

1 HURLEY, CHAD

15:20:02 2 [REDACTED] and Google's questions in the course of
15:20:05 3 diligence?

15:20:06 4 A I'm sure I delegated some responsibility
15:20:09 5 through the negotiations, yeah.

15:20:10 6 Q Well, do you remember doing that?

15:20:13 7 A I don't remember.

15:20:16 8 Q Do you remember whether there was a diligence
15:20:24 9 room set up at the Wilson Sonsini law firm?

15:20:29 10 A For who?

15:20:31 11 Q For [REDACTED] and Google to examine your books
15:20:37 12 and records and other things. Was there a diligence
15:20:40 13 room set up?

15:20:43 14 A Perhaps there was. I remember through the
15:20:44 15 process, at least with Google, that, you know,
15:20:49 16 finalizing the documents we -- we were -- we had a
15:20:51 17 room there, but...

15:20:54 18 Q I take it you don't remember any question
15:20:56 19 that you were asked by either [REDACTED] or Google as part
15:20:59 20 of their due diligence?

15:21:01 21 A No. I mean, the one thing that -- that did
15:21:04 22 stick with me is one -- I had a chance to meet with --
15:21:07 23 with Larry at Denny's, Larry from Google, one of the
15:21:14 24 cofounders of Google, Larry Page. You know, he just
15:21:17 25 asked me if, you know, we were making the right

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15:21:20 2 decision. I think, you know, because he was in our
15:21:21 3 position at the same time that -- in the past to sell
15:21:23 4 his company, so he just, you know, beyond just kind of
15:21:25 5 pressuring us to sell, he was -- you know, he was
15:21:27 6 genuine in the -- you know, the fact that this could
15:21:29 7 be our shot to do something independently, and, you
15:21:32 8 know, we talked about that. I remember that.

15:21:35 9 Q So you met at Denny's in booth -- both Google
15:21:39 10 and you -- and [REDACTED]?

15:21:41 11 A Uh-huh.

15:21:42 12 Q And who attended the Google meeting at
15:21:48 13 Denny's?

15:21:48 14 A I can't remember exactly. I know -- I think
15:21:50 15 there were two meetings with them, and at one point I
15:21:53 16 met with Eric and Larry. I don't know if -- if Sergey
15:21:57 17 was ever there. I think David Drummond may have
15:22:00 18 attended one as well, but that was the extent of it.

15:22:03 19 Q So there was more than one meeting with
15:22:06 20 Google that you attended as part of the acquisition?

15:22:08 21 A I think so, at least at the Denny's.

15:22:11 22 Q There was more than one meeting at Denny's?

15:22:14 23 A Yeah.

15:22:17 24 Q And you think you met with Mr. Drummond at
15:22:20 25 one such meeting?

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15:22:21 2 A Yeah, I think -- I think at one of them he
15:22:23 3 was there.

15:22:23 4 Q And you met with Mr. Schmidt at one such
15:22:26 5 meeting?

15:22:26 6 A Uh-huh.

15:22:27 7 Q And you met at -- you met with Mr. Brin at
15:22:31 8 one such meeting?

15:22:32 9 A I don't -- I don't remember if Sergey was
15:22:35 10 there. I think Larry, Larry Page was there.

15:22:35 11 Q Mr. Page was there at one such meeting?

15:22:37 12 A Yeah.

15:22:38 13 Q And have you seen any e-mails that you
15:22:39 14 prepared in connection with those meetings?

15:22:43 15 MR. SCHAPIRO: Excluding any e-mails you
15:22:47 16 might have seen in our preparation for this
15:22:50 17 deposition.

15:22:50 18 THE WITNESS: Again, I can't -- I can't
15:22:52 19 recall.

15:22:52 20 MR. BASKIN: Q. Do you remember what sort of
15:22:58 21 questions those gentlemen asked you at Denny's?

15:23:03 22 A Like I said, that -- that one question in
15:23:05 23 particular stuck out to me because he seemed kind of
15:23:08 24 generally -- general -- genuinely kind of, you know,
15:23:12 25 concerned or just -- you know, it just struck me as,

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15:23:14 2 you know, as interesting, you know, because, you know,
15:23:17 3 he was a founder as well. He knew the situation that
15:23:20 4 we were in, so I remember that question in particular.

15:23:25 5 Q Now, this one transaction over the course
15:23:27 6 of -- strike that.

15:23:31 7 As of the date of the acquisition, Google's
15:23:42 8 acquisition of YouTube, was -- strike that.

15:23:44 9 As of the date of the acquisition, YouTube
15:23:47 10 was a little more than a year old; is that correct?

15:23:51 11 A Yeah, I -- I -- I believe that's -- the
15:23:55 12 old -- how old we were at the time.

15:23:57 13 Q And I think you testified this morning that
15:23:59 14 you yourself put minimal money into YouTube --

15:24:05 15 A Yeah.

15:24:05 16 Q -- is that correct?

15:24:07 17 A Yeah, I was recalling this morning, I think
15:24:10 18 it was like miss -- miscellaneous things, like domain
15:24:13 19 name and things, yeah.

15:24:14 20 Q And as a result of the acquisition, I think
15:24:19 21 you told us your net worth is somewhere in the range
15:24:21 22 of \$300 million; is that correct?

15:24:23 23 A Yeah, I don't know the exact mark -- amount,
15:24:27 24 yeah.

15:24:27 25 Q But something like that; correct?

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15:24:29 2 A It's in the range.

15:24:30 3 Q And if I understand it correctly, apart from
15:24:51 4 these two Denny's meetings at the Denny's restaurants,
15:24:57 5 you played no role in the negotiation of the
15:25:00 6 transaction?

15:25:01 7 MR. SCHAPIRO: Objection; mischaracterizes
15:25:02 8 his testimony.

15:25:03 9 THE WITNESS: Yeah, I don't think that's what
15:25:04 10 I said. I think I remember having these meetings and
15:25:07 11 working with our team to kind of structure the right
15:25:09 12 deal. I'm sure I had a few phone calls, you know,
15:25:13 13 especially with David Drummond, but we were working as
15:25:15 14 a team trying to pull this deal off.

15:25:19 15 MR. BASKIN: Okay.

15:25:19 16 Q So what do you recall your doing as a team
15:25:20 17 member to try to pull the deal off?

15:25:22 18 A You know, specifically, kind of discussion
15:25:26 19 with David Drummond talking about price, and
15:25:28 20 ultimately I think he -- you know, he finished those
15:25:31 21 discussions with Gideon and...

15:25:33 22 Q So -- so you communicated a -- a price to
15:25:36 23 Mr. Drummond that you'd be willing to sell the
15:25:39 24 business?

15:25:39 25 A Yeah. We were discussing those various

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15:25:41 2 things, as we do during negotiation.

15:25:43 3 Q And what price did you communicate to

15:25:44 4 Mr. Drummond?

15:25:47 5 A I can't recall the specific prices. I think,

15:25:50 6 you know, obviously in any negotiation you're trying

15:25:53 7 to push for the -- the maximum amount. I mean,

15:25:58 8 positioning for probably -- for something like two

15:26:00 9 billion or something like that.

15:26:01 10 Q And, in fact, did you tell Mr. Drummond that

15:26:05 11 [REDACTED] had made an offer of \$2 billion?

15:26:08 12 A I may have. That's what you do during

15:26:09 13 negotiations.

15:26:10 14 Q Was that a lie?

15:26:11 15 A You bluff during negotiations, obviously.

15:26:13 16 You try -- you're trying to maximize value for

15:26:15 17 shareholders.

15:26:16 18 Q Well, shareholders were you and the -- your

15:26:21 19 founders and the venture capitalists and the like in

15:26:24 20 this transaction; correct?

15:26:25 21 A Can you repeat the question?

15:26:26 22 Q I'll phrase the question differently.

15:26:28 23 Was the \$2 billion -- that's true. The

15:26:40 24 transcript -- the question I asked you was, was your

15:26:42 25 statement to Mr. Drummond that [REDACTED] had offered

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15:26:47 2 \$2 billion, was that a lie, Mr. Hurley?

15:26:53 3 A Well, if you want to --

15:26:56 4 MR. SCHAPIRO: Objection; asked and answered.

15:26:57 5 MR. BROWNE: Q. Was that a lie, sir?

15:26:59 6 MR. SCHAPIRO: Asked and answered.

15:27:01 7 THE WITNESS: Okay. Like I said, like I
15:27:02 8 answered before, you know, obviously it's a bluffing
15:27:05 9 tactic that you use in any negotiation, you know.

15:27:08 10 MR. BASKIN: Q. And when you negotiate, you
15:27:10 11 always bluff by lying?

15:27:14 12 MR. SCHAPIRO: Objection.

15:27:15 13 THE WITNESS: No, not necessarily. You know,
15:27:18 14 it depends on the situation.

15:27:19 15 Obviously if you're looking for an exit and
15:27:21 16 you have two competing entities, that's something you
15:27:25 17 typically do.

15:27:27 18 MR. BASKIN: Q. Now, in fact, the truth of
15:27:28 19 the matter is that [REDACTED] offer, I think you told us
15:27:33 20 this morning, you think, was \$1.2 billion; correct?

15:27:38 21 A I believe it was in that range.

15:27:40 22 Q So you bluffed by another \$800 million; is
15:27:42 23 that correct? You added \$800 million to their offer;
15:27:46 24 is that correct?

15:27:48 25 A Yeah, roughly.

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15:27:48 2 Q And when you bluff by adding \$800 million to
15:27:52 3 their offer, do you believe Mr. Drummond took you at
15:27:54 4 your word?

15:27:55 5 A Well, we obviously sold for a lower amount,
15:27:57 6 so I guess it didn't work.

15:27:58 7 Q Well, you sold between what [REDACTED] actually
15:28:02 8 offered you and \$2 billion; correct?

15:28:05 9 A I guess, if that's how the math works. I
15:28:07 10 don't know.

15:28:07 11 Q To this day, do you have any reason to
15:28:09 12 believe that Mr. Drummond knew that you bluffed him by
15:28:14 13 \$800 million?

15:28:15 14 A I don't know. You'd have to ask him exactly.
15:28:17 15 But, like I said, we obviously sold for a lower price.

15:28:22 16 Q Now, when you were talking to [REDACTED], were you
15:28:44 17 also bluffing by inflating the offers you were getting
15:28:50 18 from Google?

15:28:50 19 A Probably. I can't recall.

15:28:51 20 Q Because that's the way you think you're
15:28:53 21 supposed to negotiate? Is that why?

15:28:56 22 MR. SCHAPIRO: Objection.

15:28:56 23 THE WITNESS: You know, if -- if you're
15:28:57 24 talking about a negotiation, well, again, where you
15:29:00 25 have two entities trying to purchase something, it

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15:29:02 2 seems like a typical tactic.

15:29:04 3 MR. BASKIN: Q. And did the other members of
15:29:06 4 the YouTube -- strike that.

15:29:08 5 Did the other YouTube shareholders know that
15:29:12 6 you were bluffing by inflating your offers by
15:29:18 7 \$800 million to your counter parties?

15:29:21 8 A You know, obviously, you know, the -- the
15:29:23 9 board, we sat down and had meetings about it, and they
15:29:27 10 knew we were trying to maximize value for our
15:29:30 11 shareholders.

15:29:30 12 Q Well, what I asked you is, did your board or
15:29:32 13 the other shareholders know that Chad Hurley was
15:29:39 14 bluffing by inflating your offers by \$800 million that
15:29:45 15 you communicated to your counter parties?

15:29:47 16 A I -- I can't remember if they had -- you
15:29:49 17 know, we specifically discussed it; but, like I said,
15:29:54 18 they -- they obviously knew I was doing a good job to
15:29:57 19 try to maximize shareholder value.

15:30:00 20 Q You think they would have -- your
15:30:01 21 shareholders would have approved it if they knew that
15:30:05 22 you were bluffing your counterparties by inflating
15:30:08 23 your offers by \$800 million?

15:30:10 24 MR. SCHAPIRO: Objection; calls for
15:30:11 25 speculation.

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15:30:11 2 THE WITNESS: Yeah, again, I don't -- I don't
15:30:13 3 know what they would think, but, again, you know,
15:30:16 4 if -- if they're good at negotiations, they would
15:30:19 5 probably be doing the same things.

15:30:23 6 MR. BASKIN: Q. You think Mr. Botha, for
15:30:26 7 example, of Sequoia would negotiate by -- by bluffing
15:30:29 8 and inflating offers by \$800 million?

15:30:32 9 A I don't know. You'd have to ask him.

15:30:33 10 Q And what about Mr. Botha at Cisco? Do you
15:30:38 11 think that's the way he does business, Mr. Hurley?

15:30:41 12 A I have no idea.

15:30:42 13 MR. SCHAPIRO: Objection.

15:30:43 14 MR. BASKIN: Q. And you have no idea because
15:30:44 15 you didn't tell them; is that why?

15:30:46 16 MR. SCHAPIRO: Objection; mischaracterizes
15:30:46 17 his testimony; asked and answered.

15:30:48 18 THE WITNESS: Yeah, again, I've already
15:30:49 19 answered the question. But, yeah, I don't recall us
15:30:51 20 having a specific meeting, but we were all on the
15:30:53 21 same -- same team. We wanted to maximize value.

15:30:58 22 MR. BASKIN: Q. Now, is it your practice on
15:30:59 23 things that are important to you, is it your practice
15:31:02 24 to bluff, Mr. Hurley?

15:31:07 25 A No. Well, again, no, not necessarily, you

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15:31:09 2 know. You're -- you have to look at the situation.

15:31:12 3 MR. SCHAPIRO: Why don't we take a break.

15:31:15 4 MR. BASKIN: Why don't I finish this line of
15:31:18 5 question first and then we can take a break.

15:31:20 6 MR. SCHAPIRO: How many more do you have?

15:31:22 7 MR. BASKIN: I don't know.

15:31:22 8 MR. SCHAPIRO: I -- I -- I need a break.

15:31:26 9 THE VIDEOGRAPHER: Okay.

15:31:27 10 The time is 3:30 p.m.

15:31:31 11 We're off the record.

15:31:40 12 (Recess taken.)

15:41:51 13 THE VIDEOGRAPHER: The time is 3:41 p.m.

15:42:05 14 We are back on the record.

15:42:08 15 MR. BASKIN: Q. Mr. Hurley, as you sit here
15:42:13 16 today, do you think it's okay that you increased the
15:42:24 17 purchase price by \$800 million in your negotiations
15:42:28 18 with Google?

15:42:30 19 A What do you mean "okay"?

15:42:32 20 Q Well, are you proud of the fact that you did
15:42:34 21 that?

15:42:35 22 A Well, like I was saying, typically through a
15:42:39 23 negotiation you're trying to maximize value, so I'm
15:42:44 24 proud of the fact that we're able to do that.

15:42:46 25 Q And you're proud of the fact that you're able

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15:42:48 2 to do that by telling Google that [REDACTED] bid was
15:42:56 3 \$800 million higher than it really was; is that right,
15:43:01 4 sir?

15:43:01 5 A I mean, using a -- a typical bluffing tactic,
15:43:06 6 sure. It worked.

15:43:30 7 Q Now, let me show you -- can you find this for
15:44:01 8 me? No, I don't need it. Forget it.

15:44:08 9 During your time as CEO of Yahoo --

15:44:33 10 MR. SCHAPIRO: Objection.

15:44:38 11 THE WITNESS: YouTube.

15:44:39 12 MR. BASKIN: Withdrawn. Sorry.

15:44:40 13 Q You -- you have been CEO of YouTube from its
15:44:43 14 founding to today; correct?

15:44:44 15 A Yeah, pretty much.

15:44:45 16 Q Now, during that time period, has YouTube
15:44:51 17 experienced the phenomenon where individuals seek to
15:44:57 18 upload entire movies serially on the website?

15:45:09 19 A I -- I can't think of a specific example. I
15:45:12 20 mean, could have happened in the past.

15:45:15 21 Q You truly cannot think of a single example of
15:45:18 22 a movie that was serially loaded on the website?

15:45:23 23 MR. SCHAPIRO: Objection; asked and answered.

15:45:24 24 THE WITNESS: Like I said, I can't remember
15:45:26 25 if a -- an -- an example.

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15:45:27 2 MR. BASKIN: Q. Well, for example, how about
15:45:32 3 United 93? Is that a movie that was loaded onto the
15:45:40 4 YouTube website in ten-minute intervals? Do you know,
15:45:48 5 sir?

15:45:49 6 A I can't -- I can't recall. I'm not aware of
15:45:51 7 that, to the best of my knowledge.

15:45:54 8 Q How about Slither?

15:46:04 9 A Again, I don't know.

15:46:08 10 Q And how about Breakup?

15:46:11 11 A Don't know.

15:46:11 12 Q How about Transformers?

15:46:16 13 A I can't recall.

15:46:18 14 Q How about Sicko?

15:46:24 15 A I can't -- can't recall.

15:46:26 16 Q How about Tropic Thunder?

15:46:33 17 A May have happened. I can't recall.

15:46:34 18 Q You do not recall whether you learned that a
15:46:39 19 single one of these movies had been uploaded serially
15:46:43 20 onto the website?

15:46:45 21 A I may have, but I don't remember
15:46:47 22 specifically.

15:46:53 23 Q And am I right that it is -- strike that.

15:46:57 24 Do I understand your testimony that you do

15:47:01 25 not -- you're not aware of a single incident where an

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15:47:04 2 entire movie was serially loaded onto the website in
15:47:09 3 ten-minute intervals?

15:47:11 4 A I'm -- I'm sure it -- it's -- it's happened
15:47:13 5 in the past. I -- it probably was brought to my
15:47:16 6 attention at some time. I -- I don't recall any
15:47:19 7 specific instance.

15:47:20 8 Q Well, are you familiar with circumstances
15:47:31 9 when movies, entire movies, were uploaded onto the
15:47:38 10 YouTube website while they were still in the theater?

15:47:48 11 A Again, it may have happened. Someone may
15:47:52 12 have sent me an e-mail, but I can't -- I can't recall
15:47:54 13 which movies or when that happened.

15:47:57 14 Q Well, without regard to which movies, do you
15:48:00 15 recall that happening, that entire movies being
15:48:04 16 uploaded onto your website while they were still in
15:48:11 17 first runs in the movie theaters?

15:48:13 18 A I can't remember.

15:48:16 19 Q Do you recall incidents where entire movies
15:48:26 20 were uploaded onto your website before they reached
15:48:30 21 the movie theater?

15:48:34 22 A Again, it may have happened. I -- I don't
15:48:36 23 recall a specific example.

15:48:38 24 Q Well, again, without regard to whether you
15:48:41 25 can name a specific movie, do you recall being advised

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15:48:51 2 that entire movies were uploaded onto YouTube even
15:48:57 3 before the movie hit the movie theaters?

15:49:01 4 A You know, may have happened. You know, I
15:49:05 5 would forward it onto the appropriate people to deal
15:49:07 6 with it, if it did.

15:49:08 7 Q But you -- as you sit here today, it's your
15:49:10 8 testimony you don't remember one such incident?

15:49:12 9 MR. SCHAPIRO: Objection; mischaracterizes
15:49:14 10 the testimony.

15:49:14 11 THE WITNESS: Yeah, again, like I said, I
15:49:17 12 can't remember a specific example.

15:49:18 13 MR. BASKIN: Q. Well, if that happened, is
15:49:29 14 that the sort of incident that -- what you might
15:49:32 15 expect you would remember, sir?

15:49:38 16 A I received a lot of e-mails, and like all of
15:49:42 17 these documents, I -- you know, I don't necessarily
15:49:44 18 recall every single conversation. You know, I've
15:49:48 19 built a team where I'm able to forward and delegate.

15:49:53 20 Q Well, because I didn't ask whether you
15:49:55 21 remembered each conversation. I asked if you were
15:49:58 22 advised by e-mail or orally that entire movies were
15:50:06 23 being uploaded onto the YouTube website.

15:50:12 24 MR. SCHAPIRO: Objection; that's not what you
15:50:14 25 asked.

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15:50:14 2 MR. BASKIN: Q. Would you expect that you
15:50:16 3 would remember that?

15:50:18 4 A Like I said, you know, I may recall some --
15:50:21 5 some of those examples. I can't think of a specific
15:50:27 6 one. I...

15:50:32 7 Q In the course of your -- for the last year or
15:50:36 8 are two, do you recall seeing e-mails where you were
15:50:38 9 so advised of that, that there were serial uploads of
15:50:44 10 entire movies onto the YouTube website?

15:50:47 11 MR. SCHAPIRO: You can answer to the extent
15:50:48 12 that you exclude any work that we had preparing for
15:50:54 13 this deposition.

15:50:56 14 THE WITNESS: No, I can't remember.

15:51:01 15 MR. BASKIN: Q. Do you think those were
15:51:02 16 among the e-mails that were lost?

15:51:06 17 A There may have been some, you know. You
15:51:09 18 know, if it happened within the last year, probably
15:51:12 19 not.

15:51:15 20 Q Now, I think you told us earlier that you
15:51:36 21 were aware or you had heard that Google Video was
15:51:43 22 sweeping for copyrighted materials when they were a
15:51:47 23 direct competitor of yours.

15:51:48 24 MR. SCHAPIRO: Objection; mischaracterizes
15:51:49 25 his prior testimony.

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15:51:51 2 THE WITNESS: I don't -- I don't know exactly
15:51:52 3 what I said -- remember what I said this morning, the
15:51:55 4 exact wording.

15:51:56 5 MR. BASKIN: Q. Well, what's the truth? I
15:51:58 6 don't care about the exact wording this morning.

15:52:00 7 Were you aware that when they were a direct
15:52:03 8 competitor of yours, Google Video was sweeping for
15:52:09 9 copyright materials?

15:52:10 10 MR. SCHAPIRO: Objection; vague.

15:52:11 11 Aware when? The testimony was that he
15:52:13 12 learned about it afterwards.

15:52:15 13 MR. BASKIN: That's fine.

15:52:16 14 Q Did you learn about that afterwards?

15:52:19 15 A That was something I heard. I'd never seen
15:52:20 16 it. That's just -- I heard about it.

15:52:23 17 Q That is, you heard that at the time when
15:52:28 18 Google Video was competing directly with YouTube, that
15:52:33 19 Google Video was sweeping for copyrighted materials?

15:52:36 20 MR. SCHAPIRO: Objection; vague as to
15:52:39 21 "sweeping."

15:52:40 22 THE WITNESS: Yeah, again, I don't -- I don't
15:52:42 23 remember when and where and who told me that or how I
15:52:46 24 came upon it, but that's just something I heard.

15:52:49 25 MR. BASKIN: Q. But it's fair to say, is it

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15:52:52 2 not, that after Google acquired YouTube, this practice
15:53:00 3 of sweeping for copyright violations was not applied
15:53:05 4 at YouTube; correct?

15:53:07 5 MR. SCHAPIRO: Objection; "sweeping."

15:53:09 6 THE WITNESS: Again, I -- you know, I don't
15:53:12 7 necessarily know what was implemented after the
15:53:15 8 acquisition. You'd have to speak to the teams that
15:53:18 9 were focusing on that.

15:53:19 10 MR. BASKIN: Q. Well, your -- you -- you
15:53:20 11 remained CEO after the acquisition; didn't you?

15:53:23 12 MR. SCHAPIRO: Objection; asked and answered.

15:53:25 13 THE WITNESS: Yes, I was CEO.

15:53:27 14 MR. BASKIN: Q. And do you know whether,
15:53:31 15 after the acquisition, when you were CEO, did a Google
15:53:37 16 Video practice of sweeping for videos not apply at
15:53:41 17 YouTube?

15:53:42 18 MR. SCHAPIRO: Vagueness objection as to
15:53:45 19 "sweeping."

15:53:46 20 THE WITNESS: Again, I can't remember what
15:53:48 21 happened, what was applied.

15:53:49 22 MR. BASKIN: Q. You cannot remember whether
15:53:53 23 YouTube post-acquisition has been sweeping for
15:53:57 24 videos --

15:53:57 25 MR. SCHAPIRO: Same objection.

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15:54:00 2 MR. BASKIN: Q. -- for copyright violations?

15:54:03 3 A Yeah, I -- I -- I don't know if we are. I --

15:54:04 4 I doubt we are.

15:54:08 5 Q Now, did you have a discussion with somebody

15:54:13 6 at Google to the effect that Google Video's practice

15:54:22 7 of sweeping for copyright violations would not apply

15:54:29 8 at YouTube?

15:54:31 9 MR. SCHAPIRO: Objection; lacks foundation.

15:54:34 10 MR. BASKIN: Q. Did you have such a

15:54:36 11 discussion with anybody, Mr. Hurley?

15:54:37 12 A I -- I -- I can't remember, but there may

15:54:41 13 have been an e-mail.

15:54:42 14 Q Well, an e-mail or discussion, do you ever

15:54:45 15 remember discussing with somebody at Google, you're

15:54:53 16 acquirer, that the practice of sweeping videos for

15:54:59 17 copyright violations would not apply at YouTube post

15:55:03 18 acquisition?

15:55:04 19 MR. SCHAPIRO: Do you want to define what you

15:55:05 20 mean by "sweeping"?

15:55:08 21 THE WITNESS: Can you define sweeping?

15:55:10 22 MR. BASKIN: I ask the questions, not your

15:55:12 23 counsel.

15:55:12 24 Q What -- what -- are you -- did you have any

15:55:15 25 discussion with anybody at Google that the practice of

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15:55:24 2 sweeping videos to take out copyright violations would
15:55:28 3 not apply at YouTube?

15:55:30 4 MR. SCHAPIRO: Objection; vague as to the
15:55:32 5 term "sweeping."

15:55:34 6 THE WITNESS: Again, can't remember.

15:55:36 7 MR. BASKIN: Q. Do you have a memory problem
15:55:39 8 in your daily life?

15:55:40 9 MR. SCHAPIRO: Objection; don't answer that
15:55:41 10 question.

15:55:43 11 MR. BASKIN: Q. Now, you were shown this
15:56:02 12 morning a document actually prepared by your brother,
15:56:11 13 Hurley -- Brent Hurley Exhibit 14 which showed
15:56:16 14 advertising revenue for ads placed on Watch Pages at
15:56:28 15 YouTube in and around June 2006?

15:56:31 16 MR. SCHAPIRO: Do you want us to pull this
15:56:33 17 out?

15:56:34 18 MR. BASKIN: He's welcome to look at it. I'm
15:56:36 19 not going to ask him any questions about the document.

15:56:38 20 Q I just wanted to know, what -- do you
15:56:38 21 remember that document?

15:56:38 22 MR. SCHAPIRO: Objection to the
15:56:39 23 characterization.

15:56:40 24 THE WITNESS: Well, yeah, it's from this
15:56:41 25 morning.

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15:56:42 2 MR. BASKIN: Okay.

15:56:43 3 Q Now, without regard to the document, were you
15:56:52 4 aware -- strike that.

15:56:53 5 Without regard to the document, I take it you
15:56:55 6 were aware that YouTube's practice prior to the
15:57:00 7 acquisition by Google was to run ads against Watch
15:57:06 8 Pages?

15:57:09 9 A Yeah, I don't know how many Watch Pages, but
15:57:12 10 that's what this document implies.

15:57:14 11 Q But independent of the document, just from
15:57:17 12 your experience as CEO of YouTube, you knew that;
15:57:23 13 didn't you, sir?

15:57:24 14 A Yeah.

15:57:25 15 Q Now, how long prior to the acquisition of
15:57:34 16 YouTube by Google, how long a period of time had
15:57:42 17 YouTube advertised against Watch Pages?

15:57:47 18 A I don't -- I don't know the specific
15:57:49 19 length/time.

15:57:49 20 Q Well, your brother's document purports to
15:57:53 21 cover the time, that is, Hurley -- Brent Hurley 14, of
15:57:57 22 June results, June '06.

15:58:03 23 Do you know how much earlier than June '06 --

15:58:08 24 A I think --

15:58:09 25 Q -- did YouTube engage in the practice of

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15:58:15 2 advertising against Watch Pages?

15:58:17 3 MR. SCHAPIRO: Objection; lacks foundation;
15:58:18 4 mischaracterizes the document.

15:58:20 5 THE WITNESS: Again, I can't recall the
15:58:22 6 specific dates. I can't tell you.

15:58:24 7 MR. BASKIN: Q. Now, you are aware, I take
15:58:29 8 it, that there came a time when the practice of
15:58:34 9 that -- of YouTube's practice of advertising against
15:58:37 10 Watch Pages stopped? Is that right, sir?

15:58:43 11 A Yeah, I believe there's a time.

15:58:44 12 Q And do you recall when the time arose that
15:58:49 13 the practice -- YouTube's practice of advertising
15:58:51 14 against Watch Pages stopped?

15:58:54 15 A Well, I'm not aware of -- or I can't remember
15:58:58 16 the specific date that it changed, no.

15:59:00 17 Q Was it shortly after the acquisition by
15:59:02 18 Google, sir?

15:59:06 19 A I'm not sure.

15:59:09 20 Q Was it in and around January 2007?

15:59:13 21 A I don't know.

15:59:13 22 Q Do you recall why the practice of advertising
15:59:18 23 against Watch Pages stopped at YouTube post
15:59:23 24 acquisition?

15:59:25 25 A Beyond any -- any privileged information, I

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15:59:28 2 mean, there's a -- you know, business reasons why.
15:59:30 3 You know, obviously we wanted to show our business
15:59:33 4 partners that we're serious about concentrating on
15:59:36 5 their content, selling their pages, maximizing value
15:59:40 6 for them participating in our -- on our system. We
15:59:43 7 wanted to focus the sales force on that.

15:59:45 8 Also, just generally, we -- we didn't want to
15:59:47 9 disrupt the user's experience on the site. We wanted
15:59:50 10 to limit the amount of ads, and unless you would join
15:59:53 11 our partner program and not opt into having ads show
15:59:56 12 up against your -- your videos, we didn't want to
15:59:57 13 randomly just put videos against someone's family trip
16:00:00 14 to the beach.

16:00:03 15 Q Do I take from this last answer that you
16:00:05 16 actually have a memory of discussing with somebody
16:00:08 17 that these are the reasons for ceasing advertisements
16:00:13 18 in its Watch Pages?

16:00:14 19 A No, I don't remember specific discussions. I
16:00:17 20 remember this was potentially some of the reasons why
16:00:20 21 we were thinking about it.

16:00:23 22 Q Well, do you know why, in fact, you stopped,
16:00:28 23 why YouTube stopped practice of advertising its Watch
16:00:31 24 Pages?

16:00:31 25 A You know, some of those reasons are what I

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16:00:34 2 just stated. That's what I remember.

16:00:36 3 Q Do you know whether it was an instruction

16:00:41 4 from counsel to stop?

16:00:43 5 MR. SCHAPIRO: Objection; I -- I instruct you
16:00:47 6 not to answer.

16:00:58 7 MR. BASKIN: Q. Well, without regard to what
16:01:00 8 was said to you, do you recall having discussions with
16:01:08 9 counsel on that topic --

16:01:10 10 MR. SCHAPIRO: Object.

16:01:11 11 MR. BASKIN: Q. -- of whether -- of whether
16:01:12 12 ads should be placed against Watch Pages?

16:01:15 13 MR. SCHAPIRO: Objection; instruction not to
16:01:53 14 answer.

16:01:53 15 MR. BASKIN: Q. Who was YouTube's counsel,
16:01:55 16 by the way, external counsel on copyright issues post
16:01:58 17 acquisition? Still Wilson Sonsini?

16:02:03 18 A I'm not sure. It may have been. I don't
16:02:05 19 know.

16:02:35 20 MR. BASKIN: Now, could you hand me this
16:02:45 21 document.

16:03:23 22 Let's mark as Hurley Exhibit --

16:03:30 23 MR. WILKENS: 20.

16:03:32 24 MR. BASKIN: -- 20, the document in my hand,
16:03:35 25 and then we'll hand it to Mr. Hurley.

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16:03:47 2 (Document marked Hurley, C., Exhibit 20

16:03:48 3 for identification.)

16:03:48 4 THE WITNESS: Thanks.

16:04:04 5 THE VIDEOGRAPHER: You lost your microphone,

16:04:06 6 sir.

16:04:07 7 MR. BASKIN: Oh.

16:04:23 8 MR. SCHAPIRO: Do you -- I have a copy.

16:04:26 9 MR. WILLEN: I got something different.

16:04:28 10 MR. SCHAPIRO: I think you handed the back of

16:04:29 11 it, the earlier exhibit.

16:04:30 12 THE WITNESS: Oh, that was the earlier one.

16:04:32 13 MR. SCHAPIRO: Yeah.

16:04:32 14 THE WITNESS: That one had just been sitting

16:04:34 15 there.

16:04:34 16 MR. SCHAPIRO: Oh, I don't know. Maybe that

16:04:36 17 was just on the table. Sorry. You got it?

16:04:41 18 MR. BASKIN: Q. Sir, do you recall seeing

16:04:44 19 Hurley Exhibit 20 prior to today?

16:04:47 20 MR. SCHAPIRO: Other than in preparation for

16:04:48 21 this deposition.

16:04:52 22 THE WITNESS: No, I don't recall.

16:04:53 23 MR. BASKIN: Q. I take it, though, it's fair

16:04:56 24 to say that you are the head -- the Chad Hurley to

16:05:01 25 whom this was sent?

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16:05:02 2 A It looks like that's the case.

16:05:03 3 Q Now, do you recall this subject matter of
16:05:09 4 this, of -- of Hurley Exhibit 20?

16:05:17 5 A No, not specifically, no.

16:05:18 6 Q Well, do you recall removing that paragraph
16:05:28 7 that begins with "A" for answer from YouTube's
16:05:35 8 policies in and around December 2005?

16:05:39 9 A I -- I don't know what happened in response
16:05:40 10 to this e-mail.

16:05:41 11 Q Do you know whether, in fact, up until that
16:05:48 12 point, you had a review process primarily focused on
16:05:58 13 removing adult content or obvious copyright violations
16:06:04 14 and then you ceased that review process on or after
16:06:09 15 December 2005?

16:06:12 16 A I don't remember the specific time frame, but
16:06:15 17 I think at one point we -- we tried to do something
16:06:18 18 like this, but obviously it -- it continued to change
16:06:24 19 as we tried to strike the appropriate balance, and...

16:06:27 20 Q And by continuing to change, you mean you
16:06:29 21 ceased your review process insofar as it pertained to
16:06:34 22 copyright -- obvious copyright violations in and
16:06:37 23 around December 2005; is that right, Mr. Hurley?

16:06:40 24 A I'm assuming so. I don't know what happened
16:06:42 25 in response to this.

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16:06:43 2 Q Was this roughly the same time that you
16:06:47 3 stopped practice at YouTube of community flagging for
16:06:51 4 copyright violations?

16:06:55 5 A It may have been. I don't -- I don't know
16:06:57 6 what time that happened.

16:07:02 7 Q Because you are the person who ordered that
16:07:04 8 practice be stopped, right, internally; correct?

16:07:09 9 A Yeah, I believe we -- we discussed it.

16:07:11 10 Q And then you -- I think we saw it this
16:07:14 11 morning -- didn't you issue the instruction to stop
16:07:17 12 community flagging?

16:07:20 13 A Yeah, I think I recall it from earlier today.

16:07:26 14 Q Do you recall other practices that had been
16:07:28 15 engaged in at Yoohoo -- at Ya -- at You -- YouTube in
16:07:37 16 connection with copyright compliance that stopped in
16:07:42 17 and around -- strike that.

16:07:44 18 Do you recall other practices that had been
16:07:47 19 engaged in by YouTube, insofar as copyright compliance
16:07:53 20 was concerned, that changed prior to the acquisition
16:08:00 21 by Google?

16:08:00 22 MR. SCHAPIRO: Objection; vague and assumes
16:08:05 23 facts not in evidence.

16:08:07 24 MR. BASKIN: Okay. Well, let me be a little
16:08:10 25 more concrete.

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16:08:10 2 Q You stopped screening -- strike -- strike
16:08:13 3 that.

16:08:13 4 You stopped -- stopped flagging, correct,
16:08:16 5 sir?

16:08:16 6 A Flagging?

16:08:18 7 Q For -- community flagging for copyright
16:08:20 8 violations. You stopped that in the fourth quarter of
16:08:23 9 2005, right, Mr. Hurley?

16:08:25 10 A Again, I don't remember the date, but
16:08:29 11 potentially, yes.

16:08:30 12 Q And then in and around December 2005, at
16:08:35 13 least it's Ms. Gillette's instruction, that this
16:08:38 14 paragraph that references the review process primarily
16:08:45 15 focused on removing adult content or obvious copyright
16:08:50 16 violations, that that also stopped --

16:08:50 17 MR. SCHAPIRO: Objection --

16:08:55 18 MR. BASKIN: Q. -- right, Mr. Hurley?

16:08:56 19 MR. SCHAPIRO: -- mischaracterizes the text
16:08:58 20 of the document.

16:08:59 21 THE WITNESS: Again, in response to this
16:09:01 22 e-mail, I don't know what was -- what had taken place.

16:09:05 23 Like I stated this morning, we were making
16:09:08 24 mistakes. Our community was making mistakes based on
16:09:12 25 their perceived kind of, I guess, definition of

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16:09:15 2 professional content on the site, that we didn't know
16:09:18 3 if it was up there with authorization or not.

16:09:21 4 MR. BASKIN: Q. So, therefore, is your
16:09:24 5 testimony that you now remember stopping the practice
16:09:27 6 of focusing on removing obvious copyright violations
16:09:34 7 from your website?

16:09:36 8 A Well, like I keep saying, I -- I don't
16:09:39 9 remember this specific e-mail. I don't remember the
16:09:41 10 action that was taken because of this. We had -- you
16:09:44 11 know, we have changed our policies over time, but...

16:09:49 12 Q Now, that led, then, to my question of
16:10:06 13 whether there were other practices you recall directed
16:10:13 14 to the issue of copyright compliance that YouTube
16:10:18 15 stopped prior to the acquisition by Google.

16:10:21 16 MR. SCHAPIRO: Objection to the premise
16:10:23 17 embedded in the question.

16:10:26 18 THE WITNESS: Again, I don't -- I don't know
16:10:28 19 what you're specifically referring to.

16:10:31 20 MR. BASKIN: Q. Was it your instruction that
16:10:53 21 YouTube should communicate to its users a canned
16:11:00 22 response regarding their need not to violate
16:11:06 23 copyrights?

16:11:07 24 A We're always trying to educate our -- our
16:11:10 25 users.

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16:11:11 2 Q Well, did you instruct your team that YouTube
16:11:15 3 should use a canned response when a user inquires
16:11:22 4 about its copyright obligations?

16:11:25 5 A I don't remember if I used those specific
16:11:27 6 terms, but, again, if we want to educate our
16:11:29 7 community.

16:11:31 8 Q What about the use of a can response? You
16:11:39 9 don't remember that phrase?

16:11:41 10 A I can't recall that specific remark, no.

16:11:42 11 Q Assuming that you communicated to your
16:11:55 12 YouTube team that all you should do is provide a can
16:12:04 13 response that users should own all copyrights to the
16:12:10 14 material they upload, what meaning does "can response"
16:12:18 15 have for you in that context?

16:12:20 16 MR. SCHAPIRO: Objection; calls for
16:12:21 17 speculation; incomplete hypothetical.

16:12:22 18 THE WITNESS: Yeah, well --

16:12:28 19 MR. BASKIN: Q. Well, do you know the
16:12:29 20 meaning of the word "can response" -- words "can
16:12:32 21 response"?

16:12:33 22 A They can have many different meanings.

16:12:38 23 Q Well, let's -- give me this document. Sorry.
16:13:18 24 I think you're right.

16:13:19 25 MR. WILKENS: Yeah.

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16:13:34 2 MR. BASKIN: Why don't we mark as Hurley

16:13:36 3 Exhibit 21 a document in my hand, and I will hand out

16:13:38 4 copies to other counsel. I'm sorry.

16:13:48 5 You got it?

16:13:50 6 THE WITNESS: Thank you.

16:13:50 7 (Document marked Hurley, C., Exhibit 21

16:13:51 8 for identification.)

16:14:17 9 MR. BASKIN: Q. Have you seen Exhibit 21

16:14:24 10 prior to today, Mr. Hurley?

16:14:30 11 A I don't recall it, no.

16:14:31 12 Q Well, without regard to the exhibit,

16:14:33 13 recalling the particular exhibit, do you recall in

16:14:40 14 communicating to the YouTube team, in your capacity as

16:14:44 15 CEO in and around September 25th, 2005, that "We

16:14:53 16 should communicate the canned response that you should

16:14:57 17 own all copyrights to the material you upload"?

16:15:01 18 Do you remember using --

16:15:03 19 MR. SCHAPIRO: Objection; misstates the text

16:15:05 20 and omits part of the text.

16:15:08 21 MR. BASKIN: Q. Do you remember

16:15:09 22 communicating that, Mr. Hurley?

16:15:11 23 A I don't remember, but it -- it looks like

16:15:12 24 I -- I had.

16:15:14 25 Q And read in the context of the e-mail you, in

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16:15:17 2 fact, sent, what did you mean by "canned
16:15:22 3 response," Mr. Hurley?

16:15:23 4 A Well, I -- I don't know. Like I said, I
16:15:24 5 don't know if -- if we responded to this guy. I don't
16:15:29 6 know if he -- he owned the rights to this clip. I
16:15:32 7 mean, that's what we were trying to communicate to
16:15:34 8 him.

16:15:34 9 I think, obviously to make things efficient,
16:15:39 10 you can't construct -- or you know, construct
16:15:42 11 individual e-mails to -- to keep up with questions. I
16:15:45 12 mean, a canned response is just trying to create a
16:15:47 13 more efficient process so we can educate more people.

16:15:51 14 Q And that's your understanding of what you
16:15:53 15 meant by "canned response"?

16:15:56 16 A I mean, typically, that's how you try to
16:15:58 17 respond to people's questions online.

16:16:00 18 Q Now, on the YouTube website, have there
16:16:15 19 always been a portion of the website that is private?

16:16:23 20 A In terms of -- of -- well, what portion are
16:16:26 21 you talking about?

16:16:27 22 Q Well, are there can -- strike that.

16:16:30 23 Can individuals upload videos to -- not for
16:16:43 24 public dissemination, but for simply private viewing?

16:16:47 25 A Yeah, we have that functionality.

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16:16:49 2 Q And has that functionality existed from the
16:16:52 3 start of YouTube?

16:16:56 4 A I'm trying to remember. I don't know if it
16:16:58 5 existed from the beginning, but it's something that
16:17:00 6 we've had for a while.

16:17:01 7 Q And does it exist today?

16:17:04 8 A Yeah, I believe so.

16:17:05 9 Q Now, if someone wants to upload videos
16:17:17 10 privately to this private part of the YouTube website,
16:17:23 11 can they upload anything they want?

16:17:28 12 A Well, assuming they, you know, follow our --
16:17:32 13 our terms of use, they can upload a clip typically
16:17:39 14 under ten minutes in range.

16:17:40 15 Q Is the ten-minute range limitation applied to
16:17:43 16 private videos?

16:17:46 17 A I believe so, yes.

16:17:47 18 Q And can individuals upload serially entire
16:17:53 19 movies to their private video?

16:17:57 20 A Again, that's against our terms of use, but
16:18:00 21 someone could possibly do it.

16:18:01 22 Q Now, assuming a content owner was intent on
16:18:14 23 preserving its intellectual property and wanted to
16:18:18 24 issue a takedown notice to YouTube, am I correct that
16:18:25 25 a content owner has zero access to private videos?

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16:18:35 2 A I don't know technically the capabilities
16:18:37 3 that we've enabled for the private videos. I mean,
16:18:40 4 obviously those private videos are limited to a set of
16:18:43 5 people, so you can't share them broadly, and we also
16:18:47 6 now, you know, as we continue to improve the -- the
16:18:50 7 content tools that we can provide, we have audio and
16:18:53 8 video fingerprinting, which I think may scan those
16:18:57 9 videos, even though a content owner can't see them.

16:19:01 10 Q Well, with -- in -- let's go back to 2005.
16:19:09 11 Was there any way for any content owner to
16:19:14 12 protect its intellectual property with respect to
16:19:18 13 materials uploaded to private videos?

16:19:24 14 A I'm trying to think. You know, as our tool
16:19:26 15 has -- tools have changed, I -- I -- I don't -- I
16:19:30 16 don't believe there was, other than, you know, we're
16:19:32 17 talking about some of the manual review that we've --
16:19:36 18 we've -- we've changed. I think that was things that
16:19:38 19 we were doing.

16:19:39 20 Q So just so I'm sure I understand your answer,
16:19:42 21 I take it your answer is that in 2005, there was no
16:19:48 22 way for any content owner to protect its intellectual
16:19:52 23 property with respect to materials uploaded to private
16:19:56 24 videos --

16:19:56 25 MR. SCHAPIRO: Objection --

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16:19:57 2 MR. BASKIN: Q. -- is that correct?

16:20:00 3 MR. SCHAPIRO: -- misstates the testimony;
16:20:01 4 lacks foundation.

16:20:02 5 THE WITNESS: Yeah, that's not what I said.
16:20:03 6 I just said I -- I -- it -- I -- I don't know. I
16:20:06 7 don't remember.

16:20:07 8 MR. BASKIN: Q. What about with respect to
16:20:11 9 2006?

16:20:13 10 A I don't know. Again, as -- as the tools have
16:20:16 11 evolved, I -- I don't know the -- you know, for, you
16:20:19 12 know, private videos, if partners have the ability
16:20:23 13 beyond some of the -- the audio and video
16:20:25 14 fingerprinting that we have today to -- to see them.

16:20:30 15 Q In 2006 -- strike that.

16:20:36 16 What about in 2007? Could an individual --
16:20:42 17 can a content owner who's not a partner with you, not
16:20:52 18 a partner with YouTube -- could a content owner
16:20:57 19 protect its intellectual property that was uploaded to
16:21:00 20 private videos?

16:21:02 21 MR. SCHAPIRO: Objection; vague; lacks
16:21:04 22 foundation.

16:21:04 23 THE WITNESS: Yeah, can -- can you define
16:21:06 24 "partner"?

16:21:08 25 MR. BASKIN: Well, yeah, sure.

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16:21:09 2 Q Let me phrase it this way: Assume that a
16:21:15 3 content owner refuse -- has declined to enter into a
16:21:19 4 license agreement with YouTube. Was there any way
16:21:24 5 that content owner could protect its intellectual
16:21:28 6 property that was uploaded to private video -- to the
16:21:31 7 private part of YouTube?

16:21:33 8 A Again, I don't -- I don't know in any case
16:21:37 9 what the abilities where around private videos. I
16:21:40 10 know, you know, just as a, you know, practical matter,
16:21:44 11 anyone, any partner, if they're in a licensing
16:21:47 12 agreement with us or not, it's our intent to have our
16:21:49 13 tools available to them.

16:21:51 14 Obviously there's probably different levels
16:21:53 15 at which they can have access because there's some
16:21:56 16 level of trust around particular tools that may be
16:21:58 17 more -- more powerful or affect the community more
16:22:02 18 but...

16:22:03 19 Q Well, let's go back again.

16:22:05 20 In 2005, if Viacom declined or did not enter
16:22:12 21 into a license agreement with YouTube, am I correct,
16:22:14 22 sir, that there is no -- was no way for Viacom to
16:22:17 23 access private videos to protect its intellectual
16:22:21 24 property?

16:22:22 25 MR. SCHAPIRO: Objection to the premise

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16:22:23 2 embedded in the question.

16:22:25 3 THE WITNESS: Yeah, again, what I was saying,
16:22:32 4 I -- I don't know any partner, you know, a partner at
16:22:33 5 any level, what their abilities were, you know, tied
16:22:35 6 to private videos.

16:22:36 7 MR. BASKIN: Q. That's at any year or just
16:22:38 8 2005?

16:22:38 9 A No, I -- as I was saying, the tools continued
16:22:43 10 to adapt. I -- I don't know how technically it would
16:22:45 11 work for them.

16:22:46 12 Q Am I correct that in 2008, as late as 2008, a
16:22:56 13 content owner has no access to the private videos,
16:23:00 14 unless they sign a license agreement with YouTube?

16:23:03 15 A I'm not aware of that, no. Like I said,
16:23:06 16 we -- we want them to -- you know, a partner, as we
16:23:11 17 define it, is someone that doesn't necessarily need to
16:23:13 18 provide us content or licensing deal.

16:23:15 19 It's, you know, kind of a legal agreement so
16:23:18 20 they can have access to our tools. Obviously, you
16:23:20 21 know, with any piece of technology it's common.

16:23:25 22 Q The question was, as late as 2008, if Viacom
16:23:29 23 declines to enter -- had declined to enter into --
16:23:33 24 with -- a license agreement with you, am I right, sir,
16:23:37 25 that there was no way for Viacom to access the private

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16:23:42 2 videos to protect its intellectual property rights?

16:23:45 3 MR. SCHAPIRO: Objection; asked and answered.

16:23:47 4 THE WITNESS: Yeah, like I continue to say,

16:23:49 5 any partner at any level, I don't know what their

16:23:52 6 abilities were concerning private videos.

16:23:56 7 MR. BASKIN: Q. Am I also right that

16:23:58 8 individuals who upload videos can switch public videos

16:24:02 9 to private -- and make them private?

16:24:05 10 A Yeah, that's -- that's a functionality that's

16:24:09 11 available.

16:24:09 12 Q Just a press of a button; is that correct?

16:24:11 13 A I -- I think that's what it requires. I

16:24:14 14 don't know if you check a box or click a button,

16:24:17 15 something like that.

16:24:17 16 Q And you mentioned before that there was

16:24:19 17 limited viewership to private videos. When did that

16:24:23 18 start, sir?

16:24:25 19 A I don't know when it exactly started, but

16:24:28 20 that's something that we've had for a while.

16:24:30 21 Q Did you have limited viewership in 2005?

16:24:34 22 A I -- I -- I don't know.

16:24:36 23 Q Did you have limited viewership in 2006?

16:24:39 24 A I can't say for sure. I don't know.

16:24:41 25 Q Did you have limited viewership in 2007?

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16:24:44 2 A Again, I -- I don't know the date that we
16:24:47 3 implemented that.

16:24:48 4 Q Now, are there private videos that are --
16:25:01 5 have been viewed thousands or even tens of thousands
16:25:04 6 of times, sir?

16:25:08 7 A Oh, I -- I assume potentially it's a
16:25:10 8 possibility, if it used to be public and they -- they
16:25:13 9 marked it as private. But, you know, I guess it would
16:25:16 10 seem for, you know, a limited group of 25 people to --
16:25:20 11 but there could be. I have lots of great family
16:25:23 12 videos.

16:25:24 13 Q Did you ever, by the way, personally take
16:25:26 14 some public video and mark it private?

16:25:29 15 A Yeah, I may have. I -- like I said, I
16:25:31 16 uploaded family videos, and as the site became more
16:25:34 17 popular, I didn't necessarily want people to see my
16:25:37 18 children running around on the beach.

16:25:40 19 Q Now, am I correct that YouTube has
16:26:58 20 distribution agreements with many other parties to
16:27:06 21 distribute YouTube videos over other medium?

16:27:15 22 A What do you mean by -- by "medium"?

16:27:16 23 Q Well, I think you discussed some of it this
16:27:19 24 morning, but is there a distribution agreement between
16:27:22 25 YouTube and Cingular?

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16:27:27 2 A I believe at one time we probably had a deal
16:27:29 3 with them or a mobile carrier.

16:27:32 4 Q Well, you have one with Verizon today; don't
16:27:35 5 you, sir?

16:27:35 6 A I don't know if that's still the case. We
16:27:37 7 probably do. I don't know.

16:27:38 8 Q You don't know if you have a distribution
16:27:40 9 agreement with Verizon?

16:27:41 10 MR. SCHAPIRO: Objection; asked and answered.

16:27:43 11 THE WITNESS: Again, I -- I don't know. We
16:27:46 12 have lots of partnerships.

16:27:47 13 MR. BASKIN: Q. Do you know if you have a
16:27:49 14 distribution agreement with Vodafone in Europe?

16:27:53 15 A I think we do. That sounds familiar.

16:27:55 16 Q Now, do you -- do you know if you have a
16:27:56 17 dis- -- you told us this morning you have a
16:27:59 18 distribution agreement with iPhone; is that correct?

16:28:00 19 A With Apple, yes.

16:28:01 20 Q And you have a distribution agreement also
16:28:04 21 with Apple TV; is that correct?

16:28:05 22 A Well, again, same company, Apple, yeah.

16:28:07 23 Q And what other distribution agreements come
16:28:09 24 to your mind in addition to the ones I just mentioned?

16:28:13 25 A I don't know. A -- a -- a few different hard

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16:28:15 2 year -- hardware manufacturers, I think. I believe
16:28:19 3 Sony TVs or Panasonic TVs, TiVo, you know, different
16:28:26 4 manufacturers in terms of mobile phones or carriers.
16:28:29 5 It's a lot. That's why I can't remember any
16:28:32 6 specifics. It's just...

16:28:34 7 Q Well, just give me the names of a few of
16:28:37 8 these "a lot" that you have a lot of these
16:28:40 9 distribution agreements.

16:28:40 10 A Well, like I said, Sony, Panasonic, TiVo, and
16:28:46 11 other kind of smaller, I guess, players. I think
16:28:52 12 Roku. That's like the Netflix box. Quite a few.

16:28:58 13 Q Now, in connection with all of these
16:29:01 14 distribution agreements, I take it the agreements are
16:29:09 15 embodied in contracts; are they not?

16:29:12 16 A Yeah, typically.

16:29:12 17 Q And you get paid, that is, by "you," meaning,
16:29:18 18 YouTube gets paid for all of these distribution
16:29:20 19 agreements; do they not?

16:29:23 20 A I don't think so. I don't think --
16:29:24 21 typically, I don't know how the deals -- each
16:29:27 22 individual deal was structured, but typically we just
16:29:30 23 have an API and they sign an agreement to access that
16:29:35 24 API.

16:29:36 25 Q And what is an API?

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16:29:38 2 A It's application, some protocol -- something
16:29:42 3 interface. I -- I don't know.

16:29:42 4 Q So am I to understand that you enter into
16:29:46 5 these distribution agreements with these carriers for
16:29:48 6 free?

16:29:53 7 A For the most part. I mean, maybe in the
16:29:55 8 early deals we -- there may have been some -- some
16:29:58 9 kind of value attached to it, but I can't remember.

16:30:01 10 Q And when you enter into them for free with
16:30:06 11 some of the distributees, is the assumption that
16:30:11 12 you'll share advertising revenue with them for videos
16:30:12 13 displayed over -- over their medium?

16:30:14 14 A Probably sometimes. I don't know of specific
16:30:18 15 agreements, what's in each one with each company.

16:30:21 16 Q Well, I assume in every case you get paid
16:30:24 17 some way, do you not, Mr. Hurley?

16:30:27 18 A I don't know. I -- I don't think in every
16:30:29 19 case, but maybe some of them.

16:30:32 20 Q Well, which distribution agreements are you
16:30:37 21 entering into with some of these large companies
16:30:41 22 without getting paid? Tell us one.

16:30:45 23 A I -- I can't think of one specifically, but I
16:30:47 24 just know in general we -- we have an API together --
16:30:51 25 available, and they have the ability to -- to access

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16:30:53 2 that API. I don't know if every time we -- we do a
16:30:56 3 deal whether there's any revenue involved or any kind
16:30:59 4 of sharing of ad revenue.

16:31:00 5 Q You don't know that?

16:31:02 6 A Every time, no.

16:31:05 7

16:31:16 8

16:31:21 9

16:31:23 10

16:31:27 11

16:31:31 12

16:31:33 13

16:31:38 14

16:31:38 15

16:31:41 16

16:31:42 17

16:31:44 18

16:31:50 19

16:31:51 20 Q Now, what about with Vodafone in Europe? Or
16:31:54 21 is that -- is it just in Europe that you have a deal
16:31:56 22 with Vodafone or is it Vodafone worldwide?

16:31:59 23 A I'm not sure. I don't know if they may be in
16:32:02 24 other countries. I typically associate them with
16:32:05 25 Europe, but...

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16:32:05 2 Q And what is the form of payment in the
16:32:07 3 Vodafone transaction?

16:32:09 4 A That one, I -- I don't know. I haven't seen
16:32:11 5 the -- the deal terms on that or I can't remember
16:32:14 6 them. I don't know what it is.

16:32:15 7 Q Do you think you're distributing your YouTube
16:32:20 8 videos over Vodafone for free?

16:32:24 9 A I couldn't tell you. I don't know.

16:32:32 10 Q Now, did you -- when -- when Google acquired
16:32:55 11 YouTube, did Eric Schmidt tell you that your focus
16:33:07 12 should be to grow playbacks to one billion a day?

16:33:13 13 A I don't know. He may -- he may have told --
16:33:15 14 told us that. He -- you know, when he came by the
16:33:18 15 office and would speak with us, he -- he wanted to
16:33:20 16 make sure that we stayed focus on what was -- what was
16:33:23 17 important.

16:33:24 18 That, you know, continue to grow numbers on
16:33:26 19 all fronts, build a great user experience, you know,
16:33:30 20 bring partners on board and build a great advertising
16:33:34 21 tool. So kind of, you know, he just wanted us to
16:33:36 22 continue momentum.

16:33:37 23 Q Who is -- do you know who David Eun is,
16:33:42 24 E-U-N?

16:33:43 25 A Yeah, I know David. I don't know. I

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16:33:47 2 can't -- I don't know what his current title is. He
16:33:49 3 basically leads partnerships for, I think, YouTube and
16:33:53 4 a few other products at Google. I don't know what it
16:33:56 5 is today.

16:33:57 6 Q And I think you already mentioned before
16:34:00 7 someone named Suzie Reider; who is she?

16:34:03 8 A Yeah, she -- she would lead sales. Again, I
16:34:06 9 don't know her current title or where she reports now,
16:34:08 10 but she's based in San Bruno and typically leads the
16:34:11 11 sales team there.

16:34:12 12 Q So these are both -- strike that.

16:34:17 13 Do -- do these individuals work with you in
16:34:19 14 connection with YouTube?

16:34:27 15 A Yeah, from time to time.

16:34:28 16 Q Now, there's an e-mail, which I have no
16:34:32 17 reason to believe you ever saw, but in which
16:34:34 18 Ms. Reider is communicating to Mr. Eun. I just want
16:34:39 19 to read you a line in the e-mail.

16:34:40 20 MR. SCHAPIRO: Would you mind giving us a
16:34:42 21 Bates number or a --

16:34:43 22 MR. BASKIN: Yeah, I may be able to give you
16:34:45 23 the e-mail itself, if you want it. This is one of
16:34:48 24 the --

16:34:50 25 MR. SCHAPIRO: If we can have it as an

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16:34:52 2 exhibit, that would be great, Stu.

16:34:56 3 MR. BASKIN: I will give you -- to you --

16:34:58 4 well, the Bates number is -- well, let me give you --

16:35:00 5 find -- see if I can find the exhibit.

16:35:01 6 MR. SCHAPIRO: Thank you.

16:35:03 7 MR. BASKIN: I'm not marking it. I just want

16:35:05 8 to reference this, and I just want to get his --

16:35:10 9 MR. SCHAPIRO: Fine.

16:35:11 10 MR. BASKIN: So here it be.

16:35:13 11 MR. SCHAPIRO: So if you're not marking it,

16:35:14 12 is it okay that I read or you read the Bates number

16:35:17 13 into the record, just so we know what it is?

16:35:19 14 MR. BASKIN: Sure.

16:35:20 15 MR. SCHAPIRO: This is GOO001-02021241.

16:35:28 16 MR. BASKIN: Now -- I'm sorry.

16:35:30 17 MR. SCHAPIRO: It's all right.

16:35:31 18 It's an e-mail that purports to be from David

16:35:34 19 Eun to Suzie Reider, September 14th, 2007.

16:35:39 20 MR. BASKIN: Q. And in the third full

16:35:41 21 paragraph, Mr. Hurley, they make reference -- this

16:35:46 22 e-mail makes reference to you and says, "If you -- we

16:35:48 23 think back to last November," that would be

16:35:52 24 November 2006, that's when the deal closed between

16:35:55 25 YouTube and Google; correct?

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16:35:57 2 A Yeah, I -- I -- I think it's around that time
16:35:59 3 frame, yes.

16:36:01 4 Q "You are Chad. Your head is spinning and
16:36:04 5 Eric Schmidt, COO of the most powerful company in the
16:36:08 6 world, tells you your only focus is to grow playbacks
16:36:12 7 to one billion per day --- that's what you do"; do you
16:36:20 8 see that reference in the document?

16:36:23 9 A Yes.

16:36:23 10 Q Do you recall Mr. Schmidt, in fact,
16:36:26 11 instructing you, Chad, that your only focus is to grow
16:36:34 12 playbacks to one billion per day?

16:36:37 13 A You know, I don't remember a specific
16:36:39 14 conversation, but he was definitely confident in our
16:36:44 15 ability to build a great product.

16:36:46 16 Q But do you recall him telling you in the
16:36:49 17 course of building this great product he wanted you to
16:36:53 18 grow playbacks to one billion per day?

16:36:56 19 A I -- I don't know specifically, but
16:36:59 20 definitely growing user base, growing plays was, you
16:37:04 21 know, something we aspired to do.

16:37:06 22 Q Now, did there come a time when Mr. Schmidt's
16:37:10 23 thinking shifted on that and he changed his direction
16:37:12 24 to you guys to YouTube?

16:37:18 25 A I mean, maybe slightly. He -- he's always,

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16:37:19 2 you know, pushing us to create a great product and a
16:37:24 3 great user experience and continue to grow the -- the
16:37:25 4 community. But obviously with what's happened in the
16:37:28 5 economy and, you know, to some extent Google's
16:37:31 6 business, although it's performing quite well, you
16:37:35 7 know, we've -- we've had ideas of advertising as -- as
16:37:39 8 we started this project. He, you know, wanted us
16:37:43 9 to -- to concentrate a little bit more on -- on
16:37:45 10 defining some of those -- what some of those solutions
16:37:47 11 may be.

16:37:50 12 Q Well, let me show you what we'll mark as
16:37:52 13 Exhibit 22, Hurley Exhibit 22.

16:37:53 14 A I'm sorry.

16:38:07 15 (Document marked Hurley, C., Exhibit 22
16:38:08 16 for identification.)

16:38:08 17 THE WITNESS: Thanks.

16:38:28 18 MR. BASKIN: Q. Why don't you read
16:38:30 19 Exhibit 22 for a second, Mr. Hurley.

16:38:32 20 A Yeah, I'm trying to read through it right
16:38:34 21 now.

16:38:50 22 Yes, I read it.

16:38:51 23 Q Can you identify this as an e-mail that, in
16:38:54 24 fact, was sent out by you in and around March 14th,
16:38:58 25 2008?

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1 HURLEY, CHAD

16:38:59 2 A Yeah, it looks like an e-mail I sent.

16:39:01 3 Q And it references that "Three weeks ago

16:39:03 4 Eric" -- is that Eric Schmidt?

16:39:07 5 A Yeah, I think that's who I'm referring to.

16:39:08 6 Q "Shifted his thinking on YouTube's focus, so
16:39:13 7 since that time we have been rapidly been redirecting
16:39:17 8 our efforts and resources from user growth to
16:39:20 9 monetization"; do you see that?

16:39:23 10 A Yeah, I see that.

16:39:24 11 Q What happened three weeks prior to
16:39:27 12 March 14th, 2008, whereby Mr. Schmidt communicated to
16:39:32 13 you that his thinking had shifted and that he wanted
16:39:37 14 you to redirect your efforts from user growth to
16:39:41 15 monetization?

16:39:43 16 A Yeah, like I -- I mentioned in my previous
16:39:45 17 answer, that, you know, obviously what was happening
16:39:49 18 in the economy and, to some effect, Google's core
16:39:53 19 business of advertising, they wanted us to make this
16:39:56 20 more of a priority.

16:39:58 21 You know, he didn't want us to -- to redirect
16:40:00 22 all our efforts. I don't -- it doesn't say all our
16:40:03 23 efforts, but focus more on monetization, which we --
16:40:06 24 we started to do.

16:40:07 25 Q And by the time Mr. Schmidt had -- had asked

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1 HURLEY, CHAD

16:40:12 2 you to shift your focus this way, had you, in fact,
16:40:20 3 reached one billion views?

16:40:26 4 A I'm -- I'm not sure in terms of dates. We
16:40:30 5 may have.

16:40:30 6 Q And today have you reached one billion views?

16:40:34 7 A Yes.

16:40:35 8 Q Per day?

16:40:38 9 A Yeah, I mean, we -- we've -- we've constantly
16:40:40 10 kind of adjusted, you know, what a view really means,
16:40:44 11 but, yeah, over -- over a billion views, yeah.

16:40:46 12 Q And now, I take it, pursuant to this
16:40:50 13 communication from Mr. Schmidt, you are now going to
16:40:56 14 try to monetize that user base; is that correct?

16:41:01 15 MR. SCHAPIRO: Objection; foundation; assumes
16:41:03 16 facts.

16:41:04 17 THE WITNESS: Yeah, again, like I was saying,
16:41:07 18 I -- I don't think, you know, he was targeting a
16:41:08 19 specific number for us to shift. It was just kind of,
16:41:12 20 you know, strategically kind of looking at the
16:41:16 21 environment and making an intelligent decision, we
16:41:19 22 adjusted.

16:41:20 23 MR. BASKIN: Is it time? Okay.

16:41:22 24 We have to break the tape.

16:41:23 25 THE WITNESS: Okay.

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16:41:24 2 THE VIDEOGRAPHER: This is the end of
16:41:26 3 videotape No. 3 in the continuing deposition of Chad
16:41:28 4 Hurley on April 22nd, 2009.

16:41:32 5 The time is 4:40 p.m.

16:41:34 6 We're off the record.

16:41:36 7 (Recess taken.)

16:53:22 8 THE VIDEOGRAPHER: This is the beginning of
16:53:23 9 videotape No. 4 in the deposition of Chad Hurley on
16:53:27 10 April 22nd, 2009.

16:53:29 11 The time is 4:52 p.m.

16:53:32 12 We're back on the record.

16:53:34 13 MR. BASKIN: Mr. Hurley, I think we're in the
16:53:43 14 final lap.

16:53:47 15 MR. SCHAPIRO: Objection.

16:53:49 16 THE WITNESS: What do you mean by that?

16:53:50 17 MR. SCHAPIRO: Let the record reflect that
16:53:51 18 we're smiling.

16:53:52 19 MR. BASKIN: We're not in the final lap.

16:53:56 20 Q In 2006 -- strike that.

16:54:10 21 In 2006, prior to the acquisition of YouTube
16:54:26 22 by Google, did YouTube engage in discussions with a
16:54:36 23 company called Audible Magic?

16:54:40 24 A It sounds familiar. I don't -- I don't know
16:54:42 25 at what time we -- we did have discussions with them.

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1 HURLEY, CHAD

16:54:45 2 Q But you remember you had discussions with
16:54:46 3 them prior to your acquisition by Google; correct?

16:54:50 4 A Probably. Like I said, I can't recall
16:54:53 5 specific discussions or when they happened.

16:54:56 6 Q And for what purpose were you having
16:54:58 7 discussions with Audible Magic?

16:55:02 8 A I think it was concerning their technology,
16:55:06 9 audio fingerprinting.

16:55:07 10 Q And, in particular, was -- were you involved
16:55:22 11 in the discussions with Audible Magic?

16:55:25 12 A I may have been from a high level. I don't
16:55:29 13 know. I don't remember any specific e-mails or
16:55:30 14 discussions about it, though.

16:55:33 15 Q When -- am I correct that there were many
16:55:41 16 vendors who approached YouTube in late 2005 throughout
16:55:48 17 2006 regarding providing audio fingerprinting?

16:55:55 18 A I -- I don't know if they approached us or if
16:55:57 19 we approached them, but -- or how many there even
16:56:02 20 were; but, you know, I think the -- the technical team
16:56:03 21 was trying to evaluate different -- different
16:56:07 22 technologies to see how they worked theirs.

16:56:10 23 Q And that, among the competing vendors, was
16:56:13 24 Audible Magic; correct?

16:56:15 25 A I believe they were one.

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1 HURLEY, CHAD

16:56:18 2 Q Was one Gracenote? Does that sound familiar?

16:56:22 3 A Gracenote, that sounds familiar.

16:56:23 4 Q What about Shazam? Is that one?

16:56:26 5 A It sort of sounds familiar, but I don't --

16:56:29 6 I -- I don't remember exactly.

16:56:29 7 Q What about Snocap? Does that sound familiar
16:56:32 8 to you?

16:56:33 9 A Yeah, I think. Yeah, I think that's one
16:56:34 10 company now, Gracenote and Snocap. I don't know if
16:56:38 11 they were separate at the time.

16:56:39 12 Q What about INA? Was that one also?

16:56:42 13 A Yeah, I don't -- I don't know if all at the
16:56:44 14 same time, but I think that's the French one, I
16:56:47 15 believe.

16:56:48 16 Q And the technical team, as you referred to
16:56:53 17 it, was trying to determine which among them provided
16:56:59 18 the best product for your purposes; correct?

16:57:02 19 A I think that was, you know, one of the
16:57:04 20 factors that we were evaluating.

16:57:07 21 Q And at roughly this time -- same time period,
16:57:15 22 was YouTube trying to engage in discussions with
16:57:19 23 different large-scale content providers regarding
16:57:27 24 you signing licensing agreements between them and
16:57:31 25 YouTube?

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16:57:35 2 A I think we were. I mean, I can't remember
16:57:36 3 the specific ones. I...

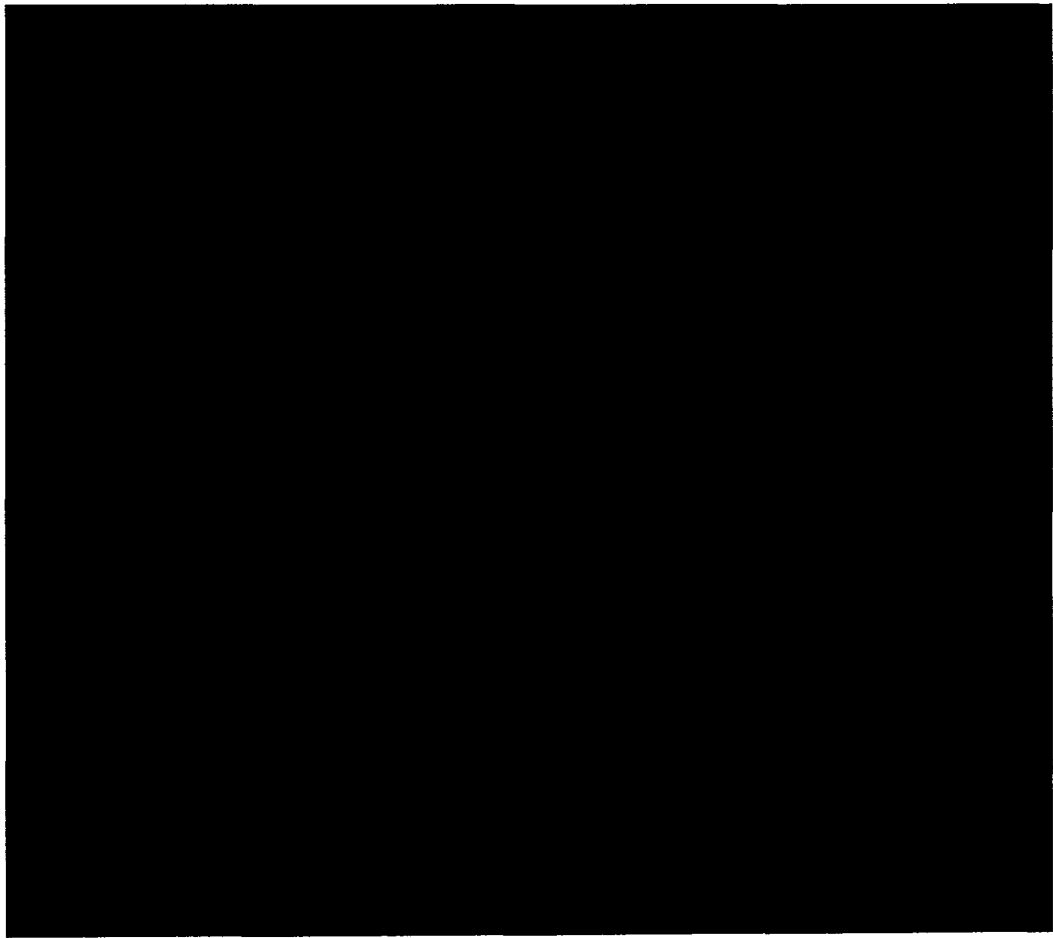
16:57:39 4 Q Well, was one that you can remember Warner
16:57:42 5 Music?

16:57:42 6 A Sure. Yeah, we were in discussions with all
16:57:45 7 the labels.

16:57:45 8 Q Was Warner Music actually the first large
16:57:49 9 record company with which you signed a license
16:57:52 10 agreement?

16:57:52 11 A I think they were.

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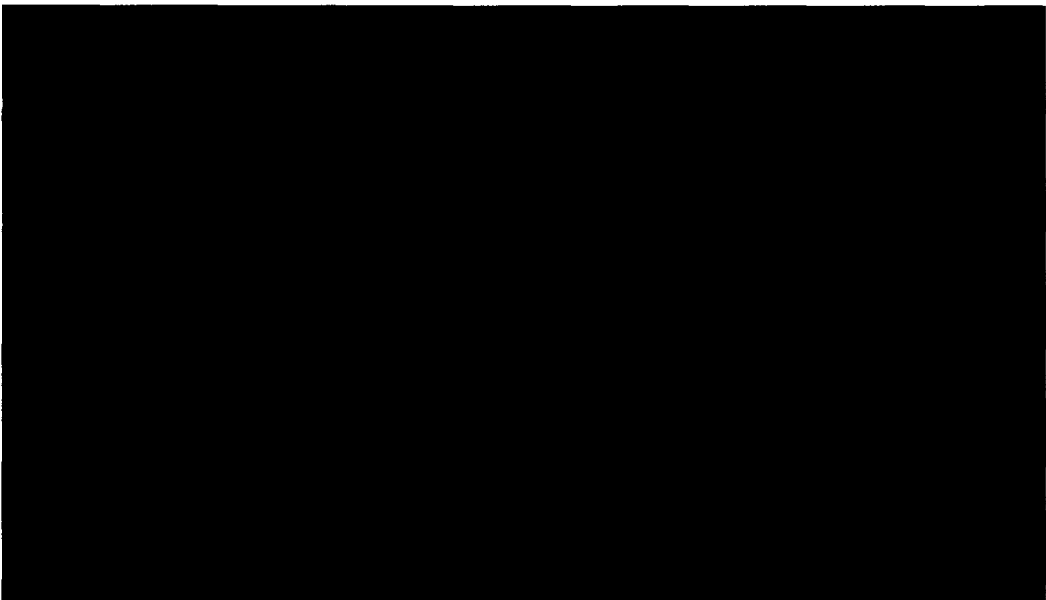
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Q And how does audio -- what is your understanding how fingerprint technology works or worked at the time? What -- what did it entail?

A Well, I'm not -- I'm not an engineer, far from it, but they -- simply just trying to make a -- you know, basically a fingerprint that you're trying to match somehow based on the waves or the notes, and that could -- that could be pretty effective in identifying a -- an audio file, audio track.

Q And as part of the discussions with these various companies, did you learn what the price would be to enter into a license agreement with one of these fingerprint vendors for them to provide this audio fingerprinting service for you?

A I'm sure we did. I mean, again, it's one of

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17:00:11 2 the factors, you know, beyond how effective it is,
17:00:14 3 how -- how, you know, effectively it scales, how much
17:00:16 4 it costs. I mean, these are all of the types of
17:00:18 5 things that you look into when you're trying to strike
17:00:21 6 a deal.

17:00:21 7 Q Well, do you know, for example, in the case
17:00:24 8 of Audible Magic, was the cost -- what -- what the
17:00:30 9 approximate cost of a license was gonna be?

17:00:34 10 A I can't -- I can't remember. You know,
17:00:38 11 again, someone on the partnership side tried to strike
17:00:40 12 the deal would know that. Probably Chris Maxcy.

17:00:44 13 Q And does the range of about \$200,000 a year
17:00:49 14 sound about right to you?

17:00:51 15 A I -- I don't know. I can't recall.

17:00:54 16 Q Let me have that one. No, the...

17:01:00 17 Did there come a time when you, in fact --
17:01:03 18 first, this one -- entered into an agreement with
17:01:20 19 Audible -- Audible Magic, as -- as opposed to the
17:01:22 20 other vendors?

17:01:25 21 A I believe, you know, through the process of
17:01:28 22 weighing various factors and, you know, looking at all
17:01:31 23 of the -- looking at all of them, you know, I think we
17:01:34 24 did determine to go with -- with Audible, yeah.

17:01:36 25 Q And did you sign a contract with them in

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