

TAB A

THE FOLLOWING TRANSCRIPTS WERE  
FILED UNDER SEAL:

3/12/10	Jonathan Alferness
3/3/10	Edward Allen Blair
2/23/10	Terri Chen
2/24/10	Edward Chiang
2/26/10	Daniel Dulitz
3/4/10	Baris Glutekin
9/30/04	Rose Hagan in <i>GEICO v. Google, Inc.</i> , No. 1:04CV507 (E.D. Va.)
9/26/06	Rose Hagan in <i>CNG Financial Corp. v. Google, Inc.</i> , No. 1:06-cv-040 (N.D. Ohio)
3/5/10	Rose Hagan
3/5/10	Richard T. Holden
3/10/10	Bill Lloyd
2/25/10	Cory Louie
3/18/10	Susan Wojcicki

DENIS DOYLE  
(3/11/10)

Capital Reporting Company  
Doyle, Denis P. 03-11-2010

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

----- x  
ROSETTA STONE, LTD, :  
 :  
 Plaintiff, :  
 :  
 vs. : Case No. 1:09-CV-00736  
 :  
 GOOGLE, INC., : (GBL/TCB)  
 :  
 Defendant. :  
 :  
----- x

Chevy Chase, Maryland

Thursday, March 11, 2010

Videotaped Deposition of:

DENIS P. DOYLE,

Called for oral examination by counsel for Plaintiff,

pursuant to notice, at the residence of Denis P.

Doyle, 110 Summerfield Road, Chevy Chase, MD, before

Denise M. Brunet, RPR, of Capital Reporting Company, a

Notary Public in and for the State of Maryland,

beginning at 10:29 a.m., when were present on behalf

of the respective parties:

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<p style="text-align: right;">2</p> <p>1            A P P E A R A N C E S</p> <p>2</p> <p>3 On behalf of the Plaintiff:</p> <p>4            MITCHELL S. ETTINGER, ESQUIRE</p> <p>5            Skadden, Arps, Slate, Meagher &amp; Flom, LLP</p> <p>6            1440 New York Avenue, Northwest</p> <p>7            Washington, D.C. 20005</p> <p>8            (202) 371-7444</p> <p>9            Mitchell.ettinger@skadden.com</p> <p>10</p> <p>11 On behalf of the Defendant:</p> <p>12            JONATHAN D. FRIEDEN, ESQUIRE</p> <p>13            Odin Feldman Pittleman, P.C.</p> <p>14            9302 Lee Highway</p> <p>15            Suite 1100</p> <p>16            Fairfax, Virginia 22031</p> <p>17            (703) 218-2100</p> <p>18            Jonathan.frieden@ofplaw.com</p> <p>19</p> <p>20 ALSO PRESENT: Daniel Holmstock, Videographer</p> <p>21</p> <p>22</p>	<p style="text-align: right;">4</p> <p>1            P R O C E E D I N G S</p> <p>2            THE VIDEOGRAPHER: This is tape number 1 of</p> <p>3 the videotape deposition of Mr. Denis P. Doyle, taken</p> <p>4 in the matter Rosetta Stone, Limited, plaintiff,</p> <p>5 versus Google, Inc., defendant, pending before the</p> <p>6 United States District Court for the Eastern District</p> <p>7 of Virginia, Alexandria Division, case number</p> <p>8 1:09-CV-00736. This deposition is being held at the</p> <p>9 residence of Mr. Denis P. Doyle, 110 Summerfield Road,</p> <p>10 Chevy Chase, Maryland, on March 11th, 2010 at</p> <p>11 approximately 10:29 a.m.</p> <p>12            My name is Daniel Holmstock from the firm of</p> <p>13 Capital Reporting Company, and I'm the certified legal</p> <p>14 video specialist. Capital Reporting Company is</p> <p>15 located at 1821 Jefferson Place, Northwest in</p> <p>16 Washington, D.C.</p> <p>17            Will counsel please introduce themselves and</p> <p>18 whom they represent.</p> <p>19            MR. ETTINGER: Mitchell Ettinger from Skadden</p> <p>20 Arps on behalf of Rosetta Stone.</p> <p>21            MR. FRIEDEN: Jonathan Frieden from Odin,</p> <p>22 Feldman &amp; Pittleman on behalf of Google.</p>																																										
<p style="text-align: right;">3</p> <p>1            C O N T E N T S</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">2 EXAMINATION BY:</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>3 Counsel for plaintiff</td> <td style="text-align: right;">5</td> </tr> <tr> <td>4 Counsel for defendant</td> <td style="text-align: right;">30</td> </tr> <tr> <td>5 Counsel for plaintiff</td> <td style="text-align: right;">61</td> </tr> <tr> <td>6 Counsel for defendant</td> <td style="text-align: right;">64</td> </tr> <tr> <td>7 Counsel for plaintiff</td> <td style="text-align: right;">66</td> </tr> <tr> <td>8</td> <td></td> </tr> <tr> <td>9 DOYLE DEPOSITION EXHIBITS:</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>10 1 - Rosetta Stone Quick Start</td> <td style="text-align: right;">19</td> </tr> <tr> <td>11 2 - Trifold CD</td> <td style="text-align: right;">26</td> </tr> <tr> <td>12 3 - Audio Companion</td> <td style="text-align: right;">28</td> </tr> <tr> <td>13 4 - Rosetta Stone User's Guide</td> <td style="text-align: right;">29</td> </tr> <tr> <td>14 5 - Page from sourceplaza.com</td> <td style="text-align: right;">41</td> </tr> <tr> <td>15 6 - Ticket summary</td> <td style="text-align: right;">62</td> </tr> <tr> <td>16</td> <td></td> </tr> <tr> <td>17            (Exhibits 1 through 4 retained by</td> <td></td> </tr> <tr> <td>18            counsel for plaintiff.)</td> <td></td> </tr> <tr> <td>19            (Exhibits 5 through 6 attached to the transcript.)</td> <td></td> </tr> <tr> <td>20</td> <td></td> </tr> <tr> <td>21</td> <td></td> </tr> <tr> <td>22</td> <td></td> </tr> </table>	2 EXAMINATION BY:	PAGE	3 Counsel for plaintiff	5	4 Counsel for defendant	30	5 Counsel for plaintiff	61	6 Counsel for defendant	64	7 Counsel for plaintiff	66	8		9 DOYLE DEPOSITION EXHIBITS:	PAGE	10 1 - Rosetta Stone Quick Start	19	11 2 - Trifold CD	26	12 3 - Audio Companion	28	13 4 - Rosetta Stone User's Guide	29	14 5 - Page from sourceplaza.com	41	15 6 - Ticket summary	62	16		17            (Exhibits 1 through 4 retained by		18            counsel for plaintiff.)		19            (Exhibits 5 through 6 attached to the transcript.)		20		21		22		<p style="text-align: right;">5</p> <p>1            THE VIDEOGRAPHER: Will the court reporter</p> <p>2 please swear or affirm in the witness.</p> <p>3 WHEREUPON,</p> <p>4            DENIS P. DOYLE,</p> <p>5 called as a witness, and after having been first duly</p> <p>6 sworn, was examined and testified as follows:</p> <p>7            EXAMINATION BY COUNSEL FOR THE PLAINTIFF</p> <p>8            BY MR. ETTINGER:</p> <p>9            Q    Would you please state your full name.</p> <p>10            A    Denis Philip Doyle.</p> <p>11            Q    Sir, have you ever been deposed before?</p> <p>12            A    No.</p> <p>13            Q    So there's certain ground rules we have to</p> <p>14 follow, and I'll just go through them briefly for you.</p> <p>15 Everything that is being said today will be reported</p> <p>16 verbatim by our stenographer and so -- or our court</p> <p>17 reporter. So we have to make sure that all of our</p> <p>18 answers are audible. Okay? A nod of the head or a</p> <p>19 hand gesture is not sufficient.</p> <p>20            A    All right. I will try to be audible.</p> <p>21            Q    And to facilitate the process, I will not</p> <p>22 speak while you are speaking, and if you can try to</p>
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<p style="text-align: right;">6</p> <p>1 let counsel finish their questions before you answer, 2 that will make it easier on the court reporter as 3 well. 4 A Okay. 5 Q From time to time, counsel for Google -- or 6 myself when he's asking you questions -- may interpose 7 an objection. An objection is one just for the 8 record. It will be ruled on later by the Court. So 9 let the counsel make their objection, and if you can 10 answer the question that's been posed, please do so. 11 A Okay. 12 Q If you do not understand any question that's 13 asked of you, please let counsel know and we will try 14 to rephrase that question for you. 15 A And if it goes on for more than 45 minutes, 16 will we have time for a break? 17 Q That's my last point. We are guests in your 18 home today, and at any point that you want a break, 19 you just ask for it and we will accommodate you. 20 A Okay. Good. Thanks. 21 Q Could you please state your address. 22 A 110 Summerfield Road, Chevy Chase, Maryland,</p>	<p style="text-align: right;">8</p> <p>1 Q And i what business does Schoolnet engage? 2 A We provided data services to school 3 districts, large and small, across the United States. 4 And we provide instruction and management services. 5 Q You said data for schools? 6 A Data -- we manage data for schools, 7 demographic data, test score data, student performance 8 data, student cum files -- that is to say, the 9 cumulative files for their student records as long as 10 they've been available electronically. 11 We provide teachers with access to student 12 records and student performance. And we provide 13 administrators with the capacity to analyze teacher 14 and student performance over time in real time. We 15 have about 3 million kids under management whose 16 data -- out of 50 million kids in public schools in 17 this country. And our clients include Philadelphia, 18 Chicago, Denver, Wichita, Atlanta, Washington, D.C. 19 Q And how many employees does Schoolnet engage? 20 A About a hundred full-time equivalent. 21 Q Is it a publicly traded company? 22 A No, privately held.</p>
<p style="text-align: right;">7</p> <p>1 20815. 2 Q How long have you lived at this address? 3 A 35 years temporarily. 4 Q Sir, how old are you? 5 A I'll be 70 next month. 6 Q What is the highest level of education that 7 you have completed? 8 A Master's degree in political science, 9 University of California at Berkeley. 10 Q And where did you get your undergraduate 11 degree? 12 A Berkeley as well. 13 Q And was what your major? 14 A Political science. 15 Q Are you currently employed? 16 A I am. 17 Q And what is your position? 18 A I'm the chief academic officer with a company 19 called Schoolnet, Incorporated. 20 Q And how long have you been employed by 21 Schoolnet? 22 A About a decade, a little over ten years.</p>	<p style="text-align: right;">9</p> <p>1 Q Does Schoolnet advertise on the Internet? 2 A No, we don't. No, we don't. 3 Q You understand that this case involves a 4 civil lawsuit between Rosetta Stone and Google, 5 correct? 6 A Yes, I do. 7 Q And you've agreed to provide testimony in 8 this matter without being subpoenaed; isn't that 9 right? 10 A That's right. 11 Q Are you being compensated in any way for your 12 appearance today? 13 A No, I'm not. 14 Q Has anyone promised you anything for your 15 testimony today? 16 A No, nothing. 17 Q Sir, during your adult life, did you ever 18 desire to brush up or learn a foreign language? 19 A I have indeed. 20 Q And when was that? 21 A All my adult life. In my pre-adult life as 22 well, I've always wanted to acquire a second language,</p>

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<p style="text-align: right;">10</p> <p>1 and found that I'm not very adept. 2 Q Have you in the past purchased a product to 3 assist you in learning a foreign language? 4 A I have. 5 Q Which product did you purchase? 6 A Rosetta Stone. 7 Q When did you first purchase Rosetta Stone? 8 A It's been about eight or ten years ago when 9 it was a fairly novel item on the market. And I have 10 spent time at the University of -- or the Naval 11 Academy at Annapolis also with their electronic 12 instructional programs. 13 Q So you first purchased the product eight or 14 ten years ago? 15 A Uh-huh. 16 Q And how did you learn of Rosetta Stone at 17 that point? 18 A I must have learned of it through the 19 grapevine. I was doing some work with the Foreign 20 Service Language Institute and heard about Rosetta 21 Stone, and at the Naval Academy heard about Rosetta 22 Stone and just -- from friends and colleagues.</p>	<p style="text-align: right;">12</p> <p>1 which I couldn't resist. And I thought it was 2 legitimate and ordered it on the web through PayPal. 3 Q All right. Let's go a little slower. You 4 say you went on the web. Did you use a search engine? 5 A Used Google. 6 Q Is that your default search engine? 7 A Yes, it is, by preference. I love Google. 8 Q How often do you use Google as a general 9 rule? 10 A I would say I must Google five, maybe ten 11 times a day. 12 Q So in the fall of 2009 when you went on the 13 web, you used Google as your search browser? 14 A Yes. 15 Q What did you type into the search browser 16 when searching for Rosetta Stone software? 17 A Just Rosetta Stone. 18 Q And no other search terms? 19 A Not that I recall. 20 Q And then you pressed Enter, and what did you 21 see? 22 A I saw a group of sponsored ads on the left</p>
<p style="text-align: right;">11</p> <p>1 Q And did you have success with the product 2 when you tried it eight or ten years ago? 3 A I did. I had limited success. And I think 4 the lack of success was my lack of diligence. 5 Q What language did you attempt to learn 6 through Rosetta Stone eight to ten years ago? 7 A Spanish. 8 Q Did there come a point in time, sir, when you 9 decided that you were going to try again in the more 10 recent future -- 11 A Yes, there did. 12 Q -- in the more recent past? 13 A Yes. 14 Q When was that? 15 A It was last fall. I got a flyer from 16 American Express with my monthly bill advertising a 17 discounted Rosetta Stone, and it piqued my curiosity. 18 Q And what did you do in response to that 19 curiosity? 20 A I went to the web, and the first sponsored 21 link that showed up -- I opened to their home page and 22 they had a real bargain, \$139 for a \$435 product,</p>	<p style="text-align: right;">13</p> <p>1 and sponsored ads on the right and went to the first 2 sponsored ad to see what it offered, and it offered 3 Spanish 3, 4 -- 1, 2, 3, 4 for 139 bucks. 4 Q And when you say you went to the first 5 sponsored ad, are you referring to the links that 6 appear on the search page? 7 A Yes. 8 Q Do you recall what the link said? 9 A I don't, except that it was -- I went -- I 10 cancelled payment on it after I discovered that it was 11 pirated software, and I wrote the name down, 12 SourcePlaza. But I don't remember -- I remember that 13 being the name of the web page when I got it. 14 Q So SourcePlaza was the name of the company 15 that was advertising on Google? 16 A Yes. 17 Q And do you remember what the ad link itself 18 said? You know, did it -- you know, did it have -- 19 the text of the ad, did it say, "by Rosetta Stone" or 20 did it say, "get software here"? What did it say, if 21 you remember? 22 A No, something of that sort. It was just a</p>

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<p style="text-align: right;">14</p> <p>1 standard stock ad, that they were presenting 2 themselves as a retailer of Rosetta Stone. 3 Q And did the ad, the link for the ad itself, 4 use the words "Rosetta Stone," to your knowledge? 5 A I presume it did, since I was looking for 6 Rosetta Stone. 7 Q As you sit here today, do you remember 8 whether the URL or the address associated with the 9 website SourcePlaza, whether it used the terms 10 "Rosetta Stone"? 11 A I don't remember, no, but I doubt it. I 12 would be surprised if it did, but I don't remember. 13 Q Why would that surprise you? 14 A Because the URL, universal locator network 15 reference, is not something that I would expect to see 16 there. 17 Q And why is that? 18 A I wouldn't be aware of it. I guess I would 19 just be surprised. 20 Q Okay. So in your experience, you've not seen 21 trademark terms appear in the URLs of companies 22 offering products?</p>	<p style="text-align: right;">16</p> <p>1 on the website and you saw the box that was displayed, 2 was there anything on the website that led you to 3 believe that this product wasn't genuine? 4 A No. I didn't look at it with great care, but 5 I -- nothing led me to believe that it wasn't genuine. 6 Q And did you actually purchase from 7 SourcePlaza? 8 A I did, yes. 9 Q So you placed an order that very same day 10 that you went on the web? 11 A I did. 12 Q At the time you placed your order with 13 SourcePlaza, did you think you were buying genuine 14 Rosetta Stone software? 15 A I did, yes. 16 Q Do you know what the term "counterfeit 17 software" means? 18 A I presume I do, yeah. Self-explanatory. 19 Pirated software. I mean, made up, like counterfeit 20 money. 21 Q You said pirated before. What does that mean 22 to you?</p>
<p style="text-align: right;">15</p> <p>1 A No, I've never looked for that. I use Amazon 2 frequently and Amazon-related activities, and I don't 3 get that far. 4 Q So when you clicked on the link that offered 5 this Rosetta Stone software for \$139, what did you 6 see? 7 A I saw a picture of the Rosetta Stone box with 8 a little blue seal on it, guaranteed, or a hundred 9 percent satisfaction or some such thing. So I ordered 10 it, and thought that I -- thought it was too good to 11 be true, which it turned out to be too good to be 12 true. 13 Q What color was the box that was displayed on 14 the ad? 15 A Oh, it was the characteristic yellow of -- 16 amarillo, as they say in Espanol. 17 Q So you were familiar with what the Rosetta 18 Stone box looked like? 19 A Yes, I've seen it. And I had priced it at 20 Barnes and Noble and priced it at other retail 21 outlets. 22 Q From the website itself, sir, when you went</p>	<p style="text-align: right;">17</p> <p>1 A That it's been stolen from the intellectual 2 property rights holder. 3 Q Did you intend to purchase pirated software, 4 sir? 5 A No, I did not. I fully intended -- I'm a 6 professional writer, and I prize intellectual 7 property. I live on royalties. There are some book 8 covers here on the wall that were my first efforts at 9 intellectual property, and I still get royalties. 10 Q Had you ever purchased a product from 11 SourcePlaza prior to October 2009? 12 A Never. And I won't again, you may be sure. 13 Q Did you know anything about the company 14 SourcePlaza when you made your purchase? 15 A No, I had no idea. It could have been Barnes 16 and Noble, for all I knew. 17 Q Did you, in fact, receive a product from 18 SourcePlaza? 19 A I did. 20 Q When the package arrived, did it come in the 21 mail or FedEx? 22 A You know, I don't remember. I think it came</p>



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<p style="text-align: right;">18</p> <p>1 in the mail. I think it came by Priority Mail, 2 because it came pretty quickly. 3 Q Did you retain the outside shipping -- 4 A No, I didn't. I discarded that immediately. 5 Q Was there anything about the package that you 6 received that would indicate to you its country of 7 origin? 8 A I don't remember, I'm afraid. At some point 9 in time, I discovered it was from Hong Kong. And I 10 think it was -- I presume it was the return address on 11 the package. But I don't have any specific memory of 12 that. 13 Q But your recollection is that the package 14 originated in Hong Kong? 15 A Yeah, that was my recollection. Yeah. 16 Q When you opened the package, did it -- did 17 the product come in what you believed to be the 18 Rosetta Stone box? 19 A It did, yeah. I was pleased to see that it 20 came in what seemed to be the Rosetta Stone -- the 21 real McCoy, it looked like. 22 Q From looking at the outside packaging of the</p>	<p style="text-align: right;">20</p> <p>1 right-hand corner. Do you see the Rosetta Stone 2 trademark with the stone next to it there? 3 A I see that. It had the stone next to it, I'm 4 sure it did, on the box. That seems to be ubiquitous. 5 They usually use the stone. 6 Q Could I get you to turn that to the camera so 7 that we could -- just point to the trademark that 8 you're referring to there. Okay. Thank you. 9 So when you opened up the product, you 10 thought it was genuine. Did you try to install it in 11 your computer? 12 A I did install it. And I always install it by 13 ignoring the installation instructions. So I just 14 popped it into the computer and followed the prompts 15 on the screen. 16 Q And what happened? 17 A It came up, and I began to use it fairly 18 quickly. 19 Q All right. Did you encumber -- did you incur 20 any problems with the software? 21 A I did later on. I found it clumsy to use, 22 and I contacted Rosetta Stone to see what was going on</p>
<p style="text-align: right;">19</p> <p>1 product, could you tell that it was anything but 2 genuine product? 3 A No. 4 Q Do you recall what the color of the box was 5 that you got? 6 A Of the -- 7 Q Of the product itself. 8 A Yeah, it was the Rosetta Stone yellow. 9 Q And did it have the Rosetta Stone trademark 10 with the Rosetta Stone -- actual Rosetta Stone next to 11 the mark? 12 A Oh, I don't know if it had a TM mark or not. 13 I presume it did. 14 Q Let me show you what I'm going to mark as 15 Exhibit 1. 16 (Doyle Deposition Exhibit Number 1 was marked 17 for identification.) 18 MR. ETTINGER: This is a document that was 19 provided by the witness this morning. It's just 20 entitled, "Rosetta Stone quick start." 21 BY MR. ETTINGER: 22 Q And, sir, can I get you to look at the upper</p>	<p style="text-align: right;">21</p> <p>1 because I went back to look at this written material 2 and it said that I was not to register it with Rosetta 3 Stone and ignore the activation information. And that 4 began to make me suspicious that it was not real 5 Rosetta Stone material. 6 Q Okay. So -- was the product functional? 7 A It was functional at first, but it did not -- 8 it was not satisfying. I couldn't get certain 9 processes to work. I've forgotten what they were, but 10 I remember being frustrated with it. 11 Q So then when you went back to the user guide, 12 could you identify for us the paragraphs that you saw 13 that directed the user not to register online? 14 A Yes. The centerfold here in this -- in the 15 text, if you can see that -- I don't know if that's 16 going to show or not. 17 THE VIDEOGRAPHER: Can you indicate -- point 18 to where you're -- yeah, that is visible. Okay. 19 BY MR. ETTINGER: 20 Q And could you just -- it's under, "Register 21 and activate"? Is that what you're looking at? 22 A Yeah, "register and activate" and "add user."</p>

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<p style="text-align: right;">22</p> <p>1 The first time you start Rosetta Stone, you create a 2 new user, type your user name, click "change 3 settings." And for all users, make sure you don't 4 update or register if it asks you to. 5 And that, of course, aroused my suspicion 6 given the fact that it was so cheap and that it was so 7 clumsy to execute, that I began to wonder. That's 8 when I called Rosetta Stone. 9 Q Could I get you, sir -- there's one other 10 question I have about that document. Is there 11 anything in there, in that same section, about the 12 term "OEM"? 13 A Yes. This is OEM products, so you cannot 14 activate -- "activation Rosetta Stone over the 15 Internet." And the broken English was also a tip-off, 16 of course. 17 Q And what does the term "OEM" mean to you? 18 A It means original equipment manufacturer. 19 Q So if OEM means original equipment 20 manufacturer, what did you understand that sentence to 21 convey to the user with respect to not activating it 22 over the Internet?</p>	<p style="text-align: right;">24</p> <p>1 Q And when you called Rosetta Stone, to whom or 2 what department were you directed? 3 A I don't have any recollection. I just got 4 the switchboard, and they directed me wherever they 5 directed me. 6 Q And what did you tell Rosetta Stone? 7 A I told them that I had this software and 8 wanted to check its authenticity. And they said that 9 it was inauthentic, that it was probably -- I use the 10 word "pirated" and I think they used the word 11 "pirated." And -- 12 Q I'm sorry. Please finish. 13 A No. And that was really essentially it. And 14 I then called American Express to see if I could 15 cancel payment on the product. 16 Q Now, when you called Rosetta Stone and you 17 advised them that you were having problems with the 18 software, did you tell them the source from which you 19 purchased it? 20 A I presumably did. I must have told them I 21 purchased it on the web. I made no secret of that. 22 Q Do you recall whether you told them that</p>
<p style="text-align: right;">23</p> <p>1 A I had no idea what to attribute that to, but 2 I -- the "you cannot activation Rosetta Stone over the 3 Internet" struck me as a very strange way to say 4 anything. 5 Q Okay. So based on the lack of functionality 6 with the product and the information that you read in 7 the manual, you decided to call Rosetta Stone? 8 A I did. 9 Q And who at Rosetta Stone did you call? 10 A I called just the 800 number, whoever I got 11 through to. 12 Q Did you go online to find Rosetta Stone to 13 get the number? 14 A I probably did. Yeah, I would have done 15 that. 16 Q Do you remember if you used Google or not to 17 do that? 18 A Yeah, I would have used Google, yes. 19 Q And you were able to find -- 20 A Yes. 21 Q -- the Rosetta Stone company? 22 A Exactly.</p>	<p style="text-align: right;">25</p> <p>1 SourcePlaza was the company that was selling software 2 on the web? 3 A I don't recall, and I don't remember the name 4 of the company. I had to look it up before today's 5 deposition. So if I did tell them, it was something 6 that's escaped my memory. 7 Q And were you successful in getting your money 8 back from American Express? 9 A I was, mercifully. 10 Q Did you ultimately purchase the original or 11 genuine Rosetta Stone software? 12 A I did. I went to Barnes and Noble within a 13 couple of weeks and bought it for 450 bucks, as I 14 recall. 15 Q Did you go to Barnes and Noble store or did 16 you do it online? 17 A I actually went to the Barnes and Noble 18 store, uncharacteristically. I usually buy stuff 19 online. 20 Q And have you had success with the product? 21 A Yes. Insofar as I've been diligent, it's 22 worked fine.</p>

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<p style="text-align: right;">26</p> <p>1 Q I want to show you just a few more things and 2 then I'll finish up. 3 (Doyle Deposition Exhibit Number 2 was marked 4 for identification.) 5 MR. ETTINGER: Handing the witness what's 6 been marked as Exhibit 2. It's a trifold CD, a disk 7 container. 8 BY MR. ETTINGER: 9 Q I'll ask you if you can identify that. 10 A Yeah, this is the stuff. 11 Q When you say "this is the stuff," is that 12 the -- are those the disks that you received from 13 Source Plaza? 14 A Yeah. I only recognize them because they -- 15 where I stored them in the cabinet, because they 16 looked exactly like the real McCoy, so it's hard to 17 tell the real from the false. 18 Q Could I get you to hold that up, and if you 19 would, sir, actually open that up so that the camera 20 can get a shot of the pictures that appear on the 21 inside. 22 THE VIDEOGRAPHER: One second, please. I'm</p>	<p style="text-align: right;">28</p> <p>1 as a registered. But I guess that means the same 2 thing, legally. 3 Q Okay. Just two more -- 4 A It says Harrisonburg, Virginia, USA. 5 Q And where are you reading from? 6 A The inside cover here. 7 Q And do you know whether or not Rosetta Stone 8 is actually based in Harrisonburg, Virginia? 9 A No. I know they're a Virginia-based company, 10 but I don't have any idea where they're based. 11 (Doyle Deposition Exhibit Number 3 was marked 12 for identification.) 13 MR. ETTINGER: Handing the witness what's 14 been marked as Exhibit 3. 15 BY MR. ETTINGER: 16 Q If I could get you to do the same thing with 17 this. This is entitled, "Audio companion." 18 A Do you want to open it up? 19 Q If you could just open it up. 20 THE VIDEOGRAPHER: Hold on. Scanning our 21 left window. Our right window. We're good. 22 BY MR. ETTINGER:</p>
<p style="text-align: right;">27</p> <p>1 scanning the first window, middle window, last window. 2 Okay. 3 BY MR. ETTINGER: 4 Q And, sir, if you could, what does it say on 5 that last window in the interior? 6 A Language learning success trademark. 7 Q And if you could just then fold it together 8 and then hold it up for the camera to get a shot of 9 that side and then the other side. 10 THE VIDEOGRAPHER: One second. Okay. Visual 11 flip. Okay. 12 BY MR. ETTINGER: 13 Q And lastly, sir, could you just take out one 14 of the CDs, just one of them, and hold it up for the 15 camera. 16 THE VIDEOGRAPHER: One second, please, while 17 I get that in focus. Confirmed. 18 BY MR. ETTINGER: 19 Q And, again, you would agree with me that the 20 Rosetta Stone trademark and symbol appears on that 21 disk? 22 A Yeah. It doesn't appear as a TM. It appears</p>	<p style="text-align: right;">29</p> <p>1 Q And then, sir, what is that entitled? 2 A "Audio companion. Practice what you've 3 learned in Rosetta Stone." 4 This has audio companion trademark, TM. 5 Q As opposed to the R? 6 A As opposed to the R. 7 Q And did you try that CD to see if it -- 8 A No, I've never tried it. I don't even know 9 what an MP3 player is, or if I own one. I guess it's 10 the Apple. 11 (Doyle Deposition Exhibit Number 4 was marked 12 for identification.) 13 BY MR. ETTINGER: 14 Q And, lastly, let me show you what's been 15 marked as Exhibit 4. It's entitled, Rosetta Stone 16 user guide -- user's guide. 17 And Did that come in the package that you 18 received from SourcePlaza? 19 A Yes, it did. 20 Q And if you could hold that up just for a 21 second. 22 THE VIDEOGRAPHER: Okay.</p>

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<p style="text-align: right;">30</p> <p>1 BY MR. ETTINGER: 2 Q And so, sir, Exhibits 1, 2, 3 and 4, do they 3 comprise the entirety of the package that you received 4 from SourcePlaza? 5 A I presume they do. I threw the wrapping away 6 and threw the box away. 7 Q And if you -- I'm sorry. Please finish. 8 A No, no. That was all I was going to say. 9 Q And did you -- have you had custody of these 10 four exhibits since you've received them from 11 SourcePlaza? 12 A I have, yes. 13 MR. ETTINGER: No further questions. 14 EXAMINATION BY COUNSEL FOR THE DEFENDANT 15 BY MR. FRIEDEN: 16 Q Mr. Doyle, my name is Jon Frieden. I 17 represent Google. 18 THE VIDEOGRAPHER: Microphone, please. 19 BY MR. FRIEDEN: 20 Q Now that I'm wired, Mr. Doyle -- 21 A Yes. 22 Q -- my name is Jon Frieden. I represent</p>	<p style="text-align: right;">32</p> <p>1 A Uh-huh. 2 Q -- offering discounted -- 3 A Yes. 4 Q -- Rosetta Stone software. Do you recall 5 what the price of that discounted software was? 6 A No. It was, like, 20 percent off. I think 7 there's an ad today, in fact, for 20 percent off on 8 Rosetta Stone software. 9 Q And was that a -- and that was a flyer that 10 came with your bill, some sort of a quarter sheet of 11 paper -- 12 A Exactly. 13 Q -- or color ad? 14 And did it -- how did the ad that you got 15 with your American Express bill direct you to purchase 16 the software? Was it through a certain store? Was it 17 through a website? 18 A Oh, I don't recall. I think it was through 19 American Express. I think you -- I don't recall. 20 Q Do you recall -- I know you said that it was 21 20 percent off. Did it happen to say what the regular 22 price was at that time of the Rosetta Stone software?</p>
<p style="text-align: right;">31</p> <p>1 Google. I just have a few questions about -- starting 2 with your purchase of the Rosetta Stone software eight 3 to ten years ago. Do you recall where you purchased 4 that software? 5 A No, I don't. It would have been in a 6 bookstore, though. I did not buy it on the web. 7 Q I don't think there was a ton of people 8 buying things like this on the web back then. 9 Do you recall how much you paid for it eight 10 to ten years ago? 11 A No, I don't. A couple hundred dollars. 12 Q When you looked at the software more recently 13 in the fall of 2009 -- 14 A That's a household phone. It will be off in 15 a second. 16 (Telephone interruption.) 17 BY MR. FRIEDEN: 18 Q Turning your attention now to the fall of 19 2009 when you made this purchase that we just 20 discussed, did you do any -- I know that you indicated 21 that you got a flyer with your American Express 22 bill --</p>	<p style="text-align: right;">33</p> <p>1 A I presume it did, but I don't remember. 2 Q And at the time that you saw that ad and then 3 went to look to purchase the Rosetta Stone software, 4 did you become aware of how much that software 5 typically costs? 6 A I was aware it would cost a lot more than 7 \$139. Yeah, I didn't know what it cost, but -- I was 8 expecting to pay about 350. 9 Q Okay. And I believe that you actually 10 indicated that you had price checked it at a couple of 11 other sites, Barnes and Noble one of them; is that 12 correct? 13 A That was after I returned it. 14 Q Okay. But at the time that you went to the 15 site where you got this software for \$139, it was your 16 understanding that the Rosetta Stone software was 17 typically in the range of \$350? 18 A Exactly. 19 Q And I believe that you indicated that you 20 thought you were getting a real bargain at \$139? 21 A Yes. 22 Q And that you thought it was too good to be</p>

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<p style="text-align: right;">34</p> <p>1 true? 2 A Yes. 3 Q You indicated that you did a search on Google 4 for the Rosetta Stone software; is that correct? 5 A Yes, that's right. 6 Q Had you searched for other products or 7 services through Google previously? 8 A Other than Rosetta Stone? 9 Q Yes. 10 A Oh, yeah, for many things. 11 Q Had you ever purchased, on the basis of doing 12 a search on Google, either a product or service 13 before? 14 A Yes. 15 Q And I believe you used the term "sponsored 16 link." 17 A Uh-huh. 18 Q And I believe you indicated that there were 19 sponsored links on the page that you saw for Rosetta 20 Stone on both the right-hand side and the left-hand 21 side. 22 A Yes.</p>	<p style="text-align: right;">36</p> <p>1 sponsored links and organic links. 2 A Yes. 3 Q When did he give you that education? 4 A Today. 5 Q Okay. Was that the first time you met 6 Mr. Ettinger? 7 A Yes, face to face. We talked on the phone. 8 Q Okay. How many other times did you talk on 9 the phone prior to today's deposition? 10 A Twice. Once to schedule it and once to 11 confirm it. 12 Q Okay. And then you spoke to him some this 13 morning where you had this conversation about the 14 difference between -- 15 A Yes. 16 Q -- organic search results and sponsored -- 17 A Uh-huh. 18 Q What else did you and Mr. Ettinger talk about 19 this morning before your deposition? 20 A Just the timing of it, and that was 21 essentially it. 22 MR. ETTINGER: We did discuss Montgomery</p>
<p style="text-align: right;">35</p> <p>1 Q Okay. And I take it, from your use of the 2 terminology, that you understand that there are what 3 we call organic results in a search? 4 A Yeah, I do, now. Yeah. 5 Q And then sponsored links as well? 6 A Uh-huh. 7 Q And you indicated that you now have that 8 understanding. When did you come to that 9 understanding? 10 A More recently. 11 Q Okay. 12 A I wasn't aware of the sponsored links on the 13 left-hand side of the page. I thought those were 14 organic links. 15 Q And how did you become aware of the 16 difference between sponsored links? 17 A The attorney here from -- representing the 18 other side informed me of that. 19 Q Okay. So Mr. Ettinger, who represents 20 Rosetta Stone, had -- 21 A Yeah. 22 Q -- informed you about the difference between</p>	<p style="text-align: right;">37</p> <p>1 County schools. 2 THE WITNESS: Well, yes, that was small talk. 3 I just finished a book on Montgomery County schools. 4 BY MR. FRIEDEN: 5 Q You correctly inferred that I was excluding 6 small talk in the scope of my questions. 7 MR. ETTINGER: I just want the record to be 8 complete. 9 BY MR. FRIEDEN: 10 Q Now, you indicated that you had previously 11 purchased goods or services after having searched for 12 those goods or services through Google; is that 13 correct? 14 A Yes. 15 Q Aside from this product that we're discussing 16 today, the Rosetta Stone product, had you have had any 17 other problems with goods or services you purchased 18 using Google as a search tool? 19 A No, I haven't. No. And I use Google all the 20 time. 21 Q Now, I believe that you indicated that, with 22 respect to the link that led you to purchase the</p>

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<p style="text-align: right;">38</p> <p>1 software that has been in part admitted into evidence 2 in this deposition today, you don't recall what that 3 link said? 4 A No, I don't. 5 Q Do you recall what the description of the 6 link underneath the link in the search results said? 7 A No, I don't. 8 MR. ETTINGER: Objection as to form. I'm 9 sorry. I just have to make an objection to the form. 10 THE WITNESS: No, I don't recall. I did look 11 up the link this morning, and it seems to be pretty 12 much the same as it was last fall. 13 BY MR. FRIEDEN: 14 Q And how did you look up the link this 15 morning? 16 A Went to Google and went to Rosetta Stone, and 17 it was the -- I think it was the second one today 18 rather than the first one, of the sponsored links. 19 Q Did you do that with Mr. Ettinger? 20 A No, I did that by myself. I was just 21 curious. 22 Q I believe you described the material that you</p>	<p style="text-align: right;">40</p> <p>1 ask. Has she been happy with the -- 2 A Oh, yeah, she's been very happy with Google. 3 And advanced -- she's finally advanced to first place 4 in the listings. 5 Q And -- so she began that process 15 months 6 ago. So you understood, certainly by virtue of that 7 experience with your wife, that when you look at an 8 advertisement on Google, it's not Google that's 9 offering the product? 10 A Right. Same way in the newspaper. 11 Q Same with the newspaper, like a classified 12 ad? 13 A Yes, exactly. 14 Q Now, when Mr. Ettinger asked you if the link 15 for the material on the search results that led you to 16 purchase the software that has been admitted into 17 evidence used the terms "Rosetta Stone," you indicated 18 that you presumed that it did. 19 A Yes. 20 Q Do you recall precisely whether it did or 21 not? 22 A Well, I'm sure it did. I mean, I don't have</p>
<p style="text-align: right;">39</p> <p>1 saw on the search results that led you to the site 2 that you eventually purchased this software from as a 3 standard stock ad; is that correct? 4 A Yeah, that's what I assumed it was. 5 Q And what did you mean by that, standard stock 6 ad? 7 A It was just what you would expect to see on 8 Google. My wife has a book for sale on Google, for 9 example, and she has a website, and we have Google 10 ads. And I expected the same kind of thing as that. 11 Q Okay. When did -- so your wife uses Google's 12 AdWords program to promote her book? 13 A Not AdWords. She uses -- she registered with 14 Google -- maybe it is AdWords. We pay \$12 a month. 15 Does that sound right? 16 Q It could be one of those programs. But she 17 advertises through Google? 18 A Yes. 19 Q When did she start advertising through 20 Google? 21 A About 15 months ago. 22 Q My client would be upset with me if I didn't</p>	<p style="text-align: right;">41</p> <p>1 any -- it was such an innocent foray on my part that 2 it had to say Rosetta Stone since I was buying Rosetta 3 Stone. 4 Q Sure. Okay. The -- when you clicked on the 5 link from the Google search results that took you to 6 the site from which you eventually purchased the 7 software which has been admitted into evidence as 8 Deposition Exhibits 1 through 4, do you recall -- and 9 I know that the company you purchased it from was 10 SourcePlaza. Do you recall whether or not it was a 11 sourceplaza.com sub-domain that you were directed to? 12 A Oh, no, I don't. Sorry. 13 Q Let's try this, just because I took a quick 14 look at sourceplaza.com this morning. I just want to 15 see if you recognize -- 16 (Doyle Deposition Exhibit Number 5 was marked 17 for identification.) 18 BY MR. FRIEDEN: 19 Q Mr. Doyle, I'm going to show you what's been 20 marked as Deposition Exhibit Number 5, which I can 21 represent, for the record, is a printout of the 22 landing page for the sourceplaza.com domain as it</p>

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<p style="text-align: right;">42</p> <p>1 appeared yesterday morning at 9:14 a.m. Does that 2 look familiar to you, sir? 3 A No. It doesn't look unfamiliar, but it 4 doesn't look familiar either. 5 Q So you can't say whether or not this was the 6 page or a page that you were directed to? 7 A No, I don't think I would have been directed 8 to a page like this. It seems to -- I think it was a 9 Rosetta Stone page. 10 Q Okay. I believe you indicated that, though 11 you were directed to the sourceplaza.com website, or 12 SourcePlaza on the web, to purchase the software which 13 has been admitted into evidence as Deposition 14 Exhibits 1 through 4, you had never previously 15 purchased from that website before; is that correct? 16 A No, never. 17 Q Did you do anything to check the website out 18 to determine where the company was located, whether 19 the company had positive, you know, product reviews or 20 positive reviews in terms of service at all? 21 A No, I didn't. 22 Q How much time would you say elapsed between</p>	<p style="text-align: right;">44</p> <p>1 Q Correct? You understand that? 2 A Exactly. 3 Q And if I was to purchase -- you may not play 4 video games, but you may -- 5 A No, I don't. 6 Q I do. And if I purchase a video game in 7 software form, either for a console or for a computer, 8 in many instances I can take that product and I can 9 then sell it -- 10 A Yes. 11 Q So I can sell it back to the game store or I 12 can sell it to a friend. You understand that as well? 13 A Yeah. My wife's book is being resold by 14 Amazon. Amazon has not accepted the book as its own, 15 but resold as a used book. 16 Q As a used book. Exactly. Were you aware 17 that Rosetta Stone's policy prevent a purchaser -- for 18 instance, you've now purchased their software -- 19 prevents you from reselling that software to a third 20 party? 21 A No, I'm not aware of that. 22 Q Does that strike you as being unfair?</p>
<p style="text-align: right;">43</p> <p>1 your looking at the Google search results and what you 2 saw -- what you indicated to be a link to this 3 sourceplaza.com site and your actually purchasing the 4 software from that site? 5 A I bought immediately. 6 Q Mr. Doyle, are you aware of the fact that 7 Rosetta Stone -- well, let's back up. 8 You indicated that you've written several 9 books. 10 A Yes. 11 Q I think I've seen some of those online. And, 12 as a result, you get royalties from those books? 13 A Small pittance royalties, but royalties 14 nonetheless. 15 Q And you understand that -- and I think that 16 you have some sort of basic understanding of 17 intellectual property law as a result of that -- at 18 least you have used the right terminology. You 19 understand that, if I purchase one of your books, for 20 instance, and then I want to sell it to a used book 21 store, I can do that? 22 A Uh-huh.</p>	<p style="text-align: right;">45</p> <p>1 MR. ETTINGER: Objection. 2 THE WITNESS: I'd have to mull that one over, 3 I guess. I don't know that it would be unfair or not. 4 BY MR. FRIEDEN: 5 Q In this instance, you received software from 6 SourcePlaza that we've discussed that you then later 7 discussed with Rosetta, and then you received what you 8 believe to be the genuine product from Rosetta Stone 9 itself, correct? 10 A Uh-huh. Yes. 11 Q And I believe you already indicated that 12 the -- the disks and the documentation between the two 13 products are virtually identical. 14 A Uh-huh. 15 Q And you have indicated that you had some 16 functionality of the Rosetta Stone software that you 17 bought in -- in the fall of 2009 which you later 18 decided was not authentic, as you described it? 19 A Uh-huh. Right. 20 Q And you indicated that the software that -- 21 that you first purchased in the fall of 2009 that you 22 believe to be pirated software -- do you have any</p>

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<p style="text-align: right;">46</p> <p>1 understanding as to whether or not the disk that has 2 been admitted into evidence is actually a disk 3 containing the software and, for whatever reason, 4 because it wasn't registered, doesn't give you full 5 functionality or whether the actual Rosetta Stone 6 software is not on this disk? 7 MR. ETTINGER: Objection as to form. 8 THE WITNESS: No, I would have no way to know 9 that. But it seemed to be real when I -- authentic 10 material when I opened it up and loaded it and began 11 to use it. 12 BY MR. FRIEDEN: 13 Q So the software that you received in the fall 14 of 2009 appeared to be, based on your experience with 15 the Rosetta Stone -- the genuine Rosetta Stone 16 software, appeared to be genuine? 17 A It seemed to be, yes. 18 Q Except that it had limited functionality? 19 A Yeah, and then when I went back to the 20 installation instructions and discovered you couldn't 21 get web connections with it, that was what really 22 tipped me off.</p>	<p style="text-align: right;">48</p> <p>1 A Fully refunded, yeah. 2 Q Other than what's been marked and admitted as 3 Deposition Exhibits 1 through 4, do you have any of 4 the other materials which were associated with your 5 purchase of the Rosetta Stone software in the fall of 6 2009 including the packaging, the box that it came 7 in -- not only the outer packaging, but the inner 8 Rosetta Stone box or any other software or magnetic or 9 optical media related to that purchase? 10 A No, I don't. 11 Q Mr. Doyle, I saw you look at your watch. 12 Would you like to take a break? 13 A No, no. That's fine. 14 Q With respect to the search that you did on 15 Google that came up with a link to the sourceplaza.com 16 website, do you recall precisely where that link was 17 on the page? 18 MR. ETTINGER: Objection as to form. 19 THE WITNESS: No, I don't. 20 BY MR. FRIEDEN: 21 Q So it could have been on the right-hand side, 22 in the center or on the left-hand side?</p>
<p style="text-align: right;">47</p> <p>1 Q Because some functionality was limited 2 because you couldn't activate or register the software 3 through Rosetta Stone? 4 A Yeah, and I -- it couldn't be registered with 5 Rosetta Stone, and I presumably was not eligible for 6 updates as well. I presume there were updates that 7 would have come on occasion, bug fixes or whatever 8 they would have. 9 Q To back up a little bit, Mr. Doyle, just to 10 confirm, you clicked on the link at sourceplaza.com to 11 purchase the software, correct? 12 A Uh-huh. 13 Q How did you pay for that software? 14 A PayPal. Which -- they came up as a PayPal 15 option. I'm not a member of PayPal, but I -- 16 Q Did you join for that purpose? 17 A No, I didn't. I just typed in my American 18 Express card number. 19 Q And it was your American Express card? 20 A Yes. 21 Q And you were fully refunded by American 22 Express?</p>	<p style="text-align: right;">49</p> <p>1 A You mean, the link to SourcePlaza? 2 Q Yes. 3 A My recollection, it was on the left-hand 4 side. 5 Q And this was the link that you followed to 6 purchase the software in 2009? 7 A Yes. 8 Q Do you recall if it was set off in any way 9 different from other links on the page or did it look 10 like all the others? 11 A It looked like the others, as I recall. I 12 usually go to the first or second one first. I would 13 scroll through and pick out the one that looks the 14 most promising when I'm making an online investigation 15 or examination. 16 Q Could it be that that link was not an 17 advertisement but just one of the links that normally 18 comes up organically on the Google search? 19 MR. ETTINGER: Objection. 20 THE WITNESS: No. I assumed it was not 21 organic, as I understand that term. I assumed it was 22 a sponsored link since it came up immediately as</p>



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<p style="text-align: right;">50</p> <p>1 SourcePlaza. 2 BY MR. FRIEDEN: 3 Q And you assumed that it was a sponsored link 4 based on your discussion with Mr. Ettinger this 5 morning? 6 A Well, yes. That's my understanding from my 7 discussion with Mr. Ettinger what a sponsored link is, 8 but I knew intuitively what a sponsored link was 9 before. I mean, I know that Rosetta Stone is sold by 10 second-hand -- secondary retailers, both online and 11 physical. 12 Q And you believed that you were going to an 13 authorized retailer of Rosetta Stone when you -- 14 A I presumed I was, yeah. 15 Q I know that you indicated that you use Google 16 probably five to ten times a day. 17 A Uh-huh. 18 Q I assume you use -- do you use -- do you 19 really use any other search engine? 20 A No, not any longer. 21 Q And for how long has that been your practice, 22 to use exclusively Google as your search engine?</p>	<p style="text-align: right;">52</p> <p>1 to your website from Google searches? 2 A No, it's certainly -- we could certainly find 3 out, but I'm not aware. 4 Q Okay. 5 A Google has got, like, 80 percent of the 6 search engine market in the whole world, don't they? 7 Maybe higher than Europe. 8 Q Your information is probably as good as mine 9 on that subject, but I think it's -- I think it's 10 about that. But certainly, you're aware that Internet 11 users find their site as a result of Google searches? 12 A Uh-huh. 13 Q What is it about Google that you find to be 14 so valuable in terms of -- essentially, why is it now 15 your exclusive search engine? 16 A Well, speed and accuracy are the two that I 17 would value most highly. And the fact that you don't 18 need to put much information in to get a lot of 19 information out. I used it twice yesterday to get 20 directions on Google Maps. I used it recently to get 21 some information about some people I know, people I 22 was going to meet. And it just -- very, very -- trace</p>
<p style="text-align: right;">51</p> <p>1 A Oh, my goodness. As long as I remember 2 Google being around. 3 Q Would that be five years? Ten years? 4 A Yeah, I would say five years. 5 Q I know that you indicated that your wife 6 advertises her book on Google, and has for the last 15 7 months. 8 A Uh-huh. 9 Q Do you know any of the details of that 10 advertising program or how exactly it works with 11 respect to her? 12 A No, I don't. I just pay the bill. It's 12, 13 \$15 a month. 14 Q Have you ever advertised anything on Google? 15 A No, I've not. 16 Q And I know that you have a website -- I've 17 been on it, I think -- or Schoolnet does. 18 A Yeah, Schoolnet has a website, and my wife 19 has a website. I don't have a website. 20 Q Okay. Schoolnet has a website? 21 A Yes. 22 Q And are you aware of how much traffic is led</p>	<p style="text-align: right;">53</p> <p>1 amounts of information produced stupendous results, 2 and the algorithms are really fabulous. 3 Q And I think that we indicated that at the 4 time that you did this search in the fall of 2009 that 5 led you to the Rosetta Stone software which has been 6 marked and admitted as Deposition Exhibits 1 through 7 4, you didn't at that time know the difference between 8 an organic search result and a sponsored link; is that 9 correct? 10 A No, I didn't. 11 Q After having been educated by Mr. Ettinger 12 about sponsored links, do you now look back on your 13 experience with Google and know whether or not you 14 had, other than the Rosetta Stone software, clicked on 15 sponsored links in the past to get -- 16 A I've clicked on sponsored links in the past, 17 yeah. 18 Q And as a result of clicking on sponsored 19 links in the past, have you purchased goods or 20 services? 21 A Yes, I have. 22 Q And you've been happy with those purchases?</p>

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<p style="text-align: right;">54</p> <p>1 A Yes, very happy. I got a thousand dollar 2 refund from American Express on a purchase I made 11 3 months ago -- 11 months before the refund. This was 4 last year, 2008. It was a business class airline that 5 flew out of Dulles to London -- I forgot the name of 6 it now -- and it went bankrupt before my ticket was 7 used. And I immediately contacted American Express 8 and they refunded the money even though it had been 11 9 months since I bought the ticket. 10 Q That's a good ad for American Express. 11 A Yes, it would be. 12 Q At the time that you purchased the Rosetta 13 Stone software in 2009 that's been marked as 14 Deposition Exhibits 1 through 4, did you understand 15 the distinction between a counterfeit product, which 16 is not what it purports to be, and an unauthorized 17 product, which I would define as being a product which 18 it is what it purports to be but hasn't been 19 authorized by the software developer for your use? 20 A No, I hadn't thought about that, but it seems 21 to be self-evident and clear that the terminology 22 does -- so if someone had asked me the question, I</p>	<p style="text-align: right;">56</p> <p>1 additional problem. 2 I know, when we went through Deposition 3 Exhibit Number 1, which is a quick start guide that 4 came with your Rosetta Stone software in the fall of 5 2009 -- 6 A Right. 7 Q -- you noted some -- what you refer to as 8 broken English in the writing of this document. 9 A In the center panel there you'll see it. 10 Q Right. Did you notice this when the product 11 first came? 12 A No, I don't use the quick start information. 13 I just go right to the source and grab the install 14 disk and start going when I buy computer software. 15 Q Okay. But -- 16 A When I went back and looked at it, I noticed 17 it. 18 Q Okay. Having -- when you went back and 19 looked at it, it's fairly glaring? 20 A Yes. 21 Q Were there any other similar problems that 22 you noted with the documentation for the software that</p>
<p style="text-align: right;">55</p> <p>1 wouldn't understand it. 2 Q I know we talked in terms of pirated software 3 when we discussed Deposition Exhibits 1 through 4, and 4 my fear is that that's an imprecise term. Based on 5 those definitions that you understand, do you believe 6 what you purchased in 2009 to be counterfeit software 7 or unauthorized software? 8 A Counterfeit. 9 Q And why is that? 10 A Because it looks and acts and performs the 11 way the real product does with only minor exceptions. 12 You need a magnifying glass to find out the 13 difference. With counterfeit money, you're stuck with 14 it. If someone passes counterfeit money to you, you 15 have no recourse, is my understanding. 16 Q Well, we could probably have a half-day 17 discussion about what your possible recourses are. 18 A Well, your recourse -- you find the person 19 that passed the counterfeit money to you. But other 20 than that, you have no recourse. You can't go to the 21 bank and get it exchanged for real money. 22 Q No, you can't pass it on. That would be an</p>	<p style="text-align: right;">57</p> <p>1 you received in the fall of 2009 in other aspects 2 other than this part of the quick start? 3 A No, there were -- nothing I was aware of. 4 Q And have you carefully reviewed any of the 5 documentation? 6 A No, I haven't. 7 Q Okay. When you went to the website 8 sourceplaza.com that sold you the software in the fall 9 of 2009, did you note any broken English or, I guess, 10 non-standard use of the English language on the 11 website? 12 A No, I didn't. That would have alerted me, I 13 think, to the fact that it was bogus. 14 Q And you indicated that you used the product 15 for a period of time and then it became clumsy to use. 16 Do you recall how long you used it before you -- 17 A Oh, a couple of weeks, off again, on again. 18 Q Do you know -- 19 A Just my habit with Rosetta Stone is to use 20 it -- I haven't used it for weeks now. I keep 21 forgetting to return to it. 22 Q In that period of time in the fall of 2009,</p>

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<p style="text-align: right;">58</p> <p>1 do you recall how many times you utilized the 2 software? 3 A No, I don't, but I must have used it two 4 dozen times, I suppose. 5 Q So a dozen times over a few weeks? 6 A Or a month. 7 Q Okay. So a dozen times over, you know, a few 8 weeks to a month before you realized that there was a 9 problem with the software that you purchased in 2009? 10 A Uh-huh. 11 Q If you could -- if you could say yes or no -- 12 A Oh, yes, I'm sorry. 13 Q -- because it's easier for her to transcribe. 14 A Yes. 15 Q And then, as a result, you contacted Rosetta 16 Stone? 17 A Yes. 18 Q But you didn't contact Google? 19 A No, I didn't contact Google. No, I didn't -- 20 I would not have thought to have contacted Google 21 for -- it's like contacting The Washington Post if 22 they ran an ad that you didn't like.</p>	<p style="text-align: right;">60</p> <p>1 A 139. 2 Q And since that time in the fall of 2009, 3 you're still using Google on a daily basis? 4 A Yes. 5 Q And still using Google to purchase -- to 6 research and purchase -- 7 A Yes. 8 Q -- goods and services? 9 A Did all our Christmas shopping online, 10 including international presents. 11 MR. FRIEDEN: Let's go off the record for 12 about five minutes, if that's all right with you, 13 Mr. Ettinger. 14 THE VIDEOGRAPHER: The time is 11:20 a.m. 15 Going off the record. 16 (Whereupon, a short recess was taken.) 17 THE VIDEOGRAPHER: The time is 11:23 a.m. 18 We're back on the record. 19 MR. FRIEDEN: Mr. Doyle, thank you very much. 20 I don't have any further questions at this time. 21 THE WITNESS: You're most welcome. 22 MR. ETTINGER: Just a couple of follow-up.</p>
<p style="text-align: right;">59</p> <p>1 Q Right, it would be like contacting The 2 Washington Post if they ran a classified ad. 3 Understood. 4 And you didn't contact the Better Business 5 Bureau? 6 A No. 7 Q Did you contact any other government agency 8 or quasi-governmental agency? 9 A No, I didn't. 10 Q So about the problem, you spoke to Rosetta 11 Stone and I assume you spoke to your credit card 12 company? 13 A I did, yes. 14 Q To dispute the charge? 15 A Yes. Asked them if they would dispute the 16 charge on my behalf. 17 Q Okay. And the charge was ultimately fully 18 reversed? 19 A Yeah, reversed within the month. 20 Q The -- your purchase price for the software 21 that you purchased in 2009 as a result of that Google 22 search was \$139?</p>	<p style="text-align: right;">61</p> <p>1 THE WITNESS: Sure. Go ahead. 2 FURTHER EXAMINATION BY COUNSEL FOR THE 3 PLAINTIFF 4 BY MR. ETTINGER: 5 Q You've indicated that when you put in the 6 Rosetta Stone search terms, the links that came up -- 7 I believe you testified on cross-examination that you 8 believed they were on the left-hand side of the page, 9 the one that you clicked on. 10 A Yes. 11 Q And during your direct testimony you said you 12 thought it was the first link, and I thought during 13 cross you said it might have been the second link. As 14 you sit here today, do you know if it was the first or 15 second? 16 A I don't know if it was the first or second. 17 My recollection is it was the first link when I went 18 up to get it in the fall. And I think it was the 19 second link when I went up this morning, so it's got 20 me confused. 21 Q All right. And what was the date that you 22 actually placed the order again? 23 A October 14th, SourcePlaza, \$139, the American</p>

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<p style="text-align: right;">62</p> <p>1 Express record shows. 2 Q Okay. And do you remember how long it took 3 for the package to arrive from the time you ordered 4 it? 5 A No. It came fairly quickly, though. It was 6 within the week. 7 Q So you think by October 21st it would have 8 been in your hands? 9 A I think so, exactly. 10 Q And, sir, as you sit here today, do you have 11 a recollection of the date on which you called Rosetta 12 Stone. 13 A It would have been probably the same day I 14 called the American Express people. I called them on 15 November 20th, according to the American Express 16 records online, which I got through a Google search. 17 And then I waited another -- I guess the next week I 18 went out and bought the Barnes and Noble stuff. 19 Q Okay. Let me show you -- 20 MR. ETTINGER: Can I have a sticker, please. 21 (Doyle Deposition Exhibit Number 6 was marked 22 for identification.)</p>	<p style="text-align: right;">64</p> <p>1 would be six weeks [sic] instead of -- 2 BY MR. ETTINGER: 3 Q So it's October 14th was the day that you 4 ordered it, correct? 5 A Yes. And then I got it the 21st, or 6 thereabouts, and I called them the 29th. That's about 7 right. 8 Q So it's about -- and you called them 9 October 29th. So that's just a week or so after you 10 had received it? 11 A Yes. 12 Q All right. 13 MR. ETTINGER: No further questions. 14 FURTHER EXAMINATION BY COUNSEL FOR THE DEFENDANT 15 BY MR. FRIEDEN: 16 Q I guess there is one issue, Mr. Doyle. I 17 understand that the records that you received from 18 American Express indicated that you made the purchase 19 on or about October 14th of 2009, correct? 20 A Yes. 21 Q And that you then contacted American Express 22 about the product on November 20th of 2009, correct?</p>
<p style="text-align: right;">63</p> <p>1 BY MR. ETTINGER: 2 Q Let me show you what's been marked as 3 Exhibit 6. It's a two-page document bearing Bates 4 number RS 008000003000004. Just take a look at that, 5 sir. 6 I'll represent to you, sir, that this is an 7 internal document from Rosetta Stone which reflects a 8 call that was made by you to a woman named Shannon 9 White. And all I want you to do is look at -- the 10 creation date in the ticket summary is October 29th, 11 2009. Does that refresh your recollection, sir, that 12 you reached out to Rosetta Stone on October 29th, 13 2009? 14 A Yeah, that sounds entirely plausible to me, 15 yes. 16 Q So when you testified that you might have 17 used it for a few weeks or a month, that time period 18 had to have been shorter than that, correct? 19 MR. FRIEDEN: Objection to form of the 20 question. 21 You may answer. 22 THE WITNESS: October 14th to the 29th. That</p>	<p style="text-align: right;">65</p> <p>1 A I apparently said that's my recollection, 2 yeah. That's what the American Express record shows. 3 Q And before seeing this Rosetta Stone 4 document, it was your recollection that you spoke to 5 American Express and Rosetta Stone on the same day? 6 A That was my recollection, but it's -- it was 7 not a very high priority in my otherwise fairly heavy 8 schedule. So I don't have any very good recollection 9 of it. 10 Q So it may have been that you received the 11 product very quickly, on or about October 14th, 2009, 12 and then some two weeks later contacted Rosetta Stone? 13 MR. ETTINGER: Objection. 14 THE WITNESS: Well, looks to me like the 15 documents here from Rosetta Stone show I contacted 16 them the 29th. That would be three weeks later. 17 BY MR. FRIEDEN: 18 Q And in those -- in that period of time, it's 19 your recollection that you had used the software 20 approximately a dozen times? 21 A About that, yes. 22 MR. FRIEDEN: Thank you, sir. I don't have</p>

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<p style="text-align: right;">66</p> <p>1 anything further. 2 FURTHER EXAMINATION BY COUNSEL FOR THE 3 PLAINTIFF 4 BY MR. ETTINGER: 5 Q Mr. Doyle, do you have a copy of your 6 American Express receipt that would reflect when you 7 actually purchased the product from SourcePlaza? 8 A I don't have a copy of it, no. But, I mean, 9 I could -- it's a matter of me going to the web and 10 downloading it. 11 Q Is that something that you would be willing 12 to share with counsel for both sides at your 13 convenience? 14 A Yeah. Sure. I'd be happy to. 15 MR. FRIEDEN: Thank you very much. 16 MR. ETTINGER: Thank you, sir. 17 THE WITNESS: Okay. 18 THE VIDEOGRAPHER: The time is 11:28 a.m., 19 March 11th, 2010. Going off the record, completing 20 the videotape deposition. 21 (Discussion held off the record.) 22 MR. ETTINGER: I will get it to Mr. Doyle and 23 have him read it. That's what we've agreed on the</p>	<p style="text-align: right;">68</p> <p>1 CERTIFICATE OF NOTARY PUBLIC 2 I, Denise M. Brunet, the officer before whom 3 the foregoing deposition was taken, do hereby certify 4 that the witness whose testimony appears in the 5 foregoing deposition was duly sworn by me; that the 6 testimony of said witness was taken by me 7 stenographically and thereafter reduced to print by 8 means of computer-assisted transcription by me; that 9 said deposition is a true record of the testimony 10 given by said witness; that I am neither counsel for, 11 related to, nor employed by any of the parties to this 12 litigation and have no interest, financial or 13 otherwise, in the outcome of this matter. 14 15 _____ 16 Denise M. Brunet 17 Notary Public in and for the 18 State of Maryland 19 20 My commission expires: 21 November 7, 2011 22</p>
<p style="text-align: right;">67</p> <p>1 other ones as well. 2 (Whereupon, at 11:28 a.m. the deposition of 3 DENIS P. DOYLE was concluded.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">69</p> <p>1 ACKNOWLEDGEMENT OF DEPONENT 2 I, DENIS P. DOYLE, do hereby acknowledge I 3 have read and examined the foregoing pages of 4 testimony, and the same is a true, correct and 5 complete transcription of the testimony given by me, 6 and any changes and/or corrections, if any, appear in 7 the attached errata sheet signed by me. 8 9 10 11 12 13 14 15 16 17 18 19 20 21 _____ 22 Date DENIS P. DOYLE</p>

**Rosetta Stone Ltd. v. Google Inc.**  
**Case No. 1:09-CV-00736 (E.D. Va.)**

**Deposition of Denis P. Doyle**  
**March 11, 2010**

**ERRATA SHEET**

<b>Page/Line</b>	<b>Correction</b>
Page 8, line 1	change "i" to "in"
Page 8, line 2	change "provided" to "provide"
Page 9, line 4	change "instruction and management" to "instructional management"
Page 33, line 8	change "350" to "\$350"
Page 60, line 1	change "139" to "\$139"

*Denis P. Doyle*

3/23/2010

**STEVE DUBOW**  
(3/8/10)

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1

IN THE DISTRICT COURT  
FOR THE DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

----- :  
ROSETTA STONE, LTD., :  
 :  
Plaintiff, :  
 : C.A. No. :  
vs. : 1:09-cv-00736 (GBL/TCB)  
 :  
GOOGLE, INC., :  
 :  
Defendant. :  
----- :

Lakewood, Colorado

Monday, March 8, 2010

Videotaped Deposition of:

STEVE F. DUBOW

called for oral examination by counsel for Plaintiff,  
pursuant to notice, at the Sheraton Denver West  
Hotel, 360 Union Blvd., Lakewood, Colorado, before  
Barbara J. Castillo, RMR/CRR, of Capital Reporting  
Company, a Notary Public in and for the State of  
Colorado, beginning at 10:52 a.m., when were present  
on behalf of the respective parties:



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<p style="text-align: right;">2</p> <p>1           A P P E A R A N C E S 2 On behalf of Plaintiff    MITCHELL S. ETTINGER, ESQ. 3 Skadden, Arps, Slate, Meagher &amp; Flom, LLP    1440 New York Avenue, N.W. 4 Washington, D.C. 20005    (202) 371-7444 5 6 On behalf of Defendant:    CLAUDE M. STERN, ESQ.    Quinn, Emanuel, Urquhart, Oliver &amp; Hedges, LLP 7 555 Twin Dolphin Drive, Suite 560    Redwood Shores, California 94065 8 (650) 801-5002 9 ALSO PRESENT:    Carie Finegan 10 Victor Sieff 11       ***** 12 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">4</p> <p>1           P R O C E E D I N G S 2           THE VIDEOGRAPHER: This begins Volume 1,    Tape 3 Number 1 of the videotaped deposition of Steve Floyd 4 DuBow in the matter of Rosetta Stone Limited versus 5 Google, Incorporated in the U.S. District Court for the 6 Eastern District of Virginia, Alexandria Division, Case 7 Number 1:09-cv-00736 8           (GBL/TCB). 9           This deposition is being held at the Sheraton 10 Hotel located at 360 Union Boulevard, Lakewood, 11 Colorado on March 8, 2010, at approximately 10:52 a.m. 12 My name is Carie Finegan with the firm of Capital 13 Reporting Company. I am the legal video specialist. 14 The court reporter is Barbara Castillo in association 15 with Capital Reporting Company located at 1821 16 Jefferson Place, Washington, D.C., 20036. 17           For the record, will counsel please introduce 18 themselves and who they represent. Then the court 19 reporter -- reporter will swear in the witness. 20           MR. ETTINGER: Mitchell Ettinger from Skadden 21 Arps on behalf of Rosetta Stone. 22           MR. STERN: Claude Stern of Quinn Emanuel on</p>
<p style="text-align: right;">3</p> <p>1           C O N T E N T S 2 EXAMINATION BY:                   PAGE    Counsel for Plaintiff           5, 113 3     Counsel for Defendant        47, 125 4 5     DUBOW DEPOSITION EXHIBITS        PAGE 6 Exhibit 1    Web page printout       20    Exhibit 2   E-mail string, beginning    message dated 2/17/10 from    DuBow to Ettinger           26 7 Exhibit 3    Product brought by DuBow   32    (Retained by Attorney Ettinger) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22           (*Exhibits attached to transcript.)</p>	<p style="text-align: right;">5</p> <p>1 behalf of Google. 2           STEVE F. DUBOW, called as a witness, and 3 having been first duly sworn, was examined and 4 testified as follows: 5           EXAMINATION 6           BY MR. ETTINGER: 7     Q   Good morning. 8     A   Good morning. 9     Q   Please state your full name. 10    A   Steve Floyd DuBow. 11    Q   Have you ever been deposed before, sir? 12    A   Yes, sir. 13    Q   On how many occasions? 14    A   At least twice from my memory. 15    Q   Well, the ground rules that applied to those 16 depositions will apply here, and I'd like to go over 17 them briefly with you just to make sure we're on the 18 same page. Okay? 19    A   Uh-huh. 20    Q   Everything that we say in this room today 21 will be recorded verbatim by the court reporter and the 22 videographer. So we need to be careful not to speak</p>

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<p style="text-align: right;">6</p> <p>1 over one another. And I will try my best not to 2 interrupt your answers, and I would ask that you permit 3 counsel both for Google and Rosetta Stone to complete 4 their question before you begin your answer. Okay? 5 A Okay. 6 Q All of your answers today must be audible. 7 That means a nod of the head, while it will be recorded 8 on the videotape, is not acceptable. So please answer 9 audibly. From time to time, counsel for Google or 10 myself may inter- -- interpose an objection to a 11 question that is asked by counsel. That is for the 12 record and the court reporter at a later time. If you 13 can answer the question, you can let the counsel make 14 their objection and then go ahead and answer the 15 request if you're able to do so. Okay? 16 A Okay. 17 Q If you do not understand a question that is 18 asked, please ask counsel to clarify the question. 19 A Yes, sir. 20 Q All right. Finally, you're not captive here 21 today. You're -- you're our guest. And if you need a 22 break, all you need to do is request a break and, of</p>	<p style="text-align: right;">8</p> <p>1 A I did. I went to USC graduate school, did 2 not complete my master's there. I started a software 3 company in 1973, and that was the end of my college 4 work. 5 MR. STERN: Mr. DuBow, I'm terribly sorry. 6 This is Claude Stern. The acoustics of this room are 7 horrendous, and the court reporter is nodding. You're 8 doing fine, but if I could ask you to speak up just a 9 little bit. 10 THE DEPONENT: I'll do my best. 11 MR. STERN: We have -- we have literally 12 airplanes outside and -- 13 THE DEPONENT: Air-conditioning. 14 MR. STERN: -- air-conditioning going on. I'm 15 terribly sorry for the conditions, but if you can speak 16 up just a little bit, that would be great. 17 THE DEPONENT: Okay. 18 MR. STERN: Thank you. 19 THE DEPONENT: I'll do my best. 20 Q (BY MR. ETTINGER) And are you currently 21 employed? 22 A Yes.</p>
<p style="text-align: right;">7</p> <p>1 course, we'll accommodate you. All right? 2 A Thank you. 3 Q Sir, where do you reside? 4 A I reside in Conifer, Colorado. 5 Q What is your address? 6 A 26500 Long View Drive, 80433. 7 Q And how long have you lived there? 8 A About a year and a half now. 9 Q And are you married? 10 A Yes. 11 Q What is your wife's name? 12 A Sandra. 13 Q And I'm not trying to be intrusive, but would 14 you mind stating your age. 15 A My age is 65. 16 Q What is the highest level of education that 17 you completed? 18 A Bachelor in mathematics. 19 Q And from what university did you receive that 20 degree? 21 A From Cal State Northridge. 22 Q Did you do any follow-on graduate work?</p>	<p style="text-align: right;">9</p> <p>1 Q Okay. Through what business? 2 A I'm in the software development business. 3 Q What is the name of the business? 4 A It's called Comm-Pro Associates, C-o-m-m, 5 hyphen, P-r-o Associates. 6 Q And how long have you been employed by Comm- 7 Pro? 8 A We started that company in 1973, as I said. 9 Q And what is the business of Comm-Pro? 10 A We write communications software for IBM 11 computers. 12 Q And who are your principal customers? 13 A Our customers are generally banks, insurance 14 companies, cross platform -- or I should say cross 15 industry. 16 Q And what is the functionality of the software 17 that you sell? 18 A Our current iteration of software is -- 19 provides an interface between users on a network and 20 IBM applications that run on a mainframe. 21 Q Okay. And you understand that this case that 22 you're testifying in today involves a civil lawsuit</p>

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10	<p>1 between Rosetta Stone and Google, correct?</p> <p>2 A Yes.</p> <p>3 Q And you've agreed to provide testimony in</p> <p>4 this matter, is that right?</p> <p>5 A Correct.</p> <p>6 Q You're not under any subpoena to appear here</p> <p>7 today, are you, sir?</p> <p>8 A No.</p> <p>9 Q Are you being compensated for your appearance</p> <p>10 today?</p> <p>11 A Not at all.</p> <p>12 Q Did anyone promise you anything in return for</p> <p>13 your testimony?</p> <p>14 A No.</p> <p>15 Q Have you ever taken or studied a foreign</p> <p>16 language in your life?</p> <p>17 A Yes. I took Spanish in high school.</p> <p>18 Q Did you achieve fluency in that foreign</p> <p>19 language?</p> <p>20 A Not really.</p> <p>21 Q During your adult life, have you had the</p> <p>22 desire to learn a foreign language?</p>	12
11	<p>1 A I wanted to review my Spanish again and</p> <p>2 become fluent in it.</p> <p>3 Q And when did that spark or desire come about?</p> <p>4 A I would say in the last two years or so.</p> <p>5 Q And why is it that you wanted to learn to</p> <p>6 speak Spanish?</p> <p>7 A My career in computing is winding down and I</p> <p>8 wanted to do some traveling, and I thought it would be</p> <p>9 advantageous to learn -- learn another language like</p> <p>10 Spanish.</p> <p>11 Q Mr. DuBow, have you ever heard of the company</p> <p>12 Rosetta Stone?</p> <p>13 A Oh, yes.</p> <p>14 Q And what do you understand Rosetta Stone</p> <p>15 sells?</p> <p>16 A Rosetta Stel- -- Rosetta Stone sells</p> <p>17 language learning software.</p> <p>18 Q And how did you arrive at the understanding</p> <p>19 that Rosetta Stone sells language learning software?</p> <p>20 A Well, I've -- I've looked around at other</p> <p>21 products or competitors with Rosetta Stone and, based</p> <p>22 on doing a little research, decided that that product</p>	13

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<p style="text-align: right;">14</p> <p>1 A Well, as I say, based on the reviews that I 2 read, the fact that the government agencies use this 3 software. It's the quickest, based on what they're 4 telling me, of all the learning software products 5 available right now. 6 Q And when did you decide to purchase Rosetta 7 Stone software? 8 A My wife -- I had been talking to her about 9 this for quite some time, and she decided she wanted to 10 give me a gift. So we -- she's not a computer literal 11 person, so I assisted her. We got on the Web, went to 12 Google, entered Rosetta Stone, and started going 13 through all the links that were presented to us. 14 Q Okay. And when did that occur? 15 A We did this in October of last year. 16 Q October 2009? 17 A Yes. 18 Q When you went on the Internet to look for 19 Rosetta Stone -- 20 A Uh-huh. 21 Q -- did you have a specific source in mind 22 from which you wanted to purchase the software?</p>	<p style="text-align: right;">16</p> <p>1 bar? 2 A Well, I guess my wife did the -- the typing, 3 and then I helped her scroll through the links that 4 were presented. 5 Q And did you direct your wife what terms to 6 enter into the search bar? 7 A Yes. 8 Q All right. And were those terms Rosetta 9 Stone? 10 A Yes. 11 Q Did you use any other terms other than 12 Rosetta Stone at the time you searched on Google to 13 look for the purchase of software? 14 A No. 15 Q Do you know what the term "sponsored link" 16 means? 17 A I do now. I heard it for the first time 18 this morning. I wasn't exactly sure. I've seen those 19 on the right-hand side of the -- of the Google Web 20 page, but I wasn't exactly sure what it was. 21 Q Okay. At the time that you entered the terms 22 or your wife entered the terms "Rosetta Stone" in the</p>
<p style="text-align: right;">15</p> <p>1 A No. Not really. 2 Q And you indicated that you used Google as 3 your search engine when looking for Rosetta Stone; is 4 that right? 5 A That's correct. 6 Q All right. Are you certain of that? 7 A Absolutely. 8 Q And do you recall specifically the search 9 terms that you entered on the Google search bar when 10 looking for Rosetta Stone software? 11 A I simply typed in Rosetta Stone. 12 Q Why did you use the trademark Rosetta Stone 13 at that time? 14 A Because -- 15 MR. STERN: Objection, foundation. 16 A Because as I said -- 17 MR. STERN: Excuse me. I'm sorry. Objection, 18 foundation. Go ahead. 19 A Okay. As I said, I had decided that Rosetta 20 Stone was the product that I was most interested in. 21 Q (BY MR. ETTINGER) Did you actually do the 22 typing or did your wife do the typing on the search</p>	<p style="text-align: right;">17</p> <p>1 Google search engine -- 2 A Uh-huh. 3 Q -- in October 2009, do you recall whether any 4 advertisements appeared on the first page? 5 A I -- what -- what do you mean by 6 advertisements? 7 Q Links that appear to you to be companies 8 selling goods in response to your query. 9 A Yes. Yeah. There were quite a few under 10 that description, yes. 11 Q What do you recall seeing on the search page 12 results when you entered Rosetta Stone in the Google 13 search engine? 14 A I saw a number of sites and -- advertising 15 Rosetta Stone software for a number of different 16 discounted prices. What attracted us to this 17 particular site was that they presumed to be a Rosetta 18 Stone reseller reselling OEM or original equipment 19 manufactured product. 20 Q Did you click on one or more of the -- of the 21 links that appeared to offer Rosetta Stone products for 22 sale?</p>

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<p style="text-align: right;">18</p> <p>1 A We probably clicked on a few before deciding 2 on this one. I don't remember. It was six months ago. 3 Q Ultimately you selected one particular link - 4 - 5 A Yes. 6 Q -- to purchase your software; is that 7 correct? 8 A Correct. 9 Q And what attracted you to that link? 10 A I think the fact, again, re- -- my memory is 11 not a hundred percent here, but I think the fact that 12 they -- they presumed to be a reseller. And it looked 13 like a legitimate Rosetta Stone site. 14 Q What do you mean by reseller? 15 A That they were a -- a sanctioned reseller of 16 Rosetta Stone product. 17 Q Was that important to you? 18 A Absolutely. 19 Q Why is that? 20 A Well, because there's -- there's a lot of 21 bootlegged software product out there. This one looked 22 to be legitimate.</p>	<p style="text-align: right;">20</p> <p>1 what's been marked as DuBow Exhibit 1. It is a two- 2 page document that I'll represent to you is a landing 3 page from a Google search to Gain Soft Mall, not 4 Bossdisk, but I want to ask you if this -- if you can 5 take a look at this exhibit and ask you whether or not 6 it bears any resemblance to the one that you saw when 7 you clicked on the Bossdisk site. 8 A It's virtually identical. The price here is 9 \$142. I guess it's gone up. Mine was 139. And I 10 don't remember the version number being presented on 11 the level of Rosetta Stone. 12 Q The page that was presented to you and your 13 wife, did it have the Rosetta Stone boxes appear on the 14 Web itself? 15 A To the best of my recollection, it looked 16 almost exactly like this. 17 Q All right. Sir, if you'd look to the second 18 page, do you see at the bottom of the second page 19 there's some links like to -- conditions of use, 20 contact us. 21 A Uh-huh. 22 Q Do you recall whether you and your wife</p>
<p style="text-align: right;">19</p> <p>1 Q Did the ad text, the actual text of the ad 2 itself, appearing on the link use the term "Rosetta 3 Stone"? 4 MR. STERN: Objection, foundation. 5 A Yes. 6 MR. STERN: Objection, foundation. 7 Q (BY MR. ETTINGER) It's okay. You may 8 answer 9 now. 10 A Yes, it did. 11 Q When you clicked on the -- the link or your 12 wife clicked on the link -- 13 A Uh-huh. 14 Q -- did you see the page that came up? 15 A Yeah, oh, absolutely. 16 Q Sir, do you recall the name of the -- the 17 company that advertised on the link that you -- you and 18 your wife clicked on? 19 A Yes. It was a company called Bossdisk. 20 Q Could you spell that, please. 21 A B-o, double, s-d-i-s-k. 22 (Exhibit Number 1 was marked.) 23 Q (BY MR. ETTINGER) Sir, I'm going to hand you</p>	<p style="text-align: right;">21</p> <p>1 clicked on any of those? 2 A I don't remember looking at conditions of 3 use. However, when -- as time went on, I -- I -- well, 4 I -- I don't remember, to be honest with you. 5 Q Okay. What color, if any, do you associate 6 with Rosetta Stone products? 7 A Oh, it's yellow, of course. 8 Q And you say of course. Why is that? 9 A Well, that's their trademark. 10 Q Do you recall, sir, what, if anything, the 11 Website -- the Bossdisk Website promised you with 12 respect to a guarantee on the software? 13 A I don't actually. I don't remember if this 14 on the left-hand side was actually on that site. I just 15 don't remember. 16 Q What, if anything, did the Bossdisk Website 17 offer with respect to the cost of shipping? 18 A Oh, the shipping, I remember, was free. 19 Q It was included in the purchase price? 20 A It was included in the purchase. 21 Q Was there anything else about the Web site 22 itself that you -- that you went to that led you to</p>

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<p style="text-align: right;">22</p> <p>1 believe that it was offering genuine Rosetta Stone 2 products? 3 A I -- again, I think -- I remember choosing 4 the site because they said they were a Rosetta Stone 5 reseller. 6 Q How many times do you believe you searched 7 the Internet before getting to the point that you were 8 ready to buy Rosetta Stone software? 9 MR. STERN: Objection, vague. 10 Q (BY MR. ETTINGER) Let me re-ask the 11 question. How many times did you search the Internet 12 for language learning software before you determined 13 that you were ready to buy a product? 14 MR. STERN: Same objection. 15 Q (BY MR. ETTINGER) You can answer. 16 A Okay. I would say a couple of times. I had 17 also read articles in magazines, advertisements. 18 Q When you and your wife sat down at the 19 computer on the day that you were purchasing the 20 software, how long did the whole session take between 21 the time you started until the time that you actually 22 placed an order?</p>	<p style="text-align: right;">24</p> <p>1 A Not at all. 2 Q And why is that? 3 A I thought it was back level software, in 4 other words, an earlier version. I don't necessarily 5 have to have the latest and greatest. I thought it 6 would work sufficiently good for me. 7 Q Have you ever heard of the term "counterfeit 8 software"? 9 A Absolutely. 10 Q And had what does that mean to you? 11 A It means not produced by the original 12 manufacturer. 13 Q At the time you placed your order with 14 Bossdisk, did you intend to purchase counterfeit 15 software? 16 A Oh, no, never, no. 17 Q At the time you placed your order with 18 Bossdisk, did you believe that you were purchasing 19 counterfeit software? 20 A No, I didn't. 21 Q How did you pay for the order? 22 A I used PayPal.</p>
<p style="text-align: right;">23</p> <p>1 A Probably less than a half hour, I'd say. 2 Q Did you, in fact, place an order with the 3 company Bossdisk? 4 A Yes, I did. 5 Q And what did you do? 6 A I ordered Latin American Spanish, Levels 1, 7 2, and 3, which I received. 8 Q And what was the purchase price? 9 A It was \$139. 10 Q At the time that you placed the order with 11 Bossdisk -- Bossdisk, did you know how much other 12 companies were, charging for the Rosetta Stone software 13 Levels 1, 2, and 3? 14 A Oh, yes. 15 Q And how did you know this? 16 A Well, I -- going into Borders or looking at 17 Amazon.com, I knew the price for the latest version was 18 much higher than what I paid. 19 Q Did the lower price -- purchase price offered 20 through Bossdisk lead you to conclude that the software 21 that was being offered was not genuine Rosetta Stone 22 software?</p>	<p style="text-align: right;">25</p> <p>1 Q Did you provide your credit card information 2 directly to PayPal or did you have an account there 3 already? 4 A I had an account there with PayPal. They 5 have my bank account and my credit card. I used my 6 credit card for this purchase. 7 Q And which credit card? 8 A It's a Citibank MasterCard. 9 Q Okay. Did you receive confirmation from 10 Bossdik -- Bossdisk that your order had been received? 11 A I did. 12 (Exhibit Number 2 was marked.) 13 Q (BY MR. ETTINGER) I want to show you what's 14 been marked as Exhibit 2. Mr. DuBow, these are the e- 15 mails that you provided to me this morning. 16 A Uh-huh. 17 Q I believe some of them had been previously 18 provided. 19 A Okay. 20 Q Counsel has a copy of these, I believe. 21 MR. ETTINGER: Do you need another? 22 MR. STERN: If I can just take a look at</p>

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<p style="text-align: right;">26</p> <p>1 yours quick. If it's this document that's pages -- 2 there's no Bates stamps on this. 3 MR. ETTINGER: That's correct. I just got it 4 this morning. 5 MR. STERN: If it's -- 6 THE DEPONENT: The date stamps on the send -- 7 or the receive up in the top. Original message. 8 MR. STERN: We use the phrase -- it's "Bates 9 stamp." Bates stamp is a term for -- 10 THE DEPONENT: Oh, I'm sorry. I'm sorry. 11 MR. STERN: That's all right. It's a -- it's 12 a legal thing that lawyers do. We number documents to 13 make sure they were produced. 14 THE DEPONENT: I got you. 15 MR. STERN: But, Counsel, on your 16 representation, I'll presume that what you handed me is 17 Exhibit 2 for Steve DuBow's deposition. 18 MR. ETTINGER: Okay. And for the record, 19 it's eight pages front -- there's some photocopy on 20 front and back. 21 Q (BY MR. ETTINGER) Could I get you to look at 22 the very first page of the exhibit, sir.</p>	<p style="text-align: right;">28</p> <p>1 A Yes. This appears to be a receipt for the 2 purchase showing the price that I paid for it. 3 Q Okay. And does this accurately reflect that 4 you paid \$139 for the set? 5 A Yes, uh-huh. 6 Q And that there was free shipping? 7 A Yes. 8 Q And the delivery address, is that your home 9 address? 10 A Is that -- where is that on here? 11 MR. STERN: Right below the middle of the 12 page. 13 Q (BY MR. ETTINGER) There's a delivery address 14 and a billing address that are Long View Drive. 15 A Am I looking at the right one here? 16 Q I'm sorry. Second page of the exhibit. 17 MR. STERN: Below the center of the page. 18 A Below the center of the page. 19 MR. STERN: Page 1 of 2. 20 A I'm sorry, I'm having a problem here. 21 Q (BY MR. ETTINGER) Okay. Let's hand the 22 exhibit back to me and let's make sure that we didn't</p>
<p style="text-align: right;">27</p> <p>1 A Okay. 2 Q And you see there, there is an e-mail from 3 Bossdisk to sfDubow@attglobal.net. 4 A Dot net, yes. 5 Q All right. Is that your e-mail address? 6 A It is. 7 Q And does this document -- did you receive 8 this e-mail from Bossdisk? 9 A Yes. 10 Q Okay. And, sir, what is this e-mail? 11 A It's a confirmation, appears to be, of my 12 purchase. 13 Q And what is the date of your purchase? 14 A I guess it was October 6th. 15 Q And what year? 16 A 2009. 17 Q And could I get you to turn to the second 18 page of the exhibit. 19 A Okay. 20 Q And could you please describe for the court 21 the second e-mail that you received from Bossdisk at 22 3:09 p.m.?</p>	<p style="text-align: right;">29</p> <p>1 mix up pages as we did -- that does happen. 2 A Maybe my glasses, too. 3 Q I think two pages just stuck together. 4 A Oh. Ah, there they go. 5 Q Could you confirm, sir, that the delivery 6 address is your home? 7 A Yes, it is. 8 Q All right. Could I get you, if you would, 9 sir, to turn to the next page. 10 A Okay. 11 Q Could you please tell us what this document 12 reflects. 13 A It appears to be PayPal acknowledging what 14 they paid. 15 Q And did you receive this from PayPal? 16 A Apparently I did, yes. 17 Q Okay. And, sir, do you see that in the 18 subject line -- 19 A Uh-huh. 20 Q -- it says your payment to and then there's 21 some Chinese figures there? 22 A Yes.</p>

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<p style="text-align: right;">30</p> <p>1 Q Do you recall seeing that in October of 2009? 2 A No. Not until this came. 3 MR. STERN: I'm sorry? 4 A Not until I received this. 5 Q (BY MR. ETTINGER) When you say "this," are 6 you referring to the e-mail? 7 A Yes. This acknowledgment from PayPal. 8 Q Okay. So the date that you received the 9 acknowledgment from PayPal was October 6, 2009, 10 correct? 11 A Right. It appears to be with -- almost 12 simultaneously with the order confirmation from 13 Bossdisk. 14 Q Okay. At the time you received this 15 confirmation from PayPal, do you remember seeing the 16 Chinese figures in the subject line? 17 A I don't remember paying attention to it. I 18 certainly do now. 19 Q And if I could get you to turn to the next 20 page, please. 21 A Okay. 22 Q In the next e-mail from Bossdisk, do they</p>	<p style="text-align: right;">32</p> <p>1 the package that you received from Bossdisk? 2 A I did. 3 Q Okay. And do you have that? 4 A I do. 5 Q I'm going to mark this as Exhibit 3, and I'll 6 work with counsel to get whatever photocopies or 7 photographs that he would like. 8 (Exhibit Number 3 was marked.) 9 Q (BY MR. ETTINGER) Could you please describe 10 -- keep that in front of you, sir. 11 A Front of me. 12 Q Could you please describe the contents of 13 that box. 14 A It has a number of CDs, CD-ROMs, a headset 15 for an audio -- for audio CDs, a little instruction 16 manual. 17 Q Okay. Could you please hold it up so the 18 camera could record it. 19 A All right. 20 Q So when you received this package from 21 Bossdisk, did you have any reason to suspect that it 22 was not original Rosetta Stone -- Rosetta Stone</p>
<p style="text-align: right;">31</p> <p>1 provide you a tracking number for your shipment? 2 A Yes. 3 Q All right. And did you actually receive a 4 product from Bossdisk? 5 A I did. 6 Q How long between the time that you placed 7 your order lapsed before you received the product? 8 A I -- I honestly don't remember. I believe 9 it was weeks. 10 Q And where was the product received? 11 A At my home. 12 Q Do you recall the carrier that provided the 13 delivery? 14 A I don't. I'd like to say UPS, but I just 15 don't remember. 16 Q Could you describe the package that you 17 received? 18 A Well, the -- the yellow box, the standard 19 Rosetta Stone software is delivered in, was contained 20 in a cardboard box, which I didn't save unfortunately, 21 and I don't remember the markings on that box. 22 Q Did you bring with you today the contents of</p>	<p style="text-align: right;">33</p> <p>1 software? 2 MR. STERN: Objection, foundation. 3 A Not at all, no. 4 Q (BY MR. ETTINGER) The packaging was 5 consistent with what you had seen on the Internet? 6 A Yes. And it was consistent with what I had 7 seen in the stores. 8 Q On the top part of the box, do you see that 9 it says -- could you read that into the record? What 10 does it say at the very top of the box? 11 A Rosetta Stone with a trademark symbol. 12 Q And the trademark symbol, what is that? And 13 when I say what is -- is it just a -- 14 A It's an R and a circle. 15 Q Okay. And next to it is what? 16 A It looks like the Rosetta Stone. 17 Q Okay. And could you turn it to make sure the 18 camera gets that. All right, sir, could you open the 19 box and just detail the index -- or index the -- the 20 contents for us by holding up each piece in front of 21 the camera -- 22 A Okay.</p>



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<p style="text-align: right;">34</p> <p>1 Q -- and telling us what it purports to be. 2 A This is supposed to be the audio disks, 3 which I did not use, for the Spanish Levels 1, 2, 3. 4 Q All right. And could you take one of the 5 disks out of the audio companion and just hold that up 6 for the camera. And if you could, sir, if you could 7 read into the record what it says on the top of it. 8 A It says, "Rosetta Stone Audio Companion 9 Spanish Level 1." 10 Q All right. And what else is in that box? 11 A This is Rosetta Stone audio component Level 12 1 -- also Level 1. That's confusing. 13 Q All right. Could you hold that up for the -- 14 the camera, please. The next disk? 15 A The next disk is Spanish Level 2. 16 Q Okay. 17 A May I interject something here? 18 Q Go ahead. 19 A This -- the second disk may have come from 20 the copy that I bought at Borders after this whole 21 episode and I happened to put it in this box. I don't 22 -- I don't remember.</p>	<p style="text-align: right;">36</p> <p>1 Q Okay. And how many disks were in that box? 2 A There were three -- there appear to be three 3 disks. 4 Q Okay. Could you just hold one of those up 5 for the camera. 6 A Sure. 7 MR. STERN: Could I just ask the witness to - 8 - make sure not to confuse the disks with the boxes. 9 A I'll put these back. 10 MR. ETTINGER: Thank you. 11 A Yeah. I'll put these back. 12 Q (BY MR. ETTINGER) Why don't you take that 13 one out of its container and just hold it up. 14 A Okay. 15 Q And this is one of the disks that you 16 attempted to install on your computer, sir, is that 17 correct? 18 A Yes. 19 Q Okay. Just point to the camera. All right. 20 So if you would just take a moment and do a little 21 housekeeping -- 22 A Okay.</p>
<p style="text-align: right;">35</p> <p>1 Q Okay. Could you tell from looking at it 2 whether the disk that's in your hand originated with 3 Bossdisk or the -- the product you bought through 4 Borders? 5 A I can't tell a difference at all. They look 6 identical. 7 Q All right. Could you go to the next disk, 8 please. 9 A I did the Level 2. Oh, this is Level 2 as 10 well, so I'm not sure why they're duplicated. 11 Q Okay. And then the last disk? 12 A And the last disk is Level 3, and there just 13 appears to be one of these packages. 14 Q All right. What else was in the box that you 15 received from Bossdisk? 16 A This is the -- I believe the software that I 17 installed on my computer. 18 Q And what is the name of the software that's 19 on the outside of the package? 20 A Rosetta Stone. I don't see a -- a 21 registered trademark on here, though. Learning 22 software CD-ROM.</p>	<p style="text-align: right;">37</p> <p>1 Q -- to put those back in to comply with Mr. 2 Stern's request. Were there any other computer disks 3 in the box you received? 4 A Well, there appear to be. 5 Q Okay. 6 A This probably is a tutorial, which I did not 7 use. 8 Q And the name of that tutorial is? 9 A "Rosetta Stone Language Learning Success 10 Applicable Disk." 11 Q Okay. 12 A Let me back up for one second. This may be, 13 if I remember correctly, the specific language that I 14 had chosen. The other disks that I installed were the 15 actual software that uses this disk. 16 Q Okay. And when you say the specific language 17 you chose, which language did you choose? 18 A I chose Latin American Spanish. 19 Q Okay. 20 A This is Ros- -- Rosetta Stone user's guide. 21 If I remember correctly, it's a PDF file. 22 Q Did you try to load that onto your computer?</p>

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<p style="text-align: right;">38</p> <p>1 A I don't remember if I did. 2 Q Anything else? 3 A And finally there's a headphone for the 4 audio -- for the audio disks. 5 Q Okay. And that came in the original package 6 from Bossdisk? 7 A Yes. Yes. 8 Q Sir, did you receive any instruction manual 9 or user manual from Bossdisk? 10 A It -- the only -- I don't remember. It's 11 not in here, so it may have been on this disk, the -- 12 the user guide. I -- I don't remember. 13 Q So you don't recall whether there were any 14 written materials in the package you received, correct? 15 A I'm almost certain there was not. And 16 certainly there was not a welcome package that I got in 17 the Borders version of this. 18 Q Now, what happened when you attempted to load 19 the disks onto your computer? 20 A They loaded successfully. And it recognized 21 the fact that the software -- there were updates 22 available on the Rosetta Stone Website. It</p>	<p style="text-align: right;">40</p> <p>1 provided. 2 Q So without the keys, was the software 3 functional? 4 A It was somewhat functional. It's very basic 5 function, as far as I could tell. But in order to 6 enjoy the complete complement of that product, you need 7 the key. 8 Q And what -- what did you do to determine how 9 to get the key? 10 A Well, the first thing I did is call Rosetta 11 Stone. 12 Q Why did you call Rosetta Stone? 13 A Because I thought that since this company 14 was a representative perhaps they just forgot to put 15 the welcome kit in this package and that they would 16 have a key. 17 Q And who did you contact at Rosetta Stone? 18 A I called their customer service. 19 Q How did you get their number? 20 A From their Website. 21 Q What did you ask of Rosetta Stone? 22 A I explained that I bought this from what I</p>
<p style="text-align: right;">39</p> <p>1 automatically went to that Website, downloaded those 2 updates and then asked me for a key to activate the 3 software. 4 Q So make sure I understand. When you load the 5 disks from Bossdisk -- 6 A Uh-huh. 7 Q -- they took you to the Rosettastone.com 8 Website? 9 A Yes. 10 Q And that is where your computer automatically 11 downloaded the most recent versions? 12 A Yes. 13 Q And were you able to access those versions? 14 A Yes. 15 Q Okay. When you say it requested an 16 authorization code, what is it that you were asked to 17 put into the computer? 18 A There's a key provided to allow you to use 19 the entire functionality of each level of the software, 20 Level 1, Level 2, et cetera. And each level requires a 21 separate key. There were no keys in here. I didn't 22 realize when this I bought it, but there were no keys</p>	<p style="text-align: right;">41</p> <p>1 thought was one of their resellers and that they forgot 2 to provide a key and could Rosetta Stone give me that 3 key. 4 Q And what did Rosetta Stone respond to you? 5 A They said no, I would have to go back to the 6 reseller and get the key from him. 7 Q Did you attempt to do that? 8 A I did. 9 Q Were you successful? 10 A No. 11 Q What happened when you tried to contact the - 12 - the company that sold you the software? 13 MR. STERN: Objection, foundation. 14 Q (BY MR. ETTINGER) You may answer. 15 A I sent an e-mail off to them, which was 16 never responded to. 17 Q Do you recall when you sent that e-mail? 18 A I'd have to look. 19 Q Why don't you look at Exhibit Number -- is it 20 Number 2 and see if you can find the e-mail that you're 21 referring to. 22 A Yes. It was sent on November 15th of</p>

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<p style="text-align: right;">42</p> <p>1 2009. 2 MR. STERN: Can -- can you identify the page 3 you're looking at? 4 A It's this one here. You can see it with my 5 scribbling on it. It's -- 6 MR. STERN: Yes. This is the e-mail of 7 February 17, 2010, at 2:38 p.m. 8 A These are just copies of what I received 9 that I sent to Mr. Ettinger. 10 MR. STERN: I'm sorry, so this is the e-mail 11 of November 7 -- November 15 -- 12 A Right. 13 MR. STERN: -- 2009, at 2:27. 14 A Yes. 15 MR. STERN: Thank you. 16 Q (BY MR. ETTINGER) And what did you ask of 17 Bossdisk? 18 A I asked them to -- they obviously forgot to 19 give the key so I need the key to use their software. 20 Q And is this the e-mail that you never 21 received a response to? 22 A That's correct.</p>	<p style="text-align: right;">44</p> <p>1 together now? 2 MR. STERN: Yeah. 3 Q (BY MR. ETTINGER) Okay. Is this the e-mail 4 you received from Rosetta Stone? 5 A Yes, it is. 6 Q In which they advised you that Bossdisk was 7 not an authorized reseller? 8 A Yes. 9 Q All right. And is this -- this e-mail what 10 prompted you to call your credit card company? 11 A Yes. 12 Q All right. And what happened when you called 13 your credit card company? 14 A I initiated a dispute over this charge. So 15 they -- they removed the charge from the credit card 16 and tried to contact the -- this Bossdisk company. 17 Q And so you -- you were made whole on the 18 purchase? 19 A I was. 20 Q Had you ever before purchased software on the 21 Internet that turned out to be counterfeit or pirated? 22 A No.</p>
<p style="text-align: right;">43</p> <p>1 Q When you didn't receive a response from 2 Bossdisk, what did you do? 3 A Well, actually I had already talked to 4 Rosetta Stone at that point. When I didn't receive the 5 response from -- from Bossdisk, I -- I guess I -- if I 6 remember correctly, I sent off an e-mail to Rosetta 7 Stone with a copy of the bill of sale or the receipt 8 and then finally got a response from them indicating 9 that these people were not a legitimate reseller. And 10 subsequently I contacted my credit card company. 11 Q Okay. Could I get you to turn to the e-mail 12 November 15, 2009, at 3:38 p.m. -- 13 A Yes. 14 Q -- from support at Rosetta Stone to you. 15 A Right. 16 Q Okay. And is this he the e-mail -- 17 MR. STERN: Wait, wait. Where are you? 18 MR. ETTINGER: If you flip -- I'm sorry. 19 A This is the last page actually. 20 MR. STERN: Okay. I'm sorry. 21 MR. ETTINGER: This makes it hard without 22 Bates numbers, and I apologize for that. Are we all</p>	<p style="text-align: right;">45</p> <p>1 Q Did the experience with Bossdisk cool your 2 desire to learn a foreign language? 3 A Oh, no. 4 Q Did you ultimately purchase Rosetta Stone 5 software from another source? 6 A I did. 7 Q What source? 8 A It was Borders, I believe. 9 Q Did you use the Internet to buy the software 10 or did you go down and buy it in person? 11 A Well, they were just not too far away, so I 12 just went down and bought it. 13 Q And how much did you pay for the Rosetta 14 Stone software? 15 A For Level -- I -- when I bought the one from 16 Borders, I believe I bought just Level 1, and I 17 honestly don't remember what I paid, but it was sig- -- 18 significantly more than Bossdisk. 19 Q Have you tried the software? 20 A Yes, but not a lot, but I plan on it. 21 Q All right. Well, my client would be unhappy 22 if I didn't ask this question, so I'm going to ask it:</p>

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<p style="text-align: right;">46</p> <p>1 Are you satisfied with it the product? 2 A I love it. 3 MR. ETTINGER: I have no further questions. 4 MR. STERN: Mr. DuBow, how are you doing? 5 You've -- it's only been about half an hour now. 6 THE DEPONENT: I'm doing good. 7 MR. STERN: Doing good? 8 THE DEPONENT: Yeah. 9 THE REPORTER: I might have trouble hearing 10 you from back there. 11 MR. STERN: Can we go off the record? 12 THE VIDEOGRAPHER: We're going off the 13 record 14 at 11:30. 15 (Recess from 11:30 to 11:42 a.m.) 16 THE VIDEOGRAPHER: We're going back on the 17 record at 11:42. 18 EXAMINATION 19 BY MR. STERN: 20 Q Mr. DuBow, I'm sorry for the -- the technical 21 difficulties -- 22 A Oh, no problem. 23 Q -- we had during the break. My name is</p>	<p style="text-align: right;">48</p> <p>1 done consulting in the past for companies like IBM. 2 We've actually written software for them, sold them 3 software, companies like Timeshare in Cupertino, HSBC 4 in Hong Kong, they're customers and clients. 5 Q Okay. When you deliver your product, do you 6 deliver it in the form of a CD-ROM or a DVD, or is it a 7 download? 8 A It's a download. 9 Q And with respect to the clients that obtain 10 this download from Comm-Pro, is this done through a 11 license? 12 A Yes. 13 Q Okay. You understand that -- then that what 14 you're doing is you're giving permission for your 15 customers or clients to be able to use the software 16 based on the conditions and terms of the license that 17 you have with them, right? 18 A Absolutely. 19 Q Do you know if under the terms of your 20 license with your customers your customers are 21 authorized to resell the software they get from you to 22 third parties?</p>
<p style="text-align: right;">47</p> <p>1 Claude Stern again. I represent Google. 2 A Mr. Stern. 3 Q And I really appreciate your coming here this 4 morning. I know these sorts of depositions can be 5 intrusive, and I just appreciate you coming here. I'm 6 going to have some follow-up questions. I hope you 7 don't mind. 8 A Not at all. 9 Q First of all, by way of background, you -- I 10 think you mentioned in 1973 you started a company that 11 was called Comm-Pro; is that right? 12 A That's correct. 13 Q And Comm-Pro, if I understand, you offer some 14 sort of communication bridge between IBM mainframes 15 and 16 people who are working on a network? 17 A Yes. Specifically, it's an X-25 network, 18 which is primarily used in Europe and Asia, not so much 19 here in the United States anymore. 20 Q Okay. And in your business, do you -- would 21 you -- do you characterize yourself as having clients 22 or customers? 23 A Well, we -- both actually. Clients. We've</p>	<p style="text-align: right;">49</p> <p>1 A No, they're not. 2 Q Okay. So you understand that sometimes 3 companies create conditions under which -- 4 MR. STERN: I'm sorry I'm -- we're getting 5 feedback. Do you hear an echo or is that just me? 6 Sorry. I apologize. 7 Q (BY MR. STERN) Sometimes companies restrict 8 the ability of people who license software to re- 9 license it down the chain, correct? 10 A Yes. 11 Q And that's particularly true in the business 12 community; is that right? 13 A I would -- I would think so, yes. 14 Q Were you aware of the fact that Rosetta Stone 15 has a policy that prohibits customers that acquire 16 versions of its language learning software from 17 reselling or re-licensing that software after they've 18 acquired it? 19 MR. ETTINGER: Objection. 20 Q (BY MR. STERN) You can answer. 21 A I would assume so. I don't know for a fact, 22 but, yes, I would assume so.</p>

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<p style="text-align: right;">50</p> <p>1 Q Okay. So you -- you understand that there's 2 some companies that, for example -- do you play video 3 games, by any chance? 4 A No. I'm not a big video game. 5 Q Okay. There's some software companies, 6 whether they're games, there's other software 7 applications where you can buy a program from a 8 company 9 and after you use it, you can sell the program on the 10 open market and someone can buy it from you. You 11 understand that? 12 A Uh-huh. Open source? 13 Q Open source is an example, but even -- even 14 proprietary programs. You've heard of companies that 15 allow you to resell games, for example, correct? 16 A I wasn't aware of that, but okay. 17 Q Okay. I mean, for example, you're aware of 18 other copyrighted products like, for example, records 19 that you could buy and then decide to sell to somebody 20 else, right? 21 A You mean physical media? 22 Q Physical media, exactly. 23 A Yeah, sure.</p>	<p style="text-align: right;">52</p> <p>1 they have no right to be able to license it? 2 A No, they have no right. 3 Q All right. And you understand that if they 4 try to license that software, that software wouldn't 5 probably be characterized as bootleg or counterfeit, 6 correct? 7 MR. ETTINGER: Objection. 8 A No. Technically it wouldn't. It would just 9 be stolen software. 10 Q (BY MR. STERN) Or put another way, would you 11 agree with me that that would be software which might 12 be genuine, but it's not authorized for resale? 13 A Yes. 14 Q Okay. Now, when you went onto this Website - 15 - first of all, let me just see if I can lay some 16 foundation for this. Did anybody from -- let's lay 17 some -- lay some foundation for this. When you 18 communicated with Rosetta Stone, did you ever actually 19 talk with somebody on the phone, or was it all by e- 20 mail? 21 A No. That was the thirist thing I did was 22 called them.</p>
<p style="text-align: right;">51</p> <p>1 Q Okay. I want to make sure that we're talking 2 the same language. You used the definition before, 3 which I agreed with, which is you understand that 4 counterfeit software is software that is manufactured 5 by someone other than the original titleholder or 6 trademark holder, right? 7 A Correct. 8 Q You understand, though, that, for example, 9 for the -- for the Comm-Pro software that you licensed 10 to your customers, you're the trademark holder and the 11 titleholder, right? 12 A That's true. 13 Q And when you license it to a customer, you 14 prohibit that customer from re-licensing it to anybody 15 else, right? 16 A With a caveat. We have business partners in 17 France, in Germany who essentially are our first level 18 of support there. They have their own license with 19 their customers. So we're like -- we're one step back 20 from them. We supply the software and the support, and 21 then they have a separate license with their customers. 22 Q That's fine. But those end users customers,</p>	<p style="text-align: right;">53</p> <p>1 Q And do you remember the name of the person 2 who you spoke with? 3 A It was a lady by the name of Jennifer. 4 Q Okay. And do you know how long the 5 conversation was? 6 A 10, 15, minutes. I don't remember. It was 7 quite a while ago. 8 Q I take it because this was the first 9 communication she had with you, she was not in a 10 position to tell you what you had purchased. She 11 couldn't characterize it one way or another? 12 A That's correct. 13 Q She couldn't tell you whether it was 14 counterfeit or unauthorized software or anything, 15 right? 16 A She didn't know at that time. 17 Q Basically she told you that, if I understand 18 your testimony correctly, look, if you didn't buy it 19 from us directly and you bought it from some reseller, 20 you've got to go back from the reseller to try to get 21 the authentication number? 22 A That's correct.</p>

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<p style="text-align: right;">54</p> <p>1 Q All right. And you tried to do that 2 afterwards? 3 A I did. 4 Q Okay. And that was the only telephonic 5 communication you ever had with anybody at Rosetta 6 Stone, right? 7 A That's true. 8 Q Okay. And after that, the only other 9 communications you had with the folks at Rosetta Stone 10 are the -- are the e-mails that you have produced in 11 this case, right? 12 A That is true. 13 Q And -- and is it accurate, Mr. DuBow, that 14 you have produced all the documents that you have that 15 relate to your acquisition or searching or anything 16 else related to the software that was obtained from 17 this company called Bossdisk? 18 A I save virtually all the e-mails that I've 19 ever sent. I'm a -- I'm a packrat, and I think this is 20 just about everything I've got. 21 Q You know, I'm a packrat too, and it really 22 bothers my IT department because I think they have a</p>	<p style="text-align: right;">56</p> <p>1 correct? 2 A Right. 3 Q And then it downloaded some sort of upgrades 4 or updates; is that correct? 5 A That's correct. 6 Q And then based on that, you obtained some 7 sort of functionality of the product, correct? 8 A Very limited in its function. 9 Q Can you describe what the functionality was? 10 A I think they even tell you that this will 11 not have full functionality unless you supply a key. 12 That's my remembrance. 13 Q Okay. But can you -- what -- what was the 14 functionality? Did it -- did it, for example, tell 15 you, you know, basic Level 1 Spanish language? 16 A Very basic. Very basic stuff. Not -- not 17 the full complement you'd expect with their software. 18 Q And can you be any more granular about 19 exactly what sort of functionality was provided, what 20 learn -- what language learning features you got to see 21 even with this limited function? 22 A I -- to be honest with you, once I had this</p>
<p style="text-align: right;">55</p> <p>1 special server just for me. 2 A Too much information, huh? 3 Q Too much information. All right. So if I'm 4 correct and this is the -- the totality of the 5 documentation that you produced, which is Exhibit 2, at 6 no time did anybody at Rosetta Stone tell you what you 7 purchased was -- and I'm using this word carefully -- 8 counterfeit software; is that right? 9 A They didn't specifically say counterfeit. 10 Q Okay. Now, you mentioned that when you got 11 the software you loaded it onto a computer; is that 12 right? 13 A Uh-huh. My laptop. 14 Q Was -- was it a PC or a Mac? 15 A It's a Dell PC. 16 Q I have a Dell PC in front of me. And from 17 what I understand, the software, in fact, did load, 18 correct? 19 A It did. 20 Q And it took you to a Website, correct? 21 A It took me to Rosetta Stone. 22 Q It took you to the Rosetta Stone Website,</p>	<p style="text-align: right;">57</p> <p>1 problem with the key, I wasn't really interested in 2 fooling with the basic functionality. I started 3 contacting Rosetta Stone at that point. I decided that 4 if -- you know, if I -- if I -- if I couldn't have the 5 full functionality that I really did not want this 6 product. So I -- I mean, that's what I thought I was 7 buying. 8 Q Okay. And as you sit here right now today, 9 you're not in a position to say whether the product was 10 either what you've described as counterfeit or 11 unauthorized software, namely original genuine software 12 that was resold? 13 A I -- to be honest with you, I -- I can't 14 tell the difference. I don't know. 15 Q Okay. I have a question about the Comm-Pro 16 software that you sell. 17 A Okay. 18 Q And I'm not trying to delve into trade 19 secrets or anything, so if I step too far, please let 20 me know. 21 A All right. 22 Q When you license your end user or you license</p>

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<p style="text-align: right;">58</p> <p>1 your contractors for further contact with your 2 customers with your software -- 3 A Uh-huh. 4 Q -- do you require an authentication key or an 5 activation key? 6 A We -- we have two versions of the software. 7 We have a trial version that we provide with a -- it's 8 essentially a date stamp, and it will stop functioning 9 after a certain date unless you order a permanent 10 version. And then with the permanent version, we have 11 a key that says essentially how long this software can 12 be used before you have to renew the key. 13 Q And if the person fails to renew the key in 14 time the key expires? 15 A The key will expire. 16 Q And then they have to come back to you for a 17 new key and to re-up the contract, right? 18 A Correct. 19 Q Okay. So the question is: This concept -- 20 just so we're clear, this concept of a company 21 requiring an activation key to be able to start 22 software again, that's not something that was unique</p>	<p style="text-align: right;">60</p> <p>1 which is the last e-mail I received -- saying that 2 these people were not authorized resellers. 3 Q Okay. I take it at no time during that 4 process -- I'm sorry. I misspoke. You also at some 5 point contacted, I think -- correct me if I'm wrong -- 6 you contacted your credit card company to try to get a 7 refund; is that right? 8 A Oh, yes. Once -- once I determined that 9 this was not a real legitimate Rosetta Stone and I 10 wasn't going to get a key, then I contacted my credit 11 card company. 12 Q Okay. But that was after Jennifer had told 13 you though the last e-mail, sorry, we can't help you? 14 A I'm almost certain it was after, yes, yeah. 15 Q And your credit card company reimbursed you, 16 right? 17 A Yes, uh-huh. 18 Q Okay. At any time during this time or 19 thereafter did you contact the Better Business Bureau? 20 A No, I didn't at that point. 21 Q Did you -- at any point did you contact the 22 Federal Trade Commission?</p>
<p style="text-align: right;">59</p> <p>1 and learned by you for the first time with Rosetta 2 Stone? 3 A No. It's been going on for a long time. 4 Q Okay. Okay. All right. Let's talk about 5 the -- the actual software itself. If I understand 6 correctly, you obtained the software from Bossdisk? 7 A Uh-huh. 8 Q And then after you determined that you 9 couldn't get full functionality, you first communicated 10 or tried to communicate with Rosetta Stone? 11 A That's true. 12 Q They told you to contact the reseller? 13 A Right. 14 Q You then contacted the reseller and got no 15 response? 16 A True. 17 Q And then you went back to Rosetta Stone and 18 that was the final connection where they told you they 19 couldn't help you? 20 A Well, I sent them -- I sent them the -- the 21 receipt for the product. And then Jennifer, this gal 22 that I talked to, sent me an e-mail back saying --</p>	<p style="text-align: right;">61</p> <p>1 A Not for this particular case, no. 2 Q Okay. At any point did you contact Google? 3 A I did not contact Google. 4 Q Okay. 5 A May I interject one thing here? 6 Q Oh, please. 7 A Considering that I had already talked to 8 Rosetta Stone, my feeling was that they determined that 9 this is a -- not a true reseller, my assumption was 10 that they would look into this. Also, I thought the 11 credit card company would. 12 Q Which stands -- I mean, your -- your thinking 13 was I've reported this to certain people -- 14 A Right. 15 Q -- let them find out what went wrong? 16 A That's what they do. 17 Q Let me ask you: Was this the first time you 18 had ever acquired -- I'll withdraw that. Technically 19 was the credit card your wife's credit card or your 20 credit card? 21 A It's -- it's a joint credit card. 22 Q I was going to use the phrase "your," and I</p>

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<p style="text-align: right;">62</p> <p>1 wanted to make sure I was being completely accurate, so 2 that's -- 3 A Okay. 4 Q Was this the first time that you had been 5 involved in acquiring something over the Internet? 6 A Oh, no. I use the Internet all the time. 7 Q Okay. And is it accurate that your -- the 8 primary search tool that you use for the Internet is 9 Google? 10 A It is. 11 Q Okay. I mean, would you agree with me that 12 Google is your primary search tool both for personal 13 and for professional reasons? 14 A It is. 15 Q And you may occasionally use other search 16 tools like Yahoo! or Ask.com or maybe even Bing -- I 17 don't know if you do -- but the -- the primary search 18 tool you use is Google, right? 19 A It is. 20 Q And when you say primary, what percentage of 21 the time would you say it is? 22 A Oh, I'd say 80 to 90 percent.</p>	<p style="text-align: right;">64</p> <p>1 generally just toss those, because I -- I believe that 2 they're pretty much all bogus anyway. 3 When I go to Google, I have a certain 4 expectation that when -- that these -- and honestly 5 this is the truth. I was under the impression that 6 many of these sites were vetted and that they -- that I 7 could trust them. I did -- unlike these junk e-mails 8 that I get, when I go to Google, I'm expecting somebody 9 has done some homework on these sites and they're -- 10 they're going to be legitimate sites. I hadn't -- 11 Q Did -- did anybody at Google ever tell you 12 that they did that? 13 A I didn't see any fine print. Buyer beware, 14 I understand that now, but -- 15 Q But actually -- and I really just meant to 16 ask, is this sort of an assumption that you use? 17 A It was an assumption. I thought that -- I 18 thought that I could trust Google, buying things 19 through Google, more than I could receiving an -- an 20 unsolicited advertisement. 21 Q Let's talk about newspapers, if we can, for a 22 second.</p>
<p style="text-align: right;">63</p> <p>1 Q Okay. And just so -- you understand that the 2 way that the search engine works is that you type in a 3 particular query -- 4 A Uh-huh. 5 Q -- and then as a result of that, you get 6 certain search results, right? 7 A True. 8 Q Okay. Now, in the past when you've acquired 9 product over the Internet, have you acquired it through 10 the same type of search that you conducted for Rosetta 11 Stone; namely you first look for general category of 12 product, in this case, it was language learning 13 software, and then after you found out what you thought 14 was the best product that you wanted to buy, you then 15 focused in on that product and then conducted searches 16 for that particular product name? 17 A That's -- that is a case. May I -- may I 18 just say one thing? 19 Q Please. 20 A Okay. When I -- I get a lot of junk e- 21 mails, and I'm sure you do too. Some selling their 22 wares, some I recognize, some I -- I don't. I</p>	<p style="text-align: right;">65</p> <p>1 A Sure. 2 Q You're -- you're aware of the fact that in 3 newspapers that are advertisements, right? 4 A Uh-huh. 5 Q I'm sorry, one just important thing is 6 because the court reporter is using a device that 7 records phonetically, if you could just say yes instead 8 of uh-huh. 9 A I'm sorry. 10 Q It's all right. You're fine. You and I 11 understand it. I just need the record -- 12 A I understand. 13 Q So you understand that newspapers have 14 advertisements, right? 15 A Of course, yes. 16 Q And those advertisements are paid 17 advertisements by advertisers, right? 18 A Correct, yes. 19 Q And the advertisers -- I mean, there's all 20 sorts of the advertisements in the newspaper, 21 everything from jewelry to plumbing to God knows what, 22 right?</p>

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<p style="text-align: right;">66</p> <p>1 A Right. 2 THE REPORTER: Plumbing to what? 3 MR. STERN: To God knows what. 4 MR. ETTINGER: That's a legal term. 5 MR. STERN: That's a legal term. It's a type 6 of product. 7 Q (BY MR. STERN) You understand that the 8 newspaper, by allowing people to advertise, doesn't 9 necessarily endorse or sponsor or be affiliated with 10 whatever the advertisement is, correct? 11 MR. ETTINGER: Objection. 12 Q (BY MR. STERN) You can answer. 13 A Yeah. I see where you're going with this. I 14 understand, yes. 15 Q And you also understand that the -- that the 16 newspaper makes money from advertisements, right? 17 A Right. 18 Q Also, on -- have you ever either used 19 personally or placed a classified ad? 20 A Oh, of course, yes. 21 Q Which one, have you placed or just used? 22 A I have placed.</p>	<p style="text-align: right;">68</p> <p>1 A Yeah. 2 Q But, in fact, you know, we all -- if you go 3 on to -- if you go on to the classified ads and someone 4 says they're advertising a Yamaha motorcycle for -- 5 A I had one of those. 6 Q -- for \$500 -- say what? 7 A I had one of those. 8 Q I had one once when I was in college. But a 9 Yamaha motorcycle for \$500 and it's a 350 CC, you might 10 -- you don't know by looking at that classified ad 11 whether or not it's a genuine Yamaha motorcycle or 12 whether it's a knockoff, right? 13 A True. 14 Q Okay. And if I asked you the same sort of 15 questions about television -- let's -- when you watch a 16 television set -- do you watch television? 17 A I watch the news. 18 Q The news. Right. Do you know -- even on the 19 news when you watch television, you see advertisements, 20 right? 21 A Of course. 22 Q And you understand that -- I'll pick an</p>
<p style="text-align: right;">67</p> <p>1 Q Okay. You understand that when you place a 2 classified ad, the newspaper when they acquire your 3 classified ad, they know very little about you in that 4 you're restricted to the number of words and what 5 information you can put in the ad, correct? 6 A Right. 7 Q And that people who look at that classified 8 ad then have to do their own diligence to figure out 9 whether or not you are a respectable, reputable, honest 10 person from whom they can obtain whatever it is that is 11 in the classified ad, right? 12 A Okay. Yes. 13 Q Okay. And you've also seen -- so it's fair 14 to say that the idea, at least for you, of a newspaper 15 having advertisements that are paid for by advertisers, 16 for which the newspaper makes money, is not something 17 that you find socially abhorrent? 18 A No, of course not -- 19 Q Okay. 20 A -- unless the -- unless the advertisement 21 was blatantly racist or -- 22 Q Fallacious?</p>	<p style="text-align: right;">69</p> <p>1 example. If NBC as a television broadcaster allows 2 people to -- well, let me ask the question. You 3 understand that broadcasters, stations sell advertising 4 space to advertisers, right? 5 A Yes. 6 Q And you understand that just because NBC, for 7 example, has certain advertisements being publicized on 8 the -- on the network doesn't mean that that NBC is 9 sponsoring, being affiliated with, or endorsing 10 whatever the product is, right? 11 A Right. 12 Q And you understand that NBC makes money from 13 this form of advertising, right? 14 A Of course. 15 Q Okay. If I understood your testimony before, 16 I think you said -- and please correct me if I'm wrong 17 -- that the first time that you heard about sponsored 18 links was this morning; is that -- is that correct? 19 A I didn't realize what sponsored links were 20 until Mr. Ettinger explained it to me. 21 Q And Mr. Ettinger explained it to you this 22 morning?</p>

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<p style="text-align: right;">70</p> <p>1 A Yes.</p> <p>2 Q Would you -- what did he tell you?</p> <p>3 A If I remember correctly, these are links</p> <p>4 that -- that -- that Google gets money for every time</p> <p>5 the link is accessed.</p> <p>6 Q Okay. But in your view, if I understand you</p> <p>7 correctly, when you went onto the Website -- when you</p> <p>8 went onto the Website that you ultimately went on to --</p> <p>9 A Uh-huh.</p> <p>10 Q -- and picked or clicked on the Bossdisk link</p> <p>11 --</p> <p>12 A Right.</p> <p>13 Q -- is it accurate that, in your view, they</p> <p>14 were all simply a collection of search results and you</p> <p>15 didn't distinguish one from the other?</p> <p>16 A They -- they -- if I remember correctly, the</p> <p>17 Bossdisk Website came up on the very first page, and as</p> <p>18 you know, you've got multiple pages on -- when you get</p> <p>19 a hit. They were on the first page, and basically we</p> <p>20 scrolled down and were looking for what -- you know,</p> <p>21 the best price for -- and for a Rosetta Stone reseller.</p> <p>22 Q Okay. I'm -- unfortunately something just --</p>	<p style="text-align: right;">72</p> <p>1 you'll see a line that says results 1 through 10 of</p> <p>2 about 68,500 for, quote, Comm-Pro, close quote. Do you</p> <p>3 see that?</p> <p>4 A It's hard to read, but I -- I see it. It's -</p> <p>5 - it's rather -- it's right here. I see it, yeah.</p> <p>6 Q Right. Oh, it is -- it is hard to read.</p> <p>7 A It's right there. Yeah.</p> <p>8 Q If you want to see my screen, I'm happy to</p> <p>9 show you my screen.</p> <p>10 A No. I -- I -- I can understand it.</p> <p>11 Q And you understand that that means that --</p> <p>12 you understand that for -- that's me. You understand</p> <p>13 that for that search that means that essentially that</p> <p>14 search query produced some 68,500 impressions --</p> <p>15 A Uh-huh.</p> <p>16 Q -- or images that can be viewed that would</p> <p>17 have the actual language Comm-Pro, not Pro Comm or</p> <p>18 just</p> <p>19 Comm or Pro, but actually Comm-Pro. Do you see that?</p> <p>20 A Right.</p> <p>21 Q Do you see that? Am I right?</p> <p>22 A Correct, yes.</p> <p>23 Q And yours happens to be at the very top,</p>
<p style="text-align: right;">71</p> <p>1 is it up?</p> <p>2 A It's up, yeah.</p> <p>3 Q Do you see it? I'm showing you -- I typed in</p> <p>4 just so that you could see -- and the record should</p> <p>5 reflect I've typed in the following. And I'm -- this</p> <p>6 is a hunch. This may not be the right name of your</p> <p>7 company, but I typed in Comm-Pro. Do you see that?</p> <p>8 A Uh-huh.</p> <p>9 Q And you see you'll see it says, "Comm,</p> <p>10 hyphen, Pro." Do you see that?</p> <p>11 A Uh-huh.</p> <p>12 Q Is that how you spell your --</p> <p>13 A It is, yes.</p> <p>14 Q Okay. And the very first link is a company</p> <p>15 called Comm-Pro Associates, Inc. Do you see that?</p> <p>16 A That's true.</p> <p>17 Q Is that you?</p> <p>18 A Yes, it is.</p> <p>19 Q All right. There are other companies that</p> <p>20 are identified below here, and you'll see on the -- on</p> <p>21 the page that we're looking at -- tell me if we're</p> <p>22 looking at the same page. On the very top right side,</p>	<p style="text-align: right;">73</p> <p>1 right?</p> <p>2 A Right.</p> <p>3 Q You are not -- let me see if one thing is</p> <p>4 clear. Are you a Google advertiser?</p> <p>5 A No.</p> <p>6 Q That is to say what this did is this may have</p> <p>7 called up a Website or other information that you</p> <p>8 posted on the Internet but isn't the subject something</p> <p>9 that you necessarily identified as advertising, right?</p> <p>10 A That's true.</p> <p>11 Q Okay. Now, on the right side you'll see</p> <p>12 there are two hyperlinked phrases. One says, "Hire</p> <p>13 student painters," and the other one says, "Replace</p> <p>14 Procomm Plus." Do you see that?</p> <p>15 A Yes.</p> <p>16 Q And have you -- do you recognize either of</p> <p>17 those?</p> <p>18 A Procomm Plus is a communication software</p> <p>19 product. I don't know that they're still in business.</p> <p>20 Apparently they are.</p> <p>21 Q Okay. And the -- am I correct that the fact</p> <p>22 that these are on the right side, has that ever meant</p>

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<p style="text-align: right;">74</p> <p>1 something to you when you've -- 2 A Well -- well, the -- 3 Q -- looked at them? 4 THE REPORTER: Has that ever meant something 5 to you? 6 MR. STERN: Let me repeat the question. 7 Q (BY MR. STERN) When you've done Google 8 searches, I want to make -- I don't want -- there's no 9 trickery here. I just want to make sure -- let me 10 start over. Have you ever done the specific Google 11 search that I've just done? 12 A I'd go directly to our Website, so I 13 wouldn't do it, but I can put my name in there and 14 you'll get a few hits there, too. 15 Q Exactly. So the question is you've seen 16 search results where on the right side there was some 17 sort of listing, correct? 18 A Yes. 19 Q Okay. And have you understood what those 20 were? 21 A It says sponsored link. I was assuming that 22 those are advertisers on Google, but I don't -- you</p>	<p style="text-align: right;">76</p> <p>1 there is something that says, "Sponsored link"? 2 A I probably have and just not paid much 3 attention to it -- 4 Q Okay. 5 A -- to be honest with you. 6 Q Okay. And I take it you -- you haven't done 7 any research to find out what sponsored link meant? 8 A No. 9 Q Okay. And have you -- have you ever done 10 that same search -- withdraw that. Have you ever done 11 similar searches on other search engines and seen that 12 other search engines use other phrases like sponsored 13 link? 14 A I -- I probably have seen it and just don't 15 remember what they were, yeah. 16 Q Okay. 17 A I generally -- not to interrupt. When -- 18 when I do the search, I am generally looking at a 19 collection and not focusing on just sponsored links. 20 Q Okay. Let me see if I can do one more here. 21 There we go. So I've just done one called The Gap. Do 22 you see that?</p>
<p style="text-align: right;">75</p> <p>1 know, I don't know more than that. 2 Q Okay. And let's -- let me -- let me put in 3 another phrase. I'm just going to -- I'm going to put 4 in the phrase -- this -- let's put in Borders Books. 5 You mentioned them this morning. 6 A Right. 7 Q So I'll click on that. And you'll see -- do 8 you see that particular search result? 9 A Yes. 10 Q Okay. And that search result, you'll see at 11 the very top there is a hyperlink that says, "Books at 12 Borders." Do you see that? 13 A Yes, I do. 14 Q And it's against a pinkish, tannish -- 15 A Yes. 16 Q -- background. 17 A Uh-huh. 18 Q Do you see that? And on the far right side, 19 it says, "Sponsored link." Do you see that? 20 A Yes. 21 Q Have you ever seen images like that as well 22 where you do a search and at the very top of the page</p>	<p style="text-align: right;">77</p> <p>1 A Yes. 2 Q And you'll see on the top left there's 3 something that says Gap with a circle R, official site. 4 On the far right, there's something that says, "The 5 Children's Place." Do you see that? 6 A Right. Uh-huh. 7 Q And you see there's the word "sponsored link" 8 next to both of those. 9 A Right. 10 Q Do you see that? And you'll also see that 11 below on the right side, the phrase "the Children's 12 Place," there is a -- there is a -- a line that says, 13 "See your ad here," which I'm circling with the cursor. 14 Do you see that? 15 A Right. Yes. 16 Q So you understand that what these sponsored 17 links indicate are these are advertisements that people 18 place, correct? 19 A I see that now, yes. 20 Q Now, the -- when -- I know that -- let me lay 21 some foundation for this. What has previously been 22 marked as Exhibit 1 --</p>

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<p style="text-align: right;">78</p> <p>1 A Uh-huh. 2 Q -- that's the -- what was marked as Exhibit 3 1. You will agree with me that this document, Exhibit 4 1, is not a -- an image or representation of the 5 Bossdisk Website that you went to. 6 A I don't remember a hundred percent. It 7 looks very similar. 8 Q Take -- if you look at the very bottom of the 9 page of Exhibit 1 -- 10 A Uh-huh. 11 Q -- you'll see there is an HTML listing. Do 12 you see that? 13 A Right. Okay. 14 Q And if you look at this, would you agree with 15 me that the phrase "Bossdisk" does not appear anywhere 16 in that HTML? 17 A It does not appear. 18 Q And -- and if you look at the second page, 19 would you agree with me as well that -- 20 A It does not appear. 21 Q And if you look at the -- the second page as 22 well, you'll see copyright that says, "Copyright 2009</p>	<p style="text-align: right;">80</p> <p>1 Q So that -- that link, the Bossdisk link was 2 somewhere on the first page, correct? 3 A Yes. 4 Q Other than that granularity, can you say 5 whether it was in the middle of the page or at the 6 bottom of the page? 7 A I don't remember. I -- I -- one thing I -- 8 I -- I believe is that -- and I've seen this before. 9 The same link will appear on multiple pages, but I 10 believe this was probably in the lower part of the 11 first page. 12 Q The lower part of the first page. 13 A Yeah. 14 Q Okay. And -- and that's the link that you 15 clicked on to ultimately buy the product? 16 A Right. 17 Q And do you know if -- when -- what you -- if 18 what you clicked on -- I'm sorry. Just some more 19 foundation. So what we're clear about is that what you 20 clicked on was not on the right side of the page? 21 A It was not on the right side. 22 Q And it wasn't the Number 1 on the top of the</p>
<p style="text-align: right;">79</p> <p>1 gainsoftmail.com." Do you see that? 2 A Yes. 3 Q There's nothing in here that indicates this 4 is a Bossdisk Website, right? 5 A True. 6 Q Okay. But what you meant to say is that -- 7 what you intended is that even though this may not be 8 the precise image that you saw, it's similar in general 9 appearance to whatever you looked at, right? 10 A That's true. 11 Q Now, can you tell me where on the page -- if 12 you remember, where on the page that you ultimately 13 clicked on to buy -- I'm not talking about this -- I'm 14 not talking about the Exhibit 1. 15 A Oh. 16 Q I'm talking about the search result page. 17 A Search result. 18 Q Where on the page that you -- the Bossdisk 19 search result was actually located. 20 A I had -- I remember having to scroll down. 21 Didn't have to change pages, but I scrolled down. It 22 was on the first page.</p>	<p style="text-align: right;">81</p> <p>1 page? 2 A It was not Number 1. 3 Q Okay. Can you tell me whether or not that 4 link for -- that led you to the Boss -- 5 A Disk. 6 Q -- Bossdisk site whether it was located 7 behind the field that said, "Sponsored link"? 8 MR. ETTINGER: Objection. 9 A I don't -- I just can't remember that. 10 Q (BY MR. STERN) Okay. 11 A I don't think so. I don't know. 12 Q So the best -- the best you can recall is 13 that it was somewhere on the first page? 14 A Yes. 15 Q Now, when you clicked on the site, you saw 16 some sort of discounted prices similar to -- 17 A Very similar. 18 Q -- Exhibit 1? 19 A Yeah. 20 Q And if I understand your testimony, you 21 didn't think it was counterfeit. You thought it was -- 22 I think you used the phrase "back"?</p>

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<p style="text-align: right;">82</p> <p>1 A Back levels. 2 Q Back levels. Which is prior versions? 3 A Prior versions. 4 Q Okay. And -- because you had no intention of 5 buying counterfeit product, right? 6 A I'd never buy -- I wouldn't want somebody 7 counterfeiting my software. 8 Q But did you -- you thought -- and just so I 9 understand what you mean by back level, you thought 10 that what you were buying were earlier versions of what 11 is today a current program? 12 A That's correct. 13 Q And you wanted to buy Levels 1, 2, and 3 of 14 Latin American Spanish? 15 A Correct. 16 Q You understand that when you -- when you buy 17 Rosetta Stone product, Rosetta Stone sells product at 18 various educational levels, correct? 19 A Yes. 20 Q And that with each level there is 50 hours of 21 training, correct? 22 A Okay. Yes.</p>	<p style="text-align: right;">84</p> <p>1 just prior versions, right? 2 A That's -- give you an example. Our software 3 works at Version 1. It doesn't have as many features 4 as Version 3. 5 Q Sure. 6 A Yeah. 7 Q You might go out today and buy -- if you went 8 out today on the market and bought a version Windows 9 2003, you would expect not to pay the same amount -- 10 A Absolutely. 11 Q -- as Windows 2007 costs? 12 A Exactly. 13 Q Okay. But am I -- is it accurate, Mr. DuBow, 14 that what you did not do is when you saw these prices 15 and you did this comparative shopping, you didn't do 16 any actual background check on this company called 17 Bossdisk? 18 MR. ETTINGER: Objection. 19 A I -- no. I mean, I -- as mentioned before, 20 I -- I tend to have always trusted the Google search. 21 I know now that you've got to be very careful. But, 22 no. I -- I -- unlike e-mail solicitations I get, I --</p>
<p style="text-align: right;">83</p> <p>1 Q So that at -- if you're buying three levels, 2 that means that for you to become facile or fluent in 3 whatever the language is you've got to devote 150 hours 4 of time to this, right? 5 A That would seem correct, yes. 6 Q You also understand that the more levels that 7 you buy of Rosetta Stone, the more you pay? 8 A Correct. 9 Q So -- and from the -- from the prior shopping 10 that you did, you knew that buying three levels costs 11 more than buying one level, right? 12 A Oh, absolutely. 13 Q Okay. And you also knew that when you -- if 14 you go to Amazon or if you go to Borders, three levels 15 of Latin American Spanish costs somewhere between 16 \$400 17 and \$600? 18 A Depending on the discounts that might be 19 applicable at that time, yeah. 20 Q But you saw that this site was offering three 21 levels for \$139. 22 A True. 23 Q But you thought that was okay because it was</p>	<p style="text-align: right;">85</p> <p>1 I -- I figured that these guys were probably 2 legitimate. They sure looked legitimate to me. 3 Q (BY MR. STERN) The Website looked authentic 4 to you? 5 A It looked very authentic. This looks pretty 6 authentic, too. 7 Q And when you said this, you were referring to 8 Exhibit 1? 9 A Yes. 10 Q But one of the things that you learned now 11 from this is that when you go on the Internet and you 12 check on the Website you have to do more background 13 search on the people that are offering products for 14 sale? 15 A I know now. 16 Q Yeah. Right. 17 A Yeah. 18 Q But getting back to this company, 19 Bossdisk, you didn't -- let me ask you: Do 20 you recall any other resellers that are with selling 21 Rosetta Stone Level 1, 2, 3 Latin American Spanish at 22 prices comparable to the Bossdisk price?</p>

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<p style="text-align: right;">86</p> <p>1 A I think there were, but this one -- the 2 Bossdisk, if my memory serves me correctly, said they 3 were a Rosetta Stone reseller -- 4 Q Okay. 5 A -- an OEM provider. And that's what led me 6 to that link. I -- I honestly feel that using -- when 7 I use Google, I felt that I was getting some protection 8 there unlike you might with a -- just a random e-mail 9 that I get every now and then. 10 Q Well, I understand that you felt that you -- 11 you were getting more protection, but that wasn't based 12 on anything that Google had said. Am I right? 13 MR. ETtingER: Asked and answered. 14 Q (BY MR. STERN) You can answer. 15 A Yeah. No. I've never seen it in writing. 16 It was just a -- my feeling about Google. They're a 17 big company and they -- I thought they would vet some 18 of these other advertisers. 19 Q Okay. Have you ever had any of your software 20 from your company Pro-Comm -- 21 A Comm-Pro. 22 Q I'm sorry, Comm-Pro. Have you ever had it</p>	<p style="text-align: right;">88</p> <p>1 Stone and say -- contact them and say, by the way, I'm 2 about to buy some what I think is earlier version of 3 the products, is that okay? 4 A You mean -- in hindsight, I probably should 5 have done that, but I didn't. 6 Q Okay. 7 A No. I just assumed -- I -- I guess I 8 shouldn't have assumed. 9 Q Excuse me for a second. I think you -- if 10 you -- do you have Exhibit 2 in front of you, by any 11 chance? 12 A I do. 13 Q If you take a look at -- and I apologize. The 14 -- there's e-mail -- there's writing on both sides of 15 the page, so I'm talk -- when I talk about pages, I'm 16 talking about the hard pages, the actual turn pages. 17 A Got you. 18 Q Could you turn to the third page of the 19 document. There's an e-mail below the one that you 20 sent to Mr. Ettinger dated October 6, 2009, 3:09 p.m. 21 Do you see that? 22 A I do.</p>
<p style="text-align: right;">87</p> <p>1 counterfeited or pirated? 2 A Nobody would know how it works, yeah. 3 Q It's too complex? 4 A Yes. 5 Q What about unauthorized copies? 6 A We have one instance, if I remember 7 correctly, where somebody inadvertently copied the 8 software, moved it to another installation. It stopped 9 working there. 10 Q That is to say, do you key your specific 11 products to specific IP addresses? 12 A Not to IP addresses. And we don't -- IBM 13 mainframes have a serial number. We don't do that 14 either. But we've had -- when we get -- if there's a 15 problem, we get a phone call, the thing doesn't work, 16 and we look and see if this customer is -- is a 17 legitimate customer. It turns out, well, you're not 18 supposed to be using it at this site. That's how we -- 19 that's how we found out. 20 Q When you found this site, this Bossdisk site, 21 what you also didn't do -- just correct me if I'm wrong 22 -- what you also didn't do is you didn't go to Rosetta</p>	<p style="text-align: right;">89</p> <p>1 Q And that was what you testified to was 2 PayPal's e-mail to you talking about who they were 3 effecting payment to. 4 A Right. 5 Q And you'll notice Mr. Ettinger mentioned that 6 they were what he called Chinese figures or Chinese 7 characters -- 8 A Right. 9 Q -- on this page, right? 10 A Uh-huh. 11 Q Now, just so we're clear, you -- you produced 12 this document in this litigation, correct? 13 A I did, yeah. 14 Q And you received this document on or about 15 October 6, 2009, at 3:09 p.m.? 16 A Right. 17 Q And at the time that you received it, you did 18 not notice these Chinese characters? 19 A No. I just noticed the fact that the -- the 20 price at the bottom there was the same as the receipt 21 that I received from Bossdisk. 22 Q Okay. But I think you said, and the record</p>

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<p style="text-align: right;">90</p> <p>1 will reflect, once you saw this literally in this 2 deposition, once you looked at it, it gave you pause; 3 is that right? 4 A Well, of course, yeah. 5 Q And tell me why it gave you pause. 6 A Well, I just -- I -- I assumed that the 7 transaction would be with a U.S. company. 8 Q If you had known -- had the company -- that 9 the transaction was being done with a Chinese company, 10 what would you have done? 11 A It would have raised -- it would have raised 12 a red flag -- 13 Q Okay. 14 A -- yeah. 15 Q But -- but I take it that that's something 16 you didn't notice in October? 17 A I -- I guess apparently not. 18 THE REPORTER: You guys are talking over the 19 end of one another. Can you give me your question 20 again? 21 MR. ETTINGER: You didn't notice that on 22 October 6th.</p>	<p style="text-align: right;">92</p> <p>1 copyright, right? 2 A Copyright. 3 Q Where it says, "Copyright 2009 Special 4 Discount and Free Shipping. Powered by Zen Cart." Do 5 you see that? 6 A Okay. Yes. 7 Q Did you ever notice that before? 8 A Probably not. 9 Q Okay. And if you had noticed that, would 10 that have given you any pause? 11 A You know, people use strange name. That 12 would -- that probably wouldn't have raised a flag, but 13 ... 14 Q Okay. The -- by the way, let me ask you -- 15 you obviously know Mr. Ettinger's e-mail address. Have 16 you spoken to Mr. Ettinger before today's deposition? 17 A Oh, yes. 18 Q How often time -- how many times do you think 19 you spoke with him? 20 A Brief phone calls, three, four. I don't 21 remember exactly. 22 Q Okay. And other than the documents that</p>
<p style="text-align: right;">91</p> <p>1 Q (BY MR. STERN) But I take it that you did 2 not notice that on October 6th? 3 A Apparently I -- I didn't notice it then. 4 Q If you look at the prior page -- you don't 5 have to turn the page. It's on the back side of the 6 prior page. 7 A Okay. 8 Q You see that you had received an e-mail on 9 October 6 at 3:09 p.m. from something called Special 10 Discount and Free Shipping bossdisk@gmail.com. Do 11 you 12 see that? 13 A That's on -- is that on the front page? 14 Q It's on the second page, second page. 15 A Oh, yes. Second page, right. 16 Q If you look at October 6, 2009 at 3:09 p.m., 17 you received an e-mail from Special Discount and Free 18 Shipping. 19 A Uh-huh, yes. 20 Q Do you see that? 21 A Right. Okay. 22 Q Okay. And if you turn to the very end of it, turn the page, the very back side, you'll see a</p>	<p style="text-align: right;">93</p> <p>1 you've seen here, are there any other documents that 2 you've sent Mr. Ettinger? 3 A Not -- not that I remember. This is -- 4 this, I believe, is it. 5 Q Okay. 6 A Yeah, these are all of them. 7 Q And did he contact you originally or did you 8 contact him? 9 A He contacted me. 10 Q And do you recall when he contacted you, did 11 he tell you why he was contacting you? 12 A Yes. 13 Q What did he tell you? 14 A Basically I was one of ten people that 15 Rosetta Stone asked Mr. Ettinger to contact. I believe 16 that's the case because of the experience we had with 17 these -- purchasing software over the Internet. 18 Q Okay. And did you tell -- I assume Mr. 19 Ettinger asked you various questions, you answered 20 those questions? 21 A Yes. 22 Q During that conversation at all, did you</p>

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<p style="text-align: right;">94</p> <p>1 happen to relate to him what your experiences with 2 Google were outside of this particular situation? 3 A I don't recall that, no. 4 Q Mr. -- Mr. DuBow, would you agree with me 5 that except for this situation, Google has been an 6 effective and valuable search tool for you? 7 A Google is fantastic. No argument. 8 Q How many -- how many times a day do you use 9 Google? That's a bad question. 10 A Yeah. It's tough. 11 Q That's a bad question. Let me ask you this: 12 Do you believe that you use Google every day? 13 A Almost every day. 14 Q Okay. And you use it for personal work? 15 A Personal business, yes. 16 Q Person reasons as well as business? 17 A Uh-huh. Yes, I mean. 18 Q Yes. That's fine. You're doing great. Do 19 you have a -- does -- does -- does -- does Comm-Pro 20 have a Website? 21 A Oh, of course, yes. 22 Q Okay. And have you seen -- have you gotten</p>	<p style="text-align: right;">96</p> <p>1 A Of course, yes. 2 Q I mean, that's an effective way for you to 3 get business, right? 4 A Right. 5 Q Okay. And I think you said that except for - 6 - you've previously purchased products or services over 7 the Internet, correct? 8 A Yes. 9 Q Both personally and professionally? 10 A Yes, of course. 11 Q How many -- I mean, I know this is -- and I'm 12 not holding you to any specific number but more than 13 ten times? 14 A I buy computers. I buy printers. I buy 15 printer products through the Internet -- over the 16 Internet. 17 Q And of those times that you've purchased 18 products over the Internet, how many times have you 19 used Google in the same way that you used in this case, 20 namely to do price shopping and comparative shopping? 21 A I will -- I will use Google a lot. I will 22 use Google a lot. I also use NexTag, which is a great</p>
<p style="text-align: right;">95</p> <p>1 any customers or clients from people looking on the 2 Internet for you? 3 A Most of our -- as I mentioned before, most 4 of our product is sold overseas, not so much here in 5 the United States any longer. And we have business 6 partners who do the advertising and -- and the actual 7 legwork. We also are an IBM business partner, and so 8 people who knew this particular software could go to 9 the IBM Website. 10 Q I see. Have you ever heard of any customer 11 or client coming to you through your Website? 12 A For information, yes. 13 Q Okay. So -- and -- and they found -- do you 14 know if they found your Website on Google? 15 A Some may, some may have found it on the IBM 16 Website. 17 Q Okay. You don't know one way or the other? 18 A I -- I actually don't, no. 19 Q Okay. But in all events, is it fair to say 20 that you make your Website available for the purpose of 21 people being able to find it if they conduct an 22 appropriate search?</p>	<p style="text-align: right;">97</p> <p>1 site for computer equipment for any electronics. 2 Q They're our client, too. 3 A Are they? 4 Q But that's -- that's a comparative shopping 5 site? 6 A Right. 7 Q Okay. But I'm actually thinking about Goog- 8 -- my question is -- pertains to Google. Have you used 9 Google before in order to find information about 10 products before buying them? 11 A Yes. 12 Q And based on the information you got from 13 Google, you purchased products? 14 A Yes. 15 Q And that's -- you've done that many times? 16 A A number of times, yes. 17 Q Okay. And except for this situation, that's 18 been a valuable experience for you? 19 A Yes. 20 Q Okay. These are basic questions. I'm sorry. 21 I just want to make sure that we're all on the same 22 page. First of all, you understand that Google is a</p>



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98	<p>1 search engine, correct? 2 A Yes. 3 Q Okay. You understand that when you see all 4 these Websites or all these hyperlinks that show up as 5 a result of your searches, you understand that those 6 hyperlinks are not created by and developed by Google, 7 correct? 8 MR. ETTINGER: Objection. 9 A I understand. 10 Q (BY MR. STERN) You understand that Google is 11 not the actual advertiser, correct? 12 A Yes. 13 Q You understand that Google is the medium by 14 which these various advertisers make their Websites or 15 other ads available? 16 A Yes. 17 Q And you understand that just because Google 18 has all sorts of ads or Websites that appear as a 19 result of a search, that doesn't mean that Google is 20 either sponsoring, endorsing, or is otherwise 21 affiliated with those sites? 22 MR. ETTINGER: Objection.</p>	100	<p>1 hardware over the Internet. Have you ever sold 2 computers? 3 A I've sold things on Craigslist, but not 4 computers. 5 Q Good enough. So you haven't -- have you ever 6 sold any computers or peripherals or software on 7 Craigslist? 8 A No. 9 Q Have you ever seen people offering software 10 products like, you know, Microsoft Word or Microsoft 11 PowerPoint or Office for sale? 12 MR. ETTINGER: Object. 13 A I've seen -- I've seen ads for that and for 14 Adobe Postscript, things like that. 15 Q (BY MR. STERN) Okay. Have you -- are you 16 aware of the fact that for some software publishers if 17 you buy their product, you can resell their product as 18 long as you delete it off your system? 19 A I've -- I've heard that, but I -- and I 20 wasn't aware that's a general rule. 21 MR. STERN: Just a second. 22 (Pause in proceedings.)</p>
99	<p>1 A I understand that. 2 Q (BY MR. STERN) Have you ever paid money to 3 Google for advertising? 4 A Not for advertising. 5 Q Have you ever paid money to Google for 6 anything? 7 A Yes. I've -- before PayPal, I would use 8 Google Pay. I've done that before. 9 Q Okay. Did you find that a reliable service? 10 A Yes. 11 Q With respect to the Rosetta Stone purchase 12 that you made, you didn't pay any money to Google? 13 A I'm sorry? 14 Q You didn't pay any money to Google? 15 A Oh, no. No. 16 Q Dumb question, but I have to answer -- ask 17 you it. The -- the actual Web page that you ultimately 18 clicked on to buy the Ro- -- Rosetta Stone product that 19 you purchased, you don't have a copy of that, do you? 20 A No. Unfortunately I didn't think to print 21 that off. 22 Q You mentioned that you bought software and</p>	101	<p>1 Q (BY MR. STERN) You used a phrase -- I want 2 to make sure I'm sure about this. You used the phrase 3 when you looked on the Bosdisk site that you presumed 4 them to be a reseller selling OEM product. When you say 5 presumed, do you mean that you assumed or did they 6 actually say they were -- 7 A I -- my recollection is that they said they 8 were a Rosetta Stone reseller. 9 Q Okay. When you typed in the words -- I think 10 Mr. Ettinger asked you whether or not what -- what your 11 search query was that led you to the page that you 12 scrolled down and found near the bottom of this link 13 that you ultimately clicked on to buy your product. 14 MR. ETTINGER: Objection. 15 A Uh-huh. 16 Q (BY MR. STERN) I think you said what your 17 query was was Rosetta Stone, right? 18 A That's correct. That's right. 19 Q Do you remember exactly how you typed it? Was 20 it all caps? Was it initial caps? 21 A Initial caps. 22 Q So it was capital R --</p>

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<p style="text-align: right;">102</p> <p>1 A Uh-huh. 2 Q -- Rosetta, capital S, Stone? 3 A Yes. 4 Q And it was separated by a space? 5 A Yes, correct. 6 Q Okay. You -- I know -- and this is going to 7 be tough again, but you -- when you did that, you got a 8 whole bunch of search results, right? 9 A Yes. 10 Q And it was more than one page. It was one of 11 those search results where it stopped at a certain 12 portion of the page? 13 A That's my recollection, yeah. 14 Q And I think you testified that you searched 15 and you saw discounts on many of the pages, correct? 16 A I don't know how many pages I actually went 17 through. I don't remember, but certainly on the first 18 page there were more than one discounted version, if my 19 recollection serves me right. 20 Q Okay. So that's actually important 21 information. So are you saying that as you sit here 22 today you can't recall actually going beyond the first</p>	<p style="text-align: right;">104</p> <p>1 which CDs you -- let me ask you this -- 2 A Yeah. 3 Q -- do you recall what CDs you didn't install? 4 A First of all, I don't think I even opened 5 the audio CD pack because I wasn't interested in the -- 6 in that part of the package. I wanted to install the - 7 - I guess you'd say the engine, Rosetta Stone engine 8 followed by the actual Spanish language disks. 9 Q Is -- is that what you understood had to be 10 done, namely you had to first install the engine and 11 then you install the actual applications? 12 A Yes. I believe that's -- yes, that's true. 13 Q Can you -- can you hand me your -- the box of 14 products? 15 A Oh, sure. 16 Q And actually before you hand it to me, can 17 you pull out, if you can, if you can recall the CD that 18 you loaded, if you can remember. 19 A Oh, boy. Yeah. It's -- I think the 20 application CD, this one here, which I believe is the 21 engine. 22 Q Okay. Can -- can you hand that to me?</p>
<p style="text-align: right;">103</p> <p>1 page? 2 A I don't -- I don't think we did. 3 Q Okay. That's great. Okay. So on that first 4 page, even on that first page, there were multiple 5 hyperlinks that when you clicked on them, they 6 indicated that they were selling Rosetta Stone at a 7 discounted price, right? 8 MR. ETTINGER: Objection. 9 A I didn't have to click on them to see that 10 they were selling at a discounted price, yeah. The 11 price was highlighted there. 12 Q (BY MR. STERN) Was \$139 the least expensive? 13 Was it the middle range? Do you recall? 14 A I don't remember. My wife is pretty frugal, 15 so she probably picked out the least expensive, yeah. 16 Q Okay. 17 A Yeah. 18 Q Okay. You also testified, I think, that 19 there were some disks that you showed us that you 20 installed and some you did not install? 21 A That's my remembrance, yes. 22 Q Can you tell me which does -- which does --</p>	<p style="text-align: right;">105</p> <p>1 A Sure. 2 Q Actually, before you hand it, can you get a 3 close-up of that particular CD? 4 MR. STERN: Thank you very much. Thanks. 5 A Yeah. 6 Q (BY MR. STERN) Have you ever -- let me ask 7 you this: Have you ever taken any of these products 8 and actually sent them to Rosetta Stone to see whether 9 or not they're either authorized or counterfeited? 10 A I did not do that. I was actually -- when I 11 -- when I decided that I wasn't going to get the key, I 12 wanted to send this thing back to them and get my money 13 back. So I was planning on doing that, but I -- they 14 just disappeared, so there was nobody to send it back 15 to. 16 Q Have you since tried to find them? 17 A I've totally given up, yeah. 18 Q When I say them, I mean Bossdisk. 19 A Bossdisk, no. 20 Q Is -- can you see a screen in front of you 21 right now? 22 A It's fuzzy, but I can see it, yes.</p>

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<p style="text-align: right;">106</p> <p>1 Q Do you see that there's a -- there's a -- 2 A You're loading the software? 3 Q There's a box that says Rosetta Stone LTD, 4 extracting data tab. Do you see that? 5 A Uh-huh. Yes, I do. 6 Q Is that the sort of -- sort of visual that 7 you saw when you loaded the software? 8 A I think that's pretty much a standard 9 Windows type of installation thing, yes, I believe so. 10 MR. ETTINGER: And, Counsel, for the record, 11 could you just state what you're doing? 12 MR. STERN: Oh, sure. I took the disk that 13 was contained in the -- 14 THE DEPONENT: Right. 15 MR. STERN: -- in the jewel case that was 16 provided to me by Mr. DuBow and I've put it in my hard 17 drive, but I thought it would load faster. And at this 18 rate we'll be here all day, so I'm going to -- I'm 19 going to stop the loading because it's going to just 20 end up taking too long. 21 Q (BY MR. STERN) But that was the sort of -- 22 just the question is that was the sort of visual you</p>	<p style="text-align: right;">108</p> <p>1 Q That's what you needed the key for? 2 A I think that's what you needed the key for. 3 Q I see. Well, that's going to take -- I don't 4 want to -- how long do you think -- I mean, based on 5 your own experience, how long would it take to download 6 all these things? 7 A Well, because there are updates to this as 8 well as to that -- I don't remember how long it took me 9 to install them. I don't remember. 10 Q Okay. 11 A It was -- it was -- it could have been an 12 hour. 13 Q That's not going to happen here. All right. 14 MR. ETTINGER: We're happy to make these 15 available to you, Counsel. 16 MR. STERN: I appreciate that. Hand these 17 back. 18 MR. ETTINGER: You want to put these back in 19 the box, that's fine. 20 MR. STERN: Thank you very much. I 21 appreciate your time, Mr. DuBow. 22 THE DEPONENT: Thank you.</p>
<p style="text-align: right;">107</p> <p>1 saw while it was loading, correct? 2 A Yes, that's correct. 3 Q All right. I'm going to end that now and 4 then I'm going to give you back your disk. All right. 5 And if you would, can you hand me that -- the 6 application program that you said that you loaded? 7 A That is the application. 8 Q Oh, this is -- this is the actual engine? 9 A I believe that's the engine. These are the 10 actual data disks which the engine would use, I 11 believe. 12 Q Okay. Can you hand me -- let's make it easy. 13 A Level 1? 14 Q Let me ask you: Was -- was it the data discs 15 that had the limited functionality? 16 A Yes. Well, these are the ones that need the 17 key. 18 Q Those are -- but there is some sort of 19 functionality on them? 20 A The engine itself provides some basic 21 functional- -- functionality when you load those, but 22 to get the -- all of the data off of these disks --</p>	<p style="text-align: right;">109</p> <p>1 MR. ETTINGER: I just have a few follow-up 2 questions. 3 THE DEPONENT: All right. 4 MR. ETTINGER: Can we switch places, so that 5 I could use your -- 6 MR. STERN: Sure. Go ahead. 7 MR. ETTINGER: Would that be all right? 8 MR. STERN: Yeah. You want to get the 9 Internet? 10 MR. ETTINGER: Yes. Just do a Google search. 11 MR. STERN: Actually, I could click you right 12 in there if you could -- 13 MR. ETTINGER: Okay. 14 MR. STERN: -- load that onto your computer. 15 Could we go off for a second? 16 THE VIDEOGRAPHER: Going off the record at 17 12:40. 18 (Recess from 12:40 to 12:49 p.m.) 19 THE VIDEOGRAPHER: We're going back on the 20 record at 12:49. 21 EXAMINATION 22 BY MR. ETTINGER:</p>

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<p style="text-align: right;">110</p> <p>1 Q All right. So now we've -- counsel have 2 changed positions so that I can ask you questions using 3 the Internet hookup that we have. Do you see the 4 Google search page in front of you, sir? 5 A I do. 6 Q All right. Counsel has been so kind as to 7 type in Rosetta Stone and enter search. And you see 8 the search results? 9 A I do. 10 Q All right. Looking at the -- the far right- 11 hand side, all right, can you tell from looking at 12 those sponsored links which, if any, of those links are 13 authorized resellers of Rosetta Stone product? 14 MR. STERN: Objection, foundation. 15 A It's -- it's very difficult to read, but I 16 see eBay. Honestly, Mr. Ettinger, I can't read the 17 others. My eyes are just not that good. 18 Q (BY MR. ETTINGER) Okay. Do we need to 19 move 20 the monitor closer to you? 21 MR. STERN: I think the -- I don't think it's 22 -- I think it's the resolution. A It's the resolution, yeah. It's very</p>	<p style="text-align: right;">112</p> <p>1 A Yes. It's coming up now. 2 Q Mr. DuBow, do you see that there's a number 3 of Rosetta Stone boxes that appear on -- on your 4 screen? 5 A Not unlike Bossdisk's Website. 6 Q That was what my next question is. Is this 7 similar to what you saw with Bossdisk? 8 A Yes, it is similar. 9 Q And do you see that the retail price has been 10 crossed out and then a -- a current purchase price has 11 been listed? 12 A It's -- it's difficult to read, but it -- 13 yes. I -- yes, I -- I think so. 14 Q Like, for example, the first box on the left 15 says \$229 crossed out with a sale price of \$118. Do you 16 see that? 17 A I see something in red. I can't honest tell 18 you -- 19 Q You can't see the numbers? 20 A I can't see the numbers. 21 Q Okay. And when you went on the Bossdisk 22 Website, did it have similar entries where there was a</p>
<p style="text-align: right;">111</p> <p>1 blurry. My eyes are not that good anyway. 2 MR. ETTINGER: Do we have the best resolution 3 on this -- 4 MR. SIEFF: Yeah. It's coming out of a 5 VGA. 6 Q (BY MR. ETTINGER) Okay. I'm going to click 7 on the link -- do you see the second sponsored link 8 that says, "\$118 get Rosetta software"? Do you see 9 that? 10 A I see that, yes. 11 Q All right. And do you see below it says, 12 "Save 75 percent free shipping"? Do you see that? 13 A I believe -- yes. That's where your cursor 14 is? Yes. Okay. 15 Q And do you see below that it says, "Accepts 16 PayPal. Buy now"? 17 A Yes. 18 Q And below that, it says, "Learn" to play -- 19 "learntoplanguange.com/Rosetta Stone." Do you see that? 20 A I do. 21 Q All right. I'm going to click on that link. 22 Can you see what's come up?</p>	<p style="text-align: right;">113</p> <p>1 retail price that was crossed out with a sales price? 2 A I -- I don't remember, honestly. Probably. 3 But I -- I don't remember. 4 Q Okay. Looking at this site that we've just 5 called up off the Googled sponsored link, do you know 6 whether or not this is an EOM or an authorized reseller 7 of Rosetta Stone product? 8 MR. STERN: Foundation, objection. 9 A It didn't actually say reseller. 10 Q (BY MR. ETTINGER) But do you know from 11 looking at this site whether you're -- you're buying 12 product from someone who's authorized to sell Rosetta 13 Stone product? 14 A It looks like a legitimate site, but I -- 15 there's no way to know. 16 Q Do you know how much money Rosetta Stone -- 17 excuse me. Do you know how much money Google gets 18 -- 19 Google makes every time someone clicks on one of these 20 sponsored links? 21 A Well, I -- I learned this morning it's a bit 22 over a dollar every click. MR. STERN: Objection, foundation.</p>

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<p style="text-align: right;">114</p> <p>1 Q (BY MR. ETTINGER) Okay. Other than what 2 I've told you this morning about how auctions work and 3 pricing works, okay, do you know how much money 4 Google 5 makes when someone clicks on a sponsored link? Do you 6 know that personally? 7 MR. STERN: Objection, foundation. 8 A I forget -- I forget the exact number. I 9 think it was a dollar and some odd cents. 10 Q My question is, sir, do you have personal 11 knowledge of how much Google makes every time 12 someone 13 clicks on a sponsored link? 14 A Oh, no, I don't, no. 15 Q The third one down on the left side of the 16 page says, "119, get Rosetta on sale." Do you see 17 that? 18 A I do. 19 Q Do you know whether or not that Website 20 pertains to a authorized reseller of Rosetta Stone 21 product? 22 MR. STERN: Objection, foundation. A I don't.</p>	<p style="text-align: right;">116</p> <p>1 Q All right. That Website -- I'm going to give 2 it just another second, see if it comes up. Rather than 3 wait, I'm going to go down to the right-hand side again 4 to the sponsored link where it says, "Buy Rosetta 5 Stone," the fourth one down. 6 A Uh-huh. 7 Q Do you see that? 8 A Yes. 9 Q Rosetta Stone up to 43 percent off. 10 A Okay. 11 Q All right. I'm going to go above that one. 12 A Okay. 13 Q The third one down, "Rosetta software on 14 sale." 15 MR. STERN: Which was that one? 16 MR. ETTINGER: I apologize. Let me go back. 17 MR. STERN: It's still loading. 18 Q (BY MR. ETTINGER) This is -- this is the 19 earlier site that we -- that we clicked on? 20 A Right. Right. 21 Q Do you see that site? 22 A I do.</p>
<p style="text-align: right;">115</p> <p>1 at it whether it's a genuine Website at which you can 2 buy genuine Rosetta Stone product? 3 MR. STERN: Same objection. 4 A I -- I can't looking at this, no. 5 Q (BY MR. ETTINGER) All right. Let's click on 6 it. So I've clicked on it. We are waiting for 7 something to happen. 8 A That's a pretty slow Internet. 9 MR. STERN: It's the -- it's the wireless 10 Internet this in this room. 11 A Yeah. Or it could be the number of servers 12 that it's going through as well. 13 Q (BY MR. ETTINGER) While we're waiting for 14 that to come up, given the price tag that's placed on 15 that Website, \$119, are you -- do you suspect that this 16 is not an authorized reseller? 17 MR. STERN: Objection, foundation. 18 A Based on -- it doesn't appear to be. That's 19 a pretty good price. 20 Q And that would be based on your personal 21 experience, correct? 22 A Correct.</p>	<p style="text-align: right;">117</p> <p>1 Q Can you see the pictures that are coming up 2 now? 3 A Very professional. 4 Q Do these compare to the ones that appear on 5 the Rosetastone.com site that you visited? 6 MR. STERN: Objection, foundation, vague. 7 A I don't -- I don't remember the moving -- 8 the slide show above it. I don't remember that, but it 9 may have been there. 10 Q (BY MR. ETTINGER) From looking at this 11 Website now that it's loaded -- 12 A Uh-huh. 13 Q -- can you tell whether or not this is an 14 authorized reseller of Rosetta Stone product? 15 MR. STERN: Foundation. 16 A It -- it looks like it, but I can't tell. 17 Q (BY MR. ETTINGER) You don't know one way 18 or 19 another whether this is a -- another site where people 20 are selling software to individuals that have no 21 activation key? 22 A I -- no way to know for me. Q I want to go to one more of the sites. The</p>

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<p style="text-align: right;">118</p> <p>1 third one down, "Rosetta software on sale." Do you see 2 that on the right-hand side? 3 A I do. 4 Q All right. It says, "Learn foreign language 5 with Rosetta award winning software," then there's a 6 space and a comma and it says, "Ship free." Do you see 7 that? 8 A Very difficult to read, but I -- I believe 9 that's what it says, yes. 10 Q All right. And the URL for that is 11 www.onlyrosetta.com. Do you see that? 12 A I see that, yes. 13 Q All right. I'm going to click on that link. 14 Do you see what's coming up? 15 A I do. 16 Q Do you see the familiar yellow boxes, yes? 17 A Oh, yes. 18 MR. STERN: Objection, foundation. 19 Q (BY MR. ETTINGER) You said earlier in your 20 testimony that you've associated the color yellow with 21 Rosetta Stone, correct? 22 A Yes.</p>	<p style="text-align: right;">120</p> <p>1 A I -- I -- it appears like it would be, yes. 2 Q (BY MR. ETTINGER) Well, counsel asked you 3 about red flags. Is this going to send up some red 4 flags for you now? 5 A It certainly will now, yes. 6 Q So of the seven sponsored links that appear 7 on the Google search this morning, three of them raise 8 questions, in your mind, as to the authenticity; isn't 9 that right? 10 A Yes, indeed. 11 MR. ETTINGER: No further questions. 12 MR. STERN: Let's leave that up for a second. 13 MR. ETTINGER: Do you want to trade? Give me 14 two seconds, Counsel, because I want to try to catch up 15 on my computer so I can see it. 16 MR. STERN: Sure. 17 MR. ETTINGER: Are you refreshing? 18 MR. STERN: I'm going to see if I can. 19 MR. ETTINGER: I just want you to know when I 20 -- when I call mine up, it's different. 21 MR. STERN: Is that right? 22 MR. ETTINGER: Because every minute or two it</p>
<p style="text-align: right;">119</p> <p>1 Q And you also testified that the box that you 2 got from Bossdisk looked very much like the one that 3 you saw on the Rosetta Stone Website; isn't that right? 4 A Correct. 5 Q Looking at this Website now, sir, does this 6 not look exactly like the ones that you saw on the 7 Bossdisk Website? 8 MR. STERN: Objection, foundation. 9 A It -- it looks very, very similar. 10 Q (BY MR. ETTINGER) And do you see, sir, that, 11 again, like the other Website we just saw a moment ago, 12 the retail price has been crossed out and a sales price 13 is entered? 14 A I see that, yes. 15 Q Do you know whether or not this Website 16 offers genuine Rosetta Stone product for sale with an 17 activation key? 18 A No, I don't. I don't know. 19 Q Given the price that it's offered at, do you 20 suspect that maybe this is another rip-off Website 21 that's appearing on Google? 22 MR. STERN: Objection, foundation.</p>	<p style="text-align: right;">121</p> <p>1 will change because I've refreshed. 2 MR. STERN: So I should refresh it? 3 MR. ETTINGER: Only if you don't want to ask 4 him about what's exactly on the page that I showed him. 5 (A discussion was held off the record.) 6 THE VIDEOGRAPHER: Microphone. 7 MR. ETTINGER: Can I ask one more time, are 8 we back to the page we were at when I was on? 9 MR. STERN: This is a new page? 10 MR. ETTINGER: Okay. 11 EXAMINATION 12 BY MR. STERN: 13 Q The record should reflect I've added a -- a 14 search called Rosetta Stone discount. Do you see that? 15 A I do. 16 Q Okay. Did you ever do a search for something 17 like that where you were looking for Rosetta Stone 18 discounted product? 19 A I did not do that. 20 Q You see here when I see discounted Rosetta 21 Stone, I click and I get this site here. Do you see 22 that?</p>

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<p style="text-align: right;">122</p> <p>1 A I do. 2 Q Okay. And if I click on a particular site 3 here, I'm looking -- I'm looking for Spanish. Do you 4 see where I've -- I've got my cursor on Spanish? 5 A I see it. 6 Q I click on Spanish. And now I've got various 7 prices that you see in front of you. 8 A Right. 9 Q First of all, have you ever been to this 10 site? 11 A No, I have not. 12 Q Okay. Do you know -- are you acquainted with 13 this site at all? 14 A No. I've never been there. 15 Q Do you know if they are offering authentic or 16 inauthentic Rosetta Stone product? 17 A I -- I wouldn't know. 18 Q Okay. If you look at the product, you'll see 19 that there's a learning CD for Spanish at \$19.99. Do 20 you see that on the far left? 21 A I do. 22 Q Does that give you pause about a concern</p>	<p style="text-align: right;">124</p> <p>1 Q I see. Okay. But you see it's a 2 predominantly yellow box? 3 A It's a yellow box, yes. 4 Q All right. And you'll see I've put now just 5 another box over on the far -- on the -- it's below 6 that one also where it says, "Rosetta Stone Latin 7 American Spanish V2, Levels 1 and 2." Do you see that? 8 A Right. I see that. 9 Q And that's for \$62. 10 A That's incredible. 11 Q Yeah. So would you agree with me this is 12 another site that's offering product -- discounted -- 13 what appears to be Rosetta Stone product, yes? 14 A Yes. 15 Q And you can't tell from looking at it as 16 whether it's genuine or not, right? 17 A If you -- well, no, but then there's -- 18 above it, there's -- oh, that's -- that's the U.S. 19 price. I see. 20 Q Yes. 21 A Yeah. Those are the legitimate prices. 22 Q Well -- so the question is: Now that you see</p>
<p style="text-align: right;">123</p> <p>1 about whether this is a legitimate site? 2 A Well, that doesn't look like a Rosetta Stone 3 box. 4 Q Okay. You see how it says, "The Rosetta 5 Stone key to Spanish language learning CD." 6 A Yes. 7 Q Okay. Does the fact that it calls itself 8 Rosetta Stone indicate to you that that may not be 9 genuine product? 10 A I -- I suppose there -- there are -- let me 11 -- let me back up for a second. There are a number of 12 companies that produce manuals for products that they 13 don't actually write. 14 Q Take a look at what's -- I've -- I've just 15 put in the center of the screen, it says, "Rosetta 16 Stone Spanish Espanol, Levels 1 and 2, U.S., 129.99." 17 Do you see that? 18 A Yes, I do. 19 Q Does that box look like it's a Rosetta Stone 20 box? 21 A It's pretty blurry, but it's hard -- it's 22 very difficulty for me to tell.</p>	<p style="text-align: right;">125</p> <p>1 that there's one on the same page both priced three 2 levels of Latin -- or of Spanish Latin for \$402 and 3 various levels of Spanish for less than a hundred 4 dollars, would you agree with me that just by looking 5 at the site you can't tell whether it's genuine or not? 6 A I'd have to think it's not genuine. 7 Q Okay. And with respect to this site? 8 MR. ETTINGER: And for the record, because 9 I'm behind you and I can't see the screen at this 10 point. It's totally blurred from this distance. Can I 11 just make sure I understand. You typed in Rosetta 12 Stone discounts. And then what hyperlink did you go 13 to? 14 MR. STERN: The hyperlink -- the hyperlink I 15 went to -- in fact, I could go back to it. 16 17 MR. ETTINGER: If you don't mind because I'm 18 behind you here. 19 MR. STERN: Absolutely. Right here. 20 A You can cut and paste it and -- 21 Q (BY MR. STERN) It's actually on the top of 22 the screen.</p>

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<p style="text-align: right;">126</p> <p>1 A Yeah. 2 Q The URL is http full colon, forward slash, 3 forward slash, free language dot org, forward slash, 4 tags, forward slash, blogs, forward slash, discount, 5 hyphen, Rosetta, hyphen, Stone. Hold on. 6 MR. ETTINGER: So my -- my question to you is 7 -- if you can just put on the record -- that's what you 8 clicked on from the search result page? 9 MR. STERN: Here it is. The search -- what 10 you were looking at now is the search result page, 11 Rosetta Stone discount. 12 MR. ETTINGER: Yes. 13 MR. STERN: If you go down, I've clicked on 14 this non-advertised in the search results page of 15 discount Rosetta Stone with a line free language, which 16 I'm now -- 17 MR. ETTINGER: Now I see where you are. Thank 18 you. 19 Q (BY MR. STERN) And just so we can recap, the 20 appearance of a Website that you're not sure if it has 21 either genuine or not genuine Rosetta Stone product was 22 from a link not on the -- on the -- on the sponsored</p>	<p style="text-align: right;">128</p> <p>1 change. 2 MR. STERN: We're going to finish. 3 Q (BY MR. STERN) You would agree with me that 4 the people who offer Rosetta Stone product or other 5 counterfeit product aren't being -- withdraw that. Let 6 me ask the question this way: You have no information 7 that -- that Google is either sponsoring, endorsing, or 8 otherwise affiliated with any of these companies that 9 offer counterfeit product -- 10 MR. ETTINGER: Objection. 11 Q (BY MR. STERN) -- right? 12 A I have no knowledge of that. 13 Q And you have no knowledge that Google has 14 either endorsed, sponsored, or is affiliated with any 15 of these sites that offer unauthorized older version of 16 product, right? 17 MR. ETTINGER: Same objection. 18 A I -- I'm not. No, I don't know. 19 MR. STERN: I'm done. 20 THE VIDEOGRAPHER: Anything further? 21 MR. ETTINGER: Thank you, Mr. DuBow. 22 MR. STERN: Thank you so much.</p>
<p style="text-align: right;">127</p> <p>1 link portions of the page -- 2 A Right. 3 Q -- but rather just in the organic search 4 results? 5 A Right. 6 Q Let me -- let me ask you a question. You've 7 been in the software world for -- 8 A Forever. 9 Q I'm doing the math. At least 37 years, 10 probably before 1973, correct? 11 A Before then, yeah. Yes. 12 Q And you're aware of the fact that something 13 which is endemic to the software world is either 14 unauthorized software, which is the sale of prior 15 versions without authority of the titleholder, or 16 another problem, counterfeiting, correct? 17 MR. ETTINGER: Objection. 18 A Correct. 19 Q (BY MR. STERN) This is not a problem that -- 20 as far as you know is unique to Rosetta Stone, right? 21 A No. 22 THE VIDEOGRAPHER: Six minutes until tape</p>	<p style="text-align: right;">129</p> <p>1 THE DEPONENT: Thank you fellows. 2 THE VIDEOGRAPHER: This marks the end of Tape 3 1 of 1 in today's testimony of Steve Floyd DuBow. 4 We're going off the record at 1:07 p.m. 5 (The deposition concluded at 1:07 p.m. 6 on March 8, 2010.) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>



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<p style="text-align: right;">130</p> <p>1 STATE OF COLORADO) 2 ) ss. REPORTER'S CERTIFICATE 3 COUNTY OF DENVER ) 4 I, Barbara J. Castillo, do hereby certify that 5 I am a Registered Merit Reporter, Certified Realtime 6 Reporter and Notary Public within and for the State of 7 that previous to the commencement of the examination, 8 the deponent was duly sworn to testify to the truth. 9 I further certify that this deposition was taken 10 in shorthand by me at the time and place herein set 11 forth, that it was thereafter reduced to typewritten 12 form, and that the foregoing constitutes a true and 13 correct transcript. 14 I further certify that I am not related to, 15 employed by, nor of counsel for any of the parties or 16 attorneys herein, nor otherwise interested in the 17 result of the within action. 18 In witness whereof, I have affixed my signature 19 and seal this 10th day of March, 2010. 20 My commission expires January 5, 2013. 21 22</p> <p style="text-align: center; margin-left: 100px;">_____ Barbara J. Castillo, CRR 216 - 16th Street, Suite 650 Denver, Colorado 80202</p>	<p style="text-align: right;">132</p> <p>1 A C K N O W L E D G E M E N T O F D E P O N E N 2 T 3 I, STEVE F. DUBOW, do hereby acknowledge I have 4 read and examined the foregoing pages of testimony, and 5 the same is a true, correct and complete transcription 6 of the testimony given by me, and any changes or 7 corrections, if any, appear in the attached errata 8 sheet signed by me. 9 10 11 12 13 14 15 16 17 _____ 18 Date STEVE F. DUBOW 19 20 21 22</p>
<p style="text-align: right;">131</p> <p>1 Capital Reporting Company 2 1821 Jefferson Place, NW 3 3rd Floor 4 Washington, DC 20036 5 (202) 857-3376 6 E R R A T A S H E E T 7 Case Name: Rosetta Stone vs. Google 8 Witness Name: STEVE F. DUBOW 9 Deposition Date: March 8, 2010 10 Page No. Line No. Change/Reason for Change 11 12 13 14 15 16 17 18 19 20 21 _____ 22 Date Signature</p>	<p style="text-align: right;">133</p> <p>1 Mitchell S. Ettinger, Esq. 2 Skadden, Arps, Slate, Meagher &amp; Flom, LLP 3 1440 New York Avenue, N.W. 4 Washington, D.C. 20005 5 (202) 371-7444 6 7 IN RE: Rosetta Stone vs. Google 8 Dear Mr. Ettinger: 9 Enclosed please find your copy of the deposition 10 of STEVE F. DUBOW, along with the errata sheet and 11 original signature page. As agreed, you will be 12 responsible for contacting the witness regarding 13 signature. Within 30 days of March 10, 2010, please 14 forward errata sheet and original signed signature page 15 to counsel for Plaintiff, Claude M. Stern. If you have 16 any questions, please do not hesitate to call. Thank 17 you. 18 19 Yours, 20 Barbara J. Castillo, CRR 21 22 cc: Claude M. Stern</p>

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<p style="text-align: right;">130</p> <p>1 STATE OF COLORADO) 2 ) ss. REPORTER'S CERTIFICATE 3 COUNTY OF DENVER ) 4 I, Barbara J. Castillo, do hereby certify that I am a Registered Merit Reporter, Certified Realtime 5 Reporter and Notary Public within and for the State of that previous to the commencement of the examination, 6 the deponent was duly sworn to testify to the truth. I further certify that this deposition was taken 7 in shorthand by me at the time and place herein set forth, that it was thereafter reduced to typewritten 8 form, and that the foregoing constitutes a true and correct transcript. 9 I further certify that I am not related to, employed by, nor of counsel for any of the parties or 10 attorneys herein, nor otherwise interested in the result of the within action. 11 In witness whereof, I have affixed my signature and seal this 10th day of March, 2010. 12 My commission expires January 5, 2013. 13 14 15 16 17 18 19 20 21 22</p> <p style="text-align: center;">_____ Barbara J. Castillo, CRR 216 - 16th Street, Suite 650 Denver, Colorado 80202</p>	<p style="text-align: right;">132</p> <p>1 ACKNOWLEDGEMENT OF DEPONENT T 2 3 I, STEVE F. DUBOW, do hereby acknowledge I have 4 read and examined the foregoing pages of testimony, and 5 the same is a true, correct and complete transcription 6 of the testimony given by me, and any changes or 7 corrections, if any, appear in the attached errata 8 sheet signed by me. 9 10 11 12 13 14 15 16 17 03/17/10 <i>Steve F. Dubow</i> 18 Date STEVE F. DUBOW 19 20 21 22</p>
<p style="text-align: right;">131</p> <p>1 Capital Reporting Company 2 1821 Jefferson Place, NW 3 3rd Floor 4 Washington, DC 20036 5 (202) 857-3376 6 ERRATA SHEET 7 Case Name: Rosetta Stone vs. Google 8 Witness Name: STEVE F. DUBOW 9 Deposition Date: March 8, 2010 10 Page No. Line No. Change/Reason for Change 11 12 13 14 15 16 17 18 19 20 21 22</p> <p>_____ Date Signature</p>	<p style="text-align: right;">133</p> <p>1 Mitchell S. Ettinger, Esq. 2 Skadden, Arps, Slate, Meagher &amp; Flom, LLP 3 1440 New York Avenue, N.W. 4 Washington, D.C. 20005 5 (202) 371-7444 6 7 IN RE: Rosetta Stone vs. Google 8 Dear Mr. Ettinger: 9 Enclosed please find your copy of the deposition 10 of STEVE F. DUBOW, along with the errata sheet and 11 original signature page. As agreed, you will be 12 responsible for contacting the witness regarding 13 signature. Within 30 days of March 10, 2010, please 14 forward errata sheet and original signed signature page 15 to counsel for Plaintiff, Claude M. Stern. If you have 16 any questions, please do not hesitate to call. Thank 17 you. 18 19 Yours, 20 Barbara J. Castillo, CRR 21 22 cc: Claude M. Stern</p>

DEBORAH JEFFRIES  
(3/9/10)





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<p style="text-align: right;">6</p> <p>1 A Yes. 2 Q First, everything you say will be 3 recorded verbatim by the court reporter. So we 4 need for you to answer all questions orally, not 5 just nodding your head or giving hand gestures. 6 A I understand. 7 Q Secondly, we need to be careful not to 8 speak over one another. So I will allow you to 9 finish your answer before I begin the next 10 question and just ask that you ensure that 11 Counsel has finished their question before you 12 begin your answer. Okay? 13 A Will do. 14 Q From time to time Counsel for Google or 15 myself, if Mr. Stern is questioning you, may 16 impose an objection on the record. That's an 17 objection only for the record to be decided later 18 on by the court. So if you hear an objection, 19 allow Counsel to make those objections, and if 20 you can answer the question, you should do so. 21 All right? 22 A All right.</p>	<p style="text-align: right;">8</p> <p>1 A Unfortunately 59, yes. 2 Q And what is the highest level of 3 education that you've completed? 4 A Masters. 5 Q What was your area of study? 6 A I have an MBA and a masters in 7 physical therapy. 8 Q From what university or colleges? 9 A Stanford is the masters in physical 10 therapy, and the MBA is from the University of 11 Alabama. 12 Q Are you currently employed? 13 A Yes. 14 Q What do you do? 15 A I co-own and manage a golf course. 16 Q Is that here in Eugene? 17 A Yes. 18 Q How long have you done that? 19 A Twenty-two years. 20 Q You understand that this case involves 21 a civil lawsuit between Rosetta Stone and Google. 22 Correct?</p>
<p style="text-align: right;">7</p> <p>1 Q If you do not understand a question 2 that I ask you today, please just tell me and 3 I'll rephrase it. 4 A Will do. 5 Q Lastly, you are not captive here today, 6 you're our guest, and we want to thank you for 7 coming. But if you want a break, comfort break 8 or otherwise, you just let us know and we will 9 accommodate you. 10 A All right. 11 Q Just some background information. Could 12 you please state your address? 13 A My mailing address is 3800 North 14 Delta Highway, Eugene, Oregon 97408. 15 Q How long have you lived in Eugene? 16 A Twenty-two years. 17 Q And are you married? 18 A Yes. 19 Q And your husband's name? 20 A Eric Howard Jeffries. 21 Q And I'm not trying to be too intrusive, 22 but could you state your age for the record?</p>	<p style="text-align: right;">9</p> <p>1 A Yes. 2 Q And you've agreed to provide testimony 3 voluntarily; is that right? 4 A Yes. 5 Q No one has sent you a subpoena to 6 appear today? 7 A No. 8 Q Did anyone promise you anything in 9 return for your testimony? 10 A No. 11 Q Do you speak a foreign language? 12 A No. 13 Q Have you ever studied foreign 14 languages. 15 A Yes. 16 Q Which language? 17 A Spanish. 18 Q When did you study the language? 19 A My freshman and sophomore year of 20 high school. 21 Q Have you ever heard of the company, 22 Rosetta Stone?</p>

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10	<p>1 A Yes.</p> <p>2 Q How did you learn of the company?</p> <p>3 A I'm not real sure, maybe a magazine,</p> <p>4 maybe -- I'm not sure. Television. Maybe just in</p> <p>5 the store. I'm not sure.</p> <p>6 Q What do you understand Rosetta Stone</p> <p>7 sells?</p> <p>8 A A learning method for being</p> <p>9 proficient at a particular language.</p> <p>10 Q Did there come a point in time when you</p> <p>11 were interested in purchasing Rosetta Stone</p> <p>12 software?</p> <p>13 A Yes.</p> <p>14 Q Was that for yourself or some other</p> <p>15 member of your family?</p> <p>16 A It was a Christmas gift for my son.</p> <p>17 Q Why did you want to purchase Rosetta</p> <p>18 Stone software for your son?</p> <p>19 A He works in the wine industry in</p> <p>20 Napa, and he works with a large contingent of</p> <p>21 Latinos.</p> <p>22 Q Did you do any research to explore</p>	12
11	<p>1 whether there were other products available on</p> <p>2 the marketplace that would serve the same purpose</p> <p>3 of teaching your son Spanish?</p> <p>4 A Not really, huh-uh. We just kind of</p> <p>5 made up our mind to get that particular brand.</p> <p>6 Q Is there anything particular that led</p> <p>7 you to decide to purchase the Rosetta Stone brand</p> <p>8 of language learning software?</p> <p>9 A Say that again.</p> <p>10 Q Is there any particular reason that led</p> <p>11 you to purchase Rosetta Stone?</p> <p>12 A Just I thought it was a good product.</p> <p>13 Just from probably advertisement is all. I don't</p> <p>14 know anybody who had used it.</p> <p>15 Q Did you attempt to purchase Rosetta</p> <p>16 Stone software for your son?</p> <p>17 A Actually my mother and I did it</p> <p>18 together.</p> <p>19 Q Can you describe how that came about?</p> <p>20 A My mom enjoys surfing, and she was on</p> <p>21 the Internet, and her default -- whatever it is</p> <p>22 when you type in search is Google, and she called</p>	13
10	<p>1 and told me she found a good price.</p> <p>2 Q So your mother, whose name is?</p> <p>3 A Dorothy Park.</p> <p>4 Q And she's how old?</p> <p>5 A She's now 89.</p> <p>6 Q When you say she enjoys surfing, you're</p> <p>7 not referring to the beach, are you?</p> <p>8 A No.</p> <p>9 Q You're talking about the use of the</p> <p>10 Internet?</p> <p>11 A Right.</p> <p>12 Q So did you come up with a plan with</p> <p>13 your mother to purchase the software for your</p> <p>14 son?</p> <p>15 A Uh-huh. She asked me to actually do</p> <p>16 the purchase, and she gave me her American</p> <p>17 Express card.</p> <p>18 Q And now you said that she called you</p> <p>19 after doing a search on Google.</p> <p>20 A Uh-huh.</p> <p>21 Q And that she had found a good price.</p> <p>22 A Uh-huh.</p>	12
11	<p>1 Q Did you replicate that search?</p> <p>2 A Uh-huh.</p> <p>3 Q Tell me what you did.</p> <p>4 A I -- you mean my --</p> <p>5 Q Physically, what did you do?</p> <p>6 A Physically what I did? I typed in</p> <p>7 Rosetta Stone and the information that Mom found</p> <p>8 popped up on the right-hand side, and I clicked</p> <p>9 it and found the same thing she did.</p> <p>10 Q So when you typed in Rosetta Stone,</p> <p>11 were you typing that into the Google search</p> <p>12 engine?</p> <p>13 A Yes.</p> <p>14 Q And do you recall when you did this?</p> <p>15 A No. The actual date?</p> <p>16 Q Yes.</p> <p>17 A No. I know that when we purchased</p> <p>18 it, just because I was looking -- it was in</p> <p>19 October.</p> <p>20 Q October of what year?</p> <p>21 A 2009.</p> <p>22 Q So you say that you typed in the words</p>	13

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<p style="text-align: right;">14</p> <p>1 "Rosetta Stone" into the Google search engine. 2 A Right. 3 Q And then you pressed enter? 4 A Yeah. 5 Q And then you saw links appear on the 6 right-hand side? 7 A Yes. 8 Q Do you know what the term "sponsored 9 link" means? 10 A I do now. 11 Q How do you know that? 12 A Because once we went through this 13 fiasco and I called Rosetta Stone, they told me. 14 Q What is your understanding of what a 15 sponsored link is? 16 A It's paid. It's like a billboard. 17 That's my description. 18 Q I'm going to mark as Jeffries Exhibit 1 19 just an example search for Rosetta Stone Spanish. 20 I'm not suggesting that this was done in October, 21 Ms. Jeffries. But I would just ask that you take 22 a look at this layout.</p>	<p style="text-align: right;">16</p> <p>1 side, the left or the right? 2 A Right. 3 Q And you clicked on the link on the 4 right-hand side? 5 A Yes. 6 Q Did you print out the landing page? 7 A Yes. 8 Q That you went to when you clicked on 9 the link on the right-hand side? 10 A Yes. Actually my mother did. 11 Q Your mother printed it out? 12 A Uh-huh. 13 Q So did you bring that with you today? 14 A Yes. 15 Q When you did the search that your 16 mother did, you replicated the search engine, did 17 you find the same link that she was talking 18 about? 19 A Uh-huh. 20 Q Yes? 21 A Yes. I'm sorry, yes. 22 Q Do you remember the name of the company</p>
<p style="text-align: right;">15</p> <p>1 (Exhibit No. 1 marked.) 2 A Okay. 3 Q And tell me if the layout appears as 4 did it on your screen, with searches on the left- 5 hand side or the right-hand side. 6 MR. STERN: Objection. Vague. Objection. 7 Foundation. 8 Q You can answer. 9 A Yeah, it generally looked like that. 10 Q And you indicated you typed in Rosetta 11 Stone, but not Rosetta Stone Spanish. Correct? 12 A Yes; that's correct. 13 Q And do you recall when you clicked on 14 the right-hand side, do you remember whether 15 there was actually like a line like this that 16 appeared that separated the left from the right 17 on your screen? 18 A Yes. Oh, the line? I don't know. I 19 just know there were two -- there is a narrow 20 column and then the wide area where you can find 21 different things. 22 Q And the narrow column was on which</p>	<p style="text-align: right;">17</p> <p>1 or the URL that appeared on that link? 2 A No. No. I know it's on what I 3 brought. 4 Q Let me show you what -- actually what I 5 want to do -- 6 A Soft something I think is what it 7 was. 8 MR. ETTINGER: Because the copies that we 9 had made earlier, Claude, cut off the 10 bottom, if it's all right with Ms. 11 Jeffries, I'm going to mark your originals 12 and I'll give them back to you when we 13 make better copies. 14 A I don't care. 15 MR. ETTINGER: That way we don't have to 16 go back and forth. Is that all right with 17 you? 18 MR. STERN: That's fine. So do I 19 understand that Ms. Jeffries copies don't 20 have a cut-off bottom. 21 MR. ETTINGER: That is correct. This was a 22 hotel -- you can actually see them on the</p>



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<p style="text-align: right;">18</p> <p>1 bottom. 2 MR. STERN: Okay. 3 THE VIDEOGRAPHER: Did you want any of 4 these on video? 5 MR. ETTINGER: If I do, I'll ask her to 6 hold them up. 7 THE VIDEOGRAPHER: Thank you. 8 Q MR. ETTINGER: So I'm handing you a 9 four-page document that you brought with you 10 today. 11 (Exhibit No. 2 marked.) 12 A Okay. 13 Q It's got a date of October 11, 2009 and 14 an address on the bottom, WWW.softer4world.com. 15 Could you take a look at that for me, please? 16 A Uh-huh. 17 Q Is that the printout that your mother 18 provided to you? 19 A Yes, less this one name I just wrote 20 down there this morning. 21 MR. STERN: I'm sorry to interpose this. 22 Was this marked as an exhibit?</p>	<p style="text-align: right;">20</p> <p>1 MR. STERN: Yes. 2 Q MR. ETTINGER: When you looked at the 3 web page that your mother provided to you after 4 replicating her search, what did you believe that 5 this company was offering for sale? 6 A What I was looking for was Spanish 7 Rosetta Stone. 8 Q Did you have any belief or suggestion 9 in your mind that this was not an authorized sale 10 of Rosetta Stone software? 11 A No. 12 MR. STERN: Objection. Foundation. 13 Q MR. ETTINGER: Let him make his 14 objection and then you can answer. 15 A Sorry. 16 MR. STERN: It's okay. You're doing fine. 17 Q MR. ETTINGER: It's just the format. 18 Did you have any belief in your mind 19 that the company that was offering this product 20 through the Internet that you found on the Google 21 search engine was offering a legal software for 22 sale?</p>
<p style="text-align: right;">19</p> <p>1 MR. ETTINGER: Yes, that was Exhibit 1. 2 MR. STERN: I'm sorry. 3 Q MR. ETTINGER: Is that a copy of what 4 your mother provided to you? 5 A Yes. 6 Q And you say the handwriting on the 7 right-hand side is something you wrote down this 8 morning? 9 A Yes. 10 Q So when you looked at this website, 11 what did you believe the softer -- 12 MR. STERN: Unfortunately I have no idea 13 if we're talking about the same thing. I'm 14 sorry. You said there was handwriting? 15 A Yes. It's her son's name. 16 MR. STERN: I don't have that on my copy. 17 A We were just chatting about her son, 18 so I wrote the name so I could give it to my 19 husband. 20 MR. STERN: That's fine. Go ahead, 21 please. 22 MR. ETTINGER: Are we okay?</p>	<p style="text-align: right;">21</p> <p>1 MR. STERN: Objection. Foundation. 2 A No. 3 Q MR. ETTINGER: What did you do next in 4 your pursuit of the purchase of Rosetta Stone 5 software? 6 A I read through what was on the site 7 and then I -- my mother and I went to a local 8 office supply place and wanted to see if we could 9 find it there, because we had read that Staples 10 matched prices. So we went to a local Staples 11 store and took this printout with us. 12 Q When you say this printout, you're 13 referring to Exhibit 2? 14 A Yes. 15 Q And what did you learn when you went to 16 the Staples? 17 A That they didn't match web pricing. 18 Q Did they give you any -- did they give 19 you anything in writing that suggested to you 20 what their policy was regarding matching prices 21 that appeared on the Internet? 22 A Yes. They printed it out for me.</p>

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<p style="text-align: right;">22</p> <p>1 Q I will hand you what's been marked as 2 Exhibit 3. It is a one-page document that is 3 entitled Staples price match guarantee. Has the 4 date at the bottom -- Claude, your copy probably 5 will not have it, 10/11/2009. I will hand that 6 to the witness. 7 Ms. Jeffries, could you please verify 8 for us that Exhibit 3 is what you were provided 9 by Staples. 10 (Exhibit No. 3 marked.) 11 A Yes. 12 Q So when Staples said that they wouldn't 13 match the price that you found on the Internet, 14 what did you do next? 15 A We went home and bought it on-line. 16 Q Did you buy it from the company, 17 softer4world.com? 18 A Yes. 19 Q The same company that you found through 20 the Google search engine? 21 A Yes. 22 Q Did you actually place the order or did</p>	<p style="text-align: right;">24</p> <p>1 find out which documents we're talking 2 about. I've got it. Thank you very much. 3 A Sure. 4 MR. ETTINGER: Claude, I apologize. 5 MR. STERN: That's all right. 6 Q MR. ETTINGER: So this is -- this 7 exhibit reflects two e-mails, one from 8 softer4world confirming your order? 9 A Right. 10 Q And you forwarded that to your mother. 11 Correct? 12 A Yes. 13 Q And when you placed the order, whose 14 name did you make the order in? 15 A I used my name. 16 Q And you used your mother's credit card? 17 A Yes. 18 Q How much was the purchase price? 19 A \$158. 20 Q Did you actually receive product in 21 response to your order? 22 A Yes.</p>
<p style="text-align: right;">23</p> <p>1 your mother place the order? 2 A I did. 3 Q Do you remember the day upon which you 4 did that? 5 A No. But there is a confirmation 6 thing someplace in there that I brought. 7 Q I will hand the witness what has been 8 marked as Exhibit 4. It is an e-mail from Debbie 9 Jeffries to Dorothy Park. That's your mother? 10 Correct? 11 (Exhibit No. 4 marked.) 12 A Yeah. 13 Q And you're forwarding your 14 confirmation? 15 A Yeah. 16 Q Could you please look at Exhibit 4 and 17 verify that that is, in fact, the e-mail that you 18 received from softer4world that you forwarded to 19 your mother. 20 A Yes. 21 MR. STERN: I'm sorry, Counsel. You guys 22 are way ahead of me. I'm struggling to</p>	<p style="text-align: right;">25</p> <p>1 Q What did you receive? 2 A A box about that size. 3 Q I'm going to mark as exhibit -- 4 A That's the box, isn't it? They sent 5 the whole thing to you. 6 Q I'm going to mark as Exhibit 5 this box 7 of materials entitled Rosetta Stone, and it 8 contains certain CDs, and I'll have the witness 9 go through that. On the outside of the box is a 10 mailer I'll have the witness identify. So this 11 will all be Exhibit 5. First of all, could you 12 identify the outside mailer for me? 13 (Exhibit No. 5 marked.) 14 A This is the one that it came -- that 15 the Rosetta Stone came in, yes. 16 Q So this mailer is addressed to whom? 17 A This was a gentleman that -- 18 Q What's the name on there? 19 A William Thomas. 20 Q Who is William Thomas? 21 A The individual that I spoke with, 22 when I called Rosetta Stone after I found out</p>

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<p style="text-align: right;">26</p> <p>1 that it wasn't a real copy, when I tried to use 2 it and instead I saw I had a counterfeit copy. 3 Q Can you take a look at Jeffries Exhibit 4 5 and tell me whether or not these are the 5 materials you received from softer4world.com? 6 A Well, I tell ya, I only opened the 7 first -- we tried to play the first one. The rest 8 of it I didn't even really look at. 9 Q You indicated you sent the entire set 10 to Rosetta Stone? 11 A Correct. 12 Q Why did you do that? 13 A Because they asked me to. 14 Q Did they tell you why they wanted it? 15 A They said that they had a fraud 16 division, and I was rather alarmed that the thing 17 came from someplace in the Pacific Rim when I had 18 no idea that's where I ordered it from, and was 19 more than happy to send it back to them. 20 Q Let's go a little slower. When the 21 package arrived in the mail, was there any 22 indication as to its country of origin?</p>	<p style="text-align: right;">28</p> <p>1 opened the shipping box. But when it said it was 2 from Shanghai I figured I had a problem. 3 Q So did this label or package shipment 4 label come with the package you received with the 5 Rosetta Stone software? 6 A Yes. 7 Q What did you do with this label? 8 A You mean right away? I just kept it, 9 obviously. And then when I called Rosetta Stone 10 and they wanted everything, I made a copy -- I 11 didn't make a copy of this. I just put 12 everything in and sent it. 13 Q So you sent the shipping label to 14 Rosetta Stone, as well? 15 A Yeah. I sent the box, the shipping 16 label, the whole shooting match. 17 Q Can you tell, from the shipping label, 18 what the company indicated was being shipped to 19 Ms. Dorothy Park? 20 A Yes. A dress and shoes. 21 Q And you indicated that when you 22 received --</p>
<p style="text-align: right;">27</p> <p>1 A No, but there was stuff on it that 2 was weird, because it came from this -- it 3 obviously came -- it came from something -- EMS 4 or something, and then it came -- was delivered 5 by the post office. So there was some sort of 6 step one, step two. 7 Q Let me show you what I've marked as 8 Exhibit 6. 9 A Okay. Yeah. 10 (Exhibit No. 6 marked.) 11 MR. STERN: Exhibit what? 12 MR. ETTINGER: I'm handing it to you. 13 Q This is a one-page document. Yours is a 14 cleaner version, Ms. Jeffries. But it has 15 RS008000016 is the Bate's numbers, but that's not 16 on the copy -- 17 A What? 18 Q There is a number on the bottom that 19 Counsel has. Can you please tell us what this 20 is? 21 A This was -- I can't remember if this 22 was -- it must have been in the box, when I</p>	<p style="text-align: right;">29</p> <p>1 A And a gift, yeah. 2 Q You indicated when you received the 3 package, you thought there might be something 4 amiss because of its country of origin. Why is 5 that? 6 A Well, I thought because, A, I didn't 7 know I bought it from overseas. B, it clearly 8 wasn't a dress and shoes unless it was Barbie 9 doll stuff. And it just looked like we have a 10 problem. 11 Q Could you please go back to Exhibit 5, 12 which is the box? 13 A Okay. 14 Q Could you please identify for us, if 15 you could, which portion of the software you 16 attempted to load on your computer? 17 A Well, it's whatever was number one. 18 I don't really -- it must have been -- it was 19 whatever was the number one disk. 20 Q Why don't we do this first. Why don't 21 we go through and identify all of the pieces that 22 are in the box. You don't have to take out all</p>

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<p style="text-align: right;">30</p> <p>1 the disks, but what is in your hand that you are 2 holding up? You can hold it up for the camera. 3 A Okay. It says application. 4 Q And that came out of a sleeve from -- 5 THE VIDEOGRAPHER: Can you hold that up 6 again, please? 7 A Sure. 8 Q That came out of a sleeve, Ms. 9 Jeffries, that is entitled what? 10 A It says, language learning software. 11 THE VIDEOGRAPHER: Thank you. 12 A I probably -- I'm the one in the 13 family that reads the directions, so I probably 14 looked at this and was told -- it just said what 15 I was supposed to do first. 16 Q What is this that you're looking at? 17 A It's a user guide. 18 Q What's the name on the top of that user 19 guide? 20 A Rosetta Stone User Guide. 21 Q Could you hold that up for the camera, 22 as well?</p>	<p style="text-align: right;">32</p> <p>1 A You can open them. 2 Q So the user guide didn't have -- 3 doesn't have cellophane on it at this point. 4 Correct? 5 A No, none of them do. 6 Q And then finally? 7 A "An audio companion, practice what 8 you learned, Rosetta Stone." 9 Q And lastly if you could -- if you could 10 hold up the box that it came in. I know it's 11 been -- I take it the box is not in the same form 12 that it was when you received it? 13 A No. 14 Q What's different about it now? 15 A It's flat. 16 Q If you could just hold that up for the 17 camera. 18 A (The witness complied.) 19 THE VIDEOGRAPHER: Thank you. 20 A You're welcome. 21 Q When you loaded the software or 22 attempted to load the software, what happened?</p>
<p style="text-align: right;">31</p> <p>1 A (The witness complied.) 2 THE VIDEOGRAPHER: Thank you. 3 Q Next thing that's in the package? 4 A Oh, dynamic emergent -- I don't know 5 what's in here. Oh, it's more disks. It's level 6 two. 7 Q What's the name of that package? 8 A Rosetta Stone. 9 Q If you could turn it around so the 10 camera could see it. That says, language 11 learning software, does it not? 12 A Yes. 13 Q And then the next thing? 14 A This is a user guide CD. 15 Q What else was in the package? 16 A This is an application disk CD. 17 THE VIDEOGRAPHER: Can you hold that still 18 for me. 19 A Sorry. 20 Q On the user guide that's on the CD 21 format and the application disk, are those opened 22 or unopened?</p>	<p style="text-align: right;">33</p> <p>1 A It didn't work. 2 Q When you say "it didn't work" what do 3 you mean? 4 A It was a -- it was an audio one that 5 we put in to listen to while we were in the car, 6 and it didn't work. 7 Q Did you try to load the software on to 8 your computer? 9 A No. 10 Q You only tried the audio disk? 11 A Yes. 12 Q When that didn't work -- when you say 13 it didn't work, did you hear anything come out? 14 A No. 15 Q It was totally silent? 16 A Yeah. It just didn't work. Maybe 17 there was some static. I don't know. It did 18 nothing. 19 Q As a result of that, what did you do 20 next? 21 A I called -- I can't remember who I 22 called in what order, but I spoke to my mom about</p>

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<p style="text-align: right;">34</p> <p>1 it. I spoke to -- well, I either spoke to my mom 2 or I called Rosetta Stone first and then I called 3 -- the Rosetta Stone people recommended that I 4 call American Express. 5 Q Why did you call Rosetta Stone? 6 A Because after I got this thing -- 7 Q This thing is the -- 8 A The shipping label, and it didn't 9 work, all right, I thought they should know that 10 somebody was counterfeiting their stuff. 11 Q What did Rosetta Stone tell you? 12 A They told me that -- they asked me to 13 -- they thanked me for calling and asked me to 14 send them the stuff. 15 Q Had they ever heard of 16 softer4world.com? 17 MR. STERN: Objection. Foundation. 18 MR. ETTINGER: Let me rephrase it. 19 A I don't know. 20 Q MR. ETTINGER: Did you tell them who 21 you purchased the materials from? 22 A I don't remember. I offered to send</p>	<p style="text-align: right;">36</p> <p>1 well as the packing slip has been included." 2 Q Did you get a response from Rosetta 3 Stone? 4 A Well, I'm sure I did. I just don't - 5 - eventually they sent a -- actually they sent me 6 -- Mom a letter. They sent it to me, but it was 7 a letter for Mom to be able to use with American 8 Express so that she could get credit on her 9 account. 10 Q And let me hand you what's been marked 11 as Exhibit 8. 12 (Exhibit No. 8 marked.) 13 MR. STERN: I think the witness produced 14 this document. 15 MR. ETTINGER: That's fine. This one has 16 a Bates number on it. And I'm handing you 17 one with the Bates number, as well. 18 MR. STERN: Okay. 19 Q MR. ETTINGER: What's been marked as 20 Exhibit 8 is a letter dated November 30, 2009, 21 addressed to Dorothy Park from a Jason Calhoun. 22 It bears Bates number RS008000017. The address on</p>
<p style="text-align: right;">35</p> <p>1 them all the stuff so they would know. 2 MR. ETTINGER: Could I have a couple more 3 exhibit labels, please? We're up to 4 number seven. 5 Q I'm handing the witness what's been 6 marked as Exhibit 7. That is a one-page letter 7 dated November 9, 2009, signed by Deborah 8 Jeffries bearing Bates number RS008-000015. 9 Could you please identify this letter? 10 (Exhibit No. 7 marked.) 11 A It's a letter I wrote to Rosetta 12 Stone. 13 Q And did you send it to Mr. Thomas at 14 Rosetta Stone? 15 A Uh-huh. 16 Q Is this the letter that you used to 17 forward the software, which is Exhibit 5? 18 A Yes. 19 Q And again, what was your purpose of 20 sending this to Rosetta Stone? 21 A Well, just what it said in the 22 letter. "As requested, counterfeit product as</p>	<p style="text-align: right;">37</p> <p>1 this letter, 3800 North Delta Highway, is that 2 yours or your mother's? 3 A Both. 4 Q Does she live with you? 5 A She lives in a cottage on the 6 property, yeah. 7 Q And so did you actually receive this 8 letter? 9 A Uh-huh. 10 Q When you received this letter from 11 Rosetta Stone, is that when you understood that 12 the software that you purchased from the company 13 in China was counterfeit? 14 A Actually I -- we knew that before 15 this letter. We knew that -- well, I didn't know 16 it, but I guessed it when I called them when we 17 tried to use it and it didn't work. 18 Q This just confirmed your suspicion? 19 A Yes. 20 Q What, if anything, did you do with this 21 letter? 22 A Well, my mom needed to use this to</p>

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38	<p>1 send to American Express to get credit.  2 Q Did she ultimately get credit from  3 American Express?  4 A Yes.  5 Q Was the full purchase amount refunded  6 to her?  7 A Yes.  8 Q Let me show you what's been marked as  9 Exhibit 9.  10 Claude, this is a PayPal receipt that  11 was in the package received from the witness this  12 morning. It's got handwriting on it. Are you  13 with me?  14 (Exhibit No. 9 marked.)  15 MR. STERN: Is that it?  16 MR. ETTINGER: Yeah. That's it.  17 Q Let me hand you what's been marked  18 Exhibit 9. Take a look at that for a moment.  19 A Got it.  20 Q Could you tell us what Exhibit 9 is?  21 A This is a receipt that my mom printed  22 out when we bought it, the product.</p>	40	<p>1 Stone software to you?  2 A No.  3 Q Ms. Jeffries, did you try to send the  4 software back to softer4world?  5 A No.  6 Q So once you determined that it was  7 counterfeit via -- through Rosetta Stone, that  8 was the end of your efforts with this except to  9 get your money back?  10 A Uh-huh, yes.  11 Q Did you ultimately purchase Rosetta  12 Stone software?  13 A Yes.  14 Q And through what source did you buy it?  15 A Rosetta Stone.com.  16 Q So you went on-line and bought it  17 directly from the company?  18 A Yes.  19 Q Do you recall approximately how much  20 you paid for it?  21 A No, but it was a Christmas special  22 thing you had.</p>
39	<p>1 Q Do you see where it says "seller  2 information"?  3 A Yes.  4 Q The right-hand side. Could you tell  5 us, what does it say there for the e-mail  6 account?  7 A LINZHIYUE02 at gmail.com.  8 Q Do you know what gmail is?  9 A Yes.  10 Q What is gmail?  11 A It's an e-mail -- it's a system that  12 you can use for e-mail.  13 Q Do you know who sponsors that?  14 A Google.  15 MR. STERN: Objection. Foundation.  16 Q MR. ETTINGER: Did you ever try to  17 communicate with the seller through the e-mail  18 account, the e-mail address that appears on  19 Exhibit 9?  20 A No.  21 Q Did you do any research to try to find  22 the softer4world company that sold the Rosetta</p>	41	<p>1 Q And you bought it in 2009?  2 A Uh-huh.  3 Q And did you, in fact, give the software  4 to your son?  5 A Yes.  6 Q Does he like the product?  7 A Yes.  8 Q Has he been successful in his efforts  9 to learn some Spanish with it?  10 A Yes.  11 MR. STERN: Objection. Foundation.  12 A Yes.  13 Q MR. ETTINGER: How do you know that?  14 A Because I -- as a mother, I ask him.  15 And in fact yesterday he answered -- or he  16 answered the phone, he called, and then answered  17 me in Spanish.  18 Q So we're having some success with the  19 software?  20 A Yes.  21 MR. ETTINGER: One moment, please.  22 THE VIDEOGRAPHER: Can we take this moment</p>

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<p style="text-align: right;">42</p> <p>1 to reconnect to your microphone? 2 MR. ETTINGER: Thank you. 3 THE VIDEOGRAPHER: We're still on the 4 record. I am getting a little Blackberry 5 type interference. It's not bad, but it's 6 coming through just once in a while. 7 MR. ETTINGER: Can we go off the record 8 for a moment. 9 THE VIDEOGRAPHER: Sure. We're going off 10 the record. The time is 9:48. We're off 11 the record. 12 (Break in proceedings.) 13 THE VIDEOGRAPHER: Stand by. All systems 14 go. We are going back on the record. The 15 time is 9:53. We're on the record. 16 MR. ETTINGER: No further questions at 17 this time. 18 EXAMINATION 19 BY MR. STERN: 20 Q Ms. Jeffries, my name is Claude Stern. 21 We've been going a little bit -- I don't know how 22 long we've been going, about 45 minutes. Do you</p>	<p style="text-align: right;">44</p> <p>1 Q Was it last week? 2 A No. It was maybe a month ago. 3 Q And then when -- did you speak to him 4 this morning, before the deposition? 5 A Yes. 6 Q How long did you speak to him before 7 the deposition? 8 A About five minutes. 9 Q And before -- so that was the second 10 time? 11 A No, that was the third time. 12 Q That was the third time. I'm sorry. 13 There was a time in the middle. 14 A Uh-huh. 15 Q Do you recall when that took place? 16 A Sometime in the -- I'm trying -- 17 Q It's all right. 18 A I don't know, a couple of weeks ago. 19 Q That's fine. So over the last month 20 you've spoken to him three times? 21 A Correct. 22 Q Is he the only person from the law firm</p>
<p style="text-align: right;">43</p> <p>1 need a break? 2 A No, I'm fine. 3 Q I represent Google. A couple of things 4 to start. You and I have never met before today. 5 Right? 6 A No. 7 Q And we've never spoken today? 8 A No. 9 Q Is it accurate to say that you've never 10 spoken to anybody from Google? 11 A About this, yeah. 12 Q And you've never spoken to anybody with 13 my law firm? 14 A No. 15 Q Have you spoken to Mr. Ettinger before 16 today? 17 A Yes. 18 Q How many times did you speak to him? 19 A Let's see, three. 20 Q Do you recall when the first time you 21 spoke to Mr. Ettinger was? 22 A No -- specific date, no.</p>	<p style="text-align: right;">45</p> <p>1 representing Rosetta Stone you've spoken to? 2 A Yes. 3 Q What did you speak to him about? 4 A Well, the first time he called me as 5 a follow-up I believe to -- well, I sent all that 6 stuff that we've already gone through, and he 7 asked if -- he explained that there was legal 8 proceedings and asked if I would sign -- write 9 out what had happened and send it to him, and I 10 said sure. 11 Q Did you do that? 12 A No, I didn't do that. 13 Q Maybe I misunderstood. So he asked you 14 to fill out -- make a statement about what 15 happened and send it to him and you said you 16 would? 17 A Exactly. And I said I would. And I 18 didn't because he called later and said he wanted 19 to do a deposition, like we're here right now. 20 And asked if I was available to do that, and I 21 said sure. 22 Q Did he ask you about the facts that you</p>

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<p style="text-align: right;">46</p> <p>1 testified about this morning, about how you 2 bought software, from whom you bought it, and 3 sort of the story of what you testified to this 4 morning? 5 A He confirmed that -- the information 6 that I had sent him. 7 Q Did you send him any documents? 8 A No. 9 Q So prior to today, you didn't provide 10 Mr. Ettinger any documents; is that right? 11 A No. Wasn't I sent him. I sent to -- 12 Q To Google -- to Rosetta Stone? 13 A To Rosetta Stone, yeah. 14 Q I take it that Mr. Ettinger didn't ask 15 you to send any documents to Rosetta Stone. You 16 did that beforehand? 17 A Yes. 18 Q You know who my client is, who Google 19 is? 20 A Yes. 21 Q Are you acquainted with the Google 22 search engine?</p>	<p style="text-align: right;">48</p> <p>1 Q MR. STERN: You can answer the 2 question. 3 A What I'm thinking is I don't 4 necessarily think news is reliable. It's just 5 interesting. That's what I -- 6 Q I don't mean do you consider that the 7 news is reliable. I mean did you find Google, 8 the fact that -- is it always reliable, that when 9 you click on the news, it provides you news? 10 A Yeah. 11 Q And I take it you use it also to 12 conduct searches or queries to find things? 13 A Yes, I do. 14 Q Is there any search engine that you use 15 more than Google? 16 A No. 17 Q So you're acquainted -- 18 A My computer defaults to that. 19 Q Is that right? 20 A Yeah. 21 Q Did you set that? 22 A Actually our IT people did.</p>
<p style="text-align: right;">47</p> <p>1 A Yes. 2 Q Do you use it frequently? 3 A Yes. 4 Q How many times a day -- first of all, 5 do you use it every day? 6 A Yes. 7 Q How many times a day do you think you 8 use it? 9 A I always read the news. 10 Q And you use Google as the means of 11 obtaining that information? 12 A Uh-huh. 13 Q You type CNN or something to the search 14 bar? 15 A No, I just type Google and then I 16 shadow that little thing up at the top that says 17 "news." 18 Q Do you find it a reliable source for 19 news? 20 MR. ETTINGER: Objection. Go ahead. 21 THE VIDEOGRAPHER: Mr. Ettinger, can you 22 put your mic on?</p>	<p style="text-align: right;">49</p> <p>1 Q The business that you're in, you're -- 2 a golf course. Do you have a website? 3 A Yes. 4 Q Do you know -- is your website 5 identifiable on Google? 6 A I have no idea. 7 Q You never looked up your website to see 8 if you could find it on Google? 9 A No. 10 Q Do you know if you've ever gotten -- 11 what do you call them customers, I guess, people 12 who play at the golf course. What do you call 13 them? 14 A Golfers. 15 Q Golfers. How about that. Do you know 16 if golfers have ever come to your golf location 17 through Google? 18 A No, I don't know. 19 Q Do you know if anybody's ever even 20 taken a look at your website? 21 A You mean did I do it -- can I prove 22 it? No. But I'm sure they have.</p>



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<p style="text-align: right;">50</p> <p>1 Q But have people reported back to you 2 that they've looked at your website? 3 A Yeah. 4 Q Do you know if anybody's ever looked at 5 your website on Google? 6 A No, I don't know. 7 Q Have you ever used Google to buy 8 product other than this particular occasion? 9 A You mean to find product, not to buy 10 product, no. 11 Q I think that's a better question. Have 12 you ever used the Google search engine to 13 identify a company from whom you could buy 14 product? 15 A I use the Google search engine not to 16 identify the company, it's to find a product, and 17 then it just takes me to the company, yeah. 18 Q So you've used -- in the past you've 19 used the Google search engine to find products? 20 A Yes. 21 Q Have you used it to find services? 22 A No, I don't think so.</p>	<p style="text-align: right;">52</p> <p>1 buying? 2 A It's very helpful, yeah. 3 Q And you have found it very helpful in 4 the past? 5 A Uh-huh. 6 Q And you still use it today? 7 A Yes. 8 Q Even though you had this incident where 9 you obtained this product from this company over 10 the Internet, you still use Google today? 11 A Sure. 12 Q Let's talk about the product that we're 13 talking about. I want to make sure that I 14 understand your testimony. You have the exhibits 15 in front of you. 16 A Uh-huh. 17 Q What was identified as Exhibit 1, I 18 just want to make sure we're clear about this. 19 Exhibit 1 is not a representation of the website 20 that you saw when you typed in the words "Rosetta 21 Stone." Correct? 22 MR. ETTINGER: Objection as to form,</p>
<p style="text-align: right;">51</p> <p>1 Q What sort of products have you used the 2 Google search engine to find? 3 A Jeez, you know, I'm really sorry. I 4 don't remember. 5 Q That's all right. Was it more than one 6 occasion? 7 A Yeah, okay. I've got an example. I 8 was looking for some tile for our proshop and -- 9 ceiling tile, and I went on-line to kind of see 10 what was out there. 11 Q Did you type in "ceiling tile"? 12 A Yeah. 13 Q At the time you typed in ceiling tile, 14 you didn't know much about what specific sort of 15 ceiling tile you wanted. 16 A Correct. 17 Q So you wanted to get some information 18 about that? 19 A Yes. 20 Q Would you agree with me that Google is 21 an excellent way of finding information about 22 different products that you may be interested in</p>	<p style="text-align: right;">53</p> <p>1 Counsel. You might want to read your 2 question back. 3 Q What was identified as Exhibit 1 is not 4 a representation of the website -- I'm sorry, of 5 the search results that you saw when you typed in 6 the words, "Rosetta Stone." Correct. 7 A Okay, now I'm a little lost of what 8 the question is. This was kind of the general 9 format, the way it looked. 10 Q But this isn't the precise image of 11 what you saw? 12 A No. 13 Q If I asked you to reconstruct exactly 14 what you saw on that particular image that you 15 saw when you typed in Rosetta Stone, you 16 couldn't? 17 A Exactly? Not a chance. 18 Q If I asked you to tell me the -- what 19 the link looked like on the right side, namely 20 the specific words that were on the link, could 21 you tell me that? 22 A It said Rosetta Stone.</p>

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<p style="text-align: right;">54</p> <p>1 Q Do you know where it said Rosetta 2 Stone? 3 A It was on this side of the page. Is 4 that what you're talking about? 5 Q So you see on the right side of the 6 page there are various different entries. 7 A Uh-huh. 8 Q And some are blue hyperlinks. Do you 9 see what I'm saying? 10 A Uh-huh. 11 Q They're blue in color. They're 12 underlined. And beneath them there is text in 13 black. 14 A Okay. 15 Q And beneath that there is text in 16 green. 17 A Got it. 18 Q In the case of the advertisement that 19 you clicked on, do you recall where the words 20 Rosetta Stone were? Were they in blue? Were they 21 in black? Were they in green? 22 A I wouldn't have known.</p>	<p style="text-align: right;">56</p> <p>1 yeah. 2 Q So this looks like the image was made 3 on October 11. 4 A Uh-huh. 5 Q Is that what your understanding is, as 6 well? 7 A Yeah. 8 Q And judging from the documents that 9 you've put into the -- that you testified about 10 this morning, would you look at Exhibit 9 11 briefly? 12 THE VIDEOGRAPHER: I want to let you know 13 we're about ten minutes away from changing 14 the first tape. 15 A Okay got it. 16 Q If you look at Exhibit 9, you will 17 agree with me that Exhibit 9 seems to indicate 18 that there is a PayPal transaction on or about 19 October 13, 2009. Do you see that? 20 A Yes. 21 Q Do you see that on the top right? 22 A Yes.</p>
<p style="text-align: right;">55</p> <p>1 Q You have no idea? 2 A No. 3 Q With respect to the site that you went 4 to -- and I apologize. I've got a bunch of 5 paperwork in front of me. I want to make sure 6 that I've got everything right. Could you take a 7 look at Exhibit 2? 8 A Uh-huh. 9 Q Do you have that in front of you? 10 A Yes, I do. 11 Q Ms. Jeffries, Exhibit 2, this is a 12 document that I believe you said either you or 13 your mother made a copy of? 14 A My mom. 15 Q Do you recall the date that she made a 16 copy of this? 17 A Well, it was between the day that -- 18 a couple of days before we bought it. 19 Q So I'm looking at the bottom -- I have 20 a very poor copy because in mine the bottom is -- 21 but it looks like -- 22 A There it is, 10/11, October 11th,</p>	<p style="text-align: right;">57</p> <p>1 Q Is it your understanding that Exhibit 2 2 was made by your mom about two days before the 3 actual transaction took place? 4 A Yes. 5 Q Now Exhibit 2 -- I'm sorry. Again, this 6 is the first time I'm seeing this today. I'm 7 looking at this cardboard box. And the cardboard 8 box -- I don't see on the cardboard box -- I'm 9 not trying to be argumentative, I just don't see 10 it. I don't see anything that shows that it was 11 shipped to you. Is the priority mail slip that 12 you put to William Thomas on top of the box, is 13 that covering the -- 14 A Probably. Let me look at it. 15 Q Don't take it off. I want to make sure 16 that -- 17 A No. You know what, where is that 18 other thing, that mailing label? 19 Q Hold on. I can direct you to it. There 20 was a mailing label -- 21 A Six, six. 22 Q Exhibit 6.</p>

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<p style="text-align: right;">58</p> <p>1 A It was underneath this thing, this 2 plastic stuff. 3 Q So is it still there right now? 4 A No, no, here it is. You took it out 5 and put it in the box. 6 Q I see. That's fine. I got it. So if I 7 understand then, so you took off the original 8 mailing label off of this -- 9 A No, I didn't take it off. Well, I 10 guess you could say it was in that plastic -- you 11 know how they ship things. 12 Q It's the insert. 13 A Yeah, thanks. 14 Q So you took the plastic shipping label 15 out of the insert and put it in the box and sent 16 it to Rosetta Stone? 17 A Correct. 18 Q And it's your testimony that Exhibit 6 19 is the copy of the shipping label that was on the 20 box when you received it; is that right? 21 A Uh-huh. 22 Q I'm sorry. Is that correct?</p>	<p style="text-align: right;">60</p> <p>1 that this -- when I say "this," I mean Exhibit 2, 2 is a facsimile, I mean a copy, of the precise 3 website that your mother identified as being the 4 location that she wanted to get the product from? 5 A Yes. 6 Q Are you in a position to testify that 7 this is the website that you decided to buy the 8 product from? 9 A Yes. 10 Q There is no doubt in your mind? 11 A No. 12 Q Now, the product that we're looking at 13 on top of page Exhibit 2 has a price of \$178. 14 A I know. 15 Q And I'm trying to figure out, was there 16 another product that was referenced on this 17 website that showed a product being sold for 18 \$158? 19 A No. 20 Q The check that you -- the PayPal 21 expense that you made was for \$158. Correct? 22 A Correct.</p>
<p style="text-align: right;">59</p> <p>1 A Yes. I'm sorry. 2 Q That's all right. And I'm just trying 3 to look -- on that shipping label, you'll see -- 4 am I correct -- my copy is very poor. It looks 5 like it says, company Shanghai -- 6 A Something. 7 Q -- something ping compute or computer, 8 and then there is a stamp over it. Is that what 9 yours looks like, as well? 10 A Yes. 11 Q It doesn't say any other company name 12 on it other than that; is that correct? 13 A That's right. 14 Q Taking your -- take a look at Exhibit 2 15 again. That's the -- 16 A Okay. 17 Q Got it? 18 A Yeah. 19 Q Exhibit 2. You said this is -- you 20 said your mom made a copy of this. 21 A Yes. 22 Q Are you in a position to testify today</p>	<p style="text-align: right;">61</p> <p>1 Q So my question is, if this -- if what 2 I'm looking at in Exhibit 2 shows a product 3 that's being sold at \$178, at what point in the 4 transaction did you see a charge for \$158? 5 A Not until we got this confirmation. 6 No. Not until I placed the order and it was less 7 than the 178. 8 Q I'm sorry. So when you say placed the 9 order -- 10 A On the website. 11 Q So do you have a copy of that? 12 A This was the confirming thingy. 13 Q You are talking about now exhibit -- 14 just so we're clear. 15 A Nine. 16 Q Hold on. Exhibit 9. 17 A Right. 18 Q Exhibit 9 is not an image of what was 19 in the website. Correct? 20 A No. That's the thing they send when 21 -- after you place the order. 22 Q But I'm actually asking a much more</p>

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<p style="text-align: right;">62</p> <p>1 specific question. You didn't take -- withdraw 2 that. Exhibit 2 is a picture made by you or your 3 mother? 4 MR. ETTINGER: Asked and answered. 5 A Mine. 6 Q MR. STERN: Your mom? 7 A My mom. 8 Q SO your mother didn't take a picture of 9 the actual web image that reflected the cart or 10 invoice that she made out to buy the product; is 11 that right? 12 A That's right. 13 Q So -- and who between you and your 14 mother was the person who actually entered the 15 form in the website to buy the product? 16 A I did. 17 Q And used your mother's credit card 18 number? 19 A I did. 20 Q And when you did that, what you didn't 21 enter was \$178. You entered \$158. 22 A I didn't enter anything. I just</p>	<p style="text-align: right;">64</p> <p>1 A No. 2 Q I want to take you -- if you take a 3 look at -- look at the very bottom of the page. 4 A Uh-huh. 5 Q I'm looking at Exhibit 2. 6 A Okay. 7 MR. ETTINGER: You're on the first page? 8 MR. STERN: The first page of Exhibit 2. 9 Q Do you see the last, the very last 10 sentence, it says, "Think about all of the ways 11 you've tried to learn a language: classes at 12 school, tapes and cassettes, even software that 13 uses your native language as a base for your next 14 one. What do they all have in common" space, 15 "translation and memorization." Do you see that? 16 A Uh-huh. 17 Q Do you notice -- I know that you have 18 an undergraduate degree from Stanford. 19 A Not exactly. 20 Q I'm sorry, was it -- 21 A No. From Oregon. 22 Q From Oregon? Was it the masters from</p>
<p style="text-align: right;">63</p> <p>1 clicked and it put in the amount. 2 Q Did a receipt, an electronic receipt 3 pop up to show you what you had just purchased? 4 A Yeah. I mean -- 5 Q I'm talking about on the computer. 6 You're on the computer. You click the button -- 7 A I don't remember. 8 Q But whatever image did or didn't come 9 up, you didn't make a picture of it? 10 A No. 11 Q Now, can you tell me what 12 investigation, if any, you made of this 13 particular website, that's the one reflected in 14 Exhibit 2, before you decided to purchase product 15 from it? 16 A I didn't. 17 Q Did you read in detail the contents of 18 the website? 19 A I did. 20 Q Did you notice that when you read the 21 actual text of the website, there were various 22 spelling or grammatical errors?</p>	<p style="text-align: right;">65</p> <p>1 Stanford? 2 A Yes. 3 Q I'm sorry. I apologize. You've got a 4 graduate degree. Would you agree with me that 5 that last sentence where it says, "What do they 6 all have in common" with the space, "translation 7 and memorization" is an improperly formatted 8 question? 9 MR. ETTINGER: Objection. 10 THE VIDEOGRAPHER: We're five minutes. 11 Q You can answer. 12 A Yes. It's not written very well, is 13 it. 14 Q If you look at the next page where it 15 says -- that paragraph that starts, "That might 16 work." Do you see that? It says, "That might 17 work for a few words." 18 A I see it. 19 Q "But what happens when you get to a 20 sentence or phrase," and then there is no 21 punctuation and it continues. That also isn't 22 properly punctuated, is it?</p>

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<p style="text-align: right;">66</p> <p>1 A No. 2 Q But in all events, I take it that when 3 you were interested in buying this product, you 4 were looking for a present for your son at a good 5 price. Correct? 6 A Yes. 7 Q Other than going to Staples and 8 comparing the price of these three levels of 9 Spanish, did you go anywhere else to compare 10 price? 11 A Well, I didn't go to Staples to 12 compare the price. I went to Staples thinking 13 that they would match the price. 14 Q Oh. It shows you how infrequently I go 15 to Staples. 16 A Yeah. 17 Q So Staples has a program where if you 18 show them a particular price, they'll match it? 19 A Yes. 20 Q So what you did is, you went to 21 Staples, bringing them a copy of Exhibit 2 -- 22 A Yes.</p>	<p style="text-align: right;">68</p> <p>1 product for \$158? 2 A That's correct. 3 Q Was the fact that -- let me ask you 4 this: Were you at all concerned that you were 5 looking at a location on the Internet that was 6 selling a product that was a third to a quarter 7 of the price that was being offered elsewhere? 8 MR. ETTINGER: Objection as to form. 9 A No. 10 Q MR. STERN: You just thought it was a 11 good discount? 12 A I thought it was a great discount. 13 Q You thought it was a great discount. 14 Did you do any price comparison of the Spanish 15 Latin American level one, two and three on the 16 Internet? Not with Staples, but just going on 17 the Internet to see what other locations were 18 selling Rosetta Stone product for? 19 A No, I didn't. 20 Q Did you compare -- withdraw that. 21 When you typed in Rosetta Stone, did 22 you notice that the first search on the top level</p>
<p style="text-align: right;">67</p> <p>1 Q -- and said, match this. Right? 2 A Yes. 3 Q And they said, we won't match it. 4 A They said that they don't match 5 things that are on the Internet. 6 Q I see. 7 A It had to be someplace in town. 8 Q And did you notice how much Staples was 9 charging for the same Spanish Latin America level 10 one, two and three set? 11 A No. I did know that they didn't have 12 it in stock. 13 Q Have you seen, in other locations, that 14 same set would sell anywhere from between 450 and 15 \$600? 16 A Yes. 17 Q And you understood that at the time 18 that you purchased the set for \$158? 19 A Say that again? 20 Q You understood that other locations 21 were selling Rosetta Stone for between 450 and 22 \$600 at the time that you decided to purchase the</p>	<p style="text-align: right;">69</p> <p>1 of the listings on the left was the actual 2 Rosetta Stone.com site? 3 A I didn't do the search. 4 Q Your mom did. 5 A Uh-huh. 6 Q I see. Let me see if I got this 7 straight. And I apologize if I've confused this. 8 So what happened is your mom did the search and 9 then she called you and had you replicate the 10 search, and then you simply went through the 11 mechanics of ordering the product? 12 A Yeah. 13 Q Did you talk with your mom about any 14 other sites that may have appeared on the search 15 result page? 16 A Probably. I don't remember. 17 Q Did your mother tell you what it was 18 about this site on the right-hand side that 19 attracted her to why she wanted to buy the 20 product from there? 21 A The price. 22 Q That's what was driving?</p>

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<p style="text-align: right;">70</p> <p>1 A My mom looked at -- for pricing. 2 Q I see. Do you know -- did she tell you 3 whether or not she had actually gone on to the 4 actual Rosetta Stone.com site, as well? 5 A I don't recall. 6 Q Let me ask you, had you -- based on the 7 information that we've just gone through, the 8 various punctuation mistakes in this particular 9 website, had you noticed those when your mom had 10 asked you to buy the product, would you have 11 spoken to your mom about whether you thought it 12 was a good idea to buy the product from this 13 site? 14 MR. ETTINGER: Objection. 15 A No, I wouldn't have. I mean -- say 16 that again. 17 Q MR. STERN: Sure. The question is, if 18 you had noticed the punctuation problems, would 19 that have raised a flag with you about whether or 20 not this site was real or not? 21 A No. 22 Q Basically the key thing was the price?</p>	<p style="text-align: right;">72</p> <p>1 any other software companies are the victims of 2 counterfeit? 3 MR. ETTINGER: Objection. Foundation. 4 A I still don't exactly understand -- 5 if you're asking me, is it a result of this I'm 6 now more aware of counterfeit stuff, no. 7 Q MR. STERN: I'll take that. 8 A Huh-huh. 9 Q That's fine. You said, if I understand 10 you correctly, the only version of this product - 11 - I'm sorry, the only CD of this product that 12 you've played is the audio component CD. 13 A One of them. 14 Q And you put it in your car and it 15 didn't work? 16 A Correct. 17 Q And that's it? 18 A Yes. 19 Q And you shipped it off to Rosetta Stone 20 and they told you that the product was 21 counterfeit? 22 A Yes.</p>
<p style="text-align: right;">71</p> <p>1 A What is? 2 Q The key reason for going to this site 3 and buying -- 4 A Was the price, yes. 5 Q -- was the price. Prior to your 6 purchasing this product, had you ever bought a 7 counterfeit product at all? 8 A No. 9 Q Of any type? 10 A No. 11 Q And prior to -- let me ask you this: 12 As you sit here today, are you -- have you become 13 acquainted with the problem in the software world 14 with counterfeit software product? 15 MR. ETTINGER: Objection. 16 A Say that question again. 17 Q MR. STERN: Sure. 18 A Because of this did I -- am I now 19 familiar with -- 20 Q No, not because of this. After this 21 incident, has anything made you more familiar 22 with the fact that not just Rosetta Stone, but</p>	<p style="text-align: right;">73</p> <p>1 Q Did they tell you that the product 2 wouldn't work? 3 A I didn't ask them. 4 Q And they didn't tell you one way or the 5 other? 6 A Huh-huh. 7 Q You said that your mom got made whole 8 by American Express. They ended up returning her 9 money. 10 A Yes. 11 Q Do you know, other than Rosetta Stone, 12 did you or your mother complain about this 13 incident to Google? 14 A No. 15 Q Did you complain to the Better Business 16 Bureau? 17 A No. 18 Q To the Federal Trade Commission? 19 A No. U.S. Post Office. 20 Q I was about to get there. It sounds 21 like you did send a message to the U.S. Post 22 Office. Did you call them or send a letter to</p>

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<p style="text-align: right;">74</p> <p>1 them? 2 A No, when I mailed it. I said -- 3 before I packaged it I said, "Look, here is the 4 situation. Here is this. Is there something I 5 should do before I send it back to Rosetta 6 Stone?" The guy shrugged his shoulders and said 7 no. 8 Q The language that's -- I'm sorry, the 9 handwriting that's on Exhibit 9, is that yours or 10 is that your mom's? 11 A That's my mom's. 12 Q Did -- was it your mother who got the 13 refund from American Express or was it you? 14 A Yes. 15 Q Your mom? 16 A It's my mother's card, yes. 17 Q Did my American Express tell her why they 18 were giving her the refund? 19 A Yeah. I think -- well, they gave her 20 the refund when they got the letter from -- a 21 copy of the letter from Rosetta Stone saying that 22 it had been returned and it was counterfeit.</p>	<p style="text-align: right;">76</p> <p>1 Q And you understand that the 2 advertisements don't belong to the newspaper, 3 that they're simply the medium by which the 4 advertisements are being provided? 5 MR. STERN: Objection. 6 A Yes, I understand that. 7 Q MR. STERN: When you see an 8 advertisement in a newspaper, you don't believe 9 that the newspaper is necessarily endorsing, 10 sponsoring or is affiliated with the 11 advertisement. Right? 12 MR. ETTINGER: Objection. 13 A Not always, no. 14 Q MR. STERN: And do you watch 15 television? 16 A Sure. 17 Q You've seen advertisements on 18 television, as well. Correct? 19 A Yes. 20 Q You know that advertisements that you 21 see on television are the result of advertisers 22 who buy media space on television?</p>
<p style="text-align: right;">75</p> <p>1 Q I see. So basically your mother gave 2 them the Rosetta Stone letter and then because of 3 that, they gave her the refund? 4 A Correct. 5 Q Does your golf course do any form of 6 advertising? 7 A Other than on our own website, no. 8 Q You're aware of the fact that 9 newspapers do advertising in them. Correct? 10 A Yes. 11 Q And you've seen advertising in 12 newspapers. Right? 13 A Yes. 14 Q You've seen -- you ever see classified 15 ads in the newspaper? 16 A Yes. 17 Q You understand that even though a 18 newspaper may have classified ads or other 19 advertising, those advertisements are placed by 20 people who are advertising their products or 21 services. You understand that? 22 A I do.</p>	<p style="text-align: right;">77</p> <p>1 A Yes. 2 Q Media time. Correct? 3 A Uh-huh. 4 Q And you understand that even though, 5 for example, you might see a particular 6 advertisement on NBC, that that doesn't mean that 7 NBC is sponsoring, endorsing, or otherwise 8 affiliated with a company that's offering that 9 particular product or service. Right? 10 A I understand that. 11 Q When you have gone to Google and you 12 see all these -- when you do a search on Google, 13 suddenly all these search results come up. You 14 understand that the search results aren't created 15 by Google. Correct? 16 MR. ETTINGER: Objection. 17 A I have no idea how that works. 18 Q MR. STERN: I see. 19 A I mean, none. 20 Q So when you do a search -- when you've 21 done a search and all these results take place -- 22 A I think it's a miracle.</p>

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<p style="text-align: right;">78</p> <p>1 Q It is a miracle. It is a miracle. But 2 you have no view one way or another how all that 3 is done or who is developing those materials or 4 the links? 5 A Don't have a clue. 6 Q I think you testified, and I'm not sure 7 about this, but I think you testified that -- I 8 think Mr. Ettinger asked you if you understood 9 what a sponsored ad was or a sponsored link was, 10 and I think you testified that before all this 11 you didn't know what one was. Right? 12 A I had -- you know, no. That word up 13 there, no. In fact -- no, I had no idea. 14 Q And that is to say, even though you've 15 done web searches before, have you ever noticed 16 that phrase "sponsored links"? 17 A On -- 18 Q On Google? 19 A Sure. 20 Q You didn't know what that meant? 21 A No. I can tell you what I guessed it 22 meant. I thought you -- Google sponsored those.</p>	<p style="text-align: right;">80</p> <p>1 think you mentioned that when you saw that the 2 product came from Shanghai, you, quote, figured 3 you had a problem, closed quote. 4 A I thought I had a problem. 5 Q Is that because -- 6 A It wasn't the Shanghai part. It was 7 the dress and shoes. 8 Q The dress and shoes. If you look at 9 the top of the receipt on Exhibit 6, you notice 10 the Chinese characters at the very top of it? 11 A I had no idea what language that was. 12 Q And when you were seeking some sort of 13 refund, you didn't contact Google of course. 14 Right? 15 A No. 16 Q You didn't think that Google had sold 17 you Rosetta Stone. Right? 18 MR. ETTINGER: Objection. 19 A No. 20 MR. STERN: I'm done. Thank you very 21 much. 22 MR. ETTINGER: Just a couple of follow up.</p>
<p style="text-align: right;">79</p> <p>1 Q Google sponsored those? 2 A Uh-huh. 3 Q Since all this has developed, have you 4 gotten a better understanding of what sponsored 5 links means? 6 A I think it's like the classifieds. 7 Q In other words, they're advertisers 8 that are placing those; is that right? 9 A Exactly. 10 Q And you learned that after this 11 development with this CD product? 12 A I became aware of it, yeah. Did 13 somebody tell me? No. You just kind of start to 14 put two and two together kind of thing. 15 Q And you put two and two together after 16 this incident with Rosetta Stone? 17 A Yeah. 18 Q Is that right? 19 A Yeah. As a matter of fact, I don't 20 even pay attention to this stuff on the right 21 side of the page anymore. 22 Q Hold on a second. You mentioned -- I</p>	<p style="text-align: right;">81</p> <p>1 I want to make sure that the record is 2 clear. 3 EXAMINATION 4 BY MR. ETTINGER: 5 Q Can I get you to put in front of you 6 Exhibit 2, and I believe it's the PayPal receipt, 7 which is the exhibit that we have. Is it nine? 8 A Yeah. 9 Q So just so the record is clear, October 10 11, 2009, your mother printed out what is Exhibit 11 2 from the Internet after doing a Google search. 12 Correct? 13 A Yes. 14 Q And gave you a copy of that? 15 A We took that copy with us when we 16 went to Staples, yes. 17 Q And two days later, on October 13, 18 2009, you placed your order with the 19 softer4world.com? 20 A Yes. 21 Q The same company that was identified in 22 the search from October 11?</p>





**Rosetta Stone Ltd. v. Google Inc.**  
**Case No. 1:09-CV-00736 (E.D. Va.)**

**Deposition of Deborah Jeffries**  
**March 9, 2010**

**ERRATA SHEET**

<b>Page/Line</b>	<b>Correction</b>
Page 11, line 7	change "huh-uh" to "no"
Page 19, line 16	change "1" to "2"
Page 21, line 19	change "a legal" to "illegal"
Page 48, line 20	change "Wasn't I sent him" to "I did not send any to him."
Page 64, line 9	change "178" to "\$178"
Page 65, line 11	change "SO" to "So"
Page 69, line 1	change "it." to "it?"

*Deborah A. Jeffries*  
*March 18, 2010*

RITA PORTER  
3/10/10



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Porter, Rita Kay 03-10-2010

2	4
<p>1           A P P E A R A N C E S</p> <p>2 On behalf of the Plaintiff</p> <p>3     MR. MITCHELL S. ETTINGER</p> <p>4     SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM, LLP</p> <p>5     1440 New York Avenue, NW,</p> <p>6     Washington, DC 20005.</p> <p>7</p> <p>8 On behalf of the Defendant</p> <p>9     MR. CLAUDE M. STERN</p> <p>10    QUINN, EMANUEL, URQUHART, OLIVER &amp; HEDGES,</p> <p>11    LLP</p> <p>12    555 Twin Dolphin Drive, Suite 560</p> <p>13    Redwood Shores, California 94065.</p> <p>14 Also present:</p> <p>15    MS. LISA J. HARGIS, CLVS</p> <p>16    MR. DAVE PERDARIS, Videographer</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1           P R O C E E D I N G S</p> <p>2           THE VIDEOGRAPHER: This is the</p> <p>3 videotaped deposition of Rita Porter in Case</p> <p>4 No. 1:09-CV-00736, in parentheses GBL/TCB, end</p> <p>5 parentheses, taken this 10th day of March, 2010.</p> <p>6 We're now going on the record at 10:24 a.m.</p> <p>7           Will counsel please state their</p> <p>8 appearances for the record.</p> <p>9           MR. ETTINGER: Mitchell Ettinger</p> <p>10 from Skadden, Arps on behalf of Rosetta Stone.</p> <p>11          MR. STERN: Claude Stern of Quinn</p> <p>12 Emanuel on behalf of Google.</p> <p>13          THE VIDEOGRAPHER: Thank you.</p> <p>14          Will the court reporter please</p> <p>15 swear in the witness.</p> <p>16          RITA KAY PORTER,</p> <p>17 a witness, being first duly sworn, testified under</p> <p>18 oath as follows:</p> <p>19           EXAMINATION</p> <p>20 BY MR. ETTINGER:</p> <p>21     Q. Please state your full name.</p> <p>22     A. Rita Kay Porter.</p> <p>23     Q. Have you been deposed before, ma'am?</p> <p>24     A. Yes.</p> <p>25     Q. Okay. So you know there's certain</p>
3	5
<p>1           I N D E X</p> <p>2 WITNESS:                           PAGE:</p> <p>3 RITA KAY PORTER</p> <p>4 Examination by Mr. Ettinger           4</p> <p>5 Examination by Mr. Stern               42</p> <p>6 Reexamination by Mr. Ettinger        83</p> <p>7</p> <p>8 EXHIBITS*:</p> <p>9 Deposition Exhibit 1                   15</p> <p>10 Deposition Exhibit 2                   16</p> <p>11 Deposition Exhibit 3                   18</p> <p>12 Deposition Exhibit 4                   24</p> <p>13 Deposition Exhibit 5                   29</p> <p>14 Deposition Exhibit 6                   33</p> <p>15 Deposition Exhibit 7                   38</p> <p>16 Deposition Exhibit 8                   39</p> <p>17 Deposition Exhibit 9                   73</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22           (*Exhibits attached to transcript)</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 ground rules we have to follow here?</p> <p>2     A. Yes.</p> <p>3     Q. All right. Let me just go over them</p> <p>4 briefly this morning. Everything that's being</p> <p>5 said in this room today is being recorded verbatim</p> <p>6 by the court reporter sitting next to you, as well</p> <p>7 as being recorded on the videotape, but in order</p> <p>8 to help the court reporter, we need to make sure</p> <p>9 that all of our answers are audible. Can you</p> <p>10 agree to do that?</p> <p>11    A. Yes.</p> <p>12    Q. Secondly, if you would permit me to</p> <p>13 answer -- ask my questions all the way through</p> <p>14 before you begin an answer and the same for</p> <p>15 Mr. Stern, that will make the record a little</p> <p>16 cleaner; okay?</p> <p>17    A. Okay.</p> <p>18    Q. From time to time, you may hear counsel</p> <p>19 for Google or myself interject an objection to a</p> <p>20 question that's been asked. Those objections are</p> <p>21 for the record to be considered by the Court at a</p> <p>22 later time, so allow the counsel to make the</p> <p>23 objection, and if you can answer the question as</p> <p>24 it's posed to you, please do so.</p> <p>25    A. Okay.</p>

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6	<p>1 Q. All right. If you don't understand a 2 question that's asked, just let me know and I'll 3 rephrase it. 4 A. Okay. 5 Q. All right. Finally, you are a guest 6 here today, you're not a captive prisoner, and if 7 you need a break for any reason, you just let us 8 know and we'll accommodate you; okay? 9 A. All right. 10 Q. All right. Ma'am, could you state your 11 address. 12 A. 10801 West 99th Street, Overland Park, 13 Kansas 66214. 14 Q. And how long have you lived at that 15 address? 16 A. 21 years. 17 Q. And are you married? 18 A. Yes. 19 Q. What is your husband's name? 20 A. David Vaughn Porter. 21 Q. And would you kindly state how young 22 you are for the record. 23 A. I'm 59. 24 Q. What is the highest level of education 25 that you've completed?</p>	8	<p>1 officer, ma'am? 2 A. Twenty -- 25 years as a police officer, 3 two years as a reserve officer. 4 Q. And you indicated that you achieved the 5 rank of major; is that correct? 6 A. That's correct. 7 Q. And where does that fit in the 8 hierarchy of the Overland Park Police Department? 9 A. Starting at the top, there's the chief 10 of police, then there's the deputy chief of 11 police, then the major position. 12 Q. You understand that this case involves 13 a civil lawsuit between Rosetta Stone and Google, 14 Inc.; is that right? 15 A. That's correct. 16 Q. All right. And you've agreed to 17 provide testimony in this matter without requiring 18 a subpoena; isn't that true? 19 A. That's true. 20 Q. Did anyone promise you anything in 21 return for your testimony today? 22 A. No, they did not. 23 Q. Have you ever had the desire to learn a 24 foreign language? 25 A. Yes.</p>
7	<p>1 A. Some master's -- some master's classes. 2 Q. Okay. Where did you receive your 3 undergraduate degree from? 4 A. Mid-America Nazarene University. 5 Q. Okay. And what was your major? 6 A. Management and human resources. 7 Q. You indicated that you've taken some 8 master's courses. Where did you do that? 9 A. University of Kansas. 10 Q. Do you recall how many hours you 11 pursued towards your master's degree? 12 A. I believe 13 or so. 13 Q. And is that for an MBA or some other 14 degree? 15 A. For an MBA. It's an MPA, master's in 16 public administration. 17 Q. Are you currently employed? 18 A. No. I'm retired. 19 Q. Okay. And when did you retire? 20 A. January 28th, 2010. 21 Q. And what was your profession before 22 retirement? 23 A. I was a police major with the City of 24 Overland Park, Kansas. 25 Q. And how long did you serve as a police</p>	9	<p>1 Q. Okay. When did that come about? 2 A. In high school. I took Spanish for 3 four years. 4 Q. Did you become fluent? 5 A. Not very. Pretty good, but not fluent. 6 Q. During your adult life, have you -- has 7 that desire to learn a foreign language ever been 8 rekindled? 9 A. Yes. 10 Q. And when was that? 11 A. Several times. One of the guys at work 12 offered a class, so I took his Spanish class, and 13 then later we had another -- at the -- they had 14 somebody come in and teach, and so I started 15 taking those classes for Spanish. 16 Q. And were you able to achieve fluency in 17 Spanish through these other efforts? 18 A. No. 19 Q. Most recently, did you attempt to gain 20 fluency or improve your proficiency with Spanish? 21 A. Yes, I did. 22 Q. Okay. When was that? 23 A. Last year. 24 Q. Okay. And why did you want to improve 25 your Spanish, ma'am?</p>

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<p style="text-align: right;">10</p> <p>1 A. Well, I want to for personal level, but 2 also my son is in Spain. He's studying over there 3 for the semester, and so we plan to take a trip 4 over there, and I thought if I could brush up on 5 my Spanish, I might be able to speak some Spanish 6 to folks and just enjoy it. 7 Q. Ms. Porter, when did you first learn of 8 the company Rosetta Stone? 9 A. I would have to say several years ago 10 when they started advertising on television. 11 Q. So is that where you first learned of 12 Rosetta Stone, through TV ads? 13 A. Probably. 14 Q. And what do you understand Rosetta 15 Stone sells? 16 A. They sell language software, and it's 17 something where you use audio and you have 18 visuals, and it just looked like a really good 19 program. 20 Q. You mentioned earlier that you recently 21 wanted to brush up and become more proficient in 22 Spanish. 23 A. Yes. 24 Q. Did you conduct any research to 25 determine what product or products were available</p>	<p style="text-align: right;">12</p> <p>1 words. 2 Q. And you indicated that this research 3 was done on foot, by going to the store and 4 reading about Rosetta Stone? 5 A. Yes. 6 Q. Did you actually see the Rosetta Stone 7 product in any of the stores that you were in? 8 A. I saw the book or the cover. They 9 didn't really have the software inside. They only 10 had the cover part. So I looked at that. 11 Q. When you say "the cover part," what do 12 you mean? 13 A. The package that it came in, the box. 14 Q. And what color was the box? 15 A. Yellow. 16 Q. Was it a distinctive color to you? 17 A. Oh, very. 18 Q. So when did you determine that you 19 wanted to purchase Rosetta Stone? Do you recall 20 the approximate time frame? 21 A. Probably the first part of November. 22 Q. And you indicated that you went online 23 to make that purchase; is that right? 24 A. That's correct. 25 Q. Could you please describe for us what</p>
<p style="text-align: right;">11</p> <p>1 to you to assist you in that nature? 2 A. Yes, I did. 3 Q. And when did you conduct that research? 4 A. I started back in October. 5 Q. And this is October of 2009? 6 A. That's correct. 7 Q. And how did you conduct the research? 8 A. Well, to start with, I started going to 9 bookstores to see what was available there, and 10 the more I thought about it, the more I wanted 11 Rosetta Stone. So I went online, I checked 12 Google, and did some online research through 13 Google. 14 Q. Okay. 15 A. I like Google. They're a great search 16 engine. 17 Q. When you conducted this initial 18 research through the bookstores, what factors led 19 you to conclude that you wanted to purchase 20 Rosetta Stone? 21 A. Just looking at the different things 22 that were available. There was no one else that 23 appeared to have the same product they did where 24 they have the actual computer where you can plug 25 in, you can listen, you can speak, you can see the</p>	<p style="text-align: right;">13</p> <p>1 you did when -- literally, when you went on the 2 Internet to try to purchase Rosetta Stone. 3 A. Okay. Well, I opened Google, and the 4 first thing I saw was the top, the sponsored link 5 that said "RosettaStone.com," so I went in there 6 and I started looking at all their products and 7 found they had two different kinds of Spanish. 8 One is a Castilian Spanish, spoken in Spain, and 9 the other is the Mexican Spanish. I determined I 10 wanted the Castilian Spanish just because I 11 thought, since I'm going to Spain, why not. And I 12 started researching that, determined I really 13 wanted Levels 1 through 5, but probably could only 14 afford Levels 1 through 3. 15 So I started looking for Levels 1 16 through 3, and -- just doing Google searches, 17 seeing who else might sell it. And, of course, 18 Borders, Barnes &amp; Noble, those types of people 19 sell it. And then there were some other links on 20 the right-hand side, and one of them -- I clicked 21 on that link -- it was \$142, which is a much 22 cheaper price. So I'm a bargain shopper, and I 23 thought, That sounds really good. 24 Q. So let's go back just for a second. 25 When you went on Google, is that your default</p>

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<p style="text-align: right;">14</p> <p>1 search engine? 2 A. Yes. 3 Q. All right. So whenever you do searches 4 on the Internet, you use Google? 5 A. Yes. 6 Q. And do you recall what you actually 7 typed into the search engine when you were looking 8 for the Rosetta Stone software? 9 A. "Rosetta Stone Spanish." 10 Q. And that was your search terms -- those 11 were your search terms? 12 A. Uh-huh. 13 Q. Did you do this Internet shopping in 14 one session where you went onto RosettaStone.com 15 as you described and ultimately clicked on a link 16 for \$142, or did this occur over time? 17 A. This occurred over time. Just about 18 every night I was on just looking for -- for good 19 prices. 20 Q. Bear with me one second. 21 Okay. When you typed in "Rosetta 22 Stone Spanish" at the time that you actually went 23 forward to make your purchase, okay, do you recall 24 where the link appeared on the page that you 25 actually clicked on to take you to the \$142 price?</p>	<p style="text-align: right;">16</p> <p>1 Q. Okay. And what is the date of the 2 transaction? 3 A. 11/15/2009. 4 Q. And does that refresh your recollection 5 that you did this on November 15, 2009? 6 A. Yes, it does. 7 Q. You can put that down for just a 8 moment. 9 (Deposition Exhibit No. 2 was 10 marked for identification.) 11 Q. (By Mr. Ettinger) Let me show you what 12 I've marked as Exhibit 2. 13 MR. STERN: I'm sorry. Could 14 you -- could you repeat the question and answer -- 15 the question and the answer -- the last two, 16 please. 17 (The record was read by the 18 reporter as requested.) 19 Q. (By Mr. Ettinger) Let me show you what 20 I've marked as Exhibit 2, just get you to take a 21 look at that for a second. This is a three-page 22 document which I will represent to you is a screen 23 shot of a "Rosetta Stone Spanish" search -- 24 A. Uh-huh. 25 Q. -- that was done on 11/16/2009.</p>
<p style="text-align: right;">15</p> <p>1 A. Yes. It was on the right-hand side of 2 the page. 3 Q. And do you recall the name of the 4 company that was associated with that link? 5 A. Gainsoftmall. 6 Q. Gainsoftmall? 7 A. Uh-huh. Would you like for me to spell 8 that? 9 Q. Sure. 10 A. G-a-i-n-s-o-f-t-m-a-l-l. 11 (Deposition Exhibit No. 1 was 12 marked for identification.) 13 Q. (By Mr. Ettinger) First, let me show 14 you what I've marked as Exhibit 1 -- this is a 15 two-page document bearing Bates Nos. RS-008-000030 16 to '31 -- and ask you to just take a look at that 17 for a moment. 18 A. (Indicating.) 19 Q. Do you recognize this document? 20 A. Yes. 21 Q. Okay. Could you tell us what it is? 22 A. I had made a purchase from Gainsoftmall 23 and this was a purchase through PayPal, and it 24 just tells me how much I paid through PayPal to 25 CHENPING022.</p>	<p style="text-align: right;">17</p> <p>1 A. Okay. 2 Q. And I ask you, can you, from looking at 3 this, identify the link that you saw when you went 4 onto the Internet on 11/15/2009 and clicked on it 5 to take you to Gainsoftmall? 6 A. Yes. It's this -- how do I do this? 7 Q. Just hold it up and point to it. 8 A. This one right here (indicating). 9 Q. And could you for the record, please, 10 read into the record what that says. 11 A. Yes. It says, "\$142 Get Language 12 Software, Level 1, 2, 3 with audio, now on sale, 13 74 percent off, free and fast shipping, buy now, 14 www.Gainsoftmall.com/Rosetta Stone, Colorado." 15 Q. You indicated that the link that you 16 clicked on on November 15, 2009, appeared in the 17 right-hand side of your screen. Do you recall 18 exactly where it appeared on November 15? 19 A. I would -- no -- I would say it's on 20 the right-hand side, but I don't know if it was in 21 Spot No. 1 or 2, but it was 1 or 2. 22 Q. All right. Thank you. You can turn 23 that over just a moment. 24 (Deposition Exhibit No. 3 was 25 marked for identification.)</p>



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<p style="text-align: right;">18</p> <p>1 Q. (By Mr. Ettinger) Let me show you what 2 I've marked as Exhibit 3. And I'll represent to 3 you that this is the landing page from the -- 4 click on that link that you just identified in 5 Exhibit 2 on the day after you purchased your 6 software, 11/16/2009. 7 MR. ETTINGER: That's 8 3 (indicating). 9 Q. (By Mr. Ettinger) And, ma'am, can you 10 tell us whether or not this is the -- very similar 11 or the same landing page that you saw when you 12 clicked on the link? 13 MR. STERN: Objection. 14 A. Yes. 15 MR. STERN: Foundation. 16 THE WITNESS: Sorry. 17 MR. STERN: That's all right. As 18 counsel mentioned to you, I'm making formal 19 objections to the form of the question that's 20 being asked, but if you understand the question, 21 you may answer. 22 THE WITNESS: Okay. 23 A. And, yes, it does appear to be similar 24 to or the one that I did click on. 25 Q. (By Mr. Ettinger) Okay. And what</p>	<p style="text-align: right;">20</p> <p>1 A. Yes. 2 Q. And do you recall whether, in fact, it 3 had retail prices crossed through with the offered 4 purchase price? 5 A. Yes. 6 Q. Okay. It appears as it does in 7 Exhibit 3? 8 A. Yes. 9 Q. Had you ever purchased a product from 10 Gainsoftmall before November 15, 2009? 11 A. No, I have not. 12 Q. Ms. Porter, at the bottom of the second 13 page of Exhibit 3, there is a -- what appears to 14 be a hyperlink that says "Conditions of use." Do 15 you see that? 16 A. Yes. 17 Q. Did you click on that, by any chance? 18 A. No. 19 Q. Do you remember clicking on any of 20 those hyperlinks that appear at the bottom of the 21 page, "Home," "Contact Us," "Shipping," "Privacy," 22 or "Site Map"? 23 A. I believe I clicked on "Home" and got 24 the same pages basically, the same information, 25 and then the "Shipping" I looked at to see, you</p>
<p style="text-align: right;">19</p> <p>1 about this Exhibit 3 looks familiar to you? 2 A. On page 2, "Rosetta Stone Version 3, 3 Spanish (Latin America), Level 1, 2, 3 Set with 4 Audio Companion." 5 Q. You're talking about the -- 6 A. The last one, the Spain. 7 Q. So the last one appearing on the right 8 on the second page? 9 A. That's correct. 10 Q. All right. And -- 11 A. And then -- 12 Q. Go ahead. I'm sorry. 13 A. You said what else appealed to me; is 14 that correct? 15 Q. No. What else -- what else in this 16 document -- 17 A. Okay. The "100 percent satisfaction 18 guaranteed," the "30-day Money Back," the "Free 19 Shipping." 20 Q. All of those things appeared on the web 21 site that you looked at? 22 A. Yes. 23 Q. And did the web site that you -- the 24 landing page that you went to on November 15th, 25 have these images of the Rosetta Stone yellow box?</p>	<p style="text-align: right;">21</p> <p>1 know, how it was going to be shipped or if there 2 was going to be a shipping charge. 3 Q. And what -- when you clicked on 4 "Shipping," what did the site tell you? 5 A. It was a free shipping. I don't really 6 recall more about it, but I was satisfied that I 7 was going to get my merchandise. 8 Q. Okay. Did you actually place an order 9 with Gainsoftmall.com? 10 A. Yes, I did. 11 Q. All right. And when you placed your 12 order, was it through your -- with 13 Gainsoftmall.com, was it in connection with your 14 search on Google for "Rosetta Stone Spanish"? 15 A. Yes, it was. 16 Q. And what did you, in fact, order? 17 A. I ordered Rosetta Stone Version 3, 18 Spanish, parentheses, Spain, end of parentheses, 19 Level 1, 2, and 3 set with audio companion for 20 \$142. 21 Q. Now, you indicated that you had done a 22 little research about Rosetta Stone, so I take it 23 you understood -- at the time that you made this 24 purchase you understood that other companies were 25 charging more for the Rosetta Stone software;</p>

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<p style="text-align: right;">22</p> <p>1 isn't that right? 2 A. That's correct. 3 Q. Did the lower purchase price offered 4 through Gainsoftmall lead you to conclude that the 5 product that you were ordering was not genuine 6 Rosetta Stone software? 7 A. Was not genuine? No. It was -- it 8 appeared to be absolutely genuine. 9 Q. So when you placed the order, is it 10 fair to say that you believed you were purchasing 11 genuine Rosetta Stone software? 12 A. Yes, I did. 13 Q. Have you ever heard the term 14 "counterfeit software"? 15 A. Not "counterfeit." 16 Q. Is -- in the term -- in the police 17 vernacular, is there a term for -- 18 A. Bootlegged. 19 Q. Bootlegged. So what does that term 20 "bootlegged software" mean to you? 21 A. Means that it's not authentic. 22 Q. Is it illegal to sell bootlegged 23 software? 24 A. Yes. 25 MR. STERN: Objection. Objection.</p>	<p style="text-align: right;">24</p> <p>1 Q. Let me show you what's been marked as 2 Exhibit 4. 3 (Deposition Exhibit No. 4 was 4 marked for identification.) 5 Q. (By Mr. Ettinger) You can put that one 6 down. 7 This is a two-page -- three-page 8 document, RS-008-000027 through '29. And if I 9 could get you to look at the second page, which is 10 numbered 28 at the bottom. Do you see that? 11 A. Number 28, yes. 12 Q. Okay. So we're just on the same page 13 here. Can you tell us whether or not that the 14 e-mail that appears in the middle of this page is 15 the confirmation you received from Gainsoftmall? 16 A. Yes. 17 Q. Do you know what the reference to 18 "Order Number: 3" means? 19 A. No. Other than the fact it's probably 20 the third order they received for it. I don't 21 know. 22 Q. Do you recall whether the web site 23 indicated how many copies of the software it had 24 available for purchase? 25 A. Yes. It was something like 700 and</p>
<p style="text-align: right;">23</p> <p>1 Legal foundation. 2 Q. (By Mr. Ettinger) From your experience 3 as a police officer, do you know whether it's 4 legal to sell bootlegged software in Kansas? 5 A. It is not legal. 6 Q. At the time that you placed your order 7 with Gainsoftmall, did you intend to purchase 8 bootlegged software? 9 A. No. 10 Q. Okay. You indicated you paid with 11 your -- you paid for the order with PayPal; is 12 that right? 13 A. That's correct. 14 Q. All right. What is PayPal? 15 A. Well, that's a good question. It's 16 a -- it's a company, I guess, that takes your 17 money and gives it to the person that is selling 18 the goods. 19 Q. And did you use a credit card through 20 PayPal to make the purchase? 21 A. Yes, I did. My American Express card. 22 Q. Do you recall whether you received 23 confirmation from Gainsoftmall that your order had 24 been received? 25 A. Yes, I did.</p>	<p style="text-align: right;">25</p> <p>1 some, I think. 2 Q. And you saw that on the web site 3 itself? 4 A. Yes. 5 Q. Now, if you look at the date ordered 6 that appears a little bit below your name on 7 the -- on that same page, page 28 -- do you see 8 that? 9 A. I'm sorry. I don't understand what 10 you're asking. 11 Q. Okay. The e-mail that you received 12 from Gainsoftmall came in to you at what time and 13 on what date? 14 A. November 15th at 10:44 a.m. 15 Q. Okay. And do you see -- if you go down 16 just a little ways on the page, it has a date 17 ordered. 18 A. Monday, November 16th, 2009. 19 Q. Okay. At the time you received this, 20 did that give you any reason for concern that the 21 order date was one day after the date that you 22 actually received the e-mail from them? 23 A. No. I probably didn't even read the 24 e-mail. I just saw order confirmation No. 3 and 25 said okay.</p>

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<p style="text-align: right;">26</p> <p>1 Q. Okay. And does this confirmation 2 reflect the purchase price that you paid, \$142? 3 A. Yes. 4 Q. And it lists your home address 5 accurately? 6 A. Yes. 7 Q. And the payment method accurately; 8 correct? 9 A. Yes. 10 Q. Now, could I get you to go back to 11 Exhibit 1 just for a moment. 12 A. Exhibit 1? 13 Q. Exhibit 1, which is the PayPal receipt. 14 A. Okay. 15 Q. All right. You indicated that you 16 actually received this PayPal receipt through your 17 e-mail; correct? 18 A. That's correct. 19 Q. All right. At the time you received 20 the PayPal receipt that included a reference to a 21 payment made to someone with a Chinese name -- 22 A. Yes. 23 Q. -- because -- and I say that because of 24 the Chinese symbols. 25 A. Uh-huh.</p>	<p style="text-align: right;">28</p> <p>1 you even recognize the fact that the payment had 2 gone to someone with a Chinese surname? 3 A. The Chinese surname, yes. 4 Q. Did you, in fact, receive product from 5 Gainsoftmall? 6 A. I did. 7 Q. Could you describe for us, please, what 8 you received. 9 A. It looked like a -- well, it was a 10 Rosetta Stone box. It looked like the way a cigar 11 box opened. It was complicated for me because I 12 expected it just to open up and slide out, but it 13 opened differently than I thought it would. Is 14 that all you want me to say about that? 15 Q. Well, what color was the box? 16 A. It was yellow. 17 Q. And did it have any images on the box? 18 A. Yes. It looked like a Rosetta Stone 19 box that I had seen in Borders or Barnes &amp; Noble. 20 Q. From the -- from the outward appearance 21 of the product that you received, could you 22 distinguish it in any way from the product that 23 you had seen at Borders? 24 A. No. It looked exactly the same. 25 (Deposition Exhibit No. 5 was</p>
<p style="text-align: right;">27</p> <p>1 Q. Do you recall seeing it at the time and 2 recognizing that your payment went to some -- 3 someone with a Chinese name? 4 A. Yes. I thought, CHENPING022. 5 Q. Did that -- 6 MR. STERN: I'm sorry. I'm sorry. 7 Can I get that back again, please, just the 8 question and answer. 9 MR. ETTINGER: Just one second. 10 THE WITNESS: Sure. 11 (The following was read by the 12 reporter: 13 QUESTION: "Do you recall seeing 14 it at the time and recognizing that your payment 15 went to some -- someone with a Chinese name?") 16 MR. STERN: I'm good. That's 17 fine. 18 Q. (By Mr. Ettinger) Did the fact that 19 your payment -- the fact that your payment went to 20 someone who had a Chinese name and a -- the 21 "CHENPING022," did that give you any reason to be 22 alarmed? 23 A. No. 24 Q. At the time that you made the payment 25 and received this confirmation from PayPal, did</p>	<p style="text-align: right;">29</p> <p>1 marked for identification.) 2 Q. (By Mr. Ettinger) All right. Before 3 we get into the contents of the box -- 4 A. Uh-huh. 5 Q. -- let me show you what I've marked as 6 Exhibit 5. 7 A. Yes. 8 MR. ETTINGER: And, Claude, this 9 is the shipping label that I gave you a copy of 10 earlier. 11 MR. STERN: Okay. Hold on. 12 (Discussion off the record.) 13 Q. (By Mr. Ettinger) So you have before 14 you Exhibit 5; right? 15 A. Yes. 16 Q. Okay. Can you tell us what this is. 17 A. This is the -- I don't know what to 18 call it -- the packing slip or whatever that was 19 on the outside of the box that came to my house 20 from CHENPING. 21 Q. Okay. And as far as the name and 22 description of the contents, can you -- can you 23 read that into the record. Appears in the lower 24 left-hand corner. 25 A. "Gift DVD, \$10, CN."</p>

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<p style="text-align: right;">30</p> <p>1 Q. And when you -- when you saw this 2 packing slip, did that give you any reason for 3 concern? 4 A. It was a little bit. I asked my 5 husband about it and he said that perhaps Rosetta 6 Stone had sold some -- some, you know, copies, 7 overstock, or something they didn't want, to 8 China, and he said, "Don't worry about it. It 9 will probably be fine." So I went ahead and 10 installed it on my computer. 11 Q. All right. So when you opened up the 12 box, could you tell us what was in the contents -- 13 what the contents consisted of. Excuse me. 14 A. You know, I haven't looked at it for 15 three or four months, but there was some software 16 in there. There was a headset with a microphone. 17 That's all I remember. We do have that in 18 property at the Overland Park Police Department. 19 Q. And I'll get to that in just a moment. 20 A. Okay. 21 Q. The software, was it on CD-ROMs? 22 A. Yes. 23 Q. All right. And how many CDs, if you 24 recall, were in the box? 25 A. I don't know.</p>	<p style="text-align: right;">32</p> <p>1 A. Yes, it is. I do not have a copy of 2 that. 3 Q. Before you placed your disk into the 4 computer, okay, from the outward appearance of the 5 box and the fact that you had the software, did 6 you believe you had genuine Rosetta Stone 7 software? 8 A. Yes, I did. 9 Q. Did you actually try to load it onto 10 your computer? 11 A. Yes. 12 Q. And what happened when you did that? 13 A. It didn't work as I thought it would. 14 As I recall, I couldn't get it to load, and so I 15 asked my computer-savvy son to help me and he 16 couldn't get it to load right. There was no 17 authorization code with it, as I recall. 18 Q. Did the software have any 19 functionality? 20 A. I don't think so. 21 Q. You weren't able to get the programs to 22 run at all? 23 A. No. 24 Q. What did you do when you could not get 25 the program to run?</p>
<p style="text-align: right;">31</p> <p>1 Q. Do you recall whether there was an 2 instruction manual? 3 A. I didn't see an instruction manual. 4 Q. You indicated that the package that you 5 received from Gainsoftmall.com is in property at 6 the police department? 7 A. Yes. 8 Q. And is that something that you have 9 control over to retrieve if you wanted to? 10 A. Most likely. 11 Q. And so if we were to ask you to 12 retrieve that, would you be willing to try? 13 A. Yes. 14 There was one other thing in the 15 box -- it was a little piece of paper, as I 16 recall -- that said, "If you have problems, don't 17 call Rosetta Stone" or something like that. It 18 was some weird, cryptic note. 19 Q. Did it give you a number or person to 20 contact instead of Rosetta Stone? 21 A. No. I just don't remember enough about 22 it, but it was something weird about it and -- I 23 don't remember. 24 Q. Okay. Is that note with the software 25 that was given to the police department?</p>	<p style="text-align: right;">33</p> <p>1 A. I called Rosetta Stone. 2 Q. Okay. You didn't follow -- 3 A. I said, "It doesn't work." 4 Q. Okay. And why did you call Rosetta 5 Stone? 6 A. Because it was a Rosetta Stone product. 7 Q. And what did you do to determine who at 8 Rosetta Stone to contact? 9 A. I got on their web site, and I believe 10 there's a customer help button or something like 11 that, so I got their customer service number and 12 called. 13 Q. All right. And do you recall who you 14 spoke with when you contacted Rosetta Stone? 15 A. I do not. 16 Q. Do you recall when you contacted 17 Rosetta Stone? 18 A. No, I don't remember. 19 Q. Ultimately, did you complete an 20 antipiracy report on the Rosetta Stone web site? 21 A. Yes, I did. 22 (Deposition Exhibit No. 6 was 23 marked for identification.) 24 Q. (By Mr. Ettinger) All right. Let me 25 show you what I've marked as Exhibit 6 and ask if</p>

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<p style="text-align: right;">34</p> <p>1 you can confirm that this exhibit contains the 2 information that you provided to Rosetta Stone 3 through their web site. Take your time looking at 4 it. This is a -- 5 A. Okay. 6 Q. -- document bearing Bates Nos. 7 RS-008-000018 through '21. 8 A. Okay. 9 Q. Okay. So my question to you is, on 10 pages 18, 19, and 20, the first three of this 11 exhibit -- 12 A. Uh-huh. 13 Q. -- does it reflect information you 14 provided to Rosetta Stone through the -- their 15 antipiracy web site? 16 A. Yes, it does. 17 Q. All right. And, Ms. Porter, does this 18 document refresh your recollection as to when you 19 entered the data into the Rosetta Stone web site? 20 A. Yes. 21 Q. And when was that? 22 A. 11/24 of '09. 23 Q. And do you know who Michael Hill is? 24 A. Yes. He's an investigator with the 25 legal department of Rosetta Stone, I believe.</p>	<p style="text-align: right;">36</p> <p>1 Rosetta Stone advise you to do? 2 A. Well, they told me that I needed the 3 update, so I called them again for an update, and 4 then I was told that those -- they were not -- 5 this person that I purchased it from was not an 6 authorized reseller of Rosetta Stone products. 7 Q. And, therefore, you were not able to 8 access the updates? 9 A. That's correct. 10 Q. All right. 11 MR. STERN: I'm sorry. Just for 12 clarification, you said "so I called them." Is 13 the "them" Rosetta Stone? 14 THE WITNESS: Yes. 15 MR. STERN: Okay. 16 THE WITNESS: For the update? 17 MR. STERN: Yes. 18 THE WITNESS: Yes. 19 Q. (By Mr. Ettinger) Had you ever before 20 purchased software on the Internet that turned out 21 to be bootlegged? 22 A. No. 23 Q. What, if anything, did you do to recoup 24 the money that you had paid to Gainsoftmall? 25 A. First of all, I contacted PayPal</p>
<p style="text-align: right;">35</p> <p>1 Q. Did you speak to Mr. Hill directly? 2 A. Yes, I did. 3 Q. Okay. And what was the nature of your 4 conversation with Mr. Hill? 5 A. He called me and he asked about the 6 Rosetta Stone product that I had purchased, and he 7 said that there were some other people that had 8 purchased this product, and he said something 9 about some cases in Kansas and Missouri and that 10 Lawrence Police Department was working on a 11 student possibly selling some software, Rosetta 12 Stone unauthorized software. 13 Q. And did Mr. Hill ask you to do anything 14 in particular? 15 A. No, he did not. 16 Q. Did you follow up on your conversation 17 with Mr. Hill? 18 A. I followed up with my department, 19 because as a police officer, I'm required to 20 report any time I'm involved in an investigation. 21 So I contacted my bureau commander. I sent him an 22 e-mail and we filed a police report, but nothing 23 further was done. 24 Q. Okay. With respect to the software 25 that you purchased from Gainsoftmall, what did</p>	<p style="text-align: right;">37</p> <p>1 because it was guaranteed, and they said, "Oops. 2 Sorry. We don't guarantee the product. We just 3 guarantee that you get it," basically. 4 So I said, "Well, I got it." 5 So they said, "Sorry. You're out 6 your money." So he said to contact American 7 Express. 8 I called American Express and they 9 did a ticket on it of some kind and they were able 10 to get my money refunded. 11 Q. Did you ever reach out to Gainsoftmall 12 again to see whether or not they could correct the 13 problem with the software that you had purchased? 14 A. I did. 15 Q. And did you reach out to the 16 Gainsoftmall after you spoke to Rosetta Stone or 17 before? 18 A. After. 19 Q. And what did -- what did you do to try 20 to contact Gainsoftmall? 21 A. I sent them an e-mail and said, "Hey, 22 the product doesn't work and I'd like to get my 23 money back." 24 And Gainsoftmall sent me back a 25 customer service thing that said, "What is the</p>

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<p style="text-align: right;">38</p> <p>1 problem?" basically, and by that time -- then I 2 was notified that I got my money back, and I 3 thought, I'm not going to go further with it. 4 (Deposition Exhibit No. 7 was 5 marked for identification.) 6 Q. (By Mr. Ettinger) All right. Let me 7 show you what's been marked as Exhibit 7, 8 RS-008-037 through '039. It's a three-page 9 document. 10 A. Okay. 11 Q. That's 7. 12 And I just want you to focus on 13 the first page of this exhibit, please. 14 A. Okay. 15 Q. Does this exhibit contain the e-mail 16 that you sent to Gainsoftmall seeking their 17 assistance in obtaining an authorization key for 18 your software? 19 A. Yes, it did. 20 Q. All right. And does the top e-mail 21 back from chenping022@gmail.com reflect the answer 22 you got from them? 23 A. Yes. 24 Q. And is this the only communication you 25 had with CHENPING022 or Gainsoftmall after</p>	<p style="text-align: right;">40</p> <p>1 MR. ETTINGER: All right. Let me 2 see it just for a moment, then. 3 THE WITNESS: Sure. 4 MR. STERN: That's fine. I think 5 it's the same. I just want to make sure -- 6 THE WITNESS: Yes. 7 MR. STERN: -- it's one -- is it 8 one exhibit? 9 MR. ETTINGER: Yes. It's all one 10 exhibit. 11 I'm missing the first page. It's 12 okay. 13 THE WITNESS: Okay. 14 Q. (By Mr. Ettinger) Okay. So if you 15 could tell us what that is. 16 A. This is an Overland Park Police 17 Department police report, an incident or an 18 investigation report. 19 Q. Okay. And is this the report that was 20 generated as a result of your purchase from 21 Gainsoftmall? 22 A. Yes, it is. 23 Q. And is the information that appears in 24 there accurate to the best of your knowledge and 25 belief?</p>
<p style="text-align: right;">39</p> <p>1 receiving the software in the mail? 2 A. Yes. 3 Q. Let me show you what's been marked as 4 Exhibit 8 and see if I can get you to tell us what 5 this is. 6 (Deposition Exhibit No. 8 was 7 marked for identification.) 8 Q. (By Mr. Ettinger) This is a document 9 entitled "Incident/Investigation Report," 10 December 24, 2009, and a additional supplement, 11 one-page supplement that is page 5. 12 MR. ETTINGER: Counsel, do you 13 have a copy of this? 14 MR. STERN: I should. 15 Q. (By Mr. Ettinger) Ms. Porter, if you 16 could just take a moment to look at that and then 17 tell me what this is. 18 MR. STERN: I'm sorry. Could I 19 just see the -- is that a five-page document? 20 MR. ETTINGER: Actually, it's a -- 21 THE WITNESS: Yes. 22 MR. ETTINGER: It's a four -- 23 Four or five? 24 THE WITNESS: It's four stapled, 25 and 5 is the last -- the loose one.</p>	<p style="text-align: right;">41</p> <p>1 A. Yes, it is. For the quotes that are on 2 page 2, that came from the actual e-mail that I 3 sent to my boss. 4 Q. And do you know what, if anything, the 5 Overland Park police were able to do in response 6 to this incident report? 7 A. On page 5, you will see a little 8 follow-up done by one of our officers, Blaine 9 Bronson. He contacted Steve Verbanic of the 10 Lawrence Police Department, and in here is 11 mentioned Michael Hill once again. 12 Q. All right. And do you know what, if 13 anything, came of this investigation? 14 A. No, I do not. 15 Q. Did the experience with Gainsoftmall 16 chill your desire to purchase Rosetta Stone 17 software? 18 A. No. 19 Q. Did you, in fact, ultimately purchase 20 Rosetta Stone software from another source? 21 A. Yes. 22 Q. And what source was that? 23 A. I don't know for sure. It was a gift 24 from my husband, but I would imagine Barnes &amp; 25 Noble.</p>

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<p style="text-align: right;">42</p> <p>1 Q. And do you know how much he paid for 2 the Rosetta Stone software? Because it was a 3 gift, you don't know? 4 A. That's right. I don't ask. 5 Q. All right. Have you used the software? 6 A. Yes. 7 Q. And it functions as expected? 8 A. Yes. 9 MR. ETTINGER: No further 10 questions. 11 MR. STERN: How are you doing, 12 Ms. Porter? I just want to make sure that you're 13 not tired. I know we've had a lot of technology 14 thrown at you this morning, and I want to make 15 sure you're okay. 16 THE WITNESS: I'm fine. 17 MR. STERN: Want to take -- 18 THE WITNESS: Thank you. 19 MR. STERN: -- a break? Are you 20 okay? 21 THE WITNESS: No, I'm fine. 22 MR. STERN: Good. Great. 23 EXAMINATION 24 BY MR. STERN: 25 Q. My name is Claude Stern, and I'm proud</p>	<p style="text-align: right;">44</p> <p>1 A. Both. 2 Q. Okay. And do you typically use it to 3 find out information about products and services 4 or people or all sorts of other things? 5 A. Yes. 6 Q. Is there any search engine that you use 7 more than you use Google? 8 A. No. 9 Q. Have you ever tried any other search 10 engine -- 11 A. Yes. 12 Q. -- like Yahoo!? 13 A. Yahoo! 14 Q. And you prefer Google. 15 A. Yes. 16 Q. Why is that? 17 A. It's very simple to use. I like the 18 little things they put above their search box. 19 Sounds pretty silly, but I really enjoy that they 20 change that and make it according to the seasons, 21 the Olympics, and things like that. But it's 22 very, very simple to use. That's the main reason. 23 Q. And except for this incident that is 24 the subject of the lawsuit, have you ever used 25 Google to obtain products or services?</p>
<p style="text-align: right;">43</p> <p>1 to represent Google. I'm going to ask you some 2 follow-up questions, and if I ask anything that 3 you don't understand, tell me and I'll try to 4 rephrase it; okay? 5 A. Okay. 6 Q. First of all, I'm glad to hear that you 7 use Google. 8 A. Yes. 9 Q. How long have you been using Google as 10 a search engine? 11 A. A long, long time. 12 Q. And -- 13 A. They're awesome. 14 Q. And -- I'm sorry. I missed the last. 15 A. They're awesome. 16 Q. Yeah. 17 MR. ETTINGER: I think you heard 18 that. 19 MR. STERN: But maybe I didn't 20 hear it quite ... 21 MR. ETTINGER: I object to your 22 hearing, but go ahead. 23 Q. (By Mr. Stern) Do you use Google for 24 your -- in your personal life or for your 25 professional life or for both?</p>	<p style="text-align: right;">45</p> <p>1 A. Yes. 2 Q. Can you give me some examples. 3 A. Oh, my goodness. 4 Q. First of all, let me ask: More than 5 once? 6 A. Oh, yes. 7 Q. Okay. 8 A. Lots. 9 Q. Lots. 10 A. I use a lot of Internet. I guess 11 probably most recently -- I was just searching for 12 something yesterday. I can't remember what it 13 was. But if there's a book that I want, I will -- 14 and you're just talking about products and 15 services; right? 16 Q. Sure. Just for now. 17 A. Okay. Products and services, usually 18 books. I go to Amazon quite a bit, but I usually 19 find out through Google that they have the product 20 that I'm looking for. But there have just been 21 numerous products. I don't even remember. 22 Q. And except for this incident involving 23 Gainsoftmall, have you always successfully 24 acquired the product or service you were looking 25 for?</p>

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<p style="text-align: right;">46</p> <p>1 A. Yes. 2 Q. Okay. Without any form of 3 disappointment toward Google or anybody else? 4 A. That's correct. 5 Q. Okay. You mentioned that you were a -- 6 or -- am I correct in saying you were a police 7 officer or you are a police officer? 8 A. I'm a retired police officer. 9 Q. You know, it's sort of -- I think -- 10 even when lawyers retire, they say that they are a 11 lawyer, so I assume you're really still a police 12 officer at heart. Let me ask you, as a police 13 officer, have you ever been involved in what may 14 be characterized as cyber crime activity? 15 A. No. 16 Q. Okay. Have you ever heard of that 17 phrase, "cyber crime"? 18 A. Yes. 19 Q. You understand from your over 20 years 20 on the police force that since the development of 21 the Internet, there is a phenomenon called cyber 22 crime? 23 A. Yes. 24 Q. And you understand that there are 25 criminals and other people who use the Internet to</p>	<p style="text-align: right;">48</p> <p>1 Q. Do you know if -- have you ever seen 2 that web site accessed through Google? 3 A. I don't -- I have not personally, no. 4 Q. Okay. But you've seen the web site? 5 A. I've seen our web site. 6 Q. If I -- I've got the Internet hooked up 7 right now. If I were to type in "Overland Park, 8 Kansas, police force," do you think it's likely 9 that that web site will come up? 10 A. I would imagine. 11 Q. Okay. And you would agree with me that 12 if that were the case that Google would be 13 searching -- withdraw that -- you would agree with 14 me that Google would be serving its essential 15 function of being able to call up web sites about 16 a particular subject? 17 A. Yes. 18 Q. All right. Now, on the -- I want to 19 ask you some questions about this -- about the 20 incident that you were involved in. First of all, 21 you understand that Google offers -- and by the 22 way, I'm going to apologize. Some of these 23 questions are dumb questions. I have to lay these 24 foundations out later on for the jury in this 25 case; okay?</p>
<p style="text-align: right;">47</p> <p>1 dupe people and commit fraud? 2 A. Yes. 3 Q. The incident that happened here, was 4 this the first time that you'd ever personally 5 experienced some sort of cyber crime activity? 6 A. Yes. 7 Q. When you've -- I should probably go 8 back. I understand that you've been on the police 9 force for 22 years, was it? 10 A. 25. 11 Q. 25 years. 12 A. Uh-huh. 13 Q. Before that, were you in industry or in 14 any sort of business? 15 A. I was a secretary. 16 Q. Okay. Have you ever been involved in 17 the development of a web site or putting together 18 a web site? 19 A. No. 20 Q. Does the Overland Park police force 21 have a web site? 22 A. Yes. 23 Q. And I assume you've seen that web site 24 in operation? 25 A. Yes.</p>	<p style="text-align: right;">49</p> <p>1 A. Understood. 2 Q. You understand that Google is a search 3 engine; correct? 4 A. Yes. 5 Q. You understand that what -- as a search 6 engine, that what they do is they serve up to 7 people who are conducting queries the results of 8 those sorts of search queries? 9 A. Yes. 10 Q. And that the search queries that are 11 resulting aren't created by Google, but they're 12 created by third parties? 13 MR. ETTINGER: Objection. 14 Q. (By Mr. Stern) Right? 15 A. I don't know. 16 Q. Oh, you don't know. Okay. Let's talk 17 about the Rosetta Stone search that you did. With 18 respect to the "Rosetta Stone Spanish" search that 19 you did, when you got the results of that search, 20 I assume that the page that you saw had results 21 both on a column on the left and some results on 22 the right. 23 A. Right. 24 Q. Okay. And you're acquainted with that 25 format of Google presenting search results?</p>



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<p style="text-align: right;">50</p> <p>1 A. I've seen it before, yes. 2 Q. Okay. And you're acquainted with the 3 fact that the results on the right are called 4 sponsored links? 5 A. No, I'm not familiar with that. 6 Q. Okay. I think this morning when 7 Mr. Ettinger asked you a question, you referred 8 to -- you referred to the advertisement on the 9 right side that you clicked on as a sponsored 10 link. 11 A. Did I say that? 12 Q. I think so. 13 A. Okay. Well, we were talking about it 14 earlier, so maybe at that time. 15 Q. Okay. Let me ask you, at the time that 16 you conducted the search -- 17 A. Uh-huh. 18 Q. -- had you ever noticed that on the 19 Google web page there is a designation for certain 20 search results as being sponsored links? 21 A. The top ones where they have in the 22 blue -- 23 Q. Exactly. 24 A. -- yes. 25 Q. Okay. And is it your understanding</p>	<p style="text-align: right;">52</p> <p>1 Exhibit 2, but you'll -- I have to do this for the 2 record. You'll agree with me that on Exhibit 2 3 the top three ads that are identified are 4 sponsored links; correct? 5 A. Right. Those are the ones that are the 6 advertised -- 7 Q. Okay. 8 A. -- that people paid for advertising. 9 Q. And you see on the right side where it 10 also says "Sponsored Links," and then there are 11 ones down -- 12 A. Uh-huh. 13 Q. -- the side. Do you see that? 14 A. Uh-huh. 15 Q. I'm sorry. You have to answer yes. 16 A. Yes. I'm sorry. 17 Q. No, no. You're doing great. You're 18 just doing great. 19 MR. STERN: Or you could answer 20 no. 21 MR. ETTINGER: You don't have to 22 answer yes. 23 THE WITNESS: I have to be honest, 24 though -- 25 MR. STERN: That's right.</p>
<p style="text-align: right;">51</p> <p>1 those top search results that are in the colored 2 field, did you have an understanding what those 3 were? 4 A. People pay for that. It's advertising. 5 Q. Okay. And if you take a look at -- you 6 have some exhibits in front of you that 7 Mr. Ettinger -- 8 A. I do. 9 Q. -- made. If you'd take a look at the 10 right side. Actually, do you have Exhibit 2? 11 A. 2? 12 Q. Yeah. 13 A. Okay. 14 Q. Now, your -- I think -- 15 A. "Sponsored links" right there. That's 16 why I said it. 17 Q. Actually, is your -- can I see yours 18 for a second? 19 A. Uh-huh. 20 Q. Okay. Yours is color. That's perfect 21 actually. I'm -- 22 A. Okay. 23 Q. -- thrilled that your -- 24 A. Uh-huh. 25 Q. So I have a black-and-white version of</p>	<p style="text-align: right;">53</p> <p>1 THE WITNESS: -- right? 2 Q. (By Mr. Stern) In all events, you 3 understand that those -- those -- those ads on the 4 right are also sponsored links? 5 A. Does that mean they pay advertising? 6 Q. Yes. I'm asking. Did you understand 7 that? 8 A. I'm not sure that I knew that. 9 Q. Okay. Is that something you -- 10 A. I didn't know how they got there. I 11 just assumed they were somehow put in there. 12 Q. Okay. 13 A. Sorry. I'm not very computer -- 14 Q. No, no, no. That's perfectly okay. 15 A. -- literate. 16 Q. That's okay. 17 But in all events, when you 18 clicked on the web site that said "\$142 Get 19 Language Software," you didn't think that Google 20 was actually offering that product for sale? 21 A. Google doesn't offer any of the 22 products for sale. 23 Q. Good. 24 A. Okay. 25 Q. I understand that.</p>

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<p style="text-align: right;">54</p> <p>1 When you went to buy the product, 2 you didn't think that you were actually buying 3 product from Google; right? 4 A. That's correct. 5 Q. Okay. And you -- 6 A. Yeah. 7 Q. You didn't think that any of the web 8 sites or ads that are identified on Exhibit 2 or 9 whatever you actually saw were actually endorsed 10 or sponsored or affiliated with Google; right? 11 MR. ETTINGER: Objection as to 12 form. 13 Q. (By Mr. Stern) You can answer the 14 question. 15 A. (No response.) 16 Q. Want me to ask you that -- 17 A. Would you please ask it again. 18 Q. Sure. You didn't think that the web 19 site that you clicked on was something that was 20 sponsored by Google? 21 A. I wouldn't think Google sponsored any 22 of these, would they? 23 Q. Or endorsed any of them? 24 A. I wouldn't know. 25 Q. Yeah. And -- or was affiliated with</p>	<p style="text-align: right;">56</p> <p>1 Q. -- is that right? 2 And, am I correct, because I've 3 done some research in this field, that if you look 4 at Spanish Levels 1, 2, 3, that the price you saw 5 was somewhere between 450 and \$600? 6 A. Correct. 7 Q. All right. And then when you went 8 subsequently online -- 9 A. Uh-huh. 10 Q. -- you went to RosettaStone.com; 11 correct? 12 A. When I went online, I went to the 13 Google search and then I went to RosettaStone.com. 14 Q. Correct. And when you went to the 15 RosettaStone.com, you saw the same product, but it 16 was also offered for, I'm guessing, between 450 17 and \$600? 18 A. Yes. 19 Q. All right. And although that you -- 20 you wanted to buy Rosetta Stone and you thought it 21 would be a quality product, you thought that was 22 too rich for your pocketbook? 23 A. Yes. 24 Q. Okay. And so what you wanted to do is 25 you wanted to find something that was less</p>
<p style="text-align: right;">55</p> <p>1 any of them? 2 A. I wouldn't know. I don't know how the 3 information gets onto Google. 4 Q. Okay. When you bought the product, I 5 take it that what you -- I think you answered -- 6 and I'm going to go through this chronology 7 relatively quickly. If I understood you, 8 Ms. Porter, the first thing you did is you went to 9 bookstores and saw the Rosetta Stone product at -- 10 was it a Barnes &amp; Noble? 11 A. Barnes &amp; Noble or Borders -- 12 Q. Or Borders? 13 A. -- or somewhere. 14 Q. Okay. 15 A. I'm not sure exactly where. 16 Q. And, actually, before that, the first 17 time you had even become acquainted with Rosetta 18 Stone is through a television advertisement? 19 A. Yes. 20 Q. Okay. It wasn't through the Internet? 21 A. No. 22 Q. Okay. And, then, after you saw the 23 price -- at some point you saw the price of 24 Rosetta Stone at the book store -- 25 A. Yes.</p>	<p style="text-align: right;">57</p> <p>1 expensive, but delivered what you thought was the 2 quality of Rosetta Stone? 3 A. I wanted Rosetta Stone. 4 Q. Right. I mean, you wanted Rosetta 5 Stone; you just didn't want to pay that much for 6 it? 7 A. That's right. 8 Q. Okay. And so, then, you went to this 9 Rosetta Stone -- withdraw that. 10 You did some -- let me ask you 11 this: After you went to the RosettaStone.com site 12 and saw the price, I think Mr. Ettinger asked you 13 whether you did some sort of shopping on the 14 Internet. 15 A. Uh-huh. 16 Q. And it's the case that you did; is that 17 correct? 18 A. Yes. 19 Q. Do you know how many different sites 20 you clicked on to do price comparison? 21 A. I don't know. I do know that I went to 22 Amazon and checked their prices. 23 Q. And they were probably -- 24 A. I always check theirs before. 25 Q. And they were also at the 450 to</p>

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<p style="text-align: right;">58</p> <p>1 \$600 range? 2 A. I don't remember, but they were too 3 expensive. 4 Q. Okay. Prior to going to Gainsoftmall, 5 did you go to any other site other than Amazon or 6 RosettaStone.com? 7 A. Probably, but I couldn't tell you which 8 ones. 9 Q. Okay. But is it the fact that 10 Gainsoftmall was the cheapest of those sites that 11 you saw? 12 A. Yes. 13 Q. All right. So -- 14 A. The \$142 grabbed me. 15 Q. Okay. That took my next question. I 16 was going to say -- I was going to ask you whether 17 the price was a driver, but it sounds like it -- 18 A. Absolutely. 19 Q. All right. And then you -- you went 20 through the process of clicking on whatever the 21 button was on the Gainsoftmall web site in order 22 to purchase the product; right? 23 A. Yes. 24 Q. Did you do any sort of due diligence or 25 background check on Gainsoftmall?</p>	<p style="text-align: right;">60</p> <p>1 bought the product on or about November 15th, 2 2009 -- 3 A. Uh-huh. 4 Q. -- right? 5 Now, there's a -- by the way -- 6 I'm sorry. I was sloppy about something. You 7 were kind enough to produce a whole bunch of 8 documents today and provide them to Mr. Ettinger; 9 is that correct? 10 A. Yes. 11 MR. STERN: What I'm going to ask 12 Mr. Ettinger to do is, can we have a stipulation 13 about what those documents are so we can have them 14 marked at some point as an exhibit that they were 15 produced? 16 MR. ETTINGER: A copy set of what 17 she provided as one exhibit? 18 MR. STERN: Exactly. 19 MR. ETTINGER: I have no problem 20 with that. I just -- 21 MR. STERN: Great. 22 MR. ETTINGER: -- want to make 23 sure that -- before you leave that we have an 24 agreement as to what was in that package. 25 MR. STERN: That's what I mean. I</p>
<p style="text-align: right;">59</p> <p>1 A. I looked -- I did some, like, searches 2 on Gainsoftmall to see if I saw anything on there 3 and I didn't. 4 Q. Okay. 5 A. So I figured no news is good news. 6 Q. Do you recall seeing a particular web 7 site where there were various comments by users 8 indicating that they had brought fraudulent 9 product from Gainsoftmall? 10 A. No. 11 Q. You didn't see that? 12 A. Uh-uh. 13 Q. Let me ask you this: When you did 14 whatever search it was for Gainsoftmall, do you 15 recall, did you do a comprehensive search, or did 16 you just do sort of a casual search? 17 MR. ETTINGER: Objection. 18 A. I just did a -- 19 MR. ETTINGER: Go ahead. 20 A. I did a casual search. 21 Q. (By Mr. Stern) Okay. 22 A. Basically, I just put in Gainsoftmall 23 and did a search to see if there was anything 24 there. 25 Q. Okay. And, then, if I'm correct, you</p>	<p style="text-align: right;">61</p> <p>1 want to make sure that we just have a -- 2 MR. ETTINGER: That's fine. 3 MR. STERN: -- stipulation about 4 that. That's good. 5 Q. (By Mr. Stern) Okay. And, then, 6 you -- if I'm correct, you discovered that the 7 product wasn't working and you contacted Rosetta 8 Stone and they told you that the product was -- 9 well, before I tell you what they -- when you -- 10 once the product wasn't working, you decided to go 11 to Rosetta Stone; correct? 12 A. Yes. 13 Q. And -- because you thought it was an 14 authentic product, you just thought, I'm going to 15 go to the publisher of the product? 16 A. Uh-huh. They'll fix it for me. 17 Q. Take a look at, if you would, Exhibit 6 18 that's in front of you. 19 A. Exhibit 6. Okay. 20 Q. Exhibit 6 is I think what Mr. Ettinger 21 asked you about earlier; is that correct? 22 A. Yes. 23 Q. And this is, if I'm correct, a copy of 24 the template that you filled out on the Rosetta 25 Stone web site; right?</p>

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<p style="text-align: right;">62</p> <p>1 A. I don't know that I filled this out. I 2 called. And up in the right-hand corner there 3 under "Customer Info," it says "Entered By: Karen 4 D'Rozario," so I'm thinking I probably just talked 5 to someone who filled this out for me. 6 Q. Okay. That's actually exactly where I 7 was going because -- 8 A. Okay. 9 Q. -- I thought, from looking at this, 10 that it wouldn't have been filled out by you, 11 but -- 12 A. That's -- 13 Q. Okay. 14 A. -- correct. 15 Q. So let me ask you -- 16 MR. ETTINGER: Could we be clear, 17 Counsel, as to which page she's looking at, 18 because I think you have two documents pulled 19 together. 20 MR. STERN: Well, let me -- 21 let's -- 22 MR. ETTINGER: It might be simpler 23 to do it that way. 24 Q. (By Mr. Stern) Let's go to the first 25 two pages. If you take a look at the first two</p>	<p style="text-align: right;">64</p> <p>1 Rosetta Stone? 2 A. Yes. 3 Q. Okay. And then it mentions "Spanish 4 (Latin America)." Do you see that? 5 A. Yes. 6 Q. And that's accurate? 7 A. Yes. 8 Q. And it says "Month of purchase: 9 November" and "Year of Purchase: 2009" -- 10 A. Yes. 11 Q. -- do you see that? 12 And those are accurate as well? 13 A. Yes. 14 Q. And, then, if you go down, it says 15 "Details." Do you see that, that entry for -- 16 A. "Issue Detail"? 17 Q. -- "Details"? 18 No, no. 19 THE REPORTER: Say again? 20 Q. (By Mr. Stern) It says just "Details." 21 THE WITNESS: "Issue Detail"? and 22 then he says, "No. Just 'Details.'" 23 Q. (By Mr. Stern) Just "Details." And 24 it -- 25 A. Okay.</p>
<p style="text-align: right;">63</p> <p>1 pages, did you fill out the first two pages, if 2 you recall? 3 A. I don't know. 4 Q. Okay. And, then, the last two pages, 5 you're fairly certain that was not filled out by 6 you? 7 A. That's correct. 8 Q. Okay. So focusing on the last two 9 pages, take a look at the -- the area that says 10 "Ticket Description." Do you see that? There's a 11 line that says "Ticket Description" on page 3. 12 A. How far down? 13 Q. Oh, I'm actually going to go line by 14 line with you. Do you see that phone number, it 15 says "(913) 895-8303"? 16 A. Yes. 17 Q. Is that your number? 18 A. It was my work number. 19 Q. Okay. And then it says, quote, I need 20 help with my product, closed quote. 21 A. Uh-huh. 22 Q. Do you see that? 23 A. Uh-huh. 24 Q. Is that something of the sort of 25 substance you would have said to the person at</p>	<p style="text-align: right;">65</p> <p>1 Q. -- says -- 2 A. Okay. 3 Q. -- "Our customer called in for 4 assistance with the installation process." 5 A. Yes. 6 Q. Do you see that? 7 A. Uh-huh. 8 Q. And that's accurate as well? 9 A. Yes. 10 Q. That is to say, you called Rosetta 11 Stone about the installation process? 12 A. Yes. 13 Q. And the next one says, "Is the customer 14 happy?" and it says, "Happy." 15 A. I'm just a happy person, I guess. 16 Q. I think that's true. But the next 17 sentence says, "Resolution: Unauthorized resell." 18 Did they tell you it was an unauthorized resell? 19 A. Yes. They said, "Who did you purchase 20 the product from?" 21 And I said, "Gainsoftmall." 22 And they said, "That is not an 23 authorized reseller of Rosetta Stone." 24 Q. This is a very important question I'm 25 about to ask you -- well, all of them are</p>

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<p style="text-align: right;">66</p> <p>1 important, but this one in particular: Did 2 anybody at Rosetta Stone tell you that the product 3 was counterfeit? 4 A. No. 5 Q. Okay. Let me ask you a question, 6 Ms. Porter, and if -- these questions may be 7 beyond your experience, and if they are, I 8 apologize. You use a computer; correct? 9 A. Yes. 10 Q. And on the computer there's probably 11 all sorts of software, I'm -- for example, 12 Microsoft Word -- 13 A. Yes. 14 Q. -- or PowerPoint. 15 A. Yes. 16 Q. And have you ever take -- have you ever 17 taken a look at the terms or conditions by which 18 you use that -- those software programs? 19 A. No. 20 Q. All right. Have you ever -- have you 21 ever purchased software other than this example? 22 A. My husband purchases all the software. 23 Q. Okay. You mentioned that your son -- 24 is -- does your son play video games? 25 A. Yes.</p>	<p style="text-align: right;">68</p> <p>1 Did you understand that Rosetta 2 Stone has a policy that once a customer buys 3 Rosetta Stone product, that it's their position 4 that that customer has no right to resell the 5 product to anybody else? Were you aware of that? 6 A. No, I'm not aware of that. 7 Q. Okay. Okay. But in all events, is it 8 accurate to say that throughout the entire time 9 that you were working or have spoken to Rosetta 10 Stone, even till today, no one at Rosetta Stone 11 told you that the product was counterfeit? 12 A. No, they did not. 13 Q. Okay. They told you that the product 14 was not authorized for resale? 15 A. That's correct. 16 MR. ETTINGER: Asked and answered. 17 Q. (By Mr. Stern) Now, when you took the 18 product and loaded it in, do you recall, did it 19 ask for an authorization key? 20 A. Yes, it did. 21 Q. Okay. And am I correct that the 22 product that you bought didn't come with an 23 authorization key? 24 A. You are correct. 25 Q. And then when you contacted Rosetta</p>
<p style="text-align: right;">67</p> <p>1 Q. Does he play computer games? 2 A. Yes -- well, computer games -- not 3 unless you count, like, the PlayStation or the 4 Wii. 5 Q. Exactly. 6 A. Okay. 7 Q. Okay. Have you ever bought computer 8 games for your son? 9 A. Yes. 10 Q. Do you know if you or your son have 11 ever resold the computer games, you know, just 12 after a while said, "We're not interested. We 13 want to sell them to somebody else"? 14 A. Uh-huh. 15 Q. Have you ever done that? 16 A. I think he has. 17 Q. Okay. You understand that there -- is 18 it your understanding that there's some software 19 that you can buy that you can resell, just like if 20 I bought a book, I can resell it to somebody? 21 A. Yes. 22 Q. Okay. Did you understand -- let me -- 23 I can lay some foundation for this. Rosetta Stone 24 has a policy that -- well, withdraw that. Let me 25 ask you the question.</p>	<p style="text-align: right;">69</p> <p>1 Stone, they told you they can't give you an 2 authorization key because you have to get it from 3 the person you purchased it from; is that correct? 4 A. Right. 5 Q. All right. And I take it that as far 6 as you know, Rosetta Stone never sent you or 7 provided to you a copy of the authorization key? 8 A. Not for that product. 9 Q. Okay. When your -- when your husband 10 subsequently bought you the Rosetta Stone product 11 from Barnes &amp; Noble, I assume that he was provided 12 the authorization key for that product; is that 13 right? 14 A. I do have the authorization key for 15 that product. 16 Q. And once you had that authorization 17 key, you were capable of operating the product; is 18 that right? 19 A. Yes. 20 Q. Okay. Okay. And I'm delighted to hear 21 that you got your money back from American 22 Express. The information -- I'm going to take 23 a -- I want to ask you about Exhibit 8. The 24 information that you have in Exhibit 8, is that -- 25 is that information that you put in accurate</p>

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<p style="text-align: right;">70</p> <p>1 that's on the bottom of page 2, going to page 3? 2 A. Is it accurate? 3 Q. Yes. 4 A. Yes. 5 Q. So let me see if I got this straight. 6 When you went to the Overland Park police and you 7 sent them an e-mail and then filled out the 8 report -- 9 A. I'm sorry. Would you go back -- 10 Q. Sure. 11 A. -- from what you were saying. 12 Q. I'm sorry. Is this incident/ 13 investigation report from the Overland Park Police 14 Department? 15 A. Yes, it is. 16 Q. Okay. And I thought you said something 17 about you sent them an e-mail. 18 A. Yes. Since I was employed by Overland 19 Park Police Department, I have to notify -- as an 20 officer, I have to notify my boss any time I'm 21 involved in an investigation. 22 Q. I see. 23 MR. STERN: We have to take a 24 break just for a second just to reload a tape. 25 THE WITNESS: All right.</p>	<p style="text-align: right;">72</p> <p>1 A. Apparently so. 2 Q. I see. Okay. 3 Do you know if they ultimately 4 apprehended the person? 5 A. I don't know. 6 Q. Okay. But that -- in all events, the 7 information about that other person, that's 8 located on the last page of Exhibit -- 9 A. Blaine Bronson. 10 Q. -- 8; is that correct? 11 A. Uh-huh. 12 Q. And is Mr. Bronson a police officer? 13 A. Yes, he is. 14 Q. And is -- to the best of your 15 knowledge, was this information on the last page 16 of Exhibit 6 put into this investigation report by 17 Mr. Bronson? 18 A. Yes. 19 Q. Okay. 20 (Discussion off the record.) 21 Q. (By Mr. Stern) Okay. That's it for 22 the -- the incident report. I have to do a small 23 bit of housekeeping. You were kind enough to 24 bring some documents with you this morning. 25 MR. STERN: We have had several of</p>
<p style="text-align: right;">71</p> <p>1 MR. STERN: Okay. 2 THE VIDEOGRAPHER: We're going off 3 the record, ending Tape No. 1 at 11:23 a.m. 4 (A recess was taken.) 5 (Deposition Exhibit No. 9 was 6 marked for identification.) 7 THE VIDEOGRAPHER: We are back on 8 the record at 11:34 a.m., beginning Tape No. 2. 9 Q. (By Mr. Stern) Let me finish asking 10 you about Exhibit 8 that you have in front of you. 11 Am I correct that you've learned in your capacity 12 as a police officer or former police officer that, 13 in fact, there was a person in this general 14 vicinity who was buying this unauthorized software 15 from Gainsoftmall and reselling it here in the 16 Kansas area? 17 A. I don't know if it was Gainsoftmall or 18 not, but he had purchased some unauthorized 19 copies. 20 Q. I see. And he was reselling it here? 21 A. Yes. And that was per Mike Hill. 22 Q. I see. And that -- the investigation 23 of that person was coincidental with the fact that 24 you happened to bought -- buy this product from 25 Gainsoftmall?</p>	<p style="text-align: right;">73</p> <p>1 them marked as an exhibit and I want to just get 2 counsel to stipulate Exhibit 8 and Exhibit -- 3 MR. ETTINGER: -- 5. 4 MR. STERN: -- 5 are copies of 5 documents that were provided by Ms. Porter this 6 morning; is that correct? 7 MR. ETTINGER: Yes. 8 Q. (By Mr. Stern) In addition, you 9 provided some other documents, and we're going to 10 make the additional documents a collective 11 exhibit. What I'd like you to do is just briefly 12 look at them on the record. Don't read them -- if 13 you have to. Just confirm that you brought them 14 with you this morning; all right? 15 A. Okay. 16 Q. And you can look at them as a group, 17 and let me know when you're done. 18 A. Yes. 19 Q. Okay. So those are marked as 20 Exhibit 9. So can you confirm that, in fact, the 21 documents that comprise Exhibit 9 were, in fact, 22 documents that you brought with you this morning? 23 A. Yes. 24 Q. And those are documents that you 25 maintained in your own custody, control, or</p>

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<p style="text-align: right;">74</p> <p>1 possession? 2 A. Yes. 3 Q. And you either had received those 4 documents or generated those documents with 5 respect to this matter? 6 A. Yes. 7 Q. Thank you very much. 8 Okay. Let me ask you a question, 9 Ms. Porter. You said that you first saw Rosetta 10 Stone on television -- 11 A. Yes. 12 Q. -- is that right? 13 Was it a network advertisement or 14 a cable advertisement, if you remember? 15 A. I have cable -- 16 Q. So it -- 17 A. -- so -- 18 Q. -- could have been either. 19 A. It could have been either. 20 Q. Okay. I'm going to ask you a bunch of 21 dumb questions, and I hope you don't mind. You 22 understand that cable or network television sells 23 advertising space to people to advertise on? 24 A. Yes. 25 Q. And you understand that the advertisers</p>	<p style="text-align: right;">76</p> <p>1 A. Yes. 2 Q. That doesn't bother you, does it? 3 A. I hate ads, but I guess that's the way 4 they make money. 5 Q. Okay. And you understand that -- oh, 6 when you said you hate ads, you mean it takes up 7 space and clutters the view of the newspaper? 8 A. Yes. 9 Q. I see. Okay. 10 You understand that even though a 11 newspaper might have certain advertising in it, 12 let's say in the first part of the newspaper, that 13 that doesn't mean that the newspaper is either 14 endorsing, sponsoring, or is affiliated with the 15 ad that's being provided? 16 A. Correct. 17 MR. ETTINGER: Objection. 18 Q. (By Mr. Stern) I'm sorry? 19 A. Correct. 20 Q. By the same token, when you've seen 21 classified ads, you understand that all sorts of 22 members of the public or companies in the private 23 sector can place ads as part of a classified ad; 24 correct? 25 A. Yes.</p>
<p style="text-align: right;">75</p> <p>1 place their adds on that television space and 2 time; correct? 3 A. Yes. 4 Q. And you understand that even though, 5 for example, you might see an advertisement on 6 NBC, that doesn't mean that NBC is endorsing or 7 sponsoring or is affiliated with the product 8 that's being advertised? 9 MR. ETTINGER: Objection. 10 Q. (By Mr. Stern) You can answer. 11 A. Yes. 12 Q. Okay. And do you have a -- you're also 13 acquainted with advertising in local newspapers? 14 A. Yes. 15 Q. You're acquainted with the fact that 16 newspapers sell advertising space? 17 A. Yes. 18 Q. And they can either sell in the -- in 19 the actual pages of the newspaper or they sell it 20 in the classified ad section of the newspaper? 21 A. Yes. 22 Q. You're acquainted with that. 23 You understand that newspapers, 24 like television, makes money off of allowing 25 people to place advertising with them?</p>	<p style="text-align: right;">77</p> <p>1 Q. And that might be in one of your local 2 newspapers; right? 3 A. Yes. 4 Q. And you understand that just because an 5 ad is in the newspaper doesn't mean that the 6 newspaper is endorsing or sponsoring or is 7 affiliated with one of those ads? 8 MR. ETTINGER: Objection. 9 A. Yes. 10 Q. (By Mr. Stern) When you have used -- 11 I'm not going to ask you how many times you've 12 used Google, because my guess is you've used it a 13 whole lot. 14 A. Yes. 15 Q. By the way, do you think you use it 16 every day? 17 A. Yes. 18 Q. I certainly do, but you use it every 19 day? 20 A. Yes. 21 Q. Okay. When you see the -- when you 22 conduct searches on Google and you see the results 23 from the searches with advertisements on the 24 left-hand side or the top or in the center of the 25 pages, you understand that, in effect, those</p>

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<p style="text-align: right;">78</p> <p>1 advertisements are sort of like the classifieds. 2 Namely, they're just ads that are being placed 3 there by various different people; correct? 4 MR. ETTINGER: Objection. 5 A. I don't really know about that. Would 6 you rephrase the question. 7 Q. (By Mr. Stern) Sure. In -- when you 8 look at the classified ads -- 9 A. Uh-huh. 10 Q. -- in a newspaper, you understand that 11 those ads are not being authored by the newspaper 12 to sell property owned by the newspaper; they're 13 being sold by third parties -- 14 A. Okay. 15 Q. -- correct? 16 A. Uh-huh. 17 Q. Do you understand? 18 A. Yes. 19 Q. By the same token, when you go to 20 Google and you conduct some sort of search, 21 whether it's for paint or for whatever you do, and 22 ads show up as a result, either on the sponsored 23 link side or just in the body of the page, you 24 understand that those are ads or web sites that 25 are developed by third parties, not by Google?</p>	<p style="text-align: right;">80</p> <p>1 collecting them for a particular reason? 2 A. I was saving them, yes. 3 Q. Okay. And why were you saving them? 4 A. In case anything ever came of it. 5 Q. Okay. I see. 6 A. I save a lot of stuff. 7 Q. Okay. Did you put them in a file? 8 A. Yes. 9 Q. And the documents that you produced 10 this morning, are they from that file? 11 A. Yes, from my saved file. 12 Q. Okay. Do you recall the first time 13 that you spoke to Mr. Ettinger? 14 A. Do you mean the date? 15 Q. Yeah. Actually, I'm not really looking 16 for a specific date. Was it in the last month? 17 A. Probably. 18 Q. Okay. And do you recall between then 19 and now how many times you've spoken to him? 20 A. Once when he originally called and then 21 once today. 22 Q. Okay. And do you recall when he 23 originally called what he told you? 24 A. He said that Rosetta Stone was filing a 25 suit against Google for allowing them to post</p>
<p style="text-align: right;">79</p> <p>1 A. Yes. 2 MR. ETTINGER: Objection. 3 Q. (By Mr. Stern) Okay. And in that 4 sense, would you agree that in a way those ads are 5 sort of like the classified ads in the newspaper? 6 MR. ETTINGER: Objection. 7 A. I wouldn't have thought of them that 8 way, no. 9 Q. (By Mr. Stern) Okay. But you see them 10 as being offered by third parties -- 11 A. Yes. 12 Q. -- correct? 13 Okay. Another question: As I 14 looked through all these documents that you 15 produced this morning, I noticed that they are 16 from a web site of rkp546@aol.com, and I assume 17 that that's your e-mail address. 18 A. That's correct. 19 Q. And I see that they were sent to -- to 20 you -- they were sent to you on December 28th, 21 2009. 22 A. Yes. 23 Q. I'm guessing here, but is the reason 24 that you were sending these former e-mails that 25 you had copies of to yourself was that you were</p>	<p style="text-align: right;">81</p> <p>1 counterfeit software, or something to that effect, 2 on their web site. 3 Q. That's how he described the suit to 4 you? 5 A. That's just a general idea of what he 6 said. 7 Q. Okay. 8 A. I wouldn't say he described it or used 9 those words, but that was what I got from the 10 conversation. 11 Q. That's fine. And did he tell you why 12 he was calling you? 13 A. Other than the fact that I had made the 14 report. 15 Q. Oh. Did he tell you that he had got 16 your name from Google -- I mean from -- withdraw 17 that. 18 Did he tell you that he got your 19 name from Rosetta Stone? 20 A. I don't know where he got my name. 21 Q. Okay. 22 A. Could have been from Michael -- Michael 23 Hill or -- I don't know. 24 Q. Did you -- did Mr. Ettinger tell you 25 how many other people he was speaking to other</p>



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<p style="text-align: right;">82</p> <p>1 than yourself? 2 A. No. 3 Q. Okay. During this initial call, how 4 long was the call? Do you recall? 5 A. Oh, I would say it was probably not 6 more than 10, 15 minutes. 7 Q. Okay. And during that conversation, 8 did you relay to him much of the information you 9 provided this morning to us? 10 A. Uh-huh, basically. 11 Q. Okay. 12 A. Just that I had purchased the software 13 and it turned out to be an unauthorized reseller. 14 Q. Did Mr. Ettinger ask you if you were 15 going to be testifying at trial in this case? 16 A. Say it again. 17 Q. Did Mr. Ettinger ask you if you would 18 be willing to testify at trial in this case? 19 A. Probably. I don't remember exactly. 20 Q. Okay. Do you -- 21 A. But he did ask me if I would be 22 available for a deposition, and I assumed that 23 meant it would go to trial. 24 Q. Okay. Do you know, has Mr. Ettinger or 25 anyone else from Rosetta Stone asked you whether</p>	<p style="text-align: right;">84</p> <p>1 possession of the Overland Park -- Overland Park 2 Police Department? 3 A. Yes, it is. 4 Q. All right. And have they agreed to 5 release that? 6 A. Yes, they have. 7 Q. And are you going to assist us in 8 getting that today? 9 A. Yes, I will. 10 Q. Thank you. 11 MR. STERN: Thank you very much. 12 THE WITNESS: You're welcome. 13 THE VIDEOGRAPHER: We're going off 14 the record at 11:46 a.m., concluding the 15 deposition of Rita Porter. 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">83</p> <p>1 you are willing to fly out to Virginia for trial? 2 A. No, they haven't asked. 3 Q. Okay. 4 Let me just look over the 5 documents really quickly. I think we're done. 6 Oh. Just one -- a couple of last 7 questions: When all this happened, at no time 8 have you contacted Google; correct? 9 A. No. 10 Q. At no time in any of the discussions 11 you've had with any of these people did you blame 12 Google for any of these things that took place? 13 A. That's correct. 14 MR. STERN: I have no further 15 questions. Thank you very much. 16 THE WITNESS: Okay. 17 REEXAMINATION 18 BY MR. ETTINGER: 19 Q. Just before we break, during the break 20 when the tape was being changed, did you have a 21 chance to contact the police department to 22 determine the physical location of the software 23 you purchased from Gainsoftmall? 24 A. Yes, I did. 25 Q. And is the software still in the</p>	<p style="text-align: right;">85</p> <p>1 A C K N O W L E D G E M E N T O F D E P O N E N T 2 3 4 I, RITA KAY PORTER, do hereby acknowledge I 5 have read and examined the foregoing pages of 6 testimony, and the same is a true, correct, and 7 complete transcription of the testimony given by 8 me, and any changes or corrections, if any, appear 9 in the attached errata sheet signed by me. 10 11 12 13 14 15 16 17 _____ 18 DATE RITA KAY PORTER 19 20 21 22 23 24 25</p>

1 RE: Rosetta Stone, Ltd. vs. Google, Inc.

2

3 \_\_\_\_\_ I certify that I have read my testimony and  
4 request that NO changes be made.

5

6  I certify that I have read my testimony and  
7 request that the above changes be made.

8

9

10

11

*Rita Kay Porter*

12

Rita Kay Porter

13

14

15

Subscribed and sworn to before me

16

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

17

18

19

20

\_\_\_\_\_  
Notary Public

21

State of \_\_\_\_\_

22

County of \_\_\_\_\_

23

My commission expires \_\_\_\_\_

24

25

MAM

1 RE: Rosetta Stone, Ltd. vs. Google, Inc.  
2 PG/LN Correction and Reason for Change

3 7/5 change "human resources" to "Human Relations"

4 7/19 change "January 28" to "March 1"

5 9/25 change "level" to "reasons"

6 13/9,10 change "Castilian Spanish just because I'm going to  
7 Spain, why not" to "Latin American version."

8 19/5 change "The last one, the Spain," to "The  
9 Latin American version."

10 19/8 change "That's correct" to "The one stating  
11 Latin America"

12 21/7 change "Spain" to "Latin America"

13 28/2 Change "The Chinese surname, yes" to  
14 "At the time I submitted the payment, I did  
15 not. I believe the first time I realized  
16 the payment went to someone with a  
17 Chinese surname was when I received  
18 the receipt from PayPal."

19 59/11 Change "uh uh" to "no"  
20  
21  
22

23 *Rita Kay Porter*  
24 Rita Kay Porter

25 YAM

DIANA THOMAS  
3/12/10

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Thomas, Diana Stanley 03-12-2010

1

FOR THE EASTERN DISTRICT OF  
ALEXANDRIA DIVISION

-----:  
ROSETTA STONE, LTD., :  
Plaintiff, :  
vs. : Case No.  
: 1:09-CV-00736  
GOOGLE, INC., : (GBL/TCB)  
Defendants. :  
-----:

Newburgh, New York

Friday, March 12, 2010

Deposition of:

DIANA STANLEY THOMAS

called for oral examination by counsel for  
Plaintiff, pursuant to Notice, held at the  
Courtyard Marriott at Newburgh Stewart Airport,  
located at 4 Governor Drive, Newburgh, New York,  
before Roberta-Anne Schmitt, of Capital Reporting  
Company, a Notary Public in and for the State of  
New York, beginning at 2:05 p.m., when were present  
on behalf of the respective parties:

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<p style="text-align: right;">2</p> <p>1 On behalf of Plaintiff: 2 MITCHELL ETTINGER, ESQUIRE 3 Skadden Arps Slate Meagher &amp; Flom, LLP 4 1440 New York Avenue, N.W. 5 Washington, D.C. 20005-2111 6 (202) 371-7126 7 mitchell.ettinger@skadden.com 8 9 On behalf of Defendants: 10 JONATHAN B. OBLAK, ESQUIRE 11 Quinn, Emanuel, Urquhart, Oliver &amp; Hedges, LLP 12 51 Madison Avenue 13 22nd Floor 14 New York, NY 10010 15 (212) 849-7000 16 jonoblak@quinnemanuel.com 17 18 ALSO PRESENT: 19 JOHN THOMAS 20 SALLEAN BROWNE, VIDEOGRAPHER 21 22</p>	<p style="text-align: right;">4</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>1 THE VIDEOGRAPHER: We are about to begin. 2 This is tape number 1 of the videotaped 3 deposition of Diana Stanley Thomas taken in 4 the matter of Rosetta Stone, Limited, 5 versus 6 Google, Inc. in the United States District 7 Court for the Eastern District of Virginia, 8 Alexandria Division, Number 1:09-CV-00736 9 (GBL/TCB). 10 This deposition is being held at the 11 Courtyard Marriott, 4 Governor Drive, 12 Newburgh, New York, on Friday, March 12, 13 2010 at approximately 2:00 P.M. 14 My name is Sallean Brown from Capital 15 Reporting Company and I am the legal video 16 specialist. The court reporter is Roberta 17 Schmitt, also in association with Capital 18 Reporting Company. 19 Would counsel please introduce themselves. 20 MR. ETTINGER: Mitchell Ettinger from 21 Skadden Arps on behalf of Rosetta Stone. 22</p>
<p style="text-align: right;">3</p> <p style="text-align: center;">I N D E X</p> <p>1 TO TESTIMONY 2 WITNESS BY PAGE 3 DIANA STANLEY THOMAS MR. ETTINGER 4 5 6 MR. OBLAK 35 7 MR. ETTINGER 82 8 9 TO EXHIBITS 10 EXHIBIT DESCRIPTION *PAGE 11 Stanley Thomas 1 Screen shots of internet 14 12 pages, four pages 13 Stanley Thomas 2 Screen shots of internet 17 14 pages, seven pages 15 Stanley Thomas 3 Email, one page 18 16 17 (*Exhibits attached to transcript) 18 19 20 21 22</p>	<p style="text-align: right;">5</p> <p>1 MR. OBLAK: Jonathan Oblak of Quinn Emanuel 2 on behalf of Google, Inc. 3 THE VIDEOGRAPHER: Would the court reporter 4 please swear in the witness. 5 WHEREUPON, 6 DIANA STANLEY THOMAS, 7 called as a witness, and having been first duly 8 sworn, was examined and testified as follows: 9 EXAMINATION BY COUNSEL FOR 10 PLAINTIFF 11 BY MR. ETTINGER: 12 Q Please state your full name. 13 A Diana L. Stanley Thomas. 14 Q Have you ever been deposed before? 15 A Yes. 16 Q So you know there are certain ground 17 rules we have to follow here? 18 A Yes. 19 Q The first important ground rule is that 20 the stenographer is taking down every word that is 21 said, so to help her out and make sure the record 22 is clean, I ask that you allow counsel, both</p>

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<p style="text-align: right;">6</p> <p>1 myself and Mr. Oblak, to ask the questions  2 completely before you begin your answer.  3 A Okay.  4 Q And we will certainly allow you to  5 complete your answer before we ask any further  6 questions.  7 A Okay, sure.  8 Q All of your answers today must be  9 audible. Even though you're being recorded on  10 videotape, it's not enough just to nod your head.  11 We ask that you say yes or no instead of uh-huh.  12 A Okay.  13 Q Okay is a good answer.  14 A Great.  15 Q From time to time, you may hear counsel  16 interpose an objection to a question. Those  17 objections are for the record and to be dealt with  18 by the Court at a later time. It doesn't really  19 concern you.  20 Please allow counsel to make their  21 objections, and then if you can answer the  22 question as asked, go ahead and answer it; okay?</p>	<p style="text-align: right;">8</p> <p>1 education you've achieved?  2 A Six years college; two associate's.  3 Q You have two associate's degrees?  4 A Yes.  5 Q Can you tell me where you obtained those  6 degrees?  7 A Ulster County Community College.  8 Q What are the degrees in?  9 A Associate's in paramedic and associate's  10 in RN.  11 Q Are you currently employed?  12 A Yes.  13 Q Where are you employed?  14 A Mobile Life Support Services, Newburgh,  15 New York.  16 Q What do you do for Mobile Life?  17 A I'm a paramedic.  18 Q How long have you been a paramedic?  19 A Five years.  20 Q I understand that you work nights; is  21 that correct?  22 A Yes.</p>
<p style="text-align: right;">7</p> <p>1 A Understood.  2 Q If you do not understand a question that  3 I ask you please, just tell me and I'll rephrase  4 it.  5 A Okay.  6 Q Finally, you are our guest here today.  7 You're not captive. If you need a break at any  8 point in time, just ask counsel for the break and  9 we'll accommodate you.  10 A Okay. Thank you.  11 Q Could you please state your home  12 residence?  13 A 12 Smith Road, Cornwall, New York,  14 12518.  15 Q How long have you lived there?  16 A Two years.  17 Q And may I ask how young you are?  18 A Forty-four.  19 Q All right. You can say no, but I'll  20 probably ask again.  21 A I'm 44.  22 Q All right. What's the highest level of</p>	<p style="text-align: right;">9</p> <p>1 Q So we owe you a special thanks for  2 coming here this afternoon after your shift  3 yesterday.  4 Do you understand that this is a civil  5 case between Rosetta Stone and Google?  6 A Yes.  7 Q And you've agreed to provide testimony  8 in this case without being subpoenaed to attend;  9 correct?  10 A Yes.  11 Q Are you being compensated in any way for  12 your appearance today?  13 A No.  14 Q Has anyone promised you anything for  15 your testimony here today?  16 A No.  17 Q Did there come a point in time when you  18 decided that you wanted to purchase Rosetta Stone  19 software?  20 A When I was taking a Spanish class in  21 August, September.  22 Q So you were taking --</p>

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10	<p>1 A Of 2009. 2 Q Okay. 3 A Sorry about that. 4 Q It's okay. So you were taking Spanish 5 in 2009 in community college? 6 A Yes. 7 Q And had you actually started the class? 8 A Yes. 9 Q After you started the class, did you 10 determine you wanted to purchase Rosetta Stone 11 software? 12 A Yes. 13 Q How did you know about Rosetta Stone? 14 A Advertisements; friends of mine have it; 15 my husband's boss has it. They said it was a 16 great program. 17 Q In going to purchase Rosetta Stone 18 software, did you go to the store or did you try 19 to buy it on the internet or how did you -- 20 A No. I did a search online on Google. 21 Q Do you use Google for your search engine 22 typically?</p>	12	<p>1 Q When you say "how many," you're talking 2 about how many levels you bought? 3 A Correct. 4 Q When you used your Google search tool to 5 find the Rosetta Stone software, do you recall 6 what query you put or terms you used to attempt to 7 find the software? 8 MR. OBLAK: Objection to the form. 9 A Um, Rosetta Stone. 10 Q And why did you type in the words 11 "Rosetta Stone"? 12 A Because that's what I was looking for. 13 Q And did you press enter after you typed 14 in Rosetta Stone? 15 A Yes. 16 Q Could you describe for us what you saw 17 on the search result page that came up? 18 A Well, there was a whole bunch of 19 advertisements. Like, it said "Rosetta Stone" 20 with a line underneath it, and then if you look 21 off to the right, you know, "Rosetta Stone cheap," 22 blah blah. I don't know.</p>
11	<p>1 A Yes. 2 Q And why is that? 3 A It's the most popular one out there. 4 Q Do you recall when you used Google to 5 search for Rosetta Stone software? 6 A Early September. 7 Q Of '09? 8 A Of '09; correct. 9 Q At the time you began your search on 10 Google for Rosetta Stone software, did you have an 11 understanding of how much the software cost? 12 A Yes. 13 Q How did you arrive at that 14 understanding? 15 A TV; everybody else telling me. 16 Q And what did you understand the software 17 purchase price to be? 18 A Expensive. 19 Q Do you remember the range? 20 A For the entire program? Five, six -- 21 anywhere between 500 and 700; depends on how many 22 you bought.</p>	13	<p>1 Q And did you click on different links 2 that appeared on that landing page? 3 A I did. 4 Q What did you learn when you clicked on 5 these different links? 6 A Everybody has a different price, so I 7 was looking for the cheapest one. 8 Q What do you recall the cheapest price to 9 be the day you did the search? 10 A I believe it was around \$90 for Spanish 11 1, and that's the one that I was looking for. I 12 didn't want to buy the whole set. 13 Q And do you recall who offered Span -- 14 Rosetta Stone Spanish 1 for approximately \$90? 15 A Are you asking for a name? 16 Q Yes. If you recall who was offering it 17 at that price. 18 A Like the Sourceplaza? 19 Q If that was the name. 20 A Okay. Then that was the name, 21 Sourceplaza. 22 Q Sourceplaza?</p>



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<p style="text-align: right;">14</p> <p>1 A I'm sorry. 2 Q I'm just asking you if you recall who 3 was offering it at that price. 4 A There were a lot of people. Different 5 prices and stuff. I don't remember the exact one 6 for \$90. 7 Q Did you click on a link to purchase the 8 software? 9 A Yes. 10 Q Okay. Where did the link appear on the 11 search results page that you clicked on that 12 ultimately lead to your purchase? 13 A Do you mean either in the middle, on the 14 right or the left? 15 Q Literally where on the page did it 16 appear? 17 A On the right (Indicating). 18 Q Let me show you what I'm going to mark 19 as Stanley Thomas 1. 20 (At which time, Stanley Thomas Exhibit 21 1, Screen shots of internet pages, 22 consisting of four pages, was marked</p>	<p style="text-align: right;">16</p> <p>1 A It was up there. It was more toward the 2 top than to the bottom of the page, but I don't 3 remember the exact location. 4 Q And you said it was one of the sponsored 5 links. Do you understand what a "sponsored link" 6 is? 7 A I thought that they were linked directly 8 to Rosetta Stone or to whoever you're looking for, 9 but I guess they're not I'm finding out now. 10 Q When you clicked on the link and saw the 11 landing page, right, you clicked on the link for 12 Rosetta Stone software and you went to a landing 13 page, what did you see on that landing page? 14 A Rosetta Stone, the box. 15 Q And do you recall the color of the box? 16 A It was yellow. Looks just like the 17 Rosetta Stone boxes. 18 Q Do you remember anything else about the 19 landing page that you saw? 20 A No. 21 Q When you clicked on the link, what, if 22 anything, did you believe about the affiliation</p>
<p style="text-align: right;">15</p> <p>1 for identification by counsel.) 2 Q This is a four-paged document that I'll 3 represent to you is basically a search that was 4 done for Rosetta Stone Spanish on September -- 5 excuse me, on October 16th 2009, and this is 6 obviously after the point in time you said you 7 purchased it. But I'm asking you just to take a 8 look at Exhibit 1, and if you could tell us where 9 on the page the link appeared that you clicked on? 10 A Off to the right over here on sponsored 11 links (Indicating). 12 Q Could you hold that up for the camera 13 please and just point to it? 14 A Sure (Indicating). 15 Q Point to it. 16 A This side (Indicating). 17 Q Do you recall whether the link that you 18 clicked on appeared in the first, second or third 19 position on the list? 20 A I don't. 21 Q Do you remember how high up on the list 22 it was?</p>	<p style="text-align: right;">17</p> <p>1 between the company that was offering the software 2 that you saw and Rosetta Stone? 3 MR. OBLAK: Object to form. 4 A I thought that they were people that 5 worked with Rosetta Stone. 6 Q Let me show you what I've marked as 7 Stanley Thomas Exhibit 2. 8 (At which time, Stanley Thomas Exhibit 9 2, Screen shots of internet pages, 10 consisting of seven pages, was marked 11 for identification by counsel.) 12 Q This is a seven-paged document. I'll 13 represent to you it is a printout of a landing 14 page for Sourceplaza dot com from October 16th 15 2009, again, after the date of your purchase. But 16 my question to you is, does this landing page for 17 Sourceplaza dot com, resemble, in any respect, the 18 one that you saw when you purchased Rosetta Stone 19 software? 20 A Yes. 21 Q And in what way or ways is it similar to 22 what you saw?</p>

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18	<p>1 A Well, it has the price on the right and 2 then it has the Rosetta Stone box, which I thought 3 was the original Rosetta Stone stuff (Indicating). 4 Q And, in fact, as you sit here today, do 5 you remember what purchase price you paid for the 6 Rosetta Stone software? 7 A I believe it was \$89.97, somewhere in 8 that vicinity. After taxes and stuff it ended up 9 being like a hundred and something. 10 Q Okay. Let me show you -- 11 A I don't remember. 12 Q Okay. Hang on one second. Let me see 13 if I can refresh your memory. 14 A Okay. 15 (At which time, Stanley Thomas Exhibit 16 3, Email, one page, was marked for 17 identification.) 18 BY MR. ETTINGER 19 Q Let me show you what I've marked as 20 Stanley Thomas Exhibit 3. It's a one-paged e-mail 21 from Diana Stanley to paymenteasy2009 at Gmail dot 22 com.</p>	20
19	<p>1 Would you take a look and read that to 2 yourself. 3 A (Witness complied with request.) 4 Yes, yes. That's my e-mail. 5 Q Do you recognize this e-mail? 6 A Yes, I do. 7 Q You said this is your e-mail? 8 A Correct. 9 Q Is that your e-mail address, "flymenu" 10 at Gmail dot com? 11 A "Fly4menu," yes. 12 Q To whom were you sending this e-mail? 13 A Paymenteasy2009. 14 Q And this e-mail reflects that you're 15 requesting a return of the purchase price of \$139? 16 A Correct. 17 Q Does this email refresh your 18 recollection that you paid \$139? 19 A Correct. After taxes and, yup with my 20 phone number. 21 Q Okay. 22 A At the time I still had everything in</p>	21
18	<p>1 the box. 2 Q At the time you sent this e-mail? 3 A Correct. 4 Q So you ordered your software from 5 Sourceplaza dot com on the very same day that you 6 did your initial search on Google? 7 A Yes. 8 MR. OBLAK: Objection to form. 9 MR. ETTINGER: Let me try to rephrase it. 10 BY MR. ETTINGER: 11 Q Did you have one or more sessions with 12 the Google search Rosetta Stone before you 13 purchased the software? 14 A Oh, I searched a couple; quite a few. 15 Q Different sites? 16 A Yes. 17 Q But when you made the purchase, was it 18 on the same day as you began the search effort? 19 A Yes. 20 Q And you indicated that you bought from 21 Sourceplaza dot com; correct? 22 A Correct.</p>	20
19	<p>1 Q I believe you said you paid \$139 we now 2 know. 3 A Correct. 4 Q At the time that you -- 5 MR. ETTINGER: Withdrawn. 6 Q Did you -- how did you pay for the 7 software you ordered from Sourceplaza dot com? 8 A My ATM bank card. 9 Q Okay. 10 A Which came straight out of my checking 11 account. 12 Q At the time that you purchased the 13 Rosetta Stone software through Sourceplaza dot 14 com, did you believe you were buying genuine 15 Rosetta Stone software? 16 A Yes. 17 Q Do you know what counterfeit software is 18 or bootleg software? 19 A Yeah. 20 Q What does that mean to you? 21 A "Bootleg" means that they've either 22 bought it illegally and they're selling it</p>	21

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22	<p>1 illegally under a fictitious name, and 2 "counterfeit" means it's not the real stuff. 3 Q When you made your purchase from 4 Sourceplaza dot com of Rosetta Stone software, did 5 you intend to buy either counterfeit or bootleg 6 software? 7 A No. 8 Q Did you, in fact, receive software from 9 Sourceplaza? 10 A I did. 11 Q Could you describe for us what you 12 received? 13 A I received this box (Indicating), which 14 is the yellow box, showing Rosetta Stone. 15 Q Could you hold that up? 16 A Hold it up? 17 Q Please hold it up. 18 You're referring now to Exhibit 2? 19 A Yes, sure. 20 Q Please describe it for the record. 21 A Okay. It was in a brown box and then 22 this box, which shows Rosetta Stone with all the -</p>	24	<p>1 Q Did the package have a customs form with 2 it? 3 A No. 4 Q Did the outside of the package indicate 5 what the contents were? 6 A Nope. 7 Q And did you save, by any chance, the 8 packaging that the software was sent to you in? 9 A I did for a while, but then I threw it 10 out because I called Rosetta Stone and then I 11 called PayPal and I did a bunch of things trying 12 to get my money back and everybody said they 13 couldn't help me so I threw it out. 14 Q Did you attempt to load the software 15 onto your computer? 16 A I did. 17 Q And were you successful in loading it? 18 A No. 19 Q And why is that? 20 A Well, first off, when my husband and I 21 opened up the package, the CDs, itself, had some 22 kind of gunk on them, like glue or something. So</p>
23	<p>1 - which I thought was real, decals and everything 2 on it, and that was what was in the box, but -- 3 Q When you received the package, did it 4 come in the mail, UPS, Federal Express; do you 5 remember? 6 A It came in the regular mail. 7 Q From the outside of the packaging, could 8 you tell what country the software originated 9 from? 10 A It looked to me either Japanese or 11 Chinese. I don't know the difference between 12 them. 13 Q What did you see on the outside of the 14 box that lead you to that conclusion? 15 A It was in either Japanese writing, but 16 there was no return address either. It just had 17 my name, address, and then it had something in 18 Chinese writing, and I can't remember exactly what 19 it meant. Because I did look it up online to see 20 what that meant, but I don't remember. Because I 21 was trying to locate the company so I could get my 22 money back.</p>	25	<p>1 I tried to load it in anyway because I know some 2 CDs can get that so I thought it was kind of 3 funny. So I loaded it in and it didn't do 4 anything at all. Just nothing. 5 Q Do you remember what the contents of the 6 package consisted of? And what I mean by that is 7 how many CDs, what they said on their packaging at 8 all? 9 A It had all my -- 10 I reordered directly through Rosetta 11 Stone afterward once I found out they were 12 counterfeit. 13 So it had a headset with a microphone 14 attached to it, and then it had the Spanish 1, 15 which I thought were all the proper CDs, but 16 apparently not, in them. 17 Q Approximately how many CDs came with 18 your package? 19 A I want to say four to eight, I don't 20 remember. 21 Q Was there a CD that was entitled audio 22 companion; do you remember?</p>

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<p style="text-align: right;">26</p> <p>1 A No. 2 Q Did the package contain a user's guide? 3 A No. 4 Q Did the package contain any information 5 regarding the installation of the software? 6 A I don't believe so. 7 Q When you were unable to load the 8 software on your computer, what did you do? 9 A I believe the next day is when I called 10 Rosetta Stone. 11 Q And why did you call Rosetta Stone? 12 A Well, I wanted to see what they could 13 do, if it was --you know, how to really load this 14 in, and that's when I found out that it wasn't the 15 right stuff and that it was all counterfeit. 16 Q And who at Rosetta Stone did you reach 17 out to? 18 A I talked to a couple of different 19 representatives, and then I talked to -- after a 20 couple of days, because I made a couple of 21 different phone calls to Rosetta Stone, and then I 22 talked to their legal department after sometime.</p>	<p style="text-align: right;">28</p> <p>1 A That they told me that they weren't real 2 CDs. 3 Q That the software that you purchased was 4 not genuine Rosetta Stone software? 5 A Correct. 6 MR. OBLAK: Objection to the form. 7 Q And at that point in time you said you 8 also spoke to someone in close proximity to 9 someone in the Rosetta Stone legal department? 10 A Yes. 11 Q Do you remember the individual's name's? 12 A I don't. 13 Q Does the name Jason Calhoun ring a bell? 14 A Jason, yes. 15 Q What did Jason tell you? 16 A Well, he worked with me for a couple of 17 days and he said, Well, see if you can try to get 18 them to work; get a hold of the company through 19 PayPal and see if they'll give you your money back 20 to return them, and if that doesn't work, call me 21 back. 22 So I called PayPal. They were not</p>
<p style="text-align: right;">27</p> <p>1 I don't remember. 2 Q When you reached out to Rosetta Stone, 3 did you do that because you believed that Rosetta 4 Stone, the company, was going to be able to help 5 you with the software you had purchased? 6 A Yes. 7 Q At that point in time did you still 8 believe you had bought genuine Rosetta Stone 9 software? 10 A No. I was pretty upset. 11 Q What did Rosetta Stone tell you when you 12 contacted them? 13 A Um, you know, at first they tried to 14 figure out, you know, how we could make them work, 15 and they were going about what was in the box and 16 then they realized -- you know, they asked me 17 where I ordered it from and I told them that. And 18 I believe at that point they told me they weren't 19 there -- but they actually tried to help me 20 anyway. 21 Q When you said they told you that "they 22 weren't there," what did you mean by that?</p>	<p style="text-align: right;">29</p> <p>1 helpful. 2 And the reason PayPal said they couldn't 3 help me was because I didn't use a PayPal account 4 and it came directly out of my checking account, 5 so they were like, Sorry. 6 Q Were you ever refunded the purchase 7 price that you paid to Sourceplaza dot com? 8 A No. 9 Q You indicated that you thought Jason may 10 have advised you to see if you could get the CDs 11 to work, is that what you said? 12 A Correct. 13 Q Did you tell him that you already tried 14 that -- 15 A Yeah. 16 Q -- and had spoken to the customer care 17 people? 18 A Yes. 19 Q You indicated that you ultimately 20 purchased Rosetta Stone software for your use; is 21 that right? 22 A Correct.</p>

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30	<p>1 Q From whom did you purchase it?</p> <p>2 A Rosetta Stone.</p> <p>3 Q How did you get to Rosetta Stone to buy</p> <p>4 that?</p> <p>5 A I called them.</p> <p>6 Q So you just telephoned their 800 number?</p> <p>7 A Yes.</p> <p>8 Q And ordered it directly through them?</p> <p>9 A Correct.</p> <p>10 Q Did you get what you ordered?</p> <p>11 A I did.</p> <p>12 Q Is it functioning properly?</p> <p>13 A Yes.</p> <p>14 Q Do you recall how much you paid for your</p> <p>15 order?</p> <p>16 A 250 for Spanish 1; somewhere in that</p> <p>17 vicinity.</p> <p>18 MR. ETTINGER: May I just take a break for</p> <p>19 one minute.</p> <p>20 THE VIDEOGRAPHER: The time is 2:30 P.M.,</p> <p>21 we're going off the record.</p> <p>22 (At which time, a brief recess was</p>	32	<p>1 cent, free shipping, accept PayPal, buy now, and</p> <p>2 that's from learn more language dot com slash</p> <p>3 Rosetta Stone.</p> <p>4 Q And the one below it?</p> <p>5 A (Witness Reading from Document)</p> <p>6 It says \$119 get Rosetta Stone -- Rosetta on sale.</p> <p>7 Learn foreign language with Rosetta, award winning</p> <p>8 software, ship free.</p> <p>9 Q Now, with respect to that first site</p> <p>10 that you read, the one that says \$118, get Rosetta</p> <p>11 Stone, as you sit here today, do you know whether</p> <p>12 that site offers genuine Rosetta Stone software?</p> <p>13 MR. OBLAK: Objection to form.</p> <p>14 A No, I don't now.</p> <p>15 Q You don't know whether it does or does</p> <p>16 not?</p> <p>17 A (Witness shook head in response.)</p> <p>18 I assumed before that they did.</p> <p>19 Q Does the price of that raise any red</p> <p>20 flags to you at this time?</p> <p>21 A At this point it does because I've</p> <p>22 learned my lesson.</p>
31	<p>1 taken.)</p> <p>2 THE VIDEOGRAPHER: The time is 2:40 P.M.</p> <p>3 and we are back on the record.</p> <p>4 BY MR. ETTINGER</p> <p>5 Q Just before we finish, I had run a</p> <p>6 Google query, okay, for the terms "Rosetta Stone,"</p> <p>7 and I wanted to ask you to look at the search</p> <p>8 results page. And this was done just before you</p> <p>9 walked in the room today.</p> <p>10 A Okay.</p> <p>11 Q I wanted you to take a look at this</p> <p>12 page, and the first thing I wanted you to do is</p> <p>13 tell me, if you can, where the link that you saw</p> <p>14 appeared on the page as you see this search</p> <p>15 result, okay? Just physically, where yours</p> <p>16 appeared.</p> <p>17 A Oh, on the right side under the</p> <p>18 sponsored links.</p> <p>19 Q Could you read for us, please, the top</p> <p>20 sponsored link?</p> <p>21 A (Witness Reading from Document)</p> <p>22 It says \$118 get Rosetta software, save 75 per</p>	33	<p>1 Q How about the one below it, that's for</p> <p>2 \$119, get Rosetta Stone, do you have any</p> <p>3 understanding of whether or not that site sells</p> <p>4 genuine Rosetta Stone software?</p> <p>5 A No.</p> <p>6 MR. ETTINGER: So I'm going to ask that the</p> <p>7 videographer takes a picture of this.</p> <p>8 Just one second.</p> <p>9 This page (Indicating).</p> <p>10 (At which time, there was a brief pause</p> <p>11 in the proceedings.)</p> <p>12 MR. ETTINGER: Let's go off the record for</p> <p>13 one second.</p> <p>14 THE VIDEOGRAPHER: The time is 2:43 P.M.</p> <p>15 and we are off the record.</p> <p>16 (At which time, a discussion was held</p> <p>17 off the record.)</p> <p>18 THE VIDEOGRAPHER: The time is 2:44 P.M.</p> <p>19 and we are back on the record.</p> <p>20 BY MR. ETTINGER</p> <p>21 Q Okay. So now I've clicked on the second</p> <p>22 link, the one for \$119.</p>

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34	<p>1 A Okay.</p> <p>2 Q Just take a look at that. What do you</p> <p>3 see?</p> <p>4 A Different languages for Rosetta Stone</p> <p>5 with the boxes from Rosetta Stone.</p> <p>6 Q And do you see the Rosetta Stone</p> <p>7 trademark appear on that screen?</p> <p>8 MR. OBLAK: Objection to form.</p> <p>9 A Yes.</p> <p>10 Q Is there anything about this website</p> <p>11 that tells you it's genuine or not genuine Rosetta</p> <p>12 Stone software that's being offered?</p> <p>13 MR. OBLAK: Objection to form.</p> <p>14 A No.</p> <p>15 Q Can you tell from looking at the landing</p> <p>16 page from this link whether or not this company is</p> <p>17 offering genuine Rosetta Stone software?</p> <p>18 MR. OBLAK: Objection to form.</p> <p>19 A No.</p> <p>20 MR. ETTINGER: Again, I'm just going to ask</p> <p>21 that the videographer record this.</p> <p>22 (At which time, there was a brief pause</p>	36	<p>1 Mr. Ettinger that you use Google. My question for</p> <p>2 you is, is Google your primary search engine that</p> <p>3 you use?</p> <p>4 A It is.</p> <p>5 Q What kinds of things do you use it for?</p> <p>6 A I look up a lot of information for</p> <p>7 schooling; if I'm going to buy something else; I</p> <p>8 search for eBay things; I buy books through</p> <p>9 Amazon, and I'll just punch in Amazon dot com.</p> <p>10 Q As far as shopping, how often do you use</p> <p>11 Google to assist you in shopping?</p> <p>12 A For books? Quite a bit.</p> <p>13 Q Okay. When you use Google to search for</p> <p>14 books, what kinds of things are you looking for?</p> <p>15 A What kind of books?</p> <p>16 Q Well, are you looking for physical</p> <p>17 location to go and buy the book, are you looking</p> <p>18 for --</p> <p>19 A No. I'm just looking to buy the book</p> <p>20 from online.</p> <p>21 Q Are you looking to do price comparison?</p> <p>22 A Yes.</p>
35	<p>1 in the proceedings.)</p> <p>2 MR. ETTINGER: John, you should see this</p> <p>3 because it is changing.</p> <p>4 Okay. No further questions. I will leave</p> <p>5 this out.</p> <p>6 MR. OBLAK: Thank you.</p> <p>7 MR. ETTINGER: Before you start, do you</p> <p>8 want me to go back and see if I can get</p> <p>9 that page for you?</p> <p>10 MR. OBLAK: Yes, why don't you go back. Go</p> <p>11 back if you can.</p> <p>12 EXAMINATION</p> <p>13 BY MR. OBLAK</p> <p>14 Q Good afternoon. Do you go by Ms.</p> <p>15 Stanley Thomas or Ms. Thomas, what do you prefer?</p> <p>16 A Mrs. Stanley Thomas.</p> <p>17 Q Mrs. Stanley Thomas, thank you for your</p> <p>18 time this afternoon. As I said, when we met</p> <p>19 before we started, my name is Jonathan Oblak. I'm</p> <p>20 a lawyer. I work on behalf of Google, Inc.</p> <p>21 First, can you tell me, I think you</p> <p>22 mentioned in your testimony during questions from</p>	37	<p>1 Q Do you also use Google to shop for, say,</p> <p>2 electronic goods?</p> <p>3 A No.</p> <p>4 Q Okay.</p> <p>5 A No.</p> <p>6 Q What other types of things do you use or</p> <p>7 do you shop for using Google?</p> <p>8 A Well, I used it for the Rosetta Stone,</p> <p>9 but any other electronic stuff? Mainly just</p> <p>10 literature.</p> <p>11 Q Okay. And do you use Google in</p> <p>12 connection with your work at all?</p> <p>13 A No.</p> <p>14 Q When you said that you use it --</p> <p>15 A I'm sorry. In connection with my work</p> <p>16 looking things up you mean?</p> <p>17 Q Yes.</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 A For like medical terminology and</p> <p>21 different things like that.</p> <p>22 Q And do you find Google useful in that</p>

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38	<p>1 respect? 2 A Yeah. 3 Q Do you use any other search engines? 4 A No. 5 Q How long have you been using Google as 6 your primary search engine? 7 A A long time. I don't know. 8 Q Okay. And do you understand that Google 9 has advertisements? 10 A I guess so. 11 Q Well, have you ever, in connection with 12 shopping, have you ever purchased anything from 13 Google? 14 A Specifically from Google itself? 15 Q Yes. 16 A No. 17 Q You've used Google, though, to find 18 places where you can purchase things? 19 A Correct. 20 Q And have you ever thought that Google, 21 itself, sells products? 22 A I never thought of it, no.</p>	40	<p>1 Q Did you -- 2 If you look at the exhibit marked as 3 Exhibit 1. 4 A (Witness complied with request.) 5 Okay. 6 Q Do you see at the top on the left the 7 first listing is Rosetta Stone, there's a little 8 R, and then Spanish? 9 A Correct. 10 Q And under that is www dot Rosetta Stone 11 dot com? 12 A Yes. 13 Q Do you recall whether you clicked on a 14 link for Rosetta Stone dot com when you were 15 searching? 16 A I don't remember. 17 I'm sorry. 18 Q Go ahead. 19 A Did you mean whether I clicked on it to 20 compare the price? 21 Q Have you ever -- do you know if you ever 22 clicked on Rosetta Stone dot com?</p>
39	<p>1 Q Okay. You also mentioned, I think, that 2 you use -- 3 Do you use Google to find things on 4 eBay, is that what you were saying? 5 A I just type in eBay. 6 Q Do you regularly shop at eBay? 7 A Not very often. Depends on what I'm 8 looking for. 9 Q Aside from your purchase of the Rosetta 10 Stone software that you've been testifying about, 11 have you ever had any other experience purchasing 12 something over the internet where the product was 13 not what you expected it to be? 14 A No. 15 Q You testified that you, that the day 16 that you purchased the Rosetta Stone software I 17 believe you checked a number of sites -- 18 A Correct. 19 Q -- is that correct? 20 Did you visit the Rosetta Stone dot com 21 website? 22 A Probably.</p>	41	<p>1 A Yes. 2 Q Did you do it the day you were shopping 3 for the software? 4 A I probably did. 5 Q Do you know if you did it any occasion 6 before that? 7 A No. 8 Q On the day that you were shopping for 9 software from Rosetta Stone, do you recall seeing 10 the price for the product at the Rosetta Stone dot 11 com website? 12 A Yes. 13 Q And what was the price that you saw? 14 A Somewhere between four to 700; depends 15 on how much you're buying. 16 Q Okay. Focusing again on Exhibit 1, do 17 you see below that there's a link for Amazon dot 18 com? 19 A Correct. 20 Q Do you recall whether you clicked on a 21 link for Amazon and looked for the Rosetta Stone 22 software at Amazon?</p>

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42	<p>1 A I might have.</p> <p>2 Q Do you --</p> <p>3 A I checked a bunch of different sites</p> <p>4 before I bought it, so I know I did check on eBay.</p> <p>5 I'm not sure if I checked Amazon.</p> <p>6 Q Do you recall how many sites you checked</p> <p>7 before you purchased?</p> <p>8 A I don't.</p> <p>9 Q And when you were clicking on the</p> <p>10 different sites, what was it that you were looking</p> <p>11 for in looking at the different sites?</p> <p>12 A For the Spanish 1 at the lowest price I</p> <p>13 could get it for. I mean, I was on there for</p> <p>14 quite awhile, a couple of hours.</p> <p>15 Q You were looking for the software for a</p> <p>16 couple of hours?</p> <p>17 A Correct.</p> <p>18 Q And was your primary goal to find it at</p> <p>19 the lowest price?</p> <p>20 A Yes.</p> <p>21 Q And did you come to the conclusion that</p> <p>22 there were many different outlets that were</p>
44	<p>1 appearance to the actual Rosetta Stone software --</p> <p>2 A Yes.</p> <p>3 Q -- that you received?</p> <p>4 A Yes.</p> <p>5 Q And you also testified that there were</p> <p>6 certain items that you did not find in the box</p> <p>7 that you received, such as the owner's manual.</p> <p>8 Were there other items that were not in</p> <p>9 the box you received from Sourceplaza that were in</p> <p>10 the box you received from Rosetta Stone?</p> <p>11 A Well, I didn't get a packing receipt.</p> <p>12 Q Do you recall anything else?</p> <p>13 A That wasn't in there?</p> <p>14 Q It wasn't in the box that you received,</p> <p>15 it was in the box you later received directly from</p> <p>16 Rosetta Stone.</p> <p>17 MR. ETTINGER: Objection, asked and</p> <p>18 answered.</p> <p>19 A The -- everything that I said. I mean,</p> <p>20 it was -- you know, you had the box and you opened</p> <p>21 it up and you had the headset and you had the CDs.</p> <p>22 I thought that was all that was there, but no</p>
43	<p>1 selling the software at different prices?</p> <p>2 MR. ETTINGER: Objection.</p> <p>3 A But I thought they were all linked to</p> <p>4 Rosetta Stone.</p> <p>5 Q Okay. Did you have a belief as to why</p> <p>6 Rosetta Stone would be offering its product at so</p> <p>7 many different prices --</p> <p>8 A No.</p> <p>9 Q -- at so many different websites?</p> <p>10 A Never questioned it.</p> <p>11 Q Were you concerned at all in making your</p> <p>12 purchase that the price you were paying was at</p> <p>13 such a significant discount from what Rosetta</p> <p>14 Stone dot com was selling it at?</p> <p>15 A No. Never questioned it.</p> <p>16 Q Now, you testified that you received a</p> <p>17 box that included within in it a yellow box that</p> <p>18 had Rosetta Stone material in it?</p> <p>19 A Correct.</p> <p>20 Q And I believe it was your testimony --</p> <p>21 and if not, please correct me -- that the material</p> <p>22 that you found in the box was similar in</p>
45	<p>1 packing slip and no return address.</p> <p>2 Q Okay. With respect to the package you</p> <p>3 received from Sourceplaza, it's your testimony</p> <p>4 that the CDs that came with it were damaged?</p> <p>5 A Yes. They are -- they were.</p> <p>6 Q Was there damage beyond the material? I</p> <p>7 think you described it perhaps as glue or some</p> <p>8 kind of glue.</p> <p>9 A There was some kind of glue on there.</p> <p>10 Q Was there some kind of damage beyond</p> <p>11 that?</p> <p>12 A Other than not working?</p> <p>13 Q Well, let's talk about the physical, the</p> <p>14 physical appearance of the product.</p> <p>15 A No.</p> <p>16 Q Did you ever, when you loaded it into</p> <p>17 your computer, did anything happen at all?</p> <p>18 A No.</p> <p>19 Q When you called Rosetta Stone after you</p> <p>20 tried to load it, did either Mr. Jason Calhoun or</p> <p>21 anyone else ask you to send them the CDs and</p> <p>22 material you had purchased?</p>



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<p>1 A They were going to do huge investigation 2 on it and then he said, We may have you mail them 3 back. 4 Q Okay. 5 A But then they said, There was really 6 nothing we could do. 7 Q Okay. So they did not follow up with 8 you and ask you to mail the product back to 9 Rosetta Stone? 10 A At the last conversation that I had with 11 him was that there was really nothing that they 12 could do. 13 Q Okay. And did, in your conversation 14 with Mr. Calhoun, did he specifically say that you 15 purchased counterfeit or pirated software? 16 A He said it was pirated. 17 Q Did he indicate how he knew it was 18 pirated? 19 A There was a lot of discussions, so, you 20 know, with all his questions that he asked me, you 21 know, no return address, it was in Japanese or 22 Chinese, whichever one it was, I don't remember.</p>	<p>1 America, who is my checking account. They said 2 they couldn't help me. 3 I called PayPal. E-mailed them this e- 4 mail that's here, and nobody seemed to be able to 5 refund me. 6 And Bank of America said because it's 7 already been -- that the money had already been 8 taken out that they could get it back. 9 Q Now, when you were doing this, doing the 10 searches for the Rosetta Stone software, did you 11 do any research to determine -- 12 MR. OBLAK: Withdrawn. 13 Q When you were doing the research, had 14 you heard of Sourceplaza before? 15 A No. 16 Q And did you do any research to determine 17 whether Sourceplaza was an authorized reseller of 18 Rosetta Stone? 19 A No. I just made the assumption that 20 because they were there that they were linked with 21 Rosetta Stone, which I think a lot of people do. 22 Q Have you known anyone else that</p>
47	49
<p>1 And that -- he said that if they were the proper 2 Rosetta Stone and the real thing, that they 3 wouldn't be damaged the way that they were. 4 Q Is there anything else that Mr. Calhoun 5 discussed with you as to why he believed that the 6 software you purchased was counterfeit? 7 A I don't recall. 8 Q Okay. Did he discuss with you whether 9 or not Sourceplaza was an entity that sold the 10 Rosetta Stone software? 11 A I don't remember. 12 Q And it's your testimony that after you 13 had these discussions with Rosetta Stone, you 14 threw away the CDs and material you received? 15 A Yes. 16 Q Did you keep any copy of any of the 17 material that you received from Sourceplaza? 18 A No. 19 Q Did you attempt to get a refund from 20 your purchase through your bank, through your 21 debit card? 22 A I did. I actually called Bank of</p>	<p>1 purchased Rosetta Stone software that they 2 believed was counterfeit or pirated? 3 A I don't. 4 Q Have you talked with anyone else about 5 their efforts to find Rosetta Stone software on 6 the internet and purchase it? 7 A Have I spoke to people? Yeah. Yes. 8 Q And -- 9 A Told them to buy directly from Rosetta 10 Stone. 11 Q Prior to this experience, where you made 12 the purchase from Sourceplaza, had you spoken with 13 anyone else about purchasing Rosetta Stone 14 software over the internet? 15 A I don't believe so. 16 Q And had you heard of anyone else that's 17 purchased Rosetta Stone software that turned out 18 to be counterfeit or pirated? 19 A No. 20 Q Had you heard of people selling 21 counterfeit or pirated software over the internet 22 prior to your purchase through Sourceplaza?</p>

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<p style="text-align: right;">50</p> <p>1 A No. 2 Q Do you know whether in doing your search 3 for Rosetta Stone software you typed in any 4 queries other than Rosetta Stone? 5 A No, I did not. 6 Q Mr. Ettinger marked as Exhibit 3 an e- 7 mail between you and paymenteasy2009 at Gmail dot 8 com. What was your understanding of 9 paymenteasy2009 at Gmail dot com? Whose e-mail 10 address did you believe that to be? 11 A I believed it to be either, one, the 12 website that I had purchased it from, but then I 13 also believed it to maybe be PayPal. I wasn't 14 sure. 15 Q Did you receive any e-mail confirmation 16 regarding your purchase? 17 A Just -- yeah. Just from the 18 paymenteasy. That's how I ended up getting their 19 e-mail address. 20 Q That was going to be my next question, 21 how you got the e-mail address paymenteasy. 22 Did you have any other communications</p>	<p style="text-align: right;">52</p> <p>1 paymenteasy2009. 2 Q That's aside from the initial e-mail you 3 received confirming the purchase? 4 A Correct. 5 Q Did you save that e-mail? 6 A I did not. 7 Q Do you know how long after your purchase 8 you received that e-mail? 9 A Probably a day after I purchased it. 10 Q Was there anything in that e-mail to 11 suggest that it had come from somewhere based in 12 China or Japan? 13 A No. 14 Q When you received the package of Rosetta 15 Stone product and saw characters on the outside 16 that you thought might be either Chinese or 17 Japanese, were you concerned, at that point in 18 time, that you may not have purchased authorized 19 Rosetta Stone software? 20 A I was like, Well, this is kind of funny. 21 Q Why did you think that? 22 A It wasn't in English.</p>
<p style="text-align: right;">51</p> <p>1 with paymenteasy2009? 2 A I did, but I didn't save the e-mails and 3 they were not -- they were pretty vulgar so I 4 didn't think you needed to see those. 5 Q Did you receive any response to Exhibit 6 3? 7 A No response to any of them. 8 Q You received other e-mails from 9 paymenteasy2009? 10 A I didn't receive any e-mails from 11 paymenteasy2009. I e-mailed them like three or 12 four times. 13 Q Sure. 14 A The other ones I had e-mailed I didn't 15 give anybody because they were not very nice. 16 Q I see. I'm sorry. I didn't -- I 17 misunderstood. 18 A I didn't think you needed to see the 19 language that was in there. 20 Q You're referring to the e-mails you sent 21 to paymenteasy2009? 22 A Correct. I never received anything from</p>	<p style="text-align: right;">53</p> <p>1 Q Did you expect it to be in English? 2 A I did. 3 Q Did you have an understanding of where 4 Rosetta Stone was based? 5 A A little bit. Not -- 6 Q Did you believe they were based in the 7 U.S.? 8 A Yes. 9 Q And that's why you thought it was funny 10 that the characters outside -- 11 A Correct. But I've never received 12 anything counterfeit either. So I was like, Okay. 13 Q Now, with respect to the research that 14 you did into the Rosetta Stone software, did you 15 only do research on the internet or did you look 16 in stores at well? 17 MR. ETTINGER: Objection as to time. 18 A I just looked on the internet. I didn't 19 have time to look in the store. 20 Q Did you ever make a complaint to Google 21 regarding the purchase that you made from 22 Sourceplaza?</p>

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54	<p>1 A No.</p> <p>2 Q Why not?</p> <p>3 A I didn't know you could.</p> <p>4 Q Did you believe that Google was to blame</p> <p>5 for the purchase of the software from Sourceplaza?</p> <p>6 A Oh, I have no idea.</p> <p>7 Q Do you understand now, after this</p> <p>8 experience, that there are people out there that</p> <p>9 sell counterfeit software over the internet?</p> <p>10 A Oh, yes.</p> <p>11 Q Did you have an understanding, prior to</p> <p>12 this purchase, that people were selling things</p> <p>13 illegally over the internet?</p> <p>14 MR. ETTINGER: Asked and answered.</p> <p>15 A I guess.</p> <p>16 Q You understood, before the purchase of</p> <p>17 the software from Sourceplaza, that people were</p> <p>18 out there selling things illegally over the</p> <p>19 internet?</p> <p>20 A I didn't think it was Sourceplaza that</p> <p>21 did, but I knew that there's people out there that</p> <p>22 do that.</p>
55	<p>1 Q Did you file a complaint with anyone</p> <p>2 else besides Rosetta Stone?</p> <p>3 A Rosetta Stone, PayPal.</p> <p>4 Q Anyone beyond those two?</p> <p>5 A No.</p> <p>6 Q In addition to your trying to start the</p> <p>7 software on your computer --</p> <p>8 MR. OBLAK: Well, withdrawn. Let's back</p> <p>9 up.</p> <p>10 Q Can you describe what you did to try and</p> <p>11 get the software to work on your computer?</p> <p>12 A I put it in my computer.</p> <p>13 Q And how --</p> <p>14 A The regular Rosetta Stone just starts</p> <p>15 up.</p> <p>16 Q Sure.</p> <p>17 A Which, when you put it into the CD</p> <p>18 drive, that's what normally happens, they just</p> <p>19 start up.</p> <p>20 So I put it into the CD drive, it didn't</p> <p>21 start up, so I went over to Start, went into my C</p> <p>22 drive, D drive, and tried to start it that way,</p>
56	<p>1 and it was nothing.</p> <p>2 Q Did you try to start up more than one CD</p> <p>3 from the set that you got from Sourceplaza?</p> <p>4 A Yes.</p> <p>5 Q How many CDs did you try?</p> <p>6 A I tried them all.</p> <p>7 Q Did any of them start at all?</p> <p>8 A No.</p> <p>9 Q You didn't get any message at all?</p> <p>10 A No.</p> <p>11 Q Did all of them have some form of damage</p> <p>12 on them that you described?</p> <p>13 A I don't believe all of them did. I know</p> <p>14 a couple of them did.</p> <p>15 Like I said before, I don't remember how</p> <p>16 many CDs were in there, but I do remember, like,</p> <p>17 two or three of them having some kind of gunk on</p> <p>18 them.</p> <p>19 Q The box that you received from</p> <p>20 Sourceplaza dot com, was it shrinkwrapped in</p> <p>21 plastic?</p> <p>22 A No.</p>
57	<p>1 Q Were any of the CDs shrinkwrapped at</p> <p>2 all?</p> <p>3 A No.</p> <p>4 Q Was anything in the package</p> <p>5 shrinkwrapped?</p> <p>6 A No.</p> <p>7 Q What about the Rosetta Stone software</p> <p>8 that you received from the store after you ordered</p> <p>9 it online, was any of that material shrinkwrapped?</p> <p>10 A The real Rosetta Stone?</p> <p>11 Q Yes.</p> <p>12 A I think so.</p> <p>13 Q The outside of the box?</p> <p>14 A The outside of the box, no. Because it</p> <p>15 comes in a brown box and then the Rosetta Stone</p> <p>16 box.</p> <p>17 Q Sure.</p> <p>18 A The real Rosetta Stone box had -- I'm</p> <p>19 not sure if it's shrinkwrap, but I think it's got</p> <p>20 the little pilly (sic) things in there.</p> <p>21 Q The box that you received from Rosetta</p> <p>22 Stone, did it have some sort of seal?</p>

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<p style="text-align: right;">58</p> <p>1 A It had "Rosetta Stone" on the outside of 2 it. 3 Q The yellow box with the software in it, 4 was there a seal -- 5 A Yeah. It looked exactly like this in 6 that picture (Indicating). 7 Q To get to the disc there was some sort 8 of seal you had to break? 9 A I don't remember. 10 Q What about the discs themselves, did 11 they come shrinkwrapped? 12 A No. 13 Q Were they in a sleeve? 14 A They're like in a, like, sleeve thing 15 that you open up, and they're each separated. 16 Q All right. 17 A Which the other one was as well, so -- 18 Q Do you recall one way or the other -- 19 I'm not clear on this, so I'm sorry if I'm asking 20 you this again. 21 Do you recall one way or the other 22 whether any of the materials in the Rosetta Stone</p>	<p style="text-align: right;">60</p> <p>1 Q And they worked when you put them in the 2 computer? 3 A Correct. 4 Q We talked a little bit about your 5 conversation with Mr. Calhoun. 6 I'm correct that you spoke to more than 7 Mr. Calhoun at Rosetta Stone? 8 A Yeah. I spoke to another 9 representative. I don't remember who it was. 10 Q Okay. And were your conversations, was 11 it -- 12 MR. OBLAK: Withdrawn. 13 Q Was it with a man or a woman; do you 14 recall? 15 A Oh, I don't know. 16 Q And -- 17 A It was September. I can't even remember 18 yesterday some days. 19 Q Sure. Were those conversations 20 concerning your efforts trying to get the software 21 to work? 22 A Yes.</p>
<p style="text-align: right;">59</p> <p>1 box that you got from the company was 2 shrinkwrapped in plastic? 3 MR. ETTINGER: Objection as to form and 4 asked and answered. 5 A Which one, from the -- 6 Q From the real Rosetta Stone. 7 A From the real Rosetta Stone? I don't 8 remember if it was shrinkwrapped. I remember they 9 had the little pilly stuff in there. 10 I don't believe it was shrinkwrapped. It 11 looked exactly like the other one that I had, only 12 it had the Rosetta Stone return address and the 13 form that they give you for receipt showing that 14 you paid for it, where the first one that I had 15 bought didn't. 16 Q Okay. So the only difference that you 17 observed between the two sets was that some of the 18 documentation wasn't there in the first set that 19 you received? 20 A Correct. 21 And the real Rosetta Stone didn't have 22 gunk on them.</p>	<p style="text-align: right;">61</p> <p>1 Q Did you have conversations with anyone 2 at Rosetta Stone, besides Mr. Calhoun, regarding 3 the potential that this software was counterfeit? 4 A Just the customer service rep who put me 5 into Jason Calhoun because he was the legal 6 department. 7 Q Okay. And did the customer service rep 8 indicate to you why they believed you purchased 9 counterfeit software? 10 MR. ETTINGER: Objection. 11 A I don't -- I don't know what you're 12 asking. 13 Q Sure. 14 So you spoke to a customer service rep 15 to first to try to get your software to work; 16 correct? 17 A Correct. 18 Q After it didn't work, why did the 19 customer service rep direct you to Mr. Calhoun? 20 A Oh. Because then they asked me -- 21 sorry, what it looked like and everything like 22 that.</p>

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<p style="text-align: right;">62</p> <p>1 And I told them that there was stuff on 2 it, and they said, Well, we'll put you into the 3 legal department because they should be working, 4 so -- 5 Q And was it just those two individuals 6 that you spoke with, the customer service 7 representative and Mr. Calhoun? 8 A As far as I remember. 9 Q In the shopping that you've done using 10 Google as a search engine, have you clicked on the 11 advertisements that appear on the right side 12 during those shopping experiences, other than with 13 respect to the Rosetta Stone software we've 14 already talked about? 15 A Sure, yes. 16 Q And do you regularly click on those ads 17 on the right side? 18 A I usually check both out. 19 Q Was it your understanding that the 20 listings that appeared in the sponsored link 21 section were advertisements? 22 MR. ETTINGER: Objection.</p>	<p style="text-align: right;">64</p> <p>1 A That would be the search engine I would 2 use, correct. 3 Q The search engine or the search term? 4 A The search term, I'm sorry. 5 Q Okay. And then you clicked on the right 6 side? 7 A Yes. 8 Q Have you ever used the classified 9 section of the newspaper? 10 A (No verbal/audible response.) 11 Q Have you ever shopped for something, 12 looked in the classifieds for something? 13 A Yeah. 14 Q Have you ever placed a classified 15 advertisement? 16 A Have I ever placed one? No. 17 Q But you've used a classified 18 advertisement to look for something? 19 A Not online. 20 Q I'm talking about in the newspaper now. 21 A Yes. 22 Q And is it your understanding that the</p>
<p style="text-align: right;">63</p> <p>1 A No. I've boughten (sic) -- 2 I've bought tickets to fly and used the 3 sponsored link. 4 Q Sure. And when you clicked on those 5 links, where did it take you? 6 A To the website where you can purchase 7 whatever you're purchasing. 8 Q Was the link that you clicked on an 9 advertisement for tickets to go to where it was 10 you were looking to go? 11 A Well, at that point it -- you know, it 12 puts you where you're going. You go onto a screen 13 where, you know, you put where you want to fly out 14 of, where you want to fly into, city, state. 15 Q Right. But let's stick with this 16 example of searching for airline tickets. 17 A Okay. 18 Q What was it that you put into the search 19 query? Your destination? An airline? What were 20 you looking for? 21 A Cheap airline tickets. 22 Q Was that the --</p>	<p style="text-align: right;">65</p> <p>1 advertisements that are placed in the classified 2 section are placed by someone other than the 3 newspaper? 4 A Yes. 5 Q Someone else writes the ad -- 6 A Correct. But they get reviewed first. 7 Q Sure. But do you know, does the 8 newspaper go and confirm that everything -- 9 A Oh, I don't know. 10 Q -- that's being offered in the 11 classified section is legitimate? 12 A Oh, I don't know. I would make the 13 assumption, yes. 14 Q You believe that when someone places an 15 ad in the classified section, the newspaper 16 confirms whether what's being offered for sale is 17 legitimate? 18 A I would assume so, yes. 19 Q But you've never placed a classified ad 20 in the newspaper yourself? 21 A No. 22 Q Setting aside the classified</p>

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<p style="text-align: right;">66</p> <p>1 advertisements, you've seen advertisements, 2 generally, in the newspaper; correct? 3 A Correct. 4 Q Is it your understanding that someone 5 pays the newspaper to place those advertisements 6 in the paper? 7 A Yes. 8 Q And the person's placing that 9 advertisement, they're the ones that write what 10 appears in the paper; correction? 11 MR. ETTINGER: Objection. 12 A Okay. 13 Q Is that your understanding? 14 A Yes. 15 Q Do you believe that the newspaper goes 16 and checks the accuracy of what's being advertised 17 in that -- 18 A I thought they had to. 19 Q And why do you think that? 20 A To make sure they're not selling 21 anything that's not real. 22 Q Do you still use Google as your search</p>	<p style="text-align: right;">68</p> <p>1 Q Amazon is not, itself, a publisher of 2 books; correct? 3 A No. 4 Q Is Amazon an example of a site that 5 you'll go to purchase books, even though they're 6 not the ones manufacturing the books? 7 A Correct. Because I can get used books. 8 Q And are there other sites that you go to 9 that sell some protects that aren't directly from 10 the manufacturer? 11 A EBay. 12 Q So you continue to shop for products at 13 eBay? 14 A Correct. 15 Q EBay themselves doesn't manufacture the 16 products that you purchase? 17 A No. But at least they back it up. 18 Q Am I correct, though -- 19 MR. OBLAK: Withdrawn. 20 Q When you say eBay "backs" it up, what do 21 you mean? 22 A If I buy from eBay and there's something</p>
<p style="text-align: right;">67</p> <p>1 engine? 2 A Yes. 3 Q Do you still use it to shop? 4 A Yes. 5 Q You testified in response to one of Mr. 6 Ettinger's questions, you said something about 7 learning your lesson. "I learned my lesson." 8 A Yes. 9 Q What did you mean by that? 10 A Because basically now I only go to the 11 direct website. I'll put in -- 12 For example, if I put in Rosetta Stone 13 because I want another language, I'm going to go 14 directly to Rosetta Stone. 15 Q Right. 16 A If I put in Amazon because I'm looking 17 for a book, I'm going directing directly to Amazon 18 dot com. 19 Q In the shopping that you do now through 20 the internet, is it your testimony you only buy 21 directly from the manufacturer? 22 A Yes.</p>	<p style="text-align: right;">69</p> <p>1 wrong with it, I can send it back. I've never had 2 an invalid e-mail address, either from Amazon dot 3 com or from eBay. 4 Q When you were purchasing the Rosetta 5 Stone software from Sourceplaza dot com, am I 6 correct that you did not believe you were buying 7 it directly from Google? 8 MR. ETTINGER: Asked and answered. 9 A Yeah. No. 10 Q And it's your testimony you never bought 11 anything directly from Google? 12 MR. ETTINGER: Asked and answered. 13 A No. 14 Q If we could look at Exhibit 1 again. 15 A (Witness complied with request.) 16 Q What appears on Exhibit 1 is not the 17 exact screen results that you saw when you did 18 your search for Rosetta Stone software. 19 A I guess -- 20 Q Right. 21 A -- not. I don't know. That was back in 22 September.</p>

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<p style="text-align: right;">70</p> <p>1 Q Sure. 2 I believe Mr. Ettinger's representation 3 on the record is this was from October of 2009. 4 A Right. 5 Q And that would have been at least a 6 month after you bought the software. 7 A Correct. 8 Q But using this to orient ourselves to 9 what a search result looks like, is it your 10 testimony that you believe that all of the links 11 you saw on the right side were somehow connected 12 to Rosetta Stone? 13 A I did. 14 Q Okay. What about above, the top three 15 listings there, Rosetta Stone dot com, Amazon dot 16 com and eBay dot com. 17 Do you see those? 18 A Uh-huh. 19 Q You understood at the time that Amazon 20 dot com was something separate from Rosetta Stone? 21 MR. ETTINGER: Objection. 22 A Yeah, correct.</p>	<p style="text-align: right;">72</p> <p>1 you saw on the right side, and you clicked on a 2 number of those links; correct? 3 A Yes. 4 Q Did you also believe, with respect to 5 those links, that they were authorized to sell the 6 Rosetta Stone software? 7 A Yes. 8 Q You didn't think that they were actually 9 Rosetta Stone, you believe that they had 10 permission to sell the Rosetta Stone software; is 11 that correct? 12 A I believe they had permission to sell 13 the Rosetta Stone, but I thought it was the real 14 Rosetta Stone. 15 Q Sure. I understand. 16 It's your testimony that in shopping, in 17 looking at the sites that appeared on the right, 18 you believed you were seeing outlets that were 19 selling real Rosetta Stone? 20 A Correct. 21 Q And you believed that they had been 22 authorized by Rosetta Stone to sell that software?</p>
<p style="text-align: right;">71</p> <p>1 Q Because you've done shopping on Amazon 2 dot com? 3 A Correct. 4 Q Similarly you understood that eBay dot 5 com was not a site that was the same as Rosetta 6 Stone? 7 A Correct. 8 Q You understood that Amazon and eBay were 9 both places that sold the Rosetta Stone software? 10 MR. ETTINGER: Objection. 11 A Correct. 12 Q Do you recall -- 13 A But they're -- I made -- 14 I don't know. Forget it. Never mind. 15 Q Was it your belief that they were 16 authorized to sell the Rosetta Stone software? 17 A Yes. 18 Q You understood they were separate from 19 Rosetta Stone, but it was your belief they had 20 permission to sell the Rosetta Stone software? 21 A Correct. 22 Q With respect to the sponsored link that</p>	<p style="text-align: right;">73</p> <p>1 A Correct. 2 Q But did you also believe that, like 3 Amazon and eBay, they were separate online retail 4 sellers who were selling the products separately 5 from Rosetta Stone -- 6 A But was authorized to. 7 Q -- the company? 8 Sure. 9 So when you clicked on Sourceplaza dot 10 com, it was your belief they were selling the real 11 Rosetta Stone software? 12 A Yes. 13 Q And you believed that they had 14 authorization from Rosetta Stone to sell that 15 software? 16 A Yeah. 17 Q And did you also believe that they were 18 a separate retail online seller, who, like eBay 19 and Amazon, are separate from Rosetta Stone, the 20 company? 21 A I guess so. 22 MR. ETTINGER: Can we go off the record for</p>

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<p style="text-align: right;">74</p> <p>1 a second? 2 MR. OBLAK: Sure. 3 THE VIDEOGRAPHER: The time is 3:19 P.M. 4 and we are off the record. 5 (At which time, a brief recess was held 6 and Mr. Thomas left the deposition 7 area.) 8 THE VIDEOGRAPHER: We're back on the 9 record. The time is 3:21 P.M. and we are 10 back on the record. 11 BY MR. OBLAK 12 Q Mrs. Stanley Thomas, is it your 13 testimony that you did not buy, originally try and 14 purchase the product from Rosetta Stone dot com 15 because the price that was offered there was more 16 than you wanted to pay? 17 A Yes. 18 Q And that's why you clicked on a number 19 of other sites, to see if you could find another 20 outlet that sold it for less? 21 A Correct. 22 Q And while it was your belief that</p>	<p style="text-align: right;">76</p> <p>1 A Couple of weeks ago maybe; maybe longer. 2 Q What's your best estimate? 3 A Maybe a month. 4 Q And how many times have you spoken with 5 Mr. Ettinger? 6 A Maybe three or four. 7 Q And do you recall the first time you 8 heard from him what you discussed with him? 9 A Yes. 10 Q Just generally, what was your 11 conversation about? 12 A It was regarding the CDs that I had 13 gotten and said that there was something going on 14 with some kind of lawsuit with Google and the 15 search engines and, you know, did I purchase from 16 somebody else and I said yes and asked me what 17 happened and. 18 Q And is Mr. Ettinger the only attorney 19 you've spoken with on behalf of Rosetta Stone? 20 A Yes. Other than Jason. 21 Q Sure. 22 A I didn't know if he was an attorney or</p>
<p style="text-align: right;">75</p> <p>1 Sourceplaza was selling real Rosetta Stone 2 software, when you went to that website, you knew 3 you were not at the Rosetta Stone dot com website; 4 correct? 5 MR. ETTINGER: Asked and answered. 6 A Um, yes. 7 Q And the primary factor in you going and 8 ultimately purchasing from Sourceplaza was the 9 lower price that you had seen either from Rosetta 10 Stone or some of the other outlets? 11 MR. ETTINGER: Asked and answered. 12 A Correct. 13 Q Do you recall some of the other price 14 ranges that you saw when you were searching for 15 it? 16 A I don't. 17 Q And at the time were you only searching 18 for a Level 1? 19 A Yes. 20 Q Can you tell me when you first heard 21 from Mr. Ettinger, or someone from his law firm, 22 about this issue?</p>	<p style="text-align: right;">77</p> <p>1 not. 2 Q Understood. And those conversations 3 with Mr. Calhoun were back in September? 4 A Correct. 5 Q And am I correct that you did not speak 6 with anyone from Rosetta Stone between September 7 and when Mr. Ettinger contacted you? 8 A Right. 9 Q And you've spoken to Mr. Ettinger two 10 other times I gather? 11 A Somewhere around that, yes. 12 Q And what were those conversations about? 13 A Um, if I could find the CDs; if I didn't 14 throw them out; do I have an e-mail; how much did 15 I pay for it; what happened; what did they look 16 like; do I have the original box. 17 Q Right. And everything that you had in 18 connection with this purchase you provided to Mr. 19 Ettinger? 20 A Other than the original -- 21 What do you mean? 22 Q Well, as far as either documentation</p>



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<p style="text-align: right;">78</p> <p>1 relating to the sale, the box -- 2 A Except for my two or three vulgar e- 3 mails, yeah. 4 Q And those were the e-mails to 5 paymenteasy that we talked about? 6 A Correct. 7 Q And in those e-mails I assume you were 8 expressing your frustration with the purchase? 9 A Yes. 10 Q Aside from the indication from Mr. 11 Calhoun that he believed that the material was 12 counterfeit that you'd received, is there anything 13 else that made you believe that you'd received 14 counterfeit software? 15 A Other than getting the CDs that were 16 damaged and wouldn't work? 17 Q Sure. 18 A I think that's enough. 19 Q Do you know whether or not the CDs were 20 counterfeit as opposed to simply you got broken or 21 damaged CDs that didn't work? 22 A I don't think I understand the question.</p>	<p style="text-align: right;">80</p> <p>1 A No, I don't. 2 Q So they could have been real Rosetta 3 Stone software that was simply broken? 4 A I guess. 5 Q Like broken in the sense that the discs 6 were damaged and thus didn't work. 7 A I guess, but Rosetta Stone would have 8 refunded them. 9 Q Well -- 10 A Or somebody would have refunded them. 11 Q But you never sent the material to 12 Rosetta Stone; correct? 13 A No. Because it didn't come from them. 14 Q Sure. However, Rosetta Stone indicated 15 they might want you to send the material to them 16 and they never followed up to request it; correct? 17 MR. ETTINGER: Objection. Asked and 18 answered. 19 A They said if it went any further they 20 would contact me. 21 Q And in any case, they didn't contact you 22 and ask you --</p>
<p style="text-align: right;">79</p> <p>1 Q Sure. I understand Mr. Calhoun 2 indicated he believed they were counterfeit CDs? 3 A Correct. 4 Q CDs that were illegally made. 5 Is it also possible that you received 6 from Sourceplaza CDs that were authorized copies 7 of the Rosetta Stone but were simply damaged and 8 broken and didn't work? 9 A Are you asking if I bought something 10 else from Sourceplaza or if the original CDs that 11 I bought that I realized were counterfeit at the 12 time? Because I realized that were counterfeit 13 after I got them and they didn't work and then I 14 couldn't get a refund from Rosetta Stone because 15 they didn't come directly from Rosetta Stone and I 16 couldn't get a hold of the paymenteasy. 17 Q Isn't it the case that you believed they 18 were counterfeit is because they didn't work? 19 A Yes. 20 Q You have no way of knowing, one way or 21 the other, whether they were real Rosetta Stone 22 software?</p>	<p style="text-align: right;">81</p> <p>1 MR. ETTINGER: Asked and answered. 2 A I didn't hear anything until Mr. 3 Ettinger called me, so I just assumed that nothing 4 was going to be done because they originally said 5 to me there was nothing they could do at that 6 point, so I threw them out. 7 Q But you don't have any way of knowing, 8 one way or the other, whether they were, in fact, 9 counterfeit versus CDs that simply didn't function 10 when you put them in the computer? 11 MR. ETTINGER: Asked and answered three 12 times. 13 A Not by looking at them, no. 14 Q When you went to the Sourceplaza 15 website, how much time did you spend on that 16 website? 17 A Oh, I don't know. I spend a lot of time 18 online searching because I needed them for school. 19 Q Were you reviewing the different sites 20 that you were looking at or were you simply 21 looking for the best price? 22 A I was looking for the best price.</p>

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<p style="text-align: right;">82</p> <p>1 I didn't review it whether it was a 2 legit site. I just made the assumption it was. 3 I really don't know how to check out if 4 a site is legit or not, to tell you the truth. 5 MR. OBLAK: I have nothing further. Thank 6 you. 7 MR. ETTINGER: Just a couple of quick 8 follow-up and you're done. 9 THE WITNESS: Okay. 10 FURTHER EXAMINATION 11 BY MR. ETTINGER 12 Q In Mr. Oblak's questioning, he asked you 13 whether you recalled going to Rosetta Stone dot 14 com in and around the time you were searching for 15 the best prices. 16 A Correct. 17 Q You answered "probably." 18 As you sit here today, do you know 19 whether you went on that website? 20 A I did. Sorry. 21 Q That's fine. I just want to be clear on 22 the record.</p>	<p style="text-align: right;">84</p> <p>1 remember? 2 A Whatever color that is on there 3 (Indicating). It's blue. Whatever's on the box. 4 Q You're pointing to the exhibit? 5 A Correct. 6 Q Did anyone at Rosetta Stone ever tell 7 you that Sourceplaza dot com had sold counterfeit 8 software to other unsuspecting customers? 9 MR. OBLAK: Objection to form. 10 A After we figured out they were 11 counterfeit they said that they had problems with 12 a company. 13 Q Did they refer to Sourceplaza dot com or 14 -- 15 A They didn't refer exactly to 16 Sourceplaza, but they did say that there were 17 problems with counterfeit. 18 Q Did anyone from Rosetta Stone tell you 19 whether they had contacted Google and asked them 20 to take down the Sourceplaza dot com website prior 21 to your purchase? 22 A No, they did not.</p>
<p style="text-align: right;">83</p> <p>1 A Sorry. 2 Q I want you to take a quick look at 3 Exhibit 1 in front of you. 4 A Uh-huh. 5 Q The very first link that appears says 6 Rosetta Stone with an "R" then the word Spanish. 7 A Correct. 8 Q Do you recall when you got the discs 9 from Sourceplaza whether any of the discs had the 10 Rosetta Stone mark with an "R" or whether they 11 just said Rosetta Stone? 12 A Actually, I believe that they did have 13 the "R" on them. They looked like the real thing. 14 Q As you sit here today, do you remember 15 whether the registration "R" appeared on this? 16 A I don't remember, exactly. 17 Q Do you recall whether or not the disc 18 had a picture of the Rosetta Stone? 19 A It did. 20 Q You do remember that? 21 A Yes. 22 Q What color was the stone; if you</p>	<p style="text-align: right;">85</p> <p>1 Q So you don't know one way or another? 2 A I don't. 3 MR. ETTINGER: No further questions. 4 THE WITNESS: Okay. 5 THE VIDEOGRAPHER: The time is 3:31 P.M. 6 on March 12, 2010, and this completes the 7 videotaped deposition. 8 (Whereupon at 3:31 P.M., the deposition 9 of Diana Stanley Thomas was concluded.) 10 11 12 13 14 15 16 17 18 19 20 21 22</p>

