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FOR THE DEFENDANT

1 (THE CLERK OPENS COURT.)

2 THE COURT: GOOD MORNING, EVERYONE.

3 ALL COUNSEL: GOOD MORNING, YOUR HONOR.

4 THE COURT: YOU ARE WELCOME TO BE SEATED.

5 ONE PRELIMINARY MATTER BEFORE WE RESUME
6 THE TESTIMONY. THE WITNESS IS WELCOME TO COME UP AT HER
7 CONVENIENCE. WE HAVE TELEPHONED THE OFFICES OF COUNSEL
8 FOR THE TWO PARTIES WHO FILED MOTIONS FOR PROTECTIVE
9 ORDER IN THE THIRD-PARTY DEPOSITION TRANSCRIPTS. WE
10 REACHED ONE OF THEM PERSONALLY. THAT WAS THE LOCAL
11 COUNSEL FOR THE ONE ORGANIZATION. OTHER COUNSEL IS
12 PROBABLY STILL GETTING OUT OF BED IN OREGON. WE LEFT A
13 PHONE MESSAGE WITH HIM. WE ARE NOT AWARE OF ANY LOCAL
14 COUNSEL FOR THAT CLIENT SO FAR. THE DOCUMENT WAS FILED
15 BY OREGON COUNSEL. THE MESSAGE WE LEFT WAS, UNLESS THE
16 PARTIES ARE ABLE TO WORK IT OUT BEFORE THEN, WE ARE
17 HAVING A HEARING AT 1:30 IN THE AFTERNOON ON WEDNESDAY
18 THIS WEEK, TOMORROW.

19 THAT IS THE MESSAGE WE LEFT. I JUST
20 THOUGHT YOU OUGHT TO KNOW THAT.

21 WE HAVE RECEIVED A PROPOSED STIPULATION
22 FROM MASTER CARD, I GUESS IT IS, WITH A REDACTED COPY OF
23 THE DEPOSITION TRANSCRIPT AND EXHIBITS, I ASSUME. IT'S
24 A LONG DOCUMENT. WE DID NOT HAVE TIME TO PRINT IT OUT
25 THIS MORNING. MY QUESTION IS, IT WOULD APPEAR THAT THE

1 STIPULATION IS ONLY BETWEEN THE DEPONENT COMPANY AND THE
2 PLAINTIFF AND STANDS IN PLACE OF THE DESIGNATIONS. THE
3 DOCUMENT AS REDACTED -- THE DOCUMENTS ATTACHED TO THE
4 STIPULATION ARE REDACTED VERSIONS OF WHAT WAS PROPOSED
5 TO BE USED FOR A SURROGATE TO TESTIFY IN THE COURSE OF
6 THE TRIAL. I DON'T KNOW WHETHER DEFENSE HAS SEEN THAT
7 MATERIAL OR HAS AGREED TO IT, OR IF THEY EVEN KNOW WHAT
8 I'M DESCRIBING.

9 I WILL TELL YOU WHAT. LET ME GET THIS
10 STRAIGHT. THE DOCUMENT NUMBER 348, WHICH IS A
11 STIPULATION, SUPPOSED TO BE A STIPULATION -- OH, I'M
12 SORRY. IT LOOKS AS IF THE DEFENDANT HAS ALREADY SIGNED
13 OFF ON IT.

14 MR. GOMEZ: YES, SIR.

15 THE COURT: THAT SOLVES THAT ONE. WE
16 HAVE ONE WITNESS WE CAN USE.

17 THE DOCUMENT WAS A LITTLE BIT OBTUSE OR I
18 WAS.

19 WE WILL PROCEED WITH OUR TESTIMONY.

20 (LORRIE FAITH CRANOR, PLAINTIFF WITNESS,
21 RETAKES THE STAND.)

22 (OFF THE RECORD DISCUSSION.)

23 THE COURT: MR. LANG IS LEAVING. THE
24 TRIAL WILL NOW DECOMPOSE.

25 YOU MAY PROCEED.

1 MR. FINE: THANK YOU, YOUR HONOR.

2 DIRECT EXAMINATION (CONTINUED)

3 BY MR. FINE:

4 Q. GOOD MORNING, DR. CRANOR.

5 A. GOOD MORNING.

6 THE COURT: GOOD MORNING, DR. CRANOR.

7 THE WITNESS: GOOD MORNING.

8 BY MR. FINE:

9 Q. YESTERDAY WHEN WE BROKE, YOU HAD JUST BEEN
10 DESCRIBING THE MONITORING AND REPORTING FEATURES OF
11 INTERNET FILTERING SOFTWARE. YOU HAD ALSO MENTIONED
12 SOMETHING THAT YOU REFERRED TO AS TIME MANAGEMENT
13 ASPECTS OF THE SOFTWARE. CAN YOU TELL US WHAT YOU MEAN
14 BY TIME MANAGEMENT?

15 A. YES. A LOT OF THE INTERNET FILTERING SOFTWARE
16 INCLUDES FEATURES THAT LETS PARENTS SET UP SPECIFIC
17 AMOUNTS OF TIME OR TIMES OF DAY WHEN THEIR CHILDREN CAN
18 USE THE INTERNET, SO THEY CAN HAVE, YOU KNOW, A TIME
19 BUDGET AND SAY, YOU CAN'T USE THE INTERNET MORE THAN AN
20 HOUR A DAY, OR FIVE HOURS A WEEK, OR WHATEVER NUMBER
21 THEY WANT TO SET UP, OR THEY CAN SET SPECIFIC TIMES WHEN
22 IT IS ALLOWED, LIKE 3 TO 5 PM, OR SOMETHING ALONG THOSE
23 LINES.

24 Q. CAN THEY DETERMINE WHICH DAYS OF THE WEEK?

25 A. YES, YES. SOME OF THE SOFTWARE ALLOWS YOU TO

1 SAY, YOU KNOW 3 TO 5 ON TUESDAYS AND 4 TO 7 ON
2 WEDNESDAYS OR WHATEVER PARTICULAR SCHEDULE SUITS YOUR
3 NEEDS.

4 Q. WHAT IS THE PURPOSE OF THIS FEATURE?

5 A. THIS IS USEFUL FOR LIMITING THE AMOUNT OF TIME
6 CHILDREN SPEND ONLINE, BUT ALSO THE TIME OF DAY FEATURES
7 ARE OFTEN USED BY PARENTS WHO WANT TO MAKE SURE THAT THE
8 CHILDREN ONLY USE THE INTERNET WHEN THEY ARE AT HOME.

9 Q. AND I WANT TO NOW TURN YOUR ATTENTION -- FIRST
10 OF ALL, WE ARE GOING TO SWITCH SUBJECTS NOW. TELL US --
11 JUST BACK UP TO REALLY SQUARE ONE. WHAT IS THE
12 DIFFERENCE BETWEEN THE WORLDWIDE WEB AND THE INTERNET?

13 A. THE WORLDWIDE WEB IS A PART OF THE INTERNET.
14 THE INTERNET IS THE BIGGER THING, AND THE WORLDWIDE WEB
15 IS A COLLECTION OF DOCUMENTS THAT ARE LINKED AND THAT
16 PEOPLE CAN ACCESS USING A PARTICULAR PROTOCOL KNOWN AS
17 THE HTTP PROTOCOL.

18 Q. AND CAN FILTERING PRODUCTS BE USED BY PARENTS TO
19 PREVENT CHILDREN FROM ACCESSING PARTS OF THE INTERNET
20 OTHER THAN THE WORLDWIDE WEB?

21 A. YES, THEY CAN. MOST OF THEM HAVE CAPABILITIES
22 OF FILTERING OTHER THINGS, SUCH AS E-MAIL, OR CHAT, OR
23 INSTANT MESSAGING. SOME OF THEM WILL EVEN ALLOW YOU TO
24 FILTER THINGS LIKE PEER-TO-PEER OR, IN FACT, ANY
25 ARBITRARY APPLICATION THAT RUNS ON THE INTERNET.

1 Q. I'M GOING TO ASK YOU TO EXPLAIN THAT TO US A
2 LITTLE BIT MORE. USE E-MAIL AND I-M AS AN EXAMPLE. HOW
3 DOES A FILTER WORK?

4 THE COURT: LET THE RECORD SHOW I-M
5 MEANS, WHAT, INSTANT MESSAGING?

6 MR. FINE: YES.

7 THE WITNESS: YES. SO PARENTS CAN EITHER
8 ALLOW OR BLOCK IN ITS ENTIRETY. THEY MIGHT SAY THIS
9 CHILD CANNOT USE E-MAIL PERIOD OR CANNOT USE INSTANT
10 MESSAGING OR THEY CAN HAVE A MORE FINE-GRAINED CONTROL,
11 WHERE THEY MIGHT ALLOW A SPECIFIC LIST OF CORRESPONDENTS
12 THAT A CHILD CAN COMMUNICATE WITH, OR THEY MIGHT HAVE A
13 LIST OF PEOPLE THAT THEY CANNOT COMMUNICATE WITH. THEY
14 ALSO -- SOME OF THE FILTERS WILL SCREEN FOR CERTAIN KEY
15 WORDS IN E-MAIL OR NOT ALLOW PICTURES TO COME THROUGH ON
16 THE E-MAIL. SO THERE ARE A NUMBER OF DIFFERENT
17 CONFIGURATIONS THAT ARE AVAILABLE.

18 Q. DO FILTERING PRODUCTS HAVE ANY FEATURES THAT
19 PERMIT PARENTS TO MAKE SURE THAT THEIR CHILDREN DO NOT
20 TRANSMIT PERSONAL INFORMATION?

21 A. YES. SOME OF THE PRODUCTS ALLOW PARENTS TO PUT
22 IN A LIST OF PERSONAL INFORMATION, SUCH AS THE CHILD'S
23 FULL NAME OR THEIR HOME ADDRESS OR HOME PHONE NUMBER,
24 AND THE FILTER WILL CHECK TO SEE IF THE CHILD IS
25 TRANSMITTING ANY OF THAT INFORMATION AND, IF THEY ARE,

1 IT WILL BLOCK IT.

2 Q. AND WHAT IF THE CHILD ADVERTENTLY TRIES TO SEND
3 SOMEONE THEIR HOME ADDRESS, WHAT WILL HAPPEN?

4 A. SO, IF THIS FILTER IS ENGAGED, THEN BASICALLY IT
5 WILL STOP THE TRANSMISSION, DEPENDING ON THE SOFTWARE.
6 IT MAY WARN THE CHILD ABOUT IT OR IT MAY JUST BLOCK THE
7 TRANSMISSION.

8 Q. I WANT TO NOW ASK YOU -- WE HAVE BEEN TALKING
9 ABOUT WHAT FILTERING PRODUCTS ARE AND WHAT THEY DO. HOW
10 DOES A PARENT GO ABOUT OBTAINING A FILTERING PRODUCT?

11 A. THERE ARE A NUMBER OF WAYS OF OBTAINING THE
12 PRODUCT. YOU CAN GO TO YOUR LOCAL SOFTWARE STORE AND
13 BUY A BOX WITH THE PRODUCT IN IT. YOU CAN GO TO THE
14 COMPANY'S WEBSITE AND DOWNLOAD THE PRODUCT, OR SOME OF
15 THEM ARE SUBSCRIPTION BASED. AND SO YOUR INTERNET
16 SERVICE PROVIDER ACTUALLY HAS THE FILTERING CAPABILITY
17 BUILT IN, AND SO USUALLY ALL YOU HAVE TO DO IS EITHER
18 CALL THE ISP OR GO TO A PLACE ON THE WEBSITE WHERE YOU
19 CAN ACTIVATE IT.

20 Q. AND DO MOST ISP'S OFFER FILTERING PRODUCTS TO
21 THEIR CUSTOMERS?

22 A. YES, MOST OF THEM DO.

23 Q. DR. CRANOR, DO YOU HAVE AN OPINION AS TO HOW
24 EASY IT IS FOR PARENTS TO OBTAIN FILTERING PRODUCTS?

25 A. YES.

1 Q. WHAT IS THAT OPINION?

2 A. MY OPINION IS THAT IT'S VERY EASY FOR PARENTS TO
3 OBTAIN FILTERING PRODUCTS.

4 Q. WHY IS THAT?

5 A. THEY ARE VERY READILY AVAILABLE AND BECAUSE MOST
6 OF THE ISP'S OFFER THEM, IT'S REALLY -- IT'S VERY
7 SIMPLE. YOU DON'T EVEN HAVE TO GO BUY A SEPARATE
8 PRODUCT. YOU CAN JUST TURN IT ON USING YOUR WEB BROWSER
9 OR BY CALLING YOUR ISP.

10 Q. HOW MUCH DO FILTERS COST?

11 A. THEY RANGE IN PRICE. THOSE THAT ARE PROVIDED BY
12 ISP'S, MANY OF THEM ARE ACTUALLY FREE, IF YOU SUBSCRIBE
13 TO THE ISP. SOME OF THEM ARE EVEN FREE IF YOU DON'T.
14 SO AOL NOW MAKES THEIRS AVAILABLE TO EVERYBODY FOR FREE.
15 THERE ARE SOME THAT YOU HAVE TO PURCHASE AND THEY HAVE
16 PRICES IN THE 20 TO \$60 RANGE OR SO FOR HOME USERS.
17 SOME OF THEM DO REQUIRE SUBSCRIPTIONS TO BE RENEWED.

18 Q. I JUST WANT TO MAKE SURE I UNDERSTOOD WHAT YOU
19 SAID ABOUT AOL. WHO CAN GET AOL'S FILTERING PRODUCT FOR
20 FREE?

21 A. ANYONE.

22 Q. SO EVEN NONAOL SUBSCRIBERS?

23 A. THAT'S RIGHT. ALL YOU HAVE TO DO IS SIGN UP FOR
24 A FREE AOL ACCOUNT AND YOU CAN GET IT FOR FREE.

25 Q. ARE THERE ANY RESOURCES AVAILABLE FOR PARENTS TO

1 -- LET'S SAY A PARENT WANTS TO FIND A FILTER AND DOES
2 NOT REALLY KNOW MUCH ABOUT FILTERING PRODUCTS. WHAT
3 RESOURCES ARE THERE FOR PARENTS?

4 A. THERE ARE A VARIETY OF RESOURCES. I FOUND THAT
5 MOST OF THE ISP'S HAVE RESOURCES ON THEIR WEBSITES WHICH
6 TELL PARENTS ABOUT FILTERING OPTIONS THAT ARE AVAILABLE.
7 THERE ARE MANY SCHOOLS AND SCHOOL DISTRICTS AND PTA
8 ORGANIZATIONS ARE NOW PROVIDING INFORMATION TO PARENTS
9 IN THEIR COMMUNITY ABOUT FILTERING PRODUCTS, AND THEN
10 THERE ARE ALSO SOME MAJOR WEBSITES THAT HAVE BEEN PUT
11 TOGETHER. SO THERE IS SOMETHING CALLED GETNETWISE WHICH
12 HAS A LOT OF GOOD INFORMATION FOR PARENTS.

13 Q. WHAT IS GETNETWISE?

14 A. IT'S A WEBSITE THAT WAS PUT TOGETHER A NUMBER OF
15 YEARS AGO BY A GROUP OF COMPANIES AND NONPROFITS TO HELP
16 PARENTS LEARN ABOUT HOW TO PROTECT THEIR CHILDREN ON THE
17 INTERNET, SO IT INCLUDES A NUMBER OF SAFETY TIPS AS WELL
18 AS A CATALOG OF FILTERING TOOLS AND RELATED PRODUCTS.

19 Q. I'M GOING TO NOW ASK YOU TO TURN TO WHAT HAS
20 PREVIOUSLY BEEN MARKED AS PLAINTIFFS' EXHIBIT 87.

21 A. OKAY.

22 Q. DO YOU RECOGNIZE THIS?

23 A. YES.

24 Q. WHAT IS IT?

25 A. THIS IS A PAGE FROM THE GETNETWISE WEBSITE.

1 Q. AND IF YOU CAN TURN TO PAGE 4 OF PLAINTIFFS'
2 EXHIBIT 87.

3 A. OKAY.

4 Q. WHAT IS REPRESENTED ON PAGE 4?

5 A. THIS IS THE FRONT PAGE OF THE TOOLS FOR FAMILIES
6 SECTION OF THE GETNETWISE WEBSITE.

7 Q. AND WHAT IS YOUR UNDERSTANDING OF WHAT TOOLS FOR
8 FAMILIES MEANS?

9 A. THIS PAGE DESCRIBES THE VARIOUS FILTERING TOOLS
10 THAT ARE AVAILABLE AND LETS PEOPLE CONDUCT SEARCHES FOR
11 TOOLS THAT MEET THEIR NEEDS.

12 Q. I WANT TO TURN TO THE NEXT PAGE, PAGE 5. WHAT
13 IS GOING ON ON THIS PAGE?

14 A. SO THIS IS THE INTERFACE FOR SEARCHING FOR A
15 TOOL. SO YOU CAN SEE THAT THERE ARE A VARIETY OF
16 DIFFERENT THINGS THAT A PARENT MIGHT BE LOOKING FOR IN A
17 TOOL, SO DIFFERENT TYPES OF CATEGORIES THAT MIGHT BE
18 FILTERED OR WHAT OPERATING SYSTEM THE PARENTS HAVE ON
19 THEIR COMPUTER OR WHETHER THEY WANT JUST WEB OR IF THEY
20 ALSO WANT CHAT AND E-MAIL AND OTHER THINGS. SO A PARENT
21 WOULD GO THROUGH THERE AND CLICK THE BOXES THAT APPLY TO
22 THEM AND THEN CLICK THE FIND MY TOOLS BUTTON.

23 Q. WHAT WOULD HAPPEN WHEN THEY CLICK THE FIND MY
24 TOOLS BUTTON?

25 A. THEN THEY WILL GET A LIST OF TOOLS THAT MEET

1 THAT CRITERIA.

2 MR. FINE: YOUR HONOR, PLAINTIFFS WOULD
3 NOW LIKE TO MOVE PLAINTIFFS' EXHIBIT 87 INTO EVIDENCE.

4 THE COURT: HEARING NO OBJECTION, P 87 IS
5 RECEIVED INTO EVIDENCE.

6 MR. CAMPBELL: NO OBJECTION, YOUR HONOR.

7 THE COURT: IF I DON'T HEAR ONE, I'LL
8 ASSUME THERE ISN'T ANY.

9 (PLAINTIFFS' EXHIBIT 87 RECEIVED INTO
10 EVIDENCE.)

11 BY MR. FINE:

12 Q. DR. CRANOR, I WANT TO ASK YOU -- YOU WERE
13 TALKING ABOUT THE COST OF PRODUCTS. DO SOME COMPANIES
14 OFFER FREE TRIALS FOR THEIR FILTERING PRODUCTS?

15 A. YES, THEY DO. MANY OF THEM DO PROVIDE A FREE
16 TRIAL THAT YOU CAN DOWNLOAD ON THE INTERNET AND USE FOR
17 A PERIOD OF 10 DAYS OR TWO WEEKS OR A MONTH, OR
18 SOMETHING ALONG THOSE LINES, WITHOUT HAVING TO PAY.

19 Q. AND WHAT HAPPENS AT THE END OF THAT TIME PERIOD?

20 A. THEN YOU ARE GIVEN THE OPTION OF PAYING AND
21 CONTINUING TO USE IT OR TYPICALLY IT WILL STOP
22 FUNCTIONING IF YOU DON'T PAY AFTER THAT TIME.

23 Q. YOU MENTIONED THAT AOL PROVIDES FILTERING
24 PRODUCT FOR FREE. DO ANY OTHER COMPANIES PROVIDE
25 FILTERING PRODUCTS FOR FREE?

1 THE COURT: ISP'S?

2 MR. FINE: MORE BROADLY THAN THAT.

3 THE COURT: SORRY.

4 THE WITNESS: YES. THERE ARE OTHER
5 COMPANIES THAT PROVIDE THOSE PRODUCTS. MICROSOFT IN
6 THEIR VISTA OPERATING SYSTEM IS INTRODUCING A FREE
7 FILTERING PRODUCT.

8 BY MR. FINE:

9 Q. AND TELL US, WHAT IS AN OPERATING SYSTEM?

10 A. THE OPERATING SYSTEM IS THE SOFTWARE, THE MAIN
11 SOFTWARE THAT RUNS ON THE COMPUTER. BEFORE YOU CAN
12 INSTALL ANY PROGRAMS YOU HAVE TO HAVE AN OPERATING
13 SYSTEM ON THE COMPUTER. SO MOST COMPUTERS THAT PEOPLE
14 ARE USING TODAY HAVE WINDOWS XP. SOME OF THEM HAVE THE
15 MACINTOSH OPERATING SYSTEM, OR LINUX. SO VISTA WILL BE
16 MICROSOFT'S NEXT VERSION OF THEIR OPERATING SYSTEM.

17 Q. IT WILL REPLACE WINDOWS?

18 A. IT WILL REPLACE WINDOWS XP.

19 Q. DO YOU KNOW APPROXIMATELY WHAT PERCENT OF
20 PERSONAL COMPUTERS TODAY OPERATE WITH MICROSOFT
21 OPERATING SYSTEM?

22 A. I BELIEVE IT'S MORE THAN 90 PERCENT.

23 THE COURT: ARE YOU TALKING ABOUT THE
24 RESIDENTIAL USE, OR WHAT ARE YOU TALKING ABOUT? I DON'T
25 KNOW.

1 BY MR. FINE:

2 Q. LET ME ASK YOU. WHY DON'T YOU GO AHEAD AND
3 ANSWER.

4 A. SO IF YOU LOOK AT HOME COMPUTER USERS, IT IS
5 OVER 90 PERCENT ARE USING WINDOWS PLATFORMS.

6 Q. WHEN IS THE VISTA OPERATING SYSTEM EXPECTED TO
7 BE AVAILABLE TO CONSUMERS?

8 A. I'M NOT SURE ON THE DATE. I BELIEVE IT'S
9 SOMETIME NEXT YEAR.

10 Q. AND YOU MENTIONED THAT VISTA IS GOING TO HAVE A
11 FILTERING FEATURE IN IT. CAN YOU TELL US A LITTLE BIT
12 ABOUT THAT FILTERING PRODUCT?

13 MR. CAMPBELL: OBJECTION, LACK OF
14 FOUNDATION.

15 THE COURT: SUSTAINED. LAY A FOUNDATION.

16 BY MR. FINE:

17 Q. DO YOU KNOW ANYTHING ABOUT VISTA'S FILTERING
18 FEATURES?

19 A. I DO KNOW A LITTLE BIT ABOUT IT.

20 Q. HOW DO YOU KNOW THAT? HOW DO YOU KNOW?

21 A. I KNOW SOME FROM WHAT HAS BEEN POPULARLY
22 REPORTED. I ALSO WANTED TO LEARN MORE ABOUT THEM AND SO
23 I HAD A DISCUSSION WITH A MICROSOFT ENGINEER ABOUT THE
24 FEATURES.

25 Q. AND TELL US A LITTLE BIT ABOUT THAT DISCUSSION.

1 A. SO I WANTED TO FIND OUT WHAT KINDS OF
2 CAPABILITIES --

3 MR. CAMPBELL: OBJECTION. HEARSAY.

4 THE COURT: THE QUESTION IS A LITTLE
5 VAGUE, BUT THE WITNESS IS CLEARLY REPEATING THINGS THAT
6 SHE LEARNED ON THE TELEPHONE CALL WITH A MICROSOFT
7 REPRESENTATIVE. THAT IS HEARSAY, SUSTAINED.

8 THE QUESTION IS, TELL ME A LITTLE BIT
9 ABOUT THAT. SHE MIGHT TELL YOU THE PHONE CALL WAS 3 IN
10 THE AFTERNOON ON FEBRUARY 2ND, BUT SHE CHOSE TO TELL YOU
11 WHAT THE CONVERSATION WAS.

12 BY MR. FINE:

13 Q. WHAT QUESTIONS DID YOU ASK?

14 A. I ASKED WHAT TYPES OF FEATURES AND CAPABILITIES
15 THE SOFTWARE WOULD HAVE AND SOME QUESTIONS ABOUT HOW IT
16 WOULD WORK.

17 Q. AND WHAT DID YOU LEARN?

18 A. SO I LEARNED --

19 MR. CAMPBELL: OBJECTION. HEARSAY.

20 MR. FINE: YOUR HONOR, THIS IS NOT BEING
21 OFFERED FOR THE TRUTH OF THE MATTER. IT'S SIMPLY BEING
22 OFFERED TO FIND OUT WHAT SHE WAS TOLD.

23 THE COURT: I FIND THAT REASON TO BE
24 CAPTIOUS. I DON'T KNOW WHETHER IT CAN BE ANYTHING ELSE
25 BUT THE TRUTH OF IT. YOU ARE GOING TO ASK IF SHE RELIED

1 ON IT AND REACHED HER CONCLUSIONS, I ASSUME.

2 MR. FINE: YES.

3 THE COURT: THE OBJECTION IS SUSTAINED.

4 BY MR. FINE:

5 Q. DR. CRANOR, I WILL TRY TO GO ABOUT IT THIS WAY.

6 DID YOU RELY ON THE INFORMATION THAT YOU LEARNED FROM

7 THE MICROSOFT ENGINEER IN PREPARING YOUR EXPERT REPORT

8 IN THIS CASE?

9 A. YES.

10 Q. AND IS SPEAKING TO AN ENGINEER OF A SOFTWARE

11 PRODUCT SOMETHING THAT OTHER EXPERTS IN YOUR FIELD WOULD

12 DO IN TRYING TO OBTAIN INFORMATION ABOUT A PRODUCT?

13 A. YES.

14 Q. WHAT DID YOU LEARN FROM THE MICROSOFT ENGINEER?

15 A. I LEARNED THAT THE VISTA PRODUCT WILL HAVE

16 FILTERING FEATURES THAT ARE SIMILAR TO WHAT YOU FIND IN

17 MOST FILTERING PRODUCTS, THAT THEY ARE GOING TO BE

18 FEATURES THAT LET PARENTS SELECT CATEGORIES TO FILTER.

19 THERE ARE GOING TO BE TIME-LIMITING FEATURES. THERE

20 WILL BE FEATURES THAT LET YOU FILTER THINGS BESIDES THE

21 WEB, THAT YOU WILL BE ABLE TO FILTER E-MAIL. THERE'S

22 EVEN A GAME FILTERING FEATURE. I ALSO LEARNED THAT

23 THERE IS A FEATURE THAT ALLOWS YOU TO USE THE MICROSOFT

24 PRODUCT IN CONJUNCTION WITH A THIRD-PARTY SOFTWARE

25 PRODUCT. SO IF YOU ARE NOT HAPPY WITH THE WAY MICROSOFT

1 HAS CATEGORIZED WEBSITES, YOU COULD USE SOME OTHER
2 PRODUCT ALONG WITH IT AND BE ABLE TO USE THE STANDARD
3 INTERFACE WHICH COMES WITH VISTA, BUT USE THE RATINGS
4 PROVIDED BY A THIRD-PARTY PROVIDER.

5 Q. WHO WILL HAVE ACCESS TO THE FILTERING FEATURES
6 OF VISTA?

7 A. ANYBODY WHO HAS VISTA INSTALLED ON THEIR
8 COMPUTER.

9 Q. AND WHAT WILL BE THE IMPACT OF THE LAUNCH OF
10 VISTA FOR PARENTS WHO WANT TO USE FILTERS?

11 A. IT SHOULD MAKE IT EVEN --

12 MR. CAMPBELL: OBJECTION. VAGUE,
13 AMBIGUOUS.

14 THE COURT: I'M SORRY. I DON'T
15 UNDERSTAND.

16 MR. CAMPBELL: THE QUESTION IS VAGUE AND
17 AMBIGUOUS, YOUR HONOR.

18 THE COURT: WHAT WOULD BE THE EFFECT.
19 COULD BE. SUSTAINED. ASK A MORE SPECIFIC QUESTION.

20 MR. FINE: SURE.

21 BY MR. FINE:

22 Q. HOW WILL THE FACT THAT VISTA CONTAINS A BUILT-IN
23 FILTERING FEATURE MAKE A DIFFERENCE TO PARENTS WHO WANT
24 TO USE FILTERS?

25 A. IT WILL MEAN THAT THEY DON'T ACTUALLY HAVE TO GO

1 AND INSTALL ANY ADDITIONAL SOFTWARE. IT WILL BE RIGHT
2 THERE IN THEIR COMPUTER WHEN THEY BUY IT AND TURN IT ON.

3 Q. WHAT IF YOU DON'T HAVE THE NEWEST OPERATING
4 SYSTEM? IS THERE ANY OTHER WAY TO ACCESS MICROSOFT'S
5 FILTERING FEATURE?

6 A. MICROSOFT IS MAKING A SIMILAR FEATURE AVAILABLE
7 FOR THEIR WINDOWS XP USERS VIA THEIR ONLINE SERVICES.

8 Q. AND WHEN YOU SAY VIA THEIR ONLINE SERVICES, HOW
9 DOES ONE GET THOSE FEATURES?

10 A. THEY HAVE A WEBSITE ON WINDOWS LIVE WHERE YOU
11 CAN GO AND REGISTER FOR FREE AND TAKE ADVANTAGE OF A
12 WHOLE BUNCH OF DIFFERENT SERVICES THAT THEY OFFER.

13 Q. IN CONNECTION WITH THE RESEARCH THAT YOU WERE
14 DISCUSSING YESTERDAY AFTERNOON FOR THE INTERNET ONLINE
15 SUMMIT, DID YOU EVER ATTEMPT TO INSTALL AND CONFIGURE A
16 FILTERING PRODUCT?

17 A. YES.

18 Q. AND IN CONNECTION WITH YOUR TESTIMONY BEFORE THE
19 COPA COMMISSION AND YOUR TESTIMONY BEFORE -- IN
20 CONNECTION WITH THE FIVE OTHER LAWSUITS THAT YOU WERE
21 TALKING ABOUT YESTERDAY, DID YOU EVER ATTEMPT TO INSTALL
22 AND CONFIGURE A FILTERING PRODUCT?

23 A. YES.

24 Q. WHAT WERE YOUR CONCLUSIONS?

25 A. I FOUND, FOR THE MOST PART, THAT THEY WERE

1 FAIRLY EASY TO INSTALL AND USE.

2 Q. DID YOU ATTEMPT TO INSTALL AND CONFIGURE A
3 FILTERING PRODUCT IN CONNECTION WITH THIS CASE?

4 A. YES.

5 Q. DO YOU HAVE AN OPINION AS TO HOW EASY IT IS FOR
6 PARENTS TO INSTALL AND USE INTERNET FILTERS?

7 A. YES.

8 Q. WHAT'S YOUR OPINION?

9 A. I FOUND THEM TO BE OVERALL FAIRLY EASY TO
10 INSTALL AND USE, AND I FOUND THAT THE ONES THAT I TESTED
11 MOST RECENTLY WERE EVEN EASIER TO USE THAN THOSE THAT I
12 TESTED OVER THE PAST SEVERAL YEARS, THAT THEY SEEMED TO
13 BE IMPROVING OVER TIME.

14 Q. WHEN YOU SAY THAT THEY WERE EASY TO USE, ARE YOU
15 SPEAKING EASY FOR YOU TO USE, EASY FOR ANYONE TO USE?

16 A. I TRY TO PUT MYSELF IN THE SHOES OF A TYPICAL
17 PARENT AND LOOKING AT HOW EASY I THINK IT WOULD BE FOR
18 -- FOR AN AVERAGE COMPUTER USER TO USE THEM.

19 Q. WHAT IS YOUR OPINION ABOUT HOW EASY IT IS FOR AN
20 AVERAGE COMPUTER USER TO USE FILTERING SOFTWARE?

21 A. I THINK THEY ARE ALL FAIRLY EASY TO USE. THE
22 ACTUAL INSTALLING OF THEM IS VERY STRAIGHTFORWARD, AND
23 REALLY THE MOST COMPLICATED PART I FOUND WAS IN DECIDING
24 WHAT TYPES OF FILTERS I WANT TO PUT IN THERE. SO, YOU
25 KNOW, SOME OF THE SOFTWARE OFFERS PARENTS MANY CHOICES,

1 SO THEY MAY LOOK AT 35 DIFFERENT CATEGORIES OF CONTENT.
2 THEY HAVE TO MAKE A DECISION, DO I WANT THIS FILTERED,
3 DO I NOT WANT THIS FILTERED? AND SO THAT HAS NOTHING TO
4 DO WITH COMPUTER SKILLS, THAT IS JUST A PARENT HAS TO
5 DECIDE WHAT THEY WANT. SOME OF THE PRODUCTS MAKE IT A
6 LOT EASIER, THEY HAVE FEWER CHOICES. THEY JUST ASK YOU
7 FOR THE AGE RANGE OF THE CHILD AND THEY SET IT UP.

8 Q. FOCUSING ON THE PRODUCTS THAT GIVE YOU LOTS OF
9 OPTIONS, WHAT IF ALL YOU ARE CONCERNED WAS BLOCKING
10 PORNOGRAPHY?

11 A. THEN ALL --

12 THE COURT: EXCUSE ME FOR INTERRUPTING.
13 I HATE TO INTERRUPT YOUR QUESTIONING BUT WHAT IF
14 SOMETHING -- I DON'T UNDERSTAND THE QUESTION. IF YOU
15 ARE TRYING TO TEACH ME SOMETHING, WHAT IF QUESTIONS DO
16 NOT HELP.

17 MR. FINE: I UNDERSTAND.

18 BY MR. FINE:

19 Q. IF A PARENT IS SOLELY CONCERNED WITH BLOCKING
20 PORNOGRAPHY, HOW MANY CHOICES ARE THERE ON THE PRODUCTS
21 THAT OFFER MULTIPLE CATEGORIES FOR PARENTS TO CHOOSE?

22 A. IT DEPENDS ON THE PRODUCT, BUT TYPICALLY THERE
23 WILL BE ONE CATEGORY THAT IS LABELLED PORNOGRAPHY, OR
24 NUDDITY, OR SEXUAL CONTENT, OR SOMETHING ALONG THOSE
25 LINES, SO THEY CAN IGNORE ALL THE CATEGORIES HAVING TO

1 DO WITH ALCOHOL AND TOBACCO AND VIOLENCE AND THINGS
2 WHICH THEY ARE NOT CONCERNED ABOUT.

3 Q. HOW LONG DOES IT TAKE TO INSTALL AND SET UP A
4 FILTER?

5 A. IT DEPENDS ON THE PRODUCT AND HOW DETAILED YOU
6 WANT TO GO THROUGH IT. BUT IT CAN BE 5 MINUTES, 10
7 MINUTES. USUALLY IT SHOULD NOT BE MORE THAN 10 OR 15
8 MINUTES.

9 Q. HOW TECHNICALLY COMPLEX ARE THESE 5 OR 10
10 MINUTES THAT YOU WERE JUST DISCUSSING?

11 A. THERE IS VERY LITTLE TECHNICALLY COMPLEX ABOUT
12 THEM. YOU PUT IT IN, YOU CLICK INSTALL, THERE IS SOME
13 WAITING WHILE THE INSTALLATION IS GOING ON.

14 THE COURT: WHEN YOU SAY PUT IT IN, PUT A
15 DISK IN?

16 THE WITNESS: YOU CAN PUT A CD IN OR --

17 THE COURT: WHATEVER COMES WITH THE
18 SOFTWARE PACKAGE.

19 THE WITNESS: A CD WOULD COME WITH THE
20 SOFTWARE PACKAGE. OR IF YOU DOWNLOAD IT, THEN YOU WILL
21 DOWNLOAD IT. IT WILL BE IN YOUR DOWNLOAD FOLDER ON YOUR
22 COMPUTER AND YOU HAVE TO CLICK ON IT AND SAY YES, I WANT
23 TO INSTALL THIS.

24 BY MR. FINE:

25 Q. WHAT TRAINING OR BACKGROUND DO YOU NEED TO BE

1 ABLE TO INSTALL AND CONFIGURE A FILTERING PRODUCT?

2 A. BASICALLY, IF YOU KNOW HOW TO INSTALL ANY
3 SOFTWARE ON THE COMPUTER, THEN YOU SHOULD BE ABLE TO
4 INSTALL A FILTERING PRODUCT. SO IF A PARENT HAS
5 INSTALLED MICROSOFT WORD ON THEIR COMPUTER, OR GAME
6 SOFTWARE, OR ANY OTHER SOFTWARE ON THEIR COMPUTER, THEN
7 THEY SHOULD BE ABLE TO HANDLE INSTALLING A FILTERING
8 PRODUCT.

9 Q. DOES FILTERING SOFTWARE POSE ANY SPECIAL
10 INSTALLATION OR CONFIGURATION PROBLEMS THAT OTHER
11 SOFTWARE DOES NOT POSE?

12 A. FOR THE MOST PART, NO. THERE HAVE BEEN REPORTS
13 THAT SOME FILTERING SOFTWARE CAN OCCASIONALLY INTERACT
14 BADLY WITH SOME OTHER SOFTWARE ON THE COMPUTER, BUT THIS
15 IS ACTUALLY TRUE OF MANY TYPES OF SOFTWARE. THAT
16 SOMETIMES HAPPENS WITH ANTIVIRUS SOFTWARE ALSO, FOR
17 EXAMPLE. BUT FOR THE MOST PART, IT'S PRETTY MUCH LIKE
18 INSTALLING ANY OTHER TYPE OF SOFTWARE.

19 Q. YOU HAVE JUST BEEN DESCRIBING HOW EASY IT IS TO
20 INSTALL FILTERING SOFTWARE. I WANT TO NOW SHOW YOU WHAT
21 HAS BEEN PREVIOUSLY MARKED AS PLAINTIFFS' EXHIBIT 86 AND
22 ASK YOU TO TURN TO THAT DOCUMENT.

23 A. OKAY.

24 Q. DO YOU RECOGNIZE THIS DOCUMENT, PLAINTIFFS'
25 EXHIBIT 86?

1 A. YES, I DO.

2 Q. WHAT IS IT?

3 A. THIS IS A POWERPOINT PRESENTATION THAT I PUT
4 TOGETHER THAT ILLUSTRATES HOW YOU SET UP AND CONFIGURE
5 AOL PARENTAL CONTROLS.

6 Q. AND WHEN DID YOU CREATE THIS?

7 A. A FEW WEEKS AGO.

8 Q. I WANT TO NOW TURN YOUR ATTENTION TO PAGE 2,
9 WHICH I BELIEVE IS APPEARING ON THE MONITOR OF
10 PLAINTIFFS' EXHIBIT 86, AND I'M GOING TO ASK YOU WHAT
11 DOES THIS PAGE REPRESENT?

12 A. THIS IS A SCREEN CAPTURE OF WHAT YOU WOULD SEE
13 IF YOU WERE LOGGED INTO AOL ON A WINDOWS COMPUTER. AND
14 AOL USES A CONCEPT CALLED A KEYWORD, THAT IF YOU WANT TO
15 GO AND FIND SOMETHING ON AOL YOU TYPE IN THE KEYWORD AND
16 THAT BRINGS YOU TO THAT PARTICULAR CONTENT. AND SO IN
17 AOL THEY HAVE A KEYWORD, PARENTAL CONTROLS, AND SO I
18 TYPED THAT INTO THE BOX AT THE TOP AND I CLICKED GO.

19 Q. AND WE ARE GOING TO BE WALKING THROUGH THIS
20 POWERPOINT PRESENTATION. THERE IS A RED ARROW ON THIS
21 SCREEN SHOT NEXT TO THE WORD PARENTAL CONTROLS. WHAT
22 DOES THAT REPRESENT?

23 A. YES. I PUT THE RED ARROWS IN TO SHOW YOU WHERE
24 I WAS TYPING OR DOING SOMETHING ON THE SCREEN.

25 Q. AND WHAT HAPPENS IF YOU CLICK WHERE THE RED

1 ARROW IS?

2 A. IN THIS CASE, IT SHOWS THAT I WAS TYPING THERE.
3 I THEN HAD TO MOVE MY MOUSE TO THE GO BUTTON TO THE
4 RIGHT OF THAT AND I CLICKED GO. THAT BRINGS YOU TO WHAT
5 YOU SEE ON THE NEXT PAGE.

6 Q. TURNING TO PAGE 3. TELL US WHAT YOU SEE ON PAGE
7 3.

8 A. SO HERE WE SEE THE FRONT PAGE OF THE AOL
9 PARENTAL CONTROLS SERVICE. AND SO YOU CAN SEE ALL OF
10 THE OPTIONS THAT ARE AVAILABLE. AND WHAT YOU SEE BY THE
11 ARROW IS A LIST OF SCREEN NAMES. AND THE WAY AOL WORKS,
12 YOU HAVE YOUR MAIN SCREEN NAME, WHICH IS THE NAME ON
13 YOUR ACCOUNT, BUT YOU CAN HAVE UP TO SIX ADDITIONAL
14 SCREEN NAMES. AND SO IN MANY FAMILIES, EACH MEMBER OF
15 THE FAMILY HAS THEIR OWN SCREEN NAME THAT ALLOWS THEM TO
16 GET THEIR OWN E-MAIL AND THEIR OWN MAILBOX WITHOUT
17 HAVING TO PAY FOR SEVEN AOL MEMBERSHIPS. IN THIS CASE,
18 I'M IMAGINING THAT WE HAVE A PARENT, LORRACKS, AND THE
19 PARENT HAS A 14-YEAR OLD CHILD, LORRACKS14, WHO ALREADY
20 HAS THEIR OWN SCREEN NAME.

21 Q. JUST SO WE ARE CLEAR, WHICH ENTRY UNDER THE
22 SCREEN NAMES IS THE PARENT?

23 A. THE FIRST ENTRY, WHICH YOU WILL SEE UNDER THE
24 RIGHT COLUMN, IT SAYS MASTER. IT SAYS YES THERE,
25 INDICATING THAT THIS IS THE MASTER ACCOUNT THAT CAN

1 CONTROL THE OTHER SCREEN NAMES.

2 Q. AND WHAT HAPPENS WHEN YOU CLICK WHERE THE RED
3 ARROW IS?

4 A. SO THIS IS CLICKING ON THE CHILD'S SCREEN NAME.
5 AND THEN, IF WE TURN TO PAGE 4 OF THE EXHIBIT, WE WILL
6 SEE THE WAY THE CHILD'S SCREEN NAME IS CURRENTLY
7 CONFIGURED, WHICH IS TO HAVE NO RESTRICTIONS, THE
8 GENERAL AGE CATEGORY.

9 Q. WHAT IF THE PARENT WANTS TO IMPOSE SOME
10 RESTRICTIONS?

11 A. SO THEN WE CLICK ON THE EDIT AGE CATEGORY BUTTON
12 WHERE YOU SEE THE ARROW.

13 Q. AND THAT TAKES US TO PAGE 5?

14 A. YES. AND HERE WE SEE THAT THERE ARE FOUR
15 DIFFERENT CATEGORIES. BESIDES THE GENERAL THERE IS A
16 KIDS ONLY CATEGORY, YOUNG TEEN, AND A MATURE TEEN. AND
17 SO HERE, I HAVE SELECTED YOUNG TEEN, BECAUSE AOL
18 DESCRIBES THIS AS FOR CHILDREN BETWEEN THE AGES OF 13
19 AND 15. SO I CAN GO AHEAD AND CLICK THAT AND THEN MOVE
20 MY MOUSE TO THE SAVE BUTTON AND CLICK THE SAVE BUTTON.

21 Q. WHAT HAPPENS AFTER YOU CLICK THE SAVE BUTTON?

22 A. THEN THE SCREEN POPS UP WHICH GIVES ME MORE
23 DETAILED INFORMATION ABOUT WHAT IS COVERED IN THE YOUNG
24 TEEN CATEGORY SO I CAN MAKE SURE THAT THAT IS REALLY
25 WHAT I WANTED. AND THEN IF IT IS, I CLICK THE YES

1 BUTTON.

2 Q. AND SO ON PAGE 6, IF YOU CAN JUST -- THERE ARE
3 SEVERAL DIFFERENT DESCRIPTIONS HERE. CAN YOU READ FOR
4 US WHAT IT SAYS NEXT TO THE WORDS, E-MAIL?

5 A. IT SAYS: MAY EXCHANGE E-MAIL WITH ANYONE ON AOL
6 OR THE INTERNET. FILE ATTACHMENTS AND EMBEDDED PICTURES
7 CANNOT BE SENT OR RECEIVED.

8 Q. IS THIS WHAT YOU WERE DESCRIBING A FEW MINUTES
9 AGO ABOUT HOW THE FILTERING PRODUCTS BLOCK E-MAIL?

10 A. RIGHT. RIGHT. HERE INSTEAD OF BLOCKING IT
11 ALTOGETHER, WE JUST HAVE SOME RESTRICTIONS ON HOW THE
12 E-MAIL CAN BE USED.

13 Q. WHAT'S THE NEXT STEP?

14 Q. SO IF I DECIDE THIS IS WHAT I WANT, I CLICK THE
15 YES BUTTON. AND THEN WE SEE ON PAGE 7, THAT WE GET A
16 CONFIRMATION SCREEN AND WE CLICK OKAY. AND THEN ON PAGE
17 8 WE NOW SEE HOW THE LORRACKS14 SCREEN NAME IS SET UP
18 WITH THE YOUNG TEEN SETTINGS. YOU CAN SEE THAT THE BLUE
19 BARS SHOW YOU VISUALLY THE KINDS OF RESTRICTIONS THERE
20 ARE FOR WEB BROWSING, INSTANT MESSAGING, E-MAIL AND
21 CHAT. SO THERE ARE DIFFERENT LEVELS OF RESTRICTIONS.
22 THIS IS WHAT IS RECOMMENDED BY AOL FOR THE YOUNG TEEN
23 SETTING. IF WE WANTED TO, WE COULD CHANGE THOSE. AND
24 YOU CAN SEE THE ARROW IS BY THE EDIT WEB CONTROL BUTTON,
25 WHICH WILL LET US DRILL DOWN ON THE WEB CONTROLS?

1 Q. BEFORE WE DO THAT, CAN YOU JUST EXPLAIN --
2 FOCUSING ON THE WEB BROWSING BAR, THE BLUE LINE APPEARS
3 TO GO BASICALLY RIGHT ABOUT HALFWAY ACROSS?

4 A. RIGHT.

5 Q. WHAT DOES THAT MEAN?

6 A. SO THERE IS A RANGE OF RESTRICTIONS THAT AOL
7 ALLOWS ON WEB BROWSING. THIS IS KIND OF THEIR MIDDLE
8 RESTRICTION. AND THERE IS A DESCRIPTION OF IT. AT THE
9 TOP, IT SAYS IT PROVIDES ACCESS TO MOST CONTENT ON AOL,
10 BUT LIMITS ACCESS TO WEBSITES KNOWN TO CONTAIN VIOLENT
11 MATERIAL OR ADULT CONTENT.

12 Q. AND WHAT IF A PARENT WANTS TO MAKE THE FILTER
13 EVEN MORE RESTRICTIVE THAN THAT? WHAT CAN A PARENT DO?

14 A. SO THEN WE CAN CLICK ON THAT EDIT WEB CONTROL
15 BUTTON. AND IF WE GO TO PAGE 9, WE WILL SEE THAT WE CAN
16 ADJUST THE SETTINGS FOR THE WEB CONTROL. AND SO IF WE
17 WANT TO BE MORE RESTRICTIVE, WE CAN SWITCH TO KIDS ONLY,
18 WHICH SAYS: MAY VISIT ALL WEBSITES EXCEPT THOSE KNOWN
19 TO CONTAIN INAPPROPRIATE CONTENT.

20 Q. WHAT IF YOU WANT TO MAKE THE FILTER LESS
21 RESTRICTIVE?

22 A. THEN WE WOULD SWITCH EITHER TO THE MATURE TEEN
23 OR TO NO FILTERING OF THE WEB. AND ALL WE HAVE TO DO IS
24 CLICK ON A DIFFERENT BUTTON THERE.

25 Q. OKAY. LET'S SAY YOU WANT TO KEEP THE YOUNG

1 TEEN'S SETTING?

2 A. OKAY. THEN WE JUST CLICK ON THE SAVE BUTTON TO
3 SAVE THAT SETTING, AND THAT WILL BRING US -- WE GO BACK
4 TO PAGE 10. WE CAN SEE WHAT OUR SETTINGS ARE.

5 Q. OKAY. NOW, I SEE ON PAGE 10 THE RED ARROW IS IN
6 THE BOTTOM RIGHT-HAND CORNER. WHAT ARE YOU DOING THERE?

7 A. SO HERE I'M GOING TO SET UP THE AOL GUARDIAN.
8 AND THIS IS AOL'S FEATURE THAT ALLOWS PARENTS TO MONITOR
9 THEIR CHILD'S ONLINE ACCESS.

10 Q. AND RIGHT ABOVE AOL GUARDIAN, WHAT DOES IT SAY?

11 A. IT SAYS: EDIT TIME ONLINE. THAT IS THE FEATURE
12 THAT LETS PARENTS RESTRICT WHAT TIME OF DAY OR HOW MUCH
13 TIME THEIR KIDS SPEND ONLINE.

14 Q. LET'S SAY YOU CLICK ON EDIT AOL GUARDIAN, WHAT
15 HAPPENS NEXT?

16 A. IF WE GO TO PAGE 11, WE SEE WE GET A PAGE WHICH
17 DESCRIBES THE AOL GUARDIAN SERVICE. AND THERE ARE
18 BUTTONS FOR SETTING IT UP. SO I CLICK THE CHECK BOX
19 THAT SAYS TURN ON GUARDIAN REPORTING. I CAN SELECT
20 WHICH CHILD. IF I HAD MORE THAN ONE CHILD, I WOULD HAVE
21 MULTIPLE CHILDREN THERE TO CHOOSE FROM. THEN I CAN ALSO
22 CHOOSE HOW OFTEN I WANT TO HAVE REPORTS E-MAILED TO ME
23 ABOUT THE CHILD'S ONLINE ACTIVITY. SO HERE I SELECTED
24 DAILY.

25 Q. AND WHAT HAPPENS WHEN YOU SELECT DAILY AND TURN

1 ON THE GUARDIAN REPORTING?

2 A. SO ON PAGE 12, YOU SEE THAT WE GET A
3 CONFIRMATION SCREEN TO TELL US THAT WE HAVE MADE THIS
4 CHANGE. AND THEN ON PAGE 13, IT TAKES US TO THE AOL
5 GUARDIAN REPORT. AND SINCE WE HAVE JUST TURNED IT ON,
6 THE CHILD HAS NOT ACTUALLY GONE TO ANY WEBSITES SINCE WE
7 TURNED IT ON. BUT YOU CAN SEE FROM THE OUTLINE HERE
8 THAT WE WOULD HAVE THE OPPORTUNITY TO LOOK AT WHICH
9 WEBSITES THE CHILD IS VISITING, WHERE THEY ARE HAVING
10 CONTENT BLOCKED, AND WE CAN ALSO LOOK AT HOW MUCH E-MAIL
11 THEY ARE SENDING AND RECEIVING IN THEIR INSTANT
12 MESSAGING. IF WE SCROLL DOWN ON THE PAGE, WE WOULD ALSO
13 FIND OUT ABOUT THEIR CHAT ROOM ACTIVITY AS WELL.

14 Q. OKAY.

15 SO WHAT DID YOU DO NEXT IN YOUR
16 PRESENTATION?

17 A. OKAY. SO I CLOSED THIS SCREEN AND GO BACK TO
18 THE MAIN SCREEN. AND SO AT THIS POINT, WE HAVE THE
19 PARENTAL CONTROLS SET UP. AND IT WOULD WORK JUST FINE
20 IF I WAS ACCESSING AOL THROUGH A DIAL-UP CONNECTION, BUT
21 IF I WAS USING A BROAD BAND CONNECTION, FOR EXAMPLE,
22 THROUGH MY CABLE SERVICE PROVIDER, AND THEN I WAS ALSO
23 USING AOL ON TOP OF THAT, THEN I WOULD NEED TO ALSO
24 DOWNLOAD THE INTERNET ACCESS CONTROLS.

25 Q. CAN YOU JUST -- I'M SORRY. TO INTERRUPT YOU.

1 CAN YOU JUST BRIEFLY TELL US, WHAT IS THE DIFFERENCE
2 BETWEEN DIAL-UP AND BROAD BAND?

3 A. WELL, THE BIG DIFFERENCE IS THE BROAD BAND GOES
4 A LOT FASTER. BUT THIS DEPENDS HOW YOU ARE CONNECTING
5 TO THE INTERNET. SO IF YOU ARE DIALING UP THROUGH THE
6 AOL SERVICE, THEN BASICALLY EVERYTHING YOU DO IS GOING
7 THROUGH THE AOL SERVICE. AND IF YOU ARE USING, SAY,
8 YOUR CABLE COMPANY TO CONNECT TO THE INTERNET, THEN ONLY
9 YOUR TRAFFIC WHEN YOU HAVE THE AOL SOFTWARE OPEN IS
10 GOING TO GO THROUGH THE AOL SERVICE, AND THE REST OF IT
11 IS GOING TO GO THROUGH YOUR CABLE COMPANY. SO THE AOL
12 FILTER WILL ONLY WORK WHEN YOU ARE ACTUALLY GOING
13 THROUGH THE AOL SERVICE. SO IF A CHILD WANTED TO AVOID
14 THE FILTERING, THEY COULD SIMPLY NOT START UP AOL WHEN
15 THEY WENT ON THE INTERNET. THEY COULD JUST USE A
16 REGULAR WEB BROWSER WITHOUT TURNING AOL ON. AND SO WE
17 NEED EXTRA SOFTWARE WHICH IS GOING TO FORCE ALL OF THE
18 TRAFFIC TO GO THROUGH THE FILTER EVEN WHEN THE CHILD HAS
19 NOT CHOSEN TO TURN AOL ON.

20 Q. I WAS GOING TO ASK YOU, IF A PARENT DOES NOT
21 WANT THEIR CHILD TO BE ABLE TO GO OUTSIDE THE AOL
22 SERVICE, WHAT CAN A PARENT DO WITH THIS PRODUCT?

23 A. THIS INTERNET ACCESS CONTROL IS WHAT WILL ALLOW
24 THAT.

25 Q. SO WHAT HAPPENS WHEN YOU CLICK ON THE BUTTON ON

1 THE HOME PAGE THAT SAYS INTERNET ACCESS CONTROLS?

2 A. OKAY. SO THIS WILL BRING US TO THE INTERNET
3 ACCESS CONTROL SCREEN ON PAGE 15.

4 Q. I'M SORRY TO INTERRUPT AGAIN. TELL US, UP TO
5 THIS POINT, WHEN YOU DID THIS LIVE, HOW LONG DID THIS
6 PROCESS TAKE?

7 A. OH, ABOUT FIVE MINUTES.

8 Q. I'M SORRY. IF YOU CAN CONTINUE.

9 A. SO WE CAN SEE THAT THE INTERNET ACCESS CONTROLS
10 ARE TURNED OFF AT THIS TIME. AND THEN WE SCROLL DOWN TO
11 THE BOTTOM OF THAT SCREEN ON PAGE 16, WE CAN SEE THERE
12 IS A DESCRIPTION OF THE INTERNET ACCESS CONTROLS AND A
13 DOWNLOAD BUTTON SO THAT WE CAN DOWNLOAD THAT SOFTWARE.
14 THE PREVIOUS PARENTAL CONTROL SOFTWARE WE DID NOT
15 ACTUALLY HAVE TO DOWNLOAD ANYTHING BECAUSE IT WAS BUILT
16 INTO THE AOL SERVICE. THIS PART DOES REQUIRE A
17 DOWNLOAD. AND SO WE JUST PRESSED THAT GREEN BUTTON TO
18 BEGIN THE DOWNLOAD.

19 Q. WHAT HAPPENS AFTER YOU PRESS THE GREEN BUTTON?

20 A. THEN WE SEE ON PAGE 17 THAT OUR COMPUTER IS
21 GOING TO PROMPT US TO ASK WHETHER WE WANT TO SAVE OR RUN
22 THIS FILE. IT'S A SECURITY WARNING. SO WE CLICK THE
23 RUN BUTTON AND THEN WE WILL GET A SECOND SECURITY PROMPT
24 ON PAGE 18. ONCE AGAIN WE CLICK THE RUN BUTTON. AND
25 NOW ON PAGE 19 YOU CAN SEE THAT THE DOWNLOAD HAS BEGUN.

1 AND YOU CAN SEE THE GREEN BAR GETS BIGGER AS YOU
2 DOWNLOAD. I THINK ON MY COMPUTER IT TOOK LESS THAN A
3 MINUTE TO ACTUALLY DOWNLOAD THE PROGRAM. ONCE THAT
4 FINISHES ON PAGE 20, YOU WILL SEE THAT IT AUTOMATICALLY
5 STARTS INSTALLING ITSELF. I DID NOT HAVE TO DO
6 ANYTHING.

7 Q. IF I CAN ASK YOU, ON PAGE 20 IN THE BOTTOM OF
8 THE WINDOW IN THE CENTER OF THE PAGE, THERE IS THE
9 NUMBERS 00:20. WHAT DOES THAT REPRESENT?

10 A. THAT INDICATES HOW MUCH TIME HAS PASSED.

11 Q. SO 20 SECONDS TO THIS POINT?

12 A. YEAH. THE TOTAL INSTALL WAS AGAIN ABOUT A
13 MINUTE OR SO.

14 Q. SO IF YOU CAN TURN TO PAGE 21?

15 A. YES.

16 Q. WHAT IS THE NEXT STEP?

17 A. SO AT 21 YOU CAN SEE IT TELLS ME THAT IT IS ALL
18 INSTALLED. I DIDN'T HAVE TO DO ANYTHING EXCEPT NOW I
19 CLICK CLOSE TO ACKNOWLEDGE THAT IT IS FINISHED.

20 Q. WHAT HAPPENS AFTER YOU CLICK CLOSE?

21 A. SO YOU SEE ON PAGE 22, NOW INTERNET ACCESS
22 CONTROLS ARE SET AS BEING ON.

23 Q. WHAT IS THE NEXT THING YOU DID IN YOUR
24 PRESENTATION?

25 A. OKAY. SO AT THIS POINT, THE SOFTWARE IS ALL

1 INSTALLED AND CONFIGURED. SO NOW, I WANTED TO SHOW YOU
2 WHAT WOULD HAPPEN IF THE CHILD TRIED TO ACTUALLY USE THE
3 INTERNET WITHOUT GOING THROUGH AOL. SO ON PAGE 23 YOU
4 CAN SEE THE CHILD OPENED THE INTERNET EXPLORER WEB
5 BROWSER. THIS IS NOT THE AOL BROWSER. THIS IS JUST THE
6 NORMAL INTERNET EXPLORER WEB BROWSER THAT CAME WITH THE
7 COMPUTER. THEY ARE NOT LOGGED INTO AOL. AND SO THE
8 CHILD OPENS THE BROWSER AND TYPES IN THE ADDRESS OF A
9 WEBSITE THEY WANT TO GO TO. AND INSTEAD OF LOADING THE
10 PAGE, THE SOFTWARE CAUSES THIS POP-UP SCREEN TO COME UP
11 AND ASKS THEM TO LOG INTO AOL IF THEY WANT TO GO ON THE
12 INTERNET. SO YOU CAN SEE ON PAGE 24 THE CHILD HAS TO
13 PUT IN THEIR SCREEN NAME AND TYPE IN THEIR PASSWORD AND
14 THEY CAN SIGN IN.

15 Q. WHAT HAPPENS AFTER THEY SIGN IN?

16 A. WHEN THEY SIGN IN, THAT BASICALLY CAUSES ALL
17 THEIR INTERNET TRAFFIC TO GO THROUGH THE AOL FILTER.
18 AND SO NOW THE AOL FILTER IS GOING TO CHECK THE WEBSITE
19 THAT THEY WANT TO GO TO. IN THIS CASE, IT'S OKAY. IT'S
20 THE CARNEGIE MELLON UNIVERSITY WEBSITE. AND IT MEANS
21 THE REQUIREMENTS, SO IT IS NOT FILTERED.

22 Q. YOU ARE NOW LOOKING AT PAGE 25?

23 A. YES.

24 NOW, IF, ON THE OTHER HAND, THE CHILD
25 WANTED TO GO TO A WEBSITE THAT MET THE CRITERIA TO BE

1 BLOCKED, SOMETHING DIFFERENT WOULD HAPPEN. SO IF WE
2 LOOK AT PAGE 26, WE CAN SEE THE CHILD IS TRYING TO
3 ACCESS THE PLAYBOY WEBSITE, WHICH ACCORDING TO THE
4 FILTERING CRITERIA WE SET UP, IT SHOULD BE BLOCKED. IN
5 THIS CASE, A SCREEN POPS UP TO INFORM THE CHILD THAT
6 THEY DON'T HAVE PERMISSION TO GO TO THAT WEBSITE, AND
7 THERE ARE A FEW THINGS A CHILD COULD DO AT THIS POINT.

8 Q. WHAT ARE THOSE OPTIONS?

9 A. SO THEY COULD JUST GIVE UP AT THAT POINT AND
10 SAY, ALL RIGHT, I'M NOT GOING THERE, OR THEY COULD ASK
11 THEIR PARENTS TO OVERRIDE THE BLOCK. AND ONE WAY THEY
12 CAN DO THAT IS TO GET PERMISSION NOW. SO, IMAGINE THAT
13 THE PARENTS ARE HOME AND THE CHILD GOES AND GRABS MOM
14 AND SAYS, COME OVER HERE, CAN YOU GIVE ME PERMISSION TO
15 ACCESS THIS SITE. SO THEN THEY WOULD CLICK THE GET
16 PERMISSION NOW BUTTON.

17 Q. WHAT HAPPENS IF THEY CLICK THE GET PERMISSION
18 NOW BUTTON?

19 A. SO ON PAGE 27, YOU SEE THAT A SCREEN POPS UP TO
20 UNLOCK. AND SO HERE THE PARENT HAS TO PUT IN THEIR
21 SCREEN NAME AND THEIR PASSWORD TO APPROVE OVERRIDING
22 THIS PARTICULAR BLOCK.

23 Q. WHY CAN'T THE CHILD DO THAT?

24 A. BECAUSE THE CHILD DOES NOT KNOW THE PARENT'S
25 PASSWORD.

1 Q. AND WHAT HAPPENS NEXT IN YOUR PRESENTATION HERE?

2 A. SO NEXT I'M SHOWING THE SCENARIO THAT THE PARENT
3 IS NOT HOME OR NOT AVAILABLE AND THE CHILD WANTS TO BE
4 ABLE TO ASK FOR PERMISSION TO ACCESS IT LATER. AND SO
5 THEY CAN CLICK THE REQUEST ACCESS BUTTON.

6 Q. AND WHAT HAPPENS WHEN THEY CLICK THE REQUEST
7 ACCESS BUTTON? HOW DO THEY REQUEST ACCESS?

8 A. WELL, YOU CAN SEE ON PAGE 29 THAT A WINDOW POPS
9 UP THAT LETS THE CHILD COMPOSE AN E-MAIL TO THEIR
10 PARENTS ASKING FOR PERMISSION TO ACCESS THIS WEBSITE.
11 SO HERE, I SHOWED A CHILD TYPED IN A MESSAGE,
12 AUTOMATICALLY THE REQUEST PUTS IN THE WEBSITE THAT THEY
13 WANT TO ACCESS, AND THEN THEY CLICK THE SEND BUTTON.
14 AND THEN THAT WILL GET SENT TO THEIR PARENTS VIA E-MAIL
15 AND WILL ALSO SHOW UP IN THAT AOL GUARDIAN REPORT THE
16 NEXT TIME THE PARENT LOOKS AT THE REPORT.

17 Q. HOW SOON WILL THAT E-MAIL BE SENT TO THE PARENT?

18 A. IMMEDIATELY.

19 Q. AND NEXT IN YOUR PRESENTATION? CONTINUE WALKING
20 US THROUGH.

21 A. SO THEN THERE IS AN ACKNOWLEDGEMENT THAT THE
22 REQUEST HAS BEEN SENT.

23 Q. YOU CLICK OKAY?

24 A. YOU CLICK OKAY. THEN YOU CAN ACTUALLY SEE A
25 LIST OF THE REQUESTS THAT YOU HAVE MADE. IN THIS CASE,

1 THE CHILD HAS ONLY MADE ONE REQUEST. BUT IF THEY HAD A
2 WHOLE BATCH, THEY CAN SEE THE WHOLE LIST OF REQUESTS
3 THEY MADE. THEY CAN SEE WHETHER THEIR PARENT HAS
4 ACTUALLY RESPONDED TO ANY OF THESE REQUESTS. SO HERE IT
5 SAYS PENDING. BUT YOU CAN SEE WHETHER IT HAS BEEN
6 GRANTED OR DENIED DEPENDING ON WHAT THE PARENT HAD
7 ACTUALLY DONE.

8 Q. IF YOU CAN TURN TO PAGE 32. YOU WERE JUST
9 MENTIONING THE AOL GUARDIAN, THE REPORT SUMMARY. WHAT
10 DOES THIS PAGE REPRESENT?

11 A. RIGHT. SO THIS IS WHAT THE PARENT WOULD SEE
12 AFTER THE CHILD HAD SENT A REQUEST. AND SO HERE YOU CAN
13 SEE THE WEBSITES THAT THE CHILD HAD VISITED. AND IF YOU
14 SCROLL DOWN, THERE WOULD BE A LIST OF THE REQUESTS THAT
15 THE CHILD HAD MADE.

16 Q. TURNING TO PAGE 33. WHERE ARE WE NOW?

17 A. OKAY. SO NOW WE ARE DONE SETTING UP AOL, BOTH
18 THE PARENTAL CONTROLS AS WELL AS DOWNLOADING THE
19 SOFTWARE FOR ONE CHILD. THAT IS ALL THERE IS TO IT.
20 BUT IMAGINE THAT IN YOUR FAMILY YOU HAVE MORE THAN ONE
21 CHILD, AND THEY ARE DIFFERENT AGES, AND YOU WANT TO SET
22 UP DIFFERENT CONTROLS FOR OTHER CHILDREN IN THE FAMILY.
23 HERE I'M GOING TO SHOW YOU THE STEPS YOU WOULD GO
24 THROUGH TO DO THAT.

25 Q. WHAT'S THE FIRST STEP?

1 A. FIRST WE NEED TO CREATE A SCREEN NAME FOR THE
2 ADDITIONAL CHILD. SO WE CLICK ON THAT BIG BLUE BUTTON
3 TO CREATE A SCREEN NAME. AND ON PAGE 34, YOU CAN SEE
4 THE SCREEN NAME CREATION SCREEN. AND SO WE JUST CLICK
5 THE CREATE BUTTON. ON PAGE 35, WE CAN SEE WE ARE
6 PROMPTED TO TYPE IN A NEW SCREEN NAME. SO IN THIS CASE,
7 I WANT TO CREATE A SCREEN NAME FOR AN 8-YEAR OLD CHILD.
8 SO I DECIDED TO NAME IT LORRACKS8 TO BE ABLE TO KEEP
9 TRACK OF IT. SO, I ENTER THAT AND I CLICK CONTINUE.
10 NOW I GET TO CHOOSE WHAT TYPE OF ACCOUNT I WANT. SO I'M
11 GOING TO PICK THE KIDS ONLY FOR CHILDREN 12 AND UNDER.
12 Q. LET ME ASK YOU BEFORE YOU DO THAT. WHAT IF YOU
13 THOUGHT YOU HAD A REALLY PRECOCIOUS 8-YEAR OLD WHO WAS
14 REALLY MATURE AND YOU WANTED THEM TO SEE A LITTLE BIT
15 MORE THAN THE AVERAGE 8-YEAR OLD? WHAT CAN YOU DO?
16 A. THEN I WOULD PROBABLY PICK THE YOUNG TEEN
17 SETTING FOR THEM. I'M FREE TO PICK WHICHEVER SETTING I
18 WANT. JUST BECAUSE THE CHILD IS 8 DOES NOT MEAN I HAVE
19 TO DO THE KIDS ONLY. IT IS UP TO THE PARENT TO USE
20 THEIR JUDGMENT AND DECIDE.
21 Q. LET'S SAY YOUR KID IS NOT THAT PRECOCIOUS, AND
22 YOU DECIDE TO CLICK THE KIDS ONLY BUTTON. WHAT HAPPENS
23 NEXT?
24 A. THEN I CLICK THE NEXT BUTTON, AND THAT BRINGS ME
25 ON PAGE 37. THERE ARE SOME TERMS OF SERVICE TO REVIEW

1 AND ACCEPT. AND THEN I ALSO GET TO CHOOSE WHETHER OR
2 NOT I WANT AOL GUARDIAN REPORTS FOR THAT CHILD. IN THIS
3 CASE I SAID YES, I DO WANT THEM AND I CLICK NEXT.

4 ON PAGE 38, I THEN CREATE A PASSWORD FOR
5 THE CHILD SO THEY WILL HAVE THEIR OWN PASSWORD, NOT MY
6 PASSWORD, BUT A PASSWORD JUST FOR THEM TO LOG INTO THEIR
7 ACCOUNT. SO I SELECT THAT PASSWORD AND I CLICK NEXT.

8 AND THEN FINALLY ON PAGE 39, I GET A
9 CONFIRMATION SCREEN SHOWING ME THAT WE HAVE CREATED A
10 NEW SCREEN NAME IN THE KIDS ONLY CATEGORY AND I HAVE A
11 FINISH BUTTON TO CLICK.

12 Q. OKAY.

13 AGAIN, HOW LONG DID IT TAKE YOU WHEN YOU
14 DID THIS TO ADD AN ADDITIONAL CHILD TO THE PRODUCT?

15 A. ABOUT TWO MINUTES.

16 Q. TURNING TO PAGE 40, WHAT IF YOU HAD A THIRD
17 CHILD? COULD YOU GO THROUGH THE SAME EXACT PROCESS YOU
18 JUST DESCRIBED?

19 A. RIGHT. AOL ALLOWS ME TO CREATE UP TO SEVEN
20 SCREEN NAMES, SO THE MASTER ONE, AND I COULD ADD SIX
21 KIDS, EACH HAVING THEIR OWN ACCOUNT.

22 Q. AND THEN IF YOU CAN TURN TO WHAT I BELIEVE IS
23 THE FINAL SLIDE. WHAT DOES THIS REPRESENT?

24 A. SO HERE YOU CAN SEE MY ACCOUNT WITH MY MASTER
25 SCREEN NAME AND THE TWO CHILDREN'S SCREEN NAMES, AND WE

1 CAN SEE WHAT SETTING EACH OF THOSE SCREEN NAMES HAS. SO
2 THE MASTER ONE HAS THE GENERAL CATEGORY WITH NO
3 RESTRICTIONS, LORRACKS14 HAS THE YOUNG TEENS SETTING,
4 LORRACKS8 HAS THE KIDS ONLY SETTING. I CAN SEE THERE
5 ARE PENDING REQUESTS FOR LORRACKS14. I CAN ACTUALLY SEE
6 WHICH ONE IS THE MASTER AND WHICH ONES ARE NOT MASTER
7 ACCOUNTS.

8 Q. THANK YOU FOR WALKING US THROUGH THAT
9 PRESENTATION, DR. CRANOR.

10 MR. FINE: YOUR HONOR, PLAINTIFFS WOULD
11 NOW LIKE TO MOVE PLAINTIFFS' EXHIBIT 86 INTO EVIDENCE.

12 THE COURT: THERE BEING NO OBJECTION,
13 PLAINTIFFS' 86 IS RECEIVED INTO EVIDENCE.

14 (PLAINTIFFS' EXHIBIT 86 IS RECEIVED INTO
15 EVIDENCE.)

16 BY MR. FINE:

17 Q. BEFORE WE LOSE SITE OF THINGS, WHY DID YOU USE
18 AN AOL PRODUCT TO DEMONSTRATE TO US?

19 A. WELL, IT'S ONE OF THE MOST POPULAR PRODUCTS AND
20 IN THE VARIOUS STUDIES OF PRODUCTS IT'S ONE THAT COMES
21 OUT CONSISTENTLY HIGHLY RATED. AND SINCE NOW IT IS
22 FREELY AVAILABLE, IT'S A PRODUCT THAT -- IT'S AVAILABLE
23 TO MANY PEOPLE TO USE.

24 Q. WHAT IMPACT, IF ANY, DO FILTERS HAVE ON THE
25 SPEED OF A USER'S PERSONAL COMPUTER?

1 A. IT'S A VERY MINIMAL, IF ANY, IMPACT. IT DEPENDS
2 ON THE TECHNOLOGY BEHIND THE FILTERING PRODUCT. SOME OF
3 THEM MAY HAVE A VERY MINOR IMPACT, MUCH LESS THAN A
4 SECOND FOR EACH REQUEST. SOME OF THEM HAVE DON'T HAVE
5 ANY IMPACT AT ALL.

6 Q. IS THAT EVEN NOTICEABLE TO THE USER?

7 A. FOR THE MOST PART, IT'S NOT GOING TO BE
8 NOTICEABLE.

9 Q. DO FILTERS POSE ANY COMPATIBILITY ISSUES FOR
10 COMPUTERS?

11 A. GENERALLY, NO. THERE HAVE BEEN SOME --

12 THE COURT: EXCUSE ME. WHAT DOES IT
13 MEAN, COMPATIBILITY?

14 THE WITNESS: COMPATIBILITY IS SOME
15 SOFTWARE DOES NOT WORK WELL WHEN OTHER SOFTWARE IS
16 INSTALLED ON THE COMPUTER. SO...

17 MR. CAMPBELL: OBJECTION, YOUR HONOR,
18 LACK OF FOUNDATION.

19 THE COURT: OVERRULED. SHE IS AN EXPERT
20 WITNESS. I THINK SHE KNOWS WHAT SHE IS TALKING ABOUT,
21 IF ONE ACCEPTS HER TESTIMONY, WHICH --

22 THE WITNESS: SO THERE IS SOME SOFTWARE
23 THAT ONCE YOU HAVE IT INSTALLED ON THE COMPUTER THAT
24 OTHER TYPES OF SOFTWARE, WHEN YOU TRY TO RUN IT, YOU
25 HAVE PROBLEMS. IT EITHER CAUSES PROBLEMS WITH THE FIRST

1 SOFTWARE OR PROBLEMS WITH THE SECOND SOFTWARE.

2 THE COURT: THANK YOU.

3 THE WITNESS: THERE HAVE BEEN SOME
4 REPORTS WITH SOME FILTERING PRODUCTS CAUSING SOME
5 PROBLEMS, BUT FOR THE MOST PART, I THINK THEY ARE FEW
6 AND FAR BETWEEN.

7 BY MR. FINE:

8 Q. WHAT KIND OF COMPATIBILITY PROBLEMS, IF ANY,
9 WILL THERE BE WITH VISTA'S FILTERING PRODUCT?

10 A. WELL, WE DON'T KNOW FOR SURE, BECAUSE IT'S NOT
11 OUT YET, BUT IT'S LIKELY NOT TO HAVE COMPATIBILITY
12 PROBLEMS BECAUSE IT'S BUILT INTO THE OPERATING SYSTEM.

13 Q. AND WHY IS THAT? EXPLAIN THAT A LITTLE BIT
14 MORE.

15 A. WHEN THINGS ARE BUILT INTO THE OPERATING SYSTEM,
16 THEN ALL OF THE APPLICATION PROVIDERS WHO ARE BUILDING
17 ON TOP OF IT ALL KNOW WHAT THE PLATFORM IS, SO THEY CAN
18 TEST THEIR SOFTWARE ON THE OPERATING SYSTEM AND THERE
19 WON'T BE ANY SURPRISES. BUT WHEN YOU HAVE ADD-ON
20 SOFTWARE, IT'S IMPOSSIBLE TO TEST YOUR SOFTWARE WITH
21 EVERY POSSIBLE COMBINATION OF SOFTWARE SOMEONE MIGHT
22 HAVE ON THEIR COMPUTER. SO I CAN SET UP MY COMPUTER
23 WITH WINDOWS XP AND NORTON ANTIVIRUS AND MICROSOFT WORD
24 PROCESSING AND, YOU KNOW, THIS PARTICULAR GAME PROGRAM
25 AND ADOBE ILLUSTRATOR AND TEST IT AND MAKE SURE THERE

1 ARE NO CONFLICTS, BUT THEN SOMEBODY ELSE HAS A SLIGHTLY
2 DIFFERENT SETUP AND I DIDN'T TEST IT WITH THEIR SETUP,
3 AND THAT IS WHERE THE PROBLEM IS. SO WHEN THE FILTER IS
4 ACTUALLY BUILT INTO THE OPERATING SYSTEM, THEN WE KNOW
5 WHAT THE COMMON SETUP IS, AND SO IT IS MUCH LESS LIKELY
6 THAT WE ARE GOING TO HAVE THESE SORTS OF CONFLICTS.

7 Q. AND BASED ON YOUR EXPERIENCE AND YOUR EXPERTISE,
8 LET'S SAY THERE WAS SOME SORT OF PROBLEM WITH SOFTWARE
9 WITH THE VERSION THAT EXISTED IN, SAY, THE YEAR 2000.
10 NOW, WOULD IT BE LIKELY THAT THERE WOULD STILL BE THAT
11 SAME PROBLEM WITH THE SOFTWARE IN THE YEAR 2006?

12 MR. CAMPBELL: OBJECTION, SPECULATION AND
13 LACK OF FOUNDATION.

14 THE COURT: I'M FURTHER CONFUSED WITH THE
15 QUESTION. I WILL JOIN YOU. SUSTAIN THE OBJECTION, YOUR
16 GROUNDS AND MINE, TOO.

17 BY MR. FINE:

18 Q. ARE YOU GENERALLY FAMILIAR WITH THE DEVELOPMENT
19 OF SOFTWARE?

20 A. THE DEVELOPMENT PROCESS?

21 Q. YES.

22 A. YES.

23 Q. AND CAN YOU TELL US A LITTLE BIT ABOUT WHAT THAT
24 PROCESS IS? FOCUSING -- LET'S SAY YOU HAVE ALREADY
25 DEVELOPED A PRODUCT AND YOU HAVE PUT IT ON THE MARKET

1 AND --

2 THE COURT: WHAT IS THE PRODUCT,
3 OPERATING SYSTEM OR FILTER PACKAGE?

4 BY MR. FINE:

5 Q. WHY DON'T WE CHOOSE ANTIVIRUS SOFTWARE.

6 A. OKAY.

7 Q. LET'S SAY IN 2000 YOU CAME OUT WITH YOUR FIRST
8 PRODUCT. THERE ARE A FEW REPORTED PROBLEMS. WHAT DOES
9 THE SOFTWARE DEVELOPER DO TO ADDRESS THOSE PROBLEMS?

10 A. SO THE SOFTWARE DEVELOPER WILL TRY TO FIX THE
11 PROBLEMS. SO THEY WILL LOOK INTO THE REPORTS THAT THEY
12 GET FROM USERS AND TRY TO REPRODUCE THEM IN THEIR OWN
13 LABORATORY AND FIGURE OUT WHAT IS CAUSING THE PROBLEM
14 AND FIX IT, SO THE NEXT VERSION OF THE PRODUCT WON'T
15 HAVE THOSE PROBLEMS.

16 Q. AND WHY DO SOFTWARE DEVELOPERS DO THAT?

17 A. WELL, THEY WANT THEIR SOFTWARE TO BE AS RELIABLE
18 AS POSSIBLE SO THAT PEOPLE WILL BUY IT.

19 Q. I WANT TO TURN YOUR ATTENTION TO A SLIGHTLY
20 DIFFERENT SUBJECT. FOR PURPOSES OF YOUR EXPERT OPINION
21 HERE, IS EVIDENCE REGARDING FILTERING PRODUCTS MARKETED
22 FOR USE IN BUSINESSES RELEVANT TO YOUR ANALYSIS?

23 A. YES.

24 Q. WHY?

25 A. FOR A VARIETY OF REASONS. ONE IS THAT THE

1 INTERNET SERVICE PROVIDERS THAT PROVIDE FILTERING
2 PRODUCTS ARE USING THE PRODUCTS THAT ARE MARKETED FOR
3 BUSINESSES, EITHER ONES THEY DEVELOPED OR ONES THAT THEY
4 PURCHASED FROM A THIRD PARTY. IT'S THOSE BUSINESS OR
5 ENTERPRISE PRODUCTS THAT ARE ACTUALLY BEING USED BY THE
6 ISP AND, IN TURN, BY THEIR USERS.

7 ALSO, THERE ARE SOME COMPANIES THAT MAKE
8 MOST OF THEIR MONEY ON THEIR BUSINESS OR ENTERPRISE
9 PRODUCTS. BUT THEY ALSO HAVE HOME PRODUCTS AND THEY USE
10 ESSENTIALLY THE SAME TECHNOLOGY IN THEIR HOME PRODUCTS
11 AS THEY USE IN THE ENTERPRISE PRODUCTS.

12 Q. I WAS GOING TO ASK YOU, WHAT IF ANY TECHNICAL
13 DIFFERENCES ARE THERE BETWEEN PRODUCTS THAT ARE MARKETED
14 FOR USE IN A HOME AND PRODUCTS THAT ARE MARKETED FOR USE
15 IN BUSINESSES?

16 A. SO IT DEPENDS ON THE PARTICULAR PRODUCT. THERE
17 MAY BE SOME SMALL DIFFERENCES. THE DIFFERENCES ARE
18 USUALLY NOT IN THE CORE FILTERING TECHNOLOGY. THE
19 DIFFERENCES ARE IN THE WAY IT IS DEPLOYED. SO IN A
20 BUSINESS, WHEN THEY HAVE A FILTER, THEY MAY WANT IT
21 DEPLOYED ON DOZENS OR HUNDREDS OR THOUSANDS OF
22 COMPUTERS. AND SO THEY NEED SOFTWARE THAT ALLOWS THEM
23 TO MANAGE IT ON THESE HUNDREDS OF COMPUTERS. IN A HOME
24 ENVIRONMENT, A PARENT IS THE ONE WHO IS GOING TO WANT TO
25 DEPLOY IT ON ONE OR A FEW COMPUTERS. THEY DON'T NEED

1 ALL THESE MANAGEMENT TOOLS THAT YOU WOULD FIND IN AN
2 ENTERPRISE EDITION.

3 ALSO, YOU WILL FIND THAT SOMETIMES IN A
4 HOME ENVIRONMENT, YOU ARE GOING TO -- IF YOU, SAY, HAVE
5 THREE COMPUTERS IN A HOME ENVIRONMENT, YOU WOULD JUST
6 INSTALL THE SOFTWARE ON ALL THREE COMPUTERS. BUT IN AN
7 ENTERPRISE ENVIRONMENT INSTEAD OF INSTALLING THE
8 SOFTWARE ON HUNDREDS OF COMPUTERS, YOU MIGHT INSTALL IT
9 ON ONE COMPUTER AND FORCE ALL THE OTHER COMPUTERS TO
10 SEND THEIR TRAFFIC THROUGH THAT, IT WILL BE SET UP AS
11 SOMETHING KNOWN AS A PROXY SERVER, AND THAT WAY YOU
12 DON'T HAVE TO ACTUALLY GO IN AND INSTALL IT ON EVERY
13 COMPUTER.

14 SO THERE ARE SOME DIFFERENCES LIKE THAT.
15 BUT THE FUNDAMENTAL, HOW DOES IT DECIDE WHAT TO BLOCK
16 AND WHAT NOT TO BLOCK IS BASICALLY THE SAME WHETHER YOU
17 ARE IN AN ENTERPRISE ENVIRONMENT OR IN A HOME
18 ENVIRONMENT.

19 Q. WHAT WOULD YOU EXPECT THE DIFFERENCE IN
20 EFFECTIVENESS TO BE BETWEEN A PRODUCT THAT IS MARKETED
21 FOR USE IN THE HOME AND A PRODUCT THAT IS MARKETED FOR
22 USE IN BUSINESSES?

23 A. WELL --

24 MR. CAMPBELL: OBJECTION, LACK OF
25 FOUNDATION.

1 MR. FINE: SHE IS HERE TO PROVIDE EXPERT
2 TESTIMONY.

3 THE COURT: OVERRULED. SHE HAS EXPLAINED
4 BOTH TYPES OF FILTER USAGES, BOTH BUSINESS AND AT HOME.
5 SO I THINK THE FOUNDATION IS ADEQUATE. OVERRULED.

6 THE WITNESS: SO THERE ARE A VARIETY OF
7 LEVELS OF ACCURACY THAT YOU WILL FIND DEPENDING ON WHICH
8 PRODUCT. BUT, IN GENERAL, BETWEEN THE HOME PRODUCTS AND
9 THE ENTERPRISE PRODUCTS, I WOULD NOT EXPECT TO FIND
10 LARGE DIFFERENCES.

11 BY MR. FINE:

12 Q. JUST TO BE CLEAR FROM A TECHNICAL PERSPECTIVE,
13 IS THERE ANY REASON A PARENT COULD NOT USE A CORPORATE
14 PRODUCT, FILTERING PRODUCT, THAT IS DESIGNED -- THAT IS
15 MARKETED FOR USE BY CORPORATIONS AT HOME, IS THERE ANY
16 REASON A PARENT COULD NOT USE THAT SAME PRODUCT AT HOME?

17 A. AS LONG AS THEY HAD THE RIGHT KIND OF COMPUTER
18 AND OPERATING SYSTEM AT HOME, THERE IS NO REASON WHY
19 THEY COULDN'T USE IT AT HOME.

20 Q. DO FILTERING PRODUCTS BLOCK WEB PAGES
21 ORIGINATING FROM OUTSIDE THE UNITED STATES?

22 A. YES.

23 Q. DO THEY ALSO BLOCK WEB PAGES THAT ORIGINATE FROM
24 WITHIN THE UNITED STATES?

25 A. YES.

1 Q. DOES IT MAKE A DIFFERENCE TO FILTERING PRODUCTS
2 IF A WEB PAGE ORIGINATES IN, SAY, RUSSIA OR IN THE
3 UNITED STATES?

4 A. NO.

5 Q. WHY NOT?

6 A. THE FILTERING PRODUCT IS NOT LOOKING AT THE
7 GEOGRAPHIC LOCATION OF THE WEB PAGE. IT IS LOOKING AT
8 THE URL AND THE CONTENT OF THE WEB PAGE.

9 Q. DO FILTERING PRODUCTS BLOCK BOTH NONCOMMERCIAL
10 AND COMMERCIAL WEB PAGES?

11 A. YES.

12 Q. DOES IT MAKE A DIFFERENCE TO THE FILTERING
13 PRODUCTS IF THE WEB PAGE IS FROM A COMMERCIAL OR
14 NONCOMMERCIAL ENTITY?

15 A. NO.

16 Q. WHY NOT?

17 A. AGAIN, THE FILTERING PRODUCT IS NOT LOOKING AT
18 THAT.

19 Q. DO FILTERING PRODUCTS BLOCK WEB PAGES THAT ARE
20 AVAILABLE FOR VIEWING FOR FREE?

21 A. YES.

22 Q. DO FILTERING PRODUCTS ALSO BLOCK WEB PAGES THAT
23 ONE HAS TO PAY FOR TO ACCESS?

24 A. YES.

25 Q. CAN FILTERING PRODUCTS BE USED BY PARENTS TO

1 BLOCK MATERIAL THAT IS DISTRIBUTED ON THE INTERNET
2 THROUGH PROTOCOLS OTHER THAN HTTP?

3 A. YES.

4 Q. AND IS THAT WHAT YOU WERE DESCRIBING EARLIER
5 WHEN YOU SAID THAT FILTERING PRODUCTS CAN BLOCK INTERNET
6 APPLICATIONS LIKE E-MAIL, CHAT AND I-M?

7 A. YES.

8 Q. IF A NEW INTERNET APPLICATION CAME ALONG
9 TOMORROW THAT DOES NOT EXIST TODAY, LET'S SAY A NEW
10 VERSION OF INSTANT MESSAGING, WOULD FILTERS BE ABLE TO
11 BLOCK THAT APPLICATION?

12 A. MANY OF THEM WOULD.

13 Q. WHY IS THAT?

14 A. BECAUSE MANY OF THEM ARE SET UP TO BASICALLY
15 CAPTURE ALL INTERNET TRAFFIC REGARDLESS OF WHAT
16 APPLICATION IT IS ASSOCIATED WITH. AND SO IF YOU SET UP
17 THE FILTER TO BLOCK EVERYTHING EXCEPT THE THINGS I
18 ALLOW, THEN THIS NEW APPLICATION WOULD NOT BE ONE OF THE
19 THINGS THAT I ALLOWED, AND SO IT WOULD BE BLOCKED.

20 Q. CAN FILTERS BE USED TO BLOCK WEB PAGES
21 CONTAINING SPEECH OTHER THAN SEXUALLY EXPLICIT CONTENT
22 THAT PARENTS MAY NOT WANT THEIR CHILDREN TO ACCESS?

23 A. YES.

24 Q. CAN YOU EXPLAIN? HOW CAN FILTERS BE SET UP TO
25 DO THAT?

1 A. FILTERS OFFER PARENTS A VARIETY OF DIFFERENT
2 CATEGORIES OF CONTENT THAT THEY CAN BLOCK, AND SO THE
3 PARENTS CAN CHOOSE WHICH CATEGORY THEY WANT TO HAVE
4 BLOCKED.

5 Q. AND YESTERDAY YOU TESTIFIED THAT IT IS YOUR
6 OPINION THAT FILTERS ARE AN EFFECTIVE TOOL FOR PARENTS
7 TO USE. I WANT TO ASK YOU NOW, WHAT DO YOU MEAN WHEN
8 YOU SAY THAT THEY ARE AN EFFECTIVE TOOL?

9 A. SO I THINK THAT FOR PARENTS WHO WOULD LIKE TO
10 HAVE THEIR COMPUTER AUTOMATICALLY BLOCK ACCESS TO
11 CERTAIN TYPES OF CONTENT, THERE ARE FILTERS AVAILABLE
12 THAT PROVIDE A FLEXIBLE RANGE OF OPTIONS THAT PARENTS
13 CAN CHOOSE FROM. AND DEPENDING ON THE PARENTS' GOALS,
14 AS FAR AS WHAT TYPES OF CONTENT THEY WANT TO BLOCK AND
15 HOW IMPORTANT IT IS FOR THEM TO MAKE SURE IT IS BLOCKED,
16 VERSUS MAKE SURE THAT THERE IS NOT OVERBLOCKING, PARENTS
17 CAN CONFIGURE THEIR SOFTWARE TO BE REASONABLY ACCURATE
18 AND TO MEET THEIR NEEDS.

19 Q. WHAT KIND OF MATERIAL DO FILTERS WORK ESPECIALLY
20 WELL AT BLOCKING?

21 A. IT APPEARS THAT PORNOGRAPHY -- THEY SEEM TO
22 BLOCK PORNOGRAPHY PARTICULARLY WELL.

23 Q. WHY IS THAT?

24 A. I THINK THAT IS SOMETHING THAT PEOPLE HAVE BEEN
25 TRYING TO BLOCK FOR A WHILE, AND SO THERE IS A LOT OF

1 EXPERIENCE IN DEVELOPING TOOLS TO BLOCK PORNOGRAPHY.

2 Q. WHAT OTHER TYPES OF WEBSITES ARE MOST
3 SUCCESSFULLY BLOCKED BY FILTERING PRODUCTS? ARE THERE
4 ANY OTHER TYPES?

5 A. WELL, THERE ARE MANY OTHER TYPES THAT ARE
6 BLOCKED FREQUENTLY, AND SO THOSE ARE THINGS LIKE
7 VIOLENCE AND ADULT LANGUAGE. SO THE MORE COMMON
8 CATEGORIES, THERE IS MORE EXPERIENCE IN BLOCKING THEM.

9 Q. IS IT MORE LIKELY THAT SAY PLAYBOY.COM IS GOING
10 TO BE BLOCKED OR SAY FROMRUSSIAWITHLOVE.COM.

11 MR. CAMPBELL: OBJECTION, YOUR HONOR.
12 LACK OF FOUNDATION AND AMBIGUOUS.

13 THE COURT: SUSTAINED. FIND OUT, IF YOU
14 WANT, HOW SHE KNOWS THIS.

15 BY MR. FINE:

16 Q. DO YOU KNOW WHAT SITES FILTERING PRODUCTS ARE
17 MOST LIKELY TO BLOCK?

18 A. DEPENDS HOW THEY ARE CONFIGURED.

19 Q. AND DO FILTERING PRODUCTS LOOK AT LISTS OF MOST
20 POPULAR WEBSITES?

21 A. YES. IN ORDER TO DEVELOP THEIR BLACK LISTS,
22 MANY FILTERING PRODUCTS WILL GET LISTS OF THE MOST
23 POPULAR WEBSITES ON A REGULAR BASIS AND THEY WILL CHECK
24 THOSE WEBSITES TO SEE IF THEY FALL INTO ANY OF THE
25 CATEGORIES THAT THE PRODUCT IS GOING TO BE BLOCKING.

1 Q. AND GIVEN THAT THEY DO THAT, IS IT YOUR OPINION
2 THAT IT IS MORE LIKELY THAT FILTERING PRODUCTS WILL
3 BLOCK POPULAR WEBSITES OR UNKNOWN WEBSITES?

4 MR. CAMPBELL: OBJECTION, LEADING.

5 THE COURT: OBJECTION SUSTAINED.

6 LEADING.

7 BY MR. FINE:

8 Q. IN PREPARING YOUR EXPERT OPINION IN THIS MATTER,
9 DR. CRANOR, WHAT IS MOST RELEVANT TO YOU IN DETERMINING
10 THE EFFECTIVENESS OF FILTERING PRODUCTS? IS IT THAT
11 THEY BLOCK EVERY SINGLE WEBSITE OR IS IT THAT THEY BLOCK
12 SOME WEBSITES?

13 MR. CAMPBELL: OBJECTION, YOUR HONOR.

14 COMPOUND, LEADING.

15 THE COURT: SUSTAINED. SAME QUESTION.

16 MR. FINE: WHY DON'T WE MOVE ON FOR NOW.

17 BY MR. FINE:

18 Q. TELL US A LITTLE BIT MORE ABOUT WHAT YOU DID TO
19 REACH YOUR EXPERT OPINION IN THIS MATTER.

20 A. SO I REVIEWED THE WORK THAT I HAD DONE ON
21 FILTERING OVER THE PAST 10 YEARS, INCLUDING THE WORK I
22 HAD DONE AT AT&T, AND PREPARING FOR THE INTERNET ONLINE
23 SUMMIT AND FOR THE PREVIOUS COURT CASES WHERE I WAS AN
24 EXPERT. I ALSO REVIEWED A NUMBER OF STUDIES THAT HAVE
25 BEEN CONDUCTED OVER THE YEARS. I REVIEWED SOME OF THE

1 DOCUMENTS THAT WERE OBTAINED ON DISCOVERY FOR THIS CASE,
2 AND I OBTAINED COPIES OF RECENT VERSIONS OF SOME
3 FILTERING SOFTWARE AND ACTUALLY INSTALLED THEM AND USED
4 THEM.

5 Q. HOW MANY DIFFERENT STUDIES HAVE YOU REVIEWED
6 OVER THE YEARS, OVER THE PAST 10 YEARS, REGARDING
7 INTERNET FILTERING SOFTWARE?

8 A. I DON'T KNOW THE EXACT NUMBER, BUT PROBABLY
9 ABOUT A DOZEN.

10 Q. AND WHAT DO THESE STUDIES GENERALLY MEASURE?

11 A. THEY GENERALLY MEASURE THE ACCURACY OF THE
12 SOFTWARE IN TERMS OF BLOCKING WHAT IT IS SUPPOSED TO,
13 AND NOT BLOCKING WHAT IT IS NOT SUPPOSED TO. SOME OF
14 THEM ALSO LOOK AT HOW EASY THEY ARE TO INSTALL AND
15 CONFIGURE AND USE.

16 Q. AND WHAT DOES UNDERBLOCKING REFER TO?

17 A. UNDERBLOCKING IS WHEN A PRODUCT DOES NOT BLOCK
18 SOMETHING THAT IT'S SUPPOSED TO BLOCK.

19 Q. WHAT IS OVERBLOCKING?

20 A. OVERBLOCKING IS WHEN A PRODUCT BLOCKS SOMETHING
21 THAT IT IS NOT SUPPOSED TO BLOCK.

22 Q. FOR PURPOSES OF YOUR OPINION HERE, WHAT IS MORE
23 IMPORTANT, THE UNDERBLOCKING RATE OR THE OVERBLOCKING
24 RATE?

25 A. FOR THIS PURPOSE, THE UNDERBLOCKING RATE IS MOST

1 IMPORTANT.

2 Q. WHY IS THAT?

3 A. BECAUSE WE ARE LOOKING TO SEE WHETHER FILTERS
4 OFFER AN EFFECTIVE ALTERNATIVE TO COPA. AND SO WE WANT
5 TO SEE WHETHER YOU CAN USE FILTERS TO BLOCK CONTENT THAT
6 WE WANT TO BLOCK.

7 Q. AND WHAT DO THESE STUDIES GENERALLY SHOW ABOUT
8 THE EFFECTIVENESS OF FILTERS?

9 A. THEY GENERALLY SHOW THAT THERE IS VARIATION
10 BETWEEN PRODUCTS AND SOME ARE BETTER THAN OTHERS, BUT
11 THERE ARE SOME THAT ARE ACTUALLY QUITE EFFECTIVE.

12 Q. AND DO ALL THE STUDIES COME TO THE EXACT SAME
13 CONCLUSION ABOUT THE BLOCKING RATES?

14 A. WELL, THEY ALL HAVE SLIGHTLY DIFFERENT NUMBERS.
15 BUT THE GENERAL -- THEY ARE ALL IN THE SAME GENERAL AREA
16 AS FAR AS WHAT THEY ARE REPORTING ON BLOCKING RATES.

17 MR. CAMPBELL: OBJECTION, YOUR HONOR.
18 MOVE TO STRIKE THE TESTIMONY. THERE WAS NO FOUNDATION
19 THAT THESE STUDIES ACTUALLY CAME TO THOSE CONCLUSIONS.
20 THEY WERE CONDUCTED ACCORDING TO GENERALLY ACCEPTED
21 SCIENTIFIC PRINCIPLES.

22 THE COURT: THE QUESTION, DO ALL STUDIES
23 COME TO THE EXACT SAME CONCLUSION ABOUT THE BLOCKING
24 RATES?

25 MR. CAMPBELL: YOUR HONOR, THAT IS

1 CORRECT, BUT THE SECOND PART OF THE OBJECTION WAS, THERE
2 WAS NO FOUNDATION LAID THAT THESE STUDIES WERE DONE.
3 ACCORDING TO GENERALLY ACCEPTED SCIENTIFIC PRINCIPLES,
4 REGARDING THE BLOCKING RATES -- THAT THESE STUDIES USED
5 GENERALLY ACCEPTED PRINCIPLES IN DETERMINING THE
6 BLOCKING RATES.

7 THE COURT: I WILL CONSIDER THAT A
8 GENERAL OBJECTION TO THE LACK OF FOUNDATION AND SUSTAIN
9 THE OBJECTION.

10 MR. FINE: YOUR HONOR, I'M HAPPY TO LAY
11 THE FOUNDATION RIGHT NOW FOR ALL THESE STUDIES
12 GENERALLY, IF THE DEFENDANT IS GOING TO OBJECT. I'M
13 GOING TO PROCEED TO GO THROUGH EACH STUDY PARTICULARLY,
14 AND I'M HAPPY TO LAY THE FOUNDATION.

15 THE COURT: YOU ARE IN CHARGE OF THE
16 WITNESS. I'M JUST REFEREEING.

17 BY MR. FINE:

18 Q. OKAY. DR. CRANOR, DID YOU RELY ON SOME OF THESE
19 STUDIES THAT YOU WERE JUST REFERRING TO?

20 A. YES.

21 Q. AND ARE THEY THE TYPE OF STUDIES THAT OTHER
22 EXPERTS IN YOUR FIELD WOULD RELY UPON?

23 A. YES.

24 Q. AND ARE YOU GENERALLY FAMILIAR WITH THE
25 METHODOLOGY USED BY THOSE STUDIES?

1 A. MOST OF THEM, YES.

2 Q. AND IN YOUR OPINION, ARE THE METHODOLOGIES THAT
3 WERE USED IN THE STUDIES THAT YOU ARE FAMILIAR WITH
4 GENERALLY RELIABLE?

5 A. GENERALLY RELIABLE. I MAY HAVE SOME QUIBBLES
6 WITH A FEW DETAILS ON SOME OF THEM. FOR THE MOST PART,
7 I WOULD SAY THEY ARE RELIABLE.

8 Q. AND I'M NOT EVEN SURE WHAT THE QUESTION WAS THAT
9 I HAD BEFORE, BUT WHAT DO THESE STUDIES GENERALLY SHOW
10 ABOUT THE EFFECTIVENESS OF FILTERING PRODUCTS?

11 A. THEY SHOW THAT THERE IS A RANGE OF
12 EFFECTIVENESS, BUT THAT THERE ARE -- EACH STUDY TESTED
13 MULTIPLE PRODUCTS AND THEY FOUND SOME OF THEM TO BE
14 QUITE EFFECTIVE.

15 Q. AND WHEN YOU SAY "QUITE EFFECTIVE," CAN YOU BE
16 MORE SPECIFIC THAN THAT?

17 A. THEY FOUND VERY LOW UNDERBLOCK RATES, AND IN THE
18 CASES OF SOME PRODUCTS EVEN VERY LOW OVERBLOCK RATES AS
19 WELL.

20 Q. WHAT DO YOU MEAN BY VERY LOW?

21 A. THAT THE UNDERBLOCK RATES, ESPECIALLY FOR
22 PORNOGRAPHY -- YOU KNOW, THEY PROPERLY BLOCKED AT LEAST
23 95 PERCENT OF WHAT THEY WERE SUPPOSED TO BLOCK.

24 Q. DID YOU REVIEW A STUDY BY ETESTING LABS IN
25 CONNECTION WITH PREPARING YOUR EXPERT OPINION?

1 A. YES.

2 Q. NOW, I DIRECT YOUR ATTENTION TO PLAINTIFFS'
3 EXHIBIT 3. AND THERE ARE TWO DOCUMENTS CONTAINED WITHIN
4 PLAINTIFFS' EXHIBIT 3, AND I'M GOING TO ASK YOU TO FOCUS
5 ON PLAINTIFFS' EXHIBIT 3, THE FIRST 39 PAGES, PAGES 1
6 THROUGH 39.

7 A. OKAY.

8 Q. IS THIS THE ETESTING LAB?

9 THE COURT: CAN YOU IDENTIFY P 3 FOR THE
10 RECORD, PLEASE IDENTIFY WHAT IT IS.

11 THE WITNESS: IT IS THE U.S. DEPARTMENT
12 OF JUSTICE WEB CONTENT FILTERING SOFTWARE COMPARISON BY
13 ETESTING LABS.

14 Q. IS THIS THE STUDY BY ETESTING LABS THAT YOU WERE
15 JUST REFERRING TO, THAT YOU REVIEWED?

16 A. YES.

17 Q. WHO WAS THIS REPORT PREPARED FOR?

18 A. THIS WAS PREPARED FOR THE U.S. DEPARTMENT OF
19 JUSTICE.

20 Q. AND I WANT YOU TO KEEP YOUR EYES ON PAGE 1.
21 FOCUS ON THE BOX THAT IS LABELLED KEY FINDINGS. WHAT
22 DID THIS STUDY CONCLUDE ABOUT THE EFFECTIVENESS OF
23 FILTERING PRODUCTS?

24 A. THEY TESTED FOUR FILTERING PRODUCTS. AND IT
25 SAYS THEY CORRECTLY BLOCKED AN AVERAGE OF APPROXIMATELY

1 92 PERCENT OF OBJECTIONABLE CONTENT. AND THEY
2 INCORRECTLY BLOCKED AN AVERAGE OF 4 PERCENT OF CONTENT
3 NOT MATCHING THE TEST CRITERIA.

4 Q. SO THE FIRST FIGURE, THE 92 PERCENT FIGURE, IS
5 THAT OVERBLOCKING OR UNDERBLOCKING?

6 A. THAT IS UNDERBLOCKING.

7 Q. AND THE 4 PERCENT FIGURE?

8 A. THAT IS OVERBLOCKING.

9 Q. I'M GOING TO NOW DIRECT YOUR ATTENTION TO PAGE 4
10 OF PLAINTIFFS' EXHIBIT 3 TO THE BOTTOM PARAGRAPH ON PAGE
11 4.

12 A. OKAY.

13 Q. WHAT DID THE STUDY CONCLUDE ABOUT THE EASE OF
14 USE OF FILTERING PRODUCTS?

15 A. IT SAYS THAT WE FOUND ALL THE PRODUCTS TESTED TO
16 BE QUITE EASY TO INSTALL AND CONFIGURE, AND THAT THEY
17 WERE ABLE TO MAKE THEM ALL OPERATIONAL IN LESS THAN 30
18 MINUTES.

19 Q. NOW, I WILL ASK YOU TO TURN, STAYING WITHIN
20 PLAINTIFFS' EXHIBIT 3 TO PAGES 40 TO 81 OF PLAINTIFFS'
21 EXHIBIT 3. PAGES 40 TO 81, AGAIN.

22 A. OKAY.

23 Q. DID YOU ALSO REVIEW ANOTHER STUDY CONDUCTED BY
24 ETESTING LABS IN CONNECTION WITH PREPARING YOUR EXPERT
25 REPORT?

1 A. YES.

2 Q. AND IS THIS THAT SECOND STUDY?

3 A. YES.

4 Q. I WANT YOU NOW TO FOCUS ON PAGE 5 WHICH WOULD BE
5 PAGE 45.

6 A. OKAY.

7 Q. ACTUALLY, IF WE CAN GO BACK TO PAGE 44, THERE IS
8 A TABLE ON PAGE 44. WHAT DOES THIS TABLE SHOW THAT THE
9 SECOND TESTING LABS CONCLUDED ABOUT THE EFFECTIVENESS
10 OF FILTERS ON ADULT MATERIAL, FOCUSING ON THE ADULT
11 MATERIAL BAR?

12 A. SO THEY TESTED THREE FILTERS, AND ONE OF THEM
13 CORRECTLY BLOCKED 95 PERCENT OF ADULT MATERIAL AND THE
14 OTHER TWO CORRECTLY BLOCKED 90 PERCENT OF ADULT
15 MATERIAL.

16 Q. AND IF YOU CAN TURN THE PAGE TO PAGE 45, THERE
17 ARE TWO ADDITIONAL TABLES. I WANT TO FOCUS YOUR
18 ATTENTION ON THE LOWER TABLE, THE BOTTOM TABLE. WHAT
19 DID THIS STUDY CONCLUDE ABOUT HOW MUCH OVERBLOCKING
20 THERE IS?

21 A. SO, AGAIN, THREE PRODUCTS WERE TESTED AND THERE
22 WERE TWO PRODUCTS THAT THEIR OVERBLOCKING RATE WAS LESS
23 THAN 1 PERCENT. WE HAVE THE .085 PERCENT AND ALL THREE
24 WERE LESS THAN 1 PERCENT. ONE WAS .028 PERCENT. ONE
25 WAS .0484 PERCENT.

1 MR. FINE: YOUR HONOR, AT THIS TIME WE
2 WOULD LIKE TO MOVE PLAINTIFFS' EXHIBIT 3 INTO EVIDENCE
3 AT THIS TIME.

4 THE COURT: THERE BEING NO OBJECTION,
5 PLAINTIFFS' EXHIBIT NUMBER 3 IS RECEIVED INTO EVIDENCE.

6 (PLAINTIFFS' EXHIBIT 3 WAS RECEIVED INTO
7 EVIDENCE.)

8 BY MR. FINE:

9 Q. DR. CRANOR, IN CONNECTION WITH PREPARING YOUR
10 EXPERT REPORT, DID YOU ALSO REVIEW A REPORT BY A
11 GENTLEMAN NAMED COREY FINNEL?

12 A. YES.

13 THE COURT: SPELL IT FOR THE RECORD,
14 PLEASE.

15 MR. FINE: C-O-R-E-Y, F-I-N-N-E-L.

16 BY MR. FINE:

17 Q. I WILL ASK YOU TO TURN TO PLAINTIFFS' EXHIBIT 4.
18 AGAIN, THERE ARE TWO DOCUMENTS IN HERE, AND I'M GOING TO
19 HAVE YOU FOCUS ON PAGES 1 THROUGH 10 OF PLAINTIFFS'
20 EXHIBIT 4.

21 A. OKAY.

22 Q. IS THIS THE REPORT BY COREY FINNEL THAT YOU
23 REVIEWED IN CONNECTION WITH PREPARING YOUR EXPERT
24 REPORT?

25 A. YES.

1 Q. NOW, I WILL HAVE YOU TURN YOUR ATTENTION TO THE
2 VERY BOTTOM OF PAGE 7.

3 A. OKAY.

4 Q. AND THE SENTENCE CONTINUES ON TO THE NEXT PAGE.
5 I'M GOING TO ASK YOU, WHAT DID THE STUDY CONCLUDE ABOUT
6 THE EFFECTIVENESS OF THE CYBER-PATROL FILTERING PRODUCT?

7 IT IS ACTUALLY PAGE 6 OF 8 OF THE STUDY,
8 ACTUALLY PAGE 7 OF THE EXHIBIT.

9 A. SO MR. FINNEL FOUND THAT CYBER-PATROL PRODUCT
10 WAS ESTIMATED TO BE 6.34 PERCENT ACCURATE, AND HE SAYS
11 THAT GIVEN A 95 PERCENT CONFIDENCE INTERVAL BASICALLY
12 SOMEWHERE BETWEEN 4.69 AND 7.99 PERCENT ACCURATE.

13 Q. WHEN YOU SAY ACCURATE, THIS IS OVERBLOCKING?
14 WHAT EXACTLY --

15 A. HE IS TALKING ABOUT OVERBLOCKING HERE.

16 Q. AND IF YOU TURN THE PAGE TO --

17 THE COURT: EXCUSE ME FOR INTERRUPTING.
18 I'M A LITTLE CONFUSED. OTHER STUDIES THAT WE REVIEWED
19 WITH THE WITNESS TALKED ABOUT 90, 92, 95 PERCENT
20 EFFECTIVE. NOW WE HAVE A LOW NUMBER. I HAVE TROUBLE
21 COMPARING THE TWO.

22 MR. FINE: I UNDERSTAND. IT IS
23 CONFUSING.

24 BY MR. FINE:

25 Q. CAN YOU PLEASE EXPLAIN WHY THE PREVIOUS STUDIES

1 THAT WE WERE TALKING ABOUT, THE 90 PERCENT FIGURES, WAS
2 THAT THE UNDERBLOCKING OR THE OVERBLOCKING?

3 A. THOSE WERE THE UNDERBLOCKING RATES. SO THEY
4 WERE SAYING THAT 95 PERCENT OF THE TIME THEY BLOCKED
5 WHAT THEY ARE SUPPOSED TO BLOCK. HERE, HE IS TALKING
6 ABOUT THE OVERBLOCKING RATE. SO HE IS SAYING THAT
7 APPROXIMATELY 6 PERCENT OF THE TIME THEY BLOCK WHAT THEY
8 ARE NOT SUPPOSED TO BLOCK.

9 Q. SO TURNING TO THE NEXT PAGE, WHAT DOES THIS
10 STUDY CONCLUDE ABOUT THE OVERBLOCKING RATE FOR THE
11 WEBSense FILTERING PRODUCT?

12 THE COURT: WHAT DO YOU MEAN BY NEXT
13 PAGE?

14 MR. FINE: TO PAGE 8 OF PLAINTIFFS'
15 EXHIBIT 4.

16 THE WITNESS: FOR THE WEBSense PRODUCT,
17 HE ESTIMATED THE ERROR RATE, THE OVERBLOCKING RATE TO BE
18 BETWEEN 5.25 AND 11.03 PERCENT.

19 BY MR. FINE:

20 Q. TURNING TO THE FINAL PARAGRAPH ON PAGE 8,
21 PLAINTIFFS' EXHIBIT 4, WHAT DID HE CONCLUDE ABOUT THE
22 OVERBLOCKING RATE OR THE ERROR RATE FOR THE N2H2
23 FILTERING PRODUCTS?

24 A. HE FOUND THAT IT WAS BETWEEN 6.92 AND 9.36
25 PERCENT.

1 Q. DR. CRANOR, DID YOU REVIEW A STUDY FOR NETALERT
2 AND THE AUSTRALIA BROADCAST AUTHORITY IN CONNECTION WITH
3 PREPARING YOUR EXPERT REPORT?

4 A. YES, I DID.

5 Q. AND I'M GOING TO ASK YOU TO TURN TO PLAINTIFFS'
6 EXHIBIT 5.

7 IS THIS THE REPORT PREPARED FOR NETALERT
8 THAT YOU REVIEWED IN CONNECTION --

9 A. YES.

10 Q. I'M NOW GOING TO HAVE YOU TURN YOUR ATTENTION TO
11 PAGE 35 OF PLAINTIFFS' EXHIBIT 5. LET ME BACK UP A STEP
12 AND ASK YOU, WHAT WAS THIS STUDY MEASURING?

13 A. THIS STUDY WAS MEASURING THE EFFECTIVENESS OF
14 FILTERING PRODUCTS FROM A VARIETY OF DIFFERENT CRITERIA.
15 SO THEY LOOKED AT A NUMBER OF DIFFERENT CATEGORIES OF
16 CONTENT THAT PARENTS MIGHT WANT BLOCKED, AND THEY
17 MEASURED EACH OF THESE INDIVIDUALLY. THEY ALSO LOOKED
18 AT THE ABILITY OF THE PRODUCT TO RESIST CIRCUMVENTION,
19 AND THEY LOOKED AT SOME USEABILITY ISSUES AS WELL.

20 Q. AND FOCUSING ON PAGE 35, PLAINTIFFS' EXHIBIT 5,
21 WHAT DOES THIS PAGE REPRESENT?

22 A. SO THIS SHOWS --

23 MR. CAMPBELL: OBJECTION, YOUR HONOR,
24 HEARSAY.

25 THE COURT: SURE, IT IS HEARSAY, BUT IT

1 IS A STUDY SHE RELIED UPON IN REACHING HER EXPERT
2 OPINION. IT WAS DONE IN ACCORDANCE WITH HER OPINION
3 WITH ACCEPTABLE STANDARDS.

4 MR. CAMPBELL: YOUR HONOR, THERE HAS BEEN
5 NO FOUNDATION LAID THAT THESE TESTS WERE CONDUCTED
6 ACCORDING TO GENERALLY SCIENTIFIC ACCEPTABLE STANDARDS.

7 THE COURT: SORRY. YOU MAY BE CORRECT
8 ABOUT THAT. I CAN'T REMEMBER WHAT STUDIES COUNSEL
9 QUALIFIED IN THE EARLY QUESTIONING.

10 MR. FINE: I'M HAPPY TO DO IT AGAIN.

11 THE COURT: OBJECTION SUSTAINED.

12 BY MR. FINE:

13 Q. DID YOU RELY UPON THE NETALERT STUDY,
14 PLAINTIFFS' EXHIBIT 5, IN REACHING YOUR EXPERT OPINION
15 IN THIS MATTER?

16 A. YES.

17 Q. AND IS THE NETALERT STUDY THE TYPE OF STUDY THAT
18 OTHER EXPERTS IN YOUR FIELD WOULD RELY UPON?

19 A. YES.

20 Q. AND ARE YOU GENERALLY FAMILIAR WITH THE
21 METHODOLOGY THAT THE NETALERT STUDY WAS CONDUCTED
22 PURSUANT TO?

23 A. IN GENERAL, YES.

24 Q. IS THE METHODOLOGY RELIABLE ENOUGH FOR YOURSELF
25 AND OTHER EXPERTS IN YOUR FIELD TO RELY UPON IT?

1 A. YES, FOR THE TYPES OF CONCLUSIONS THAT I'M
2 DRAWING, YES.

3 Q. TURNING BACK NOW TO PAGE 35 OF PLAINTIFFS'
4 EXHIBIT 5, CAN YOU PLEASE TELL US WHAT PAGE 35
5 REPRESENTS?

6 A. SO HERE WE SEE A NUMBER OF DIFFERENT CATEGORIES
7 OF CONTENT THAT SOME PARENTS MIGHT WISH TO USE FILTERS
8 TO BLOCK, AND THEY HAVE TESTED THE AOL FILTER WITH THE
9 KIDS SETTING UNDER 12 SETTING TO SEE WHAT PERCENTAGE OF
10 EACH OF THE THINGS IN THAT CATEGORY THAT IT ACTUALLY DID
11 BLOCK.

12 Q. I KNOW IT'S A LITTLE HARD TO SEE, AT LEAST ON MY
13 COPY.

14 THE COURT: I HAVE A HARD COPY.
15 BY MR. FINE:

16 Q. IF YOU CAN FOCUS ON THE BOTTOM CATEGORY,
17 PORNOGRAPHY AND EROTICA. WHAT DOES IT SHOW -- WHAT DID
18 IT CONCLUDE ABOUT THE EFFECTIVENESS OF AOL'S FILTERING
19 PRODUCT FOR PORNOGRAPHY AND EROTICA?

20 A. MY HARD COPY IS ALSO SOMEWHAT HARD TO SEE, BUT I
21 BELIEVE IT IS SHOWING EITHER 100 PERCENT OR NEAR 100
22 PERCENT BLOCKING.

23 Q. AND THIS IS FOR WHICH AGE SETTING AGAIN?

24 A. THIS IS FOR THE KIDS UNDER 12 SETTING.

25 Q. IF YOU TURN TO THE NEXT PAGE, PAGE 36 OF

1 PLAINTIFFS' EXHIBIT 5. FOCUSING ON THE TOP CHART, WHAT
2 DOES THAT TOP CHART REPRESENT?

3 A. THIS IS THE SAME THING AS THE PREVIOUS ONE
4 EXCEPT THAT IT IS FOCUSING ON THE SETTING FOR CHILDREN
5 AGES 13 TO 15.

6 Q. AND THE BOTTOM CHART, WHAT DOES THAT CHART
7 REPRESENT?

8 A. THAT IS FOR THE AOL SETTING FOR KIDS AGES 16 TO
9 17.

10 Q. AND THE TOP CHART, THE AOL SETTING FOR AGES 13
11 TO 15, AGAIN FOCUSING ON THE LAST CATEGORY, PORNOGRAPHY
12 AND EROTICA, WHAT DOES THIS STUDY CONCLUDE ABOUT THE
13 EFFECTIVENESS OF AOL'S FILTERING PRODUCT FOR PORNOGRAPHY
14 AND EROTICA IN THE CATEGORY 13 TO 15-YEAR OLDS?

15 A. IT'S REALLY HARD TO SEE ON MY PRINTOUT, BUT IT
16 LOOKS LIKE IT'S NEAR 100 PERCENT.

17 THE COURT: IF THE GRAPH IS SUPPOSED TO
18 REPRESENT THE END OF THE BLACK LINE ON THE BLACK AND
19 WHITE COPY, IS THE EFFECTIVENESS. IF THAT IS CORRECT,
20 THEN -- LET ME JUST STATE THIS FOR THE RECORD SO IT DOES
21 NOT GET LOST, THAT I'M LOOKING AT THE EXHIBIT AND THE
22 BLACK LINE FOR PORNOGRAPHY/EROTICA ON PAGE 13 TO 15 GOES
23 ALL OF THE WAY TO THE END WHERE THE LINE IS 100 PERCENT,
24 AND WITH RESPECT TO AOL 16 TO 17, IT IS SHOWING THE SAME
25 PORNOGRAPHY/EROTICA LINE WHICH IS BLACK ALL OF THE WAY

1 TO THE 100 PERCENT LINE, WHATEVER THAT MEANS. THAT IS
2 HOW I DESCRIBED IT.

3 MR. FINE: THANK YOU, YOUR HONOR.

4 BY MR. FINE:

5 Q. AND NOW I'M GOING TO HAVE YOU TURN TO PAGE 32 OF
6 PLAINTIFFS' EXHIBIT 5.

7 THE COURT: PARDON ME. WE ARE GOING TO
8 TAKE A MORNING RECESS, PLEASE. COURT IS IN RECESS FOR
9 10 MINUTES. WE ARE OFF THE RECORD.

10 THE CLERK: ALL RISE.

11 (RECESS TAKEN.)

12 ALL RISE.

13 THE COURT: WELCOME BACK, EVERYONE.

14 PLEASE BE SEATED.

15 CONTINUE.

16 MR. FINE: YOUR HONOR, JUST A PRELIMINARY
17 MATTER, BEFORE WE BEGIN REQUESTIONING THE WITNESS. I
18 BELIEVE I NEGLECTED TO MOVE PLAINTIFFS' EXHIBIT 4, THE
19 REPORT BY COREY FINNEL INTO EVIDENCE. THE PLAINTIFFS
20 WOULD NOW LIKE TO MOVE THAT INTO EVIDENCE.

21 MR. CAMPBELL: YOUR HONOR, WE OBJECT TO
22 THAT. AS RELIANCE MATERIAL, HE IS ENTITLED ASK THE
23 WITNESS ABOUT IT, BUT IT SHOULD BE OFFERED INTO EVIDENCE
24 FOR THE TRUTH OF THE MATTER ASSERTED. IT IS HEARSAY
25 MATERIAL.

1 THE COURT: -- PERHAPS BUT NOT THROUGH
2 THIS WITNESS.

3 MR. FINE, ANY RESPONSE?

4 MR. FINE: I'M HAPPY TO LAY THE
5 FOUNDATION YET AGAIN.

6 THE COURT: LAY THE FOUNDATION FOR HER
7 REVIEW, RELYING UPON IT, AND USING IT IN HER REACHING
8 HER CONCLUSION. BUT THE PURPOSE FOR OFFERING IT NOW,
9 DEFENSE COUNSEL PRESUMES, IS FOR THE TRUTH OF THE MATTER
10 STATED THEREIN. AND SHE DIDN'T CONDUCT THE STUDY, SO I
11 ASSUME THE OBJECTOR IMPLIES SOME SUB SILENTIO. IF MR.
12 FINNEL TESTIFIED, THAT'S ANOTHER STORY. IT'S HIS STUDY,
13 BUT NOT HER STUDY. I THINK THAT IS THE GIST OF WHAT HE
14 IS SAYING. IT IS JUST NOT ADMISSIBLE AS --

15 MR. FINE: THAT'S FINE, YOUR HONOR.

16 THE COURT: IT'S OFFENSIVE. I DON'T MEAN
17 DELETERIOUS, BUT OPPOSED TO DEFENSIVE. IT'S AN
18 OFFENSIVE USE OF ANOTHER PERSON'S STUDY IS WHAT HE IS
19 OBJECTING TO.

20 MR. CAMPBELL: YES, YOUR HONOR.

21 MR. FINE: UNDERSTOOD.

22 THE COURT: SO THE OFFER OF P 4 --

23 MR. FINE: YES.

24 THE COURT: -- IS DENIED WITHOUT
25 PREJUDICE.

1 THE OBJECTION IS SUSTAINED. IF I WAS
2 OBSCURE ON THAT, I'M NOT ANYMORE. YOU WILL HAVE TO
3 REMEMBER TO PUT IT IN THROUGH FINNEL, IF THAT IS WHAT
4 YOU WANT TO DO.

5 MR. FINE: UNDERSTOOD.

6 BY MR. FINE:

7 Q. PICKING UP WHERE WE LEFT OFF, IF YOU CAN TURN
8 BACK TO PLAINTIFF'S EXHIBIT 5, THE NETALERT STUDY.
9 FOCUSING YOUR ATTENTION ON PAGE 32.

10 A. OKAY.

11 Q. USING AOL'S PARENTAL CONTROL PRODUCT AGAIN AS AN
12 EXAMPLE, FOCUSING ON THE PARAGRAPH CAPTIONED, EASE OF
13 USE, WHAT DID THIS STUDY CONCLUDE ABOUT HOW EASY IT IS
14 TO INSTALL AND USE AOL'S FILTER?

15 A. IT SAYS THAT IT IS QUITE EASY TO USE.

16 Q. AND THE PARAGRAPH ABOVE EASE OF USE, THAT IS
17 CAPTIONED: EASE OF INSTALLATION AND DEINSTALLATION,
18 WHAT DID THIS STUDY CONCLUDE ABOUT THE EASE OF
19 INSTALLATION OF AOL'S FILTER?

20 A. IT SAYS THE SYSTEM IS STRAIGHTFORWARD TO INSTALL
21 AND DEINSTALL.

22 Q. IN CONNECTION WITH PREPARING YOUR EXPERT REPORT,
23 DID YOU ALSO REVIEW A STUDY BY CONSUMER REPORTS?

24 A. YES.

25 Q. I'M GOING TO NOW ASK YOU TO TURN YOUR ATTENTION

1 TO PLAINTIFFS' EXHIBIT 8. IS THIS THAT CONSUMER REPORT
2 STUDY THAT YOU REVIEWED?

3 A. YES.

4 Q. ARE YOU FAMILIAR WITH CONSUMER REPORTS?

5 A. YES.

6 Q. WHAT IS CONSUMER REPORTS?

7 A. IT'S A CONSUMER-ORIENTED MAGAZINE THAT REVIEWS A
8 WIDE VARIETY OF PRODUCTS FOR CONSUMERS.

9 Q. AND WHO ARE ITS REPORTS FOR USE BY?

10 A. FOR CONSUMERS.

11 Q. AND DID YOU RELY UPON THIS STUDY IN REACHING
12 YOUR OPINION IN CONNECTION WITH THIS MATTER?

13 A. YES.

14 Q. AND IS THIS THE TYPE OF STUDY THAT OTHER EXPERTS
15 IN YOUR FIELD WOULD RELY ON IN DETERMINING WHETHER THERE
16 ARE EFFECTIVE TOOLS FOR PARENTS TO USE?

17 A. YES. I WOULD NOT RELY ON IT IN THE SAME WAY
18 THAT I RELIED ON SOME OF THE OTHERS AS FAR AS LOOKING AT
19 THE ACCURACY, BUT CONSUMER REPORTS FOCUSES THEIR
20 EVALUATIONS ON LOOKING AT THINGS THAT WOULD BE IMPORTANT
21 TO CONSUMERS, AND SO THEIR GENERAL RECOMMENDATIONS, I DO
22 FIND RELIABLE.

23 Q. AND ARE THEIR CONCLUSIONS RELEVANT TO YOUR
24 ANALYSIS?

25 A. YES.

1 Q. WHY IS THAT?

2 A. BECAUSE I'M INTERESTED IN WHETHER -- NOT ONLY
3 HOW ACCURATE THE PRODUCTS ARE, BUT WHETHER THEY ARE
4 GOING TO BE USABLE BY PARENTS.

5 Q. I WANT TO FOCUS YOUR ATTENTION NOW ON PAGE 3 OF
6 PLAINTIFFS' EXHIBIT 8, SPECIFICALLY THE TOP PARAGRAPH OF
7 PAGE 3, PLAINTIFFS' EXHIBIT 8.

8 A. OKAY.

9 Q. WHAT DOES THE CONSUMER REPORTS STUDY CONCLUDE
10 ABOUT THE EFFECTIVENESS OF FILTERING PRODUCTS OF
11 BLOCKING PORNOGRAPHY IN THE TOP PARAGRAPH ON PAGE 3?

12 A. IT SAYS: FILTERS KEEP MOST, BUT NOT ALL, PORN
13 OUT.

14 Q. CAN YOU CONTINUE READING?

15 A. AND THAT THEY WERE VERY GOOD OR EXCELLENT AT
16 BLOCKING PORNOGRAPHY. AND THEN THEY GAVE EXAMPLES OF
17 AOL, KIDSNET AND MSN BLOCKED PRACTICALLY --

18 THE COURT: KIDSNET AND?

19 THE WITNESS: KIDSNET AND MSN BLOCKED
20 PRACTICALLY EVERY SUCH SITE IN OUR TEST. AND EVEN THE
21 WORST PRODUCT THAT THEY TESTED STILL BLOCKED 88 PERCENT
22 OF THE PORNOGRAPHY.

23 BY MR. FINE:

24 Q. NOW DIRECT YOUR ATTENTION TO PLAINTIFFS' EXHIBIT
25 6.

1 WHAT IS THIS DOCUMENT?

2 A. THIS IS THE REPORT WRITTEN BY THE COPA
3 COMMISSION.

4 Q. DID YOU REVIEW THIS REPORT IN CONNECTION WITH
5 PREPARING YOUR EXPERT OPINION?

6 A. YES.

7 Q. AND IS THIS THE SAME COPA COMMISSION THAT YOU
8 TESTIFIED TO?

9 A. YES.

10 Q. AND DID YOU RELY UPON THIS REPORT IN REACHING
11 YOUR OPINION?

12 A. YES.

13 Q. AND IS THIS THE TYPE OF REPORT THAT OTHER
14 EXPERTS IN YOUR FIELD WOULD RELY UPON?

15 A. YES.

16 Q. WHY IS THAT?

17 A. WELL, IT'S A REPORT THAT REPRESENTS THE
18 CONSENSUS OF THIS COMMISSION WHICH SPENT MANY HOURS
19 HEARING TESTIMONY FROM EXPERTS ON ALL DIFFERENT SIDES OF
20 THE ISSUE AND FROM A VARIETY OF DIFFERENT PLACES SO IT
21 HAS KIND OF A CONSENSUS OPINION.

22 Q. I WANT TO FOCUS YOUR ATTENTION ON PAGE 19 OF
23 PLAINTIFFS' EXHIBIT 6, SPECIFICALLY THE SECOND BULLET
24 POINT, A LITTLE MORE THAN HALFWAY DOWN THE PAGE.

25 A. OKAY.

1 Q. WHAT DID THE COPA COMMISSION REPORT CONCLUDE
2 ABOUT THE EFFECTIVENESS OF SERVER-SIDE FILTERS?

3 A. IT SAYS: RELATIVE TO OTHER TECHNOLOGIES, THE
4 BEST OF THESE TECHNOLOGIES CAN BE HIGHLY EFFECTIVE IN
5 DIRECTLY BLOCKING ACCESS TO GLOBAL HARMFUL TO MINORS
6 CONTENT ON THE WEB AND ALSO ON NEWS GROUPS, E-MAIL AND
7 CHAT ROOMS. SERVER-SIDE FILTERS MAY BE MORE EASILY
8 IMPLEMENTED ON A WIDE SCALE THAN CLIENT-SIDE FILTERS AND
9 MAY BE MORE DIFFICULT FOR CHILDREN TO DEFEAT.

10 Q. AND FOCUSING ON THE NEXT BULLET POINT. DO YOU
11 AGREE WITH THE STATEMENT THAT: DUE TO RAPID GROWTH IN
12 INTERNET CONTENT SERVER-SIDE FILTERS USING URL LISTS MAY
13 NOT BE PERFECTLY EFFECTIVE IN BLOCKING? DO YOU AGREE
14 WITH THAT STATEMENT?

15 A. YES.

16 Q. DOES THAT AFFECT YOUR OPINION THAT FILTERS
17 PROVIDE PARENTS WITH AN EFFECTIVE MEANS OF BLOCKING
18 ACCESS TO INAPPROPRIATE MATERIAL ON THE INTERNET?

19 A. I TOOK THAT INTO ACCOUNT IN FORMING MY OPINION.

20 Q. LET ME ASK YOU, DO YOU THINK FILTERS ARE
21 PERFECTLY EFFECTIVE?

22 A. NO.

23 Q. WHY NOT?

24 A. FROM THE STUDIES THAT I REVIEWED AND MY OWN USE
25 OF THEM, THEY SOMETIMES MAKE MISTAKES.

1 Q. BUT DESPITE THAT, IT IS YOUR EXPERT TESTIMONY
2 THAT FILTERS ARE AN EFFECTIVE TOOL FOR PARENTS?

3 A. YES, I BELIEVE, DESPITE THAT, THEY ARE STILL
4 EFFECTIVE.

5 Q. I'M GOING TO NOW FOCUS YOUR ATTENTION ON PAGE 34
6 OF THE REPORT. I'M GOING TO ASK YOU TO LOOK AT THE
7 SECOND BULLET POINT.

8 A. OKAY.

9 Q. FIRST OF ALL, TELL US, WHAT IS PAGE 34
10 DISCUSSING?

11 A. THE MONITORING AND TIME-LIMITING TECHNOLOGIES.

12 Q. AND FOCUSING ON THE SECOND BULLET POINT, WHAT
13 DID THE COPA COMMISSION CONCLUDE ABOUT THE EFFECTIVENESS
14 OF MONITORING AND TIME-LIMITING TECHNOLOGIES?

15 A. THEY CONCLUDED THEY CAN BE EFFECTIVE WHEN USED
16 IN THE HOME BECAUSE THEY INFLUENCE CHILDREN'S ACTIVITIES
17 AND REQUIRE INVOLVEMENT OF PARENTS, AND THAT THEY CAN
18 ALSO BE EFFECTIVE FOR E-MAIL AND OTHER NONWEB
19 COMMUNICATION AND FOR ACCESS TO GLOBAL CONTENT.

20 Q. I'M GOING TO HAVE YOU FOCUS ON PAGE 39 OF
21 PLAINTIFFS' EXHIBIT 6. I'M GOING TO HAVE YOU FOCUS ON
22 THE SECOND PARAGRAPH ON PAGE 39, THE THIRD SENTENCE,
23 BEGINNING: COUPLED WITH INFORMATION.

24 A. IT SAYS: COUPLED WITH INFORMATION TO MAKE THESE
25 METHODS UNDERSTANDABLE AND USEFUL, THESE VOLUNTARY

1 APPROACHES PROVIDE POWERFUL TECHNOLOGIES FOR FAMILIES.

2 Q. DO YOU AGREE WITH THAT CONCLUSION?

3 A. YES, I DO.

4 Q. WHY IS THAT?

5 A. I'VE SEEN THAT THE PRODUCTS ARE EFFECTIVE AND
6 THEY ARE VERY FLEXIBLE. THEY ALLOW FAMILIES TO CHOOSE
7 THE KINDS OF RESTRICTIONS THAT MAKE SENSE FOR THEM. SO
8 I THINK THAT THESE CAN BE VERY USEFUL FOR A FAMILY.

9 Q. DR. CRANOR, DID YOU REVIEW A REPORT PREPARED BY
10 THE NATIONAL RESEARCH COUNCIL IN CONNECTION WITH
11 PREPARING YOUR EXPERT OPINION?

12 A. I DID.

13 Q. AND NOW I ASK YOU TO TURN TO PLAINTIFFS' EXHIBIT
14 54. YOU MAY HAVE TO SWITCH BINDERS. PLAINTIFFS'
15 EXHIBIT 54. IS THAT THE REPORT BY THE NATIONAL RESEARCH
16 COUNCIL THAT YOU REVIEWED?

17 A. YES.

18 Q. DID YOU RELY UPON THIS REPORT IN REACHING YOUR
19 EXPERT OPINION?

20 A. YES.

21 Q. AND IS THIS THE TYPE OF REPORT THAT OTHER
22 EXPERTS IN YOUR FIELD RELY UPON?

23 A. YES.

24 Q. AND ARE YOU GENERALLY FAMILIAR WITH THE
25 METHODOLOGY THAT WENT INTO THIS REPORT?

1 A. GENERALLY.

2 Q. AND IS THE METHODOLOGY THAT WAS USED TO PREPARE
3 THIS REPORT GENERALLY ACCEPTABLE TO OTHER EXPERTS AND
4 YOURSELF?

5 A. WELL, AGAIN, THIS REPORT RELIES ON TAKING A
6 CONSENSUS OF THE OPINIONS OF A VARIETY OF EXPERTS AS
7 WELL AS RESEARCH FROM THE STAFF. GENERALLY, THE
8 NATIONAL RESEARCH COUNCIL IS A HIGHLY-RESPECTED
9 ORGANIZATION AND SO EXPERTS GENERALLY DO RELY ON THEIR
10 REPORTS.

11 Q. WHAT IS THE NATIONAL RESEARCH COUNCIL?

12 A. I DON'T REALLY KNOW EXACTLY HOW THEY WERE
13 FORMED, BUT -- I DON'T WANT TO GIVE INCORRECT
14 INFORMATION OF THE NATIONAL RESEARCH COUNCIL.

15 Q. I'M GOING TO FOCUS YOU ON PAGE 30 OF PLAINTIFFS'
16 EXHIBIT 54. THAT IS THE WRONG PAGE.

17 FOCUSING ON PAGE 40, PLAINTIFFS' EXHIBIT
18 54. PAGE 40. I'M GOING TO ASK YOU TO FOCUS YOUR
19 ATTENTION IN THE PARAGRAPH UNDER THE CAPTION:
20 TECHNOLOGY BASED TOOLS.

21 A. OKAY.

22 Q. WHAT DID THE NATIONAL RESEARCH COUNCIL REPORT
23 CONCLUDE ABOUT THE EFFECTIVENESS OF FILTERING PRODUCTS,
24 IF YOU CAN FOCUS ON THE FOURTH SENTENCE?

25 A. FILTERS CAN BE HIGHLY EFFECTIVE IN REDUCING THE

1 EXPOSURE OF MINORS TO INAPPROPRIATE CONTENT IF THE
2 INABILITY TO ACCESS LARGE AMOUNTS OF APPROPRIATE
3 MATERIAL IS ACCEPTABLE.

4 Q. DO YOU AGREE WITH THAT CONCLUSION?

5 A. YES.

6 Q. ARE YOU AWARE THAT THE GOVERNMENT HAS
7 COMMISSIONED A STUDY IN CONNECTION WITH THIS LITIGATION?

8 A. YES.

9 Q. AND HAVE YOU REVIEWED THE RESULTS OF THE
10 GOVERNMENT'S STUDY?

11 A. YES.

12 Q. HOW DOES THAT STUDY AFFECT YOUR OPINION ABOUT
13 THE EFFECTIVENESS OF FILTERING PRODUCTS?

14 MR. CAMPBELL: OBJECTION, UNDISCLOSED
15 EXPERT OPINION. PREVIOUSLY UNDISCLOSED EXPERT OPINION.

16 THE COURT: IS THERE A WAY, MR. FINE,
17 THAT YOU CAN -- WELL, WHAT IS YOUR RESPONSE TO THE
18 OBJECTION?

19 MR. FINE: THE RESPONSE IS THAT THIS IS
20 -- THE WITNESS WAS SUBJECT TO CROSS EXAMINATION IN A
21 FULL DAY DEPOSITION, AND THE DEFENDANTS COUNSEL SIMPLY
22 DID NOT ASK. SHE IS ENTITLED TO OPINE ON --

23 MR. CAMPBELL: YOUR HONOR, THERE IS NO
24 REBUTTAL REPORT TO OUR STUDY --

25 MR. FINE: -- FILTERING STUDIES.

1 MR. CAMPBELL: -- THAT DR. CRANOR
2 PROVIDED.

3 THE COURT: WAS THE GOVERNMENT STUDY
4 FINISHED AND IN HAND BY THE TIME HER DEPOSITION WAS
5 TAKEN?

6 MR. FINE: YOUR HONOR, THE WAY THIS
7 WORKED, DEFENDANT'S EXPERTS SUBMITTED A REBUTTAL REPORT
8 CONTRADICTING, CRITICIZING DR. CRANOR'S PRINCIPAL
9 REPORT. DR. CRANOR DID NOT HAVE AN OPPORTUNITY TO FILE
10 A SURREBUTTAL REPORT TO THE DEFENDANT'S EXPERT REBUTTAL
11 REPORT.

12 THE COURT: WELL, I DON'T KNOW THE DATES
13 INVOLVED, BUT IF IT'S ONLY THE PASSAGE OF TIME THEN A
14 SURREBUTTAL REPORT COULD HAVE BEEN SUBMITTED, BUT IT
15 JUST WASN'T. DIDN'T HAVE THE OPPORTUNITY MAYBE BECAUSE
16 SOMEONE DID NOT ASK HER. I DON'T KNOW WHAT THAT MEANS.
17 DIDN'T HAVE THE OPPORTUNITY TO SUBMIT IT.

18 MR. FINE: UNDER THE COURT'S SCHEDULING
19 ORDER, THERE WERE SET DEADLINES FOR SUBMITTING EXPERT
20 REPORTS. AND WE COMPLIED WITH -- THERE WAS SIMULTANEOUS
21 DISCLOSURE OF REBUTTAL REPORTS. AND ON THAT DEADLINE
22 DR. CRANOR SUBMITTED A REBUTTAL REPORT DIRECTED AT
23 PLAINTIFFS' EXPERT'S INITIAL REPORT.

24 MR. CAMPBELL: ACTUALLY, IF I MAY SAY,
25 YOUR HONOR, WE WITHDRAW THIS OBJECTION.

1 THE COURT: YOU MAY PROCEED.

2 BY MR. FINE:

3 Q. HOW DOES THE STUDY CONDUCTED BY THE DEFENDANT'S
4 EXPERT AFFECT YOUR OPINION ABOUT THE EFFECTIVENESS OF
5 FILTERING PRODUCTS?

6 A. IT REINFORCES MY OPINION ABOUT THE EFFECTIVENESS
7 OF FILTERING PRODUCTS.

8 Q. WHY IS THAT?

9 A. ITS CONCLUSIONS ARE VERY SIMILAR TO THE TYPES OF
10 CONCLUSIONS THAT I HAVE SEEN IN THE OTHER STUDIES THAT
11 WE HAVE TALKED ABOUT, AND SO THAT SUPPORTS MY OVERALL
12 FINDINGS.

13 Q. AND SPECIFICALLY WHAT CONCLUSIONS ARE YOU
14 REFERRING TO?

15 A. BASICALLY THE CONCLUSIONS ABOUT THE ACCURACY OF
16 THE FILTERING PRODUCTS SHOWS THAT MANY OF THEM ARE QUITE
17 ACCURATE, ESPECIALLY IN BEING ABLE TO FILTER OUT THE
18 MOST POPULAR WEBSITES.

19 MR. CAMPBELL: OBJECTION TO THIS
20 QUESTION. SHE IS TALKING ABOUT THE PRINCIPAL REPORT
21 NOW, YOUR HONOR, OF DEFENDANT.

22 THE COURT: DID YOU FIND OR RECOGNIZE
23 WHAT COUNSEL IS TALKING ABOUT?

24 MR. FINE: I'M A BIT CONFUSED BY THE
25 OBJECTION, WITHDRAWING OBJECTION.

1 THE COURT: WHAT WAS THE QUESTION YOU
2 JUST POSED?

3 MR. FINE: I BELIEVE THE QUESTION WAS,
4 WHAT IS IT ABOUT THOSE CONCLUSIONS? I DON'T HAVE THE
5 SCREEN IN FRONT OF ME --

6 MR. CAMPBELL: IF I CAN CLARIFY MY
7 OBJECTION. THE WITNESS WAS GOING TO TALK ABOUT HER
8 REBUTTAL REPORT. I'M USUALLY MUCH MORE OF A BOOMING
9 SPEAKER. I'LL TRY TO SPEAK LOUDER. MY APOLOGIES.

10 NOW SHE IS SPEAKING ABOUT HER PRINCIPAL
11 REPORT, OUR PRINCIPAL REPORT.

12 THE COURT: REPHRASE THE QUESTION IF YOU
13 THINK IT'S APPROPRIATE. THE OBJECTION IS SUSTAINED.
14 START OVER -- NOT OVER BUT ON THIS SUBJECT.

15 MR. FINE: SURE.

16 THE COURT: I'M NOT SURE WHAT REPORT SHE
17 IS REFERRING TO.

18 BY MR. FINE:

19 Q. CAN YOU PLEASE REMIND US WHAT REPORT, WHAT STUDY
20 YOU ARE REFERRING TO?

21 A. I WAS REFERRING TO THE STUDY THAT THE DEFENDANTS
22 COMMISSIONED ON FILTERS.

23 Q. AND DID YOU REVIEW THAT STUDY IN CONNECTION WITH
24 PREPARING YOUR EXPERT OPINION IN THIS CASE?

25 A. YES. AFTER I WROTE MY REPORT BECAUSE THE STUDY

1 WAS NOT AVAILABLE UNTIL AFTER I WROTE MY REPORT.

2 THE COURT: IS THERE A WAY TO IDENTIFY
3 THE SO-CALLED DEFENDANT OR GOVERNMENT STUDY IN SOME
4 PARTICULAR WAY SUCH AS THE DATE OF IT, THE NAME OF IT OR
5 SOMETHING?

6 MR. FINE: DO YOU KNOW THE NAME OF THE
7 AUTHOR OF THE GOVERNMENT'S STUDY?

8 THE WITNESS: I BELIEVE IT WAS MR.
9 MEWETT.

10 MR. CAMPBELL: YOUR HONOR, WE OBJECT.
11 OBJECTION. THE OPINION SHE IS OFFERING NOW WAS NOT
12 ADDRESSED IN HER PRINCIPAL REPORT OR HER REBUTTAL
13 REPORT.

14 THE COURT: I THOUGHT YOU WITHDREW THAT
15 OBJECTION.

16 MR. CAMPBELL: RESTATING THAT OBJECTION,
17 YOUR HONOR.

18 MR. FINE: AGAIN, SHE IS SIMPLY -- SHE IS
19 HERE AS AN EXPERT DISCUSSING THE EFFECTIVENESS OF
20 FILTERING SOFTWARE.

21 THE COURT: THE OBJECTION IS OVERRULED.
22 WE ARE GOING TO LET MOST EXPERTS TESTIFY TO EVERYTHING
23 THEY LOOKED AT PROBABLY EVENHANDEDLY FOR BOTH SIDES, THE
24 BEST I CAN DO.

25 BY MR. FINE:

1 Q. I'M NOT EVEN SURE WHERE WE WERE IN THE
2 QUESTIONING. I THINK THAT THE QUESTION THAT I BELIEVE
3 YOU ANSWERED ALREADY WAS, HOW DOES THAT STUDY AFFECT
4 YOUR OPINION? HOW DOES MR. MEWETT'S OPINION AFFECT YOUR
5 OPINION?

6 THE COURT: SHE ANSWERED THAT. IN
7 GENERAL SUPPORT OF IT.

8 BY MR. FINE:

9 Q. THE FOLLOW-UP QUESTION WAS, WHY?

10 A. I BELIEVE I ANSWERED, AS WELL, THAT MR. MEWETT'S
11 FINDINGS WERE GENERALLY CONSISTENT WITH THE FINDINGS OF
12 OTHER STUDIES THAT I RELIED ON IN THAT THEY FOUND THAT
13 MOST OF THE FILTERING OR SOME OF THE FILTERING PRODUCTS
14 WERE VERY EFFECTIVE AND VERY ACCURATE IN THEIR
15 BLOCKING ABILITIES, ESPECIALLY AMONG THE MOST POPULAR
16 WEB CONTENT. AND WHILE THEY ARE NOT PERFECT, OVERALL,
17 THEY ARE QUITE EFFECTIVE.

18 Q. DR. CRANOR, IN YOUR OPINION, ARE FILTERS BETTER
19 OR WORSE TODAY THAN THEY WERE SEVEN OR EIGHT YEARS AGO?

20 A. THEY SEEM TO BE BETTER.

21 Q. WHY DO YOU SAY THAT?

22 A. WELL, THE FILTERING TECHNOLOGY HAS IMPROVED
23 SOMEWHAT. WE ARE SEEING MORE FILTERS THAT USE A
24 COMBINATION OF TECHNOLOGY, NOT JUST RELYING ON BLACK
25 LISTS AND WHITE LISTS, BUT ALSO USING SOME OF THESE

1 DYNAMIC FILTERING TECHNIQUES. SO THEY ARE GETTING MORE
2 EFFECTIVE. THEY HAVE ALSO BEEN ABLE TO ADDRESS PROBLEMS
3 THAT PEOPLE HAVE BROUGHT TO THEIR ATTENTION IN THE
4 PROCESS OF USING FILTERS OVER THE YEARS.

5 Q. AND IS THAT SURPRISING TO YOU THAT THE SOFTWARE
6 HAS GOTTEN BETTER?

7 A. NO. MOST SOFTWARE HAS GOTTEN BETTER. SOFTWARE
8 COMPANIES RESPOND TO THE PROBLEMS THAT THEY OBSERVE WITH
9 PEOPLE USING THEIR SOFTWARE, AND THEY TRY TO IMPROVE
10 THEIR SOFTWARE.

11 Q. DO YOU KNOW HOW PARENTS FEEL ABOUT THE
12 EFFECTIVENESS OF FILTERING SOFTWARE?

13 THE COURT: ANSWER THAT ONE YES OR NO, IF
14 YOU CAN.

15 THE WITNESS: SOME PARENTS.

16 BY MR. FINE:

17 Q. LET ME ASK YOU GENERALLY, DO YOU KNOW -- ARE YOU
18 AWARE OF HOW PARENTS FEEL GENERALLY ABOUT THE
19 EFFECTIVENESS OF FILTERING SOFTWARE?

20 MR. CAMPBELL: OBJECTION, LACK OF
21 FOUNDATION.

22 MR. FINE: THE QUESTION IS SIMPLY DO YOU
23 KNOW.

24 THE COURT: OVERRULED. THE ANSWER IS YES
25 OR NO.

1 THE WITNESS: YES.

2 BY MR. FINE:

3 Q. HOW DO YOU KNOW THAT?

4 A. I HAVE READ SOME STUDIES THAT HAVE SURVEYED
5 PARENTS AS WELL AS REPORTS FROM THE VENDORS WHO TALK
6 ABOUT THE RATES OF PEOPLE RENEWING THEIR SUBSCRIPTIONS.

7 Q. WHAT HAS ALL OF THIS INFORMATION THAT YOU HAVE
8 REVIEWED SUGGESTED?

9 A. IT SUGGESTS THAT MOST PARENTS ARE HAPPY WITH IT.
10 NOT ALL OF THEM, BUT MOST OF THEM ARE HAPPY WITH THE
11 PRODUCTS.

12 Q. AND CAN YOU POINT US TO ANY SPECIFIC STUDIES OR
13 DOCUMENTS THAT LED YOU TO THIS CONCLUSION?

14 A. I REVIEWED SOME DOCUMENTS FROM AOL.

15 MR. FINE: YOUR HONOR, I BELIEVE -- I'M
16 NOT SURE WHAT THE STATUS IS. I BELIEVE THAT AOL
17 DOCUMENTS THAT I WOULD LIKE TO DISCUSS NOW ARE PERHAPS
18 THE SUBJECT OF SOME CONFIDENTIALITY ISSUES THAT MAY OR
19 MAY NOT HAVE BEEN RESOLVED WHILE WE WERE HERE THIS
20 MORNING AND SO I'M NOT --

21 THE COURT: DO YOU WANT TO CHECK WITH
22 CO-COUNSEL AND SEE IF THERE IS ANYTHING NEW?

23 MR. FINE: PERHAPS. I'M NOT SURE WHEN
24 THIS WITNESS WILL -- HOW WOULD YOUR HONOR LIKE US TO
25 PROCEED?

1 THE COURT: WELL, FIRST OF ALL, I DON'T
2 KNOW WHICH OF THE SEVERAL WITNESSES OF THIRD PARTIES ARE
3 DEPOSED AND WHAT ORGANIZATION THIS WAS THAT WAS DEPOSED,
4 IF IT WAS AOL -- IS THAT THE SUBJECT OF A MOTION TO
5 PROTECT -- FOR PROTECTIVE ORDER?

6 MR. FINE: IT'S NOT THE SUBJECT OF A
7 MOTION. MY SIMPLE UNDERSTANDING IS THAT UNDER THE
8 PROTECTIVE ORDER IN THIS CASE, THE PARTIES ARE REQUIRED
9 TO GIVE FIVE BUSINESS DAYS NOTICE, AND A LETTER WAS SENT
10 TO AOL WITH RESPECT TO THE DEPOSITION DESIGNATIONS.
11 APPARENTLY THE SPECIFIC EXHIBIT THAT I WOULD LIKE TO
12 REFERENCE HERE WAS INADVERTENTLY OMITTED FROM THAT
13 LETTER, SO WE ARE STILL WAITING TO HEAR BACK FROM AOL
14 WITH RESPECT TO THAT ONE EXHIBIT.

15 THE COURT: YOU ARE THE FIRST JUDGE OF
16 WHETHER OR NOT YOU THINK YOU ARE VIOLATING THE
17 PROTECTIVE ORDER.

18 MR. FINE: I DON'T NECESSARILY WANT TO BE
19 THE GUINEA PIG, BUT I THINK WHAT --

20 THE COURT: YOU ARE EITHER GOING TO OFFER
21 THE TESTIMONY OR NOT. IT IS A JUDGMENT ON WHETHER --

22 MR. FINE: UNDER THAT STANDARD, YOUR
23 HONOR, I DON'T THINK WE CAN GO INTO THIS DOCUMENT AT
24 THIS TIME. TO THE EXTENT THE WITNESS IS STILL AVAILABLE
25 AFTER THE LUNCH BREAK, HOPEFULLY DURING THE LUNCH BREAK

1 WE CAN CONFER WITH AOL'S COUNSEL AND SEE IF THIS HAS
2 BEEN RESOLVED.

3 THE COURT: EXCUSE ME I NEED TO KNOW THAT
4 BEFORE I EVEN RULE ON THE CROSS DESIGNATIONS AND SO
5 FORTH. I STARTED TO DO THAT AND REALIZED THAT ALL THAT
6 WORK MAY NOT BE NECESSARY DEPENDING ON WHO OBJECTS,
7 WHICH OF THE PARTIES OBJECTS.

8 MR. FINE: JUST TO BE CLEAR, AT LEAST
9 WITH RESPECT TO AOL, I DON'T BELIEVE THERE ARE ANY
10 CONFIDENTIALITY ISSUES WITH THEIR DEPOSITION
11 DESIGNATIONS. IT'S SIMPLY A DOCUMENT THAT WAS PRODUCED
12 IN DISCOVERY THAT WAS NOT USED AT THE DEPOSITION.

13 THE COURT: I'M NOT AWARE OF THAT
14 DOCUMENT, UNLESS IT IS IN THE EXHIBITS SOMEWHERE.

15 MR. FINE: IT IS IN THE EXHIBITS, YOUR
16 HONOR.

17 THE COURT: IT SHOULD BE UNDER SEAL, I
18 SUPPOSE.

19 MR. FINE: I BELIEVE THE PROTECTIVE ORDER
20 REQUIRES DOCUMENTS TO BE PUT UNDER SEAL ONLY WHEN THEY
21 ARE OFFERED INTO EVIDENCE, BUT WE CAN COME BACK.

22 THE COURT: WE WILL PASS THAT ISSUE FOR
23 THE TIME BEING.

24 BY MR. FINE:

25 Q. DR. CRANOR, ARE YOU AWARE THAT THE DEPARTMENT OF

1 JUSTICE USES FILTERS ON MANY OF ITS COMPUTERS?

2 A. YES.

3 Q. HOW DID YOU BECOME AWARE OF THAT?

4 A. FROM THE DOCUMENTS THAT WERE OBTAINED DURING
5 DISCOVERY.

6 Q. AND WHAT DID THOSE DOCUMENTS REVEAL ABOUT THE
7 EFFECTIVENESS OF THE FILTERS ON THE DEPARTMENT OF
8 JUSTICE'S COMPUTERS?

9 A. THAT THE DEPARTMENT OF JUSTICE FINDS THEM TO BE
10 VERY EFFECTIVE.

11 Q. DR. CRANOR, YOU EARLIER MENTIONED SOMETHING
12 CALLED CIRCUMVENTION. WHAT DO YOU MEAN BY THAT?

13 A. A CHILD WHO HAS FOUND THAT THERE IS FILTERING
14 SOFTWARE ON THEIR COMPUTER AND WANTS TO ACCESS CONTENT
15 THAT THEIR PARENTS DON'T WANT THEM TO MAY TRY TO REMOVE
16 THE SOFTWARE FROM THEIR COMPUTER OR DISABLE IT OR
17 SOMEHOW GET AROUND IT SO THAT THEY CAN ACCESS THAT
18 CONTENT.

19 Q. AND HOW EASY IS IT FOR CHILDREN TO CIRCUMVENT
20 FILTERING PRODUCTS?

21 A. IT IS FAIRLY DIFFICULT.

22 Q. EXPLAIN A LITTLE MORE, WHY IS IT FAIRLY
23 DIFFICULT?

24 A. SOFTWARE VENDORS ARE AWARE THAT THE CHILDREN MAY
25 TRY TO CIRCUMVENT THE SOFTWARE AND SO THEY BUILD IN A

1 VARIETY OF PROTECTIONS SO THAT THEY REQUIRE ANY CHANGES
2 TO THE SETTINGS OR INSTALLING AND REMOVING SOFTWARE
3 REQUIRES A PASSWORD WHICH ONLY THE PARENTS SHOULD KNOW.
4 AND SO IF THE CHILD DOES NOT KNOW THE PASSWORD, THERE IS
5 NOT AN EASY WAY THAT THEY CAN JUST DELETE THE SOFTWARE
6 OFF THEIR COMPUTER OR TURN IT OFF.

7 AND, YOU KNOW, OVER THE YEARS, CHILDREN
8 HAVE COME UP WITH VARIOUS CLEVER WAYS OF CIRCUMVENTING
9 THE SOFTWARE. THEN THE SOFTWARE COMPANIES RESPOND AND
10 PUT IN EXTRA PROTECTIONS SO THAT THOSE TECHNIQUES WILL
11 FAIL.

12 Q. WHAT STEPS DID FILTERING COMPANIES TAKE TO MAKE
13 SURE THAT THEIR PRODUCTS CAN'T BE CIRCUMVENTED? CAN YOU
14 GIVE US A FEW EXAMPLES?

15 A. WELL, SO THEY MONITOR THE VARIOUS WEBSITES WHERE
16 CHILDREN TALK ABOUT HOW TO CIRCUMVENT THE PRODUCTS AND
17 THEY -- WHEN THEY HEAR ABOUT TECHNIQUES THEY MAKE SURE
18 THAT THEIR SOFTWARE IS NOT SUSCEPTIBLE TO THOSE
19 TECHNIQUES AND THEY USE -- THEY PASSWORD PROTECT ALL
20 ASPECTS OF THE SOFTWARE, SUCH AS CHANGING THE SETTINGS
21 AND REMOVING IT.

22 Q. DO FILTERING PRODUCTS WORK ON LAPTOPS?

23 A. YES, THEY DO.

24 Q. AND DO THEY WORK IF A FAMILY HAS MORE THAN ONE
25 COMPUTER IN THE HOME?

1 A. YES.

2 Q. DR. CRANOR, DO YOU KNOW HOW MANY PARENTS ARE
3 ACTUALLY USING FILTERING PRODUCTS TODAY?

4 A. I HAVE SEEN ESTIMATES SAYING THAT ABOUT 54
5 PERCENT OF PARENTS WITH KIDS ARE USING FILTERS.

6 THE COURT: 54?

7 THE WITNESS: YES, 54.

8 BY MR. FINE:

9 Q. AND WHERE DID THAT ESTIMATE COME FROM?

10 A. THAT CAME FROM A STUDY CONDUCTED BY PEW, PEW
11 RESEARCH.

12 Q. WHAT IS PEW, PEW RESEARCH? P-E-W?

13 A. P-E-W, YES.

14 IT'S A RESEARCH ORGANIZATION THAT HAS
15 DONE A NUMBER OF STUDIES ABOUT THE USE OF THE INTERNET.
16 I THINK THEY DO STUDIES ON OTHER TOPICS, TOO, BUT THE
17 ONES I'M FAMILIAR WITH HAVE TO DO WITH THE USE OF THE
18 INTERNET.

19 Q. AND I'M GOING TO NOW ASK YOU TO TURN TO
20 PLAINTIFFS' EXHIBIT 10. IS THIS THE PEW INTERNET REPORT
21 THAT YOU WERE REFERRING TO?

22 A. YES.

23 Q. DID YOU RELY UPON THIS REPORT IN REACHING YOUR
24 -- PREPARING YOUR EXPERT OPINION IN THIS CASE?

25 A. YES.

1 Q. AND IS THE PEW INTERNET STUDY THE TYPE THAT
2 OTHER EXPERTS IN YOUR FIELD WOULD RELY UPON?

3 A. YES.

4 Q. ARE YOU GENERALLY FAMILIAR WITH THE METHODOLOGY
5 THAT WAS USED TO PREPARE THIS REPORT?

6 A. YES.

7 Q. AND IS THE METHODOLOGY RELIABLE IN YOUR OPINION?

8 A. YES.

9 Q. NOW, I'M GOING TO ASK YOU TO FOCUS ON PAGE 2 OF
10 PLAINTIFFS' EXHIBIT 10. IT APPEARS TO BE -- AT LEAST MY
11 VERSION IS A DOUBLE-SIDED COPY. I ASK YOU TO FOCUS ON
12 THE LAST FULL PARAGRAPH OF PAGE 2.

13 MR. CAMPBELL: YOUR HONOR, WE AGAIN
14 OBJECT -- RESTATE OUR OBJECTION TO THIS LINE OF
15 QUESTIONING BECAUSE THE WITNESS DID NOT PROVIDE THESE
16 OPINIONS IN HER EXPERT REPORT.

17 MR. FINE: THAT IS SIMPLY NOT CORRECT,
18 YOUR HONOR. PLAINTIFFS' EXHIBIT 2 IS THE WITNESS'
19 EXPERT REPORT. I'M HAPPY TO FIND THE SPECIFIC CITATION,
20 IF YOUR HONOR SO DESIRES.

21 THE COURT: I ASSUME IT IS IN THE REPORT.
22 THE OBJECTION IS OVERRULED. CHECK IT OUT. IF DEFENSE
23 COUNSEL CHECKS IT OUT AND FINDS THAT THAT IS NOT
24 CORRECT, MOVE TO STRIKE IT OUT AT A LATER TIME. YOU
25 HAVE THE BURDEN, SIR.

1 MR. CAMPBELL: YES, YOUR HONOR.

2 BY MR. FINE:

3 Q. FOCUSING ON PAGE 2 OF PLAINTIFFS' EXHIBIT 10,
4 THE LAST FULL PARAGRAPH.

5 A. YES.

6 Q. SPECIFICALLY, WHAT DID THAT STUDY CONCLUDE
7 ABOUT THE NUMBER OF FAMILIES WHO ARE USING FILTERS?

8 A. THEY SAY MORE THAN HALF, 54 PERCENT OF
9 INTERNET-CONNECTED FAMILIES WITH TEENS NOW USE FILTERS.

10 Q. HOW BIG AN INCREASE WAS THAT FROM PREVIOUS
11 STUDIES?

12 A. THAT WAS A 65 PERCENT INCREASE FROM A PREVIOUS
13 STUDY FOUR YEARS EARLIER.

14 Q. DR. CRANOR, DO YOU KNOW WHY SOME FAMILIES USE
15 FILTERS AND SOME FAMILIES DON'T USE FILTERS?

16 THE COURT: ANSWER YES OR NO, PLEASE.

17 THE WITNESS: YES.

18 BY MR. FINE:

19 Q. HOW DO YOU KNOW THAT?

20 A. THERE HAVE BEEN STUDIES THAT HAVE ASKED PARENTS
21 WHY THEY CHOOSE TO USE OR NOT USE FILTERS.

22 Q. AND WHAT DO THOSE STUDIES REVEAL?

23 A. THERE ARE A VARIETY OF REASONS, BUT THE NUMBER
24 ONE REASON FOR NOT USING FILTERS TENDS TO BE THAT
25 PARENTS DON'T FEEL THEY NEED THEM BECAUSE THEY GENERALLY

1 TRUST THEIR KIDS AND DON'T SEE A NEED TO ACTUALLY BLOCK
2 CONTENT.

3 MR. FINE: YOUR HONOR, PLAINTIFFS WOULD
4 NOW LIKE TO MOVE PLAINTIFFS' EXHIBIT 10 INTO EVIDENCE.

5 MR. CAMPBELL: YOUR HONOR, WE HAVE THE
6 SAME OBJECTION TO THE OTHER EXHIBITS THAT PLAINTIFFS
7 INTEND TO MOVE INTO EVIDENCE.

8 THE COURT: MY VIEW OF THE LAW IS THAT
9 THE DOCUMENT IS NOT ADMISSIBLE IN ITS ENTIRETY. IF THE
10 EXPERT WITNESS QUALIFIES THE DOCUMENT WHICH SHE HAS, AND
11 RELIED UPON IT, SOME OR ALL OF IT, THAT IS THE EXTENT OF
12 THE EVIDENCE. IT DOES NOT GO INTO EVIDENCE TO PROVE
13 WHAT IS IN THE ENTIRE REPORT. SO THE OBJECTION IS
14 SUSTAINED.

15 MR. FINE: JUST TO BE CLEAR, THE
16 OBJECTION IS SUSTAINED TO THAT EXTENT?

17 THE COURT: YES. REVIEW OF THE REPORT
18 AND HER TESTIMONY IS ADMISSIBLE AND IS IN EVIDENCE, BUT
19 NOT THE ENTIRE REPORT. I LIKEN THAT TO A LEARNED
20 TREATISE. YOU CAN CROSS EXAMINE WITH IT, COUNSEL CAN.
21 YOU WERE THE FIRST ONE TO DO IT ON DEFENSE SIDE. HE
22 COULDN'T GET IT IN EITHER, THE WHOLE REPORT. THAT IS
23 ALL.

24 MR. FINE: UNDERSTOOD.

25 BY MR. FINE:

1 Q. DR. CRANOR, WE HAVE BEEN TALKING NOW FOR
2 YESTERDAY AFTERNOON AND ALL OF THIS MORNING ABOUT
3 FILTERING PRODUCTS. I'M GOING TO NOW ASK YOU TO SWITCH
4 SUBJECTS TO THE SECOND PART OF YOUR EXPERT OPINION,
5 WHICH YOU PREVIEWED FOR US YESTERDAY. AND SINCE IT HAS
6 BEEN A WHILE, I'M GOING TO ASK YOU TO RESTATE YOUR
7 OPINION. HAVE YOU REACHED AN OPINION AS TO WHETHER
8 THERE ARE NONFILTERING PARENTAL CONTROL TOOLS FOR USE BY
9 PARENTS?

10 A. YES.

11 Q. WHAT IS THAT OPINION?

12 A. THAT THERE ARE NONFILTERING TOOLS THAT PARENTS
13 CAN USE EFFECTIVELY IN THEIR HOMES.

14 Q. AND TELL US, WHAT ARE SOME OF THESE NONFILTERING
15 PARENTAL CONTROL TOOLS?

16 A. SO WE HAVE ALREADY TALKED ABOUT SOME OF THE
17 TECHNOLOGIES THAT ARE NOT FILTERING TECHNOLOGIES, SUCH
18 AS THE MONITORING AND TIME LIMITS, BUT THERE ARE ALSO
19 SOME NONTECHNOLOGY TOOLS, AND THESE ARE THINGS THAT
20 PARENTS CAN DO IN THEIR HOME. SO THEY CAN COME UP WITH
21 A SET OF INTERNET-RELATED RULES FOR THEIR FAMILY AS FAR
22 AS WHAT TYPES OF WEBSITES ARE APPROPRIATE TO VISIT OR
23 WHO IT IS APPROPRIATE TO EXCHANGE E-MAIL WITH, SO THEY
24 CAN SET UP THESE GROUND RULES FOR THEIR CHILDREN TO
25 FOLLOW.

1 THEY CAN ALSO MAKE SURE THAT THEY ARE
2 AWARE OF WHAT THEIR CHILDREN ARE DOING ON THE INTERNET,
3 EITHER BY SITTING WITH THEM WHEN THEY GO ONLINE OR BY
4 PUTTING THE COMPUTER IN A LOCATION IN THE HOUSE WHERE
5 THE PARENT IS GOING TO WALK BY AND SEE WHAT THE CHILD IS
6 DOING FREQUENTLY, SO PUTTING THE COMPUTER IN THE LIVING
7 ROOM OR THE KITCHEN RATHER THAN IN A CHILD'S BEDROOM,
8 FOR EXAMPLE.

9 Q. ARE THERE ANY OTHER PARENTAL CONTROL TOOLS OTHER
10 THAN FILTERS AND THE ONES YOU JUST DESCRIBE,
11 NONTECHNOLOGICAL PARENTAL CONTROL TOOLS?

12 A. THERE PROBABLY ARE OTHERS. THOSE ARE THE MAIN
13 ONES THAT I RECALL OFF THE TOP OF MY HEAD.

14 Q. WHAT DOES BEST PRACTICES REFER TO?

15 A. BEST PRACTICES ARE GENERALLY ESTABLISHED GOOD
16 PRACTICES. AND SO IN THIS CONTEXT THERE ARE A NUMBER OF
17 THINGS THAT PARENTS CAN DISCUSS WITH THEIR CHILDREN
18 ABOUT WHAT IS SAFE AND WHAT IS NOT SAFE TO DO ONLINE.
19 SO TALK TO THEM ABOUT NOT TALKING TO STRANGERS ONLINE,
20 NOT GIVING YOUR PERSONAL INFORMATION TO PEOPLE YOU DON'T
21 KNOW ONLINE, THINGS ALONG THOSE LINES.

22 Q. CAN EDUCATION BE A HELPFUL PARENTAL CONTROL TOOL
23 FOR PARENTS TO USE?

24 A. YES. FIRST OF ALL, THE PARENTS NEED TO BE
25 EDUCATED. AND THERE IS A VARIETY OF MATERIALS FOR

1 PARENTS TO TEACH THEM ABOUT ONLINE SAFETY. AND SCHOOLS
2 FREQUENTLY HAVE PROGRAMS FOR PARENTS THROUGH THE PTA
3 ORGANIZATION, AND INTERNET SERVICE PROVIDERS PROVIDE
4 INFORMATION, AND THEN THE PARENTS IN TURN CAN WORK WITH
5 THEIR CHILDREN. SCHOOLS OFTEN WORK WITH THEIR CHILDREN
6 TO TEACH THEM ABOUT ONLINE SAFETY.

7 Q. HOW HELPFUL DO YOU THINK THESE NONTECHNOLOGICAL
8 PARENTAL CONTROL TOOLS ARE FOR PARENTS TO HELP CONTROL
9 ACCESS TO INAPPROPRIATE MATERIAL ON THE INTERNET?

10 A. I THINK THESE ARE VERY HELPFUL AND THEY REALLY
11 ENGAGE THE PARENT IN THE PROCESS, SO THE PARENT
12 UNDERSTANDS WHAT THEIR CHILDREN ARE DOING AND CAN, YOU
13 KNOW, BE FLEXIBLE IN -- AS THE CHILD EXPLORES NEW
14 THINGS, TO BE ABLE TO HELP THEM SEE WHERE THE BOUNDARIES
15 ARE.

16 Q. AND IN CONDUCTING THE RESEARCH YOU DID FOR THE
17 INTERNET ONLINE SUMMIT WE DISCUSSED A WHILE AGO, DID YOU
18 INVESTIGATE THESE NONTECHNOLOGICAL PARENTAL CONTROL
19 TOOLS FOR USE BY PARENTS?

20 A. YES.

21 Q. AND HAVE YOU ALSO REVIEWED STUDIES AND OTHER
22 LITERATURE DISCUSSING THESE NONTECHNOLOGICAL PARENTAL
23 CONTROL TOOLS?

24 A. YES. SOME OF THE STUDIES WE DISCUSSED HAVE ALSO
25 LOOKED AT THESE TOOLS.

1 Q. AND WHAT GENERALLY DID YOUR RESEARCH SHOW TO YOU
2 THAT OTHERS HAD CONCLUDED ABOUT THE EFFECTIVENESS OF
3 THESE NONFILTERING PARENTAL CONTROL TOOLS?

4 A. OTHERS HAD FOUND THESE TO BE EFFECTIVE AS WELL,
5 AND THE COMBINATION OF THESE TOOLS AND FILTERS IS EVEN
6 MORE EFFECTIVE.

7 Q. NOW, I'M GOING TO DIRECT YOUR ATTENTION BACK TO
8 PLAINTIFFS' EXHIBIT 6, WHICH I BELIEVE YOU IDENTIFIED AS
9 THE COPA COMMISSION REPORT.

10 A. YES.

11 Q. I'M GOING TO ASK YOU TO TURN TO PAGE 18 OF
12 PLAINTIFFS' EXHIBIT 6. WHAT'S PAGE 18 DESCRIBING?

13 A. FAMILY EDUCATION PROGRAMS.

14 Q. AND THAT IS WHAT YOU WERE JUST DESCRIBING?

15 A. YES.

16 Q. IF YOU CAN TURN TO THE SECOND BULLET POINT ON
17 PAGE 18. WHAT DID THE COPA COMMISSION REPORT CONCLUDE
18 ABOUT THE EFFECTIVENESS OF FAMILY EDUCATION PROGRAMS?

19 A. IT SAYS: AS WITH ONLINE RESOURCES FAMILY
20 EDUCATION PROGRAMS DO NOT THEMSELVES DIRECTLY PREVENT
21 MINORS ACCESS TO HARMFUL TO MINORS MATERIAL, BUT THEY
22 ARE AN ESSENTIAL PART OF AN OVERALL SOLUTION.

23 IT GOES ON TO SAY THAT AS FAMILIES ARE
24 THE FIRST LINE OF DEFENSE IN RAISING AND PROTECTING
25 CHILDREN, EDUCATION PROGRAMS CAN BE HIGHLY EFFECTIVE IN

1 GIVING CAREGIVERS NEEDED INFORMATION ABOUT ONLINE RISKS
2 AND PROTECTION METHODS AND ACCESS TO TECHNOLOGIES AND
3 WAYS TO GET HELP.

4 Q. NOW, I'M GOING TO SHOW YOU WHAT HAS PREVIOUSLY
5 BEEN MARKED AS PLAINTIFFS' EXHIBIT 11. ASK YOU TO TURN
6 TO THAT.

7 A. OKAY.

8 Q. WHAT IS THIS DOCUMENT?

9 A. THIS IS A REPORT FROM THE DEPARTMENT OF COMMERCE
10 TO CONGRESS ON THE CHILDREN'S INTERNET PROTECTION ACT.

11 Q. DID YOU REVIEW THIS REPORT IN CONNECTION WITH
12 PREPARING YOUR EXPERT OPINION?

13 A. YES, I DID.

14 Q. DID YOU RELY UPON IT?

15 A. YES.

16 Q. AND IS THIS THE TYPE OF REPORT THAT OTHERS IN
17 YOUR FIELD WOULD RELY UPON?

18 A. YES.

19 Q. AND GENERALLY, WHAT DOES THE DEPARTMENT OF
20 COMMERCE REPORT CONCLUDE ABOUT THE EFFECTIVENESS OF
21 NONTECHNOLOGICAL PARENTAL CONTROL TOOLS? I WILL FOCUS
22 YOU ON ONE EXAMPLE. WHY DON'T YOU TURN TO PAGE 5, IN
23 THE BOTTOM PARAGRAPH.

24 A. SO THEY FOUND THAT THE INTERNET SAFETY POLICIES
25 ARE EFFECTIVE AND THEY LIKED THE ABILITY -- THE FACT

1 THAT THEY ARE FLEXIBLE, AND IN FACT THEY PRAISE
2 THE ABILITY TO CUSTOMIZE THESE POLICIES TO ADDRESS THE
3 CONCERNS OF INDIVIDUAL COMMUNITIES.

4 Q. AND I KNOW THIS IS A LONG DOCUMENT AND YOU'VE
5 REVIEWED A LOT OF DOCUMENTS. DID YOU KNOW WHAT THEY
6 WERE REFERRING TO WHEN THEY SAID INTERNET SAFETY
7 POLICIES?

8 WHY DON'T YOU LOOK ON THE SAME PAGE, PAGE
9 5, TOWARD THE MIDDLE OF THE PAGE, THE LAST BULLET POINT
10 THAT BEGINS: ADOPTING AN INTERNET SAFETY STRATEGY?

11 A. RIGHT. SO THEY ARE TALKING ABOUT AN OVERALL
12 STRATEGY THAT IS GOING TO INCLUDE USING A TECHNOLOGY,
13 PERHAPS A FILTER, AS WELL AS USING MONITORING TOOLS,
14 EITHER TECHNOLOGY MONITORING TOOLS OR IN-PERSON
15 MONITORING TOOLS AND THE EDUCATIONAL COMPONENT AS WELL.
16 THEY ARE LOOKING FOR THIS KIND OF HOLISTIC SOLUTION.

17 Q. AND TAKING YOU BACK TO THE BOTTOM PARAGRAPH.
18 WHAT DID THE DEPARTMENT OF COMMERCE REPORT CONCLUDE
19 ABOUT THE EFFECTIVENESS OF USING THE APPROACH THAT YOU
20 WERE JUST DESCRIBING?

21 A. IT SAYS -- THEY EXPRESSED A GREAT DEAL OF
22 SATISFACTION REGARDING THE DEVELOPMENT AND EFFECTIVENESS
23 OF INTERNET SAFETY POLICIES. THEY ARE REFERRING TO THE
24 COMMENTATORS WHO THEY CONSULTED IN PREPARING THEIR
25 REPORT.

1 Q. DO YOU KNOW HOW MANY PEOPLE ARE USING THESE
2 NONTECHNOLOGICAL PARENTAL CONTROL TOOLS?

3 A. I DON'T HAVE NUMBERS.

4 Q. CAN I REFER YOU BACK TO PLAINTIFFS' EXHIBIT 10,
5 THE PEW INTERNET REPORT. I'M GOING TO ASK YOU TO FOCUS
6 ON PAGE 3.

7 A. RIGHT. YES.

8 Q. IN THE TOP SECTION.

9 A. YES. SO THEY HAVE STATISTICS ON A NUMBER OF
10 DIFFERENT TOOLS AND WHAT PERCENTAGE OF BOTH PARENTS AND
11 TEENS REPORT USING THESE. AND SO IT LOOKS LIKE FOR
12 HAVING THE HOUSEHOLD COMPUTER IN A PUBLIC PLACE, 73
13 PERCENT OF TEENS SAY THAT THAT IS THE CASE IN THEIR
14 HOUSEHOLD AND 64 PERCENT OF PARENTS SAY THAT THEY SET
15 RULES ABOUT ONLINE USE.

16 Q. I'M SORRY. CAN YOU REPEAT THE LAST?

17 A. 64 PERCENT OF PARENTS SAY THAT THEY SET RULES
18 ABOUT THEIR CHILD'S ONLINE USE.

19 Q. WHAT IS YOUR REACTION TO THESE STATISTICS, TO
20 THESE FINDINGS? WERE YOU SURPRISED?

21 A. NO. NO. NOT REALLY.

22 Q. WHY NOT?

23 A. THEY SEEM CONSISTENT WITH MY EXPERIENCE.

24 Q. AND BY YOUR EXPERIENCE, ARE YOU REFERRING TO THE
25 PAST 10 YEARS?

1 A. YEAH, FROM THE WORK THAT I HAVE DONE OVER THE
2 PAST 10 YEARS IN THIS AREA AND THE VARIOUS REPORTS THAT
3 I HAVE READ AND INFORMATION THAT I'VE RECEIVED, THIS
4 SEEMS CONSISTENT.

5 Q. IS THERE ANYTHING THAT THE GOVERNMENT COULD DO
6 THAT WOULD MAKE THESE NONFILTERING PARENTAL CONTROL
7 TOOLS MORE EFFECTIVE?

8 A. YEAH. I THINK THERE ARE LOTS OF THINGS THAT
9 COULD BE DONE TO BETTER PUBLICIZE TO PARENTS WHAT TYPES
10 OF THINGS THAT THEY CAN DO IN THEIR HOUSEHOLD AS WELL AS
11 EDUCATIONAL CURRICULUM FOR THE SCHOOLS AND THINGS ALONG
12 THOSE LINES.

13 Q. ARE NONFILTERING PARENTAL CONTROL TOOLS AN
14 EFFECTIVE MECHANISM ON THEIR OWN FOR PARENTS TO USE TO
15 CONTROL THEIR CHILDREN'S ACCESS TO INAPPROPRIATE
16 MATERIAL ON THE INTERNET?

17 A. IN SOME HOMES, THAT IS VERY EFFECTIVE, JUST ON
18 THEIR OWN. IN OTHER HOMES, PARENTS MAY NEED TO HAVE THE
19 TECHNOLOGY AS WELL.

20 Q. HOW EFFECTIVE ARE THESE NONFILTERING PARENTAL
21 CONTROL TOOLS IF THEY ARE USED IN COMBINATION WITH THE
22 TECHNOLOGICAL SOLUTION, LIKE FILTERING PRODUCTS?

23 A. WELL, THE FILTERING PRODUCTS ARE ALREADY PRETTY
24 EFFECTIVE. WHEN YOU ADD THIS, IT MAKES THEM EVEN MORE
25 EFFECTIVE.

1 MR. FINE: YOUR HONOR, AT THIS POINT,
2 PLAINTIFFS HAVE NO FURTHER QUESTIONS FOR DR. CRANOR,
3 SUBJECT TO -- I KNOW WE HAVE A COUPLE OF EVIDENTIARY
4 ISSUES WITH RESPECT TO SOME OF THE EXHIBITS AND THE
5 POTENTIAL CONFIDENTIALITY ISSUE WITH THE AOL DOCUMENT
6 THAT WE WOULD LIKE TO HAVE A CHANCE TO SEE IF THAT HAS
7 BEEN RESOLVED.

8 THE COURT: OTHER THAN THE BURDEN ON
9 DEFENSE COUNSEL TO CHECK THE DISCLOSURE OF USE OF ONE OF
10 THE STUDIES, I DON'T KNOW THAT THERE HAS BEEN ANY
11 UNRESOLVED EVIDENTIARY ISSUES, OTHER THAN, AGAIN, THE
12 ISSUE OF WHETHER OR NOT YOU ARE GOING TO QUESTION THE
13 WITNESS ABOUT AOL MATERIAL. THAT IS NOT AN UNRESOLVED
14 EVIDENTIARY ISSUE.

15 MR. FINE: THE OTHER ONE I WAS REFERRING
16 TO, YOUR HONOR, WAS YESTERDAY, DESPITE LAST THURSDAY'S
17 AGREEMENT, DEFENSE COUNSEL OBJECTED TO THE INTRODUCTION
18 OF DR. CRANOR'S EXPERT REPORT INTO EVIDENCE.

19 THE COURT: THAT WAS --

20 MR. CAMPBELL: TO BE CLEAR --

21 THE COURT: DOES THE GOVERNMENT STILL
22 OBJECT TO THE ENTRY OF HER REPORT INTO EVIDENCE?

23 MR. CAMPBELL: OPPOSING COUNSEL
24 MISCHARACTERIZES OUR OBJECTION. WHAT WE STATED WAS HER
25 REBUTTAL REPORT CONTAINED CONFIDENTIAL INFORMATION AND

1 WE OBJECTED TO THE ADMISSIBILITY OF THE REBUTTAL REPORT,
2 THE CONFIDENTIAL PORTIONS OF HER REBUTTAL REPORT, YOUR
3 HONOR.

4 THE COURT: I DON'T KNOW THE DATE OF THE
5 REPORT IN CHIEF. DOES SOMEONE HAVE THE DATE OF THAT
6 REPORT, EXHIBIT NUMBER?

7 MR. FINE: IT IS EXHIBIT 2.

8 MR. CAMPBELL: TO BE CLEAR, YOUR HONOR,
9 HER PRINCIPAL REPORT AND HER REBUTTAL REPORT ARE PART OF
10 THE SAME EXHIBIT.

11 THE COURT: I SEE. HAVE PLAINTIFFS'
12 COUNSEL CONSIDERED THE ISSUE OF WHETHER THERE IS THAT
13 DISCLOSURE OF CONFIDENTIAL INFORMATION IN THE REBUTTAL
14 REPORT?

15 MR. FINE: I BELIEVE, YOUR HONOR, THIS IS
16 THE SAME. UNFORTUNATELY, IT'S -- DR. CRANOR'S REPORTS
17 -- THERE IS THE SAME AOL ISSUE, BUT DR. CRANOR'S REPORT
18 ALSO CITES TO DEPOSITION TESTIMONY AND CERTAIN DOCUMENTS
19 FROM RULESPACE WHICH IS, FROM WHAT WE KEEP HEARING, A
20 COMPANY THAT HAS EITHER FILED A MOTION TO KEEP THE
21 MATERIAL SEALED OR -- I HAVE NOT SEEN IT BUT --

22 MR. CAMPBELL: TO BE CLEAR, YOUR HONOR,
23 THERE WAS MORE THAN JUST THAT. THERE WAS INFORMATION
24 GOING THROUGH THE REBUTTAL REPORT, INFORMATION FROM
25 MICROSOFT, SURFCONTROL, RULESPACE -- YES, THE RULESPACE

1 DEPOSITION, THE SURFCONTROL DEPOSITION AND CONFIDENTIAL
2 MICROSOFT INFORMATION IN THE REBUTTAL REPORT.

3 MR. FINE: I KNOW, AT LEAST WITH RESPECT
4 TO SURFCONTROL HAS RECEIVED THEIR CONFIDENTIALITY
5 DISCLOSURES AT LEAST FROM THE PLAINTIFFS AND HAS NOT
6 NOTIFIED THE PLAINTIFFS THAT THEY HAVE ANY OBJECTIONS AS
7 THEY ARE REQUIRED TO DO UNDER THE PROTECTIVE ORDER.

8 THE COURT: RULESPACE HAS FILED A MOTION
9 FOR PROTECTIVE ORDER, DOCUMENT NUMBER 347. THEY FILED
10 THAT YESTERDAY. I WILL BURDEN COUNSEL WITH DISCUSSING
11 AMONG THEMSELVES AND COME UP WITH A SOLUTION. I'M NOT
12 GOING TO AUTOCRATICALLY MAKE MY OWN DECISION OF WHAT TO
13 DO WITHOUT INPUT FROM COUNSEL ON THESE CONFIDENTIAL
14 ISSUES, CONFIDENTIALITY ISSUES. PROPHYLACTICALLY AND
15 PRELIMINARILY I WOULD ALLOW THE PLAINTIFF TO RECALL THIS
16 WITNESS FOR FURTHER DIRECT EXAMINATION ONCE THOSE ISSUES
17 ARE RESOLVED.

18 MR. FINE: JUST ONE MOMENT, YOUR HONOR.
19 (OFF THE RECORD DISCUSSION.)

20 THE COURT: FOR CLARITY, I DISCLOSED FOR
21 THE RECORD THAT WHAT I WAS TOLD LAST THURSDAY I BELIEVE
22 THAT THE PARTIES HAD AGREED THAT THE EXPERT REPORTS BE
23 ADMITTED. THIS SUBJECT OF CONFIDENTIALITY WAS NOT
24 DISCUSSED.

25 MR. FINE: UNDERSTOOD, YOUR HONOR. THE

1 LAST REMAINING CLEANING UP ISSUE FROM PLAINTIFFS, AND I
2 APOLOGIZE AND ASK FOR YOUR INDULGENCE, IS I SIMPLY WANT
3 TO MAKE SURE THAT WE HAVE MOVED INTO EVIDENCE OR AT
4 LEAST ATTEMPTED TO MOVE INTO EVIDENCE ALL THE DOCUMENTS
5 THAT WE WENT OVER.

6 THE COURT: I BELIEVE YOU DID, BUT YOU
7 CAN SATISFY YOURSELVES TO THAT EFFECT BY TALKING TO
8 CO-COUNSEL WHO IS KEEPING GOOD NOTES. I DON'T WANT TO
9 BE THE NOTETAKER FOR THE EXHIBITS.

10 MR. FINE: THE ONES THAT I BELIEVE HAVE
11 NOT FORMALLY BEEN MOVED INTO EVIDENCE, YOUR HONOR, ARE
12 5, 8, 6, 54, AND 11, AND PLAINTIFFS WOULD LIKE TO MOVE
13 ALL OF THOSE REPORTS INTO EVIDENCE. LET ME GO
14 ONE-BY-ONE.

15 THE COURT: YOU HAVE TO DO THAT. LET ME
16 LOOK AT MY NOTES. I USUALLY MARK THAT DOWN. MY NOTES
17 ARE NOT CLEAR ENOUGH. THE TRANSCRIPT WILL SHOW THAT.

18 MR. FINE: JUST OUT OF AN ABUNDANCE OF
19 CAUTION. PLAINTIFFS' EXHIBIT 5 IS THE NETALERT STUDY
20 THAT DR. CRANOR WAS DISCUSSING EARLIER.

21 THE COURT: I DON'T WANT TO REPEAT WHAT
22 WE HAVE DONE BEFORE. IF YOU SHARE WITH ME THAT WE HAVE
23 NOT DISCUSSED THIS, THAT IS FINE.

24 MR. FINE: I BELIEVE WE HAVE NOT MOVED
25 THESE INTO --

1 THE COURT: ANY OBJECTION TO P 5?

2 MR. CAMPBELL: YES, YOUR HONOR, SAME
3 OBJECTIONS.

4 THE COURT: P 5 IN ITS ENTIRETY WILL NOT
5 BE RECEIVED INTO EVIDENCE, IT BEING HEARSAY. THE COURT
6 OBSERVES THE IMPORTANCE OF THE REPORT. IT SEEMED MOST
7 IMPORTANT TO THE PLAINTIFF, IN QUESTIONING THIS WITNESS,
8 AND WERE READ INTO THE RECORD WITHOUT OBJECTION. ALL
9 RIGHT. SO P 5 IS NOT IN EVIDENCE IN ITS ENTIRETY.

10 MR. FINE: THE NEXT EXHIBIT, YOUR HONOR,
11 IS PLAINTIFFS' EXHIBIT 8.

12 THE COURT: PARDON ME?

13 MR. FINE: PLAINTIFFS' EXHIBIT 8.

14 MR. CAMPBELL: YOUR HONOR, WE OBJECT TO
15 EXHIBIT 8 BEING INTRODUCED INTO EVIDENCE. THE WITNESS
16 TESTIFIED THAT THE REPORT DID NOT FOLLOW GENERALLY
17 SCIENTIFIC -- SHE DID NOT RELY ON IT FOR ACCURACY.

18 THE COURT: P 8 IS NOT RECEIVED INTO
19 EVIDENCE FOR THE SAME REASONS THAT I DID NOT RECEIVE
20 P 5. THE PORTIONS OF THE REPORT ON WHICH THE WITNESS
21 RELIED WERE READ INTO THE RECORD WITHOUT OBJECTION. THE
22 REPORT AS A WHOLE IS AVAILABLE IN THE RECORD FOR CROSS
23 EXAMINATION OR OTHER PURPOSES BUT, AS OF RIGHT NOW, IT'S
24 NOT RECEIVED INTO EVIDENCE.

25 MR. FINE: THE NEXT EXHIBIT IS THE

1 PLAINTIFFS' EXHIBIT 6.

2 MR. CAMPBELL: WE DON'T OBJECT. NO
3 OBJECTION, YOUR HONOR.

4 THE COURT: P 6 IS THE COPA COMMISSION
5 REPORT. RECEIVED INTO EVIDENCE.

6 (PLAINTIFFS' EXHIBIT P 6 RECEIVED INTO
7 EVIDENCE.)

8 MR. FINE: NEXT EXHIBIT, YOUR HONOR,
9 PLAINTIFFS' EXHIBIT 54.

10 THE COURT: I DON'T HAVE THAT HANDY. YOU
11 WILL HAVE TO REMIND ME.

12 MR. FINE: PLAINTIFF'S EXHIBIT 54 IS THE
13 NATIONAL RESEARCH COUNCIL REPORT.

14 MR. CAMPBELL: WE HAVE NO OBJECTIONS,
15 YOUR HONOR.

16 THE COURT: P 54 IS RECEIVED INTO
17 EVIDENCE.

18 (PLAINTIFFS' EXHIBIT 54 WAS RECEIVED INTO
19 EVIDENCE.)

20 MR. FINE: THE LAST ONE, I BELIEVE, YOUR
21 HONOR, IS THE VERY LAST EXHIBIT THAT WE WERE LOOKING AT,
22 EXHIBIT 11, DEPARTMENT OF COMMERCE REPORT.

23 THE COURT: ANY OBJECTION?

24 MR. CAMPBELL: YES, YOUR HONOR. SAME
25 OBJECTION.

1 THE COURT: THIS IS A DIFFERENT ANIMAL.

2 MR. FINE: IT IS. THERE IS HEARSAY
3 EXCEPTION FOR A GOVERNMENT REPORT.

4 THE COURT: ANY RESPONSE TO THAT? THERE
5 IS AN EXCEPTION FOR GOVERNMENTAL REPORTS BY THE
6 DEPARTMENT OF COMMERCE.

7 MR. CAMPBELL: YOUR HONOR, EVEN THOUGH
8 THIS IS A GOVERNMENT REPORT, IT HAS A NUMBER OF EXTERNAL
9 STATEMENTS FROM COMMUNITIES AND OTHER LETTER WRITERS
10 CONTAINED IN THE REPORT.

11 THE COURT: I DON'T KNOW OF ANY EXCEPTION
12 FOR THAT CONCERN. THE REPORT IS THE REPORT. I DON'T
13 REMEMBER THE SUBPARAGRAPH FOR THE EXCEPTION, THE NUMBER
14 OF IT.

15 MR. FINE: THAT MAKES TWO OF US.

16 THE COURT: I WILL READ IT.

17 IT'S IN THE 800 SERIES, I PRESUME.

18 MR. FINE: YES.

19 THE COURT: RULE 803 (8), PUBLIC RECORDS
20 AND REPORTS. I WILL READ IT TO MYSELF AND NOT BURDEN
21 THE RECORD.

22 PARAGRAPH (8), THE PORTION THAT I THINK
23 IS RELEVANT IS: RECORDS, REPORTS, STATEMENTS OR DATA
24 COMPILATIONS IN ANY FORM OF PUBLIC OFFICES OR AGENCIES
25 SETTING FORTH, (A), THE ACTIVITIES OF THE OFFICE OR

1 AGENCY, AND THAT IS PROBABLY FAR ENOUGH, (B) MATTERS
2 OBSERVED AND REPORTED PURSUANT TO DUTY IMPOSED BY LAW.
3 IT CERTAINLY COVERS THE COPA REPORT, BUT I PRESUME
4 COVERS THIS ONE, AS TO WHICH PARTIES WERE THE DUTY TO
5 REPORT, THE REST OF THE RULE IS NOT RELEVANT.

6 MR. CAMPBELL: YOUR HONOR, IF I MAY, JUST
7 IN RESPONSE TO THAT, IT SEEMS THAT WOULD COVER THE
8 REPORT. IT SEEMS THAT THIS WOULD BE HEARSAY WITHIN
9 HEARSAY, THAT THERE IS NOT A SPECIFIC OBJECTION, NOT A
10 SPECIFIC EXEMPTION TO THE SECOND LEVEL OF HEARSAY
11 CONTAINED THEREIN.

12 THE COURT: MR. FINE, YOUR RESPONSE.

13 MR. FINE: I BELIEVE THE STATUTE SAYS
14 THAT UNDER THIS EXCEPTION, RECORDS OR REPORTS OF
15 GOVERNMENT OFFICIALS, OF GOVERNMENT OFFICES AND
16 AGENCIES, SPECIFICALLY SUBSECTION (B), MATTERS OBSERVED
17 AND REPORTED. MATTERS OBSERVED, THEY ARE BY DEFINITION
18 HEARSAY.

19 MR. CAMPBELL: ACTUALLY, I WOULD ARGUE,
20 FIRST, YOUR HONOR, IN RESPONSE TO THAT, THAT THESE ARE
21 NOT MATTERS OBSERVED. THIS IS NOT A MATTERS THAT THE
22 AGENCY OBSERVES THEMSELVES. AND, SECOND, IF WE CONTINUE
23 IT, IT SAYS: MATTERS OBSERVED PURSUANT TO DUTY IMPOSED
24 BY LAW, AS TO WHICH THERE ARE MATTERS, THERE WAS A DUTY
25 TO REPORT, AND I DON'T THINK THAT APPLIES IN THIS CASE,

1 YOUR HONOR.

2 MR. FINE: YOUR HONOR, THIS WAS A REPORT.
3 THE COVER PAGE INDICATES THAT IT WAS SUBMITTED -- IT'S A
4 REPORT TO CONGRESS.

5 THE COURT: WELL, LET ME TAKE SOME TIME
6 TO SEE WHAT THE SOURCE OF --

7 MR. FINE: I BELIEVE --

8 THE COURT: -- THE REASONS FOR THE REPORT
9 WERE. I HAVE NOT READ THE WHOLE THING.

10 MR. FINE: I BELIEVE THE ORIGINAL
11 OBJECTION WAS THAT IT'S NOT JUST THE REPORT OF THE
12 DEPARTMENT OF CONGRESS. IT IS REGARDING OBSERVATIONS
13 FROM OUTSIDE NONGOVERNMENTAL OFFICERS AND THAT IS
14 CLEARLY COVERED BY SUBSECTION (B), WHICH IS TALKING
15 ABOUT MATTERS OBSERVED.

16 MR. CAMPBELL: YOUR HONOR, WHILE I
17 APPRECIATE --

18 THE COURT: WE WILL BE HERE ALL DAY. DO
19 YOU HAVE A CASE THAT PROHIBITS THIS REPORT THAT YOU CAN
20 CITE, A 3RD CIRCUIT CONTROLLING PRECEDENT?

21 MR. CAMPBELL: NOT AT THIS TIME, YOUR
22 HONOR.

23 MR. FINE: I CAN CITE A 5TH CIRCUIT
24 OPINION, YOUR HONOR, ADMITTING INTO EVIDENCE THE -- I'M
25 JUST READING HERE SO I HAVE NOT READ THIS CASE,

1 ADMITTING INTO EVIDENCE THE DEPARTMENT OF CONGRESS
2 REPORT TO THE JOINT COMMITTEE REPORTING COMMERCE'S
3 INFORMAL POLICY TO INDUCE AIRPLANE MANUFACTURERS TO GIVE
4 PRIORITY TO DEFENSE ORDERS. AND THE CITATION IS 532 F.
5 2D, 957, A CASE FROM THE 5TH CIRCUIT.

6 THE COURT: PAGE NUMBER, PLEASE.

7 MR. FINE: 532 F. 2D 957, AND I

8 APOLOGIZE. I HAVE NOT READ THIS CASE.

9 THE COURT: THE COURT WILL TAKE THE
10 OBJECTION UNDER ADVISEMENT. ALL I'M GOING TO DO IS FIND
11 OUT WHAT THE GENESIS WAS FOR THE REPORT. IF THEY WERE
12 REPORTING A DUTY ON THE COMMERCE DEPARTMENT TO PROVIDE
13 THE REPORT, THIS MAY BE IMPORTANT. ARE THEY ALL THE
14 OFFERS AT THIS TIME?

15 MR. FINE: YES, YOUR HONOR.

16 THE COURT: YOU MAY CROSS EXAMINE.

17 MR. CAMPBELL: MIGHT I REQUEST A SLIGHT
18 RECESS FOR -- BEFORE BEGINNING THE CROSS EXAMINATION?

19 THE COURT: DO YOU HAVE TIME TO COLLECT
20 OTHER MATTERS AT 12:30?

21 MR. CAMPBELL: YES, YOUR HONOR.

22 THE COURT: DO YOU HAVE ANY EXHIBITS THAT
23 YOU EXPECT TO USE WITH THE WITNESS? THE PLAINTIFFS GAVE
24 ME SOME HARD COPIES. MY EXHIBIT SCREEN IS LESS THAN
25 CLEAR. SO IF YOU HAVE A PARTICULAR SET OF PAPERS YOU

1 ARE GOING TO USE WITH THIS WITNESS, IT WOULD BE HELPFUL.

2 MR. CAMPBELL: YES, YOUR HONOR. I DO
3 HAVE EXHIBITS THAT I PLAN TO USE.

4 CROSS EXAMINATION

5 MR. CAMPBELL: MAY IT PLEASE THE COURT.

6 BY MR. CAMPBELL:

7 Q. GOOD AFTERNOON, DR. CRANOR.

8 A. GOOD MORNING -- AFTERNOON.

9 THE COURT: DEPENDS ON WHAT TIME ZONE YOU
10 ARE IN.

11 BY MR. CAMPBELL:

12 Q. DR. CRANOR, IF I USE THE ACRONYM, ICF, INSTEAD
13 OF CONSTANTLY SAYING INTERNET CONTENT FILTERS, YOU WILL
14 UNDERSTAND WHAT I MEAN, WON'T YOU?

15 A. I BELIEVE SO.

16 THE COURT: ICF?

17 MR. CAMPBELL: ICF, YES, YOUR HONOR.

18 BY MR. CAMPBELL:

19 Q. IF I SAY HTM INSTEAD OF CONSTANTLY SAYING
20 HARMFUL TO MINORS, YOU WILL UNDERSTAND WHAT I MEAN,
21 WON'T YOU?

22 A. YES.

23 Q. AT YOUR DEPOSITION YOU DEFINED AN ICF PRODUCT AS
24 BEING EFFECTIVE IF IT ENFORCES FILTER SETTINGS MOST OF
25 THE TIME, ISN'T THAT RIGHT?

1 A. THAT SOUNDS LIKE SOMETHING I PROBABLY SAID. IT
2 WOULD BE NICE TO HAVE THE TRANSCRIPT IN FRONT OF ME
3 THOUGH.

4 THE COURT: EXCUSE ME FOR INTERRUPTING.
5 YESTERDAY, COUNSEL DID NOT FOLLOW THE ORDINARY PROCEDURE
6 FOR USING DEPOSITIONS TO CROSS EXAMINE A WITNESS WITH.
7 I THINK IT ENDS UP TO BE UNFAIR TO ASK THE WITNESS TO
8 AGREE OR DISAGREE WITHOUT HAVING THE AVAILABILITY TO
9 LOOK AT A CITATION TO WHAT WAS SAID AND TO REFRESH
10 HERSELF AS TO THE QUESTION THAT IS BEFORE AND AFTER THE
11 ONES THAT ARE AT ISSUE. THE STANDARD WAY TO DO THAT IS
12 TO DIRECT THE WITNESS' ATTENTION TO THE TESTIMONY.
13 OTHERWISE, WHAT GOOD IS THE STRENGTH OF HER RECOLLECTION
14 WHEN WE HAVE SOMETHING THAT IS MUCH MORE DEFINITIVE? SO
15 I'M GOING TO ASK BOTH SIDES OF THIS CASE, WHEN THEY ARE
16 USING A DEPOSITION TO CROSS EXAMINE THE WITNESS, TO
17 IDENTIFY THE DATE OF THE DEPOSITION, AND THE PLACE, IF
18 YOU WILL, AND WHAT CITY IT WAS TAKEN, FOR REFRESHMENT
19 PURPOSES, AND THE PAGE AND LINE OF IT. I PREFER TO USE
20 THE ELECTRONIC EXHIBITS TO PRESENT THE MATERIAL TO THE
21 WITNESS. BEING THERE'S NO JURY HERE, WE HAVE THAT
22 FLEXIBILITY. BUT IF YOU HAVE TO SHOW HER A TRANSCRIPT,
23 HARD COPY, THEN YOU WILL HAVE TO DO THAT. I EARNESTLY
24 HOPE YOU DON'T HAVE TO DO THAT BECAUSE YOU ARE GOING TO
25 BE WALKING BACK-AND-FORTH.

1 MR. CAMPBELL: YES, YOUR HONOR.

2 BY MR. CAMPBELL:

3 Q. DR. CRANOR, YOU PARTICIPATED IN A DEPOSITION ON
4 AUGUST 11TH OF THIS YEAR, DIDN'T YOU?

5 A. YES.

6 Q. AND PLAINTIFFS' COUNSEL WAS PRESENT AT
7 DEPOSITION, CORRECT?

8 A. YES.

9 Q. AND YOU GAVE YOUR TESTIMONY UNDER OATH, CORRECT?

10 A. YES.

11 Q. AND YOU TESTIFIED TRUTHFULLY, CORRECT?

12 A. YES.

13 Q. NOW, AT PAGE 153, LINE 18, I ASKED YOU TO DEFINE
14 WHAT YOU MEAN WHEN YOU SAY AN ICF PRODUCT CAN BE
15 EFFECTIVE. AND YOU STATED THAT IT'S EFFECTIVE IF IT
16 ENFORCES FILTER SETTINGS MOST OF THE TIME. ISN'T THAT
17 CORRECT?

18 THE COURT: I DIDN'T UNDERSTAND WHAT YOU
19 SAID. READ IT AGAIN, WHAT YOU SAID.

20 MR. GOMEZ: I APOLOGIZE, THERE IS JUST AN
21 ADMINISTRATIVE MATTER. THE COURT REPORTER NEEDS TO
22 SWITCH THE SCREEN SO THE SCREEN CAN OPERATE:

23 THE COURT: I WAS HOLDING THAT UP.
24 SOMETIMES THE JUDGE HAS SOME POWER. NO APPLAUSE. I
25 PUSHED THE RIGHT BUTTON.

1 (APPLAUSE.)

2 THE COURT: IT WAS LATE, SO I APOLOGIZE
3 FOR THAT.

4 BY MR. CAMPBELL:

5 Q. NOW, AT YOUR DEPOSITION, WHEN I ASKED YOU WHAT
6 YOU MEAN WHEN YOU SAY THAT FILTERS ARE EFFECTIVE, YOU
7 DEFINE EFFECTIVENESS IS WHEN A FILTER ENFORCES FILTER
8 SETTINGS MOST OF THE TIME. ISN'T THAT CORRECT?

9 A. YES.

10 THE COURT: THAT IS NOT ON THE SCREEN.
11 WHERE IS THAT? IS THAT PAGE 154?

12 MR. CAMPBELL: YES, YOUR HONOR.

13 THE COURT: I THOUGHT YOU SAID 153.

14 MR. CAMPBELL: I'M SORRY. I SAID 153, WE
15 STARTED FOR THE PREDICATE. THE ACTUAL LINE WHERE I
16 ASKED THE QUESTION IS AT PAGE 154. IT BEGINS AT LINE 8
17 AND IT GOES THROUGH TO LINE 15 -- LINE 16, YOUR HONOR.

18 THE COURT: THANK YOU.

19 BY MR. CAMPBELL:

20 Q. NOW, NOT ALL ICF PRODUCTS ARE EFFECTIVE, ARE
21 THEY?

22 A. RIGHT.

23 Q. YOU DON'T KNOW HOW MANY PORNOGRAPHIC WEB PAGES
24 ARE AVAILABLE ON THE WORLDWIDE WEB, DO YOU, DR. CRANOR?

25 A. NO.

1 Q. IT WOULD BE FAIR TO SAY THERE ARE HUNDREDS OF
2 MILLIONS?

3 THE COURT: CITES OR DOCUMENTS, WHAT DO
4 YOU MEAN?

5 MR. CAMPBELL: I'M SORRY?

6 THE COURT: ARE THESE SITES, DOCUMENTS,
7 PAGES OR WHAT?

8 MR. CAMPBELL: PORNOGRAPHIC WEB PAGES,
9 YES, YOUR HONOR.

10 THE WITNESS: I AM NOT REALLY SURE WHAT
11 THE NUMBER IS.

12 BY MR. CAMPBELL:

13 Q. LET ME POSE A HYPOTHETICAL TO YOU, DR. CRANOR.
14 ASSUME THAT THERE ARE HUNDREDS OF MILLIONS OF
15 PORNOGRAPHIC WEB PAGES ON THE WORLDWIDE WEB. ASSUME
16 THAT A PARENT USES A FILTER THAT HAS A 95 PERCENT
17 BLOCKING RATE AND ASSUME THAT THE FILTER IS SET TO BLOCK
18 PORNOGRAPHY. CAN YOU TELL ME THE NUMBER OF PAGES OF
19 PORNOGRAPHY THAT WOULD STILL BE ACCESSIBLE, DR. CRANOR?

20 A. WELL, LET'S ASSUME INSTEAD OF HUNDREDS OF
21 MILLIONS WE NEED A SPECIFIC NUMBER.

22 Q. LET'S SAY ONE HUNDRED MILLION.

23 A. OKAY. SO ONE HUNDRED MILLION, AND THE FILTER IS
24 95 PERCENT ACCURATE, THEN THERE WOULD BE 5 MILLION STILL
25 AVAILABLE.

1 Q. IN YOUR EXPERT REPORT, YOU SAID THAT YOU
2 PERSONALLY TESTED THREE INTERNET CONTENT FILTERING
3 PRODUCTS, CORRECT?

4 A. YES, AT THE TIME OF MY REPORT.

5 Q. YES. AND THE THREE PRODUCTS THAT YOU TESTED
6 WERE THE CYBER-SITTER 9.0. ONE OF THE PRODUCTS WAS
7 CYBER-SITTER 9.0 PRODUCT, CORRECT?

8 A. YES.

9 Q. ONE OF THE OTHER PRODUCTS WAS NET NANNY 5 ICF
10 PRODUCT, CORRECT?

11 A. YES.

12 Q. AND THE OTHER PRODUCT WAS THE AOL PARENTAL
13 CONTROLS PRODUCT, CORRECT?

14 A. YES.

15 Q. AT YOUR DEPOSITION, YOU EXPLAINED HOW YOU
16 CONDUCTED YOUR TESTING OF THE CYBER-SITTER 9.0 PRODUCT,
17 DIDN'T YOU DR. CRANOR?

18 A. I BELIEVE I DID.

19 Q. WELL, YOU SAID THAT YOU TESTED THE PRODUCT BY
20 DOING GOOGLE SEARCHES FOR OBJECTIONABLE MATERIALS,
21 RIGHT?

22 A. THAT WAS ONE ASPECT OF MY TESTING.

23 Q. AND YOU DEFINED OBJECTIONABLE MATERIAL AS
24 MATERIALS THAT WERE ASSOCIATED WITH PORNOGRAPHY?

25 MR. FINE: YOUR HONOR, I DON'T REALLY

1 HAVE AN OBJECTION OTHER THAN, IF COUNSEL IS REFERRING TO
2 THE DEPOSITION TRANSCRIPTS, I WOULD ASK FOR THE WITNESS
3 AND COUNSEL TO BE ABLE TO REVIEW IT.

4 MR. CAMPBELL: WELL, AT THIS POINT, YOUR
5 HONOR, I'M ASKING HER HOW SHE -- WELL, WE CAN --

6 THE COURT: THE IMPLICATION WAS THAT
7 SOMETHING ABOUT HER DEPOSITION. IF YOU WANT TO ASK IT
8 WITHOUT THAT, THAT IS FINE.

9 BY MR. CAMPBELL:

10 Q. WELL, YOU DID THE GOOGLE SEARCHES -- THE
11 OBJECTIONABLE MATERIAL FOR THE OBJECTIONABLE MATERIAL --
12 YOU USED TERMS THAT WERE ASSOCIATED WITH PORNOGRAPHY,
13 CORRECT?

14 A. YES.

15 Q. YOU ALSO DID GOOGLE SEARCHES FOR WHAT YOU
16 THOUGHT WERE NOT OBJECTIONABLE MATERIAL?

17 A. YES.

18 Q. AND YOU SAID THAT THE SEARCH TERMS THAT YOU USED
19 WERE RANDOM TERMS YOU HAPPENED TO THINK OF AT THE
20 MOMENT, ISN'T THAT RIGHT?

21 A. YES.

22 Q. YOU DID NOT DOCUMENT THE SEARCH TERMS THAT YOU
23 USED IN YOUR TEST OF THE CYBER-SITTER 9.0 PRODUCT, DID
24 YOU, DR. CRANOR?

25 A. RIGHT.

1 Q. AND YOU DO NOT REMEMBER WHICH WEBSITES YOU WENT
2 TO WHEN YOU PERFORMED THIS TEST, DO YOU, DR. CRANOR?

3 A. THAT'S CORRECT.

4 Q. THE ERROR RATE FOR THE TESTING YOU DID FOR THE
5 CYBER-SITTER 9.0 PRODUCT DID NOT MEET THE LEVEL OF 95
6 PERCENT CERTAINTY, DID IT?

7 A. I DID NOT CALCULATE AN ERROR RATE.

8 Q. NOW, THE TESTING THAT YOU PERSONALLY CONDUCTED
9 ON THE CYBER-SITTER 9.0 PRODUCT WAS NOT SYSTEMATIC, WAS
10 IT?

11 A. I WAS NOT TRYING TO CALCULATE AN ERROR RATE OR
12 ACCURACY OR ANYTHING LIKE THAT. I WANTED TO GET A FEEL
13 FOR THE USER EXPERIENCE.

14 Q. SO THE TEST THAT YOU PERSONALLY CONDUCTED WAS
15 NOT STRUCTURED TO MEASURE WHETHER OR NOT THE
16 CYBER-SITTER 9.0 PRODUCT WAS EFFECTIVE, WAS IT?

17 A. NO, IT WAS NOT.

18 Q. YOU ALSO CONDUCTED TESTING ON THE NET NANNY 5
19 ICF PRODUCT, DIDN'T YOU?

20 A. YES.

21 Q. AND YOU TESTED THAT PRODUCT BY DOING GOOGLE
22 SEARCHES FOR OBJECTIONABLE MATERIALS, CORRECT?

23 A. YES.

24 Q. AND YOU DEFINED OBJECTIONABLE MATERIAL AS
25 MATERIALS THAT WERE ASSOCIATED WITH PORNOGRAPHY,

1 CORRECT?

2 A. YES.

3 Q. YOU ALSO DID GOOGLE SEARCHES FOR WHAT YOU
4 THOUGHT WERE NOT OBJECTIONABLE MATERIAL, CORRECT?

5 A. YES.

6 Q. THE SEARCH TERMS YOU USED WERE JUST RANDOM TERMS
7 YOU HAPPEN TO THINK OF AT THE MOMENT, ISN'T THAT
8 CORRECT?

9 A. YES.

10 Q. YOU DIDN'T DOCUMENT THE SEARCH TERMS YOU USED
11 WHEN YOU TESTED NET NANNY PRODUCT, DID YOU, DR. CRANOR?

12 A. NO.

13 Q. THE ERROR RATE OF THE TESTING FOR THAT PRODUCT
14 DIDN'T MEET THE LEVEL OF 95 PERCENT CERTAINTY, DID IT?

15 A. I DID NOT CALCULATE AN ERROR RATE FOR THAT
16 PRODUCT EITHER.

17 Q. YOUR TEST WAS NOT STATISTICALLY SIGNIFICANT, WAS
18 IT?

19 A. WELL, IT DOES NOT EVEN MAKE SENSE TO TALK ABOUT
20 STATISTICAL SIGNIFICANCE WHEN I DID NOT CALCULATE AN
21 ERROR RATE, NOW, WOULD IT?

22 Q. NOW, THE TEST THAT YOU CONDUCTED, OR THAT YOU
23 PERSONALLY CONDUCTED ON NET NANNY 5 ICF PRODUCT, WAS NOT
24 SYSTEMATIC?

25 A. ONCE AGAIN, IT WAS DESIGNED TO GET A FEEL FOR

1 THE USER EXPERIENCE, NOT TO TEST THE ACCURACY OF THE
2 PRODUCT.

3 Q. YOU PERSONALLY CONDUCTED TESTING ON AOL PARENTAL
4 CONTROL PRODUCT?

5 A. YES.

6 Q. AND YOU TESTED THAT PRODUCT BY DOING GOOGLE
7 SEARCHES FOR OBJECTIONABLE MATERIAL?

8 A. YES.

9 Q. YOU DEFINED OBJECTIONABLE MATERIALS IN THAT TEST
10 AS MATERIALS THAT WERE ASSOCIATED WITH PORNOGRAPHY,
11 ISN'T THAT RIGHT?

12 A. YES.

13 Q. YOU ALSO DID GOOGLE SEARCHES FOR WHAT YOU
14 THOUGHT WERE NONOBJECTIONAL MATERIAL AS WELL?

15 A. YES.

16 Q. THE SEARCH TERMS THAT YOU USED IN THAT TEST WERE
17 JUST RANDOM TERMS YOU HAPPENED TO THINK OF AT THE
18 MOMENT, ISN'T THAT CORRECT?

19 A. YEAH. YEAH, THAT'S RIGHT.

20 Q. YOU DID NOT DOCUMENT THE SEARCH TERMS THAT YOU
21 USED IN YOUR TEST OF THE AOL PARENTAL CONTROL PRODUCTS,
22 DID YOU?

23 A. RIGHT.

24 Q. AND THE ERROR RATE OF YOUR TESTING OF THE AOL
25 PARENTAL CONTROL PRODUCTS DID NOT MEET THE LEVEL OF 95

1 PERCENT CERTAINTY, DID IT?

2 A. WELL, AS I SAID, AGAIN, IS THAT I DID NOT
3 ACTUALLY CALCULATE AN ERROR RATE, SO THAT QUESTION JUST
4 DOES NOT MAKE SENSE.

5 Q. SO THE ANSWER IS NO?

6 THE COURT: THAT IS NOT A FAIR QUESTION.
7 YOUR QUESTION WAS IT DID NOT MEET THE ERROR RATE.

8 THE WITNESS: I DID NOT CALCULATE AN
9 ERROR RATE IN ANY OF THESE TESTS.

10 BY MR. CAMPBELL:

11 Q. OKAY. AND THE TESTING OF THE AOL, YOUR
12 PERSONALLY CONDUCTED TEST OF THE AOL PARENTAL CONTROL
13 PRODUCTS, WAS NOT SYSTEMATIC, WAS IT?

14 A. IT WAS NOT DESIGNED TO MEASURE THE ACCURACY OF
15 THE SOFTWARE.

16 Q. YOU ALSO STATED THAT YOU -- YOU ALSO CONDUCTED
17 TESTING ON THE SAFE EYES ICF PRODUCT, ISN'T THAT RIGHT?

18 A. YES.

19 Q. AND YOU CONDUCTED YOUR TESTS OF THE SAFE EYES
20 PRODUCT IN THE SAME MANNER AS YOU CONDUCTED THE TESTS
21 THAT YOU PREVIOUSLY TALKED ABOUT?

22 A. SIMILAR MANNER, YES.

23 Q. SO THE TEST THAT YOU PERSONALLY CONDUCTED FOR
24 THE SAFE EYES PRODUCT WAS NOT STRUCTURED TO MEASURE
25 WHETHER OR NOT THE PRODUCT WAS EFFECTIVE, ISN'T THAT

1 CORRECT?

2 A. THAT'S RIGHT.

3 Q. YOU SAID YOU ALSO DID TESTS OR YOU ALSO DID
4 TESTING ON AOL INTERNET ACCESS CONTROLS, DIDN'T YOU?

5 A. YES.

6 Q. THE AOL INTERNET ACCESS CONTROL PRODUCT IS JUST
7 A COMPANION TO THE AOL PARENTAL CONTROLS ICF PRODUCT?

8 A. YES.

9 Q. WE WILL GO TO YOUR DEPOSITION FOR THIS. AT YOUR
10 DEPOSITION, YOU STATE THAT YOU HAVE ALSO PERSONALLY
11 CONDUCTED TESTING ON ICF PRODUCTS SOMEWHERE AROUND 1998
12 OR 1999. I WOULD REFER YOU TO PAGE 157, LINE 12 OF YOUR
13 DEPOSITION.

14 THE COURT: 167?

15 MR. CAMPBELL: 157, YOUR HONOR.

16 THE WITNESS: YES.

17 BY MR. CAMPBELL:

18 Q. THE PRODUCTS THAT YOU TESTED IN 1998 AND 1999,
19 YOU DON'T REMEMBER THE NAMES OF THOSE PRODUCTS THAT YOU
20 TESTED, DO YOU, DR. CRANOR?

21 A. NO, I DO NOT.

22 Q. AND THE TESTS THAT YOU CONDUCTED ON THOSE ICF
23 PRODUCTS IN 1998 OR 1999, THEY WERE NOT STRUCTURED TO
24 MEASURE THE EFFECTIVENESS OF THOSE FILTERING PRODUCTS,
25 WERE THEY?

1 A. NO.

2 Q. AND YOU HAVE NOT PERSONALLY CONDUCTED ANY
3 TESTING ON ANY OTHER ICF PRODUCTS, HAVE YOU, DR. CRANOR?

4 A. I CONDUCTED TESTING ON PRODUCTS IN CONJUNCTION
5 WITH MY PREPARATION FOR THE VARIOUS TESTIMONY OVER THE
6 YEARS, BUT RECENTLY ONLY THE ONES THAT WE HAVE TALKED
7 ABOUT.

8 Q. WHEN I ASKED YOU AT YOUR DEPOSITION ABOUT THE
9 ICF PRODUCTS YOU TESTED, YOU DID NOT MENTION THESE OTHER
10 PRODUCTS THAT YOU ARE REFERRING TO NOW, DID YOU, DR.
11 CRANOR?

12 A. I TALKED ABOUT HAVING TESTED SOME PRODUCTS A
13 NUMBER OF YEARS AGO AND I DON'T REMEMBER EXACTLY WHICH
14 ONES.

15 Q. AND WHEN I ASKED YOU WHEN YOU TESTED THOSE
16 PRODUCTS, YOU SAID THAT YOU TESTED THEM AROUND 1998.
17 1998 OR 1999, ISN'T THAT CORRECT?

18 A. YES.

19 Q. AND SO THE PRODUCTS THAT YOU TESTED AROUND 1998
20 OR 1999, THOSE TESTS WERE NOT STRUCTURED TO MEASURE THE
21 EFFECTIVENESS OF THE ICF PRODUCTS, WERE THEY, DR.
22 CRANOR?

23 A. THAT'S CORRECT.

24 Q. AND SO THERE WEREN'T ANY OTHER PERSONALLY
25 CONDUCTED TESTS THAT YOU'VE DONE ON ICF PRODUCTS TO

1 MEASURE THEIR EFFECTIVENESS THAT WE HAVE NOT TALKED
2 ABOUT?

3 A. THAT'S RIGHT.

4 Q. NOW, DURING YOUR DIRECT EXAMINATION, YOU TALKED
5 ABOUT THE MICROSOFT VISTA ICF PRODUCT, ISN'T THAT
6 CORRECT?

7 A. YES.

8 Q. BUT YOU DID NOT PERSONALLY CONDUCT ANY TESTING
9 TO DETERMINE THE EFFECTIVENESS OF THE VISTA PRODUCT,
10 HAVE YOU, DR. CRANOR?

11 A. THAT'S RIGHT.

12 Q. AND YOU HAVE NOT REVIEWED ANY INDEPENDENT
13 THIRD-PARTY STUDIES EVALUATING THE EFFECTIVENESS OF THE
14 VISTA ICF PRODUCT. HAVE YOU, DR. CRANOR?

15 A. THAT'S RIGHT. THAT'S CORRECT.

16 THE COURT: COUNSEL, WE CAN TAKE OUR
17 MIDDAY RECESS NOW.

18 MR. CAMPBELL: THANK YOU, YOUR HONOR.

19 THE COURT: THE COURT IS IN RECESS FOR
20 ONE HOUR. WE WILL BE BACK A MINUTE OR 2 AFTER 1:30. WE
21 ARE OFF THE RECORD. COUNSEL ARE EXCUSED.

22 (LUNCH RECESS.)

23 AFTERNOON SESSION.

24 THE CLERK: ALL RISE. COURT IS NOW IN
25 SESSION.

1 THE COURT: WELCOME BACK, EVERYONE.

2 PLEASE BE SEATED.

3 THE COURT: PRELIMINARILY, LET ME RULE ON
4 THE OFFER OF P 11 INTO EVIDENCE. P 11 IS A REPORT TO
5 CONGRESS, PURSUANT TO THE CHILDREN'S INTERNET PROTECTION
6 ACT, LAW 6-534, THE STUDY OF TECHNOLOGY PROTECTION
7 MEASURE, NATIONAL TELECOMMUNICATIONS AND INFORMATION
8 ADMINISTRATION, DATED AUGUST OF 2003. THE REPORT BY ITS
9 OWN TERMS IS PRODUCED BY REASON OF STATUTORY IMPERATIVE.
10 THEREFORE, UNDER THE RULE 803, SUBPARAGRAPH 8 REPORTS
11 LISTED AS AN EXCEPTION TO THE HEARSAY RULE: REPORTS,
12 STATEMENTS OR DATA COMPILATIONS IN ANY FORM OF A PUBLIC
13 OFFICER -- OFFICES OR AGENCIES SETTING FORTH THE
14 ACTIVITIES OF THE OFFICE OR AGENCY OR MATTERS OBSERVED
15 PURSUANT TO DUTY IMPOSED BY LAW. THE WORD "MATTERS" IS
16 AWFULLY BROAD. I HAVE READ PORTIONS OF THE REPORT THAT
17 SHOWS THAT WHAT APPEARS TO BE A RELIABLE SOURCE,
18 ANALYTICAL MATERIAL SUBMITTED BY -- SUBMITTED BY THIS
19 AGENCY TO CONGRESS. BUT BASED ON CONTACTS WITH THE
20 ARRAY OF 30 OR 40 OR 50 ORGANIZATIONS, MANY OF WHICH ARE
21 PATENTLY NEUTRAL IN THE FIELD THAT THEY ARE WORKING IN,
22 I THINK THE REPORT HAS ITS OWN RELIABILITY STANDARD
23 BEYOND RULE 803(8). SO THE OBJECTION IS OVERRULED AND P
24 11 IS RECEIVED INTO EVIDENCE.

25 (EXHIBIT P 11 IS RECEIVED INTO EVIDENCE.)

1 THE COURT: BACK TO CROSS EXAMINATION.

2 MR. CAMPBELL: YOUR HONOR --

3 THE COURT: UNLESS THERE IS SOMETHING
4 ELSE THAT HAS BEEN SETTLED OUT.

5 MR. FINE: YOUR HUNCH IS CORRECT, YOUR
6 HONOR. WE HAVE HEARD FROM AOL.

7 THE COURT: I LIKE THAT KIND OF HUNCH.

8 MR. FINE: THEY HAVE WAIVED THEIR
9 CONFIDENTIALITY OBJECTIONS. WE HAVE CONFERRED, AND
10 DEFENSE COUNSEL WOULD PREFER THAT WE DO THE DIRECT
11 EXAMINATION -- COMPLETE THE DIRECT EXAMINATION WITH
12 RESPECT TO THE AOL INFORMATION.

13 THE COURT: BEFORE YOU CONTINUE YOUR
14 CROSS?

15 MR. CAMPBELL: YES, YOUR HONOR.

16 THE COURT: THAT IS FINE WITH ME.

17 LET THE RECORD SHOW THAT WE ARE
18 REINSTITUTING DIRECT EXAMINATION BY PLAINTIFF.

19 DIRECT EXAMINATION (CONTINUED)

20 BY MR. FINE:

21 Q. GOOD AFTERNOON, DR. CRANOR.

22 A. GOOD AFTERNOON.

23 Q. I'M GOING TO NOW ASK YOU TO TURN TO WHAT HAS
24 PREVIOUSLY BEEN MARKED AS PLAINTIFFS' EXHIBIT 85.

25 THE COURT: GO RIGHT AHEAD.

1 MR. FINE: YOUR HONOR, COUNSEL HAS JUST
2 INDICATED TO ME THAT THE SCREENS MAY NEED TO BE
3 READJUSTED TO MAKE SURE THAT THE DOCUMENT IS EXHIBITED.

4 THE COURT: WHAT DO WE HAVE TO DO TO DO
5 THAT?

6 MR. FINE: YOU MAY NEED TO PRESS THE
7 BUTTON.

8 MR. GOMEZ: YOUR HONOR, WE HAVE A
9 TECHNICIAN WHO MIGHT ASSIST YOU, IF YOU CARE.

10 THE COURT: THE EXHIBIT SCREEN IS BLACK.
11 THERE ARE A LOT OF PLACES I CAN POKE, TURN IT OFF AND
12 BACK ON AGAIN. YOU KNOW THAT CLEARS UP MOST PROBLEMS ON
13 COMPUTERS. TURN THEM OFF. BOOT THEM UP AGAIN.

14 MR. GOMEZ: YOUR HONOR, WE HAVE A
15 TECHNICIAN. IF YOU CARE.

16 THE COURT: OKAY. SEND HIM UP HERE.
17 THERE ARE A LOT OF BUTTONS TO PUSH.

18 THIS IS THE ONLY SCREEN THAT WILL CONTROL
19 WHERE THE EVIDENCE IS COMING FROM. THAT IS WHAT I HAVE
20 ON MY SCREEN.

21 VOILA.

22 THANK YOU.

23 MR. FINE: THANK YOU, YOUR HONOR.

24 BY MR. FINE:

25 Q. DR. CRANOR, EARLIER YOU WERE TESTIFYING ABOUT

1 YOUR KNOWLEDGE OF PARENTAL SATISFACTION WITH FILTERING
2 PRODUCTS. AND YOU REFERRED TO A SPECIFIC STUDY THAT YOU
3 HAD SEEN BY AOL. IS THAT PLAINTIFFS' EXHIBIT 85?

4 MR. CAMPBELL: OBJECTION. ASSUMES FACTS
5 NOT IN EVIDENCE. I DON'T BELIEVE SHE TALKED ABOUT WHICH
6 STUDIES SHE REVIEWED. I DON'T THINK SHE SHOULD BE
7 MENTIONING STUDIES.

8 MR. FINE: I DON'T HAVE THE TRANSCRIPT.

9 THE COURT: COUNSEL IS MERELY DIRECTING
10 HER ATTENTION TO SOMETHING. IT IS NOT SUBSTANTIVE
11 EVIDENCE. NOT THAT HE IS -- HE IS DIRECTING HER
12 ATTENTION TO SOMETHING. FOR THAT PURPOSE, I WILL
13 OVERRULE THE OBJECTION.

14 BY MR. FEIN:

15 Q. DR. CRANOR, DO YOU RECOGNIZE PLAINTIFFS' EXHIBIT
16 85?

17 A. YES.

18 Q. WHAT IS IT?

19 A. IT IS THE AOL PARENTAL CONTROLS AND KOL AND RED
20 SURVEY.

21 Q. DID YOU REVIEW THIS DOCUMENT, PLAINTIFFS'
22 EXHIBIT 85, IN CONNECTION WITH PREPARING YOUR EXPERT
23 REPORT?

24 A. YES.

25 Q. DID YOU RELY UPON IT?

1 A. YES.

2 Q. AND ARE YOU GENERALLY FAMILIAR WITH THE
3 METHODOLOGY USED HEREIN?

4 A. YES.

5 Q. AND I WANT TO ASK YOU A LITTLE BIT -- YOU
6 TESTIFIED AT THE BEGINNING OF YOUR TESTIMONY YESTERDAY
7 THAT YOU DESIGNED SURVEYS IN THE PAST, IS THAT CORRECT?

8 A. YES.

9 Q. HOW MANY SURVEYS?

10 A. A FEW DOZEN.

11 Q. AND ARE YOU FAMILIAR WITH HOW TO DESIGN A
12 SURVEY?

13 A. YES.

14 Q. HOW TO IMPLEMENT A SURVEY?

15 A. YES.

16 Q. HOW TO ANALYZE A SURVEY?

17 A. YES.

18 Q. AND FOCUSING NOW SPECIFICALLY ON PLAINTIFFS'
19 EXHIBIT 85, DO YOU HAVE AN UNDERSTANDING AS TO THE
20 SAMPLE SIZE THAT WAS USED IN PLAINTIFFS' EXHIBIT 85?

21 A. YES.

22 Q. AND DO YOU HAVE AN UNDERSTANDING AS TO HOW THE
23 SAMPLE WAS SELECTED?

24 A. YES.

25 Q. DO YOU HAVE AN UNDERSTANDING AS TO THE WORDING

1 OF THE QUESTIONS THAT WERE USED IN THE SURVEY?

2 A. YES.

3 Q. DO YOU HAVE AN UNDERSTANDING AS TO THE PURPOSE
4 OF THE SURVEY?

5 A. YES.

6 Q. DO YOU HAVE AN UNDERSTANDING AS TO THE RESULTS
7 OF THE SURVEY?

8 A. YES.

9 Q. I WANT TO NOW DIRECT YOUR ATTENTION TO PAGE 4 OF
10 PLAINTIFFS' EXHIBIT 85.

11 A. OKAY.

12 Q. THE SECOND BULLET POINT, WHAT DOES THE SURVEY
13 INDICATE THE SATISFACTION WITH PARENTAL CONTROLS WAS?

14 A. IT SAYS THAT SATISFACTION WITH PARENTAL CONTROLS
15 IS VERY HIGH. 85 PERCENT OF PARENTS GAVE THEIR
16 SATISFACTION A TOP 2 BOX RATING WHICH, IN THIS CASE,
17 MEANS THAT IT WAS EITHER HIGH OR VERY HIGH.
18 SATISFACTION WAS CONSISTENT AMONG PARENTS WITH CHILDREN
19 OF DIFFERENT AGES. 87 --

20 MR. CAMPBELL: OBJECTION, YOUR HONOR.
21 THE DOCUMENT SPEAKS FOR ITSELF.

22 THE COURT: PARDON ME?

23 MR. CAMPBELL: THE DOCUMENT SPEAKS FOR
24 ITSELF, YOUR HONOR.

25 THE COURT: NOT IN EVIDENCE YET. SO

1 CONSISTENT WITH OTHER TESTIMONY OF THE WITNESS, THE
2 OBJECTION IS OVERRULED.

3 BY MR. FINE:

4 Q. IF YOU CAN CONTINUE TELLING US, WHAT DID THE
5 SURVEY CONCLUDE ABOUT THE -- I'M SORRY. HAD YOU
6 FINISHED READING THE FIRST SENTENCE?

7 A. YES.

8 Q. WHAT DID THE SURVEY CONCLUDE ABOUT HOW EASY IT
9 IS TO USE PARENTAL CONTROLS PRODUCTS?

10 A. IT ALSO CONCLUDED THAT THEY WERE EASY TO USE.

11 Q. AND DOES IT HAVE A STATISTICAL PERCENTAGE?

12 A. YES. 87 PERCENT OF THE PARENTS RATED THE
13 PARENTAL CONTROLS EASY TO USE.

14 Q. CAN YOU REMIND US, WHAT ARE PARENTAL CONTROLS?

15 A. THOSE ARE THE FILTERING PRODUCT THAT AOL
16 PROVIDES FOR FREE.

17 Q. I WANT TO TURN YOUR ATTENTION NOW TO THE BOTTOM
18 BULLET POINT ON PAGE 4 OF PLAINTIFFS' EXHIBIT 85.

19 A. OKAY.

20 Q. WHAT DOES THE SURVEY INDICATE THE TOP REASONS
21 FOR PARENTS NOT ACTIVATING PARENTAL CONTROLS WERE?

22 A. THAT THEY TRUST THEIR KIDS AND THAT THEY CHECK
23 UP ON THEIR KIDS' ONLINE ACTIVITIES.

24 Q. I WANT TO NOW DIRECT YOUR ATTENTION TO PAGE 14
25 OF PLAINTIFFS' EXHIBIT 85.

1 THE COURT: EXCUSE ME FOR INTERRUPTING.
2 FOR PURPOSES OF TECHNICAL USE BY THE COURT, TO WIT,
3 BEING ABLE TO READ THE SCREEN, I FIND THE YELLOW
4 HIGHLIGHTER TO BE EXTRAORDINARY HELPFUL IN THE SCREEN IN
5 THE COURTROOM. WHEN THERE IS A PRINTED MATERIAL --
6 WORDS BEING HIGHLIGHTED IN YELLOW, IT'S VERY EFFECTIVE
7 IN MAKING IT MORE READABLE, WHOEVER IS DOING THAT.

8 BY MR. FINE:

9 Q. TURNING YOUR DIRECTION TO PAGE 14. FIRST OF
10 ALL, TELL US, WHAT DOES THIS PAGE REPRESENT?

11 A. THIS IS THE RESPONSE TO ONE OF THE QUESTIONS ON
12 THE SURVEY THAT ASKED CHILDREN: WHERE DO YOU FEEL MOST
13 UNSAFE WHILE ON AOL?

14 Q. WHAT IS THE NUMBER ONE RESPONSE FROM CHILDREN?

15 A. CHILDREN SAY THEY FEEL MOST UNSAFE IN THE CHAT
16 ROOMS ON AOL.

17 MR. CAMPBELL: OBJECTION, YOUR HONOR.
18 COUNSEL IS NOT ASKING HER HER OPINION. HE IS ASKING HER
19 TO READ THE DOCUMENT AND NOT TO PROVIDE HER OPINION
20 BASED ON WHAT SHE GOT FROM THE DOCUMENT.

21 THE COURT: I DON'T THINK SHE WAS ASKED
22 TO PROVIDE HER OPINION. SHE WAS ASKED WHAT THE
23 CONCLUSION OF THE STUDY WAS, OR WORDS TO THAT EFFECT.
24 MR. FINE?

25 MR. FINE: YES, THAT WAS THE QUESTION.

1 MR. CAMPBELL: YOUR HONOR IS CORRECT THAT
2 WAS THE QUESTION THAT MR. FINE ASKED. HOWEVER, THIS IS
3 NOT HER STUDY.

4 THE COURT: THE TESTIMONY WAS, WHEN ASKED
5 WHAT WAS THE RESPONSE FROM CHILDREN, ANSWER: CHILDREN
6 SAY THEY FEEL MOST UNSAFE IN THE CHAT ROOMS ON AOL.

7 I ASSUME THAT IS A PARAPHRASE OR A QUOTE
8 FROM THE REPORT. I DID NOT HEAR HER GIVE HER OPINION.
9 WAS IT YOUR INTENTION TO ASK HER HER OPINION?

10 MR. FINE: NO.

11 MR. CAMPBELL: SAME OBJECTION, THAT WAS
12 THE POINT I WAS MAKING. SHE IS NOT PROVIDING HER
13 OPINION. SHE IS READING FROM THE STUDY. IT IS NOT HER
14 STUDY. THE RELEVANT ISSUE IS HER OPINION.

15 THE COURT: THE OBJECTION IS OVERRULED.
16 BY MR. FINE:

17 Q. WHAT PERCENT OF KIDS RESPONDED THAT THEIR NUMBER
18 ONE CONCERN ON THE INTERNET WERE CHAT ROOMS?

19 A. 34 PERCENT.

20 Q. WHAT DOES THE STUDY CONCLUDE IS THE NUMBER 2
21 CONCERN OF CHILDREN ON THE INTERNET?

22 A. THEY FEEL UNSAFE. NUMBER TWO CONCERN IS
23 DOWNLOADING.

24 Q. WHAT DOES THAT MEAN, DOWNLOADING?

25 A. WHEN THEY DOWNLOAD SOFTWARE, WHERE THEY OBTAIN

1 SOFTWARE OFF THE INTERNET.

2 Q. AND WHAT PERCENTAGE OF CHILDREN INDICATED THAT
3 DOWNLOADING WAS THEIR NUMBER TWO CONCERN?

4 A. WELL, I THINK IT'S PROBABLY THE --

5 Q. I MISSPOKE, I THINK. LET ME STRIKE THAT AND ASK
6 THE QUESTION AGAIN.

7 WHAT PERCENTAGE OF CHILDREN INDICATED
8 THAT DOWNLOADING WAS THEIR PRIMARY CONCERN?

9 A. 13 PERCENT.

10 Q. WHAT DOES THE STUDY INDICATE WAS ON THIS CHART
11 THE THIRD HIGHEST PERCENTAGE FEAR OF CHILDREN ON THE
12 INTERNET?

13 A. E-MAIL.

14 Q. WHERE DOES SURFING ON THE WORLDWIDE WEB COME IN
15 ON THIS SURVEY, PLAINTIFFS' EXHIBIT 85?

16 A. IT IS LISTED AS THE FOURTH CONCERN.

17 Q. AND WHAT PERCENTAGE OF CHILDREN LISTED SURFING
18 ON THE WEB AS THEIR NUMBER ONE CONCERN?

19 A. 9 PERCENT.

20 Q. I WANT TO NOW FOCUS YOUR ATTENTION ON PAGE 49.
21 WHAT DOES THIS PAGE REPRESENT?

22 A. THIS IS THE RESPONSES TO THE QUESTION THAT WAS
23 ASKED OF PARENTS, WHY ARE PARENTAL CONTROLS NOT
24 CURRENTLY ACTIVATED FOR YOUR CHILD.

25 Q. WHAT WAS THE NUMBER ONE RESPONSE FROM PARENTS?

1 A. THEY SAID, I TRUST MY KIDS.

2 Q. HOW MANY PERCENT SAID THAT THAT WAS THE REASON
3 THEY DIDN'T ACTIVATE PARENTAL CONTROLS?

4 A. 60 PERCENT.

5 MR. FINE: YOUR HONOR, PLAINTIFFS WOULD
6 NOW LIKE TO MOVE PLAINTIFFS' EXHIBIT 85 INTO EVIDENCE.

7 THE COURT: MR. CAMPBELL.

8 MR. CAMPBELL: NO OBJECTION, YOUR HONOR.

9 THE COURT: 85 IS RECEIVED IN EVIDENCE.

10 (PLAINTIFFS' EXHIBIT 85 RECEIVED INTO
11 EVIDENCE.)

12 MR. FINE: NO FURTHER QUESTIONS ON DIRECT
13 EXAMINATION RIGHT NOW, YOUR HONOR.

14 THE COURT: YOU MAY RESUME CROSS.

15 MR. CAMPBELL: THANK YOU, YOUR HONOR.

16 THE COURT: I DID NOT GIVE VISUAL CREDIT
17 TO THE YELLOW UNDERLINERS ON PLAINTIFFS' TABLE OVER
18 THERE BECAUSE I COULD NOT SEE THEM.

19 MR. HANSEN: YOUR HONOR, IT'S KATHRYN
20 WOOD, WHO WAS BEEN PROVIDING YELLOW UNDERLINING FOR YOU.
21 SHE WORKS AT OUR OFFICE, AND WE ARE GRATEFUL FOR HER TO
22 BE HERE TO DO THAT.

23 THE COURT: KEEP UP THE GOOD WORK.

24 MR. CAMPBELL: I DON'T KNOW IF YOUR HONOR
25 NEEDS TO SWITCH THE SCREEN FOR OUR EXHIBITS, IF THAT IS

1 TECHNICALLY REQUIRED.

2 THE COURT: THIS THING IS BLANK AGAIN. I
3 DON'T KNOW HOW WE DID IT LAST TIME. PROBABLY USED THIS
4 ONE TO SEE IF IT WORKS:

5 THERE IS NOTHING THERE. THERE IS NO
6 EXHIBIT UP NOW, I GUESS.

7 CROSS EXAMINATION (CONTINUED)

8 BY MR. CAMPBELL:

9 Q. GOOD AFTERNOON AGAIN, DR. CRANOR.

10 A. GOOD AFTERNOON.

11 Q. AND MAY IT PLEASE THE COURT, TO RECAP WHERE WE
12 LEFT OFF THIS AFTERNOON, NONE OF THE TESTS OF ICF
13 PRODUCTS THAT YOU PERSONALLY CONDUCTED WAS STRUCTURED TO
14 MEASURE THE FILTER'S EFFECTIVENESS, WAS IT, DR. CRANOR?

15 A. THAT'S RIGHT.

16 Q. YOU TESTIFIED ABOUT THE MICROSOFT VISTA ICF
17 PRODUCT. AND BY WAY OF RECAPPING, OR TO REVIEW THE
18 TESTIMONY, YOU DID NOT PERSONALLY CONDUCT ANY TESTING TO
19 DETERMINE THE EFFECTIVENESS OF THE VISTA PRODUCT, HAVE
20 YOU?

21 A. NO, I HAVE NOT.

22 Q. AND YOU HAVE NOT REVIEWED ANY INDEPENDENT
23 THIRD-PARTY STUDIES EVALUATING THE EFFECTIVENESS OF THE
24 VISTA ICF PRODUCT, HAVE YOU, DR. CRANOR?

25 A. THAT'S RIGHT.

1 Q. YOU DON'T KNOW THE METHODOLOGY OF TESTING THAT
2 MICROSOFT USED TO MAKE ITS CLAIM THAT VISTA WOULD BE
3 EFFECTIVE. DO YOU, DR. CRANOR?

4 A. NOT THE DETAILED METHODOLOGY.

5 Q. YOU DON'T ADOPT MICROSOFT'S CONCLUSION THAT
6 VISTA WILL BE SECURE AGAINST CIRCUMVENTION, DO YOU, DR.
7 CRANOR?

8 A. I THINK IT'S LIKELY THAT IT WILL BE, BUT I HAVE
9 NOT TESTED IT MYSELF.

10 Q. AND YOU DON'T KNOW THE METHODOLOGY OF TESTING
11 THAT MICROSOFT USED TO MAKE THE CLAIM THAT VISTA WILL BE
12 SECURE AGAINST CIRCUMVENTION?

13 A. I DON'T KNOW THE SPECIFIC TEST THEY CONDUCTED.
14 I KNOW THE REPUTATION OF MICROSOFT AND THEIR OTHER
15 PRODUCTS.

16 Q. YOU DON'T ADOPT MICROSOFT'S CONCLUSION THAT
17 VISTA'S PARENTAL CONTROL SOFTWARE WILL BE EASY TO USE,
18 DO YOU, DR. CRANOR?

19 A. ONCE AGAIN, I KNOW THAT THEY HAVE CONDUCTED
20 USEABILITY TESTS AND I KNOW THE REPUTATION OF THEIR
21 PRODUCTS, THAT THEY GENERALLY ARE PRETTY EASY TO USE, SO
22 IT'S LIKELY, BUT I HAVE NOT SEEN IT MYSELF.

23 Q. AND YOU DON'T KNOW THE METHODOLOGY MICROSOFT
24 USED TO MAKE ITS CLAIM THAT VISTA IS EASY TO USE, DO
25 YOU, DR. CRANOR?

1 A. I KNOW ONLY THAT THEY SAID THAT THEY CONDUCTED
2 USER STUDIES.

3 Q. YOU HAVE NOT PERSONALLY CONDUCTED ANY TESTING TO
4 DETERMINE IF VISTA PARENTAL CONTROL SOFTWARE WILL BE
5 COMPATIBLE WITH THIRD-PARTY INTERNET CONTENT FILTERS,
6 HAVE YOU, DR. CRANOR?

7 A. NO, I ONLY KNOW MICROSOFT'S CLAIM THAT THEY
8 WOULD MAKE AN API AVAILABLE THAT WOULD ALLOW THEIR
9 PRODUCT TO BE COMPATIBLE WITH OTHER FILTERS.

10 Q. SO THAT WOULD BE NO?

11 A. RIGHT.

12 Q. AND YOU DON'T KNOW THE METHODOLOGY OF TESTING
13 THAT MICROSOFT USED IN MAKING ITS CLAIM THAT THE VISTA
14 PARENTAL CONTROL SOFTWARE WILL BE COMPATIBLE WITH
15 THIRD-PARTY INTERNET CONTENT FILTERS?

16 A. I DON'T KNOW HOW THEY TESTED IT.

17 Q. DURING YOUR DIRECT EXAMINATION, YOU TALKED ABOUT
18 THE WINDOWS LIVE FILTER, DIDN'T YOU, DR. CRANOR?

19 A. YES.

20 Q. NOW, WINDOWS USERS HAVE TO REGISTER TO USE
21 WINDOWS LIVE, DON'T THEY?

22 A. I BELIEVE SO.

23 Q. NOW, YOU DON'T KNOW THE PERCENTAGE OF MICROSOFT
24 USERS THAT UTILIZE WINDOWS LIVE, DO YOU, DR. CRANOR?

25 A. NO.

1 Q. YOU DON'T KNOW THE PERCENTAGE OF WINDOWS LIVE
2 USERS THAT ARE PARENTS WITH MINOR CHILDREN DO YOU DR.
3 CRANOR?

4 A. NO.

5 MR. CAMPBELL: I'M FROM NEW YORK, I WILL
6 TRY TO FIGHT AGAINST THAT AND SLOW UP. MY APOLOGIES.

7 THE WITNESS: NO, I DON'T.

8 BY MR. CAMPBELL:

9 Q. YOU HAVE NOT PERSONALLY CONDUCTED ANY TESTING TO
10 EVALUATE THE EFFECTIVENESS OF THE WINDOWS LIVE FILTER,
11 HAVE YOU?

12 A. NOPE.

13 Q. AND YOU HAVE NOT REVIEWED ANY INDEPENDENT
14 THIRD-PARTY STUDIES EVALUATING THE EFFECTIVENESS OF THE
15 WINDOWS LIVE FILTER, HAVE YOU?

16 A. NO.

17 Q. NOW, YOU PREPARED AN EXPERT REPORT THAT DETAILED
18 YOUR OPINIONS IN THIS CASE, CORRECT?

19 A. YES.

20 Q. AND YOU DISCUSSED THE WAY FILTERING PRODUCTS
21 WORK IN YOUR EXPERT REPORT?

22 A. YES.

23 Q. AND IN YOUR EXPERT REPORT, YOU STATE THAT
24 FILTERING COMPANIES ATTEMPT TO MIMIC THE SEARCHES OF
25 INTERNET USERS, IS THAT CORRECT?

1 A. I BELIEVE I SAID SOMETHING LIKE THAT.

2 Q. AND YOU STATE THAT FILTERING COMPANIES DO THIS
3 TO IDENTIFY THE SITES PEOPLE -- IN FACT, YOU TESTIFIED
4 YESTERDAY THAT THE REASON WHY FILTERING COMPANIES DO
5 THIS IS TO IDENTIFY THE SITES PEOPLE ARE MOST LIKELY TO
6 SEE AND ACCESS, ISN'T THAT CORRECT?

7 A. YES.

8 Q. NOW, IN YOUR EXPERT REPORT, YOU PROVIDED
9 SPECIFIC EXAMPLES OF FILTERING COMPANIES THAT YOU
10 BELIEVE DO THIS, DIDN'T YOU?

11 A. YES, I BELIEVE I DID.

12 Q. AND EACH EXAMPLE YOU PROVIDED WAS BASED ON THE
13 TESTIMONY OF A FILTERING COMPANY -- FILTER COMPANY
14 EMPLOYEE, CORRECT?

15 A. I BELIEVE, YEAH. IT WAS DOCUMENTS THAT WERE
16 FOUND IN THE DISCOVERY PROCESS.

17 Q. AND THOSE DOCUMENTS -- YOU RELIED ON THOSE
18 DOCUMENTS, ISN'T THAT RIGHT?

19 A. YES.

20 Q. THE DOCUMENTS THAT YOU RELIED ON WERE BASED ON
21 THE TESTIMONY OF EMPLOYEES OF FILTERING COMPANIES, ISN'T
22 THAT CORRECT?

23 A. I BELIEVE SO.

24 Q. IN EACH EXAMPLE, THE FILTER COMPANY EMPLOYEE WAS
25 DISCUSSING THE PRODUCT OF HIS OR HER OWN COMPANY, ISN'T

1 THAT CORRECT?

2 A. I BELIEVE SO.

3 Q. NOW, YOU DON'T KNOW THE METHOD BY WHICH FILTER
4 COMPANIES THAT YOU USED IN YOUR EXAMPLE -- THE METHOD
5 THEY USED TO MIMIC SEARCHES, ISN'T THAT CORRECT?

6 A. THEY EXPLAINED IT TO VARYING DEGREES IN THOSE
7 DOCUMENTS. I WOULD HAVE TO GO BACK TO THE DOCUMENTS TO
8 SEE HOW MUCH DETAIL THEY PROVIDED.

9 Q. OKAY. BUT AT YOUR DEPOSITION, YOU STATED THAT
10 YOU DID NOT KNOW THE METHOD BY WHICH THE FILTER
11 COMPANIES MIMIC SEARCHES; ISN'T THAT CORRECT?

12 THE COURT: TAKE A LOOK, PAGE AND LINE
13 NUMBER.

14 MR. CAMPBELL: FOR THAT, WE WILL GO TO
15 PAGE 112, LINE 22. THE COURT'S INDULGENCE TO FOLLOW
16 ALONG THE PAPER COPY. THIS SCREEN IS NOT VERY CLEAR
17 EITHER.

18 BY MR. CAMPBELL:

19 Q. THE TESTIMONY IN SPEAKING ABOUT ONE PARTICULAR
20 EXAMPLE SAYS: QUESTION: CERTAINLY. AT ANY TIME PRIOR
21 TO COMPLETING YOUR PRINCIPAL REPORT, DID YOU CONDUCT --

22 THE COURT: SLOWLY, PLEASE.

23 MR. CAMPBELL: I'M SORRY.

24 BY MR. CAMPBELL:

25 Q. CERTAINLY. AT ANY TIME PRIOR TO COMPLETING YOUR

1 PRINCIPAL REPORT, DID YOU CONDUCT -- DID YOU PERSONALLY
2 CONDUCT ANY TESTING TO ASCERTAIN WHETHER THE METHOD
3 SYMANTEC USES IN FORMULATING ITS SEARCH ENGINE INQUIRES
4 TO MIMIC THE WAY USERS SEARCH THE INTERNET IS EFFECTIVE?

5 MR. FINE OBJECTED.

6 ANSWER: I DID NOT CONDUCT STUDIES OF THE
7 SYMANTEC SOFTWARE PRIOR TO WRITING MY REPORT.

8 THAT WAS YOUR TESTIMONY?

9 A. YES. IT ANSWERS A DIFFERENT QUESTION THAN WHAT
10 YOU JUST ASKED BUT, YES.

11 Q. ACTUALLY, YOU ARE RIGHT. LET'S GO TO PAGE 114
12 OF THE DEPOSITION, LINE 20.

13 ACTUALLY, WE'LL HOLD OFF ON THAT.

14 YOU DON'T KNOW THE METHOD BY WHICH -- YOU
15 DON'T KNOW HOW EFFECTIVE THESE COMPANIES ARE IN
16 MIMICKING THE WAY USERS SEARCH THE INTERNET, ISN'T THAT
17 CORRECT?

18 A. CORRECT.

19 Q. YOU TESTIFIED YESTERDAY ABOUT IMAGE FILTERING,
20 CORRECT?

21 A. YES.

22 Q. AND IT IS YOUR BELIEF THAT SOME FILTERING
23 PRODUCTS FILTER IMAGES BASED SOLELY ON THE IMAGE ALONE,
24 ISN'T THAT RIGHT?

25 MR. FINE: AGAIN, YOUR HONOR, I'M NOT

1 SURE IF WE ARE REFERRING TO THE DEPOSITION TRANSCRIPT.

2 BUT TO THE EXTENT THAT WE ARE, WE PREFER TO SEE IT.

3 MR. CAMPBELL: I DID NOT ASK HER ABOUT
4 WHAT SHE SAID. I ASKED HER ABOUT HER BELIEF. SO WE ARE
5 NOT REFERRING TO ANYTHING. WE'RE ASKING HER ABOUT WHAT
6 IT IS THAT DR. CRANOR BELIEVES?

7 THE WITNESS: CAN YOU REPEAT THE
8 QUESTION, PLEASE.

9 MR. CAMPBELL: CERTAINLY.

10 BY MR. CAMPBELL:

11 Q. IT IS YOUR BELIEF THAT SOME FILTERING PRODUCTS
12 FILTER IMAGES BASED SOLELY ON THE IMAGE ALONE, ISN'T
13 THAT CORRECT?

14 A. NO, I DON'T THINK -- NO.

15 Q. BUT YOU STATED THAT WAS YOUR BELIEF AT YOUR
16 DEPOSITION, DIDN'T YOU?

17 A. I DON'T REMEMBER STATING THAT, BUT SHOW ME.

18 Q. AND I REFER TO PAGE --

19 THE COURT: CONFRONT HER WITH SOMETHING
20 IN THE DEPOSITION UNTIL SHE HAS AN OPPORTUNITY TO SEE
21 IT.

22 MR. CAMPBELL: CERTAINLY.

23 BY MR. CAMPBELL:

24 Q. IF WE GO TO PAGE 133, LINE 3.

25 QUESTION: IT IS YOUR TESTIMONY THAT THE

1 FILTERS -- WELL, AT LINE 6.

2 CAN FILTERS THAT ARE DESIGNATED FOR HOME
3 USE FILTER IMAGES BASED SOLELY ON THE IMAGE ALONE?

4 MR. FINE RAISES AN OBJECTION.

5 AND THE WITNESS ANSWERS: IT IS POSSIBLE.

6 QUESTION: WELL, DO YOU KNOW IF THERE ARE
7 ANY ICF PRODUCTS DESIGNED FOR HOME USE THAT DO FILTER
8 IMAGES BASED SOLELY ON THE IMAGE ALONE?

9 ANSWER: I BELIEVE THERE ARE.

10 THAT WAS YOUR TESTIMONY, WASN'T IT, DR.
11 CRANOR?

12 A. UH-HUH.

13 Q. YOU TESTIFIED YESTERDAY THAT SOME IMAGES MAY BE
14 BLOCKED BY FILTERS BASED ON THE FILE NAME OF THE IMAGE,
15 CORRECT?

16 A. AS ONE OF THE FACTORS, YES.

17 Q. NOW, IT IS NOT YOUR TESTIMONY THAT IMAGE FILE
18 NAMES ARE SEEN BY VIEWERS TO A WEBSITE, IS IT?

19 A. I DID NOT TESTIFY TO THAT, NO.

20 Q. IS IT YOUR TESTIMONY THAT VIEWERS THROUGH
21 WEBSITES SEE --

22 THE COURT: NOW, I'M CONFUSED OVER WHEN
23 YOU SAY TESTIMONY, WHETHER YOU ARE TALKING ABOUT TODAY'S
24 TESTIMONY OR PRIOR TESTIMONY.

25 MR. CAMPBELL: I UNDERSTAND, YOUR HONOR.

1 LET ME CORRECT THAT QUESTION.

2 BY MR. CAMPBELL:

3 Q. WELL, I MEAN TODAY'S TESTIMONY. IS IT YOUR
4 BELIEF THAT IMAGE FILE NAMES ARE SEEN BY VIEWERS THROUGH
5 A WEBSITE?

6 A. SOMETIMES THEY ARE.

7 Q. WELL, NAMING AN IMAGE FILE IS LIKE NAMING A
8 DOCUMENT, ISN'T IT?

9 A. YES.

10 Q. A PERSON CAN GIVE AN IMAGE ANY FILE NAME HE OR
11 SHE CHOOSES, ISN'T THAT CORRECT?

12 A. YES.

13 Q. SO LET'S ASSUME THAT A PERSON LOADS A
14 PORNOGRAPHIC PHOTO, BUT THEY DON'T GIVE IT A NAME USING
15 WORDS ASSOCIATED WITH PORNOGRAPHY. IT'S NOT YOUR
16 TESTIMONY TODAY THAT A FILTER WILL BLOCK THE IMAGE BASED
17 SOLELY ON A FILE NAME, IS IT?

18 A. WELL, IT CAN IF THAT FILE NAME IS ON THE BLACK
19 LIST.

20 Q. WELL, IF THE FILE NAME IS NOT ON THE BLACK LIST,
21 THEN THE FILTER WOULD NOT BLOCK THAT IMAGE BASED ON THE
22 FILE NAME, ISN'T THAT CORRECT?

23 THE COURT: BASED ON WHAT, SIR?

24 MR. CAMPBELL: BASED ON THE FILE NAME OF
25 THE PHOTO, ISN'T THAT CORRECT?

1 THE WITNESS: I'M NOT REALLY SURE WHAT
2 YOU ARE ASKING.

3 BY MR. CAMPBELL:

4 Q. IF THE FILE NAME OF A PHOTO DOES NOT USE WORDS
5 THAT ARE INCLUDED ON A BLACK LIST, THEN THE FILTER WILL
6 NOT BLOCK A PHOTO BASED ON ITS FILE NAME, ISN'T THAT
7 CORRECT?

8 A. NO.

9 Q. IT IS YOUR TESTIMONY THAT THE FILTER WILL STILL
10 BLOCK THE IMAGE BASED ON THE FILE NAME?

11 A. THIS IS VERY HYPOTHETICAL. I'M NOT REALLY
12 -- I'M NOT REALLY QUITE SURE HOW TO ANSWER. THERE ARE
13 SOME FILTERS THAT TAKE INTO ACCOUNT FILE NAMES, AND THEY
14 CAN DO THAT WITH THE DYNAMIC FILTERING PROCESS. SO IT'S
15 NOT THAT -- IT'S NOT THE CASE THAT A PERSON HAS TO COME
16 UP WITH A LIST OF FILE NAMES THAT ARE BLOCKED. THAT IS
17 WHAT YOU DO IN A BLACK LIST. BUT IN DYNAMIC FILTERING
18 THE MACHINE LEARNING ALGORITHM LEARNS VARIOUS FEATURES
19 THAT IT CAN RELY ON IN MAKING BLOCKING DECISIONS. SO
20 THERE MAY BE SOME SOFTWARE THAT HAS LEARNED CERTAIN CUES
21 FROM FILE NAMES AND I CAN'T REALLY SAY WHETHER OR NOT A
22 PARTICULAR SOFTWARE DOES THAT.

23 Q. NOW, IN PREPARING YOUR EXPERT REPORT, YOU
24 REVIEWED MATERIAL THAT EVALUATED THE EFFECTIVENESS OF
25 FILTERS; ISN'T THAT CORRECT?

1 A. YES.

2 Q. AND SOME OF THE MATERIAL THAT YOU REVIEWED
3 CONTRADICTED THE CONCLUSIONS THAT YOU OFFERED IN YOUR
4 EXPERT REPORT, ISN'T THAT CORRECT?

5 A. YES.

6 Q. AND YOU TESTIFIED THAT YOU DID NOT -- STRIKE
7 THAT.

8 THE MATERIAL YOU REVIEWED THAT
9 CONTRADICTED THE CONCLUSIONS IN YOUR EXPERT REPORT, YOU
10 DID NOT INCLUDE THAT MATERIAL BECAUSE YOU THOUGHT THAT
11 THE CONTRADICTORY MATERIAL WAS UNRELIABLE; ISN'T THAT
12 CORRECT?

13 A. YES.

14 Q. AND YOU FELT THAT THERE WAS SOME STUDIES YOU
15 REVIEWED THAT CONTRADICTED YOUR CONCLUSIONS BUT YOU DID
16 NOT INCLUDE THEM IN YOUR PRINCIPAL REPORT BECAUSE YOU
17 THOUGHT THE METHODOLOGY OF THE STUDIES WAS UNRELIABLE,
18 ISN'T THAT CORRECT?

19 A. YES.

20 Q. AND THERE WERE BETWEEN THREE TO FIVE STUDIES
21 THAT FIT INTO THIS CATEGORY, ISN'T THAT CORRECT?

22 A. WELL, YOU ARE NOT SHOWING ME THE DEPOSITION
23 TRANSCRIPT, BUT I THINK I SAID SOMETHING ALONG THOSE
24 LINES.

25 THE COURT: I DON'T KNOW WHETHER HE IS

1 REFERRING TO A TRANSCRIPT OR NOT.

2 MR. CAMPBELL: I'M ASKING WHETHER THERE
3 WERE THREE TO FIVE STUDIES THAT SHE WOULD KNOW HOW MANY
4 STUDIES SHE SAW THAT CONTRADICTED HER CONCLUSIONS AND
5 DID NOT PUT INTO THE REPORT, SO I'M NOT REFERRING --

6 THE COURT: -- BASIS OF METHODOLOGY AS
7 BEING UNRELIABLE.

8 MR. CAMPBELL: YES, YOUR HONOR.

9 THE WITNESS: I DIDN'T COUNT THEM AND I
10 HAVE REVIEWED STUDIES OVER QUITE A LONG PERIOD OF TIME,
11 BUT THREE TO FIVE SOUNDS LIKE A REASONABLE RANGE.

12 BY MR. CAMPBELL:

13 Q. IS IT FAIR TO SAY THAT IT IS IMPORTANT FOR YOU
14 TO KNOW THE METHODOLOGY OF STUDIES SO THAT YOU CAN
15 ASCERTAIN WHETHER THE STUDIES ARE RELIABLE?

16 A. YES.

17 Q. BUT AT YOUR DEPOSITION, YOU SAID THAT YOU DID
18 RELY ON FILTER EVALUATION REPORTS THAT HAD GAPS IN THIS
19 METHODOLOGY. AND I REFER SPECIFICALLY TO PAGES 163,
20 LINE 7 TO LINE 16.

21 IT SAYS QUESTION --

22 THE COURT: CAN YOU SEE IT ALL RIGHT,
23 MA'AM?

24 THE WITNESS: YES.

25 BY MR. CAMPBELL:

1 Q. IT SAYS: QUESTION: YOU STATE THAT SOME FILTER
2 EVALUATION REPORTS DO NOT COMPLETELY DOCUMENT THEIR
3 METHODOLOGY.

4 FOR THE FILTER EVALUATION REPORTS THAT
5 YOU RELY UPON -- WELL, STRIKE THAT.

6 WERE THERE ANY FILTER EVALUATION REPORTS
7 THAT YOU RELY UPON IN YOUR PRINCIPAL REPORT THAT DO NOT
8 COMPLETELY DOCUMENT THEIR METHODOLOGY?

9 ANSWER: MOST OF THEM HAVE SOME GAPS IN
10 THE DOCUMENTATION OF THEIR METHODOLOGY.

11 THAT WAS YOUR TESTIMONY, WASN'T IT, DR.
12 CRANOR?

13 A. YES.

14 Q. YOU SAID THAT YOU DID NOT FILL IN THOSE
15 METHODOLOGICAL GAPS BECAUSE THE REPORTS REACHED
16 CONCLUSIONS SIMILAR TO OTHER REPORTS THAT YOU REVIEWED.
17 AND THE PORTION OF THE DEPOSITION -- WELL, ACTUALLY,
18 ISN'T IT TRUE THAT YOU DID NOT FILL IN THOSE
19 METHODOLOGICAL GAPS BECAUSE THE REPORTS REACHED
20 CONCLUSIONS SIMILAR TO OTHER REPORTS THAT YOU REVIEWED?

21 A. THAT WAS PART OF THE REASON, YES. THEY ALSO --
22 YOU KNOW, THERE WAS ENOUGH THERE THAT I FELT CONFIDENT
23 IN THE METHODOLOGY, ALTHOUGH I DID NOT KNOW EVERY LAST
24 DETAIL OF IT.

25 Q. YOU RELIED ON SOME REPORT THAT HAD UNKNOWN

1 METHODOLOGIES, DIDN'T YOU?

2 THE COURT: UNKNOWN?

3 MR. CAMPBELL: UNKNOWN METHODOLOGIES.

4 THE WITNESS: THERE WERE PARTS OF THEIR
5 METHODOLOGY THAT I DID NOT KNOW. AND I RELIED ON THE
6 REPORTS FOR DIFFERENT REASONS. SO I ALREADY EXPLAINED,
7 FOR EXAMPLE, THAT THE CONSUMER REPORTS STUDY DID NOT
8 COMPLETELY DOCUMENT THEIR METHODOLOGY FOR DOING THE
9 ACCURACY TESTING, BUT I RELIED ON IT BECAUSE CONSUMER
10 REPORTS IS A WELL-KNOWN ORGANIZATION FOR TESTING FROM A
11 CONSUMER'S PERSPECTIVE. AND SO THEIR OVERALL
12 RECOMMENDATIONS ABOUT THE SUITABILITY OF THE PRODUCTS
13 FOR CONSUMERS, I THOUGHT, WERE COMPELLING, DESPITE NOT
14 HAVING THE DETAILED METHODOLOGY OF EXACTLY WHERE THE
15 NUMBERS CAME FROM.

16 Q. BUT IN YOUR DEPOSITION, YOU TESTIFIED THE REASON
17 YOU RELIED ON THOSE REPORTS WITH UNKNOWN METHODOLOGIES
18 WAS BECAUSE THEY REACHED SIMILAR CONCLUSIONS AS OTHER
19 REPORTS THAT REACHED CONCLUSIONS SIMILAR TO YOUR OWN,
20 ISN'T THAT TRUE?

21 A. THAT WAS ONE OF THE REASONS, AND AFTER YOU
22 PERSISTED ON PUSHING ME TO TRY TO GIVE YOU SOME ANSWER
23 THERE, I DID SAY THAT.

24 Q. AT YOUR DEPOSITION, YOU SAID THAT -- WELL,
25 THERE WERE OTHER REPORTS, THERE WERE OTHER MATERIALS

1 THAT REACHED CONCLUSIONS CONTRARY TO YOUR OWN, THAT
2 REACHED CONCLUSIONS CONTRARY TO THE CONCLUSIONS YOU
3 REACHED THAT YOU DID NOT INCLUDE IN YOUR PRINCIPAL
4 REPORT, ISN'T THAT TRUE?

5 A. REPEAT THE QUESTION, PLEASE.

6 Q. THERE WERE OTHER TYPES OF -- THERE WERE OTHER
7 MATERIALS THAT REACHED CONCLUSIONS CONTRARY TO YOUR OWN
8 -- TO THE CONCLUSIONS YOU REACHED THAT YOU DID NOT
9 INCLUDE IN YOUR PRINCIPAL REPORT, ISN'T THAT CORRECT?

10 A. OTHER MATERIALS BESIDES WHAT?

11 Q. OTHER MATERIALS THAT WERE CONTRARY THAT YOU DID
12 NOT INCLUDE FOR REASONS OTHER THAN THE METHODOLOGY WAS
13 UNRELIABLE OR THAT YOU FOUND THE METHODOLOGY TO BE
14 UNRELIABLE?

15 A. RIGHT.

16 Q. AND THE BASIS FOR THE REASON THAT YOU DID NOT
17 INCLUDE THAT CONTRADICTORY INFORMATION IS BECAUSE YOU
18 FELT THE AUTHOR WAS PROVIDING ONLY AN OPINION AND NOT
19 FACTS, ISN'T THAT CORRECT?

20 A. YES.

21 Q. NOW, YOU TESTIFIED ABOUT YOUR RELIANCE ON THE
22 P.C. MAGAZINE REVIEW OF THE CYBER-SITTER 9 PRODUCT?

23 A. YES.

24 Q. THE RATING OF THE CYBER-SITTER FILTERING PRODUCT
25 IS THE OPINION OF THE MAGAZINE'S AUTHOR, ISN'T IT?

1 A. YES, IT IS.

2 Q. BUT YOU RELIED ON THAT MATERIAL FOR YOUR
3 PRINCIPAL REPORT?

4 A. I DID NOT SAY THAT I WOULD NEVER RELY ON
5 OPINIONS. YOU ASKED ME SOME OF THE REASONS WHY I DID
6 NOT RELY ON SOME OF THEM, BUT THAT WAS NOT A STATEMENT
7 OF WHAT MY CRITERIA FOR RELYING ON THINGS IS.

8 Q. BUT TO BE CLEAR, IT WAS A CRITERIA THAT YOU GAVE
9 TO ME FOR NOT PROVIDING INFORMATION THAT WAS IN YOUR
10 EXPERT REPORT THAT WAS CONTRARY TO THE CONCLUSIONS YOU
11 REACHED, ISN'T THAT CORRECT?

12 A. THAT WAS AMONG THE REASONS, YES.

13 Q. YOU RELY ON THE COPA COMMISSION REPORT IN YOUR
14 EXPERT REPORT, DON'T YOU?

15 A. YES, I DO.

16 Q. YOU REVIEWED THE ENTIRE REPORT, ISN'T THAT
17 CORRECT?

18 A. I FOCUSED ON THE EXECUTIVE SUMMARY, BUT I DID
19 TAKE A CURSORY LOOK THROUGH THE WHOLE REPORT.

20 Q. SO IS IT YOUR TESTIMONY THEN THAT YOU RELIED ON
21 IT BUT YOU DID NOT REVIEW THE ENTIRE REPORT -- YOU DID
22 NOT FULLY REVIEW THE ENTIRE REPORT?

23 A. I DID NOT READ EVERY WORD OF THE REPORT, BUT I
24 DID READ THE EXECUTIVE SUMMARY AND THEN THE PARTS THAT I
25 WAS RELYING ON I DID READ THE DETAILED SECTIONS THAT

1 WERE THE PARTS THAT I WAS RELYING ON.

2 Q. IF YOU DIDN'T REVIEW THE ENTIRE REPORT, HOW DID
3 YOU KNOW THAT THERE WOULD NOT BE RELEVANT INFORMATION
4 CONTAINED SOMEWHERE ELSE IN THE PARTS THAT YOU DID NOT
5 READ?

6 A. WELL, THE EXECUTIVE SUMMARY AND THE TABLE OF
7 CONTENTS PROVIDE AN OVERVIEW OF ALL OF THE TOPICS GIVEN
8 IN THE REPORT.

9 Q. NOW, THE COPA COMMISSION REPORT STATES THAT
10 FILTERING USING TEXT-BASED CONTENT ANALYSIS HAS AN
11 EFFECTIVE RATING OF 5.4 OUT OF A 10 POINT SCALE?

12 A. NO. I DON'T THINK SO.

13 Q. WELL, WE WILL BRING UP THE REPORT.

14 THE COURT: WHAT IS THE CITATION TO THE
15 RECORD?

16 MR. CAMPBELL: I'M REFERRING NOW TO THIS
17 COPA REPORT, AND THIS IS EXHIBIT P 6, PAGE 22 OF 26.
18 AND LET ME REPHRASE THAT.

19 BY MR. CAMPBELL:

20 Q. NOW, THE TOP OF THE PAGE SAYS: FILTERING,
21 SERVER FILTERING. AND IT SAYS: SERVER AND CLIENT SIDE,
22 BUT FILTERING USING TEXT-BASED CONTENT ANALYSIS. THEN
23 THERE'S A BAR CHART THERE. DO YOU SEE THAT?

24 A. YES.

25 Q. IT SAYS EFFECTIVENESS 5.4. ISN'T THAT CORRECT?

1 A. 5.4, BUT IT IS NOT A 10 POINT SCALE. IT'S A 20
2 POINT SCALE.

3 Q. OH. ACTUALLY -- WELL, OKAY. WE EVEN SAY --
4 WELL, IT'S A 20 POINT SCALE, BUT FROM IF ON -- FOR A
5 POSITIVE EFFECT IT GOES FROM 0 TO 10, ISN'T THAT
6 CORRECT?

7 A. YES.

8 Q. AND IT GIVES IT A RATING OF 5.4. TO BE
9 POSITIVE, IT GIVES IT 5.4 OUT OF 10 POSSIBLE POINTS,
10 ISN'T THAT CORRECT?

11 A. THE 5.4 OF THE 10 POSITIVE POINTS. SO IT'S IN
12 ROUGHLY A LITTLE BIT MORE THAN 75 PERCENT OF THE TOTAL
13 POINTS. IT IS MISLEADING TO CHARACTERIZE IT AS BEING
14 5.4 ON A 10 POINT SCALE. IT WOULD BE BETTER TO SAY,
15 15.4 ON A 20 POINT SCALE.

16 Q. SO IT IS YOUR ASSERTION THAT BECAUSE IT DOES NOT
17 HAVE NEGATIVE NUMBERS -- WELL --

18 A. IT IS NOT A 10 POINT SCALE. IT'S A 20 POINT
19 SCALE.

20 Q. OKAY. BUT YOU DON'T INCLUDE THAT INFORMATION OR
21 THE NUMBERS FROM THE SCALE -- YOU DON'T INCLUDE THAT IN
22 YOUR REPORT, DO YOU?

23 A. I WAS JUST RESPONDING TO YOUR ASSERTION THAT IT
24 WAS 5.4 ON A 10 POINT SCALE.

25 Q. YOU DO NOT INCLUDE THE EVALUATION FOR THE

1 EFFECTIVENESS OF THIS PARTICULAR TYPE OF FILTERING IN
2 YOUR REPORT, DO YOU?

3 A. I DON'T BELIEVE I INCLUDE THE 5.4 NUMBER IN MY
4 REPORT.

5 Q. OKAY.

6 WITH THE CLIENT-SIDE FILTERING USING URL
7 LISTS AND IT HAS A NUMBER OF 6.5 ON THE SCALE FOR
8 CLIENT-SIDE FILTERING USING URL LISTS. YOU DON'T
9 INCLUDE THAT INFORMATION IN YOUR EXPERT REPORT, DO YOU?

10 A. I DON'T THINK I INCLUDED THE NUMBER.

11 Q. YOU TESTIFIED YESTERDAY ABOUT MACHINE LEARNING
12 OR ARTIFICIAL INTELLIGENCE TECHNIQUES, ISN'T THAT
13 CORRECT, DR. CRANOR?

14 A. YES.

15 Q. AND IT IS NOT YOUR TESTIMONY THAT WITH THESE
16 TECHNIQUES THE MACHINE ACTUALLY UNDERSTANDS LANGUAGE, IS
17 IT, DR. CRANOR?

18 A. NO, THE MACHINE DOES NOT.

19 Q. YOU RELY ON THE NRC REPORT IN YOUR EXPERT
20 REPORT, DON'T YOU?

21 A. YES.

22 Q. AND YOU HAVE REVIEWED THE ENTIRE REPORT, HAVEN'T
23 YOU?

24 A. I HAVE NOT REVIEWED EVERY CHAPTER OF THE REPORT.

25 Q. OKAY. AT PAGE 420 OF THE NRC REPORT, IT STATES

1 THAT --

2 MR. CAMPBELL: THE COURT'S INDULGENCE.

3 BY MR. CAMPBELL:

4 Q. -- THAT AUTOMATIC TEXT CATEGORIZATION IS THE
5 PRIMARY LANGUAGE RETRIEVAL TECHNIQUE IN CONTENT
6 SCREENING. TEXT CATEGORIZATION IS THE SORTING OF TEXT
7 INTO GROUPS SUCH AS PORNOGRAPHY, HATE SPEECH AND
8 VIOLENCE. DO YOU SEE THAT?

9 A. YES.

10 Q. IT TALKS ABOUT THE PROBLEMS WITH TEXT
11 CATEGORIZATION IN THE NEXT PARAGRAPH. DO YOU SEE THAT?
12 THE PRINCIPAL PROBLEM WITH TEXT CATEGORIZATION IS THAT
13 THE TEXT IS AMBIGUOUS IN MANY WAYS?

14 A. YES.

15 Q. AND THE NEXT PARAGRAPH ON THE NEXT PAGE, IT
16 STATES IN THE NEXT PARAGRAPH THAT: EFFICIENT AUTOMATIC
17 TEXT CATEGORIZATION REQUIRES AN AUTOMATED CATEGORIZATION
18 DECISION THAT IDENTIFIES ON THE BASIS OF SOME
19 CATEGORIZATION RULES THE CATEGORY INTO WHICH AN OBJECT
20 FALLS.

21 IN EXPLAINING HOW THIS PROCESS WORKS, IT
22 GOES ON TO SAY IN THE NEXT PARAGRAPH THAT: DECISION
23 RULES ARE DEVELOPED BY -- HOW THIS PROCESS WORKS. IT
24 GOES ON TO SAY, THE DECISION RULES ARE DEVELOPED BY
25 MODELLING THE KINDS OF DECISIONS THAT RESPONSIBLE HUMAN

1 BEINGS MAKE.

2 IT GOES ON TO SAY: OF COURSE THE
3 SELECTION OF PERSONS WHO PROVIDE THE SAMPLES IS CRUCIAL,
4 BECAUSE WHATEVER THEY DO BECOMES THE GOLD STANDARD,
5 WHICH THE DECISION RULES THEN MIMIC. EVERYTHING DEPENDS
6 ON THE PARTICULAR PERSONS AND THEIR JUDGMENTS, BUT THE
7 TECHNOLOGY DOES NOT PROVIDE GUIDANCE ON HOW TO DEFINE
8 THE COMMUNITY.

9 AFTER EXPLAINING THIS PROCESS, IT GOES ON
10 AT THE VERY END TO STATE THAT: THE EFFECTIVENESS OF
11 THESE METHODS IS FAR FROM PERFECT. THERE IS ALWAYS A
12 HIGH ERROR RATE. SUBSTANTIALLY IMPROVED METHODS ARE NOT
13 EXPECTED IN THE NEXT 10 TO 20 YEARS.

14 DID YOU REVIEW THAT, THIS SECTION OF THE
15 NRC REPORT?

16 A. YES.

17 Q. BUT YOU DID NOT INCLUDE THAT IN YOUR PRINCIPAL
18 REPORT, DID YOU, DR. CRANOR?

19 A. I DID NOT QUOTE IT DIRECTLY, BUT IN REACHING MY
20 EXPERT OPINION, I TOOK THAT INTO ACCOUNT.

21 Q. YOU RELY ON THE TESTING OF FILTERS IN THE MARCH
22 2001 ETESTING REPORT, DON'T YOU, DR. CRANOR?

23 A. YES.

24 THE COURT: WHAT REPORT ARE YOU REFERRING
25 TO, SIR?

1 MR. CAMPBELL: I'M SORRY, YOUR HONOR?

2 THE COURT: WHICH REPORT ARE YOU
3 REFERRING TO?

4 MR. CAMPBELL: MARCH -- ACTUALLY MARCH
5 2002 ETESTING REPORT. WE DISCUSSED THAT ISSUE. WE
6 DISCUSSED THIS TEST EARLIER.

7 THE COURT: I RECOGNIZE IT. WHAT EXHIBIT
8 IS IT IN?

9 MR. CAMPBELL: WELL, THIS IS DEFENDANT'S
10 EXHIBIT 353.

11 THE COURT: 353.

12 BY MR. CAMPBELL:

13 Q. NOW, THE TITLE OF THIS REPORT IS CORPORATE
14 CONTENT FILTERING PERFORMANCE AND EFFECTIVENESS TESTING.
15 ISN'T THAT CORRECT, DR. CRANOR?

16 A. YES.

17 Q. THERE IS A SECTION ENTITLED: EXECUTIVE SUMMARY,
18 ISN'T THERE?

19 A. YES.

20 Q. UNDERNEATH THE EXECUTIVE SUMMARY, IT STATES
21 THAT: WEBSense, INCORPORATED -- WEBSense INCORPORATED
22 COMMISSIONED E-TESTING LABS TO CONDUCT A SERIES OF
23 BLOCKING EFFECTIVENESS TESTING OF THE FOLLOWING
24 CORPORATE WEB CONTENT FILTERING APPLICATIONS DESIGNED
25 FOR USE IN DEMANDING HIGH-TRAFFIC BUSINESS NETWORKS.

1 THAT IS WHAT IT SAYS, DOESN'T IT?

2 A. YES.

3 Q. AND THE RESULTS OF THE TESTING OF TWO FILTERING
4 PRODUCTS WERE PROVIDED IN THIS REPORT, ISN'T THAT
5 CORRECT?

6 A. THREE FILTERING PRODUCTS.

7 Q. ONE PRODUCT THAT WAS TESTED WAS SUPERSCOOT WEB
8 FILTER FOR WINDOWS NT/2000, ISN'T THAT CORRECT?

9 A. YES.

10 Q. YOU RELIED, IN REACHING YOUR CONCLUSIONS, ON THE
11 EFFECTIVENESS RATING THAT WAS PROVIDED FOR THIS PRODUCT.
12 ISN'T THAT CORRECT?

13 A. THAT WAS ONE OF THE FACTORS THAT I RELIED ON,
14 YES.

15 Q. NOW, AT YOUR DEPOSITION, YOU TESTIFIED THAT YOU
16 DIDN'T KNOW IF THIS PRODUCT WAS EVEN AVAILABLE FOR
17 RESIDENTIAL USE FOR PARENTS WITH CHILDREN, ISN'T THAT
18 CORRECT?

19 WE CAN GO TO PAGE 173, LINE 7 FOR THAT.

20 BUT ISN'T IT TRUE THAT -- STRIKE THAT QUESTION.

21 ISN'T IT TRUE THAT YOU DON'T KNOW IF THIS
22 PRODUCT IS AVAILABLE FOR RESIDENTIAL USE?

23 A. RIGHT.

24 Q. THE OTHER PRODUCT TESTED WAS WEBSense ENTERPRISE
25 V 43 FILTER, ISN'T THAT CORRECT?

1 A. YES.

2 Q. BUT YOU DON'T KNOW IF THIS PRODUCT IS AVAILABLE
3 FOR PERSONAL OR HOME COMPUTER USE, DO YOU?

4 A. WELL, SO I DON'T KNOW IF THEY ACTUALLY MARKET IT
5 THAT WAY, BUT ANY HOME USER IS FREE TO PURCHASE IT AND
6 INSTALL IT ON THEIR HOME COMPUTER EVEN IF IT IS NOT
7 MARKETED THAT WAY.

8 Q. I SEE. WELL, BOTH PRODUCTS REQUIRE THE USE OF A
9 PROXY DEVICE TO OPERATE CORRECTLY, ISN'T THAT RIGHT?

10 A. THERE IS NOTHING SAYING THAT A HOME USER CAN'T
11 HAVE A PROXY DEVICE. A PROXY DEVICE IS JUST A COMPUTER.
12 IT'S NOT ANY SORT OF FANCY THING.

13 Q. YOU DON'T KNOW THE PERCENTAGE OF PARENTS USING
14 PROXY DEVICES ON THEIR HOME COMPUTERS, DO YOU?

15 A. NO, I DON'T.

16 Q. AND YOU SAY THAT PARENTS CAN BUY A PROXY SERVER
17 TO RUN THIS. DO YOU KNOW IF THAT IS THE COMMON PRACTICE
18 OF MOST PARENTS WITH MINOR CHILDREN?

19 A. NO, I DON'T.

20 Q. YOU ALSO RELY ON THE TESTING RESULTS OF THE
21 OCTOBER 2001 ETESTING REPORT, DON'T YOU?

22 A. YES.

23 Q. THE OCTOBER 2001 ETESTING REPORT EVALUATED FIVE
24 DIFFERENT FILTERING PRODUCTS, DIDN'T THEY?

25 A. YEAH, I BELIEVE SO. I DON'T HAVE IT IN FRONT OF

1 ME.

2 MR. CAMPBELL: IF WE CAN BRING THAT UP,
3 MR. BYRDSONG. THANK YOU, SIR.

4 THE WITNESS: I GUESS THERE WERE FOUR
5 PRODUCTS, NOT FIVE.

6 MR. CAMPBELL: IF YOU CAN BRING UP THE
7 D(2)56, 003.

8 THE WITNESS: THAT'S RIGHT. THE FIFTH
9 ONE WAS INCLUDED IN THE APPENDIX.

10 BY MR. CAMPBELL:

11 Q. NOW, THIS REPORT PROVIDED THE RESULTS OF TESTING
12 FOR THE MICROSOFT PROXY SERVER VERSION 3.01, IS THAT
13 CORRECT?

14 A. YES.

15 Q. THE CYBER-PATROL 6.0 FOR EDUCATION?

16 A. YES.

17 Q. THE WEBSense ENTERPRISE 4.3.0 FOR MICROSOFT
18 PROXY SERVER 2.0. CORRECT?

19 A. YES.

20 Q. N2H2 INTERNET FILTERING FOR MICROSOFT PROXY
21 SERVER 2.0?

22 A. YES.

23 Q. THE FOOLPROOF SAFE SERVER FOR WINDOWS NT SERVER
24 4.0?

25 A. YES.

1 Q. EACH OF THE PRODUCTS I MENTIONED IS AN
2 ENTERPRISE PRODUCT, CORRECT?

3 A. I BELIEVE SO.

4 MR. CAMPBELL: IF WE GO TO D(2) 56, 0032,
5 PLEASE, MR. BYRDSONG.

6 BY MR. CAMPBELL:

7 Q. NOW, IT SAYS, THE FIRST SENTENCE ON THIS PAGE,
8 THAT THE E-TESTING LABS IS A ZIFF DAVIS MEDIA COMPANY?

9 A. YES.

10 Q. ON THE NEXT PAGE, IT HAS THE RESUME FOR THE
11 CHIEF PROGRAMMER. AND IT HAS FOR ITS PROFESSIONAL
12 EXPERIENCE, IT SHOWS THAT THIS IS A ZIFF DAVIS MEDIA
13 INCORPORATED EMPLOYEE, ISN'T THAT CORRECT, UNDER
14 PROFESSIONAL EXPERIENCE?

15 A. YES.

16 Q. ON THE TOP, IT LISTS THIS PROGRAMMER'S TECHNICAL
17 SKILLS. DO YOU SEE THAT, DR. CRANOR?

18 A. YES.

19 Q. AND HE IS PROFICIENT IN A NUMBER OF
20 COMPUTER-BASED -- HE HAS A GREAT -- HE HAS A LOT OF
21 COMPUTER SCIENCE SORT OF EXPERIENCE, DOESN'T HE, DR.
22 CRANOR?

23 A. I CAN'T REALLY READ IT. IT IS KIND OF SMALL ON
24 MY SCREEN.

25 MR. CAMPBELL: IF WE CAN JUST HIGHLIGHT,

1 MS. BYRDSONG, ON THE TOP, THE TECHNICAL SKILLS SO THAT
2 DR. CRANOR MAY READ IT.

3 BY MR. CAMPBELL:

4 Q. CAN YOU SEE THAT NOW, DR. CRANOR?

5 A. YES.

6 Q. AND SO THIS INDIVIDUAL HAS A GREAT DEGREE OF
7 TECHNICAL SKILLS, ISN'T THAT CORRECT?

8 A. HE HAS SKILLS IN A VARIETY OF TECHNICAL AREAS.

9 Q. IF WE CAN GO BACK TO THE FIRST PAGE OF THIS
10 DOCUMENT, ACTUALLY THE THIRD PAGE OF THIS DOCUMENT.
11 THIS ALSO SHOWS THAT THIS WAS A STUDY CONDUCTED BY
12 E-TESTING LABS, ISN'T THAT CORRECT?

13 A. YES.

14 Q. NOW, WITH THE EDUCATIONAL -- IF WE CAN GO TO
15 PAGE (D) 256, 0006, IF WE CAN GO TO THE BOTTOM
16 PARAGRAPH, IT SAYS THAT IT TOOK -- IN THE SECOND
17 SENTENCE, IT SAID THAT THE PRODUCT TOOK 30 MINUTES OR NO
18 MORE THAN 30 MINUTES TO INSTALL. HOWEVER, IT WOULD TAKE
19 THAT LONG FOR AN INDIVIDUAL -- WE HAVE REVIEWED THE
20 RESUME OF THE HEAD PROGRAMMER AND IN FACT THIS IS
21 ETESTING PRODUCT. IT TOOK -- WE SEE HERE, IT TOOK NO
22 MORE THAN 30 MINUTES TO INSTALL.

23 IS IT YOUR TESTIMONY THAT MOST PARENTS
24 ATTEMPTING TO INSTALL INTERNET CONTENT FILTERS HAVE A
25 RESUME WITH THAT TYPE OF COMPUTER EXPERIENCE?

1 A. NO. BUT I DON'T SEE HOW THAT IS RELEVANT.

2 Q. SO IT IS YOUR TESTIMONY THEN THE COMPUTER
3 EXPERIENCE OF THE INDIVIDUALS ATTEMPTING TO INSTALL THE
4 SOFTWARE THAT TOOK THEM NO MORE THAN 30 MINUTES IS NOT
5 RELEVANT TO WHAT A PARENT MAY ENCOUNTER TRYING TO
6 INSTALL THE SOFTWARE, IS THAT YOUR TESTIMONY?

7 A. NO. WHAT I'M SAYING IS THAT WHEN I CONCLUDED
8 THESE PRODUCTS WERE EASY TO INSTALL, I RELIED ON A
9 VARIETY OF DIFFERENT PIECES OF EVIDENCE. AND IT WAS NOT
10 ONLY THAT THIS TRAINED PROFESSIONAL COULD INSTALL IT IN
11 UNDER 30 MINUTES. THERE WERE MANY OTHER FACTORS THAT
12 LED ME TO THE CONCLUSION THAT THEY WERE EASY TO INSTALL.

13 Q. BUT YOU CITED THIS IN YOUR DIRECT TESTIMONY,
14 DIDN'T YOU?

15 A. THIS WAS ONE OF THE THINGS I CITED, YES.

16 Q. YOU TESTIFIED YESTERDAY THAT YOU WORK AT THE CMU
17 USABLE PRIVACY AND SECURITY LAB?

18 A. YES.

19 Q. AND YOU TESTIFIED YESTERDAY THAT YOU BRING
20 PEOPLE INTO YOUR LABORATORY WHERE YOU CONDUCT STUDIES,
21 CORRECT?

22 A. YES.

23 Q. AND YOU SAID THAT YOU GIVE THE PEOPLE TASKS IN
24 THOSE STUDIES, CORRECT?

25 A. YES.

- 1 Q. THAT YOU WATCH THEM SEARCH FOR THINGS?
- 2 A. UH-HUH.
- 3 Q. YOU WATCH THEM DO IT?
- 4 A. YES.
- 5 Q. AND YOU MEASURE HOW LONG IT TAKES?
- 6 A. UH-HUH.
- 7 Q. AND YOU SEE HOW ACCURATELY THEY CAN COMPLETE THE
- 8 TASKS?
- 9 A. YES.
- 10 Q. AND YOU GET COMMENTS FROM THEM REGARDING THE
- 11 TASKS?
- 12 A. YES.
- 13 Q. YOU HAVE NOT PERSONALLY CONDUCTED ANY TESTING ON
- 14 THE EASE OF USE OF FILTERING PRODUCTS BY PARENTS USING
- 15 -- ACTUAL PARENTS, HAVE YOU?
- 16 A. I HAVE NOT DONE THAT.
- 17 Q. YOU HAVE NOT DESIGNED ANY SURVEYS ON THE EASE OF
- 18 USE FOR FILTERING PRODUCTS BY PARENTS AND DISSEMINATED
- 19 THEM TO ACTUAL PARENTS, HAVE YOU, DR. CRANOR?
- 20 A. I HAVE NOT, BUT I RELIED ON OTHER PEOPLE WHO
- 21 HAVE DONE SURVEYS ON THAT.
- 22 Q. YOU DID NOT CONDUCT ANY SURVEYS IN WHICH YOU HAD
- 23 A REPRESENTATIVE SAMPLE OF PARENTS ATTEMPTING TO INSTALL
- 24 FILING SOFTWARE, DID YOU, DR. CRANOR?
- 25 A. I HAVE NOT.

1 Q. YOU DID NOT CONDUCT ANY STUDIES IN WHICH YOU HAD
2 A REPRESENTATIVE SAMPLE OF PARENTS ATTEMPT TO RUN
3 FILTERING SOFTWARE, DID YOU, DR. CRANOR?

4 A. NO.

5 Q. YOU DID NOT CONDUCT ANY STUDIES IN WHICH YOU HAD
6 A REPRESENTATIVE SAMPLE OF PARENTS PROVIDE FEEDBACK ON
7 HOW EASY OR HARD IT IS TO USE FILTERING SOFTWARE, DID
8 YOU, DR. CRANOR?

9 A. I DID NOT CONDUCT THEM MYSELF, NO.

10 MR. CAMPBELL: COURT'S INDULGENCE.

11 (PAUSE.)

12 MR. CAMPBELL: IF WE COULD BRING UP

13 P 8-0002.

14 BY MR. CAMPBELL:

15 Q. NOW, YOU SAID THAT YOU RELIED UPON THE CONSUMER
16 REPORTS ARTICLE RATING FILTERING SOFTWARE, ISN'T THAT
17 CORRECT?

18 A. YES.

19 Q. AND IN THE PARAGRAPH THAT SAYS, HOW WE TESTED,
20 IT SAID THAT, IT PROVIDES CERTAIN LANGUAGE ON HOW THE
21 TESTS WERE PERFORMED. FROM THAT LANGUAGE, CAN YOU TELL
22 THE METHODOLOGY THAT CONSUMER REPORTS EMPLOYED IN
23 DETERMINING THE EFFECTIVENESS OF FILTERS?

24 A. A LITTLE BIT, BUT IT DOES NOT HAVE A COMPLETE
25 DESCRIPTION OF THEIR METHODOLOGY.

1 Q. IF WE GO DOWN TO THE PARAGRAPH AFTER THE WORD
2 -- IF WE GO TO THE NEXT PAGE, PAGE P 8-0003, THE FIRST
3 FULL PARAGRAPH, IT SAYS THAT -- THE FIRST SENTENCE SAYS:
4 FILTERS KEEP MOST, BUT NOT ALL, PORN OUT.

5 ISN'T THAT CORRECT?

6 A. YES, IT DOES.

7 Q. IN THE THIRD PARAGRAPH, IT TALKS ABOUT
8 OVERBLOCKING, DOESN'T IT, DR. CRANOR?

9 A. I CAN'T SEE THE THIRD PARAGRAPH.

10 Q. AND IT SAYS THAT WITH THESE WEBSITES THAT
11 INFORMATION SITES ARE SNUBBED, TOO. THE BEST PORN
12 BLOCKERS WERE HEAVY HANDED AGAINST SITES ABOUT HEALTH
13 ISSUES, SEX EDUCATION, CIVIL RIGHTS AND POLITICS.

14 ISN'T THAT WHAT IT SAID, DR. CRANOR?

15 A. YES.

16 Q. YOU DID NOT PROVIDE THAT INFORMATION IN YOUR
17 REPORT, DID YOU, DR. CRANOR?

18 A. I DID NOT QUOTE THAT DIRECTLY, NO.

19 MR. CAMPBELL: THE COURT'S INDULGENCE.

20 I'M ALMOST FINISHED WITH CROSS EXAMINATION. I JUST WANT
21 TO CONFER WITH COUNSEL.

22 THE COURT: SURE.

23 (COUNSEL CONSULTING.)

24 MR. CAMPBELL: THANK YOU, YOUR HONOR.

25 BY MR. CAMPBELL:

1 Q. DR. CRANOR, YOU DON'T KNOW OF ANY FAMILY THAT
2 HAS PURCHASED AN ENTERPRISE FILTER FOR ITS RESIDENTIAL
3 PERSONAL HOME COMPUTER USE, DO YOU?

4 A. NO.

5 Q. AND IT'S YOUR POSITION THAT FILTERS DO NOT BLOCK
6 IMAGES WITHOUT REFERENCE TO SOME TEXT, ISN'T THAT
7 CORRECT?

8 A. NO, I DON'T THINK I SAID THAT.

9 Q. I'M ASKING YOU IF THAT IS YOUR POSITION?

10 A. NO.

11 MR. CAMPBELL: THAT IS ALL I HAVE, YOUR
12 HONOR.

13 THE COURT: ALL RIGHT. REDIRECT?

14 MR. FINE: YES, YOUR HONOR.

15 THE COURT: THANK YOU, MR. CAMPBELL.

16 MR. FINE: ONE MOMENT, YOUR HONOR.

17 REDIRECT EXAMINATION

18 BY MR. FINE:

19 Q. DR. CRANOR, ON CROSS EXAMINATION YOU WERE ASKED
20 ABOUT SOME TESTING THAT YOU CONDUCTED, SOME LIMITED
21 TESTING THAT YOU CONDUCTED IN CONNECTION WITH PREPARING
22 YOUR EXPERT REPORT IN THIS CASE. I WANT TO ASK YOU NOW,
23 WHAT WAS THE PURPOSE OF THE TESTING THAT YOU DID?

24 A. THE MAIN PURPOSE OF THE TESTING WAS TO GET A
25 FEEL FOR THE USER EXPERIENCE OF THE PRODUCTS. THIS WAS

1 KIND OF AN INFORMAL EVALUATION WHICH IS FREQUENTLY DONE
2 IN THE USEABILITY TESTING FIELD, SOMETIMES REFERRED TO
3 AS A HEURISTIC EVALUATION, WHERE AN EXPERT TESTER WILL
4 USE THE PRODUCT THEMSELVES. THEY HAVE A KNOWLEDGE OF
5 WHAT ARE THE KINDS OF THINGS THAT TYPICAL USERS FIND
6 PROBLEMATIC IN SOFTWARE, SO THEY CAN BE ON THE LOOKOUT
7 FOR THOSE. AND IT GIVES YOU -- IT IS A WAY TO VERY
8 QUICKLY GET A HIGH LEVEL OVERVIEW OF THE OVERALL
9 USEABILITY OF A PRODUCT WITHOUT INVESTING IN THE TIME
10 AND EXPENSE OF A FULL USER STUDY.

11 Q. WHAT DID YOUR -- I BELIEVE YOU CALLED IT YOUR
12 HEURISTIC ANALYSIS DEMONSTRATE TO YOU ABOUT THE EASE OF
13 USE OF FILTERING SOFTWARE?

14 A. IT DEMONSTRATED THAT IT IS FAIRLY EASY TO USE
15 AND SOME OF THE PRODUCTS WERE EASIER THAN OTHERS. BUT
16 OF THE FOUR PRODUCTS THAT I LOOKED AT, THREE OF THEM, I
17 WOULD SAY WERE VERY, VERY EASY TO USE. ONE WAS SOMEWHAT
18 EASY TO USE.

19 Q. AND FOCUSING JUST ON USEABILITY, WHY DIDN'T YOU
20 CONDUCT A MORE THOROUGH OR SYSTEMATIC USEABILITY STUDY?
21 WHY WASN'T THAT NECESSARY?

22 A. WELL, THERE HAVE BEEN OTHER STUDIES CONDUCTED
23 AND A NUMBER OF OTHER SOURCES THAT HAVE CONFIRMED THAT
24 THE PRODUCTS ARE USABLE, INCLUDING THE SURVEYS OF
25 PARENTS WHO HAVE SAID THAT THEY FOUND THE PRODUCTS EASY

1 TO USE.

2 Q. I WANT TO NOW FOCUS YOU ON TESTING FOR
3 EFFECTIVENESS. WHY DIDN'T YOU CONDUCT A SCIENTIFICALLY
4 SYSTEMATIC STUDY OF THE EFFECTIVENESS OF FILTERING
5 PRODUCTS?

6 A. WELL, HERE, THERE HAVE BEEN MANY SUCH STUDIES
7 THAT HAVE ALREADY BEEN CONDUCTED, AND SO I DIDN'T FEEL
8 THE NEED TO ADD YET ANOTHER STUDY.

9 Q. WHY IS THAT? WHAT CONCLUSIONS HAVE THOSE
10 STUDIES DRAWN?

11 A. FOR THE MOST PART, MOST OF THEM DO CONCLUDE THAT
12 THERE ARE SOME OF THE PRODUCTS THAT ARE EFFECTIVE AT
13 BLOCKING, AND THEY ALL HAVE SLIGHTLY DIFFERENT NUMBERS,
14 BUT THEY HAVE THE SAME TYPE OF CONCLUSION. SO IT DIDN'T
15 SEEM NECESSARY TO REPEAT THESE STUDIES.

16 Q. AND MAYBE I MISSED THIS. WHY WASN'T IT
17 NECESSARY?

18 A. BECAUSE SO MANY STUDIES HAVE ALREADY BEEN DONE
19 THAT HAVE SIMILAR FINDINGS THAT FILTERS ARE EFFECTIVE,
20 INCLUDING THE GOVERNMENT STUDY.

21 Q. I WANT TO NOW FOCUS YOUR ATTENTION ON
22 PLAINTIFFS' EXHIBIT 6, WHICH IS THE COPA COMMISSION
23 REPORT. I WANT TO DRAW YOUR ATTENTION TO -- FIRST,
24 LET'S START AT PAGE 19 OF THE REPORT.

25 FOCUSING ON THE BAR CHART, YOU WERE

1 EXPLAINING BEFORE THAT THIS IS A 20 POINT SCALE. CAN
2 YOU EXPLAIN WHAT THAT MEANS EXACTLY?

3 A. RIGHT. SO BECAUSE THE SCALE GOES FROM NEGATIVE
4 10 TO POSITIVE 10, IT'S EFFECTIVELY A 20-POINT SCALE
5 BECAUSE YOU HAVE 10 POSITIVE POINTS AND 10 NEGATIVE
6 POINTS. SO ON THIS SCALE HERE, WE SEE EFFECTIVENESS OF
7 7.4. AND SO THAT IS ACTUALLY VERY EFFECTIVE ON A
8 20-POINT SCALE BECAUSE IT'S 7.4 POSITIVE POINTS. SO YOU
9 COULD VIEW IT AS BEING 17.4 OUT OF 20. I DON'T KNOW,
10 OFF THE TOP OF MY HEAD, WHAT PERCENTAGE THAT IS, BUT
11 IT'S SOMEWHERE AROUND 90 PERCENT.

12 Q. SO IN LAYMEN'S TERMS, THE REAL EFFECTIVENESS
13 RATING HERE IS 17.4 OUT OF 20?

14 A. YES.

15 Q. AND FOCUSING ON PAGE 21 NOW -- JUST TELL US,
16 AGAIN, WHAT IS THAT 17.4 BEFORE WE LEAVE PAGE 19, THE
17 17.4 OUT OF 20 RATING WAS FOR WHAT?

18 A. THE EFFECTIVENESS OF SERVER-SIDE FILTERING USING
19 URL LISTS.

20 Q. FOCUSING ON PAGE 21, WHAT IS THIS CHART
21 REPRESENTING THE FAR LEFT COLUMN, THE EFFECTIVENESS
22 COLUMN?

23 A. THIS IS FOR CLIENT-SIDE FILTERING USING URL
24 LISTS. AND HERE WE SEE 6.5 WHICH, AGAIN, IF YOU WANT TO
25 INTERPRET IT ON A 20-POINT SCALE IT WOULD BE BASICALLY

1 16.5.

2 Q. AND ROUGHLY WHAT PERCENT IS THAT?

3 A. YOU WANT ME TO DO THE MATH IN MY HEAD? SO THAT
4 SOUNDS LIKE ABOUT 85 PERCENT.

5 Q. I WANT TO NOW FOCUS YOUR ATTENTION, IF YOU CAN
6 TURN TO PLAINTIFFS' EXHIBIT 54, AND FOCUS YOU ON PAGE
7 421 OF THE REPORT WHICH MAY OR MAY NOT EQUATE TO 421 OF
8 THE EXHIBIT, THE SAME PARAGRAPH THAT WAS BEING SHOWN TO
9 YOU AND BEING READ TO YOU BY DEFENDANT'S COUNSEL, PAGE
10 421 OF THE REPORT.

11 MR. FINE: BEAR WITH US A MOMENT, YOUR
12 HONOR, WHILE WE TRY TO GET TO THAT EXCERPT.

13 IF YOU CAN BLOW UP THE PARAGRAPH AND IF
14 YOU CAN HIGHLIGHT IT IN YELLOW.

15 BY MR. FINE:

16 Q. I WANT YOU TO READ THE ENTIRE THING. THERE ARE
17 PORTIONS THAT WERE NOT READ ON YOUR CROSS EXAMINATION.
18 TELL US EXACTLY WHAT IT SAYS, THE FIRST TWO SENTENCES.

19 A. RESEARCH INDICATES THAT SUPERVISED LEARNING IS
20 AT LEAST AS GOOD AS EXPERT HUMAN RULE WRITING. THE
21 EFFECTIVENESS OF THESE METHODS IS FAR FROM PERFECT
22 -- THERE IS ALWAYS A HIGH ERROR RATE -- BUT SOMETIMES IT
23 IS NEAR AGREEMENT WITH HUMAN PERFORMANCE LEVELS.

24 MR. FINE: NO FURTHER QUESTIONS, YOUR
25 HONOR.

1 THE COURT: ANY NECESSARY RECROSS?

2 MR. CAMPBELL: YES, YOUR HONOR.

3 RECROSS EXAMINATION

4 BY MR. CAMPBELL:

5 Q. YOU DOCUMENTED THE TEST THAT YOU PERSONALLY
6 CONDUCTED IN YOUR EXPERT REPORT, DIDN'T YOU, OF THE AOL
7 PARENTAL CONTROLS, NET NANNY 5 AND CYBER-SITTER 9.0
8 PRODUCTS, ISN'T THAT CORRECT?

9 A. I ALREADY TOLD YOU THAT I DID NOT.

10 Q. THAT YOU DID NOT CITE THE FACT THAT YOU DID
11 THESE -- IS IT YOUR TESTIMONY THAT YOU DID NOT INCLUDE
12 THE FACT THAT YOU DID THESE TESTS IN YOUR PRINCIPAL
13 REPORT?

14 A. OH, I'M SORRY, AMBIGUITY ABOUT THE WORD
15 "DOCUMENTED."

16 Q. TO BE CLEAR, YOU INCLUDED THE FACT THAT YOU
17 CONDUCTED THESE REPORTS IN -- THE TESTS -- YOU INCLUDED
18 THE FACT THAT YOU PERSONALLY CONDUCTED TESTS ON THESE
19 THREE PRODUCTS IN YOUR EXPERT REPORT?

20 A. YES, I DID.

21 Q. AND YOU INCLUDED THAT FACT IN THE SECTION
22 ENTITLED, EFFECTIVENESS OF FILTERS, DIDN'T YOU?

23 MR. FINE: OBJECTION. IF YOU WANT TO
24 SHOW THE WITNESS EXACTLY --

25 MR. CAMPBELL: CERTAINLY. IF WE CAN

1 BRING UP PLAINTIFFS' EXPERT REPORT, PAGE 13.

2 THE COURT: WE HAVE TO CHANGE THE
3 COMPUTER. THANK YOU.

4 MR. CAMPBELL: MR. BYRDSONG, IF YOU COULD
5 BRING UP MISS CRANOR'S PRINCIPAL REPORT, PAGE 13,
6 PLEASE. DO THE ENTIRE PAGE, PLEASE.
7 BY MR. CAMPBELL:

8 Q. NOW, THAT HEADING ON PAGE 13 SAYS:
9 EFFECTIVENESS OF FILTERS, DOES IT NOT?

10 A. IT DOES.

11 Q. AND IF WE GO TO PAGE 14, MR. BYRDSONG -- NO NEW
12 HEADINGS. GO TO PAGE 15. GO TO PAGE 16.

13 THE COURT: WHAT ARE YOU DOING?

14 MR. CAMPBELL: I WANT TO SHOW HER WITH
15 EACH OF THE PAGES THERE ARE NO NEW SECTIONS. MY
16 QUESTION IS, DIDN'T SHE INCLUDE THAT IN THE SECTION
17 ENTITLED EFFECTIVENESS OF FILTERS. SO, I'M SHOWING
18 HER --

19 THE COURT: I JUST HAD TROUBLE FINDING
20 OUT WHERE THE QUESTION WAS. I DIDN'T KNOW WHAT YOU WERE
21 DOING.

22 MR. CAMPBELL: I'M SORRY. I ASKED HER
23 THAT QUESTION. IT WAS NOT IN THAT SECTION. SHE SAID
24 SHE WANTED TO REVIEW THE EXPERT REPORT, YOUR HONOR.

25 THE WITNESS: I'M READY TO SEE THE NEXT

1 PAGE.

2 OKAY.

3 BY MR. CAMPBELL:

4 Q. YOU INCLUDED --

5 A. WHERE IS THE PART WHERE I MADE THAT STATEMENT?

6 Q. ON PAGE 17 IN THE FINAL PARAGRAPH.

7 A. HERE I AM.

8 Q. I WILL ASK MY QUESTION AGAIN.

9 A. OKAY.

10 Q. WHERE YOU TALK ABOUT THE FACT THAT YOU
11 PERSONALLY CONDUCTED TESTING OF THESE PRODUCTS APPEARED
12 IN THE SECTION ENTITLED, EFFECTIVENESS OF FILTERS.
13 ISN'T THAT CORRECT, DR. CRANOR?

14 A. YES, A SECTION WHICH DISCUSSES THE EFFECTIVENESS
15 FROM BOTH THE ACCURACY AND USEABILITY PERSPECTIVE.

16 Q. NOW, YOU SAY THAT USEABILITY STUDIES -- YOU
17 STATE THAT -- YOU TESTIFIED THAT YOU DON'T NEED TO
18 CONDUCT USEABILITY STUDIES WHEN YOU KNOW WHAT PARENTS
19 ARE LOOKING FOR, ISN'T THAT CORRECT?

20 A. NO, I DON'T BELIEVE I SAID THAT.

21 Q. WHEN YOU WERE ASKED ON REDIRECT WHY YOU DIDN'T
22 CONDUCT USEABILITY STUDIES, YOU SAID THAT YOU WERE ABLE
23 TO DETERMINE WHAT IT IS THAT PARENTS ARE LOOKING FOR
24 WHEN YOU PERSONALLY CONDUCTED THESE TESTS, ISN'T THAT
25 CORRECT, DR. CRANOR?

1 A. NO, IT IS NOT.

2 Q. WELL, YOU TESTIFIED YESTERDAY THAT YOU ATTEMPTED
3 TO STEP IN THE SHOES OF A TYPICAL PARENT WHEN YOU
4 CONDUCTED -- WHEN YOU PERSONALLY CONDUCTED YOUR TESTS,
5 DIDN'T YOU, DR. CRANOR?

6 A. YES.

7 Q. BUT REGARDING THE EASE OF USE OF PARENTS WITH
8 INTERNET CONTENT FILTERING PRODUCTS, YOU HAVE NEVER
9 CONDUCTED ANY STUDIES WITH ACTUAL PARENTS, HAVE YOU, DR.
10 CRANOR?

11 A. THAT'S RIGHT.

12 Q. SO YOU HAVE NO PERSONALLY CONDUCTED STUDIES BY
13 WHICH YOU CAN DETERMINE WHAT IT IS THAT PARENTS ARE
14 LOOKING FOR, OR YOU HAVE NOT CONDUCTED ANY -- THERE HAVE
15 BEEN NO PERSONALLY CONDUCTED STUDIES -- STRIKE THAT.

16 YOU HAVE NOT PERSONALLY CONDUCTED ANY
17 SURVEYS TO DETERMINE WHAT IT IS PARENTS ARE LOOKING FOR
18 IN DETERMINING -- OR HOW EASY IT IS FOR PARENTS TO USE
19 INTERNET CONTENT FILTERING SOFTWARE, HAVE YOU, DR.
20 CRANOR?

21 A. NO.

22 Q. YOU SAY THAT IT WAS YOUR TESTIMONY THAT THERE
23 WERE STUDIES REGARDING PARENTS' EASE OF USE THAT YOU
24 RELIED ON, ISN'T THAT CORRECT?

25 A. YES.

1 Q. BUT YOU HAVE NOT PROVIDED IN YOUR EXPERT REPORT
2 ANY STUDIES, SPECIFIC STUDIES, THAT YOU RELY ON
3 REGARDING PARENTS' EASE OF USE, DO YOU, DR. CRANOR?

4 A. I PROVIDE A SURVEY THAT I RELY ON WHERE PARENT'S
5 REPORT THAT THEY FOUND THE SOFTWARE EASY TO USE.

6 Q. OUTSIDE OF THE STUDY BY AOL, DO YOU PROVIDE ANY
7 OTHER STUDIES REGARDING THE PARENTS' EASE OF USE?

8 A. NOT IN DETAIL. I REFER TO SOME OF THE INTERNAL
9 TESTING THAT THE COMPANIES PROVIDED, BUT I DON'T HAVE
10 DETAILED INFORMATION ABOUT THAT.

11 MR. CAMPBELL: NO FURTHER QUESTIONS, YOUR
12 HONOR.

13 THE COURT: THANK YOU.

14 MR. FINE, ANYTHING ELSE FOR THE WITNESS?

15 MR. FINE: NO, YOUR HONOR. BUT BEFORE
16 THE WITNESS LEAVES THE STAND, WE STILL HAVE OUTSTANDING
17 THE ISSUE OF INTRODUCING THE WITNESS' EXPERT REPORT. IF
18 WE MAY HAVE A MOMENT TO CONFER, I BELIEVE DEFENDANT IS
19 AGREEABLE BUT --

20 THE COURT: WASN'T THE PROBLEM AN AOL
21 PROBLEM?

22 MR. CAMPBELL: NO, YOUR HONOR, IT WAS
23 MORE THAN THAT. I THINK, HOWEVER, TO THE EXTENT THAT
24 THERE IS CONFIDENTIAL INFORMATION, TO THE EXTENT THAT
25 PLAINTIFFS OBTAIN THE WAIVERS OF THAT CONFIDENTIAL

1 INFORMATION, WE HAVE NO OBJECTIONS TO ENTERING THAT
2 MATERIAL.

3 MR. FINE: THAT DOES NOT REALLY HELP US,
4 YOUR HONOR.

5 THE COURT: YOU CAN CONFER, IF YOU NEED
6 TO.

7 MR. FINE: I BELIEVE THE ISSUE IS THE
8 RULESPACE MOTION.

9 THE COURT: WHICH MOTION?

10 MR. FINE: RULESPACE MOTION. I BELIEVE
11 IF WE MAY HAVE A MOMENT TO CONFER.

12 THE COURT: SURE.

13 (COUNSEL CONFERRING OFF THE RECORD.)

14 MR. FINE: YOUR HONOR, THE ONE ISSUE
15 WOULD BE YOUR HONOR HAD PREVIOUSLY INDICATED THAT YOU
16 WANT ALL EXPERT REPORTS MOVED INTO EVIDENCE WHILE THE
17 WITNESS IS ON THE STAND.

18 THE COURT: NO, I DIDN'T. WAIT A MINUTE.
19 I ASKED THE PARTIES WHAT THEY WANTED TO DO, IF THEY HAD
20 ANY OBJECTIONS. IT WAS REPORTED TO ME ON THURSDAY LAST
21 WEEK THAT THE PARTIES AGREED THAT ALL EXPERT REPORTS
22 WILL GO INTO EVIDENCE. I SAID THAT IS FINE WITH ME AS
23 LONG AS YOU HAVE AGREED TO IT. THE WHOLE LEGAL ANALYSIS
24 THAT GOES INTO THIS WAS UNNECESSARY BY REASON OF THE
25 AGREEMENT AND YOU DID NOT BRING TO MY ATTENTION THE

1 CONFIDENTIALITY ISSUE. I'M NOT MAD AT YOU. I'M JUST
2 SAYING IT DID NOT HAPPEN.

3 MR. GOMEZ: YOUR HONOR, WHAT THE
4 DEFENDANT WOULD PROPOSE IS THAT, BASED ON THE
5 REPRESENTATIONS MADE BY THE PLAINTIFFS, THAT ALL
6 CONFIDENTIALITY PROVISIONS OR SECTIONS IN THIS EXPERT
7 REPORT HAVE BEEN ADDRESSED BY THE THIRD PARTIES EXCEPT
8 FOR RULESPACE WHICH IS GOING TO BE ADDRESSED IN A
9 SEPARATE MOTION.

10 WE WOULD JUST PROPOSE THAT ONCE THAT
11 MOTION IS RESOLVED, THEN THE EXPERT REPORT COULD EITHER
12 GO IN OR OUT WITH RESPECT -- DEPENDING ON HOW THE COURT
13 WOULD RULE WITH RESPECT TO THAT PORTION OF THE REPORT
14 RELATED TO RULESPACE AND NOT REQUIRE THE WITNESS TO HAVE
15 TO STAY.

16 THE COURT: NOT REQUIRE WHAT?

17 MR. GOMEZ: THE QUESTION, I THINK, THAT
18 HAD ARISEN BEFORE WAS WHETHER EXPERT REPORTS HAD TO
19 ACTUALLY GO IN WITH THE WITNESS STILL BEING PRESENT OR
20 NOT. AND I THINK WE ONLY HAVE AN ISSUE OF
21 CONFIDENTIALITY WITH RESPECT TO RULESPACE BASED ON THE
22 REPRESENTATION BY PLAINTIFF.

23 THE COURT: AUTHENTICITY OF THE REPORT OF
24 THE REBUTTAL REPORT AGREED UPON. THERE IS NO QUESTION
25 ABOUT THE AUTHENTICITY OF THESE REPORTS.

1 MR. GOMEZ: NO.

2 THE COURT: THE REBUTTAL REPORT AND THE
3 MAIN REPORT OF DR. CRANOR.

4 MR. GOMEZ: NO, YOUR HONOR.

5 THE COURT: OKAY. THEN MR. FINE CAN
6 CONSIDER NOT OFFERING IT NOW AND WAITING UNTIL THOSE
7 CONFIDENTIALITY ISSUES ARE RESOLVED.

8 MR. FINE: THAT IS FINE, YOUR HONOR.

9 THE COURT: ANYTHING ELSE YOU HAVE TO
10 MOVE IN WHILE THE WITNESS IS HERE?

11 MR. FINE: NO, YOUR HONOR.

12 THE COURT: DR. CRANOR, YOU ARE EXCUSED.

13 THE WITNESS: THANK YOU.

14 (WITNESS EXCUSED.)

15 THE COURT: WHAT IS YOUR PLAN, MR.

16 HANSEN?

17 MR. HANSEN: WE CAN START THE NEXT

18 WITNESS OR TAKE THE AFTERNOON BREAK, WHATEVER IS YOUR
19 PLEASURE.

20 THE COURT: WE WILL TAKE A RECESS FOR 10
21 MINUTES.

22 (RECESS.)

23 THE CLERK: ALL RISE.

24 COURT IS NOW IN SESSION.

25 THE COURT: COUNSEL MAY BE SEATED.

1 MR. HANSEN: PLAINTIFFS' NEXT WITNESS
2 WILL BE PRESENTED BY MISS KATHERINE CRUMP.

3 THE COURT: MISS CRUMP.

4 MS. CRUMP: GOOD AFTERNOON, YOUR HONOR.
5 PLAINTIFFS CALL EDWARD FELTEN.

6 MS. CRUMP: YOUR HONOR, WE ALSO HAVE
7 THESE EXHIBIT BINDERS. CAN I HAND THEM TO YOU?

8 EDWARD WILLIAM FELTEN, PLAINTIFFS'
9 WITNESS, SWORN.

10 THE CLERK: STATE AND SPELL YOUR FULL
11 NAME FOR THE RECORD, PLEASE.

12 THE WITNESS: EDWARD WILLIAM FELTEN,
13 F-E-L-T-E-N.

14 DIRECT EXAMINATION

15 BY MS. CRUMP:

16 Q. GOOD AFTERNOON, PROFESSOR FELTEN.

17 A. GOOD AFTERNOON.

18 Q. HOLD ON, PLEASE.

19 THANKS FOR JOINING US A LITTLE EARLIER
20 THAN EXPECTED.

21 PROFESSOR FELTEN, WHAT WERE YOU RETAINED
22 TO DO?

23 A. I WAS ASKED TO GIVE MY EXPERT OPINION ON THREE
24 GENERAL AREAS, FIRST, ON SOME TECHNICAL LANGUAGE USED IN
25 THE COPA STATUTE AND WHAT THAT LANGUAGE MEANS FROM A

1 TECHNICAL STANDPOINT; SECOND, ON SOME TECHNICAL ISSUES
2 RELATED TO SEARCH ENGINES; AND THIRD ON SOME TECHNICAL
3 ISSUES RELATED TO INTERNET FILTERING SYSTEMS.

4 Q. PLEASE REFER TO THE DOCUMENT THAT HAS PREVIOUSLY
5 BEEN MARKED AS PLAINTIFFS' EXHIBIT 12 IN THIS CASE. I
6 THINK THAT IS AT TAB 7 IN YOUR BINDER.

7 A. YES.

8 Q. DO YOU RECOGNIZE THIS DOCUMENT?

9 A. YES, THIS IS MY CV.

10 Q. IS IT AN ACCURATE COPY?

11 A. YES.

12 Q. PROFESSOR FELTEN, WHAT IS YOUR EDUCATIONAL
13 BACKGROUND?

14 A. I HAVE A BACHELOR'S DEGREE IN PHYSICS FROM THE
15 CALIFORNIA INSTITUTE OF TECHNOLOGY IN 1985, MASTERS
16 DEGREE IN COMPUTER SCIENCE AND ENGINEERING FROM THE
17 UNIVERSITY OF WASHINGTON IN 1991, AND A PH.D. ALSO IN
18 COMPUTER SCIENCE IN ENGINEERING, FROM THE UNIVERSITY OF
19 WASHINGTON, IN 1993.

20 Q. WHAT WAS THE TOPIC OF YOUR PH.D. THESIS?

21 A. MY PH.D. DISSERTATION WAS ENTITLED PROTOCOL
22 COMPILATION, HIGH PERFORMANCE COMMUNICATION FOR PARALLEL
23 PROGRAMS. WHAT THAT IS BASICALLY, WAS A NEW WAY OF
24 DESIGNING COMMUNICATION PROTOCOLS, A NEW WAY OF
25 DESIGNING METHODS OF COMMUNICATING BETWEEN COMPUTERS

1 ACROSS NETWORKS.

2 Q. WHAT IS YOUR PROFESSION NOW?

3 A. I'M A PROFESSOR AT PRINCETON UNIVERSITY.

4 Q. AND HAVE YOU BEEN AWARDED TENURE?

5 A. YES.

6 Q. HOW MANY PROFESSORSHIPS DO YOU HOLD?

7 A. TWO.

8 Q. WHAT IS THE FIRST ONE?

9 A. THE FIRST ONE IS IN THE DEPARTMENT OF COMPUTER
10 SCIENCE AT PRINCETON.

11 Q. AND HOW LONG HAVE YOU BEEN WITH THAT DEPARTMENT?

12 A. 13 YEARS.

13 Q. WHAT IS YOUR OTHER PROFESSORSHIP?

14 A. IT IS A PROFESSOR OF PUBLIC AFFAIRS POSITION IN
15 THE WOODROW WILSON SCHOOL OF PUBLIC AND INTERNATIONAL
16 AFFAIRS.

17 Q. HOW LONG HAVE YOU HELD THAT POSITION?

18 A. ONE YEAR.

19 Q. DO YOU HAVE ANY OTHER INSTITUTIONAL AFFILIATIONS
20 AT PRINCETON?

21 A. YES. I AM THE FOUNDING DIRECTOR OF PRINCETON'S
22 CENTER FOR INFORMATION TECHNOLOGY POLICY.

23 Q. AND WHAT IS THAT CENTER?

24 A. THAT IS A CROSS-DISCIPLINARY CENTER THAT LOOKS
25 AT ISSUES RELATED TO PUBLIC POLICY IN THE AREA OF

1 INFORMATION TECHNOLOGY, AND BRINGS TOGETHER PEOPLE FROM
2 ACROSS THE CAMPUS TO WORK ON THOSE TOPICS.

3 Q. PROFESSOR FELTEN, WHAT ARE THE PRIMARY THEMES OF
4 YOUR TEACHING AND RESEARCH?

5 A. I WORKED IN A NUMBER OF GENERAL AREAS. SOME OF
6 MY WORK RELATES TO COMPUTER SECURITY AND PRIVACY ISSUES.
7 SOME OF MY WORK RELATES TO INTERNET AND NETWORK
8 TECHNOLOGIES, AND SOME OF MY WORK RELATES TO PUBLIC
9 POLICY ISSUES CONNECTED TO INFORMATION TECHNOLOGY?

10 Q. DO YOU HAVE ANY TEACHING OR RESEARCH EXPERIENCE
11 WITH INTERNET PROTOCOLS?

12 A. YES. I HAVE TAUGHT PRINCETON'S COURSE ON
13 COMPUTER NETWORKING WHICH INCLUDES A BIG SECTION ON
14 INTERNET PROTOCOLS. I HAVE WRITTEN A NUMBER OF PAPERS
15 AND ALSO MY PH.D. DISSERTATION ABOUT PROTOCOLS.

16 Q. DO YOU HAVE ANY RESEARCH EXPERIENCE WITH
17 INTERNET FILTERING?

18 A. YES. SOME OF MY RESEARCH RELATES TO FILTERING
19 TECHNOLOGIES IN GENERAL, TECHNOLOGIES FOR FILTERING OUT
20 DIFFERENT KINDS OF BAD TRAFFIC ON THE INTERNET, FOR
21 EXAMPLE, CERTAIN KINDS OF SECURITY ATTACKS.

22 Q. WHAT'S YOUR EXPERIENCE WITH SEARCH ENGINES?

23 A. WITH SEARCH ENGINES THIS IS AN AREA THAT I HAVE
24 STUDIED AND SPOKEN ABOUT. FOR EXAMPLE, ABOUT A YEAR
25 AGO, I WAS INVITED TO A SYMPOSIUM ON REGULATING SEARCH

1 ENGINES AT YALE UNIVERSITY WHERE I GAVE A TALK ABOUT THE
2 FUTURE OF SEARCH ENGINES.

3 Q. ABOUT HOW MANY PUBLICATIONS HAVE YOU AUTHORED?

4 A. 70 OR 80, SOMEWHERE IN THAT NEIGHBORHOOD.

5 Q. WERE ANY OF THOSE PUBLICATIONS PEER REVIEWED?

6 A. YES. THE SUBSTANTIAL MAJORITY WERE PEER
7 REVIEWED.

8 Q. HOW MANY PAPERS HAVE YOU PRESENTED?

9 A. DOZENS.

10 Q. HAVE YOU RECEIVED ANY AWARDS OR GRANTS FOR YOUR
11 WORK?

12 A. YES. A NUMBER OF GRANTS. SOME AWARDS INCLUDING
13 A SLOANE FELLOWSHIP, A NATIONAL YOUNG INVESTIGATOR AWARD
14 FROM THE NATIONAL SCIENCE FOUNDATION, AND THREE YEARS
15 AGO I WAS NAMED TO THE SCIENTIFIC AMERICAN FIFTY, WHICH
16 IS A LIST THAT SCIENTIFIC AMERICAN PUBLISHES EACH YEAR
17 OF 50 GLOBAL LEADERS IN SCIENCE AND TECHNOLOGY.

18 Q. HAVE YOU EVER PREVIOUSLY SERVED AS AN EXPERT?

19 A. YES. I HAVE TESTIFIED AS AN EXPERT AT TRIAL IN
20 THREE DIFFERENT CASES.

21 Q. WHAT WAS THE FIRST CASE IN WHICH YOU PROVIDED
22 TESTIMONY?

23 A. THE FIRST ONE WAS U.S. V MICROSOFT, THE
24 ANTITRUST CASE.

25 Q. WHAT DID THAT CASE INVOLVE?

1 A. WELL, THAT CASE, IN GENERAL, WAS A BROAD CASE IN
2 WHICH THE DEPARTMENT OF JUSTICE WAS ACCUSING MICROSOFT
3 OF VARIOUS KINDS OF ANTI-COMPETITIVE ACTIVITY.

4 Q. AND WHAT WAS THE TOPIC OF YOUR TESTIMONY?

5 A. I WAS THE PRIMARY TECHNICAL EXPERT WITNESS FOR
6 THE DEPARTMENT OF JUSTICE IN THAT CASE. AND SO MY
7 TESTIMONY TOUCHED ON A BROAD RANGE OF AREAS RELATED TO
8 OPERATING SYSTEMS, RELATED TO WEB BROWSERS AND WEB
9 TECHNOLOGY, INTERNET TECHNOLOGY IN GENERAL, RELATED TO
10 ISSUES OF SOFTWARE COMPATIBILITY AND STANDARDIZATION.
11 ALMOST EVERY TECHNICAL ISSUE THAT THE DEPARTMENT OF
12 JUSTICE NEEDED TESTIMONY ON, I WAS ASKED TO ADDRESS.

13 Q. WHAT WAS THE SECOND CASE IN WHICH YOU PROVIDED
14 TESTIMONY?

15 A. THE SECOND CASE WAS UNIVERSAL V REIMERDES.

16 Q. WHAT WERE THE ISSUES IN THAT CASE?

17 A. THAT WAS A CASE ABOUT THE DIGITAL MILLENIUM
18 COPYRIGHT ACT, IN WHICH REIMERDES -- WELL, IN WHICH A
19 SET OF DEFENDANTS WERE ACCUSED OF TRAFFICKING IN
20 CIRCUMVENTION TECHNOLOGY, TECHNOLOGY FOR CIRCUMVENTING
21 ANTICOPYING TECHNOLOGY.

22 Q. WHAT WERE THE TOPICS OF YOUR TESTIMONY?

23 A. I TESTIFIED IN GENERAL ABOUT THE NATURE OF
24 COMPUTER SOFTWARE AND SOFTWARE DEVELOPMENT, AND I ALSO
25 TESTIFIED ABOUT COMPUTER SECURITY RESEARCH, HOW IT IS

1 CONDUCTED AND HOW RESEARCHERS IN THAT FIELD INTERACT AND
2 COMMUNICATE WITH EACH OTHER.

3 Q. WHAT WAS THE THIRD CASE IN WHICH YOU WERE
4 INVOLVED?

5 A. THE THIRD ONE WAS EOLAS V MICROSOFT, WHICH WAS A
6 PATENT CASE.

7 Q. AND ON WHAT TOPICS DID YOU PROVIDE TESTIMONY?

8 A. WELL, IT WAS A PATENT CASE RELATING TO ASPECTS
9 OF WEB BROWSER TECHNOLOGY. SO MY TESTIMONY IN THAT CASE
10 DISCUSSED BROWSERS AND INTERNET TECHNOLOGY GENERALLY AND
11 WENT INTO CONSIDERABLE DETAIL ABOUT HOW INTERNET CONTENT
12 IS DELIVERED AND DISPLAYED AND RENDERED BY BROWSERS.

13 Q. PROFESSOR FELTEN, HAVE I COVERED ALL OF YOUR
14 PRIOR EXPERT TESTIMONY?

15 A. YES.

16 MS. CRUMP: YOUR HONOR, WE MOVE
17 PLAINTIFFS' EXHIBIT 12, PROFESSOR FELTEN'S CV, INTO
18 EVIDENCE.

19 MR. MCELVAIN: YOUR HONOR, NO OBJECTION,
20 YOUR HONOR.

21 THE COURT: P 12 IS RECEIVED INTO
22 EVIDENCE.

23 (PLAINTIFFS' EXHIBIT 12 WAS RECEIVED INTO
24 EVIDENCE.)

25 MS. CRUMP: WE OFFER HIM AS AN EXPERT ON

1 THE TECHNOLOGY AND USE OF INTERNET PROTOCOLS, THE
2 TECHNOLOGY AND USE OF FILTERING PRODUCTS AND THE
3 TECHNOLOGY AND USE OF SEARCH ENGINES.

4 MR. MCELVAIN: WE OBJECT TO THE EXTENT
5 THAT DR. FELTEN WILL PROVIDE LEGAL OPINIONS. WE
6 OTHERWISE DON'T OBJECT TO HIS QUALIFICATIONS.

7 THE COURT: WHAT IS YOUR QUALIFICATION
8 HERE?

9 MR. MCELVAIN: WE OBJECT ONLY TO THE
10 EXTENT THAT HE WILL BE OFFERING LEGAL OPINIONS.

11 THE COURT: WHEN WE HEAR ONE, WE WILL SEE
12 WHAT TO DO WITH IT.

13 MR. MCELVAIN: YES, YOUR HONOR.

14 THE COURT: THE COURT WILL HEAR DR.
15 FELTEN'S OPINIONS IN THE FIELDS FOR WHICH HE HAS BEEN
16 OFFERED AS AN EXPERT.

17 YOU MAY PROCEED.

18 BY MS. CRUMP:

19 Q. PROFESSOR FELTEN, PLEASE TURN TO THE EXHIBIT
20 THAT HAS PREVIOUSLY BEEN MARKED AS PLAINTIFFS' EXHIBIT
21 13.

22 A. OKAY.

23 Q. DO YOU RECOGNIZE THE DOCUMENTS IN THAT EXHIBIT?

24 A. YES. THIS IS MY PRIMARY EXPERT REPORT AND MY
25 REBUTTAL EXPERT REPORT AND THE APPENDICES TO THOSE.

1 Q. ARE THEY ACCURATE COPIES OF YOUR REPORTS?

2 A. YES.

3 MS. CRUMP: YOUR HONOR, PLAINTIFFS WOULD
4 LIKE TO OFFER PROFESSOR FELTEN'S EXPERT REPORTS INTO
5 EVIDENCE. HOWEVER, THESE REPORTS ALSO CITE CONTESTED
6 RULESPACE CONFIDENTIAL DOCUMENTS. AND SO IF THE
7 DEFENDANTS ARE AGREEABLE, WE WOULD LIKE TO PROCEED
8 FORWARD WITH THESE EXPERT REPORTS IN THE SAME FASHION AS
9 THE CRANOR REPORTS.

10 MR. MCELVAIN: WE DON'T GENERALLY OBJECT
11 TO THE ADMISSION OF THESE DOCUMENTS IN EVIDENCE, SO IF
12 PLAINTIFFS WANT TO RESOLVE THE CONFIDENTIALITY ISSUE AND
13 LATER OFFER THEM ONCE THAT'S RESOLVED, THAT IS CERTAINLY
14 FINE.

15 THE COURT: WE LEAVE IT TO PLAINTIFFS TO
16 OFFER THESE REPORTS LATER OF DR. CRANOR AND DR. FELTEN.

17 MS. CRUMP: THANK YOU, YOUR HONOR.

18 BY MS. CRUMP:

19 Q. PROFESSOR FELTEN, ARE YOU FAMILIAR WITH 47
20 UNITED STATES CODE, 231, KNOWN AS COPA?

21 A. YES, I AM.

22 Q. ARE YOU FAMILIAR WITH ITS DEFINITION OF BY MEANS
23 OF THE WORLDWIDE WEB?

24 A. YES.

25 Q. I WOULD LIKE TO TAKE A MOMENT TO PULL UP A COPY

1 OF THE STATUTE.

2 MS. CRUMP: IT'S ALSO IN THE EXHIBIT
3 BINDER UNDER TAB 1, YOUR HONOR.

4 BY MS. CRUMP:

5 Q. PROFESSOR FELTEN, CAN YOU TURN TO PAGE 3 OF THE
6 EXHIBIT -- OF THE COPY OF COPA IN YOUR BINDER THAT IS
7 ALSO PROJECTED ON THE SCREEN?

8 A. YES.

9 Q. IS THIS AN ACCURATE COPY OF COPA'S DEFINITION?

10 A. YES.

11 Q. PROFESSOR FELTEN, BASED ON YOUR TECHNICAL
12 KNOWLEDGE, DO YOU HAVE AN OPINION ABOUT THE FORMS OF
13 ONLINE COMMUNICATION COVERED BY THIS DEFINITION?

14 A. YES, I DO.

15 Q. PLEASE EXPLAIN HOW YOU REACHED YOUR OPINION.

16 MR. MCELVAIN: OBJECTION. THIS CALLS FOR
17 A LEGAL OPINION.

18 MS. CRUMP: YOUR HONOR, THERE ARE CERTAIN
19 TERMS IN THIS DEFINITION WHICH ARE TECHNICAL IN NATURE,
20 TERMS SUCH AS INTERNET PROTOCOL AND --

21 THE COURT: EXCUSE ME. THE OBJECTION IS
22 PREMATURE. LET'S FIND OUT WHERE WE ARE GOING. I'M
23 SORRY, BUT I DID NOT UNDERSTAND THE -- THE QUESTION WAS
24 DO YOU HAVE AN OPINION ABOUT THE FORMS OF ONLINE
25 COMMUNICATION COVERED BY THIS DEFINITION. WITH ALL DUE

1 RESPECT, I DON'T UNDERSTAND THE QUESTION. I HOPE THE
2 WITNESS DOES. IF HE HAS ONE. WHAT PARTICULAR PART OF
3 THE STATUTE ARE YOU REFERRING TO?

4 MS. CRUMP: PROFESSOR FELTEN WILL TESTIFY
5 THAT MANY OF THE TERMS --

6 THE COURT: WHAT SPECIFIC PART OF THE
7 STATUTE ARE YOU REFERRING TO?

8 MS. CRUMP: I'M REFERRING TO SECTION
9 E(1), THE DEFINITION OF BY MEANS OF THE WORLDWIDE WEB.

10 THE COURT: I THINK YOU HAVE TO LAY A
11 FOUNDATION FOR WHAT HE IS GOING TO BE DOING. HE IS NOT
12 GIVING A LEGAL EVALUATION OF THE WORDS. WHAT IS THE
13 BASIS FOR HIS SAYING ANYTHING ABOUT THESE WORDS? WHAT
14 IS -- THE WAY IN WHICH YOU ARE APPROACHING IT IS NOT
15 LEGAL.

16 BY MS. CRUMP:

17 Q. PROFESSOR FELTEN, DO YOU RECOGNIZE SOME OF THE
18 TERMS CONTAINED IN THE DEFINITION BY MEANS IN THE
19 WORLDWIDE WEB?

20 A. YES, I DO.

21 Q. BASED ON YOUR EXPERTISE AS A COMPUTER SCIENTIST,
22 DO YOU HAVE A VIEW ABOUT THE TECHNICAL MEANING OF
23 VARIOUS OF THESE TERMS?

24 THE WITNESS: YES, I DO.

25 MR. MCELVAIN: OBJECTION, YOUR HONOR.

1 SAME OBJECTION AS TO LEGAL OPINION.

2 THE COURT: THE QUESTION WAS, DOES HE
3 KNOW THE TECHNICAL TERMS. THE QUESTION GOES TO HIS
4 TECHNICAL KNOWLEDGE, THE WORDS THAT ARE USED IN THE
5 STATUTE. CORRECT?

6 MS. CRUMP: THAT'S CORRECT, YOUR HONOR.

7 THE COURT: OBJECTION IS OVERRULED.

8 BY MS. CRUMP:

9 Q. PROFESSOR FELTEN, YOU MENTIONED EARLIER THAT YOU
10 HAVE AN OPINION ABOUT THE VARIETIES OF ONLINE
11 COMMUNICATION ENCOMPASSED WITH THE DEFINITION. HOW DID
12 YOU REACH YOUR OPINION?

13 MR. MCELVAIN: SAME OBJECTION. YOUR
14 HONOR, I THINK THIS GOES BEYOND ASKING ABOUT THE
15 TECHNICAL. SHE IS ACTUALLY ASKING HIM --

16 THE COURT: I DON'T UNDERSTAND WHAT YOU
17 ARE ASKING HIM TO DO.

18 MS. CRUMP: YOUR HONOR, COPA'S DEFINITION
19 "BY MEANS OF THE WORLDWIDE WEB" CONTAINS A NUMBER OF
20 TECHNICAL TERMS. THOSE TERMS HAVE A SPECIFIC MEANING IN
21 COMPUTER SCIENCE, AND PROFESSOR FELTEN WILL EXPLAIN THAT
22 THEY INDICATE SPECIFIC FORMS OF ONLINE COMMUNICATION
23 THAT THOSE TERMS ENCOMPASS. AND SO HIS --

24 THE COURT: WHY DON'T YOU DO SOMETHING
25 SIMPLE. HAVE YOU SEEN THAT PARAGRAPH, THAT STARTS WITH

1 THE TERMS BY DEFINITION WITH THE WORLDWIDE WEB, AND ENDS
2 WITH SUCCESSOR PROTOCOL. YES, I HAVE. YES, I HAVE SEEN
3 IT. WHAT DOES IT MEAN TO YOU FROM A TECHNICAL POINT OF
4 VIEW.

5 BY MS. CRUMP:

6 Q. PROFESSOR FELTEN, HAVE YOU SEEN THE WORDS IN THE
7 PARAGRAPH THAT BEGINS "THE TERM BY MEANS OF THE
8 WORLDWIDE WEB" AND ENDS WITH THE WORDS "OR ANY SUCCESSOR
9 PROTOCOL"?

10 A. YES.

11 Q. ARE YOU FAMILIAR WITH THOSE TERMS?

12 A. YES.

13 Q. WHAT DO THEY MEAN TO YOU?

14 A. WELL, THE LANGUAGE IN THIS PARAGRAPH --

15 MR. MCELVAIN: OBJECTION.

16 THE COURT: OVERRULED. YOU DON'T HAVE TO
17 KEEP OBJECTING. HE IS NOT GIVING LEGAL OPINION.

18 MR. MCELVAIN: THANK YOU, YOUR HONOR.

19 THE WITNESS: THE LANGUAGE IN THIS
20 PARAGRAPH BREAKS DOWN INTO ROUGHLY THREE PARTS. THE
21 FIRST PART IS PLACEMENT OF A MATERIAL IN A COMPUTER
22 SERVER BASED FILE ARCHIVE. THE SECOND PART IS SO THAT
23 THE MATERIAL, IS PUBLICLY ACCESSIBLE OVER THE INTERNET.
24 AND THE THIRD PART IS USING HYPERTEXT TRANSFER PROTOCOL
25 OR ANY SUCCESSOR PROTOCOL. I CAN TALK IN MORE DETAIL

1 ABOUT WHAT EACH OF THOSE MEANS FROM A TECHNICAL
2 STANDPOINT.

3 BY MS. CRUMP:

4 Q. WHY DON'T WE TAKE THEM ONE AT A TIME.

5 THE FIRST ELEMENT YOU MENTIONED WAS BY
6 PLACEMENT OF MATERIAL IN A COMPUTER SERVER BASED FILE
7 ARCHIVE. WHAT DOES THAT PHRASE MEAN TO YOU, AS A
8 COMPUTER SCIENTIST?

9 A. WELL, THERE ARE TWO PARTS OF IT. IT TALKS ABOUT
10 A FILE ARCHIVE WHICH IS A PARTICULAR KIND OF COMPUTER
11 SYSTEM. AND THEN IT SAYS THAT THAT FILE ARCHIVE MUST BE
12 COMPUTER SERVER BASED, WHICH IS A TERM OF ART THAT
13 REFERS TO CERTAIN KINDS OF SYSTEMS OR IN THIS CASE,
14 CERTAIN KINDS OF FILE ARCHIVES.

15 Q. HOW DO COMPUTER SCIENTISTS UNDERSTAND THE
16 PHRASE, FILE ARCHIVE?

17 A. FILE ARCHIVE IS A SYSTEM FOR STORING THE FILES
18 OR FOLDERS. FOR EXAMPLE, THE HARD DISK OF A PERSONAL
19 COMPUTER IS ONE EXAMPLE OF A FILE ARCHIVE. IT'S A
20 SYSTEM THAT STORES FILES AND IT STORES THEM FOR SOME
21 LENGTH OF TIME, NOT JUST EPHEMERAL STORAGE.

22 Q. WILL YOU PLEASE PROVIDE US WITH AN EXAMPLE OF
23 ONLINE STORAGE THAT DOES NOT INVOLVE AN ARCHIVE?

24 A. SURE. IF YOU SEND AN E-MAIL TO SOMEONE, THE
25 E-MAIL WILL PASS THROUGH A NUMBER OF INTERMEDIATE

1 COMPUTERS ON THE WAY. AND IN EACH ONE OF THOSE
2 INTERMEDIATE COMPUTERS, THE E-MAIL MESSAGE MAY SIT THERE
3 FOR ONLY A FRACTION OF A SECOND. IT ARRIVES AT THAT
4 INTERMEDIATE COMPUTER AND IS FORWARDED ON TOWARD THE
5 DESTINATION. THE STORAGE IN THOSE INTERMEDIATE
6 COMPUTERS WOULD NOT BE CALLED A FILE ARCHIVE BECAUSE IT
7 IS NOT STORING IN ANY KIND OF A LONG-TERM OR PERMANENT
8 WAY. THE STORAGE IS JUST EPHEMERAL AND TEMPORARY.

9 Q. YOU HAVE GIVEN TWO EXAMPLES, ONE STORAGE THAT
10 DOES NOT INVOLVE A FILE ARCHIVE WHICH IS THE E-MAIL
11 EXAMPLE YOU JUST GAVE, AND THEN EARLIER YOU MENTIONED
12 STORAGE THAT DOES INVOLVE A FILE ARCHIVE WHICH IS, SAY,
13 A HARD DRIVE?

14 A. YES.

15 Q. WHAT IS THE DIFFERENCE BETWEEN THOSE TWO
16 EXAMPLES?

17 A. THE DIFFERENCE IS THAT A HARD DRIVE ON A TYPICAL
18 PERSONAL COMPUTER IS DESIGNED TO STORE FILES FOR SOME
19 LENGTH OF TIME. IT'S AN ARCHIVE AS OPPOSED TO JUST
20 TEMPORARY STORAGE.

21 Q. AND IS FILE ARCHIVE A TERM USED BY COMPUTER
22 SCIENTISTS?

23 A. YES.

24 Q. LET'S MOVE ON TO THE SECOND ELEMENT THAT YOU
25 MENTIONED.

1 WHAT DOES THE PHRASE COMPUTER SERVER
2 BASED MEAN?

3 A. A COMPUTER SERVER IS A SYSTEM WHOSE JOB IT IS TO
4 RESPOND TO REQUESTS THAT COME FROM -- THAT COME FROM
5 SOMEWHERE ELSE. A STANDARD EXAMPLE OF A COMPUTER
6 SERVER, FOR EXAMPLE, MIGHT BE THE COMPUTER THAT PROVIDES
7 WEB PAGES FROM, SAY, THE USCOURTS.GOV SITE. SOMEWHERE
8 THERE IS A COMPUTER THAT STORES ALL OF THE FILES THAT
9 YOU CAN PULL UP BY GOING TO USCOURTS.GOV. THAT COMPUTER
10 IS A SERVER, MEANING THAT ITS JOB IS TO SIT THERE AND
11 WAIT FOR PEOPLE TO ASK IT TO DO THINGS. WHEN IT IS
12 ASKED TO DO SOMETHING, IT RESPONDS TO THAT REQUEST.
13 THAT IS A SERVER. OTHER COMPUTERS THAT MAKE THE
14 REQUESTS ARE CALLED CLIENTS.

15 Q. ALL RIGHT. LET'S TAKE THE PHRASE "AS A WHOLE."
16 CAN YOU GIVE AN EXAMPLE OF SOMETHING THAT IS A COMPUTER
17 SERVER BASED FILE ARCHIVE?

18 A. YES. THE U.S. COURT -- THE COMPUTER THAT -- THE
19 WEB SERVER THAT PROVIDES PAGES FOR THE USCOURTS.GOV
20 SITE, FOR EXAMPLE, IS A COMPUTER SERVER BASED FILE
21 ARCHIVE. IT'S A FILE ARCHIVE BECAUSE IT STORES THOSE
22 FILES, AND IT IS COMPUTER SERVER BASED BECAUSE THE
23 FUNCTION OF THAT COMPUTER IS TO RESPOND TO REQUESTS THAT
24 COME FROM PEOPLE WHO ARE SURFING THE WEB.

25 Q. LET'S MOVE ON TO THE SECOND ELEMENT IN THE

1 DEFINITION.

2 THE SECOND ELEMENT YOU MENTIONED WAS
3 PUBLICLY ACCESSIBLE OVER THE INTERNET. AS A COMPUTER
4 SCIENTIST, DO YOU HAVE AN OPINION ON WHAT THAT PHRASE
5 MEANS?

6 A. YES. THE INTERNET IS A WELL-KNOWN TECHNICAL
7 TERM THAT REFERS TO A WORLDWIDE NETWORK OF COMPUTERS.
8 AND PUBLICLY ACCESSIBLE SIMPLY MEANS THAT THE PUBLIC,
9 NAMELY ANYONE, CAN GET THIS MATERIAL OVER THE INTERNET.

10 Q. CAN YOU GIVE AN EXAMPLE OF SOMETHING THAT IS
11 PUBLICLY ACCESSIBLE OVER THE INTERNET?

12 A. MANY WEB PAGES ARE PUBLICLY ACCESSIBLE OVER THE
13 INTERNET BECAUSE THEY CAN BE DOWNLOADED BY ANYBODY
14 ANYWHERE.

15 Q. AND CAN YOU PROVIDE AN EXAMPLE OF SOMETHING THAT
16 IS NOT PUBLICLY ACCESSIBLE OVER THE INTERNET?

17 A. E-MAIL MESSAGE IS A GOOD EXAMPLE. THE E-MAIL
18 MESSAGE IS AVAILABLE TO -- ACCESSIBLE TO THE SENDER AND
19 TO THE RECIPIENTS, BUT NOT TO JUST ANYBODY.

20 Q. PROFESSOR FELTEN, ARE YOU FAMILIAR WITH THE TERM
21 DEEP WEB, D-E-E-P, AS IN PETER, WEB?

22 A. YES, I AM.

23 Q. AND WHAT DOES THAT TERM MEAN?

24 A. IT'S A GENERAL TERM THAT REFERS TO MATERIAL THAT
25 IS ON THE WEB BUT IS NOT AVAILABLE TO OR NOT INDEXED IN

1 SEARCH ENGINES.

2 Q. WHY WOULD A SEARCH ENGINE EVER IGNORE A WEB
3 PAGE?

4 A. THERE ARE A NUMBER OF REASONS. THE WEB PAGE
5 MIGHT BE INSIDE THE INTERNAL WEBSITE OR INTRANET OF A
6 COMPANY. A LOT OF COMPANIES HAVE WEBSITES THAT ARE JUST
7 AVAILABLE TO THEIR EMPLOYEES THAT PROVIDE A LOT OF
8 INFORMATION THAT THEY DON'T WANT MADE AVAILABLE TO
9 EVERYONE. SO THIS MIGHT BE THEIR INTERNAL
10 DOCUMENTATION, THEIR BUSINESS PLANS, SOME OF THEIR
11 PAPERWORK, WHAT WOULD HAVE BEEN DONE WITH PAPERWORK
12 BEFORE. THAT IS ONE EXAMPLE.

13 SOME OF THE MATERIAL IN THE DEEP WEB IS
14 THE RESULT OF FILLING OUT FORMS. FOR EXAMPLE, IF YOU GO
15 TO THE PUBLIC LIBRARY'S WEBSITE, YOU COULD DO A SEARCH
16 FOR BOOKS SPOT. YOU CAN PUT IN THE NAME OF THE AUTHOR
17 AND SEARCH FOR BOOKS. THE RESPONSE TO THAT SEARCH WOULD
18 ALSO BE PART OF THE DEEP WEB. THERE ARE A GREAT MANY
19 SEARCHES THAT YOU COULD DO AND THE SEARCH ENGINES DON'T
20 GO AND DO EVERY POSSIBLE SEARCH ON THE LIBRARY'S
21 WEBSITE. THAT IS ALSO A PART OF THE DEEP WEB.

22 ANOTHER EXAMPLE MIGHT BE IF YOU ARE
23 SHOPPING ONLINE, YOU HAVE A SHOPPING CART PAGE, THAT YOU
24 CAN LOOK AT THAT TO SEE WHAT PRODUCTS YOU HAVE PICKED
25 OUT. AND THAT ALSO IS PART OF THE DEEP WEB, BECAUSE A

1 SEARCH ENGINE IS NOT ALLOWED TO LOOK INTO YOUR SHOPPING
2 CART. SO THERE ARE A NUMBER OF DIFFERENT REASONS WHY
3 MATERIAL MIGHT NOT SHOW UP IN A SEARCH ENGINE, AND
4 THEREFORE MIGHT BE ON THE DEEP WEB.

5 Q. IS DEEP WEB CONTENT PUBLICLY ACCESSIBLE?

6 MR. MCELVAIN: OBJECTION, YOUR HONOR.
7 THIS GOES BEYOND DR. FELTEN'S EXPERT REPORT. THERE WAS
8 NOTHING IN HIS REPORT SAYING HE WAS GOING TO BE OFFERING
9 AN OPINION ABOUT THE DEEP WEB. UNDISCLOSED --

10 THE COURT: I DIDN'T HEAR YOUR RESPONSE.

11 MS. CRUMP: YES, YOUR HONOR. PROFESSOR
12 FELTEN DID NOT USE THE PHRASE, DEEP WEB, BUT HE DID
13 OFFER AN EXPLANATION OF WHAT CONSTITUTES -- WHAT IS
14 PUBLICLY ACCESSIBLE OVER THE INTERNET. AND PROFESSOR
15 FELTEN -- I HAVE JUST ASKED PROFESSOR FELTEN TO PROVIDE
16 AN OPINION, AN EXAMPLE, IF YOU WILL, OF WHAT COUNTS AS
17 PUBLICLY ACCESSIBLE.

18 MR. MCELVAIN: YOUR HONOR, IN HIS REPORT
19 HE LISTED EXAMPLES OF CERTAIN THINGS THAT MAY NOT BE
20 PUBLICLY ACCESSIBLE. THE DEEP WEB WAS NOT SOMETHING
21 THAT WAS LISTED IN HIS REPORT, SO WE HAVE NOT HEARD THIS
22 BEFORE. WE HAVE NOT HAD AN OPPORTUNITY TO RESPOND.

23 THE COURT: IS THAT CORRECT?

24 MS. CRUMP: IT IS CORRECT THAT PROFESSOR
25 FELTEN DID NOT USE THE TERM "DEEP WEB" IN HIS REPORT.

1 HOWEVER, DEFENDANT'S EXPERTS HAVE CERTAINLY USED THIS
2 TERM, AND SO DEFENDANTS ARE WELL AWARE OF THIS TERM.
3 THAT IS NOT A SURPRISE IN THAT SENSE.

4 MR. MCELVAIN: YOUR HONOR, OUR OBJECTION
5 IS NOT TO THE USE OF THE TERM. WE ARE FAMILIAR WITH THE
6 USE OF THAT PHRASE AND WHAT IT MEANS. THE FACT THAT HE
7 IS GOING TO OFFER AN OPINION ON WHAT THE MEANING IS OF
8 THE DEEP WEB AND HOW IT FITS INTO COPA, WHICH APPARENTLY
9 IS WHERE THIS LINE IS GOING, THAT, WE DO HAVE STRENUOUS
10 OBJECTION TO. THIS WAS NOT DISCLOSED BEFORE. WE HAVE
11 NEVER HAD AN OPPORTUNITY TO RESPOND TO THIS.

12 MS. CRUMP: YOUR HONOR, PROFESSOR
13 FELTEN -- ALL I CAN SAY IS WHAT I HAVE ALREADY SAID. I
14 GUESS I WILL JUST STOP.

15 THE COURT: I THINK THE SUBJECT OF THE
16 DEEP WEB -- I BELIEVE THE SUBJECT OF THE DEEP WEB IS
17 FAIRLY WITHIN THE SCOPE OF THE EXPECTED TESTIMONY OF
18 THIS WITNESS AND THERE HAS BEEN TIME TO TAKE HIS
19 DEPOSITION AND IF IT WAS NOT COVERED AT THE DEPOSITION
20 THEN IT WOULD BE COVERED TOMORROW ON CROSS EXAMINATION.
21 OBJECTION IS OVERRULED.

22 BY MS. CRUMP:

23 Q. PROFESSOR FELTEN, DOES THE DEEP WEB COUNT AS
24 PUBLICLY ACCESSIBLE OVER THE INTERNET?

25 A. SOME OF IT IS AND SOME OF IT ISN'T. SOME OF THE

1 EXAMPLES I GAVE ARE MATERIAL THAT ANYONE COULD ACCESS,
2 SAY THE RESULT OF DOING A SEARCH AT THE PUBLIC LIBRARY.
3 OTHER EXAMPLES ARE NOT. FOR EXAMPLE, CORPORATE INTRANET
4 THAT IS A COMPANY'S INTERNAL WEBSITE IS ALSO NOT
5 ACCESSIBLE TO THE PUBLIC, AND A PARTICULAR SHOPPER'S
6 SHOPPING CART, FOR EXAMPLE, IS NOT ACCESSIBLE TO THE
7 PUBLIC. SOME OF THE DEEP WEB IS ACCESSIBLE, SOME IS
8 NOT.

9 Q. WE HAVE DISCUSSED THE FIRST TWO ELEMENTS OF THE
10 DEFINITION THAT YOU MENTIONED. YOU ALSO MENTIONED A
11 THIRD ELEMENT, SPECIFICALLY USING HYPERTEXT TRANSFER
12 PROTOCOL OR ANY SUCCESSOR PROTOCOL. LET'S START OUT BY
13 DISCUSSING WHAT IS A PROTOCOL.

14 A. A PROTOCOL IS A FORMALIZED SET OF RULES THAT IS
15 WRITTEN DOWN IN THE LANGUAGE OF COMPUTER SCIENCE THAT
16 GOVERNS AN INTERACTION BETWEEN DIFFERENT COMPUTERS
17 USUALLY ACROSS A NETWORK.

18 Q. CAN YOU GIVE AN EXAMPLE OF A PROTOCOL?

19 A. SURE.

20 I CAN GIVE A COUPLE OF EXAMPLES OF
21 PROTOCOLS IN EVERY-DAY LIFE. FOR EXAMPLE, IF PEOPLE ARE
22 TALKING OVER A RADIO CHANNEL LIKE A CB RADIO OR THE
23 RADIOS THAT PILOTS USE, THERE IS OFTEN A CONVENTION
24 THAT, WHEN SOMEONE IS DONE TALKING, THEY SAY "OVER,"
25 WHICH LETS EVERYONE ELSE KNOW THAT THE SPEAKER IS DONE

1 AND SOMEONE ELSE CAN SPEAK. THAT RULE THAT THE SPEAKER
2 GETS TO KEEP SPEAKING UNTIL HE SAYS "OVER" AND THEN
3 SOMEONE ELSE CAN START SPEAKING IS A SIMPLE EXAMPLE OF A
4 PROTOCOL.

5 ANOTHER EXAMPLE IS WHAT WE ARE DOING
6 HERE. YOU CAN VIEW THIS CONVERSATION WE ARE HAVING AS
7 BEING ACCORDING TO A PROTOCOL, THE PROTOCOL OF EXAMINING
8 A WITNESS IN WHICH THE EXAMINER ASKS A QUESTION AND THE
9 WITNESS ANSWERS THE QUESTION, AND THE EXAMINER ASKS
10 ANOTHER QUESTION AND SO ON UNTIL THE EXAMINER SAYS, NO
11 MORE QUESTIONS. THEN THE OPPOSING COUNSEL GETS A CHANCE
12 TO ASK QUESTIONS.

13 THE COURT: UNTIL THE EXAMINER SAYS
14 "OVER."

15 THE WITNESS: PRECISELY. YOU CAN VIEW
16 THIS AS A PROTOCOL. IF WE WANTED TO SPECIFY THIS
17 PROTOCOL COMPLETELY, I'D HAVE TO SAY, WHAT IS THE
18 PROCEDURE FOR OBJECTIONS. WE WOULD HAVE TO SAY OPPOSING
19 COUNSEL HAS THE OPTION OF OBJECTING AND THERE ARE
20 CERTAIN OBJECTIONS THAT CAN BE OFFERED. AND ONCE AN
21 OBJECTION IS OFFERED, THERE IS A CERTAIN SUB-PROTOCOL, A
22 CERTAIN SET OF RULES THAT ARE FOLLOWED THAT END WITH THE
23 COURT RULING ON THE OBJECTION. AND DEPENDING ON HOW THE
24 COURT RULES, THIS HAPPENS OR THAT HAPPENS. IF WE TOOK
25 ALL THOSE RULES AND WROTE THEM DOWN IN A FORMAL WAY IN

1 THE LANGUAGE OF COMPUTER SCIENCE, WE WOULD HAVE WRITTEN
2 DOWN THE PROTOCOL FOR EXAMINATION OF A WITNESS.

3 Q. DOES THE WHOLE INTERNET USE ONE PROTOCOL?

4 A. NO. THERE ARE A GREAT MANY PROTOCOLS THAT ARE
5 USED, DIFFERENT PROTOCOLS FOR DIFFERENT PURPOSES.

6 Q. WHY WOULD THERE BE MORE THAN ONE PROTOCOL?

7 A. IT'S PARTLY THAT YOU USE DIFFERENT TOOLS FOR
8 DIFFERENT JOBS. SOME PROTOCOLS ARE WELL DESIGNED FOR
9 SOME PURPOSES AND NOT FOR OTHERS. SOMETIMES PROTOCOLS
10 EVOLVE OVER TIME. SO AN OLD PROTOCOL MIGHT BE REPLACED
11 BY A NEW ONE. SOMETIMES COMPANIES WILL CREATE
12 PROPRIETARY PROTOCOLS AS A BUSINESS STRATEGY AND YOU
13 WILL HAVE COMPETING PROPRIETARY PROTOCOLS. THERE ARE
14 LOTS OF REASONS WHY PROTOCOLS CAN MULTIPLY. AND THERE
15 ARE A GREAT MANY PROTOCOLS IN EXISTENCE. THERE ARE
16 LITERALLY THOUSANDS OF STANDARDS DOCUMENTS THAT LAY DOWN
17 DIFFERENT PROTOCOLS FOR USE ON THE NET.

18 Q. HOW ARE PROTOCOLS CREATED?

19 A. THERE ARE DIFFERENT METHODS. ANYONE CAN CREATE
20 A PROTOCOL AND WRITE IT DOWN, BUT THE PROTOCOLS THAT ARE
21 MOST WIDELY USED TEND TO BE DEFINED BY STANDARDS BODIES.
22 THERE ARE GROUPS LIKE THE INTERNET ENGINEERING TASK
23 FORCE OR IETF AND WORLDWIDE WEB CONSORTIUM. THESE ARE
24 GROUPS WHOSE PURPOSE INCLUDES DEFINING PROTOCOLS, AND
25 ONCE THOSE PROTOCOLS ARE DEFINED AND STANDARDIZED, THEN

1 SOME OF THEM BECOME WIDELY USED.

2 Q. THE DEFINITION REFERENCES SPECIFICALLY HYPERTEXT
3 TRANSFER PROTOCOL. WHAT IS THAT?

4 A. HYPERTEXT TRANSFER PROTOCOL IS OFTEN REFERRED TO
5 AS HTTP. AND THAT IS A PARTICULAR PROTOCOL THAT IS
6 DEFINED IN THE PARTICULAR STANDARDS DOCUMENT OR
7 DOCUMENTS.

8 Q. CAN YOU GIVE AN EXAMPLE OF WHEN SOMETHING USES
9 HTTP?

10 A. WELL, ONE OF THE THINGS THAT HTTP TENDS TO BE
11 USED FOR IS DOWNLOADING WEB PAGES. IT IS NOT THE ONLY
12 PROTOCOL THAT CAN BE USED TO DOWNLOAD WEB PAGES, BUT IT
13 IS OFTEN USED FOR THAT PURPOSE. IN GENERAL, HTTP CAN BE
14 USED TO GET DIFFERENT KINDS OF DATA FROM ONE COMPUTER TO
15 ANOTHER.

16 Q. ALL RIGHT.

17 IF A PERSON WANTED TO UNDERSTAND, FROM A
18 TECHNICAL PERSPECTIVE, WHAT HTTP IS, WHERE WOULD THAT
19 PERSON LOOK?

20 A. WELL, THERE ARE -- THE PRIMARY SOURCE IS A
21 STANDARDS DOCUMENT. THERE IS AN HTTP STANDARD. THE
22 CURRENT VERSION OF THE PROTOCOL IS DEFINED BY STANDARD
23 THAT IS A COUPLE HUNDRED PAGES OF FAIRLY PRECISE
24 DESCRIPTION AND ALSO REFERENCES SOME OTHER STANDARDS
25 DOCUMENTS. SO THE PROTOCOL IS WRITTEN DOWN IN GREAT

1 TECHNICAL DETAIL IN A STANDARDS DOCUMENT THAT IS WELL
2 RECOGNIZED.

3 Q. THE DEFINITION WE ARE DISCUSSING TODAY
4 REFERENCES USING HYPERTEXT TRANSFER PROTOCOL OR A
5 SUCCESSOR PROTOCOL. WHAT IS A SUCCESSOR?

6 A. SUCCESSOR PROTOCOL -- I UNDERSTAND A SUCCESSOR
7 PROTOCOL, FROM A TECHNICAL STANDPOINT, TO REFER TO A
8 PROTOCOL THAT COMES AFTER HTTP, WAS DESIGNED AFTER HTTP,
9 THAT IS DESIGNED TO DO THE SAME JOB OR FULFILL THE SAME
10 ESSENTIAL PURPOSE AS HTTP AND THAT HAS A DESIGN THAT IS
11 BASED ON THE DESIGN OF HTTP. IF ALL THREE OF THOSE
12 THINGS ARE PRESENT, THEN IT IS A SUCCESSOR PROTOCOL TO
13 HTTP.

14 Q. WHAT IS THE BASIS OF YOUR UNDERSTANDING OF THE
15 MEANING OF SUCCESSOR PROTOCOL?

16 A. IT IS BASED ON MY UNDERSTANDING OF HOW PROTOCOLS
17 ARE DESIGNED AND HOW PROTOCOLS EVOLVED, THE PROCESS BY
18 WHICH NEW PROTOCOLS ARE CREATED. AND BASED ON MY
19 UNDERSTANDING OF SORT OF THE FAMILY TREE OF PROTOCOLS AS
20 THEY EXIST AND THE HISTORY AND GENERAL PRACTICE IN
21 DESIGNING PROTOCOLS, I REACHED THAT UNDERSTANDING OF
22 SUCCESSOR PROTOCOL.

23 Q. ALL RIGHT. HOW DOES ONE TELL IF A PROTOCOL IS
24 DESIGNED AFTER HTTP?

25 A. WELL, YOU WOULD LOOK AT HISTORICAL DOCUMENTS.

1 THE PROCESS OF DESIGNING A PROTOCOL AND DEFINING A
2 PROTOCOL CREATES A LOT OF DOCUMENTS, FOR EXAMPLE, THE
3 STANDARDS DOCUMENTS THAT I DESCRIBED AS WELL AS
4 DOCUMENTS ABOUT, SAY, THE STANDARDS MEETINGS AT WHICH A
5 PROPOSED PROTOCOL WAS DISCUSSED AND SO ON. BASICALLY,
6 YOU LOOK AT THE HISTORICAL RECORD.

7 Q. AND HOW WOULD ONE KNOW IF A PROTOCOL WAS
8 DESIGNED TO SUPPLANT HTTP OR TO FORM THE SAME ESSENTIAL
9 FUNCTION AS HTTP?

10 A. WELL YOU WOULD HAVE TO LOOK, FIRST OF ALL, AT
11 WHAT -- THERE ARE REALLY TWO SOURCES OF INFORMATION
12 ABOUT WHAT A PROTOCOL IS TRYING TO DO. YOU CAN LOOK AT
13 WHAT THE DESIGNERS OF THE PROTOCOL SAID ABOUT WHAT THEY
14 WERE TRYING TO DO, AND YOU CAN ALSO LOOK AT THE DESIGN
15 OF THE PROTOCOL AND LOOK AT THE DESIGN, AND, FROM THAT,
16 REACH A CONCLUSION ABOUT WHAT THE DESIGN IS APPARENTLY
17 TRYING TO ACHIEVE. SO THOSE ARE TWO SOURCES OF
18 INFORMATION ABOUT THE PURPOSE OF A PROTOCOL.

19 Q. HOW CAN A COMPUTER SCIENTIST TELL WHETHER A
20 PROTOCOL USES A DESIGN BASED ON THAT OF HTTP?

21 A. WELL, YOU COMPARE THE DESIGN. AGAIN, THERE ARE
22 TWO THINGS THAT YOU COULD LOOK AT. YOU COULD LOOK AT
23 WHETHER THE DESIGNERS OF THE NEW PROTOCOL WERE
24 CONSULTING OR USING OR DISCUSSING THE DESIGN OF HTTP,
25 WHETHER THEY SAID, WELL, HTTP IS PRETTY GOOD, BUT WE CAN

1 DO THIS THING BETTER.

2 YOU CAN ALSO LOOK AT THE DESIGNS AND SEE
3 WHETHER YOU SEE DISTINCTIVE ELEMENTS FROM HTTP. IT'S A
4 BIT LIKE LOOKING FOR THE SEQUEL TO A BOOK. IF YOU LOOK
5 AT THE SEQUEL, YOU WILL SEE SOME ELEMENTS THAT ARE
6 PRESENT IN THE ORIGINAL. AND TO A SKILLED READER, IT
7 WILL BE RELATIVELY OBVIOUS WHETHER SOMETHING IS INTENDED
8 AS A SEQUEL OR NOT.

9 Q. CAN YOU GIVE AN EXAMPLE OF SUCCESSOR PROTOCOL TO
10 HTTP?

11 A. SURE. HTTPS OR SECURE HTTP IS AN EXAMPLE. THIS
12 IS A PROTOCOL THAT WAS DESIGNED TO BE LIKE HTTP, BUT TO
13 HAVE ADDITIONAL SECURITY FEATURES. AND THIS IS THE
14 PROTOCOL THAT YOU USE IF YOU ARE AT AN E-COMMERCE
15 WEBSITE AND YOU'RE BUYING SOMETHING, THERE IS A PAGE
16 WHERE YOU ENTER YOUR CREDIT CARD NUMBER AND YOUR ADDRESS
17 AND SO ON, AND YOU CLICK THE PURCHASE BUTTON, AND THAT
18 INFORMATION IS TRANSMITTED TO THE MERCHANT VIA THE HTTPS
19 PROTOCOL, WHICH IS MUCH LIKE HTTP, EXCEPT IT PROVIDES
20 EXTRA SECURITY FOR YOUR CREDIT CARD.

21 Q. ALL RIGHT.

22 NOW THAT YOU HAVE EXPLAINED THE THREE
23 ELEMENTS OF THE DEFINITION, AND HAVE GIVEN YOUR VIEW ON
24 HOW COMPUTER SCIENTISTS INTERPRET THOSE TERMS, I WOULD
25 LIKE TO ASK YOU TO APPLY IT TO A VARIETY OF MEANS OF

1 ONLINE COMMUNICATION. AS A COMPUTER SCIENTIST, WOULD
2 YOU CONSIDER E-MAIL BY MEANS OF THE WORLDWIDE WEB?

3 MR. MCELVAIN: RESTATE OUR OBJECTION,
4 YOUR HONOR. NOW WE REALLY ARE MOVING INTO LEGAL
5 OPINION.

6 THE COURT: NOT THE FORM OF THE QUESTION.
7 THE FORM OF THE QUESTION IS ASKING HIM FROM A COMPUTER
8 SCIENTIST'S POINT OF VIEW. THESE LEGAL TERMS, WHILE
9 THEY ARE LEGAL BECAUSE THEY ARE IN THE STATUTE, DON'T
10 EXIST IN A VACUUM OF LIFE OUTSIDE THE WORLD. TO DEFINE
11 THEM IS RELEVANT TO THIS LITIGATION. HOW THE LAWYERS,
12 THE LAW, THE COURTS, INTERPRET THEM LEGALLY IS A
13 SEPARATE ANIMAL. BUT THEY ARE ENTITLED TO INQUIRE --
14 THE PLAINTIFF IS ENTITLED TO INQUIRE TO THE TECHNICAL
15 ASPECTS OF THE STATUTE, AS IS THE DEFENSE, IN ORDER TO
16 DETERMINE ITS ULTIMATE PURPOSE AND INTERPRETATION. SO I
17 FIND THIS TESTIMONY RELEVANT AND I DON'T VIEW IT AS OUR
18 EXPERT WITNESS IN GIVING AN OPINION ON THE LEGAL MEANING
19 OF WORDS. I THINK I HAVE TO GO BACK AND SEE WHAT THE
20 QUESTION IS.

21 MS. CRUMP: I CAN RESTATE THE QUESTION,
22 YOUR HONOR.

23 THE COURT: OKAY.

24 BY MS. CRUMP:

25 Q. PROFESSOR FELTEN, I JUST ASKED YOU WHETHER

1 E-MAIL WAS BY MEANS OF THE WORLDWIDE WEB, BASED ON YOUR
2 COMPUTER SCIENCE EXPERTISE?

3 A. NO, IT IS NOT.

4 Q. AND WHY NOT?

5 A. WELL, FOR ONE THING, E-MAIL IS NOT PUBLICLY
6 ACCESSIBLE OVER THE INTERNET. THE E-MAIL MESSAGE WOULD
7 BE ACCESSIBLE TO THE SENDER AND TO THE RECIPIENTS, BUT
8 NOT TO JUST ANYBODY.

9 Q. ARE THERE ANY OTHER REASONS?

10 A. WELL, IN ADDITION, E-MAILS ARE GENERALLY NOT
11 ACCESSIBLE USING HTTP OR A SUCCESSOR PROTOCOL. E-MAILS
12 ARE NORMALLY TRANSFERRED VIA OTHER PROTOCOLS THAT ARE
13 NOT SUCCESSOR PROTOCOLS TO HTTP.

14 Q. IS IT POSSIBLE TO DETERMINE THE QUANTITY OF
15 COMMUNICATION CONVEYED THROUGH E-MAIL?

16 A. YES.

17 Q. HAVE YOU FORMED AN OPINION ABOUT THE QUANTITY OF
18 COMMUNICATION CONVEYED THROUGH E-MAIL?

19 A. YES.

20 Q. AND WHAT IS THE QUANTITY OF SPEECH COMMUNICATED
21 THROUGH E-MAIL IN YOUR OPINION?

22 A. A VERY LARGE AMOUNT.

23 Q. AND WHAT IS THE BASIS OF YOUR OPINION?

24 A. WELL, IT'S BASED ON MY GENERAL KNOWLEDGE OF THE
25 WAY THAT LARGE COMPUTER SYSTEMS ARE OPERATED, THE AMOUNT

1 OF ATTENTION THAT IS GIVEN TO HANDLING OF E-MAIL, AND
2 THE AMOUNT OF RESOURCES THAT ARE DEVOTED TO E-MAIL.
3 IT'S ALSO BASED ON THINGS LIKE SURVEYS OF USERS AND HOW
4 MANY USERS USE E-MAIL.

5 Q. ARE THERE ANY PARTICULAR STUDIES ON WHICH YOU
6 HAVE RELIED?

7 A. ONE STUDY ON THIS TOPIC IS FROM THE PEW INTERNET
8 PROJECT.

9 Q. PLEASE REFER TO THE EXHIBIT THAT HAS BEEN
10 PREVIOUSLY MARKED AS PLAINTIFFS' EXHIBIT 14.

11 A. OKAY.

12 Q. DO YOU RECOGNIZE THIS DOCUMENT?

13 A. YES. THIS IS A REPORT FROM THE PEW INTERNET
14 PROJECT.

15 Q. AND IS IT AN ACCURATE COPY?

16 A. YES.

17 Q. AND ACCORDING TO THIS REPORT, UPON WHICH YOU
18 RELIED, WHAT PERCENTAGE OF INTERNET USERS SEND OR
19 RECEIVE E-MAIL?

20 A. ABOUT 90 PERCENT OF ALL INTERNET USERS.

21 MS. CRUMP: YOUR HONOR, PLAINTIFFS MOVE
22 THAT EXHIBIT 14 BE ADMITTED INTO EVIDENCE.

23 MR. MCELVAIN: OBJECTION, YOUR HONOR.
24 HEARSAY. THERE IS NO SHOWING THAT THE SURVEY WAS
25 CONDUCTED ACCORDING TO GENERALLY ACCEPTED PRINCIPLES. I

1 DON'T UNDERSTAND DR. FELTEN TO BE AN EXPERT ON SURVEYS.

2 THE COURT: I CAN'T HEAR YOU.

3 MR. MCELVAIN: BEFORE I WAS SPEAKING TOO
4 LOUDLY. I'LL TRY TO MODULATE. I APOLOGIZE.

5 THE COURT: PULL THAT MICROPHONE OVER.

6 MR. MCELVAIN: I APOLOGIZE.

7 THE COURT: THAT WILL HELP.

8 MR. MCELVAIN: CAN YOU HEAR ME NOW, YOUR
9 HONOR?

10 THE COURT: SURE.

11 MR. MCELVAIN: THE OBJECTION IS HEARSAY.
12 OBVIOUSLY, THE PEOPLE WHO CONDUCTED THE SURVEY ARE NOT
13 HERE IN COURT. THERE HAS BEEN NO SHOWING THAT THIS WAS
14 CONDUCTED ACCORDING TO GENERALLY ACCEPTED PRINCIPLES AS
15 WOULD BE REQUIRED TO GET IT IN THROUGH A HEARSAY
16 EXCEPTION. I DON'T UNDERSTAND DR. FELTEN TO BE A SURVEY
17 EXPERT WHO COULD OFFER TESTIMONY ON THAT SUBJECT.

18 THE COURT: LET'S FIND OUT. OBJECTION IS
19 SUSTAINED ON THAT GROUND ONLY.

20 MS. CRUMP: ALL RIGHT.

21 THE COURT: THE OBJECTION TO ADMITTING
22 THE EXHIBIT IN TOTO, THAT IS WHAT YOU ARE OFFERING?

23 MS. CRUMP: THAT'S CORRECT.

24 WE WILL MOVE ON.

25 BY MS. CRUMP:

1 Q. PROFESSOR FELTEN, WHAT IS INSTANT MESSAGING AND
2 CHAT?

3 A. THESE ARE COMMUNICATION TECHNOLOGIES THAT ALLOW
4 USERS TO TYPE MESSAGES TO EACH OTHER AND HAVE THOSE
5 MESSAGES DISPLAYED IMMEDIATELY. YOU MIGHT HAVE AN
6 INSTANT MESSAGE CONVERSATION BETWEEN TWO PEOPLE AND EACH
7 PERSON CAN TYPE A MESSAGE AND THOSE MESSAGES APPEAR IN A
8 KIND OF TRANSCRIPT ON THE SCREEN AS PEOPLE TYPE THEM.

9 Q. PROFESSOR FELTEN, I UNDERSTAND THAT YOU PREPARED
10 A NUMBER OF SLIDES TO ILLUSTRATE HOW TO USE VARIOUS
11 FORMS OF ONLINE COMMUNICATION, IS THAT CORRECT?

12 A. YES.

13 Q. PLEASE TURN TO PLAINTIFFS' EXHIBIT 119, WHICH I
14 BELIEVE IS AT TAB 8 IN THE BINDER.

15 A. YES.

16 Q. ARE THESE THE SLIDES THAT YOU PREPARED?

17 A. YES, THEY ARE.

18 Q. AND WILL THEY HELP YOU EXPLAIN WHETHER VARIOUS
19 FORMS OF ONLINE COMMUNICATION ARE BY MEANS OF THE
20 WORLDWIDE WEB?

21 A. YES.

22 Q. CAN YOU PLEASE LOOK AT PAGE 2 OF THIS DOCUMENT.
23 WHAT ARE WE SEEING ON THIS SLIDE?

24 A. THIS IS A SCREEN CAPTURE FROM MY COMPUTER THAT
25 SHOWS A WINDOW FROM THE AOL INSTANT MESSAGING PROGRAM,

1 WHICH IS THE MOST POPULAR OR ONE OF THE MOST POPULAR
2 INSTANT MESSAGING TOOLS. I AM HERE RUNNING AOL INSTANT
3 MESSAGING.

4 Q. HOW DID YOU OBTAIN THIS PROGRAM?

5 A. I DOWNLOADED IT FROM AOL'S WEBSITE. IT IS
6 AVAILABLE THERE FOR FREE.

7 Q. AND AFTER YOU DOWNLOADED IT, WHAT DID YOU DO?

8 A. WELL, I WENT THROUGH KIND OF STANDARD PROCESS TO
9 INSTALL IT. AFTER IT WAS DOWNLOADED, IT WAS SITTING IN
10 THE DOWNLOADED FILES DIRECTORY ON MY COMPUTER AND I WENT
11 THERE AND I DOUBLE-CLICKED THE FILE AND IT ASKED ME A
12 COUPLE OF QUESTIONS. WHAT LANGUAGE DID I SPEAK? AND IT
13 ASKED ME TO AGREE TO A LICENSE AGREEMENT. AND ONCE I
14 DID ALL THAT, THE PROGRAM PROCEEDED TO INSTALL ITSELF
15 AND THEN IT RAN.

16 Q. APPROXIMATELY HOW LONG DID IT TAKE TO INSTALL
17 THE PROGRAM?

18 A. JUST A COUPLE OF MINUTES.

19 Q. AFTER YOU INSTALLED IT, WHAT DID YOU DO NEXT?

20 A. WELL, THEN AT THAT POINT, I HAD AN ICON FOR THE
21 PROGRAM WHICH I JUST DOUBLE CLICKED, AND THEN THIS
22 WINDOW POPPED UP.

23 Q. I SEE THERE ARE VARIOUS TABS ON THIS WINDOW.
24 WHAT ARE ALL OF THESE ICONS AND THE LIKE?

25 A. SURE. LET ME EXPLAIN ONE-BY-ONE. UP NEAR THE

1 TOP THERE IS SOMETHING THAT SAYS: SAFE SOME GREEN, AOL
2 AUTOS. AND THAT IS AN AD. THE PROGRAM DISPLAYS ADS UP
3 THERE.

4 UNDERNEATH IT, THERE IS A LITTLE
5 MAGNIFYING GLASS THAT SAYS: FIND IN BUDDY LIST. IF I
6 CLICK THIS, I CAN TRY TO FIND OTHER USERS OF AOL INSTANT
7 MESSENGER WHO I MIGHT WANT TO TALK TO. I CAN TYPE IN A
8 NAME AND IT WILL SEE IF IT KNOWS A PERSON WITH THAT
9 NAME, FOR EXAMPLE. UNDERNEATH THAT, THERE IS A BLUE
10 AREA WHERE IT SAYS, E.W. FELTEN. THAT IS MY SCREEN NAME
11 OR USER NAME IN AOL INSTANT MESSENGER. AND JUST BELOW
12 THAT, ALSO IN THE BLUE, IT SAYS I AM AVAILABLE.

13 ONE OF THE THINGS THAT THE INSTANT
14 MESSAGE SYSTEM LETS ME DO IS PROVIDE A MESSAGE FOR OTHER
15 PEOPLE WHO MIGHT WANT TO TALK TO ME. THIS IS -- HERE
16 I'M ADVERTISING THAT I'M AVAILABLE TO CHAT. IF I
17 PULL -- IF I CLICK ON THE LITTLE BLACK ARROW TO THE
18 RIGHT OF, I'M AVAILABLE, I CAN PULL DOWN A MENU AND SAY
19 SOMETHING LIKE, I AM BUSY, DON'T BOTHER ME. I CAN EVEN
20 TELL IT TO -- THAT I'M PRETENDING NOT TO BE THERE.

21 BELOW THAT, YOU SEE AN ORANGE AREA THAT
22 SAYS: BUDDIES. AND BELOW THAT: FAMILY AND CO-WORKERS.
23 THESE ARE LISTS OF PEOPLE WHO I HAVE SET UP AS MY CHAT
24 BUDDIES, PEOPLE WHO I MIGHT WANT TO TALK TO, MEMBERS OF
25 MY FAMILY, CO-WORKERS AND OTHER FRIENDS. IF ANY OF

1 THESE PEOPLE ARE ONLINE, I CAN CHAT WITH THEM. IN THIS
2 CASE, AT THIS MOMENT, NONE OF MY BUDDIES OR FAMILY OR
3 CO-WORKERS ARE ONLINE AT THE MOMENT WHEN I TOOK THIS
4 PARTICULAR SCREEN SHOT.

5 Q. LET'S MOVE ON TO THE NEXT SLIDE.

6 WHAT DOES THIS SLIDE SHOW?

7 A. THIS IS ANOTHER AOL INSTANT MESSENGER MENU.
8 HERE I'M IN THE MIDDLE OF A CHAT WITH ANOTHER PERSON
9 CALLED PHILOM. YOU CAN SEE UP NEAR THE TOP IT SAYS:
10 E.W. FELTEN. THEN THERE IS A TIME, COLON, HELLO. THAT
11 SAYS THAT I TYPED HELLO AND THEN THE OTHER PERSON TYPED
12 HI. OUR CONVERSATION COULD GO ON FROM THERE. BUT YOU
13 CAN SEE THE SORT OF TRANSCRIPT THAT IS FORMED AS PEOPLE
14 TYPE.

15 DOWN AT THE BOTTOM UNDERNEATH THE LINE
16 THAT SAYS A, B,I, U, ET CETERA, THERE IS A LITTLE BOX IN
17 WHICH I COULD TYPE WHATEVER I WANT. IF I TYPED
18 SOMETHING THERE AND HIT THE ENTER KEY THAT WOULD GET
19 SENT TO THE OTHER PERSON. IT WOULD SHOW UP IN THE
20 TRANSCRIPT HERE.

21 Q. HOW DID YOU GET FROM THE PREVIOUS SCREEN TO THIS
22 SCREEN?

23 A. WELL, THIS OTHER USER WHEN HE LOGGED ON TO AOL
24 INSTANT MESSENGER SYSTEM, HIS NAME POPPED UP ON THAT
25 OTHER SCREEN, AND I JUST CLICKED ON THAT NAME WHICH SAID

1 I WANT TO TALK TO THIS PERSON. THEN I TYPED THE MESSAGE
2 HELLO IN THIS BOTTOM BOX. THAT CAUSED SOMETHING TO POP
3 UP ON HIS COMPUTER AND INTERRUPT AND SAY E.W. FELTEN
4 WANTS TO TALK TO YOU, AND HE RESPONDED.

5 Q. I NOTICE THERE ARE A NUMBER OF TABS ACROSS THE
6 TOP OF THIS SCREEN. WHAT ARE THEY?

7 A. WELL, WE ARE IN THE TEXT TAB HERE. THE NEXT TAB
8 OVER IS CALLED TALK. IF WE GO THERE AND OUR COMPUTERS
9 ARE SET UP RIGHT, THEN WE CAN HAVE A VOICE CONVERSATION,
10 LIKE A TELEPHONE CALL.

11 THE NEXT TAB OVER IS VIDEO. WE CAN USE
12 THAT, AGAIN, IF WE ARE SET UP IN THE RIGHT WAY, TO HAVE
13 A VIDEO CONVERSATION WHERE WE CAN TALK AND SEE EACH
14 OTHER.

15 AFTER THAT IS PICTURES. THIS IS A
16 FACILITY THAT WE CAN USE TO LOOK AT PICTURES TOGETHER OR
17 SHOW EACH OTHER PICTURES.

18 AND FINALLY, THERE IS A FILES FACILITY,
19 WHICH WILL LET US TRANSFER FILES TO EACH OTHER.

20 Q. LET'S MOVE ON TO THE NEXT SLIDE.

21 WHAT DOES THIS SLIDE SHOW?

22 A. WELL, TO GET TO THIS SLIDE I WAS ON THE PREVIOUS
23 SLIDE AND I CLICKED THE FILES TAB. AND THIS SHOWS THE
24 FACILITY THAT AOL INSTANT MESSENGER PROVIDES THAT LETS
25 ME SHARE FILES, AND LETS MY CHAT PARTNER HERE SHARE

1 FILES WITH ME.

2 DOWN NEAR THE BOTTOM, THERE ARE SEND FILE
3 AND SEND FOLDER BUTTONS. IF I CLICKED, SAY, THE SEND
4 FILE BUTTON, I CAN CHOOSE A FILE ON MY COMPUTER AND PUSH
5 THE SEND BUTTON, THAT WILL CAUSE THAT FILE TO GET
6 TRANSFERRED TO THE OTHER PERSON. SIMILARLY HE CAN SEND
7 FILES TO ME. WE CAN SEND WHOLE FOLDERS FULL OF FILES
8 FROM OUR COMPUTER TO EACH OTHER AS WELL.

9 Q. WHAT VARIETIES OF FILES CAN YOU SEND?

10 A. YOU CAN SEND ANYTHING. ANY FILE THAT YOU MIGHT
11 HAVE ON YOUR COMPUTER OF ANY TYPE OF INFORMATION IN ANY
12 FORMAT CAN BE SENT VIA THIS FACILITY.

13 Q. DOES THAT INCLUDE IMAGES?

14 A. YES.

15 Q. DOES IT INCLUDE VIDEO?

16 A. YES.

17 Q. ARE THERE ANY LIMITS ON HOW MANY FILES YOU CAN
18 SEND?

19 A. IF THERE IS A LIMIT, IT IS QUITE LARGE.

20 Q. ARE THERE ANY LIMITS ON HOW FREQUENTLY YOU CAN
21 SEND FILES?

22 A. NO. THE ONLY LIMITATION IS THAT IF YOU TRY TO
23 SEND TOO MUCH STUFF, IT MIGHT TAKE A LONG TIME.

24 Q. NOW, ALL OF THESE SLIDES ARE EXAMPLES OF THE AOL
25 INSTANT MESSENGER PROGRAM, IS THAT CORRECT?

1 A. YES.

2 Q. ARE THERE OTHER INSTANT MESSAGING PROGRAMS?

3 A. YES. THERE ARE A NUMBER OF COMPETING SYSTEMS.

4 THEY GENERALLY OFFER THE SAME TYPE OF FUNCTIONALITY.

5 Q. AND HOW DO THEY COMPARE? HOW DO THEY OPERATE,

6 THE SAME OR DIFFERENTLY?

7 A. THE BASIC DESIGN IS SIMILAR. THEY ALLOW USERS

8 TO TYPE MESSAGES TO EACH OTHER. IN MOST CASES, THEY

9 ALLOW VOICE OR VIDEO CONVERSATIONS AND FILE TRANSFERS.

10 THE SCREENS LOOK A LITTLE DIFFERENT IN SOME CASES, BUT

11 BASICALLY WHAT THEY DO IS ABOUT THE SAME.

12 Q. AS A COMPUTER SCIENTIST, DO YOU CONSIDER INSTANT

13 MESSAGING AND CHAT BY MEANS OF THE WORLDWIDE WEB?

14 A. NO.

15 Q. WHY NOT?

16 A. WELL, THIS INFORMATION IS NOT PUBLICLY

17 ACCESSIBLE ACROSS THE INTERNET. IN THIS EXAMPLE HERE,

18 THE INFORMATION, THE FILES THAT WOULD BE TRANSFERRED AND

19 THE CONTENTS OF THE DISCUSSION ARE AVAILABLE ONLY TO ME

20 AND TO THE OTHER PARTY WITH WHOM I'M CHATTING. SO,

21 AGAIN, NOT PUBLICLY ACCESSIBLE.

22 Q. ARE THERE ANY OTHER REASONS THIS IS NOT BY MEANS

23 OF THE WORLDWIDE WEB?

24 A. WELL, DEPENDING ON WHICH CHAT SYSTEM YOU ARE

25 USING, YOU MAY OR MAY NOT BE USING THE HTTP PROTOCOL TO

1 TRANSFER THE INFORMATION.

2 Q. HOW WOULD A USER TELL WHETHER HE OR SHE WAS
3 USING THE HTTP PROTOCOL?

4 A. A USER REALLY CAN'T TELL. WHAT THE USER SEES IS
5 THAT THEY TYPE SOMETHING AND CLICK THE SEND OR TRANSMIT
6 BUTTON AND THE USER DOES NOT SEE WHAT PROTOCOL GETS USED
7 TO ACTUALLY SEND THAT INFORMATION OFF TO THE OTHER USER.
8 IN SOME CASES, THE PROTOCOLS THAT ARE USED BY CHAT
9 PROGRAMS ARE SECRET AND PROPRIETARY. IN SOME CASES,
10 THEY ARE NOT. THE USER, UNLESS HE IS WILLING TO DO
11 CONSIDERABLE TECHNICAL RESEARCH, MAY BE UNABLE TO TELL.

12 Q. PROFESSOR FELTEN, IS IT POSSIBLE TO GAUGE HOW
13 MUCH ONLINE COMMUNICATION IS BY MEANS OF I-M OR CHAT?

14 A. YES.

15 Q. HOW?

16 A. WELL, MUCH LIKE E-MAIL, YOU CAN LOOK AT
17 INFORMATION ABOUT HOW SYSTEMS ARE RUN, HOW MUCH OF AN
18 ISSUE IS CHAT TRAFFICKED TO THE PEOPLE WHO MANAGE
19 NETWORKS, FOR EXAMPLE. AND THERE ARE ALSO SURVEY-BASED
20 STUDIES OF HOW WIDELY USED INSTANT MESSAGING AND CHAT
21 TECHNOLOGIES ARE.

22 Q. DO YOU HAVE AN OPINION REGARDING THE QUANTITY OF
23 ONLINE COMMUNICATION THAT OCCURS THROUGH I-M OR CHAT?

24 A. YES.

25 Q. WHAT IS YOUR OPINION?

1 A. MY OPINION IS THAT THERE IS A GREAT DEAL OF SUCH
2 COMMUNICATION.

3 Q. WHAT IS THE BASIS FOR YOUR VIEW?

4 A. AGAIN, KNOWLEDGE ABOUT HOW LARGE NETWORKS ARE
5 RUN AND THE ISSUES THAT NETWORK MANAGERS HAVE TO FACE
6 RELATING TO I-M AND ALSO SURVEY-BASED STUDIES.

7 Q. ANY PARTICULAR SURVEYS?

8 A. THERE IS, FOR INSTANCE, A SURVEY FROM THE PEW
9 INTERNET PROJECT THAT RELATES TO THIS ISSUE.

10 Q. LET'S TURN BACK TO PLAINTIFFS' EXHIBIT 14 AND
11 SPECIFICALLY PAGE 3 OF THAT EXHIBIT.

12 DID YOU USE INFORMATION HERE TO REACH
13 YOUR CONCLUSION?

14 A. YES.

15 Q. WHAT INFORMATION DID YOU USE?

16 A. WELL, RELATING TO INSTANT MESSAGING, THE FOURTH
17 LINE, I THINK, OF THE TABLE, SAYS, INSTANT MESSAGE OVER
18 ON THE LEFT. AND THIS GIVES INFORMATION ABOUT HOW
19 WIDELY USED INSTANT MESSAGE IS AMONG DIFFERENT AGE
20 GROUPS. WHAT IT SHOWS IS THAT AMONG TEENS ABOUT 75
21 PERCENT OF TEEN USERS USE INSTANT MESSAGING, AND OVERALL
22 AMONG ONLINE ADULTS, IT IS 47, ABOUT 47 PERCENT.

23 Q. ALL RIGHT. WHY DON'T WE MOVE ON TO A SLIGHTLY
24 DIFFERENT TOPIC.

25 ARE YOU FAMILIAR WITH THE TERM

1 PEER-TO-PEER?

2 A. YES.

3 THE COURT: I'M SORRY, YOU SPEAK SOFTLY.
4 WHAT DID YOU SAY?

5 MS. CRUMP: I ASKED THE WITNESS
6 WHETHER -- I ASKED PROFESSOR FELTEN WHETHER HE IS
7 FAMILIAR WITH THE TERM "PEER-TO-PEER."

8 THE COURT: SURE.

9 THE WITNESS: YES, I AM.

10 BY MS. CRUMP:

11 Q. WHAT DOES THAT TERM MEAN?

12 A. PEER-TO-PEER OR P2P REFERS TO TECHNOLOGIES FOR
13 TRANSFERRING FILES BETWEEN DIFFERENT USERS. AND THE
14 TERM P2P REFERS TO CERTAIN TECHNICAL ASPECTS OF THE
15 DESIGN, NAMELY, THAT THE FILES ARE TRANSFERRED DIRECTLY
16 FROM ONE END USER'S COMPUTER TO ANOTHER END USER'S
17 COMPUTER WITHOUT THE USE OF AN INTERVENING SERVER.

18 Q. AND IS PEER-TO-PEER WIDELY AVAILABLE?

19 A. YES. THERE ARE NUMEROUS PEER-TO-PEER PROGRAMS
20 THAT ARE AVAILABLE FOR FREE.

21 Q. PROFESSOR FELTEN, I BELIEVE YOU PREPARED A FEW
22 SLIDES TO ILLUSTRATE PEER-TO-PEER. CAN WE TURN TO
23 PLAINTIFFS' EXHIBIT 119, PAGE 6.

24 WHAT ARE WE SEEING ON THIS SLIDE?

25 A. WHAT WE SEE HERE ON PAGE 6 IS A SCREEN CAPTURE

1 FROM MY COMPUTER OF A WINDOW FROM THE BIT TORRENT P2P
2 PROGRAM.

3 Q. WHAT IS BIT TORRENT?

4 A. BIT TORRENT IS A PARTICULAR P2P PROGRAM THAT IS
5 WIDELY USED.

6 Q. HOW DID YOU OBTAIN IT?

7 A. I DOWNLOADED IT FOR FREE ON THE INTERNET.

8 Q. AND WHAT DID YOU DO NEXT?

9 A. AFTER DOWNLOADING IT -- AS BEFORE, IT IS A
10 FAIRLY STANDARD PROCESS TO INSTALL IT. THE PROGRAM HAD
11 BEEN DOWNLOADED INTO MY DOWNLOADED FILES DIRECTORY. I
12 DOUBLE-CLICKED THE PROGRAM THERE. IT ASKED ME THE USUAL
13 QUESTIONS, WHAT LANGUAGE DO YOU SPEAK? IT ASKED ME TO
14 AGREE TO A LICENSE AGREEMENT. AND THEN IT PROCEEDED TO
15 INSTALL THE BIT TORRENT PROGRAM. ONCE THAT WAS DONE, I
16 I JUST CLICKED THE BIT TORRENT PROGRAM TO START IT, AND
17 THAN THIS WINDOW POPPED UP.

18 Q. WHAT ARE THE VARIOUS ICONS DISPLAYED IN THIS
19 WINDOW?

20 A. WELL, GOING ACROSS THE TOP, WE HAVE THE ADD
21 ICON. THIS ALLOWED ME TO ADD A FILE TO THE LIST OF
22 FILES THAT I WANT TO GET FROM OTHER USERS. WE HAVE A
23 BUNCH OF OTHER ICONS, INFO, PAUSE AND SO ON, WHICH ARE
24 NOW AT THIS POINT IN TIME GRAYED OUT, MEANING THAT THEY
25 ARE NOT ACTIVE. BUT ONCE I START TO DOWNLOAD STUFF,

1 THEN THOSE WILL LIGHT UP AND I WILL BE ABLE TO DO
2 THINGS.

3 OVER ON THE RIGHT, WE HAVE A SEARCH AREA
4 WHERE I CAN TYPE IN A WORD AND DO A SEARCH AMONG ALL OF
5 THE FILES THAT ARE AVAILABLE VIA BIT TORRENT. I CAN
6 SEARCH BY -- I CAN TYPE IN A KEYWORD THAT I THINK MIGHT
7 BE IN THE FILE THAT I WANT, AND CLICK SEARCH. THEN IT
8 WILL GIVE ME A LIST OF THINGS. IT IS RATHER LIKE A
9 SEARCH ENGINE THAT IS SPECIALIZED FOR BIT TORRENT
10 MATERIAL.

11 Q. ON THE RIGHT-HAND SIDE, IT SAYS: SEARCH FOR
12 TORRENT. WHAT IS A TORRENT?

13 A. A TORRENT IS THE JARGON THAT THE BIT TORRENT
14 SYSTEM USES FOR -- BASICALLY TO REFER TO A FILE THAT YOU
15 CAN GET, A FILE THAT YOU CAN DOWNLOAD VIA THE BIT
16 TORRENT PROGRAM.

17 Q. LET'S MOVE ON TO THE NEXT SLIDE.

18 A. HERE ON THE NEXT SLIDE, I HAVE SAID THAT I
19 WANT --

20 THE COURT: PAGE 7?

21 MS. CRUMP: THAT IS ON PAGE 7, YES, YOUR
22 HONOR.

23 BY MS. CRUMP:

24 Q. WHAT ARE WE SEEING HERE?

25 A. HERE, I HAVE SAID THAT I WANT TO DOWNLOAD A FILE

1 VIA BIT TORRENT. IT HAS ASKED ME TO GIVE THE URL OF A
2 TORRENT FILE OR, IN OTHER WORDS, THE URL, THE ADDRESS
3 FROM WHICH TO GET THE FILE. AND SO I HAVE TYPED IT IN
4 HERE. IT IS A LITTLE BIT WIDER THAN THIS BOX, BUT I
5 HAVE TYPED IN THE ADDRESS OF THE TORRENT I WANT TO GET.

6 Q. HOW DID YOU OBTAIN THAT ADDRESS?

7 A. I GOT IT OFF A WEBSITE. I WENT TO A WEBSITE
8 THAT LISTED DIFFERENT FILES THAT WERE AVAILABLE VIA BIT
9 TORRENT WITH THE ADDRESS FOR EACH ONE, AND I JUST GOT
10 THE ADDRESS THERE AND PUT IT INTO THIS BOX.

11 Q. DO YOU HAVE TO GO TO A WEBSITE IN ORDER TO
12 LOCATE A FILE NAME TO DOWNLOAD?

13 A. NO. IF I KNEW THE FILE NAME THAT I WANTED, IF I
14 KNEW THE LOCATION OR ADDRESS THAT I WANTED, I COULD JUST
15 TYPE IT IN HERE. I CAN USE THE SEARCH BOX IN BIT
16 TORRENT TO FIND SOMETHING IF I WANTED TO DO IT THAT WAY.

17 Q. SO ONCE YOU HAVE ENTERED IN THIS ADDRESS, WHAT
18 HAPPENS NEXT?

19 A. WELL, THE NEXT THING I DID IS, I CLICKED THE
20 OKAY BUTTON HERE ON THIS PAGE, AND THAT THEN TOOK US TO
21 THE DISPLAY THAT WE SEE ON THE NEXT PAGE.

22 Q. LET'S TURN TO PAGE 7 OF EXHIBIT 119. WHAT IS
23 THAT?

24 THE COURT: YOU JUST DID 7.

25 MS. CRUMP: SORRY PAGE 8.

1 BY MS. CRUMP:

2 Q. WHAT'S DISPLAYED HERE?

3 A. THIS IS THE NEXT STEP IN THE PROCESS. I HAVE
4 SAID THAT I WANT TO DOWNLOAD A PARTICULAR FILE WHICH
5 TURNS OUT TO BE A MUSIC VIDEO FROM A GROUP CALLED THE
6 CARDIGANS, A SONG CALLED FINE WINE. THE PROCESS OF
7 GETTING OR DOWNLOADING THAT FILE, THAT VIDEO HAS
8 STARTED. YOU CAN SEE, TOWARD THE MIDDLE, THERE IS AN
9 AREA MARKED PROGRESS, WHICH LOOKS LIKE A SILVER AREA
10 WITH SOME GREEN VERTICAL STRIPES IN IT. THIS IS SHOWING
11 ME WHICH PORTIONS OF THE FILE THAT I HAVE GOTTEN. BIT
12 TORRENT, IT TURNS OUT, BREAKS THE FILE UP INTO LITTLE
13 PIECES AND THEN GETS THE INDIVIDUAL PIECES OF THE FILE
14 SEPARATELY.

15 MOVING ACROSS, YOU CAN SEE IT ESTIMATES
16 THE TIME REMAINING UNTIL I AM DONE DOWNLOADING THE WHOLE
17 VIDEO, 6 MINUTES AND 21 SECONDS. IT GIVES ME
18 INFORMATION ABOUT HOW FAST THE FILE IS COMING AND SO ON.

19 Q. YOU JUST MENTIONED THAT BIT TORRENT BREAKS THE
20 FILE DOWN INTO PIECES. DOES THAT MEAN, SAY, YOU GET
21 THREE SECONDS OF THE VIDEO FROM ONE SOURCE AND THREE
22 SECONDS FROM ANOTHER SOURCE?

23 A. SOMETHING LIKE THAT. THE FILE IS SLICED UP INTO
24 RELATIVELY SMALL PIECES. AND YOU GET THE DIFFERENT
25 PIECES FROM DIFFERENT PLACES ON THE NET, SO ONE END

1 USER'S COMPUTER MAY GIVE ME THE FIRST LITTLE BIT OF THE
2 VIDEO AND ANOTHER USER'S COMPUTER ON A DIFFERENT SIDE OF
3 THE WORLD MIGHT GIVE ME THE NEXT LITTLE PIECE AND SO ON.
4 THERE ARE, IT LOOKS LIKE, DOZENS OR HUNDREDS OF PIECES
5 IN THIS FILE.

6 Q. WHY WOULD ONE ORGANIZE A P2P SYSTEM THIS WAY?

7 A. WELL, THE REAL REASON IS, SOME OF THESE FILES
8 ARE REALLY BIG. IF I WERE TO GO, AND THESE FILES ARE
9 PROVIDED BY THE COMPUTERS OF REGULAR END USERS. SO IF I
10 WERE TO GO TO -- IF I WERE TO PICK ONE END USER AND
11 DOWNLOAD THIS WHOLE ENORMOUS FILE FROM THEM, IT WOULD
12 TIE UP THEIR INTERNET CONNECTION POTENTIALLY FOR A LONG
13 TIME. THAT IS NOT VERY NICE. SO WHAT I DO IS, I GO AND
14 GET A LITTLE PIECE FROM HERE AND A LITTLE PIECE FROM
15 THERE AND SOMEWHERE ELSE, IN THE HOPES THAT IT WON'T
16 BURDEN ANYBODY TOO MUCH. AND THAT IS ONE OF THE DESIGN
17 PRINCIPLES OF BIT TORRENT, TO GET LITTLE PIECES OF THE
18 FILE FROM ALL OVER THE PLACE AS A WAY OF SORT OF
19 SPREADING THE WORK, SPREADING OUT THE WORK OF PROVIDING
20 THE FILE TO ME.

21 Q. AND DOES THAT HAPPEN AUTOMATICALLY WHEN YOU
22 DOWNLOAD SOMETHING?

23 A. RIGHT. HERE, IN THIS DISPLAY, THE BIT TORRENT
24 PROGRAM THAT YOU SEE HERE ON THE SCREEN IS DOING ALL OF
25 THAT AUTOMATICALLY. IT IS TALKING TO OTHER PEOPLE'S BIT

1 TORRENT PROGRAMS. THEY ARE HAVING NEGOTIATIONS ABOUT
2 WHO HAS WHICH PIECES OF THE FILE. AND SO FROM MY
3 STANDPOINT AS THE USER, IT IS ALL AUTOMATIC. I JUST
4 SAY, I WANT THIS FILE, THEN I WAIT ABOUT SEVEN MINUTES
5 AND IT IS THERE.

6 Q. ARE THERE ANY SERVERS INVOLVED IN THIS PROCESS?

7 A. NO. THERE ARE NO SERVERS AT ALL. IN BIT
8 TORRENT AND OTHER P2P SYSTEMS, THE FILES ARE STORED ON
9 AND DISTRIBUTED FROM ORDINARY END USER COMPUTERS. THAT
10 IS WHAT MAKES P2P DISTINCTIVE, IS THE LACK OF SERVERS.

11 Q. NOW, IN THESE SLIDES YOU SHOWED US ONE

12 PEER-TO-PEER PROGRAM, BIT TORRENT. ARE THERE OTHERS?

13 A. YES. THERE ARE MANY OTHERS. SOME POPULAR ONES
14 INCLUDE E-DONKEY, KAZAA, K-A-Z-A-A, GROXTER, WHICH WAS
15 THE TOPIC OF A SUPREME COURT CASE IN RECENT YEARS.

16 Q. AND HOW DOES THE FUNCTIONALITY OF THOSE PROGRAMS
17 COMPARE TO THE FUNCTIONALITY OF BIT TORRENT?

18 A. WELL, AT A GENERAL LEVEL, IT IS SIMILAR. ALL OF
19 THESE ARE PROGRAMS THAT WILL DISTRIBUTE FILES DIRECTLY
20 FROM ONE END USER'S COMPUTER TO OTHER END USERS'
21 COMPUTERS WITHOUT THE USE OF A SERVER. AND ALL OF THEM
22 ARE ORGANIZED IN THAT WAY. THE NUTS AND BOLTS DETAILS
23 OF EXACTLY HOW THEY DO IT DIFFER FROM SYSTEM TO SYSTEM.

24 Q. AS A COMPUTER SCIENTIST, DO YOU CONSIDER
25 PEER-TO-PEER COMMUNICATION TO BE BY MEANS OF THE

1 WORLDWIDE WEB?

2 A. NO.

3 Q. WHY NOT?

4 A. BECAUSE THE MATERIAL IS NOT PLACED ON A
5 COMPUTER-BASED FILE ARCHIVE. IN PARTICULAR, THE
6 SERVER-BASED PART IS MISSING. THAT IS THE PRIMARY
7 REASON. AS WELL, SOME P2P SYSTEMS DO NOT USE HTTP OR A
8 SUCCESSOR PROTOCOL.

9 Q. HOW DOES A USER DETERMINE WHETHER A PEER-TO-PEER
10 PROGRAM USES HTTP OR A SUCCESSOR PROTOCOL?

11 A. A TYPICAL USER WON'T BE ABLE TO TELL. JUST AS
12 WITH INSTANT MESSAGING, THE PRECISE PROTOCOLS THAT ARE
13 USED ARE SORT OF UNDER THE HOOD, AND ALL THE USER SEES
14 IS BITS OF THE FILE ARE ARRIVING. THE USER IS NOT TOLD
15 WHICH PROTOCOL PRECISELY IS USED TO GET THOSE PIECES.
16 SO A TYPICAL USER WON'T BE ABLE TO TELL.

17 Q. NOW, IN THE EXAMPLE THAT YOU GAVE US, YOU WERE
18 DOWNLOADING A VIDEO FILE, CORRECT?

19 A. YES.

20 Q. COULD YOU HAVE DOWNLOADED AN IMAGE?

21 A. YES.

22 Q. COULD YOU DOWNLOADED AN AUDIO FILE?

23 A. YES.

24 Q. COULD YOU HAVE DOWNLOADED ANY OTHER TYPES OF
25 FILES?

1 A. YES. THIS SYSTEM, BIT TORRENT, FOR EXAMPLE, CAN
2 DOWNLOAD ABSOLUTELY ANY KIND OF FILE THAT IS ON A
3 COMPUTER.

4 Q. IS IT POSSIBLE TO GAUGE HOW MUCH SPEECH OCCURS
5 THROUGH PEER-TO-PEER?

6 A. YES.

7 Q. DO YOU HAVE AN OPINION REGARDING THE QUANTITY OF
8 COMMUNICATION THAT OCCURS THROUGH PEER-TO-PEER?

9 A. YES, I DO.

10 Q. WHAT IS YOUR OPINION?

11 A. MY OPINION IS THAT IT'S A VERY LARGE AMOUNT. A
12 VERY LARGE AMOUNT OF MATERIAL IS TRANSMITTED VIA
13 PEER-TO-PEER.

14 Q. WHAT'S THE BASIS FOR THAT VIEW?

15 A. SEVERAL FACTORS GO INTO THAT. FIRST, MY
16 KNOWLEDGE OF THE NETWORK MANAGEMENT PRACTICES. IT'S
17 WELL KNOWN IN THE FIELD THAT NETWORK MANAGERS WORRY A
18 LOT ABOUT THE AMOUNT OF PEER-TO-PEER TRAFFIC ON THEIR
19 NETWORKS.

20 THERE ARE STUDIES THAT SHOW THAT A
21 SIGNIFICANT FRACTION OF ALL OF THE TRAFFIC ON THE
22 INTERNET APPEARS TO BE PEER-TO-PEER TRAFFIC. THERE ARE
23 ALSO STATISTICS GATHERED BY COMPANIES CALLED --
24 COMPANIES LIKE BIG CHAMPAGNE, ABOUT THE AMOUNT OF
25 MATERIAL AND THE NATURE OF THE MATERIAL ON PEER-TO-PEER

1 NETWORKS.

2 Q. WHAT IS BIG CHAMPAGNE?

3 A. BIG CHAMPAGNE IS A COMPANY THAT SPECIALIZES IN
4 MONITORING AND PROVIDING INFORMATION ABOUT P2P NETWORKS.
5 THEY KIND OF STYLE THEMSELVES AS THE NIELSEN RATINGS FOR
6 P2P. THEY WANT TO BE ABLE TO TELL PEOPLE WHAT IS THERE
7 AND HOW POPULAR IT IS.

8 Q. IN WHAT WAY DO THEIR STUDIES FORM THE BASIS OF
9 YOUR VIEW?

10 A. THEIR STUDIES SHOW INFORMATION ABOUT THE NUMBER
11 OF USERS OF P2P SYSTEMS AND ABOUT THE AMOUNT OF MATERIAL
12 THAT IS AVAILABLE.

13 Q. ALL RIGHT. IS WHAT YOU SAY REGARDING THE
14 QUANTITY OF COMMUNICATION THAT OCCURS THROUGH
15 PEER-TO-PEER, WAS THAT TRUE IN 1998?

16 A. NO.

17 Q. WHAT HAS CHANGED?

18 A. WELL, IN 1998, P2P TECHNOLOGY WAS QUITE NEW AND
19 NOT VERY WELL KNOWN. BUT SINCE THEN, P2P TECHNOLOGY HAS
20 GROWN TREMENDOUSLY IN USAGE, AND IS NOW VERY WIDELY
21 USED. SO IT'S THE TECHNOLOGY THAT WENT FROM NEARLY
22 NOTHING IN 1998 TO BROADLY USED NOW.

23 Q. WHAT IS VOICEOVER IP?

24 A. VOICEOVER IP REFERS TO A -- IT REFERS TO
25 TECHNOLOGIES THAT LET PEOPLE HAVE VOICE CONVERSATIONS ON

1 THE INTERNET, ESSENTIALLY SOMETHING LIKE A PHONE CALL,
2 BUT CONDUCTED OVER THE INTERNET INSTEAD OF OVER THE
3 TRADITIONAL PHONE SYSTEM.

4 Q. PROFESSOR FELTEN, I BELIEVE YOU PREPARED ONE
5 SLIDE ILLUSTRATING VOICEOVER IP. CAN WE TURN BACK TO
6 PLAINTIFF'S EXHIBIT 19, PAGE 17?

7 A. 17, YOU SAY?

8 Q. YES. 17.

9 A. YES.

10 Q. WHAT DO WE SEE ON THIS SLIDE?

11 A. HERE WE SEE A VOIP PROGRAM CALLED SKYPE,
12 S-K-Y-P-E, WHICH IS THE MOST POPULAR VOIP SYSTEM. AND
13 THIS IS A SCREEN CAPTURED FROM MY COMPUTER.

14 Q. HOW DID YOU OBTAIN SKYPE?

15 A. IT'S AVAILABLE FOR FREE DOWNLOAD ON THE
16 INTERNET.

17 Q. AND AFTER YOU DOWNLOADED IT, WHAT DID YOU DO?

18 A. I WENT THROUGH THE TYPICAL PROCESS. I
19 DOWNLOADED THE SKYPE PROGRAM. IT WAS IN MY DOWNLOADED
20 FILES DIRECTORY. I DOUBLE CLICKED IT THERE. IT ASKED
21 ME THE TYPICAL SET OF QUESTIONS ABOUT LANGUAGE AND SO
22 ON. IT ASKED ME TO AGREE TO A LICENSE AGREEMENT, AND
23 THEN IT WENT AHEAD WITH THE INSTALLATION.

24 Q. HOW LONG DID IT TAKE TO INSTALL?

25 A. JUST A COUPLE OF MINUTES.

1 Q. WAS IT DIFFICULT TO INSTALL?

2 A. NO. NO MORE DIFFICULT THAN ANY OTHER KIND OF
3 SOFTWARE.

4 Q. ALL RIGHT. SO ONCE YOU DOWNLOADED AND INSTALLED
5 SKYPE, WHAT HAPPENS NEXT?

6 A. WELL, YOU CAN CLICK THE SKYPE PROGRAM AND THEN A
7 WINDOW, SOMEWHAT LIKE THIS, OPENS UP THAT SHOWS THE
8 SKYPE PROGRAM.

9 Q. ALL RIGHT. I SEE THERE ARE A NUMBER OF BUTTONS
10 ON THIS SCREEN?

11 A. YES.

12 Q. WHAT ARE THEY?

13 A. UP NEAR THE TOP, YOU SEE AN ADD CONTACT BUTTON.
14 SKYPE PROVIDES A LIST OF CONTACTS WHICH YOU CAN THINK OF
15 BEING LIKE AN ADDRESS BOOK OR PHONE BOOK. IT'S A BUNCH
16 OF PEOPLE YOU KNOW, WITH EITHER THE PHONE NUMBER OR THE
17 SKYPE, THE USER NAME WITHIN SKYPE OF THAT PERSON,
18 BASICALLY INFORMATION ABOUT HOW TO CONTACT THEM.

19 THERE IS A SEARCH BUTTON THAT LETS YOU
20 SEARCH FOR PEOPLE. IF I KNOW SOMEBODY'S NAME, I WANT TO
21 BE ABLE TO CONTACT THEM VIA SKYPE, I CAN CLICK THE
22 SEARCH BUTTON AND TYPE IN THEIR NAME, AND IT WILL GIVE
23 ME A LIST OF PEOPLE WITH THAT NAME WHO ARE ON SKYPE.

24 THE NEXT ONE IS CALLED PHONES. THIS, IF
25 I REMEMBER CORRECTLY, GIVES YOU A WAY TO MAKE A PHONE

1 CALL TO A PERSON WHO HAS A TRADITIONAL PHONE. SKYPE CAN
2 BE USED TO TALK TO SOME OTHER SKYPE USER ON THEIR
3 COMPUTER, BUT YOU CAN ALSO CALL SOMEONE WHO HAS A
4 REGULAR TELEPHONE.

5 THE NEXT BUTTON IS CONFERENCE. THIS LETS
6 ME HAVE A CONFERENCE CALL, A CALL THAT HAS MORE THAN TWO
7 PEOPLE ON IT, WHICH SKYPE SUPPORTS.

8 THERE IS A CHAT BUTTON THAT LETS ME DO
9 CHAT-LIKE INSTANT MESSAGING BY TYPING MESSAGES TO
10 PEOPLE.

11 THERE IS A SEND FILE BUTTON WHICH I CAN
12 USE IF I'M IN A PHONE CALL TO SEND A FILE TO THE PERSON
13 THAT I'M TALKING TO.

14 THEN PROFILE, I BELIEVE, IS INFORMATION
15 ABOUT ME, YOU KNOW, MY AGE AND MY ADDRESS, AND THAT SORT
16 OF STUFF, TO THE EXTENT THAT I WANT TO SHOW THAT TO
17 OTHER PEOPLE.

18 Q. HOW DO YOU MAKE A CALL USING SKYPE?

19 A. WELL, THIS SCREEN HERE SHOWS ME ALREADY IN THE
20 MIDDLE OF A CALL. I WOULD GO TO MY CONTACTS LIST, AND
21 MY CONTACTS LIST IS A LIST OF PEOPLE, AND I JUST CLICK
22 THE NAME OF THE PERSON I WANT TO CALL, AND THAT WILL
23 CAUSE SKYPE TO CALL THAT PERSON.

24 Q. HOW MUCH DOES IT COST TO CALL SOMEONE USING
25 SKYPE?

1 A. IT'S FREE. IF THEY ARE ALSO USING THE SKYPE
2 PROGRAM ANYWHERE IN THE WORLD, IT IS FREE TO CALL THEM
3 VIA SKYPE. IF THEY ARE USING THE TRADITIONAL PHONE
4 SYSTEM, A REGULAR PHONE NUMBER AND THEY ARE IN NORTH
5 AMERICA OR EUROPE, IT IS FREE. IF THEY ARE ELSEWHERE IN
6 THE WORLD WITH A TRADITIONAL PHONE IT IS RELATIVELY
7 CHEAP DEPENDING ON WHERE THEY ARE, BUT USUALLY A FEW
8 CENTS A MINUTE.

9 Q. AFTER YOU DIAL A NUMBER, WHAT HAPPENS?

10 A. WELL, THE OTHER PERSON'S COMPUTER WILL RING LIKE
11 A PHONE. AND ASSUMING THEY PUSH -- THE SKYPE WINDOW
12 WILL POP UP. IF THEY PUSH THE ANSWER BUTTON, THEN YOU
13 ARE TALKING TO THEM. YOUR SKYPE WILL USE THE MICROPHONE
14 AND SPEAKERS ON YOUR COMPUTER TO MAKE THE SKYPE PROGRAM
15 ACT LIKE A SPEAKERPHONE, SO YOU CAN HAVE A CONVERSATION
16 WITH THIS OTHER PERSON ACROSS THE NET.

17 HERE, IN THIS PARTICULAR SCREEN CAPTURE,
18 I'M TALKING TO MY COLLEAGUE ANDREW LAPEL AND HIS
19 PHOTOGRAPH APPEARS HERE ON THE SCREEN. AND EVERYTHING
20 THAT I SAY HERE, INTO MY COMPUTER, HE IS HEARING AND
21 VICE VERSA. THIS IS JUST A VOICE CALL. BUT SKYPE ALSO
22 SUPPORTS VIDEO CALLS. SO THAT IF I HAVE ON MY COMPUTER
23 -- IF I HAVE A CAMERA ATTACHMENT TO MY COMPUTER, AND IF
24 I CLICK A BUTTON SAYING I WANT HIM TO SEE ME, THEN HE
25 WILL BE ABLE TO SEE A LIVE VIDEO OF ME AS WE ARE TALKING

1 AND VICE VERSA. YOU CAN USE SKYPE TO HAVE VIDEO PHONE
2 CONVERSATIONS AS WELL. THAT IS ALSO FREE WHEN YOU ARE
3 TALKING TO OTHER SKYPE USERS.

4 Q. YOU MENTIONED THAT YOU CAN TRANSFER FILES
5 THROUGH THE COMPUTER -- THROUGH SKYPE RATHER. ARE THERE
6 ANY LIMITATIONS ON THE TYPES OF FILES YOU CAN TRANSFER?

7 A. NO. I CAN TRANSFER ANY FILES I WANT. I JUST
8 CLICK THE SEND FILE BUTTON UP NEAR THE TOP OF THE SCREEN
9 HERE AND THEN I DESIGNATE WHICH FILE ON MY COMPUTER I
10 WANT TO SEND. IT GOES OVER TO MY -- OVER TO THE OTHER
11 PERSON'S SYSTEM. SO ANY KIND OF FILE CAN BE SENT.

12 Q. ALL OF YOUR SLIDES INVOLVE ONE PARTICULAR
13 PROGRAM, SKYPE. ARE THERE OTHER VOICEOVER IP PROGRAMS?

14 A. YES. THERE IS AN AREA IN WHICH THERE ARE
15 SEVERAL DIFFERENT COMPETING PROGRAMS. THEY TEND TO
16 OFFER FAIRLY SIMILAR FUNCTIONALITIES. SKYPE, I
17 UNDERSTAND, IS THE MOST POPULAR.

18 Q. AS A COMPUTER SCIENTIST, DO YOU CONSIDER
19 VOICEOVER IP TO BE BY MEANS OF THE WORLDWIDE WEB?

20 A. NO.

21 Q. WHY NOT?

22 A. THE MATERIAL THAT IS SENT, EITHER THE VOICE, OR
23 VIDEO, OR THE FILES THAT ARE TRANSFERRED, ARE NOT
24 PUBLICLY ACCESSIBLE. THEY ARE ACCESSIBLE ONLY TO THE
25 PEOPLE WHO ARE ON THAT SKYPE CALL. THE MATERIAL IS, IN

1 MOST CASES, NOT SENT VIA HTTP OR A SUCCESSOR PROTOCOL.

2 AND IN ADDITION, THE MATERIAL IS NOT
3 PLACED ON A COMPUTER SERVER BASED FILE ARCHIVE. THERE
4 IS NO SERVER INVOLVED. IF I TRANSFER A FILE HERE, IT
5 GOES STRAIGHT FROM MY COMPUTER TO THE COMPUTER OF MY
6 COLLEAGUE, WITH ONLY SORT OF EPHEMERAL STOPS IN BETWEEN
7 AT OTHER USER'S COMPUTERS.

8 Q. HOW MUCH SPEECH IS AVAILABLE THROUGH SKYPE AND
9 OTHER VOICEOVER IP PROGRAMS?

10 A. THERE ARE AN AWFUL LOT OF PEOPLE ON SKYPE.
11 SKYPE SAYS THAT TENS OF MILLIONS OR PERHAPS HUNDREDS OF
12 MILLIONS OF PEOPLE HAVE DOWNLOADED THEIR APPLICATION.
13 IT IS FREE PHONE CALLS TO ALMOST ANYWHERE IN THE WORLD,
14 AND THAT IS A PRETTY POPULAR THING.

15 Q. WHAT IS STREAMING VIDEO AND AUDIO?

16 A. STREAMING VIDEO AND AUDIO IS A SET OF
17 TECHNOLOGIES THAT LET YOU LISTEN TO LIVE AUDIO STREAMS,
18 LISTEN TO AUDIO STREAMS, RATHER LIKE LISTENING TO THE
19 RADIO OR WATCH VIDEO STREAMS RATHER LIKE WATCHING T.V.
20 ON YOUR COMPUTER. THESE TECHNOLOGIES DISTRIBUTE THAT
21 MATERIAL TO YOUR COMPUTER SO YOU CAN WATCH IT AS IT IS
22 HAPPENING.

23 Q. PROFESSOR FELTEN, PLEASE TURN BACK TO EXHIBIT
24 119, SPECIFICALLY TO PAGE 10.

25 WHAT DO WE SEE ON THIS SLIDE?

1 A. WHAT WE SEE HERE IS A -- HERE ON PAGE 10 IS A
2 WEB PAGE OF WHYR RADIO, A RADIO STATION HERE IN
3 PHILADELPHIA.

4 Q. AND WHAT ARE THE VARIOUS ICONS ON THE PAGE?

5 A. WELL, THERE ARE VARIOUS CONTENT HERE RELATED TO
6 WHYR. BUT PROBABLY OF MOST INTEREST HERE, TOWARD THE
7 MIDDLE OF THE PAGE, THERE IS A SET OF LINKS THAT ARE
8 UNDERLINED IN BLUE THAT SAY: LISTEN, LISTEN WITH
9 WINDOWS MEDIA PLAYER AND THEN AGAIN, LISTEN. AND IF YOU
10 CLICK ONE OF THOSE LINKS, THAT WILL CAUSE A STREAMING
11 VIDEO PROGRAM TO START AND IT WILL STREAM TO YOU
12 WHATEVER IS BEING BROADCAST ON WHYR RIGHT NOW, SO YOU
13 CAN LISTEN TO THE RADIO LIVE ON YOUR COMPUTER.

14 Q. HOW DO YOU GET A STREAMING PROGRAM?

15 A. THERE ARE A NUMBER OF DIFFERENT PROGRAMS. THERE
16 IS WINDOWS MEDIA PLAYER, WHICH COMES WITH MICROSOFT
17 WINDOWS. THERE IS REAL PLAYER, WHICH IS AVAILABLE AS A
18 FREE DOWNLOAD ON THE NET. AND THERE ARE I-TUNES, WHICH
19 IS AVAILABLE FROM APPLE. ALSO A FREE DOWNLOAD, AND SO
20 ON.

21 Q. ALL RIGHT. SO WHAT HAPPENS IF YOU CLICK ON ONE
22 OF THESE BUTTONS?

23 A. WELL, I CLICKED ON THE TOP ONE THAT SAYS, LISTEN
24 FOR USE WITH REAL I-TUNES, ET CETERA, AND WHAT HAPPENED
25 IS THAT A PROGRAM ON MY COMPUTER PROGRAM CALLED REAL

1 PLAYER STARTED AND POPPED UP. I SAW WHAT WAS ON PAGE
2 11.

3 Q. WHY DON'T WE TURN TO PAGE 11 THEN. WHAT DO WE
4 SEE HERE?

5 A. THIS IS A SCREEN CAPTURE OF THE REAL PLAYER
6 PROGRAM LISTENING TO WHYY. SO AS I WAS DOING THE SCREEN
7 CAPTURE OUT OF THE SPEAKERS OF MY COMPUTER WAS COMING
8 WHATEVER PROGRAMMING WAS ON WHYY AT THAT MOMENT.

9 Q. WHAT ARE THE VARIOUS BUTTONS ON THIS SCREEN?

10 A. WELL, YOU SEE THE MAIN ROW OF BUTTONS HAS THE
11 KIND OF CONTROLS THAT YOU MIGHT EXPECT ON A VCR OR TAPE
12 DECK OR SOMETHING. THE BIGGEST ONE IS THE PAUSE BUTTON
13 WITH TWO VERTICAL BARS, STOP BUTTON, BUTTONS TO GO BACK
14 AND FORWARD. THERE IS SOMETHING THAT SAYS LIVE, AND
15 THEN SOMETHING THAT RIGHT ABOVE WHERE IT SAYS LIVE,
16 THERE IS -- I'M NOT SURE, THAT IS A PROGRESS REPORT THAT
17 SHOWS HOW MUCH OF THE PROGRAM I HAVE LISTENED TO.

18 OVER ON THE RIGHT, THERE IS A SORT OF
19 GREEN TRIANGLE THAT GETS WIDER AS YOU GO TO THE RIGHT.
20 THAT IS THE VOLUME CONTROL.

21 JUST TO THE LEFT OF THAT, I BELIEVE, IS A
22 MUTE BUTTON. THERE IS INFORMATION ABOUT IT THAT SAYS I
23 HAVE BEEN LISTENING TO IT FOR 8 MINUTES AND 15 SECONDS.
24 I'M LISTENING LIVE. IT SAYS WHAT STATION I'M LISTENING
25 TO, WHYY 91 FM. 24 KBPS TELLS ME THE QUALITY OF THE

1 AUDIO, HOW MUCH FIDELITY I'M GETTING.

2 Q. THIS BOX THAT WE ARE LOOKING AT, IS THIS INSIDE
3 A WEB BROWSER?

4 A. NO, THIS IS A SEPARATE PROGRAM THAT IS RUNNING
5 SEPARATELY FROM THE BROWSER.

6 Q. HOW DO WE GET FROM THE WEB PAGE THAT WE WERE
7 LOOKING AT IN THE LAST SLIDE TO THIS BOX?

8 A. IN THIS CASE, WHAT HAPPENED IS, I CLICKED ON A
9 LINK IN THE WEB PAGE, AND THE WEB PAGE BROWSER THEN
10 LAUNCHED THIS SEPARATE REAL PLAYER PROGRAM WHICH KNOWS
11 HOW TO PLAY THIS RADIO STREAM.

12 Q. LET'S MOVE ON TO THE NEXT SLIDE, SPECIFICALLY
13 SLIDE 12 IN PLAINTIFFS' EXHIBIT 119. WHAT DO WE SEE
14 HERE?

15 A. WELL, THIS IS ALSO THE REAL PLAYER PROGRAM.
16 HERE, I'M WATCHING A STREAMING VIDEO. UNFORTUNATELY,
17 THE ACTUAL VIDEO I WAS SEEING WAS NOT CAPTURABLE IN THE
18 SCREEN CAPTURE, BUT OVER TOWARD THE LEFT SIDE, THERE IS
19 A BIG BLACK RECTANGLE INSIDE THE REAL PLAYER WINDOW.
20 WHAT WAS DISPLAYED IN THERE WAS A STREAM FROM THE
21 WEATHER CHANNEL. THERE WAS A MAN STANDING IN FRONT OF A
22 WEATHER MAP AND POINTING AND TALKING ABOUT THE WEATHER.
23 THIS WAS THE WEEKLY PLANNER FROM THE WEATHER CHANNEL
24 FROM THAT WEEK THAT I WAS WATCHING. SO THIS,
25 ESSENTIALLY IT'S TELEVISION CONTENT THAT IS INSIDE THAT

1 WINDOW.

2 Q. HOW DOES THE PROCESS FOR VIEWING VIDEO COMPARE
3 TO THE PROCESS FOR LISTENING TO AUDIO?

4 A. PRETTY MUCH THE SAME THING. I WENT TO THE
5 WEATHER CHANNEL SITE, IF I REMEMBER CORRECTLY, AND I
6 CLICKED ON THE LINK TO GET THIS TO START. ALTERNATIVELY
7 I CAN START UP THE REAL PLAYER PROGRAM AND I CAN USE IT
8 TO FIND CONTENT. I CAN NAVIGATE THROUGH THEIR MENUS AND
9 SO ON, AND SAY I WANT TO WATCH THE WEATHER CHANNEL, THIS
10 WILL START STREAMING.

11 Q. NOW, ALL OF THE EXAMPLES YOU HAVE GIVEN US
12 INVOLVED REAL PLAYER. YOU MENTIONED EARLIER THAT THERE
13 ARE OTHER STREAMING PROGRAMS AVAILABLE. HOW DO THEY
14 COMPARE?

15 A. THEY PROVIDE PRETTY SIMILAR FUNCTIONALITY. THEY
16 GENERALLY ALLOW YOU TO STREAM VIDEO AND AUDIO IN A
17 NUMBER OF DIFFERENT FORMATS FROM A WIDE RANGE OF SITES.

18 Q. AS A COMPUTER SCIENTIST, DO YOU CONSIDER
19 COMMUNICATION THROUGH STREAMING VIDEO AND AUDIO TO BE BY
20 MEANS OF THE WORLDWIDE WEB?

21 A. NO.

22 Q. WHY NOT?

23 A. BECAUSE THE PROTOCOLS THAT IT USES ARE NOT HTTP
24 OR SUCCESSOR PROTOCOLS. THESE SYSTEMS USE PROTOCOLS
25 THAT ARE SPECIALIZED FOR STREAMING OF AUDIO OR VIDEO.

1 Q. DIDN'T YOU HAVE TO ACCESS THE CONTENT BY GOING
2 TO A WEB PAGE?

3 A. NO. THERE ARE DIFFERENT WAYS I CAN FIND THE
4 CONTENT AND GET TO IT. ONE WAY TO DO IT IS TO USE THE
5 BROWSER THE WAY I DID. YOU CAN THINK OF THAT AS BEING
6 LIKE USING THE T.V. GUIDE TO FIND A PROGRAM. THE
7 BROWSER, THE WEB PAGE, IS LIKE THE TV GUIDE, AND THIS
8 REAL PLAYER IS LIKE THE TV ON WHICH I'M WATCHING THE
9 CONTENT. YOU CAN, IF YOU WANT, USE THE TV GUIDE TO FIND
10 THE CONTENT, OR, IF YOU PREFER, YOU CAN JUST START UP
11 THE TV. I CAN OPEN UP THE REAL PLAYER PROGRAM AND
12 EITHER TYPE INTO IT THE LOCATION OF THE THING I WANT TO
13 WATCH, REAL PLAYER GIVES ME A SET OF MENUS I CAN
14 NAVIGATE THROUGH WHERE THEY HAVE DIFFERENT CONTENT I CAN
15 SEE OR I CAN TELL IT TO GO BACK TO SOMETHING THAT I HAVE
16 SEEN BEFORE. ONCE I HAVE BEEN TO WHYY, I CAN GO TO REAL
17 PLAYER, I CAN SAY, SHOW ME WHAT I HAVE SEEN RECENTLY. I
18 GET A LIST AND IF I CLICK WHYY ON THAT LIST, IT WILL
19 PLAY ME THAT STATION AGAIN.

20 SO THERE ARE LOTS OF DIFFERENT WAYS THAT
21 I COULD FIND SOMETHING TO WATCH OR LISTEN TO. NOT ONLY
22 -- BY USING MY BROWSER.

23 Q. NOW, IN THE EXAMPLES THAT YOU HAVE GIVEN US,
24 STREAMING VIDEO AND AUDIO CONTENT POPPED UP IN THESE
25 SEPARATE BOXES. ARE THERE OTHER WAYS IT CAN BE

1 DISPLAYED?

2 A. IT CAN BE DISPLAYED WITH A BROWSER WINDOW
3 WRAPPED AROUND IT BUT, IN THAT CASE, IT'S STILL BEING
4 DISPLAYED BY REAL PLAYER, BY A SEPARATE PROGRAM.

5 Q. AND WHEN STREAMING VIDEO OR AUDIO, OR STREAMING
6 VIDEO RATHER, IS DISPLAYED WITHIN A WEB BROWSER, IS IT
7 BY MEANS OF THE WORLDWIDE WEB?

8 A. NO, IT IS NOT.

9 Q. WHY NOT?

10 A. BECAUSE AS IN THE CASE YOU SEE HERE, IT IS NOT
11 BEING MADE, IT IS NOT ACCESSIBLE VIA HTTP OR A SUCCESSOR
12 PROTOCOL. IT IS USING ANOTHER PROTOCOL WHICH IS
13 DESIGNED FOR STREAMING RATHER THAN HTTP OR SUCCESSOR
14 PROTOCOL. THEREFORE, IT DOES NOT MEET THE DEFINITION OF
15 BY MEANS OF THE WORLDWIDE WEB.

16 Q. WHAT IS THE QUANTITY OF COMMUNICATION THAT
17 OCCURS THROUGH STREAMING?

18 A. IT'S VERY LARGE. THERE ARE A GREAT MANY RADIO
19 STATIONS THAT BROADCAST THEIR MATERIAL THIS WAY. YOU
20 CAN LISTEN TO AND WATCH SPORTS EVENTS. SOME OF THE
21 MAJOR T.V. NETWORKS MAKE THEIR SHOWS AVAILABLE VIA
22 STREAMING. YOU CAN WATCH LOST AND DESPERATE HOUSEWIVES
23 THE MORNING AFTER THE SHOWS ARE ON VIA STREAMING FOR
24 EXAMPLE AND ARE ALSO A SPECIALIZED WEBSITES LIKE
25 YOU-TUBE THAT LETS ANYONE UPLOAD A FILE AND MAKE IT

1 AVAILABLE VIA STREAMING. YOU-TUBE HAS HUGE NUMBERS,
2 HUNDREDS OF THOUSANDS OF VIDEOS CONTRIBUTED BY USERS AND
3 IT'S VERY WIDELY USED. IT'S REPORTEDLY ONE OF THE MOST
4 POPULAR SITES ON THE WEB. THE YOU-TUBE COMPANY GOT SOLD
5 FOR ABOUT \$1.6 BILLION.

6 Q. THE VIDEOS ON YOU-TUBE, ARE THOSE BY MEANS OF
7 THE WORLDWIDE WEB?

8 A. NO, BECAUSE THEY ARE DISTRIBUTED BY STREAMING.

9 Q. CAN MINORS USE THE MEANS OF COMMUNICATION WE
10 DISCUSSED?

11 A. YES, ALL OF THEM. THERE IS NOTHING INHERENT IN
12 THESE PROGRAMS THAT PREVENTS A MINOR FROM USING IT. THE
13 ONLY THING THAT WOULD STOP A MINOR FROM USING THESE
14 PARTICULAR PROGRAMS TO GET TO CONTENT WOULD BE FILTERS.

15 Q. AND ARE THERE ANY TECHNICAL BARRIERS TO SEXUALLY
16 EXPLICIT CONTENT BEING COMMUNICATED THROUGH THE
17 TECHNOLOGIES WE DISCUSSED?

18 A. NO. THESE TECHNOLOGIES DELIVER ALL DIFFERENT
19 TYPES OF CONTENT. THESE VIDEO PLAYERS CAN DELIVER AND
20 DISPLAY ALL DIFFERENT KINDS OF VIDEOS. AGAIN, IT IS
21 ONLY FILTERING THAT WOULD STAND IN THE WAY OF A MINOR
22 GETTING ACCESS TO ANY KIND OF CONTENT VIA THESE
23 TECHNOLOGIES.

24 MS. CRUMP: YOUR HONOR I SEE THAT IT IS
25 ABOUT 4:30. I'M ABOUT TO SWITCH TOPICS. I'M HAPPY TO

1 KEEP GOING, IF THAT IS WHAT YOU WOULD LIKE. I
2 UNDERSTAND THAT THIS IS ABOUT THE TIME THAT YOU INTENDED
3 TO STOP FOR THE DAY.

4 THE COURT: YOU SHOULD STOP EVERY DAY AT
5 THIS TIME. WILL DR. FELTEN BE ABLE TO COME BACK
6 TOMORROW MORNING?

7 THE WITNESS: YES.

8 THE COURT: THE COURT DAY WILL END SOON
9 BUT, FOR THE TIME BEING, THE TRIAL IS IN RECESS UNTIL
10 TOMORROW MORNING AT 9:30. DR. FELTEN IS EXCUSED UNTIL
11 THAT TIME AND COUNSEL WILL REMAIN HERE TO CONFER WITH
12 THE COURT. WE REMAIN ON THE RECORD.

13 (WITNESS EXCUSED.)

14 THE COURT: SIR, YOU ARE WELCOME TO BE
15 SEATED.

16 JUST BY REASON OF THE FACT THAT I HAVE
17 THESE PAPERS IN FRONT OF ME, TOMORROW AFTERNOON AT 1:30,
18 WE ARE GOING TO HAVE A HEARING ON THIRD PARTIES WHO WANT
19 TO ASSERT THEIR RIGHTS UNDER THE PROTECTIVE ORDER. AND
20 THEY HAVE GIVEN NOTICE TO COUNSEL, THOMAS FINARELLI,
21 F-I-N-A-R-E-L-L-I, ATTORNEY FOR THIRD-PARTY CHOICEPOINT,
22 WHO HAS FILED AN EMERGENCY MOTION. WE HAVE NOTIFIED
23 STEPHEN BLACKHURST, B-L-A-C-K-H-U-R-S-T, ATTORNEY FOR
24 THIRD-PARTY RULESPACE, R-U-L-E-S-P-A-C-E, SORRY,
25 R-U-L-E-S-P-A-C-E, ALL ONE WORD, LLC, THE THIRD PARTY

1 THAT GIVE TESTIMONY.

2 AND I FIND IT PERPLEXING THAT NEITHER
3 PARTY, PARTICULARLY THE PLAINTIFF, WHO WANTS TO OFFER
4 THESE TRANSCRIPTS, PURPORTS TO SAY THEY TAKE NO POSITION
5 ON THEM, ATTEMPT TO PROTECT THIS MATERIAL.

6 WHAT HAPPENS WHEN THAT OCCURS IS, IF
7 THERE IS A PROBLEM, NO ONE IS BRINGING IT TO MY
8 ATTENTION EXCEPT THE PERSON WHO WANTS THE PROTECTION.
9 AND WE DON'T HAVE ANY -- ASSUMING I CAN FIGURE OUT
10 WHETHER THEY ARE SUBJECT TO THE -- NOT SUBJECT TO BUT
11 WITHIN THE INTENDED DEFINITION OF THE PROTECTIVE ORDER,
12 WE HAVE A PROBLEM ABOUT SEALING TESTIMONY IN OPEN COURT.
13 WE CAN SEAL DOCUMENTS, ASSUMING THEY ARE ENTITLED TO BE
14 SEALED, SO-TO-SPEAK, BUT I HAVE NO METHODOLOGIES TO KEEP
15 THE MATERIAL FROM BEING PRESENTED IN OPEN COURT.
16 BECAUSE THE SAME RULE APPLIES. THE COURTROOM IS OPEN.
17 THE SAME RULES APPLY TO THE REST OF THE CASE. IT IS A
18 PUBLIC PROCEEDING. MAYBE WE WILL FIND OUT TOMORROW
19 AFTERNOON WHAT THE PETITIONERS WANT THE COURT TO DO.

20 MR. HANSEN: I HOPE THAT IS POSSIBLE,
21 YOUR HONOR. AND I ACTUALLY HAVE SOME OPTIMISM THAT IF
22 WE GOT THE CHOICEPOINT LAWYERS AND THE OTHER LAWYERS IN
23 THE ROOM, MAYBE WE CAN WORK OUT MOST, IF NOT ALL, OF THE
24 PROBLEMS.

25 THE COURT: BUT SOMEHOW RULESPACE HAS TO

1 GET A LAWYER IN PHILADELPHIA, OR SOMEBODY HAS TO FLY
2 HERE FROM OREGON, ONE OR THE OTHER. WE HAVE NO ENTRY OF
3 APPEARANCE, AS OF EARLIER TODAY, FROM ANYBODY ON BEHALF
4 OF RULESPACE. THE COURT WILL ACCEPT FILINGS FROM
5 ANYBODY.

6 MR. HANSEN: YOUR HONOR, WE HAVE BEEN IN
7 COMMUNICATION WITH THE RULESPACE LAWYERS AND WE ARE
8 TRYING TO WORK IT OUT, FIRST, AMONGST OURSELVES. WE MAY
9 BE ABLE TO DO THAT. IF SO, WE CAN ADVISE THE COURT IN
10 THE MORNING.

11 THE COURT: WHAT ARE YOU DOING WITH
12 RESPECT TO CHOICEPOINT?

13 MR. HANSEN: RATHER THAN HAVE MR. VAN
14 KWAWEGEN WHISPER IN MY EAR, MAYBE I CAN HAVE HIM ADDRESS
15 IT.

16 THE COURT: IDENTIFY YOURSELF FOR THE
17 RECORD.

18 MR. VAN KWAWEGEN: JEROEN VAN KWAWEGEN,
19 J-E-R-O-E-N, V-A-N K-W-A-W-E-G-E-N, FOR PLAINTIFFS.

20 YOUR HONOR, WE SPOKE BOTH WITH -- I
21 PERSONALLY SPOKE WITH RULESPACE COUNSEL, AND WE HAVE
22 DISCUSSED THE DIFFICULTY OF PRESENTING DEPOSITION
23 DESIGNATIONS THAT THEY OBJECT TO. I'M VERY OPTIMISTIC
24 THAT WE CAN RESOLVE ANY ISSUES. IT WAS A VERY
25 CONSTRUCTIVE CONVERSATION. AND I THINK, AS MR. HANSEN

1 JUST INDICATED, WE CAN GIVE YOU A BETTER UPDATE
2 TOMORROW.

3 WITH REGARD TO CHOICEPOINT, MY COLLEAGUES
4 IN NEW YORK ACTUALLY SPOKE DIRECTLY WITH THEM. AND THEY
5 HAVE REPORTED BACK TO ME THAT CHOICEPOINT HAD AN
6 OBJECTION WITH REGARD TO ONE OF THE DOCUMENTS THAT WE
7 MAY BE USING. AND WE HAVE RESOLVED THAT POINT BY NOT
8 USING THAT DOCUMENT. THERE IS A REMAINING ISSUE WITH
9 REGARD TO THE DEPOSITION DESIGNATIONS WITH REGARD TO
10 CHOICEPOINT THAT HAVE NOT YET BEEN RESOLVED. I'M LESS
11 OPTIMISTIC, QUITE FRANKLY, THAT WE WILL BE ABLE TO
12 RESOLVE THOSE BEFORE TOMORROW.

13 THE COURT: THANK YOU VERY MUCH. WHAT
14 ARE THE OPTIONS FOR DEALING WITH -- WHAT ARE THE OPTIONS
15 FOR USING THE TRANSCRIPT JUST TO REDACT IT, BUT THE
16 GOVERNMENT MAY NOT WANT TO REDACT THE INFORMATION, SO WE
17 HAVE ANOTHER PARTY TO CONSIDER.

18 MR. HANSEN: WELL, THE OTHER OPTION THAT
19 OCCURS TO ME, YOUR HONOR, THE DEPOSITION DESIGNATIONS
20 ARE THEMSELVES DOCUMENTS. WE COULD CONCEIVABLY, RATHER
21 THAN SIMPLY READ THEM OUT LOUD IN COURT, WE COULD TREAT
22 THEM AS DOCUMENTS AND HAVE THEM SUBMITTED AS EXHIBITS
23 AND HAVE THEM SUBMITTED UNDER SEAL.

24 THE COURT: SURE. IT MAY NOT BE THE MOST
25 HELPFUL TO ME, AS A FACT-FINDER. I WOULD LIKE TO HEAR

1 THE TESTIMONY. BUT IT'S CERTAINLY AN OPTION. DO YOU
2 EXPECT PROFESSOR FELTEN TO TAKE AT LEAST A HALF-DAY
3 TOMORROW?

4 MR. HANSEN: NO, YOUR HONOR, WE DON'T. I
5 SUSPECT PROFESSOR FELTEN WILL BE, AT MOST, ANOTHER HOUR
6 TOMORROW.

7 THE COURT: WITH CROSS OR?

8 MR. HANSEN: PROBABLY, NO. LET ME ASK
9 MISS CRUMP TO ADDRESS THAT, YOUR HONOR, IF I MIGHT.

10 MS. CRUMP: I THINK THE GOVERNMENT MAY --

11 MR. MCELVAIN: WE DON'T ANTICIPATE A VERY
12 LENGTHY CROSS EXAMINATION.

13 THE COURT: WILL YOU FINISH BEFORE 12:30?
14 DON'T WE HAVE A TRANSCRIPT FROM SOMEBODY ELSE TO READ?

15 MR. HANSEN: WE HAVE ANOTHER WITNESS,
16 YOUR HONOR, FOR TOMORROW. MR. RUSSO IS SCHEDULED TO
17 TESTIFY TOMORROW AND MR. RUSSO IS AVAILABLE AND READY TO
18 TESTIFY. AND IT MIGHT BE CONSISTENT -- WITH WHAT I
19 UNDERSTAND YOUR HONOR'S PROPOSAL TO BE, THIS MIGHT BE AN
20 APPROPRIATE TIME FOR US TO IDENTIFY THE EXHIBITS THAT WE
21 INTEND TO USE THROUGH MR. RUSSO SO THAT THE GOVERNMENT
22 IS AWARE OF THEM.

23 THE COURT: SURE.

24 ALSO, IF WE GET TO MR. RUSSO BEFORE
25 12:30, WE MAY MOVE ALONG QUICKLY AT 1:30 AND BE READY TO

1 GO BACK TO TESTIMONY WITHIN AN HOUR OR LESS. WHO KNOWS.

2 MR. HANSEN: WE DO HAVE AT LEAST ONE
3 DEPOSITION DESIGNATION TRANSCRIPT THAT I THINK WE WORKED
4 OUT ALL THE PROBLEMS ON, AND WE COULD START READING
5 THAT, AS WELL, IF WE NEEDED BECAUSE OF THE TIME.

6 THE COURT: LET'S TALK ABOUT THE EXHIBITS
7 WITH MR. RUSSO.

8 MR. VAN KWAWEGEN: YOUR HONOR, WE WILL BE
9 USING THE FOLLOWING EXHIBITS FOR MR. RUSSO TOMORROW.
10 ONE ISSUE THAT WE WOULD LIKE TO ADDRESS WITH THE COURT
11 IS THAT SOME OF THESE EXHIBITS ARE EXPLICIT. AND
12 CONSISTENT WITH THE PRIOR PRACTICE, WHAT WE WOULD INTEND
13 TO DO IS PROVIDE THESE EXHIBITS OR AT LEAST REFERENCE
14 THOSE EXHIBITS, BECAUSE THEY HAVE ALREADY BEEN PROVIDED
15 TO BOTH YOUR HONOR AND THE GOVERNMENT. WE WOULD HAVE
16 MR. RUSSO DESCRIBE THEM RATHER THAN SHOW THEM ON THE
17 DISPLAY.

18 PLAINTIFFS INTEND TO USE THE FOLLOWING
19 EXHIBITS. PLAINTIFFS' EXHIBIT 24, PLAINTIFFS' EXHIBIT
20 25, PLAINTIFFS' EXHIBIT 74, PLAINTIFFS' EXHIBIT 75,
21 PLAINTIFFS' EXHIBIT 76, PLAINTIFFS' EXHIBIT 77,
22 PLAINTIFFS' EXHIBIT 78, PLAINTIFFS' EXHIBIT 79,
23 PLAINTIFFS' EXHIBIT 80, PLAINTIFFS' EXHIBIT 106,
24 PLAINTIFFS' EXHIBIT 107, PLAINTIFFS' EXHIBIT 111,
25 PLAINTIFFS' EXHIBIT 112, PLAINTIFFS' EXHIBITS 113 AND

1 PLAINTIFFS' EXHIBIT 114.

2 YOUR HONOR, THE FINAL FOUR PLAINTIFFS'
3 EXHIBITS, 111 THROUGH 114, ARE SELECT SCREEN SHOTS THAT
4 WERE PROVIDED TO BOTH THE COURT AND DEFENDANT ON A DVD.
5 AND WE ARE NOT INTENDING TO USE ALL THE SCREEN SHOTS.
6 AND I'M HAPPY TO TELL THE GOVERNMENT LATER EXACTLY WHICH
7 ONES WE ARE GOING TO USE.

8 THE COURT: THEY ARE ALL IN EXHIBITS 111
9 THROUGH 114?

10 MR. VAN KWAWEGEN: YES, YOUR HONOR.

11 THE COURT: AND I GATHER EACH EXHIBIT
12 CONTAINS MORE THAN ONE SCREEN SHOT?

13 MR. VAN KWAWEGEN: THAT'S CORRECT, YOUR
14 HONOR.

15 THE COURT: OKAY.

16 MR. VAN KWAWEGEN: IF I MAY CONTINUE?

17 THE COURT: CAN YOU THINK OF ANYTHING
18 ELSE?

19 MR. VAN KWAWEGEN: ON THE DEPOSITION
20 DESIGNATIONS, WE HAVE NOT YET HAD A CHANCE TO CONFER
21 AMONG COUNSEL TO RESOLVE ANY OUTSTANDING ISSUES. THE
22 DEPOSITION DESIGNATION THAT WE BELIEVE WOULD BE READY TO
23 BE READ INTO THE RECORD TOMORROW IS THE DEPOSITION OF
24 JAMES RYAN OF CINGULAR. THE REASON FOR THAT IS THAT
25 THERE ARE ONLY DESIGNATIONS BY PLAINTIFFS AND

1 COUNTERDESIGNATIONS OF DEFENDANT. THERE ARE NO
2 OBJECTIONS TO ANY DESIGNATIONS. THERE ARE NO COUNTER
3 COUNTERDESIGNATIONS AND, THEREFORE, WE BELIEVE THAT MR.
4 RYAN'S DEPOSITION TRANSCRIPT CAN BE READ.

5 THE COURT: ARE THERE ANY OBJECTIONS TO
6 THE COUNTERDESIGNATIONS, OBJECTIONS BY PLAINTIFFS?

7 MR. VAN KWAWEGEN: THERE ARE NOT, YOUR
8 HONOR.

9 THE COURT: THAT IS ONE I DON'T HAVE TO
10 WORK ON.

11 MR. VAN KWAWEGEN: EXACTLY.

12 THE COURT: I GATHER, WITHOUT OVERWORKING
13 IT, THAT WITHIN AVAILABLE TIME, KEEPING IN MIND THE
14 PLAINTIFFS' WITNESS SCHEDULES, YOU ARE GOING TO WORK ON
15 SUCH THIRD-PARTY DEPOSITIONS AS ARE NECESSARY TO BRING
16 THEM BEFORE THE COURT WITH THE OBJECTIONS ALL WORKED
17 OUT, OR TASK THE COURT WITH DEALING WITH THOSE
18 OBJECTIONS. SO I'M NOT GOING TO REVIEW AND USE THE
19 BEAUTIFUL COLOR CODED DISK I HAVE, AND LOVELY INDEED,
20 UNTIL I'M TOLD THAT THERE IS SOMETHING TO DO. BUT I'M
21 READY TO GO.

22 MR. VAN KWAWEGEN: THANK YOU, YOUR HONOR.

23 MR. HANSEN: I HAVE ONE MORE THING, YOUR
24 HONOR. I WOULD LIKE TO INTRODUCE TO THE COURT AN
25 ADDITIONAL MEMBER OF THE PLAINTIFFS' LEGAL TEAM,

1 STEPHANIE LOUGHLIN, WHO IS ASSOCIATED WITH THE LAW FIRM
2 OF LATHAM & WATKINS AND HAS PROVIDED ENORMOUS ASSISTANCE
3 TO US ON THE CASE.

4 THE COURT: GOOD AFTERNOON. NICE TO MEET
5 YOU IN PERSON. SIGNATURES FLY AROUND THIS CASE LIKE
6 GRAPES IN A VINEYARD.

7 MR. GOMEZ, DO YOU HAVE ANYTHING TO BRING
8 TO THE ATTENTION OF THE COURT?

9 MR. MCELVAIN?

10 MR. GOMEZ: NO, YOUR HONOR.

11 THE COURT: THEN WE WILL BE HERE TOMORROW
12 MORNING AT 9:30 WITH BELLS ON, RIGHT, THE OLD-FASHIONED
13 WAY.

14 HOLD IT.

15 STAY ON THE RECORD, PLEASE.

16 WILL COUNSEL PAY ATTENTION TO THIS
17 CONCERN THAT I HAVE. I HAVE BEFORE ME THE PAPERS,
18 INCLUDING THE STIPULATION, IN THE MASTER CARD MATTER,
19 SIGNED BY BOTH PARTIES. AND THE EXHIBIT STIPULATED TO
20 BE REPLACED WITH AN ATTACHED VERSION, WHICH IS A LENGTHY
21 DOCUMENT, WHICH I DID NOT PRINT OUT. IT IS IDENTIFIED
22 IN THE STIPULATION AS MASTER CARD EXHIBIT 2. THAT DOES
23 NOT MEAN ANYTHING TO THIS RECORD. THAT IS PROBABLY A
24 DEPOSITION DESIGNATION, IF THAT. WHATEVER IT MAY BE.
25 SO THE STIPULATION REALLY DOESN'T HAVE THE RIGHT ITEM IN

1 IT.

2 MR. HANSEN: I BELIEVE --

3 THE COURT: IF IT IS A TRIAL EXHIBIT,
4 THEN WE SHOULD KNOW WHAT IT IS. OR IF THERE IS A NEW
5 EXHIBIT, YOU ADD IT AT THE END.

6 MR. HANSEN: IT WILL COME UP, THE MASTER
7 CARD, THERE ARE DEPOSITION DESIGNATIONS FOR MASTER CARD.
8 IT WILL COME UP DURING THAT POINT. WE CAN LIST THOSE AS
9 A SEPARATE EXHIBIT, IF THAT WOULD BE PREFERABLE TO THE
10 COURT.

11 THE COURT: WILL IT BE -- ONE EXHIBIT
12 WILL BE THE TRANSCRIPT WITH ATTACHED DEPOSITION
13 EXHIBITS?

14 MR. HANSEN: THAT WOULD BE MY SUGGESTION
15 AS WELL, YOUR HONOR, YES.

16 THE COURT: WE DON'T YET KNOW WHAT THAT
17 EXHIBIT NUMBER WILL BE?

18 MR. HANSEN: NO. BUT WE WILL REFERENCE
19 IT AT THE TIME WHEN WE DO THE OUT LOUD READING OF THE
20 DEPOSITION.

21 THE COURT: IF YOU BRING IT TO MY
22 ATTENTION, THE STIPULATION AT THAT TIME, THEN I WILL PUT
23 THE EXHIBIT NUMBER IN THE DOCUMENT BEFORE I SIGN THE
24 ORDER. THEN WE WILL HAVE IT.

25 MR. HANSEN: THAT WILL BE FINE, YOUR

1 HONOR.

2 THE COURT: YOU CAN PLAN ON THAT. I'M
3 GOING TO APPROVE THE STIPULATION BECAUSE THE PARTIES
4 HAVE. SO WE WILL WORK IT THAT WAY. ALL RIGHT.

5 THANK YOU FOR YOUR ATTENTION TODAY. WE
6 HAD A SUCCESSFUL SECOND DAY. MAYBE THERE WILL BE MORE.

7 THE PROCEEDINGS FOR TODAY ARE CONCLUDED.
8 WE ARE OFF THE RECORD. COUNSEL ARE EXCUSED. HAVE A
9 PLEASANT EVENING.

10 (COURT ADJOURNED AT 4:45 P.M.)

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16 I CERTIFY THAT THE FOREGOING IS A CORRECT
17 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
18 ABOVE-ENTITLED MATTER.

19

20

21

22 DATE

OFFICIAL COURT REPORTER

23

24

25

1		I-N-D-E-X			
2	PLAINTIFF WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	LORRIE FAITH CRANOR	5,125	110,135	167	172
4	EDWARD W. FELTEN	180			
5					
6	PLAINTIFFS' EXHIBITS			RECEIVED	
7	P 87			12	
8	P 86			39	
9	P 3			59	
10	P 6			105	
11	P 54			105	
12	P 11			124	
13	P 85			134	
14	P 12			186	
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