

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

3           AMERICAN CIVIL LIBERTIES       :   CIVIL ACTION  
 4           UNION, ET AL                    :                   :

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26           ALBERTO R. GONZALES,         :  
 27           IN HIS OFFICIAL CAPACITY AS   :  
 28           ATTORNEY GENERAL OF THE       :  
 29           UNITED STATES                   :  
 30    :                   :

31   :   NO. 98-05591

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401           APPEARANCES:

402           CHRISTOPHER A. HANSEN, ESQUIRE  
 403           KATHARINE MARSHALL, ESQUIRE  
 404           ADEN J. FINE, ESQUIRE  
 405           BEN WIZNER, ESQUIRE  
 406           CATHERINE CRUMP, ESQUIRE  
 407           STEFANIE LAUGHLIN, ESQUIRE  
 408           AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
 409           125 BROAD STREET  
 410           NEW YORK, NY 10004-2400  
 411           (212)549-2606   FOR THE PLAINTIFFS

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

1 APPEARANCES: (CONTINUED)

2 CHRISTOPHER HARRIS, ESQUIRE  
3 BENJAMIN SAHL, ESQUIRE  
4 JEROEN VAN KWAWEGEN, ESQUIRE  
5 ADDISON F. GOLLODAY, ESQUIRE  
6 BENJAMIN SAHL, ESQUIRE  
7 LATHAM & WATKINS  
8 53RD AT THIRD, 885 THIRD AVENUE  
9 SUITE 1000  
10 NEW YORK, NY 10022  
11 (212) 906-1200

FOR THE PLAINTIFFS

12 U.S. DEPARTMENT OF JUSTICE  
13 CIVIL DIVISION  
14 RAPHAEL O. GOMEZ, ESQUIRE  
15 THEODORE HIRT, ESQUIRE  
16 ERIC J. BEANE, ESQUIRE  
17 KENNETH E. SEALLS, ESQUIRE  
18 TAMARA ULRICH, ESQUIRE  
19 JOEL MCELVAIN, ESQUIRE  
20 JAMES TODD, ESQUIRE  
21 ERIC J. BEANE, ESQUIRE  
22 ISAAC R. CAMPBELL, ESQUIRE  
23 ROOM 6144  
24 20 MASSACHUSETTS AVENUE, NW  
25 WASHINGTON, DC 20530  
(202)514-1318

FOR THE DEFENDANT

1 (CLERK OPENS COURT.)

2 THE COURT: GOOD MORNING, ALL.

3 ARE YOU READY TO CONTINUE WITH MR. RUSSO?

4 MR. VAN KWAWEGEN: YES, YOUR HONOR.

5 THE COURT: MR. RUSSO, YOU ARE WELCOME TO  
6 COME UP.

7 MR. GOMEZ: WITH THE COURT'S PERMISSION,  
8 I NEED TO BE OUT OF THE COURTROOM FOR A SHORT PERIOD OF  
9 TIME THIS MORNING, BUT WILL RETURN. MR. HIRT WILL BE  
10 HERE.

11 THE COURT: ABLE BODIED PEOPLE IN CHARGE.

12 MR. VAN KWAWEGEN: YOUR HONOR, BEFORE MR.  
13 TODD CONTINUES HIS CROSS EXAMINATION, MR. RUSSO HAS  
14 INDICATED THAT HE WOULD LIKE TO CORRECT PART OF HIS  
15 TESTIMONY FROM YESTERDAY WITH YOUR PERMISSION.

16 THE COURT: WELL, TYPICALLY YOU ASK  
17 QUESTIONS. SO DO YOU THINK YOU HAVE TO DO IT BEFORE  
18 YOUR REDIRECT?

19 MR. VAN KWAWEGEN: NO, YOUR HONOR.

20 THE COURT: THE WAY WE WILL DO IT IS YOU  
21 WILL ASK QUESTIONS. HE WILL NOT SPONTANEOUSLY DISCUSS  
22 WHAT HE WANTS TO SAY.

23 MR. VAN KWAWEGEN: THANK YOU.

24 THE COURT: MR. RUSSO. IN THE EVENT THAT  
25 WHEN YOU ARE UNDER CROSS EXAMINATION WE GET INTO --

1 COUNSEL GETS INTO AN AREA THAT YOU WANT TO ADD MORE  
2 INFORMATION TO, YOU WILL HAVE TO DO THAT IN CONNECTION  
3 WITH MAKING WHATEVER ANSWER YOU WANT.

4 THE WITNESS: THAT'S FINE, YOUR HONOR. I  
5 THINK IT WILL COME UP.

6 THE COURT: THE FORMAL EXCHANGE OF IT  
7 WILL COME WHEN PLAINTIFFS' COUNSEL GETS TO REDIRECT  
8 EXAMINATION.

9 THANK YOU.

10 CONTINUED CROSS EXAMINATION

11 BY MR. TODD:

12 Q. GOOD MORNING, MR. RUSSO, HOW ARE YOU TODAY.

13 A. GOOD MORNING. HOW ARE YOU.

14 Q. I THINK WHEN WE LEFT OFF WE WERE IN THE MIDDLE  
15 OF THE DEFENDANT'S EXHIBIT 383?

16 A. IS THIS ALSO IN MY BINDER, WOULD YOU KNOW?

17 Q. I THINK THOSE ARE EXHIBITS THAT THE PLAINTIFFS  
18 INTRODUCED.

19 A. OKAY.

20 Q. WE HAD JUST FINISHED LOOKING AT PAGE 2, I  
21 BELIEVE. PAGE 2, MR. BYRDSONG. I HAD JUST READ ALOUD  
22 THE SENTENCE: PARENTS ENROLL THEIR TEEN IN THE PROGRAM  
23 AND CAN ALSO MONITOR THEIR TEEN'S SPENDING. THEY SET  
24 THE SPENDING LIMITS BY THE PREPAID AMOUNT LOADED ON THE  
25 CARD.

1 IF WE COULD NOW BRING UP THE DEPOSITION,  
2 MR. BYRDSONG. ON PAGE 112, LINE 18, I ASKED YOU, ARE  
3 YOU AWARE THAT THE VISA BUXX CARD REQUIRES A PARENT'S  
4 SIGNATURE ON THE ACCOUNT, AND YOU ANSWERED: I THINK  
5 THIS PARTICULAR ISSUE IS NOT ANYTHING THAT I CONSIDERED  
6 ONE WAY OR THE OTHER. IS THAT CORRECT?

7 A. ABOUT THE VISA BUXX CARD, YES, CORRECT.

8 THE COURT: YOU HAVE TO BE CAREFUL WHEN  
9 YOU ASK A WITNESS, IS THAT CORRECT. DID YOU MEAN DID HE  
10 SAY THAT OR DID HE READ IT CORRECTLY?

11 BY MR. TODD:

12 Q. THAT WAS YOUR TESTIMONY, IS THAT CORRECT?

13 A. YES, I WAS INDICATING TO YOU THAT THAT  
14 PARTICULAR ISSUE ABOUT THE VISA BUXX CARD REQUIRING  
15 PARENT'S SIGNATURE ON THE ACCOUNT WAS NOT SOMETHING I  
16 HAD CONSIDERED.

17 Q. YES OR NO WOULD BE SUFFICIENT.

18 A. OKAY.

19 Q. IF WE COULD GO TO -- GO BACK TO THE DEFENDANT'S  
20 EXHIBIT 383, MR. BYRDSONG. ACTUALLY, CAN WE SEE THE  
21 WHOLE PAGE FIRST?

22 THE COURT: EXHIBIT NUMBER AGAIN FOR THE  
23 RECORD?

24 MR. TODD: THIS IS 383, YOUR HONOR,  
25 DEFENDANT'S EXHIBIT 383. THIS IS THE PRINTOUT FROM

1 AUGUST 11, 2006 WITH THE VISA BUXX CARD FREQUENTLY ASKED  
2 QUESTIONS.

3 BY MR. TODD:

4 Q. IF WE CAN ZOOM IN ON THE HIGHLIGHTED QUESTION,  
5 MR. BYRDSONG.

6 THE QUESTION IS: HOW CAN PARENTS GUIDE  
7 THEIR TEENS TO THE MOST APPROPRIATE PLACES TO SHOP,  
8 ESPECIALLY ONLINE? AND THE ANSWER IS: PARENTS CAN  
9 REVIEW A TEEN'S ACCOUNT ANY TIME AND SEE HOW MUCH THEY  
10 ARE SPENDING AND WHERE THEY ARE SPENDING IT. PARENTS  
11 CAN DISCUSS WITH THEIR TEENS HOW AND WHERE THE CARD CAN  
12 BE USED. TOGETHER, YOU AND YOUR TEEN CAN AGREE ON THE  
13 BEST PLACES TO SHOP. BUT EVEN MORE IMPORTANT IS TALKING  
14 TO YOUR TEEN ABOUT MONEY AND WHAT YOU EXPECT FROM THEM.

15 IS THAT WHAT IT SAYS?

16 A. THAT IS WHAT IT SAYS, YES.

17 Q. NOW, MR. RUSSO, YOU TESTIFIED -- I'M SORRY, MR.  
18 BYRDSONG, IF YOU CAN BRING UP PAGE 114 OF HIS DEPOSITION  
19 TESTIMONY. YOU TESTIFIED THAT YOU WERE ONLY AWARE OF  
20 THE VISA BUXX CARD EXISTENCE, IS THAT CORRECT?

21 A. CAN YOU REPEAT THAT?

22 Q. I ASKED -- AT THE DEPOSITION I ASKED YOU WITH  
23 THE VISA BUXX CARD, SINCE YOU MENTIONED THAT IN YOUR  
24 REPORT, WERE YOU AWARE THAT THE PARENTS COULD REVIEW THE  
25 TEEN'S ACCOUNT ANY TIME? AND YOU ANSWERED: I HAVE

1 NEVER USED A VISA BUXX CARD MYSELF, I ONLY KNOW OF ITS  
2 EXISTENCE SO I WOULD HAVE NO OPINION ON THAT ONE WAY OR  
3 THE OTHER. THAT WAS YOUR TESTIMONY, CORRECT?

4 A. THAT'S CORRECT, YES.

5 Q. NOW, MR. RUSSO, YOU CAN'T QUANTIFY THE NUMBER OF  
6 CHILDREN THAT HAVE A VISA BUXX CARD, IS THAT CORRECT?

7 A. THAT'S CORRECT, YES.

8 Q. AND YOU CAN'T QUANTIFY THE NUMBER OF CHILDREN  
9 THAT HAVE ACCESS TO ANY TYPE OF PAYMENT CARD, IS THAT  
10 CORRECT?

11 A. YES, THAT'S CORRECT.

12 Q. NOW, YOU ALSO TESTIFIED, I BELIEVE, THAT NOT ALL  
13 ADULTS HAVE ACCESS TO PAYMENT CARDS, IS THAT CORRECT?

14 A. YES, CORRECT.

15 Q. BUT THE BASIS OF YOUR KNOWLEDGE FOR THAT IS  
16 ANECDOTAL, IS THAT CORRECT?

17 A. COULD YOU BE A LITTLE MORE SPECIFIC, PLEASE, AS  
18 TO WHAT YOU ARE GETTING AT?

19 Q. SURE. IF WE COULD BRING UP PAGE 124 OF MR.  
20 RUSSO'S DEPOSITION, PLEASE. I ASKED YOU BEGINNING AT  
21 LINE 7:

22 QUESTION: YOU IDENTIFY PROBLEM 2 AS NOT  
23 ALL ADULTS HAVE ACCESS TO A PAYMENT CARD.

24 THEN I ASKED: NOW WHAT IS YOUR BASIS FOR  
25 THAT STATEMENT?

1                    THEN YOU STATED:  THERE HAVE BEEN  
2                    INSTANCES WHERE AFFILIATE PROGRAM OPERATORS HAVE  
3                    DISCUSSED REQUESTS THEY HAVE GOTTEN TO RECEIVE CONTENT  
4                    THROUGH MEANS OTHER THAN A PAYMENT CARD BECAUSE THE  
5                    INDIVIDUAL CONTACTING THEM DOESN'T HAVE A PAYMENT CARD.

6                    IS THAT YOUR TESTIMONY?

7                    THE WITNESS:  YES.  YOU ASKED ME FOR THE  
8                    BASIS OF MY OPINION.  THAT IS AN EXAMPLE THAT I GAVE  
9                    YOU.  THAT IS MY EXAMPLE, YES.

10                  Q.            IN FACT, BUT YOU HAVE NO -- YOU CAN'T QUANTIFY  
11                  THE NUMBER OF ADULTS THAT DON'T HAVE PAYMENT CARDS, IS  
12                  THAT CORRECT?

13                  A.            I HAVE NO NUMBERS WHATSOEVER IN TERMS OF HOW  
14                  MANY ADULTS DON'T HAVE PAYMENT CARDS, CORRECT.

15                  Q.            YOU ALSO BASED YOUR STATEMENT THAT -- NOT ALL  
16                  ADULTS HAVE ACCESS TO PAYMENT CARDS -- YOU WERE NOT  
17                  CONFINING THAT STATEMENT TO U.S. ADULTS, IS THAT  
18                  CORRECT?

19                  A.            I SEE NO REASON WHY IT WOULD BE CONFINED TO U.S.  
20                  ADULTS ONLY.

21                  Q.            YOUR TESTIMONY WAS THAT PAYMENT CARDS ARE NOT AS  
22                  POPULAR IN EUROPE, FOR EXAMPLE, IS THAT CORRECT?

23                  A.            THAT'S VERY TRUE, YES.

24                  Q.            YOU CAN'T QUANTIFY THE NUMBER OF PEOPLE IN  
25                  EUROPE THAT DO OR DON'T HAVE A PAYMENT CARD, IS THAT

1 CORRECT?

2 A. I HAVE NO NUMBERS IN THAT REGARD, CORRECT.

3 Q. TURNING TO YOUR EVALUATION OF WHAT YOU CALLED  
4 DATA VERIFICATION SERVICES, THAT IS THE EVALUATION YOU  
5 DID ABOUT ID RESPONSE, VERIFY ME AND IDOLOGY, IS THAT  
6 CORRECT?

7 MR. VAN KWAWEGEN: YOUR HONOR, IF I MAY,  
8 MAY WE HAVE A MOMENT ON THE SIDE, PLEASE. THERE IS A  
9 CONFIDENTIALITY ISSUE.

10 THE COURT: WHAT HAPPENS WHEN YOU GO TO  
11 SIDE BAR IS WHAT WE SAY IS PUT ON THE OFFICIAL RECORD OF  
12 THE COURT. WE DON'T GO OFF THE RECORD.

13 MR. TODD: I'M SIMPLY ASKING HIM THE  
14 THREE COMPANIES THAT HE EVALUATED.

15 THE COURT: HE HAS ALREADY TESTIFIED TO  
16 THEM, THE NAMES OF THESE COMPANIES?

17 MR. TODD: HE HAS NOT TESTIFIED -- HE  
18 TESTIFIED AT THE DEPOSITION ABOUT THE NAMES.

19 THE COURT: I MEAN IN COURT YESTERDAY.

20 MR. TODD: NO, I DON'T THINK HE MENTIONED  
21 ANY OF THESE NAMES.

22 MR. VAN KWAWEGEN: THE SECTION OF THE  
23 DEPOSITION THAT MR. TODD IS REFERRING TO IS ACTUALLY  
24 DESIGNATED CONFIDENTIAL.

25 MR. TODD: I DON'T BELIEVE THE SECTION

1 ABOUT ID RESPONSE OR VERIFY ME IS DESIGNATED  
2 CONFIDENTIAL, IS THAT CORRECT?

3 MR. VAN KWAWEGEN: I CAN'T DISCLOSE THAT  
4 BY ANSWERING THE PROBLEM THAT WE HAVE RIGHT NOW. BY  
5 IDENTIFYING TWO OUT OF THE THREE, I'M DISCLOSING ONE OF  
6 THE THREE. BUT WHAT I'M TRYING TO SAY, YOUR HONOR, IS  
7 THAT IT IS CONFIDENTIAL. THERE IS A CONFIDENTIALITY  
8 PROBLEM HERE. MR. RUSSO CANNOT TALK --

9 THE COURT: WHOSE ARE THEY? THE PROBLEMS  
10 ARE THE ORGANIZATIONS WHOSE NAMES ARE MENTIONED?

11 MR. VAN KWAWEGEN: AS MR. RUSSO TESTIFIED  
12 YESTERDAY, YOUR HONOR, PART OF HIS ANALYSIS OF DVS  
13 TECHNOLOGIES WAS IN THE CONTEXT OF HIS WORK FOR YNOT.  
14 IN THE CONTEXT OF THAT WORK, YNOT, HIS EMPLOYER, SIGNED  
15 CONFIDENTIALITY AGREEMENTS WITH VARIOUS DVS COMPANIES,  
16 AND PART OF THAT CONFIDENTIALITY IS THAT HE CANNOT  
17 DISCLOSE THE NAME, SPECIFICALLY, THE NAME OF ONE OF  
18 THESE THREE COMPANIES. THIS WAS DISCUSSED WITH MR. TODD  
19 AND ALSO OTHER DEFENDANT'S COUNSEL EARLIER IN THE WEEK.  
20 I'M QUITE SURPRISED THIS IS COMING UP.

21 MR. TODD: I'M NOT TRYING TO PROBE THE  
22 CONTENT OF THE CONVERSATIONS, YOUR HONOR. I'M MERELY  
23 TRYING TO ESTABLISH WHICH THREE COMPANIES HE EVALUATED.

24 MR. VAN KWAWEGEN: YOUR HONOR, PLAINTIFFS  
25 HAVE NO OBJECTION --

1 THE COURT: DO THESE COMPANIES EXIST IN  
2 SECRET? THEIR NAMES ARE KNOWN THROUGHOUT THE WORLD, I  
3 ASSUME. WE ARE JUST TALKING ABOUT NAMES, NOT ABOUT  
4 ANYTHING MORE AT THIS POINT. I DON'T UNDERSTAND THE  
5 CONFIDENTIALITY PROBLEM.

6 MR. VAN KWAWEGEN: THE AGREEMENT THAT WAS  
7 SIGNED BY YNOT AND THIS SPECIFIC COMPANY SPECIFICALLY  
8 IDENTIFIES -- ONE OF THE CLAUSES OF THE AGREEMENT  
9 SPECIFICALLY IDENTIFIES THAT YNOT OR REPRESENTATIVES OF  
10 YNOT CANNOT DISCLOSE THAT THESE DISCUSSIONS HAVE TAKEN  
11 PLACE, YOUR HONOR.

12 THE COURT: LIKE YOU JUST DID.

13 MR. VAN KWAWEGEN: I DID NOT SAY WHICH  
14 ONE.

15 MR. TODD: I WILL TELL YOU WHAT, YOUR  
16 HONOR. I WILL TRY TO GET TO IT THIS WAY AND THEN I WILL  
17 COME BACK TO IT. OKAY? CAN WE STRIKE THE LAST  
18 QUESTION?

19 THE COURT: SURE.

20 MR. VAN KWAWEGEN: PLAINTIFFS HAVE NO  
21 OBJECTION TO GENERAL QUESTIONS ABOUT HIS ANALYSIS AND  
22 STUFF LIKE THAT. IT'S JUST THE PARTICULAR IDENTITY OF  
23 THIS ENTITY THAT IS CONFIDENTIAL.

24 THE COURT: MAYBE IT COULD BE  
25 CHARACTERIZED AS TO WHAT THEY ARE AS OPPOSED TO BY NAME.

1 MR. TODD, YOU MAY BE ABLE TO CHARACTERIZE THE  
2 ORGANIZATIONS OR ASK HIM TO DO IT.

3 MR. TODD: WELL, LET ME TRY DOING THIS ON  
4 QUESTIONING, YOUR HONOR. WE MIGHT COME RIGHT BACK TO  
5 THIS ISSUE. I'M WILLING TO TRY TO RESOLVE IT THEN.

6 IF WE COULD BRING UP PAGE 171 OF MR.  
7 RUSSO'S DEPOSITION, MR. BYRDSONG.

8 BY MR. TODD:

9 Q. AT LINE 14 I ASKED: YOU HAD A DISCUSSION WITH  
10 ID RESPONSE ABOUT A BUSINESS PROPOSAL, IS THAT CORRECT?

11 AND YOU TESTIFIED: WE HAD CONVERSATIONS  
12 WITH ID RESPONSE ABOUT THEIR PRODUCT AND THE POSSIBILITY  
13 OF US DOING BUSINESS TOGETHER.

14 WAS THAT YOUR TESTIMONY?

15 A. YES, IT WAS.

16 Q. THESE EVALUATIONS WERE CONDUCTED IN THE CONTEXT  
17 OF DOING BUSINESS WITH THESE COMPANIES, IS THAT CORRECT,  
18 POTENTIALLY DOING BUSINESS WITH THESE COMPANIES, IS THAT  
19 CORRECT?

20 A. YES, IT IS.

21 Q. NOW, YOUR EVALUATION OF THESE COMPANIES  
22 CONSISTED IN PART OF CONTACTING THE COMPANIES, IS THAT  
23 CORRECT?

24 A. YES.

25 Q. AND YOUR EVALUATION CONSISTED IN PART OF

1 ARRANGING FOR EXTENDED PHONE CONVERSATIONS AND  
2 CONFERENCE CALLS WITH THESE COMPANIES, IS THAT CORRECT?

3 A. YES.

4 Q. YOUR EVALUATION CONSISTED IN PART OF  
5 EXPERIENCING DEMOS OF THE COMPANY'S PRODUCTS, IS THAT  
6 CORRECT?

7 A. YES.

8 Q. YOUR EVALUATION CONSISTED IN PART OF RUNNING  
9 SOME DATA THROUGH THE SYSTEMS, IS THAT CORRECT?

10 A. YES.

11 Q. THE TESTING CONSISTED OF RUNNING VARIOUS SETS OF  
12 DATA THAT WAS EITHER COMPLETELY MADE UP OR WAS AN ACTUAL  
13 PERSON, IS THAT CORRECT?

14 A. YES.

15 Q. AND THE BOGUS DATA, AS YOU CHARACTERIZED IT IN  
16 YOUR REPORT, WAS REJECTED, IS THAT CORRECT?

17 A. YES, IT WAS.

18 Q. AND THE ACCURATE DATA CAME BACK WITH A MATCH  
19 WHEN YOU INCLUDED SOCIAL SECURITY NUMBER, IS THAT  
20 CORRECT?

21 A. WHEN WE INCLUDED SOCIAL SECURITY NUMBER, YES,  
22 THAT'S CORRECT.

23 Q. AND THE ACCURATE DATA CAME BACK WITH A MATCH  
24 WHEN YOU INCLUDED THE LAST FOUR NUMBERS OF A SOCIAL  
25 SECURITY NUMBER, IS THAT CORRECT?

1 A. YES.

2 Q. NOW, AFTER CONDUCTING THIS LEVEL OF TESTING,  
3 YOUR INTEREST IN THE DVS TECHNOLOGIES WANED, IS THAT  
4 CORRECT?

5 A. WELL, THERE WERE MORE STEPS THAT HAPPENED AFTER  
6 THAT TESTING SO OUR INTEREST WANED. IT WAS NOT AS A  
7 RESULT SPECIFICALLY OF THOSE DATA CHECKS. THERE WERE  
8 ADDITIONAL FACTORS.

9 Q. BUT SHORTLY AFTER, IS THAT CORRECT?

10 THE COURT: SHORTLY AFTER WHAT HAPPENED?

11 MR. TODD: LET'S DO IT THIS WAY. IF WE  
12 CAN BRING UP PAGE 163 OF THE DEPOSITION, LINE 17.  
13 ACTUALLY WE MAY NEED TO BACK UP A LITTLE BIT TO HAVE  
14 SOME CONTEXT FOR THE QUESTION.

15 THE COURT: BACK THE DISPLAY UP?

16 MR. TODD: YES.

17 BY MR. TODD:

18 Q. I ASKED YOU: IN ADDITION TO NAME, ADDRESS,  
19 BIRTHDAY, ZIP CODE AND SOCIAL SECURITY NUMBER, DID YOU  
20 EXPLORE THE ONLINE QUESTIONS WHERE -- DID YOU, YOU KNOW,  
21 LIVE AT YOUR PRIOR -- WHAT WAS YOUR PRIOR ADDRESS, SO ON  
22 AND SO FORTH ON THAT ARE OFFERED BY THESE COMPANIES?

23 YOU ANSWERED: THAT WAS THE SYSTEM THAT  
24 WAS DEMONSTRATED TO US.

25 I ASKED YOU: DID YOU TEST THAT?

1                   AND YOU ANSWERED:  MINIMALLY.  WE DID  
2  MINIMAL TESTS ON THAT.

3                   I ASKED YOU:  WHY ONLY MINIMALLY?

4                   YOU ANSWERED:  WE -- WE WERE STARTING AT  
5  THIS POINT -- WHEN IT WAS BROUGHT UP WE WERE STARTING AT  
6  THIS POINT TO HAVE ISSUES WITH THE TECHNOLOGY SO I THINK  
7  OUR INTEREST WAS WANING AT THIS PARTICULAR TIME.

8                   THAT WAS YOUR TESTIMONY, CORRECT?

9  A.            THAT WAS, YES.

10  Q.            YOU DIDN'T RECORD THE RESULTS OF THESE TESTS, IS  
11  THAT CORRECT?

12  A.            RECORD, NO, I MEAN, NO.

13  Q.            AND IN FACT, YOU DIDN'T DOCUMENT ANY ASPECT OF  
14  YOUR EVALUATION OF THESE DVS COMPANIES, IS THAT CORRECT?

15  A.            YES, THAT'S CORRECT.

16  Q.            DO YOU REMEMBER THE SAMPLE SIZE THAT -- YOU  
17  DON'T REMEMBER THE SAMPLE SIZE OF DATA THAT YOU RAN  
18  THROUGH ON THESE TESTS, IS THAT CORRECT?

19  A.            NO, EXACT NUMBER OF INSTANCES OF DATA THAT WE  
20  RAN THROUGH, NO, I DON'T HAVE A NUMBER FOR THAT.

21  Q.            OKAY.

22                   YOU DIDN'T CONSULT WITH A STATISTICIAN  
23  ABOUT THE SIZE OF THE DATA SAMPLE, IS THAT CORRECT?

24  A.            THAT'S CORRECT.  WE WERE TRYING TO GET A GENERAL  
25  FEEL FOR THE TECHNOLOGY AND HOW IT WORKED.

1 Q. NOW, TO SEE IF I HAVE THIS RIGHT, YOU TESTIFIED  
2 THAT WHEN YOU HAD COMPLETELY BOGUS DATA, IT WAS  
3 REJECTED, CORRECT?

4 A. YES. IN OTHER WORDS, WHEN WE JUST MADE UP DATA  
5 AND PUT IT IN, IT WAS REJECTED, YES. IN THE SENSE THAT  
6 -- WHEN I SAY REJECTED, I GUESS I SHOULD CLARIFY.

7 Q. DID NOT HAVE A MATCH?

8 A. IT CAME BACK, WE CAN'T MATCH THIS, EXACTLY.

9 Q. AND THE ACCURATE DATA CAME BACK WITH A MATCH  
10 WHEN YOU INCLUDED SOCIAL SECURITY NUMBER. DO I  
11 UNDERSTAND THAT CORRECTLY?

12 A. ONLY WHEN WE INCLUDED SOCIAL SECURITY, WHEN WE  
13 DID NOT, WE HAD SOME ISSUES.

14 THE COURT: YOU HAD WHAT?

15 THE WITNESS: SOME ISSUES. IN OTHER  
16 WORDS, WE DID NOT ALWAYS GET A MATCH.

17 THE COURT: DIDN'T HEAR YOU. SORRY.

18 BY MR. TODD:

19 Q. YOU GOT A MATCH WHEN YOU DID THE LAST FOUR  
20 NUMBERS OF THE SOCIAL SECURITY NUMBER, CORRECT?

21 A. YES.

22 Q. CAN WE BRING UP PAGE 29 OF PLAINTIFFS' EXHIBIT  
23 25.

24 NOW THIS IS YOUR EXPERT REPORT, AND YOU  
25 STATED: DVS SERVICES CAN BE DEFEATED BY CHILDREN WITH

1 MINIMAL EFFORT. IS THAT CORRECT?

2 A. THAT IS THE FIRST LINE THERE, YES.

3 Q. AND THEN YOU WENT ON TO SAY: TO UNDERSTAND  
4 THIS, FIRST IT SHOULD BE EXPLAINED THAT IT IS  
5 INAPPROPRIATE TO COMPARE DVS TECHNOLOGIES TO REAL WORLD  
6 ID CHECKS, SUCH AS THOSE THAT WOULD HAPPEN IN A LIQUOR  
7 STORE. THAT IS THE SECOND SENTENCE, CORRECT?

8 A. YES.

9 Q. LET'S TAKE THESE ONE AT A TIME. THE BASIS FOR  
10 YOUR ASSERTION THAT CHILDREN CAN DEFEAT THESE DATA  
11 CHECKS IS THE ASSUMPTION THAT CHILDREN CAN OBTAIN THEIR  
12 PARENTS' SOCIAL SECURITY NUMBERS, CORRECT?

13 A. NO. THAT IS INCORRECT.

14 Q. CAN WE BRING UP PAGE 212 OF HIS DEPOSITION.

15 THE COURT: WHAT LINE, PLEASE?

16 MR. TODD: LINE 16.

17 I ASKED: DOES YOUR ANALYSIS CHANGE WHEN  
18 THE DVS SERVICE THAT A MERCHANT USES ASKS FOR SOCIAL  
19 SECURITY NUMBER? IF WE CAN JUMP AHEAD TO PAGE 217.

20 THE COURT: WAIT A MINUTE. WAIT A  
21 MINUTE. THIS IS CONFUSING.

22 MR. TODD: THIS IS JUST THE PREDICATE  
23 QUESTION. WE HAD KIND OF BACK-AND-FORTH. I'M TRYING TO  
24 SET THE STAGE FOR THE RELEVANT TESTIMONY, YOUR HONOR.

25 THE COURT: ALL RIGHT. NOBODY IS

1 OBJECTING, SO GO AHEAD.

2 MR. TODD: ON PAGE 217, LINE 3. I THINK  
3 THAT IS THE WRONG ONE. I WILL COME BACK TO THIS IN A  
4 MOMENT. ACTUALLY WITH THE COURT'S INDULGENCE, I WILL  
5 FIND THE RIGHT PAGE.

6 (PAUSE.)

7 I'M SORRY. IF WE CAN GO TO PAGE 213,  
8 LINE 10, ACTUALLY BEGINNING AT LINE 10 AND CONTINUING  
9 DOWN.

10 MR. VAN KWAWEGEN: OBJECTION, YOUR HONOR.  
11 AT LEAST THE WITNESS SHOULD BE SHOWN THE ENTIRE QUESTION  
12 AND ANSWER.

13 THE COURT: I THINK THAT IS WHAT THEY ARE  
14 TRYING TO DO.

15 MR. TODD: YES.

16 THE COURT: IT'S UP ON THE SCREEN NOW.

17 MR. TODD: OKAY.

18 I ASKED YOU: WHY DO YOU THINK IT WOULD  
19 BE EASY FOR A CHILD TO GET THEIR PARENTS' SOCIAL  
20 SECURITY NUMBER.

21 YOU ANSWERED: I HAVE MY MOTHER'S SOCIAL  
22 SECURITY NUMBER?

23 THE WITNESS: TRUE.

24 BY MR. TODD:

25 Q. I ASKED YOU: SO BASED ON YOUR PERSONAL

1 KNOWLEDGE OF YOUR MOTHER'S SOCIAL SECURITY NUMBER.

2 SKIPPING DOWN YOU ANSWERED: ALL I'M  
3 SAYING IS THAT IF A CHILD WERE ABLE TO OBTAIN THIS  
4 INFORMATION THEN THEY CAN DEFEAT THE SYSTEM.

5 AND THEN CONTINUING, I ASKED: DO YOU  
6 HAVE ANY DATA OR DOCUMENTS TO SUGGEST THAT CHILDREN HAVE  
7 EASY ACCESS TO THEIR PARENTS' SOCIAL SECURITY NUMBERS?

8 AND YOU ANSWERED: I DO NOT HAVE ANY DATA  
9 OR DOCUMENTS ON THIS PARTICULAR TOPIC.

10 AND I ASKED: DO YOU HAVE ANY OTHER  
11 EVIDENCE ABOUT CHILDRENS'S ACCESS TO THEIR PARENTS' --  
12 MINOR CHILDREN'S ACCESS TO THEIR PARENTS' SOCIAL  
13 SECURITY NUMBER?

14 AND YOU ANSWERED: THIS IS A STATEMENT  
15 THAT I'M MAKING FROM MY EXPERIENCE IN THE ADULT  
16 INDUSTRY, OKAY? I'M OBVIOUSLY NOT AN EXPERT IN WHAT  
17 INFORMATION CHILDREN ARE STEALING FROM THEIR PARENTS OR  
18 WHATEVER. THEN YOU CONTINUED: BUT WHAT I CAN SAY IS  
19 THAT CHILDREN HAVE GAINED ACCESS TO PARENTS' PAYMENT  
20 CARDS. THIS DOES HAPPEN. THIS DOES OCCUR. SO IT SEEMS  
21 VERY REASONABLE THAT CHILDREN WILL ALSO COME INTO ACCESS  
22 WITH SOCIAL SECURITY NUMBERS. HOW OFTEN THIS WILL  
23 HAPPEN? I DON'T KNOW.

24 THAT WAS YOUR TESTIMONY, CORRECT?

25 A. YES. BUT I BELIEVE YOU ARE MISSTATING. I

1 BELIEVE THE PRESENTATION YOU ARE MAKING HERE IS VERY  
2 DECEPTIVE, AND I WOULD LIKE AN OPPORTUNITY TO EXPLAIN  
3 WHY, IF THAT IS OKAY.

4 Q. YOUR COUNSEL CAN ASK ON REDIRECT AND YOU WILL  
5 HAVE AN OPPORTUNITY AT THAT TIME.

6 A. OKAY.

7 THE COURT: MAKE A NOTE, COUNSEL, IF YOU  
8 WANT TO.

9 THE WITNESS: PLEASE.

10 BY MR. TODD:

11 Q. MR. RUSSO, YOU HAVE NO EXPERTISE ABOUT WHAT  
12 INFORMATION CHILDREN DO OR DO NOT HAVE ACCESS TO FROM  
13 ANY SOURCE, IS THAT CORRECT?

14 A. ANY SOURCE. I DON'T UNDERSTAND THAT QUESTION.

15 Q. IF WE CAN BRING UP PAGE 215 OF THE DEPOSITION.  
16 ACTUALLY, LET'S GO BACK TO 214 TO SET THE STAGE.

17 LINE 22, I ASKED: AND WITH OTHER  
18 SECURITY QUESTIONS THAT DVS SERVICES ASK, SUCH AS PRIOR  
19 ADDRESSES, DO YOU THINK THIS INFORMATION IS EASILY  
20 OBTAINED BY CHILDREN? AND WE HAD A LITTLE CONFUSION. I  
21 CLARIFIED: I'M ASKING ABOUT PRIOR ADDRESSES, WHERE YOU  
22 LIVED PREVIOUSLY AND BEFORE THAT.

23 AND YOU SAID: OH, YEAH. THIS IS AGAIN  
24 PROBABLY WOULD DO BETTER TO ASK SOMEBODY, YOU KNOW, WHO  
25 IS AN EXPERT IN THIS PARTICULAR FIELD.

1 WAS THAT YOUR TESTIMONY?

2 THE COURT: FINISH THE ANSWER.

3 BY MR. TODD:

4 Q. WELL, THAT WAS THE FIRST SENTENCE OF YOUR  
5 TESTIMONY, CORRECT?

6 A. YOU SKIPPED SOME FIELDS. THERE IS MORE TO MY  
7 TESTIMONY ON THIS TOPIC. YOU JUMPED.

8 Q. I'M JUST ASKING ABOUT THE FIRST SENTENCE.

9 THE COURT: YOU CAN'T ASK ABOUT THE FIRST  
10 SENTENCE WITHOUT ASKING ABOUT THE SECOND SENTENCE.

11 BY MR. TODD:

12 Q. IN TERMS OF NUMBERS, I CAN'T GIVE YOU NUMBERS.  
13 I CAN ONLY TELL YOU THAT MY ANALYSIS IS THAT IF SOMEBODY  
14 DOES HAVE THIS INFORMATION THEY CAN DEFEAT A DVS.

15 THAT WAS YOUR ANSWER, CORRECT?

16 A. YES, AND AGAIN YOU ALSO SKIPPED A LITTLE BIT  
17 PREVIOUS AS WELL.

18 Q. IN THIS ANSWER?

19 A. RIGHT. UP ABOVE THAT. YOU STARTED READING --  
20 YOU SKIPPED ONE OF MY RESPONSES.

21 Q. I WILL BE HAPPY TO GO BACK.

22 A. PLEASE.

23 Q. LET'S GO BACK TO PAGE 214, LINE 22. I ASKED:  
24 AND WITH OTHER SECURITY QUESTIONS THAT DVS SERVICES ASK,  
25 SUCH AS PRIOR ADDRESSES, DO YOU THINK THIS INFORMATION

1 IS EASILY OBTAINED BY CHILDREN?

2 YOU ANSWERED: IF YOU ARE ASKING ME IF I  
3 THINK CHILDREN HAVE EASY ACCESS TO NAME AND ADDRESS  
4 INFORMATION OF ADULTS, THEN MY PERSONAL OPINION ON THAT  
5 IS YES.

6 THEN I CLARIFIED: I'M ASKING ABOUT PRIOR  
7 ADDRESSES, WHERE YOU LIVED PREVIOUSLY AND BEFORE THAT  
8 AND BEFORE THAT.

9 YOU ANSWERED: OH. THEN YOU CONTINUED.  
10 YEAH, THIS IS -- AGAIN PROBABLY WOULD DO BETTER TO ASK  
11 SOMEBODY, YOU KNOW, WHO'S AN EXPERT IN THIS PARTICULAR  
12 FIELD. IN TERMS OF THE NUMBERS, I CAN'T GIVE YOU ANY  
13 NUMBERS. I CAN ONLY TELL YOU THAT MY ANALYSIS IS THAT  
14 IF SOMEBODY DOES HAVE THIS INFORMATION, THEY CAN DEFEAT  
15 A DVS.

16 A. YES.

17 Q. THAT WAS YOUR TESTIMONY?

18 A. YES. ABSOLUTELY.

19 Q. NOW, IF WE CAN GO BACK TO PLAINTIFFS' EXHIBIT  
20 25, PAGE 29 AGAIN, MR. BYRDSONG. YOU ARE ALMOST THERE.

21 THE COURT: IN HIS REPORT?

22 MR. TODD: YES, PLAINTIFFS EXHIBIT 25.

23 BY MR. TODD:

24 Q. RETURNING TO THE SECOND SENTENCE, THE SECOND  
25 SENTENCE STATED: TO UNDERSTAND THIS --

1 THE COURT: PAGE 29?

2 MR. TODD: THAT'S CORRECT, YOUR HONOR.

3 WHICH IS MARKED AS PAGE 30 IN THE EXHIBIT BECAUSE THE  
4 NUMBERS IS OFF FROM THE COVER PAGE, TO BE CLEAR FOR THE  
5 COURT AND FOR THE RECORD.

6 BY MR. TODD:

7 Q. TO UNDERSTAND THIS, FIRST IT SHOULD BE EXPLAINED  
8 THAT IT IS INAPPROPRIATE TO COMPARE DVS TECHNOLOGIES TO  
9 REAL WORLD ID CHECKS, SUCH AS THOSE THAT WOULD HAPPEN IN  
10 A LIQUOR STORE. THAT IS THE SECOND SENTENCE, CORRECT?

11 A. YES, CORRECT.

12 Q. NOW, MR. RUSSO, YOU HAVE NO EXPERTISE IN  
13 FACE-TO-FACE AGE VERIFICATION, IS THAT CORRECT?

14 A. NO EXPERTISE. I'M NOT AN EXPERT ON THAT TOPIC,  
15 YES.

16 Q. AND YOU HAVE NO EXPERTISE ON FAKE IDS, IS THAT  
17 CORRECT?

18 A. FAKE IDS, YES, THAT'S CORRECT.

19 Q. AND YOU HAVE NO EXPERTISE ON WHETHER A STORE  
20 CLERK ALWAYS ASKS FOR IDENTIFICATION BEFORE SELLING  
21 ADULT ENTERTAINMENT MAGAZINES, IS THAT CORRECT?

22 A. THAT IS NOT SOMETHING I LOOKED INTO. THAT IS  
23 NOT MY AREA, CORRECT.

24 Q. SO YOU HAVE NO BASIS FOR COMPARISON BETWEEN THE  
25 EFFECTIVENESS OF DVS SERVICES AND FACE-TO-FACE AGE

1 VERIFICATION, ISN'T THAT CORRECT?

2 A. I DON'T BELIEVE THAT IS CORRECT.

3 Q. IF WE COULD BRING UP PAGE 217, THE DEPOSITION  
4 TESTIMONY. GO TO LINE 10.

5 I ASKED YOU AT YOUR DEPOSITION ON AUGUST  
6 12TH: SO YOU REALLY HAVE NO BASIS FOR A COMPARISON  
7 BETWEEN THE EFFECTIVENESS OF DVS SERVICES AND  
8 FACE-TO-FACE AGE VERIFICATION, IS THAT CORRECT?

9 AND YOU ANSWERED: IN THIS PARTICULAR  
10 EXAMPLE, I'M TALKING ABOUT SOMETHING THAT IS VERY  
11 SIMPLE. I'M TALKING ABOUT A PERSON WALKING INTO A STORE  
12 AND HANDING A CARD TO A CLERK. IS THIS SOMETHING THAT I  
13 HAVE PERSONALLY EXPERIENCED? YES. AM I HOLDING MYSELF  
14 OUT TO BE AN EXPERT IN THIS REGARD? NO. BUT THIS IS  
15 NOT SOMETHING THAT I THINK PEOPLE STUDY IN COLLEGE.

16 THAT IS YOUR TESTIMONY, CORRECT?

17 A. EXACTLY. I WAS --

18 Q. JUST YES OR NO. THAT WAS YOUR TESTIMONY?

19 A. YES, THAT IS MY TESTIMONY.

20 Q. TURN TO PAGE 30 OF YOUR REPORT, WHICH IS  
21 PLAINTIFFS' EXHIBIT 25-00031. NOW, IF WE CAN ZOOM IN ON  
22 PROBLEM NUMBER 2 ON THE BOTTOM OF THE PAGE, MR.  
23 BYRDSONG.

24 THE FIRST SENTENCE IS OR THE FIRST TWO  
25 SENTENCES, JUST TO BE -- YOU STATE IN PAGE 30 OF YOUR

1 EXPERT REPORT: PROBLEM NUMBER TWO: DVS SOLUTIONS  
2 CANNOT ALWAYS VERIFY THE VALID PERSONAL DATA OF AMERICAN  
3 BASED ADULTS. AND THE SECOND SENTENCE STATES: DVS  
4 COMPANIES SIMPLY CANNOT VERIFY VALID DATA ONE HUNDRED  
5 PERCENT OF THE TIME, EVEN WHEN THE MAXIMUM AMOUNT OF  
6 PERSONAL DATA IS COLLECTED.

7 THAT IS THE STATEMENT IN THE REPORT, IS  
8 THAT CORRECT?

9 A. CORRECT, YES.

10 Q. BUT YOU JUST TESTIFIED A FEW MOMENTS AGO, NOT  
11 ONCE BUT TWICE ON CROSS, THAT WITH YOUR TESTING THAT  
12 ACCURATE DATA CAME BACK WITH A MATCH WHEN YOU INCLUDED  
13 SOCIAL SECURITY NUMBER, IS THAT CORRECT?

14 A. IN OUR TEST, YES. IN OUR CONVERSATIONS WITH THE  
15 DVS COMPANIES, NO. YOU ARE TAKING ONE SMALL SECTION OF  
16 WHAT WE DID TO ANALYZE THESE THINGS AND TRYING TO  
17 SUGGEST THIS SENTENCE RIGHT HERE RELATES TO JUST THOSE  
18 TESTS THAT WE RAN, BUT IT DOESN'T.

19 MR. TODD: MOVE TO STRIKE AS  
20 NONRESPONSIVE, YOUR HONOR. I WAS ASKING A YES/NO  
21 QUESTION.

22 THE COURT: OVERRULED.

23 BY MR. TODD:

24 Q. ALL RIGHT. NOW, YOU HAVE NO DOCUMENTATION OF  
25 THOSE CONVERSATIONS WITH DVS COMPANIES, IS THAT CORRECT?

1 A. NO, WE WERE NOT DOCUMENTING IT. WE WERE  
2 ANALYZING THE SYSTEMS OURSELVES.

3 Q. SO YOU CAN'T QUANTIFY THE SUCCESS RATE FOR  
4 VERIFYING VALID PERSONAL DATA OF AMERICAN-BASED ADULTS,  
5 CORRECT? I APOLOGIZE FOR BEING UNCLEAR.

6 A. IN THAT I ONLY HAVE GENERALS AND NOT SPECIFICS,  
7 I WILL SAY THAT'S CORRECT, YES.

8 Q. NOW, YOU DON'T KNOW ALL THE DATA SOURCES THAT  
9 THESE COMPANIES CHECK, CORRECT?

10 A. THAT'S CORRECT, YES.

11 Q. BUT YOU ALSO -- YOU DO KNOW THAT DVS COMPANIES  
12 CAN CHECK A DRIVER'S LICENSE ONLINE, CORRECT?

13 A. THAT WAS ONE OF THE FIELDS, CORRECT, YES.

14 Q. A DRIVER'S LICENSE IS SOMETHING THAT IS USED IN  
15 FACE-TO-FACE AGE VERIFICATION, CORRECT?

16 A. SURE, YES. CAN I CLARIFY? YOU ARE ASKING ME IF  
17 THEY CAN CHECK A DRIVER'S LICENSE, NOT IF THE CHECK IS  
18 GOING TO WORK OR NOT, RIGHT?

19 Q. THAT IS NOT MY QUESTION.

20 A. JUST IF THEY CAN PUT THAT FIELD IN, THEN, YES, I  
21 ANSWERED CORRECTLY.

22 Q. MOVING ON TO ANOTHER SUBJECT, YOU STATED -- YOU  
23 TESTIFIED YESTERDAY THAT THERE ARE PASSWORD TRADING  
24 SITES, CORRECT?

25 A. CORRECT.

1 Q. YOU CAN'T PROVIDE A SINGLE EXAMPLE OF A PASSWORD  
2 TRADING SITE, CORRECT?

3 A. LET ME SEE. I BELIEVE ULTRAPASSWORDS.COM WOULD  
4 BE AN EXAMPLE OF ONE, IF I REMEMBER CORRECTLY. ANY  
5 OTHERS? THE PROBLEM IS, AS I TOLD YOU IN THE  
6 DEPOSITION, THAT THESE SITES TEND TO BE SHADY SO THEY  
7 WILL MOVE URLS. SO THE BEST WAY TO FIND THEM IS TO HIT  
8 SEARCH ENGINES AND START TYPING IN KEYWORDS TO TRY TO  
9 FIND THEM.

10 Q. YOUR KNOWLEDGE ABOUT THE PASSWORD SHARING  
11 PROBLEM IS CONFINED TO THE ADULT ENTERTAINMENT INDUSTRY,  
12 IS THAT CORRECT?

13 A. MY EXPERIENCE COMES FROM THE ADULT ENTERTAINMENT  
14 INDUSTRY, CORRECT.

15 Q. YOU HAVE NO KNOWLEDGE ABOUT PASSWORD SECURITY  
16 FOR OTHER WEBSITES, IS THAT CORRECT?

17 A. NO, I DON'T THINK THAT IS EXACTLY CORRECT.

18 Q. CAN WE BRING UP PAGE 155 OF YOUR DEPOSITION.  
19 LINE 10. I THINK IF WE CAN BACK UP A LITTLE BIT TO MAKE  
20 SURE THE BEGINNING OF THE COLLOQUY. I THINK LINE 10 IS  
21 THE RIGHT PLACE TO START: IS THERE ANY DIFFERENCE  
22 BETWEEN THE PASSWORD SECURITY TO YOUR KNOWLEDGE AT AN  
23 ADULT ENTERTAINMENT SITE VERSUS OTHER ONLINE CONTENT,  
24 SUCH AS THE WALL STREET JOURNAL OR A DATING SITE?

25 AND YOU ANSWERED: MY EXPERIENCE STRICTLY

1 COMES FROM THE ADULT ENTERTAINMENT INDUSTRY. I HAVE NO  
2 EXPERT OPINION ON THAT.

3 THAT WAS YOUR TESTIMONY, CORRECT?

4 A. YES. I WAS USING THE WALL STREET JOURNAL AND  
5 DATING SITE EXAMPLE THAT YOU WERE GIVING ME IN THOSE  
6 SPECIFIC REGARDS. TO A MORE GENERAL SENSE, I CAN SPEAK  
7 DIFFERENTLY.

8 Q. THANK YOU. NOW, MOVING ONTO ANOTHER TOPIC.

9 YOU TESTIFIED YESTERDAY ABOUT ADULT  
10 ENTERTAINMENT ON PEER-TO-PEER NETWORKS, IS THAT CORRECT?

11 A. YES, CORRECT.

12 Q. BUT YOU ARE NOT AWARE OF THE ABILITY TO PURCHASE  
13 CONTENT, ADULT ENTERTAINMENT CONTENT ON PEER-TO-PEER  
14 NETWORKS, IS THAT CORRECT?

15 A. YOU ASKED ME ABOUT THIS IN MY DEPOSITION. IT  
16 WAS A VERY CONFUSING QUESTION. I'M NOT AWARE OF ANY  
17 MEANS TO WHERE YOU WOULD THROUGH YOUR PEER-TO-PEER  
18 CLIENT PURCHASE ADULT ENTERTAINMENT THROUGH -- IS THAT  
19 WHAT YOU ARE ASKING? I MEAN --

20 Q. YES.

21 A. IT CAN LEAD TO PURCHASES, BUT I GUESS --

22 Q. THAT'S RIGHT?

23 A. THAT IS WHY I'M CONFUSED AS TO EXACTLY WHAT IF  
24 YOU ARE GETTING AT.

25 Q. IN FACT, IT WOULD LEAD TO A PURCHASE BY



1 THAT HAS CONTENT ON PEER-TO-PEER NETWORKS WITH  
2 ADVERTISEMENTS ON IT. IS THAT WHAT YOU ARE ASKING FOR?

3 YES.

4 I DON'T KNOW WHAT THE OFFICIAL COMPANY  
5 NAME IS, BUT THE OPERATORS OF BANGBUS.COM, I HAVE SEEN  
6 THEIR CONTENT ON PEER-TO-PEER NETWORKS. AND IT  
7 CONTINUES, I DIDN'T UNDERSTAND THE QUESTION -- THE  
8 RESPONSE.

9 SO YOU GAVE ME ONE EXAMPLE IN THE  
10 DEPOSITION.

11 A. CAN YOU SCROLL DOWN, PLEASE? THAT WOULD BE AN  
12 EXAMPLE, I SAY.

13 Q. OKAY. SO THAT WAS -- YOU GAVE ME ONE EXAMPLE?

14 A. RIGHT. YOU DID NOT ASK FOR ADDITIONAL EXAMPLES.  
15 SO I CERTAINLY DON'T WANT IT TO BE UNDERSTOOD THAT I WAS  
16 SUGGESTING THAT THAT WAS THE ONLY COMPANY THAT HAD  
17 CONTENT ON PEER-TO-PEER.

18 Q. OKAY. NOW, YOU CANNOT PROVIDE AN ESTIMATE OF  
19 THE PERCENT OF COMMERCIAL ADULT ENTERTAINMENT ON  
20 PEER-TO-PEER NETWORKS, IS THAT CORRECT?

21 A. YES, THAT'S CORRECT, YES.

22 THE COURT: EXCUSE ME. JUST FOR THE  
23 RECORD, PERCENT OF WHAT?

24 MR. TODD: THE PERCENT OF COMMERCIAL  
25 ADULT ENTERTAINMENT THAT IS ON PEER-TO-PEER NETWORKS, AS

1 COMPARED TO THE WEB.

2 THE COURT: IS THAT WHAT YOU UNDERSTOOD  
3 THE QUESTION TO BE?

4 THE WITNESS: YES -- WELL, I UNDERSTOOD  
5 IT'S NOT JUST THE WEB BUT EVERYWHERE.

6 BY MR. TODD:

7 Q. WELL, TO BE CLEAR --

8 THE COURT: I JUST WANT TO IDENTIFY THE  
9 OUTREACH OF THAT QUESTION.

10 MR. TODD: OKAY.

11 BY MR. TODD:

12 Q. TO BE CLEAR, YOU CAN'T PROVIDE AN ESTIMATE OF  
13 THE PERCENT OF COMMERCIAL ADULT ENTERTAINMENT THAT IS ON  
14 PEER-TO-PEER AS COMPARED TO THE AMOUNT OF COMMERCIAL  
15 ADULT ENTERTAINMENT THAT IS ON THE WEB, IS THAT CORRECT?

16 A. THAT'S CORRECT.

17 Q. OKAY. AND YESTERDAY YOU TESTIFIED THAT  
18 PEER-TO-PEER IS VIEWED AS MARKETING -- HAVING MARKETING  
19 POTENTIAL FOR ADULT ENTERTAINMENT COMPANIES, IS THAT  
20 CORRECT?

21 A. THAT'S ONE THING, YES.

22 Q. YOU TESTIFIED THAT THERE WAS ADULT ENTERTAINMENT  
23 ON PEER-TO-PEER NETWORKS IN VIOLATION OF COPYRIGHT LAWS,  
24 CORRECT?

25 A. YES, THERE IS THAT, TOO, YES.

1 Q. OKAY.

2 AND BY THAT, IT'S REASONABLE TO INFER  
3 THAT IT'S NOT THE ADULT ENTERTAINMENT COMPANIES THAT ARE  
4 ENGAGING IN THIS COPYRIGHT VIOLATION ON PEER-TO-PEER, IS  
5 THAT CORRECT? IT'S PEOPLE STEALING FROM THE ADULT  
6 ENTERTAINMENT AND REPUBLISHING IT ON PEER-TO-PEER, IS  
7 THAT CORRECT?

8 A. IN THE INSTANCES WHERE WE ARE TALKING ABOUT  
9 COPYRIGHT VIOLATIONS ONLY, YES, ABSOLUTELY. I MEAN, YOU  
10 CAN'T VIOLATE YOUR OWN COPYRIGHTS.

11 Q. NOW, YOU TESTIFIED YESTERDAY ABOUT ADULT  
12 ENTERTAINMENT ON USENET AS WELL, IS THAT CORRECT?

13 A. YES, I DID.

14 Q. YOU TESTIFIED THAT YOU HAD BEEN TO USENET AS  
15 PART OF PREPARING YOUR EXPERT REPORT, YOU HAD GONE TO  
16 USENET TO SEE IF THERE WAS STILL ADULT ENTERTAINMENT  
17 CONTENT ON IT, IS THAT CORRECT?

18 A. I HAVE BEEN TO USENET SINCE PREPARING MY REPORT.  
19 THAT IS A CORRECT STATEMENT.

20 Q. AS PART OF PREPARING YOUR REPORT?

21 A. YES.

22 Q. COULD WE GO TO PAGE 277, LINE 20. I JUST WANT  
23 TO MAKE SURE I HAVE THIS CORRECT MYSELF.

24 A. OKAY.

25 Q. I ASKED: CAN YOU GIVE ME SOME EXAMPLES OF

1 COMPANIES THAT HAVE USED OR ARE CURRENTLY USING USENET  
2 FOR THEIR ADULT ENTERTAINMENT BUSINESS?

3 YOU ANSWERED ON THE NEXT PAGE: WELL, I  
4 PERSONALLY USED USENET FOR THAT PURPOSE AND ASIDE FROM  
5 THAT, YOU KNOW, LIKE I SAID, I HAVEN'T BEEN ON THE  
6 USENET RECENTLY TO, YOU KNOW, SEE WHO IS CURRENTLY USING  
7 IT.

8 THAT WAS YOUR TESTIMONY, CORRECT?

9 A. YES, THAT I HAD NOT GONE ON USENET TO SEE WHO  
10 HAD BEEN USING IT, THAT IS CORRECT. AS LONG AS WE  
11 UNDERSTAND THAT.

12 Q. NOW, YOU TESTIFIED YESTERDAY ABOUT ADULT  
13 ENTERTAINMENT COMING FROM OVERSEAS, IS THAT CORRECT?

14 A. YES, I DID.

15 Q. BUT YOU CAN'T PROVIDE AN ESTIMATE ABOUT THE  
16 AMOUNT OF ADULT ENTERTAINMENT THAT COMES FROM OVERSEAS  
17 AS COMPARED TO ADULT ENTERTAINMENT BY AMERICAN ADULT  
18 ENTERTAINMENT COMPANIES, IS THAT CORRECT?

19 A. I WOULD NOT HAVE ANY PERSONAL NUMBERS. ALL I  
20 CAN DO IS RECITE NUMBERS THAT I HAVE SEEN.

21 Q. BUT YOU DID NOT PROVIDE THOSE NUMBERS IN YOUR  
22 EXPERT REPORT, IS THAT CORRECT?

23 A. NO, I DIDN'T.

24 Q. NOW, YOU ALSO TESTIFIED YESTERDAY ABOUT SOME OF  
25 YOUR FIRST ADULT ENTERTAINMENT WEBSITES, IS THAT

1 CORRECT?

2 A. YES, I DID.

3 Q. AND YOU TESTIFIED THAT IT WAS IMPRACTICAL TO  
4 IMPLEMENT THE AGE VERIFICATION SYSTEM THAT YOU USED ON  
5 YOUR BULLETIN BOARD SYSTEM BECAUSE THERE WAS TOO MUCH  
6 COMPETITION FROM THOSE WEBSITES THAT DID NOT IMPLEMENT A  
7 CHECK, IS THAT CORRECT?

8 A. THAT WAS ONE OF SEVERAL REASONS WHY I FELT THAT  
9 IT WAS IMPRACTICAL. THERE WERE OTHER REASONS.

10 Q. THE REASON THERE WAS THAT COMPETITION IS, THOSE  
11 WEBSITES WERE NOT MAKING THAT KIND OF CHECK, IS THAT  
12 CORRECT?

13 A. THAT IS ONE ISSUE, YES.

14 Q. THAT IS IN PART BECAUSE THEY ARE NOT REQUIRED TO  
15 PERFORM THAT KIND OF CHECK, IS THAT CORRECT?

16 A. THAT THEY WERE NOT MAKING THAT CHECK?

17 Q. YES.

18 A. WELL, MAYBE, BUT THERE MIGHT BE THE OTHER  
19 ADDITIONAL REASONS AS WELL FOR THEM.

20 Q. SURE. OKAY.

21 NOW, YOU ALSO TESTIFIED THAT YOU OPERATED  
22 AFFILIATE SITES YESTERDAY, IS THAT CORRECT?

23 A. LET ME MAKE SURE WE HAVE THIS TERM RIGHT BECAUSE  
24 I THINK IT IS IMPORTANT. I DID TESTIFY THAT I'D  
25 OPERATED WHAT I CALLED FREE SITES AND THAT THE FREE

1 SITES HAD ADVERTISEMENTS ON THEM THAT WERE  
2 ADVERTISEMENTS FOR PAY SITES THAT WERE PART OF AN  
3 AFFILIATE PROGRAM. IS THAT WHAT YOU ARE ASKING?

4 Q. YES.

5 A. YES, THAT'S CORRECT.

6 Q. SO, THE FREE SITES WERE DERIVING REVENUE FROM  
7 THE PAY SITES WHEN A VISITOR TO THE FREE SITE MADE A  
8 PURCHASE AT THE PAY SITE, IS THAT CORRECT?

9 A. FREE SITES DERIVE REVENUE WHEN A VISITOR THAT I  
10 SENT THERE -- I'M JUST MAKING SURE I UNDERSTAND THIS  
11 QUESTION. LET ME START OVER. YOU ARE SAYING THAT IF I  
12 HAD AN AD ON A FREE SITE THAT LED TO ANOTHER PERSON'S  
13 PAY SITE, I SENT SOMEBODY FROM MY SITE TO THAT SITE,  
14 THEY MADE A PURCHASE AND I GOT REVENUE BACK FROM THAT  
15 PURCHASE. THAT WOULD BE CORRECT, YES.

16 Q. SO THE FREE SITE IS SORT OF LIKE A CARNIVAL  
17 CALLER STANDING OUTSIDE THE TENT TO GET PEOPLE TO COME  
18 IN AND SEE WHAT IS GOING ON IN THE TENT? IS THAT A FAIR  
19 CHARACTERIZATION?

20 A. I THINK THAT IT WOULD BE IMPORTANT TO POINT OUT  
21 THAT NOT ALL FREE SITES ARE THE SAME. THERE ARE A LOT  
22 OF DIFFERENT KINDS OF FREE SITES.

23 Q. I'M JUST ASKING ABOUT --

24 A. THE ONES THAT I BUILT PERSONALLY, SOME OF THEM  
25 WERE. THERE WERE OTHERS WHERE I WAS TRYING TO DO

1           SOMETHING A LITTLE BIT DIFFERENT, WOULD BE THE BEST  
2           ANSWER FOR THAT. I CAN GIVE YOU AN EXAMPLE OF ONE IF  
3           YOU WOULD LIKE.

4           Q.           NO, THANK YOU. NOW YESTERDAY YOU TESTIFIED  
5           ABOUT LARGE AMOUNTS OF ADULT ENTERTAINMENT ON STREAMING  
6           VIDEO, IS THAT CORRECT?

7           A.           YES.

8           Q.           AND THIS IS STREAMING VIDEO THAT APPEARED AT  
9           LEAST IN PART ON ADULT ENTERTAINMENT WEBSITES, IS THAT  
10          CORRECT?

11          A.           YES. WELL, LET ME CLARIFY THAT IF I CAN,  
12          PLEASE. THE STREAMING VIDEOS WERE LINKED TO -- FROM  
13          ADULT ENTERTAINMENT WEBSITES IS WHAT I WOULD LIKE TO  
14          SAY.

15          Q.           THAT IS FINE. THANK YOU FOR THAT CLARIFICATION.

16          A.           SURE.

17          Q.           MR. RUSSO, YOU TESTIFIED YESTERDAY ABOUT THE  
18          AMOUNT OF DATA COLLECTED -- THAT IS TAKEN BY AN INTERNET  
19          PAYMENT SERVICE PROVIDER AND PASSED ON TO AN ACQUIRING  
20          BANK, IS THAT CORRECT?

21          A.           YES, I DID.

22          Q.           AND YOU TESTIFIED THAT YOU ARE RELYING ON ONE  
23          DEPOSITION FOR THAT ASSERTION, IS THAT CORRECT?

24          A.           AGAIN, TO CLARIFY, BECAUSE I THINK THIS WAS AN  
25          IMPORTANT ISSUE. WHAT I TESTIFIED TO WAS THAT I HAD

1 KNOWLEDGE, PERSONAL KNOWLEDGE THAT THERE WAS A CERTAIN  
2 AMOUNT OF DATA COLLECTED, NAME, ADDRESS, PHONE NUMBER,  
3 ET CETERA, SO I KNEW IT WAS GOING TO BE WITHIN THIS  
4 AMOUNT. THE ONLY REASON WHY I KNOW THAT -- OF THAT  
5 DATA, THOSE TWO FIELDS ARE WHAT IS PASSED ON TO THE  
6 CREDIT CARD COMPANIES, IS BECAUSE OF ONE OF THE  
7 DEPOSITIONS THAT I READ IN PREPARATION FOR THIS CASE.

8 Q. THAT WAS THE DEPOSITION OF IRA CADWELL FROM CC  
9 BILL, IS THAT CORRECT?

10 A. YES, THAT'S CORRECT.

11 MR. TODD: IF I MAY HAVE A MOMENT TO  
12 CONFER WITH COUNSEL?

13 THE COURT: BEFORE YOU GO, CAN YOU SPELL  
14 IRA CADWELL FOR THE RECORD, PLEASE.

15 MR. TODD: SURE. IRA. C-A-D-W-E-L-L. I  
16 BELIEVE THAT THAT DEPOSITION WILL BE OR AT LEAST  
17 EXCERPTS FROM THE DEPOSITION WILL BE READ INTO THE  
18 RECORD.

19 THE COURT: THANK YOU.

20 MR. TODD: A MOMENT, YOUR HONOR TO CONFER  
21 WITH COUNSEL?

22 THE COURT: SURE.

23 (COUNSEL CONFERRING.)

24 MR. TODD: NO MORE QUESTIONS FOR THIS  
25 WITNESS. THANK YOU, MR. RUSSO.

1 THE WITNESS: THANK YOU.

2 THE COURT: ANY REDIRECT?

3 MR. VAN KWAWEGEN: YES, YOUR HONOR.

4 REDIRECT EXAMINATION

5 BY MR. VAN KWAWEGEN:

6 Q. GOOD MORNING, MR. RUSSO.

7 A. GOOD MORNING.

8 Q. YOU HAD INDICATED THAT YOU WANTED TO CLARIFY  
9 SOME OF YOUR TESTIMONY FROM YESTERDAY, IS THAT CORRECT?

10 A. YES, PLEASE.

11 Q. WHAT WOULD YOU LIKE TO CLARIFY?

12 A. THERE WAS A QUESTION YESTERDAY, YOUR HONOR,  
13 ABOUT THE DIFFERENCES OF CONTENT IN AMERICA VERSUS  
14 OVERSEAS AND I EXPRESSED AN OPINION ON THAT. I WAS  
15 ASKED AFTER THAT WHY -- WHY I HELD THAT OPINION. SO IN  
16 THE PROCESS OF EXPLAINING THAT I MISSPOKE ONE WORD WHERE  
17 I SAID INTERNET PAYMENT SERVICE PROVIDERS. I MEANT TO  
18 SAY AFFILIATE PROGRAMS. WHAT I WAS TRYING TO SAY THERE  
19 WAS AFFILIATE PROGRAMS HAVE SITUATIONS WHERE THEY HAVE  
20 ALL THESE AFFILIATES THAT ARE LINKING TO THEIR WEBSITES.  
21 SO WHAT THEY DO IS, THEY WILL MONITOR THEIR AFFILIATES  
22 TO THE BEST OF THEIR ABILITY SOMETIMES TO SEE -- YOU  
23 KNOW, TO SEE IF ANYBODY IS LINKING TO THEM, IS DOING  
24 ANYTHING THAT THEY THINK THAT THEY ARE UNCOMFORTABLE  
25 WITH OR THEY THINK MAY LEAD TO LEGAL LIABILITY, ET

1 CETERA. THAT IS WHAT I WAS TRYING TO POINT OUT BUT IN  
2 THE PROCESS OF SAYING IT QUICKLY AND TALKING  
3 ABOUT INTERNET PAYMENT SERVICES PROVIDERS I SAID IPSPS  
4 AND I MEANT TO SAY AFFILIATE PROGRAMS.

5 THE COURT: PROCESS OF SPEAKING QUICKLY.

6 THE WITNESS: QUICKLY AND WE HAD BEEN  
7 SAYING INTERNET PAYMENT SERVICE PROVIDERS SO OFTEN THAT  
8 I SAID THAT. I MEANT TO SAY AFFILIATE PROGRAMS, SO I  
9 APOLOGIZE FOR THAT. SO I WOULD LIKE TO CHANGE THOSE TWO  
10 WORDS. WHERE I SAID INTERNET PAYMENT SERVICE PROVIDERS  
11 I MEANT TO SAY AFFILIATE PROGRAMS. THAT WAS IT.

12 THE COURT: OKAY.

13 BY MR. VAN KWAWEGEN:

14 Q. TODAY, YOU SPOKE ABOUT YOUR RESEARCH INTO DVS  
15 TECHNOLOGY?

16 A. YES.

17 Q. AT ONE POINT MR. TODD WAS ASKING YOU QUESTIONS  
18 ABOUT STEPS THAT YOU TOOK WHEN YOU WERE ANALYZING THIS  
19 DATA, CORRECT?

20 A. YES.

21 Q. AND YOU INDICATED THAT HIS QUESTIONING WAS  
22 INCOMPLETE, AND THAT ADDITIONAL STEPS HAD BEEN TAKEN?

23 A. YES.

24 Q. WOULD YOU LIKE TO CLARIFY THAT?

25 A. YES, PLEASE. WELL, THERE WERE A COUPLE OF

1 ISSUES THAT I WANTED TO CLARIFY. WE --

2 THE COURT: WE WILL STICK WITH THE ONE  
3 THAT COUNSEL POSED FOR YOU. YOU CAN'T REMAKE THE WORLD  
4 IN ONE QUESTION.

5 BY MR. VAN KWAWEGEN:

6 Q. SPECIFICALLY THE STEPS YOU TOOK BEFORE YOUR  
7 INTEREST IN THE DVS TECHNOLOGY STARTED TO WANE.

8 A. ONE THING I REALLY WANTED TO POINT OUT WAS THAT  
9 IT WAS NOT A MATTER OF US JUST PUTTING IN CONTENT INTO  
10 THEIR TESTS AND THEN SAYING, OKAY, BASED ON THESE TESTS.  
11 THE DATA THAT WE PUT IN, THAT COMPLETES OUR ANALYSIS,  
12 BECAUSE THAT IS CERTAINLY WAS NOT THE CASE. IT WAS MUCH  
13 MORE INVOLVED THAN THAT.

14 IN ADDITION TO THE TESTS THAT WE DID, WE  
15 SPENT A LOT OF TIME TALKING TO THE DVS COMPANIES. THEY  
16 PROVIDED US WITH INFORMATION. FOR INSTANCE, JUST  
17 BECAUSE WE GOT CERTAIN RESULTS, THEY WOULD TELL US,  
18 WELL, THERE IS GOING TO BE INSTANCES WHERE YOU ARE NOT  
19 GOING TO GET A MATCH AND THESE ARE GOING TO BE SOME OF  
20 THE INSTANCES WHERE YOU ARE NOT GOING TO GET A MATCH.  
21 WE ALSO GOT INFORMATION THAT WAY.

22 WE ALSO SPENT A LOT OF TIME ALSO  
23 ANALYZING WHAT, IF ANY, WAYS WE COULD USE THE DVS  
24 TECHNOLOGIES WITH ADULT BUSINESS MODELS TO TRY TO FIND A  
25 MATCH. THAT AREA -- THAT IS THE INFORMATION THAT WE HAD

1 THAT OTHERS DID NOT HAVE. WE KNOW THE INDUSTRY VERY  
2 WELL. WE WERE ABLE TO SAY, OKAY, WOULD IT WORK HERE?  
3 NO. WOULD IT WORK HERE? NO. WOULD IT WORK HERE?  
4 MAYBE, BUT WE ARE GOING TO HAVE THESE PROBLEMS, THAT  
5 SORT OF THING.

6 I THINK THAT ONE OF THE THINGS THAT WAS  
7 HAPPENING IS, HE WAS RELYING ON THIS WHOLE ISSUE OF THE  
8 SOCIAL SECURITY NUMBER AND, SAYING, IF A PERSON COMES IN  
9 WITH A SOCIAL SECURITY NUMBER, THEN YOU GOT MATCHES,  
10 RIGHT? YES. THE VERY FIRST TEST WE DID WITH ANY OF  
11 THESE COMPANIES IS WE PUT IN THE NAME AND ADDRESS OF THE  
12 OTHER INDIVIDUAL WHO WAS PRIMARILY RESPONSIBLE FOR THESE  
13 TESTS WITH ME AND IT CAME BACK THAT THERE WAS NO MATCH.  
14 WE HAD TO PUT IN THE SOCIAL SECURITY NUMBER AT THAT  
15 POINT JUST TO BE ABLE TO MATCH HIS DATA. THIS IS A  
16 PERSON WHO HAS CONSUMER RECORDS, HIS LAST NAME WAS RUGA,  
17 WHICH IS NOT ESPECIALLY COMMON.

18 SO I JUST WANTED TO MAKE IT CLEAR THAT  
19 THERE IS NO REQUIREMENT TO PUT IN A SOCIAL SECURITY  
20 NUMBER. WE FELT THAT PUTTING IN A SOCIAL SECURITY  
21 NUMBER WAS GOING TO BE A BIG PROBLEM WITH PEOPLE  
22 VISITING ADULT WEBSITES, SO THAT PLAYED A ROLE IN OUR  
23 DECISION. BELIEVE ME, WE WANTED THIS TO WORK. IT WAS A  
24 POTENTIAL BUSINESS OPPORTUNITY FOR US. IT WAS SOMETHING  
25 THAT WE WOULD HAVE MADE A LOT OF MONEY OFF OF IF THERE

1 WAS AN OPPORTUNITY FOR IT TO WORK.

2 WE TRIED TO THINK OF EVERY POSSIBLE WAY  
3 WE COULD MAKE THIS WORK, BUT BECAUSE AT ITS SIMPLEST  
4 SETTING, THE DVS WAS JUST NAME AND ADDRESS AND THAT IS  
5 TOO EASY TO BEAT. I PUT IN NAMES AND ADDRESSES OF  
6 PEOPLE I KNEW. WE GOT BACK SOME THAT CAME BACK WITH A  
7 MATCH. WELL, ANYBODY CAN DO THAT. WITH THE CASE OF  
8 SOCIAL SECURITY NUMBERS, WHEN YOU START TO GET INTO MORE  
9 PERSONAL INFORMATION, WE FELT THAT BASED ON OUR  
10 KNOWLEDGE OF THE INDUSTRY, THAT ASKING PEOPLE TO PUT  
11 THAT IN AT ADULT WEBSITES THAT'S GOING TO CAUSE A LOT OF  
12 PROBLEMS. IN ADDITION TO THAT, WHICH PLAYED A VERY  
13 IMPORTANT ROLE IN OUR DECISION, WE HAVE -- ADULT  
14 WEBSITES RELY ON A LOT OF VOLUME, ON A LOT OF PEOPLE  
15 COMING, IN ORDER TO GET A FEW CUSTOMERS. WE FELT THAT  
16 TRYING TO LIMIT -- IF WE HAD TO LIMIT --

17 MR. TODD: OBJECTION, YOUR HONOR. THIS  
18 IS FAR BEYOND THE SCOPE OF THE CROSS EXAMINATION.  
19 SHOULD HAVE BEEN RAISED IN DIRECT.

20 THE COURT: ASK ANOTHER QUESTION.

21 MR. VAN KWAWEGEN: NO FURTHER QUESTIONS,  
22 YOUR HONOR.

23 THE COURT: I HAVE JUST ONE. YOU SAID  
24 JUST A MOMENT AGO THAT IF YOU HAD TO USE SOCIAL SECURITY  
25 NUMBERS, IT WOULD CAUSE A LOT OF PROBLEMS. WHAT DO YOU

1 MEAN BY THAT?

2 THE WITNESS: SURE.

3 WHAT I MEAN IS, AGAIN, I'M SPEAKING TOO  
4 VAGUELY HERE. WHAT I MEANT TO SAY WAS, IS THAT WE FELT  
5 THAT IF WE WERE ASKING PEOPLE TO PUT IN THEIR SOCIAL  
6 SECURITY NUMBERS THAT IT WOULD CAUSE A LOT OF PEOPLE TO  
7 BE VERY UNCOMFORTABLE AND NOT WANT TO PUT IN THEIR  
8 SOCIAL SECURITY NUMBERS. AS A RESULT THEY WOULD MOVE ON  
9 AND LEAVE THE SITE AND NOT PARTICIPATE IN THE WEBSITE.  
10 IT'S JUST SOMETHING THAT IT SEEMS LIKE A VERY PERSONAL  
11 INFORMATION TO ASK SOMEBODY FOR THEIR SOCIAL SECURITY  
12 NUMBER JUST TO BE ABLE TO GET INTO AN ADULT WEBSITE. IN  
13 ADDITION TO THAT --

14 THE COURT: THAT IS FINE. THANK YOU.

15 DO YOU NEED TO RECROSS?

16 MR. TODD: ONE QUESTION, YOUR HONOR, I  
17 BELIEVE.

18 THE COURT: YOUR PRESENT INTENT IS TO ASK  
19 ONE QUESTION?

20 MR. TODD: THAT'S CORRECT, YOUR HONOR.

21 THE COURT: YOUR INTENT MAY CHANGE.

22 MR. TODD: THAT IS MY PRESENT SENSE  
23 IMPRESSION.

24 RECROSS EXAMINATION

25 BY MR. TODD:

1 Q. MR. RUSSO, TO BE CLEAR, IT'S FOR THE MERCHANT TO  
2 DECIDE HOW MUCH INFORMATION TO ASK FOR FROM THE WEBSITE  
3 VISITOR, IS THAT CORRECT?

4 A. WE ARE TALKING ABOUT DVS TECHNOLOGIES?

5 Q. YES. A MERCHANT THAT SIGNS UP FOR THE DVS  
6 TECHNOLOGY COMPANY.

7 MR. VAN KWAWEGEN: YOUR HONOR, OBJECTION.  
8 IT IS VAGUE AS TO WHAT IS A MERCHANT.

9 BY MR. TODD:

10 Q. A MERCHANT THAT IS TRYING TO VERIFY THE AGE OF A  
11 WEBSITE VISITOR BEFORE THEY ENTER THE WEBSITE, THEY ARE  
12 THE ONES THAT DECIDE HOW MUCH INFORMATION IS NEEDED, IS  
13 THAT CORRECT?

14 A. LET ME GIVE YOU AN EXAMPLE TO MAKE SURE WE HAVE  
15 THIS RIGHT. IN OTHER WORDS, I HAVE A WEBSITE, I SIGN UP  
16 FOR DVS SERVICE, I GET TO DECIDE WHETHER I WANT TO  
17 INCLUDE SOCIAL SECURITY NUMBER OR THE MINIMAL SETTINGS.  
18 THEY DON'T DECIDE. YES, ABSOLUTELY, THAT IS VERY  
19 CORRECT.

20 MR. TODD: NO MORE QUESTIONS, YOUR HONOR.

21 THE COURT: THANK YOU.

22 MR. RUSSO, YOU ARE EXCUSED, SIR.

23 MR. TODD: AT THIS TIME WE RENEW OUR  
24 MOTION IN LIMINE TO STRIKE THE WITNESS AS AN EXPERT  
25 BECAUSE OF HIS FAILURE TO DOCUMENT THE REPORT, HIS

1 FAILURE TO DOCUMENT ANY PART OF THE EVALUATION, HIS  
2 ADMITTED LACK OF EXPERTISE IN SEVERAL PREDICATE ELEMENTS  
3 OF HIS SPIN INCLUDING PAYMENT CARDS, INCLUDING  
4 FACE-TO-FACE VERIFICATION, AND ALL THE REST OF THE  
5 REASONS THAT WERE STATED IN OUR MOTION IN LIMINE.

6 THE COURT: RESPONSE.

7 MR. VAN KWAWEGEN: YOUR HONOR, WE RENEW  
8 OUR RESPONSES TO THE OBJECTIONS THAT WERE ALSO BEFORE  
9 YOUR HONOR. IN ADDITION --

10 THE COURT: DO ME A FAVOR. REMIND ME OF  
11 WHAT YOUR POSITION IS.

12 MR. VAN KWAWEGEN: EXCUSE ME?

13 THE COURT: THE REASONS FOR IT, PLEASE.

14 MR. VAN KWAWEGEN: WE BELIEVE MR. --

15 THE COURT: THIS IS A FRESH -- LOOK, WE  
16 HAVE TESTIMONY NOW. WE DON'T JUST HAVE PREPARATIONS.

17 MR. VAN KWAWEGEN: SORRY, YOUR HONOR,  
18 THAT WAS ACTUALLY JUST THE INTRODUCTORY TO MY ARGUMENT.

19 IN ADDITION TO THE OBJECTIONS -- TO THE  
20 RESPONSE TO THE OBJECTIONS THAT WERE FILED BEFORE YOUR  
21 HONOR, WE BELIEVE THAT THERE IS AMPLE TESTIMONY WITH  
22 REGARD TO EACH OF THE INDIVIDUAL SUBTOPICS THAT MR. TODD  
23 IS ALLLUDING TO. MR. RUSSO HAS BEEN HEARD TO TESTIFY AT  
24 LENGTH ABOUT THE TESTS HE -- WITH REGARD TO THE DVS  
25 TECHNOLOGY, FOR EXAMPLE, HE WAS TESTIFYING AT LENGTH

1 WITH REGARD TO THE TESTS THAT HE PERFORMED. HE WAS  
2 CROSS-EXAMINED ON THAT. HE GAVE COGENT ANSWERS. HE  
3 EXPLAINED WELL THAT THEY DID THESE TESTS, THAT THEY WENT  
4 THROUGH ALL KIND OF ANALYSIS, THEY HAD CONVERSATIONS  
5 WITH THE COMPANIES THAT PROVIDE THESE TECHNOLOGIES.  
6 THAT HE CONTINUED TO ANALYZE THE TECHNOLOGY AS PART OF  
7 HIS WORK FOR THE FREE SPEECH COALITION WHERE HE IS ON  
8 THE INTERNET COMMITTEE, AND THEREFORE HAS BEEN  
9 UP-TO-DATE, EVEN THOUGH THE TESTS WERE RELATIVELY -- HE  
10 DID THESE TESTS IN THE SUMMER OF 2005. HE WAS VERY  
11 FORTHCOMING WITH ALL KINDS OF INFORMATION IN THAT  
12 REGARD.

13 WITH REGARD TO THE AVAILABILITY OF ADULT  
14 CONTENT ON PEER-TO-PEER NETWORKS AND USENET, MR. RUSSO  
15 IS CLEARLY FAMILIAR WITH THE ADULT ONLINE ENTERTAINMENT  
16 INDUSTRY, WHICH IS NOT LIMITED TO THE WORLDWIDE WEB. IT  
17 IS PART OF HIS JOB AT YNOT AS PRESIDENT TO REMAIN  
18 INFORMED, TO INFORM MYSELF AND TO KEEP INFORMING HIMSELF  
19 OF TRENDS IN THE INDUSTRY, AND HE WRITES ABOUT THE  
20 TRENDS IN THE INDUSTRY WHICH INCLUDES PEER-TO-PEER. HE  
21 DIRECTS WRITERS ON HIS STAFF TO STAY ABREAST OF NEW  
22 DEVELOPMENTS. HE MONITORS MESSAGE BOARDS WITH  
23 WEBMASTERS WHO THEMSELVES POST CONTENT ON PEER-TO-PEER  
24 NETWORKS TO ADVERTISE THEIR WEBSITES, FREQUENTLY  
25 INTERACTS INCLUDING WITH MR. RUSSO. AND IN ADDITION TO

1 THAT, HE HIMSELF -- WITH REGARD TO THE USENET PART OF  
2 THIS, HE HIMSELF USED USENET. I THINK THAT HIS  
3 QUALIFICATIONS HAVE BEEN AMPLY STATED.

4 WITH REGARD TO THE PAYMENT CARD PART OF  
5 THE OBJECTION, MR. RUSSO IS, HAS BEEN A WEBMASTER FOR  
6 SIX YEARS. HE HAS INTERACTED WITH INTERNET PAYMENT  
7 SERVICE PROVIDERS IN THE CONTEXT OF THAT OPERATION. HE  
8 HAD HIS OWN PAY SITES WHERE HE WOULD DIRECT TRAFFIC TO  
9 THE INTERNET PAYMENT SERVICE PROVIDERS THAT WOULD  
10 PROCESS THE PAYMENT CARD INFORMATION. HE WOULD HAVE, AS  
11 HE HAS TESTIFIED BEFORE, YOUR HONOR, FREQUENT  
12 INTERACTIONS WITH THE INTERNET PAYMENT SERVICE  
13 PROVIDERS, BOTH WHEN HE WAS WORKING WITH THEM WHEN HE  
14 WAS OPERATING HIS ADULT WEBSITES, BUT ALSO SUBSEQUENTLY  
15 BECAUSE HE ATTEND SEMINARS AND TRADE SHOWS AND EVENTS  
16 WHERE REPRESENTATIVES OF PAYMENT CARDS OR INTERNET  
17 PAYMENT SERVICE PROVIDERS HOLD BILLING SEMINARS, SO HE  
18 HAS STAYED ABREAST OF NEW DEVELOPMENTS.

19 MR. RUSSO HAS NEVER HELD MYSELF OUT TO BE  
20 A PAYMENT CARD EXPERT PER SE WITH REGARD TO THE NUMBERS  
21 OF PAYMENT CARDS THAT ARE AVAILABLE TO MINORS OR TO  
22 ADULTS. HOWEVER, HE CLEARLY IS AN EXPERT WITH REGARD TO  
23 PAYMENT CARDS AS THEY APPLY TO THE ADULT ONLINE  
24 ENTERTAINMENT INDUSTRY AND WHAT THE ADULT ONLINE  
25 ENTERTAINMENT INDUSTRY, WHICH CARDS THEY ACCEPT AND HOW

1 THOSE -- HOW THE INFORMATION FROM PAYMENT CARDS IS  
2 PROCESSED AND SUBMITTED TO THE PAYMENT CARD ASSOCIATIONS  
3 SUCH AS VISA AND MASTERCARD, YOUR HONOR.

4 THE COURT: ANY RESPONSE?

5 MR. TODD: WELL, YOUR HONOR, I WILL JUST  
6 NOTE THAT THERE IS NO FOUNDATION FOR THESE OPINIONS  
7 BEYOND HIS PERSONAL OBSERVATION AND I THINK THAT HIS  
8 EXPERIENCE WITH PAYMENT CARDS, FOR EXAMPLE, IS NO  
9 DIFFERENT THAN THAT OF ANY MERCHANT THAT DOES BUSINESS  
10 WITH VISA ANYWHERE IN THE COUNTRY, ANY ONE OF THOUSANDS,  
11 IF NOT MILLIONS OF PEOPLE COULD HAVE COME IN HERE AND  
12 TALKED ABOUT HOW A PAYMENT CARD IS PROCESSED. WITH  
13 RESPECT TO THE FACT THAT HE KNOWS ABOUT HOW THEY ARE  
14 PROCESSED ON AN ADULT ENTERTAINMENT SITE, HE WAS NOT  
15 ABLE TO TESTIFY ABOUT HOW THEY WERE IN FACT PROCESSED BY  
16 THE INTERNET PAYMENT SERVICE PROVIDER. WE HEARD SEVERAL  
17 ADMISSIONS -- IN FACT, THAT IS WHERE HE VOLUNTEERED THAT  
18 HE WAS NOT A PAYMENT CARD EXPERT.

19 FINALLY, WITH RESPECT TO AND MOST  
20 IMPORTANTLY HIS ANALYSIS OF THE DATA VERIFICATION  
21 SERVICES, THERE WAS NO DOCUMENTATION OF ANY OF THAT  
22 ANALYSIS. THAT IS KEY.

23 I GUESS I ALSO WANT TO RESPOND TO THE  
24 STATEMENTS ABOUT PEER-TO-PEER AND USENET. THE DEFENDANT  
25 IS NOT CHALLENGING THE FACT THAT THERE MAY BE OR IS

1 ADULT ENTERTAINMENT ON PEER-TO-PEER NETWORKS OR ON  
2 E-MAIL OR, AS WE HEARD IN THE OPENING STATEMENT, MOVIE  
3 THEATERS AND BOOK STORES AND CABLE TELEVISION. WHAT MR.  
4 RUSSO -- MR. RUSSO WAS UNABLE TO TESTIFY OR ADD ANYTHING  
5 TO THE DISPUTE ABOUT THE AMOUNT OF COMMERCIAL  
6 PORNOGRAPHY, COMMERCIAL PORNOGRAPHY ON PEER-TO-PEER  
7 NETWORKS OR USENET, ONLY THAT THERE WAS SOME  
8 PORNOGRAPHY. BUT AS THIS COURT IS WELL AWARE, WHAT IS  
9 AT STAKE HERE IS CONGRESS'S ATTEMPT TO REGULATE  
10 COMMERCIAL PORNOGRAPHY ON THE WORLDWIDE WEB.

11 THE COURT: MR. TODD, YOU ARE MAKING A  
12 PART OF YOUR CLOSING ARGUMENT.

13 MR. TODD: I'M TRYING TO EXPLAIN WHY THE  
14 TESTIMONY IS NOT RELEVANT. TO THE EXTENT THAT HE MIGHT  
15 ACTUALLY BE QUALIFIED IT'S NOT RELEVANT. TO THE EXTENT  
16 THAT IT IS RELEVANT, HE IS NOT QUALIFIED.

17 MR. VAN KWAWEGEN: YOUR HONOR, BRIEFLY IF  
18 I MAY.

19 THE COURT: I DON'T NEED ANY MORE  
20 ARGUMENT. I'M PREPARED TO RULE.

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

22 THE COURT: ON THE BASIS OF ONE OF THE  
23 LEADING CASES, KUMO TIRE, THAT AUTHORIZED THE COURT TO  
24 RECEIVE EVIDENCE FROM NONSCIENTIFIC EXPERTS, AND IN  
25 ACCORDANCE -- ITS PROGENY SHOWS THAT EXPERTS OR

1 WITNESSES WILL BE ALLOWED TO GIVE EXPERT TESTIMONY FROM  
2 THEIR OWN PERSONAL EXPERIENCE WHO ARE NOT PH.D.S IN  
3 ADULT ENTERTAINMENT BUT HAVE EXPRESS PERSONAL  
4 EXPERIENCE. RULE 702 SAYS IF OTHER SPECIALIZED  
5 KNOWLEDGE WILL ASSIST THE TRIER OF FACT TO UNDERSTAND  
6 THE EVIDENCE, OR TO DETERMINE A FACT IN ISSUE, AND I'M  
7 PARAPHRASING, AN EXPERT BY KNOWLEDGE, SKILL, EXPERIENCE,  
8 TRAINING OR EDUCATION MAY TESTIFY THERETO IN THE FORM OF  
9 AN OPINION. I FIND THAT THIS WITNESS IS EXPERIENCED TO  
10 AN ENORMOUSLY GREAT DEGREE IN THE FIELD OF ADULT  
11 ENTERTAINMENT. I FIND THAT THE TESTIMONY WILL ASSIST  
12 THE TRIER OF FACT TO UNDERSTAND THE EVIDENCE AND  
13 DETERMINE THE FACTS AT ISSUE. I FIND THAT MOST OF THE  
14 ARGUMENTS OF THE MOTION TO STRIKE GO TO THE WEIGHT OF  
15 THE EVIDENCE AND THEREFORE THE TESTIMONY WILL STAND AND  
16 THE MOTION IS DENIED.

17 MR. TODD: THANK YOU, YOUR HONOR.

18 THE COURT: IF THE JURY WERE HERE, I  
19 WOULD SAY DON'T THANK ME IN FRONT OF THE JURY. THEY MAY  
20 THINK YOU WON. I'M NOT BEING CAPTIOUS. THAT IS A  
21 SERIOUS PROBLEM IF YOU HAVE A JURY. THANKING A JUDGE  
22 FOR MAKING A RULING IS INAPPROPRIATE IN OPEN COURT.  
23 IT'S VERY MISLEADING. IT'S VERY COURTEOUS, THAT IS WHY  
24 PEOPLE DO IT. THANKING A JUDGE WHO IS ON THE BENCH  
25 PRESIDING OVER A TRIAL IS MISUNDERSTOOD AND APPRECIATED

1 BUT NOT APPROPRIATE. OKAY.

2 WE STILL HAVE A LITTLE TIME BEFORE THE  
3 MORNING RECESS SO WE WILL MOVE TO THE NEXT WITNESS,  
4 PLEASE.

5 MS. MARSHALL: PLAINTIFFS WOULD LIKE TO  
6 CALL PROFESSOR MATTHEW ZOOK AS THE NEXT WITNESS.

7 THE COURT: YOU MAY. PROFESSOR ZOOK, I  
8 DON'T KNOW WHAT KIND OF WIRES ARE DOWN THERE, BUT BE  
9 CAREFUL PLEASE. STEP UP AND STAND BEHIND THE CHAIR AND  
10 PUT YOUR LEFT HAND ON THE BIBLE.

11 MATTHEW ZOOK, DEFENSE WITNESS, AFFIRMS.

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

14 THE WITNESS: MY NAME IS MATTHEW ALAN  
15 ZOOK. M-A-T-T-H-E-W A-L-A-N Z-O-O-K.

16 DIRECT EXAMINATION

17 BY MS. MARSHALL:

18 Q. GOOD MORNING, PROFESSOR ZOOK.

19 A. GOOD MORNING.

20 THE COURT: YOU DON'T HAVE TO THANK ME.  
21 I HESITATE TO BRING THAT TO YOUR ATTENTION.

22 BY MS. MARSHALL:

23 Q. PROFESSOR ZOOK, DO YOU HAVE AN UNDERGRADUATE  
24 DEGREE?

25 A. YES, I DO. MY UNDERGRADUATE DEGREE IS FROM

1 EARLHAM COLLEGE.

2 Q. WHEN DID YOU RECEIVE YOUR DEGREE?

3 A. I RECEIVED MY DEGREE IN 1989.

4 Q. IN WHAT FIELD OF STUDY?

5 A. MAJOR IN POLITICAL SCIENCE AND MINOR IN GERMAN.

6 Q. ARE YOU PROFICIENT IN GERMAN?

7 A. YES, I AM.

8 Q. ARE YOU PROFICIENT IN ANY OTHER LANGUAGES?

9 A. YES. I AM PROFICIENT IN SPANISH, ALSO CAN READ  
10 IN FRENCH AND PORTUGUESE. I'M AT THE INTRODUCTORY LEVEL  
11 IN ESTONIAN.

12 Q. DO YOU HAVE A GRADUATE DEGREE?

13 A. YES.

14 Q. HOW MANY?

15 A. I HAVE TWO GRADUATE DEGREES.

16 Q. TELL ME ABOUT ONE OF THEM.

17 A. THE FIRST ONE I RECEIVED WAS A MASTERS IN  
18 REGIONAL PLANNING FROM CORNELL UNIVERSITY.

19 Q. IN WHAT YEAR?

20 A. IN 1995.

21 Q. AND WHAT EXACTLY IS REGIONAL PLANNING?

22 A. REGIONAL PLANNING IS A FIELD LOOKING  
23 SPECIFICALLY AT HOW REGIONAL ECONOMIES FUNCTION, WHAT  
24 SORT OF INPUTS GO INTO A REGIONAL ECONOMY, HOW REGIONAL  
25 ECONOMIES GROW, PROSPER AND SOMETIMES DECLINE.

1 Q. DO YOU HAVE ANOTHER GRADUATE DEGREE?

2 A. YES. PH.D. FROM THE UNIVERSITY OF CALIFORNIA,  
3 BERKELEY.

4 Q. WHAT YEAR DID YOU RECEIVE YOUR PH.D.?

5 A. I RECEIVED THAT IN 2001.

6 Q. WHAT WAS THE FOCUS OF YOUR THESIS FOR WHICH YOU  
7 EARNED YOUR PH.D.?

8 A. MY DISSERTATION WAS FOCUSING ON THE REASONS --  
9 THE CONCENTRATION AND THE REASONS BEHIND THE CLUSTERING  
10 OF .COM FIRMS IN SPECIFIC REGIONS OF THE UNITED STATES  
11 DURING THE LATE 1990S AND THE EARLY 2000S.

12 Q. PROFESSOR ZOOK, ARE YOU CURRENTLY EMPLOYED?

13 A. YES. I AM CURRENTLY EMPLOYED AT THE UNIVERSITY  
14 OF KENTUCKY.

15 Q. WHAT IS YOUR POSITION AT THE UNIVERSITY OF  
16 KENTUCKY?

17 A. I'M AN ASSISTANT PROFESSOR THERE.

18 Q. IN WHAT DEPARTMENT?

19 A. IN THE GEOGRAPHY DEPARTMENT.

20 Q. DO YOU HAVE A SPECIALTY WITHIN THE GEOGRAPHY  
21 DEPARTMENT?

22 A. WITHIN GEOGRAPHY, TWO FIELDS IN WHICH I HAVE  
23 SPECIALTY ARE INTERNET GEOGRAPHY AND ECONOMIC GEOGRAPHY.

24 Q. HOW LONG HAVE YOU BEEN EMPLOYED BY THE  
25 UNIVERSITY OF KENTUCKY AS AN ASSISTANT PROFESSOR?

1 A. EMPLOYED THERE FOR A LITTLE OVER FOUR YEARS.

2 Q. DO YOU TEACH CLASSES AT THE UNIVERSITY?

3 A. YES, I DO.

4 Q. IN WHAT SUBJECT AREAS?

5 A. I TEACH THEM IN INTERNET GEOGRAPHY, ECONOMIC  
6 GEOGRAPHY, BOTH AT THE UNDERGRADUATE AND GRADUATE LEVEL,  
7 I HAVE ALSO TALKED INTRODUCTORY COURSES AND CLASSES ON  
8 STATISTICAL METHODOLOGY FOR GEOGRAPHY STUDENTS.

9 Q. DO YOU CONDUCT RESEARCH AS PART OF YOUR WORK AS  
10 AN ASSISTANT PROFESSOR?

11 A. YES. IT'S A VERY IMPORTANT PART OF MY WORK, MY  
12 JOB.

13 Q. WHAT KIND OF RESEARCH DO YOU CONDUCT?

14 A. MY RESEARCH AGAIN TENDS TO FOCUS PRINCIPALLY ON  
15 MY TWO SPECIALTIES, ECONOMIC GEOGRAPHY AND INTERNET  
16 GEOGRAPHY. AND MY REAL FOCUS -- MY REAL INTEREST IN  
17 BOTH MY RESEARCH AND MY TEACHING IS HOW THE TECHNOLOGIES  
18 OF THE INTERNET ARE AFFECTING THE SPATIAL ORGANIZATION  
19 OF THE ECONOMY.

20 Q. CAN YOU PROVIDE THE COURT WITH A RECENT EXAMPLE  
21 OF ONE OF YOUR RESEARCH PROJECTS?

22 A. A PROJECT THAT I AM CURRENTLY WORKING ON, THIS  
23 IS BEING FUNDED BY THE NATIONAL SCIENCE FOUNDATION, IS  
24 LOOKING AT THE ADOPTION OF E-COMMERCE TECHNOLOGIES BY  
25 MANUFACTURING FIRMS IN THE UNITED STATES AND THE EFFECT

1 OF THAT ADOPTION ON THE SPATIAL ORGANIZATION OF  
2 PRODUCTION, DISTRIBUTION OF SALES OF THESE COMPANIES.

3 Q. CAN YOU PROVIDE THE COURT WITH ONE MORE EXAMPLE  
4 OF A RECENT RESEARCH PROJECT?

5 A. A RECENT PAPER THAT I FINISHED VERY RECENTLY WAS  
6 A PAPER LOOKING AT THE GEOGRAPHY AND ORGANIZATION OF  
7 WHAT IS COMMONLY CALLED NIGERIAN SPAM, IT'S ALSO KNOWN  
8 AS 419 SPAM. THIS IS THE KIND OF SPAM THAT SHOWS UP IN  
9 PEOPLE'S IN-BOXES ASKING THEM FOR HELP IN GETTING  
10 ILL-GOTTEN MONEY OUT OF GENERALLY A WEST AFRICAN  
11 COUNTRY. THE PAPER WAS SPECIFICALLY LOOKING AT HOW THE  
12 NETWORKS OF THE PEOPLE INVOLVED IN THIS PROCESS ARE  
13 ORGANIZED SPATIALLY.

14 Q. WHEN YOU SAY IN-BOX, WHAT DO YOU MEAN IN-BOX?

15 A. OH, YOUR IN-BOX YOUR E-MAIL IN-BOX, THE KIND OF  
16 THING THAT YOU -- BASICALLY, THE IN-BOX FOR THE E-MAIL  
17 PROGRAM.

18 Q. I JUST WANT TO ASK YOU TO HELP US UNDERSTAND  
19 WHAT YOU MEANT BY SPAM.

20 A. SPAM. SPAM IS THE COMMON TERM FOR UNSOLICITED  
21 E-MAIL, E-MAIL THAT PEOPLE SEND TO DO MASS MAILING AS AN  
22 ATTEMPT TO EITHER MARKET A PRODUCT OR, IN THE CASE OF  
23 THIS NIGERIAN E-MAIL, TO TRY TO DEFRAUD PEOPLE. IT'S  
24 E-MAIL THAT TAKES PLACE WHERE THERE IS NO PRIOR  
25 RELATIONSHIP BETWEEN THE PEOPLE INVOLVED. WE ARE NOT

1 GETTING -- WE ARE NOT GETTING SPAM FROM PEOPLE WE KNOW.  
2 WE ARE GETTING IT FROM PEOPLE -- FROM PEOPLE WHO ARE  
3 TRYING TO TAKE ADVANTAGE OF THE E-MAIL TECHNOLOGY.

4 Q. YOUR HONOR, I WAS ABOUT TO DIRECT PROFESSOR ZOOK  
5 TO THE BINDER IN FRONT OF HIM, BUT I BELIEVE IT'S THE  
6 WRONG WITNESS BINDER.

7 MS. MARSHALL: YOUR HONOR, MAY WE  
8 APPROACH WITH A BINDER FOR YOU?

9 THE COURT: OH, THAT WOULD BE HELPFUL.

10 I PUT THE VIDEO SEARCH ON PLAINTIFFS.

11 BY MS. MARSHALL:

12 Q. DIRECTING YOUR ATTENTION TO THE BINDER I JUST  
13 PUT BEFORE YOU, CAN YOU PLEASE DIRECT YOUR ATTENTION TO  
14 WHAT'S MARKED, WHAT HAS PREVIOUSLY BEEN MARKED IN THERE  
15 AS PLAINTIFFS' EXHIBIT 28, I BELIEVE IT IS BEHIND TAB  
16 28?

17 A. YES.

18 Q. DO YOU RECOGNIZE THIS DOCUMENT?

19 A. YES, IT IS A RECENT COPY OF MY CV.

20 MS. MARSHALL: PLAINTIFFS WOULD LIKE TO  
21 OFFER 28, PROFESSOR ZOOK'S CV, INTO EVIDENCE.

22 MR. MCELVAIN: NO OBJECTION.

23 THE COURT: P 28 IS RECEIVED IN EVIDENCE.

24 (P 28 ADMITTED INTO EVIDENCE.)

25 BY MS. MARSHALL:

1 Q. PROFESSOR ZOOK, HAVE YOU PUBLISHED ANY ARTICLES  
2 IN PEER REVIEWED JOURNALS IN THE LAST 10 YEARS?

3 A. YES, I HAVE.

4 Q. APPROXIMATELY HOW MANY?

5 A. APPROXIMATELY 10, 15 ARTICLES IN PEER REVIEWED  
6 JOURNALS.

7 Q. ON WHAT SUBJECTS GENERALLY?

8 A. THE MAJORITY OF MY PUBLICATIONS ARE ON THE TOPIC  
9 OF INTERNET GEOGRAPHY, LOOKING AT AGAIN, HOW THE  
10 TECHNOLOGY OF THE INTERNET IS FUSING US TO DIFFERENT  
11 LOCATIONS AND AFFECTING THE SPATIAL ORGANIZATION OF  
12 ECONOMIC ACTIVITY. I HAVE WRITTEN PAPERS ALSO ON  
13 CHANGES WITHIN GLOBAL AIRLINE GEOGRAPHY AND A FEW OTHER  
14 TOPICS AS WELL.

15 Q. DO YOU HAVE ANY ARTICLES THAT ARE CURRENTLY  
16 UNDER REVIEW AWAITING PUBLICATION?

17 A. YES. I CURRENTLY HAVE THREE ARTICLES THAT ARE  
18 UNDER REVIEW.

19 Q. AND WHAT SUBJECTS ARE THOSE ARTICLES ADDRESSING?

20 A. TWO OF THEM ARE FOCUSED ON AN INTERNET SERVICE  
21 THAT GOOGLE OFFERS CALLED GOOGLE MAPS, WHICH IS A WAY OF  
22 USING DATA THAT IS RANKED, INDEXED ON THE INTERNET AND  
23 LOCATING IT IN SPECIFIC LOCATIONS. THE BEST WAY OF  
24 THINKING ABOUT IT IS, IT IS SORT OF AN ONLINE DIRECTORY  
25 THAT PROVIDES YOU MAPS. THE ARTICLES ARE FOCUSED ON HOW

1 THIS SERVICE AND SERVICES LIKE IT ARE CHANGING THE WAY  
2 THAT PEOPLE SEARCH FOR -- SEARCH FOR SPATIAL DATA, HOW  
3 PEOPLE USE MAPS, HOW PEOPLE PERCEIVE THE CITIES AND THE  
4 SPACE AROUND THEM.

5 Q. AND I THINK YOU MENTIONED THERE WAS A THIRD  
6 PAPER CURRENTLY UNDER REVIEW?

7 A. YES. THE THIRD PAPER IS A PAPER IS WRITTEN --  
8 IT IS FOCUSED ON -- IT IS BASICALLY AN EXPLANATION,  
9 FOCUSED AT GEOGRAPHERS, SPECIFICALLY DISCUSSING HOW  
10 GEOGRAPHERS CAN USE DATA THAT IS AVAILABLE ON THE  
11 INTERNET FOR RESEARCH PROJECTS.

12 Q. ARE THOSE ARTICLES AWAITING PUBLICATION IN  
13 NATIONAL JOURNALS?

14 A. THOSE ARTICLES ARE UNDER REVIEW, BUT THE  
15 JOURNALS THAT ARE SUBMITTED ARE NATIONAL AND  
16 INTERNATIONAL.

17 Q. HAVE YOU PUBLISHED ANY BOOKS, PROFESSOR ZOOK?

18 A. YES, I HAVE PUBLISHED A BOOK.

19 Q. AND WHEN DID YOU -- WHEN WAS THE BOOK PUBLISHED?

20 A. THE BOOK WAS PUBLISHED IN 2005.

21 Q. WHAT IS THE TITLE OF THE BOOK?

22 A. THE TITLE OF THE BOOK IS GEOGRAPHY OF INTERNET  
23 INDUSTRY: VENTURE CAPITAL, DOT-COMS AND LOCAL  
24 KNOWLEDGE.

25 Q. CAN YOU TELL US BRIEFLY WHAT THE SUBJECT MATTER

1 OF THE BOOK IS ABOUT?

2 A. THE SUBJECT MATTER IS LOOKING SPECIFICALLY AT  
3 THE CASE OF THE SAN FRANCISCO BAY REGION AND THE LARGE  
4 CLUSTERING OF .COM OR INTERNET RELATED FIRMS DURING THE  
5 LATE 1990S AND EARLY 2000S IN THAT REGION. THE BOOK IS  
6 SPECIFICALLY LOOKING AT SORT OF THE REASONS BEHIND THIS  
7 CLUSTERING AND SOME OF THE -- AND THEN SUBSEQUENTLY THE  
8 DECLINE ONCE THE .COM BUBBLE BURST IN THE EARLY 2000S,  
9 LOOKING SPECIFICALLY AT WHAT FACTORS HELPED DRAW  
10 -- CONTRIBUTED TO THIS LARGE CLUSTERING IN THIS  
11 PARTICULAR PLACE.

12 Q. HAVE YOU CONTRIBUTED TO ANY OTHER BOOKS?

13 A. YES, I HAVE CONTRIBUTED CHAPTERS TO FIVE OTHER  
14 BOOKS.

15 Q. ON WHAT SUBJECTS DID THOSE CHAPTERS ADDRESS?

16 A. AGAIN, LIKE MUCH OF MY OTHER WORK, THE CHAPTERS  
17 THAT I HAVE SUBMITTED FOCUS PRIMARILY ON INTERNET  
18 GEOGRAPHIES, LOOKING SPECIFICALLY AT E-COMMERCE  
19 GEOGRAPHIES. I HAVE ALSO WRITTEN REVIEW PIECES OR  
20 SPECIFICALLY A REVIEW PIECE OUTLINING -- ENTITLED  
21 GEOGRAPHIES OF THE INTERNET.

22 Q. DO YOU HAVE ANY OTHER PUBLICATIONS IN PROGRESS?

23 A. I'M CURRENTLY WORKING ON THREE ENCYCLOPEDIA,  
24 ENCYCLOPEDIA ENTRIES.

25 Q. WITH WHAT ENCYCLOPEDIA?

1           A.           THE ENCYCLOPEDIA ENTRIES THAT I WAS SOLICITED TO  
2           WRITE IS FOR AN UPCOMING PUBLICATION CALLED THE  
3           INTERNATIONAL HANDBOOK OF HUMAN GEOGRAPHY, AND IT'S  
4           DESIGNED FOR STUDENTS OF GEOGRAPHY AND THESE  
5           ENCYCLOPEDIA ENTRIES ARE RATHER LONG, LONGER THAN A  
6           TYPICAL ENTRY YOU WOULD FIND IN AN ENCYCLOPEDIA, 4,000  
7           WORDS, HALF THE LENGTH OF A STANDARD ACADEMIC PAPER, AND  
8           THE TOPICS THAT I'M WRITING ON, THE THREE DIFFERENT  
9           ENTRIES INCLUDE MAPPING CYBERSPACE, INTERNET MEASUREMENT  
10          AND E-COMMERCE GEOGRAPHIES.

11          Q.           PROFESSOR ZOOK, BACK TO YOUR RESEARCH  
12          ACTIVITIES. DO YOU RECEIVE ANY FUNDING I'M -- I'M  
13          SORRY. WITHDRAW THAT QUESTION.

14                                ARE YOU A MEMBER OF ANY PROFESSIONAL OR  
15          ACADEMIC ORGANIZATIONS?

16          A.           YES. I'M A MEMBER OF THE ASSOCIATION OF  
17          AMERICAN GEOGRAPHERS, THIS IS AN ORGANIZATION FOR  
18          ACADEMIC GEOGRAPHERS. I AM ALSO A MEMBER OF THE  
19          ASSOCIATION OF COLLEGIATE SCHOOLS OF PLANNING AND A  
20          MEMBER OF THE SOUTHEAST DIVISION OF THE ASSOCIATION OF  
21          AMERICAN GEOGRAPHERS.

22          Q.           ARE YOU EVER ENGAGED TO SPEAK AT CONFERENCES IN  
23          YOUR FIELD OF STUDY?

24          A.           YES, I AM.

25          Q.           HAVE YOU SPOKEN AT A CONFERENCE RECENTLY?

1 A. YES, I DID.

2 EARLIER THIS MONTH, IN OCTOBER, I SPOKE.  
3 I WAS INVITED TO SPEAK AT A CONFERENCE IN TORONTO. THIS  
4 CONFERENCE WAS FOR AN ORGANIZATION CALLED CENTER AND  
5 CENTER IS A BLANKET ORGANIZATION OF EUROPEAN -- THE  
6 ENTITIES THAT ARE RESPONSIBLE FOR RUNNING EUROPEAN TOP  
7 LEVEL DOMAINS. A TOP LEVEL DOMAIN IS SOMETHING LIKE .DE  
8 FOR GERMANY OR .FR FOR FRANCE, AND THIS CONFERENCE OR  
9 THIS MEETING WAS A REGULAR CONFERENCE THAT THESE PEOPLE  
10 ARE RESPONSIBLE FOR MAINTAINING AND RUNNING THESE  
11 REGISTRIES HAVE.

12 Q. WHAT DID YOU SPEAK ABOUT AT THIS CONFERENCE?

13 A. THE TITLE -- THE FOCUS OF MY TALK AT THIS  
14 CONFERENCE WAS THE CURRENT STATE OF THE DOMAIN NAME  
15 INDUSTRY.

16 Q. CAN YOU PLEASE TELL US WHAT YOU MEAN BY THE  
17 DOMAIN NAME INDUSTRY?

18 A. SURE.

19 THE DOMAIN NAME INDUSTRY IS SIMPLY A  
20 DOMAIN NAME, SOMETHING LIKE -- THE NEW YORK TIMES ON THE  
21 WEB IS REPRESENTED BY A SPECIFIC DOMAIN NAME. IN THE  
22 CASE OF NEW YORK TIMES, IT IS NYTIMES.COM. THE GLOBAL  
23 DOMAIN NAME INDUSTRY IS SIMPLY THE INDUSTRY THAT IS  
24 RESPONSIBLE FOR MAINTAINING AND REGULATING THIS DOMAIN  
25 NAME SYSTEM. IT IS ONE OF THE IMPORTANT PARTS OF THE

1 SYSTEM BECAUSE A DOMAIN NAME IS EQUIVALENT TO AN ADDRESS  
2 ON THE INTERNET. IT IS A UNIQUE IDENTIFIER, MAKING SURE  
3 THAT ONLY ONE ENTITY OR ONE BUSINESS OR ONE PERSON HAS  
4 RIGHTS AND CAN USE A SPECIFIC DOMAIN NAME, THAT THERE IS  
5 NOT OVERLAPPING, OVERLAPPING USE OF DOMAIN NAMES.

6 Q. PROFESSOR ZOOK, IN ADDITION TO YOUR WORK WITH  
7 THE UNIVERSITY OF KENTUCKY, DO YOU HAVE A PRIVATE  
8 CONSULTING PRACTICE?

9 A. YES, I DO.

10 Q. WHAT IS IT CALLED?

11 A. MY CONSULTING PRACTICE IS CALLED ZOOKNIC.

12 Q. WHAT DOES YOUR CONSULTING PRACTICE DO?

13 A. MY CONSULTING PRACTICE IS FOCUSED SPECIFICALLY  
14 AT PROVIDING DATA AND ANALYSIS TO THIS GLOBAL DOMAIN  
15 NAME INDUSTRY.

16 Q. HOW LONG HAVE YOU HAD THIS CONSULTING PRACTICE?

17 A. CONSULTING PRACTICE HAS BEEN IN OPERATION FOR  
18 APPROXIMATELY FIVE TO SIX YEARS.

19 Q. AND IN THE PAST FIVE TO SIX YEARS, APPROXIMATELY  
20 HOW MANY CLIENTS HAVE YOU HAD?

21 A. I HAVE HAD APPROXIMATELY 30 TO 40 CLIENTS.

22 Q. CAN YOU PROVIDE THE COURT WITH A FEW EXAMPLES OF  
23 YOUR CLIENTS?

24 A. A COUPLE EXAMPLES WOULD INCLUDE VERISIGN.  
25 VERISIGN IS THE COMPANY THAT IS RESPONSIBLE FOR MANAGING

1 AND RUNNING THE COM AND THE NET TOP LEVEL DOMAINS. TO  
2 COMBINE THE COM AND NET TOP LEVEL DOMAINS, PROBABLY  
3 REPRESENTS ABOUT 50 PERCENT OF ALL DOMAINS WORLDWIDE.  
4 THEY ARE THE ENTITY THAT IS RESPONSIBLE FOR MANAGING  
5 THOSE TWO TOP LEVEL DOMAINS. ANOTHER CUSTOMER OF MINE  
6 IS A COMPANY CALLED GO DADDY, AND GO DADDY IS THE  
7 LARGEST REGISTRAR OF COM OR NET DOMAINS. A REGISTRAR  
8 DIFFERS FROM A REGISTRY, AND THAT IS WHAT VERISIGN IS.  
9 A REGISTRY IS SIMPLY MANAGING THE TOP LEVEL DOMAIN. A  
10 REGISTRAR, ACTUALLY SELLING THESE TO THE FINAL CUSTOMER.  
11 GO DADDY IS A REGISTRAR, THE WORLD'S LARGEST REGISTRAR  
12 FOR -- THE WORLD'S LARGEST SELLER OF COM DOMAINS. OTHER  
13 CUSTOMERS HAVE INCLUDED CIRA, C-I-R-A, WHICH IS THE  
14 REGISTRY FOR CANADA OR .CA, THE TOP LEVEL DOMAIN FOR  
15 CANADA, AND ANOTHER CUSTOMER IS AFNIC, A-F-N-I-C, WHICH  
16 IS THE REGISTRY FOR FRANCE. THEY MANAGE THE .FR TOP  
17 LEVEL DOMAIN.

18 Q. WHAT KIND OF PROJECTS DO YOU DO FOR THESE  
19 CLIENTS?

20 A. THESE CLIENTS -- THE RANGE OF PROJECTS, I  
21 GENERALLY PROVIDE ANALYSIS AND DATA ON THE GLOBAL DOMAIN  
22 NAME INDUSTRY. THIS WOULD INCLUDE -- A BIG PART OF THIS  
23 IS TRACKING THE COUNTS AND GROWTH AND TRENDS IN  
24 DIFFERENT TOP LEVEL DOMAINS, .COM, .NET, .DE OVER TIME.  
25 ANOTHER VERY IMPORTANT PART OF IT IS PROVIDING MEASURES

1 OF THE NUMBER OF THESE DOMAINS THAT ARE LOCATED IN ANY  
2 PARTICULAR COUNTRY. I HAVE ALSO DONE SOME WORK ON  
3 FORECASTING GROWTH OF THESE TOP LEVEL DOMAINS AND  
4 LOOKING AT SOME OF THE -- HOW THESE -- LOOKING AT HOW  
5 FREQUENTLY CERTAIN WORDS APPEAR IN DOMAINS AND SORT OF  
6 TRENDS, TRENDS FOR REGISTRATION PRACTICES.

7 Q. HAVE ANY OF YOUR CLIENTS INCLUDED INVESTMENT  
8 BANKS?

9 A. YES. I HAVE HAD SEVERAL CLIENTS THAT HAVE BEEN  
10 INVESTMENT BANKS.

11 Q. WHAT KIND OF WORK DO YOU DO FOR THE INVESTMENT  
12 BANKS?

13 A. I DO MUCH OF THE SAME WORK I HAVE DONE FOR THE  
14 REGISTRIES AND REGISTRARS I HAVE OUTLINED BUT IN  
15 PARTICULAR INVESTMENT BANKS ARE CONCERNED ABOUT MARKET  
16 SHARE OF THESE DOMAINS. FOR EXAMPLE, THEY WOULD BE  
17 INTERESTED IN QUESTIONS OF WHAT PERCENTAGE OF .COM  
18 DOMAINS IS GO DADDY RESPONSIBLE FOR SELLING, THOSE KIND  
19 OF QUESTIONS.

20 Q. PROFESSOR ZOOK, HAVE YOU BEEN HIRED BY THE  
21 PLAINTIFFS IN THIS CASE?

22 A. YES, I HAVE.

23 Q. TO DO WHAT?

24 A. THE PURPOSE OF MY EXPERT REPORT WAS TO LOOK  
25 SPECIFICALLY AT THE DISTRIBUTION OF THE OWNERSHIP OF

1 INTERNET ADULT WEBSITES AND SPECIFICALLY -- MORE  
2 SPECIFICALLY LOOKING AT THE EXTENT TO WHICH THESE  
3 WEBSITES WERE LOCATED IN THE UNITED STATES.

4 Q. DID YOU CONDUCT SOME RESEARCH AS PART OF YOUR  
5 ENGAGEMENT BY PLAINTIFFS?

6 A. YES, I DID.

7 Q. WHAT WAS THE NATURE OF THAT RESEARCH GENERALLY?  
8 WE WILL TALK ABOUT IT SPECIFICALLY LATER.

9 A. OKAY.

10 GENERALLY MY RESEARCH -- THE RESEARCH I  
11 DID WAS COLLECTING LISTS OF ADULT WEBSITES AND THEN  
12 USING THE REGISTRATION INFORMATION ASSOCIATED WITH THE  
13 OWNER OF THAT WEBSITE TO LOCATE WHERE THIS WEBSITE WAS  
14 HEADQUARTERED.

15 Q. HAVE YOU DONE WORK LIKE THIS IN THE PAST?

16 THE COURT: EXCUSE ME FOR INTERRUPTING.  
17 I THOUGHT YOU WERE GOING TO FINISH HIS QUALIFICATIONS.  
18 I THINK YOU HAVE SLIPPED.

19 MS. MARSHALL: I THINK I'M THREE  
20 QUESTIONS AWAY.

21 THE COURT: TIME FOR A RECESS, BUT I  
22 WANTED TO FINISH IT.

23 MS. MARSHALL: I'M ALMOST THERE.  
24 BY MS. MARSHALL:

25 Q. HAVE YOU DONE WORK LIKE THIS IN THE PAST?

1 A. YES, I HAVE.

2 Q. WHEN WAS THAT?

3 A. THIS WAS -- A LOT OF THIS KIND OF WORK IS  
4 REPRESENTED IN MY ACADEMIC PUBLICATIONS.

5 Q. SPECIFICALLY, DID YOU PUBLISH A PAPER ON THIS  
6 SUBJECT IN THE PAST?

7 A. YES, I HAVE.

8 Q. WHEN WAS THAT PAPER PUBLISHED?

9 A. THIS PAPER WAS PUBLISHED IN 2003.

10 Q. IN WHAT JOURNAL?

11 A. IT WAS PUBLISHED IN A JOURNAL CALLED ENVIRONMENT  
12 AND PLANNING A, JUST A.

13 Q. DID IT GO THROUGH A PEER REVIEW PROCESS BEFORE  
14 PUBLICATION?

15 A. YES. ENVIRONMENT AND PLANNING A IS A VERY  
16 WELL-RESPECTED PEER REVIEWED JOURNAL IN THE FIELD OF  
17 GEOGRAPHY. IT IS ACTUALLY BASED IN THE UK. AS PART OF  
18 THE PUBLICATION PROCESS, IT WENT THROUGH A PEER REVIEW  
19 PROCESS.

20 Q. WERE YOU PAID TO DO THAT RESEARCH?

21 A. NO. I WAS NOT.

22 MS. MARSHALL: YOUR HONOR, AT THIS TIME  
23 PLAINTIFFS WOULD LIKE TO OFFER PROFESSOR MATTHEW ZOOK AS  
24 AN EXPERT IN INTERNET GEOGRAPHY.

25 MR. MCELVAIN: NO OBJECTION TO HIS

1 QUALIFICATIONS. WE RESERVE THE RIGHT TO OBJECT TO THE  
2 ADMISSIBILITY OF HIS EXPERT OPINION.

3 THE COURT: DR. ZOOK'S OPINION TESTIMONY  
4 WILL BE RECEIVED IN EVIDENCE IN THE FIELD OF INTERNET  
5 GEOGRAPHY.

6 SOMETIME SOON YOU ARE GOING TO HAVE HIM  
7 TESTIFY TO WHAT THAT MEANS. MEANTIME THE COURT IS IN  
8 RECESS FOR 10 MINUTES. COUNSEL ARE EXCUSED, WE ARE OFF  
9 THE RECORD.

10 (RECESS.)

11 THE COURT: COURT IS NOW IN SESSION. WE  
12 ARE ON THE RECORD.

13 BEFORE WE PROCEED, A BIT OF HOUSEKEEPING.  
14 I THINK AT THE END OF THE DAY YESTERDAY, COUNSEL FOR  
15 PLAINTIFFS ASKED ME WHETHER I WOULD LISTEN TO -- I'M NOT  
16 SURE WHAT WAS TOLD ME, ONE OR MORE VOCAL COMPACT DISKS  
17 OF ONE OF THE PLAINTIFFS AND I SAID I WOULD. I WOULD  
18 LIKE TO MODIFY THAT RESPONSE THAT I GAVE YOU IN THIS  
19 RESPECT. AS I UNDERSTAND IT, AND I WOULD EXPECT THE  
20 TYPEWRITTEN VERSION OF THE LYRICS WILL BE MADE AN  
21 EXHIBIT AND PUT INTO EVIDENCE.

22 MR. HANSEN: THEY WILL, YOUR HONOR.

23 THE COURT: IS THERE ONE OR MORE THAN  
24 ONE?

25 MR. HANSEN: TWO SONGS.

1 THE COURT: THAT APPLIES TO THE SECOND  
2 ONE AS WELL?

3 MR. HANSEN: YES, IT DOES.

4 THE COURT: THE ONLY THING I THINK THE  
5 COURT CAN DO TO PARTICIPATE IN RECEIVING THAT EVIDENCE,  
6 OR NEEDS TO DO, IS TO LISTEN TO SUFFICIENT BARS OF THE  
7 SONGS, IF THOSE WORDS DON'T APPLY TO THAT KIND OF MUSIC  
8 THEN WHATEVER DOES APPLY, TO DETERMINE WHETHER THE  
9 LYRICS ARE INTELLIGIBLE OR NOT. FOR INSTANCE, IF -- I  
10 ASSUME THERE IS GOING TO BE TESTIMONY THAT THESE SONGS  
11 ARE AVAILABLE TO PEOPLE ON THE INTERNET.

12 MR. HANSEN: YES.

13 THE COURT: WHO CALL INTO THE PLAINTIFFS'  
14 WEBSITE.

15 MR. HANSEN: THE WITNESS' WEBSITE, YES,  
16 YOUR HONOR.

17 THE COURT: THE WITNESS IS NOT PARTY?

18 MR. HANSEN: THIS WITNESS IS NOT A PARTY.

19 THE COURT: I MISRECALLED. SO -- IF THIS  
20 IS BEING OFFERED TO PROVE IN PART THE VALIDITY OF THE  
21 WITNESS' CONCERN ABOUT PROSECUTION, THEN THE LYRICS  
22 WHICH ARE THE SUBJECT OF THE POSSIBLE PROSECUTION WOULD  
23 HAVE TO BE INTELLIGIBLE TO A LISTENER. AND IF THERE IS  
24 TESTIMONY THAT THE TYPEWRITTEN LYRICS ARE IDENTICAL TO  
25 THOSE THAT ARE SUNG, MY PLAN IS TO LISTEN TO -- I HAVE

1 READ THE LYRICS OF AT LEAST ONE OF THEM. OF COURSE, I  
2 WILL READ THE OTHER ONE OR WHATEVER ELSE IS PRESENTED.  
3 IT SEEMS TO ME THAT IT WOULD BETTER SUIT THE DIGNITY OF  
4 THE COURT THAT THIS IS WHAT WE HAVE TO LISTEN TO AND NOT  
5 ANYMORE THAN THAT. SO THAT IS AN OBSERVATION. AFTER  
6 YOU CONSULT WITH YOUR COLLEAGUES OR WHATEVER YOU WANT TO  
7 DO, IF THAT IS THE WAY YOU WANT TO PROCEED, THAT WOULD  
8 BE FINE WITH ME. I'M NOT INSTRUCTING YOU TO DO  
9 ANYTHING.

10 MR. HANSEN: VERY WELL, YOUR HONOR.

11 MR. GOMEZ: YOUR HONOR, THE DEFENDANT  
12 WOULD ADDRESS THAT ISSUE WHEN THAT WITNESS TESTIFIES,  
13 BUT IF THE TEXT IS NOT AVAILABLE ON THE INTERNET, ON THE  
14 WITNESS' WEBSITE, THE DEFENDANT WOULD STRENUOUSLY OBJECT  
15 THAT THE TEXT BE PROVIDED BECAUSE SONGS JUST AS YOU HEAR  
16 THEM ON A COMPUTER MAY NOT IN FACT BE INTELLIGIBLE. IN  
17 FACT, THE COPY THAT WE MAY HAVE MAY BE CLEARER THAN ONE  
18 MIGHT HEAR OFF MY LITTLE LAPTOP RIGHT HERE. THAT IS A  
19 VERY IMPORTANT POINT IN TERMS OF ANY ALLEGATION THAT  
20 THERE IS A FEAR OF PROSECUTION.

21 THE COURT: PART OF THE PROBLEM THAT THE  
22 PLAINTIFF MAY HAVE IN PRESENTING THIS WITNESS AND IT'S  
23 THE SUBJECT OF CROSS EXAMINATION AND I'M NOT GOING TO  
24 MAKE A FINAL DECISION ON WHAT TO DO UNTIL WE GET ALL OF  
25 THIS SUBJECT MATTER. I JUST WANT TO ALERT YOU THAT --

1 TO THAT ONE SPECIFIC AREA THAT I THINK -- IT'S SORT OF  
2 LIKE VERY SIMILAR -- JUST FOR PLANNING PURPOSES, YOU CAN  
3 HEAR WHAT MY PRELIMINARY THINKING IS ON THIS -- IT'S  
4 VERY SIMILAR TO PLAYING TAPES TO A JURY THAT HAVE BEEN  
5 SURVEILLANCE TAPES OF ACTIVITY THAT IS RELEVANT TO THE  
6 LAWSUIT THAT IS BEING TRIED AND THE JURY IS INSTRUCTED  
7 TO MAKE THEIR DECISION ON WHAT THE TAPES SAY FROM WHAT  
8 THEY HEAR EVEN THOUGH THEY HAVE A TRANSCRIPT. THE  
9 TRANSCRIPT IS NOT EVIDENCE. IT'S FOR THEIR USE,  
10 WHATEVER PURPOSE IT MAY SERVE THEM, IN DECIDING WHAT  
11 THEY HEAR. IT'S VERY SIMILAR TO THAT. I UNDERSTAND.

12 MR. GOMEZ: YES, YOUR HONOR.

13 THE COURT: THAT IS WHY I CAME UP WITH  
14 THE IDEA THAT I HAVE TO FIGURE OUT WHETHER IT IS  
15 INTELLIGIBLE.

16 MR. HANSEN: VERY WELL, YOUR HONOR.

17 THE COURT: I'M SORRY TO TAKE THE TIME.  
18 THAT IS JUST PRELIMINARY. IT MIGHT HELP YOU WITH YOUR  
19 PREPARATION.

20 BACK TO WORK, COUNSEL.

21 BY MS. MARSHALL:

22 Q. FINISHED WITH THE PRELIMINARIES.

23 PROFESSOR ZOOK, CAN YOU PLEASE EXPLAIN TO  
24 US WHAT INTERNET GEOGRAPHY IS?

25 A. CERTAINLY. THE FIELD OF INTERNET GEOGRAPHY AND

1 MY RESEARCH FOCUS IS SIMPLY TRYING TO ASSOCIATE THE KIND  
2 OF ACTIVITIES, THE PRODUCTION, FOR EXAMPLE. THE  
3 PRODUCTION OF A WEBSITE, THE CREATION, THE MANAGEMENT OF  
4 A WEBSITE TO A SPECIFIC LOCATION. THE INTERNET ALLOWS  
5 PEOPLE TO COMMUNICATE AT GREAT DISTANCES, BUT AT SOME  
6 POINT IT GETS TIED BACK TO AN ACTUAL HUMAN BEING SITTING  
7 PHYSICALLY IN SOME LOCATION CREATING THE CONTENT,  
8 CREATING A WEBSITE AND CREATING AND MANAGING A  
9 PARTICULAR WEBSITE. AND SO INTERNET GEOGRAPHY IS  
10 ESSENTIALLY LOOKING AT LOCATING WHERE THE PEOPLE, THE  
11 PEOPLE ARE LOCATED WHO ARE USING THE INTERNET.  
12 SPECIFICALLY.

13 THE COURT: USING OR BUILDING A WEBSITE?

14 THE WITNESS: SAY THAT AGAIN?

15 THE COURT: USING THE INTERNET OR  
16 BUILDING A WEBSITE?

17 THE WITNESS: THEY ARE TWO DIFFERENT  
18 WAYS, SUPPLY SIDE AND DEMAND SIDE. THEY ARE BOTH VALID  
19 QUESTIONS.

20 BY MS. MARSHALL:

21 Q. PROFESSOR ZOOK, WITH RESPECT TO THE RESEARCH FOR  
22 WHICH YOU WERE ENGAGED BY PLAINTIFFS, DID YOU PUT THOSE  
23 FINDINGS IN A REPORT?

24 A. YES, I DID.

25 Q. I BELIEVE THERE IS A DOCUMENT BEFORE YOU THAT

1 HAS PREVIOUSLY BEEN MARKED AS PLAINTIFFS EXHIBIT 29.

2 TAKE A MOMENT TO REVIEW THAT DOCUMENT.

3 A. YES.

4 Q. DO YOU RECOGNIZE THIS DOCUMENT?

5 A. YES. THIS IS A COPY OF THE EXPERT REPORT THAT I  
6 PREPARED FOR THIS CASE.

7 MS. MARSHALL: YOUR HONOR, I WOULD LIKE  
8 TO INTRODUCE PLAINTIFFS' EXHIBIT 29 INTO EVIDENCE.

9 MR. MCELVAIN: WE DON'T OBJECT TO THE  
10 ADMISSION OF THE REPORT, BUT JUST TO RESTATE, WE RESERVE  
11 THE RIGHT TO OBJECT TO THE ADMISSIBILITY OF HIS EXPERT  
12 TESTIMONY.

13 THE COURT: THE PARTIES HAVING AGREED TO  
14 THE ENTRY AS QUALIFIED, THE EXHIBIT PLAINTIFFS 29 IS  
15 RECEIVED INTO EVIDENCE.

16 (P 29 ADMITTED INTO EVIDENCE.)

17 BY MS. MARSHALL:

18 Q. PROFESSOR ZOOK, DO YOU USE THE TERM "INTERNET  
19 ADULT INDUSTRY" IN YOUR REPORT?

20 A. YES, I DO.

21 Q. FOR THE PURPOSES OF YOUR REPORT, HOW DO YOU  
22 DEFINE THE TERM "INTERNET ADULT INDUSTRY"?

23 A. I DEFINE THE TERM "INTERNET ADULT INDUSTRY" AS  
24 ADULT-ORIENTED WEBSITES THAT CONTAIN ADULT OR ADULT  
25 MATERIALS THAT CONSIST OF IMAGES, VIDEO, CHAT SERVICES,

1 AUDIO THAT ARE AVAILABLE TO INTERNET USERS IN GENERAL.

2 Q. HOW DID YOU COME UPON THAT DEFINITION?

3 A. THIS DEFINITION ACTUALLY BUILDS UPON MY EARLIER  
4 2003 PAPER, MY ACADEMIC WORK, AND I CAME TO THIS  
5 DEFINITION BY GOING TO THE GOOGLE SEARCH ENGINE AND  
6 BASICALLY LOOKING FOR ADULT MATERIAL ON THE INTERNET,  
7 SPECIFICALLY LOOKING AT AGGREGATORS OF ADULT MATERIALS  
8 OR AGGREGATORS OF LINKS OF WEBSITES. AND ONCE I GOT TO  
9 THESE INDEXES OF THE INTERNET ADULT WEBSITES, I BASED MY  
10 DEFINITION ON WHAT I FOUND IN THESE INDEXES.

11 Q. WHAT DO YOU MEAN, AGGREGATORS?

12 A. AN AGGREGATOR -- THE BEST WAY TO THINK OF ONE OF  
13 THESE AGGREGATORS, IT'S A DIRECTORY, SORT OF A YELLOW  
14 PAGES OF INTERNET ADULT WEBSITES. AND THESE AGGREGATORS  
15 TAKE LISTS OR PUT TOGETHER LISTS OF ADULT WEBSITES THAT  
16 INTERNET USERS WHO ARE INTERESTED IN VISITING THESE  
17 TYPES OF SITES CAN SELECT FROM AND CHOOSE TO VISIT.

18 Q. DO YOU REFER TO THESE AGGREGATORS IN YOUR REPORT  
19 AS INDICES OR INDEXES?

20 A. YES, I REFER TO IT, I REFER TO THEM AS INDEXES  
21 OR INDICES.

22 Q. ARE THERE DISTRIBUTION CHANNELS FOR ADULT  
23 CONTENT THAT ARE NOT INCLUDED IN YOUR REPORT?

24 A. YES. THERE ARE A NUMBER OF INTERNET  
25 TECHNOLOGIES THAT CAN BE USED AND ARE USED TO DISTRIBUTE

1 INTERNET ADULT -- ADULT MATERIALS ON THE INTERNET.  
2 THESE INCLUDE THINGS LIKE NEWS GROUPS, USENET,  
3 PEER-TO-PEER SYSTEMS, OTHER SORT OF, OTHER SORT OF  
4 PEER-TO-PEER, INSTANT MESSAGING KIND OF SYSTEMS.

5 Q. WHY ARE THOSE CHANNELS NOT INCLUDED IN YOUR  
6 STUDY?

7 A. THE REASON THEY ARE NOT INCLUDED IS, THESE  
8 THINGS, PARTICULARLY SINCE THEY ARE DISTRIBUTED VERY  
9 DECENTRALIZED, ARE DIFFICULT TO OBTAIN, OBTAIN LISTS  
10 FROM. MORE IMPORTANTLY IN THE CONTEXT OF THIS, THE  
11 QUESTION THAT THIS REPORT ADDRESSES, ESTABLISH THE  
12 GEOGRAPHIC LOCATION OF THE OWNERSHIP OF THE MATERIALS ON  
13 THESE SITES.

14 THE COURT: I DON'T UNDERSTAND EXACTLY  
15 WHAT YOU SAID. ABOUT THE -- NOT THE MEANING BUT THE  
16 WORDS, "ESTABLISH." I DID NOT UNDERSTAND. HOW THE WORD  
17 "ESTABLISH" GOT INTO YOUR ANSWER.

18 THE WITNESS: TO DETERMINE WHERE THIS  
19 MATERIAL IS LOCATED.

20 THE COURT: SORRY.

21 THE WITNESS: THAT IS --

22 THE COURT: THANK YOU.

23 BY MS. MARSHALL:

24 Q. TO CLARIFY, PROFESSOR ZOOK, THE FOCUS OF YOUR  
25 STUDY IN TERMS OF GEOGRAPHICALLY LOCATING INTERNET ADULT

1 INDUSTRY, WHAT DATA DID YOU LOOK AT?

2 A. I LOOKED SPECIFICALLY AT THE REGISTRATION  
3 INFORMATION FOR -- THE OWNERSHIP INFORMATION FOR DOMAIN  
4 NAMES.

5 Q. AND DOMAIN NAMES BEING?

6 A. DOMAIN NAMES IN THIS REPORT ARE EQUIVALENT TO  
7 WEBSITES, SO THE OWNERSHIP INFORMATION OF WEBSITES.

8 Q. NOW, JUST TO BE CLEAR FOR THE PURPOSES OF YOUR  
9 REPORT, DOES A WEBSITE AND A WEB PAGE DIFFER?

10 A. YES. THE WAY THAT I USE THESE TERMS IN MY  
11 REPORT DIFFERS. THE SIMPLEST WAY TO THINK ABOUT IT IS A  
12 WEBSITE CAN HAVE ANY NUMBER OF WEB PAGES, BUT -- AND A  
13 WEBSITE -- GOING BACK TO MY ANALOGY OF THE NEW YORK  
14 TIMES, THE WEBSITE FOR THE NEW YORK TIMES IS  
15 WWW.NYTIMES.COM, AND THAT PARTICULAR WEBSITE CAN HAVE  
16 ANY NUMBER OF WEB PAGES, SUCH AS ARTICLES ON FOOD.HTML.  
17 AND WITH THE WEB PAGES, ALL THE WEB PAGES LEAD BACK TO  
18 THE SAME, THE SAME WEBSITE, WHICH AGAIN IS THE POINT OF  
19 OWNERSHIP, THE POINT AT WHICH WHO CONTROLS THIS  
20 PARTICULAR WEBSITE AND WHAT KIND OF CONTENT GOES ON THAT  
21 WEBSITE.

22 THE COURT: THE QUESTION IS, WHAT IS A  
23 WEB PAGE? YOU BROKE IT DOWN.

24 THE WITNESS: WELL, A WEB PAGE IS SIMPLY  
25 A PAGE OF CONTENT THAT IS MADE AVAILABLE AT A WEBSITE.

1 SO, AGAIN, A WEBSITE CAN HAVE ANY NUMBER OF WEB PAGES  
2 ASSOCIATED WITH IT.

3 THE COURT: A WEB PAGE IS REALLY A  
4 SCREEN, IS IT?

5 THE WITNESS: SORT OF A SCREEN, IF YOU  
6 THINK ABOUT THE NEW YORK TIMES ANALOGY, IT IS AN ARTICLE  
7 IN THE NEW YORK TIMES. THE NEW YORK TIMES IS THE  
8 WEBSITE, THE ENTIRE PAPER IS THE WEBSITE. A SPECIFIC  
9 ARTICLE AT THE NEW YORK TIMES IS A WEB PAGE.

10 THE COURT: MY POINT IS, IT'S NOT A PAGE  
11 OF PAPER, IT IS AN IMAGE ON A SCREEN?

12 THE WITNESS: RIGHT. IT'S AN IMAGE.

13 THE COURT: SORRY TO BE SO OBVIOUS.

14 BY MS. MARSHALL:

15 Q. TO FULLY EXPLAIN, TO BE SURE WE UNDERSTAND WHAT  
16 YOU DID IN YOUR REPORT, CAN YOU PROVIDE US WITH AN  
17 EXAMPLE OF, I THINK, IT IS THE URL ADDRESS OR THE  
18 ADDRESS INFORMATION FOR A WEB PAGE VERSUS A WEBSITE AND  
19 THEN THE DOMAIN INFORMATION.

20 A. OKAY.

21 FOR THE LINKS THAT I WAS COLLECTING FROM  
22 THESE INDEXES ARE WHAT I CALL AN URL. URL IS A STRING  
23 OF TEXT. TO CONTINUE WITH THE NEW YORK TIMES EXAMPLE,  
24 THE URL FOR A STORY AT THE NEW YORK TIMES WOULD BE  
25 [HTTP://WWW.NEWYORKTIMES.COM/FOODARTICLE.HTML](http://www.newyorktimes.com/foodarticle.html). THAT IS A

1       VERY SPECIFIC URL.  IF YOU CLICKED ON THAT URL, IT WOULD  
2       TAKE YOU TO THE SPECIFIC ARTICLE ON THIS HYPOTHETICAL  
3       ARTICLE ON FOOD.  THE WEBSITE FOR THE NEW YORK TIMES IS  
4       SIMPLY WWW.NEWYORKTIMES.COM, AND THE DOMAIN NAME OF THE  
5       NEW YORK TIMES IS NEW YORK -- NYTIMES.COM.  SO IT'S SORT  
6       OF -- A STEADY SHRINKING DOWN FROM THE VERY SPECIFIC WEB  
7       PAGE DOWN TO THE WEBSITE, DOWN TO THE SPECIFIC DOMAIN  
8       NAME.  AND THE DOMAIN NAME AGAIN IS WHERE THE POINT OF  
9       OWNERSHIP OF A WEBSITE CAN BE ESTABLISHED.

10      Q.       PROFESSOR ZOOK, IS IT POSSIBLE TO GEOGRAPHICALLY  
11      MEASURE THE INTERNET ADULT INDUSTRY?

12      A.       YES, IT IS.

13      Q.       ARE THERE DIFFERENT COMPONENTS THAT ARE  
14      MEASURABLE?

15      A.       YES.  BUILDING ON MY ORIGINAL ACADEMIC PAPER,  
16      ONE THAT WAS PUBLISHED IN 2003, I SEPARATED MY ANALYSIS  
17      INTO THREE DIFFERENT SEGMENTS OF THE INTERNET ADULT  
18      INDUSTRY THAT WERE POSSIBLE TO MEASURE, THAT IT WAS  
19      POSSIBLE TO HAVE DIFFERENT LOCATIONS FOR.  IT WAS  
20      POSSIBLE TO MEASURE THE DIFFERENCES BETWEEN THESE  
21      LOCATIONS.  THE FIRST WAS WITH THE CREATION OF THE  
22      CONTENT FOR THE INDUSTRY.  THE SECOND WAS THE LOCATION  
23      OF THE WEBSITE, AND THE THIRD WAS THE LOCATION OF THE  
24      HOSTING, WHERE THE WEBSITE WAS HOSTED.

25      Q.       FOR THIS REPORT, WHICH COMPONENT DID YOU FOCUS

1 ON MEASURING?

2 A. I FOCUSED ON THE LOCATION OF WEBSITES.

3 Q. WHY DID YOU NOT STUDY THE HOST LOCATION?

4 A. I DIDN'T STUDY THE HOST LOCATION BECAUSE IT  
5 WASN'T RELEVANT TO THE QUESTION THAT WAS -- THAT I WAS  
6 ADDRESSING IN THE REPORT. I WAS AGAIN SPECIFICALLY  
7 LOOKING AT THE LOCATION OF WHERE THE OWNERSHIP OF  
8 WEBSITES, LOCATION OF THE OWNERSHIP OF WEBSITES, WHICH  
9 CAN BE COMPLETELY SEPARATED FROM THE LOCATION OF  
10 HOSTING.

11 Q. MAYBE WE NEED TO STEP BACK ONE MINUTE AND CAN  
12 YOU EXPLAIN FOR THE COURT WHAT IT MEANS TO BE HOSTING A  
13 WEBSITE?

14 A. HOSTING A WEBSITE. AGAIN, THE DISTINCTION  
15 BETWEEN -- THE WEBSITE CREATION IS CREATED BY A SPECIFIC  
16 HUMAN BEING LOCATED IN A SPECIFIC LOCATION. ONCE THE  
17 WEBSITE IS COMPLETED, THE WEBMASTER UPLOADS THE WEB PAGE  
18 TO A COMPUTER THAT IS CONNECTED TO THE INTERNET. THIS  
19 IS WHERE THE WEBSITE IS HOSTED, AND THE HOSTING LOCATION  
20 DOES NOT NEED TO BE AT THE SAME LOCATION OF WHERE THE  
21 WEBMASTER CREATED THE WEB PAGE.

22 Q. IS THE HOSTING LOCATION AND THE LOCATION OF THE  
23 OWNER OF THE WEB PAGE RELATED?

24 A. NO. THEY CAN BE COMPLETELY SEPARATED. JUST A  
25 COUPLE OF EXAMPLES. ONE OF MY GRADUATE STUDENTS AT THE

1 UNIVERSITY OF KENTUCKY HAS A WEBSITE AND A DOMAIN NAME  
2 ASSOCIATED WITH THAT WEBSITE. SHE IS BASED IN KENTUCKY,  
3 BUT HER WEBSITE HOSTING IS ACTUALLY BASED IN NEW  
4 ZEALAND. THIS IS SOMETHING SHE DID NOT REALIZE UNTIL  
5 AFTER SHE HAD BEEN HOSTING HER WEBSITE AT THAT  
6 PARTICULAR LOCATION. SHE SIMPLY PURCHASED A HOSTING  
7 SERVICE AND THAT IS WHERE THE HOSTING WAS LOCATED.  
8 ANOTHER EXAMPLE IS, THE DEPARTMENT OF JUSTICE WEB PAGE.  
9 THE DEPARTMENT OF JUSTICE IS HEADQUARTERED IN  
10 WASHINGTON, D.C. BUT THE WEB PAGE -- THE WEBSITE, I'M  
11 SORRY, EXCUSE ME, THE WEBSITE FOR THE DEPARTMENT OF  
12 JUSTICE IS ACTUALLY HOSTED OUT IN COLORADO.

13 Q. PROFESSOR ZOOK, DID YOU CREATE A DATABASE FOR  
14 YOUR RESEARCH THAT YOU CONDUCTED FOR THIS REPORT?

15 A. YES, I DID.

16 Q. CAN YOU PLEASE DESCRIBE FOR US GENERALLY -- WE  
17 WILL TALK SPECIFICS A LITTLE BIT LATER -- THE  
18 METHODOLOGY YOU USED TO DEVELOP THE DATABASE?

19 A. THE METHODOLOGY I USED WAS, I -- AGAIN A LOT OF  
20 THE INDICES THAT I USED WITHIN THIS EXPERT REPORT IS  
21 BUILDING UPON MY ORIGINAL RESEARCH FOR THIS ACADEMIC  
22 PAPER. AND THE METHODOLOGY I USED FOR THE ACADEMIC  
23 PAPER WAS I WENT TO GOOGLE AND DID SOME KEYWORD SEARCHES  
24 LOOKING FOR PORNOGRAPHY, AND BASED ON THE TOP RANKED  
25 RESULTS THAT CAME BACK FROM THE GOOGLE SEARCH, I

1       SELECTED INDICES WERE AMONG THE TOP RANKED GOOGLE  
2       RESULTS.

3       Q.        AFTER YOU COLLECTED THEM, WHAT WAS THE NEXT  
4       STEP, JUST GENERALLY BEFORE WE GET INTO SPECIFICS?

5       A.        THE NEXT STEP IS, I WOULD GO TO, I WOULD GO TO  
6       THESE INDEX AND AGAIN, THESE INDEX OF ADULT MATERIAL IS  
7       BEST THOUGHT OF -- IT'S SORT OF A DIRECTORY. IT'S A  
8       YELLOW PAGES. IT PROVIDES A LIST OF URLS TO ADULT  
9       MATERIAL. GENERALLY THERE'S LINK TO AN ADULT WEBSITE  
10      AND A SHORT DESCRIPTION INCLUDING THE NAME OF THE  
11      WEBSITE, A SHORT DESCRIPTION OF THE KIND OF CONTENT AND  
12      MATERIAL AVAILABLE THERE.

13                    THE COURT:   EXCUSE ME FOR INTERRUPTING.  
14      WHERE DOES THE LINK APPEAR IN THE YELLOW PAGES?

15                    THE WITNESS:  YELLOW PAGES IS AN ANALOGY.

16                    THE COURT:   THE DIRECTORY, OR INDEX?

17                    THE WITNESS:  THE INDEX. IT SIMPLY  
18      APPEARS. THERE IS A FINAL WEB PAGE OR A SCREEN WHERE  
19      THERE IS A LISTING OF LINKS TO WEB PAGES. SO IT'S --  
20      YOU WOULD GO TO YOUR COMPUTER AND THERE WOULD BE A  
21      SCREEN FULL OF LINKS THAT WOULD TAKE YOU TO DIFFERENT  
22      ADULT WEBSITES.

23                    THE COURT:   AND THOSE LINKS OCCUR IN THE  
24      INDEX?

25                    THE WITNESS:  THOSE LINKS ARE IN THE

1 INDEX.

2 THE COURT: DISPLAYED IN THE INDEX.

3 THE WITNESS: CORRECT. THEY ARE  
4 DISPLAYED IN THE INDEX.

5 BY MS. MARSHALL:

6 Q. WHAT INDICES DID YOU USE TO GATHER THE WEB  
7 PAGES?

8 A. FOR THIS EXPERT REPORT I USED FOUR DIFFERENT  
9 SOURCES INCLUDING ADULTREVIEWS.NET, GOOGLE'S DIRECTORY  
10 SERVICE, ADULTWEBMASTERS.ORG AND SEXTRACKER.COM.

11 Q. WHY DIDN'T YOU RANDOMLY SAMPLE THE ADULT  
12 WEBSITES ON THE WEB? WHY USE THESE INDICES?

13 A. THIS REALLY GOES INTO THE CONSTRUCTION OF AN  
14 EFFECTIVE RESEARCH DESIGN, AND THE REASON I DIDN'T  
15 CHOOSE A RANDOM SELECTION OR MAKE A RANDOM SELECTION OF  
16 WEBSITES, ADULT WEBSITES, IS THAT THERE IS NOT A MASTER  
17 LIST OF WEBSITES AVAILABLE. THERE IS NO -- THERE IS NO  
18 MASTER LIST OF ADULT WEBSITES WHICH I CAN DRAW A RANDOM  
19 SAMPLE FROM.

20 Q. IS IT POSSIBLE TO DRAW A RANDOM SAMPLE OF ADULT  
21 WEBSITES AVAILABLE ON THE WEB?

22 A. NO. IT'S SIMPLY NOT POSSIBLE TO MAKE A RANDOM  
23 SAMPLE OF ADULT WEBSITES.

24 Q. IS THERE A STATISTICAL NAME FOR THE PROCESS YOU  
25 USED, THE VISITING OF THE INDICES?

1           A.           THE KIND OF SAMPLING THAT I DID IS REFERRED TO  
2 AS CLUSTER SAMPLING. IT'S PARTICULARLY APPROPRIATE FOR  
3 SOCIAL SCIENCE RESEARCH OR, IN MY CASE, GEOGRAPHIC  
4 RESEARCH WHERE THE QUESTION THAT -- THE POPULATION THAT  
5 YOU ARE TRYING TO EXAMINE DOES NOT HAVE ANY CENTRALIZED  
6 LIST. INSTEAD YOU GO TO THE LOCATIONS WHERE THERE IS A  
7 CLUSTERING OR AGGREGATION OF THE POPULATION. IT'S  
8 CALLED CLUSTER SAMPLING.

9           Q.           CAN YOU HELP US UNDERSTAND WITH PERHAPS AN  
10 EXAMPLE OFFLINE, DOES NOT INVOLVE THE INTERNET?

11          A.           THE EXAMPLE -- CLASSIC EXAMPLE THAT IS OFTEN  
12 USED FOR CLUSTER SAMPLING, IS WHEN PEOPLE ARE TRYING TO  
13 GET INFORMATION ABOUT HOMELESS POPULATIONS, BY  
14 DEFINITION IF ONE IS HOMELESS, THEY DO NOT HAVE -- THEY  
15 DON'T HAVE A PHONE BOOK LISTING, THEY DON'T HAVE A  
16 PHONE, AND THEREFORE THE ABILITY TO PULL OUT A RANDOM  
17 SAMPLE. THEY ARE NOT -- THEY DON'T APPEAR ON THESE  
18 LISTS. SO INSTEAD PEOPLE USE CLUSTER SAMPLING. AS PART  
19 OF THAT PROCESS, THEY WILL GO TO PLACES LIKE HOMELESS  
20 SHELTERS OR SOUP KITCHENS WHERE THE HOMELESS POPULATION  
21 GATHERS AND COLLECT THE SAMPLE THAT WAY.

22          Q.           I WANT TO MOVE TO THE NEXT STEP IN YOUR  
23 METHODOLOGY. HOW DID YOU GATHER THE WEBSITE DATA FROM  
24 THE INDICES?

25          A.           THERE WERE TWO MAIN WAYS. FOR SOME INDEXES I

1 SIMPLY COPIED THE INFORMATION DIRECTLY FROM THE WEB PAGE  
2 AND INTO AN EXCEL SPREADSHEET. FOR OTHERS I WROTE A  
3 SMALL SOFTWARE PROGRAM THAT WENT OUT AND AUTOMATICALLY  
4 COLLECTED THE LINKS FROM THESE INDEXES.

5 Q. AND I'M GOING TO TAKE THOSE ONE AT A TIME. WHEN  
6 YOU SAY COPY, DID YOU SORT OF -- DID YOU MANUALLY KEY IN  
7 THE INFORMATION YOU SAW ON THE INDEX OR DID YOU DO  
8 SOMETHING ELSE?

9 A. NO. I DID NOT MANUALLY -- I DID NOT MANUALLY  
10 KEY IN. IT'S SIMPLY, IT'S ONE OF THE ADVANTAGES OF  
11 COMPUTERS. IT'S POSSIBLE TO HIGHLIGHT A LARGE PORTION  
12 OF TEXT AND SIMPLY COPY IT OVER INTO ANOTHER FORMAT,  
13 WHICH IS WHAT I DID.

14 Q. NOW, WE ARE GOING TO TALK ABOUT THE SOFTWARE  
15 PROGRAMS YOU JUST MENTIONED.

16 WHAT INFORMATION DO THE SOFTWARE PROGRAMS  
17 COLLECT FROM THE INDICES?

18 A. THE MAIN PIECE OF INFORMATION THE SOFTWARE WAS  
19 COLLECTING WAS THE URL. THAT WAS LISTED AT THE -- AT  
20 THE INDICES. THAT IS AGAIN, IT WAS GATHERING -- THIS IS  
21 THE COMPLETE LINK THAT WOULD TAKE A USER TO A SPECIFIC  
22 WEB PAGE CONTAINING ADULT CONTENT.

23 Q. CAN YOU PROVIDE US WITH AN EXAMPLE AGAIN?

24 A. FOR EXAMPLE, I MEAN, GOING BACK TO THE NEW YORK  
25 TIMES, I'M NOT SUGGESTING THAT NEW YORK TIMES WAS ONE OF

1       THESE SITES, BUT IT WOULD BE -- THE COMPLETE URL WOULD  
2       BE HTTP://WWW.NYTIMES.COM/FOODARTICLE.HTML. THAT IS THE  
3       COMPLETE LINK THAT WOULD TAKE A USER TO A SPECIFIC WEB  
4       PAGE AT THE NEW YORK TIMES WEBSITE.

5       Q.       THIS WAS THE DATA THE SOFTWARE PROGRAM  
6       ORIGINALLY CAPTURED?

7       A.       THIS IS THE DATA THAT WAS -- THAT WAS CAPTURED  
8       BY THE SOFTWARE PROGRAM.

9                       THE COURT:   EXCUSE ME FOR INTERRUPTING.  
10       I UNDERSTAND THE SMALL SOFTWARE PROGRAM YOU JUST  
11       DISCUSSED. THE OTHER GATHERING METHODOLOGY WAS I WROTE  
12       DOWN COPIED FROM THE INDEX, BUT THAT WAS JUST A QUICK --  
13       EXPLAIN WHAT THAT IS.

14                      THE WITNESS:  THAT IS TRUE. I MEAN, YOU  
15       CAUGHT THE ESSENCE OF IT. IT IS SIMPLY A MATTER OF  
16       RATHER THAN SETTING A PROGRAM TO GRAB THIS AUTOMATICALLY  
17       OR TO GRAB THIS AUTOMATICALLY, I SIMPLY WOULD HIGHLIGHT  
18       THE LINKS THAT WERE IN THE WEB PAGE AND THEN USE THE  
19       COPY FUNCTION WITHIN MICROSOFT WINDOWS THAT WOULD  
20       CAPTURE THAT TEXT, AND THEN I COULD PASTE IT IN ANOTHER  
21       SOFTWARE PROGRAM.

22                      THE COURT:   WHAT IS THE DIFFERENCE  
23       BETWEEN THAT AND WHAT THE SOFTWARE PROGRAM WAS DOING?

24                      THE WITNESS:  THE SOFTWARE PROGRAM, THE  
25       DIFFERENCE -- IT IS ESSENTIALLY THE SAME THING, BUT THE

1 REASON THAT THE SOFTWARE PROGRAM WAS DOING IT WAS  
2 BECAUSE IT ESSENTIALLY -- IT IS CAPTURING THE SAME  
3 INFORMATION, BUT DEPENDING ON THE STRUCTURE OF THE  
4 INDEX, SOMETIMES IT WAS -- I COULD CAPTURE IT ALL MYSELF  
5 VERY EFFICIENTLY. OTHER TIMES THE SOFTWARE PROGRAM DID  
6 IT SO I WOULD NOT HAVE TO GO AND DO, THE SPECIFIC TASK  
7 OF GRABBING THE URL.

8 THE COURT: THANK YOU.

9 BY MS. MARSHALL:

10 Q. THE DATA COLLECTED BY THE SOFTWARE PROGRAMS,  
11 WHERE DID THAT DATA GO?

12 A. THE DATA FROM THE SOFTWARE PROGRAMS WAS WRITTEN  
13 INTO A TEMPORARY FILE.

14 Q. DID THE SOFTWARE PROGRAMS ALTER THE DATA IN ANY  
15 WAY FROM THE TIME IT CAPTURED IT AT THE INDEX AND  
16 DEPOSITED IT INTO THE TEMPORARY FILE?

17 A. WELL, ONE OF THE THINGS THAT THE TEMPORARY  
18 -- THESE PROGRAMS WERE DESIGNED TO DO, I DREW -- I  
19 USED -- I REUSED A LOT OF THE SAME PROGRAMS THAT I  
20 WROTE, THAT I USED ORIGINALLY FOR MY ACADEMIC PIECE.  
21 ONE OF THINGS I DESIGNED THEM TO DO WAS TO TAKE THAT  
22 URL, THAT LONG STRING OF TEXT, AND REDUCE IT DOWN TO A  
23 DOMAIN NAME AND BECAUSE AGAIN, THE DOMAIN NAME IS THE  
24 POINT WHICH I CAN ESTABLISH OWNERSHIP OF A WEBSITE. SO,  
25 FOR EXAMPLE, IF THE URL IS

1 HTTP://WWW.NYTIMES.COM/FOODARTICLE.HTML THE PROGRAM  
2 WOULD REDUCE THAT DOWN TO NYTIMES.COM, BASICALLY  
3 REDUCING THE URL DOWN TO A DOMAIN NAME.

4 Q. WAS THERE ANY OTHER CHANGING OF THE DATA BEFORE  
5 IT GOT INTO THE FINAL DATABASE?

6 A. IN BOTH CASES, BOTH WHEN I COPIED IT DIRECTLY  
7 AND WHEN THE SOFTWARE PROGRAM WROTE IT INTO A TEMPORARY  
8 FILE, I DID SOME ADDITIONAL CLEANING AND DEDUPLICATION  
9 WITHIN THE DATA I GATHERED FROM THE INDEXES.

10 Q. WHAT DO YOU MEAN BY DEDUPLICATION?

11 A. IN SOME CASES AT THESE INDEXES THERE WOULD BE  
12 MULTIPLE WEB PAGES FROM THE SAME WEBSITE. AND SO WHEN I  
13 REDUCED IT DOWN TO THE DOMAIN NAME, I WOULD HAVE  
14 SOMETIMES MULTIPLE OCCURRENCES OF THE SAME DOMAIN NAME.  
15 SO I WAS RE -- I REMOVED THE DUPLICATES JUST TO AVOID  
16 DOUBLE COUNTING.

17 Q. HOW MANY DOMAINS DID YOU COLLECT FOR YOUR  
18 DATABASE?

19 A. OVERALL THIS DATABASE CONTAINS A LITTLE LESS  
20 THAN 12,000 DOMAINS.

21 Q. AND IN THE END WERE THERE ANY DOMAINS IN YOUR  
22 DATABASE THAT WERE NOT OBVIOUSLY RELATED TO ADULT  
23 WEBSITES LIKE THE EXAMPLE THAT YOU PROVIDED, LIKE  
24 NYTIMES.COM?

25 A. THERE WERE SOME DOMAINS LIKE THAT.

1 Q. WHAT IS AN EXAMPLE OF ONE?

2 A. AN EXAMPLE OF ONE IS AOL.COM.

3 Q. SO HOW DID AOL.COM END UP IN YOUR DATABASE OF  
4 ADULT WEBSITE DOMAINS?

5 A. WELL, THE WAY IN WHICH AOL.COM ENDED UP IN THE  
6 DATABASE WOULD BE THROUGH THE PROCESS BY WHICH MY  
7 SOFTWARE PROGRAM REMOVED EXTRANEIOUS INFORMATION. SO IF  
8 THERE WAS A LINK ON THE INDEX FROM WHICH I WAS GATHERING  
9 WHICH WAS SOMETHING LIKE THE  
10 HTTP://WWW.AOL.COM/HOTGIRLS.HTML, MY PROGRAM WOULD STRIP  
11 OUT THE WEB PAGE INFORMATION, THE EXTRANEIOUS  
12 INFORMATION, THE HTTP AT THE FRONT, AND REDUCE IT DOWN  
13 TO THE DOMAIN NAME AOL.COM.

14 Q. DOES THAT MEAN THAT THERE WAS ACTUALLY A LINK ON  
15 ONE OF THE ADULT WEBSITE INDICES WITH THE AOL.COM DOMAIN  
16 THAT DIRECTED SOMEONE TO AN ADULT WEBSITE?

17 A. YES. IT MEANS THAT THERE WAS AN ACTUAL LINK ON  
18 THE INDEX THAT I WAS GATHERING FROM. SITES LIKE  
19 AOL.COM, OTHER SITES OFFER MEMBERS SPACE TO PUT UP THEIR  
20 OWN PERSONAL WEB PAGES, AND SOME PEOPLE DO USE THIS  
21 SPACE TO SET UP ADULT-ORIENTED CONTENT.

22 Q. PROFESSOR ZOOK, STEPPING BACK JUST ONE MOMENT,  
23 YOU MENTIONED THAT YOU FIRST IDENTIFIED THESE INDICES BY  
24 USING GOOGLE.COM, RIGHT?

25 A. YES.

1 Q. WHAT IS THE EFFECT, IF ANY, OF USING GOOGLE.COM  
2 TO IDENTIFY THE INDICES?

3 A. ONE OF THE EFFECTS BY USING -- STARTING MY  
4 INITIAL SEARCH FROM GOOGLE.COM AS OPPOSED TO OTHER  
5 PORTALS INTO GOOGLE, LIKE GOOGLE.DE WHICH WOULD BE FOR  
6 GERMANY, OR GOOGLE.FR, WHICH WOULD BE FOR FRANCE, IS  
7 THAT THE RESULTS I WOULD GET ARE WEB PAGES THAT ARE IN  
8 ENGLISH AND TAKING PEOPLE TO ADULT WEBSITES THAT ARE  
9 ALSO IN ENGLISH.

10 Q. WHAT IS THE SIGNIFICANCE OF THAT WITH RESPECT TO  
11 THE RESULTS OF YOUR REPORT?

12 A. THE RESULTS -- THE SIGNIFICANCE OF THAT IS, THAT  
13 BECAUSE OF THIS LANGUAGE ISSUE, ENGLISH -- COUNTRIES  
14 THAT ARE ENGLISH SPEAKING ARE GOING TO BE  
15 OVERREPRESENTED IN MY DATABASE. THE END RESULT BEING,  
16 IT IS, IT'S VERY LIKELY THAT THE NUMBER OF ADULT  
17 WEBSITES IN THE UNITED STATES REPRESENTED IN MY DATABASE  
18 IS INFLATED.

19 Q. PROFESSOR ZOOK, DO YOU KNOW WHAT PERCENTAGE OF  
20 INTERNET USERS ARE ENGLISH SPEAKERS?

21 A. THE PERCENTAGE IS 30.6.

22 Q. DO YOU KNOW IF IT IS POSSIBLE TO MEASURE THE  
23 OVERALL SIZE OF THE INTERNET ADULT INDUSTRY?

24 A. IT'S A VERY DIFFICULT -- IT'S A VERY DIFFICULT  
25 MEASUREMENT TO MAKE.

1 Q. IS IT POSSIBLE TO GET A ROUGH ESTIMATE?

2 A. IT IS POSSIBLE TO GET SOME ROUGH ESTIMATES, AND  
3 THE ROUGH ESTIMATES THAT I HAVE SEEN AND I HAVE DONE  
4 MYSELF PLACE THE PERCENTAGE OF WEBSITES THAT ARE ADULT  
5 ORIENTED SOMEWHERE BETWEEN 1 AND 1.5 PERCENT.

6 Q. OF WHAT?

7 A. OF ALL WEBSITES ON THE INTERNET.

8 Q. THANK YOU.

9 I WOULD LIKE TO NOW TURN YOUR ATTENTION  
10 TO SOME OF THE TABLES AND FIGURES IN YOUR REPORT.

11 THE COURT: EXCUSE ME FOR INTERRUPTING.  
12 THE PERCENTAGE YOU GAVE COVERED SO-CALLED FOREIGN SITES  
13 AND U.S. SITES?

14 THE WITNESS: THE PERCENTAGE OF THE 1 TO  
15 1.5 PERCENT, YES, IT INCLUDES THE ENTIRE WEB SPACE, BOTH  
16 U.S. AND FOREIGN.

17 THE COURT: THANK YOU.

18 BY MS. MARSHALL:

19 Q. TURN YOUR ATTENTION TO THE TABLES AND FIGURES IN  
20 YOUR REPORT. WE HAVE SEGREGATED THEM OUT, PREVIOUSLY  
21 MARKED YOUR TABLES AND FIGURES AS EXHIBITS 30 AND 31 FOR  
22 EASE OF REFERENCE, BUT IF YOU PREFER TO USE YOUR REPORT,  
23 THAT IS FINE.

24 MS. MARSHALL: YOUR HONOR, I WILL BE  
25 REFERENCING THEM AS EXHIBITS 30 AND 31 FOR EASE OF THE

1 COMPUTER.

2 THE COURT: ALL RIGHT.

3 BY MS. MARSHALL:

4 Q. BECAUSE I'M DOING THAT, PROFESSOR ZOOK, CAN YOU  
5 TAKE A MOMENT TO LOOK AT THE EXHIBITS 30 AND 31 AND  
6 IDENTIFY THEM FOR US?

7 A. YES. THESE ARE THE FIGURES AND TABLES FROM MY  
8 EXPERT REPORT.

9 Q. THANK YOU. I WOULD LIKE TO FIRST DIRECT YOUR  
10 ATTENTION TO FIGURE 3, WHICH IS PLAINTIFFS -- OR  
11 PREVIOUSLY MARKED AS PLAINTIFFS' EXHIBIT 31, PAGE 3.  
12 PROFESSOR ZOOK, WHAT DOES THE DATA IN THIS FIGURE  
13 REPRESENT?

14 A. THE DATA IN THIS FIGURE SHOWS THE PERCENTAGE  
15 SHARE OF ALL INTERNET -- IN ALL INTERNET USERS THAT ARE  
16 LOCATED IN THE UNITED STATES. IT SHOWS IT OVER TIME  
17 FROM APPROXIMATELY 1997 TO 2005.

18 Q. AND HOW DID THE PERCENT OF INTERNET USERS  
19 LOCATED IN THE UNITED STATES CHANGE FROM 1997 TO JULY  
20 2005?

21 A. THE SHARE, THE U.S.'S SHARE OF ALL INTERNET  
22 USERS DECLINED. IN 1997, APPROXIMATELY 75 PERCENT OF  
23 ALL INTERNET USERS WERE LOCATED IN THE UNITED STATES,  
24 AND IN 2005 THAT WAS APPROXIMATELY 25 PERCENT.

25 Q. WHAT IS THE SIGNIFICANCE, IF ANY, OF THIS SHIFT?

1 A. THE SHIFT -- IT SIMPLY -- IT SIMPLY SHOWS THAT  
2 INCREASINGLY INTERNET USERS ARE LOCATED OUTSIDE OF THE  
3 UNITED STATES. AND, AGAIN, THIS GOES BACK TO IN TERMS  
4 OF INTERNET GEOGRAPHY THAT YOU HAVE AN INCREASING  
5 PERCENTAGE OF THE INTERNET'S USERS AND PRODUCERS LOCATED  
6 OUTSIDE OF THE UNITED STATES.

7 Q. TURNING TO TABLE 1 OF YOUR REPORT, WHICH IS  
8 PLAINTIFFS' EXHIBIT 30, PAGE 1, PLEASE DESCRIBE THE DATA  
9 PRESENTED IN THIS TABLE, TABLE 1?

10 A. THIS TABLE IS SIMPLY A SUMMARY OF THE INDEXES  
11 THAT I USED IN COLLECTING THE ADULT WEBSITES THAT ARE  
12 USED IN THAT -- THAT ARE USED IN THIS REPORT.

13 Q. CAN YOU PLEASE DESCRIBE FOR US THE DATA OR THE  
14 TEXT YOU HAVE ON THE FAR LEFT COLUMN OF THIS TABLE?

15 A. THE FAR LEFT COLUMN IS A DISTINCTION THAT I  
16 MADE, AGAIN, THIS IS GOING BACK TO MY ORIGINAL ACADEMIC  
17 RESEARCH, THE PAPER THAT WAS PUBLISHED IN 2003, BETWEEN  
18 DIFFERENT ASPECTS OR DIFFERENT PARTS OF THE INTERNET  
19 ADULT INDUSTRY, SPECIFICALLY THE DISTINCTION BETWEEN  
20 PAID MEMBERSHIP WEBSITES AND FREE OR FEEDER WEBSITES I  
21 ALSO REFER TO THEM AS. THE FIRST TWO CATEGORIES WERE  
22 SOURCES THAT LISTED HERE ARE REPRESENTED OF PAID  
23 MEMBERSHIP WEBSITES. THE THIRD ONE IS REPRESENTED OF  
24 FREE OR FEEDER WEBSITES, AND THE LAST TWO I CLASSIFIED  
25 AS MIXED BECAUSE I WAS UNABLE TO DETERMINE TO MY

1 SATISFACTION THE BEST WAY OF PUTTING THOSE IN EITHER OF  
2 THOSE CATEGORIES.

3 Q. FOR THE FIRST THREE INDICES YOU USED,  
4 ADULTREVIEWS AND GOOGLE MEMBERSHIP AND THE GOOGLE  
5 NONMEMBERSHIP, AS YOU DESCRIBE IT, THOSE INDICES  
6 THEMSELVES IDENTIFIED FREE VERSUS MEMBERSHIP?

7 A. WELL, PARTICULARLY FOR GOOGLE. THE GOOGLE  
8 DIRECTORY MADE A VERY CLEAR DISTINCTION BETWEEN WEBSITES  
9 THAT WERE MEMBER WEBSITES AND WEBSITES THAT WERE NOT  
10 MEMBER WEBSITES. AND SO THAT WAS -- AGAIN, BUILDING  
11 UPON THE DISTINCTION THAT THE GOOGLE INDEX WAS MAKING  
12 WITHIN ITS OWN DATA AND THE ADULTREVIEWS.NET SELF  
13 IDENTIFIED AS A WEBSITE THAT WAS PROVIDING REVIEWS OF  
14 MEMBERSHIP WEBSITES, SO THAT IS THE BASIS OF THOSE  
15 DISTINCTIONS.

16 Q. TURNING YOUR ATTENTION TO THE FAR RIGHT COLUMN  
17 OF THIS TABLE, WHAT DOES THE DATA HERE REPRESENT?

18 A. THESE ARE THE NUMBER OF WEBSITES THAT I GATHERED  
19 FROM EACH OF -- THAT I GATHERED FROM EACH OF THESE  
20 INDEXES.

21 Q. FROM YOUR RESEARCH, ARE MEMBERSHIP AND FREE  
22 SITES EQUALLY REPRESENTED ON THE WEB?

23 A. NO. MY RESEARCH SAYS THAT THEY ARE NOT.

24 Q. AND WHAT IS THE DIFFERENCE?

25 THE COURT: EXCUSE ME FOR INTERRUPTING.

1 WHAT DO YOU MEAN BY "EQUALLY REPRESENTED"?

2 MS. MARSHALL: IF THEY APPEAR 50-50. IF  
3 THERE IS AN EQUAL NUMBER OF MEMBER WEBSITES ON THE  
4 INTERNET AS THERE ARE FREE WEBSITES ON THE INTERNET.

5 THE COURT: THAT IS THE WAY YOU  
6 UNDERSTOOD THE QUESTION?

7 THE WITNESS: THAT IS HOW I UNDERSTOOD  
8 THE QUESTION.

9 THE COURT: THANK YOU.

10 THE WITNESS: DID I ANSWER THE QUESTION?  
11 BY MS. MARSHALL:

12 Q. WHAT IS THE DIFFERENCE BETWEEN THE  
13 REPRESENTATION OF MEMBERSHIP VERSUS FREE SITES ON THE  
14 WEB?

15 A. MY RESEARCH ON THIS TOPIC IS PUT AT AN  
16 APPROXIMATE BREAKDOWN, 80 PERCENT OF THESE FREE OR  
17 FEEDER WEBSITES AND APPROXIMATELY 20 PERCENT OF  
18 MEMBERSHIP WEBSITES.

19 Q. I THINK YOU TESTIFIED EARLIER THAT YOU COLLECTED  
20 APPROXIMATELY 12,000 DOMAINS FOR YOUR DATABASE, IS THAT  
21 RIGHT?

22 A. THAT IS CORRECT.

23 Q. ARE ALL OF THOSE DOMAINS REPRESENTED IN THIS  
24 TABLE?

25 A. YES. ALL OF THESE DOMAINS ARE IN THIS TABLE.

1 Q. ARE THERE ANY WEBSITES OR DOMAIN NAMES THAT  
2 APPEARED IN MORE THAN ONE INDEX?

3 A. YES. THERE WAS A RELATIVELY SMALL NUMBER. I  
4 BELIEVE THE EXACT NUMBER WAS 414 DOMAINS THAT APPEARED  
5 ON MORE THAN ONE OF THESE INDEXES SO I FOUND THOSE  
6 DOMAINS AT MORE THAN ONE INDEX.

7 Q. WHAT IS THE SIGNIFICANCE OF THAT NUMBER, IF ANY,  
8 TO YOUR DATA?

9 A. THE SIGNIFICANCE TO ME, I FOUND IT INTERESTING,  
10 REASSURING BECAUSE IT INDICATED THAT THESE INDEXES -- I  
11 WAS NOT SIMPLY DRAWING FROM THE SAME SOURCE OR THESE  
12 WEBSITES, THESE INDEXES WERE NOT SIMPLY RECYCLING THE  
13 SAME DIRECTORY LIST, THAT THEY WERE CONSTRUCTING THEIR  
14 OWN DIRECTORIES AND REPRESENTED DIFFERENT SLICES OF THE  
15 INTERNET ADULT INDUSTRY.

16 Q. I WOULD LIKE TO NOW TURN YOUR ATTENTION TO TABLE  
17 2 IN PLAINTIFFS'S EXHIBIT 30. PLAINTIFFS' EXHIBIT 30.  
18 PLEASE DESCRIBE THE DATA PRESENTED IN THIS TABLE.

19 A. THIS TABLE IS LOOKING AT THE DISTRIBUTION OF THE  
20 DOMAINS IN THIS REPORT BY TOP LEVEL DOMAIN. AGAIN, TOP  
21 LEVEL DOMAIN IS A DISTINCTION WITHIN THE DOMAIN NAME  
22 INDUSTRY BETWEEN -- COM IS A TOP LEVEL DOMAIN. D.DE,  
23 WHICH IS FOR GERMANY, IS ALSO A TOP LEVEL DOMAIN. AND  
24 SO THIS IS SHOWING THE SHARE OF EACH OF THESE TOP LEVEL  
25 DOMAINS IN MY DATABASE AND THEN COMPARING IT TO THE TOP

1 LEVEL DOMAINS -- THE SHARE OF THESE TOP LEVEL DOMAINS IN  
2 THE ENTIRE UNIVERSE OF DOMAINS. SO IT IS COMPARING THE  
3 SPECIFIC, THE SPECIFIC DISTRIBUTION IN MY DATABASE TO  
4 THE DISTRIBUTION MORE GENERALLY.

5 Q. WHAT DOES THE DATA IN THE FIRST ROW INDICATE?

6 A. WHAT IT SHOWS IS THAT 87 PERCENT OF THE DOMAINS  
7 THAT ARE IN MY DATABASE ARE UNDER THE .COM TLD, BUT IN  
8 GENERAL USE ON THE INTERNET, THE .COM TLD ONLY MAKES UP  
9 ABOUT 49.1 PERCENT OF ALL DOMAINS. AND SO THERE IS A  
10 MUCH LARGER NUMBER OF .COM DOMAINS IN MY DATABASE THAN  
11 EXISTS ON THE INTERNET IN GENERAL.

12 Q. I WANT TO TAKE ONE MORE EXAMPLE TO MAKE SURE WE  
13 UNDERSTAND THIS TABLE. WHAT DOES THE DATA IN THE DE ROW  
14 REPRESENT?

15 A. .DE AGAIN IS ANOTHER TOP LEVEL DOMAIN. IT IS  
16 THE TOP LEVEL DOMAIN ASSOCIATED WITH GERMANY. IT SHOWS  
17 THAT .3 PERCENT OF THE DOMAINS IN MY DATABASE ARE .DE  
18 DOMAINS, WHEREAS IN THE INTERNET IN GENERAL .DE  
19 REPRESENTS ABOUT 10 PERCENT OF ALL DOMAINS WORLDWIDE.  
20 SO IT'S QUITE -- MY DATABASE HAS A MUCH SMALLER NUMBER  
21 OF .DE DOMAINS THEN EXISTS ON THE INTERNET IN GENERAL.

22 Q. WHAT DOES THAT MEAN WITH RESPECT TO THE RESULT  
23 OF YOUR RESEARCH?

24 A. WELL, AGAIN, THIS REALLY GETS BACK TO THE  
25 LANGUAGE BIAS WITHIN MY DATABASE. AGAIN, SINCE I WENT

1 TO GOOGLE.COM RATHER THAN GOOGLE.DE I WAS USING INDEXES  
2 THAT CONTAINED PRIMARILY ENGLISH ORIENTED WEB PAGES  
3 VERSUS IN THIS CASE, GERMAN ORIENTED WEB PAGES. AND SO  
4 THE DATABASE IS -- AGAIN, IT CONTAINS AN  
5 UNDERREPRESENTATION OF .DE DOMAINS WHICH ARE MUCH MORE  
6 LIKELY TO BE LOCATED OUTSIDE THE UNITED STATES. SO,  
7 AGAIN, THE EFFECT IS TO OVER -- IS TO INFLATE THE NUMBER  
8 OF WEBSITES LOCATED IN THE UNITED STATES.

9 Q. I'M NOW GOING TO ASK YOU SOME QUESTIONS WITH  
10 RESPECT TO HOW IT IS THAT YOU DETERMINE THE GEOGRAPHIC  
11 LOCATION OF AN ADULT WEBSITE OR ADULT DOMAIN.

12 SO WITH THAT, HOW DO YOU DETERMINE THE  
13 GEOGRAPHIC LOCATION OF, FOR INSTANCE, THE INDIVIDUALS OR  
14 THE ORGANIZATION THAT OWNS A PARTICULAR DOMAIN?

15 A. THE METHOD THAT I USE AND I SPOKE -- SORT OF  
16 INTRODUCED THIS IDEA EARLIER IS TO LOOK AT THE  
17 REGISTRATION INFORMATION ASSOCIATED WITH THE OWNER OF A  
18 DOMAIN. AND THE WAY THAT ONE GOES ABOUT DOING THIS IS  
19 THERE IS UTILITY AVAILABLE ON THE INTERNET. IT'S CALLED  
20 WHOIS, WHICH IS ONE WORD, W-H-O-I-S. AND IT IS A  
21 UTILITY THAT WAS DESIGNED TO HELP PEOPLE CONTACT THE  
22 PERSON IN CHARGE WITH OPERATING A SPECIFIC DOMAIN NAME.  
23 BY QUERYING THE WHOIS INFORMATION, YOU WILL GET BACK THE  
24 REGISTRATION INFORMATION FOR THE DOMAIN NAME OWNER. AND  
25 I BASED THE LOCATION OF THE WEBSITE, BASED ON THIS

1 REGISTRATION INFORMATION.

2 Q. WHAT PRECISELY IS THE INFORMATION CONTAINED IN  
3 THE REGISTRATION INFORMATION?

4 A. THE REGISTRATION INFORMATION FOR THE OWNER AND  
5 PARTICULARLY FOR -- THAT IS RELEVANT FOR THIS, IS A  
6 STREET ADDRESS -- THE ADDRESS OF THE INDIVIDUAL OR THE  
7 BUSINESS OR THE OWNER OF THE DOMAIN NAME. THIS INCLUDES  
8 STREET ADDRESS, CITY, STATE, ZIP CODE AND COUNTRY  
9 LOCATION.

10 Q. IS REGISTRATION REQUIRED FOR AN INDIVIDUAL WHO  
11 PURCHASES A DOMAIN?

12 A. YEAH. IT IS REQUIRED TO SUBMIT WHOIS  
13 INFORMATION AS PART OF THE DOMAIN NAME PROCESS.

14 Q. CAN YOU BE CERTAIN THAT THE ADDRESS INFORMATION  
15 PROVIDED UPON REGISTRATION IS IN FACT THE ADDRESS  
16 INFORMATION OF THE OWNER OF THAT DOMAIN?

17 A. THERE IS NO GUARANTEE THAT THE TWO ARE THE SAME,  
18 BUT I HAVE DONE SOME ANALYSIS AS PART OF MY EARLIER  
19 WORK. THIS IS A PAPER THAT I PUBLISHED IN 2001 THAT  
20 LOOKS SPECIFICALLY AT EXACTLY THIS QUESTION BECAUSE I  
21 WAS CONCERNED -- WANTED TO KNOW THE EXTENT TO WHICH THIS  
22 COULD BE DOCUMENTED. I FOUND A VERY HIGH CORRELATION  
23 BETWEEN THE SAMPLE OF DOMAINS I TOOK AND REFERENCED TO  
24 ANOTHER DATABASE BETWEEN A FIRM'S ACTUAL LOCATION AND  
25 THE WHOIS REGISTRATION -- INFORMATION.

1 Q. DOES THE CORRELATION DIFFER WITH RESPECT TO THE  
2 SPECIFICITY OF THE GEOGRAPHICAL LOCATION?

3 A. YEAH. VERY BROADLY, THE LARGER -- THE HIGHER  
4 LEVEL OF GEOGRAPHY THAT YOU ARE TRYING TO MATCH, THE  
5 STRONGER THE CORRELATION. FOR EXAMPLE, THE CORRELATION  
6 BETWEEN THE ANALYSIS I DID AT 5 DIGIT ZIP CODE LEVEL, IN  
7 WHICH THE CASE OF SOME CITIES CAN BE A FEW CITY BLOCKS,  
8 WAS 75 PERCENT. THERE WAS A 75 PERCENT CORRELATION  
9 BETWEEN THE WHOIS REGISTRATION AND THE ADDRESS FOR THE  
10 FIRM. AT THE THREE DIGIT ZIP CODE LEVEL WHICH IS MORE  
11 AKIN, A LARGER GEOGRAPHIC AREA AKIN TO AN ENTIRE  
12 METROPOLITAN AREA, THE CORRELATION WAS APPROXIMATELY 85  
13 PERCENT. IF YOU MOVED UP TO THE COUNTRY LEVEL, THE  
14 CORRELATION BECAME EVEN STRONGER.

15 Q. I'M GOING TO GO BACK NOW TO A FIGURE IN YOUR  
16 REPORT. FIGURE 1 WHICH IS PAGE 1 OF PLAINTIFFS' EXHIBIT  
17 31. PROFESSOR ZOOK, WHAT DOES THIS FIGURE REPRESENT?

18 A. THIS IS THE WHOIS RECORD OF THE NEW YORK  
19 TIMES.COM -- SORRY, IT'S THE WHOIS RECORD FOR THE DOMAIN  
20 NAME NYTIMES.COM, WHICH IS THE DOMAIN NAME THAT IS USED  
21 BY THE NEW YORK TIMES FOR THEIR WEBSITE.

22 Q. CAN YOU WALK US THROUGH THE INFORMATION THAT IS  
23 PREPARED ON THIS SCREEN?

24 A. SURE. SPECIFICALLY THIS IS THE INFORMATION FOR  
25 THE REGISTRANT OF THE DOMAIN NAME OF NEW YORK TIMES IN

1 TERMS -- IT IS A TERM USED WITHIN THE WHOIS SYSTEM TO  
2 INDICATE THE OWNER OF THE DOMAIN. SO THIS SAYS THE  
3 OWNER OF THE DOMAIN IS THE NEW YORK TIMES COMPANY,  
4 LOCATED AT 229 WEST 43RD STREET, NEW YORK, NEW YORK,  
5 10036 IN THE UNITED STATES.

6 Q. AND JUST SO WE ARE CLEAR ON THE RECORD, WHAT  
7 DOMAIN NAME DOES THE NEW YORK TIMES COMPANY OWN?

8 A. IT OWNS THE DOMAIN NAME NYTIMES.COM.

9 Q. WERE YOU ABLE TO GATHER THIS TYPE OF WHOIS DATA  
10 FOR THE OWNERS OF ALL OF THE DOMAIN IN THE DATABASE?

11 A. I WAS ABLE TO GATHER THE INFORMATION FOR 94.2  
12 PERCENT OF THE DOMAINS IN ANY DATABASE.

13 Q. SO WHAT HAPPENED TO THE OTHER 5.8 PERCENT?

14 A. WELL, THE OTHER 5.8 PERCENT CAN BE DIVIDED IN A  
15 COUPLE OF DIFFERENT CATEGORIES. THE FIRST ARE SIMPLY  
16 DOMAINS THAT WERE NO LONGER REGISTERED, SO THERE WAS NO  
17 WHOIS INFORMATION ASSOCIATED WITH THEM. THAT MADE UP  
18 ABOUT 1.4 PERCENT. THE SECOND CATEGORY ARE DOMAINS  
19 UNDER SPECIFIC TLD MANAGEMENT THAT DID NOT PROVIDE  
20 PUBLIC ACCESS TO THEIR WHOIS INFORMATION. THAT WAS  
21 ABOUT ONE PERCENT OF THIS 5.8 PERCENT. THE FINAL 3.4  
22 PERCENT WERE DOMAINS THAT DID NOT HAVE GEOGRAPHICAL  
23 IDENTIFIERS THAT I COULD USE FOR THIS PROJECT. FOR  
24 EXAMPLE, THEY DID NOT HAVE A COUNTRY LOCATION THAT I  
25 COULD THEN USE TO ASSIGN A DOMAIN TO A SPECIFIC COUNTRY

1 LOCATION.

2 Q. I THINK WITHIN THERE, I THINK IT WAS OPTION 2,  
3 YOU MENTIONED TLD SOMETHING. CAN YOU JUST REMIND US  
4 WHAT TLD MEANS?

5 A. TLD AGAIN STANDS FOR TOP LEVEL DOMAIN. SORRY  
6 FOR THE JARGON, BUT IT'S -- TOP LEVEL DOMAIN, AGAIN IS  
7 SOMETHING LIKE .COM, .DE, .FR. .DE IS THE DOMAIN FOR  
8 GERMANY, TOP LEVEL DOMAIN FOR GERMANY. .FR IS THE TOP  
9 LEVEL DOMAIN FOR FRANCE.

10 Q. SO 5.8 PERCENT OF THE DATA FOR WHICH YOU  
11 COULDN'T GATHER WHOIS INFORMATION, ARE THEY IN YOUR  
12 RESULTS?

13 A. YES, THEY ARE. THIS 5.8 PERCENT ARE REPRESENTED  
14 MY RESULTS FROM MY RESEARCH. I MADE A SPECIAL CATEGORY  
15 WHICH I SIMPLY CALLED "NOT PLACED." AND SO IN ALL OF  
16 THE TABLES, IN ALL THE RESULTS THAT I DID FOR THIS  
17 ANALYSIS THERE IS A SEPARATE CATEGORY FOR THESE DOMAINS  
18 THAT WERE NOT -- I WAS NOT ABLE TO PLACE IN A SPECIFIC  
19 COUNTRY LOCATION.

20 Q. ARE YOU FAMILIAR WITH THE TERM "PROXY SERVICE"?

21 A. YES, I AM.

22 Q. WHAT IS A PROXY SERVICE?

23 A. A PROXY SERVICE IS A SERVICE OFFERED BY  
24 REGISTRARS, AND, AGAIN, REGISTRARS ARE THE ENTITIES THAT  
25 SELL DOMAIN NAMES TO THE FINAL CUSTOMER. A PROXY

1 SERVICE ALLOWS A CUSTOMER TO SUBSTITUTE THE LOCATION OF  
2 THE REGISTRAR OF THIS DOMAIN FOR THEIR OWN LOCATION. IT  
3 IS A WAY OF -- SO THE RESULT IS INSTEAD OF THE  
4 CUSTOMERS'S INFORMATION APPEARING IN THE WHOIS RECORD,  
5 IT IS THE REGISTRAR'S INFORMATION APPEARING IN THE WHOIS  
6 RECORD.

7 Q. YOU USED A LOT OF THE SAME TERMS. HOW DOES THE  
8 PROXY SERVICE DIFFER FROM THE OWNER OF A DOMAIN NAME?

9 A. THE PROXY SERVICE IS THE SELLER OF THE DOMAIN  
10 NAME. IT'S THE MERCHANT WHO SOLD A DOMAIN NAME TO AN  
11 INDIVIDUAL OR TO THE FINAL OWNER.

12 Q. AND NORMALLY, WHEN AN OWNER PURCHASES A DOMAIN  
13 NAME, THEY HAVE TO REGISTER THEIR ADDRESS, IS THAT  
14 CORRECT?

15 A. THAT'S CORRECT.

16 Q. BUT IF THEY PURCHASE IT WITH A PROXY SERVICE, IT  
17 IS DIFFERENT?

18 A. THEY ARRANGE SO THAT THE INFORMATION -- THEY  
19 STILL REGISTER INFORMATION WITH THE SELLER OF THE  
20 DOMAIN, BUT IN TERMS OF THE INFORMATION THAT COMES UP IN  
21 THE WHOIS RECORD, THE SELLER OF THE DOMAIN'S PROXY  
22 SERVICE INFORMATION APPEARS RATHER THAN THE OWNER'S  
23 INFORMATION.

24 Q. HOW DOES THIS AFFECT YOUR RESULTS?

25 A. WELL, THE EFFECT -- WITHIN THIS DATABASE, THE

1 MAJORITY OF THE DOMAINS -- AND THERE ARE  
2 APPROXIMATELY -- THERE ARE 374 DOMAINS THAT HAD THIS  
3 PROXY SERVICE ASSOCIATED WITH THIS, AND THE MAJORITY OR  
4 THE SUPER MAJORITY OF THESE DOMAINS THAT WERE USING  
5 PROXY SERVICE ENDED UP BEING CLASSIFIED AS BEING LOCATED  
6 IN THE UNITED STATES. 90 PERCENT OF THESE DOMAINS USING  
7 PROXY SERVICES WERE USING REGISTRAR OR SELLERS OF  
8 DOMAINS THAT WERE LOCATED IN THE UNITED STATES. SO THE  
9 END RESULT IS THAT 90 PERCENT OF THESE DOMAINS WERE  
10 CLASSIFIED -- THESE WEBSITES WERE CLASSIFIED AS BEING  
11 LOCATED IN THE UNITED STATES.

12 Q. I WANT TO BREAK IT DOWN AGAIN. OF THE 12,000 OR  
13 APPROXIMATELY 12,000 DOMAINS IN YOUR DATABASE, HOW MANY  
14 WERE YOU ABLE TO IDENTIFY AS HAVING USED A PROXY  
15 SERVICE?

16 A. 374.

17 Q. AND OF THOSE 374, WHAT PERCENT WERE LISTED AS  
18 LOCATED IN THE UNITED STATES?

19 A. 90 PERCENT OF THE 374 WERE LOCATED -- ENDED UP  
20 BEING CLASSIFIED AS BEING IN THE UNITED STATES.

21 Q. JUST SO WE ARE CLEAR, WHAT DOES THAT MEAN WITH  
22 RESPECT TO THE RESULTS OF YOUR REPORT WHEN YOU TALK  
23 ABOUT THE PERCENTAGE OF ADULT WEBSITES LOCATED IN THE  
24 UNITED STATES?

25 A. IT WOULD BE ANOTHER -- IT WOULD BE ANOTHER

1 INFLATION OF THE NUMBER OF WEBSITES LOCATED IN THE  
2 UNITED STATES BECAUSE THESE WEBSITES, REGARDLESS OF  
3 WHERE THEY WERE LOCATED, WOULD END UP GETTING CLASSIFIED  
4 IN THE UNITED STATES BECAUSE OF THIS PROXY SERVICE.

5 Q. GOING BACK TO YOUR TABLES, SPECIFICALLY I WOULD  
6 LIKE TO LOOK AT TABLE 3, WHICH IS PAGE 3 OF PLAINTIFFS'  
7 EXHIBIT 30. PROFESSOR ZOOK, COULD YOU PLEASE DESCRIBE  
8 THE DATA REPRESENTED IN THIS TABLE?

9 A. THIS TABLE LOOKS AT THE PERCENTAGE OF THE 100  
10 MOST VISITED WEBSITES IN A SERIES OF DIFFERENT  
11 CATEGORIES THAT WERE LOCATED WITHIN THE UNITED STATES  
12 OVER TIME, A PERIOD OF TIME FROM 1997 TO 2000.

13 Q. LOOKING AT THE TOP ROW OF THIS TABLE, WHAT DOES  
14 THE DATA THERE REPRESENT?

15 A. WHAT THIS DATA REPRESENTS IS A DIFFUSION OF THE  
16 TOP 100 WEBSITES OUTSIDE THE UNITED STATES DURING THIS  
17 TIME. IN 1997, 94 PERCENT OF THE TOP 100 WEBSITES IN  
18 ALL CATEGORIES WERE LOCATED IN THE UNITED STATES. BY  
19 OCTOBER OF 2000, THAT HAD DROPPED TO 86 PERCENT.

20 Q. WHAT IS THE SIGNIFICANCE OF THIS, IF ANY?

21 A. THE SIGNIFICANCE IS THAT, AS WE SAW EARLIER IN  
22 THE FIGURE ABOUT THE PERCENTAGE OF INTERNET USERS  
23 LOCATED IN THE UNITED STATES, IS THAT INTERNET USE IS  
24 INCREASINGLY DIFFUSED OUTSIDE THE UNITED STATES, THERE'S  
25 INCREASINGLY A LARGE NUMBER OF BOTH USERS AND PRODUCERS

1 OF WEB MATERIAL OUTSIDE THE UNITED STATES.

2 Q. TAKE TWO MORE EXAMPLES FROM THIS TABLE. THE  
3 BOTTOM ROW, I BELIEVE, REPRESENTING GAMBLING. TELL US  
4 ABOUT THE DATA IN THE GAMBLING ROW.

5 A. WELL, THE DATA SHOWS A SIMILAR TREND TOWARD  
6 DIFFUSION OVER TIME GOING FROM 67 PERCENT OF THE TOP 100  
7 GAMBLING WEBSITES LOCATED IN THE UNITED STATES IN 1999  
8 AND A YEAR LATER, IT HAD DECLINED TO 39 PERCENT. A MUCH  
9 SHARPER DECLINE THAN FOR ALL SITES OVERALL.

10 Q. WHAT DO WE SEE IN THE ADULT ROW?

11 A. AGAIN, WE SEE A SIMILAR PATTERN, SIMILAR PATTERN  
12 OF DECLINE OVER TIME DURING THIS PERIOD. THE NUMBER OF  
13 TOP WEBSITES LOCATED -- THE NUMBER OF TOP ADULT WEBSITES  
14 LOCATED IN THE UNITED STATES WENT FROM 79 PERCENT IN  
15 1997 DOWN TO 58 PERCENT IN 2000.

16 Q. WHAT DOES THAT MEAN FOR THE PERCENT OF ADULT  
17 WEBSITES LOCATED IN THE UNITED STATES VERSUS ABROAD?

18 A. IT MEANS THAT DURING THIS -- THAT OVER TIME, THE  
19 COMPARATIVE, THE NUMBER OF ADULT WEBSITES OUTSIDE THE  
20 UNITED STATES HAS INCREASED AT THE EXPENSE OF THOSE  
21 INSIDE THE UNITED STATES.

22 Q. TURNING YOUR ATTENTION TO TABLE 4 IN PLAINTIFFS'  
23 EXHIBIT 30, WHICH IS THE NEXT PAGE, PAGE 4, WHAT DOES  
24 THE DATA IN THIS TABLE REPRESENT?

25 A. THE DATA IN THIS TABLE IS LOOKING AT THE

1       DISTRIBUTION AT THE COUNTRY LEVEL OF ALL OF THE INTERNET  
2       ADULT WEBSITES CONTAINED WITHIN THIS REPORT. SO THIS IS  
3       THE DISTRIBUTION OF ALL APPROXIMATELY 12,000 DOMAINS  
4       THAT EXIST IN THIS REPORT'S DATABASE AT THE COUNTRY  
5       LEVEL.

6       Q.        IN LOOKING AT THE TOP ROW WHAT PERCENTAGE OF  
7       ADULT WEBSITES THAT IN YOUR DATABASE ARE LOCATED IN THE  
8       UNITED STATES?

9       A.        IN THE UNITED STATES, THERE WERE 47.2 PERCENT OF  
10      THESE WEBSITES WERE LOCATED IN THE UNITED STATES.

11     Q.        AND THAT FAR RIGHT COLUMN HEADED DN RATIO, CAN  
12     YOU REMIND US WHAT DN RATIO MEANS?

13     A.        DN RATIO IS SIMPLY A MEASURE OF THE EXTENT TO  
14     THIS SHARE OF THE DOMAINS IN THIS DATABASE COMPARES TO A  
15     COUNTRY'S SHARE OF DOMAINS MORE GENERALLY. IT'S A  
16     MEASURE -- IF THE MEASURE WAS EXACTLY 1, IT MEANT A  
17     COUNTRY HAD EXACTLY THE SAME PERCENTAGE OF ADULT  
18     WEBSITES AS IT DOES IN WEBSITES IN GENERAL. SO IT'S  
19     SIMPLY A MEASURE OF A COUNTRY'S SPECIALIZATION IN THE  
20     ADULT INDUSTRY. IF IT IS HIGHER THAN 1, IT INDICATES  
21     THAT A COUNTRY IS MORE SPECIALIZED IN THE ADULT INDUSTRY  
22     THAN ITS PRESENCE ON THE INTERNET WOULD SUGGEST.

23     Q.        WHAT IS THE DN RATIO IN YOUR TABLE FOR CANADA?

24     A.        THE DN RATIO FOR CANADA IS 2.85.

25     Q.        WHAT IS THE DN RATIO FOR THE UNITED STATES?

1 A. 1.23.

2 Q. SO HOW DOES THE DN RATIO FOR CANADA COMPARE WITH  
3 THE DN RATIO FOR THE UNITED STATES?

4 A. IT IS CLEARLY, IT IS HIGHER, MUCH HIGHER. THE  
5 WAY TO INTERPRET THAT IS THAT CANADA IS MORE SPECIALIZED  
6 IN INTERNET ADULT WEBSITES THAN THE UNITED STATES.

7 Q. I WOULD LIKE TO TURN YOUR ATTENTION TO PAGE 5 IN  
8 PLAINTIFFS' EXHIBIT 30, TABLE 5 FROM YOUR REPORT.

9 I MEANT TO ASK YOU THE PRECEDING  
10 QUESTION. DID YOU LOOK AT THE COUNTRY DISTRIBUTION OF  
11 THE WEBSITES YOU COLLECTED WITHIN EACH OF THE INDICES  
12 YOU USED?

13 A. YES. IN ADDITION TO LOOKING AT THE DISTRIBUTION  
14 OF ALL OF THESE WEBSITES OVERALL, ALL 12,000, I THEN  
15 TOOK SPECIFIC CUTS AND LOOKED AT THE SPECIFIC INDEXES  
16 AND LOOKED AT THE DISTRIBUTION OF THE WEBSITES THAT I  
17 GATHERED FROM EACH SPECIFIC INDEX.

18 Q. NOW, LOOKING AT TABLE 5, WHAT DOES THE DATA IN  
19 THIS TABLE REPRESENT?

20 A. THIS IS LOOKING AT THE DISTRIBUTION OF THE  
21 MEMBERSHIP WEBSITES THAT I GATHERED FROM ADULTREVIEWS AT  
22 THE COUNTRY LEVEL.

23 Q. WHAT PERCENT OF ADULT MEMBERSHIP WEBSITES FROM  
24 THE ADULTREVIEWS INDEX ARE LOCATED IN THE UNITED STATES?

25 A. 64.1 PERCENT.

1 Q. SO WHAT PERCENT OF THE WEBSITES INDEXED AT  
2 ADULTREVIEWS ARE LOCATED OUTSIDE THE UNITED STATES?

3 A. WELL, OUTSIDE THE UNITED STATES, SUBTRACTING THE  
4 "NOT PLACED" CATEGORY WILL PUT IT AT APPROXIMATELY 34  
5 PERCENT OF THESE PAID MEMBERSHIP -- ARE LOCATED OUTSIDE  
6 THE UNITED STATES, APPROXIMATELY.

7 Q. TURNING TO PAGE 7 OF EXHIBIT 30, WHICH IS TABLE  
8 7 FROM YOUR REPORT, WHAT DOES THE DATA IN THIS TABLE  
9 REPRESENT?

10 A. THE DATA IN THIS TABLE REPRESENTS THE  
11 DISTRIBUTION AT THE COUNTRY LEVEL OF THE ADULT WEBSITES  
12 THAT I GATHERED FROM THE ADULTWEBMASTERS INDEX.

13 Q. WHAT PERCENTAGE OF THE WEBSITES THAT YOU  
14 GATHERED FROM THE ADULTWEBMASTERS INDEX ARE LOCATED IN  
15 THE UNITED STATES?

16 A. 59.5 PERCENT OF THESE WEBSITES ARE LOCATED IN  
17 THE UNITED STATES.

18 Q. WHAT PERCENT OF THE WEBSITES FROM  
19 ADULTWEBMASTERS ARE LOCATED OUTSIDE OF THE UNITED  
20 STATES?

21 A. AGAIN, SUBTRACTING OUT THE "NOT PLACED"  
22 CATEGORY, IT IS APPROXIMATELY 30 PERCENT OF THESE  
23 WEBSITES ARE OUTSIDE OF THE UNITED STATES.

24 Q. TURNING TO TABLE 8 IN YOUR REPORT, WHICH IS THE  
25 NEXT PAGE IN PLAINTIFFS' EXHIBIT 30, WHAT DOES THE DATA

1 ON TABLE 8 REPRESENT?

2 A. THIS IS LOOKING AT THE SEXTRACKER INDEX, THE  
3 DISTRIBUTION OF -- DISTRIBUTION AT THE COUNTRY LEVEL OF  
4 THE SEXTRACKER INDEX. THIS ALSO -- SINCE THIS WAS ONE  
5 OF THE INDEXES I USED FROM MY ORIGINAL ACADEMIC STUDY  
6 FOR WHICH I GATHERED DATA IN 2001, AND FOR THIS EXPERT  
7 REPORT, I WENT BACK TO THE SAME INDEX AND GATHERED THE  
8 DATA THE SAME WAY, I'M ABLE TO COMPARE THIS ACROSS TIME.

9 Q. LOOKING AT THE TOP ROW, WHAT PERCENT OF THE  
10 WEBSITES ON THE SEXTRACKER INDEX WERE LOCATED IN THE  
11 UNITED STATES IN 2001?

12 A. 51.5 PERCENT.

13 Q. AND WHAT PERCENTAGE OF THE WEBSITES LOCATED ON  
14 THE SAME INDEX WERE LOCATED IN THE UNITED STATES IN  
15 2006?

16 A. 46.3 PERCENT.

17 Q. WHAT PERCENTAGE OF THE WEBSITES IN 2001 FROM  
18 SEXTRACKER WERE LOCATED OUTSIDE THE UNITED STATES?

19 A. APPROXIMATELY 40 PERCENT.

20 Q. AND WHAT PERCENTAGE OF THE WEBSITES FROM  
21 SEXTRACKER WERE -- ARE LOCATED OUTSIDE OF THE UNITED  
22 STATES IN 2006?

23 A. APPROXIMATELY 46 OR 47 PERCENT.

24 Q. I'M SORRY. THESE NUMBERS ARE NOT ON THE TABLE.  
25 THAT IS AN INCREASE OF ABOUT HOW MUCH?

1 A. IT'S A CHANGE OF, LET'S SAY APPROXIMATELY SIX  
2 PERCENT.

3 Q. TURNING TO PLAINTIFFS' EXHIBIT 30, PAGE 6, WHICH  
4 IS ALSO TABLE 6 IN YOUR REPORT. WHAT DOES THE DATA IN  
5 THIS TABLE REPRESENT?

6 A. THIS IS LOOKING AT USING THE GOOGLE INDEX AND  
7 LOOKING SPECIFICALLY AT THE DISTRIBUTION OF MEMBERSHIP  
8 WEBSITES LOCATED -- THE DISTRIBUTION AT THE COUNTRY  
9 LEVEL. AND, AGAIN, SINCE I USED THE GOOGLE INDEX IN MY  
10 ORIGINAL PAPER, I'M ABLE TO COMPARE BETWEEN 2001 AND  
11 2006.

12 Q. AGAIN REFERRING TO THE TOP ROW OF THIS TABLE,  
13 WHAT WAS THE PERCENTAGE OF ADULT WEBSITES FROM THE  
14 GOOGLE ADULT MEMBERSHIP INDEX LOCATED IN THE UNITED  
15 STATES IN 2001?

16 A. IT WAS 70.4 PERCENT.

17 Q. AND WHAT IS THE PERCENTAGE IN 2006?

18 A. 68.5 PERCENT.

19 Q. WHAT PERCENT OF THE WEBSITES FROM THIS VERY  
20 INDEX WERE LOCATED OUTSIDE OF THE UNITED STATES IN 2001?

21 A. A LITTLE LESS THAN 30 PERCENT.

22 Q. AND WHAT PERCENT OF THESE WEBSITES FROM THIS  
23 INDEX ARE LOCATED OUTSIDE THE UNITED STATES IN 2006?

24 A. IT'S APPROXIMATELY THE SAME AMOUNT.

25 Q. TURNING YOUR ATTENTION TO TABLE 9 WHICH IS PAGE

1 9 IN PLAINTIFFS' EXHIBIT 30, WHAT DOES THE DATA IN THIS  
2 TABLE REPRESENT?

3 A. THE DATA IN THIS TABLE IS LOOKING AT THE  
4 DISTRIBUTION AT THE COUNTRY LEVEL OF THE FREE ADULT  
5 WEBSITES LISTED AT THE GOOGLE DIRECTORY, AGAIN COMPARING  
6 IT BETWEEN 2001 AND 2006.

7 Q. SO WHAT PERCENT OF THE WEBSITES AT THE GOOGLE  
8 FREE ADULT DIRECTORY WERE LOCATED IN THE UNITED STATES  
9 IN 2001?

10 A. 59.8 PERCENT.

11 Q. AND WHAT PERCENT OF THE WEBSITES FROM THAT SAME  
12 INDEX ARE LOCATED IN THE UNITED STATES IN 2006?

13 A. THAT WAS 42.3 PERCENT.

14 Q. WAS THERE A DECLINE IN THE PERCENTAGE OF  
15 WEBSITES FROM THIS INDEX LOCATED IN THE UNITED STATES?

16 A. YES, THERE WAS A LARGE DECLINE OF 17.5 PERCENT  
17 OF THESE WEBSITES IN THE UNITED STATES.

18 Q. DID THE PERCENT OF FREE WEBSITES FROM THIS INDEX  
19 LOCATED IN ANY OTHER COUNTRY DECREASE OVER TIME?

20 A. NO. AS YOU CAN SEE IN THE LAST COLUMN IN THIS  
21 TABLE, NO OTHER -- NO OTHER COUNTRY HAD A DECLINE IN  
22 THEIR SHARE OF WEBSITES.

23 Q. DID THE OTHER COUNTRIES ALL INCREASE IN THEIR  
24 PERCENTAGE OF THE WEBSITES LOCATED IN THEIR COUNTRIES?

25 A. YES, THEY DID. ALL OTHER COUNTRIES INCREASED

1 THEIR PERCENTAGE SHARE OF THESE FREE WEBSITES.

2 Q. TURNING YOUR ATTENTION NOW TO PAGE 2 OF  
3 PLAINTIFFS' EXHIBIT 31, WHICH IS FIGURE 2 IN YOUR  
4 REPORT. WHAT DOES THE DATA IN THIS FIGURE REPRESENT?

5 A. THE DATA IN THIS FIGURE IS SIMPLY A COMPARISON  
6 BETWEEN THE DATA PRESENTED IN EARLIER TABLES. I BELIEVE  
7 THEY ARE TABLES 6 AND 9. IT IS SIMPLY A COMPARISON,  
8 GEOGRAPHICAL COMPARISON IN COMPARING THE PERCENTAGE OF  
9 FREE WEBSITES LOCATED OUTSIDE THE UNITED STATES COMPARED  
10 TO THE PERCENTAGE OF MEMBERSHIP WEBSITES LOCATED OUTSIDE  
11 THE UNITED STATES. BOTH OF THESE -- BOTH OF THESE ARE  
12 COMING FROM THE GOOGLE DIRECTORY SO WE CAN COMPARE THEM  
13 DIRECTLY.

14 Q. WHAT PERCENT OF FREE ADULT WEBSITES FROM THE  
15 GOOGLE DIRECTORY ARE LOCATED OUTSIDE OF THE UNITED  
16 STATES?

17 A. THIS -- IN THIS FIGURE IT IS 58 PERCENT. IF YOU  
18 WOULD CHOOSE TO REMOVE THE "NOT PLACED" DATA, IT WOULD  
19 REDUCE IT SLIGHTLY DOWN TO APPROXIMATELY 54 PERCENT.

20 Q. AND WHAT PERCENT OF THE MEMBERSHIP ADULT SITES  
21 FROM THE GOOGLE DIRECTORY ARE LOCATED -- I'M SORRY -- OF  
22 THE MEMBERSHIP SITES ARE LOCATED OUTSIDE OF THE UNITED  
23 STATES?

24 A. IT IS 32 PERCENT. AGAIN, THIS INCLUDES THE "NOT  
25 PLACED" CATEGORY WHICH WOULD REDUCE IT SLIGHTLY TO 28

1 PERCENT.

2 Q. PROFESSOR ZOOK, WHAT CONCLUSIONS DO YOU DRAW  
3 FROM THE TABLES AND FIGURES WE HAVE JUST REVIEWED?

4 A. MY CONCLUSION FROM THIS IS THAT THERE IS AN  
5 INCREASING -- INCREASINGLY HIGH PRESENCE OR INCREASINGLY  
6 LARGER SHARE OF THESE TYPES OF ADULT WEBSITES LOCATED  
7 OUTSIDE OF THE UNITED STATES. WE CAN SEE THIS, THIS  
8 PERCENTAGE INCREASING OVER TIME, AND THAT IS THE MAIN  
9 CONCLUSION I WOULD COME FROM.

10 Q. I NEGLECTED TO DO ONE THING EARLIER IN THE  
11 DIRECT.

12 CAN YOU PLEASE TURN YOUR ATTENTION TO  
13 WHAT PREVIOUSLY HAS BEEN MARKED AS PLAINTIFFS' EXHIBIT  
14 32. IT SHOULD BE IN THE BINDER BEFORE YOU.

15 A. YES.

16 Q. ARE YOU FAMILIAR WITH THIS DOCUMENT?

17 A. YES, I AM.

18 Q. WHAT IS THIS DOCUMENT?

19 A. IT IS THE ORIGINAL PAPER, ACADEMIC PAPER THAT I  
20 WROTE AND PUBLISHED ON THE TOPIC OF THE INTERNET ADULT  
21 INDUSTRY.

22 Q. DID YOU RELY ON THIS PAPER IN FORMULATING YOUR  
23 EXPERT REPORT?

24 A. YES. I MEAN, I RELIED UPON IT IN THE SENSE THAT  
25 I DREW SOME DATA FROM IT. I ALSO MORE IMPORTANTLY

1 RELIED UPON IT IN DETERMINING MY METHODOLOGY FOR THE  
2 EXPERT REPORT.

3 MS. MARSHALL: YOUR HONOR, PLAINTIFFS  
4 WOULD LIKE TO OFFER PLAINTIFFS' EXHIBIT 32 INTO  
5 EVIDENCE.

6 MR. MCELVAIN: NO OBJECTION.

7 THE COURT: PLAINTIFFS 32 IS RECEIVED  
8 INTO EVIDENCE.

9 (P 32 ADMITTED INTO EVIDENCE.)

10 MS. MARSHALL: YOUR HONOR, I HAVE NO  
11 FURTHER QUESTIONS AT THIS TIME.

12 THE COURT: CLOSE ENOUGH TO OUR MIDDAY  
13 BREAK AND WE WILL TAKE IT. BE BACK AT 1:30 PLEASE. WE  
14 ARE OFF THE RECORD. COUNSEL ARE EXCUSED FOR MIDDAY  
15 RECESS.

16 (LUNCH BREAK TAKEN.)

17 THE CLERK: ALL RISE. COURT IS NOW IN  
18 SESSION.

19 THE COURT: WELCOME BACK, EVERYONE.  
20 PLEASE BE SEATED.

21 DR. ZOOK WILL NOW HAVE QUESTIONING BY THE  
22 JUSTICE DEPARTMENT.

23 MR. MCELVAIN: YOUR HONOR, BEFORE I  
24 BEGIN, I HAVE SOME EXHIBITS THAT I WOULD LIKE TO PRESENT  
25 TO YOU. MAY I APPROACH?

1 THE COURT: WHAT DO YOU HAVE?

2 MR. MCELVAIN: EXHIBITS THAT I WOULD LIKE  
3 TO USE WITH THIS WITNESS.

4 THE COURT: SURE.

5 CROSS EXAMINATION

6 BY MR. MCELVAIN:

7 Q. GOOD AFTERNOON, PROFESSOR ZOOK.

8 A. GOOD AFTERNOON.

9 Q. DO ADULT WEBSITES USE MORE BANDWIDTH THAN THE  
10 TYPICAL WEBSITES?

11 A. YEAH. I WOULD SAY THAT IS A FAIR  
12 CHARACTERIZATION.

13 Q. AND ADULT WEBSITES NEED TO PAY FOR THAT  
14 BANDWIDTH, ISN'T THAT RIGHT?

15 A. YES, THAT'S CORRECT.

16 Q. AND IT'S FOR THAT REASON THAT ADULT WEBSITES ARE  
17 LIKELY TO BE COMMERCIALY DRIVEN, IS THAT CORRECT?

18 A. YES, THAT'S TRUE.

19 Q. AND YOU HAVE USED THE TERM "FEEDER" ADULT  
20 WEBSITES EARLIER TODAY. IF I USE THAT TERM, YOU WILL  
21 UNDERSTAND WHAT I'M REFERRING TO, RIGHT?

22 A. YES, I WILL UNDERSTAND. I MEAN, JUST TO  
23 CLARIFY, IN MY EXPERT REPORT I USE THE TERMS "FREE" AND  
24 "FEEDER" INTERCHANGEABLY, BUT I UNDERSTAND WHAT YOU MEAN  
25 BY FEEDER WEBSITES.

1 Q. FEEDER ADULT WEBSITES NEED TO PAY FOR THE  
2 BANDWIDTH THAT THEY CONSUME, TOO, ISN'T THAT RIGHT?

3 A. THAT IS CORRECT.

4 Q. AND FEEDER ADULT WEBSITES ARE ALSO LIKELY TO BE  
5 COMMERCIALY DRIVEN BECAUSE THEY NEED TO PAY FOR THAT  
6 BANDWIDTH, ISN'T THAT RIGHT?

7 A. FEEDER WEBSITES ARE COMMERCIALY DRIVEN IN THE  
8 SENSE THAT THEY ARE BOTH -- NEED TO I MEAN -- TO PAY FOR  
9 BANDWIDTH, BUT ALSO THE EFFORT TO MAKE SOME SORT OF  
10 MONEY IN ADDITION TO THE BANDWIDTH COSTS.

11 Q. FEEDER ADULT WEBSITES GENERALLY MAKE THEIR MONEY  
12 THROUGH AFFILIATING WITH ADULT MEMBERSHIP SITES, ISN'T  
13 THAT RIGHT?

14 A. AFFILIATE -- MAYBE I WILL JUST REPHRASE OR  
15 EXPAND MY ANSWER, MY UNDERSTANDING OF WHAT AFFILIATE IS.  
16 WOULD THAT BE OKAY?

17 Q. PLEASE.

18 A. THE WAY IN WHICH THESE FREE WEBSITES MAKE MONEY  
19 IS THAT THEY GET A PORTION OF THE MEMBERSHIP FEES THAT A  
20 USER THAT IS DIRECTED FROM A FREE OR FEEDER WEBSITE TO  
21 THE MEMBERSHIP WEBSITE.

22 Q. YOU HAVE NOT STUDIED WHETHER THERE IS ANY COMMON  
23 OWNERSHIP BETWEEN WHAT YOU CALLED FEEDER ADULT WEBSITES  
24 AND THE ADULT MEMBERSHIP SITES, HAVE YOU?

25 A. THAT IS NOT SOMETHING THAT I LOOKED AT FOR THIS

1 REPORT.

2 Q. OKAY. YOU DON'T KNOW WHETHER THERE IS ANY SUCH  
3 COMMON OWNERSHIP OR NOT, DO YOU?

4 A. IT'S NOT SOMETHING THAT I HAVE STUDIED.

5 Q. AND YOU HAVE NOT STUDIED WHETHER ADULT  
6 MEMBERSHIP SITES MONITOR THE ACTIVITIES OF THEIR  
7 AFFILIATED FEEDER ADULT WEBSITES, HAVE YOU?

8 A. I HAVE NOT -- WHAT DO YOU MEAN BY MONITOR THE  
9 ACTIVITIES -- I GUESS IS MY -- IF I GET A LITTLE MORE  
10 CLARIFICATION ON THAT.

11 Q. HAVE YOU -- YOU HAVE NOT STUDIED WHETHER ADULT  
12 MEMBERSHIP WEBSITES DO OR DO NOT TEND TO MONITOR THE  
13 ACTIVITIES OF THE FEEDER ADULT WEBSITES WITH WHICH THEY  
14 ARE AFFILIATED TO SEE IF THEY ARE ENGAGING IN ACTIVITY  
15 FOR WHICH THE MEMBERSHIP MAY BE POTENTIALLY LEGALLY  
16 LIABLE?

17 A. I HAVE NOT STUDIED WHETHER OR NOT THESE  
18 MEMBERSHIP WEBSITES STUDY OR MONITOR WEBSITES TO  
19 -- ACTUALLY, I THINK I'M LOST IN YOUR QUESTION. COULD  
20 YOU JUST RESTATE IT SO I CAN GIVE IT ANOTHER SHOT.

21 Q. OKAY.

22 THERE ARE AFFILIATE PROGRAMS BETWEEN  
23 FEEDER ADULT WEBSITES AND ADULT MEMBERSHIP WEBSITES, IS  
24 THAT RIGHT?

25 A. THAT IS CORRECT.

1 Q. AND WHETHER OR NOT THE ADULT MEMBERSHIP WEBSITES  
2 MONITOR THE ACTIVITIES OF THE FEEDER ADULT WEBSITES FOR  
3 ANY ACTIVITIES OF THE FEEDER SITES FOR WHICH THE  
4 MEMBERSHIP SITES MAY BE LEGALLY LIABLE, THAT IS A  
5 QUESTION WHICH YOU HAVE NOT STUDIED, ISN'T THAT RIGHT?

6 A. I HAVE NOT STUDIED THAT SPECIFIC QUESTION. IT  
7 IS TRUE THAT THESE MEMBERSHIP WEBSITES DO MONITOR THE  
8 ACTIVITIES OF THESE FEEDER WEBSITES IN THE SENSE THAT  
9 THEY NEED TO KNOW WHO TO PAY AND HOW MUCH IN TERMS OF  
10 THE AFFILIATE PROGRAM.

11 Q. AND THERE ARE FIRMS THAT SPECIALIZE IN OFFERING  
12 HOSTING SERVICES FOR WEBSITES?

13 A. THERE ARE HOSTING SERVICES OUT THERE.

14 Q. THERE ARE FIRMS THAT SPECIALIZE IN OFFERING  
15 THESE HOSTING SERVICES FOR ADULT WEBSITES, ISN'T THAT  
16 RIGHT?

17 A. THERE ARE FIRMS THAT ARE SPECIALIZED IN ADULT  
18 INDUSTRY HOSTING.

19 Q. ADULT WEBSITES GENERALLY DO HAVE THEIR CONTENT  
20 HOSTED BY THESE SPECIALIZED FIRMS, ISN'T THAT RIGHT?

21 A. THAT IS TRUE.

22 Q. AND THE REASON THAT THIS IS SO IS BECAUSE OF THE  
23 LARGE BANDWIDTH REQUIREMENTS THAT ADULT WEBSITES IN  
24 PARTICULAR FACE, ISN'T THAT RIGHT?

25 A. YEAH. IT'S BECAUSE THESE WEBSITES HAVE BOTH

1       LARGE BANDWIDTH REQUIREMENTS AND ALSO CERTAIN PEAKS IN  
2       THE DEMAND THAT LEAD TO THE SORT OF SPECIALIZED KIND OF  
3       HOSTING.

4       Q.       NOW, PROFESSOR ZOOK, YOU WROTE AN ARTICLE THAT  
5       WAS PUBLISHED IN 2003 THAT WAS ENTITLED UNDERGROUND  
6       GLOBALIZATON?

7       A.       THAT IS CORRECT.

8       Q.       IF I CAN HAVE PLAINTIFFS' EXHIBIT P-32 PUT UP,  
9       MR. BYRDSONG.

10                               AND THIS IS THAT ARTICLE?

11      A.       CAN I ASK -- I'M ASSUMING THAT THERE IS A STACK  
12      HERE THAT IS ALSO CORRESPONDING TO WHAT IS BEING  
13      PRESENTED ON THE SCREEN?

14      Q.       YES.   AND FOR CLARIFICATION, I HAVE PRESENTED TO  
15      YOU WHAT IS LISTED AS DEFENDANT'S EXHIBIT 389.  IT IS MY  
16      UNDERSTANDING THAT IT IS THE SAME AS PLAINTIFFS' EXHIBIT  
17      32.  PLEASE TAKE YOUR TIME AND COMPARE THEM.

18      A.       THIS APPEARS TO BE THE ARTICLE ON UNDERGROUND  
19      GLOBALIZATION THAT I PUBLISHED IN 2003.

20      Q.       FOR THE PURPOSE OF THAT ARTICLE, YOU STUDIED  
21      DATA REGARDING WHERE ADULT HOSTING SERVICES ARE LOCATED,  
22      DIDN'T YOU?

23      A.       YES, THAT IS CORRECT.

24      Q.       IF YOU COULD PLEASE TURN YOUR ATTENTION TO TABLE  
25      8 OF THAT STUDY, AND THAT IS I BELIEVE PAGE 16 OF THE

1 EXHIBIT FOR THE REFERENCE IT'S PAGE 1276 OF THE PRINTOUT  
2 OF THE JOURNAL ARTICLE.

3 A. TABLE 8, CORRECT?

4 Q. IN YOUR --

5 A. I JUST WANT TO CLARIFY, IT'S TABLE 8 WE ARE  
6 TALKING ABOUT?

7 Q. TABLE 8, YES. IN YOUR 2003 ARTICLE, YOU  
8 REPORTED THAT 85 PERCENT OF ALL ADULT MEMBERSHIP  
9 WEBSITES WERE HOSTED IN THE UNITED STATES, IS THAT  
10 CORRECT?

11 A. THAT IS CORRECT.

12 Q. IN YOUR 2003 ARTICLE, YOU REPORTED THAT 93.3  
13 PERCENT OF ALL ADULT FEEDER SITES WERE HOSTED IN THE  
14 UNITED STATES, ISN'T THAT RIGHT?

15 A. THAT IS CORRECT.

16 Q. AS OF THE TIME OF THIS 2003 ARTICLE, YOUR  
17 ANALYSIS SHOWED THAT SHIFTS IN THE LOCATION OF HOSTING  
18 ADULT WEBSITES WERE NOT TAKING PLACE TO ANY GREAT  
19 EXTENT, ISN'T THAT RIGHT?

20 A. I DID NOT LOOK AT THAT QUESTION FOR THIS -- FOR  
21 THIS ARTICLE.

22 Q. IF I COULD TURN YOUR ATTENTION TO THE FIRST FULL  
23 PARAGRAPH.

24 A. OKAY.

25 Q. ON THAT SAME PAGE, PAGE 1276, 1276 OF THE

1 JOURNAL ARTICLE, PAGE 16 OF THE EXHIBIT, DO YOU SEE  
2 THAT?

3 A. I BELIEVE SO.

4 Q. THE FIRST SENTENCE OF THAT PARAGRAPH READS: THE  
5 ANALYSIS BASED ON THE LOCATION OF IP ADDRESSES  
6 ASSOCIATED WITH ADULT WEBSITES, HOWEVER, SHOWS THAT  
7 SHIFTS IN THE LOCATION OF HOSTING ARE NOT TAKING PLACE  
8 TO ANY GREAT EXTENT.

9 DID I CORRECTLY READ WHAT YOU WROTE IN  
10 THAT ARTICLE?

11 A. YOU CORRECTLY READ WHAT I WROTE IN THAT ARTICLE,  
12 BUT IF I MAY, I CAN CLARIFY IT IN TERMS OF THE MEANING I  
13 WAS USING FOR THIS SENTENCE.

14 Q. NO, THANK YOU.

15 YOUR 2003 ARTICLE WAS PEER REVIEWED,  
16 CORRECT?

17 A. YES, THAT IS CORRECT.

18 Q. AND YOUR PRACTICE WOULD NOT BE TO INCLUDE  
19 MATERIAL THAT YOU CONSIDERED TO BE IRRELEVANT IN AN  
20 ARTICLE THAT YOU SUBMITTED FOR PEER REVIEW, WOULD IT?

21 A. NO, IT WOULD NOT BE.

22 Q. NOW THERE CAME TO BE A POINT WHERE YOU WERE  
23 CONTACTED BY PLAINTIFFS' COUNSEL IN THIS ACTION, IS THAT  
24 RIGHT?

25 A. SAY THAT QUESTION.

1 Q. YOU WERE CONTACTED BY PLAINTIFFS' COUNSEL IN  
2 THIS ACTION?

3 A. YES.

4 Q. AND YOU DISCUSSED THE POSSIBILITY OF PREPARING A  
5 REPORT FOR THIS LITIGATION?

6 A. THAT IS CORRECT.

7 Q. IN PARTICULAR, YOU DISCUSSED PREPARING A REPORT  
8 THAT WOULD REPLICATE THE RESEARCH THAT YOU PERFORMED FOR  
9 YOUR 2003 ARTICLE, ISN'T THAT RIGHT?

10 A. THE DISCUSSION ABOUT THE PREPARATION FOR THE  
11 REPORT WAS BASED ON REPLICATING THE BASIC RESEARCH  
12 DESIGN AND METHODOLOGY OF THIS 2003 ARTICLE.

13 Q. AND IN PARTICULAR, YOU DISCUSSED THE POSSIBILITY  
14 OF REPLICATING THE RESEARCH ON -- THE RESEARCH THAT YOU  
15 DID ON THIS HOSTING DATA WITH PLAINTIFFS' COUNSEL.  
16 DIDN'T YOU DISCUSS THAT?

17 A. THERE WAS SOME DISCUSSION ABOUT REPLICATING THAT  
18 AND THE REASON THAT --

19 Q. PROFESSOR ZOOK, IF YOU'VE ANSWERED MY QUESTION.  
20 THANK YOU.

21 A. I WOULD BE HAPPY TO PROVIDE CLARIFICATION.

22 Q. COUNSEL DID NOT ASK YOU -- PLAINTIFFS' COUNSEL  
23 DID NOT ASK YOU TO DO THAT RESEARCH ON THE HOSTING DATA,  
24 ISN'T THAT RIGHT?

25 THE COURT: I DIDN'T UNDERSTAND YOU SIR.

1 YOUR VOICE DROPPED.

2 MR. MCELVAIN: I APOLOGIZE, YOUR HONOR.

3 BY MR. MCELVAIN:

4 Q. PLAINTIFFS' COUNSEL DID NOT ASK YOU TO REPEAT  
5 THAT RESEARCH ON THE HOSTING THE DATA, ISN'T THAT RIGHT?

6 A. THEY DID NOT ASK ME TO LOOK AT THE HOSTING  
7 QUESTION PRIMARILY BECAUSE --

8 Q. THANK YOU, PROFESSOR ZOOK, YOU HAVE ANSWERED MY  
9 QUESTION.

10 THE COURT: TO THE EXTENT THAT PLAINTIFF  
11 WANTS TO CLEAR UP ANYTHING, THEY CAN DO THAT ON REDIRECT  
12 EXAMINATION.

13 THE WITNESS: THAT'S FINE.

14 BY MR. MCELVAIN:

15 Q. THE ULTIMATE DECISION NOT TO DO THE HOSTING  
16 RESEARCH WAS MADE BY PLAINTIFFS' COUNSEL, ISN'T THAT  
17 CORRECT?

18 A. THEY WERE THE CLIENT, SO THEY MADE THE ULTIMATE  
19 DECISION OF THE FOCUS OF MY EXPERT REPORT.

20 Q. NOW, FOR THE PURPOSE OF THIS REPORT, YOU STUDIED  
21 REGISTRATION DATA, ISN'T THAT RIGHT?

22 A. I STUDIED THE REGISTRATION DATA FOR DOMAIN  
23 NAMES.

24 Q. INSTEAD OF STUDYING THE HOSTING DATA?

25 A. AS OPPOSED TO STUDYING HOSTING DATA.

1 Q. AND THERE IS NO PARTICULAR GUARANTEE THAT THE  
2 REGISTRATION ADDRESS FOR A DOMAIN NAME AND THE ACTUAL  
3 PHYSICAL LOCATION OF THE MAKERS OF THE WEBSITES WOULD BE  
4 THE SAME, ISN'T THAT RIGHT?

5 A. NO. I THINK I STATED IN MY TESTIMONY EARLIER  
6 THAT THERE NO GUARANTEE, BUT I HAVE SEEN CORRELATIONS  
7 BETWEEN THE TWO.

8 Q. AND REGISTRATION INFORMATION ON DOMAIN NAMES CAN  
9 BE INACCURATE, ISN'T THAT RIGHT?

10 A. YES, IT IS POSSIBLE.

11 Q. REGISTRATION INFORMATION ON DOMAIN NAMES CAN BE  
12 MISLEADING, ISN'T THAT RIGHT?

13 A. IT IS POSSIBLE -- YES.

14 Q. FOR THE PURPOSES OF THIS REPORT THAT YOU HAVE  
15 DISCUSSED THIS MORNING, YOU DID NOT PERFORM ANY RESEARCH  
16 INTO THE ACTUAL PHYSICAL GEOGRAPHICAL LOCATION OF THE  
17 OWNERS OF THE WEBSITES THAT YOU DISCUSSED, HAVE YOU?

18 A. I'M NOT SURE -- REPEAT THAT QUESTION, I'M NOT  
19 SURE I UNDERSTAND THE QUESTION.

20 Q. YOU STUDIED REGISTRATION DATA ON DOMAIN NAMES ON  
21 THE WHOIS UTILITY. IS THAT A FAIR STATEMENT OF WHAT YOU  
22 DID?

23 A. I USED THE REGISTRATION DATA CONTAINED WITHIN  
24 THE WHOIS RECORD, WHICH IS THE REGISTRATION DATA FOR  
25 THE -- FOR THE OWNER OF THE WEBSITE IN QUESTION.

1 Q. AND YOU DIDN'T -- APART FROM THE USE OF THE  
2 WHOIS UTILITY, YOU DID NOT CONSULT ANY OTHER DATA  
3 SOURCES TO CHECK THE ACTUAL PHYSICAL LOCATION OF THE  
4 OWNERS OF THE WEBSITES THAT YOU STUDIED, RIGHT?

5 A. I DID NOT, BUT THERE IS NO SUCH OTHER SOURCE  
6 THAT I COULD CONSULT.

7 Q. YOU HAVE LOOKED INTO OTHER DATA SOURCES FOR AN  
8 ARTICLE THAT YOU PUBLISHED IN 2001, ISN'T THAT RIGHT?

9 A. ARE YOU REFERRING TO THE OLD HIERARCHIES OR NEW  
10 NETWORKS OF CENTRALITY ARTICLE?

11 Q. I AM.

12 A. YES, I DID LOOK AT THAT.

13 Q. MR. BYRDSONG, COULD YOU CALL UP EXHIBIT D-392.

14 PROFESSOR ZOOK, IS THIS THE ARTICLE THAT  
15 WE JUST DISCUSSED?

16 A. YES, THIS IS THE ARTICLE.

17 Q. IF I COULD REFER YOUR ATTENTION TO PAGE 1682 OF  
18 THE ARTICLE WHICH TRANSLATES INTO PAGE 4 OF THE EXHIBIT.

19 NOW THIS ARTICLE REFERS TO RESEARCH THAT  
20 YOU CONDUCTED CONCERNING HIGH-TECHNOLOGY FIRMS WITHIN  
21 THE UNITED STATES, ISN'T THAT RIGHT?

22 A. THIS -- THIS OUTLINES THE DATABASE I USED FOR MY  
23 CORRELATION BETWEEN THE ADDRESS OF A FIRM AND THE  
24 ADDRESS CONTAINED WITHIN WHOIS INFORMATION FOR THE  
25 REGISTRATION OF DOMAIN NAME, AND THE DATABASE I USED FOR

1 THIS COMPARISON WAS THE DATABASE OF HIGH-TECHNOLOGY  
2 FIRMS IN THE UNITED STATES.

3 Q. YOU FOUND AN 84 PERCENT CORRELATION FOR THAT  
4 DATA SET AT THE LEVEL OF THE FIRST THREE DIGITS OF THE  
5 ZIP CODE, IS THAT CORRECT?

6 A. AT THE 3 DIGIT ZIP CODE LEVEL.

7 Q. IN YOUR VIEW YOU CONSIDERED THAT TO BE A STRONG  
8 CORRELATION, IS THAT RIGHT?

9 A. YES, THAT IS A VERY STRONG CORRELATION.

10 Q. NOW, YOU HAVE NOT CONDUCTED SIMILAR RESEARCH AS  
11 TO WHAT THE STRENGTH OF THIS CORRELATION WOULD BE WITH  
12 RESPECT TO THE INTERNET ADULT INDUSTRY, HAVE YOU?

13 A. I HAVE NOT DONE THAT -- NOT LOOKED AT THAT  
14 SPECIFIC QUESTION.

15 Q. THERE ARE FACTORS THAT ARE UNIQUE TO THE  
16 INTERNET ADULT INDUSTRY THAT COULD AFFECT THE STRENGTH  
17 OF THIS CORRELATION, AREN'T THERE?

18 A. SAY THAT AGAIN.

19 Q. THERE ARE FACTORS THAT ARE UNIQUE TO THE  
20 INTERNET ADULT INDUSTRY THAT COULD AFFECT THE STRENGTH  
21 OF THIS CORRELATION, AREN'T THERE?

22 THE COURT: EXCUSE ME, WHAT DO YOU MEAN  
23 BY THIS CORRELATION?

24 MR. MCELVAIN: I'M SORRY, YOUR HONOR.

25 BY MR. MCELVAIN:

1 Q. THE CORRELATION THAT YOU DESCRIBED WITH REGARD  
2 TO HIGH-TECHNOLOGY FIRMS WAS A CORRELATION BETWEEN THE  
3 ADDRESS REPORTED ON REGISTRATION DATA FROM THE WHOIS  
4 UTILITY ON THE ONE HAND AND DATA REPORTED ON ANOTHER  
5 DATABASE USED WITHIN THE HIGH-TECHNOLOGY INDUSTRY. IS  
6 THAT A CORRECT STATEMENT OF THE CORRELATION THAT YOU  
7 WERE DESCRIBING IN THE 2001 ARTICLE?

8 A. I BELIEVE IT IS.

9 Q. OKAY. THERE ARE FACTORS UNIQUE TO THE ADULT  
10 INDUSTRY -- INTERNET ADULT INDUSTRY THAT COULD AFFECT  
11 HOW STRONG THIS CORRELATION WOULD BE WITH RESPECT TO THE  
12 INTERNET ADULT INDUSTRY?

13 A. I BELIEVE THERE ARE FACTORS, I DON'T KNOW THAT  
14 WOULD AFFECT THIS CORRELATION TO THE EXTENT -- I DON'T  
15 KNOW THE EXTENT TO WHICH THEY ARE UNIQUE.

16 Q. FIRMS IN THE ADULT INDUSTRY ARE OFTEN NOT WELL  
17 ESTABLISHED FIRMS, ISN'T THAT RIGHT?

18 A. THAT'S CORRECT. THERE ARE -- THERE ARE FIRMS  
19 WITHIN THE INTERNET ADULT INDUSTRY THAT ARE NOT WELL  
20 ESTABLISHED.

21 Q. THERE ARE REASONS WHY AN ADULT WEBSITE OPERATOR  
22 MAY WISH TO DISGUISE THEIR LOCATION, AREN'T THERE?

23 A. I BELIEVE THAT PRIVACY CONCERNS COULD BE A  
24 FACTOR IN A DECISION LIKE THAT.

25 Q. AND THERE ARE MORE REASONS WHY THE ADULT WEBSITE

1 OPERATOR WOULD WISH TO DISGUISE THEIR LOCATION THAN  
2 THERE ARE REASONS THAT THE -- THERE ARE MORE REASONS WHY  
3 AN ADULT WEBSITE OPERATOR COULD WISH TO DISGUISE THEIR  
4 LOCATION THAN THERE ARE REASONS WHY THE OPERATOR OF A  
5 HIGH-TECHNOLOGY FIRM WOULD WISH TO DISGUISE THEIR  
6 LOCATION, AREN'T THERE?

7 A. I THINK THAT WOULD BE A FAIR ASSESSMENT,  
8 PARTICULARLY AT THE STREET LOCATION, THE ACTUAL ADDRESS  
9 LOCATION OF THESE ACTIVITIES. I THINK IT'S A MUCH -- A  
10 MUCH LESS CLEAR ISSUE AT THE LEVEL OF A COUNTRY LEVEL,  
11 WHETHER OR NOT A WEBSITE OPERATOR WOULD HAVE THE SAME  
12 INCENTIVE TO DISGUISE THE COUNTRY LOCATION.

13 Q. IF THERE WERE A LAW IN PLACE THAT MADE IT  
14 ILLEGAL FOR THE OPERATOR OF AN ADULT INTERNET WEBSITE  
15 OPERATING WITHIN THE UNITED STATES TO PUBLISH HARMFUL TO  
16 MINORS MATERIAL THAT IS NOT PLACED BEHIND SOME SORT OF  
17 AGE VERIFICATION SCREEN AND THE OPERATOR OF THAT WEBSITE  
18 INTENDED TO VIOLATE THAT LAW, THAT OPERATOR WOULD HAVE  
19 AN INCENTIVE TO PLACE REGISTRATION DATA THAT DISGUISES  
20 THEIR LOCATION AT THE LEVEL OF THE COUNTRY LEVEL,  
21 WOULDN'T THERE?

22 MS. MARSHALL: OBJECTION, YOUR HONOR.  
23 THIS IS SPECULATION, BEYOND THE SCOPE OF THE EXPERT'S  
24 EXPERTISE AND AN EXTREMELY VAGUE AND COMPOUND QUESTION.

25 THE COURT: RESPONSE.

1                   MR. MCELVAIN: IT'S NOT BEYOND THE SCOPE  
2 OF THE DIRECT, YOUR HONOR. ON THE DIRECT HE SAID THAT  
3 THERE'S A STRONG CORRELATION BETWEEN THE USE OF  
4 REGISTRATION DATA AND THE ACTUAL LOCATION OF WEBSITES.  
5 I NEED TO EXPLORE WHETHER THAT CORRELATION ACTUALLY  
6 EXISTS WITH RESPECT TO INTERNET -- THE INTERNET ADULT  
7 INDUSTRY IN PARTICULAR.

8                   MS. MARSHALL: YOUR HONOR, THAT WAS NOT  
9 THE QUESTION THAT WAS ASKED.

10                  THE COURT: THAT'S RIGHT. YOU HAVE DONE  
11 THAT SO FAR. THIS QUESTION IS DIFFERENT.

12                  MR. MCELVAIN: I WILL MOVE ON, YOUR  
13 HONOR. THANK YOU.

14 BY MR. MCELVAIN:

15 Q.           NOW, THE DIFFERENCES BETWEEN THE INTERNET ADULT  
16 INDUSTRY AND BETWEEN -- AND BETWEEN HIGH-TECHNOLOGY  
17 FIRMS WOULD LEAD TO A LOWER CORRELATION BETWEEN THE  
18 REGISTRATION DATA AND THE ACTUAL LOCATIONS OF THE  
19 OPERATORS OF AN INTERNET ADULT WEBSITE, ISN'T THAT  
20 RIGHT?

21 A.           WELL, I BELIEVE -- I BELIEVE WE HAVE DISCUSSED  
22 THIS ALREADY. I HAVE NOT LOOKED SPECIFICALLY AT THAT  
23 QUESTION BUT SOME OF THE FACTORS WE HAVE DISCUSSED COULD  
24 LEAD TO A LOWER CORRELATION IN THAT CASE.

25 Q.           AND YOU CANNOT ESTIMATE HOW MUCH LOWER THAT

1 CORRELATION WOULD BE, CAN YOU?

2 A. I HAVE NOT SPECIFICALLY LOOKED AT THAT QUESTION,  
3 SO I CAN'T PROVIDE YOU A CORRELATION FIGURE.

4 Q. I WOULD LIKE TO TURN YOUR ATTENTION NOW TO THE  
5 DATA SETS THAT YOU USED. AND LOGICALLY MOVING BACK IN  
6 TIME, BEFORE WE WERE TALKING ABOUT YOUR USE OF  
7 REGISTRATION DATA, BUT NOW I WOULD LIKE TO ASK YOU ABOUT  
8 THE DATA SETS WHICH YOU ULTIMATELY STUDIED THE  
9 REGISTRATION DATA FOR.

10 AND YOU USED LISTS OF URLS THAT WERE  
11 FOUND ON WEBSITES THAT AGGREGATE ADULT LINKS. IS THAT A  
12 FAIR STATEMENT OF WHAT YOU DID?

13 A. IN CONSTRUCTING THE DATABASE, YES, I THINK THAT  
14 IS A FAIR ASSESSMENT.

15 Q. YOU DID NOT DO ANY ANALYSIS TO DETERMINE WHETHER  
16 THOSE LISTS THAT YOU USED ARE REPRESENTATIVE OF THE  
17 LARGER INTERNET, DID YOU?

18 A. I DID NOT DO SO -- OF THE LARGER INTERNET OR THE  
19 LARGER INTERNET ADULT INDUSTRY?

20 Q. LET'S START WITH THE LARGER INTERNET.

21 A. OKAY. SO COULD YOU JUST REPHRASE YOUR QUESTION  
22 SO I UNDERSTAND WHAT I'M ANSWERING?

23 Q. YOU DID NOT STUDY WHETHER THE LISTS THAT YOU  
24 USED ARE REPRESENTATIVE OF THE LARGER INTERNET, DID YOU?

25 A. I DID NOT SPECIFICALLY STUDY THAT QUESTION.

1 Q. AND YOU DID NOT STUDY WHETHER THE LISTS THAT YOU  
2 USED ARE REPRESENTATIVE OF ADULT WEBSITES ON THE  
3 INTERNET, DID YOU?

4 A. WELL, I DID NOT -- I WAS NOT ABLE TO MAKE THAT  
5 COMPARISON BECAUSE THERE WAS NO MASTER LIST OF ADULT  
6 WEBSITES THAT I COULD COMPARE THE URLS OR THE WEBSITES I  
7 WAS GATHERING TO, SO I DID NOT MAKE THAT COMPARISON.

8 Q. AND THE DATABASE THAT YOU COMPILED IS NOT A  
9 RANDOM SAMPLE OF THE LARGER INTERNET, ISN'T THAT RIGHT?

10 A. THE DATABASE -- WELL, IT'S NOT A RANDOM SAMPLE  
11 OF THE LARGER INTERNET BECAUSE I WAS SPECIFICALLY  
12 LOOKING FOR INTERNET ADULT WEBSITES.

13 Q. IT'S POSSIBLE THAT THE POPULATION OF ADULT  
14 WEBSITES THAT WERE LISTED IN YOUR DATABASE AND THE  
15 POPULATION OF ADULT WEBSITES THAT WERE NOT LISTED ARE  
16 DIFFERENT, ISN'T THAT RIGHT?

17 A. IT IS CERTAINLY POSSIBLE.

18 THE COURT: IF YOU ARE TRYING TO HELP  
19 ME -- THE QUESTION WAS IS IT POSSIBLE THAT THE  
20 POPULATION OF ADULT WEBSITES THAT WERE LISTED IN YOUR  
21 DATABASE IS DIFFERENT FROM SOMETHING, DIFFERENT FROM THE  
22 INTERNET AS A WHOLE, I ASSUME.

23 MR. MCELVAIN: PERHAPS ANOTHER QUESTION  
24 WOULD HELP TO CLARIFY.

25 THE COURT: LET ME ASSIST YOU. I DON'T

1 UNDERSTAND THE WORD DIFFERENT. THERE ARE SO MANY  
2 RESPECTS OF TECHNIQUE AND TECHNOLOGY THAT I HAVE NO  
3 KNOWLEDGE OF. DIFFERENT IN WHAT RESPECT? I DON'T  
4 UNDERSTAND.

5 BY MR. MCELVAIN:

6 Q. IT'S POSSIBLE THAT THERE ARE DIFFERENCES IN THE  
7 GEOGRAPHICAL DISTRIBUTION BETWEEN THE ADULT WEBSITES  
8 THAT YOU LISTED IN YOUR DATABASE AND THE POPULATION OF  
9 ADULT WEBSITES THAT WERE NOT IN YOUR DATABASE, ISN'T  
10 THERE?

11 A. IT'S POSSIBLE FOR THE SAMPLE OF WEBSITES LISTED  
12 IN MY DATABASE COULD HAVE -- COULD BE DIFFERENT THAN THE  
13 OVERALL POPULATION OF THESE TYPES OF WEBSITES, BUT THAT  
14 IS TRUE FOR ANY KIND OF SAMPLING TECHNIQUE, INCLUDING  
15 RANDOM SAMPLING.

16 Q. YOU CAN'T QUANTIFY THE CONFIDENCE INTERVAL YOU  
17 WOULD HAVE IN THE ESTIMATES THAT YOU DREW FROM THE  
18 PARTICULAR POPULATION THAT YOU STUDIED, CAN YOU?

19 A. RESTATE THAT QUESTION AGAIN.

20 Q. YOU DERIVED ESTIMATES FROM THE PARTICULAR  
21 DATABASE THAT YOU STUDIED?

22 A. I DERIVED FIGURES OF THE DISTRIBUTION OF -- THE  
23 GEOGRAPHIC DISTRIBUTION OF DOMAINS I DREW FROM MY -- THE  
24 INDEXES I USED.

25 Q. YOU CAN'T QUANTIFY THE CONFIDENCE INTERVAL FOR

1 ANY OF THOSE STATISTICS THAT YOU TESTIFIED TO THIS  
2 MORNING, CAN YOU?

3 A. IT'S POSSIBLE TO QUANTIFY A CONFIDENCE INTERVAL  
4 FOR THE DATA I PUT INTO THE REPORT.

5 Q. PROFESSOR ZOOK, DO YOU RECALL BEING DEPOSED ON  
6 JULY 24TH OF THIS YEAR?

7 A. YES, I DO.

8 Q. YOU WERE UNDER OATH AT THE TIME?

9 A. YES, I WAS.

10 Q. AND YOU WERE TELLING THE TRUTH AT THE TIME?

11 A. YES, I WAS.

12 Q. I ASKED YOU SOME QUESTIONS ON THAT DAY?

13 A. YOU DID ASK ME QUESTIONS.

14 Q. IF I COULD TURN YOUR ATTENTION TO PAGE 108 OF  
15 THE TRANSCRIPT OF THAT DEPOSITION, PARTICULARLY TO LINE  
16 24 -- I'M SORRY, TO PAGE 108, LINE 18. AND THAT READS  
17 -- DO YOU SEE IT? I'M SORRY?

18 A. I'M NOT SEEING ANYTHING.

19 THE COURT: IT'S NOT ON THE SCREEN. HERE  
20 IT COMES. WHAT LINE PLEASE?

21 MR. MCELVAIN: PAGE 108, LINE 18.

22 QUESTION: WOULD YOU HAVE MORE CONFIDENCE  
23 IN YOUR CONCLUSIONS IF YOU HAD BASED YOUR CONCLUSIONS ON  
24 A RANDOM SAMPLE?

25 ANSWER: THEORETICALLY YES, BUT SINCE

1       SUCH A RANDOM SAMPLE IS NOT POSSIBLE TO DO PRACTICALLY,  
2       IT'S NOT A MEANINGFUL QUESTION.

3                   MS. MARSHALL: YOUR HONOR, OBJECTION. I  
4       DON'T SEE ANY RELATION BETWEEN THIS DEPOSITION TESTIMONY  
5       AND THE QUESTION THAT WAS BEFORE THE WITNESS.

6                   MR. MCELVAIN: I HAVE NOT FINISHED  
7       READING, YOUR HONOR.

8                   THE COURT: LET ME ASK FOR SOME HELP FROM  
9       THE DEFENSE TECHNICAL PERSON. WHAT IS ON THE SCREEN IS  
10      EXTRAORDINARILY SMALL. I CAN'T READ IT.

11                   THERE WE GO. THAT IS THE USUAL STYLE,  
12      EXCELLENT. LET ME READ THIS, READ IT TO MYSELF.

13                   MR. MCELVAIN: I WILL CONTINUE TO READ,  
14      YOUR HONOR.

15                   THE COURT: I FIND IT DIFFICULT TO FIND  
16      THE ALLEGED CONTRADICTION IF THAT IS WHAT --

17                   MR. MCELVAIN: IF I CAN COMPLETE. THIS  
18      IS A SETUP TO THE NEXT QUESTION WHICH IS THE QUESTION  
19      THAT I WOULD LIKE TO PRESENT TO THE WITNESS. TO MAKE  
20      LOGICAL SENSE OF NEXT QUESTION I NEED TO START WITH THE  
21      QUESTION BEFORE.

22                   THE COURT: SIMPLY IT IS READING IT INTO  
23      THE RECORD. WOULD YOU PLEASE READ TO YOURSELF LINE 18  
24      WITHOUT READING IT AND THEN ASK HIM THE NEXT QUESTION.  
25      IF THAT SUITS YOU, IF IT DOES NOT, DO IT YOUR WAY.

1 MR. MCELVAIN: WELL, TURNING TO LINE 24  
2 OF PAGE 108.

3 QUESTION: IS IT POSSIBLE FOR YOU TO  
4 QUANTIFY THE LIKELY ERROR THAT RESULTED BY YOUR NOT  
5 USING A RANDOM SAMPLE?

6 ANSWER: AGAIN, THAT PRESUPPOSES HAVING  
7 INFORMATION ABOUT THE TOTAL POPULATION.

8 DID THAT FAIRLY RECITE YOUR TESTIMONY  
9 THERE?

10 THE WITNESS: I MEAN, IT'S WHAT IS IN THE  
11 DEPOSITION. I WOULD STAND BY THAT, THOUGH I WOULD BE  
12 HAPPY TO CLARIFY MY ANSWER IF THERE IS CONFUSION ON IT.  
13 BY MR. MCELVAIN:

14 Q. DR. ZOOK, YOU BELIEVE THAT YOUR DATABASE IS A  
15 CLUSTERED SAMPLE. IS THAT A FAIR STATEMENT OF YOUR  
16 OPINION?

17 A. THAT IS CORRECT.

18 Q. AND FOR THAT REASON, YOU BELIEVE THAT YOUR DATA  
19 SET IS REPRESENTATIVE OF THE LARGER INTERNET, IS THAT  
20 RIGHT?

21 A. IT IS -- YES, I GUESS THAT WOULD BE A FAIR  
22 STATEMENT.

23 Q. YOUR DATABASE IS NOT A CLUSTERED RANDOM SAMPLE,  
24 IS IT?

25 A. IT IS NOT A RANDOM CLUSTER SAMPLE BECAUSE AGAIN,

1 IT'S NOT SOMETHING THAT IS POSSIBLE TO DO.

2 Q. AND YOU'VE DESCRIBED YOUR DATABASE AS A  
3 CLUSTERED NONRANDOM SAMPLE?

4 A. I BELIEVE I HAVE REFERRED TO IT AS A CLUSTER  
5 SAMPLE. YOU MIGHT HAVE CHARACTERIZED IT AS A CLUSTERED  
6 NONRANDOM SAMPLE. I MIGHT AGREE WITH THAT. I DON'T  
7 REMEMBER. I USE THE TERM CLUSTER SAMPLE.

8 Q. OKAY.

9 IT'S A CLUSTERED SAMPLE, AND IT IS NOT  
10 RANDOM. THOSE TWO STATEMENTS ARE CORRECT?

11 A. YES.

12 Q. IS IT YOUR VIEW THAT RELIABLE INFERENCES CAN BE  
13 DRAWN FROM A CLUSTERED SAMPLE THAT IS NOT RANDOM TO THE  
14 POPULATION FROM WHICH THAT SAMPLE WAS DRAWN? IS THAT A  
15 FAIR STATEMENT OF YOUR VIEW?

16 A. IN THE CONTEXT OF THIS RESEARCH QUESTION WHERE  
17 WE CAN'T HAVE A RANDOM SAMPLE, WE CAN'T HAVE A RANDOMLY  
18 SELECT CLUSTER SINCE WE DON'T HAVE A LIST OF THE  
19 WEBSITES OR A LIST OF THE CLUSTERS TO DRAW FROM, THE  
20 DECISION I MADE WAS TO USE THIS CLUSTERING SAMPLING AND  
21 FROM THAT DRAW INFERENCES TO THE LARGER INTERNET.

22 Q. AND PROFESSOR ZOOK, YOU DON'T HAVE A PH.D. IN  
23 THE FIELD OF STATISTICS, DO YOU?

24 A. NO, I DO NOT.

25 Q. YOU DON'T HAVE A GRADUATE DEGREE IN THE FIELD OF

1 STATISTICS?

2 A. I DO NOT, BUT AS PART OF MY GRADUATE PROGRAM I  
3 TOOK SEVERAL STATISTICS COURSES.

4 Q. NOW, THE GOAL OF YOUR STUDY IS TO STUDY THE  
5 DISTRIBUTION OF ADULT WEBSITES?

6 A. THE DISTRIBUTION -- THE DISTRIBUTION OF THE  
7 OWNERSHIP OF ADULT WEBSITES.

8 Q. AND FOR THE PURPOSES OF YOUR STUDY, YOU HAVE  
9 DEFINED AN ADULT WEBSITE TO BE A WEBSITE THAT WOULD LIST  
10 ITSELF ON ONE OF THE AGGREGATOR SITES THAT YOU DISCUSSED  
11 THIS MORNING. IS THAT A FAIR STATEMENT OF YOUR VIEW?

12 A. THAT WOULD LIST ITSELF OR BE LISTED BY ONE OF  
13 THESE AGGREGATORS.

14 Q. TO BE CALLED AN ADULT WEBSITE FOR THE PURPOSES  
15 OF YOUR STUDY, IT WAS NECESSARY AND SUFFICIENT THAT THE  
16 SITE BE LISTED ON ONE OF THESE AGGREGATOR SITES, ISN'T  
17 THAT RIGHT?

18 A. TO GET INTO MY -- TO GET INTO THE DATABASE I  
19 USED FOR THIS EXPERT RESEARCH, IT WAS NECESSARY AND  
20 SUFFICIENT TO BE ON ONE OF THESE INDEXES.

21 Q. YOU DISCUSSED THIS MORNING, PROFESSOR ZOOK --  
22 YOU DISCUSSED WHY YOU CHOSE PARTICULAR INDICES WITH MISS  
23 MARSHALL. YOU CHOSE THOSE INDICES BECAUSE YOU WERE  
24 CONSIDERING THE PERSPECTIVE OF AN AMERICAN ENGLISH  
25 LANGUAGE WEB USER, ISN'T THAT RIGHT?

1 A. THE KEYWORD SEARCH THAT I DID TO GET THESE TOP  
2 RANKED INDEXES WAS WHAT AN ENGLISH USING AMERICAN -- AN  
3 ENGLISH USING SEARCHER WOULD BE DOING.

4 Q. AND IN PARTICULAR AN AMERICAN WEB USER, RIGHT?

5 A. IT IS -- YEAH, IT'S PARTICULARLY -- IT WOULD BE  
6 PARTICULARLY APPROPRIATE FOR AN AMERICAN WEB USER.

7 Q. THE GOAL OF YOUR STUDY, PROFESSOR ZOOK, WAS TO  
8 STUDY THE DISTRIBUTION OF DOMAIN NAMES RATHER THAN  
9 INDIVIDUAL WEB PAGES, ISN'T THAT RIGHT?

10 A. IT WAS -- AGAIN, THE FOCUS WAS THE OWNERSHIP OF  
11 THESE WEBSITES AND BECAUSE THE POINT OF OWNERSHIP IS  
12 ASSOCIATED WITH THE DOMAIN NAME, THAT IS WHAT I WAS  
13 STUDYING. I WAS NOT LOOKING AT WEB PAGES.

14 Q. SO THE REASON THAT YOU STUDIED DOMAIN NAME NAMES  
15 WAS TO STUDY THE UNIT AT WHICH YOU COULD ESTABLISH  
16 OWNERSHIP OVER A PARTICULAR WEBSITE OR DOMAIN NAME?

17 A. I MEAN, THE WEBSITE OR THE DOMAIN NAME OWNER  
18 DETERMINES WHAT WEB PAGES ARE AVAILABLE AT A PARTICULAR  
19 DOMAIN NAME. AND SO IT WAS -- THE FACT THAT THERE WERE  
20 MULTIPLE WEB PAGES AT A PARTICULAR DOMAIN NAME DID NOT  
21 ALTER THE FACT THAT THE SAME PERSON OR THE SAME ENTITY  
22 WAS -- OWNED A PARTICULAR DOMAIN NAME.

23 Q. FOR THE PURPOSES OF YOUR STUDY YOU STARTED WITH  
24 LISTS OF URLS FROM THE AGGREGATOR SITES THAT YOU  
25 DISCUSSED THIS MORNING, IS THAT RIGHT?

1 A. YES. I WAS GATHERING THESE URLS FROM THE  
2 AGGREGATOR WEBSITES.

3 Q. I BELIEVE THIS MORNING YOU DISCUSSED AN EXAMPLE  
4 OF A URL BEING WWW.NYTIMES.COM/FOODSTORY.HTML. THAT IS  
5 A FAIR HYPOTHETICAL EXAMPLE OF WHAT AN URL IS?

6 A. THAT IS AN EXAMPLE, BUT IN ADDITION TO THAT, THE  
7 URL WOULD INCLUDE HTTP:// AT THE BEGINNING.

8 Q. FAIR ENOUGH. FOR THE PURPOSES OF YOUR STUDY,  
9 YOU USED SOFTWARE TO SHORTEN THESE URLS, RIGHT?

10 A. FOR SOME OF THE INDEXES I GATHERED I WROTE  
11 SCRIPTS THAT SHORTENED THE URL TO GET IT DOWN TO A  
12 SPECIFIC DOMAIN NAME. IN THE EXAMPLE THAT WE WERE JUST  
13 DISCUSSING WOULD HAVE BEEN NYTIMES.COM.

14 Q. AND THE REASON YOU DID THAT WAS TO GET IT TO THE  
15 LEVEL AT WHICH YOU COULD STUDY WHO OWNED THAT PARTICULAR  
16 PIECE OF THE WEB, IF YOU WILL?

17 A. IT WAS TO GET TO IT A SPECIFIC POINT WHERE I  
18 COULD ESTABLISH OWNERSHIP.

19 Q. IN EACH INSTANCE WHAT YOU TRUNCATED DOWN TO  
20 WOULD BE SOME LINE OF TEXT, DOT, AND THEN SOMETHING  
21 FOLLOWING THE TEXT, SO NYTIMES.COM WOULD BE AN EXAMPLE  
22 OF WHAT WOULD HAVE RESULTED FROM THIS SHORTENING  
23 PROCESS?

24 A. FOR THE SOFTWARE PROGRAM THAT I WAS USING -- IN  
25 THE CASES WHERE I WAS USING A SOFTWARE PROGRAM TO GATHER

1 THE DATA, THE TRUNCATION WOULD BRING IT DOWN TO  
2 SOMETHING LIKE NYTIMES.COM.

3 Q. AND YOU DID NOT RETAIN THE ORIGINAL LISTS OF THE  
4 URLS THAT YOU STARTED WITH, DID YOU?

5 A. NO. THEY WERE JUST A TEMPORARY STEP TO MY  
6 BUILDING THE DATABASE FOR MY RESEARCH PROJECT.

7 Q. IN THE DATABASE THAT RESULTED FROM THIS PROCESS,  
8 SOME OF THE ENTRIES ENDED UP BEING TOO SHORT TO GIVE YOU  
9 ANY RELIABLE INFORMATION AS TO THE OWNERSHIP OF THAT  
10 PARTICULAR DOMAIN NAME, ISN'T THAT RIGHT?

11 A. YES. THERE WERE SOME CASES WHERE THE SHORTENING  
12 REDUCED IT TO A CASE THAT WAS NOT ACTUALLY A DOMAIN NAME  
13 THAT CONTAINED REGISTRATION INFORMATION.

14 Q. AND A FURTHER EXAMPLE OF ONE OF THE ITEMS THAT  
15 RESULTED FROM THE SHORTENING PROCESS IS AOL.COM.  
16 AOL.COM APPEARED IN YOUR DATABASE, ISN'T THAT RIGHT?

17 A. THAT IS CORRECT. I BELIEVE IF I REMEMBER  
18 CORRECTLY, I TESTIFIED TO THAT THIS MORNING.

19 Q. AOL.COM IS NOT A PORNOGRAPHY WEBSITE?

20 A. THE GENERAL PURPOSE OF AOL.COM IS NOT TO BE AN  
21 ADULT WEBSITE, BUT AGAIN, AS I STATED THIS MORNING, THE  
22 REASON THAT AOL.COM ENDED UP IN MY DATABASE IS BECAUSE  
23 THERE WAS A LINK IN ONE OF THESE AGGREGATORS THAT HAD A  
24 WEB PAGE OFF OF THE AOL.COM DOMAIN THAT WAS AT ONE OF  
25 THESE INDEXES OF ADULT CONTENT.

1 Q. BUT THERE IS NO WAY TO VERIFY WHETHER -- THERE  
2 IS NO WAY TO VERIFY FROM THE DATA THAT YOU HAVE RETAINED  
3 WHETHER THERE WAS THAT ACTUAL LINK TO BEGIN WITH, IS  
4 THERE?

5 A. I MEAN, YOU CAN VERIFY IT. I MEAN, YOU CAN  
6 VERIFY IT BECAUSE IT WOULDN'T HAVE SHOWN UP IN THE  
7 DATABASE IF THERE WAS NOT A LINK THERE ON ONE OF THESE  
8 INDEXES THAT HAD AOL.COM AS THE DOMAIN NAME.

9 Q. THE OWNER OF AOL.COM IS AOL INCORPORATED, ISN'T  
10 THAT RIGHT?

11 A. I DON'T KNOW THE FORMAL NAME, BUT FOR SAKE OF  
12 ARGUMENT I WILL ACCEPT THAT.

13 Q. THE LOCATION OF THEIR CORPORATE HEADQUARTERS IS  
14 IN VIRGINIA, CORRECT?

15 A. I BELIEVE THAT IS THE CASE.

16 Q. DO YOU KNOW WHETHER THE LOCATION OF THE PERSON  
17 WHO PLACED THIS LINK THAT YOU HAVE DESCRIBED WAS ALSO IN  
18 VIRGINIA?

19 A. I DO NOT KNOW THAT.

20 Q. IS THERE ANY WAY TO VERIFY THAT?

21 A. THERE IS -- FOR THE CASE OF THIS, AGAIN -- FOR  
22 THE CASE OF THIS ONE DOMAIN, AOL.COM, IT'S NOT POSSIBLE  
23 TO VERIFY WHERE THE CREATOR OF THE CONTENT THAT WAS IN  
24 THAT URL TAKEN FROM THE INDEX WAS LOCATED.

25 Q. ABOUT.COM, A-B-O-U-T.COM, ALSO APPEARS IN YOUR

1 DATABASE, ISN'T THAT RIGHT?

2 A. THAT IS CORRECT.

3 Q. AND BELLSOUTH.NET, B-E-L-L-S-O-U-T-H.NET ALSO  
4 APPEARS IN YOUR DATABASE, ISN'T THAT RIGHT?

5 A. BEFORE I GO -- I DON'T KNOW THAT LIST. I  
6 BELIEVE I HAVE SOMETHING THAT LISTS THESE THINGS. IF  
7 YOU GIVE ME THE TIME TO TAKE A LOOK AND JUST -- I DON'T  
8 KNOW TO CONFIRM SOMETHING WITHOUT ACTUALLY HAVING TO  
9 LOOK AT IT.

10 Q. SURE. SURE. LET'S GO TO THAT EXHIBIT. THAT IS  
11 EXHIBIT D 394. UNFORTUNATELY IT IS A LARGE DOCUMENT. I  
12 CAN DIRECT YOUR ATTENTION TO PAGE 7. THERE IS A COLUMN  
13 OF NUMBERS. I'M REFERRING TO THE COLUMN THAT READS  
14 11030. DO YOU SEE ABOUT.COM THERE?

15 A. I DO SEE THAT THERE.

16 Q. AND THAT MEANS THAT THIS WAS LISTED IN YOUR  
17 DATABASE AS A PORNOGRAPHIC WEBSITE, ISN'T THAT RIGHT?

18 A. WELL, ASSUMING FOR A MOMENT THAT THIS IS AN  
19 ACCURATE REFLECTION OF THE -- I DON'T NORMALLY WORK WITH  
20 THE DATABASE IN A PAPER FORM, I USE IT ELECTRONICALLY.  
21 IF THIS IS AN ACCURATE PRINTOUT OF MY DATABASE, THAT  
22 WOULD -- I WOULD AGREE WITH THAT STATEMENT.

23 THE COURT: EXCUSE ME FOR INTERRUPTING.

24 I DON'T THINK IT'S APPROPRIATE TO USE THE WORD

25 "PORNOGRAPHIC" FOR A WEBSITE. THE WITNESS USED ADULT

1 ENTERTAINMENT, AND PORNOGRAPHIC IS A WORD OF ART IN THE  
2 LAW, AND SOMEONE MIGHT BE CONFUSED BY READING THAT.

3 MR. MCELVAIN: FAIR ENOUGH, YOUR HONOR.

4 BY MR. MCELVAIN:

5 Q. ABOUT.COM IS NOT AN ADULT WEBSITE, IS IT?

6 A. TO MY UNDERSTANDING, NOT.

7 Q. TO BE CLEAR, ARE YOU DISPUTING WHETHER THIS IS  
8 AN ACCURATE COPY OF YOUR DATABASE?

9 A. OH, NO. I'M NOT DISPUTING THAT, BUT, AGAIN, I'M  
10 SAYING THAT THIS IS NOT HOW I NORMALLY INTERACT WITH IT  
11 SO I DIDN'T PRINT IT OUT. SO I WILL ASSUME FOR THE  
12 CASE -- FOR THIS TESTIMONY THAT IT IS.

13 Q. YOU SAW THIS SAME DOCUMENT IN YOUR DEPOSITION,  
14 DIDN'T YOU?

15 A. I MAY -- BELIEVE SO. IT'S A THICK DOCUMENT SO  
16 YEAH, I DON'T MEAN TO BE OVERLY PEDANTIC.

17 Q. TURNING YOUR ATTENTION TO PAGE 34 OF THE  
18 DOCUMENT ABOUT A THIRD OF THE WAY DOWN THE LINE READS  
19 12278. DO YOU SEE BELLSOUTH.NET?

20 A. YES, I DO.

21 Q. GOING TO PAGE 56, ABOUT TWO-THIRDS OF THE WAY  
22 DOWN AT LINE 13309, DO YOU SEE CO.HU?

23 A. YES, I DO.

24 Q. ON PAGE 57 --

25 THE COURT: EXCUSE ME FOR INTERRUPTING.

1 I CAN'T FOLLOW. WHAT'S THE INDEX NUMBER THAT YOU READ?

2 MR. MCELVAIN: THERE IS A COLUMN AT THE  
3 BEGINNING.

4 THE COURT: I SEE IT.

5 MR. MCELVAIN: I --

6 THE COURT: I'M ON PAGE 36.

7 MR. MCELVAIN: PAGE 56, YOUR HONOR. I  
8 HAVE SPOKEN UNCLEARLY.

9 THE COURT: I'M SORRY.

10 BY MR. MCELVAIN:

11 Q. TURNING TO PAGE 57, DO YOU SEE COM.MX?

12 A. YES, I DO.

13 Q. AND COM.PL?

14 A. YES, I DO.

15 Q. COM.UA?

16 A. YES, I DO.

17 Q. AND TURNING TO PAGE 74?

18 A. YES. SORRY, I'M THERE.

19 Q. DO YOU SEE EU.COM AT LINE 14132? DO YOU SEE  
20 EU.COM?

21 A. I DO.

22 Q. AT PAGE 145, LINE 17381, DO YOU SEE MTV3.FI?

23 A. YES, I DO.

24 Q. AND JUST ABOVE THAT, DO YOU SEE MSN.COM?

25 A. YES, I DO.

1 Q. AT PAGE 181. ABOUT THREE QUARTERS OF THE WAY  
2 DOWN AT LINE 19064, DO YOU SEE SALON.COM?  
3 A. YES, I DO.  
4 Q. AT PAGE 244, ABOUT TWO-THIRDS OF THE WAY DOWN,  
5 DO YOU SEE YAHOO.COM? IT'S A LOT OF PAPER.  
6 A. JUST A LOT OF DOMAINS IN HERE, I GUESS, ALL  
7 12,000. WHAT WAS THE NUMBER AGAIN?  
8 Q. PAGE 244?  
9 A. OKAY, AND THEN THE LINE?  
10 Q. THE LINE IS 21956.  
11 A. YES.  
12 Q. YOU SEE YAHOO.COM?  
13 A. YES, I DO.  
14 Q. NOW, NONE OF THOSE ARE PORNOGRAPHIC WEBSITES,  
15 ARE THEY? NONE OF THOSE ARE ADULT WEBSITES, ARE THEY?  
16 A. I DON'T KNOW. SOME I COULD SPEAK TO. SOME I'M  
17 NOT FAMILIAR WITH.  
18 Q. AND CO.HU ISN'T EVEN A WEBSITE AT ALL, IS IT?  
19 A. CO.HU IS ACTUALLY A SUB LEVEL OF THE TOP LEVEL  
20 DOMAIN FOR HUNGARY THAT INDICATES COMMERCIAL  
21 ENTERPRISES. AND TO MAKE IT A DOMAIN, IT WOULD HAVE TO  
22 BE SOMETHING BEFORE THE DOT -- THE CO.HU.  
23 Q. YOU DON'T KNOW WHETHER ANY OF THESE ARE  
24 PORNOGRAPHIC WEBSITES. IS THAT A FAIR STATEMENT OF YOUR  
25 TESTIMONY?

1 A. IF I KNOW?

2 Q. YOU DON'T KNOW WHETHER ANY OF THESE ITEMS THAT  
3 WE HAVE LISTED ARE ADULT WEBSITES?

4 A. I DO NOT KNOW, I MEAN, I -- I'M NOT FAMILIAR  
5 WITH ALL OF THEM. I DO NOT KNOW -- I DO NOT KNOW IF ALL  
6 ARE ADULT WEBSITES OR ALL ARE NOT.

7 Q. AT THE TIME THAT YOU PREPARED YOUR REPORT, YOU  
8 DIDN'T KNOW HOW MANY ITEMS WERE IN THIS DATABASE THAT  
9 YOU COULDN'T VERIFY WHETHER THEY WERE ADULT -- WHETHER  
10 THEY WERE ADULT WEBSITES, DID YOU?

11 A. I'M TRYING TO ANSWER YOUR QUESTION. I'M JUST A  
12 LITTLE CONFUSED BY IT.

13 Q. WHEN YOU PREPARED YOUR REPORT, YOU DID NOT  
14 CONSULT THIS DATABASE TO PULL OUT ANY DATA THAT APPEARED  
15 POSSIBLY NOT TO BE ADULT WEBSITES, DID YOU?

16 A. WELL, ACTUALLY I DID. THIS STACK OF PAPER HERE  
17 LISTING THESE DOMAINS ARE A TABLE WITHIN MY DATABASE  
18 CALLED DOMAINS WITH WHOIS LOCATION INFORMATION, THIS  
19 REGISTERED INFORMATION. I DID LOOK AT THIS PARTICULAR  
20 VERSION, AND I DID EXTRACT SOME DOMAINS AND PUT IT IN  
21 ANOTHER TABLE THAT THEN BECAME THE CATEGORY "NOT  
22 PLACED."

23 Q. I STAND CORRECTED. YOU TOOK OUT PARTICULAR  
24 DOMAINS FOR WHICH YOU COULD NOT FIND REGISTRATION DATA  
25 AND PLACED THEM IN A SEPARATE --

1 A. NO, NO. I DID THAT AND IN ADDITION TO THAT I  
2 ALSO TOOK OUT DOMAINS FROM THIS THAT WERE SIMILAR TO  
3 SOME OF THE EXAMPLES THAT YOU WERE POINTING OUT THAT I  
4 COULD IDENTIFY AS NOT BEING ADULT WEBSITES. I PLACED  
5 THEM IN THIS OTHER TABLE THAT I USED FOR MY "NOT PLACED"  
6 CATEGORY.

7 Q. IN YOUR "NOT PLACED" CATEGORY, THAT IS A  
8 REFERENCE TO THE DATABASE THAT YOU COMPILED OF WEBSITES  
9 WITHOUT WHOIS DATA, ISN'T THAT RIGHT?

10 A. IT'S REFERENCE TO THE 5.8 PERCENT OF THE DOMAINS  
11 IN MY DATABASE FOR WHICH I WAS UNABLE TO FIND WHOIS  
12 INFORMATION THAT WOULD PROVIDE ME WITH A GEOGRAPHIC  
13 LOCATION. THERE WERE A COUPLE OF DIFFERENT REASONS FOR  
14 THAT.

15 Q. WHEN YOU RAN YOUR PROGRAM TO FIND REGISTRATION  
16 DATA, EVERY LINE OF CODE FOR WHICH YOU GOT A RESPONSE  
17 FROM THE WHOIS UTILITY WAS INCLUDED IN THIS DATABASE,  
18 ISN'T THAT RIGHT?

19 A. I THINK THAT IS MAINLY CORRECT. I DON'T THINK  
20 IT IS COMPLETELY CORRECT. I BELIEVE I WAS ABLE TO  
21 IDENTIFY SOME WEBSITES, SORT OF SIMILAR TO THE AOL AND  
22 MSN THAT I DID GET A POSITIVE WHOIS RESPONSE. I THEN  
23 MOVED OVER TO THE "NOT PLACED" BECAUSE IT WAS NOT -- IT  
24 WAS ONE OF THESE EXAMPLES OF OVERTRUNCATING -- OR  
25 OVERTRUNCATING THE URL DOWN TO A DOMAIN NAME.

1 Q. CAN YOU PROVIDE ME AN EXAMPLE OF ONE OF THOSE  
2 LINES OF CODE THAT YOU WOULD HAVE PULLED OUT OF THIS  
3 DATABASE FOR THAT REASON?

4 A. I MEAN IT WOULD HAVE BEEN A DOMAIN LINE, NOT A  
5 LINE OF CODE.

6 Q. THAT'S FINE.

7 A. OFF THE TOP OF MY HEAD, I CANNOT.

8 Q. BUT YOU PULLED OUT SOME OF THOSE, BUT YOU DID  
9 NOT PULL OUT AOL.COM OR MSN.COM, DID YOU?

10 A. THAT IS CORRECT. I TRIED TO PULL OUT THE ONES  
11 THAT I COULD IDENTIFY, BUT I DID NOT GET THEM ALL.

12 Q. AND THE EXAMPLES THAT WE HAVE JUST DISCUSSED A  
13 FEW MOMENTS AGO, ABOUT.COM, AOL.COM, THE LIST THAT WE  
14 HAD JUST GONE THROUGH, WE WENT THROUGH THAT SAME LIST AT  
15 YOUR DEPOSITION, ISN'T THAT RIGHT?

16 A. I BELIEVE WE WENT OVER A LIST. I THINK IT'S  
17 PROBABLY THE SAME.

18 Q. AT THE TIME THAT YOU WERE DEPOSED, YOU DID NOT  
19 KNOW HOW MANY MORE ITEMS IN THIS DATABASE POSED SIMILAR  
20 PROBLEMS, DID YOU?

21 A. I DID NOT LOOK SPECIFICALLY AT THAT QUESTION.

22 Q. AT THE TIME OF YOUR DEPOSITION -- AT YOUR  
23 DEPOSITION, YOU TESTIFIED THAT YOU WOULD BE SURPRISED IF  
24 THERE WERE ANOTHER 10 WEBSITES THAT POSED THIS SAME  
25 PROBLEM, DIDN'T YOU?

1 A. IF IT IS IN THE DEPOSITION, IT'S -- I MEAN, I  
2 WOULD ASSUME THAT WOULD BE TRUE.

3 Q. IF WE COULD CALL UP PAGE 142 OF THE DEPOSITION,  
4 MR. BYRDSONG.

5 THE WITNESS: SORRY. NOT IN THE  
6 MASSIVE -- SORRY.

7 THE COURT: WHAT LINE PLEASE?

8 MR. MCELVAIN: 142, LINE 9.

9 QUESTION: DO YOU KNOW THAT THOSE ARE THE  
10 ONLY EXAMPLES OF DOMAIN NAMES THAT DON'T REFER TO  
11 PORNOGRAPHIC WEBSITES?

12 ANSWER: I DO NOT KNOW THAT FOR A FACT,  
13 BUT I WOULD BE SURPRISED IF THERE WERE ANOTHER 10 IN  
14 HERE.

15 IS THAT A FAIR STATEMENT OF YOUR  
16 TESTIMONY?

17 MS. MARSHALL: OBJECTION. CAN HE  
18 COMPLETE THE ANSWER, PLEASE?

19 THE COURT: PLEASE DO THAT, COUNSEL.

20 MR. MCELVAIN: OF COURSE.

21 THE ONES -- AND THEN THERE'S A BREAK --  
22 PLUS THE ONES THAT WERE POINTED OUT. SOME OF THEM WERE  
23 ACTUALLY LOCATING OR MOST OF THEM WERE ACTUALLY LOCATING  
24 -- FOR THE GO CODING WERE LOCATED IN THE UNITED STATES,  
25 I WOULD HAVE TO GO BACK AND REVIEW THAT. IN ANY CASE

1 THAT WOULD MAKE THAT -- THAT WOULD MAKE THE U.S.  
2 OVERREPRESENTED IN THIS DATABASE.

3 FOR THE RECORD IN THE TRANSCRIPT IT  
4 APPEARS THE LETTERS G-O CODING, BUT I UNDERSTAND HIM TO  
5 HAVE USED THE GEO CODING, G-E-O CODING.

6 WITH THAT CORRECTION, IS THAT A FAIR  
7 STATEMENT OF YOUR TESTIMONY IN YOUR DEPOSITION?

8 THE WITNESS: THAT IS A FAIR STATEMENT OF  
9 MY TESTIMONY.

10 BY MR. MCELVAIN:

11 Q. PLEASE TURN TO PAGE 53 OF EXHIBIT D-394.

12 THE COURT: PAGE AGAIN, PLEASE?

13 MR. MCELVAIN: PAGE 53.

14 THE COURT: THANK YOU.

15 BY MR. MCELVAIN:

16 Q. ABOUT HALFWAY DOWN AT LINE 13165, YOU SAY -- DO  
17 YOU SEE, CHEZCHRIS, C-H-E-Z-C-H-R-I-S.CA?

18 A. YES, I SEE THAT.

19 Q. IS THAT AN ADULT WEBSITE?

20 A. I'M NOT FAMILIAR WITH THIS WEBSITE.

21 Q. TURNING TO PAGE 54 ABOUT AT THE BOTTOM AT LINE  
22 13228, DO YOU SEE CISTRON.NL, C-I-S-T-R-O-N.NL?

23 A. YES, I DO.

24 Q. IS THAT AN ADULT WEBSITE?

25 A. I'M NOT FAMILIAR WITH THAT PARTICULAR WEBSITE.

1 Q. TURNING TO PAGE 61, TOWARDS THE BOTTOM AT LINE  
2 13549, DO YOU SEE CYBERCOMM.NL, C-Y-B-E-R-C-O-M-M.NL?  
3 A. I SEE THAT.  
4 Q. IS THAT AN ADULT WEBSITE?  
5 A. I'M NOT FAMILIAR WITH THAT WEBSITE.  
6 Q. TURNING TO PAGE 64, ABOUT HALFWAY DOWN, LINE  
7 13668, DO YOU SEE DEEP.AT? D-E-E-P.AT?  
8 A. YES, I DO.  
9 Q. IS THAT AN ADULT WEBSITE?  
10 A. I'M NOT FAMILIAR WITH THAT WEBSITE.  
11 Q. TURNING TO PAGE 68, LINE 13840, DO YOU SEE  
12 DR.AG?  
13 A. 13840?  
14 Q. YES.  
15 A. YES, I SEE THAT.  
16 Q. IS THAT AN ADULT WEBSITE?  
17 A. I'M NOT FAMILIAR WITH THAT DOMAIN NAME.  
18 Q. YOU HAVE REPORTED THAT AS A FOREIGN LOCATED  
19 WEBSITE IN YOUR DATABASE, ISN'T THAT RIGHT?  
20 A. IT IS LOCATED -- IT IS REPORTED IN THIS DATABASE  
21 AS OUTSIDE THE UNITED STATES.  
22 Q. THE SAME WOULD BE TRUE FOR THE EXAMPLES THAT WE  
23 HAVE DISCUSSED. WE CAN GO BACK THROUGH THEM. WHY DON'T  
24 WE DO THAT?  
25 A. I DID NOT LOOK AT THAT.

1 THE COURT: ARE YOU GOING TO GO BACK  
2 THROUGH ALL OF THESE AGAIN?

3 MR. MCELVAIN: WELL, MAYBE I CAN ASK LIKE  
4 ONE OVERALL QUESTION.

5 BY MR. MCELVAIN:

6 Q. IF IT DOES NOT APPEAR U.S. IN THE COUNTRY CODE  
7 ON THE RIGHT SIDE, YOU WOULD HAVE REPORTED THAT FOR YOUR  
8 PURPOSES AS A FOREIGN DATABASE, ISN'T THAT CORRECT?

9 A. IF IT'S SOMETHING OTHER THAN U.S., IT WOULD HAVE  
10 SHOWED UP IN THE EXPERT REPORT AS A WEBSITE LOCATED  
11 OUTSIDE OF THE UNITED STATES.

12 Q. TURNING YOUR ATTENTION TO PAGE 103, THREE  
13 QUARTERS OF THE WAY, 15476, DO YOU SEE GO.RO?

14 A. YES, I DO.

15 Q. IS THAT AN ADULT WEBSITE?

16 A. I'M NOT FAMILIAR WITH THAT WEBSITE.

17 Q. YOU REPORTED THAT IN YOUR DATABASE AS A FOREIGN  
18 WEBSITE, DIDN'T YOU?

19 A. YES.

20 Q. PAGE 109, ABOUT A THIRD OF THE WAY DOWN, LINE  
21 15726. H-A-S. DO YOU SEE HAS.IT?

22 A. H-A-S-I-T.

23 Q. HAS.IT?

24 A. YES, I DO SEE THAT.

25 Q. IS THAT AN ADULT WEBSITE?

1 A. I'M NOT FAMILIAR WITH THAT.

2 Q. YOU REPORTED THAT AS A FOREIGN WEBSITE IN YOUR  
3 DATABASE, DIDN'T YOU?

4 A. CORRECT.

5 Q. PAGE 111, THIRD OF THE WAY DOWN, LINE 15821. DO  
6 YOU SEE HETNET.NL?

7 A. YES, I DO.

8 Q. IS THAT AN ADULT WEBSITE?

9 A. I'M NOT FAMILIAR WITH THAT WEBSITE.

10 Q. YOU LISTED IT IN YOUR DATABASE AS A FOREIGN  
11 WEBSITE, DIDN'T YOU?

12 A. YES, I DID.

13 Q. TURNING TO PAGE 113, LINE 15922. DO YOU SEE  
14 HOST.SK?

15 A. YES, I DO.

16 Q. IS THAT AN ADULT WEBSITE?

17 A. I'M NOT FAMILIAR WITH THAT WEBSITE.

18 Q. YOU REPORTED THAT AS A FOREIGN WEBSITE IN YOUR  
19 DATABASE?

20 A. YES, I DID.

21 Q. TO SPEED THINGS UP I'M GOING TO LIST SOME MORE,  
22 MAYBE WE CAN DO THIS IN ONE MORE QUESTION. TURNING TO  
23 PAGE 120, ABOUT HALFWAY DOWN, LINE 16245, DO YOU SEE  
24 IQ.PL?

25 A. THE ONE RIGHT UNDERNEATH IPORNSTARS.NET? YES, I

1       SEE IT.

2       Q.       TURNING TO PAGE 127, AT THE TOP, ON LINE 16545.

3       DO YOU SEE KIR.JP?

4       A.       YES, I SEE IT.

5       Q.       PAGE 151, ABOUT A THIRD OF THE WAY DOWN, LINE

6       17661, DO YOU SEE NEUK-ME.NL?

7       A.       YES, I SEE THAT.

8       Q.       TURNING TO PAGE 155, LINE 17859, DO YOU SEE

9       NUTSONLINE.NL?

10      A.       YES, I DO.

11      Q.       TURNING TO PAGE 161, ABOUT TWO-THIRDS OF THE WAY

12      DOWN, 18137. DO YOU SEE PB.CZ?

13      A.       YES, I DO SEE IT.

14      Q.       TURNING TO PAGE 165, ABOUT HALFWAY DOWN, LINE

15      18309. DO YOU SEE PLANET.NL?

16      A.       I SEE -- I'M SORRY.

17      Q.       LINE 18309, ABOUT HALFWAY DOWN ON PAGE 165.

18      A.       UNDER PLAIDSKIRTTEENS.COM. PLANET.NL.

19      Q.       YOU DO SEE THAT THERE?

20      A.       YES, I DO SEE THAT.

21      Q.       TURNING TO PAGE 220 --

22                    MS. MARSHALL: OBJECTION, YOUR HONOR. IS

23      COUNSEL SEEKING TO ASK THE WITNESS TO IDENTIFY ALL

24      12,000 CODES IN THE DATABASE AND THAT IN FACT HE SEES

25      THEM IN THE DATABASE?

1                   MR. MCELVAIN: WELL, IN THE INTEREST OF  
2 TIME, I'M GOING TO ASK -- I COULD ASK INDIVIDUAL  
3 QUESTIONS FOR EACH. I'M TRYING TO GET THEM ALL OUT  
4 THERE AND THEN ASK INDIVIDUALLY.

5 BY MR. MCELVAIN:

6 Q.            BUT FOR EACH OF THE ITEMS THAT WE HAVE GONE  
7 THROUGH SO FAR, DO YOU KNOW WHETHER ANY OF THESE ARE  
8 ADULT WEBSITES?

9 A.            FOR THE ONES THAT WE HAVE GONE THROUGH, I'M NOT  
10 FAMILIAR WITH THESE WEBSITES.

11 Q.           AND EACH OF THE EXAMPLES THAT WE HAVE DISCUSSED  
12 SO FAR, ARE REPORTED IN YOUR DATABASE AS FOREIGN  
13 WEBSITES, ISN'T THAT RIGHT?

14 A.           IF THEY ARE -- IF THEY HAVE -- THEY DON'T HAVE  
15 THE U.S. LISTED TO THE -- NEXT TO IT, THEY WOULD BE  
16 LISTED AS FOREIGN LOCATIONS OR FOREIGN WEBSITES.

17 Q.           TURNING TO PAGE 222, LINE 20933.

18                   THE COURT: HOW MANY MORE DO YOU HAVE IS  
19 WHAT COUNSEL WAS TRYING TO GET AT? ARE YOU GOING TO  
20 READ ALL 12,000? OBVIOUSLY NOT. YOU HAVE SELECTED THE  
21 ONES THAT YOU THINK WILL HELP YOUR CLIENT? HOW MANY  
22 MORE DO YOU THINK YOU HAVE?

23                   MR. MCELVAIN: I HAVE ABOUT 10 MORE. IS  
24 THAT FAIR?

25                   THE COURT: GO AHEAD.

1 BY MR. MCELVAIN:

2 Q. TURNING TO PAGE 222, LINE 20933. DO YOU SEE  
3 TOPLINKS.CA, T-O-P-L-I-N-K-S.CA. DO YOU SEE THAT?

4 A. YES, I SEE IT. IS THAT THE ONE UNDERNEATH  
5 TOPFATSLUTS.COM.

6 Q. TWO DOWN FROM TOPLINKS.CA, THERE IS TOPLISTA.PL,  
7 T-O-P-L-I-S-T-A.P-L. DO YOU SEE THAT?

8 A. YES, I DO SEE THAT.

9 Q. ARE EITHER TOPLINKS.CA OR TOPLISTA.PL ADULT  
10 WEBSITES?

11 A. I'M NOT FAMILIAR WITH THOSE DOMAIN NAMES.

12 Q. YOU REPORTED THEM AS FOREIGN WEBSITES IN YOUR  
13 DATABASE?

14 A. YES.

15 Q. TOPLINKS WAS THE FIRST ONE, IT HAS C-A AFTER IT.  
16 WHAT DOES THAT MEAN?

17 A. CA IS THE TOP LEVEL DOMAIN FOR CANADA.

18 Q. TURNING TO PAGE 230, THREE QUARTERS OF THE WAY  
19 DOWN, LINE 21319. DO YOU SEE VOLNY.CZ. V-O-L-N-Y.CZ.

20 I'M SORRY, LINE 21319, DO YOU SEE VOLNY.CZ?

21 A. EXCUSE ME. YES, I DO SEE THAT.

22 Q. IS THAT AN ADULT WEBSITE?

23 A. I'M NOT FAMILIAR WITH THAT DOMAIN NAME.

24 Q. YOU REPORTED IT AS A FOREIGN WEBSITE IN YOUR  
25 DATABASE, DIDN'T YOU?

1 A. YES, I DID.

2 Q. PAGE 231, LINE 21348, DO YOU SEE WANNADOO.NL,  
3 W-A-N-N-A-D-O-O.NL?

4 A. YES, I DO SEE THAT.

5 Q. IS THAT AN ADULT WEBSITE?

6 A. I'M NOT FAMILIAR WITH THAT WEBSITE.

7 Q. YOU REPORTED IT AS A FOREIGN WEBSITE IN YOUR  
8 DATABASE, DIDN'T YOU?

9 A. YES, I DID.

10 Q. PAGE 232, LINE 21383, DO YOU SEE WEBCOM.PL?  
11 W-E-B-C-O-M.PL?

12 A. I'M SORRY. 213 -- WHAT WAS THE NUMBER?

13 Q. 21383.

14 A. OKAY.

15 Q. DO YOU SEE THAT?

16 A. I SEE WEBCOM.PL.

17 Q. IS THAT AN ADULT WEBSITE?

18 A. I'M NOT FAMILIAR WITH THAT DOMAIN NAME.

19 Q. YOU LISTED IT AS A FOREIGN WEBSITE IN YOUR  
20 DATABASE, DIDN'T YOU?

21 A. YES, I DID.

22 Q. A LITTLE FURTHER DOWN THE SAME PAGE, LINE 21394.  
23 WEBPARK.CZ?

24 A. YES.

25 Q. DO YOU SEE THAT?

1 A. YEAH. THE ONE RIGHT ABOVE WEBPORN4U.COM.

2 Q. WEBPARK.CZ, IS THAT AN ADULT WEBSITES?

3 A. I'M NOT FAMILIAR WITH THAT WEBSITE.

4 Q. YOU LIST IT AS A FOREIGN WEBSITE IN YOUR

5 DATABASE?

6 A. YES, I DO.

7 Q. PAGE 234, A THIRD OF THE WAY DOWN, LINE 20481.

8 DO YOU SEE WIDE.IT, W-I-D-E.IT?

9 A. YES, I DO SEE THAT.

10 Q. IS THAT AN ADULT WEBSITE?

11 A. I'M SORRY. I'M NOT FAMILIAR WITH THAT WEBSITE.

12 Q. AND YOU REPORTED IT AS A FOREIGN WEBSITE IN YOUR

13 DATABASE?

14 A. YES, I DID LIST IT AS A FOREIGN WEBSITE.

15 Q. TURNING TO PAGE 236, TOWARD THE TOP OF THE PAGE,

16 LINE 21561. DO YOU SEE WORLDONLINE.IT.

17 A. YES, I DO.

18 Q. IS THAT AN ADULT WEBSITE?

19 A. I'M NOT FAMILIAR WITH THAT WEBSITE OR THAT

20 DOMAIN NAME.

21 Q. YOU LISTED IT IN YOUR DATABASE AS A FOREIGN

22 WEBSITE, DIDN'T YOU?

23 A. YES, I DID.

24 Q. PAGE 237 AT THE TOP, LINE 21604. DO YOU SEE

25 WZ.CZ?

1 A. YES, I SEE THAT THERE.

2 Q. IS THAT AN ADULT WEBSITE?

3 A. AGAIN, I'M NOT FAMILIAR WITH THAT PARTICULAR  
4 DOMAIN NAME.

5 Q. THAT IS LISTED IN YOUR DATABASE AS A FOREIGN  
6 WEBSITE, ISN'T IT?

7 A. YES, IT IS.

8 THE COURT: YOUR LIST OF TEN NAMES IS  
9 LIKE THE LAWYER'S I HAVE ONLY ONE QUESTION.

10 MR. MCELVAIN: BY MY COUNT THERE IS 9,  
11 AND THIS IS ACTUALLY THE LAST ONE.

12 THE COURT: I HAD A HUNCH.

13 BY MR. MCELVAIN:

14 Q. PAGE 238, ABOUT HALF OF THE WAY DOWN, LINE  
15 21676.

16 A. OKAY.

17 Q. YOU SEE XS4ALL.NL? OR DO YOU SEE THAT?

18 A. YES, I SEE IT.

19 Q. IS THAT AN ADULT WEBSITE?

20 A. I'M NOT FAMILIAR WITH THAT PARTICULAR DOMAIN  
21 NAME.

22 Q. YOU LISTED IT IN YOUR DATABASE AS A FOREIGN  
23 WEBSITE?

24 A. THAT IS CORRECT.

25 Q. WHEN WE DISCUSSED SOME OF THESE EXAMPLES AT YOUR

1 DEPOSITION, YOUR TESTIMONY WAS THAT YOU BELIEVED THAT IF  
2 THERE WAS ANY BIAS, IT WAS IN FAVOR OF OVERREPORTING  
3 DOMESTIC WEBSITES. DO YOU RECALL THAT?

4 A. SORRY. LET ME JUST WAKE UP HERE. CAN YOU STATE  
5 THAT? RESTATE THAT QUESTION.

6 Q. AT THE TIME OF YOUR DEPOSITION WHEN WE DISCUSSED  
7 SOME OF THESE EXAMPLES, YOU STATED YOUR BELIEF THAT IF  
8 THERE WERE ANY BIAS, THE BIAS WOULD BE IN FAVOR OF  
9 OVERREPORTING DOMESTIC WEBSITES.

10 A. MY RECOLLECTION OF THE CONVERSATION WAS WE WERE  
11 DISCUSSING SPECIFICALLY THE WEBSITES THAT WERE  
12 HIGHLIGHTED AS PART OF THE DEPOSITION PROCESS. THAT WAS  
13 THE REFERENCE.

14 Q. OF COURSE WE ONLY DISCUSSED A FEW OF THESE  
15 EXAMPLES AT YOUR DEPOSITION, BUT AT THAT TIME, YOU SAID  
16 THAT YOU BELIEVED THAT THERE WOULD PROBABLY BE A BIAS,  
17 IF ANY, IN FAVOR OF OVERREPORTING DOMESTIC WEBSITES.

18 A. THAT WAS -- SORRY. LET ME START AGAIN.

19 IT WAS MY BELIEF AT THE TIME THAT THERE  
20 WAS LIKELY -- THAT WOULD LIKELY BE THE DIRECTION OF THE  
21 BIAS. PART OF THAT BELIEF WAS BASED ON THE FACT THAT  
22 SOME OF THESE -- SOME OF THE THINGS WE POINTED OUT  
23 EARLIER, THINGS LIKE CO.HU, WHICH IS A SECOND LEVEL  
24 DOMAIN ASSOCIATED WITH HUNGARY, ENDED UP NOT -- OR  
25 ACTUALLY, OR BEING -- THERE WERE MORE DOMAINS LIKELY

1 ASSOCIATED WITH THAT SECOND LEVEL DOMAIN THAT WOULD HAVE  
2 BEEN CATEGORIZED IN HUNGARY THAT WERE NOT BECAUSE I --  
3 THE SOFTWARE TRUNCATED IT DOWN JUST TO .CO.HU, BASED ON  
4 MY BELIEF THAT THAT .CO.HU ACTUALLY UNDERREPRESENTED THE  
5 NUMBER OF DOMAINS THAT WOULD COME UNDER THE HUNGARIAN  
6 TOP LEVEL DOMAIN.

7 Q. BUT IN YOUR TESTIMONY HERE TODAY YOU CAN'T STATE  
8 WHETHER THERE IS IN FACT A BIAS IN FAVOR OF  
9 OVERREPORTING FOREIGN WEBSITES, CAN YOU? LET ME BREAK  
10 THAT UP.

11 A. OKAY.

12 Q. THERE IS A BIAS THAT COULD RESULT IN THE  
13 RESULT -- THAT COULD SHOW UP IN THE RESULTS THAT YOU  
14 HAVE REPORTED FROM THE APPEARANCE OF THESE DOMAIN NAMES  
15 IN YOUR DATABASE, ISN'T THAT RIGHT?

16 A. WELL, IT IS UNCLEAR TO ME BECAUSE AS WE ARE  
17 GOING THROUGH THIS LIST, I'M UNFAMILIAR WITH THESE  
18 DOMAIN NAMES AND THESE -- I MEAN, IF I UNDERSTAND,  
19 GETTING FROM WHAT WE ARE DOING, IS ALL OF THE ONES THAT  
20 YOU WERE PICKING OUT HERE FOR US TO DISCUSS WERE ONES  
21 THAT WERE LOCATED OUTSIDE OF THE UNITED STATES, IS THAT  
22 CORRECT?

23 Q. I HAVE LISTED A SERIES OF EXAMPLES. I'M ASKING  
24 YOU, AFTER HAVING GONE THROUGH THESE EXAMPLES, CAN YOU  
25 STATE WHETHER YOU BELIEVE THAT THE BIAS IS IN FAVOR OF

1 OVERREPORTING DOMESTIC WEBSITES?

2 MS. MARSHALL: OBJECTION, YOUR HONOR. IT  
3 IS UNCLEAR.

4 THE COURT: SUSTAINED. UNFAIR QUESTION.  
5 YOU LEFT OUT A FEW THINGS. THERE'S A PRESUMPTION OF  
6 SOME KIND OF UNDERLYING FACTS THAT GO WITH THOSE WEBSITE  
7 ADDRESSES THAT YOU ARE LEAVING OUT OF YOUR QUESTION.

8 MR. MCELVAIN: I WILL TRY TO WORK BACK UP  
9 TO THAT.

10 BY MR. MCELVAIN:

11 Q. THE FACT THAT THERE ARE DOMAIN NAMES LISTED IN  
12 YOUR DATABASE THAT -- THE FACT THAT THERE MAY BE DOMAIN  
13 NAMES IN YOUR DATABASE THAT DO NOT ACTUALLY CORRELATE  
14 WITH ADULT WEBSITES COULD LEAD TO A BIAS IN THE RESULTS  
15 THAT YOU HAVE REPORTED.

16 MS. MARSHALL: OBJECTION, YOUR HONOR.  
17 THE QUESTION IS STILL ASSUMING FACTS THAT ARE NOT IN  
18 EVIDENCE.

19 THE COURT: WELL, THEY MAY EVEN BE IN,  
20 BUT MR. MCELVAIN MAY ASSUME THEY ARE IN. FIND OUT IF  
21 THE WITNESS UNDERSTANDS THE QUESTION, WHETHER HE CAN  
22 ANSWER IT, RELY ON THE EXPERT.

23 MR. MCELVAIN: I DON'T THINK I HAVE  
24 GOTTEN THERE YET.

25 THE COURT: ARE YOU ABANDONING THE LAST

1 QUESTION? DO YOU WITHDRAW IT?

2 MR. MCELVAIN: I'M GOING TO START OVER ON  
3 THIS ONE.

4 THE COURT: OKAY.

5 BY MR. MCELVAIN:

6 Q. YOU USED THIS DATABASE TO REPORT RESULTS AS TO  
7 THE DISTRIBUTION OF FOREIGN AND DOMESTIC ADULT WEBSITES,  
8 IS THAT CORRECT?

9 A. YES, THAT WOULD BE CORRECT. THAT WOULD BE  
10 CORRECT.

11 Q. AND THE POSSIBILITY THAT THERE ARE DOMAIN NAMES  
12 LISTED IN THIS DATABASE THAT WOULD NOT ACTUALLY  
13 CORRELATE WITH ADULT WEBSITES COULD SKEW YOUR RESULTS.

14 MS. MARSHALL: SAME OBJECTION, YOUR  
15 HONOR?

16 THE COURT: OVERRULED.

17 THE WITNESS: I'M GOING TO INTERPRET THIS  
18 QUESTION THAT YOU ARE ASKING ME TO ASSUME THAT THERE  
19 ARE -- ARE THESE WEBSITES THAT ARE MISCLASSIFIED IN THIS  
20 DATABASE. BASED ON THAT ASSUMPTION OR BASED ON ANY  
21 ASSUMPTION THERE WOULD BE A SKEWING, BUT I'M NOT REALLY  
22 COMFORTABLE ACCEPTING THAT ASSUMPTION. I'M JUST NOT  
23 -- I'M ALSO NOT QUITE CLEAR IN THE QUESTION.

24 BY MR. MCELVAIN:

25 Q. WELL, BEFORE WE GET TO THE SPECIFIC EXAMPLES,

1 THE POSSIBILITY THAT THERE ARE DOMAIN NAMES LISTED IN  
2 YOUR DATABASE THAT WOULD NOT CORRELATE WITH ADULT  
3 WEBSITES COULD LEAD TO A SKEW IN THE RESULTS THAT YOU  
4 HAVE REPORTED, COULDN'T IT?

5 THE COURT: IT'S THE SAME QUESTION,  
6 COUNSEL. HE ANSWERED THAT QUESTION. IT IS THE EXACT  
7 SAME QUESTION YOU ASKED BEFORE.

8 MR. MCELVAIN: OKAY. THANK YOU, YOUR  
9 HONOR.

10 BY MR. MCELVAIN:

11 Q. DO YOU KNOW WHETHER ANY SUCH BIAS WOULD BE IN  
12 FAVOR OF OVERREPORTING DOMESTIC WEBSITES OR  
13 OVERREPORTING FOREIGN WEBSITES?

14 MS. MARSHALL: OBJECTION, I DON'T KNOW  
15 WHAT ANY SUCH BIAS IS. WE HAVE NOT ESTABLISHED THAT.

16 THE COURT: THE WITNESS SAYS HE DOES NOT  
17 ACCEPT THE NOTION OF BIAS, I INFER BECAUSE HE HAS NOT  
18 STUDIED IT AND HE DOES NOT KNOW ABOUT ALL THESE  
19 WEBSITES. HE HAS REFUSED TO ACCEPT THE NOTION THAT  
20 THERE'S BIAS IN A HIGHLY TECHNICAL WAY.

21 BY MR. MCELVAIN:

22 Q. FOR THE PURPOSES OF MY QUESTION I WILL ASK YOU  
23 TO ASSUME THAT EACH OF THE ITEMS THAT WE WENT THROUGH  
24 ARE IN FACT NOT ADULT WEBSITES. WITH THAT ASSUMPTION AS  
25 A PREDICATE, THAT COULD LEAD TO A BIAS IN THE RESULTS

1 THAT YOU HAVE REPORTED, COULDN'T IT?

2 A. BASED ON THAT ASSUMPTION, YES.

3 Q. AND YOU CAN'T STATE WHETHER THAT BIAS IS IN  
4 FAVOR OF OVERREPORTING FOREIGN WEBSITES OR OVERREPORTING  
5 DOMESTIC WEBSITES, CAN YOU?

6 A. WELL, I'M NOT EXACTLY CLEAR -- WELL, I'M  
7 ASSUMING THE BIAS THAT YOU ARE OUTLINING HERE, BUT I  
8 GUESS I'M JUST NOT QUITE -- I'M JUST NOT QUITE CLEAR ON  
9 WHAT THE BIAS IS THAT YOU ARE DESCRIBING AND THEN -- IF  
10 I KNEW WHAT THE BIAS YOU ARE DESCRIBING, HOW I WOULD BE  
11 ABLE TO ANSWER THE QUESTION. I JUST I'M NOT CLEAR ON  
12 THAT POINT.

13 Q. YOUR INTENT IN YOUR STUDY WAS TO COMPARE THE  
14 NUMBER OF DOMAIN NAMES THAT ARE LOCATED DOMESTICALLY  
15 THAT ARE ADULT WEBSITES TO THE NUMBER OF DOMAIN NAMES  
16 THAT ARE LOCATED IN FOREIGN COUNTRIES THAT ARE ADULT  
17 WEBSITES, IS THAT CORRECT?

18 A. ESSENTIALLY, YES.

19 Q. AND IF YOU HAVE LISTED ITEMS IN YOUR DATABASE AS  
20 FOREIGN WEBSITES THAT ARE IN FACT NOT ADULT WEBSITES,  
21 THAT COULD LEAD TO A BIAS IN YOUR RESULTS?

22 A. ACCEPTING -- WORKING WITH THE ASSUMPTION THAT  
23 YOU ARE LAYING OUT HERE THAT THERE ARE WEBSITES THAT ARE  
24 CLASSIFIED AS FOREIGN THAT ARE NOT -- THAT ARE NOT  
25 ASSOCIATED WITH ADULT INDUSTRY, IT WOULD -- IT WOULD --

1 IT WOULD PRODUCE A BIAS.

2 MR. MCELVAIN: MAY I HAVE A MOMENT TO  
3 CONFER, YOUR HONOR?

4 THE COURT: YES.

5 (PAUSE.)

6 MR. MCELVAIN: NO FURTHER QUESTIONS, YOUR  
7 HONOR.

8 THE COURT: REDIRECT?

9 MS. MARSHALL: IF I MIGHT JUST TAKE ONE  
10 MINUTE TO CONSULT WITH MY CO-COUNSELS.

11 THE COURT: DO WHAT?

12 MS. MARSHALL: CONFER WITH MY CO-COUNSELS  
13 JUST ONE MINUTE OR LESS.

14 (PAUSE.)

15 I'M READY, YOUR HONOR.

16 THE COURT: DON'T WORRY ABOUT ME. DO  
17 WHAT YOU HAVE TO DO. HELLO AGAIN, PROFESSOR ZOOK.

18 THE WITNESS: HELLO.

19 REDIRECT EXAMINATION

20 BY MS. MARSHALL:

21 Q. YOU WANTED TO CLARIFY A SENTENCE THAT DEFENSE  
22 COUNSEL READ FROM ONE OF YOUR ARTICLES, YOUR 2003  
23 ARTICLE, I BELIEVE, ENTITLED UNDERGROUND GLOBALIZATION,  
24 PLAINTIFFS' EXHIBIT 32.

25 A. YES.

1 Q. IT'S PAGE 1276, THE ARTICLE PAGE NUMBER, THE  
2 EXHIBIT PAGE NUMBER IS 16, AND I BELIEVE THE PARAGRAPH  
3 THAT WAS BEING DISCUSSED WAS THE FIRST FULL PARAGRAPH ON  
4 THAT PAGE?

5 A. RIGHT. SHOULD I READ IT OR JUST --

6 THE COURT: READ IT TO YOURSELF FOR A  
7 MOMENT. THEN COUNSEL WILL ASK YOU A QUESTION.

8 THE WITNESS: THANK YOU.

9 BY MS. MARSHALL:

10 Q. WHAT WOULD YOU LIKE TO CLARIFY ABOUT THAT  
11 SENTENCE?

12 A. WELL, THE SENTENCE IS TALKING ABOUT SHOWING THAT  
13 SHIFTS IN LOCATION OF HOSTING IS NOT TAKING PLACE TO ANY  
14 GREAT EXTENT AND THE CONTEXT IN WHICH THE SENTENCE WAS  
15 MEANT IS COMPARISON TO THE LOCATION OF WEBSITE  
16 REGISTRATIONS, THAT WHILE WEBSITE REGISTRATIONS ARE  
17 MOVING OUTSIDE THE UNITED STATES, THE SHIFTS -- THE  
18 LOCATION OF HOSTING IS NOT. THAT IS THE COMPARISON,  
19 IT'S BETWEEN WEBSITE -- THE OWNERSHIP OF THESE WEBSITES  
20 AND THE HOSTING OF THESE WEBSITES, NOT A SHIFT OVER TIME  
21 IN HOSTING AS I THINK THE DEFENSE WAS DISCUSSING IN THIS  
22 CONTEXT.

23 Q. DEFENSE COUNSEL ALSO ASKED YOU SOME QUESTIONS  
24 WITH RESPECT TO THE HOSTING OR THE -- THE RESEARCH YOU  
25 DID WITH RESPECT TO HOST LOCATION FOR THE PAPER IN 2003

1 AND THE RESEARCH YOU DID FOR PLAINTIFFS IN THIS CASE.  
2 DO YOU RECALL THOSE QUESTIONS?

3 A. THAT IS CORRECT.

4 Q. CAN YOU CLARIFY FOR THE COURT WHY YOU DIDN'T  
5 RESEARCH THE HOST LOCATION OF THESE DOMAINS FOR THIS  
6 CURRENT PROJECT?

7 A. THE PRIMARY REASON FOR IT WAS, IT WAS JUST  
8 SIMPLY NOT RELEVANT TO THE QUESTION THAT WAS BEING ASKED  
9 IN THIS REPORT. THE REPORT WAS LOOKING SPECIFICALLY AT  
10 THE DISTRIBUTION OF THE OWNERSHIP OF THESE WEBSITES AND  
11 SINCE THE HOSTING OF THESE WEBSITES CAN BE COMPLETELY  
12 SEPARATED FROM THE OWNERSHIP AND THE MANAGEMENT OF THE  
13 WEBSITE, THESE WEBSITES, IT WAS NOT RELEVANT TO THE  
14 QUESTION THAT WAS BEING ASKED.

15 Q. I BELIEVE DEFENSE COUNSEL ASKED YOU ONE QUESTION  
16 IN THERE ABOUT CONFIDENCE INTERVALS.

17 A. THAT'S CORRECT.

18 Q. EXPLAIN TO THE COURT WHAT A CONFIDENCE INTERVAL  
19 IS.

20 A. IT IS SIMPLY A MEASURE -- A PLUS OR MINUS  
21 MEASURE AROUND A STATISTIC THAT IT -- FOR EXAMPLE, ONE  
22 OF THESE TABLES, THAT THERE WOULD BE, THAT YOUR -- YOU  
23 ARE CONFIDENT THAT THE PERCENTAGE REPORTED IS WITHIN,  
24 THAT IS THE CENTER OF, THAT THE ACTUAL NUMBER IS  
25 SOMEWHERE IN BETWEEN PLUS OR MINUS, YOU KNOW, FOR

1 EXAMPLE TWO OR THREE PERCENT OR SOMETHING LIKE THAT,  
2 AROUND A SPECIFIC STATISTIC.

3 THE COURT: IT IS THE CONCEPT OF  
4 CONFIDENCE.

5 THE WITNESS: THAT IS THE CONCEPT OF  
6 CONFIDENCE INTERVAL.

7 BY MS. MARSHALL:

8 Q. WOULD IT HAVE BEEN POSSIBLE TO CREATE CONFIDENCE  
9 INTERVALS ON THE DATA THAT YOU PRESENTED IN YOUR EXPERT  
10 REPORT?

11 A. YES, IT WOULD HAVE BEEN.

12 Q. DID YOU PRESENT CONFIDENCE INTERVALS?

13 A. NO, I DID NOT.

14 Q. DID YOU PRESENT CONFIDENCE INTERVALS ON THE DATA  
15 YOU PRESENTED IN YOUR PAPER IN 2003?

16 A. NO, I DID NOT DO THAT.

17 Q. DID THAT PAPER GO THROUGH PEER REVIEW PROCESS?

18 A. THAT PAPER WENT THROUGH A PEER REVIEW PROCESS.

19 Q. OF THE 20 TO 30 DOMAINS THAT DEFENSE COUNSEL  
20 JUST WALKED THROUGH WITH US ALL OF THE APPROXIMATELY  
21 12,000 DOMAINS IN YOUR DATABASE, I'M GOING TO ASK YOU TO  
22 ASSUME NOW -- ASSUMING IF YOU WILL THAT THE GEOGRAPHICAL  
23 LOCATION ASSOCIATED WITH THOSE DOMAINS IS INCORRECT, OR  
24 PERHAPS THOSE DOMAINS ARE NOT IN FACT ADULT WEBSITES --

25 THE COURT: EXCUSE ME. YOU ARE ASKING

1 TWO QUESTIONS AT ONCE.

2 MS. MARSHALL: I WILL START WITH JUST  
3 ONE.

4 BY MS. MARSHALL:

5 Q. THEN ASSUMING THE 20 TO 30 DOMAINS DEFENSE  
6 COUNSEL WALKED US ALL THROUGH ARE NOT ADULT WEBSITES,  
7 WHAT WOULD THE SIGNIFICANCE BE ON YOUR RESULTS  
8 STATISTICALLY SPEAKING?

9 A. ASSUMING THAT THEY WERE IN THE DATABASE  
10 INCORRECTLY AND THAT THEY WERE INFLUENCING THE RESULTS  
11 TO HEIGHTEN THE NUMBER OF DOMAINS OUTSIDE OF THE UNITED  
12 STATES, YOU KNOW, JUST IN MY HEAD CALCULATIONS IT WOULD  
13 CHANGE THE RESULTS, SPECIFICALLY THE RESULTS OF THE  
14 NUMBER OF WEBSITES -- NUMBER OF WEBSITES LOCATED IN THE  
15 UNITED STATES WOULD DECREASE IT BY ROUGHLY POINT .3., .4  
16 PERCENT.

17 Q. OF THESE 20 OR 30 EXAMPLES, I DID NOT KEEP EXACT  
18 COUNT, THAT DEFENSE COUNSEL WALKED US THROUGH, WHERE DID  
19 THOSE DOMAIN NAMES COME FROM? HOW DID THEY GET INTO  
20 YOUR DATABASE?

21 A. THOSE DOMAIN NAMES CAME FROM THESE INDICES I  
22 USED TO GATHER URL LINKS, AND SO THE DOMAIN NAME CAME  
23 FROM A LINK OR URL TO A WEBSITE CONTAINING ADULT  
24 MATERIAL, AND THEN WAS TRUNCATED DOWN TO THAT SPECIFIC  
25 DOMAIN NAME.

1 Q. THE WEBSITES LIST ON THE INDICES YOU USED,  
2 BECAUSE THEY ARE ON ADULT DOMAIN INDICES, IS THERE AN  
3 INDICATION THAT THEY ARE, IN FACT, ADULT WEBSITES?

4 A. I MEAN, THE AGGREGATORS OF THESE WEB LINKS, THE  
5 PROVIDERS OF THESE INDEXES ARE TRYING TO PROVIDE  
6 INTERNET USERS WITH LINKS TO MATERIAL THEY CLAIM TO BE  
7 AND PEOPLE, YOU KNOW, ARE -- PEOPLE CHOOSE WHICH INDEX  
8 TO USE AND AN INDEX BECOMES POPULAR BY THE FACT THAT IT  
9 IS ACTUALLY PROVIDING WHAT IT REPORTS TO BE PROVIDING.

10 MS. MARSHALL: I HAVE NO MORE QUESTIONS,  
11 YOUR HONOR.

12 THE COURT: THANK YOU.

13 ANY RE-CROSS?

14 MR. MCELVAIN: THANK YOU, YOUR HONOR.

15 RE-CROSS EXAMINATION

16 BY MR. MCELVAIN:

17 Q. WITH REGARD TO THE SERIES OF EXAMPLES THAT WE  
18 WENT THROUGH A MOMENT AGO, YOU DON'T KNOW WHETHER THESE  
19 ARE THE ONLY EXAMPLES OF DOMAIN NAMES LISTED IN YOUR  
20 DATABASE THAT MAY NOT CORRELATE WITH ADULT WEBSITES, DO  
21 YOU?

22 A. WELL, I DON'T KNOW IF THESE DOMAINS DON'T  
23 CORRELATE WITH ADULT WEBSITES AND SO I DO NOT KNOW  
24 WHETHER OR NOT THERE ARE MORE THAT MAY NOT CORRELATE AS  
25 WELL.

1 Q. YOU DIDN'T CHECK THE WEBSITES -- THE DOMAIN  
2 NAMES THAT WE HAVE LISTED A MOMENT AGO. YOU DID NOT  
3 CHECK THOSE DOMAIN NAMES TO DETERMINE WHETHER OR NOT  
4 THEY ACTUALLY WERE ADULT WEBSITES, DID YOU?

5 A. I DID NOT CHECK EACH OF THESE DOMAIN NAMES, BUT  
6 AGAIN, I GATHERED THEM FROM THE INDEXES THAT ARE  
7 PROVIDING LINKS TO ADULT WEBSITES.

8 Q. YOU DID NOT CHECK THE OTHER DOMAIN NAMES, OTHER  
9 THAN THE ONES WE HAVE LISTED A MOMENT AGO TO DETERMINE  
10 IF IN FACT THEY WERE ADULT WEBSITES, DID YOU?

11 A. I DID SOME SPOT CHECKING WHEN I WAS DOING THE  
12 INDEXES.

13 MR. MCELVAIN: NO FURTHER QUESTIONS.  
14 THANK YOU.

15 THE COURT: DR. ZOOK, YOU ARE FINISHED  
16 WITH YOUR TESTIMONY. LEAVE THE PAPERS. IF THEY WERE  
17 GIVEN TO YOU BY THE LAWYERS. LEAVE THEM THERE.

18 THE WITNESS: QUITE HONESTLY, I DON'T  
19 WANT THEM.

20 THE COURT: WATCH YOUR STEP.

21 THE WITNESS: THANK YOU.

22 (WITNESS EXCUSED.)

23 THE COURT: VERY CLOSE TO THE  
24 MID-AFTERNOON RECESS.

25 MR. MCELVAIN: YOUR HONOR, WE CAN ADDRESS

1 THIS WHEN WE COME BACK, BUT WE WOULD LIKE TO STRIKE DR.  
2 ZOOK'S EXPERT TESTIMONY. WE CAN ADDRESS IT NOW.

3 THE COURT: ON WHAT GROUNDS?

4 MR. MCELVAIN: ON THE GROUNDS THAT UNDER  
5 THE 3RD CIRCUIT PRECEDENT OF IN RE: PAOLI, THAT YOU  
6 REQUIRE --

7 THE COURT: PAOLI. THAT IS THE AMERICAN  
8 WAY TO SAY IT.

9 MR. MCELVAIN: THAT THE PROPOSED EXPERT  
10 TESTIMONY NEEDS TO MEET STANDARDS OF RELIABILITY AND TO  
11 RELEVANT MATTERS AT ISSUE IN THE PROCEEDING. WE CANNOT  
12 ESTABLISH THAT THE TESTIMONY IS RELIABLE BECAUSE  
13 PROFESSOR ZOOK RELIED ON REGISTRATION DATA WHICH HE  
14 BELIEVES HAS A CORRELATION TO ACTUAL LOCATIONS OF  
15 WEBSITE OPERATORS, BUT IN FACT THAT CORRELATION HE  
16 TESTIFIED WAS BASED ON HIS STUDY OF HIGH-TECH INTERNET  
17 FIRMS. HE CANNOT ESTABLISH THAT THERE IS THE SAME  
18 CORRELATION WITH REGARD TO ADULT INTERNET FIRMS.

19 FURTHERMORE, HE CANNOT ESTABLISH THAT THE  
20 DOMAIN NAMES THAT HE STUDIED ACTUALLY DO CORRELATE TO  
21 ANY ADULT WEBSITES. SO HE HAS REPORTED ON A SET OF  
22 DOMAIN NAMES THAT ARE IN HIS DATABASE, BUT HE HAS NOT  
23 SHOWN THAT THEY ACTUALLY CORRELATE TO ADULT WEBSITES IN  
24 THE REAL WORLD.

25 THE COURT: COUNSEL FOR PLAINTIFFS.

1 MS. MARSHALL: WITH RESPECT TO POINT ONE,  
2 WHICH I BELIEVE IS COUNSEL'S ARGUMENT THAT THERE IS NOT  
3 SUFFICIENT EVIDENCE THAT THERE'S A CORRELATION BETWEEN  
4 THE REGISTRANT'S ADDRESS LOCATION AND THE ACTUAL  
5 LOCATION OF THE WEBSITE OWNER OR OPERATOR, DEFENSE  
6 COUNSEL HAS PROVIDED NO EVIDENCE TO THE CONTRARY. WE  
7 HAVE ESTABLISHED THAT PROFESSOR ZOOK IS AN EXPERT IN THE  
8 FIELD OF LOCATION OF DOMAIN NAMES AND THE GEOGRAPHICAL  
9 LOCATION OF DOMAIN NAMES THAT IS RESPECTED BY NOT ONLY  
10 COUNTRIES INCLUDING CANADA AND FRANCE BUT THE WORLD'S  
11 LEADER IN THE SALES OF THESE DOMAIN NAMES LIKE GO DADDY  
12 AND THE REGISTRATION OS THESE DOMAIN NAMES LIKE  
13 VERISIGN.

14 WITH RESPECT TO COUNSEL'S SECOND POINT,  
15 THAT THERE SEEMS TO BE, AS COUNSEL ARGUES, LITTLE  
16 CORRELATION BETWEEN THE DOMAIN NAMES IN THE DATABASE AND  
17 WHETHER IN FACT THEY ARE ADULT WEBSITES, AGAIN, COUNSEL  
18 HAS OFFERED NO EVIDENCE TO THE CONTRARY. AND IN FACT,  
19 PROFESSOR ZOOK ESTABLISHED MORE THAN ONCE THAT ALL OF  
20 THESE DOMAIN NAMES WERE GATHERED FROM POPULAR AND  
21 WELL-ESTABLISHED ADULT WEBSITE INDICES WHICH ARE  
22 AVAILABLE ONLINE. FURTHER, YOUR HONOR, I WOULD SAY THAT  
23 THIS METHODOLOGY WAS BASED ENTIRELY ON AN ACADEMIC  
24 RESEARCH PROJECT AND METHODOLOGY THAT PROFESSOR ZOOK  
25 ENGAGED IN IN 2001, WHICH RESULTED IN AN ACADEMIC

1 PUBLICATION IN 2003 THAT WENT THROUGH A PEER REVIEW  
2 PROCESS AND WAS PUBLISHED IN A NATIONALLY-RESPECTED  
3 JOURNAL, ONE IN WHICH IS SPECIFIC TO HIS FIELD OF STUDY.

4 MR. MCELVAIN: VERY BRIEFLY, YOUR HONOR.  
5 THE 2003 ARTICLE THAT WAS JUST REFERENCED FOR THAT 2003  
6 ARTICLE PROFESSOR ZOOK STUDIED THE LOCATIONS OF ADULT  
7 WEBSITE HOSTING SERVICES. THAT ARTICLE WAS PEER  
8 REVIEWED. THAT WAS NOT RESEARCH THAT HE REPEATED FOR  
9 THIS REPORT AND HE DID NOT INCLUDE THAT RESEARCH BECAUSE  
10 THE PLAINTIFFS' COUNSEL MADE THE ULTIMATE DECISION NOT  
11 TO INCLUDE THAT RESEARCH FOR THIS REPORT.

12 MS. MARSHALL: YOUR HONOR, I JUST HAVE A  
13 BRIEF RESPONSE AND THAT I THINK THAT IS AN UNFAIR  
14 CHARACTERIZATION OF PROFESSOR ZOOK'S PRIOR PAPER, THAT  
15 IN FACT HE RESEARCHED THE LOCATION OF NOT ONLY THE HOSTS  
16 FOR ADULT WEBSITES BUT ALSO THE DOMAINS AND THE ADULT  
17 WEBSITES THEMSELVES. IT WAS MORE THAN JUST THE ONE  
18 PROJECT IN 2003.

19 THE COURT: THE COURT FINDS, NUMBER ONE,  
20 FOR EASY REFERENCE TO PRIOR RULINGS, THE WITNESS IS AN  
21 EXPERT IN THE FIELDS IN WHICH HE HAS TESTIFIED. I  
22 BELIEVE THE FACTS SET FORTH IN THE RESPONSIVE ARGUMENT  
23 OF COUNSEL FOR PLAINTIFF ARE PERMISSIBLE INFERENCES FROM  
24 THE TESTIMONY. I'M NOT SAYING I'M GOING TO MAKE THOSE  
25 INFERENCES BUT THEY'RE PRIMA FACIE SHOWING THAT THE

1 WITNESS HAS PRODUCED RELIABLE METHODOLOGY AND OF SOME  
2 SIGNIFICANCE IS THE -- SO FAR THE RECORD DOES NOT SHOW  
3 THAT SIGNIFICANT INROADS INTO RESULTS THAT HAVE BEEN  
4 MADE BY THE COMPARATIVELY SMALL NUMBER OF POSSIBLE  
5 ERRORS IF THERE WERE ANY, IN THE LISTINGS OF THE 20 OR  
6 30 LISTINGS THAT YOU WENT OVER WITH HIM -- WERE GONE  
7 OVER WITH HIM. THAT MADE A SMALL INROAD INTO THE  
8 NUMBERS RELIED UPON BY DR. ZOOK. I FIND THE --  
9 ULTIMATELY THE RELIABILITY AND THE WEIGHT TO BE GIVEN  
10 THIS EVIDENCE IS FOR THE FACT FINDER, SO-TO-SPEAK, GOES  
11 TO THE WEIGHT OF THE EVIDENCE. THE MOTION TO STRIKE THE  
12 TESTIMONY IS DENIED. WE WILL TAKE 10 MINUTE RECESS.

13 THE COURT: WHO WILL BE THE NEXT WITNESS?

14 MR. HANSEN: ALICIA SMITH, YOUR HONOR.

15 THE COURT: COUNSEL ARE EXCUSED. 10  
16 MINUTES.

17 (BREAK TAKEN.)

18 THE CLERK: ALL RISE COURT IS NOW IN  
19 SESSION.

20 THE COURT: WELCOME BACK, EVERYBODY,  
21 PLEASE BE SEATED. NEXT WITNESS PLEASE.

22 MR. FINE: PLAINTIFFS CALL ALICIA SMITH.

23 THE COURT: MISS SMITH, RIGHT UP HERE,  
24 PLEASE.

25 ALICIA SMITH, PLAINTIFF'S WITNESS, SWORN.

1 THE CLERK: STATE AND SPELL YOUR FULL NAME  
2 FOR THE RECORD, PLEASE?

3 THE WITNESS: A-L-I-C-I-A S-M-I-T-H  
4 TAMARA ULRICH FOR THE DEPARTMENT OF JUSTICE.

5 MS. ULRICH: AND DEFENDANT HAS SEVERAL  
6 OBJECTIONS TO MISS SMITH'S TESTIMONY IN ITS ENTIRETY.  
7 THE FIRST OBJECTION IS THAT MISS SMITH WAS NOT DISCLOSED  
8 AS A WITNESS UNTIL THE FINAL PRETRIAL ORDER DESPITE THE  
9 DEFENDANT'S REQUEST FOR THIS INFORMATION DURING  
10 DISCOVERY. THE SECOND OBJECTION IS RELEVANCE. IF I  
11 UNDERSTAND CORRECTLY FROM THE FINAL PRETRIAL ORDER, THIS  
12 WITNESS IS TO BE TESTIFYING ABOUT HER FEAR OF  
13 PROSECUTION UNDER COPA. THIS WITNESS IS NOT A PLAINTIFF  
14 AND ANY SUCH FEAR OF PROSECUTION IS NOT RELEVANT TO THE  
15 PLAINTIFFS. THIRDLY, THE DEFENDANT OBJECTS BECAUSE THIS  
16 WITNESS WILL BE PRESENTING CUMULATIVE EVIDENCE. SHE  
17 WILL BE TESTIFYING TO THE SAME SUBJECTS AS OTHER  
18 PLAINTIFFS AND NUMEROUS OTHER WITNESSES HAVE TESTIFIED  
19 TO AND WILL TESTIFY TO.

20 MR. FINE: YOUR HONOR, AS TO THE FIRST,  
21 MY UNDERSTANDING WAS THAT THIS ISSUE WAS ALREADY DEALT  
22 WITH AS TO THE DISCOVERY DISCLOSURE. THERE WAS NO  
23 QUESTION AS TO -- TO IDENTIFY OF EVERY SINGLE PERSON  
24 WHOSE SPEECH ON THE WEB IS AT RISK UNDER THE STATUTE.  
25 MISS SMITH IS HERE TO SPEAK TO A COMPLETELY DIFFERENT

1 TYPE OF SPEECH THAT NO OTHER PLAINTIFF OR WITNESS TO MY  
2 KNOWLEDGE IS GOING TO SPEAK ABOUT, WHICH IS MUSIC AND  
3 HOW MUSICIANS ARE AFFECTED BY THIS STATUTE.

4 AND AS TO RELEVANCE, PLAINTIFFS HAVE AN  
5 OVERBREADTH CLAIM, YOUR HONOR.

6 THE COURT: PARDON ME?

7 MR. FINE: PLAINTIFFS HAVE AN OVERBREADTH  
8 CLAIM AND THE NAMED PLAINTIFFS ARE CERTAINLY ENTITLED TO  
9 RELY UPON THE SPEECH OF OTHERS OR NOT NAMED PLAINTIFFS  
10 IN BRINGING THEIR OVERBREADTH CLAIM TO THE COURT.

11 THE COURT: MISS ULRICH, DO YOU HAVE A  
12 COMMENT?

13 MS. ULRICH: YES, YOUR HONOR, AS FAR AS  
14 THE NONDISCLOSURE, THE DEFENDANT DID HAVE A REQUEST AS  
15 TO WHO THE PLAINTIFF WOULD BE CALLING AT TRIAL. THAT IS  
16 THE SPECIFIC INTERROGATORY THAT I'M REFERRING TO THERE.  
17 AS TO THE RELEVANCE AND THE OVERBREADTH CLAIM, IT IS OUR  
18 UNDERSTANDING THAT THE PLAINTIFFS IN THIS CASE ARE NOT  
19 SAYING THAT COPA IS PROPERLY APPLIED TO THEM, YET  
20 IMPROPERLY APPLIED TO OTHERS. WE DO NOT BELIEVE THAT  
21 THIS PLAINTIFF WOULD BE RELEVANT. AND AS TO THE  
22 CUMULATIVE NATURE, TO THE EXTENT THAT THIS WITNESS IS  
23 TESTIFYING AS TO AUDIO ON THE WEB, THAT IS SOMETHING  
24 THAT HAS BEEN COVERED BY MS. WALSH OF SALON.

25 THE COURT: I'LL DO IT BACKWARDS. MY

1 RULING IS THAT THE EVIDENCE IS RELEVANT IN THAT THE  
2 PLAINTIFFS ARE ENTITLED TO PRESENT EVIDENCE TO THE COURT  
3 THAT WILL SUPPORT THEIR ALLEGATIONS AS TO FEAR OF  
4 PROSECUTION, AND THE COURT WON'T LIMIT THEIR INGENUITY  
5 IN BRANCHING OUT BEYOND THE NAMED PLAINTIFFS THEMSELVES  
6 FOR THEIR METHOD OF COMMUNICATION. THAT WOULD DENY THE  
7 PLAINTIFFS THE RIGHT OF HAVING A DUE PROCESS PROCEEDING  
8 HERE. I BELIEVE I HAVE ALREADY RULED THAT THE ISSUE OF  
9 LATE DISCLOSURE IS NOT PREJUDICIAL TO THE DEFENSE AND IN  
10 THAT THE DEFENSE HAS FAILED TO SHOW ANY SUCH PREJUDICE  
11 AND THE COURT IS ALLOWING WITNESSES FOR THE DEFENDANT  
12 THAT ARE IN THE SAME POSTURE AS THIS WITNESS IN TERMS OF  
13 SO-CALLED LATE DISCLOSURE. THE OBJECTION TO THE  
14 TESTIMONY IN TOTO IS DENIED OR OVERRULED OR HOWEVER YOU  
15 WANT TO CALL IT.

16 DIRECT EXAMINATION

17 BY MR. FINE:

18 Q. GOOD AFTERNOON, MISS SMITH.

19 A. GOOD AFTERNOON.

20 Q. CAN YOU TELL US, WHAT IS YOUR PROFESSION?

21 A. I'M A PROFESSIONAL MUSICIAN.

22 Q. WHAT KIND OF MUSIC?

23 A. IT'S LIKE HIP HOP, SOUL, R AND B.

24 Q. WHEN YOU SAY HIP HOP, CAN YOU TELL US WHAT YOU  
25 MEAN BY HIP HOP?

1 A. YEAH, WELL HIP HOP ASPECT THAT WE BRING TO THE  
2 MUSIC IS KIND OF LIKE POETRY TO A BEAT ESSENTIALLY.  
3 IT'S VERY WORDY. MY STUFF IS PROGRESSIVE, POLITICAL AND  
4 THEN THE SOUL ASPECT IS MY SINGER AND SHE KIND OF BRINGS  
5 THE MELODY INTO THE MUSIC.

6 Q. CAN YOU GIVE US A FEW WELL-KNOWN EXAMPLES OF HIP  
7 HOP MUSICIANS OTHER THAN YOURSELF?

8 A. LIKE M AND M. JAY Z. MISSY ELLIOTT, FIFTY  
9 CENT. THERE IS A HARSH -- IT'S KIND OF HARD TO  
10 DETERMINE WHETHER PEOPLE CONSIDER THEMSELVES TO BE THE  
11 GENRE OF RAP OR HIP HOP, BUT THE WORDS ARE KIND OF  
12 INTERTWINED AND PEOPLE TEND TO CLASSIFY HIP HOP AS BEING  
13 A LITTLE MORE PROGRESSIVE AND SMART LYRICALLY AND RAP TO  
14 BE A LITTLE MORE HARD CORE.

15 Q. THANK YOU.

16 DO YOU PERFORM UNDER YOUR REAL NAME?

17 A. NO, I DON'T.

18 Q. WHAT NAME DO YOU PERFORM UNDER?

19 A. GOD-DES, AND "SHE" IS MY SINGER.

20 Q. AND WHERE DOES YOUR NAME GOD-DES -- CAN YOU  
21 PLEASE SPELL IT FOR THE COURT REPORTER?

22 A. SURE, THAT IS G-O-D-D-E-S. ONE S.

23 Q. TELL US WHERE DID YOU GET THE NAME, GOD-DES?

24 A. WELL, IT HAS BEEN REALLY TRADITIONAL IN HIP HOP  
25 FOR IT TO BE -- FOR THE FEMALES TO BE OVER FEMININE,

1 HYPERFEMININE. THEY TAKE THESE NAMES LIKE QUEEN, YOU  
2 KNOW, GOD-DES, AND THEY REALLY USE THAT TO KIND OF SELL  
3 THEIR SEXUALITY AND THE FEMININE ASPECT OF WHAT THEY ARE  
4 DOING. SINCE I'M NOT EXACTLY LIKE THAT, AND I DON'T  
5 SELL THAT SORT OF SEX, A REALLY FEMININE BODY TO SELL MY  
6 MUSIC, I THOUGHT IT WOULD BE IRONIC TO KIND OF PLAY OFF  
7 OF THAT NAME. SO I WANTED ORIGINALLY TO FIND A GREEK  
8 GODDESS NAME THAT I LIKED, BUT I COULD NOT FIND ONE SO I  
9 THOUGHT GODDESS WAS COOL, BUT I WANTED TO SPICE IT UP SO  
10 I TOOK A COMBINATION OF LIKE I GOT THIS AND GODDESS AND  
11 CAME UP WITH GOD-DES.

12 Q. HOW LONG HAVE YOU BEEN A MUSICIAN?

13 A. WELL, I STARTED PLAYING THE CELLO AT 3, THEN THE  
14 VIOLIN AT 7, PERCUSSION AT 10. I PLAYED PERCUSSION  
15 UNTIL I WAS ABOUT 20 AND I STARTED RAPPING WHEN I WAS  
16 ABOUT 18. I'M TURNING 30, BELIEVE IT OR NOT, IN MARCH  
17 SO IT HAS BEEN ABOUT 11 YEARS I HAVE BEEN DOING HIP HOP.

18 Q. AND HOW DID YOU START PLAYING THE CELLO AT THE  
19 AGE OF 3?

20 A. MY MOM IS A PROFESSIONAL CELLIST, AND MY DAD IS  
21 A PROFESSIONAL TROMBONIST. I KIND OF WANTED TO FOLLOW  
22 IN MY MOM'S FOOTSTEPS, SO I STARTED PLAYING CELLO AT 3.  
23 BUT THEN I LIKED THE VIOLIN BETTER. THEN I STARTED  
24 PLAYING DRUMS, THAT WAS MORE MY STYLE. --

25 Q. DID YOU GO TO COLLEGE?

1 A. YES. I WENT TO THE UNIVERSITY OF WISCONSIN AT  
2 MADISON.

3 Q. WHAT DID YOU MAJOR IN?

4 A. ENGLISH AND WOMENS' STUDIES.

5 Q. WHERE WERE YOU BORN?

6 A. IN SEATTLE.

7 Q. DID YOU GROW UP IN SEATTLE?

8 A. NO, I ACTUALLY -- MY PARENTS WERE IN THE SEATTLE  
9 SYMPHONY AND THEN ACTUALLY WE MOVED TO CALIFORNIA AND  
10 THEY WERE DOING A LOT OF COMMERCIAL WORK THERE. AND  
11 THEN MY DAD GOT A JOB OFFER AT UNIVERSITY OF MICHIGAN TO  
12 BE THE TROMBONE PROFESSOR AND THEY WANTED SOMETHING MORE  
13 STABLE WITH INSURANCE AND THAT KIND OF THING SO I GREW  
14 UP IN ANN ARBOR.

15 Q. HOW LONG DID YOU LIVE IN MADISON?

16 A. I LIVED IN MADISON FROM '96 TO 2003.

17 Q. AND WHERE DO YOU CURRENTLY LIVE?

18 A. IN BROOKLYN, NEW YORK.

19 Q. NOW, I WANT TO FOCUS YOU A LITTLE BIT ON -- WE  
20 WERE JUST TALKING ABOUT YOU AS A PERSON. I WANT TO  
21 FOCUS ON YOU AS A MUSICIAN. WHY DID YOU DECIDE TO  
22 BECOME A PROFESSIONAL MUSICIAN?

23 A. IT REALLY RUNS IN MY FAMILY, LIKE MY GRANDDAD  
24 WAS A PROFESSIONAL VIOLIST, MY UNCLE'S THE VIOLA  
25 PROFESSOR AT INDIANA. I GUESS MUSIC IS IN MY BLOOD. I

1 DIDN'T REALLY INTEND TO BE A PROFESSIONAL MUSICIAN, BUT  
2 WHEN I STARTED DOING THE HIP HOP THING, I REALIZED HOW  
3 IMPORTANT IT WAS TO ME AND THE EFFECT IT WAS HAVING ON  
4 PEOPLE, AND I JUST COULDN'T DO ANYTHING ELSE, SO I JUST  
5 TOOK A GO AT IT.

6 Q. AND WHAT ARE YOUR GOALS AS A MUSICIAN, AS A  
7 PERFORMER?

8 A. MY GOAL IS TO BE LIKE THE FIRST OPENLY GAY HIP  
9 HOP ARTIST IN THE MAINSTREAM PER SE.

10 Q. WHAT MESSAGE ARE YOU TRYING TO GET OUT IN YOUR  
11 SONGS?

12 A. I'M JUST SO SICK OF LIKE ALL THE NEGATIVE IMAGES  
13 ABOUT WOMEN AND VIOLENCE AND A LOT OF OTHER THINGS IN  
14 NOT ONLY HIP HOP BUT JUST POP CULTURE, MOVIES AND THAT  
15 SORT OF THING, AND MY MESSAGE IS -- MY MESSAGE IS VERY  
16 POSITIVE. IT MAKES A LOT OF GAY PEOPLE FEEL LIKE  
17 IT'S -- THEY FEEL OKAY ABOUT THEMSELVES AND IT'S LIKE  
18 REALLY WOMAN-POSITIVE, YOU KNOW. WOMEN FEEL REALLY  
19 EMPOWERED BY MY MUSIC AND IT'S A GREAT FEELING TO SEE  
20 HOW WE AFFECT PEOPLE. THAT IS MY ULTIMATE GOAL IS TO  
21 GET AS MANY FOLKS TO HEAR IT AS POSSIBLE THAT, HEY, IT  
22 MAKES THEM FEEL. BECAUSE MUSIC NOWADAYS IN MY OPINION  
23 DOES NOT MAKE YOU FEEL ANYTHING. IT DOES NOT MAKE YOU  
24 FEEL ANYTHING GOOD, AND WE KIND OF REALLY BROUGHT THAT  
25 FEELING BACK TO PEOPLE.

1 Q. TELL US A LITTLE BIT ABOUT WHAT ARE SOME OF THE  
2 SUBJECTS OF THE SONGS THAT YOU SING ABOUT?

3 A. WE TALK A LOT ABOUT CLASSISM, RACISM,  
4 HOMOPHOBIA, PEER PRESSURE FOR KIDS, SOME SEXUAL  
5 MATERIAL, BUT THAT IS THE BASIS.

6 Q. WHY DO YOU SING ABOUT THOSE SUBJECTS?

7 A. WELL, BECAUSE HIP HOP IS SUPPOSED TO BE ABOUT  
8 YOUR STORY, ABOUT YOUR PERSPECTIVE AND WHERE YOU ARE  
9 COMING FROM AND THOSE ARE ALL RELEVANT IN MY LIFE, SO I  
10 JUST TELL THE TRUTH.

11 Q. ARE ANY OF YOUR SONGS SEXUALLY EXPLICIT?

12 A. YES, A FEW.

13 Q. WHY DO YOU MAKE YOUR SONGS SEXUALLY EXPLICIT?

14 A. WELL, IT'S LIKE EVERY OTHER RAPPER, EVERY OTHER  
15 HIP HOP ARTIST. I KIND OF FEEL THEY USE SEX IN A  
16 NEGATIVE WAY AND IT'S SO MISOGYNIST AND SO SEXIST ABOUT  
17 MALE PLEASURE. AND SO WHEN I COME OUT, YOU KNOW,  
18 SINGING ABOUT FEMALE PLEASURE LIKE IT MAKES WOMEN FEEL  
19 REALLY HAPPY AND REALLY EMPOWERED. WE WILL PLAY  
20 FESTIVALS WHERE THE WOMEN ARE ALL OVER 40 OR 45, AND  
21 WE'LL DO LICK IT AND THEY WILL BE ON THEIR FEET, LIKE SO  
22 HAPPY AND PROUD. WE BRING THEM ALIVE. SO WE JUST --  
23 IT'S JUST AN ASPECT OF LIFE AND SOMETHING WE BRING TO  
24 THAT AS WELL.

25 Q. IS IT IMPORTANT TO GET YOUR MESSAGE OUT FOR YOUR

1 SONGS TO BE SEXUALLY EXPLICIT?

2 A. I MEAN, YOU KNOW THE TERM, SEX SELLS. IT'S JUST  
3 THE WAY THAT IT IS, AND I TRY TO DO IT IN A MANNER THAT  
4 SUITS MY LIFE AND MYSELF, AND IT IS IMPORTANT. I MEAN  
5 PEOPLE, IF WE ONLY RAP ABOUT THE REALLY POLITICAL STUFF,  
6 PEOPLE KIND OF CLOSE THEIR EARS, BUT IF YOU CAN ADD THAT  
7 ELEMENT AND OTHER ELEMENTS AND MAKE IT REALLY DIVERSE,  
8 PEOPLE TEND TO PAY MORE ATTENTION TO YOU. EVEN LICK IT,  
9 LIKE WE WILL DO A SONG ABOUT, YOU KNOW, THE HARDEST  
10 STRUGGLE IN SOMEBODY'S LIFE AND THEN WE DO LICK IT AND  
11 THE CROWD GOES CRAZY SO IT'S GOING TO BE ONE OF THOSE  
12 SONGS I HAVE TO DO PROBABLY FOR THE NEXT 15 YEARS AND  
13 I'LL BE SICK OF DOING IT.

14 Q. WE ARE GOING TO GET TO YOUR SONG LICK IT. SO  
15 THE RECORD IS CLEAR, IS LICK IT SEXUALLY EXPLICIT?

16 A. YES, I WOULD CONSIDER IT THAT.

17 Q. WHO IS YOUR AUDIENCE? WHO ARE YOU TRYING TO  
18 COMMUNICATE TO?

19 A. WELL, IT'S LIKE ANYBODY THAT WILL LISTEN. WE  
20 JUST REALLY WANT EVERYBODY TO HEAR OUR MUSIC, BUT THERE  
21 ARE A LOT OF YOUNGER KIDS THAT LISTEN TO US. THAT KIND  
22 OF GOES ALONG WITH HIP HOP IN GENERAL, KIND OF HAS A  
23 YOUNGER FAN BASE. WE ALSO HAVE A LOT OF LOT OF LESBIANS  
24 JUST TOTALLY ROOTING FOR US TO TRY TO MAKE A GO OF IT.

25 Q. ARE YOU TRYING TO BE A ROLE MODEL?

1 A. ABSOLUTELY. I MEAN I DON'T THINK THAT MUSICIANS  
2 AND ACTORS, PEOPLE THAT ARE IN POP CULTURE REALLY HAVE A  
3 CHOICE BECAUSE AUTOMATICALLY PEOPLE LOOK AT YOU, THEY  
4 LOOK AT WHAT YOU DO AND THEY LOOK UP TO YOU. AND I WANT  
5 TO BE A POSITIVE ROLE MODEL, BUT I KNOW THAT I HAVE TO  
6 BE A ROLE MODEL BECAUSE PEOPLE ARE GOING TO CONSIDER ME  
7 THAT, WHETHER I WANT THAT OR NOT.

8 Q. AND YOU MENTIONED THAT YOU HAVE A SINGER, WHAT  
9 IS HER NAME?

10 A. HER NAME IS SHE, HER PERFORMANCE NAME.

11 Q. SO IF SHE IS -- WHEN YOU SAY SHE IS YOUR SINGER,  
12 WHAT DOES THAT MEAN? WHAT DO YOU DO? WHAT DOES SHE DO?

13 A. WELL, I'M LIKE THE RAPPER. I'M LIKE THE POET  
14 AND I WRITE THE BULK OF THE MATERIAL, AND THEN FOR LIVE  
15 PERFORMANCES SHE BACKS ME UP TO EMPHASIZE CERTAIN WORDS  
16 THEN SHE SINGS A LOT OF THE CHORUSES AND THE MELODIES.

17 Q. YOU MENTIONED THAT YOU WRITE THE BULK OF YOUR  
18 SONGS. HOW MANY SONGS HAVE YOU WRITTEN?

19 A. HUNDREDS, MAYBE EVEN A THOUSAND OR SO.

20 Q. HOW OFTEN DO YOU PERFORM, HAVE SHOWS?

21 A. BETWEEN 4 TO 10 TIMES A MONTH, PROBABLY.

22 Q. AT WHAT KIND OF VENUES DO YOU PERFORM?

23 A. WE PLAY EVERYWHERE. WE WILL PLAY ANYWHERE, IF  
24 ANYBODY IS LOOKING. WE PLAYED AT THE WHISKEY A GO GO IN  
25 LA. WE HAVE PLAYED AT THE KNITTING FACTORY IN NEW YORK.

1 WE PLAYED AT THE ROXY IN NEW YORK. WE PLAYED AT GAY  
2 PRIDE IN SAN FRANCISCO, GAY PRIDE IN NEW YORK. THE VANS  
3 WARD TOUR. WOMEN'S MUSIC FESTIVALS ALL OVER THE  
4 COUNTRY. SOME PLACES IN CANADA.

5 Q. CAN YOU JUST GIVE US A FEW EXAMPLES OF PLACES  
6 THAT YOU HAVE PERFORMED LATELY?

7 A. YEAH. LAST WEEKEND WE WERE IN SEATTLE AND WE  
8 PLAYED WITH SPINDERELLA FROM SALT 'N' PEPA WHICH IS A  
9 REALLY FAMOUS FEMALE HIP HOP GROUP FROM THE '90S. THE  
10 WEEK BEFORE THAT WE WERE IN JACKSON MISSISSIPPI FOR  
11 THEIR GAY PRIDE, AND THE WEEK BEFORE THAT WE WERE AT  
12 PROVIDENCE, RHODE ISLAND FOR A MARRIAGE EQUALITY  
13 BENEFIT.

14 Q. DO YOU HAVE ANY ALBUMS?

15 A. YES, WE HAVE TWO CURRENTLY THAT WE SELL ONLINE  
16 AND ALSO AT OUR SHOWS.

17 Q. AND WHAT ARE THE NAMES OF THE TWO ALBUMS?

18 A. REALITY AND THE AWESOME EP.

19 Q. TELL ME --

20 THE COURT: THE SECOND ONE, WHAT IS THE  
21 NAME?

22 THE WITNESS: THE AWESOME EP.

23 BY MR. FINE:

24 Q. TELL ME FIRST, THE ALBUM REALITY, WHAT IS THE  
25 TITLE REALITY SIGNIFY?

1           A.           WELL, I THOUGHT OF THAT TITLE BECAUSE I FELT  
2           LIKE HIP HOP NOW IS SO NOT REALITY AND THAT'S HOW IT  
3           ORIGINATED. IT WAS SUPPOSED TO BE YOUR STORY AND COME  
4           FROM A DEPRESSED PLACE AND HAVE YOUR VOICE HEARD.

5                           AND NOW IT IS SO COMMERCIALIZED AND  
6           PEOPLE ARE NOT TELLING THE TRUTH AND THEY ARE NOT  
7           TELLING THE REALITY TO MAKE PEOPLE WANT TO FEEL LIKE  
8           THEY WISH THEY COULD HAVE THEIR RICHES AND THEIR BLING  
9           AND THEIR SEX. AND I DON'T FEEL LIKE IT IS TRUTHFUL.  
10          SO I WANTED TO NAME MY ALBUM REALITY, WHICH IS WHAT I  
11          CONSIDERED TO BE REAL LIFE AND ON THE COVER IT HAS  
12          REALITY IN A TV AND THE TV IS FUZZY, KIND OF MOCKING  
13          REALITY TV. YOU TURN IT OVER AND WE FILLED IN THE TV  
14          WITH A BUNCH OF IMAGES OF LIKE DIVERSITY, PEOPLE OF  
15          DIFFERENT COLORS, DIFFERENT ORIENTATIONS, RELIGIONS,  
16          THAT SORT OF THING.

17          Q.           AND THE SECOND ALBUM AWESOME EP. FIRST OF ALL,  
18          WHAT'S EP?

19          A.           AN EP IS NOT A FULL ALBUM. IT'S USUALLY LIKE  
20          FIVE OR SIX SONGS AND BECAUSE OF THE POPULARITY FROM  
21          LICK IT, WHEN WE WERE ON THE L WORD, WHICH IS A SHOW ON  
22          SHOW TIME, EVERYBODY WANTED TO BUY THAT SONG. SO WE  
23          MADE THE AWESOME EP AS A WAY TO SELL THAT SONG BEFORE  
24          THE FULL ALBUM COMES OUT BECAUSE WE ARE PROBABLY GOING  
25          TO PUT IT OUT WITH SONY NOW. WE ARE NEGOTIATING A DEAL

1 WITH THEM.

2 Q. FIRST TELL US, WHERE DOES THE TITLE THE AWESOME  
3 EP COMES FROM?

4 A. IT'S AWESOME AND IT IS AN EP. THAT'S IT.

5 Q. FAIR ENOUGH. YOU JUST MENTIONED THAT. DO YOU  
6 HAVE A DEAL UP COMING WITH A RECORD COMPANY?

7 A. YES, WE ARE. WE ALREADY SIGNED A SINGLE DEAL  
8 WITH SONY, SONY'S NEW RECORD LABEL, MUSIC WITH A TWIST,  
9 AND THE PRESS RELEASE COMES OUT OCTOBER 30TH AND WE HAD  
10 TO SIGN A FIVE-ALBUM DEAL WITH THEM, BUT IT'S GOING TO  
11 TAKE SIX MONTHS FOR THEM TO DECIDE IF THAT IS -- IT'S  
12 KIND OF A LONG STORY, BUT WE HAVE A SINGLE DEAL WITH  
13 THEM THAT IS GOING TO BE ON A COMPILATION AND THEN  
14 PROBABLY THE ALBUM DEAL AS WELL.

15 Q. CONGRATULATIONS.

16 A. THANK YOU.

17 Q. WHERE CAN YOU BUY YOUR ALBUMS?

18 A. WELL, IT'S MOSTLY ONLINE AND IN OUR LIVE SHOWS.

19 Q. ARE YOUR ALBUMS AVAILABLE IN ANY STORES?

20 A. A FEW STORES THROUGH GOLDENROD, WHICH IS A  
21 DISTRIBUTION COMPANY ONLINE, BUT I'M NOT ACTUALLY REALLY  
22 SURE WHAT THE STORES ARE. IT'S SO MINIMAL. IT'S REALLY  
23 MOSTLY ONLINE.

24 Q. DOES THE FACT THAT MORE STORES DON'T SELL YOUR  
25 ALBUMS CAUSE ANY PROBLEMS FOR SOME OF YOUR FANS?

1           A.           A LOT OF PROBLEMS, SO MANY PEOPLE, ON OUR  
2           WEBSITE -- YOU CAN CONTACT US AND ACTUALLY I REALLY DO  
3           GET CONTACTED. A LOT OF ARTISTS SAY YOU CAN CONTACT  
4           THEM, BUT IT IS REALLY ME THAT READS THE MESSAGES AND  
5           EVERY DAY WE GET PEOPLE ASKING HOW THEY CAN GET THE  
6           ALBUM OR SAYING THAT CAN THEY GO TO A STORE TO BUY IT  
7           BECAUSE THEY DON'T WANT TO GIVE THEIR CREDIT CARD  
8           INFORMATION ONLINE OR THEY DON'T HAVE A CREDIT CARD OR  
9           THEY ARE 16 AND THEY DON'T HAVE A CREDIT CARD OR  
10          WHATEVER SO...

11                        MS. ULRICH: YOUR HONOR. OBJECTION,  
12          HEARSAY, LACK OF FOUNDATION.

13                        MR. FINE: I'M NOT QUITE SURE WHAT THE  
14          LACK OF FOUNDATION IS, BUT I'M HAPPY TO LAY A  
15          FOUNDATION.

16                        THE COURT: IT SOUNDED LIKE SHE HANDLES  
17          THESE CALLS HERSELF, SO I THOUGHT THAT WAS ENOUGH  
18          FOUNDATION. OVERRULED.

19          BY MR. FINE:

20          Q.           ARE YOUR SONGS ON THE RADIO?

21          A.           LOVE YOU BETTER, THE SONG THAT SONY SIGNED.

22                        THE COURT: WHAT IS THE NAME OF THE SONG  
23          AGAIN?

24                        THE WITNESS: LOVE YOU BETTER. IT HAS  
25          BEEN ON LIKE 10 TOP 40 STATIONS AROUND THE COUNTRY.

1 BY MR. FINE:

2 Q. WHAT ABOUT LICK IT, HAS LICK IT EVER BEEN ON THE  
3 RADIO?

4 A. LICK IT HAS NEVER BEEN ON THE RADIO. BUT LICK  
5 IT WAS ON THE SHOW THE L WORD.

6 Q. AND TELL US, I BELIEVE YOU TOLD US WHAT THE L  
7 WORD IS, BUT CAN YOU CLARIFY? TELL US, WHAT IS THE L  
8 WORD.

9 A. IT'S LIKE A LESBIAN BASED SHOW THAT IS ON  
10 SHOWTIME. I THINK IT IS ACTUALLY THEIR MOST POPULAR  
11 SHOW, THAT AND WEEDS.

12 Q. HAVE YOU EVER TRIED TO GET LICK IT ON THE RADIO?

13 A. I DO KNOW THE PROGRAM DIRECTOR AT HOT 97, WHICH  
14 IS THE BIGGEST HIP HOP STATION I BELIEVE IN THE COUNTRY,  
15 BUT DEFINITELY IN NEW YORK. WHEN I SENT HIM LICK IT, HE  
16 THOUGHT IT WAS FUNNY, BUT HE SAID HE JUST DIDN'T THINK  
17 THERE WAS ANY WAY THAT HE COULD GET IT ON THE RADIO.

18 Q. DID LICK IT EVER PLAY ON THE RADIO?

19 A. NO.

20 Q. HAVE YOU EVER BEEN FEATURED IN A DOCUMENTARY?

21 A. YES, A FEW.

22 Q. HOW MANY?

23 A. TWO THAT ARE CURRENTLY OUT, HIP HOP HOMOS IS  
24 ONE. AND THE OTHER ONE IS PICK UP THE MIKE?

25 Q. FIRST, TELL ME, THIS MAY BE OVERLY SIMPLISTIC,

1 BUT WHAT WAS HIP HOP HOMOS ABOUT?

2 A. HIP HOP HOMOS. YOU KNOW, IT'S ABOUT -- IT'S  
3 ACTUALLY ABOUT MYSELF AND ANOTHER GAY RAPPER THAT IS A  
4 MALE, DEADLEE AND IT'S JUST ABOUT THE STRUGGLES IN THE  
5 LIVES THAT YOU MAY FACE TRYING TO BE GAY IN WHAT THEY  
6 CONSIDER A VERY HOMOPHOBIC ASPECT OF MUSIC IN INDUSTRY.  
7 IT KIND OF LIKE GOES THROUGH AND PLAYS OUR STUFF FOR  
8 PEOPLE ON THE STREET, AND IT SHOWS THEIR RESPONSES.  
9 IT'S ALSO JUST LIKE, IS A BIOGRAPHY OF OUR LIVES AND OF  
10 OUR STRUGGLES TRYING TO MAKE IT.

11 Q. YOU MENTIONED THE OTHER PERFORMER. CAN YOU  
12 SPELL HIS NAME FOR THE RECORD?

13 A. DEADLEE. D-E-A-D-L-E-E.

14 Q. DO DEADLEE'S SONGS CONTAIN SEXUALLY EXPLICIT  
15 LYRICS?

16 A. YES, THEY COULD BE CONSIDERED TO BE THAT WAY.

17 Q. ARE HIS SONGS ON THE WEB ALSO?

18 A. YEP.

19 Q. AND THE SECOND DOCUMENTARY, PICK UP THE MIKE,  
20 WHAT WAS THAT ABOUT?

21 A. IT WAS SIMILAR, EXCEPT FOR IT FOLLOWED ABOUT 20  
22 OF US. AND IT WAS LONGER AND HIP HOP HOMOS GOT INTO A  
23 LOT OF FESTIVALS AROUND THE WORLD, BUT PICK UP THE MIKE  
24 HAS BEEN EVERYWHERE AND ALSO JUST GOT BOUGHT BY MTV'S  
25 NEW GAY CHANNEL, LOGO.

1 Q. AND WHEN YOU SAY IT WAS ABOUT 20 OF US, WHEN YOU  
2 SAY -- WHO ARE YOU REFERRING TO?

3 A. OTHER RAPPERS THAT ARE GAY THAT ARE DOING HIP  
4 HOP.

5 Q. AND THESE OTHER 20 OR SO INDIVIDUALS, DO ANY OF  
6 THEM HAVE SONGS THAT ARE SEXUALLY EXPLICIT?

7 A. DEFINITELY.

8 Q. AND ARE THEIR SONGS ON THE WEB?

9 A. ALL OF THEM.

10 Q. I WANT TO NOW ASK YOU A LITTLE BIT MORE BROADLY  
11 ABOUT THE HIP HOP COMMUNITY IN GENERAL, NOT JUST YOUR  
12 GENRE WITHIN THE HIP HOP COMMUNITY. HOW WOULD YOU  
13 DESCRIBE THE TYPICAL SUBJECT OF A HIP HOP SONG?

14 A. NOWADAYS, I MEAN IT'S KIND OF LIKE -- I'M NOT  
15 SURE IF YOU GUYS ARE FAMILIAR WITH BLING BLING, BUT IT'S  
16 THE TERM USED TO BRAG ABOUT YOUR RICHES. IF YOU HAVE  
17 BLING, IT'S USUALLY LIKE BIG JEWELRY, BIG NECKLACES,  
18 IT'S OVER-SEXUALIZED. YOU PRETTY MUCH WILL SEE, YOU  
19 KNOW, 10 BOOTY GIRLS LIKE SHAKING THEIR BUTT EVEN IF IT  
20 IS LIKE A COMPLETELY UNRELATED SONG ON THE VIDEOS. AND  
21 A LOT OF IT IS BRAGGING KIND OF ABOUT WHAT THEY HAVE,  
22 YOU KNOW, THAT KIND OF THING.

23 Q. HOW MANY HIP HOP MUSICIANS ARE THERE?

24 A. MILLIONS, I WOULD SAY.

25 MS. ULRICH: OBJECTION. IT APPEARS THAT

1 WE ARE GETTING INTO LAY OPINION TESTIMONY WITH THE  
2 WITNESS.

3 MR. FINE: I'M HAPPY TO LAY A FOUNDATION.  
4 THE QUESTION IS WITHDRAWN.

5 THE COURT: WITHDRAWN.

6 MR. FINE: THE QUESTION IS WITHDRAWN.

7 BY MR. FINE:

8 Q. DO YOU KNOW HOW MANY ROUGHLY HIP HOP MUSICIANS  
9 THERE ARE?

10 A. MILLIONS.

11 Q. AND DO MOST OF THEM HAVE THEIR MATERIAL ON THE  
12 WEB?

13 MS. ULRICH: OBJECTION, YOUR HONOR. SAME  
14 OBJECTION. LAY OPINION.

15 MR. FINE: I WILL WITHDRAW IT AGAIN.

16 BY MR. FINE:

17 Q. DO YOU KNOW IF MOST HIP MUSICIANS HAVE THEIR  
18 MATERIAL ON THE WEB?

19 THE COURT: ANSWER THAT YES OR NO.

20 MS. ULRICH: OBJECTION, YOUR HONOR.

21 THE COURT: OVERRULED.

22 THE WITNESS: I WOULD SAY --

23 THE COURT: WAIT A MINUTE. EXCUSE ME,  
24 JUST ANSWER THE QUESTION YES OR NO. IF YOU KNOW  
25 SOMETHING, THE ANSWER IS YES OR NO, OR NO, I DON'T KNOW.

1 THE WITNESS: YES.

2 BY MR. FINE:

3 Q. AND HOW DO YOU KNOW THAT?

4 A. BECAUSE I KNOW PERSONALLY AND WE HAVE PERFORMED  
5 WITH THOUSANDS OF OTHER HIP HOP GROUPS THROUGHOUT MY  
6 CAREER AS WELL AS I HAVE STUDIED IN SPAIN AND TRAVELLED  
7 ALL OVER EUROPE AND BEEN TO MANY, MANY, MANY DIFFERENT  
8 HIP HOP SHOWS. ALL OF THE COMMUNITY THAT I'M WITH THAT  
9 IS UNDERGROUND ALL HAS THEIR STUFF ON THE WEB AND ALL  
10 HAVE WEB PAGES WHERE I PERSONALLY VISITED THEM OR  
11 PURCHASED MUSIC FROM THEIR SITES.

12 Q. AND HAVE YOU RECEIVED ANY AWARDS OR NOMINATIONS?

13 A. YES, I HAVE. RECEIVED A GLAAD AWARD, WHICH IS  
14 AN OUT MUSIC AWARD, WHICH IS A CEREMONY THAT THEY HAVE  
15 ONCE A YEAR THAT CELEBRATES GAY ARTISTS, AND I RECEIVED  
16 IN 2004 A NOMINATION FOR OUR SONG, CAN'T STAND, FOR SONG  
17 OF THE YEAR.

18 Q. HOW DO YOU TRY TO ATTRACT FANS OR LISTENERS?

19 A. PRETTY MUCH EVERY WAY THAT WE CAN, BUT THE  
20 INTERNET IS PROBABLY THE BIGGEST WAY THAT WE FIND NEW  
21 PEOPLE OR NEW PEOPLE FIND US AND IT ADDS UP TO MORE THAN  
22 HALF OF OUR SALES, BECAUSE THE ONLY OTHER WAY WE SELL  
23 OUR MUSIC IS FOR LIVE PERFORMANCES AND THE OTHER HALF  
24 ARE ONLINE SALES.

25 Q. AND JUST BACK UP A SECOND. DO YOU HAVE A

1 WEBSITE?

2 A. YES, I DO.

3 Q. AND WHY DO YOU HAVE A WEBSITE?

4 A. YOU KNOW, AGAIN, TO ATTRACT AS MANY LISTENERS AS  
5 WE CAN.

6 Q. WHY IS BEING ON THE WEB ESPECIALLY IMPORTANT TO  
7 A MUSICIAN LIKE YOU?

8 A. WELL, BECAUSE WE HAVE KIND OF BEEN -- MUSICIANS  
9 SIMILAR TO MYSELF, WE TALK ABOUT TOPICS THAT ARE NOT IN  
10 THE BOX, ARE NOT TYPICAL OF HIP HOP OR THE MAIN STREAM,  
11 HAVE A HARD TIME GETTING THEIR MUSIC OUT THERE, SO THE  
12 INTERNET SERVES AS A TOOL. IF I CAN'T GET MY MUSIC ON  
13 HOT 97 BECAUSE IT'S TOO CONTROVERSIAL FOR THEM I ALWAYS  
14 HAVE THE INTERNET. PEOPLE ALL OVER THE WORLD HAVE  
15 ACCESS TO MY MUSIC THAT WAY.

16 Q. IS IT IMPORTANT TO YOU THAT AS MANY PEOPLE AS  
17 POSSIBLE VISIT YOUR WEBSITE?

18 A. ABSOLUTELY.

19 Q. WHY?

20 A. THAT IS REACHING MORE PEOPLE AND GETTING MORE  
21 FANS FOR US.

22 Q. I WANT TO ASK YOU NOW A LITTLE BIT ABOUT YOUR  
23 WEBSITE, SPECIFICALLY. JUST GENERALLY, WHAT DO YOU HAVE  
24 ON YOUR WEBSITE?

25 A. ON OUR WEBSITE, WE HAVE OUR BIOGRAPHY, A LIST OF

1 THE SHOWS THAT WE HAVE DONE AND OUR UPCOMING SHOWS SO  
2 PEOPLE KNOW WHERE TO CATCH US. WE HAVE ALL OF OUR  
3 MERCHANDISE SUCH AS OUR CDS AVAILABLE, T-SHIRTS. WE  
4 ALSO HAVE A CONTACT PAGE WHERE PEOPLE CAN CONTACT US FOR  
5 SHOWS AND FAN MAIL AND THAT KIND OF THING.

6 Q. CAN YOU LISTEN TO YOUR SONGS ON YOUR WEBSITE?

7 A. YES.

8 Q. HOW MUCH DOES IT COST TO LISTEN TO YOUR SONGS ON  
9 YOUR WEBSITE?

10 A. IT'S FREE.

11 Q. WHY DO YOU LET PEOPLE DO THAT FOR FREE?

12 A. WELL, YOU KNOW, BECAUSE IT'S REALLY IMPORTANT,  
13 IT'S KIND OF LIKE FREE ADVERTISING. PEPSI WILL PAY  
14 MILLIONS OF DOLLARS TO HAVE AN ADVERTISEMENT ON T.V. IT  
15 IS KIND OF LIKE FREE ADVERTISING FOR US.

16 Q. WHO CAN LISTEN TO THE SONGS ON YOUR WEBSITE?

17 A. ANYBODY.

18 Q. DO YOU HAVE TO PROVIDE ANY INFORMATION OF ANY  
19 KIND TO LISTEN TO YOUR SONGS ON YOUR WEBSITE?

20 A. NO.

21 Q. WHY NOT?

22 A. I WOULDN'T EVEN KNOW HOW TO DO THAT, BUT WE JUST  
23 -- AGAIN, WE THINK IT'S REALLY IMPORTANT FOR EVERYBODY  
24 TO HEAR OUR MUSIC.

25 Q. CAN YOU ALSO WATCH VIDEOS ON YOUR WEBSITE?

- 1 A. YES, YOU CAN.
- 2 Q. CAN YOU WATCH A VIDEO OF YOU PERFORMING YOUR  
3 SONG, LICK IT?
- 4 A. YES, YOU CAN.
- 5 Q. WHO CAN WATCH THAT VIDEO?
- 6 A. ANYBODY.
- 7 Q. HOW MUCH DOES IT COST TO WATCH THAT VIDEO?
- 8 A. IT'S FREE.
- 9 Q. DO YOU HAVE TO PROVIDE ANY PERSONAL INFORMATION  
10 TO WATCH THAT VIDEO?
- 11 A. NO.
- 12 Q. WHY NOT?
- 13 A. SAME KIND OF THING. WE JUST WANT EVERYBODY TO  
14 BE ABLE TO WATCH IT, IF THEY WOULD LIKE TO.
- 15 Q. AND I BELIEVE YOU MENTIONED YOU HAVE A WAY FOR  
16 YOUR FANS, YOUR AUDIENCE TO CONTACT YOU THROUGH THE  
17 WEBSITE?
- 18 A. YES.
- 19 Q. DOES ANYONE EVER SEND YOU E-MAILS THROUGH THE  
20 WEBSITE?
- 21 A. ALL THE TIME. I HAVE THOUSANDS AND THOUSANDS OF  
22 MESSAGES SAVED. I GET PROBABLY AT LEAST MAYBE THREE TO  
23 FIVE MESSAGES A DAY PERSONALLY TO MY IN-BOX OF FAN MAIL  
24 OR WHATEVER, PLUS WE HAVE A MYSPACE PAGE.
- 25 THE COURT: HAVE A WHAT? PARDON?

1 THE WITNESS: MYSPACE.

2 THE COURT: I UNDERSTAND.

3 THE WITNESS: YEAH. AND JUST SINCE WE --  
4 WE HAVE ONLY BEEN ON MYSPACE PROBABLY ABOUT LESS THAN A  
5 YEAR AND AS SOON AS WE DID LICK IT ON THE L WORD, WE  
6 HAVE NEVER ASKED ANYBODY TO BE OUR FRIEND, BUT WE HAVE  
7 ALMOST 7,500 FRIENDS NOW.

8 BY MR. FINE:

9 Q. JUST TELL US, SO THAT THE RECORD IS CLEAR, WHAT  
10 ARE YOU REFERRING TO WHEN YOU SAY "A FRIEND"?

11 A. PEOPLE THAT REQUEST US TO KIND OF ADD OUR PAGE  
12 TO THEIRS, WHERE THEY CAN SEND US MESSAGES AND LEAVE US  
13 COMMENTS, LISTEN TO OUR MUSIC. LICK IT HAS HAD OVER ONE  
14 HUNDRED THOUSAND PLAYS ON MYSPACE, I BELIEVE.

15 Q. YOU STARTED TALKING ABOUT YOUR MYSPACE PAGE.  
16 ARE YOUR SONGS AVAILABLE ON WEBSITES OTHER THAN YOUR OWN  
17 WEBSITE?

18 A. YES.

19 Q. ARE YOUR LYRICS AVAILABLE ON THE WEB?

20 A. YES.

21 Q. WHY DO YOU HAVE A MYSPACE PAGE?

22 A. BECAUSE IT'S SUCH A GREAT NETWORKING TOOL.

23 Q. AND DO YOU HAVE A MYSPACE PAGE IN ORDER TO HELP  
24 YOU MAKE MONEY?

25 A. ABSOLUTELY.

1 Q. ARE YOUR SONGS AVAILABLE ON YOUR MYSPACE PAGE?

2 A. YES, THEY ARE.

3 Q. WHY?

4 A. SAME REASON WHY THEY ARE AVAILABLE ON MY -- OUR  
5 HOME PAGES. SO PEOPLE HAVE ACCESS TO BE ABLE TO LISTEN  
6 TO THEM -- AND ACTUALLY ON MYSPACE, YOU CAN'T DOWNLOAD  
7 IT PER SE, LIKE YOU COULD FOR MYTUNES WHERE YOU CAN PUT  
8 IT ON YOUR IPOD, BUT YOU COULD MOVE OUR SONG, IF YOU  
9 WANTED TO, TO YOUR OWN MYSPACE PAGE AND HAVE THAT AS  
10 YOUR SONG ON YOUR PAGE, AND YOU COULD LISTEN TO IT EVERY  
11 DAY IF YOU WANTED TO.

12 Q. DO YOU HAVE ANY FANS OR LISTENERS WHO ARE -- WHO  
13 LIVE OUTSIDE THE UNITED STATES?

14 A. ABSOLUTELY.

15 Q. ARE YOU GENERALLY AWARE OF THE STATUTE THAT IS  
16 AT ISSUE IN THIS LAWSUIT?

17 A. YES, I AM.

18 Q. DO YOU KNOW IF ANY OF YOUR MATERIAL IS, QUOTE,  
19 HARMFUL TO MINORS UNDER THE DEFINITION IN THE STATUTE?

20 MS. ULRICH: OBJECTION. CALLS FOR LEGAL  
21 CONCLUSION.

22 MR. FINE: SIMPLY ASKING HER IF SHE  
23 KNOWS.

24 THE COURT: I DON'T KNOW IF IT WILL EVER  
25 GET IN THROUGH THIS WITNESS, BUT IT'S CERTAINLY NOT AN

1 ADEQUATE FOUNDATION. SUSTAINED.

2 MR. FINE: LET ME ASK YOU THIS QUESTION.  
3 DO YOU THINK SOME PEOPLE WOULD CONSIDER YOUR SONGS TO BE  
4 SEXUALLY EXPLICIT.

5 MS. ULRICH: OBJECTION, HEARSAY.

6 MR. FINE: I'M ASKING FOR THIS WITNESS'  
7 VIEWS. IT IS NOT HEARSAY.

8 THE COURT: UNUSUAL QUESTION, THE WAY YOU  
9 WORDED IT. I THINK THE QUESTION IS CONFUSING AND I'M  
10 GOING TO SUSTAIN THE OBJECTION ON THAT GROUND.

11 BY MR. FINE:

12 Q. LET ME ASK YOU THIS QUESTION: ARE ANY OF YOUR  
13 SONGS SEXUALLY EXPLICIT?

14 THE COURT: SHE ANSWERED THAT YES  
15 SOMETIME AGO.

16 BY MR. FINE:

17 Q. DO YOU THINK ANYONE ELSE MAY CONSIDER YOUR SONGS  
18 TO BE SEXUALLY EXPLICIT?

19 MS. ULRICH: OBJECTION, HEARSAY.

20 THE WITNESS: ABSOLUTELY.

21 MR. FINE: AGAIN, YOUR HONOR --

22 THE COURT: THE OBJECTION IS SUSTAINED  
23 FOR LACK OF FOUNDATION.

24 BY MR. FINE:

25 Q. DO YOU KNOW IF ANYONE CONSIDERS YOUR SONG TO BE

1 SEXUALLY EXPLICIT?

2 A. YES, I DO KNOW THAT.

3 Q. HOW DO YOU KNOW THAT?

4 A. BECAUSE OF AGAIN MESSAGES WE HAVE GOTTEN, AND  
5 ALSO A FEW SHOWS THAT WE HAVE BEEN ASKED NOT TO DO LICK  
6 IT BECAUSE IT'S SEXUALLY EXPLICIT AND KIDS AND FAMILIES  
7 WERE GOING TO BE THERE.

8 Q. TELL ME ABOUT A FEW OF THOSE SHOWS.

9 A. BROOKLYN PRIDE, WE COULD NOT PLAY IT IN PROSPECT  
10 PARK BECAUSE THEY SAID THERE WERE GOING TO BE KIDS AND  
11 FAMILIES THERE.

12 Q. WHEN YOU -- SORRY TO INTERRUPT. WHEN YOU SAY  
13 YOU COULDN'T PLAY IT, WHAT SONG?

14 A. LICK IT. ALSO WE PLAYED AT THE HETRICK MARTIN,  
15 HARVEY MILK SCHOOL, AS WELL. THAT IS IN MANHATTAN. IT  
16 IS A SCHOOL FOR KIDS THAT ARE GAY TEENS THAT EITHER GOT  
17 KICKED OUT OF THEIR HOMES, KICKED OUT OF THEIR SCHOOLS  
18 OR BEAT UP IN THEIR SCHOOLS OR JUST WANT TO BE IN AN  
19 ENVIRONMENT WHERE THEY FEEL SAFE AND COMFORTABLE. WE  
20 DID A SHOW THERE AND WE WERE ALSO ASKED NOT TO DO THAT  
21 SONG THERE AS WELL.

22 Q. HAS ANYONE EVER COMPLAINED TO YOU ABOUT THE  
23 CONTENT OF YOUR SONGS?

24 A. YEAH. I HAVE GOTTEN, ACTUALLY, QUITE A FEW  
25 MESSAGES FROM ANGRY LESBIANS SAYING THAT IT WAS

1 DISTASTEFUL AND DISRESPECTFUL.

2 Q. AND DO YOU BELIEVE ALL OF YOUR SONGS ARE  
3 VALUABLE?

4 A. I BELIEVE THAT, YES.

5 Q. DO YOU BELIEVE ALL OF YOUR MATERIAL IS VALUABLE  
6 FOR OLDER MINORS?

7 A. ABSOLUTELY.

8 Q. DO YOU FEAR OTHERS MIGHT DISAGREE?

9 A. I'M SURE -- I WOULD ASSUME THAT, YES.

10 Q. WHY DO YOU?

11 A. FEAR THAT.

12 Q. WHY DO YOU THINK THAT?

13 A. JUST FROM THE RESPONSES THAT WE GET WHEN WE DO  
14 SHOWS AND -- I MEAN EVERYTHING IS RELATIVE, I WOULD  
15 SUPPOSE, BUT PEOPLE WOULD DEFINITELY THINK THAT OUR  
16 MUSIC IS OFFENSIVE AND HAVE THOUGHT THAT.

17 MS. ULRICH: OBJECTION, HEARSAY. MOVE TO  
18 STRIKE.

19 THE COURT: OVERRULED. SHE SAID SHE  
20 TALKS TO A WHOLE LOT OF PEOPLE, GOT COMPLAINTS IN E-MAIL  
21 AND OTHER PLACES.

22 BY MR. FINE:

23 Q. MS. SMITH, DO ANY OF YOUR SONGS DEPICT, QUOTE,  
24 AN ACTUAL OR SIMULATED SEXUAL ACT OR SEXUAL CONTACT, END  
25 QUOTE, OR, QUOTE, AN ACTUAL OR SIMULATED NORMAL OR

1 PERVERTED SEXUAL ACT?

2 MS. ULRICH: OBJECTION. CALLS FOR A  
3 LEGAL CONCLUSION. HE IS READING FROM THE STATUTE.

4 THE COURT: I DON'T KNOW THAT THE WORDS  
5 ARE UNIQUE TO THE STATUTE. THEY ARE GENERIC WORDS.  
6 OVERRULED.

7 THE WITNESS: SAY IT AGAIN.

8 BY MR. FINE:

9 Q. DO ANY OF YOUR SONGS DEPICT AN ACTUAL OR  
10 SIMULATED SEXUAL ACT OR SEXUAL CONTACT OR AN ACTUAL OR  
11 SIMULATED NORMAL OF PERVERTED SEXUAL ACT?

12 A. I WOULD SAY THAT LICK IT FELL IN THAT  
13 DESCRIPTION.

14 Q. I WANT TO NOW DIRECT YOU TO ONE OF THE EXHIBITS  
15 THAT IS IN FRONT OF YOU, PLAINTIFFS' EXHIBIT 50. IN THE  
16 MANILA FOLDER?

17 A. OKAY.

18 Q. YOUR HONOR, JUST SO THE RECORD IS CLEAR,  
19 PLAINTIFFS' EXHIBIT 50, WE INADVERTENTLY OMITTED THE  
20 FOURTH PAGE FROM PLAINTIFFS' EXHIBIT 50 WHICH ARE THE  
21 LYRICS TO AN ADDITIONAL SONG. DEFENDANT'S COUNSEL HAS  
22 AGREED TO PERMIT US TO ADD THE FOURTH PAGE TO EXHIBIT  
23 50. I UNDERSTAND THAT DEFENDANT'S COUNSEL HAS  
24 OBJECTIONS TO THE ENTIRE EXHIBIT 50, BUT NOT TO THE  
25 INCLUSION OF THE FOURTH PAGE.

1 THE COURT: I SEE THE TECHNICAL POINT OF  
2 THIS, PUT IT ALL IN HERE SO THEY CAN OBJECT TO ALL OF IT  
3 AT THE SAME TIME. THAT'S OKAY.

4 BY MR. FINE:

5 Q. I NOW WANT TO ASK YOU, WHAT IS PLAINTIFFS'  
6 EXHIBIT 50? I WANT TO FOCUS YOU ON THE FIRST THREE  
7 PAGES FOR NOW.

8 A. OKAY.

9 Q. WHAT IS THAT?

10 A. THESE ARE LYRICS TO MY SONG, LICK IT.

11 Q. JUST VERY GENERALLY SPEAKING, WHAT IS THE SONG  
12 LICK IT ABOUT?

13 A. IT'S ABOUT -- GUIDELINES TO ORAL SEX, KIND OF  
14 INSINUATING BETWEEN TWO WOMEN, BUT DEFINITELY ABOUT HOW  
15 TO GIVE PROPER ORAL SEX TO A FEMALE.

16 Q. I WANT TO NOW HAVE YOU LOOK AT WHAT PREVIOUSLY  
17 HAS BEEN MARKED AS PLAINTIFFS' EXHIBIT 83.

18 THE COURT: WHAT EXHIBIT IS THAT?

19 MR. FINE: PLAINTIFFS' EXHIBIT 83. YOU  
20 DON'T HAVE IT THERE. THIS IS ONE OF THE COMPACT DISKS  
21 THAT WAS PREVIOUSLY PROVIDED TO THE COURT.

22 THE WITNESS: DO YOU WANT TO SEE MINE?

23 THE COURT: NO, THAT IS OKAY.

24 BY MR. FINE:

25 Q. WHAT IS PLAINTIFFS' EXHIBIT 83?

1 A. THIS IS A COPY OF OUR AWESOME EP.

2 Q. IS LICK IT ONE OF THE SONGS ON THE AWESOME EP?

3 A. YES.

4 Q. HOW MANY SONGS ARE ON THE AWESOME EP?

5 A. FIVE.

6 Q. WE HAVE SEEN THE LYRICS TO LICK IT. WE ARE NOW  
7 GOING TO PLAY JUST THE VERY BEGINNING OF LICK IT. MY  
8 UNDERSTANDING, YOUR HONOR, IS THAT WE SIMPLY WANT TO  
9 PLAY THE VERY BEGINNING SO WE CAN UNDERSTAND THAT THE  
10 WORDS ARE AUDIBLE.

11 THE COURT: I'M NOT GOING TO LIMIT YOU TO  
12 DO ANYTHING. MY OBSERVATION IS THAT THAT IS ALL I NEED  
13 TO HEAR. DEFENSE MAY THINK DIFFERENTLY. THEY MAY HAVE  
14 OTHER OBJECTIONS. MY ONLY STATEMENT WAS THAT I THOUGHT  
15 I NEEDED TO HEAR ENOUGH TO DETERMINE WHETHER THE WORDS  
16 WERE INTELLIGIBLE, BECAUSE IT'S THE WORDS THAT GO OUT TO  
17 THE PUBLIC OR THE FANS THAT ARE CLAIMED TO BE THE BASIS  
18 FOR THE WITNESS BEING FEARFUL OF PROSECUTION. THAT IS  
19 JUST MY TAKE ON MY ROLE. YOU MAY THINK DIFFERENTLY, SO  
20 YOU CAN OFFER WHAT YOU THINK IS BEST FOR YOUR CLIENT.

21 MS. ULRICH: YOUR HONOR, DEFENDANTS  
22 OBJECT TO THE PLAYING OF THE CD. THIS IS NOT BEEN  
23 DEMONSTRATED TO BEING PLACED ON THE WEB BY THE WITNESS  
24 FOR COMMERCIAL PURPOSES, WHICH IS A NECESSARY PREDICATE  
25 FOR PROSECUTION UNDER COPA. THEREFORE THIS IS NOT A

1 RELEVANT EXHIBIT.

2 MR. FINE: I'M HAPPY TO ASK THE WITNESS  
3 AGAIN WHY SHE PUTS HER SONGS ON HER WEBSITE, IF YOUR  
4 HONOR WOULD LIKE ME TO DO THAT AGAIN.

5 THE COURT: SHE HAS ALREADY TESTIFIED  
6 ABOUT IT, BUT BETTER IF YOU DO IT RIGHT NOW AGAIN.  
7 BY MR. FINE:

8 Q. CAN YOU PURCHASE THE AWESOME EP ON YOUR WEBSITE?

9 A. YES, YOU CAN.

10 Q. AND CAN YOU LISTEN TO THE SONGS FROM THE AWESOME  
11 EP ON YOUR WEBSITE?

12 A. YES, YOU CAN.

13 Q. AND DO YOU PUT -- DO YOU MAKE YOUR SONGS  
14 AVAILABLE -- DO YOU MAKE THE AWESOME EP AVAILABLE FOR  
15 PURCHASE ON YOUR WEBSITE IN ORDER TO MAKE A PROFIT?

16 A. YES, ABSOLUTELY.

17 Q. SO WE ARE NOW GOING TO PLAY THE VERY BEGINNING.

18 THE COURT: THE OBJECTION. I DID  
19 OVERRULE IT, BUT IT IS CLEAR THAT SHE SAID THAT 50  
20 PERCENT OF THEIR INCOME COMES FROM THE SELLING OF CDS ON  
21 THE WEB. I THINK I HEARD HER SAY THAT. THAT IS ANOTHER  
22 BIT OF EVIDENCE OF COMMERCIAL NATURE OF THIS SPEECH.

23 MR. FINE: SO IF WE CAN NOW PLAY THE  
24 BEGINNING OF THE SONG LICK IT FROM PLAINTIFFS' EXHIBIT  
25 83.

1 THE COURT: BEFORE YOU START IT, I JUST  
2 WANT TO MAKE THE OBSERVATION, I HAVE SEEN THE LYRICS, I  
3 RESPECT THE RIGHT OF THIS WITNESS AND HER COLLEAGUES TO  
4 DO WHAT THEY DO IN LIFE BUT IT MAY BE UNUSUAL FOR A LOT  
5 OF PEOPLE IN THE ROOM. THIS IS A SERIOUS PROCEEDING AND  
6 WE WILL BE ACTING WITH APPROPRIATE RESPECT TO THE  
7 PROCEEDINGS THAT WE ARE HAVING HERE, PLEASE. THANK YOU.

8 MR. FINE: YOU CAN NOW PLAY IT.

9 (TAPE BEING PLAYED.)

10 MR. FINE: I APOLOGIZE FOR CUTTING YOUR  
11 SONG.

12 THE COURT: LET THE RECORD SHOW THAT I  
13 COULD UNDERSTAND THE WORDS IN THE SONG.

14 BY MR. FINE:

15 Q. WHY DID YOU MAKE THIS SONG?

16 A. I WAS JUST REALLY SICK OF -- THERE IS ACTUALLY A  
17 MALE RAPPER THAT SANG THIS SONG IN THE '90S CALLED PUT  
18 IT IN YOUR MOUTH, AND IT WAS KIND OF LIKE I FELT KIND OF  
19 OFFENSIVE TOWARD WOMEN AND THERE ARE SO MANY SONGS ABOUT  
20 MEN'S PLEASURE AND ORAL SEX FOR MEN. AND I WAS JUST  
21 LIKE, YOU KNOW WHAT, I WANT TO DO SOMETHING THAT MAKES  
22 THE LADIES FEEL GOOD ABOUT THEMSELVES AND HAPPY, PLUS A  
23 LITTLE ADVICE CAN'T HURT. SO I JUST DECIDED TO MAKE  
24 THIS SONG AND IT WAS SUCH A HUGE HIT THAT --

25 Q. WHY WAS IT IMPORTANT TO YOU TO BE AS SEXUALLY

1 EXPLICIT AND GRAPHIC AS YOU ARE IN THIS SONG?

2 A. I MEAN, IT'S PART OF HIP HOP AND IT'S JUST LIKE  
3 THERE ARE CERTAIN ASPECTS TO GET RESPECT. I BELIEVE IN  
4 HIP HOP, AND ONE OF THOSE IS TO REALLY PROVE YOURSELF AS  
5 A LYRICIST OR REALLY KIND OF BE COMBATIVE OR SATIRICAL  
6 OR REALLY KIND OF IN YOUR FACE. I THOUGHT THIS WAS A  
7 CLEVER WAY TO DO IT AND MAKE WOMEN FEEL REALLY EMPOWERED  
8 WHEN THEY HEARD THIS SONG.

9 Q. I WANT YOU TO LOOK BACK AT PLAINTIFFS' EXHIBIT  
10 50, NOW TO PAGE 4 OF PLAINTIFFS' EXHIBIT 50. WHAT IS  
11 THIS?

12 A. THESE ARE THE LYRICS TO ANOTHER SONG THAT WE  
13 HAVE THAT IS ACTUALLY ON REALITY CALLED, OH SHIT.

14 Q. AND GENERALLY WHAT IS THIS SONG ABOUT?

15 A. IN GENERAL, IT'S KIND OF TALKING ABOUT HOW I  
16 THINK THE HIP HOP LYRICISTS THAT ARE OUT THERE NOW KIND  
17 OF STINK, AND THIS IS KIND OF MY BATTLE TOWARD THEM  
18 ABOUT WHY WHAT THEY DO STINKS AND WHY WHAT I DO IS  
19 FANTASTIC.

20 Q. AND DID YOU USE SEXUALLY EXPLICIT WORDS TO GET  
21 YOUR MESSAGE ACROSS?

22 A. THERE ARE SOME WORDS IN THERE THAT COULD BE  
23 CONSIDERED THAT, YES.

24 Q. AND WHY DID YOU DO THAT?

25 A. YOU KNOW, IT'S JUST, YOU KNOW, LIKE WHEN I

1 SAY -- CAN I SAY ANYTHING?

2 THE COURT: SAY WHATEVER WORDS THAT ARE  
3 PROPER THAT YOU KNOW ABOUT THAT YOU HAVE TO COMMUNICATE  
4 WITH.

5 THE WITNESS: WHEN I SAY IN VERSE 2 THE  
6 FIRST LINE, OH SHIT, I LICKED YOUR LADY'S CLIT, IS THAT  
7 APPROPRIATE. IT'S KIND OF REALLY POLITICAL. I MEAN,  
8 IT'S SEXUAL, BUT IT'S ALSO FROM MY TAKE WAS REALLY  
9 POLITICAL BECAUSE IT WAS LIKE PEOPLE CLOSE THEIR EARS IF  
10 IT'S GAY-RELATED. BUT, YOU KNOW, THE STUFF THAT IS OUT  
11 THERE THAT IS HETEROSEXUAL IS SO BLATANT THAT I FELT  
12 LIKE, HEY, THAT IS CONTROVERSIAL, YOU KNOW IS THAT  
13 APPROPRIATE? WELL, I DON'T CARE, I'M GOING TO SAY IT  
14 ANYWAY.

15 Q. CAN YOU LISTEN TO OH SHIT THROUGH YOUR WEBSITE?

16 A. YES, YOU CAN.

17 Q. AND HOW HAS THIS SONG BEEN RECEIVED?

18 A. VERY WELL. IT'S ACTUALLY THE FIRST SONG ON  
19 REALITY. I ACTUALLY WROTE IT A LONG TIME AGO. IT WAS  
20 ONE OF THE FIRST SONGS THAT I EVER PERFORMED, BUT IT HAS  
21 GOTTEN CHANGED OVER THE YEARS. YEAH, PEOPLE REALLY LIKE  
22 THAT, REALLY LIKE IT, TOO.

23 Q. NOW I WANT TO ASK YOU TO LOOK AT PLAINTIFFS'  
24 EXHIBIT 51. YOUR HONOR, THIS AGAIN IS THE SECOND CD.  
25 WHAT IS PLAINTIFFS' EXHIBIT 51?

1 A. THIS CD IS OUR FULL LENGTH ALBUM, REALITY.

2 Q. AND WE ARE NOW GOING TO PLAY JUST THE VERY  
3 BEGINNING OF THE SONG OH SHIT THAT YOU WERE JUST  
4 DESCRIBING.

5 (TAPE BEING PLAYED.)

6 (END MUSIC BEING PLAYED.)

7 MR. FINE: YOUR HONOR, AT THIS TIME,  
8 PLAINTIFFS WOULD LIKE TO MOVE PLAINTIFFS' EXHIBIT 50, 51  
9 AND 83 INTO EVIDENCE.

10 THE COURT: ANY OBJECTIONS?

11 MS. ULRICH: DEFENDANTS OBJECT TO EXHIBIT  
12 50, WHICH IS THE PRINTOUT OF THE LYRICS. THERE HAS BEEN  
13 NO TESTIMONY THAT PRINTOUTS OF THE LYRICS ARE AVAILABLE  
14 ON THE PLAINTIFFS' WEBSITE OR HAVE BEEN PLACED ON THE  
15 WEB BY -- I'M SORRY, BY THE WITNESS OR ON THE WITNESS'  
16 WEBSITE. IN FACT, IT APPEARS THAT THE LYRICS OF THE  
17 FIRST SONG ARE TAKEN FROM A COMPLETELY SEPARATE WEBSITE,  
18 NOT THE WITNESS' WEBSITE. THERE IS NO INDICATION AT ALL  
19 AS TO THE SECOND SONG THAT THOSE LYRICS COME FROM THE  
20 WEB AT ALL, SO WE DO OBJECT TO EXHIBIT 50 ON THOSE  
21 GROUNDS. EXHIBIT -- I'M SORRY, OTHER NUMBERS WERE 51  
22 AND 83.

23 THE COURT: 51 IS THE CD.

24 MR. FINE: YES, 51.

25 THE COURT: THE FIRST CD IS 51. THE

1 SECOND ONE IS 83.

2 MR. FINE: JUST FOR THE RECORD, 83 WAS  
3 THE AWESOME EP. THE FIRST ONE WE LISTENED TO HERE.

4 THE COURT: I GOT THEM BACKWARD.

5 MR. FINE: WE PUT THEM IN BACKWARDS  
6 ORDER.

7 THE COURT: SORRY.

8 MS. ULRICH: WE DO OBJECT TO THE  
9 ADMISSION OF THOSE TWO CDS IN THEIR ENTIRETY.  
10 OBVIOUSLY, THERE HAS NOT BEEN TESTIMONY IN COURT ABOUT  
11 THE ENTIRETY, JUST TESTIMONY ABOUT TWO SPECIFIC SONGS  
12 AND IN PARTICULAR CLIPS FROM TWO SPECIFIC SONGS ABOUT  
13 THOSE CDS AND THE DEFENDANT OBJECTS.

14 THE COURT: MR. FINE, YOU HAVE NOT EVEN  
15 AUTHENTICATED THESE LYRICS. I DON'T KNOW WHETHER THE  
16 WITNESS SAYS THAT P 51 IS AN EXACT COPY OF HER LYRICS OR  
17 NOT. I DON'T REMEMBER HER SAYING THAT.

18 MR. FINE: I DID NOT KNOW THAT DEFENDANTS  
19 WERE GOING TO CHALLENGE THE AUTHENTICITY.

20 BY MR. FINE:

21 Q. DO YOU HAVE PRESENTLY YOUR LYRICS ON YOUR OWN  
22 WEBSITE?

23 A. NO.

24 Q. DO YOU INTEND TO HAVE YOUR OWN LYRICS ON YOUR  
25 WEBSITE?

1 A. ABSOLUTELY.

2 Q. AND ARE THE LYRICS TO YOUR SONG LICK IT  
3 AVAILABLE ON THE WEB?

4 A. YES, THEY ARE.

5 Q. AND DO YOU KNOW THAT?

6 A. YEAH, I KNOW THAT.

7 Q. AND PLAINTIFFS' EXHIBIT 50, FOCUSING FIRST ON  
8 PAGES 1 THROUGH 3, ARE THESE THE WORDS FROM YOUR SONG,  
9 LICK IT, THE LYRICS?

10 A. YES, THEY ARE.

11 Q. AND PAGE 4 OF PLAINTIFFS' EXHIBIT 50, ARE THESE  
12 THE LYRICS FROM YOUR SONG OH SHIT?

13 MR. FINE: PLAINTIFFS WOULD RENEW THEIR  
14 MOTION TO MOVE THESE EXHIBITS INTO EVIDENCE. TO THE  
15 EXTENT DEFENDANT IS OBJECTING TO THE ENTIRE -- TO  
16 PLAINTIFFS' EXHIBIT 51 AND 83 ON THE GROUND THAT WE HAVE  
17 NOT DISCUSSED AND/OR PLAYED EITHER THE ENTIRE -- THE  
18 OTHER SONGS OR THE ENTIRE LICK IT AND OH SHIT SONGS, WE  
19 HAVE SIMPLY DONE THAT IN AN ATTEMPT TO MOVE THINGS ALONG  
20 AND TO COMPLY WITH THE COURT'S RECOMMENDATIONS REGARDING  
21 THE NECESSITY FOR LISTENING TO THE SONGS.

22 THE COURT: THERE MAY BE A WAY TO HAVE A  
23 LEGALLY ACCEPTABLE OFFER IF YOU RESTRICT THE OFFER OF  
24 THE CDS TO THE TWO SONGS THAT YOU HAVE IDENTIFIED.

25 MR. FINE: THAT WOULD BE FINE WITH US,

1 YOUR HONOR.

2 THE COURT: MISS ULRICH, ANY FURTHER  
3 OBJECTION AT THIS TIME?

4 MS. ULRICH: YOUR HONOR, WE DO CONTINUE  
5 TO OBJECT TO EXHIBIT 50, THAT THEY ARE NOT -- THE LYRICS  
6 THEMSELVES ARE NOT PRINTED ON THE WITNESS' WEBSITE AS  
7 SHE STATED AND NOR HAS THE PLAINTIFFS' COUNSEL  
8 DEMONSTRATED THAT THEY WERE PLACED ON THE WEB BY THE  
9 WITNESS, WHICH IS NECESSARY UNDER COPA FOR FEAR OR  
10 PROSECUTION.

11 MR. FINE: I'M NOT SURE EXACTLY WHAT THE  
12 OBJECTION IS. IT SOUNDS LIKE IT'S A RELEVANCE OBJECTION  
13 OF SOME SORT UNDER RULE 403. I DON'T KNOW IF THIS IS --  
14 THEY ARE ARGUING THAT THIS IS MORE PREJUDICIAL THAN  
15 PROBATIVE, BUT THIS IS OBVIOUSLY A BENCH TRIAL, AND IT  
16 MERELY GOES TO THE WEIGHT.

17 THE COURT: THAT IS NOT THE RULE. WE ARE  
18 JUST TALKING ABOUT AUTHENTICITY AND PROOF TO SUPPORT THE  
19 ADMISSION OF P 50. I THINK IF I'M NOT -- I HOPE I'M  
20 CORRECT, THERE HAS BEEN TESTIMONY THAT THE SONG AS IT IS  
21 PERFORMED, LICK IT, AND THE LYRICS ARE AVAILABLE ON THE  
22 WEBSITE OF THE WITNESS. DID SHE SAY THAT?

23 MR. FINE: NOT THE LYRICS. THE SONGS ARE  
24 AVAILABLE ON HER WEBSITE.

25 THE WITNESS: MAY I SAY SOMETHING TO

1 MAYBE HELP CLARIFY?

2 THE COURT: HOLD IT. WE HAVE TO GO BY  
3 THE RULES.

4 THE WITNESS: SORRY ABOUT THAT.

5 THE COURT: THAT IS OKAY.

6 MR. FINE: THE SONGS ARE AVAILABLE ON THE  
7 WITNESS' OWN WEBSITE. THE LYRICS ARE NOT PRESENTLY ON  
8 HER WEBSITE. SHE TESTIFIED THAT SHE INTENDS TO PUT THEM  
9 ON HER WEBSITE. THEY ARE --

10 THE COURT: WHAT IS THE OFFER OF PROOF?  
11 WHAT ARE YOU TRYING TO PROVE BY THE LYRICS?

12 MR. FINE: THEY ARE AVAILABLE ON THE WEB,  
13 YOUR HONOR, JUST NOT ON HER WEBSITE.

14 THE COURT: I SEE. OKAY.

15 DOES THE DEFENSE CONCEDE THAT P 50, THE  
16 FOUR PAGES, ARE AVAILABLE ON THE WEB, ON THE INTERNET?

17 MS. ULRICH: YOUR HONOR, IT DOES APPEAR  
18 THAT THE FIRST SONG, THE FIRST THREE PAGES IS A PRINTOUT  
19 FROM A WEBSITE, AND WHILE THE FOURTH PAGE DOES NOT HAVE  
20 THAT, THE DEFENDANT HAS NO REASON TO DOUBT THE VERACITY  
21 OF THE WITNESS' STATEMENT THAT THE LYRICS ARE ON A  
22 WEBSITE. HOWEVER, THE POINT OF THE DEFENDANT'S  
23 RELEVANCE OBJECTION IS THAT THESE LYRICS ARE NOT PRINTED  
24 OUT ON THE WITNESS' WEBSITE AND SHE DOES NOT HAVE THE  
25 FEAR OF PROSECUTION IF THESE LYRICS, AS WRITTEN, WERE

1 NOT PLACED ON THE WEB BY THE WITNESS BECAUSE OF THE  
2 LANGUAGE OF COPA.

3 MR. FINE: I BELIEVE IF WE LOOK AT THE  
4 SPECIFIC LANGUAGE -- I DON'T KNOW IF WE WANT TO GET INTO  
5 THAT NOW, IT TALKS ABOUT KNOWINGLY DISTRIBUTING IT ON  
6 THE WEB, THERE IS OBVIOUSLY A LEGAL ARGUMENT AS TO  
7 WHETHER THIS MATERIAL HAS KNOWINGLY BEEN PLACED ON THE  
8 WEB.

9 THE COURT: DO YOU BELIEVE YOU PROVED THE  
10 FACTS THROUGH THIS WITNESS THAT SHE HAS DONE THAT?  
11 GENERICALLY, NOT LEGALLY?

12 MR. FINE: IT'S UNCLEAR AND, YOUR HONOR,  
13 I DON'T THINK THOUGH -- I MEAN, THE LYRICS ARE NOT  
14 CRITICAL EXCEPT IN THE SENSE THAT WE HAVE NOT  
15 UNFORTUNATELY LISTENED TO THE ENTIRE SONG HERE IN COURT.  
16 SO THE ENTIRE SONG -- TO THE EXTENT THE ENTIRE SONG GOES  
17 INTO EVIDENCE I THINK WE CAN MOVE FORWARD.

18 MS. ULRICH: YOUR HONOR, I THINK WITH  
19 THAT STATEMENT BY THE PLAINTIFFS, IT SOUNDS LIKE THEY  
20 ARE SAYING IF THE CDS GET INTO EVIDENCE, THEY ARE  
21 WILLING NOT TO PUT THE LYRICS THEMSELVES INTO EVIDENCE.  
22 THE DEFENDANT WILL WITHDRAW HIS OBJECTION TO THE CDS  
23 GOING INTO EVIDENCE.

24 THE COURT: I THINK I CAN RULE IT IS  
25 CONSISTENT WITH THE OBJECTION AND STILL MEET THE

1 PLAINTIFFS' CONCERNS. I WILL ACCEPT INTO THE RECORD OF  
2 THIS CASE P 50 AND ALL FOUR PAGES TO ASSIST THE COURT IN  
3 WHATEVER WAY IT IS APPROPRIATE TO EVALUATE THE EVIDENCE  
4 OF THE PERFORMED SONGS ON THE CDS THEMSELVES. THE COURT  
5 VIEWS THE CDS AS THE EVIDENCE OF SEXUALLY EXPLICIT  
6 MATERIAL ALLEGEDLY BEING KNOWINGLY PLACED ON THE  
7 INTERNET. I BELIEVE THE FACT-FINDER HAS TO RELY ON WHAT  
8 IS ON THOSE, THE LYRICS THAT THE FACT-FINDER CAN HEAR  
9 FROM THE PERFORMANCE. THE PRINTED LYRICS ARE NOT  
10 SUBSTANTIVE EVIDENCE IN THE CASE. FOR WHATEVER IT IS  
11 WORTH, I LIKEN IT TO GIVING A TRANSCRIPT OF A RECORDING,  
12 A SURREPTITIOUS RECORDING IN A CRIMINAL CASE TO A JURY  
13 TO ASSIST IT IN DECIDING WHAT THEY HEAR ON THE  
14 SURVEILLANCE TAPES, AND THE JURY IS ADMONISHED THAT THE  
15 PRINTED TRANSCRIPT OF THE TAPES ARE NOT EVIDENCE BUT  
16 RATHER WHAT THEY HEAR ON THE RECORDINGS IS EVIDENCE. IT  
17 IS VIRTUALLY THE SAME THING. I ADMONISH MYSELF TO  
18 FOLLOW MY OWN INSTRUCTION.

19 THE OBJECTIONS ARE OVERRULED, FOR THE  
20 QUALIFIED PURPOSE AS STATED BY THE COURT, P 50 IS  
21 RECEIVED INTO EVIDENCE AND P 83, AND P 51, ARE RECEIVED  
22 AS THE EVIDENCE OF THE CONTENT OF THESE SONGS.

23 (P 50, P 83 AND P 51 ADMITTED INTO  
24 EVIDENCE.)

25 BY MR. FINE:

1 Q. MISS SMITH, WOULD YOU BE WILLING TO LIMIT YOUR  
2 WEBSITE TO ONLY PEOPLE WITH CREDIT CARDS?

3 A. NO.

4 Q. WHY NOT?

5 A. BECAUSE I BELIEVE THAT WOULD AFFECT OUR SALES.

6 Q. WHY IS THAT?

7 A. BECAUSE A LOT OF OUR FANS ARE YOUNGER AND ARE  
8 UNDER 18, AND I DON'T BELIEVE MOST OF THEM WOULD HAVE  
9 CREDIT CARDS, AS WELL AS WE HAVE GOTTEN NUMEROUS  
10 MESSAGES FROM WOMEN WHO FEAR GIVING THEIR CREDIT CARD  
11 INFORMATION BECAUSE THEY THINK THAT SOMEBODY IS GOING TO  
12 STEAL IT AND STEAL THEIR PERSONAL IDENTIFICATION OR  
13 WHATEVER THE REASON IS.

14 MS. ULRICH: OBJECTION. MOVE TO STRIKE.  
15 HEARSAY.

16 MR. FINE: YOUR HONOR, IT GOES TO THE  
17 STATE OF MIND OF THESE INDIVIDUALS WHO CONTACTED HER.

18 THE COURT: NOT OFFERED FOR THE TRUTH OF  
19 THE MATTER, BUT THAT THE UTTERANCES WERE MADE AND THIS  
20 WITNESS' STATE OF MIND IS AFFECTED BY THE UTTERANCE, BUT  
21 NOT OFFERED TO PROVE WHAT THE UTTERER SAID. THAT IS  
22 HEARSAY.

23 BY MR. FINE:

24 Q. HOW WOULD IT AFFECT YOUR MISSION, YOUR GOALS AS  
25 A MUSICIAN IF YOU HAD TO LIMIT YOUR WEBSITE TO THOSE

1 WITH CREDIT CARDS?

2 A. IT WOULD RULE OUT ANY YOUTH FROM VIEWING OUR  
3 WEBSITE AND HEARING OUR MATERIAL ONLINE.

4 Q. AND HOW WOULD THAT AFFECT THE GOALS THAT YOU  
5 WERE TALKING ABOUT AT THE VERY BEGINNING?

6 A. HUGELY, BECAUSE A LOT OF THE PEOPLE THAT WE  
7 TARGET ARE YOUTH BECAUSE SO MANY KIDS THAT ARE  
8 STRUGGLING WITH THEIR IDENTITY, AND IT'S REALLY SAD,  
9 LIKE, YOU KNOW, KIDS HAVE SUCH A HARD TIME COMING OUT  
10 AND GETTING BEAT UP IN THEIR SCHOOLS OR SCARED THAT  
11 THEIR PARENTS ARE GOING TO KICK THEM OUT OF THE HOUSE OR  
12 WHATEVER THE REASON BEING. OUR MUSIC REALLY GIVES THEM  
13 A SENSE OF HOPE AND THAT WOULD BE REALLY SAD FOR ME IF  
14 THEY WERE NOT ABLE TO HEAR OUR STUFF.

15 MR. FINE: NO FURTHER QUESTIONS NOW, YOUR  
16 HONOR.

17 THE COURT: MS. ULRICH, ARE YOU GOING TO  
18 QUESTION THE WITNESS?

19 MS. ULRICH: YES, YOUR HONOR. THANK YOU.

20 THE COURT: PLEASE DO. A FEW MORE  
21 QUESTIONS.

22 CROSS EXAMINATION

23 BY MS. ULRICH:

24 Q. GOOD AFTERNOON, MY NAME IS TAMARA ULRICH. I'M  
25 AN ATTORNEY FOR THE DEPARTMENT OF JUSTICE, AND I HAVE A

1 FEW QUESTIONS FOR YOU.

2 A. SURE.

3 Q. I UNDERSTAND -- TELL ME IF I UNDERSTAND  
4 CORRECTLY THAT YOU DO HAVE A WEBSITE?

5 A. YES, I DO.

6 Q. I WOULD LIKE YOU TO LOOK AT THE SCREEN IN FRONT  
7 OF YOU IF YOU COULD. I REFER THE COURT TO WHAT HAS BEEN  
8 MARKED AS DEFENDANT'S EXHIBIT 443.

9 MR. FINE: YOUR HONOR, COUNSEL HAVE  
10 DISCUSSED THIS MATTER. WE HAVE NO OBJECTION TO THIS  
11 DOCUMENT, ONLY SO MUCH THAT THE RECORD BE CLARIFIED THAT  
12 THERE IS A BACKGROUND ON THE ACTUAL WEBSITE THAT DOES  
13 NOT APPEAR ON THIS PARTICULAR COPY THAT COUNSEL  
14 REPRESENTED COULD NOT BE PRINTED OUT.

15 THE COURT: AM I SUPPOSED TO KNOW WHAT IS  
16 ON THE BACKGROUND?

17 MS. ULRICH: I WILL NOT BE ASKING ANY  
18 QUESTIONS ABOUT THAT, YOUR HONOR. I WILL BE FOCUSING ON  
19 THE WORDS OF THE WEBSITE, BUT I THINK FOR THE RECORD,  
20 PLAINTIFFS' COUNSEL DID WANT NOTED THAT THERE IS -- THE  
21 BACKGROUND GRAPHICS DID NOT PRINT OUT ON THIS EXHIBIT.

22 MR. FINE: THE BACKGROUND GRAPHICS  
23 ESSENTIALLY, YOUR HONOR, ARE A BIGGER VERSION OF THE  
24 IMAGE CONTAINED AT THE TOP OF THIS PAGE WITH TWO WHAT  
25 APPEAR TO BE TOPLESS ANGELS.

1 THE COURT: DO WE EXPECT THAT DEFENDANTS  
2 443 IS GOING TO GO INTO EVIDENCE?

3 MS. ULRICH: YES, YOUR HONOR, WE WILL BE  
4 MOVING IT.

5 THE COURT: JUST THE PAGE OR THE ACTUAL  
6 CD COVER?

7 MS. ULRICH: JUST THE PAGE. THIS IS A  
8 PAGE OF A WEBSITE.

9 THE COURT: THEN I DON'T HAVE TO WORRY  
10 ABOUT WHAT'S ON THE -- YOU ARE TALKING ABOUT THE COVER  
11 OR THE WEBSITE ITSELF HAS THIS BACKGROUND?

12 MR. FINE: THE WEBSITE.

13 MS. ULRICH: THE BACKGROUND DOES NOT  
14 PRINT OUT WHEN YOU PRINT OUT THE PAGE.

15 THE COURT: WE WILL LET PLAINTIFFS'  
16 COUNSEL DEAL WITH THAT AFTER YOU ARE FINISHED.

17 BY MS. ULRICH:

18 Q. IS THIS THE HOME PAGE OF YOUR WEBSITE,  
19 DEFENDANT'S EXHIBIT 443?

20 A. YES, IT IS.

21 Q. AND DO I UNDERSTAND CORRECTLY FROM LOOKING AT  
22 YOUR HOME PAGE THAT YOUR SONG LICK IT IS AVAILABLE ON  
23 ITUNES?

24 A. YES, IT IS.

25 Q. AND IS THAT INDICATED ON THE RIGHT-HAND COLUMN

1 OF THE PAGE?

2 A. THAT'S CORRECT.

3 Q. AND THE SONG IS ALSO AVAILABLE ON RHAPSODY,  
4 R-H-A-P-S-O-D-Y?

5 A. CORRECT.

6 Q. SO A USER OF YOUR WEBSITE COULD CLICK ON THE  
7 WORDS ITUNES OR RHAPSODY TO PURCHASE YOUR MUSIC?

8 A. YES.

9 Q. AND IF A USER CLICKED ON ITUNES, WOULD THEY BE  
10 TAKEN TO THE ITUNES WEBSITE?

11 A. I THINK IT IS SET UP THAT WAY, BUT THAT IS THE  
12 INTENT, YES.

13 Q. IS THE SAME TRUE FOR RHAPSODY, DOES RHAPSODY  
14 HAVE A WEBSITE?

15 A. YES, THEY DO.

16 Q. THAT A USER IF YOU CLICKED TO PURCHASE WOULD BE  
17 TAKEN TO THE RHAPSODY WEBSITE?

18 A. THAT'S CORRECT.

19 Q. WHAT HAPPENS IF THEY WERE TO CLICK ON THE  
20 AWESOME EP LINK THAT IS ON THE RIGHT-HAND SIDE OF YOUR  
21 WEB PAGE?

22 A. IT WOULD TAKE YOU TO -- IT WOULD START TO PLAY  
23 THE SONGS FROM THE AWESOME EP, BUT I BELIEVE IT TAKES  
24 YOU TO THE GOLDENROD WEBSITE, WHICH IS ONE OF OUR  
25 DISTRIBUTION COMPANIES.

1 Q. IS THAT A SEPARATE WEBSITE FROM YOUR WEBSITE?

2 A. YES, IT IS. YOU CAN ALSO LISTEN AND VIEW A  
3 VIDEO OF US DOING LICK IT LIVE ON THE WATCH HOME PAGE OF  
4 OUR WEBSITE AS WELL.

5 Q. AND ON THE HOME PAGE THERE IS ALSO -- THIS MIGHT  
6 BE WHAT YOU WERE REFERRING TO, YOU COULD CLICK ON A  
7 MUSIC VIDEO AND IT APPEARS THAT ON YOUR HOME PAGE RIGHT  
8 NOW, IT SAYS LOVE YOU BETTER IS CURRENTLY AIRING?

9 A. YEAH. THERE ARE TWO DIFFERENT THINGS YOU CAN  
10 DO. ON THE LEFT-HAND SIDE THERE WHERE IT SAYS WATCH,  
11 THERE IS ACTUALLY LIVE VIDEO FOOTAGE FROM SOME SHOWS WE  
12 HAVE DONE. AND THERE IS LICK IT, MAYBE A VERSE  
13 AND-A-HALF AT ONE SHOW, THEN THE BEGINNING FROM ANOTHER  
14 SHOW WE DID AT THE ROXY THAT YOU CAN CLICK ON, PLUS SOME  
15 OTHER SONGS THEN WE ALSO HAVE OUR VIDEO THAT IS ON MTV'S  
16 LOGO, LOVE YOU BETTER, THAT YOU CAN WATCH THE VIDEO IN  
17 ITS ENTIRETY, WHICH IS I THINK WHAT YOU ARE REFERRING  
18 TO.

19 Q. OKAY. I JUST WANT TO MAKE SURE I UNDERSTAND FOR  
20 THE RECORD. IF YOU WERE TO CLICK ON THE RIGHT-HAND SIDE  
21 OF THE WEB PAGE FOR THE MUSIC VIDEO FOR LOVE YOU BETTER,  
22 THAT WOULD TAKE THE USER TO THE LOGO WEBSITE?

23 A. NO. IT'S -- LOGO IS JUST -- ACTUALLY IT IS  
24 AVAILABLE ON THEIR WEBSITE AS WELL, OUR VIDEO, AS WELL  
25 AS MTV.COM, BUT YOU CAN ACTUALLY PHYSICALLY WATCH IT

1 FROM OUR WEBSITE. I'M NOT SURE --

2 THE COURT: DELIVERED FROM LOGO.

3 THE WITNESS: NO. IT'S ACTUALLY  
4 DELIVERED FROM US. IT'S LIKE SOME SORT OF CODE THAT WE  
5 EMBEDDED IN OUR WEBSITE THAT HOSTS VIDEOS, THAT YOU  
6 CLICK ON IT AND PLAY DIRECTLY FROM OUR WEBSITE. IT IS  
7 ALSO AVAILABLE ON MYSPACE AS WELL.

8 BY MS. ULRICH:

9 Q. IF I UNDERSTAND YOU CORRECTLY FROM YOUR PREVIOUS  
10 TESTIMONY, IF YOU WOULD CLICK ON THE LEFT-HAND SIDE OF  
11 THE WEB PAGE WHERE IT SAYS WATCH --

12 A. RIGHT.

13 Q. -- THAT WOULD BE ANOTHER OPPORTUNITY TO WATCH A  
14 VIDEO?

15 A. YEAH. THAT IS DIRECTLY ON OUR WEBSITE FROM LIVE  
16 SHOWS THAT WE HAVE DONE. WE LOADED THEM INTO THAT  
17 SECTION.

18 Q. WHAT VIDEOS ARE CURRENTLY ON YOUR WEBSITE?

19 A. THE LIVE FOOTAGE, LICK IT. THERE ARE TWO  
20 DIFFERENT SHOWS. ONE IS AN INTRO TO THE SONG THAT WE  
21 DID AT THE ROXY, AND THEN THE OTHER ONE HAS ABOUT A  
22 VERSE AND-A-HALF, I BELIEVE, OF THE SONG WHICH WE  
23 PERFORMED AT MICHIGAN WOMEN'S FESTIVAL, WHICH IS LIVE  
24 FOOTAGE THAT YOU CAN SEE. I KNOW THERE IS A SONG WHERE  
25 MY SINGER PLAYS GUITAR AND ALSO OUR SONG, STRUGGLE. I'M

1 NOT SURE WHAT OTHER SONGS. I HAVE NOT WATCHED IT IN A  
2 WHILE.

3 Q. SO THOSE WOULD BE LIVE CONCERT VIDEOS?

4 A. YES.

5 Q. IF I CAN TURN YOUR ATTENTION TO DEFENDANT'S  
6 EXHIBIT 444. IS EXHIBIT 444 ANOTHER PAGE FROM YOUR  
7 WEBSITE?

8 A. YES, IT IS.

9 Q. IS THIS THE MUSIC PAGE FROM YOUR WEBSITE?

10 A. THAT'S CORRECT.

11 Q. DO I UNDERSTAND CORRECTLY THAT YOU CAN WATCH  
12 VIDEO FROM THIS PAGE?

13 A. I DON'T THINK YOU CAN WATCH VIDEO. I THINK IT  
14 IS ONLY TO LISTEN TO THE SONGS.

15 Q. IT STATES THAT SOMEONE CAN LISTEN TO THE CLIPS  
16 FROM THE REALITY CD, IS THAT CORRECT?

17 A. THAT'S CORRECT.

18 Q. HOW LONG ARE THOSE CLIPS?

19 A. I'M NOT SURE.

20 Q. ARE THEY PORTIONS OF THE SONG OR THE WHOLE SONG?

21 A. I THINK THEY ARE PORTIONS.

22 Q. IS THIS WHERE A WEBSITE USER WOULD GO TO ON YOUR  
23 WEBSITE TO LISTEN TO MUSIC FROM THE REALITY CD?

24 A. YES.

25 Q. YOU MAY HAVE STATED THIS ALREADY. I APOLOGIZE

1 IF I'M REPEATING. HOW LONG HAVE YOU HAD THIS WEBSITE ON  
2 THE WEB?

3 A. WELL, IT WAS UPDATED AND IT IS MUCH FANCIER NOW,  
4 BUT I THINK THE FIRST TIME WE HAD -- THAT WE GOT  
5 GOD-DES.COM WAS PROBABLY 2002, BUT I CAN'T SAY FOR SURE,  
6 BUT I BELIEVE IT WAS 2002.

7 Q. YOU HAD TALKED A LITTLE BIT BEFORE WITH MR. FINE  
8 ABOUT THE ABILITY FOR PEOPLE TO CONTACT YOU THROUGH YOUR  
9 WEB PAGE?

10 A. THAT'S CORRECT.

11 Q. ARE THEY GIVEN YOUR E-MAIL ADDRESS TO CONTACT  
12 YOU?

13 A. YES, MA'AM.

14 Q. SO THEY CONTACT YOU BY SENDING YOU AN E-MAIL?

15 A. YES, THAT'S CORRECT. I ACTUALLY GET ALL THE  
16 QUESTIONS, BOOKING INFORMATION. EVERYTHING IS ALSO SENT  
17 TO ME AS WELL BECAUSE I LIKE TO MAKE SURE THAT I KNOW  
18 WHAT IS GOING ON SO --

19 Q. DO YOU SELL YOUR MUSIC ON MY SPACE?

20 A. I THINK WE MAY HAVE A LINK TO LICK IT, TO ITUNES  
21 ON OUR MYSPACE, BUT WE CERTAINLY ADVERTISE OUR WEBSITE  
22 ON THERE. WE CAN'T SELL IT DIRECTLY FROM MYSPACE  
23 BECAUSE THEY WON'T LET US, BUT WE WOULD IF WE COULD.

24 Q. ARE ALL OF YOUR SALES FUNNELED THROUGH EITHER  
25 ITUNES OR RHAPSODY OR THE -- SORRY, I MIGHT HAVE

1 FORGOTTEN, GOLDENROD?

2 A. NO. ALSO CDBABY.COM IS OUR OTHER BIG  
3 DISTRIBUTOR THAT WHEN YOU CLICK ON REALITY WHERE YOU  
4 PURCHASE YOUR ALBUM IS THROUGH CD BABY.

5 Q. THAT IS A SEPARATE WEBSITE?

6 A. THAT'S CORRECT. THE ONLY THING THAT WE  
7 PERSONALLY SEND OUT OURSELVES IS LOVE YOU BETTER, AND WE  
8 SEND THAT TO PEOPLE ON E-MAIL WITH THE MP3, WHICH TAKES  
9 A LOT OF WORK.

10 MS. ULRICH: LET ME CONFER WITH COUNSEL A  
11 MOMENT, YOUR HONOR.

12 THE COURT: SURE.

13 (COUNSEL CONFERRING.)

14 MS. ULRICH: YOUR HONOR, AT THIS TIME  
15 DEFENDANTS WOULD LIKE TO MOVE IN EXHIBIT D 443 AND D 444  
16 INTO THE RECORD.

17 MR. FINE: NO OBJECTIONS, YOUR HONOR.

18 THE COURT: D 443 AND D 444 ARE RECEIVED  
19 INTO EVIDENCE.

20 (D 443 AND D 444 ADMITTED INTO EVIDENCE.)

21 MS. ULRICH: I HAVE NO FURTHER QUESTIONS.  
22 THANK YOU.

23 THE WITNESS: THANK YOU.

24 THE COURT: ANY REDIRECT?

25 MR. FINE: NO REDIRECT, YOUR HONOR.

1 THE COURT: OKAY. YOUR JOB ON THE STAND  
2 IS FINISHED. YOU ARE EXCUSED.

3 THE WITNESS: THANK YOU.

4 THE COURT: BE CAREFUL GETTING DOWN.  
5 LEAVE THE PAPERS THERE.

6 THE WITNESS: LEAVE THESE HERE? THANKS A  
7 LOT.

8 THE COURT: YOU'RE WELCOME.

9 (WITNESS EXCUSED.)

10 THE COURT: IS THERE ANYTHING ELSE WE  
11 HAVE TO DO ON THE RECORD BEFORE WE GO INTO OBLIVION  
12 AFTER 4:30? WE WILL END THE COURT DAY NOW EXCEPT FOR  
13 THE USUAL CONFERENCE WITH COUNSEL ON THE RECORD AND  
14 FORTHWITH THE TRIAL DAY IS CONCLUDED. COUNSEL ARE NOT  
15 EXCUSED AND WE ARE NOT OFF THE RECORD.

16 WE NEED COUNSEL FOR THE PLAINTIFF TO TELL  
17 US WHAT HAPPENS ON MONDAY.

18 MR. HANSEN: AS YOUR HONOR UNDOUBTEDLY  
19 NOTED, WE ARE FALLING A LITTLE BEHIND. WE HAD HOPED MR.  
20 GLICKMAN WOULD GO ON TODAY, BUT WE OBVIOUSLY DID NOT  
21 MAKE IT. WE HAVE THEREFORE ASKED MR. GLICKMAN TO COME  
22 BACK ON MONDAY. HE HAS AGREED TO DO SO. THAT, HOWEVER,  
23 OVERFILLS MONDAY AND SO WE HAVE TAKEN MR. MANN, WHO IS  
24 SCHEDULED TO TESTIFY ON MONDAY, AND MOVED HIM AS WELL.  
25 SO MONDAY WILL NOW BE MR. GLICKMAN, MR. TEPPER AND MR.

1 REICHMAN.

2 THE COURT: GLICKMAN, TEPPER AND  
3 REICHMAN. MR. MANN IS GOING TO BE ON A LATER DAY?

4 MR. HANSEN: HE WILL PROBABLY END UP  
5 BEING ON THE MONDAY OF THE THIRD WEEK.

6 THE COURT: EXHIBITS FOR MONDAY?

7 MR. HANSEN: WITH RESPECT TO MR. TEPPER,  
8 I BELIEVE THERE IS ONLY ONE EXHIBIT, YOUR HONOR. THAT  
9 IS EXHIBIT 37. WITH RESPECT TO MR. REICHMAN, THE  
10 EXHIBITS ARE 21, 22 AND 23, AND WITH RESPECT TO MR.  
11 GLICKMAN, WE IDENTIFIED THOSE EXHIBITS YESTERDAY AT 4:30  
12 WHEN WE THOUGHT WE MIGHT GET HIM ON TODAY. IT'S THE  
13 SAME EXHIBITS.

14 THE COURT: WHAT ARE THEY, IF YOU HAVE  
15 THEM HANDY.

16 MR. HANSEN: THERE IS ONLY ONE. IT IS  
17 EXHIBIT 40, YOUR HONOR.

18 THE COURT: DOES THE DEFENDANT HAVE  
19 ANYTHING TO BRING TO MY ATTENTION?

20 MR. GOMEZ: NO, YOUR HONOR.

21 THE COURT: MUCH TO THAT OBLIVION.

22 I WANTED TO EMPHASIZE ONE THING THAT I  
23 BEGAN TO TALK ABOUT WHEN I SPOKE TO MR. FINE ABOUT WHAT  
24 PORTIONS OR WHAT ITEMS WOULD BE PUT INTO EVIDENCE  
25 THROUGH OUR RECENT WITNESS, MISS SMITH. WHEN I

1 SUGGESTED TO YOU ON THE OPENING OF THE CASE ON MONDAY,  
2 AND REPEATED PERHAPS ONCE MORE BEFORE NOW AND THEN WHEN  
3 MISS SMITH WAS ON THE STAND, OUT OF RESPECT FOR THE  
4 INSTITUTION AND THE NEED TO HAVE A SEDATE AND SERIOUS  
5 PROCEEDING HERE, EVEN THOUGH SOME OF THESE THINGS --  
6 BECAUSE THEY ARE IN THE ENTERTAINMENT FIELD, THEY WILL  
7 BE ENTERTAINING TO US AS WE HAVE TO WORK WITH THEM, BUT  
8 WE ARE NOT HERE TO BE ENTERTAINED. WHEN I HAVE SAID  
9 THAT I THINK THAT THE JUSTICE SYSTEM IN THIS PROCEEDING  
10 NEEDS SOME PROTECTION, I'M NOT MUZZLING COUNSEL TO  
11 PRESENT EVIDENCE IN A CERTAIN WAY. I'M NOT MAKING A  
12 RULING. I'M JUST GIVING YOU A SUGGESTION. I SAY TO ALL  
13 OF YOU, IF YOU NEED AN IMAGE IN EVIDENCE OR A SCREEN  
14 SHOT OF A CHAT ROOM WITH SEXUALLY EXPLICIT MATERIAL IN  
15 IT OR WHATEVER ANYBODY NEEDS TO PROVE THEIR CASE, YOU  
16 HAVE TO PUT THAT IN EVIDENCE, WHETHER I LIKE IT OR NOT.  
17 WHETHER YOU CARE WHETHER I LIKE IT OR NOT. I DON'T MEAN  
18 TO ISSUE A RULING INDIRECTLY BY TELLING YOU SOMETHING  
19 THAT REALLY IS ALMOST AN ETHICAL ISSUE. I HOPE YOU  
20 UNDERSTAND THAT. IF ANYBODY MISUNDERSTOOD IT, YOU CAN  
21 REOPEN ANYTHING THAT YOU HAVE DONE SO FAR AND OFFER  
22 OTHER MATERIAL.

23 MR. FINE: WE UNDERSTOOD, YOUR HONOR,  
24 THAT THAT WAS THE COURT'S PREFERENCE. WE DON'T HAVE  
25 ANYTHING WE NEED TO FIX UP AFTER THIS WEEK.

1                   THE COURT:   SAME FOR CROSS EXAMINATION,  
2                   IF THE WITNESSES HAVE TO BE CONFRONTED WITH MATERIAL  
3                   THAT MIGHT NOT BE PRECISELY IN LINE WITH MY NOTION OF  
4                   DECORUM, DECORUM IS NOT THE ISSUE BEFORE THIS COURT.  
5                   WHAT IS BEFORE THE COURT IS THE TASK OF GIVING DUE  
6                   PROCESS TO BOTH SIDES, AND I WANT TO MAKE SURE THE  
7                   DEFENSE FEELS THAT THEY HAVE THE POWER TO CONFRONT  
8                   WITNESSES WITH WHATEVER MATERIAL THEY THINK IS RELEVANT  
9                   AND APPROPRIATE, EVEN THOUGH IT'S EXPLICIT AND NOT THE  
10                  MOST PLEASANT THING TO DO ON A PARTICULAR AFTERNOON.  
11                  I'M SURE THE DEFENSE UNDERSTANDS THAT, AM I CORRECT, MR.  
12                  GOMEZ?

13                   MR. GOMEZ:   YES, YOUR HONOR.   THE DEFENSE  
14                  DOES UNDERSTAND AND IN THIS CONTEXT IT HAD ARISEN I  
15                  THINK IN PART AT THE OPENING, OUR CONCERN IS THAT  
16                  MATERIAL THAT IS -- FOR INSTANCE, THAT FILTERS DON'T  
17                  BLOCK AND THAT CHILDREN MAY SEE, WE NEED TO PUT INTO THE  
18                  RECORD TO MAKE IT CLEAR THAT FOR THE COURT THAT HERE IS  
19                  MATERIAL THAT FILTERS ARE IN FACT NOT BLOCKING.   WE  
20                  INTEND TO ADDRESS THAT ISSUE AS WE PURSUE THE CASE, YOUR  
21                  HONOR.

22                   THE COURT:   FINE, I WILL DEAL WITH THEM  
23                  AS WE GO ALONG.   I DIDN'T WANT TO HAVE SOME BLANKET OF  
24                  IMPLIED ORDER OVER THIS PROCEEDING BECAUSE THERE IS  
25                  NONE.

1                   MR. GOMEZ: WE UNDERSTAND THAT, YOUR  
2 HONOR.

3                   THE COURT: THANK YOU VERY MUCH,  
4 EVERYBODY.

5                   MR. HANSEN: YOUR HONOR, I HAVE JUST ONE  
6 FINAL ISSUE. I JUST WANT TO ADVISE THE COURT, MR.  
7 TEPPEER IS WHEELCHAIR-BOUND. THUS IT WILL NOT BE  
8 POSSIBLE FOR HIM TO ACTUALLY SIT IN THE WITNESS BOX.

9                   THE COURT: I REMEMBER THAT. HE APPEARED  
10 AT THE PI HEARING.

11                   OKAY. WE CAN GET HIM IN THE WELL OF THE  
12 COURTROOM OVER HERE OR I GUESS IT'S OVER THERE, SO THAT  
13 THE DEFENSE CAN SEE HIM WHEN HE IS TESTIFYING. YOU CAN  
14 TRY TO FIGURE THAT OUT.

15                   MR. FINE: WE WILL WORK IT OUT MONDAY  
16 MORNING.

17                   THE COURT: IT IS FINE, IF HE DOES NOT  
18 TAKE THE STAND. I ASK FOR YOUR INGENUITY WHERE TO PUT  
19 HIM, IF I DON'T LIKE IT, I'LL SAY SOMETHING.

20                   MR. GOMEZ: IF THE WITNESS IS IN A  
21 WHEELCHAIR BEHIND THE COURT REPORTER, WE PROBABLY WON'T  
22 BE ABLE TO SEE.

23                   THE COURT: PERHAPS NEAR THE END OF THE  
24 PLAINTIFFS' SECOND TABLE HERE. WHERE COUNSEL IS SITTING  
25 MIGHT BE A PLACE.

1 MR. GOMEZ: THAT WOULD BE FINE, YOUR  
2 HONOR.

3 THE COURT: THE COURT REPORTER HAS TO SEE  
4 HIM ALSO. THERE'S A CERTAIN AMOUNT INTEGRITY TO HER  
5 WORK THAT ARISES OUT OF SEEING THE WITNESS AND LIP  
6 READING, NOT FORMALLY BUT AS A PRACTICAL MATTER. MAKE  
7 SURE WHEN IF YOU FIND A SPOT FOR HIM THAT EVERYBODY CAN  
8 SEE HIM.

9 MR. FINE: WE WILL, YOUR HONOR. THANK  
10 YOU.

11 THE COURT: THE PROCEEDINGS ARE  
12 CONCLUDED. COUNSEL ARE EXCUSED AND WE ARE OFF THE  
13 RECORD.

14 (COURT PROCEEDINGS CONCLUDED AT 4:45  
15 P.M.)

16  
17  
18 I CERTIFY THAT THE FOREGOING IS A CORRECT  
19 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
20 ABOVE-ENTITLED MATTER.

21

22

23

24 DATE

OFFICIAL COURT REPORTER

25

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