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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN CIVIL LIBERTIES : CIVIL ACTION  
UNION, ET AL :  
 :  
PLAINTIFF :  
 :  
 :  
VS. :  
 :  
 :  
ALBERTO R. GONZALES, :  
IN HIS OFFICIAL CAPACITY AS :  
ATTORNEY GENERAL OF THE :  
UNITED STATES :  
 :  
DEFENDANT : NO. 98-05591

WEDNESDAY, OCTOBER 25, 2006  
COURTROOM 17-A  
PHILADELPHIA, PA 19106

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BEFORE THE HONORABLE LOWELL A. REED, JR. SJ

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NON-JURY TRIAL  
DAY 3

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APPEARANCES:

CHRISTOPHER A. HANSEN, ESQUIRE  
ADEN J. FINE, ESQUIRE  
BEN WIZNER, ESQUIRE  
CATHERINE CRUMP, ESQUIRE  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
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FOR THE PLAINTIFFS

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PROCEEDINGS RECORDED BY STENOGRAPHY-COMPUTER,  
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

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FOR THE DEFENDANT

24

25

1 THE COURT: GOOD MORNING.

2 ALL COUNSEL: GOOD MORNING.

3 THE COURT: YOU ARE WELCOME TO BE SEATED.

4 WE HAD BEEN TALKING, MY STAFF AND I, ABOUT THE DARKNESS  
5 OF THAT STAIRWAY. THE STEPS ARE DECEPTIVE AND I DID NOT  
6 PAY CLOSE ATTENTION TO THAT PROBLEM.

7 GOOD MORNING, MISS WHITE.

8 THE COURT REPORTER: GOOD MORNING.

9 THE COURT: DR. FELTEN, YOU ARE WELCOME  
10 TO COME UP, SIR. YOU REMAIN UNDER OATH AND PLEASE BE  
11 SEATED. GOOD MORNING.

12 THE WITNESS: GOOD MORNING.

13 (MR. FELTEN RETAKES THE STAND.

14 THE COURT: MISS CRUMP.

15 MS. CRUMP: GOOD MORNING, YOUR HONOR.

16 THE COURT: GOOD MORNING.

17 MS. CRUMP: MR. FELTEN.

18 THE WITNESS: GOOD MORNING.

19 MS. CRUMP: BEFORE WE RESUME QUESTIONING  
20 PROFESSOR FELTEN, I WANTED TO LET YOU KNOW THAT OVER THE  
21 EVENING AND THIS MORNING PLAINTIFFS, DEFENDANTS AND  
22 RULESPACE MANAGED TO NEGOTIATE AN AGREEMENT REGARDING  
23 CONFIDENTIALITY AT LEAST AS TO PROFESSOR FELTEN'S  
24 REPORTS. OUR AGREEMENT IS THAT WE WILL SUBMIT INTO  
25 EVIDENCE PROFESSOR FELTEN'S PRINCIPAL REPORT IN FULL AND

1 HIS REBUTTAL REPORT WITH FOUR WORDS REDACTED. WE DON'T  
2 HAVE A REDACTED VERSION READY TODAY BUT ANTICIPATE  
3 FILING THAT LATER?

4 THE COURT: HAS THIS PROPOSAL BEEN SHARED  
5 WITH THE DEFENDANT?

6 MS. CRUMP: YES.

7 MR. MCELVAIN: THAT'S CORRECT. NO  
8 OBJECTION TO THE LATER SUBMISSION OF THE REDACTED REPORT  
9 AS DESCRIBED.

10 THE COURT: LET'S SUBMIT THE MAIN REPORT  
11 AND THE REDACTED REPORT AT THE SAME TIME SO WE DON'T  
12 HAVE BITS AND PIECES.

13 MS. CRUMP: YES, YOUR HONOR.

14 THE COURT: WHAT EXHIBIT NUMBER IS THAT,  
15 BY THE WAY?

16 MS. CRUMP: THAT IS PLAINTIFFS' EXHIBIT  
17 13.

18 THE COURT: THAT THIRD PARTY, THE NAME  
19 AGAIN?

20 MS. CRUMP: THE NAME IS RULESPACE.

21 THE COURT: THAT IS MR. BLACKHURST ON THE  
22 WEST COAST. HE LEFT A PHONE MESSAGE WITH US LAST NIGHT.  
23 PART OF WHICH HE SAID, IF THERE IS A HEARING ON  
24 WEDNESDAY AFTERNOON, CALL ME BY CELL PHONE. I DID NOT  
25 PANIC. I KNEW YOU WOULD WORK IT OUT. TECHNICALLY WHEN

1 YOU PUT THE FINAL AGREEMENT ON THE RECORD AND OFFER THE  
2 DOCUMENTS, I WILL THEREUPON RULE ON THE MOTION FOR  
3 PROTECTIVE ORDER OF RULESPACE, BUT I WON'T DO IT YET  
4 BECAUSE WE HAVE NOT FINISHED. THAT IS HOUSEKEEPING FOR  
5 ME.

6 MS. CRUMP: THANKS, YOUR HONOR.

7 THE COURT: YOU MAY PROCEED.

8 MS. CRUMP: THANK YOU.

9 CONTINUED DIRECT EXAMINATION

10 BY MS. CRUMP:

11 Q. PROFESSOR FELTEN, WHEN WE LEFT OFF YESTERDAY,  
12 YOU HAD BEEN EXPRESSING YOUR VIEWS ON WHETHER CERTAIN  
13 FORMS OF ONLINE COMMUNICATION WERE BY MEANS OF THE  
14 WORLDWIDE WEB. I WOULD LIKE TO CONTINUE WITH THAT  
15 CONVERSATION BY ASKING YOU, WHAT IS FTP?

16 A. FTP STANDS FOR FILE TRANSFER PROTOCOL, AND IT'S  
17 A PROTOCOL THAT IS OFTEN USED FOR DOWNLOADING  
18 INFORMATION ON THE INTERNET.

19 Q. IS FTP A SUCCESSOR PROTOCOL TO HTTP?

20 A. NO, IT IS NOT.

21 Q. WHY NOT?

22 A. IT FAILS TO MEET ALL THREE ARMS OF WHAT IS  
23 REQUIRED FOR SOMETHING TO BE A SUCCESSOR PROTOCOL. MOST  
24 NOTABLY IT WAS DESIGNED WELL BEFORE HTTP, ABOUT TWO  
25 DECADES EARLIER. HTTP DATES TO ABOUT 1991 AND FTP DATES

1 TO THE EARLY 1970S.

2 Q. PROFESSOR FELTEN, IS IT TECHNICALLY POSSIBLE FOR  
3 AN INDIVIDUAL TO CHANGE A WEBSITE FROM BEING DELIVERED  
4 IN HTTP TO BEING DELIVERED IN FTP?

5 A. YES.

6 Q. HOW EASY IS IT FOR WEBSITE OPERATORS TO MAKE  
7 THAT CHANGE?

8 A. IT'S RELATIVELY EASY FOR A WEBSITE OPERATOR TO  
9 EITHER DELIVER PARTS OF THEIR SITE BY FTP OR THE WHOLE  
10 SITE.

11 Q. PROFESSOR FELTEN, I UNDERSTAND THAT YOU HAVE  
12 PREPARED A NUMBER OF SLIDES.

13 THE COURT: EXCUSE ME FOR INTERRUPTING.  
14 IT SOUNDS VERY NEAT WHAT YOU JUST SAID, NICELY PACKAGED.  
15 I DON'T UNDERSTAND IT IN THE SENSE THAT CAN A WEBSITE  
16 OPERATOR CHANGE -- I DON'T KNOW WHAT CHANGE MEANS IN  
17 THIS SETTING. IT IS NOT AS BAD AS WE DON'T KNOW WHAT IT  
18 IS, BUT --

19 MS. CRUMP: I WILL TRY TO BE MORE CLEAR  
20 IN MY QUESTIONING.

21 THE COURT: THANK YOU.

22 BY MS. CRUMP:

23 Q. THE QUESTION I WAS TRYING TO ASK IS, LET'S  
24 ASSUME THERE IS A PARTICULAR WEB PAGE ON THE WEB THAT IS  
25 BEING DELIVERED -- BUT IS MADE AVAILABLE USING HTTP. IS

1 IT TECHNICALLY POSSIBLE FOR A WEBSITE OPERATOR TO MODIFY  
2 THE WEBSITE, SUCH THAT IT IS DELIVERED BY A DIFFERENT  
3 PROTOCOL USING FTP IN PLACE OF HTTP?

4 A. YES, IT'S TECHNICALLY POSSIBLE TO DELIVER A WEB  
5 PAGE VIA FTP RATHER THAN HTTP.

6 Q. I UNDERSTAND THAT YOU HAVE PREPARED SOME SLIDES  
7 ILLUSTRATING THIS POINT.

8 A. YES.

9 Q. I APOLOGIZE, BUT I INADVERTENTLY SPLIT UP THE  
10 SLIDES BETWEEN TWO DIFFERENT PLAINTIFFS' EXHIBITS. THE  
11 FIRST SLIDES ARE CONTAINED --

12 THE COURT: WHAT ARE THE EXHIBIT NUMBERS?

13 MS. CRUMP: THE FIRST SLIDES ARE  
14 CONTAINED IN PLAINTIFFS' EXHIBIT 119, WHICH IS THE  
15 EXHIBIT WE WERE GOING THROUGH YESTERDAY. I BELIEVE  
16 SPECIFICALLY THE RELEVANT SLIDES START ON PAGE 14.

17 THE COURT: GO AHEAD. I'M SORRY TO HOLD  
18 YOU UP.

19 BY MS. CRUMP:

20 Q. WHAT ARE WE SEEING ON THIS SLIDE?

21 A. WHAT WE SEE HERE IS A URL OR WEB ADDRESS. IN  
22 THIS CASE IT IS THE ADDRESS OF MY HOME PAGE AT PRINCETON  
23 UNIVERSITY.

24 Q. WHAT IS THE PURPOSE OF THE URL?

25 A. IT GIVES THE LOCATION OF A PAGE OR IT GIVES

1 -- IF YOU LIKE, IT TELLS A WEB BROWSER WHERE TO FIND A  
2 PAGE OR HOW TO GET A PAGE. SO YOU CAN THINK OF IT AS  
3 BEING THE INSTRUCTIONS FOR GETTING A PAGE. IF YOU  
4 PREFER, YOU CAN THINK OF IT BEING AN ADDRESS FOR THAT  
5 PAGE IN THE SAME WAY THAT A PHONE NUMBER IS INFORMATION  
6 ABOUT HOW TO GET A HOLD OF SOMEONE ON THE PHONE. THIS  
7 IS INFORMATION ABOUT HOW TO GET A HOLD OF A PARTICULAR  
8 WEB PAGE.

9 Q. DOES EVERY WEB PAGE HAVE AN ASSOCIATED URL?

10 A. YES.

11 Q. WHY DON'T WE TAKE A LOOK AT THAT SECOND SLIDE,  
12 WHICH IS PLAINTIFFS' EXHIBIT 119, PAGE 15. WHAT ARE WE  
13 SEEING HERE?

14 A. WHAT THIS DOES IS TAKES THAT URL OR WEB ADDRESS  
15 AND BREAKS IT DOWN INTO ITS PARTS AND EXPLAINS WHAT EACH  
16 PART IS SAYING. SO YOU CAN SEE HERE THAT THERE ARE  
17 THREE PARTS. ON THE LEFT IN BLUE THERE IS THE PART THAT  
18 SAYS HTTP AND THAT SPECIFIES -- THAT SAYS WHICH PROTOCOL  
19 YOU SHOULD USE OR WHICH PROTOCOL YOU CAN USE TO GET THE  
20 PAGE. THE SECOND PART, WHICH IS IN GREEN HERE --  
21 WWW.CS.PRINCETON.EDU. THAT SAYS WHICH COMPUTER ON THE  
22 INTERNET TO CONTACT TO GET THAT PAGE. AND THE THIRD  
23 PART, WHICH IS IN -- I GUESS THAT IS GRAY, SAYS WHICH  
24 PARTICULAR FILE TO ASK THAT SERVER FOR. SO THIS,  
25 ESSENTIALLY, IS A SET OF INSTRUCTIONS ABOUT HOW TO GET



1 THE PAGE. IT SAYS WHICH SERVER COMPUTER TO ASK. IT  
2 SAYS WHICH PROTOCOL TO USE TO TALK TO THAT SERVER  
3 COMPUTER AND IT SAYS WHICH FILE YOU SHOULD ASK THAT  
4 SERVER COMPUTER FOR. AND THIS, THIS PACKAGES TOGETHER  
5 ALL OF THE INFORMATION THAT A BROWSER NEEDS TO GET THAT  
6 FILE ACROSS THE INTERNET.

7 Q. NOW IN THIS PARTICULAR EXAMPLE, PROFESSOR  
8 FELTEN, I SEE THAT THE PROTOCOL TO USE IS HTTP. COULD  
9 YOU USE A DIFFERENT PROTOCOL?

10 A. YES. THE REASON THAT THAT FIELD, THAT PART OF  
11 THE URL THAT IS IN BLUE IS THERE IS TO ALLOW YOU TO  
12 SPECIFY WHATEVER PROTOCOL YOU WANT AND THERE ARE MANY  
13 PROTOCOLS YOU COULD USE INSTEAD, JUST BY PUTTING IN THE  
14 NAME OF THAT OTHER PROTOCOL THERE.

15 Q. ALL RIGHT. THANK YOU. I BELIEVE THE NEXT SLIDE  
16 IN YOUR PRESENTATION IS IN EXHIBIT 19 WHICH IS IN TAB 7  
17 OF THE BINDER THAT PLAINTIFFS PREPARED. I THINK IT  
18 MAKES SENSE TO START WITH PAGE 3 OF THAT EXHIBIT SO TO  
19 BE CLEAR, IT IS PLAINTIFFS' EXHIBIT 19, PAGE 3.

20 WHAT ARE WE SEEING HERE?

21 A. THIS IS MY HOME PAGE AT PRINCETON UNIVERSITY  
22 DISPLAYED IN A BROWSER WINDOW AND IT INCLUDES A BUNCH OF  
23 TEXT. IT INCLUDES A PHOTO THAT LOOKS AWFULLY PINK IN  
24 THIS COPY.

25 Q. WHERE IS THIS PAGE LOCATED?

1           A.           THIS PAGE IS LOCATED ON THE WEB SERVER OF  
2           COMPUTER SCIENCE DEPARTMENT AT PRINCETON.  PARTICULARLY  
3           NEAR THE TOP YOU CAN SEE WHAT IS HIGHLIGHTED IN YELLOW  
4           ON THE MONITOR.  YOU CAN SEE THE URL OR THE LOCATION OR  
5           ADDRESS OF THAT PAGE, WHICH IS THE SAME ONE THAT I  
6           SHOWED A MINUTE AGO.  THAT IS WHAT YOU HAVE TO TYPE INTO  
7           YOUR BROWSER IN ORDER TO GET IT TO VIEW MY HOME PAGE.

8           Q.           AND IS YOUR HOME PAGE IN THIS EXAMPLE MADE  
9           AVAILABLE BY MEANS OF THE WORLDWIDE WEB?

10          A.           YES, IT IS.  AT THIS POINT IN THE EXAMPLE, IT  
11          IS.

12          Q.           LET'S MOVE ON TO THE NEXT SLIDE.

13                        THE COURT:  PAGE PLEASE.

14          BY MS. CRUMP:

15          Q.           PLAINTIFFS' EXHIBIT 19, PAGE 4.

16                        THE COURT:  THANK YOU.

17          BY MS. CRUMP:

18          Q.           I SEE A NUMBER OF LINES OF TEXT HERE.  COULD YOU  
19          EXPLAIN WHAT WE ARE SEEING?

20          A.           SURE.  THIS IS -- IN ORDER TO DO THAT WE NEED TO  
21          GO UNDER THE HOOD OF THE BROWSER A LITTLE BIT.  NORMALLY  
22          YOU THINK ABOUT GETTING A WEB PAGE AND VIEWING IT AND  
23          YOU THINK ABOUT GETTING IT AND YOU THINK THAT WHAT YOU  
24          GET IS EXACTLY WHAT YOU SEE, BUT IN FACT THE WAY IT  
25          WORKS IS THAT THE BROWSER GETS NOT A PICTURE OF THE PAGE

1 BUT A SET OF INSTRUCTIONS FOR BUILDING THE PAGE. THE  
2 WEB SERVER PROVIDES SOMETHING CALLED AN HTML FILE, OF  
3 WHICH THIS IS AN EXAMPLE. THAT SAYS WHAT SHOULD BE  
4 DRAWN ONTO THE PAGE, A SET OF INSTRUCTIONS. THEN THE  
5 BROWSER FOLLOWS THOSE INSTRUCTIONS TO DISPLAY THE PAGE  
6 AND THERE ARE A BUNCH OF TECHNICAL REASONS WHY YOU SEND  
7 INSTRUCTIONS RATHER THAN A PICTURE OF THE PAGE, BUT THAT  
8 IS THE WAY IT IS TYPICALLY DONE.

9 Q. WHAT IS HTML?

10 A. THAT STANDS FOR HYPERTEXT MARKUP LANGUAGE AND  
11 IT'S A LANGUAGE THAT IS USED TO DESCRIBE HOW WEB PAGES  
12 SHOULD BE LAID OUT. IT IS COMMONLY USED FOR MOST WEB  
13 PAGES. MOST OF THE PAGES THAT YOU VIEW ON THE WEB ARE  
14 WRITTEN IN HTML AND DISPLAYED BY YOUR BROWSER BY  
15 FOLLOWING THE INSTRUCTIONS IN THE HTML.

16 Q. HOW DOES THE TEXT ON THIS PAGE RELATE TO THE  
17 IMAGE OF YOUR WEBSITE WE SAW ON THE PREVIOUS SLIDE?

18 A. THIS HERE IS THE HTML INSTRUCTONS FOR DRAWING MY  
19 HOME PAGE, WHAT WE SAW ON THE PREVIOUS PAGE. THIS IS  
20 WHAT YOUR WEB BROWSER WILL GET AND WILL FOLLOW THESE  
21 INSTRUCTIONS TO DRAW MY -- TO DRAW MY HOME PAGE. WE CAN  
22 GO, WE CAN LOOK AT THE PIECES OF THIS AND FIGURE OUT HOW  
23 THEY CORRESPOND, HOW THESE INSTRUCTIONS CORRESPOND TO  
24 WHAT YOU SEE WHEN YOU VIEW THE WEB PAGE.

25 Q. WHY DON'T WE DO THAT FOR MAYBE ONE OR TWO

1       EXAMPLES?

2       A.        SURE.

3                        UP NEAR THE TOP OF THIS HTML PAGE THERE  
4       ARE THREE LINES THAT START WITH -- STARTING WITH THE  
5       SECOND LINE WHERE IT SAYS TITLE AND THEN IT SAYS TITLE  
6       AND THEN BELOW THAT EDWARD W. FELTEN AND THEN /TITLE.  
7       WHAT THESE THREE LINES TOGETHER SAY IS THAT THE TITLE OF  
8       THIS WEB PAGE IS EDWARD W. FELTEN, WHICH MAKES SENSE  
9       BECAUSE IT IS MY HOME PAGE.  AND THE BROWSER KNOWS THAT  
10      WHEN IT SEES THIS, IT IS SUPPOSED TO PUT THAT TITLE UP  
11      AT THE TOP OF THE DISPLAY.  IF YOU LOOK AT THE WEB PAGE  
12      -- INDEED UP AT THE VERY TOP OF THE WEB PAGE IN BLUE, ON  
13      THE BLUE LINE, YOU SEE EDWARD W. FELTEN - MOZILLA  
14      FIREFOX.  MOZILLA FIREFOX IS THE NAME OF THE WEB BROWSER  
15      AND THE EDWARD W. FELTEN IS THE TITLE.  SO GOING BACK TO  
16      PAGE 4, AGAIN, THIS TITLE SECTION TELLS THE BROWSER THE  
17      TITLE OF THE WEB PAGE.  IF WE MOVE DOWN A LITTLE BIT,  
18      MAYBE ABOUT HALFWAY DOWN THERE IS A LINE THAT STARTS  
19      WITH H2 AND THEN PROFESSOR OF -- AND A COUPLE LINES  
20      BELOW THAT.  THIS IS THE PART OF MY WEB PAGE THAT SAYS  
21      PROFESSOR OF COMPUTER SCIENCE AND PUBLIC AFFAIRS.  YOU  
22      NOTICE THAT AROUND THE WORDS COMPUTER SCIENCE AND AROUND  
23      THE WORDS PUBLIC AFFAIRS, THERE IS A BUNCH OF TECHNICAL  
24      STUFF AND THAT IS WHAT CREATES THE LINKS THAT YOU CAN  
25      CLICK ON ON THE WEB PAGE, I WON'T GO INTO DETAIL WHAT

1 THAT SAYS, BUT YOU SEE THE WORDS PROFESSOR OF COMPUTER  
2 SCIENCE AND PUBLIC AFFAIRS APPEAR IN THIS HTML. THEY  
3 APPEAR IN WHAT IS CALLED AN H2, WHICH IS A HEADING SO  
4 THEY ARE DRAWN IN LARGER PRINT ON THE WEB PAGE.

5 IF I COULD POINT TO ONE MORE THING HERE.  
6 ABOUT TWO-THIRDS OF THE WAY DOWN, THERE'S A LINE THAT  
7 STARTS WITH IMG. AND WHAT THAT DOES IS IT TELLS THE  
8 BROWSER TO PUT AN IMAGE, A PICTURE ONTO THE WEB PAGE.  
9 IT IS THIS LINE THAT CAUSES MY PHOTO TO BE DISPLAYED ON  
10 THE WEB PAGE. THIS SAYS IMG, THAT IS SHORT FOR IMAGE.  
11 THAT SAYS THE BROWSER SHOULD DISPLAY AN IMAGE. SRC  
12 STANDS FOR SOURCE. IN OTHER WORDS, HERE IS THE SOURCE  
13 OF THAT IMAGE. AFTER SRC YOU SEE ANOTHER WEB ADDRESS,  
14 ANOTHER URL THAT STARTS WITH HTTP AND THEN ENDS IN  
15 EWF.JPG. THAT IS THE LOCATION OR THE WEB ADDRESS OF THE  
16 PHOTO. WHEN THE BROWSER SEES THIS LINE IT SAYS I NEED  
17 TO GO GET AN IMAGE FROM THAT LOCATION AND I'M GOING TO  
18 DISPLAY THE IMAGE IN THE WEB PAGE. THIS IS WHAT CAUSES  
19 MY PICTURE TO SHOW UP IN THE WEB PAGE.

20 Q. I THINK IT WOULD BE HELPFUL, COULD YOU BREAK  
21 DOWN THIS URL, OR THIS IMAGE SRC AND THEN HTTP. COULD  
22 YOU BREAK THAT DOWN JUST AS YOU DID WITH THE URL FOR  
23 YOUR HOME PAGE?

24 A. YES. SO THE URL THAT APPEARS AFTER SRC EQUALS  
25 -- IN QUOTES IT SAYS HTTP. THAT MEANS THAT THE IMAGE

1 SHOULD BE ACCESSED VIA THE HTTP PROTOCOL. AFTER THAT IT  
2 SAYS WWW.CS.PRINCETON.EDU. THAT SAYS THAT THE COMPUTER  
3 SERVER THAT IS CALLED BY THAT NAME IS THE ONE TO ASK TO  
4 GET THE IMAGE. SO NOW WE KNOW THAT WE WANT TO USE THE  
5 HTTP PROTOCOL, WE KNOW WHICH SERVER TO ASK, AND THEN THE  
6 REST OF IT SAYS, WHAT TO ASK THAT SERVER FOR. SO THE  
7 BROWSER WILL CONTACT THE SERVER AT WWW.CS.PRINCETON.EDU  
8 USING THE HTTP PROTOCOL AND IT WILL SAY PLEASE GIVE ME  
9 THE FILE THAT IS CALLED TILDE FELTEN/EWF.JPG. THE  
10 BROWSER WILL KNOW BECAUSE I -- IN THAT FILE I HAVE PUT  
11 MY PHOTO. AND SO WHEN THE BROWSER ASKS THE WEB SERVER  
12 FOR THAT FILE, THE WEB SERVER WILL PROVIDE THE PHOTO AND  
13 THEN THE BROWSER WILL GET THAT AND IT WILL DISPLAY IT  
14 WITHIN THE WEB PAGE. SO THIS URL HERE GIVES THE BROWSER  
15 INSTRUCTIONS FOR HOW TO GET THE PHOTO.

16 Q. IN THIS EXAMPLE, IS THE IMAGE OF YOU CONVEYED BY  
17 MEANS OF THE WORLDWIDE WEB?

18 A. YES, BECAUSE IT IS ACCESSIBLE TO THE PUBLIC AND  
19 IT IS DELIVERED VIA HTTP AND IT'S ON A COMPUTER  
20 SERVER-BASED FILE ARCHIVE. SO YES, IT IS DELIVERED BY  
21 MEANS OF THE WORLDWIDE WEB.

22 Q. WHY DON'T WE MOVE ON TO THE NEXT SLIDE WHICH IS  
23 PLAINTIFFS' EXHIBIT 19, PAGE 5. WHAT ARE WE SEEING  
24 HERE?

25 A. WELL, THIS ILLUSTRATES WHAT I HAVE TO DO TO

1 CHANGE THE WEB PAGE SO THAT THE IMAGE WILL BE DELIVERED  
2 BY FTP INSTEAD OF BY HTTP. WHAT IS UP AT THE TOP IS A  
3 LINE, THE LINE OF TEXT WE WERE JUST LOOKING AT IN THE  
4 HTML WHICH TELLS THE BROWSER TO USE HTTP ET CETERA TO  
5 GET THE IMAGE. IF I TAKE THAT LINE OUT AND WE PLACE IT  
6 WITH THE LINE THAT IS DOWN AT THE BOTTOM, THIS ALSO  
7 TELLS THE BROWSER GET AN IMAGE, BUT HERE IT SAYS -- IT  
8 TELLS THE BROWSER TO GET THE IMAGE BY FTP. YOU CAN TELL  
9 THAT BECAUSE THE URL, THE WEB ADDRESS, STARTS WITH FTP  
10 COLON RIGHT AFTER IMG SRC EQUALS, THEN THERE'S FTP  
11 COLON. THAT SAYS THAT THE PICTURE SHOULD BE RETRIEVED  
12 VIA THE FTP PROTOCOL. SO IF I MAKE THIS CHANGE, IF I  
13 SUBSTITUTE THE LINE ON THE BOTTOM HERE FOR THE LINE ON  
14 THE TOP IN MY WEB PAGE THAT WILL CAUSE THE IMAGE TO BE  
15 RETRIEVED BY FTP INSTEAD OF HTTP.

16 Q. ALL RIGHT. WHY DON'T WE MOVE ONTO THE NEXT  
17 SLIDE, PLAINTIFFS' EXHIBIT 19, PAGE 6. WHAT ARE WE  
18 SEEING IN THIS SLIDE?

19 A. WELL, THIS IS THE SAME HTML DESCRIPTION OF MY  
20 HOME PAGE THAT WE HAD BEFORE AFTER I MADE THAT CHANGE  
21 THAT I JUST DESCRIBED. IF YOU LOOK ABOUT THREE QUARTERS  
22 OF THE WAY DOWN YOU SEE A LINE THAT STARTS WITH IMG. IT  
23 HAS IN IT THAT FTP URL THAT TELLS THE BROWSER TO GET THE  
24 IMAGE BY FTP.

25 Q. PROFESSOR FELTEN, AT THIS POINT IN THE EXAMPLE,

1 IS THE PHOTOGRAPH OF YOU ON YOUR WEB SITE CONVEYED BY  
2 MEANS OF THE WORLDWIDE WEB?

3 A. NO, IT IS NOT BECAUSE IT USES THE FTP PROTOCOL,  
4 WHICH IS NEITHER HTTP NOR A SUCCESSOR TO HTTP. SO IT  
5 DOES NOT MEET THE DEFINITION OF BY MEANS OF THE  
6 WORLDWIDE WEB.

7 Q. AFTER YOU HAVE CONVERTED YOUR WEBSITE BY  
8 INSERTING THE NEW LINE REFERENCING FTP IN PLACE OF THE  
9 OLD LINE REFERENCING HTTP, HOW DOES YOUR WEBSITE LOOK  
10 DIFFERENT FROM ITS PREVIOUS VERSION?

11 A. NOT AT ALL. THE WEB PAGE LOOKS ABSOLUTELY  
12 IDENTICAL TO THE WAY IT LOOKED BEFORE. A USER WHO WAS  
13 JUST BROWSING COULD NOT TELL ANY DIFFERENCE.

14 Q. THANK YOU. IN THE EXAMPLE THAT WE HAVE JUST  
15 GONE THROUGH YOU CONVERTED AN IMAGE BEING CONVEYED IN  
16 HTTP TO BE CONVEYED IN FTP. COULD YOU HAVE DONE  
17 SOMETHING SIMILAR FOR ANOTHER TYPE OF FILE, FOR EXAMPLE,  
18 A VIDEO?

19 A. YES. I COULD HAVE TAKEN A VIDEO THAT WAS  
20 CONVEYED BY HTTP AND I COULD HAVE DELIVERED THAT VIA  
21 FTP, FOR EXAMPLE, BY DOING SOMETHING MUCH THE SAME AS  
22 WHAT I DID HERE, TAKING THE URL THAT WAS WRITTEN INTO  
23 THE DOCUMENT AND JUST CONVERTING IT OVER TO USE FTP  
24 INSTEAD.

25 Q. PROFESSOR FELTEN, IN THIS EXAMPLE ALSO YOU ONLY



1 CONVERTED A SINGLE IMAGE. WOULD IT BE POSSIBLE -- WOULD  
2 IT HAVE BEEN POSSIBLE TO, FOR INSTANCE, CONVEY YOUR  
3 ENTIRE WEB PAGE USING FTP?

4 A. YES. YES, I COULD HAVE DONE THAT AS WELL SIMPLY  
5 BY CHANGING TO USE OF FTP URL. YOU CAN CONVEY ANY  
6 MATERIAL THAT YOU LIKE BY FTP INSTEAD OF HTTP.

7 Q. LET'S SAY THAT YOU HAD A WEBSITE WITH MULTIPLE  
8 PAGES, WOULD IT BE POSSIBLE FOR SOME OF THE PAGES TO BE  
9 MADE AVAILABLE VIA FTP AND OTHER PAGES TO BE MADE  
10 AVAILABLE VIA HTTP?

11 A. YES. YES. EACH PAGE THE WEBSITE PRODUCER CAN  
12 DECIDE INDIVIDUALLY FOR EACH PAGE OR FILE THAT MAKES UP  
13 THE SITE HOW THEY WANT THAT PAGE OR FILE TO BE  
14 DELIVERED.

15 Q. NOW THIS CONVERSION THAT WE HAVE BEEN DISCUSSING  
16 FROM HTTP TO FTP, THE IMAGE THAT YOU CONVERTED WAS AN  
17 IMAGE OF YOURSELF ON YOUR WEB PAGE. COULD SOMEONE  
18 CONVERT A SEXUALLY EXPLICIT IMAGE IN THE SAME WAY?

19 A. IT IS THE SAME MECHANISM, YES, THERE'S NO  
20 DIFFERENCE IN HOW THAT CAN BE DONE. NOTHING ABOUT THIS  
21 PROCESS DEPENDS ON THE NATURE OF THE PICTURE OR INDEED  
22 EVEN ON THE TYPE OF THE FILE.

23 Q. LET'S DISCUSS A NUMBER OF POTENTIAL DOWN SIDES  
24 OF CONVERTING FROM HTTP TO FTP. WHAT ARE FIREWALLS  
25 AND --

1           A.           A FIREWALL IS A KIND OF FILTER THAT OPERATES IN  
2           A NETWORK, AND SITES OFTEN USE FIREWALLS TO TRY TO BLOCK  
3           CERTAIN KINDS OF NETWORK TRAFFIC THAT THEY DON'T WANT  
4           HAPPENING, THAT THEY DON'T WANT COMING INTO THEIR SITE.  
5           IT IS SOMETIMES USED FOR TRYING TO BLOCK VIRUSES WHEN  
6           THEY TRY TO GET INTO A SITE AND SO ON.

7           Q.           HOW WOULD THE PRESENCE OF A FIREWALL AFFECT  
8           MOVEMENT FROM HTTP TO FTP?

9           A.           WELL, OBVIOUSLY, IF THE PERSON OPERATING THE  
10          FIREWALL WANTS TO FILTER FTP TRAFFIC, THEY CAN. BUT  
11          UNDER NORMAL CONDITIONS, FTP WILL NORMALLY PASS THROUGH  
12          A FIREWALL WITHOUT BEING FILTERED AND SO IT WOULD HAVE  
13          NO IMPACT AT ALL.

14          Q.           WHAT IS A CGI SCRIPT?

15          A.           A CGI SCRIPT IS ONE OF THE NUTS AND BOLTS  
16          TECHNOLOGIES OF THE WEB. WHAT IT IS USED FOR IS FOR  
17          PROVIDING PAGES THAT ARE WEB PAGES THAT ARE BUILT ON THE  
18          FLY IN RESPONSE TO SOME QUERY. FOR EXAMPLE, IF YOU GO  
19          TO A SEARCH ENGINE AND YOU TYPE IN SOME WORD THAT YOU  
20          WANT TO SEARCH FOR, THE SEARCH ENGINE WILL PRODUCE A  
21          CUSTOMIZED RESPONSE JUST FOR YOU AND THEY WILL BUILD  
22          THAT RESPONSE RIGHT THEN AND A CGI SCRIPT IS TECHNOLOGY  
23          FOR BUILDING THAT CUSTOMIZED RESPONSE RIGHT THEN. IF  
24          YOU VIEW YOUR SHOPPING CART ON AN E-COMMERCE SITE, THAT  
25          IS ANOTHER EXAMPLE WHERE THAT SHOPPING CART PAGE IS

1 BUILT JUST FOR YOU BASED ON WHAT PRODUCTS YOU HAVE  
2 PICKED OUT. GENERALLY A CGI SCRIPT WOULD BE USED FOR  
3 THAT AS WELL.

4 Q. HOW WOULD CGI SCRIPT BE AFFECTED BY THE  
5 CONVERSION OF HTTP TO FTP?

6 A. WELL, THERE IS NO FUNDAMENTAL REASON WHY CGI  
7 SCRIPTS CANNOT BE USED WITH FTP JUST AS EASILY AS WITH  
8 HTTP SO THERE NEED NOT BE ANY EFFECT.

9 Q. DOES FTP POSE ANY SECURITY RISKS?

10 A. FTP HAS ABOUT THE SAME SECURITY ISSUES AS HTTP  
11 HAS, AND SO I DON'T SEE ANY ADDITIONAL SECURITY RISKS  
12 THAT YOU WOULD FACE FROM USING FTP INSTEAD OF HTTP.

13 Q. ALL RIGHT. I WOULD LIKE TO MOVE ON TO A  
14 DIFFERENT TOPIC.

15 LET'S SWITCH GEARS AND TALK ABOUT VIEWING  
16 THE INTERNET THROUGH DEVICES OTHER THAN A TRADITIONAL  
17 P.C. OR LAPTOP. IS IT POSSIBLE TO VIEW THE INTERNET  
18 THROUGH SUCH DEVICES?

19 A. YES. THERE ARE A NUMBER OF ALTERNATIVE DEVICES  
20 THAT YOU CAN USE TO BROWSE THE INTERNET.

21 Q. WHAT ARE SOME OF THE ALTERNATIVE DEVICES?

22 A. MANY CELL PHONES CAN BE USED TO BROWSE THE  
23 INTERNET, HAND-HELD DEVICES LIKE BLACKBERRIES, SOME  
24 VIDEO GAME CONSOLES. THOSE ARE COMMON EXAMPLES.

25 Q. DO YOU HAVE AN OPINION WHETHER IT IS

1 TECHNOLOGICALLY POSSIBLE TO OFFER EFFECTIVE FILTERING ON  
2 ALTERNATE DEVICES?

3 A. YES.

4 Q. WHAT'S YOUR OPINION?

5 A. MY OPINION IS THAT IT IS TECHNICALLY FEASIBLE TO  
6 OFFER EFFECTIVE FILTERING.

7 Q. IN WHAT WAYS COULD ONE IMPLEMENT FILTERING ON A  
8 MOBILE, FOR A MOBILE DEVICE?

9 A. THERE ARE -- WELL, ESSENTIALLY THE SAME WAYS  
10 THAT YOU WOULD GO ABOUT IMPLEMENTING FILTERING ON AN  
11 ORDINARY COMPUTER. YOU HAVE ABOUT THE SAME TECHNICAL  
12 OPTIONS. BECAUSE IT IS IN MANY WAYS JUST THE SAME  
13 TECHNICAL PROBLEM.

14 THERE ARE THREE GENERAL APPROACHES THAT  
15 YOU COULD USE. YOU COULD DO FILTERING -- THE FILTER  
16 COULD BE ON THE DEVICE. FOR EXAMPLE, THE FILTER COULD  
17 BE ON THE CELL PHONE. THE FILTERING COULD BE DONE IN  
18 THE PROVIDER'S NETWORK OR THE FILTERING COULD BE DONE  
19 USING A WEB PROXY. IF THE TRAFFIC -- IF THE INTERNET  
20 TRAFFIC FROM THE PHONE OR OTHER DEVICE GOES THROUGH A  
21 WEB PROXY, THE PROXY COULD DO FILTERING.

22 Q. WHY DON'T WE GO THROUGH THESE ONE AT A TIME. IN  
23 WHAT WAY IS IT TECHNOLOGICAL POSSIBLE TO IMPLEMENT  
24 FILTERING ON A MOBILE DEVICE ITSELF?

25 A. WELL, MOBILE DEVICES ARE FUNDAMENTALLY JUST

1 COMPUTERS THAT RUN COMPUTER PROGRAMS IN THE SAME WAY  
2 THAT P.C.S RUN COMPUTER PROGRAMS. AND SO YOU COULD  
3 CREATE A FILTERING PROGRAM OF THE SAME SORT THAT YOU  
4 MIGHT USE ON A P.C. AND PUT THAT FILTERING PROGRAM ONTO  
5 THE MOBILE DEVICE. BECAUSE THE MOBILE DEVICE IS JUST  
6 ULTIMATELY A COMPUTER, IT CAN DO THE SAME KINDS OF  
7 THINGS THAT OTHER COMPUTERS CAN DO, INCLUDING DOING  
8 FILTERING.

9 Q. ARE THERE ANY LIMITATIONS OR THE EFFECTIVENESS  
10 OF DEVICE BASED FILTERING?

11 A. WELL, FOR THIS PURPOSE, THE SIGNIFICANT  
12 DIFFERENCE BETWEEN A CELL PHONE AND A DESKTOP COMPUTER  
13 IS THAT THE DESKTOP COMPUTER HAS MORE COMPUTING  
14 HORSEPOWER, IF YOU WILL, MAYBE MORE MEMORY. SO THE CELL  
15 PHONE WOULD BE -- WOULD BE IN TERMS OF ITS HORSEPOWER  
16 EQUIVALENT TO A P.C. THAT IS A FEW YEARS OLD. AND SO  
17 ANY FILTER THAT COULD RUN ON A P.C. A FEW YEARS OLD IS  
18 LIKELY TO BE ABLE TO RUN ON A CELL PHONE. FILTERS THAT  
19 REQUIRE THE LATEST GREATEST P.C. TECHNOLOGY MIGHT HAVE  
20 DIFFICULTY WORKING ON A CELL PHONE.

21 Q. HOW DO YOU EXPECT THAT TO CHANGE OVER TIME?

22 A. WELL, ALL OF THESE DEVICES ARE GETTING FASTER,  
23 GETTING MORE CAPABLE AT A RAPID RATE. IT'S THE -- MY  
24 EXPECTATION IS THAT THE COMPUTING POWER, THE AMOUNT OF  
25 MEMORY, THE AMOUNT OF COMPUTING THAT CAN BE DONE ON A

1 CELL PHONE IS LIKELY TO DOUBLE EVERY 18 MONTHS IN THE  
2 FUTURE.

3 Q. WHY DO YOU HAVE THAT ASSUMPTION?

4 A. THIS IS A RULE THAT IS KNOWN AS MOORE'S LAW,  
5 WHICH HAS HELD FOR DECADES NOW IN THE COMPUTER WORLD,  
6 WHICH SAYS THAT THE CAPABILITIES, THE MEMORY, COMPUTING  
7 POWER AND SO ON AVAILABLE AT A PARTICULAR COST IN A  
8 PARTICULAR SIZE PACKAGE WILL DOUBLE EVERY 18 MONTHS.  
9 THAT HAS HELD TRUE FOR DECADES, FOR MANY OF THESE 18  
10 MONTH CYCLES, AND I EXPECT IT TO CONTINUE.

11 Q. THE SECOND WAY OF DOING FILTERING ON MOBILE  
12 NETWORKS THAT YOU MENTIONED WAS FILTERING THROUGH A  
13 PROXY?

14 A. YES.

15 Q. WHAT'S A PROXY?

16 A. A PROXY IS A DEVICE THAT GETS THINGS FROM THE  
17 WEB FOR YOU. IT IS PROBABLY BEST EXPLAINED BY ANALOGY.

18 IF I WANT TO GET MATERIAL FROM A LIBRARY,  
19 ONE THING I CAN DO IS GO TO THE LIBRARY MYSELF AND GET  
20 THE MATERIAL. ANOTHER THING I CAN DO IS I CAN HAVE AN  
21 ASSISTANT AND I CAN TELL THE ASSISTANT WHAT TO GET. THE  
22 ASSISTANT GOES TO THE LIBRARY, GETS THOSE THINGS AND  
23 GIVES THEM BACK TO ME. A PROXY IS LIKE THAT ASSISTANT.  
24 RATHER THAN YOUR BROWSER GOING OUT INTO THE INTERNET AND  
25 GETTING MATERIAL THAT IT WANTS, IT TELLS THE ASSISTANT,

1 PLEASE GET THIS THING, AND THE ASSISTANT GOES AND GETS  
2 IT, AND THEN GIVES IT BACK. SO A PROXY IS A DEVICE ON  
3 THE INTERNET WHICH WILL GET WEB PAGES FOR YOU AND YOU  
4 CAN INSTRUCT YOUR BROWSER TO ACCESS THE INTERNET THROUGH  
5 A PROXY, IF YOU WANT. IF YOU DO THAT, THEN ALL OF THE  
6 REQUESTS THAT YOUR BROWSER ISSUES WILL BE SENT TO THAT  
7 PROXY, WHICH WILL THEN GO AHEAD AND GET THE STUFF FOR  
8 YOU.

9 Q. WHAT ARE SOME EXAMPLES OF USES OF PROXIES?

10 A. WELL, PROXIES ARE USED IN A NUMBER OF DIFFERENT  
11 SETTINGS. SOME ORGANIZATIONS USE PROXIES. THERE ARE  
12 REASONS WHY IT CAN BE EFFICIENT TO SHARE A PROXY WITH  
13 PEOPLE WHO WORK NEAR YOU. PROXIES ARE USED SOMETIMES  
14 FOR SECURITY BECAUSE IT IS SOMETIMES CONVENIENT TO  
15 CENTRALIZE SECURITY SCREENING IN A PROXY. PROXIES ARE  
16 SOMETIMES USED FOR CONTENT FILTERING. IF ALL OF THE  
17 MATERIAL THAT IS COMING TO YOU FROM THE INTERNET IS  
18 GOING THROUGH A PROXY, THEN THIS PROXY CAN FILTER THE  
19 MATERIAL FOR YOU AND WHATEVER CONTENT FILTERING YOU WANT  
20 TO USE CAN BE DONE BY THE PROXY.

21 Q. AND HOW WOULD THAT WORK IN THE CONTEXT OF MOBILE  
22 DEVICES?

23 A. MOBILE DEVICES CAN USE PROXIES JUST LIKE A  
24 DESKTOP COMPUTER CAN. SO YOUR MOBILE PROVIDER, FOR  
25 EXAMPLE, YOUR CELL PHONE COMPANY MIGHT HAVE A PROXY, AND

1 IF YOU ASK FOR IT OR MAYBE EVEN IF YOU DON'T, DEPENDING  
2 ON HOW THEIR NETWORK IS SET UP, ALL OF YOUR WEB TRAFFIC  
3 CAN BE PASSED THROUGH THE PROXY, AND THEN THE PROXY CAN  
4 DO WHATEVER FILTERING IT WANTS OR WHATEVER FILTERING YOU  
5 ASK FOR.

6 Q. WHAT IS THE THIRD OPTION YOU MENTIONED REGARDING  
7 DOING FILTERING IN A MOBILE NETWORK?

8 A. TO HAVE THE FILTERING DONE IN THE NETWORK  
9 ITSELF. THE WAY THAT WOULD WORK IS THAT YOUR PHONE  
10 WOULD SEND OUT REQUESTS TO THE WEB FOR WHATEVER PAGES OR  
11 FILES YOU ASKED FOR. AND AS THOSE PAGES OR FILES WERE  
12 COMING BACK TO YOU ACROSS THE CELL PHONE PROVIDER'S  
13 NETWORK, THE NETWORK ITSELF COULD SEE WHAT IS IN THEM,  
14 SEE WHERE THEY CAME FROM AND BASED ON THAT, FILTER THEM.  
15 IT COULD BLOCK THE RETURN OF MATERIAL WHICH THE FILTER  
16 SAID WAS INAPPROPRIATE. IT COULD PREVENT YOU FROM  
17 ASKING FOR CERTAIN THINGS THAT YOU ARE NOT SUPPOSED TO  
18 GET.

19 Q. WHAT YOU HAVE SAID ABOUT THE THREE WAYS  
20 FILTERING IS POSSIBLE FOR MOBILE DEVICES, DOES THAT HOLD  
21 TRUE FOR CELL PHONES?

22 A. YES. IT DOES.

23 Q. DOES THAT HOLD TRUE FOR PERSONAL DIGITAL  
24 ASSISTANTS SUCH AS BLACKBERRIES?

25 A. YES.



1 Q. WHAT ABOUT PORTABLE MUSIC PLAYERS SUCH AS IPODS?

2 A. YES. ALL OF THESE METHODS ARE POSSIBLE WITH ALL  
3 OF THESE SORTS OF MOBILE DEVICES.

4 Q. DO YOU HAVE AN OPINION REGARDING WHETHER THERE  
5 ARE ANY PRODUCTS CURRENTLY AVAILABLE THAT WOULD ALLOW  
6 MOBILE CARRIERS TO PROVIDE FILTERING FOR MOBILE DEVICES?

7 A. YES.

8 Q. WHAT IS YOUR OPINION?

9 A. MY OPINION IS THAT THERE ARE SUCH PRODUCTS.

10 Q. WHAT PRODUCTS ARE AVAILABLE?

11 A. WELL, THERE ARE A NUMBER OF SUCH PRODUCTS, BUT  
12 SOME EXAMPLES -- THERE IS A PRODUCT FROM CISCO, FOR  
13 EXAMPLE.

14 THE COURT: SPELL THE ACRONYM?

15 THE WITNESS: C-I-S-C-O.

16 THE COURT: THANK YOU.

17 THE WITNESS: THERE IS A PRODUCT FROM A  
18 COMPANY CALLED BLUECOAT. ANOTHER PRODUCT FROM A COMPANY  
19 CALLED BYTEMOBILE. THERE IS ANOTHER ONE FROM A COMPANY  
20 CALLED RULESPACE.

21 BY MS. CRUMP:

22 Q. DO ANY MOBILE CARRIERS CURRENTLY OFFER PARENTAL  
23 CONTROLS?

24 A. YES. THERE ARE SEVERAL THAT DO. CINGULAR  
25 OFFERS PARENTAL CONTROLS. ALTEL OFFERS PARENTAL

1 CONTROLS, AND SPRINT NEXTEL. THOSE ARE THREE EXAMPLES.

2 Q. IS THERE ANYTHING ELSE PARENTS CAN DO IF THEY  
3 ARE CONCERNED ABOUT CHILDREN ACCESSING INAPPROPRIATE  
4 CONTENT THROUGH THEIR CELL PHONES OR OTHER MOBILE  
5 DEVICES?

6 A. YES. THERE ARE AT LEAST TWO OTHER THINGS THAT  
7 PARENTS CAN DO. ONE OF THEM IS TO GIVE THEIR KID A CELL  
8 PHONE THAT CAN'T ACCESS THE INTERNET. SOME CELL PHONES  
9 ARE UNABLE TO ACCESS THE INTERNET. WITH SOME CELL PHONE  
10 PROVIDERS YOU HAVE TO PAY EXTRA FOR EXTRA INTERNET  
11 SERVICE ON TOP OF YOUR BASIC PHONE SERVICE. SO IF YOU  
12 ORDER FOR YOUR KID JUST THE BASIC PHONE SERVICE WITHOUT  
13 INTERNET, THEN THEY WON'T BE ABLE TO ACCESS THE  
14 INTERNET. THERE ARE ALSO SOME PHONES THAT ARE  
15 ESPECIALLY BUILT FOR KIDS, SUCH AS THE FIRE FLY PHONE  
16 WHICH IN ADDITION TO CONTROLLING INTERNET ACCESS ALSO  
17 LIMITS WHICH NUMBERS THE KIDS CAN CALL AND SO ON.

18 Q. CIRCLING BACK FOR A MOMENT TO THE PRODUCTS  
19 OFFERED BY BLUECOAT, BYTEMOBILE AND OTHER COMPANIES,  
20 WHERE DO THESE PRODUCTS OPERATE?

21 A. THESE PRODUCTS OPERATE IN THE PROVIDER'S  
22 NETWORK.

23 THE COURT: EXCUSE ME FOR INTERRUPTING.  
24 ANOTHER ONE OF YOUR QUESTIONS AND ANSWERS THAT SOUNDS  
25 VERY TIDY. I HAVE NO IDEA WHAT IT MEANT. I MAKE NOTES

1 AND IF IT IS NOT COVERED BY THE DEFENSE I WILL COVER IT  
2 LATER BUT IT'S EASIER TO DO IT NOW. YOU TALKED ABOUT  
3 OPERATE WITHIN THE PROVIDER'S NETWORK, I FORGOT THE  
4 PRECISE QUESTION, I DON'T WANT TO LOOK IT UP, BUT CAN  
5 YOU BREAK THAT QUESTION AND ANSWER DOWN FOR ME IT WILL  
6 BE HELPFUL.

7 MS. CRUMP: SURE, YOUR HONOR.

8 BY MS. CRUMP:

9 Q. YOU MENTIONED A NUMBER OF PRODUCTS THAT ARE  
10 CURRENTLY AVAILABLE FOR MOBILE CARRIERS TO OFFER  
11 FILTERING. I WAS WONDERING, COULD YOU EXPLAIN FOR US  
12 HOW THOSE PRODUCTS INTERACT WITH USERS' CELL PHONES AND  
13 WITH MOBILE CARRIER NETWORKS?

14 A. YES. THOSE PRODUCTS ARE SOLD TO THE CELL PHONE  
15 COMPANY AND THE CELL PHONE COMPANY WOULD THEN INSTALL  
16 THOSE PRODUCTS IN THEIR NETWORK. AND WHEN THE PRODUCTS  
17 ARE DEPLOYED, WHAT HAPPENS IS THAT WHEN USERS ARE  
18 ACCESSING THE INTERNET VIA THEIR CELL PHONES, THE  
19 TRAFFIC, THAT INTERNET TRAFFIC IS GOING THROUGH THE CELL  
20 PHONE PROVIDER'S NETWORK. AND AS IT GOES THROUGH THE  
21 CELL PHONE PROVIDER'S NETWORK, THESE PRODUCTS WILL SEE  
22 THAT TRAFFIC AND WILL DECIDE WHETHER TO BLOCK IT OR NOT  
23 BASED ON WHATEVER THE BLOCKING CRITERIA ARE. AND SO  
24 ACCESSES THAT DON'T MEET THE BLOCKING CRITERIA WILL BE  
25 BLOCKED. THEN THE USER WILL BE UNABLE TO SEE THAT

1 MATERIAL.

2 Q. PROFESSOR FELTEN, A LOT HAS BEEN SAID IN THIS  
3 CASE ABOUT THE DISTINCTION BETWEEN ENTERPRISE FILTERING  
4 ON THE ONE HAND AND MAYBE HOME FILTERING ON THE OTHER.  
5 HOW DOES THIS FIT IN?

6 A. THIS IS AN EXAMPLE OF A PRODUCT THAT IS SOLD TO  
7 THE ENTERPRISE, NAMELY THE CELL PHONE COMPANY, BUT THE  
8 PRODUCT OPERATES ON BEHALF OF OR ON THE TRAFFIC OF THE  
9 END USER, SO THE PURPOSE OF THE PRODUCT IS TO PROVIDE  
10 FILTERING FOR THE END USERS, BUT THE PRODUCT IS SOLD TO  
11 THE ENTERPRISE.

12 Q. I WOULD LIKE TO LEAVE THIS TOPIC AND MOVE ON TO  
13 ASK YOU SOME QUESTIONS ABOUT SEARCH ENGINES. WHAT IS A  
14 SEARCH ENGINE?

15 A. A SEARCH ENGINE IS AN ONLINE TOOL THAT ALLOWS  
16 YOU TO FIND MATERIAL, USUALLY WEB PAGES, THAT MEET  
17 CERTAIN CRITERIA. FOR EXAMPLE, YOU MIGHT COMMONLY  
18 SEARCH FOR DOCUMENTS THAT HAVE CERTAIN WORDS OR THAT ARE  
19 ABOUT CERTAIN TOPICS.

20 Q. CAN YOU GIVE US SOME EXAMPLES OF SEARCH ENGINES?

21 A. WELL, THE BEST KNOWN ONE THESE DAYS IS GOOGLE.  
22 THERE ARE SEARCH FACILITIES ASSOCIATED WITH OTHER MAJOR  
23 SITES LIKE YAHOO AND AOL. THEY ALSO OFFER SEARCH  
24 FACILITIES ON THEIR WEBSITE.

25 Q. IS IT POSSIBLE TO GAUGE THE QUANTITY OF SEARCHES

1 BEING CONDUCTED?

2 A. YES.

3 Q. DO YOU HAVE AN OPINION REGARDING THE PREVALENCE  
4 OF SEARCH ENGINE USE?

5 A. YES, I DO.

6 Q. WHAT IS YOUR OPINION?

7 A. SEARCH ENGINES ARE VERY WIDELY USED BY INTERNET  
8 USERS.

9 Q. WHAT IS THE BASIS OF YOUR OPINION?

10 A. IT COMES PARTLY FROM DISCUSSIONS WITH ENGINEERS  
11 AT THE SEARCH COMPANIES, KNOWLEDGE OF HOW THEIR SYSTEMS  
12 WORK AND HOW BIG THEY ARE AND ALSO FROM SURVEYS THAT  
13 HAVE BEEN DONE OF INTERNET USERS.

14 Q. ANY PARTICULAR SURVEYS?

15 A. WELL, ONE SURVEY WAS DONE BY THE PEW INTERNET  
16 PROJECT.

17 Q. PLEASE TURN TO PLAINTIFFS' EXHIBIT 15.

18 THE COURT: WHAT TAB IS THAT IN?

19 MS. CRUMP: THAT IS IN TAB 5.

20 THE COURT: I THOUGHT IT WAS INGENIOUS TO  
21 TURN TRIAL EXHIBIT NUMBERS INTO TABS AND PUT ANOTHER  
22 LAYER ON IT.

23 MS. CRUMP: SORRY, YOUR HONOR.

24 THE COURT: I ALREADY HAVE A NUMBER. WE  
25 WILL USE THAT ONE THAT IS THE EXHIBIT.

1 MS. CRUMP: WE CAN CHANGE OUR PLAINTIFFS'  
2 BINDERS TO REFLECT THAT. WE ARE LOOKING HERE AT  
3 PLAINTIFFS' EXHIBIT 15, PAGE 1.

4 BY MS. CRUMP:

5 Q. HAVE YOU SEEN THIS DOCUMENT BEFORE?

6 A. YES, I HAVE.

7 Q. WHAT IS IT?

8 A. IT'S A MEMO REPORTING ON RESEARCH BY THE PEW  
9 INTERNET PROJECT AND A COMPANY CALLED COMSCORE MEDIA  
10 METRIX.

11 Q. IS THIS AN ACCURATE COPY?

12 A. YES.

13 Q. IN WHAT WAY DOES THIS DOCUMENT SUPPORT YOUR  
14 VIEWS ON THE PREVALENCE OF SEARCH ENGINE USE?

15 A. WELL, IT REPORTS, FOR EXAMPLE, THAT ON AN  
16 AVERAGE DAY NEARLY 60 MILLION PEOPLE USE SEARCH ENGINES.  
17 IT REPORTS ON THE PERCENTAGE OF INTERNET USERS WHO USE  
18 SEARCH ENGINES.

19 Q. HOW DO SEARCH ENGINES WORK?

20 A. BASICALLY A SEARCH ENGINE OPERATES IN TWO  
21 PHASES, BUT THE CORE OF A SEARCH ENGINE IS A GIANT INDEX  
22 THAT THAT INDEXES THE ENTIRE INTERNET, THE ENTIRE WEB.  
23 AND THAT ALLOWS THE SEARCH ENGINE COMPANY AND ITS  
24 CUSTOMERS TO FIND INFORMATION ON A PARTICULAR TOPIC  
25 QUICKLY BY USING THE INDEX. SO THE FIRST PHASE OF A

1 SEARCH ENGINE'S OPERATION IS BUILDING THE INDEX. THE  
2 WAY THIS IS DONE IS THAT THE SEARCH ENGINE COMPANY USES  
3 PROGRAMS THAT ARE VARIOUSLY CALLED SPIDERS OR BOTS OR  
4 CRAWLERS. AND WHAT THEY DO IS THEY JUST GO OUT AND GET  
5 ALL THE WEB PAGES THEY CAN FIND AND DOWNLOAD THEM ALL  
6 AND STORE THEM. AND ONCE THE SEARCH ENGINE COMPANY HAS  
7 ACCUMULATED ALL THE STUFF IT CAN FIND ON THE WEB, THEY  
8 THEN BUILD THIS HUGE INDEX THAT COVERS ESSENTIALLY THE  
9 ENTIRE WEB. THEN LATER, WHEN A CUSTOMER WANTS TO DO A  
10 SEARCH, HE MIGHT GO TO A SEARCH ENGINE AND TYPE IN A  
11 PHRASE THAT YOU WANT TO SEARCH FOR. THE SEARCH ENGINE  
12 COMPANY USES THE INDEX TO RETURN TO YOU A LIST OF WEB  
13 PAGES THAT SATISFIES YOUR SEARCH.

14 Q. HOW DOES THE PRESENCE OF A SCREEN REQUIRING  
15 ENTRY OF A CREDIT CARD NUMBER OR OTHER INFORMATION  
16 AFFECT SEARCH ENGINES?

17 A. WELL, THE IMPACT WOULD BE THAT THAT MATERIAL  
18 WOULD NOT BE AVAILABLE ON THE SEARCH ENGINE, THE REASON  
19 BEING THAT THE CRAWLERS OR BOTS THAT THE SEARCH ENGINE  
20 COMPANY USES TO USE ALL THE MATERIAL THAT THEY INDEXED  
21 COULD NOT GET PAST THE SCREEN. AS A RESULT, THAT  
22 MATERIAL WOULD NOT BE INCORPORATED INTO THE INDEX, SO  
23 USERS WHO SEARCH FOR IT WOULD NOT BE ABLE TO GET IT.

24 Q. HOW DOES THE PRESENCE OF SUCH A BARRIER SCREEN  
25 AFFECT THE PROBABILITY THAT THE PAGES BEHIND THEM WILL

1 BE SEEN?

2 A. IT MAKES THOSE PAGES LESS LIKELY TO BE SEEN BY  
3 END USERS BECAUSE MANY END USERS USE SEARCH ENGINES TO  
4 FIND THE PAGES THAT THEY ARE GOING TO LOOK AT.

5 Q. HOW DO SEARCH ENGINES AFFECT THE FREQUENCY WITH  
6 WHICH INDIVIDUALS SEE CONTENT THEY DO NOT WISH TO SEE?

7 A. WELL, THE WHOLE PURPOSE OF A SEARCH ENGINE IS TO  
8 HELP THE USER FIND SOMETHING THAT THEY WANT TO SEE, AND  
9 THE SEARCH ENGINE COMPANIES WORK REALLY HARD TO MAKE THE  
10 RESPONSES TO THE SEARCHES ACCURATE. AND THEY HAVE MADE  
11 PROGRESS IN DOING THAT BETTER AND BETTER OVER TIME. THE  
12 BETTER A SEARCH ENGINE DOES AT GIVING YOU THE CONTENT  
13 YOU WANT, THE MORE LIKELY YOU ARE GOING TO USE THAT  
14 SEARCH ENGINE IN THE FUTURE. SO SEARCH ENGINES HELP YOU  
15 FIND WHAT YOU WANT MORE EASILY THAN YOU COULD WITHOUT A  
16 SEARCH ENGINE. THAT IS WHAT THEY ARE FOR.

17 Q. BEFORE SEARCH ENGINES, HOW DID PEOPLE FIND  
18 INFORMATION ONLINE?

19 A. THEY TENDED TO TYPE IN URLS, TYPE IN WEB  
20 ADDRESSES AND RELY ON WORD OF MOUTH.

21 THE COURT: EXCUSE ME FOR INTERRUPTING.  
22 IF YOU SAID THIS BEFORE, I APOLOGIZE. WHAT IS THE  
23 DIFFERENCE BETWEEN A BROWSER AND A SEARCH ENGINE?

24 THE WITNESS: A BROWSER --

25 THE COURT: -- IF THERE IS ANY.



1                   THE WITNESS:  YES, THERE IS.  A BROWSER  
2                   IS A PROGRAM THAT IS ON YOUR COMPUTER AND POPS UP A  
3                   WINDOW ON YOUR COMPUTER THAT YOU USE TO VIEW WEB PAGES.  
4                   A SEARCH ENGINE IS GENERALLY A COMPANY WHOSE WEBSITE YOU  
5                   CAN VISIT.  YOU CAN THINK OF IT AS BEING A WEBSITE WHOSE  
6                   PURPOSE IS TO HELP YOU FIND THINGS.  SO IF YOU ARE USING  
7                   YOUR COMPUTER AND YOU OPEN UP A BROWSER AND YOU COULD BE  
8                   READING THE NEWS OR SOMETHING, IF YOU WANT TO GO TO THE  
9                   GOOGLE SEARCH ENGINE, YOU COULD TYPE IN WWW.GOOGLE.COM  
10                  AND THAT WOULD TAKE YOU TO THE GOOGLE SEARCH ENGINE.  
11                  YOU COULD THEN TYPE IN SOMETHING THAT YOU WANTED TO  
12                  SEARCH FOR, YOU COULD TYPE IN COPA TRIAL, FOR EXAMPLE,  
13                  AND SEE -- IT WOULD THEN GIVE YOU A LIST OF PAGES ON THE  
14                  WEB THAT WERE RELEVANT TO THAT THING THAT YOU SEARCHED  
15                  FOR.  IT WOULD RANK THEM IN ORDER OF WHAT IT THOUGHT WAS  
16                  THE LIKELIHOOD THAT YOU WOULD WANT TO SEE THAT PAGE.

17                  THE COURT:  A BROWSER IS A WAY TO GET TO  
18                  THE SEARCH ENGINE?

19                  THE WITNESS:  YES.  A SEARCH ENGINE IS  
20                  ONE OF THE PLACES THAT YOU MIGHT GO WITH THE BROWSER.

21                  THE COURT:  THANK YOU.

22                  BY MS. CRUMP:

23                  Q.            SO WHEN INDIVIDUALS USE SEARCH ENGINES, AND THEY  
24                  TYPE IN COPA TRIAL OR SOME OTHER TOPIC, DOES THE SEARCH  
25                  ENGINE DIRECT THEM TO WEBSITES OR WEB PAGES?

1 A. IT DIRECTS THEM TO PAGES. THE RESULTS RETURNED  
2 BY COMMON SEARCH ENGINES ARE PAGES.

3 Q. WHAT IS THE DIFFERENCE BETWEEN A WEBSITE ON THE  
4 ONE HAND AND A WEB PAGE ON THE OTHER?

5 A. WELL, A WEB PAGE IS -- IT IS LIKE A PAGE IN THAT  
6 IT IS A THING THAT YOU CAN VIEW AT ONCE ON YOUR SCREEN  
7 WITH -- FOR EXAMPLE, MY HOME PAGE THAT WE SAW BEFORE HAD  
8 INFORMATION ABOUT ME AND MY PICTURE AND SO ON. THAT WAS  
9 ONE PAGE WHICH YOU LOOK AT AT ONE TIME. A WEBSITE IS A  
10 WHOLE COLLECTION OF PAGES THAT ARE MADE AVAILABLE BY ONE  
11 ORGANIZATION. FOR EXAMPLE, THE PRINCETON COMPUTER  
12 SCIENCE DEPARTMENT HAS A WEBSITE WHICH HAS ALL KINDS OF  
13 DIFFERENT PAGES ABOUT DIFFERENT INDIVIDUALS WHO WORK IN  
14 THE DEPARTMENT. THERE IS INFORMATION ABOUT HOW TO APPLY  
15 TO OUR GRADUATE PROGRAM, SCHEDULES, ALL KINDS OF  
16 INFORMATION THAT THE COMPUTER SCIENCE DEPARTMENT WANTS  
17 TO PUBLISH. SO MANY PAGES MAKE UP ONE SITE.

18 Q. WOULD IT BE FAIR TO SAY THAT A WEB PAGE IS SORT  
19 OF THE BASIC UNIT OF THE WEB?

20 A. YES, IT IS THE BASIC --

21 MR. MCELVAIN: OBJECTION, VAGUE.

22 THE COURT: SUSTAINED FOR ANOTHER REASON.

23 IT IS A LEADING QUESTION.

24 BY MS. CRUMP:

25 Q. HOW DO WEB PAGES AND WEBSITES RELATE TO ONE

1 ANOTHER?

2 A. WELL, A WEB PAGE IS THE THING THAT YOU READ.  
3 YOU READ THE WEB ONE PAGE AT A TIME AND OFTEN WHEN YOU  
4 ARE BROWSING THE WEB, YOU WANT ONLY A PARTICULAR PAGE.  
5 IF YOU ARE READING THE NEWSPAPER, FOR EXAMPLE, EACH  
6 STORY MIGHT BE A PAGE, WHEREAS A SITE IS ALL OF THE  
7 MATERIAL THAT IS PUT UP BY SOME ORGANIZATION.

8 Q. LET'S INTRODUCE ONE OTHER CONCEPT. WHAT IS A  
9 HOME PAGE?

10 A. HOME PAGE IS A TERM THAT IS USED TO REFER TO THE  
11 SORT OF MAIN OR PRIMARY OR SORT OF ENTRANCE PAGE TO A  
12 WEBSITE OR TO INFORMATION ABOUT SOMETHING. FOR EXAMPLE,  
13 THE PRINCETON COMPUTER SCIENCE DEPARTMENT HAS A HOME  
14 PAGE WHICH YOU GET TO IF YOU TYPE IN  
15 WWW.CS.PRINCETON.EDU THAT HAS A NICE PICTURE OF OUR  
16 BUILDING AND A BUNCH OF LINKS THAT YOU CAN CLICK ON. IF  
17 YOU WANT INFORMATION ABOUT PEOPLE IN THE DEPARTMENT,  
18 CLICK HERE. IT WILL TAKE YOU TO SOME OTHER PAGE. IF  
19 YOU WANT INFORMATION ABOUT THE GRADUATE PROGRAM, THE  
20 UNDERGRADUATE PROGRAM, THE CALENDAR, ET CETERA.

21 Q. ALL RIGHT. WE TALKED ABOUT WEB PAGES, WEBSITES  
22 AND HOME PAGES. IF YOU WERE TO GO TO GOOGLE AND SEARCH  
23 FOR A TERM, WHAT WOULD THE RESULTS REFLECT?

24 A. YOU WOULD SEE -- EACH RESULT WOULD BE A WEB  
25 PAGE. IT WOULD POINT TO YOU A PARTICULAR PAGE ON THE

1 WEB.

2 Q. AND WOULD THAT PAGE BE A HOME PAGE?

3 A. NOT NECESSARILY. IT MIGHT BE A HOME PAGE OR IT  
4 MIGHT BE SOMETHING ELSE. IT MIGHT BE AN INDIVIDUAL PAGE  
5 WITHIN A SITE.

6 Q. LET'S SWITCH GEARS.

7 I WANT TO DISCUSS WITH YOU THE EASE WHICH  
8 FILTERS CAN BE CIRCUMVENTED. DO YOU HAVE AN OPINION  
9 REGARDING THE EASE WITH WHICH MINORS CAN CIRCUMVENT  
10 INTERNET FILTERING TECHNOLOGY?

11 A. YES, I DO.

12 Q. WHAT IS YOUR OPINION?

13 A. MY OPINION IS THAT IT'S QUITE DIFFICULT FOR  
14 MINORS TO CIRCUMVENT FILTERS.

15 Q. WHAT ARE THE GENERAL TECHNIQUES SOMEONE WHO IS  
16 TRYING TO CIRCUMVENT A FILTER COULD USE?

17 A. WELL, THERE ARE -- THERE ARE BASICALLY TWO  
18 CATEGORIES OF TECHNIQUES. ONE CATEGORY IS IF THE FILTER  
19 IS INSTALLED ON THE END USER'S COMPUTER, IN THIS CASE ON  
20 THE TEEN'S COMPUTER, THEY COULD TRY TO REMOVE THAT  
21 SOFTWARE FROM THE COMPUTER OR TURN IT OFF. THE SECOND  
22 CATEGORY HAS TO DO -- CIRCUMVENTION TECHNIQUE HAS TO DO  
23 WITH TRYING TO ROUTE THE INTERNET TRAFFIC THROUGH SOME  
24 INTERMEDIARY IN ORDER TO TRY TO HIDE WHAT THE TEEN IS  
25 TRYING TO DO IN THE HOPE THAT THE FILTER WON'T NOTICE

1 THAT THIS IS MATERIAL THAT IS SUPPOSED TO BE FILTERED.

2 Q. YOU EXPRESSED THE VIEW THAT IT WOULD BE  
3 DIFFICULT FOR A MINOR TO ENGAGE IN THESE TECHNIQUES?

4 A. YES.

5 Q. WHAT ARE THE DIFFICULTIES OF THE FIRST TECHNIQUE  
6 YOU MENTIONED?

7 A. THE FIRST TECHNIQUE WOULD BE TO REMOVE OR  
8 SOMEHOW TURN OFF FILTERING SOFTWARE THAT IS INSTALLED ON  
9 THE END USER COMPUTER. WELL, FIRST, SOME FILTERS  
10 OPERATE ON THE END USER COMPUTER AND SOME DON'T. SOME  
11 FILTERS, FOR EXAMPLE, WORK IN A PROVIDER'S NETWORK IF  
12 THE PROVIDER IS IN THE NETWORK -- I'M SORRY, IF THE  
13 FILTER IS IN THE NETWORK, THEN THERE IS NOTHING TO TRY  
14 TO REMOVE FROM THE END USER COMPUTER. SO THAT METHOD  
15 DOES NOT EVEN GET STARTED. IF IT'S THE KIND OF FILTER  
16 THAT OPERATES ON THE END USER COMPUTER, THEN THE TEEN  
17 WOULD HAVE TO TRY TO REMOVE THAT SOFTWARE OR TURN IT OFF  
18 AND A WELL CONSTRUCTED FILTER WILL BE PROTECTED SO THAT  
19 THAT IS NOT POSSIBLE. IT WOULD REQUIRE -- IT WOULD  
20 REQUIRE THE ENTRY OF A PASSWORD THAT ONLY THE PARENT  
21 SHOULD KNOW IN ORDER TO GET ACCESS TO THE FILTER IN  
22 ORDER TO REMOVE IT OR IN ORDER TO RECONFIGURE IT, IN  
23 ORDER TO MAKE IT LESS STRINGENT. SO JUST LIKE OTHER  
24 SECURITY SOFTWARE LIKE VIRUS CHECKERS, THIS SOFTWARE  
25 TAKES ADVANTAGE OF THE SECURITY MECHANISMS OF THE

1 OPERATING SYSTEM TO MAKE IT VERY HARD TO REMOVE WITHOUT  
2 ENTRY OF A PASSWORD.

3 Q. HOW DIFFICULT IS IT TO BREAK OR CRACK PASSWORD  
4 PROTECTION?

5 A. IN THE PASSWORD IS CHOSEN WELL, IT'S VERY  
6 DIFFICULT INDEED. IT IS SOMETHING THAT'S FAR BEYOND THE  
7 CAPABILITIES OF A TYPICAL TEEN.

8 Q. YOU MENTIONED A SECOND APPROACH TO  
9 CIRCUMVENTION. WHAT WAS THAT APPROACH?

10 A. SECOND APPROACH IS TO TRY TO SOMEHOW ROUTE THE  
11 INTERNET TRAFFIC THROUGH SOME KIND OF INTERMEDIARY ON  
12 THE NET IN THE HOPE OF OBSCURING WHAT IS GOING ON SO THE  
13 FILTER WOULD NOT BLOCK IT.

14 Q. WHAT ARE THE DIFFICULTIES OF THAT APPROACH?

15 A. WELL, THERE ARE A NUMBER OF -- THERE ARE A  
16 NUMBER OF DIFFERENT WAYS THIS APPROACH CAN BE TRIED.  
17 ONE METHOD IS TO TRY TO FIND -- IS TO USE ONE OF A  
18 WELL-KNOWN SET OF SITES ON THE NET THAT WILL ACT AS AN  
19 INTERMEDIARY FOR YOUR WEB TRAFFIC. AND THE DIFFICULTY  
20 WITH USING THAT METHOD IS THAT THE FILTERING COMPANIES  
21 KNOW ABOUT THESE SITES AS WELL. AND SO IF THEY SEE  
22 TRAFFIC THAT TRIES TO GO TO ONE OF THESE WELL-KNOWN  
23 PROXY OR INTERMEDIARY SITES, THE FILTER CAN JUST BLOCK  
24 THAT TRAFFIC. THE FILTER WILL NOTICE THAT THIS LOOKS  
25 LIKE AN ATTEMPT TO CIRCUMVENT THE FILTER AND IT CAN JUST

1 BLOCK THAT TRAFFIC.

2 THERE ARE SOME OTHER METHODS IN WHICH THE  
3 USER COULD TRY TO SET UP THEIR OWN INTERMEDIARY SITE ON  
4 SOME OTHER COMPUTER, AND THAT TURNS OUT TO BE FRAUGHT  
5 WITH ALL KINDS OF TECHNICAL DIFFICULTIES. YOU REALLY  
6 HAVE TO HAVE A LOT OF FACILITY WITH INSTALLING AND  
7 CONFIGURING NETWORKING SOFTWARE IN ORDER TO HAVE ANY  
8 HOPE OF GETTING THAT TO WORK IN PRACTICE.

9 Q. DOES IT MATTER WHAT KIND OF FILTERING SOFTWARE  
10 IS BEING USED? DOES THE KIND OF FILTERING SOFTWARE  
11 BEING USED AFFECT THE PROBABILITY OF SUCCESS IN ENGAGING  
12 IN CIRCUMVENTION?

13 A. WELL, IT DOES, YES. IF SOMEONE -- FOR EXAMPLE,  
14 IF SOMEONE IS TRYING TO CIRCUMVENT A FILTER BY ROUTING  
15 TRAFFIC THROUGH AN INTERMEDIARY, THAT IS NOT GOING TO BE  
16 EFFECTIVE IF THE FILTER OPERATES BY LOOKING AT WHAT'S IN  
17 THE IMAGE OR WHAT IS IN THE CONTENT. IF IT IS LOOKING  
18 IN THE CONTENT, THEN IT DOES NOT NECESSARILY CARE WHERE  
19 THE CONTENT CAME FROM AND SO ROUTING IT THROUGH AN  
20 INTERMEDIARY TO TRY TO DISGUISE THE SOURCE IS NOT GOING  
21 TO HELP.

22 THAT IS ONE WAY IN WHICH THIS USE OF AN  
23 INTERMEDIARY MAY NOT WORK JUST BECAUSE OF THE WAY THE  
24 FILTER WORKS.

25 THE OTHER EXAMPLE IS THE ONE I TALKED

1 ABOUT BEFORE, WHERE CIRCUMVENTION BY REMOVING THE  
2 SOFTWARE FROM THE END USER COMPUTER DOES NOT WORK IF THE  
3 FILTER IS NOT ON THE END USER COMPUTER IN THE FIRST  
4 PLACE.

5 MS. CRUMP: YOUR HONOR, I BELIEVE  
6 PLAINTIFFS ARE ALMOST FINISHED WITH DIRECT. MAY I TAKE  
7 A MOMENT TO CONFER WITH MY CO-COUNSEL?

8 THE COURT: CERTAINLY.

9 BY MS. CRUMP:

10 Q. PROFESSOR FELTEN, I BELIEVE THERE IS ONE  
11 QUESTION I NEGLECTED TO ASK YOU EARLIER. YOU SHOWED US  
12 HOW ONE WOULD CONVERT AN IMAGE FROM HTTP TO FTP. YOU  
13 GAVE A DEMONSTRATION. HOW LONG WOULD THAT PROCESS TAKE?

14 A. ONLY A FEW MINUTES. IT TOOK ME LITERALLY ONLY A  
15 COUPLE OF MINUTES TO DO THE TRANSFORMATION THAT I  
16 ILLUSTRATED HERE.

17 MS. CRUMP: YOUR HONOR, THERE ARE A FEW  
18 EXHIBITS THAT PLAINTIFFS WOULD LIKE TO MOVE INTO  
19 EVIDENCE. THE FIRST ONE IS EXHIBIT 15 WHICH IS AT TAB 5  
20 IN THE BINDER. IT'S THE PEW SEARCH ENGINE USE STUDY.

21 MR. MCELVAIN: OBJECTION, HEARSAY. THIS  
22 IS THE SAME ISSUE WITH SURVEYS AND WHETHER YOU CAN GET  
23 THE STUDY IN THROUGH THE RESIDUAL HEARSAY EXCEPTION.  
24 THERE HAS BEEN NO SHOWING THAT THIS WAS CONDUCTED  
25 ACCORDING TO GENERALLY ACCEPTED PRINCIPLES.



1 THE COURT: I DON'T RECALL WHETHER DR.  
2 FELTEN QUALIFIED THE SURVEY AS BEING DONE IN ACCORDANCE  
3 WITH GENERALLY ACCEPTED PRACTICES AND MODALITIES AND SO  
4 FORTH.

5 SO I ASK THE QUESTION: WHAT IS THE  
6 PURPOSE OF THE OFFER? WHAT ARE YOU TRYING TO PROVE BY  
7 THE STUDY IN P 15?

8 MS. CRUMP: THAT IT SUPPORTS PROFESSOR  
9 FELTEN'S OPINION.

10 THE COURT: THE OBJECTION IS SUSTAINED.  
11 WE ALREADY HAVE THAT IN EVIDENCE.

12 MS. CRUMP: PLAINTIFFS WOULD ADDITIONALLY  
13 MOVE PLAINTIFFS 19 AND 119 INTO EVIDENCE. THESE ARE  
14 PROFESSOR FELTEN'S TWO POWERPOINT PRESENTATIONS.

15 MR. MCELVAIN: NO OBJECTION.

16 THE COURT: P 19 IS RECEIVED INTO  
17 EVIDENCE.

18 MS. CRUMP: AND ALSO PLAINTIFFS' EXHIBIT  
19 119, YOUR HONOR.

20 MR. MCELVAIN: NO OBJECTION.

21 THE COURT: P 119 IS RECEIVED INTO  
22 EVIDENCE.

23 THERE ARE 19 AND 119. I DID NOT WANT TO  
24 GET LOST.

25 MS. CRUMP: YES, YOU ARE CORRECT. YOUR

1 HONOR. 19 AND 119.

2 (P 19 AND P 119 RECEIVED INTO EVIDENCE.)

3 MS. CRUMP: NO FURTHER QUESTIONS.

4 THE COURT: CROSS EXAMINE.

5 CROSS EXAMINATION

6 BY MR. MCELVAIN:

7 Q. GOOD MORNING, DR. FELTEN.

8 A. GOOD MORNING.

9 Q. MY NAME IS JOEL MCELVAIN. I REPRESENT THE  
10 DEFENDANT IN THIS ACTION. DR. FELTEN, YOU HAVE  
11 CONSULTED WITH THE ELECTRONIC FRONTIER FOUNDATION, ISN'T  
12 THAT RIGHT?

13 A. THAT'S CORRECT.

14 Q. AND YOU ARE ON THE ADVISORY BOARD OF THE  
15 ELECTRONIC FRONTIER FOUNDATION?

16 A. YES.

17 Q. THE ELECTRONIC FRONTIER FOUNDATION HAS GIVEN YOU  
18 AN AWARD, ISN'T THAT RIGHT?

19 A. THAT IS ALSO RIGHT, YES.

20 MR. MCELVAIN: THE ELECTRONIC FRONTIER  
21 FOUNDATION IS A PLAINTIFF IN THIS LAWSUIT, RIGHT?

22 THE WITNESS: I'M ACTUALLY NOT SURE  
23 WHETHER THAT IS RIGHT.

24 MR. MCELVAIN: YOUR HONOR, CAN I ASK TO  
25 HAVE THE SCREEN CHANGED FOR USE OF OUR EXHIBITS.

1 BY MR. MCELVAIN:

2 Q. NOW, DR. FELTEN, YOU ARE NOT A LAWYER, IS THAT  
3 RIGHT?

4 A. THAT'S CORRECT.

5 Q. YOU ARE NOT A JUDGE, THAT'S RIGHT?

6 A. THAT'S CORRECT.

7 Q. AND YOU DON'T HAVE ANY LEGAL TRAINING, ISN'T  
8 THAT RIGHT?

9 A. YES, THAT IS RIGHT.

10 Q. YESTERDAY IN YOUR DISCUSSION WITH MS. CRUMP, YOU  
11 WENT OVER SOME DIFFERENT FORMATS OR PROTOCOLS OR  
12 TECHNOLOGIES THAT YOU STATED DID NOT IN YOUR VIEW  
13 QUALIFY AS BEING DELIVERED BY MEANS OF THE WORLDWIDE  
14 WEB. DO YOU RECALL THAT TESTIMONY?

15 A. YES, I DO.

16 Q. YOU REFERRED TO E-MAIL?

17 A. YES.

18 Q. E-MAIL IS NOT PUBLICLY ACCESSIBLE, ISN'T THAT  
19 RIGHT?

20 A. THAT'S RIGHT.

21 Q. AND YOU DON'T KNOW WHAT PERCENTAGE OF E-MAILS  
22 CONTAIN PORNOGRAPHIC CONTENT, DO YOU?

23 A. NO, I DON'T.

24 Q. AND YOU HAVE NOT OFFERED ANY OPINION AS TO THE  
25 EXTENT TO WHICH COMMERCIAL PORNOGRAPHERS WOULD USE

1 E-MAIL TO DISTRIBUTE PORNOGRAPHY, HAVE YOU?

2 A. AS TO WHAT THEY WOULD USE, NO.

3 Q. YOU ALSO REFERRED TO INSTANT MESSAGING AND CHAT  
4 YESTERDAY. DO YOU RECALL THAT?

5 A. YES.

6 Q. INSTANT MESSAGING IS NOT PUBLICALLY ACCESSIBLE,  
7 RIGHT?

8 A. THAT'S CORRECT.

9 Q. CHAT IS NOT PUBLICLY ACCESSIBLE?

10 A. YES, THAT IS GENERALLY CORRECT.

11 Q. YOU DON'T KNOW THE PERCENTAGE OF INSTANT  
12 MESSAGES OR OF CHATS THAT CONTAIN PORNOGRAPHIC CONTENT,  
13 DO YOU?

14 A. I DON'T HAVE A SPECIFIC NUMBER, BUT I KNOW THESE  
15 TECHNOLOGIES ARE USED TO TRANSFER FILES OF ALL KINDS.

16 Q. MY QUESTION FOR YOU IS YOU DON'T KNOW THE  
17 PERCENTAGE OF INSTANT MESSAGES OR CHATS THAT CONTAIN  
18 PORNOGRAPHIC CONTENT?

19 A. THAT'S RIGHT. I DON'T HAVE A NUMBER FOR THAT.

20 Q. AND YOU HAVE NOT OFFERED ANY OPINION AS TO THE  
21 EXTENT TO WHICH COMMERCIAL PORNOGRAPHERS WOULD USE  
22 INSTANT MESSAGES OR CHAT TO DISTRIBUTE PORNOGRAPHIC  
23 CONTENT, HAVE YOU?

24 A. THAT'S RIGHT.

25 Q. YOU ALSO REFERRED TO VOICE OVER IP, IS THAT

1 CORRECT?

2 A. YES.

3 Q. AND VOICE OVER IP IS NOT PUBLICLY ACCESSIBLE,  
4 RIGHT?

5 A. THAT'S RIGHT.

6 Q. AND YOU DON'T KNOW THE PERCENTAGE OF  
7 COMMUNICATIONS OVER VOICE OVER IP THAT ARE PORNOGRAPHIC,  
8 RIGHT?

9 A. I DON'T KNOW A NUMBER, BUT I DO KNOW THAT THE  
10 USE OF THE TELEPHONE FOR PORNOGRAPHIC SERVICES IS  
11 WIDESPREAD.

12 MR. MCELVAIN: MOVE TO STRIKE AS  
13 NON-RESPONSIVE.

14 THE COURT: JUST ANSWER THE QUESTION,  
15 SIR. IF THERE IS ANYTHING TO BE CLEARED UP, COUNSEL FOR  
16 THE PARTY THAT CALLED YOU CAN DO THAT ON REDIRECT.

17 BY MR. MCELVAIN:

18 Q. MY QUESTION FOR YOU IS, YOU DON'T KNOW THE  
19 PERCENTAGE OF COMMUNICATIONS OVER VOICE OVER IP THAT ARE  
20 PORNOGRAPHIC, DO YOU?

21 A. THAT'S RIGHT. I DON'T HAVE A NUMBER.

22 Q. YOU HAVE NOT OFFERED ANY OPINION AS TO EXTENT TO  
23 WHICH COMMERCIAL PORNOGRAPHERS WOULD USE VOICE OVER IP  
24 TO DISTRIBUTE PORNOGRAPHIC CONTENT, HAVE YOU?

25 A. NO.

1 Q. YOU ALSO REFERRED YESTERDAY TO PEER-TO-PEER  
2 TECHNOLOGIES.

3 A. YES.

4 Q. OR P2P, THAT IS A SYNONYM FOR PEER-TO-PEER, IS  
5 THAT RIGHT?

6 A. YES.

7 Q. YOU DON'T KNOW WHAT PERCENTAGE OF P2P FILE  
8 DISTRIBUTIONS ARE PORNOGRAPHIC, DO YOU?

9 A. NO, I DON'T HAVE A PERCENTAGE NUMBER.

10 Q. YOU HAVE NOT OFFERED ANY OPINION AS TO THE  
11 EXTENT TO WHICH COMMERCIAL PORNOGRAPHERS WOULD USE P2P  
12 TECHNOLOGY TO DISTRIBUTE PORNOGRAPHY, HAVE YOU?

13 A. NO.

14 Q. YOU HAVE ALSO REFERRED TO FILE TRANSFER PROTOCOL  
15 YESTERDAY AND THIS MORNING AS WELL.

16 A. YES.

17 Q. AND YOU DON'T KNOW WHAT PERCENTAGE OF  
18 PORNOGRAPHIC CONTENT IS ON SITES THAT USE FTP, DO YOU?

19 A. NO, I DON'T HAVE THE NUMBER.

20 Q. AND YOU HAVE NOT OFFERED ANY OPINION AS TO THE  
21 EXTENT TO WHICH COMMERCIAL PORNOGRAPHERS WOULD USE THE  
22 FTP TECHNOLOGY TO DISTRIBUTE PORNOGRAPHIC CONTENT, HAVE  
23 YOU?

24 A. I HAVE TALKED ABOUT WHETHER THEY COULD. I HAVE  
25 NOT TALKED ABOUT WHETHER THEY DO.

1 Q. FAIR ENOUGH. YOU ALSO REFERRED TO STREAMING  
2 VIDEO AND AUDIO YESTERDAY.

3 A. YES.

4 Q. DO YOU REMEMBER THAT?

5 A. YES.

6 Q. AND YOU PROVIDED THE EXAMPLE OF REAL PLAYER AS  
7 AN EXAMPLE OF A FORMAT THAT USES STREAMING VIDEO?

8 A. NO, REAL PLAYER IS NOT A FORMAT. IT'S A  
9 SOFTWARE TOOL THAT YOU CAN USE TO WATCH STREAMING VIDEO.

10 Q. I STAND CORRECTED. REAL PLAYER IS AN EXAMPLE OF  
11 SOFTWARE THROUGH WHICH STREAMING VIDEO COULD BE  
12 DISTRIBUTED, COULD BE VIEWED?

13 A. YES.

14 Q. YOU DON'T KNOW WHAT PERCENTAGE OF STREAMING  
15 VIDEO OR AUDIO IS PORNOGRAPHIC, DO YOU?

16 A. NO, I DON'T HAVE THE NUMBER.

17 Q. YOU HAVE NOT OFFERED ANY OPINION AS TO THE  
18 EXTENT TO WHICH COMMERCIAL PORNOGRAPHERS WOULD USE  
19 STREAMING VIDEO OR STREAMING AUDIO TO DELIVER  
20 PORNOGRAPHIC CONTENT?

21 A. NO, NO. NOT AS TO WHAT THEY DO.

22 Q. NOW, FILES UNDER THE STREAMING VIDEO FORMAT CAN  
23 BE EMBEDDED WITHIN WEBSITES THAT USE THE HTTP PROTOCOL,  
24 IS THAT RIGHT?

25 A. WHAT DO YOU MEAN BY EMBEDDED WITHIN WEBSITES?

1 Q. WELL, IF WE CAN CALL UP PLAINTIFFS' EXHIBIT P  
2 119. IF YOU CAN TURN TO PAGE 10 OF THAT.

3 THE COURT: WHAT PAGE, SIR?

4 MR. MCELVAIN: PAGE 10.

5 BY MR. MCELVAIN:

6 Q. DO YOU SEE THAT PAGE?

7 A. YES, I DO.

8 Q. COULD YOU PLEASE READ THE BROWSER BAR AT THE  
9 TOP?

10 A. BROWSER BAR AT THE TOP. I'M NOT SURE WHICH LINE  
11 YOU ARE REFERRING TO, THE URL OR THE TITLE AT THE TOP.

12 Q. I'M SORRY. COULD WE HAVE P 119. AT THE VERY  
13 TOP THERE?

14 A. YES, IT SAYS, LISTEN LIVE. THERE IS A VERTICAL  
15 BAR. IT SAYS RADIO. THERE IS ANOTHER VERTICAL BAR THAT  
16 SAYS WHY MOZILLA FIREFOX.

17 Q. IF I COULD ASK YOU TO READ THE TEXT THAT IS  
18 AFTER THE LITTLE BLUE CIRCLE WITH THE Y?

19 A. YES. IT SAYS [HTTP://WWW.WHY.ORG/91](http://www.whyy.org/91)  
20 [FM/LIVE.HTML](http://www.whyy.org/91).

21 Q. THE USE OF THOSE LETTERS, HTTP AT THE BEGINNING  
22 MEAN THAT THIS IS A PAGE THAT IS PUBLISHED USING THE  
23 HTTP PROTOCOL?

24 A. YES. THIS PAGE THAT YOU ARE SEEING HERE,  
25 DEPICTED HERE, IS DISTRIBUTED VIA HTTP.



1 Q. IT IS A WEB PAGE THAT IS ACCESSIBLE USING THE  
2 HTTP PROTOCOL?

3 A. YES, IT IS.

4 Q. IF I COULD TURN YOUR ATTENTION TO THE FIRST  
5 HIGHLIGHTED BLUE TERM ABOUT A QUARTER OF THE WAY DOWN  
6 THE PAGE THAT SAYS LISTEN. DO YOU SEE THAT?

7 A. YES, I DO.

8 Q. IF I RECALL YOUR TESTIMONY YESTERDAY CORRECTLY,  
9 YOU TESTIFIED THAT YOU IF YOU CLICK THAT LINK, YOU WOULD  
10 RECEIVE A FILE THAT DELIVERS THE AUDIO OF THE WHY? RADIO  
11 STATION, IS THAT CORRECT?

12 A. YOU WOULD RECEIVE STREAMING AUDIO THAT WOULD  
13 ALLOW YOU TO LISTEN TO THE RADIO STATION, YES. AND YOU  
14 WOULD LISTEN TO IT USING THE REAL PLAYER PROGRAM IN MY  
15 CASE.

16 Q. AND THAT LINK IS CONTAINED WITHIN A WEB PAGE  
17 THAT USES THE HTTP PROTOCOL?

18 A. YES. THAT LINK IS CONTAINED WITHIN THE WEB  
19 PAGE, BUT, OF COURSE, THE CONTENT YOU GET WHEN YOU CLICK  
20 THE LINK IS NOT.

21 Q. YOU TESTIFIED YESTERDAY THAT THE LINK OR THE  
22 MATERIAL ACCESSED BY THAT LINK COULD BE ACCESSED BY A  
23 LISTENER DIRECTLY THROUGH THE REAL PLAYER PROGRAM?

24 A. YES, THAT'S RIGHT.

25 Q. IF I UNDERSTAND YOUR TESTIMONY CORRECTLY,

1 YESTERDAY YOU STATED FOR THAT REASON, YOUR OPINION IS  
2 THAT THE FILE IS NOT DELIVERED BY MEANS OF THE WORLDWIDE  
3 WEB?

4 A. THAT IS ONE REASON.

5 Q. THE SAME FILE IS ACCESSIBLE TO A LISTENER BY  
6 GOING TO THE WHYY.ORG WEBSITE AND THEN CLICKING ON THAT  
7 LINK?

8 A. THEY CAN USE THIS WEB PAGE TO FIND THE CONTENT,  
9 BUT THE CONTENT IS DELIVERED VIA STREAMING.

10 Q. DR. FELTEN, DO YOU RECALL DISCUSSING THE TEXT OF  
11 47 U.S.C. 231(E)(1) WITH MS. CRUMP YESTERDAY?

12 A. ASSUMING YOU ARE REFERRING TO THE DEFINITION OF  
13 BY MEANS OF THE WORLDWIDE WEB, THEN YES.

14 Q. YES. THAT IS WHAT I'M REFERRING TO. CAN WE  
15 CALL THAT UP ON THE SCREEN, MR. BYRDSONG? IF YOU COULD  
16 TURN TO THE THIRD PAGE. YOU, AS WELL, DR. FELTEN. DO  
17 YOU SEE PARAGRAPH 1 UNDER PARAGRAPH E AT THE TOP OF THE  
18 PAGE?

19 A. YES, I DO.

20 Q. DR. FELTEN, I WOULD LIKE YOU TO LOOK AT THAT  
21 PARAGRAPH AND POINT TO ME WHERE IN THIS PARAGRAPH THE  
22 WORD "ACCESSED" APPEARS.

23 A. WELL, IT SAYS ACCESSIBLE. THE MATERIAL IS  
24 ACCESSIBLE, MEANING IT CAN BE ACCESSED.

25 Q. DR. FELTEN, CAN YOU SHOW ME WHERE THE WORD

1 "ACCESSED" APPEARS IN THAT PARAGRAPH?

2 A. THAT FORM OF THE WORD, NO.

3 Q. THE TERM THAT IS USED IN THE STATUTE IS  
4 "ACCESSIBLE," ISN'T THAT RIGHT?

5 A. YES. THAT IS THE WORD THAT IS USED.

6 Q. I BELIEVE YOU TESTIFIED EARLIER THAT YOU DON'T  
7 HAVE ANY LEGAL TRAINING, CORRECT?

8 A. THAT'S RIGHT.

9 Q. SO YOU CAN'T OPINE ON WHAT THE LEGAL  
10 SIGNIFICANCE WOULD BE OF CONGRESS'S CHOICE OF THE TERM  
11 "ACCESSIBLE" INSTEAD OF "ACCESSED," CORRECT?

12 A. FROM A LEGAL STANDPOINT, NO. I UNDERSTAND THAT  
13 TERM AS A COMPUTER SCIENTIST.

14 Q. YOU REFERRED TO YOUTUBE, Y-O-U-T-U-B-E,  
15 YESTERDAY. DO YOU REMEMBER THAT?

16 A. YES.

17 Q. YOUTUBE IS A WEBSITE?

18 A. YES.

19 Q. IS THAT RIGHT?

20 A. YES.

21 Q. AND YOUTUBE IS ACCESSIBLE USING THE HTTP  
22 PROTOCOL?

23 A. YOU MEAN THE MAIN YOUTUBE PAGE?

24 Q. YES.

25 A. YES, THE MAIN YOUTUBE PAGE IS ACCESSIBLE BY

1 HTTP.

2 Q. NOW, WITH REGARD TO ANY OF THESE PROTOCOLS OR  
3 TECHNOLOGIES THAT WE HAVE BEEN DISCUSSING SO FAR,  
4 E-MAIL, INSTANT MESSAGING, VOICE OVER IP, P2P, FILE  
5 TRANSFER PROTOCOL, STREAMING VIDEO AND AUDIO, YOU HAVE  
6 NOT STUDIED WHETHER FILTERING IS EFFECTIVE ON SCREENING  
7 OUT CONTENT DELIVERED OVER ANY OF THESE PROTOCOLS,  
8 CORRECT?

9 A. WELL, I UNDERSTAND AS A COMPUTER SCIENTIST WHAT  
10 CAN AND CANNOT BE DONE WITH FILTERING, AND I UNDERSTAND  
11 THAT THERE IS NOT A FUNDAMENTAL BARRIER TO USING THE  
12 SAME KINDS OF FILTERING TECHNOLOGIES ON THESE  
13 TECHNOLOGIES THAT IS USED ON HTTP AND OTHERS.

14 Q. BUT YOU HAVE NOT CONDUCTED ANY FIRSTHAND STUDIES  
15 TO CONFIRM WHETHER OR NOT FILTERING IS EFFECTIVE ON THE  
16 CONTENT DELIVERED OVER THESE PROTOCOLS, HAVE YOU?

17 A. NO SUCH STUDY IS NECESSARY BECAUSE I UNDERSTAND  
18 AS A COMPUTER SCIENTIST THAT THE PROBLEM OF FILTERING  
19 CONTENT IS THE SAME REGARDLESS OF WHICH PROTOCOL IS USED  
20 TO DELIVER IT.

21 Q. SO IF I ASK YOU THAT YOU HAVE NOT CONDUCTED ANY  
22 FIRSTHAND STUDIES ON THE SUBJECT, THE ANSWER WOULD BE  
23 NO, RIGHT?

24 A. IF BY FIRSTHAND -- I GUESS I DON'T UNDERSTAND  
25 WHAT YOU MEAN BY FIRSTHAND STUDIES.

1 Q. HAVE YOU PERSONALLY STUDIED WHETHER ANY  
2 FILTERING TECHNOLOGY IS EFFECTIVE AT BLOCKING UNWANTED  
3 CONTENT OVER ANY OF THESE PROTOCOLS?

4 A. YES. I HAVE STUDIED THE QUESTION OF WHETHER  
5 CONTENT -- OF WHETHER FILTERING TECHNOLOGIES CAN BLOCK,  
6 CAN BLOCK CONTENT DELIVERED OVER THESE TECHNOLOGIES. I  
7 EXPLAINED A MINUTE AGO WHAT MY OPINION ABOUT THAT IS AND  
8 WHY.

9 Q. MY QUESTION FOR YOU IS NOT WHETHER IT IS  
10 FEASIBLE. HAVE YOU CONDUCTED ANY FIRSTHAND STUDIES TO  
11 CONFIRM THE FACT THAT UNWANTED CONTENT CAN BE FILTERED  
12 BY SOFTWARE ATTEMPTING TO FILTER THAT CONTENT OVER THESE  
13 PROTOCOLS?

14 A. NO. AS I SAID BEFORE, NO SUCH STUDY IS  
15 NECESSARY TO REACH THAT CONCLUSION.

16 Q. TURNING YOUR ATTENTION SPECIFICALLY TO FILE  
17 TRANSFER PROTOCOL, DR. FELTEN, YOU CAN'T IDENTIFY ANY  
18 COMMERCIAL WEBSITES THAT PREDOMINANTLY USE FILE TRANSFER  
19 PROTOCOL, CAN YOU?

20 A. PREDOMINANTLY, NO.

21 Q. AND YOU DON'T KNOW HOW MUCH OF MATERIAL THAT IS  
22 DELIVERED OVER THE FTP PROTOCOL COULD BE DESCRIBED AS  
23 E-COMMERCE, CAN YOU?

24 A. HOW MUCH OF THE MATERIAL DISTRIBUTED OVER THE  
25 FTP PROTOCOL COULD BE DESCRIBED AS E-COMMERCE? NO, I

1 DON'T HAVE THE NUMBER FOR THAT.

2 Q. AND YOU DON'T KNOW WHETHER THERE ARE ANY FTP  
3 BASED CREDIT CARD PROCESSING WEBSITES, DO YOU?

4 A. NO, I DON'T. OH, I'M SORRY, PERHAPS I DID NOT  
5 UNDERSTAND THE QUESTION. BY CREDIT CARD PROCESSING  
6 WEBSITES, YOU MEAN WEBSITES THAT ARE DESIGNED PRIMARILY  
7 FOR THAT PURPOSE?

8 Q. WELL, LET'S BREAK THAT UP. FOR A WEBSITE THAT  
9 IS DESIGNED PRIMARILY FOR CREDIT CARD PROCESSING, YOU  
10 DON'T KNOW WHETHER THERE ARE ANY FTP BASED WEBSITES THAT  
11 WOULD QUALIFY UNDER THAT DEFINITION?

12 A. NO, I DON'T KNOW WHETHER THERE ARE ANY TODAY.

13 Q. YOU DON'T KNOW WHETHER THERE ARE ANY WEBSITES  
14 THAT HAVE CREDIT CARD PROCESSING AS PART OF A LARGER  
15 PURPOSE THAT ARE FTP-BASED?

16 A. I KNOW THERE ARE SITES THAT USE FTP AND ALSO  
17 TAKE PAYMENT BY CREDIT CARD.

18 Q. AND DO THEY TAKE PAYMENT BY CREDIT CARD OVER THE  
19 FTP PROTOCOL?

20 A. NO. THOSE SITES USE FTP FOR DELIVERING CONTENT  
21 AND ANOTHER PROTOCOL LIKE HTTPS FOR PROCESSING THE  
22 PAYMENT.

23 Q. DR. FELTEN, WHAT'S A COOKIE AS THAT TERM IS USED  
24 IN THE CONTEXT OF THE INTERNET?

25 A. COOKIES ARE TECHNOLOGY ASSOCIATED WITH THE WEB

1 THAT ARE USED BY A SITE TO STORE INFORMATION ON A USER'S  
2 COMPUTER.

3 Q. AND ISN'T IT RIGHT THAT FTP DOES NOT PROVIDE  
4 FUNCTIONALITY FOR COOKIES?

5 A. THAT IS RIGHT. THERE IS NO COOKIE FACILITY IN  
6 FTP. THERE ARE OTHER WAYS OF GETTING THE SAME FUNCTION  
7 THAT COOKIES PROVIDE.

8 Q. BUT FTP DOES NOT PROVIDE FUNCTIONALITY FOR  
9 COOKIES?

10 A. FTP PROVIDES FUNCTIONALITY THAT SOLVES THE  
11 PROBLEMS THAT COOKIES SOLVE, BUT THEY DON'T PROVIDE  
12 COOKIES PER SE.

13 MR. MCELVAIN: A MOMENT WITH THE COURT'S  
14 INDULGENCE, YOUR HONOR.

15 THE COURT: SURELY.

16 BY MR. MCELVAIN:

17 Q. DR. FELTEN, IF A WEB USER TYPES A DOMAIN NAME  
18 DIRECTLY INTO THE BROWSER BAR, BROWSERS, AS THEY EXIST  
19 TODAY, WOULD ASSUME THAT THE WEB USER IS DIRECTING THE  
20 BROWSER TO USE HTTP, ISN'T THAT RIGHT? AS BROWSERS ARE  
21 CONFIGURED TODAY?

22 A. DEPENDS ON WHAT THE USER TYPES.

23 Q. IF THE USER JUST TYPES THE DOMAIN NAME INTO THE  
24 BROWSER?

25 A. THAT'S RIGHT. THE BROWSER WOULD -- THE BROWSER

1 WOULD TYPICALLY ASSUME THAT.

2 Q. AND DR. FELTEN, YOU DON'T KNOW WHETHER SEARCH  
3 ENGINES AS THEY EXIST TODAY OBTAIN FILES VIA FTP, IS  
4 THAT RIGHT?

5 A. NO. I DON'T KNOW WHETHER THEY DO THAT TODAY. I  
6 KNOW THAT THERE IS NO TECHNICAL BARRIER TO THEM DOING  
7 IT.

8 Q. DR. FELTEN, IF I RECALL YOUR TESTIMONY CORRECTLY  
9 FROM EARLIER THIS MORNING, YOUR OPINION IS THAT IT IS  
10 TECHNICALLY POSSIBLE TO CONVERT AN HTTP PAGE TO AN FTP  
11 PAGE. IS THAT A FAIR STATEMENT OF YOUR TESTIMONY?

12 A. YES, THAT IS PART OF MY TESTIMONY.

13 Q. YOU HAVE NOT STUDIED WHETHER A WEBSITE OPERATOR  
14 WOULD BE LIKELY TO USE FTP FOR THE PROCESSING OF  
15 FINANCIAL INFORMATION, HAVE YOU?

16 A. FOR THE PROCESSING OF FINANCIAL INFORMATION?  
17 NO, I HAVE NOT STUDIED THAT -- THAT DIRECTLY. I HAVE  
18 STUDIED WHETHER THEY WOULD PROVIDE CONTENT VIA FTP.

19 Q. IF I RECALL YOUR TESTIMONY FROM THIS MORNING  
20 CORRECTLY, YOU STATED THAT YOU BELIEVE THAT UNDER NORMAL  
21 CONDITIONS FIREWALLS WOULD NOT POSE A PROBLEM FOR THE  
22 DELIVERY OF AN FTP SITE. IS THAT A FAIR STATEMENT OF  
23 YOUR TESTIMONY FROM THIS MORNING?

24 A. YES.

25 Q. BUT THERE ARE SOME CONDITIONS IN WHICH FIREWALLS



1 WOULD POSE A PROBLEM FOR THE DELIVERY OF CONTENT VIA FTP  
2 THROUGH THE FIREWALL, IS THAT CORRECT?

3 A. IF THE FIREWALL HAS BEEN CONFIGURED OR  
4 INSTRUCTED TO DO FILTERING ON FTP, THEN, YES, IT COULD  
5 FILTER IT.

6 Q. DR. FELTEN, THIS MORNING YOU DISCUSSED THE  
7 AVAILABILITY OF FILTERING TECHNOLOGY ON ALTERNATIVE  
8 DEVICES. I MEAN MOBILE PHONES AND PDAS.

9 A. YES.

10 Q. IN YOUR OPINION THAT YOU EXPRESSED THIS MORNING  
11 WAS THAT IT IS TECHNICALLY FEASIBLE FOR THE FILTERING  
12 SOFTWARE TO -- YOUR OPINION IS IT IS TECHNICALLY  
13 FEASIBLE FOR THESE FILTERING SOFTWARE PRODUCTS TO BE  
14 AVAILABLE FOR THESE ALTERNATIVE DEVICES. IS THAT A FAIR  
15 STATEMENT --

16 A. YES.

17 Q. -- OF YOUR TESTIMONY.

18 NOW, DR. FELTEN, YOU HAVE NOT ANALYZED  
19 THE ACCURACY OF ANY OF THE FILTERING PRODUCTS THAT YOU  
20 DESCRIBED FOR ALTERNATIVE DEVICES?

21 A. THAT'S CORRECT.

22 Q. AND YOU DON'T KNOW HOW ACCURATE THE CISCO  
23 FILTERING PRODUCT IS?

24 A. THAT'S RIGHT. I HAVE NOT STUDIED THAT MYSELF.

25 Q. YOU DON'T KNOW HOW ACCURATE THE BLUECOAT

1 FILTERING PRODUCT IS?

2 A. RIGHT, I HAVE NOT STUDIED THAT.

3 Q. YOU DON'T KNOW HOW ACCURATE THE BYTEMOBILE  
4 FILTERING PRODUCT IS?

5 A. YES.

6 Q. YOU DON'T KNOW HOW ACCURATE THE RULESPACE  
7 FILTERING PRODUCT IS?

8 A. THAT'S CORRECT. I HAVE NOT STUDIED THAT MYSELF.

9 Q. DR. FELTEN, THIS MORNING YOU REFERRED TO WEB  
10 PAGES AND WEBSITES.

11 A. YES.

12 Q. DO YOU RECALL THAT?

13 A. YES.

14 Q. AND I BELIEVE YOU REFERRED THIS MORNING TO THE  
15 POSSIBILITY THAT A STORY ON A NEWS WEBSITE COULD BE ON A  
16 SINGLE WEB PAGE. DO YOU RECALL THAT TESTIMONY?

17 A. YES.

18 Q. BUT IT'S POSSIBLE THAT A STORY ON A NEWS WEBSITE  
19 COULD BE ON MORE THAN ONE WEB PAGE, ISN'T IT?

20 A. IT'S POSSIBLE, YES.

21 THE COURT: CAN I ASSUME WE ARE TALKING  
22 ABOUT THE LENGTH OF THE STORY IT MIGHT APPEAR SOMEWHERE  
23 ELSE FOR ORGANIZATIONAL PURPOSES SOMEONE ARRANGES IT  
24 THAT WAY?

25 THE WITNESS: ON NEWS SITES LONG STORIES

1 ARE SOMETIMES BROKEN UP ON MULTIPLE WEB PAGES.

2 THE COURT: EXCUSE ME.

3 BY MR. MCELVAIN:

4 Q. YOU ALSO DISCUSSED INTERMEDIARY WEBSITES THIS  
5 MORNING. DO YOU RECALL THAT?

6 A. INTERMEDIARY SITES, YES.

7 Q. YOU DON'T KNOW HOW MANY INTERMEDIARY SITES THERE  
8 ARE?

9 A. NO, I DON'T HAVE A NUMBER.

10 Q. AND YOU DON'T HAVE AN ESTIMATE EVEN OF HOW MANY  
11 INTERMEDIARY SITES THERE ARE?

12 A. NO.

13 Q. YOU DON'T KNOW HOW MANY INTERMEDIARY WEBSITES  
14 HAVE BEEN LOCATED BY FILTERING SOFTWARE PRODUCERS?

15 A. NO, I DON'T HAVE A NUMBER FOR THAT.

16 Q. YOU HAVE NOT STUDIED WHICH FILTERS, IF ANY, ARE  
17 EFFECTIVE AT FINDING INTERMEDIARY SITES, HAVE YOU?

18 A. NO, I HAVE NOT STUDIED THAT MYSELF.

19 Q. YOU DON'T KNOW THE AVERAGE TIME LAG THAT IT  
20 WOULD TAKE TO FIND AN INTERMEDIARY WEBSITE, DO YOU?

21 A. TIME LAG FROM WHEN TO WHEN?

22 Q. FROM THE TIME THAT THE INTERMEDIARY WEBSITE IS  
23 MADE AVAILABLE ON THE WEB TO THE TIME THAT THE FILTERING  
24 SOFTWARE FINDS THE SITE AND PUTS IT ON, SAY, THEIR BLACK  
25 LIST?

1 A. IF THE FILTERING COMPANY IS WATCHING THE SITE  
2 THAT YOU ARE TALKING ABOUT WHERE THIS INFORMATION IS  
3 MADE AVAILABLE, THIS COULD HAPPEN QUITE QUICKLY.

4 Q. YOU DON'T KNOW THE AVERAGE TIME LAG THAT IT  
5 WOULD TAKE, DO YOU?

6 A. NO, I DON'T HAVE AN AVERAGE TIME.

7 Q. AND YOU TESTIFIED THIS MORNING THAT YOU BELIEVE  
8 THAT FILTERING SOFTWARE PRODUCERS HAVE THE INCENTIVE TO  
9 FIND THESE SITES. IS THAT A FAIR STATEMENT OF YOUR  
10 TESTIMONY?

11 A. YES. THEY HAVE AN INCENTIVE TO MAKE THEIR  
12 FILTERS AS ACCURATE AS THEY CAN.

13 Q. AND YOUR OPINION IN THIS COURT IS BASED ON YOUR  
14 KNOWLEDGE OF THE COMPUTER SECURITY SOFTWARE BUSINESS,  
15 ISN'T THAT RIGHT?

16 A. IT'S BASED ON MY KNOWLEDGE OF COMPUTER SCIENCE  
17 IN GENERAL.

18 Q. DR. FELTEN, YOU WERE DEPOSED IN THIS LITIGATION  
19 ON JULY 19TH, 2006. DO YOU RECALL THAT?

20 A. YES.

21 Q. YOU REMEMBER YOU WERE UNDER OATH?

22 A. YES.

23 Q. KENNETH SEALLS FROM MY OFFICE TOOK SOME  
24 QUESTIONS FROM YOU. DO YOU RECALL THAT?

25 A. YES, I DO.

1 Q. AND ATTORNEYS FROM THE ACLU WERE PRESENT AS  
2 WELL?

3 A. YES.

4 THE COURT: SPELL COUNSEL'S LAST NAME  
5 PLEASE.

6 MR. MCELVAIN: S-E-A-L-L-S. DO I HAVE  
7 THAT RIGHT?

8 MR. SEALLS: THAT'S CORRECT.

9 THE COURT: THANK YOU.

10 BY MR. MCELVAIN:

11 Q. MR. BYRDSONG, IF YOU COULD CALL UP PAGES 105 AND  
12 106 OF DR. FELTEN'S DEPOSITION, AND IF YOU COULD SEE  
13 THAT WHEN IT COMES UP AS WELL, DR. FELTEN, PLEASE.

14 THE COURT: ANY PARTICULAR LINES?

15 MR. MCELVAIN: BEGINNING AT LINE 16 AT  
16 PAGE 105.

17 THE QUESTION IS: ARE YOU INFERRING THAT  
18 THERE ARE SOME THAT ARE GOOD AT FINDING INTERMEDIARY  
19 SITES?

20 ANSWER: THIS IS SOMETHING THAT I WOULD  
21 EXPECT COMPANIES IN THIS FIELD TO DO. I KNOW THAT THEY  
22 DO DO IT. BASED ON MY UNDERSTANDING OF HOW THESE SORTS  
23 OF THINGS ARE DONE, COMPANIES IN THE SECURITY BUSINESS  
24 OFTEN DO A SORT OF INTELLIGENCE WORK TO FIGURE OUT WHAT  
25 METHODS PEOPLE ARE TRYING TO USE TO DEFEAT THEIR

1 PRODUCTS. AND THIS IS SOMETHING THAT I'M FAMILIAR WITH  
2 IN A NUMBER OF DIFFERENT SETTINGS WITHIN THE COMPUTER  
3 SECURITY FIELD. AND SO THESE COMPANIES I'M SURE USE THE  
4 SAME KINDS OF METHODS. THESE METHODS TEND TO WORK  
5 FAIRLY WELL IN GENERAL AT DISCOVERING THE MAJOR SOURCES  
6 OF PROBLEMS FOR CIRCUMVENTION.

7 DID I ACCURATELY READ YOUR TESTIMONY, DR.  
8 FELTEN?

9 THE WITNESS: YES.

10 BY MR. MCELVAIN:

11 Q. DR. FELTEN, YOU HAVE NOT STUDIED WHETHER THERE  
12 ARE ANY DIFFERENCES IN THE ECONOMIC INCENTIVES BETWEEN  
13 THE FILTERING SOFTWARE MARKET AND THE COMPUTER SECURITY  
14 SOFTWARE MARKET THAT MAY AFFECT THE INCENTIVES ON THIS  
15 SCORE, HAVE YOU?

16 A. NO, BUT I WOULD NOT ASSUME AS YOUR QUESTION  
17 SEEMS TO ASSUME THAT THESE ARE SEPARATE MARKETS. FOR  
18 THIS PURPOSE THE FILTERS ARE SECURITY PRODUCTS.

19 Q. BUT YOU HAVE NOT STUDIED WHETHER THERE ARE ANY  
20 POTENTIAL DIFFERENCES, HAVE YOU?

21 THE COURT: ANY POTENTIAL WHAT?

22 MR. MCELVAIN: ANY POTENTIAL DIFFERENCES  
23 IN THE INCENTIVES BETWEEN THE MARKETS, THE MARKET FOR  
24 FILTERING SOFTWARE PRODUCERS AND THE MARKET OF COMPUTER  
25 SECURITY SOFTWARE PRODUCERS.

1 THE WITNESS: I DON'T UNDERSTAND THOSE TO  
2 BE SEPARATE MARKETS. I UNDERSTAND THIS KIND OF  
3 FILTERING SOFTWARE TO BE A SECURITY PRODUCT. THAT'S  
4 PART OF WHAT I MEAN WHEN I TALK ABOUT SECURITY.

5 MR. MCELVAIN: MAY I HAVE AN A MOMENT TO  
6 CONFER WITH COUNSEL?

7 THE COURT: SURELY.

8 BY MR. MCELVAIN:

9 Q. DR. FELTEN, YOU ARE NOT AN ECONOMIST, RIGHT?

10 A. THAT'S RIGHT.

11 Q. YOU DON'T HAVE A PH.D. IN ECONOMICS?

12 A. THAT'S RIGHT.

13 MR. MCELVAIN: NO FURTHER QUESTIONS.

14 THANK YOU.

15 THE COURT: ANY REDIRECT?

16 MS. CRUMP: NO REDIRECT, YOUR HONOR.

17 THE COURT: I HAVE A COUPLE OF QUESTIONS.

18 BY THE COURT:

19 Q. LET'S PICK ONE OF THESE AREAS AT RANDOM. YOU  
20 USED THE SAME TESTIMONY FROM TIME-TO-TIME. I BELIEVE  
21 YOU WERE ASKED A QUESTION REGARDING ALTERNATIVE DEVICES  
22 AND RECALLING THAT YOU TESTIFIED THAT THEY WERE  
23 TECHNICALLY -- IT WAS TECHNICALLY FEASIBLE FOR FILTERS  
24 TO BE AVAILABLE ON THESE DEVICES. DO YOU REMEMBER THAT  
25 SUBJECT MATTER IN GENERAL?

1 A. YES, I DO.

2 Q. AND YOU SAID YOU DID NOT ANALYZE YOURSELF THE  
3 OCCURRENCE OF THE ACTUAL USE OF THESE DEVICES -- LET ME  
4 GET MY NOTES STRAIGHT -- DID NOT ANALYZE THE ACCURACY OF  
5 THE FILTERING DEVICES, THAT YOU DID NOT DO A STUDY  
6 YOURSELF?

7 A. THAT'S RIGHT.

8 Q. WHAT DID YOU MEAN BY SAYING YOU DID NOT CONDUCT  
9 A STUDY OF ACCURACY YOURSELF?

10 A. WELL, ALL I MEANT TO SAY IS THAT -- I DIDN'T  
11 MEAN TO IMPLY THAT NO ONE HAD DONE SUCH STUDIES.

12 Q. THAT IS WHY I'M ASKING THE QUESTION.

13 A. IT IS NOT A TOPIC I HAVE STUDIED MYSELF. I'M  
14 NOT AWARE SITTING HERE OF PARTICULAR STUDIES THAT I  
15 WOULD REFERENCE ON THIS TOPIC.

16 Q. THERE MAY BE SOME OR ARE SOME?

17 A. THERE MAY BE SOME.

18 Q. YOU TESTIFIED ABOUT PLAINTIFFS' EXHIBIT 19, PAGE  
19 6. WILL SOMEONE PUT THAT UP ON THE SCREEN PLEASE. THIS  
20 APPEARS TO BE IT. IN YOUR DIRECT EXAMINATION, MISS  
21 CRUMP WAS ASKING YOU WHAT THIS DOCUMENT REPRESENTED AND  
22 YOU TESTIFIED ABOUT IT AND HOW IT WAS FEASIBLE TO USE  
23 FTP AND THAT IT WAS NOT PART OF THE WORLDWIDE WEB. MY  
24 QUESTION IS SOMETHING LIKE WHAT DEFENSE COUNSEL WAS  
25 GETTING TO BUT MAYBE DIFFERENTLY. I PUT A NOTE ON THE



1 MARGIN TO MYSELF, HOW MUCH. I ASK YOU THIS, HOW MUCH IS  
2 THIS TECHNIQUE USED? DO YOU HAVE ANY KNOWLEDGE OF WHAT  
3 IS TECHNICALLY FEASIBLE IS BEING USED BY ANYBODY FOR ANY  
4 PURPOSE?

5 A. I DON'T KNOW HOW MUCH IT IS BEING USED TODAY TO  
6 DELIVER MATERIAL. TODAY I DON'T KNOW OF MUCH REASON WHY  
7 SOMEONE WOULD WANT TO DELIVER -- WOULD PREFER FTP OVER  
8 HTTP FOR THIS PURPOSE.

9 Q. WOULD IT BE POSSIBLE UNDER THE FTP SYSTEM FOR A  
10 HOME COMPUTER USER TO SEND A FILE FULL OF PORNOGRAPHIC  
11 IMAGES TO ANOTHER USER ON THE INTERNET?

12 A. YES, THAT WOULD BE POSSIBLE. I WOULD ASSUME  
13 THOUGH THAT AN END USER WOULD PROBABLY WANT TO USE  
14 E-MAIL OR P2P OR ONE OF THESE OTHER TECHNOLOGIES. THAT  
15 WOULD POSSIBLY BE THE MOST LIKELY WAY FOR AN END USER TO  
16 END USER TRANSFER TO HAPPEN.

17 THE COURT: THAT IS ALL I HAVE. ANY  
18 OTHER QUESTIONS?

19 MR. MCELVAIN: NO, YOUR HONOR.

20 THE COURT: ASKED A FEW.

21 MS. CRUMP: NO, YOUR HONOR.

22 THE COURT: DR. FELTEN, YOU ARE EXCUSED  
23 FROM THE STAND, SIR, BE CAREFUL GETTING DOWN.

24 (WITNESS EXCUSED.)

25 THE COURT: TIME FOR THE MID-MORNING

1 RECESS. THE COURT IS IN RECESS FOR 10 MINUTES, COUNSEL  
2 ARE EXCUSED. WE ARE OFF THE RECORD.

3 (BREAK TAKEN.)

4 THE COURT: COURT IS NOW IN SESSION,  
5 PLEASE BE SEATED. PLAINTIFF, CALL YOUR NEXT WITNESS,  
6 PLEASE. PLAINTIFFS. I'M SORRY.

7 MR. VAN KWAWEGEN: PLAINTIFFS CALL MR.  
8 RUSSO, MR. MICHAEL RUSSO, YOUR HONOR.

9 THE COURT: COME RIGHT UP ALONG THE JURY  
10 BOX AND AROUND THE CORNER HERE. STEP ALL OF THE WAY UP,  
11 PLEASE. TAKE THE OATH FROM THE COURT REPORTER.

12 MICHAEL RUSSO, PLAINTIFF'S WITNESS, SWORN

13 THE CLERK: STATE AND SPELL YOUR FULL  
14 NAME FOR THE RECORD, PLEASE.

15 THE WITNESS: MICHAEL RUSSO,  
16 M-I-C-H-A-E-L R-U-S-S-O.

17 DIRECT EXAMINATION

18 BY MR. VAN KWAWEGEN:

19 Q. GOOD MORNING, MR. RUSSO. MY NAME IS JEROEN VAN  
20 KWAWEGEN FOR PLAINTIFFS:

21 THE COURT: SPEAK UP, TOO. BOTH THINGS.

22 BY MR. VAN KWAWEGEN:

23 Q. GOOD MORNING, MR. RUSSO.

24 A. GOOD MORNING.

25 Q. PLEASE STATE YOUR EMPLOYMENT HISTORY FOLLOWING

1 COLLEGE.

2 A. SURE. AFTER GRADUATING FROM COLLEGE, I FIRST  
3 TOOK A POSITION WITH A SOFTWARE COMPANY CALLED REALITY  
4 BY DESIGN. IT WAS KIND OF A SMALL SOFTWARE COMPANY THAT  
5 BUILT SIMULATION SOFTWARE MOSTLY FOR THE MILITARY. AT  
6 THE SAME TIME I STARTED BUILDING AND MAINTAINING  
7 WEBSITES AT THAT TIME. SO I HAD TWO THINGS GOING ON. I  
8 WAS SELF-EMPLOYED AND ALSO WORKING AT REALITY BY DESIGN.  
9 THAT LASTED FOR SEVERAL YEARS. THEN I WORKED JUST BY  
10 MYSELF FOR A FEW YEARS. AFTER THAT I MOVED ON TO A  
11 COMPANY -- A WEBSITE CALLED THE ADULT WEBMASTER.COM  
12 WHERE I SERVED AS EDITOR-IN-CHIEF FOR A COUPLE OF YEARS.  
13 THAT COMPANY WAS PURCHASED BY YNOT NETWORK WHERE I MOVED  
14 OVER THERE. I WAS EDITOR-IN-CHIEF AT YNOT FOR A COUPLE  
15 OF YEARS AND THAT LED TO MY CURRENT POSITION AS  
16 PRESIDENT OF YNOT NETWORK.

17 Q. TAKE THESE ONE AT A TIME. WHAT DID YOU DO AT  
18 REALITY BY DESIGN?

19 THE COURT: KEEP YOUR VOICE UP. YOU ARE  
20 VERY SOFT. WE HAVE TO HEAR YOU.

21 BY MR. VAN KWAWEGEN:

22 Q. WHAT DID YOU DO AT REALITY BY DESIGN?

23 A. PRIMARILY I WAS A TECHNICAL WRITER. I WROTE  
24 SOFTWARE MANUALS THAT DESCRIBE HOW THE SOFTWARE PRODUCTS  
25 THAT REALITY BY DESIGN CREATED WORKED. I ALSO WOULD

1       HELP THE ENGINEERS SET UP AND DEMONSTRATE THE PRODUCTS  
2       AT TRADE SHOWS OR WITH CUSTOMERS OR CLIENTS.  AND I ALSO  
3       WORKED IN QUALITY ASSURANCE SO I WOULD HELP TEST THE  
4       PRODUCTS, PROVIDE FEEDBACK TO THE ENGINEERS, HOW WELL  
5       THEY WORKED, THINGS OF THAT NATURE.

6       Q.        AND YOU SAID THAT YOU WERE SELF-EMPLOYED FOR A  
7       WHILE AS WELL?

8       A.        YES, ABSOLUTELY.

9       Q.        WHAT DID YOU DO?

10      A.        WELL, I BUILT WEBSITES, PRIMARILY OF ADULT  
11      NATURE.  SO I GUESS THERE IS NOT MUCH MORE TO SAY ABOUT  
12      THAT.

13      Q.        WHAT DO YOU MEAN WHEN YOU SAY YOU BUILT  
14      WEBSITES?

15      A.        FROM THE PROCESS OF BUILDING WEBSITES, THAT  
16      WOULD BE THE PROCESS OF ACTUALLY LEARNING HOW TO USE  
17      HTML TO DESIGN A WEB PAGE, LEARNING HOW TO DESIGN  
18      GRAPHICS TO MAKE THE WEB PAGE LOOK NICE, LEARNING HOW TO  
19      OBTAIN CONTENT FOR USE ON THE WEBSITE, HOW TO PUT THE  
20      PAGES TOGETHER, HOW TO LINK THE PAGES TOGETHER IN A WAY  
21      THAT WOULD MAKE SENSE FOR A USER OF THE WEB PAGE.  SO  
22      THAT WOULD BE IN THE BUILDING PROCESS OF THAT.

23      Q.        ONCE THE WEBSITE WAS BUILT, WHAT DID YOU DO?

24      A.        AT THAT POINT, YOU WOULD NEED TO PUT THE  
25      WEBSITES ONLINE.  SO YOU WOULD NEED TO OBTAIN AN ACCOUNT

1 WITH A WEB SERVER, A WEB HOST, SOMEBODY WHO HAD COMPUTER  
2 CONNECTED TO THE NETWORK -- LET ME JUST REPHRASE. I  
3 WOULD OBTAIN A HOST, AN ACCOUNT WITH A WEB HOST. SO  
4 THAT WOULD MEAN A COMPANY THAT HAD COMPUTERS THAT WERE  
5 CONNECTED TO THE INTERNET. THESE COMPUTERS COULD BE  
6 USED TO STORE YOUR WEB PAGES. ONCE THEY WERE PLACED ON  
7 THESE COMPUTERS, OF COURSE, THEN THEY ARE ACCESSIBLE TO  
8 USERS OF THE WORLDWIDE WEB. SO THAT IS THE PROCESS OF  
9 PUTTING THEM ONLINE, REGISTERING A DOMAIN NAME SO THAT  
10 IT COULD POINT TO YOUR WEBSITE. AND THEN OF COURSE IT  
11 WAS A MATTER OF MAINTAINING AND RUNNING THE WEBSITE AT  
12 THAT POINT.

13 Q. HOW DID YOU RUN THE WEBSITE?

14 A. WELL, IT WOULD DEPEND FROM WEBSITE TO WEBSITE,  
15 BUT PRIMARILY IT WOULD INVOLVE UPDATING THE SITES IF  
16 NECESSARY, IF YOU NEEDED TO CHANGE CONTENT. IT WOULD  
17 INVOLVE DEALING WITH ANY CUSTOMER ISSUES THAT WOULD COME  
18 UP IF SOMEBODY WOULD E-MAIL YOU ASK QUESTIONS OR HAVE A  
19 PROBLEM. IT WOULD INVOLVE DEALING WITH BILLING ISSUES  
20 THAT WOULD COME UP, HAVING A RELATIONSHIP WITH THE  
21 BILLING COMPANIES SO THAT YOUR PAYMENTS COULD BE  
22 PROCESSED FOR THE WEBSITE. GOING TO SEARCH ENGINES,  
23 LEARNING HOW TO DESIGN YOUR PAGES IN A WAY TO WHERE THE  
24 SEARCH ENGINES WOULD BE ABLE TO NOT ONLY FIND YOUR PAGES  
25 BUT RANK THEM IN A WAY THAT WAS APPROPRIATE. FOR

1        INSTANCE, IF YOU WERE BUILDING A WEB PAGE THAT FEATURED  
2        PLAYBOY MODELS, IF SOMEONE WAS TO GO TO GOOGLE AND TYPE  
3        IN, PLAYBOY MODELS YOU WOULD WANT THEM TO BE ABLE TO  
4        FIND YOUR WEB PAGE, OBVIOUSLY.  THERE ARE THINGS YOU CAN  
5        DO WHEN YOU DESIGN YOUR PAGE TO INCREASE THE LIKELIHOOD  
6        THAT YOUR PAGE IS FOUND OVER OTHER PEOPLE WHO ARE STILL  
7        LOOKING, WHO HAVE SIMILAR SITES.  SO THERE WAS THAT.  
8        THERE WAS TRYING TO FIND LINK LISTS THAT LISTED SITES  
9        APPROPRIATE TO THE KIND OF SITE YOU BUILT, MAKING SURE  
10       YOU WERE INCLUDED IN THOSE LISTS.  GENERAL MARKETING.

11       Q.            ANYTHING ELSE THAT YOU CAN THINK OF RIGHT NOW?

12                    THE COURT:  ANYTHING ELSE ABOUT WHAT?  
13       THAT WOULD HELP THE WITNESS.

14       BY MR. VAN KWAWEGEN:

15       Q.            DID YOU DO ANYTHING ELSE TO MAKE YOUR WEB PAGES  
16       KNOWN TO POTENTIAL CUSTOMERS?

17       A.            YEAH.  ONE THING THAT I WOULD DO IS I MADE USE  
18       OF USENET.  AT THE TIME USENET WAS PRETTY POPULAR.  
19       THERE WERE GROUPS WITHIN USENET THAT WERE DEDICATED TO  
20       ADULT ENTERTAINMENT.  SO IF THERE WAS A GROUP THAT WAS  
21       APPROPRIATE FOR THE TYPE OF SITE I HAD, ONE THING YOU  
22       CAN DO IS TAKE IMAGES AND PUT YOUR URL ON THE IMAGE  
23       USING SOME KIND OF A PHOTO EDITING SOFTWARE LIKE  
24       PHOTOSHOP, PUT IT ON THE IMAGE AND JUST PROVIDE THEM TO  
25       THE GROUP.  THE IDEA BEING THAT IT IS KIND OF HAVING A

1 BILLBOARD, SO IF SOMEBODY IN THE GROUP SAW THAT  
2 PARTICULAR IMAGE, SAW YOUR URL, THERE WAS AN INCREASED  
3 CHANCE THEY MIGHT COME AND VISIT YOUR WEBSITE IF THEY  
4 LIKED IT.

5 Q. WHAT IS USENET? EXPLAIN.

6 A. SURE.

7 USENET IS ONE OF THE TOOLS THAT ARE  
8 AVAILABLE ON THE INTERNET. JUST LIKE WEBSITES, THE  
9 WORLDWIDE WEB, FTP, E-MAIL, USENET IS ANOTHER TOOL.  
10 IT'S BASICALLY A COLLECTION OF MESSAGE BOARDS, IS THE  
11 EASIEST WAY TO EXPLAIN IT. IMAGINE A BUNCH OF MESSAGE  
12 BOARDS WITH A VARIETY OF TOPICS, RANGE FROM AUTO REPAIR  
13 TO VACATION PLANNING, WHATEVER YOU WANT TO TALK ABOUT.  
14 THERE WERE A LOT OF USENET GROUPS THAT DEALT  
15 SPECIFICALLY WITH ADULT ENTERTAINMENT AND SPECIFICALLY  
16 WITH WHAT WE WOULD CALL BINDERY ATTACHMENTS. SO JUST  
17 LIKE YOU CAN ATTACH A FILE TO AN E-MAIL WHEN YOU SEND AN  
18 E-MAIL TO YOUR FRIENDS, YOU CAN ATTACH A FILE TO A  
19 USENET GROUP. THEN OTHERS COULD VISIT THESE GROUPS THAT  
20 WERE SPECIFICALLY EARMARKED FOR BINARY ATTACHMENTS,  
21 WHICH BY THAT I MEAN MEDIA FILES, COULD BE ANYTHING, A  
22 MEDIA FILE, A COMPUTER APPLICATION, A DOCUMENT,  
23 BASICALLY ANYTHING THAT YOU COULD STORE ON YOUR COMPUTER  
24 YOU COULD ATTACH TO A USENET GROUP FOR OTHERS TO SHARE,  
25 OBTAIN.

1 Q. HOW MANY ADULT WEBSITES DID YOU OPERATE IN  
2 TOTAL?

3 A. WELL, THIS IS A REALLY HARD THING TO ESTIMATE  
4 BECAUSE IT'S BEEN A LITTLE WHILE, AND A LOT OF THE SITES  
5 I BUILT WERE VERY SMALL. SO IT WAS MORE OF A QUANTITY  
6 ISSUE, BUT I WOULD GUESSTIMATE IT WAS PROBABLY IN THE  
7 NEIGHBORHOOD OF 100, 110, SOMETHING LIKE THAT.

8 Q. ARE ALL THESE SITES THE SAME TYPE OF ADULT  
9 WEBSITE?

10 A. BY TYPE YOU MEAN?

11 Q. WHAT TYPES OF BUSINESS MODELS DID YOU USE?

12 A. WELL, THERE WERE THREE PRIMARILY THAT I USED.  
13 THERE WAS -- SOME OF THE SITES WERE WHAT WE CALLED AVS  
14 SITES. OTHERS WERE WHAT YOU WOULD CALL PAY SITES, AND  
15 THEN THERE WERE SOME THAT WERE CALLED FREE SITES.

16 Q. WHAT DOES THE ACRONYM AVS STAND FOR?

17 A. WELL, AT THE TIME WHEN I FIRST STARTED BUILDING  
18 THESE SITES, IT STOOD FOR AGE VERIFICATION SYSTEM.  
19 EVENTUALLY THAT CHANGED AND NOW THESE SITES ARE EITHER  
20 REFERRED TO AS SOMETHING LIKE ACCESS VERIFICATION SYSTEM  
21 OR SOMETIMES ADULT ENTERTAINMENT NETWORK. SO IT  
22 CHANGED.

23 Q. DO YOU KNOW WHY THIS CHANGED?

24 A. YES. THE ADULT INDUSTRY WAS TOLD THAT VISA NO  
25 LONGER WANTED WEBSITES TO CLAIM THAT AGE -- THAT BY USE



1 OF A PAYMENT CARD THEY WERE ACQUIRING AGE VERIFICATION.  
2 WE WERE SPECIFICALLY INSTRUCTED THAT THIS COULD NO  
3 LONGER GO ON.

4 Q. WERE YOU INSTRUCTED WHY -- STRIKE THAT.

5 WERE YOU TOLD WHY YOU WERE INSTRUCTED NOT  
6 TO USE THE ACRONYM AVS TO REFER TO AGE VERIFICATION  
7 SYSTEMS?

8 A. WELL, BEYOND THE FACT THAT VISA DID NOT WANT  
9 THIS, THE REASON WAS GIVEN THAT OF COURSE MINORS CAN  
10 HAVE ACCESS TO PAYMENT CARDS. IN THAT REGARD -- IN THAT  
11 REGARD, VISA WAS UNCOMFORTABLE WITH THIS SORT OF CLAIM  
12 THAT THEY KNEW WAS NOT ACCURATE.

13 MR. TODD: OBJECTION, BEST EVIDENCE, YOUR  
14 HONOR. WAS THIS A CONVERSATION OR WERE THESE DOCUMENTS  
15 THAT COMMUNICATED THIS?

16 THE COURT: I TAKE IT IT'S YOUR MOTION TO  
17 STRIKE THE LAST VOLUNTARY STATEMENT THAT VISA WAS  
18 UNCOMFORTABLE. GRANT THE MOTION TO STRIKE, ASK COUNSEL  
19 IF HE WANTS TO PURSUE THIS TO LAY A FOUNDATION.

20 BY MR. VAN KWAWEGEN:

21 Q. I WILL MOVE ON FOR NOW. I WILL LAY A FOUNDATION  
22 LATER, YOUR HONOR.

23 YOU JUST TESTIFIED THAT YOU HAD AVS  
24 SITES, CORRECT?

25 A. THAT'S RIGHT.

1 Q. THAT WAS ONE OF THE THREE BUSINESS MODELS THAT  
2 YOU USED?

3 A. YES, CORRECT.

4 Q. WHAT IS AN AVS SITE?

5 A. WELL, I THINK MAYBE THE EASIEST WAY TO EXPLAIN  
6 IT IS TO APPROACH IT FROM THE AVS COMPANY'S POINT OF  
7 VIEW. IF YOU ARE SETTING UP THIS BUSINESS MODEL THE  
8 IDEA IS THAT IF THERE ARE A LOT OF INDIVIDUAL SMALL  
9 WEBSITES OUT THERE, MAYBE NONE OF THEM REALLY WARRANT BY  
10 THEMSELVES ENOUGH REASON FOR A PERSON TO PAY FOR ACCESS  
11 TO. THE IDEA IS YOU SET UP A SYSTEM WHERE YOU CAN SELL  
12 ACCESS TO MAYBE A THOUSAND OF THEM. SO WHILE SOMEBODY  
13 WOULDN'T BUY ACCESS TO JUST ONE OF THESE WEBSITES, IF  
14 THEY COULD BUY ACCESS TO ALL OF THEM, THERE IS SOME  
15 ADVANTAGE TO THAT. THE AVS COMPANY WAS A LITTLE LIKE A  
16 MIDDLEMAN THAT WOULD STAND BETWEEN ALL THESE DIFFERENT  
17 WEBSITE OWNERS AND THE CUSTOMERS AND PUT THEM TOGETHER  
18 INTO ONE GROUP AND SELL THEN ACCESS TO THE CUSTOMERS TO  
19 ALL OF THESE WEBSITES ALL AT ONCE.

20 Q. WHICH AVS COMPANIES DID YOU HAVE AGREEMENTS  
21 WITH?

22 A. THE FIRST ONE I USED WAS -- WENT BY THE NAME  
23 ADULTSIGHTS, THAT IS SPELLED ADULT S-I-G-H-T-S.COM.  
24 THERE WAS ANOTHER ONE CALLED SEXKEY.COM THAT I USED,  
25 S-E-X-K-E-Y.COM. THERE WAS NET VERIFIER, CYBERAGE AND

1 THE BIGGEST ONE WAS PROBABLY ADULT CHECK.

2 Q. HOW DID YOU RECEIVE REVENUES FROM YOUR WEBSITES  
3 THAT WERE SIGNED UP WITH AVS COMPANIES?

4 A. AVS COMPANIES WILL PAY THE WEBMASTERS A  
5 COMMISSION, SO EFFECTIVELY IF SOMEBODY VISITS MY WEBSITE  
6 AND THEY WANT ACCESS TO MY PROTECTED CONTENT, AND THEY  
7 ARE TOLD BASICALLY THE ONLY WAY YOU ARE GOING TO GET  
8 ACCESS TO THIS IS TO GO THROUGH THE AVS COMPANY. YOU  
9 NEED TO BUY A PASSWORD FROM THIS AVS COMPANY AND THEN  
10 YOU WILL GET ACCESS TO IT. ASSUMING THE PERSON IS  
11 PLAYING BY THE RULES, THEY WANT ACCESS TO THE CONTENT SO  
12 THEY PURCHASE ACCESS FROM THE AVS COMPANY WITH A PAYMENT  
13 CARD. THE AVS COMPANY THEN WILL SEND A COMMISSION TO  
14 THE WEBMASTER FOR REFERRING THAT SALE OVER TO THEM. SO  
15 IT WAS COMMISSION-BASED.

16 Q. CAN YOU DESCRIBE WHAT A VISITOR TO ONE OF YOUR  
17 WEBSITES WOULD SEE ONCE THEY CLICKED ON A LINK OR  
18 ENTERED THE WEB PAGE?

19 A. SURE. IN THE CASE OF MY OWN SITES THE FIRST  
20 THING THEY WOULD SEE WOULD BE A WARNING PAGE, SOMETHING  
21 EXPLAINING TO THEM THAT THEY ARE AT AN ADULT WEBSITE.  
22 IF THEY WOULD PASS THAT, THEN THEY WILL GET TO THE SALES  
23 PITCH AREA OF THE SITE, WHICH IS BASICALLY -- IT'S GOING  
24 TO INCLUDE A DESCRIPTION, IT'S GOING TO SAY, HELLO, THIS  
25 IS WHAT THE SITE IS ABOUT, THIS IS THE KIND OF THINGS

1 THAT WE OFFER. THERE WOULD BE POTENTIALLY SOME  
2 REPRESENTATIVE PICTURES OR SOME IMAGES SO THEY CAN GET  
3 KIND OF AN IDEA WHAT THEY WERE GOING TO GET. AND THEN  
4 THERE WOULD BE AN EXPLANATION THAT SAID, IN ORDER TO GET  
5 ACCESS TO THIS SITE'S CONTENT WE NEED YOU TO --  
6 ORIGINALLY IT WOULD SAY WE NEED YOU TO CLICK ON THESE  
7 LINKS TO VERIFY YOUR AGE. EVENTUALLY THAT CHANGED TO  
8 JUST YOU NEED TO CLICK ON THIS LINK TO PURCHASE A  
9 PASSWORD WITH THIS COMPANY. AT THAT POINT, THEY COULD  
10 CLICK ON THE PASSWORD, GO TO THE AVS COMPANY, AND  
11 PURCHASE A PASSWORD IF THEY WANTED TO.

12 THE COURT: CLICK ON THE LINK, YOU MEAN?

13 THE WITNESS: YES.

14 BY MR. VAN KWAWEGEN:

15 Q. HOW LONG WOULD A PASSWORD THAT WAS PURCHASED BE  
16 VALID?

17 A. WELL, THAT IS GOING TO DEPEND ON THE AVS  
18 COMPANY. IN THE CASE OF THIS PARTICULAR BUSINESS MODEL  
19 THE LENGTH OF PASSWORDS AND HOW MUCH IS BEING CHARGED  
20 FOR A PASSWORD IS GOING TO BE IN THE CONTROL OF THE AVS  
21 COMPANY, NOT THE WEBMASTER. GENERALLY, HOWEVER, THERE  
22 WERE SOME TRENDS IN THAT REGARD.

23 GENERALLY IT WOULD BE ONE YEAR, WOULD BE  
24 ONE OPTION, A TWO YEAR PASSWORD ONE OPTION OR A LIFETIME  
25 PASSWORD WOULD BE A THIRD OPTION.

1 Q. WHEN YOU REFER TO LIFETIME PASSWORD, IS THAT THE  
2 LIFETIME OF THE VISITOR WHO PURCHASED THE PASSWORD?

3 A. NO. IT'S GOING TO BE THE LIFETIME OF THE AVS  
4 COMPANY BECAUSE, OBVIOUSLY, IF THE AVS COMPANY WENT OUT  
5 OF BUSINESS FIVE YEARS LATER, THE PASSWORD IS NO GOOD.  
6 AND THERE WAS NO MECHANISM -- I MEAN THE AVS COMPANY IS  
7 NOT GOING TO KNOW IF SOMEBODY IS STILL ALIVE OR NOT  
8 ALIVE. SO IT'S GOING TO BE GOOD AS LONG AS THE AVS  
9 COMPANY IS AROUND.

10 Q. IN ADDITION TO PAY SITES YOU ALSO OPERATED A  
11 BUSINESS MODEL THAT YOU REFERRED TO AS PAY SITES?

12 A. IN ADDITION TO AVS SITES?

13 Q. I APOLOGIZE. IN ADDITION TO AVS SITES?

14 A. YES, PAY SITES.

15 Q. WHAT IS A PAY SITE?

16 A. WELL, IT'S ALSO A WEBSITE THAT IN THIS INSTANCE  
17 WOULD CONTAIN ADULT ENTERTAINMENT. THE BIG DIFFERENCE  
18 BETWEEN A PAY SITE AN AVS SITE IS -- WELL, FIRST OF ALL  
19 THERE IS NO MIDDLEMAN, THERE IS NO AVS COMPANY. THE  
20 WEBMASTER CONTROLS THE WEBSITE. THE WEBMASTER CONTROLS  
21 THE USER NAME AND PASSWORD LIST OF EVERYBODY WHO CAN  
22 GAIN ACCESS TO THAT WEBSITE. SO, FOR INSTANCE, WITH THE  
23 AVS SITE THE AVS COMPANY CONTROLS THAT. THE WEBMASTER  
24 DOES NOT HAVE ANY IDEA WHATSOEVER OF WHO SHOULD -- WHO  
25 GETS ACCESS AND WHO DOES NOT. THE AVS COMPANY DOES ALL

1 THAT ON THEIR OWN. IN THE CASE OF A PAY SITE, THE  
2 WEBMASTER WILL HAVE A PASSWORD LIST ON THEIR WEBSITE  
3 WHICH LISTS ALL THE USER NAMES AND PASSWORDS OF THE  
4 INDIVIDUALS OR THE ACCOUNTS THAT SHOULD GET ACCESS TO  
5 THE PROTECTED AREA OF THE PAY SITE, YES, OR THE  
6 NON-PUBLIC AREA.

7 GENERALLY THE PAY SITE IS GOING TO  
8 CONTAIN A LOT MORE CONTENT THAN AN AVS SITE. THERE IS  
9 NO RULE THAT SAYS IT HAS TO BE THAT WAY, BUT THAT WAS  
10 THE CASE. IN THE VAST MAJORITY OF THE TIMES IT IS GOING  
11 TO BE A LARGER WEBSITE BECAUSE A PERSON IS NOT GETTING  
12 ACCESS TO THOUSANDS OF WEBSITES LIKE THEY WOULD WITH  
13 AVS. THEY ARE BUYING ACCESS TO THAT PAY SITE, SO THERE  
14 HAS TO BE ENOUGH THERE TO KEEP THEIR INTEREST AND  
15 WARRANT THE CHARGE.

16 Q. HOW DID YOU RECEIVE REVENUES FROM YOUR PAY  
17 SITES?

18 A. WELL, FIRST AND FOREMOST I WOULD ESTABLISH A  
19 RELATIONSHIP WITH A THIRD PARTY BILLER, WHICH ARE  
20 COMPANIES THAT ARE NOW KNOWN AS INTERNET PAYMENT SERVICE  
21 PROVIDERS, IPSPS. THESE COMPANIES WOULD ON BEHALF OF  
22 THE WEBSITE PROCESS PAYMENTS. ONCE YOU HAD ESTABLISHED  
23 AN ACCOUNT WITH AN IPSP, YOU COULD SET UP ON YOUR PAY  
24 SITE IN THE PUBLICLY AVAILABLE AREA A JOIN PAGE. TO SET  
25 UP A JOIN PAGE, CUSTOMERS WHO DECIDED THEY WANTED TO

1 PURCHASE ACCESS WOULD GO TO THE JOIN PAGE, WOULD FILL  
2 OUT THE INFORMATION THAT WAS REQUESTED, SELECT THE TYPE  
3 OF PAYMENT THEY WANTED TO CHOOSE. THE IPSP WOULD RUN  
4 THE PAYMENT AND ASSUMING IT IS A SUCCESSFUL TRANSACTION,  
5 THE IPSP WOULD MAIL A CHECK OR WIRE THE MONEY TO THE  
6 WEBMASTER FOR THE WEBMASTER'S SHARE. THERE WOULD BE  
7 DEDUCTIONS OF COURSE BASED ON WHATEVER THE IPSP TOOK AS  
8 THEIR PERCENTAGE.

9 Q. DO YOU KNOW WHAT METHOD OF PAYMENT WAS MOST  
10 COMMONLY USED BY VISITORS IN ORDER TO JOIN YOUR PAY  
11 SITES?

12 A. YES. ON MY PAY SITES THE MOST COMMON METHOD OF  
13 PAYMENT WAS PAYMENT CARDS.

14 Q. HOW DO YOU KNOW THAT MOST VISITORS THAT WANTED  
15 TO JOIN YOUR PAY SITES USED PAYMENT CARDS?

16 A. THE IPSPS HAD ADMIN AREAS FOR THE WEBMASTERS WHO  
17 HAD ACCOUNTS WITH THEM, SO YOU COULD LOG IN TO A SPECIAL  
18 AREA AND LOOK AT YOUR STATISTICS, IN OTHER WORDS TRACK  
19 HOW MANY SALES YOU HAD FOR THAT DAY OR FOR THAT WEEK,  
20 LAST WEEK, OR THE YEAR, WHAT HAD BEEN SENT TO YOU, WHAT  
21 CHECKS YOU HAD COMING. ONE OF THE BREAKDOWNS WAS OF  
22 COURSE WHICH PAYMENT OPTION INDIVIDUALS WERE USING, IN  
23 OTHER WORDS, WERE THEY USING A PAYMENT CARD, AN ONLINE  
24 CHECK, OR IF THEY WERE USING SOME ALTERNATIVE FORM OF  
25 PAYMENT LIKE PHONE BILLING, ET CETERA. THERE WERE

1           OPTIONS FOR THAT AS WELL.

2           Q.           EARLIER YOU TESTIFIED THAT YOU USED THIRD PARTY  
3           BILLERS, CORRECT?

4           A.           THAT'S CORRECT.

5           Q.           AFTER YOU STARTED ENGAGING THEIR SERVICES DID  
6           YOU COMMUNICATE WITH THESE THIRD PARTY BILLING  
7           COMPANIES?

8           A.           YES.   ABSOLUTELY.

9           Q.           HOW FREQUENTLY?

10          A.           VERY FREQUENTLY.

11          Q.           CAN YOU GIVE AN ESTIMATE?

12          A.           WELL, FIRST OF ALL, WHEN YOU ARE RUNNING  
13          WEBSITES THAT ARE USING IPSP SERVICES, YOU NEED TO STAY  
14          IN CONTACT WITH THEM.  THERE ARE COMPLIANCE ISSUES THAT  
15          WILL COME UP.  IF YOU ARE ADDING A NEW WEBSITE, YOU HAVE  
16          TO CONTACT THEM ABOUT THAT, THE PROCESS OF INSTALLING  
17          THEIR SYSTEM, THEIR SOFTWARE TO MAKE EVERYTHING WORK  
18          RIGHT.  IN ADDITION TO THAT, THERE WAS JUST REGULAR  
19          CONTACT WITH THESE COMPANIES AT EVERY INDUSTRY EVENT  
20          THAT I WOULD GO TO.  THEY USUALLY HAD A VERY STRONG  
21          PRESENCE.  THEY WOULD ADVERTISE AT MARKETED INDUSTRY  
22          EVENTS.  THEY WOULD EXHIBIT WHEN EXHIBITS WERE AVAILABLE  
23          AT INDUSTRY EVENTS.  PRETTY MUCH EVERY EVENT THERE IS,  
24          THERE IS WHAT YOU WOULD CALL A BILLING SEMINAR WHERE THE  
25          BILLING COMPANIES HAVE AN OPPORTUNITY TO SPEAK TO THE



1 CROWD AND EXPLAIN ABOUT THEIR SERVICES. AND I DON'T  
2 KNOW, ARE YOU SPEAKING ONLY ABOUT MY WEBMASTER  
3 EXPERIENCE OR ARE YOU ALSO TALKING ABOUT YNOT AND THE  
4 ADULT WEBMASTER?

5 Q. JUST YOUR WEBMASTER EXPERIENCE RIGHT NOW.

6 A. THAT WOULD BE IT FOR THAT.

7 Q. COULD YOU GIVE AN EXAMPLE OF COMPLIANCE ISSUES  
8 THAT WOULD COME UP IN YOUR DISCUSSION WITH THIRD PARTY  
9 BILLERS?

10 A. SURE. THEY WERE CONCERNED WITH THINGS ALONG THE  
11 LINES OF -- ONE OF THEIR BIG CONCERNS WAS CHARGEBACKS.  
12 THERE IS A LOT OF PRESSURE ON THEM TO KEEP CHARGEBACKS  
13 LOW. IF SOMEBODY COMES TO A WEBSITE -- OR A PAYMENT IS  
14 PROCESSED FOR A WEBSITE, THEN LATER THE CARDHOLDER SAYS,  
15 HEY, THIS WAS NOT AN AUTHORIZED PAYMENT, THE PAYMENT  
16 CARD COMPANIES DON'T LIKE THAT. THEY WANT TO KEEP THE  
17 INCIDENCE OF THAT AS LOW AS POSSIBLE. IF CHARGEBACKS  
18 EXCEED A CERTAIN AMOUNT, THERE ARE FINES THAT CAN BE  
19 LEVIED. ALL KINDS OF BAD THINGS CAN HAPPEN. IN AN  
20 EXTREME CASE AN IPSP COULD LOSE THEIR ABILITY TO PROCESS  
21 CHARGES.

22 THAT HAPPENED WITH THE FIRST THIRD PARTY  
23 BILLER I USED, A COMPANY THAT WENT BY THE NAME OF DMR.  
24 THEY LOST THEIR HER MERCHANT ACCOUNT WITH VISA BECAUSE  
25 THE CHARGEBACKS WERE TOO HIGH.

1                   SO THIS IS A REALLY BIG CONCERN BECAUSE  
2           IF YOU LOSE YOUR ABILITY TO PROCESS VISA CHARGES AND YOU  
3           ARE A THIRD PARTY BILLER, YOU ARE OUT OF BUSINESS.  
4           THERE IS A LOT OF MONEY IN THIS FOR THEM, SO THEY DON'T  
5           WANT TO BE OUT OF BUSINESS. THEY WILL WORK WITH THE  
6           WEBSITES TO MAKE SURE THEY DO THINGS LIKE IF YOU ARE  
7           GOING TO HAVE A RECURRING BILLING METHOD, FOR INSTANCE  
8           YOU ARE GOING TO SAY IT IS \$20 A MONTH AND IT IS GOING  
9           TO RECUR EVERY SINGLE MONTH UNTIL YOU SAY I WANT TO  
10          CANCEL. THEY WANT TO MAKE SURE THE WEBMASTERS ARE  
11          PUTTING A PLACE UP THAT SAYS, HERE IS WHERE YOU CANCEL,  
12          SO THE CUSTOMER CAN'T PAY, I DON'T KNOW WHERE TO CANCEL,  
13          AND THEN THEY CHARGE IT BACK.

14                   THEY WANT TO MAKE SURE THAT THE PRICES  
15          ARE PROPERLY EXPLAINED ON YOUR JOIN PAGE THAT SOMEBODY  
16          DOES NOT THINK THEY ARE PAYING ONE THING, IT TURNS OUT  
17          THEY ARE PAYING SOMETHING ELSE. THEY WANT TO WORK WITH  
18          YOU AND ENCOURAGE YOU TO SET UP PROPER CUSTOMER SERVICE  
19          SO IF SOMEBODY HAS A PROBLEM WITH YOUR WEBSITE AND THEY  
20          CAN'T GET A REPLY BACK, THEY DON'T GO TO THE BILLING  
21          COMPANY AND CHARGE IT BACK. SO THAT WAS A REALLY BIG  
22          ISSUE.

23          Q.           FROM WHEN TO WHEN DID YOU OPERATE YOUR ADULT  
24          WEBSITES?

25          A.           THE FIRST ADULT WEBSITE I BUILT WAS IN 1997

1 IMMEDIATELY AFTER I GRADUATED FROM COLLEGE. I STOPPED  
2 REALLY BUILDING THEM AROUND 2002 AND GRADUALLY JUST  
3 PHASED THEM OUT. I THINK THROUGH 2003, WOULD HAVE  
4 PROBABLY BEEN THE LAST TIME I WAS ACTIVELY RUNNING THE  
5 ADULT WEBSITES.

6 Q. IN ADDITION TO WEBSITES THAT WERE SIGNED UP WITH  
7 AVS COMPANIES, AND PAY SITES, YOU TESTIFIED THAT YOU  
8 ALSO HAD FREE SITES, CORRECT?

9 A. THAT'S CORRECT.

10 Q. WHAT IS A FREE SITE?

11 A. GENERALLY A FREE SITE IS A WEBSITE THAT IS NOT  
12 ASKING FOR ANY MONEY FROM THE CONSUMER DIRECTLY, SO FOR  
13 WHATEVER REASON, THEY JUST WANT TO SUPPLY WHATEVER  
14 CONTENT THEY ARE SUPPLYING FREE OF CHARGE. IN MY CASE  
15 THE WEBSITES THAT I BUILT THAT WERE FREE SITES WERE  
16 DESIGNED TO PROVIDE TRAFFIC TO AFFILIATE PROGRAMS. IN  
17 OTHER WORDS, THEY WERE ADVERTISING-BASED. SO I WOULD  
18 EITHER ADVERTISE MY OWN AVS SITES OR PAY SITES ON THE  
19 FREE SITE, OR I WOULD ADVERTISE OTHER PEOPLE'S PAY SITES  
20 AND THOSE PAY SITES WOULD THEN SEND ME A COMMISSION IF  
21 THAT ADVERTISING RESULTED IN A SALE.

22 Q. APPROXIMATELY HOW MANY FREE SITES DID YOU  
23 OPERATE DURING THE SIX YEARS THAT YOU OPERATED ADULT  
24 WEBSITES?

25 A. PROBABLY AGAIN, I'M GUESSING, IT'S HARD TO HAVE

1 AN EXACT NUMBER, BUT PROBABLY IN THE NEIGHBORHOOD OF 50.  
2 SOMETHING LIKE THAT.

3 Q. IN ADDITION TO BUILDING AND OPERATING WEBSITES,  
4 YOU MENTIONED THAT YOU ALSO WORKED AS AN EDITOR-IN-CHIEF  
5 FOR THE ADULT WEBMASTER.COM?

6 A. YES.

7 Q. WHAT IS THE ADULT WEBMASTER.COM?

8 A. THIS WAS WHAT WE WOULD REFER TO IN THE INDUSTRY  
9 AS A WEBMASTER RESOURCE SITE. SO ITS PRIMARY ATTRACTION  
10 WAS TRADE ARTICLES, ARTICLES THAT WERE DESIGNED TO HELP  
11 OTHER WEBMASTERS BUILD BETTER WEBSITES, BE MORE  
12 SUCCESSFUL AT WHAT THEY WERE DOING, THAT SORT OF THING.  
13 WE MIGHT WRITE ARTICLES ABOUT HOW TO FIND A GOOD HOST  
14 FOR YOUR WEBSITES, HOW TO CHOOSE A DOMAIN NAME THAT  
15 WOULD BE MORE EFFECTIVE. WE ALSO WROTE ARTICLES ABOUT  
16 THE VARIOUS BUSINESS MODELS, THE AVS SITE BUSINESS, THE  
17 PAY SITE BUSINESS MODEL. AND THEN IN ADDITION TO THE  
18 MORE EDUCATIONAL INSTRUCTIONAL ARTICLES, WE WOULD ALSO  
19 WRITE OCCASIONAL, WHAT I WOULD CALL, EDITORIALS WHICH  
20 WOULD JUST BE EXPRESSING OUR OPINION ON A TOPIC THAT WAS  
21 OF INTEREST TO THE COMMUNITY.

22 Q. WHAT IS AN ADULT WEBMASTER?

23 A. WELL, IT'S A VERY BROAD UMBRELLA TERM AS IT IS  
24 USED IN THE INDUSTRY.

25 IT GENERALLY -- I MEAN TECHNICALLY, A

1 WEBMASTER WOULD BE THE PERSON WHO IS RUNNING AND  
2 OPERATING A WEBSITE. BUT IN THE WAY IT IS USED IN THE  
3 ADULT INDUSTRY, IT'S MORE OF A BROAD TERM TO ENCOMPASS  
4 ANYBODY WHO REALLY HAS AN INTEREST IN THE OPERATION OF  
5 AN ADULT WEBSITE. SO IN THAT REGARD, IT CAN INCLUDE NOT  
6 JUST THE DESIGNER WHO ACTUALLY BUILT THE PAGES, IT CAN  
7 ALSO INCLUDE THE TECHNICAL STAFF WHO ACTUALLY RUNS THE  
8 WEBSITE. MAKE SURE THAT ITS FUNCTIONING PROPERLY, MAKE  
9 SURE -- IT TRIES TO WATCH THE SERVER FOR ANY SECURITY  
10 ISSUES, THE MARKETING STAFF, THE PEOPLE WHO ARE IN  
11 CHARGE OF OPTIMIZING THE WEBSITE FOR SEARCH ENGINES, THE  
12 ADMINISTRATION STAFF. SO IT'S A VERY BROAD TERM THAT  
13 REFERS TO EVERYBODY WHO IS INVOLVED IN THIS INDUSTRY.

14 Q. WHILE YOU WERE OPERATING YOUR ADULT WEBSITES,  
15 WOULD YOU HAVE CONSIDERED YOURSELF TO BE AN ADULT  
16 WEBMASTER?

17 A. YES.

18 Q. WOULD YOU CONSIDER YOURSELF TO BE AN ADULT  
19 WEBMASTER TODAY?

20 A. YES, IN THE SENSE THAT WHEN THAT TERM IS USED IN  
21 THE INDUSTRY, IT'S GOING TO REFER TO EVERYBODY WHO IS  
22 INVOLVED. SO IN THAT REGARD, YES, I STILL AM AN ADULT  
23 WEBMASTER.

24 Q. WHEN DID YOU SERVE AS EDITOR-IN-CHIEF FOR THE  
25 ADULT WEBMASTER.COM?

1           A.            THAT I STARTED IN THE YEAR 2000, AND THAT LASTED  
2           FOR THREE YEARS UNTIL 2003.

3           Q.            WHAT WERE YOUR RESPONSIBILITIES?

4           A.            MY PRIMARY RESPONSIBILITIES WERE TO WORK WITH  
5           THE WRITERS WHO WERE WRITING ARTICLES TO COME UP WITH  
6           TOPICS THAT THEY COULD WRITE ABOUT, TO HELP THEM OUT  
7           WHERE THEY HAD QUESTIONS AND TO EDIT THEIR ARTICLES.  
8           AND THE OTHER PRIMARY RESPONSIBILITY WAS TO ACTUALLY  
9           WRITE ARTICLES MYSELF. I WROTE QUITE A NUMBER OF  
10          ARTICLES WHILE I WAS THERE, AND THEN OF COURSE I WOULD  
11          UPDATE THE WEBSITE WITH THESE ARTICLES, USUALLY IT WAS  
12          ABOUT A DAILY UPDATE, MONDAY, TUESDAY, WEDNESDAY,  
13          THURSDAY, FRIDAY.

14          Q.            DID YOUR RESPONSIBILITIES CHANGE WHEN YOU BECAME  
15          EDITOR IN CHIEF OF YNOT?

16          A.            DID NOT REALLY CHANGE. IT WAS A MATTER OF JUST  
17          BEING MORE, I GUESS YOU COULD SAY. YNOT WAS EXTREMELY  
18          WELL-KNOWN WITHIN THE INDUSTRY, EXTREMELY WELL  
19          RESPECTED. IT WAS THE BIGGEST OF ITS KIND. SO I WAS  
20          DOING THE SAME THING, BUT I WAS WORKING WITH MORE  
21          WRITERS. I WAS STARTING TO GIVE A LITTLE MORE THOUGHT  
22          TO MY ARTICLES, AS TO WHERE IN THE PAST I MAY HAVE JUST  
23          -- OH, IT IS TUESDAY, LET'S JUST WRITE SOMETHING  
24          QUICKLY. WITH YNOT I WAS BEING A LITTLE BIT MORE  
25          CAREFUL.

1 Q. EARLIER YOU TESTIFIED THAT YOU BECAME  
2 EDITOR-IN-CHIEF AT YNOT AROUND 2003, WHEN YNOT PURCHASED  
3 THE ADULT WEBMASTER.COM, IS THAT CORRECT?

4 A. YES.

5 Q. WHAT IS YNOT?

6 A. YNOT IS -- WELL, FIRST, IT IS A LITTLE LIKE THE  
7 ADULT WEBMASTER IN THAT IT IS ALSO CONSIDERED A  
8 WEBMASTER RESOURCE SITE BUT IT HAS SOME ADDITIONAL  
9 FEATURES. FIRST, IT WAS THE FIRST OF ITS KIND. IT WAS  
10 SET UP IN 1996 PRIMARILY BECAUSE THE OWNER OF YNOT AT  
11 THE TIME WAS INTERESTED IN ESTABLISHING A PLACE WHERE  
12 WEBMASTERS COULD PURSUE WHAT THEY CONSIDERED TO BE  
13 ETHICAL BUSINESS PRACTICES. IT WAS REALLY A WILD WILD  
14 WEST PERIOD IN THE BEGINNING, AND THERE WERE CONCERNS  
15 OVER SOME COMPANIES WERE MAYBE CHARGING PEOPLE IN WAYS  
16 THEY SHOULD NOT HAVE CHARGED THEM. MAYBE THEY WERE --  
17 MAYBE THEY WERE NOT BEING STRAIGHTFORWARD WITH HOW THE  
18 BILLING WAS GOING TO GO THROUGH OR COMING UP WITH  
19 DECEPTIVE PRACTICES TO GET PEOPLE TO A WEBSITE. YNOT  
20 WAS A WAY FOR THESE WEBMASTERS TO NETWORK ORIGINALLY  
21 TOGETHER AND SAY, YOU KNOW WHAT, THAT IS THEM, THIS IS  
22 US, AND WE DON'T WANT TO DO BUSINESS THAT WAY.

23 IN ADDITION TO THAT, IT HAD A SERVICE  
24 DIRECTORY WHICH WAS KIND OF LIKE A YELLOW PAGES FOR  
25 ADULT WEBMASTERS IF THEY NEEDED TO FIND A WEB HOST, IF

1       THEY NEEDED TO FIND SOMEBODY TO SUPPLY THEM WITH  
2       CONTENT, IF THEY NEEDED TO FIND WEB DESIGN COMPANIES.  
3       THERE WOULD BE LISTINGS OF ALL OF THESE COMPANIES IN THE  
4       YNOT DIRECTORY. WE ALSO PROVIDE -- IN ADDITION TO STILL  
5       PROVIDING THESE SERVICES, WE HAVE MESSAGE BOARDS WHERE  
6       WEBMASTERS CAN INTERACT, NETWORK WITH EACH OTHER. AND  
7       WE HAVE NEWS ARTICLES, STRAIGHT NEWS ARTICLES THAT COVER  
8       THE ADULT ENTERTAINMENT INDUSTRY, IN ADDITION TO THE  
9       EDUCATIONAL ARTICLES AND EDITORIALS I TALKED ABOUT  
10      BEFORE.

11      Q.       HOW DO YOU LEARN OF TOPICS OF INTEREST TO ADULT  
12      WEBMASTERS THAT ARE REFLECTED IN THOSE NEWS ARTICLES?

13      A.       THERE ARE TWO PRIMARY WAYS. WELL, FIRST OF ALL,  
14      I CAN DRAW UPON MY OWN EXPERIENCE OF HAVING BEEN A  
15      WEBMASTER, HAVING BUILT SITES AND WORKED WITH SITES. I  
16      KNOW THE ISSUES THAT ARE AFFECTING THEM.

17                      IN ADDITION TO THAT, I SPEND TIME ON  
18      INDUSTRY MESSAGE BOARDS. THERE ARE A LOT OF THESE  
19      MESSAGE BOARDS WHERE WEBMASTERS ARE TALKING ABOUT WHAT  
20      IS ON THEIR MINDS. IT IS A PLACE FOR YOU TO COMMUNICATE  
21      ONLINE, AND I ATTEND QUITE A NUMBER OF EVENTS THROUGHOUT  
22      THE YEAR, OR, AT LEAST IT SEEMS LIKE A LOT OF EVENTS  
23      THROUGHOUT THE YEAR WHERE I GET TO INTERACT DIRECTLY  
24      WITH OTHER WEBMASTERS, TALK TO THEM ABOUT WHAT IS ON  
25      THEIR MINDS, IF THERE IS A TOPIC OF PARTICULAR INTEREST,



1 IT'S GOING TO BE -- PEOPLE ARE GOING TO BE DISCUSSING IT  
2 AT SEMINARS, JUST WALKING AROUND, IN THE EVENINGS, AT  
3 NETWORKING EVENTS, SO INTERACTING WITH OTHER WEBMASTERS  
4 DIRECTLY IS ANOTHER WAY.

5 Q. WHO ATTENDS THESE EVENTS THAT YOU ARE SPEAKING  
6 OF?

7 A. THEY ARE GOING TO BE -- IT'S GOING TO BE PRETTY  
8 MUCH THAT ADULT WEBMASTER UMBRELLA THAT I WAS TALKING  
9 ABOUT. BUT I WOULD ALSO ADD TO THAT, WE DO GET PEOPLE  
10 FROM OUTSIDE OF THE ADULT INDUSTRY AS WELL, IN OTHER  
11 WORDS, TECHNICAL COMPANIES THAT MIGHT HAVE SERVICES THAT  
12 THEY ARE TRYING TO SEE IF THERE IS A MARKET FOR IN THE  
13 ADULT ENTERTAINMENT INDUSTRY, BUT THEY ARE NOT REALLY A  
14 PART OF IT YET. WE DO GET THAT.

15 Q. DID YOUR AUDIENCE CHANGE WHEN YOU BECAME  
16 EDITOR-IN-CHIEF FOR YNOT AS OPPOSED TO THE ADULT  
17 WEBMASTER.COM BEFORE?

18 A. NOT REALLY. ONLY IN THE EXTENT THAT THE  
19 AUDIENCE WAS MUCH, MUCH BIGGER, SO IT WAS PROBABLY THE  
20 SAME TYPES OF INDIVIDUALS WHO WERE COMING TO THE  
21 WEBSITE, JUST A LOT MORE OF THEM.

22 Q. WHERE IS YOUR AUDIENCE LOCATED?

23 A. FOR YNOT THE AUDIENCE IS LOCATED ALL OVER THE  
24 PLACE. THE INTERNET IS AN INTERNATIONAL MEDIUM, SO WE  
25 HAVE AUDIENCE MEMBERS FROM UNITED STATES, FROM ENGLAND,

1 FROM CANADA, REALLY JUST ALL OVER THE PLACE.

2 Q. DOES YOUR AUDIENCE CONSIST OF WEBMASTERS?

3 A. PRIMARILY, YES.

4 Q. HOW DO YOU KNOW THAT YOUR AUDIENCE INCLUDES  
5 WEBMASTERS WHO ARE LOCATED OUTSIDE THE UNITED STATES?

6 A. THERE ARE COUPLE OF WAYS TO DETERMINE THAT.

7 FIRST, WE HAVE SERVER LOGS WHICH CAN TO A  
8 CERTAIN DEGREE OF ACCURACY GIVE YOU AN IDEA WHERE PEOPLE  
9 ARE COMING FROM. SO, FOR INSTANCE, BASED ON OUR SERVER  
10 LOGS, APPROXIMATELY 20 PERCENT OF OUR AUDIENCE ARE  
11 IDENTIFIED AS DEFINITELY COMING FROM OUTSIDE OF THE  
12 UNITED STATES. ANOTHER 17 PERCENT OF OUR AUDIENCE IS  
13 COMING FROM A PLACE THAT CAN'T BE DETERMINED, MEANING IT  
14 COULD BE AS HIGH AS 37 PERCENT BASED ON THE SERVER LOGS,  
15 BUT IT'S PROBABLY SOMEWHERE IN THE MIDDLE BETWEEN 20 AND  
16 37. BUT IN ADDITION TO THAT, WE HAVE -- WE INTERACT  
17 WITH OUR AUDIENCE. WE HAVE MESSAGE BOARDS WHERE  
18 WEBMASTERS FROM OTHER COUNTRIES WILL STOP BY AND POST  
19 AND INTERACT WITH US. WE ATTEND INDUSTRY EVENTS WHERE  
20 WEBMASTERS FROM OTHER COUNTRIES WILL SEEK US OUT, TALK  
21 TO US, EXPLAIN TO US WHAT IS ON THEIR MIND OR WHAT THEY  
22 THINK ABOUT OUR SERVICE. SO WE JUST COME INTO CONTACT  
23 WITH THESE INDIVIDUALS PERSONALLY.

24 Q. COULD YOU GIVE AN ESTIMATE OF HOW MANY VISITORS  
25 TO THE YNOT NETWORK WEBSITES ARE LOCATED OUTSIDE THE

1 UNITED STATES IN ABSOLUTE NUMBERS?

2 A. WELL, BEYOND THE SERVER LOG NUMBERS THAT I GAVE,  
3 ABSOLUTE NUMBERS, YOU MEAN YOU WANT LIKE A SPECIFIC  
4 NUMBER.

5 Q. IF YOU CAN.

6 A. NO, THERE IS NO WAY TO KNOW EXACTLY HOW MANY.

7 Q. DO YOU CONSIDER THAT IT IS YOUR JOB TO LEARN  
8 ABOUT ADULT CONTENT THAT IS PROVIDED BY ADULT WEBMASTERS  
9 LOCATED OUTSIDE THE UNITED STATES?

10 A. CAN YOU BE MORE SPECIFIC ABOUT WHAT YOU MEAN  
11 ABOUT LEARN ABOUT THE CONTENT? YOU MEAN WHAT KIND OF  
12 CONTENT IT IS OR --

13 Q. YES.

14 A. WHERE IT IS LOCATED OR --

15 Q. THE KIND OF CONTENT. THE TYPES OF CONTENT THAT  
16 IS PROVIDED OUTSIDE THE UNITED STATES BY WEBMASTERS.

17 A. WELL, WE CERTAINLY PAY ATTENTION TO WHAT OUR  
18 AUDIENCE IS TELLING US, SO TO THE EXTENT THAT WE HAVE  
19 MEMBERS OF OUR AUDIENCE WHO ARE OPERATE AFFILIATED  
20 PROGRAMS, FOR INSTANCE, WE ARE GOING TO BE AWARE OF THAT  
21 AND WHAT SORT OF WEBSITES THEY ARE OPERATING ON THEIR  
22 AFFILIATE PROGRAMS. WE ARE A LITTLE BIT PICKY WHO  
23 ADVERTISES ON YNOT, SO WE DO A LITTLE BIT OF DUE  
24 DILIGENCE WHEN SOMEBODY COMES TO ADVERTISE. IN ADDITION  
25 TO THAT, THERE IS GENERAL DISCUSSION ABOUT CONTENT

1 COMING FROM CERTAIN REGIONS OF THE WORLD. I DON'T KNOW  
2 IF THIS IS WHAT YOU ARE TALKING ABOUT.

3 Q. YOU ARE ALSO CURRENTLY PRESIDENT OF YNOT,  
4 CORRECT?

5 A. THAT'S RIGHT, YES.

6 Q. WHAT ARE YOUR RESPONSIBILITIES AS PRESIDENT?

7 A. WELL, IN ADDITION, I STILL -- I STILL DO KEEP  
8 SOME OF MY DUTIES THAT WERE AS EDITOR-IN-CHIEF. I STILL  
9 DO WORK WITH THE WRITERS. I STILL DO PAY ATTENTION TO  
10 THE TOPICS THAT ARE GOING ON AND TRY TO HELP THEM COME  
11 UP WITH TOPICS. I DON'T DO THE EDITING AS MUCH ON THE  
12 ARTICLES. I STILL DO WRITE, ALTHOUGH NOT WITH THE SAME  
13 FREQUENCY THAT I USED TO.

14 IN ADDITION TO THOSE DUTIES, I WORK WITH  
15 THE STAFF. FOR EXAMPLE, WE HAVE DIFFERENT AREAS WITHIN  
16 OUR COMPANY. WE HAVE INDIVIDUALS WHO ARE ON THE  
17 CREATIVE SIDE THAT HELP US BUILD WEBSITES AND WRITE  
18 THINGS. WE HAVE INDIVIDUALS ON THE TECHNICAL STAFF THAT  
19 WILL HELP US RUN OUR SERVERS AND WRITE ACTUAL SOFTWARE  
20 CODE IF WE ARE DEVELOPING A SOFTWARE PRODUCT. WE HAVE A  
21 MARKETING AND SALES STAFF. I MAKE SURE ALL THESE PEOPLE  
22 ARE DOING WHAT THEY ARE SUPPOSED TO DO. I MAKE SURE  
23 THEY ARE WORKING TOGETHER WELL. I ACT AS AN  
24 INTERMEDIARY BETWEEN THESE PEOPLE.

25 IN ADDITION TO THAT, I'M RESPONSIBLE FOR

1 THE COMPANY'S DIRECTION SO I ANALYZE THE INDUSTRY, WHAT  
2 IS GOING ON IN THE INDUSTRY, WHAT TRENDS THERE ARE GOING  
3 ON IN THE INDUSTRY, WHAT OUR CUSTOMERS MIGHT NEED. I  
4 LOOK AT OUR OWN PRODUCTS, SEE WHERE THEY ARE FALLING  
5 SHORT, HOW THEY ARE NOT DELIVERING IN WAYS THEY OUGHT TO  
6 BE DELIVERING. I WRITE THE SPECS FOR SOFTWARE. SO FOR  
7 EXAMPLE WHEN IT COMES TIME TO UPDATE OUR SERVICE  
8 DIRECTORY, I WILL LOOK AT THE SERVICE DIRECTORY AND THEN  
9 ENVISION WHERE I WANT IT TO GO, WHAT I WANT IT TO DO,  
10 AND THEN PROVIDE THE SOFTWARE ENGINEERS WITH EXACTLY  
11 WHAT IT SHOULD DO. IN OTHER WORDS THIS SHOULD BE HERE,  
12 THAT SHOULD BE HERE, THIS FEATURE SHOULD BE IN HERE. SO  
13 IN THAT REGARD, I'M CREATING THE SOFTWARE AND THEN THEY  
14 ARE ACTUALLY WRITING THE CODE THAT MAKES IT HAPPEN. I  
15 REPRESENT THE COMPANY AT INDUSTRY EVENTS. I SPEAK AT  
16 SEMINAR PANELS AT INDUSTRY EVENTS. SO THERE ARE A  
17 NUMBER OF THINGS INVOLVED.

18 Q. YOU REFER TO ONE OF YOUR RESPONSIBILITIES TO  
19 LOOK AT THE DIRECTION OF THE COMPANY?

20 A. YES.

21 Q. GIVE AN EXAMPLE WHERE YOU DID AN ANALYSIS THAT  
22 MAY HAVE AFFECTED THE DIRECTION OF THE COMPANY?

23 A. YES. IN MY DEPOSITION I TALKED ABOUT ONE OF  
24 THOSE EXAMPLES, WHICH WAS WE ANALYZED WHAT I CALLED DATA  
25 VERIFICATION SERVICES OR DVS SERVICES WHICH I REFERRED

1 TO THEM IN MY REPORT. IN THE SUMMER OF 2005, I  
2 PERSONALLY WAS MADE AWARE THAT THERE WAS A SENATOR WHO  
3 WAS LOOKING INTO THE POSSIBILITY OF COMING UP WITH SOME  
4 NEW LEGISLATION THAT WOULD REQUIRE AGE VERIFICATION. MY  
5 FIRST REACTION WAS, WELL, THAT IS INTERESTING. I DON'T  
6 KNOW HOW WE ARE GOING TO DO THAT. AND THEN I WAS MADE  
7 AWARE, WELL, THERE ARE THESE COMPANIES THAT DO AGE  
8 VERIFICATION. SO I DECIDED THAT, HEY, THIS IS SOMETHING  
9 MAYBE YNOT WOULD BE INTERESTED IN. IT MIGHT BE AN  
10 OPPORTUNITY FOR US TO MARKET THESE SERVICES TO OUR  
11 AUDIENCE. IF THEY PROVIDED AGE VERIFICATION, IF THERE  
12 WAS A BENEFIT TO THIS, THEN CERTAINLY IT'S GOING TO BE  
13 SOMETHING THAT WE COULD SELL TO ADULT WEBMASTERS. AND  
14 SO WITH THAT IN MIND, AS A COMPANY WE ANALYZED THESE  
15 SYSTEMS AND THEN WE MADE THAT DECISION AS TO WHAT TO DO.

16 Q. WHAT IS DATA VERIFICATION SERVICES?

17 MR. TODD: OBJECTION, CALLS FOR A  
18 NARRATIVE.

19 BY MR. VAN KWAWEGEN:

20 Q. WHAT DID YOU DO TO ANALYZE THE SERVICES YOU JUST  
21 DESCRIBED?

22 MR. TODD: SAME OBJECTION.

23 THE COURT: OVERRULED.

24 THE WITNESS: WELL, FIRST AND FOREMOST,  
25 WE READ EVERYTHING WE COULD ABOUT THEM THAT WAS PUBLICLY

1 AVAILABLE. THEN WE CONTACTED THE COMPANIES DIRECTLY.  
2 WE CONTACTED THREE DIFFERENT DVS COMPANIES. I HAD  
3 ONE-ON-ONE CONVERSATIONS WITH SOME OF THE INDIVIDUALS  
4 FROM THESE COMPANIES. THEN WE OPENED IT UP TO  
5 CONFERENCE CALLS WHERE WE HAD CONFERENCE CALLS WITH THE  
6 COMPANIES -- WITH THEIR COMPANY AND OUR COMPANY WHERE WE  
7 TRIED TO JUST REALLY GET TO KNOW THEIR TECHNOLOGIES.  
8 THEY DEMONSTRATED THE TECHNOLOGIES TO US, WE RAN TEST  
9 DATA THROUGH THEIR SYSTEMS BASED ON THE DEMONSTRATIONS  
10 THAT THEY WERE PROVIDING US. THEN AT THAT POINT WE  
11 STEPPED BACK AND WE TALKED ABOUT IT WITHIN OUR OWN  
12 COMPANY AND TRIED TO APPLY OUR KNOWLEDGE OF THE ADULT  
13 ENTERTAINMENT INDUSTRY TO THESE TECHNOLOGIES. IN OTHER  
14 WORDS, WE SAID KNOWING WHAT WE KNOW ABOUT THE INDUSTRY  
15 FROM HAVING BEEN IN IT THIS LONG, IS THERE ROOM FOR THIS  
16 TECHNOLOGY. IF THERE IS, WHERE WOULD IT BE? HOW WOULD  
17 WE PRESENT IT? IS THERE GOING TO BE AN INTEREST? IS  
18 THIS GOING TO WORK?

19 Q. FROM THE PERSPECTIVE OF SOMEONE WHO IS OPERATING  
20 AN ADULT WEBSITE, WHAT, IF ANYTHING, DOES A DVS SERVICE  
21 DO?

22 A. WHAT IT IS GOING TO DO IS, IF SOMEBODY COMES TO  
23 MY WEBSITE AND I'M USING A DVS SERVICE, THEY ARE GOING  
24 TO BE REQUIRED TO PUT IN SOME PERSONAL INFORMATION, SUCH  
25 AS NAME, ADDRESS, THAT SORT OF THING. AND THEN THE DVS

1 COMPANY IS GOING TO CHECK THAT INFORMATION AGAINST A  
2 DATABASE OF RECORDS THAT THEY HAVE. THEY ARE GOING TO  
3 LOOK FOR A MATCH. IF THEY CAN FIND A MATCH FOR THAT  
4 INFORMATION THAT WAS ENTERED, THEN THEY WILL REPLY BACK  
5 TO THE WEBSITE OWNER AND I'M GOING TO GET SOME SORT OF  
6 REPLY SOMETHING ALONG THE LINES OF, YES, WE FOUND A  
7 MATCH FOR THIS DATA, NO, WE DID NOT FIND A MATCH FOR  
8 THIS DATA, THERE MIGHT BE A MATCH, WE THINK YOU SHOULD  
9 LOOK INTO IT MORE. SO THERE ARE A COUPLE POSSIBLE  
10 REPLIES.

11 Q. BESIDES ANALYZING THESE DVS SERVICES FOR YNOT,  
12 DID YOU DO ANYTHING ELSE TO ANALYZE THE AVAILABLE  
13 SERVICES?

14 A. WE HAVE NOT TALKED ABOUT THIS YET, BUT I'M ON  
15 THE BOARD OF DIRECTORS OF THE FREE SPEECH COALITION, I'M  
16 VICE-PRESIDENT OF THE BOARD, AND WE HAVE VARIOUS  
17 COMMITTEES IN THE FREE SPEECH COALITION. ONE IS THE  
18 INTERNET COMMITTEE, AND THE INTERNET COMMITTEE HAS  
19 BROUGHT UP DATA VERIFICATION SERVICES. SO IN THAT  
20 REGARD WE DISCUSSED THEM THERE AS WELL.

21 Q. DID YNOT DECIDE TO MARKET ANY DVS SERVICES  
22 FOLLOWING YOUR ANALYSIS?

23 A. NO, WE DID NOT.

24 Q. WHY NOT?

25 A. THERE WERE A NUMBER OF REASONS WHY WE THOUGHT IT



1 WAS NOT GOING TO WORK. FIRST, THERE WAS A PRICE ISSUE.  
2 WE THOUGHT THEY WERE EXTREMELY EXPENSIVE, IN THE SENSE  
3 THAT THE ONLY WAY IT'S GOING TO WORK IS, WE FELT, WAS  
4 THAT IF WE TIED THEM TO A PAY POINT. IN OTHER WORDS, IF  
5 YOU HAD A SPOT WHERE SOMEBODY WAS ALREADY GOING TO BE  
6 PURCHASING CONTENT, THEN THE PRICE MIGHT NOT BE SO  
7 BURDENSOME. IN OTHER WORDS, IF YOU HAVE 10,000 PEOPLE  
8 VISITING YOUR WEBSITE, IT IS ENTIRELY POSSIBLY THAT YOU  
9 ARE ONLY GOING TO GET TWO CUSTOMERS OUT OF THOSE 10,000,  
10 THAT REALLY HAPPENS IN THIS FIELD. SO YOU CAN'T -- IT'S  
11 NOT PRACTICAL TO VERIFY THEM AS THEY ARE COMING INTO THE  
12 WEBSITE BECAUSE THAT IS GOING TO BE A LOT OF MONEY.  
13 LET'S SAY YOU WERE PAYING 25 CENTS 10,000 TIMES EVERY  
14 SINGLE DAY.

15 MR. TODD: OBJECTION, FOUNDATION.

16 THE COURT: OVERRULED. ASK HIM ON CROSS  
17 EXAMINATION. HE PARTICIPATED IN AN IN-DEPTH STUDY, AS  
18 HE HAS ALREADY TESTIFIED TO.

19 THE WITNESS: SO WE FELT THAT WOULD BE  
20 TOO EXPENSIVE TO VERIFY PEOPLE AS THEY WERE JUST COMING  
21 INTO THE WEBSITE BECAUSE YOU ARE GOING TO BE SPENDING 25  
22 CENTS FOR ALL THESE PEOPLE THAT ARE NOT GOING TO BUY  
23 ANYTHING ANYWAY. AT A PAY POINT, IF THEY WERE SPENDING  
24 \$30 ON A MEMBERSHIP, IT MIGHT NOT BE SO BAD. THE  
25 PROBLEM WITH THAT WAS, IN ADDITION TO THE FACT THAT YOU

1 CAN'T VERIFY PEOPLE, IT WAS TOO EXPENSIVE FOR THE FREELY  
2 AVAILABLE SECTIONS, THE OTHER PROBLEM WAS IT WAS NOT  
3 REALLY DOING ANYTHING. FOR INSTANCE, AT THE LOWEST  
4 SETTINGS, IF WE WERE TO PUT IN NAME, ADDRESS, YOU KNOW,  
5 AND ZIP CODE, SOMETHING ALONG THOSE LINES, I MEAN THAT  
6 WAS LAUGHABLY EASY TO BEAT. IN OTHER WORDS, AS A CHILD  
7 I COULD PUT IN MY PARENTS' NAME, ADDRESS AND THE ZIP  
8 CODE AND GET THROUGH THOSE SETTINGS.

9 MR. TODD: OBJECTION, FOUNDATION. WHAT  
10 STUDY? DO WE HAVE THE STUDY IN FRONT OF US?

11 THE COURT: COUNSEL DEVELOPED WHAT THE  
12 STUDY WAS. OBJECTION OVERRULED FOR THE TIME BEING.

13 DON'T SAY ANYTHING, SIR. THE WITNESS  
14 TALKED ABOUT A STUDY. WOULD YOU KIND OF IDENTIFY WHAT  
15 IT WAS, WHAT HIS ROLE WAS, WHAT THE BASIS OF HIS  
16 KNOWLEDGE IS AND SO FORTH.

17 BY MR. VAN KWAWEGEN:

18 Q. DEFINITELY I WILL GET BACK TO THIS AT A LATER  
19 TIME AS WELL. I BELIEVE THE STUDY THAT MR. RUSSO IS  
20 REFERRING TO IS THE SUMMER OF 2005 ANALYSIS THAT YNOT  
21 PERFORMED WITH REGARD TO THESE DVS SERVICES.

22 THE COURT: ASK HIM WHAT IT WAS. DON'T  
23 PRESUME WHAT IT WAS.

24 BY MR. VAN KWAWEGEN:

25 Q. WHAT DID YOU DO IN THE SUMMER OF 2005 IN ORDER

1 TO ANALYZE THE POSSIBLE DVS SERVICES IN THE CONTEXT OF  
2 YOUR WORK FOR YNOT?

3 A. THAT IS WHAT I SPOKE ABOUT BEFORE, ABOUT THE  
4 CONVERSATIONS WITH THE COMPANIES DIRECTLY, THE ONE ON  
5 ONE CONVERSATIONS, CONFERENCE CALLS THAT WE HAD WITH THE  
6 COMPANIES, THE DEMONSTRATIONS THEY GAVE US OF THEIR  
7 TECHNOLOGIES. WE TESTED DATA WITH -- THEY HAD ADMIN  
8 PANELS WHERE YOU COULD GO IN AND TEST DATA, PUT IN DATA  
9 ON INDIVIDUALS AND SEE WHAT THE RESULTS WOULD BE, TEST  
10 THAT. THE CONFERENCE DISCUSSIONS WE HAD, THE INTERNAL  
11 DISCUSSIONS THAT WE HAD TRYING TO APPLY WHAT WE LEARNED  
12 FROM THE COMPANIES TO THE INDUSTRY AS WE KNOW IT,  
13 WHETHER OR NOT THERE WAS A MATCH.

14 Q. JUST ONE FOLLOW-UP QUESTION. WHAT DO YOU MEAN  
15 BY ADMIN PANELS IN YOUR LAST ANSWER?

16 A. SURE. IN OTHER WORDS, IT'S A WEB PAGE THAT  
17 THESE COMPANIES WOULD PROVIDE THAT WAS PROTECTED. YOU'D  
18 HAVE A USER NAME AND PASSWORD IN ORDER TO VISIT IT.  
19 ONCE THERE, IT HAD CERTAIN OPTIONS YOU COULD DO, LIKE  
20 PUT IN DATA TO TEST IT AND SEE WHAT KIND OF RESULTS YOU  
21 WOULD GET BACK, NAME, ADDRESS, PHONE NUMBER, SUBMIT IT.  
22 IT WOULD GO THROUGH THEIR SYSTEM AND COME BACK WITH SOME  
23 SORT OF REPLY TO YOU.

24 MR. TODD: OBJECTION, FOUNDATION. WHAT  
25 RESULTS? WHAT DOCUMENT?

1 THE COURT: OVERRULED. ASK HIM ON CROSS.

2 THE WITNESS: DO YOU WANT ME TO CONTINUE  
3 WHERE I WAS BEFORE?

4 THE COURT: ASK ANOTHER QUESTION,  
5 COUNSEL.

6 MR. VAN KWAWEGEN: WE WILL GET BACK TO  
7 THIS LATER.

8 BY MR. VAN KWAWEGEN:

9 Q. WHAT, IF ANYTHING, IS YOUR EXPERIENCE WITH ADULT  
10 CONTENT ON USENET?

11 A. WELL, AS I TALKED ABOUT EARLIER, I USED USENET  
12 MYSELF WHEN I WAS A WEBMASTER FOR A MEANS OF MARKETING  
13 THE WEBSITES THAT I HAD BUILT, SO THAT IS ONE.

14 IN ADDITION TO THAT, USENET IS A TOPIC  
15 THAT HAS COME UP OFTEN, ALTHOUGH NOT AS MUCH LATELY, BUT  
16 IT WAS A POPULAR DISCUSSION TOPIC IN THE EARLY YEARS AS  
17 A MEANS FOR MARKETING. IN OTHER WORDS, WHEN I'M WORKING  
18 FOR A COMPANY THAT IS SHARING INFORMATION WITH  
19 WEBMASTERS, THAT IS THE KIND OF THING THAT WE WOULD  
20 SHARE A USENET IS A WAY YOU COULD DRAW ATTENTION TO YOUR  
21 WEBSITES, HOW IT WOULD WORK, WHY IT WOULD WORK, WHAT THE  
22 PITFALLS OF USENET ARE, THAT SORT OF THING.

23 Q. REMIND US WHAT USENET IS.

24 A. YES. USENET IS WHAT I WAS REFERRING TO BEFORE,  
25 THAT MESSAGE, IT'S LIKE A MESSAGE BOARD SYSTEM. IT'S

1 ONE OF THE FEATURES OF THE INTERNET, LIKE FTP, E-MAIL,  
2 WORLDWIDE WEB, USENET, WHERE YOU CAN ALSO ATTACH BINARY  
3 FILES TO MESSAGES THAT YOU POST ON THESE MESSAGE BOARDS,  
4 SIMILAR TO HOW YOU WOULD WITH E-MAIL.

5 Q. WHAT TYPES OF FILE FORMATS HAVE YOU SEEN OR USED  
6 ON USENET?

7 A. WELL, BY FILE FORMATS YOU ARE TALKING ABOUT THE  
8 EXTENSIONS, THE VERY SPECIFIC?

9 Q. FOR EXAMPLE.

10 A. JPEG FILES, WHICH ARE A TYPE OF IMAGE FILE, GIF  
11 FILES, WHICH ARE ALSO A TYPE OF IMAGE FILE.

12 THE COURT: SPELL THAT WORD, PLEASE.

13 THE WITNESS: G-I-F.

14 THE COURT: THANK YOU.

15 THE WITNESS: AVI FILES, WHICH ARE A FORM  
16 OF VIDEO FILES. I HAVE SEEN WAVE FILES, W-A-V, WHICH  
17 ARE A FORM OF AUDIO FILES.

18 BY MR. VAN KWAWEGEN:

19 Q. HAVE YOU SEEN ANY ADULT IMAGES ON USENET?

20 A. ABSOLUTELY.

21 Q. HAVE YOU SEEN ANY ADULT VIDEOS ON USENET?

22 A. ABSOLUTELY.

23 Q. DO YOU CONSIDER TO BE PART OF YOUR JOB AND YOUR  
24 RESPONSIBILITIES AT YNOT TO LEARN ABOUT ADULT CONTENT  
25 THAT IS PROVIDED ON USENET?

1 A. INsofar AS WE ARE SHARING INFORMATION WITH OTHER  
2 WEBMASTERS, YES.

3 Q. SWITCHING TO A DIFFERENT TOPIC.

4 WHAT, IF ANYTHING, IS YOUR EXPERIENCE  
5 WITH PEER-TO-PEER SYSTEMS?

6 A. WELL, THERE ARE TWO REASONS WHY PEER-TO-PEER IS  
7 OF INTEREST TO THE ADULT INDUSTRY AND THEREFORE OF  
8 INTEREST TO ME. ONE, IT PROVIDES A POTENTIAL MARKETING  
9 OPPORTUNITY FOR ADULT WEBSITES. IT IS A WAY THAT THEY  
10 CAN POTENTIALLY SHARE FILES WITH OTHER PEOPLE, SAME AS  
11 YOU COULD WITH USENET, AND THEN DRAW ATTENTION TO  
12 WHATEVER IT IS THAT YOU ARE TRYING TO DRAW ATTENTION TO.  
13 SO IT IS OF INTEREST IN THAT REGARD. IT'S ALSO OF  
14 INTEREST TO THE ADULT INDUSTRY IN THE SENSE THAT IT'S  
15 ALSO A POTENTIAL FOR COPYRIGHT ABUSE. THERE ARE PEOPLE  
16 WITHIN THE INDUSTRY WHO ARE SELLING DVDS OR SELLING  
17 MOVIES, SELLING IMAGES AND WHEN THEY ARE TRADED WITHOUT  
18 THEIR AUTHORIZATION ON PEER-TO-PEER NETWORKS THEN IT  
19 CREATES A PROBLEM FOR THEM IN THE SAME WAY IT WOULD FOR  
20 THE MOTION PICTURE OR THE MUSIC INDUSTRY.

21 Q. WHAT, IF ANYTHING, DID YOU DO TO ANALYZE ANY  
22 FUTURE DEVELOPMENTS WITH REGARD TO PEER-TO-PEER NETWORKS  
23 AND ADULT CONTENT PROVIDED THEREON?

24 A. ANY FUTURE DEVELOPMENTS? I DON'T KNOW IF THIS  
25 IS WHAT YOU MEAN, --

1 THE COURT: THE QUESTION IS WHAT DID YOU  
2 DO TO FIND THAT OUT?

3 BY MR. VAN KWAWEGEN:

4 Q. WHAT DID YOU DO TO FIND THAT OUT?

5 THE COURT: TO CONSIDER FUTURE  
6 DEVELOPMENT.

7 THE WITNESS: WELL, FIRST OF ALL, I  
8 LEARNED HOW TO USE PEER-TO-PEER MYSELF, DOWNLOADED  
9 VARIOUS PEER-TO-PEER CLIENTS. SHARED FILES ON  
10 PEER-TO-PEER. DOWNLOADED FILES ON PEER-TO-PEER.  
11 LEARNED THE TECHNOLOGY, WHAT SORT OF OPTIONS WERE  
12 AVAILABLE ON PEER-TO-PEER. IN ADDITION TO THAT, I WOULD  
13 SHARE INFORMATION WITH OTHER WEBMASTERS, TALK TO THEM  
14 ABOUT THEIR EXPERIENCES ON PEER-TO-PEER. THERE WERE  
15 COMPANIES THAT WERE TRYING TO MARKET COPYRIGHT  
16 SOLUTIONS, I GUESS YOU COULD SAY, KNOWN AS DRM, WAYS TO  
17 TRY TO PROTECT YOUR CONTENT ON PEER-TO-PEER SO I WOULD  
18 DISCUSS THAT WITH THEM, WHAT THEY WERE OFFERING, WHY  
19 THEY WERE OFFERING IT, HOW THEY THOUGHT IT WAS OF  
20 BENEFIT, THINGS OF THAT NATURE.

21 Q. WHAT TYPES OF FILE FORMAT HAVE YOU SEEN ON  
22 PEER-TO-PEER NETWORKS?

23 A. AGAIN, IT'S GOING TO BE A WIDE LIST, A LONG LIST  
24 OF THINGS, JPEG FILES AND THE GIF FILES I REFERRED TO  
25 BEFORE, IMAGE FILES, AVI VIDEO FILES, WINDOWS MEDIA

1 FILES WHICH ARE VIDEOS, QUICK TIME VIDEO FILES WHICH IS  
2 APPLE'S VIDEO FORMAT, AUDIO FILES, MP3 FILES, A FORM OF  
3 AUDIO FILES, ALL KINDS OF FILES.

4 Q. HAVE YOU SEEN ANY ADULT IMAGES ON PEER-TO-PEER  
5 NETWORK?

6 A. ABSOLUTELY, YES.

7 Q. HAVE YOU SEEN ANY ADULT VIDEOS ON PEER-TO-PEER  
8 NETWORKS?

9 A. YES, ABSOLUTELY.

10 Q. DO YOU CONSIDER IT YOUR JOB AS PART OF YOUR  
11 RESPONSIBILITIES FOR YOUR WORK AT YNOT TO LEARN ABOUT  
12 ADULT CONTENT THAT IS DISTRIBUTED THROUGH PEER-TO-PEER  
13 NETWORKS?

14 A. YES, I DO.

15 Q. EARLIER YOU REFERRED TO THE FREE SPEECH  
16 COALITION, CORRECT?

17 A. YES.

18 Q. YOU SAID YOU WERE A MEMBER OF THE BOARD?

19 A. YES, I AM.

20 Q. ARE YOU A MEMBER OF ANY OTHER ORGANIZATION?

21 A. NO, NOT AT THE MOMENT.

22 Q. DO YOU SPEAK FOR THE FREE SPEECH COALITION HERE?

23 A. NO, I DO NOT.

24 Q. WHAT WERE YOU ASKED TO TESTIFY ABOUT ON BEHALF  
25 OF THE PLAINTIFFS IN THIS MATTER?



1 A. WELL, I WAS ASKED TO TALK ABOUT THE  
2 EFFECTIVENESS OF ONLINE AGE VERIFICATION TECHNIQUES. I  
3 WAS ASKED TO TALK ABOUT THE AVAILABILITY OF ADULT  
4 MATERIALS OUTSIDE OF THE WORLDWIDE WEB, OUTSIDE OF WEB  
5 BROWSERS. I WAS ALSO ASKED TO TALK ABOUT THE  
6 AVAILABILITY OF ADULT CONTENT OVERSEAS.

7 Q. I WOULD LIKE TO ASK YOU TO REFER TO A DOCUMENT  
8 IN THE BINDER THAT IS IN FRONT OF YOU.

9 A. OKAY.

10 Q. COPIES WERE PROVIDED TO YOUR HONOR AND ALSO TO  
11 THE DEFENDANT. WOULD YOU TURN TO PLAINTIFFS' EXHIBIT 24  
12 BEHIND TAB 1 PLEASE.

13 A. OKAY.

14 Q. COULD YOU IDENTIFY THIS DOCUMENT, TELL THE COURT  
15 WHAT IT IS?

16 A. YEAH, THIS IS A RESUME THAT I WROTE UP IN  
17 RESPONSE TO A REQUEST FROM LATHAM AND WATKINS.

18 Q. IS IT YOUR RESUME?

19 A. YES, IT IS MY RESUME, YES.

20 Q. IS IT A COMPLETE AND ACCURATE COPY OF YOUR  
21 RESUME?

22 A. YES, IT IS.

23 Q. TURN TO PLAINTIFFS' EXHIBIT 25, BEHIND TAB 2 OF  
24 THE BINDER, PLEASE.

25 A. OKAY.

1 Q. CAN YOU IDENTIFY THIS DOCUMENT AND EXPLAIN TO  
2 THE COURT WHAT IT IS?

3 A. THIS IS THE EXPERT REPORT THAT I WAS ASKED TO  
4 WRITE WHICH COVERS THE TOPICS OF THE VARIOUS AGE  
5 VERIFICATION ATTEMPTS ONLINE, MY EXPERIENCE WITH THEM,  
6 THE AVAILABILITY OF CONTENT OVERSEAS ON USENETS, THE  
7 THINGS THAT WE HAVE BEEN TALKING ABOUT LARGELY.

8 Q. PLEASE TAKE YOUR TIME. IS THIS A COMPLETE AND  
9 ACCURATE COPY OF YOUR REPORT? WOULD YOU CHECK?

10 A. SURE. YES, IT APPEARS TO BE.

11 MR. VAN KWAWEGEN: YOUR HONOR, PLAINTIFFS  
12 OFFER EXHIBITS 24 AND 25 INTO EVIDENCE AT THIS TIME.

13 THE COURT: ANY OBJECTION?

14 MR. TODD: SUBJECT TO CROSS EXAMINATION  
15 AND POTENTIAL MOTION TO STRIKE, NO OBJECTION AT THIS  
16 TIME, YOUR HONOR.

17 THE COURT: P-24 AND P 25 ARE RECEIVED  
18 INTO EVIDENCE.

19 (P-24 AND P-25 ADMITTED INTO EVIDENCE.)

20 MR. VAN KWAWEGEN: IN ADDITION,  
21 PLAINTIFFS MOVE TO CERTIFY MR. RUSSO AS AN EXPERT  
22 REGARDING THE EFFECTIVENESS OF ONLINE VERIFICATION  
23 SCHEMES INCLUDING PAYMENT CARD SCREENS AND DVS SERVICES  
24 AS JUST DISCUSSED.

25 THE COURT: WAIT A MINUTE.

1 GO THROUGH THE LIST OF THINGS AGAIN,  
2 PLEASE.

3 MR. VAN KWAWEGEN: I WILL. MR. RUSSO  
4 WOULD BE CERTIFIED FOLLOWING OUR MOTION HOPEFULLY AS AN  
5 EXPERT REGARDING THE EFFECTIVENESS OF VARIOUS ONLINE  
6 VERIFICATION SCHEMES, INCLUDING PAYMENT CARD SCREENS AND  
7 DVS SERVICES. HE WOULD ALSO BE -- PLAINTIFFS ALSO MOVE  
8 TO CERTIFY MR. RUSSO AS AN EXPERT REGARDING THE  
9 AVAILABILITY OF ADULT MATERIAL OUTSIDE THE UNITED STATES  
10 AND THE AVAILABILITY OF ADULT MATERIALS ON THE INTERNET  
11 OTHER THAN THE WORLDWIDE WEB, INCLUDING FOR EXAMPLE,  
12 PEER-TO-PEER NETWORK AND USENET.

13 THE COURT: ANY OBJECTION?

14 MR. TODD: SUBJECT TO CROSS EXAMINATION  
15 AND LATER POTENTIAL MOTION TO STRIKE, NO OBJECTION AT  
16 THIS TIME.

17 THE COURT: THE COURT WILL RECEIVE  
18 OPINIONS FROM MR. RUSSO ON THE LISTED SUBJECT MATTERS  
19 PRESENTED BY COUNSEL. YOU MAY PROCEED.

20 I DON'T USE THE DUBBING OF SOMEBODY AS AN  
21 EXPERT, I JUST DECIDE THAT THE OPINION IS ADMISSIBLE. I  
22 DON'T KNOW WHY I DO THAT, BUT IT'S MY CHOICE.

23 MR. VAN KWAWEGEN: THANK YOU, YOUR HONOR.  
24 BY MR. VAN KWAWEGEN:

25 Q. MR. RUSSO, BEFORE DISCUSSING THE WEBSITES THAT

1 YOU DESIGNED AND OPERATED IN A LITTLE BIT MORE DETAIL,  
2 WOULD YOU PLEASE EXPLAIN TO THE COURT HOW YOU BECAME  
3 INTERESTED IN THE INTERNET IN THE FIRST PLACE?

4 A. SURE. IN 1989, FOR A SHORT PERIOD OF TIME I  
5 OPERATED WHAT YOU WOULD CALL A COMPUTER BULLETIN BOARD  
6 SYSTEM. IT'S EFFECTIVELY -- I HAD A COMPUTER IN MY HOME  
7 THAT I INSTALLED WITH COMPUTER BULLETIN BOARD SYSTEM  
8 SOFTWARE, INSTALLED MODEMS ON THESE MACHINES TO WHERE  
9 PEOPLE ON OTHER MACHINES OUTSIDE OF MY HOUSE COULD DIAL  
10 INTO THE COMPUTER AND RECEIVE CERTAIN SERVICES, IN OTHER  
11 WORDS LIKE FILE SHARING, BULLETIN BOARDS, WHERE THEY  
12 COULD POST MESSAGES. IT WAS REALLY BEFORE THE INTERNET  
13 CAUGHT ON. I OPERATED MY FIRST BOARD FOR A COUPLE OF  
14 YEARS, STARTED WHEN I WAS IN HIGH SCHOOL. CLOSED THAT  
15 ONE DOWN. THEN I WENT ON TO COLLEGE, I STARTED A SECOND  
16 BULLETIN BOARD SYSTEM THAT I RAN FROM 1992 THROUGH 1997.  
17 WHEN THE INTERNET STARTED TO CATCH ON WITH MAINSTREAM  
18 USERS OF BULLETIN BOARD SYSTEMS -- WERE NO LONGER, YOU  
19 THERE WAS NO NEED TO USE THEM ANYMORE. I HAD OPERATED  
20 THEM AS A HOBBY FOR A NUMBER OF YEARS. IT WAS AT A  
21 FINANCIAL COST TO ME, IT WAS NOT A MONEY MAKER, AND WHEN  
22 I STARTED TO LOSE ALL MY USERS FROM THE BOARD -- IT HAD  
23 BEEN A BIG PART OF MY LIFE FOR A NUMBER OF YEARS, I  
24 DECIDED TO TRY OUT THE WEB. IF YOU CAN'T BEAT THEM,  
25 JOIN THEM. THAT IS WHERE MY INTEREST IN THE INTERNET

1 FIRST STARTED.

2 Q. WHAT IS A BULLETIN BOARD SERVICE?

3 A. WELL, AS I WAS EXPLAINING, IT'S KIND OF AN  
4 ONLINE SERVICE LIKE A VERY SMALL VERSION OF THE  
5 INTERNET. SO INDIVIDUALS CAN DIAL INTO A COMPUTER  
6 BULLETIN BOARD SERVICE AND ONCE THEY ARE CONNECTED TO  
7 IT, THEY CAN DO A VARIETY OF THINGS. THEY CAN TALK WITH  
8 OTHER USERS OF THAT BULLETIN BOARD SYSTEM ON MESSAGE  
9 BOARDS. NOW KEEP IN MIND, THE NUMBER OF PEOPLE  
10 CONNECTED CAN ONLY BE THE NUMBER OF HOW MANY PHONE LINES  
11 YOU HAD CONNECTED TO YOUR COMPUTER. IF YOU ONLY HAD ONE  
12 PHONE LINE, ONE PERSON AT A TIME, FIVE PHONE LINES, FIVE  
13 PEOPLE. THEY COULD GO TO MESSAGE BOARDS AND TALK ABOUT  
14 WHAT IS GOING ON IN THE LOCAL COMMUNITY, COMPUTER ISSUES  
15 THEY ARE HAVING, WHICH OPERATING SYSTEM IS BEST,  
16 WHATEVER THEY WANTED TO TALK ABOUT.

17 THEY COULD SHARE FILES, SO THERE WAS A  
18 MEANS FOR PEOPLE TO UPLOAD FILES AND DOWNLOAD FILES, A  
19 GOOD WAY TO DISTRIBUTE WHAT WE KNOW AS SHAREWARE, FILES  
20 THAT YOU DON'T HAVE TO BUY PER SE BUT YOU CAN TRY OUT.  
21 IF YOU LIKE THEM, YOU SEND IN MONEY TO THE SOFTWARE  
22 CREATOR. SO THAT WAS ONE THING. IN ADDITION TO  
23 APPLICATIONS, LIKE COULD BE ANYTHING FROM WORD  
24 PROCESSORS TO COMPUTER UTILITIES. THERE WERE ALSO MEDIA  
25 FILES. YOU COULD SHARE IMAGES IN THE FILE AREA. THERE

1 WERE ONLINE GAME SECTIONS WHERE PEOPLE COULD PLAY GAMES.  
2 THE MOST POPULAR WAS CALLED TRADE WARS WHERE THEY WOULD  
3 SET UP INTERGALACTIC TRADING SCHEMES AND COMPETE WITH  
4 OTHER USERS OF THE BOARD. THERE WERE SERVICES THAT YOU  
5 COULD POTENTIALLY OFFER, LIKE THE LOCAL WEATHER AND  
6 INFORMATION AND NEWS. SO IT WAS A VERY SMALL VERSION OF  
7 THE INTERNET, I GUESS YOU COULD SAY.

8 Q. DID YOU PROVIDE ANY ADULT CONTENT ON YOUR  
9 BULLETIN BOARD SYSTEM?

10 A. YES. I HAD -- AS PART OF THE FILE SECTION,  
11 THERE WAS A SMALL ADULT CONTENT SECTION THAT WE ALSO  
12 OFFERED ON MY BULLETIN BOARD SYSTEM THAT -- I DON'T KNOW  
13 WHEN THAT SPRUNG UP. IT WAS NOT PART OF MY ORIGINAL  
14 OPERATION, BUT AT SOME POINT THERE WAS ENOUGH DEMAND FOR  
15 THAT THAT WE ADDED IT.

16 Q. DID YOU MAKE ANY ATTEMPT TO PREVENT MINORS FROM  
17 ACCESSING THE ADULT SECTION ON YOUR BULLETIN BOARD  
18 SERVICE?

19 A. YES, I DID.

20 THE SECTIONS THAT CONTAINED THE ADULT  
21 FILES REQUIRED A CERTAIN LEVEL OF ACCESS. YOUR ACCOUNT  
22 HAD TO SET UP A CERTAIN LEVEL OF ACCESS WHICH I WOULD  
23 SET. IN ORDER TO GET THAT ACCESS THE INDIVIDUALS WHO  
24 WANTED IT WOULD HAVE TO MAIL ME BY U.S. MAIL A SIGNED  
25 APPLICATION FORM THAT WOULD BASICALLY STATE THAT THEY

1 WERE OF THE RIGHT AGE, THAT THEY KNEW WHAT THEY WERE  
2 ASKING FOR, THINGS OF THAT NATURE. AND THEN I WOULD ASK  
3 THEM TO SEND A PHOTOCOPY OF THEIR EITHER CALIFORNIA ID  
4 OR THEIR MILITARY ID. THEN I COULD COMPARE THE  
5 SIGNATURE WITH THE FORM. THAT WAS REALLY THE BEST THING  
6 THAT I COULD DO AT THE TIME.

7 Q. WHY DID YOU REQUIRE USERS OF YOUR BULLETIN BOARD  
8 SYSTEM THAT WANTED ACCESS TO THE ADULT CONTENT TO MAIL  
9 IN A COPY OF THEIR ID AND AN APPLICATION?

10 A. WELL, I WAS YOUNG AT THE TIME. I WAS IN  
11 COLLEGE, NOT AN ATTORNEY. I DID NOT REALLY KNOW WHAT  
12 WAS REQUIRED OF ME. IT SEEMED LIKE, YOU KNOW, WHAT I  
13 OUGHT TO DO IF I WAS GOING TO HAVE AN ADULT SECTION ON  
14 THE BOARD, THAT THERE OUGHT TO BE SOME KIND OF A SYSTEM  
15 SO I JUST PUT THAT IN PLACE AS THE ONLY THING THAT I  
16 COULD COME UP WITH.

17 Q. YOU MENTIONED THAT YOU DISCONTINUED USING YOUR  
18 BULLETIN BOARD SERVICE WITH THE ADVENT OF THE INTERNET?

19 A. I DON'T KNOW ABOUT WITH THE ADVENT OF THE  
20 INTERNET.

21 Q. WHY DID YOU DISCONTINUE THE BULLETIN BOARD  
22 SERVICE?

23 A. AGAIN, THE WHOLE PURPOSE OF RUNNING THIS BOARD,  
24 THE PAYOFF TO ME WAS, WELL, NOT ONLY WAS IT AN  
25 OPPORTUNITY FOR ME TO LEARN MORE ABOUT COMPUTERS AND

1       COMPUTER HARDWARE, BUT IT WAS -- IT WAS FUN. IT WAS AN  
2       OPPORTUNITY TO SOCIALIZE AND NETWORK WITH OTHER PEOPLE  
3       IN THE COMMUNITY, AND TO TALK ABOUT TOPICS THAT ARE OF  
4       INTEREST TO ME. SO WHEN PEOPLE STOPPED USING IT, FOR  
5       INSTANCE, LET'S SAY YOU ARE CONNECTING TO A BULLETIN  
6       BOARD SYSTEM BECAUSE YOU WANT TO TALK WITH OTHERS AND  
7       THERE IS MAYBE 30 OTHER PEOPLE THAT USE THE SAME BOARD,  
8       YOU GO ONLINE AND THERE IS A MESSAGE BOARD WITH ONE  
9       HUNDRED PEOPLE. THAT IS MORE INTERESTING. MY BULLETIN  
10      BOARD HAS A COUPLE OF FILES AVAILABLE. YOU GO ONLINE,  
11      THERE IS THOUSANDS OF FILES AVAILABLE. THAT IS MORE  
12      INTERESTING. SO I STARTED LOSING MY AUDIENCE TO THE  
13      INTERNET. WHY SPEND ALL THIS TIME CONNECTED TO A  
14      BULLETIN BOARD SYSTEM IF YOU CAN GO ON THE INTERNET AND  
15      EVERYTHING IS BETTER. IT WAS POINTLESS. WHY RUN THIS  
16      BULLETIN BOARD SYSTEM THAT AT THIS POINT IS COSTING ME  
17      MONEY, I HAVE TO HAVE MULTIPLE PHONE LINES, KEEP  
18      UPDATING MY HARDWARE. IT WAS VERY CUTTING EDGE. YOU  
19      ARE ALWAYS LOOKING FOR THE LATEST COMPUTER HARDWARE SO  
20      YOUR BOARD WOULD RUN WELL. IT BECAME POINTLESS. I  
21      MIGHT GET ONE OR TWO PEOPLE CONNECTING A DAY AT THAT  
22      POINT SO...

23      Q.       WHEN DID THIS HAPPEN?

24      A.       1997.

25      Q.       WAS THIS ALSO WHEN YOU FIRST STARTED BUILDING



1 WEBSITES?

2 A. YES, 1997.

3 Q. HOW DID YOU BUILD THE FIRST WEBSITE?

4 A. WELL, MY ORIGINAL THOUGHT WAS, HEY, IF EVERYBODY  
5 IS GOING TO THE INTERNET, MAYBE THERE IS A WAY TO  
6 RECREATE MY BULLETIN BOARD SYSTEM ON THE INTERNET, SO I  
7 CAN GET OUTSIDE THE LOCAL COMMUNITY, THERE WILL BE MORE  
8 PEOPLE, YOU KNOW, SO THE FIRST STEP OF COURSE WAS  
9 LEARNING HOW THE BUILD WEB PAGES, LOOKING HOW TO USE  
10 HTML TO DESIGN WEB PAGES, LINK THEM TOGETHER, ET CETERA.  
11 THE ADULT SECTION ON MY BULLETIN BOARD SYSTEM WAS THE  
12 ONLY SECTION THAT REALLY HAD GOTTEN OVERLY ENTHUSIASTIC  
13 RESPONSE. THERE WAS -- THERE WERE A LOT OF PEOPLE WHO  
14 WERE INTERESTED IN THAT SECTION. SO I THOUGHT, WELL, IF  
15 I'M TRYING TO ATTRACT PEOPLE TO THIS WEBSITE, I WILL  
16 START THERE. SO I FOUND A BUNCH OF IMAGES THAT WAS  
17 BASICALLY NUDE IMAGES THAT I HAD FROM MY BULLETIN BOARD  
18 SYSTEM AND BUILT A LITTLE WEBSITE. NOW I HAD BEEN  
19 OPERATING A BULLETIN BOARD SYSTEM FOR YEARS, SO I DID  
20 NOT REALLY EXPECT THIS TO BE A FINANCIAL THING FOR ME,  
21 IT WAS JUST, LET'S LEARN HOW THIS WORKS AND PUT IT  
22 ONLINE. BUT I HAD THE PROBLEM OF NOW WHAT AM I GOING TO  
23 DO IN TERMS OF CAN I JUST PUT THIS ON THE INTERNET.  
24 WHAT ARE THE RULES, I DON'T KNOW, AND A FRIEND OF MINE  
25 TOLD ME, WELL, THERE'S THIS AGE VERIFICATION SERVICE.

1 WHY DON'T YOU GO CHECK THEM OUT. THAT WAS ADULTSIGHTS  
2 COMPANY. SO AT FIRST, I TOOK THEM AT THEIR WORD. I HAD  
3 JUST GRADUATED. IN OTHER WORDS, I TOOK THEM AT THEIR  
4 WORD THAT IT WAS AGE VERIFICATION. I JUST GRADUATED  
5 FROM COLLEGE AND I JUST GOTTEN MARRIED. I HAD BEEN  
6 TOGETHER WITH MY WIFE FOR A NUMBER OF YEARS. AND WAS  
7 ANXIOUS TO GET MARRIED, BUT WE WAITED UNTIL I GRADUATED.

8 I BUILT THIS SITE. IT TOOK ME A COUPLE  
9 OF WEEKS TO FIGURE OUT HOW EVERYTHING WORKED. I PUT IT  
10 ONLINE, SUBMITTED IT TO A COUPLE OF SEARCH ENGINES AND  
11 THEN WE SET IT UP WITH THE AVS COMPANY. I SHOULD ADD  
12 THAT. THEN WE WENT ON OUR HONEYMOON AND I FORGOT ABOUT  
13 IT. I KNEW THAT IF ANYBODY SIGNED UP, THEY WOULD SEND  
14 ME A COMMISSION FOR LIKE \$15 PER SALE, SOMETHING ALONG  
15 THOSE LINES. I THOUGHT, WELL, THAT MIGHT BE NICE IF I  
16 GET BEER MONEY. WHEN I CAME BACK AFTER A COUPLE OF  
17 WEEKS AND LOOKED AT IT, IT HAD A LOT OF SIGNUPS, I HAD  
18 MADE A LOT OF MONEY, SO IT WAS, WOW, THIS WAS UNEXPECTED  
19 AND IT WENT FROM THERE.

20 Q. YOU SAID THAT YOU SIGNED UP YOUR WEBSITE WITH AN  
21 AVS COMPANY?

22 A. THAT'S CORRECT.

23 Q. IN THIS INSTANCE IT WAS ADULTSIGHTS?

24 A. YES.

25 Q. IN THE PERSPECTIVE OF RUNNING AN ADULT WEBSITE

1 AS YOU DID, WHAT IS AN AVS COMPANY?

2 A. FROM MY PERSPECTIVE, INITIALLY, LIKE I SAID, IT  
3 WAS A MEANS TO -- IT HAD TWO PURPOSES. ONE WAS I WOULD  
4 USE IT IN THE HOPE THAT IT WOULD WEED OUT MINORS. THE  
5 OTHER IS I WOULD USE IT AS A MEANS OF COLLECTING MONEY  
6 FOR THE WORK ON THE SITE. IF SOMEONE WAS ENJOYING THE  
7 SITE, MAYBE THERE IS A MEANS TO GET COMPENSATION FOR  
8 THAT. SO THAT WOULD BE THE REASONS WHY I WOULD USE IT  
9 AS A WEBMASTER.

10 Q. WHAT SERVICES DOES THE AVS COMPANY PROVIDE TO  
11 ADULT WEBMASTERS?

12 A. WHAT SERVICES DO THEY PROVIDE?

13 THE COURT: EXCUSE ME FOR INTERRUPTING.  
14 ARE YOU TALKING ABOUT BACK WHEN HE WAS FIRST USING THEM  
15 OR WHEN?

16 MR. VAN KWAWEGEN: YES.

17 THE COURT: NOT THE PRESENT TENSE.

18 MR. VAN KWAWEGEN: SHALL I REPHRASE?

19 THE COURT: SURE.

20 BY MR. VAN KWAWEGEN:

21 Q. AT THE TIME YOU BUILT YOUR FIRST WEBSITE, WHAT  
22 SERVICES DID AN AVS COMPANY PROVIDE TO AN ADULT  
23 WEBMASTER SUCH AS YOURSELF?

24 A. WELL, THERE WAS THE PIECE OF MIND, OF COURSE, OF  
25 THE FACT THAT THEY WERE CLAIMING TO VERIFY AGE, BUT THE

1 MAIN SERVICES THAT THEY WOULD PROVIDE WAS, WELL, THEY  
2 WOULD PROVIDE MORE OF A REASON FOR SOMEBODY TO PAY  
3 BECAUSE YOU HAD A LOT OF SITES TOGETHER RATHER THAN JUST  
4 YOUR ONE LITTLE SITE. AND THEY WOULD KEEP THE PASSWORD  
5 LIST, USER NAME AND PASSWORD LIST OF WHO WOULD GET  
6 ACCESS, SO THEY WOULD RELAY -- THEY WOULD RELAY PEOPLE  
7 FROM THE PUBLIC AREA OF THE SITE TO THE HIDDEN URL  
8 SECTION OF THE SITE OR THE PRIVATE AREA. I GUESS I  
9 SHOULD EXPLAIN THAT A LITTLE BIT.

10 BECAUSE AS A WEBMASTER I DON'T HAVE THE  
11 USER NAME AND PASSWORD LIST, I DON'T KNOW WHO CAN GET IN  
12 AND NOT GET IN. THE AVS COMPANY HAS TO DETERMINE THAT.  
13 SO WHAT I WOULD DO THEN IS YOUR PRIVATE AREA -- YOU  
14 WOULD PUT IT ON THE WEB, AND YOU WOULD NOT TELL ANYBODY  
15 WHERE IT WAS LOCATED. TO GET SOMEWHERE ON THE WEB YOU  
16 HAVE TO PUT IN -- TYPE IN THE URL IN YOUR BROWSER OR  
17 FIND A LINK THAT LEADS TO IT, SOMETHING ALONG THOSE  
18 LINES, OR KNOW WHAT IT IS. SO THAT WOULD NOT BE MADE  
19 PUBLICLY AVAILABLE BY ME. I WOULD GIVE IT TO THE AVS  
20 COMPANY ONLY. SO WHEN CUSTOMERS CAME TO THE OUTSIDE OF  
21 THE SITE, HAD PURCHASED A PASSWORD AND PUT THAT PASSWORD  
22 IN, THE AVS COMPANY WOULD THEN SUPPLY THAT CUSTOMER WITH  
23 THE LOCATION WHERE THE CONTENT WAS, SAY HERE IT IS, YOU  
24 CAN GO GET IT HERE.

25 Q. IS THERE A LIMIT -- HAS THIS BUSINESS MODEL

1 CHANGED? DO AVS COMPANIES PROVIDE THE SAME OR DIFFERENT  
2 SERVICES TODAY?

3 A. THE TECHNOLOGY IS THE SAME. THE DIFFERENCE IS  
4 THEY NO LONGER CLAIM TO VERIFY AGE.

5 MR. TODD: OBJECTION, FOUNDATION.

6 THE COURT: ASK HIM ON CROSS EXAMINATION.  
7 OVERRULED. HE'S QUALIFIED AS AN EXPERT. HE KNOWS  
8 GENERALLY THE ENTIRE ADULT ENTERTAINMENT INDUSTRY IN  
9 GENERAL, SO THAT IS WHERE WE ARE.

10 BY MR. VAN KWAWEGEN:

11 Q. THERE IS A LIMIT TO THE NUMBER OF AVS SITES OR  
12 WEBSITES THAT CAN BE SIGNED UP BY ONE AVS COMPANY, SUCH  
13 AS ADULTSIGHTS AS YOU REFERRED TO EARLIER?

14 THE COURT: EXTRAORDINARILY CONFUSING.

15 MR. VAN KWAWEGEN: I WILL REPHRASE, YOUR  
16 HONOR.

17 THE COURT: IT SEEMS JUMBLED UP TO ME.  
18 THAT IS A GOOD REASON FOR AN OBJECTION. TOTALLY  
19 UNINTELLIGIBLE.

20 MR. TODD: THANK YOU, YOUR HONOR. I TRY.

21 THE COURT: RULE 5,223 ONLY THE JUDGE  
22 CAN GET AWAY WITH THAT. TRY AGAIN, SIR.

23 BY MR. VAN KWAWEGEN:

24 Q. FROM THE PERSPECTIVE OF AN ADULT WEBMASTER THAT  
25 SIGNS UP WITH AN AVS COMPANY, IS THERE A NUMBER -- IS

1           THERE A LIMIT TO THE NUMBER OF ADULT WEBMASTERS THAT CAN  
2           SIGN UP WITH ONE ADULT -- WITH ONE AVS COMPANY?

3                               SORRY, YOUR HONOR, I WILL TRY AGAIN.

4                               EARLIER YOU TESTIFIED THAT AVS COMPANIES  
5           SIGN UP VARIOUS ADULT WEBSITES, CORRECT?

6           A.           THAT'S CORRECT, YES.

7           Q.           IS THERE A LIMITATION TO THE NUMBER OF WEBSITES  
8           THAT CAN BE SIGNED UP BY ONE AVS COMPANY?

9           A.           NO.    IN FACT, THERE WOULD BE AN INCENTIVE ON THE  
10          PART OF THE AVS COMPANY TO HAVE AS MANY WEBSITES AS PART  
11          OF THEIR NETWORK AS POSSIBLE.    IN OTHER WORDS, IF ONE  
12          AVS SITE WAS TO SAY, JOIN US AND WE WILL GIVE YOU ACCESS  
13          TO 100 SITES, ANOTHER AVS COMPANY WOULD SAY, JOIN US AND  
14          WE WILL GIVE YOU ACCESS TO 10,000 SITES, WELL, THEN MOST  
15          PEOPLE ARE PROBABLY GOING TO WANT TO BUY FROM THE GUY  
16          THAT IS ADVERTISING 10,000 SITES AND NOT THE 100 SITES.

17          Q.           IN YOUR EXPERIENCE, IS IT NECESSARY FOR AN AVS  
18          COMPANY TO BE LOCATED IN THE UNITED STATES?

19          A.           NO, IT IS NOT.

20          Q.           CAN YOU GIVE AN EXAMPLE OF AN AVS COMPANY THAT  
21          IS NOT LOCATED IN THE UNITED STATES?

22          A.           YEAH, ADULT CHECK IS ONE.    ADULT BOUNCER IS  
23          ANOTHER.

24          Q.           EARLIER YOU EXPLAINED THAT THERE IS A PUBLIC  
25          SECTION TO AN ADULT WEBSITE AND THEN A PRIVATE SECTION

1 TO THE ADULT WEBSITE, CORRECT?

2 A. TO WHAT KIND OF ADULT WEBSITE -- YOU ARE TALKING  
3 ABOUT AVS SITES SPECIFICALLY HERE?

4 Q. YES.

5 A. YES, THAT'S CORRECT.

6 Q. HOW DO VISITORS GAIN ACCESS TO THE PRIVATE  
7 SECTION OF AN ADULT WEBSITE THAT IS PART OF AN AVS  
8 COMPANY'S COLLECTION OF SITES?

9 A. WELL, THAT IS WHAT I WAS TALKING ABOUT BEFORE  
10 WITH GETTING THE LOCATION OF THE HIDDEN URL. FIRST AND  
11 FOREMOST, IF THEY ARE PLAYING BY THE RULES, THAT IS,  
12 THEY WOULD NEED TO PURCHASE A PASSWORD FROM THE AVS  
13 COMPANY. SO ONCE THEY HAVE A PASSWORD TO USE, THEY  
14 WOULD ENTER IT INTO A FORM WHICH MIGHT BE LOCATED ON THE  
15 WEBMASTER SITE OR YOU MIGHT FIND THIS FORM ON THE AVS  
16 COMPANY SITE. AND WHEN YOU ENTER THAT PASSWORD, THEN  
17 THE AVS COMPANY THEN WOULD REDIRECT YOU TO THE LOCATION  
18 OF THE HIDDEN CONTENT.

19 Q. DOES THE PASSWORD THAT IS PURCHASED AND ISSUED  
20 BY THE AVS COMPANY GIVE ACCESS TO ALL THE AVS SITES, THE  
21 UNDERLYING ADULT WEBSITES THAT ARE PART OF THE AVS  
22 COMPANY'S COLLECTION OF SITES?

23 A. GENERALLY, YES. THERE WERE SOME SMALL  
24 EXCEPTIONS TO THAT. FOR INSTANCE, ADULT CHECK HAD A  
25 SERVICE CALLED ADULT CHECK GOLD, WHICH IF SOMEBODY JUST

1 BOUGHT AN ADULT CHECK PASSWORD, THEY WOULD GET ACCESS TO  
2 REALLY IT WAS TENS OF THOUSANDS OF SITES, BUT NOT THE  
3 ADULT CHECK GOLD SITES, THAT WAS AN UPSELL. IF PEOPLE  
4 WANTED ACCESS TO THOSE, THEY WOULD HAVE TO BUY THE  
5 UPSSELL. BUT GENERALLY YES.

6 Q. DO THE OPERATORS OF THE WEBSITES WITH ADULT  
7 CONTENT THAT ARE PART OF THE COLLECTION OF AN AVS  
8 COMPANY'S COLLECTION OF WEBSITES, DO THE OPERATORS OF  
9 THOSE WEBSITES KNOW WHETHER A VISITOR WITH A PASSWORD IS  
10 AN ADULT?

11 A. NO. THERE IS NO WAY TO KNOW THAT.

12 Q. WHY NOT?

13 A. WELL, FIRST OF ALL, THE AVS COMPANIES WERE  
14 RELYING SOLELY ON PAYMENT CARDS. THERE WAS NO OTHER  
15 TECHNOLOGY BUILT IN TO VERIFY AGE.

16 MR. TODD: OBJECTION, FOUNDATION.

17 THE COURT: I JOIN WITH THAT IDEA, PLUS  
18 WE DON'T HAVE TIME HERE. THE PRESENT TENSE, THE PAST  
19 TENSE IS BEING ROLLED AROUND HERE LIKE A RUBBER BALL.  
20 SO THERE MAY BE FOUNDATION, BUT I DON'T KNOW WHEN HE IS  
21 TALKING ABOUT SO I CAN'T DEAL WITH THE OBJECTION EXCEPT  
22 TO SUSTAIN IT FOR RIGHT NOW.

23 BY MR. VAN KWAWEGEN:

24 Q. AT THE PRESENT TIME, DO YOU KNOW WHETHER  
25 OPERATORS OF ADULT WEBSITES KNOW WHETHER A VISITOR WITH



1 A PASSWORD IS AN ADULT?

2 A. WE ARE TALKING ABOUT AVS SITES HERE AGAIN?

3 Q. YES.

4 A. YES, I KNOW. YES. I MEAN YES I KNOW IF THEY  
5 KNOW IS THE ANSWER TO THAT.

6 Q. DO OPERATORS OF AVS SITES KNOW WHETHER A VISITOR  
7 WITH A PASSWORD IS AN ADULT?

8 A. NO, THEY DO NOT.

9 Q. WHY DON'T THEY KNOW PRESENTLY?

10 A. THEY DON'T KNOW BECAUSE -- WELL, FIRST OF ALL,  
11 LIKE I WAS SAYING, THE AVS COMPANY IS ONLY RELYING ON  
12 PAYMENT CARDS.

13 MR. TODD: OBJECTION, FOUNDATION.

14 THE COURT: SUSTAINED. LAY A FOUNDATION  
15 FOR HIS KNOWLEDGE OF RELYING ON PAYMENT CARDS.

16 BY MR. VAN KWAWEGEN:

17 Q. WHEN YOU WERE OPERATING YOUR WEBSITES, I'M  
18 TALKING SPECIFICALLY ABOUT THE WEBSITE YOU HAD SIGNED UP  
19 WITH AN AVS COMPANY, HOW DID YOU RECEIVE PAYMENT FROM  
20 THIS AVS COMPANY?

21 A. THEY WOULD MAIL ME A CHECK.

22 Q. AND DO YOU KNOW HOW AVS COMPANIES RECEIVED  
23 PAYMENT IN ORDER TO GIVE YOU THE COMMISSION THAT YOU  
24 WERE OWED?

25 A. THEY HAD JOIN PAGES WHERE CUSTOMERS COULD ENTER

1 IN SOME PERSONAL INFORMATION AND SELECT THEIR PAYMENT  
2 TYPE, VISA, MASTER CARD, ET CETERA.

3 THE COURT: JOIN. J O-I N, PAGE?

4 THE WITNESS: YES, CORRECT. AND THEN PUT  
5 IN THEIR CARD INFORMATION, ET CETERA, AND THEN SUBMIT  
6 IT, AND ONCE THE CHARGE WAS PROCESSED, THEN THAT IS HOW  
7 THEY WOULD GET THEIR MONEY.

8 BY MR. VAN KWAWEGEN:

9 Q. HOW DO YOU KNOW THIS?

10 A. WELL, I RAN THESE SITES, SO OBVIOUSLY, ONE OF  
11 THE THINGS I'M GOING TO DO IS FOLLOW THE SITE THROUGH,  
12 SEE HOW IT WORKS, SEE HOW THE TECHNOLOGY WORKS. FIRST  
13 OF ALL, YOU COULD JUST VISIT THE SITES AND GO THROUGH  
14 THE TRAIL, CLICK ON THE SIGNUP PROCESS, THERE WAS THE  
15 FORM, ENTER IN INFORMATION, SUBMIT IT, SEE WHAT HAPPENS  
16 ON THE USER SIDE. THIS IS CERTAINLY -- THERE WAS A LOT  
17 OF DISTRUST WHEN YOU ARE INITIALLY DEALING WITH  
18 COMPANIES THAT YOU DON'T KNOW. IN OTHER WORDS, OKAY,  
19 THEY ARE SAYING THEY ARE GOING TO PAY ME, BUT ARE THEY  
20 REALLY PAYING ME, ARE THEY REALLY TELLING ME EVERY TIME  
21 SOMEBODY IS COMING THROUGH THIS THING. ONE OF THE WAYS  
22 YOU DO THAT IS EVERY ONCE IN A WHILE YOU SNEAK UP AND  
23 SIGN UP YOURSELF, YOU MAKE SURE THAT THERE IS A PAYMENT  
24 SHOWING UP IN THE STATISTICS. SO IF I HAVE FOLLOWED  
25 THROUGH THE PROCESS MYSELF, SO THAT IS ONE WAY I WOULD

1 KNOW.

2 Q. NOW, YOU STOPPED OPERATING YOUR WEBSITES IN  
3 2003, CORRECT?

4 A. THAT'S CORRECT.

5 Q. DO YOU KNOW IF THIS IF IT HAS CHANGED SINCE YOU  
6 STOPPED OPERATING YOUR WEBSITES? AND BY THAT I MEAN, DO  
7 YOU KNOW WHETHER AVS COMPANIES STILL PROCESS PAYMENT  
8 CARD INFORMATION?

9 A. I DO KNOW.

10 Q. HOW DO YOU KNOW?

11 A. FIRST, I HAVE CONTINUING RELATIONSHIPS WITH THE  
12 AVS COMPANIES. I TALK TO INDIVIDUALS AT THE VARIOUS  
13 SHOWS WE GO TO, AND IN THE PROCESS OF PREPARING MY  
14 EXPERT REPORT, THAT WAS ONE THING THAT OCCURRED TO ME  
15 ALSO IS TO MAKE SURE THAT MY INFORMATION WAS UP-TO-DATE.  
16 THERE ARE TWO THINGS IN THAT REGARD THAT I DID. FIRST  
17 OF ALL, I LOGGED INTO AN AVS SITE, FOUND, OH, WE WERE  
18 TALKING ABOUT PAYMENT CARDS SPECIFICALLY -- SO STRIKE  
19 THAT.

20 I HAD CONVERSATIONS WITH THE INDIVIDUALS  
21 THAT I KNEW FROM SEXKEY AND ADULT SIGHTS. SO I  
22 SPECIFICALLY TALKED TO THEM AND SAID, HEY, ARE THERE ANY  
23 NEW DEVELOPMENTS? DOES THIS WORK THE SAME WAY AS IT DID  
24 WHEN I WAS USING THEM? I WAS TOLD YES, NO NEW  
25 DEVELOPMENTS.

1 Q. GOING BACK TO MY ORIGINAL QUESTION. PRESENTLY,  
2 DO OPERATORS OF AVS SITES KNOW WHETHER A VISITOR WITH A  
3 PASSWORD IS AN ADULT?

4 MR. TODD: OBJECTION, FOUNDATION.

5 THE COURT: OVERRULED.

6 THE WITNESS: NO, THEY DO NOT.

7 BY MR. VAN KWAWEGEN:

8 Q. WHY DON'T THEY KNOW?

9 THE COURT: TIME FOR OUR MID-DAY RECESS.  
10 EVERYONE IS EXCUSED EXCEPT I WOULD LIKE TO TALK TO  
11 WHOEVER IS MANAGING THE MASTERCARD STIPULATION ASPECT OF  
12 THE PLAINTIFFS' EFFORT TO GET MASTERCARD TESTIMONY AND  
13 DOCUMENTS BEFORE THE COURT.

14 MR. HANSEN: THAT IS MISS CRUMP. SHE IS  
15 HERE AND AVAILABLE TO DISCUSS IT.

16 THE COURT: I JUST NEED -- I HAVE A MINOR  
17 ADMINISTRATIVE MATTER THAT I WANT TO TALK TO HER ABOUT  
18 EVERY ONE ELSE IS EXCUSED.

19 MR. HIRT: UNTIL WHAT TIME, YOUR HONOR?

20 THE COURT: 1:30.

21 MR. RUSSO, WOULD YOU COME BACK AT 1:30,  
22 PLEASE. I WANT TO TELL YOU KNOW NOW WE MAY HAVE A  
23 LITTLE INTERRUPTION AROUND 1:30 TO DO SOME RELATED  
24 BUSINESS, BUT WE EXPECT TO GET BACK TO YOUR TESTIMONY AS  
25 QUICKLY AS WE CAN. IF YOU WILL BEAR WITH US.

1 OFF THE RECORD NOW. LUNCHEON.

2 (BREAK TAKEN.)

3 THE CLERK: ALL RISE, COURT IS NOW IN  
4 SESSION.

5 THE COURT: WELCOME BACK, EVERYONE,  
6 PLEASE BE SEATED.

7 WE INTERRUPTED. WE ARE BACK ON THE  
8 RECORD. WE INTERRUPTED THE TESTIMONY OF MR. RUSSO WITH  
9 THE HOPE OF BEING ABLE TO EITHER HOLD A HEARING OR  
10 RESOLVE THE ISSUES ARISING OUT OF PLAINTIFFS' OFFER TO  
11 PRESENT DEPOSITIONS OF THIRD PARTY WITNESSES. AND AS I  
12 UNDERSTAND IT, PRELIMINARILY, AT THIS POINT IN THE CASE  
13 THE PLAINTIFFS BELIEVE THEY HAVE RESOLVED THEIR CONCERNS  
14 AND CHOICEPOINT'S CONCERNS WITH THE PLAINTIFFS' INTENDED  
15 OFFER AND THAT THE GOVERNMENT -- NO, THAT IS NOT THE  
16 ONE, PARDON ME -- IT'S RULESPACE. COUNSEL?

17 MR. HARRIS: CHRISTOPHER HARRIS. WE  
18 BELIEVE WE HAVE RESOLVED OUR CONCERNS WITH RULESPACE  
19 EITHER BY WITHDRAWING SOME OF OUR DESIGNATIONS OR  
20 RULESPACE HAS AGREED TO WITHDRAW SOME OF THEIR  
21 OBJECTIONS. RULESPACE STILL HAS AN OUTSTANDING ISSUE  
22 WITH THE GOVERNMENT THAT THEY MAY BE ABLE TO RESOLVE AS  
23 WELL.

24 THE COURT: I UNDERSTAND THE GOVERNMENT'S  
25 GOING TO PUT THAT OFF FOR A WHILE.

1 MR. GOMEZ: YES, YOUR HONOR.

2 THE COURT: RESOLUTION BY THE COURT.

3 MR. GOMEZ: YES.

4 THE COURT: AS I UNDERSTAND IT THERE IS A  
5 THIRD PARTY. I SUPPOSE CHOICEPOINT IS REPRESENTED BY  
6 COUNSEL HERE.

7 MR. GILFILLAN: YES, YOUR HONOR.

8 THE COURT: COULD YOU COME FORWARD,  
9 PLEASE. IDENTIFY YOURSELF FOR THE RECORD PLEASE.

10 MR. FINARELLI: TOM FINARELLI FROM LAVIN  
11 O'NEILL AND WITH ME IS DOUGLAS GILFILLAN FROM THE  
12 ATLANTA FIRM OF KING AND SPALDING.

13 THE COURT: MR. GILFILLAN, SPELL YOUR  
14 LAST NAME FOR THE COURT REPORTER, PLEASE.

15 MR. GILFILLAN: YES. G-I-L-F AS IN  
16 FRANK, I-L-L-A-N.

17 THE COURT: FOR REASONS THAT ARE PRETTY  
18 SIMPLE, I HAVE NOT DELVED INTO THE MERITS OF YOUR MOTION  
19 FOR THE SOLE PURPOSE OF EFFICIENCY, THAT THERE WAS SOME  
20 LIKELIHOOD THAT ALL OF THE CONCERNS OF YOUR CLIENT, MR.  
21 FINARELLI, MIGHT BE TAKEN CARE OF BY AGREEMENTS BETWEEN  
22 THE PARTIES ON THE MERITS IN THIS CASE TO AVOID  
23 DISCLOSURE OF THE THINGS THAT YOUR CLIENT IS CONCERNED  
24 ABOUT. SO I NEED TO BE, I HAVE TO -- I HAVE TO HAVE YOU  
25 EXPLAIN WHAT PARTS OF THE DEPOSITION, WHAT DESIGNATIONS

1       REMAIN A CONCERN.

2                   MR. FINARELLI:  YES, YOUR HONOR.  IF IT  
3       PLEASE THE COURT, I WOULD LIKE MR. GILFILLAN TO TAKE  
4       CARE OF THAT PART OF THE PRESENTATION THIS MORNING.  I  
5       APPLIED FOR HIS ADMISSION PRO HAC PURSUANT TO RULE 83  
6       AND I HAVE A COPY --

7                   THE COURT:  I WILL SIGN THE ORDER WHEN I  
8       SEE IT.

9                   MR. FINARELLI:  I HAVE A COPY IF THE  
10      COURT WOULD LIKE TO SEE IT OR IF I CAN HAVE MR.  
11      GILFILLAN GO AHEAD.

12                  THE COURT:  LET ME SEE IF I CAN'T GET IT  
13      IN FRONT OF ME, THE DEPOSITION MATERIAL.

14                  THE TRANSCRIPT WE ARE WORKING FROM IS A  
15      DEPOSITION OF MR. KEN MEISER, M-E-I-S-E-R IN ATLANTA,  
16      GEORGIA ON MARCH 29, 2006?

17                  MR. GILFILLAN:  YES, YOUR HONOR.

18                  THE COURT:  PRELIMINARILY, MR. GILFILLAN,  
19      HAS YOUR, YOU AND YOUR CLIENT, MR. FINARELLI, WORKED OUT  
20      ARRANGEMENTS FOR SOME OF THAT DEPOSITION MATERIAL?

21                  MR. GILFILLAN:  YOUR HONOR, MY  
22      UNDERSTANDING IS THAT THE PLAINTIFF, ACLU, DOES NOT  
23      INTEND TO OFFER OR USE THE DOCUMENT THAT WAS MARKED AS  
24      EXHIBIT 1 AT MR. MEISER'S DEPOSITION.  IF THE PLAINTIFF  
25      ACLU WILL CONFIRM THAT TO THE COURT, THEN WITH RESPECT

1 TO THAT DOCUMENT AND THE DEPOSITION TESTIMONY AT PAGE  
2 126 THAT IS LISTED IN CHOICEPOINT'S MOTION, I THINK WE  
3 ARE OKAY ON THAT.

4 THE COURT: ACLU, WILL YOU DO THAT FOR US  
5 PLEASE?

6 MR. HARRIS: WE ARE NOT GOING TO SEEK TO  
7 MOVE THAT DOCUMENT INTO EVIDENCE. SO I THINK THE  
8 OUTSTANDING ISSUE IS THE DEPOSITION DESIGNATIONS  
9 THEMSELVES.

10 THE COURT: ALL RIGHT. THANK YOU.

11 PROCEED THEN. WHAT ARE THE PARTS THAT  
12 ARE CONCERNING YOUR CLIENT?

13 MR. GILFILLAN: THANK YOU, YOUR HONOR.

14 THE TWO EXCERPTS STILL IN ISSUE BEGIN ON  
15 PAGE 64 AT LINE 22.

16 THE COURT: BEAR WITH ME.

17 MR. GILFILLAN: YES, SIR.

18 THE COURT: WHERE DOES IT GO TO? I HAVE  
19 64.

20 MR. GILFILLAN: YOUR HONOR, IT GOES TO  
21 PAGE 68, LINE 11.

22 THE COURT: CAN YOU EXPLAIN WHAT IS THERE  
23 THAT YOUR CLIENT FEELS IS COVERED BY THE CONFIDENTIALITY  
24 AGREEMENT?

25 MR. GILFILLAN: YES, SIR. THE TESTIMONY



1 AT THAT EXCERPT REFLECTS THE SOURCES OF DATA AND THE  
2 BREADTH OF DATA THAT CHOICEPOINT HAS IN ITS AGE  
3 VERIFICATION SERVICES PRODUCT. THAT TESTIMONY ALSO  
4 INCLUDES SOME DIRECT QUOTATIONS BY BOTH THE LAWYER FOR  
5 THE ACLU THAT WAS TAKING MR. MEISER'S DEPOSITION AND BY  
6 MR. MEISER FROM THE DOCUMENT THAT IS DESCRIBED IN OUR  
7 MOTION AND THAT THAT DOCUMENT WAS PRODUCED PURSUANT TO  
8 THE PROTECTIVE ORDER AS WELL. YOUR HONOR, CHOICEPOINT  
9 TREATS THAT INFORMATION AS CONFIDENTIAL TRADE SECRETS  
10 AND CONFIDENTIAL COMMERCIAL INFORMATION BECAUSE IT IS  
11 INFORMATION THAT CHOICEPOINT DERIVES ECONOMIC VALUE FROM  
12 THE FACT THAT THAT INFORMATION IS NOT GENERALLY KNOWN OR  
13 READILY ASCERTAINABLE TO OR BY CHOICEPOINT'S  
14 COMPETITORS. CHOICEPOINT ALSO TAKES REASONABLE STEPS TO  
15 KEEP THAT INFORMATION CONFIDENTIAL. THAT IS EXPLAINED  
16 MORE FULLY IN OUR MOTION AND ALSO IN THE DECLARATION OR  
17 AFFIDAVIT THAT MR. MEISER HAS SUBMITTED IN SUPPORT OF  
18 CHOICEPOINT'S MOTION.

19 THE COURT: I READ THE MOTION. IT MAY BE  
20 ACCURATE, BUT IT'S SO GENERAL. I NEEDED TO -- AND DID  
21 AVOID READING ALL OF THE MATERIAL BECAUSE AS WE  
22 SUSPECTED, SOME OF IT GOT RESOLVED, SO I DID NOT WANT TO  
23 SPEND THE TIME TO DO IT. FOR THE FIRST TIME I'M LOOKING  
24 AT THIS AND YOU ARE SPEAKING IN A CONCLUSORY FASHION,  
25 WHICH I RESPECT, BUT IS THERE ANY WAY THAT YOU CAN THINK

1 OF -- AND IF THE ACLU COUNSEL WOULD PAY ATTENTION ALSO,  
2 IS THERE ANY WAY THAT THE NAMES OF ORGANIZATIONS OR  
3 OTHER MATERIAL COULD BE NOT NECESSARILY REDACTED BUT  
4 CHANGED TO A PSEUDONYM OR SOME DEVICE LIKE THAT?

5 MR. HARRIS: WE CAN CONSIDER THAT, YOUR  
6 HONOR. I THINK THE ACTUAL SOURCES OF INFORMATION ARE  
7 PROBABLY IMPORTANT. ONE OTHER ALTERNATIVE, THE ACLU  
8 DOES NOT TAKE A POSITION ON WHETHER THESE MATERIALS ARE  
9 CONFIDENTIAL OR SHOULD BE UNDER SEAL OR NOT, BUT IF YOUR  
10 HONOR APPROVED THIS APPROACH, WE WOULD NOT HAVE AN  
11 OBJECTION TO RATHER THAN READING DESIGNATIONS IN OPEN  
12 COURT, MERELY HAVING THE PAGES OF THE TRANSCRIPTS  
13 THEMSELVES FILED UNDER SEAL IF YOUR HONOR THOUGHT THAT  
14 WAS APPROPRIATE.

15 THE COURT: MR. GILFILLAN, WHAT DO YOU  
16 THINK OF THAT?

17 MR. GILFILLAN: YOUR HONOR, MY CONCERN IS  
18 WHETHER THE PLAINTIFFS CAN USE A EUPHEMISM THAT IS  
19 SUFFICIENTLY GENERAL. I WOULD WANT AN OPPORTUNITY TO  
20 TALK TO COUNSEL FOR THE ACLU ABOUT THAT, BECAUSE IF I  
21 MAY ADDRESS THE SPECIFIC HARMS THAT THIS TESTIMONY  
22 PRESENTS AND THAT IS --

23 THE COURT: I WOULD LIKE YOU TO CONNECT  
24 THE HARMS WITH THE LANGUAGE BECAUSE I DON'T HAVE THE  
25 SENSE OF THE FLOW OF THE DEPOSITION OR THE BREADTH OF

1 KNOWLEDGE OF THE WITNESS, ALL OF THAT INFORMATION, SO I  
2 NEED HELP ON FOCUSING WHERE THE HARM IS TO THE ACTUAL  
3 -- WHAT THE HARM IS TO THE ACTUAL LANGUAGE OF THE CITED  
4 MATERIAL FROM PAGES 64 TO 68.

5 MR. GILFILLAN: YES, YOUR HONOR. THE  
6 DESCRIPTIONS OF THE SOURCES OF DATA THAT CHOICEPOINT  
7 OBTAINS FOR ITS AGE VERIFICATION SERVICES PRODUCT. IF  
8 THAT WERE TO BECOME AVAILABLE TO CHOICEPOINT'S  
9 COMPETITORS IN THE AGE VERIFICATION MARKET, THOSE  
10 COMPETITORS COULD SEEK TO OBTAIN THOSE SOURCES OF DATA  
11 AND USE IT IN THEIR OWN AGE VERIFICATION PRODUCT TO  
12 CHOICEPOINT'S COMPETITIVE INJURY. FURTHER, YOUR HONOR,  
13 CHOICEPOINT'S COMPETITORS COULD, WITH ACCESS AND  
14 KNOWLEDGE ABOUT THESE SOURCES OF DATA, MARKET THEIR OWN  
15 PRODUCTS TO THEIR CUSTOMERS AND THEIR OWN POTENTIAL  
16 CUSTOMERS IN A WAY THAT IS DAMAGING TO CHOICEPOINT'S  
17 PRIVACY AND COMMERCIAL PROPRIETARY INFORMATION.

18 THE COURT: DOES THAT OBSERVATION CARRY  
19 FORTH THROUGH ALL OF THESE CITED PAGES?

20 MR. GILFILLAN: YOUR HONOR, I BELIEVE SO.

21 THE COURT: 64 TO 68?

22 MR. GILFILLAN: YES, SIR, I BELIEVE SO.

23 THE COURT: I'M NOTICING HERE, FOR  
24 INSTANCE, THE WITNESS TALKS ABOUT BELOW LISTED SOURCES  
25 BUT THERE IS NO DOCUMENT OR LIST IN THESE PAGES AT ALL.

1 IT'S REFERRING TO A DOCUMENT THAT IS NOT PART OF THE  
2 TRANSCRIPT AND IS NOT TYPED OUT IN THE FLOW OF THE  
3 QUESTIONS AND ANSWERS.

4 MR. GILFILLAN: YOUR HONOR, MAY I CLARIFY  
5 WHAT I WAS REFERRING TO. FOR EXAMPLE, ON PAGE 65, LINES  
6 21 THROUGH 24, WITHOUT STATING THOSE THINGS AND PUTTING  
7 THEM ON THE RECORD BUT THE REFERENCES IS THERE TO THOSE.  
8 THE REFERENCES IN THAT QUESTION ARE TO SOURCES OF DATA  
9 IN CHOICEPOINT'S AGE VERIFICATION PRODUCT. AS ANOTHER  
10 EXAMPLE, YOUR HONOR, ON PAGE 66, THE ANSWER THAT BEGINS  
11 AT PAGE 7 SIMILARLY LISTS OR DESCRIBES SOURCES OF DATA  
12 IN CHOICEPOINT'S AGE VERIFICATION PRODUCT AND THOSE ARE  
13 EXAMPLES, YOUR HONOR.

14 THE COURT: I DON'T HAVE ANY INSIDE VIEW  
15 OF THE INDUSTRY, BUT I WOULD BE SURPRISED IF THE PLACES  
16 THAT ARE SOURCES THAT ARE REFERRED TO HERE ARE USED BY  
17 YOUR CLIENT, I WOULD ASSUME THEY WOULD BE USED BY  
18 ANYBODY IN THE BUSINESS. THESE ARE NOT ESOTERIC  
19 SOURCES. THESE ARE PUBLIC RECORDS.

20 MR. GILFILLAN: I BELIEVE YOUR HONOR IS  
21 CORRECT, BUT WITH REGARD TO WHETHER OTHER COMPANIES USE  
22 THEM IN THEIR AGE VERIFICATION PRODUCT AND WHETHER OTHER  
23 COMPANIES HAVE IDENTIFIED THEM AS THINGS THAT ARE USEFUL  
24 IN AN AGE VERIFICATION PRODUCT, I DON'T KNOW THAT  
25 EITHER, YOUR HONOR, BECAUSE THOSE COMPANIES VERY WELL

1 MAY TREAT THEIR SOURCES AS SIMILARLY CONFIDENTIAL.

2 THE COURT: THE TESTIMONY IN THIS CASE  
3 ALREADY IN THIS COURTROOM THAT YOU HAVE NOT HEARD, THERE  
4 HAS BEEN A LOT OF TESTIMONY ABOUT THE BUSINESS THAT YOUR  
5 CLIENT IS IN AND THE USE OF THESE PUBLIC RECORDS IS  
6 AMONG MANY OTHER SOURCES HAS BEEN BANDIED ABOUT THE  
7 COURTROOM AT LEAST ONCE THAT I REMEMBER. NOT A VERY  
8 SOPHISTICATED SOURCE OR THE USE OF IT IS NOT A VERY  
9 SOPHISTICATED IDEA. IS THAT THE ONLY ONE THAT IS  
10 MENTIONED IN HERE IN PARTICULAR? THE SOURCE?

11 MR. GILFILLAN: YOUR HONOR, ALSO FOR  
12 EXAMPLE AT PAGE 68, THERE IS TESTIMONY ABOUT THE BREADTH  
13 OR EXPANSE OF THE DATA THAT IS A SOURCE FOR CHOICEPOINT.

14 THE COURT: PARTICULARLY TALKING ABOUT  
15 LINES 4 TO 11 ON PAGE 68?

16 MR. GILFILLAN: YES, YOUR HONOR.

17 THE COURT: FRANKLY, GOING BACK TO PAGE  
18 64 FOR A MINUTE, AS A LOGICAL DIVERSION, I THINK THE  
19 INFORMATION ON LINE 22 IS NOBODY'S BUSINESS. THAT GOES  
20 TO BREADTH AND MUCH MORE SPECIFICALLY THAN ON PAGE 68.

21 MR. GILFILLAN: YOUR HONOR IS CORRECT.  
22 THAT IS ALSO A GOOD EXAMPLE. IF I MAY ADDRESS A POINT  
23 YOUR HONOR MADE A FEW SECONDS AGO, THAT IS, THAT EVEN IF  
24 IT IS NOT SURPRISING OR AS SOPHISTICATED TO USE THESE  
25 DATA SOURCES IN THE AGE VERIFICATION PRODUCT THAT

1 CHOICEPOINT OFFERS, THE SPECIFICITY HERE AND PERHAPS  
2 EVEN CHOICEPOINT'S LACK OF SOPHISTICATION WOULD BE  
3 SOMETHING THAT CHOICEPOINT DERIVES AN ECONOMIC VALUE  
4 FROM, IT NOT BEING KNOWN.

5 THE COURT: WOULD THE ACLU RESPOND TO ME?  
6 WOULD THE ACLU AND THEIR OTHER PLAINTIFFS BE WILLING TO  
7 REDACT THE NUMBER OF RECORDS, THE QUANTITATIVE STATEMENT  
8 ON LINE 22 OF PAGE 64, TO REDACT THE NAME OF THE PUBLIC  
9 ORGANIZATIONS REFERRED TO, BY THE COURT AND COUNSEL AND  
10 ELIMINATE THE WORD IN THE MIDDLE OF LINE 9 ON PAGE 68,  
11 REDACT THE WORD IN THE MIDDLE OF THE SENTENCE THAT  
12 DESCRIBES THE PERIOD OF CALENDAR TIME AND TO REDACT THE  
13 WORDS ON PAGE 10 -- I MEAN LINE 10 WHICH DESCRIBES THE  
14 PERIOD OF TIME IN ONE WORD AND REDACT THE WORD ON LINE  
15 11 THAT LIKEWISE REFERS TO A PERIOD OF TIME? WOULD THAT  
16 EMASCULATE YOUR PRESENTATION OR AFFECT IT BADLY?

17 MR. HARRIS: WE THINK THAT IS RELEVANT  
18 EVIDENCE AND PRIOR USEFUL INFORMATION FOR THE COURT.  
19 HOWEVER, IF THE COURT WOULD PREFER TO REDACT THAT  
20 INFORMATION AS OPPOSED TO FILING THIS DOCUMENT UNDER  
21 SEAL, WE WILL CONSENT TO THAT.

22 THE COURT: FILING SOMETHING UNDER SEAL  
23 IS, FORGETTING THE TECHNICAL ADMINISTRATIVE PART OF IT,  
24 THAT JUST GOES WITH THE TERRITORY, BUT IT DOES NOT SOLVE  
25 THE PROBLEM BECAUSE IF SOMEBODY LATER WANTS TO COME AND

1 GET IT UNSEALED, YOU'VE GOT TO GO BACK, IT'S A DE NOVO  
2 REVIEW. THAT IS WHY I'M NOT TOO THRILLED ABOUT USING  
3 ITEMS UNDER SEAL.

4 MR. HARRIS: TO ANSWER YOUR QUESTION,  
5 YES, WE CAN CONSENT TO THOSE REDACTIONS.

6 THE COURT: WOULD THAT HELP YOUR CLIENT,  
7 MR. GILFILLAN?

8 MR. GILFILLAN: YES, YOUR HONOR. I THINK  
9 IT WILL WITH ONE. I DON'T KNOW THAT WE TALKED ABOUT  
10 PAGE 67, BUT THERE ARE JUST ONE OR TWO PLACES IN THERE  
11 THAT I THINK WE COULD APPLY A SIMILAR REDACTION TO.

12 THE COURT: WHAT ARE THOSE LINES?

13 MR. GILFILLAN: SPECIFICALLY YOUR HONOR,  
14 THE ANSWER THAT BEGINS ON LINE 5, PAGE 67.

15 THE COURT: THE NAMES OF THE  
16 ORGANIZATIONS WHERE THEY GET INFORMATION FROM?

17 MR. GILFILLAN: WELL, YOUR HONOR, I THINK  
18 IT IS MORE THE FACT THAT CHOICEPOINT DOES GET THAT  
19 INFORMATION IN CONNECTION WITH THIS PRODUCT.

20 MR. HARRIS: YOUR HONOR, WE COULD CONSENT  
21 TO THE REDACTION OF THE NAMES, BUT NOT THE REST OF THE  
22 INFORMATION IN THAT PARAGRAPH. THAT IS VERY RELEVANT  
23 INFORMATION TO HOW THIS KIND OF PRODUCT WORKS.

24 THE COURT: BEAR WITH ME.

25 EXCUSE ME FOR THE DISTRACTION, BUT ON

1 LINE 11 WHAT DOES GLB MEAN?

2 MR. GILFILLAN: IT'S A FEDERAL STATUTE  
3 CALLED GRAHAM LEACH BLILEY ACT.

4 THE COURT: L-E-A-C-H?

5 MR. GILFALLAN: YES.

6 HOW DO YOU SPELL THE LAST NAME?

7 THE WITNESS: B-L-I-L-E-Y.

8 THE COURT: OH, I SEE IT HERE NOW.

9 MR. HARRIS: WE COULD CONSENT TO  
10 REDACTING THOSE THREE NAMES AND REPLACING THEM WITH A  
11 GENERIC DESCRIPTION OF WHAT KINDS OF ENTITIES THEY ARE.

12 THE COURT: THAT IS BOTHERSOME, TOO.

13 MR. GILFILLAN: YES.

14 THE COURT: I AM TRYING TO WORK THIS OUT  
15 IN A LESS THAN AUTOCRATIC FASHION EVEN THOUGH I KNOW  
16 WHAT TO DO ABOUT IT. I'M NOT CONVINCED BY ANYTHING THAT  
17 HAS BEEN SAID THAT ANY OF THIS MATERIAL IS AS IMPORTANT  
18 TO THE MOVANT AS THE MOVANT THINKS. THE BURDEN IS ON  
19 CHOICEPOINT TO SATISFY THE COURT THAT THESE ARE SUBJECT  
20 TO SEALING SO-TO-SPEAK BECAUSE OF THE IMPORTANT BUSINESS  
21 NATURE OF THE INFORMATION. I'M GOING TO ORDER THAT THE  
22 NAMES OF THE ORGANIZATIONS LISTED IN THE END OF LINE 8  
23 ON PAGE 67 -- SORRY, LINE 6, PAGE 67 AND BEGINNING OF  
24 LINE 7 BE REDACTED FROM THE TESTIMONY AND FROM THE  
25 DEPOSITION TRANSCRIPT THAT IS FILED OF RECORD. THAT



1 TAKES CARE OF THAT ONE. YOU MAY NOT BE HAPPY, BUT THAT  
2 IS DONE. DO YOU HAVE ANY OTHERS THAT WE CAN, SHOULD PAY  
3 ATTENTION TO?

4 MR. GILFILLAN: THANK YOU, YOUR HONOR. I  
5 WOULD LIKE TO CALL THE COURT'S ATTENTION TO PAGE 71.

6 THE COURT: BEFORE WE GO TO THAT ONE, THE  
7 COURT WILL ORDER THEN THAT THE REDACTIONS PROFFERED BY  
8 THE COURT AS A POSSIBLE SOLUTION AND ACCEPTED ACLU IS  
9 PART OF THE ORDER OF THE COURT. I DON'T WANT TO REPEAT  
10 THEM BECAUSE I DON'T REMEMBER ALL OF THEM. IT'S IN THE  
11 RECORD.

12 MR. GILFILLAN: WE CAN ADDRESS IT WITH  
13 MR. HARRIS.

14 MR. HARRIS: YES, YOUR HONOR.

15 THE COURT: PAGE 71.

16 MR. GILFILLAN: YES, YOUR HONOR.  
17 BEGINNING ON LINE 23 AND THE REFERENCE THERE, THE  
18 QUESTION IS BEING ASKED BY COUNSEL FOR PLAINTIFF, ACLU,  
19 IS ASKING THE WITNESS TO READ FROM THE AVS OVERVIEW  
20 DOCUMENT THAT WAS MARKED AS EXHIBIT 1 THAT SHOULD NOT  
21 NOW BE AN ISSUE AND THAT EXTENDS TO --

22 THE COURT: WE ARE GOING TO REDACT THE  
23 WORD -- THE WORDS AT THE END OF LINE 23 AND THE FIRST  
24 WORD ON LINE 24.

25 MR. GILFILLAN: OKAY.

1                   THANK YOU, YOUR HONOR.

2                   THE COURT: WE ARE GOING TO REDACT THE  
3 ACRONYM IN THE MIDDLE OF LINE 1 ON PAGE 72. IS THE  
4 ACRONYM IN THE FOURTH WORD OF LINE 3 OF PAGE 72?

5                   BOTHERSOME IF WE REDACT THE LAST TWO  
6 WORDS IN THAT SENTENCE?

7                   MR. GILFILLAN: LINE 3, PAGE 72, YOUR  
8 HONOR.

9                   THE COURT: YES.

10                  THE NOTION THAT THERE IS SOMETHING  
11 SPECIAL ABOUT USING THAT PARTICULAR METHOD OF  
12 IDENTIFYING SOMEONE SEEMS A LITTLE FANCIFUL TO ME.

13                  MR. HARRIS: YOUR HONOR, I BELIEVE THAT  
14 INFORMATION ACTUALLY IS QUITE RELEVANT TO THE ISSUES  
15 ABOUT THIS TYPE OF PRODUCT.

16                  MR. GILFILLAN: WELL, YOUR HONOR, AGAIN,  
17 THE ISSUE IS THAT CHOICEPOINT USES IT IN THIS PRODUCT,  
18 BUT I UNDERSTAND THE COURT'S POINT.

19                  THE COURT: WE WILL REDACT THE LAST TWO  
20 WORDS ON LINE 3 AND THE FIRST WORD ON LINE 4 AND REPLACE  
21 THEM WITH THE WORDS "OTHER PUBLIC RECORDS." SO, IT WILL  
22 READ: IN SOME CASES THE ACRONYM AND OTHER PUBLIC  
23 RECORDS. DO YOU AGREE WITH THAT, SIR?

24                  MR. HARRIS: I BELIEVE THAT WE CAN AGREE  
25 TO THAT, YES.

1 THE COURT: OKAY.

2 MR. HARRIS: THAT IS FINE.

3 THE COURT: THANK YOU.

4 NEXT.

5 MR. GILFILLAN: YOUR HONOR, THE ACRONYM  
6 THAT WE WERE TALKING ABOUT REDACTING THAT THE COURT WAS  
7 REFERRING TO REDACTING IN LINE 1 ON PAGE 72 ALSO APPEARS  
8 A FEW TIMES DOWN THROUGH LINE 11 ON THIS PAGE AND  
9 SPECIFICALLY ON LINE 6 AND LINE 7. SO FOR CONSISTENCY,  
10 WE WOULD REQUEST THAT WE REDACT IT THERE AS WELL.

11 THE COURT: LINE 6, THE ACRONYM IN THE  
12 MIDDLE OF THAT LINE BE REDACTED TO REPLACE WITH THE WORD  
13 PUBLIC. LINE 13, THE FIRST WORD IS AN ACRONYM.

14 MR. GILFILLAN: I BELIEVE AFTER LINE 11  
15 IS OUTSIDE THE PORTION OF THE TESTIMONY THAT PLAINTIFF  
16 INTENDS TO OFFER.

17 THE COURT: ALL RIGHT.

18 MR. GILFILLAN: IS THAT CORRECT?

19 THE COURT: IT STOPS SOMEWHERE AT THE END  
20 OF LINE 11.

21 MR. GILFILLAN: THAT IS WHAT THEY HAVE  
22 INFORMED ME.

23 THE COURT: IT'S MARKED IN HERE AND I  
24 DIDN'T PAY ATTENTION. ANY OTHERS, SIR?

25 MR. GILFILLAN: NO, YOUR HONOR.

1 THE COURT: ARE THERE THINGS THAT YOU  
2 HAVE AGREED TO WITH ACLU THAT YOU THINK YOU HAVE TO PUT  
3 ON THE RECORD HERE LIKE YOU DID AT THE BEGINNING OF OUR  
4 SESSION?

5 MR. GILFILLAN: NO, YOUR HONOR. I DON'T  
6 THINK SO.

7 THE COURT: THANK YOU.

8 MR. GOMEZ, I KNOW YOU ARE NOT TAKING A  
9 POSITION ON MERITS.

10 MR. GOMEZ: THE DEFENDANT HAS NO  
11 OBJECTION. THESE ARE ALL DESIGNATIONS BY THE  
12 PLAINTIFFS, AT LEAST UP TO THIS POINT.

13 THE COURT: IN CONCLUSION THE COURT FINDS  
14 THAT AS FAR AS THIS TRIAL IS CONCERNED, THE REDACTIONS  
15 AND SUBSTITUTIONS OF GENERIC WORDS HAVE NOT AND WILL NOT  
16 AFFECT THE MERITS OF ANY ISSUE BEING SOUGHT BY THE  
17 PLAINTIFF IN PRESENTING THIS TESTIMONY THROUGH  
18 DEPOSITION. I DON'T THINK -- I FIND THAT THERE IS NO  
19 PREJUDICE TO THE PLAINTIFF BY THE COURT'S RULINGS AND  
20 THE KIND AGREEMENTS OF THE PARTIES.

21 MR. GILFILLAN: THANK YOU, YOUR HONOR.

22 THE COURT: I EXPECT THE PLAINTIFFS TO  
23 THOROUGHLY AND ADEQUATELY REPORT THE COURT'S ORDER TO  
24 THE SURROGATE WHO'S GOING TO BE READING THE TESTIMONY.

25 MR. HARRIS: YES, YOUR HONOR.

1 THE COURT: IF YOU ARE GOING TO BE DOING  
2 THE QUESTIONING, RE-INFORM YOURSELF OF THESE CHANGES.

3 MR. HARRIS: CERTAINLY.

4 THE COURT: WE DON'T WANT THEM ASSEMBLED  
5 IN THE MIDDLE OF THE HEARING AND SELF-DESTRUCT HERE.  
6 THANK YOU FOR COMING TO BE WITH US.

7 MR. GILFILLAN: THANK YOU FOR ALLOWING ME  
8 TO APPEAR.

9 THE COURT: ARE WE READY TO PROCEED WITH  
10 MR. RUSSO? MR. GOMEZ, YOU WERE STANDING.

11 MR. GOMEZ: YES. WITH THE COURT'S  
12 PERMISSION I WILL BE ABSENT FOR JUST A SHORT TIME. I  
13 JUST WANT -- MR. HIRT WILL BE LEAD COUNSEL IF THAT IS  
14 OKAY.

15 THE COURT: I LIKE THE TRANSFER OF POWER,  
16 VERY ORDERLY. UNDER MY STANDING NOTION OF HOW TO RUN  
17 THE TRIAL THAT I SHARED WITH YOU DURING THE PRETRIAL  
18 CONFERENCE, I'M VERY PLEASED TO ACCEPT YOUR REPORT.

19 MR. GOMEZ: THANK YOU.

20 THE COURT: MR. RUSSO. COULD YOU COME  
21 BACK UP TO THE STAND PLEASE.

22 (MR. RUSSO RETAKES THE STAND ON CONTINUED  
23 DIRECT EXAMINATION.)

24 THE COURT: YOU MAY PROCEED.

25 MR. VAN KWAWEGEN: THANK YOU, YOUR HONOR.

1 BY MR. VAN KWAWEGEN:

2 Q. GOOD AFTERNOON, MR. RUSSO.

3 A. GOOD AFTERNOON.

4 Q. BEFORE WE BROKE FOR LUNCH, WE WERE TALKING ABOUT  
5 AVS COMPANIES, AND I JUST WANTED TO QUICKLY BACK UP AND  
6 PROCEED WHERE WE WERE BEFORE, WITH YOUR HONOR'S  
7 INDULGENCE.

8 WOULD YOU REMIND THE COURT EXACTLY AGAIN  
9 WHAT AN AVS COMPANY IS?

10 A. YEAH. THE AVS COMPANY IS THE COMPANY THAT IS  
11 EFFECTIVELY BRINGING TOGETHER ALL OF THESE SMALL  
12 WEBSITES AND THEN SELLING ACCESS TO THEM ALL FOR ONE  
13 PRICE.

14 Q. DO AVS COMPANIES ACCEPT PAYMENT CARDS?

15 A. THEY DO, YES.

16 Q. HOW DO YOU KNOW THAT?

17 A. BECAUSE I RAN AVS SITES.

18 Q. YOU USED TO OPERATE ADULT WEBSITES UP UNTIL  
19 2003, CORRECT?

20 A. THAT'S CORRECT, YES.

21 Q. HOW DO YOU KNOW THAT AVS COMPANIES STILL ACCEPT  
22 PAYMENT CARD INFORMATION TODAY?

23 A. IT'S EASY TO VERIFY JUST BY VISITING AVS SITES  
24 AND THE COMPANIES THAT ARE OUT THERE, CLICKING ON THEIR  
25 JOIN PAGES YOU CAN SEE THE PAYMENT OPTIONS THAT THEY

1 ACCEPT.

2 Q. HAVE YOU DONE SO RECENTLY?

3 A. YES, I HAVE.

4 Q. WHEN WAS THE LAST TIME YOU DID THAT?

5 A. THE LAST TIME I VISITED THEIR JOIN PAGE  
6 SPECIFICALLY WAS, I BELIEVE, MARCH.

7 Q. AFTER PAYMENT CARD INFORMATION HAS BEEN  
8 PROCESSED, THE AVS COMPANY ISSUES A PASSWORD, CORRECT?

9 A. YES, THEY DO.

10 Q. HOW LONG IS SUCH A PASSWORD VALID?

11 THE COURT: AS LONG AS THE AVS COMPANY  
12 EXISTS.

13 THE WITNESS: THAT WOULD BE FOR A  
14 LIFETIME IF YOU PURCHASED A LIFETIME PASSWORD. THERE  
15 ARE SOME THAT CAN BE VALID FOR ONE YEAR, SOME THAT COULD  
16 BE VALID FOR TWO YEARS.

17 Q. NOW DO THE OPERATORS OF THE ADULT WEBSITES SUCH  
18 AS YOURSELF UP UNTIL 2003 KNOW WHETHER A VISITOR WHO  
19 COMES TO THAT WEBSITE WITH A PASSWORD IS AN ADULT?

20 A. NO, THERE IS NO WAY FOR THE WEBMASTER TO KNOW  
21 THAT.

22 Q. WHY NOT?

23 A. WELL, THERE ARE A NUMBER OF REASONS FOR THIS.  
24 FIRST OF ALL, AS YOU WERE POINTING OUT, THE PASSWORDS  
25 LAST FOR A CERTAIN LENGTH OF TIME. SO, FOR EXAMPLE,

1 EVEN IF IT WAS A LEGITIMATE ADULT WHO PURCHASED THE  
2 PASSWORD TO BEGIN WITH, THERE IS NOTHING THAT WOULD STOP  
3 THAT ADULT FROM THEN GIVING THE PASSWORD OUT TO OTHERS.  
4 THE OTHER PROBLEM IS, IS THAT THERE IS NO WAY FOR US, AS  
5 A WEBMASTER, TO KNOW THAT THE PERSON WHO PURCHASED THAT  
6 PASSWORD ACTUALLY WAS AN ADULT TO BEGIN WITH.

7 Q. CAN VISITORS TO AN AVS WEBSITE WITH ADULT  
8 CONTENT GAIN ACCESS WITHOUT HAVING A PASSWORD?

9 A. YES, THEY CAN.

10 Q. WOULD YOU EXPLAIN TO THE COURT HOW THEY COULD DO  
11 THAT?

12 A. SURE.

13 WELL, I WAS TALKING ABOUT THE HIDDEN URL  
14 METHOD. SINCE THE AVS WEBMASTER DOES NOT HAVE THE  
15 PASSWORD LIST OF WHO GETS ACCESS, THEY HAVE TO HIDE  
16 THEIR CONTENT. ONCE AN INDIVIDUAL GOES TO THE SYSTEM  
17 AND GIVEN THE LOCATION OF THAT CONTENT, THERE IS  
18 NOTHING, NOTHING TO STOP THAT PERSON FROM SHARING THAT  
19 URL WITH OTHERS AND SAYING, HEY, DON'T BUY A PASSWORD,  
20 JUST GO HERE. SO FROM THE WEBMASTER SIDE, THE WAY YOU  
21 HAVE TO TRY TO COMBAT THAT IS EVERY SO OFTEN YOU CHANGE  
22 THE LOCATION TO TRY TO FORCE THEM TO GO BACK THROUGH THE  
23 AVS COMPANY AGAIN. BUT IN THE MEANTIME, FROM THE TIME  
24 YOU PUT UP A NEW LOCATION UNTIL THE TIME YOU CHANGE THE  
25 LOCATION, IT CAN BE SHARED ALL OVER THE PLACE.



1 Q. HOW MANY AVS WEBSITES DID YOU OPERATE DURING THE  
2 SIX YEARS THAT YOU OPERATED ADULT WEBSITES?

3 A. AGAIN, IT'S REALLY HARD TO KNOW A NUMBER. SO  
4 I'M JUST TRYING TO REMEMBER. I WOULD PROBABLY SAY  
5 SOMEBODY IN THE NEIGHBORHOOD OF 50 TO 60.

6 Q. DID YOU HAVE A SYSTEM IN PLACE TO PREVENT MINORS  
7 FROM ACCESSING THESE WEBSITES?

8 A. WELL, THERE WAS NO WAY THAT I KNEW TO PREVENT  
9 MINORS FROM ACCESSING THE WEBSITES ENTIRELY. THE THINGS  
10 THAT I DID WERE -- WELL, FIRST AND FOREMOST, I CREATED A  
11 WARNING PAGE FOR THE SITES. AND I KNOW OBVIOUSLY ANY  
12 MINOR CAN CLICK THROUGH A WARNING PAGE, BUT IT'S A GOOD  
13 FAITH EFFORT ON THE PART OF THE WEBMASTER SO THAT IF  
14 ANYBODY STUMBLES ACROSS A SITE BY ACCIDENT AND THEY  
15 DON'T WANT TO BE THERE, IT IS A WAY TO LET THEM KNOW,  
16 HEY, THIS IS WHAT THIS SITE IS ABOUT. IF YOU ARE NOT  
17 HERE -- YOU DID NOT INTEND TO BE HERE, HERE IS YOUR  
18 CHANCE TO LEAVE. IN ADDITION TO THAT, I RATED THE  
19 WEBSITES WITH VOLUNTARY RATING SERVICES. THERE WAS TWO  
20 THAT I USED. THE INTERNET CONTENT RATING ASSOCIATION,  
21 ICRA, AND SAFESURF.ORG WAS ANOTHER. WHAT YOU WOULD DO  
22 AT THIS SITES IS ENTER SOME INFORMATION ABOUT YOUR  
23 WEBSITE, THE NATURE OF THE CONTENT. THEY WOULD RETURN  
24 WITH A METATAG THAT WAS CODED PROPERLY TO IDENTIFY YOUR  
25 WEBSITE AS HAVING ADULT CONTENT. THEN YOU WOULD INSERT

1 THAT METATAG INTO THE SOURCE CODE BASICALLY FOR YOUR WEB  
2 PAGES. SO IF ANYBODY IS LOOKING FOR THAT METATAG,  
3 WHETHER IT IS THEIR BROWSER SOFTWARE OR WHATEVER, IT'S  
4 THERE. IT IS AVAILABLE TO IDENTIFY THE SITE. THAT WAS  
5 PRETTY MUCH THE BEST I COULD DO OTHER THAN PROVIDE LINKS  
6 TO THE FILTERING SOFTWARE THAT WAS OUT THERE, MEANING  
7 LIKE NET NANNY, SOFTWARE OF THAT NATURE.

8 Q. EARLIER YOU TESTIFIED THAT WHEN YOU WERE RUNNING  
9 YOUR BULLETIN BOARD SERVICE BEFORE BUILDING YOUR  
10 WEBSITES YOU REQUIRED CUSTOMERS WHO WANTED TO ACCESS TO  
11 THE ADULT SECTION OF YOUR BULLETIN BOARD SERVICE TO SEND  
12 IN A FORM, APPLICATION AND A COPY OF THEIR ID, CORRECT?

13 A. THAT'S CORRECT. YES.

14 Q. WHY DID YOU NOT USE THAT SYSTEM WHEN YOU WERE  
15 OPERATING YOUR ADULT WEBSITES?

16 A. THE SYSTEM THAT I WAS USING FOR MY BULLETIN  
17 BOARD SERVICE WAS -- WOULD BE IMPRACTICAL ON THE WEB.

18 FIRST OF ALL, WITH THE BULLETIN BOARD  
19 SERVICE YOU ARE SERVING A LOCAL COMMUNITY. SO IN THE  
20 CASE OF WHEN I WAS IN COLLEGE, I WAS LIVING IN DAVIS,  
21 CALIFORNIA. AND PRETTY MUCH EVERYBODY WHO CALLED IN WAS  
22 LIKewise FROM DAVIS, CALIFORNIA OR FROM THE LOCAL  
23 CALLING AREA. BECAUSE YOU DON'T WANT TO CONNECT IF IT  
24 IS A LONG DISTANCE PHONE CALL. YOU COULD RUN UP GIANT  
25 PHONE BILLS. SO IN THAT REGARD IF ANYBODY WAS SENDING

1 ME THEIR ID, IT WAS EITHER A CALIFORNIA ID OR MILITARY  
2 ID. I KNEW WHAT THOSE LOOKED LIKE. I HAD SOME  
3 REASONABLE CHANCE OF DETERMINING IF THEY WERE -- IF THEY  
4 WERE, YOU KNOW, REAL LEGITIMATE ID. THE INTERNET IS AN  
5 INTERNATIONAL MEDIUM. IF SOMEONE IS SENDING ME AN ID  
6 FROM HUNGARY, FROM REALLY JUST ANOTHER STATE THAT I'M  
7 NOT FAMILIAR WITH, I'M NOT GOING TO KNOW ONE FROM THE  
8 OTHER. ALSO IMPORTANT HERE IS THAT NOBODY WOULD HAVE  
9 DONE IT. THERE'S ALL THESE WEBSITES OUT THERE. IF  
10 ANYBODY HAD COME TO MY WEBSITE AND HAD TO GO THROUGH THE  
11 PROCESS OF --

12 MR. TODD: OBJECTION, FOUNDATION.

13 THE COURT: I THINK IT IS WITHIN THE  
14 SCOPE OF THE QUESTION. HE IS EXPLAINING WHAT HIS  
15 EXPERIENCE WAS BACK AT THAT TIME AND WHY HE DID THINGS.  
16 OVERRULED.

17 THE WITNESS: CONTINUE. OKAY. NOBODY  
18 WOULD HAVE DONE IT BECAUSE THERE WERE SO MANY WEBSITES  
19 OUT THERE THAT WERE AVAILABLE. IF YOU COME TO ONE  
20 WEBSITE AND THEY ARE SAYING, HEY, FILL OUT ALL THESE  
21 FORMS, GO FIND A COPY MACHINE, FAX THIS TO ME, MAIL THIS  
22 TO ME OR WHATEVER AND IN ANOTHER WEEK OR TWO WE WILL  
23 GIVE YOU ACCESS, AND ALL YOU HAVE TO DO IS BACK OUT AND  
24 THERE ARE A HUNDRED OTHER WEBSITES OFFERING THE SAME  
25 THING, THEY ARE GOING TO BACK OUT AND GO TO THE NEXT

1 WEBSITE. SO IT WAS IMPRACTICAL FOR THE WORLDWIDE WEB.

2 BY MR. VAN KWAWEGEN:

3 Q. YOU WERE SPEAKING ABOUT YOUR EXPERIENCES WHEN  
4 YOU WERE OPERATING YOUR ADULT WEBSITES JUST NOW,  
5 CORRECT?

6 A. CORRECT, YES.

7 Q. DO YOU KNOW WHETHER THE CIRCUMSTANCES YOU  
8 DESCRIBED JUST A MOMENT AGO WHERE YOU SAID THAT NO ONE  
9 WOULD IN FACT GO THROUGH THE PROCESS OF MAILING IN AN  
10 APPLICATION, DO YOU KNOW WHETHER THAT CIRCUMSTANCE STILL  
11 EXISTS TODAY?

12 A. THERE IS NOTHING THAT HAS CHANGED SINCE THEN  
13 THAT WOULD CHANGE MY ANALYSIS OF THAT. I'M VERY  
14 CONFIDENT, BASED ON MY EXPERIENCE, THAT IF I WAS TO TRY  
15 TO IMPLEMENT A SYSTEM LIKE THAT, THAT IT WOULDN'T BE  
16 USED.

17 Q. HOW DO YOU KNOW THAT?

18 A. AGAIN, BECAUSE THERE IS SO MUCH ADULT CONTENT ON  
19 THE INTERNET. TO GO THROUGH THE PROCESS OF FILLING OUT  
20 FORMS, MAILING THEM IN, IT'S JUST -- IT JUST WOULD NOT  
21 BE AN ATTRACTIVE OPTION FOR VISITORS. IN ADDITION TO  
22 THAT, I WILL SAY THAT THERE HAVE BEEN COMPANIES THAT  
23 HAVE TRIED TO OFFER VARIOUS MEANS OF ALTERNATIVE  
24 BILLING. I CAN'T THINK OF ANY OF THEM THAT GOT IN FRONT  
25 OF AN ADULT INDUSTRY AUDIENCE AND TRIED TO SUGGEST, HEY,

1 WE WILL HELP YOU WITH PAPER BILLING OR PAPER BILLING IS  
2 A GOOD OPTION. IT'S JUST VERY COMMONLY UNDERSTOOD THAT  
3 THAT WOULD NOT BE AN OPTION FOR WEBSITES.

4 Q. I WOULD LIKE TO BRIEFLY DISCUSS THE SECOND  
5 BUSINESS MODEL THAT YOU ALSO EMPLOYED PERSONALLY AT SOME  
6 POINT IN TIME, THE BUSINESS MODEL OF PAY SITES. WHAT  
7 ARE PAY SITES AGAIN?

8 A. THE PAY SITE AGAIN, THE BIG DIFFERENCES BETWEEN  
9 AVS SITES AND PAY SITES, IS, ONE, THEY ARE GENERALLY  
10 LARGER, HAVE A LOT MORE CONTENT. SECOND DIFFERENCE THAT  
11 IS THE WEBMASTER CONTROLS THE USER NAME AND PASSWORD  
12 LIST SO THAT -- SO THE WEBMASTER CAN CONTROL WHO GETS IN  
13 AND WHO GETS OUT. THE WEBMASTER CAN SET PRICES. THE  
14 WEBMASTER HAS A DIRECT RELATIONSHIP WITH A THIRD PARTY  
15 BILLING COMPANY SO HE CAN SET PRICES.

16 Q. CAN YOU GIVE AN EXAMPLE OF A PAY SITE?

17 A. YES. PLAYBOY HAS A COUPLE OF THEM, SO THE  
18 PLAYBOY CYBER CLUB IS ONE EXAMPLE OF A PAY SITE.

19 Q. ARE ALL PAY SITES LOCATED IN THE UNITED STATES?

20 A. NO. ABSOLUTELY NOT.

21 Q. HOW DO YOU KNOW THAT?

22 A. WELL, FIRST OF ALL, I HAVE FRIENDS AND  
23 ACQUAINTANCES IN THE INDUSTRY WHO ARE FROM OVERSEAS AND  
24 WHO OPERATE PAY SITES. IN ADDITION TO THAT, WE HAVE  
25 ADVERTISERS ON YNOT WHO OPERATE AFFILIATE PROGRAMS WHICH

1 EFFECTIVELY THEY HAVE A LIST OF PAY SITES THAT PEOPLE  
2 CAN PROMOTE AND THEY ARE LOCATED OVERSEAS. BRAINCASH,  
3 FOR EXAMPLE, WOULD BE ONE EXAMPLE OF ONE OF THESE  
4 AFFILIATE PROGRAMS.

5 Q. PLEASE EXPLAIN TO THE COURT WHAT SOMEONE SEES  
6 WHEN HE OR SHE VISITS A PAY SITE?

7 A. SIMILAR TO AN AVS SITE, ASSUMING THIS INDIVIDUAL  
8 IS ARRIVING AT THE OUTSIDE OF A WEBSITE, THEY MAY OR MAY  
9 NOT GET A WARNING PAGE, IT'S UP TO THE WEBMASTER. THEY  
10 ARE GOING TO GET SOME SORT OF A SALES PITCH GENERALLY  
11 THAT IS GOING TO EXPLAIN WHAT THEY WOULD HAVE THE OPTION  
12 OF PURCHASING. SO WE -- IT'S OFTEN CALLED THE FREE  
13 TOUR. TAKE A FREE TOUR OF THE SITE, CLICK THROUGH THESE  
14 PAGES AND SEE YOU ARE GOING TO GET ACCESS TO AN IMAGE  
15 GALLERY, ACCESS TO LIVE STREAMING VIDEOS, YOU ARE GOING  
16 TO GET ACCESS TO STORIES OR A MESSAGE BOARD OR WHATEVER  
17 THE SITE HAS TO OFFER, WHATEVER FEATURES THE SITE HAS TO  
18 OFFER. IF THEY PURCHASE, IF THEY WANT TO PURCHASE THEY  
19 WILL CLICK ON A LINK TO GO TO A JOIN PAGE WHERE  
20 INFORMATION IS GATHERED AND THE PAYMENT TYPE IS  
21 SELECTED. IF THAT ALL WORKS GREAT, AND THEIR USER NAME  
22 AND PASSWORD IS SUPPLIED, THEY CAN THEN GO TO THE  
23 PRIVATE AREA OF THE PAY SITE OR WHAT WE CALL THE MEMBERS  
24 AREA OFTEN. THAT IS WHERE THE CONTENT THAT THEY JUST  
25 PURCHASED ACCESS TO WOULD THEN BE SERVED TO THE

1 CUSTOMER.

2 Q. HOW DOES A VISITOR GAIN ACCESS TO THE MEMBERS  
3 AREA THAT YOU JUST DESCRIBED.

4 A. FIRST BY CLICKING A JOIN PAGE. AGAIN, WE ARE  
5 ASSUMING THEY ARE PLAYING BY THE RULES HERE, CORRECT?  
6 FIRST, THEY WOULD CLICK THE JOIN PAGE, THEN THEY WOULD  
7 PROVIDE THE INFORMATION REQUESTED ON THE FORM. IN MOST  
8 CASES THIS IS GOING TO BE A FORM THAT IS HOSTED BY A  
9 THIRD PARTY BILLER, AN IPSP, NAME AND ADDRESS, USER NAME  
10 AND PASSWORD, OFTEN THE PHONE NUMBER, WHAT SORT OF  
11 PAYMENT CARD THEY WANT TO USE OR IF THEY DON'T WANT TO  
12 USE A PAYMENT CARD, ONLINE CHECKING OR HOWEVER THEY WANT  
13 TO PAY. IF THEY AGREE TO THE TERMS AND SERVICES, THEN  
14 THEY CLICK AND SUBMIT IT. THE IPSP WILL PROCESS THE  
15 PAYMENT. ASSUMING IT IS SUCCESSFUL, WILL THEN ACTIVATE  
16 THE USER NAME AND PASSWORD THAT THE INDIVIDUAL JUST  
17 REQUESTED, ASSUMING IT IS AVAILABLE. THEN THEY WILL BE  
18 SHOWN THE LOCATION WHERE THE MEMBERS AREA IS OR THEY CAN  
19 GO BACK TO THE PAY SITE AND CLICK MEMBERS. THE USER  
20 NAME AND PASSWORD PROMPT WILL COME UP AT WHICH POINT  
21 THEY CAN PUT IN THE USER NAME AND PASSWORD THAT WAS JUST  
22 ACTIVATED AND ASSUMING TECHNICALLY THAT EVERYTHING IS  
23 SET UP RIGHT, THEN THEY NOW HAVE ACCESS TO THE MEMBERS  
24 AREA.

25 Q. YOU JUST MENTIONED THAT IPSPS PROCESS PAYMENTS,

1 CORRECT?

2 A. THAT'S CORRECT. YES.

3 Q. DO YOU KNOW WHAT THE MINIMUM INFORMATION IS THAT  
4 AN IPSP NEEDS IN ORDER TO PROCESS PAYMENT?

5 A. YES, I DO.

6 Q. HOW DO YOU KNOW THAT?

7 A. WELL, I KNOW THAT BECAUSE IN THE PROCESS OF  
8 PREPARING FOR THIS CASE, IT WAS SOMETHING THAT CAME UP  
9 IN THE DEPOSITIONS, SO THAT IS ONE SOURCE OF KNOWLEDGE.

10 Q. WHAT IS THE MINIMUM INFORMATION THAT AN IPSP  
11 NEEDS IN ORDER TO PROCESS PAYMENT CARD INFORMATION?

12 A. AT MINIMUM THEY ARE GOING TO NEED THE PAYMENT  
13 CARD NUMBER AND THE EXPIRATION DATE.

14 MR. TODD: OBJECTION, FOUNDATION.

15 THE COURT: THE OBJECTION IS ONE QUESTION  
16 LATE, BUT EXCUSING YOU FROM THAT, THE FOUNDATION IS VERY  
17 WEAK. WE WILL LET THE PLAINTIFFS' COUNSEL TRY TO  
18 REHABILITATE THE WITNESS ON FOUNDATION IF HE IS NOT  
19 SUCCESSFUL, YOU CAN MOVE TO STRIKE. THE DEFENDANTS WILL  
20 MOVE TO STRIKE.

21 HE SAID THE SUBJECT CAME UP IN  
22 DEPOSITION. THAT IS THE ONLY FOUNDATION THAT YOU HAVE  
23 LAID. I SAID THAT IS WEAK. DEFENSE COUNSEL THINKS THE  
24 SAME WAY, SO YOU HAVE ANOTHER CHANCE.

25 BY MR. VAN KWAWEGEN:



1 Q. MR. RUSSO, EARLIER WE DISCUSSED THAT IPSPS  
2 PROCESS PAYMENT CARD INFORMATION, CORRECT?

3 A. THAT'S CORRECT, YES.

4 Q. COULD YOU REMIND THE COURT WHAT AN IPSP IS?

5 A. INTERNET PAYMENT SERVICE PROVIDER, A THIRD PARTY  
6 BILLER WHICH WILL PROCESS PAYMENTS ON BEHALF OF OTHER  
7 PARTIES, FOR EXAMPLE, WEBSITE.

8 Q. BESIDES THE DEPOSITION THAT YOU REFERENCED  
9 EARLIER, DO YOU HAVE ANY BASIS FOR YOUR KNOWLEDGE AS TO  
10 WHAT INFORMATION AN IPSP WILL NEED IN ORDER TO PROCESS  
11 PAYMENT CARD INFORMATION?

12 A. ASIDE FROM THAT, THE ONLY BASIS THAT I WOULD  
13 HAVE IS WHAT IS COLLECTED. I KNOW WHAT INFORMATION IS  
14 COLLECTED FROM THE WEBMASTER'S POINT OF VIEW. NOW,  
15 THERE IS MORE INFORMATION THAT IS COLLECTED ON A JOIN  
16 PAGE THAN I UNDERSTAND IT NOW IS ACTUALLY TRANSMITTED,  
17 SO THAT WOULD BE THE BASIS.

18 MR. TODD: OBJECTION TO THE FOUNDATION.  
19 MOVE TO STRIKE.

20 THE COURT: OVERRULED.

21 MR. TODD: THERE'S NO BASIS. HOW DOES HE  
22 UNDERSTAND WHAT IS ACTUALLY TRANSMITTED?

23 THE COURT: HE WAS EXPLAINING HIMSELF. I  
24 DON'T THINK HE IS AN EXPERT ON IT. THE LOGIC OF IT WAS  
25 IN THE MIDDLE OF A SENTENCE. HE DID NOT FINISH HIS

1 ANSWER IS MY POINT. LET HIM FINISH HIS ANSWER AND WE'LL  
2 SEE WHAT IS WHAT.

3 MR. VAN KWAWEGEN: THE QUESTION --

4 THE COURT: YOU USED THE PHRASE THE ONLY  
5 BASIS IS WHAT INFORMATION IS COLLECTED FROM -- FOR THE  
6 IPSP IS WHAT THE WEBMASTER LEARNED AND THEN WE GOT  
7 INTERRUPTED.

8 THE WITNESS: RIGHT. BASICALLY, WHAT I  
9 WAS SAYING WAS, AS A WEBMASTER I KNOW WHAT INFORMATION  
10 IS COLLECTED SO IT CANNOT BE MORE THAN WHAT IS  
11 COLLECTED. OKAY. WHAT I'M ADDING TO THAT IS IN THE  
12 PROCESS OF PREPARING THIS EXPERT REPORT, ONE OF THE  
13 THINGS I DID WAS REVIEW A NUMBER OF DOCUMENTS THAT WERE  
14 REFERENCED IN THE REPORT. ONE OF WHICH WAS A DEPOSITION  
15 WHERE THAT EXACT SUBJECT WAS COVERED. SO BASICALLY WHAT  
16 I'M SAYING IS THAT I HAD ARRANGED THAT IT COULD BE.  
17 RIGHT. THERE IS THE INFORMATION THAT IS COLLECTED WHICH  
18 WOULD INCLUDE YOUR NAME, YOUR PASSWORD, THINGS OF THAT  
19 NATURE, AND IT WAS FURTHER CLARIFIED BY THE DEPOSITION,  
20 WHERE THEY SAID, YES, OF THESE THINGS THAT ARE  
21 COLLECTED, THESE ARE THE THINGS THAT ARE TRANSMITTED.

22 THE COURT: OTHER QUESTIONS?

23 BY MR. VAN KWAWEGEN:

24 Q. WHAT INFORMATION IS COLLECTED FROM A WEBMASTER?

25 A. GENERALLY, IT'S GOING TO BE YOUR NAME, ADDRESS,

1 TELEPHONE NUMBER, THE IP ADDRESS IS COLLECTED. THEY  
2 MAKE SURE THAT IS KNOWN IN CASE SOMEBODY IS TRYING TO  
3 COMMIT FRAUD TO TRY TO SCARE THEM OFF.

4 THE COURT: WHAT ADDRESS?

5 THE WITNESS: IP ADDRESS. IT'S SUPPOSED  
6 TO BE -- THIS IS A VERY TECHNICALLY UNSAVVY WAY OF  
7 SAYING IT, BUT IT'S SUPPOSED TO BE LIKE THE ADDRESS OF  
8 YOUR INTERNET ADDRESS OF YOUR MACHINE, BUT DON'T RELY ON  
9 THAT ENTIRELY. THAT IS JUST FOR A GENERAL DESCRIPTION.  
10 THAT WOULD BE COLLECTED. THE USER NAME AND PASSWORD IS  
11 COLLECTED, THE FACT OF WHETHER OR NOT THE INDIVIDUAL HAS  
12 AGREED TO THE TERMS AND CONDITIONS IS COLLECTED.

13 BY MR. VAN KWAWEGEN:

14 Q. IS ALL THIS INFORMATION COLLECTED FROM VISITORS  
15 THAT INPUT AMERICAN INFORMATION AS WELL AS VISITORS FROM  
16 ABROAD?

17 A. THERE IS NO DISTINGUISHING PAGE THAT CHANGES THE  
18 INFORMATION THAT IS COLLECTED BASED ON -- AT LEAST, I'M  
19 NOT AWARE OF ANY, I GUESS I SHOULD SAY. I'M NOT AWARE  
20 OF ANY DIFFERENT PAGES THAT WOULD COLLECT DIFFERENT  
21 INFORMATION BASED ON WHERE YOU ARE COMING FROM.

22 Q. SO A FOREIGN VISITOR TO A WEBSITE WOULD INPUT  
23 THE SAME INFORMATION JUST DISCUSSED, NAME, ADDRESS,  
24 PAYMENT CARD INFORMATION?

25 A. I BELIEVE SO, YES.

1 Q. DO YOU KNOW WHAT INFORMATION -- FROM THE  
2 INFORMATION THAT IS BEING COLLECTED FROM THE WEBMASTER,  
3 WHAT INFORMATION IS SUBMITTED BY THE IPSP TO THE PAYMENT  
4 CARD ASSOCIATION?

5 MR. TODD: OBJECTION, FOUNDATION.

6 THE COURT: THE QUESTION IS DO YOU KNOW.  
7 THE ANSWER IS YES OR NO. THEN WE'LL FIND OUT.  
8 OVERRULED.

9 THE WITNESS: YES.

10 BY MR. VAN KWAWEGEN:

11 Q. WHAT INFORMATION?

12 A. GOES BACK TO MY ANSWER BEFORE.

13 THE COURT: YOU LEFT OUT A QUESTION.

14 HOW DOES HE KNOW THAT?

15 BY MR. VAN KWAWEGEN:

16 Q. HOW DO YOU KNOW THAT?

17 A. THIS GOES BACK TO HOW DO I GET FROM THE LARGER  
18 SET OF INFORMATION TO THE SMALLER SET, AND THE SOLE  
19 SOURCE FOR MY KNOWLEDGE ON THAT PARTICULAR ISSUE IS  
20 GOING TO BE THE DEPOSITION.

21 BY MR. VAN KWAWEGEN:

22 Q. TO REPEAT MY QUESTION FROM BEFORE, WHAT  
23 INFORMATION, WHAT MINIMUM -- WHAT IS THE MINIMUM  
24 INFORMATION AN IPSP WILL SUBMIT TO VISA OR MASTERCARD IN  
25 ORDER TO PROCESS THE TRANSACTION?

1 A. THAT WOULD BE THE CREDIT CARD -- THE PAYMENT  
2 CARD NUMBER AND THE EXPIRATION OF THE PAYMENT CARD.

3 Q. DO OPERATORS OF PAY SITES KNOW WHETHER A VISITOR  
4 WHO PURCHASES ACCESS IS AN ADULT?

5 A. NO, THEY DO NOT.

6 Q. HOW DO YOU KNOW THAT?

7 A. WELL, I KNOW THAT BECAUSE I OPERATED PAY SITES.  
8 IF THERE WAS A WAY FOR ME TO KNOW WHETHER THEY WERE  
9 ADULTS OR NOT THEN I WOULD KNOW.

10 Q. YOU USED TO OPERATE PAY SITES UP TO 2003,  
11 CORRECT?

12 A. MY PAY SITES MAY HAVE BEEN PULLED OFF EARLIER  
13 THAN THAT, BUT IT WOULD HAVE BEEN IN THE GENERAL  
14 2002/2003 TIME FRAME.

15 Q. DO YOU KNOW WHETHER OPERATORS OF PAY SITES TODAY  
16 KNOW WHETHER A VISITOR WHO PURCHASES ACCESS IS AN ADULT?

17 A. YES, I KNOW, AND NO, THEY WOULD NOT.

18 Q. WHY IS THAT?

19 A. THE FUNCTION OF A PAY SITE IS STILL THE SAME.  
20 THERE IS NO DIFFERENCE IN HOW THEY RUN TODAY VERSUS HOW  
21 THEY RAN WHEN I WAS RUNNING THEM IN 2002 OR 2003,  
22 WHENEVER THEY WERE FINALLY PULLED OFF THE INTERNET.  
23 IT'S GOING TO BE THE SAME PROBLEM. THERE IS NO WAY TO  
24 KNOW THAT THE PERSON WHO IS COMING INTO YOUR PAY SITE IS  
25 USING A USER NAME AND PASSWORD THAT THEY IN FACT

1 PURCHASED THEMSELVES.

2 THERE IS NO WAY TO KNOW THAT THE PERSON  
3 WHO ACTUALLY PURCHASED THE USER NAME AND PASSWORD IS IN  
4 FACT -- WAS IN FACT A LEGAL ADULT OR IS IN FACT A LEGAL  
5 ADULT. IT'S JUST A BIG QUESTION MARK. THERE IS JUST NO  
6 WAY TO KNOW. THIS IS SOMETHING THAT THE INDUSTRY WOULD  
7 LOVE TO BE ABLE TO KNOW, THAT I WOULD HAVE LOVED TO BE  
8 ABLE TO KNOW, BUT THERE IS NO WAY TO KNOW.

9 Q. DO OPERATORS OF PAY SITES KNOW WHETHER A VISITOR  
10 WITH A PASSWORD IS AN ADULT?

11 A. NO, THEY DO NOT.

12 Q. WHY NOT?

13 A. IN ADDITION TO WHAT I WAS SAYING THAT THE  
14 PASSWORD COULD BE, COULD HAVE BEEN GIVEN TO THE PERSON  
15 BY AN ORIGINAL PURCHASER, IN OTHER WORDS, THE PERSON  
16 COMING IN WITH A PASSWORD MIGHT NOT HAVE BEEN THE  
17 ORIGINAL PURCHASER OF THE PASSWORD, THERE ARE ALSO  
18 -- AND THIS ACTUALLY SPEAKS MORE TO WHAT I'M SAYING,  
19 THERE ARE ALSO WEBSITES THAT ARE IN EXISTENCE SOLELY FOR  
20 THE PURPOSE OF TRADING THESE PASSWORDS. SO WHEN I  
21 OPERATED PAY SITES, FOR INSTANCE, ONE OF THE PROBLEMS I  
22 WOULD HAVE IS EVERY NOW AND THEN THE AMOUNT OF ACTIVITY  
23 ON THE PAY SITE WOULD SHOOT THROUGH THE ROOF, AND THAT  
24 IS A CONCERN BECAUSE THEY CHARGE YOU BANDWIDTH CHARGES.  
25 SO THE MORE BANDWIDTH THAT YOUR WEBSITE WAS USING, THE

1 HIGHER YOUR MONTHLY BILL IS GOING TO BE FOR THAT HOSTING  
2 ACCOUNT. SO YOU CAN IMAGINE IF YOU ARE DOING ONE LEVEL  
3 OF BANDWIDTH THAT MAY BE -- LET'S SAY IS RESULTING IN A  
4 BILL OF \$500 A MONTH, ALL OF A SUDDEN THE USAGE OF YOUR  
5 WEBSITE GOES UP BY 10 TIMES, BUT YOUR SALES ARE ALL THE  
6 SAME, YOUR BILL IS ABOUT TO GO UP 10 TIMES. THAT IS A  
7 PROBLEM. SO WE WOULD HAVE TO MONITOR FOR THAT.

8 WHAT WAS HAPPENING IN THAT PARTICULAR  
9 CASE IS SOMEBODY HAD GIVEN OUT THE PASSWORD IN A VERY  
10 PUBLIC AREA AND THE CONSUMERS WOULD KNOW OR IN THIS  
11 CASE -- WELL, THEY ARE STILL CONSUMERS, JUST NOT PAYING  
12 CONSUMERS -- WOULD KNOW THEY HAD A LIMITED AMOUNT OF  
13 TIME BEFORE THE PAY SITE WOULD FIGURE OUT WHAT WAS GOING  
14 ON AND CUT OFF THAT PARTICULAR PASSWORD. SO THEY WOULD  
15 ALL RUSH IN, COLLECT AS MUCH CONTENT AS THEY COULD FOR  
16 FREE, AND THEN YOU WOULD CATCH IT MAYBE THE NEXT DAY,  
17 YOU SEE YOUR BANDWIDTH SPIKED. YOU WOULD SEE THAT SPIKE  
18 AND THEN TURN OFF, TRY TO FIND OUT WHICH ACCOUNT WAS  
19 GETTING THE ACTIVITY AND TURN IT OFF.

20 Q. HOW DO YOU KNOW IF THERE ARE STILL WEBSITES  
21 OPERATING TODAY THAT TRADE IN PASSWORDS?

22 A. BECAUSE IT'S STILL A PROBLEM FOR THE INDUSTRY.  
23 WEBMASTERS STILL TALK ABOUT IT. THERE ARE SECURITY  
24 SCRIPTS AVAILABLE THAT TRY TO HELP WEBMASTERS WITH THE  
25 PROBLEM, TO NOTIFY THEM IF SOMETHING WEIRD IS GOING ON.

1       THERE ARE -- A GOOGLE SEARCH FOR PASSWORD TRADING  
2       GENERALLY WILL BRING UP WEBSITES THAT OFFER PASSWORDS, A  
3       LOT OF WAYS TO KNOW THAT.

4       Q.        COULD YOU TURN TO PLAINTIFFS' EXHIBIT 106 WHICH  
5       IS BEHIND TAB 10 IN THE BINDER?

6       A.        OKAY.

7       Q.        SIR, DO YOU RECOGNIZE THIS DOCUMENT?

8       A.        YES, I DO.

9       Q.        WHAT IS IT?  COULD YOU PLEASE DESCRIBE IT TO THE  
10      COURT?

11      A.        THIS IS AN AGREEMENT THAT WOULD BE SIGNED BY A  
12      CLIENT OF PAYCOM WHICH IS ALSO -- THIS PARTICULAR  
13      COMPANY IS ALSO KNOWN BY THE NAME EPOCH.  EFFECTIVELY IT  
14      IS SPELLING OUT THE RULES OF WHAT'S GOING ON BETWEEN THE  
15      TWO PARTIES.

16      Q.        BEFORE WE DISCUSS THE DOCUMENT IN MORE DETAIL,  
17      DID YOU CONSIDER THIS DOCUMENT IN FORMING YOUR OPINIONS  
18      HERE TODAY?

19      A.        YES, I DID.

20                   MR. VAN KWAWEGEN:  YOUR HONOR, AT THIS  
21      TIME, PLAINTIFFS WILL NOT BE OFFERING THIS DOCUMENT INTO  
22      EVIDENCE.  THE PLAINTIFFS INTEND TO LAY A PROPER  
23      FOUNDATION FOR THIS DOCUMENT THROUGH THE DEPOSITION  
24      DESIGNATIONS OF THIS PARTICULAR COMPANY THAT PRODUCED  
25      THIS DOCUMENT IN THE THIRD PARTY PRODUCTIONS.



1 THE COURT: ARE YOU ASKING WHETHER YOU  
2 ARE PERMITTED TO QUESTION THE WITNESS ABOUT IT BASED ON  
3 YOUR CERTIFICATION THAT THE DOCUMENT WILL GO INTO  
4 EVIDENCE THROUGH ANOTHER WITNESS?

5 MR. VAN KWAWEGEN: I'M ASKING YOUR  
6 PERMISSION TO.

7 THE COURT: THROUGH THE THIRD PARTY  
8 DEPOSITION?

9 MR. VAN KWAWEGEN: I'M ASKING YOUR  
10 PERMISSION TO USE THIS DOCUMENT AND TO ELICIT TESTIMONY  
11 FROM MR. RUSSO WITHOUT OFFERING IT INTO EVIDENCE AT THIS  
12 TIME KNOWING THAT THERE MAY BE OBJECTIONS THAT YOUR  
13 HONOR MAY STILL NEED TO RULE ON.

14 THE COURT: I WILL TASK THE DEFENDANTS  
15 WITH MOVING TO STRIKE IT OUT IF THE OTHER DOCUMENT DOES  
16 NOT GET IN.

17 MR. TODD: YES, YOUR HONOR.

18 THE COURT: YOUR REQUEST IS GRANTED.

19 MR. VAN KWAWEGEN: THANK YOU, YOUR HONOR.

20 BY MR. VAN KWAWEGEN:

21 Q. MR. RUSSO, WOULD YOU PLEASE TURN TO PAGE 15 OF  
22 PLAINTIFFS' EXHIBIT 106.

23 A. OKAY.

24 Q. BEFORE WE DISCUSS THIS SPECIFIC PAGE, COULD YOU  
25 PLEASE DESCRIBE FOR THE COURT WHAT PAYCOM IS?

1 A. PAYCOM IS AN IPSP, A THIRD PARTY BILLER.

2 Q. EARLIER YOU REFERENCED CLIENTS OF IPSPS OR  
3 CLIENTS OF PAYCOM THAT WOULD BE PRESUMABLY SIGNING THIS  
4 AGREEMENT. WHAT DID YOU REFER TO BY CLIENT?

5 A. I'M REFERRING TO WEBMASTERS IN THIS CASE, PEOPLE  
6 WHO RUN WEBSITES AND WISH TO USE PAYCOM'S PAYMENT  
7 PROCESSING SERVICES.

8 Q. WHEN YOU WERE RUNNING YOUR WEBSITES, YOUR ADULT  
9 WEBSITES, DID YOU ENTER INTO AGREEMENTS WITH IPSPS?

10 A. YES, I DID.

11 Q. MR. RUSSO, PLEASE TURN TO PAGE 15 OF PLAINTIFFS'  
12 EXHIBIT 106 RIGHT NOW.

13 A. YES. PAGE 15, I'M THERE.

14 Q. FOCUSING ON THE TOP PART, DO YOU SEE WHERE IT  
15 SAYS PROCESSING FEES?

16 A. YES, I DO.

17 Q. DESCRIBE TO THE COURT WHAT PROCESSING FEES ARE  
18 IN THE CONTEXT OF AN AGREEMENT BETWEEN A WEBMASTER AND  
19 IPSP?

20 A. SURE. THE PRIMARY WAY THE IPSP IS GOING TO  
21 CHARGE THE WEBMASTER FOR THE SERVICE THAT THEY PROVIDE  
22 IS TO SET A PERCENTAGE, PROCESSING PERCENTAGE SHEET. IN  
23 THIS PARTICULAR CASE, THIS DOCUMENT IS SHOWING THE 15  
24 PERCENT SETTING, SO IN OTHER WORDS, AND THAT IS VERY  
25 STANDARD. IF I HAVE A PRODUCT THAT I'M SELLING FOR

1       \$100, PAYCOM PROCESSES IT, THEY ARE GOING TO TAKE THEIR  
2       15 PERCENT OUT AND SEND ME THE \$85 THAT IS LEFT OVER.

3       Q.       HOW MUCH -- WHAT PERCENTAGE WERE YOU GENERALLY  
4       CHARGED WHEN YOU WERE OPERATING YOUR ADULT WEBSITES BY  
5       IPSPS?

6       A.       I DON'T RECALL THE EXACT NUMBER, BUT I CAN TELL  
7       YOU IT WAS VERY CLOSE TO 15 PERCENT.

8       Q.       FOCUSING YOUR ATTENTION ON A FEW LINES DOWN  
9       WHERE IT SAYS ADMINISTRATIVE FEES.

10      A.       YES.

11      Q.       THEN UNDER ONE IT SAYS CHARGEBACK FEES, DO YOU  
12      SEE THAT?

13      A.       I DO, YES.

14      Q.       WHAT ARE CHARGEBACK FEES?

15      A.       WELL, I WAS TALKING EARLIER ABOUT THE DESIRE TO  
16      LIMIT CHARGEBACKS. ONE THING THAT IS GOING TO HAPPEN  
17      WHEN YOU DO HAVE A CHARGEBACK IS THE IPSP IS GOING TO  
18      CHARGE YOU THIS FEE EVERY TIME IT HAPPENS. SO IF  
19      SOMEBODY SIGNED UP FOR MY WEBSITES AND, FOR INSTANCE, IT  
20      COULD BE AS SIMPLE AS THEY HAD A SPOUSE WHO LATER  
21      DISCOVERED THE CHARGE AND SAID WHAT'S THIS? IT'S AN  
22      ADULT WEBSITE, AND THAT PERSON SAID I DID NOT SIGN UP  
23      FOR THAT. IT MUST HAVE BEEN A FRAUDULENT CHARGE. THE  
24      SPOUSE CALLS THE CREDIT CARD COMPANY AND SAYS THIS IS  
25      NOT LEGITIMATE. YOU ARE IN A CARD-NOT-PRESENT

1 ENVIRONMENT AT THIS POINT. YOU DON'T HAVE A CARD SWIPE,  
2 YOU DIDN'T HAVE A SIGNATURE. THERE IS NO WAY FOR VISA  
3 OR MASTERCARD OR ANYBODY ELSE TO PROVE THAT THAT PERSON  
4 WAS THERE AND DID MAKE -- DID IN FACT, INITIATE THE  
5 TRANSACTION. SO IT'S CHARGED BACK. THAT IS ONE  
6 SCENARIO THAT THIS HAPPENS. THE WEBSITES WOULD THEN GET  
7 CHARGED A CHARGEBACK FEE IN ADDITION TO LOSING THE MONEY  
8 THAT WAS INITIALLY PROCESSED.

9 THE COURT: IN THAT EVENT THE HOLDER OF  
10 THE CARD WOULD GET A CREDIT AGAINST HIS OR HER ACCOUNT?

11 THE WITNESS: EXACTLY.

12 THE COURT: THE CHARGED BACK SUM?

13 THE WITNESS: YES.

14 BY MR. VAN KWAWEGEN:

15 Q. YOU REFERRED TO A CARD-NOT-PRESENT TRANSACTION.  
16 WHAT IS THAT?

17 A. WELL, IN OTHER WORDS, THAT IS WHAT I'M SAYING,  
18 YOU DON'T HAVE -- FROM THE WEBMASTER'S POINT OF VIEW, WE  
19 DON'T HAVE A CARD, WE DON'T HAVE PROOF THAT WE EVER SAW  
20 THE CARD. ALL WE HAVE IS A NUMBER THAT WAS PUT INTO A  
21 FORM, SIMILAR TO HOW WE CAN'T TELL THAT THE PERSON ON  
22 THE OTHER SIDE IS 18 OR 25 OR WHATEVER AGE. WE CAN'T  
23 TELL FOR SURE THAT THE PERSON PUTTING IN THE NUMBERS IS  
24 ACTUALLY THE PERSON AUTHORIZED TO PUT IN THE NUMBER. IF  
25 WE HAD THE ABILITY TO ACTUALLY HOLD THE CARD, SWIPE IT,

1 HAVE THE CUSTOMER SIGN A RECEIPT, THEN IT WOULD MAKE IT  
2 A LOT MORE DIFFICULT FOR PEOPLE TO CHARGE BACK. AT THAT  
3 POINT AS A MERCHANT WE COULD GO TO THE CREDIT CARD  
4 COMPANIES AND SAY LOOK, WE HAVE PROOF AND IT WOULD BE  
5 MORE DIFFICULT.

6 BUT THAT IS -- WE DON'T HAVE  
7 THAT ABILITY.

8 Q. GENERALLY SPEAKING, WHAT KINDS OF FEES ARE  
9 ASSOCIATED WITH CHARGEBACKS?

10 A. WHAT KINDS OF FEES? WELL, I MEAN THERE IS THE  
11 FEE THAT WE ARE TALKING ABOUT HERE, OF COURSE, WHICH IS  
12 AN ADMINISTRATIVE FEE THAT WOULD BE CHARGED TO THE  
13 WEBMASTER BECAUSE OF THE CHARGEBACK.

14 Q. ANY OTHER FEES ASSOCIATED WITH CHARGEBACKS?

15 A. WELL, THERE IS THE POSSIBILITY OF CATASTROPHIC  
16 FEES, IF THE CHARGEBACKS GET TOO HIGH. FOR EXAMPLE, THE  
17 FIRST IPSP -- THEN IT WAS JUST CALLED A THIRD PARTY  
18 BILLER THAT I USED, WAS A COMPANY THAT WENT BY DMR. AND  
19 THEY LOST THEIR MERCHANT ACCOUNT BECAUSE THEIR  
20 CHARGEBACK RATES WERE TOO HIGH. BEFORE THEY LOST THEIR  
21 MERCHANT ACCOUNT THEY WERE GETTING HIT WITH REALLY HEAVY  
22 FINES. I MEAN, IT WAS THOUSANDS OF DOLLARS WORTH OF  
23 CHARGEBACK FINES THAT THEY WERE THEN TRYING TO PASS ON  
24 TO THE WEBMASTERS THAT WAS USING THE SERVICE. IT WAS A  
25 VERY UGLY SITUATION, SO THAT IS CERTAINLY POSSIBLE.

1 Q. PUTTING EXHIBIT 106 ASIDE, ARE THERE ANY OTHER  
2 FEES ASSOCIATED WITH ACCEPTING PAYMENT CARDS BESIDES THE  
3 ADMINISTRATIVE FEES THAT YOU JUST DESCRIBED AND THE  
4 PROCESSING FEES THAT YOU JUST DESCRIBED?

5 A. YES, THERE IS.

6 Q. WHAT ARE THOSE?

7 A. WELL, IF YOU WANT TO ACCEPT VISA PAYMENT CARDS  
8 SPECIFICALLY, THEN THERE IS GOING TO BE AN INITIAL  
9 REGISTRATION FEE WHEN YOU SIGN UP WITH THE IPSP THAT IS  
10 GOING TO BE IN THE NEIGHBORHOOD OF \$750 IN ADDITION TO  
11 THAT EVERY YEAR THAT YOU WANT TO CONTINUE TO ACCEPT VISA  
12 CARDS YOU ARE GOING TO HAVE TO PAY ANOTHER RENEWAL FEE  
13 OF APPROXIMATELY \$400.

14 Q. BASED ON YOUR RESEARCH AND YOUR EXPERIENCE WITH  
15 PAY SITES AND AVS SITES, HAVE YOU REACHED AN OPINION  
16 REGARDING THE USE OF PAYMENT CARDS TO VERIFY AGE ONLINE?

17 A. YES, I HAVE.

18 Q. WHAT IS THAT OPINION?

19 A. THAT PAYMENT CARDS ARE NOT AN EFFECTIVE MEANS OF  
20 VERIFYING AGE ONLINE.

21 Q. WHY NOT?

22 A. PARTIALLY --

23 MR. TODD: OBJECTION, FOUNDATION.

24 THE COURT: HE HAS ALREADY TESTIFIED TO  
25 ALMOST EVERYTHING HE IS BEING ASKED RIGHT NOW AND IT IS

1 ALREADY IN THE RECORD, BUT OVERRULED.

2 THE WITNESS: AS A WEBMASTER, I JUST HAVE  
3 NO IDEA WHO PUT THIS IN, WHO PUT THIS NUMBER IN. IN  
4 OTHER WORDS, THE THINGS THAT ARE GOING TO BE GOING ON IN  
5 MY MIND ARE, WAS THIS A CHILD WHO TOOK HIS OR HER  
6 PARENTS' CREDIT CARD IN ORDER TO GET ACCESS TO THE SITE?  
7 IS THIS A CHILD WHO SIMPLY HAD THEIR OWN PAYMENT CARD  
8 FOR WHATEVER REASON? THERE'S JUST TOO MANY POSSIBLE  
9 SCENARIOS THAT I CAN COME UP WITH AS A WEBMASTER AS TO  
10 WHY THE PERSON COMING IN MIGHT NOT BE AN ADULT. SO I  
11 CERTAINLY WOULD NOT BE ABLE TO SAY WITH ANY CERTAINTY  
12 THAT PAYMENT CARDS ARE GOING TO VERIFYING AGE.

13 Q. SWITCHING TO A DIFFERENT TOPIC.

14 ARE YOU AWARE OF ANY ONLINE SERVICES THAT  
15 CLAIM TO VERIFY THE AGE OF WEBSITE VISITORS BY VERIFYING  
16 PERSONAL DATA OTHER THAN PAYMENT CARD INFORMATION?

17 A. YES, I AM.

18 Q. HOW HAVE YOU BECOME AWARE OF SUCH SERVICES?

19 A. WELL, AGAIN, THIS GOES BACK TO WHAT I WAS SAYING  
20 EARLIER ABOUT BEING MADE AWARE OF POSSIBLE LEGISLATION  
21 THAT WOULD REQUIRE USE OF AGE VERIFICATION TECHNOLOGIES,  
22 LOOKING INTO WHAT THESE TECHNOLOGIES WERE. THIS WAS  
23 AGAIN BACK IN THE SUMMER OF 2005 AND THAT LED ME TO THE  
24 COMPANIES -- THE TECHNOLOGY THAT I DESCRIBED IN MY  
25 REPORT AS DATA VERIFICATION SERVICES, THE DVS COMPANIES.

1 Q. COULD YOU EXPLAIN TO THE COURT --

2 THE COURT: DIDN'T HE TESTIFY AT SOME  
3 LENGTH ABOUT THIS THIS MORNING?

4 MR. VAN KWAWEGEN: YES.

5 THE COURT: CAN'T YOU BUILD ON THAT  
6 RATHER THAN DO IT OVER AGAIN?

7 BY MR. VAN KWAWEGEN:

8 Q. WHAT KIND OF INFORMATION CAN BE VERIFIED?

9 A. WELL, YOU COULD VERIFY A NAME. WE ARE GOING TO  
10 NEED A MINIMAL SET OF DATA AT LEAST. THE MINIMAL SET OF  
11 DATA COULD POTENTIALLY VARY FROM DVS COMPANY TO DVS  
12 COMPANY, BUT BASICALLY AT THE MINIMUM YOU ARE GOING TO  
13 NEED A NAME AND ADDRESS. SO AT THE MINIMUM YOU CAN  
14 SUBMIT A NAME AND ADDRESS AND SEE IF THEY CAN FIND A  
15 MATCH FOR THAT. OTHER POSSIBLE BITS OF INFORMATION THAT  
16 COULD BE VERIFIED COULD POTENTIALLY BE BIRTH DATE, YOU  
17 COULD BE PUTTING IN A BIRTH DATE TO VERIFY, YOU COULD BE  
18 PUTTING IN SOCIAL SECURITY NUMBER OR THE LAST FOUR  
19 DIGITS OF THE SOCIAL SECURITY NUMBER, A DRIVER LICENSE  
20 NUMBER, INFORMATION SUCH AS THAT.

21 MR. TODD: OBJECTION. FOUNDATION. THERE  
22 IS NO DOCUMENTS TO SUPPORT THIS ASSERTION.

23 THE COURT: COUNSEL, IS IT COVERED IN HIS  
24 EXPERT REPORT?

25 MR. VAN KWAWEGEN: IT IS, YOUR HONOR.



1 THE COURT: MY RECOLLECTION IS THAT HE  
2 TESTIFIED TO THIS ENTIRE AREA THIS MORNING. I DON'T  
3 KNOW WHY WE ARE GOING OVER IT AGAIN BUT --

4 MR. VAN KWAWEGEN: IN PART TO AVOID THE  
5 FOUNDATION OBJECTIONS, YOUR HONOR.

6 THE COURT: WELL, YOU DID NOT GO VERY FAR  
7 INTO IT.

8 THE OBJECTION I WOULD CHARACTERIZE AS A  
9 MOTION TO STRIKE THE WITNESS' TESTIMONY TO THE QUESTION  
10 OF WHAT CAN BE VERIFIED? EVERYTHING AFTER THAT IS  
11 STRICKEN ON THE BASIS OF LACK OF FOUNDATION.

12 BY MR. VAN KWAWEGEN:

13 Q. MR. RUSSO, COULD YOU PLEASE TURN TO PLAINTIFFS'  
14 EXHIBIT 76 WHICH IS BEHIND TAB 5 OF YOUR BINDER.

15 A. SURE.

16 Q. DO YOU RECOGNIZE THIS DOCUMENT?

17 A. YES, I DO.

18 Q. COULD YOU DESCRIBE THIS DOCUMENT TO THE COURT?

19 A. THIS IS A DOCUMENT THAT WAS PREPARED BY ONE OF  
20 THE DVS COMPANIES THAT TALKS ABOUT THE DATA THAT WOULD  
21 BE REQUIRED, LISTS SOME SOURCES OF OPTIONAL DATA THAT  
22 CAN BE INCLUDED IN A DATA CHECK AND TALKS ABOUT SOME OF  
23 THE REASONS WHY A PERSON MIGHT NOT BE ABLE TO BE  
24 VERIFIED EVEN THOUGH THEIR DATA IS GOOD.

25 Q. DID YOU CONSIDER THIS DOCUMENT IN FORMING

1 OPINIONS THAT YOU ARE STATING HERE TODAY?

2 A. YES, I DID.

3 MR. VAN KWAWEGEN: YOUR HONOR, THE  
4 PLAINTIFFS WILL NOT BE MOVING TO ENTER THIS DOCUMENT  
5 INTO EVIDENCE AT THIS TIME. HOWEVER, WE WILL LAY A  
6 FOUNDATION AND PROPER AUTHENTICATION WHEN A  
7 REPRESENTATIVE OF THE PARTY PRODUCING THIS COMPANY WILL  
8 BE CALLED TO TESTIFY.

9 THE COURT: WILL SOMEONE FROM ID RESPONSE  
10 BE HERE?

11 MR. VAN KWAWEGEN: YES. IT WILL BE ONE  
12 OF DEFENDANT'S WITNESSES.

13 MR. TODD: YOUR HONOR, WE DON'T ACTUALLY  
14 OBJECT TO THIS DOCUMENT BEING ADMITTED AT THIS TIME  
15 SO...

16 THE COURT: YOU ARE GOING TO PROBABLY  
17 ADMIT IT IN YOUR OWN CASE?

18 MR. TODD: YES, THERE IS A POSSIBILITY,  
19 SO NO OBJECTION.

20 THE COURT: WILL YOU TAKE ADVANTAGE OF  
21 THIS OFFER?

22 MR. VAN KWAWEGEN: YES, I WILL.

23 MR. HIRT: WE CAN'T SEE THE SCREEN. CAN  
24 WE TURN IT SO ONE OF MY COUNSEL CAN LOOK AT IT. ALL  
25 RIGHT. OUR SCREEN WAS NOT ALIGNED RIGHT.

1 THE COURT: PLAINTIFFS' EXHIBIT 76 IS  
2 RECEIVED INTO EVIDENCE.

3 (P 76 ADMITTED INTO EVIDENCE.)

4 THE COURT: I'M BEING DISTURBED ABOUT  
5 THIS LACK OF FOUNDATION. YOU HAVE ALREADY MOVED INTO  
6 EVIDENCE THE REPORT OF THIS GENTLEMAN WHICH INCLUDES ALL  
7 THE INFORMATION THAT YOU ARE ASKING HIM ABOUT. IT'S  
8 ALREADY IN EVIDENCE. THE DEFENSE COUNSEL IS OBJECTING  
9 TO IT GOING IN FROM THE WITNESS CHAIR.  
10 EVIDENTIARY-WISE, IT'S CACOPHONOUS, VERY CONFUSING TO  
11 THE COURT. IF THE EXPERT REPORT IS IN, I CAN READ IT  
12 ANY TIME I WANT TO.

13 MR. VAN KWAWEGEN: YOUR HONOR, THESE  
14 DOCUMENTS WERE USED TO PREPARE THE EXPERT REPORT, BUT  
15 THEY ARE NOT NECESSARILY CONTAINED COMPLETELY IN THE  
16 EXPERT REPORT.

17 THE COURT: I WILL LOOK UP THE ONE THAT I  
18 JUST RULED ON WHEN I HAVE A FEW MOMENTS, AND WE WILL SEE  
19 WHAT I FIND OUT. WE ARE GOING TO TAKE A MID-AFTERNOON  
20 RECESS FOR 10 MINUTES. WE ARE OFF THE RECORD. COUNSEL  
21 ARE EXCUSED.

22 (BREAK TAKEN.)

23 THE CLERK: ALL RISE.

24 THE COURT: COURT IS NOW IN SESSION. MR.  
25 RUSSO, COME UP PLEASE.

1                   LET THE RECORD SHOW THAT I DON'T HAVE ANY  
2 REASON AT THIS POINT TO CHANGE MY RULING ON THE MOTION  
3 TO STRIKE WHICH IS GRANTED. GO AHEAD.

4 BY MR. VAN KWAWEGEN:

5 Q.           TURNING BACK TO PLAINTIFFS' EXHIBIT 76.

6 A.           WHICH TAB?

7 Q.           IT IS BEHIND TAB 5.

8                   DID YOU CONSIDER THIS DOCUMENT IN FORMING  
9 YOUR OPINIONS THAT YOU ARE STATING HERE TODAY?

10 A.          YES, I DID.

11 Q.          WOULD YOU PLEASE DESCRIBE THE DOCUMENT TO THE  
12 COURT, PLEASE. I WANT TO MAKE SURE THAT YOU DID.

13 A.          THIS IS A DOCUMENT THAT WAS CREATED BY ONE OF  
14 THE DVS COMPANIES THAT -- IT TALKS ABOUT THE DATA THAT  
15 WOULD BE REQUIRED IN ORDER TO INITIATE A DVS CHECK, DATA  
16 CHECK, LISTS SOME EXAMPLES OF OPTIONAL DATA THAT COULD  
17 BE INCLUDED IN THE CHECK AND TALKS ABOUT SOME OF THE  
18 REASONS WHY A LISTING MAY NOT BE ABLE TO BE VERIFIED.

19 Q.          FOCUSING ON THE MIDDLE PART OF THE PAGE WHERE IT  
20 SAYS REQUIRED DATA, DO YOU SEE THAT?

21 A.          YES, I DO.

22 Q.          WHAT'S YOUR UNDERSTANDING OF WHAT DATA IS  
23 REQUIRED IN ORDER TO INITIATE A DVS CHECK?

24 A.          THE DATA THAT WE WERE TOLD WAS REQUIRED WHEN WE  
25 DID OUR ANALYSIS OF THESE SYSTEMS WAS THE NAME AND

1 ADDRESS.

2 Q. WHEN DID YOU DO THIS ANALYSIS?

3 A. SUMMER OF 2005.

4 THE COURT: DOES THIS DOCUMENT PURPORT TO  
5 BE DATED AS TO WHEN IT WAS PRODUCED?

6 MR. VAN KWAWEGEN: IT IS NOT AT THIS  
7 POINT.

8 THE COURT: THERE IS A QUESTION PENDING.  
9 I THINK I INTERRUPTED THE ANSWER.

10 YOU ASKED HIM WHEN HE DID SOMETHING.

11 MR. VAN KWAWEGEN: I ASKED WHEN HE DID  
12 HIS ANALYSIS. HE SAID IN THE SUMMER OF 2005.

13 THE WITNESS: YES.

14 THE COURT: I REMEMBER THAT. THANK YOU.  
15 SORRY.

16 BY MR. VAN KWAWEGEN:

17 Q. MOVING DOWN THE PAGE, DO YOU SEE WHERE IT SAYS  
18 OPTIONAL DATA?

19 A. YES.

20 Q. WHAT DO YOU UNDERSTAND THAT TO MEAN?

21 A. THIS IS EXAMPLES OF DATA THAT YOU COULD INCLUDE  
22 IN A CHECK. IN OTHER WORDS, I UNDERSTAND IT TO MEAN  
23 THAT YOU COULD ASK FOR THE PHONE NUMBER, IN ADDITION TO  
24 THE REQUIRED DATA, YOU COULD ASK FOR THE PHONE NUMBER OF  
25 THE PERSON. YOU CAN ASK FOR THE FULL SOCIAL SECURITY

1 NUMBER OR THE LAST FOUR DIGITS OF THE SOCIAL SECURITY  
2 NUMBER. OUR UNDERSTANDING WAS THE MORE INFORMATION THAT  
3 WAS COLLECTED, THE BETTER OF A CHANCE THAT YOU COULD GET  
4 A MATCH ON THE DATA.

5 Q. FROM THE PERSPECTIVE OF AN OPERATOR OF A  
6 WEBSITE, WHO DECIDES WHICH INFORMATION WILL BE REQUESTED  
7 FROM AN ONLINE CUSTOMER THAT IS VISITING THAT WEBSITE?

8 A. INFORMATION COLLECTED, YOU MEAN IF YOU'RE USING  
9 THE DVS, I ASSUME?

10 Q. YES.

11 A. THERE WOULD BE THE REQUIRED DATA, THE REQUIRED  
12 FIELDS THAT WOULD BE MINIMUM. THAT WOULD BE DECIDED BY  
13 THE DVS COMPANY, IN THIS CASE NAME AND ADDRESS. THEN  
14 ALL THE OPTIONAL DATA THE WEBMASTER WOULD DECIDE IF HE  
15 OR SHE WANTED TO COLLECT, PHONE NUMBER, SOCIAL SECURITY  
16 NUMBER, ET CETERA.

17 Q. WHAT HAPPENS AFTER A WEBSITE HAS COLLECTED THE  
18 PERSONAL INFORMATION AND SENT IT TO THE DVS COMPANY?

19 MR. TODD: OBJECTION. CALLS FOR  
20 SPECULATION, FOUNDATION.

21 THE COURT: SUSTAINED.

22 BY MR. VAN KWAWEGEN:

23 Q. DO YOU KNOW WHAT HAPPENS WITH THE INFORMATION  
24 AFTER IT HAS BEEN COLLECTED AND SENT TO A DVS COMPANY?

25 A. YES, I DO.

1 Q. HOW DO YOU KNOW THAT?

2 A. THE DVS COMPANIES TOLD US BASICALLY -- LET ME  
3 PUT IT THIS WAY, THEY TOLD US GENERALLY WHERE THEY SENT  
4 IT. THEY DID NOT LIST THE SPECIFIC COMPANIES AS TO  
5 WHERE THEY SENT IT. SO I DO KNOW THAT, AND THEN, OF  
6 COURSE, I KNOW ON THE WEBMASTER SIDE WHAT HAPPENS AFTER  
7 WE SEND IT OFF.

8 Q. WHAT WERE YOU TOLD WITH REGARD TO THE  
9 INFORMATION THAT WAS COLLECTED BY THE WEBSITE, WITH  
10 REGARD TO THAT INFORMATION? WHAT WERE YOU TOLD --

11 MR. HIRT: WE CAN'T HEAR, COUNSEL.

12 MR. VAN KWAWEGEN: I WILL SPEAK UP.

13 APOLOGIES.

14 MR. TODD: IT MIGHT HAVE BEEN A HEARSAY  
15 OBJECTION, BUT I CAN'T HEAR.

16 THE COURT: A FAILURE TO HEAR, SAY  
17 OBJECTION.

18 MR. TODD: EXCELLENT, YOUR HONOR. I'LL  
19 CITE YOU ON THAT.

20 BY MR. VAN KWAWEGEN:

21 Q. AFTER THE INFORMATION HAS BEEN COLLECTED BY THE  
22 WEBSITE AND IT IS SENT TO THE DVS COMPANY, WHAT HAPPENS  
23 WITH THE INFORMATION?

24 A. THE DVS COMPANIES, DEPENDING ON THE COMPANY,  
25 WILL HAVE SOURCES OF DATA THAT THEY ARE GOING TO CHECK

1 IT AGAINST. IN THE CASE OF ONE COMPANY, THEY HAD  
2 EFFECTIVELY PURCHASED THE USE OF THE DATABASES FOR  
3 THEMSELVES. IN OTHER WORDS, THEY TOLD US THAT THEY HAD  
4 THE DATABASE LOCALLY, THEY DID NOT HAVE TO SEND THE  
5 INFORMATION OUT, THEY COULD JUST CHECK IT AGAINST THE  
6 DATABASE THAT THEY HAD ACCESS TO.

7 MR. TODD: OBJECTION, FOUNDATION.

8 THE COURT: OVERRULED.

9 THE WITNESS: IN THE CASE OF OTHER DVS  
10 COMPANIES, THEY HAD ALSO WORKED WITH THIRD PARTY VENDORS  
11 OF DATABASE INFORMATION. THEY DID NOT WANT TO DISCLOSE  
12 WHO THOSE SOURCES OF DATA WERE, WHICH I THINK WE SAW  
13 TODAY. BUT THEY WERE WILLING TO SAY THAT THEY WERE IN  
14 GENERAL CONSUMER CREDIT REPORTING AGENCIES, GOVERNMENT  
15 RECORDS DATABASES, THINGS OF THAT NATURE. SO THE  
16 INFORMATION WOULD BE SENT OFF SO IT WOULD BE MATCHED UP  
17 AGAINST THESE DATABASES AND THEN COME BACK.

18 Q. DO THESE DATABASES CONTAIN AMERICAN RECORDS?

19 A. YES, THEY DO.

20 MR. TODD: OBJECTION, FOUNDATION.

21 THE COURT: OVERRULED.

22 ANSWER STANDS.

23 BY MR. VAN KWAWEGEN:

24 Q. DO YOU KNOW WHAT RECORDS ARE CONTAINED IN THE  
25 ONLINE DATABASES THAT ARE CONSULTED BY THE DVS



1 COMPANIES?

2 A. WHAT RECORDS ARE CONTAINED? CAN YOU REPHRASE  
3 THE QUESTION, PLEASE.

4 Q. YES.

5 EARLIER YOU EXPLAINED THAT THE DVS  
6 COMPANY AFTER RECEIVING INFORMATION FROM THE WEBSITE  
7 CHECKS THIS INFORMATION AGAINST AN ONLINE DATABASE,  
8 CORRECT?

9 A. CORRECT, YES.

10 Q. WITH REGARD TO THOSE ONLINE DATABASES, DO YOU  
11 KNOW WHAT TYPES OF INFORMATION IS CONTAINED IN THOSE  
12 DATABASES?

13 A. OH, I SEE. YES, IT IS GOING TO BE PERSONAL  
14 INFORMATION ABOUT INDIVIDUALS, SUCH AS YOU KNOW, NAME,  
15 ADDRESS, TELEPHONE NUMBER, POTENTIALLY SOCIAL SECURITY  
16 NUMBER, POSSIBLY DATE OF BIRTH, INFORMATION OF THAT  
17 NATURE.

18 Q. DO YOU KNOW WHETHER THESE SOURCES OR THIS  
19 INFORMATION IS PARTICULAR TO THE UNITED STATES?

20 A. YES, I DO KNOW.

21 Q. HOW DO YOU KNOW THAT?

22 A. BECAUSE WE ASKED ABOUT THAT. IT WAS A BIG ISSUE  
23 FOR US. BEING THAT WEBSITES HAVE AN INTERNATIONAL  
24 AUDIENCE, WE WANTED TO MAKE SURE THAT IF WE WERE USING A  
25 SERVICE THAT IT WAS NOT GOING TO EXCLUDE INDIVIDUALS WHO

1 WERE LOCATED OUTSIDE OF THE UNITED STATES.

2 Q. DO YOU KNOW WHETHER THE DATABASES THAT THE DVS  
3 COMPANY USES TO CHECK THE INFORMATION CONTAIN FOREIGN  
4 RECORDS?

5 A. THEY DID NOT CONTAIN FOREIGN RECORDS.

6 Q. DO YOU KNOW WHETHER THE ONLINE DATABASES USED BY  
7 DVS COMPANIES TO CHECK THE INFORMATION CONTAINED  
8 INFORMATION THAT WOULD COVER ALL AMERICAN CITIZENS?

9 A. THE INFORMATION DID NOT COVER ALL AMERICAN  
10 CITIZENS.

11 Q. DO YOU KNOW WHETHER THE INFORMATION IN THE  
12 ONLINE DATABASES COVERED ALL AMERICAN ADULTS?

13 A. THE INFORMATION DID NOT COVER ALL AMERICAN  
14 ADULTS.

15 Q. WHY NOT?

16 A. WELL, THERE WERE A NUMBER OF DIFFERENT  
17 POSSIBILITIES. ONE, FOR EXAMPLE, WOULD BE THAT BECAUSE  
18 THEY WERE RELYING ON PUBLIC RECORDS, CONSUMER REPORTING  
19 AGENCIES, GOVERNMENT RECORDS, ET CETERA, THERE ARE  
20 POSSIBLE SCENARIOS UNDER WHICH AN INDIVIDUAL -- AND THIS  
21 WOULD BE MORE LIKELY WITH SOMEBODY WHO WAS YOUNGER,  
22 SOMEBODY 18, 19 YEARS OLD, JUST DID NOT DO WHATEVER IT  
23 IS THAT THEY NEEDED TO DO IN ORDER FOR A PUBLIC RECORD  
24 TO EXIST. MAYBE THEY DID NOT GET A DRIVER'S LICENSE.  
25 MAYBE THEY DID NOT APPLY FOR A CREDIT CARD. SO IN CASES

1        LIKE THAT, THERE JUST IS NO PUBLIC RECORD AVAILABLE FOR  
2        THOSE PEOPLE AND NO WAY FOR THE DVS COMPANY TO ACTUALLY  
3        DO A MATCH.

4                                THERE WERE OTHER POSSIBLE SCENARIOS AS  
5        WELL. IT COULD BE THAT THE INDIVIDUAL WAS RECENTLY  
6        MARRIED AND THEIR NAME WAS CHANGED AND THE RECORDS JUST  
7        WERE NOT MATCHING. A PERSON WAS PUTTING IN THEIR  
8        INFORMATION, IT WAS NOT COMING BACK WITH A MATCH. IT IS  
9        POSSIBLE THAT THE INDIVIDUAL HAD RECENTLY MOVED, THAT  
10       THEIR ADDRESS HAD CHANGED OR THEY HAD MORE THAN ONE  
11       ADDRESS, ONE FOR WHICH THERE WAS A MATCH, ANOTHER FOR  
12       WHICH THERE WAS NOT. THERE WERE A FEW POSSIBILITIES.

13        Q.            DID THE ONLINE DATABASES COVER EVERYONE WHO  
14        LIVES IN THE UNITED STATES?

15        A.            NO, THEY DO NOT.

16        Q.            HOW DO YOU KNOW THAT?

17        A.            THE DVS COMPANIES TOLD US. THIS WAS SOMETHING  
18        THAT, AGAIN, WE WERE VERY CONCERNED WITH. WHEN YOU ARE  
19        TALKING ABOUT HIGH VOLUME WEBSITES WHICH OFTEN -- BY  
20        THAT I MEAN, I SHOULD EXPLAIN, A LOT OF PEOPLE VISITING  
21        THE WEBSITE ON A DAILY BASIS. WHEN YOU HAVE THAT MANY  
22        PEOPLE COMING THROUGH YOU WANT TO BE AS INCLUSIVE AS  
23        POSSIBLE. TO THE EXTENT THAT THIS TECHNOLOGY WAS GOING  
24        TO MEAN THAT WE HAD TO SEND AWAY A LARGE PERCENTAGE OF  
25        THE POPULATION, JUST TURN THEM AWAY AND SAY YOU KNOW

1           WHAT, WE CAN'T DEAL WITH YOU, THAT WAS A VERY SERIOUS  
2           PROBLEM FOR US.

3                           MR. TODD:  OBJECTION, FOUNDATION, LARGE  
4           PERCENTAGE.  THERE IS NO TESTIMONY ABOUT PERCENTAGE YET.  
5           MOVE TO STRIKE.

6                           THE COURT:  SUSTAINED.  CURE IT IF YOU  
7           WANT TO.

8           BY MR. VAN KWAWEGEN:

9           Q.           DO YOU KNOW PERCENTAGE-WISE HOW MANY PEOPLE  
10          WOULD BE TURNED AWAY, IN YOUR WORDS, BECAUSE THEIR  
11          INFORMATION WOULD NOT BE -- BECAUSE THE DVS COMPANY  
12          WOULD NOT BE ABLE TO CHECK THEIR INFORMATION AGAINST THE  
13          ONLINE DATABASES?

14          A.           I DON'T HAVE A NUMBER PERCENTAGE IN MIND.  I  
15          UNDERSTAND WHAT HE IS SAYING.  IT WAS A VAGUE TERM.  
16          WHAT I MEANT BY THAT, IF I CAN CLARIFY, IS THAT THERE  
17          WAS GOING TO BE, IN OUR MIND, ENOUGH PEOPLE TURNED AWAY  
18          THAT I WOULD CONSIDER THAT A LARGE AMOUNT.  IN OTHER  
19          WORDS, WE WERE DEFINITELY UNDER THE IMPRESSION AFTER  
20          EVALUATING THESE TECHNOLOGIES THAT FIRST AND FOREMOST WE  
21          WERE GOING TO HAVE TO SEND AWAY ALL VISITORS WHO CAME  
22          FROM OVERSEAS WHO DID NOT HAVE AMERICAN RECORDS.  WE  
23          WERE GOING TO HAVE TO SEND AWAY ALL VISITORS WHERE WE  
24          COULD NOT GET A MATCH.  THAT WAS -- WHATEVER THAT  
25          PERCENTAGE IS, WE KNOW IT TO BE LARGE ENOUGH TO WHERE

1 THESE TECHNOLOGIES WERE NOT GOING TO WORK.

2 Q. GENERALLY SPEAKING, WHAT ARE THE POSSIBLE  
3 RESPONSES FROM THE DVS COMPANY TO THE WEBSITE FOLLOWING  
4 THE VERIFICATION OF THE PROVIDED DATA AGAINST AN ONLINE  
5 DATABASE?

6 A. THE POSSIBLE RESPONSES WOULD BE EITHER WE HAVE A  
7 MATCH FOR THIS DATA AND IT MATCHES THAT OF AN ADULT IN  
8 OUR RECORDS, WE HAVE A MATCH FOR THIS DATA AND IT  
9 MATCHES THAT OF A KNOWN CHILD IN OUR RECORDS, OR WE MAY  
10 HAVE A MATCH, WE WANT MORE INFORMATION FROM YOU, LET'S  
11 GET MORE INFORMATION, RUN ANOTHER CHECK, OR WE JUST  
12 CAN'T MATCH THIS DATA.

13 Q. IF THE DVS COMPANY CANNOT CONFIRM ANY OF THE  
14 PROVIDED DATA, WILL A CUSTOMER TO THE WEBSITE WHO IS  
15 JUST INFORMED THAT THE DVS COMPANY CANNOT CONFIRM THIS  
16 DATA, WILL THAT CUSTOMER BE PERMITTED ACCESS TO WHATEVER  
17 IT IS THAT THEY TRIED TO PURCHASE?

18 MR. TODD: OBJECTION. CALLS FOR  
19 SPECULATION.

20 MR. VAN KWAWEGEN: I CAN REPHRASE, YOUR  
21 HONOR.

22 THE COURT: OBJECTION SUSTAINED.

23 BY MR. VAN KWAWEGEN:

24 Q. AFTER THE DVS COMPANY REPORTS THE RESULTS OF THE  
25 VERIFICATION TO THE WEBSITE, WHO DECIDES WHETHER A

1 VISITOR OF THAT WEBSITE IS PERMITTED ACCESS TO CONTENT?

2 A. WELL, THE WEBMASTER WOULD BECAUSE THE DVS  
3 COMPANY IS SIMPLY RUNNING A CHECK. THEY ARE NOT TRYING  
4 TO TELL THE WEBSITE OWNER WHAT TO DO AFTER THEY PROVIDE  
5 YOU WITH THE INFORMATION. SO IT WAS MADE VERY CLEAR TO  
6 US THAT EVEN IF THEY WERE TO COME BACK AND SAY, THIS  
7 DATA MATCHES THAT OF A KNOWN ADULT, YOU CAN LET THEM IN.  
8 IF THEY CAME BACK AND SAID THIS DATA MATCHES THAT OF A  
9 KNOWN CHILD, WE COULD STILL LET THEM IN. OBVIOUSLY,  
10 VERY FEW PEOPLE WOULD DO THAT OR OTHERWISE WHY USE THE  
11 SERVER. WHERE IT COMES INTO PLAY IS WHERE THEY CAN'T  
12 MAKE A DATA MATCH, OR MAYBE, WE HAVE A PARTIAL MATCH BUT  
13 WE DON'T REALLY KNOW IF THIS IS A COMPLETE MATCH OR NOT.  
14 AT THAT POINT THE WEBMASTER HAS TO MAKE A DECISION. AM  
15 I GOING TO LET THIS PERSON IN OR GOING TO SAY, WE CAN'T  
16 MATCH YOU FULLY, WE CAN'T LET YOU IN. BUT IN ALL CASES,  
17 NO MATTER WHAT THE INFORMATION IS PROVIDED BACK, IT'S  
18 STILL GOING TO BE UP TO THE WEBSITE OWNER TO DECIDE  
19 WHETHER OR NOT TO LET THE PERSON IN OR NOT.

20 Q. LET'S DISCUSS THE SITUATION WHERE A VISITOR HAS  
21 COME TO A WEBSITE, HE OR SHE HAS ENTERED THE REQUESTED  
22 PERSONAL INFORMATION, THE INFORMATION WAS SENT TO THE  
23 DVS COMPANY AND THE DVS COMPANY WAS ABLE TO CONFIRM HIS  
24 DATA AGAINST AN ONLINE DATABASE. DO YOU KNOW WHETHER  
25 THE OPERATOR OF THE WEBSITE KNOWS WHETHER THE VISITOR

1 WHO PROVIDED THAT INFORMATION IS AN ADULT?

2 A. YES, I KNOW AND NO, THE OPERATOR OF THE WEBSITE  
3 WOULD NOT KNOW IF THE PERSON WHO PROVIDED THE  
4 INFORMATION WAS AN ADULT OR NOT.

5 Q. HOW DO YOU KNOW?

6 A. JUST BECAUSE AN INDIVIDUAL CAN ENTER VALID  
7 INFORMATION OF AN ADULT INTO AN ONLINE FORM DOES NOT  
8 MEAN THAT THE PERSON WHO ENTERED THAT INFORMATION IS AN  
9 ADULT HIMSELF OR HERSELF. IT'S THE SAME THING. WE ARE  
10 NOT IN AN ENVIRONMENT WHERE YOU ARE ACTUALLY SEEING THE  
11 PERSON ACTUALLY HANDING YOU AN ID, ACTUALLY BEING ABLE  
12 TO COMPARE SIGNATURES. IT'S AN ONLINE ENVIRONMENT.  
13 THERE IS JUST NO WAY TO KNOW.

14 Q. IF A CHILD USES THE INFORMATION OF ONE OF HIS OR  
15 HER PARENTS TO ACCESS AN ADULT WEBSITE THAT EMPLOYS THE  
16 DVS SERVICE, DOES THE DVS SERVICE REPORT BACK TO THE  
17 PARENT THAT HIS OR HER INFORMATION WAS USED?

18 A. THEY DO NOT, NO.

19 Q. WOULD YOU TURN TO PLAINTIFFS' EXHIBIT 80 BEHIND  
20 TAB 9 OF THE BINDER, PLEASE?

21 A. OKAY.

22 Q. MR. RUSSO, DO YOU RECOGNIZE THIS DOCUMENT?

23 A. YES, I DO.

24 Q. WOULD YOU EXPLAIN TO THE COURT WHAT IT IS?

25 A. THIS IS A DOCUMENT THAT WAS CREATED BY ANOTHER

1 ONE OF THE DVS COMPANIES THAT GOES OVER THE PRICING THAT  
2 THEY CHARGE FOR THEIR DIFFERENT SERVICES.

3 Q. DID YOU CONSIDER THIS DOCUMENT IN FORMING YOUR  
4 OPINIONS THAT ARE STATED IN YOUR EXPERT REPORT AND YOUR  
5 TESTIMONY TODAY?

6 A. YES, I DID.

7 THE COURT: KEEP YOUR VOICE UP PLEASE,  
8 COUNSEL.

9 BY MR. VAN KWAWEGEN:

10 Q. PLEASE TURN TO PAGE 1 OF THIS DOCUMENT.

11 A. OKAY, I'M THERE.

12 Q. TO THE BOTTOM OF THE PAGE, PLEASE.

13 A. OKAY.

14 Q. DO YOU SEE WHERE IT SAYS PER ITEM FEE?

15 A. YES, I DO.

16 Q. UNDERNEATH IT SAYS 42 CENTS?

17 A. YES, I SEE THAT.

18 Q. WHAT DO YOU UNDERSTAND THAT TO MEAN?

19 MR. TODD: OBJECTION, HEARSAY.

20 THE COURT: WHAT IS GOING TO BE THE  
21 HISTORY OF THIS DOCUMENT? IS IT GOING TO GO INTO  
22 EVIDENCE OR ISN'T IT, COUNSEL? DO YOU EXPECT TO PUT IT  
23 IN EVIDENCE OR NOT?

24 MR. VAN KWAWEGEN: YOUR HONOR, SIMILAR TO  
25 THE PREVIOUS DOCUMENT, WE EXPECT THAT THE AUTHENTICATION



1 OBJECTION, IF THERE IS ANY, WILL BE CURED BY ONE OF THE  
2 DEFENDANT'S WITNESSES THAT ACTUALLY PRODUCED THIS  
3 DOCUMENT. SO WE DO EXPECT TO MOVE IT INTO EVIDENCE AT A  
4 FUTURE POINT.

5 THE COURT: WHEN THAT DEPOSITION IS  
6 OFFERED?

7 MR. VAN KWAWEGEN: IT IS ACTUALLY LIVE  
8 TESTIMONY HERE BEFORE YOU, YOUR HONOR.

9 THE COURT: YOU EXPECT TO OFFER IT AS A  
10 BUSINESS RECORD?

11 MR. VAN KWAWEGEN: YES, YOUR HONOR.

12 THE COURT: SUBJECT TO BEING TIED IN  
13 LATER WITH ANOTHER WITNESS, THE OBJECTION IS OVERRULED.

14 THE WITNESS: AS IT WAS EXPLAINED TO US  
15 BY THE DVS COMPANIES, THERE ARE PER TRANSACTION FEES  
16 THAT ARE GOING TO BE CHARGED TO THE WEBSITE OWNER WHO'S  
17 USING THEIR SERVICE. EVERY TIME THE WEBSITE OWNER HAS A  
18 DATA CHECK INITIATED ON HIS BEHALF OR HER BEHALF, A PER  
19 TRANSACTION FEE WILL BE CHARGED. THAT IS HOW THE DVS  
20 COMPANY IS PRIMARILY MAKING ITS MONEY. ON THIS DOCUMENT  
21 THEY ARE BREAKING DOWN COSTS DEPENDING ON THE TYPE OF  
22 CHECK THAT YOU ARE GOING TO RUN. NOT ALL CHECKS COSTS  
23 THE SAME AMOUNT. THERE ARE THREE OF THEM. DID YOU WANT  
24 ME TO GO THROUGH THEM?  
25 BY MR. VAN KWAWEGEN:

1 Q. PLEASE DO.

2 A. THE FIRST IS A BASIC NAME AND ADDRESS CHECK.  
3 THEY ARE LISTING THAT AT 42 CENTS PER CHECK. THE SECOND  
4 IS THE HOME AND ADDRESS AND THEN YOU ARE INCLUDING THE  
5 LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER AS WELL.  
6 THEY LOWERED THAT TO 37 CENTS. THE REASON WHY THAT  
7 WOULD BE LOWER TO MY UNDERSTANDING IS THAT --

8 MR. TODD: OBJECTION, YOUR HONOR, THE  
9 DOCUMENT --

10 THE COURT: SUSTAINED.

11 MR. TODD: -- IS MARKED CONFIDENTIAL AND  
12 WE CAN'T TELL -- WE HAVE NOT GIVEN NOTICE AS TO WHETHER  
13 OR NOT THE CONFIDENTIALITY OBJECTION HAS BEEN RESOLVED  
14 AND SO PENDING NOTICE ABOUT THE RESOLUTION WE MOVE TO  
15 STRIKE ALL TESTIMONY ABOUT THIS DOCUMENT.

16 THE COURT: IT IS AN INTERESTING TIME TO  
17 DO IT, BUT HAVE THE PLAINTIFFS RESOLVED CONFIDENTIALITY  
18 ISSUES ON THE RESPECTIVE TESTIMONY OF THE WITNESS THAT  
19 IS SUPPOSED TO IDENTIFY ID LIVE -- EXHIBIT 80 AS A  
20 BUSINESS RECORD? ANY OF THOSE CONFIDENTIALITY ISSUES  
21 BEEN RAISED OR RESOLVED? WHAT IS THE STATUS OF IT?

22 MR. VAN KWAWEGEN: YOUR HONOR, IT IS MY  
23 UNDERSTANDING THAT IT WAS RESOLVED. I WILL CONFIRM THAT  
24 WITH YOUR HONOR. HOWEVER, IT IS ACTUALLY ONE OF  
25 DEFENDANT'S WITNESSES WHO WILL BE TESTIFYING AT THAT

1 POINT IN TIME. SO I CAN'T TALK ABOUT THE  
2 CONFIDENTIALITY OF ANY ISSUES THAT HE WILL RAISE AT THE  
3 TIME.

4 THE COURT: IS COUNSEL AWARE OF ANY, HAVE  
5 YOU BEEN PUT ON NOTICE OF ANY BY THE PURPORTED WITNESS?

6 MR. HIRT: IF I MAY SPEAK, AS FAR AS I  
7 KNOW WE HAVE NOT RECEIVED ANY NOTICE FROM EITHER  
8 PLAINTIFFS' COUNSEL OR THE WITNESS TO THIS EFFECT. SO I  
9 DON'T THINK THAT IT IS REALLY A RESPONSE FOR COUNSEL FOR  
10 PLAINTIFF TO SAY THAT TWO WEEKS FROM NOW WE WOULD  
11 RESOLVE THIS ISSUE. THIS IS THE TIME THEY ARE BRINGING  
12 THIS EVIDENCE INTO THE COURT. I DON'T THINK IT'S OUR  
13 OBLIGATION TO TRY TO DO THIS IN ANTICIPATION.

14 THE COURT: I MUST SAY I HAVE NEVER HEARD  
15 OF A DEFENDANT IN A CIVIL CASE THAT IS GOING TO OFFER A  
16 DOCUMENT, OBJECT WHEN THE PLAINTIFF USES THE DOCUMENT.

17 MR. HIRT: YOUR HONOR, TO CLARIFY, YOUR  
18 HONOR, WE HAVE NOT SAID YET THAT WE ARE GOING TO USE  
19 THIS DOCUMENT. I THINK MAYBE COUNSEL FOR PLAINTIFF IS  
20 JUMPING TO THAT CONCLUSION. I DON'T CHALLENGE THAT HE  
21 MAY THINK THAT, BUT I THINK IT IS AN ASSUMPTION ON HIS  
22 PART WHICH HAS NOT BEEN CONFIRMED. SO I THINK  
23 COUNSEL --

24 THE COURT: WELL, I DON'T WANT YOU TO BE  
25 COY. ARE YOU GOING TO CALL THIS WITNESS OR AREN'T YOU?

1 MR. HIRT: YES, WE WILL CALL THE WITNESS.

2 THE COURT: OBJECTION IS OVERRULED,  
3 SUBJECT TO BE TIED IN LATER. IF THE PLAINTIFF WANTS TO  
4 TAKE THE CHANCE THAT YOU'RE NOT GOING TO COVER IT, OR HE  
5 CAN'T PROPERLY GET IT OUT OF THE WITNESS ON CROSS  
6 EXAMINATION, THAT IS -- THE BURDEN IS ON THE PLAINTIFF.  
7 THEN YOU CAN MOVE TO STRIKE IT OUT.

8 MR. HIRT: THE PROBLEM I CAN SEE IF I CAN  
9 BE HEARD ONE MORE SECOND ON THIS, IS THAT THIS IS A  
10 REPLAY OF THE ISSUE WE HAD WITH CHOICEPOINT. THIS IS A  
11 DOCUMENT THAT WAS MARKED CONFIDENTIAL DURING THE  
12 DEPOSITION THAT PLAINTIFFS TOOK. AND THEY ARE NOW USING  
13 THIS DOCUMENT WITH THIS WITNESS AND HAVING HIM RECITE  
14 FROM THE DOCUMENT BUT WE HAVE NOT, AS FAR AS I KNOW MADE  
15 A DECISION ABOUT USING THIS SPECIFIC DOCUMENT IN OUR  
16 CASE SO THE PLAINTIFFS HAVE ACCELERATED THIS PROBLEM  
17 PREMATURELY AT LEAST IN MY VIEW UNLESS COUNSEL CAN  
18 STRAIGHTEN IT OUT, WHICH I INVITE HIM TO DO.

19 THE COURT: I THINK YOU ARE ALL CREATING  
20 A CONUNDRUM THAT SHOULDN'T EXIST.

21 MR. VAN KWAWEGEN: I JUST CONFERRED WITH  
22 MY COLLEAGUES. WE SENT A LETTER TO THE THIRD PARTY THAT  
23 ACTUALLY PRODUCED THIS DOCUMENT IN DISCOVERY, AND THE  
24 NOTICE PERIOD TO OBJECT TO THE USE OF THIS DOCUMENT HAS  
25 EXPIRED UNDER THE TERMS OF THE PROTECTIVE ORDER THAT

1 GOVERNS IN THIS CASE.

2 THE COURT: DO YOU NEED ANY MORE  
3 INFORMATION TO -- THE DATE THEY SENT THE LETTER?

4 MR. HIRT: WE HAVE NOT BEEN GETTING  
5 COPIES OF THESE LETTERS, WHICH I THINK IS UNFORTUNATE TO  
6 SAY THE LEAST. WE SHOULD BE COPIED ON THESE LETTERS SO  
7 WE ARE NOT CAUGHT BY SURPRISE. HAVE WE BEEN GETTING  
8 THEM? I GUESS I WOULD RECOMMEND THAT THEY TENDER THEM  
9 TO US TO MAKE SURE IF THE PAPERWORK HAS BEEN LOST.

10 THE COURT: PROBABLY A GOOD IDEA, BUT IT  
11 IS PROBABLY NOT REQUIRED.

12 MR. HIRT: I WOULD LIKE THIS CLARIFIED  
13 BEFORE A CONFIDENTIAL DOCUMENT IS USED.

14 MR. HARRIS: WE SENT COPIES OF ALL OF  
15 THEM TO DEFENDANTS. WE ARE HAPPY TO SEND THEM  
16 ADDITIONAL COPIES.

17 THE COURT: DON'T SEND THEM ANYTHING  
18 THAT YOU ALREADY SENT. IT IS UP TO THEM TO READ THEIR  
19 MAIL.

20 MR. HARRIS: YES, YOUR HONOR.

21 MR. HIRT: I WOULD RECOMMEND THAT  
22 WHENEVER WE HAVE THIS PROBLEM THAT THE TENDERING PARTY  
23 JUST GO THROUGH THAT SO EVERYONE IS ON THE SAME PAGE,  
24 MAYBE I WILL AVOID BEING EMBARRASSED THIS WAY.

25 THE COURT: DON'T WORRY ABOUT BEING

1 EMBARRASSED. I'M NOT.

2 MR. VAN KWAWEGEN: THERE IS A LARGE  
3 NUMBER OF PEOPLE ON YOUR TEAM AND SOMEBODY HAS IT.

4 MR. HIRT: I DON'T KNOW THAT FOR SURE,  
5 WITH ALL DUE RESPECT.

6 THE COURT: I DON'T KNOW WHAT YOU MEAN BY  
7 WHAT YOU JUST SAID. I EXPECT WHEN A WITNESS IS CALLED  
8 THAT COUNSEL WILL INFORM THE OTHER SIDE FROM THE PODIUM  
9 SOME OF MY QUESTIONS ARE GOING TO HAVE TO DO WITH THE  
10 CONFIDENTIAL DOCUMENTS THAT HAVE BEEN CLEARED BY A  
11 FAILURE OF THE DEPONENT TO OBJECT WITHIN THE FIVE DAYS  
12 OR WHATEVER IT WAS.

13 MR. HIRT: THAT IS ALL I WOULD ASK.

14 THE COURT: IT'S BETTER TO BE POLITE.

15 THE OBJECTION ON THE GROUNDS OF WHATEVER  
16 SOMEONE SHOULD -- FURTHER GROUNDS WERE AND THE COMMENTS  
17 OF THE COURT IS OVERRULED. COUNSEL MAY USE THE DOCUMENT  
18 P 80 AT PAGE 1.

19 BY MR. VAN KWAWEGEN:

20 Q. TURNING TO THE BOTTOM --

21 THE COURT: I THINK YOU WERE IN  
22 MIDSTREAM, WITNESS.

23 THE WITNESS: YES, I WAS EXPLAINING THAT  
24 THE --

25 MR. VAN KWAWEGEN: MAYBE I SHOULD

1           REPHRASE THE QUESTION SO WE CAN MOVE ON.

2                           THE WITNESS:   SURE, GO AHEAD.

3           BY MR. VAN KWAWEGEN:

4           Q.           IF YOU GO TO THE BOTTOM OF THE PAGE, DO YOU SEE  
5           WHERE IT SAYS PER ITEM FEE?

6           A.           YES, I DO.

7           Q.           AND I BELIEVE THAT YOU WERE EXPLAINING WHAT THE  
8           42 CENTS MEANS TO YOU.

9           A.           RIGHT.

10          Q.           PLEASE EXPLAIN.

11          A.           YES.  IN THIS CASE, THE DVS COMPANIES WOULD BE  
12          CHARGING A PER TRANSACTION FEE EVERY TIME YOU RAN A DATA  
13          CHECK.  IN THIS PARTICULAR DOCUMENT THEY ARE LINING THAT  
14          UP WITH A CHECK WHERE YOU ARE ASKING FOR NAME AND  
15          ADDRESS ONLY.  THAT IS GOING TO RUN AT 42 CENTS PER  
16          CHECK ACCORDING TO THIS DOCUMENT.  THE NEXT LINE, AT 37  
17          CENTS, IS MATCHING UP WITH NAME, ADDRESS AND LAST FOUR  
18          SOCIAL SECURITY NUMBERS.  DVS COMPANIES WERE VERY  
19          ADAMANT TO US THAT ADDING IN THIS INFORMATION, THE  
20          SOCIAL SECURITY NUMBER INFORMATION, WAS GOING TO GREATLY  
21          INCREASE THE CHANCE THAT THEY WERE GOING TO BE ABLE TO  
22          FIND A CHECK.  IN OTHER WORDS, IF YOU JUST PUT NAME AND  
23          ADDRESS, JOHN SMITH ON ELM STREET, THERE MIGHT BE SO  
24          MANY -- THEY MIGHT NOT BE ABLE TO MATCH THAT AS EASILY  
25          AS IF THEY ACTUALLY HAD SOCIAL SECURITY NUMBER.  IF IT

1 IS EASIER FOR THEM, THE PRICE GOES DOWN. THE THIRD IS  
2 NAME, ADDRESS, DATE OF BIRTH. SIMILARLY DATE OF BIRTH  
3 INCREASES THE LIKELIHOOD OF A MATCH, SO WE HAVE THAT AT  
4 37 CENTS.

5 Q. TURN TO PAGE 2, PLEASE. PLAINTIFFS 80.

6 A. YES.

7 Q. THE TOP PART OF THE PAGE AGAIN SAYS PER ITEM  
8 FEE, AND THEN TWO LINES DOWN IT SAYS 97 CENTS. WHAT DO  
9 YOU UNDERSTAND THAT TO MEAN?

10 A. IN THIS CASE THIS PARTICULAR CHECK HAS AN ADDED  
11 ELEMENT TO IT. THERE IS AN EXTRA ELEMENT WHERE, IN  
12 ADDITION TO SUPPLYING DATA, THEY CAN ASK CHALLENGE  
13 QUESTIONS. SO THEY CAN ASK YOU LIKE, OKAY, WHAT COLOR  
14 IS YOUR CAR OR WHAT FORMER ADDRESS DID YOU LIVE ON, TO  
15 TRY TO HELP INCREASE THE CHANCES THAT THE PERSON  
16 SUPPLYING THE DATA IS IN FACT THE PERSON THAT THE DATA  
17 REPRESENTS. THEY ARE CHARGING AN ADDITIONAL FEE FOR  
18 THAT SERVICE HERE. SO THAT IS GOING UP TO 97 CENTS PER  
19 TRANSACTION.

20 Q. COULD YOU TURN TO THE NEXT PAGE, PLEASE, PAGE 3  
21 OF PLAINTIFFS' EXHIBIT 80. AT THE TOP OF THE PAGE, TOP  
22 RIGHT CORNER IT SAYS \$195. DO YOU SEE THAT?

23 A. YES, I DO.

24 Q. WHAT DOES THAT MEAN TO YOU?

25 A. WELL, IT MEANS TO ME THAT DVS COMPANIES WILL



1 CHARGE A FEE IN ADDITION TO PER TRANSACTION FEES FOR  
2 GETTING SET UP. SO HERE THEY ARE LISTING ONE OF THE  
3 FEES THAT WOULD BE CHARGED IN THE PROCESS OF SETTING  
4 THIS WHOLE SERVICE UP AND GETTING READY TO UTILIZE IT.

5 Q. DO YOU KNOW WHAT FEE THAT IS?

6 A. I DON'T RECALL THE FEE THAT THEY SPECIFICALLY  
7 TOLD -- GAVE US, SO I ONLY HAVE IN TERMS OF EXACT  
8 NUMBERS WHAT YOU HAVE HERE ON THIS DOCUMENT, \$195.

9 Q. DO YOU KNOW WHAT THIS FEE WAS CHARGED FOR?

10 A. AGAIN, MY UNDERSTANDING IS THAT THERE ARE SETUP  
11 FEES. IN TERMS OF BEYOND THAT IF THIS FEE INCLUDES  
12 ANYTHING BEYOND JUST GENERAL SETUP, THAT I DON'T KNOW.

13 Q. DURING THE DISCUSSIONS IN YOUR ANALYSIS OF DVS  
14 COMPANIES IN THE SUMMER OF 2005, WERE YOU DISCUSSING A  
15 SETUP FEE AT THAT TIME?

16 A. YES. WE DID DISCUSS SETUP FEES AT THAT TIME.

17 Q. WHAT WAS THE RANGE? DO YOU RECALL WHAT THE  
18 SETUP FEES WERE THAT THE DVS COMPANIES WERE PROPOSING TO  
19 CHARGE?

20 A. JUST A GENERAL IDEA OF, IT WAS IN THE RANGE OF  
21 HUNDREDS.

22 Q. HUNDREDS OF?

23 A. HUNDREDS OF DOLLARS, I'M SORRY.

24 Q. THANK YOU.

25 WOULD YOU PLEASE TURN TO PLAINTIFFS'

1 EXHIBIT 75, PLEASE. THAT IS BEHIND TAB 4.

2 MR. VAN KWAWEGEN: FOR THE DEFENDANT, WE  
3 BELIEVE THAT THIS IS A CONFIDENTIAL DOCUMENT AND THAT  
4 THE NOTICE PERIOD HAS EXPIRED SO THE FIVE DAYS IN WHICH  
5 ID RESPONSE COULD OBJECT TO THE USE OF THIS DOCUMENT HAS  
6 EXPIRED.

7 THE COURT: YOU LEFT OUT ONE THING. HAVE  
8 YOU OR ANY REPRESENTATIVES OF YOUR CLIENT RECEIVED  
9 NOTICE FROM THE OWNER OF THE CONFIDENTIAL DATA?

10 MR. VAN KWAWEGEN: NO, YOUR HONOR. WE  
11 HAVE SENT A LETTER. WE HAVE NOT RECEIVED ANY NOTICE.

12 THE COURT: THAT IS KIND OF A PART OF  
13 WHAT YOU HAVE TO PUT ON THE RECORD.

14 MR. VAN KWAWEGEN: THANK YOU, YOUR HONOR.  
15 BY MR. VAN KWAWEGEN:

16 Q. TURNING TO PLAINTIFFS' EXHIBIT 75, WOULD YOU  
17 TURN TO THE LAST PAGE, PLEASE -- FIRST, BEFORE WE DO  
18 THAT, DESCRIBE THIS DOCUMENT TO THE COURT, PLEASE.

19 A. THIS DOCUMENT IS JUST A GENERAL APPLICATION THAT  
20 THE WEBMASTER IN THIS CASE WOULD USE WHEN APPLYING FOR  
21 THIS SERVICE. IT IS THE FIRST STEP WHERE YOU ARE  
22 UNDERSTANDING WHAT INFORMATION YOU HAVE TO SUPPLY THEM  
23 WITH IN ORDER TO SET UP THE SERVICE.

24 Q. DID YOU CONSIDER THIS DOCUMENT IN FORMING THE  
25 OPINIONS STATED IN YOUR EXPERT REPORT AND YOUR TESTIMONY

1 TODAY?

2 A. YES, I DID CONSIDER IT.

3 Q. COULD YOU TURN TO THE LAST PAGE, PLEASE. I

4 BELIEVE THAT IS PAGE 8.

5 A. YES, I'M ON PAGE 8.

6 Q. DO YOU SEE WHERE IT SAYS ONE TIME SETUP FEE?

7 A. YES, I DO.

8 Q. DO YOU SEE WHERE IT SAYS \$295?

9 A. YES, I DO.

10 Q. WHAT DOES THAT SIGNIFY TO YOU?

11 A. AGAIN, THIS IS SIMILAR TO THE SETUP FEE THAT WAS

12 GOING TO BE CHARGED BY THE OTHER DVS COMPANY. THIS IS

13 SOMETHING THAT WOULD BE CHARGED ONE TIME WHEN YOU ARE

14 GETTING READY TO GET STARTED.

15 Q. TWO LINES DOWN IT SAYS AGE, AND THEN BETWEEN

16 PARENTHESES, AGE AND ADDRESS VERIFICATION PLUS IDR CALC

17 AND THEN COPYRIGHT SYMBOL, CLOSE PARENTHESES, 50 CENTS

18 PER TRANSACTION. DO YOU SEE THAT?

19 A. YES, I DO.

20 Q. WHAT DOES THAT MEAN TO YOU?

21 A. THIS IS THE PER TRANSACTION RATE THAT THEY ARE

22 GOING TO BE CHARGING UNDER THESE CIRCUMSTANCES WHEN YOU

23 ARE ASKING FOR -- WHEN YOU ARE SUPPLYING THE AGE AND

24 ADDRESS AND USING THEIR IDR CALC SERVICE.

25 Q. AND THREE LINES DOWN IT SAYS 4 D. DO YOU SEE

1 THAT LINE?

2 A. 4 D. YES, I DO.

3 Q. AND THEN AT THE END OF THAT LINE IT SAYS 85  
4 CENTS PER TRANSACTION. DO YOU SEE THAT?

5 A. YES, I DO.

6 Q. WHAT DOES THAT MEAN TO YOU?

7 A. AGAIN, IN THIS CASE, YOU ARE LOOKING FOR AGE AND  
8 ADDRESS VERIFICATION. THEY ARE GOING TO CHARGE YOU 85  
9 CENTS PER TRANSACTION. HOWEVER, IN THIS CASE THEY ARE  
10 ALSO ADDING IN FOUR CHALLENGE QUESTIONS SO-TO-SPEAK  
11 WHERE THEY CAN ASK YOU CERTAIN QUESTIONS TO TRY TO HELP  
12 IDENTIFY THAT YOU ARE WHO YOU SAY YOU ARE.

13 Q. BASED ON YOUR RESEARCH AND YOUR EXPERIENCE WITH  
14 DVS SYSTEMS, HAVE YOU REACHED ANY OPINION REGARDING THE  
15 USE OF DVS SERVICES TO VERIFY AGE ONLINE?

16 A. YES, I HAVE.

17 Q. WHAT IS YOUR OPINION IN THIS REGARD?

18 A. MY OPINION IS THAT THEY WOULD NOT BE A SOLUTION  
19 FOR WEBSITES THAT ARE -- SPECIFICALLY FROM MY INDUSTRY,  
20 FOR THE ADULT ENTERTAINMENT INDUSTRY, THAT THEY DON'T  
21 ACTUALLY VERIFY AGE, THEY VERIFY DATA, THAT THEY ARE  
22 BURDENSOMELY EXPENSIVE IN A LOT OF CASES AND THAT THEY  
23 ARE NOT NEARLY INCLUSIVE ENOUGH. THEY DON'T INCLUDE  
24 ENOUGH INDIVIDUALS IN ORDER TO -- THAT WOULD MAKE THEM  
25 SOMETHING THAT MOST WEBSITE OPERATORS WOULD BE

1 INTERESTED IN.

2 THE COURT: EXCUSE ME, MEANING THE NUMBER  
3 OF PEOPLE IN THEIR DATABASE?

4 THE WITNESS: WHAT I MEAN BY THAT IS  
5 EXACTLY THAT. OF THE CUSTOMERS WHO ARE VISITING THE  
6 WEBSITE OR THE VISITORS, TOO MANY OF THEM WOULD HAVE TO  
7 HAVE TO BE TURNED AWAY. THEY WOULD NOT BE ABLE TO MATCH  
8 THOSE INDIVIDUALS FOR A VARIETY OF REASONS.

9 THE COURT: THANK YOU.

10 BY MR. VAN KWAWEGEN:

11 Q. I WOULD LIKE TO BRIEFLY DISCUSS THE ADULT  
12 CONTENT ON THE INTERNET ORIGINATING FROM OVERSEAS.

13 A. OKAY.

14 Q. IS THE ADULT CONTENT THAT ORIGINATES FROM  
15 OVERSEAS SIMILAR OR DIFFERENT TO THE CONTENT THAT  
16 ORIGINATES IN THE UNITED STATES?

17 MR. TODD: OBJECTION, CALLS FOR  
18 SPECULATION.

19 THE COURT: THERE MAY BE A FOUNDATION IN  
20 THERE SOMEWHERE, BUT WE HAVE NOT HEARD IT YET.  
21 SUSTAINED.

22 BY MR. VAN KWAWEGEN:

23 Q. DO YOU KNOW WHETHER ADULT CONTENT ORIGINATING  
24 FROM OVERSEAS IS SIMILAR OR DIFFERENT TO CONTENT THAT  
25 ORIGINATES IN THE UNITED STATES?

1 A. YES, I HAVE AN OPINION ON THAT, YES.

2 Q. HOW HAVE YOU FORMED THAT OPINION?

3 A. FROM THE FACT THAT I HAVE WORKED IN THIS  
4 INDUSTRY FOR SO MANY YEARS, FROM TALKING ABOUT THE ISSUE  
5 WITH OTHER WEBMASTERS, FROM HAVING EXPERIENCE WITH  
6 COMPANIES THAT ARE BASED OVERSEAS. IT'S JUST SOMETHING  
7 THAT IS KNOWN IN THIS PARTICULAR INDUSTRY.

8 Q. WHAT IS YOUR OPINION?

9 A. THAT IT'S GOING TO DEPEND, IN ALL HONESTY. IT'S  
10 NOT A CASE OF -- IT'S NOT A REALLY EASY CUT AND DRY  
11 CASE. THERE MIGHT BE SOME COUNTRIES WHERE THE CONTENT  
12 THEY ARE PRODUCING IS VERY SIMILAR TO THE CONTENT THAT  
13 IS PRODUCED IN THE UNITED STATES. THERE ARE OTHER  
14 COUNTRIES SUCH AS JAPAN WHERE THE CONTENT IS GOING TO BE  
15 VERY DIFFERENT. IT'S AN INTERESTING COUNTRY. SOME OF  
16 THE CONTENT WOULD SEEM VERY GRAPHIC TO US. FOR EXAMPLE,  
17 THERE'S LOT OF SIMULATED RAPE EROTICA THAT COMES OUT OF  
18 JAPAN. ON THE OTHER HAND THERE ARE LOT OF IMAGES WHERE  
19 THE GENITALS ARE FUZZED OUT BECAUSE THEY HAVE LAWS ABOUT  
20 THE DISPLAY OF GENITALS. IN EASTERN EUROPE THERE IS A  
21 LOT OF CONTENT COMING FROM EASTERN EUROPE THAT IS OF A  
22 VERY GRAPHIC AND EXTREME NATURE. IT'S CAUSED PROBLEMS  
23 FOR INTERNET PAYMENT SERVICE PROVIDERS WHO HAVE TO  
24 POLICE THESE THINGS AND TRY TO KEEP THE MORE EXTREME  
25 CONTENT WHICH MIGHT GET THEM IN TROUBLE IN THE UNITED

1 STATES OFF OF THEIR SYSTEMS.

2 Q. CAN SUCH CONTENT BE ACCESSED IN THE UNITED  
3 STATES?

4 A. IF IT IS PLACED ONLINE, THEN ABSOLUTELY, YES.

5 Q. WHY IS THAT?

6 A. WELL, THE INTERNET IS AN INTERNATIONAL MEDIUM,  
7 SO WE DON'T HAVE ANY RESTRICTIONS IN THE UNITED STATES  
8 ABOUT YOU CAN'T GO OUT TO THIS COUNTRY OR RECEIVE  
9 CONTENT THAT IS HOSTED FROM THAT COUNTRY. SO IF IT'S  
10 PLACED ONLINE, AND THERE IS AN URL THAT YOU CAN USE TO  
11 ACCESS THAT CONTENT, THEN ANYBODY WITH AN UNCENSORED  
12 INTERNET ACCESS IS GOING TO BE ABLE TO PUT THAT URL IN  
13 AND ACCESS IT.

14 Q. SWITCHING TO A DIFFERENT TOPIC. DO PEER-TO-PEER  
15 NETWORKS SHARE ADULT CONTENT FILES?

16 A. ABSOLUTELY, YES.

17 THE COURT: CAN IT OR DOES IT?

18 THE WITNESS: YES, IT DOES. ABSOLUTELY.

19 THE COURT: PRESENT TENSE.

20 BY MR. VAN KWAWEGEN:

21 Q. HOW DO YOU KNOW THAT?

22 A. FROM USING PEER-TO-PEER APPLICATIONS MYSELF,  
23 GETTING TO KNOW THE TECHNOLOGY, SEARCHING FOR ADULT  
24 CONTENT, FROM DISCUSSING THE ISSUE WITH OTHER  
25 WEBMASTERS, FROM TRYING TO UNDERSTAND PEER TO PEER AS A

1           MARKETING OPPORTUNITY FOR ADULT WEBSITES.

2           Q.           IS THERE CONTENT SHOWING NUDITY?

3           A.           YES, ABSOLUTELY.

4           Q.           IS THERE CONTENT SHOWING GENITALS?

5           A.           YES.

6           Q.           IS THERE CONTENT SHOWING SEX ACTS?

7           A.           YES.

8           Q.           IS THERE CONTENT SHOWING HETEROSEXUAL ACTS?

9           A.           YES.

10          Q.           IS THERE CONTENT SHOWING SEX BETWEEN A MAN AND A  
11          WOMAN?

12          A.           YES.

13                           MR. TODD:  OBJECTION, BEST EVIDENCE.

14          NONE OF THESE DOCUMENTS ARE BEFORE THE COURT.  ARE WE TO  
15          TAKE THE WITNESS'S WORD FOR IT?

16                           THE COURT:  THE WITNESS SAID HE HAS  
17          INSPECTED THE P2P PROTOCOLS AND HE IS REPORTING WHAT HE  
18          SAW.  THAT IS NOT SECONDARY EVIDENCE.  THAT IS DIRECT  
19          EVIDENCE.  OVERRULED.

20          BY MR. VAN KWAWEGEN:

21          Q.           IS THERE CONTENT SHOWING NONVAGINAL SEX?

22          A.           I 'M SORRY?

23          Q.           FOR EXAMPLE, IS THERE CONTENT SHOWING ANAL SEX?

24          A.           YES.

25          Q.           IS THERE CONTENT SHOWING BONDAGE AND DOMINATION?



1 A. YES.

2 Q. IS THERE CONTENT SHOWING SEX WITH OBJECTS?

3 A. YES.

4 Q. IS ALL OF THIS CONTENT THAT WE JUST DESCRIBED,  
5 IS THAT AVAILABLE IN VIDEO IMAGES AS WELL AS STILL  
6 IMAGES?

7 A. YES.

8 Q. HOW MUCH SEXUALLY EXPLICIT CONTENT IS AVAILABLE  
9 ON PEER-TO-PEER NETWORKS?

10 MR. TODD: OBJECTION, FOUNDATION.

11 THE COURT: SUSTAINED.

12 BY MR. VAN KWAWEGEN:

13 Q. DO YOU HAVE AN OPINION ON HOW MUCH ADULT CONTENT  
14 IS AVAILABLE ON PEER-TO-PEER NETWORKS?

15 A. I DO NOT HAVE ANY EXACT NUMBERS ABOUT HOW MUCH  
16 CONTENT IS AVAILABLE.

17 THE COURT: THE ANSWER TO THE QUESTION IS  
18 YES, I HAVE AN OPINION, OR NO, I DON'T HAVE AN OPINION.

19 THE WITNESS: REPHRASE THE WHOLE QUESTION  
20 THEN, PLEASE, OR RESTATE IT AT LEAST.

21 BY MR. VAN KWAWEGEN:

22 Q. DO YOU HAVE AN OPINION AS TO THE QUANTITY OF  
23 ADULT SEXUALLY EXPLICIT MATERIALS THAT IS AVAILABLE ON  
24 PEER-TO-PEER NETWORKS TODAY?

25 A. YOU ARE NOT ASKING FOR SPECIFIC NUMBERS, YES, I

1 DO.

2 Q. HOW DID YOU FORM THAT OPINION?

3 A. THROUGH THE USE OF P2P NETWORKS. ALL THE  
4 REASONS I SAID BEFORE.

5 Q. WHAT IS YOUR OPINION WITH REGARD TO THE QUANTITY  
6 OF ADULT SEXUALLY EXPLICIT MATERIALS THAT ARE CURRENTLY  
7 AVAILABLE ON PEER-TO-PEER NETWORKS?

8 A. THAT IT IS NOT AN INSIGNIFICANT AMOUNT. LET ME  
9 EXPLAIN WHAT I MEAN BY THAT.

10 IF I WAS TO GO TO A P2P NETWORK AND PUT  
11 IN A COMMON SEARCH TERM SUCH AS SEX OR NAKED OR  
12 SOMETHING ALONG THOSE LINES, GENERALLY I'M GOING TO GET  
13 BACK -- IT HAS BEEN MY EXPERIENCE I'M GOING TO GET BACK  
14 HUNDREDS OF RESULTS. IN ADDITION TO THAT, IN A LOT OF  
15 CASES, FOR INSTANCE, WITH KAZAA, AFTER THE INITIAL  
16 RESULTS COME BACK YOU CAN CLICK INITIAL SEARCH AGAIN,  
17 I'M GOING TO GET BACK --

18 THE COURT: KAZZA? IS THAT WHAT YOU  
19 SAID?

20 THE WITNESS: K-A-Z-Z-A. K-A-Z-A-A. I'M  
21 SORRY. IT IS ONE OF THE TWO.

22 MR. HANSEN: TWO A'S, YOUR HONOR, AND ONE  
23 Z.

24 MR. VAN KWAVEGEN: K-A-Z-A-A. IT IS FROM  
25 THE NETHERLANDS, ACTUALLY.

1 THE WITNESS: YOU DON'T HAVE TO VISIT  
2 THEIR WEBSITE OFTEN. YOU CAN SEARCH AGAIN AND GET BACK  
3 HUNDREDS OF ADDITIONAL RESULTS.

4 MR. TODD: OBJECTION. I'M SORRY. IS  
5 THIS A STUDY YOU DID CONDUCT OR YOU COULD CONDUCT?

6 THE COURT: STRIKE OUT THE LAST PHRASE.  
7 ASK THE QUESTION OF WHAT DID YOU FIND IN YOUR STUDY,  
8 THAT IS THE GIST OF WHAT THE QUESTION IS. IT CAME FROM  
9 THE STUDY HE MADE IN THE SUMMER OF 2005, I GATHER.

10 THE WITNESS: NO, THIS IS DIFFERENT.

11 THE COURT: ASK ANOTHER QUESTION.

12 BY MR. VAN KWAWEGEN:

13 Q. BASED ON YOUR EXPERIENCE WITH PEER-TO-PEER  
14 NETWORKS, DO YOU HAVE AN OPINION AS TO HOW EASY OR HOW  
15 DIFFICULT IT IS TO ACCESS ADULT CONTENT AS JUST  
16 DESCRIBED ON PEER-TO-PEER NETWORKS WHEN YOU COMPARE THAT  
17 TO ACCESSING THE SAME TYPE OF MATERIALS ON THE WORLDWIDE  
18 WEB?

19 A. YES, I DO.

20 Q. HOW DID YOU FORM THAT OPINION?

21 A. FROM USE OF BOTH TECHNOLOGIES.

22 Q. EXPAND ON THAT.

23 A. SURE. I'M VERY AWARE OF WHERE ADULT CONTENT IS  
24 ON THE WORLDWIDE WEB, WHAT IT WOULD TAKE TO FIND IT.  
25 I'M VERY AWARE OF WHAT IT WOULD TAKE TO USE A P2P

1 APPLICATION ON YOUR COMPUTER AND PUT IN A SEARCH FOR  
2 ADULT CONTENT AND FIND IT. GENERALLY, IF YOU ARE ASKING  
3 IN A GENERAL SENSE WHICH IS EASIER, DO I HAVE AN OPINION  
4 ON WHICH IS EASIER, YES, I WOULD HAVE AN OPINION.

5 Q. COULD YOU STATE THAT OPINION?

6 A. P2P. IT IS MUCH EASIER TO FIND ADULT CONTENT ON  
7 P2P.

8 Q. IS THERE ANY REASON THAT A MINOR COULD NOT SEE  
9 THE IMAGES AND VIDEO FILES WE JUST DESCRIBED ON A  
10 PEER-TO-PEER NETWORK?

11 A. IF THERE WERE SOME SORT OF TECHNOLOGY IN PLACE  
12 TO PREVENT THE MINOR FROM DOING THAT, PERHAPS, SOME SORT  
13 OF SOFTWARE INSTALLED ON A COMPUTER OR SOMETHING THAT  
14 SPECIFICALLY STOPPED THEM FROM LOADING OR USING A P2P  
15 CLIENT, THAT WOULD BE ONE REASON WHY A MINOR MIGHT NOT  
16 BE ABLE TO ACCESS THE CONTENT.

17 MR. TODD: OBJECTION, FOUNDATION. WE HAD  
18 TESTIMONY THAT HE WOULD DO THIS SEARCH ON P2P AND WOULD  
19 DO THE SEARCH ON THE WEB. WE DON'T HAVE ANY TESTIMONY  
20 THAT HE DID, IN FACT, DO THE STUDY.

21 THE COURT: HE WAS ASKED HOW HE KNOWS IT.  
22 HE SAID FROM THE USE OF BOTH TECHNOLOGIES. HE KNOWS HOW  
23 TO COMPARE THEM. THAT IS WHAT HE TESTIFIED TO, FROM HIS  
24 PERSONAL USE OF BOTH TECHNOLOGIES. I THINK THE WITNESS  
25 HAS A TENDENCY, AND COUNSEL DOES, NOT TO BE VERY

1 PARTICULAR WITH THE TENSE OF THE WORDS, AND WE ARE  
2 ASSUMING THE WITNESS IS TALKING ABOUT SOMETHING HE HAS  
3 DONE WHEN HE MAY NOT HAVE. HE MAY BE GIVING AN OPINION.  
4 I SHARE WITH DEFENSE COUNSEL A CONCERN THERE. WE WILL  
5 OVERRULE THE OBJECTION NOW AND HAVING BEEN ADMONISHED,  
6 PLAINTIFFS' COUNSEL PROCEED. TRY TO AVOID THESE  
7 PROBLEMS. USE WORDS LIKE TODAY IF YOU DID IT OR WHEN  
8 YOU DID IT. SOMEHOW PIN IT DOWN.  
9 BY MR. VAN KWAWEGEN:

10 Q. MR. RUSSO, WHEN YOU WERE ACCESSING PEER-TO-PEER  
11 NETWORKS AND LOOKING FOR ADULT CONTENT AVAILABLE ON  
12 THOSE NETWORKS, HOW DIFFICULT WAS TO IT FIND ADULT  
13 CONTENT THAT WOULD DISPLAY NUDITY, GENITALS, SEXUAL  
14 ACTS, ALL THE CATEGORIES THAT WE DESCRIBED BEFORE?

15 A. IN ALL OF THE TIMES WHERE I HAVE USED P2P  
16 CLIENTS TO SEARCH FOR ADULT CONTENT, IT HAS BEEN  
17 EXTRAORDINARILY EASY FOR ME TO FIND ADULT CONTENT. IT  
18 WOULD TAKE ALL BUT A MATTER OF SECONDS TO LOCATE IT WITH  
19 A P2P CLIENT.

20 Q. I WOULD LIKE TO MOVE ON TO A DIFFERENT TOPIC.  
21 AT THE OUTSET OF YOUR TESTIMONY YOU DESCRIBED YOUR  
22 EXPERIENCE WITH USENET, CORRECT?

23 A. THAT'S CORRECT, YES.

24 Q. BASED ON THAT EXPERIENCE, DO YOU HAVE AN OPINION  
25 AS TO -- DO YOU HAVE AN OPINION WITH REGARD TO THE

1 AVAILABILITY OF SEXUALLY EXPLICIT MATERIAL CONTENT TODAY  
2 ON USENET APPLICATION?

3 A. YES, I DO.

4 Q. HOW DID YOU REACH THAT OPINION?

5 A. I'M SORRY. WELL, FIRST OF ALL GOING BACK, IF I  
6 MAY TO LEAD HOW TODAY I HAVE THAT OPINION.

7 Q. PLEASE DO.

8 A. WHEN I WAS OPERATING WEBSITES USENET WAS ONE OF  
9 THE TOOLS THAT I WOULD USE FOR RAISING THE AWARENESS  
10 ABOUT THE SITES THAT I HAD SO, SO I HAD --

11 Q. THESE WOULD BE ADULT WEBSITES THAT YOU HAD?

12 A. EXACTLY, YEAH. SO I HAD PERSONAL INFORMATION,  
13 PERSONAL EXPERIENCE RATHER I MEAN, SHARING INFORMATION  
14 ON USENET NEWSSCRIPTS. GOING FORWARD, USENET IS  
15 SOMETHING THAT WE MONITOR AS OF INTEREST TO WEBMASTERS.  
16 NOW, I WILL SAY THAT USENET --

17 THE COURT: PRESENTLY?

18 THE WITNESS: YES, PRESENTLY IT IS  
19 SOMETHING THAT WE WILL KEEP TRACK OF.

20 I WILL SAY THAT INTEREST IN USENET HAS  
21 WANED OVER THE LAST FOUR YEARS OR SO BECAUSE THE RISE OF  
22 P2P APPLICATIONS -- WELL, IT'S JUST A MUCH MORE  
23 EFFICIENT WAY TO GET WHAT YOU ARE LOOKING FOR IN A LOT  
24 OF CASES, NOT ALL CASES, BUT IN A LOT OF CASES.  
25 WEBMASTERS ARE LESS INTERESTED IN USENET NOW THAN THEY

1 WERE BEFORE P2P WAS AVAILABLE. THAT SAID, THERE STILL  
2 ARE A SIZEABLE NUMBER OF INDIVIDUALS ON USENET GROUPS,  
3 SO THERE IS STILL AN INTEREST FOR WEBMASTERS TO USE  
4 USENET, POST IMAGES, DRAW ATTENTION TO THEIR WEBSITES,  
5 MARKETING PURPOSES, ET CETERA.

6 Q. TODAY IS THERE CONTENT ON USENET SHOWING NUDITY?

7 A. YES, THERE IS.

8 Q. HOW DO YOU KNOW?

9 A. BECAUSE I STILL DO VISIT USENET FROM  
10 TIME-TO-TIME. IT IS SOMETHING THAT WE DO KEEP UP ON.  
11 THE TECHNOLOGY HAS CHANGED A LITTLE BIT IN THAT THE NEWS  
12 READERS HAVE CHANGED. IT IS SOMETHING THAT I NEED TO BE  
13 AWARE OF IN MY INDUSTRY, HOW DO YOU USE THE ACTUAL  
14 SOFTWARE TO VISIT USENET GROUPS. BEFORE GETTING BINARY  
15 ATTACHMENTS WAS A LITTLE DIFFICULT, YOU HAD TO DECODE  
16 THEM. THERE WERE SPECIAL PROGRAMS TO DO THAT. SOFTWARE  
17 TECHNOLOGY NOW MAKES PULLING BINARIES OFF OF NEWS GROUPS  
18 ABOUT AS EASY AS READING YOUR E-MAIL ATTACHMENTS.  
19 THAT'S IN ONE REGARD KEEPING UP WITH THE TECHNOLOGY.  
20 THE OTHER IS VISITING NEWS GROUPS AND SEEING WHAT IS  
21 ONLINE.

22 Q. TODAY, THERE IS CONTENT ON USENET SHOWING SEXUAL  
23 ACTS?

24 A. YES, THERE IS.

25 Q. TODAY, IS THERE CONTENT ON USENET SHOWING SEX

1 BETWEEN MAN AND WOMAN?

2 A. YES, THERE IS.

3 Q. TODAY, IS THERE CONTENT ON USENET SHOWING  
4 BONDAGE AND DOMINATION?

5 A. YES, THERE IS.

6 Q. TODAY, IS THERE ANY CONTENT ON USENET SHOWING  
7 SEX WITH OBJECTS?

8 A. YES, THERE IS.

9 Q. WITH REGARD TO THESE TYPES OF CONTENT, IS THE  
10 CONTENT TODAY ON USENET AVAILABLE -- IS THAT IN THE FORM  
11 OF VIDEO AS WELL AS STILL IMAGES?

12 A. THERE IS GOING TO BE BOTH FORMS ON USENET  
13 GROUPS, BOTH VIDEO AND STILL IMAGES.

14 Q. DO YOU HAVE AN OPINION AS TO THE QUANTITY OF  
15 THIS CONTENT, ADULT CONTENT ON USENET TODAY?

16 A. THE --

17 THE COURT: CAN YOU ANSWER THAT YES OR  
18 NO, PLEASE.

19 THE WITNESS: YES, I DO.

20 BY MR. VAN KWAWEGEN:

21 Q. HOW DID YOU REACH THAT OPINION?

22 A. AGAIN, FROM USING USENET GROUPS, VISITING USENET  
23 GROUPS.

24 Q. WHAT IS YOUR OPINION WITH REGARD TO THE QUANTITY  
25 OF SEXUALLY EXPLICIT MATERIAL THAT IS AVAILABLE TODAY ON



1 USENET?

2 A. WELL, FIRST, I WOULD LIKE TO CLARIFY THAT HOW  
3 MUCH CONTENT YOU ARE GOING TO COME IN CONTACT WITH IS  
4 GOING TO DEPEND ON WHO IS SUPPLYING THE USENET GROUPS TO  
5 YOU. SIMILAR TO HOW YOU CAN PICK DIFFERENT ISPS TO  
6 SUPPLY YOUR INTERNET SERVICE TO YOU, THERE ARE DIFFERENT  
7 ORGANIZATIONS THAT WILL SUPPLY ACCESS TO USENET GROUPS.  
8 THESE ORGANIZATIONS HAVE THE ABILITY TO TRIM THE NUMBER  
9 OF MESSAGES IN GROUPS AND TO INCLUDE SOME GROUPS AND NOT  
10 OTHER GROUPS. ONE ORGANIZATION MAY SAY, I DON'T REALLY  
11 WANT MORE THAN 500 MESSAGES A DAY COMING THROUGH HERE.  
12 OTHERS MIGHT SAY, WELL, THERE IS NO LIMIT, LET THEM ALL  
13 COME THROUGH. THERE COULD BE SOME VARIETY FROM SERVICE  
14 TO SERVICE. IN GENERAL, I FOUND THAT LITERALLY  
15 THOUSANDS OF POSTS IN THE ADULT CATEGORY WILL GET POSTED  
16 TO USENET GROUPS EVERY DAY.

17 Q. DO THESE POSTS CONTAIN VIDEO IMAGES AS WELL AS  
18 STILL IMAGES?

19 A. YES, THEY DO.

20 Q. DO YOU HAVE AN OPINION AS TO WHETHER IT IS  
21 FEASIBLE FOR MINORS TO ACCESS THESE IMAGES OR VIDEO  
22 FILES ON USENET GROUPS?

23 A. YES, I DO.

24 Q. HOW HAVE YOU REACHED THAT OPINION?

25 A. WELL, FROM USING USENET GROUPS AND KNOWING WHAT

1 IT TAKES TO OBTAIN THE SOFTWARE TO READ THEM, THE  
2 SERVICE, ADDING IN THE SERVICE, SETTING THEM UP, USING  
3 -- ACTUALLY USING THE GROUPS TO SELECT IMAGES TO VIEW.  
4 THAT IS HOW I WOULD HAVE OBTAINED THE OPINION.

5 Q. WHAT IS YOUR OPINION WITH REGARD TO THE QUESTION  
6 AS TO WHETHER MINORS TODAY CAN ACCESS ADULT CONTENT,  
7 IMAGE FILES OR VIDEO FILES ON USENET?

8 A. ASSUMING THE ABSENCE OF SOME SORT OF TECHNOLOGY  
9 THAT WOULD PREVENT USENET GROUPS FROM LOADING PROPERLY  
10 ON SOMEBODY'S COMPUTER, IT WOULD BE VERY EASY FOR A  
11 MINOR TO INSTALL A NEWS GROUP READER AND COME INTO  
12 CONTACT WITH ADULT ENTERTAINMENT ON NEWS GROUPS.

13 Q. SWITCH TO A DIFFERENT TOPIC.

14 DO YOU HAVE AN OPINION AS TO WHETHER  
15 THERE IS ADULT CONTENT AVAILABLE THROUGH STREAMING VIDEO  
16 ON THE INTERNET TODAY?

17 A. SURE. ABSOLUTELY.

18 Q. HOW HAVE YOU REACHED THAT OPINION?

19 A. WELL, I OPERATED PAY SITES, WEBSITES THAT --  
20 ACTUALLY ONE OF THE SERVICES THAT I WOULD ADVERTISE TO  
21 MEMBERS IS THEY WOULD GET ACCESS TO STREAMING VIDEO  
22 CONTENT.

23 Q. YOU TESTIFIED EARLIER THAT YOU STOPPED OPERATING  
24 THIS PAY SITE AROUND 2002, CORRECT?

25 A. THAT'S CORRECT.

1 Q. DO YOU HAVE AN OPINION AS TO WHETHER ADULT  
2 CONTENT IS AVAILABLE ON THE INTERNET THROUGH STREAMING  
3 VIDEO TODAY?

4 A. YES, I DO.

5 Q. HOW DID YOU REACH THAT OPINION?

6 A. WELL, WE STILL HAVE RELATIONSHIPS WITH THE EXACT  
7 SAME COMPANIES THAT I USED THAT SUPPLIED ME WITH THESE  
8 STREAMING VIDEO FEEDS. I DID NOT PRODUCE THESE FEEDS.  
9 I DID NOT ACTUALLY RUN THEM MYSELF. WHAT YOU WOULD DO  
10 IS, THERE WERE COMPANIES THAT DID ALL THAT. YOU WOULD  
11 SIMPLY PAY THEM A MONTHLY FEE IN EXCHANGE FOR YOUR  
12 MEMBERS NOW BEING ABLE TO ACCESS THE STREAMING VIDEO.  
13 THESE COMPANIES ARE STILL IN EXISTENCE TODAY. THEIR  
14 PRODUCTS ARE STILL THERE.

15 Q. IS THERE CONTENT ON STREAMING VIDEOS AVAILABLE  
16 ON THE INTERNET TODAY THAT SHOW NUDITY?

17 A. YES, THERE IS.

18 Q. IS THERE CONTENT AVAILABLE ON STREAMING VIDEO ON  
19 THE INTERNET TODAY THAT SHOWS GENITALS?

20 A. YES, THERE IS.

21 Q. IS THERE CONTENT -- IS THERE CONTENT ON  
22 STREAMING VIDEO AVAILABLE ON THE INTERNET TODAY THAT  
23 SHOWS SEX ACTS?

24 A. YES, THERE IS.

25 Q. THERE IS CONTENT ON STREAMING VIDEO AVAILABLE ON

1 THE INTERNET TODAY THAT SHOWS SEXUAL ACTS BETWEEN A MAN  
2 AND WOMAN?

3 A. YES, THERE IS.

4 Q. IS THERE CONTENT ON THE INTERNET THROUGH  
5 STREAMING VIDEO AVAILABLE TODAY THAT SHOWS ANAL SEX?

6 A. YES, THERE IS.

7 Q. IS THERE CONTENT AVAILABLE ON THE INTERNET  
8 THROUGH STREAMING VIDEO AVAILABLE TODAY THAT SHOWS SEX  
9 WITH OBJECTS?

10 A. YES, THERE IS.

11 Q. DO YOU HAVE AN OPINION WITH REGARD TO THE  
12 QUANTITY OF ADULT SEXUALLY EXPLICIT CONTENT THAT IS  
13 AVAILABLE THROUGH STREAMING VIDEO ON THE INTERNET TODAY?

14 A. YES, I DO.

15 Q. HOW DID YOU REACH THAT OPINION?

16 A. IT'S A VERY GENERAL OPINION, I GUESS I COULD  
17 SAY. IT IS SIMPLY FROM WORKING IN THE INDUSTRY AND  
18 KNOWING COMPANIES THAT ARE OUT THERE THAT ARE DOING  
19 THESE WEBSITES, THAT ARE OUT THERE THAT ARE SUPPLYING  
20 THIS. I DON'T HAVE ANY EXACT NUMBERS. I JUST HAVE AN  
21 OPINION ABOUT A GENERAL -- I CAN ONLY GIVE YOU A GENERAL  
22 OPINION.

23 Q. WHAT IS YOUR OPINION?

24 A. THAT THERE IS AT THE VERY LEAST THOUSANDS OF  
25 DIFFERENT STREAMING VIDEO FEEDS, AND I KNOW -- I CAN

1 GIVE YOU THAT NUMBER AT LEAST BECAUSE I KNOW COMPANIES  
2 THAT ADVERTISE THOUSANDS OF STREAMING VIDEO FEEDS.

3 Q. DO YOU HAVE AN OPINION AS TO WHETHER --

4 THE COURT: WHAT DOES THAT TELL US ABOUT  
5 VOLUME? THOUSANDS OF VIDEO FEEDS. WHAT DOES THAT MEAN?

6 THE WITNESS: SIMPLY THAT EACH FEED COULD  
7 BE A DIFFERENT VIDEO. SO IT'S JUST GIVING YOU AN IDEA,  
8 I GUESS, THAT IT'S NOT JUST A COUPLE OF VIDEOS OUT  
9 THERE, THAT EACH FEED WOULD BE, THAT THERE ARE THOUSANDS  
10 OF THEM, THERE'S A LOT OF CHOICE.

11 THE COURT: EACH FEED MIGHT BE A 3 MINUTE  
12 FEED. MIGHT BE A MINUTE OR FIVE MINUTES?

13 THE WITNESS: YES. THAT IS CERTAINLY  
14 POSSIBLE. THE LENGTH COULD CERTAINLY VARY FROM FEED TO  
15 FEED.

16 THE COURT: OKAY. THANK YOU. EXCUSE ME.

17 MR. VAN KWAWEGEN: THANK YOU VERY MUCH,  
18 YOUR HONOR.

19 BY MR. VAN KWAWEGEN:

20 Q. IS THERE ANY REASON WHY ONE FEED WOULD NOT BE  
21 AVAILABLE ON MORE THAN ONE WEBSITE?

22 A. NO.

23 Q. DO YOU HAVE AN OPINION AS TO WHETHER OR NOT  
24 MINORS CAN ACCESS STREAMING VIDEO WITH ADULT CONTENT ON  
25 THE INTERNET TODAY?

1 A. YES, I DO HAVE AN OPINION.

2 Q. HOW DID YOU REACH THAT OPINION?

3 A. FROM HAVING OPERATED WEBSITES THAT SUPPLY  
4 STREAMING VIDEO FEEDS.

5 Q. YOU TESTIFIED EARLIER TODAY THAT YOU STOPPED  
6 OPERATING WEBSITES IN 2002, 2003, CORRECT?

7 A. YES, I DID.

8 Q. DO YOU HAVE AN OPINION AS TO WHETHER MINORS  
9 TODAY CAN ACCESS ADULT SEXUALLY EXPLICIT CONTENT THROUGH  
10 STREAMING VIDEO ON THE INTERNET?

11 A. YES.

12 Q. HOW DID YOU REACH THAT OPINION?

13 A. FIRST OF ALL, THERE IS NO DIFFERENCE BETWEEN THE  
14 PAY SITES I OPERATED AND MOST OF THE PAY SITES THAT ARE  
15 IN EXISTENCE TODAY. IN ADDITION TO THAT, AS I WAS  
16 TALKING ABOUT EARLIER, THE COMPANIES THAT I USED ARE  
17 STILL IN EXISTENCE TODAY. OTHER WEBMASTERS USE THEM  
18 TODAY.

19 Q. WHAT IS YOUR OPINION?

20 A. IT'S THE SAME PROBLEM THAT I WAS TALKING ABOUT  
21 BEFORE IN THE SENSE THAT -- LET'S ASSUME THAT WE ARE  
22 TALKING ABOUT PAY SITES WHICH IS MY EXPERIENCE, AND THE  
23 STREAMS ARE PUT BEHIND SOME SORT OF A PAYMENT CARD  
24 SCREEN. FOR ALL OF THE REASONS THAT I AS A WEBMASTER  
25 DON'T KNOW WHO IS COMING INTO THAT WEBSITE, WHETHER IT

1 IS THE ORIGINAL PURCHASER, WHETHER OR NOT THE ORIGINAL  
2 PURCHASER WAS AN ADULT OR NOT, FOR ALL OF THOSE REASONS,  
3 IT WOULD, THAT CONTENT WOULD BE POTENTIALLY AVAILABLE TO  
4 MINORS.

5 MR. VAN KWAWEGEN: YOUR HONOR, COULD I  
6 HAVE A MOMENT TO CONFER WITH COUNSEL?

7 THE COURT: YES, YOU MAY.

8 (OFF THE RECORD DISCUSSION.)

9 MR. VAN KWAWEGEN: NO FURTHER QUESTIONS,  
10 YOUR HONOR.

11 THE COURT: COUNSEL MAY CROSS EXAMINE.

12 MR. TODD: THANK YOU, YOUR HONOR. YOUR  
13 HONOR, I HAVE ONE, POTENTIALLY TWO DOCUMENTS THAT YOU  
14 MIGHT LIKE PAPER COPIES OF, DEFENDANT'S EXHIBIT --  
15 ACTUALLY THIS IS A PLAINTIFFS' EXHIBIT, 25. THE STICKER  
16 IS INCORRECT. AND DEFENDANT'S EXHIBIT 383.

17 THE COURT: WHAT IS IT?

18 MR. TODD: EXHIBIT 383. IF I MAY  
19 APPROACH THE BENCH, YOUR HONOR.

20 CROSS EXAMINATION

21 BY MR. TODD:

22 Q. GOOD AFTERNOON.

23 THE COURT: SIR, WILL YOU ANSWER  
24 COUNSEL'S QUESTIONS, PLEASE.

25 THE WITNESS: SURE.

1 BY MR. TODD:

2 Q. GOOD AFTERNOON, MR. RUSSO.

3 I'M SORRY, YOUR HONOR?

4 THE COURT: I WAS REMINDING HIM WHY HE  
5 WAS HERE.

6 MR. TODD: IT HAS BEEN A LONG DAY.

7 BY MR. TODD:

8 Q. MY NAME IS JAMES TODD, COUNSEL FOR THE  
9 DEFENDANT. WE MET AT YOUR AUGUST 12TH, 2006 DEPOSITION  
10 IN NEW YORK CITY.

11 A. RIGHT.

12 Q. HOW ARE YOU DOING?

13 A. DOING GOOD. HOW ARE YOU?

14 Q. GOOD, THANK YOU.

15 MR. RUSSO, YOU HAVE RUN ADULT  
16 ENTERTAINMENT SITES, CORRECT?

17 A. THAT'S CORRECT, YES.

18 Q. YOU ARE THE EDITOR OF YNOT.COM, CORRECT?

19 A. PRESENTLY I'M PRESIDENT OF YNOT.

20 Q. YOU ARE ON THE BOARD OF THE FREE SPEECH  
21 COALITION, CORRECT?

22 A. THAT'S CORRECT.

23 Q. AND ARE YOU STILL THE VICE-PRESIDENT OF THE FREE  
24 SPEECH COALITION?

25 A. I AM, YES.



1 Q. TO YOUR KNOWLEDGE THE FREE SPEECH COALITION IS  
2 NOT HERE AS A PLAINTIFF, IS THAT CORRECT?

3 A. ABSOLUTELY. I'M VERY CLEARLY NOT SPEAKING ON  
4 BEHALF OF THE FREE SPEECH COALITION TODAY.

5 Q. IN FACT TO YOUR KNOWLEDGE, NO ONE FROM THE ADULT  
6 ENTERTAINMENT INDUSTRY IS HERE AS A PLAINTIFF, IS THAT  
7 CORRECT?

8 A. AS A PLAINTIFF?

9 Q. TO YOUR KNOWLEDGE?

10 A. I WAS JUST SPEAKING WITH AN INDIVIDUAL BEFORE  
11 THAT OFFERED CONDOMS OR SOMETHING. I DON'T KNOW. I  
12 DON'T KNOW IF YOU WOULD COUNT HIM OR NOT.

13 Q. WELL, I'M ASKING IF YOU WOULD COUNT HIM.

14 A. AS A MEMBER OF THE ADULT ENTERTAINMENT INDUSTRY?

15 THE COURT: HOW IS THIS FAIR? YOU DON'T  
16 KNOW WHETHER HE KNOWS THE NAMES OF THE ORGANIZATIONS  
17 THAT ARE PLAINTIFFS.

18 MR. TODD: I'M ASKING IF HE IS AWARE IF  
19 THERE IS ANY ADULT ENTERTAINMENT INDUSTRY  
20 REPRESENTATIONS THAT ARE PLAINTIFFS IN THE CASE.

21 THE COURT: YOU DON'T KNOW WHAT HE KNOWS  
22 ABOUT, EVEN THE NAMES OF THE PLAINTIFFS.

23 MR. TODD: THANK YOU, YOUR HONOR. I WILL  
24 WITHDRAW THE QUESTION.

25 BY MR. TODD:

1 Q. MR. RUSSO, YOU ARE IN FAVOR OF PLACING A WARNING  
2 SCREEN BEFORE DISPLAYING ANY ADULT ENTERTAINMENT  
3 CONTENT, IS THAT CORRECT?

4 A. YES, I AM, AND YES, THAT IS CORRECT.

5 Q. WHEN YOU RAN ADULT CONTENT ON YOUR BULLETIN  
6 BOARD, YOU CHECKED IDS BEFORE YOU GAVE CUSTOMERS ACCESS,  
7 IS THAT CORRECT?

8 A. NOT EXACTLY. I CHECKED PHOTOCOPIES OF IDS  
9 BEFORE I GAVE THEM ACCESS.

10 Q. OKAY. AND YOU TESTIFIED EARLIER THAT YOU DID  
11 THAT BECAUSE IT SEEMED LIKE THE RIGHT THING TO DO, IS  
12 THAT CORRECT?

13 A. TO ME IT DID SEEM LIKE THE RIGHT THING TO DO,  
14 YES.

15 Q. YOU WERE CHECKING ON DRIVER'S LICENSE OR  
16 MILITARY ID OR PHOTOCOPY OF A DRIVER'S LICENSE OR  
17 MILITARY ID?

18 A. SPECIFICALLY A CALIFORNIA DRIVER'S LICENSE, YES,  
19 OR CALIFORNIA ISSUED ID CARD.

20 Q. YOU ALSO BELIEVE THAT PUTTING TAME OR CENSORED  
21 CONTENT BEFORE A PAYMENT SCREEN IS A MORE EFFECTIVE WAY  
22 TO GENERATE SALES OF EXPLICIT CONTENT, IS THAT CORRECT?

23 A. THAT IS MY PREFERENCE, YES.

24 Q. MR. RUSSO, YOU ALSO BELIEVE THAT CREATION OF A  
25 .XXX DOMAIN WILL NOT CREATE A FRAMEWORK TO PROTECT

1 CHILDREN, IS THAT CORRECT?

2 A. YES, IT IS.

3 Q. YOU BELIEVE THAT A .XXX DOMAIN WOULD CREATE  
4 PROBLEMS FOR WEBMASTERS, IS THAT CORRECT?

5 A. YES, IT IS.

6 Q. IN FACT, YOU BELIEVE THAT EVEN IF THERE WERE A  
7 .XXX DOMAIN PARENTS WOULD STILL NOT BE ABLE TO FILTER  
8 OUT EXPLICIT ADULT ENTERTAINMENT, IS THAT CORRECT?

9 A. YES, IT IS. YOU MEAN AS A RESULT OF .XXX, YOU  
10 DON'T THINK IT WOULD HELP PARENTS FILTER OUT ADULT  
11 ENTERTAINMENT, YES.

12 THE COURT: ARE YOU TALKING ABOUT FILTERS  
13 AS A PIECE OF GEAR, OR SOFTWARE? ARE YOU TALKING  
14 GENERICALLY? I'M CONFUSED.

15 THE WITNESS: WHAT I UNDERSTAND THEM TO  
16 BE SAYING IS THAT -- NOT TALKING ABOUT SOFTWARE, BUT IF  
17 THERE WAS A .XXX DOMAIN NAME IS THERE THEN GOING TO BE  
18 ANY MEANS BY WHICH THE FACT THAT THAT IS IN EXISTENCE  
19 CAN THEN RESULT IN ADULT ENTERTAINMENT BEING FILTERED  
20 OUT. NOW, CORRECT ME IF I'M WRONG, I UNDERSTAND THAT TO  
21 BE ALL ADULT ENTERTAINMENT WE ARE TALKING ABOUT, OR ARE  
22 WERE YOU JUST TALKING ABOUT ANY ADULT ENTERTAINMENT AT  
23 ALL?

24 THE COURT: MY CONFUSION IS FILTERED OUT  
25 SOUNDS LIKE IT'S A GENERIC TERM AS OPPOSED TO FILTERING

1 SOFTWARE.

2 MR. TODD: YOUR HONOR, I'M SORRY. WE CAN  
3 BRING UP THE WITNESS' DEPOSITION TESTIMONY BECAUSE IT'S  
4 THE TERM HE USED.

5 THE COURT: IF YOU ARE GOING TO CONFRONT  
6 HIM WITH HIS DEPOSITION TESTIMONY, PUT IT ON THE SCREEN  
7 SO HE CAN SEE WHAT IT IS.

8 MR. TODD: I WAS NOT PLANNING ON  
9 CONFRONTING, UNTIL YOUR HONOR ASKED THE QUESTION, BUT  
10 CAN WE BRING UP THE DEPOSITION TESTIMONY. YOUR HONOR,  
11 NEED TO FLICK ON YOUR SCREEN?

12 THE COURT: I DID. I HAVE IT ON DEFENSE.  
13 GO AHEAD. HIT THE VIDEO SOURCE ON THE DEFENSE BUTTON.

14 TRY IT DOWN HERE AND SEE IF IT WILL WORK.

15 COUNSEL, MY QUESTION HAS NOTHING TO DO  
16 WITH WHETHER I LIKE OR DON'T LIKE THE GENTLEMAN'S  
17 TESTIMONY. THE QUESTION IS WHAT HE MEANT BY THE WORD  
18 FILTER, WHETHER THE WORD FILTER WAS BEING USED IN TERMS  
19 OF A FILTERING DEVICE AS SOFTWARE OR WHETHER HE WAS  
20 REFERRING TO FILTERING OUT SOMETHING AS A MATTER OF A  
21 GENERIC TERM. I CAN'T TELL THAT. THAT IS ALL I'M  
22 TRYING TO FIND OUT.

23 MR. TODD: YOUR HONOR --

24 THE COURT: ASK THE WITNESS THAT.

25 MR. TODD: I DON'T THINK THE DEPOSITION

1 TESTIMONY HERE WILL ELICIT THAT. HE JUST USED THE TERM  
2 FILTER THAT OUT AT THE DEPOSITION.

3 THE COURT: DO YOU UNDERSTAND MY  
4 QUANDARY?

5 THE WITNESS: YEAH, I DO.

6 THE COURT: WHAT DID YOU MEAN BY THE WORD  
7 FILTER?

8 THE WITNESS: I MEAN IT IN A VERY GENERAL  
9 SENSE. I'M NOT TALKING ABOUT ANY SOFTWARE TECHNOLOGY  
10 SPECIFICALLY, JUST THE IDEA OF BEING ABLE TO -- WE ARE  
11 TALKING ABOUT IN GENERAL, AS I UNDERSTAND IT -- AS I  
12 REMEMBER IT, WE ARE JUST TALKING ABOUT IN GENERAL, IS  
13 .XXX GOING TO BE SOME KIND OF A SOLUTION THAT IS GOING  
14 TO MAGICALLY KEEP CHILDREN FROM COMING INTO CONTACT WITH  
15 ADULT CONTENT ONLINE. SO IN THAT REGARD, I OFFERED THE  
16 OPINION THAT NO, I DON'T THINK THE CREATION OF .XXX  
17 DOMAIN NAME IS GOING TO RESULT IN THAT SITUATION.

18 THE COURT: I'M SORRY TO INTERRUPT.

19 MR. TODD: NO PROBLEM, YOUR HONOR.

20 BY MR. TODD:

21 Q. MR. RUSSO, AT YNOT.COM, DO YOU STILL WRITE  
22 EDITORIALS?

23 A. I DO FROM TIME-TO-TIME, YES.

24 Q. AND DO YOU STILL WRITE INSTRUCTIONAL EDUCATIONAL  
25 ARTICLES?

1 A. RARELY, BUT FROM TIME-TO-TIME.

2 Q. AND THE BASIS FOR YOUR KNOWLEDGE THAT YOU SHARE  
3 IN THESE ARTICLES IS FROM HAVING OPERATED ADULT  
4 ENTERTAINMENT SITES, YEARS OF ATTENDING ADULT  
5 ENTERTAINMENT INDUSTRY EVENTS, AND ADULT ENTERTAINMENT  
6 INDUSTRY SEMINARS, AND RELATIONSHIPS WITH INDIVIDUALS IN  
7 THE ADULT ENTERTAINMENT INDUSTRY, CORRECT?

8 A. I'M TRYING TO GET A FEEL FOR WHAT EXACTLY YOU  
9 ARE GETTING AT. YOU ARE SAYING IS THAT WHAT I USE IN  
10 THE INFORMATION THAT I'M SUPPLYING?

11 Q. YES.

12 A. SOMETIMES IT'S GOING TO DEPEND ON THE ARTICLE.

13 Q. AND THAT IS MORE OR LESS THE SAME BASIS FOR YOUR  
14 KNOWLEDGE ABOUT THIRD PARTY BILLING COMPANIES, THESE  
15 SAME KINDS OF RELATIONSHIPS AND SEMINARS AND EVENTS, IS  
16 THAT CORRECT?

17 A. OPERATING WEBSITES AND WORKING WITH THEM AS A  
18 CLIENT AND YES.

19 Q. OKAY.

20 NOW, CAN WE BRING UP PLAINTIFFS' EXHIBIT  
21 25. THAT IS ACTUALLY YOUR EXPERT REPORT IF YOU WANT TO  
22 REFER TO THAT, BUT I THINK WE ARE GOING TO BRING UP  
23 -- ON PAGE 20 OF YOUR REPORT YOU WERE TALKING ABOUT  
24 INTERNET PAYMENT SERVICE PROVIDERS, IS THAT CORRECT?

25 A. LET'S SEE. THE SUBSECTION IS WALKING THROUGH A

1 TYPICAL PAY SITE TRANSACTION. SO I'M HERE JUST  
2 EXPLAINING THE STEPS THAT WOULD BE INVOLVED IN THAT.

3 Q. AND JUST TO BE CLEAR, WHEN YOU ARE TALKING ABOUT  
4 INTERNET PAYMENT SERVICE PROVIDERS, YOU ARE TALKING  
5 PRIMARILY ABOUT EPOCH, ALSO KNOWN AS PAYCOM.NET, AND CC  
6 BILL, CORRECT?

7 A. I'M SORRY. YES, THAT'S CORRECT. THOSE ARE THE  
8 TWO PRIMARY IPSPS.

9 Q. NOW, YOU STATED IN YOUR REPORT AND AT YOUR  
10 DEPOSITION TESTIMONY WITH RESPECT TO PAYCOM AND CC BILL,  
11 WHEN THEY PROCESS A TRANSACTION, EACH COMPANY COLLECTS A  
12 CUSTOMER'S NAME, CORRECT?

13 A. YES.

14 Q. THE CUSTOMER'S ADDRESS, CORRECT?

15 A. YES.

16 Q. THE CUSTOMER'S E-MAIL ADDRESS, CORRECT?

17 A. I BELIEVE THAT IS CORRECT IN ALL CASES.

18 Q. AND THE CUSTOMER'S PAYMENT DETAILS, CORRECT?

19 A. YES.

20 Q. NOW, YOU TESTIFIED EARLIER TODAY THAT THE  
21 MINIMUM INFORMATION REQUIRED TO PROCESS A TRANSACTION IS  
22 THE CREDIT CARD NUMBER AND THE EXPIRATION DATE, IS THAT  
23 CORRECT?

24 A. YES.

25 Q. MR. RUSSO, IT'S ALSO CORRECT THAT INTERNET

1 PAYMENT SERVICE PROVIDERS ARE REQUIRED TO FOLLOW CERTAIN  
2 RULES SET OUT BY THE PAYMENT CARD COMPANIES BECAUSE THEY  
3 DEAL WITH HIGH RISK COMPANIES, IS THAT CORRECT?

4 A. THEY ARE REQUIRED TO FOLLOW CERTAIN RULES, I  
5 THINK, WHETHER OR NOT THEY DEAL WITH HIGH RISK COMPANIES  
6 OR NOT, YES.

7 Q. THERE ARE SPECIAL RULES BECAUSE THEY DEAL WITH  
8 HIGH RISK COMPANIES THEY ALSO HAVE TO FOLLOW, IS THAT  
9 CORRECT?

10 A. YES.

11 Q. BUT YOU DON'T KNOW ALL OF THE RULES THESE  
12 INTERNET PAYMENT SERVICE PROVIDERS ARE REQUIRED TO  
13 FOLLOW, IS THAT CORRECT?

14 A. IT'S CERTAINLY POSSIBLE, YEAH, THAT THERE ARE  
15 RULES THAT I'M NOT AWARE OF.

16 Q. SO YOU DON'T KNOW WHETHER THESE COMPANIES ARE  
17 REQUIRED TO USE ADDRESS VERIFICATION AS PART OF FRAUD  
18 PREVENTION, IS THAT CORRECT?

19 A. I HAVE AN OPINION ON THAT SO, NO, THAT IS NOT  
20 CORRECT.

21 Q. CAN WE BRING UP YOUR DEPOSITION?

22 A. SURE.

23 Q. OF PAGE 98?

24 A. IS THAT GOING TO BE ON THE SCREEN?

25 Q. YES. IT SHOULD COME ON THE SCREEN. I ASKED



1 YOU, TO YOUR KNOWLEDGE, ARE IPSPS THAT ARE THEMSELVES  
2 CHARACTERIZED AS HIGH RISK OR IPSPS THAT DO BUSINESS  
3 WITH MERCHANTS THAT ARE CONSIDERED HIGH RISK, ARE THEY  
4 REQUIRED TO EMPLOY ADDRESS VERIFICATION TECHNOLOGIES  
5 WITH ANY GREATER FREQUENCY THAN IPSPS OR ONLINE  
6 MERCHANTS THAT ARE NOT CHARACTERIZED AS HIGH RISK. YOU  
7 ANSWERED I HAVE NO OPINION WHATSOEVER ABOUT WHETHER OR  
8 NOT IPSPS OF ANY KIND ARE REQUIRED TO USE ADDRESS  
9 VERIFICATION. IS THAT YOUR TESTIMONY?

10 A. TODAY OR THEN?

11 Q. WAS THAT YOUR TESTIMONY IN THE DEPOSITION?

12 A. YES, IT WAS.

13 Q. IS THAT -- YOU ARE SUGGESTING IT IS NOT YOUR  
14 TESTIMONY TODAY?

15 A. WHEN YOU ASKED ME THAT PARTICULAR QUESTION, I  
16 WAS THINKING OF THE INFORMATION THAT WAS COLLECTED AND  
17 WHETHER OR NOT THERE WAS A REQUIREMENT FOR THEM TO USE  
18 THE ADDRESS VERIFICATION SYSTEM. AT THE TIME THAT WAS  
19 MY RECOLLECTION, I GAVE YOU AN HONEST ANSWER AT THE  
20 TIME. SINCE THEN, I HAVE RECALLED AND TO THE EXTENT  
21 THAT IT'S OF INTEREST HERE, AND I EXPLAINED EXACTLY  
22 WHERE THAT INFORMATION CAME FROM, THE DEPOSITION, A  
23 DEPOSITION THAT WAS TAKEN IN WHICH THAT PARTICULAR POINT  
24 WAS CLARIFIED. SO WHEN BEING ASKED HERE TODAY IF I HAVE  
25 AN OPINION, IT WOULD BE INAPPROPRIATE FOR ME TO SAY NO,

1 I HAVE NO OPINION, JUST BECAUSE THIS IS WHAT I SAID IN  
2 MY DEPOSITION.

3 Q. SO YOU ARE CHANGING YOUR TESTIMONY. THIS  
4 TESTIMONY WAS UNDER OATH, CORRECT?

5 A. YES, IT WAS.

6 Q. AND YOU HAD REVIEWED YOUR EXPERT REPORT BEFORE  
7 YOU GAVE THIS TESTIMONY, IS THAT CORRECT?

8 A. YES. YES, THAT'S CORRECT.

9 Q. YOU HAVE REVIEWED THE DOCUMENTS YOU HAD RELIED  
10 ON IN FORMING YOUR OPINION WHEN YOU GAVE THIS TESTIMONY,  
11 IS THAT CORRECT?

12 A. THAT'S CORRECT, YES.

13 Q. NOW, TO BE CLEAR THOUGH, PAYCOM.NET COLLECTS A  
14 CUSTOMER'S BILLING ADDRESS, IS THAT CORRECT?

15 A. YES, THEY DO.

16 Q. CC BILL.COM COLLECTS A CUSTOMER'S BILLING  
17 ADDRESS, IS THAT CORRECT?

18 A. YES, THEY DO.

19 Q. NOW, YOU STATED ON PAGE 16 OF YOUR REPORT, CAN  
20 WE BRING YOUR REPORT BACK UP? I THINK THAT IS GOING TO  
21 BE 17 ON THE ONLINE SCREEN.

22 THE COURT: I'M SORRY.

23 MR. TODD: PAGE 16 ON YOUR COPY. JUST ON  
24 THE ONLINE IT IS MARKED A LITTLE DIFFERENTLY ON THE  
25 BOTTOM. OKAY. YOU STATED THAT.

1 THE COURT: WHERE IS THAT ON THE PAGE, ON  
2 THIS PAGE?

3 MR. TODD: IT'S AT THE TOP, YOUR HONOR.  
4 IT SAYS IN THE CASE.

5 THE COURT: IN THE CASE OF PAYMENT CARD  
6 TRANSACTION.

7 MR. TODD: YES.

8 BY MR. TODD:

9 Q. YOU STATED THEY RUN THIS DATA THROUGH THEIR  
10 INTERNAL FRAUD CONTROL TECHNOLOGY, IS THAT CORRECT?

11 A. YES. YES, I SEE THAT.

12 Q. NOW, YOU ARE NOT -- YOU KNOW A FAIR AMOUNT ABOUT  
13 INTERNET PAYMENT SERVICE PROVIDERS, BUT YOU ARE NOT A  
14 PAYMENT CARD EXPERT, IS THAT CORRECT?

15 A. NOT A GENERAL PAYMENT CARD EXPERT, MY EXPERTISE  
16 WOULD COME FROM THEIR USE IN CONNECTION WITH ADULT  
17 ENTERTAINMENT WEBSITES.

18 Q. OKAY. BUT CAN WE BRING UP YOUR DEPOSITION  
19 AGAIN, PAGE 82.

20 MR. TODD: JUST WITH THE COURT'S  
21 INDULGENCE, YOUR HONOR.

22 (PAUSE.)

23 BY MR. TODD:

24 Q. I ASKED YOU ABOUT THESE VARIOUS SCRUBBING  
25 TECHNOLOGIES.

1 THE COURT: WHERE ARE WE TALKING ABOUT?

2 MR. TODD: LINE 12 AT THE TOP OF THE  
3 SCREEN. I ASKED YOU ABOUT THESE SCRUBBING TECHNOLOGIES  
4 ON THE INTERNET PAYMENT SERVICE PROVIDERS. YOU  
5 TESTIFIED BEGINNING AT LINE 18: WELL, YOU UNDERSTAND  
6 I'M NOT A PAYMENT CARD EXPERT SO I CAN ONLY SPEAK FROM  
7 THE POINT OF VIEW OF A WEBMASTER.

8 WAS THAT YOUR TESTIMONY?

9 THE WITNESS: YES, THAT IS WHAT I'M  
10 SAYING HERE TODAY, TOO.

11 BY MR. TODD:

12 Q. OKAY.

13 NOW, MR. RUSSO, YOU HAVE TESTIFIED THAT  
14 CHILDREN HAVE ACCESS TO PAYMENT CARDS, BUT YOU CAN'T  
15 QUANTIFY THE NUMBER OF CHILDREN THAT HAVE ACCESS TO  
16 PAYMENT CARDS, IS THAT CORRECT?

17 A. THAT IS CERTAINLY CORRECT, YES.

18 MR. TODD: COULD WE BRING UP PAGE 22 OF  
19 YOUR REPORT.

20 THE COURT: 20, DID YOU SAY?

21 MR. TODD: 22, YOUR HONOR.

22 ACTUALLY, YOUR HONOR, IN ALL CANDIDNESS,  
23 THIS IS A LENGTHY LINE OF QUESTIONING. I'M AWARE OF THE  
24 HOUR AND WILLING TO KEEP GOING.

25 THE COURT: FINISH UP.

1 BY MR. TODD:

2 Q. NOW, AS AN EXAMPLE OF CHILDREN'S ACCESS TO  
3 PAYMENT CARDS IN YOUR REPORT, YOU CITED THE VISA BUXX  
4 CARD AS AN EXAMPLE OF A PAYMENT CARD THAT IS MARKETED TO  
5 MINORS, IS THAT CORRECT?

6 A. YES, THAT'S CORRECT.

7 Q. AND I NOW DIRECT YOUR ATTENTION TO WHAT'S BEEN  
8 MARKED AS DEFENDANT'S EXHIBIT 383. THIS IS A WEB PAGE  
9 FROM THE VISA BUXX CARD WEBSITE CALLED FREQUENTLY ASKED  
10 QUESTIONS. WE DISCUSSED THIS DOCUMENT AT YOUR  
11 DEPOSITION, IS THAT CORRECT?

12 A. I DO RECALL A SIMILAR DOCUMENT. I TAKE YOUR  
13 WORD THIS IS THE ONE THOUGH. IT LOOKS FAMILIAR.

14 Q. IT'S MARKED AT THE BOTTOM THERE, RUSSO 4.  
15 8/12/06, IS THAT CORRECT?

16 A. I SEE THAT MARK, YES.

17 Q. CAN WE TURN TO PAGE 2, PLEASE. WITH THE COURT'S  
18 INDULGENCE WE WILL TRY TO MAKE THIS PAGE LARGE ENOUGH  
19 FOR THE WITNESS TO READ. NOW THE FIRST QUESTION ON PAGE  
20 2 SAYS, WHAT IS A VISA BUXX CARD, IS THAT CORRECT?

21 A. THAT IS WHAT IT SAYS, YES.

22 Q. THE LAST SENTENCE OF THE ANSWER STATES: PARENTS  
23 CAN ENROLL THEIR TEEN IN THE PROGRAM AND CAN ALSO  
24 MONITOR THEIR TEEN'S SPENDING. IS THAT CORRECT?

25 A. CLOSE, YOU MISSED A COUPLE OF WORDS.

1 Q. OKAY. PARENTS ENROLL THEIR TEEN IN THE PROGRAM  
2 AND CAN ALSO MONITOR THEIR TEEN'S SPENDING. IS THAT  
3 CORRECT?

4 A. YES. THAT IS CORRECT.

5 Q. THANK YOU. THANK YOU FOR YOUR HELP. LONG DAY.

6 A. IT IS THE EDITOR IN ME, I'M SORRY.

7 THE COURT: YOU DID NOT READ THE WHOLE  
8 SENTENCE.

9 MR. TODD: THE SENTENCE CONTINUES: THEY  
10 SET THE SPENDING LIMITS BY THE PREPAID AMOUNT LOADED ON  
11 THE CARD. IS THAT CORRECT?

12 THE WITNESS: THAT IS WHAT I SEE, YES.

13 THE COURT: YOU HAVEN'T IDENTIFIED THIS  
14 DOCUMENT VERY MUCH OTHER THAN BY NUMBER. YOU SHOWED IT  
15 TO HIM AT HIS DEPOSITION.

16 MR. TODD: THAT'S RIGHT. WE CAN RETURN  
17 TO THE FIRST PAGE. THIS IS A DOCUMENT OBTAINED BY THE  
18 WEBSITE, FROM THE WEBSITE OF VISA BUXX CARD. IT IS  
19 CALLED FREQUENTLY ASKED QUESTIONS.

20 THE COURT: DO WE KNOW THE DATE OF THE  
21 SCREEN?

22 MR. TODD: YOUR HONOR, THE DOCUMENT WAS  
23 PRINTED UP THE DAY BEFORE MR. RUSSO'S DEPOSITION, AUGUST  
24 11TH OR 10TH. THERE IS THE DATE ON THE PRINTOUT. FOR  
25 THE RECORD IT IS AUGUST 11, 2006, 4:16 PM.

1 THE COURT: THANK YOU. WE ARE DONE FOR  
2 TODAY.

3 MR. TODD: THANK YOU, YOUR HONOR.

4 THE COURT: MR. RUSSO, WE WILL SEE YOU  
5 TOMORROW MORNING. CAN YOU BE WITH US AGAIN?

6 THE WITNESS: YES.

7 THE COURT: 9:30 AGAIN OR AS EARLY AS  
8 COUNSEL INSTRUCTS YOU. THE TRIAL SESSION FOR THE DAY IS  
9 CONCLUDED. THE WITNESS IS EXCUSED UNTIL TOMORROW  
10 MORNING. AND THE COURT REPORTER AND THE LAWYERS WILL  
11 REMAIN FOR OUR USUAL AFTERNOON TETE-A-TETE.

12 MR. HANSEN, WHAT'S HAPPENING TOMORROW?

13 MR. HANSEN: YOUR HONOR, AS SOON AS MR.  
14 RUSSO'S EXAMINATION IS DONE, WE INTEND TO CALL PROFESSOR  
15 ZOOK AS OUR FIRST WITNESS. MISS MARSHALL IS GOING TO  
16 PRESENT PROFESSOR ZOOK AND CAN IDENTIFY THE EXHIBITS  
17 THAT SHE WILL USE DURING THAT EXAMINATION.

18 MS. MARSHALL: GOOD AFTERNOON, YOUR  
19 HONOR.

20 THE COURT: HELLO.

21 MS. MARSHALL: FOR PROFESSOR ZOOK WE WILL  
22 BE USING PLAINTIFFS' EXHIBITS 20 THROUGH 32.

23 THE COURT: THAT IS ALL?

24 MS. MARSHALL: THAT IS ALL.

25 THE COURT: CV AND HIS REPORT.

1 MS. MARSHALL: IT WILL BE HIS CV. HIS  
2 REPORT, A PRIOR PUBLICATION OF PROFESSOR ZOOK'S AND TWO  
3 EXHIBITS WHICH COMPRISE THE TABLES AND FIGURES FROM HIS  
4 REPORT.

5 THE COURT: THANK YOU.

6 MR. HANSEN: AFTER WE CONCLUDE PROFESSOR  
7 ZOOK, YOUR HONOR, WE INTEND TO CALL ALICIA SMITH. YOUR  
8 HONOR WILL RECALL SHE IS A RAP PERFORMER WHO GOES BY THE  
9 NAME GOD-DES. G-O-D - D-E-S. FOR MISS SMITH WE INTEND  
10 TO USE EXHIBITS 51, 50 AND 83. I WOULD LIKE TO ALERT  
11 YOUR HONOR TO THOSE EXHIBITS. EXHIBIT 50 IS THE LYRICS  
12 OF TWO OF HER PARTICULAR SONGS. IT IS OUR CURRENT  
13 INTENTION -- AND THOSE TWO SONGS THEN ARE CONTAINED ON  
14 THE CDS THAT ARE EXHIBITS 51 AND 83. IT IS OUR CURRENT  
15 INTENTION TO PLAY THE SONGS. HOWEVER, YOUR HONOR, THEY  
16 DO CONTAIN SOME SEXUALLY EXPLICIT LANGUAGE. I WANTED TO  
17 ALERT YOUR HONOR SO YOU COULD LOOK AT THE LANGUAGE AND  
18 DETERMINE WHETHER YOU WANTED TO HAVE THEM HEARD IN OPEN  
19 COURT OR WHETHER YOU WANTED TO SIMPLY HAVE HER DESCRIBE  
20 THEM. WE THINK THAT THERE IS NO OBJECTION TO HEARING  
21 THEM IN OPEN COURT, BUT I WANT YOUR HONOR TO HAVE THE  
22 OPPORTUNITY IF YOU CHOOSE TO NOT HAVE THEM HEARD.

23 THE COURT: I DON'T EXPECT TO PREVENT  
24 THEM FROM BEING PLAYED. WE PLAY DEA RECORDINGS OF DRUGS  
25 TRANSACTIONS, YOU BETTER BELIEVE THE LANGUAGE IS NOT



1 TOO THRILLING.

2 MR. HANSEN: I DO BELIEVE THAT, YOUR  
3 HONOR. OUR FINAL WITNESS -- MISS MARSHALL WILL PRESENT  
4 OUR FINAL WITNESS AS WELL. I WILL LET HER IDENTIFY THE  
5 EXHIBITS.

6 MS. MARSHALL: THAT WILL BE ADAM  
7 GLICKMAN, YOUR HONOR, WHO IS A PLAINTIFF IN THE MATTER  
8 FROM CONDOMANIA.

9 THE COURT: WHO IS THE PERSON?

10 MS. MARSHALL: ADAM GLICKMAN,  
11 G-L-I-C-K-M-A-N.

12 THE COURT: OKAY.

13 MS. MARSHALL: WE ONLY INTEND TO USE  
14 PLAINTIFFS' EXHIBIT NUMBER 40, WHICH IS A COLLECTION OF  
15 WEB PAGES. WE ONLY INTEND TO USE PLAINTIFFS' EXHIBIT  
16 NUMBER 40, WHICH IS A COLLECTION OF WEB PAGES FROM THE  
17 PLAINTIFFS' WEBSITE.

18 THE COURT: THANK YOU.

19 IT LOOKS LIKE WE HAVE ENOUGH WITNESSES TO  
20 GET THROUGH TOMORROW.

21 MR. HANSEN: I THINK WE WILL NOT HAVE  
22 DIFFICULTY FILLING TOMORROW, YOUR HONOR.

23 THE COURT: MR. GOMEZ, CHECK WITH YOUR  
24 COLLEAGUES ON THIS, YOU PROVIDED ME WITH A DISK OF  
25 DEFENDANT'S EXHIBITS, SOMEBODY DID, EXHIBITS WHICH I

1           COULD HARDLY READ ON MY COMPUTER, BUT DID CONTAIN THREE  
2           STILL SHOTS AND ONE STREAMING OF VIDEO, ALL OF WHICH ARE  
3           SEXUAL EXPLICIT MATERIAL.   WHICH SIDE GAVE ME THAT  
4           MATERIAL?

5                         MR. GOMEZ:   YOUR HONOR, WE PROVIDED YOU A  
6           DVD DISK THAT HAD AS OF YESTERDAY, OUR SET OF  
7           DEFENDANT'S AND PLAINTIFFS' TRIAL EXHIBITS.   THERE WAS A  
8           CONCERN YOU RAISED ABOUT BEING ABLE TO SEE THE SCREEN  
9           SO...

10                        THE COURT:   THANK YOU.   NO, I MEANT THIS  
11           IS A SINGLETON DISK WITH A SINGLE SUBJECT ON IT.

12                        MR. GOMEZ:   WE DID NOT PROVIDE THAT, I  
13           DON'T BELIEVE.

14                        THE COURT:   PLAINTIFFS' EXHIBIT 111 TO  
15           117 ARE AMONG THE ONES YOU GAVE ME, I THOUGHT THEY WERE  
16           GOING TO COME UP IN COURT TODAY SO I TRIED TO TAKE A  
17           PEEK AT THEM, BUT THEY DIDN'T COME UP.

18                        MR. VAN KWAWEGEN:   PLAINTIFFS WILL NOT BE  
19           USING THOSE EXHIBITS.   WE WERE GOING TO USE THEM WITH  
20           MR. RUSSO.   WE CHANGED OUR MIND.   WE ARE WITHDRAWING  
21           THOSE EXHIBITS.

22                        THE COURT:   WELL, I WON'T ASK YOU TO MAKE  
23           A TECHNICAL RECORD OF WHAT YOU ARE WITHDRAWING.   IF YOU  
24           DON'T OFFER THEM, THEN THEY WON'T BE IN, WHATEVER THEY  
25           ARE.   I JUST THOUGHT I WOULD FIND OUT BECAUSE I HAD

1           THEM, AND I DID NOT KNOW WHERE WE ARE GOING WITH THEM  
2           BECAUSE THERE WAS A MANAGEMENT PROBLEM WITH THE IMAGES.  
3           I WANTED TO MANAGE THE IMAGES IN A SPECIAL WAY, BUT I'LL  
4           GET AROUND TO THAT WHEN THERE IS SOME NEED FOR THAT.

5                           MR. HANSEN?

6                           MR. HANSEN:   YOUR HONOR, THE ONLY OTHER  
7           TOPIC I KNOW THAT WOULD BE HELPFUL TO DISCUSS THIS  
8           AFTERNOON IS THE DEPOSITION -- JUST THE SHEER MECHANICS  
9           OF THE DEPOSITION DESIGNATION READING AND HOW YOUR HONOR  
10          WOULD LIKE IT TO HAPPEN.  AS YOUR HONOR IS AWARE, BOTH  
11          SIDES HAVE DESIGNATED CERTAIN PAGES OF THE DEPOSITION  
12          DESIGNATIONS.  MY UNDERSTANDING FROM THE DEFENDANTS IS  
13          THAT THEY WOULD LIKE TO HAVE ONE OF THEIR LAWYERS READ  
14          THE PAGES THAT THEY DESIGNATED AND HAVE ONE OF OUR  
15          LAWYERS READ THE PAGES WE DESIGNATED.  THE PROBLEM WITH  
16          THAT, OF COURSE, IS THAT THEY ARE NOT SEQUENTIAL.  WE  
17          MAY HAVE DESIGNATED 1.  THEY MAY DESIGNATE 2.  THEN WE  
18          DESIGNATE 3.

19                          THE COURT:   AT THE DEFENDANT'S REQUEST?

20                          MR. GOMEZ:   YES, THE PROPOSAL WE MADE WAS  
21          TO HAVE THE QUESTIONS -- THE SECTION THAT RELATED TO THE  
22          PLAINTIFFS, THAT THE QUESTIONER FOR THE PLAINTIFFS BE AN  
23          ATTORNEY FROM THE PLAINTIFFS' READING THEIR PORTION.

24                          THE COURT:   YOU DON'T HAVE TO REPEAT.  I  
25          ASKED YOU WHETHER MR. HANSEN STATED ACCURATELY WHAT YOUR

1 SUGGESTION WAS.

2 MR. GOMEZ: THAT WAS ONE OF TWO  
3 ALTERNATIVES, YOUR HONOR.

4 THE COURT: I WILL BE ANXIOUS TO HEAR THE  
5 SECOND ONE.

6 MR. GOMEZ: THE SECOND ONE WAS -- THE  
7 FIRST ONE WAS WE HAVE -- JUST TO BE CLEAR -- WAS THE  
8 PLAINTIFFS HAVE THEIR ATTORNEY OR THEIR PERSON READ THE  
9 QUESTION FOR THEIR DESIGNATION, AND THEN THE PLAINTIFFS  
10 HAD A LISTENER OR READER WHO WOULD READ BACK THE  
11 RESPONSE. THE OTHER -- THE OPTION UNDER THAT PROPOSAL  
12 WOULD BE THAT THE DEFENDANT WOULD HAVE AN ATTORNEY OR  
13 PERSON READ THE QUESTION AND A SEPARATE READER, BUT THE  
14 ALTERNATIVE WAS TO HAVE ONE READER AND WE WOULD  
15 ALTERNATE ON THESE DEPOSITIONS. WE WOULD JUST HAVE THE  
16 QUESTIONER BE -- FOR INSTANCE, IF THE PLAINTIFFS'  
17 PORTION WENT FIRST OF THE DESIGNATION THAT THEY WOULD  
18 READ THE QUESTION, THERE WOULD BE ONE READER WHO WOULD  
19 READ THE RESPONSE BACK, IT WOULD BE MADE CLEAR ON THE  
20 RECORD THAT PLAINTIFFS HAVE DESIGNATED THIS PORTION. IF  
21 THE -- WHEN THE DEFENDANT PORTION CAME UP NEXT IN THE  
22 PART OF THE DEPOSITION, PARTICULARLY IF IT WAS RIGHT  
23 NEXT TO WHAT THE PLAINTIFFS HAD DESIGNATED, OUR ATTORNEY  
24 WOULD IDENTIFY THEMSELVES, IDENTIFY THAT THEY ARE NOW  
25 READING THE COUNTER DESIGNATIONS, THE READER WOULD

1 RESPOND AND THEN JUST BACK-AND-FORTH. MOST OF THESE --  
2 IT WON'T BE AS COMPLICATED ON THE FIRST DEPOSITION, BUT  
3 THE OTHER DEPOSITIONS THEY BEGIN AND START -- ON THE  
4 FIRST DEPOSITION THAT PLAINTIFFS ARE PROPOSING TO  
5 SUBMIT, ACTUALLY MOST OF IT IS -- THE FIRST PART IS JUST  
6 THE PLAINTIFFS AND THE SECOND PART IS PRETTY MUCH THE  
7 DEFENDANT IN TERMS OF LONG PASSAGES SO...

8 THE COURT: PROBABLY CREATED IT BECAUSE  
9 THAT IS THE WAY THE QUESTIONING WENT.

10 MR. GOMEZ: THAT IS THE WAY IT WENT, AND  
11 IT WOULD -- IT'S PROBABLY GOING TO BE LESS PROBLEMATIC  
12 ON THIS FIRST DEPOSITION, BUT ON THE SUBSEQUENT ONES IT  
13 WILL BE MORE PROBLEMATIC. SO WHAT THE PARTIES HAD  
14 TALKED ABOUT IS HAVING ONE READER, WE WOULD JUST  
15 ALTERNATE ON DEPOSITIONS WHO THE READER BEING FROM THE  
16 PLAINTIFF, FOR THE FIRST ONE, THE SECOND ONE BEING THE  
17 DEFENDANT, BUT WE WOULD HAVE SEPARATE -- FOR THE  
18 QUESTIONS IT WOULD BE -- ON THE DESIGNATION, IT WOULD BE  
19 THE PLAINTIFFS WOULD READ THEIR PORTIONS AND THE  
20 DEFENDANT WOULD READ HIS PORTIONS.

21 THE COURT: IS THE PURPOSE --

22 MR. GOMEZ: JUST SO THE RECORD IS CLEAR.

23 THE COURT: AS THE PRESIDING JUDGE AND  
24 FACT FINDER, LET ME SAY THIS, IF I'M GOING TO BE  
25 REQUIRED TO CONSIDER ALL OF DESIGNATED MATERIAL ON CROSS

1 DESIGNATED MATERIAL, I DON'T CARE WHO READS IT, WHO ASKS  
2 THE QUESTIONS. TO ME, I'M CANDIDLY SHARING WITH YOU, IT  
3 BORDERS ON FANCIFUL FOR ME TO CARE ABOUT IT. THERE IS  
4 IN TERMS OF AMBIENCE IN THE COURTROOM AND WHATEVER  
5 CHEMISTRY GOES WITH THIS TYPE OF EVIDENCE IT IS AMONG  
6 THE GRIMMEST OF EVIDENCE, RECEIVED, NOT SUBSTANTIVELY,  
7 BUT I'M TRYING TO GET THE PROCEDURES DOWN TO SOMETHING  
8 THAT MAKES IT LESS GRIM. THAT IS ONE OBSERVATION. MY  
9 QUESTION IS, I HAVE A PRELIMINARY ONE. HAVE THERE BEEN  
10 CROSS DESIGNATIONS BY THE PLAINTIFF AFTER THE  
11 DESIGNATIONS BY THE DEFENSE? I HAVE FORGOTTEN.

12 MR. VAN KWAWEGEN: YES, YOUR HONOR, THERE  
13 HAVE BEEN.

14 THE COURT: I HAVE THE COLORS.

15 MR. VAN KWAWEGEN: THOSE WOULD BE IN  
16 GREEN.

17 THE COURT: IT DOES SHOW THAT.

18 MR. VAN KWAWEGEN: THOSE ARE IN GREEN,  
19 THE COUNTER COUNTERDESIGNATIONS TO THE DEFENDANT'S  
20 COUNTERDESIGNATIONS WERE ENTERED ON THE TRANSCRIPT IN  
21 ORDER TO CURE ANY DEFECTS OR TO CLARIFY, NOT TO ADD ANY  
22 SUBSTANTIVE NEW ISSUES SO DEFENDANTS DID --

23 THE COURT: AT THE TIME OF THE DEPOSITION  
24 THAT WAS THE INTENT. THAT IS WHAT YOU ARE SAYING.

25 MR. VAN KWAWEGEN: AT THE TIME OF

1 DESIGNATION.

2 THE COURT: NO. AT THE TIME OF  
3 DEPOSITION. THAT WAS THE INTENT OF THE QUESTION.

4 MR. VAN KWAWEGEN: ACTUALLY, NO. WHAT  
5 I'M TRYING TO SAY, AND I'M PROBABLY NOT VERY CLEAR, IS  
6 THAT THE PLAINTIFFS DESIGNATED FIRST AND THEN THE  
7 DEFENDANTS DESIGNATED OTHER SECTIONS WITH OTHER TOPICS,  
8 AND WE LOOKED AT THE DESIGNATIONS OF THE DEFENDANT,  
9 WHICH INCLUDED BOTH THE OBJECTIONS OR CLARIFICATION TO  
10 OUR DESIGNATIONS AND THE NEW SUBSTANTIVE ISSUES THAT  
11 WERE RAISED BY THE NEW DESIGNATIONS. WE ONLY ADDED AS A  
12 THIRD LAYER IN GREEN ANY DESIGNATIONS THAT WE FELT WAS  
13 NECESSARY TO CLARIFY ANY OF THE DEFENDANT'S DESIGNATIONS  
14 OR TO CURE ANY OF THE OBJECTIONS THAT WERE RAISED BY THE  
15 DEFENDANT WITH REGARD TO THE DESIGNATIONS IN OUR  
16 TRANSCRIPT.

17 THE COURT: BY THE WAY, ALL THOSE  
18 OBJECTIONS HAVE BEEN TAKEN CARE OF, I GATHER.

19 MR. GOMEZ: FOR THE FIRST DEPOSITION,  
20 YOUR HONOR. I WOULD LIKE THE RECORD TO BE CLEAR, YOUR  
21 HONOR, THAT THE DEFENDANT DOES NOT AGREE AT ALL WITH THE  
22 CHARACTERIZATION MADE BY THE PLAINTIFFS IN TERMS OF  
23 THEIR COUNTERDESIGNATIONS. VIRTUALLY ALL OF THE  
24 COUNTERDESIGNATIONS THE PLAINTIFFS HAVE MADE ARE NOT  
25 CLARIFICATIONS BUT IN FACT ARE ADDITIONS. IN FACT,

1       THERE ARE COUNTERDESIGNATIONS THAT DON'T EVEN RELATE FOR  
2       PAGES IN CONNECTION WITH WHAT THE DEFENDANT HAD  
3       COUNTERDESIGNATED, BUT I WANT THE RECORD TO BE CLEAR ON  
4       THAT. WE ARE WILLING TO JUST LET THAT GO. WE HAVE GONE  
5       AHEAD AND IDENTIFIED THREE DEPOSITIONS THAT WERE DOING  
6       SMALL. WHAT WE, OUR COUNTER COUNTERDESIGNATIONS AND WE  
7       BELIEVE THAT SHOULD BRING THIS TO AN END, BUT RATHER  
8       THAN TO ARGUE ABOUT WHETHER IN FACT THEY ARE PLAINTIFFS'  
9       COUNTERDESIGNATIONS OR CLARIFICATION OR NOT, AND OUR  
10      POSITION IS THEY'RE NOT.

11                   THE COURT: AS FACT FINDER I DON'T REALLY  
12      CARE. I WANT TO HEAR THE WHOLE -- HEAR OR SEE THE WHOLE  
13      THING AND CONSIDER IT AS A PACKAGE. I CAN TELL WHEN A  
14      QUESTION IS LEANING TOWARD A DEFENSE POINT AND WHEN IT  
15      ISN'T. I WILL READ -- I WILL HEAR ALL OF IT. I'M  
16      TRYING TO AVOID THE -- I JUST WONDER WHETHER THE FACT OF  
17      WHAT PARTY DESIGNATED SOMETHING HAS ANY RELEVANCE. IT  
18      MAY HAVE IN THE MINDS OF THE LAWYERS WHO DID IT AND THEY  
19      ARE DOING A DUTIFUL JOB OF BEING ADVERSARIES AND TO DO  
20      WHAT IS BEST FOR THEIR CLIENTS. I ACCEPT THAT AND THAT  
21      IS DONE NOW. AND MY QUESTION IS, IS IT UNFAIR OR  
22      PREJUDICIAL TO HAVE TO ALTERNATE, PLAINTIFFS WILL  
23      PRESENT THE FIRST DEPOSITION AND ASK A QUESTION. THE  
24      NEXT TIME THE DEFENSE LAWYER WILL PUT SOMEBODY ON THE  
25      STAND AND ASK ALL THE QUESTIONS. I GUESS IF THE



1 DEPOSITION IS GOING IN THE PLAINTIFFS CASE THAT WOULD  
2 NOT MAKE ANY SENSE.

3 MR. HANSEN: THIS IS READING OUT LOUD.  
4 I'M NOT SURE IT MATTERS WHO READS OUT LOUD AND WHO ALSO  
5 READS OUT LOUD.

6 THE COURT: IF THERE WERE A JURY -- I HAD  
7 A SENIOR PARTNER ONCE WHO WE ALWAYS ASKED TO GO TO COURT  
8 TO READ DEPOSITIONS BECAUSE NO ONE COULD TOUCH HIM. HE  
9 WAS SUCH A WONDERFUL SENIOR GENT AND KNOWN AT THE BAR.  
10 HE KNEW ALL THE JUDGES, HE HAD FUN BEING A DRAMATIST,  
11 EMPHASIZING THINGS AND SORT OF LIKE COUNSEL  
12 CROSS-EXAMINING AND READING FROM A STATEMENT OF  
13 SOMEBODY. WE WON'T HAVE THAT HAPPEN HERE. WHEN YOU  
14 HAVE A JURY, IT'S A LITTLE MORE INTERESTING TO DO THAT  
15 IS THE DEFENSE GOING TO OFFER ANY DEPOSITION TRANSCRIPTS  
16 IN THIS FASHION?

17 MR. GOMEZ: NO, YOUR HONOR, BUT WE HAVE  
18 DESIGNATED SUBSTANTIAL PORTIONS OF THE DEPOSITIONS OF  
19 THE PLAINTIFFS THAT WAS PUT IN.

20 THE COURT: I DON'T KNOW. I HAVE NOT  
21 LOOKED AT THE CASES. I ONLY KNOW THE PROCEDURE IS THAT  
22 WHEN A PARTY DESIGNATES A DEPOSITION IN LIEU OF  
23 TESTIMONY, IT'S BLACK LETTER LAW THAT THE OPPOSING PARTY  
24 HAS A RIGHT TO DESIGNATE AND IT'S ALSO BLACK LETTER LAW  
25 THAT THEY WILL BE PRESENTED AT THE SAME TIME IN CONTEXT.

1 I DON'T KNOW ABOUT THE HIGHLY THEORETICAL ISSUE OF  
2 WHETHER THE DESIGNATIONS BY THE DEFENSE ARE BEING  
3 OFFERED AS SUBSTANTIVE EVIDENCE IN THEIR CASE OR JUST  
4 CLARIFICATIONS IN THE PLAINTIFFS' CASE. I THINK WE ARE  
5 HAVING ANGELS DANCE ON THE HEAD OF A PIN, BUT THAT IS  
6 WHAT IS GOING THROUGH MY MIND. I APPRECIATE THE WORK  
7 THAT THE PARTIES HAVE DONE TO TRY TO SORT THIS OUT.  
8 LET'S TRY THE FIRST DEPOSITION WHERE THE PLAINTIFF WILL  
9 HAVE A READER OF THE QUESTIONS THE PLAINTIFF WILL  
10 PROVIDE A SURROGATE FOR THE WITNESS AND I WILL GIVE A  
11 FEW INSTRUCTIONS TO THE SURROGATE ABOUT BEHAVIOR IF THE  
12 SURROGATE IS NOT IN THE ROOM NOW, AND THE QUESTIONER  
13 WILL, IF IT'S NOT TOO STACCATO, IF IT DOES NOT HAPPEN  
14 TOO FREQUENTLY THE QUESTIONER SHOULD STATE THESE ARE THE  
15 COUNTERDESIGNATIONS. SO AT LEAST THEY ARE IDENTIFIED IN  
16 THE RECORD. SO YOU CAN USE THEM FOR ANY PURPOSE YOU  
17 WANT. THE DEFENSE COULD -- THEY COULD MOVE THEM IN  
18 THEIR CASE OR TALK ABOUT THEM IN THEIR CLOSING OR USE  
19 THEM FOR WHATEVER PURPOSE. THEY WILL BE IN EVIDENCE.  
20 WE'LL TRY THAT AND SEE HOW IT WORKS. IT HAS NOTHING TO  
21 DO WITH PARTISANSHIP ON MY PART AT ALL. ARE THERE  
22 BLOCKS OF MATERIAL SO THAT THE QUESTIONER CAN TAKE A  
23 MOMENT TO IDENTIFY THE COUNTERDESIGNATIONS?

24 MR. HANSEN: YES, YOUR HONOR, WE CAN DO  
25 THAT.

1 THE COURT: THE COUNTER  
2 COUNTERDESIGNATIONS.

3 MR. HANSEN: WE CAN IDENTIFY WHICH  
4 PASSAGES WERE DESIGNATED BY WHICH PARTY.

5 THE COURT: WE DON'T WANT TO HOLD UP THE  
6 PROCEDURE. IT SHOULD BE SMOOTH AS POSSIBLE. WE WILL  
7 HAVE THE SURROGATE PRACTICING MOST OF THE EVENING. I  
8 WANT TO REPEAT, I APPRECIATE THE LAWYERS TRYING TO WORK  
9 OUT SOMETHING. YOU DON'T KNOW HOW I FEEL ABOUT IT. SO  
10 YOU DID YOUR JOB. THANK YOU. MR. HANSEN.

11 MR. HANSEN: ONE OTHER THING ON THE  
12 DEPOSITION DESIGNATIONS, YOUR HONOR. I THINK THE  
13 PARTIES ARE -- IF WE HAVE NOT COMPLETELY WORKED OUT, WE  
14 ARE ON THE VERGE OF COMPLETELY WORKING OUT OBJECTIONS IN  
15 THE DEPOSITION DESIGNATIONS RAISED BY EITHER PARTY. I  
16 DON'T THINK YOUR HONOR IS GOING TO BE CALLED UPON TO  
17 RULE ON ANY OF THOSE. THERE ARE SOME INSTANCES IN WHICH  
18 THERE ARE OBJECTIONS TO THE DEPOSITION DESIGNATIONS  
19 RAISED BY THE THIRD PARTIES. I THINK IT IS OUR VIEW  
20 THAT GIVEN THE FACT THAT THE THIRD PARTIES WERE NOTIFIED  
21 THAT WE INTENDED TO READ THE DEPOSITIONS AND WERE TOLD  
22 WHAT PARTICULAR SECTIONS WE INTENDED TO READ, IF THE  
23 THIRD PARTY HAS NOT RESPONDED AT THIS POINT, THE  
24 OBJECTION HAS BEEN WAIVED, BUT I JUST WANT TO FLAG IT  
25 FOR YOUR HONOR.

1 THE COURT: WERE THERE MANY OCCASIONS  
2 WHERE IN THAT TRANSCRIPT, FOR INSTANCE, WHERE THE THIRD  
3 PARTY OBJECTS, WERE THEY ARGUED IN ANY WAY OR JUST NOTED  
4 FOR THE RECORD?

5 MR. HANSEN: NOTED FOR THE RECORD. THERE  
6 ARE SOME. IT'S NOT JUST ONE OR TWO. THERE ARE SOME,  
7 BUT THEY WERE NOT GENERALLY ARGUED.

8 THE COURT: DO YOU THINK IT'S EVEN  
9 NECESSARY TO READ THOSE INTO THE RECORD?

10 MR. HANSEN: I DON'T THINK IT IS, YOUR  
11 HONOR, BUT I JUST WANTED TO FLAG IT IN CASE YOUR HONOR  
12 WANTED TO.

13 THE COURT: I WILL SEE THEM AS I'M GOING  
14 THROUGH THERE. I WOULD HAVE WONDERED ABOUT THEM.

15 OKAY. MISS CRUMP AND I HAVE A DEAL. IS  
16 SHE HERE?

17 MS. CRUMP: I AM.

18 THE COURT: WE ARE GOING TO GET A NEW  
19 STIPULATION ON ONE OF THE THIRD PARTY OBJECTIONS BECAUSE  
20 IT DID NOT HAVE A TRIAL EXHIBIT NUMBER IN IT. SO YOU  
21 KNOW I'M NOT GOING TO DO ANYTHING ABOUT THAT FIRST  
22 STIPULATION. IT IS FILED WITH THE CLERK. IT WILL SIT  
23 THERE UNATTENDED TO UNTIL THE END OF TIME. I WILL DEAL  
24 WITH THE NEW ONE. THERE IS NO SENSE ISSUING AN ORDER TO  
25 STRIKE SOMETHING THAT IS NEVER GOING TO BE GOING

1 ANYWHERE. SOMEBODY IS GOING TO ASSIGN SOMEBODY TO WORK  
2 ON THE DEPOSITION OF THE ATLANTA COMPANY THAT WE JUST  
3 RESOLVED THIS AFTERNOON AND MARK IT UP.

4 MR. HANSEN: PLAINTIFFS WILL DO THAT,  
5 YOUR HONOR.

6 THE COURT: I HAVE ASKED MR. LANG TO DO  
7 HIS BEST TO PREPARE A SHORT ORDER TO COVER THOSE BECAUSE  
8 WE HAVE A PUBLIC MOTION, A MOTION IS FILED. I HAVE TO  
9 FILE AN ORDER RULING ON THE MOTION AND --

10 THE CLERK: I TALKED TO MR. FINARELLI ON  
11 THE ELEVATOR ON THE WAY DOWN. HE TOLD ME THAT AFTER MR.  
12 HARRIS AND HE WORK IT OUT, HE WOULD TELL ME EXACTLY WHAT  
13 THEY AGREED TO AND THAT WOULD HELP ME WITH THE ORDER  
14 WRITING.

15 THE COURT: I DON'T KNOW WHEN YOU ARE  
16 GOING TO GET AROUND TO READING THAT DEPOSITION INTO THE  
17 RECORD. DO YOU KNOW WHEN THAT MIGHT BE?

18 MR. HARRIS: I TOLD HIM IT WOULD NOT BE  
19 TOMORROW SO HE CAN CERTAINLY CONTACT ME TOMORROW WITH  
20 HIS PROPOSED CHANGES. WE WILL WORK IT OUT. WE CAN  
21 CERTAINLY RESOLVE ALL THAT AND LET YOU KNOW BEFORE WE  
22 NEED TO READ IT INTO THE RECORD.

23 THE COURT: FRANKLY, WE CAN ISSUE THE  
24 ORDER ANY TIME AS LONG AS IT IS ACCURATE, BUT IF WE HAVE  
25 TO MARK UP THE DEPOSITION IN ADVANCE OF PRESENTING IT,

1           OBVIOUSLY, THAT IS THE KEY PART OF THIS AS FAR AS  
2           KEEPING THE TRIAL GOING.

3                           DO YOU HAVE ANYTHING ELSE TO COVER RIGHT  
4           NOW?

5                           MR. HANSEN:   NOT FROM THE PLAINTIFFS,  
6           YOUR HONOR.

7                           THE COURT:   MR. GOMEZ.

8                           MR. GOMEZ:   NO, YOUR HONOR.   WE HAVE  
9           NOTHING TO ADD.

10                          THE COURT:   I WANT TO COMPLIMENT THE  
11           PARTIES ON THE NEATNESS OF THE COURTROOM NOW AND WHEN  
12           YOU LEAVE, PRISTINE, AND YOU NOTICE HOW HEAVILY WE ARE  
13           ATTENDED BY THE PUBLIC?  I THINK I SAW SOME PROUD  
14           PARENTS HERE OF CERTAIN LAWYERS.  I WAS IMPRESSED WITH  
15           THAT.  OKAY.

16                          THE DAY'S SESSION IS CONCLUDED.  WE ARE  
17           OFF THE RECORD.  COUNSEL ARE EXCUSED.

18                          (PROCEEDINGS CONCLUDED AT 4:50 P.M.)

19

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