in order for Addicting Clips to be the best
21 UGC website to link to YouTube; is that right?

22 MR. WILKENS: Objection to the form.

23 A You know, if it was great content we
24 would link to it, yes.

1 03:37:47 Q And the word I think you used was
2 "socially relevant"?

3 A Yes. If it was relevant to something
4 that was happening at that moment that was popular in
5 03:37:54 society and the content fit that and, you know, it was
6 pertinent and made sense, we linked to it.

7 Q Did there ever come a time when you
8 stopped linking to YouTube videos?

9 A I don't know if we ever stopped linking
10 03:38:10 to the videos. I don't recall.

11 Q Even after Viacom sued YouTube for a
12 billion dollars you continued to link to the videos on the
13 YouTube service?

14 A Well, looking back on one of your
15 03:38:26 previous exhibits -- and I don't remember which one it
16 was -- between Scott and Cindy and I, we no longer featured
17 those on our front page, but I do not believe we stopped
18 linking to the videos. Again, I'm not clear. I don't
19 recall specifically.

20 03:38:43 Q Did you ever come to believe that
21 YouTube stopped being a source for socially relevant UGC?

22 A No.

23 Q Do you think it's a source of socially
24 relevant UGC today?

1 03:38:54 A Yes, I do.

2 Q Do you think it's a pirate site?

3 A I think there's definitely some pirating

4 going on, yes.

5 03:39:02 Q Do you think there's pirating going on

6 at Addicting Clips?

7 A Just based upon some of the videos we

8 rejected, yes.

9 Q Do you think it was an endemic aspect of

10 03:39:12 a site that hosted UGC?

11 MR. WILKENS: Objection to form.

12 A I can't comment on every other site, but

13 I know from the sites that I went to that it was commonly

14 some copyrighted, pirated content there.

15 03:39:28 Q Have you ever been or experienced a UGC

16 site of any magnitude that didn't face any issue with

17 respect to unauthorized content?

18 A No.

19 Q Do you think it's -- the presence of

20 03:39:44 unauthorized content is a reflection of the service itself?

21 MR. WILKENS: Objection to the form.

22 Q Do you think the presence of

23 unauthorized content on Addicting Clips was a presence of

24 the work you did -- rather a reflection of the work you did

1 03:40:01 as the product manager of Addicting Clips?

2 MR. WILKENS: Objection to the form.

3 A No.

4 Q Do you think it would be fair to

5 03:40:17 conclude that the presence of allegedly unauthorized content

6 on another service would then be a reflection on the

7 operators of that service?

8 MR. WILKENS: Objection to the form.

9 A Personal reflection? I don't understand

10 03:40:33 the --

11 Q Sure. We can start there.

12 A I mean, I don't know what the guideline

13 to the other services are. I know that, you know, from

14 my -- our own personal guidelines we were doing all we

15 03:40:45 could. I don't know what the other sites guidelines looked

16 like, so I really can comment.

17 Q But on a personal level?

18 A Again, I don't know what their -- I know

19 for my own self. I can't speak for them on a personal

20 03:40:59 level.

21 Q Do you see No. 4 --

22 A I do.

23 Q -- in Exhibit 16?

24 A I do.

1 03:41:35 Q Could you please read it allowed?

2 A "MTVN UGC sites may post copies of, or

3 excerpts from, unlicensed motion pictures, television

4 programs and/or web content if the copies or excerpts are

5 03:41:48 accompanied with sufficient original creative elements or

6 commentary to constitute 'fair use.' MTVN employees should

7 seek instructions from BALA representative when relying on

8 'fair use.'"

9 Q What was your understanding of this

10 03:42:04 guideline?

11 A This is another piece to me that kind of

12 was similar to the idea of the mash up and -- and that idea

13 of fair use. This is one, again, we err on the side of

14 caution -- or I did at least -- and would, you know, take

15 03:42:22 these down more often than not and get approval from the

16 legal team.

17 Q What is a BALA representative?

18 A I do not know.

19 Q Is it a business and legal affairs

20 03:42:37 representative?

21 A It could be. I'm not sure that's an

22 acronym that's used at MTV.

23 Q You never had occasion to seek

24 instructions from a BALA represented?

1 03:42:46 A You know, our main legal contact was
2 always Victoria, so I never -- you know, I'm sure there were
3 other lawyers there before, but I always went through
4 Victoria or Jesse through Victoria.

5 03:42:56 Q Do you know if Victoria Libin was a BALA
6 representative?

7 A I do not know.

8 Q Did you find it fairly easy to make
9 determinations about which clips should be rejected for
10 03:43:53 violating pornography guidelines?

11 A Yes.

12 Q Did you find it just as easy to make
13 determinations about which clips should be rejected for
14 violating the copyright guidelines?

15 03:44:09 A I personally found it easy. I'm, you
16 know, a cultural media junkie, so I feel like my base of
17 knowledge for music and television is fairly large. So I
18 found it to be -- to be fairly easy for me personally.

19 Q Did you take into account the
20 03:44:30 authorization status of the video when you made the
21 rejection?

22 A For those videos that I knew were
23 authorized, yes.

24 Q Could you explain that answer?

1 03:44:41 A So there were some content providers
2 that had put content on our site that we contacted to make
3 sure that they were the actual owners of that content. So I
4 knew when that person's user name uploaded content X that it
5 03:44:57 was their content from their network.

6 Q And how many clips a day roughly were
7 uploaded to the Addicting Clips website?

8 A You know, it varied anywhere from 50 to
9 150 or 200. I'd say we tried to average around a hundred
10 03:45:15 per day.

11 Q But you think for someone who didn't
12 have the level of cultural knowledge you do might be a bit
13 more challenging to apply the copyright guidelines?

14 MR. WILKENS: Objection to the form.

15 03:45:33 A Possibly. I think we were lucky to have
16 people that worked on this specifically who were very
17 knowledgeable about popular culture.

18 Q Mistakes were made, though, weren't
19 they?

20 03:46:04 MR. WILKENS: Objection to the form.

21 A Can you be more specific?

22 Q Sure. In the course of reviewing
23 content for the porn patrol, reviewers made mistakes, didn't
24 they?

1 03:46:14 A I cannot recall any specific mistakes.
2 I'm sure there were some, but I don't know.

3 Q Without regard to any specific mistakes,
4 do you recall that videos that should have under the
5 03:46:27 guidelines been rejected weren't and videos that shouldn't
6 have been rejected were?

7 A I can recall videos that shouldn't have
8 been rejected that were. I don't -- I can't speak
9 personally for me of any videos that got through me that I
10 03:46:51 later found out shouldn't have. I don't -- I don't
11 remember.

12 Q But you found out videos that you had
13 rejected that shouldn't have?

14 A Or there were videos that had been
15 03:47:02 rejected in general. Again, erring on the side of caution,
16 you know, someone would -- from legal would come to me and
17 say, you know, this has been rejected, you might want to
18 follow up with this content provider. In those cases we
19 would. And if we found out they were the correct person,
20 03:47:18 then we would talk to them about their content and how we
21 could maybe use it more on our site.

22 Q At some point did the porn patrol stop
23 patrolling?

24 A Yes.

1 03:47:42 Q When was that?

2 A I do not know specifically when that

3 was.

4 Q When the porn patrol stopped patrolling,

5 03:47:52 did Addicting Clips revert to an unmoderated situation?

6 A In the progression of moderation, I

7 believe the next thing we did was to then start previewing

8 all videos that were uploaded to the site before they went

9 live.

10 03:48:14 Q When you say "we," who are you referring

11 to?

12 A I know ultimately it was the folks at

13 IFilm. I feel like intermittently there was another

14 solution, but I -- I don't recall.

15 03:48:35 Q Did --

16 MR. RUBIN: Well, let me just go ahead

17 and introduce an exhibit, Exhibit 17.

18 (Whereupon, Defendants' Exhibit 17 was

19 marked for identification purposes.)

20 03:49:09 Q Mr. Jackson, Exhibit 17 is a document

21 produced by Viacom in this action bearing Bates No.

22 VIA01981185. It is an email that you sent to Joel Sanders

23 and Scott Roesch on Monday April 23rd, 2007. Do you see

24 that?

1 03:49:30 A I do.

2 Q Do you recall sending this email?

3 A I don't.

4 Q Could you read the first sentence,

5 03:49:39 please?

6 A Sure. "I wanted to thank everyone for

7 all the support you have been giving to Addicting Clips over

8 the past few months by helping us root out our obvious

9 Copyright and TOS violations."

10 03:49:54 Q What are you referring to when you are

11 thanking Mr. Sanders and Mr. Roesch for their help in

12 helping Addicting Clips root out its obviously copyright and

13 TOS violations?

14 A I believe I was referring to the porn

15 03:50:07 patrol we were all taking part in. This actually went to

16 the entire Atom customer service team. It was only cc'd to

17 Joel and Scott.

18 Q Oh, thank you for that clarification.

19 So the email address m_atom_CS_team went to a much broader

20 03:50:30 group of people?

21 A Yes. It went to the Atom customer

22 service team.

23 Q And who was a part of the Atom customer

24 service team?

1 03:50:39 A I can see faces, but I don't remember
2 their names. There were, I think, three or four people in
3 the Atom customer service team. Jerry Giovanni I believe is
4 one. The other three I don't remember.

5 03:50:50 Q Was Cindy Emch one of them?

6 A No.

7 Q So the members of the Atom customer
8 service team were part of the porn patrol too?

9 A They were, yes.

10 03:51:01 Q So by the end of its operation, the porn
11 patrol had swelled to include not only the original members
12 that we've seen on a various set of exhibits today and that
13 you've described in your testimony, but also the customer
14 service team?

15 03:51:17 A That's correct.

16 Q Four more individuals?

17 A Yes.

18 Q Why did it grow to include four
19 additional people?

20 03:51:23 A I believe it was always -- they were
21 always part of it. I mean, I could be incorrect there, but
22 they were helping during the day to monitor videos. And
23 they also worked later hours and worked on the weekends, so
24 they were able to provide extra coverage. You know, it

1 03:51:43 was -- so...

2 Q Could you read the second sentence?

3 A Sure. "You will be happy to hear we
4 finally put together a 24/7 moderation solution that will

5 03:51:58 launch on May 15th, which means starting the 15th you won't
6 need to check AC again for violations."

7 Q Does this remind you that the porn
8 patrol stopped patrolling somewhere around mid May 2007?

9 A Yes.

10 03:52:19 Q And I believe you testified that you're
11 recollection is is that the moderation duties were taken
12 over by IFilm at that point?

13 A Corrected.

14 Q Was that the plan all along at Addicting
15 03:52:31 Clips; that is, that the porn patrol would be operative for
16 some period of time and then IFilm would take over?

17 A The plan was that the porn patrol would
18 be active for a certain period of time and then there would
19 be a solution. I don't think from the beginning we had
20 03:52:51 IFilm specifically at the beginning to be the solution.

21 Q So when you started working at Addicting
22 Clips in June -- sometime in June of 2006, Addicting Clips
23 had no technological filter for uploaded content and no porn
24 patrol and nothing like the porn patrol, that is, no human

1 03:53:16 review of clips either before they were uploaded or after
2 they were uploaded?

3 A Nothing besides us just being on the
4 site, you know, in the normal course of business and seeing
5 03:53:27 something that was copyright infringement.

6 Q Sure. Or pornography for that matter?

7 A Or pornography.

8 Q But no standardized protocol for the
9 review of content on the service; isn't that right?

10 03:53:40 A That's correct.

11 Q Did you understand that to be a
12 deliberative decision of the company not to employ a review
13 protocol for content on the service at that time?

14 MR. WILKENS: Objection to the form.

15 03:53:58 A And, again, I have to ask this. I think
16 goes to --

17 MR. WILKENS: If it's --

18 Q It's a yes or no question.

19 MR. WILKENS: Yeah, you can answer yes

20 03:54:12 or no and if you need to consult about
21 attorney/client after that we can do that.

22 A Could you please restate that?

23 Q Did you understand it to be a
24 deliberative policy of the company not to review or monitor

1 03:54:24 content on its service --

2 A Yes.

3 Q -- at that time --

4 MR. WILKENS: Objection.

5 03:54:27 Q -- at the time you joined the company?

6 MR. WILKENS: Same objection.

7 A Yes.

8 Q What did you understand to be the basis

9 for that policy?

10 03:54:36 MR. WILKENS: And if your understanding

11 is based on conversations with counsel, I instruct

12 you not to answer.

13 A Okay. Based on that, then I can't

14 answer the question.

15 03:54:47 Q Did you have conversations with Victoria

16 Libin that informed your understanding of the policy?

17 MR. WILKENS: You can answer that yes or

18 no.

19 A Yes.

20 03:55:03 Q What did Victoria Libin tell you?

21 MR. WILKENS: I instruct you not to

22 answer that question.

23 MR. RUBIN: It is our position that

24 Viacom has waived privilege on this issue as a

1 03:55:13 result of Mr. Salmi's testimony. And your
2 instruction, therefore, is improper.

3 MR. WILKENS: We don't agree with that.

4 MR. RUBIN: Okay. I understand you
5 03:55:21 don't agree with it. You risk having to reseat
6 this witness by taking that position.

7 MR. WILKENS: We don't agree with that
8 and we believe if that's your position, then
9 you're opening the defendants' witnesses to
10 03:55:33 testify on the same issue.

11 MR. RUBIN: We haven't waived on that
12 issue.

13 MR. WILKENS: I disagree with your
14 position.

15 03:55:44 MR. RUBIN: I look forward to receiving
16 a letter from you promptly outlining the basis of
17 your contention of waiver.

18 MR. WILKENS: I'd like to receive a
19 letter from you outlining your basis for claiming
20 03:55:46 that there was a waiver and if I get a letter --

21 MR. RUBIN: You know the basis.

22 MR. WILKENS: I don't know the basis.
23 Why don't you send me a letter and why don't we
24 continue with this deposition instead of delaying,

1 04:06:23 that doesn't exist?

2 A That's true.

3 Q It's an existential problem we're

4 constantly confronting in these situations. Privilege

5 04:06:31 objections is another one.

6 MR. WILKENS: Why don't you move on.

7 MR. RUBIN: Excuse me?

8 MR. WILKENS: Please move on.

9 MR. RUBIN: Thanks, Scott. I appreciate

10 04:06:39 it.

11 MR. WILKENS: Instead of casting

12 aspersions.

13 MR. RUBIN: Casting aspersions? Not --

14 not the least of what I'm doing. Trying to make

15 04:06:46 levity in -- in what's not a light situation.

16 Sorry that you misinterpreted it.

17 MR. WILKENS: I don't think I

18 misinterpreted it. Please -- please continue.

19 MR. RUBIN: I will conduct this

20 04:07:00 deposition at my own pace.

21 Q Do you know when the policy changed from

22 a policy of no proactive monitoring of content to one of

23 proactive monitoring of content --

24 MR. WILKENS: Objection to --

1 04:07:34 Q -- on Addicting Clips?

2 MR. WILKENS: Objection to the form.

3 A I don't recall a specific date.

4 Q Do you recall a general time frame?

5 04:07:50 A I don't.

6 Q Do you recall whether it was before or

7 after the August 2006 acquisition by Viacom of Addicting

8 Clips?

9 A It was after.

10 04:08:01 Q Do you know whether or not Viacom was

11 the instigation for the change in policy?

12 A I don't recall.

13 Q You don't know?

14 A I don't know, no.

15 04:08:12 Q Do you know who would know that?

16 A I would say those people that would know

17 would be Scott Roesch or Victoria Libin.

18 Q You were involved, weren't you, in the

19 very first steps of outlining and developing the moderation

20 04:09:01 strategy for Addicting Clips, right?

21 MR. WILKENS: Objection to the form.

22 A Involved how?

23 Q Involved in any way.

24 A Yes.

1 04:09:11 Q But you were more than just involved at
2 a low level, you were actually actively involved in
3 researching the options available and helping to select
4 them, weren't you?

5 04:09:20 A Yes.

6 Q In fact, as early as January of 2007,
7 you were already putting together a top line framework for
8 the monitoring with resource allocation and process, weren't
9 you?

10 04:09:39 A I don't recall.

11 Q Look at a document.

12 A I figured you had one.

13 MR. RUBIN: I'd like to introduce

14 Exhibit 18.

15 04:09:54 (Whereupon, Defendants' Exhibit 18 was
16 marked for identification purposes.)

17 Q Mr. Jackson, Exhibit 18 is a document
18 Viacom produced in this litigation. It bears Bates No.
19 848 -- pardon me -- vIA00848179 through VIA00848180. Do you
20 04:10:26 recognize this document?

21 A I do.

22 Q How do you recognize this document?

23 A I created it.

24 Q What is this document?

1 04:10:38 A This document is a proposal for how to
2 monitor the site from an employee standpoint and a resource
3 standpoint as well as, I think, the beginnings of what the
4 monitoring procedure would look like on the site from a
5 04:10:58 technical standpoint and a process standpoint.

6 Q If you look at the first section on the
7 second page --

8 A Yes.

9 Q -- entitled "AC Clip Monitoring
10 04:11:19 Resources and Procedure." You see the first part is broken
11 out as monitoring resources, right?

12 A Yes.

13 Q It says, "At current clip level." What
14 did you understand the current clip level to be in early
15 04:11:30 January 2007?

16 A You know, again, as I said earlier, it's
17 between maybe 50 and 150 a day. Average I usually tried to
18 get was around a hundred per day.

19 Q Do you happen to know how many videos
20 04:11:47 were being uploaded to YouTube at this time?

21 A I don't recall.

22 Q Was it more than a hundred?

23 A Yes.

24 Q Many more than a hundred?

1 04:11:59 A I couldn't say so without assuming.

2 Q Make a guess.

3 A I couldn't guess. I would say, yes,

4 many more than a hundred is probably an accurate statement.

5 04:12:12 Q When you say "many more than a hundred,"

6 what would your guess be?

7 MR. WILKENS: Objection to the form.

8 A I really don't know.

9 Q Most of this document talks about

10 04:12:25 monitoring for pornography, doesn't it?

11 A No. There's a section in here that

12 talks about watermark clips, clips from movies, TV, et

13 cetera.

14 Q Sure. But that's under the monitoring

15 04:12:49 procedure, 2(c), isn't it?

16 A Under monitoring resources, 1(a), as

17 well.

18 Q That's what they were responsible for

19 taking down, right?

20 04:12:59 A Yes.

21 Q In terms of procedure --

22 A Based upon guidelines we provide.

23 Q Correct. And would those guidelines be

24 the guidelines we looked at earlier?

1 04:13:07 A I'm not sure.

2 Q Well, this document is dated

3 January 11th, 2007.

4 A Okay.

5 04:13:13 Q And Exhibit 16, I believe, was dated

6 January 22nd, 2007.

7 A Whatever the -- whatever the final

8 guidelines were as provided by MTVN legal would be the ones

9 that they would be referencing in this document.

10 04:13:26 Q When you say final, you mean the

11 existing policy as applied, not necessarily one that said

12 final on it?

13 A Correct.

14 Q Because we talked about in the context

15 04:13:33 at least of Exhibit 16 the word -- the fact that it says

16 draft on it didn't have any impact on the fact that it was

17 implied in that current form?

18 A Yes.

19 Q What we're looking at here in Exhibit 18

20 04:13:55 evolved, though, didn't it?

21 A Which -- which portion?

22 Q Generally speaking this process evolved.

23 A The monitoring piece evolved beyond my

24 initial proposal. The procedure evolved somewhat.

1 04:14:38 Q Did you ever -- actually, if you look at
2 the procedure component of this -- pardon me -- the
3 resources component of it --

4 A Yes.

5 04:14:53 Q -- Section 2 says, "Moderator would be
6 an outsourced employee in India and would be paid at \$6 an
7 hour." Do you see that?

8 A I do.

9 Q Do you know what that's referring to?

10 04:15:03 A One of the ideas we had was to outsource
11 this and I had reached out to a few different outsourcing
12 companies and -- that had employees in India and, as I
13 recall, most of them had a \$6 an hour fee. So that's what
14 it was in here.

15 04:15:25 Q And did you think this to be a
16 reasonable cost to spend for reviewers based on the clip
17 level that was referenced in bullet point 1?

18 MR. WILKENS: Objection to form.

19 A I'm not sure if it was reasonable or
20 04:15:44 unreasonable. It was something I was asked to -- to
21 research and perform -- you know, report on that.

22 Q What was your opinion as to the
23 reasonableness of it?

24 A Based upon -- my opinion was was that if

1 04:16:08 we were to have to pay someone or to have -- if we were --
2 if we were to have a resource to do this, the least
3 expensive would be the best way to go as opposed to hiring
4 someone in San Francisco which would not have been \$6 an
5 04:16:26 hour.

6 Q Did you reach out to any U.S. based
7 companies?

8 A Yes. I believe I reached out to a
9 company who did outsourcing in the Midwest.

10 04:16:48 Q Company called Rural Source?

11 A I don't remember if that's their name or
12 not.

13 MR. RUBIN: I'd like to introduce
14 Exhibit 19.

15 04:16:56 (Whereupon, Defendants' Exhibit 19 was
16 marked for identification purposes.)

17 Q Mr. Jackson, Exhibit 19 is a document
18 produced by Viacom in this litigation bearing Bates No.
19 VIA10387748 through 49. An email string that begins with an
20 04:17:36 email from you to Inquiry_DG dated Friday January 5th, 2007.
21 And then a response and a bit of back and forth between you
22 and John Wright of Ruralsource.com. Do you see that?

23 A I do.

24 Q Is this the contact you were referring

1 04:18:00 to, to an outsourcing agency in the Midwest?

2 A Yes.

3 Q Do you see the first email you sent on

4 Friday January 15th, 2007?

5 04:18:11 A I do.

6 Q "Subject: Video content screening"?

7 A Yes.

8 Q What was the first sentence of your

9 email to Rural Source?

10 04:18:19 A I manage a user generated content site

11 similar to YouTube that is part of the MTV network.

12 Q Do you recall ever having the

13 conversation that was between the lines of this

14 communication?

15 04:18:39 A I do.

16 Q What was the substance of that

17 conversation?

18 A Finding out how their outsourcing worked

19 and associated costs.

20 04:18:48 Q And what did you learn?

21 A I learned that they are an outsourcing

22 company that employees some people in rural cities, mostly

23 stay-at-home moms, and have a very similar model to that of

24 those in India, just in the U.S.

1 04:19:07 Q After learning that Rural Source
2 employed midwestern stay-at-home moms, as you've described
3 it, for their outsourcing, did you pursue it any further?
4 A I -- I believe we did not and I think it
5 04:19:24 was based more on cost factors.
6 Q The -- the midwestern stay-at-home mom
7 was more expensive than the \$6 an hour content reviewer in
8 India?
9 A At that time, yeah, that's what I
10 04:19:38 remember.
11 Q Do you ever recall interacting with a
12 company by the name of Catalytic?
13 A I do.
14 Q What do you recall about that?
15 04:19:55 A They were an outsourcing company.
16 Q What kind of outsourcing services did
17 they offer?
18 A I believe we talked to them about doing
19 some of the things that I put together in Exhibit 18 as far
20 04:20:10 as being a monitor, monitoring resources.
21 Q And did Addicting Clips consider using
22 Catalytic as a monitoring solution?
23 A I believe we did. From my -- my memory,
24 I believe they were brought to us from MTVN as opposed to us

1 04:20:37 going to them.

2 Q Do you recall meeting with personnel
3 from Catalytic?

4 A I recall, I think, meeting with some
5 04:21:00 people on the phone. I don't remember if I did in person or
6 not though.

7 Q Do you remember what you discussed with
8 personnel from Catalytic?

9 A Actually I do. We discussed -- they
10 04:21:17 were doing some monitoring of the -- the text stream for
11 Total Request Live. You know, as you were watching Total
12 Request Live there's some live text. And I believe that
13 they came to us -- or their -- they talked to us about their
14 expertise and how they were handling that information coming
15 04:21:38 in. They were monitoring it in realtime and putting it up
16 on the site. I think that's the basis of their desire to
17 help us with our problem.

18 Q So it was your understanding then that
19 they already had some involvement with Viacom?

20 04:21:55 A Yes.

21 Q Total Request Live, to which you just
22 referred, is an MTV program, is it not?

23 A That is correct.

24 Q What else did you discuss during your

1 04:22:04 conversations with them?

2 A I don't recall specifically. I would
3 have to assume it was about monitoring -- monitoring the
4 content of our site.

5 04:22:13 Q Did they ask for any information from
6 you in order to be able to provide you with an estimate or a
7 proposal for monitoring?

8 MR. WILKENS: Objection. Form.

9 A I don't know if they requested anything
10 04:22:29 from me. I can tell you that if they were to put a proposal
11 together, it would require some information about the volume
12 of -- of our clips and probably the length of time --
13 average length of time for a clip.

14 MR. RUBIN: I'd like to introduce

15 04:22:45 Exhibit 20.

16 (Whereupon, Defendants' Exhibit 20 was
17 marked for identification purposes.)

18 Q Mr. Jackson, Exhibit 20 is a document
19 produced by Viacom in this litigation bearing Bates No.

20 04:23:02 VIA11691261 to 262.

21 A Okay.

22 Q There's an email chain between you and
23 Andrew Rosen that occurred on February 7th, 2007. Do you
24 recognize this document?

1 04:23:25 A I don't recognize it, but I understand
2 it.
3 Q Does it appear genuine to you?
4 A Yes, it does.
5 04:23:33 Q Do you see it begins with an email that
6 you sent to Mr. Rosen?
7 A Yes.
8 Q Who is Mr. Andrew Rosen?
9 A I believe Andrew Rosen was on the -- the
10 04:23:43 MTVN or Viacom legal team.
11 Q Do you know -- do you know what role he
12 played on the legal team?
13 A I do not recall the role that he played.
14 Q Do you know if he was a lawyer?
15 04:23:58 A I don't remember if he was or wasn't.
16 Q In your email of February 7th at
17 7:29 p.m. you weren't asking him for legal advice, were you?
18 A No, I was not.
19 Q What were you asking him for?
20 04:24:24 A I was asking him for an update on
21 Catalytic. From -- from looking at the rest of this email,
22 I believe what we were trying to do was to join all of the
23 UGC volume for different sites across MTV and Viacom and
24 have one big pool and have Catalytic moderate all that

1 04:24:47 content together as opposed to one offs.

2 Q One offs like the porn patrol?

3 A One offs, like we would hire one company

4 to do our moderation, IFilm would hire another company to do

5 04:24:56 their moderation and it would be property by property as

6 opposed to pulling everything together.

7 Q And Mr. Rosen responded to you by saying

8 that Catalytic was waiting for UGC upload volume, right?

9 A Yes. That's correct.

10 04:25:19 Q And that certain of entities in the

11 Digital Brand Group seemed to be taking some time to provide

12 that information. Do you see that?

13 A That's what it says, yes.

14 Q And that Catalytic couldn't project

15 04:25:40 costs without those numbers?

16 A Yes, that's what it says.

17 Q In fact, he said, "I'm basically

18 powerless in that sense," didn't he?

19 A That's what he says.

20 04:25:48 Q At least for AddictingClips' part, you

21 turned around and gave him those numbers within a matter of

22 hours?

23 A Yes.

24 Q And what did you report Addicting Clips

1 04:26:03 upload volume to be?

2 A I said our volume now is 100 per day.

3 We are going to be making some changes that could result in

4 that increasing to 150 to 200 a day.

5 04:26:17 Q What were those changes you were

6 planning to make?

7 A I don't recall specifically what those

8 changes were.

9 Q Could that have been the rebrand to Atom

10 04:26:25 Uploads?

11 A That could have been. I mean, that did

12 not happen until, you know -- completely done until right as

13 I left, but we could have been planning for it in February,

14 yes.

15 04:26:35 Q It was an idea at least as early as

16 February, wasn't it?

17 A Correct.

18 Q So the 100 per day was a statement of

19 fact at the time and the 150 to 200 was aspirational?

20 04:26:54 A Yes.

21 MR. WILKENS: Is this a good time for a

22 break? I believe we've been going about an hour

23 and a half.

24 MR. RUBIN: Sure.

1 04:27:06 VIDEOGRAPHER: We're going off the
2 record. The time is 4:32.
3 (Whereupon, a brief recess was taken.)
4 VIDEOGRAPHER: We're now back on the
5 04:37:15 record. The time is 4:43 p.m.
6 Q Mr. Jackson, before we took a break, we
7 were looking at Exhibit 20, which is a document that sets
8 forth an email chain between you and Andrew Rosen titled
9 "Catalytic Update" where you ultimately provided Addicting
10 04:37:36 Clips then present upload volume which you indicated was
11 around a hundred per day?
12 A That's correct.
13 Q The purpose of this was so that
14 Catalytic could project costs and provide a report; is that
15 04:37:48 right?
16 A That is correct.
17 Q Ultimately Catalytic did provide a
18 report, didn't they?
19 A I believe so, yes.
20 04:38:00 Q In fact, they provided two reports,
21 didn't they?
22 A I don't recall.
23 Q Let's -- let's take a look at them.
24 MR. RUBIN: Mark Jackson Exhibit 21.

1 04:38:20 (Whereupon, Defendants' Exhibit 21 was
2 marked for identification purposes.)
3 Q Mr. Jackson, Exhibit 21 is a document
4 produced by Viacom in this litigation bearing Bates No.
5 04:38:41 VIA01673623 through 38. Do you recognize this document?
6 A I do not.
7 Q Do you recall receiving it?
8 A I don't recall receiving it. I'm
9 assuming because it's about Addicting Clips I did, but I
10 04:39:09 don't specifically recall when I received it.
11 Q Let's put any doubt to rest.
12 A Okay.
13 MR. RUBIN: I would like to introduce
14 Exhibit 22.
15 04:39:14 (Whereupon, Defendants' Exhibit 22 was
16 marked for identification purposes.)
17 Q Exhibit 22 is a document produced by
18 Viacom in this action bearing Bates No. VIA00329691 through
19 93. Do you recognize this email, Mr. Jackson, which is an
20 04:39:44 email chain of two emails -- pardon me, three emails --
21 dated March 14th and then March 18th.
22 A Again, I don't recall receiving it, but
23 my name is on here, so I did.
24 Q Do you see that your name is in the

1 04:51:19 something I would have gone ahead and done without
2 instruction from someone else.

3 Q Does this reflect -- refresh your
4 recollection as to whether any other changes were
5 04:51:31 implemented on the Addicting Clips service in response to
6 the -- the lawsuit Viacom brought against YouTube?

7 A Does not.

8 Q But doesn't rule out that other changes
9 might have been made, does it?

10 04:51:42 A That's correct.

11 Q Because you don't, in fact, recall the
12 basis for asking for this change either?

13 A That's correct.

14 Q And who did you make this request to?

15 04:51:56 A Ed Klein and Randy St. Jane.

16 Q And we discussed those gentlemen
17 earlier, correct?

18 A That's correct.

19 Q They work at Reality Digital, right?

20 04:52:05 A Correct.

21 Q They're the back end providers for
22 Addicting Clips at least as of the date of this email,
23 right?

24 A That's correct.

1 04:52:11 Q Did they comply with your request?

2 A Yes, they did.

3 Q Did you actually review the videos that

4 they put into the admin field with inappropriate check me

5 04:52:36 tag?

6 A I don't recall. I'm not sure what we do

7 with this information.

8 Q Was Scott Roesch the individual who

9 directed you to do this?

10 04:52:56 A I don't specifically remember. He was

11 my -- my boss and I would assume he did, but I don't

12 remember specifically.

13 Q Okay. Returning to Catalytic.

14 A Okay.

15 04:53:23 Q After providing you the -- the document

16 that we saw in Exhibit 21 --

17 A Uh-huh. Yes.

18 Q They also provided you an actual

19 proposal to implement a moderation solution as well, didn't

20 04:53:39 they?

21 A They provided a proposal here. I don't

22 remember the solution being provided. Or I don't recall it

23 being provided.

24 MR. RUBIN: I'd like to introduce

1 04:55:38 it when you received it?

2 A I have no doubt that I reviewed this.

3 Q If I ask you to turn to Page 13, what

4 was the price that Catalytic was going to charge Addicting

5 04:56:10 Clips on the volume of less than 400 per day?

6 A \$6,250 per month.

7 Q Did you consider that to be too

8 expensive?

9 A It was more expensive than some of the

10 04:56:24 other options that we received.

11 Q Did you think it was too expensive to

12 accept?

13 MR. WILKENS: Objection. Asked and

14 answered.

15 04:56:41 MR. RUBIN: The question was not asked.

16 MR. WILKENS: You just asked the

17 question a second ago.

18 MR. RUBIN: No, I did not, Scott. I

19 asked if he thought it was too expensive. I did

20 04:56:50 not ask if he thought it was too expensive to

21 accept.

22 MR. WILKENS: I don't understand the

23 distinction there, but --

24 MR. RUBIN: It's not the same question.

1 04:56:58 MR. WILKENS: I don't think there's a
2 distinction. Go ahead.

3 A Ultimately the decision wasn't mine on
4 whether to accept it or not accept it.

5 04:57:05 Q I'm -- the question isn't, Mr. Jackson,
6 whether you had you ultimate decision-making authority --

7 A Sure.

8 Q -- on whether or not the Catalytic
9 solution should be implemented.

10 04:57:13 A Uh-huh.

11 Q The question was whether you thought the
12 proposal was too expensive and whether you -- let's -- let's
13 cut the question there. Did you think the solution offered
14 by Catalytic of \$6,250 per month for 400 uploads a day or
15 04:57:33 less was too expensive for the services they were offering.

16 MR. WILKENS: Objection. That question
17 was asked and answered.

18 MR. RUBIN: I don't believe I received a
19 response.

20 04:57:42 MR. WILKENS: I think you did. Try to
21 answer it again.

22 MR. RUBIN: Scott, if you want us to
23 stay here all afternoon, you can continue this
24 banter back and forth or we can get to the end of

1 04:57:53 the question.

2 A I did not believe it was too expensive,

3 no.

4 Q You believed it was a reasonable price

5 04:57:59 for the services they were offering?

6 A Yes.

7 MR. RUBIN: I'd like to introduce

8 Exhibit 25.

9 (Whereupon, Defendants' Exhibit 25 was

10 04:58:04 marked for identification purposes.)

11 Q Mr. Roesch, Exhibit --

12 A Mr. Jackson.

13 Q I'm sorry. I apologize. I've been

14 doing that all day. It's not my typical approach. It's

15 04:58:46 been a long day. Mr. Jackson -- I'll get that right by the

16 end of the day -- Exhibit 25 is a document produced by

17 Viacom bearing Bates No. VIA00466703 through 704. Do you

18 recognize this document?

19 A I do.

20 04:59:06 Q Does this remind you that in fact you

21 did think the Catalytic proposal was too expensive?

22 A Yes.

23 Q So contrary to your earlier testimony

24 where you thought it was not too expensive, in fact, you did

1 04:59:17 think it was too expensive, didn't you?

2 A Apparently I did, yes.

3 Q And you recommended that you at least
4 negotiate on the price even if it meant having to spend more
5 04:59:26 time getting up at 5:00 a.m. to review videos on the porn
6 patrol, didn't you?

7 A I did.

8 Q Was the Catalytic solution ultimately
9 adopted?

10 04:59:40 A No.

11 Q Why not?

12 A I don't recall what the reasons were. I
13 do not believe I was part of that decision-making process.

14 Q Do you recall ever being informed of it?

15 04:59:58 A I don't recall being informed of it, but
16 I do know we went with a different solution. I'm -- I'm
17 assuming I was at some point.

18 MR. RUBIN: I would like to introduce
19 Exhibit 26.

20 05:00:09 (Whereupon, Defendants' Exhibit 26 was
21 marked for identification purposes.)

22 Q Mr. Jackson, Exhibit 26 is a document
23 produced by Viacom in this litigation bearing Bates No. you
24 VIA00399413. It's a series of two emails from April 3rd of

1 05:00:45 2007. The first is from Scott Roesch to you and Joel
2 Sanders and cc to Chris Albrecht and then your response to
3 the same group of individuals. Do you see that?
4 A I do.
5 05:01:00 Q In the first email, "Subject:
6 Moderation next steps," could you read the update that -- at
7 least the first paragraph of the update that Scott Roesch
8 reported?
9 A Sure. "Here's an update. Catalytic and
10 05:01:12 any India based solution is dead due to concerns about
11 indemnifications and other legal issues. I don't know much
12 more and am not going to waste more time finding out."
13 Q At that point what was the next step in
14 terms of moderation that was sought?
15 05:01:34 A As Scott continued to say, "We (Andrew
16 and I, with Erik's blessing) are now trying to see if
17 IFILM's moderation team can handle AC's moderation needs as
18 well."
19 Q Who ran the IFilm moderation team?
20 05:01:48 A I don't recall.
21 Q Do you know who Matt Klauschie is?
22 A I believe he was someone at IFilm. I
23 think I've seen an email from him earlier in this stack here
24 somewhere.

Schapiro Exhibit 269

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

PLAINTIFFS,)

vs.)

07 CIV. 3582(LLS)

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

DEFENDANTS.)

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

PLAINTIFFS,)

vs.)

07 CIV. 2103 (LLS)

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

DEFENDANTS.)

-----)
VIDEOTAPED DEPOSITION OF COURTNEY NIEMAN
WEDNESDAY, DECEMBER 16, 2009
PALO ALTO, CALIFORNIA

Job No. 18293

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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THE FOOTBALL ASSOCIATION)
PREMIER LEAGUE LIMITED AND)
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) 07 CIV. 2103 (LLS)

YOUTUBE, INC., YOUTUBE, LLC)
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DEFENDANTS.)
-----)

VIDEOTAPED DEPOSITION OF COURTNEY NEIMAN,
TAKEN ON BEHALF OF THE DEFENDANTS, AT 9:28 A.M.,
WEDNESDAY, DECEMBER 16, 2009 AT 650 PAGE MILL ROAD,
PALO ALTO, CALIFORNIA BEFORE MARY JACKSON, CSR NO.
8688, PURSUANT TO NOTICE.

A P P E A R A N C E S

1
2 For the Plaintiff Viacom:

3 JENNER & BLOCK, LLP

4 1099 New York Avenue, NW, Suite 900

5 Washington, D.C. 20001

6 BY: JAMES COX, ESQ.

(202) 637-6361

7 jamescox@jenner.com

8 For the Plaintiffs The Football Association Premier
9 League Limited:

10 PROSKAUER ROSE, LLP

2049 Century Park E, Suite 3200

11 Los Angeles, California 90067

BY: GIL PELES, ESQ.

(310) 284-5611

12 gpeles@proskauer.com

13
14 For the Non-Party BayTSP:

KENDALL, BRILL & KLIEGER, LLP

15 10100 Santa Monica Boulevard, Suite 1725

Los Angeles, California 90067

16 BY: PHILIP KELLY, III, ESQ.

(310) 272-7908

17 pkelly@kbbkfirm.com

18
19 For the Defendants Google and YouTube:

20 WILSON, SONSINI, GOODRICH & ROSATI

650 Page Mill Road

21 Palo Alto, California 94304

BY: DAVID KRAMER, ESQ.

BART VOLKMER, ESQ.

22 (650) 493-9300

dkramer@wsgr.com

23 bvolkmer@wsgr.com

24 ALSO PRESENT: OSAMA HUSSAIN, BayTSP Counsel

25 STUART PETTIGREW, Videographer

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1 identification.)

2 12:08 MR. KRAMER: Q. Do you recognize

3 Exhibit 15?

4 12:08 A. Yes, I do.

5 12:08 Q. What is it?

6 12:08 A. It's a -- hang on. I'm getting to the

7 page where there's actually printing. Holy smokes.

8 We cut down a forest to do this one.

9 12:08 Q. Mm-hmm.

10 12:08 A. I don't recall this format of this report.

11 However, I do recall the report in general. It was

12 part of the weekly process of informing our clients

13 what we did based on their instructions.

14 12:08 Q. In Exhibit 15, there is an e-mail exchange

15 on the cover page between Bay and Viacom

16 representatives including Ms. Hallie, Mr. Cahan,

17 you're included as a cc. In the first in time

18 message, Ms. Arizala says, "Please review the

19 enclosed YouTube, Google Video, MySpace and Yahoo!

20 Video approved notice sent rule."

21 12:09 A. Mm-hmm.

22 12:09 Q. Do you know what that's a reference to?

23 12:09 A. It would be, here's the report for the

24 actions you told us to take.

25 12:09 Q. But I'm specifically asking about the

1 "approved notice sent rule," not the report itself.

2 12:09 A. I don't know what -- what Deana -- why she
3 chose that phrase. But in my dealings with Deana as
4 a manager, that's -- I would ask her what she meant
5 by that.

6 12:09 Q. The last four pages of Exhibit 15 --

7 12:09 A. Yeah.

8 12:09 Q. -- are one-page charts entitled MTV Agent
9 Asset Rule List for each of the four services
10 Ms. Arizala mentions in her message: YouTube,
11 MySpace, Google Video, and Yahoo! And there is a
12 list of shows in common among each of the four
13 lists. Do you see that?

14 12:10 A. Yes.

15 12:10 Q. Do you recognize this as the rules that
16 BayTSP was to follow with respect to each of those
17 services at the time?

18 12:10 A. I recall that this table was the
19 representation of what client services, Deana,
20 myself, understood as to how BayTSP was to enforce
21 these titles.

22 12:10 Q. Got it. You were involved in helping to
23 prepare these asset agent rule lists?

24 12:10 A. Inasmuch as the manager of client services
25 e-mails, phone calls, yeah, I'm sure it came up.

1 12:11 Q. Okay.

2 12:11 A. Please do this; please do that.

3 12:11 Q. If you take a look at the -- let me see if

4 I can do it this way. Can you explain to me what

5 these rules were looking at, these charts as of

6 November 6th, 2006?

7 12:11 A. Yes. We will take, for example, column

8 one would be the content order. So Spice TV, Comedy

9 Central, Viacom in general, Country Music

10 Television, blah, blah, blah. The second one would

11 be the specific network of that content holder that

12 those titles belong to. And then notices were to be

13 sent on the complete entire show versus a clip, some

14 subset, and, with God as my witness, I don't

15 remember what -- other than looking at it here, that

16 the rule would be to -- would be used to define what

17 is a clip.

18 12:12 Q. On which action should be taken, right?

19 12:12 A. Yeah. So full was fairly straightforward.

20 It's the whole episode. Whereas -- whether it had

21 commercials or not was irrelevant. It was, did you

22 have the whole show? Clip would have been anything

23 less than the whole show. So two and a half would

24 be in minutes as opposed to seconds or days or

25 greater.

1 12:12 Q. So these charts reflect that at this time,
2 the full episode rule was in effect at YouTube,
3 right?

4 12:12 MR. COX: Objection. Document speaks for
5 itself.

6 12:12 MS. COLEMAN-BISHOP: Mischaracterizes --
7 objection mischaracterizes the document.

8 12:13 THE WITNESS: Okay. I'm lost.

9 12:13 MR. KRAMER: Q. Sure.

10 12:13 A. Because I don't -- as I read this, these
11 rules for engagement were for -- "please review the
12 enclosed YouTube, Google Video, MySpace, Yahoo!
13 Video."

14 12:13 Q. We have one page for each of the four
15 services that you just mentioned, and on each page
16 there are the rules that you just described, but
17 they differ.

18 12:13 A. Oh, okay.

19 12:13 Q. So for the page entitled YouTube Approved
20 Notice Sent, which is the first of the four
21 charts --

22 12:14 A. Yes. There is full rule -- full assets is
23 the rule for the YouTube page; full assets is for
24 the Google page; full assets and some clips for
25 MySpace; and full assets and some clips for Yahoo!

1 That's what that tells me.

2 12:14 Q. And my question is, do you have any
3 insight into why the rules for YouTube and Google
4 Video were different than the rules for MySpace and
5 Yahoo! at the time?

6 12:14 A. No.

7 12:14 MS. COLEMAN-BISHOP: Objection. Calls for
8 speculation.

9 12:14 THE WITNESS: No, I do not.

10 12:14 MR. KRAMER: Q. Were you communicating
11 Viacom's takedown rules to YouTube at the time?

12 12:14 A. No.

13 12:14 Q. Why not?

14 12:14 A. We didn't communicate our practices to
15 anyone. To -- I mean inasmuch as I didn't tell
16 YouTube or MySpace or AT&T or Canada Net, I didn't
17 tell -- I and none of my staff would have
18 communicated any rules. We just sent the DMCA
19 notice.

20 12:15 Q. Were you under instructions not to reveal
21 Viacom's takedown rules to YouTube?

22 12:15 A. If it's in the -- if it's in my NDA or
23 work rules. I don't remember somebody giving me an
24 explicit instruction. I don't recall somebody
25 saying, don't tell, but --

1 12:15 Q. Do you think it would have helped YouTube
2 follow Viacom's wishes with respect to having its
3 content appear on YouTube --

4 12:15 MS. COLEMAN-BISHOP: Objection. Calls for
5 speculation. No matter where you go with the
6 question, it's going to call for speculation.

7 12:15 MR. KRAMER: Yeah, but you have to let me
8 get the question so the record's clear, and then
9 you can object. And if I think your objection --

10 12:16 MS. COLEMAN-BISHOP: Don't lecture me on
11 how to defend a --

12 12:16 MR. KRAMER: No, Counsel, it's not just
13 proper. It's just not proper. You have to let me
14 get the question out so we can make the record, and
15 then if you have an objection, you can make it. I
16 can decide whether I want to restate the question or
17 not. But if you object in the middle of the
18 question, we don't even know whether your objection
19 is going to be meritorious. So just wait until I
20 get the question out. That's all. Just courtesy.
21 Okay?

22 12:16 MR. KRAMER: Q. Do you think it would
23 have helped YouTube follow Viacom's wishes with
24 respect to having its content appear on YouTube if
25 Viacom had communicated these kinds of rules to

1 putting them together and creating a new -- a new
2 piece of art, a new whatever you want to call it,
3 putting a new voice stream over a clip for humor
4 sake. That's -- taking more than one piece of
5 original work and reworking it to come up with
6 something else.

7 1:11 And that's when I -- someone told me about
8 Andy Warhol. I mean I knew of the images. I just
9 didn't realize that was of consequence. He took
10 something everybody knew, an icon, and did something
11 to it and made it different. So Andy Warhol's
12 pictures, in my mind, were a mash-up.

13 1:11 What defines a clip? I don't know that I
14 ever got that answered. You know, let's go to the
15 clip. You know, in sports, I don't know. So I
16 don't know. It was -- it was struggling to
17 understand the process.

18 1:11 Q. So the next question on the list is one
19 about which I'd like to ask you. You asked
20 Mr. Ishikawa, "Is setting any time limit arbitrary?"
21 Sitting here today, do you believe that setting time
22 limits for the clips that should be taken down
23 versus the clips that should be left up was an
24 arbitrary process?

25 1:12 MS. COLEMAN-BISHOP: Object to form.

1 1:12 THE WITNESS: I don't have an opinion.

2 1:12 MR. KRAMER: Q. Okay. How about back

3 when you were a manager at BayTSP?

4 1:12 A. Same answer. I didn't have an opinion.

5 Did what I was told.

6 1:12 MR. COX: Same objection.

7 1:12 MR. KRAMER: Fair enough.

8 1:12 MS. COLEMAN-BISHOP: Can I ask a quick

9 question here?

10 1:12 MR. KRAMER: Sure.

11 1:12 MS. COLEMAN-BISHOP: Courtney, what

12 exactly is a mash-up? What is your understanding of

13 one?

14 1:12 THE WITNESS: Two or more pieces of

15 original work being put together to create a third.

16 1:12 MS. COLEMAN-BISHOP: Okay.

17 1:13 (Whereupon Exhibit No. 18 was marked for

18 identification.)

19 1:13 MR. KRAMER: Q. Okey doke. Exhibit 18

20 is an e-mail exchange between BayTSP and MTVN

21 representatives on which you were copied with the

22 subject line, Video Takedown 11/14/2006. And

23 contained within the e-mail exchange itself, there

24 is a report entitled MTV Network's Video Takedown

25 Update. That's at the bottom of the first page.

1 The title is on the bottom of the first page. Then
2 the report starts on page 2.

3 1:14 A. Yes.

4 1:14 Q. Let me ask you if you've seen reports like
5 this at BayTSP?

6 1:14 A. Yes.

7 1:14 Q. This is a report on the application of the
8 Viacom takedown effort through BayTSP on that day,
9 November 14th, 2006, right?

10 1:14 A. Yes.

11 1:14 Q. And in the chart at the top of page 2
12 there are the four services that we looked at
13 earlier: YouTube, MySpace, Yahoo! Video, and Google
14 Video, right?

15 1:14 A. Yes.

16 1:14 Q. So am I reading the chart correctly in
17 saying that it shows on that day BayTSP sent
18 takedown notices for 22 episodes and 36 clips on
19 YouTube?

20 1:14 A. Yes.

21 1:14 Q. Okay. In the next column it says, "Passed
22 on." Do you know what that means?

23 1:15 A. Means we determined what we saw didn't
24 fall within the rules that we had been given, too
25 long, too short, it wasn't the clip.

1 1:15 Q. So on that day, Bay found and sent
2 takedown notices to YouTube for 58 videos containing
3 what it thought was Viacom content?

4 1:15 A. Yes.

5 1:15 Q. And on that day, it also found and left
6 out or passed on 555 videos on the YouTube service,
7 right?

8 1:15 A. Of the ones they reviewed, yes.

9 1:15 Q. So 555 clips that were passed on because
10 they fell outside of Viacom's takedown rules, right?

11 1:15 MR. COX: Objection. Asked and answered.

12 1:15 THE WITNESS: Trying to make sure I
13 understand. I believe that is correct.

14 1:16 MR. KRAMER: Q. And the reason that
15 BayTSP left up on YouTube those 555 clips it found
16 was because Viacom directed BayTSP to leave them up,
17 right --

18 1:16 MR. COX: Objection. Calls for
19 speculation.

20 1:16 MR. KRAMER: Q. -- as part of its
21 instructions?

22 1:16 A. No, that would not be correct.

23 1:16 Q. Why is that not correct?

24 1:16 A. We were not given instructions, per se, of
25 what to leave up.

1 1:16 Q. Fair enough. The converse of an
2 instruction to take something down, however, is it
3 implicitly to leave it up, right?

4 1:16 A. Yes.

5 1:16 Q. Okay. In the next table down in the
6 document, there's a chart labeled P2P?

7 1:17 A. Yes.

8 1:17 Q. Can you explain what that shows?

9 1:17 A. Those were files that we found on those
10 three P2P networks: Gnutella, eDonkey and
11 BitTorrent.

12 1:17 Q. That you believed contained Viacom
13 content?

14 1:17 A. Yes.

15 1:17 Q. And so on that day, BayTSP representatives
16 identified 7,626 pieces of Viacom content on the
17 BitTorrent service, correct?

18 1:17 A. That's what this report would suggest.

19 1:17 Q. So Bay had found a far greater volume of
20 what it thought was Viacom content on P2P networks
21 that day than it had found on YouTube, right?

22 1:17 MR. COX: Object to the form.

23 1:18 THE WITNESS: It would be an inaccurate
24 comparison.

25 1:18 MR. KRAMER: Q. Hmm. Well, I suppose I

1 should ask you why that's an inaccurate comparison.

2 1:18 A. Why can't you make a Yugo go as fast as a
3 drag race rail car?

4 1:18 Q. I take it you're a fan of car racing. I'm
5 getting that sense.

6 1:18 A. It is not designed to do so. Why can't
7 you find bags of oranges that have counts of upwards
8 to 1,000 like you would if you bought a bag of
9 peanuts? It's apples and oranges. You can't make
10 that comparison.

11 1:18 The kind of things you can find on a P2P
12 network have a broader base, a global base, than you
13 would find on a particular video service regardless
14 of service. So --

15 1:19 Q. Can you elaborate on that?

16 1:19 A. There's no relationship between the number
17 we found or passed on a service -- on a single point
18 of source, MySpace server, than we would find on the
19 untold -- and I say that because I don't know -- the
20 untold number of BitTorrent servers that are out
21 there on the planet Earth. There's more
22 possibilities to find things on BitTorrent than you
23 would find on YouTube or MySpace or whatever just
24 because of the sheer number of source points.

25 1:19 Q. Okay. Let's -- let me come it at slightly

1 differently. In the chart beneath the P2P chart
2 there's a list by asset of Viacom content --

3 1:20 A. Mm-hmm.

4 1:20 Q. -- that rolls up into the 22 episodes, 36
5 clips and 556 clips passed on for the day, right?

6 1:20 A. Yes.

7 1:20 Q. And so on that given day Viacom
8 encountered 316 different pieces of content on the
9 YouTube service that appeared to contain content
10 from South Park, it took down one clip?

11 1:20 A. Yes.

12 1:20 Q. It took down one clip, and it passed on
13 315, correct?

14 1:20 A. Yes.

15 1:20 Q. So I'm reading that correctly. The counts
16 for the P2P services that appear in the chart above
17 the asset-by-asset breakdown --

18 1:20 A. Mm-hmm.

19 1:20 Q. -- those counts were for the same list of
20 assets that appear in the breakdown beneath it,
21 right?

22 1:20 MR. COX: Object to form, lacks
23 foundation.

24 1:21 THE WITNESS: I don't know in that -- the
25 start of this, I don't know if the P2P chart refers

1 to the assets below or the asset above, the European
2 Music Awards 2006 or to the asset list below. I
3 don't remember.

4 1:21 MR. KRAMER: Q. Take a look, if you
5 would, at the page that starts -- the page that ends
6 with the Bates No. BayTSP 522. See that's the topic
7 heading P2P Not Sent?

8 1:21 A. Excuse me. Yes.

9 1:21 Q. And there's a breakdown by asset which
10 matches the same assets in the --

11 1:21 A. Okay.

12 1:21 Q. -- prior YouTube chart, right?

13 1:21 A. Yes. Okay.

14 1:21 Q. So the totals in the P2P chart for each of
15 the three P2P services, Gnutella, eDonkey and
16 BitTorrent, those correspond to the specific list of
17 assets that BayTSP was charged with identifying for
18 YouTube as well, correct?

19 1:22 A. Yes.

20 1:22 MR. COX: Object to the form.

21 1:22 MR. KRAMER: Q. So am I reading the
22 chart correctly that on this day, November 14, 2006,
23 with respect to P2P services, BayTSP identified some
24 6500 pieces of content on P2P networks that it
25 believed contained content from Viacom's show South

1 1:30 MR. KRAMER: Q. So Exhibit 20 is an
2 e-mail exchange you had with a gentleman by the name
3 of Micah Schaffer at YouTube. Started at the bottom
4 with others on the chain at BayTSP, and Ms. Gillette
5 is a cc shown on the last in time e-mail dated
6 November 29, 2006. The subject line is Please Take
7 This Down Immediately.

8 1:30 A. Yes.

9 1:30 Q. Do you recognize this document?

10 1:31 A. Yeah.

11 1:31 Q. Okay. Your first message has a list of
12 URLs identifying clips on the YouTube service that
13 you wanted removed, right?

14 1:31 A. Yes.

15 1:31 MR. COX: Objection. Document speaks for
16 itself.

17 1:31 MR. KRAMER: Q. Do you remember that
18 these documents -- that these were full episodes of
19 the show South Park from a YouTube user with the
20 name South Park Studios?

21 1:31 A. Other than my e-mail says that, no.
22 There's nothing about a YouTube URL that gives you
23 any indication of what it is.

24 1:31 Q. Fair enough. Do you remember that there
25 was a user on the YouTube service with the user name

1 South Park Studios?

2 1:31 A. I don't have any specific memory of it,
3 but it would be a memory of one of hundreds of
4 accounts, so . . .

5 1:31 Q. You're aware that South Park Studios is
6 the name of a Viacom-related entity, right?

7 1:32 A. I don't know. I don't remember.

8 1:32 Q. Well, you -- you wrote in your message
9 that's the last in time at the top, "Under normal
10 circumstances, I would be cheering right now.
11 Please be prepared to reinstate that account" --

12 1:32 A. Mm-hmm.

13 1:32 Q. -- "if and when it's determined that South
14 Park Studios is actually an authorized activity of
15 Comedy Central." So you thought it was possible
16 that the clips that you were identifying had been
17 uploaded to YouTube by someone authorized to do it,
18 right?

19 1:32 A. Yes. That's the way I would read this.

20 1:32 Q. By the way, YouTube took down,
21 immediately, the clips that you sent to it --

22 1:32 A. Yes.

23 1:32 Q. -- right? Now, Ms. Nieman, couldn't you
24 tell from the user name South Park Studios that the
25 clips had been uploaded to YouTube by someone with

1 the authority to upload them?

2 1:33 MR. COX: Object to the form.

3 1:33 THE WITNESS: No. There's nothing about a
4 name that suggests anything about the owner.

5 1:33 MR. KRAMER: Q. Could you tell by
6 looking at the clips that they had not been uploaded
7 to YouTube by someone at Viacom with the authority
8 to do it?

9 1:33 A. No.

10 1:33 Q. Why not?

11 1:33 A. An episode of South Park is an episode of
12 South Park. There's nothing that makes it
13 identifiable -- the source of the clip identifiable
14 other than that there is a screen name attached to
15 it, a screen name which doesn't tell me anything
16 about the owner of the screen name. So, no, there's
17 no chain from clip to source. If the source comes
18 forward, we have taken down somebody -- taken down
19 somebody's content and they can prove they're the
20 owner, then across the board, it was BayTSP's policy
21 to send a retraction because that's what the DMCA
22 says to do.

23 1:34 Q. Well, if they were full episodes of South
24 Park though, Ms. Neiman, couldn't you tell that they
25 weren't authorized?

1 1:34 A. No.

2 1:34 Q. Why not?

3 1:34 A. There were no rules at the time for a time
4 limitation -- when I first became aware of YouTube,
5 MySpace, video sharing, videos were five minutes,
6 videos were an hour, videos were two hours. There
7 was no rule that said, okay, you can't put up just
8 part of it. And there was nothing there -- from the
9 videos that I watched, I don't recall ever seeing an
10 entire movie, hundred and two minutes in its
11 entirety. But I can think of a number of times,
12 including now, where you can see whole content on
13 YouTube.

14 1:35 I like watching the Glenn Beck show. It
15 is approximately a 38-minute, sucking out
16 commercials, and some people put it up in two parts.
17 Some people put it up in six parts. Some people put
18 it up in -- so the point is, nothing about the clip
19 identifies its source.

20 1:35 Q. Okay. But couldn't you tell if it was a
21 full episode of South Park, that it wasn't
22 authorized to be there?

23 1:35 A. No.

24 1:35 Q. The whole thing was there. Doesn't that
25 give it away?

1 1:35 MR. COX: Object to the form.

2 1:36 THE WITNESS: No.

3 1:36 MR. KRAMER: Q. Do you think it's likely
4 that someone with authority to do it at Viacom was
5 uploading full episodes of South Park to YouTube?

6 1:36 MS. COLEMAN-BISHOP: Objection. Asked and
7 answered, argumentative. She's already said no.
8 She's not able to identify whether or not any one of
9 these full episodes had any authority to be posted
10 or did not.

11 1:36 MR. KRAMER: Okay.

12 1:36 MS. COLEMAN-BISHOP: There's no way to
13 tell from a full episode whether or not the person
14 that uploaded it had authority. No matter how many
15 times you ask the question, you're going to get the
16 same answer. The answer's no.

17 1:36 THE WITNESS: I'm with her.

18 1:36 MR. KRAMER: Q. You agree with the
19 sentiment your attorney just expressed?

20 1:36 A. Yeah. There is no connection between what
21 you see in YouTube, the person who posted it, and
22 the person who produced it. There is no
23 identifiable link.

24 1:36 Q. Meaning there's no way to tell --

25 1:36 A. Correct.

1 1:36 Q. -- whether it's authorized?

2 1:36 A. Correct.

3 1:37 (Whereupon Exhibit No. 21 was marked for
4 identification.)

5 1:37 MS. COLEMAN-BISHOP: Can we go off the
6 record just one second?

7 1:37 MR. KRAMER: Sure. Off the record.

8 1:37 THE VIDEOGRAPHER: The time is 1:38. Off
9 the record.

10 1:37 (Whereupon a recess was taken.)

11 1:37 THE VIDEOGRAPHER: Time is 1:38. On the
12 record.

13 1:37 MR. KRAMER: Q. Okay.

14 1:37 A. Okay.

15 1:37 Q. Ms. Nieman, Exhibit 21 is a similar e-mail
16 exchange you had with someone named Misty at YouTube
17 the same day as Exhibit 20, right?

18 1:38 A. Yes.

19 1:38 Q. Your message starts with the same list of
20 clips on YouTube and the same requests, "Please take
21 this down immediately." Misty responds that she
22 removed the videos but she, too, thought that the
23 account might have been set up by Comedy Central.
24 Do you see that?

25 1:38 MR. COX: Object to the characterization

1 of the document.

2 1:38 THE WITNESS: I don't know what Misty was
3 thinking. As I read this, she had some belief that
4 they may have come from a valid source.

5 1:38 MR. KRAMER: Q. And you wrote, "Referring
6 to this account, South Park Studios, they are
7 associated with Comedy Central, but MTVN has the
8 exclusive rights"?

9 1:38 A. Yes.

10 1:38 Q. So you thought at that point that the user
11 South Park Studios was associated with Comedy
12 Central, right?

13 1:38 A. I believe our client informed us of that.

14 1:39 Q. Do you recall who specifically?

15 1:39 A. No, I do not.

16 1:39 Q. Can you turn back to Exhibit 8, which is
17 the work digest for Project 1 for MTV?

18 1:39 A. Got it.

19 1:39 Q. And if you could look at the second page
20 of Exhibit 8 --

21 1:39 A. Yes.

22 1:39 Q. Under where it says, "Description of
23 Activity," it says, "YouTube is no longer an active
24 protocol in Project 1 because of the implementation
25 of Project 2." Do you know what that means?

Schapiro Exhibit 270

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,)

vs.)

NO. 07-CV-2103)

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

Defendants.)

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

Plaintiffs,)

vs.)

NO. 07-CV-3582)

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

Defendants.)

-----)
VIDEOTAPED DEPOSITION OF ALFRED PERRY
NEW YORK, NEW YORK
DECEMBER 16TH, 2009

JOB NO. 18178

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VIDEOTAPED DEPOSITION OF ALFRED
PERRY, held at the offices of Mayer
Brown, 1675 Broadway, New York, New
York, pursuant to notice, before
Maureen Ratto, Registered Professional
Reporter and Notary Public of the State
of New York on December 16, 2009, at
10:08 a.m.

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

JENNER & BLOCK, LLP

BY: SCOTT B. WILKENS, ESQ.

1585 Broadway, New York, NY 10036

(202)639-6000

FOR THE DEFENDANTS:

MAYER BROWN, LLP

BY: JOHN MANCINI, ESQ.

CHRISTINE HERNANDEZ, ESQ

JASON KIRCHNER, ESQ.

1675 Broadway, New York, NY 10019

(212)506-2146

jmancini@mayerbrown.com

1 at this July meeting was that BayTSP
2 was never to issue a take down notice
3 without first contacting Ms. Powell
4 either personally in phone or in
5 13:27:25 writing?

6 A. No.

7 Q. Was that the directive at this
8 time of this meeting with BayTSP?

9 MR. WILKENS: Objection to the
10 13:27:38 form.

11 Q. Was what Ms. Powell states in
12 her e-mail of July 26th the directive
13 given to BayTSP with respect to take
14 downs from the YouTube service as of
15 13:27:50 that time?

16 A. I think what the way I read
17 this, the way I would have taken it at
18 the time of the discussion, was that
19 they should reach out to Amy and/or her
20 13:28:08 team to, yeah, so I'm not sure -- maybe
21 she writes now I can't know whether she
22 has somehow altered the direction. I
23 mean, I don't recall it being
24 specifically that Amy Powell herself
25 13:28:29 and no one on her team, including her

1 lawyer, could have -- give
2 authorization or not. So I don't
3 remember it that way.

4 Q. So leaving aside whether it was
5 13:28:41 to call her personally, if I understand
6 your testimony correctly, is it is
7 your recollection that Bay was to call
8 someone on the Paramount prior to
9 issuing a take down notice at
10 13:28:52 Paramount?

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

13 A. This isn't about Paramount
14 clips. I read all of this with an
15 13:29:01 overlay of anything that looks like it
16 could be a clip from Amy or her team,
17 which is exactly why you have the
18 incident here is because Bay,
19 incorrectly, as I said, reached a
20 13:29:18 determination that this didn't look
21 like something that came from Amy or
22 her team so therefore, it did not need
23 to reach out to Amy or her team. So Bay
24 understood that it was to reach out to
25 13:29:33 Amy, not for removal of any take down,

1 but if anything looked like it could be
2 hers, so they wanted to stay clear of
3 her content, her clips.

4 Q. How do you mesh that with her
5 13:29:48 statement in her e-mail to you where
6 she says "they were strictly informed
7 to never contact a third party without
8 an okay from me." She does not put any
9 type of qualifier in as you just have,
10 13:30:00 could she?

11 A. But you see Mr. Ishikawa did
12 because he acted, it didn't look like
13 it was yours, I didn't have a copy of
14 it saying it was yours, it looked like
15 13:30:12 it was prerelease content, okay,
16 unauthorized content and that's what
17 we're that the business of doing is
18 taking down you know authorize the
19 content. This didn't look like it was
20 13:30:23 something put up by her so he did not
21 put in the call.

22 Q. So, taking your definition, was
23 there any definition -- I'll rephrase.

24 Taking your recollection, was
25 13:30:47 there any definition given to BayTSP as

1 to using your terminology now, what
2 looked like it could have come from
3 Amy's department?

4 A. It seems that the other crucial
5 13:31:08 point here is provision of a trailer.

6 Q. I see. So let me rephrase. I
7 accept that you did say that. Let me
8 rephrase.

9 Is it your recollection that the
10 13:31:20 directives given to BayTSP on or about
11 July of 2006 was that if they had been
12 provided with a trailer and if it
13 "looked like it came from Amy's
14 department", then they need to do call
15 13:31:44 Paramount prior to issuing a take down?

16 A. I didn't recall the take away,
17 deliverable of this, that is what
18 appears to be the case as I sit here
19 today trying to recollect it with this
20 13:32:01 document in front of me and what --
21 what needed to be done.

22 Q. And again, you recall giving any
23 or Ms. Powell giving any further
24 explication as to how Mr. Ishikawa
25 13:32:18 could determine how "what looked like

Schapiro Exhibit 271

UNITED STATES DISTRICT COURT
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

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF MEGAN WAHTERA
SAN FRANCISCO, CALIFORNIA
FRIDAY, DECEMBER 4, 2009

JOB NO. 18262

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MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

DECEMBER 4, 2009

10:27 A.M.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF MEGAN
WAHTERA, at WILSON SONSINI GOODRICH & ROSATI, 1 Market
Plaza, San Francisco, California, pursuant to notice,
before me, KATHERINE E. LAUSTER, CLR, CRR, RPR, CSR
License No. 1894.

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MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

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

FOR THE PLAINTIFFS, VIACOM INTERNATIONAL, INC., and
the WITNESS:

JENNER & BLOCK, LLP
By: SCOTT B. WILKENS, ESQ.
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
T.202.639.6000
F.202.661.4832
swilkens@jenner.com

and

PARAMOUNT PICTURES MOTION PICTURE GROUP
INTERACTIVE MARKETING
By: PAUL KOENIG, ESQ.
5555 Melrose Avenue
Hollywood, California 90038-3197
T.323.956.5882
F.323.862.2875
paul_koenig@paramount.com

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

WILSON, SONSINI, GOODRICH & ROSATI
By: MICHAEL H. RUBIN, ESQ.
CAROLINE WILSON, ESQ.
650 Page Mill Road
Palo Alto, California 94304-1050
T.650.493.9300
F.650.493.6811
mrubin@wsgr.com
cwilson@wsgr.com

Also Present: JOSEPH SKORMAN, Videographer

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 11:06:57 MR. RUBIN: Scott, I'm not yelling.

3 11:06:57 MR. WILKENS: You are yelling, Michael.

4 11:06:58 MR. RUBIN: No, I'm not. I'm being --

5 11:06:58 MR. WILKENS: You better calm down.

6 11:06:58 MR. RUBIN: I'm simply being clear.

7 11:06:59 MR. WILKENS: Well, you're going to

8 11:06:59 have -- you're yelling, and I think it's

9 11:06:59 inappropriate.

10 11:07:04 MR. RUBIN: No, I'm not, Scott. I'm

11 11:07:05 trying to be clear. I don't want you coaching the

12 11:07:07 witness anymore.

13 11:07:08 MR. WILKENS: I am not coaching the

14 11:07:09 witness.

15 11:07:10 MR. RUBIN: Scott, you are plainly

16 11:07:12 coaching the witness.

17 11:07:13 MR. WILKENS: That's untrue. That's

18 11:07:13 incorrect.

19 11:07:14 BY MR. RUBIN:

20 11:07:16 Q. Ms. Wahtera --

21 11:07:17 A. Uh-huh.

22 11:07:18 Q. -- my question isn't whether or not you

23 11:07:19 believe you had a long-standing --

24 11:07:20 A. Uh-huh.

25 11:07:21 Q. -- relationship with YouTube --

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 11:07:22 A. Uh-huh.

3 11:07:22 Q. -- or whether you believe you made certain

4 11:07:25 calls to YouTube.

5 11:07:25 A. Okay.

6 11:07:26 Q. My question is -- is whether, given what

7 11:07:27 you testified to about there being certain

8 11:07:31 internal --

9 11:07:32 A. Uh-huh.

10 11:07:32 Q. -- Paramount procedures that needed to be

11 11:07:36 followed to determine whether a clip was approved or

12 11:07:39 not --

13 11:07:39 A. Uh-huh.

14 11:07:40 Q. -- how it is that YouTube would be able to

15 11:07:42 determine whether or not any given clip --

16 11:07:46 A. Uh-huh.

17 11:07:46 Q. -- of a piece of Paramount content had

18 11:07:48 gone through those procedures or not to be approved?

19 11:07:52 MR. WILKENS: Objection to the form, calls

20 11:07:54 for speculation, asked and answered.

21 11:07:55 THE WITNESS: I don't know how YouTube

22 11:07:57 goes about finding that out. I truly don't.

23 11:08:00 BY MR. RUBIN:

24 11:08:00 Q. I'm asking you how they could go about

25 11:08:04 doing it, if they don't have those procedures in

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
2 11:08:07 their hands.
3 11:08:08 MR. WILKENS: Same objections.
4 11:08:08 THE WITNESS: I don't know. I could tell
5 11:08:10 you what I would do, but I don't know what YouTube
6 11:08:12 could do.
7 11:08:13 BY MR. RUBIN:
8 11:08:13 Q. But you have those procedures at your --
9 11:08:15 at your fingertips; right?
10 11:08:16 A. I do.
11 11:08:17 Q. Does YouTube?
12 11:08:17 MR. WILKENS: Objection to the form.
13 11:08:18 THE WITNESS: I don't know.
14 11:08:19 BY MR. RUBIN:
15 11:08:19 Q. Did you ever provide them to YouTube?
16 11:08:21 A. Provide what to YouTube?
17 11:08:22 Q. The set of guidelines and procedures that
18 11:08:25 you use to determine whether or not a clip is
19 11:08:27 approved or not.
20 11:08:28 A. I don't know.
21 11:08:28 Q. Did you personally ever provide those
22 11:08:30 guidelines to YouTube?
23 11:08:31 A. I don't know.
24 11:08:32 Q. You can't recall whether you did, one way
25 11:08:33 or the other?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 11:08:34 A. No.

3 11:08:35 MR. WILKENS: Objection to the form.

4 11:08:35 THE WITNESS: Okay. Like if I sat down

5 11:08:37 with YouTube and said, "Usually we clear and assess,

6 11:08:40 and we" -- I don't know.

7 11:08:43 BY MR. RUBIN:

8 11:08:43 Q. You don't know whether you did that or

9 11:08:45 not?

10 11:08:45 A. Uh-huh, correct.

11 11:08:51 Q. Is the decision whether or not to approve

12 11:08:54 content black and white?

13 11:08:55 A. No.

14 11:08:56 Q. Does it vary, based on each film?

15 11:08:58 A. Absolutely.

16 11:08:59 Q. What other factors are at play in making

17 11:09:02 the decision of whether or not to approve content?

18 11:09:05 A. There's different factors for each film,

19 11:09:07 but it's highly thought about, you know, if it's

20 11:09:11 a -- there are some scenes that play well in the

21 11:09:15 movie, but don't play well out of context.

22 11:09:18 There are some actors and talent that are

23 11:09:22 popular -- more popular than others, with different

24 11:09:26 audience segments.

25 11:09:27 Some clips play well on certain sites,

Schapiro Exhibit 272

MTVN | Digital Music
Project Foxhunt

- **Current MTVN digital music strategy**
- **The Foxhunt strategy / rationale**
- **Foxhunt options**
- **Foxhunt process**

Why are we getting into digital music?

- **Brand:** Music is at the core DNA of our brands and digital will increasingly become a pervasive medium for music; our audience expects us to be there
- **Labels / Artists:** Embracing digital music supports our label / artist constituencies
- **Financial:** Digital music services generate new transactional revenue streams
- **Advertisers / Affiliates:** Digital music provides opportunities to grow our relationships with key Ad Sales and Affiliate partners
- **Competitors:** Our competitors are launching services and there will be high switching costs for users that we lose to them
- **Strategic:** Digital music is one piece of a larger MTVN digital media strategy in which we aim to grow our brands, capabilities, and relevance in the interactive space

JASON

- 25 million monthly Kazaa users, but down >20% annually
- EMI reported that their digital music sales tripled in Q2-Q3 of 2003
- Apple has sold more than 30 million tracks since April, as of Jan 6; pacing around 80M annualized (and over 2 million ipods)
- Napster sold 300K downloads in first week (16M annualized)
- Online subscription users (no more than 500-600K max)
 - Rhapsody ~250K
 - Musicmatch ~160K
 - Musicnet ~150K
 - Napster

Partnership Approach	Product Offering	Differentiation
<ul style="list-style-type: none"> • Work with a team of external B2B strategic partners to integrate best in class product components, without full development / investment • Allows MTVN to set and control our strategy: • Package the services with our brands • Own the customer relationship • Have the ability to customize the user experience for our audience • Control the content programming • Have the flexibility to redistribute / co-brand the service freely 	<ul style="list-style-type: none"> • A la carte downloads • Programmed and personalized streaming radio • On-demand, unlimited music subscription service • Integrated music - player software client with full collection - management capabilities, CD playback, ripping / burning, and portable player interface / transfer 	<ul style="list-style-type: none"> • Meaningful brands • Programming / editorial voice • Exclusive content • Integrated promotion • Consumer focus and understanding

JASON

- 25 million monthly Kazaa users, but down >20% annually
- EMI reported that their digital music sales tripled in Q2-Q3 of 2003
- Apple has sold more than 30 million tracks since April, as of Jan 6; pacing around 80M annualized (and over 2 million ipods)
- Napster sold 300K downloads in first week (16M annualized)
- Online subscription users (no more than 500-600K max)
 - Rhapsody ~250K
 - Musicmatch ~160K
 - Musicnet ~150K
 - Napster

- Pursue a digital music acquisition in order to:
 - Increase overall speed to market
 - Leapfrog competitors from a technology and feature set point of view
 - Capture immediate ad sales and affiliate distribution opportunities
 - Leverage end of year music release schedule
 - Acquire technology, infrastructure, and expertise that can be leveraged across MTVN and Viacom for digital entertainment delivery
 - Free up internal resources to focus on core competencies and other strategic growth initiatives

Company	Key Issues
iTunes	<ul style="list-style-type: none"> • Core growth driver for Apple, closely linked to Apple brand; unlikely to divest
Musicmatch	<ul style="list-style-type: none"> • Product is advanced, but seemingly built on legacy elements • May have already been purchased by another acquirer
MusicNet	<ul style="list-style-type: none"> • Primarily B2B backend; missing key product elements • Business currently supports multiple MTVN competitors
Real Networks	<ul style="list-style-type: none"> • Part of much larger Real Networks entity including non-competitive technology business and potentially conflicting content aggregation business • Potential need to rebuild significant elements of product infrastructure
MusicNow	<ul style="list-style-type: none"> • Recently purchased by Circuit City
Buymusic	<ul style="list-style-type: none"> • Relatively inferior product; missing key product elements
Loudeye	<ul style="list-style-type: none"> • Primarily B2B backend; missing key product elements
Liquid Digital	<ul style="list-style-type: none"> • Primarily B2B backend; missing key product elements
OD2	<ul style="list-style-type: none"> • Primarily competes in Europe; may lack US rights • Worthwhile exploring potential to transplant product to US
Napster	<ul style="list-style-type: none"> • Similar product strategy to MTVN vision • Extensive product infrastructure currently exists and deployed

- Napster's parent, Roxio, is a 500-person company based in LA, that encompasses two businesses:
 - Software:
 - Leading provider of CD authoring and DVD creation tools under the Roxio brand
 - Business has declined sharply, but currently stabilizing
 - Digital music:
 - Nov 2002: Purchased Napster's brand and IP out of bankruptcy for \$6.1M
 - May 2003: Acquired Pressplay, an online music joint venture between Sony Music Entertainment and Universal Music Group
 - Oct 2003: Launched Napster 2.0, a legal, pay service for online music
 - Approximately 100-200K subscribers in the US; launched in the UK in May 2004
 - Business in early stages of development; currently unprofitable

- Based on current information, Napster appears to be best positioned acquisition target for our strategy:
 - Most advanced product offering, with extremely consistent product strategy
 - All key product components under unified control
 - Service already includes many product extensions on our roadmap (device support, Windows Media Player plug-in, Media Center Edition / Portable Media Center versions)
 - Infrastructure built around most open standard, Microsoft
 - Product likely to be most easily and quickly deployed with our brands
 - Extensive distribution deals that might be leveraged
 - Strong brand as potential asset to utilize
 - Roxio is open to various corporate development options

- ✓ Initial exploratory discussions and NDA process
- Pursue due diligence: financial, legal, technology / product, staff
- Evaluate potential deal alternatives
- Develop potential deal structure options
- Develop integration strategy options
- Research brand implications / options and develop branding strategy
- Develop valuation parameters
- Negotiate and structure potential deal
- Integration process

Potential Foxhunt Deal Structure Options

	Ownership	Corporate Structure	Board Control	Operational Control	Creative Control	Branding
Option 1						
Option 2						

- TBD

- TBD