

# **Rubin Reply Exhibit 186**

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Subject: RE: Viral clips  
From: Lam, Cuong <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=USER  
ACCOUNTS/CN=USER/CN=LAMC>  
To: Cohn, David  
Cc: Preston, Lisa, Castaneda, Jeff  
Date: Fri, 03 Mar 2006 14:04:55 +0000

YouTube.com did not get anything more than any of the sites. Ifilm.com exclusively previewed all of the viral clips one day before it went wide. My list includes:

- CollegeHumor.com
- TV.com
- YouTube.com
- Ifilm.com

Other sites that were given access to clip, but did not post include: IGN.com, UGO.com, IMDB.com. I can get you a full list shortly.

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From: Castaneda, Jeff  
Sent: Fri 3/3/2006 8:55 AM  
To: Cohn, David; Lam, Cuong  
Cc: Preston, Lisa  
Subject: RE: Viral clips

as far as i know from my discussion with cuong, i do not believe youtube.com got anything different than the rest.

here's a list of the folks that press sent clips to:

ebaumsworld.com, yofun.net, idontlikeyouinthatway.com. wwtd.com, gawker.com, dead-frog.com, newgrounds.com, humping frog.com, afunnysite.com, smithappens.com, paulkatcher.com; Kontraband.com; phun.org; bullzeye.com, hifiny.com; doubleagent.com, doubleviking.com. vidilife.com, savvy.com, collegehumor.com, coolbuddy.com, cityrag.blogs.com, slushfactory.com, littlefunny.com, yikers.com, gorillamask.net, stevesilver.net, milkandcookies.com, tv.com, popmatters.com, goyk.com, squidoo.com, slantmagazine.com, bofunk.com, revver.com, alldub.com, blogtelevision.net, buzzscope.com, alldumb.com, tvsquad.com, tvrage.com, drunkendelight.com, youtube.com, aintitcoolnews.com, boredatwork.com

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From: Cohn, David  
Sent: Fri 3/3/2006 8:48 AM  
To: Lam, Cuong; Castaneda, Jeff  
Cc: Preston, Lisa  
Subject: Viral clips

I need a list of the sites we serviced Andy & Wonder clips to ASAP!!! And tell me as well, did youtube get anything different than the rest???

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Sent from my BlackBerry Wireless Handheld

# **Rubin Reply Exhibit 187**

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 KYLE BONICI  
SAN FRANCISCO, CALIFORNIA  
WEDNESDAY, APRIL 22, 2009

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR  
JOB NO. 16739

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APRIL 29, 2009

9:13 a.m.

VIDEOTAPED DEPOSITION OF KYLE BONICI,  
held at the offices of WILSON, SONSINI,  
GOODRICH & ROSATI, One Market Street,  
Spear Tower, San Francisco, California,  
pursuant to notice, before ANDREA M. IGNACIO  
HOWARD, CLR, CCRR, 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 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                               NEMA MILANINIA, Esq.

15                   650 Page Mill Road

16                   Menlo Park, 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

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

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4                   ALSO PRESENT:   Ken Reeser, Videographer.

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1 KYLE BONICI

09:29:13 2 Q Mr. Bonici if you'd take a moment to look  
09:29:15 3 this over, and let me know once you've had an  
09:29:17 4 opportunity to review it. I'd like to ask you some  
09:29:21 5 questions about the document.

09:29:27 6 A Okay.

09:29:58 7 Q Would this be an example of you receiving a  
09:30:03 8 work assignment via e-mail in the course of your  
09:30:06 9 employment at Paramount?

09:30:10 10 A Yes.

09:30:10 11 Q Is this representative of the type of tasks  
09:30:13 12 you were assigned during your internship period?

09:30:19 13 A One of the many, yes.

09:30:22 14 Q The first, for lack of a better word, bullet  
09:30:28 15 point under Ms. Tipton's instruction of "Here's what  
09:30:31 16 we need help with today," it says "Can you please  
09:30:34 17 check back on Transformers trailer tracking to see if  
09:30:38 18 there are more links (the more the better:-))."

09:30:42 19 What was Ms. Tipton referring to?

09:30:44 20 MS. CUNHA: Objection to form.

09:30:45 21 THE WITNESS: Can you please ask that  
09:30:49 22 question a different way? I'm not sure I --

09:30:50 23 MR. RUBIN: Q. Do you not understand the  
09:30:52 24 question?

09:30:52 25 A I don't understand.



1 KYLE BONICI

09:30:54 2 Q What do you understand "Transformer trailer  
09:30:56 3 tracking" to mean?

09:30:58 4 A I don't recall from this e-mail exactly what  
09:31:00 5 she meant.

09:31:02 6 Q Do you recall -- can you understand, sitting  
09:31:04 7 here today, looking at those words, do you have any  
09:31:06 8 understanding of what they mean?

09:31:11 9 MS. CUNHA: I'm going to object to form.

09:31:13 10 You're asking him if he -- if he has an  
09:31:15 11 understanding of what that means, or if he can  
09:31:17 12 interpret it from the document?

09:31:18 13 MR. RUBIN: Either.

09:31:19 14 MS. CUNHA: You can answer the question, but  
09:31:21 15 he's asking you -- if you're interpreting it from the  
09:31:23 16 document, you should make sure you say that you're  
09:31:26 17 interpreting it from the document.

09:31:27 18 THE WITNESS: Uh-huh.

09:31:33 19 My interpretation of the document currently,  
09:31:35 20 right now, is that "Transformers trailer tracking,"  
09:31:38 21 meaning, what's currently available on the  
09:31:40 22 Transformers trailer as to what's -- what's out there.

09:31:44 23 MR. RUBIN: Okay.

09:31:46 24 Q The next bullet states "Update trailers and  
09:31:49 25 video in our viral video accounts"; do you see that?

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

1 KYLE BONICI

09:31:53 2 A Uh-huh.

09:31:53 3 Q What do you understand "our viral video  
09:31:56 4 accounts" to mean?

09:31:59 5 A Viral video would be a video that is passed  
09:32:02 6 along virally, and accounts obviously would be our  
09:32:06 7 separate accounts.

09:32:07 8 Q And who -- what is the "our" referring to in  
09:32:12 9 that sentence?

09:32:13 10 A Ours, Paramount Pictures. For example, you  
09:32:19 11 can see it on the actual list, the accounts we're  
09:32:21 12 talking about.

09:32:22 13 Q And which accounts are those?

09:32:26 14 A YouTube, Revver, Break, Veoh.

09:32:29 15 Q Have you uploaded videos to -- Paramount  
09:32:33 16 videos to each of these accounts?

09:32:35 17 A I don't recall.

09:32:36 18 Q But you have to the YouTube account?

09:32:40 19 A Yes.

09:32:50 20 MR. RUBIN: I'd like to introduce another  
09:32:51 21 exhibit.

09:32:52 22 (Document marked Bonici Exhibit 2  
09:33:02 23 for identification.)

09:33:11 24 MS. CUNHA: Thanks.

09:33:13 25 THE WITNESS: Thank you.

1 KYLE BONICI

09:44:37 2 (Document marked Bonici Exhibit 3

09:44:42 3 for identification.)

09:44:42 4 MS. CUNHA: This is -- just so the record is  
09:44:44 5 clear, this is something you or someone in your office  
09:44:46 6 printed out yesterday from the website?

09:44:49 7 MR. RUBIN: Indeed.

09:45:02 8 THE WITNESS: Thank you.

09:45:03 9 MR. RUBIN: Q. Mr. Bonici, please take a  
09:45:04 10 moment to look at it, and once you've had an  
09:45:08 11 opportunity to review the document, let me know, and  
09:45:10 12 I'd like to ask you a few questions about it.

09:45:12 13 A Okay. Okay. Ready.

09:45:39 14 Q Do you recognize this document?

09:45:40 15 A Yes.

09:45:40 16 Q What is it?

09:45:42 17 A It is our Paraccount, what I believe looks  
09:45:50 18 like our Paraccount YouTube front page.

09:45:52 19 Q I think that's right.

09:45:53 20 Do you recall when you first logged in to the  
09:45:56 21 Paraccount?

09:45:57 22 A Gosh, I don't recall.

09:45:58 23 Q Do you recall when you last logged in to the  
09:46:02 24 Paraccount?

09:46:03 25 A I don't recall. Sorry.

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1 KYLE BONICI

09:46:06 2 Q If you look on the document, it says --

09:46:09 3 A "Last Sign In."

09:46:10 4 Q -- "Last Sign In" was "17 hours ago." This  
09:46:13 5 was printed yesterday.

09:46:16 6 A Uh-huh.

09:46:16 7 Q So that would have been on the 27th?

09:46:19 8 A Uh-huh.

09:46:19 9 Q Does anyone log into the account other than  
09:46:21 10 you?

09:46:23 11 A Not that I'm aware of. I don't believe so,  
09:46:27 12 but I'm not sure.

09:46:27 13 Q Did you log into this account two days ago?

09:46:31 14 A I might have. I don't know why I would have,  
09:46:33 15 but I don't actually recall.

09:46:36 16 Q You don't recall what you did at work two  
09:46:38 17 days ago?

09:46:40 18 MS. CUNHA: Objection to form; that's  
09:46:42 19 argumentative.

09:46:42 20 THE WITNESS: Sorry. I don't.

09:46:44 21 MR. RUBIN: Q. How often do you log into the  
09:46:49 22 Paraccount?

09:46:52 23 A It varies. When it's a new trailer,  
09:46:57 24 you'll up -- we'll upload it usually, but if there's  
09:47:02 25 no new trailers coming out, then, you know, it could

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1 KYLE BONICI

09:47:05 2 be months.

09:47:06 3 Q How often does Paramount release new  
09:47:10 4 trailers?

09:47:11 5 A Varies. Sometimes it's three in a month.  
09:47:15 6 Sometimes it's zero in a month, et cetera.

09:47:23 7 Q Do you see it says "Videos Watched 1,176" in  
09:47:36 8 the upper left of the document?

09:47:38 9 A Uh-huh.

09:47:40 10 Q Do you recall remaining logged in to the  
09:47:45 11 Paraccount and watching other YouTube videos?

09:47:50 12 A I don't recall.

09:47:51 13 Q But it may have happened?

09:47:53 14 A I don't recall.

09:47:53 15 MS. CUNHA: Objection to form.

09:47:55 16 MR. RUBIN: Q. If you look in the next box  
09:47:59 17 down in the left, it says "Connect with Paraccount."

09:48:02 18 A Uh-huh.

09:48:03 19 Q Send a message or, pardon me, "Send  
09:48:07 20 Message"; do you see that?

09:48:08 21 A Uh-huh.

09:48:09 22 Q Mr. Bonici, I apologize, but you're going to  
09:48:11 23 actually need to respond audibly.

09:48:13 24 A Yes. I apologize.

09:48:14 25 Q It's important --

1 KYLE BONICI

09:51:07 2 a document that someone in my office printed out also  
09:51:13 3 on April 28th. This is a listing of all of the videos  
09:51:17 4 currently active in the Paraccount in order of most  
09:51:22 5 viewed.

09:51:24 6 A Uh-huh. Would you like me to go in --

09:51:30 7 Q Do you recognize this?

09:51:31 8 MS. CUNHA: There's no question yet.

09:51:32 9 THE WITNESS: Sorry.

09:51:33 10 MR. RUBIN: Q. Do you see it says there are  
09:51:35 11 "96" videos active in the Paraccount?

09:51:38 12 A Yes.

09:51:39 13 Q Have you ever removed a video from the  
09:51:42 14 Paraccount?

09:51:46 15 A I can't recall.

09:51:46 16 Q Do you know if anyone else has ever removed a  
09:51:49 17 video from the Paraccount?

09:51:51 18 A I don't know.

09:51:52 19 Q Do you know if anyone else other than you  
09:52:03 20 have uploaded videos to the Paraccount?

09:52:08 21 A Not that I recall.

09:52:09 22 Q Have you ever given third parties access to  
09:52:12 23 the account credentials for the Paraccount?

09:52:15 24 A I don't know.

09:52:17 25 Q You don't know if you've done that?

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1 KYLE BONICI

09:52:19 2 A Oh, personally me? No, I don't recall me  
09:52:22 3 ever doing it.

09:52:22 4 Q Do you know if anyone else at Paramount has  
09:52:25 5 ever done that?

09:52:26 6 A I don't know.

09:52:27 7 Q Do you believe that the uploading of  
09:52:37 8 Paramount content to the Paraccount has been an  
09:52:40 9 effective marketing tool for Paramount?

09:52:40 10 MS. CUNHA: Objection to form.

09:52:41 11 THE WITNESS: Please repeat the question.

09:52:43 12 MR. RUBIN: Q. Do you believe the uploading  
09:52:44 13 of Paramount content to the Paraccount has been an  
09:52:49 14 effected -- effective marketing tool for Paramount?

09:52:52 15 MS. CUNHA: Same objection.

09:52:53 16 THE WITNESS: I don't know. I'm -- I don't  
09:52:56 17 know. I'm unaware if it's been effective or not.

09:53:02 18 MR. RUBIN: Q. You continue to do it to this  
09:53:05 19 day; is that right?

09:53:05 20 A Uh-huh.

09:53:06 21 Q Does Paramount continue to engage in  
09:53:09 22 promotional strategies it believes to be ineffective?

09:53:13 23 MS. CUNHA: Objection to form.

09:53:14 24 THE WITNESS: We're not sure it's  
09:53:15 25 ineffective, or we're not sure it's effective either.

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1 KYLE BONICI

09:53:18 2 MR. RUBIN: Q. But you continue to engage in  
09:53:19 3 it; is that right?

09:53:20 4 A Yes.

09:53:23 5 Q And if you look at the first video, Tropic  
09:53:26 6 Thunder, do you see that?

09:53:27 7 A Uh-huh.

09:53:28 8 Q How many views does that video have?

09:53:31 9 A 6,186,562.

09:53:36 10 MR. RUBIN: Okay. I'd like to introduce the  
09:53:37 11 next exhibit.

09:53:43 12 (Document marked Bonici Exhibit 5  
09:53:58 13 for identification.)

09:53:58 14 MR. RUBIN: Exhibit No. 5 is a document  
09:53:59 15 produced by Viacom in this litigation marked  
09:54:04 16 VIA01283483 through VIA01283486. It is an e-mail from  
09:54:22 17 Kyle Bonici to Megan Wahtera, CCed to Tamar Teifeld,  
09:54:29 18 dated September 14th, 2007.

09:54:37 19 Q Mr. Bonici, please take a moment to review  
09:54:40 20 the document, and once you have, let me know, and we  
09:54:43 21 can ask -- discuss it for a moment.

09:55:01 22 A Okay.

09:55:01 23 Q After you upload Paramount content to -- to  
09:55:06 24 YouTube, do you monitor the content you've uploaded on  
09:55:09 25 occasion?



1 KYLE BONICI

09:57:51 2 A I don't recall it.

09:57:53 3 Q Does it refresh your recollection that there  
09:57:56 4 was concern at Paramount about negative comments on  
09:57:59 5 clips that had been uploaded to YouTube?

09:58:02 6 MS. CUNHA: Objection to form.

09:58:03 7 You can answer.

09:58:03 8 THE WITNESS: Please refer to which -- do  
09:58:07 9 you -- are you referring to Paraccount?

09:58:09 10 MR. RUBIN: Q. I don't know which account  
09:58:11 11 this refers to; do you?

09:58:13 12 A Likely it's a Paraccount. I'm assuming, but  
09:58:17 13 I'm making an assumption.

09:58:19 14 Q Have you ever deleted comments from the  
09:58:21 15 Paraccount?

09:58:24 16 A I might have. I can't recall though.

09:58:26 17 Q Have you ever deleted comments from any  
09:58:27 18 account on YouTube?

09:58:31 19 A I can't recall. Sorry.

09:58:35 20 Q You can't recall whether you've ever deleted  
09:58:37 21 a comment on YouTube?

09:58:38 22 A I can't recall.

09:58:43 23 Q What's the subject line of this e-mail?

09:58:47 24 A It is "HBK/YouTube."

09:58:55 25 Q Do you know what "HBK" refers to?

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1 KYLE BONICI

10:01:13 2 to do?

10:01:14 3 A I can't remember. I can't recall.

10:01:17 4 Q Do you know why she would ask you to do this?

10:01:19 5 MS. CUNHA: Objection to form.

10:01:21 6 THE WITNESS: I -- I don't know why she would

10:01:26 7 have -- she would ask me.

10:01:28 8 MR. RUBIN: Q. Do you know what the video

10:01:29 9 was?

10:01:29 10 A Huh-uh. Heartbreak Kid. No, I don't know.

10:01:36 11 I'm not sure.

10:01:38 12 Q Does Paramount have a practice of deleting

10:01:40 13 negative comments on YouTube?

10:01:42 14 A I don't know.

10:01:43 15 Q But you can't recall ever doing it?

10:01:47 16 A Personally, no. I -- I might have. I just

10:01:49 17 can't remember.

10:01:50 18 Q And you're the one who's responsible for the

10:01:52 19 Paraccount?

10:01:55 20 A Majority of it, yeah.

10:01:55 21 Q So presumably if Paramount did this

10:01:58 22 routinely, you would know about it?

10:01:59 23 MS. CUNHA: Objection to form.

10:02:01 24 THE WITNESS: No. I mean, I -- I would know

10:02:06 25 only what I did. I can't make that assumption.

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1 KYLE BONICI

10:05:32 2 A A list of the videos currently available?

10:05:34 3 Q I'm trying to get an understanding of what  
10:05:37 4 your testimony is. You just said a list.

10:05:39 5 A Yeah, I could -- I could -- if you gave me a  
10:05:43 6 list of stuff we uploaded, I could possibly tell you  
10:05:45 7 the ones that I -- I think I've done. I'm not sure  
10:05:48 8 about all of them.

10:05:49 9 Q That would be to the Paraccount?

10:05:52 10 A Yes, yeah.

10:05:53 11 Q And that would be assuming then that  
10:05:55 12 Paramount hadn't uploaded content to any other  
10:06:00 13 account?

10:06:00 14 MS. CUNHA: Objection to form.

10:06:02 15 THE WITNESS: Please re -- reword it, the  
10:06:04 16 question.

10:06:04 17 MR. RUBIN: Q. My question is not, do you  
10:06:07 18 recall all the Paramount content that you have  
10:06:09 19 uploaded to the Paraccount. My question is, do you  
10:06:12 20 recall all of the content that you have uploaded to  
10:06:15 21 YouTube?

10:06:17 22 MS. CUNHA: In connection with your  
10:06:19 23 employment at Paramount I think is what you're asking.

10:06:21 24 A Do I recall? No, not everything.

10:06:24 25 MR. RUBIN: Q. So as you sit here today, you

1 KYLE BONICI

10:06:25 2 cannot recall all the Paramount content that you have  
10:06:29 3 uploaded to YouTube?

10:06:30 4 A No.

10:06:36 5 Q Was content ever uploaded to the Para2009 or  
10:06:48 6 Para2010 accounts?

10:06:50 7 A It was an Eagle Eye trailer for both.

10:06:54 8 Q Do those accounts remain active?

10:07:04 9 A I don't know.

10:07:06 10 Q What e-mail address did you use to register  
10:07:08 11 for those accounts?

10:07:10 12 A I can't recall.

10:07:12 13 Q Do you use a Paramount e-mail address?

10:07:17 14 A I can't recall.

10:07:19 15 Q Would there have been a reason that you  
10:07:21 16 wouldn't have used a Paramount e-mail address?

10:07:24 17 MS. CUNHA: Objection; form.

10:07:25 18 THE WITNESS: I don't know. I can't recall.

10:07:31 19 If there's a reason why, if you guys have stipulations  
10:07:35 20 where there's only a certain one e-mail address per  
10:07:38 21 account, then it's possible, but I don't believe -- I  
10:07:42 22 don't believe so.

10:07:48 23 MS. CUNHA: Michael, we've been going for  
10:07:50 24 almost an hour, can we take a break soon?

10:07:53 25 MR. RUBIN: I'm happy to take a break

# **Rubin Reply Exhibit 188**

January 19, 2010

**Via Electronic Mail**

Ms. Susan Kohlmann  
Jenner & Block LLP  
919 Third Avenue  
37th Floor  
New York, NY 10022

**Re: *Viacom International Inc., et al. v. YouTube, Inc., et al.*  
*The Football Association Premier League Ltd., et al. v. YouTube, Inc., et al***

Dear Susan:

I write concerning certain highly relevant evidence that we just learned Viacom appears to have been withholding in direct contravention of its court-ordered obligations. Last Thursday at his deposition, Warren Solow testified that since prior to January 2007, Viacom has maintained a set of aggregated data reflecting the promotional video uploading activity of its many agents and subsidiaries, including the URL of the uploaded video, and often the username used and the Internet service to which the video was posted. Not only does this data fall squarely within discovery requests YouTube served on Viacom in July 2007, Viacom was also ordered to produce this very information pursuant to the August 24, 2009 Stipulation and Order requiring the production of “documents or portions of documents that reflect ... Viacom’s decisions to upload or authorize the uploading of videos to the YouTube service.” We have asked for this information on countless occasions and assumed from its absence from in Viacom’s production, that it did not exist. Your apparent failure to produce all versions of this dataset is made all the more surprising by Mr. Solow’s testimony that it was provided to both Jenner & Block and Sherman & Sterling.

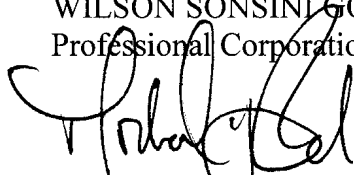
We therefore demand that Viacom immediately produce, for receipt by no later than Monday, January 25, 2010, each and every version of the dataset reflecting Viacom’s attempt to track which videos its subsidiaries and agents have uploaded to the Internet, including to

Ms. Susan Kohlmann  
January 19, 2010  
Page 2

YouTube. If all such versions have already been produced, please identify the Bates Nos. for the materials by the end of this week. Be advised that if this issue is not promptly and satisfactorily resolved, we will raise it with the Court.

Regards,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

A handwritten signature in black ink, appearing to read "Michael H. Rubin", is written over the printed name and company name.

Michael H. Rubin

cc: All Counsel of Record

# **Rubin Reply Exhibit 189**



January 25, 2010

Jenner & Block LLP  
919 Third Avenue  
37th Floor  
New York, NY  
Tel 212 891-1600  
www.jenner.com

Chicago  
Los Angeles  
New York  
Washington, DC

**VIA E-MAIL**

Michael H. Rubin  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304

Susan J. Kohlmann  
Tel 212 891-1690  
skohlmann@jenner.com

Re: *Viacom International, Inc., et al. v. YouTube, Inc., et al.*, 07 Civ. 02103

Dear Michael:

I write in response to your January 19, 2010 letter requesting the production of data referenced at Warren Solow's January 14 deposition. Your letter fundamentally mischaracterizes Mr. Solow's testimony and misstates Viacom's production obligations.

*First*, you state that Mr. Solow "testified that since prior to January 2007, Viacom has maintained a set of aggregated data reflecting the promotional video uploading of its many agents and subsidiaries." That is inaccurate in many ways. Mr. Solow testified that he does not personally maintain a list of the content Viacom does not seek to have taken down from the YouTube site but that he has asked Michael Housley to ensure that such a list is maintained. *See* Solow Rough Tr. at 144. He stated that he did not know where the list was kept. Indeed, he testified that, for at least part of 2007, Viacom sent the relevant data "directly to BayTSP" rather than maintaining an internal list, *see* Solow Rough Tr. at 162, and that he did not know when, if ever, that practice changed.

In fact, BayTSP continues to maintain the list. As Mr. Solow testified, Mr. Housley aggregates information regarding account names whose uploads Viacom does not seek to have removed. Mr. Housley then provides that information to BayTSP so that BayTSP can track and use it. Defendants have received numerous documents confirming this process, including Exhibits 8, 9, and 11 to Mr. Solow's deposition.

*Second*, you claim that Viacom's failure to provide whatever records exist was "in direct contravention of its court-ordered obligations." That is simply wrong. As Mr. Solow's testimony indicates, to the extent that Viacom (rather than BayTSP) kept copies of the "set of aggregated data" you request, they were maintained by Michael Housley and stored in his custodial files. Mr. Housley is not one of the 90 Priority or Additional Custodians whose records Defendants requested in this case. Viacom has no obligation to produce data from his files. Nor does the August 24, 2009 Stipulation you cited create such an obligation. In that Stipulation, Viacom agreed to "withdraw[] its claims of privilege and work product" as to certain classes of documents, not produce every document within those classes that might exist anywhere in its records. Your claim that Viacom shirked its discovery obligations is groundless.

Michael H. Rubin

Page 2

Notwithstanding your distortions, and as a courtesy, we have located and are providing a recent email exchange between Mr. Housley and BayTSP taken from Mr. Housley's custodial files. It bears the Bates range VIA-SUPP000001 - VIA-SUPP000003. The intent of this document is to list YouTube account names from which Viacom does not wish to take down video uploads. The users whose account names appear on the document have not necessarily uploaded promotional materials to YouTube on behalf of Viacom and are not necessarily authorized by Viacom to do so.

Finally, Defendants have failed to provide the same type of information you inaccurately accused Viacom of withholding: documents listing content that should not be taken down from the YouTube or Google Video websites. *See, e.g.,* Narasimhan Tr. at 33 ("Our partner team decided to generate a list of e-mail addresses for us of partners that were—or content owners that were uploading videos."). We have requested production of that information before and once again demand that you provide it without delay.

Sincerely,

A handwritten signature in cursive script that reads "Susan J. Kohlmann / JCC".

Susan J. Kohlmann

Attachment, designated Highly Confidential

cc: Counsel for all parties

## Housley, Michael

---

**From:** Andrea Cordone [andreac@baytsp.com]  
**Sent:** Wednesday, April 16, 2008 7:23 PM  
**To:** Housley, Michael  
**Cc:** Sean Ray; Evelyn Espinosa; Elliott Kohtz  
**Subject:** RE: Whitelist

Mike,

All of the following usernames are on the white-list in BVM and in the CIMS filters:

BAAFamily  
BadBoyRecords  
barelypolitical  
BdubEtv  
bestweekevertv  
blacktreemedia  
bpfrecords  
bravenewfilms  
BroadwayJoe  
BroadwayJoe415  
bullrunvideo  
CBS  
ChannelFrederator  
cimatics  
Damonjohnson  
fanscapevideos  
FanscapeVideos4U  
FiveChemical  
freeforlife112  
FreshTakes  
FutureWorld77  
HGiantVid  
irenemariemodels  
Isitfridayyet  
JackassWorldMTV  
jerseymouth1  
ladyfragment  
Lakeshore Records  
laurenceegibbs  
LiberalViewer  
Menudo  
OfficialReno911  
Paraccount  
Paramount  
Paramount Pictures  
ParamountPictures  
ParentsConnect  
ParkMyVibe  
PinkStrawberry  
PinkStrawberry1  
powermadeak47dotcom  
powmadeak47  
reaction2006  
reno911miami  
rollingoutTELEVISION  
RunsHouseVideos  
shishka  
Snackboard

SpikeTV  
TDSwriters  
thatisalsofunny  
thatsfunny  
Thatsnotfunny  
themoviemonkey  
thesparksfly  
TNAWrestling  
tomato808  
TVgasmdotcom  
TXCANY  
vh1staff  
Victorweb  
virtualmtv  
VLogging  
Wiredset

These usernames appear only in CIMS:

ArtisanNewsService  
Digitalfilmmaker  
MyDamnChannel  
universalmusicgroup

Please let me know if you have any questions or if there any changes that should be made.

Best Regards,

Andrea Cordone  
Client Services Manager  
BayTSP, Inc.  
408.341.2365  
[andreas@baytsp.com](mailto:andreas@baytsp.com)

**Save the date! Join us for "One World 2008: Managing Piracy in the Global Village" -  
BayTSP's 5<sup>th</sup> Annual Anti-Piracy Conference September 15-17<sup>th</sup>! Join us!**

The information contained in this email message may be confidential and is intended only for the parties to whom it is addressed. If you are not the intended recipient or an agent of same, please notify us of the mistake by telephone (408-341-2300) or email and delete the message from your system. Please do not copy the message or distribute it to anyone. This message was prepared at the request of counsel.

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**From:** Housley, Michael [<mailto:Michael.Housley@viacom.com>]  
**Sent:** Wednesday, April 16, 2008 2:13 PM  
**To:** Andrea Cordone  
**Cc:** Sean Ray; Evelyn Espinosa; Elliott Kohtz  
**Subject:** RE: Whitelist

Thanks, Andrea. Can you send me a list of all white-listed usernames?

---

**From:** Andrea Cordone [<mailto:andreas@baytsp.com>]  
**Sent:** Wednesday, April 16, 2008 5:06 PM  
**To:** Housley, Michael  
**Cc:** Sean Ray; Evelyn Espinosa; Elliott Kohtz  
**Subject:** RE: Whitelist

Mike,

The username "BAAFamily" has been added to the BVM white-list and the filters in CIMS.

Best Regards,

HIGHLY CONFIDENTIAL

VIA-SUPP000002

Andrea Cordone  
Client Services Manager  
BayTSP, Inc.  
408.341.2365  
andreas@baytsp.com

**Save the date! Join us for "One World 2008: Managing Piracy in the Global Village" -  
BayTSP's 5<sup>th</sup> Annual Anti-Piracy Conference September 15-17<sup>th</sup>! Join us!**

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**From:** Housley, Michael [mailto:Michael.Housley@viacom.com]  
**Sent:** Wednesday, April 16, 2008 1:55 PM  
**To:** Andrea Cordone  
**Cc:** Sean Ray  
**Subject:** Whitelist

Hello Andrea,

Please white-list the username, BAAFamily.

Thanks,

Mike

# **Rubin Reply Exhibit 190**

January 26, 2010

**Via Electronic Mail**

Ms. Susan Kohlmann  
Jenner & Block LLP  
919 Third Avenue  
37th Floor  
New York, NY 10022

**Re: *Viacom International Inc., et al. v. YouTube, Inc., et al.*  
*The Football Association Premier League Ltd., et al. v. YouTube, Inc., et al***

Dear Susan:

This letter responds to yours of yesterday and to our brief conversation following my receipt of it.

I am afraid you cannot resolve the matter of Viacom's failure to produce important evidence by mischaracterizing what Mr. Solow actually said in his deposition. Contrary to your assertions, Mr. Solow testified that Viacom's third-party marketing agents and "departments who are in the business of posting clips to websites . . . provide information as to their activities" to his department because "[i]t helps mitigate the removal of clips that some parts of the organization would prefer to stay in place." Solow Rough Tr. at 141; 145. Mr. Solow testified that the "[w]ebsite URL is the most material information that we ask for," and that the user ID of the uploading account and website to which the video was posted are also generally provided. Solow Rough Tr. at 142-43. Thus, the email you sent us listing some YouTube user accounts is plainly not what Mr. Solow testified that his department maintains, as it lacks the URL data Mr. Solow testified is the most material data Viacom aggregates.

Further, your reference to the fact that Mr. Solow has not always personally maintained that data, but instead for some time has tasked Mr. Housely with maintaining it for Viacom, does not render the data "custodial" nor somehow outside the reach of discovery or the Court's orders. And your suggestion that Mr. Housley does not maintain the data is flatly contradicted by Mr. Solow's sworn testimony. At his deposition, Mr. Solow specifically referenced "a document that Michael Housley maintains" containing this aggregated data. Solow Rough Tr. at 213. And while he disclaimed knowledge of "the application that is used to organize that data," Mr. Solow was confident that this "list that Michael Housley ha[d] created" exists and is stored in electronic form. Solow Rough Tr. at 154, 161. If your letter was meant to convey that Viacom's version of the data as maintained by Mr. Housely's now only exists in the form in which it was communicated to BayTSP, you should expressly say so and explain what happened to the version Viacom once had. And if that is the case, Viacom is obligated to produce that data in

Ms. Susan Kohlmann  
Jenner & Block LLP  
January 26, 2010  
Page 2

form sent to BayTSP by obtaining it from BayTSP. As Viacom has repeatedly expressed, BayTSP is Viacom's agent and is authorized to act on Viacom's behalf according to a series of rules that includes checking the aggregated data at issue before issuing takedown notices, which, as you admitted, "BayTSP continues to maintain." Jan. 25, 2010 Kohlmann letter to Rubin at 1. As such, Viacom cannot evade the Court's orders by hiding behind a claim that the data is in BayTSP's possession.

According to Mr. Solow, in fact, your firm has a version of this data that you apparently continue to withhold based on the unsupportable assertion that privilege protects the versions of this data because Viacom chose to share it with counsel. *See* Rough Tr. at 155. We do not see how this data could ever be privileged in the first place. But even if some plausible claim existed, "Viacom withdrew[] its claims of privilege and work product" as to "documents or portions of documents that reflect . . . Viacom's decisions to upload or authorize the uploading of videos to the YouTube service [and] Viacom's guidelines or policies for allowing videos to remain on YouTube for marketing, promotional, or other business reasons." August 24, 2009 Stipulation and Order regarding Viacom's Copyright Monitoring Guidelines. That plainly includes materials maintained by Mr. Solow's department in connection with its copyright monitoring protocol, regardless of whether or not they were shared with counsel.

We reiterate our demand that Viacom produce by no later than January 29, 2010, all versions of the data identified above and in Mr. Solow's deposition regarding the activities of Viacom's marketing agents and departments who are in the business of posting clips to websites, including all versions of that data provided by Viacom to BayTSP, Jenner & Block and/or Shearman & Sterling.

Regards,

WILSON SONSONI GOODRICH & ROSATI  
Professional Corporation



Michael H. Rubin

cc: All Counsel of Record



# **Rubin Reply Exhibit 191**

# JENNER & BLOCK

January 29, 2009

Jenner & Block LLP  
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## VIA E-MAIL

Michael H. Rubin  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304

Susan J. Kohlmann  
Tel 212 891-1690  
skohlmann@jenner.com

Re: *Viacom International, Inc., et al. v. YouTube, Inc., et al.*, 07 Civ. 02103

Dear Michael:

Your January 26 letter includes many statements that I do not agree with, see the relevance of, or in some cases even understand, but rather than arguing about each of them I will stick to the point. It is not productive for us to engage in an extended debate about what Mr. Solow did or did not say in his deposition. While I dispute your characterizations of his testimony, the bottom line is that those characterizations cannot change the fact that the documents you seek do not exist and have never existed. To the best of our knowledge, neither Viacom nor BayTSP has maintained a list of website URLs representing content not to be taken down from the YouTube site or other Internet video sites. Viacom is not intentionally withholding any lists of website URLs, usernames, or any other such identifiers kept for that purpose on privilege grounds, because they exist only in Michael Housley's custodial files, or for any other reason.

VIA-SUPP000001 - 03, the document we provided to you as an attachment to my January 25 letter, is an example of the type of information that Mr. Housley and BayTSP did maintain. It contains a list of YouTube usernames that may have been used to post content Viacom did not wish to have removed from the YouTube site. As I stated before, Defendants have received numerous documents containing various iterations of this information in discovery. We are not aware of any versions predating the parties' agreed-upon discovery cutoff that Defendants do not already have. Indeed, we provided VIA-SUPP000001 - 03 as a courtesy even though it postdates the cutoff. We cannot provide the information in any other form because, in our knowledge, we do not have it in any other form.

Sincerely,



Susan J. Kohlmann

cc: Counsel for all parties