

HIGHLY CONFIDENTIAL -- OUTSIDE  
COUNSEL'S EYES ONLY

1/13/2010 King, David

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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4 VIACOM INTERNATIONAL, INC., COMEDY  
5 PARTNERS, COUNTRY MUSIC  
6 TELEVISION, INC., PARAMOUNT  
7 PICTURES CORPORATION, and BLACK  
8 ENTERTAINMENT TELEVISION, LLC,

9 Plaintiffs,

10 vs.

No. 07-CV-2103

11 YOUTUBE, INC., YOUTUBE, LLC,  
12 and GOOGLE, INC.,

13 Defendants.

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

18 Plaintiffs,

19 vs.

No. 07-CV-3582

20 YOUTUBE, INC., YOUTUBE, LLC,  
21 and GOOGLE, INC.,

22 Defendants.

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23 HIGHLY CONFIDENTIAL  
24 VIDEOTAPED DEPOSITION OF DAVID KING  
25 SAN FRANCISCO, CALIFORNIA  
WEDNESDAY, JANUARY 13, 2010

JOB NO. 18545

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 THE WITNESS: I just wanted to say that, you  
3 know, in a heated moment, I -- I did say that you would  
4 be well within your rights to -- to ask for removal of  
5 a -- of a -- of a video from the site based on, you  
6 know, one second of content.

7 I'm not actually, you know, a copyright  
8 lawyer, and not really in a position to -- to speak to  
9 that. And this was a -- you know, I don't think that  
10 would actually be a logical thing to do. I feel like  
11 the -- you know, the -- from whatever expertise I have  
12 in the matter, that would be -- that would be  
13 inappropriate at that level. But anyway --

14 BY MR. PLATZER:

15 Q. All right. Understood.

16 Before we broke to change the tape, we were  
17 discussing what happens to videos that YouTube removes  
18 from the service, and we were -- had just finished  
19 talking about terms of service violations.

20 A. Uh-huh.

21 Q. The next category I wanted to ask about are  
22 videos that are removed pursuant to a sort of formal  
23 DMCA takedown request. And is that terminology that  
24 you're familiar with, "DMCA takedown request"?

25 A. Yes.

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2 Q. And I think I know what the answer to this is  
3 based on the colloquy we've had so far, but I just want  
4 to confirm. If YouTube received a DMCA takedown request  
5 from a copyright owner, and that takedown request did  
6 not go through the password protected portion of the  
7 YouTube website that partners could use to check the box  
8 and say add this to YTU -- in other words, if it were a  
9 traditional DMCA takedown request, such as a letter or  
10 an e-mail requesting that a video be removed from  
11 YouTube's service, would the video that the content  
12 owner requested be removed, be fingerprinted and added  
13 to the YTU partition?

14 MR. WILLEN: Objection to the form.

15 THE WITNESS: I think the -- the -- if you  
16 examine the level of information that comes in on a DMCA  
17 takedown request, it does not include any information  
18 about the -- the quantity of the video that is being  
19 objected to. It simply just -- it says I have a right  
20 at some level to request a takedown of this, and I --  
21 and I am doing so.

22 So that does not give YouTube sufficient  
23 information to be able to diligently understand whether  
24 that user upload is -- meets the criteria for it being  
25 included in fingerprint database.

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2 So as we -- the example we discussed was if  
3 it's -- if you're making your claim of copyright  
4 infringement based on a very short segment of content in  
5 that video, and your DMCA notice simply says take this  
6 video down, with no additional information, then we are  
7 not in a position to be able to use that content as a  
8 reference file for future matching.

9 BY MR. PLATZER:

10 Q. So is the answer no? It's -- DMCA notices are  
11 not added to the YTU partition?

12 MR. WILLEN: Objection to the form. The  
13 answer is what the answer was.

14 THE WITNESS: So as -- as a matter of course,  
15 they are not added automatically to the fingerprint  
16 database.

17 The -- the criteria being was it reviewed, and  
18 do we have a statement from that right holder that --  
19 that they are claiming the entirety of that piece of  
20 content, as opposed to any portion thereof.

21 BY MR. PLATZER:

22 Q. Has YouTube ever added -- removed videos to  
23 the YTU partition based on a DMCA notice in the absence  
24 of partner use of the password protected copyright  
25 console?

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2 three interfaces or eight interfaces to communicate the  
3 same information, but the point remains that there was  
4 an interface that allowed a rights holder to communicate  
5 that level of information to us.

6 BY MR. PLATZER:

7 Q. Are you familiar with the large takedown  
8 notice that Viacom sent YouTube in February of 2007?

9 MR. WILLEN: Objection. I believe this is  
10 outside the scope of the 30(b)6 notice.

11 But if you have personal understanding you can  
12 answer.

13 THE WITNESS: As a -- you know, as a reader of  
14 the news, I -- I was familiar with that event.

15 BY MR. PLATZER:

16 Q. And again, I think I know the answer to this,  
17 based on what you've already testified to, but were the  
18 videos that Viacom re- -- requested be removed from  
19 YouTube in its large February 2007 takedown notice --  
20 were those fingerprinted by YouTube for blocking  
21 purposes?

22 MR. WILLEN: Objection to form.

23 THE WITNESS: The -- to my knowledge, those --  
24 those takedown notices were not turned into  
25 fingerprinting references.

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2 BY MR. PLATZER:

3 Q. Well, so far we've been talking about cases  
4 where YouTube uses Audible Magic to query a video that  
5 was uploaded to the YouTube website. And as a -- as a  
6 general matter, were all videos that were uploaded to  
7 the YouTube website queried against Audible Magic's  
8 databases by YouTube?

9 MR. WILLEN: Objection as to form. Vague as  
10 to time.

11 THE WITNESS: So could you maybe be more  
12 specific about what time frame?

13 BY MR. PLATZER:

14 Q. Okay. Well, does YouTube still use Audible  
15 Magic today?

16 A. YouTube uses Google technology today.

17 Q. Okay. But is YouTube also using Audible Magic  
18 alongside Google's technology today?

19 A. Not at this time.

20 Q. When did YouTube stop querying Audible Magic?

21 A. At the end of 2009.

22 Q. From the point in time where YouTube began  
23 querying Audible Magic up until it stopped at the end of  
24 2009, were all newly uploaded videos to YouTube queried  
25 against the Audible Magic databases?

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2 A. Yes, we ran queries against Audible Magic for  
3 all uploads to the site during that time.

4 Q. Does the term "legacy fingerprinting" mean  
5 anything to you?

6 A. It means something to me. What does it mean  
7 to you?

8 Q. Well, once again, I just want to make sure we  
9 have a common vocabulary as we move into this topic.

10 A. Uh-huh.

11 Q. But I'd like to ask about any instances in  
12 which YouTube queried videos from the back catalog  
13 against Audible Magic. Do you have a term that you want  
14 to use for that phenomenon?

15 A. We -- we could use the term "legacy."

16 Q. Legacy? Did YouTube at any point use Audible  
17 Magic for legacy queries?

18 A. Yes, YouTube did do legacy queries against the  
19 Audible Magic database.

20 Q. And did YouTube query its entire catalog  
21 against the Audible Magic database?

22 MR. WILLEN: Objection to form.

23 THE WITNESS: Over time, every single YouTube  
24 video that is still existent on our servers was queried  
25 against the Audible Magic database.

1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010  
2 marked as King Exhibit 10. It's a December 5th, 2006,  
3 e-mail from Stephen Cho to Franck Chastagnol, Bates  
4 number Google 189308 through 189312.

5 And just let me know when you're ready.

6 A. Okay.

7 Q. Was YouTube approached by a fingerprinting  
8 company called MAGIX in 2006?

9 A. I believe they were.

10 Q. And did YouTube ever end up testing their  
11 technology?

12 A. No, they did not.

13 Q. And I'd like to ask you a question about the  
14 second paragraph of King Exhibit 10. It says:

15 "Some of these external inbounds (Gracernote,  
16 Aurix, MAGIX, Tunesat, Attributer, . . .) are  
17 being handled as a matter of courtesy and just  
18 keeping abreast of what's in the market.  
19 (i.e., no one is thinking about any sort of  
20 bake off with multiple 3rd party  
21 fingerprinting vendors. . .)

22 Around this time frame, late 2006, did YouTube  
23 have any interest in retaining a fingerprinting vendor  
24 other than Audible Magic?

25 MR. WILLEN: Objection to the form.



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2                   THE WITNESS: I think this e-mail thread is  
3 relatively clear in that the course of action that had  
4 been decided upon was to develop Google fingerprinting  
5 technology in-house, and that's even a -- slightly  
6 misstating it, in that Google had already built  
7 excellent fingerprinting technology, both audio and  
8 video fingerprinting technology, and really, the -- the  
9 work of implementing a system like this was two-fold.

10                   One part was making it scale to the size of  
11 YouTube, a not -- a nontrivial exercise, and the second  
12 piece was harnessing it to all the -- the file flows  
13 of -- of YouTube and dealing with the rights, and --  
14 and -- and, you know, having a really strong policy  
15 framework around that.

16                   So we had excellent technology to work from  
17 as -- as a raw match service, and the -- you know, as --  
18 as we looked at doing this type of work of integrating,  
19 we decided that we wanted to do that integration with  
20 our own technology, which was robust, and -- and that --  
21 that was a rational use of our -- of our resources.

22                   I might also add that -- you asked if -- you  
23 know, if we had done technical evaluations of these  
24 companies, and I'm sure you can appreciate that a  
25 company like Google has to be very careful around patent

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2           issues and IP issues. And we weren't in a position to  
3           announce the work that we were doing. We wanted to --  
4           the -- the way of our company policy is to -- is to only  
5           announce things when you launch them, as opposed to  
6           pre-announce things that are under development.

7                        So we didn't -- we weren't in a position to be  
8           able to tell these companies that we had our own  
9           in-house technology, so our feeling was we wouldn't be  
10          able to put them on notice that they were talking to a  
11          potential competitor.

12                       And so as a -- as a matter of not wanting to  
13          create IP taint, we felt that it was important not to do  
14          deep technical evaluations of these technologies with  
15          them being unaware that we had competitive technology  
16          that we had developed at Google.

17          BY MR. PLATZER:

18                       Q.    Okay. So just to run through a couple of  
19          the -- the vendors in this space, I just want to confirm  
20          whether or not they had any kind of interaction with  
21          YouTube in 2006-2007.

22                       A.    Uh-huh.

23                       Q.    Did Audible approach YouTube about its  
24          fingerprinting technology?

25                       A.    Yes, I spoke to Auditude about their

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2 fingerprinting technology.

3 Q. And YouTube didn't end up testing that  
4 technology in 2006 or 2007?

5 A. Yes.

6 Q. Is Vobel -- did they approach YouTube in 2006  
7 about their fingerprinting technology?

8 A. They did.

9 Q. And YouTube didn't test their fingerprinting  
10 technology in 2006-2007 either?

11 A. That is correct, but I'd just like to, once  
12 again, just point out that -- two things. One, the  
13 technology that we deployed was world class in its  
14 performance. And secondly, that no matter which  
15 matching engine we used, there were still many months of  
16 work to make it work within YouTube's environment.

17 Q. Okay. But let's say --

18 A. So there were no shortcuts here.

19 Q. Okay. But at the point in time of February of  
20 2007, YouTube wasn't testing Auditude; right?

21 MR. WILLEN: Objection to the form.

22 THE WITNESS: We did not test Auditude in  
23 February of 2007.

24 BY MR. PLATZER:

25 Q. And it wasn't testing Gracernote any longer at

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2 that point; right?

3 A. Testing is -- requires real resources, and I  
4 outlined before some of the considerable issues around  
5 IP taint if we were to do technical evaluations of all  
6 these companies, which we eventually ended up competing  
7 with.

8 Q. Okay. But the answer is that in February of  
9 2007 YouTube had ceased its testing of Gracenote; right?

10 MR. WILLEN: Objection to the form.

11 THE WITNESS: We did not test Gracenote in  
12 February of 2007.

13 BY MR. PLATZER:

14 Q. And YouTube also didn't test Audible Magic's  
15 proposal for a video solution that we looked at earlier  
16 in the deposition; correct?

17 A. So as a practical matter, if we couldn't come  
18 to terms on financial matters and service level  
19 agreements, there seemed to be little point in doing  
20 technical evaluations of services that we weren't ready  
21 to contract for.

22 Q. Okay. So if someone had made a representation  
23 in -- in February of 2007 that YouTube was continuing to  
24 test Gracenote, Audible Magic, and Auditude, that  
25 wouldn't be an accurate representation, would it?

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2                   MR. WILLEN:  Objection to form.  Vague as to  
3 what "testing" means.

4                   THE VIDEOGRAPHER:  Time.

5                   MR. PLATZER:  Okay.

6                   THE VIDEOGRAPHER:  This is the end of tape  
7 number 2 of the video deposition of David King.  We are  
8 now going off the record.  The time is 2:05 p.m.

9                   (Short break.)

10                  THE VIDEOGRAPHER:  This is the beginning of  
11 recording number 3 of the video deposition of David  
12 King.  We are now back on the record.  The time is  
13 2:11 p.m.

14                  MR. PLATZER:  Would you please read back to  
15 the witness the question that was pending before we  
16 broke.

17                  (Record read:

18                   Question:  So if someone had made a  
19 representation in February of 2007 that  
20 YouTube was continuing to test Gracenote,  
21 Audible Magic, and Auditude, that wouldn't be  
22 an accurate representation, would it?)

23                  MR. WILLEN:  And -- and I'll just restate my  
24 objection, although it's not showing -- okay.  Sorry.

25                  THE WITNESS:  I just -- we had continued

1           DAVID KING           SAN FRANCISCO, CA           JANUARY 13, 2010  
2           under which YouTube would use the YT -- the YTU  
3           partition of the Audible Magic database with respect to  
4           videos that had been taken down.

5           A.    Uh-huh.

6           Q.    I'd like to ask a similar set of questions  
7           about Google's own fingerprinting technology.  Since  
8           implementation of Google's own fingerprinting  
9           technology --

10          A.    Uh-huh.

11          Q.    -- are there any circumstances in which a  
12          video that is removed pursuant to a takedown notice is  
13          fingerprinted and blocked going forward?

14          A.    As previously discussed, we switched over,  
15          once we had the Google technology in place, when we --  
16          we -- we switched over the back end so that when a user  
17          of the CMS system flagged a video and said, please  
18          create a reference off of this, we did so using the  
19          Google technology.  So really all my former testimony  
20          around that issue is -- would -- would remain the same  
21          regardless of which technical back end we were using.

22          Q.    YouTube didn't stop doing that at some point  
23          in time?

24                   MR. WILLEN:  Objection to the form.

25                   THE WITNESS:  That is a service that we still