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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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

HIGHLY CONFIDENTIAL
DEPOSITION OF DMITRY SHAPIRO
SAN DIEGO, CALIFORNIA
MAY 21, 2007

REPORTED BY: NICOLE R. HARNISH, CSR 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 DMITRY SHAPIRO,
taken by the Plaintiff, commencing at the hour of
2:00 p.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
6 TITAN MEDIA.COM
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9 San Francisco, California 94114

10 For the Defendant:

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

15 Also Present: Keith Ruoff

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I N D E X

WITNESS: DMITRY SHAPIRO

EXAMINATION:	Page
By Mr. Sperlein	5

E X H I B I T S

MARKED FOR IDENTIFICATION

4	Document entitled "Press Releases"	11
5	Document entitled "Terms of Use"	24
6	Document entitled "Acceptable Use Policy"	29
7	E-mail correspondence from Joseph Papa to Engineering	50
8	E-mail correspondence from Francis Costello to Dmitry Shapiro, dated 8/7/2006	72
9	E-mail correspondence from Dmitry Shapiro to Francis Costello, dated 6/5/2006	73
10	Document entitled "Red Herring, The Business of Technology," dated 8/17/2005	75

Questions Witness Instructed Not To Answer

Page	Line
66	25

1 DMITRY SHAPIRO,
2 having been duly sworn, testified as follows:

3
4 EXAMINATION

5
6 BY MR. SPERLEIN:

7 Q. Good afternoon, Mr. Shapiro. Have you ever
8 had your deposition taken before?

9 A. No.

10 Q. No. Hopefully you won't ever have to have
11 to do it again. No one likes to do it, but I will do
12 my best to make it as painless as possible for you.

13 Just a couple of ground rules that I always go
14 over with people. I am going to be asking you
15 questions and you are going to be giving your
16 responses under oath as you just took. Our
17 conversation is going to be a little bit different
18 from the way that people generally communicate.

19 Because the reporter is trying to record
20 everything we say, she cannot hear any nonaudible
21 responses to my questions. So I ask that instead of
22 shaking your head yes or no, that you actually
23 verbally say yes or no.

24 Can you do that?

25 A. Yes, I can.

1 releases.

2 A. Not at all.

3 Q. Thank you.

4 Does Veoh have policies in place that
5 discuss how users of the Veoh system are permitted to
6 use the system?

7 A. Yes.

8 Q. And would those policies, in general, be
9 covered in what is referred to as "the terms of use"?

10 A. Specifically.

11 Q. And you are familiar with Veoh's terms of
12 use?

13 A. At a high level.

14 Q. Okay. And you are familiar with any
15 changes that have occurred to the terms of use over
16 time? I am not asking you for specific recollections
17 at this time, but in general.

18 A. No. I actually can't say that I would be
19 familiar with the changes. I mean, the terms of
20 use -- you know, I'm the CEO of the company and I
21 spend my time on the road, and that is done at
22 different levels of organization. I suspect they've
23 changed over time.

24 Q. Were you involved in the initial drafting
25 of the terms of use?

1 A. No. I was present on a phone call at one
2 time, although I don't remember specifics of the
3 phone call. But the primary drafting was done
4 between our attorneys and Dr. Dunning, who you have
5 met.

6 Q. Are users required to agree to Veoh's terms
7 of use when they register with Veoh?

8 A. Yes. I believe their registration states
9 that they are agreeing to the terms of use by
10 registering.

11 Q. And is registration required before an
12 individual could upload a video file to the Veoh
13 network?

14 A. Yes, it is.

15 Q. So I think that is an example of a
16 transitive property, if I recall from my high school
17 days. If someone places a file on the Veoh system,
18 then they would have had to agree with Veoh's terms
19 of use in order to do that?

20 A. I think that is fair to say.

21 Q. They have to register. In order to
22 register, they have to agree to terms of use.

23 A. Yes, they do.

24 Q. Thank you.

25 A. You are right. That is the transitive

1 property.

2 Q. Do you know if a user has always agreed to
3 the terms of use before they could upload a video
4 file to Veoh?

5 A. Yes, I believe so.

6 Q. I am going to give you another exhibit and
7 ask the reporter to mark this as Exhibit No. 5. And
8 why don't you take a few minutes to look that over.
9 I don't want you to read every paragraph, but just
10 generally take a look at the document. If you want
11 to read the whole thing, you can.

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

13 THE WITNESS: Okay.

14 BY MR. SPERLEIN:

15 Q. For the record, this document is numbered
16 with plaintiff's Document Production No. 200029
17 through 032. And has the title of "Terms of Use."

18 At the bottom left-hand corner there's a
19 URL. Will you take a look at that URL, Mr. Shapiro?

20 A. Uh-huh.

21 Q. And then on the bottom right hand corner
22 there is a date of June 13th, 2006; is that correct?

23 A. That's correct.

24 Q. Does this appear to be the terms of use as
25 they appeared on the Veoh web site as of June 13th,

1 2006?

2 A. I wouldn't know if they were incorrect, but
3 they appear to be correct.

4 Q. Is there any reason to believe that this
5 isn't an accurate copy of the terms of use as they
6 appeared on the Veoh network?

7 A. No.

8 Q. Okay. If you'll go down to the third
9 paragraph from the bottom that begins with "you
10 expressly." I am going to read that aloud and ask
11 that you read it along with me.

12 "You expressly acknowledge and agree that
13 any user material that you make available on the Veoh
14 service may be freely available by Veoh" -- I am
15 going to have to back up and reread that because I
16 didn't get that quite right.

17 I'm going to start at the beginning of the
18 line. "The Veoh service may be made freely available
19 by Veoh through the Veoh service, including, without
20 limitation, for download by others. And that this
21 permission is made and granted in consideration of
22 your use of the Veoh service and is nonexclusive,
23 perpetual, royalty free, irrevocable, and
24 transferable."

25 MS. GOLINVEAUX: You made one more minor

1 error in the third line.

2 MR. SPERLEIN: Okay.

3 MS. GOLINVEAUX: "By other users," rather
4 than by others.

5 MR. SPERLEIN: Thank you.

6 BY MR. SPERLEIN:

7 Q. "User material that you obtain from the
8 Veoh service is limited to your personal
9 noncommercial use. And you will not redistribute or
10 attempt to redistribute such user material outside
11 the Veoh service."

12 Now, with Ms. Golinveaux's corrections and
13 my minor correction, did I read that accurately?

14 A. Yes, you did.

15 Q. Was that an accurate statement of Veoh's
16 policy as of June 13th, 2006?

17 A. Well, there are lots of things in here,
18 but, yes, they look overall correct.

19 Q. As you understand this paragraph, does a
20 user give Veoh the right to take any video file that
21 they submit to the system and then further
22 broadcast -- let me rephrase that.

23 Under this paragraph, is a user granting
24 Veoh permission to further broadcast any video file
25 that they uploaded onto the Veoh system?

1 MS. GOLINVEAUX: I object. That calls for
2 a legal conclusion. The witness is not an attorney.

3 BY MR. SPERLEIN:

4 Q. I am not asking you for your legal opinion
5 on this. I want you to tell me if that was what the
6 policy was at the time.

7 MS. GOLINVEAUX: Same objection. It calls
8 for a legal conclusion.

9 BY MR. SPERLEIN:

10 Q. Would you go ahead and answer the question?

11 MS. GOLINVEAUX: And I think you restated
12 the question. Could you reread the question, please?

13 MR. SPERLEIN: Why don't we strike all
14 that. I will start over, rather than rereading.

15 BY MR. SPERLEIN:

16 Q. For the time being I am going to move on.
17 And now I want to go and read another paragraph.
18 This is the last paragraph on the page that starts
19 with "Veoh." "Veoh shall have no obligation to
20 monitor any user material. However, Veoh and its
21 agents shall have, and do reserve the right, to
22 monitor any user material from time to time for any
23 lawful purpose. Veoh may, without notice to you,
24 remove or block content of any user material from the
25 Veoh service, including disabling access to such user

1 material that you have downloaded through the Veoh
2 service. Veoh reserves the right to terminate your
3 use of the Veoh service if we determine that you have
4 violated these terms or the acceptable use policy."

5 Did I read that correctly?

6 A. Yes, you did.

7 Q. And was that an accurate statement of
8 Veoh's policies as of June 13th, 2006?

9 A. It is what is written in the terms of use.

10 Q. Would all users have had to agree to that
11 term along with the other terms of use in order to
12 register at that moment in time?

13 A. Yes.

14 Q. Following with the next paragraph on
15 page 30. I am just going to read the last sentence
16 of that paragraph and have you read silently along
17 with me. "You agree to indemnify and hold Veoh
18 harmless from and against any liability, claims,
19 losses, demands, or damages arising out of or
20 relating to your violation of these terms per the
21 acceptable use policy."

22 Did I read that correctly?

23 A. Yes.

24 Q. And is that a term that a user would have
25 had to agree to in order to register with the Veoh

1 really bad with dates. I would say definitely less
2 than a year. Six to nine months ago, perhaps.

3 Q. And that group is specifically charged with
4 attempting to gain additional content for the Veoh
5 system; is that correct?

6 MS. GOLINVEAUX: Object to the form -- I'm
7 sorry. Could you read back the question, please?

8 (Record read.)

9 MS. GOLINVEAUX: Object to the form of the
10 question. You can answer subject to the objection,
11 if you understand the question.

12 THE WITNESS: Yes. The group talks to
13 primarily kind of brand name content owners and gets
14 them to use Veoh.

15 BY MR. SPERLEIN:

16 Q. Okay. I'll come back to that group
17 shortly. But prior to the existence of that group,
18 did Veoh obtain content from other sources?

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

21 BY MR. SPERLEIN:

22 Q. Let me ask you a specific example, and then
23 we can go from there.

24 A. Okay.

25 Q. Did Veoh have a deal with Turner

1 Broadcasting or -- if I don't have the name exactly
2 correct, perhaps you can correct me -- but one of the
3 Turner properties to put some of Turner's content on
4 the Veoh system?

5 A. We did do a short-lived promotion, is what
6 we called it, with Turner that supported a marathon
7 that they were doing. And yes, that promotion had
8 Turner content that they put on the system.

9 Q. Did Veoh pay Turner for any of that
10 content?

11 A. No.

12 Q. And did Turner pay Veoh to put any of that
13 content on the system?

14 A. No.

15 Q. So it was a deal where both sides were
16 considered to have been benefiting from it; is that
17 accurate?

18 A. Yes.

19 Q. Otherwise why do it, right?

20 A. Right.

21 Q. When you were putting the Turner
22 content -- or when the Turner content was being put
23 onto the Veoh network, did employees or others
24 associated with Turner go to the -- use either the
25 Veoh client or Veoh web site and upload the content

1 onto the Veoh system?

2 MS. GOLINVEAUX: Sorry. Would you read the
3 question back, please?

4 (Record read.)

5 BY MR. SPERLEIN:

6 Q. Let me form a cleaner question for you.

7 Did Turner upload the content or did Veoh upload the
8 content to the system?

9 A. I don't know, but one of the two parties
10 did. I would suspect it was Turner.

11 Q. Why would you suspect that?

12 A. I mean, that is what we prefer, that Turner
13 do it.

14 Q. As part of any deal to put content on the
15 Veoh system, is one of the negotiated terms the
16 question of whether the content provider uploads the
17 content or Veoh uploads the content?

18 A. I don't know.

19 Q. Are there some deals where the content
20 provider actually gives the files, the video files,
21 to Veoh and Veoh's employees upload the content onto
22 the system?

23 A. Yes, I believe so.

24 Q. Can you give me a few other examples of
25 deals that were entered into prior to the formation

1 Q. And let me kind of just bring this back to
2 full circle. The reason why I am asking these
3 questions under this topic is that I want to know if
4 it is important for Veoh to have a lot of content on
5 its system?

6 MS. GOLINVEAUX: I'm sorry. Is that the
7 question?

8 MR. SPERLEIN: Yes.

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

11 BY MR. SPERLEIN:

12 Q. I am going to ask you a new question,
13 Mr. Shapiro. Does Veoh seek deals with third-party
14 content provider's because it is important for Veoh
15 to have content on veoh.com?

16 MS. GOLINVEAUX: Object to the form.

17 BY MR. SPERLEIN:

18 Q. Go ahead and answer.

19 A. Again, back to my prior answer. Veoh seeks
20 deals with content providers for a number of reasons,
21 one of them being brand association. Absolutely
22 content. Along with that, brand association is
23 important.

24 Q. Thank you.

25 Does Veoh take any measures to ensure that

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 Q. And the video file has to first go to Veoh
2 and it is centralized -- the centralized part of the
3 system and then goes out to the other user that might
4 want that video file; is that correct?

5 A. Well, let me clarify to -- so a content
6 publisher or content owner uploads the content to
7 Veoh. The content is then posted on Veoh. And the
8 peer clients connect to Veoh or other peers in the
9 system and get file fragments, as they are called,
10 from those peers.

11 Q. And in addition those users would watch the
12 Flash version of the video file through the veoh.com
13 web site; is that correct?

14 A. That's correct.

15 Q. You said earlier that you envisioned a
16 system where Veoh could remove files from its system
17 if they were discovered to be infringing; is that
18 accurate?

19 A. Yes. That's correct.

20 Q. Did you ever envision a system where video
21 files would be reviewed in advance of being broadcast
22 to determine if they were infringing on copyright?

23 A. Yes. I did envision a system like that.

24 Q. And how would that system operate?

25 A. Well, there would be a queue that would,

1 you know, hold the file for review and then a series
2 of previewers that would review it.

3 Q. And where would those -- would those
4 reviewers have potentially been Veoh employees?

5 A. I wasn't sure. I suspected they could have
6 been Veoh employees or been kind of like
7 about.com, which is what I used to use, which are
8 volunteers distributed throughout the world. I don't
9 know if you know how about.com works. They are
10 volunteers, not employees. I am a technologist, not
11 a media guy still to this day.

12 Q. Did you feel that reviewers were able to
13 look at a video file before it went through the
14 system, that they could reduce copyright
15 infringement?

16 A. I don't know if I ever thought through it
17 enough to, you know, be able to answer how I felt
18 about it. But I did envision a system that had
19 reviewers.

20 Q. For the purpose of reducing copyright
21 infringement; is that correct, or no?

22 A. Well, clearly that would have been one of
23 the purposes, I suspect, for other purposes.

24 Q. At any time since Veoh went live, did you
25 personally see a video file that you suspected of

1 being copyright infringement and take action to
2 remove that video file from the system?

3 A. Not that I recall. I have flagged files,
4 but not for copyright purposes. I flagged files that
5 I saw were violent or, you know, broke our current
6 policy of nudity, but that is done by our, you know,
7 group. We've got a person that does that.

8 Q. I'm sorry. Could you clarify? That does
9 what?

10 A. That does a takedown. That does the actual
11 takedown.

12 Q. So to the extent that you have been
13 involved in the takedown of any particular video
14 file, it has been in the same way that a community
15 member could flag a video file and bring it to a core
16 groups' attention that perhaps it needed to be --

17 A. Correct.

18 Q. Okay. Thank you.

19 Was Veoh designed to earn revenue from ad
20 sales?

21 A. We envisioned Veoh to -- yes, to be able to
22 earn revenue from ad sales.

23 Q. How does that business model operate -- or
24 how -- let me ask you this. How did you envision
25 Veoh earning revenue from the ad sales?

1 A. We envisioned people seeing video and our
2 ability to be able to serve an ad to them while they
3 were launching.

4 Q. Did you envision banner ads?

5 A. Sure.

6 Q. And did you also envision maybe video files
7 that actually could play subsequent to or prior to a
8 video clip?

9 A. Yes.

10 Q. Do you currently -- does Veoh currently
11 obtain revenue from advertising on veoh.com?

12 A. We are playing around, as we call it, with
13 advertising.

14 Q. And are any of those ads video ads yet?

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

17 THE WITNESS: I don't know. I have seen in
18 demo form a -- I don't know if I have ever seen a
19 video ad in the site. So I don't know if I could
20 answer that question for you, but I have seen a
21 prototype of a video ad. But I believe I saw it on
22 the test system rather than a production system.

23 BY MR. SPERLEIN:

24 Q. Is there a hope that Veoh could direct ads
25 that are specific to what a user might be interested

1 in based on video files that that user has previously
2 reviewed?

3 MS. GOLINVEAUX: Could you reread the
4 question for me, please?

5 (Record read.)

6 MS. GOLINVEAUX: I will object to the form.

7 THE WITNESS: Yes.

8 BY MR. SPERLEIN:

9 Q. Does Veoh currently control what ads a user
10 views?

11 A. Not that I know.

12 Q. Is that in development?

13 A. Again, I don't know if "development" would
14 be -- it is in research.

15 Q. Is there a correlation between how many
16 users come to veoh.com and how much revenue Veoh is
17 able to earn?

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

20 THE WITNESS: There will be a correlation
21 between how much video a -- yes, how much video a
22 viewer watches and revenue, we believe. Again, don't
23 have real data on it, but that is the assumption.

24 BY MR. SPERLEIN:

25 Q. Is there a correlation between the quality

1 of video content available on veoh.com and the number
2 of people that come to veoh.com?

3 MS. GOLINVEAUX: Object to the form.

4 THE WITNESS: I have discussed
5 theoretically with smart people what the word
6 "quality" means. So it is somewhat of an ambiguous
7 word. But I think to each person a video is -- you
8 know, whether they like it or not is dependent on
9 many different factors. So I don't know how to
10 quantify that.

11 But, you know, if they like it, they watch
12 it. And to me, I guess that means quality. I don't
13 know if you are referring to picture quality or
14 storytelling or, you know, writing or the resolution.
15 You know, all of those are -- to me it is an
16 ambiguous question. I don't know how to really
17 answer it, but --

18 BY MR. SPERLEIN:

19 Q. If Veoh has more content on its web site,
20 is it more likely that some of that content will
21 appeal to any given individual user?

22 MS. GOLINVEAUX: Object to the form.

23 THE WITNESS: Yes.

24 BY MR. SPERLEIN:

25 Q. When veoh.com -- strike that.

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 A. Yes. There were.

2 Q. Was there a drawback to Veoh allowing
3 sexually explicit material to appear on the web site?

4 MS. GOLINVEAUX: Object to the form.

5 THE WITNESS: You mean a negative aspect of
6 it?

7 BY MR. SPERLEIN:

8 Q. Yes, sir.

9 A. Yes.

10 Q. And what were those negative aspects?

11 A. Well, we got overrun by it very quickly.
12 And we were afraid that the marketplace would
13 perceive us as being an adult provider.

14 Q. Where there any other negative aspects?

15 A. That was the primary aspect.

16 Q. Acknowledging that that was the primary
17 aspect, were there other negative aspects?

18 A. We were concerned about litigation that
19 we -- or a law that we did not understand, which was
20 this 2257 that the adult industry is judged by. And
21 we were concerned that --

22 MS. GOLINVEAUX: I would just interject
23 here to the extent that your testimony would disclose
24 any attorney-client communications of any sort, I
25 would instruct the witness not to answer.

1 THE WITNESS: Okay.

2 BY MR. SPERLEIN:

3 Q. Do you know when --

4 A. I'm sorry. Let me make one statement. By
5 far the biggest concern for us was -- by far,
6 underline, bolded, all upper case, was that we were
7 going to get branded as an adult destination.

8 Q. And if that happened, how would that affect
9 your business?

10 A. Well, we were a venture capital backed
11 company. And venture capital backed companies go for
12 big, big projects. Even though the adult industry is
13 a very big industry, we felt that there was something
14 bigger. And that is, you know, getting this
15 democratized platform for anyone to be able to
16 broadcast. And we thought that we could build a
17 bigger business.

18 While we didn't necessarily discriminate
19 against -- we always envisioned a network that would
20 allow people to, in a sense, have free speech, we
21 were concerned that it was going to make us be
22 perceived as an adult --

23 Q. Was it your feeling that CBS wouldn't come
24 and enter a deal with you if your web site was
25 primarily composed, at that time, of adult video?

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

3 THE WITNESS: I don't think we specifically
4 thought that far ahead with, you know, just signing
5 the CBS deal. But, again, we were concerned that the
6 world would perceive us -- you know, when people
7 wrote stories and talked with Veoh that they would
8 perceive Veoh as a predominately adult site.

9 BY MR. SPERLEIN:

10 Q. The idea being that companies that were
11 producing material that was not sexually explicit
12 would not want to be broadcast in the same location
13 as material that was sexually explicit; is that
14 accurate?

15 A. Again, probably not. That wasn't our
16 biggest concern. The companies would not want to do
17 it. I mean, they do do it on cable. Next to Playboy
18 you have got the Disney channel. We were just more
19 concerned with the general perception of consumers
20 and press and everybody else.

21 Q. Including your user base, the people that
22 actually came to view video files?

23 A. Well, yeah. To me, they fall into that
24 bucket of consumers, yeah.

25 Q. Do you know when Veoh officials first

1 A. Not offhand.

2 Q. Would that be measured?

3 A. I don't know how accurately, but I expect
4 probably could be given a ballpark.

5 Q. And how about just the raw numbers of
6 sexually explicit files compared to say nonsexually
7 explicit files, can you -- do you have any idea what
8 that ratio was at the time?

9 A. I don't know.

10 Q. Do you have any idea of the -- just the raw
11 number of sexually explicit video files that were on
12 the Veoh system at that time?

13 A. I don't recall. I think at one time I
14 probably knew an approximate number, but I can't
15 recall it.

16 Q. When Veoh changed it's policy, did Veoh at
17 that time remove sexually explicit files that were
18 currently on the system?

19 A. Yes.

20 Q. Do you know the number of files that were
21 removed at that time?

22 A. That is the number that I am referring to
23 that would be a number that I could give you a number
24 if I remembered it.

25 Q. And when Veoh removed them from the system,

1 did Veoh actually remove the sexually explicit video
2 files that were residing on registered members' home
3 computers?

4 A. I believe that is true.

5 Q. Did Veoh's traffic drop when Veoh changed
6 its policy to no longer allow sexually explicit video
7 files on the video system?

8 A. Yes, it did.

9 Q. Do you have a quantitative number that you
10 could give me as to how much?

11 A. Again, not offhand. At one time I believe
12 we did measure it.

13 Q. What statistics would one look at to
14 measure that change in traffic?

15 A. Well, number of videos viewed; Number of,
16 you know, users coming to the site. Those are, I
17 think, the two primary.

18 Q. Do you know if the LimeLight usage dropped
19 significantly at that time?

20 A. I don't know specifically, but the number
21 of videos viewed, I believe dropped. And because I
22 think LimeLight was serving at that time -- I don't
23 recall if it was or not, but if it was, clearly
24 LimeLight would have noticed that.

25 Q. I am going to take a few minutes to go

1 through this. It is probably a little early for a
2 break, but if you want to take advantage of this five
3 minutes or something while I look through documents,
4 you can do that.

5 MS. GOLINVEAUX: Okay. Let's do that.

6 (Recess.)

7 MR. SPERLEIN: Okay. Exhibit No. 8.

8 (Plaintiff's Exhibit No. 8 was marked.)

9 BY MR. SPERLEIN:

10 Q. Defendant's Document Production No. 00203,
11 an e-mail from Francis Costello to Dmitry Shapiro,
12 dated August 7th, 2006; is that correct?

13 A. Yes, it is.

14 Q. I am going to read this. It says "Traffic
15 was down last week by approximately 10 percent,
16 almost all from lower direct links to
17 Video Details.HTML. We should talk about strategies
18 to get promotion going in the car. Numbers are flat
19 to down still since porn takedown."

20 Did I read that correctly?

21 A. Yes.

22 Q. Does this acknowledge that even on
23 August 7th of 2006, veoh.com is still feeling the
24 effects of no longer having sexually explicit video
25 files on the Veoh web site?

1 MS. GOLINVEAUX: Object to the form.

2 THE WITNESS: Yes. I think in August of
3 that year our traffic was lower than expected.

4 MR. SPERLEIN: That is all for that one.
5 Thank you.

6 BY MR. SPERLEIN:

7 Q. Exhibit No. 9. This is defendant's
8 Document Production No. 00218.

9 (Plaintiff's Exhibit No. 9 was marked.)

10 THE WITNESS: Okay.

11 BY MR. SPERLEIN:

12 Q. You have had an opportunity to review the
13 exhibit?

14 A. Yes, I have.

15 Q. Do you recall getting this e-mail
16 originally from Francis Costello to you and then your
17 brief reply back to Francis Costello?

18 A. I don't explicitly recall it, but I see it
19 here now.

20 MS. GOLINVEAUX: Mr. Sperlein, is this a
21 multipage e-mail? Is this just the first page of
22 more than one page that was produced?

23 MR. SPERLEIN: I don't believe so. But
24 certainly if there is another page, it would
25 obviously be in the same order and you could take a

1 look at it.

2 BY MR. SPERLEIN:

3 Q. And does this e-mail -- the portion from
4 Francis Costello to you, lay out some different
5 strategies for dealing with adult content?

6 A. Yes, it does.

7 Q. In a general way?

8 A. Yes.

9 Q. And the third option as presented says
10 "Create dedicated porn product under different
11 brand."

12 A. Uh-huh.

13 Q. Did Veoh ever further consider that option?

14 A. Yeah, we thought about it and decided not
15 to do it.

16 Q. Do you recall why Veoh decided not to do
17 that?

18 A. Because we felt any association, whether we
19 had it on one site or two sites, was all still going
20 to be perceived as Veoh and we would be perceived as
21 an adult company rather than a --

22 Q. Did you discuss any measures that you could
23 take to distinguish the two different brands from
24 each other so that wouldn't be a risk?

25 A. Well, you have them on different sites and

1 call them different things, but people always know
2 who owns what. At least we believe they do, so --

3 Q. Okay. Let me look at also No. 1 that is
4 listed there. It says "current allow but hide
5 strategy."

6 Was this the idea of allowing sexually
7 explicit video files to remain on Veoh, but tagging
8 them in a way that they wouldn't appear on the front
9 page or the most popular page?

10 A. Yes, I believe that is what that refers to.

11 Q. Okay. Do you recall doing an interview
12 with Red Herring around August 17th of 2005? Do you
13 have any recollection of that?

14 A. I do so many interviews. I have clearly
15 interviewed a number of times with Red Herring, so --

16 Q. Let me do this. Take your time to review
17 it, but eventually I am going to ask you to direct
18 your attention to the top of the third column, the
19 first paragraph.

20 (Plaintiff's Exhibit No. 10 was marked.)

21 THE WITNESS: Okay.

22 BY MR. SPERLEIN:

23 Q. Do you recall specifically having said that
24 "Veoh would use human filters to filter out illegally
25 miscategorized and improperly formatted content"?

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 A. Well, when we did change the policy
2 concerning adult, it was changed as -- well, it's the
3 board. It was a board decision. So I don't know if
4 I would say "pressure." I believe I was the one that
5 volunteered it, because I was concerned about it.
6 And I believe everyone agreed.

7 Q. Okay. How many people are on Veoh's board?

8 A. Today there are, I want to say, five. Let
9 me just -- yes, five. And at that time I believe it
10 was four.

11 Q. And who were the four people on the board
12 at that time? You?

13 A. I, Art Bilger, Michael Eisner, and
14 Tod Dages.

15 Q. Would you spell his last name?

16 A. D-a-g-r-e-s.

17 Q. So it was those four people that voted?

18 Let me back up. Did those four people vote to change
19 the policy so that adult video files would no longer
20 be allowed on Veoh?

21 A. I don't think it was a vote, but those four
22 people would have known about and agreed upon
23 changing the policy, sure.

24 Q. Prior to the change in policy where Veoh no
25 longer allowed sexually explicit video files on the

1 Veoh system, did Veoh make a change in policy so that
2 adult files would not appear on the front page, the
3 home page?

4 A. I don't know if you'd say we made a policy;
5 but yes, we tried to not have those files on the home
6 page.

7 Q. And was that in part to appease concerns of
8 investors?

9 A. Well, it was to appease concern of -- I
10 don't know if it was concern of investors. It was to
11 try not to embarrass, in a sense, investors. And
12 again, it was a general overall feeling of we did not
13 want somebody to come to veoh.com after reading about
14 it in whatever magazine, saying it is this great new
15 platform for independent producers and the first
16 thing that hits you is adult content.

17 Q. Do you have any recollection as to when
18 that policy went into effect, when you started making
19 that change?

20 A. It would have all happened in a very short
21 time frame because, again, all this happened in a
22 series of a month and a half to two months.

23 Q. Was there any decision why you delayed
24 completely removing sexually explicit video files
25 until the time you did, rather than at that same time

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 8th day of June 2007
14 at San Diego, California.

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NRH.
NICOLE R. HARNISH
C.S.R. NO. 13101