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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IO GROUP, INC., a California)
Corporation,)
)
Plaintiff,)
)
vs.) Case No. C-06-3926 (HRL)
)
Veoh NETWORKS, Inc., a)
California Corporation,)
)
Defendant.)
_____)

HIGHLY CONFIDENTIAL
DEPOSITION OF JOSEPH PAPA
VOLUME I
SAN DIEGO, CALIFORNIA
MAY 21, 2007

REPORTED BY: NICOLE R. HARNISH, CSR No. 13101

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SAN JOSE DIVISION

IO GROUP, INC., a California)
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Plaintiff,)
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vs.) Case No. C-06-3926 (HRL)
)
Veoh NETWORKS, Inc., a)
California Corporation,)
)
Defendant.)
_____)

DEPOSITION OF JOSEPH PAPA,
taken by the Plaintiff, commencing at the hour of
9:00 a.m., on Monday, May 21, 2007, at
530 B Street, Suite 350, San Diego, California,
before Nicole R. Harnish, Certified Shorthand
Reporter in and for the State of California.

1 APPEARANCES:

2

3 For the Plaintiff:

4 GILL SPERLEIN
5 GENERAL COUNSEL
6 TITAN MEDIA.COM
7 BY: GILL SPERLEIN, ESQ.
8 584 Castro Street, Suite 849
9 San Francisco, California 94114

10 For the Defendant:

11 WINSTON & STRAWN
12 BY: JENNIFER A. GOLINVEAUX, ESQ.
13 101 California Street
14 San Francisco, California 94111

15 Also Present: Keith Ruoff

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I N D E X

WITNESS: JOSEPH PAPA

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E X H I B I T S

MARKED FOR IDENTIFICATION

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Questions Witness Instructed Not To Answer

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1 you should cancel video files that are blatant
2 examples of copyright infringement?

3 MS. GOLINVEAUX: Object to the extent that
4 it would require you to disclose attorney-client
5 communications. I would instruct you not to answer.

6 THE WITNESS: Who's Veoh in this context?

7 BY MR. SPERLEIN:

8 Q. Veoh is any employee or director of Veoh.

9 A. I am not going to answer.

10 Q. Have you instructed any employee below
11 you -- first off, do you have any employees that
12 report to you directly?

13 A. Yes.

14 Q. Have you instructed any of those employees
15 to remove video files if they appear to be blatantly
16 copyrighted material?

17 A. I have advised all employees as to our DMCA
18 policy. And I have let them know that Josh Metz --
19 who is our chief counsel -- is available if they have
20 questions as to policy.

21 Q. Prior to Josh Metz coming to Veoh as your
22 chief counsel, did you ever instruct any other
23 employee to remove video files that they thought were
24 blatantly copyright infringement?

25 A. I can't recall a specific conversation, but

1 I, NICOLE R. HARNISH, Certified Shorthand Reporter
2 for the State of California, do hereby certify:

3
4 That the witness in the foregoing deposition was by
5 me first duly sworn to testify to the truth, the
6 whole truth and nothing but the truth in the
7 foregoing cause; that the deposition was taken by me
8 in machine shorthand and later transcribed into
9 typewriting, under my direction, and that the
10 foregoing contains a true record of the testimony of
11 the witness.

12
13 Dated: This 9th day of June 2007
14 at San Diego, California.

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16
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18 NRH

19 NICOLE R. HARNISH

20 C.S.R. NO. 13101

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IO GROUP, INC., a California)
Corporation,)
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Plaintiff,)
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vs.) Case No. C-06-3926 (HRL)
)
VEOH NETWORKS, Inc., a)
California Corporation,)
)
Defendant.)
_____)

DEPOSITION OF JOSEPH PAPA,
taken by the Plaintiff, commencing at the hour of
8:10 p.m., on Tuesday, May 22, 2007, at
530 B Street, Suite 350, San Diego, California,
before Nicole R. Harnish, Certified Shorthand
Reporter in and for the State of California.

1 APPEARANCES:

2

3 For the Plaintiff:

4 GILL SPERLEIN
5 GENERAL COUNSEL
6 TITAN MEDIA.COM
7 BY: GILL SPERLEIN, ESQ.
8 584 Castro Street, Suite 849
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I N D E X

2 WITNESS: JOSEPH PAPA

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5 By Mr. Sperlein 5

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E X H I B I T S

10 MARKED FOR IDENTIFICATION

11 11 Printouts from Veoh Forum section 201

12 12 E-mail correspondence from Joseph Papa 206
13 to Brad Seraphin, Engineering, dated
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14 13 Various e-mail correspondence 232

15 14 Section of the Wiki 233

16 15 E-mail correspondence from Dmitry Shapiro 236
17 to John MacDonald, Ted Meisel,
Francis Costello, Todd Leeloy,
dated 12/23/2006

18 16 E-mail correspondence from Joseph Papa 239
19 to Ted Dunning, dated 6/9/2006

20 17 E-mail correspondence from Joseph Papa 240
21 to Ted Dunning, dated 5/23/2006

22 Questions Witness Instructed Not To Answer

23 Page Line

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1 BY MR. SPERLEIN:

2 Q. And did you take such measures?

3 A. No.

4 Q. Can you tell me what measures were
5 discussed that were a possible way of dissuading
6 people from uploading child porn?

7 A. We discussed a stern warning presented on
8 the upload page.

9 Q. Was that stern warning ever added to the
10 Veoh system upload page?

11 A. No.

12 Q. Did you discuss any other measures?

13 A. Not that I recall.

14 Q. Are you aware of any additional
15 documentation that could have been required that
16 would help eliminate child pornography from appearing
17 on the Veoh system?

18 MS. GOLINVEAUX: Object to form of the
19 question. Calls for speculation.

20 THE WITNESS: What would constitute
21 "documentation"?

22 BY MR. SPERLEIN:

23 Q. Any written piece of paper with further
24 information from the uploader.

25 MS. GOLINVEAUX: Would you read back the

1 to the removal of adult video files from the Veoh
2 system and the concurrent change in Veoh policy
3 regarding adult material, if an individual who was an
4 employee of Veoh encountered a video file which they
5 deemed to be obviously copyright infringement, was
6 that -- were those employees authorized to delete the
7 video file from the Veoh system?

8 MS. GOLINVEAUX: Object to the form of the
9 question.

10 THE WITNESS: Veoh employees have always
11 been bound by the DMCA policy.

12 BY MR. SPERLEIN:

13 Q. Does that policy include permission for a
14 Veoh employee to delete a video file that that
15 employee deems to be a blatant copyright violation?

16 MS. GOLINVEAUX: Object to the form of the
17 question. Calls for legal conclusion.

18 THE WITNESS: Employees don't delete files.

19 BY MR. SPERLEIN:

20 Q. Can you clarify that last statement? When
21 you say "Employees don't delete files," is there
22 another term that more accurately describes how an
23 employee prevents a video file from being viewed by
24 users on the system?

25 A. Canceled files are not removed from the

1 file system, but are not accessible.

2 Q. Okay. So prior to Veoh's change in its
3 policy regarding sexually explicit material being
4 available on the Veoh system, were employees
5 permitted to cancel files which the employee, in his
6 own estimation, deemed to be obviously acts of
7 copyright infringement?

8 MS. GOLINVEAUX: Object to the form of the
9 question.

10 THE WITNESS: Yes.

11 BY RIGHT1:

12 Q. I am handing you an exhibit that the court
13 reporter will mark as Exhibit No. 12. Will you take
14 a look at that and tell me when you have had a chance
15 to review it?

16 (Plaintiff's Exhibit No. 12 was marked.)

17 THE WITNESS: Okay. I have had a chance.

18 BY MR. SPERLEIN:

19 Q. Okay. This is Defendant's Exhibit Document
20 Production No. 00026. It is an e-mail from
21 Joe Papa to Brad Seraphin and Engineering, copied to
22 Mr. Costello; and it is dated June 21st, 2006. The
23 subject line is "porn watch schedule."

24 Are you familiar with this document?

25 A. Yes.

1 clarify.

2 Does Veoh require a DMCA notification from
3 the owner of the copyrighted work or the registered
4 agent before Veoh will cancel the file from the
5 system?

6 MS. GOLINVEAUX: I will object to the form
7 of the question.

8 THE WITNESS: Do we require that?

9 BY MR. SPERLEIN:

10 Q. Yes.

11 A. Meaning that that is the only circumstance
12 under which that would happen?

13 Q. That's correct.

14 A. No.

15 Q. And we are speaking right now currently, or
16 did you answer the question regarding your current
17 policy?

18 A. Current policy.

19 Q. Going back to June 21st, '06, and prior to
20 that, would Veoh take down video files if they were
21 identified as possibly containing copyrighted
22 material even if that notification did not come from
23 the owner or agent of the owner of the content?

24 A. No.

25 Q. Has any person or entity ever requested

1 that Veoh prevent their copyrighted works from
2 appearing on the Veoh system?

3 MS. GOLINVEAUX: Object to the form of the
4 question.

5 THE WITNESS: I am not aware of that
6 request from anyone outside work.

7 BY MR. SPERLEIN:

8 Q. Are you familiar with whether NBC Universal
9 provided Veoh a list of its titles with the requests
10 that Veoh prevent those works from appearing on the
11 Veoh system?

12 A. I am not aware of any requests to prevent
13 works from appearing on the system.

14 Q. With your understanding of how the Veoh
15 system operates, if an individual or company were to
16 provide a list of works that it wished to have Veoh
17 prevent from appearing on the Veoh system, could Veoh
18 comply with that request?

19 MR. GOLINVEAUX: Object to the form of the
20 question.

21 THE WITNESS: Can you clarify "works"?

22 BY MR. SPERLEIN:

23 Q. Titles. For example, if someone gave you a
24 list of titles of movies and requested that Veoh
25 prohibit those movies from appearing on the Veoh

1 system, could Veoh take measures to prevent such
2 movies from appearing on the system?

3 A. No.

4 Q. And why is it that Veoh could not take such
5 measures?

6 A. If we were given titles and a video was of
7 the content that was expressed, but not titled as
8 such, then we would have no way of preventing that
9 from appearing.

10 Q. If a company contacted Veoh and said we
11 don't want any work that has our trademark or our
12 company's name on the video work, could Veoh take
13 measures to prevent video files with that company's
14 name or trademark from appearing on the system?

15 MS. GOLINVEAUX: I will object as outside
16 the scope of the 30B6 notice.

17 THE WITNESS: I am not aware of a
18 technology that would allow us to detect any piece of
19 content that would indicate a trademark.

20 BY MR. SPERLEIN:

21 Q. Could a human looking at a video file
22 determine if it had a particular trademark on it?

23 MS. GOLINVEAUX: Object to the form of the
24 question. Calls for legal conclusion.

25 THE WITNESS: If the human was trained, I

1 suppose they could.

2 BY MR. SPERLEIN:

3 Q. If 20th Century Fox said to Veoh we would
4 like you to prevent any video file that has "20th
5 Century Fox" opening screen generally associated with
6 our movie and showed you what that screen looked like
7 could Veoh review files and prevent that from
8 appearing on the Veoh system?

9 MS. GOLINVEAUX: Object to the form of the
10 question.

11 THE WITNESS: Can you clarify "review"?

12 BY MR. SPERLEIN:

13 Q. To look at with human eyes.

14 A. Human eyes. That sounds plausible, yes.

15 Q. But as far as you know, no company has
16 requested that Veoh review video files in advance and
17 prevent them from appearing on the Veoh network
18 regardless of whether it was identified by title or
19 brand; is that accurate?

20 A. I am not aware of any outside requests to
21 prevent content from appearing on Veoh.

22 Q. If a producer were to provide Veoh with an
23 actual copy of the content of its content and
24 requested that Veoh prevent any of that content from
25 appearing on the Veoh system, is there any way that

1 Veoh could comply with that request currently?

2 MS. GOLINVEAUX: Object to the form of the
3 question.

4 THE WITNESS: Currently we could prevent an
5 exact duplicate of the content provider, bit for bit,
6 precisely the same file.

7 BY MR. SPERLEIN:

8 Q. And could you do that -- strike that.

9 When you say "bit for bit," would that --
10 would such a file generate a hash I.D. that would be
11 identical to a hash I.D. that is on your system? Is
12 that how your able to do it, or is there some other
13 method?

14 A. If there was a file that produced the same
15 hash I.D., then we could consider it the same file.

16 Q. But in order for a video file to do that it
17 would have to be an exact replica of a file that has
18 previously been on the Veoh network; is that
19 accurate?

20 A. You are asking me about a hypothetical case
21 where a third-party gives us a sample file?

22 Q. Right.

23 A. So the sample file would have to be bit for
24 bit exactly the same file as the hypothetically
25 uploaded file that we would match against it.

1 Q. So if someone came along and tried to
2 upload a video file, but removed the first three
3 seconds from that video file, you would no longer be
4 able to automatically, through a technological
5 process, identify that file as one that has been --
6 that has requested to be filtered out; is that
7 accurate?

8 A. That is accurate.

9 Q. If Titan Media, prior to June 1st, 2006,
10 had given Veoh a list of titles that were in its
11 collection and requested that Veoh prevent those
12 titles from being -- appearing on the Veoh system,
13 could Veoh have complied with that request?

14 MS. GOLINVEAUX: Object to the form of the
15 question. And calls for speculation.

16 THE WITNESS: If we had received a DMCA
17 compliant take down request, we could have taken down
18 the content. And at that time that is all we could
19 have done.

20 BY MR. SPERLEIN:

21 Q. So proactively if Veoh [sic] had given you
22 a list of title, could Veoh have filtered metadata
23 based on those titles to make sure that at least the
24 titles were not entered into the Veoh system?

25 MS. GOLINVEAUX: Object to the form of the

1 question.

2 THE WITNESS: Titles would not be
3 sufficient information for us to do a takedown.

4 BY MR. SPERLEIN:

5 Q. Okay. I am not asking about a takedown
6 process. I'm asking about a request that Veoh take
7 measures in advance to prevent material from
8 appearing on the Veoh system.

9 And specifically, right now, I am asking
10 only about metadata, understanding that people may
11 sometimes put incorrect metadata titles in various
12 content. But my question is if Io Group, which does
13 business as Titan Media, had sent a list of titles to
14 Veoh and said "These titles all belong to us. If you
15 see any of these titles listed as the title
16 associated with a video file on your system, we ask
17 that you cancel that video file," could Veoh have
18 done that?

19 A. From a technological perspective could we
20 have searched for each one of those titles and
21 canceled any results that came back as part of that
22 search?

23 Q. Yes. Answer that.

24 A. Yes.

25 Q. Could Veoh have prevented those words from

1 ever being entered in as a title in the first
2 instance?

3 A. We could have prevented those words from
4 being entered into a title.

5 Q. And if Titan Media had sent copies of all
6 of its movies to Veoh, is there any process that Veoh
7 could have taken in order to prevent any portion of
8 those movies from being uploaded onto the Veoh
9 system?

10 MS. GOLINVEAUX: Object to the form of the
11 question.

12 THE WITNESS: Any portion?

13 BY RIGHT1:

14 Q. Any portion.

15 A. No.

16 Q. If Io Group had sent that same copies of
17 all of its movies on to Veoh and asked that no
18 portion of those movies be permitted to be uploaded
19 onto the Veoh system, could Veoh have had employees
20 review all of those movies and then based on that
21 human review somehow review incoming material to
22 prevent it from going onto the Veoh system?

23 MS. GOLINVEAUX: Would you please read back
24 the question?

25 (Record read.)

1 MS. GOLINVEAUX: Object to the form of the
2 question. And calls for speculation.

3 THE WITNESS: As I understand the question
4 it is asking if we could have had humans reviewing
5 all uploaded content and screen out the content that
6 was provided by Titan Media; is that correct?

7 BY MR. SPERLEIN:

8 Q. That's correct.

9 A. It was never considered feasible to do
10 that. And at that time we would not have been able
11 to do that.

12 Q. Are there any actions that Io Group could
13 have taken prior to June 21st, 2006, to prevent its
14 works from appearing on the Veoh system?

15 MS. GOLINVEAUX: Object to the form of the
16 question.

17 THE WITNESS: All content that meets the
18 technology requirements is made active on the system,
19 and I can't think of a way, at that time, that it
20 could have been prevented.

21 BY MR. SPERLEIN:

22 Q. And is that different today?

23 A. The one change that we have implemented
24 today that we do not have on that date is if a bit
25 for bit copy is republished and it has already been

1 canceled, then the new version, again, bit for bit,
2 precisely the same, goes into a canceled state
3 immediately.

4 Q. When did that technology go online?

5 A. I was going to say winter. I am really not
6 sure specifically. So late 2006, early 2007.

7 Q. Prior to June -- end of June 2006, was
8 there any way to prevent Io Group works from
9 appearing on the Veoh system other than Io Group
10 reviewing the Veoh Web site and contacting Veoh with
11 a request that the -- that any works posted on the
12 site be removed?

13 A. We would have responded to a -- and we did
14 respond to DMCA compliant takedown request. So in
15 the hypothetical case, when we had been contacted we
16 could have responded.

17 Q. Let me just ask you one question here.
18 Okay. This is Exhibit No. 13. And this is marked
19 with Defendant's Exhibit -- I'm sorry, Document
20 Production No. 000781. And it appears to be an
21 e-mail.

22 I want to specifically direct your
23 attention to the middle of the page. There's a
24 paragraph that reads "This would have caused me" --
25 I'm sorry -- "This could have been caused by me

1 taking down his copyrighted work, Ted responding to a
2 DMCA request, our Russian helper being over
3 aggressive, or other."

4 This was written by Brad Seraphin. Do you
5 have any idea who or what he might be referring to by
6 "our Russian helper being over aggressive"?

7 (Plaintiff's Exhibit No. 13 was marked.)

8 MS. GOLINVEAUX: I would point out for the
9 record that this appears to be a multipage e-mail and
10 counsel has given us one page and it appears to fall
11 in the middle of the multipage e-mail.

12 THE WITNESS: There is a member of our
13 St. Petersburg team that works with Brad and Sabine.

14 BY MR. SPERLEIN:

15 Q. Do you know his name?

16 A. His first name is Gleb. I believe it is
17 Trubanov.

18 Q. That is fine. Thank you.

19 And do you know if Gleb Trubanov was given
20 the task of identifying material to be removed from
21 the website for any reason?

22 A. If Gleb finds content that violates our
23 terms of service, he can take it down.

24 Q. Does that include material that appears to
25 be a blatant example of copyright infringement?

1 MS. GOLINVEAUX: Object to the form of the
2 question.

3 THE WITNESS: If any employee encounters
4 blatantly copyrighted material, they can take it down
5 in compliance with our DMCA policy.

6 BY MR. SPERLEIN:

7 Q. I have handed you Exhibit 14 -- 006417 it
8 is marked "highly confidential. Attorneys eyes
9 only," but by stipulation of counsel it's been
10 reduced designation to confidential. Will you take a
11 few minutes to look over the document.

12 (Plaintiff's Exhibit No. 14 was marked.)

13 THE WITNESS: Yes. Okay.

14 BY MR. SPERLEIN:

15 Q. And is this a section of wiki?

16 A. Yes.

17 Q. And I was told if I say "the wiki," I will
18 sound like George Bush saying "the Internets."
19 That's why I was asking yesterday.

20 Under "copyright violations," do you see
21 that section?

22 A. Yes.

23 Q. It says "Veoh always responds immediately
24 to DMCA compliant takedown notices. These will
25 generally come from Dmitry or Francis. In addition,

1 I, NICOLE R. HARNISH, Certified Shorthand Reporter
2 for the State of California, do hereby certify:

3
4 That the witness in the foregoing deposition was by
5 me first duly sworn to testify to the truth, the
6 whole truth and nothing but the truth in the
7 foregoing cause; that the deposition was taken by me
8 in machine shorthand and later transcribed into
9 typewriting, under my direction, and that the
10 foregoing contains a true record of the testimony of
11 the witness.

12
13 Dated: This 6th day of June
14 at San Diego, California.

15
16
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18 NRH.
19 NICOLE R. HARNISH
20 C.S.R. NO. 13101
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