

Rubin Reply Exhibit 162

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VIACOM INTERNATIONAL INC.,)	
COMEDY PARTNERS,)	
COUNTRY MUSIC TELEVISION, INC.,)	
PARAMOUNT PICTURES)	Case No. 1:07-CV-2103-LLS
COPRORATION,)	(Related Case No. 1:07-cv-03582 (LLS))
and BLACK ENTERTAINMENT)	
TELEVISION LLC,)	
)	
)	
)	
Plaintiffs,)	
)	
v.)	
)	
YOUTUBE, INC., YOUTUBE, LLC, and)	
GOOGLE INC.,)	
)	
)	
Defendants.)	
_____)	

PLAINTIFFS' OBJECTIONS AND RESPONSE TO YOUTUBE'S SECOND SET OF INTERROGATORIES TO VIACOM INTERNATIONAL, INC. ET AL.

Plaintiffs Viacom International, Inc., Comedy Partners, Country Music Television, Inc., Paramount Pictures Corporation, and Black Entertainment Television, LLC, by their attorneys Jenner & Block LLP and Shearman & Sterling LLP, hereby object to YouTube's Second Set of Interrogatories to Viacom International, Inc. (Defendants' Second Set of Interrogatories) as follows:

GENERAL OBJECTIONS

Plaintiffs make the following objections to specific Interrogatories by, among other things, incorporating by reference the following general objections ("General Objections"):

1. Plaintiffs object to the Second Set of Interrogatories in their entirety as exceeding the scope permissible under Local Rule 33.3(b), which states that interrogatories other than those seeking names of witnesses with relevant knowledge or information only if ordered by the court or if interrogatories are “a more practical method of obtaining the information sought than a request for production or a deposition.” Defendants’ interrogatory requests are unduly burdensome and duplicative of their document requests.

2. Plaintiffs object to the Second Set of Interrogatories in their entirety as exceeding, with subparts, the limit of twenty-five Interrogatories under the Court’s Scheduling Order entered on August 9, 2007, and amended on October 10, 2007. Plaintiffs have already identified over 20,000 video clips that infringe its copyrights. Interrogatory 7 and Interrogatory 8 purport to request specific information about each of those thousands of infringing clips on a clip-by-clip basis and thus impermissibly exceed Defendants’ twenty-five interrogatory limit.

2. Plaintiffs object to Defendants’ definition of “Viacom,” which includes entities listed in Paragraph 1 of the Definitions and those listed in Exhibit A to Defendants’ First Set of Interrogatories (“Exhibit A”). Paragraph 1 and Exhibit A make up a voluminous, globe-spanning listing of Plaintiffs’ partners, affiliates, and subsidiaries. Defendants’ inclusion of these entities is vexatious and improper. Plaintiffs further object to Defendants’ definition of “Viacom” to the extent that it includes Plaintiffs’ outside counsel, because searching for responsive information in the possession of Plaintiffs’ outside counsel would be unduly burdensome.

Plaintiffs further object to Defendants’ inclusion of Viacom’s “agents,” “representatives,” “any other person acting or purporting to act on [Viacom’s] behalf,” or

“any other person otherwise subject to its control” in their definition of Viacom because those terms and/or phrases are overbroad and vague.

3. Plaintiffs object to Defendants’ Second Set of Interrogatories to the extent that they seek to impose on Plaintiffs obligations or requirements beyond those imposed by the Federal Rules of Civil Procedure or the Local Rules of the Southern District of New York.

4. Plaintiffs object to Defendants’ Second Set of Interrogatories to the extent that they seek information or request documents that are known to Defendants, a matter of public record, or otherwise publicly available.

5. In objecting to Defendants’ Second Set of Interrogatories, Plaintiffs do not in any way waive or intend to waive but, rather, intend 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 request;

d. the right to preserve the confidential or proprietary nature of any information or document, or the subject matter thereof, by mutual agreement or otherwise, as a condition of production; *and*

e. the right at any time to correct, supplement, or clarify any of the objections.

6. Plaintiffs' objections to Defendants' Second Set of Interrogatories shall not constitute an admission of any statement or conclusion implied in any of Defendants' Interrogatories.

OBJECTIONS TO SPECIFIC INTERROGATORIES

Subject to and without waiving any of the foregoing General Objections, which apply to each Interrogatory as if set forth fully below, Plaintiffs make the following specific objections:

INTERROGATORY NO. 7:

For each Accused Video Clip, state whether the work reflected in the clip was published with a copyright notice on all authorized publicly distributed copies, and if so, set forth the content of the notice.

Objections to Interrogatory No. 7:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory exceeds the scope permissible under Local Rule 33.3(b). Absent a court order, Local Rule 33.3(b) allows interrogatories seeking information other than names of witnesses with knowledge of information relevant to the subject matter of the action, the computation of each category of damage alleged, and the existence, custodian, location and general description of relevant documents to be served only "if they are a more practical method of obtaining the information sought than a request for production or a deposition."

Without waiving any objections Plaintiffs might have to such requests, Plaintiffs further object that Interrogatory 7 is duplicative of Defendants' document requests, including but not limited to Document Requests 1 and 3. Seeking additional information

by interrogatory is redundant, unduly burdensome, and inconsistent with the Scheduling Order and the Local Rule.

INTERROGATORY NO. 8:

For each Accused Video Clip, state whether the same content is available for viewing on a website operated by You or pursuant to a license agreement with You, and if so, identify the website and state when the clip first became available on that site.

Objections to Interrogatory No. 8:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory exceeds the scope permissible under Local Rule 33.3(b) because it is not “a more practical method of obtaining the information sought than a request for production or a deposition.” Plaintiffs object further that this Interrogatory is vague.

Without waiving any objections Plaintiffs might have to such requests, Plaintiffs further object that Interrogatory 3 is duplicative of Defendants’ document requests, including but not limited to Document Requests 3, 17, and 18. Seeking additional information by interrogatory is redundant, unduly burdensome, and inconsistent with the Scheduling Order and the Local Rule.

INTERROGATORY NO. 9:

Identify (by name, address, job title and employer) each individual who has knowledge of marketing or public relations efforts for Your content involving uploading video of such content to websites for online viewing, including without

limitation each individual involved in uploading or authorization for uploading of all videos that Viacom directly or indirectly caused to be uploaded to YouTube.

Objections to Interrogatory No. 9:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is burdensome, overly broad, vague, not limited to any period of time relevant to this litigation, and duplicative of Defendants' document requests. Plaintiffs also object that this Interrogatory requests information that may not be disclosed under foreign privacy laws. Subject to and without waiving the stated objections, Plaintiffs respond that the following Viacom employees are most knowledgeable about Viacom's uploading of content on websites for marketing and public relations purposes related to the United States and the regions of the United Kingdom, Germany, Benelux, Japan, and Mexico:

<i>Name</i>	<i>Job Title or Division</i>	<i>Employer</i>
Aitken, Stephanie	Counsel, Digital Media	MTV Networks Europe, UK
Alibhai, Seema	Director of Communications	MTV Networks Europe, UK
Arnold, Georgia	SVP, Social Responsibility	MTV Networks Europe, UK
Arsulich, Matt	Assistant Product Manager, Brand Marketing	Paramount Pictures Corporation
Bonnici, Kyle	Editorial Coordinator	Paramount Pictures Corporation
Brooks, Stephen	Senior Product Manager, Brand Marketing	Paramount Pictures Corporation
Bui-Van, Sao	VP Communications	MTV Networks Europe, UK
Cunin, Mary Beth	VP, Programming	MTV Networks

DeGuzman, Jennifer	Senior Director Communications	MTV Networks
Douglas, Juline	Coordinator, Consumer Marketing	MTV Networks
Esler, Amy	Director, Marketing	MTV Networks
Estrada, Jocelyn	Executive Director, Brand Marketing	Paramount Pictures Corporation
Farrell, Steve	VP, Digital Media Director	MTV Networks
French, Jackie	Producer, VP	MTV Networks
Gottlock, Brian	Counsel	MTV Networks
Griffith, Dylan	Head of Creative	MTV Networks Productions B.V.
Grossman, Sam	Director, Series Development	MTV Networks
Guillermo, Robert	Director	MTV Networks
Hack, Ben	Director of Marketing and Events, Viacom Brand Solutions Europe	MTV Networks Europe, UK
Hallie, Michelena	SVP, Deputy General Counsel, Litigation/Intellectual Property	MTV Networks
Hershon, Mandy	Publicity Manager	MTV Networks Europe, UK
Hucke, Vivien	Junior Manager, Consumer Marketing	MTV Networks Europe, Germany GmbH
James, Roger	VP, Business and Legal Affairs	MTV Networks Europe, UK
Jones, Heather	EVP, Creative & Content	MTV Networks Europe, UK
Kelman, Matt	Senior Counsel, Business and Legal Affairs	MTV Networks
Koenig, Paul	Attorney, Interactive	Paramount Pictures Corporation
Lawhorn-Summers, Kristin	Manager, Business Affairs Administration	Paramount Pictures Corporation

Lynn, David	Managing Director	MTV Networks Europe, UK
Meyer, Juan	Senior Director, Marketing	MTV Networks Mexico
Molko, Joseph	VP, Content Distribution/Marketing	MTV Networks
Morales, Cindy	Manager, Intellectual Property	MTV Networks
Morachnick, Tami	VP, Legal and Business Affairs	MTV Networks
Mühlemann, Catherine	Managing Director	MTV Networks
O'Ferrall, Philip Bouchier	VP, Digital Media	MTV Networks Europe, UK
Ono, Yukari	Business and Legal Affairs	MTV Networks Japan
Ortiz, Dan	Sales Communication Coordinator (formerly Manager of Interactive Marketing)	Paramount Pictures Corporation
Parent, Richard	VP, Counsel	MTV Networks
Peterson, Ona	Senior Producer	MTV Networks
Polaner, Melissa	SVP, Deputy General Counsel	MTV Networks
Powell, Amy	SVP, Interactive Marketing	Paramount Pictures Corporation
Ramon, Jennifer	Senior Product Manager, Brand Marketing	Paramount Pictures Corporation
Ruiz, Patricia	Senior Manager, Corporate Communications	MTV Networks Mexico
Silver, Jennifer	Senior Counsel	MTV Networks
Smith, Josh	Product Manager, Brand Marketing	Paramount Pictures Corporation
Stockx, Mark	Marketing Manager MTV and TMF	MTV Networks B.V.
Stone, Casey	Editorial Coordinator	Paramount Pictures Corporation

Stone, Leigh	Product Manager, Brand Marketing	Paramount Pictures Corporation
Studer, Syrinthia	Vice President, Brand Marketing	Paramount Pictures Corporation
Taylor, Kelly	VP, Marketing, Creative & Consumer Press	MTV Networks Europe, UK
Teifeld, Tamar	Editorial Manager	Paramount Pictures Corporation
Thomason, Aubrey	Vice President, Business Affairs & Legal	Paramount Pictures Corporation
Tripodi, David	Digital Media International	MTV Networks
Vargo, Susan	Senior Director, Theatrical	MTV Networks
Vega, Miguel Angel Vera	Director, New Media	MTV Networks Mexico
Wagenaar, Menno	VP, Head of MTV and TMV	MTV Networks B.V.
Williams, Brucetta	VP, Off-Channel Marketing	BET
Whiley, Dan	VP, Digital Media	MTV Networks Europe, U.K.
Wolffers, Kaja	Head of AV Productions	MTV Networks B.V.
Wulfe, Kym	VP, Business and Legal Affairs	MTV Networks

Plaintiffs will supplement this response in due course.

INTERROGATORY NO. 10:

Identify (by name, address, job title and employer) each individual who has knowledge concerning DMCA compliance by Viacom UGC Websites, including without limitation the drafting and implementing of policies and procedures for complying with the DMCA, the implementation of any repeat infringer policy, and the disabling of access to material in response to takedown notices.

Objections to Interrogatory No. 10:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is burdensome, overly broad, vague, not limited to any period of time relevant to this litigation, and duplicative of Defendants' document requests. Subject to and without waiving stated objections, Plaintiffs, respond that the following individuals are most knowledgeable about Viacom's DMCA compliance by Viacom UGC Websites:

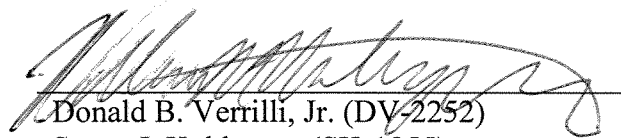
<i>Name</i>	<i>Job Title</i>	<i>Employer</i>
Carter-Jenkins, Tia	VP, Business Affairs	BET
Cooper, Donna	Senior Associate General Counsel	BET
Hallie, Michelena	SVP, Deputy General Counsel, Litigation/Intellectual Property	MTV Networks
Koenig, Paul	Attorney, Interactive	Paramount Pictures Corporation
Martin, Scott	EVP, Intellectual Property and Associate General Counsel	Paramount Pictures Corporation
Morachnick, Tami	VP, Legal and Business Affairs	MTV Networks
Morris, Jamie	Manager, Technology	Paramount Pictures Corporation
Powell, Amy	SVP, Interactive	Paramount Pictures Corporation
Solow, Warren	VP Information &	Viacom

	Knowledge Management	
Springer, Geoffrey	VP, Technology	Paramount Pictures Corporation
Wulfe, Kym	VP, Legal and Business Affairs	MTV Networks

Plaintiffs will supplement this response in due course.

September 8, 2008

Respectfully submitted,



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William M. Hohengarten (WH-5233)

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VERIFICATION FOR PLAINTIFFS VIACOM INTERNATIONAL INC., ET AL.

Information in Plaintiffs' Responses to Defendants' Second Set of Interrogatories was provided by me and/or gathered at my direction from corporate records and personnel. I have reviewed the responses. I declare under penalty of perjury under the laws of the United States that the foregoing responses as to Plaintiffs Viacom International Inc. et al. are true and correct to the best of my knowledge and belief, based on my review of such information.

Executed on September 8, 2008, in New York ny.

Signature: 
Name (print): Warren Solow
Title: VP, Information & Knowledge Management

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on this 8th day of September, 2008, on Defendants' counsel by electronic mail (viacomservice@mayerbrown.com; viacomteam@wsgr.com; google@faegre.com) pursuant to an agreement of the parties under Fed. R. Civ. P. 5(b)(2)(D).

Sarah Ann Maguire

Sarah A. Maguire

Rubin Reply Exhibit 163

VIACOM INTERNATIONAL INC.,)
COMEDY PARTNERS,)
COUNTRY MUSIC TELEVISION, INC.,)
PARAMOUNT PICTURES) Case No. 1:07-CV-2103-LLS
CORPORATION,) (Related Case No. 1:07-cv-03582 (LLS))
and BLACK ENTERTAINMENT)
TELEVISION LLC,)
)
Plaintiffs,)
)
v.)
)
YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE INC.,)
)
Defendants.)
_____)

**PLAINTIFFS' AMENDED OBJECTIONS AND RESPONSES TO YOUTUBE'S
SECOND SET OF INTERROGATORIES TO VIACOM INTERNATIONAL, INC.
ET AL.**

Plaintiffs Viacom International, Inc., Comedy Partners, Country Music Television, Inc., Paramount Pictures Corporation, and Black Entertainment Television, LLC, by their attorneys Jenner & Block LLP and Shearman & Sterling LLP, hereby amend their Objections and Responses to YouTube's Second Set of Interrogatories to Viacom International, Inc. (YouTube's Second Set of Interrogatories) as follows:

GENERAL OBJECTIONS

Plaintiffs incorporate by reference the General Objections set forth in their September 8, 2008 Objections and Responses to YouTube's Second Set of Interrogatories.

OBJECTIONS TO SPECIFIC INTERROGATORIES

Subject to and without waiving any of the General Objections and the specific objections to each Interrogatory set forth in their September 8, 2008 Objections and Responses to YouTube's Second Set of Interrogatories, Plaintiffs provide the following specific amended responses and objections:

INTERROGATORY NO. 7:

For each Accused Video Clip, state whether the work reflected in the clip was published with a copyright notice on all authorized publicly distributed copies, and if so, set forth the content of the notice.

Amended Response and Objections to Interrogatory No. 7:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is improper, overly broad, unduly burdensome, unreasonably cumulative, abusive, and exceeds the scope of permissible discovery under Local Civil Rule 33.3 and Federal Rules of Civil Procedure 26 and 33. Plaintiffs also object that this Interrogatory is overbroad, oppressive, harassing and unduly burdensome to the extent it seeks highly detailed information. In addition, Plaintiffs object to the extent this Interrogatory seeks information contained in documents produced in discovery. Such information is already equally and fully accessible to Defendants, and it is unduly burdensome to require Plaintiffs to review the documents to identify particular information for Defendants.

Plaintiffs further object that Interrogatory 7 is duplicative of Defendants' document requests. Seeking additional information by interrogatory is redundant, unduly burdensome, and inconsistent with the Scheduling Order and the Local Rule.

Subject to and without waiver of these general and specific objections, Plaintiffs respond as follows: It is Viacom's policy that each work it publishes in the United States includes a copyright notice on all publicly distributed copies that complies with the form of notice set forth in 17 U.S.C. § 401, et seq. That policy applies to the Works in Suit, and Viacom is not aware of any exceptions to the policy with respect to the Works in Suit.

It would be unduly burdensome to locate and transcribe the text of the notice from every publicly distributed copy of every Work in Suit. Plaintiffs have already produced to Defendants a copy of each Work in Suit. Defendants can readily ascertain the existence and content of the copyright notices from those copies. Defendants can also readily access other publicly distributed copies of the Works in Suit and ascertain the existence and content of the copyright notices from those copies.

As an accommodation, in Attachment A hereto, Plaintiffs set forth the copyright notice appearing with Works in Suit published prior to March 1, 1989. Furthermore, in Attachment B hereto, Plaintiffs set forth the copyright notices appearing with a sample of 100 Works in Suit published on or after March 1, 1989.

In addition, by way of example, Plaintiffs state that episodes of South Park that have been viewable on the comedycentral.com and southparkstudios.com websites have been displayed with the following copyright notice: "© [year of first publication] Comedy Partners All Rights Reserved." Thus, the copyright notice for episodes that were first published in 1997 is "© 1997 Comedy Partners All Rights Reserved," and the copyright notice for episodes first published in 1998 is "© 1998 Comedy Partners All Rights Reserved," etc. Plaintiffs further state that episodes of The Colbert Report and

The Daily Show With Jon Stewart that have been viewable on comedycentral.com, colbertnation.com, and dailyshow.com, have been displayed with the following copyright notice: “©1995-[most recent year] Comedy Partners. All Rights Reserved.” Thus, episodes of The Colbert Report and The Daily Show With Jon Stewart that have been viewable on comedycentral.com, colbertnation.com, and dailyshow.com in 2009 state “©1995-2009 Comedy Partners. All Rights Reserved.”

INTERROGATORY NO. 8:

For each Accused Video Clip, state whether the same content is available for viewing on a website operated by You or pursuant to a license agreement with You, and if so, identify the website and state when the clip first became available on that site.

Amended Response and Objections to Interrogatory No. 8:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is improper, overly broad, unduly burdensome, unreasonably cumulative, abusive, and exceeds the scope of permissible discovery under Local Civil Rule 33.3 and Federal Rules of Civil Procedure 26 and 33. Plaintiffs also object that this Interrogatory is overbroad, oppressive, harassing and unduly burdensome to the extent it seeks highly detailed information. In addition, Plaintiffs object to the extent this Interrogatory seeks information contained in documents produced in discovery. Such information is already equally and fully accessible to Defendants, and it is unduly burdensome to require Plaintiffs to review the documents to identify particular information for Defendants. Plaintiffs object further that this Interrogatory is vague. Plaintiffs further object that Interrogatory 8 is duplicative of Defendants' document

requests. Seeking additional information by interrogatory is redundant, unduly burdensome, and inconsistent with the Scheduling Order and the Local Rule.

Subject to and without waiver of these general and specific objections, Plaintiffs respond as follows:

Availability of Viacom Content on Viacom Websites

As a general matter under present practices, full episodes of MTV content are made available for viewing on the MTV website the morning after the premiere of the episode on air. The episode remains on the website for a week, is removed for three weeks, and is then reposted and remains online indefinitely. Many MTV series will make the first full episode of a series available on line several days in advance of the series' premiere on television. Short clips are made available for viewing on line at the time an episode premieres. A preview clip for each episode is made available for viewing on line several days before the episode premieres on air.

As a general matter under present practices, full episodes of VH1 content are made available for viewing on the VH1 website the morning after the episode premieres on air. The episode remains on the website for a week, is removed for three weeks, is then reposted for three weeks, and is subsequently removed from the on line library. Many VH1 series will make the first full episode of a series available for viewing on line several days in advance of the series' premiere on television. Short clips are made available for viewing on line at the time an episode premieres. A preview clip for each episode is made available for viewing on line several days before the episode premieres on air.

As a general matter under present practices, full episodes of CMT content and related clips are made available on line immediately following the premiere of the episode on air.

As a general matter under present practices, full length programming of LOGO content is made available on line the same day the programming premieres on line.

As a general matter under present practices, full episodes of Nickelodeon content are made available on line immediately after airing and remain online until the end of the season. At least one short clip of each episode is made available on line shortly before the episode airs.

As a general matter under present practices, full episodes of the Daily Show and Colbert Report are made available online within twenty-four hours after the episodes premiere on air. The episodes remain on line for up to 30 days and are then removed from the online library. Clips are made available online within twenty-four hours after the associated episode premieres on air and remain on line indefinitely.

As a general matter under present practices, full episodes of South Park are made available online within twenty-four hours after the episodes premiere on air. Clips are made available online within twenty-four hours after the associated episode premieres on air and remain on line indefinitely. All thirteen seasons of South Park are currently available online in full episode form. Episodes 101-1201 of South Park were made available on SouthParkStudios.com beginning on March 19, 2008. Subsequent episodes were made available on SouthParkStudios.com on the following dates:

1202	2008-03-19
1203	2008-03-26
1204	2008-04-02
1205	2008-04-09

1206	2008-04-16
1207	2008-04-23
1208	2008-10-08
1209	2008-10-15
1210	2008-10-22
1211	2008-10-29
1212	2008-11-05
1213	2008-11-12
1214	2008-11-19
1301	2009-03-11
1302	2009-03-18
1303	2009-03-25
1304	2009-04-01
1305	2009-04-08
1306	2009-04-15
1307	2009-04-22
1308	2009-10-07
1309	2009-10-14
1310	2009-10-21
1311	2009-10-28
1312	2009-11-04
1313	2009-11-11
1314	2009-11-18

As a general matter under present practices, for other Comedy Central shows, full episodes and three to six associated clips are made available online within twenty-four hours after the episodes premiere on air. The clips remain online indefinitely. The full episodes remain online for varying periods of time.

Attached as Exhibit C is a spreadsheet listing MTV, VH1, CMT, and LOGO full episodes that are currently available for viewing on line, as well as the date when each episode was first made available for viewing on line.

Availability of Viacom Content on Third Party Websites

Attached as Exhibit D is a spreadsheet listing MTV Networks content that has been made available for viewing on third party websites, as well as the date when each piece of content was first made available on those sites.

INTERROGATORY NO. 9:

Identify (by name, address, job title and employer) each individual who has knowledge of marketing or public relations efforts for Your content involving uploading video of such content to websites for online viewing, including without limitation each individual involved in uploading or authorization for uploading of all videos that Viacom directly or indirectly caused to be uploaded to YouTube.

Amended Response and Objections to Interrogatory No. 9:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is burdensome, overly broad, vague, not limited to any period of time relevant to this litigation, and duplicative of Defendants' document requests. Plaintiffs also object that this Interrogatory requests information that may not be disclosed under foreign privacy laws.

Subject to and without waiver of these general and specific objections, Plaintiffs supplement their prior response with the names of the following additional Viacom employees who are knowledgeable about Viacom's uploading of content on websites for marketing and public relations purposes:

<i>Name</i>	<i>Job Title</i>	<i>Employer</i>
Ames, Todd	Senior Director, Marketing	Spike TV
Apmann, Todd	Director, Grassroots Marketing	MTV Networks
Black, Marnie	Senior VP, Communications	MTV Networks

Bordo, Sara	Executive Director of Interactive Marketing	Paramount Pictures Corporation
Burrell, Damon	VP, Marketing	MTV Networks
Castaneda, Jeffrey	Senior Director of Communications, MTV2	MTV Networks
Cummins, Karen	VP, Consumer Ad Sales Marketing	TV Land
Exharos, Tina	EVP, Marketing	MTV Networks
French, David	Marketing	MTV Networks
Grove, Alyson	Media Coordinator	Paramount Pictures Corporation
Heacock, Jessica	Affiliate Sales and Marketing	MTV Networks
Hirschhorn, Jason	Chief Digital Officer MTVN	MTV Networks
Kadetsky, Deborah	VP, Digital Marketing	MTV Networks
Lam, Cuong	Marketing Manager	MTV Networks
Lin, Andrew	VP, Interactive Marketing	Paramount Vantage
Manning, Andrea	Communications	MTV Networks
Mitchell, Sono	Director, Advertising & Marketing	MTV Networks
Morriss, Jamie	Technical Director, Marketing	Paramount Pictures Corporation
Pollack, Marnie	Communications	MTV Networks
Riven, Julie	Marketing Director	MTV Networks
Shermans, Neil	Marketing	Spike TV
Simard, Stephanie	Director, Creative Marketing	Paramount Pictures Corporation
Spina, Dario	VP, Marketing and Promotions	Spike TV
Steele, Don	VP, Digital Marketing	MTV Networks
Stevenson, Sean	Manager Advertising & Marketing	Comedy Central
Strube, Amy	Music and Program Promotion	MTV Networks
Tipton, Kristina	Coordinator, Online Publicity	Paramount Pictures Corporation
Thurber, Jessica	Director, Media	Paramount Pictures

		Corporation
Urbont, Ariana	Senior Director	MTV Networks
Wahtera, Megan	Exec. Creative Director	Paramount Pictures Corporation
Waite, Matthew	Advertising Executive	Paramount Pictures UK
Whiley, Dan	VP, Digital Media	MTV Networks
Worsnup, Mickey	VP, Creative Marketing-Interactive	Paramount Pictures Corporation
Yeomans, Emily	Communications	MTV Networks

INTERROGATORY NO. 10:

Identify (by name, address, job title and employer) each individual who has knowledge concerning DMCA compliance by Viacom UGC Websites, including without limitation the drafting and implementing of policies and procedures for complying with the DMCA, the implementation of any repeat infringer policy, and the disabling of access to material in response to takedown notices.

Amended Response and Objections to Interrogatory No. 10:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is burdensome, overly broad, vague, not limited to any period of time relevant to this litigation, and duplicative of Defendants' document requests. Subject to and without waiver of these general and specific objections, Plaintiffs supplement their prior response with the names of the following additional Viacom employees who are knowledgeable about the takedown policies and procedures of Viacom UGC Websites:

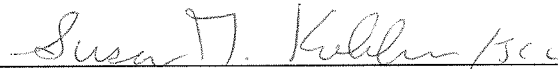
<i>Name</i>	<i>Job Title</i>	<i>Employer</i>
Pier Borra	SVP, Technology, Kids & Family	MTV Networks
Michael D. Fricklas	EVP and General Counsel and	Viacom Inc.

	Corporate Secretary	
Andrew Han	VP, Business and Legal Affairs	MTV Networks
Jason Jordan	CFO, iFilm	MTV Networks
Laurie Lawrence-Dillon	VP, Legal	MTV Networks
Victoria Libin	Atom, Director of Legal Affairs	MTV Networks
Cindy Morales	Manager, Intellectual Property	MTV Networks
Mark C. Morrill	SVP and Deputy General Counsel	MTV Networks
Stanley Pierre-Louis	VP and Associate General Counsel	Viacom Inc.

Brian Ross	VP, Business and Legal Affairs	MTV Networks
Yalda Sharif	Director, Business and Legal Affairs	MTV Networks
Pauline Wen	SVP, Business and Legal Affairs	MTV Networks

Respectfully submitted,

January 8, 2010



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VERIFICATION FOR PLAINTIFFS VIACOM INTERNATIONAL INC., ET AL.

Information in Plaintiffs' Responses to Defendants' Second Set of Interrogatories was provided by me and/or gathered at my direction from corporate records and personnel. I have reviewed the responses. I declare under penalty of perjury under the laws of the United States that the foregoing responses as to Plaintiffs Viacom International Inc. et al. are true and correct to the best of my knowledge and belief, based on my review of such information.

Executed on January 8, 2010, in New York, New York.

Signature:

A handwritten signature in black ink, appearing to read 'Stanley Pierre-Louis', written over a horizontal line.

Name:

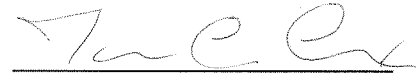
Stanley Pierre-Louis

Title:

Vice President & Associate General Counsel

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on this 8th 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).

A handwritten signature in cursive script, appearing to read "James C. Cox", written in black ink.

James C. Cox

Rubin Reply Exhibit 164

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.) NO.
) 07-CV-2203
)
 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.) NO.
) 07-CV-3582
)
 YOUTUBE, INC., YOUTUBE, LLC, and)
 GOOGLE, INC.,)
)
 Defendants.)
 _____)

VIDEOTAPED DEPOSITION OF TODD APMANN
NEW YORK, NEW YORK
THURSDAY, July 23, 2009

JOB NO. 17255

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

FOR THE PLAINTIFFS VIACOM
INTERNATIONAL, INC.:

JENNER & BLOCK, LLP
BY: SCOTT B. WILKENS, ESQ.
Swilkens@jenner.com
1099 New York Avenue, NW,
Suite 900
Washington, D.C. 20001
(202) 639-6000

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

WILSON, SONSINI, GOODRICH & ROSATI, LLP
ROSATI, ESQ.
BY: BART E. VOLKMER, ESQ.
Bvolkmer@wsgr.com
650 Page Mill Road
Palo Atlo, California 94304

ALSO PRESENT:

Carlos King, Videographer

---oOo---

1 TODD APMANN

2 thought upon by others. I, you know,
3 can only give you, to the best of my
4 recollection, what I thought, you know,
10:19:09 5 may have been effective and what was
6 not effective. That's the best of my
7 knowledge.

8 Q. But evaluating the
9 effectiveness of marketing campaigns
10:19:23 10 that you were working on, that was part
11 of your job responsibility, correct?

12 A. It was not really an
13 official part of my job. It was -- I
14 guess it was part of it, but not a
10:19:40 15 large part of my job. It also depends
16 on, you know, the definition of
17 evaluation and parameters and things
18 like that.

19 Q. When you were employed at
10:19:59 20 MTV, did MTV upload clips to YouTube to
21 promote its programming?

22 A. I can't speak to MTV
23 overall. I can only speak to, again,
24 what I do recall from the projects that
10:20:14 25 I worked on.

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1 TODD APMANN

2 Q. Right. The question was:
3 When you were employed at MTV, did you
4 have any knowledge of MTV uploading
10:20:24 5 clips to YouTube to promote its
6 programming?

7 A. Again, I can't speak for all
8 of MTV. I can only speak for the
9 projects that I worked on specifically.
10:20:37 10 I do not recall specific websites for
11 that -- for those.

12 Q. Is your testimony that,
13 under oath today, that you can't recall
14 any of the specific websites to which
10:20:59 15 MTV uploaded clips to promote its
16 programming?

17 MR. WILKENS: Objection.
18 Mischaracterizes his testimony.

19 A. I can recall that we
10:21:10 20 uploaded to a variety of websites, but
21 I can't recall specifics.

22 Q. If I wanted to find out all
23 of the clips that MTV uploaded to
24 YouTube to promote its programming, how
10:22:00 25 would I find that out?

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1 TODD APMANN

2 MR. WILKENS: Objection.

3 Lacks foundation.

10:22:06

4 A. Quite honestly, I do not
5 know how you would do that.

6 Q. Is there a comprehensive
7 list or a spreadsheet somewhere of all
8 the assets that MTV uploaded to YouTube
9 to promote its programming?

10:22:17

10 MR. WILKENS: Objection as
11 to form.

12 A. Honestly, I don't know.

13 Q. Did you ever compile such a
14 list?

10:22:24

15 A. I do not recall.

16 Q. Do you remember anyone
17 compiling such a list?

18 A. I do not recall.

10:22:46

19 Q. What if I wanted to find out
20 all the clips that any Viacom
21 subsidiary had uploaded to YouTube, how
22 would I go about finding out that data?

23 MR. WILKENS: Objection.

24 Lacks foundation.

10:22:56

25 A. I do not know.

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1 TODD APMANN

10:23:05

2 Q. Were you aware of a list
3 somewhere where all of the assets that
4 any Viacom subsidiary uploaded to
5 YouTube were compiled?

6 MR. WILKENS: Same
7 objection. And vague.

8 A. I was not aware of any list.

10:23:24

9 Q. Were the marketing
10 departments at MTV, Comedy Central,
11 Nickelodeon, Paramount, any other
12 Viacom subsidiaries, coordinated or did
13 they operate independently?

10:23:36

14 MR. WILKENS: Objection as
15 to form.

16 A. I cannot speak for any of
17 the MTV Networks channels. Except, I
18 can only speak to the projects, you
19 know, that I worked on for MTV.

10:23:50

20 Q. I am asking you a factual
21 question. You were employed at MTV for
22 a number of years and the question is:
23 Were the marketing departments at the
24 various Viacom subsidiaries coordinated
25 or did they operate independently?

10:24:02

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1 TODD APMANN

2 MR. WILKENS: Objection as
3 to form.

10:24:09

4 A. Again, I can't speak to
5 overarching Viacom or MTV Network
6 strategies.

10:24:30

7 Q. When you were working at
8 MTV, was the marketing department at
9 MTV coordinated with the marketing
10 departments at other Viacom
11 subsidiaries?

10:24:42

12 A. Again, I can't speak to the
13 overall MTV marketing department, nor
14 the marketing departments for MTV
15 Networks or Viacom.

10:24:59

16 Q. When you say "I can't speak
17 to the overall marketing department,
18 nor the marketing departments for MTV
19 Networks or Viacom," why do you say you
20 can't speak to that?

21 MR. WILKENS: Objection.

10:25:11

22 A. I can't speak to them
23 because I was not involved with them.
24 I do not know their strategies. I do
25 not know the overarching strategies for

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1 TODD APMANN

2 any of them. I was not involved.

10:25:19

3 Q. Did you have any exposure to
4 the marketing departments at Comedy
5 Central?

6 MR. WILKENS: Objection.

7 A. I don't recall.

8 Q. Did you have any exposure to
9 the marketing department at Paramount?

10:25:25

10 MR. WILKENS: Objection as
11 to form.

12 A. I don't recall.

13 Q. Did you have any exposure to
14 the marketing department at CMT?

10:25:36

15 MR. WILKENS: Objection as
16 to form.

17 A. I don't recall.

18 Q. Did you have any exposure to
19 the marketing department at Black
20 Entertainment Television?

10:25:44

21 MR. WILKENS: Same
22 objection.

23 A. I don't recall.

24 Q. When you were employed at
25 MTV, who was in charge of viral

10:26:09

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1 TODD APMANN

2 marketing at Comedy Central?

3 MR. WILKENS: Objection.

4 A. I do not recall.

10:26:18

5 Q. Have you ever known that
6 fact?

7 MR. WILKENS: Objection.

8 A. I do not recall.

10:26:48

9 Q. Did you ever perform any
10 investigations regarding MTV's
11 marketing activities at the direction
12 of MTV or Viacom attorneys?

13 MR. WILKENS: Objection. To
14 the extent it calls for any kind
15 of legal communications with
16 counsel, I instruct you not to
17 answer that. But if you can
18 answer without talking about
19 conversations with counsel, please
20 go ahead and answer.

10:27:00

21 A. I do not recall. No.

10:27:08

22 Q. You don't recall performing
23 any investigations at the direction of
24 MTV or Viacom's attorneys; is that
25 correct?

10:27:25

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1 TODD APMANN

2 A. No, I did not.

3 Q. Do you know who at MTV, when
4 you were employed there, was
10:28:23 5 responsible for directly uploading
6 clips to YouTube to promote MTV
7 programming?

8 MR. WILKENS: Objection.
9 Lacks foundation.

10:28:30 10 A. I do not recall. Even if
11 there -- I don't -- I don't know.

12 Q. Did you ever have any
13 conversations with anyone at YouTube
14 about possibly uploading promotional
10:28:49 15 material to YouTube?

16 A. Honestly, I do not recall.

17 Q. Did you ever have any
18 conversations or E-mail correspondence
19 with Kevin Donahue at YouTube about
10:29:17 20 potentially uploading MTV material to
21 YouTube to promote MTV content?

22 A. I do not recall.

23 Q. Did you ever create a
24 YouTube account with the user name,
10:29:48 25 MTV?

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1 TODD APMANN

2 A. I do not recall.

3 Q. Did you ever create a
4 YouTube account with the user name,
10:30:02 5 MTV2?

6 A. Do not recall.

7 Q. Did MTV or its agents ever
8 upload full episodes of MTV shows to
9 YouTube?

10:30:23 10 A. I cannot speak for MTV in
11 general. Again, I can only speak to
12 the projects that I worked on, and I do
13 not recall for the projects that I
14 worked on.

10:30:39 15 Q. You don't recall if any MTV
16 employee ever uploaded full episodes of
17 programs to YouTube to promote the MTV
18 programming?

19 MR. WILKENS: Objection.

10:30:57 20 Asked and answered.

21 A. Again, I can't speak to all
22 of MTV. I can only speak to the
23 projects that I worked on. I do not
24 recall for the projects that I worked
10:31:08 25 on.

1 TODD APMANN

10:31:49

2 Q. Did MTV agents or employees
3 ever upload full episodes of its
4 programming to other EGC websites apart
5 from YouTube?

6 A. Again, I cannot speak for
7 MTV. I can only speak for the projects
8 that I worked on, and I do not recall
9 for the projects that I worked on.

10:32:01

10 Q. Why do you keep saying "I
11 can only speak to the projects I worked
12 on"?

13 MR. WILKENS: Objection.

10:32:15

14 A. Because I cannot speak for
15 the others at MTV who -- and their
16 projects and responsibilities because I
17 do not have knowledge.

10:32:26

18 Q. Do you understand, sir, if
19 you have percipient knowledge of a fact
20 that occurred outside of the projects
21 that you worked on and you have a
22 memory of that fact, you need to
23 disclose those facts because you are
24 testifying under oath?

10:32:34

25 MR. WILKENS: Objection.

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1 TODD APMANN

2 And I move to strike the
3 argumentative portion of that.

4 A. Yes.

10:32:38

5 Q. You understand that that's
6 your obligation when you are testifying
7 under oath, to give full and complete
8 testimony about percipient facts that
9 you are aware of?

10:32:46

10 A. Yes.

11 MR. VOLKMER: I would like
12 to mark Exhibit 2.

13 (Whereupon, the
14 aforementioned E-mail dated
15 February 15, 2006 was marked as
16 Apmann Exhibit 2 for
17 identification as of this date by
18 the Reporter.)

10:33:58

19 MR. VOLKMER: Exhibit 2 is
20 an E-mail exchange -- E-mail
21 message, I should say, produced in
22 litigation by Google. It is Todd
23 Apmann to Kevin Donahue. The date
24 is February 15, 2006.

10:34:14

25 Q. What is this document, Mr.

1 TODD APMANN

2 Apmann?

3 A. This document appears to be
4 an E-mail.

10:34:29 5 Q. Do you recognize it?

6 A. I recognize my name. I do
7 not recall this E-mail.

8 Q. Did you send it?

9 MR. WILKENS: Objection.

10:34:45 10 A. Again, I do not recall.

11 Q. Todd.Apmann@mtvstaff.com was
12 your E-mail address when you were
13 working at MTV in February of 2006,
14 correct?

10:35:02 15 A. Yes, it was.

16 Q. This is a message that
17 appears to have been written by you to
18 Kevin Donahue, correct?

19 A. It does appear as that, yes.

10:35:17 20 Q. Do you have any reason to
21 doubt that this is, in fact, an E-mail
22 you sent to Mr. Donahue at YouTube?

23 A. Again, doubt or not, I don't
24 recall the details of around this time
10:35:43 25 from what it says on this E-mail.

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1 TODD APMANN

2 Q. Do you have any reason to
3 doubt this is an E-mail you sent to Mr.
4 Donahue in February of 2006?

10:35:49

5 A. Again, you know, I don't
6 recall from that time period.

7 Q. That is not responsive to
8 the question that I asked. The
9 question that I asked is: Do you have
10 any reason to doubt that this is an
11 E-mail you sent to Mr. Donahue in
12 February of 2006?

10:36:05

13 MR. WILKENS: Objection.

14 Asked and answered and I move to
15 strike the argumentative portion
16 of that.

10:36:12

17 A. Again, I don't recall from
18 that time period. Therefore, I can't
19 really give an answer as to a doubt or
20 not.

10:36:25

21 Q. This E-mail message starts
22 off, "Great talking to you,"
23 exclamation mark.

24 Does that appear to be a
25 greeting that you normally use in an

10:36:46

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1 TODD APMANN

2 an E-mail message with your E-mail
3 address in the "from" line. Do you
4 think that you had E-mail
10:54:21 5 correspondence with Mr. Donahue?

6 A. Again, this is my E-mail
7 address, and I do not recall E-mail
8 exchanges with Kevin Donahue.

9 Q. You don't remember talking
10:54:38 10 with Mr. Donahue?

11 A. I do not recall.

12 Q. You don't remember having
13 any conversations with Mr. Donahue?

14 A. I do not recall.

10:54:46 15 Q. You write, "Wanted to give
16 you a heads up that MSN may come in as
17 a national sponsor of the Andy
18 Milonakis contest."

19 What were you referring to
10:54:58 20 when you talked about MSN potentially
21 coming in as a sponsor of the Andy
22 Milonakis contest?

23 A. Again, I do not recall
24 sending this E-mail. That is my E-mail
10:55:10 25 address, but I do not recall sending

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1 TODD APMANN

2 this E-mail.

10:55:23

3 Q. Do you recall MSN
4 potentially coming in as a sponsor of
5 the Andy Milonakis contest?

6 A. I do not recall.

7 Q. Do you recall working on a
8 marketing campaign for the Andy
9 Milonakis show?

10:55:37

10 A. I remember the Andy
11 Milonakis show and I remember -- I
12 remember discussions about Andy
13 Milonakis. I do not recall the
14 specifics.

10:55:56

15 Q. As part of your job
16 responsibilities at MTV, were you
17 involved in promoting the Andy
18 Milonakis show?

10:56:14

19 A. I don't recall which channel
20 Andy Milonakis was on, but I do
21 remember a conversation about promoting
22 Andy Milonakis. Again, I worked on
23 various show priorities, and I remember
24 conversations about Andy Milonakis or
25 having conversations about Andy

10:56:34

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1 TODD APMANN

2 Milonakis. But I don't remember what
3 the subject matter was specifically.

4 Q. Who was -- who was
10:56:41 5 responsible for viral marketing with
6 respect to the Andy Milonakis show?

7 A. I do not recall.

8 Q. Who else did you work with
9 at MTV or MTV2 to market the Andy
10:57:00 10 Milonakis show?

11 A. Again, I remember having
12 discussions about the Andy Milonakis
13 show. I don't recall specifics.

14 Q. Who were the people that you
10:57:11 15 worked with in your day-to-day job
16 responsibilities in February of 2006?

17 A. In my departments, again,
18 this time period is -- you know, I
19 don't recall a lot of details. Joe
10:57:36 20 Armenia was my boss. Tina Exarhos was
21 his boss.

22 Q. Who else did you work with
23 around this time frame, February of
24 2006?

10:58:02 25 A. Let's see. In my

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1 TODD APMANN

10:58:33

2 department, again, I am trying to
3 remember exactly the time periods. A
4 woman named Lana Kaufman reported to
5 me.

6 Q. Anyone else?

7 A. Those were the people that I
8 dealt with.

10:58:44

9 Q. You worked with Joe Armenia,
10 Tina Exarhos and Lana Kaufman. You
11 can't remember anyone else that you
12 worked with in this time frame,
13 February 2006?

10:58:54

14 MR. WILKENS: Are you asking
15 anyone else at MTV?

16 Q. I am asking about anyone
17 else.

18 A. At MTV or in general?

10:59:04

19 Q. MTV, MTV2, MTV Networks,
20 Viacom, Paramount, Comedy Central.
21 Anyone within the Viacom organization.

10:59:32

22 A. I am trying to recall who I
23 dealt with at that time besides those
24 main people. Let's see. A woman named
25 Marissa Grasso and then -- and my main

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1 TODD APMANN

2 department. I am trying to think of
3 who was there.

11:00:01

4 Also someone -- no, he
5 wasn't there. A woman named Amy Strube
6 (phonetic.) That's all I can recall at
7 this moment in time from that time
8 period.

11:00:26

9 Q. What about Kun Long
10 (phonetic)?

11 A. His name does sound
12 familiar. I believe -- yes, I believe
13 -- yes, his name does sound familiar.

11:00:51

14 Q. For whom did Mr. Long work?

15 A. I believe he worked for Lisa
16 Preston.

17 Q. Which organization did Lisa
18 Preston work in?

11:01:13

19 A. I believe she worked for MTV
20 and MTV2.

21 Q. And you worked for MTV and
22 MTV2 as well?

23 A. Yes.

11:01:24

24 Q. Did you work in the same
25 department as Miss Preston?

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1 TODD APMANN

2 A. Yes.

12:51:02

3 Q. And this was an E-mail you
4 sent in the ordinary course of your
5 business, right?

6 A. Again, I don't remember
7 specifics with Human Giant, but this
8 does have my name and my E-mail address
9 on here.

12:51:11

10 Q. And you believe you wrote
11 this E-mail, right?

12 A. I can't speak to if I sent
13 it or not. I do not recall this
14 E-mail, but that is my name on there.

12:51:22

15 Q. Do you think there was any
16 possibility that you didn't write this
17 E-mail?

12:51:31

18 A. You know, again, I can't say
19 if I did or I didn't. I don't recall
20 this E-mail.

21 Q. Do you think there is any
22 possibility that you didn't draft this
23 E-mail?

12:51:43

24 A. Again, I don't recall this
25 E-mail so I don't -- I can't say if I

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1 TODD APMANN

2 sent it or did not.

12:51:56

3 Q. So you think there is a
4 possibility you didn't draft this
5 E-mail?

12:52:10

6 A. Again, I don't recall this
7 E-mail. So -- and, you know, my name
8 is on there. So that's all I can
9 really speak to. I don't recall this
10 E-mail.

12:52:27

11 Q. Giving your best testimony
12 and recognizing that you are testifying
13 under penalty of perjury, do you
14 believe that you drafted the E-mail
15 that I have marked as Exhibit 4?

12:52:38

16 A. No. Again, I don't recall
17 this E-mail. My name is on there. It
18 is a possibility. I don't recall this
19 E-mail.

12:52:52

20 Q. Given the contents of the
21 E-mail, the recipients, given the fact
22 that this E-mail was produced by Viacom
23 in litigation, isn't it a near
24 certainty, sir, that you drafted this
25 E-mail?

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1 TODD APMANN

12:53:06

2 A. Again, no, I don't recall
3 this E-mail. That is my name on there.
4 That's Joe's name on there. So it is a
5 possibility that I sent it. But,
6 again, I don't recall.

12:53:14

7 Q. It is more than a
8 possibility, isn't it? Isn't it a near
9 certainty that you drafted this E-mail,
10 Mr. Apmann?

12:53:25

11 A. Again, I don't recall this
12 E-mail. I can only say that is my name
13 and my E-mail address on there. That
14 is my boss and my boss' boss on there
15 as well.

12:53:37

16 Q. You write, "Attached is a
17 list of sites to which I recommend
18 linking the Human Giant clips."

19 Do you remember providing
20 Miss Exarhos or Mr. Armenia with a list
21 of sites to which you were seeking to
22 leak clips of the Human Giant?

12:53:49

23 A. Again, I don't recall
24 specifics about Human Giant.

25 Q. But have you had a chance to

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Rubin Reply Exhibit 165

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.
) 1:07-CV-2103
YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)
)
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF NICOLE BROWNING

New York, New York

Wednesday, October 7th, 2009

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 17867

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October 7, 2009
10:30 a.m.

VIDEOTAPED DEPOSITION OF NICOLE
BROWNING, held at the offices of Skadden
Arps Slate Meagher & Flom, LLP, 4 Times
Square, New York, New York, pursuant to
notice, before Erica L. Ruggieri,
Registered Professional Reporter and
Notary Public of the State of New York.

1

2 A P P E A R A N C E S

3 FOR THE PLAINTIFFS:

4 JENNER & BLOCK, LLP

5 BY: SUSAN KOHLMANN, ESQ.

6 919 Third Avenue

7 New York, NY 10022-3908

8 skohlmann@jenner.com

9

10 FOR THE DEFENDANTS

11 MAYER BROWN, LLP

12 BY: CHRISTINE M. HERNANDEZ, ESQ.

13 JOHN MANCINI, ESQ.

14 1675 Broadway

15 New York, New York 10019

16 Chernandez@mayerbrown.com

17

18 SKADDEN ARPS SLATE MEAGHER & FLOM, LLP

19 BY: DAVID SUSSMAN, ESQ.

20 Four Times Square

21 New York, New York 10036

22 David.sussman@skadden.com

23

24 ALSO PRESENT:

25 CARLOS KING, Videographer

MARK MORELL, Viacom

25

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1 BROWNING

2 Q. And who did you report to as
3 executive vice president in affiliate
4 sales and marketing?

10:46:28 5 A. Mark Rosenthal.

6 Q. Did you come to hold another
7 position at MTV Networks?

8 A. Yes.

9 Q. Okay. And what position was
10 that?

10:46:42

11 A. President affiliate sales and
12 marketing.

13 Q. And did your duties expand at
14 all in that role?

10:46:48 15 A. Yes.

16 Q. How so?

17 A. Well, I was more involved as
18 well internally, on the various executive
19 teams for the networks, the senior
20 executive management team.

10:47:10

21 Q. Do you know approximately when
22 you became president?

23 A. I would say maybe around 2000,
24 2001.

10:47:30

25 Actually, I'm not even really

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1 BROWNING

2 sure. It could have been the late '90s or
3 early 2000.

10:47:41

4 Q. Well, again, I'll say I have
5 seen some references that suggest that you
6 ended that position December 2000.

7 Does that ring a bell at all?

8 A. Okay. If you saw something that
9 said that, then I'm sure that was right.

10:47:51

10 Q. And who did you report to, as
11 president of affiliate sales and
12 marketing?

13 A. There were three different
14 people at different times.

10:48:01

15 Q. Okay. And the first was?

16 A. Mark Rosenthal.

17 Q. And do you remember
18 approximately how long you reported to
19 him?

10:48:09

20 A. Until he left.

21 Q. And when was that?

22 A. I am not exactly sure when he
23 left. I don't remember exactly when he
24 left.

10:48:28

25 Q. And the next person that you

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

Rubin Reply Exhibit 166

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

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

Plaintiffs,

vs.

NO. 07-CV-3582

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

Defendants.

_____x

VIDEOTAPED DEPOSITION OF DAMON BURRELL
NEW YORK, NEW YORK
TUESDAY, APRIL 14, 2009
JOB NO.: 16730

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APRIL 14, 2009

10:09 a.m.

VIDEOTAPED DEPOSITION OF DAMON
BURRELL, held at the offices of WILSON
SONSINI GOODRICH & ROSATI, PC, 1301 Avenue of
the Americas, New York, New York, pursuant to
notice, before JENNIFER OCAMPO-GUZMAN, a
Shorthand 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:
FOR THE PLAINTIFFS VIACOM INTERNATIONAL,
INC.:

JENNER & BLOCK, LLP
By: SCOTT B. WILKENS, Esq.
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
(202) 639-6000 swilkens@jenner.com

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

WILSON SONSINI GOODRICH & ROSATI, PC
BY: BART E. VOLKMER, ESQ.
650 Page Mill Road
Palo Alto, California 94304-1050
650-565-3508 bvolkmer@wsgr.com

ALSO PRESENT:
MARCELO RIVERA, Videographer

1 Burrell

10:14:36 2 Q. Besides meeting with Mr. Wilkens,
10:14:42 3 did you do anything else to prepare for the
10:14:44 4 deposition today?

10:14:48 5 A. No.

10:14:53 6 Q. And can you explain what your
10:14:54 7 current job responsibilities are?

10:14:59 8 A. I'm responsible for developing
10:15:03 9 marketing plans for the promotion of
10:15:05 10 television shows and events, for MTV.

10:15:10 11 Q. And for the television shows, what
10:15:14 12 types of marketing does MTV employ to promote
10:15:17 13 those shows?

10:15:23 14 A. Multiple tactics. Never the same
10:15:26 15 thing for any show.

10:15:27 16 Q. What are some of those multiple
10:15:31 17 tactics?

10:15:32 18 A. Television campaigns, print
10:15:38 19 campaigns, radio campaigns, events, online
10:15:47 20 campaigns.

10:15:48 21 Q. And who do you report to?

10:15:56 22 A. I report to Tina Exarhos.

10:16:02 23 Q. How many direct reports do you
10:16:03 24 have?

10:16:05 25 A. Six.

1 Burrell

10:16:12 2 Q. And can you list them out for me,
10:16:15 3 please?

10:16:16 4 A. Wendy Perez, Amie Esler, Jolina
10:16:30 5 Hoang, Julie Sun, Lauren Weinstein; and Amy
10:16:42 6 Strube, who has just left, so I'm looking to
10:16:45 7 replace her.

10:16:46 8 Q. Why did Ms. Strube leave the
10:16:54 9 company?

10:16:56 10 A. Career opportunity.

10:16:58 11 Q. Can you be any more specific than
10:17:00 12 that?

10:17:02 13 A. I wouldn't -- I wouldn't know any
10:17:04 14 other reason besides additional career
10:17:07 15 opportunity for her.

10:17:07 16 Q. She didn't tell you where she was
10:17:11 17 going?

10:17:12 18 A. Yes.

10:17:12 19 Q. Where was she going?

10:17:14 20 A. She is now employed at Music
10:17:17 21 Choice.

10:17:17 22 Q. The five individuals that you just
10:17:24 23 listed who are still at the company, which
10:17:26 24 individuals have, as part of their job
10:17:33 25 responsibilities, online marketing in their

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 Burrell

10:17:36 2 portfolio of work?

10:17:37 3 A. All of them.

10:17:41 4 Q. All of them engage in online

10:17:44 5 marketing for MTV?

10:17:45 6 A. Yes.

10:17:58 7 Q. What jobs have you previously held

10:18:00 8 at MTV?

10:18:01 9 A. Director of marketing for MTV.com.

10:18:12 10 Q. Any others?

10:18:16 11 A. That's it.

10:18:17 12 Q. Do you know if MTV ever bought

10:18:23 13 advertising space on the YouTube website?

10:18:32 14 A. I don't remember.

10:18:44 15 MR. VOLKMER: I would like to mark

10:19:00 16 Burrell Exhibit 1.

10:19:02 17 (Exhibit Burrell-1, E-mail dated

10:19:02 18 1/9/07, Bates No. VIA00183065, marked

10:19:02 19 for identification, this date.)

10:19:02 20 Q. This is an e-mail from January 9,

10:19:05 21 2007, from Tina Exarhos to Damon Burrell.

10:19:08 22 The subject is "confidential," and the text

10:19:10 23 of the e-mail says, "Carole thinks we

10:19:13 24 shouldn't buy YouTube right now."

10:19:15 25 Mr. Burrell, do you know what

Rubin Reply Exhibit 167

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.)
_____)

VIDEOTAPED DEPOSITION OF JEFFREY CASTANEDA

New York, New York

Tuesday, September 29th, 2009

REPORTED BY:

ERICA RUGGIERI, CSR, RPR

JOB NO: 17745

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September 29th, 2009
9:36 a.m.

VIDEOTAPED DEPOSITION OF JEFFREY
CASTANEDA, held at the offices of Mayer
Brown, 1675 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

FOR THE PLAINTIFFS:

JENNER & BLOCK, LLP

BY: SCOTT B. WILKENS, ESQ.

1099 New York Avenue, NW

Suite 900

Washington, DC 20001-4412

swilkens@jenner.com

FOR THE DEFENDANTS:

MAYER BROWN, LLP

BY: CHRISTINE M. HERNANDEZ, ESQ.

1675 Broadway

New York, New York 10019

Chernandez@mayerbrown.com

ALSO PRESENT:

CARLOS KING, Videographer

1 CASTANEDA

2 A. Not that I can recall.

3 Q. Were any of your superiors aware
4 of your use of mosjef73 to upload
11:32:14 5 authorized clips to YouTube?

6 A. My superiors in the press
7 department or MTV2 or?

8 Q. Within MTV2 in general.

9 A. Yes, I believe so. Yeah.

11:32:23 10 Q. Who do you believe was aware of
11 your use of mosjef73?

12 A. I believe members of the
13 marketing team at MTV2.

14 Q. And who would that be?

11:32:44 15 A. As far as I can remember, Kung
16 Lam, Lisa Preston, Todd Apmann, David
17 Cohen, GM of MTV2. That's all I can
18 remember at this point.

19 Q. Do you know if Tina Escaros was
11:33:09 20 aware of your use of mosjef73?

21 A. No.

22 Q. Do you believe that a user,
23 seeing clips posted from the account
24 mosjef73, would understand them to be
11:33:54 25 approved MTV marketing materials?

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

Rubin Reply Exhibit 168

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. 07CV2203
YOUTUBE, INC., YOUTUBE, LLC,)	
and GOOGLE, INC.,)	
)	
Defendants.)	
)	
<hr/>		
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.)	
)	

VIDEOTAPED DEPOSITION OF TINA EXARHOS

NEW YORK, NEW YORK

MONDAY, FEBRUARY 23, 2009

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 16507

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February 23, 2009

9:36 a.m.

VIDEOTAPED DEPOSITION OF TINA
EXARHOS, held at the offices of Wilson
Sonsini Goodrich & Rosati, 1301 Avenue of,
New York, New York, pursuant to notice,
before 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

FOR THE PLAINTIFFS:

JENNER & BLOCK, LLP
BY: SCOTT B. WILKENS, ESQ
1099 New York Avenue, NW
Washington, D.C. 20001
(202) 639-6000
Swilkens@jenner.com

FOR THE DEFENDANTS

WILSON SONSINI GOODRICH & ROSATI, PC
BY: BART E. VOLKMER, ESQ.
650 Page Mill Road
Palo Alto, CA 94304
(650) 493-9300
Bvolkmer@wsgr.com

- and -

MAYER BROWN, LLP
BY: JASON KIRSCHNER, ESQ.
1675 Broadway
New York, New York 10019
(212) 506-2500
Jkirschner@mayerbrown.com

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A P P E A R A N C E S: (Cont'd)

ALSO PRESENT:

MICHELENA HALLIE, MTV Networks

CARLOS KING, Videographer

* * *

1 T. EXARHOS

2 A. I did not.

3 Q. And where do you work? In what
4 location?

09:46:50 5 A. I work at MTV Networks'
6 headquarters at 1515 Broadway.

7 Q. And can you explain what your
8 job responsibilities are?

9 A. I oversee all marketing
09:47:03 10 activities for MTV music television and
11 MTV2. Those are my primary
12 responsibilities, but I have oversight of
13 marketing for MTV.woman and MTVU.

14 Q. What about VH1?

09:47:23 15 A. No, I don't oversee VH1
16 marketing.

17 Q. Who's responsible for VH1 on the
18 marketing side?

19 A. A man by the name of Nigel
09:47:33 20 Coxhegan.

21 Q. And what about CMT, who is
22 responsible for marketing at CMT?

23 A. A woman by the name of Dee
24 McLoughlin.

09:47:43 25 Q. And how about Logo?

1 T. EXARHOS

2 A. I don't know who is running
3 marketing at Logo right now.

09:47:54

4 Q. And are you responsible for
5 marketing at MTV films?

6 A. No, I am not.

7 Q. And who is?

8 A. Marketing of MTV films is done
9 out of Paramount now.

09:48:09

10 Q. At one time was that done out of
11 MTV?

12 A. No. Actually, it's always been
13 done by Paramount.

09:48:27

14 Q. What about Nickelodeon, who is
15 responsible for marketing at Nickelodeon?

16 A. Pam Kaufman.

17 Q. And Comedy Central?

18 A. Peter Rosati.

09:48:47

19 Q. And who is in charge of
20 marketing at Paramount?

21 A. There are a number of different
22 people, but I think Rob Moore is the
23 person who is responsible for all of
24 marketing. There are different people who
25 have different responsibilities there.

09:49:03

1 T. EXARHOS

2 Q. How many direct reports do you
3 have, if it's a manageable number?

09:51:23

4 A. Yeah, it is. I just want to
5 think and make sure I get it right.

6 Five.

7 Q. And could you list them for me,
8 please?

09:51:36

9 A. Sure, I can. Kevin Mackall,
10 Jeffrey Keaton, Duncan McDonald, Damon
11 Burrell and Vivian Castello.

12 Q. In the past two years have you
13 had any of your direct reports leave the
14 company?

09:52:04

15 A. I have.

16 Q. And who were they?

17 A. Two other direct reports, Lisa
18 Preston and Joe Armenia.

09:52:26

19 Q. And why did Ms. Preston and
20 Mr. Armenia leave MTV?

21 A. They both left because of
22 downsizing at the company.

23 Q. And when was that?

24 A. Two years ago.

09:52:40

25 Q. How long have you been employed

1 T. EXARHOS

2 Q. Who at MTV will reach out to a
3 third party to start up a viral marketing
4 campaign?

12:10:41

5 A. There would be different people
6 that either -- generally, that work for me
7 that would be responsible for a specific
8 priority. So there are a number of
9 different people who might be responsible
10 for doing that.

12:10:52

11 Q. And who are those people?

12 A. Today or?

13 Q. Correct, today.

14 A. Today it would be Damon Burrell.

12:11:05

15 And there are two or three other people
16 who work for Damon, Jolena Wong, and I
17 don't know the exact spelling, and Wendy
18 Perez. And there might be people from the
19 communications department as well, who I
20 don't know, but there might be some people
21 from that department who would also work
22 with third-party agencies.

12:11:36

23 Q. Is there anyone besides Jolena,
24 Wendy and Damon who work with those
25 agencies?

12:11:46

1 T. EXARHOS

2 A. Today?

3 Q. Today.

12:11:55

4 A. Not that I can think of. Those
5 are the primary people at this time.

6 Q. And over the past two years, who
7 else at MTV has worked with the
8 third-party viral marketing agencies?

12:12:06

9 A. There are a number of different
10 people. So you want me to list them?

11 Q. If you could list them.

12:12:32

12 A. Sure. Lisa Preston, Todd
13 Apmann, Cuong Lam, Joe Armenia. And there
14 might have been one or two other people a
15 little bit lower down, but I don't
16 remember names.

12:12:46

17 Q. Does MTV develop the viral
18 marketing strategy and tell the third
19 party to implement it, or does the third
20 party collaborate with MTV in implementing
21 the strategy?

22 MR. WILKENS: Objection.

12:13:03

23 A. Each campaign is different. So
24 we direct our agencies, but we hire them
25 for their expertise as well. So there are

Rubin Reply Exhibit 169

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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.)
_____)

VIDEOTAPE DEPOSITION OF STEPHEN FARRELL
NEW YORK, NEW YORK
TUESDAY, JULY 14, 2009

JOB NO. 17249

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July 14, 2009
10:09 a.m.

VIDEOTAPED DEPOSITION OF STEPHEN
FARRELL, held at the offices of Mayer Brown,
LLP, 1675 Broadway, New York, New York,
pursuant to notice, before Rebecca
Schaumloffel, Registered Professional
Reporter and Notary Public of the State of
New York.

1 FARRELL

2 Bates stamp label G0001-04941959,
3 and mark this for the witness'
4 identification as Farrell
10:47:24 5 Exhibit 3.

6 (Whereupon, the
7 aforementioned document,
8 G0001-04941959, was marked as
9 Farrell Exhibit 1 for
10 identification as of this date by
11 the Reporter.)

12 Q. Have you reviewed this
13 document?

14 A. Yes.

10:47:47 15 Q. Do you know what this
16 document is?

17 A. Yes.

18 Q. What is it?

19 A. Another E-mail to YouTube.

10:47:55 20 Q. And what are you
21 communicating to YouTube by this
22 document?

23 A. That the user by the name of
24 gumboy16 is posting episodes of Afro
10:48:14 25 Samurai.

DAVID FELDMAN WORLDWIDE, INC.

450 7th Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1 FARRELL

2 Q. I believe in the document it
3 says, "without permission"?

4 A. Yes.

10:48:19 5 MS. CUNHA: Well --

6 Q. What investigation did you
7 do prior to sending this E-mail to
8 determine that gumboy16 lacked
9 permission to post these episodes?

10:48:36 10 A. I don't recall.

11 Q. I believe you -- strike
12 that.

13 Did the marketing department
14 keep a list of user names for YouTube
15 that did have permission to post
16 various Spike clips on YouTube?

10:48:54 17 A. I don't know.

18 Q. Who would know that?

19 A. Probably the marketing
20 department.

10:49:03 21 Q. Was it the marketing
22 department that gave you the
23 information that this user name was not
24 authorized?

10:49:10 25 A. I don't recall.

DAVID FELDMAN WORLDWIDE, INC.

450 7th Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1 FARRELL

10:49:25

2 Q. Who in the marketing
3 department would know whether or not a
4 user had authority to post content to
5 YouTube?

6 A. Specifically, I don't know.

10:49:51

7 Q. Do you know if anyone ever
8 gave any list, besides this E-mail, to
9 YouTube of accounts -- YouTube user
10 accounts that were not authorized to
11 post Spike content to YouTube?

12 A. No, I don't know.

13 Q. Do you know who would know?

14 A. No, I don't.

10:50:37

15 MR. MANCINI: I would next
16 like to mark as Farrell Exhibit 4
17 a document bearing Bates stamp
18 label VIA0518608 through '617 and
19 ask the witness to review that.

10:51:00

20 (Whereupon, the
21 aforementioned documents,
22 VIA0518608 through '617, were
23 marked as Farrell Exhibit 4 for
24 identification as of this date by
10:51:47 25 the Reporter.)

DAVID FELDMAN WORLDWIDE, INC.

450 7th Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1 FARRELL

2 Q. What is the Video Game
3 Awards?

11:05:53

4 A. It's a program that Spike
5 makes.

6 Q. Am I correct that somebody
7 appears to have taken a video on their
8 phone and posted it on YouTube?

9 A. That's what it seems like.

11:06:15

10 Q. There is an exchange between
11 you and Scott Fishman beginning on page
12 '041. It talks about how many hits
13 these videos are getting on YouTube; is
14 that correct?

11:06:36

15 A. Yes.

16 Q. Then, on the prior page,
17 '040, again, the E-mails are printed in
18 reverse order.

11:06:57

19 Now, later in the
20 discussion, Kevin Kay responds to a
21 group of folks, including yourself,
22 quote, "I don't know why we would have
23 to take this down."

24 Do you see that reference?

11:07:10

25 A. Yes.

DAVID FELDMAN WORLDWIDE, INC.

450 7th Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1 FARRELL

2 Q. Who is Kevin Kay?

3 A. That's the president of
4 Spike.

11:07:13 5 Q. Was he the president at this
6 time?

7 A. Yes.

8 Q. Do you know in between your
9 exchange and Kevin's response, did
11:07:21 10 somebody indicate that this clip should
11 be taken down from YouTube?

12 A. I don't recall.

13 Q. But from Kevin's response,
14 is it fair to say that was an issue
11:07:33 15 under consideration?

16 A. Yes.

17 Q. And Kevin goes on to state,
18 in the second down full paragraph,
19 quote, "but for what it is worth, my
11:07:43 20 opinion is that we need buzz and that
21 gamers get buzz from the Internet and
22 creates buzz and raise awareness and
23 makes me think as a viewer, if I tune
24 into the show, I will see more cool
11:07:55 25 stuff. The goal is to go after the

DAVID FELDMAN WORLDWIDE, INC.

450 7th Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1 FARRELL

2 fans. This is how you get them."

3 Do you see that reference?

4 A. Yes.

11:08:01

5 Q. Is it fair to say what Kevin
6 is articulating is the reasons why you
7 would want to leave this stuff up on
8 YouTube; is that correct?

11:08:09

9 MS. CUNHA: Objection to
10 form. Calls for speculation.

11 A. It is the reasons he feels
12 he would want to leave it up there.

11:08:28

13 Q. Then Pete Jacobs responds to
14 Mr. Kay immediately above, in the
15 second full paragraph, "I agree that it
16 is a great buzz builder. I think that
17 the problem is that these videos do
18 nothing to make the show cool. I feel
19 that people will now just wait for the
20 trailer to appear online. Knowing that
21 this link is getting E-mailed and
22 posted on fan sites, I think we can
23 still cash in on the buzz by pulling it
24 down. People who follow the link will
25 get a video removed message. News will

11:08:42

11:08:51

DAVID FELDMAN WORLDWIDE, INC.

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1 FARRELL

2 spread it closed down and will keep
3 people talking about it for an extra
4 day."

11:08:59 5 Do you see Mr. Jacobs'
6 response?

7 A. Yes.

8 Q. Who is Pete Jacobs?

11:09:08 9 A. Pete Jacobs was a video game
10 marketing consultant who worked with
11 Spike.

12 Q. And Mr. Kay responds to Pete
13 Jacobs and others, immediately above,
14 saying, quote, "Yeah, but pulling it
11:09:20 15 down is saying to the fans that we are
16 not cool. Besides, if you see it, it
17 looks shitty. Don't you want to tune
18 into the show to see what it really
19 looks like?"

11:09:33 20 Do you see that reference?

21 A. Yes.

22 Q. Do you know if this clip was
23 ever taken down?

24 A. I don't recall.

11:09:47 25 Q. Did you ultimately agree

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Rubin Reply Exhibit 170

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,)
NO. 07-CV-2203)
)
vs.)
YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)
)
)
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF ERIK FLANNIGAN
NEW YORK, NEW YORK
THURSDAY, OCTOBER 16, 2008

BY: REBECCA SCHAUMLOFFEL, RPR, CLR
JOB NO. 16002

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OCTOBER 16, 2008

9:30 a.m.

VIDEOTAPED DEPOSITION OF
ERIK FLANNIGAN, taken at the offices of
WILSON, SONSINI, GOODRICH & ROSATI, 1301
Avenue of the Americas, New York, New
York, pursuant to notice, before REBECCA
SCHAUMLOFFEL, CLR, RPR.

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

FOR THE PLAINTIFFS VIACOM
INTERNATIONAL, INC.:
SHEARMAN & STERLING LLP
By: JOHN GUELI, ESQ.
By: KRISTIN FITZMAURICE, ESQ.
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(212) 848-4744
jgueli@shearman.com
kfitzmaurice@shearman.com

FOR THE DEFENDANTS YOUTUBE, INC.,
YOUTUBE, LLC and GOOGLE, INC.:
WILSON SONSINI GOODRICH & ROSATI
By: DAVID H. KRAMER, ESQ.
CAROLINE WILSON, ESQ.
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(650) 849-3311
Dkramer@wsgr.com
Cwilson@wsgr.com

ALSO PRESENT:

Michelena Hallie, MTV Networks
Manuel Abreu, Videographer

1 FLANNIGAN

2 THE WITNESS: Yeah.

3 Q. I mean to be focused on what
4 you are aware of for MTVN. You said
11:15:03 5 Deep Focus, you said Iced Media.

6 A. Yep.

7 Q. And said you heard of
8 Fanscape and Wiredset, but you don't
9 recall whether or not MTVN has used
11:15:13 10 them?

11 A. I mean, again MTVN, that is
12 sort of knowledge outside of my
13 purview. I guess, yes, I don't -- I
14 mean, I don't know for certain whether
11:15:27 15 we have used those firms or not.

16 Q. Are there any other firms
17 that you can recall that MTV has used
18 for purposes of viral marketing of
19 video content online?

11:15:41 20 A. Not that I can recall.

21 Q. Viacom has engaged in viral
22 marketing with content on the YouTube
23 service, right?

24 A. Today?

11:16:02 25 Q. Today.

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1 FLANNIGAN

2 A. I don't know.

3 Q. But in the past?

4 A. In the past, yes.

11:16:06

5 Q. And when Viacom uploads
6 Viacom content to services like
7 YouTube, the content is authorized to
8 be on the service by Viacom, right?

11:16:34

9 A. Well, I am hesitating only
10 because using Viacom is the subject of
11 that sentence. I mean, we are talking
12 about individual people who are
13 employees of Viacom, but I think
14 generally speaking, that is true.

11:16:51

15 Q. And when Viacom hires
16 services to upload content on its
17 behalf to YouTube, again, that content
18 is authorized to be on the YouTube
19 service, right?

11:17:04

20 A. Well, the first -- in the
21 question, I don't think we have hired
22 someone to put content on the YouTube
23 service as if that was the only job
24 they had. So, we don't hire people to
25 do that. We hire people to market our

11:17:26

1 FLANNIGAN

2 content to multiple places.

3 Q. So I will rephrase the
4 question. It is a fair point.

11:17:37

5 When Viacom hires an agent
6 to market its content to various places
7 and that agent puts the content on
8 YouTube, the content is then authorized
9 to be on the YouTube service by Viacom,
10 right?

11:17:47

11 A. Correct.

12 Q. How would you go about
13 determining if a video clip you
14 encountered on the YouTube service that
15 contained Viacom content had been
16 uploaded with Viacom's authorization?

11:17:57

17 A. How would I go about it?

18 Q. Yes.

19 A. Well, probably in two ways.

11:18:20

20 One is I would ask our digital
21 marketing staff, whoever had the
22 relationship with the third party to
23 identify the sort of uploader or
24 uploader ID or whatever the user ID is
25 of the account they are using to post

11:18:40

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1 FLANNIGAN

11:21:59

2 A. Because there is no good or
3 bad reason. The information that I was
4 referring to as the boilerplate could
5 be communicated with or without them
6 saying their name is Viacom boy 01.
7 They are not mutually exclusive.

11:22:16

8 Q. Have you ever received a
9 written report of viral marketing
10 activities conducted by Viacom or its
11 agents?

12 A. Sure.

11:22:22

13 Q. How frequently would you say
14 you received that report?

15 A. That report?

16 Q. A report. How frequently
17 would you say you received a report?

11:22:38

18 A. I probably see things like
19 that once a month or so.

20 Q. What format?

11:22:50

21 A. Sometimes I am shown slides
22 at a meeting. Sometimes I am sent a
23 PowerPoint dec that shows how many
24 click-throughs back to our website were
25 generated by that clip. Information

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1 FLANNIGAN

2 like that.

3 Q. Is there some regular report
4 you receive?

11:22:56

5 A. There is not.

6 Q. Who would you ask for
7 reports on the viral marketing
8 activities of your organization?

11:23:09

9 A. It would be several
10 different people depending on the
11 brand.

12 Q. Can you name them for me and
13 the brand?

11:23:23

14 A. At Comedy Central, my first
15 point of contact now would be Deena
16 Stern at the network. There are people
17 that work for her that I can also ask.

11:23:40

18 Don Steele who works for me
19 has a group functioning in digital
20 marketing. He has several folks that
21 report into him at the some of the
22 websites.

11:23:54

23 At Spike, Neil Shermans runs
24 marketing for the network, so I would
25 ask him.

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1 FLANNIGAN

2 At TV Land, Karen Cummins
3 runs marketing, so I would ask her.

4 Q. Is that it?

11:24:07

5 A. Basically, yes.

6 Q. Is there some documents that
7 would tell you or me all of the content
8 uploaded by Viacom representatives to
9 the YouTube service in connection with
10 Viacom's viral marketing activities?

11:24:19

11 A. I don't know.

12 Q. Is there some database that
13 contains that information?

14 A. Not that I know of.

11:24:28

15 Q. Who would know if that
16 information exists?

17 Better question, who would
18 you ask if you wanted to find out
19 whether that information exists?

11:24:40

20 A. For MTV Networks?

21 Q. Yes.

22 A. I would ask Don Steele who
23 works for me as the person closest to
24 it.

11:25:05

25 Q. You said that with respect

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Rubin Reply Exhibit 171

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 MICHELE GANELESS
NEW YORK, NEW YORK
MONDAY, NOVEMBER 3, 2008

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Novemeber 3, 2008
9:49 a.m.

VIDEOTAPED DEPOSITION OF MICHELE
GANELESS, held at the offices of Wilson
Sonsini Goodrich & Rosati, LLP, 1301
Avenue of the Americas, 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
FOR THE LEAD PLAINTIFFS AND PROSPECTIVE
CLASS:

JENNER & BLOCK, LLP
BY: SUSAN J. KOHLMANN, ESQ.
919 Third Avenue
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(212) 891-1690
Skohlmann@jenner.com

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

FOR THE DEFENDANTS YOUTUBE, INC.,
YOUTUBE, LLC and GOOGLE, INC.:
WILSON SONSINI GOODRICH & ROSATI, LLP
BY: DAVID H. KRAMER, ESQ.
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Dkramer@wsgr.com
Bvolkner@wsgr.com

ALSO PRESENT:
SALLIAN BROWN, Videographer
MICHELENA HALLIE, MTV Networks

1 M. GANELESS

2 Q. Who is your current employer,
3 Ms. Ganeless?

4 A. MTV Networks.

09:44:11

5 Q. Is that a company, MTV Networks,
6 or is that a division of a Viacom entity?

7 A. I believe it's a division of
8 Viacom.

9 Q. So who pays your salary?

09:44:22

10 A. I don't know, specifically.

11 Q. So you don't know whose name is
12 on your W-2?

13 A. No.

14 Q. It's okay. What is your current
15 title with MTV?

09:44:33

16 A. President Comedy Central.

17 Q. And what are your
18 responsibilities in that role?

19 A. I oversee the day-to-day
20 operations of Comedy Central, mostly
21 programming and marketing.

09:44:41

22 Q. By Comedy Central, you are
23 referring to the television network?

24 A. Yes.

09:44:48

25 Q. You were promoted to that

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1 M. GANELESS

2 position last year, right?

3 A. Yes.

09:44:55

4 Q. And what was your prior
5 position, to president?

6 A. General manager of Comedy
7 Central.

8 Q. Have your responsibilities
9 changed in any way?

09:45:00

10 A. No.

11 Q. So a new title?

12 A. Correct.

13 Q. Got it. To whom do you now
14 report?

09:45:07

15 A. Doug Herzog.

16 Q. And what's his title?

17 A. President of the MTV
18 entertainment group.

09:45:18

19 Q. Who are your direct reports at
20 Comedy Central?

21 A. Peter Risafi, David Bernath,
22 Jennifer Porter, Mitch Fried.

23 Q. Can you give me the titles for
24 each one of those people, please?

09:45:36

25 A. Peter Risafi is the senior vice

1 M. GANELESS

2 president of marketing. David Bernath is
3 the senior vice president of programming.
4 Jennifer Porter is the vice president of
5 integrated marketing. And Mitch Fried is
6 the senior vice president of Comedy
7 Central live entertainment.

09:45:46

8 Q. What's integrated marketing?

9 A. It's marketing that we do with
10 our advertising partners, creating
11 promotions for advertisers.

09:45:58

12 Q. There's an abbreviation that I
13 have seen in a number of documents that
14 have been produced to us by Viacom in this
15 case. That's ASM or AS&M.

09:46:10

16 Do you know what that is a
17 reference to?

18 MS. KOHLMANN: Objection as to
19 form.

09:46:17

20 You may answer.

21 A. No.

22 Q. So have you seen the
23 abbreviation AS&M in documents that you
24 review at MTV?

09:46:31

25 MS. KOHLMANN: Objection to

1 M. GANELESS

2 A. For new series launches, my
3 guess would be three to five series a
4 year.

01:39:40

5 Q. Have you ever heard the term
6 "viral marketing"?

7 A. Yes.

8 Q. What's your understanding of the
9 term?

01:39:47

10 A. It's exactly what I have been
11 talking about. Making clips that promote
12 the show that promote tune-in back to the
13 network and putting them out on the web.

01:39:59

14 Q. Comedy Central is engaged in
15 viral marketing online to promote its
16 shows, right?

17 A. Yes, it is.

01:40:08

18 Q. It's contracted with various
19 third parties to assist in its online
20 viral marketing efforts, right?

21 MS. KOHLMANN: Objection.

22 You can answer.

23 A. Yes.

01:40:15

24 Q. Can you identify for me every
25 company you are aware of with whom Comedy

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Rubin Reply Exhibit 172

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

1 APPEARANCES OF COUNSEL

2

FOR PLAINTIFFS:

3

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5

And

6

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7

8

9

FOR DEFENDANTS YOUTUBE and GOOGLE:

10

11

MAYER BROWN, LLP
BY: ANDREW H. SCHAPIRO, ESQ.

12

And

13

BY: CHRISTINE M. HERNANDEZ, ESQ.
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aschapiro@mayerbrown.com
chernandez@mayerbrown.com

14

15

16

ALSO PRESENT:

17

Salleen Browne, Videographer

18

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DAVID FELDMAN WORLDWIDE, INC.

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10:13:40 1 Q. Who is that?

10:13:40 2 A. Her name is Kristen Frank.

10:13:45 3 Q. I asked you who you first reported

10:13:47 4 to, and I asked you who you report to now. Did

10:13:49 5 I skip over any change in the organizational

10:13:52 6 chart in between?

10:13:52 7 A. Tina Imm is no longer with the

10:13:56 8 company.

10:13:56 9 Q. So the people to whom you have

10:13:57 10 reported directly were Tina Imm and now to

10:14:04 11 Nigel --

10:14:06 12 A. Cox-Hagan.

10:14:07 13 Q. -- hyphenated last name that I am

10:14:09 14 forgetting, and there's been no one else?

10:14:11 15 A. No.

10:14:12 16 Q. And who are your direct reports

10:14:15 17 now, if any?

10:14:15 18 A. I have two direct reports, one

10:14:18 19 woman named Sonia Ocasio, and one gentleman

10:14:21 20 named Joseph Ternesky.

10:14:24 21 Q. Have they always been your direct

10:14:26 22 reports during your time at VH1?

10:14:28 23 A. During my time at VH1, yes.

10:14:30 24 Q. Have you had anyone else as a

10:14:32 25 direct report?

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10:14:32 1 A. I have also had a coordinator who
10:14:34 2 is no longer with the company.

10:14:35 3 Q. Do you sometimes have interns at
10:14:37 4 VH1?

10:14:38 5 A. We do, yes.

10:14:39 6 Q. Do they sometimes help you with
10:14:41 7 viral marketing?

10:14:42 8 A. They sometimes support our team's
10:14:45 9 efforts in a variety of ways.

10:14:47 10 Q. Including helping with viral
10:14:49 11 marketing?

10:14:51 12 A. On occasion, yes.

10:14:53 13 Q. When you provide reports to -- when
10:15:05 14 you provided reports to Ms. Imm or now to Nigel
10:15:13 15 Cox-Hagan, I assume you try to be accurate and
10:15:19 16 careful, correct?

10:15:20 17 A. Absolutely.

10:15:22 18 Q. And you never -- I assume you've
10:15:26 19 never intentionally misled them about anything?

10:15:29 20 A. Absolutely not.

10:15:31 21 Q. Have you ever created any YouTube
10:15:33 22 accounts?

10:15:34 23 A. Yes, I have.

10:15:38 24 Q. Can you tell me the names of the
10:15:39 25 YouTube accounts, if you remember them, that

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10:41:05 1 Q. My question to you a moment ago was
10:41:07 2 are you aware of other people doing that, and
10:41:09 3 you said I'm not sure. So I'm showing you a
10:41:13 4 document. My question is: This document,
10:41:17 5 which ultimately you received, which included
10:41:19 6 the e-mails that came before it, discusses
10:41:23 7 leaking footage from a premier, correct?

10:41:28 8 MS. CUNHA: Objection to form.

10:41:29 9 A. This discusses asking the questions
10:41:32 10 about using our content and putting it out
10:41:36 11 there, yes.

10:41:38 12 Q. The answer is yes, correct?

10:41:40 13 A. The answer is other people are
10:41:42 14 asking about, quote, unquote, their version of
10:41:45 15 leaking content.

10:41:50 16 Q. Ms. Kadetsky, on the second page of
10:41:53 17 this e-mail Scott Lapatine says to Michelle
10:42:03 18 Clark, "What dates did you have in mind? Our
10:42:06 19 blog launches in April, so we probably want it
10:42:09 20 for the VH1 blog if it is around that time."

10:42:12 21 MS. CUNHA: Where are you?

10:42:13 22 MR. SCHAPIRO: In the middle of the
10:42:14 23 Bates number ending in 513.

10:42:19 24 Q. And he says, "Otherwise, I think
10:42:21 25 your best bet is to 'leak' it to youtube.com

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10:42:26 1 and let it get passed around virally that way,
10:42:29 2 including e-mailing it to delisted and
10:42:32 3 fourfour." Do you see that?
10:42:35 4 A. I do.
10:42:35 5 Q. Did I read that correctly?
10:42:37 6 A. You did.
10:42:37 7 Q. And Ms. Clark says, "Hmm. It would
10:42:41 8 be cool to do it like two or three weeks
10:42:43 9 before, or I can wait for the VH1 blog.
10:42:46 10 Whatever you think works best." That's from
10:42:47 11 Michelle Clark, correct?
10:42:49 12 A. Yes.
10:42:49 13 Q. And you told me she was someone who
10:42:51 14 worked at VH1?
10:42:52 15 A. Yes.
10:42:52 16 Q. And Mr. Lapatine says to her,
10:42:55 17 "Well, since SL6 premier 3/19," March 19th,
10:43:01 18 "I won't make you sit on the premier footage,
10:43:03 19 because I think it could build significant buzz
10:43:06 20 by getting out there early. Plus, it doesn't
10:43:08 21 prevent us from doing other sneaks. Does
10:43:11 22 leaking footage from the premier interfere with
10:43:13 23 any VSPOT plans. Just want to make sure
10:43:17 24 everyone is on the same page." It says that,
10:43:17 25 correct?

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10:43:19 1 A. Yes.

10:43:20 2 Q. And that's when you get added,
10:43:20 3 correct?

10:43:23 4 A. Yes.

10:43:23 5 Q. And that's because someone thought
10:43:25 6 you needed to be looped into this conversation,
10:43:25 7 correct?

10:43:27 8 A. That is correct.

10:43:27 9 Q. To make sure that everyone is on
10:43:31 10 the same page, right?

10:43:31 11 A. To --

10:43:34 12 Q. The last question from Mr. Lapatine
10:43:36 13 is, "I just want to make sure everyone is on
10:43:40 14 the same page," right?

10:43:40 15 A. Yes.

10:43:40 16 Q. And obviously it makes sense. You
10:43:41 17 want to make sure the right hand knows what the
10:43:45 18 left hand is doing at VH1, correct?

10:43:47 19 MS. CUNHA: Objection.

10:43:48 20 A. What I reference in my response is
10:43:49 21 that I would like to talk to them about how
10:43:49 22 we're both working on this type of marketing.

10:43:52 23 Q. Correct. Because you want to make
10:43:54 24 sure that you are not doing anything that gets
10:43:56 25 in their way or they're not doing anything that

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

10:43:58 1 gets in your way, that's at least one reason
10:44:00 2 you want to coordinate, correct?

10:44:03 3 A. That is correct.

10:44:05 4 Q. And I assume you had people that
10:44:09 5 knew that Deb Kadetsky is someone at VH1 who
10:44:13 6 has some knowledge and experience in this area,
10:44:15 7 correct?

10:44:17 8 A. Yes.

10:44:18 9 Q. So it's logical that someone might
10:44:22 10 say I think Deb needs to be looped into this,
10:44:24 11 correct?

10:44:24 12 A. Yes.

10:44:25 13 Q. So Benjamin Taylor looped you in
10:44:25 14 and says, "We have plans/agreements in the
10:44:28 15 works for a sneak, the first episode, and
10:44:32 16 exclusive packages going out for episodes."
10:44:36 17 That's what he said, correct?

10:44:40 18 MS. CUNHA: He is on the second
10:44:41 19 page.

10:44:41 20 MR. SCHAPIRO: I am on the page
10:44:43 21 ending 12.

10:44:45 22 A. I see. Yes, and this is an e-mail
10:44:51 23 from quite a while ago, but -- and I can't
10:44:53 24 speak to what Ben was specifically referring
10:44:55 25 to, but we tended to put this content on our

Rubin Reply Exhibit 173

From: Clark, Michelle - VH1 <Michelle.Clark@vh1staff.com>
Date: Wed, 1 Mar 2006 13:22:31 -0500
To: Kadetsky, Deborah <Deborah.Kadetsky@vh1staff.com>
Cc: Cantwell, Erica <Erica.Cantwell@vh1staff.com>
Subject: RE: SUPERGROUP/MYSPACE

Very cool! Let's talk Friday-how about 1pm?

Michelle Clark
Senior Publicist
VH1 Communications
1515 Broadway 20th Fl. Rm. 2019
NY, NY 10036
212-846-5576
michelle.clark@vh1staff.com

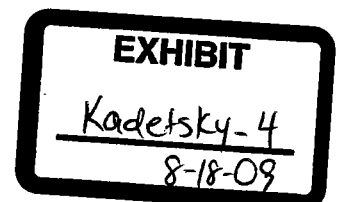
>-----
>From: Kadetsky, Deborah
>Sent: Wednesday, March 1, 2006 12:58 PM
>To: Clark, Michelle - VH1
>Cc: Cantwell, Erica
>Subject: RE: SUPERGROUP/MYSPACE
>
>No problem - I'm pretty wide open Friday.
>
>And I did learn that we can do whatever we want to create a myspace page!
>
>

>From: Clark, Michelle - VH1
>Sent: Wednesday, March 01, 2006 12:39 PM
>To: Kadetsky, Deborah
>Cc: Cantwell, Erica
>Subject: RE: SUPERGROUP/MYSPACE
>
>Hey Deborah,
>It's been a little crazy on this end. Do you have time tomorrow or Friday to chat?
>
>Michelle Clark
>Senior Publicist
>VH1 Communications
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>NY, NY 10036
>212-846-5576
>michelle.clark@vh1staff.com
>

>-----
>From: Kadetsky, Deborah
>Sent: Thursday, February 23, 2006 11:24 AM
>To: Clark, Michelle - VH1
>Cc: Cantwell, Erica
>Subject: RE: SUPERGROUP/MYSPACE
>

>Great - Let's all have a chat, so that we're not doing double duty between press & marketing.
>
>

>From: Clark, Michelle - VH1
>Sent: Thursday, February 23, 2006 11:23 AM



> To: Kadetsky, Deborah
> Cc: Cantwell, Erica
> Subject: RE: SUPERGROUP/MYSPACE

> Erica Cantwell is actually our go to person on this stuff, but I'd love to talk to you about my shows as long as we can keep her in the loop.

> ERICA-Is this ok w/ you?

> Michelle Clark
> Senior Publicist
> VH1 Communications
> 1515 Broadway 20th Fl. Rm. 2019
> NY, NY 10036
> 212-846-5576
> michelle.clark@vh1staff.com

> -----
> From: Kadetsky, Deborah
> Sent: Thursday, February 23, 2006 11:20 AM
> To: Clark, Michelle - VH1
> Subject: RE: SUPERGROUP/MYSPACE

> Hey michelle, let's touch base on the best way to get these types of things out on blogs...are you free later this afternoon, or tomorrow? It'd just be nice to meet you in person and talk about what we're both working on in terms of viral marketing :)

> Thx,
> deb

> -----
> From: Taylor, Benjamin
> Sent: Wednesday, February 22, 2006 5:17 PM
> To: Lapatine, Scott; Clark, Michelle - VH1
> Cc: Carbone, Tony; Kadetsky, Deborah
> Subject: RE: SUPERGROUP/MYSPACE

> In terms of going out early with footage we have plans/agreements in the works for a sneak the first episode and exclusive packages going out for episodes - Deb K. needs to be looped in on this conversation.

> Thanks
> ~b

> -----
> From: Lapatine, Scott
> Sent: Wednesday, February 22, 2006 5:07 PM
> To: Clark, Michelle - VH1
> Cc: Taylor, Benjamin; Carbone, Tony
> Subject: RE: SUPERGROUP/MYSPACE

> Well, since SL6 premiere 3/19 I won't make you sit on the premiere footage, 'cause I think it could build significant buzz by getting out there early. Plus, it doesn't prevent us from doing other sneaks. Does leaking footage from the premiere interfere with any VSPOT plans? Just wanna make sure

everyone's on the same page.

-s

From: Clark, Michelle - VH1
Sent: Wednesday, February 22, 2006 5:00 PM
To: Lapatine, Scott
Subject: RE: SUPERGROUP/MYSPACE

Hmm. It would be cool to do it like 2 or 3 weeks before. OR I can wait for the VH1 blog.

Whatever you think works best.

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From: Lapatine, Scott
Sent: Wednesday, February 22, 2006 4:57 PM
To: Clark, Michelle - VH1
Subject: RE: SUPERGROUP/MYSPACE

What dates did you have in mind? Our blog launches in April, so we'd probably want it for the VH1blog if it's around that time.

Otherwise, I think your best best is to 'leak' it to youtube.com and let it get passed around virally that way, including e-mailing it to dlisted and fourfour.>

-s

From: Clark, Michelle - VH1
Sent: Wednesday, February 22, 2006 4:56 PM
To: Lapatine, Scott
Subject: RE: SUPERGROUP/MYSPACE

I had another question for you about "leaking" some SL6 episodes to a blog.

I think DListed or Four Four would be perfect. What's the process?

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michelle.clark@vh1staff.com

From: Lapatine, Scott
Sent: Wednesday, February 22, 2006 4:40 PM
To: Clark, Michelle - VH1
Cc: Kadetsky, Deborah; Taylor, Benjamin
Subject: RE: SUPERGROUP/MYSPACE

> I think Deb made one for Flavor Of Love; Deb, is this your domain?

> **From:** Clark, Michelle - VH1
> **Sent:** Wednesday, February 22, 2006 2:55 PM
> **To:** Lapatine, Scott
> **Subject:** SUPERGROUP/MYSPACE

> Hey Scott,
> I know you're a similar sort of page for VH1.com is in the works, but I wanted to
see if you could help me go about creating a MySpace page for SuperGroup.

> Let me know. Thanks!

> Michelle Clark
> Senior Publicist
> VH1 Communications
> 1515 Broadway 20th Fl. Rm. 2019
> NY, NY 10036
> 212-846-5576
> michelle.clark@vh1staff.com

Rubin Reply Exhibit 174

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,)

CASE NO.
07-CV-2103

VS.)

YOUTUBE INC., YOUTUBE, LLC AND)
GOOGLE, INC.,)

DEFENDANTS.)

-----)

THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., ET AL.,)
ON BEHALF OF THEMSELVES AND ALL)
OTHERS SIMILARLY SITUATED,)

PLAINTIFFS,)

CASE NO.
07-CV-3582

VS.)

YOUTUBE, INC., YOUTUBE, LLC, AND)
GOOGLE, INC.,)

DEFENDANTS.)

-----)

VIDEOTAPED DEPOSITION OF AMY POWELL
TAKEN ON TUESDAY, DECEMBER 15, 2009

JOB NO. 18310

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

3 VIACOM INTERNATIONAL, INC., COMEDY)
4 PARTNERS, COUNTRY MUSIC TELEVISION,)
5 INC., PARAMOUNT PICTURES CORPORATION,)
6 AND BLACK ENTERTAINMENT TELEVISION,)
7 LLC,)

8 PLAINTIFFS,)

CASE NO.
07-CV-2103

9 VS.)

10 YOUTUBE INC., YOUTUBE, LLC AND)
11 GOOGLE, INC.,)

12 DEFENDANTS.)

13 -----)
14 THE FOOTBALL ASSOCIATION PREMIER)
15 LEAGUE LIMITED, BOURNE CO., ET AL.,)
16 ON BEHALF OF THEMSELVES AND ALL)
17 OTHERS SIMILARLY SITUATED,)

CASE NO.
07-CV-3582

18 PLAINTIFFS,)

19 VS.)

20 YOUTUBE, INC., YOUTUBE, LLC, AND)
21 GOOGLE, INC.,)

22 DEFENDANTS.)

23 -----)
24 Videotaped deposition of AMY HOWELL, taken on)
25 behalf of the Defendants, at 350 South Grand Avenue,)
Suite 2500, Los Angeles, California, on Tuesday,)
December 15, 2009, at 9:25 a.m., before NIKKI ROY,)
CSR. No. 3052.)

1 APPEARANCES:

2

3 FOR THE PLAINTIFFS:

4

5 JENNER & BLOCK, LLP
6 BY: SUSAN J. KOHLMANN, ESQ.
7 919 Third Avenue
8 37th Floor
9 New York, New York 10022-3908
10 212.891.1600
11 skohlmann@jenner.com

9

10 FOR DEFENDANT GOOGLE:

11 WILSON SONSINI GOODRICH & ROSATI
12 BY: BART E. VOLKMER, ESQ.
13 650 Page Mill Road
14 Palo Alto, California 94304-1050
15 650.565.3508
16 bvolkmer@wsgr.com

14

15

16 ALSO PRESENT:

16

17 PAUL KOENIG, Paramount
18 REBECCA PRENTICE, General Counsel, Paramount
19 SCOTT McNAIR, Videographer

18

19

20

21

22

23

24

25

09:57:01 1 BY MR. VOLKMER:

09:57:11 2 Q. Do you recall in early 2006 Megan Crowell

09:57:14 3 recommending that Paramount upload materials to

09:57:19 4 YouTube for viral marketing purposes?

09:57:21 5 A. No.

09:57:21 6 MS. KOHLMANN: Objection.

09:57:22 7 THE WITNESS: No, I don't.

09:57:23 8 MS. KOHLMANN: Objection as to form.

09:57:24 9 You can answer.

09:57:25 10 THE WITNESS: No, I don't recall.

09:57:40 11 MR. VOLKMER: Let's mark Exhibit 2.

09:57:43 12 (Powell Exhibit 2, document

09:57:43 13 bearing Bates numbers VIA 00366274 through

09:57:43 14 VIA 00366287, marked for identification, as

09:57:50 15 of this date.)

09:57:50 16 MS. KOHLMANN: Thank you.

09:57:53 17 MR. KOENIG: Thank you.

09:58:02 18 THE WITNESS: Thank you.

09:58:03 19 BY MR. VOLKMER:

09:58:31 20 Q. Exhibit 2 is an e-mail exchange from

09:58:37 21 February 2006. And in the last message in the thread

09:58:43 22 Megan Crowell writes to Amy Powell on February 25th,

09:58:47 23 2006.

09:58:47 24 Do you recognize this document, Ms. Powell?

09:58:50 25 A. I don't.

09:58:50 1 Q. This is an e-mail, though, that you received
09:59:00 2 in the course of your employment at Paramount, right?

09:59:03 3 A. It appears so.

09:59:04 4 Q. And who is Megan Crowell?

09:59:07 5 A. Megan Crowell was someone who worked for me
09:59:11 6 several years ago.

09:59:13 7 Q. She no longer works for Paramount?

09:59:15 8 A. No.

09:59:15 9 Q. And at your direction she gives a number of
09:59:29 10 suggestions about using websites for viral marketing
09:59:34 11 purposes. And in the second bullet point she says:

09:59:37 12 We recommend YouTube, Vimeo and
09:59:42 13 VidiLife as sites to post our
09:59:43 14 contents for viral distribution. In
09:59:46 15 these instances the best promotion
09:59:48 16 can be gained by posting
09:59:51 17 behind-the-scenes footage or content
09:59:53 18 from the cutting room floor so users
09:59:56 19 feel they find something unique
09:59:59 20 rather than a traditional trailer.

10:00:00 21 Do you see that?

10:00:01 22 MS. KOHLMANN: Objection.

10:00:01 23 You can answer.

10:00:01 24 THE WITNESS: I see that sentence, yes.

25

10:00:03 1 BY MR. VOLKMER:

10:00:03 2 Q. Do you know if Paramount followed up on this
10:00:05 3 recommendation from Ms. Crowell?

10:00:08 4 MS. KOHLMANN: Objection as to form.

10:00:10 5 You can answer.

10:00:10 6 THE WITNESS: Are you asking about that
10:00:11 7 specific suggestion or the entire e-mail?

10:00:11 8 BY MR. VOLKMER:

10:00:16 9 Q. How about the suggestion that Paramount post
10:00:21 10 its content to YouTube for viral distribution?

10:00:24 11 MS. KOHLMANN: Objection.

10:00:26 12 You can answer.

10:00:26 13 THE WITNESS: In certain instances, yes.

10:00:35 14 BY MR. VOLKMER:

10:00:37 15 Q. What about the suggestion to post
10:00:40 16 behind-the-scenes footage and footage that looked
10:00:42 17 like it came from the cutting room floor, did
10:00:45 18 Paramount follow up on that suggestion?

10:00:47 19 MS. KOHLMANN: Objection; document speaks
10:00:47 20 for itself.

10:00:54 21 You can answer.

10:00:55 22 THE WITNESS: Those are two different pieces
10:00:58 23 of material.

10:01:00 24 BY MR. VOLKMER:

10:01:00 25 Q. What about the latter, footage that looked

10:01:03 1 like it came from the cutting room floor, do you know
10:01:05 2 if Paramount ever followed up on that suggestion?

10:01:09 3 MS. KOHLMANN: Objection.

10:01:13 4 THE WITNESS: In some instances, yes.

10:01:17 5 BY MR. VOLKMER:

10:01:22 6 Q. Can you describe the circumstances in which
10:01:24 7 Paramount posted material that looked like it had
10:01:26 8 come from the cutting room floor?

10:01:31 9 A. As part of our marketing campaign, in some
10:01:37 10 instances we will create a featurette or a packaged
10:01:43 11 piece which illustrates a filmmaker at work and
10:01:47 12 includes content from the film that that filmmaker is
10:01:51 13 working on which is from the cutting room floor and
10:01:54 14 is then packaged, produced and distributed VIA our
10:01:58 15 approved marketing arm.

10:02:04 16 Q. Can you give me some specific examples in
10:02:05 17 which Paramount employed that tactic, posting
10:02:08 18 materials to viral video sites that looked like they
10:02:12 19 had come from the cutting room floor?

10:02:14 20 MS. KOHLMANN: Objection; misstates the
10:02:15 21 testimony.

10:02:16 22 You can answer.

10:02:16 23 THE WITNESS: I don't have specific examples
10:02:21 24 for you.

25

10:03:32 1 you know if Paramount generally assigned appropriate
10:03:36 2 metadata to videos that it uploaded to YouTube to
10:03:40 3 promote its content?

10:03:41 4 MS. KOHLMANN: Objection as to form.

10:03:43 5 You can answer.

10:03:44 6 THE WITNESS: We assign metadata that
10:03:48 7 describes approved clips when uploading to YouTube as
10:03:52 8 we do with all websites.

10:03:56 9 BY MR. VOLKMER:

10:03:56 10 Q. And can you give me some examples of the
10:03:59 11 appropriate metadata that would accompany an upload
10:04:04 12 to YouTube?

10:04:06 13 A. Depending on the clip, the title of the
10:04:11 14 film, the filmmaker, talent, et cetera.

10:04:17 15 Q. The third sub-bullet that we've been looking
10:04:39 16 at says:

10:04:40 17 Encouraging our internal team to
10:04:41 18 rank, view and comment on these
10:04:41 19 placements -- and in parens -- not
10:04:44 20 using Paramount e-mail accounts to
10:04:48 21 gain higher position in clip
10:04:48 22 galleries.

10:04:49 23 Do you know if Paramount employed that
10:04:51 24 tactic when uploading materials and posting materials
10:04:55 25 that had uploaded to YouTube?

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450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

10:04:58 1 MS. KOHLMANN: Objection.

10:04:59 2 You can answer.

10:04:59 3 THE WITNESS: I do not.

10:05:01 4 BY MR. VOLKMER:

10:05:03 5 Q. Do you know why Paramount would not want to
10:05:06 6 use its own e-mail accounts to rank, view and comment
10:05:09 7 on content that it had uploaded to YouTube?

10:05:11 8 MS. KOHLMANN: Objection; lacks foundation.

10:05:14 9 You can answer.

10:05:14 10 THE WITNESS: This was not my e-mail
10:05:16 11 suggestion.

10:05:20 12 BY MR. VOLKMER:

10:05:20 13 Q. Right. But this is an e-mail that you
10:05:21 14 received in the course of your employment from
10:05:25 15 someone that reported to you, correct?

10:05:27 16 A. That is correct.

10:05:28 17 Q. And you understood what she was talking
10:05:31 18 about when she wrote this e-mail, right?

10:05:33 19 MS. KOHLMANN: Objection.

10:05:35 20 THE WITNESS: As her e-mail illustrates,
10:05:38 21 she's listing a number of suggestions for
10:05:43 22 incorporating sites in our marketing campaign.

10:05:46 23 BY MR. VOLKMER:

10:05:46 24 Q. Right. And why would it -- why would it be
10:05:48 25 the case that Paramount would not use its own e-mail

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450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

10:05:51 1 accounts to rank, view and comment on content that it
10:05:54 2 had placed on YouTube?

10:05:55 3 MS. KOHLMANN: Objection; misstates the
10:05:57 4 record; lacks foundation.

10:05:58 5 You can answer.

10:05:59 6 THE WITNESS: It's not my suggestion. I
10:06:03 7 don't know.

10:06:05 8 BY MR. VOLKMER:

01:23:03 9 Q. You can't think of any reasons as to why
10:06:08 10 Paramount would employ that tactic?

10:06:10 11 MS. KOHLMANN: Objection.

10:06:11 12 You can answer.

10:06:11 13 THE WITNESS: It's not my suggestion. I
10:06:14 14 don't know.

10:06:14 15 BY MR. VOLKMER:

10:06:15 16 Q. Do you know if Paramount actually followed
10:06:17 17 up on that suggestion and used e-mail accounts that
10:06:21 18 were not associated with Paramount to rank, view or
10:06:25 19 comment on promotional materials that it had uploaded
10:06:27 20 to YouTube?

10:06:28 21 MS. KOHLMANN: Objection; asked and
10:06:29 22 answered.

10:06:29 23 You can answer it again.

10:06:31 24 THE WITNESS: I don't know.

25

10:15:05 1 THE WITNESS: Yes, we did.

10:15:06 2 BY MR. VOLKMER:

10:15:07 3 Q. And can describe how Paramount used YouTube
10:15:10 4 to promote the Heartbreak Kid?

10:15:13 5 A. We uploaded --

10:15:14 6 MS. KOHLMANN: Objection. You can answer.

10:15:15 7 THE WITNESS: We uploaded the approved
10:15:17 8 trailer, clips, TV spots to YouTube.

10:15:22 9 BY MR. VOLKMER:

10:15:34 10 Q. What are TV spots?

10:15:36 11 A. Pardon me?

10:15:37 12 Q. What are TV spots?

10:15:39 13 A. Marketing material that is created for
10:15:45 14 television campaigns.

10:15:49 15 Q. What about the film Stardust, did Paramount
10:16:02 16 use YouTube to promote that film?

10:16:05 17 MS. KOHLMANN: Objection.

10:16:06 18 You can answer.

10:16:06 19 THE WITNESS: I don't recall.

10:16:08 20 BY MR. VOLKMER:

10:16:09 21 Q. How about Beowulf?

10:16:12 22 MS. KOHLMANN: Objection as to form.

10:16:14 23 THE WITNESS: I believe we uploaded the
10:16:16 24 approved materials.

25

10:16:22 1 BY MR. VOLKMER:

10:16:24 2 Q. The Spiderweb Chronicles, did Paramount use
10:16:27 3 YouTube to promote that film?

10:16:29 4 MS. KOHLMANN: Objection as to form.

10:16:30 5 You can answer.

10:16:30 6 THE WITNESS: I don't recall.

10:16:31 7 BY MR. VOLKMER:

10:16:33 8 Q. How about Drillbit Taylor?

10:16:37 9 MS. KOHLMANN: Same objection.

10:16:39 10 You can answer.

10:16:39 11 THE WITNESS: I don't recall.

10:16:40 12 BY MR. VOLKMER:

10:16:45 13 Q. How about Stop Loss?

10:16:47 14 MS. KOHLMANN: Same objection.

10:16:49 15 You can answer.

10:16:49 16 THE WITNESS: Yes, we did.

10:16:51 17 BY MR. VOLKMER:

10:16:51 18 Q. And can you describe how Paramount used
10:16:54 19 YouTube to promote the film Stop Loss?

10:16:56 20 MS. KOHLMANN: Objection.

10:16:58 21 You can answer.

10:16:58 22 THE WITNESS: To the best of my knowledge,
10:17:01 23 we had a paid advertising campaign with YouTube.

10:17:06 24 BY MR. VOLKMER:

10:17:09 25 Q. And can you describe that campaign, please.

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11:28:34 1 A. Yes.

11:28:34 2 Q. If you turn to the page that ends in 857,
11:28:45 3 and there's a message that Kristina Tipton sent on
11:28:48 4 January 31st at 1:09. She references in the first
11:28:58 5 sentence the Rasputia versus Trump clip that we were
11:29:02 6 discussing earlier and a clip called Lloyd the Dog.

11:29:08 7 Do you know what the Lloyd the Dog clip was?

11:29:10 8 MS. KOHLMANN: Objection; document speaks
11:29:10 9 for itself.

11:29:12 10 You can answer.

11:29:13 11 THE WITNESS: I don't recall that clip.

11:29:15 12 BY MR. VOLKMER:

11:29:36 13 Q. You respond at 1:18 p.m. on February 1st to
11:29:40 14 Ms. Tipton, you say:

11:29:43 15 I'm really concerned because
11:29:45 16 these clips have been uploaded as if
11:29:46 17 from the official film from the
11:29:48 18 studio. I thought we were clear with
11:29:50 19 Scott that it was to be uploaded from
11:29:51 20 his personal account and not
11:29:52 21 associated with the film.

11:29:54 22 Please clarify asap.

11:29:58 23 Why were you concerned in this e-mail that
11:30:00 24 users would think that the marketing material came
11:30:02 25 from the studio?

11:30:03 1 MS. KOHLMANN: Objection.

11:30:06 2 You can answer.

11:30:06 3 THE WITNESS: Again, these are the0, this is
11:30:08 4 the same clip we've been referencing which I don't
11:30:11 5 recall. I do not know what the Lloyd the Dog clip
11:30:13 6 is.

11:30:14 7 BY MR. VOLKMER:

11:30:29 8 Q. You don't remember a marketing clip created
11:30:32 9 by your department that contained a talking dog and
11:30:35 10 there was time code added to the clip and that was
11:30:38 11 clip was uploaded to various video sharing sites to
11:30:43 12 promote the Norbit film?

11:30:45 13 MS. KOHLMANN: Objection.

11:30:46 14 You can answer.

11:30:46 15 THE WITNESS: I don't.

11:30:47 16 BY MR. VOLKMER:

11:30:47 17 Q. You don't remember a clip that was created
11:30:48 18 by your department that featured Donald Trump and his
11:30:54 19 tirade against Rosie O'Donnell spliced in with
11:30:58 20 footage from Norbit? You don't recall that clip at
11:31:01 21 all?

11:31:01 22 MS. KOHLMANN: Objection; asked and
11:31:02 23 answered.

11:31:02 24 THE WITNESS: I don't. You already asked me
11:31:04 25 that.

11:31:04 1 BY MR. VOLKMER:

11:31:15 2 Q. So Ms. Tipton's message below are the links
11:31:21 3 where the Rasputia -- she says:

11:31:24 4 Below are the links where the
11:31:26 5 Rasputia versus Trump and the Lloyd
11:31:29 6 the Dog clips have been uploaded so
11:31:30 7 far.

11:31:31 8 That sentence doesn't make any sense to you
11:31:33 9 because you don't know what she's referring to,
11:31:35 10 Rasputia versus Trump and Lloyd the Dog?

11:31:40 11 MS. KOHLMANN: Objection; misstates the
11:31:40 12 record.

11:31:41 13 You can answer.

11:31:41 14 THE WITNESS: I don't know that I would say
11:31:44 15 it doesn't make sense. What she's saying is below
11:31:47 16 are the links to the two different clips that have
11:31:50 17 been uploaded so far.

11:31:54 18 BY MR. VOLKMER:

11:31:55 19 Q. And for those clips that are referenced by
11:31:59 20 Ms. Tipton --

11:31:59 21 A. Uh-huh.

11:32:00 22 Q. -- you were really concerned because they
11:32:04 23 appeared to have been uploaded as if from the studio;
11:32:07 24 is that right?

11:32:08 25 MS. KOHLMANN: Objection; document speaks

11:32:08 1 for itself.

11:32:10 2 You can answer.

11:32:11 3 THE WITNESS: The e-mail reads:

11:32:12 4 I'm really concerned because

11:32:14 5 these clips have been uploaded as if

11:32:15 6 from the official film from the

11:32:19 7 studio.

11:32:20 8 BY MR. VOLKMER:

11:32:20 9 Q. What was the basis for that concern?

11:32:22 10 MS. KOHLMANN: Objection.

11:32:23 11 THE WITNESS: Again, without reviewing the
11:32:24 12 clips, I cannot answer your question.

11:32:27 13 BY MR. VOLKMER:

11:33:31 14 Q. The clip that's referenced here, Rasputia
11:33:33 15 versus Trump, was uploaded by Iced Media using an
11:33:43 16 account, Park My Vibe. Are you familiar with that
11:33:45 17 YouTube account?

11:33:46 18 A. No.

11:33:47 19 MS. KOHLMANN: Objection.

11:33:48 20 THE WITNESS: Pardon me. No, not.

11:33:49 21 BY MR. VOLKMER:

11:33:49 22 Q. You don't know that account?

11:33:50 23 A. No, I do not.

11:33:51 24 Q. Do you know if it's affiliated at all with
11:33:55 25 Iced Media?

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

11:33:55 1 A. I don't know the account.

11:33:56 2 Q. If you saw on YouTube a clip containing
11:34:01 3 Paramount footage uploaded from the account Park My
11:34:05 4 Vibe, would you know whether or not it was
11:34:06 5 authorized?

11:34:07 6 MS. KOHLMANN: Objection.

11:34:11 7 THE WITNESS: Can you repeat the question?

11:34:13 8 BY MR. VOLKMER:

11:34:13 9 Q. Sure. If you saw on YouTube a clip
11:34:16 10 containing Paramount footage uploaded from the
11:34:20 11 account Park My Vibe, would you know whether or not
11:34:22 12 it was authorized?

11:34:24 13 A. I would need to review the clip.

11:34:25 14 Q. Why would you need to review the clip to
11:34:44 15 make a determination about whether Paramount
11:34:46 16 materials uploaded to the account Park My Vibe are
11:34:50 17 authorized?

11:34:51 18 MS. KOHLMANN: Objection.

11:34:52 19 You can answer.

11:34:52 20 THE WITNESS: Without reviewing the clip, I
11:34:56 21 wouldn't know if it was approved material or not.

11:34:58 22 BY MR. VOLKMER:

11:35:06 23 Q. So you need to review the clip itself to
11:35:07 24 make a determination about whether or not the
11:35:11 25 material is authorized?

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

Rubin Reply Exhibit 175

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.)

NO. 07-CV-2203)

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.)

NO. 07-CV-3582)

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

Defendants.)

VIDEOTAPED DEPOSITION OF TAMAR TEIFELD
PALO ALTO, CALIFORNIA
WEDNESDAY, FEBRUARY 18, 2009

JOB NO. 16515

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FEBRUARY 18, 2009

9:12 a.m.

VIDEOTAPED DEPOSITION OF TAMAR TEIFELD,
WILSON SONSINI GOODRICH & ROSATI, LLP,
601 California Ave., Palo Alto, California,
pursuant to notice, and before me,
ANDREA M. IGNACIO HOWARD, CLR, RPR, CSR
License No. 9830.

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

2

3 FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

4 SHEARMAN & STERLING LLP

5 By: KIRSTEN NELSON CUNHA, Esq.

6 599 Lexington Avenue

7 New York, New York 10022-6069

8 (212) 848-4000 kirsten.cunha@shearman.com

9

10 FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and

11 GOOGLE, INC.:

12 WILSON SONSINI GOODRICH & ROSATI, LLP

13 By: MICHAEL H. RUBIN, Esq.

14 CAROLINE WILSON, Esq.

15 650 Page Mill Road

16 Palo alto, California 94304

17 (650) 493-9300 mrubin@wsgr.com

18

19 ALSO PRESENT:

20 PARAMOUNT PICTURES

21 By: PAUL KOENIG, Esq.

22 5555 Melrose Avenue

23 Hollywood, California 90038-3197

24 (323) 956-5882 paul_koenig@paramount.com

25

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

2

3 ALSO PRESENT: Lou Meadows, Videographer.

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1 TEIFELD

10:18:48 2 Q This was e-mailed by Kristina Tipton to the
10:18:54 3 team. It says "Hi Team"; do you see that?

10:18:54 4 A (Witness nods head.)

10:18:57 5 Q I'd like to walk through and figure out who
10:19:00 6 some of these people are.

10:19:02 7 A Okay.

10:19:02 8 Q Could you explain again who Mickey Worsnup
10:19:05 9 is?

10:19:06 10 A He's a creative director.

10:19:07 11 Q And he works at Paramount?

10:19:09 12 A Yes.

10:19:09 13 Q And he's still there?

10:19:10 14 A Yes.

10:19:10 15 Q Who is Bryan Warman?

10:19:13 16 A Bryan Warman is another creative director.

10:19:15 17 Q Is he also still with Paramount?

10:19:17 18 A Yes.

10:19:18 19 Q And Megan -- Megan Wahtera we've discussed.
10:19:22 20 Who is Phil Pirrello?

10:19:25 21 A Phil Pirrello was Mickey's -- I don't
10:19:28 22 remember his exact title, but junior producer,
10:19:30 23 basically.

10:19:32 24 Q Who is Stephanie Simard?

10:19:35 25 A Stephanie works with Megan Wahtera.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 TEIFELD

10:19:39 2 Q Do you work with Stephanie?

10:19:41 3 A Just along the same lines as I work with

10:19:44 4 Megan.

10:19:44 5 Q Who is Carolyn Hu?

10:19:47 6 A She used to be Bryan Warman's junior.

10:19:53 7 Q She's no longer with Paramount?

10:19:56 8 A No.

10:19:56 9 Q Who is Sara Bordo?

10:19:58 10 A Sara was the director of online media.

10:20:02 11 Q No longer with the company?

10:20:04 12 A Correct.

10:20:05 13 Q Do you know when she left?

10:20:10 14 A Sara left probably about a year ago, but I'm

10:20:12 15 not sure exactly.

10:20:13 16 Q What does the director of online media

10:20:16 17 position entail?

10:20:17 18 A Buying media advertising online.

10:20:21 19 Q So paid advertisement?

10:20:24 20 A Yes.

10:20:24 21 Q Who does that job now?

10:20:35 22 A Robb Dickehut.

10:20:35 23 Q Who is Megan Crowell?

10:20:37 24 A Megan Crowell was Sara Bordo's coordinator.

10:20:42 25 Q Working under Sara?

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 TEIFELD

10:20:43 2 A Correct.

10:20:44 3 Q Who is Kristina Griswold?

10:20:47 4 A Also Sara Bordo's coordinator.

10:20:52 5 Q David Toth?

10:20:53 6 A He was our ad trafficker.

10:20:57 7 Q What is an ad trafficker?

10:20:59 8 A He would deliver our ads to the websites that
10:21:01 9 we were buying media on.

10:21:02 10 Q Is he no longer with the company?

10:21:04 11 A He's no longer with the company.

10:21:06 12 Q Who is doing that job now? Do you know?

10:21:07 13 A I don't know.

10:21:08 14 Q And who is the person CCed here, Amy Powell?

10:21:14 15 A She's our boss.

10:21:15 16 Q And she's who hired you?

10:21:17 17 A Yes.

10:21:17 18 Q What is her title?

10:21:19 19 A Senior vice president of online marketing.

10:21:24 20 Q And to whom does she report?

10:21:28 21 A I'm not sure exactly.

10:21:34 22 Q At the top of this e-mail, it appears as
10:21:38 23 though you forwarded this to another e-mail.

10:21:41 24 A Uh-huh.

10:21:42 25 Q T-A-M-A-R-L-O-V-E-S-U @gmail.com?

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 TEIFELD

14:06:01 2 webmasters and the viral video websites that you work
14:06:05 3 with and to which you upload video content because you
14:06:08 4 believe it will provide a promotional benefit to the
14:06:12 5 film you're working on; is that right?

14:06:14 6 A We -- yeah, we select people that we send
14:06:17 7 content to.

14:06:18 8 Q How about when you upload videos directly?
14:06:23 9 Do you do so in connection with sites and viral video
14:06:29 10 websites that you believe will provide a promotional
14:06:32 11 benefit to the film?

14:06:36 12 A Yes.

14:06:43 13 Q Has it ever occurred that a video uploaded by
14:06:50 14 your team or authorized to be uploaded by your team
14:06:55 15 but uploaded by a third party in connection with a
14:06:57 16 promotion has been taken down by Viacom for
14:07:03 17 allegations of copyright infringement?

14:07:06 18 A What was the original question? Sorry. Am I
14:07:08 19 aware of it?

14:07:09 20 Q It was a long one.

14:07:11 21 Do you know whether that's ever occurred,
14:07:13 22 whether it's ever happened that your team, in the
14:07:15 23 context of marketing, works -- sorry -- marketing
14:07:19 24 movies have uploaded a video clip to YouTube, for
14:07:24 25 example, and then some other component of Viacom had

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 TEIFELD

14:07:29 2 sent a takedown notice to remove the video?

14:07:32 3 A I don't recall.

14:07:35 4 Q Has it ever occurred with any website where
14:07:40 5 there's been confusion around the authorization of the
14:07:45 6 video clip that's been posted by the site?

14:07:47 7 A Yes.

14:07:47 8 MS. CUNHA: Objection to form.

14:07:49 9 MR. RUBIN: You're allowed to answer when she
14:07:52 10 objects. You didn't do anything wrong.

14:07:54 11 MS. CUNHA: She already had answered before I
14:07:57 12 objected.

14:07:57 13 THE WITNESS: Sorry.

14:07:58 14 MR. RUBIN: She'll tell you she wants you to
14:07:59 15 wait before you answer. It's a hard thing to do.

14:08:01 16 Q What websites has that happened in connection
14:08:05 17 with?

14:08:05 18 A There's a lot of websites where that's
14:08:08 19 happened.

14:08:08 20 Q Can you name any?

14:08:09 21 A Yes. IESB, LatinoReview, MovieWeb.

14:08:16 22 Q And it may have happened on YouTube. You
14:08:18 23 just can't recall a specific incident?

14:08:24 24 A What may have happened?

14:08:25 25 Q That you've uploaded -- that someone has

1 TEIFELD

14:14:03 2 A I don't know. I haven't read through
14:14:05 3 whatever rules they have on there.

14:14:08 4 Q Have you ever -- 17 -- have you ever had
14:14:15 5 occasion to communicate with anyone who runs a website
14:14:18 6 about finding a way to ensure that the website
14:14:27 7 operator knows the content being uploaded is coming
14:14:30 8 directly from the studio?

14:14:32 9 A Say that again.

14:14:35 10 Q Have you ever communicated directly with a
14:14:38 11 website operator regarding how to ensure that the
14:14:41 12 website operator could know that content was coming
14:14:46 13 directly from the studio?

14:14:48 14 A Yes.

14:14:48 15 Q With which website operators have you had
14:14:52 16 that communication?

14:14:53 17 A A lot of different website operators.

14:14:55 18 Q Have you had that communication with YouTube?

14:14:56 19 A I don't recall if we discussed that.

14:15:00 20 (Document marked Teifeld Exhibit 42
14:15:01 21 for identification.)

14:15:01 22 MR. RUBIN: I'd like to introduce Exhibit

14:15:03 23 No. 42. Exhibit No. 42 is marked VIA01305320.

14:15:21 24 THE WITNESS: Yes.

14:15:22 25 MR. RUBIN: Q. Do you recognize this

TEIFELD

1

14:18:36 2 site?

14:18:37 3 A The presence of authorized content on their

14:18:39 4 site?

14:18:41 5 Q Uh-huh.

14:18:44 6 A I don't recall.

14:18:45 7 Q You don't recall doing so?

14:18:47 8 A I --

14:18:47 9 MS. CUNHA: Objection.

14:18:48 10 THE WITNESS: -- don't recall the last time I

14:18:50 11 did it.

14:18:50 12 MR. RUBIN: Q. Was it within the past month?

14:18:57 13 A Are you asking me if I've let a website know

14:19:01 14 that they have approved materials on their site?

14:19:04 15 Q Yes.

14:19:04 16 A I have not had to do that in the last month.

14:19:06 17 Q Six months?

14:19:13 18 A I don't recall.

14:19:14 19 Q Let me clarify this, at least clarify it for

14:19:23 20 myself.

14:19:23 21 Is it your testimony that you have sent

14:19:27 22 notices to websites, including YouTube, indicating

14:19:32 23 that the content uploaded by a given user name is

14:19:36 24 authorized by Paramount?

14:19:38 25 A Yes.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 TEIFELD

14:19:38 2 Q To whom do you send those at YouTube?

14:19:42 3 A I don't remember who I sent it to.

14:19:43 4 Q Did you send it in connection with every user
14:19:46 5 account used by Paramount?

14:19:49 6 A I don't remember.

14:19:50 7 Q Did you send it in connection with every
14:19:53 8 video uploaded by Paramount to YouTube?

14:19:59 9 A I don't recall.

14:20:00 10 Q Do you recall a single instance in which a
14:20:04 11 video was uploaded and for which notice of its
14:20:08 12 authorization was not provided by you to YouTube?

14:20:16 13 A I don't recall.

14:20:16 14 Q 20. Actually, let's do 16.

14:21:27 15 (Document marked Teifeld Exhibit 43
14:21:28 16 for identification.)

14:21:28 17 MR. RUBIN: I'd like to introduce Exhibit
14:21:31 18 No. 43, a document bearing Bates No. VIA01988198
14:21:41 19 through VIA01988201.

14:21:57 20 That's the wrong -- I'm referring to the
14:22:00 21 wrong document.

14:22:01 22 The Bates number of this document,
14:22:05 23 Exhibit 43, is VIA0125 --

14:22:10 24 MS. CUNHA: That's not what I have.

14:22:11 25 MR. RUBIN: I'm jumping around here.

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

Rubin Reply Exhibit 176

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.
YOUTUBE, INC., YOUTUBE, LLC,)	07CV-2103
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.
YOUTUBE, INC., YOUTUBE, LLC, and)	07CV-3582
GOOGLE, INC.,)	
)	
Defendants.)	
)	

DEPOSITION OF KRISTINA TIPTON

NEW YORK, NEW YORK

Thursday, October 29, 2009

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 17863

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

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October 29, 2009
9:36 a.m.

VIDEOTAPED DEPOSITION OF KRISTINA
TIPTON, held at the offices of Wilson
Sonsini Goodrich & Rosati, 1301 Avenue of
the Americas, New York, New York, pursuant
to notice, before 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

FOR THE VIACOM PLAINTIFFS and THE WITNESS:

SHEARMAN & STERLING, LLP
BY: KIRSTEN NELSON CUNHA, ESQ.
599 Lexington Avenue
New York, New York 10022
Kirsten.cunha@shearman.com

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

WILSON SONSINI GOODRICH & ROSATI
BY: MAURA L. REES, ESQ.
650 Page Mill Road
Palo Alto, CA 94304
Mrees@wsgr.com

ALSO PRESENT:

CARLOS KING, Videographer

1 TIPTON

2 A. No. I don't recall that.

3 MS. REES: Exhibit 17.

11:53:44

4 (Tipton Exhibit 17, e-mail
5 thread regarding Norbit clips,
6 marked for identification, as of
7 this date.)

8 (Witness reviews document.)

9 Q. Can you identify Exhibit 17?

11:55:26

10 A. It appears to be an e-mail
11 thread between Amy Powell, myself, Brian
12 Moerman and Carolyn Hu regarding Norbit
13 clips.

14 Q. And who is Carolyn Hu?

11:55:37

15 A. She was -- she worked with Brian
16 on the website for -- they were a team,
17 working on websites together at that
18 point.

19 Q. In the middle of the page there
20 appears to be an e-mail from you to Amy
21 Powell, cc'ing Brian Moerman and Carolyn
22 Hu, that talks about placing a trailer on
23 YouTube, after it goes off exclusive on
24 Yahoo --

11:56:15

25 A. Yes.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1 TIPTON

2 Q. -- is that correct?

3 A. Yes.

11:56:20

4 Q. Why did you think that Paramount
5 should place a trailer on YouTube?

6 A. I believe because it would get
7 additional views and exposure on YouTube.

11:56:44

8 Q. Did you have any understanding
9 in this time frame of the popularity of
10 YouTube, as opposed to other viral video
11 sites?

12 A. Yes, roughly.

13 Q. What was your understanding?

11:56:55

14 A. I believe at the time YouTube
15 was the largest video site for user
16 videos.

17 MS. REES: Exhibit 18.

11:57:48

18 (Tipton Exhibit 18, e-mail
19 chain regarding a clip for Norbitz,
20 marked for identification, as of
21 this date.)

22 (Witness reviews document.)

23 Q. Can you identify Exhibit 18?

12:00:06

24 A. It appears to be an e-mail chain
25 between Amy Powell, Brian Moerman, Carolyn

Rubin Reply Exhibit 177

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

VIACOM INTERNATIONAL, INC., COMEDY
PARTNERS, COUNTRY MUSIC
TELEVISION, INC., PARAMOUNT
PICTURES CORPORATION, and BLACK
ENTERTAINMENT TELEVISION, LLC,

Plaintiffs,

vs.

No. 07-CV-2103

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

Defendants.

-----X

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

Plaintiffs,

vs.

No. 07-CV-3582

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

Defendants.

-----X

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF MEGAN WAHTERA
SAN FRANCISCO, CALIFORNIA
FRIDAY, DECEMBER 4, 2009

JOB NO. 18262

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 DECEMBER 4, 2009

3 10:27 A.M.

4

5 HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF MEGAN

6 WAHTERA, at WILSON SONSINI GOODRICH & ROSATI, 1 Market

7 Plaza, San Francisco, California, pursuant to notice,

8 before me, KATHERINE E. LAUSTER, CLR, CRR, RPR, CSR

9 License No. 1894.

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1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

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

3 FOR THE PLAINTIFFS, VIACOM INTERNATIONAL, INC., and
4 the WITNESS:

5 JENNER & BLOCK, LLP
6 By: SCOTT B. WILKENS, ESQ.
7 1099 New York Avenue, NW
8 Suite 900
9 Washington, DC 20001
10 T.202.639.6000
11 F.202.661.4832
12 swilkens@jenner.com

13 and

14 PARAMOUNT PICTURES MOTION PICTURE GROUP
15 INTERACTIVE MARKETING
16 By: PAUL KOENIG, ESQ.
17 5555 Melrose Avenue
18 Hollywood, California 90038-3197
19 T.323.956.5882
20 F.323.862.2875
21 paul_koenig@paramount.com

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

24 WILSON, SONSINI, GOODRICH & ROSATI
25 By: MICHAEL H. RUBIN, ESQ.
CAROLINE WILSON, ESQ.
650 Page Mill Road
Palo Alto, California 94304-1050
T.650.493.9300
F.650.493.6811
mrubin@wsgr.com
cwilson@wsgr.com

Also Present: JOSEPH SKORMAN, Videographer

23
24
25

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
10:47:42 2 it?
10:47:43 3 A. I can't be sure.
10:47:43 4 Q. Right, because you're under oath,
10:47:44 5 Miss Wahtera.
10:47:47 6 MR. WILKENS: Objection --
10:47:48 7 THE WITNESS: I understand.
10:47:48 8 MR. WILKENS: -- to the form of the
10:47:49 9 question.
10:47:49 10 BY MR. RUBIN:
10:47:50 11 Q. You know that; right?
10:47:50 12 A. Yes.
10:47:50 13 MR. WILKENS: Objection.
10:47:50 14 BY MR. RUBIN:
10:47:50 15 Q. So I want to get clear clarity in your
10:47:51 16 testimony --
10:47:51 17 A. Uh-huh.
10:47:52 18 Q. -- as we sit here right now.
10:47:54 19 A. Uh-huh.
10:47:54 20 Q. You have uploaded content owned by
10:47:56 21 Paramount Pictures to YouTube; correct?
10:47:58 22 A. Correct.
10:47:59 23 Q. Is it your testimony that you have always
10:48:01 24 done so to accounts that YouTube knew?
10:48:04 25 A. I can't be sure.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

10:48:05 2 Q. You can't be sure.

10:48:05 3 A. (Witness nods head.)

10:48:06 4 Q. Why can't you be sure?

10:48:07 5 A. Because I just don't remember every piece

10:48:10 6 of content I uploaded.

10:48:12 7 Q. How many pieces of Paramount content have

10:48:14 8 you uploaded to YouTube?

10:48:15 9 A. I don't know.

10:48:16 10 Q. More than one?

10:48:17 11 A. Yes.

10:48:17 12 Q. More than five?

10:48:19 13 A. Yes.

10:48:20 14 Q. More than ten?

10:48:21 15 A. I don't know.

10:48:21 16 Q. Where would you go to find that

10:48:23 17 information out?

10:48:24 18 A. Probably look back on my e-mails.

10:48:32 19 Q. Who else in your department uploads

10:48:34 20 content to YouTube?

10:48:37 21 A. That I'm certain about?

10:48:39 22 Q. Yes.

10:48:41 23 A. Tamar Teifeld, Kyle Bennicci, Kristina

10:48:47 24 Tipton, Stephanie Simard, and that's all I can be

10:48:54 25 sure about at the moment.

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

10:48:55 2 Q. Where would you go to find out with
10:48:57 3 certainty the list of people in your department that
10:49:00 4 upload content to YouTube?

10:49:02 5 A. There is no list that I would -- that I
10:49:04 6 have.

10:49:06 7 Q. Paramount Pictures does not keep a list of
10:49:08 8 the people who upload content to YouTube --

10:49:10 9 A. Not that I --

10:49:10 10 Q. -- in the course of their employment?

10:49:10 11 A. Not that I'm aware of.

10:49:15 12 Q. Who would be aware of that?

10:49:17 13 A. I don't know.

10:49:27 14 Q. You indicated that you had two direct
10:49:29 15 reports; right?

10:49:30 16 A. I currently do, yes.

10:49:31 17 Q. Correct.

10:49:32 18 A. Uh-huh.

10:49:33 19 Q. Do you have any direct superiors?

10:49:34 20 A. Yes.

10:49:34 21 Q. Who is your direct superior?

10:49:35 22 A. I'm reporting to Amy Powell.

10:49:37 23 Q. Do you know who Amy Powell reports to?

10:49:38 24 A. Amy Powell currently reports in to Megan
10:49:44 25 Colligan.

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10:52:43 2 A. Correct.

10:52:44 3 Q. -- that you uploaded?

10:52:45 4 A. Yes, correct.

10:52:47 5 Q. Do you recall a Paramount film by the name

10:52:52 6 of "The Last Kiss"?

10:52:53 7 A. Yes.

10:52:54 8 Q. Did you work on the marketing campaign for

10:52:56 9 that film?

10:52:57 10 A. Yes.

10:52:59 11 Q. Approximately when did that campaign take

10:53:01 12 place?

10:53:07 13 A. This is awful, but I've worked on so many

10:53:09 14 films, I don't remember the year that that one was.

10:53:12 15 I want to say a few years ago, but I can't be

10:53:14 16 certain.

10:53:15 17 Q. Do you tend to work on most Paramount

10:53:18 18 films?

10:53:18 19 A. My job is that I split titles with three

10:53:21 20 different creative executives, so I work on a third

10:53:26 21 of them. But my -- outside of -- I do more things,

10:53:32 22 so I -- I assist other groups with -- sometimes when

10:53:36 23 it's not my specific film.

10:53:37 24 Q. You pitch in on the --

10:53:38 25 A. Correct.

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10:53:39 2 Q. On the two thirds you're not --

10:53:41 3 A. Correct.

10:53:41 4 Q. -- specifically assigned to?

10:53:43 5 A. Correct.

10:53:43 6 Q. Who are the other two creative directors?

10:53:48 7 A. Mickey Warsnup and Bryan Warman.

10:53:51 8 Q. And you don't know if they've uploaded

10:53:53 9 content to YouTube?

10:53:55 10 A. I don't know.

10:53:56 11 Q. "The Last Kiss" was released in September

10:54:10 12 of 2006; right?

10:54:11 13 A. I don't know.

10:54:14 14 Q. What was your role in that campaign?

10:54:18 15 A. I think I was a director at that point, my

10:54:22 16 title, so it was overseeing the creatives for "The

10:54:27 17 Last Kiss" that went online.

10:54:33 18 Q. And by -- by your answer, you mean

10:54:36 19 overseeing the Paramount content --

10:54:39 20 A. Correct.

10:54:39 21 Q. -- from the film that was placed onto the

10:54:42 22 Internet; right?

10:54:43 23 A. The content from the film --

10:54:45 24 Q. Correct.

10:54:45 25 A. -- or the content that we created for the

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
10:54:48 2 film?
10:54:49 3 Q. Both.
10:54:50 4 A. It wasn't my responsibility to oversee
10:54:52 5 content from the film, but to help place
10:54:56 6 strategically online, yes.
10:54:59 7 Q. You were involved with the placement of
10:55:00 8 content from the film --
10:55:03 9 A. Correct.
10:55:03 10 Q. -- onto the Internet; right?
10:55:05 11 A. Correct.
10:55:06 12 Q. Actual clips of the movie; right?
10:55:11 13 A. I don't remember, specifically, "The Last
10:55:13 14 Kiss," but that does fall into my realm of
10:55:18 15 responsibility. But I don't specifically remember
10:55:20 16 "The Last Kiss."
10:55:22 17 MR. RUBIN: I'd like to introduce Wahtera
10:55:23 18 1.
10:55:25 19 (Wahtera Exhibit Number 1 was marked for
10:55:25 20 identification.)
10:55:37 21 THE WITNESS: Thank you.
10:55:38 22 BY MR. RUBIN:
10:55:41 23 Q. Miss Wahtera, Exhibit 1 is a document
10:55:46 24 Viacom produced in this litigation bearing Bates
10:55:49 25 number VIA00366904 through -05.

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10:55:55 2 A. Uh-huh.

10:56:02 3 Q. Do you recognize this document?

10:56:03 4 A. No.

10:56:05 5 Q. Please take a moment to look it over.

10:56:18 6 A. Okay.

10:56:20 7 Q. Having now reviewed it, do you recognize

10:56:22 8 this document?

10:56:23 9 A. No.

10:56:25 10 Q. Do you see that it includes e-mails sent

10:56:29 11 and received by the e-mail address you described?

10:56:32 12 A. Yes.

10:56:34 13 Q. Do you doubt that you sent and received

10:56:36 14 these e-mails?

10:56:37 15 A. No, I don't.

10:56:39 16 Q. So you agree that these are authentic

10:56:42 17 e-mails sent and received by you?

10:56:44 18 A. Yes --

10:56:44 19 MR. WILKENS: Objection to the form.

10:56:45 20 THE WITNESS: Yes.

10:56:45 21 BY MR. RUBIN:

10:56:48 22 Q. You simply don't recall it?

10:56:50 23 A. Correct.

10:57:00 24 Q. I'd like to bring your attention to the

10:57:02 25 second page of the document. It's an e-mail

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10:57:06 2 exchange between you and Amy Powell, and this is --
10:57:11 3 earlier starts with Amy Powell at an e-mail address,
10:57:14 4 breep6@mac.com?
10:57:19 5 A. Yes.
10:57:20 6 Q. Are you familiar with that e-mail address?
10:57:24 7 A. Yes.
10:57:24 8 Q. Well, whose e-mail address is that?
10:57:26 9 A. Zach Braff's.
10:57:27 10 Q. Who is Zach Braff?
10:57:29 11 A. An actor.
10:57:30 12 Q. Is he an actor that was in the movie "The
10:57:32 13 Last Kiss"?
10:57:34 14 A. Yes, he's also a writer and a producer. I
10:57:35 15 don't know -- I cannot recall if he was on this
10:57:38 16 film.
10:57:47 17 Q. Do you see that on June 15th, 2006, Amy
10:57:51 18 Powell wrote to Zach Braff and said:
10:57:57 19 "I just wanted to know if you're okay with
10:57:59 20 us posting the LK montage to your profile
10:58:02 21 on YouTube, or do you want us to post from
10:58:05 22 an anonymous source?
10:58:08 23 A. Yes, I see that.
10:58:10 24 Q. What does it mean "to post from an
10:58:12 25 anonymous source"?

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10:58:15 2 A. In this instance, or --

10:58:17 3 Q. In this instance.

10:58:18 4 A. I'm not sure.

10:58:19 5 Q. What does it mean to post from an

10:58:21 6 anonymous source generally at Paramount Pictures?

10:58:26 7 MR. WILKENS: Objection to form.

10:58:27 8 THE WITNESS: I don't know.

10:58:27 9 BY MR. RUBIN:

10:58:28 10 Q. Have you ever posted from an anonymous

10:58:31 11 source?

10:58:31 12 A. Yes. Do you want me to describe that

10:58:33 13 instance?

10:58:34 14 Q. Yes, but I'd also like to be clear that,

10:58:36 15 if you've posted from an anonymous source, and you

10:58:41 16 work at Paramount Pictures, you do understand my

10:58:41 17 question.

10:58:42 18 MR. WILKENS: Objection. Argumentative.

10:58:43 19 MR. RUBIN: Scott, you've been wasting my

10:58:44 20 time with specious form objections. That objection

10:58:46 21 was specious. Let's move on. We've already been

10:58:50 22 delayed today.

10:58:50 23 MR. WILKENS: It wasn't specious.

10:58:51 24 MR. RUBIN: Let's move on.

10:58:51 25 MR. WILKENS: It wasn't specious and I

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
10:58:52 2 will make proper objections. That was an
10:58:55 3 argumentative statement.
10:58:56 4 MR. RUBIN: You're entitled to make proper
10:58:59 5 objections all day. You've not made one yet.
10:59:02 6 MR. WILKENS: I disagree.
10:59:02 7 MR. RUBIN: And I know you do. You've
10:59:03 8 wasted multiple hours of our deposition time
10:59:03 9 throughout the course of this case with specious
10:59:03 10 objections, specious instructions. This deposition
10:59:07 11 is not going to be another one of them.
10:59:10 12 MR. WILKENS: I disagree with that too.
10:59:11 13 MR. RUBIN: Disagree all you want, Scott.
10:59:14 14 MR. WILKENS: You're right --
10:59:14 15 MR. RUBIN: The record --
10:59:14 16 MR. WILKENS: -- I can.
10:59:15 17 MR. RUBIN: The record speaks for itself
10:59:17 18 and it's voluminous.
10:59:19 19 MR. WILKENS: And the judge will find that
10:59:20 20 that was an argumentative statement.
10:59:22 21 MR. RUBIN: I believe Judge Stanton can
10:59:24 22 read the transcript.
10:59:26 23 BY MR. RUBIN:
10:59:27 24 Q. Ms. Wahtera, you indicated a moment ago
10:59:30 25 that you yourself have uploaded from an anonymous

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
10:59:32 2 source.
10:59:35 3 A. Yes, I have.
10:59:36 4 Q. What do you think -- what does -- what
10:59:36 5 does that mean? What is your understanding of what
10:59:37 6 that means, to upload from an anonymous source?
10:59:41 7 A. In that instance I created an e-mail
10:59:43 8 account, which I believe was Yahoo, and uploaded a
10:59:47 9 clip from the "Heartbreak Kid."
10:59:49 10 Q. What's anonymous about that?
10:59:52 11 A. It didn't have Paramount associated with
10:59:56 12 it.
10:59:56 13 Q. And it's the only instance in which you
10:59:58 14 are aware of anyone at Paramount ever uploading a
11:00:01 15 clip from an anonymous source?
11:00:03 16 A. That I can recall right now.
11:00:05 17 Q. Or that you're aware of, ever.
11:00:07 18 MR. WILKENS: Objection to the form.
11:00:07 19 THE WITNESS: That I can recall.
11:00:08 20 BY MR. RUBIN:
11:00:16 21 Q. That wasn't my question. I'm asking
11:00:17 22 whether you're aware of anyone ever uploading a
11:00:21 23 video from an account that wasn't associated with
11:00:24 24 Paramount Pictures.
11:00:25 25 MR. WILKENS: Objection. Asked and

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
11:00:25 2 answered.
11:00:26 3 THE WITNESS: I'm only aware of what I did
11:00:28 4 on this one.
11:00:28 5 BY MR. RUBIN:
11:00:29 6 Q. You're not aware of what anyone else did
11:00:31 7 at Paramount Pictures?
11:00:32 8 MR. WILKENS: Objection to the form.
11:00:33 9 THE WITNESS: Not in that -- without --
11:00:34 10 with regard to uploading from an anonymous source --
11:00:38 11 anonymous sources, no, not that I can recall.
11:00:47 12 BY MR. RUBIN:
11:00:48 13 Q. Apparently Amy Powell is, according to
11:00:50 14 this question; right?
11:00:51 15 A. Uh-huh.
11:00:57 16 Q. And according to this e-mail, Amy Powell
11:01:05 17 sent the e-mail to you, asking you to have Zach --
11:01:12 18 pardon me -- asking you to "have Kirk --
11:01:14 19 A. Uh-huh.
11:01:15 20 Q. -- post to Zach Braff's YouTube page
11:01:20 21 tonight." Do you see that?
11:01:21 22 A. Yes.
11:01:22 23 Q. What do you understand that to mean?
11:01:25 24 A. Kirk ran Zach Braff's website and YouTube
11:01:29 25 pages.

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11:17:31 2 A. Uh-huh.

11:17:32 3 Q. -- on July 25th --

11:17:34 4 A. Okay.

11:17:34 5 Q. -- from Real Pie, forwarding the e-mail

11:17:39 6 that Real Pie had received from YouTube --

11:17:43 7 A. Uh-huh.

11:17:43 8 Q. -- that Paramount Pictures has -- had

11:17:46 9 sought to have this video removed.

11:17:49 10 A. Where does it say that?

11:17:52 11 Oh, yeah. At the bottom?

11:17:53 12 Q. (Reading:)

11:17:54 13 "Dear member:" --

11:17:54 14 A. Uh-huh.

11:17:54 15 Q. (Reading:)

11:17:55 16 -- "This is to notify you that we have

11:17:57 17 removed or disabled access to the

11:17:59 18 following material as a result of a

11:18:01 19 third-party notification by Paramount

11:18:02 20 Pictures claiming that this material is

11:18:05 21 infringing."

11:18:06 22 A. Yes, I see that.

11:18:07 23 Q. Do you see that?

11:18:08 24 A. Correct, yes.

11:18:09 25 Q. Why did Paramount Pictures send a DMCA

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11:18:12 2 takedown notice for a video that it authorized to
11:18:15 3 have uploaded?
11:18:17 4 A. I'm not sure.
11:18:18 5 Q. Why would it do that?
11:18:19 6 A. I'm not sure.
11:18:27 7 Q. Doesn't make sense, does it?
11:18:29 8 MR. WILKENS: Objection to the form.
11:18:30 9 THE WITNESS: I don't know, because I
11:18:31 10 don't -- I'm not sure why it happened. If I knew
11:18:37 11 why it happened, maybe it would make sense, but
11:18:39 12 right now I'm not sure.
11:18:40 13 BY MR. RUBIN:
11:18:41 14 Q. Okay. But at the -- the last e-mail your
11:18:43 15 response was "So strange"; right?
11:18:44 16 A. Uh-huh.
11:18:45 17 Q. You thought this was a strange thing to
11:18:47 18 have happened, didn't you?
11:18:49 19 A. According to what I wrote there, yes.
11:18:50 20 Q. And as you still sit here today, do you
11:18:53 21 still think it's strange?
11:18:55 22 A. I don't recall this -- this specific
11:18:57 23 instance, so I'm not sure.
11:18:58 24 Q. I'm asking you what your opinion is today.
11:18:59 25 MR. WILKENS: Objection --

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11:19:00 2 THE WITNESS: I don't have an opinion
11:19:01 3 today. I don't remember this incident.

11:19:03 4 BY MR. RUBIN:

11:19:03 5 Q. So in 2006, when you learned of this, you
11:19:04 6 thought it was strange, and in 2009, you don't have
11:19:07 7 an opinion about it?

11:19:08 8 MR. WILKENS: Objection to the form.

11:19:10 9 THE WITNESS: I don't -- I mean --

11:19:11 10 THE REPORTER: One at a time.

11:19:11 11 THE WITNESS: I don't remember if we found
11:19:11 12 out why this was taken down, if there was a
11:19:13 13 conclusion about it. I don't remember.

11:19:17 14 BY MR. RUBIN:

11:19:17 15 Q. You said you were looking into it; right?

11:19:20 16 A. According to this e-mail, yes.

11:19:23 17 Q. And the video's not down anymore, is it?

11:19:27 18 A. That is accurate.

11:19:28 19 Q. Do you recall what happened?

11:19:29 20 A. I don't recall.

11:19:57 21 Q. Do you see that Kirk at Real Pie --

11:20:00 22 A. Uh-huh.

11:20:00 23 Q. -- told you that you had only told them to
11:20:04 24 take the teaser down, that is, that you had only
11:20:08 25 told YouTube to take the teaser down?

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
11:27:18 2 was it just 'Paramount Pictures'?"
11:27:25 3 BY MR. RUBIN:
11:27:25 4 Q. So Kevin Donahue had no idea which account
11:27:29 5 you had uploaded this to, did he?
11:27:31 6 MR. WILKENS: Objection to the form.
11:27:32 7 THE WITNESS: I don't know.
11:27:32 8 BY MR. RUBIN:
11:27:32 9 Q. You don't know?
11:27:33 10 A. I don't know.
11:27:34 11 Q. Based on his e-mail, he had no idea, did
11:27:37 12 he?
11:27:38 13 MR. WILKENS: Objection to the form.
11:27:39 14 THE WITNESS: Based on this e-mail, looks
11:27:41 15 like he wasn't aware of it.
11:27:44 16 BY MR. RUBIN:
11:27:44 17 Q. Did Paramount Pictures have an account
11:27:47 18 named "ParamountPictures"?
11:27:50 19 A. I don't know. I -- we refer to it as
11:27:52 20 "ParaAccount."
11:27:54 21 Q. Did you just refer to it as "ParaAccount,"
11:27:56 22 or was the account named "ParaAccount"?
11:27:58 23 A. I can't remember.
11:28:00 24 Q. Did you ever upload any videos to an
11:28:02 25 account by the name of "ParaAccount"?

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11:28:04 2 A. I can't be certain, but I'm -- but
11:28:06 3 probably. I can't be certain.

11:28:08 4 Q. And what was the name of that account?
11:28:10 5 Was it "ParaAccount"?

11:28:11 6 A. I can't remember.

11:28:12 7 Q. Or "ParamountPictures"?

11:28:13 8 A. I can't remember.

11:28:17 9 Q. So you don't even know whether or not
11:28:18 10 Paramount Pictures had an account named
11:28:20 11 "ParamountPictures," do you?

11:28:22 12 A. Or if they called it "Paramount," or if
11:28:24 13 they called it "ParaAccount," or what it was
11:28:26 14 actually called, I don't remember, but we had an
11:28:29 15 account.

11:28:29 16 Q. In fact, at the time Kevin Donahue wrote
11:28:32 17 this e-mail to you, you didn't know whether or not
11:28:34 18 that was the account you were using either, did you?

11:28:37 19 MR. WILKENS: Objection to the form.

11:28:39 20 THE WITNESS: I'm not sure.

11:28:40 21 BY MR. RUBIN:

11:28:40 22 Q. Look at the e-mail you wrote,
11:28:41 23 Miss Wahtera.

11:28:42 24 A. Yes. My vendor does it checking with him
11:28:48 25 by way of cc.