Exhibit F

Case 3:23-cv-03417-VC   Document 437-6   Filed 02/14/25   Page 2 of 16

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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RICHARD KADREY, ET AL.,   )

    INDIVIDUAL AND REPRESENTATIVE   )

                        PLAINTIFFS,) LEAD CASE NO.

            v.   ) 3:23-cv-03417-VC

META PLATFORMS, INC.,   )

                        DEFENDANT.)

_____)

 * * * H I G H L Y   C O N F I D E N T I A L   * * *

* * * A T T O R N E Y S '   E Y E S   O N L Y * * *

VIDEO-RECORDED 30(B)(6) DEPOSITION OF

MICHAEL CLARK

VOLUME III

WEDNESDAY, NOVEMBER 20, 2024

SAN FRANCISCO, CALIFORNIA

9:38 A.M. PST

REPORTED BY AUDRA E. CRAMER, CSR NO. 9901

_____

DIGITAL EVIDENCE GROUP

1730 M Street, NW, Suite 812

Washington, D.C. 20036

(202) 232-0646

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 1      A.   Good morning.

 2      Q.   We meet again.

 3           On this third day of 30(b)(6)

 4  testimony, your counsel gave me this binder.

 5  I'd like to enter this binder in as an exhibit.

 6                (Whereupon, Exhibit 619 was

 7           marked for identification.)

 8  BY MS. POUEYMIROU:

 9      Q.   And what is this binder, Mr. Clark?

10      A.   This binder is some of the information

11  that I had used in preparation; a list of

12  additional folks that I had spoken with, the

13  same list with people added; a few of the

14  Lamas -- so L-a-m-a -- that we had discussed;

15  and some of the other additional information

16  that we said we would follow up with today.

17      Q.   Great.

18           And who are the new people that you

19  spoke with at Meta to prepare for today?

20      A.   Let me see if the other list is here so

21  I can give you the difference.

22           Ahmad Al-Dahle, A-h-m-a-d,
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 1    A-l-dash-D-a-h-l-e.

 2            Sean -- oh, sorry.  Dustin Holland,

 3    D-u-s-t-i-n, H-o-l-l-a-n-d.

 4            Melanie Kambadur, M-e-l-a-n-i-e,

 5    K-a-m-b-a-d-u-r.

 6            Joelle Pineau, J-o-e-l-l-e,

 7    P-i-n-e-a-u.

 8            Hugo Touvron, H-u-g-o, T-o-u-v-r-o-n.

 9            And then I had also spoken to Sean

10    Bell, S-e-a-n, B-e-l-l.

11            And then Kenneth, who -- these are not

12    on the list, but Kenneth's last name I always

13    forget.

14            MS. HARTNETT:  Heafield.

15            THE WITNESS:  H-e-a-f-f-i-e-l-d [sic].

16            MS. HARTNETT:  And Shiyang.

17            THE WITNESS:  And Shiyang,

18    S-h-i-y-a-n-g.

19            Shiyang's last name is Chen; right?

20            MS. HARTNETT:  Correct.

21            THE WITNESS:  C-h-e-n.

22
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 1   BY MS. POUEYMIROU:

 2       Q.    I'm sorry.  The last person you said

 3   was S-h-i- --

 4       A.    -- y-a-n-g.

 5       Q.    Okay.

 6       A.    And Chen, C-h-e-n.

 7       Q.    Okay.  And why did you speak with

 8   Mr. Al-Dahle.

 9       A.    I spoke with him to see if there were

10   any additional conversations that had happened

11   around the use of copyrighted material that were

12   outside the presence of counsel.

13       Q.    And what did he say?

14       A.    He said that there were not.

15       Q.    So to clarify, you're saying that he

16   said there were no additional conversations that

17   happened around the use of copyrighted material

18   outside the presence of counsel?

19       A.    That is correct.

20       Q.    And by "additional conversations," what

21   are you referring to?

22       A.    By "additional conversations," on the
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 1       Q.   This says, "Decided to go with direct

 2   file upload without using torrents for the

 3   following reasons:  Using torrents would entail

 4   seeding the files, sharing the content outside.

 5   This could be legally not okay."

 6            So how did Meta obtain and copy LibGen?

 7            MS. HARTNETT:  Object to the form.

 8            THE WITNESS:  So I spoke with

 9   Bashlykov.  We used libtorrent and the torrent

10   protocol for downloading.  We had tried to

11   download a few different ways.  One of them

12   included doing it via direct downloads where

13   there were individually hosted files in

14   different places and saw many issues with that

15   where files wouldn't exist, it was too slow or

16   would error out.

17            Also tried -- well, actually, the other

18   only other option was downloading via torrent,

19   and --

20   BY MS. POUEYMIROU:

21       Q.   And that's what you did?

22       A.   That's what we did.  And the library
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 1   that we used using, LibGen -- sorry --

 2   libtorrent for downloading LibGen, Bashlykov

 3   modified the config setting so that the smallest

 4   amount of seeding possible could occur.

 5        Q.   What does that mean?

 6        A.   When you use a torrent protocol, part

 7   of the configuration on how torrents work is you

 8   can only download as long as you offer to

 9   participate in the torrent network in some way,

10   and seeding means that you have to open up some

11   amount of sharing of the torrent file while

12   you're downloading.

13        Q.   So why did Meta decide to minimize

14   seeding the files?

15             Is it because it was concerned that

16   that was legally not okay, to quote this

17   document?

18             MS. HARTNETT:  Objection to the form.

19             And to the extent it calls for any

20   attorney-client privilege, please don't reveal

21   that.

22             THE WITNESS:  Yeah, I do not know what
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 1   Nikolay means in here by "legally not okay." I

 2   know that legal did provide advice, which I

 3   can't share. I can share what the setting was.

 4   BY MS. POUEYMIROU:

 5   Q.   Is Bashlykov a lawyer?

 6   A.   No.

 7   Q.   Okay. So you ended up using torrent,

 8   but you minimized seeding the files?

 9   A.   To the lowest possible setting, yes.

10   Q.   Are you familiar with anti-leeching

11   protocol?

12   A.   I've heard the term before.

13   In which context?

14   Q.   In the context of -- with respect to

15   seeding the files.

16   Is there a relationship what Meta was

17   doing by minimizing the seeding of file with

18   leeching?

19   A.   Could you be more specific?

20   Q.   How do you understand anti-leeching?

21   A.   I don't -- I didn't prepare on it

22   today. I would only know from my just own

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 1   personal context that leeching in torrents is

 2   taking more than you give from the torrent

 3   network.  So having more download than you would

 4   allow to upload.

 5        Q.   So by minimizing -- by minimizing

 6   seeding the files, Meta was essentially -- what

 7   does that actually mean with respect to Meta's

 8   participation in sharing the files that it has

 9   downloaded?

10             MS. HARTNETT:  Object to the form.

11             THE WITNESS:  The use of the

12   libtorrent, the configuration that Bashlykov

13   used was to download as much as possible from

14   the torrent network but to let the least amount

15   to be shared back and only for the amount of

16   time the content was being loaded and not before

17   or after.

18   BY MS. POUEYMIROU:

19        Q.   And why did he not want to share back?

20        A.   He was provided guidance by counsel on

21   limiting that.

22        Q.   Okay.
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 1   Can you pull 52.

 2   THE REPORTER: 624.

 3   MS. POUEYMIROU: 624?

 4   Mark that.

 5   (Whereupon, Exhibit 624 was

 6   marked for identification.)

 7   MS. HARTNETT: 624?

 8   MS. POUEYMIROU: Yeah.

 9   MS. HARTNETT: Okay.

10   MS. POUEYMIROU: And before we turn to

11   that, I just had a couple more questions. Just

12   that these two relate to each other, these

13   documents.

14   THE WITNESS: Do we have the metadata

15   for this?

16   MS. POUEYMIROU: Let me see. We

17   should.

18   624A.

19   (Whereupon, Exhibit 624A was

20   marked for identification.)

21   BY MS. POUEYMIROU:

22   Q.   So you said that "The use of

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 1   libtorrent, the configuration that Bashlykov

 2   used was to download as much as possible from

 3   the torrent network but to let the least amount

 4   to be shared back and only for the amount of

 5   time the content was being loaded and not before

 6   or after."

 7           Here he's saying that using torrent

 8   might not be legally okay.

 9           Was there a change in policy around

10   this time about using torrent?

11           MS. HARTNETT:  Objection to the form.

12           THE WITNESS:  There wasn't a specific

13   policy around using torrent that I am aware of.

14   BY MS. POUEYMIROU:

15      Q.   Okay.

16      A.   The guidance was to try and download

17   the file, as I can remember it, which was not

18   feasible.

19      Q.   Okay.

20      A.   And so torrenting was how it was

21   collected.

22      Q.   And you said to set the setting on
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 1   seeding down as low as possible; is that

 2   correct?

 3       A.    That was what Bashlykov had shared he

 4   had done in the configuration setting.

 5       Q.    And what speed is that?

 6       A.    He didn't say.

 7       Q.    Okay.  Does that mean that Meta was

 8   still in a place to distribute the files that it

 9   had downloaded?

10           MS. HARTNETT:  Object to the form.

11           THE WITNESS:  Based on torrenting,

12   while the torrent was running and content was

13   being downloaded, during that period of time,

14   yes, it would allow others to download via

15   whatever that amount of that lowest possible

16   setting was on libtorrent.

17   BY MS. POUEYMIROU:

18       Q.    Okay.  And you said "for the amount of

19   time the content was being loaded."

20           What does it mean to be loaded?

21       A.    Sorry.  To be downloaded.

22       Q.    Okay.
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 1   A.   While content was being downloaded from

 2   torrent network -- that while content was being

 3   loaded from, that is the only time it was

 4   running until the complete file had been

 5   downloaded and the libtorrent process was

 6   terminated.

 7   Q.   Okay. So what you're describing, then,

 8   is essentially a time period where Meta is

 9   downloading all of the files from LibGen through

10   torrent, and once it has downloaded everything,

11   libtorrent ends, and it no longer is sharing the

12   data?

13   A.   That is correct.

14   Q.   Okay. How much data did it share?

15   A.   He did not have any details, so I do

16   not know.

17   Q.   How would we find that out?

18   MS. HARTNETT: I would object to beyond

19   the scope.

20   MR. STEIN: Beyond the scope of --

21   MS. HARTNETT: Of the 30(b)(6). Sorry.

22   I'm not sure how --

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 1            MR. STEIN:  On the shadow libraries?

 2            MS. HARTNETT:  On the sharing of how

 3   much sharing or non-sharing of data was

 4   accomplished by the downloaded method.

 5            MR. STEIN:  Okay.  Well, if the shadow

 6   library was being downloaded and required Meta

 7   to also be uploading the data at the same time

 8   and kind of compound the infringement here, I

 9   think it's very much in the scope.

10            MS. HARTNETT:  I think he's not -- I

11   don't read the topics to include that nor I

12   don't think reasonably put him on notice, but he

13   can answer.

14            I'm not going to try to stop him from

15   answering, I'm just saying that I think that's

16   kind of beyond -- going to the edge of the topic

17   at best.

18   BY MS. POUEYMIROU:

19      Q.   So how would we find out how much data

20   was shared?

21      A.   I do not know.  I don't have those

22   details.
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 1   record just say one thing?

 2           With respect to your questioning about

 3   seeding, kind of without arguing about whether

 4   it's under 1 or 7, Mr. Bashlykov will be the

 5   30(b)(6) witness for Topic 7, and he's prepared

 6   to talk about the seeding in more detail.

 7           This witness has some obvious technical

 8   knowledge, but Mr. Bashlykov will be the person

 9   to provide more information on that for you.

10           MS. POUEYMIROU:  Okay.  Thank you.

11       Q.   So last week we looked at a document

12   where Eleonora Presani says LibGen is an illegal

13   pirating website.

14           Were there other employees at Meta that

15   expressed concern about using LibGen because it

16   was a pirating website?

17           MS. HARTNETT:  Object to the form.

18           THE WITNESS:  I am not aware of others

19   that -- I am not.

20   BY MS. POUEYMIROU:

21       Q.   One of the documents you were prepared

22   with was a New York Times article which
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 1   STATE OF CALIFORNIA          )

 2   COUNTY OF LOS ANGELES        )  SS.

 3           I, AUDRA E. CRAMER, CSR No. 9901, in and for the

 4   State of California, do hereby certify:

 5           That, prior to being examined, the witness named

 6   in the foregoing deposition was by me duly sworn to

 7   testify the truth, the whole truth and nothing but the

 8   truth;

 9           That said deposition was taken down by me in

10   shorthand at the time and place therein named, and

11   thereafter reduced to typewriting under my direction,

12   and the same is a true, correct and complete transcript

13   of said proceedings;

14           I further certify that I am not interested in the

15   event of the action.

16           Witness my hand this 22 day of November,

17   2024.

18

19

20                            _____
                              Certified Shorthand
21                            Reporter for the
                              State of California
22
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