

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 CHAD HURLEY
 SAN FRANCISCO, CALIFORNIA
 WEDNESDAY, APRIL 22, 2009

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
 JOB NO. 16789

DAVID FELDMAN WORLDWIDE, INC.
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APRIL 22, 2009

9:08 a.m.

VIDEOTAPED DEPOSITION OF CHAD HURLEY,
held at the offices of SHEARMAN & STERLING,
525 Market Street, San Francisco, California,
pursuant to notice, before ANDREA M. IGNACIO
HOWARD, CLR, CCRR, RPR, CSR License No. 9830.

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

2

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

5 MAYER BROWN, LLP

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18

19 KEN REESER, Videographer.

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23

24

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1 HURLEY, CHAD
2 SAN FRANCISCO, CALIFORNIA
3 WEDNESDAY, APRIL 22, 2009, 9:08 A.M.
4

09:08:12 5 THE VIDEOGRAPHER: Good morning.
09:08:15 6 Today's videotaped deposition of Chad Hurley
09:08:18 7 is taken on April 22nd, 2009, at 525 Market Street,
09:08:25 8 15th Floor, San Francisco, California.

09:08:27 9 In the matter of Viacom International,
09:08:27 10 Incorporated, et al., and The Football Association
09:08:27 11 Premier League Limited, et al., vs. YouTube,
09:08:39 12 Incorporated.

09:08:39 13 Case Nos. 07-CV-2203 and 07-CV-3582. In the
09:08:51 14 U.S. District Court, for the Southern District of
09:08:53 15 New York.

09:08:54 16 My name is Ken Reeser. I represent David
09:08:57 17 Feldman Worldwide, located at 600 Anton Boulevard,
09:09:02 18 Suite 1100, Costa Mesa, California.

09:09:05 19 We are now commencing at 9:08 a.m.

09:09:08 20 Will all present please identify themselves,
09:09:12 21 beginning with the witness.

09:09:13 22 THE WITNESS: I'm Chad Hurley.

09:09:16 23 MR. BROWNE: Good -- good morning. This is
09:09:18 24 John Browne. I'm from Bernstein, Litowitz, Berger &
09:09:23 25 Grossman. I represent the plaintiffs in the class

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09:09:24 2 action, including the lead plaintiffs, The English
09:09:26 3 Premier League.

09:09:26 4 MR. SCHAPIRO: Andrew Schapiro from Mayer
09:09:31 5 Brown for the defendants.

09:09:32 6 MR. WILLEN: Brian Willen from Mayer Brown,
09:09:33 7 also for the defendants.

09:09:33 8 MR. BAREA: Adam Barea, Google, Inc.

09:09:39 9 MR. WILKENS: Scott Wilkens, Jenner & Block,
09:09:48 10 for Viacom.

09:09:48 11 MR. BASKIN: And Stuart Baskin of Shearman &
09:09:48 12 Sterling for Viacom.

09:09:48 13 THE VIDEOGRAPHER: Thank you.

09:09:49 14 The court reporter may please swear in the
09:09:50 15 witness.

09:09:50 16 CHAD HURLEY,
09:09:50 17 having been sworn as a witness, testified as follows:

09:09:50 18

09:10:00 19 EXAMINATION BY MR. BROWNE

09:10:00 20 MR. BROWNE: Q. Good morning, Mr. Hurley.

09:10:01 21 A Good morning.

09:10:02 22 Q Have you ever been deposed before?

09:10:04 23 A No; this is the first time.

09:10:05 24 Q Okay. But you've given testimony under oath
09:10:07 25 before; is that right?

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09:14:18 2 conclusion.

09:14:18 3 THE WITNESS: I don't know. You'd have to
09:14:19 4 ask the -- for, yeah, a legal opinion on that. I'm
09:14:20 5 not necessarily sure.

09:14:22 6 MR. BROWNE: Q. You don't have any
09:14:23 7 understanding, as you sit here today, what the
09:14:26 8 corporate relationship of YouTube is vis-a-vis Google?

09:14:29 9 MR. SCHAPIRO: Objection; asked and answered.

09:14:32 10 THE WITNESS: Yeah. Like -- like I said, I'm
09:14:34 11 not necessarily sure.

09:14:35 12 MR. BROWNE: Q. You say you're not
09:14:38 13 necessarily sure, but do you have some idea?

09:14:42 14 A No, I don't.

09:14:43 15 Q Do you -- do you consider yourself an
09:14:52 16 employee of Google?

09:14:53 17 A Yes, I do.

09:14:54 18 Q Now, you mentioned that -- or you started the
09:15:01 19 website in early of 2005; is that right?

09:15:03 20 A That's right.

09:15:04 21 Q Okay. And were you one of the founders of
09:15:07 22 the YouTube website?

09:15:08 23 A Yes.

09:15:08 24 Q Were there any other founders?

09:15:10 25 A Yeah, there were.

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09:15:10 2 Q Who were they?

09:15:12 3 A Steve Chen and Jawed Karim.

09:15:20 4 Q Do you -- can you recall an approximate month
09:15:23 5 when you founded YouTube?

09:15:26 6 A Well, we, you know, started discussing things
09:15:29 7 and registered the domain in February of 2005.

09:15:37 8 Q Now, did you personally invest any money into
09:15:40 9 the founding of YouTube?

09:15:44 10 MR. SCHAPIRO: Objection; vague.

09:15:45 11 THE WITNESS: Yeah, in -- in terms of --
09:15:47 12 of -- of -- of what? The formation, or what do you
09:15:50 13 mean?

09:15:50 14 MR. BROWNE: Yeah.

09:15:52 15 Q Did you put forward any capital to help start
09:15:54 16 the business, you personally?

09:15:55 17 A We didn't necessarily set anything aside. I
09:16:00 18 mean, I registered things like the domain. We just
09:16:02 19 had various roles before it was officially formed,
09:16:05 20 so...

09:16:06 21 Q Now, when you -- when you registered the
09:16:07 22 domain and did these other things to set up the
09:16:09 23 company, were you -- did you receive a stock in the
09:16:12 24 company?

09:16:15 25 A Not -- not initially. I -- I -- we went

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09:18:11 2 there, Jawed Karim?

09:18:17 3 A Jawed Karim.

09:18:18 4 Q I'm sorry. Jawed Karim.

09:18:19 5 Has he or, to your knowledge, did he, at any
09:18:21 6 point in time, invest any of his own personal funds
09:18:24 7 into YouTube?

09:18:25 8 A Again, I'm -- I'm not sure if there's any
09:18:26 9 miscellaneous things that he needed to pay for while
09:18:30 10 we were getting things up. I -- I don't think he
09:18:33 11 was -- he was paying for anything, but I can't
09:18:41 12 remember.

09:18:41 13 Q Now, how old were you when you founded
09:18:44 14 YouTube?

09:18:44 15 A Let's see. 20 -- 27, 28, yeah.

09:18:46 16 Q And how old are you today?

09:18:48 17 A I'm 32.

09:18:49 18 Q What did you do immediately prior to the time
09:18:53 19 that -- that you and others founded YouTube?

09:18:57 20 A Well, before YouTube, my last -- my last job
09:18:59 21 was at PayPal.

09:19:01 22 Q Okay. And what is PayPal?

09:19:03 23 A It's a payment service that was eventually
09:19:06 24 acquired by eBay and people use it to pay for -- for
09:19:10 25 auction listings and other services online.

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09:19:13 2 Q And where is -- where is PayPal located?

09:19:15 3 A I think in San Jose now where eBay is.

09:19:19 4 Q Where was it located during the time that you
09:19:22 5 were employed there?

09:19:23 6 A Originally, Palo Alto, and then we moved to
09:19:25 7 Mountain View at some point.

09:19:26 8 Q And -- and -- at what -- can you give me the
09:19:30 9 date when you left PayPal?

09:19:33 10 A I'm trying to remember the exact date. It
09:19:37 11 was maybe close to 2003 time frame.

09:19:42 12 Q Early 2003 or late? Do you have any sense?

09:19:45 13 A I can't remember. I just know that I was
09:19:47 14 away from PayPal for -- for some amount of time before
09:19:50 15 we started working on YouTube or I started working on
09:19:54 16 YouTube.

09:19:54 17 Q And during that gap period between the time
09:19:56 18 when you left PayPal and the time you founded YouTube,
09:19:59 19 were you employed anywhere?

09:20:01 20 A No; I was just -- just working on various
09:20:03 21 ideas and -- and I did some consulting, but then I
09:20:06 22 just took some time to relax, start a family, things
09:20:09 23 like that.

09:20:10 24 Q And what type of consulting did you do?

09:20:13 25 A Just some design work for friends and

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09:20:16 2 Internet companies and -- out in the West Coast.

09:20:20 3 Q Were you paid for any of that consulting?

09:20:23 4 A Yeah, I believe for some of it.

09:20:25 5 Q If you can list for me those that you
09:20:28 6 remember the consulting engagements during that period
09:20:31 7 for which you received some payment.

09:20:38 8 A I think the only one that actually was paid
09:20:41 9 for was just a logo for Space X, it's a space company.

09:20:46 10 Q And how do you spell Space X?

09:20:49 11 A Space and then the letter X.

09:20:52 12 Q Now, what was your -- and just to be clear,
09:20:55 13 can you -- can you recall any other consulting
09:20:57 14 engagements during that time period between PayPal and
09:21:00 15 Google that you were paid for?

09:21:01 16 A Yeah, I mean, I -- I did some work, but I
09:21:03 17 don't think I was ever paid for it. It was with
09:21:07 18 friends.

09:21:07 19 Q What was your title when you left PayPal?

09:21:14 20 A Just designer. I don't -- I don't know at
09:21:16 21 what level. I was just a designer at PayPal.

09:21:19 22 Q And why did you leave?

09:21:23 23 A Just to try new things. You know, I had
09:21:26 24 already spent about three-and-a-half years there. I
09:21:29 25 was just looking and ready to do something different,

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09:21:32 2 new, just kind of burned out.

09:21:34 3 Q When was PayPal acquired by eBay?

09:21:38 4 A I guess it was, you know, six months to a
09:21:41 5 year before I took off, so it was just a few months
09:21:45 6 kind of into that acquisition when I moved on.

09:21:47 7 Q What type of acquisition was it? Do you
09:21:53 8 know?

09:21:55 9 A I'm not sure if it was cash or stock or what,
09:21:59 10 what they used.

09:21:59 11 Q Did you -- did you yourself receive any money
09:22:02 12 as a result of eBay's acquisition of PayPal?

09:22:06 13 A I don't think I -- I received any -- anything
09:22:09 14 directly. We -- we were already a public company, so
09:22:12 15 I already had some stock within the company.

09:22:14 16 Q And when did PayPal become a public company?

09:22:19 17 A Again, I can't remember the specific date,
09:22:20 18 but I think it was a year previous to the acquisition.
09:22:23 19 Somewhere in that time frame.

09:22:24 20 Q So 2001, 2002, something like that?

09:22:29 21 A Something like that.

09:22:30 22 Q Okay. Now, at the time that you -- that
09:22:34 23 PayPal became public, I take it that at that time you
09:22:37 24 had stock in PayPal; is that right?

09:22:39 25 A That's right.

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09:22:39 2 Q Okay. And at the -- at the IPO price,
09:22:42 3 approximately how much was that stock worth, if you
09:22:44 4 know?

09:22:45 5 MR. SCHAPIRO: Objection.

09:22:47 6 THE WITNESS: Yeah, I -- I can't necessarily
09:22:48 7 remember in terms of stock price.

09:22:50 8 MR. BROWNE: Q. What was your highest salary
09:22:53 9 at PayPal.

09:22:55 10 A Again, I -- I can't remember what it was.

09:23:01 11 Q Was it more than [REDACTED] ?

09:23:04 12 A No, I don't believe it was.

09:23:05 13 Q Do you currently today own any PayPal stock?

09:23:12 14 A No, I don't.

09:23:12 15 Q And when did you dispose of that stock?

09:23:15 16 MR. SCHAPIRO: Objection; is this -- what are
09:23:19 17 you getting at with this? I mean, we're going to
09:23:21 18 be -- at some point, I think this is going to be, I
09:23:23 19 think, crossing into a line of personal information
09:23:25 20 that I might instruct him not to answer about.

09:23:27 21 It's just harassing, but if there's
09:23:29 22 somewhere -- some reason you want to know what his
09:23:31 23 assets consist of, let me have a hear at it.

09:23:35 24 MR. BROWNE: Well, if you want to instruct
09:23:37 25 him not to answer, you're welcome to do that, but

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09:23:39 2 that's my question.

09:23:40 3 Q When did you dispose of your PayPal stock?

09:23:43 4 MR. SCHAPIRO: You can answer this question.

09:23:44 5 THE WITNESS: Okay.

09:23:45 6 Again, I -- I -- I don't necessarily

09:23:47 7 remember. I don't remember calendar-wise.

09:23:48 8 MR. BROWNE: Okay.

09:23:49 9 Q Well, maybe to accommodate your counsel, what

09:23:51 10 was your approximate net worth at the time that you

09:23:53 11 left PayPal?

09:23:54 12 A Probably roughly around [REDACTED].

09:24:02 13 Q What's your approximate net worth now?

09:24:08 14 MR. SCHAPIRO: Objection; that one crosses
09:24:15 15 the line. I'm going to instruct you not to answer.

09:24:18 16 MR. BROWNE: How can it cross the line to
09:24:20 17 answer it now but not have crossed the line to answer
09:24:23 18 the same question for a period of three years prior?

09:24:26 19 I don't understand that.

09:24:26 20 MR. SCHAPIRO: Well, I'm not a mind reader,
09:24:29 21 but I assumed there was a basis for asking at PayPal,
09:24:31 22 because you're probably trying to suggest that there
09:24:35 23 was value to him in developing YouTube one way or
09:24:39 24 another, and you got to -- you have a line of
09:24:40 25 questioning here where you're going to talk about his

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09:24:42 2 incentives at YouTube, but what his net worth now is
09:24:46 3 has nothing to do with that.

09:24:47 4 Anyway, that's my instruction to him.

09:24:49 5 MR. BROWNE: Okay. Well, let me try to do
09:24:49 6 it -- maybe -- maybe we're misunderstanding each
09:24:52 7 other, but let me try it this way.

09:24:53 8 Q As a result of your founding of YouTube and
09:24:56 9 the subsequent sale back to Google, has that impact --
09:25:00 10 impacted your net worth?

09:25:02 11 A I'm sure it's increased.

09:25:04 12 Q Okay. Increased as a result of those things,
09:25:06 13 the things associated with YouTube? How much has your
09:25:10 14 net worth increased?

09:25:16 15 A Substantially, of course, yeah.

09:25:17 16 Q More than \$300 million?

09:25:24 17 A I'm not sure where the market stands today,
09:25:26 18 but probably around that ballpark.

09:25:31 19 Q Now, what did you do before PayPal?

09:25:39 20 A I was just coming out of school. That was my
09:25:43 21 first job out of school.

09:25:44 22 Q And by "school" you mean college?

09:25:45 23 A That's right.

09:25:45 24 Q Where did you go to college?

09:25:47 25 A Indiana University of Pennsylvania.

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11:47:50 2 Why don't we go off the record for one
11:47:52 3 second.

11:47:56 4 THE VIDEOGRAPHER: The time is 11:47 a.m.
11:47:59 5 We are off the record.

11:48:00 6 (Recess taken.)

11:48:00 7 (Document marked Hurley, C., Exhibit 12
11:53:26 8 for identification.)

11:53:26 9 THE VIDEOGRAPHER: The time is 11:52 a.m.
11:53:29 10 We are back on the record.

11:53:32 11 MR. BROWNE: Okay. And while we were off the
11:53:34 12 record, I -- I had a discussion with Mr. Hurley's
11:53:37 13 counsel about a video that we're about to mark as
11:53:40 14 Exhibit 11 and play, and -- I'm sorry. We're going to
11:53:44 15 mark it as Exhibit 12 and play for the witness.

11:53:47 16 The witness's counsel did have an opportunity
11:53:49 17 and took that opportunity to review the video, and we
11:53:55 18 agreed, I believe, that we were gonna mark as
11:53:58 19 Exhibit 12 for now a piece of paper that references
11:54:01 20 the Bates number of the video in the production, and
11:54:05 21 that Bates number is JKA00010387.

11:54:11 22 You may look at that.

11:54:12 23 MR. SCHAPIRO: We also agreed that because
11:54:14 24 the video, in the form that you have, contains much
11:54:17 25 more than -- additional clips beyond this 40-second

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11:54:20 2 clip, we would work together to produce some 40 --

11:54:24 3 some version that includes only the -- the particular

11:54:26 4 clip you're going to be asking about.

11:54:30 5 You've represented to me that this is

11:54:32 6 something that was part of the production that

11:54:34 7 Mr. Karim made. We, of course, reserve all rights to

11:54:38 8 challenge authenticity for foundation.

11:54:40 9 MR. BROWNE: Okay. Perfect.

11:54:41 10 Q Now, Mr. Hurley, I'm gonna play for you --

11:54:44 11 this is a very short video.

11:54:44 12 (Video Clip playing on laptop.)

11:54:44 13 (Unintelligible.)

11:54:49 14 SPEAKER 1: "It was like pretty impressed.

11:54:53 15 You're basically right. It's like anywhere

11:54:55 16 on the Internet you have a little that can

11:54:58 17 control and, you know, basically serve up

11:55:00 18 ads, and the whole of things with tags and,

11:55:06 19 you know, what our viewers have seen before

11:55:08 20 the flash. It's pretty --

11:55:10 21 SPEAKER 2: "So if we get them involved, at

11:55:13 22 what point would we tell them our dirty

11:55:16 23 little secret, which is that we actually just

11:55:19 24 want to sell out quickly?

11:55:19 25 SPEAKER 1: "Are you filming?"

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11:55:19 2 You're going to actually have to erase this.

11:55:22 3 SPEAKER 2: "No. It won't be released until
11:55:24 4 after the acquisition."

11:55:25 5 MR. BROWNE: Q. Now, Mr. -- stop that.

11:55:29 6 Now, Mr. Hurley, have you ever seen that
11:55:31 7 video before?

11:55:32 8 A I don't remember it.

11:55:33 9 Q Okay. Did you recognize the two individuals
11:55:37 10 that were on camera during that video?

11:55:40 11 A I recognize Steve and myself, and it sounded
11:55:43 12 like Jawed's voice.

11:55:45 13 Q Okay. And it sounded like -- and Mr. Karim's
11:55:51 14 voice on the video, you recognized that?

11:55:52 15 A It sounded like it.

11:55:53 16 Q Did you hear yourself say on -- on -- on that
11:55:58 17 video that -- that you have to -- something like
11:56:01 18 "we'll have to erase the file"?

11:56:04 19 A I mean, yeah, it seemed like a pretty
11:56:07 20 sarcastic remark to his sarcastic comment.

11:56:10 21 Q Okay. Now, when you were first in -- in
11:56:20 22 discussions with Sequoia Capital about the Series A
11:56:26 23 financing, did -- did Sequoia Capital value -- provide
11:56:30 24 you with a valuation that they had for YouTube?

11:56:34 25 A Yeah, through the -- negotiation they would

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12:02:02 2 Q And then farther over it says -- the final
12:02:04 3 column on the right says "earnings"; you see that?

12:02:07 4 A Yes.

12:02:07 5 Q This -- this spread spreadsheet is -- is --
12:02:09 6 is communicating how much YouTube is earning based on
12:02:16 7 ads sold on different types of web pages at different
12:02:20 8 dates; isn't that right?

12:02:21 9 MR. SCHAPIRO: Objection; calls for
12:02:22 10 speculation; mischaracterizes the document.

12:02:24 11 THE WITNESS: Yeah. Again, I -- I don't
12:02:25 12 remember what this -- this spreadsheet is referring
12:02:29 13 to, you know. To me, it potentially looks like it's,
12:02:34 14 you know, managing or tracking ad impressions.

12:02:38 15 MR. BROWNE: Q. Now, do you have an
12:02:40 16 understanding, though, as to what -- what is meant my
12:02:43 17 "channel watch," and it says -- like, look at the
12:02:45 18 first row. It says "Watch Top"; do you know what that
12:02:48 19 means?

12:02:48 20 A Uh-huh. Not specifically, you know, like --
12:02:54 21 you know, it may be referring to a page.

12:02:58 22 Q The Watch Page?

12:02:59 23 A It could be. I -- I don't remember the
12:03:02 24 document, but it could be.

12:03:02 25 Q What is -- what is -- what is the Watch Page?

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12:03:07 2 A Well, typically, we refer to Watch Pages
12:03:10 3 where a video is being watched where it's being
12:03:12 4 played.

12:03:13 5 Q On the YouTube website?

12:03:14 6 A Yes.

12:03:14 7 Q Okay. And this -- this document is
12:03:16 8 communicating that YouTube was selling advertisements
12:03:19 9 as of June 1st, 2006, on the Watch Page; isn't that
12:03:21 10 right?

12:03:23 11 A I guess. I guess that's what it's tracking.
12:03:25 12 I don't know. I don't remember again.

12:03:26 13 Q Aside from this document, as the CEO of
12:03:29 14 YouTube, in June of 2006, you -- you know that YouTube
12:03:33 15 was, in fact, selling advertisements on its Watch Page
12:03:37 16 at that time; right?

12:03:38 17 A You know, again, I don't call -- recall
12:03:41 18 specific dates. It looks like this -- this document
12:03:44 19 is implying that, but I -- I can't remember.

12:03:46 20 Q And then down a little bit further it says
12:03:49 21 "results"; do you see that?

12:03:51 22 A Uh-huh.

12:03:51 23 Q Is there a -- is there something called a
12:03:53 24 results page on YouTube?

12:03:55 25 A Typically, results, just like in a search

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12:03:58 2 engine, is the results -- it's a page that you get
12:04:01 3 when you're looking for something, searching for
12:04:03 4 something. It lists --

12:04:03 5 Q And as of -- as of June --

12:04:04 6 A -- results.

12:04:05 7 Q Oh, I'm sorry.

12:04:06 8 A Just a list of results.

12:04:07 9 Q And as of June 2006, YouTube was selling
12:04:10 10 advertisements on -- on its results page; isn't that
12:04:13 11 right?

12:04:13 12 MR. SCHAPIRO: Objection; lacks foundation.

12:04:15 13 THE WITNESS: I -- I don't know. I -- I
12:04:25 14 can't remember.

12:04:25 15 MR. BROWNE: Q. Do you have any reason to
12:04:27 16 believe that it wasn't?

12:04:32 17 A No, I mean, I can't remember, so I wouldn't
12:04:34 18 know why. Wouldn't have any reason not to.

12:04:38 19 Q And then a little bit down -- well, just the
12:04:43 20 next group down below, it says "browse" under that
12:04:47 21 channel column; do you see that?

12:04:49 22 A Yes.

12:04:49 23 Q Do you know what that's referring to?

12:04:54 24 A I think it's referring to -- probably to
12:04:57 25 the -- the browse pages, the pages where you have the

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12:04:59 2 ability to -- to browse. Not simply -- you know, not
12:05:03 3 search the result, but page of videos.

12:05:05 4 Q And -- and -- and how does that work? How do
12:05:07 5 the browse pages work at YouTube? At least how did
12:05:10 6 they work as of June 2006?

12:05:12 7 A I can't remember how they -- they -- they
12:05:14 8 worked at that time, but, typically, you can just look
12:05:17 9 at videos by category.

12:05:22 10 Q And in June of 2006, YouTube was selling
12:05:26 11 advertisements on its -- on its browse pages; isn't
12:05:28 12 that right?

12:05:29 13 A Again, I can't remember. It looks like a
12:05:33 14 spread shot -- spreadsheet is implying that, but I --
12:05:37 15 I don't know.

12:05:37 16 Q And then it says "channels" under the column
12:05:43 17 marked "channel."

12:05:44 18 A Uh-huh.

12:05:45 19 Q What -- what's channels?

12:05:48 20 A Typically, channels are, you know, the
12:05:51 21 profile page of a user. You know, representing
12:05:56 22 yourself within the YouTube community. It's kind of
12:05:59 23 how you express yourself, how you broadcast yourself.

12:06:02 24 Q And as of June 2006, YouTube was selling
12:06:04 25 advertisements on its channels pages; right?

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12:06:08 2 A Again, I -- I don't know. I don't remember.
12:06:10 3 Again, the document looks like it's implying that.

12:06:13 4 Q Now, I'm just looking down the earnings
12:06:16 5 column on the right, and I see the largest earnings
12:06:19 6 numbers seem to equate to the Watch Pages. Why is
12:06:24 7 that?

12:06:24 8 MR. SCHAPIRO: Objection; document speaks for
12:06:25 9 itself.

12:06:26 10 THE WITNESS: Yeah, again, I -- I don't know
12:06:30 11 the reasons. I don't remember this document, but it
12:06:33 12 looks like the case in this -- in this spreadsheet.

12:06:37 13 MR. BROWNE: Q. Could YouTube make more
12:06:39 14 money selling advertisements on the Watch Pages than
12:06:43 15 elsewhere on its site?

12:06:45 16 A In -- in terms of what -- I mean, when?
12:06:47 17 What -- what are you implying here? Can you -- can
12:06:47 18 you --

12:06:50 19 Q I wasn't really implying anything.

12:06:52 20 A Can you restate the question?

12:06:53 21 Q Sure.

12:06:54 22 Did YouTube make more money selling
12:06:56 23 advertisements on its Watch Pages than it did selling
12:07:00 24 advertisements on other portions of the YouTube
12:07:02 25 website?

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14:27:39 2 they -- they thought about the clip, I guess. You
14:27:41 3 know, one through five. One being bad and five being
14:27:45 4 great.

14:27:46 5 Q Does that five stars there indicate that the
14:27:48 6 people were rank -- ranking it as five stars, or does
14:27:52 7 that indicate something else?

14:27:53 8 A It looks like I can't -- I can't tell the --
14:27:55 9 the color. It's either zero stars or all five stars.

14:27:59 10 Q Oh, okay. I have just one question about
14:28:03 11 this.

14:28:03 12 On the bottom right-hand corner it says
14:28:07 13 "featured videos."

14:28:08 14 How did it come to be that those particular
14:28:10 15 videos are featured on this Watch Page with the
14:28:12 16 Arsenal versus Manchester United video clip?

14:28:16 17 A Again, with -- with the name changes
14:28:20 18 recently, I'm not sure. I think -- well, it looks
14:28:21 19 like they're all partners. Expert Village, Blooms --
14:28:26 20 Bloomberg, Beyonce. They're all partner videos that
14:28:28 21 have been randomly selected.

14:28:29 22 Q And YouTube generates revenue from its
14:28:33 23 partner deals; right?

14:28:35 24 A Yeah, potentially, yes.

14:28:41 25 Q Now, the re- -- the related video -- I'm

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14:28:46 2 sorry.

14:28:46 3 On the right-hand corner, it also says

14:28:48 4 "related videos"; do you see that?

14:28:51 5 A Yep.

14:28:51 6 Q What -- what -- and then -- and then I think

14:28:53 7 it has a list of similar videos?

14:28:55 8 A Uh-huh.

14:28:55 9 Q How did that list come to be generated?

14:28:58 10 A Again, I think it's -- well, it's a technical

14:29:01 11 question that I don't know the answer for. Somehow

14:29:03 12 some kind of algorithm choosing what -- what's

14:29:06 13 appropriate to show.

14:29:08 14 Q So there's some algorithm at YouTube that --

14:29:12 15 that determined that the videos in this block were

14:29:15 16 related to the video that's playing on the watch

14:29:18 17 block?

14:29:18 18 MR. SCHAPIRO: Objection; calls for

14:29:20 19 speculation.

14:29:21 20 THE WITNESS: Yeah, I -- I -- again, I don't

14:29:26 21 know the details of how that actually works, but it's

14:29:29 22 trying to show related videos, however that is

14:29:32 23 determined.

14:29:32 24 MR. BROWNE: Okay. I have just one document

14:29:39 25 and then I'm done.

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14:45:51 2 cofounders --

14:45:52 3 A That's correct.

14:45:52 4 Q -- of YouTube; correct?

14:45:54 5 A That's correct.

14:45:54 6 Q And did you perceive the three of you as
14:45:55 7 being partners at the time?

14:45:57 8 MR. SCHAPIRO: Objection; vague.

14:46:01 9 THE WITNESS: Partners in -- in what way?

14:46:03 10 MR. BASKIN: Q. Well, did you perceive the
14:46:04 11 other two gentlemen as being your partners?

14:46:07 12 MR. SCHAPIRO: Objection; vague. Partners?

14:46:10 13 MR. BASKIN: Q. Do you understand the word
14:46:12 14 "partner"?

14:46:14 15 A Partner in -- in terms of, you know, a
14:46:17 16 corporate structure partner?

14:46:21 17 Q Well, did you view these two gentlemen as
14:46:22 18 your partners?

14:46:23 19 MR. SCHAPIRO: Same objection.

14:46:24 20 THE WITNESS: Yeah, I mean, we were a -- we
14:46:27 21 were a team trying to develop this.

14:46:30 22 MR. BASKIN: Q. Now, as I understand it --
14:46:34 23 let me ask you to put in front of you what I guess was
14:46:37 24 Hurley 7, and on the bottom of Hurley --

14:46:56 25 MR. SCHAPIRO: Hold on, Counsel. I don't

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14:46:58 2 have it yet.

14:47:00 3 MR. WILLEN: Here it is.

14:47:01 4 MR. SCHAPIRO: Okay. I got it.

14:47:08 5 MR. BASKIN: Okay.

14:47:08 6 Q If we go to the bottom of the first page of
14:47:10 7 Hurley 7, you have the paragraph that Mr. Browne
14:47:14 8 referred you to in the course of your earlier
14:47:16 9 testimony; do you remember that?

14:47:18 10 A Yeah, I think I recall that.

14:47:19 11 Q And in particular, in that paragraph, if I'm
14:47:23 12 reading it right, Mr. Chen is accusing your other
14:47:37 13 partner/colleague/cofounder of being a copyright thief
14:47:44 14 and dropping the copyrights or uploading the copy --
14:47:48 15 the stolen copyrighted materials onto the YouTube
14:47:53 16 website?

14:47:53 17 MR. SCHAPIRO: Objection; blatant
14:47:57 18 mischaracterization of the document.

14:47:59 19 MR. BASKIN: Q. Is that the way you read
14:47:59 20 that paragraph, sir?

14:48:02 21 A I don't think that's what he's trying to say.
14:48:03 22 I think Steve obviously saw some type of videos that
14:48:07 23 he thought may look professional. I -- I don't know
14:48:07 24 Steve -- what videos Steve was referring to.

14:48:09 25 Q Well, I didn't ask you what videos he was

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14:48:11 2 referring to.

14:48:12 3 What I'm asking you is, do you read that

14:48:13 4 paragraph as saying that "Jawed --" who is Jawed, sir?

14:48:18 5 A He was one of the cofounders of the site.

14:48:22 6 Q "Was putting stolen videos on the site."

14:48:24 7 Do you read that, sir?

14:48:29 8 A Yeah, well, Steve was saying "Please stop
14:48:33 9 putting stolen videos on the site."

14:48:34 10 Q And he -- in the last line of that paragraph,
14:48:39 11 if I'm reading it right, he's accusing one of the
14:48:43 12 cofounders of YouTube of blatantly stealing content
14:48:48 13 from another site and trying to get everyone to see
14:48:52 14 it; do you see that?

14:48:53 15 MR. SCHAPIRO: Objection to the
14:48:54 16 characterization of "accusing."

14:48:57 17 MR. BASKIN: Q. Do you see that, sir?

14:48:59 18 A Well, I see what Steve is saying. I think
14:49:03 19 maybe for -- for some of this, he's just referring --
14:49:06 20 you know, he's saying he's referring to content from
14:49:09 21 another site. I don't know if that -- you know, he
14:49:12 22 had authorized -- authorization to do that or what
14:49:14 23 type of content that was. I have no idea.

14:49:18 24 Q Well, I appreciate if you have no idea,
14:49:20 25 because you didn't ask; is that right, sir?

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14:49:21 2 MR. SCHAPIRO: Objection; argumentative.

14:49:24 3 MR. BASKIN: Q. Did you ask?

14:49:25 4 A Ask what?

14:49:25 5 Q Did you ask Mr. Chen what he meant by this
14:49:28 6 paragraph?

14:49:28 7 A I don't remember this e-mail. I --

14:49:29 8 Q Do you remember --

14:49:30 9 A I don't know.

14:49:30 10 Q Do you remember ever discussing with Mr. Chen
14:49:32 11 this paragraph?

14:49:33 12 A Potentially. I can't recall.

14:49:35 13 Q I didn't ask potentially what you can or
14:49:38 14 cannot do.

14:49:38 15 MR. SCHAPIRO: Objection.

14:49:39 16 MR. BASKIN: Q. Do -- do you recall
14:49:40 17 discussing this with Mr. Chen?

14:49:41 18 A I don't remember it.

14:49:43 19 Q Do you remember confronting Mr. Karim with
14:49:46 20 this, the accusation in this paragraph?

14:49:49 21 MR. SCHAPIRO: Objection to the
14:49:50 22 characterization.

14:49:51 23 THE WITNESS: I can't remember having a
14:49:53 24 discussion with him, no.

14:49:55 25 MR. BASKIN: Q. Do you remember consulting

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14:49:57 2 counsel regarding this paragraph, any legal counsel?

14:50:00 3 A I don't even know if we had counsel at the
14:50:03 4 time. I -- I don't remember at this time.

14:50:04 5 Q Is it your testimony that the first time you
14:50:10 6 have knowledge of this incident from this deposition
14:50:13 7 today?

14:50:14 8 MR. SCHAPIRO: Objection; lacks foundation;
14:50:16 9 mischaracterizes the testimony.

14:50:17 10 THE WITNESS: Like I said, I don't -- I don't
14:50:21 11 remember seeing this e-mail in the past, so I don't
14:50:24 12 remember it.

14:50:24 13 MR. BASKIN: Q. When you -- back in 2005,
14:50:33 14 when this incident happened, according to Mr. Chen,
14:50:39 15 were you reporting to work every day?

14:50:43 16 A Sure. We worked around the clock, yeah.

14:50:44 17 Q You were CEO of YouTube at the time; were you
14:50:47 18 not?

14:50:48 19 A Yes, I was.

14:50:48 20 Q And during the course of reporting to work
14:50:52 21 every day, did you see Mr. Chen virtually every
14:50:55 22 working day?

14:50:58 23 A I don't know about every day, but a fair
14:51:02 24 amount.

14:51:02 25 Q And did you see Mr. -- how do you pronounce

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14:51:05 2 it, Karim?

14:51:07 3 A Karim.

14:51:07 4 Q Did you see Mr. Karim virtually every day?

14:51:10 5 A No.

14:51:10 6 Q How frequently did you see Mr. Karim?

14:51:13 7 A I can't recall. I mean, early on he was
14:51:14 8 involved with a few things, but ultimately he ended up
14:51:18 9 deciding to go back to school, so we didn't really see
14:51:21 10 him very often at all.

14:51:22 11 Q And you had his telephone number, I take it;
14:51:25 12 did you not?

14:51:26 13 A I believe so.

14:51:27 14 Q Now, how far was Mr. Chen's office from yours
14:51:31 15 back in and around September 2005 or July 2005? How
14:51:38 16 many feet was his office from yours?

14:51:42 17 A I'm not sure. I can't remember where we sat.
14:51:44 18 If this was in Sequoia's office when we had little
14:51:48 19 incubator space, or if it was when we were in
14:51:52 20 San Mateo, we had our little -- little place there.

14:51:55 21 Q Okay. Well, assuming it's one or the other,
14:51:59 22 what was the furthest distance that Mr. Chen's office
14:52:02 23 was from yours back in September 2005?

14:52:04 24 A I mean, we were always close to each other.

14:52:06 25 I -- I don't know the distance, exactly, but I could

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14:52:09 2 see him.

14:52:09 3 Q And would it be fair to say that you were
14:52:13 4 e-mailing with Mr. Karim virtually every day during
14:52:15 5 this period?

14:52:18 6 A I -- I -- I don't remember. I -- I -- I
14:52:22 7 probably doubt it. I was more in touch with Steve
14:52:25 8 during this entire process.

14:52:26 9 Q Do you remember e-mailing with Mr. Karim
14:52:31 10 frequently during this period?

14:52:33 11 A Maybe in the beginning, but then, again, like
14:52:36 12 I was saying, he decided to go back to school and we
14:52:38 13 didn't stay in touch as much.

14:52:40 14 Q And I take it you don't remember sending him
14:52:43 15 an e-mail inquiring as to the validity of this
14:52:47 16 allegation on the part of Mr. Chen?

14:52:49 17 MR. SCHAPIRO: Objection to the
14:52:49 18 characterization.

14:52:50 19 THE WITNESS: I may have. I mean, this is
14:52:52 20 obviously not what we wanted him to do, if -- you
14:52:55 21 know, if, in fact, he didn't have authorization.

14:53:00 22 MR. BASKIN: Q. Are you saying you now have
14:53:01 23 a memory of doing it or you may have done it?

14:53:03 24 A I may have --

14:53:04 25 MR. SCHAPIRO: Objection; form.

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14:53:05 2 THE WITNESS: -- done it. I mean, I could
14:53:06 3 imagine. I mean, we wouldn't want him to -- to do
14:53:09 4 that, and so if --

14:53:12 5 MR. BASKIN: Q. Do you have any --

14:53:13 6 MR. SCHAPIRO: Can you let him finish his
14:53:15 7 answer?

14:53:16 8 MR. BASKIN: No, not at all.

14:53:17 9 MR. SCHAPIRO: No, you're not going to let
14:53:18 10 him finish his answer?

14:53:20 11 MR. BASKIN: I said not at all. He's welcome
14:53:22 12 to finish his answer.

14:53:23 13 Q Do you have any recollection --

14:53:23 14 MR. SCHAPIRO: Hold on.

14:53:25 15 Did you finish your answer?

14:53:25 16 THE WITNESS: I can't remember what I was
14:53:26 17 trying to say, so sorry.

14:53:29 18 MR. BASKIN: Q. Do you remember whether
14:53:32 19 these videos that Mr. Chen is alleging that Mr. Karim
14:53:41 20 stole were any of those Viacom videos, sir?

14:53:44 21 A I have no idea, but I don't remember.

14:53:47 22 Q Do you remember whether the videos that
14:53:55 23 Mr. Chen accuses Mr. Karim of stealing, whether they
14:54:00 24 were many or a few?

14:54:03 25 MR. SCHAPIRO: Same objection.

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14:54:04 2 THE WITNESS: Yeah, I don't -- I don't
14:54:05 3 remember. I can't recall the number.

14:54:06 4 MR. BASKIN: Q. And do you remember whether
14:54:10 5 he was being accused of stealing entire movies and
14:54:13 6 posting it on the website?

14:54:16 7 A Again, I don't -- I don't recall.

14:54:19 8 Q When -- in your life at YouTube, is it fair
14:54:33 9 to say that it was a -- an unusual event to have a
14:54:39 10 cofounder accused of being the copyright thief?

14:54:45 11 MR. SCHAPIRO: Objection to the
14:54:46 12 characterization.

14:54:47 13 THE WITNESS: Can you -- can you repeat the
14:54:48 14 question?

14:54:55 15 MR. BASKIN: Q. Well, is it an unusual event
14:54:58 16 during your time as CEO to have one of your cofounders
14:55:02 17 being accused of putting stolen videos on the YouTube
14:55:06 18 website?

14:55:06 19 MR. SCHAPIRO: Objection.

14:55:09 20 THE WITNESS: I would assume it's -- it's
14:55:11 21 unusual, because I -- you know, seeing this, I
14:55:13 22 don't -- I don't remember it and it's not what our
14:55:16 23 site was about.

14:55:17 24 MR. BASKIN: Q. Now, were you a frequent
14:55:24 25 user of e-mails back in this time period?

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14:55:26 2 A I can't remember to -- to what extent I
14:55:29 3 receive or send e-mails, no.

14:55:30 4 Q What about today? Are you a frequent user of
14:55:33 5 e-mails?

14:55:34 6 A I've never really enjoyed e-mail.

14:55:35 7 Q How many e-mails do you receive and send
14:55:39 8 during the course of a business day today?

14:55:42 9 A I don't know the exact number. Probably
14:55:43 10 receive a lot more than I respond to. That's for
14:55:46 11 sure.

14:55:46 12 Q You think you receive and send hundreds of
14:55:52 13 e-mails in the course of a day?

14:55:53 14 MR. SCHAPIRO: Objection; compound.

14:55:54 15 THE WITNESS: Again, I don't know the
14:55:56 16 specific numbers. I receive more than I send.

14:55:59 17 MR. BASKIN: Q. Back in 2005, do you have a
14:56:02 18 recollection when this event was happening how many
14:56:09 19 e-mails you receive and send during the course --
14:56:12 20 course of one of those business days?

14:56:14 21 A I can't --

14:56:14 22 MR. SCHAPIRO: Objection to the form.

14:56:23 23 Mr. Hurley, you got to wait until he finishes
14:56:26 24 asking his question to answer it.

14:56:29 25 THE WITNESS: Okay.

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14:56:30 2 MR. BASKIN: Q. Do you know what happened to
14:56:33 3 your e-mails from 2005?

14:56:39 4 A Well, like I said, during the -- you know,
14:56:42 5 the procedure to prepare for this case, I -- at one
14:56:44 6 point I tried to transition from POP to IMAP or IMAP
14:56:50 7 to pop. I mean, different ways to handle e-mail and
14:56:53 8 lost it.

14:56:54 9 Q Well, I didn't know that you lost e-mails
14:56:55 10 in -- when -- when did you lose e-mails, sir?

14:57:01 11 A I can't remember the specific date. We were
14:57:03 12 in the office in San Mateo. I just remember being
14:57:05 13 upset and having to go over to talk to Bradley to see
14:57:08 14 if he can recover it.

14:57:10 15 Q And you lost all of your e-mails?

14:57:11 16 A I believe so.

14:57:12 17 Q And who is Bradley, by the way?

14:57:22 18 A Bradley is one of the engineers.

14:57:24 19 Q And Bradley, you discussed -- strike that.

14:57:28 20 You discussed with Mr. Bradley the fact that
14:57:32 21 you lost almost all your e-mails?

14:57:35 22 A Yeah. I mean, I just remember getting up and
14:57:37 23 going over to talk to him to see if there's a way
14:57:41 24 to -- to recover it, and if there was a way, he was
14:57:43 25 trying to look into it.

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14:57:44 2 MR. SCHAPIRO: Is there a time frame?

14:57:46 3 THE WITNESS: Right, you know, when it

14:57:47 4 happened. I --

14:57:49 5 MR. BASKIN: Q. Is it fair to say that these

14:57:50 6 lost e-mails occurred during the summer of 2005 when

14:57:58 7 you and Mr. Karim and Mr. Chen were sending e-mails

14:58:03 8 back and forth to each other about copyright

14:58:06 9 compliance on the YouTube site?

14:58:09 10 MR. SCHAPIRO: Objection; vague; occurred?

14:58:12 11 THE WITNESS: You know, it just happened. It

14:58:13 12 didn't happen because of any kind of discussions we

14:58:16 13 were having. I was trying to be more efficient with

14:58:18 14 my e-mail and unfortunately didn't know what the hell

14:58:20 15 I was doing.

14:58:21 16 MR. BASKIN: Q. Well, do you recall if it

14:58:24 17 happened in 2005 or 2006 that you lost all these

14:58:28 18 e-mails, Mr. -- sir?

14:58:34 19 A I -- like I said, I can't recall a specific

14:58:36 20 day.

14:58:37 21 Q If I told you that as far as we can tell, for

14:58:43 22 July of 2005, you produced from your custodian account

14:58:48 23 33 e-mails, does that sound like a pretty scanty

14:58:53 24 number of e-mails for the course of a month, sir?

14:58:56 25 MR. SCHAPIRO: Objection; argumentative;

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14:58:57 2 calls for speculation; lacks foundation; testifying.

14:59:03 3 THE WITNESS: Again, I don't remember how
14:59:05 4 many e-mails I sent. I wouldn't be surprised, because
14:59:08 5 I -- like I said, I don't necessarily enjoy e-mail.

14:59:12 6 MR. BASKIN: Q. So you think it's possible
14:59:13 7 you only sent and received 33 e-mails in the month of
14:59:16 8 July of 2005?

14:59:20 9 A I have no idea. I don't -- I don't recall.

14:59:22 10 Q How about August 2005? You think it's
14:59:24 11 possible you sent and received three e-mails,
14:59:28 12 Mr. Hurley?

14:59:31 13 A I -- I have -- I have no idea.

14:59:32 14 Q Well, I'm asking you if -- knowing your own
14:59:35 15 practices, is it conceivable even that you sent and
14:59:40 16 received three e-mails for the entire month of August
14:59:42 17 of 2005?

14:59:44 18 MR. SCHAPIRO: Objection to the form.

14:59:45 19 THE WITNESS: You know, I can't recall.

14:59:50 20 MR. BASKIN: Q. How about the following
14:59:52 21 month, the month of September? Is it possible that
14:59:56 22 you sent and received five e-mails for the entire
15:00:00 23 month of September of 2005?

15:00:03 24 A I can't recall.

15:00:05 25 Q I didn't ask you if you recall it.

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15:00:07 2 I'm saying, is it possible, knowing your own
15:00:09 3 practices, that you sent and received only five
15:00:13 4 e-mails for the entire month of September, Mr. Hurley?

15:00:15 5 A You know, anything is possible, but I wasn't
15:00:18 6 keeping track of how I was sending and receiving
15:00:23 7 e-mails.

15:00:23 8 Q Would it be fair and true and honest to say
15:00:27 9 that you send more than five e-mails in an hour in the
15:00:30 10 course of a normal business day, sir?

15:00:32 11 MR. SCHAPIRO: Objection; speculative;
15:00:34 12 incomplete hypothetical; lacks time frame.

15:00:36 13 MR. BASKIN: Q. Mr. Hurley, is it fair and
15:00:37 14 true and accurate to say that you typically spent --
15:00:40 15 sent more than five e-mails in an hour back in 2005?

15:00:45 16 A I have no idea, but...

15:00:48 17 Q How about in October of 2005? Is possible
15:00:51 18 you only had five e-mails for that month also?

15:00:56 19 A Again, I -- I have no idea.

15:00:59 20 Q Okay. Now, let's talk about the lost e-mails
15:01:01 21 that you brought up with -- with -- what was his name,
15:01:04 22 Bradley?

15:01:05 23 A That's right.

15:01:05 24 Q This is Bradley who? What's his last name,
15:01:10 25 sir?

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15:01:12 2 A What's his last name? Something with an H, I
15:01:16 3 believe. I can't -- I can't remember.

15:01:16 4 Q How about Heilbrun? Does that sound right?

15:01:23 5 A Yes, that's it.

15:01:23 6 Q And you went to Mr. Heilbrun and you advised
15:01:26 7 him of the fact that you had lost some e-mail -- all
15:01:29 8 your e-mails for some period of time?

15:01:31 9 A To the best of my knowledge, yes.

15:01:33 10 Q And do you recall, was it a four-, five-,
15:01:37 11 six-month period? How long a period of time did you
15:01:42 12 lose all these e-mails, sir?

15:01:43 13 A I -- I don't know what the period was. I
15:01:45 14 just...

15:01:45 15 Q Well, as you sit here today, was it a week?
15:01:48 16 A day? A month? Two months? Three months?

15:01:51 17 A I mean, I thought I lost all my e-mail from
15:01:53 18 that date previous.

15:01:54 19 Q From that date from up to the start of when?
15:01:59 20 What? Previous to the start of YouTube?

15:02:01 21 A Whenever we started storing e-mails, I guess.
15:02:04 22 Yeah.

15:02:05 23 Q And did Mr. Heilbrun confirm to you that you
15:02:10 24 had lost all your e-mails?

15:02:12 25 A Yeah, it was my impression, but, yeah.

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15:02:14 2 Q Was he able to reproduce all of these lost
15:02:17 3 e-mails?

15:02:19 4 A I -- you know, kind of looking back at the
15:02:21 5 situation, I don't think he was able to get any of
15:02:23 6 them, but I don't remember.

15:02:24 7 Q There was no backup system, I take it, at
15:02:26 8 YouTube for these e-mails?

15:02:28 9 A No, unfortunately, no.

15:02:30 10 Q And were you the only unlucky sole who lost
15:02:35 11 all your e-mails at the company or did other people
15:02:37 12 lose them as well?

15:02:38 13 MR. SCHAPIRO: Objection to the argumentation
15:02:40 14 and sarcasm.

15:02:42 15 THE WITNESS: I -- I've -- I have no idea --

15:02:45 16 MR. BASKIN: Q. Did you ask --

15:02:46 17 A -- of other people's situations.

15:02:49 18 You know, it was never brought to my
15:02:52 19 attention. I don't know if I -- I can't remember if I
15:02:53 20 ever asked.

15:02:54 21 Q Did you ask Mr. Bradley whether all of
15:02:56 22 YouTube's e-mails from the start of YouTube's time to
15:02:59 23 that date were lost?

15:03:01 24 A I was just asking about mine.

15:03:03 25 Q Didn't inquire about anyone else's e-mails?

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15:03:07 2 A No, because it was something that I did
15:03:08 3 trying to change it myself.

15:03:10 4 Q And, by the way, where is Mr. Brad --
15:03:19 5 Mr. Heilbrun today? Is he still around at YouTube?

15:03:22 6 A I think so.

15:03:23 7 Q Now, what did he tell you you did or what do
15:03:30 8 you think you did that caused the loss of all these
15:03:33 9 e-mails, sir?

15:03:34 10 A I was just trying to move between two
15:03:36 11 different ways to handle e-mail. I don't know the
15:03:39 12 technical differences between POP and IMAP. I think
15:03:43 13 IMAP somehow allows you to manage e-mail more
15:03:46 14 effectively. I think that's what I was trying to move
15:03:48 15 to, but I didn't do it correctly.

15:03:51 16 Q And was everybody at YouTube also moving to
15:03:58 17 this new system or just you?

15:04:02 18 A I don't know. It was just different ways to
15:04:04 19 manage your e-mail.

15:04:08 20 Q Well, do you recall whether this was
15:04:09 21 universal at YouTube, that people were -- were
15:04:12 22 migrating to this new system, or was that just simply
15:04:16 23 what Chad Hurley was doing?

15:04:18 24 A I mean, others could have done it. It's
15:04:20 25 just -- like I said, it's different protocols or

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15:04:22 2 whatever you call it to -- to handle ways that you
15:04:26 3 manage your e-mail. I don't know. People could have
15:04:28 4 been doing both.

15:04:28 5 Q Now, have you advised counsel in connection
15:04:39 6 with this litigation that you have lost most of your
15:04:41 7 e-mails?

15:04:41 8 MR. SCHAPIRO: Objection. I'm going to
15:04:42 9 instruct him not to answer on the basis of privilege.

15:04:47 10 THE WITNESS: Okay.

15:04:48 11 MR. BASKIN: Q. Did this loss of e-mails
15:04:59 12 occur after Google acquired YouTube?

15:05:03 13 A I don't think so. I think it happened
15:05:05 14 before.

15:05:05 15 Q So it happened during the period of time from
15:05:09 16 2005 'til October of 2006?

15:05:14 17 A I guess. I don't know the specific dates.

15:05:15 18 Q And did you lose all of your personal e-mails
15:05:48 19 also or just the company e-mails?

15:05:50 20 A I'm not sure. I -- I think it was just -- it
15:05:52 21 was just trying to deal with the e-mail -- the -- the
15:05:55 22 company one.

15:06:06 23 Q When you heard about this lawsuit and that
15:06:13 24 your documents were being called for, what did you do?

15:06:18 25 A What do you mean what --

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15:06:20 2 MR. SCHAPIRO: You can answer to the extent
15:06:22 3 that you're not revealing privileged conversations
15:06:24 4 with counsel.

15:06:25 5 Go ahead.

15:06:26 6 THE WITNESS: What do you mean what did --
15:06:28 7 what did I do?

15:06:29 8 MR. BASKIN: Q. What did you do to find
15:06:30 9 documents?

15:06:31 10 A What did I what?

15:06:32 11 Q What did you do to find documents?

15:06:34 12 A Well, nothing. I just handed over whatever I
15:06:38 13 had, my laptop, and let them go through my files
15:06:41 14 and...

15:06:41 15 Q Do you know whether Mr. Chen has lost a lot
15:06:44 16 of his documents also?

15:06:46 17 A I have no idea.

15:06:47 18 Q Did you discuss it with him, whether he lost
15:06:49 19 documents like you or...

15:06:52 20 A I don't think so.

15:06:52 21 Q You know if Mr. Karim -- I'm sorry. I'm
15:06:58 22 always mispronouncing that -- but whether he also --
15:07:01 23 Mr. Karim, whether he lost documents as well during
15:07:04 24 this time period?

15:07:06 25 A I -- I have no idea.

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15:07:08 2 Q How long did you prepare for this deposition,
15:07:17 3 Mr. Hurley?

15:07:18 4 A Just the past two days, just sat down.

15:07:20 5 Q And were you shown documents?

15:07:23 6 A A few.

15:07:23 7 Q Less than 50? Fewer than 50?

15:07:28 8 MR. SCHAPIRO: Objection; I'm going to
15:07:30 9 instruct you not to answer.

15:07:31 10 MR. BASKIN: Q. Were you shown any documents
15:07:33 11 that you thought you had lost?

15:07:38 12 A I don't recall a lot of these e-mails. I
15:07:40 13 don't know if I lost them or not.

15:07:53 14 Q Well, just so the record is clear on it, why
15:08:00 15 don't you explain what you believe happened that
15:08:04 16 caused the loss of all these e-mails.

15:08:08 17 A Well, like I was saying, it was just a
15:08:10 18 transition between two ways to handle e-mail between
15:08:13 19 POP and IMAP, and somehow the system that handled it,
15:08:16 20 when I transitioned to one to the other, somehow on
15:08:20 21 the system they disappeared. I don't -- I can't go
15:08:24 22 into anymore technical explanation because I don't
15:08:27 23 necessarily know how it works.

15:08:28 24 Q Now, did you lose, as part of your lost
15:08:38 25 e-mails, the e-mails -- strike that.

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15:08:50 2 When you were shown this morning the e-mail
15:09:32 3 regarding the -- Mr. Chen's accusation regarding
15:09:39 4 Mr. Karim --

15:09:43 5 A Which one? This one?

15:09:44 6 Q Yes, the one before you now.

15:09:46 7 A Thank you.

15:09:48 8 Q Exhibit 7, early 7, is that the first time
15:09:50 9 you recall seeing this e-mail?

15:09:52 10 MR. SCHAPIRO: Same objection as to
15:09:54 11 "accusation."

15:09:55 12 You can answer to the extent that you can --
15:09:59 13 that -- excluding what you might have seen in
15:10:02 14 preparation for this deposition.

15:10:04 15 THE WITNESS: Okay.

15:10:06 16 Yeah, yeah, I -- I don't recall this e-mail.

15:10:08 17 MR. BASKIN: Q. Was anyone, other than
15:10:27 18 Mr. Heilburn, involved in investigating the loss of
15:10:32 19 your e-mails?

15:10:38 20 A I'm trying to think. Maybe other engineers
15:10:40 21 that were in the office. I can't particularly
15:10:43 22 remember who.

15:10:44 23 Q Okay. Now, let me move forward a little bit,
15:11:16 24 sir, to the period when you were negotiating your --
15:11:22 25 the acquisition by Google.

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15:11:24 2 Did -- did you -- did YouTube have a

15:11:26 3 financial advisor in connection with that?

15:11:31 4 A In -- in terms of what? What negotiation?

15:11:34 5 Q The sale of YouTube to Google.

15:11:39 6 A We had our CFO, Gideon Yu.

15:11:43 7 Q Did you have an external financial advisor?

15:11:47 8 A Not that I believe. Just board members as
15:11:50 9 well. I mean, just us as a team.

15:11:53 10 Q What about a firm called Allen & Company?

15:11:57 11 Were they involved with you in trying to sell YouTube?

15:12:01 12 A No, they -- they wanted to get involved, but
15:12:02 13 they weren't.

15:12:03 14 Q They were not retained?

15:12:04 15 A No.

15:12:05 16 Q They didn't prepare any analytical material
15:12:09 17 or any analysis of valuation for you?

15:12:13 18 MR. SCHAPIRO: Objection; calls for
15:12:14 19 speculation.

15:12:15 20 THE WITNESS: Not that I'm aware of.

15:12:17 21 MR. BASKIN: Q. Did anyone prepare -- on
15:12:21 22 your side at the transaction prepare any valuation
15:12:24 23 material?

15:12:29 24 A We probably did, but I -- I don't remember
15:12:31 25 what that was.

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15:12:40 2 Q Did you see the valuation material in
15:12:42 3 preparation for your deposition today?

15:12:47 4 A I can't -- I can't remember. We reviewed a
15:12:49 5 lot of documents --

15:12:50 6 MR. SCHAPIRO: Objection; don't answer that.

15:12:51 7 THE WITNESS: Okay.

15:12:53 8 MR. BASKIN: Q. Do you recall when was the
15:12:54 9 last time you saw your internal valuation material?

15:12:59 10 MR. SCHAPIRO: Excluding in preparation for
15:13:00 11 this deposition.

15:13:03 12 THE WITNESS: I cannot.

15:13:06 13 MR. BASKIN: Q. Did you lose the internal
15:13:09 14 valuation material?

15:13:10 15 A Did I lose it? I -- I don't remember the
15:13:14 16 last time I saw it, so I don't know where -- where it
15:13:17 17 would be.

15:13:17 18 Q And was -- was that among the materials that
15:13:19 19 were lost that you discussed with Mr. Heilburn?

15:13:27 20 A I doubt it. It happened way before we ever
15:13:29 21 discussed anything. I don't know.

15:13:47 22 Q Do you recall the internal valuation material
15:13:51 23 that was generated by YouTube what value you believed
15:13:55 24 the business was worth?

15:13:59 25 A I can't recall a specific document. I don't

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15:14:02 2 remember.

15:14:02 3 Q Was it close to \$1.65 billion?

15:14:06 4 MR. SCHAPIRO: Objection; lacks foundation;
15:14:08 5 assumes facts not in evidence.

15:14:09 6 MR. BASKIN: Doesn't need it. I'm asking him
15:14:09 7 if he knows what it was.

15:14:13 8 Q Was it in range of \$1.65 billion?

15:14:14 9 MR. SCHAPIRO: You have to establish that
15:14:16 10 there was any valuation done.

15:14:17 11 THE WITNESS: Yeah, I -- I -- I don't know.
15:14:18 12 If there was a document, I don't remember the number.

15:14:20 13 MR. BASKIN: Q. Did you think \$1.65 billion
15:14:26 14 was a fair price for YouTube in and around
15:14:30 15 October 2006?

15:14:31 16 A Well, ultimately we settled on that number,
15:14:33 17 so...

15:14:34 18 Q Well, did you at the time think it was a fair
15:14:37 19 price?

15:14:39 20 MR. SCHAPIRO: Objection; vague.

15:14:40 21 THE WITNESS: Yeah. Well, again, assuming
15:14:42 22 there was valuation, you're always trying to negotiate
15:14:44 23 for more, but...

15:14:47 24 MR. BASKIN: Q. And do you recall how you
15:14:49 25 valued YouTube in and around October 2006?

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15:14:54 2 A I don't recall.

15:14:55 3 Q At that point, YouTube had generated losses
15:14:59 4 every single quarter; did it not?

15:15:01 5 A Probably.

15:15:02 6 Q So presumably a \$1.65 billion valuation was
15:15:07 7 not effectuated based on profit; correct?

15:15:13 8 MR. SCHAPIRO: Objection; calls for
15:15:14 9 speculation.

15:15:15 10 THE WITNESS: I don't know what factors went
15:15:16 11 into it.

15:15:17 12 MR. BASKIN: Q. Well, was the valuation
15:15:20 13 based upon the size of your user base and the
15:15:25 14 likelihood of advertising -- selling ads to that user
15:15:31 15 base in the future?

15:15:31 16 MR. SCHAPIRO: Same objection.

15:15:33 17 THE WITNESS: Again, I -- I don't know the
15:15:34 18 valuation. It could potentially be one of the
15:15:36 19 factors.

15:15:37 20 MR. BASKIN: Q. Well, do you recall if that
15:15:38 21 was one of the factors?

15:15:40 22 MR. SCHAPIRO: Same objection; asked and
15:15:42 23 answered.

15:15:42 24 THE WITNESS: Again, yeah, I don't remember
15:15:44 25 the document.

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15:15:46 2 MR. BASKIN: Q. Well, I'm asking whether you
15:15:47 3 remember, irrespective of remembering the document, in
15:15:51 4 terms of fixing a value on YouTube, in your mind, was
15:15:56 5 the value dependent upon the size of your user base
15:16:01 6 and the possibility of selling ads to that user base
15:16:04 7 in the future?

15:16:05 8 A Like I said, it could be one of the factors.

15:16:08 9 Q What other factors are there in your mind or
15:16:10 10 were there in your mind, other than the size of your
15:16:13 11 user base?

15:16:15 12 A Building a great community. Building a site
15:16:18 13 that would affect popular culture, would change
15:16:21 14 elections, would allow people to share their talents
15:16:24 15 around the world. I mean, the fact that we were able
15:16:26 16 to create a site that was easy to use the user
15:16:29 17 interface. The fact that anyone had a chance to use
15:16:32 18 it now have a chance to be heard.

15:16:34 19 Q And presumably all of those factors
15:16:37 20 materialized in a user base; correct?

15:16:39 21 A Yeah, ultimately you need to use the site,
15:16:43 22 the user.

15:16:44 23 Q And in order to generate money or to monetize
15:16:48 24 that user base, you have to sell advertisements to
15:16:51 25 them; correct?

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15:16:52 2 MR. SCHAPIRO: Objection.

15:16:54 3 MR. BASKIN: Q. Is that correct?

15:16:55 4 A Potentially one of the ways, yes.

15:16:57 5 Q Was there any other way to monetize your
15:16:59 6 website, other than selling advertisements?

15:17:05 7 A You know, I can't recall at the time. We
15:17:07 8 continued to look for ways to build a -- a business,
15:17:10 9 but primarily it's going to be supported by ads.

15:17:13 10 Q And the larger the user base, the higher
15:17:17 11 number of ads that could be sold; correct?

15:17:19 12 MR. SCHAPIRO: Objection; asked and answered.

15:17:20 13 THE WITNESS: Yeah, again, that could be the
15:17:21 14 case.

15:17:22 15 MR. BASKIN: Q. Well, that is the case; is
15:17:24 16 it not?

15:17:24 17 MR. SCHAPIRO: Objection; argumentative.

15:17:26 18 THE WITNESS: Like I said, it could be the
15:17:27 19 case.

15:17:28 20 MR. BASKIN: Q. Well, when you sell ads
15:17:30 21 today, do you sell it based on the user base? Likely
15:17:35 22 number of viewers?

15:17:36 23 A I -- I'm not sure exactly how we sell today.
15:17:39 24 Like -- like I said, the site continues to change.
15:17:42 25 You'd have to ask probably Suzie for -- for that

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15:17:45 2 specific answer. I don't know how we're selling it.

15:17:54 3 Q And Suzie is Ms. Reider; is that who it is?

15:17:59 4 A That's right.

15:18:02 5 Q Now, you were asked whether there were other
15:18:09 6 potential acquirers apart from Google this morning,
15:18:12 7 and you mentioned [REDACTED] also made an offer; is that
15:18:16 8 correct?

15:18:17 9 A That's correct.

15:18:17 10 Q And were you involved in the negotiation with
15:18:22 11 [REDACTED]?

15:18:23 12 A To some extent. I -- I don't remember if I
15:18:28 13 was involved with the -- the details of the offer. I
15:18:29 14 just -- like I mentioned before, I met with [REDACTED] and
15:18:32 15 [REDACTED] at Denny's.

15:18:34 16 Q And that was the extent of your involvement?

15:18:37 17 A Well, that's what I remember.

15:18:39 18 Q Do you remember negotiating price at all?

15:18:43 19 A There may have been e-mails back and forth.
15:18:45 20 I -- I don't -- I don't know the specifics. I can't
15:18:49 21 remember the specifics.

15:18:50 22 Q And do you still -- have you seen those
15:18:54 23 e-mails that may have happened, as you put it, that
15:18:57 24 may have been e-mails back and forth? Have you seen
15:18:59 25 those e-mails?

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15:19:00 2 A I don't remember them.

15:19:03 3 Q So you were speculating there may have been
15:19:06 4 e-mails?

15:19:07 5 A Well, there probably were, I just -- I don't
15:19:11 6 remember them.

15:19:11 7 Q Do you recall seeing them in preparation for
15:19:13 8 this deposition?

15:19:14 9 MR. SCHAPIRO: Objection.

15:19:14 10 Don't answer.

15:19:19 11 MR. BASKIN: Q. Do you recall seeing them in
15:19:22 12 the last year?

15:19:22 13 MR. SCHAPIRO: Excluding any preparation
15:19:26 14 regarding this deposition, you may answer.

15:19:30 15 THE WITNESS: Again, I -- I don't remember.

15:19:31 16 MR. BASKIN: Q. Now, in the course of the --
15:19:34 17 of the process of trying to sell YouTube, were both
15:19:39 18 [REDACTED] and Google performing due diligence?

15:19:43 19 A I assume. You'd have to ask them.

15:19:45 20 Q Well, did they ask you questions?

15:19:48 21 A I'm sure they did. I don't remember what
15:19:51 22 they were.

15:19:51 23 Q Do you remember being asked questions at all?

15:19:54 24 A Not specifically, no.

15:19:59 25 Q Do you remember instructing others to answer

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