

1 UNITED STATES DISTRICT COURT  
 2 NORTHERN DISTRICT OF CALIFORNIA  
 3 SAN JOSE DIVISION  
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6 IO GROUP, INC., a California )  
 Corporation, )  
 7 )  
 Plaintiff, )  
 8 )  
 vs. ) Case No. C-06-3926 (HRL)  
 9 )  
 Veoh NETWORKS, Inc., a )  
 10 California Corporation, )  
 )  
 11 Defendant. )  
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13  
 14 HIGHLY CONFIDENTIAL  
 15 DEPOSITION OF JOSEPH PAPA  
 16 VOLUME I  
 17 SAN DIEGO, CALIFORNIA  
 18 MAY 21, 2007  
 19  
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22 REPORTED BY: NICOLE R. HARNISH, CSR No. 13101  
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Veoh NETWORKS, Inc., a )  
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Defendant. )  
\_\_\_\_\_ )

DEPOSITION OF JOSEPH PAPA,

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

1 APPEARANCES:

2

3 For the Plaintiff:

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5 GENERAL COUNSEL  
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10 For the Defendant:

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15 Also Present: Keith Ruoff

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1 I N D E X

2 WITNESS: JOSEPH PAPA

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4 EXAMINATION: Page

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1 JOSEPH PAPA,  
2 having been duly sworn, testified as follows:

3  
4 EXAMINATION

5 BY MR. SPERLEIN:

6 Q. Good morning, Mr. Papa. My name is  
7 Gill Sperlein. I'm the attorney for Io Group.

8 Let me start off by asking you just a few  
9 questions about the process here.

10 Have you ever been deposed before?

11 A. No.

12 Q. Okay. It is -- our conversation today --  
13 I'm going to ask you questions and ask you to respond  
14 to them. You are under oath as just indicated. But  
15 our conversation's going to be a little different  
16 from day-to-day conversation, mostly because the  
17 court reporter is recording everything that we say.  
18 Fortunately that doesn't happen in your regular life.

19 So it is common for people to respond with  
20 a shake of the head or a yes or a kind of a verbal  
21 sound that may not really be a yes or a no, something  
22 in between. What I am going to ask you to do is to  
23 respond to each of my questions verbally. And if it  
24 requires a yes or no, to use a yes or no rather than  
25 uh-huh or something like that.

1 ask it in a very clear way. Would it also work on  
2 Windows 2000?

3 A. Yes.

4 Q. Thank you.

5 And currently you are the director of  
6 product development; is that correct?

7 A. That's correct.

8 Q. I assume your duties broadened even further  
9 at that point; is that correct?

10 A. No.

11 Q. No.

12 Are you still responsible for product  
13 architecture under that new title?

14 A. Yes.

15 Q. Were there any specific new  
16 responsibilities that you took over when you became  
17 director of product development?

18 A. No.

19 Q. Was that new title considered a promotion?

20 A. Yes.

21 Q. And was it a promotion designed to  
22 recognize that you were an important part of the  
23 company?

24 A. I don't think I can answer that properly.

25 Q. Okay. Fair enough.

1           When a user wishes to upload a video onto  
2 the Veoh server or -- I'm sorry -- onto the Veoh  
3 system, what steps does the user have to take to  
4 accomplish that task?

5           A.    They have to navigate to veoh.com in their  
6 web browser.  They have to select the uploading tab.  
7 They have to pick the video file off their local  
8 system.  They have to enter the title and description  
9 of the video, and then they press "okay," and the  
10 file will be transferred to their system.

11          Q.    Okay.  You said they had to enter the title  
12 and description of the video file.  Are those  
13 required fields?

14          A.    Yes.

15          Q.    Now, before --

16          A.    Can I correct that?

17          Q.    Absolutely.

18          A.    Title is required.  I believe description  
19 is optional.

20          Q.    And that brings up another point.  If at  
21 any point during the day you realize that you gave an  
22 incomplete answer or maybe something that wasn't  
23 quite right, feel free to bring that to our attention  
24 and we can take your corrected answer and make sure  
25 it is on the record.

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 for to determine if a file was in a proper format to  
2 be loaded?

3 A. Can you clarify "proper format to be  
4 loaded"?

5 Q. That it was in a file format that the  
6 system could accept.

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

9 BY MR. SPERLEIN:

10 Q. You can go ahead and answer as best you  
11 can.

12 A. Can you just repeat it?

13 Q. You said earlier that if a user attempted  
14 to upload a software file, that the user would get a  
15 message that would say "improper codec" or something  
16 to that affect; is that correct?

17 A. That's correct.

18 Q. For what reason would that message be  
19 generated?

20 A. To communicate to the user that the file  
21 they uploaded is not a video file.

22 Q. Do all video files have a codec associated  
23 with it?

24 A. Yes.

25 Q. Let's take a moment to clarify what a codec

1 is. Could you tell me, in relatively simple layman's  
2 terms as you can, what a codec is?

3 A. A codec is a compression scheme.

4 Q. So codec is used to compress video files so  
5 that it can be transferred more quickly; is that an  
6 accurate statement?

7 A. Yes.

8 Q. Do files that are not video files ever  
9 contain codecs?

10 A. Yes.

11 Q. Are the codecs that are used with video  
12 files unique to video files?

13 A. They can be.

14 Q. Are there some codecs that work with both  
15 video and other types of files?

16 A. Yes.

17 Q. Can you give me an example?

18 A. MPEG-2.

19 Q. An MPEG-2 is able to be used with video  
20 files as well as some other type of file?

21 A. Correct.

22 Q. And what type of file is that?

23 A. Audio.

24 Q. If a user were to attempt to upload an  
25 audio file that had an MPEG-2 codec, would the user

1 get the same message from Veoh rejecting the file?

2 A. Yes.

3 Q. And how is the system able to determine  
4 that that is an audio file and therefore reject it as  
5 opposed to a video file?

6 A. An audio file doesn't contain a video  
7 codec.

8 Q. Just for clarification, the audio file can  
9 contain a codec that is an MPEG-2 codec?

10 A. Correct.

11 Q. And can MPEG-2 codec be either audio or  
12 video?

13 A. Correct.

14 Q. Okay. Thank you.

15 So to just summarize this area and clarify,  
16 Veoh does not accept any files that are not video  
17 files; is that correct?

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

20 THE WITNESS: Can you clarify "accept"?

21 BY MR. SPERLEIN:

22 Q. Can users upload any files that are not  
23 video files to the Veoh system?

24 MS. GOLINVEAUX: Object to the form.

25 THE WITNESS: Users can upload anything

1 they choose. If it is not a video file, they will  
2 get the "unknown codec" message.

3 BY MR. SPERLEIN:

4 Q. Will the Veoh system accept any files that  
5 a user attempts to upload that are not video files?

6 MS. GOLINVEAUX: Object to the form of the  
7 question and still vague and ambiguous.

8 THE WITNESS: Can you clarify what you mean  
9 by "accept"?

10 BY MR. SPERLEIN:

11 Q. By "accept" I mean allow the file to be  
12 transferred onto the Veoh system.

13 MS. GOLINVEAUX: Sorry. With that  
14 clarification can you read back the question?

15 MR. SPERLEIN: I will ask it once more.

16 MS. GOLINVEAUX: Sure.

17 BY MR. SPERLEIN:

18 Q. If a user attempts to upload a file that is  
19 not a video file, will the Veoh system allow that  
20 video file to transfer to the Veoh system?

21 A. Yes.

22 Q. And if it is not a video file, what will  
23 the Veoh system do at that time with that file?

24 MS. GOLINVEAUX: Asked and answered.

25 BY MR. SPERLEIN:

1 Q. Would you answer the question?

2 A. It will attempt to recognize the audio and  
3 video codec in the file.

4 Q. Okay. And if it is not a codec that is  
5 associated with video, what will the Veoh system then  
6 do with that file?

7 A. The file stays in the video system and is  
8 marked as "unknown codec."

9 Q. And how long will the Veoh system continue  
10 to keep that file on the system?

11 A. Our current policy is 90 days.

12 Q. After 90 days -- strike that.

13 Is there anything that might occur during  
14 that 90 days that would cause Veoh to maintain the  
15 file beyond that 90 days?

16 A. For a file that has been deemed "codec  
17 unknown"?

18 Q. Correct.

19 A. 90 days is our policy, but we don't have a  
20 guarantee that it happens at the 90-day mark. No  
21 less than 90 days is the policy.

22 Q. What is the reason for maintaining those  
23 files at all?

24 MS. GOLINVEAUX: I would object. To the  
25 extent the answer would call for the witness to

1 whether or not to eliminate those files.

2 Q. Does the operations team routinely  
3 eliminate files, or does the operational team make  
4 specific decisions about specific files for deletion?

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

7 BY MR. SPERLEIN:

8 Q. I'm going to rephrase that for you,  
9 Mr. Papa.

10 A. Okay.

11 Q. After the files have been made available  
12 for deletion by the operations team, does the team  
13 evaluate each individual file to determine if it  
14 should be eliminated or not?

15 A. No.

16 MS. GOLINVEAUX: Mr. Sperlein, I am going  
17 to stop you for a moment and ask you -- as you know,  
18 Mr. Papa is here to designate on behalf of Veoh on  
19 matters specified in your notice, and which  
20 matter does this extended topic fall under?

21 MR. SPERLEIN: The process of uploading  
22 files to Veoh.

23 MS. GOLINVEAUX: I think your topic was a  
24 process of uploading video files to Veoh.

25 MR. SPERLEIN: I think this is included

1 it?

2 A. No.

3 Q. You said that Veoh -- that you value Veoh  
4 based on registrations. Does that mean that the more  
5 users are registered with Veoh, the more valuable  
6 Veoh is?

7 MS. GOLINVEAUX: Object to the form.

8 THE WITNESS: Valuing any company is  
9 complicated. User registrations are one way to  
10 measure our growth.

11 BY MR. SPERLEIN:

12 Q. In addition to users uploading video files  
13 onto the Veoh system, do video files -- are video  
14 files placed on the Veoh system by nonusers?

15 A. Define users.

16 Q. Does Veoh itself ever load or add content  
17 onto the Veoh system?

18 A. Yes.

19 Q. Under what circumstances would Veoh add  
20 video files to the Veoh service?

21 A. We produce a series called Viral, and there  
22 are a variety of promotional videos produced by our  
23 marketing department.

24 Q. Are those promotional videos, videos that  
25 promote Veoh?

1 A. Correct.

2 Q. Are there promotional videos that promote  
3 anything else?

4 A. No.

5 Q. Does Veoh ever obtain content from other  
6 companies which Veoh employees then load onto the  
7 Veoh system?

8 A. Veoh has a content programming team that is  
9 responsible for relationships with content providers.

10 Q. And when the content and programming  
11 team -- does the content and programming team obtain  
12 content from other individuals or companies to play  
13 on the Veoh system?

14 MS. GOLINVEAUX: Object to the form.

15 THE WITNESS: Can you repeat it? Sorry.

16 BY MR. SPERLEIN:

17 Q. Is there content that is associated with --  
18 strike that.

19 Does Veoh itself upload content other than  
20 the Viral series and promotional videos onto the Veoh  
21 system?

22 A. Yes.

23 Q. Under what circumstances?

24 A. The content -- if the content team has a  
25 relationship, and that relationship merits personal

1 attention, then we have uploaded content for third  
2 parties.

3 Q. Can you give me any examples of such  
4 situations?

5 A. Unfortunately I don't know any names. I am  
6 just involved on the technology side. I don't know  
7 the company names, for example.

8 Q. Do you know if Veoh uploads any content on  
9 behalf of Turner Broadcasting?

10 A. We did load content on behalf of Turner  
11 Broadcasting.

12 Q. At some point in the past did Veoh obtain  
13 content from video bloggers that had RSS feeds?

14 A. Yes.

15 Q. And did Veoh upload that content onto the  
16 Veoh system?

17 A. Can you clarify what you mean by "did  
18 Veoh"? Are you speaking did a person, an individual?

19 Q. Someone on behalf of Veoh?

20 A. No.

21 Q. Did Veoh develop technology that would  
22 spider video blogs to obtain content?

23 A. Yes.

24 Q. Do you know if Veoh asked permission to use  
25 the content that those spiders obtained?

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 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 asked at that time if they have permission to upload  
2 the video file?

3 A. Not that I recall.

4 Q. Are users asked for their address at that  
5 time?

6 A. No.

7 Q. Are users asked for their telephone number  
8 at that time?

9 A. No.

10 Q. Are users asked if the video file has been  
11 registered with the U.S. Copyright Office at that  
12 time?

13 A. No.

14 Q. Are users asked for a copyright  
15 registration number at that time?

16 A. No.

17 Q. Are users asked if they have a license to  
18 distribute the video file at that time?

19 A. They are asked to reaffirm the terms of use.

20 Q. Are they asked if they have a license to  
21 distribute the file?

22 A. Not specifically.

23 Q. Are they asked for -- to upload a copy of  
24 any document that shows ownership of the video file?

25 A. Upload a document? No.

1 Q. Does Veoh have a system for reviewing some  
2 video files on its own accord that are available on  
3 the Veoh system.

4 MS. GOLINVEAUX: Object to the form.

5 THE WITNESS: What do you mean by "system"?

6 BY MR. SPERLEIN:

7 Q. Procedure. So let me rephrase.

8 Does Veoh have procedures in place for  
9 reviewing certain video files?

10 A. The content and programming team has  
11 procedures to confirm that all the content is within  
12 our terms of service.

13 Let me rephrase that. I am aware that the  
14 content team has procedures. I don't participate in  
15 those procedures, and they don't review all content.  
16 There's a few mechanisms by which they would review  
17 content.

18 Q. Do you know how they determine which  
19 content will be reviewed?

20 A. My understanding is that they will  
21 periodically review recently published videos to  
22 confirm that they are within our terms of service.  
23 We also have a community feature where users will  
24 communicate to us if a video is inappropriate.

25 Q. You said the content and programming team

1 is successfully ingested into the system it is marked  
2 active and that when it is active, then it will show  
3 up on the recently published area; is that correct?

4 A. That's correct.

5 Q. How long does the video file remain active?

6 A. Indefinitely.

7 Q. So does that mean that a video file is  
8 indefinitely on the recently published area?

9 A. No.

10 Q. So what I want to know is how long a video  
11 file stays in the recently published area. Can you  
12 respond to that?

13 A. It is not based on time duration.

14 Q. Is it based on a number of different  
15 factors that are considered in tandem?

16 A. No.

17 Q. Is it a raw number? Is it the last  
18 100 videos that have been published, for example?

19 A. The main page contains the last 20 videos  
20 published.

21 Q. Can users of the Veoh system go to a second  
22 page to see the next 20 or so?

23 A. Yes.

24 Q. So if something is marked recently or if it  
25 is in the recently published area, is that just a

1 mechanism for showing order in which the video files  
2 came into the system most recently?

3 A. It does show that, yes.

4 Q. So understanding that there may be some  
5 variation the general idea is that the video at the  
6 top of the most recently published list is the most  
7 recently published video that came onto the system;  
8 is that correct?

9 A. That's correct.

10 Q. And then you can go on through --

11 A. Actually that is not correct. It is the  
12 most recently published video that is marked active.

13 Q. And let's go back to that. Before, you  
14 said that a video file is marked active after it is  
15 ingested into the system. Can you tell me what all  
16 has to be completed in the process before a video  
17 file is marked active?

18 MS. GOLINVEAUX: Object to the form.

19 MR. SPERLEIN: I am going to strike that  
20 because I think we have those answers.

21 BY MR. SPERLEIN:

22 Q. To clarify your earlier statements, the  
23 content and programming team periodically reviews the  
24 video files to determine if they are consistent with  
25 Veoh's terms of service; is that correct?

1 MS. GOLINVEAUX: Object to the form.

2 BY MR. SPERLEIN:

3 Q. We were most recently speaking about how  
4 the content and programming team performs periodic  
5 reviews of video files or the metadata video files  
6 currently. Going back to the area of June 2006, did  
7 Veoh have any similar review type of process in  
8 effect at that time?

9 MS. GOLINVEAUX: Object to the form.

10 THE WITNESS: Similar to the current  
11 process?

12 BY MR. SPERLEIN:

13 Q. Yes.

14 A. We would periodically review most recent to  
15 verify that the videos were in accord with the terms  
16 of service.

17 Q. And were you personally involved in the  
18 process at that time?

19 A. Yes.

20 Q. So just to clarify, you personally -- did  
21 you personally periodically review recently published  
22 video files to determine if they were compliant with  
23 Veoh's terms of use?

24 A. I would periodically review the most recent  
25 to confirm that they applied -- were acceptable.

1 Q. So there is no mechanism for marking that a  
2 video file had been reviewed for terms of service  
3 violations; is that correct?

4 A. That's correct.

5 Q. So when you reviewed the video files -- or  
6 when you reviewed the most recently published page  
7 looking for violations, what types of things were you  
8 looking for at the time?

9 A. Pornographic content.

10 Q. And if you saw something -- let me clarify  
11 something for you -- or with you.

12 The word "pornographic" is a little bit  
13 ambiguous and under some people's estimation. Were  
14 you looking for video files that contained sexually  
15 explicit material?

16 A. Yes.

17 Q. And what about mere nudity? If there was  
18 just one picture of a woman or man who was unclothed,  
19 would that be something that would cause you to take  
20 a closer look?

21 A. Yes.

22 Q. And if you witnessed a thumbnail that  
23 clearly showed sexually explicit activity, what would  
24 your next step be?

25 A. I would select the video and it would be

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 referred to as the most recent page?

2 A. Yes.

3 Q. So once you were on the most recent page  
4 you would limit your search results so that only  
5 video files that were not marked as adult would show  
6 up; is that accurate?

7 A. Yes. You turn the content filter off.

8 Q. And then you would review those video  
9 files, you would look at the thumbnails and metadata  
10 on that page; is that correct?

11 A. correct.

12 Q. Did that process allow you to review for  
13 any terms of use violation other than improperly  
14 designating the adult category for a video file?

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

17 THE WITNESS: What other violations?

18 BY MR. SPERLEIN:

19 Q. I'm sorry?

20 A. Which other violations?

21 Q. Did that process allow you to check for  
22 anything else?

23 MS. GOLINVEAUX: Same objection.

24 THE WITNESS: On rare occasion there would  
25 be a violent video that was clear.

1 BY MR. SPERLEIN:

2 Q. And was your process the same there as if  
3 it were miscategorized.

4 A. No. That would result in the cancellation.

5 Q. On a cancellation, what happens to the  
6 video file?

7 A. For a terms of use cancellation it is  
8 marked as canceled. So it was no longer available on  
9 the site.

10 Q. And is that different from deleted?

11 A. Yes.

12 Q. And what happens if it is deleted?

13 A. Deleted refers to physically removing the  
14 file from disk. Cancellation refers to the logical  
15 state in the database.

16 Q. If Veoh deletes a file, does it also delete  
17 that file from the computers of individuals that have  
18 downloaded the Veoh client?

19 A. That capability exists, and it depends on  
20 circumstances.

21 Q. So to be clear, Veoh does have the  
22 capability of removing video files that are on the  
23 users' computers if those video files were obtained  
24 through the Veoh system?

25 A. Correct.

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 I would say that all employees are expected to comply  
2 with the DMCA policy. But I can't recall a specific  
3 conversation.

4 Q. Under your DMCA policy -- let's start with  
5 currently -- is it Veoh's policy to remove a video  
6 file for copyright violation in the absence of a  
7 notice from the owner of that video file to take it  
8 down or someone acting on behalf of the owner?

9 A. There are circumstances which Veoh  
10 employees may take down content absence of a form of  
11 takedown request.

12 Q. And what are those circumstances?

13 A. If in the course of using veoh.com somebody  
14 encounters blatantly copyrighted material, then they  
15 can take it down, but they need to follow the  
16 guidelines for doing so, which includes  
17 communicating to our internal DMCA designate and  
18 keeping a written record of what was done.

19 MS. GOLINVEAUX: I want to object and move  
20 to strike to the extent the witness testified about  
21 "blatantly copyrighted material" as he's not a legal  
22 expert and would constitute an opinion.

23 BY MR. SPERLEIN:

24 Q. When you took down 300 -- or canceled the  
25 video file of the movie 300, you testified that that

1 was at the same time that the video was actually  
2 playing in theaters; is that correct?

3 A. That's correct.

4 Q. Would you consider -- did you consider that  
5 a blatant copyright violation?

6 A. I did, yes.

7 Q. Can you tell me other factors that would  
8 indicate to you that something is blatantly copyright  
9 infringing?

10 MS. GOLINVEAUX: Object. It calls for  
11 legal opinion.

12 THE WITNESS: Duration is a factor.

13 BY MR. SPERLEIN:

14 Q. And how is that a factor?

15 A. Videographers will often use clips of this  
16 or that, you know, editorial content that likely  
17 constitutes fair use. So we don't -- I don't  
18 consider that -- if it is a complete copy and that I  
19 am aware that it is something that would be an  
20 extreme stretch for one of our users to own the  
21 rights to and it is not a user who I know that we  
22 have a relationship with on the content side, those  
23 factors would weigh into my personal determination  
24 and opinion as to what is blatant.

25 Q. Okay. I want to break those down a little

1 bit. The first thing you said was the duration of  
2 the clip; is that correct?

3 A. Uh-huh.

4 Q. Or duration of the file. And it is your  
5 opinion that if the video file is there in its  
6 entirety that is a factor that goes towards showing  
7 that it may be copyright infringement; is that  
8 accurate?

9 MS. GOLINVEAUX: Objection. Calls for  
10 legal conclusion.

11 THE WITNESS: My opinion is if the video is  
12 there in its entirety, that content publisher has a  
13 weak fair use argument, and so that is a factor.

14 BY MR. SPERLEIN:

15 Q. So is it your opinion that if someone puts  
16 a shorter clip, even if they don't have permission,  
17 it may be legal because there may be a fair use  
18 argument; is that what you are saying?

19 MS. GOLINVEAUX: Object. Calls for legal  
20 conclusion.

21 THE WITNESS: My opinion of blatant --  
22 well, let me rephrase that. I would say it is -- for  
23 me personally, it is very difficult to determine if a  
24 clip is violating somebody's copyright.

25 BY MR. SPERLEIN:

1 Q. Okay. But there are some factors that you  
2 believe make it easier to make that determination; is  
3 that correct? We've talked about at least one  
4 factor, the fact that the movie is still playing in  
5 the movie theater.

6 Is that -- let's focus in on that for just  
7 a second. The fact that 300 was still in the movie  
8 theaters was an indicator to you that the copy that  
9 was submitted to Veoh was not likely there with the  
10 permission of the owner; is that correct?

11 A. That was one factor, yes.

12 Q. And is that because it is not a very common  
13 business practice for movie distributors to give away  
14 their movies in there entirety by some other channel  
15 when they are still trying to get sales from theater  
16 attendance?

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

19 BY MR. SPERLEIN:

20 Q. Let me ask you why you think that's a  
21 factor that shows a likelihood of copyright  
22 infringement.

23 A. Knowing that we don't have a relationship  
24 with that publisher and knowing that the entire  
25 content in it's entirety did not constitute something

1 promotional that may have been published by somebody  
2 with permission, in my opinion, that led me to  
3 determine that it was blatantly copyrighted.

4 Q. Are you generally aware of who Veoh has  
5 relationships with, with regard to content, and who  
6 they don't?

7 MS. GOLINVEAUX: Mr. Sperlein, can you  
8 direct me back to where in the 30B6 where this --  
9 which topic this is?

10 MR. SPERLEIN: If you look at 22, it is the  
11 policies for preventing copyright infringement.

12 MS. GOLINVEAUX: And what does that have to  
13 do with this question?

14 MR. SPERLEIN: It has to do with, if there  
15 is a policy about blatant copyright infringement, I  
16 want to know how the determination is made to  
17 exploit.

18 MS. GOLINVEAUX: Would you read back the  
19 question, please?

20 (Record read.)

21 MS. GOLINVEAUX: I will make the objection  
22 that this is outside the scope of the topics for  
23 which this witness has been desinginated and to that  
24 extent that would count as his personal testimony  
25 rather his testimony of Veoh.

1 THE WITNESS: Repeat.

2 (Record read.)

3 THE WITNESS: I am generally aware, yes.

4 BY MR. SPERLEIN:

5 Q. Have you discussed with other employees of  
6 Veoh what may be an example of blatantly copyrighted  
7 infringement?

8 MS. GOLINVEAUX: Object to the extent it  
9 would require the witness to disclose attorney-client  
10 communications. I would instruct him not to answer.

11 THE WITNESS: I am not going to answer.

12 BY MR. SPERLEIN:

13 Q. Would you feel that it would help you to  
14 determine if something was an example of copyright  
15 infringement or not if you knew the producer of the  
16 video clip that appeared on Veoh?

17 MS. GOLINVEAUX: Objection. Calls for  
18 legal conclusion.

19 THE WITNESS: If I knew that Veoh had a  
20 relationship with the producer, then that would  
21 clearly mean it was not problematic.

22 BY MR. SPERLEIN:

23 Q. Did Veoh ever implement a policy that  
24 allowed users to be community editors?

25 A. No.

1 Q. Of 2007 or -- no --

2 A. 2006 through now it has grown quite  
3 substantially.

4 Q. Has Veoh reconsidered the possibility of  
5 using community editors now that there is a  
6 significant community?

7 A. I have not been involved in any discussions  
8 about doing that.

9 Q. Okay. When a Veoh employee is reviewing  
10 a video file in the video editor page, can the  
11 employee tag the video file in such a way that the  
12 places on the Veoh system where the video file  
13 appears are limited?

14 A. Yes.

15 Q. And for an example, if a video file  
16 contains nudity, but is within Veoh's terms of use,  
17 can a Veoh employee mark that video file in such a  
18 way that it would not appear on Veoh's home page?

19 A. Yes.

20 Q. And if that is done, are there a number of  
21 areas on the Web site where that video file would not  
22 appear?

23 A. My recollection is home page and most  
24 popular.

25 Q. Is there only one -- strike that.

1 Q. When a user goes to the home page of  
2 Veoh.com, does Veoh immediately recognize the  
3 computer that that user -- based on the computer that  
4 the person is using, regardless of whether they've  
5 registered or not?

6 A. What do you mean "recognize"?

7 Q. If a computer has been used to visit  
8 Veoh.com previously, and someone on that computer  
9 comes back to veoh.com, does Veoh recognize the  
10 computer -- recognize that that person is returning  
11 to Veoh and change the interfacing anyway because  
12 of -- or based on his earlier visits to the Web site?

13 A. I am not aware of the interface changing  
14 for first time versus repeat visitors.

15 Q. And when a user goes to the video home  
16 page, is there a -- does the video file immediately  
17 launch in the Flash Player?

18 A. Yes.

19 Q. And what determines which video file plays  
20 when a user goes to the home page?

21 A. Content and programming team select the  
22 videos.

23 Q. They select which videos will play on the  
24 home page?

25 A. Correct.

1 Q. And is it at any given time the same for  
2 all users on the system?

3 A. There's different kinds of users. There's  
4 registered users and not registered users.

5 Registered users get their own recommendations.

6 Nonregistered users get the home page that is  
7 programmed by the content team.

8 Q. If a user goes to veoh.com and is  
9 registered, but does not log in on this new visit,  
10 does Veoh recognize that person as the registered  
11 user based on the IP address that they are coming  
12 from; or does it see that user as a new user -- or an  
13 unregistered user? Sorry.

14 A. I don't believe the IP address is used at  
15 all.

16 Q. Does the user have to be registered to view  
17 video files?

18 A. No.

19 Q. Are the ads served by Veoh generated based  
20 in part on what video files a user has viewed?

21 A. Has viewed?

22 Q. Has viewed.

23 A. No.

24 Q. I want to clarify that. If a registered  
25 user is on veoh.com, does Veoh keep track of the

1 video files that that user has viewed?

2 A. Yes.

3 Q. And does Veoh have the capability of  
4 distinguishing which ads they want to show to that  
5 user based on what his interests might be based on  
6 what video files that he's watched?

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

9 THE WITNESS: Ads on video do not take into  
10 account user viewing history.

11 BY MR. SPERLEIN:

12 Q. Does Veoh make recommendations of other  
13 videos that the user might wish to view based on his  
14 past viewing history?

15 A. Yes.

16 Q. Are there any advertisements on the Veoh  
17 system that are served in the same manner as video  
18 files?

19 MS. GOLINVEAUX: Sorry. Mr. Sperlein, can  
20 you direct me back to our 30B6 notice and just what  
21 related topics you are talking about?

22 MR. SPERLEIN: With regard to whether they  
23 are treated like other video files, it would be under  
24 Section No. 5, which is --

25 MS. GOLINVEAUX: Whether what is treated as

1           Let me show you another exhibit we will  
2 mark Exhibit 3. Okay. This is Defendant's  
3 Exhibit -- or I'm sorry, Document No. Veoh00196 and  
4 197. It appears to be an e-mail from Dmitry Shapiro,  
5 D-m-i-t-r-y, S-h-a-p-i-r-o, to Joseph Papa, from  
6 August 24th, 2006.

7           Do you recall this e-mail, Mr. Papa?  
8           (Plaintiff's Exhibit No. 3 was marked.)

9           THE WITNESS: I can't say I can recall it,  
10 but it is clearly to me, so --

11 BY MR. SPERLEIN:

12         Q. And just to clarify, if we go down a bit,  
13 it is actually -- this is a response. And the e-mail  
14 trail further down shows that -- some comments that  
15 were made by you.

16         A. Yep.

17         Q. But at the very top here the part that  
18 appears to come from Dmitry Shapiro to you it says,  
19 "Send him an e-mail back. We listened to him and we  
20 took it off the home page."

21           Would this be an example of a video file  
22 that was marked so that it wouldn't show up on the  
23 home page or the most popular sections?

24         A. I can't recall if that same mechanism was  
25 used here. I would speculate that that is true.

1 Q. Is there any other mechanism that would  
2 achieve that same task of keeping the video on the  
3 system while at the same time not making it available  
4 on the home page?

5 A. Just time. More videos are published and  
6 it is bumped off the home page.

7 Q. Okay. And when you look down at the body  
8 of the original e-mail that came to you, is this  
9 e-mail dealing with a video that a user found  
10 offensive but was not necessarily violative of the  
11 terms of use?

12 A. I think that is accurate.

13 Q. If it was a violation of the terms of use,  
14 would the video have been canceled rather than just  
15 taken off the home page?

16 A. Yes.

17 Q. Thank you.

18 Going back to the idea of reviewing,  
19 indexing, and categorization to make sure it is  
20 accurate, do you know if Veoh ever had a policy in  
21 the past where Veoh's employees checked  
22 categorization to make sure that it was appropriate?

23 A. "A policy" was the question?

24 Q. Yes.

25 A. I am not aware of a policy for

1 categorization.

2 Q. Were there any procedures in place for  
3 reviewing categorization to make sure it was  
4 appropriate?

5 A. Categorization" is somewhat ambiguous. Do  
6 you mean something very specific in the Veoh system?  
7 Is that what you are referring to?

8 Q. I am talking about specifically which  
9 categories are associated with the video file in the  
10 Veoh system.

11 A. Okay. Can you repeat the question? I'm  
12 sorry.

13 Q. Did Veoh have a procedure for reviewing the  
14 categorization as done by the users when they  
15 uploaded to make sure that that categorization was  
16 accurate?

17 A. I am not aware of a procedure for that.

18 Q. Are you familiar with procedures for  
19 transforming user submitted video files into Flash  
20 format.

21 A. Yes.

22 Q. Is that an important area of your job  
23 function at Veoh?

24 A. Important area?

25 Q. Are you directly involved with that

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 Q. What is the purpose for -- strike that.

2 Let me ask a different question.

3 When there is two Flash format versions  
4 made, is the only difference between those two  
5 versions the resolution?

6 A. And the codec.

7 Q. And what is the purpose for making two  
8 different types of Flash format files?

9 A. Publishers that are in our Pro program get  
10 the higher quality version generated. It is a value  
11 added to the service.

12 Q. It the Pro Publisher service is a service  
13 whereby the publisher can actually earn revenue from  
14 his video file on Veoh?

15 A. Correct.

16 Q. Is there software associated with  
17 transcoding the original video file into a Flash  
18 format file?

19 A. Yes.

20 Q. And what software does Veoh use?

21 A. We use a commercial product called, Flix  
22 engine.

23 Q. And does Flix engine come with preset  
24 options for specifications?

25 A. I don't know.

1 Q. Does Veoh use preset specifications from  
2 Flix?

3 A. We have a standard format for both the low  
4 and high res.

5 Q. What bit rate are the Flash files set up  
6 in?

7 A. 512 kilobits per second is the maximum bit  
8 rate. They are variable.

9 Q. And does Veoh set the frame size?

10 A. Correct.

11 Q. And what frame size is it set at?

12 A. For the low res version it is 320 by 240.  
13 The high res version is escaping me. It is the same  
14 aspect ratio, 4 by 3. So it is approximately 400 by  
15 300.

16 Q. So that would appear larger on a user  
17 screen when they see it?

18 A. No.

19 Q. Would it appear the same size on the user  
20 screen?

21 A. Yes.

22 Q. But would it appear sharper image than --

23 A. Yes.

24 Q. And to be clear, the frame size is -- does  
25 Veoh set that frame size, or is it set by -- as a

1 preset in the Flix software?

2 A. We can control the frame size. That's the  
3 output of the Flix engine, and we elect to set it at  
4 those sizes.

5 Q. And is that the same for the bit rate?

6 A. Correct.

7 Q. And what about the frame rate? Do you set  
8 the frame rate?

9 A. We do.

10 Q. And what do you set the frame rate at?

11 A. I don't know.

12 Q. Is it different for the two different  
13 versions?

14 A. It is likely higher in the high res  
15 version.

16 Q. Can a user tell Veoh what frame rate they  
17 want the video file set at when it is transcoded into  
18 Flash?

19 A. No.

20 Q. Can a user instruct Veoh on any of the  
21 other specifications?

22 A. No.

23 Q. Does the Flix software allow Veoh to track  
24 any user viewing statistics?

25 A. No.

1 Q. And does Veoh sniff a user's bandwidth to  
2 determine if a different bit rate should be used for  
3 that viewer?

4 A. No.

5 Q. So it's -- for whatever -- for a particular  
6 video file that has been transcoded into Flash, it  
7 would have the same bit rate regardless of what user  
8 viewed video file on the system?

9 A. That's correct.

10 Q. And currently once a video file is  
11 submitted and then transcoded into Flash format the  
12 entire video file is transcoded into Flash; is that  
13 your testimony?

14 A. Currently, yes.

15 Q. And is the entire Flash version of that  
16 file then available to users using the veoh.com  
17 interface?

18 A. Yes.

19 Q. And at some time in the past was something  
20 other than the full video file transcoded into Flash  
21 format?

22 A. Yes.

23 Q. And when was that change made?

24 A. October of '06.

25 Q. And prior to that was it a smaller version

1 of the video that was transcoded into Flash format?

2 A. Yes.

3 Q. And how was the length determined? Was it  
4 a standard cutoff?

5 A. If it was longer than ten minutes -- if the  
6 duration of the incoming video was longer than ten  
7 minutes we would encode a three-minute Flash version.  
8 If it was shorter than ten minutes, we would encode  
9 the entire thing.

10 Q. Shorter than three minutes?

11 A. Ten minutes.

12 Q. Okay. Ten minutes.

13 And why was that change made?

14 A. From a marketing and product placement  
15 perspective we wanted to have a clear  
16 differentiator for publishers. And YouTube and other  
17 competitors were limiting, so we wanted to be  
18 unlimited.

19 Q. But at all times when a user viewed a video  
20 file or a part of a video file on the veoh.com Web  
21 site, was that user also able to download an entire  
22 version of that file if the user had the Veoh client  
23 installed on their computer?

24 A. Yes.

25 Q. Is it a challenge to get users to down-load

1 Veoh client onto their home computers?

2 A. That is a fair statement.

3 Q. Was the original hope that by not having  
4 the entire video clip on the Web site users might be  
5 persuaded into downloading the client so that they  
6 could see the full version?

7 A. The primary motivator for the truncated  
8 previews was cost.

9 Q. Was there a second area motive?

10 A. We acknowledged that it may help drive  
11 player adoption. The cost was what drove the  
12 decision.

13 Q. And what costs would be incurred by having  
14 the full video files available in a Flash format?

15 A. Bandwidth.

16 Q. Bandwidth as the user actually viewed video  
17 files?

18 A. Correct.

19 Q. How about storage? Was that a concern?

20 A. To a lesser extent.

21 Q. When a video file is submitted to Veoh and  
22 a Flash version is made, is that Flash version made  
23 as part of the publication process?

24 A. Yes.

25 Q. It is not made on the fly as someone goes

1 to veoh.com and clicks on a video to watch, that's  
2 not transcoded at that point in order for the user to  
3 watch it; is that correct?

4 A. That's correct.

5 MS. GOLINVEAUX: What time is it?

6 MR. SPERLEIN: It is about 20 after.

7 BY MR. SPERLEIN:

8 Q. Does Veoh also, in some cases, make a PSP  
9 file of the video files?

10 A. Not currently.

11 Q. Did they in the past?

12 A. Not as part of the product.

13 Q. What does that mean, "not as part of the  
14 product"?

15 A. We developed it, but never made it publicly  
16 available, part of the product.

17 Q. Are there any video files that are  
18 currently available in PSP format.

19 A. If the user has published a file that's in  
20 PSP format then, yes.

21 Q. So Veoh has never transcoded into PSP  
22 format?

23 A. That's correct.

24 Q. How about an iPod type format?

25 A. Yes.

1 Q. Yes, Veoh has transcoded into iPod.

2 A. Yes.

3 Q. What's the extension for the current --

4 A. MP4.

5 Q. MP4. And why did Veoh transcode into MP4

6 for the iPod?

7 A. Pro Publishers get iPod compatible versions

8 as part of the value add.

9 MR. SPERLEIN: I think -- let me just look  
10 over this one area here real quick and see if there  
11 are other questions in this area; and then we will  
12 break, get some lunch.

13 BY MR. SPERLEIN:

14 Q. Does Veoh progressive download or streaming  
15 download Flash preview files?

16 A. Progressive download.

17 Q. Do the specifications on the Flash preview  
18 files correlate with the specification on the  
19 original video file that the user downloaded; or to  
20 the contrary, does Veoh set standard specs for every  
21 file, regardless of what the specs of that file are  
22 coming into the system?

23 A. So the aspect ratio is determined by the  
24 incoming file. And we won't exceed the 400 by 300,  
25 approximately. So if somebody publishes 1024 by 768,

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 \_\_\_\_\_ day of \_\_\_\_\_  
14 at San Diego, California.

15

16

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\_\_\_\_\_

19

NICOLE R. HARNISH

20

C.S.R. NO. 13101

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22

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25



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

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NRH

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NICOLE R. HARNISH

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C.S.R. NO. 13101

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

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

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

1 APPEARANCES:

2

3 For the Plaintiff:

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10 For the Defendant:

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13 101 California Street  
14 San Francisco, California 94111

15 Also Present: Keith Ruoff

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1

I N D E X

2 WITNESS: JOSEPH PAPA

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4 EXAMINATION: Page

5 By Mr. Sperlein 5

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E X H I B I T S

10 MARKED FOR IDENTIFICATION

11 11 Printouts from Veoh Forum section 201

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

15 14 Section of the Wiki 233

16 15 E-mail correspondence from Dmitry Shapiro 236  
17 to John MacDonald, Ted Meisel,  
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18 16 E-mail correspondence from Joseph Papa 239  
19 to Ted Dunning, dated 6/9/2006

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

22 Questions Witness Instructed Not To Answer

23 Page Line

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24 180 18

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1 JOSEPH PAPA,  
2 having been duly sworn, testified as follows:  
3

4 EXAMINATION

5  
6 BY MR. SPERLEIN:

7 Q. Good morning, Mr. Papa. Everything that I  
8 said yesterday before we started the deposition also  
9 applies today, as far as remembering to give audible  
10 responses. You did a great job yesterday, so I think  
11 we will be fine on that.

12 Yesterday you talked about prior to Veoh  
13 going online that there was a possibility being  
14 discussed of having community reviewers review  
15 content before it was made generally available to the  
16 Veoh community; is that correct?

17 A. That's correct.

18 Q. Do you remember that conversation?

19 A. Yes.

20 Q. You indicated later that Veoh found that to  
21 be infeasible and decided not to implement that  
22 program.

23 Is that an accurate portrayal of what you  
24 said yesterday?

25 A. Yes.

1 concerned about end user perception. And the  
2 efficiency of the peer network was sufficient without  
3 it.

4 BY MR. SPERLEIN:

5 Q. The first item you mentioned, that Veoh was  
6 concerned with end user perception, what type of  
7 perception might an end user get if this system was  
8 implemented?

9 A. There was concerns that end user would  
10 perceive our distributing content without their  
11 specifically requesting it as negative.

12 Q. Does Veoh, under any other circumstances,  
13 send video files out to Veoh clients without the  
14 users requesting it?

15 A. No.

16 Q. When a user uploads video file onto the  
17 Veoh system, does Veoh sometimes create a group of  
18 sample images of that video file?

19 MS. GOLINVEAUX: Object to the form.

20 THE WITNESS: Uploading just moves the file  
21 from the client machine to the video system.

22 BY MR. SPERLEIN:

23 Q. At that time does the Veoh system create a  
24 Flash version of that video file?

25 MS. GOLINVEAUX: Object to the form.

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 captures were generated for every video file?

2 A. We attempt to generate screen captures for  
3 every video file, and that has always been the case.

4 Q. And how many screen captures are made for  
5 each video file?

6 A. Currently 32.

7 Q. And has that changed over time?

8 A. Yes.

9 Q. How many screen captures were made for each  
10 video file in the past?

11 A. My recollection is two were made initially.

12 Q. Between the time that two screen captures  
13 were made, or at least as you best recollect two were  
14 made, and the time that 32 screen captures were made  
15 was there any other period of time when a different  
16 number were made?

17 A. Not that I recall.

18 Q. And do you recall when that change was  
19 made?

20 A. My recollection is it preceded the launch  
21 of veoh.com, but I don't remember specifically when.

22 Q. Can you tell me why Veoh made decision  
23 to increase the number of screen captures from 2 to  
24 32?

25 A. We introduced a product feature where users

1 could look at the screen caps for a video.

2 Q. And did that add value to the user's  
3 experience?

4 MS. GOLINVEAUX: Object to the form.

5 THE WITNESS: I can't speak for all users.  
6 I used it quite a bit.

7 BY MR. SPERLEIN:

8 Q. You used the screen capture feature?

9 A. Yes.

10 Q. Did you use that when you were accessing  
11 Veoh as an end user, as a regular user?

12 MS. GOLINVEAUX: Object to the form.

13 THE WITNESS: Yes.

14 BY MR. SPERLEIN:

15 Q. And how about professionally when you were  
16 accessing the Veoh system for something that was  
17 related to your working for Veoh? Did you use the  
18 screen capture feature in those situations?

19 A. I periodically test all features.

20 Q. How would the screen capture feature  
21 enhance a user's experience, if at all?

22 MS. GOLINVEAUX: Object to the form.

23 THE WITNESS: I can't speak for all users.

24 BY MR. SPERLEIN:

25 Q. How did -- Veoh added this feature for a

1 reason. Why did Veoh add this feature?

2 MS. GOLINVEAUX: Object to the form. And  
3 it assumes facts not in evidence.

4 THE WITNESS: Prior to the launch of  
5 Veoh.com there was no video preview. The screen caps  
6 feature provided a way to get a little bit more  
7 information about the content of the video, prior to  
8 downloading it.

9 BY MR. SPERLEIN:

10 Q. At that time, prior to the launch of  
11 Veoh.com, were there any other reasons that Veoh  
12 thought the screen capture feature would be  
13 beneficial?

14 A. I am not aware of any.

15 Q. And then once the veoh.com site was  
16 launched, at that time is it your recollection that  
17 at that time there were 32 screen captures available  
18 for each video file?

19 A. Yes.

20 Q. And at that time did Veoh believe that  
21 there was some benefit to having 32 screen captures  
22 for each video file on the Veoh system?

23 MS. GOLINVEAUX: Object to the form.

24 THE WITNESS: I can't speak for all of  
25 Veoh.

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 the content and programming teams' responsibility.

2 Q. Do you know if anyone in that department  
3 then takes any action?

4 MS. GOLINVEAUX: Object to the form.

5 THE WITNESS: I am aware that action has  
6 been taken in response to flags, but I am not aware  
7 of the business process that guarantees that all  
8 flags are addressed.

9 BY MR. SPERLEIN:

10 Q. You said earlier that there is a flag that  
11 says something to the effect of should be featured on  
12 Veoh; is that correct?

13 A. That's correct.

14 Q. And what is the purpose of that flag?

15 A. Gives the community an opportunity to  
16 communicate to Veoh if there is a video that they  
17 think should be featured.

18 Q. And what does it mean to feature a video?

19 A. Give it special treatment in the visual  
20 design.

21 Q. And what kind of special treatment would it  
22 receive?

23 A. It might be presented in a box at the top  
24 of the page on any one of our browse navigation  
25 pages.

1 Q. Anything else?

2 A. It could also be added to the list of  
3 videos which play on the home page.

4 Q. And are the videos that are listed on the  
5 home page -- does at least one of those automatically  
6 begin playing when someone navigates to veoh.com?

7 A. Yes.

8 Q. Is there any other special treatment that a  
9 featured video would get?

10 A. Not that I am aware of.

11 Q. How long does it remain a featured video?

12 A. Content and programming team have a  
13 rotation schedule and it varies.

14 Q. Is there any method for a video file  
15 becoming a featured video other than have the  
16 community flag it with the featured flag?

17 A. We often feature content from producers  
18 with whom we have relationships.

19 Q. And does Veoh ever select a featured video  
20 file on its own accord?

21 MS. GOLINVEAUX: Object to the form.

22 MR. SPERLEIN: Let me clarify.

23 BY MR. SPERLEIN:

24 Q. Other than those that are featured because  
25 of a relationship with the content producer --

1 excluding those situations does Veoh sometimes select  
2 a video file that Veoh wishes to feature?

3 A. Yes.

4 Q. Under what circumstances?

5 A. If there's a video that is interesting, the  
6 content and program team may feature it.

7 Q. Prior to June 21st 2006, was there a flag  
8 menu item that says "appears to be copyrighted  
9 material"?

10 A. My recollection is yes.

11 Q. Can you tell me when that was changed?

12 A. I would estimate July or August of 2006.

13 Q. Do you know why it was changed?

14 MS. GOLINVEAUX: I would instruct the  
15 witness not to answer to the extent it discloses  
16 attorney-client communications.

17 THE WITNESS: It was communicated to me  
18 that it was guidance from our counsel.

19 BY MR. SPERLEIN:

20 Q. During the time frame when there was a flag  
21 that says "appears to be copyrighted material," did  
22 Veoh employees review a video file that was so  
23 flagged?

24 A. I am not aware of a business process that  
25 would guarantee that all flags were addressed.

1 question, please?

2 (Record read.)

3 MS. GOLINVEAUX: Thank you.

4 THE WITNESS: I am personally aware that  
5 adult sites --

6 MS. GOLINVEAUX: I am going to interject  
7 now. If you are about to reveal the content of any  
8 attorney-client communications that was passed on to  
9 you from an attorney, I would instruct you not to  
10 answer the question. If you aren't, you can proceed  
11 to answer the question.

12 THE WITNESS: Yeah. As I indicated  
13 earlier, I was personally concerned about underage  
14 content. And that is because I was personally aware  
15 that adult sites require -- or are required to keep  
16 documentation.

17 BY MR. SPERLEIN:

18 Q. Were you aware of that prior to your  
19 employment with Veoh?

20 A. I believe so.

21 Q. And how is it that you were personally  
22 aware of that fact?

23 A. I read a lot of technology blogs, and that  
24 subject is sort of an important issue for free speech  
25 advocates and other active, you know, groups.

1 Q. Were you familiar at that time -- had you  
2 ever heard of those requirements being referred to as  
3 2257 requirements?

4 MS. GOLINVEAUX: Again, outside anything  
5 counsel may have told you.

6 THE WITNESS: I've heard of that.

7 BY MR. SPERLEIN:

8 Q. And at the time that you were considering  
9 these issues for Veoh and ways of keeping  
10 child pornography off of Veoh, did you take any  
11 further steps to learn more about what 2257 might  
12 mean?

13 MS. GOLINVEAUX: Outside communications  
14 with counsel, he's asking.

15 THE WITNESS: Uh-huh. I have read about  
16 2257 on a variety of blogs and other Web sources.

17 BY MR. SPERLEIN:

18 Q. And from that research -- or from reading  
19 those blogs, can you tell me what you learned about  
20 2257?

21 A. Essentially that producers of explicit  
22 content are required to maintain documentation  
23 pertaining to the age of participants.

24 Q. Anything else?

25 A. That is pretty much it.

1 Q. In your investigation, did anyone ever  
2 discuss whether or not sexually explicit video files  
3 were required to be labeled as to where records were  
4 maintained?

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

7 THE WITNESS: Can you repeat it?

8 BY MR. SPERLEIN:

9 Q. During your -- is it fair to call your  
10 looking into these issues as an investigation?

11 A. I wouldn't characterize it as an  
12 investigation.

13 Q. Did you actively seek answers to your  
14 questions about what was required under the law to --  
15 for a Web site that contains sexually explicit  
16 material?

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

19 THE WITNESS: I was curious about the  
20 subject matter because I encountered it on various  
21 blogs and other web sources.

22 BY MR. SPERLEIN:

23 Q. Were you seeking to understand what was  
24 required?

25 MS. GOLINVEAUX: Object to the form of the

1 question.

2 THE WITNESS: I was looking for additional  
3 information after I encountered the subject matter.

4 BY MR. SPERLEIN:

5 Q. Have you ever witnessed on a Web site that  
6 contained sexually explicit material statements about  
7 2257?

8 A. I have.

9 Q. Have you witnessed statements that said --  
10 indicated an address where a keeper of records for  
11 2257 material was?

12 MS. GOLINVEAUX: I would like to say on the  
13 record that I think this is outside of the scope of  
14 the 30B6, and this is not testimony that would be  
15 related to Veoh networks.

16 THE WITNESS: I don't remember seeing an  
17 address.

18 BY MR. SPERLEIN:

19 Q. Did you ever advise anyone else at Veoh of  
20 anything that you had learned about 2257?

21 MS. GOLINVEAUX: Other than attorneys.

22 THE WITNESS: I communicated to others  
23 concerns that were expressed in the blog community  
24 about the ambiguity of the producer definition.

25 BY MR. SPERLEIN:

1 Q. Do you recall who you had those  
2 conversations with?

3 A. Dmitry and Francis.

4 Q. Did you ever have those conversations with  
5 Dr. Dunning?

6 A. I don't specifically recall discussing it  
7 with Dr. Dunning.

8 Q. After Veoh's policy changed so that  
9 adult -- sexually explicit adult material was no  
10 longer allowed on Veoh, were video files that  
11 contained simple nudity still allowed on video?

12 MS. GOLINVEAUX: Object to the form of the  
13 question.

14 Did you call it "simple nudity"? I'm  
15 sorry. I didn't hear.

16 MR. SPERLEIN: I think that is what I said.

17 MS. GOLINVEAUX: Okay.

18 THE WITNESS: Our terms of service  
19 prohibited -- or continued to prohibit nudity.

20 BY MR. SPERLEIN:

21 Q. Do you know if Veoh currently enforces its  
22 terms of use with regard to video files that contain  
23 nudity, but not sexually explicit activity?

24 A. Not sexually explicit, nudity is tolerated.

25 Q. By "tolerated" you mean that it is not

1 removed from the Veoh system?

2 A. Correct.

3 Q. Can you tell me why nudity or video files  
4 that contain nudity, but not sexually explicit  
5 activity, are allowed to remain on the Veoh system?

6 A. The CEO stated that the standard should be  
7 HBO, which permits not sexually explicit nudity.

8 Q. Do you know if that policy is written  
9 anywhere?

10 A. Not that I am aware of.

11 Q. Can you tell me -- when you said "the CEO,"  
12 are you speaking of Dmitry Shapiro?

13 A. Yes.

14 Q. And can you tell me when he made those  
15 statements?

16 A. I would say approximately September  
17 of '06 -- excuse me -- November, November of '06,  
18 give or take.

19 Q. Did Veoh at any point require video files  
20 that contained sexually explicit material to be  
21 labeled with information about where age verification  
22 records are maintained?

23 A. No.

24 Q. Did Veoh require at any time sexually --  
25 let me start over.

1           If the person reviewing the e-mail knew the  
2 user name or e-mail to be that of a Veoh employee,  
3 then they might know it was generated by that Veoh  
4 employee; is that accurate?

5           A.    That's accurate.

6           Q.    But if they did not know that information,  
7 they would not be able to tell if it was a Veoh  
8 employee; is that accurate?

9           A.    That is accurate.

10          Q.    Are you familiar with the forum section of  
11 the Veoh Web site?

12          A.    Yes.

13          Q.    And do you know when Veoh changed it's  
14 policy on adult material whether people expressed --  
15 users expressed their unhappiness with that decision  
16 in the Veoh forums?

17          A.    There were a small number of posts, I would  
18 say, that expressed displeasure.

19          Q.    Can you describe what a small number would  
20 be?

21          A.    A dozen or two.

22          Q.    I just handed you a document with  
23 Plaintiff's Production No. 200214 to 239. Are these  
24 printouts from Veoh's forum section?

25                   (Plaintiff's Exhibit No. 11 was marked.)

1 THE WITNESS: That appears to be true.

2 BY MR. SPERLEIN:

3 Q. Is there any reason to believe that this  
4 isn't an accurate printout of Veoh's forum section as  
5 of the date June 23rd, 2006?

6 A. That seems accurate.

7 MS. GOLINVEAUX: Note for the record that  
8 the page numbers at the bottom of the exhibit are cut  
9 off.

10 MR. SPERLEIN: Which -- Counsel, are you  
11 talking about on the left-hand side?

12 MS. GOLINVEAUX: Correct. The lower  
13 left-hand side of most of these pages, the page  
14 number is cut off.

15 MR. SPERLEIN: And it says "of 4" without  
16 the number in front, or in some cases --

17 MS. GOLINVEAUX: Right. Correct.

18 MR. SPERLEIN: That is all the questions I  
19 have about that document. I am going to ask you just  
20 a couple quick questions I think we went over  
21 yesterday, but I want to make sure.

22 BY MR. SPERLEIN:

23 Q. When a Veoh employee in the normal course  
24 of their job function sees or identifies a file that  
25 contains offensive material, are they authorized to

1 change the rating?

2 A. In the course of their -- can you repeat  
3 the question?

4 Q. In the normal course of their job, if they  
5 see a video file that contains offensive material,  
6 but was not checked with the offensive material box,  
7 are they permitted to change that rating?

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

10 THE WITNESS: Yes.

11 BY MR. SPERLEIN:

12 Q. And if an employee sees a video file that  
13 contains nudity, can they change the rating on that  
14 file if it doesn't have a proper rating?

15 A. Yes.

16 Q. If an individual sees a video file that  
17 they deem to be an obvious violation of copyright are  
18 they permitted to delete that video file?

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

21 THE WITNESS: What would constitute an  
22 "obvious copyright"?

23 BY MR. SPERLEIN:

24 Q. Based on the individual's own personal  
25 estimation?

1 along the process that should be filtering this out?

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

4 THE WITNESS: The content and programming  
5 team periodically review recently published videos to  
6 confirm that they all meet our terms of service. If  
7 I have to speculate, I would say that that is what  
8 Dmitry is referring to.

9 BY MR. SPERLEIN:

10 Q. Thank you.

11 Do you have any idea at the time that you  
12 removed -- or changed the policy regarding allowing  
13 sexually explicit video files on the Veoh system, at  
14 that time with regard to video files that might be  
15 categorized as gay versus categorized as straight, do  
16 you have any idea what the ratio or percentage or  
17 some other way of comparing those two figures? Can  
18 you give me any statistical data on that?

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

21 THE WITNESS: I can't recall any numbers  
22 about that.

23 BY MR. SPERLEIN:

24 Q. Let me just show you this. This is  
25 Defendant's Document Production 00081, and it is --

1 the top header indicates it's an e-mail from  
2 Joseph Papa to Ted Dunning on June 9th, responding to  
3 an earlier e-mail. But what you wrote there,  
4 Mr. Papa, "If we can get this kind of reaction from  
5 nongay porno watchers we are golden."

6 Did I read that correctly?

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

8 THE WITNESS: That's correct.

9 BY MR. SPERLEIN:

10 Q. When you wrote this it seems to imply to me  
11 that there was a lot of interest in gay pornos  
12 that -- is that a correct characterization of why you  
13 may have written this in the way you did?

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

16 BY MR. SPERLEIN:

17 Q. Mr. Papa, at the time that you wrote this  
18 did you have a perception that there was a lot of  
19 interest in gay content on veoh.com?

20 A. Yes.

21 MR. SPERLEIN: Let me take five minutes and  
22 look through my documents and my outline; but other  
23 than that, we are close to being finished.

24 Give me five minutes on the other end.

25 MS. GOLINVEAUX: Really, five minutes.

1 Because we didn't negotiate.

2 MR. SPERLEIN: We won't take a lot of time.

3 We can keep the clock running.

4 MS. GOLINVEAUX: Okay. Fine.

5 (Recess.)

6 MR. SPERLEIN: Handing the court reporter

7 another exhibit, which I will ask her to mark as

8 Exhibit 17. You guys may see it.

9 MS. GOLINVEAUX: That is a good idea.

10 BY MR. SPERLEIN:

11 Q. This exhibit bears Defendant's Document

12 Production No. 00120. It is an e-mail from

13 Joseph Papa to Ted Dunning copied to Jarrod Cuzens or

14 Cuzens. It is from May 23rd, 2006, and the subject

15 line is "gay vs straight." I am going to read this

16 out loud, if you will read it to yourself along with

17 me.

18 "Ted, can you take a crack at separating

19 gay from straight porn, via tags, publisher, and

20 other metadata? I would rather not have to ask as

21 part of the upload process thanks, Joe."

22 (Plaintiff's Exhibit No. 17 was marked.)

23 THE WITNESS: Yes.

24 BY MR. SPERLEIN:

25 Q. Can you explain why you would rather not

1 ask that as part the upload process? And that, I  
2 assume, being you did not want to ask video uploaders  
3 to identify material as gay or straight during the  
4 upload process. Is that what you meant by that  
5 second sentence?

6 A. Yes.

7 Q. And why were you reticent to ask that?

8 A. The simple way of implementing that  
9 question would be to present it on the page for all  
10 uploaders. I didn't want to do that, because I  
11 didn't want to reinforce the level of pornographic  
12 content that was coming into Veoh.

13 A preferable way of implementing that would  
14 have been to implement an additional upload step,  
15 where, had a user elected to rate their content  
16 adult, they would then be given a secondary page to  
17 select whether or not it was gay or straight. And I  
18 just simply didn't want to spend the engineering  
19 resources to implement that.

20 Q. So the other solution that you are asking  
21 Dr. Dunning to look at, by way of this e-mail, is to  
22 take existing metadata associated with adult files  
23 and based on that metadata make a determination as to  
24 if something is more likely to fall in a gay category  
25 than a straight category; is that accurate?

1 A. That is accurate.

2 Q. And did you ever implement such a system?

3 A. No.

4 Q. Did you implement one of the other systems  
5 that you described earlier, namely either having a  
6 separate place to indicate it on the upload page or  
7 to have a secondary page asking just that one  
8 question? Did you pick from one of those two?

9 A. We did not pick from one of those two.

10 Q. Did you come up with some other way of  
11 separating gay adult video files from straight adult  
12 video files?

13 A. We presented on the adult category page a  
14 tag search for gay and a tag search for straight.  
15 And that, I believe, successfully reinforced amongst  
16 the community that if they tagged their videos gay or  
17 straight it would go into the correct bucket.

18 Q. Was that division into gay and straight by  
19 those two sole tags administered prospectively so  
20 that all previous video files that had been uploaded  
21 onto the Veoh system were separated into those two  
22 tags if they contained those tags?

23 A. If they contained those tags, they went  
24 into one of those groups. And if they contained  
25 neither or both, then there was another category.

1 Q. And is that the way -- do you know when  
2 that system went into effect?

3 A. I would guess that that went into effect in  
4 a matter of weeks before we decided to change our  
5 terms of service to disallow explicit content.

6 Q. All right. This e-mail is on May 23rd, and  
7 by June 21st content was gone. So somewhere in that?

8 A. Yeah.

9 Q. Why separate it into gay and straight? Was  
10 that something that you felt was beneficial to the  
11 end user?

12 A. Yes.

13 Q. And how was it beneficial to the end user?

14 A. There were a number of e-mails that  
15 indicated that commingling those was a bad  
16 experience.

17 Q. Just to clarify, when someone uploaded a  
18 video file to the Veoh system, did they at that time  
19 specifically direct Veoh whether to put their  
20 sexually explicit video file into a gay category or a  
21 straight category?

22 A. If a video was tagged gay or straight, that  
23 tag could be added at upload time or it could be  
24 added after upload by the publisher or the community  
25 member.

1 Q. Did the upload page indicate to users that  
2 if they wanted their material to appear in the gay  
3 category, they needed to add a tag that said gay; or  
4 conversely with the straight?

5 A. My recollection is no.

6 Q. Did anyone from Veoh ever review adult  
7 video files and add either the word gay or straight  
8 so that tag searches would put the -- a video file  
9 into a corresponding group, the gay group of videos  
10 or the straight group?

11 A. Yes.

12 Q. And under what circumstances would people  
13 do that -- Veoh employees make those changes?

14 A. The other category which could contain  
15 neither gay or straight or both would be separated  
16 periodically.

17 Q. So let me see if I understand this  
18 correctly. Would Veoh employees go and look at video  
19 files that were in the other category and determine  
20 whether they would be more appropriate in straight or  
21 gay and then adjust the tags so that they would go  
22 into those other categories?

23 A. It is essentially the same process as the  
24 recently published process, recently published videos  
25 that had no tag or both tags -- excuse me -- recently

1 tagged videos, not recently published videos. But  
2 recently tagged videos that had both or neither would  
3 periodically be cleaned so that they would fall into  
4 one or the other category.

5 Q. And was that something that was done in  
6 your department at the time?

7 A. Yes.

8 Q. Did you personally do that from time to  
9 time?

10 A. On rare occasion.

11 Q. Did you have other employees that did that?

12 A. Yes.

13 Q. And when I say "that," I mean go into the  
14 recently tagged section and look at video files that  
15 were in the other category and separate them using  
16 tags into straight and to gay?

17 A. Yes.

18 MR. SPERLEIN: That is all I have. Thank  
19 you for your time. Send the original to  
20 Ms. Golinveaux. But be sure to notify me when you  
21 send it to her. Can you send a copy to me at that  
22 same time?

23 MS. GOLINVEAUX: And as I said yesterday,  
24 both witnesses would like the opportunity to review  
25 their transcripts, and the entire transcript will be

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

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

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

15  
16  
17  
18 NRH.  
19 NICOLE R. HARNISH  
20 C.S.R. NO. 13101  
21  
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24  
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