

12/16/2009 Weingarten, Oliver



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

3
4 VIACOM INTERNATIONAL, INC., COMEDY)
5 PARTNERS, COUNTRY MUSIC.)
6 TELEVISION, INC., PARAMOUNT)
7 PICTURES CORPORATION, and BLACK)
8 ENTERTAINMENT TELEVISION, LLC,)
9
10 Plaintiffs,)

11 vs.) NO. 07-CV-2103

12 YOUTUBE, INC., YOUTUBE, LLC,)
13 and GOOGLE, INC.,)
14
15 Defendants.)

16
17 THE FOOTBALL ASSOCIATION PREMIER)
18 LEAGUE LIMITED, BOURNE CO., et al.,)
19 on behalf of themselves and all)
20 others similarly situated,)
21
22 Plaintiffs,)

23 vs.) NO. 07-CV-3582

24 YOUTUBE, INC., YOUTUBE, LLC, and)
25 GOOGLE, INC.,)
26
27 Defendants.)

28 VIDEOTAPED DEPOSITION OF OLIVER WEINGARTEN
29 TAKEN ON WEDNESDAY, DECEMBER 16, 2009
30 AT THE OFFICES OF MAYER BROWN INTERNATIONAL, LLP
31 201 BISHOPSGATE
32 LONDON EC2M 3AF, UNITED KINGDOM
33 JOB NO. 18278

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1 Q. And at the time that Premier League signed up for the
2 Content Verification Programme, it was not licence in
3 content to YouTube, correct?

4 A. We have never licensed content to YouTube.

5 Q. You testified yesterday that when Premier League got
6 access to the automated takedown tool, and this is a quote
7 from your testimony, "It meant that we did not have to send
8 an e-mail with infringing URLs and be at the behest of
9 YouTube in respect of the time it took them to take it
10 down, and we would, therefore, be able to instantly remove 09:15
11 the content." Is that an accurate description of how the
12 Content Verification Programme worked?

13 MR. SHAFTEL: Objection to form. Misstates the full testimony
14 from yesterday on those issues.

15 A. I didn't deal with the takedown programme on a
16 day-to-day basis; I stated in my testimony I allowed
17 NetResult to carry this out for us. But that was my
18 understanding.

19 Q. So the CVP gave Premier League the ability to
20 instantly take down content without having to send an 09:15
21 e-mail to YouTube each time it wanted to take down a video?

22 MR. SHAFTEL: Objection.

23 A. That is my recollection, as far as I can remember, but
24 we still had problems dealing with this tool.

25 Q. Did the tool make it easier for Premier League to

1 remove videos from YouTube?

2 MR. SHAFTEL: Easier than what?

3 Q. Easier than the situation had been before?

4 MR. SHAFTEL: Objection.

5 A. I would -- wouldn't say it was easier; it was still as
6 cost intensive and time intensive and we still had issues
7 in respect of repost and private videos being shared, but
8 it was another form of takedown that made NetResult's job
9 slightly more manageable in the grand scheme of things.

10 Q. The Premier League, in fact, used the Content 09:16
11 Verification Programme tool to remove videos from YouTube,
12 correct?

13 A. Yes.

14 Q. Do you know approximately how many videos Premier
15 League caused to be removed from YouTube using CVP?

16 A. I know more or less a cumulative figure, to date, of
17 how many videos have been removed, which is approaching
18 30,000, from my recollection.

19 Q. 30,000 total?

20 A. Yes. 09:17

21 Q. That is not necessarily limited to the ones that were
22 removed using CVP specifically?

23 A. I have no reason to break it down.

24 Q. I am going to show you another document.

25 (Exhibit 20 marked for identification)

1 This is a document produced by Premier League with the Bates
2 number PL00000574. Do you recognise this?

3 A. I do.

4 Q. What is this?

5 A. This is an e-mail confirmation from YouTube confirming
6 videos that we submitted had been deleted, videos of
7 infringing Premier League content had been taken down.

8 Q. This is taken down through the Content Verification
9 Programme?

10 A. That is what I believe, yes. 09:18

11 Q. Did Premier League receive other e-mails like this one
12 confirming that videos had been removed using CVP?

13 A. We would have received a limited amount, but I believe
14 at some point the details were changed so that NetResult
15 could manage this and I wouldn't need to get involved on a
16 daily basis.

17 Q. Are you aware of any videos that Premier League or
18 NetResult requested be removed from YouTube using the CVP
19 tool, that were not, in fact, removed?

20 MR. SHAFTEL: Objection to form. You mean the specific URLs or 09:19
21 the --

22 Q. Yes, I mean specific videos that either Premier League
23 or NetResult requested be removed using CVP, that were not
24 removed?

25 A. Well, I would count reposts of the same video as not

1 being removed and I am aware of instances where videos have
2 been requested to be taken down or submitted to be taken
3 down, and have then reappeared, the same video.

4 Q. But it's the case, in that circumstance, that the
5 original video was taken down, right?

6 A. But the same video has then reappeared.

7 Q. Right. But the original video was taken down,
8 correct?

9 A. Well, the original video may have been taken down but
10 the original video was still reappearing so I don't 09:20
11 classify that as a permanent takedown.

12 Q. Do you know whether, in that instance, the original
13 video was posted again by the same person who had posted it
14 the first time?

15 A. My belief is, yes.

16 Q. And what is the basis for that belief?

17 A. It has been pointed out to me by NetResult that this
18 has happened.

19 Q. Has it been pointed out to you in any written
20 correspondence or orally? 09:20

21 A. Certainly, orally. In respect of written
22 correspondence, I believe reposts have certainly been an
23 issue that have been raised and, as a result, I have raised
24 with my counsel, because I believe there would be some form
25 of written communication about reposts.

1 award and patches are going to second rounds.

2 Q. What about UK rights?

3 A. As far as I am aware, the only long-form agreements
4 that have been concluded to date are for the
5 aforementioned.

6 Q. Sky?

7 A. And ESPN.

8 Q. What about BBC?

9 A. And BBC.

10 Q. That is for the --

13:58

11 A. Free-to-air highlights.

12 Q. There has been a long-form agreement?

13 A. Yes.

14 Q. Do you know whether the BBC has paid more or less for
15 the package from '10 to '13 than it paid for that package
16 in 2007 to 2010?

17 A. I think it remained the same.

18 Q. So what exactly are the financial damages that the
19 Premier League believes that it has suffered as a result of
20 the infringements that it's alleged in this case?

13:59

21 MR. SHAFTEL: Objection to form.

22 A. There are a category of damages that we believe we
23 have suffered. We believe that we have not extracted the
24 maximum value from licensees because of the ongoing piracy
25 problems and issues with YouTube, the fact that licensees

1 purchase rights but then find that their rights are being
2 diluted and they actually don't have exclusivity, as we
3 have tried to grant; the loss of royalties that would be
4 payable by someone like YouTube who is using -- infringing
5 our content, take your rights; there is the loss of

6 goodwill, both -- not just to the League in respect of the
7 damage that we are suffering, but also to our partners who
8 are buying exclusive rights; there are also the costs that
9 we have incurred in the ongoing monitoring using

10 NetResult - our fees with them have increased

14:00

11 exponentially; we have incurred a lot of cost in the
12 fingerprinting and sending reference files to YouTube and
13 sending the 4.11(b) notices - YouTube has taken up a lot of
14 time internally and taken people away from doing their day
15 jobs; and, of course, we have had the costs of the
16 additional monitoring that we have had to incur outside the
17 scope of just the NetResult contract.

18 Q. What are you referring to in the last thing you just
19 said?

20 A. The fact is that not only have we increased our

14:01

21 contract with NetResult over time, but, in addition to the
22 contract we have with them for this season, we are having
23 to pay the extra work, as I said yesterday, for monitoring
24 over and above the contract and in respect of the archive
25 and legacy that is on YouTube. That is taking up a lot of