

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY )  
PARTNERS, COUNTRY MUSIC )  
TELEVISION, INC., PARAMOUNT )  
PICTURES CORPORATION, and BLACK )  
ENTERTAINMENT TELEVISION, LLC, )

Plaintiffs, )

vs. )

NO. 07-CV-2203

YOUTUBE, INC., YOUTUBE, LLC, )  
and GOOGLE, INC., )

Defendants. )

THE FOOTBALL ASSOCIATION PREMIER )  
LEAGUE LIMITED, BOURNE CO., et al., )  
on behalf of themselves and all )  
others similarly situated, )

Plaintiffs, )

vs. )

NO. 07-CV-3582

YOUTUBE, INC., YOUTUBE, LLC, and )  
GOOGLE, INC., )

Defendants. )

VIDEOTAPED DEPOSITION OF ERIC SCHMIDT  
SAN FRANCISCO, CALIFORNIA  
WEDNESDAY, MAY 6, 2009

JOB NO. 16802

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MAY 6, 2009

9:14 a.m.

VIDEOTAPED DEPOSITION OF ERIC SCHMIDT,  
held at the offices of WILSON, SONSINI,  
GOODRICH & ROSATI, 601 California Avenue,  
Palo Alto, California, pursuant to notice,  
before ANDREA M. IGNACIO HOWARD, CLR, CCRR, RPR,  
CSR License No. 9830.

1           A P P E A R A N C E S:

2

3           FOR THE PLAINTIFFS VIACOM INTERNATIONAL, INC.:

4           JENNER & BLOCK, LLP

5           By:   SUSAN J. KOHLMANN, Esq.

6           1099 New York Avenue, NW, Suite 900

7           Washington, D.C. 20001

8           (202) 639-6000   skohlmann@jenner.com

9

10          FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

11          PROSKAUER ROSE, LLP

12          By:   TANYA L. FORSHEIT, Esq.

13          2049 Century Park East, Suite 3200

14          Los Angeles, California 90067-3206

15          (310) 284-4508   sforsheit@proskauer.com

16

17          FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

18          SHEARMAN & STERLING, LLP

19          By:   STUART J. BASKIN, Esq.

20                   SEAN T. STRAUSS, Esq. (San Francisco)

21          599 Lexington Avenue

22          New York, New York 10022-6069

23          (212) 848-4000   stuart.baskin@shearman.com

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          DAVID FELDMAN WORLDWIDE, INC.  
805 Third Avenue, New York, New York 10022   (212)705-8585

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SCHMIDT, ERIC

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

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and  
GOOGLE, INC.:

MAYER BROWN, LLP

By: JOHN MANCINI, Esq.

DAVID H. MCGILL, Esq.

1675 Broadway

New York, New York 10019-5820

(212) 506-2279 jmancini@mayerbrownrowe.com

ALSO PRESENT:

GOOGLE

By: KENT WALKER, Esq.

CATHERINE LACAVERA, Esq.

1600 Amphitheater Parkway

Mountain View, California 94043

(650) 214-4879

KEN REESER, Videographer.

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1 SCHMIDT, ERIC  
2 PALO ALTO, CALIFORNIA  
3 WEDNESDAY, MAY 6, 2009, 9:14 A.M.  
4  
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09:14:24 6 THE VIDEOGRAPHER: Good morning.  
09:14:25 7 Today's videotaped deposition of Eric Schmidt  
09:14:28 8 is taken on May 6th, 2009, at 601 California Avenue,  
09:14:36 9 Palo Alto, California.

09:14:38 10 In the matter of Viacom International,  
09:14:38 11 et al., vs. YouTube, Incorporated, et al., and The  
09:14:38 12 Football Association Premier League Limited, et al.,  
09:14:38 13 vs. YouTube, Incorporated.

09:14:49 14 Case Nos. 07-CV-2203 and 07-CV-3582. In the  
09:15:01 15 U.S. District Court for the Southern District of  
09:15:03 16 New York.

09:15:04 17 My name is Ken Reeser. I represent David  
09:15:07 18 Feldman Worldwide, located at 600 Anton Boulevard,  
09:15:13 19 Suite 1100, Costa Mesa, California.

09:15:15 20 We are now commencing at 9:14 a.m.

09:15:17 21 Will all present please identify themselves,  
09:15:21 22 beginning with the witness.

09:15:22 23 THE WITNESS: Eric Schmidt.

09:15:24 24 MR. MANCINI: John Mancini, Mayer Brown, for  
09:15:26 25 defendants Google and YouTube.

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09:15:29 2 MR. MCGILL: David McGill, also from Mayer  
09:15:32 3 Brown, for the defendants.

09:15:33 4 MR. WALKER: Kent Walker, Google.

09:15:35 5 MS. LACAVERA: Catherine Lacavera, Google.

09:15:40 6 MR. BASKIN: Stuart Baskin, Shearman &  
09:15:42 7 Sterling, for Viacom.

09:15:42 8 MR. STRAUSS: Sean Strauss, Shearman &  
09:15:43 9 Sterling, for Viacom.

09:15:43 10 MS. KOHLMANN: Susan Kohlmann, Jenner &  
09:15:45 11 Block, for Viacom.

09:15:48 12 MS. FORSHEIT: Tanya Forsheit, Proskauer  
09:15:53 13 Rose, for The Premier League and The Class.

09:15:53 14 THE VIDEOGRAPHER: Thank you.

09:15:54 15 Would the court reporter please swear in the  
09:15:56 16 witness.

09:15:56 17 ERIC SCHMIDT,  
09:15:56 18 having been sworn as a witness testified as follows:

09:15:56 19

09:16:07 20 EXAMINATION BY MR. BASKIN

09:16:07 21 MR. BASKIN: Good morning, sir.

09:16:13 22 Q Did you have the opportunity to prepare for  
09:16:15 23 this deposition?

09:16:16 24 A I did.

09:16:17 25 Q And how long did you prepare for the

1 SCHMIDT, ERIC

09:16:18 2 deposition?

09:16:21 3 A Yesterday, a few hours.

09:16:23 4 Q Now, I assume you have e-mail service on your  
09:16:31 5 computer at Google?

09:16:32 6 A I do.

09:16:33 7 Q How many computers do you have, by the way?  
09:16:36 8 I'm impressed with all the computers in the room. How  
09:16:39 9 many computers do you have?

09:16:40 10 A Me personally, probably 30.

09:16:41 11 Q And over the course of these 30 computers, do  
09:16:47 12 you frequently e-mail during the course of the day?

09:16:49 13 A I do.

09:16:52 14 Q Did you participate in gathering documents  
09:16:56 15 for -- or your e-mails in connection with this  
09:16:59 16 litigation?

09:17:01 17 MR. MANCINI: Objection to form.

09:17:03 18 MR. BASKIN: Q. Did you play any role in  
09:17:04 19 collecting your e-mails or other documents for this  
09:17:06 20 litigation?

09:17:07 21 MR. MANCINI: Objection to form.

09:17:08 22 THE WITNESS: I -- yes.

09:17:10 23 MR. BASKIN: Q. What did you do, sir?

09:17:17 24 A I was given what I believe is a protective  
09:17:21 25 order, is what it's called, and I followed that.

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09:17:25 2 Q And did you make the selection yourself as to  
09:17:29 3 what is produceable in this litigation?

09:17:31 4 MR. MANCINI: Objection to form.

09:17:32 5 THE WITNESS: No.

09:17:37 6 MR. BASKIN: Q. You made it in conjunction  
09:17:38 7 with somebody else?

09:17:41 8 MR. MANCINI: Objection to form.

09:17:42 9 THE WITNESS: Yes.

09:17:42 10 MR. BASKIN: Okay.

09:17:43 11 Q And with whom did you make the decision as to  
09:17:47 12 what is produceable in this litigation?

09:17:50 13 MR. MANCINI: Objection to form.

09:17:52 14 THE WITNESS: I'm not sure I understand the  
09:17:54 15 question very well, because you're using a precise  
09:17:57 16 word, which is jointly producing something.

09:18:00 17 MR. BASKIN: Okay. Well let me -- let me --  
09:18:02 18 let me show you what -- let's mark as Schmidt  
09:18:07 19 Exhibit 1.

09:18:07 20 (Document marked Schmidt Exhibit 1  
09:18:10 21 for identification.)

09:18:10 22 MR. BASKIN: I'll pass these out to the gang.

09:18:21 23 MR. MANCINI: The court reporter will hand it  
09:18:22 24 to you.

09:18:23 25 MR. BASKIN: And let me hand you Schmidt

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09:28:36 2 related to this case but none that are related to this  
09:28:40 3 case?

09:28:40 4 MR. MANCINI: Objection; lacks foundation.

09:28:42 5 THE WITNESS: Some people have permanent data  
09:28:51 6 stores of all communications for their whole lives.  
09:28:55 7 Other people over time either delete or lose some of  
09:29:01 8 that e-mail.

09:29:03 9 It has been my practice for 30 years to not  
09:29:05 10 retain my e-mails unless asked specifically.

09:29:11 11 There are other people who would have copies  
09:29:13 12 of e-mails that I had sent, for example, in 2005, that  
09:29:20 13 you might find an e-mail that I sent to them that  
09:29:23 14 would not be in my copy but might be in their copy.

09:29:27 15 MR. BASKIN: Q. Now, do I understand that it  
09:29:34 16 has been your practice for -- strike that.

09:29:37 17 For 30 years, for how long have you preserved  
09:29:43 18 your e-mails before they are deleted?

09:29:47 19 MR. MANCINI: Objection to form; objection to  
09:29:49 20 the characterization of the testimony.

09:29:50 21 THE WITNESS: That's not what I said, so...

09:29:53 22 MR. BASKIN: Okay.

09:29:53 23 Q I thought you told me if not -- I'm not  
09:29:56 24 fencing with you. I just want to know the answer.

09:29:56 25 You said that --

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09:29:58 2 A Yeah.

09:29:58 3 Q -- I thought you said that for 30 years it's  
09:30:01 4 been your practice not to preserve or to delete  
09:30:05 5 e-mails?

09:30:05 6 MR. MANCINI: Objection to form; objection to  
09:30:07 7 the characterization of the testimony.

09:30:09 8 MR. BASKIN: Q. Is that accurate?

09:30:10 9 A Again, I'll answer the question previously  
09:30:14 10 asked, which was it has been my practice to not keep  
09:30:16 11 my e-mails.

09:30:17 12 Q And is this on some sort of automatic system  
09:30:20 13 where they are deleted in the ordinary course over  
09:30:24 14 some ordinary period of time?

09:30:25 15 MR. MANCINI: Objection to form; objection,  
09:30:26 16 lacks foundation.

09:30:27 17 THE WITNESS: Depending on the e-mail system  
09:30:29 18 and the company and so forth, the answer would vary.

09:30:32 19 MR. BASKIN: Okay.

09:30:32 20 Q Well, let's take Google in 2005. What was  
09:30:41 21 your practice then as to the length of time in which  
09:30:44 22 you preserved your e-mails before they were deleted?

09:30:47 23 MR. MANCINI: Objection to form.

09:30:48 24 THE WITNESS: It was my practice to delete or  
09:30:52 25 otherwise cause the e-mails that I had read to go away

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09:30:56 2 as quickly as possible.

09:30:57 3 MR. BASKIN: Q. Within days?

09:31:01 4 A Yes.

09:31:01 5 Q And I assume that practice carried over to  
09:31:11 6 2006 and 2007 and 2008?

09:31:13 7 MR. MANCINI: Objection; lacks foundation.

09:31:14 8 THE WITNESS: In -- again, without the  
09:31:21 9 specific dates, in principle, yes.

09:31:24 10 MR. BASKIN: Q. Now, when the lawsuit was  
09:31:28 11 filed in February 2007, did anyone instruct you that  
09:31:36 12 you should preserve your e-mails relevant to the  
09:31:41 13 litigation?

09:31:44 14 Excuse me. As of -- excuse me. As of the  
09:31:47 15 filing of this complaint, which is March of 2007, did  
09:31:50 16 anyone instruct you to preserve your e-mails that  
09:31:53 17 might be relevant to this litigation?

09:31:54 18 MR. MANCINI: Objection to the extent it  
09:31:55 19 calls for a privileged communication.

09:31:58 20 THE WITNESS: I want to be careful not to  
09:32:04 21 discuss a legal conversation that I had.

09:32:08 22 You used a precise month. A -- a clear -- a  
09:32:14 23 clear and precise answer would be that I did change my  
09:32:16 24 practice after this lawsuit was filed and I was  
09:32:20 25 notified.

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10:26:34 2 MR. BASKIN: Q. And do you recall whether  
10:26:36 3 Mr. Drummond's various numbers were reduced to writing  
10:26:42 4 for the board or were they only communicated orally?

10:26:44 5 MR. MANCINI: Objection to form; objection to  
10:26:46 6 the characterization of the testimony.

10:26:46 7 THE WITNESS: I have no recollection of how  
10:26:48 8 they were communicated, but certainly verbally at a  
10:26:53 9 minimum.

10:26:54 10 MR. BASKIN: Q. Now, you are aware, I  
10:26:56 11 assume, that the acquisition agreement contains an  
10:27:03 12 indemnification provision relating to copyright  
10:27:06 13 lawsuits?

10:27:06 14 MR. MANCINI: Objection; lacks foundation.

10:27:08 15 THE WITNESS: I am aware of what I'm going to  
10:27:14 16 call a holdback. I don't know the details of exactly  
10:27:19 17 the terms of the holdback, but it is my understanding  
10:27:22 18 that it includes areas of copyright.

10:27:25 19 MR. BASKIN: Q. And was that discussed by  
10:27:29 20 the board in and around October 9, 2006?

10:27:32 21 A Yes.

10:27:32 22 MR. MANCINI: Objection to form.

10:27:33 23 THE WITNESS: Yes.

10:27:33 24 MR. BASKIN: Q. And do you remember that  
10:27:34 25 discussion, sir?

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10:27:35 2 MR. MANCINI: Objection to form.

10:27:36 3 THE WITNESS: No.

10:27:39 4 MR. BASKIN: Q. Was it a factor in your  
10:27:45 5 mind, in recommending the transaction, that there was  
10:27:47 6 a holdback provision to protect Google in the event of  
10:27:52 7 copyright infringement lawsuits?

10:27:53 8 MR. MANCINI: Objection to form; and  
10:27:54 9 objection to the extent it seeks communications from  
10:27:58 10 counsel, to which I instruct the witness not to  
10:28:00 11 answer.

10:28:00 12 THE WITNESS: It is common for us to have a  
10:28:02 13 holdback, and this holdback was -- sorry. Let me say  
10:28:10 14 it more concretely.

10:28:11 15 It is -- when we do -- we do loss of  
10:28:15 16 acquisitions, it is common to have a holdback for  
10:28:17 17 legal issues, surprises and what have you.

10:28:23 18 My judgment was this holdback was sort of in  
10:28:26 19 the ballpark, and that's the level of conversation  
10:28:28 20 that I recall.

10:28:29 21 MR. BASKIN: Q. Now, give me one second,  
10:28:50 22 sir. I want to collect my thoughts, because we may be  
10:28:52 23 able to jump ahead a little bit.

10:28:55 24 A Sure.

10:29:02 25 THE WITNESS: May I give this back to you?

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10:38:05 2 MR. MCGILL: I'm fine. Thank you.

10:38:06 3 MR. BASKIN: Q. Most importantly, would you  
10:38:06 4 like one, sir?

10:38:09 5 A I'm fine.

10:38:09 6 Q You okay? Okay.

10:38:09 7 A Thank you.

10:38:14 8 Q Prior to Google's purchase of YouTube, did  
10:38:19 9 you ever hear a Google executive complain that YouTube  
10:38:26 10 was competing unfairly because of the way it dealt  
10:38:30 11 with copyrighted material on its site?

10:38:33 12 MR. MANCINI: Objection; lacks foundation;  
10:38:35 13 and objection to the form to the extent it seeks a  
10:38:37 14 legal conclusion.

10:38:38 15 THE WITNESS: I'm trying to think.

10:38:50 16 I don't recall. I mean, I may -- someone may  
10:38:55 17 have said something, but it would have been in general  
10:38:59 18 terms. It wouldn't have been with the specificity of  
10:39:02 19 your question.

10:39:03 20 MR. BASKIN: Q. Well, did you ever hear any  
10:39:08 21 Google executives criticize YouTube because of the way  
10:39:11 22 it dealt with copyright issues --

10:39:15 23 MR. MANCINI: Same objections.

10:39:16 24 MR. BASKIN: Q. -- prior to your acquisition  
10:39:17 25 of it?

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10:39:17 2 MR. MANCINI: Same objections.

10:39:19 3 THE WITNESS: Again, I recall complaints  
10:39:27 4 about YouTube having different policies, but not  
10:39:31 5 specific in the way you asked your question.

10:39:36 6 MR. BASKIN: Q. Well, did you ever read an  
10:39:39 7 internal Google document in which a Google executive  
10:39:44 8 criticized YouTube because of the way it dealt with  
10:39:47 9 copyright issues?

10:39:47 10 MR. MANCINI: Objection; lacks foundation;  
10:39:50 11 calls for a legal conclusion; and objection to form.

10:39:52 12 THE WITNESS: I may have. I don't -- I don't  
10:39:55 13 recall specifics.

10:39:56 14 MR. BASKIN: Q. Do you remember being told  
10:40:12 15 by a senior Google executive that a large part of  
10:40:20 16 YouTube's traffic is from pirated content?

10:40:24 17 MR. MANCINI: Objection; lacks foundation;  
10:40:26 18 objection to form.

10:40:29 19 THE WITNESS: No specific recollection, no.

10:40:34 20 MR. BASKIN: Let me hand you what we will  
10:40:36 21 mark as Schmidt 7. It was Drummond 17, I believe, and  
10:40:47 22 Eun -- is that the way you pronounce it, E-U-N, Eun,  
10:40:50 23 Eun 12?

10:40:51 24 THE WITNESS: Eun.

10:40:51 25 ///

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10:40:51 2 (Document marked Schmidt Exhibit 7

10:40:51 3 for identification.)

10:40:51 4 MR. BASKIN: Q. Who is Mr. Eun, Mr. Schmidt?

10:40:52 5 A I assume you're referring to David Eun at UM?

10:40:58 6 Q Correct.

10:41:02 7 Who is he?

10:41:03 8 A An executive that we hired from Time Warner  
10:41:05 9 who was doing media -- media partnerships. He -- he  
10:41:13 10 became Jennifer Feikin's boss.

10:41:17 11 Q Was he, in the pecking order of things,  
10:41:19 12 basically the senior executive dealing with  
10:41:23 13 partnerships with content providers?

10:41:25 14 MR. MANCINI: Objection to form.

10:41:26 15 THE WITNESS: As I recall in the org chart,  
10:41:31 16 he did content or media partnerships reporting, I  
10:41:38 17 think, to Omid Kordestani, who was responsible for  
10:41:41 18 overall partnerships.

10:41:43 19 MR. BASKIN: Okay. Fair enough.

10:41:44 20 Q Now, let me hand -- hand you Exhibit 7.

10:42:06 21 A Okay.

10:42:12 22 Q And Mister --

10:42:13 23 A What would -- what would you like me to focus  
10:42:16 24 on?

10:42:16 25 Q Well, first, would it be fair to say that you

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10:42:24 2 sent this e-mail and the chain that follows it --  
10:42:30 3 strike that.

10:42:30 4 Is it fair to say the Eric Schmidt from whom  
10:42:34 5 this e-mail was sent is you?

10:42:35 6 A That is correct.

10:42:36 7 Q And Mr. Kordestani, the cc, is the gentleman  
10:42:40 8 you referred to a few seconds ago as Mr. Eun's direct  
10:42:45 9 report; correct?

10:42:46 10 A That is correct.

10:42:46 11 Q And going down to Mr. Eun's e-mail, that  
10:42:55 12 e-mail was sent to you in and around May 12th, 2006;  
10:42:59 13 right, sir?

10:43:00 14 A Yes.

10:43:00 15 Q And that e-mail was sent to you prior to  
10:43:02 16 something called the Video GPS; correct?

10:43:08 17 A That's correct.

10:43:08 18 Q And am I correct that GPS is a -- basically,  
10:43:16 19 a quarterly review of product lines within Google that  
10:43:16 20 you --

10:43:23 21 A No.

10:43:23 22 MR. MANCINI: Objection; lacks foundation.

10:43:24 23 THE WITNESS: No.

10:43:24 24 MR. BASKIN: Q. What was the Video GPS then?

10:43:27 25 A Well, GPS stands for Google product strategy,

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10:43:30 2 and it's a series of meetings that occur on typically  
10:43:35 3 Tuesdays on a rotating basis. And Video GPS would  
10:43:39 4 have been a review of the video -- Google Video  
10:43:43 5 product of some kind.

10:43:47 6 And I would read this as -- I read -- I read  
10:43:52 7 this e-mail as he's briefing me ahead of the meeting.

10:44:00 8 Q And I take it you did in fact attend the  
10:44:05 9 Video GPS, to your recollection?

10:44:06 10 A I normally attend them.

10:44:08 11 Q And in addition to you, would the executive  
10:44:11 12 management committee of the company attend GPS  
10:44:16 13 meetings?

10:44:16 14 MR. MANCINI: Objection; lacks foundation.

10:44:18 15 THE WITNESS: Approximately half of the  
10:44:19 16 executives -- senior executives do, yes.

10:44:21 17 MR. BASKIN: Q. So would Mr. Kordestani have  
10:44:23 18 attended in the ordinary course?

10:44:25 19 A Normally not.

10:44:27 20 Q Since this fell within his jurisdiction, is  
10:44:30 21 it likely he attended?

10:44:31 22 MR. MANCINI: Objection to form.

10:44:34 23 THE WITNESS: He would have to tell you, but  
10:44:37 24 it's again un -- I would be speculating to know -- to  
10:44:39 25 know that. Again, normally Omid is not in the

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10:44:42 2 meetings. Normally I am in the meetings.

10:44:43 3 MR. BASKIN: Q. What about Mr. Brin?

10:44:46 4 MR. MANCINI: Objection; lacks foundation.

10:44:48 5 THE WITNESS: Some percentage of the time.

10:44:51 6 MR. BASKIN: Q. Do you recall if Mr. Brin

10:44:53 7 attended --

10:44:54 8 A I do --

10:44:54 9 Q -- the Video GPS?

10:44:56 10 A -- I do not. I do not.

10:44:57 11 Q And what about Mr. Page?

10:45:02 12 A Again, no recollection.

10:45:03 13 Q In the ordinary course, does he tend to

10:45:08 14 attend Video GPS meetings?

10:45:09 15 MR. MANCINI: Objection to form.

10:45:13 16 THE WITNESS: Larry more than Sergey. But  
10:45:17 17 their meetings -- the GPS's are built around me, so  
10:45:20 18 the normal course of business, I'm there and the  
10:45:23 19 others may or may not be there.

10:45:26 20 MR. BASKIN: Okay.

10:45:28 21 Q Now, you said -- I think you said that you  
10:45:30 22 read Mr. Eun's -- am I pronouncing that right, by the  
10:45:35 23 way?

10:45:36 24 A That's correct.

10:45:37 25 Q So it's E-U-N.

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10:45:38 2 You read Mr. Eun's e-mail as preparatory to  
10:45:42 3 the Video GPS; correct?

10:45:45 4 A That is correct.

10:45:46 5 Q Now, he tells you that -- strike that.

10:46:00 6 Do you read this e-mail as focusing on the  
10:46:03 7 issue of how to beat YouTube?

10:46:05 8 MR. MANCINI: Objection to the  
10:46:06 9 characterization of the document.

10:46:07 10 THE WITNESS: Well, I haven't read the whole  
10:46:12 11 e-mail, but it starts by saying, "We are preparing in  
10:46:18 12 preparation for the GPS how we beat YouTube in the  
10:46:23 13 short term and how we win over time."

10:46:25 14 So that would be consistent with your  
10:46:25 15 assertion.

10:46:27 16 MR. BASKIN: Q. And do you recall that one  
10:46:28 17 of the topics being discussed as a way of beating  
10:46:32 18 YouTube was whether Google Video should relax  
10:46:36 19 enforcement of our copyright policies in an effort to  
10:46:41 20 stimulate traffic growth?

10:46:43 21 MR. MANCINI: Objection to the  
10:46:43 22 characterization of the document.

10:46:45 23 THE WITNESS: You would have to point me to a  
10:46:47 24 paragraph or a sentence here.

10:46:49 25 MR. BASKIN: Q. Well, first, do you -- do

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10:46:51 2 you recall this e-mail?

10:46:52 3 A I do not.

10:46:52 4 Q Have you seen this e-mail prior to today, to  
10:46:55 5 the best of your recollection?

10:46:57 6 A I think --

10:46:58 7 MR. MANCINI: Objection.

10:46:58 8 THE WITNESS: Go ahead.

10:46:59 9 MR. MANCINI: Objection to the extent it  
10:47:01 10 seeks communications with counsel.

10:47:02 11 MR. BASKIN: Okay. Fair enough.

10:47:03 12 Q Now, so let's go to the e-mail, sir, at the  
10:47:05 13 bottom. You see it says -- the paragraph that reads  
10:47:11 14 as follows, let me point it out to you, "there is a  
10:47:17 15 chance of pursuing short-term goals with such  
10:47:21 16 zealously that we develop blind spots that could  
10:47:25 17 hurt us later. For example, there was heated debate  
10:47:31 18 about whether we should relax enforcement of our  
10:47:34 19 copyright policies in an effort to stimulate traffic  
10:47:38 20 growth, despite the inevitable damage it would cause  
10:47:43 21 to relationships with content owners."

10:47:48 22 Do you see that, sir?

10:47:50 23 A I do see that paragraph.

10:47:51 24 Q Do you remember reading that paragraph in and  
10:47:53 25 around May 2006?

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10:47:55 2 MR. MANCINI: Objection; lacks foundation.

10:47:56 3 THE WITNESS: As I indicated, I do not recall  
10:47:58 4 the e-mail.

10:47:58 5 MR. BASKIN: Q. Do you recall being party to  
10:48:00 6 a discussion as to whether Google Video should relax  
10:48:04 7 its copyright policies --

10:48:05 8 MR. MANCINI: Objection to the extent it  
10:48:06 9 seeks a leading conclusion.

10:48:06 10 MR. BASKIN: Excuse me. Excuse me. Let me  
10:48:08 11 finish. Then you may register your objection.

10:48:11 12 Q Do you recall whether -- strike that.

10:48:17 13 Do you recall being involved in discussions  
10:48:20 14 in and around May 2006 on the topic of whether Google  
10:48:29 15 Video should relax enforcement of its copyright  
10:48:31 16 policies in an effort to stimulate traffic growth?

10:48:34 17 MR. MANCINI: Objection to form; and  
10:48:35 18 objection to the extent it seeks communications with  
10:48:37 19 counsel, to which I instruct the witness not to  
10:48:39 20 answer.

10:48:39 21 THE WITNESS: I only have a vague  
10:48:43 22 recollection of their -- as I testified previously, I  
10:48:48 23 have only a vague recollection of us talking about the  
10:48:51 24 difference between their policies, "their" being  
10:48:55 25 YouTube's and ours.

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10:48:57 2 MR. BASKIN: Q. So you do not have a  
10:48:58 3 recollection of being party to a discussion about  
10:49:01 4 whether Google Video should relax its policies to  
10:49:03 5 comport with YouTube's?

10:49:05 6 MR. MANCINI: Same objections.

10:49:07 7 THE WITNESS: And again, I have no specific  
10:49:08 8 recollection in that area.

10:49:11 9 MR. BASKIN: Q. Now, in the next paragraph,  
10:49:16 10 Mr. Eun says, "I think we should beat YouTube - and  
10:49:25 11 all competitors - but not at all costs. A large part  
10:49:31 12 of their traffic is from pirated content."

10:49:34 13 Do you see that, sir?

10:49:35 14 A I see that.

10:49:36 15 Q Does -- do you recall reading that sentence  
10:49:38 16 in and around May of 2006?

10:49:39 17 MR. MANCINI: Objection; lacks foundation.

10:49:40 18 THE WITNESS: As I previously said, I don't  
10:49:43 19 recall this e-mail and, therefore, I don't recall this  
10:49:44 20 sentence.

10:49:45 21 MR. BASKIN: Q. Do you recall a conversation  
10:49:46 22 with Mr. Eun on the topic that a large part of  
10:49:54 23 YouTube's traffic is from pirated content?

10:49:57 24 MR. MANCINI: Objection to form; lacks  
10:49:59 25 foundation.

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12:39:01 2 companies to protect the -- their content on the  
12:39:06 3 YouTube website?

12:39:07 4 MR. MANCINI: Objection; lacks foundation;  
12:39:08 5 and objection to form.

12:39:09 6 THE WITNESS: Okay. There were a lot of  
12:39:12 7 negatives in that question.

12:39:13 8 MR. BASKIN: Yeah. It was a lousy question.

12:39:15 9 THE WITNESS: Yeah.

12:39:16 10 MR. BASKIN: Let me withdraw it. That was a  
12:39:16 11 real bad question. Let me try again.

12:39:18 12 MR. MANCINI: Good idea.

12:39:20 13 MR. BASKIN: Q. Did you ever reach the  
12:39:22 14 conclusion, in your own mind, sir, that Google simply  
12:39:29 15 couldn't afford the license fee necessary to make  
12:39:35 16 Audible Magic technology available to content owners  
12:39:39 17 who wanted it in the end of 2006 and the early parts  
12:39:46 18 of 2007, irrespective of whether they entered into a  
12:39:50 19 license agreement with YouTube?

12:39:51 20 MR. MANCINI: Objection; lacks foundation;  
12:39:53 21 objection to form; and objection to the extent it's  
12:39:56 22 seeking mental impressions.

12:39:57 23 THE WITNESS: I -- I have no recollection in  
12:39:59 24 this area.

12:40:15 25 MR. BASKIN: Q. Let me ask you this: Based

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12:40:37 2 on your -- strike that.

12:40:44 3 Q In 2006, can you tell us, for the record, the  
12:41:00 4 name of even one large media company that was given  
12:41:09 5 access to available fingerprint technologies on  
12:41:15 6 YouTube in the absence of a revenue-sharing agreement?

12:41:19 7 MR. MANCINI: Objection to form.

12:41:21 8 THE WITNESS: I'm sorry. In 2006, I -- I  
12:41:27 9 don't know.

12:41:28 10 MR. BASKIN: Q. And what about 2007? Can  
12:41:32 11 you give me the name of one media company that was  
12:41:37 12 given access to available fingerprint technologies in  
12:41:45 13 the absence of a revenue deal?

12:41:46 14 MR. MANCINI: I just want to object --  
12:41:48 15 continuing objection that the witness has indicated  
12:41:49 16 his lack of recollection in this area.

12:41:52 17 THE WITNESS: Yeah. I just -- I don't know  
12:41:54 18 the details, so I don't recall.

12:41:55 19 MR. BASKIN: Q. You don't recall the name of  
12:41:57 20 one company, right, sir?

12:41:59 21 MR. MANCINI: Same objection.

12:42:01 22 THE WITNESS: Yeah.

12:42:04 23 MR. BASKIN: Q. Correct?

12:42:04 24 A That is correct.

12:42:05 25 Q Now, I just want to do five more minutes and

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13:47:46 2 Q Are you familiar that there's a segment of  
13:47:49 3 the YouTube website that displays so-called private  
13:47:53 4 videos?

13:47:55 5 MR. MANCINI: Objection to form.

13:47:56 6 THE WITNESS: I've heard the term, but I  
13:47:58 7 don't know what "private videos" means.

13:48:00 8 MR. BASKIN: Q. So you have no idea how the  
13:48:02 9 private videos sector of the website operates?

13:48:07 10 A No.

13:48:09 11 Q Okay. Would you know, as you sit here today,  
13:48:20 12 whether a content company is capable of searching the  
13:48:31 13 private sector of the website to ascertain whether any  
13:48:36 14 of its copyrighted materials are contained in the  
13:48:39 15 private sector of the website and to try to take it  
13:48:41 16 down?

13:48:41 17 MR. MANCINI: Objection; the witness has  
13:48:43 18 testified to his lack of knowledge in this area.

13:48:46 19 THE WITNESS: I don't know what private part  
13:48:48 20 of the website is.

13:48:49 21 MR. BASKIN: Okay. Fair enough.

13:48:50 22 Q Now, in 2006 and early 2007, am I correct  
13:48:59 23 that Viacom and Google were in a negotiation to try to  
13:49:03 24 achieve a revenue-sharing deal between the companies?

13:49:07 25 MR. MANCINI: Objection to the

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13:49:07 2 characterization.

13:49:08 3 THE WITNESS: We were attempting to do a  
13:49:12 4 business deal, so yes.

13:49:13 5 MR. BASKIN: Q. And -- and that negotiation  
13:49:15 6 went on for several months; did it not?

13:49:19 7 A Yes, that's correct.

13:49:19 8 Q And you were personally involved in the  
13:49:22 9 negotiations to some degree; weren't you?

13:49:25 10 A That's correct.

13:49:25 11 Q And from time to time, you and Mr. Dauman,  
13:49:28 12 the Viacom -- your counterpart at Viacom, would be in  
13:49:31 13 communication either by -- either orally or by e-mail;  
13:49:34 14 is that correct?

13:49:35 15 A Well, and in person, yes.

13:49:37 16 Q And in person as well?

13:49:39 17 A Yes, absolutely.

13:49:39 18 Q In fact, you visited the Viacom premises at  
13:49:42 19 one point to participate, in part, in the  
13:49:44 20 negotiations; didn't you?

13:49:49 21 A I participated, I believe, twice with meeting  
13:49:52 22 with Philippe in his office to discuss the business,  
13:49:56 23 potential business deal.

13:49:57 24 Q And at the same time, you were also  
13:50:01 25 negotiating with some of the other -- the chief

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13:50:04 2 executives of other media companies; weren't you?

13:50:07 3 A Yes.

13:50:10 4 Q Now -- and I guess we already discussed as  
13:50:14 5 part of the business review you were getting periodic  
13:50:18 6 reports of the status of negotiations with the big  
13:50:20 7 media companies; correct?

13:50:23 8 MR. MANCINI: Objection to the  
13:50:23 9 characterization of the prior testimony.

13:50:25 10 THE WITNESS: That is correct.

13:50:34 11 MR. BASKIN: Q. Now, so the jury can  
13:50:43 12 understand what a revenue deal like this is, am I  
13:50:45 13 right that, as structured, these transactions provided  
13:50:54 14 that the media companies' property, videos, would be  
13:51:02 15 displayed on YouTube alongside advertisement?

13:51:05 16 MR. MANCINI: Objection; lacks foundation;  
13:51:07 17 objection to form; and objection to the presence of a  
13:51:10 18 nonexistent jury.

13:51:12 19 THE WITNESS: As a general statement about  
13:51:13 20 the business deals, the copyright owner would enter  
13:51:22 21 into a license agreement with Google where Google  
13:51:27 22 would show the videos or music or what have you and  
13:51:32 23 would be compensated on a per-play basis based on some  
13:51:37 24 form of advertising product either then in existence  
13:51:42 25 or one hoped for in the future.

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