EXHIBIT EE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

TV GUIDE ONLINE, INC, and TV GUIDE MEDIA SERVICES, LLC, Plaintiffs, vs. TRIBUNE MEDIA SERVICES, INC., Defendant.	C.A. No. 05-CV-725-KAJ

VIDEOTAPED DEPOSITION OF MARK KAPLINSKY

Taken on Thursday, October 5, 2006

At 1:36 p.m.

At Courtyard Marriott
3275 Paradise Road

Las Vegas, Nevada

Reported by: Maria C. Wooley, CCR NO. 488

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Also Present:

KENNY LAURSEN, VIDEOGRAPHER

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MARK KAPLINSKY

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Las Vegas, Nevada, Thursday, October 5, 2006

THE VIDEOGRAPHER: Today is Thursday, October 5, 2006. The time is approximately 1336 hours as indicated on the video screen. The location is Courtyard Marriott Hotel, 3275 Paradise Road, Las Vegas, Nevada.

My name is Kenneth Laurson, certified legal video specialist, Member No. 00037, American Guild of Court videographers from the firm Legalink of Chicago, located at 230 West Monroe Street, Suite 1500, Chicago, Illinois 60606. The court reporter is Maria Wooley from the firm Bonanza Reporting of Las Vegas.

This is Case No. 05-CV-725-KAJ in U.S. District Court, District of Delaware. The case is entitled TV Guide Online, Inc. and TV Guide Online, LLC, versus Tribune Media Services, Inc.

The deponent is Mark Kaplinsky. The videographed deposition is requested by the defense. Counsel and all present will please identify themselves for the record and then the

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court reporter will swear in the deponent.

MS. DeBRUIN: Linda DeBruin from Kirkland and Ellis, on behalf of Tribune Media Services.

MS. FUKUDA: June Fukuda from Ropes & Gray, on behalf of TV Guide, the plaintiffs.

Before we get started, I wanted to put on the record that I was just handed a number of documents by Ms. DeBruin which she represented were documents that Mr. Kaplinsky had provided to her today during a morning meeting between Ms. DeBruin and Mr. Kaplinsky.

I have had about 20 minutes or so to flip through them; however, I wasn't able to read every single word and haven't been able to analyze it in detail.

So TV Guide is going to reserve its right to call the witness back and to resume its cross-examination to the extent that it's going to relate to these new documents and any new information that may be uncovered through them.

MS. DeBRUIN: And I'd just like to note for the record that there is a very limited number of documents, approximately eight to ten, and that we are amenable to counsel taking

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whatever time she needs to review them and have given you some time now and are happy to give you more time if you'd like to review them because I do not expect my questioning to take very long. We can fight about this another day, though, and let's get on with the deposition.

Thereupon--

MARK KAPLINSKY,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

BY MS. DeBRUIN:

Q. Mr. Kaplinsky, would you please introduce yourself.

A. Okay. My name is Mark Kaplinsky. And do you want my address?

Q. Where do you live?

A. Right. 10660 Habersham Court, Las Vegas, Nevada.

Q. What do you do for a living?

A. We -- I would call myself a business owner/inventor and computer programmer, and I've been that since about 1962 when I was 12 years

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old.

Q. What schooling do you have to prepare you for the type of work that you do?

A. None. I'm completely self-trained. I was taught by my father in 1962 when I was 12, and my father was one of the first in the business. And back in those days the industry was first becoming transistorized, it's so far back, and we used paper tape and punch cards. So I've been in a very, very long time and everything I've learned I've learned on my own.

Q. Are you familiar with a company called Metasystems Concept, Inc.?

A. Yes. Metasystems Concept was our first company between myself and Marge, my wife, who is sitting here to my right, and it was incorporated I believe in 1977, and I would defer to the record if that's not correct.

And that was primarily to do financial software for banks, which my wife and I had met at Chemical Bank that used to exist in those days. And she was my boss and we met and we got together, and then we quit our jobs and formed Metasystems Concept, Incorporated.

Q. You and your wife were both partners

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in Metasystems?
A. Yes.
Q. What type of work did Metasystems do?
A. Metasystems did personal trust systems and other financial systems for banking. Our clients were the major banks, Citibank in those days before all the mergers, Chase, Manufacturers Hanover, Chemical Bank, and many other banks.
And we ran Metasystems Concept up until we folded -- we didn't really fold. As a matter of fact, it's still active today as a New York State corporation, but we ceased doing business when we formed Lookahead Communications to do the TV listings package.
(Defendant's 16 was marked for identification.)
BY MS. DeBRUIN:
Q. I'm going to hand you a photograph that I've marked as Exhibit No. 16. Do you recognize Exhibit 16?
A. Yes.
This is a photograph of one of our shows for the American Bankers Association,

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which shows the usage and I believe to be, if not the very first, certainly one of the very earliest based on my conversations with people who have been given credit with having invented the technology, namely, Ward Christensen of IBM, the bulletin board and the distributed processing system consisting of network PCs.
In this particular case, we used seven IBM PCs first generation -- no. I'd correct it. I have to say second generation, the ones with the hard disk, the first generation with the hard disk, and a device of our own design to form the bulletin board and also to do distributed processing. And it was very revolutionary at the time and it still forms the basis of what's called network service today.
Q. Where was Exhibit 16 taken? Where was the photo taken?
A. We did these shows all over the country, so it may have been New Orleans or Atlanta. Can I ask my wife? Or --
Q. It doesn't really --
A. Okay.
Q. It was taken at a trade show?

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A. It was taken at a trade show in one of the major cities such as New Orleans or Atlanta or San Diego, but we did many of these shows, so I can't remember exactly what city this was in.
Q. Now, you mentioned another company, Lookahead Communications. What is Lookahead Communications?
A. Metasystems Concept had a -- let's say a business purpose of doing financial software. And at the time Metasystems Concept was working, basically my wife, and potentially at that time other subcontractors, I went and formed Lookahead Communications for the purpose of doing consumer product because we wanted to make use of this technology for consumers and we saw many applications for that.
Q. When you say "this technology," what are you talking about?
A. There is -- incorporated in this picture and in this technology is the bulletin board, which we invented in the early '80s prior to, at least in my understanding, when Ward Christensen claims to have invented the bulletin board, distributed processing, so that processes

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that work independently on these different machines are coordinated by a central machine, and the seven machines link up to be one supermachine, power load processing is another term for this, the screen generators, the database handlers and what we commonly call infrastructure software today.
I mean today company's like D base and Microsoft and Oracle put out packages, but in those days there were no packages such as this and we wrote our own, and we invented many of the processes.
Q. What made you think that your bulletin board system would be used for consumer applications?
A. Well, when we marketed it to the banks, we found that the banks were very reticent to apply such advanced technology at the time to secure transactions, many times handling a trillion dollars a day.
Financial transfer -- or electronic funds transfer applications we did, and we did several and we found that senior management was very reticent to entrust huge sums of money, and literally, I mean one transaction could be

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$100 million.
And so we came to the decision that consumer products would be better suited for this advanced technology if the banking executives were not prepared to go forward with this.
Eventually, they caught up and now they use distributed service systems all the time. But back in the early '80s, it was a concept that was not proven to be safe.
Q. When did you start Lookahead Communications?
A. Lookahead was started -- oh, boy.
Q. Is there anything that would refresh your recollection?
A. Yeah. I do have the date. It was '89. Do you have --
Q. Is there something that would refresh your recollection?
A. Right. I prepared a little sheet and I don't know if I put on that date, but it was --
Q. Just for the record I'm going to mark your sheet as Exhibit No. 17.
///

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(Defendant's 17 was marked for identification.)
BY MS. DeBRUIN:
Q. Is Exhibit --
A. Unfortunately, I didn't put down when Lookahead was started, but it was -- it was sometime -- I mean it's on the record in New York State, so it's sometime between June and December of '89.
Would you say about September '89?
MS. MARGARET KAPLINSKY: Yes.
THE WITNESS: September '89 is the best guess, but somewhere between June and the -- the fall of '89 is my best recollection.
BY MS. DeBRUIN:
Q. Now, you said you were interested in working on consumer applications with Lookahead Communications.
Did you have specific consumer applications in mind?
A. At the beginning in June, no. And we had never done a consumer application and, you know, we were quite excited at the possibility. And we tried coming up with a number of different applications and finally

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because of an incident that happened with my wife, we decided that a TV listings database package would be a good candidate.
Q. Would you tell us about the incident that happened with your wife.
A. Okay. My wife is an Agatha Christie fan and she loves watching the mystery series on public broadcasting.
In New York we had between four and five different public broadcasting stations, and within each one of those public broadcasting stations they would play the different mystery series from the BBC and most of these series were multipart, sometimes as many as 13 parts, and the TV listings that we got which was either TV Guide or the newspapers made no mention of which episode was being shown.
So my wife had no idea as to whether a particular episode would be the one she wanted to see, and she complained bitterly to me as wasn't there some way that we can tell how -- which episode of which series is going to be on and what time.
And it kind of hit us like a bolt of lightening, is that we needed and the other

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people like us, we needed to be able to do further research in like a database application. Since we were both used databases and used to computer applications, we wanted to see TV listings on the computer.
Q. Would you step through for us -- about when did you have the idea of doing TV listings on the computer?
A. Sometime in September, October, thereabouts.
Q. What was the first thing that you did in connection -- in following up on that idea?
A. We asked everybody that we could, all of our friends, as to what they thought of the idea and everybody said that they thought it was a terrible idea.
Q. So what did you do?
A. We did it. We did it anyway. We had -- we figured that there were other people like ourselves out there but we just didn't know them.
Q. And would you describe for us -- did you ultimately develop a product based on your idea?

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A. Yes.
Q. What was the product?
A. The product was initially called Telewatch, and we did a copywrite search on the name -- or trademark search, sorry, on the name Telewatch. We found there were too many marks in use or too close to that name, so we finally named it the Personal Entertainment Guide, which is described as a program for displaying television listings on a computer using a downloaded database. And all of the technology that we use was the technology that we developed for the banks.
Q. And that was the bulletin board system that you described earlier?
A. Bulletin board, database, screen handling, transaction handling. I mean there is a number of different subpackages within -- it was -- now they would call it a rapid -- they would call it a Rapid Application Development, I think is the term, RAD, which is all of the infrastructure, and then you just put the finishing touches on it, and the finishing touches was the application to do the TV listings.

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(Defendant's 18 was marked for identification.)
BY MS. DeBRUIN:
Q. I'm handing you a document that I've marked as Exhibit No. 18. It's an October 3rd, 1990 letter to you from a Miss Madoff.
A. Emily Madoff.
Q. Madoff, excuse me.
Do you recognize Exhibit --
MS. FUKUDA: Give me just a second. Let me pull mine out.
MS. DeBRUIN: Sure.
MS. FUKUDA: October 3rd?
MS. DeBRUIN: October 3rd.
BY MS. DeBRUIN:
Q. Do you recognize exhibit 18?
A. Yes. This is when we tried to get a copyright or -- let's see -- copyright. Now --
Q. Is Exhibit 18 a copy of a letter from your files?
A. Yes. This is a copy of a letter from our files.
Q. Is Exhibit 18 a letter that you created in the ordinary course of the business of Lookahead Communications?

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A. Yes, it is.
Q. Was Exhibit 18 maintained in the ordinary course of your business?
A. Yes, it was.
Q. What is Exhibit 18?
A. It's an application for -- well, it's a letter from the lawyer Emily Madoff, that she prepared an application for copyrighting the Personal Entertainment Guide code.
Now, we couldn't -- or we didn't choose to patent the code. What we chose to do is copyright the code.
Q. Why is that?
A. Well, mostly because of the finances involved, is that it was too costly for us as a small company to patent the code. So we were told that an alternative was to copyright the code, which is not as -- it's not as powerful or is -- I'm not sure what the best word is, but it's not as good a way of protecting your invention.
Copywriting the code, we took the first ten pages and the last ten pages of the source code of the application, that is, the computer program, the first ten pages and the

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last ten pages of the computer program, and we submitted this to the copyright office as per the instructions of this lawyer.
Q. I'm handing you a -- if I can find a place to put a sticker on it -- I'm handing you another document that I have marked as Exhibit 19.
(Defendant's 19 was marked for identification.)
BY MS. DeBRUIN:
Q. Do you recognize Exhibit 19?
A. Yes.
Q. What is Exhibit 19?
A. This is a composite of screen shots from the first version -- no, strike that. That's not the first version.
This would be the final version of our first product which is a D-O-S product.
Q. D-O-S is sometimes referred to as DOS?
A. DOS, right.
And it's -- I mean if you look at it, you can see. It's not a Windows based product. It's a fixed screen size of 25 by 80 and it's a lot -- I mean it's considered kind of

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clunky today, but it's older technology. And Microsoft put out a DOS version of their operating system before they put out the Windows version. And this was written in the DOS system and this is our first version. I think it's labeled V 1.0 and -- but it's not the first version of the system as we did it.

The very, very first version was tested out by some of our friends and we made many changes to come to this version. So what this is is the -- let's say the fourth or the fifth revision of our first version of our system, if that makes any sense.

Q. Did you create the -- did you make the screen shots that are shown on Exhibit 19?

A. Yes.

I believe that this was done by physically taking a camera and shooting the screen and then putting those together and color copying them. Because there is two, four, six, eight different screens in this one page.

Q. Did you create the fixtures of those screens as part of your work for Lookahead?

A. Yes.

Q. Did you maintain these copies of the

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screens as part of your work for Lookahead?

A. Yes. And this I believe was because TV Data wanted a copy of our work to see what we were doing with their data before they would approve the usage of their data in our package.

Q. Now, you mention there is a date shown on this screen, 11/2/1990?

A. Yes.

Q. Do you see that?

A. That was the date that the photographs were taken of the screen, and that was the time, 4:11 in the afternoon -- actually, no. 4:11 in the morning I believe.

Q. You were up early.

A. Yeah.

Q. What was the status of your Personal Entertainment Guide system at the time that these screen shots shown in Exhibit 19 were taken?

MS. FUKUDA: Objection to form.

BY MS. DeBRUIN:

Q. You may go ahead and answer.

A. You're asking me what was the status of this system at this time?

Q. Yes.

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A. This version we considered and in fact was the last and final version of the system. It had been through several revisions prior to this, but on 11/2/90 and at the time we made it -- I mean actually this 11/2/90 was -- the package had been -- this particular version of the package, the DOS version of the package had been already developed.

Q. Now, this is before --

A. I'm sorry.

Q. Strike that.

Now, were you doing any testing of this version of the Personal Entertainment Guide? By "this version," I mean the version as it existed on 11/2/1990.

A. Yes. We tested this version.

Q. Would you describe for us the testing that you did.

A. We picked out some unfortunate friends who we twisted their arms to try -- it was actually co-workers, friends, anybody we could get really, but a few of them, four or five, and we asked them to run through the system with test data. That is, test data is data that we generated ourselves from the

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newspaper.

Q. How did you go about doing that?

A. We actually had somebody come in from -- in those days it was called Kelly Girls, the temp firm, and we gave them a copy of the New York times or whatever newspaper we used and they key-punched in the data, and it took forever. It took an eternity. It was a huge effort.

Q. Did you ultimately go to some other source to get your data?

A. Yes.

MS. FUKUDA: Objection to form.

BY MS. DeBRUIN:

Q. You may go ahead and answer.

A. Okay. I mean is there a better form? I'm not sure what that means.

BY MS. DeBRUIN:

Q. She's just making objections to my questions. She needs to do that to preserve her objections for later.

A. Okay.

We ultimately found TV Data and originally we went -- originally we thought we -- until we realized what a huge job it was

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to produce TV listings, we did it ourselves and we figured -- and I actually went to movie production houses, agents, HBO, Cinemax, CBS television, all told us they would be more than happy to give us all the information we wanted as to their upcoming schedules.

And then when we realized the enormity of the task, we thought that we -- we were looking for somebody else. We had never heard of TV Data or TMS. And we thought that the people who did this were the people who produced the TV Shoppers, which are the little magazines you pick up in supermarkets. And we went to them and we finally traced it back to TV Data and ultimately we contracted with TV Data to produce the raw data.

But we originally started out -- and I guess the story is is that we live within six or eight blocks of CBS, ABC, NBC, HBO, right there in the middle of Manhattan, so we thought we'd just have to go down the street to get all this data. We didn't realize it took 200 people to put it together.

(Defendant's 20 was marked for identification.)

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BY MS. DeBRUIN:

Q. I'm handing you a document that I have marked as Exhibit 20. For the record, it's a letter to Alan Straub from you dated December 10, 1990.

Do you recognize Exhibit 20?

A. Yes.

Q. Is Exhibit 20 a document from your files?

A. Yes.

Q. Did you create Exhibit 20 in the ordinary course of your business?

A. Yes.

Q. Did you maintain Exhibit 20 in the ordinary course of your business?

A. Yes.

Q. What was the purpose of your writing the letter that we've marked as Exhibit 20?

A. In this letter we were telling TV Data that we were happy with the form of the database that they had transmitted to us and that we were happy and ready to sign the contract. And in fact in this letter we sent them a check for I guess the first installment.

And we had been working with them

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for sometime, I don't know how many months it was, but it was awhile before we got it to the point where we liked it.

Q. Who did you work with at TV Data?

A. Initially Alan Straub and then later on Dick Guay, that's G-u-a-y, and then later on the president.

Well, we ended up working with a lot of people there, I mean the presidents, Charlie Stackhouse, United Media, their parent organization, so Brad -- do you want --

Q. That's fine. You've answered it.

A. Okay.

(Defendant's 21 was marked for identification.)

BY MS. DeBRUIN:

Q. I'm handing you a document I've marked as Exhibit 21. For the record, it bears production numbers TMS 8737 through 8746.

Do you recognize Exhibit 21?

A. Yes.

Q. What is it?

A. It's a letter -- it's a letter from Dick Guay who was at that time the director of special projects. It's a letter from me to Dick

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Guay, who was the director of special projects, which answered on their part as to what kind of an application the Personal Entertainment Guide package really was.

Because when we first contracted it, Alan Straub basically licensed us as a TV Shopper. And even though I had explained to them many, many times what it was, the true impact of what our package was hadn't really sunk in. They had never seen a package like that before.

And I got a call one day from Dick Guay and he said, you know, that's not exactly what we thought -- what you're doing is not exactly a TV listing, a TV Shopper, an ordinary printed magazine. You're doing something very new to us and we need more information on it.

So in order to keep on going, they required me to answer any number of questions which this letter of -- well, I don't know, about 10, 15 pages, thereabouts, attempts to answer.

Q. When you say "in order to keep on going," you mean in order to keep on obtaining listings from TV Data?

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A. That's correct.
They were worried about whether their data was protected, whether people could use their data to steal it, or whether people could use our package to steal their data, and there was certainly legitimate concerns.
And we had thought a lot about it and taken many, many steps within our package, such as encryption, to make sure that the data could not be stolen wholesale.
Q. When did you first start getting data from TV Data?
A. Now, this is going back 16 years, and the only thing I can do is say that the date of this letter is December 10th, 1990, the first one from Alan Straub. And we had received at least a month or two of data before that to test with.
So I can't tell you the first day that we contacted TV Data, but it had to have been prior to December 10th, 1990 and allow enough time for us to have tested with and had several go-arounds with the database because there was a lot in the database that needed fixing at the time.

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Q. Now, what did you -- when you say test with the data, what do you mean by that?
A. TV Data had a bulletin board and we would download the data from TV Data and the data would be in a certain format and it would contain certain things.
For example, it would contain like the year of the movie, it would contain the actors in the movie, and stupid little things, for example, whether a comma was used to say that something, some piece of the data was missing or what type of ending punctuation on a line or whether or not movie air was just like '80 or -- 1980 or the format.
And we had particularly a lot of trouble with the categories, comedy, series, many, many, many inconsistencies in the format for the categories, comedy, horror, science fiction, series, whatever.
And we spent a long time having to straighten that out because they had never -- when they coded, they coded for people who are going to just drop it wholesale into a typesetting machine for a printing press, and here our computer system had to make sense of it.
If you were going to be able to pull out all the science fiction, you had to be able to have a code that means science fiction. Sometimes it was SCI, sometimes it was SCI-FI, sometimes it was SF.
And then we had to make sure it was consistent, so we went through a lot of go-arounds to get all that compatible with our package, which is why we write: We've examined the latest transmission from TV Data and found them to be most satisfactory.
Q. So that means you were working out some of the problems that you had with the data at that time?
A. That's correct, yes.
Q. Now, at the time that you were -- once you started to get the data from TV Data in the late 1990 -- was that in the late 1990, early 1991 time frame?
A. That's correct.
Q. Once you started to get the data from TV Data, were you still testing your Personal Entertainment Guide?
A. Yes.

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Q. Did you have other people than people within Lookahead Communications testing it?
A. Well, the people weren't within Lookahead Communications. They were outside of Lookahead Communications. They were essentially volunteers.
But we wanted people out -- well, Lookahead Communications only consisted of myself and Marge. So anybody who tested it was outside of Lookahead Communications. They weren't paid. They did it as a favor.
Q. Did you have any confidentiality agreements with them?
A. No, we didn't.
Q. What type of things could the Personal Entertainment Guide do at that time? And I'm talking by "that time" the late 1990, early 1991 time frame.
A. That would be --
MS. FUKUDA: Objection to form.
BY MS. DeBRUIN:
Q. You can ahead and answer.
A. That would be the DOS version, and I'm going to just -- I'm going to take the time

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slice 11/02/90. You could look at program listings by time, by time slot, which would now be known as a grid, and by type of show, science fiction, horror, comedy.

You could set up clippings folders so that you could specify within the clippings folders that you wanted a particular actor, like Kirk Douglas, and the system would generate a listing every cycle, which our cycles were weekly. Within these clippings folders then you could have up to 255 clippings folders.

Then we had a transmission schedule where you would download the data and it had to be downloaded -- we set up a system so that you could specify a unattended download. That means you could do it in the middle of the night while you went to sleep, and that was a big deal because people used to use their phone lines and they needed to use the phone lines during the day, so overnight download was the way that worked.

And we also had alphabetic listings so you could see different kinds of shows, and we segregated that by movie, sports, and other, also known as program. And one of the most

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convenient listings was the other times listing. So that, for example, if you're looking at a show, then -- or let's say you saw a movie on Cinemax, then it would tell you all other times over the next three weeks, and our system went on three weeks. It would tell you over the next three weeks when that movie would be playing again.

And those are the functions it would perform. That's that particular generation. Later on we added more.

Q. Were you familiar with any other systems at this time, late 1990, early 1991, that could provide the capabilities that your Personal Entertainment Guide provided?

A. Initially -- to the best of our knowledge, initially there were electronic program guides that is on the screen, such as OnStar --

Q. You mean on the television screen?

A. On the television screen, but nothing on the computer.

And since we ultimately ended up either talking to or having e-mail interactions or having some relationship with everybody we

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were aware of, and there was at least five or six or seven different companies, everybody who we knew was in the business ultimately had either talked to us about it first or had been one of our subscribers, for example, or had e-mailed or some sort of electronic communication.

In other words, there was nobody who we found that had done this at that time before us. And that was confirmed to the best of my knowledge by Dick Guay who -- and also Larry Shulman there at TV Data where they said they had never heard or seen anything like this before, and if anybody would know, they would know because they dealt with everybody.

Q. So if someone was using your system, they would actually see the data on their PC?

A. Yes.

Q. So it wouldn't show up on the television screen --

A. No.

Q. -- is that right?

A. Unless the PC was plugged into the television screen. And, actually, some people did do that, but mostly it was designed for the

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PC.

Q. What kind of PCs were used in the 1990, 1991 time frame?

A. It was --

MS. FUKUDA: Objection to form.

THE WITNESS: The IBM PC with 10 megabytes of disk, and it had to have at least a 1200 board modem, minimum configuration, else otherwise.

(Defendant's 22 was marked for identification.)

BY MS. DeBRUIN:

Q. I'm handing you a document that I've marked as Exhibit 22.

Please go ahead and have some water, if you like.

A. Yeah, okay.

Q. For the record, Exhibit 22 bears production numbers TMS 1274 through TMS 1280.

Do you recognize Exhibit 22?

A. I --

Q. And take a moment and look through it.

A. Right. I mean I recognize it as something that I -- it was the contract between

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us and TV Data, it's dated February 4, 1991, but I mean I don't remember it, you know, from 16 or 15 years ago per se. This isn't one of the documents that we gave you. This must have come from your files.

Q. But you recognize Exhibit 22 as an agreement -- as a cover letter and an agreement between you and TV Data; is that right?

A. Yes.

I mean we certainly did have -- this does look like our contract and this is -- this must be the finalized contract between us and TV Data when everybody -- when TV Data was finally satisfied that we had protected their copyrights sufficiently.

See, there was a lot of discussion back and forth as to whether their copyrights were properly protected, so this was that final negotiation.

Q. How did you go about marketing your Personal Entertainment Guide?

A. Originally, as I said, we asked for volunteers and we corralled who we could.

And then we went to United Media, and United Media is the parent of TV Data, and

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United media offered to assist us with the marketing and they gave us access to a consultant, I believe the name was School Listing Data Services or something roughly equivalent to that.

(Defendant's 23 was marked for identification.)

BY MS. DeBRUIN:

Q. Let me hand you a document that I've marked as Exhibit No. 23. For the record, Exhibit No. 23 bears production numbers TMS 8767 through 8783.

Do you recognize Exhibit 23?

A. Yes. This is a copy of the -- today we would call it Power Point notes, but the -- the bullets are a presentation that I made to United media in April 19, 1991.

Q. Now, who is United Media?

A. United Media is the parent company of TV Data. TV Data is a company who produces TV listings for newspapers and was subsequently purchased by TMS, Tribune Media Services.

United media is a large syndication company that has many cartoons like Peanuts and I Think Dilbert, things like that, but also

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owned the subsidiary called TV Data.

And United Media, the parent, took an interest in us because we were revolutionary at the time and asked for a presentation on everywhere we saw this package going. So we gave them a rather conclusive and detailed presentation on how this product would work and how this product would be expanded and future uses of this product and --

Q. And by "this product," you're referring to your Personal --

A. Personal Entertainment Guide, that's correct.

Q. Okay.

A. And that's where they decided to help us market and give us expert advice in marketing, which they did.

Q. How did they help you in marketing?

A. They set up meetings with us with their marketing people, and they gave us access to a consultant, and they -- basically, they gave us the instructions on how one would market a retail package.

Q. What approach -- working along with United Media, how did you go ahead and how did

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you go about marketing the Personal Entertainment Guide?

A. We came up with a mailer, a direct marketing mailer. It was a four side, blue and black, and it advertised the Personal Entertainment Guide.

And let me just say parenthetically that the problem we had is that nobody had ever heard of anything like this, so we had the problem of trying to introduce the package in terms of form, function, and also try to sell it at the same time.

And one of the problems we had was we had to try to explain to people what it was because it was unknown at the time. And as I said, everybody I talked to thought it was a waste of time.

And we took a mailing list off of PC Magazine and we took 10,000 names cross-selected by Zip Code and Area Code for Manhattan Cable and Paragon Cable TV areas, which was the island of Manhattan, and comprised two different cable systems and we sent out 10,000 fliers.

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(Defendant's 24 was marked for identification.)
BY MS. DeBRUIN:
Q. I'm going to hand you a document I've marked as Exhibit No. 24. Do you recognize Exhibit No. 24?
A. Yes. This is the -- this is a copy of the flier, the four-page flier that we sent out to the 10,000 people.
Q. Do you have -- can you date for me approximately when you would have sent the flier out to the people in trying to market --
A. Yes. I can date it very accurately because there is an expiration date on the package itself.
It says make sure to mail this back by 10/31/91, so that we had to have it in the mail earlier than 9/31/91, and in fact it was the probably second week in September of that year, and it kind of sticks in my memory base we had 10,000 mailers in my living room and it took up the entire living room.
And we had to take it to the post office and the post office rejected 10,000 mailers. We had to bring back 10,000 mailers to

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the living room and resort them by Zip Code, within Zip Code, subZip Code, and we were at it and we almost messed up our date, but we finally got it out so that everybody would have -- it says free for four weeks, and everybody had it so that they had sufficient amount of time to make a decision on the package, so one month prior to 10/31/91 it went out.
Let me put it this way. Two weeks, two weeks -- six weeks prior to 10/31/91 it went out. That's when it had to go out, otherwise we'd have to reprint them.
Q. Is Exhibit No. 24 a copy of a document from your file?
A. Yes.
Q. From your files?
A. Yes.
Q. That was -- Exhibit 24 is a document that you created and maintained in the ordinary course of your work for Lookahead?
A. Yes.
Q. The particular copy that we've marked as Exhibit 24 appears to be one that was actually sent out to a perspective client; is that right?

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MS. FUKUDA: Objection to form.
THE WITNESS: I believe what -- this is one before the rejects because we only targeted Manhattan, New York, and this is Sunnyvale, California, and so this was a bad label. So this is one that got rejected by the post office, so that's how we came to have it, this particular one.
(Defendant's 25 was marked for identification.)
BY MS. DeBRUIN:
Q. I'm handing you a document I've marked as Exhibit No. 25. For the record, it bears production numbers TMS 8881 through 8883.
Does Exhibit 24 -- 25, I'm sorry, include a copy of the flier that we were just looking at and that we had marked as Exhibit 24?
A. Yes, it's the same one.
Q. What is Exhibit 25?
A. This is me having sent a copy of this to Dick Guay and Larry Shulman of TV Data.
Q. Why did you do that?
A. I was -- well, part of our agreement is that -- even beyond that, part of our relationship was that we -- I copied them on all

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public correspondence, and we kept them apprised on a running basis of everything we were doing. I mean it was an informal partnership.
(Defendant's 26 was marked for identification.)
BY MS. DeBRUIN:
Q. I'm handing you a copy of a document that I've marked as Exhibit 26.
Do you recognize Exhibit No. 26? And for the record, I should state it bears production numbers TMS 1105 through TMS 1186.
A. This is a Personal Entertainment Guide manual. It's a user manual for the package.
Q. Did you and your wife write this manual?
A. Yes, we did.
Q. Did you write this manual as part of your work for Lookahead Communications?
A. Yes, we did.
Q. What was your purpose in writing the manual that we've marked as Exhibit 26?
A. So that the people who were going to use our system would have a manual on how it works.

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Q. What did you do with the manual that we've marked as Exhibit 26?
A. We sent it out with the disk to the customers.
Q. Can you -- strike that.
When did you send out Exhibit 26 to customers?
A. It was on or about the date of the expiration here in, let's say, November 19 -- I just want to get this straight -- November 1991.
Q. What are you looking at to tell you when you would have sent the user's guide?
A. The expiration date on the flier. Because as soon as it expired, and people were sending it back, we started -- as a matter of fact, it would probably have been earlier than that. We sent out the packages as soon as people sent in the applications.
So it would have been all through the month of October and -- I just want to keep double-checking this date here -- the month of October, November and thereafter.
I mean whenever applications came in, people would send them in, we'd send out these manuals, a disk, fliers, and then we'd see

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people start logging on and using the package on our bulletin board.
Q. And when you said October, November, that was all in the 1991 time frame?
A. Yes, 1991.
Q. Why don't we take a short break so the videographer can change the tape.
A. Okay.
THE VIDEOGRAPHER: This is the end of tape and disk No. 1 of the Videotaped Deposition of Mark Kaplinsky. The time as indicated on the video screen is approximately 1427 hours.
(Recess taken.)
THE VIDEOGRAPHER: This is the beginning of tape and disk No. 2 in the Videotaped Deposition of Mark Kaplinsky. The time as indicated on the video screen is approximately 1436 hours.
BY MS. DeBRUIN:
Q. Mr. Kaplinsky, does Exhibit 26 accurately describe the Personal Entertainment Guide that you marketed in 1991?
A. Yes, it does.
Q. Could you step through for us how

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the Personal Entertainment Guide that you marketed in 1991 operated?
A. Do you want me to go from the --
Q. How the user would install --
A. Assuming it's all set up.
Q. Right.
A. Okay. I believe, and I'm not 100 percent sure of this, but I believe that we put the first two weeks of listings onto each disk. Now --
Q. And when you refer to the disk, the disk is what the user would initially receive?
A. Physical 3-1/2 or 5-1/4 inch disk that the user would receive in the mail.
Q. What was on that disk?
A. It was the operating system, but it was also two weeks of data, the first two weeks of data, because we wanted the user to have an instant start-up experience. We didn't want them downloading up front, so it was very, very time sensitive.
We would send out the data and -- I'm sorry. We would get the data, we'd put the data onto the disk, and the disk would go out to the customer. The customer would load that on

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their computer and they would instantly have TV listings.
Q. That was the very first time they used the system?
A. The very first time they used it.
And the reason for that is because we wanted -- I mean we were selling a very advanced concept, a new concept, and we didn't want them to have to go through the difficulty of having to download the listings and get established with a modem.
And in those days the modems were very flaky and it was very difficult to get the modems to synch, synchronize with the bulletin board, and we wanted to spare -- we wanted to get them hooked on the package before they potentially found out that they had problems with the modem.
So when we sent out the package -- and the reason I remember this, is that it was a week or two before we would see any evidence that somebody was using this system on our bulletin board, the lights wouldn't flash, the phone calls wouldn't come in because we had given them first three weeks of data on the

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disk, and that's also why I can pinpoint the date that these disks went out to around the date of the mailer because the listings had to be current. Now, we had them --

Q. Now, what's the process then once those weeks have passed, the data that they have on the disk --

A. Well, can I finish answering?

Q. Okay. Sure, go ahead. I'm sorry.

A. When they got the disk in the mail, they would put the disk -- and in those days there were no formal setup mechanisms like there are today with Windows.

We would have them put the disk into the computer and copy it onto the hard drive, and then we would have them type in P-E-G, PEG, for Personal Entertainment Guide and instantly their TV listings would appear with the opening screen and it would say Personal Entertainment Guide version 1.0, at least in the -- let's say the final version of the DOS system.

At the end of the first week or potentially at the end of the second week or potentially at the end of the third week, they would push the button -- I'm sorry -- bring up

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option No. 6 here for Schedule Transmission.

Q. And you're looking referring, to what exhibit?

A. I'm referring to the screen shots that we had discussed before.

And the system would automatically dial the bulletin board, automatically request the right database, and automatically download all of the listings for either the first, second or, let's say, for either one, two or three weeks as were necessary, and it was in a three-week rolling cycle, so the first disk we gave them three weeks.

As the first week expired, then we'd give them one week. But if they allowed two weeks to expire, we gave them two weeks. And if they allowed three weeks to expire, we'd give them three weeks on the download.

Q. Now, did all your users get the same listings?

A. No.

The users -- we had only marketed to two cable lineups, and each system was customized with a lineup for that particular cable system. So there was a file on the system

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which we called the key file, and the key file had the name of the cable system or a numonic for the reference of the cable system and the zone within the cable system. And then that indicated a particular lineup so that the bulletin board knew exactly the right lineup to give to the customer. It was all automatic and it was by virtue of the setup that we did when we first sent them out the disk.

When people requested the disk from us, in the application they specified the cable system. If you look on the -- I guess page 1, 2 -- well, in the part where they fill out the name, one of the things that they fill out was the disk size, 3-1/2, 5-1/4, what modem speed they had, and the cable system.

And that cable system was used to encode the lineup for the particular cable system so that everybody's lineup would be correct.

In the early days we started with two lineups, Paragon Cable and Manhattan Cable TV, and the listings were proper for those two lineups.

Q. Now, how would that -- you referred

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to that information as the key; is that right?

A. Yes. Ultimately, we did make it to a key file.

Q. How did that information get from the user to your bulletin board system?

MS. FUKUDA: Objection to form.

THE WITNESS: When we would customize the disk for the user, we had a program where we inputted a code for the particular cable system and zone.

For example, Manhattan Cable TV might have two or three different lineups depending on where in the city you were and whether you were in the rebuilt areas or whether you were in the older areas.

And we would encode that into the disks that we sent to the user. From then on the system would automatically request the right data. I don't know if that answers the question properly.

BY MS. DeBRUIN:

Q. How would the system request the right data when I, I as a user -- when a user of your system would dial in to your bulletin board system, how would the data be -- the correct

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data be requested?
A. The data was automatically requested by the system based on the code that we set up initially. In other words, we entered once in the beginning based on them specifying the cable system on the application. We did the Data entry, not them.
So they sent this back, the form with the cable system. We would enter the cable system onto the disk. We'd send them the disk. The disk had the information that told the system -- the disk had the information that specified the right cable system.
We are the ones who actually entered the information onto the disk. We then sent the disk to the customer.
Q. Did that information, that key from the disk, get transmitted back then from the user to your system?
A. Yes.
In the conversation between -- in the automatic conversation between the system, that is, the customer system to the bulletin board, that key information was used as a request code to the bulletin board and the

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bulletin board responded with the proper channel lineup.
Q. Now, you mentioned that initially you served two different cable companies?
A. Right.
Q. Did you ever expand your coverage?
A. Yes. We expanded to the entire nation, concentrated around 13 major cities.
And we had to change the way that we did it based on the nature of the distribution mechanism we used when we switched from our own proprietary bulletin board, CompuServe, which is a national bulletin board and, you know, there is some technical details to do that.
And, you know, you'll ask me what changes were made, I mean unless you want me to just go into --
(Defendant's 27 was marked for identification.)
BY MS. DeBRUIN:
Q. Before we get to CompuServe, let me hand you a document I've marked as Exhibit No. 27. On the top it says Complete Weekly TV Listings on your IBM PC.
Do you recognize Exhibit 27?

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A. Yes. This is a nonattached form that we put into the manual as kind of like a little sales brochure.
Q. And what does Exhibit 27 mean when it says -- the first bullet item says "Keyed to your Cable Converter"? Do you know what that means?
A. Yes.
That is indicating to the customer that the listings that will appear on their computer will be exactly the lineup that's on their cable converter channel for channel. The only -- I think the only channels we didn't include were the public access channels.
Q. And when that says "Keyed," using the word key in the way that you were using it previously, the key for the data --
A. Yeah.
It was a key file and it's also keyed in the more generic sense of the word keyed. It's consistent with -- or it's exactly the same, it's identical to the cable converter.
So what's on channel 2 is what's on the computer on channel 2, and Channel 3 on the converter is channel 3 on the computer, all the

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way up through the entire lineup.
(Defendant's 28 was marked for identification.)
(Defendant's 29 was marked for identification.)
BY MS. DeBRUIN:
Q. I'm handing you two envelopes, two mailing envelopes, that I've marked. One I've marked as Exhibit No. 28 and one I've marked as Exhibit No. 29.
Do you recognize Exhibit 28 and Exhibit 29?
A. Yes, I do.
Q. What are they?
A. These represent two customers who decided not to use the package and who were kind enough to follow my request to send everything back so we could reuse it.
And what these are is this is exactly the kit that was sent to them, and they put their own stamps and put their own label on it. And in one case it's sealed so that this hasn't been opened since 1991.
And in this case it's open and inside would be the information, the details

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that we sent to them which includes a manual and a disk.
Q. And which of the two is it that's opened? Exhibit 29 is opened?
A. Let me -- I just want to point out something on the disk.
But if you look at the first number on the disk here, this is the customer key. As you see, it says 718 GQ.
Q. What does that mean, 718 GQ?
A. That happened to be -- 718 was Area Code of Brooklyn, and that would have been a Queens lineup at that time. I guess we had expanded it out, but that's the physical key and it was written on the disk, but it was also -- it was printed on the disk. It's also physically magnetically on the disk.
And this number, this 718 G -- I'm sorry, this 718 QO is the designator we use to determine cable lineup. This 718 QO would be passed back to the bulletin board, and this 718 QO is what instructed the bulletin board to send the proper -- the proper cable lineup for this particular cable lineup, which I mean looking at it, it looks like a Queens lineup

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which would have been later on in our process.
The next number, the 220, is the customer number. And I forget what these other numbers are, but the 718 QO is the number which designates the cable lineup. This is the most precise designation you can have. It tells you exactly what's on channels 2 through, you know, the end of the cable lineup.
Q. Now, what is the -- strike that for a moment.
Did you maintain Exhibits 28 and 29 as part of the ordinary course of running Lookahead?
A. Yes, we did.
Q. And why did you keep them?
A. I guess the main reason is for a moment like this in case anybody wanted to find out what we did back then.
And we have photographs and pictures and listings of all of the different things that we've invented and all of our work. My wife likes to collect things and she hardly ever throws anything out.
But this is part of the record of our invention. And this one, for example, is

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sealed, so it shows exactly -- this was sealed by the customer. They ripped off the tag, tried the package, for whatever reason, I don't know what's inside, and then they sent it back. But I guess we saved it for posterity for our own interest.
Q. What are the postmarks on the exhibits?
A. Okay. This one has a postmark of November 26, 1991.
Q. And when you say "this one," that's Exhibit 28 or 29? I can't see that far, sorry.
A. Sorry. Exhibit 28, November 26, 1991.
And you can see on this one here -- by the way, the tag that we sent out also has the cable designator on it. Because what they did is they pasted their label on top of our label, and this has a postmark of -- I'm having a little -- January 19 -- I think it's January 1992. Maybe you can make it out better than I can. It looks like January 1992.
MS. FUKUDA: Could I just take a look at that as well.
MS. DeBRUIN: Sure.

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BY MS. DeBRUIN:
Q. It has 1991 Christmas stamps on it, so January 1992 would make sense.
A. Right.
You know, the person held it for awhile. And, as a matter of fact, I think in this one they had trouble getting it to start, they couldn't get the disk to be read, because I think there is a letter inside explaining why they couldn't use it.
Shall I take it out? You want me to --
Q. Let's move on to something.
Would you say that your Personal Entertainment Guide was a successful product?
MS. FUKUDA: Objection. Leading.
BY MS. DeBRUIN:
Q. Let me ask it this way. Was the Personal Entertainment Guide a successful product?
A. Right. I'm not sure how you define success. I say that because in and of itself, the Personal Entertainment Guide only had a few hundred customers and did not make money.
But what it did do is it perfected

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the technology and it introduced us to all the players in the industry, including TV Data, TMS, TV Listings, Gemstar, AT&T, numerous other companies that are smaller, and ultimately fostered an agreement between us and Tribune Media Services, the company you represent, and which we contracted with later on for five years. And that was very successful, both for us and also for TMS.

So in the sense that it got us to the next step, very successful. In the sense that it in and of itself was a successful product, not in the economic sense.

Q. You mentioned the system we were talking about that Exhibit 26 is the user's guide for, that was the DOS system; is that correct?

A. Yes, right, only the DOS system.

Q. Now, you mentioned some work that you did with CompuServe and I'd like to talk about that now.

A. Right.

(Defendant's 30 was marked for identification.)

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BY MS. DeBRUIN:

Q. I'm handing you an exhibit that I have marked as Exhibit No. 30. For the record, it bears production numbers TMS 8754 through TMS 8756.

Do you recognize Exhibit 30?

A. Yes.

This is the press release that we designed for CompuServe, and it's a -- the overall form of it is it's a fax of the sales brochure or sales flier or press release that we made for our introduction to CompuServe, being sent to Dick Guay of TV Data.

And as I said, we always -- everything we did publically, we kept them informed. We always faxed them everything that went out to anybody, lawyers, CompuServe, whoever.

Q. Do you have any -- how did you first start working with CompuServe?

A. When we first put out the package in Manhattan, we ended up with a lot of very influential, a limited number I say -- the number wasn't great, but the quality of the customer was extraordinary.

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We had a lot of reporters for major newspapers and cable companies and directors and people who were in the industry. And one of the people we had was the author of -- was either the publisher or -- it was the editor of Video Review Magazine, a national magazine. And Video Review did a review of our product based on our New York release and wrote a national article, and at that point we started getting calls from all over the country based on that article.

And one of those calls was from Dawn Gordon, Dawn, D-a-w-n, Dawn Gordon of CompuServe, and she said she'd like to use our package in her consumer electronics form on CompuServe.

(Defendant's 31 was marked for identification.)

BY MS. DeBRUIN:

Q. I'm handing you a document I've marked as Exhibit 31.

Is Exhibit 31 a copy of the Video Review article that you were referring to?

A. Yes, it is.

Q. Did Miss Gordon contact you?

A. Yes, she did.

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Q. Did you ultimately end up working with CompuServe?

A. Yes, we did.

Q. And how did the CompuServe system differ from the DOS system that you've described for us earlier?

A. It was -- well, there were many differences. There were differences forced upon us by the nature of CompuServe as a distribution mechanism.

And then there were practical considerations based on the fact that we were going from just the New York area to the national listings.

And then there was a wish list based on the technical sophistication of the CompuServe user base, and each one of those had put upon us specific requirements. So let me take them in order, if I may.

Our bulletin board was proprietary and used proprietary mechanisms between the user and the bulletin board itself. None of that could be used with CompuServe.

In fact, the DOS program itself was keyed specifically to our bulletin board and was

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incompatible with CompuServe. So we immediately had to strip out the whole bulletin board protocol, then we had to make the files in a format such that people could download the proper channels from CompuServe.

Well, we found much to our horror that there were 10,000 channel lineups, and we weren't going to be able to put out 10,000 files every week. So what we did is we put -- linked them together and we served the national listings represented by what you might see on a satellite TV and 13 major demographic areas like Washington, D.C. and Baltimore and Philadelphia, Atlanta, Denver, Los Angeles, San Francisco, the largest 13 cities by demographic areas and then some of the outlying areas.

And then because of the technical sophistication of the CompuServe users, they demanded that the system be done in Windows, and Windows was just becoming -- just coming into its own at the time, Windows 3.1.

And prior to that, it wasn't really -- well, I mean this will be my own opinion, but it had many, many bugs in it prior to 3.1. 3.0 was considered to be the first

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useful version.

And so we recoded our system and we did it in Windows, and we did an extensive rewrite and we took all of these different considerations in mind. And so the mechanism for requesting the files changed, the protocols changed, and basically we abandoned or DOS program and we just pretty much kept it in Windows. Although we did provide the DOS program, very few people used it.

And then we had one other version which we call PEG Speak, and that was specifically designed for blind people, and that was designed for talking machines. That's a whole different thing like that.

Q. On the CompuServe system, did you have anything that was comparable to the key that you had in the DOS system?

A. Right.

Instead of us having to -- we had no way of providing the disk to each customer, that is, uploading an entire program and program files and disk files was unwieldy.

So what we did is we compressed all of the information that was necessary to support

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that customer into a very short key file, which also included an encryption or D encryption key or a key and we called it the key file. And within that key file is the same sort of code that I showed you on the envelope here, 718 QO, or like in New York it would be 212 MO, M standing for Manhattan Cable TV, 212 being the Area Code of Manhattan and 0 being the basic lineup.

And that particular code was put in this little short key file of maybe only a thousand bytes, 1,000 characters long, and to each and every customer we would send the key file.

So people would say or e-mail to us: Please send me the key to Denver, and we'd give them the Denver key. Now, the Denver key included many, many, let's say, 100 channels, and at that point our system was not keyed by cable system. Our system was keyed by demographic area. And we left it up to the end user to arrange the channels in the order of their particular lineup.

Again, so we couldn't put out the 10,000 different lineups that existed in the

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country, so we'd only issue I think 13 demographic areas or perhaps four national. For example, I think it's four national satellite listings, like Dish TV, Direct TV, or whatever their predecessors were. I forget the exact ones -- oh, C band TV, things like that. So there was about 15, 16 lineups in general, and then people would mix and match those files.

Now, the way they requested those files were they would type -- we had to use the standard mechanism that CompuServe provided. We didn't have any other way of doing it.

What I would have loved to have done would have been, you know, if you're in Detroit, press 13. But what would happen is if you're in Detroit, you had to ask for the file by name and that would have been PEG DT for Detroit, and then three numbers which corresponded to the week, dot zip.

And it was wieldy, but it was something that CompuServe customers were very used to, as they downloaded a lot in that format. So that's how the customers downloaded the proper file.

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(Defendant's 32 was marked for identification.)
BY MS. DeBRUIN:
Q. Let me hand you a document that I have marked as Exhibit No. 32. For the record, it bears production numbers TMS 8884 through 8887.
Do you recognize Exhibit 32?
A. Yes.
That was the article that was faxed to Dick Guay of TV Data, the first writeup, the first of two writeups that we had in the CompuServe manual -- the CompuServe Magazine, which I believe had a circulation of like a million people.
Q. On the front page, your fax cover sheet to Mr. Guay, it says "130 Responses on Day 1."
What does that mean?
A. It means 130 people e-mailed us for keys on the first day. Within the first 24 hours 130 people would ask us for, say, Detroit or Baltimore, Washington or whatever.
Q. Did you have -- how would you characterize the number of subscribers you had

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once the system was on CompuServe?
A. Again, as I said, it was not a commercial success. It was only a few hundred.
(Defendant's 33 was marked for identification.)
BY MS. DeBRUIN:
Q. I'm handing you another document that I've marked as Exhibit 33. For the record, it bears production Nos. 1281 through 1290.
Do you recognize Exhibit 33?
A. Yes.
This is a text of a speech that I delivered in London on behalf of IFRA, and IFRA, unfortunately, is an acronym in French so I can't pronounce it and I don't remember it; but the IFRA is the equivalent of the national newspaper, the Newspaper Association of America. IFRA would be the Newspaper Association of Europe.
Q. Who asked you to give the speech?
A. I got a call from the representative from IFRA asking me to come out and give the speech, and I don't know how they found me.
Q. What did you talk about?
A. I talked about our package and I

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talked about the future of our package and the future of newspaper publishing using downloading systems such as CompuServe, and I described how I saw the future for that.
And in it you will see that we changed the name of PEG, from the Personal Entertainment Guide to P-E-N, PEN, for the Personal Entertainment Newspaper because we were expanding where the -- we included articles and coverage to make it much more like a TV Guide or a newspaper entertainment section.
Q. How did your speech go?
A. They all clapped. They seemed to have liked it.
Q. Did you get a good reaction from the crowd?
A. Yeah, we got a great reaction. I was very impressed, surprised. Let's see. It was the heads of the publishing empires. I mean it was very high-ranking like lords and important people, and I thought they were people out of my league anyway, as just amazingly important people, the publishers of all the major newspapers, not the editors but the publishers.

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So yeah, I was really amazed I had gone over as well as I did.
Q. You mentioned in some of your earlier testimony Tribune Media Services or TMS. Are you familiar with TMS?
A. Yes, I am.
Q. How did you become familiar with TMS?
A. During the time that we were with TV Data and on CompuServe, we became familiar with everybody in the industry because it's a very small industry, and we started entertaining bids from many companies and, as I said before, TV Data and United Media, and we talked about bids, we talked about partnership. They thought we had something very special and wanted to either partner up or buy it outright.
And some of the companies that we talked to was Tribune Media Services, United Media or TV Data, and Gemstar, TV Guide. AT&T had TMS do a demo project for them and a couple of other companies, and then all of the so-called rivals, like TV Host and just -- well, let me strike about TV Host. TV Host did not attempt to partner with us, but GIST certainly

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did, Art Gavina, and a lot of other companies that I didn't know, that I didn't know of.
But it certainly was a very -- you know, I felt -- made me feel very good and very important to have all these companies trying to get you to partner up with them.
Q. Did you ultimately develop a business relationship with TMS?
A. Ultimately, we signed a five-year contract with TMS, Tribune Media Services, which ended up being very successful.
Q. Now, do you know a gentleman by the name of Michael Levine?
A. Yes, I do.
Q. How do you know Mr. Levine?
A. Shortly after we signed up with TV Data and shortly after I had met Dick Guay, TV Data was the more innovative, at least in my opinion the more innovative company, and had more contacts.
And Dick and United Media were interested in our success, and what they would do is they would call us with all kinds of contacts, for example, Jim West who was the person who founded both TMS and TV Data and

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started the whole TV listings business outside of TV Guide, and one person was Michael Levine.
And Dick called me one day and told me about Mr. Levine and asked me if I'd be interested in talking to him, and I said I would, and he and I developed a relationship of basically inventor to inventor. And he talked to me extensively about his Onstar patent and all of the things he had gone through his 10-year court battle, his life in Florida, what it's like to grow old and all kinds of personal things.
Q. Do you have any idea about when you first became acquainted with Mr. Levine?
A. It would have been -- it's a little hard to do that, but I mean it would have been sometime after I first met Dick Guay because during the first couple of months -- so the best I can pin it down is to take the Dick Guay letter, my first Dick Guay letter, and see whatever the date was. January 1991.
And within the first few months of our relationship with TV Data, I had met a lot of people, so sometime after January 1991, but to pin down the exact date -- I mean I remember

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there was an initial conversation where we spoke for a long, long time and then there was another, a couple of subsequent conversations.
And then there was another conversation prior to my meeting with Gemstar where Levine called me and he said would I like to meet Gemstar. Or if it wasn't Levine that called me, it was Dick Guay that called me and asked me that -- or told me that Levine had introduced me to Gemstar or brought up my name at Gemstar and would I like to talk to Gemstar, after which time we actually did talk to Gemstar.
Q. Now, before we get to the Gemstar meeting, in your discussions with Mr. Levine, did you describe to him at all how your Personal Entertainment Guide worked?
A. Yes, in the greatest detail. In excruciating detail, every little part.
I mean he would tell me all kinds of things and I would tell him all kinds of things, and I was pretty open with a lot of people. I mean there were a lot of different inventors and people who I was meeting at the time, and especially after we got on with CompuServe.

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And, you know, I wasn't that paranoid about essentially revealing trade secrets. For example, I mean I told them how we did our compression. I told everybody how we did our compression. I'm not saying I told him exclusively.
But we had a long conversation about the Personal Entertainment Guide, and I remember talking to him for a long time about that and multiple conversations.
Q. Now, you mentioned a meeting with Gemstar?
A. Yes.
Q. Tell me about the meeting with Gemstar. Who did you meet with?
A. After I talked to Levine -- or Dick Guay on the part of Levine, I did talk to Levine because Levine, he gave me like kind of a heads-up on who's with Gemstar and, you know, what the people were like and especially Henry Yuen.
And then we set up an appointment with Henry Yuen and we went to the Intercontinental Hotel, and I remember like it was yesterday because it was a very, very

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exciting meeting and we thought that, you know, this was the big time. We're talking major players who weren't our friends, if you will.
And Mr. Yuen and about five associates, vice-presidents and lawyers, sat down with me in the lobby and we negotiated a relationship. And, actually, we came out of that meeting thinking that we were going to be partnering with Gemstar.
And subsequently in later phone conversation, we didn't realize but we had misunderstood certain of the terms, and at that point since we had misunderstood and they didn't -- it turns out that we didn't have an agreement after all, but we did come out of that meeting thinking we were actually going to be part of Gemstar.
Q. What was it that Gemstar was interested in?
A. They were interested in the Personal Entertainment Guide technology and us, and they wanted to sign us to a five-year contract to the best of my recollection on an exclusive basis.
Q. Can you pinpoint at least approximately when that meeting occurred?

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A. If I did further research, I probably could, but since you know, I'm just first getting this question today --
(Defendant's 34 was marked for identification.)
BY MS. DeBRUIN:
Q. Let me hand you a document and see if this helps you at all.
A. Yes, this does help, certainly.
Q. I have handed you a document that I have marked as Exhibit 34.
What is Exhibit 34?
A. It's letter from me to Roy Mankovitz of Gemstar. I believe he was counsel for Gemstar. And in it we describe our package and our concept so, therefore, December 13, 1993 would be the date of our meeting with Gemstar.
Q. So this --
A. Or thereabouts.
Q. You sent the letter before you met with Gemstar?
A. Yes.
MS. DeBRUIN: If we could go off the record, please.
THE VIDEOGRAPHER: Please stand by.

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We're going off the record at the approximate math time as indicated on the video screen, 1519 hours.
(Off the record.)
THE VIDEOGRAPHER: We are back on the record at the approximate time as indicated on the video screen, 1529.
MS. DeBRUIN: I have no further questions.
MS. FUKUDA: I'd like to follow up with some questions for you, Mr. Kaplinsky.

EXAMINATION

BY MS. FUKUDA:
Q. Going back to your very initial marketing efforts with the PEG product that you had described in your testimony earlier.
A. Yes.
Q. You mentioned that the first effort was in the 10,000 fliers that you had sent out?
A. The first effort was about five or six volunteers and subsequent to that 10,000 fliers.
Q. Okay. And those fliers were only sent to -- or you tried to only send those

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10,000 fliers to Manhattan residents?
A. I think it was Manhattan and a couple of the -- a couple of the contiguous areas in Brooklyn and Queens.
Q. Okay. And referring back to Exhibit 24 which is a copy of your flier --
A. That will be to the best of my knowledge because it's been 17 years.
Q. Okay.
A. You are referring to the flier, the mailer?
Q. Yes.
A. Okay.
Q. You had mentioned that this particular flier here that was sent to Sunnyvale California was a mistake?
A. That was a mistake.
Q. Why was that a mistake?
A. We -- okay, that's easy.
Got a mailer. We had -- we had the person who printed up the fliers put lables on them and we bought the mailing list from PC Magazine and -- let's see. I want to make sure I get this right.
PC Magazine and -- there is another

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magazine just like PC Magazine, I forget the name. There were two, the two top major PC Magazines. One is actually PC Magazine and, I'm sorry, but the name escapes me.

They both have circulations in the millions and we demographically chose for Manhattan and I believe the contiguous Zip Codes, because what you do is you specify by Zip Code, and for some reason or another they sent us this thing from Sunnyvale, California and it was just an error, so we never sent out that far.

Q. Why did you limit your 10,000 flier mailing to just Manhattan and a couple of the contiguous boroughs?

A. Because of the long distance charges -- well, there is several reasons. The most important is because of the long distance charges on the bulletin board.

Whereas Compu-Serve is a local number, we're a 212 number in Manhattan where our company was located and we weren't going to ask people to pay long distance charges from California or for that matter even New Jersey.

Only -- the only people who would be

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candidates for a local bulletin board would be in the 718 and 212 Area Codes at that time. There is more Area Codes now, the local Area Codes in Manhattan.

So the first reason and then the primary reason is because our users, our customers, we didn't want to market a product which required them to pay long distance phone charges.

The second reason is for the expense of carrying channels from California. We only subscribed to a couple of hundred channels here in the general Manhattan area, Manhattan -- New York area, let's say the New York database. And they were charging us by the channel by the week. And for our initial rollout, we only wanted to pay for one demographic area.

So to save our customers the long distance charge, we didn't think that the product would be in any way viable with a 25-minute download from, say, California to be imposed on the customer on a weekly basis and also because we didn't want to pay for California channels because nobody in California would use that package under that basis.

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Eventually, we had planned to have bulletin boards in every major city and then it would be local charges from whatever major city you were subscribing to the package.

Q. You mentioned that for that -- for those 10,000 mailers that you had only two different cable lineups to provide TV?

A. Yeah. Now that I'm looking at it, we rolled out a couple more later on, but initially it was Manhattan Cable TV, basic lineup -- not basic but nonrebuilt, nondigital, nonrebuilt, and Paragon. We called it zone zero or lineup zero.

So there was only two lineups primarily at the very beginning, then I believe that we launched a couple of others in the contiguous area that wouldn't require a long distance charge.

And we were basically starting with one zone and we'd add to another zone and then we'd add to another zone, and our plan was to add zones as we moved across the country, but since we went to CompuServe, it didn't happen that way. We went to the country all at once.

Q. When did you add additional lineups

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beyond the two initial cable lineups that you had?

A. You know, I didn't even -- to be honest with you, I didn't even notice that until I saw the cable lineup QO, and 718 QO could only have been Queens and, therefore, there had to have been a Queens lineup because it would have either been 212 MO or 213 PO.

So when I saw 718 QO, per se I don't have any memory of that as we speak here, but there is no other way it could have been. 718 QO can only exist for Queens.

So I can't tell you the exact time, but it couldn't have been much after because it was sometime between the time we went from rolling out to Manhattan to rolling out to CompuServe, sometime in there.

Q. And when did you roll out with CompuServe?

A. Okay. That I have to refer to my timeline. Okay. You're going to have to give me a minute because I don't think -- the date of the letter -- I'm piecing these dates together by the letters and the correspondence.

It would be the date of the letter

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that I wrote to Dick Guay about CompuServe. Here we go. So I'm looking at August 1991.
Q. Can you tell me which exhibit --
A. No. I'm sorry, wrong memo, wrong memo.
MS. DeBRUIN: Exhibit 30.
THE WITNESS: It's the one where I'm telling Dick Guay about CompuServe.
BY MS. FUKUDA:
Q. Is it Exhibit 32?
A. Please bear with me. Oh, here we go, Exhibit 30, 5/26/92.
So or about -- on or before -- well, no. On or about 5/26/92.
And this was a copy of the brochure that we sent out, the press release we sent out from CompuServe. I'm sorry.
MS. MARGARET KAPLINSKY: The CompuServe magazine is dated May of '92, I believe.
THE WITNESS: Oh, that's right.
MS. MARGARET KAPLINSKY: In which case --
THE WITNESS: That means it was months earlier than that. I'm sorry. I'm

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corrected by my wife. Okay. May '92 was several months after it went live.
BY MS. FUKUDA:
Q. Okay. Let's just -- tell me which Exhibit you're looking at right now.
A. All right. Here we have -- now, this is the second of two articles.
Do we have the first article? The first article has the -- that was within the first month. So that can pinpoint it pretty accurately. It would be the date of the first article.
Q. And by "the first article," you are referring to which exhibit?
A. I don't see it. Well, it was prior to May '92. It was probably --
MS. MARGARET KAPLINSKY: I belive you sent a fax to Dick Guay.
THE WITNESS: Okay. Good point. I don't see it here.
MS. MARGARET KAPLINSKY: There are other faxes to Dick Guay.
THE WITNESS: Okay. I don't see it here. I don't see it here.
There is an article in a magazine

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called CompuServe Magazine which is prior to the one we have here, I don't know how many months prior, but they will accurately pin -- because that was put out within the first month of our rollout on CompuServe.
BY MS. FUKUDA:
Q. It's none of the documents that are in front of you right now?
A. Unfortunately, no. No. Maybe -- here we have. Okay, we do have it.
MS. DeBRUIN: That's my copy, but you should have that same --
THE WITNESS: This is the document. It's the first CompuServe Magazine article as opposed to the second more lengthy CompuServe, and the date is October 1992.
BY MS. FUKUDA:
Q. Okay. For the record, you are looking at Exhibit 32?
A. I don't have an exhibit number.
MS. DeBRUIN: Yes.
THE WITNESS: I'm looking at TMS 8884. Oh, Exhibit 32, yes.
BY MS. FUKUDA:
Q. Okay.

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A. That pinpoints it exactly.
Q. Okay. So your rollout for your national product with CompuServe was October 1992?
A. Yes.
Q. Okay. I know you had testified earlier that there were numerous differences between your initial DOS product and the CompuServe version of the product?
A. Right.
Q. Were there differences in the way that the key information was provided?
A. Yes, there were, but the key -- the key -- in the DOS version the key was -- or the coding, the encoding of the key was by us at Lookahead, and in the Windows version -- let's say -- I'm going to back up a second.
The key file was explicitly made available to the user. There was no key file per se. The key file was transparent to the user with the DOS version. In other words, we put the key file on the disk -- let me back up.
Are you asking me whether it's user oriented or the technical, the internal specifications? Can you be more precise.

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Q. Sure. Why don't we take those two products separately.
A. Right.
Q. Now, for your Manhattan based PEG product, your initial product, what information in terms of the key file that we're discussing was provided on the disk that you sent to the users?
A. Their name, their key code. Primarily, their name and their key code, and their expiration date. The key code looks like this, for example, 718 Q000002200133. 718 refers to their Area Code. Q is the designator for their -- I don't think you'll see this in any of your docs. I think that's only apparent here.
Q. Okay. And here you are referring to Exhibit -- which one is that?
A. This is Exhibit 29.
Q. Okay.
A. 718 refers to their Area Code. Q refers to Queens, for example. 212 would be the Manhattan Area Code, and M would be Manhattan Cable TV. P would be Paragon TV. Zero is whether it's the rebuilt lineup or the original

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lineup and whatever zones are necessary. And there would be 36 possibilities here, zero through 9, A through Z.
This number here I believe is the expiration date -- or maybe this number is the expiration date. It's been too many years now, but one number is the customer and one number is the expiration date. So this is either customer 13 within that area, and 22 -- 220 is the expiration date, and that's a code. It's not an actual date.
Between this and this and this, between these three numbers here, what we had is a customer number and an expiration date. So that we expected people to subscribe for -- I want 26 weeks, I want 46 weeks, and we would figure out what the cutoff date was and the package would stop working on a particular date.
The key code was placed on the disk by us and then the disk was sent to the customer. The customer did not place the key code. The way we knew which key code to put in was based on that document that you're holding there which was the application for the package.
Ask me more questions so that I

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can --
Q. Okay, I will, but let's take a break to change tape.
A. Sure.
THE VIDEOGRAPHER: This is the end of tape and disk No. 2 in the Videotaped Deposition of Mark Kaplinsky. The approximate time as indicated on the video screen is 1545 hours.
(Off the record.)
THE VIDEOGRAPHER: This is the beginning of tape and disk No. 3 in the Videotaped Deposition of Mark Kaplinsky. The approximate time as indicated on the video screen is 1548 hours.
BY MS. FUKUDA:
Q. Mr. Kaplinsky, getting back to your testimony about the key file that's put onto your PEG disk to be mailed out to the users, you were just referring to your flier which is shown in Exhibit 24?
A. Right.
Q. You said that you pulled information from that flier to create the key file?
A. Yes.

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Q. Just an initial question. In your user guide there is mention of a user account number?
A. Yes.
Q. Is that the same as the key file that we're talking about?
A. Yes, one and the same.
Q. Okay. What information did you use from the flier that's shown in Exhibit 24 in order to create the key file?
A. If you look at the part where the people fill in their names, you will see a line that says cable company.
Q. Cable System, yes.
A. That was the field that told us whether to put in 718 QO or 212 MO or 213 PO or whatever other code that was necessary at that point.
They would say, for example, Manhattan Cable TV rebuilt, and we would know to put in 212 MO, so we knew generally. I mean they would come in all kinds of different formats. They'd just say Manhattan, so you would question is it lower Manhattan, upper Manhattan, upper Manhattan, Paragon.

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Most of the time we'd just say MC TV or Paragon, or in some cases I think it's BQE Cable or something like that later on. We knew what code to put in. We had all the translations, you know, all the different ways people would supply their cable system.

Q. So you based your key file off of whatever the user would fill out under Cable System on the flier?

A. Right.

We actually called up BQE Cable and Manhattan Cable and Paragon Cable and we got listings of their lineups.

Q. Okay. I see a line on the flier that asks for the user's Area Code and telephone number.

A. Right.

Q. If the user did not provide that information, are you still able to create the key file?

A. Yeah. I mean the only really important -- the reason for the phone number -- well, yes.

A lot of people didn't put in their phone number for privacy reasons and we did send

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them out disks, and we just put in the generic like 212 for New York or, you know, 718 for Brooklyn or Queens.

No, we didn't need -- we did not need the phone number.

Q. And I see also here in your -- in the flier in Exhibit 24 that there are lines for filling out the user's address.

A. Yes. We needed to have -- we needed to be able to send them the kit, this package.

Q. Did you need the user's address in order to designate the proper key file for the users?

A. No. That was completely described by the cable system.

Q. Now, let's switch to the PEG system that you created for CompuServe.

A. Right.

Q. I'm going to ask you the same questions with respect to that system.

In the CompuServe system, did the PEG also have a key file that's similar to the one that you just testified to?

A. It was in fact one and the same. It was the same key file. It was the way we

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instructed the users to use it that was the big difference and, of course, the program was different, too.

People would write us an e-mail and they'd say -- and I mean I didn't care what their name was -- well, I guess I did care what their name was, but mostly I cared what their account number was from CompuServe because that was -- I mean they could say any name, but this is not germane.

The name was used to protect the copyright from the TV Data -- data actually listed within the print e-mails, so our person's name -- let me just strike that whole thing. It's not answering your question.

Could you please ask your question again.

Q. Sure. Do you mind just reading it back.

(The record was read by the reporter.)

THE WITNESS: Okay. The answer to your question is not just similar, it was exact. It was the same file.

The difference was the way that the

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customer was instructed to use it, and the system itself was different, the system that used the key file was different. The internals of the system were the same, but the way we wrapped it and we put it into Windows environment rather than the DOS environment were different.

Now, the way that would work was somebody would write us an e-mail and they would give us significant information, namely, their CompuServe ID and their name. We used that for uniqueness, but the most important thing they'd give us was what of the 13 files they were going to access or, let's say, the 16 files they were going to access they wanted, for example, Detroit or Washington, D.C. or Seattle or whatever the particular area was, and then we would encode that exact same file; but instead of sending them a disk, all we'd do is send them that one small file about a thousand bytes long, approximately.

And that file would be sent to them via the CompuServe file -- or actually be sent in a CompuServe e-mail, and then they would use that file in conjunction with the program that

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they downloaded and in conjunction with the listings that they downloaded, the listings having to be corresponding to the key, that is, Detroit key for Detroit listings, Atlanta key for Atlanta listings and so on.
BY MS. FUKUDA:
Q. Just so I can understand --
A. Please ask it again or another way.
Q. So for the user of your CompuServe PEG product, they would actually be presented with a choice of 13 or 16 different possible listings?
A. That's correct.
Q. And they would choose the listing that they're interested in?
A. Yes.
Q. And at that point they'd just send you an e-mail that tells you --
A. Which one.
Q. -- which listing they'd want?
A. That is correct.
Q. And in turn your system would then send a key file with the designations for that listing?
A. Yeah. Actually -- I mean it wasn't

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a system. I mean we did it manually. We had a little program, into the program we'd enter their CompuServe ID and their name and what city they were interested in, and it would grind out this key because the key also contained encryption data so that the listings were always encrypted for copyright purposes.
And it would authorize one and only one user for that key and one and only one city for that particular user. So a particular user could only use -- a Detroit key would only access a Detroit listing.
Q. In creating the key file for the CompuServe version, the PEG product, did you require the user to provide their Area Code?
A. No.
Q. Or how about require -- did you require the user to provide their address?
A. Just the city or just -- see, it's really the demographic area, but the indicater was -- we call it a city code.
Q. Now, were there multiple channel lineups available for each demographic area?
A. Yes.
Q. And how would your CompuServe PEG

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product pick which one?
A. Right.
We had another file structure which we provided to the users which had the lineups within the -- so if somebody had Detroit and they were -- you know, it said Cox, let's say for the sake of argument Cox Zone 1, what we had is like a kind of a share possibility or a share capability where people who were in Cox Zone 1 would -- or we or anybody would upload two of the libraries, the lineup for Cox Zone 1, off of the Detroit listings, so that was also downloadable as a file. It was called a channel file.
Q. I'm going to ask you to explain that to me again.
A. Okay.
Q. If there were multiple listings available for a demographic area, how would the user pull up the proper one for their area?
A. Maybe I think it will be useful just to go through the process.
Q. Sure.
A. The first thing that the user would do is read the verbiage on the system.

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The second thing the user would do is download the demonstration program which had canned data, but in doing so they will have downloaded the program, too.
If they liked what they saw at that point, they'd write us an e-mail and say I live in Detroit, I wish to download the Detroit listings, please send me a key for Detroit. We would then e-mail them a key or the small file for the Detroit listings.
Then they would download the Detroit listings, let's say -- on CompuServe we had up to two weeks as opposed to three weeks. They would download two weeks of Detroit listings and they would download the key that we e-mailed them and then they would have a generic Detroit listing.
Beyond that, they could also go into the database or, let's say, the set of files within CompuServe and they can see if anybody had a particular Cox lineup.
It was optional. Many people did their own lineups, but there was some common line understanding. Like, for example, Manhattan Cable TV, a lot of people were on

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Manhattan.
So we had people voluntarily like, you know, with Wikidata, Wikipedia or, you know, shareware type of situation where people would code up a particular lineup and then upload those files to the library for those files.
So that all of the lineups for, let's say, Detroit or, let's say, some of the lineups, the more popular lineups for Detroit, let's say, the first user in Detroit would come up with a lineup and then they would upload the channel file and then people would download that channel file and would customize the Detroit lineup.
And people had their favorites and it wasn't necessarily based on -- it wasn't necessarily based on channel -- cable company. It was based on popularity of -- popularity of channels.
So science fiction people uploaded science fiction channel items, and people who liked horror movies would upload horror movie channel lineups, but you could also upload -- we had cable company channel lineups.
It was the mechanism that we

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designed so that you could download both the Detroit listings and also Detroit lineups if people had uploaded.
Because we didn't have access to the lineups ourselves, so we let the people in the individual cities customize their own lineups and provide it to their fellow users.
I know that it's probably clear as mud, but you're going to try again if you like.
Q. I think what, you know, I'm trying to clarify here is that if a user from the Detroit area wants to receive Detroit information, they would receive all of the information relevant to the Detroit --
A. Yes.
Q. -- demographic area?
A. They'd receive a generic Detroit.
Q. Okay. And then they can pick and choose?
A. They can pick and choose or they can use a channel lineup done by somebody else who would have already picked and choosed for them.
Q. Okay. When you say "done by somebody else," who are you referring to?
A. Well, let's say I'm a user in

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Detroit. Let's say I'm the first person out of Detroit. And I know I'm in, you know, Detroit Cox zone zero or Detroit downtown for lack of a better -- I mean this is a hypothetical channel lineup.
I say, you know, gee, I mean are there other people using Detroit? And I can see by the channel lineups that, you know, 100 people downloaded Detroit. Okay, great.
I'll upload the file and I'll say hello, everybody. I've encoded the system -- or the channel file. I made a channel file for downtown Detroit. Anybody else would like it, please have a go at it, and then other people could -- that was the design of the system and that's in fact what people did.
But they also besides Detroit downtown and more commonly they would have: I'm a science fiction, you know, fan and this is my channel lineup for just science fiction. So I mean it was not only just by cable companies. It was also by genre interest, interest group. Mostly -- let me just -- to be frank, mostly people did their own.
Q. Okay. Now, this is generally with

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respect to the PEG product?
A. Yes.
Q. When the user -- let's assume that they already received the disk or the file that has their key file in it.
A. Right.
Q. Each time that the user wants to obtain television programming information from the PEG system, what information is transmitted from the user's computer to the PEG system?
A. There is two different answers for the two different systems.
Q. Okay. You can break them apart.
A. So if you want to break it down by the DOS system or our proprietary bulletin board and the CompuServe system.
Q. Sure. You can answer for both separately.
A. Okay. Starting with the DOS system, the DOS system was separately automated. You pressed one key which was essentially transmit, and essentially this code here as we see, 718 GQ, da-da-da-da, was essentially the cable system. That's the key information that was sent to the bulletin board.

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The bulletin board assembled the proper channels and then the bulletin board would send those proper channels and the data, and it would also -- the information was how many weeks were required, in other words, what's the last week that I have on my database. And the system would send either one, two or three weeks as was required.

The DOS system was proprietary. It was completely automatic. Does that answer the question on the DOS system?

Q. Just to clarify, when you say automatic, you mean that the key file was already set in the disk?

A. The key file was already set in the disk and the protocol was already matched to the bulletin board. So the user only had to hit one button to transmit and all the rest of the conversation was automatic.

And, as a matter of fact, within the manual, if you will refer to your manual, you can see a log of the conversation between the proprietary customer application and the proprietary bulletin board. The log of all the files that were transmitted and all the

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determinations that were made is all in the log, which is in the manual, so I mean that -- I mean that's very specific.

Does that answer your question on the DOS system?

Q. Sure. Okay. Let's go, move onto the CompuServe system.

A. All right.

On the CompuServe system we had no proprietary protocol. We needed to deal with a generic, what's known as TTY version or generally TTY version of -- you type a character one at a time and you have to type -- and CompuServe will respond.

CompuServe was designed for the entire country. It wasn't designed just for, you know, Lookahead Communications. So we had to adhere to the very elementary, what's called TTY protocol. It's essentially a question and answer protocol. What file would you like, what with you like to do. 1, download a file; 2, return to the menu, that sort of thing. And you had to answer those questions by hand manually.

There was no other reasonable way to do it other than construct a very complicated

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terminal handler which would be different and would be different for different computers and different for different modems and a nightmare, and the people didn't require it.

So the conversation within CompuServe would be go to a particular forum, go to a particular library within the forum, and you have to manually type this out. And then within the forum on a weekly basis you'd say download the following file, download the file for week No. 220 from Detroit, PEG DT 0220.zip, and you have to say D for download, PEG DT for Detroit, 220 for week No. 220.zip, and then that would come down into the library on your computer or into the file -- I'm sorry into the directory on your computer.

Once that happened, then we ran a program under our program, the Personal Entertainment Guide program, and it would integrate all the files. But the actual handling of CompuServe was completely manual. It had to be done line by line, Q and A style by the user. Does that make --

Q. Okay. How is the user then able to access any information nationally --

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A. Yes.

Q. -- in terms of television programming?

A. Well, some people were -- like, for example, people who lived in the middle of New Jersey and picking up Philadelphia and New York, and we had a policy which we actually cleared with TV Data, TMS by the way, but we had a policy where we would give out up to four keys, I think, so that people could have like a satellite Dish in Philadelphia and New York. And they would have to download those three files separately and then integrate them in their own computer.

And they would ask for three different keys. Say Dear Lookahead, please send me the key for satellite Philadelphia and New York, and then they would go about downloading all the different files and then they could see the listings on the -- on the Windows based system.

Q. Okay. Now, going back to your DOS version of the PEG, if a user obtains a disk with their key file on there, and let's say they happen to be vacationing in another state and

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they wanted to obtain programming information for another state --
A. We had people that did that.
Q. And what happened?
A. And we gave them two keys. And we had people that also had bi-coastal, some people, and what not and we'd give them -- in those days it was satellite, so we'd give them satellite. We'd have to give them two different keys.
Q. Okay. And how would they go about requesting the two different keys?
A. Well, they would specify -- well, let me back up a second.
All right. I'm going to have to correct myself here.
There were people who were bi-coastal and there were people on vacation. We only had Manhattan and New York based on the DOS system. So what they did was they just took the New York key or they would take the New York system. That was not -- that was not very often, let me put it to you that way.
When we got to the CompuServe system, then there were people who were

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bi-coastal. There were many people who lived in multiple cities, many people on the road, and then they would take multiple keys.
So I guess the best answer for the DOS system is for all practical purposes we didn't supply anything outside of New York.
Q. Okay.
MS. MARGARET KAPLINSKY: Excuse me. Did we provide the satellite listings?
THE WITNESS: No.
MS. MARGARET KAPLINSKY: Okay.
THE WITNESS: We supplied the satellite listing by virtue of New York.
MS. MARGARET KAPLINSKY: Okay.
BY MS. FUKUDA:
Q. For any of your PEG systems, did you require the user to provide their Zip Code information in order to obtain television programming information?
A. The only time the Zip Code would come in would be so we can mail these kits to them, for purposes of mailing the kit only. CompuServe, whereas we required the CompuServe people to give us name, I believe name and address, and that would have included Zip Code,

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but it had nothing to do with what cable system they had.
It had everything to do with logging their name onto the system so that there wouldn't be copyright infringement on the listings.
Q. If I were a user of your DOS PEG system that's described in the user manual here in Exhibit 26, and let's say I've now received your disk with my key file to my home which is what I wanted, and now I'm going to be moving to another state, how I do change the information on my key file so that I could get the listings for the different state?
A. Okay.
Q. Oh, I'm sorry, maybe that's a bad question.
You said that only Manhattan was available; right?
A. You see there was a marketing plan and there was -- and described in our various handouts and marketing plans. There was a marketing plan for the PEG system that didn't include CompuServe.
So before we hooked up with

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CompuServe, we were going to put a bulletin board in every city and we were going to have it run by -- well, we didn't know, but -- and in every city we would replicate the franchise, so to speak, that we had in New York, which was people would write in and say I'm in such and such a cable system, please send me a disk for such and such a cable system.
So now you're saying -- let's just say hypothetically had we used our original DOS model -- and it could have been done with Windows too. I mean it was not a question of DOS versus Windows. It was the difference between proprietary bulletin board versus generic bulletin board, namely CompuServe.
CompuServe was a generic bulletin board. We had to adhere to their rules. They weren't going to customize themselves for us.
With our proprietary model, the bulletin board, the one that is -- have you shown her the picture? There is one in the picture. The one in the picture with us at the American Banking Association, that's a picture of the bulletin board. Right. The thing in the middle.

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