

# Schapiro Exhibit 289

Show Is Electronics, =ut It&#39;s Disney, CBS That Get Star Billing

Investors Business Daily, and 1 other source &ndash; =1/05/2007, 17:44 pm

BY PATRICK SEITZ INVESTOR&#39;S BUSINESS DAILY Posted 1/5/2007 Forget about=cool features and sleek designs. The key to success for many new consumer =lectronics devices has more to do with access to music and video content t= play on those gadgets.

CBS has been providing content for video sites on Google, (GOOG) Google =ow=ed YouTube, Yahoo, (YHOO) Amazon (AMZN) and Microsoft&#39;s (MSFT) =box ...

Words matched: YouTube

Barney Frank accuses Bush =f &#39;ethnic cleansing&#39;

World Net Daily &ndash; 01/05/2007, 17:31 pm

By Art Moore © 2007 WorldNetDaily.com Rep. Barney Frank, D-Mass., on N=C&#39;s &#39;Meet the Press&#39; In a private session videotaped yesterday=on Capitol Hill, Rep.

...is intentional. Frank said, according to an amateur video clip posted on=YouTube, "What they recognize is they&#39;re in this happy pos=ition for...

Words matched: YouTube

#7: Movies shift to V=D

BoxOfficeProphets &ndash; 01/05/2007, 17:30 pm

September 12, 2006 was a landmark date for the film industry. After years o= rumors and speculation, iTunes finally added movie downloads to their onl=ne catalogue.

...from unknown to Google acquisition in a calendar year. The Web site , , has the simple logo of &#39;broadcast yourself&#39;; however,=studios discovered...

Words matched: YouTube

Films: What&#39;s new=for 2007

CNHI News Service &ndash; 01/05/2007, 17:13 pm

January 05, 2007 10:43 am Photos Scott Meeker THE JOPLIN GLOBE (JOPLIN, Mo.= Films: What&#39;s new for 2007 Entertainment column By Scott Meeker Thing= to look forward to at the movies in 2007: A huge crop of sequels (many of=which are difficult to imagine being very good, but I still want to see) i=cluding: "Live Free or Die Hard," "28 Weeks Later," &q=ot;Spider-Man 3," "Ocean&#39;s 13," "The Bourne Ultima=um," "Shrek the Third," "Harry Potter and the Order of=the Phoenix," "Rush Hour 3," "Evan Almighty,"

...Tarantino. If you haven&#39;t seen the trailer yet, head over to YouT=be . Any movie featuring an amputee who has a machine gun attached to =here her...

Words matched: YouTube

YouTube Defends Attem=ts To Remove Brazilian Supermodel Sex Video

Information Week &ndash; 01/05/2007, 17:07 pm

YouTube Defends Attempts To Remove Brazilian Supermodel Sex Video A =razilian court ordered YouTube shut down until it removes the video=of supermodel Daniela Cicarelli cavorting amorously with her boyfriend.

YouTube Defends Attempts To Remove Brazilian Supermodel Sex Video Defends Attempts To Remove Brazilian Supermodel Sex Video A B=azilian ...

Words matched: YouTube

Google is The Top Bra=d of 2006

WebProNews &ndash; 01/05/2007, 17:06 pm

Google Is The Top Brand Of 2006 Joe LewisStaff Writer Published: 2007-01-05=Landor Associates, a New York based design agency, conducted a survey of t=e most popular brands among consumers.

...complete top 10 list is as follows: Google Las Vegas iPod YouTube=eBay Yahoo! Target Oprah Winfrey Sony NFL The Landor Associates brand surv=y...

Words matched: YouTube

ROH NEWSWIRE: WINDY C=TY DEATH MATCH, NYC, UPDATED NEW JERSEY RETURN LINEUP &#amp; MORE

Pro Wrestling Insider &ndash; 01/05/2007, 16:58 pm

ROH NEWSWIRE: WINDY CITY DEATH MATCH, NYC, UPDATED NEW JERSEY RETURN LINEUP=& MORE by ROH Wrestling @ 8:57:00 AM on 1/5/2007 January 5th: The firs= match has been announced for

ROH's return to Chicago and debut at the Windy City Fieldhouse on February 24th.  
...now make sure to watch all the ROH Video Wires for FREE at and on YouTube. Watch them in order and they will play like a TV show. January 5th :  
Words matched: Youtube

Model behavior?

USA Today &ndash; 01/05/2007, 16:56 pm  
Model behavior? Uh oh -- nakey people on YouTube, gonna get closed down. That's the thinking from Brazil, anyway, where a judge has that because the site can't seem to get rid of a particular video (of a model and her beau behaving badly), the U.  
Model behavior? Model behavior? Uh oh -- nakey people on YouTube, gonna get closed down. That's the thinking from Brazil, anyway, where a judge ...  
Words matched: YouTube

Interpublic Shuts Down Consumer-Experience Practice

Advertising Age &ndash; 01/05/2007, 16:56 pm  
January 05, 2007 Login | Register Now By Brooke Capps Published: January 05= 2007 Video Interview With Saatchi & Saatchi CEO Kevin Roberts The Industry in Data Charts MORE How the YouTube Effect is Impacting Small Agency Clients And Seven Other Commercials of Note Find out how the winners made mobile deliver ROI.  
...CEO Kevin Roberts The Industry in Data Charts MORE How the YouTube Effect is Impacting Small Agency Clients And Seven Other Commercials of Note...  
Words matched: YouTube

Google invests in Chinese video site

Chicago Tribune &ndash; 01/05/2007, 16:41 pm  
Google invests in Chinese video site By Janet Ong and John Liu Bloomberg Published January 5, 2007, 3:51 PM CST Google Inc., owner of the world's most-used Internet search site, invested in a Chinese company that helps users download online videos and software to take market share from local competitor Baidu.  
...that may be the world's biggest in two years. The U.S. company bought YouTube Inc. for \$1.65 billion in November. &#39;&#39;Xunlei is Google's YouTube ...  
Words matched: YouTube

PRIMEVAL pics/TV spot=, RED & SEVERANCE clips

Fangoria &ndash; 01/05/2007, 16:41 pm  
January 5: With no time to lose as PRIMEVAL heads for its last-minute January 12 release date, Hollywood Pictures has released a few more photos (see the others below) from the killer-crocodile adventure that haven't yet been posted at the movie's official website.  
...that he has posted two clips from his new feature RETURN IN RED at YouTube; you can see the trailer here and a sneak peek here. RETURN take= ...  
Words matched: YouTube

YouTube blocks clip in Brazil

USA Today &ndash; 01/05/2007, 16:36 pm  
SAO PAULO, Brazil - A Brazilian judge has ordered YouTube to find a way to stop Brazilians from viewing steamy footage of supermodel Daniela Cicarelli and her boyfriend on the highly trafficked video-sharing site, court officials said Thursday.  
YouTube blocks clip in Brazil SAO PAULO, Brazil - A Brazilian judge has ordered YouTube to find a way to stop Brazilians from viewing steamy ...  
Words matched: YouTube

What about Targeting Video Ads?

Searchenginewatch &ndash; 01/05/2007, 16:31 pm  
What about Targeting Video Ads? According to , "Analysts and agency executives envision a new ad system that would use sophisticated targeting techniques to create ad messages users will want to watch.  
...ads to video content. That's viable in the new world of YouTube and Google. Advertisers could buy video ads based on keywords. Then their ads...  
Words matched: YouTube

Looking back: From immigration marches to school shootings, events in 2006 had a big impact on kids  
News Sentinel &ndash; 01/05/2007, 16:25 pm

Looking back: From immigration marches to school shootings, events in 2006 had a big impact on kids By  
Emilie Le Beau Chicago Tribune (MCT) Major events grabbed our attention on a regular basis in 2006.  
Sept. 12: The real identity of lonelygirl15 is revealed. Since June, YouTube.com viewers watched ongoing video  
clips of "Bree," a 15-year-old teenager ...  
Words matched: YouTube

The Internet succeeds because it is a screaming meritocracy

News Sentinel &ndash; 01/05/2007, 16:25 pm

The Internet succeeds because it is a screaming meritocracy. People with a smart idea can hatch companies in  
their garages and watch them go nationwide.

...companies can buy into the fast lane and others are stuck in second gear. Would YouTube have burst out of  
nowhere if, as a start-up, it had no...

Words matched: YouTube

That was the year that was: A review in rhyme

Gazette.net &ndash; 01/05/2007, 16:23 pm

That was the year that was: A review in rhyme Wednesday, Jan. 3, 2007 Generalizations Jen Chaney Good of  
2006 is behind us Now we're smack in 07 We look ahead at a new year, one we hope will go to 11.

...boob. Miss a minute of her antics? No prob. Just go catch them on YouTube. In sports, George Mason  
shocked the world and won a trip to the final...

Words matched: youtube

Google Is The Top Brand Of 2006

Webpro News &ndash; 01/05/2007, 16:22 pm

Landor Associates, a New York based design agency, conducted a survey of the most popular brands among  
consumers. Among the top vote getters were Las Vegas, Oprah Winfrey, and the NFL.

...complete top 10 list is as follows: Google Las Vegas iPod YouTube eBay Yahoo! Target Oprah Winfrey Sony  
NFL The Landor Associates brand survey...

Words matched: YouTube

Well, that was predictable

Medford Transcript &ndash; 01/05/2007, 15:54 pm

Well, that was predictable By Peter Chianca/At Large Tuesday, January 02, 2007 - Updated: 04:59 PM EST Its  
time once again for me to look back on my predictions from 12 months ago, in order to see whether my keen  
journalistic insight served me well in prognosticating the major events for the coming year, or if I was, as usual,  
talking out of an opening not typically equipped for human speech.

...and Jill fail to translate well from the Japanese. Google will buy YouTube, the new Web site where people can  
upload videos of their laughs ...

Words matched: YouTube

DePalma Returns to War Atrocities with Redacted

Cinematical &ndash; 01/05/2007, 15:49 pm

It's been many years since the cherubous 1980s Michael J. Fox co-starred with Sean Penn in Brian  
DePalma's Casualties of War. Dealing with the atrocious realities of the Vietnam War, the film detailed the  
true story of a girl taken from her village by American troops and kept as a sex slave until she's killed to  
cover the soldiers' tracks.

the movie will employ news broadcasts, trial coverage and also internet video from YouTube and, believe it or  
not, one of the soldiers' video ...

Words matched: YouTube

The L Word

Miami Herald &ndash; 01/05/2007, 15:42 pm

Once upon a time, there was Bette and Tina. And they were in love. They lived a sexy lesbian fairy tale in West  
Hollywood, surrounded by sexy art, sex-friendly Mid Century furniture and sexy lesbian friends.

added telling songs, and posted their own Bette and Tina videos on YouTube and other websites. TiBettors, the

# **Schapiro Exhibit 290**

To: "deun@google.com" <deun@google.com>, "Susan Wojcicki" <susan@google.com>, "Salar Kamangar" <salar@google.com>, [REDACTED], "Campbell, Bill" <bill\_campbell@intuit.com>  
From: [REDACTED]  
Cc:  
Bcc:  
Received Date: 2006-10-08 18:58:10 CST  
Subject: from Fox

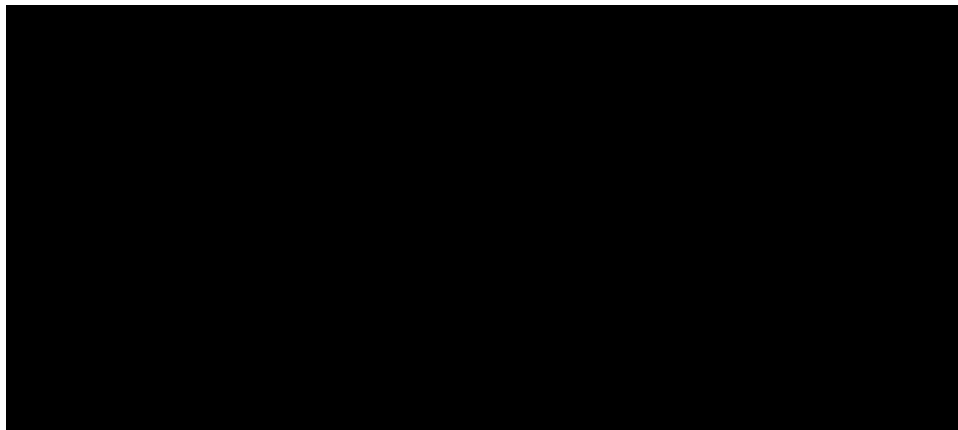
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This is FYI

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From: Ross Levinsohn [REDACTED]  
Sent: Sunday, October 08, 2006 10:19 AM  
To: Eric Schmidt  
Subject:  
Importance: High

Hi Eric. First, i wanted to thank you for including us in Zeitgeist this week. It was an amazing event, and incredibly valuable. I'm sorry we didn't have a chance to spend much time, but i realize how busy you all were. I am looking forward to spending time with you at some time in the near future.



We are very excited about all the things we can do with Google, and our relationship with your team has been outstanding. I hope we can keep that momentum going.

Regards,

Ross

Ross Levinsohn  
President

FOX Interactive Media  
407 N. Maple Drive  
Beverly Hills, Ca 90210

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# **Schapiro Exhibit 291**



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. )

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. )

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

Defendants. )  
----- )

VIDEOTAPED DEPOSITION OF WENDY CHANG  
SAN FRANCISCO, CALIFORNIA  
FRIDAY, JULY 11, 2008

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR  
CSR LICENSE NO. 9830  
JOB NO. 15371

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JULY 11, 2008

10:03 a.m.

VIDEOTAPED DEPOSITION OF WENDY CHANG,  
held at the offices of SHEARMAN & STERLING,  
525 Market Street, San Francisco, California,  
pursuant to notice, before ANDREA M. IGNACIO  
HOWARD, CLR, RPR, CSR License No. 9830.

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

FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC. :

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By: KIRSTEN NELSON CUNHA, Esq.

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New York, New York 10022-6069

(212) 848-4000 kirsten.cunha@shearman.com

FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS :

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(212) 554-1533 davidh@blbglaw.com

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

WILSON SONSINI GOODRICH & ROSATI

By: MAURA L. REES, Esq.

650 Page Mill Road

Palo Alto, California 94304-1050

(650) 493-9300 mress@wsgr.com

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

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(212) 506-2146 bwillen@mayorbrown.com

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By: ADAM L. BAREA, Esq.

1600 Amphitheatre Parkway

Mountain View, California 94043

(650) 214-4879 adambarea@google.com

ALSO PRESENT: Lou Meadows, Videographer

---oOo---

1 12:33:44 MS. CUNHA: Q. Does it play any role in how  
2 12:33:49 much revenue is generated --  
3 12:33:53 MS. REES: Object to the form of the  
4 12:33:54 question.  
5 12:33:55 MS. CUNHA: Q. -- at Google Video?  
6 12:33:58 A At Google Video we had a download-to-own  
7 12:34:01 model, so it would have been the number of purchases.  
8 12:34:05 A particular user could have played a piece of content  
9 12:34:08 many times, but they still have only purchased it  
10 12:34:11 once.  
11 12:34:11 So I would not say for Google Video it was  
12 12:34:13 necessarily the most important measure.  
13 12:34:18 Q How about at YouTube?  
14 12:34:24 A I'm sorry. Can you --  
15 12:34:25 Q Sure.  
16 12:34:26 At -- at YouTube --  
17 12:34:31 A Yes.  
18 12:34:31 Q -- the number of video plays, I believe, is  
19 12:34:35 that how you described it? I have to go back up.  
20 12:34:39 Can I go up in here?  
21 12:35:00 THE REPORTER: Yes. Stop it and go up.  
22 12:35:01 MS. CUNHA: Okay.  
23 12:35:02 Q So at YouTube --  
24 12:35:04 A Yes.  
25 12:35:06 Q -- YouTube also tracks video playbacks;

1 12:35:10 correct?

2 12:35:11 A We do track video playbacks.

3 12:35:14 Q And that's an important metric at YouTube;

4 12:35:16 correct?

5 12:35:17 A Yes.

6 12:35:17 Q And does that metric have any role with

7 12:35:20 respect to the revenue that's generated at YouTube?

8 12:35:24 MS. REES: Object to the form of the

9 12:35:25 question.

10 12:35:26 THE WITNESS: Currently?

11 12:35:26 MS. CUNHA: Q. Correct.

12 12:35:28 A At YouTube, we monetize or we make -- we

13 12:35:33 generate revenues through not just playback pages but

14 12:35:38 also other page views.

15 12:35:40 MS. CUNHA: Q. And are some page views --

16 12:35:45 strike that.

17 12:35:45 Do some page views generate a higher

18 12:35:51 monetization value than others?

19 12:35:53 MS. REES: Object to the form of the

20 12:35:55 question.

21 12:35:55 THE WITNESS: So for pages or, excuse me, for

22 12:35:59 playbacks that are authorized, we will serve

23 12:36:04 advertising against it. For playbacks that are

24 12:36:10 unauthorized or that we do not know whether or not

25 12:36:14 they're authorized to be on the site, we do not put

1 12:36:18 any ads against it, so we do not generate revenue.

2 12:36:21 MS. CUNHA: Q. And for the videos against

3 12:36:25 which YouTube places ads --

4 12:36:28 A Okay.

5 12:36:28 Q -- are there different amounts of revenues --

6 12:36:35 strike that.

7 12:36:35 Are there different prices for those ads?

8 12:36:39 A In the current?

9 12:36:41 Q Correct.

10 12:36:41 A So in our current rate card, we charge a

11 12:36:53 certain rate for the banner or in video ad in which

12 12:37:01 the direct sales team sells. It is a set rate card

13 12:37:06 regardless of who the -- what the video is, and

14 12:37:12 whatever the direct sales team is unable to sell

15 12:37:17 against, we backfill with what we call remnant, which

16 12:37:22 is essentially using our AdSense network.

17 12:37:27 Q So currently there's a set rate card that

18 12:37:30 does not vary among -- by the video that's played

19 12:37:33 against the ad; is that correct?

20 12:37:36 A It's one rate card regardless of what video.

21 12:37:39 Q And that's regardless of whether it's a

22 12:37:43 premium content partner video or whether it's a torso

23 12:37:47 partner video; correct?

24 12:37:48 A Regardless of what type of content, who the

25 12:37:52 partner is, we have one rate card. The exception

1 12:37:57 would be we do allow certain partners to directly sell  
2 12:38:01 against their content, in which case it's up to them  
3 12:38:06 to establish what price they want to charge their  
4 12:38:09 advertiser, but Google does not charge different  
5 12:38:13 rates.

6 12:38:14 Q Has that always been the case?

7 12:38:16 A I cannot comment on what happened prior to  
8 12:38:22 the Google acquisition.

9 12:38:23 Q Okay. Since the Google acquisition, has that  
10 12:38:25 always been the case?

11 12:38:28 A I actually do not know, but at least in  
12 12:38:38 recent cases, from what I can remember, we have been  
13 12:38:43 charging the same rate card.

14 12:39:37 Q Take a look at Exhibit 14.

15 12:39:39 A Oh, sorry.

16 12:39:43 Q And the slide that's stamped 496185.

17 12:39:49 A Excuse me.

18 12:39:51 Q Do you recall seeing that slide before?

19 12:40:07 A I do not recall.

20 12:40:08 Q Do you know who the Dave and the Jennifer are  
21 12:40:11 who are referred to at the top?

22 12:40:13 A I'm guessing, given this e-mail, it was  
23 12:40:16 probably David Eun and Jennifer Feikin.

24 12:40:20 Q And do you see at the top it says "Maintain  
25 12:40:24 relationships with premium content owners," the first



1 12:54:23 are there different rates on that rate card?

2 12:54:26 A There are different ad formats on YouTube,  
3 12:54:29 and so different ad formats are able to -- we're able  
4 12:54:34 to charge a different rate for different formats.

5 12:54:37 Q But that depends on the format of the ad  
6 12:54:40 rather than the video that it's played against?

7 12:54:46 A So for different ad formats, whether it's,  
8 12:54:50 you know, a big one or little one, which page it shows  
9 12:54:54 up on, or whether it's an in video ad, then there are  
10 12:55:01 different rates.

11 12:55:02 Q But that's a different rate for a type of ad.  
12 12:55:04 It's not a different rate for the video that it's  
13 12:55:07 played against; correct?

14 12:55:10 A That is correct. Assuming it is a  
15 12:55:14 Google-sold ad, we do not charge different rates based  
16 12:55:17 off of the underlying content.

17 12:55:19 Q Okay. Take a look, if you would, at the  
18 12:55:33 slide 23 stamped 791592.

19 12:55:40 A Could you restate the number again?

20 12:55:43 Q Yeah. It's 791592.

21 12:55:46 A Okay.

22 12:55:47 Q You see the third bullet point at the end  
23 12:55:52 says "Avoid unreliable content sites such as YouTube"?  
24 12:55:57 Do you see that?

25 12:55:58 A I do.

1 12:55:58 Q Did you ever hear of YouTube referred to as  
2 12:56:01 an unreliable content site while you were at Google  
3 12:56:04 Video?

4 12:56:04 MS. REES: Object to the form of the  
5 12:56:06 question.

6 12:56:06 THE WITNESS: I do not recall.

7 12:56:07 MS. CUNHA: Q. Take a look at slide 25,  
8 12:56:10 which is 791594, and you see at the top it says "We  
9 12:56:19 may be able to coax or force access to viral premium  
10 12:56:24 content"? Do you see that?

11 12:56:25 A Yes.

12 12:56:25 Q Do you know what that means?

13 12:56:28 A No, I do not. I do not recall this slide.

14 12:56:30 Q Have you ever seen this slide before?

15 12:56:32 A No, I don't remember ever seeing this slide.

16 12:56:34 Q Do you see the fourth bullet point says  
17 12:56:38 "Include in partnership terms the content owners will  
18 12:56:41 do at least one of the following," and the first  
19 12:56:43 bullet point says "Clamp down on copyright infringers  
20 12:56:47 with DMCA notice within X hours"? Do you see that?

21 12:56:51 A Yes.

22 12:56:51 Q Do you know what that's referring to?

23 12:56:54 A I do not.

24 12:56:55 Q Do you recall any conversation about  
25 12:56:58 partnership terms at Google Video requiring content

1 12:57:02 owners to provide DMCA notices within a certain number  
2 12:57:06 of hours?  
3 12:57:08 A I do not recall.  
4 12:57:10 Q You see at the bottom it says "or pay us for  
5 12:57:15 lost traffic"?  
6 12:57:16 A Yes.  
7 12:57:16 Q Do you know what that refers to?  
8 12:57:17 A I do not.  
9 12:57:18 Q Do you know what type of traffic that's  
10 12:57:22 referring to there?  
11 12:57:23 A I do not.  
12 12:57:24 Q Underneath it says "Threaten a change in  
13 12:57:29 copyright policy is part of a PR campaign complaining  
14 12:57:32 about harm through users' interests through content  
15 12:57:32 owner foot-dragging -- use threat to get standard deal  
16 12:57:36 sign-up." Do you see that?  
17 12:57:38 A Yes.  
18 12:57:38 Q Do you know what that refers to?  
19 12:57:39 A No, I do not.  
20 12:57:40 Q Do you recall any conversation about a PR  
21 12:57:42 campaign to complain about harm to users through  
22 12:57:45 content owner foot-dragging?  
23 12:57:47 A No, I do not.  
24 12:57:48 Q Do you recall any discussion or communication  
25 12:57:52 about a PR campaign related to copyright interests of

1 12:57:57 content owners?

2 12:57:58 A No, I do not.

3 12:57:59 Q Take a look at the slide 37, which is stamped

4 12:58:06 7891606.

5 12:58:10 A Okay.

6 12:58:12 Q And I see -- I'm showing you this only

7 12:58:14 because I see your name under "Source" for the first

8 12:58:18 chart there.

9 12:58:19 A Yes.

10 12:58:19 Q Do you recall participating and contributing

11 12:58:22 to this?

12 12:58:23 A Yes, I do.

13 12:58:23 Q Do you recall seeing this slide before?

14 12:58:31 A I don't recall this specific slide, but...

15 12:58:35 Q All right.

16 12:58:39 Let's do one more document, and then -- oh,

17 12:58:43 yeah, on the first page of this slide of the deck, at

18 12:58:48 the bottom it says "Contributors: Grace Weber." Do

19 12:58:53 you know who that is?

20 12:58:57 A Yes, that was the Grace W that we had spoken

21 12:59:00 about earlier, and she was -- I don't know if she

22 12:59:03 still is, but she was, at the time, in business

23 12:59:05 operations.

24 12:59:05 Q Okay. And that was -- that was the Grace W

25 12:59:07 that we saw in that earlier e-mail?

1 12:59:09 A Yes, that's correct.

2 12:59:10 Q Okay. All right.

3 12:59:11 We'll do one more document, and then we'll

4 12:59:13 take a lunch break.

5 12:59:32 (Document marked Chang Exhibit 16

6 12:59:40 for identification.)

7 12:59:40 MS. CUNHA: Q. Showing you what's been

8 12:59:41 marked as Exhibit 16. Do you recall this e-mail?

9 13:00:17 A I do not.

10 13:00:18 Q Now, I note at the top it's from Wendy Chang,

11 13:00:22 but it doesn't seem to be to anyone.

12 13:00:25 A Right.

13 13:00:25 Q Do you have any explanation for that?

14 13:00:29 A I often use my e-mail just to take notes.

15 13:00:35 Sometimes I send them to myself, sometimes I leave

16 13:00:39 them in drafts. I don't know if that was this case

17 13:00:42 or -- I don't recall.

18 13:00:44 Q You see at the very top it says "gps notes"?

19 13:00:47 A Yes.

20 13:00:47 Q What is GPS?

21 13:00:49 A I believe it stands for Google Product

22 13:00:53 Strategy or something like that.

23 13:00:55 Q Is that a group that you were a part of?

24 13:00:58 A No. It's generally the product team

25 13:01:02 reviewing things with the executive team.

1 14:13:12 finding more of what they want. They weren't finding  
2 14:13:15 what they wanted on Google Video. We weren't getting  
3 14:13:18 the traffic volume, so in that sense we were serving  
4 14:13:20 our mission, so yes, it would be a benefit.

5 14:13:23 Q Turn the page.

6 14:13:27 A Okay.

7 14:13:30 Q And under item seven, you see it says  
8 14:13:36 "Specific response on YouTube"? You see that?

9 14:13:41 A Yes.

10 14:13:41 Q And underneath it it says "Despite the  
11 14:13:44 intervening acquisition." So is it fair to assume  
12 14:13:47 that this is shortly after the acquisition was  
13 14:13:49 announced?

14 14:13:54 A I can't remember the time frame we -- this  
15 14:13:59 may have happened. We started to draft it prior to  
16 14:14:02 the announcement, and things changed, but it's a  
17 14:14:05 little bit fuzzy during that period.

18 14:14:07 Q Okay. Now, do you see under A, the last  
19 14:14:13 sentence, it says "By developing and audience," I  
20 14:14:18 think it means an audience, "following the users  
21 14:14:20 first, YouTube has created advertiser and monetization  
22 14:14:24 value, as evidenced by their large recent -- by their  
23 14:14:27 recent large media company deals"?

24 14:14:29 Do you see that?

25 14:14:29 A Yes.

1 14:14:29 Q Do you know what that's referring to?

2 14:14:35 A The day that YouTube -- the announcement of

3 14:14:38 the acquisition, YouTube closed either two or three

4 14:14:46 deals with some of the major music labels. I imagine

5 14:14:50 this is in reference to that.

6 14:14:54 Q Do you have any understanding what it means

7 14:14:58 when it says "By developing an audience following the

8 14:15:01 users first"? Do you know what that refers to?

9 14:15:06 A Generally speaking, for both Google and for

10 14:15:10 YouTube, everything is about users first and foremost,

11 14:15:13 so creating a product that users will like or need or

12 14:15:20 want.

13 14:15:20 Q And I assume flowing from that is advertiser

14 14:15:31 and monetization value?

15 14:15:34 MS. REES: Object to the form of the

16 14:15:35 question.

17 14:15:36 THE WITNESS: I'm not sure I understand your

18 14:15:42 question.

19 14:15:42 MS. CUNHA: Q. Well, if you have users,

20 14:15:45 you'll probably have advertiser and monetization

21 14:15:48 value; right?

22 14:15:49 A The way I always think about it is you have

23 14:15:51 to have users, you have to have advertisers, and you

24 14:15:55 have to have your partners. Users want to see content

25 14:15:58 on the site whether it may be in the form of a premium

1 14:16:05 content or whether it may be in the form of  
2 14:16:08 user-generated content.  
3 14:16:09 Advertisers want eyeballs, and content  
4 14:16:14 providers want to make money. So you can't make money  
5 14:16:20 from the advertisers unless you have the users, and  
6 14:16:24 you're only going to have -- have users if you have  
7 14:16:29 the right content, so I would say all of it is an  
8 14:16:32 equal.  
9 14:16:33 Q Okay. Item B, see where it says "Challenges  
10 14:16:39 from both a business model perspective and a legal  
11 14:16:43 liability perspective in terms of pornographic and  
12 14:16:46 copyright infringed content as among the primary  
13 14:16:49 drivers of YouTube traffic"? Do you see that?  
14 14:16:51 A I do.  
15 14:16:52 Q Do you know what that refers to?  
16 14:16:54 A At the time that this document was drafted, I  
17 14:16:56 don't believe we knew anything about the -- the data  
18 14:17:00 about YouTube. We weren't allowed to speak to them,  
19 14:17:03 so there were concerns that some of the content may  
20 14:17:12 not be authorized on it, but we did not know for a  
21 14:17:16 fact anything about the -- what traffic YouTube had.  
22 14:17:21 Q But there was a concern that there might be  
23 14:17:29 traffic that was driven by pornographic or copyright  
24 14:17:33 infringed material? Was that a concern?  
25 14:17:36 MS. REES: Object to the form of the



1 14:17:38 question.

2 14:17:38 THE WITNESS: I would -- I would think that

3 14:17:45 generally there was concern that there may have been

4 14:17:48 pornographic or unauthorized videos on the site.

5 14:17:51 MS. CUNHA: Q. If you turn the page to

6 14:17:57 little "I" at the top of the next page, it says

7 14:18:00 "Developing technology for tagging and tracking

8 14:18:03 copyrighted material"; you see that?

9 14:18:07 A Yes.

10 14:18:07 Q Do you have any idea what technology that's

11 14:18:09 referring to?

12 14:18:11 A I do not. Right now, I would think it's

13 14:18:16 related to the content identification, but I don't

14 14:18:19 know if at this time we'd already known about it yet.

15 14:18:24 Q Okay. Oh, one other question on Exhibit 17.

16 14:18:39 The "To" line says to "monetization-subteam --"

17 14:18:43 A Yeah.

18 14:18:43 Q "-- @google"; are you on the

19 14:18:47 monetization-subteam?

20 14:18:47 A I can't remember that specific e-mail list,

21 14:18:49 but I was on the team that worked on it, so that must

22 14:18:53 be the e-mail list.

23 14:19:00 Q Do you recall if you had a tendency to read

24 14:19:03 most of the mone- -- monetization-subteam e-mails as

25 14:19:06 opposed to the Harappa e-mails?

1 17:38:38 be a partner account, but it could also include  
2 17:38:41 promotional channels. We may also give advertisers,  
3 17:38:47 for example, branded channels, so it's not necessarily  
4 17:38:50 limited to just content providers who have entered  
5 17:38:55 into a commercial arrangement with us.

6 17:38:57 Q Well, my question is, this is an internal  
7 17:39:03 Google e-mail; correct?

8 17:39:07 A I think so, yes.

9 17:39:08 Q And it seems to be suggesting that the  
10 17:39:14 recipients of this e-mail may have accounts that  
11 17:39:18 receive a cumulative total of three strikes for either  
12 17:39:22 copyright or TOU violations, then all of the user  
13 17:39:25 names associated with the one e-mail address will be  
14 17:39:28 suspended, and so my question is, why would internal  
15 17:39:34 Google employees have accounts that would receive  
16 17:39:39 three strikes for copyright or terms-of-use  
17 17:39:43 violations?

18 17:39:45 A I actually don't know. I'm not familiar with  
19 17:39:47 this area at all.

20 17:39:56 Q Who's E. Brown?

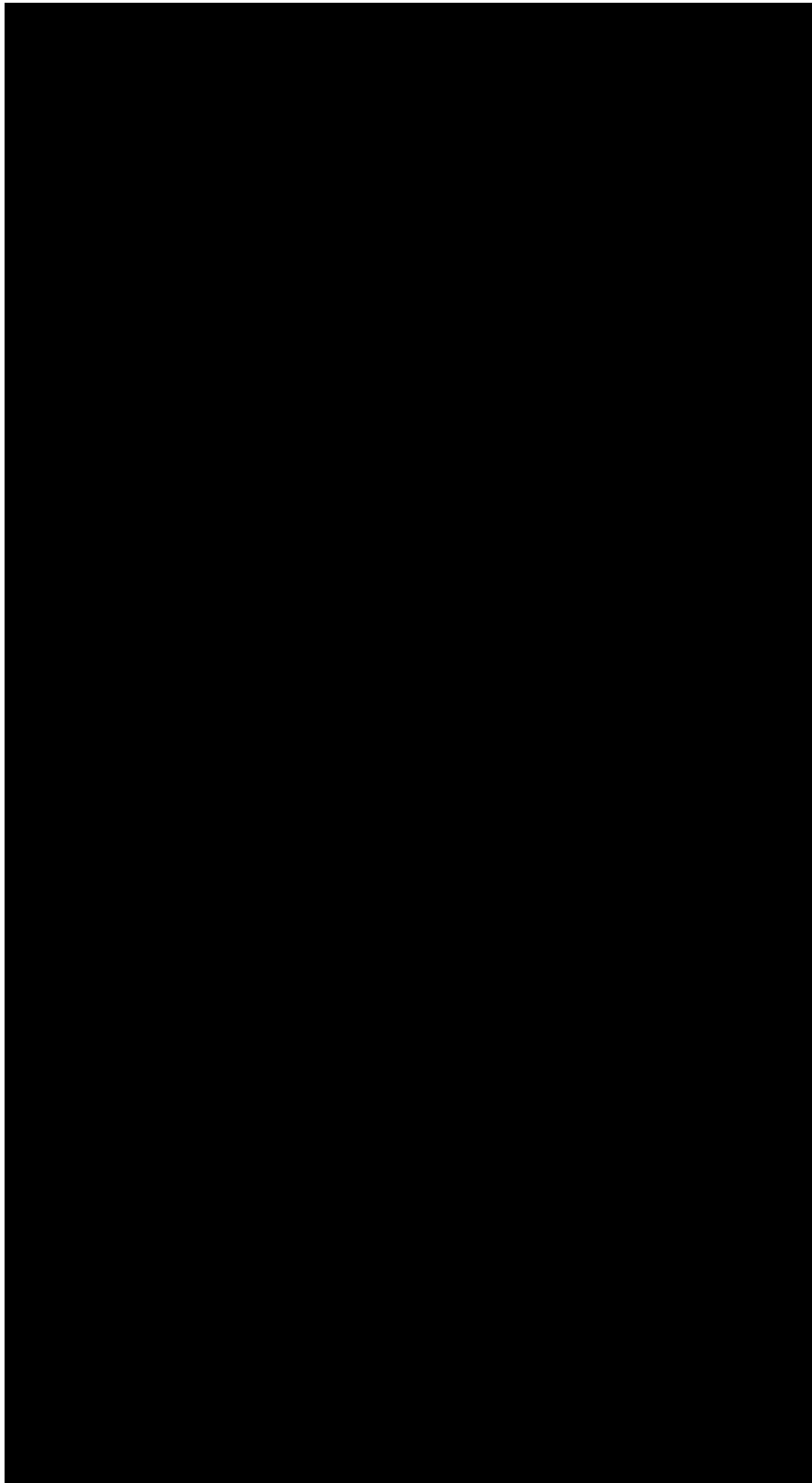
21 17:39:59 A I do not know.

22 17:40:06 Q He is YouTube?

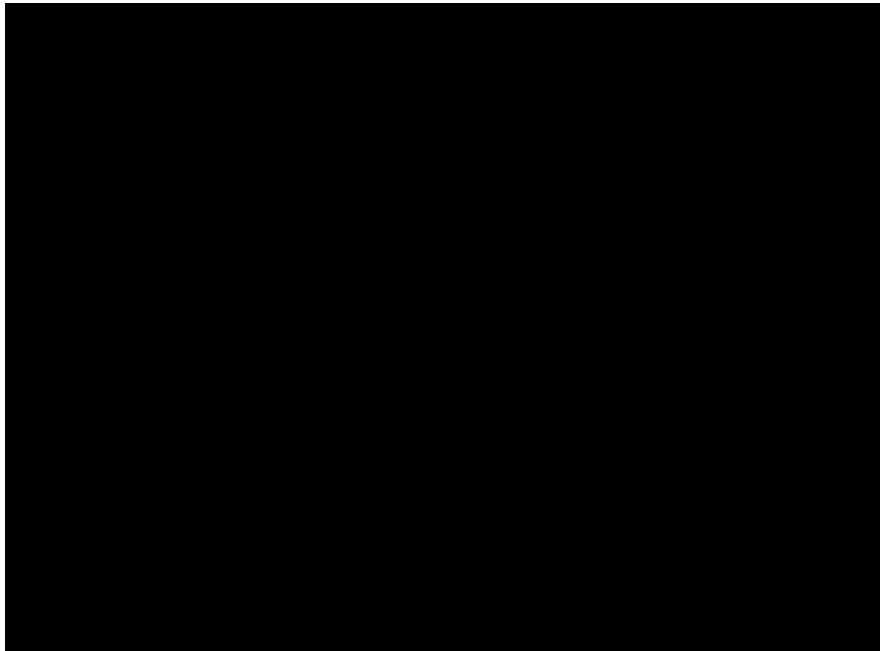
23 17:40:08 A Yes, he is YouTube. There's a lot of people  
24 17:40:11 now at YouTube. I believe he may be on the operations  
25 17:40:15 team, but I do not know.

1 17:40:17 Q So you can't help shed any light on this for  
2 17:40:25 me; can you?  
3 17:40:26 A No. I'm sorry.  
4 17:40:26 Q Have you yourself ever uploaded content onto  
5 17:40:31 YouTube?  
6 17:40:32 A No; I don't know how. Don't let Chad know  
7 17:40:37 that.  
8 17:40:38 Q And you own Google stock, I take it?  
9 17:40:42 A All employees do, yes.  
10 17:40:45 Q And do you believe personally that your stock  
11 17:40:47 increased in value as a result of the YouTube  
12 17:40:54 acquisition?  
13 17:40:54 A No, I do not.  
14 17:40:55 Q You do not?  
15 17:40:56 A No.  
16 17:40:56 Q Do you think it decreased in value?  
17 17:40:59 A No, I do not. I think there's a lot of  
18 17:41:02 products that Google has, and it has just, I think,  
19 17:41:05 done a lot of great things, so just based on the  
20 17:41:10 strength of the business.  
21 17:41:11 YouTube itself is not making any money for  
22 17:41:14 us, so I don't think it's been built into the  
23 17:41:16 financial projections of where the stock is.  
24 17:41:21 Q And as a financial planner for YouTube, do  
25 17:41:24 you believe that YouTube will make money for Google?

1 17:41:29  
2 17:41:34  
3 17:41:36  
4 17:41:40  
5 17:41:45  
6 17:41:49  
7 17:41:51  
8 17:41:55  
9 17:41:59  
10 17:42:03  
11 17:42:07  
12 17:42:13  
13 17:42:16  
14 17:42:17  
15 17:42:20  
16 17:42:25  
17 17:42:27  
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24 17:42:51  
25 17:42:52



1 17:42:52  
2 17:42:53  
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4 17:43:01  
5 17:43:07  
6 17:43:14  
7 17:43:18  
8 17:43:21  
9 17:43:25  
10 17:43:31



11 17:43:37 MS. CUNHA: Okay. I don't have any further  
12 17:43:40 questions at this time.

13 17:43:41 I'm going to suspend only because we have  
14 17:43:44 document production issues, and I would just note for  
15 17:43:47 the record that there are some documents that were not  
16 17:43:49 produced in native format, were difficult for us to  
17 17:43:53 read in the, I think, two recent productions that came  
18 17:43:55 in the last week that had Chang custodial documents in  
19 17:44:00 them, so I'm going to suspend.

20 17:44:03 MS. REES: Yeah, I'm going to disagree with  
21 17:44:06 that. The -- I know that there has been some  
22 17:44:08 correspondence in writing about this, but we  
23 17:44:10 absolutely disagree that any of these depositions can  
24 17:44:13 be suspended on that basis.

25 17:44:15 We're talking about document productions that

# **Schapiro Exhibit 292**

To: "Kamangar Salar" <salar@google.com>  
From: "Steve Chen" <steve@youtube.com>  
Cc:  
Bcc:  
Received Date: 2006-10-09 01:11:12 GMT  
Subject: Fwd: diligence questions

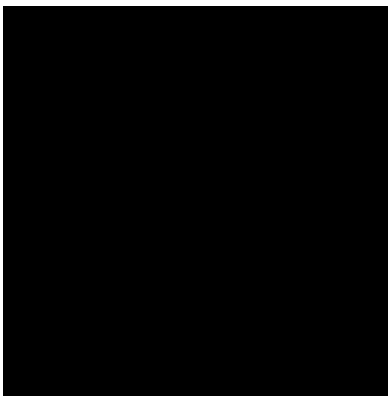
---

Is this the breakdown that you're looking for based on categories?

-s

Begin forwarded message:

> From: Cuong Do <cdo@youtube.com>  
> Date: October 6, 2006 4:38:27 PM PDT  
> To: "Salar Kamangar" <salar@google.com>  
> Cc: Steve Chen <steve@youtube.com>  
> Subject: Re: diligence questions  
>  
> Hi Salar,  
>  
> I've compiled some of the requested information.  
>  
> For a sample of 10,000 video views from peak hours today, here is  
> the breakdown of categories of the videos that were watched;



>  
> I'm also attaching the categories for every video uploaded on each  
> Monday since June 13, 2005.  
>  
> ?  
> Cuong  
>  
> On Oct 6, 2006, at 3:28 PM, Steve Chen wrote:  
>  
>> cuong, can you send it to salar directly and cc me on it?  
>>  
>> -s  
>>  
>> Begin forwarded message:  
>>  
>>> From: "Salar Kamangar" <salar@google.com>  
>>> Date: October 6, 2006 2:57:25 PM PDT  
>>> To: "Steve Chen" <steve@youtube.com>

>>> Subject: Re: diligence questions

>>>

>>> if you could send us a couple hundred random playbacks so we can get  
>>> going with categorizing the playbacks, that'd be great.

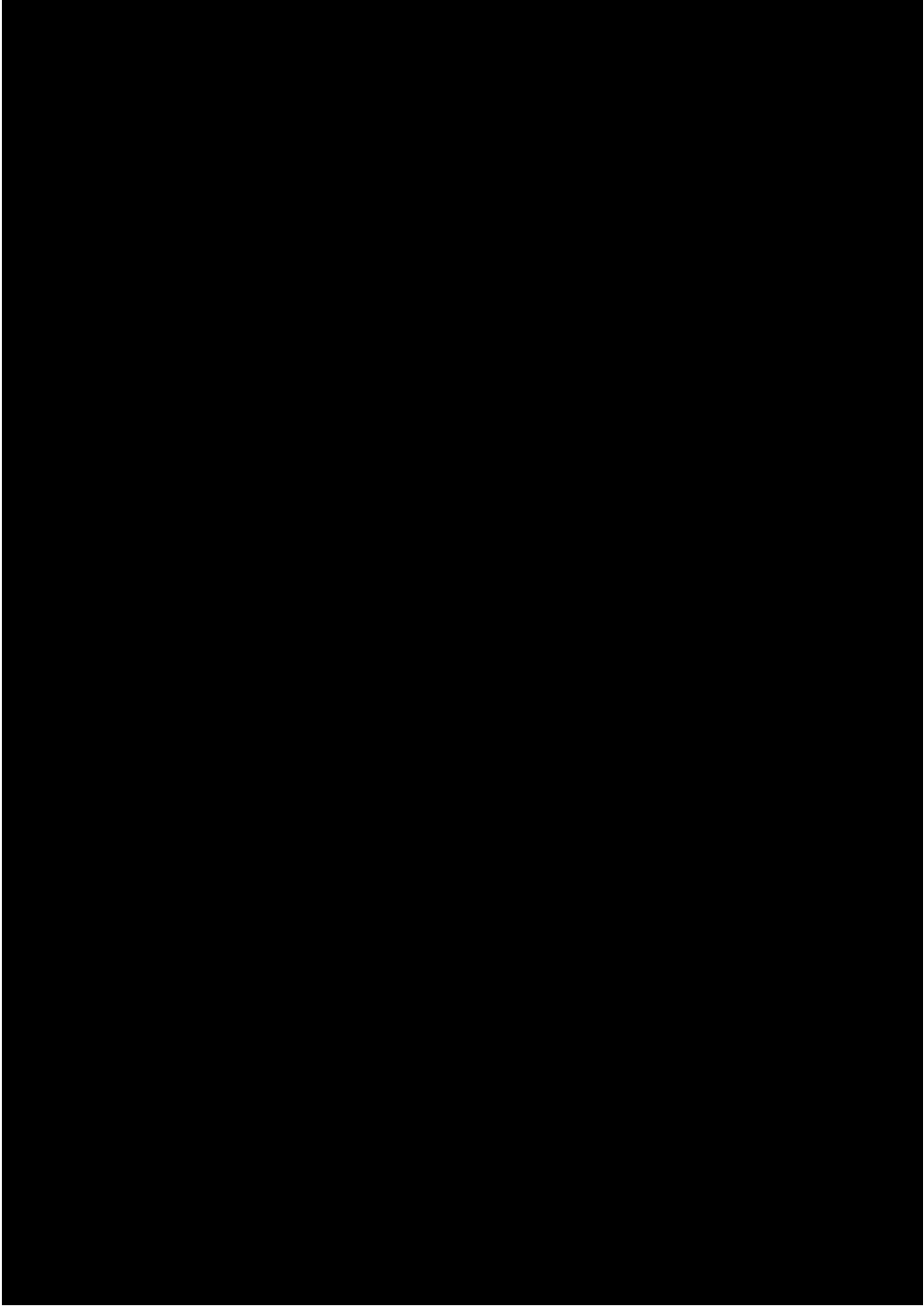
>>>

>>> thx,

>>> --salar

>>>

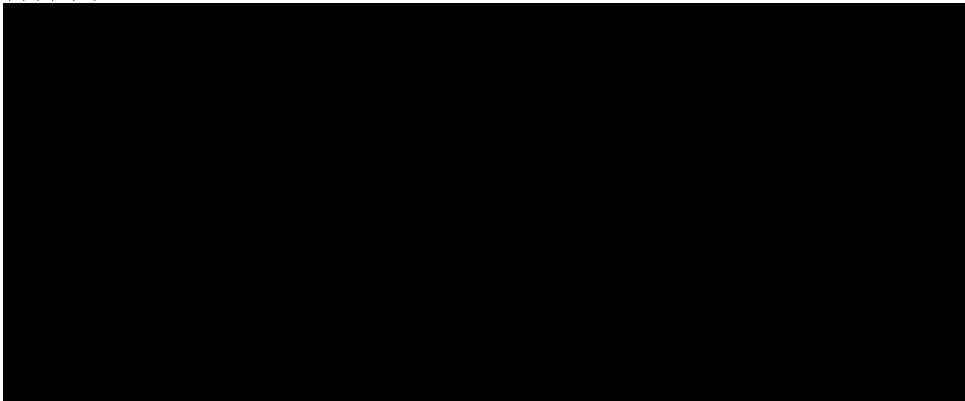
>>> On 10/5/06, Salar Kamangar <salar@google.com> wrote:







>>>>  
>>>> it'll be easier to get a couple of folks on the phone with you. =>>>> i'll  
>>>> have names tomorrow. they'll probably want to ask those questions  
>>>> above and more...  
>>>>  
>>>> > Thanks. Don't hesitate to call if there are any follow-up  
>>>> questions.  
>>>>  
>>>> thanks!  
>>>>  
>>>> --salar  
>>>>  
>>>> > -s  
>>>> >  
>>>> >  
>>>> >  
>>>> >  
>>>> > On Oct 5, 2006, at 2:10 PM, Salar Kamangar wrote:  
>>>> >  
>>>> > > Hi Steve,  
>>>> > >  
>>>> > > Nice talking with you, and I look forward to spending a lot  
>>>> > > more time  
>>>> > > in person. I'm very excited about joining forces with Youtube.  
>>>> > >  
>>>> > > Amit's email address is amitp@google.com. Kouros'h's is  
>>>> > > kouros'h@google.com. They both have a heads-up that you'll  
>>>> > > be setting  
>>>> > > up a phone call with them to talk about logging.  
>>>> > >  
>>>> > > And below are the questions I referenced. If anything isn't =>>>> clear, or  
>>>> > > you can get to the same question I'm asking in a way that  
>>>> > > involves  
>>>> > > less work, please let me know.  
>>>> > >  
>>>> > > Best,  
>>>> > > --Salar  
>>>> > >





>>>> >  
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>>>> >  
>>>> >  
>>>>  
>>  
>

# **Schapiro Exhibit 293**

To: "Salar Kamangar" <salar@google.com>, "Dempsey, Sean [GOOGLE, INC. \\(Mountain View\\)]" <dempsey@google.com>  
From: "Salman Ullah" <salmanu@google.com>  
Cc: "Mike Pearson" <pearson@google.com>, "Jason Harinstein" <jharinstein@google.com>  
Bcc:  
Received Date: 2006-10-06 19:43:07 GMT  
Subject: Snowmass video analysis

---

Gross Total 424 (includes 123 that aren't valid URLs)

Net Total 301 100% No 112 37% Prem/rem 189 63%

Premium/removed- means the content is copyright (either in whole or in substantial part) and removed were links that were taken down  
No- no copyright but includes commercials, trailers, public service, promos, true ugc

we are working on gvideo now.

---

# **Schapiro Exhibit 294**

To: "Salman Ullah" <salmanu@google.com>  
From: "Salar Kamangar" <salar@google.com>  
Cc:  
Bcc:  
Received Date: 2006-10-06 22:49:17 GMT  
Subject: Re: snowmass data request

---

reminder that the data you received and categorized was from our toolbar analysis. i haven't received their list yet. i'll remind steve again to send theirs. we go through a couple hundred of theirs to make sure it looks about the same, in case we did something wrong in pulling the toolbar data.

On 10/6/06, Salman Ullah <salmanu@google.com> wrote:  
> in case you didnt get the im  
>  
> better idea: send them the trix sheet and ask them to run a query against  
> those random URLs and give us the number of playbacks for each  
>

---

# **Schapiro Exhibit 295**

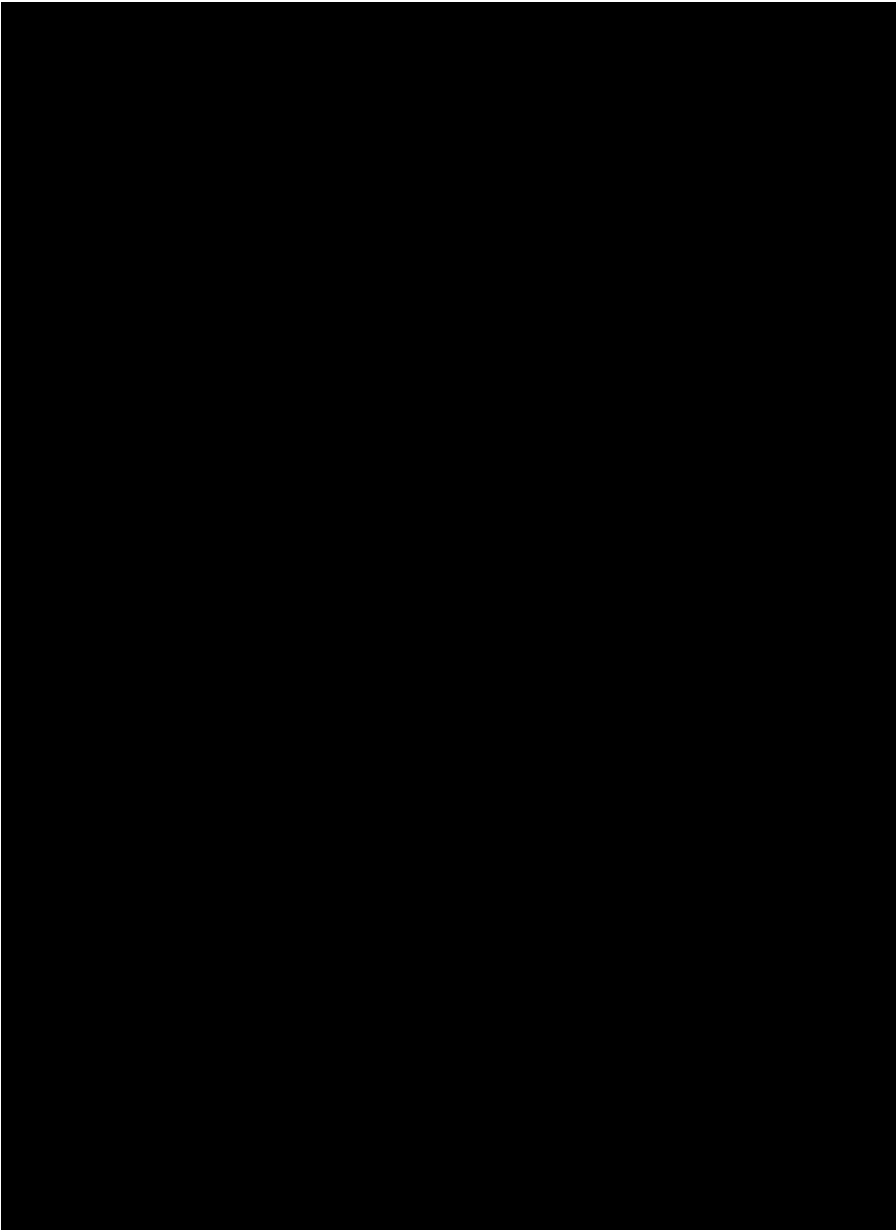
To: "Steve Chen" <steve@youtube.com>  
From: "Salar Kamangar" <salar@google.com>  
Cc:  
Bcc:  
Received Date: 2006-10-06 22:57:25 GMT  
Subject: Re: diligence questions

---

if you could send us a couple hundred random playbacks so we can get going with categorizing the playbacks, that'd be great.

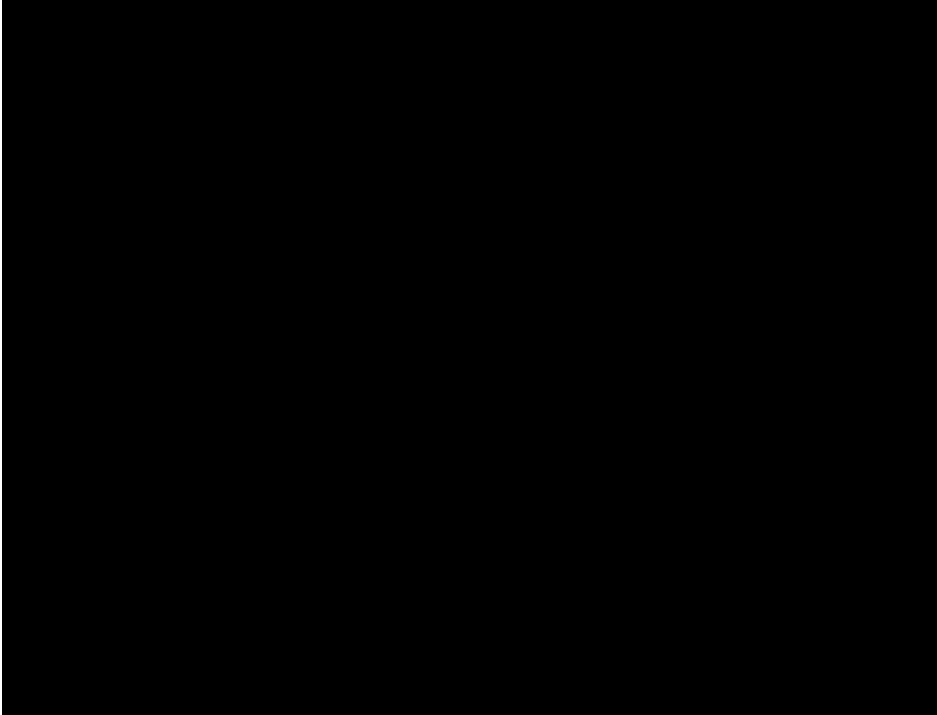
thx,  
--salar

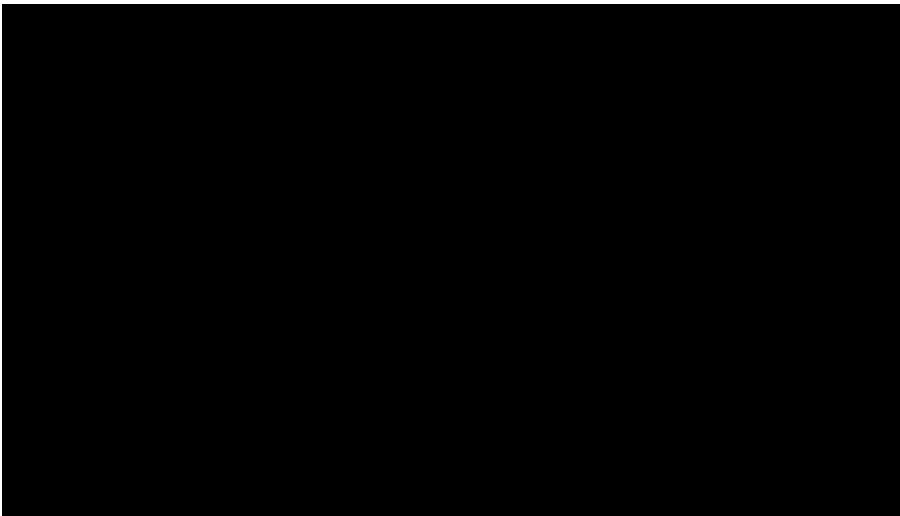
On 10/5/06, Salar Kamangar <salar@google.com> wrote:





>  
> it'll be easier to get a couple of folks on the phone with you. i'll  
> have names tomorrow. they'll probably want to ask those questions  
> above and more...  
>  
> > Thanks. Don't hesitate to call if there are any follow-up questions.  
>  
> thanks!  
>  
> --salar  
>  
> > -s  
> >  
> >  
> >  
> >  
> > On Oct 5, 2006, at 2:10 PM, Salar Kamangar wrote:  
> >  
> > > Hi Steve,  
> > >  
> > > Nice talking with you, and I look forward to spending a lot more time  
> > > in person. I'm very excited about joining forces with Youtube.  
> > >  
> > > Amit's email address is amitp@google.com. Kourosh's is  
> > > kourosh@google.com. They both have a heads-up that you'll be setting  
> > > up a phone call with them to talk about logging.  
> > >  
> > > And below are the questions I referenced. If anything isn't clear, or  
> > > you can get to the same question I'm asking in a way that involves  
> > > less work, please let me know.  
> > >  
> > > Best,  
> > > --Salar





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>

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# **Schapiro Exhibit 296**

HIGHLY CONFIDENTIAL

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-2203

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

Defendants.

-----X

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

Plaintiffs,

vs.

No. 07-CV-3582

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

Defendants.

-----X

HIGHLY CONFIDENTIAL  
VIDEOTAPED DEPOSITION OF GIDEON YU  
MENLO PARK, CALIFORNIA  
FRIDAY, AUGUST 14, 2009

JOB NO. 17485

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HIGHLY CONFIDENTIAL - GIDEON YU

AUGUST 14, 2009

9:16 A.M.

HIGHLY CONFIDENTIAL VIDEOTAPED

DEPOSITION OF GIDEON YU, at PERKINS COIE, 101  
Jefferson Drive, Suite 2000, Menlo Park,  
California, pursuant to notice, before me,  
KATHERINE E. LAUSTER, CLR, CRR, RPR, CSR License  
No. 1894.

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HIGHLY CONFIDENTIAL - GIDEON YU

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

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GOOGLE, INC.:

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FOR THE WITNESS:

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e-mail: tfranks@perkinscoie.com

Also Present: LOU MEADOWS, Videographer

1 HIGHLY CONFIDENTIAL - GIDEON YU

2 12:30:21 exchange ratio is, whether there's any kind of

3 12:30:24 limits on those exchange ratios; acceleration

4 12:30:28 provisions for certain employees on the vesting of

5 12:30:36 their options or their shares; what to do with the

6 12:30:40 shares of certain board members; who would be -- you

7 12:30:43 know, who would be retained and who wouldn't be, as

8 12:30:46 far as the acquisition is concerned; escrow

9 12:30:50 provisions, timing of escrow provisions; material

10 12:30:57 adverse change clauses. These types of things. I

11 12:31:01 mean, should I go on?

12 12:31:02 Q. You can -- you can stop there.

13 12:31:07 In -- you mentioned a moment ago, escrow

14 12:31:10 provisions. Did you negotiate with David Drummond

15 12:31:14 regarding the litigation reserve and the escrow that

16 12:31:19 would be held for the litigation reserve?

17 12:31:23 MR. WILLEN: Objection. Assumes facts.

18 12:31:25 THE WITNESS: So -- so the portion of the

19 12:31:32 term sheet and resulting merger agreement that

20 12:31:36 referred to the escrow provisions were -- I mean, I

21 12:31:41 was the point person for David, and there were other

22 12:31:44 people on both the YouTube team and Google team

23 12:31:49 that -- that also were involved in -- heavily

24 12:31:52 involved, as a matter of fact, on the ac- -- on the

25 12:31:56 negotiations.

1 HIGHLY CONFIDENTIAL - GIDEON YU

2 12:31:57 BY MR. WILKENS:

3 12:31:57 Q. Who else was involved in the negotiation

4 12:32:00 on the litigation reserve and the escrow?

5 12:32:03 A. On -- on the YouTube side?

6 12:32:05 Q. Yes.

7 12:32:07 A. Zahavah was on the YouTube side. Some

8 12:32:14 members of our outside legal team were -- were

9 12:32:19 involved. I think Mike Ringler was the main person

10 12:32:29 from Wilson Sonsini who was leading those

11 12:32:33 negotiations from the outside counsel's side.

12 12:32:40 Q. And what about on the Google side? In

13 12:32:42 addition to Mr. Drummond, who was involved in

14 12:32:46 negotiating the litigation reserve and the escrow

15 12:32:49 provision?

16 12:32:50 A. There were a number of people on their --

17 12:32:52 on their side of the table. The only person I can

18 12:32:54 remember -- and I'm not sure whether his role was

19 12:32:57 directly, senior or junior, or directly involved or

20 12:33:00 not -- was a man by the name of Matt Sucherman.

21 12:33:05 But like I said, there were many people

22 12:33:06 involved on their side, and I can't remember their

23 12:33:10 names.

24 12:33:17 Q. And who proposed the litigation reserve

25 12:33:21 and the escrow provision in the first place?



1 HIGHLY CONFIDENTIAL - GIDEON YU

2 12:33:24 MR. WILLEN: Objection to the form.

3 12:33:25 THE WITNESS: "Proposed" -- sorry.

4 12:33:27 MR. WILLEN: Calls for speculation, it's

5 12:33:29 vague.

6 12:33:29 THE WITNESS: Proposed as far as -- as far

7 12:33:31 as in writing, or as far as like verbally, or --

8 12:33:35 BY MR. WILKENS:

9 12:33:35 Q. Either one. Just -- who -- who proposed

10 12:33:38 including that as a term in the -- in the -- the

11 12:33:40 deal?

12 12:33:41 MR. WILLEN: Same objections.

13 12:33:42 THE WITNESS: I don't know who -- who went

14 12:33:46 into the thought process on the Google side, when

15 12:33:48 they gave us the term sheet that had, you know, the

16 12:33:52 terms of the escrow in it.

17 12:33:55 BY MR. WILKENS:

18 12:33:55 Q. Did you discuss with them the reasons why

19 12:34:01 they wanted to have an escrow?

20 12:34:06 A. So within the context of our reactions to

21 12:34:12 their initial term sheet, I went through and asked

22 12:34:18 them for rationale on a good majority of the terms

23 12:34:23 that they were asking for, you know, as part of any

24 12:34:26 kind of standard negotiations in an M&A context.

25 12:34:30 Q. And what was their rationale for the

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2 12:34:33 litigation reserve in the escrow?

3 12:34:35 MR. WILLEN: Objection. Assumes facts.

4 12:34:37 THE WITNESS: I can't recall now what -- I

5 12:34:38 don't remember what -- what they told me. I don't

6 12:34:44 recall specifically.

7 12:34:45 I -- I -- the only thing I can remember is

8 12:34:48 getting an answer that seemed similar to kind of

9 12:34:51 what they were proposing, which is, we want to have

10 12:34:54 protection in case of, you know, any litigation,

11 12:34:56 and, you know, it was, you know, similar to other

12 12:35:00 parts of, you know, the escrow, that they wanted

13 12:35:03 protection against certain things.

14 12:35:05 BY MR. WILKENS:

15 12:35:05 Q. Did they discuss that they -- whether they

16 12:35:08 wanted protection from copyright litigation?

17 12:35:11 A. That was -- that -- I -- I don't recall

18 12:35:12 specifically, but I -- I remember that being part of

19 12:35:15 the term sheet, yes.

20 12:35:17 Q. Did they explain why they wanted

21 12:35:20 protection from copyright litigation?

22 12:35:25 MR. WILLEN: Well, objection to the form,

23 12:35:28 it's vague.

24 12:35:29 BY MR. WILKENS:

25 12:35:30 Q. Do you understand the question?

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2 12:35:32 A. Who -- I would repeat the question. Who

3 12:35:35 is "they" in that case?

4 12:35:37 Q. The Google side in the negotiations to

5 12:35:40 you -- did they explain to you why they wanted a --

6 12:35:43 a litigation reserve and escrow for copyright

7 12:35:48 infringement lawsuits?

8 12:35:49 A. Only that it was part of the package that

9 12:35:52 they -- that they proposed as well as the

10 12:35:56 acquisition. And that, you know, if I were to -- as

11 12:35:59 I said before, I -- the -- the only response that I

12 12:36:02 recall getting was something that seemed just to

13 12:36:05 restate why I asked them, which is that they want to

14 12:36:08 have protection in case of certain things happening,

15 12:36:11 representations, warranties, these kind of things.

16 12:36:14 Q. Did you negotiate with them -- with "them"

17 12:36:16 being the Google side of the negotiations -- over

18 12:36:20 the size of the escrow vis-a-vis the overall merger

19 12:36:26 consideration?

20 12:36:26 MR. WILLEN: Objection to the form.

21 12:36:30 THE WITNESS: I negotiated the overall

22 12:36:35 size of the escrow with -- with Google in the sense

23 12:36:40 that, you know -- and again, as is typical in any

24 12:36:44 kind of M&A con- -- or most M&A contexts, the

25 12:36:49 acquirer would want to have a larger escrow; the

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2 12:36:51 seller would want to have a smaller escrow. So I

3 12:36:55 was pushing for a smaller escrow.

4 12:37:07 BY MR. WILKENS:

5 12:37:07 Q. Besides talking with David Drummond, who I

6 12:37:11 think you mentioned earlier that you had --

7 12:37:14 A. Yes.

8 12:37:14 Q. -- discussions with, who -- did you have

9 12:37:17 conversations with anybody else at Google during

10 12:37:20 these negotiations over the terms of the

11 12:37:25 Google/YouTube merger?

12 12:37:28 A. Can you give me a rough -- rough time

13 12:37:29 period that -- that I can answer that question on?

14 12:37:32 Q. Between September 25th, 2006, and

15 12:37:35 October 9th, 2006.

16 12:37:37 A. So I don't recall specifically

17 12:37:38 conversation dates, but the -- on the Google side,

18 12:37:47 you know, during the course of these discussions on

19 12:37:50 or around this date, I would have spoken with Matt

20 12:37:54 Sucherman, and before signing the agreement, I

21 12:38:00 briefly spoke with Eric Schmidt.

22 12:38:07 Q. And do you recall what you spoke to Eric

23 12:38:09 Schmidt about before the agreement was signed?

24 12:38:13 A. I don't recall specifically. The --

25 12:38:15 the -- we were talking just generally about, you

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2 12:38:19 know, my potential role, or not, you know, at

3 12:38:25 Google, and about how excited both of us were that

4 12:38:30 this deal was going to happen.

5 12:38:40 Q. Did you -- who on -- on the YouTube side

6 12:38:47 was responsible for negotiating with the Google side

7 12:38:50 regarding the overall amount of the merger

8 12:38:54 consideration?

9 12:38:57 MR. WILLEN: Objection to the form.

10 12:38:58 THE WITNESS: "Amount of the merger

11 12:39:00 consideration" is -- what do you mean by that? The

12 12:39:03 price?

13 12:39:04 BY MR. WILKENS:

14 12:39:05 Q. Yes, the over -- the -- the purchase price

15 12:39:07 that Google was -- Google was going to pay. Who was

16 12:39:11 responsible on the YouTube side for negotiating that

17 12:39:14 term?

18 12:39:14 A. Okay. So "responsible" meaning the point

19 12:39:17 person that was negotiating with them?

20 12:39:19 Q. Yes.

21 12:39:20 A. Okay. So the point person for the overall

22 12:39:23 price from our -- from YouTube's side was -- was

23 12:39:26 myself.

24 12:39:31 Now, to be fair, there may have been other

25 12:39:34 discussions that I was not privy to, and I was not a

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2 14:02:53 needed this level of protection for copyright

3 14:02:59 infringement liabilities?

4 14:03:01 MR. WILLEN: Objection. I think this has

5 14:03:02 been asked and answered.

6 14:03:05 THE WITNESS: Yeah, like I said, I -- I

7 14:03:06 don't recall specifically asking them for this,

8 14:03:09 although -- or -- or why they thought this, other

9 14:03:12 than just getting the general kind of sense from

10 14:03:15 them that they just wanted protection on many

11 14:03:18 things.

12 14:03:18 BY MR. WILKENS:

13 14:03:19 Q. Did they raise any concerns with you about

14 14:03:22 the -- about copyright infringement occurring on the

15 14:03:29 YouTube website?

16 14:03:31 MR. WILLEN: Objection to the form.

17 14:03:36 THE WITNESS: In the course of the

18 14:03:37 acquisition discussions with [REDACTED], while I was

19 14:03:40 there and leading these discussions, you know, we --

20 14:03:46 there -- there wasn't a whole lot of discussion, and

21 14:03:49 I don't recall having specific discussions about,

22 14:03:52 you know, what's copyright infringement on YouTube's

23 14:03:57 website.

24 14:03:59 But [REDACTED] had a business that was

25 14:04:01 substantially similar, as far as [REDACTED] and we

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2 14:04:07 had -- I think, because of that dynamic, there

3 14:04:11 wasn't a whole lot of discussion about the

4 14:04:13 overlapping parts of our business.

5 14:04:17 BY MR. WILKENS:

6 14:04:18 Q. And yet they still wanted a 15 percent

7 14:04:21 escrow for copyright infringement liabilities;

8 14:04:25 right?

9 14:04:26 A. Sure. But --

10 14:04:27 MR. WILLEN: Objection. Document speaks

11 14:04:28 for itself. What's the question?

12 14:04:30 BY MR. WILKENS:

13 14:04:31 Q. Do you understand the question?

14 14:04:32 A. Sure. But they also want indemnification

15 14:04:38 for, you know, capitalization information, tax

16 14:04:40 information, you know, correct document retention,

17 14:04:43 all these kind of things. I don't think there's any

18 14:04:47 kind of assumption there that they believed that we

19 14:04:50 were doing anything incorrect.

20 14:04:53 Q. Well, with regard to all the things that

21 14:04:55 you just mentioned that you just listed -- document

22 14:04:58 retention, capitalization -- do you see any of those

23 14:05:03 things specifically listed in the paragraph we were

24 14:05:07 just looking at under "Indemnification and Escrow"?

25 14:05:11 A. I don't see anything specifically, you

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2 14:05:12 know, but I was just listing out things that

3 14:05:15 generally are part of escrow arrangements. I mean,

4 14:05:18 I -- they're -- I think we established earlier on,

5 14:05:22 when you were asking me questions about the number

6 14:05:24 of deals I've done, that I've seen a handful at

7 14:05:28 least of merger agreements.

8 14:05:31 And when a private company is being

9 14:05:34 bought, there are -- there's almost invariably an

10 14:05:38 escrow provision that serves as protection for the

11 14:05:44 buyer, and it's not in there for any other purpose

12 14:05:46 than to protect the -- the buyer. There -- there's

13 14:05:48 no presumption of guilt, or anything, on behalf of

14 14:05:52 the seller --

15 14:05:53 Q. In --

16 14:05:54 A. -- in these agreements.

17 14:05:55 Q. In your experience, do you generally

18 14:05:57 see -- have you generally seen copyright liability

19 14:06:00 specifically mentioned in term sheets for the

20 14:06:02 acquisitions that you've been involved in?

21 14:06:04 A. I've seen -- I've seen many things in term

22 14:06:06 sheets that I've been involved in. I've seen --

23 14:06:09 I've seen, you know, protection for -- for IP, for

24 14:06:13 copyrights, for trademarks, for all sorts of things

25 14:06:17 like that.



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2 14:06:17 Q. Well, putting aside protection for patents

3 14:06:20 or trademarks, have you seen, as a -- as a general

4 14:06:25 matter, in the -- in the mergers and acquisitions

5 14:06:30 that you've worked on, an indemnification that

6 14:06:34 specif- -- that specifically states that it is

7 14:06:38 available to secure copyright infringement

8 14:06:44 liabilities?

9 14:06:45 A. Yes, I have.

10 14:06:46 Q. Which --

11 14:06:47 A. I wouldn't say as a general rule it's in

12 14:06:50 everything, but I think every acquisition is pretty

13 14:06:53 much case-by-case.

14 14:06:54 Q. Which acquisitions have you seen that

15 14:06:56 language in in the term sheet?

16 14:07:03 A. May I ask my counsel a question? Am I

17 14:07:05 allowed to speak on confidential term sheets that

18 14:07:08 aren't public?

19 14:07:09 MR. FRANKS: You can only -- you -- you

20 14:07:10 can talk about public ones, you can talk about ones

21 14:07:14 done on behalf of YouTube, not confidential -- not

22 14:07:16 confidential information of [REDACTED] or any other

23 14:07:19 parties not a litig- -- not a party to this

24 14:07:23 litigation.

25 14:07:23 So if they're -- if they're confidential

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2 14:07:26 terms of a You- -- of a [REDACTED] agreement, you can't

3 14:07:29 discuss that. If the public -- if they're public

4 14:07:33 terms of a -- of a [REDACTED] agreement, you can discuss

5 14:07:36 that.

6 14:07:36 THE WITNESS: Yeah, so that --

7 14:07:38 MR. FRANKS: And if, again, you're not

8 14:07:39 sure whether they're public or private, then don't

9 14:07:42 answer, because you will need to check with [REDACTED]

10 14:07:44 before disclosing. So --

11 14:07:47 THE WITNESS: I'll need to check with --

12 14:07:48 with [REDACTED] before disclosing, but it -- from my

13 14:07:51 recollection, it wasn't -- it -- copyright

14 14:07:54 infringement liability -- liability, as described

15 14:07:57 here, was in at least one other acquisition that --

16 14:08:05 that I was a part of at -- at [REDACTED] for a private

17 14:08:09 company.

18 14:08:22 BY MR. WILKENS:

19 14:08:22 Q. Do you recall receiving a -- a subsequent

20 14:08:27 higher offer from [REDACTED] to purchase YouTube?

21 14:08:36 A. Hold it -- hold on a second.

22 14:08:48 MR. WILLEN: Objection to the form.

23 14:08:50 THE WITNESS: "Higher offer" -- if you --

24 14:08:51 if you're referring to higher offer as far as the

25 14:08:55 aggregate gross consideration, I think we did, but I

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2 14:09:00 can't be sure if we actually got a term sheet.

3 14:09:05 BY MR. WILKENS:

4 14:09:06 Q. So you -- you may have just gotten an

5 14:09:08 offer of an amount without a written term sheet?

6 14:09:11 A. Well, I don't consider a verbal offer to

7 14:09:16 be worth anything, but I do recall talking with them

8 14:09:21 about higher numbers. I think it was even in one of

9 14:09:26 the e-mail attachments -- exhibits that you just

10 14:09:30 handed over to me we talked about some other, higher

11 14:09:32 numbers than this. I can't remember if they

12 14:09:34 actually -- if -- if it turned into a real term

13 14:09:37 sheet or not. I wouldn't be surprised if it did.

14 14:10:15 MR. WILKENS: We'll mark the next exhibit,

15 14:10:16 13, I believe.

16 14:10:20 THE REPORTER: Yes.

17 14:10:30 (Deposition Exhibit Number 13 was marked

18 14:10:30 for identification.)

19 14:10:56 BY MR. WILKENS:

20 14:10:57 Q. Just for the record this is a document

21 14:10:59 produced by Mr. Yu with the Bates number GYU000028.

22 14:11:06 It's an e-mail from Marcus Shen to Gideon Yu,

23 14:11:09 copying Keith Nilsson and Sylvia Yam, dated

24 14:11:15 October 3rd, 2006.

25 14:11:17 A. Uh-huh.