

# Schapiro Exhibit 65

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. ) Case No. 1:07CV02103

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

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

vs. ) Case No. 07CV3582

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

\_\_\_\_\_  
 DEPOSITION OF ALEX ELLERSON  
 NEW YORK, NEW YORK  
 Friday, May 22, 2009

JOB NO: 16902

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May 22, 2009

9:28 a.m.

VIDEOTAPED DEPOSITION OF ALEX  
ELLERSON, held at the offices of Proskauer  
Rose, LLP, 1585 Broadway, New York,  
New York, pursuant to notice, before Erica  
L. Ruggieri, Registered Professional  
Reporter and Notary Public of the State of  
New York.

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A P P E A R A N C E S

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ALSO PRESENT:

CARLOS KING, Videographer

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A. ELLERSON

go about doing it?

A. If I were a YouTube employee today, and I wanted to perform an analysis like this one --

Q. Uh-hum.

A. -- how would I gather the query stream data to perform that analysis?

Q. Yeah.

A. I would ask an engineer who I thought had access to query stream data if he or she could provide some of that data to me.

Q. And can you describe for us what query stream data is, or are?

A. So my general understanding of query stream data is that it is -- well, for this analysis, this would be aggregate query stream data. But raw query stream data is just a stream of the keywords that users are entering into a search engine to look for something.

Q. Is query stream data data that users enter into the YouTube search function to look for videos on YouTube?

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A. ELLERSON

A. So search operates by a user entering one or more keywords that they are hoping will describe what it is that they are looking for.

03:52:15

Q. And the query stream data that you analyzed for this memo were searches that users inputted into the YouTube search box to look for YouTube videos?

03:52:30

A. My best recollection is that, is that this data reflects queries that were aggregate queries that were entered into the Youtube search engine, yes.

03:52:50

Q. And how did you decide -- how did you categorize --

MR. GITTERMAN: Let me rephrase that.

03:53:06

Q. How did -- how were the queries aggregated in this analysis?

MR. WILLEN: Objection to the form.

03:53:24

A. This analysis -- so just to be clear, I looked at top hundred queries, so that's already an aggregation of query stream data. And then I further

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A. ELLERSON

aggregated it into these broad buckets,  
music, nonmusic, premium, adult, other.

Q. And how did you aggregate it  
03:53:38 into those buckets?

A. My best recollection is that I  
was making a best guess. So that if I saw  
the name -- if I saw a query of Bruce  
Springstein, I would use my understanding  
03:53:53 of the music world to know that that was a  
musical artist, and I would put it in the  
music bucket.

Q. How did you aggregate queries  
into the premium bucket?

A. So in a similar fashion to what  
I just described, I provided examples in  
this query stream report. If I saw the  
query "family guy," I would know -- you  
know, users might mean lot of things by  
03:54:28 the term "family guy." They might mean  
they are looking for information about,  
you know, good dads, because they are  
having a kid or something.

But I made my best guess that it  
03:54:38 probably was referring to Fox's television

1 A. ELLERSON

2 programming called Family Guy.

3 So to say that this an  
4 imperfect, back-of-the-envelope analysis  
5 03:54:57 at best and also frankly focused, with  
6 respect to it describing user interest in  
7 content, it only reflects what users on  
8 YouTube were searching for.

9 And their user interest is  
10 03:55:13 certainly expressed in other ways. Users  
11 browse to find content on YouTube, users  
12 are e-mailed links to YouTube that they  
13 can then watch on YouTube. YouTube  
14 content can be embedded on blogs, and  
15 03:55:32 users can find it there. So I was just  
16 looking at one aspect of, illustration of  
17 user interest.

18 Q. Other than browsing, e-mailing  
19 or embedding on blogs, are there any other  
20 03:55:56 ways that users express their interest in  
21 YouTube video content?

22 MR. WILLEN: Objection to the  
23 form.

24 A. How do users express an interest  
25 03:56:08 in video content? Could be conversations



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A. ELLERSON

with friends about what they like. You could look at Neilson linear television data to find out what users are interested in. You could look at the theatrical box office receipts to gather data about what users are interested in. You could look at stadium receipts of sports, sporting events, to find out what users are interested in. Lots of ways, on-line and off-line.

Q. And why is -- why did you make the determination that the Fox television show Family Guy was premium content?

A. Fox was an entity that had a large library of video content that I would have wanted to license to make available on the YouTube platform.

Q. At the -- if you look at page 65465.

Do you see at the top you write that you "analyzed two categories of query stream data. First, playback queries. Second, search queries."

A. Yes, I see that.

1                                   A. ELLERSON

2                                   index. I'm not an engineer, so some of

3                                   this is just sort of my passing

4                                   understanding. It might be very wrong.

5                   04:15:38       But I believe that the main search engine

6                                   finds text, could be written newspaper

7                                   articles, could be metadata that a website

8                                   owner has somehow made available on its

9                                   web page, and shoves all of that text into

10                   04:15:58       the search engine -- search index.

11   And then when a user runs a

12                                   query, that query is run against the

13                                   index; and the engine surfaces what its

14                                   algorithm believes is the most relevant

15                   04:16:15       content or web pages that correspond to

16                                   that specific user query.

17                                   Q.       And could users search for

18                                   YouTube video content through Google web

19                                   search --

20                   04:16:29       MR. WILLEN:  Objection.

21                                   Q.       -- on YouTube?

22                                   MR. WILLEN:  Objection.  Calls

23                                   for speculation.

24                                   Q.       If you know.

25                   04:16:34       A.       I don't know the answer to that.

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A. ELLERSON

Q. If you could turn back to your analysis at page 65465.

Under the heading of "The Top 100 Playback Queries," you write, [REDACTED]."

Does that mean -- was your conclusion, as part of this analysis, that --

MR. GITTERMAN: Actually, strike that.

Q. Can you explain for us what, what that means in the context of this analysis?

A. I believe that means that of the top 100 user queries, so a user did a query, got a search result page and then watched a video as a result of running that query and finding the search result page, that [REDACTED].

It doesn't mean that the video that the user watched was [REDACTED] c. It means that the keywords that they typed in, it was my guess that that was a [REDACTED]

1 A. ELLERSON

2 keyword.

3 Q. And how were you able to  
4 determine that it was a [REDACTED]  
5 04:18:14 keyword?

6 MR. WILLEN: Objection. I think  
7 we have asked this already.

8 A. Yeah. My recollection is we  
9 were talking about this before, and I was  
10 04:18:23 describing that I was drawing on my  
11 personal knowledge that a keyword like,  
12 for example, Bruce Springstein, that -- I  
13 mean maybe a user had a family member  
14 named Bruce Springstein that they were  
15 04:18:38 trying to find something about, but I used  
16 my judgment to determine that that meant  
17 that the user's interest was in videos  
18 related to the Bruce Springstein.

19 And frankly, I was also making a  
20 04:18:50 leap of faith that -- that that meant that  
21 they were looking for Bruce Springstein  
22 performing music, but I don't know that to  
23 a certainty. This is a very  
24 nonscientific -- they could have been  
25 04:19:02 looking for Bruce Springstein news

1 A. ELLERSON  
2 interviews. They could have been looking  
3 for Bruce Springstein blooper reels. I  
4 wouldn't know. So again, I was merely  
5 04:19:13 making a back-of-the-envelope guess.

6 Q. Now, you relied on this data  
7 analysis to conclude that there was an  
8 enormous demand for premium content on the  
9 YouTube website; isn't that right?

10 04:19:29 A. I think what I wrote was  
11 something along those lines, yes, that  
12 there was -- how was the memo phrased?  
13 Yeah. [REDACTED]  
14 [REDACTED],  
15 04:20:00 [REDACTED]  
16 [REDACTED], and --

17 Q. And do you --

18 MR. WILLEN: Let him finish his  
19 answer.

20 04:20:08 A. -- the reason for that is, the  
21 reason I would come to that conclusion is  
22 looking at these, to me, what's more  
23 interesting here is the search query data  
24 which indicates that someone did a, ran a  
25 04:20:20 search looking for something and

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A. ELLERSON

document number ending in 1167.

(Witness reviews document.)

MS. KOHLMANN: That's a  
04:59:17 different document.

MR. GITTERMAN: That's not 10.  
How did that happen?

MR. FRANKS: Here you go. This  
is what 10 is here. What you gave the  
04:59:25 witness and what you gave me is  
received -- from Alex Ellerson,  
received date 5/30/07, at 1649 CST.  
That's what's been marked as 10, with  
attachment [REDACTED]

04:59:46 [REDACTED].

You want to go to a number 11?

MS. KOHLMANN: No. Go ahead.

MR. GITTERMAN: We will stick  
with number 10, but I read the wrong  
05:00:02 Bates number.

MR. WILLEN: Can I get my copy  
back, then.

MS. KOHLMANN: Sorry.

MR. WILLEN: That's all right.

05:00:08 Thanks.

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A. ELLERSON

MR. GITTERMAN: So document 10 starts with Bates number GOO 00102519867 and ends in 02519873.

05:00:31 MR. FRANKS: That appears to be what we got.

MR. GITTERMAN: Sorry about that.

Q. Mr. Ellerson, if you can turn to page 9868, it's the second page. I don't think you need to read the whole thing.

A. I'd like to at least know --

Q. I just have a couple questions.

A. -- what the -- at least skim through it.

05:01:05 Q. Okay. Turning to the second page of the document, do you recognize this as an earlier draft of the memo we were just discussing?

05:02:04 A. It appears to be an earlier draft of the memo we were just discussing, yes.

Q. And by just discussing, I'm referring to Exhibit 9.

05:02:18 And if you turn to page 9871,

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A. ELLERSON

which is headed "Analysis of Query Stream Data."

A. Yes.

05:02:29 Q. And is that the same analysis that was attached to the Exhibit 9 memorandum?

A. So it appears to be identical.

05:03:06 Q. If you turn to page 9869, which is the second page of the memo. In the second paragraph from the top, in the second sentence, do you see it says, 

05:03:31

  
A. I see it, yes.

Q. Do you have any reason, sitting here now, to disagree with that conclusion?

05:03:54 A. I believe that that conclusion is saying that as a result of looking at



# **Schapiro Exhibit 66**

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. )Case 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. )Case No. 07CV3582

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

\_\_\_\_\_)

DEPOSITION OF MICAH SCHAFFER

SAN FRANCISCO, CALIFORNIA

WEDNESDAY, JULY 23, 2008

REPORTED BY:

YVONNE FENNELLY, CRP, CSR NO. 5495

JOB NO. 15376

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JULY 23, 2008

10:00 a.m.

VIDEOTAPED DEPOSITION OF MICAH SCHAFFER,  
held at the offices of SHEARMAN & STERLING,  
525 Market Street, San Francisco, California,  
pursuant to notice, before YVONNE FENNELLY, CRP,  
CSR License No. 5495.

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A P P E A R A N C E S

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APPEARANCES (Continued):

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ALSO PRESENT: Kelly Truelove, consultant;  
Lou Meadows, Videographer

--oOo--

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2 03:18 disclosures, the requests for removal under CYC do not  
3 03:18 trigger the repeat infringer policy? Is there a  
4 03:18 provision in those agreements?  
5 03:18 A. I'm not aware of -- I don't have firsthand  
6 03:18 knowledge of those agreements and certainly not outside  
7 03:18 of discussions with attorneys. And again, I'm not  
8 03:19 testifying to the end implementation of it and how it  
9 03:19 worked; I am simply explaining the context of this  
10 03:19 discussion and the principles at work.  
11 03:19 I believe some of those -- I believe that  
12 03:19 essential workflow is what was ultimately codified in  
13 03:19 our content ID program, and I would presume that that  
14 03:19 was done, you know, in partnership and in conjunction  
15 03:19 with the content owners who used that program. But,  
16 03:19 again, that's essentially the limits of my knowledge on  
17 03:19 the subject.  
18 03:19 Q. You testified that attached to this e-mail is  
19 03:19 the generic notice that was sent to the uploader  
20 03:19 describing the repeat infringer policy; is that right?  
21 03:19 Is this a form notice that Mr. Liu attaches?  
22 03:20 A. Yes, this appears to be what I would imagine  
23 03:20 was being sent at the time. I know -- I believe this  
24 03:20 e-mail has evolved over time as much of our messaging  
25 03:20 has.

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2 03:20 Q. This doesn't say that three incidents will  
3 03:20 result in deletion of your account. It says "repeat  
4 03:20 incidents"; do you see that?  
5 03:20 A. Sure. Yes, I see it now.  
6 03:20 Q. Where is it disclosed to -- let's take this  
7 03:20 over time.  
8 03:20 Are you aware at any point in time when YouTube  
9 03:20 publicized to uploaders as part of the notices they  
10 03:20 would get when their content was removed on copyright  
11 03:20 grounds, that there was a three repeat policy?  
12 03:21 A. A three strikes policy?  
13 03:21 Q. Yes.  
14 03:21 A. I know that changed over time. I don't recall  
15 03:21 specifically to this messaging in this particular form  
16 03:21 e-mail.  
17 03:21 Q. Are you aware of any messaging where YouTube  
18 03:21 publicized to uploaders that you have three strikes or  
19 03:21 your account is deleted?  
20 03:21 A. I think at one point our terms of use may have  
21 03:21 made reference to three strikes. I'm not sure if it was  
22 03:21 in a copyright context or not.  
23 03:21 Q. Does it today?  
24 03:21 A. I'd have to look it up. I don't believe so.  
25 03:21 Q. And when strikes are allocated to a user for

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2 03:21 copyright reasons, what does the strike -- what is the  
3 03:22 strike imposed against? Is it a user ID? Is it a  
4 03:22 user --  
5 03:22 A. [REDACTED].  
6 03:22 Q. So if my account is closed at a given [REDACTED]  
7 03:22 [REDACTED] for repeat infringer reasons, what, if anything,  
8 03:22 blocks me from reopening an account at another [REDACTED]  
9 03:22 [REDACTED]?  
10 03:22 A. I think that would probably be possible to do  
11 03:22 for most people.  
12 03:22 Q. You say "probably possible." Is there anything  
13 03:22 blocking me from doing that?  
14 03:22 A. Well, you would have to [REDACTED]  
15 03:22 [REDACTED]. I  
16 03:22 imagine that's fairly -- yeah, I don't know how many  
17 03:23 people would figure that out, but one could.  
18 03:23 Q. Are you aware of any discussions at YouTube  
19 03:23 about allocating the strikes in another fashion other  
20 03:23 than to an [REDACTED]?  
21 03:23 A. Well, [REDACTED] are really the only  
22 03:23 unique identifier that I'm aware of that's associated  
23 03:23 with a YouTube account. Certainly I imagine someone  
24 03:23 that is indicated provided by the user. I'm sure there  
25 03:23 are some other kinds of IDs we assign. So I would think



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2 03:23 that would be the only one that would be reliable in an  
3 03:23 automated fashion.  
4 03:23           There are other technologies that were -- that  
5 03:24 we're working on developing and trying to leverage that  
6 03:24 are better at detecting duplicate accounts, and we tend  
7 03:24 to use those more in a reactive capacity because they  
8 03:24 involve some human review typically for, like, an abuse  
9 03:24 investigation, things like that. I know it is something  
10 03:24 that -- and it touches on all areas of our business  
11 03:24 where there is abuse, be it copyright, to more serious  
12 03:24 things like child protection, child pornography, things  
13 03:24 like that, very serious matters like copyright where we  
14 03:24 want to prevent people who have been terminated from  
15 03:24 creating new accounts.  
16 03:24           And if we discover that -- one of the things  
17 03:24 that we've actually, and we've taken various steps to  
18 03:24 improve our messaging in this regard over time is to  
19 03:24 communicate to users when their accounts are terminated  
20 03:24 that they're not permitted to create new accounts.  
21 03:24           And if it comes to our attention where we're  
22 03:24 able to determine that someone has, in fact, created a  
23 03:25 new account after having a previous account terminated,  
24 03:25 we will immediately want to terminate that account as  
25 03:25 well.

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2 03:25 Q. I want to just go back.  
3 03:25 Is there any reason that you couldn't block --  
4 03:25 that you're aware of, that you couldn't block an IP  
5 03:25 address based on a three-strike policy? Three strikes  
6 03:25 at that IP address, the IP address is shut down?  
7 03:25 A. Absolutely.  
8 03:25 Q. Was there any consideration?  
9 03:25 MR. SCHAPIRO: Let him answer.  
10 03:25 BY MR. SHAFTEL:  
11 03:25 Q. I thought you did.  
12 03:25 A. No, no, no.  
13 03:25 So my answer is, absolutely there is a reason  
14 03:25 why that's not an effective solution, is IP addresses  
15 03:25 are not a unique identifier; they don't uniquely  
16 03:25 identify necessarily a computer or a person. They  
17 03:25 change. So I may have one IP address today and you may  
18 03:25 have that IP address tomorrow if we're at the same  
19 03:25 internet service provider. I might access YouTube from  
20 03:25 a library, and others would then be prevented. So there  
21 03:26 are lots of good reasons not to rely on an IP address.  
22 03:26 I think it's one signal that can be combined  
23 03:26 with other signals to give a likelihood, and that is  
24 03:26 something that we're very interested in and that we  
25 03:26 leverage when possible. But I don't think an IP address

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2 03:26 alone is really viable for that kind of an action.  
3 03:26 Q. Has YouTube ever blocked IP addresses for any  
4 03:26 reasons on grounds other than copyright infringement?  
5 03:26 A. From signing up for a YouTube account?  
6 03:26 Q. Yes, from opening an account, continuing to use  
7 03:26 an account associated with an IP address.  
8 03:26 A. Not to my knowledge.  
9 03:26 Q. You had mentioned in your answer that YouTube  
10 03:26 has or is developing duplication detection for abuse  
11 03:27 reasons.  
12 03:27 What was the nature of the technology that  
13 03:27 you're referring to there?  
14 03:27 MR. SCHAPIRO: Could you pause for a minute?  
15 03:27 (Discussion off the record between the  
16 03:27 witness and counsel.)  
17 03:27 MR. SCHAPIRO: Go ahead. You can answer.  
18 03:27 THE WITNESS: Well, the most notable system,  
19 03:27 and this has actually been developed, but isn't fully  
20 03:27 integrated with YouTube yet, is one that YouTube has for  
21 03:27 Google accounts. The system is called GRADS. I don't  
22 03:27 know what that's an acronym for, G-R-A-D-S.  
23 03:27 And it looks at various signals to try and  
24 03:27 ascertain whether a duplicate account has been created,  
25 03:27 and it's used for a variety of things including, you

1  
2 03:27 know, fraud detection and spam and things like that.  
3 03:28 YouTube has not yet fully integrated with  
4 03:28 Google's account management system. I believe we have  
5 03:28 plans to in the near term, and it involves a lot of  
6 03:28 other moving pieces, but to the extent possible, we try  
7 03:28 to leverage that system.  
8 03:28 BY MR. SHAFTEL:  
9 03:28 Q. Thank you.  
10 03:28 You had testified earlier today about MD5  
11 03:28 hashes.  
12 03:28 Am I correct that when content is removed  
13 03:28 pursuant to the DMCA process, YouTube then takes some  
14 03:28 action based on MD5 hashes?  
15 03:28 A. Yes.  
16 03:28 Q. How does it work?  
17 03:28 A. So when content is removed for terms of use  
18 03:29 violation or in response to a copyright notification,  
19 03:29 our system automatically implements a block on the  
20 03:29 originally uploaded files, MD5 hash.  
21 03:29 Q. Do the MD5 hashes, have they ever at YouTube  
22 03:29 operated to delete videos that were existing on the  
23 03:29 system before the video that is taken down?  
24 03:29 A. So the question is about preexisting?  
25 03:29 Q. Exactly.

1  
2 04:01 business decisions.  
3 04:01 Do you recall that issue around this MySpace  
4 04:01 account?  
5 04:01 A. I don't recall this incident.  
6 04:01 Q. Do you recall issues where others at Google, to  
7 04:01 use Mary Rose Dutton's words, were trying to figure out  
8 04:01 a way to dance around the copyright stuff to reinstate  
9 04:01 accounts?  
10 04:01 A. Well, first of all, I believe you said  
11 04:01 February 2006.  
12 04:01 Q. Correct.  
13 04:01 A. I would not have any knowledge of what Google  
14 04:02 was up to at that time.  
15 04:02 MR. SCHAPIRO: Did you mean YouTube?  
16 04:02 BY MR. SHAFTEL:  
17 04:02 Q. I'm sorry. I did mean YouTube.  
18 04:02 A. Oh, okay.  
19 04:02 I think the frustration being expressed in that  
20 04:02 transcript you've read doesn't necessarily reflect  
21 04:02 attitudes towards copyright so much as towards fairness  
22 04:02 and wanting to provide a positive user experience.  
23 04:02 The circumstances that Mary Rose describes  
24 04:02 are -- in which, you know, a user who had uploaded 250  
25 04:02 videos, presumably over some period of time, and was

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2 04:02 very engaged with the site and passionate about the  
3 04:02 site, you know, received, it sounded like, from what you  
4 04:03 read, received three copyright strikes within a very  
5 04:03 close amount of time.  
6 04:03           And as we reviewed earlier, when a video is  
7 04:03 removed due to a copyright claim, users receive a  
8 04:03 warning e-mail notifying them about the repeat infringer  
9 04:03 policy. And our view, I think, or my view at least  
10 04:03 philosophically is that -- and legally, as I understand  
11 04:03 it, you know, the DMCA requires we have a reasonable  
12 04:03 policy to terminate accounts that repeatedly infringe.  
13 04:03 And we really take that to heart and we want to have a  
14 04:03 reasonable policy and, you know, the DMCA says repeat.  
15 04:03           And to us, you know, if congress had wanted to,  
16 04:04 the law could have said, immediately terminate on first  
17 04:04 act of -- on first notice. It doesn't. It says repeat.  
18 04:04 And so we feel like the appropriate thing, the  
19 04:04 reasonable thing to do is to give users warnings because  
20 04:04 we find that most users do want to follow the rules.  
21 04:04 They just -- some of them need more education than  
22 04:04 others. And users will, if given the opportunity, more  
23 04:04 times than not they'll correct their behavior. And so I  
24 04:04 think the view being expressed there is what good is a  
25 04:04 warning notification if by the time they see the warning

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2 04:04 they're terminated, and that's my understanding of the

3

04:04 situation.

4

04:04 Q. That said, sitting here today, do you have an

5

04:05 understanding as to why, at least according to Mary Rose

6

04:05 Dunton, you were hog-wild on copyright, and apparently

7

04:05 opposed to the reinstatement of this person's account?

8

04:05 A. Again, I don't recall the specific incident,

9

04:05 and I would probably disagree with her characterization

10

04:05 of my attitude.

11

04:05 Q. Do you recall any situations where you favored

12

04:05 either taking down videos on copyright grounds or, it

13

04:05 seems to be referred to in these IM messages, blocking

14

04:05 accounts for copyright reasons when others at YouTube

15

04:06 prevailed in keeping the video or the account open?

16

04:06 A. In circumstances as described by that

17

04:06 transcript?

18

04:06 Q. Any circumstances. Where you favored the video

19

04:06 to come down and ultimately YouTube opted to keep the

20

04:06 video up, and then I'll ask the same question about

21

04:06 accounts.

22

04:06 A. Not that I can recall.

23

04:06 Q. And how about with user accounts, keeping them

24

04:06 open or blocking them?

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04:06 A. Well, there are lots of different reasons

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04:06 accounts might be terminated, and I'm sure we don't

04:06 always agree on those.

04:06 Q. Any involving copyright issues, any disputes,

04:06 disagreements over copyright issues with respect to

04:06 keeping accounts open or videos up?

04:07 A. I think it's widely understood at YouTube that

04:07 we have -- you know, that our copyright policies are not

04:07 really negotiable; that they can, with proper guidance

04:07 from legal counsel and in accordance with the advice we

04:07 receive, that they could be adjusted over time, but that

04:07 the policies at any given time must be followed and that

04:07 they're not discretionary.

04:07 Q. Are there arrangements with premium -- with

04:07 content partners at YouTube where their accounts cannot

04:07 be taken down based on three copyright strikes?

04:07 A. In order to prevent erroneous removals of

04:08 accounts, as I mentioned earlier, like, for instance,

04:08 NBC taking down their own account repeatedly through

04:08 mistaken self-inflicted DMCA notices, of, you know, of

04:08 authorized content.

04:08 We have with, under appropriate -- we've

04:08 established a system under appropriate circumstances and

04:08 with escalation to legal counsel to essentially change

04:08 the workflow for certain rights holders in very specific



# **Schapiro Exhibit 67**

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, :	CASE NO.
	: 07-CV-2203
Plaintiffs, :	
vs. :	
YOUTUBE, INC., YOUTUBE, LLC, AND :	
GOOGLE, INC., :	
	:
Defendants. :	

Videotaped deposition of DEBORAH KADETSKY, taken on behalf of the Defendants, in the above-entitled matter before Suzanne Stotz, a Certified Shorthand Reporter (License No. 1845) and Notary Public of the State of New York, taken at the offices of MAYER BROWN, LLP, 1675 Broadway, New York, New York, on Tuesday, August 18, 2009, commencing at 10:08 a.m.

JOB No. 17414

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## 13 ALSO PRESENT:

14 Sallean Browne, Videographer

1 11:03:35 VH1 branding, should be on a clip that you send  
2 11:03:38 to YouTube?  
3 11:03:39 A. There would be conversations about  
4 11:03:41 it, yes.  
5 11:03:42 Q. Do you recall whether Michael  
6 11:03:45 Hirschorn sometimes advocated having less  
7 11:03:48 branding?  
8 11:03:50 A. He was often interested in that  
9 11:03:54 direction, yes.  
10 11:03:57 Q. How come?  
11 11:03:59 MS. CUNHA: Objection.  
12 11:04:00 A. I can't speak to why he would  
13 11:04:03 suggest it.  
14 11:04:04 Q. Did he ever tell you why, that you  
15 11:04:06 can remember?  
16 11:04:07 A. No.  
17 11:04:11 Q. And you didn't ask?  
18 11:04:13 A. I just offered my opinion on how it  
19 11:04:16 should be handled.  
20 11:04:17 Q. I'm going to ask you to take a look  
21 11:04:21 at Exhibit 7.  
22 11:04:21 (Whereupon Exhibit No. 7, E-mail  
23 11:04:21 chain Bates number VIA 10406091 and VIA  
24 11:05:02 10406092, was marked for identification.)  
25 11:05:02 A. Okay.

1 11:05:03 Q. This e-mail, which was produced by  
2 11:05:06 Viacom in this litigation, appears to be an  
3 11:05:10 exchange between you and someone whose e-mail  
4 11:05:19 name is VH1MarkIntern. Is that the intern that  
5 11:05:26 you referred to earlier?

6 11:05:26 A. This is a generic account that all  
7 11:05:29 of our interns use.

8 11:05:30 Q. So the person using VH1MarkIntern  
9 11:05:36 would have been an intern of some kind at VH1?

10 11:05:39 A. Yes.

11 11:05:43 Q. And does this reflect the postings  
12 11:05:49 that you mentioned earlier in your testimony by  
13 11:05:55 an intern to an intern's account?

14 11:05:58 A. I don't remember specifically.

15 11:05:59 Q. So the intern writes to you, "Here  
16 11:06:05 is a list of sites that I have joined to be  
17 11:06:10 able to post the video. There are a lot of  
18 11:06:14 sites that allow me to upload videos that I  
19 11:06:17 have seen but not yet joined." Do you recall  
20 11:06:21 receiving this e-mail?

21 11:06:22 A. Not specifically, no, but I see  
22 11:06:25 that it was clearly sent to me.

23 11:06:26 Q. And there is an attachment, which I  
24 11:06:29 think we don't have here, but there appears to  
25 11:06:33 be an attachment called Flavor of Love

1 11:06:35 sites.XLS. Do you know what the XLS extension  
2 11:06:41 on a file signifies?  
3 11:06:44 A. Excel.  
4 11:06:46 Q. It signifies a spreadsheet?  
5 11:06:50 A. Yes.  
6 11:06:51 Q. And would people working for you  
7 11:06:53 sometimes send you information on spreadsheets?  
8 11:06:56 A. Yes.  
9 11:06:57 Q. And is it a fair inference that the  
10 11:06:59 intern is giving you a list of some sites that  
11 11:07:03 he has joined to be able to post the Flavor of  
12 11:07:07 Love, to post some Flavor of Love material?  
13 11:07:10 A. I believe that to be true, yes.  
14 11:07:12 Q. And you asked him for an updated  
15 11:07:19 list of the sites he promoted clip number one  
16 11:07:23 on, correct?  
17 11:07:24 A. Yes.  
18 11:07:24 Q. You don't happen to remember what  
19 11:07:26 clip number one was, do you?  
20 11:07:27 A. Not even close.  
21 11:07:29 Q. And he then sends you in response a  
22 11:07:36 list of several web addresses, correct?  
23 11:07:43 A. Yes.  
24 11:07:44 Q. So he lists YouTube, correct?  
25 11:07:49 A. Yes.

1 11:07:49 Q. MySpace, correct?

2 11:07:51 A. Yes.

3 11:07:51 Q. Dailymotion?

4 11:07:52 A. Yes.

5 11:07:53 Q. Google?

6 11:07:54 A. Yes.

7 11:07:55 Q. vSocial?

8 11:07:56 A. Yes.

9 11:07:57 Q. StreamDump?

10 11:07:59 A. Yes.

11 11:08:01 Q. And he says, "These are the sites

12 11:08:03 that I have uploaded the video on," correct?

13 11:08:05 A. That is correct.

14 11:08:05 Q. And then he lists a bunch of other

15 11:08:09 sites and after saying, "I am currently

16 11:08:11 uploading it to these sites," and lists seven

17 11:08:15 or ten other sites, correct?

18 11:08:18 A. Yes.

19 11:08:22 Q. And as far as -- he says at the

20 11:08:24 beginning that he joined these sites to be able

21 11:08:28 to post the video, correct?

22 11:08:30 A. Yes.

23 11:08:30 Q. But he had your authority to do

24 11:08:32 that, correct?

25 11:08:32 A. Yes.

1 11:08:33 Q. And he was not acting outside the  
2 11:08:40 scope of his duties when he did this, correct?

3 11:08:43 A. No.

4 11:08:43 Q. And he cleared it with you?

5 11:08:45 A. Yes.

6 11:08:48 Q. So the videos that he posted were  
7 11:08:50 to YouTube, for example, were authorized to be  
8 11:08:54 there, correct?

9 11:08:55 A. I believe so.

10 11:08:56 Q. And he was not using the VH1  
11 11:08:59 account, correct?

12 11:09:01 MS. CUNHA: Objection to form.

13 11:09:02 A. I don't believe we had a VH1  
14 11:09:05 account yet at this point.

15 11:09:06 Q. Do you know the name of the account  
16 11:09:08 that he used?

17 11:09:10 A. I am not certain, but I believe it  
18 11:09:12 to be that reaction 2006 account.

19 11:09:24 MR. SCHAPIRO: Why don't we take a  
20 11:09:26 five or ten-minute break?

21 11:09:28 THE VIDEOGRAPHER: The time is  
22 11:09:30 11:09 a.m. on August 18, 2009, and this  
23 11:09:33 completes tape number one.

24 11:09:33 (Whereupon a short break was  
25 11:14:19 taken.)



1 11:30:22 THE VIDEOGRAPHER: The time is  
2 11:30:23 11:30 a.m. on August 18, 2009, and this is  
3 11:30:28 tape number two.  
4 11:30:34 Q. I'm going to show you an e-mail  
5 11:30:36 that was produced by Viacom in this litigation.  
6 11:30:39 MR. SCHAPIRO: I'll ask that it be  
7 11:30:40 marked as Exhibit 8.  
8 11:30:40 (Whereupon Exhibit No. 8, E-mail  
9 11:30:40 chain Bates number VIA 10405377 and VIA  
10 11:31:39 10405378, was marked for identification.)  
11 11:31:39 A. Okay.  
12 11:31:40 Q. So this is an example, isn't it, of  
13 11:31:51 you leaking a clip virally before a show airs?  
14 11:31:57 MS. CUNHA: Objection.  
15 11:32:00 A. I don't recall the specific  
16 11:32:13 incident, so I can only refer to what's in this  
17 11:32:15 e-mail. It looks to me like it went up the day  
18 11:32:22 before.  
19 11:32:22 Q. And this refers to the Wendy  
20 11:32:28 Williams show; is that correct?  
21 11:32:30 A. According to the e-mail.  
22 11:32:31 Q. Is Wendy Williams a VH1 show?  
23 11:32:34 A. Yes, this one was.  
24 11:32:42 Q. You considered YouTube a platform  
25 11:33:07 that gave you a lot of exposure to an audience

1 12:15:19 Q. Was that an unusual thing for  
2 12:15:21 someone internal at MTV Networks to release  
3 12:15:26 upcoming episodes of a VH1 show?  
4 12:15:29 A. Sure, that was unusual.  
5 12:15:31 Q. And celeb reality Flavor Flav was a  
6 12:15:34 VH1 show?  
7 12:15:36 A. Probably. There is not enough  
8 12:15:39 description for me to think otherwise, but I am  
9 12:15:41 not sure.  
10 12:15:42 Q. One of the people at YouTube who  
11 12:15:44 was on this chain is someone named Zahavah  
12 12:15:47 Levine. Have you ever heard that name?  
13 12:15:49 A. I haven't.  
14 12:15:50 Q. She says, "We will take it down  
15 12:15:52 right away." And then somehow you end up on  
16 12:15:56 this chain.  
17 12:15:59 A. I have no idea.  
18 12:16:00 Q. Can you think of why someone would  
19 12:16:01 have included you on this?  
20 12:16:03 A. I don't recognize any of these  
21 12:16:04 other names.  
22 12:16:06 Q. Well, Tony Carbone is there.  
23 12:16:08 A. But not until after the Zahavah  
24 12:16:12 e-mail. Perhaps they thought I could help  
25 12:16:18 escalate their request. I don't know.

1 12:16:20 Q. So you sent an FYI?

2 12:16:23 A. Yes.

3 12:16:23 Q. To all the people listed here,  
4 12:16:26 including Tina Imm, Jeff Olde, Tony Carbone,  
5 12:16:30 saying, "FYI, folks, it looks like the video  
6 12:16:33 has been officially removed."

7 12:16:35 A. Yes.

8 12:16:35 Q. And then Adam Cahan sent something  
9 12:16:38 to YouTube saying, "Really appreciate the  
10 12:16:41 speedy action here. Goes a long way with our  
11 12:16:42 programmers. Owe you one." Smiley. Is that  
12 12:16:45 consistent with your experience with YouTube?

13 12:16:47 A. Yes.

14 12:16:48 Q. And is this an instance where  
15 12:16:56 apparently someone internally put up some  
16 12:16:59 Viacom material that shouldn't have gone out?

17 12:17:06 A. Just by reading this e-mail, it  
18 12:17:08 seems to be that way, but I wasn't aware of who  
19 12:17:11 that person was or the situation.

20 12:17:13 Q. Now, just because a video had some  
21 12:17:55 of the promotional elements that you described,  
22 12:17:57 like a call to tune in, that doesn't mean that  
23 12:18:02 the clip itself is authorized to be on YouTube,  
24 12:18:04 does it?

25 12:18:05 A. Not necessarily.

1 12:18:39 MR. SCHAPIRO: Exhibit 17.

2 12:18:39 (Whereupon Exhibit No. 17, E-mail

3 12:18:39 chain Bates number VIA 10405260, was

4 12:18:42 marked for identification.)

5 12:18:42 Q. This is an e-mail chain. It is

6 12:18:48 ultimately between you and Sonia Ocasio. I

7 12:18:52 will give you a minute to read it.

8 12:18:54 A. Okay. Okay.

9 12:19:19 Q. And the second from the top

10 12:19:25 Ms. Ocasio, am I pronouncing that right?

11 12:19:28 A. Yes.

12 12:19:28 Q. Asks you, "Who do you think is,"

13 12:19:30 and then there is a URL for what seems to be a

14 12:19:34 YouTube user PJoseph73. It says, "Who do you

15 12:19:38 think is PJoseph73? He puts up all of our VH1

16 12:19:43 promos. And you answer, "Good question. I

17 12:19:45 have no idea." As you sit here today, do you

18 12:19:50 have any idea who PJoseph73 is?

19 12:19:53 A. I don't.

20 12:19:54 Q. If you wanted to find out whether

21 12:19:56 PJoseph73 had authority to put up those promos

22 12:20:00 or not, what would you do?

23 12:20:06 MS. CUNHA: Objection to form.

24 12:20:12 A. I've never gone through that

25 12:20:14 process, so I don't know.

# **Schapiro Exhibit 68**

**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	)	
COPRORATION,	)	Case No. 1:07-CV-2103-LLS
and BLACK ENTERTAINMENT	)	(Related Case No. 1:07-cv-03582 (LLS))
TELEVISION LLC,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
YOUTUBE, INC., YOUTUBE, LLC, and	)	
GOOGLE INC.,	)	
	)	
Defendants.	)	

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**PLAINTIFFS VIACOM INTERNATIONAL INC. ET AL.'S RESPONSES TO  
DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSION**

Plaintiffs Viacom International Inc. et al. ("Viacom") respond to Defendants First Set of Requests for Admission ("RFAs") as follows.

**GENERAL OBJECTIONS**

The following General Objections to the RFAs are incorporated by reference into each of Viacom's responses below.

1. Viacom objects to each RFA to the extent it seeks to elicit information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity.
2. Viacom objects to each RFA to the extent it seeks to elicit Viacom's opinion as opposed to facts.

3. Viacom objects to each RFA to the extent it seeks to impose obligations or requirements beyond those imposed by the Federal Rules of Civil Procedure, the Local Rules of the Southern District of New York, or the applicable standing orders and orders of this Court.

4. Viacom objects to each RFA to the extent it sets forth compound, conjunctive, or disjunctive statements.

5. Viacom objects to each RFA to the extent it is unduly burdensome and seeks information not relevant to the above-captioned litigation.

6. Viacom objects to the definitions of “Viacom,” “You,” and “Your” to the extent that they are vague, ambiguous, overly broad, and unduly burdensome.

7. Viacom objects to the definition of “Accused Clip” as compound, vague, and ambiguous. To the extent that it includes clips that are not the subject of allegations of infringement in this litigation, Viacom further objects to that definition as overly broad, unduly burdensome, and not reasonably related to the claims or defenses at issue. Hereafter, Viacom uses the term “Clips In Suit” to refer to the clips that are actually at issue in this litigation, as identified in Viacom’s Works In Suit Disclosure of October 15, 2009.

8. Viacom objects to the use of the phrase “DMCA Takedown Notice” as vague, ambiguous, and calling for a legal conclusion. For the purposes of these Responses, Viacom construes that phrase to refer to any notice alleging copyright infringement and requesting the removal of material.

9. Viacom objects to the use of the phrase “at all relevant times” as vague and ambiguous.

10. In objecting to Defendants’ First Set of Requests for Admission, Viacom does not in any way waive or intend to waive but, rather, intends to preserve and are preserving:

- a. all objections as to competency, relevancy, materiality, privilege and admissibility of evidence for any purpose of any information or document, or the subject matter thereof, in the trial of this or any other action or subsequent proceedings;
- b. the right to object to the use of any information or document, or the subject matter thereof, in the trial of this or any other action or subsequent proceedings;
- c. the right to elicit appropriate evidence, beyond the responses themselves, regarding the subjects referred to in or in response to any RFA; and
- d. the right at any time to correct, supplement, or clarify any of the objections or responses.

11. These general objections are incorporated by reference into each of Viacom's Responses set forth below.

### **RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS FOR ADMISSION**

#### **REQUEST FOR ADMISSION NO. 1:**

**Admit that at all relevant times YouTube was a "service provider" as that term is used in 17 U.S.C. § 512(k)(1)(B).**

Admit that YouTube is a "service provider" as that term is used in 17 U.S.C. § 512(k)(1)(B). For purposes of clarity, Viacom denies that YouTube is or ever has been a "service provider" as that term is used in 17 U.S.C. § 512(k)(1)(A).

#### **REQUEST FOR ADMISSION NO. 2:**

**Admit that at all relevant times, YouTube stored material "at the direction of a user" as that phrase is used in 17 U.S.C. § 512(c)(1).**

Deny.

#### **REQUEST FOR ADMISSION NO. 3:**



**Admit that the material You allege to infringe Your copyrights in this case was stored on the youtube.com service “at the direction of a user” as that phrase is used in 17 U.S.C. § 512(c)(1).**

Deny.

**REQUEST FOR ADMISSION NO. 4:**

**Admit that all of Your copyright infringement claims in this action allege infringement of copyrights “by reason of the storage at the direction of a user” of material that resides on a system or network controlled or operated by or for YouTube, as set forth in 17 U.S.C. § 512(c)(1).**

Deny.

**REQUEST FOR ADMISSION NO. 5:**

**Admit that at all relevant times, YouTube had “designated an agent to receive notifications of claimed infringement” as set forth in 17 U.S.C. § 512(c)(2).**

Deny.

**REQUEST FOR ADMISSION NO. 6:**

**Admit that on every occasion that You sent YouTube a DMCA Takedown Notice relating to an Accused Clip, YouTube responded “expeditiously,” as that phrase is used in 17 U.S.C. § 512(c)(1)(A)(iii), to remove or disable access to the material claimed to be infringing.**

Deny.

**REQUEST FOR ADMISSION NO. 7:**

Admit that on every occasion that You sent YouTube a DMCA Takedown Notice relating to an Accused Clip, YouTube responded within seventy-two business hours to remove or disable access to the material claimed to be infringing.

Deny.

**REQUEST FOR ADMISSION NO. 8:**

Admit that for all of the Accused Clips, prior to receiving a DMCA Takedown Notice from You identifying those specific clips, YouTube did not have “actual knowledge” that the material was infringing, as described in 17 U.S.C. § 512(c)(1)(A)(i).

Deny.

**REQUEST FOR ADMISSION NO. 9:**

Admit that on no occasion did YouTube fail to expeditiously remove or disable access to an Accused Clip to the extent YouTube became aware of facts or circumstances from which infringing activity was apparent, as described in 17 U.S.C. § 512(c)(1)(A)(ii).

Deny.

**REQUEST FOR ADMISSION NO. 10:**

Admit that YouTube lacked the right and ability to control the infringing activity alleged by You in this case, as described in 17 U.S.C. § 512(c)(1)(B).

Deny.

**REQUEST FOR ADMISSION NO. 11:**

Admit that YouTube did not receive a financial benefit directly attributable to the infringing activity alleged by You in this case, as described in 17 U.S.C. § 512(c)(1)(B).

Deny.

**REQUEST FOR ADMISSION NO. 12:**

**Admit that at all relevant times, access to and use of the youtube.com service was provided to users by YouTube free and without charge.**

Viacom objects to this RFA on the ground that the terms “access to,” “use of,” and “users” are vague, ambiguous, and potentially cover a broad range of activities. Subject to and without waiving that objection, Viacom admits that users can watch videos on YouTube free and without charge, but denies this RFA in all other respects.

**REQUEST FOR ADMISSION NO. 13:**

**Admit that at all relevant times YouTube had adopted and reasonably implemented, and informed its subscribers and account holders of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of YouTube who were repeat infringers, as described in 17 U.S.C. § 512(i)(1)(A).**

Deny.

**REQUEST FOR ADMISSION NO. 14:**

**Admit that at no time relevant to this lawsuit have there been any “standard technical measures” in existence as that term is defined in 17 U.S.C. §§ 512(i)(1)(B) and 512(i)(2).**

Deny.

**REQUEST FOR ADMISSION NO. 15:**

**Admit that You do not claim in this case that YouTube failed to comply with 17 U.S.C. §§ 512(i)(1)(B) (*i.e.*, YouTube accommodates and not interfere with “standard technical measures” to the extent any exist).**

Deny.

**REQUEST FOR ADMISSION NO. 16:**

**Admit that You have uploaded videos to the youtube.com service.**

Viacom denies that it uploaded to youtube.com any of the Clips In Suit. Viacom admits that it uploaded a small number of trailers and other promotional videos that are not at issue in this litigation and that such uploads were generally performed with Defendants' knowledge and encouragement.

**REQUEST FOR ADMISSION NO. 17:**

**Admit that You have uploaded videos to the youtube.com service for marketing and promotional purposes.**

Viacom denies that it uploaded to youtube.com any of the Clips in Suit for any purpose, including marketing and promotional purposes. Viacom admits that it uploaded a small number of trailers and other promotional videos that are not at issue in this litigation and that such uploads were generally performed with Defendants' knowledge and encouragement.

**REQUEST FOR ADMISSION NO. 18:**

**Admit that, with respect to some videos uploaded or authorized to be uploaded by You to the youtube.com service, You intentionally concealed the fact that the uploading of the videos was done by You or at Your direction.**

Deny.

**REQUEST FOR ADMISSION NO. 19:**

**Admit that one or more of the Accused Clips were uploaded by You to the youtube.com service.**

Viacom denies this RFA as to the Clips In Suit. Viacom further denies that it uploaded any of the clips listed by URL in Attachment A.

**REQUEST FOR ADMISSION NO. 20:**

**Admit that the presence on the youtube.com website of videos embodying the Works in Suit can have the effect of increasing consumer demand for those works.**

Viacom objects to this RFA on the grounds that it is vague, ambiguous, and an incomplete hypothetical. Subject to that objection, deny.

**REQUEST FOR ADMISSION NO. 21:**

**Individually for each Accused Clip, admit that the Accused Clip was uploaded to YouTube by You or by a third party with Your authorization.**

Viacom denies this RFA as to the Clips In Suit. Viacom further denies that it uploaded any of the clips listed by URL in Attachment A.

**REQUEST FOR ADMISSION NO. 22:**

**Admit that You created the account “Paraccount” on the YouTube service and used it to upload Your copyrighted material to YouTube.**

Admit.

**REQUEST FOR ADMISSION NO. 23:**

**Admit that You created the account “VH1 staff” on the YouTube service and used it to upload Your copyrighted material to YouTube.**

Admit.

**REQUEST FOR ADMISSION NO. 24:**

**Admit that You created the account “ParamountVantage” on the YouTube service and used it to upload Your copyrighted material to YouTube.**

Admit.

**REQUEST FOR ADMISSION NO. 25:**

**Admit that You created the account “MTV2” on the YouTube service and used it to upload Your copyrighted material to YouTube.**

Deny as to creation, admit as to use.

**REQUEST FOR ADMISSION NO. 26:**

**Admit that You created the account “SpikeTV” on the YouTube service and used it to upload Your copyrighted material to YouTube.**

Admit.

**REQUEST FOR ADMISSION NO. 27:**

**Admit that You created the account “ParamountClassics” on the YouTube service and used it to upload Your copyrighted material to YouTube.**

Admit.

**REQUEST FOR ADMISSION NO. 28:**

**Admit that You created the account “MTV2AllThatRocks” on the YouTube service and used it to upload Your copyrighted material to YouTube.**

Admit.

**REQUEST FOR ADMISSION NO. 29:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “Thatsfunny”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 30:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “Thatisalsofunny”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 31:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “Thatsnotfunny”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 32:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “BroadwayJoe”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 33:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “BroadwayJoe415”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 34:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “PinkStrawberry”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 35:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “PinkStrawberry1”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 36:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “ParkMyVibe”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 37:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “FiveChemical”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 38:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “FunFunFunnyVideo”.**

Deny.

**REQUEST FOR ADMISSION NO. 39:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “strangewildernessuk”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 40:**



**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “cuongnyc”.**

Deny.

**REQUEST FOR ADMISSION NO. 41:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “skippynyc”.**

Deny.

**REQUEST FOR ADMISSION NO. 42:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “mosjef73”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 43:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “keithhn”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 44:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “MysticalGirl8”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 45:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “veehonerockz”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 46:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “qpittman”.**

Deny.

**REQUEST FOR ADMISSION NO. 47:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “inmundo”.**

Deny.

**REQUEST FOR ADMISSION NO. 48:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “mtvnewsinterns”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 49:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “MTVSneakAttack”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 50:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “UTubeVJ”.**

Deny.

**REQUEST FOR ADMISSION NO. 51:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “bestclips”.**

Deny.

**REQUEST FOR ADMISSION NO. 52:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “SpacePrince72”.**

Deny.

**REQUEST FOR ADMISSION NO. 53:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “kdolak42”.**

Deny.

**REQUEST FOR ADMISSION NO. 54:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “thinkmtv”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 55:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “panelistclips”.**

Deny.

**REQUEST FOR ADMISSION NO. 56:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “NMarketing”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 57:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “bestweekever”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 58:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “beheard”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 59:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “HotRodMovie”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 60:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “PeachesLarue”.**

Deny.

**REQUEST FOR ADMISSION NO. 61:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “Demansr”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 62:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “Reaction2006”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 63:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “Wiredset”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 64:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “Isitfridayet”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 65:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “snackboard”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 66:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “gossipgirl40”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 67:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “fanscapevideos”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 68:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “Damonjohnson”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 69:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “jerseymouth1”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 70:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “BadBoyRecords”.**

Deny.

**REQUEST FOR ADMISSION NO.71:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “blacktreemedia”.**

Deny.

**REQUEST FOR ADMISSION NO. 72:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “bpfrecords”.**

Deny.

**REQUEST FOR ADMISSION NO. 73:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “CBS”.**

Deny.

**REQUEST FOR ADMISSION NO. 74:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “freeforlife112”.**

Deny.

**REQUEST FOR ADMISSION NO. 75:**

**Admit that You authorized your copyrighted material to be uploaded to YouTube under the account name “FutureWorld77”.**

Deny.

**REQUEST FOR ADMISSION NO. 76:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “irenemariemodels”.**

Deny.

**REQUEST FOR ADMISSION NO. 77:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “ladyfragment”.**

Deny.

**REQUEST FOR ADMISSION NO. 78:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “laurenceegibbs”.**

Deny.

**REQUEST FOR ADMISSION NO. 79:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “LiberalViewer”.**

Deny.

**REQUEST FOR ADMISSION NO. 80:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “ParamountPictures”.**

Deny.

**REQUEST FOR ADMISSION NO. 81:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “ParamountGermany”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.



**REQUEST FOR ADMISSION NO. 82:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “ParamountViacom”.**

Deny.

**REQUEST FOR ADMISSION NO. 83:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “ParamountVantage”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 84:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “dreamworksfansite”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 85:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “waytblue”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 86:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “HotRodMovie”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 87:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “tastefullymine”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 88:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “waytobluefrance”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 89:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “BrienTA”.**

Deny.

**REQUEST FOR ADMISSION NO. 90:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “eibrandedcontent”.**

Deny.

**REQUEST FOR ADMISSION NO. 91:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “hostiltakeoverbank”.**

Deny.

**REQUEST FOR ADMISSION NO. 92:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “StrangersWCandyMovie”.**

Deny.

**REQUEST FOR ADMISSION NO. 93:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “powermadeak47dotcom”.**

Deny.

**REQUEST FOR ADMISSION NO. 94:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “powmadeak47”.**

Deny.

**REQUEST FOR ADMISSION NO. 95:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “reno9112miami”.**

Deny.

**REQUEST FOR ADMISSION NO. 96:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “shishka”.**

Deny.

**REQUEST FOR ADMISSION NO. 97:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “themoviemonkey”.**

Deny.

**REQUEST FOR ADMISSION NO. 98:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “thesparksfly”.**

Deny.

**REQUEST FOR ADMISSION NO. 99:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “TNAwrestling”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 100:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “txcany”.**

Deny.

**REQUEST FOR ADMISSION NO.101:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “victorweb”.**

Deny.

**REQUEST FOR ADMISSION NO. 102:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “vlogging”.**

Deny.

**REQUEST FOR ADMISSION NO. 103:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “schnebley”.**

Deny.

**REQUEST FOR ADMISSION NO. 104:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “universalmusicgroup”.**

Deny.

**REQUEST FOR ADMISSION NO. 105:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “bullrunvideo”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 106:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “bravenewfilms”.**

Deny.

**REQUEST FOR ADMISSION NO. 107:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “chu2007”.**

Viacom admits that it or its authorized agents uploaded a specific clip or clips containing its copyrighted material to YouTube to this account, but otherwise denies.

**REQUEST FOR ADMISSION NO. 108:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “livetorhyme88”.**

Deny.

**REQUEST FOR ADMISSION NO. 109:**

**Admit that You authorized Your copyrighted material to be uploaded to YouTube under the account name “globe427”.**

Deny.

**REQUEST FOR ADMISSION NO. 110:**

**Admit that You agreed to YouTube’s Terms of Service when You created accounts on the YouTube service.**

Viacom objects that this RFA is vague and ambiguous with respect to the phrase “Terms of Service.” Subject to and without waiving those objections, Viacom admits that it agreed to YouTube’s Terms of Service in effect at the time when it created accounts on the YouTube service only with respect to videos uploaded by Viacom or its authorized agents to those accounts and insofar as the Terms of Service are legally enforceable and do not conflict with laws of intellectual property. Deny in all other respects.

**REQUEST FOR ADMISSION NO. 111:**

**Admit that You expressly licensed YouTube under Your copyrights pertaining to all videos that You or Your agents uploaded to YouTube.**

Viacom admits that it expressly granted a limited, revocable license only with respect to videos actually uploaded by Viacom or its authorized agents, which do not include any Clips In Suit. Deny in all other respects.

**REQUEST FOR ADMISSION NO. 112:**

**Admit that prior to October 2006, You authorized all clips of the “The Daily Show” and the “Colbert Report” that were less than 5 minutes in length to remain on the YouTube service.**

Deny.

**REQUEST FOR ADMISSION NO. 113:**

**Admit that in October 2006, You authorized all clips of the “The Daily Show” and the “Colbert Report” that were less than 3 minutes in length to remain on the YouTube service.**

Deny.

**REQUEST FOR ADMISSION NO. 114:**

**Admit that in November 2006, You authorized all clips of the “The Daily Show” and the “Colbert Report” that were less than 2.5 minutes in length to remain on the YouTube service.**

Deny.

**REQUEST FOR ADMISSION NO. 115:**

**Individually for each Accused Clip, admit that You did not send a DMCA Takedown Notice to YouTube within one week of becoming aware of that clip’s presence on YouTube.**

Viacom objects to this RFA on the ground that it purports to constitute over 63,000 separate Requests for Admission, one for each Clip In Suit. Viacom further objects to this RFA on the ground that, for the majority of Clips In Suit, Defendants have no good-faith basis for requesting an admission that Viacom did not send a takedown notice within one week of becoming aware of the clip’s presence on YouTube. Subject to and without waiving those objections, Viacom denies that for most of the Clips In Suit it did not send a takedown notice to YouTube within one week of becoming aware of that clip’s presence on YouTube.

**REQUEST FOR ADMISSION NO. 116:**

**Individually for each Accused Clip, admit that You did not send a DMCA Takedown Notice to YouTube within one month of becoming aware of that clip’s presence on YouTube.**

Viacom objects to this RFA on the ground that it purports to constitute over 63,000 separate Requests for Admission, one for each Clip In Suit. Viacom further objects to this RFA on the ground that, for the majority of Clips In Suit, Defendants have no good-faith basis for requesting an admission that Viacom did not send a takedown notice within one month of becoming aware of the clip's presence on YouTube. Subject to and without waiving those objections, Viacom denies that for most of the Clips In Suit it did not send a takedown notice to YouTube within one month of becoming aware of that clip's presence on YouTube.

**REQUEST FOR ADMISSION NO. 117:**

**Individually for each Accused Clip, admit that You did not send a DMCA Takedown Notice to YouTube within two months of becoming aware of that clip's presence on YouTube.**

Viacom objects to this RFA on the ground that it purports to constitute over 63,000 separate Requests for Admission, one for each Clip In Suit. Viacom further objects to this RFA on the ground that, for the majority of Clips In Suit, Defendants have no good-faith basis for requesting admissions that Viacom did not send a takedown notice within two months of becoming aware of the clip's presence on YouTube. Subject to and without waiving those objections, Viacom denies that for most of the Clips In Suit it did not send a takedown notice to YouTube within two months of becoming aware of that clip's presence on YouTube.

**REQUEST FOR ADMISSION NO. 118:**

**Admit that as of July 1, 2006 Atom had "designated an agent to receive notifications of claimed infringement" as set forth in 17 U.S.C. § 512(c)(2).**

Admit.

**REQUEST FOR ADMISSION NO. 119:**



**Admit that as of July 1, 2006 Atom had provided to the Copyright Office substantially the information set forth in 17 U.S.C. § 512(c)(2)(A)-(B) for its designated agent to received notifications of claimed infringement.**

Admit.

**REQUEST FOR ADMISSION NO. 120:**

**Admit that as of July 1, 2006 the Register of Copyrights' directory of agents designated to receive notifications for claimed infringement included an agent for Atom designated by you.**

Admit.

**REQUEST FOR ADMISSION NO. 121:**

**Admit that as of July 1, 2006 Atom had stored material "at the direction of a user" as that phrase is used in 17 U.S.C. § 512(c)(1).**

Viacom objects to this RFA on the ground that it is vague with respect to the scope of the activity referenced. Subject to and without waiving that objection, deny.

**REQUEST FOR ADMISSION NO. 122:**

**Admit that as of July 1, 2006 Atom was a "service provider" as defined in 17 U.S.C. § 512(k)(1)(B).**

Admit.

**REQUEST FOR ADMISSION NO. 123:**

**Admit that as of July 1, 2006 Atom had received DMCA Takedown Notices with respect to material posted on Atom.**

Viacom admits that, as of August 9, 2006, Atom had received one takedown notice for alleged copyright infringement with regard to material posted on Atom.

**REQUEST FOR ADMISSION NO. 124:**

Admit that as of July 1, 2006, on every occasion that Atom had received a DMCA Takedown Notice, it responded “expeditiously,” as that phrase is used in 17 U.S.C. § 512(c)(1)(A)(iii), to remove or disable access to the allegedly infringing material.

Admit.

**REQUEST FOR ADMISSION NO. 125:**

Admit that as of July 1, 2006, prior to receiving a DMCA Takedown Notice concerning user-uploaded material on Atom, Atom did “not have actual knowledge” that the material was infringing, as described in 17 U.S.C. § 512(c)(1)(A)(i).

Admit.

**REQUEST FOR ADMISSION NO. 126:**

Admit that as of July 1, 2006, prior to receiving a DMCA Takedown Notice concerning user-uploaded material posted on Atom, Atom was not aware of facts or circumstances from which infringing activity was apparent, as described in 17 U.S.C. § 512(c)(1)(A)(ii).

Admit.

**REQUEST FOR ADMISSION NO. 127:**

Admit that as of July 1, 2006, with respect to user-uploaded material posted on Atom for which Atom had received a DMCA Takedown Notice, Atom did not have the right and ability to control the infringing activity, as described in 17 U.S.C. § 512(c)(1)(B).

Deny.

**REQUEST FOR ADMISSION NO. 128:**

Admit that as of July 1, 2006, with respect to user-uploaded material posted on Atom for which Atom has received a DMCA Takedown Notice, Atom did not receive a

**financial benefit directly attributable to the infringing activity, as described in 17 U.S.C. § 512(c)(1)(B).**

Viacom does not have enough information to determine whether alleged infringing clips on Atom were a draw for users, and therefore does not have information sufficient to admit or deny.

**REQUEST FOR ADMISSION NO. 129:**

**Admit that as of July 1, 2006, Atom had adopted and reasonably implemented, and informed subscribers and account holders of Atom of, a policy that provided for the termination in appropriate circumstances of its subscribers and account holders who were repeat infringers, as described in 17 U.S.C. § 512(1)(1)(A).**

Admit.

**REQUEST FOR ADMISSION NO. 130:**

**Admit that as of July 1, 2006, Atom accommodated and did not interfere with “standard technical measures” as defined in 17 U.S.C. §§ 512(i)(1)(8) and 512(i)(2).**

Admit.

**REQUEST FOR ADMISSION NO. 131:**

**Admit that as of November 1, 2006 Atom had “designated an agent to receive notifications of claimed infringement” as set forth in 17 U.S.C, § 512(c)(2).**

Admit.

**REQUEST FOR ADMISSION NO. 132:**

**Admit that as of November 1, 2006 Atom had provided to the Copyright Office substantially the information set forth in 17 U.S.C. § 512(c)(2)(A)-(B) for its designated agent to received notifications of claimed infringement.**

Admit.

**REQUEST FOR ADMISSION NO. 133:**

**Admit that as of November 1, 2006 the Register of Copyrights' directory of agents designated to receive notifications for claimed infringement included an agent for Atom designated by you.**

Admit.

**REQUEST FOR ADMISSION NO. 134:**

**Admit that as of November 1, 2006 Atom had stored material "at the direction of a user" as that phrase is used in 17 U.S.C. § 512(c)(I).**

Viacom objects to this RFA on the ground that it is vague with respect to the scope of the activity referenced. Subject to and without waiving that objection, deny.

**REQUEST FOR ADMISSION NO. 135:**

**Admit that as of November 1, 2006 Atom was a "service provider" as defined in 17 U.S.C. § 512(k)(I)(B).**

Admit.

**REQUEST FOR ADMISSION NO. 136:**

**Admit that as of November 1, 2006 Atom had received DMCA Takedown Notices with respect to material posted on Atom.**

Viacom admits that, as of November 1, 2006, Atom had received ten or fewer takedown notices for alleged copyright infringement with regard to material posted on Atom.

**REQUEST FOR ADMISSION NO. 137:**

**Admit that as of November 1, 2006, on every occasion that Atom had received a DMCA Takedown Notice, it responded "expeditiously," as that phrase is used in 17 U.S.C. § 512(c)(1)(A)(iii), to remove or disable access to the allegedly infringing material.**

Admit.

**REQUEST FOR ADMISSION NO. 138:**

Admit that as of November 1, 2006, prior to receiving a DMCA Takedown Notice concerning user-uploaded material on Atom, Atom did “not have actual knowledge” that the material was infringing, as described in 17 U.S.C. § 512(c)(1)(A)(i).

Admit.

**REQUEST FOR ADMISSION NO. 139:**

Admit that as of November 1, 2006, prior to receiving a DMCA Takedown Notice concerning user-uploaded material posted on Atom, Atom was not aware of facts or circumstances from which infringing activity was apparent, as described in 17 U.S.C. § 512(c)(1)(A)(ii).

Admit.

**REQUEST FOR ADMISSION NO. 140:**

Admit that as of November 1, 2006, with respect to user-uploaded material posted on Atom for which Atom had received a DMCA Takedown Notice, Atom did not have the right and ability to control the infringing activity, as described in 17 U.S.C. § 512(e)(1)(B).

Deny.

**REQUEST FOR ADMISSION NO. 141:**

Admit that as of November 1, 2006, with respect to user-uploaded material posted on Atom for which Atom has received a DMCA Takedown Notice, Atom did not receive a financial benefit directly attributable to the infringing activity, as described in 17 U.S.C. § 512(c)(1)(B).

Viacom does not have enough information to determine whether alleged infringing clips on Atom were a draw for users, and therefore does not have information sufficient to admit or deny.

**REQUEST FOR ADMISSION NO. 142:**

**Admit that as of November 1, 2006, Atom had adopted and reasonably implemented, and informed subscribers and account holders of Atom of, a policy that provided for the termination in appropriate circumstances of its subscribers and account holders who were repeat infringers, as described in 17 U.S.C. § 512(i)(1)(A).**

Admit.

**REQUEST FOR ADMISSION NO. 143:**

**Admit that as of November 1, 2006, Atom accommodated and did not interfere with “standard technical measures” as defined in 17 U.S.C. §§ 512(i)(1)(B) and 512(i)(2).**

Admit.

**REQUEST FOR ADMISSION NO. 144:**

**Admit that as of March 13, 2007 Atom had “designated an agent to receive notifications of claimed infringement” as set forth in 17 U.S.C. § 512(c)(2).**

Admit.

**REQUEST FOR ADMISSION NO. 145:**

**Admit that as of March 13, 2007 Atom had provided to the Copyright Office substantially the information set forth in 17 U.S.C. § 512(c)(2)(A)-(B) for its designated agent to received notifications of claimed infringement.**

Admit.

**REQUEST FOR ADMISSION NO. 146:**

**Admit that as of March 13, 2007 the Register of Copyrights’ directory of agents designated to receive notifications for claimed infringement included an agent for Atom designated by you.**

Admit.

**REQUEST FOR ADMISSION NO. 147:**

**Admit that as of March 13, 2007 Atom had stored material “at the direction of a user” as that phrase is used in 17 U.S.C. § 512(c)(l).**

Viacom objects to this RFA on the ground that it is vague with respect to the scope of the activity referenced. Subject to and without waiving that objection, deny.

**REQUEST FOR ADMISSION NO. 148:**

**Admit that as of March 13, 2007 Atom was a “service provider” as defined in 17 U.S.C. § 512(k)(1)(B).**

Admit.

**REQUEST FOR ADMISSION NO. 149:**

**Admit that as of March 13, 2007 Atom had received DMCA Takedown Notices with respect to material posted on Atom.**

Viacom admits that, as of March 13, 2007, Atom had received ten or fewer takedown notices for alleged copyright infringement with regard to material posted on Atom.

**REQUEST FOR ADMISSION NO. 150:**

**Admit that as of March 13, 2007, on every occasion that Atom had received a DMCA Takedown Notice, it responded “expeditiously,” as that phrase is used in 17 U.S.C. § 512(c)(1)(A)(iii), to remove or disable access to the allegedly infringing material.**

Admit.

**REQUEST FOR ADMISSION NO. 151:**

**Admit that as of March 13, 2007, prior to receiving a DMCA Takedown Notice concerning user-uploaded material on Atom, Atom did “not have actual knowledge” that the material was infringing, as described in 17 U.S.C. § 512(e)(1)(A)(i).**

Admit.

**REQUEST FOR ADMISSION NO. 152:**

Admit that as of March 13, 2007, prior to receiving a DMCA Takedown Notice concerning user-uploaded material posted on Atom, Atom was not aware of facts or circumstances from which infringing activity was apparent, as described in 17 U.S.C. § 512(c)(1)(A)(ii).

Admit.

**REQUEST FOR ADMISSION NO. 153:**

Admit that as of March 13, 2007, with respect to user-uploaded material posted on Atom for which Atom had received a DMCA Takedown Notice, Atom did not have the right and ability to control the infringing activity, as described in 17 U.S.C. § 512(c)(1)(8).

Deny.

**REQUEST FOR ADMISSION NO. 154:**

Admit that as of March 13, 2007, with respect to user-uploaded material posted on Atom for which Atom has received a DMCA Takedown Notice, Atom did not receive a financial benefit directly attributable to the infringing activity, as described in 17 U.S.C. § 512(c)(1)(8).

Viacom does not have enough information to determine whether alleged infringing clips on Atom were a draw for users, and therefore does not have information sufficient to admit or deny.

**REQUEST FOR ADMISSION NO. 155:**

Admit that as of March 13, 2007, Atom had adopted and reasonably implemented, and informed subscribers and account holders of Atom of, a policy that provided for the termination in appropriate circumstances of its subscribers and account holders who were repeat infringers, as described in 17 U.S.C. § 512(i)(1)(A).



Admit.

**REQUEST FOR ADMISSION NO. 156:**

Admit that as of March 13, 2007, Atom accommodated and did not interfere with “standard technical measures” as defined in 17 U.S.C. §§ 512(i)(1)(B) and 512(i)(2).

Admit.

**REQUEST FOR ADMISSION NO. 157:**

Admit that as of July 1, 2007 Atom had “designated an agent to receive notifications of claimed infringement” as set forth in 17 U.S.C. § 512(c)(2).

Admit.

**REQUEST FOR ADMISSION NO. 158:**

Admit that as of July 1, 2007 Atom had provided to the Copyright Office substantially the information set forth in 17 U.S.C. § 512(c)(2)(A)-(B) for its designated agent to received notifications of claimed infringement.

Admit.

**REQUEST FOR ADMISSION NO. 159:**

Admit that as of July 1, 2007 the Register of Copyrights’ directory of agents designated to receive notifications for claimed infringement included an agent for Atom designated by you.

Admit.

**REQUEST FOR ADMISSION NO. 160:**

Admit that as of July 1, 2007 Atom had stored material “at the direction of a user” as that phrase is used in 17 U.S.C. § 512(c)(1).

Viacom objects to this RFA on the ground that it is vague with respect to the scope of the activity referenced. Subject to and without waiving that objection, deny.

**REQUEST FOR ADMISSION NO. 161:**

**Admit that as of July 1, 2007 Atom was a “service provider” as defined in 17 U.S.C. § 512(k)(1)(B).**

Admit.

**REQUEST FOR ADMISSION NO. 162:**

**Admit that as of July 1, 2007 Atom had received DMCA Takedown Notices with respect to material posted on Atom.**

Viacom admits that, as of July 1, 2007, Atom received ten or fewer takedown notices for alleged copyright infringement with regard to material posted on Atom’s user-generated video websites.

**REQUEST FOR ADMISSION NO. 163:**

**Admit that as of July 1, 2007, on every occasion that Atom had received a DMCA Takedown Notice, it responded “expeditiously,” as that phrase is used in 17 U.S.C. § 512(c)(1)(A)(iii), to remove or disable access to the allegedly infringing material.**

Admit.

**REQUEST FOR ADMISSION NO. 164:**

**Admit that as of July 1, 2007, prior to receiving a DMCA Takedown Notice concerning user-uploaded material on Atom, Atom did “not have actual knowledge” that the material was infringing, as described in 17 U.S.C. § 512(c)(1)(A)(i).**

Admit.

**REQUEST FOR ADMISSION NO. 165:**

**Admit that as of July 1, 2007, prior to receiving a DMCA Takedown Notice concerning user-uploaded material posted on Atom, Atom was not aware of facts or**

circumstances from which infringing activity was apparent, as described in 17 U.S.C. § 512(e)(1)(A)(ii).

Admit.

**REQUEST FOR ADMISSION NO. 166:**

**Admit that as of July 1, 2007, with respect to user-uploaded material posted on Atom for which Atom had received a DMCA Takedown Notice, Atom did not have the right and ability to control the infringing activity, as described in 17 U.S.C. § 512(c)(1)(B).**

Deny.

**REQUEST FOR ADMISSION NO. 167:**

**Admit that as of July 1, 2007, with respect to user-uploaded material posted on Atom for which Atom has received a DMCA Takedown Notice, Atom did not receive a financial benefit directly attributable to the infringing activity, as described in 17 U.S.C. § 512(c)(1)(B).**

Viacom does not have enough information to determine whether alleged infringing clips on Atom were a draw for users, and therefore does not have information sufficient to admit or deny.

**REQUEST FOR ADMISSION NO. 168:**

**Admit that as of July 1, 2007, Atom had adopted and reasonably implemented, and informed subscribers and account holders of Atom of, a policy that provided for the termination in appropriate circumstances of its subscribers and account holders who were repeat infringers, as described in 17 U.S.C. § 512(i)(1)(A).**

Admit.

**REQUEST FOR ADMISSION NO. 169:**

**Admit that as of July 1, 2007, Atom accommodated and did not interfere with “standard technical measures” as defined in 17 U.S.C. §§ 512(i)(1)(B) and 512(i)(2).**

Admit.

**REQUEST FOR ADMISSION NO. 170:**

**Admit that ifilm.com has “designated an agent to receive notifications of claimed infringement” as set forth in 17 U.S.C. § 512(c)(2).**

Admit.

**REQUEST FOR ADMISSION NO. 171:**

**Admit that ifilm.com has provided to the Copyright Office substantially the information set forth in 17 U.S.C. § 512(c)(2)(A)-(B) for its designated agent to received notifications of claimed infringement.**

Admit.

**REQUEST FOR ADMISSION NO. 172:**

**Admit that the Register of Copyrights’ current directory of agents designated to receive notifications for claimed infringement includes an agent for ifilm.com designated by you.**

Admit.

**REQUEST FOR ADMISSION NO. 173:**

**Admit that ifilm.com has stored material “at the direction of a user” as that phrase is used in 17 U.S.C. § 512(c)(1).**

Viacom objects to this RFA on the ground that it is vague with respect to the scope of the activity referenced. Subject to and without waiving that objection, deny.

**REQUEST FOR ADMISSION NO. 174:**

**Admit that ifilm.com is a “service provider” as defined in 17 U.S.C. § 512(k)(1)(B).**

Deny.

**REQUEST FOR ADMISSION NO. 175:**

**Admit that ifilm.com has received DMCA Takedown Notices with respect to material posted on ifilm.com.**

Viacom admits that ifilm.com has received a small number of takedown notices alleging copyright infringement with respect to material posted on ifilm.com.

**REQUEST FOR ADMISSION NO. 176:**

**Admit that on every occasion that ifilm.com received a DMCA Takedown Notice, it responded “expeditiously,” as that phrase is used in 17 U.S.C. § 512(c)(1)(A)(iii), to remove or disable access to the allegedly infringing material.**

Admit.

**REQUEST FOR ADMISSION NO. 177:**

**Admit that prior to receiving a DMCA Takedown Notice concerning user-uploaded material on ifilm.com, ifilm.com did “not have actual knowledge” that the material was infringing, as described in 17 U.S.C. § 512(c)(1)(A)(i).**

Admit.

**REQUEST FOR ADMISSION NO. 178:**

**Admit that prior to receiving a DMCA Takedown Notice concerning user-uploaded material posted on ifilm.com, ifilm.com was not aware of facts or circumstances from which infringing activity was apparent, as described in 17 U.S.C. § 512(c)(1)(A)(ii).**

Admit.

**REQUEST FOR ADMISSION NO. 179:**

**Admit that with respect to user-uploaded material posted on ifilm.com for which ifilm.com has received a DMCA Takedown Notice, ifilm.com does not have the right and ability to control the infringing activity, as described in 17 U.S.C. § 512(c)(1)(B).**

Deny.

**REQUEST FOR ADMISSION NO. 180:**

**Admit that with respect to user-uploaded material posted on ifilm.com for which ifilm.com has received a DMCA Takedown Notice, ifilm.com did not receive a financial benefit directly attributable to the infringing activity, as described in 17 U.S.C. § 512(c)(1)(B).**

Viacom does not have enough information to determine whether alleged infringing clips on ifilm.com were a draw for users, and therefore does not have information sufficient to admit or deny.

**REQUEST FOR ADMISSION NO. 181:**

**Admit that ifilm.com has adopted and reasonably implemented, and informs subscribers and account holders of ifilm.com of, a policy that provides for the termination in appropriate circumstances of its subscribers and account holders who are repeat infringers, as described in 17 U.S.C. § 512(i)(1)(A).**

Deny.

**REQUEST FOR ADMISSION NO. 182:**

**Admit that ifilm.com accommodates and does not interfere with “standard technical measures” as defined in 17 U.S.C. §§ 512(i)(1)(B) and 512(i)(2).**

Deny.

**REQUEST FOR ADMISSION NO. 183:**

**Admit that flux.com has “designated an agent to receive notifications of claimed infringement” as set forth in 17 U.S.C. § 512(c)(2).**

Admit.

**REQUEST FOR ADMISSION NO. 184:**

**Admit that flux.com has provided to the Copyright Office substantially the information set forth in 17 U.S.C. § 512(c)(2)(A)-(B) for its designated agent to received notifications of claimed infringement.**

Admit.

**REQUEST FOR ADMISSION NO. 185:**

**Admit that the Register of Copyrights’ current directory of agents designated to receive notifications for claimed infringement includes an agent for flux.com designated by you.**

Admit.

**REQUEST FOR ADMISSION NO. 186:**

**Admit that flux.com has stored material “at the direction of a user” as that phrase is used in 17 U.S.C. § 512(c)(1).**

Viacom objects to this RFA on the ground that it is vague with respect to the scope of the activity referenced. Subject to and without waiving that objection, deny.

**REQUEST FOR ADMISSION NO. 187:**

**Admit that flux.com is a “service provider” as defined in 17 U.S.C. § 512(k)(1)(B).**

Admit.

**REQUEST FOR ADMISSION NO. 188:**

**Admit that flux.com has received DMCA Takedown Notices with respect to material posted on flux.com.**

Deny.

**REQUEST FOR ADMISSION NO. 189:**

Admit that on every occasion that flux.com received a DMCA Takedown Notice, it responded “expeditiously,” as that phrase is used in 17 U.S.C. § 512(c)(1)(A)(iii), to remove or disable access to the allegedly infringing material.

Deny.

**REQUEST FOR ADMISSION NO.190:**

Admit that prior to receiving a DMCA Takedown Notice concerning user-uploaded material on flux.com, flux.com did “not have actual knowledge” that the material was infringing, as described in 17 U.S.C. § 512(c)(1)(A)(i).

Deny.

**REQUEST FOR ADMISSION NO. 191:**

Admit that prior to receiving a DMCA Takedown Notice concerning user-uploaded material posted on flux.com, flux.com was not aware of facts or circumstances from which infringing activity was apparent, as described in 17 U.S.C. § 512(c)(1)(A)(ii).

Deny.

**REQUEST FOR ADMISSION NO. 192:**

Admit that with respect to user-uploaded material posted on flux.com for which flux.com has received a DMCA Takedown Notice, flux.com does not have the right and ability to control the infringing activity, as described in 17 U.S.C. § 512(c)(1)(B).

Deny.

**REQUEST FOR ADMISSION NO. 193:**

Admit that with respect to user-uploaded material posted on flux.com for which flux.com has received a DMCA Takedown Notice, flux.com did not receive a financial



**benefit directly attributable to the infringing activity, as described in 17 U.S.C. § 512(c)(1)(B).**

Deny.

**REQUEST FOR ADMISSION NO. 194:**

**Admit that flux.com has adopted and reasonably implemented, and informs subscribers and account holders of flux.com of, a policy that provides for the termination in appropriate circumstances of its subscribers and account holders who are repeat infringers, as described in 17 U.S.C. § 512(i)(1)(A).**

Deny.

**REQUEST FOR ADMISSION NO. 195:**

**Admit that flux.com accommodates and does not interfere with “standard technical measures” as defined in 17 U.S.C. §§ 512(i)(1)(B) and 512(i)(2).**

Deny.

**REQUEST FOR ADMISSION NO. 196:**

**Admit that spiketv.com has “designated an agent to receive notifications of claimed infringement” as set forth in 17 U.S.C. § 512(c)(2).**

Admit.

**REQUEST FOR ADMISSION NO. 197:**

**Admit that spiketv.com has provided to the Copyright Office substantially the information set forth in 17 U.S.C. § 512(c)(2)(A)-(B) for its designated agent to receive notifications of claimed infringement.**

Admit.

**REQUEST FOR ADMISSION NO. 198:**

**Admit that the Register of Copyrights' current directory of agents designated to receive notifications for claimed infringement includes an agent for spiketv.com designated by you.**

Admit.

**REQUEST FOR ADMISSION NO. 199:**

**Admit that spiketv.com has stored material "at the direction of a user" as that phrase is used in 17 U.S.C. § 512(e)(1).**

Viacom objects to this RFA on the ground that it is vague with respect to the scope of the activity referenced. Subject to and without waiving that objection, deny.

**REQUEST FOR ADMISSION NO. 200:**

**Admit that spiketv.com is a "service provider" as defined in 17 U.S.C. § 512(k)(1)(8).**

Admit.

**REQUEST FOR ADMISSION NO. 201:**

**Admit that spiketv.com has received DMCA Takedown Notices with respect to material posted on spiketv.com.**

Viacom admits that spiketv.com has received a small number of DMCA Takedown Notices with respect to material posted on spiketv.com.

**REQUEST FOR ADMISSION NO. 202:**

**Admit that on every occasion that spiketv.com received a DMCA Takedown Notice, it responded "expeditiously," as that phrase is used in 17 U.S.C. § 512(c)(1)(A)(iii), to remove or disable access to the allegedly infringing material.**

Admit.

**REQUEST FOR ADMISSION NO. 203:**

Admit that prior to receiving a DMCA Takedown Notice concerning user-uploaded material on spiketv.com, spiketv.com did “not have actual knowledge” that the material was infringing, as described in 17 U.S.C. § 512(c)(1)(A)(1).

Admit.

**REQUEST FOR ADMISSION NO. 204:**

Admit that prior to receiving a DMCA Takedown Notice concerning user-uploaded material posted on spiketv.com, spiketv.com was not aware of facts or circumstances from which infringing activity was apparent, as described in 17 U.S.C. § 512(c)(1)(A)(ii).

Admit.

**REQUEST FOR ADMISSION NO. 205:**

Admit that with respect to user-uploaded material posted on spiketv.com for which spiketv.com has received a DMCA Takedown Notice, spiketv.com does not have the right and ability to control the infringing activity, as described in 17 U.S.C. § 512(e)(1)(B).

Deny.

**REQUEST FOR ADMISSION NO. 206:**

Admit that with respect to user-uploaded material posted on spiketv.com for which spiketv.com has received a DMCA Takedown Notice, spiketv.com did not receive a financial benefit directly attributable to the infringing activity, as described in 17 U.S.C. § 512(c)(1)(B).

Viacom does not have enough information to determine whether alleged infringing clips on Atom were a draw for users, and therefore does not have information sufficient to admit or deny.

**REQUEST FOR ADMISSION NO. 207:**

**Admit that spiketv.com has adopted and reasonably implemented, and informs subscribers and account holders of spiketv.com of, a policy that provides for the termination in appropriate circumstances of its subscribers and account holders who are repeat infringers, as described in 17 U.S.C. § 512(i)(1)(A).**

Admit.

**REQUEST FOR ADMISSION NO. 208:**

**Admit that spiketv.com accommodates and does not interfere with “standard technical measures” as defined in 17 U.S.C. §§ 512(i)(1)(B) and 512(i)(2).**

Admit.

**REQUEST FOR ADMISSION NO. 209:**

**Admit that when the Atom online video service was first launched, Atom sought to induce copyright infringement by failing to include content filtering technology, including without limitation content filtering technologies offered by Audible Magic Corporation, as part of its service.**

Deny.

**REQUEST FOR ADMISSION NO. 210:**

**Admit that Viacom sought to capitalize on a library of infringing video clips by acquiring the Atom online video service offered on addictingclips.com with knowledge that Atom was not using content filtering technology, including without limitation content filtering technologies offered by Audible Magic Corporation, as part of its service.**

Deny.

**REQUEST FOR ADMISSION NO. 211:**

**Admit that the escrow provision in the August 9, 2006 acquisition agreement between Atom Entertainment, Inc. and Viacom was included because Viacom was aware**

of, and believed Atom to be liable for, prior copyright infringement committed by Atom's users.

Deny.

**REQUEST FOR ADMISSION NO. 212:**

**Admit that Viacom's failure to use content filtering technology, including without limitation content filtering technologies offered by Audible Magic Corporation, as part of the online video services provided by Viacom UGC Sites is evidence of Viacom's desire to profit from infringing content.**

Deny.

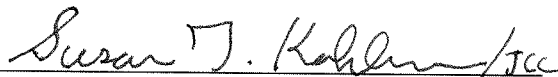
**REQUEST FOR ADMISSION NO. 213:**

**Admit that, contrary to Your allegations, the operation of the YouTube service has increased "the incentives of America's creative industries."**

Deny.

Respectfully submitted,

January 8, 2010



Susan J. Kohlmann (SK-1855)

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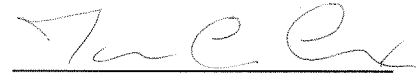
New York, New York 10022

Telephone: (212) 848-4000

Facsimile: (212) 848-7179

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on this 8<sup>th</sup> day of January 2010, on Defendants' counsel by electronic mail pursuant to an agreement of the parties under Fed. R. Civ. P. 5(b)(2)(D).



---

James C. Cox

# **Attachment A**



<b>Named Plaintiff</b>	<b>Video ID</b>
VIACOM INTERNATIONAL	_4J1nPR9obl
VIACOM INTERNATIONAL	_KDSYA5bEMc
VIACOM INTERNATIONAL	_yr3Fu_LRE4
VIACOM INTERNATIONAL	0ZO5f4q8b-g
PARAMOUNT PICTURES	17kAJR7YbDE
VIACOM INTERNATIONAL	1dWtA-nK-sQ
COMEDY PARTNERS	1LOjvymWwvl
COMEDY PARTNERS	29le85Vp8vl
VIACOM INTERNATIONAL	2TncoW-J6wA
PARAMOUNT PICTURES	3US2k6mTtEw
PARAMOUNT PICTURES	3wo2FcjFP98
COMEDY PARTNERS	4nLoXLBwZv0
COMEDY PARTNERS	5Esm9Mlt5Xo
COMEDY PARTNERS	5gbl2_Kocug
COMEDY PARTNERS	5Hd_Jzll1MA
VIACOM INTERNATIONAL	5vtDQVpq_o
VIACOM INTERNATIONAL	6_SaSuqfGB4
VIACOM INTERNATIONAL	6WhsXvOe2IU
VIACOM INTERNATIONAL	744Gh8MbTWg
VIACOM INTERNATIONAL	7aGjJBalKgs
COMEDY PARTNERS	83KsT9D_6al
VIACOM INTERNATIONAL	88XvlfKnGwl
COMEDY PARTNERS	8AYnfxZ_BXI
COMEDY PARTNERS	8v8vhNKIAZ4
PARAMOUNT PICTURES	-9_Nrpc8noE
PARAMOUNT PICTURES	a_kdq0V9G3Y
COMEDY PARTNERS	aITz05jvTlk
VIACOM INTERNATIONAL	AjG9o33dQRQ
VIACOM INTERNATIONAL	aUonqu5RIcM
PARAMOUNT PICTURES	B64MeRiGDYo
VIACOM INTERNATIONAL	b8kFrT6Ni08
VIACOM INTERNATIONAL	BbWi_RN9ou8
COMEDY PARTNERS	bdRNAUTDBqY
COMEDY PARTNERS	BrCI7t5SU-s
PARAMOUNT PICTURES	C2kSoDWG404
VIACOM INTERNATIONAL	cjhmH21ed-c
PARAMOUNT PICTURES	cpC6E1yLTx8
COMEDY PARTNERS	cR5BCbGyTkc
VIACOM INTERNATIONAL	CSs79sYQ1_o
PARAMOUNT PICTURES	cuDIQ_dlsyA
COMEDY PARTNERS	CxVxzXCbeOw
PARAMOUNT PICTURES	czg16nOL_Jc
VIACOM INTERNATIONAL	dMNgKJsmHwo
COMEDY PARTNERS	eGXV-oXzzUE
PARAMOUNT PICTURES	eRR_IDApRQs
COMEDY PARTNERS	FDXmujT4MZE
COMEDY PARTNERS	F-vuYx6d1XM
VIACOM INTERNATIONAL	g0nOEudbKOQ
VIACOM INTERNATIONAL	GgcxPrquS2k
PARAMOUNT PICTURES	H0AQehIKRB4
PARAMOUNT PICTURES	H0ZLZTR-g5Y

<b>Named Plaintiff</b>	<b>Video ID</b>
COMEDY PARTNERS	Hgu1RM2vbVM
COMEDY PARTNERS	hhXIVDxYzvg
VIACOM INTERNATIONAL	HM4b0wcMo_0
VIACOM INTERNATIONAL	hnKQ7xzDjQ4
COMEDY PARTNERS	hSdMtP8qztA
PARAMOUNT PICTURES	hZYpL6Vdz4k
PARAMOUNT PICTURES	i3YBKlAXvvk
VIACOM INTERNATIONAL	l4pc-6V4lZc
VIACOM INTERNATIONAL	i55f6qUSq4A
COMEDY PARTNERS	lZdKpTkQv8g
VIACOM INTERNATIONAL	J_LMd1WMyk4
VIACOM INTERNATIONAL	jD9iQbQBhil
VIACOM INTERNATIONAL	jP_AXwoCgws
PARAMOUNT PICTURES	JZwFUe2aXLA
VIACOM INTERNATIONAL	K4sS0wA_-lA
VIACOM INTERNATIONAL	k6CSylS5528
PARAMOUNT PICTURES	KcU0ye3nXtA
VIACOM INTERNATIONAL	kgYL9-VnhoU
COMEDY PARTNERS	KhIPvn26b1A
PARAMOUNT PICTURES	KiBDCZX7HQc
PARAMOUNT PICTURES	KNeaHNwwvvM
VIACOM INTERNATIONAL	kpkmya7Mkzk
PARAMOUNT PICTURES	kvEeLZV1j-k
COMEDY PARTNERS	L6a_iKo83RE
COMEDY PARTNERS	L8GYvwm_3bE
VIACOM INTERNATIONAL	L9h0BpdVMxA
VIACOM INTERNATIONAL	lirJJiViWsE
PARAMOUNT PICTURES	lvb3QDrHxRA
VIACOM INTERNATIONAL	L-VLn6bEOvs
VIACOM INTERNATIONAL	LYGpcUofXbk
COMEDY PARTNERS	lz0JZvlMrOA
VIACOM INTERNATIONAL	LzloLR5i9uw
PARAMOUNT PICTURES	meXedwbvCh8
VIACOM INTERNATIONAL	MGZbVuVW2wQ
PARAMOUNT PICTURES	mJkGJQyDNQ0
VIACOM INTERNATIONAL	mk3uiuXo4dk
PARAMOUNT PICTURES	mOvZn9ebc8Q
PARAMOUNT PICTURES	MSGNvmqcZK0
VIACOM INTERNATIONAL	mTLMUWP13pE
VIACOM INTERNATIONAL	MV9EB2EXGdk
COMEDY PARTNERS	NOQCkXfxJs4
COMEDY PARTNERS	N-4MT9u6LU5
VIACOM INTERNATIONAL	N7Q-vFtW8Lk
VIACOM INTERNATIONAL	n8wDRoQkN1c
VIACOM INTERNATIONAL	nCHY88De2A0
COMEDY PARTNERS	NdpArPebjFY
COMEDY PARTNERS	neyj1SyVjBs
VIACOM INTERNATIONAL	Nr8fA2kX44E
COMEDY PARTNERS	nyLj0T9EKAO
VIACOM INTERNATIONAL	nZ3Sdlb5NDI
PARAMOUNT PICTURES	o8pkZ38bLvU

<b>Named Plaintiff</b>	<b>Video ID</b>
VIACOM INTERNATIONAL	oQUgal6CFSI
PARAMOUNT PICTURES	OUWSSmNxArs
COMEDY PARTNERS	p1i1wcUpTbU
COMEDY PARTNERS	Pa3J-L29iT8
PARAMOUNT PICTURES	paveBpTiNql
COMEDY PARTNERS	pBHnokTr1xg
COMEDY PARTNERS	pE2MiuJT7Yg
VIACOM INTERNATIONAL	Phap3WkYOpc
VIACOM INTERNATIONAL	plGQYawzv9c
COMEDY PARTNERS	Ppm3MIsqsK4
VIACOM INTERNATIONAL	PRedB3aDGDg
COMEDY PARTNERS	PuqX26-GCWY
COMEDY PARTNERS	Pvz66FuaHso
COMEDY PARTNERS	pyP1JFa8bJc
COMEDY PARTNERS	qFXAI0IQiM4
COMEDY PARTNERS	QrROfhjqpDs
COMEDY PARTNERS	Q-VvGxYDGm0
VIACOM INTERNATIONAL	r_c6WlbOG2M
COMEDY PARTNERS	r0WZATT9P9g
VIACOM INTERNATIONAL	rDOB6g2-3FU
COMEDY PARTNERS	rf3BHTB2RAY
PARAMOUNT PICTURES	RhNehWcBADg
VIACOM INTERNATIONAL	rkQ9C-9pWJg
COMEDY PARTNERS	RRrB_hitU-c
COMEDY PARTNERS	s0e_lfSMtll
COMEDY PARTNERS	S5pUWE1WKGkw
VIACOM INTERNATIONAL	s8VLwpyYtB0
COMEDY PARTNERS	slXfcdZbnUw
VIACOM INTERNATIONAL	SwyufkyHfyU
VIACOM INTERNATIONAL	T3ysjszEu1s
PARAMOUNT PICTURES	tbU_2WGllqU
VIACOM INTERNATIONAL	TZv0POyzkpc
COMEDY PARTNERS	uJg2geqHK5U
COMEDY PARTNERS	USds5DhScmg
VIACOM INTERNATIONAL	Ux6aFYuTYNY
VIACOM INTERNATIONAL	UXmn2TS_ALQ
VIACOM INTERNATIONAL	v0uIAyq4p2o
PARAMOUNT PICTURES	v5XPki6Nj6k
COMEDY PARTNERS	VbDA1XS6M6A
COMEDY PARTNERS	Vj9rdT-t8Lc
VIACOM INTERNATIONAL	vlQhux5mXfY
COMEDY PARTNERS	vNgoUewhYTM
COMEDY PARTNERS	w-0x-Pwtbtw
COMEDY PARTNERS	w4ONAjIFmJY
VIACOM INTERNATIONAL	WBxZLCDm2uo
COMEDY PARTNERS	wfWEjb3DtV0
VIACOM INTERNATIONAL	WLZfSH3j_Zg
VIACOM INTERNATIONAL	wMHpbGDlDdE
COMEDY PARTNERS	Wqq-lfH3NNc
COMEDY PARTNERS	wxhRkff16ys
COMEDY PARTNERS	X-8UmL4lpPI

<b>Named Plaintiff</b>	<b>Video ID</b>
VIACOM INTERNATIONAL	xbrJOliv0qE
PARAMOUNT PICTURES	xHVqXaC-NIA
COMEDY PARTNERS	xiFajP-KVzE
PARAMOUNT PICTURES	xmHsafia5jE
COMEDY PARTNERS	Xo9TWFRIUN8
COMEDY PARTNERS	YbCNhLX-mi8
COMEDY PARTNERS	yVUAvm3fvXQ
PARAMOUNT PICTURES	ZpVZoLTAiKY

# **Schapiro Exhibit 69**

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. :

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ALSO PRESENT:

NICHOLAS GUZMAN, Videographer

MARK C. MORRIL, ESQ. (Viacom)



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Fricklas

09:52:38 Q. What are the facts and  
09:52:40 circumstances upon which it would depend?

09:52:41 A. It would -- the DMCA has a number  
09:52:44 of -- of requirements in order to meet -- I  
09:52:46 assume --

09:52:47 MR. BASKIN: Let me interrupt for a  
09:52:49 second.

09:52:50 I don't mind going lightly in the  
09:52:52 general discussion of -- of legal  
09:52:53 principles, if you think that would be  
09:52:55 helpful, but the -- you don't have to  
09:52:58 give a dissertation on copyright law,  
09:53:02 but you can discuss, if you like,  
09:53:03 generally your understanding in  
09:53:04 principles of the DMCA.

09:53:07 A. There's a multilayer analysis. The  
09:53:10 first piece of the analysis is whether there  
09:53:12 is copyright infringement at all. I guess my  
09:53:15 -- my first question would be to ask you a  
09:53:16 question about your question, about whether  
09:53:19 you're referring to the Safe Harbor  
09:53:21 provisions of the DMCA or whether you are  
09:53:24 generally referring to the question about  
09:53:25 whether a particular site is engaged in some

1 Fricklas

2 09:53:28 way in conduct that would infringe copyrights

3 09:53:31 of others.

4 09:53:31 Q. Fair enough. Yes. My question is

5 09:53:33 or should be: Is there any Viacom website

6 09:53:35 that's protected by the 512(c) Safe Harbor of

7 09:53:42 the DMCA?

8 09:53:43 A. The -- again, the answer would

9 09:53:46 depend. I don't have facts with respect to

10 09:53:47 any of our particular websites to know

11 09:53:49 whether or not they are entitled to that

12 09:53:51 exception.

13 09:53:51 Q. So it's possible that none of your

14 09:53:54 websites are covered by 512(c) Safe Harbor?

15 09:53:58 MR. BASKIN: Objection.

16 09:53:58 A. The answer, same answer, I don't --

17 09:54:05 I don't know. It would -- and whether

18 09:54:06 they're covered or not would depend on which

19 09:54:09 particular piece of content, what information

20 09:54:11 they had and other factors.

21 09:54:12 Q. You know that many of your websites

22 09:54:15 have registered DMCA -- DMCA agents, correct?

23 09:54:19 A. Correct.

24 09:54:20 Q. And why have they done that?

25 09:54:23 A. Because we do -- as a general rule,

1 Fricklas

2 09:54:29 our approach is to be respectful of  
3 09:54:37 copyrights of others and regardless of  
4 09:54:38 whether the exception is available after  
5 09:54:39 doing all the facts and circumstances. One  
6 09:54:42 method we use to identify copyrighted content  
7 09:54:46 is allow people to notify us if they find  
8 09:54:49 their content on our websites and -- and  
9 09:54:51 we -- our policy is to expeditiously take  
10 09:54:54 content down when we get those notices.

11 09:54:57 Q. Is compliance with the requirements  
12 09:55:06 for the 512(c), the Safe Harbor, something  
13 09:55:13 that has been relevant when you look at an --  
14 09:55:18 the acquisition of an online property?

15 09:55:21 A. I would say when we look at the  
16 09:55:23 acquisition of an online property we look at  
17 09:55:25 what their, among many other factors we look  
18 09:55:29 at what their legal exposure is, and so to  
19 09:55:32 extent that they might have material  
20 09:55:34 liabilities related to the copyright  
21 09:55:36 infringement that would be a factor, yes.

22 09:55:41 Q. Do you recall Viacom's acquisition  
23 09:55:43 of a company called Adam Entertainment?

24 09:55:46 A. I do.

25 09:55:46 Q. And do you recall that Adam

1 Fricklas

2 09:55:49 Entertainment ran a website called Addicting

3 09:55:54 Clips?

4 09:55:54 A. I do.

5 09:55:54 Q. And when Viacom acquired Addicting

6 09:56:04 Clips, what was your conclusion as to whether

7 09:56:11 Addicting Clips was in violation of copyright

8 09:56:14 laws?

9 09:56:14 MR. BASKIN: Let me think about

10 09:56:16 that for a second.

11 09:56:28 Well, again, I'm not going to allow

12 09:56:30 Mr. Fricklas to go into privileged

13 09:56:32 information. I don't mind him answering

14 09:56:33 that question in a general way, if he

15 09:56:35 has an answer.

16 09:56:37 A. It's not a topic I was asked to

17 09:56:40 give an opinion.

18 09:56:41 Q. Were people under you asked to give

19 09:56:43 opinions about that?

20 09:56:44 A. No.

21 09:56:45 Q. Was Addicting Clips acquired

22 09:56:54 without regard to whether it was in violation

23 09:56:57 of copyright laws?

24 09:56:58 A. It -- it -- we did an analysis, you

25 09:57:03 have to help me in terms of privilege issues.

1 Fricklas

2 12:14:52 Q. What is Mind of Mencia?

3 12:15:09 A. It's a television show on Comedy

4 12:15:14 Central.

5 12:15:14 Q. And what were the rules with

6 12:15:15 respect to the Mind of Mencia takedowns?

7 12:15:18 A. I don't know.

8 12:15:19 Q. What is Crossroads?

9 12:15:24 A. I believe it -- I'm not sure. It

10 12:15:29 sounds like a television show on, I think,

11 12:15:32 VH1.

12 12:15:33 Q. And what are the rules with regards

13 12:15:43 to the Country Music Television show

14 12:15:47 Crossroads and whether --

15 12:15:47 A. Country Music Television. I don't

16 12:15:50 remember. I don't know what they are.

17 12:15:50 Q. If I were hired by YouTube right

18 12:16:07 now to review video clips, how would I, what

19 12:16:11 should I look for to recognize the show

20 12:16:14 Crossroads?

21 12:16:17 MR. BASKIN: Objection.

22 12:16:18 A. Well, I think the first answer is

23 12:16:20 that you would deploy filtering and it would

24 12:16:22 be up to us -- in a rational world it would

25 12:16:26 be up to us to put our clips into the filter,

1 Fricklas

2 12:16:28 which is what we do today, with various  
3 12:16:30 filters and then YouTube to recognize those.  
4 12:16:33 It's kind of, you know, sharing  
5 12:16:35 responsibility of the parties doing what  
6 12:16:36 they're both capable of doing in an optimal  
7 12:16:39 way.

8 12:16:39 Otherwise what I would say is that  
9 12:16:42 if you look for material that a, at least the  
10 12:16:47 material that a reasonable average person  
11 12:16:51 would know is copyright infringement and not  
12 12:16:53 say because I can't determine everything I  
13 12:16:56 can't determine anything. You would look for  
14 12:16:57 those things that you could reasonably be  
15 12:16:59 aware we're infringing and you would take  
16 12:17:01 action with respect to those.

17 12:17:02 Q. As a reasonable average person,  
18 12:17:13 what -- what should I be on the lookout for  
19 12:17:22 in a Crossroads show? Is Crossroads people  
20 12:17:27 playing music?

21 12:17:29 MR. BASKIN: Objection.

22 12:17:30 A. I -- I testified that I don't  
23 12:17:32 remember the show so I -- I don't know the  
24 12:17:33 answer to that question.

25 12:17:34 Q. So you have no idea whether

1 Fricklas

2 12:17:38 Crossroads is animated or live action, right?

3 12:17:43 A. I don't.

4 12:17:44 Q. You have no idea of whether it's

5 12:17:46 music or drama, correct?

6 12:17:48 A. Well, you just said it's Country

7 12:17:49 Music Television so if that's right, it's --

8 12:17:51 it's likely music but I --

9 12:17:52 Q. Oh, come on, MTV is called music

10 12:17:55 television. When was the last time you saw

11 12:17:57 music on music television?

12 12:17:59 A. Fair enough. So I don't know.

13 12:18:00 Q. You have no idea whether Crossroads

14 12:18:02 is a reality show, right?

15 12:18:03 A. I do not.

16 12:18:04 Q. Have you sued YouTube for failure

17 12:18:20 to take down any clips of Crossroads?

18 12:18:26 A. I -- I don't know. There are

19 12:18:28 hundreds of thousands of clips, so. And many

20 12:18:32 thousands of works in suit.

21 12:18:35 Q. So you don't think that somebody

22 12:18:37 just seeing a clip, a reasonable average

23 12:18:39 person just seeing a clip of Crossroads while

24 12:18:48 reviewing material on YouTube would have any

25 12:18:50 basis to recognize it as a Viacom property,

1 Fricklas

2 12:18:53 correct?

3 12:18:54 MR. BASKIN: Objection.

4 12:18:55 A. I don't know -- I don't know the

5 12:18:55 answer to that question. If it was a whole

6 12:18:57 episode and showed up with the Country Music

7 12:19:01 Television bug, as they call it, on the

8 12:19:02 bottom right-hand corner, which most of our

9 12:19:04 television shows do, they might well be able

10 12:19:07 to recognize it.

11 12:19:08 If they had watched Crossroads on

12 12:19:11 television the night before, they might well

13 12:19:12 be able to recognize it, and if they've never

14 12:19:15 heard of the show, they might not.

15 12:19:17 MR. SCHAPIRO: Let's mark

16 12:19:20 Exhibit 9.

17 12:19:20 (Exhibit Fricklas-9, E-mail chain,

18 12:19:20 Bates Nos. BAYTSP 001125799 through

19 12:19:20 BAYTSP 001125805, marked for

20 12:19:35 identification, this date.)

21 12:19:37 MR. SCHAPIRO: Actually, before we

22 12:19:38 give it to the witness, one -- one other

23 12:19:40 question.

24 12:19:40 Q. Prior to the February takedown,

25 12:19:45 there was a takedown in November of '06 or in



1 Fricklas

2 12:19:49 the -- sometime in the fall of '06, correct?

3 12:19:51 A smaller one?

4 12:19:52 A. I don't know.

5 12:19:57 THE WITNESS: Sorry.

6 12:19:58 Q. Here is Exhibit 9.

7 12:20:03 A. Okay. Okay.

8 12:21:14 Q. So this is an e-mail exchange in

9 12:21:20 November of 2006, correct?

10 12:21:21 A. It appears to be, yes.

11 12:21:31 Q. The first e-mail is Sarah Cruz at

12 12:21:35 BayTSP sending a message to Michelena Hallie

13 12:21:43 who works -- who reports to you, correct?

14 12:21:47 A. She reports to people who -- she

15 12:21:49 reports within my organization, yes.

16 12:21:50 Q. And to a bunch of other people

17 12:21:52 including Adam Cahan, who we mentioned

18 12:21:54 before, right?

19 12:21:54 A. Yeah. Yes.

20 12:21:55 Q. And it's entitled, "Video Takedown

21 12:21:59 11/14/06," right?

22 12:21:59 A. Yes.

23 12:22:03 Q. And what are the European Music

24 12:22:09 Awards?

25 12:22:10 A. It's a television show on MTV

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Fricklas

13:25:00 like professionally produced content so I  
13:25:02 would want to ask more.

13:25:03 Q. And what would you ask?

13:25:04 A. That might be -- this would be a  
13:25:07 circumstance where I might, you know, take a  
13:25:09 quick look and spend three seconds on the  
13:25:11 Google search engine that's owned by the same  
13:25:14 company and -- and see whether there's a -- a  
13:25:18 television show that runs by these names and  
13:25:20 find out who -- who owns it.

13:25:22 Q. Do you have -- do you have any  
13:25:24 sense of how many hours of content are  
13:25:28 uploaded to YouTube worldwide each minute?

13:25:31 A. I've seen statistics but I do not  
13:25:33 know the answer.

13:25:33 Q. So you said earlier that one of the  
13:25:35 things you would try and look at with regard  
13:25:36 to -- by the way, do you see SpongeBob is  
13:25:38 there in number 2, Nick on TV5, lineup  
13:25:42 Tagalog --

13:25:42 A. Yes, I see it.

13:25:43 Q. -- with SpongeBob?

13:25:44 A. I see SpongeBob and I see a  
13:25:46 copyright notice too.

Fricklas

1  
2 13:25:48 Q. And what would you need to know to  
3 13:25:53 determine whether that's violating your  
4 13:25:55 copyright?  
5 13:25:57 A. I'd need to look at the clip and  
6 13:26:02 I'd need to look at the material there to  
7 13:26:05 know if somebody put it up on purpose.  
8 13:26:07 Q. So now -- you mean someone with  
9 13:26:11 authority?  
10 13:26:11 A. Someone with authority, correct.  
11 13:26:12 Q. And what would you look for in the  
12 13:26:15 clip to determine whether someone with  
13 13:26:17 authority had put it up?  
14 13:26:18 A. Well, there's multiple things. You  
15 13:26:20 want -- the first question is whether or not  
16 13:26:21 it looks like it has fair use or whether when  
17 13:26:24 you actually look at the clip it is what it  
18 13:26:26 says. And then if it's got a copyright  
19 13:26:32 notice on it and -- you know, basically you  
20 13:26:35 would contact the alleged, the people who, on  
21 13:26:39 the face of it, appear to be the copyright  
22 13:26:41 owners and find out whether it was  
23 13:26:43 authorized. And I think that when you are  
24 13:26:44 dealing with the volume that YouTube is  
25 13:26:45 dealing with what you do is you work out

1 Fricklas

2 13:26:46 processes for that as opposed to doing them

3 13:26:49 as one-offs.

4 13:26:51 Q. And are some of these items that

5 13:26:52 you've just listed things that you would also

6 13:26:55 look for when you say you would want it see

7 13:26:58 the videos for the other thumbnails as well?

8 13:27:00 A. They -- they are, yes.

9 13:27:01 Q. So let's take a look at some of

10 13:27:02 these videos.

11 13:27:04 MR. SCHAPIRO: This might take a

12 13:27:06 second to set up. I don't know if we

13 13:27:08 need to go off the record or not.

14 13:27:10 Q. Okay. So first I'm going refer you

15 13:27:12 back to Exhibit 10, and if you look down

16 13:27:15 towards the bottom it actually continues on

17 13:27:16 to -- from the first page to the second page.

18 13:27:19 There's a search result entitled SpongeBob is

19 13:27:22 scared of giggles.

20 13:27:24 A. Okay.

21 13:27:24 Q. And then someone has written next

22 13:27:26 to it, the description says SpongeBob is a

23 13:27:30 dum ass, spelled D-U-M, ass dub funny as

24 13:27:36 hell.

25 13:27:36 I would like to take a look at that

1 Fricklas

2 13:27:38 and see if you can tell me as a reasonable

3 13:27:40 average person whether that's obviously

4 13:27:47 infringing. And I'm going to let my capable

5 13:27:54 colleague try and actually do the

6 13:27:59 choreography here?

7 13:28:00 MR. SCHAPIRO: Now the court

8 13:28:01 reporter and videographer have told us

9 13:28:05 that there is a way to capture the --

10 13:28:07 the URL and -- and apparently somehow

11 13:28:09 the clip here for the record, so

12 13:28:11 hopefully that will work.

13 13:28:17 (Discussion off the record.)

14 13:28:28 MR. SCHAPIRO: So the URL for this

15 13:28:30 one is:

16 13:28:49 [www.YouTube.com/watch?V=MKNuaaxxsI8](http://www.YouTube.com/watch?V=MKNuaaxxsI8).

17 13:29:04 MR. BASKIN: And while we are

18 13:29:05 getting ready to show --

19 13:29:07 MR. SCHAPIRO: Well, you know, and

20 13:29:07 as an exhibit why don't we do this, we

21 13:29:10 can call this 10 -- well, we'll call it

22 13:29:12 13. This is a printout of the play

23 13:29:14 page. I think -- does it have the URL

24 13:29:17 on it? URL is on the bottom as well so.

25 13:29:23 How about at the end I will introduce

1 Fricklas

2 13:29:25 this just --

3 13:29:25 MR. BASKIN: And let me just -- and

4 13:29:25 also just to save time and to avoid

5 13:29:30 having to repeat my objection over and

6 13:29:31 over again, I think this is not a proper

7 13:29:34 scope of a deposition. I think that

8 13:29:36 it's, to the extent he's asking for some

9 13:29:40 combination of expert opinion and legal

10 13:29:44 interpretation, it's improper. I don't

11 13:29:47 -- I think the notion embodying

12 13:29:49 something about a reasonable average

13 13:29:51 person is not some standard that I'm

14 13:29:54 familiar with that -- no legal standard

15 13:29:55 that's relevant. And I think basically

16 13:29:58 this is not proper deposition testimony

17 13:30:01 or proper exercise for a deposition.

18 13:30:04 Since he's not seeking privileged

19 13:30:06 information, I won't order the witness

20 13:30:10 not to answer in deference to the

21 13:30:12 deposition rules, but I object to all of

22 13:30:14 this as -- as improper deposition

23 13:30:16 inquiry.

24 13:30:18 MR. SCHAPIRO: Objection noted. Do

25 13:30:22 I take it, you to be saying that it

1 Fricklas

2 13:30:24 takes an expert and a lawyer to

3 13:30:27 determine whether some of this material

4 13:30:30 is unauthorized, because you say the

5 13:30:31 question whether it's unauthorized calls

6 13:30:34 for expert opinion and a legal opinion?

7 13:30:36 I'll note that for the record. I'll

8 13:30:38 note that the average reasonable person

9 13:30:40 is -- is Mr. Fricklas' phrase from

10 13:30:42 earlier in the deposition I was choosing

11 13:30:44 to use but I'm happy to change --

12 13:30:47 MR. BASKIN: In the totally

13 13:30:49 different context and I'm not suggesting

14 13:30:51 and you know I'm not suggesting -- if

15 13:30:53 you want -- if you want to have my

16 13:30:54 thoughts embodied on the record to the

17 13:30:57 extent it's relevant, Google and YouTube

18 13:30:58 have certain responsibilities and not

19 13:31:00 the responsibility of an average reason

20 13:31:02 pers- -- reasonable person. They're

21 13:31:03 responsibilities embodied by the fact

22 13:31:05 that they're running a commercial

23 13:31:06 enterprise and might -- Mr. Fricklas is

24 13:31:11 not here to substitute for the legal

25 13:31:14 obligations or the managerial and

1 Fricklas

2 13:31:16 business obligations of YouTube and

3 13:31:18 Google and for that reason I believe all

4 13:31:20 of this is improper questions. But --

5 13:31:23 but with that mind in, let's go forward.

6 13:31:26 MR. SCHAPIRO: Let's take a look.

7 13:31:29 So the first one is called

8 13:31:31 SpongeBob is scared of giggles.

9 13:31:37 (Video clip played.)

10 13:31:48 MR. SCHAPIRO: Well, at this point

11 13:31:50 are you able to tell whether that's

12 13:31:53 material that's been taken straight from

13 13:31:56 SpongeBob?

14 13:31:57 MR. BASKIN: Objection.

15 13:31:58 Q. By the way, for the record we're at

16 13:32:01 17 seconds.

17 13:32:02 A. We don't make those determinations

18 13:32:04 ever without seeing the whole clip.

19 13:32:07 Q. So do you believe that once

20 13:32:10 something, once a filter captures a clip that

21 13:32:20 a reviewer must review the entire clip?

22 13:32:24 A. I think --

23 13:32:24 MR. BASKIN: Objection.

24 13:32:25 A. Yeah, I think the answer to that

25 13:32:27 depends.



1 Fricklas

2 13:32:31 (Video clip played.)

3 13:33:33 Q. So we're now 1 minute and

4 13:33:36 22 seconds into the video. Have you now made

5 13:33:39 any determination, are you able to make any

6 13:33:41 determination as to whether your company,

7 13:33:43 whether this infringes any of your company's

8 13:33:47 rights?

9 13:33:47 MR. BASKIN: Objection, for the

10 13:33:47 same reason I said before.

11 13:33:48 A. Whether it infringes our rights,

12 13:33:50 again, there are facts and circumstances I

13 13:33:52 would need to know.

14 13:33:53 Q. Like?

15 13:33:54 A. Well, to start out with, if nobody

16 13:33:59 authorized the posting of this clip, this

17 13:34:01 clip is using significant amounts of our

18 13:34:05 material. Now, we may make a business

19 13:34:07 decision about whether or not to take it on

20 13:34:08 or not because it seems to include as well

21 13:34:11 some creative material that's added by

22 13:34:14 parties that isn't ours, but this is a

23 13:34:16 substantial amount of -- of content that --

24 13:34:18 that would be copyrighted content and so it

25 13:34:21 would -- this would have a number of factors

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

1 Fricklas

2 13:38:56 that this was posted by "theLelouchOnline,"

3 13:39:02 but then it says "Copyright 2009 Associated

4 13:39:05 Broadcasting Company, MPB Primedia, Inc.,

5 13:39:10 Nickelodeon, Viacom International, Inc. All

6 13:39:12 Rights Reserved."

7 13:39:16 MR. SCHAPIRO: I'll introduce the

8 13:39:18 watch pages with the actual URLs in a

9 13:39:23 moment. I want to show you one other

10 13:39:25 video clip and see if you have an

11 13:39:28 opinion as to whether that violates any

12 13:39:32 copyright rules and whether it's posting

13 13:39:35 without any copyright rules.

14 13:39:37 MR. BASKIN: Objection.

15 13:39:43 THE VIDEOGRAPHER: Is this 13?

16 13:39:44 MR. SCHAPIRO: No. This one --

17 13:39:45 this has not been introduced yesterday.

18 13:39:48 We will call this Exhibit 14.

19 13:39:57 (Video clip played.)

20 13:39:59 Q. I stopped it at 14 seconds. Do you

21 13:40:01 have any idea whether anyone's copyrights are

22 13:40:04 infringed by the posting of this?

23 13:40:05 A. I do not.

24 13:40:06 Q. This appears to be a choir singing

25 13:40:10 a song, correct?

1 Fricklas

2 13:40:11 A. It does.

3 13:40:12 Q. And then the lyrics are posted.

4 13:40:15 And what would you need to know in order to

5 13:40:17 determine whether this is infringing?

6 13:40:21 MR. BASKIN: Objection.

7 13:40:21 A. I would like to see more of the

8 13:40:23 clip and wonder whether somebody, you know,

9 13:40:26 other than me might know more.

10 13:40:32 (Video clip played.)

11 13:40:48 THE WITNESS: I remember this clip

12 13:40:49 now.

13 13:40:59 Q. So you've seen this clip before?

14 13:41:01 A. I have seen this clip before.

15 13:41:02 Q. And do you have any idea who owns

16 13:41:05 the musical recording?

17 13:41:08 A. I do not.

18 13:41:09 Q. Without that knowledge, would you

19 13:41:20 forward this to someone else?

20 13:41:21 A. Well, I believe YouTube has master

21 13:41:25 license as well to all the major record

22 13:41:27 companies so I think the music rights are

23 13:41:29 generally cleared on YouTube with the record

24 13:41:31 companies and the musical composition owners.

25 13:41:33 Q. And do you have think idea whether

1 Fricklas

2 13:41:35 this choral song about the FCC is from a

3 13:41:39 major music label?

4 13:41:40 A. I have no idea.

5 13:41:41 Q. And you, in fact, did forward this

6 13:41:43 to some of your colleagues, correct?

7 13:41:45 A. I did, yes.

8 13:41:47 MR. SCHAPIRO: Just to make sure we

9 13:41:49 have the right record. Let's clear up.

10 13:41:51 We show -- we showed three SpongeBob

11 13:41:53 clips and the search pages were Exhibits

12 13:41:56 10, 11 and 12. I'm now going to intro-

13 13:42:01 -- do you -- do you want the video

14 13:42:03 itself to be listed as -- as an exhibit

15 13:42:05 or --

16 13:42:05 THE VIDEOGRAPHER: Can we go off

17 13:42:06 the record for one second?

18 13:42:08 MR. SCHAPIRO: Sure.

19 13:42:09 THE VIDEOGRAPHER: The time is

20 13:42:15 1:40 p.m. and we're off the record.

21 13:42:27 (Discussion off the record.)

22 13:43:23 THE VIDEOGRAPHER: The time is

23 13:43:32 1:42 p.m. We're going back on the

24 13:43:35 record.

25 13:43:36 MR. SCHAPIRO: Exhibit 13 for the

# **Schapiro Exhibit 70**

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From: yourfriends@atom.com  
Date: Mon, 22 May 2006 15:42:16 -0700 (PDT)  
To: <jill@cyclimg74.com>, Victoria Libin <vlibin@atom.com>  
Subject: Addicting Clips Content Removal [Copyright] (KMM373647I100L0KM)

Hello,

As a passive conduit, we cannot monitor user clips, but we respond to breaches of our Terms of Service when we learn of such behavior.

It was brought to our attention that your content violated our terms of service. It was therefore removed from the Addicting Clips web site.

If you believe that the content was removed in error, and specifically was not infringing on the copyright of another, and you want to put the materials back on the Addicting Clips website, you must provide us with a formal Counter-Notification of Infringement. Please be advised that we are obligated by the terms of the Digital Millennium Copyright Act (DMCA) of 1998 to disclose the information you supply in this form to the original notifier. This Counter-Notification is both embedded in this email and attached for your convenience.

\*\*\*\*\*  
Counter-Notification of Infringement

I hereby certify under penalty of perjury that I am the owner or am authorized to act on behalf of the owner of the intellectual property rights. I have a good faith belief that material identified below was removed by mistake. Please promptly restore the material described below.

Description of the Material Removed:  
Previous Location of the Material Removed:  
Date:

I can be contacted at:

Name:  
Title:  
Company or Organization:  
Street Address:  
City:  
State:  
Zip:  
Telephone:  
Facsimile:  
Email:

I certify under penalty of perjury the truth of the above information. I hereby consent to the jurisdiction of the federal court in which I reside and that I will accept service of process from the original notifier.

Signature:  
\*\*\*\*\*

Regards,



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User Abuse Manager, Addicting Clips  
Atom Entertainment, Inc.

List of attachments:  
Counter-Notification of Infringement.doc

# **Schapiro Exhibit 71**

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Subject: Re: Traffic Update 5/4/2006  
From: "Roger Jackson" <EX:/O=IFILM/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RJACKSON>  
To: Jason Jordan; Ed Wood; Blair Harrison; Roston, Adrian; Chris Dominguez; Kim Norlen; Scott Paterra; Jeff Skaggs  
Cc: Date: Fri, 05 May 2006 16:53:54 +0000

No need to respond to c&d very swiftly.

-----Original Message-----

From: Jason Jordan <jjordan@ifilm.com>  
To: Ed Wood <ewood@ifilm.com>; Blair Harrison <bharrison@ifilm.com>; Roston, Adrian <aroston@ifilm.com>; Roger Jackson <rjackson@ifilm.com>; Chris Dominguez <cdominguez@ifilm.com>; Kim Norlen <knorlen@ifilm.com>; Scott Paterra <spaterra@ifilm.com>; Jeff Skaggs <jskaggs@ifilm.com>  
Sent: Fri May 05 09:51:00 2006  
Subject: RE: Traffic Update 5/4/2006

Not to rain on the parade, but we just received a C&D from C-SPAN on the Colbert piece...at least we received a decent bump from it over the course of the week.

---

From: Ed Wood  
Sent: Thursday, May 04, 2006 11:21 PM  
To: Blair Harrison; Roston, Adrian; Jason Jordan; Roger Jackson; Chris Dominguez; Kim Norlen; Scott Paterra; Jeff Skaggs  
Subject: Traffic Update 5/4/2006

We have had one of our best days ever in terms of page views, and our best day ever for User Video content, thanks to Colbert. To some extent, the effect has spilled over to popup player views, as well. Uploads of video have not followed form – we are on track for two consecutive days below 200, the first such occurrence since the first weeks of the service.

More tomorrow.

Regards,

Ed Wood

Ifilm.com

Business Analyst

323.308.3676

Page View Trend – 1,834,309 by 10:30 pm

Popup Film View Trend – 767,246 by 10:30 pm (shot at crossing 800k popup player views, best in a week)

# **Schapiro Exhibit 72**

To: Kevin Donahue <kevin@youtube.com>  
From: Andrew\_Lin@paramount.com <Andrew\_Lin@paramount.com>  
Cc:  
Bcc:  
Received Date: 2006-04-12 21:01:44 CST  
Subject: Re: latest

---

thank you Kevin. Tomorrow is fine and very much still appreciated.

Also, I did find out that google is launching click to play video ads very soon from my rep

---

----- Original Message -----

From: "Kevin Donahue" [kevin@youtube.com]  
Sent: 04/12/2006 01:58 PM  
To: Andrew Lin  
Subject: latest

Andrew,

Our CEO wants to hold off on featuring any professional video today - we've been doing a lot of that recently and want to keep an even mix with the user generated stuff on the home page. I will feature it tomorrow - sorry for the false start.

- Kevin

Kevin Donahue

VP Marketing & Programming

71 E. Third Ave | San Mateo, CA | 94401

kevin@youtube.com [REDACTED]

My YouTube Video Pick of the Day: Ronaldinho - Nike

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Attachments:

image001.jpg

