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9 Attorneys for Defendant
10 VEOH NETWORKS, INC.

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

14 IO GROUP, INC.

15 Plaintiff,

16 vs.

17 VEOH NETWORKS, INC.

18 Defendant.

Case No. C 06-3926 HRL

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

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

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

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

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

5 2. The following documents, attached to this Declaration as exhibits, support Defendant
6 Veoh Networks, Inc.'s Opposition to Plaintiff's Motion for Summary Judgment.

7 A. **Exhibit A** is a true and correct copy of excerpts of Plaintiff's Response to
8 Defendant's First Set of Requests for Admissions.

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

11 C. **Exhibit C** is a true and correct copy of excerpts of the deposition transcript
12 from the May 22, 2007 (Day Two) deposition of Joseph Papa taken in this case.

13 D. **Exhibit D** is a true and correct copy of Plaintiff's Responses to Defendant's
14 Third Set of Requests for Admissions.

15 E. **Exhibit E** is a true and correct copy of excerpts of the deposition transcript
16 from the May 24, 2007 deposition of Keith Ruoff.

17 F. **Exhibit F** is a true and correct copy of excerpts of the deposition transcript
18 from the March 16, 2007 deposition of Ted Dunning taken in this case.

19 G. **Exhibit G** is a true and correct copy of excerpts of the deposition transcript
20 from the May 21, 2007 (Day One) deposition of Joseph Papa taken in this case.

21
22 Executed this 14th day of August, 2007, in San Francisco, California.

23
24 

25 Matthew Scherb

EXHIBIT A

1 GILL SPERLEIN (172887)
2 THE LAW OFFICE OF GILL SPERLEIN
3 584 Castro Street, Suite 849
4 San Francisco, California 94114
5 Telephone: (415) 378-2625
6 legal@titanmedia.com
7
8 Attorney for Plaintiff
9 IO GROUP, INC.

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

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

19 PROPOUNDING PARTY: VEOH NETWORKS, INC.
20
21 RESPONDING PARTY: IO GROUP, INC.
22 SET NUMBER: ONE
23

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

GENERAL OBJECTIONS

1
2 Io Group expressly incorporates the following General Objections as if set forth fully in
3 response to each and every request for admission contained in Veoh's First Set of Requests for
4 Admissions.
5

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

8 2. Io Group objects to each request for admission to the extent it seeks information
9 protected by attorney-client privilege, the work product privilege and/or any other applicable
10 privilege. Such information will not be disclosed. Any inadvertent disclosures of such
11 information shall not be deemed a waiver of the attorney-client privilege, the attorney work
12 product doctrine, or any other applicable privilege or immunity recognized by statute or case law.
13

14 3. Io Group objects to each request for admission and to Defendant's instructions to
15 the extent that they purport to impose any requirement or discovery obligations on Io Group other
16 than those set forth in the Federal Rules of Civil Procedure and the applicable rules of this Court.
17

18 4. Io Group objects generally to each request for admission to the extent it seeks
19 information not reasonably related to the claims or defenses in this matter.
20

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

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

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

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

2 Admit that you do not seek to hold Veoh liable for contributory or vicarious infringement
3 based on direct infringement by Veoh users of your rights under 17 U.S.C. § 106(4).

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

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

8 **REQUEST FOR ADMISSION NO. 7:**

9 Admit that you do not seek to hold Veoh liable for contributory or vicarious infringement
10 based on direct infringement by Veoh users of your rights under 17 U.S.C. § 106(6).

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

12 Admit.

13 **REQUEST FOR ADMISSION NO. 8:**

14 Admit that the Veoh website is capable of non-infringing uses.

15 **RESPONSE TO REQUEST NO. 8:**

16 Admit.

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

18 Admit that the Veoh website is capable of substantial non-infringing uses.

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

20 Plaintiff cannot truthfully admit or deny this statement for the reason that it seeks
21 information outside Io Group's possession, custody, or control and the request is otherwise vague
22 and ambiguous and because Io Group does not know upon what standard Defendant intends the
23 term "substantial" to be based.

24 **REQUEST FOR ADMISSION NO. 10:**

25 Admit that the Veoh website is a staple article of commerce.

26 **RESPONSE TO REQUEST NO. 10:**

27 Deny.

28

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

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

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

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

10
11
12
13
14
15 Dated: April 13, 2007


16
17 
18 GILL SPERLEIN
19 Attorney for Plaintiff Io Group, Inc.

EXHIBIT B

CONFIDENTIAL

Certified Copy

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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

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

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



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1 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 question?

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

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

7 BY MR. SPERLEIN:

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

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

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

16 (Record read.)

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

20 BY MR. SPERLEIN:

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

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

1 of the content group?

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

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

6 A. Yes, they have.

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

10 A. Sure.

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

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

16 A. Yes, I believe so.

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

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

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

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

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

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

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

10 MS. GOLINVEAUX: Okay.

11 (Recess.)

12 BY MR. SPERLEIN:

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

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

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

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

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

1 ability to deal with volume.

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

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

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

19 MS. GOLINVEAUX: Object to the form.

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

25 BY MR. SPERLEIN:

1 I, NICOLE R. HARNISH, Certified Shorthand Reporter
2 for the State of California, do hereby certify:
3
4 That the witness in the foregoing deposition was by
5 me first duly sworn to testify to the truth, the
6 whole truth and nothing but the truth in the
7 foregoing cause; that the deposition was taken by me
8 in machine shorthand and later transcribed into
9 typewriting, under my direction, and that the
10 foregoing contains a true record of the testimony of
11 the witness.

12
13 Dated: This 8th day of June 2007
14 at San Diego, California.

15
16
17
18 NRH.
19 NICOLE R. HARNISH
20 C.S.R. NO. 13101
21
22
23
24
25

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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

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

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



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1 THE WITNESS: At what time?

2 BY MR. SPERLEIN:

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

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

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

8 MS. GOLINVEAUX: Object to the form.

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

11 BY MR. SPERLEIN:

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

15 A. Yes.

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

19 MS. GOLINVEAUX: Object to the form.

20 THE WITNESS: Yes.

21 BY MR. SPERLEIN:

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

24 A. Yes.

25 Q. Has it always been the case that screen

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

4 A. No.

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

7 A. Yes.

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

11 A. No.

12 Q. Where do they reside?

13 A. On Veoh storage system.

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

18 A. That is accurate.

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

22 MS. GOLINVEAUX: Object to the form.

23 THE WITNESS: No.

24 BY MR. SPERLEIN:

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

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

4 A. No.

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

7 A. No.

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

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

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

17 A. That is accurate.

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

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

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

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

6 BY MR. SPERLEIN:

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

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

13 THE WITNESS: Yes. Okay.

14 BY MR. SPERLEIN:

15 Q. And is this a section of wiki?

16 A. Yes.

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

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

22 A. Yes.

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

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

7 Did I read that accurately?

8 A. Yes.

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

12 A. Yes.

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

14 A. That's correct.

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

17 A. Yes.

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

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

1 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

22

23

24

25

EXHIBIT D

e/

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

7 Attorney for Plaintiff
8 IO GROUP, INC.

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

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

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

19 PROPOUNDING PARTY: VEOH NETWORKS, INC.
20
21 RESPONDING PARTY: IO GROUP, INC.
22 SET NUMBER: THREE
23

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

GENERAL OBJECTIONS

1
2 Io Group expressly incorporates the following General Objections as if set forth fully in
3 response to each and every request for admission contained in Veoh's First Set of Requests for
4 Admissions.
5

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

8 2. Io Group objects to each request for admission to the extent it seeks information
9 protected by attorney-client privilege, the work product privilege and/or any other applicable
10 privilege. Such information will not be disclosed. Any inadvertent disclosures of such
11 information shall not be deemed a waiver of the attorney-client privilege, the attorney work
12 product doctrine, or any other applicable privilege or immunity recognized by statute or case law.
13

14 3. Io Group objects to each request for admission and to Defendant's instructions to
15 the extent that they purport to impose any requirement or discovery obligations on Io Group other
16 than those set forth in the Federal Rules of Civil Procedure and the applicable rules of this Court.
17

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

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

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

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

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OBJECTIONS AND RESPONSES

REQUEST FOR ADMISSION NO. 61:

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

RESPONSE TO REQUEST NO. 61:

Admit

REQUEST FOR ADMISSION NO. 62:

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

RESPONSE TO REQUEST NO. 62:

Deny

REQUEST FOR ADMISSION NO. 63:

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

RESPONSE TO REQUEST NO. 63:

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

REQUEST FOR ADMISSION NO. 64:

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

RESPONSE TO REQUEST NO. 64:

Admit.

REQUEST FOR ADMISSION NO. 65:

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

1 **RESPONSE TO REQUEST NO. 65:**

2 Admit.

3 **REQUEST FOR ADMISSION NO. 66:**

4 Admit that the six files whose names begin with "GWMSHORT" on the disk you produced
5 labeled 200282 are each videos with a runtime of approximately five seconds or less.

6 **RESPONSE TO REQUEST NO. 66:**

7 Admit.

8 **REQUEST FOR ADMISSION NO. 67:**

9 Admit that the eight files whose names begin with "piss," except for the files named
10 "piss31.mpg" and "piss12.wmv" on the disk you produced labeled 200282, are each videos with a
11 runtime of approximately six seconds or less.

12 **RESPONSE TO REQUEST NO. 67:**

13 Admit.

14 **(Defendant did not submit a Request No. 68)**

15 **REQUEST FOR ADMISSION NO. 69:**

16 Admit that the file named "piss31.mpg" on the disk you produced labeled 200282 is a
17 video with a run time of approximately 13 seconds or less.

18 **RESPONSE TO REQUEST NO. 69:**

19 Admit.

20 **REQUEST FOR ADMISSION NO. 70:**

21 Admit that the file named "piss12.wmv" on the disk you produced labeled 200282 is a
22 video with a run time of approximately 30 seconds or less.

23 **RESPONSE TO REQUEST NO. 70:**

24 Admit.

25 **REQUEST FOR ADMISSION NO. 71:**

26 Admit that the file named "Rough Sex.mpg" on the disk you produced labeled 200282 is a
27 video with a run time of five minutes and approximately 15 seconds or less.

28

1 **RESPONSE TO REQUEST NO. 71:**

2 Admit.

3 **REQUEST FOR ADMISSION NO. 72:**

4 Admit that the file named "Hot bear sex 2.mpg" on the disk you produced labeled 200282
5 is a video with a run time of approximately five minutes and 15 seconds or less.

6 **RESPONSE TO REQUEST NO. 72:**

7 Admit.

8 **REQUEST FOR ADMISSION NO. 73:**

9 Admit that the file named "Military Men-1.wmv" on the disk you produced labeled 200282
10 is a video with a run time of approximately eight minutes and seven seconds or less.

11 **RESPONSE TO REQUEST NO. 73:**

12 Admit.

13 **REQUEST FOR ADMISSION NO. 74:**

14 Admit that the file named "Military Men 1.wmv" on the disk you produced labeled 200282
15 is a video with a run time of approximately eight minutes and seven seconds or less.

16 **RESPONSE TO REQUEST NO. 74:**

17 Admit.

18 **REQUEST FOR ADMISSION NO. 75:**

19 Admit that the file named "Hot Boys.wmv" on the disk you produced labeled 200282 is a
20 video with a run time of approximately 18 seconds or less.

21 **RESPONSE TO REQUEST NO. 75:**

22 Admit.

23 **REQUEST FOR ADMISSION NO. 76:**

24 Admit that the file named "boner.mpg" on the disk you produced labeled 200282 is a video
25 with a run time of approximately one minute and 40 seconds or less.

26 **RESPONSE TO REQUEST NO. 76:**

27 Admit.

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REQUEST FOR ADMISSION NO. 77:

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

RESPONSE TO REQUEST NO. 77:

Admit.

REQUEST FOR ADMISSION NO. 78:

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

RESPONSE TO REQUEST NO. 78:

Admit.

REQUEST FOR ADMISSION NO. 79[sic]:

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

RESPONSE TO REQUEST NO. 79:

Deny.

Dated: May 30, 2007



GILL SPERLEIN
Attorney for Plaintiff Io Group, Inc.

EXHIBIT E

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

---oOo---

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

Plaintiff,)

) No. C-06-3926 HRL

vs.)

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

**CERTIFIED
COPY**

Defendant.)

CONFIDENTIAL SECTION, PAGES 23 - 34

Deposition of

KEITH RUOFF

Thursday, May 24, 2007

Reported by:

GEORGE SCHUMER, CSR 3326

(395992)

KEITH RUOFF May 24, 2007

09:50:32 1 RESUME NON-CONFIDENTIAL SECTION

09:50:37 2 MR. ELKIN: Q. I assume that your company

09:50:38 3 attempts to promote its products; right?

09:50:40 4 A. We tend to focus more on the brand, than

09:50:46 5 individual products or title.

09:50:47 6 Q. Let me ask you some specific questions.

09:50:52 7 Do you advertise?

09:50:53 8 A. Yes.

09:50:53 9 Q. Do you provide snippets or trailers or teasers,

09:51:10 10 to entice consumer interest?

09:51:12 11 MR. SPERLEIN: Objection to the form.

09:51:13 12 MR. ELKIN: I'll break it down.

09:51:14 13 Q. Do you provide any trailers to entice consumer

09:51:18 14 interest?

09:51:18 15 A. What do you mean by "provide"?

09:51:20 16 Q. Do you enable your licensees to provide free

09:51:26 17 portions -- portions of your content -- to market them to

09:51:35 18 the public?

09:51:36 19 MR. SPERLEIN: Objection to the form. It is

09:51:37 20 vague.

09:51:38 21 THE WITNESS: We do allow trailers to be shown,

09:51:42 22 but they have to be either provided by Io Group, that

09:51:46 23 contain our 2257 mark; our logos, as well as embedded

09:51:51 24 metadata about the product. Or they will have to be

09:51:54 25 approved by us before they are allowed to be used.

KEITH RUOFF May 24, 2007

10:15:18 1 corrections to two previous statements I made.

10:15:19 2 One of them is regarding the films being covered
10:15:23 3 under all of the licenses. And two of the films -- Prowl
10:15:27 4 3, and Don't Ask, Don't Tell -- are actually only covered
10:15:31 5 under the Sureflix licensing agreement, and not covered
10:15:35 6 under any of the other licensing agreements.

10:15:37 7 The second thing was you asked about "provided
10:15:42 8 free copies." We do provide free copies of DVD's to
10:15:47 9 reviewers in magazines, to be able to allow them to write
10:15:52 10 reviews of our films.

10:15:54 11 MR. ELKIN: Q. How did those corrections come to
10:15:56 12 your attention?

10:15:57 13 MR. SPERLEIN: I caution the witness not to
10:16:01 14 reveal the contents of any attorney-client communications.
10:16:04 15 But to the extent you can respond --

10:16:06 16 MR. ELKIN: I'm not asking you to reveal what
10:16:08 17 Mr. Sperlein told you during the break, but:

10:16:12 18 Q. It came as a result of a conversation between you
10:16:15 19 and Mr. Sperlein; correct?

10:16:17 20 A. Correct. He asked me to think a little harder.

10:16:27 21 Q. Let me ask you a couple of followups on those --
10:16:30 22 and I appreciate you bringing that to my attention.

10:16:33 23 With regard to the free copies, as it were, what
10:16:37 24 exactly is given to the publishers? And what was the
10:16:46 25 other --

KEITH RUOFF May 24, 2007

10:32:24 1 player.

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

10:32:29 3 owned; right?

10:32:30 4 A. Yes.

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

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

10:32:37 7 to Titan Media?

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

10:32:48 9 you are asking?

10:32:49 10 Q. Yes.

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

10:32:53 12 correctly.

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

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

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

10:33:07 16 downloaded through Veoh.

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

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

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

10:33:21 20 A. Yes.

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

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

10:33:34 23 material?

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

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

KEITH RUOFF May 24, 2007

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

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

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

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

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

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

10:34:36 16 A. Yes.

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

10:34:43 19 A. Okay.

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

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

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

KEITH RUOFF

May 24, 2007

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

KEITH RUOFF May 24, 2007

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

10:40:32 2 Q. Right.

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

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

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

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

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

10:40:58 8 content; correct?

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

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

10:41:08 11 aware of that?

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

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

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

10:41:17 15 A. Yes.

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

10:41:24 17 A. Correct.

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

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

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

10:41:41 21 A. No.

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

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

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

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

KEITH RUOFF May 24, 2007

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

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

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

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

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

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

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

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

KEITH RUOFF May 24, 2007

11:47:03 1 A. Yes.

11:47:04 2 Q. What does that mean: "Free Week of Porn"?

11:47:08 3 A. It is a one-week trial membership that required

11:47:17 4 credit card authorization, but would not be billed until

11:47:21 5 the end of the week, and would start auto-rebilling at the

11:47:29 6 full monthly rate.

11:47:30 7 Q. So if somebody signs up, they can get a free week

11:47:33 8 of porn without paying any money for that week; right?

11:47:37 9 A. Correct.

11:47:38 10 Q. How many films could they see during that week,

11:47:41 11 potentially? As much as they want?

11:47:43 12 A. As much as they want in the back room, yes.

11:47:46 13 Q. How regular do you run that kind of promotion,

11:47:50 14 free week of porn?

11:47:51 15 A. It was a promotion to promote some new

11:47:55 16 functionality on our web site.

11:47:56 17 Q. Have you done that from time to time, though --

11:47:59 18 offered a free week of porn?

11:48:00 19 A. I believe maybe once or twice; that type of

11:48:06 20 promotion.

11:48:07 21 Q. Do you restrict how participants can access the

11:48:12 22 free porn?

11:48:12 23 A. Yes, it is the same type of thing, where you have

11:48:16 24 to get a credit card authorization; you have to get a user

11:48:20 25 name and password. It has DRM; same type of thing.

KEITH RUOFF May 24, 2007

11:57:16 1 Q. Did you have any discussion with anyone else
11:57:31 2 about your possible interest in peer-to-peer?

11:57:33 3 A. I believe these are the only ones that I have had
11:57:37 4 discussions with. They are the only company that does
11:57:40 5 this type of thing that would actually talk to us, because
11:57:44 6 we're adult.

11:57:44 7 Q. Did you yourself explore any other peer-to-peer
11:57:55 8 technologies? Peer-to-peer applications.

11:57:59 9 A. I'm not sure I understand.

11:58:03 10 Q. Did you ever consider any other peer-to-peer
11:58:05 11 applications to promote or distribute your works?

11:58:08 12 A. No, I don't believe so.

11:58:10 13 Q. Would there be anyone else in your organization
11:58:16 14 that would have the responsibility for looking after such
11:58:20 15 new forms of marketing and distribution?

11:58:22 16 A. No.

11:59:58 17 MR. ELKIN: Next is 9.

12:00:01 18 (Document referred to herein marked for
12:00:03 19 identification Defendant Exhibit 9)

12:00:03 20 MR. ELKIN: Q. Mr. Ruoff, the court reporter has
12:00:05 21 just handed you a document that has been marked for
12:00:08 22 identification as Defendant Exhibit 9. Can you identify
12:00:13 23 what this is?

12:00:14 24 A. I believe this was the response to a production
12:00:19 25 request from Veoh, regarding profit and expenses related

KEITH RUOFF May 24, 2007

12:00:24 1 to the works.

12:00:24 2 Q. Was this created as a result of the request?

12:00:30 3 A. Yes.

12:00:30 4 Q. Who prepared it?

12:00:31 5 A. Myself and Stephen Mounce, our general manager.

12:00:38 6 Q. Does he have responsibility, effectively, as the

12:00:42 7 CFO of the company?

12:00:44 8 A. Bruce Lahey is actually the CFO of the company,

12:00:50 9 but Stephen manages accounting.

12:00:52 10 Q. Can you just tell me how the figures on this

12:00:55 11 piece of paper came together? I assume you reviewed your

12:00:59 12 books and records together, and then you sat down, and the

12:01:01 13 two of you created this?

12:01:07 14 A. Yes. So as an example, if we start with "Boner,"

12:01:11 15 which is the first title, and it says "hard sales," which

12:01:13 16 are hard product sales -- either DVD or VHS -- and hard

12:01:16 17 sales, DVD and VHS, we keep sales by title.

12:01:19 18 Q. Correct.

12:01:20 19 A. So we looked at -- that's an actual hard number

12:01:24 20 of actual dollars generated from hard-sale product.

12:01:31 21 Q. These are real numbers. \$20,240, for example,

12:01:37 22 under the column "2004" adjacent to hard sales under

12:01:41 23 Boner; correct?

12:01:42 24 A. Correct. And then for each year.

12:01:46 25 Q. There seems to be a trend where the costs are

KEITH RUOFF May 24, 2007

12:01:49 1 going down on an annual basis. Is that because --

12:01:53 2 A. I'm sorry?

12:01:55 3 Q. Let me just ask -- I'll withdraw that, and let me

12:01:59 4 ask other questions.

12:02:01 5 You've got a pro rata share of on-line sales.

12:02:05 6 How did that pro rata number come about?

12:02:07 7 A. What we did was since on-line sales -- which are

12:02:11 8 membership sales -- we don't keep sales generated broken

12:02:18 9 down by title, because of the fact that it is a membership

12:02:20 10 area. We don't sell it by the piece.

12:02:23 11 We took whatever percentage of hard sales was to

12:02:26 12 the total. We used that same percentage, and allocated

12:02:29 13 that percentage to the on-line sales, to come up with an

12:02:33 14 on-line sales number.

12:02:34 15 Q. Let me ask you: Did you include in this number

12:02:38 16 any fees associated from the license content?

12:02:40 17 A. Yes.

12:02:41 18 Q. So in this number here you've got your licensing

12:02:45 19 revenues, together with a percentage of your hard sales.

12:02:51 20 Is that correct?

12:02:51 21 A. (No response)

12:02:53 22 Q. What comprises this number, pro rata share of

12:02:58 23 on-line sales? It is your licensing fees -- is

12:03:01 24 automatically included?

12:03:02 25 A. Correct.

CERTIFICATE OF REPORTER


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

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

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

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

DATED: June 1, 2007



George Schumer, CSR

EXHIBIT F

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IO GROUP, INC., a California
corporation,

Plaintiff,

vs.

VEOH NETWORKS, INC., a
California Corporation,

Defendants.

Case No. C-06-03926 (HRL)

CONFIDENTIAL

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

REPORTED BY RITA BURGESS, CSR NO. 8374



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1 average constraints of that bit rate over the small period of
2 time.

3 Q. And what type of encoder is used during Veoh's
4 process of changing from the original file format into Flash
5 formats?

6 A. I don't know the exact encoder used.

7 Q. Was it be a particular brand or is it a
8 particular type, what distinguishes one encoder from another
9 encoder?

10 A. That's -- I mean, there are many things that
11 distinguish different encoders.

12 Q. But what I'm getting at is, are there -- are
13 there different classes of encoders or are encoders more or
14 less defined by a particular -- the company that creates it,
15 for example, you know, Flash as you mentioned before is made
16 by Adobe, is -- would this encoder be identified by the
17 company that produces it or more by the type of process it
18 uses?

19 A. There are several hundred video formats at least,
20 and if you include mix and match options, the number is huge.
21 Many video formats are defined by international standards
22 organization. MPEG is the acronym for the motion picture
23 experts group. It's an international group of experts in
24 video encoding. MPEG-1, 2, 4 are all video encoding
25 standards just defined by the MPEG committee. Other video

1 encoding standards are defined for proprietarily by
2 individual companies. Adobe bought Macromedia, who
3 contracted with other companies that I don't even know the
4 names of to use proprietary and general purpose encoders and
5 decoders in their Flash products.

6 Q. Okay.

7 A. So what I'm saying there is I can't answer that
8 question.

9 Q. Are the Flash files on to Veoh system, do they
10 all contain a standard key frame rate or -- let me strike
11 that.

12 Does the key frame rate for Flash video files
13 being played to its users change based on the capacity of the
14 individual users computer?

15 Does it sniff the capability of the users
16 computer and thereby adjust the key frame rate for better
17 experience?

18 A. What do you mean by key frame rate?

19 Q. Do you have an understanding of what a key frame
20 rate is?

21 A. This is a very specific technical term.

22 Q. Could you describe what that is?

23 A. Key frames are used in several different
24 applications but in many encoding and compression algorithms,
25 there is an uncompressed or a statically compressed image in

1 hint.

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

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

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

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

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

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

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

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

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

12 BY MR. SPERLEIN:

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

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

1 questions later.

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

8 A. No.

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

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

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

16 BY MR. SPERLEIN:

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

23 MS. GOLINVEAUX: Same objection.

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

1 infringement.

2 BY MR. SPERLEIN:

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

4 A. Should be taken down.

5 Q. Should be taken down or not.

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

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

9 A. By any reasonable multiple me personally.

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

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

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

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

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

24 (The record was read).

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

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

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

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

11 A. That's correct.

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

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

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

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

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

3 A. Entirely, automatically.

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

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

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

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

1 times, I might go, oh yes --

2 Q. That's okay.

3 A. -- there's something there.

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

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

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

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

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

1 the video?

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

9 Q. I understand.

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

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

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

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

4 A. We can rate them mature content.

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

8 A. That's correct.

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

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

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

21 MS. GOLINVEAUX: Object; calls for speculation.

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

1 it. I just disablize it.

2 BY MR. SPERLEIN:

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

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

11 Q. Is there any review at all?

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

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

17 A. No.

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

20 THE WITNESS: Oh, excuse me.

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

23 BY MR. SPERLEIN:

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

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

3
4

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

11
12

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

15
16

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

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EXHIBIT G

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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

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SAN DIEGO, CALIFORNIA
MAY 21, 2007

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



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1 A. Okay.

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

5 A. Yes.

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

9 A. No.

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

13 A. Only video.

14 Q. Only video.

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

17 A. It would be rejected.

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

20 A. Yes.

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

24 A. Approximately it says "unknown codec."

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

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

3 MS. GOLINVEAUX: Object to the form.

4 THE WITNESS: Can you clarify "review"?

5 BY MR. SPERLEIN:

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

8 A. No.

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

11 MS. GOLINVEAUX: Object to the form.

12 THE WITNESS: Can you repeat it?

13 BY MR. SPERLEIN:

14 Q. Let me clarify.

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

18 MS. GOLINVEAUX: Object to the form.

19 THE WITNESS: No.

20 BY MR. SPERLEIN:

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

23 MS. GOLINVEAUX: Object to the form.

24 THE WITNESS: No.

25 BY MR. SPERLEIN:

1 been reviewed and which had not been reviewed?

2 A. No.

3 Q. So, for example, if any given day you
4 decided that you wanted to take some time to review
5 video files, how would you start along that process?

6 A. I would navigate to the most recent page.

7 Q. And then what would you do?

8 A. I would look at the metadata presented.

9 Q. And was that metadata at the time the same
10 metadata that we talked about earlier, namely the
11 title -- actually, let me strike that.

12 Could you tell me what metadata was
13 available to you through the most recently published
14 page?

15 A. The thumbnail, the title, the rating,
16 star's rating, user's rating. And the time of
17 published, was presented as well.

18 Q. Was the publisher's name available at that
19 point?

20 A. Yes. The publisher's name was available.

21 Q. Number of views, was that available?

22 A. Cannot recall.

23 Q. And would you start your review process
24 with the video file that appeared as the most
25 recently published video file?

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

3

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

12

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

15

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17

18

NRH.

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NICOLE R. HARNISH

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C.S.R. NO. 13101

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