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 10 VEOH NETWORKS, INC.

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 13 SAN JOSE DIVISION

Winston & Strawn LLP  
 101 California Street  
 San Francisco, CA 94111-5894

14 IO GROUP, INC.

15 Plaintiff,

16 vs.

17 VEOH NETWORKS, INC.

18 Defendant.

Case No. C 06-3926 HRL

**DECLARATION OF MATTHEW SCHERB  
 IN SUPPORT OF DEFENDANT VEOH  
 NETWORKS, INC.'S MOTION FOR  
 SUMMARY JUDGMENT**

Date: September 4, 2007  
 Time: 10:00 a.m.  
 Place: Courtroom 2

Winston & Strawn LLP  
101 California Street  
San Francisco, CA 94111-5894

1 I, Matthew Scherb, declare under penalty of perjury that the following statements, made from  
2 personal knowledge, are true and correct:

3 1. I am an attorney at law and duly licensed to practice law in the State of California. I  
4 am an associate in the law firm of Winston & Strawn LLP, counsel to Defendant, Veoh Networks,  
5 Inc.

6 2. The following documents, attached hereto as exhibits, support Defendant Veoh  
7 Networks, Inc.'s Motion for Summary Judgment.

8 A. Exhibit A is a true and correct copy of excerpts of the deposition transcript  
9 from the May 21, 2007 deposition of Dmitry Shapiro taken in this case.

10 B. Exhibit B is a true and correct copy of excerpts of the deposition transcript  
11 from the March 16, 2007 deposition of Ted Dunning taken in this case.

12 C. Exhibit C is a true and correct copy of excerpts of the deposition transcript  
13 from the May 21, 2007 (Day One) deposition of Joseph Papa.

14 D. Exhibit D is a true and correct copy of excerpts of the deposition transcript  
15 from the May 22, 2007 (Day Two) deposition of Joseph Papa.

16 E. Exhibit E is a true and correct copy of Defendant Veoh Networks, Inc.'s  
17 Supplemental Responses to Interrogatory Nos. 6, 21 and 22.

18 F. Exhibit F is a true and correct copy of Defendant Veoh Networks, Inc.'s  
19 Supplemental Response to Interrogatory No. 5.

20 G. Exhibit G is a true and correct copy of excerpts of the deposition transcript  
21 from the May 24, 2007 deposition of Keith Ruoff taken in this case.

22 H. Exhibit H is a true and correct copy of excerpts of Plaintiff's Response to  
23 Defendant's First Set of Interrogatories in this case.

24 I. Exhibit I is a true and correct copy of excerpts of Plaintiff's Supplemental  
25 Response to Defendant's First Set of Interrogatories in this case.

26 J. Exhibit J is a true and correct copy of Plaintiff's Response to Defendant's  
27

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Second Set of Request for Admissions in this case.

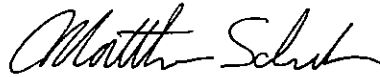
K. Exhibit K is a true and correct copy of excerpts of Plaintiff's Response to Defendant's First Set of Request for Admissions in this case.

L. Exhibit L is a true and correct copy of excerpts of Plaintiff's Response to Defendant's Third Set of Request for Admissions in this case.

M. Exhibit M is a true and correct copy of Plaintiff's Supplemental Response to Defendant's Second Set of Request for Admissions.

3. After Veoh produced to Plaintiff in discovery storage media containing all video files that had been terminated from the publicly accessible portion of the Veoh.com website prior to the filing of Plaintiff's lawsuit on June 23, 2006, Plaintiff added three new works to those it had alleged were available on Veoh. Plaintiff amended its discovery responses on June 15, 2007 to add these new works and to drop one of the works it originally claimed was infringed, *Prowl 3*. See Exhibit I, No. 1.

Executed this 30th day of July, 2007, in San Francisco, California



Matthew Scherb

# EXHIBIT A

**CONFIDENTIAL**

**Certified Copy**

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 DMITRY SHAPIRO  
SAN DIEGO, CALIFORNIA  
MAY 21, 2007

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



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1 and, you know, without a marketing department at the  
2 time, you know, if anyone would have had a final  
3 sign-off, it would have been me.

4 Q. But is it your testimony that things were  
5 relatively casual at the time and there was no formal  
6 sign-off?

7 A. That's correct. Absolutely.

8 Q. Did that change when you went with the  
9 Rose Group?

10 A. No. I wouldn't say that from a formal  
11 standpoint -- I mean, we are getting kind of more  
12 formal now, but just now. We've never been very  
13 formal on those kinds of things.

14 So somebody drafts it, you know, people  
15 throw in, you know, their own language for mostly  
16 quotes, and then we release it.

17 Q. Okay. Let me give this exhibit to the  
18 court reporter and ask her to mark it as Exhibit 4.  
19 And this is a series of press releases. And these  
20 are new document production numbers that I did just  
21 so they would be sequential. Some of the documents  
22 may have been produced to your attorneys before.

23 These particular documents have plaintiff's  
24 Document No. 200917 through 200927. Take your time  
25 to look over -- let's start with the first page

1 there, which is 200917. Take a few minutes to look  
2 through that and read it and then I am going to ask  
3 you a few questions. Let me know when you have  
4 finished looking at it.

5 (Plaintiff's Exhibit No. 4 was marked.)

6 THE WITNESS: Got it.

7 BY MR. SPERLEIN:

8 Q. Okay. This press release is dated  
9 August 10th, 2005. Is that the date that this would  
10 have been issued to the press?

11 A. Yes. I suspect either this date or a date  
12 prior, but yeah.

13 Q. And is there any reason to believe that  
14 this isn't actually the press release that was sent  
15 from Veoh to the press?

16 A. No reason to believe that.

17 Q. Looking down at, I believe it is, paragraph  
18 5, and it starts with "Veoh utilizes proprietary,"  
19 et cetera, do you see that paragraph?

20 A. Yes, I do.

21 Q. And the second sentence of that paragraph.  
22 I am going to read it out loud, and I ask that you  
23 read along with me as I read it. "Unlike rogue P to  
24 P networks that utilize unmanaged bit torrent to  
25 share mostly pirated video, Veoh is a community of

1 publishers and consumers where published content is  
2 approved by editors and consumers are assured that  
3 they get what they request."

4 Did I read that correctly?

5 A. Yes, you did.

6 Q. Was that a correct statement of Veoh's  
7 policy at the time this press release was issued?

8 A. No.

9 Q. And how was it inconsistent with Veoh's  
10 policy?

11 A. "Where a published content as approved by  
12 editors," is -- was not the case.

13 Q. Can you tell me specifically how that  
14 varied? Was content not approved by editors, was it  
15 approved by anyone else?

16 A. No. Content was not monitored at all.

17 Q. Now, I am going to go on to the next page,  
18 which is dated August 17th, 2005, at the top. And  
19 this is page -- Document Production Page 200918.

20 A. Okay.

21 Q. And without reviewing the entire --  
22 actually, strike that.

23 Will you please take a few moments to look  
24 through this press release?

25 A. Yes. I am just turning off my phone here



1 so we don't get bothered -- my apologies. I'm sorry.

2 So read the whole release?

3 Q. Do read through.

4 A. Okay. I am done. Thank you.

5 Q. Now, does the press release mention  
6 anything about content being approved by editors?

7 A. Not that I saw.

8 Q. And now I would like you to turn your  
9 attention to the following page, page 200919, which  
10 is dated October 12th, 2005. And if you could direct  
11 your attention to the fifth paragraph in the first  
12 sentence. I am going to read the sentence once aloud  
13 as you read along with me, please.

14 "Unlike rogue P to P networks used to share  
15 mostly pirated video, Veoh is a community of  
16 publishers and consumers where published content is  
17 approved by editors and consumers are assured they  
18 get what they request."

19 Did I read that correctly?

20 A. Yes, you did.

21 Q. And that's -- is that exactly the same  
22 sentence as we saw on August the 10th?

23 A. It looks like the exact same sentence, yes.

24 Q. But did not appear in the August 17th press  
25 release.

1 A. Yes. That seems correct.

2 Q. And was this sentence an accurate statement  
3 of Veoh's policy as of October 12th, 2005?

4 A. No.

5 Q. Do you have any idea why this statement  
6 would be included in a press release when it wasn't  
7 an accurate statement of Veoh's policies?

8 A. I suspect for the lack of process in  
9 reviewing and issuing press releases.

10 Q. I can understand that as a reason why it  
11 went out with a statement that wasn't accurate, but I  
12 am curious as to how -- why the statement would be  
13 put into the press release by anyone in the first  
14 place if it was inaccurate.

15 Do you have an explanation for that?

16 A. Why it would have been put into the general  
17 first release, then into this release, you mean, or  
18 why it was taken --

19 Q. I am speaking about this one, this release  
20 that we are looking at specifically right now, the  
21 October 12th, but maybe we should go back and say --  
22 yeah, even in the first one, August 10th press  
23 release, why would someone have written this  
24 particular sentence and put it into the press  
25 release?

1           A.    It is perhaps my style of communicating  
2           that led to this. We have never had a -- you know,  
3           the process that is being described here. Initially,  
4           when I was conceptualizing the company I envisioned  
5           lots of different things, and those would be one of  
6           the things that I would say as part of general spiel.  
7           And clearly somebody that wrote this took it and put  
8           it in there, and it looks like it came in and out of  
9           this, you know, boilerplate that people are putting  
10          together.

11          Q.    Did you write that sentence?

12          A.    I don't know if I wrote it, but I may have  
13          spoken it at one time or another.

14          Q.    And then you kind of foreshadowed my next  
15          question, which is: If it was inaccurate on  
16          August 10th and then taken out on August 17th and  
17          then reinserted on October 12th, is there any  
18          explanation as to why it would have been not in one  
19          press release and then added back in for another  
20          press releases.

21          A.    I have no idea. Does it do that anywhere  
22          else in there?

23          Q.    I am going to go through all these,  
24          hopefully pretty quickly; and we will establish what  
25          did occur.

1 A. Okay.

2 Q. On the next one, which is November 8th,  
3 which is Document No. -- ends with 920. Just before  
4 the "about Veoh Networks," would you agree that that  
5 same sentence appears there?

6 A. Yes. That's correct.

7 Q. And then moving on to the next one, which  
8 is November 30th, 2005, Page No. 921 in roughly the  
9 same location, the same sentence appears there; is  
10 that correct?

11 A. Yes. That is true.

12 Q. January 9th, 2006, Page No. 922. Again,  
13 roughly the same location the same sentence appears;  
14 is that correct?

15 A. That's correct.

16 Q. January 10th?

17 A. Correct.

18 Q. And January 18th, Document No. 924, towards  
19 the end of the page, does the same sentence appear  
20 there?

21 A. Yes, it does.

22 Q. And then on February 15th, 2006 -- this is  
23 page 925, near the bottom of the page -- does the  
24 same sentence appear there?

25 A. Yes, it does.

1 Q. September 21st, 2006. I want you to read  
2 the sentence to yourself and I will read it out loud.  
3 It says "Unlike rogue peer to peer networks that  
4 utilize unmanaged bit torrent to share mostly pirated  
5 video, Veoh is a community of publishers and  
6 consumers where published content is approved by  
7 editors and consumers are assured they get what they  
8 request."

9 Did I read that correctly?

10 A. Yes, you did.

11 Q. Now, that's slightly different from the  
12 other versions that we read in the earlier press  
13 releases; is that correct?

14 A. Is it?

15 Q. Well, let's compare it. The first few  
16 words it says "Unlike rogue P to P networks." In an  
17 earlier version it says "That are used to share  
18 mostly pirated video." Here it says "Utilized  
19 unmanaged bit torrent to share mostly pirated  
20 videos."

21 A. I see.

22 Q. So it has been edited at this point; is  
23 that correct?

24 A. Yes.

25 Q. Does the new language reflect Veoh's policy

1 question?

2 MS. GOLINVEAUX: You can answer subject to  
3 the objections.

4 THE WITNESS: Yes, I believe that, you  
5 know, what was stated in these documents is what the  
6 users agreed to.

7 BY MR. SPERLEIN:

8 Q. Okay. That is fine. Thank you.

9 Does Veoh license material for distribution  
10 through the Veoh system from individuals or  
11 organizations other than the standard user of the  
12 Veoh system?

13 MS. GOLINVEAUX: I'm sorry. Can you repeat  
14 the question, please? Read back the question,  
15 please.

16 (Record read.)

17 THE WITNESS: We have a content group, as  
18 it is called, that does -- we call them deals -- with  
19 content owners, some content owners.

20 BY MR. SPERLEIN:

21 Q. How long has the content group been in  
22 existence? Is that something that has existed since  
23 the beginning of Veoh or something that started  
24 later?

25 A. No. It is something started later. I am

1 of the content group?

2 A. I am actually not sure if there were any  
3 other deals.

4 Q. After the content group was formed, have  
5 they made deals to put content on the Veoh system?

6 A. Yes, they have.

7 Q. Can you give me a few examples of some of  
8 the deals that you might consider to be one of the  
9 more important ones?

10 A. Sure.

11 CBS, Us Magazine, Road and Track Magazine,  
12 Car and Driver Magazine, United Talent Agency.

13 Q. Are all of those deals similar to the  
14 Turner deal in that there's no payment by one side or  
15 the other for the transaction?

16 A. Yes, I believe so.

17 Q. What content did CBS have a deal to --

18 A. So it is not launched yet. It is a new  
19 deal for us, but it is shows from CBS.

20 Q. Do you want this portion to be marked?

21 MS. GOLINVEAUX: I was going to ask should  
22 this -- would you like this portion to be designated  
23 confidential? Is this public knowledge?

24 THE WITNESS: No. It is public knowledge.  
25 It has been announced.

1 of them playing nothing, one of them playing  
2 propaganda. I watched until the age of nine maybe an  
3 hour worth of cartoons.

4 So when I moved to the States I grew up on  
5 television and always kind of saw it and respected it  
6 as being this incredible medium to be able to  
7 communicate and influence and motivate people.  
8 Right.

9 And as I was running Aronix, the previous  
10 company that I founded, I realized that we were now  
11 at a time where technology would allow us to create  
12 practically, as I call it, infinite amount of  
13 spectrum, channels for individuals to use, to be able  
14 to broadcast their thoughts to the world very, quite  
15 frankly, politically motivated behind the scenes.  
16 But I saw it as, and still do see it as, the, you  
17 know, democratized medium that allows the average man  
18 to be able to communicate with the entire world.

19 Q. You see Veoh in that regard?

20 A. Yes. I see democratization of the video.  
21 YouTube is clearly similar in that regard. There are  
22 hundreds of sites that are allowing these kinds of  
23 things now. Veoh was one of the first ones.

24 Q. And have you referred to Veoh as an  
25 "Internet television network" before?



1 A. Yes.

2 Q. And what is your basis of that statement?

3 Why do you consider Veoh an "Internet television  
4 network"?

5 A. Well, that is just kind of what we call  
6 this capability of being able to broadcast, you know,  
7 your own video. It is like having your own TV  
8 station. It is something that consumers understand.

9 Q. When you were in the formative stages of  
10 creating Veoh, did you consider issues of copyright  
11 infringement?

12 A. Sure.

13 Q. It was something that was on your mind?

14 A. Of course.

15 Q. And understanding that Veoh has evolved  
16 a lot from what you initially had envisioned, at  
17 those early stages did you come up with a solution  
18 for dealing with potential copyright issues?

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

21 THE WITNESS: Well, what I envisioned  
22 was -- going perhaps to that e-mail that you showed  
23 me -- was the press releases that talk about peer to  
24 peer, the traditional peer to peer networks are --  
25 these days are not centralized, and therefore they

1 cannot take content down. And we wanted to build a  
2 network that -- if inappropriate content got up, that  
3 we could take it down.

4 BY MR. SPERLEIN:

5 Q. So when you built Veoh, was Veoh built as a  
6 closed system?

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

9 THE WITNESS: Well, if you could clarify  
10 for me what "closed" means in your question?

11 BY MR. SPERLEIN:

12 Q. I will also clarify the time frame. Let's  
13 talk about as of today. You talked about an open  
14 system which meant that -- which resulted in not  
15 being able to control the video files that were on  
16 that system used.

17 So my question to you is -- I will word it  
18 differently. Is Veoh an open system currently?

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

21 THE WITNESS: Well, I will answer what I  
22 believe you mean. Veoh allows anyone to create an  
23 account and publish video. And so is that -- was  
24 that your question? Does that make it open?

25 BY MR. SPERLEIN:

1                   When Veoh first launched, did Veoh allow  
2 adult or sexually explicit material at that time?

3                   A.    Yes.

4                   Q.    And did that remain the policy until  
5 approximately June 21st, 2006?

6                   A.    Yes, if that was the day that we took it  
7 down. I assume it was, but, yes.

8                   Q.    So what I'm specifically asking is, was  
9 there any time between the time that Veoh first  
10 started operating and sometime after that where adult  
11 was not allowed and then began to be permitted prior  
12 to --

13                   A.    No. Not that I recall.

14                   Q.    It was put in from the beginning until --

15                   A.    Yes. Exactly.

16                   Q.    Did the sexually explicit video files that  
17 appeared on Veoh prior to Veoh's change in policy  
18 attract a certain audience base to veoh.com?

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

21                   THE WITNESS: I don't know if it attracted  
22 the base itself, but clearly they were viewed.

23 BY MR. SPERLEIN:

24                   Q.    There were people interested in viewing  
25 sexually explicit material on veoh.com?

1 MS. GOLINVEAUX: 2 says "Human editors,"  
2 not human filters.

3 MR. SPERLEIN: I'm sorry.

4 BY MR. SPERLEIN:

5 Q. "Human editors to filter out."

6 A. Look, at that time our default spiel -- you  
7 know, painting a vision of a service was such. So  
8 whether I said this or she read it in a press release  
9 or -- I don't recall. But I could have said it, or  
10 she could have gotten it from some other place. But,  
11 again, there was -- people believed at that time that  
12 we were going towards this system of having human  
13 editors.

14 Q. Thank you.

15 Following up on that then, do you  
16 acknowledge that you have made statements to the  
17 press that that kind of -- that same basic time  
18 frame? And we are talking about -- let's see. That  
19 was August 2005. Let's say up to the launch of  
20 veoh.com web site, February 2006, is that  
21 approximately right for that time frame?

22 A. February of 2006 is the launch that -- yes.  
23 I believe that is true. February or March, sometime  
24 in there.

25 Q. Okay. So do you acknowledge that prior to

1 that I don't have any follow-up questions for you.

2 I know that this timing could have maybe  
3 allowed us a little more time with other folks,  
4 but -- so give us a few minutes, maybe even a little  
5 bit more than usual. I want to make sure, because  
6 this will be the last opportunity I have to ask you  
7 questions, and I want to see if I have anything else  
8 for you, any clarifications. And then we will wrap  
9 up.

10 MS. GOLINVEAUX: Okay.

11 (Recess.)

12 BY MR. SPERLEIN:

13 Q. Mr. Shapiro, earlier you talked about the  
14 way that you envisioned a process for reviewing video  
15 files before publication on Veoh network.

16 My question to you now is why did you  
17 eventually not come to implement such a procedure?

18 A. Well, again, as we started kind of looking  
19 at the system and how it was going to scale primarily  
20 was the concern -- there's no way that we felt that  
21 we could build a system that could do that.

22 Q. And what were the -- where were the  
23 limitations on doing the system?

24 A. Well, the ability for our editors to  
25 correctly identify copyrighted content and the

1 ability to deal with volume.

2 Q. And focusing in just on the correctly  
3 identifying copyrighted content, did you consider  
4 that you might be able to at least reduce some  
5 copyright infringement, if not catch all the  
6 copyright infringement?

7 A. I don't know if we specifically thought of  
8 it that way. You know, we are engineers, if you  
9 deduced a bit. We try to build systems that work --  
10 program adequately. And so we just felt that we  
11 couldn't do it.

12 Q. Okay. And going back to the idea that you  
13 had a vision for the company that you expressed  
14 publicly that in the end may not have come to  
15 fruition, specifically around reviewing for copyright  
16 infringement, when you approached venture capitalists  
17 and sought funding for veoh.com, did you present that  
18 same vision to the venture capitalists?

19 MS. GOLINVEAUX: Object to the form.

20 THE WITNESS: So in the Series A in the  
21 first one, you know, before we launched, I believe  
22 that I did. I presented the entire vision. I  
23 believe by the Series B I didn't. But I can't recall  
24 when.

25 BY MR. SPERLEIN:

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 9<sup>th</sup> day of June 2007  
14 at San Diego, California.

15

16

17

18

NRH.

19

NICOLE R. HARNISH

20

C.S.R. NO. 13101

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# EXHIBIT B



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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

\_\_\_\_\_  
IO GROUP, INC., a California )  
corporation, )  
 )  
Plaintiff, )  
vs. )  
 )  
VEOH NETWORKS, INC., a )  
California Corporation, )  
 )  
Defendants. )  
\_\_\_\_\_

Case No. C-06-03926 (HRL)

**CONFIDENTIAL**

DEPOSITION OF TED DUNNING  
SAN DIEGO, CALIFORNIA  
MARCH 16, 2007

REPORTED BY RITA BURGESS, CSR NO. 8374



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1 which rents out space and access to networking.

2 Q. And in that situation, does -- they just provide  
3 the computer space, but does Veoh control how that -- how  
4 those computer systems are programmed?

5 MS. GOLINVEAUX: Object to the form of the  
6 question.

7 THE WITNESS: A co-location facility provides  
8 space, and whoever rents the space controls whatever  
9 computers that they place in the space.

10 BY MR. SPERLEIN:

11 Q. Okay. I want to go through now what happens when  
12 someone wants to publish a video on the Veoh system.

13 What is the first step that if I were an  
14 individual and I had a video file that I wanted to publish,  
15 what would I have to do to publish it through the Veoh  
16 system?

17 A. There are two primary mechanisms. One is you can  
18 upload smaller videos using a browser. Larger videos require  
19 the use of software that we have written in order to manage  
20 the upload in the event of network errors and similar  
21 corruptions.

22 Q. Starting with the first type that you mentioned,  
23 smaller videos, is there a size limitation on that?

24 A. I don't know if there are precise size  
25 limitations on that.

1 it called user name?

2 A. User name would not be the person's name.

3 Q. That's what I thought you were trying to get the  
4 point across when -- so let me ask again. Was there a place  
5 for them to enter a user name?

6 A. Yes.

7 Q. Was there a separate place for them to identify  
8 their given name?

9 A. They had the opportunity to type in a given name.

10 Q. If you know, if that information was -- if  
11 nothing was entered in that field, could their registration  
12 be completed?

13 A. I believe so.

14 Q. Was there a place for them to enter an e-mail  
15 address?

16 A. Yes.

17 Q. And did Veoh verify that e-mail address by  
18 sending a confirming e-mail prior to allowing the video to  
19 upload any video files to the Veoh system?

20 A. At least at one time we did, but we discontinued  
21 that.

22 Q. Do you know why you discontinued it?

23 A. It was an error-prone process.

24 Q. And when you say error-prone, does that mean that  
25 you -- were there concerns that you would lose a certain

1 file sufficiently where we could not find it.

2 Q. Does the Veoh system search only in a particular  
3 folder that's set up by the Veoh client or does it search the  
4 entire hard drive of the user to look for the file?

5 A. I don't know the details of how it works, the  
6 deletion of it.

7 Q. Okay. And what is the -- do you know what the  
8 purpose of that tool, why it was set up so that it could  
9 operate that way?

10 A. The intent, I believe, was that we wanted to make  
11 sure that we could comply with copyright owner's desires in  
12 terms of deleting files that were stolen by somebody else.  
13 If we were notified, then we would be able to as effectively  
14 as we could conceivably do, or plausibly do or feasibly do,  
15 to remove the file.

16 Q. Okay. And I have -- from reviewing some of the  
17 statements on the web site, I also got the impression that it  
18 served as a function for making sure that user had disk space  
19 for fresher, newer files that were coming in, that there was  
20 a feature whereby unless the user overwrote it, Veoh would  
21 actually come in and delete files based purely on the amount  
22 of space that was available. Do you know about that aspect  
23 of the system or not?

24 A. I know some. It doesn't sound accurate.

25 Q. Is there -- can you give me a more accurate

1 hint.

2 Q. In those situations, will Veoh then go and take a  
3 look at the video file to determine if this statement is  
4 accurate, that it does appear on its face to infringe a  
5 copyright?

6 A. It depends a little bit, but only a little bit.  
7 If they refer to a video in a form specific enough for us to  
8 find it at all, then we absolutely will look at it. We got a  
9 notice the other day where they had typed a video identifier  
10 and not provided a title. It was almost unfindable. I did  
11 quite a few database searches and looked at all variants of  
12 how they might have mistyped it, and I found one that  
13 appeared to be the one they were talking about. So  
14 neglecting that one corner case, which is relatively rare, if  
15 they identify a video that we can understandably go to look  
16 at it, we do -- well, sorry. Not in all cases. If it's a  
17 formal DMCA notice from somebody who's large, we have heard  
18 of them, and they seem to understand how to give us reliable  
19 links, we will take down almost no questions, anything they  
20 tell us. So in those cases, I do those take downs. I  
21 wouldn't even look at the material, except after I have done  
22 the take down. I will do a random sampling to verify the  
23 technical means I use actually took down with high likelihood  
24 all the videos that were notified, or we were notified about.

25 If it's an informal notice, there is a much

1 higher chance that it's not an identifiable video. But if it  
2 comes through the flagging system, then there is included a  
3 link to the thing, which is essentially guaranteed to be  
4 resolved to a video owner. And there I will look, if I get  
5 that e-mail or if somebody else forwards it to me, I will  
6 follow that link and look at it, and see what -- what I  
7 think. It's sometimes a difficult judgement. Sometimes it's  
8 an easy judgement. There have been cases where people were  
9 feuding with each other so they said, everything they are  
10 doing is copyright infringement. They sent it back. Those  
11 are child, you know, school yard taunts more than anything.

12 In other cases, it's very very clear that it's,  
13 say, a movie or something. There's a copyright notice on the  
14 front. The user's name does not match or there's an apparent  
15 effort to obscure what that is, and there's an immediate take  
16 down in that case.

17 Q. What other types of things would help you  
18 identify something that was clearly a case of copyright  
19 infringement? Let me try to recap the things that you  
20 mentioned in your last answer. You said something about it  
21 being a movie. By that, do you mean a -- you mean, a long  
22 play, a Hollywood type movie, not -- as opposed to an amateur  
23 production. Is that what you intended when you said movie?

24 A. Yes. Movie is, as you pointed out, ambiguous.  
25 And I was referring to the extreme case where it's an hour

1 taunting back and forth, what do you do in those cases?

2 MS. GOLINVEAUX: I object to this line of  
3 questioning to the extent it calls for Dr. Dunning to make a  
4 determination as to whether certain content is or is not  
5 infringing, because he's not an attorney that would call for  
6 it.

7 MR. SPERLEIN: I'm not asking him for whether  
8 those statements are accurate or not. I'm just asking what  
9 you go -- the process that you go through, and you said that  
10 this is something that you do. So I want to ask you some  
11 questions about that.

12 BY MR. SPERLEIN:

13 Q. So my question to you is, again, in a case where  
14 it doesn't seem obvious to you, you make a call whether to  
15 take that video down or to leave it up; is that correct, or  
16 do you error on the side of taking it down?

17 A. Well, you are correct that ultimately there has  
18 to be some decision because there are some cases which aren't  
19 clearly one way or clearly the other, which means they're on  
20 middle ground as well. And I try, and we try, to error  
21 strongly on the side of taking it down if there's any  
22 plausible reason that it's material that would be  
23 copyrighted. We have an objection process where an owner can  
24 say, you took this down inaccurately, so that makes us much  
25 more willing to take down first, and let somebody else ask

1 questions later.

2 Q. Thank you. At this point in time, currently,  
3 does Veoh do any review of video files some time between  
4 their submission -- when they are submitted by the user,  
5 publisher, and the time that it's published throughout the  
6 Veoh system, does Veoh do any review to determine whether the  
7 material might be infringing on someone's copyright or not?

8 A. No.

9 Q. If you -- if you chose to do that for one  
10 particular video, would you have the ability to do that?

11 MS. GOLINVEAUX: I object to the extent that it  
12 calls for Dr. Dunning to make a legal conclusion as to what  
13 is and is not infringing material.

14 THE WITNESS: I can't answer that I could make a  
15 conclusion about whether it's infringing material.

16 BY MR. SPERLEIN:

17 Q. Earlier you said when something was brought to  
18 your attention, you review it, and you decide whether it  
19 should come down or not. Understanding that the publisher  
20 had an opportunity to make a counterclaim later on, is there  
21 anything preventing you from doing that review prior to  
22 publication on the Veoh system?

23 MS. GOLINVEAUX: Same objection.

24 THE WITNESS: And I did not say that I made a  
25 determination of whether or not something was copyright



1 infringement.

2 BY MR. SPERLEIN:

3 Q. You make a determination of whether it --

4 A. Should be taken down.

5 Q. Should be taken down or not.

6 A. I think it would be completely infeasible to  
7 review everything.

8 Q. Has -- by you personally, is that what you mean?

9 A. By any reasonable multiple me personally.

10 Q. And by multiple of you, do you literally mean  
11 people with your experience and knowledge or do you just mean  
12 a number of -- any number of people, it would be impossible  
13 to review materials before it was published?

14 A. I mean any number of people that is feasible for  
15 us to martial to the task.

16 Q. Has Veoh ever done any sort of study as to --  
17 strike that.

18 It's your testimony here today that Veoh doesn't  
19 do any review on a regular basis of video files that are  
20 submitted by users prior to the publication process; is that  
21 correct?

22 MS. GOLINVEAUX: Could you repeat the question,  
23 please?

24 (The record was read).

25 THE WITNESS: It's correct, but prior to

1 title and a description, and they can select tags. That's  
2 what we talked about before. Is that -- the things that I  
3 just covered, is that entirely of what the entering the meta  
4 data is involved?

5 A. I couldn't say that's all of it, but that's some  
6 very important parts of it.

7 Q. Okay. And from there, they select the video file  
8 from wherever it resides on their computer and they somehow  
9 deliver it electronically to the Veoh system; is that  
10 correct?

11 A. That's correct.

12 Q. And can you tell me from there what happens once  
13 that file in the meta data that the user inputed is delivered  
14 to Veoh, what happens there?

15 A. Meta data has to be stored in the database, the  
16 meta data must be indexed. The technical particulars of the  
17 video have to be examined.

18 Q. Let me stop you right there. What does that  
19 mean, the technical particulars of the video have to be  
20 examined?

21 A. Which Kodak is used, which envelope format is  
22 used. How many seconds is it. What the frame rate is. What  
23 the audio Kodak that are used are. It's like 30 or 40  
24 separate pieces of information that need to be extracted from  
25 the file and verified for usability.

1 Q. Is that done entirely by an electronic process  
2 with no human input?

3 A. Entirely, automatically.

4 Q. And after that information is extracted, what is  
5 the next step in the process?

6 A. I don't remember if I said indexes of meta data,  
7 that occurs contemporaneously with the extraction of  
8 technical information about the video. Then frames are  
9 extracted for use as thumbnails. One of those, the most  
10 seemingly interesting is selected as the single thumbnail to  
11 be represented for search results. The Flash preview is  
12 copied from the original video file. These various pieces of  
13 data are positioned on the correct servers, not just for  
14 internal access, but for external access.

15 Q. Let me stop you there for just a second. I want  
16 to clarify something.

17 With regard to both the meta data and the  
18 original video file, is there a key entry point where they  
19 come to Veoh and then get distributed to different places for  
20 these processes, or does that happen instantaneously as the  
21 user submits them? And if you would like, I can give you an  
22 example of what I mean. You said that the meta data has to  
23 go to the indexing system, which we know resides in four  
24 servers here in San Diego. Does that information go directly  
25 there, or does it go to a kind of central processing area

1 times, I might go, oh yes --

2 Q. That's okay.

3 A. -- there's something there.

4 Q. Let me focus a little bit on the actual --

5 A. I'm sorry. I knew there was. Of course  
6 transport to all of the cashing layers does not occur  
7 until -- except on demand. That is effectively part of the  
8 publishing process, but it is done as late as possible,  
9 meaning the first time something is accessed as opposed to  
10 being caused by. Some things are caused by the users  
11 submitting the video. Some things are caused by the first  
12 access of the video. Some things are caused by the tenth  
13 access. But the process of publishing is not complete just  
14 because things stop happening after submission of the video  
15 file itself.

16 Q. Does Veoh or any employee of Veoh actually look  
17 at any of the video material or the video content on a video  
18 file during that publication process?

19 A. No. We do have automated systems that look in  
20 the back log of number of videos that have been submitted,  
21 the number have gone up, you know, available, so that we can  
22 detect system failures, and somebody's phone will ring if  
23 there's a failure and things are coming in but not  
24 publishing.

25 Q. And at that point would anyone physically look at

1 the video?

2 A. They wouldn't look at the content, they would  
3 look more along the lines of how many files are there, what  
4 phase of the automated process did they get stuck in.  
5 There's at least a dozen steps on two dozen different  
6 computers or more where this -- this process is happening.  
7 And so any one of those -- not any one of them, but many  
8 steps can cause a hang up.

9 Q. I understand.

10 Once the video publishing process is complete and  
11 the video is now on the Veoh servers and available to other  
12 users, does Veoh currently review any of those videos by  
13 physically looking at the videos prior to some sort of flag  
14 or ownercation from a user that it should be looked at?

15 A. We look at prominent pieces of our site, the  
16 front page, the featured videos, things like that to make  
17 sure that we're not as an introductory experience, showing  
18 something that's lude by very strict standards, you know.  
19 Kind of the lowest common denominator community standards.  
20 But that primarily involves a quick glance at a screen full  
21 of thumbnails.

22 Q. If you see something that is appearing on the  
23 front page of Veoh as part of this automated process that you  
24 think is not something that you want the public, or the first  
25 glance of Veoh to be some nudity or you mentioned ludness, is

1 there some way that you can prevent those video files from  
2 appearing on the front page without removing it entirely from  
3 the Veoh system?

4 A. We can rate them mature content.

5 Q. And if something is -- if a video file is rated  
6 as mature content, it will not appear on the front page of  
7 the web site; is that correct?

8 A. That's correct.

9 Q. And there are other places on the web site where  
10 it will not appear; is that correct?

11 A. Presumably. Web site is a very fluid thing  
12 because the viewer filters and things like that influence the  
13 way it looks.

14 Q. Okay. Earlier you mentioned that if a viewer  
15 indicates they think of video is infringing, that you'll take  
16 a look at it and possibly remove it. If during this review  
17 of what is currently appearing on the front page, you saw a  
18 Twentieth Century Fox logo that you believe might be  
19 infringing, would you move that to another part of the web  
20 site or take it down completely?

21 MS. GOLINVEAUX: Object; calls for speculation.

22 THE WITNESS: Simply seeing a logo or parity of a  
23 logo could mean many things. I wouldn't comment on whether  
24 or not that's infringing, but if I think that there's any  
25 credible claim of infringement, I take it down. I don't move

1 it. I just disablize it.

2 BY MR. SPERLEIN:

3 Q. Okay. At any other time prior to -- we have been  
4 talking about what your current process is. At any other  
5 time were videos systematically reviewed before they were  
6 made available to other users on the Veoh system?

7 A. I wouldn't call it a systematic review, but we  
8 all watched the first 10 because we were so excited that  
9 anything worked. So I am sure we all watched all those.  
10 Since then, no, there's no system to review.

11 Q. Is there any review at all?

12 A. There are the automated reviews that we talked  
13 about.

14 Q. As far as a person actually reviewing files for  
15 some -- whatever reason it might be, prior to the files going  
16 out to the general user base?

17 A. No.

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

20 THE WITNESS: Oh, excuse me.

21 There is no systematic review by humans before  
22 the general public can see videos.

23 BY MR. SPERLEIN:

24 Q. Going back to the current system, is it correct  
25 that Veoh no longer allows sexually explicit video files to

1 Q. And has Veoh ever explored the possibility of  
2 using that type of -- either of those systems for filtering  
3 material?

4 A. I have thought about trying to use water  
5 markings, but I have never heard of any water marking system  
6 that is in wide use, and therefore have discounted any  
7 benefit that we might receive from that in terms of being  
8 able to take down infringing materials. I have no idea of  
9 any system that more than a tiny, tiny fraction of video  
10 material is water marked with.

11 It's conceivable that if we add a database of  
12 infringing material, that we might be able to do a  
13 fingerprinting type of approach, but we would do a contents  
14 comparison. And we currently do a limited form of that. We  
15 would receive a note about one piece of content, we take down  
16 all identical files, regardless of whether or not we were  
17 ever noticed about that. And any time somebody tries to  
18 publish that file again, it's immediately taken down.

19 Q. And how does the -- how do you identify that? Is  
20 it something that's previously been taken down?

21 A. We use what's known as a cryptographically secure  
22 hash function, the particular one I think we use is the  
23 secure hash algorithm number one.

24 Q. I'm not going to ask you to describe that any  
25 further.



1 I, RITA BURGESS, Certified Shorthand Reporter for the State  
2 of California do hereby state under penalty of perjury:

3  
4

5 That the witness in the foregoing deposition was by me first  
6 duly sworn to testify to the truth, the whole truth and  
7 nothing but the truth in the foregoing cause; that the  
8 deposition was taken by me in machine shorthand and that the  
9 foregoing contains a true record of the testimony of the  
10 witness.

11  
12

13 Dated this 31<sup>st</sup> day of March, 2007, at  
14 San Diego, California.

15  
16

Rita Burgess  
RITA BURGESS  
C.S.R. No. 8374

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18

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# EXHIBIT C

Copy

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. )  
\_\_\_\_\_ )

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



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1 A. Okay.

2 Q. Before the user is able to pick a video  
3 file off of their system and upload it to Veoh, are  
4 they required to register with Veoh?

5 A. Yes.

6 Q. And are they required to download the Veoh  
7 client onto their system before they can upload a  
8 video?

9 A. No.

10 Q. Are users only able to upload video files  
11 to the Veoh system as opposed to any other type of  
12 file?

13 A. Only video.

14 Q. Only video.

15 If a user attempted to upload a software  
16 file, what would happen?

17 A. It would be rejected.

18 Q. Would they get a message that said it was  
19 being rejected?

20 A. Yes.

21 Q. Do you know exactly what that message would  
22 say -- or I shouldn't say "exactly." Do you know  
23 approximately what the message would say?

24 A. Approximately it says "unknown codec."

25 Q. So is the codec what the system would look

1 MS. GOLINVEAUX: Object to the form.

2 THE WITNESS: I don't know the answer to  
3 that.

4 BY MR. SPERLEIN:

5 Q. Going back to individual users that upload  
6 content onto the Veoh system. Does Veoh ask those  
7 users if they have permission -- strike that.

8 Does Veoh ask users if they own the content  
9 that they're uploading onto the Veoh system?

10 MS. GOLINVEAUX: Objection to the form.

11 THE WITNESS: "Ask"? What do you mean by  
12 "ask"?

13 BY MR. SPERLEIN:

14 Q. During the upload process, are users  
15 required to respond to any questions about the video  
16 file that they are attempting to upload?

17 MS. GOLINVEAUX: Object to the form.

18 THE WITNESS: Users have to agree to our  
19 terms of service prior to uploading.

20 BY MR. SPERLEIN:

21 Q. Okay. And earlier you said that users are  
22 required to input a title for the video file before  
23 they uploaded it; is that correct?

24 A. That's correct.

25 Q. And you also said earlier that users have

1 an opportunity to input a description, but you are  
2 not sure if that is required or optional; is that  
3 correct?

4 A. That's correct. I don't remember.

5 Q. It is okay.

6 During that same process, does Veoh ask the  
7 user to respond to any other questions?

8 MS. GOLINVEAUX: Object to the form.

9 THE WITNESS: There are currently three  
10 questions which are asked.

11 BY MR. SPERLEIN:

12 Q. What are those questions?

13 A. Excuse me, four questions.

14 If the video contains pornographic content.  
15 If it contains violence. The last question is  
16 reaffirming that they agree to our terms of service,  
17 and I can picture the third check box, but I cannot  
18 remember what it says.

19 Q. Could it be nudity?

20 A. It could be nudity, but I am speculating.

21 Q. Okay. Are there any other fields where a  
22 user can input additional information about the video  
23 file that they are attempting to upload?

24 A. There's a tags field.

25 Q. And what is the purpose of that field?

1 A. It let's the publisher assign keywords to  
2 the video.

3 Q. And can users later use those keywords to  
4 help them search for video files on the Veoh system?

5 A. Correct.

6 Q. Are there any other fields that users are  
7 given the option of filling in information for?

8 A. They can assign it to a series.

9 Q. Any others?

10 A. Not that I can recall.

11 Q. Can users associate it with a channel --  
12 strike that.

13 Can users associate it with a category?

14 A. Yes.

15 Q. Can you recall any other information that  
16 users are allowed to fill in during the upload  
17 process?

18 A. No.

19 Q. Is there a question -- let me start over.

20 Does the interface ask the user at that  
21 time if they have permission to upload the video  
22 file?

23 A. They have to reaffirm they agree to the  
24 terms of service.

25 Q. Other than that, are users specifically

1 Q. Does Veoh review user submitted video files  
2 during the upload process?

3 MS. GOLINVEAUX: Object to the form.

4 THE WITNESS: Can you clarify "review"?

5 BY MR. SPERLEIN:

6 Q. Does an employee of Veoh actually look at  
7 each video file during the upload process?

8 A. No.

9 Q. Does a Veoh employee actually look at the  
10 video files once the upload process is complete?

11 MS. GOLINVEAUX: Object to the form.

12 THE WITNESS: Can you repeat it?

13 BY MR. SPERLEIN:

14 Q. Let me clarify.

15 Does Veoh actually look at every video file  
16 that is uploaded onto the system during the upload  
17 process?

18 MS. GOLINVEAUX: Object to the form.

19 THE WITNESS: No.

20 BY MR. SPERLEIN:

21 Q. After the upload process is complete, does  
22 Veoh look at every video file?

23 MS. GOLINVEAUX: Object to the form.

24 THE WITNESS: No.

25 BY MR. SPERLEIN:



1 taken to the -- what we call the video details page  
2 which is where the video was presented. And then I  
3 would select the edit function, and then from that  
4 page I would cancel the video.

5 Q. And to clarify the time frame -- let's  
6 narrow down to the first two weeks of June 2006, June  
7 1st to June 15th. If you saw a sexually explicit  
8 video file that contained sexually explicit material  
9 at that time, would you select the edit page and  
10 delete the video file?

11 A. I don't recall when we stopped permitting  
12 sexually explicit content. If those two weeks were  
13 prior to that, then I would confirm -- rather than  
14 cancel the video, I would confirm that the rating was  
15 adult.

16 Q. And if the rating was adult, would you take  
17 no further action?

18 A. I would change the rating.

19 Q. If the rating were correctly indicated as  
20 adult?

21 A. So when viewing the most recent page I  
22 would do that with the content filter turned on. So  
23 my expectation would be that there would be no adult.  
24 So the presence of adult implies that it was  
25 improperly rated.

1 kind of chronologically go through any of those  
2 changes if you can help me with that.

3 So starting with prior to veoh.com going  
4 live, are you aware of any plans for Veoh to have a  
5 review process in its formative stages?

6 A. Yes.

7 Q. And what was the date that Veoh went live  
8 again?

9 A. Veoh the company was launched in July of  
10 '05. Veoh.com, the site, was launched, I want to  
11 say, February '06.

12 Q. Okay. So that is the time frame I am  
13 talking about, between July '5 and February '6, did  
14 Veoh undertake to develop a policy with regard to  
15 viewing during that time frame?

16 MS. GOLINVEAUX: With regard to?

17 MR. SPERLEIN: The editing -- I'm sorry --  
18 reviewing video files.

19 BY MR. SPERLEIN:

20 Q. Let me prephrase the question. During the  
21 time of the formation of Veoh and the time that  
22 Veoh.com went live, did Veoh undertake a policy --  
23 did Veoh develop or talk about a policy for reviewing  
24 video files?

25 MS. GOLINVEAUX: Object to the form.

1 Q. During your -- at any time when you were  
2 reviewing video files through the most recent video  
3 page, did you ever cancel a video file for any reason  
4 other than the video file being violent?

5 A. I canceled bestiality and child  
6 pornography.

7 Q. And when you did that, were those files not  
8 marked as adult by the user that uploaded the file?

9 A. Correct.

10 Q. Did you ever cancel a video file because  
11 you thought it was an instance of copyright  
12 infringement?

13 A. Have I personally ever deleted a file?

14 Q. Yes.

15 A. Yes.

16 Q. Can you give me an example of what files  
17 you have deleted?

18 A. What time frame are we speaking of?

19 Q. This is anytime?

20 A. Anytime. I deleted a copy of 300 that was  
21 available on the site -- or, excuse me, I canceled a  
22 copy of 300 that was available on the site.

23 Q. And why did you cancel that?

24 A. I was in the process of testing some new  
25 functionality, and I encountered it. I happened to

1 know that it launched in the theaters that weekend,  
2 and I felt that it was blatantly copyrighted, and it  
3 was my obligation to cancel it under our DMCA policy.

4 Q. Did you ever cancel any other video files  
5 for being suspected of infringing copyrights?

6 A. I have personally canceled perhaps two  
7 dozen.

8 Q. Were all of those video files movies that  
9 were currently in the theaters?

10 A. Not all of them, no.

11 Q. Were any of them for television shows?

12 A. Yes.

13 Q. What kind of television shows did you  
14 delete from the system -- or cancel from the system?

15 A. An episode of 24.

16 Q. When you canceled the video file that was  
17 an episode of 24, did you cancel that entirely on  
18 review of the actual content on the video file; or  
19 was there some external factor that led you to  
20 believe there was copyright infringement?

21 A. It was the content of the video file.

22 Q. Did you contact the user who uploaded the  
23 video file?

24 A. Users are automatically contacted when we  
25 do a DMCA take down, which these -- so there's

1 canceled and then there's canceled for copyright as a  
2 different function of the editor page.

3 Canceled for copyright triggers are  
4 automatic DMCA lodging. So I don't know if the user  
5 was terminated or not. If the user was a first time  
6 offender, they get a warning. If the user was a  
7 second time offender, they get terminated.

8 Q. Were you instructed by anyone else at Veoh  
9 to cancel video files that were blatant copyright  
10 infringement?

11 A. All members of Veoh are expected to comply  
12 with our DMCA policy.

13 Q. And does your DMCA policy include a  
14 provision that Veoh employees will cancel video files  
15 that are obvious cases of copyright infringement?

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

18 THE WITNESS: I can't speak for other  
19 employees. As I have indicated for myself  
20 personally, there's been a couple dozen times that --  
21 when I've felt that something was obviously  
22 copyrighted.

23 BY MR. SPERLEIN:

24 Q. My question is: Did Veoh give you a  
25 directive that said you should cancel copyright -- or

1 other video files? I am talking specifically about  
2 the advertisements now.

3 MR. SPERLEIN: Right. Video files that may  
4 also be advertising.

5 MS. GOLINVEAUX: Okay. That is a stretch.  
6 I would say that this is not covered by the 30B6 and  
7 would not count as testimony on behalf of Veoh  
8 Networks and is Mr. Papa's own testimony at this  
9 point.

10 MR. SPERLEIN: Noted.

11 BY MR. SPERLEIN:

12 Q. Do you remember the question?

13 A. Repeat.

14 Q. What I am asking about is are there video  
15 files that act also as commercials on the Veoh  
16 network?

17 A. The extent of advertising on Veoh is banner  
18 ads served by value click and Google AdWords served  
19 by Google. We don't have any video advertising.

20 Q. Do you know if -- strike that.

21 Can you tell me what it means to move a  
22 video up or move a video down with regard to if a  
23 Veoh employee is in the video editor page? Is there  
24 a function move video up or move video down?

25 A. I don't believe there is an up or down on

1 process?

2 A. Yes.

3 Q. Are all video files that are submitted to  
4 Veoh transcoded into Flash format?

5 A. No.

6 Q. In what circumstances would a video file  
7 not be transcoded into Flash format?

8 A. If the format of the video file is not  
9 compatible.

10 Q. And in that case it would be -- it would be  
11 marked as noncompatible and possibly maintained for  
12 up to 90 days?

13 A. Correct.

14 Q. If a video file is in a compatible format,  
15 is that video file then transformed into Flash  
16 format?

17 A. Yes.

18 Q. Are there any other exceptions to what  
19 would be -- what video files would be transcoded into  
20 Flash format?

21 A. All valid videos are encoded into Flash  
22 format.

23 Q. All what kind of videos?

24 A. Valid videos.

25 Q. Is the entire video file transcoded into

1 Flash format?

2 A. Currently, yes.

3 Q. Was there a different policy in the past  
4 where the entire video file was not transcoded into  
5 Flash format?

6 A. Yes.

7 Q. Why are video files transcoded into Flash  
8 format after they are submitted to Veoh?

9 A. Adobe's Flash player has something like  
10 98 percent penetration in the browser market, so a  
11 video formatted into Flash can be played by just  
12 about anybody on the Web.

13 Q. When a viewer views a video file through  
14 the web-based application at veoh.com, is the video  
15 file the person is viewing in Flash format?

16 A. Is the video file in Flash format? Yes.

17 Q. Does Veoh make more than one flash -- does  
18 Veoh make more than one Flash formatted file for  
19 playing through the Veoh system for each video file?

20 A. Under some circumstances, yes.

21 Q. Are some video files transcoded into a  
22 higher and a lower resolution version?

23 A. Some files are, yes.

24 Q. Is it ever anymore than two versions?

25 A. Only two Flash versions.



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 8<sup>th</sup> day of June 2007  
14 at San Diego, California.

15

16

17

18

NRH.

19

NICOLE R. HARNISH

20

C.S.R. NO. 13101

21

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# EXHIBIT D

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. )                   |                          |
| _____ )                        |                          |

**CONFIDENTIAL**

HIGHLY CONFIDENTIAL  
DEPOSITION OF JOSPEH PAPA  
VOLUME II  
SAN DIEGO, CALIFORNIA  
MAY 22, 2007

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



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1 THE WITNESS: At what time?

2 BY MR. SPERLEIN:

3 Q. After the user uploads a new video file  
4 onto the Veoh system.

5 A. After a user uploads a new video, we verify  
6 that the codec is one that we support.

7 Q. And after that is a Flash file generated?

8 MS. GOLINVEAUX: Object to the form.

9 THE WITNESS: A Flash file is generated  
10 after we confirm the version is supported.

11 BY MR. SPERLEIN:

12 Q. And is that Flash file created on a  
13 computer or a computer that is owned and operated by  
14 Veoh?

15 A. Yes.

16 Q. At around that same time when the Flash  
17 file is being generated, are there also screen  
18 captures generated?

19 MS. GOLINVEAUX: Object to the form.

20 THE WITNESS: Yes.

21 BY MR. SPERLEIN:

22 Q. Are screen captures generated for every  
23 video file?

24 A. Yes.

25 Q. Has it always been the case that screen

1 BY MR. SPERLEIN:

2 Q. Well, actually, that is why you are here  
3 today, to speak for all of Veoh, unfortunately.

4 MS. GOLINVEAUX: Would you repeat the  
5 question, please?

6 (Record read.)

7 THE WITNESS: I understood that the value  
8 of that was significantly diminished with the advent  
9 of previews.

10 BY MR. SPERLEIN:

11 Q. Do you know why Veoh continued to generate  
12 screen captures after the preview feature was  
13 available?

14 A. It is not common practice to remove  
15 features.

16 Q. So the fact that the screen capture feature  
17 remained on the system may be somewhat of a legacy  
18 type of situation?

19 A. That is a fair characterization.

20 Q. Can you tell me what the -- just a minute.  
21 What format, file format are the screen  
22 captures in?

23 A. JPEG.

24 Q. And what is the pixel resolution?

25 A. There is two resolutions, 16 of them are

1 the same resolution as the incoming video. 16 of  
2 them are reduced resolution, approximately 90 pixels  
3 by 60 pixels. I don't recall the exact dimensions of  
4 the small range.

5 Q. Is there a reason for having one set of 16  
6 that is at a reduced resolution?

7 A. Prior to the launch of veoh.com, the visual  
8 design on the videos pages dictated two sizes.

9 Q. Was there a reason why two sizes were  
10 dictated?

11 A. The visual designers preferred a layout  
12 that required two sizes.

13 Q. After the launch of veoh.com, was there any  
14 longer a reason for having two different sets with  
15 different resolution sizes?

16 A. No.

17 Q. When a user is accessing veoh.com and  
18 they're at a video details page, are they required to  
19 click a button to show the screen captures?

20 A. Yes.

21 Q. And when they click that button, do they  
22 see all 32 screen captures?

23 A. No.

24 Q. Do they just see 16 screen captures?

25 A. Yes.

1 Q. And the screen captures that they see, are  
2 they the screen captures that are set in the original  
3 pixel resolution?

4 A. No.

5 Q. Are the screen captures that they see in  
6 the reduced pixel resolution?

7 A. Yes.

8 Q. Are the screen captures that are in the  
9 original pixel resolution available for an end user  
10 to view at all?

11 A. No.

12 Q. Where do they reside?

13 A. On Veoh storage system.

14 Q. So to be clear, there are 16 screen  
15 captures that are generated that reside on the Veoh  
16 system that users cannot view at all; is that  
17 correct?

18 A. That is accurate.

19 Q. Are any of the screen captures made  
20 available to users in a larger size on the Veoh Web  
21 site anywhere?

22 MS. GOLINVEAUX: Object to the form.

23 THE WITNESS: No.

24 BY MR. SPERLEIN:

25 Q. If an end user points his cursor over top

1 other high resolution images could be sent to the  
2 community editors that we had talked about for  
3 reviewing video files?

4 A. No.

5 Q. That wasn't one of the reasons that Veoh  
6 decided to generate 16 high resolution images?

7 A. No.

8 Q. Can you tell me why Veoh generated 15 high  
9 resolution images that viewers could not view?

10 A. We automatically select the image that  
11 appears on the video details page. And by generating  
12 16 we had a larger sample set of the selection.

13 Q. So 16 images were generated by an automated  
14 system. One of those images was selected to  
15 represent the video file on the video details page;  
16 is that accurate?

17 A. That is accurate.

18 Q. I want to go back for a second to the idea  
19 of LimeLight and see if I can get a better  
20 understanding.

21 When an end user is using the veoh.com Web  
22 site and accesses a page with a video file, does the  
23 Veoh interface go through a process that is roughly  
24 as I am about to describe? Does the system first ask  
25 LimeLight to display or play the video file, and if



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 Veoh is obligated to respond to blatant copyright  
2 violation. In other words, any copyright violations  
3 that are 'flagged' in the Veoh system should be taken  
4 down if it is a clear violation. In general usage of  
5 the site, one encounters blatantly copyrighted  
6 material, it too should be taken down."

7 Did I read that accurately?

8 A. Yes.

9 Q. And if we go looking back up towards the  
10 top of the page, is there header typed information  
11 that indicates that this was put on wiki by you?

12 A. Yes.

13 Q. On 6/28/2006; is that correct?

14 A. That's correct.

15 Q. And was this an accurate statement of Veoh  
16 policies at the time?

17 A. Yes.

18 Q. And when you wrote the phrase "blatantly  
19 copyrighted material," did you have something in mind  
20 when you wrote that? Can you describe what that  
21 means to me?

22 A. To me blatantly copyrighted material -- or  
23 determining if something is blatantly copyrighted  
24 depends on a variety of factors, duration being one  
25 of those factors. If I have specific knowledge that

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.

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NRH.

19

NICOLE R. HARNISH

20

C.S.R. NO. 13101

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# EXHIBIT E

**ORIGINAL**

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9 Attorneys for Defendant  
VEOH NETWORKS, INC.

10  
11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN JOSE DIVISION**

Winston & Strawn LLP  
101 California Street  
San Francisco, CA 94111-5894

14 IO GROUP, INC., a California corporation,  
15 Plaintiff,  
16 vs.  
17 VEOH NETWORKS, INC., a California  
corporation,  
18 Defendant.

Case No. C-06-3926 HRL

**DEFENDANT VEOH NETWORKS, INC.'S  
SUPPLEMENTAL RESPONSES TO  
INTERROGATORY NOS. 6, 21, AND 22**

19  
20 Defendant Veoh Networks, Inc. ("Veoh") hereby submits pursuant to Federal Rules of Civil  
21 Procedure 26 and 33 and Local Rule 26 of this Court the following supplemental responses to  
22 Plaintiff's Interrogatory Nos. 6, 21, and 22.  
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Winston & Strawn LLP  
101 California Street  
San Francisco, CA 94111-5894

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**GENERAL OBJECTIONS**

Veoh expressly incorporates the following General Objections as if set forth fully in response to each of the following individual interrogatories.

1. Veoh objects to the definition of "VEOH" as overly broad to the extent it seeks information from other entities that is outside Veoh's possession, custody or control.

2. Veoh objects to each interrogatory to the extent that it seeks information that is protected by the attorney-client privilege, the work product privilege and/or any other applicable privilege. Such information will not be disclosed. Any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity recognized by statute or case law.

3. Veoh objects to each interrogatory and to Plaintiff's Instructions to the extent that they purport to impose any requirement or discovery obligation on Veoh other than those set forth in the Federal Rules of Civil Procedure and the applicable rules of this Court.

4. Veoh objects to each interrogatory to the extent that it purports to require Veoh to inquire of Veoh's employees other than those employees that would reasonably be expected to have responsive information. Veoh's responses shall be based upon (1) a reasonable search, given the time allocated to Veoh to respond to the interrogatories, of files that could reasonably be expected to contain responsive information, and (2) inquiries of Veoh's employees and/or representatives who could reasonably be expected to possess responsive information.

5. Veoh objects that the defined terms "USER MATERIAL" and "VEOH SERVICE" render the requests vague, ambiguous and compound, and seek information outside Veoh's possession, custody, or control.

**RESPONSES TO INTERROGATORIES**

**INTERROGATORY NUMBER 6:**

Describe in detail how USER MATERIALS are distributed through the VEOH SERVICE, including without limitation, if the USER MATERIALS are transcoded or copied during the process.

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1 ORIGINAL RESPONSE TO INTERROGATORY NUMBER 6:

2 Veoh objects to this interrogatory as overbroad, unduly burdensome, compound, and as  
3 vague and ambiguous.

4 SUPPLEMENTAL RESPONSE TO INTERROGATORY NUMBER 6:

5 In a letter dated June 7, 2007, Plaintiff's counsel agreed to narrow Interrogatory No. 6 to the  
6 following: "Describe how Veoh sets the frame rate during the transcoding process." As narrowed  
7 and subject to and without waiving the foregoing objections and General Objections, Veoh responds  
8 as follows: Veoh utilizes a widely used third party software program provided by On2, Inc. for  
9 encoding user provided content into the Flash format. Veoh has selected default frame rates which  
10 are communicated to On2, Inc.'s Flix Engine software for use during the encoding process.

11 INTERROGATORY NUMBER 21:

12 Identify the document produced by Plaintiff in its initial disclosures which bears Plaintiff's document  
13 production numbers 200045 -200051 by providing a description of the document, the  
14 name of the person (or persons) who prepared the document, the person or persons who received the  
15 document (if any), the date the document was prepared, and the dates the document appeared on Veoh's  
16 website (if at all).

17 ORIGINAL RESPONSE TO INTERROGATORY NUMBER 21:

18 Veoh objects that with interrogatory nos. 16 and 17, Plaintiff has exceeded its limit of 25  
19 interrogatories and, therefore, no request is required to this interrogatory. In addition, this  
20 interrogatory is compound and contains multiple subparts.

21 Veoh further objects that this interrogatory seeks information outside the scope of discovery  
22 in that it seeks information that is not relevant to the subject matter of this action and is not  
23 reasonably calculated to lead to the discovery of admissible evidence. Veoh further objects to the  
24 extent the interrogatory calls for information apparent from the face of document, as Veoh and  
25 Plaintiff would face a similar burden of deriving or ascertaining the answer to this interrogatory from  
26 those documents. See Fed. R. Civ. P. 33(d).

27  
28

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101 California Street  
San Francisco, CA 94111-5894

1 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NUMBER 21:**

2 In a letter dated June 7, 2007, Plaintiff's counsel agreed to narrow Interrogatory No. 21 to  
3 have Veoh "provide the dates the document 200045-200051 (TOUs) were on the Veoh website, if at  
4 all." As narrowed and subject to and without waiving the foregoing objections and General  
5 Objections, Veoh responds as follows: To the best of Veoh's knowledge, document 200045-200051  
6 (which Veoh notes is not a "TOU" as indicated in Plaintiff's June 7, 2007 letter) was available on the  
7 Veoh.com website from June 21, 2006 through July 7, 2006.

8 **INTERROGATORY NUMBER 22:**

9 Identify the document produced by Plaintiff in its initial disclosures which bears Plaintiff's document  
10 production numbers 200056 -200060 by providing a description of the document, the name of the person (or  
11 persons) who prepared the document, the person or persons who received the document (if any), the date the  
12 document was prepared, and the dates the document appeared on Veoh's website (if at all).

13 **ORIGINAL RESPONSE TO INTERROGATORY NUMBER 22:**

14 Veoh objects that with interrogatory nos. 16 and 17, Plaintiff has exceeded its limit of 25  
15 interrogatories and, therefore, no request is required to this interrogatory.  
16 Veoh further objects that this interrogatory seeks information outside the scope of discovery in that it  
17 seeks information that is not relevant to the subject matter of this action and is not reasonably  
18 calculated to lead to the discovery of admissible evidence. Veoh further objects to the extent the  
19 interrogatory calls for information apparent from the face of document, as Veoh and Plaintiff would  
20 face a similar burden of deriving or ascertaining the answer to this interrogatory from those  
21 documents. See Fed. R. Civ. P. 33(d).

22 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NUMBER 22:**

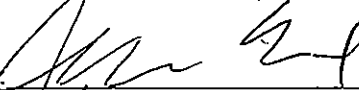
23 Plaintiff's counsel agreed to narrow Interrogatory No. 22 to have Veoh "provide the dates the  
24 document 200056-200060 (FAQs) were on the Veoh website, if at all." As narrowed and subject to  
25 and without waiving the foregoing objections and General Objections, Veoh responds as follows:  
26 To the best of Veoh's knowledge, document 200056-200060 was never on the Veoh.com website.  
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Dated: July 25, 2007

WINSTON & STRAWN, LLP

By: 

Jennifer A. Golinveaux  
Attorneys for Defendant  
VEOH NETWORKS, INC.

Winston & Strawn LLP  
101 California Street  
San Francisco, CA 94111-5894

07/25/2007 15:30 858357: ?

VEOH NETWORKS

PAGE 07

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**VERIFICATION**

I, Joseph Papa, declare:

I am Director of Product Development for Defendant Veoh Networks, Inc. I have read the attached **VEOH NETWORKS, INC.'S SUPPLEMENTAL RESPONSE TO INTERROGATORY NOS. 6, 21, and 22** and the matters set forth therein are true to the best of my knowledge, information and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 25th day of July, 2007.

Winston & Strawn LLP  
101 California Street  
San Francisco, CA 94111-5894

SF:178422.1

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**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Winston & Strawn LLP, 101 California Street, San Francisco, CA 94111-5894. On July 25, 2007 I served the within documents:

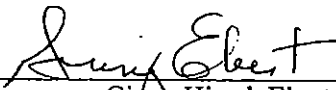
- 1. DEFENDANT VEOH NETWORKS, INC.'S SUPPLEMENTAL RESPONSES TO INTERROGATORIES NOS. 6, 21, AND 22; and**
- 2. DOCUMENT PRODUCTION BATES NUMBERS VEOH 07610 THROUGH VEOH 08212**

- By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date.
- By placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, addressed as set forth below.
- By causing personal delivery by Worldwide Network, Inc. of the document(s) listed above to the person(s) at the addresses set forth below.
- By sending the document(s) listed above to the person(s) at the addresses set forth below via Federal Express overnight courier.
- By electronically mailing a true and correct copy of the document(s) listed above to the person(s) listed below through Winston & Strawn LLP's electronic mail system at the e-mail address set forth below.
- By sending the document(s) listed above to the person(s) listed and addresses set forth below via Messenger Services.
- By the Court's ECF electronic mailing system.

Gill Sperlein  
 General Counsel  
 Io Group, Inc.  
 69 Converse Street  
 San Francisco, CA 94103  
[legal@titanmedia.com](mailto:legal@titanmedia.com)  
 T: 415.487.1211, x32  
 F: 415.252.7747

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Executed on July 25, 2007, at San Francisco, California.

  
 \_\_\_\_\_  
 Ginny Hirsch Ebert

# EXHIBIT F

Winston & Strawn LLP  
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San Francisco, CA 94111-5894

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9 Attorneys for Defendant  
VEOH NETWORKS, INC.

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN JOSE DIVISION

14 IO GROUP, INC., a California corporation,  
15 Plaintiff,  
16 vs.  
17 VEOH NETWORKS, INC., a California  
corporation,  
18 Defendant.

Case No. C-06-3926 HRL

**DEFENDANT VEOH NETWORKS, INC.'S  
SUPPLEMENTAL RESPONSE TO  
INTERROGATORY NO. 5**

21 PROPOUNDING PARTY: PLAINTIFF IO GROUP, INC.  
22 RESPONDING PARTY: DEFENDANT VEOH NETWORKS, INC.  
23 SET NUMBER: ONE

25 Defendant Veoh Networks, Inc. ("Veoh") hereby submits pursuant to Federal Rules of Civil  
26 Procedure 26 and 33 and Local Rule 26 of this Court the following supplemental objections and  
27 response to Plaintiff's Interrogatory No. 5.

Winston & Strawn LLP  
101 California Street  
San Francisco, CA 94111-5894

**GENERAL OBJECTIONS**

1  
2 Veoh expressly incorporates the following General Objections as if set forth fully in response  
3 to each of the following individual interrogatories.

4 1. Veoh objects to the definition of "VEOH" as overly broad to the extent it seeks information  
5 from other entities that is outside Veoh's possession, custody or control.

6 2. Veoh objects to each interrogatory to the extent that it seeks information that is protected by  
7 the attorney-client privilege, the work product privilege and/or any other applicable privilege. Such  
8 information will not be disclosed. Any inadvertent disclosure of such information shall not be  
9 deemed a waiver of the attorney-client privilege, the attorney work product doctrine, or any other  
10 applicable privilege or immunity recognized by statute or case law.

11 3. Veoh objects to each interrogatory and to Plaintiff's Instructions to the extent that they  
12 purport to impose any requirement or discovery obligation on Veoh other than those set forth in the  
13 Federal Rules of Civil Procedure and the applicable rules of this Court.

14 4. Veoh objects to each interrogatory to the extent that it purports to require Veoh to inquire of  
15 Veoh's employees other than those employees that would reasonably be expected to have responsive  
16 information. Veoh's responses shall be based upon (1) a reasonable search, given the time allocated  
17 to Veoh to respond to the interrogatories, of files that could reasonably be expected to contain  
18 responsive information, and (2) inquiries of Veoh's employees and/or representatives who could  
19 reasonably be expected to possess responsive information.

20 5. Veoh objects that the defined term "USER MATERIAL" renders the requests vague,  
21 ambiguous and compound, and seek information outside Veoh's possession, custody, or control.

22 **RESPONSES TO INTERROGATORIES**

23 **INTERROGATORY NUMBER 5:**

24 Describe in detail all procedures VEOH ever followed for reviewing and approving USER  
25 MATERIALS.

26 **ORIGINAL RESPONSE TO INTERROGATORY NUMBER 5:**

27  
28

1 Veoh objects to this interrogatory as overbroad, unduly burdensome, compound, and as  
2 vague and ambiguous. Veoh further objects to the interrogatory to the extent that it seeks  
3 information that is protected by the attorney-client privilege and the work product privilege.

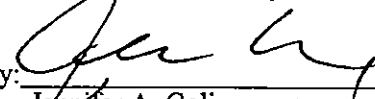
4 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NUMBER 5:**

5 Veoh objects to this interrogatory as overbroad, unduly burdensome, compound, and as  
6 vague and ambiguous. Veoh further objects to the interrogatory to the extent that it seeks  
7 information that is protected by the attorney-client privilege and the work product privilege.

8 Subject to and without waiving the foregoing objections and General Objections, Veoh  
9 responds as follows: Veoh has no "procedures" "for reviewing and approving USER  
10 MATERIALS." Veoh does not "review and approve" user material (which is defined by Plaintiff as  
11 "files submitted by USERS to the VEOH SERVICE for display, distribution or publication by and  
12 through the VEOH SERVICE") prior to such material being made available through Veoh. Early on  
13 in the development of Veoh, Veoh considered a review process prior to user provided material being  
14 made available through Veoh, but determined that no such process was feasible and no such process  
15 was ever implemented.

16 Dated: June 20, 2007

WINSTON & STRAWN, LLP

By:   
Jennifer A. Golinveaux  
Attorneys for Defendant  
VEOH NETWORKS, INC.

Winston & Strawn LLP  
101 California Street  
San Francisco, CA 94111-5894

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VEOH NETWORKS

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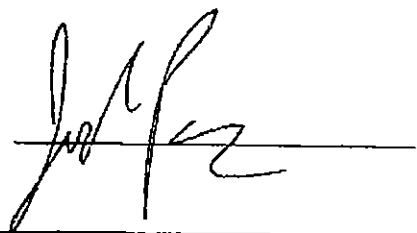
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**VERIFICATION**

I, Joseph Papa, declare:

I am Director of Product Development for Defendant Veoh Networks, Inc. I have read the attached **VEOH NETWORKS, INC.'S SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5** and the matters set forth therein are true to the best of my knowledge, information and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 20th day of June, 2007.



Winston & Strawn LLP  
101 California Street  
San Francisco, CA 94111-5894

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**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Winston & Strawn LLP, 101 California Street, San Francisco, CA 94111-5894. On June 20, 2007 I served the within document:

**DEFENDANT VEOH NETWORKS, INC.'S  
SUPPLEMENTAL RESPONSE TO  
INTERROGATORY NO. 5**

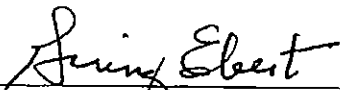
- By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date.
- By placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, addressed as set forth below.

Gill Sperlein  
General Counsel  
Io Group, Inc.  
69 Converse Street  
San Francisco, CA 94103  
legal@titanmedia.com  
T: 415.487.1211, x32  
F: 415.252.7747

- By causing personal delivery by Worldwide Network, Inc. of the document(s) listed above to the person(s) at the addresses set forth below.
- By sending it via Federal Express overnight courier.
- By electronically mailing a true and correct copy through Winston & Strawn LLP's electronic mail system at the e-mail address(es) set forth below.
- By sending it via Messenger Services.
- By the Court's ECF electronic mailing system.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Executed on June 20, 2007, at San Francisco, California.

  
Ginny Hirsch Ebert

# EXHIBIT G

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

---oOo---

IO GROUP, INC., a California )  
corporation, )

Plaintiff, )

) No. C-06-3926 HRL

vs. )

VEOH NETWORKS, INC., a )  
California corporation, )

Defendant. )

**CERTIFIED  
COPY**

CONFIDENTIAL SECTION, PAGES 23 - 34

Deposition of  
KEITH RUOFF

Thursday, May 24, 2007

Reported by:

GEORGE SCHUMER, CSR 3326

(395992)

KEITH RUOFF May 24, 2007

09:10:35 1 Q. What are the names of them, if you can remember?

09:10:38 2 A. Fallen Angel III; Sea Men; Fallen Angel IV;

09:10:48 3 Cirque Noir; Carny. Usually whatever our big feature film

09:10:55 4 of the year is, I'll usually produce.

09:11:20 5 Q. Incident to your acting in the films that you

09:11:29 6 have described, did you take any training as an actor, or

09:11:34 7 is it just sort of on-the-job work?

09:11:38 8 A. No, it came pretty naturally.

09:11:40 9 Q. Is there a particular genre of films that you

09:11:48 10 have produced, directed and acted in, as you just

09:11:51 11 described the various titles?

09:11:53 12 A. "Genre," as in...?

09:11:56 13 Q. Is it all gay erotica films?

09:11:59 14 A. Yes.

09:12:00 15 Q. We talked about marketing, and your acting in

09:12:10 16 various films. So let me just return to the question that

09:12:14 17 I put to you earlier. Please continue on, describing the

09:12:18 18 evolution of your job titles and duties and

09:12:21 19 responsibilities at Io Group.

09:12:23 20 A. I think it was in late 1998, early 1999, that I

09:12:34 21 came on as vice-president of the company.

09:12:38 22 Q. What were your duties and responsibilities as

09:12:41 23 vice-president?

09:12:41 24 A. Still continued with being responsible for sales

09:12:46 25 and marketing; Internet development. And new business

KEITH RUOFF May 24, 2007

09:22:23 1 A. Bruce Lahey.

09:22:29 2 Q. What percentage of the company does he own?

09:22:33 3 A. I believe 100 percent.

09:22:39 4 Q. Where, if any, does Io have offices?

09:22:48 5 A. Here in San Francisco.

09:22:51 6 Q. Any other locations?

09:22:53 7 A. No.

09:22:54 8 Q. Do you know whether or not it has any affiliates,

09:22:58 9 that is to say, companies at which it owns any interest?

09:23:02 10 A. I don't believe so, no.

09:23:06 11 Q. What does Io do?

09:23:09 12 A. Io is a content production company.

09:23:16 13 Q. What kind of content does it create?

09:23:20 14 A. Primarily gay adult erotica.

09:23:24 15 Q. Is there any other content that Io creates, other

09:23:30 16 than adult gay erotica?

09:23:33 17 A. No.

09:23:33 18 Q. Does it do anything other than produce content?

09:23:44 19 MR. SPERLEIN: Objection. Vague.

09:23:47 20 THE WITNESS: That's the primary function of the

09:23:49 21 company.

09:23:50 22 MR. ELKIN: Q. Does it also distribute content?

09:23:52 23 A. Can you define "distribute"?

09:23:57 24 Q. Sure. Does it sell it?

09:23:58 25 A. Yes.

KEITH RUOFF May 24, 2007

10:00:31 1 A. Over the past few years, as we have seen the  
10:00:37 2 growth of it, and see the devastation to our business  
10:00:41 3 through the piracy of our content, I have thought about:  
10:00:44 4 "Is there a way to turn lemons into lemonade, trying to  
10:00:50 5 figure out ways to utilize it?" But I have yet to figure  
10:00:53 6 out any effective way to monetize it.

10:00:55 7 Q. When is the last time you actually considered  
10:00:58 8 whether it would be useful to use peer-to-peer application  
10:01:01 9 to promote the sale of your content?

10:01:04 10 A. Probably within the last three to six months.

10:01:11 11 Q. At some point you gained knowledge that certain  
10:01:32 12 of your content was being accessed through the Veoh site;  
10:01:39 13 is that correct?

10:01:40 14 A. Yes.

10:01:40 15 Q. When did that first come to your attention?

10:01:44 16 A. I believe approximately the second week of June,  
10:01:51 17 2006.

10:01:51 18 Q. What are the circumstances under which this came  
10:01:55 19 to your attention?

10:01:55 20 A. I think within a day or two, two different  
10:01:59 21 sources brought it to our attention.

10:02:02 22 Q. Could you tell us exactly the instances in which  
10:02:12 23 that occurred?

10:02:13 24 MR. SPERLEIN: I just want to remind the witness  
10:02:15 25 not to cut off your question.

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10:19:41 1 just can't remember when it was used; if it is still being  
10:19:45 2 used. But it did restrict usage.

10:19:50 3 MR. ELKIN: We would call for the production of  
10:19:51 4 that document, if you can find it.

10:19:53 5 THE WITNESS: Okay.

10:19:56 6 MR. ELKIN: Q. Let's go back to the  
10:20:07 7 investigation.

10:20:09 8 Once the investigation began -- do you have  
10:20:18 9 something you want to say?

10:20:19 10 A. I'm remembering the last question.

10:20:21 11 The document came into use, in that for  
10:20:26 12 magazines, if they were going to publish a review of the  
10:20:30 13 film, if they were going to use associated still  
10:20:32 14 photographic works -- that there was a terms of use that  
10:20:36 15 dictated how they used the photographic images with the  
10:20:39 16 review.

10:20:40 17 Q. Right. But no other restrictions other than that  
10:20:44 18 one, that you can recall; is that correct?

10:20:45 19 A. Since it was print, yes. There was no use of the  
10:20:53 20 audio-visual work at all.

10:20:55 21 Q. Let's talk about the investigation. Who at Io  
10:20:59 22 was charged or tasked with investigating the content up on  
10:21:06 23 the Veoh site? This is in June of 2006; correct?

10:21:10 24 A. Right. Myself.

10:21:11 25 Q. Were any other parties, or any other personnel

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10:32:24 1 player.

10:32:26 2 You downloaded the material that you believed you

10:32:29 3 owned; right?

10:32:30 4 A. Yes.

10:32:30 5 Q. With regard to the material that you downloaded

10:32:34 6 that you believed you owned, did you ever see a reference

10:32:37 7 to Titan Media?

10:32:42 8 A. Within the audio-visual work itself? That's what

10:32:48 9 you are asking?

10:32:49 10 Q. Yes.

10:32:49 11 A. I'm trying to understand, so I can answer you

10:32:53 12 correctly.

10:32:54 13 From the files that I downloaded -- and when we

10:33:01 14 reviewed them, I don't remember seeing any reference to

10:33:03 15 Titan Media within those audio-visual works that I

10:33:07 16 downloaded through Veoh.

10:33:09 17 Q. So with regard to the screen shots, was there any

10:33:13 18 reference contained in those screen shots of the -- I

10:33:16 19 guess stills -- to Titan Media or Io?

10:33:21 20 A. Yes.

10:33:21 21 Q. Let's first take Io. Was there any reference to

10:33:25 22 Io in that portion of the screen shot that reflected your

10:33:34 23 material?

10:33:35 24 A. You are talking about the video details page?

10:33:40 25 Q. No, I'm actually referring to -- now you took



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10:33:44 1 shots; right, of -- we talked about the downloading of the  
10:33:50 2 video stuff; the audio-visual stuff. Now we're talking  
10:33:55 3 about the screen shots themselves.

10:33:56 4 You want to describe what that is again, so you  
10:34:00 5 and I are reading from the same playbook?

10:34:02 6 A. As in earlier depositions this week on Veoh, the  
10:34:05 7 page that plays the flash review of a video file is called  
10:34:10 8 a video details page.

10:34:11 9 Q. Is that what you are referring to, that you  
10:34:13 10 captured?

10:34:13 11 A. Yes, and the video details page is what I made  
10:34:17 12 printout copies of, that shows the embedded flash player,  
10:34:20 13 as well as the associated metadata for that file.

10:34:23 14 Q. So the video details page: Does the video  
10:34:28 15 details page reflect any photographic image of your work?

10:34:36 16 A. Yes.

10:34:36 17 Q. So the following questions refer only to the  
10:34:41 18 photographic image of your work.

10:34:43 19 A. Okay.

10:34:44 20 Q. Was there any indication, in the photographic  
10:34:49 21 image of the work, that the work was owned by Io?

10:34:53 22 A. No, because there were screen captures, and in a  
10:35:01 23 movie there's no running -- no overlay showing the name of  
10:35:06 24 the company that owns the movie.

10:35:07 25 Q. Thank you. And then with respect to the

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10:35:11 1 photographic image embedded in this Veoh details page, was  
10:35:21 2 there any identification that Titan Media owned the work?  
10:35:26 3 A. Are you referring to --  
10:35:32 4 Q. It is the very same question I just asked you.  
10:35:35 5 A. I'm just trying to make sure I understand what  
10:35:37 6 you are referring to.  
10:35:37 7 Q. Sure.  
10:35:38 8 A. Is that the 16-thumbnail screen capture images  
10:35:43 9 that Veoh provides on that video details page? Is that  
10:35:47 10 what you are referring to?  
10:35:48 11 Q. Yes.  
10:35:49 12 A. In those screen capture images, no, there is no  
10:35:52 13 indication of ownership by Titan Media.  
10:35:53 14 Q. Let me ask you this: Through what period of time  
10:36:04 15 did you collect evidence of your material, in June of  
10:36:12 16 2006?  
10:36:12 17 A. From approximately June 13th or 14th, through the  
10:36:20 18 22nd or 23rd, when all the adult material was removed.  
10:36:24 19 Q. Now from the time when you first gained knowledge  
10:36:32 20 that your material was accessed through Veoh -- accessible  
10:36:46 21 through Veoh -- did you ever provide a notice to Veoh to  
10:36:58 22 take down your material?  
10:37:00 23 A. No.  
10:37:01 24 Q. From time to time, you notice that companies --  
10:37:31 25 without your permission -- distribute or make copies of

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10:38:46 1 Q. But don't you want also to get them to stop doing  
10:38:54 2 what they are doing?  
10:38:55 3 A. Yes, and that's part of the request.  
10:39:01 4 Q. Are you familiar with a concept called a "DMCA  
10:39:14 5 take-down notice"? Ever heard that before?  
10:39:18 6 A. Yes.  
10:39:19 7 Q. What is that?  
10:39:19 8 MR. SPERLEIN: Objection. It calls for a legal  
10:39:21 9 conclusion.  
10:39:22 10 MR. ELKIN: Q. What is your understanding of a  
10:39:25 11 DMCA take-down notice?  
10:39:27 12 A. A Digital Millenium Copyright Act compliant  
10:39:33 13 notice, to remove content from a -- from somebody.  
10:39:39 14 Q. And I'm not asking for your legal conclusion; I  
10:39:43 15 know you are not a lawyer. But your company, from time to  
10:39:48 16 time, sends out these DMCA take-down notices; correct?  
10:39:54 17 A. Yes.  
10:39:55 18 Q. And if some material that you see published on  
10:40:03 19 some web site is owned by you, and it is being used in an  
10:40:06 20 unauthorized manner, is it your company's custom and  
10:40:10 21 practice to send these DMCA take-down notices?  
10:40:14 22 A. It is our custom to send take-down notices. They  
10:40:20 23 were not necessarily always DMCA take-down notices.  
10:40:23 24 Q. So it is either DMCA notices, or take-down  
10:40:28 25 notices?

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10:40:28 1 A. Demand for payment...

10:40:32 2 Q. Right.

10:40:38 3 Now the lawsuit was filed in this case

10:40:41 4 approximately on June 23, 2006. Does that seem right?

10:40:45 5 A. That sounds correct.

10:40:47 6 Q. Now you became aware, on June 22 -- at least by

10:40:54 7 June 22, 2006 -- that Veoh made a decision to remove adult

10:40:58 8 content; correct?

10:41:00 9 A. 22nd; 23rd-ish, yes.

10:41:04 10 Q. But prior to filing the lawsuit, you were made

10:41:08 11 aware of that?

10:41:09 12 A. Because all of a sudden everything disappeared,

10:41:12 13 while I was in the middle of cataloging it.

10:41:15 14 Q. So you were aware of it; right?

10:41:17 15 A. Yes.

10:41:17 16 Q. And you nevertheless filed a lawsuit; correct?

10:41:24 17 A. Correct.

10:41:24 18 Q. Did you consider not filing a lawsuit, once you

10:41:31 19 found out they weren't providing adult material, or you

10:41:35 20 could not access adult material through their site?

10:41:41 21 A. No.

10:41:51 22 Q. Can you think of any good reason why you didn't

10:41:54 23 send them a take-down notice before filing the lawsuit?

10:41:57 24 MR. SPERLEIN: Object to the form.

10:42:00 25 THE WITNESS: Can you repeat it?

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10:42:02 1 MR. ELKIN: Q. Can you think of any good reason  
10:42:04 2 for why you didn't send them a take-down notice before  
10:42:08 3 filing the lawsuit?

10:42:08 4 A. Because of the fact we had no idea of the extent,  
10:42:11 5 and it made no sense to send a take-down notice for each  
10:42:15 6 file that we were able to identify.

10:42:17 7 Plus, also, because of the fact that we had to  
10:42:20 8 download the full file before we could actually review the  
10:42:24 9 entirety, to ensure that it was our file. And the  
10:42:28 10 download process through the Veoh clients -- which I  
10:42:31 11 believe was using the Bit Torrent, or whatever process it  
10:42:34 12 was using to transfer the file -- it took an amount of  
10:42:37 13 time for the files to actually download before we could  
10:42:41 14 review them.

10:42:41 15 Q. You went up on the web site, and you spent  
10:42:44 16 somewhere in the neighborhood of 6 to 12 hours of time  
10:42:47 17 examining your content. You made copies of the material  
10:42:52 18 that you could see up there. You captured the thumbnails.

10:42:57 19 And that wasn't sufficient notice to you to  
10:43:00 20 actually send them a take-down notice? Is that what you  
10:43:03 21 are saying?

10:43:04 22 A. We were not finished with our investigation.

10:43:06 23 Q. So you were going to file the lawsuit, and finish  
10:43:08 24 your investigation thereafter? Is that correct?

10:43:11 25 A. We filed the lawsuit so quickly afterwards to

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10:46:05 1 Q. Sure. I'll take it.

10:46:07 2 A. It would be in the range of 30-40.

10:46:10 3 Q. Of those 30-40 cases, are those situations where  
10:46:22 4 some third party has used your material without your  
10:46:25 5 permission, to the best of your knowledge?

10:46:27 6 A. Yes, I believe so.

10:46:31 7 Q. Do you recall whether in any of those 30-40 other  
10:46:41 8 cases, you or your counsel ever sent letters or notices to  
10:46:49 9 the offending party, telling them to stop, or take down,  
10:46:52 10 or stop doing what they were doing?

10:46:55 11 A. Yes, I believe with every one of them there was a  
10:47:01 12 take-down notice, along with a demand for payment.

10:47:05 13 Q. And when they didn't do it, you filed a lawsuit;  
10:47:08 14 correct?

10:47:08 15 MR. SPERLEIN: Objection. Misstates testimony.

10:47:12 16 THE WITNESS: When they didn't do what?

10:47:14 17 MR. ELKIN: Q. When they didn't take it down,  
10:47:18 18 you filed a lawsuit.

10:47:19 19 A. I don't think there has ever been a case where  
10:47:22 20 they didn't take it down.

10:47:23 21 Q. You would send the notice, they would take it  
10:47:26 22 down, and then you filed the lawsuit or would resolve it?

10:47:29 23 A. If we can't come to a resolution we were forced  
10:47:33 24 to file a lawsuit, yes.

10:47:35 25 Q. Of the 30-40 cases that you filed, other than

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10:47:38 1 this one, that is still being litigated -- did they all

10:47:43 2 get resolved prior to trial?

10:47:45 3 A. Yes.

10:47:46 4 Q. And the 30-40 lawsuits that were filed by your

10:47:53 5 company: Did they all result in a settlement, whereby Io

10:47:58 6 was paid money?

10:47:59 7 A. Either paid money, or awarded money.

10:48:04 8 Q. Was there ever a situation in which you filed a

10:48:08 9 lawsuit for copyright infringement, where you didn't get

10:48:11 10 paid anything?

10:48:11 11 A. Can you repeat that again?

10:48:23 12 MR. ELKIN: George, can you repeat that?

10:48:25 13 (Record read: "Q. Was there ever a situation in which

10:48:08 14 you filed a lawsuit for copyright infringement, where you

10:48:11 15 didn't get paid anything?")

10:48:27 16 THE WITNESS: Yes.

10:48:28 17 MR. ELKIN: Q. How many instances?

10:48:29 18 A. There's a number of default judgments, where we

10:48:33 19 have not been able to collect on it.

10:48:34 20 Q. Other than default judgments, can you recall any

10:48:37 21 situation where you haven't got paid?

10:48:39 22 A. If you steal our content, everyone pays.

10:48:43 23 Q. Do you recall a situation in which you had one of

10:49:03 24 your friends attempt to upload adult material to Veoh?

10:49:09 25 A. Yes.

KEITH RUOFF May 24, 2007

14:37:02 1 you appreciate that, as much as you would expect your  
14:37:06 2 lawyer to do in reverse.

14:37:07 3 You made a decision, did you not, to bring the  
14:37:11 4 lawsuit prior to your learning that Veoh was going to  
14:37:16 5 disable access to adult material?

14:37:19 6 A. No.

14:37:19 7 Q. When did you learn that Veoh was going to disable  
14:37:28 8 access to adult material?

14:37:29 9 A. The day that they removed the adult material from  
14:37:35 10 their web site.

14:37:36 11 Q. When was that?

14:37:37 12 A. I don't remember the exact date.

14:37:39 13 Q. Would it refresh your recollection if I said  
14:37:41 14 "June 22, 2006"?

14:37:43 15 A. If that's the date you say was the date, then I  
14:37:48 16 would believe you, yes.

14:37:49 17 Q. And you believe that you gave instructions to --  
14:37:52 18 that you made a decision to go forward with the lawsuit  
14:37:55 19 prior to that date?

14:37:56 20 A. No.

14:38:00 21 Q. When did you decide to bring a lawsuit?

14:38:05 22 A. I believe it was after the adult content was  
14:38:08 23 removed, and we no longer had access to the content.

14:38:12 24 Q. So let's assume for a moment that I'm right; that  
14:38:15 25 it is June 22. You made a decision to commence the



KEITH RUOFF May 24, 2007...

14:38:19 1 lawsuit, and you provided all the information to  
14:38:23 2 Mr. Sperlein, and then he prepared the complaint, polished  
14:38:26 3 it up, and had it filed within 24 hours. Is that your  
14:38:30 4 testimony?  
14:38:30 5 A. Sounds about right.  
14:38:32 6 Q. And that's what happened? That's what you are  
14:38:35 7 telling me?  
14:38:36 8 A. To the best of my recollection, yes.  
14:38:41 9 Q. Did you ever have any communications with any  
14:38:49 10 third parties, about whether or not you decided to not go  
14:38:53 11 forward with the lawsuit, as a result of the fact that  
14:38:56 12 Veoh actually had disabled access to adult material?  
14:39:00 13 MR. SPERLEIN: Object to the form.  
14:39:03 14 MR. ELKIN: Q. You can answer.  
14:39:04 15 A. I don't understand what you are trying to ask.  
14:39:07 16 MR. ELKIN: Please repeat it, George.  
14:39:26 17 (Record read: "Q. Did you ever have any communications  
14:38:48 18 with any third parties, about whether or not you decided  
14:38:52 19 to not go forward with the lawsuit, as a result of the  
14:38:56 20 fact that Veoh actually had disabled access to adult  
14:38:59 21 material?")  
14:39:28 22 THE WITNESS: I still don't understand.  
14:39:30 23 MR. ELKIN: Q. You have taken the position, or  
14:39:32 24 you have testified -- correct me if I'm wrong -- that you  
14:39:40 25 didn't decide to bring the lawsuit until you learned that

KEITH RUOFF May 24, 2007

14:54:32 1 a decision to do it --

14:54:34 2 I assume that you are going to claim that you  
14:54:38 3 made a decision to file the lawsuit after you sent this  
14:54:41 4 e-mail, and that it was filed before the end of the day --  
14:54:44 5 despite the fact that it is a very detailed and concise  
14:54:47 6 and relatively coherent complaint, thanks to the good work  
14:54:50 7 of Mr. Sperlein.

14:54:54 8 A. This is a very simple document of 11 pages that  
14:54:59 9 is basically a template, plated from previous suits, that  
14:55:04 10 you could fill in the information in, in an hour or two.

14:55:07 11 Q. Maybe we should hire Mr. Sperlein for all of our  
14:55:10 12 cases. It is a very detailed complaint, and contains all  
14:55:14 13 of the copyright notices.

14:55:15 14 At what point after 9:05 a.m. on June 23, 2006,  
14:55:21 15 did your company make the decision to file these  
14:55:24 16 proceedings?

14:55:25 17 A. Within that same day. That's the best time range  
14:55:30 18 I can get you.

14:55:30 19 Q. And there was no follow-on e-mail after this  
14:55:33 20 date, concerning this lawsuit?

14:55:34 21 A. Not that I know of.

14:55:35 22 Q. So you were just screaming on one hand to the  
14:55:38 23 president, and screaming to Mr. Sperlein on the other.  
14:55:41 24 And that's how the whole thing happened?

14:55:43 25 A. They walk out of their offices and walk into my

KEITH RUOFF May 24, 2007

14:57:03 1 the presence of Mr. Sperlein.

14:57:06 2 A. I don't remember.

14:57:07 3 Q. But you knew, prior to filing this lawsuit, that

14:57:47 4 Veoh had stopped hosting adult content; isn't that

14:57:51 5 correct?

14:57:52 6 A. Yes.

14:57:54 7 Q. And you decided to pursue a legal action against

14:57:56 8 them anyway; is that correct?

14:57:58 9 A. Yes.

14:58:52 10 MR. ELKIN: Next is 17.

14:58:54 11 (Document referred to herein marked for

14:59:11 12 identification Defendant Exhibit 17)

14:59:11 13 MR. ELKIN: Q. By the way, I'm looking at the

14:59:18 14 complaint here, and there is a file stamp on it. It says

14:59:28 15 June 23, 2006, and it looks like it is 12:39. So if, in

14:59:37 16 fact, Mr. Sperlein is very, very, very, very, very,

14:59:45 17 fast -- because he would have had to have had the

14:59:48 18 discussion and the go-ahead, prepare the complaint, and

14:59:50 19 got the copyright stuff, and made sufficient copies, and

14:59:53 20 been able to have this thing filed -- within three hours.

14:59:59 21 A. It is not that difficult in our case.

15:00:03 22 Q. And you are still sticking to your testimony; is

15:00:07 23 that what you are saying?

15:00:08 24 A. There may have been some paperwork that he had

15:00:11 25 already pre-prepared. I don't remember.

KEITH RUOFF May 24, 2007

15:00:14 1 Q. Why would he pre-prepare it, if you hadn't made a  
15:00:20 2 decision before?  
15:00:20 3 A. I don't know.  
15:00:21 4 Q. Mr. Sperlein is not authorized to commence legal  
15:00:24 5 work without you giving him instructions; correct?  
15:00:27 6 A. Commence legal work?  
15:00:28 7 Q. He's not going to be spending his time drafting  
15:00:32 8 complaints unless he gets instructions from you; correct?  
15:00:34 9 A. I don't know.  
15:00:35 10 Q. You're his boss; right?  
15:00:39 11 A. Correct.  
15:00:40 12 Q. Take a look at what has been marked Defendant  
15:00:44 13 Exhibit 17, and tell me what that is, please.  
15:00:47 14 A. It appears to be -- well, there's a couple of  
15:00:52 15 different things. The first page is 200524 through 528 --  
15:01:04 16 appear to be communications between myself and Patrick  
15:01:08 17 Finger during February of 2007, asking him to upload a  
15:01:20 18 file to Veoh.  
15:01:24 19 Q. Why don't I take them -- these E-mails --  
15:01:30 20 separately, just to avoid unnecessary confusion.  
15:01:34 21 The first two pages that are Bates-stamped 200524  
15:01:39 22 to 200525 is an e-mail sent by you to Patrick Finger  
15:01:45 23 February 19, 2007, at 3:28 p.m., and following that is an  
15:01:56 24 e-mail from Mr. Finger to you dated February 19, 2007 at  
15:02:01 25 3:23 p.m., five minutes earlier.

CERTIFICATE OF REPORTER

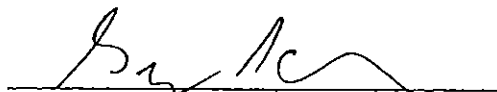
I, George Schumer, a Certified Shorthand Reporter of the State of California, hereby certify that the witness in the foregoing matter was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said proceeding was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of said witness or proceeding was thereafter reduced to typewriting under my direction and supervision;

That before completion of the deposition, review of the transcript  was  was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties in this case, nor in any way interested in the event of this cause; further, that I am not related to any of the parties thereof.

DATED: June 1, 2007



George Schumer, CSR

# EXHIBIT H

1 GILL SPERLEIN (172887)  
 2 THE LAW OFFICE OF GILL SPERLEIN  
 3 584 Castro Street, Suite 849  
 4 San Francisco, California 94114  
 Telephone: (415) 378-2625  
 legal@titanmedia.com  
 5 Attorney for Plaintiff  
 6 IO GROUP, INC.

7  
 8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**  
 10 **SAN JOSE DIVISION**

|    |   |   |   |
|----|---|---|---|
| 11 |   | ) |   |
| 12 | IO GROUP, INC., a California corporation, | ) | <b>CASE NO.: C-06-3926 (HRL)</b>          |
| 13 |   | ) | <b>PLAINTIFF IO GROUP INC.'S RESPONSE</b> |
| 14 | Plaintiff,                                | ) | <b>TO DEFENDANT'S FIRST SET OF</b>        |
| 15 |   | ) | <b>INTERROGATORIES</b>                    |
| 16 |   | ) |   |
| 17 | VEOH NETWORKS, Inc, a California          | ) |   |
| 18 | Corporation,                              | ) |   |
|    |   | ) |   |
|    | DEFENDANT.                                | ) |   |

19  
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 21 PROPOUNDING PARTY: VEOH NETWORKS, INC.

22 RESPONDING PARTY: IO GROUP, INC.

23 SET NUMBER: ONE  
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**GENERAL OBJECTIONS**

Io Group expressly incorporates the following General Objections as if set forth fully in response to each of the following interrogatories.

1. Io Group objects to each interrogatory to the extent it seeks information outside Io Group's possession, custody, or control.

2. Io Group objects to each interrogatory to the extent that it seeks information that is protected by attorney-client privilege, the work product privilege and/or any other applicable privilege. Such information will not be disclosed. Any inadvertent disclosures of such information shall not be deemed a waiver of the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity recognized by statute or case law.

3. Io Group objects to each interrogatory and to Defendant's instructions to the extent they purport to impose any requirement or discovery obligations on Io Group other than those set forth in the Federal Rules of Civil Procedure and the applicable rules of this Court.

4. Io Group objects to each interrogatory to the extent that it purports to require Io Group to inquire of Io Group's employees other than those employees that would reasonably be expected to have responsive information. Io Group's responses shall be based upon (1) a reasonable search, given the time allocated to Io Group to respond to the interrogatories, of files that could reasonably be expected to contain responsive information, and (2) inquiries of Io Group's employees and/or representatives who could reasonably be expected to possess responsive information.

5. Io Group objects to each interrogatory to the extent that it purports to require Io Group to disclose information in violation of a legal or contractual obligation of nondisclosure to a



1 third party. Io Group will not provide such information without either the consent of the relevant  
2 third party or a court order compelling production.

3 6. Io Group objects generally to each interrogatory to the extent it seeks information  
4 not reasonably related to the claims or defenses in this matter.

5 7. Io Group objects to these interrogatories to the extent they seek legal conclusions,  
6 and/or would require Io Group to reach a legal conclusion in order to prepare a response.

7 8. Io Group objects to these interrogatories to the extent they are premature, and Io  
8 Group's responses of production of any documents or things in response to these interrogatories is  
9 without prejudice to this objection. Io Group reserves the right to amend and/or supplement its  
10 responses.  
11 responses.

12 9. Io Group objects to the interrogatories to the extent that either on their face or in  
13 combination with Defendant's definition section the interrogatories create more than one discrete  
14 subpart which should be numbered as separate interrogatories.

15 10. Io Group objects to the defined term "you" or "your" as overly broad to the extent it  
16 seeks information from other entities and is outside Io Group's possession, custody or control.

17 11. Io Group objects to the defined term "identify" in that it is vague and ambiguous  
18 and creates discrete subparts which should be numbered as separate interrogatories.

19  
20  
21 **RESPONSES TO INTERROGATORIES**

22  
23 **INTERROGATORY NO. 1:**

24 Identify all copyrights owned by, or exclusively licensed to, you that you claim Veoh has  
25 infringed, whether directly, contributorily, or vicariously.

26 **RESPONSE TO INTERROGATORY NO. 1:**

27 Io Group Inc. objects to this contention interrogatory pursuant to Federal Rule of Civil  
28 Procedure 33(c) on the grounds that it is premature at this stage of the litigation and Defendant has

1 not yet responded to Plaintiff's Request for Production Number Sixteen, thereby denying Plaintiff  
2 sufficient opportunity to review video files copied and publicly displayed by Veoh in order to  
3 determine the extent to which Veoh infringed Plaintiff's works. Plaintiff further objects to the  
4 term "current exclusive licensee" as used in Defendant's definition of "identify with respect to a  
5 copyright" as being vague, ambiguous and meaningless. Plaintiff further objects to Defendant's  
6 definition of "identify with respect to a copyright" in that it creates discrete subparts to the  
7 Interrogatory.

8 Subject to and without waiving the forgoing objections and General Objections, Io Group,  
9 Inc. responds as follows:

- 10 a. Work: *Boner*; Author: Io Group, Inc.; Current Owner: Io Group, Inc.; Current Exclusive  
11 Licensee: None; U.S. Copyright Registration Number(s): PA 990-715
- 12 b. Work: *Prowl 3: Genuine Leather*; Author: MSR Video Inc.; Current Owner: Io Group,  
13 Inc.; Current Exclusive Licensee: None; U.S. Copyright Registration Number(s): PA 1-  
14 230-108
- 15 c. Work: *Don't Ask Don't Tell*; Author: MSR Video Inc.; Current Owner: Io Group, Inc.;  
16 Current Exclusive Licensee: None; U.S. Copyright Registration Number(s): PA 1-230-011
- 17 d. Work: *Heat*; Author: Io Group, Inc.; Current Owner: Io Group, Inc.; Current Exclusive  
18 Licensee: None; U.S. Copyright Registration Number(s): PA 1-017-633
- 19 e. Work: *Island Guardian*; Author: Io Group, Inc.; Current Owner: Io Group, Inc.; Current  
20 Exclusive Licensee: None; U.S. Copyright Registration Number(s): PA 984-693; PA 1-  
21 077-968
- 22 f. Work: Sea Men: *Fallen Angel IV*; Author: Io Group, Inc.; Current Owner: Io Group, Inc.;  
23 Current Exclusive Licensee: None; U.S. Copyright Registration Number(s): PA 1-065-767
- 24 g. Work: *Detour*; Author: Io Group, Inc.; Current Owner: Io Group, Inc.; Current Exclusive  
25 Licensee: None; U.S. Copyright Registration Number(s): PA 1-091-230
- 26  
27  
28

1 h. Work: *River Patrol*; Author: Io Group, Inc.; Current Owner: Io Group, Inc.; Current  
2 Exclusive Licensee: None; U.S. Copyright Registration Number(s): PA 885-073; PA 1-  
3 086-865  
4

5 **INTERROGATORY NO. 2:**

6 For each copyright requested to be identified in Interrogatory No. 1, identify each direct  
7 infringement as to which you claim that Veoh bears contributory or vicarious liability.

8 **RESPONSE TO INTERROGATORY NO. 2:**

9 Io Group Inc. objects to this contention interrogatory pursuant to Federal Rule of Civil  
10 Procedure 33(c) on the grounds that it is premature at this stage of the litigation and Defendant has  
11 not yet responded to Plaintiff's Request for Production Number Sixteen, thereby denying Plaintiff  
12 sufficient opportunity to review video files copied and publicly displayed by Veoh in order to  
13 determine the extent to which Veoh infringed Plaintiff's works. Plaintiff further objects to  
14 Defendant's definition of "identify with respect to a copyright infringement" in that it creates  
15 discrete subparts to the Interrogatory.

16 Subject to and without waiving the forgoing objections and General Objections, Io Group,  
17 Inc. responds as follows:

18 a. *Boner*. Infringers: persons identified by the user names flickrmen2 and halifax222, and  
19 Veoh Networks, Inc.; Rights Infringed: Io Group's exclusive right to reproduce the  
20 copyrighted work in copies (17 U.S.C. §106(1)), Io Group's exclusive right to prepare  
21 derivative works based on the copyrighted work (17 U.S.C. §106(2)), Io Group's exclusive  
22 right to distribute copies of the copyrighted work to the public by sale or other transfer of  
23 ownership, or by rental, lease, or lending (17 U.S.C. §106(3)), Io Group's exclusive right  
24 to perform the copyrighted work publicly (17 U.S.C. §106(4)) and Io Group's exclusive  
25 right to display the copyrighted work publicly (17 U.S.C. §106(5)). Flickrmen2 and  
26 halifax222, reproduced the work and distributed the work by providing a copy to  
27 Veoh.com along with a purported license to further distribute the work. Veoh transcoded  
28

1 For each person identified in response to Interrogatory No. 7, identify the IP address for  
2 the computer or device used by that person to access Veoh.com.

3 **RESPONSE TO INTERROGATORY NO. 9:**

4 Io Group objects that this interrogatory is vague, ambiguous and unintelligible. Io further  
5 objects that the interrogatory seeks information outside Io Group's custody or control and is  
6 overbroad. Io further objects to the interrogatory the extent that it calls for information protected  
7 by the attorney client privilege or the attorney work product doctrine. Io Group, Inc. further  
8 objects to this interrogatory as calling for confidential information.

9  
10  
11  
12 Dated: April 13, 2007

13  
14   
15 GILL SPERLEIN  
16 Attorney for Plaintiff Io Group, Inc.

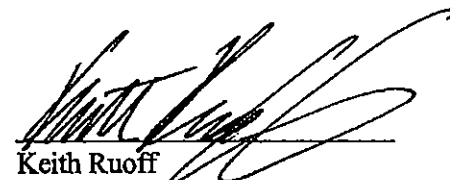
17  
18 **VERIFICATION**

19 I, Keith Ruoff, declare:

20 I am Vice-President of Plaintiff Io Group, Inc. I have read the attached PLAINTIFF IO  
21 GROUP INC.'S RESPONSE TO DEFENDANT'S FIRST SET OF INTERROGATORIES and  
22 the matters set forth therein are true to the best of my knowledge, information and belief.

23  
24 Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the  
25 United States that the foregoing is true and correct.

26  
27 April 13, 2007

28   
Keith Ruoff  
Vice President Io Group, Inc.

# EXHIBIT I

1 GILL SPERLEIN (172887)  
2 THE LAW OFFICE OF GILL SPERLEIN  
3 584 Castro Street, Suite 849  
4 San Francisco, California 94114  
5 Telephone: (415) 378-2625  
6 legal@titanmedia.com

7 Attorney for Plaintiff  
8 IO GROUP, INC.

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

|    |   |   |                           |
|----|---|---|---------------------------|
| 11 |   | ) |                           |
| 12 | IO GROUP, INC., a California corporation, | ) | CASE NO.: C-06-3926 (HRL) |
| 13 | Plaintiff,                                | ) | PLAINTIFF IO GROUP INC.'S |
| 14 |   | ) | SUPPLEMENTAL RESPONSE TO  |
| 15 | vs.                                       | ) | DEFENDANT'S FIRST SET OF  |
| 16 | VEOH NETWORKS, Inc, a California          | ) | INTERROGATORIES           |
| 17 | Corporation,                              | ) |                           |
| 18 | DEFENDANT.                                | ) |                           |

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21 PROPOUNDING PARTY: VEOH NETWORKS, INC.  
22 RESPONDING PARTY: IO GROUP, INC.  
23 SET NUMBER: ONE  
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3. Io Group objects to each interrogatory and to Defendant's instructions to the extent they purport to impose any requirement or discovery obligations on Io Group other than those set forth in the Federal Rules of Civil Procedure and the applicable rules of this Court.

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5. Io Group objects to each interrogatory to the extent that it purports to require Io Group to disclose information in violation of a legal or contractual obligation of nondisclosure to a

1 third party. Io Group will not provide such information without either the consent of the relevant  
2 third party or a court order compelling production.

3  
4 6. Io Group objects generally to each interrogatory to the extent it seeks information  
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6 7. Io Group objects to these interrogatories to the extent they seek legal conclusions,  
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8  
9 8. Io Group objects to these interrogatories to the extent they are premature, and Io  
10 Group's responses of production of any documents or things in response to these interrogatories is  
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16  
17 10. Io Group objects to the defined term "you" or "your" as overly broad to the extent it  
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19 11. Io Group objects to the defined term "identify" in that it is vague and ambiguous  
20 and creates discrete subparts which should be numbered as separate interrogatories.  
21

22 **RESPONSES TO INTERROGATORIES**

23  
24 **INTERROGATORY NO. 1:**

25 Identify all copyrights owned by, or exclusively licensed to, you that you claim Veoh has  
26 infringed, whether directly, contributorily, or vicariously.

27 **RESPONSE TO INTERROGATORY NO. 1:**

28 Io Group Inc. objects to this contention interrogatory pursuant to Federal Rule of Civil  
Procedure 33(c) on the grounds that it is premature at this stage of the litigation and Defendant has



1 not yet responded to Plaintiff's Request for Production Number Sixteen, thereby denying Plaintiff  
2 sufficient opportunity to review video files copied and publicly displayed by Veoh in order to  
3 determine the extent to which Veoh infringed Plaintiff's works. Plaintiff further objects to the  
4 term "current exclusive licensee" as used in Defendant's definition of "identify with respect to a  
5 copyright" as being vague, ambiguous and meaningless. Plaintiff further objects to Defendant's  
6 definition of "identify with respect to a copyright" in that it creates discrete subparts to the  
7 Interrogatory.

8 Subject to and without waiving the forgoing objections and General Objections, Io Group,  
9 Inc. responds as follows:

- 10 a. Work: *Boner*; Author: Io Group, Inc.; Current Owner: Io Group, Inc.; Current Exclusive  
11 Licensee: None; U.S. Copyright Registration Number(s): PA 990-715  
12  
13 b. Work: *Prowl 3: Genuine Leather*; Author: MSR Video Inc.; Current Owner: Io Group,  
14 Inc.; Current Exclusive Licensee: None; U.S. Copyright Registration Number(s): PA 1-  
15 230-108  
16  
17 c. Work: *Don't Ask Don't Tell*; Author: MSR Video Inc.; Current Owner: Io Group, Inc.;  
18 Current Exclusive Licensee: None; U.S. Copyright Registration Number(s): PA 1-230-011  
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20 d. Work: *Heat*; Author: Io Group, Inc.; Current Owner: Io Group, Inc.; Current Exclusive  
21 Licensee: None; U.S. Copyright Registration Number(s): PA 1-017-633  
22  
23 e. Work: *Island Guardian*; Author: Io Group, Inc.; Current Owner: Io Group, Inc.; Current  
24 Exclusive Licensee: None; U.S. Copyright Registration Number(s): PA 984-693; PA 1-  
25 077-968  
26  
27 f. Work: Sea Men: *Fallen Angel IV*; Author: Io Group, Inc.; Current Owner: Io Group, Inc.;  
28 Current Exclusive Licensee: None; U.S. Copyright Registration Number(s): PA 1-065-767  
g. Work: *Detour*; Author: Io Group, Inc.; Current Owner: Io Group, Inc.; Current Exclusive  
Licensee: None; U.S. Copyright Registration Number(s): PA 1-091-230

1 h. Work: *River Patrol*; Author: Io Group, Inc.; Current Owner: Io Group, Inc.; Current  
2 Exclusive Licensee: None; U.S. Copyright Registration Number(s): PA 885-073; PA 1-  
3 086-865  
4

5 **SUPPLEMENTAL RESPONSE**

6 Io Group Inc. objects to the term "current exclusive licensee" as used in Defendant's  
7 definition of "identify with respect to a copyright" as being vague, ambiguous and meaningless.  
8 Plaintiff further objects to Defendant's definition of "identify with respect to a copyright" in that it  
9 creates discrete subparts to the Interrogatory.

10 Subject to and without waiving the forgoing objections and General Objections, Io Group,  
11 Inc. responds as follows:

- 12 a. Work: *Boner*; Author: Io Group, Inc.; Current Owner: Io Group, Inc.; Current Exclusive  
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18 c. Work: *Heat*; Author: Io Group, Inc.; Current Owner: Io Group, Inc.; Current Exclusive  
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3 086-865
- 4
- 5 h. Work: *Carny*; Author: Io Group, Inc.; Current Owner: Io Group, Inc.; Current Exclusive  
6 Licensee: None; U.S. Copyright Registration Number: PA-1-221-850;
- 7 i. Work: *Laid Up*; Author: Io Group, Inc.; Current Owner: Io Group, Inc.; Current Exclusive  
8 Licensee: None; U.S. Copyright Registration Number: PA-1-040-878
- 9
- 10 j. Work: *First Crush*; Author Active Research d/b/a MSR Videos; Current Owner: Io  
11 Group, Inc.; Current Exclusive Licensee: None; U.S. Copyright Registration Number: PA-  
12 1-232-826.

13 **INTERROGATORY NO. 2:**

14 For each copyright requested to be identified in Interrogatory No. 1, identify each direct  
15 infringement as to which you claim that Veoh bears contributory or vicarious liability.

16 **RESPONSE TO INTERROGATORY NO. 2:**

17 Io Group Inc. objects to this contention interrogatory pursuant to Federal Rule of Civil  
18 Procedure 33(c) on the grounds that it is premature at this stage of the litigation and Defendant has  
19 not yet responded to Plaintiff's Request for Production Number Sixteen, thereby denying Plaintiff  
20 sufficient opportunity to review video files copied and publicly displayed by Veoh in order to  
21 determine the extent to which Veoh infringed Plaintiff's works. Plaintiff further objects to  
22 Defendant's definition of "identify with respect to a copyright infringement" in that it creates  
23 discrete subparts to the Interrogatory.

24 Subject to and without waiving the forgoing objections and General Objections, Io Group,  
25 Inc. responds as follows:

- 26 a. *Boner*. Infringers: persons identified by the user names flickrmen2 and halifax222, and  
27 Veoh Networks, Inc.; Rights Infringed: Io Group's exclusive right to reproduce the  
28 copyrighted work in copies (17 U.S.C. §106(1)), Io Group's exclusive right to prepare

1 website and had the right and ability to control the infringing activity in that it purported to license  
2 the infringing content, had the right to remove infringing content and could have taken simple  
3 measures to reduce infringement, yet failed to take such steps.  
4

5 Dated: June 15, 2007

6  
7   
8 GILL SPERLEIN  
9 Attorney for Plaintiff Io Group, Inc.

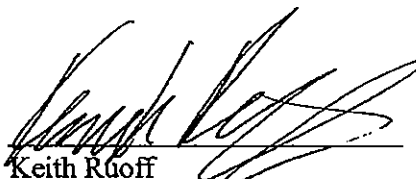
10 **VERIFICATION**

11 I, Keith Ruoff, declare:

12 I am Vice-President of Plaintiff Io Group, Inc. I have read the attached PLAINTIFF IO  
13 GROUP INC.'S SUPPLEMENTAL RESPONSE TO DEFENDANT'S FIRST SET OF  
14 INTERROGATORIES and the matters set forth therein are true to the best of my knowledge,  
15 information and belief.  
16

17 Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the  
18 United States that the foregoing is true and correct.  
19

20  
21 June 15, 2007

22   
23 Keith Ruoff  
24 Vice President Io Group, Inc.  
25  
26  
27  
28

# EXHIBIT J

1 GILL SPERLEIN (172887)  
2 THE LAW OFFICE OF GILL SPERLEIN  
3 584 Castro Street, Suite 849  
4 San Francisco, California 94114  
5 Telephone: (415) 378-2625  
6 legal@titanmedia.com

7  
8 Attorney for Plaintiff  
9 IO GROUP, INC.

10  
11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN JOSE DIVISION**

14 IO GROUP, INC., a California corporation, )  
15 ) CASE NO.: C-06-3926 (HRL)  
16 )  
17 ) **PLAINTIFF IO GROUP INC.'S RESPONSE**  
18 ) **TO DEFENDANT'S SECOND SET OF**  
19 ) **REQUESTS FOR ADMISSIONS**  
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19 PROPOUNDING PARTY: VEOH NETWORKS, INC.  
20  
21 RESPONDING PARTY: IO GROUP, INC.  
22  
23 SET NUMBER: TWO

24 Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and Local Civil Rule  
25 36, Plaintiff Io Group, Inc. hereby responds to Defendant's First Set of Requests for Admissions  
26 through the undersigned counsel, as follows:  
27  
28

1 GENERAL OBJECTIONS

2 Io Group expressly incorporates the following General Objections as if set forth fully in  
3 response to each and every request for admission contained in Veoh's First Set of Requests for  
4 Admissions.

5  
6 1. Io Group objects to each request for admission to the extent it seeks information  
7 outside Io Group's possession, custody, or control.

8 2. Io Group objects to each request for admission to the extent it seeks information  
9 protected by attorney-client privilege, the work product privilege and/or any other applicable  
10 privilege. Such information will not be disclosed. Any inadvertent disclosures of such  
11 information shall not be deemed a waiver of the attorney-client privilege, the attorney work  
12 product doctrine, or any other applicable privilege or immunity recognized by statute or case law.

13  
14 3. Io Group objects to each request for admission and to Defendant's instructions to  
15 the extent that they purport to impose any requirement or discovery obligations on Io Group other  
16 than those set forth in the Federal Rules of Civil Procedure and the applicable rules of this Court.

17  
18 4. Io Group objects generally to each request for admission to the extent it seeks  
19 information not reasonably related to the claims or defenses in this matter.

20  
21 5. Io Group objects to these requests for admission to the extent they are premature,  
22 and Io Group's responses to these requests for admission in response to these requests for  
23 admission are without prejudice to this objection.

24  
25 6. Io Group objects to each request for admission to the extent that either on its face  
26 or in combination with definitions provided by Defendant the request for admission is compound.

27  
28 7. Io Group objects to the defined term "you" or "your" as overly broad to the extent it  
seeks information from other entities and is outside Io Group's possession, custody or control.

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**OBJECTIONS AND RESPONSES**

**REQUEST FOR ADMISSION NO. 58:**

Admit that none of the allegedly infringing works at issue in this case that you claim were available thorough Veoh.com website contained a copyright notice.

**RESPONSE TO REQUEST NO. 58:**

Plaintiff cannot truthfully admit or deny this statement for the reason that it seeks information outside Io Group's possession, custody, or control, Plaintiff has not completed its investigation and the request is otherwise vague and ambiguous.

Each of the works contained a copyright notice when it was placed in the stream of commerce. Infringing copies were made by Veoh's Users and by Veoh itself. It appears the copyright notice was removed from each of the works at some point, but Plaintiff does not know if the copyright notices were removed prior to the works being made available through the Veoh.com website or after.

**REQUEST FOR ADMISSION NO. 59:**

Admit that none of the allegedly infringing works at issue in this case that you claim were available thorough Veoh.com website identified Titan Media as the source.

**RESPONSE TO REQUEST NO. 59:**

Plaintiff cannot truthfully admit or deny this statement for the reason that it seeks information outside Io Group's possession, custody, or control, Plaintiff has not completed its investigation and the request is otherwise vague and ambiguous.

Each of the works identified Titan Media as the source when it was placed in the stream of commerce. Infringing copies were made by Veoh's Users and by Veoh itself. It appears the Titan Media mark was removed from each of the works at some point, but Plaintiff does not know if it was removed prior to the works being made available through the Veoh.com website or after.

**REQUEST FOR ADMISSION NO. 60:**

Admit that none of the allegedly infringing works at issue in this case that you claim were available thorough Veoh.com website identified Io Group, Inc. as the source.



1 RESPONSE TO REQUEST NO. 60:

2 Admit.

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7 Dated: April 30, 2007

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GILL SPERLEIN  
Attorney for Plaintiff Io Group, Inc.

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**CERTIFICATE OF SERVICE**

I am a resident of the State of California, over the age of 18 years , and not a party to the action within. My business address is 69 Converse Street, San Francisco, California, 94103. On April 30, 2007 I served the within documents:

- PLAINTIFF IO GROUP INC.'S SUPPLEMENTAL RESPONSE TO DEFENDANT'S FIRST SET OF INTERROGATORIES
- PLAINTIFF IO GROUP INC.'S SUPPLEMENTAL RESPONSE TO DEFENDANT'S FIRST SET OF REQUESTS FOR ADMISSIONS
- PLAINTIFF IO GROUP INC.'S SUPPLEMENTAL RESPONSE TO DEFENDANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
- PLAINTIFF IO GROUP INC.'S RESPONSE TO DEFENDANT'S SECOND SET OF REQUESTS FOR ADMISSIONS
- PLAINTIFF IO GROUP INC.'S RESPONSE TO DEFENDANT'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

by causing a true and correct copy of the above to be placed with God's Speed Delivery Service for personal delivery in a sealed envelope with postage prepaid, addressed as follows:

JENIFER A. GOLINVEAUX  
WINSTON & STRAW LLP  
101 CALIFORNIA STREET, SUITE 3900  
SAN FRANCISCO, CA 94111-5894

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 30, 2007.

  
Gill Sperlein

# EXHIBIT K

1 GILL SPERLEIN (172887)  
2 THE LAW OFFICE OF GILL SPERLEIN  
3 584 Castro Street, Suite 849  
4 San Francisco, California 94114  
5 Telephone: (415) 378-2625  
6 legal@titanmedia.com

7  
8 Attorney for Plaintiff  
9 IO GROUP, INC.

10  
11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN JOSE DIVISION**

14 )  
15 ) **CASE NO.: C-06-3926 (HRL)**  
16 IO GROUP, INC., a California corporation, )  
17 ) **PLAINTIFF IO GROUP INC.'S RESPONSE**  
18 Plaintiff, ) **TO DEFENDANT'S FIRST SET OF**  
19 ) **REQUESTS FOR ADMISSIONS**  
20 vs. )  
21 )  
22 )  
23 VEOH NETWORKS, Inc, a California )  
24 Corporation, )  
25 )  
26 )  
27 DEFENDANT. )  
28 )

19 PROPOUNDING PARTY: VEOH NETWORKS, INC.

20 RESPONDING PARTY: IO GROUP, INC.

21 SET NUMBER: ONE

22  
23 Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and Local Civil Rule  
24 36, Plaintiff Io Group, Inc. hereby responds to Defendant's First Set of Requests for Admissions  
25 through the undersigned counsel, as follows:  
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**GENERAL OBJECTIONS**

Io Group expressly incorporates the following General Objections as if set forth fully in response to each and every request for admission contained in Veoh's First Set of Requests for Admissions.

1. Io Group objects to each request for admission to the extent it seeks information outside Io Group's possession, custody, or control.

2. Io Group objects to each request for admission to the extent it seeks information protected by attorney-client privilege, the work product privilege and/or any other applicable privilege. Such information will not be disclosed. Any inadvertent disclosures of such information shall not be deemed a waiver of the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity recognized by statute or case law.

3. Io Group objects to each request for admission and to Defendant's instructions to the extent that they purport to impose any requirement or discovery obligations on Io Group other than those set forth in the Federal Rules of Civil Procedure and the applicable rules of this Court.

4. Io Group objects generally to each request for admission to the extent it seeks information not reasonably related to the claims or defenses in this matter.

5. Io Group objects to these requests for admission to the extent they are premature, and Io Group's responses to these requests for admission in response to these requests for admission are without prejudice to this objection.

6. Io Group objects to each request for admission to the extent that either on its face or in combination with definitions provided by Defendant the request for admission is compound.

7. Io Group objects to the defined term "you" or "your" as overly broad to the extent it seeks information from other entities and is outside Io Group's possession, custody or control.

1 **RESPONSE TO REQUEST NO. 20:**

2 Plaintiff cannot truthfully admit or deny this statement for the reason that it seeks  
3 information outside Io Group's possession, custody, or control and the request is otherwise vague  
4 and ambiguous.

5 **REQUEST FOR ADMISSION NO. 21:**

6 Admit that you have never sent a DMCA Notice to Veoh.

7 **RESPONSE TO REQUEST NO. 21:**

8 Admit.

9 **REQUEST FOR ADMISSION NO. 22:**

10 Admit that before filing this lawsuit, you never sent a DMCA Notice to Veoh

11 **RESPONSE TO REQUEST NO. 22:**

12 Admit.

13 **REQUEST FOR ADMISSION NO. 23:**

14 Admit that you have never sent any notice to Veoh regarding infringement of your  
15 copyrights.

16 **RESPONSE TO REQUEST NO. 23:**

17 Deny.

18 **REQUEST FOR ADMISSION NO. 24:**

19 Admit that before filing this lawsuit, you never sent any notice to Veoh regarding  
20 infringement of your copyrights.

21 **RESPONSE TO REQUEST NO. 24:**

22 Admit.

23 **REQUEST FOR ADMISSION NO. 25:**

24 Admit that Veoh is a "service provider" as defined by the 17 U.S.C. § 512(k)(1)(A).

25 **RESPONSE TO REQUEST NO. 25:**

26 Deny.

27 **REQUEST FOR ADMISSION NO. 26:**

28 Admit that Veoh is a "service provider" as defined by 17 U.S.C. § 512(k)(1)(B).

1 **REQUEST FOR ADMISSION NO. 57:**

2 Admit that at some time prior to the infringements you allege in this action, you created  
3 and provided copies, whether complete, modified, or excerpted, of copyrighted works claimed by  
4 you in this action which copies you directly or indirectly made available for free without explicitly  
5 asserting that viewers may not violate your copyrights in that copy.

6 **RESPONSE TO REQUEST NO. 57:**

7 Io Group objects that the term "provided copies" is vague and ambiguous and that the  
8 request is otherwise unintelligible. Io Group further objects that the request is compound. For  
9 these reasons Io Group cannot truthfully admit or deny this statement.

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15 Dated: April 13, 2007

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GILL SPERLEIN  
Attorney for Plaintiff Io Group, Inc.

# EXHIBIT L



1 GILL SPERLEIN (172887)  
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 4 San Francisco, California 94114  
 Telephone: (415) 378-2625  
 legal@titanmedia.com

5 Attorney for Plaintiff  
 6 IO GROUP, INC.

7  
 8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**  
 10 **SAN JOSE DIVISION**

|    |   |   |
|----|---|---|
| 11 | ) |   |
| 12 | ) | <b>CASE NO.: C-06-3926 (HRL)</b>          |
| 13 | ) | <b>PLAINTIFF IO GROUP INC.'S RESPONSE</b> |
| 14 | ) | <b>TO DEFENDANT'S THIRD SET OF</b>        |
| 15 | ) | <b>REQUESTS FOR ADMISSIONS</b>            |
| 16 | ) |   |
| 17 | ) |   |
| 18 | ) |   |

11 IO GROUP, INC., a California corporation,  
 12  
 13 Plaintiff,  
 14 vs.  
 15  
 16 VEOH NETWORKS, Inc, a California  
 Corporation,  
 17  
 18 DEFENDANT.

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19 PROPOUNDING PARTY: VEOH NETWORKS, INC.  
 20  
 21 RESPONDING PARTY: IO GROUP, INC.  
 22 SET NUMBER: THREE

23  
 24 Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and Local Civil Rule  
 25 36, Plaintiff Io Group, Inc. hereby responds to Defendant's First Set of Requests for Admissions  
 26 through the undersigned counsel, as follows:  
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**GENERAL OBJECTIONS**

Io Group expressly incorporates the following General Objections as if set forth fully in response to each and every request for admission contained in Veoh's First Set of Requests for Admissions.

1. Io Group objects to each request for admission to the extent it seeks information outside Io Group's possession, custody, or control.

2. Io Group objects to each request for admission to the extent it seeks information protected by attorney-client privilege, the work product privilege and/or any other applicable privilege. Such information will not be disclosed. Any inadvertent disclosures of such information shall not be deemed a waiver of the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity recognized by statute or case law.

3. Io Group objects to each request for admission and to Defendant's instructions to the extent that they purport to impose any requirement or discovery obligations on Io Group other than those set forth in the Federal Rules of Civil Procedure and the applicable rules of this Court.

4. Io Group objects generally to each request for admission to the extent it seeks information not reasonably related to the claims or defenses in this matter.

5. Io Group objects to these requests for admission to the extent they are premature, and Io Group's responses to these requests for admission in response to these requests for admission are without prejudice to this objection.

6. Io Group objects to each request for admission to the extent that either on its face or in combination with definitions provided by Defendant the request for admission is compound.

7. Io Group objects to the defined term "you" or "your" as overly broad to the extent it seeks information from other entities and is outside Io Group's possession, custody or control.

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**OBJECTIONS AND RESPONSES**

**REQUEST FOR ADMISSION NO. 61:**

Admit that you never sent any notice to Veoh regarding infringements of your copyrights, apart from communications in connection with this action.

**RESPONSE TO REQUEST NO. 61:**

Admit

**REQUEST FOR ADMISSION NO. 62:**

Admit that at some time prior to June 21, 2006, you uploaded to Veoh a copy or copies of a work, or portion thereof, alleged by you in this action.

**RESPONSE TO REQUEST NO. 62:**

Deny

**REQUEST FOR ADMISSION NO. 63:**

Admit that at some time prior to June 21, 2006, you uploaded to the Internet a copy or copies of a work, or portion thereof, alleged by you in this action.

**RESPONSE TO REQUEST NO. 63:**

Plaintiff cannot truthfully admit or deny this statement for the reason that it is vague and ambiguous as to the terms "uploaded" and "Internet".

**REQUEST FOR ADMISSION NO. 64:**

Admit that at some time prior to June 21, 2006, you gave away for free DVDs or other media containing a copy or copies of a work, or portion thereof, alleged by you in this action.

**RESPONSE TO REQUEST NO. 64:**

Admit.

**REQUEST FOR ADMISSION NO. 65:**

Admit that of the files on the disk you produced labeled 200282, 17 are video files with run times of less than one minute.

1 **REQUEST FOR ADMISSION NO. 77:**

2 Admit that the file named "Falcon Boner.mpg" on the disk you produced labeled 200282 is  
3 a video with a run time of approximately 28 minutes or less.

4 **RESPONSE TO REQUEST NO. 77:**

5 Admit.

6 **REQUEST FOR ADMISSION NO. 78:**

7 Admit that the file named "Gay Porn Dont Ask Dont Tell Mi.mpg" on the disk you  
8 produced labeled 200282 is a video with a run time of approximately 31 minutes or less.

9 **RESPONSE TO REQUEST NO. 78:**

10 Admit.

11 **REQUEST FOR ADMISSION NO. 79[sic]:**

12 Admit that you employ no "standard technological measures," as defined by 17 U.S.C.  
13 §512(i)(2).

14 **RESPONSE TO REQUEST NO. 79:**

15 Deny.

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Dated: May 30, 2007

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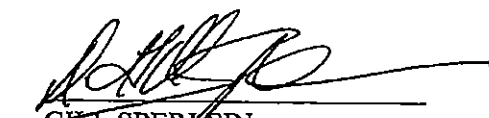
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GILL SPERLEIN  
Attorney for Plaintiff Io Group, Inc.

# EXHIBIT M

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4 San Francisco, California 94114  
5 Telephone: (415) 378-2625  
6 legal@titanmedia.com

7 Attorney for Plaintiff  
8 IO GROUP, INC.

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 IO GROUP, INC., a California corporation, )  
13 Plaintiff, ) **CASE NO.: C-06-3926 (HRL)**  
14 vs. ) **PLAINTIFF IO GROUP INC.'S RESPONSE**  
15 ) **TO DEFENDANT'S SECOND SET OF**  
16 VEOH NETWORKS, Inc, a California ) **REQUESTS FOR ADMISSIONS**  
17 Corporation, )  
18 DEFENDANT. )

19 PROPOUNDING PARTY: VEOH NETWORKS, INC.  
20

21 RESPONDING PARTY: IO GROUP, INC.

22 SET NUMBER: TWO  
23

24 Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and Local Civil Rule  
25 36, Plaintiff Io Group, Inc. hereby responds to Defendant's First Set of Requests for Admissions  
26 through the undersigned counsel, as follows:  
27  
28

1 **GENERAL OBJECTIONS**

2 Io Group expressly incorporates the following General Objections as if set forth fully in  
3 response to each and every request for admission contained in Veoh's First Set of Requests for  
4 Admissions.  
5

6 1. Io Group objects to each request for admission to the extent it seeks information  
7 outside Io Group's possession, custody, or control.

8 2. Io Group objects to each request for admission to the extent it seeks information  
9 protected by attorney-client privilege, the work product privilege and/or any other applicable  
10 privilege. Such information will not be disclosed. Any inadvertent disclosures of such  
11 information shall not be deemed a waiver of the attorney-client privilege, the attorney work  
12 product doctrine, or any other applicable privilege or immunity recognized by statute or case law.  
13

14 3. Io Group objects to each request for admission and to Defendant's instructions to  
15 the extent that they purport to impose any requirement or discovery obligations on Io Group other  
16 than those set forth in the Federal Rules of Civil Procedure and the applicable rules of this Court.  
17

18 4. Io Group objects generally to each request for admission to the extent it seeks  
19 information not reasonably related to the claims or defenses in this matter.  
20

21 5. Io Group objects to these requests for admission to the extent they are premature,  
22 and Io Group's responses to these requests for admission in response to these requests for  
23 admission are without prejudice to this objection.

24 6. Io Group objects to each request for admission to the extent that either on its face  
25 or in combination with definitions provided by Defendant the request for admission is compound.  
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27 7. Io Group objects to the defined term "you" or "your" as overly broad to the extent it  
28 seeks information from other entities and is outside Io Group's possession, custody or control.

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**OBJECTIONS AND RESPONSES**

**REQUEST FOR ADMISSION NO. 59:**

Admit that none of the allegedly infringing works at issue in this case that you claim were available thorough Veoh.com website identified Titan Media as the source.

**RESPONSE TO REQUEST NO. 59:**

Plaintiff cannot truthfully admit or deny this statement for the reason that it seeks information outside Io Group's possession, custody, or control, Plaintiff has not completed its investigation and the request is otherwise vague and ambiguous.

Each of the works identified Titan Media as the source when it was placed in the stream of commerce. Infringing copies were made by Veoh's Users and by Veoh itself. It appears the Titan Media mark was removed from each of the works at some point, but Plaintiff does not know if it was removed prior to the works being made available through the Veoh.com website or after.

**SUPPLEMENTAL RESPONSE TO REQUEST NO. 59:**

Deny.

Dated: June 15, 2007

  
GILL SPERLEIN  
Attorney for Plaintiff Io Group, Inc.