

11/2/2009 Garfield, Dean

HIGHLY CONFIDENTIAL -- OUTSIDE COUNSEL'S EYES ONLY

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

2 - - - - -X

VIACOM INTERNATIONAL INC., COMEDY:
3 PARTNERS, COUNTRY MUSIC :
TELEVISION, INC., PARAMOUNT :
4 PICTURES CORPORATION, and BLACK :
ENTERTAINMENT TELEVISION LLC :
5 Plaintiffs, :

6 v. :

: Case No.
: 07CV-2103

7 YOUTUBE, INC., YOUTUBE, LLC, :
and GOOGLE, INC., :
8 :
Defendants. :

9 - - - - -X

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

12 Plaintiffs, :

13 v. :

: Case No.
: 07CV-3582

14 YOUTUBE, INC., YOUTUBE, LLC, :
and GOOGLE, INC., :
15 :
Defendants. :

16 - - - - -X

****HIGHLY CONFIDENTIAL****

17 Videotaped Deposition of DEAN GARFIELD
Washington, D.C.
18 Tuesday, November 2, 2009
10:24 a.m.

19 BY: Okeemah S. Henderson, LSR
20 JOB NO. 18039

21
22
23
24
25



1 BY MR. BASKIN:

2 Q. In the six months between the time
3 you started the negotiations in April until the
4 acquisition by Google in October, and we're
5 going get to what happened post acquisition,
6 would it be fair to say that YouTube never
7 agreed to use available fingerprinting
8 technologies on its website to protect the
9 MPAA's members in intellectual property?

10 MR. MCGILL: Same objections.

11 A. To the best of my knowledge they had
12 not agreed to do that.

13 BY MR. BASKIN:

14 Q. Now, in fact in the course of your
15 negotiations with YouTube prior to the
16 acquisition by Google, did you have a
17 conversation with YouTube executives on the
18 topic of why they would not filter?

19 MR. MCGILL: Objection. Lacks
20 foundation.

21 A. We had multiple conversations about
22 that topic. Yes.

23 BY MR. BASKIN:

24 Q. And do you recall prior to October
25 2006 -- strike that. Can you describe to the

1 ladies and gentlemen of the jury as best you
2 can recall what reason you were given by
3 YouTube executives or executive, and we'll hash
4 out who that was in a second, as to why they
5 were not filtering in and around in 2006.

6 MR. MCGILL: Again objection. Lacks
7 foundation.

8 A. So just if I can disaggregate that a
9 bit. There were ups and flows in the
10 conversation with YouTube where they at various
11 points in time over that six-month period, I
12 think it was expressed an interest but never
13 came to a firm agreement on integrating any
14 content recognition or fingerprinting
15 technologies.

16 At some point in those discussions when
17 asked what's taking so long and why hasn't this
18 progressed to an actual agreement, there were a
19 range of reasons given including the fact that
20 the copyrighted content on YouTube was a major
21 lure for their users. I don't remember the
22 exact date of that conversation, but I firmly
23 recall that conversation and that being one of
24 the reasons offered.

25 I do also recall that there were

1 additional reasons. I don't recall what all of
2 those other reasons were but that one stood out
3 in my mind.

4 BY MR. BASKIN:

5 Q. And who communicated to you as best
6 you can recall that a reason for not signing up
7 with filtering was because copyrighted content
8 on YouTube website was serving as a lure for
9 the users?

10 MR. MCGILL: Objection.
11 Mischaracterization.

12 A. My conversations with YouTube often
13 included multiple people, so I don't recall
14 specifically. I do recall that in that
15 conversation I think Zahavah Levine and Steve
16 Chen were a part of that discussion. And I
17 also recall that there was a third person who
18 was a technology, someone with a technology
19 expertise.

20 I don't recall which person specifically
21 said that but I do recall very strongly that
22 that was one of the reasons offered. It stood
23 out in my mind.

24 BY MR. BASKIN:

25 Q. Now, do you recall whether among the

1 others and those who would license, they would
2 then in the context of that licensing
3 arrangement work in integrate filtering. But

4 for those companies who were not and did not
5 develop a licensing arrangement with Google,
6 they weren't going to be doing this sort of a
7 pilot initiative or filtering.

8 MR. BASKIN: I think we have to break
9 for the tape. Shall we break for the tape now?

10 THE VIDEO OPERATOR: This is the end
11 of tape 1. Off the record at 11:39.

12 This is the beginning of tape 2 in the
13 deposition of Mr. Garfield. On the record at
14 11:49.

15 BY MR. BASKIN:

16 Q. Sir, again to help you with the
17 dates a little bit. Let me show you what we
18 will mark as Garfield Exhibit 10.

19 (Garfield Deposition Exhibit No. 10 was marked
20 for identification.)

21 A. Okay. I have read it.

22 BY MR. BASKIN:

23 Q. Sir, first, again can you identify
24 for us Garfield Exhibit 10 as consisting of an
25 E-mail chain in which you were a participant

1 A. Yes.

2 BY MR. BASKIN:

3 Q. From your discussions with
4 Mr. Inghelbrecht, what did you understand
5 everyone who works with us meant, Mr. Garfield?

6 MR. MCGILL: Objection. Calls for
7 speculation.

8 A. I'm not sure if I had an
9 understanding when I saw it, ultimately I did
10 because we continued to talk and it became
11 clear that Google/YouTube was willing to filter
12 for those who had a licensing relationship with
13 Google/YouTube and not for those who did not.

14 Just to clarify one thing about the
15 document, which is further down the page where
16 I say "Hello, here it is. The study is ongoing
17 if you agree to filter, we will send the
18 evaluation." And then Philip says, "You crack
19 me up. Thanks Dean." The point I was making
20 wasn't actually a joke, it was the results of
21 the content recognition filtering was available
22 to everyone who participated in the process and
23 that was a part of the NDA.

24 It wasn't intended to suggest anything
25 else other than if they participated find and