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1 Q. Is it always done by telephone?

2 A. If there's something on our mind, yes, we contact each
3 other by telephone.

4 Q. Is it done by list serve?

5 A. No. There was an attempt, I think -- at one time
6 somebody tried to do that and it lasted maybe a week. Just
7 people didn't want to use it. It was that everybody-in-one-
8 place-type thing, we try and avoid.

9 Q. When you share information in the normal course by
10 telephone, is it done by conference call or by one-on-one
11 communications?

12 A. Never by conference call. One-on-one.

13 Q. And what information -- strike that.

14 Who have you shared information about this lawsuit to?

15 A. Everybody knows that I filed a lawsuit against your
16 client. Everybody that I come in contact with, basically.

17 It was, for a time, up on my website. And there are
18 people that know just to go to the website and look from time
19 to time and see.

20 And other of those people I mentioned in California
21 have their own websites, and we go to each other's websites and
22 see what's current.

23 Q. Have you encouraged anyone to file a lawsuit against
24 Adknowledge or Virtumundo?

25 A. No, I haven't done that.

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1 Q. Has anybody mentioned to you that they might file a
2 lawsuit against Adknowledge or Virtumundo?

3 A. Not offhand.

4 Q. What does "not offhand" mean?

5 A. It means I can't think of anyone that's mentioned
6 that.

7 In fact, I probably am the first one to really
8 understand -- understand -- to acknowledge the fact that these
9 people were spamming me.

10 Other people have other folks that they pursue.

11 Q. Other than the Informal Coalition of Private Anti-Spam
12 Litigants, are you involved in any formal or informal groups or
13 organizations that serve a function of assisting in the
14 prosecution of anti-spam lawsuits?

15 A. No, I don't.

16 Unless you want to call my company, Omni; unless you
17 want to call that something else that fits that definition.

18 (Exhibit No. 12 marked.)

19 Q. Do you recognize Exhibit 12?

20 A. It's a Whois record.

21 Q. What is a Whois record?

22 A. It provides information to the general public as to
23 who owns a particular domain.

24 Q. Whois is a publicly accessible database, correct?

25 A. Yes.

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1 Q. And there are several sources on the Internet by which
2 Internet users can access Whois; is that correct?

3 A. That's correct.

4 Q. And with respect to .com, .net and .org domain names,
5 the registrant information is available by Whois, right?

6 A. I believe that to be true.

7 Q. And it's the registrant of the domain that provides
8 the contact information, correct?

9 A. Yes.

10 Q. So the registrant has the ability to enter false
11 information if the registrant so chooses, correct?

12 A. Yes.

13 Q. And there's also third-party services that domain
14 registrars offer that allow registrants to register names
15 without disclosing in its database who they are; is that
16 correct?

17 A. That's true.

18 Q. Those are sometimes referred to as proxy services?

19 A. Privacy protection.

20 Q. The Whois printout for Exhibit No. 12 is for what
21 domain name?

22 A. I believe it's Gordonworks.com.

23 Q. And it lists Omni Innovations, LLC as the registrant,
24 correct?

25 A. Yes.

1 Q. And it has your address?

2 A. Yes.

3 Q. And it has your phone number, correct?

4 A. That's correct.

5 Q. And that's publicly available, right?

6 A. Yes, for Gordonworks.

7 Q. Can you tell by looking at this where the Whois record
8 obtained is; in other words, which site on the Internet?

9 A. Where it was obtained?

10 Okay, I don't know if I understand that.

11 Q. You're looking at a Whois printout that was generated
12 from a website on the Internet.

13 A. Domain Tools.

14 Q. Have you ever used Domain Tools?

15 A. Yes, I do use it.

16 Q. Do you consider it reputable and reliable?

17 A. Fairly reliable.

18 Reputable? I have not done a lot of due diligence in
19 that area, but it's proven fairly reliable.

20 Q. That's a fair response.

21 A. Okay.

22 Q. I suppose asking if something is reputable is a
23 relative question, but you've found it to be reliable, correct?

24 A. Yes.

25 Q. Have you ever done a Whois search for any domain names

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1 registered to Adknowledge or Virtumundo?

2 A. Yes.

3 Q. And in doing those Whois searches, have you ever found
4 what you believed to be false contact information about
5 Adknowledge or Virtumundo?

6 A. I can't think of anything offhand.

7 Q. I've been using the term "registrant."

8 You and I both know what that means, but this record,
9 of course, is intended for the purpose of litigation.

10 So would you explain what your understanding of that
11 term "registrant" is so that I know you and I are both on the
12 same page and the court is not confused.

13 A. I think that a registrant refers to the individual who
14 is responsible for or will be responsible for that domain in
15 terms of keeping that information up to date.

16 Q. Sometimes a registrant is referred to as an owner of a
17 domain; is that right?

18 A. Yes.

19 Q. When did you first register Gordonworks.com?

20 A. '98.

21 I think it said May of '98, so that would be a pretty
22 good --

23 I think it was May of '98.

24 Q. And for what purpose did you register that domain
25 name?

1 A. I wanted to get more than the five e-mail addresses
2 that One World Telecommunications limited me to.

3 I wanted to build a website.

4 And I decided that the other was too restrictive, or
5 the cost was more than I wanted to pay under their contract.

6 Q. Was that the first domain name you ever registered?

7 A. Yes.

8 Q. And did you do that through Network Solutions?

9 A. No, I did it through One World Telecommunications, who
10 likely used Network Solutions.

11 Q. How do you access the Internet generally?

12 A. Always on Charter.net.

13 Q. So you use Charter.net from what location to access
14 the Internet?

15 A. I use it from my home office.

16 Q. What type of connection do you have to the Internet
17 from your home office?

18 A. It's called a broadband connection.

19 Q. What speed is your broadband connection?

20 A. Well, I think it's one of the original 3 meg -- what
21 they call 3 meg pipe.

22 Q. 3 megabytes per second?

23 A. Download speed.

24 Q. What about upload speed?

25 A. I don't even pay attention to that. I have no idea

1 what the upload speed is.

2 Q. Do you know whether it is a digital subscriber line?

3 A. No, it's not.

4 Q. Do you know whether it is cable modem?

5 A. Cable modem.

6 Q. It is a cable modem?

7 A. Yes.

8 Q. Is it your understanding that when you obtain Internet
9 access through a cable modem that you're sharing the broadband
10 connection with your neighbors?

11 A. I don't know that. I don't know that.

12 Q. You have no knowledge about that one way or the other?

13 A. I hear stuff about wireless.

14 But for broadband, no, I don't know anything about it.

15 Q. Have you reviewed your agreement with Charter.net that
16 provides that you may use this 3 megabyte per second Internet
17 access line?

18 A. I may have when I first got it. I don't know.

19 Q. Do you know whether it prohibits you from acting as an
20 Internet service provider?

21 A. I don't know that.

22 Q. Have you produced that agreement in connection with
23 this lawsuit?

24 A. I don't know where it is, so I guess I haven't.

25 Q. I believe it's responsive to discovery requests.

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1 I would appreciate if you would confer with your
2 lawyer in that regard, and if it's responsive, would you please
3 produce it.

4 A. I don't know where it is. I have no idea even if I
5 have it.

6 Q. Well, you have a duty to obtain it, and I'm sure you
7 could call Charter.net and get it.

8 A. Okay. Okay.

9 Q. Before you used Charter.net, how did you access the
10 Internet?

11 A. Digital subscriber line through Verizon.

12 Q. What speed was that Internet connection?

13 A. I'm not certain. 768 sounds about right.

14 Q. Up and down?

15 A. No. That's probably just downloading.

16 Q. What about upload?

17 A. Don't know.

18 Q. Did you review your agreement with Verizon for the
19 digital subscriber line that provided that you had the right to
20 use it?

21 A. The right to use it?

22 Q. You had an agreement with Verizon that provided that
23 you had access to a digital subscriber line, correct?

24 A. Yes.

25 Q. Did you review that agreement?

1 A. I -- I'm pretty sure, initially, I did look it over.

2 Q. Do you know whether it prohibited you from acting as
3 an Internet service provider?

4 A. It wouldn't have the right to do that.

5 But, no, I didn't review it for that particular thing.

6 Q. Do you have a copy of that agreement?

7 A. No.

8 Q. Can you make efforts to obtain one?

9 A. I've not used the service in three or four years.

10 I guess if it's on the record there, it's something --
11 you asked me for two things, and I will probably ask again
12 because I didn't even bring a pen today.

13 So we'll refresh at the end of the meeting today. And
14 when I get back home, I'll try to get that.

15 Q. Before using the Verizon DSL line, did you use another
16 carrier for your access to the Internet?

17 A. The ones that I used -- I think we're mixing up, you
18 know, these various providers.

19 Web hosting is a totally different thing from Verizon,
20 who provided e-mail service. I didn't get Web hosting through
21 them, so their agreements regarding whether or not I was an
22 Internet access service doesn't mean anything, as far as I know
23 and understand.

24 My Web hosting has been through companies that allow
25 resellers, and there would be no restrictions on me in my

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1 understanding and belief from Web hosting.

2 So, yes, I used Webmasters, and prior to that,
3 ValueWeb. I think that was the sequence.

4 Q. Have you produced your agreement with Godaddy in
5 connection with this lawsuit?

6 A. I don't know.

7 THE WITNESS: Bob, can you help me?

8 MR. SIEGEL: I'm not sure, either. We could check and
9 see.

10 Q. Can you check to see that you did? Because I don't
11 believe that you have.

12 A. Okay.

13 Q. And I believe that it's responsive and we're entitled
14 to it.

15 A. Then I will go back to the ones that you have
16 mentioned. You mentioned Verizon and you mentioned for
17 Godaddy.

18 Is there any others?

19 Q. Charter.

20 A. Charter. Okay. Charter.

21 MR. NEWMAN: Let's take a five-minute break.

22 THE VIDEOGRAPHER: The time is now 2:45 p.m. We are
23 off the record.

24 (A recess was taken.)

25 THE VIDEOGRAPHER: The time is now 3:00 p.m. We are

1 on the record.

2 Q. You're suing Scott Lynn in this lawsuit, correct?

3 A. I believe he's been named.

4 Q. Why?

5 A. That was a decision my attorneys and I came up with.

6 Q. What basis do you have to file a lawsuit against Scott
7 Lynn?

8 A. Again, that was the decision that my attorneys and I
9 came up with.

10 Q. What basis do you have to file a lawsuit against Scott
11 Lynn?

12 A. I guess you would have to ask Mr. Siegel.

13 I don't understand the legal --

14 MR. SIEGEL: I'll object to the extent it calls for a
15 legal conclusion.

16 If you have responsive -- something responsive to say
17 in terms of the facts that you are aware of or that you know
18 of, then answer the question on that basis; if you have
19 personal knowledge of some of the facts.

20 A. Okay. Then I don't know what else to say about it.

21 Q. What are you suing Scott Lynn for?

22 A. I'm not sure how to recall and share what my attorneys
23 and I talked about. I don't know how to do that. I don't know
24 how to keep the two things separate.

25 Q. Well, I don't want to know what advice your lawyers

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1 have given you or what advice you've sought of them, but I do
2 want to know -- and I'm entitled to know -- your firsthand
3 knowledge and any facts that you have that are responsive to my
4 question.

5 And my question is, what are you suing Scott Lynn for?

6 A. Okay. I don't have any knowledge that's apart from
7 discussions that led us to the conclusion and my attorneys
8 included Scott Lynn in the lawsuit.

9 So I have nothing beyond that at this point. Just
10 nothing's fresh in my mind about what other information came to
11 light or anything like that.

12 Q. It was not your decision to name Scott Lynn?

13 A. I was not the prime mover, I guess.

14 But I typically agree with my attorneys when a
15 decision is made and they advise me.

16 Q. What's a "prime mover"?

17 A. I wasn't the person who initiated, I don't believe.

18 Q. Do you believe that Scott Lynn violated any laws with
19 respect to you?

20 A. I believe that he's responsible for his company.

21 Q. What do you mean, "he's responsible for his company"?

22 A. He's responsible -- if, in fact, I'm trying to
23 unsubscribe and contact the company, contact the company's
24 legal department and so forth and he ignores it, I think that
25 he's been, I guess, negligent or somehow he hasn't been

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1 diligent in terms of his responsibility as a CEO.

2 Q. What are his responsibilities as a CEO concerning you?

3 MR. SIEGEL: Objection. Calls for a narrative.

4 Speculative. It's -- it's overly broad. I don't think this

5 client is qualified to testify to what Scott Lynn's

6 responsibility as a CEO is. You can ask Scott Lynn that.

7 Q. Your attorney is going to object from time to time.

8 A. Okay. Okay.

9 Q. But you still have an obligation to answer my
10 question.

11 I'll repeat it.

12 What are Scott Lynn's responsibilities as a CEO
13 concerning you?

14 A. Okay. Well, in terms of his responsibilities, period,
15 I guess I would need a job description or some type of
16 employment contract to know that.

17 But most people who deal with the public have -- I
18 call it a responsibility, a duty -- whatever else we want to
19 call it -- to honor anyone who claims that they don't want
20 contact by the company. And I think he's responsible for
21 making sure that happens throughout his -- his company. And he
22 failed.

23 Q. Do you believe that Scott Lynn did anything else other
24 than what you just testified about that violated your rights?

25 A. I think that's all it really takes.

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1 That is the reason why we're in a lawsuit right now,
2 because he failed at what I consider his duty.

3 Q. Do you believe that only the CEO has what you consider
4 to be that duty or do you believe other officers of the
5 corporation do as well?

6 A. They could be delegated. But ultimately --

7 Q. Do you know --

8 A. Pardon.

9 But ultimately, he is responsible.

10 Q. Do you know whether he's delegated the
11 responsibilities?

12 A. I don't know that.

13 Q. Have you ever made any effort to contact Scott Lynn?

14 A. Not directly.

15 Q. Have you ever made any effort to contact Scott Lynn
16 indirectly?

17 A. Well, I didn't know his name until just months ago.

18 All the Whois look-up, I don't remember seeing -- it
19 could have been there.

20 But I looked up e-mail addresses.

21 I just don't recall seeing his name.

22 Q. Then why was he named?

23 A. I said before a few months ago.

24 Q. Had you heard his name before you filed this lawsuit?

25 A. I may have. It may have been in something that was

1 published or something like that.

2 When I started contacting was in '04, and at that
3 time, I didn't know who Scott Lynn was. So I just sent it to
4 regular departments at Virtumundo.

5 Q. Do you believe that Scott Lynn initiated the e-mails
6 that you allege Adknowledge and Virtumundo sent to you?

7 A. I don't know that.

8 Q. Have you ever made any effort to determine whether he
9 initiated them?

10 A. The efforts that I made were to get the e-mails
11 stopped, not -- just to get them to stop.

12 Q. Have you ever made any effort to determine whether
13 Scott Lynn initiated the e-mails that you allege Virtumundo and
14 Adknowledge sent to you?

15 MR. SIEGEL: Counsel, are you asking him personally or
16 through this lawsuit, through his attorneys? Could you clarify
17 that?

18 Are you asking him personally?

19 A. I don't understand.

20 MR. SIEGEL: Only if you understand the question,
21 answer.

22 A. I don't.

23 MR. SIEGEL: Then ask him to clarify.

24 THE WITNESS: Okay.

25 A. Then I'd like to get clarification.

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1 Q. You allege that Adknowledge and Virtumundo sent you
2 e-mail, correct?

3 A. I do.

4 Q. Do you believe that there was a human being who was
5 responsible for initiating those e-mails?

6 A. There was.

7 Q. And do you believe Scott Lynn might be that human
8 being?

9 A. It's possible.

10 Q. It's possible that anyone involved in the corporation
11 could be, right?

12 A. Yes, it's possible.

13 Q. Do you have any basis to believe Scott Lynn in
14 particular initiated those e-mails?

15 A. No.

16 Q. Have you ever made any effort to determine whether or
17 not he initiated those e-mails?

18 A. Well, I guess, at first blush, I said not him in
19 particular. Just, again, that notion of him being responsible
20 for what goes on in his company.

21 Q. It's just a notion?

22 A. Maybe it's a working premise.

23 Q. What is a working premise based upon?

24 A. What information we have at hand.

25 Q. What information do you have at hand?

1 A. I have nothing right now. But there's a lot of stuff
2 that we've shared back and forth, my attorney and I.

3 Q. Do you believe that Scott Lynn had any knowledge that
4 Adknowledge or Virtumundo sent e-mails to you?

5 A. Actually, I think he did.

6 Q. Upon what information do you base that belief?

7 A. Upon the seven e-mails -- I think it was seven -- that
8 I sent directly to the company, including the legal department.

9 Q. How do you connect your belief that Scott Lynn knew
10 about the e-mails to the documents that you claim to have sent
11 to the company?

12 A. If I say it was common sense, it may not be.

13 If someone sent a communication to my legal
14 department, I'm pretty sure I'd know about it. And I think
15 it's the duty of the attorney to mention it to the principal.

16 So that's the leap that I make.

17 Q. Do you have a legal department?

18 A. Not personally.

19 I've got a couple three attorneys working for me,
20 but...

21 Q. Do you believe that the legal department of
22 Adknowledge advises Scott Lynn of every communication it
23 receives?

24 A. I don't know that.

25 Q. Do you know whether the legal department received

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1 communications from you?

2 A. I believe they did.

3 Q. Upon what information do you base that belief?

4 A. The fact that I sent it and it wasn't returned to me.

5 Q. Did anybody ever acknowledge receipt of what you claim
6 to have sent to Adknowledge?

7 A. No. Never. Nothing that I sent to them was ever
8 acknowledged.

9 Q. So you really have no evidence that Adknowledge
10 received what you sent, correct?

11 A. I have evidence. It may not be something that I can
12 use right now. The fact that I sent it is evidence.

13 I showed -- I have the actual e-mail letters that were
14 sent. I have the auto responders and all these things.

15 There's evidence that it was sent.

16 And I have my "sent" log.

17 But in terms of received, without a bounce, the
18 working assumption with most people is that it's been received.

19 Q. Do you know who the general counsel of Adknowledge is?

20 A. I didn't know then who it is.

21 Q. Did you ever make any effort to learn who it is?

22 A. Not after getting, I guess, the cold shoulder.

23 Q. Did you ever call Adknowledge?

24 A. No.

25 Q. Did you ever call Scott Lynn?

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1 A. No.

2 Q. I believe you testified a minute or two ago about a
3 "sent" log.

4 A. As an outgoing mailbox, yes.

5 Q. Did you produce that "sent" log in connection with
6 this lawsuit?

7 A. I produced so much.

8 I'm not positive, but I would guess it would be in
9 there, or at least things pertaining to Virtumundo would be in
10 there.

11 E-mail communications to your clients would be in
12 there.

13 Q. You never received anything from Adknowlege or
14 Virtumundo indicating it had received any of these
15 communications you claim to have sent, right?

16 A. No, that's not correct.

17 I've said something before like it was a form letter,
18 and I did receive form letters.

19 Q. What was the nature of the form letter?

20 A. I don't recall. I have copies of it, but I don't
21 recall.

22 I've also included that in the production.

23 Q. Do you believe that Scott Lynn had any involvement in
24 Adknowlege and Virtumundo sending you e-mails?

25 MR. SIEGEL: Objection. Asked and answered.

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1 A. I can go ahead?

2 Q. Yes.

3 MR. SIEGEL: You can go ahead.

4 Q. When your lawyer objects --

5 A. I follow up? Okay.

6 I don't know what his role is at the company. I don't
7 have any way of knowing presently what his role is.

8 Q. The question was, do you believe that Scott Lynn had
9 any involvement in Adknowledge and Virtumundo sending you
10 e-mails?

11 A. Again, I don't know what his role is.

12 He can punch every night "send" buttons for millions
13 of e-mails. I don't know that.

14 Q. So you have no idea whether or not he had any
15 involvement, correct?

16 A. No. I have no idea one way or the other. He could;
17 he may not have.

18 Q. Since this lawsuit commenced, have you learned,
19 through the litigation process or otherwise, any information
20 that indicates that Scott Lynn had any involvement in
21 Adknowledge or Virtumundo sending you e-mails?

22 MR. SIEGEL: Objection. Asked and answered. This is
23 the third time.

24 Counsel, this is getting on -- bordering on
25 intimidation and harassment. You asked this question already.

1 If you want to stand by your prior answers, just say
2 so.

3 A. I don't know what else to say. I can create something
4 out of old cloth, if you like.

5 MR. SIEGEL: No, I don't want you to create anything
6 out of old cloth. Only answer if you know the answer.

7 THE WITNESS: Okay.

8 Q. Since this lawsuit commenced, have you learned,
9 through the litigation process or otherwise, any information
10 that indicates that Scott Lynn had any involvement in
11 Adknowledge or Virtumundo sending you e-mails?

12 A. And I answered that.

13 Q. Is the answer no?

14 A. I have an answer. I'm not even sure what it was.

15 I do have an answer, though. I've provided one.

16 Q. The question calls for a yes or no.

17 I understand if you think the question might be unfair
18 and you want to qualify it, and feel free to qualify, but I'd
19 like the yes or no.

20 And I'll ask the question again.

21 Since this lawsuit commenced, have you learned,
22 through the litigation process or otherwise, any information
23 that indicates that Scott Lynn had any involvement in
24 Adknowledge or Virtumundo sending you e-mails?

25 A. Okay. I guess the more I think about that -- his

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1 company is involved in the business of sending e-mail. I think
2 the figure I saw was one and a half billion per month.

3 He's involved in this in that I would think that he
4 chooses whatever business the company is involved in, and part
5 of it is sending out e-mails.

6 So in that sense, yes. The business is sending
7 e-mail, and whether or not -- you know, you're talking about me
8 as an individual, me in the collective -- he's involved in that
9 business, sending e-mail to me and everyone else.

10 Q. What information have you learned that indicates Scott
11 Lynn had any involvement in Adknowledge or Virtumundo sending
12 you e-mails?

13 MR. SIEGEL: Objection. Asked and answered. He just
14 answered that very specifically.

15 A. The business of Virtumundo is sending e-mail.

16 The business of Adknowledge is sending e-mail.

17 He, as the CEO -- unless he decides to go in a new
18 direction -- and I understand he's thinking about it, or has --
19 he is the prime mover, again, of that momentum to send e-mail.
20 It's his decision to keep you in the business or keep them in
21 the business of sending e-mails.

22 Q. Upon what basis is it your testimony that it's his
23 decision to keep the company in the business of sending e-mail?

24 A. Well, there's something that I read -- you all
25 produced a lot of information for me, too. And I can't put my

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1 finger on it right now.

2 I mentioned about the one and a half billion e-mails
3 per month.

4 But it's something I read over three disks of stuff,
5 and it's -- it's just a conclusion that I drew based on what I
6 read.

7 Q. What's the conclusion?

8 A. That he's involved in the business of the company,
9 which is sending e-mail.

10 Q. And upon what information did you base that
11 conclusion?

12 A. On what I read, and I don't remember specifically what
13 I read.

14 Q. Did you read a lot?

15 A. Pardon?

16 Q. Did you read a lot?

17 A. I read hundreds of documents of the probably thousands
18 of documents on three CDs.

19 Q. Of the hundreds of documents, can you remember
20 anything that indicates it was Scott Lynn's decision to send
21 you e-mail?

22 A. Not specifically.

23 (Exhibit No. 13 marked.)

24 Q. You testified that you had received a form letter from
25 Virtumundo.

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1 You've been handed what's been marked Exhibit No. 13.

2 A. Yes.

3 Q. Is this the form letter you were referring to?

4 A. No, it is not.

5 Q. Do you know whether you produced in the course of this
6 litigation the form letter?

7 A. Yes, I do.

8 It is dated for late January of '04. Maybe early
9 February.

10 Q. Did you receive the document that's marked Exhibit
11 No. 13?

12 A. Or something similar, yes.

13 Q. Exhibit No. 13 provides in an e-mail that's apparently
14 addressed to you from Virtumundo, "If you do not wish to
15 receive e-mail offers from Virtumundo Rewards, please click on
16 the following link to unsubscribe from Virtumundo Rewards."
17 And then there's a link.

18 Do you see that?

19 A. Yes.

20 Q. Did you ever click on that link?

21 A. I'm not sure if I did.

22 Again, I was receiving 1500 a day, and this was the
23 time my wife was so ill.

24 And I could have done it; I may not have done it. I
25 just don't know at this point.

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1 I don't know if I received it the same day or a week
2 later. I have no idea.

3 I didn't get to every e-mail every day, and they
4 accumulated on me.

5 Q. You object to receiving e-mails from Virtumundo,
6 correct?

7 A. Yes.

8 I went on the record starting October 1 when I sent
9 this very same company, EmailPrize -- I didn't send it, I went
10 through their links and unsubscribed on-line.

11 Q. And this e-mail is from Virtumundo to you advising you
12 that it's going to be sending you e-mail solicitations unless
13 you click on that link, right?

14 A. That's what it says here.

15 Q. But as you sit here today, you don't know whether you
16 ever clicked on that link?

17 A. I think I did. But it just probably wasn't that same
18 day. It wasn't September 3rd or 4th.

19 Q. You've testified in declarations that you have
20 received e-mail from Virtumundo very recently; is that right?

21 A. Yes.

22 Q. And when you receive those e-mails, did you think to
23 go back to this link and click on it in an effort to cause the
24 e-mails to stop flowing?

25 A. You mean the recent e-mails? Did it cause me to want

1 to go back? No.

2 Q. Well, here, you see that there's a link --

3 A. Yes.

4 Q. -- that, according to the e-mail, would allow you to
5 stop receiving e-mails from Virtumundo, right?

6 A. Okay.

7 Q. And since you've received e-mails recently from
8 Virtumundo --

9 A. Uh-huh.

10 Q. -- I'm wondering why you wouldn't go back and click
11 on this link so the e-mails might stop.

12 A. They have, in a serial fashion, failed to honor
13 anything that you have done to unsubscribe. Not anything;
14 everything that I've done.

15 Q. Have you done anything to unsubscribe pursuant to
16 instructions from Virtumundo itself?

17 A. Yes.

18 Q. What?

19 A. Initially -- initially, I unsubscribed by whatever
20 means I saw in front of me. That's the way I started
21 everything.

22 I'd later go through various iterations of complaints,
23 which I explained earlier.

24 Q. Do you remember unsubscribing to Virtumundo pursuant
25 to a document or website that Virtumundo's responsible for?

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1 A. Oh, geez.

2 I remember going to the second stage of the process,
3 so -- and I'm assuming I had a first stage when I go to the
4 second stage. And the second stage is complaining to the ISP
5 or Virtumundo or whatever company it is.

6 Q. Do you remember unsubscribing to Virtumundo pursuant
7 to a document or website for which Virtumundo was responsible?

8 A. Maybe I should say the same thing again.

9 Q. It's a yes or no question.

10 MR. SIEGEL: If you don't understand --

11 A. At the moment -- at the moment, I don't recall.

12 Q. So as you sit here today, you don't know whether you
13 ever unsubscribed pursuant to a method that Virtumundo provided
14 an e-mail or website?

15 A. I'll repeat, the process that I undertook was to go
16 directly to the company, unsubscribe, and when they didn't
17 honor, to go then to their Internet service providers. I'd
18 look up Whois information, which I did with Virtumundo.
19 Contacted them directly.

20 That didn't work, and I used my auto responder. That
21 didn't work.

22 So there was at least four different phases and,
23 eventually, the lawsuit.

24 And the lawsuit didn't work to stop them from sending
25 me e-mail.

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1 Q. But you never unsubscribed pursuant to the means --

2 A. That's not true.

3 Q. -- that Virtumundo provided in its e-mail, correct?

4 A. Not true.

5 Q. Do you ever remember doing that?

6 A. I --

7 MR. SIEGEL: Objection. Asked and answered at least
8 three different times.

9 A. Well, I'm saying, again, that I followed steps and the
10 step was to contact the company directly.

11 Q. And you contacted the company directly through the
12 means you testified about earlier, right?

13 A. Yes. Those steps.

14 Q. You never called them up?

15 A. Many -- most --

16 MR. SIEGEL: Objection. Asked and answered.
17 Stand by your answers already.

18 THE WITNESS: Okay.

19 Q. You never called them up?

20 MR. SIEGEL: This is bordering on harassment.

21 A. No, I never called.

22 Q. And you never sent them a letter by postal mail?

23 A. No.

24 Q. And you never sent an e-mail to a specific person as
25 opposed to a general address?

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1 A. I didn't have a specific person's name that I recall.

2 Q. You never visited their offices?

3 A. Never been to Kansas City.

4 MR. SIEGEL: What part of Canned Spam is that in?

5 THE VIDEOGRAPHER: Counsel?

6 MR. NEWMAN: The videographer must change a tape, so
7 let's take a break.

8 THE VIDEOGRAPHER: The time is now 3:25 p.m. This is
9 the end of Tape No. 2 of the video deposition of James Gordon,
10 Junior. We are off the record.

11 (A recess was taken.)

12 THE VIDEOGRAPHER: This is the beginning of Tape No. 3
13 of the video deposition of James S. Gordon, Junior. The time
14 is now 3:41 p.m. We are on the record.

15 (Exhibit No. 14 marked.)

16 Q. Do you recognize Exhibit 14?

17 A. That looks like something I received, yes.

18 Q. You testified earlier about a form letter that you
19 received from Virtumundo.

20 Is this that form letter?

21 A. I think so.

22 Q. The form letter indicates that it's an automated
23 response.

24 Do you see that?

25 A. I see that.

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1 Q. It's not from an individual in particular, right?

2 A. May or may not be.

3 Q. To your knowledge?

4 A. I don't know that it's automated, no.

5 Q. It claims to be automated --

6 A. It claims to be automated, yes.

7 Q. But you don't know that because you haven't verified
8 one way or the other?

9 A. True.

10 Q. Do you have any reason to believe it's not automated?

11 A. Yes, because I received a lot of false, demon messages
12 from people who have e-mail addresses they shouldn't have.

13 So, you know, this could be something like that.

14 Q. Any from Virtumundo or Adknowledge that you're aware
15 of?

16 A. Not offhand, except -- you know, this could be one. I
17 just don't know.

18 Q. Did you reply to this e-mail?

19 A. I think it says not to. "Replies will not be read."

20 Q. Did you reply to the e-mail?

21 A. I sent other e-mails to different addresses.

22 MR. SIEGEL: Just answer the question, Jim.

23 THE WITNESS: Oh, okay.

24 MR. SIEGEL: I know it's getting later.

25 A. I don't believe I sent another message to that, no.

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1 Q. If you look in the first paragraph of Exhibit 14, it
2 provides, "If you would like to unsubscribe from the Virtumundo
3 Rewards mailing list, please use the unsubscribe link in the
4 footer of the original e-mail sent, visit our unsubscribe page
5 here...or reply to this e-mail with 'remove' in the subject
6 line."

7 Do you see that?

8 A. Yes.

9 Q. Did you, in response to this, or at any other time,
10 utilize the unsubscribe link in the footer of the original
11 e-mail sent?

12 A. Yes.

13 Q. When do you recall doing that?

14 A. October of '03 is my best recollection.

15 Q. I believe that I asked you that question earlier and
16 you testified that you didn't, and now you're testifying that
17 you do.

18 A. I don't recall that.

19 What I have done is -- and I think we can clarify it
20 at this point -- I say that I've gone through a process, and
21 there are certain steps.

22 I went through the first steps, and I have e-mails
23 from October -- let's see -- October, August of 2003, and I
24 think some from another time prior to that, and it shows some
25 of the times that I was in the process of unsubscribing from

1 just a whole bunch of different things.

2 I also unsubscribed from these folks -- sorry -- from
3 the defendant. It's just that I didn't keep records of that
4 unsubscribe.

5 Q. Why?

6 A. Didn't know that it would be necessary.

7 Q. But you believe now -- and I'm going to refer to the
8 transcript later because I believe that you testified to the
9 contrary earlier -- that you did utilize the unsubscribe link
10 in the footer of the original e-mail you received from
11 Virtumundo?

12 A. Please say that again.

13 Q. You believe now that you did utilize the unsubscribe
14 link in the footer of the original e-mail you received from
15 Virtumundo?

16 A. Okay. I think I've said all along that I go through a
17 process, which the first step is to correspond with the company
18 directly. And that means using whatever unsubscribe is
19 available. And if I don't see any, I went to a Whois look-up
20 to find something.

21 Q. And this process you've subscribed is general, right,
22 it's not specific to Virtumundo or Adknowledge?

23 A. It would be specific to them.

24 Q. Is it general?

25 A. It's something I do in each case.

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1 Q. Is there anything with respect to Adknowledge and
2 Virtumundo that you did differently?

3 A. Yes.

4 Q. What?

5 A. I didn't send a certified return receipt letter to
6 them. That's different.

7 Q. Other than that, did you do anything differently?

8 A. I didn't -- well, of course, I don't think I called
9 anyone directly. I don't believe I called anyone.

10 So I didn't call them directly.

11 Q. Do you remember, with respect to Virtumundo, using the
12 unsubscribe link in the footer of the original e-mail sent?

13 A. I've answered that a couple of different ways.

14 The whole point of what I've said is that I use a
15 process, and when I go to step two, I would have only gone to
16 step two if I had done step one.

17 That's why I believe I used their unsubscribe links.

18 Q. I understand your testimony that you believe you used
19 their unsubscribe link.

20 My question is, do you remember, with respect to
21 Virtumundo --

22 MR. SIEGEL: Objection. Asked and answered 15 times.

23 Q. -- using the unsubscribe link in the footer of the
24 original e-mail sent?

25 MR. SIEGEL: All right. This is -- this is badgering,

1 as far as I'm concerned. And let's be clear on the record.
2 This is intended for no other reason but intimidation and
3 harassment.

4 If you believe you've answered the question clearly
5 and you want to rest on your prior answer, then just say so and
6 be on with it.

7 A. Okay. I believe I want to rest on it.

8 MR. NEWMAN: Are you instructing the witness not to
9 answer?

10 MR. SIEGEL: No, that's not what I said.

11 Q. Are you refusing to answer the question?

12 MR. SIEGEL: The record is clear about what I said.

13 A. No.

14 Q. Then I'll ask the question again.

15 Do you remember using, with respect to Virtumundo, the
16 unsubscribe link in the footer of the original e-mail sent to
17 you?

18 MR. SIEGEL: And I'll repeat my objection. Asked and
19 answered, and it's posed for no other reason but intimidation
20 and harassment.

21 And if you want to rest on your prior answers, if you
22 believe you've answered the question, then do so.

23 A. And I want to rest on that answer.

24 Q. What was that answer that you're resting on?

25 A. I don't know. We'd have to go back to the court

1 reporter.

2 We'd need to go back to the court reporter.

3 MR. SIEGEL: It's all on the record, Counsel.

4 Q. Well, I don't believe I've received an answer, and
5 it's a yes or no question, which makes it relatively easy to
6 answer.

7 So we could go around and around, I suppose we could
8 look at the transcript --

9 A. Okay.

10 Q. -- we could call the court or you could simply
11 answer. It's a really easy question.

12 And the answer [sic] is, with respect to Virtumundo,
13 do you remember using the unsubscribe link in the footer of the
14 original e-mail sent?

15 A. I'm going to rest on the answer I've given.

16 Q. What answer was that?

17 A. Let's look at the transcript.

18 I don't recall specifically what I said. I've said a
19 lot of stuff. So let's go back to the transcript.

20 Q. So you're refusing to answer the question?

21 A. No. I've already answered it.

22 MR. SIEGEL: He's answered the question, Counsel.
23 You're just harassing him.

24 Q. What is the answer?

25 A. It's on the record, so you'll have to refresh me in

1 terms of what I said.

2 MR. SIEGEL: That's the answer. He's answered the
3 question. That's the answer. He's already answered the
4 question, is the answer.

5 MR. NEWMAN: Do you know what the answer to that
6 question was, Mr. Siegel?

7 MR. SIEGEL: I don't recall, either, because you've
8 asked probably half a dozen times, so it's hard for me to
9 remember, too.

10 It's in the record, though.

11 MR. NEWMAN: Let's go off the record, and we will ask
12 the court reporter if she would be so kind as to find the
13 question and the answer.

14 A. Okay.

15 THE VIDEOGRAPHER: The time is now 3:48 p.m. We are
16 off the record.

17 (A discussion was held off the record.)

18 (The requested testimony was read.)

19 THE VIDEOGRAPHER: The time is now 3:51 p.m. We are
20 on the record.

21 Q. We went off the record and the court reporter reviewed
22 the transcript, and we determined that you testified that you
23 remember unsubscribing to Virtumundo's Rewards mailing list
24 using the unsubscribe link in the footer of the original e-mail
25 sent.

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1 What do you remember about doing that?

2 MR. SIEGEL: Is there anything more specific you have
3 to add? If there is, tell him. I mean, I want to know, too.

4 A. I'm sorry, I was just distracted. I heard some
5 voices.

6 MR. SIEGEL: Get it all out, if there's anything else.

7 A. Okay. I'm trying to refocus on the question -- which
8 just zoomed out. I need to have that question re-- restated,
9 please.

10 (The requested testimony was read.)

11 A. Is that specific to Virtumundo?

12 Q. Yes.

13 MR. SIEGEL: That's what you said, or indicated.

14 A. Nothing new comes to mind right now other than what
15 I've already communicated.

16 Q. Do you remember where you were when you clicked on
17 that unsubscribe link?

18 A. I'm sure I was at home, if that's what you mean by
19 that question.

20 Q. Why are you sure?

21 A. Because I wouldn't take that kind of information out
22 in the public place.

23 Q. Do you remember being at home at the time?

24 A. I'm going to say yes because that's the only place
25 that I've connected to the Internet -- Internet using -- in

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1 fact, it was -- yeah, it was the only place I connected using
2 those -- those e-mails, unsubscribes and stuff like that.

3 Yeah, I did it all at home.

4 Q. Do you remember the time of day it was?

5 A. No. Don't. Sorry.

6 Q. Do you remember what month or year it was?

7 A. It was continuous from July and August of '03. And
8 I'm still doing it.

9 Q. So you're still clicking on the unsubscribe link in
10 the footer of e-mails that Virtumundo sent?

11 A. I apologize. I didn't understand you saying that
12 specifically.

13 Q. Okay.

14 How many times have you clicked on an unsubscribe link
15 in a footer that Virtumundo sent?

16 And when I say footer, I'm referring to a footer in an
17 e-mail.

18 A. I don't know.

19 Q. More than once?

20 A. I'd guess that I did it more than once.

21 Q. And upon what information do you base that guess?

22 A. Because with everyone else that I unsubscribed, I did
23 it from each of the e-mail addresses that they would send to.

24 So I would have done it a minimum of maybe six times.

25 Q. And you're basing that upon your general practice with

1 respect to other e-mail marketers?

2 A. Yes.

3 Q. You don't remember specifically using the unsubscribe
4 link in Virtumundo's e-mail six times, correct?

5 A. I don't remember specifically, yes.

6 Q. Exhibit 14 also provides that you could visit
7 Virtumundo's unsubscribe page, and then there's a URL, a
8 uniform resource locator, or a location on the Internet.

9 Did you ever visit that URL?

10 A. In fact, I've visited in the past year. I remember
11 going in to see what it looked like. And I don't know which
12 e-mail address I used.

13 But I need to go in and do -- I guess -- what you call
14 it -- a reconnaissance. So I need to see what things look
15 like.

16 Q. Do you know whether you ever accessed the URL that is
17 listed in Exhibit 14?

18 A. There's two in Exhibit 14.

19 Which one of the two?

20 Q. The first one is an unsubscribe page, right?

21 A. Okay. Yes.

22 Q. Did you ever visit that one?

23 A. Yes.

24 Q. And when you visited that page, what did you view?

25 A. Don't remember.

1 Q. You don't remember seeing anything at all?

2 A. No, I just don't remember what I saw.

3 Q. Do you remember the nature of the page?

4 A. Not offhand.

5 Q. Do you remember whether it had Virtumundo's name on
6 it?

7 A. I don't remember anything about it other than the fact
8 that I did it because I was doing it for other companies at
9 that time.

10 Q. Is it possible that you're confusing --

11 A. No.

12 Q. -- the other companies with Virtumundo?

13 A. No. I -- when we filed a lawsuit, I went back in, and
14 -- as I would do with any lawsuit, and go back and try to
15 refresh my memory with as much information as I could.

16 And part of the reconnaissance, I'm calling it, was to
17 go in and look at this unsubscribe mechanism.

18 Q. Do you maintain server logs?

19 A. I don't personally, no.

20 Q. Do you have any log of the websites that you viewed?

21 A. Not to my knowledge.

22 Q. Do you maintain the history in your browser?

23 A. No.

24 Q. Do you delete the history in the browser?

25 A. I do a cleansing of my computer frequently.

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1 Q. Have you done a cleansing of your computer since you
2 commenced this lawsuit?

3 A. I cleanse my computer every time I get a virus, I go
4 through and thoroughly -- and I get 10 to 20 to as many as 100,
5 200 viruses a week.

6 Q. Did you make any efforts to backup or otherwise retain
7 evidence relating to this case when you cleansed your computer?

8 A. I've presented the evidence or discovery to my
9 attorney, who in turn turned it over to you.

10 But when I have a virus in my system, the first thing
11 I try to do is purge the virus, and I don't even think about
12 backing up anything at that time.

13 Q. I'd like to turn your attention back to Exhibit
14 No. 10.

15 A. Yes?

16 Q. You testified earlier that you received that letter
17 from your lawyer earlier in these proceedings.

18 A. Yes.

19 Q. Have you cleansed your computer since you received
20 that letter?

21 A. I've continually cleansed it, even as recently as last
22 week.

23 Q. Did you back up or make any efforts to make a record
24 of your browser history?

25 A. Yes -- no. Not browser history.

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1 Q. So you have no evidence of visiting the Virtumundo
2 unsubscribe site, correct?

3 A. No.

4 Q. Would you agree that at one time, had you ever visited
5 the Virtumundo unsubscribe site, it would be in your history,
6 correct?

7 A. It should be, yes.

8 Q. But you cleansed that, so you wouldn't know, right?

9 A. Yes, is the short answer.

10 Q. You pointed out that there are two URLs in Exhibit
11 No. 14. The second one is Virtumundo's privacy policy.

12 Do you see that?

13 A. Yes.

14 Q. Do you know whether you ever visited Virtumundo's
15 privacy policy?

16 A. I'm not sure.

17 Q. One way or the other?

18 A. I'm not sure, yes, one way or the other.

19 Q. Do you know whether you ever used an unsubscribe link
20 in the footer of an e-mail that Adknowledge sent?

21 A. I don't -- I don't recall for Adknowledge. I know I
22 did for Virtumundo, but for Adknowledge, I don't recall doing
23 that.

24 Q. Do you know whether you ever used an unsubscribe page
25 on the Internet for Adknowledge?

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1 A. Okay. Did you first refer to the e-mail and now the
2 URL; is that the distinction?

3 Q. Yes. Thank you for clarifying.

4 A. Okay.

5 In neither case, I don't believe -- I just -- I
6 shouldn't say I don't believe.

7 I don't recall. For Adknowledge, I've done the least.
8 I did a lot more in terms -- I've never done the things -- I
9 didn't do the things for Adknowledge that I did do for
10 Virtumundo. I felt it was fruitless.

11 Q. Do you know whether you've ever viewed Adknowledge's
12 privacy policy?

13 A. No, I -- I can't -- I don't recall doing that.

14 Q. Do you believe that Scott Lynn should be held
15 responsible for the e-mails that Virtumundo sent you?

16 A. Yes.

17 Q. And is it for the reasons that you testified about
18 earlier?

19 A. I don't know what all I said.

20 Unless I'm refreshed at what I said, I -- I don't
21 know.

22 Q. Well, you testified about how Scott Lynn is the CEO of
23 the company so he should be responsible.

24 A. That, and I think the statute refers to assisting in
25 the transmission. And at the very least, he would be someone

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1 who assists or facilitates the transmission of the e-mails.

2 Q. And upon what basis do you believe that he assisted in
3 the transmission of the e-mails?

4 A. His position in the company, I think, would lend some
5 credence to the fact that he had a role in what the company
6 does.

7 Q. Do you know what his position in the Virtumundo
8 company is?

9 A. I believe at the time he was president, president/CEO
10 of the company.

11 He could have been chairman of the board, but it was
12 in a director, managerial role of the company.

13 Q. You testified earlier that you utilized the
14 unsubscribe link in the footer of Virtumundo's e-mails.

15 After that time, did you ever opt in to receive
16 Virtumundo's e-mails, directly or indirectly?

17 A. It's possible that I did it indirectly.

18 And it's also possible, in this role of doing
19 reconnaissance, that I could have inadvertently resubscribed.
20 I don't think I did, but it's possible.

21 Q. You testified earlier you have customers, correct?

22 A. Yes, I do.

23 Q. When did you obtain your first customer?

24 A. I don't know. I don't know.

25 Q. Can you estimate?

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1 A. In the '90s. I just don't know when.

2 Q. Who was your first customer?

3 A. Don't recall who that was, either.

4 God, I've helped people do a lot of things. Set up
5 multi-level marketing businesses on-line and things like that.

6 I just don't know who was the first customer.

7 MR. SIEGEL: By "customer," are you referring to Omni,
8 Gordon here when you say "you have customers."

9 Q. You testified earlier that you act in the capacity as
10 Internet service provider; is that right?

11 A. Internet access service, is what I called it.

12 Q. Internet access service?

13 A. Yes.

14 Q. And who provides Internet access services; in other
15 words, is it you personally or is it Omni or both?

16 A. Prior to Omni, I did it as an individual.

17 Q. When did you do it as an individual?

18 A. I guess from the time I first set up my family's site
19 back in '96. That's the first that I recall setting up web
20 pages for anyone.

21 Q. When did you stop doing it as an individual?

22 A. I haven't, really, because people ask me from time to
23 time to help them with a web page.

24 Q. You provided an Internet access services in 1996?

25 A. Okay. What do you mean by "Internet access services"?

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1 I just want to make sure I answer appropriately.

2 Q. I'm following up on your testimony.

3 A. Okay.

4 Q. And your testimony is that you act as an Internet
5 access service.

6 A. Okay.

7 Q. And I asked whether you do it personally or whether
8 you do it through Omni, and you testified that when you started
9 in 1996, you did it personally, and I'm clarifying that you
10 provided Internet access services in 1996.

11 A. Yes.

12 Q. Did you do that on behalf of customers?

13 A. This was -- the closest term that I can think of is a
14 clearinghouse.

15 I set up websites that reflected job search
16 opportunities, reflected business resources, and other people
17 out on the Internet -- the University of Michigan, Washington
18 State, Oregon, Utah and states like that -- Small Business
19 Administration -- they would link or provide reciprocal links
20 to my website, and there were, at any given time, 2- to 300 of
21 those reciprocal links that other people used my website as a
22 destination for their visitors.

23 Q. Do you believe that any party that provides a website
24 is an Internet access service?

25 A. I don't know.

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1 In terms of, what, the law or just a personal feeling?
2 What are you asking about?

3 Q. I'm not asking you about the law.

4 A. Okay.

5 Q. I'm asking you about your belief.

6 You testified that you performed Internet access
7 services, that you did it in 1996, and specifically, you set up
8 a website that reflected job searches and other information --

9 A. Yes.

10 Q. -- and there were reciprocal links.

11 My question is whether you believe that any party that
12 sets up a website qualifies under your definition as an
13 Internet access service.

14 A. Not every party.

15 Q. Does every party that sets up a website with
16 reciprocal links qualify as an Internet access service?

17 A. I guess I just know my situation.

18 So I don't know for certain. I just know my
19 situation, and that's the only thing I can speak of with any
20 authority, what I do. And I can tell you ad nauseam what I do.

21 Q. What's your definition of an Internet access service?

22 A. Well, I provide mail services for people, and it's
23 varied over time. Probably 30 to 40 people, ballpark.

24 Provide Internet web pages for community groups, for
25 personal friends, for family. Actually, built those web pages

1 myself and allowed them to host almost like a subdomain on my
2 Gordonworks website so other people could access.

3 For example, in '05 or '04, my fraternal organization
4 wanted to have a campaign spot for our western regional vice
5 president. So I put up the website, and all of the members
6 here on the West Coast and five or six different states were
7 able to access that site and decided if they were going to vote
8 for this particular candidate or not.

9 We had family, we had bios and resumes and everything
10 on the website for voters to make a determination whether or
11 not they wanted to vote for him.

12 Q. The website provided information, correct?

13 A. Yes.

14 Q. Was it interactive to the extent that users of the
15 website could submit information on the website?

16 A. Via -- pardon me.

17 Via the e-mail link, yes.

18 Q. Other than by the e-mail link.

19 A. Well, I don't know -- there was no blog or anything
20 like that on the website, no chat services.

21 Q. Was there any other way that the user could submit
22 information other than clicking on an e-mail link?

23 A. Use the phone number.

24 Q. Was there any way that a user could submit information
25 other than clicking on an e-mail link or calling on the

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1 telephone?

2 A. I guess maybe mailing to an address.

3 No, in terms of inner activity, that's all. The
4 e-mail link was the only activity.

5 Q. Do you believe that by setting up that web page, you
6 were performing services as an Internet access service?

7 A. Yes. That's one of the services.

8 I set up the website for Dancing Wolf as -- also, and
9 they sell products and they have forms on-line to -- to sell to
10 the world, so to speak.

11 Q. Have you been to the website for my law firm?

12 A. Been to Dancing Wolf from your law firm?

13 Q. No.

14 Have you been to the website for my law firm?

15 A. No, I've not heard of that offhand.

16 Q. Have you been to the website for Doug McKinley's law
17 firm?

18 A. I think so.

19 Q. Do you believe that because he provides that website,
20 he qualifies as an Internet access service?

21 A. That's an information page. I think it's only one
22 page, if I recall.

23 Q. It has an e-mail link, right?

24 A. I don't recall. I saw it -- well, three years ago is
25 when I first saw it.

1 Q. If it has an e-mail link, does it qualify as an
2 Internet access service?

3 A. In terms of law, I don't know.

4 I think you need to do a little bit more than that. I
5 don't think he has customers. And he doesn't provide e-mail
6 services, doesn't provide web pages.

7 So, in my limited definition, it doesn't appear as if
8 he would be an Internet access service.

9 Q. So providing a web page with information, e-mail links
10 and phone numbers alone is not sufficient to constitute
11 providing Internet access services; is that right?

12 A. I'm not --

13 MR. SIEGEL: Objection. Mischaracterizes the
14 testimony.

15 A. I'm not going to try to answer that because I just
16 don't know enough to make that statement.

17 I can just tell you what I do. And anything else is
18 probably beyond my capacity.

19 Q. When did you first start providing e-mail services?

20 A. I don't know specifically. I'm guessing '97, '98,
21 '99.

22 I'm not sure when exactly it was.

23 Q. And to whom did you first provide e-mail services?

24 A. I don't know who initially.

25 Other than family members, I don't know who outside my

1 family was first. They were just people that I knew, but I
2 don't know who was first.

3 Q. Do you remember who was first outside of your family?

4 A. No, I don't.

5 Q. What e-mail services did you provide in 1997 to family
6 members?

7 A. I set up e-mail addresses at Gordonworks and I set up
8 e-mail addresses at whatever other service -- like OWT,
9 OneWorldTelecommunications.com. They just abbreviate it
10 OWT.com.

11 So set up those e-mail services initially, and people
12 who I provided web pages to, I provided them their own
13 Gordonworks -- let's say that you had one, Flowers-R-Us, and I
14 would put Flowers-R-Us@Gordonworks or something like that. If,
15 in fact, that was -- that's kind of a hypothetical.

16 Q. How did you go about providing e-mail addresses at
17 OWT.com?

18 A. I must have misspoke.

19 At Gordonworks.

20 But my family, I think, did have OWT -- I better not
21 say that because I'm not sure right now if they had OWT or not.

22 I don't recall. But I do know I've set people up with
23 Gordonworks.

24 Q. How did you go about doing that?

25 A. Just added to our control panel.

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1 Q. The control panel that connects to Godaddy?

2 A. No. This was at OWT.

3 Q. How did you access the control panel?

4 A. I don't remember what mechanism I used.

5 Q. Did you lease an e-mail server at the time?

6 A. I don't know if -- to characterize it like that. I
7 had a Web hosting service, is what I had with them. Which
8 means they hosted my domain, which gave me e-mail access.

9 Q. And it was through that e-mail access that you were
10 able to set up e-mail accounts for your family, correct?

11 A. Family and friends, yes.

12 Q. Have you ever been compensated for e-mail services?

13 A. If we count settlements, yes.

14 But in terms of directly from family members, no, or
15 friends.

16 The settlements are the only remuneration.

17 Q. Settlements of --

18 A. Lawsuits.

19 Q. -- disputes or lawsuits?

20 A. Yes.

21 Q. How do the friends and family who use Gordonworks
22 e-mail services today access their e-mail?

23 A. Okay. The short answer is they don't at Gordonworks.

24 Because Gordonworks receives so much spam, I informed,
25 advised everyone to get their own private domain, and I believe

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1 everyone did, in fact, do that.

2 And I've been trying to reclaim Gordonworks ever
3 since.

4 Q. Do you administer those domains?

5 A. As I understand "administer," yes.

6 Q. How do you understand "administer"?

7 A. That means that I still have control of the domains to
8 start, stop, do things like that with them.

9 Q. Start and stop?

10 A. Yes. When I changed from one service provider to
11 another in early 2004, because it was the first time I had ever
12 gone to that type of Web hosting with ValueWeb, I put the
13 filters on so tight that I shut off virtually everything, and I
14 was missing stuff. So I had to go back in and redo the
15 filters.

16 But it stayed super tight for weeks. Could have been
17 two weeks; could have been six weeks.

18 And then I had to go back and loosen the filters
19 because too much was being filtered out. So...

20 Q. You testified that you advised these people to obtain
21 their own private domains, correct?

22 A. That's correct.

23 Q. Did you assist them in obtaining their own private
24 domains?

25 A. Yes.

1 Q. What assistance did you provide?

2 A. It varied depending on who it was.

3 Q. Did you obtain the domains for them?

4 A. For some, yes. Yes, I did.

5 Q. And how did you do that?

6 A. Just to go to Godaddy and sign up for a given domain.

7 I'd talk with them, you know, what name do you like and things
8 like that. And I'd go ahead and, as a gift, start the domain
9 up.

10 For some, they took care of it themselves.

11 Q. Are you -- strike that.

12 Do you know what a domain name registrar is?

13 A. Well, Godaddy is a -- a registrar.

14 Q. Do you know -- what's the definition of a registrar?

15 What is your understanding of a registrar?

16 A. My understanding? That there are designated bodies,
17 entities, organizations throughout -- I'll speak to the United
18 States -- that have the capacity to -- I think it's delegated
19 -- to start domains based upon whatever IP block they've been
20 assigned, and they can start domains.

21 So I think they just parcel out, through ARIN and all
22 these other -- RIPE and so forth -- all these blocks, and
23 within that, you have some discretion as to the domains that
24 you start up.

25 Ours is .com, .net and so forth. Others is .au, .ca;

1 top level domains there.

2 Q. Are you a domain name registrar?

3 A. I don't think I'm considered one.

4 Q. Do you know what a domain name reseller is?

5 A. I'm not sure if I do or not.

6 (Exhibit No. 15 marked.)

7 Q. Do you recognize Exhibit No. 15?

8 A. I believe this is my declaration.

9 Q. I'd like to turn your attention to paragraph 9, which
10 is on page 3 and begins at line 8 and a half.

11 Tell me when you're there.

12 A. Okay.

13 Q. The paragraph provides that many of the e-mail
14 accounts that you administered were inundated with commercial
15 electronic mail messages rendering them unusable.

16 Do you see that?

17 A. Yes.

18 Q. When you administered any of these e-mail accounts,
19 did you use any spam filters?

20 A. Okay. It depends on the timing.

21 In '03, what did I have?

22 Yes.

23 Q. You paused, you thought for a moment, and then you
24 answered.

25 Is that because there was a time when you used filters

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1 and a time when you did not?

2 A. Well, there was a time where I used my own personal
3 stuff, like MailWasherPro and this other SpamCrime software.

4 And there's a time where I relied wholly on
5 server-based stuff, which is what SpamAssassin and OWT and
6 ValueWeb provided.

7 Q. And at the time that you provided e-mail addresses as
8 described in paragraph 9 of this declaration, which is
9 Exhibit 15, did you use a server-based spam filter?

10 A. I'm not sure at that particular point in time whether
11 I was using it or not.

12 Q. When did you start using the server-based spam filter?

13 A. With OWT back in the late '90s.

14 Q. You used it on and off?

15 A. No. What I did was experiment with it to see how
16 tight my filter selection should be. So I made it tight and
17 then loosened it, loosened it, loosened it and tightened it and
18 loosened it.

19 And I did that with each of the companies I was with;
20 experimented.

21 Q. You don't remember whether the e-mail accounts
22 described in paragraph 9 were on a server that had a
23 server-based spam filter; is that right?

24 A. I'm not even sure who I was with in 2003.

25 Q. You're not sure of what?

1 A. I'm not sure which service provider I was with at that
2 time.

3 Q. Paragraph 9 also says, "I took over the administration
4 of those e-mail accounts and began directly receiving the
5 e-mail sent thereto."

6 Do you see that?

7 A. Yes.

8 Q. And "I," of course, refers to you, right?

9 A. Yes.

10 Q. And do you know when you took over the administration
11 of these e-mail accounts?

12 A. A more accurate statement is, at the behest of my
13 clients, they threw their hands up and said, we don't want
14 this. And I -- that's what I mean by I took over.

15 Q. So the clients stopped using e-mail accounts, right?

16 A. Yes.

17 Q. Do those accounts still receive mail?

18 A. Yes.

19 Q. If the users don't utilize the accounts, then why
20 don't you disable them?

21 A. Oh, I do research on the spam that comes through. I
22 want to compare it to what's coming through on those that I've
23 done the most unsubscribes for.

24 I do research on it.

25 Q. Why?

1 A. For my information.

2 I may -- and I haven't decided yet -- but I may do my
3 dissertation on the spam problem that I've had.

4 Q. Dissertation in what?

5 A. For my doctorate.

6 Q. In business?

7 A. Yes.

8 I've been advised to.

9 Q. So you use the e-mail accounts described in paragraph
10 9 for the purpose of research that you might use in support of
11 a doctoral dissertation?

12 A. If I decide -- I have two choices that I like, and I
13 may decide to go with that one.

14 Q. Do you use the e-mail accounts for any other purpose?

15 A. They -- that's the prime reason for doing it.

16 And as I said, I compare it to what's coming in the
17 others. And I do see where some of the spammers cease sending
18 it to certain addresses and things like that and some continue
19 with other addresses.

20 So, again, I've not anything to really be classified
21 as an experiment in terms of scholarly experiments, empirical
22 research in that regard, but I do go back and look at -- do
23 reconnaissance, as I've called it.

24 Q. Paragraph 10 provides that the first e-mail from
25 defendants was received on or about September 4, 2003.

1 Do you see that?

2 A. Yes.

3 Q. Did you do anything in response to that e-mail?

4 A. I'm not sure what I did in response to it.

5 Q. Do you know whether you replied to it?

6 A. I have no idea right now what I might have done at
7 that time.

8 At 1500 a day, it's hard to say what I did with
9 anything.

10 So, no, I don't -- I don't know.

11 MR. SIEGEL: Counsel, are you referring to Exhibit
12 No. 13?

13 MR. NEWMAN: I'm referring to Exhibit No. 15, which is
14 a declaration, and I'm questioning the witness about paragraph
15 10.

16 MR. SIEGEL: Right. Is this e-mail in reference -- is
17 the e-mail reference that you're asking about, is that Exhibit
18 No. 13? It references a September 4th e-mail, and Exhibit
19 No. 13 appears to be a September 4th e-mail.

20 I was just asking so -- because then maybe he could be
21 more specific with his answers if he gets to look at the e-mail
22 that he's already testified about.

23 Q. Your lawyer will have the opportunity to ask you
24 follow-up questions when I'm finished.

25 A. Okay.

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1 Q. If there's anything that you don't understand about my
2 questions, of course, please let me know.

3 Do you remember whether you did anything in response
4 to the e-mail you received on or about September 14th?

5 A. At this moment, no.

6 Okay. That's not even how I wanted to say it.

7 At this -- at the present time, I don't recall what I
8 did or when I did what I did.

9 And what I eventually did was I started unsubscribing
10 to everything that EmailPrize sent me, and that was in a box
11 over a course of maybe two months, August and September, and I
12 just went through that box and started unsubscribing.

13 Q. Paragraph 10 says, "The first e-mail from defendants
14 was received on or about September 4," but you just testified
15 about e-mails from EmailPrize.

16 A. Uh-huh.

17 Q. Do you believe that EmailPrize is one of the
18 defendants?

19 A. They may become one.

20 MR. SIEGEL: Objection. Mischaracterizes testimony.
21 He stayed he started unsubscribing from EmailPrize. He didn't
22 say in response to EmailPrize.

23 A. I missed that.

24 MR. SIEGEL: So there might be some confusion here.

25 Q. Paragraph 11 provides, "Subsequently, in September of

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1 2003 while researching on-line offers, I entered the e-mail
2 addresses James@Gordonworks.com and Jay@Gordonworks.com at a
3 website found at EmailPrize.com which promised to provide free
4 merchandise."

5 Do you see that?

6 A. Yes.

7 Q. The word "subsequently," that means after, correct?

8 A. Uh-huh.

9 Q. After what?

10 A. I don't know what the thought was then. I have no
11 idea.

12 Q. This is your testimony, correct?

13 A. Yes.

14 Q. And you wrote "subsequently, in September 2003,"
15 right?

16 A. I don't know if I put the word in or my attorney put
17 it in.

18 But -- I have absolutely no idea what that refers to.

19 Q. Did you enter the e-mail addresses
20 James@Gordonworks.com and J@Gordonworks.com at a e-mail website
21 found at EmailPrize.com?

22 A. I believe I did.

23 Q. Why did you enter both e-mail addresses?

24 A. Because there was a prize that both of us could use.

25 And I don't recall what the prize was. But anytime

1 there was, like I said, makeup or Roomba or something like
2 that, I would -- whoever I thought would be interested, I'd ask
3 them about it and submit their name.

4 Q. Who is Jay?

5 A. Jay is my son.

6 Q. And you asked Jay whether you could enter his
7 e-mail --

8 A. If he would be interested, is what I asked him, yes.

9 Q. And he advised he would?

10 A. Yes.

11 Q. And he gave you permission to enter his e-mail
12 address?

13 A. Yes, he did.

14 Q. And this same paragraph says, "In September of 2003 I
15 also entered the e-mail address Faye@Gordonworks.com,
16 Jamila" --

17 A. Jamila.

18 Q. -- "@Gordonworks.com, Jonathan@Gordonworks.com and
19 Emily@Gordonworks.com at a similar website."

20 Do you see that?

21 A. Yes.

22 Q. Is that a true statement?

23 A. Yes.

24 Q. In September of 2003, who most used the e-mail address
25 Faye@Gordonworks.com?

1 A. Faye belonged to my wife. Her name is Bonnie Faye.

2 And she attempted to, but the spam -- she was the
3 first one to get frustrated and say the heck with it.

4 Q. Did she authorize you to enter her e-mail address in a
5 similar website offering free merchandise in September of 2003?

6 A. If I did -- okay. Let's see. Did she authorize?

7 I'm not sure what you mean by "authorize." There was
8 no written document. We'd typically talk, and I mentioned
9 something, and she would probably say something like, oh, that
10 sounds like it might be nice.

11 Q. So you remember her telling you that you had
12 permission or should enter her name in?

13 A. That was -- the answer to your question is no, but I
14 wouldn't have done it without permission.

15 Q. Who is Jamila?

16 A. Jamila is my daughter.

17 Q. And you entered Jamila@Gordonworks.com into the
18 website offering free merchandise?

19 A. Yes.

20 Q. Did Jamila ask you to do that?

21 A. I probably went to her and told her what we were doing
22 and trying to see if these people would provide the prizes.

23 And I have no idea what we said, but I felt that I had
24 her okay, permission, whatever we can call it, to proceed.

25 Q. Why didn't Jamila enter the e-mail address in herself,

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1 if you know?

2 A. I don't.

3 Q. Do you know why Faye didn't?

4 A. I don't.

5 Q. And Jonathan is your son, right?

6 A. Yes.

7 Q. And you entered Jonathan@Gordonworks.com in as well,
8 correct?

9 A. Yes, I did.

10 Q. Do you know why Jonathan didn't enter the e-mail
11 address in himself?

12 A. I can't say that I know.

13 Q. Is Emily your daughter?

14 A. No. Emily is a friend.

15 Q. And did Emily, your friend, use this e-mail account,
16 Emily@Gordonworks.com?

17 A. I don't remember for sure, other than I think this is
18 one of the accounts -- it may not have been Emily, it could
19 have been another. She and I used Gordonworks solely for
20 communications with one another, and I don't remember the name
21 of it. It may not have been Emily, though.

22 Q. So you don't know whether you entered
23 Emily@Gordonworks.com in a similar website offering free
24 merchandise?

25 A. It's likely that I did.

1 Q. Here you testified under the penalty of perjury that
2 you did.

3 Is that how you understand it?

4 A. It depends on what offer. I don't recall which offers
5 were in which order.

6 But if I had permission to do it once, I had
7 permission -- I would get permission to do it a subsequent
8 time.

9 So if there was makeup, Emily, Jamila and Faye would
10 get that.

11 If there was something else in a different
12 household -- if my son lived with me, he wouldn't get the same
13 one that my wife or I got. If there were a Roomba.

14 And if it was another household, we'd tell them about
15 it.

16 Q. So you don't remember whether you entered
17 Emily@Gordonworks.com at the same website offering free
18 merchandise?

19 A. No, I've done it. I just don't know which ones.

20 Q. You don't remember whether it occurred in September
21 '03?

22 A. It could have been October. But I'm guessing it was
23 September.

24 Q. Is there anything else in this declaration, which is
25 marked as Exhibit No. 15 to the deposition, that you're just

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1 guessing about?

2 A. A lot of stuff I'm thinking about right now.

3 Unless you ask for specifics, I can't say yes or no.

4 Q. But it is your testimony that there's a lot in this
5 declaration that you're just guessing about, right?

6 MR. SIEGEL: Objection. That mischaracterizes
7 testimony.

8 A. Please ask me a specific question and I'll try to
9 answer it.

10 Q. I asked, is there anything else in the declaration,
11 which is marked as Exhibit No. 15 to the deposition, that
12 you're just guessing about, and you responded, "A lot of stuff
13 I'm thinking about right now."

14 I then asked you another question and your lawyer
15 objected that I'm mischaracterizing your testimony. I don't
16 think I am, but if you do, help me clarify.

17 And that is, I'm asking whether it's your testimony
18 that there is a lot in this declaration that you're just
19 guessing about.

20 A. That's not what I intended.

21 When you asked the question about -- I think it was
22 No. 11, I was thinking that some of these people that I've
23 identified actually use the domains to handle offers that they
24 saw, and I don't know which ones they used as opposed to which
25 ones I used.

1 So we could have both actually signed up for the same
2 website.

3 So I have no idea or control over it whether or not
4 and to what degree that happened.

5 Q. Did you sign this declaration?

6 A. Yes, I signed it.

7 Q. Did you read the declaration before you signed it?

8 A. I read a draft of it. I didn't read the final, I
9 don't believe.

10 Q. Why didn't you specify in this declaration what
11 specifically you were guessing to and what specifically you
12 know?

13 MR. SIEGEL: Objection. Mischaracterizes testimony.
14 Calls for speculation. Vague. Ambiguous.

15 A. I looked for guidance from my attorneys when it comes
16 down to putting together declarations. This is not my area of
17 expertise.

18 Q. So your lawyers wrote this?

19 MR. SIEGEL: Objection. Mischaracterizes testimony.

20 Don't let him put words in your mouth, Jim. Just take
21 your time and think about it. He's just harassing you right
22 now.

23 Don't let him put things in your mouth. It's
24 improper.

25 THE WITNESS: Okay.

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1 MR. SIEGEL: He knows -- he knows how the declaration
2 drafting process goes. He does it every day.

3 A. Most -- most documents are co-authored, and I don't
4 know who inputted what.

5 Q. So this document was co-authored by you and your
6 lawyers?

7 A. I'm -- I believe that's true.

8 Q. Is it your testimony?

9 A. My testimony is I believe that's a true statement.

10 Q. Do you consider the words stated in this declaration
11 to be your testimony?

12 A. Testimony is a legal concept.

13 This is my declaration. I signed the declaration.

14 Q. Do you swear under the penalty of perjury that
15 everything stated in this declaration is true?

16 A. It's probably more than likely -- there's some things
17 that are approximate, but it's true to the best of my ability
18 in terms of approximating things that took place years before.

19 Q. Is there anything in the declaration that's
20 approximate that is not noted as such in the declaration?

21 A. Do you want me to read this thing again?

22 Q. Yes.

23 MR. SIEGEL: Yes, I do. I want you to take your time
24 and answer to every paragraph, if that's where he's going with
25 that.

1 So make sure you're being accurate here.

2 A. No. 1, "I the plaintiff"...

3 No. 2, okay.

4 Because it's not fresh in my mind, in No. 3, I'm not
5 sure if it was both the administrative and registrant or one or
6 the other.

7 Q. Was it fresh in your mind at the time you signed this
8 declaration?

9 A. There are some changes made here, I recall, because
10 something else was in here and I had to put in One World
11 Telecommunications, and that's where I concentrated my efforts,
12 so...

13 Q. Was it fresh in your mind at the time you signed the
14 declaration?

15 A. Well, what was fresh in my mind was that the answer
16 that was in here before it was a mistake, so I corrected the
17 mistake.

18 MR. SIEGEL: I'm going to object. You know, this
19 document speaks for itself.

20 So Jim, if you want to rest on what you declared in
21 this declaration, then you can just -- you can just do that
22 because it already is -- you already testified to it, so it's
23 asked and answered.

24 MR. NEWMAN: Mr. Siegel, your client has testified
25 that there's certain things he was guessing to here. I have a

1 right to know what they were considering that he filed this in
2 support of a motion and that that motion is based on this
3 testimony.

4 And you're now coaching him not to answer my question.

5 MR. SIEGEL: Jim, if there's anything that you can
6 identify as having guessed to in this declaration --

7 THE WITNESS: Okay.

8 MR. SIEGEL: -- then go ahead and tell counsel.

9 A. Then on No. 3 --

10 Q. Well, yeah. Let's go back to No. 3.

11 You were just testifying that you don't know because
12 your memory is not fresh now whether you were both
13 administrative contact and registrant.

14 A. That was not my area of focus.

15 The focus was on correcting mistakes when I did my
16 drafts. This could have been draft three, five, seven; I don't
17 know.

18 But I corrected the error in it and sent it back.

19 So that one, I could -- it could be true that I was
20 both the administrative and registrant, and I haven't checked
21 this in months, so -- and the reason why I checked a few months
22 ago was because we had some changes and I had to go back to my
23 Who Is information and change that.

24 So I don't know how long ago -- two months, four
25 months ago -- that I made the change.

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1 Q. So you really don't know if you were the
2 administrative contact and registrant, right?

3 A. That typically is what happens when you get registered
4 by someone else. You get -- sign up -- not only that, but
5 sometimes technical contact as well.

6 So you get three or four different titles or contacts
7 in the Who Is look-up.

8 Q. But you're guessing?

9 A. Well, it's a guess based on some experience --

10 MR. SIEGEL: Objection. Mischaracterizes testimony.

11 A. If it's a guess, it's on experience.

12 Q. You said -- okay. Strike that.

13 Is there anything else in paragraph 3 that you're
14 uncertain about?

15 MR. SIEGEL: Objection. Mischaracterizes testimony.

16 A. The One World Telecommunications was the only thing I
17 thought to change at the time.

18 Q. Is there anything in paragraph 4 that you're uncertain
19 about?

20 A. No.

21 Q. What about paragraph 5?

22 A. No.

23 Q. Paragraph 6?

24 A. No.

25 Q. Paragraph 7?

1 A. No.

2 Q. Paragraph 7 provides that all of the e-mail accounts
3 that you provided could be accessed using the World Wide Web.

4 Do you see that?

5 A. Yes.

6 Q. Do you know how they could be accessed using the World
7 Wide Web?

8 A. I don't understand that.

9 Q. Users access e-mail accounts, correct?

10 A. Yes.

11 Q. And you've provided e-mail accounts to users, right?

12 A. Yes.

13 Q. And those users access them through the World Wide
14 Web, correct?

15 A. That's my understanding.

16 Q. By what means do they access them through the World
17 Wide Web?

18 A. That's the part I don't understand.

19 What do you mean by "what means"?

20 Q. Did they use an e-mail client software? Did they use
21 a Web browser? Was it Mail, WebMail, IMac, POP?

22 How did they access the e-mail that you provided to
23 them?

24 A. Okay, if you mean -- they all had POP accounts -- no,
25 that's not true.

1 Some had POP accounts.

2 I should say I don't know what all of them had, but
3 they were able to access the Web and get their e-mail.

4 Q. POP e-mail protocol isn't done through the World Wide
5 Web, though, is it?

6 A. Well, right now, I'm tired and this is all running
7 together.

8 I indicate here all of these e-mail accounts could be
9 accessed by individuals.

10 I did not put the World Wide Web there, but --

11 Q. Who put the World Wide Web there?

12 A. I don't know.

13 Q. You don't know how it got there?

14 A. I'm not sure.

15 Q. But you signed it?

16 A. Yes.

17 Q. And a moment ago you testified that everything in
18 paragraph 7 is true?

19 A. It's true. I thought they did access it by using the
20 World Wide Web. And now you've started questioning me about it
21 and I want to know -- I want to know.

22 You said it's not done by the World Wide Web. Okay.
23 Then that's news to me.

24 Q. What's not done by the World Wide Web?

25 A. You just said that they didn't access e-mail by way --

1 it's not accessed by the World Wide Web.

2 So that's news to me.

3 Q. Did you provide Web mail to these users?

4 A. Web mail, meaning?

5 Q. The ability to log on to an Internet website and
6 access mail --

7 A. Provided.

8 Q. -- through an HTML-based site?

9 A. Provided by whoever the Web hosting company was.

10 Q. So a Web hosting company provided Web mail to these
11 users?

12 A. Yes.

13 Q. But you didn't?

14 A. Well, I was the interface that helped them in terms of
15 setting up passwords and user names and so forth.

16 Q. What do you mean by "interface"?

17 A. I use a control panel that allows me to set up the
18 domains and e-mail addresses within the domains, set up auto
19 responders; that type of thing.

20 Q. Is there anything in paragraph 8 that you're not sure
21 about?

22 A. No.

23 Q. Is there anything in paragraph 9 that you're unsure
24 about?

25 A. No. We've talked about that.

1 Q. Is there anything in paragraph 10 that you're unsure
2 about?

3 A. Well, I think about that. And there was an e-mail or
4 two prior to that date.

5 However, my attorneys and I did not include it in the
6 litigation from Virtumundo.

7 Q. Why didn't you include it in the litigation?

8 A. Because it was totally different from all the others,
9 that the only references to Virtumundo were in the source code.

10 And I don't know anything -- remember anything beyond
11 that, but we just decided not to include them at that point.

12 Q. Do you know whether that e-mail you just testified
13 about came from Virtumundo?

14 A. According to source code, that's where the hyperlink
15 was to Virtumundo.

16 Q. Is there anything in paragraph 11, other than what
17 you've already testified about, that you're unsure of?

18 A. No, that's fine.

19 Q. Is there anything in paragraph 12 that you're unsure
20 of?

21 A. No.

22 Q. Are you sure that you never agreed to receive e-mail
23 or opt in to any e-mail lists using any other e-mail addresses
24 at the Gordonworks.com domain other than the ones listed in
25 paragraph 11?

1 A. I don't recall any others.

2 Now that I think about it, it's possible there could
3 have been others, but those are the only ones that I remember
4 at this time.

5 There were so many created, and I didn't keep records
6 of what was created, so I'm just not absolutely positive there
7 was never anything else.

8 Q. Is there anything in paragraph 14 you're unsure of?

9 A. For 13 and for 14 --

10 Q. You already testified you never received any
11 merchandise in response to EmailPrize, right?

12 A. I thought we were going to in sequence.

13 Q. Did you ever receive any merchandise in response to
14 the EmailPrize offers?

15 A. No, I did not.

16 Q. Is there anything in paragraph 14 that you're unsure
17 about as you sit here today?

18 A. I guess my choice of words today may have been -- I
19 contacted these websites and I guess what I did was contact
20 e-mail addresses. Technically, I don't contact the website.

21 So I used e-mail addresses to try to get removed.

22 I don't understand exactly what I made contact with on
23 these websites. The only contact was the unsubscribe link.

24 So, technically -- they didn't work, so I don't know
25 if that's a contact or not.

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1 Q. By what means did you contact these websites to
2 request that they remove the e-mail addresses from their lists?

3 MR. SIEGEL: Objection. Asked and answered. He just
4 answered that question. He just said the only -- well, you can
5 read it back.

6 A. Okay. One other thought came to mind.

7 Those that had opt-in links, I used them.

8 Those that did not -- and this is not 100 percent --
9 but those that did not, I looked up Whois information to find
10 the e-mail address.

11 MR. SIEGEL: Did you say "opt-in" or "opt-out" link?

12 THE WITNESS: I should have said "opt-out."

13 MR. SIEGEL: I think you said "opt-in."

14 A. Opt-out links.

15 Q. Is there anything in paragraph 15 that you're unsure
16 of today?

17 A. No, that's fine.

18 Q. You included as part of Exhibit A to this declaration
19 e-mails that include a marking that indicates they are spam
20 which came from the SpamAssassin filter, correct?

21 A. Yes.

22 Q. The SpamAssassin filter has the ability to exclude
23 those e-mails so you never see them; isn't that right?

24 A. I don't know.

25 Q. You have no idea whether you can configure

1 SpamAssassin to exclude the e-mails marked as spam?

2 A. No -- I said I don't know to the first question that
3 you answered [sic].

4 I've never used it in that manner, if in fact it has
5 that capability.

6 Q. So you receive every e-mail marked spam?

7 A. It comes to my mailbox, yes.

8 Q. And you have no idea whether you have the ability to
9 configure SpamAssassin such that you don't receive the e-mails
10 in your mailbox, right?

11 A. SpamAssassin is server-side, and all we have an option
12 to do is turn it on or turn it off.

13 Q. You use your door, right?

14 A. That's -- I've used virtually all of the e-mail
15 clients, but that's primarily the one that I used.

16 Q. Are you familiar with the term "filter" as applied to
17 an e-mail software application?

18 A. Spam filter, yes.

19 Q. Are you familiar with filter in an e-mail application
20 that allows you to specify how certain e-mails shall be routed?

21 A. I don't know if I am or not. I don't know.

22 Q. Are you familiar with the term "rules"?

23 A. Yes. That concept, yes.

24 Q. What is rules?

25 A. With Webmaster, I believe it was, we could set up

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1 rules to white list people. We could set up rules to not
2 accept anything that was a foreign alphabet or something like
3 that.

4 So those were some of the rules.

5 Q. Do you know whether you can set up rules in the Eudora
6 e-mail client that would cause the client to automatically
7 delete e-mails that are marked as spam so that you would never
8 see them?

9 A. I've not read that in years.

10 With some of the new software, they probably do have
11 some of those rules.

12 Q. Have you ever looked into it?

13 A. No.

14 Q. If you found out that Eudora had that function, would
15 you use it?

16 A. It does now have a spam filter. It was in an ad that
17 -- when I updated my Eudora, it mentioned it had a spam filter.

18 Q. Do you use that spam filter?

19 A. No, I purchase separate spam filters.

20 Q. If you found out that Eudora had the ability to
21 discard all messages marked as spam by SpamAssassin, would you
22 utilize that function?

23 A. I haven't -- no, is the short answer.

24 I'd prefer to use the server-based options as well as
25 my other software.

1 Eudora has had some problems, and I've contacted
2 QUALCOMM about them, and they've yet to fix those problems.

3 So I'm starting to use more Outlook presently because
4 of the problems that Eudora has.

5 Q. If you learned that SpamAssassin had the ability to
6 exclude the messages that it marks spam so that you would never
7 receive them, would you use that function?

8 MR. SIEGEL: Objection. Irrelevant. Calls for
9 speculation.

10 A. I'm starting to read about SpamAssassin a little bit
11 more, and maybe I'm still intimidated a little bit about the
12 particular product.

13 I just, again, use the other, the MailWasher and
14 SpamCrime, as my spam filters after talking with the tech
15 support at the companies and asking them to help me set up spam
16 filters because I messed up my own MailWasherPro because,
17 apparently, I didn't do the rules right or there were
18 contradictions in the rules.

19 So I ask for help when it comes to those kind of
20 things.

21 Q. If you learned that SpamAssassin had the ability to
22 exclude the messages that it marks spam so that you would never
23 receive them, would you use that function?

24 A. I don't know.

25 MR. SIEGEL: Objection. Calls for speculation.

1 Irrelevant.

2 A. The "I don't know" comes because, again, I'm doing
3 research on the spam that I receive, and there is a benefit in
4 receiving spam because of that.

5 Q. What's that benefit?

6 A. The fact that it would contribute to the research.

7 Q. So you believe it's a positive thing that you receive
8 the spam?

9 A. Well, in that one regard, it is.

10 The fact that I have so much of it, my advisor told me
11 that 3 or 4 million e-mails is more than I'd ever need for a
12 dissertation.

13 So I've got to somehow, you know, trim that down and
14 develop a research question based on some much smaller corpus
15 of e-mails. So I don't know what that's going to finally look
16 like.

17 Q. The receipt of spam benefits you, correct?

18 MR. SIEGEL: Objection. Mischaracterizes testimony.
19 He told you exactly --

20 MR. NEWMAN: I didn't quote his testimony. You're
21 coaching your witness. If you want to object to the form of
22 the question, you should.

23 MR. SIEGEL: It's a leading question.

24 MR. NEWMAN: But a speaking objection is improper and
25 coaching the witness is improper.

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1 MR. SIEGEL: A leading question is improper. That's
2 not what he testified to.

3 MR. NEWMAN: A leading question is not improper. I'm
4 cross-examining this witness. In fact, a leading objection is
5 the most proper question that one can ask on cross-examination.

6 I'm going to ask the question again. I would
7 appreciate it if you do not coach the witness. We have a
8 record here.

9 MR. SIEGEL: That's fine.

10 Don't let him put words in your mouth, Jim.

11 THE WITNESS: Okay.

12 MR. NEWMAN: Would the court reporter be so kind as to
13 repeat the question.

14 (The requested testimony was read.)

15 A. I answered slightly different.

16 Yes, insofar as research, and yes, insofar as there
17 have been settlement agreements for people who have said that
18 they wouldn't spam me any longer.

19 Q. Is there anything in paragraph 16 of Exhibit 15 that
20 you're unsure of today?

21 A. We'll leave it as is.

22 Q. The answer is no?

23 A. Yes.

24 Wait a minute.

25 There's nothing. So, no.

1 Q. Exhibit 15, paragraph 16 talks about the proper use of
2 "from" names in the "from" line.

3 Do you see that?

4 A. Oh, I thought we were on 17. Let me go back.

5 Okay. Yes, I see it.

6 Q. What is the proper use of "from" names in the "from"
7 line?

8 A. Identify the sender.

9 Q. And upon what information do you base the testimony
10 that that's the proper use of the "from" name?

11 A. Federal Trade Commission and Canned Spam, in my
12 estimation, as a layman, both say that that's the proper use.

13 Q. Any other source?

14 A. I may have read other things.

15 Q. What has the Federal Trade Commission said about the
16 proper use of a "from" name in the "from" line?

17 A. I don't recall. I don't have any of that in front of
18 me.

19 Q. You testified that you based our testimony upon
20 information that you received or reviewed from the Federal
21 Trade Commission.

22 What did you receive or review from the Federal Trade
23 Commission?

24 A. I went to their website.

25 Q. And is that website publicly available?

1 A. Oh, God.

2 Okay. Now, my attorney gave me something as well.

3 I think I went to the website.

4 MR. SIEGEL: Jim, I don't want you to speculate.

5 Answer the question if you know the answer. If you have
6 personal knowledge of what he's asking you, answer it. If not,
7 say so and we'll move on.

8 A. Okay. Let's move on.

9 MR. SIEGEL: I don't want you to make up answers.

10 THE WITNESS: Okay.

11 Q. Is the website at which you reviewed or received
12 information from the Federal Trade Commission public?

13 A. And I'm saying I may have gotten it from my attorney
14 now that I think about it.

15 Q. And do you remember the content of that information?

16 A. Not offhand. It's not fresh in my head.

17 Q. Did you produce in the course of this litigation the
18 documents that you reviewed or received from the Federal Trade
19 Commission that discusses the proper use of the "from" names in
20 the "from" line?

21 A. Okay. Do you mean, did I submit as part of the
22 discovery?

23 Q. Yes.

24 A. I don't know if it's in there or not. There's so much
25 information. I don't know if it's in there.

1 And it's probably something that was just discovered
2 here in the past -- I don't know -- since the summary judgment
3 or right -- maybe a week before that. So it wouldn't have been
4 in any of the previous productions.

5 Q. Do you know how it was discovered?

6 A. It's not -- I don't recall specifically how it was
7 discovered.

8 I don't even know if I was the one to discover it.

9 Q. Paragraph 16 provides that an e-mail that you see from
10 Virtumundo shows that they are well aware of and capable of
11 properly using the "from" name information.

12 Do you see that?

13 A. Yes.

14 Q. Upon what information do you base your belief that
15 they're well aware of properly using the "from" name?

16 A. I read dozens, if not hundreds, of the e-mails that
17 were from one named individual to another named individual, and
18 if it were -- I don't know if Lynn was in there -- whoever the
19 people are, it was from one person to another person, and you
20 could identify them because their name was there.

21 Q. Upon what information do you base your belief that the
22 defendants know that that is proper?

23 A. Oh, that's a different question.

24 Because that's how e-mail is sent and received over
25 the Internet with everyone I do business with, everyone that I

1 correspond with.

2 So in terms of common practice, in terms of e-mail
3 marketing pieces that we quoted in our summary judgment motion,
4 that's just the way things are done. And they are doing it
5 internally the way things are generally done. But through
6 marketing materials or ad copy, they fudge, they don't identify
7 who they are.

8 Q. Is there anything in paragraph 17 that you're unsure
9 of?

10 A. I have to see the screenshots again, but I think this
11 refers to like 270 pages of e-mail box -- inboxes or outboxes
12 or whatever it was.

13 So I -- let's leave that one as is. I don't think
14 there's anything that needs to be changed.

15 Q. Is there anything in paragraph 18 that you're unsure
16 of?

17 A. Huh. I see one thing was added back in in terms of a
18 draft, which is a mistake.

19 Google Gmail, I erased it from one of my drafts, and
20 somehow it got back in. So that's a mistake because I'm not
21 familiar with Gmail.

22 Q. Are you familiar with Microsoft Outlook?

23 A. Yes. I used it for the three years that I was with
24 City University.

25 Q. And Hotmail?

1 A. Yes, I've used that before.

2 Q. And Yahoo mail?

3 A. Yes. I currently use that.

4 Q. Have you ever used Thunderbird?

5 A. I tried using it for a short period of time, probably
6 less than two months, and I didn't like it, so I've stopped.

7 Q. Is there anything in paragraph 19 that you're unsure
8 of?

9 A. No, there's nothing I'm unsure of.

10 Q. What is EmailLabs?

11 A. I looked up a bunch -- talked with my attorney, and he
12 asked me to do some research, and I looked bunches of sources
13 up and I wasn't aware of which ones he selected for inclusion
14 until after I saw the draft.

15 So it's not fresh in my mind as what all they do, but
16 I looked up -- probably gave them 20 or 30 different
17 references, and he just selected which -- apparently selected
18 the ones he thought would be most appropriate.

19 Q. What is EmailLabs?

20 A. I don't know specifically. I would have to go look up
21 whatever information I passed on.

22 Q. Why did you attach as Exhibit D to your declaration an
23 e-mail from -- an article from EmailLabs?

24 A. Again, I have to go back to refresh my memory as to
25 what specifically it contained.

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1 Q. Had you ever heard of EmailLabs before this
2 litigation?

3 A. I don't -- I don't know. I don't think so. It's not
4 fresh in my mind that I had.

5 Q. What is Constant Contact?

6 A. That was one of the sources that I passed on to my
7 attorney.

8 Q. Had you ever heard about it before this litigation?

9 A. I don't think so.

10 Q. In paragraph 19, you testify that it's a "leading
11 e-mail marketing industry publication."

12 Do you see that?

13 A. Okay.

14 Q. Do you stand by that testimony?

15 A. I guess I'm going to have to be more careful about the
16 words left in the draft there.

17 If I were to change that, it would just be an "e-mail
18 marketing industry publication."

19 I don't remember adding the word "leading" to it. I
20 could have done it, but I don't recall doing that.

21 Q. Is there anything else about paragraph 19 that you're
22 unsure of?

23 A. No.

24 Q. Upon what information do you base your belief that
25 Constant Contact is an e-mail marketing industry publication?

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1 A. It was whatever was contained in the research that I
2 had done.

3 Q. Did you verify it?

4 A. Verify --

5 Q. Did you verify that Constant Contact is an e-mail
6 marketing industry publication?

7 A. From the content, that was fairly clear.

8 Q. So you're basing your testimony that it's an e-mail
9 marketing industry publication based on the content of what you
10 saw on the Internet, right?

11 A. Yes.

12 Q. Do you know of any e-mail marketing industry companies
13 that receive Constant Contact?

14 A. No, I don't offhand.

15 Q. Have you ever spoken with an e-mail marketing industry
16 executive or employee about Constant Contact?

17 A. No.

18 Q. Do you know whether any e-mail marketing industry
19 business people receive Constant Contact?

20 A. No, I don't know that.

21 Q. The next sentence in paragraph 19 provides that the
22 Constant Contact publication indicates the importance of the
23 information placed in the "from" line.

24 Do you see that?

25 A. The next sentence?

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1 Q. I'm sorry, I was unclear. I'm looking at paragraph
2 19.

3 A. Okay.

4 Q. And it's actually part of the same sentence I was just
5 referring to, which might have been part of the confusion.

6 A. Okay.

7 Q. But it does say that Constant Contact article
8 indicates the importance of the information placed in the from
9 line in e-mail user's determination whether or not to delete or
10 open an e-mail?

11 Do you see that?

12 A. Yes.

13 Q. Why do you believe that this article indicates the
14 importance of that information?

15 A. I believe that's what I read.

16 Q. So you believe it simply because the article says it?

17 A. That's not the only thing I've ever read. But I
18 believe that that is true based on my own personal experience,
19 and I've seen millions of e-mails.

20 And I base my decisions -- I think initially, it was
21 all on the "from" field, but more so on subjects.

22 But those are the two pieces of information I base my
23 decisions on whether or not to delete it and whether or not to
24 open it and so forth.

25 Q. Is there anything else that you know of that indicates

1 the importance of the information placed in the "from" line in
2 an e-mail user's determination of whether or not to delete or
3 open an e-mail?

4 A. I've seen other -- what they call affiliate marketer
5 firms out there, read blogs and things like that, where people
6 refer to different companies.

7 And I draw conclusions based on the information that I
8 find.

9 Q. What are they?

10 A. What are?

11 Q. I asked whether there's anything in addition to these
12 -- strike that.

13 I asked whether there's anything in addition to this
14 article, and you testified that you have reviewed blogs.

15 A. Yes.

16 Q. And their affiliate marketer firms.

17 And I'm asking, what are those blogs for those
18 marketing affiliate firms?

19 MR. SIEGEL: He's also testified he was familiar with
20 the FTC and Canned Spam as that regards the "from" line.

21 MR. NEWMAN: Mr. Siegel, you have no right to coach
22 your witness. If you object to the form of the question, state
23 your objection, but do not feed this witness with answers.

24 MR. SIEGEL: I object.

25 MR. NEWMAN: I'm entitled to seek discovery. I'm

1 asking fair questions. I'm entitled to fair answers from the
2 witness and not from you.

3 MR. SIEGEL: Okay. Object. Asked and answered. This
4 client's already testified about how he has knowledge about the
5 proper use of "from" lines.

6 MR. NEWMAN: Would you please repeat the question.

7 (The requested testimony was read.)

8 Q. I'm going to strike that question and ask it again.

9 A. Okay.

10 Q. Do you know what the blogs and affiliate marketer
11 firms are that you testified about?

12 A. I may still have the list. I don't know them offhand.

13 Q. As you sit here today, can you name one?

14 A. No, can't name the first.

15 Q. So is there anything else that you can think of that
16 indicates the importance of the information placed in the
17 "from" line in an e-mail user's determination of whether or not
18 to delete or open an e-mail other than the Constant Contact
19 article?

20 A. No. I just said there were others because I submitted
21 the research to my attorney.

22 The statutes refer to -- I've already mentioned Canned
23 Spam refers to the "from" line as identifying a sender -- I
24 guess, technically, it would be an organization that's the
25 sender.

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1 I mentioned the FTC.

2 Washington state CEMA refers to the headers.

3 So I guess a collective of information which I've been
4 reading since '03, I come to that conclusion.

5 Q. Have you submitted any of the information that you've
6 collected since '03 in response to the discovery requests in
7 this lawsuit?

8 A. Some. Again, I can't tell you specifically what I've
9 submitted. It's on the disks.

10 Q. Can you remember any of it?

11 A. Letters regarding the communications to Virtumundo,
12 Whois look-up information, complaints, auto response messages
13 and things like that, those are the kinds of things I've
14 submitted as well as an analysis of some of the e-mails, or
15 partial analysis.

16 Q. Any of the blogs or e-mail marketing firm documents
17 that you testified about earlier?

18 A. The blogs are very unkind to the defendants. Most
19 talk about them as pariah.

20 These are people who are predators on the Internet
21 and, in a manner of speaking, that may very well be true.

22 So they're very unkind to the defendants.

23 Q. So you're basing your opinion -- strike that.

24 You believe that an indication of the importance of
25 the information placed in the "from" line in an e-mail user's

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1 determination of whether or not to delete or open an e-mail is
2 blogs that are unkind about the defendants?

3 A. Personal experience is my basis.

4 But there's corroboration in terms of the other things
5 I read out in cyberspace.

6 Q. Corroboration for what?

7 A. Some of the conclusions that I've reached.

8 I believe that your client is, in fact, an Internet
9 predator.

10 I believe that your client is involved in things that
11 are extralegal or perhaps illegal.

12 I find corroboration in the things I read out on the
13 Internet.

14 Q. Which client of mine do you believe is involved in
15 things that are extralegal or perhaps illegal?

16 A. Both, but perhaps more so, Virtumundo.

17 Q. What do you think Virtumundo is extralegal or perhaps
18 illegal?

19 A. They perhaps facilitate identity theft.

20 They are affiliated with pornographers.

21 There may be some other things that I'm not certain of
22 right now.

23 Q. Upon what information do you base your belief that
24 Virtumundo is involved in identity theft?

25 A. The relationship they had with First -- First and

1 whatever it is. First Premiere Bank.

2 Q. What is that relationship?

3 A. They do spam or e-mail ad campaigns for them.

4 They request information such as Social Security
5 number and date of birth, and it's not information that is
6 requested by the actual institution, the lending institution.
7 It's requested by the domain owners.

8 So they're data brokers in that sense. And data
9 brokers have no reason to know or need to know that
10 information. It's information that should be vested in a
11 lending institution.

12 So that's sold by maybe this client over here and
13 resold and sold again, and Washington state law -- I don't
14 think it's the 080 provision of CEMA -- strictly prohibits
15 that.

16 Q. Do you believe that Virtumundo or Adknowledge is
17 selling Social Security numbers or other private information?

18 A. I believe they may be, yes.

19 Q. And upon what information do you base that belief?

20 A. The fact that they collect it. They don't collect it
21 as a business for no reason at all.

22 Q. On what information do you base your belief that
23 Virtumundo or Adknowledge collects it?

24 A. Because of the websites they point to and redirect it
25 to.

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1 Q. What are those websites?

2 A. Don't know offhand.

3 Q. Do you know whether they're Adknowledge or Virtumundo
4 websites?

5 A. I said I don't know offhand.

6 Q. Upon what information do you base your belief that
7 Virtumundo is involved with pornographers?

8 A. I don't know what you mean by "involved," but an
9 entire IP block of Impulse Marketing Group is housed on
10 National Net. National Net is probably one of the largest
11 pornographers in America. They're based in the southeast, and
12 they occupy that block.

13 Right there in Kansas City, Wholesale Internet is
14 another company that promotes, sends out pornography, and they
15 have a relationship with -- with -- I believe it's -- no,
16 Virtumundo.

17 And there's one other company. Never mind who that
18 is.

19 But there are at least two companies that they have
20 e-mails that they do business with, and these companies also
21 are pornographers.

22 Q. Why do you believe Virtumundo is involved with the
23 pornographers?

24 A. Well, they have a business relationship with
25 pornographers.

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1 Q. How do you know?

2 A. Well, I don't have the information in front of me.

3 But to look at the e-mail, to check the IP blogs, to check the
4 Whois information and the fact that they are actually selling
5 products. For example, they sell or market IMG products.

6 IMG -- Spamhaus called them a criminal spam gang, and
7 they are, in fact, a spam gang. And they may be involved in --
8 and again, I'm a layperson -- RICO activities and so forth.

9 It's a deep pit in terms of the kinds of criminality
10 they are involved in.

11 And your clients affiliate with Impulse Marketing
12 Group.

13 Q. How is our client affiliated with Impulse Marketing
14 Group?

15 A. They market their products that they're licensed to
16 provide.

17 Q. Upon what information do you base that belief?

18 A. I have a contract -- copy of the contract that IMG has
19 with their principal, and these are -- this is an exclusive
20 contract, and the only one technically that is licensed to do
21 that -- unless they're, again, a layperson, they're violating
22 copyright laws -- Virtumundo, if they are violating copyright
23 laws, then of course they're doing it without the permission of
24 the principal.

25 But it's a paper trail. All the paperwork I gave you

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1 illustrates. Let's pull it out and I'll show you.

2 Q. Do you believe the paper trail shows a connection
3 between IMG and Virtumundo?

4 A. Absolutely.

5 Q. And can you explain that paper trail?

6 A. I could show you if you gave me the documents.

7 Q. What documents?

8 A. The e-mails. The e-mails.

9 Q. What e-mails?

10 A. There are e-mails that market typically credit cards
11 and credit offers.

12 Q. And how is there a connection between IMG and
13 Virtumundo?

14 A. That's something, again, I need to show you.

15 Q. You can't explain it?

16 A. I'm a visual person. That's my learning style that
17 predominates. And some of the times when you and I are talking
18 and I ask you to repeat things, there's things that make life
19 easy for me, and that's seeing things. That's my style.

20 Q. Mr. Gordon, can you help me understand which e-mails
21 to which you are referring?

22 Because I would like to show you those e-mails so that
23 you could establish for me the link between Virtumundo and the
24 unlawful activity.

25 A. Okay.

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1 Q. So can you explain to me what the e-mails are so that
2 I can locate them?

3 A. Let's just look under First Premiere Bank. And if you
4 have an Internet connection, we may be able to see links to
5 some of those websites that are still up. They go up and they
6 go down all the time, so I don't know if they're still up or
7 not.

8 So just click on any of the -- not any. The First
9 Premiere Bank would be the principal whose product is being
10 advertised.

11 If we find those under Virtumundo, I think we'll begin
12 finding what I'm referring to.

13 MR. SIEGEL: Counsel?

14 MR. NEWMAN: Sir?

15 MR. SIEGEL: Just a time check. Just wondering how
16 long you want to go.

17 THE WITNESS: I'm doing fine.

18 MR. NEWMAN: The witness is doing fine.

19 MR. SIEGEL: I heard that.

20 MR. NEWMAN: Considering that we're going to return
21 tomorrow, are you suggesting that we finish this evening?

22 MR. SIEGEL: I'm good for a while longer, but if there
23 is a line of questioning you want to finish, then -- I just
24 want to see the light at the end of the tunnel.

25 MR. NEWMAN: Let me give you a light for today.

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1 I'm questioning this witness about Exhibit No. 15, and
2 when I finish with Exhibit No. 15 and any related questions and
3 response to his answers, I will most likely terminate for
4 today.

5 A. We're on 15?

6 Q. We're on Exhibit No. 15.

7 A. I apologize. Okay.

8 Q. Is there anything else other than what you've
9 testified about that indicates that Virtumundo or Adknowledge
10 are engaged in any extralegal or illegal activity?

11 A. The two things I've mentioned; the identity theft and
12 pornography affiliation.

13 They had an affiliation with Enron that people talked
14 about on the Internet. Whether they occupied the Enron net
15 block or what the details were, I'm not clear at this moment.

16 I don't know. It just seems like they affiliate with
17 unsavory people.

18 Q. And if they had a business relationship with Enron,
19 you believe that indicates they were engaged in extralegal or
20 illegal activity?

21 A. Well, no. The fact that they were sending spam from
22 or sending spam on behalf of Enron from the servers, from their
23 servers.

24 It's all over the Internet. You can probably Google
25 that information.