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

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

TUESDAY, OCTOBER 31, 2006
COURTROOM 17-A
PHILADELPHIA, PA 19106

BEFORE THE HONORABLE LOWELL A. REED, JR. SJ

NON-JURY TRIAL
DAY 6

APPEARANCES:

CHRISTOPHER A. HANSEN, ESQUIRE
ADEN J. FINE, ESQUIRE
BEN WIZNER, ESQUIRE
CATHERINE CRUMP, ESQUIRE
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 BROAD STREET
NEW YORK, NY 10004-2400
(212)549-2606 FOR THE PLAINTIFFS

SUZANNE R. WHITE, CM
FEDERAL CERTIFIED REALTIME REPORTER
FIRST FLOOR U. S. COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA. 19106
(215)627-1882

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1 APPEARANCES: (CONTINUED)

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

FOR THE PLAINTIFFS

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

FOR THE DEFENDANT

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3

1 THE COURT: GOOD MORNING, EVERYONE.

2 ALL COUNSEL: GOOD MORNING.

3 THE COURT: YOU ARE WELCOME TO BE SEATED.

4 GOOD MORNING, MISS WHITE.

5 THE COURT REPORTER: GOOD MORNING, YOUR
6 HONOR.

7 THE COURT: BEFORE WE BEGIN THE CROSS
8 EXAMINATION, I DON'T RECALL WHAT I ASKED, BUT I NOTE AS
9 TO TIMING, THE PLAINTIFFS HAVE A LIST OF EXHIBITS THAT
10 THEY OFFER AS THIS WITNESS.

11 MR. FINE: WE DO, YOUR HONOR.

12 THE COURT: READ THOSE INTO THE RECORD.
13 THIS IS THE FORMAL OFFER OF THESE EXHIBITS.

14 MR. FINE: YES, YOUR HONOR. PLAINTIFF'S
15 EXHIBIT 37, PAGES 1 THROUGH 17, PAGES 73 AND 74, PAGES
16 76 THROUGH 79, PAGES 80 THROUGH 87, AND PAGES 89 THROUGH
17 99, ALL IN PLAINTIFFS' EXHIBIT 37.

18 THE COURT: THESE WERE -- I ASSUME THAT
19 THESE WERE OFFERED YESTERDAY, BUT YOU COLLECTED THEM
20 TOGETHER. I DID NOT HAVE THEM ALL COLLECTED.

21 MR. FINE: THAT IS CORRECT, YOUR HONOR.

22 MR. SEALLS: THE DEFENDANT DOES NOT
23 OBJECT, YOUR HONOR.

24 THE COURT: OKAY. PLAINTIFFS' EXHIBIT
25 37, PAGES 1 THROUGH 17 INCLUSIVE, 73, 74, 76 THROUGH 79,

4

1 INCLUSIVE, 80 THROUGH 87 INCLUSIVE, 89 THROUGH 99
2 INCLUSIVE ARE RECEIVED INTO EVIDENCE.

3 (P 37 PAGES 1-17, 73, 74, 76-79, 80-87,
4 89-99 ARE ADMITTED INTO EVIDENCE.)

5 THE COURT: OKAY. YOU MAY CROSS EXAMINE.

6 MR. SEALLS: GOOD MORNING. YOUR HONOR,
7 KENNETH SEALLS ON BEHALF OF THE DEFENDANT, THE ATTORNEY
8 GENERAL OF THE UNITED STATES. MAY I TENDER TO THE COURT
9 THE EXHIBITS?

10 THE COURT: SURE. I WOULD BE DELIGHTED.

11

12 MR. SEALLS: I HAVE ALREADY TENDERED TO
13 DR. TEPPER'S COUNSEL YESTERDAY THE EXHIBITS THAT I JUST
14 HANDED TO THE COURT.

15

CROSS EXAMINATION

16 BY MR. SEALLS:

17 Q. GOOD MORNING, DR. TEPPER.

18 A. GOOD MORNING.

19 Q. I'M KENNETH SEALLS WITH THE DOJ. WE MET DURING
20 YOUR FEBRUARY 16TH DEPOSITION THIS YEAR IN THIS CASE,
21 ISN'T THAT RIGHT?

22 A. I RECALL, YES.

23 Q. I WOULD LIKE TO DRAW YOUR ATTENTION, DR. TEPPER,
24 TO EXHIBIT D 111. DO YOU SEE THAT BEFORE YOU, SIR?
25 TAKE YOUR TIME.

5

1 MR. FINE: I DON'T BELIEVE THE WITNESS
2 HAS A COPY. IS THIS A COPY FOR THE WITNESS?

3 MR. SEALLS: YES, THAT IS WHAT I
4 INDICATED YESTERDAY.

5 MR. FINE: YOUR HONOR, MAY I APPROACH THE
6 WITNESS?

7 THE COURT: YES, PLEASE.

8 THE WITNESS: I CAN'T READ THAT SCREEN
9 AND THIS ONE NEEDS TO BE BIGGER.

10 THE COURT: YOU CAN CHOOSE YOUR SOURCE OF
11 THE INFORMATION AS LONG AS YOU CAN READ IT.

12 THE WITNESS: YES.

13 THE COURT: EITHER FROM THE HARD COPY OR
14 THE SCREEN.

15 THE WITNESS: THE SCREEN WOULD BE EASIER.

16 BY MR. SEALLS:

17 Q. DO YOU HAVE EXHIBIT D 111 BEFORE YOU, DR.
18 TEPPER?

19 A. CAN I ASSUME THIS IS D 111?

20 Q. YES, SIR, THAT IS.

21 A. YES, I CAN SEE IT.

22 Q. EXHIBIT D 111 IS A PAGE FROM THE SEXUAL HEALTH
23 NETWORK WEBSITE, ISN'T IT?

24 A. YES.

25 Q. IF YOU LOOK IN THE LOWER RIGHT-HAND CORNER OF

6

1 EXHIBIT D 111. DO YOU SEE THE DOWNLOAD DATE OF OCTOBER
2 5TH, 2006?

3 A. YES.

4 Q. DIRECTING YOUR ATTENTION TO JUST ABOUT THE TOP
5 QUARTER OF THE PAGE, DR. TEPPER, DO YOU SEE THE WORDS
6 "OUR MISSION"?

7 A. YES.

8 Q. PLEASE READ ALOUD FOR THE RECORD THE PARAGRAPH

9 UNDERNEATH OUR MISSION.

10 A. THE SEXUAL HEALTH NETWORK IS DEDICATED TO
11 PROVIDING EASY ACCESS TO SEXUALITY INFORMATION,
12 EDUCATION, MUTUAL SUPPORT, COUNSELING, THERAPY,
13 HEALTHCARE, PRODUCTS AND OTHER RESOURCES FOR PEOPLE WITH
14 DISABILITIES, ILLNESS OR NATURAL CHANGES THROUGHOUT THE
15 LIFE CYCLE AND THOSE WHO LOVE THEM OR CARE FOR THEM.

16 Q. THIS IS YOUR MISSION STATEMENT, CORRECT?

17 A. YES.

18 Q. YOUR MISSION STATEMENT HAS NOT CHANGED SINCE
19 OCTOBER 5TH, 2006, HAS IT?

20 A. NO.

21 Q. I WANT TO DIRECT YOUR ATTENTION TO EXHIBIT --
22 PARDON ME SIR, STAYING ON D 111, UNDERNEATH THE
23 PARAGRAPH THAT YOU JUST READ, DO YOU SEE THE HEADING, TO
24 END THE SILENCE?

25 A. YES.

7

1 Q. THIS CONTAINS, THIS PARAGRAPH UNDER TO END THE
2 SILENCE CONTAINS REASONS WHY SEXUAL HEALTH NETWORK
3 EXISTS, DOESN'T IT?

4 A. CORRECT.

5 Q. IF I MAY READ THE FIRST SENTENCE ON D 111, ALL
6 TOO OFTEN, SEXUAL HEALTH IS OVERLOOKED OR IGNORED IN THE
7 HEALTHCARE SYSTEM. THAT IS ONE REASON SEXUAL HEALTH
8 NETWORK EXISTS, CORRECT?

9 A. YES.

10 Q. THE SECOND SENTENCE, THE MOST COMMON REASONS FOR

11 NOT PROVIDING SEXUAL HEALTH CARE SERVICES INCLUDE
12 ANXIETY WITH REGARD TO DISCUSSING SEXUALITY WITH
13 PATIENTS, INADEQUATE TRAINING IN THE AREA OF SEXUAL
14 HEALTH CARE, LACK OF APPROPRIATE CURRICULUM AND THE
15 BELIEF THAT IT IS SOMEONE ELSE'S RESPONSIBILITY. DID I
16 READ THAT CORRECTLY?

17 A. YES.

18 Q. THAT IS ANOTHER REASON FOR SEXUAL HEALTH
19 NETWORK'S EXISTENCE, CORRECT?

20 A. YES.

21 Q. THE NEXT SENTENCE, WHICH IS THE THIRD OF THE
22 PARAGRAPH: COMPOUNDING THE PROBLEM ARE SOCIETAL
23 ATTITUDES TOWARDS SEXUALITY AND MISCONCEPTIONS ABOUT
24 SEXUALITY AS IT RELATES TO PEOPLE WITH DISABILITIES,
25 CHRONIC ILLNESS, CHILDREN, OLDER ADULTS AND THOSE WHO

8

1 JUST DO NOT FIT THE MEDIA STEREOTYPE OF SEXY. DID I
2 READ THAT ACCURATELY?

3 A. YES.

4 Q. THAT IS ANOTHER REASON FOR SEXUAL HEALTH
5 NETWORK'S EXISTENCE, CORRECT?

6 A. YES.

7 Q. THE FINAL SENTENCE READS: SILENCE ABOUT SEXUAL
8 HEALTH RELATED ISSUES HAS MADE ACCESS TO SEXUAL
9 HEALTHCARE FROM TRADITIONAL SOURCES DIFFICULT RESULTING
10 IN UNNECESSARY SUFFERING FOR MANY, BUT ESPECIALLY FOR
11 PEOPLE WITH DISABILITIES, CHRONIC ILLNESS AND EVEN
12 NATURAL CHANGES ASSOCIATED WITH GROWING OLDER. THAT IS

13 THE FOURTH AND FINAL SENTENCE UNDER THE HEADING TO END
14 THE SILENCE ON EXHIBIT D 111, CORRECT?

15 A. YES.

16 Q. LOOK JUST BELOW WHAT I READ ON EXHIBIT D 111.
17 DO YOU SEE THE SENTENCE THAT BEGINS THE SEXUAL HEALTH
18 NETWORK EXISTS TO END THE SILENCE AND SUFFERING BY, AND
19 THERE IS A COLON. DO YOU SEE THAT, DR. TEPPER?

20 A. YES.

21 Q. DO YOU SEE THE FIVE BULLET POINTS UNDERNEATH IT?

22 A. YES.

23 Q. PLEASE READ ALOUD THOSE, THE TEXT THAT
24 ACCOMPANIES THOSE RESPECTIVE BULLETS.

25 A. MAKING GENERAL AND DISABILITY AND/OR ILLNESS

9

1 SPECIFIC SEXUAL HEALTH INFORMATION, INFORMATION AT THE
2 CLICK OF A MOUSE, PROVIDING EASY ACCESS TO CREDENTIALLED
3 HEALTH PROFESSIONALS WHO ARE COMMITTED TO SEXUAL HEALTH,
4 WHO ARE HERE TO LISTEN, WHO UNDERSTAND AND HAVE
5 SUFFICIENT KNOWLEDGE AND RESOURCES TO DEAL WITH COMPLEX
6 PROBLEMS OF HUMAN SEXUALITY AND WHO CAN INFORM AND OFFER
7 ADVICE REGARDING SEXUAL HEALTH AND SEXUAL PROBLEMS, ONE
8 TO ONE AND IN GROUPS, PROVIDING FORUMS FOR OBJECTIVE
9 DISCUSSIONS OF SEXUAL MATTERS AMONG PEERS, TRAINING
10 HEALTH SERVICE PERSONNEL IN SEXUAL HEALTH, PROVIDING
11 GUIDANCE IN THE SELECTION OF HIGH QUALITY SEXUAL HEALTH
12 RELATED PRODUCTS.

13 Q. I DIRECT YOUR ATTENTION TO THE LOWER RIGHT
14 CORNER OF EXHIBIT D 111. DO YOU SEE THE DOWNLOAD DATE

15 OF OCTOBER 5, 2006, DR. TEPPER?

16 A. YES.

17 Q. THIS PAGE OF YOUR WEBSITE HAS NOT CHANGED SINCE
18 OCTOBER 5, 2006, HAS IT?

19 A. NO.

20 Q. I WANT TO LOOK AT EXHIBIT D 112, DR. TEPPER. DO
21 YOU HAVE IT IN FRONT OF YOU?

22 A. YES, I DO.

23 Q. ABOUT A QUARTER DOWN THE PAGE, DO YOU SEE THE
24 HEADING SEXUAL HEALTH EDITORIAL TEAM?

25 A. YES.

10

1 Q. BEFORE I ASK ABOUT THAT, LET ME JUST MAKE SURE
2 -- EXHIBIT D 112 HAS A DOWNLOAD DATE OF OCTOBER 5, 2006,
3 CORRECT?

4 A. CORRECT.

5 Q. THIS PAGE ON YOUR WEBSITE -- AND IT IS ON YOUR
6 WEBSITE, ISN'T IT?

7 A. YES.

8 Q. THIS PAGE ON YOUR WEBSITE HAS NOT CHANGED SINCE
9 OCTOBER 5, 2006, HAS IT?

10 A. NO.

11 Q. DIRECTING YOUR ATTENTION AGAIN TO THE HEADING
12 SEXUAL HEALTH EDITORIAL TEAM, WHICH IS ON EXHIBIT D 112
13 AND FOR THE RECORD, THE PAGE IS D 112-0001, CORRECT?

14 A. YES.

15 Q. THAT IS YOUR PICTURE ON THIS PAGE, ISN'T IT, DR.
16 TEPPER?

17 A. YES.
18 Q. IN THE UPPER LEFT CORNER?
19 A. YES.
20 Q. NEXT TO YOUR PICTURE, ON THE RIGHT OF IT IS THE
21 PICTURE OF KATHLEEN VAN KIRK, ISN'T IT?
22 A. YES.
23 Q. SHE IS THE VICE-PRESIDENT OF CONTENT FOR SEXUAL
24 HEALTH NETWORK, CORRECT?
25 A. YES.

11

1 Q. SHE HAS A DOCTORATE IN HUMAN SEXUALITY. ISN'T
2 THAT RIGHT?
3 A. YES.
4 Q. PICTURED BELOW YOUR PICTURE IS ANNETTE OWENS.
5 DO YOU SEE HER PICTURE?
6 A. YES.
7 Q. SHE IS YOUR CHIEF MEDICAL OFFICER AND CO-
8 FOUNDER, CORRECT?
9 A. YES.
10 Q. SHE IS A MEDICAL DOCTOR, ISN'T SHE?
11 A. YES.
12 Q. SHE ALSO HAS A PH.D., ISN'T THAT RIGHT?
13 A. YES.
14 Q. IF YOU TAKE A LOOK TO THE TOP OF PAGE D
15 112-0001, DO YOU SEE THE PARAGRAPH THAT BEGINS JOINING
16 THE SEXUAL HEALTH NETWORK'S MISSION?
17 A. YES.
18 Q. PLEASE READ THAT ALOUD, DR. TEPPER.

19 A. JOINING THE SEXUAL HEALTH NETWORK'S MISSION TO
20 END THE SILENCE ARE A NUMBER OF VOLUNTEER CONTENT
21 EXPERTS. THESE EXPERTS ARE AMONG THE WORLD'S LEADERS IN
22 SEXUALITY AND DISABILITY, CHRONIC ILLNESS AND WOMEN'S
23 AND MEN'S GENERAL SEXUAL HEALTH.

24 Q. THANK YOU, DR. TEPPER. I WANT TO DIRECT YOUR
25 ATTENTION TO YOUR WEBSITE IN GENERAL. I HAVE SOME

12

1 QUESTIONS ABOUT IT. WILL YOU UNDERSTAND IF I REFER TO
2 SEXUAL HEALTH NETWORK AS "YOU" OR "YOUR"?

3 A. OKAY. THE SEXUALHEALTH.COM AS FAR AS THE
4 WEBSITE?

5 Q. YES, SIR.

6 A. OKAY.

7 Q. YOUR WEBSITE DOES NOT LOOK LIKE AN ADULT
8 ENTERTAINMENT SITE, DOES IT?

9 A. NO.

10 Q. AND YOUR BUSINESS COMPETITORS ARE OTHER WEBSITES
11 THAT PROVIDE SEXUAL HEALTH RELATED INFORMATION, ISN'T
12 THAT TRUE?

13 A. YES.

14 Q. ONE OF YOUR BUSINESS COMPETITORS IS HIS AND HER
15 HEALTH, ISN'T THAT RIGHT, DR. TEPPER?

16 A. YES.

17 Q. ANOTHER OF YOUR BUSINESS COMPETITORS IS WEB M,
18 AS IN MEDICAL, PERIOD, D, AS IN DOCTOR, ISN'T THAT
19 CORRECT?

20 A. YES.

21 Q. IT'S NOT SEXUAL HEALTH NETWORK'S MISSION TO
22 TRANSMIT PORNOGRAPHIC MATERIAL OVER ITS WEBSITE, IS IT?

23 A. NO.

24 Q. SEXUAL HEALTH NETWORK HAS NEVER RECEIVED A
25 COMPLAINT FROM ANYONE THAT THE MATERIAL ON ITS WEBSITE

13

1 IS HARMFUL TO MINORS, HAS IT?

2 A. NO.

3 Q. NOR HAS SEXUAL HEALTH NETWORK BEEN THREATENED
4 WITH PROSECUTION BY THE FEDERAL GOVERNMENT FOR --
5 REGARDING ANY OF THE CONTENT ON ITS WEBSITE, HAS IT?

6 A. NO.

7 Q. IT HAS NOT BEEN THREATENED WITH PROSECUTION?

8 A. IT HAS NOT BEEN.

9 Q. I'M SORRY. I HAD A DIFFERENT QUESTION TO ASK
10 YOU. IT HAS NOT BEEN THREATENED WITH PROSECUTION BY ANY
11 STATE GOVERNMENT WITH RESPECT TO THE CONTENT OF ITS
12 WEBSITE, HAS IT?

13 A. NO.

14 Q. NOR HAS SEXUAL HEALTH NETWORK BEEN THREATENED
15 WITH PROSECUTION BY ANY LOCAL GOVERNMENT CONCERNING THE
16 CONTENT CONTAINED ON ITS WEBSITE, HAS IT, DR. TEPPER?

17 A. NO.

18 Q. SEXUAL HEALTH NETWORK HAS NEVER BEEN THREATENED
19 WITH A LAWSUIT BY ANY STATE, FEDERAL, OR LOCAL
20 GOVERNMENTAL ENTITY CONCERNING THE CONTENT OF ITS
21 WEBSITE, HAS IT?

22 A. NO.

23 Q. DOESN'T YOUR WEBSITE HAVE ADS ON IT THAT CONNECT
24 YOUR VIEWERS TO MERCHANTS' WEBSITES?

25 A. YES.

14

1 Q. THOSE TYPE OF ADS ARE CALLED BANNER ADS, AREN'T
2 THEY?

3 A. CAN I SAY YES WITH SOME CLARIFICATION?

4 THE COURT: YES, YOU MAY DO THAT.

5 THE WITNESS: THE BANNER ADS, I GUESS
6 THEY GO TO MERCHANTS' WEBSITES. I THOUGHT YOUR QUESTION
7 AS FAR AS GOING TO MERCHANTS' WEBSITES HAD TO DO WITH
8 THE SEX SHOP AND THOSE ARE MORE AFFILIATE RELATIONSHIPS.
9 SO THE BANNERS I GUESS DO TAKE YOU TO INFORMATION ABOUT
10 WHOEVER IS ADVERTISING.

11 BY MR. SEALLS:

12 Q. YOU RECEIVE COMMISSIONS EACH TIME ONE OF YOUR
13 VIEWERS GOES THROUGH A BANNER AD DISPLAYED ON YOUR
14 WEBSITE TO MAKE A PURCHASE ON A MERCHANT'S WEBSITE,
15 DON'T YOU?

16 A. I NEED TO CLARIFY THESE TWO SEPARATE ISSUES.

17 Q. PLEASE.

18 A. I RECEIVE COMMISSIONS ON PRODUCTS THAT ARE
19 PURCHASED THROUGH AN AFFILIATE COMPANY. SO IF SOMEONE
20 GOES TO THE SHOPPING CART AND BUYS A LUBRICANT OR DVD,
21 THEY GO THROUGH TO ANOTHER COMPANY, BETTER SEX OR
22 LABIDA. IF THEY MAKE A PURCHASE, I GET A COMMISSION ON
23 THAT. THE BANNER ADS DO NOT WORK LIKE THAT. THE BANNER
24 ADS I EARN MONEY PER EVERY THOUSAND TIMES SOME VIEWERS

25 SEE THAT. SO EVERY -- THEY ARE CALLED IMPRESSIONS.

15

1 EVERY TIME AN IMPRESSION IS DELIVERED, YOU KNOW, IT'S
2 ACCUMULATED IN A COST PER THOUSAND.

3 Q. THANK YOU, DR. TEPPER. I UNDERSTAND BETTER NOW.

4 A. THAT IS THE DIFFERENCE BETWEEN --

5 Q. SO ISN'T IT TRUE THEN THAT SEXUAL HEALTH NETWORK
6 RECEIVES A COMMISSION EACH TIME ONE OF ITS VIEWERS GOES
7 THROUGH AN AFFILIATE COMPANY LISTED ON THE SEXUAL HEALTH
8 NETWORK WEBSITE AND MAKES A PURCHASE ON THE AFFILIATE
9 COMPANY'S WEBSITE?

10 A. YES, SIR.

11 Q. IT'S ALSO TRUE THAT YOUR VIEWERS IN GOING
12 THROUGH YOUR WEBSITE TO THE AFFILIATE COMPANY'S WEBSITE
13 MAY MAKE PURCHASES THROUGH USE OF CREDIT CARD ON THE
14 AFFILIATE COMPANY'S WEBSITE?

15 A. YES.

16 Q. ALL OF THE ADS ON YOUR WEBSITE ARE BANNER ADS,
17 CORRECT?

18 THE COURT: IF YOU DON'T UNDERSTAND THE
19 QUESTION YOU ARE WELCOME TO SAY THAT. COUNSEL WILL
20 FIGURE OUT WHAT TO DO.

21 THE WITNESS: CAN I JUST SAY, YES, BUT
22 SOME ARE LINKS. SOME PEOPLE PAY FOR A LINK VERSUS A
23 BANNER SO...

24 BY MR. SEALLS:

25 Q. NO ONE HAS EVER COMPLAINED TO YOU ABOUT THE

16

1 CONTENT OF THE BANNER ADS ON YOUR WEBSITE?

2 A. NO.

3 Q. DR. TEPPER, SEXUAL HEALTH NETWORK IS A PLAINTIFF
4 IN A LAWSUIT THAT WAS FILED IN JUNE OF 2005 IN THE
5 FEDERAL DISTRICT COURT OF UTAH, ISN'T IT?

6 A. YES.

7 Q. I DIRECT --

8 THE COURT: WHAT YEAR, SIR.

9 MR. SEALLS: 2005.

10 BY MR. SEALLS:

11 Q. I DIRECT YOUR ATTENTION, DR. TEPPER, TO EXHIBIT
12 D 447. DO YOU SEE IT?

13 A. YES.

14 Q. THIS IS A COPY OF THE COMPLAINT IN THAT LAWSUIT,
15 ISN'T IT?

16 A. YES.

17 Q. SEXUAL HEALTH SUED IN THIS LAWSUIT TO PREVENT A
18 UTAH LAW FROM GOING INTO EFFECT, CORRECT?

19 A. YES.

20 Q. THAT UTAH LAW WOULD HAVE BLOCKED MINORS' ACCESS
21 TO WEBSITE MATERIAL THAT IS HARMFUL TO MINORS, ISN'T
22 THAT RIGHT?

23 A. YES.

24 Q. AND UTAH LAW WOULD ALSO HAVE REQUIRED WEBSITES
25 THAT ARE ACCESSIBLE IN UTAH TO LABEL MATERIAL THAT IS

17

1 HARMFUL TO MINORS, ISN'T THAT CORRECT, DR. TEPPER?

2 A. YES.

3 Q. DURING YOUR FEBRUARY 16TH, 2006 DEPOSITION IN
4 THIS CASE -- YOU REMEMBER BEING DEPOSED, DON'T YOU?

5 A. YES.

6 Q. AND YOUR COUNSEL, MR. FINE, REPRESENTED YOU AT
7 THE DEPOSITION, CORRECT?

8 A. YES.

9 Q. YOU WERE UNDER OATH AT THAT DEPOSITION?

10 A. YES.

11 Q. MR. BYRDSONG, WOULD YOU PULL UP PAGES, PAGE 4,
12 23 THROUGH 6, 13. DR. TEPPER, I WANT TO READ TO YOU
13 PAGE 4 BEGINNING ON LINE 23. DO YOU SEE THAT?

14 A. YES.

15 Q. AND I'M GOING TO GO ALL OF THE WAY TO PAGE 6,
16 LINE 13 OF YOUR DEPOSITION.

17 QUESTION: I'M NOT GOING TO BELABOR WITH
18 A LOT OF QUESTIONS THAT ARE INTRODUCTORY BECAUSE I KNOW
19 YOU'VE GIVEN A DEPOSITION IN THIS CASE BEFORE, HAVEN'T
20 YOU?

21 ANSWER: CORRECT.

22 QUESTION: AND I KNOW THAT YOU TESTIFIED
23 AT THE PRELIMINARY INJUNCTION HEARING IN THIS CASE,
24 HAVEN'T YOU?

25 ANSWER: YES.

18

1 QUESTION: OTHER THAN THOSE TWO TIMES
2 WHEN YOU HAVE GIVEN LIVE TESTIMONY, HAVE YOU TESTIFIED
3 BEFORE?

4 QUESTION: OTHER THAN THE TWO MATTERS

5 THAT YOU JUST TESTIFIED TO HAVING GIVEN TESTIMONY IN,
6 HAVE YOU EVER TESTIFIED?

7 ANSWER: EVER BEFORE?

8 QUESTION: DO YOU UNDERSTAND WHAT I MEAN
9 BY THE WORD EVER, SIR?

10 ANSWER: HAVE I EVER TESTIFIED? SO...

11 YES, YES, I HAVE TESTIFIED BEFORE.

12 QUESTION: HAS YOUR TESTIMONY BEFORE BEEN
13 IN ANY MATTER OTHER THAN THIS MATTER IN WHICH YOU'RE
14 GIVING TESTIMONY THIS MORNING?

15 ANSWER: OTHER MATTERS, YES. IT'S
16 ANOTHER MATTER. THAT'S WHERE THE CONFUSION COMES IN.

17 QUESTION: WHICH MATTER, SIR?

18 ANSWER: MATTERS. I'VE TESTIFIED OR AT
19 LEAST BEEN A PARTY TO CASES REGARDING THE INTERNET IN
20 VIRGINIA, VERMONT. THESE ARE STATE RELATED CASES,
21 VIRGINIA, VERMONT, OHIO AND WELL, I DIDN'T TESTIFY IN
22 ARIZONA.

23 DID I READ THAT CORRECTLY, DR. TEPPER?

24 A. YES.

25 Q. YOU NEVER MENTIONED THIS UTAH CASE, THE

19

1 COMPLAINT BEING EXHIBIT D 447, DID YOU?

2 A. NO.

3 Q. I WANT TO ASK YOU SOME QUESTIONS ABOUT A GRANT,
4 DR. TEPPER. THE NATIONAL INSTITUTES OF HEALTH AWARDED
5 SEXUAL HEALTH NETWORK A GRANT IN 2004, DIDN'T IT?

6 A. YES.

7 Q. THIS GRANT WAS CONTINUED IN 2005, WASN'T IT?

8 A. YES.

9 Q. SEXUAL HEALTH NETWORK RECEIVED THE GRANT THROUGH
10 THE NATIONAL INSTITUTES OF HEALTH, SMALL BUSINESS
11 INNOVATIVE RESEARCH PROGRAM. AM I RIGHT ABOUT THAT?

12 A. YES.

13 Q. THE GRANT TOTALED ROUGHLY \$98,000, CORRECT?

14 A. CORRECT.

15 Q. THE NATIONAL INSTITUTES OF HEALTH IS A PART OF
16 THE FEDERAL GOVERNMENT, IS IT NOT?

17 A. YES.

18 MR. SEALLS: MAY I CONFER WITH CO-COUNSEL
19 BRIEFLY?

20 THE COURT: SURELY.

21 MR. SEALLS: YOUR HONOR, AT THIS TIME I
22 WOULD MOVE EXHIBITS D 111, D 112 AND D 447 INTO
23 EVIDENCE.

24 MR. FINE: NO OBJECTIONS, YOUR HONOR.

25 THE COURT: DEFENDANT'S EXHIBITS 111, 112

20

1 AND 447 ARE RECEIVED IN EVIDENCE.

2 MR. SEALLS: I HAVE NO FURTHER QUESTIONS
3 OF DR. TEPPER AT THIS TIME. YOUR HONOR.

4 (D 111, D 112, D 447, ADMITTED INTO
5 EVIDENCE.)

6 THE COURT: ANY REDIRECT.

7 MR. FINE: NO REDIRECT, YOUR HONOR.

8 THE COURT: THAT WAS FAST. YOU SHOULD

9 HAVE DONE THIS YESTERDAY AFTERNOON. WHY DIDN'T YOU TELL
10 ME?

11 MR. SEALLS: YOUR HONOR, I THOUGHT IT
12 WOULD BE 20 TO 25 MINUTES AND IT WAS.

13 THE COURT: CONGRATULATIONS.
14 YOU ARE EXCUSED.

15 (WITNESS EXCUSED.)

16 THE COURT: PLAINTIFFS' NEXT WITNESS.
17 FINE.

18 MR. WIZNER: YOUR HONOR, PLAINTIFFS CALL
19 AARON PECKHAM.

20 AARON PECKHAM, PLAINTIFF'S WITNESS,
21 SWORN.

22 THE CLERK: STATE AND SPELL YOUR FULL
23 NAME FOR THE RECORD, PLEASE.

24 THE WITNESS: MY NAME IS AARON PECKHAM.
25 FIRST NAME IS A-A-R-O-N, MY LAST NAME IS P-E-C-K-H-A-M.

21

1 MR. WIZNER: DO YOU WANT TO MOVE THE
2 MICROPHONE SO YOU DO NOT BEND OVER EVERY TIME YOU SPEAK?

3 THE WITNESS: YES.

4 DIRECT EXAMINATION

5 BY MR. WIZNER:

6 Q. GOOD MORNING, MR. PECKHAM.

7 A. GOOD MORNING, MR. WIZNER.

8 Q. TELL THE COURT HOW ARE YOU CURRENTLY EMPLOYED.

9 A. I'M CURRENTLY A SOFTWARE ENGINEER AT GOOGLE IN
10 CALIFORNIA.

11 Q. AND ARE YOU HERE ON BEHALF OF GOOGLE TODAY?

12 A. NO. MY EMPLOYMENT AT GOOGLE IS UNRELATED TO MY
13 INVOLVEMENT IN THIS CASE.

14 Q. BRIEFLY DESCRIBE YOUR EDUCATIONAL BACKGROUND.

15 A. I RECENTLY GRADUATED FROM CAL POLY STATE
16 UNIVERSITY IN SAN LUIS OBISPO, CALIFORNIA, SO I
17 GRADUATED WITH A BACHELOR'S AND A MASTER'S IN COMPUTER
18 SCIENCE.

19 THE COURT: IN WHAT SUBJECT, SIR?

20 THE WITNESS: IN COMPUTER SCIENCE.

21 BY MR. WIZNER:

22 Q. AND IF YOU DON'T MIND MY ASKING, HOW OLD ARE
23 YOU?

24 A. I'M 25.

25 Q. AND WHERE DO YOU LIVE?

22

1 A. I LIVE IN MOUNTAINVIEW, CALIFORNIA.

2 Q. MR. PECKHAM, WHAT IS URBAN DICTIONARY?

3 A. URBAN DICTIONARY IS A WEBSITE THAT I CREATED
4 WHEN I WAS A FRESHMAN IN COLLEGE, IT'S
5 URBANDICTIONARY.COM AND IT'S A LOT LIKE A REAL
6 DICTIONARY IN THAT IT PROVIDES DEFINITIONS AND EXAMPLES
7 FOR WORDS, EXCEPT THAT IT FOCUSES ON SLANG, AND THAT ALL
8 OF ITS DEFINITIONS ARE WRITTEN BY PEOPLE WHO VISIT THE
9 WEBSITE.

10 Q. WHEN DID URBAN DICTIONARY COME INTO BEING, WHAT
11 YEAR?

12 A. IT WAS 1999.

13 Q. BRIEFLY DESCRIBE THE HISTORY OF URBAN DICTIONARY
14 FROM 1999 UNTIL NOW.

15 A. THE WEBSITE HAS BEEN AROUND FOR SEVEN YEARS. I
16 ORIGINALLY STARTED IT AS A PARODY OF THE DICTIONARY
17 BECAUSE I THOUGHT, WELL, THERE ARE TWO DIFFERENT WAYS OF
18 LOOKING AT DICTIONARIES. ONE IS PRESCRIPTIVIST, WHERE
19 THE DICTIONARY TELLS YOU HOW TO SPEAK, AND ONE IS
20 DESCRIPTIVIST, WHERE THE DICTIONARY DESCRIBES HOW PEOPLE
21 ACTUALLY SPEAK IN THE REAL WORLD. SO I THOUGHT,
22 WOULDN'T IT BE FUNNY IF MY DICTIONARY, BEING THE
23 ULTIMATE DESCRIPTIVIST DICTIONARY, TOOK ALL OF ITS
24 DEFINITIONS FROM THE PEOPLE WHO ACTUALLY SPOKE THE
25 LANGUAGE. AND SO THAT IS HOW IT'S HAS BEEN FOR SEVEN

23

1 YEARS. IT WAS NOT AS POPULAR IN THE FIRST TWO YEARS OF
2 ITS EXISTENCE AS IT IS NOW, BUT PEOPLE STARTED TELLING
3 THEIR FRIENDS. IT STARTED SHOWING UP IN COURT
4 PROCEEDINGS AND IN NEWS OUTLETS, AND NOW IT'S A PRETTY
5 POPULAR WEBSITE.

6 Q. AND IS URBAN DICTIONARY A FOR-PROFIT VENTURE?

7 A. IT IS.

8 Q. AND IS IT INCORPORATED?

9 A. I HAVE A SOLE PROPRIETORSHIP REGISTERED IN
10 SACRAMENTO, CALIFORNIA.

11 Q. DOES URBAN DICTIONARY HAVE ANY STAFF?

12 A. OTHER THAN ME, THERE IS NO STAFF.

13 Q. AND DOES URBAN DICTIONARY HAVE AN OFFICE?

14 A. UNLESS YOU COUNT MY APARTMENT, URBAN DICTIONARY

15 DOES NOT HAVE AN OFFICE.

16 Q. WHY DID YOU DECIDE TO PUBLISH URBAN DICTIONARY
17 ONLINE?

18 A. URBAN DICTIONARY IS A WEBSITE AND IT CAN ONLY BE
19 A WEBSITE BECAUSE THE INTERNET IS THE ONLY MEDIUM THAT
20 ALLOWS ME TO COMMUNICATE WITH SO MANY PEOPLE SO
21 IMMEDIATELY FOR SUCH LITTLE COST. URBANDICTIONARY.COM
22 COULD NOT EXIST IN PRINT AS WELL AS IT DOES ONLINE. IT
23 COULD NOT EXIST IN RADIO, COULD NOT EXIST IN TELEVISION,
24 BECAUSE THE INTERNET ALLOWS ALL THE PEOPLE THAT COME TO
25 MY WEBSITE TO TALK TO EACH OTHER.

24

1 Q. HAS URBAN DICTIONARY WON ANY AWARDS OR ACHIEVED
2 ANY RECOGNITION?

3 A. THANKS FOR ASKING. SOME OF THE ONES I'M MOST
4 PROUD OF RECENTLY ARE A MENTION IN PC MAGAZINE. THEY
5 HAD A LIST OF THE TOP 101 CLASSIC WEBSITES OF THIS YEAR.
6 THEY MENTIONED URBAN DICTIONARY IN THEIR ENTERTAINMENT
7 SECTION, SO ACCORDING TO PC MAGAZINE, URBAN DICTIONARY
8 IS ONE OF THE TOP 101 WEBSITES. IN ADDITION TO THAT,
9 THERE IS ALSO A WEBSITE CALLED ALEXA.COM AND ALEXA'S
10 RESPONSIBILITY -- ALEXA HAS TAKEN ON THE RESPONSIBILITY
11 OF RANKING ALL THE WEBSITES OUT THERE BY THE NUMBER OF
12 PEOPLE WHO VISIT THEM. SO THEY DO A SMALL SAMPLING OF
13 PEOPLE ON THE INTERNET AND AS A RESULT OF THEIR
14 EXPERIMENTS, THEY RANKED URBAN DICTIONARY AS ONE OF THE
15 TOP 1,000 WEBSITES VISITED ON THE INTERNET.

16 Q. IF WE COULD BREAK THAT DOWN. HOW MANY PEOPLE

17 VISIT URBAN DICTIONARY'S WEBSITE IN AN AVERAGE DAY?

18 A. ACCORDING TO MY RECORDS, ABOUT 330,000 PEOPLE
19 VISIT URBAN DICTIONARY IN ONE DAY.

20 Q. AND DO YOU KNOW HOW MANY UNIQUE VISITORS URBAN
21 DICTIONARY HAS HAD SINCE THE BEGINNING OF 2006?

22 A. YES. SINCE THE BEGINNING OF 2006 ABOUT 40
23 MILLION PEOPLE HAVE VISITED URBANDICTIONARY.COM.

24 Q. AND ARE YOU ABLE TO MEASURE HOW MANY SEARCH
25 QUERIES THERE ARE ON THE WEBSITE IN A TYPICAL DAY?

25

1 A. YES, I CAN. ON A TYPICAL DAY THERE ARE ABOUT
2 1.7 MILLION QUERIES ON URBAN DICTIONARY. THAT IS,
3 PEOPLE LOOK UP 1.7 MILLION WORDS.

4 Q. DO YOU KNOW HOW MANY QUERIES THERE ARE IN A
5 GIVEN MINUTE OR SECOND?

6 A. YES. AT PEAK TIMES, WHICH IS GENERALLY IN THE
7 MIDDLE OF THE DAY, THE SPEED OF THE WEBSITE CAN GO UP TO
8 100 QUERIES PER SECOND, SO THERE ARE 100 PEOPLE IN ONE
9 SECOND THAT ARE LOOKING UP WORDS.

10 Q. DO YOU KNOW WHETHER ANY OF URBAN DICTIONARY'S
11 AUDIENCE IS FROM OVERSEAS?

12 A. YES, I DO.

13 Q. HOW DO YOU KNOW THAT?

14 A. I USE A PRODUCT CALLED GOOGLE ANALYTICS. IT'S A
15 FREE PRODUCT THAT GOOGLE OFFERS FOR ITS ADVERTISERS AND
16 PUBLISHERS, AND THROUGH THEIR REPORTS, I'M ABLE TO TELL
17 THAT 37 PERCENT OF MY AUDIENCE IS FROM OVERSEAS.

18 Q. IS THAT IMPORTANT TO YOUR MISSION TO HAVE

19 OVERSEAS VISITORS?

20 A. YES, DEFINITELY.

21 Q. WHY IS THAT?

22 A. URBAN DICTIONARY'S MISSION IS TO DOCUMENT
23 ENGLISH AS IT IS SPOKEN AROUND THE WORLD. AND SO IT'S
24 VERY IMPORTANT TO ME TO HAVE AN INTERNATIONAL AUDIENCE
25 THAT IS BOTH WRITING DEFINITIONS AND READING

26

1 DEFINITIONS.

2 Q. DO YOU KNOW WHETHER YOU HAVE USERS WHO ARE UNDER
3 17?

4 A. YES, I DO.

5 Q. AND HOW DO YOU KNOW THAT?

6 A. I HAVE A SURVEY THAT IS OPTIONAL FOR MY USERS
7 BUT ON A QUESTION WHERE I ASK HOW OLD MY USERS ARE, OF
8 ABOUT 30,000 RESPONDENTS, 10 PERCENT WERE UNDER 17.

9 Q. HOW MANY DEFINITIONS ARE CURRENTLY ON URBAN
10 DICTIONARY'S WEBSITE?

11 A. ABOUT A MILLION DEFINITIONS ARE VISIBLE ON THE
12 WEBSITE RIGHT NOW.

13 Q. ARE ANY OF THOSE DEFINITIONS SEXUALLY EXPLICIT?

14 A. YES.

15 Q. DO YOU KNOW WHAT THE MOST POPULAR WORDS ARE IN
16 URBAN DICTIONARY?

17 A. YES.

18 Q. HOW DO YOU KNOW WHAT THE MOST POPULAR WORDS ARE
19 IN URBAN DICTIONARY?

20 A. THE PRODUCT I MENTIONED, GOOGLE ANALYTICS, ALSO

21 TELLS ME WHAT PAGES ARE THE MOST POPULAR, SO IT HAS A
22 REPORT WHERE I CAN SEE WHAT WORDS ARE VIEWED THE MOST ON
23 THE SITE.

24 Q. AND ARE ANY OF THE MOST POPULAR WORDS IN URBAN
25 DICTIONARY SEXUALLY EXPLICIT?

27

1 A. YES.

2 Q. DO YOU KNOW WHICH ONES OR DO YOU KNOW HOW MANY?

3 A. OF THE 20 MOST FREQUENTLY LOOKED UP WORDS ON
4 URBAN DICTIONARY, 18 ARE SEXUALLY EXPLICIT.

5 Q. MR. PECKHAM, ARE YOU GENERALLY AWARE OF THE LAW
6 BEING CHALLENGED IN THIS CASE?

7 A. YES, I AM.

8 Q. WHAT DO YOU KNOW ABOUT THE LAW?

9 A. I KNOW THAT IT WOULD MAKE IT ILLEGAL FOR ME TO
10 DELIVER CONTENT TO MINORS THAT COULD BE DEEMED HARMFUL
11 TO MINORS.

12 Q. AND ARE YOU ABLE TO DETERMINE PRECISELY WHAT
13 SPEECH COPA PROHIBITS?

14 A. NO.

15 Q. AND DO YOU HAVE AN UNDERSTANDING OF EXACTLY WHAT
16 THE LAW MEANS WHEN IT REFERS TO SPEECH THAT IS PATENTLY
17 OFFENSIVE WITH RESPECT TO MINORS?

18 A. NO.

19 Q. AND DO YOU HAVE AN UNDERSTANDING OF WHAT THE LAW
20 MEANS WHEN IT REFERS TO MATERIAL THAT "TAKEN AS A WHOLE,
21 LACKS SERIOUS LITERARY, ARTISTIC, POLITICAL OR
22 SCIENTIFIC VALUE" FOR MINORS?

23 A. NO.

24 Q. DO YOU BELIEVE THAT ANY OF URBAN DICTIONARY'S
25 CONTENT MIGHT BE CONSIDERED HARMFUL TO MINORS?

28

1 A. YES.

2 Q. WHY DO YOU BELIEVE THAT?

3 A. MUCH OF URBAN DICTIONARY'S CONTENT IS SEXUALLY
4 EXPLICIT. URBAN DICTIONARY'S MISSION IS TO DOCUMENT
5 ENGLISH AS IT IS SPOKEN EVERYWHERE, AND MUCH OF THE
6 ENGLISH THAT IS SPOKEN EVERYWHERE IS SEXUALLY EXPLICIT,
7 SO THAT IS WHAT IS REPRESENTED IN URBAN DICTIONARY, AND
8 THERE ARE COMMUNITIES THAT WOULD CONSIDER SEXUALLY
9 EXPLICIT CONTENT TO BE INAPPROPRIATE FOR MINORS.

10 Q. DO YOU CONSIDER URBAN DICTIONARY'S CONTENT TO BE
11 VALUABLE FOR ADULTS?

12 A. YES.

13 Q. AND DO YOU CONSIDER URBAN DICTIONARY'S CONTENT
14 TO BE VALUABLE FOR OLDER MINORS?

15 A. YES.

16 Q. WHY DO YOU BELIEVE THAT?

17 A. URBAN DICTIONARY TRIES TO HELP PEOPLE
18 COMMUNICATE, AND PARTICULARLY FOR OLDER MINORS, IT'S A
19 WAY FOR THEM TO EXPRESS THEMSELVES AND TO EXPRESS WHAT
20 WORDS MEAN TO THEM. IT'S IMPORTANT FOR ME THAT AN
21 AUDIENCE OF THAT AGE PARTICIPATES BECAUSE A SLANG
22 DICTIONARY IS NOT VERY HIP UNLESS IT HAS VISITORS WHO
23 ARE OF THAT AGE.

24 Q. DESCRIBE IN GENERAL TERMS THE CONTENT ON URBAN

25 DICTIONARY.

29

1 A. URBAN DICTIONARY IS MAINLY COMPOSED OF
2 DEFINITIONS. ABOUT A MILLION DEFINITIONS ARE ON THE
3 WEBSITE RIGHT NOW, BUT IN ADDITION TO THE DEFINITIONS
4 THAT ARE ALSO IMAGES AND SOUNDS THAT HELP EXPLAIN WHAT A
5 PARTICULAR WORD MEANS OR WHAT IT MEANS TO A PERSON OR
6 HOW TO PRONOUNCE IT.

7 Q. AND CAN YOU GIVE US SOME EXAMPLES OF NEW WORDS
8 OR DEFINITIONS THAT HAVE BEEN ADDED TO THE WEBSITE
9 RECENTLY?

10 A. YES. SOME OF MY RECENT FAVORITES INCLUDE ROAD
11 PARROT. THAT IS A PERSON WHO DRIVES ON THE SHOULDER OF
12 THE ROAD ON THE HIGHWAY IN HEAVY TRAFFIC AND SO AS A
13 PARROT SITS ON HIS OWNER'S SHOULDER THE ROAD PARROT
14 RIDES THE SHOULDER OF THE ROAD IN HEAVY TRAFFIC. THAT
15 IS ONE. THERE IS ALSO CARRIAGE CRUISER. THAT IS A
16 PERSON WHO INSISTS ON WALKING BETWEEN CARS IN A SUBWAY
17 MUCH TO THE INCONVENIENCE OF THE OTHER PASSENGERS. BUT
18 ONE OF THE ONES THAT ACTUALLY SHOWED UP TODAY WAS
19 COMMERCIDE.

20 Q. DID YOU SAY COMMERCIDE?

21 A. YES. COMMERCIDE, C-O-M-M-E-R-C-I-D-E.

22 Q. WHAT DOES THAT MEAN, ACCORDING TO YOUR USER?

23 A. ACCORDING TO MY USER, SAY YOU ARE ON AN
24 E-COMMERCE SITE, YOU ARE ABOUT TO PURCHASE SOMETHING,
25 BUT THE SITE IS EXTREMELY SLOW. COMMERCIDE IS WHEN YOU

30

1 CHOOSE TO ABANDON YOUR PURCHASE SIMPLY BECAUSE THE SITE
2 IS NOT RESPONDING FAST ENOUGH AND YOU LOSE PATIENCE.

3 Q. TAKE US THROUGH THE PROCESS OF HOW NEW WORDS OR
4 DEFINITIONS ARE ADDED TO URBAN DICTIONARY. SO, FIRST,
5 HOW GENERALLY DOES NEW CONTENT GET ADDED TO URBAN
6 DICTIONARY?

7 A. GENERALLY, ALL SOMEBODY HAS TO DO IS FILL OUT A
8 FORM, THE FORM REQUESTS THE WORD, THE DEFINITION AND
9 EXAMPLE. THEN IT GETS REVIEWED BY A PANEL OF VOLUNTEERS
10 AND THEN IF THE PANEL APPROVES, THEN IT GOES UP ON A
11 WEBSITE.

12 Q. OKAY. SO LET'S TAKE THOSE ONE AT A TIME. WHAT
13 KIND OF -- WHAT IF ANY PERSONAL INFORMATION DOES A USER
14 HAVE TO PROVIDE TO POST A WORD OR DEFINITION ON URBAN
15 DICTIONARY?

16 A. THE USER HAS TO PROVIDE VERY LITTLE PERSONAL
17 INFORMATION. THE USER HAS TO PROVIDE A WORKING E-MAIL
18 ADDRESS AND THAT IS IT.

19 Q. ONCE THE USER HAS PROVIDED THAT E-MAIL ADDRESS
20 AND THE WORD AND DEFINITION AND EXAMPLE AS YOU SAID, IS
21 THE WORD INSTANTLY POSTED ON THE WEBSITE?

22 A. NO. THE USER FILLS OUT THE FORM, DEFINES THE
23 WORD AND THEN IT GOES INTO A QUEUE OF DEFINITIONS THAT
24 NEED TO BE REVIEWED BY OTHER VOLUNTEERS. AND THEN WHEN
25 THOSE -- WHEN THOSE VOLUNTEERS DECIDE TO PUBLISH

1 SOMETHING, THEN IT APPEARS ON THE WEBSITE. THE WHOLE

2 PROCESS TAKES ABOUT 24 HOURS.

3 Q. YOU JUST MENTIONED VOLUNTEERS. HAVE YOU ALWAYS
4 USED VOLUNTEERS TO SCREEN CONTENT ON URBAN DICTIONARY?

5 A. NO.

6 Q. WHEN DID YOU BEGIN USING VOLUNTEERS?

7 A. THE SYSTEM THAT I JUST DESCRIBED HAS ONLY BEEN
8 IN PLACE FOR ABOUT A YEAR AND A HALF.

9 Q. AND WHY DID YOU IMPLEMENT A SCREENING SYSTEM?

10 A. BECAUSE FREQUENTLY USERS WOULD WRITE DEFINITIONS
11 THAT WERE NONSENSICAL OR ONES THAT NAMED INDIVIDUALS OR
12 WERE INAPPROPRIATE IN SOME OTHER WAY, AND I DETERMINED
13 THAT THE ONLY WAY TO RELIABLY IDENTIFY THE ONES THAT
14 SHOULD NOT BE PUBLISHED IS TO ASK A HUMAN. AND SO I
15 INSTITUTED THE SYSTEM THAT ASKS VOLUNTEERS TO REVIEW THE
16 INCOMING CONTENT BEFORE IT'S PUBLISHED.

17 Q. WHY DON'T YOU REVIEW ALL OF IT YOURSELF?

18 A. BECAUSE THE AMOUNT OF CONTENT THAT IS SUBMITTED
19 EVERY DAY IS FAR TOO LARGE FOR ME TO REVIEW IN THAT TIME
20 PERIOD.

21 Q. ABOUT HOW MANY WORDS OR DEFINITIONS ARE
22 SUBMITTED ON A DAILY BASIS?

23 A. ABOUT 2000 WORDS ARE SUBMITTED EVERY DAY, NEW
24 DEFINITIONS FOR REVIEW.

25 Q. AND HOW MANY VOLUNTEERS HAS URBAN DICTIONARY

32

1 USED TO SCREEN CONTENT?

2 A. IN THE PERIOD THAT THIS PROGRAM HAS BEEN ACTIVE,
3 ABOUT A YEAR AND-A-HALF, 80,000 VOLUNTEERS HAVE

4 PARTICIPATED IN THE PROGRAM.

5 Q. HOW DOES SOMEONE BECOME ONE OF THOSE VOLUNTEERS?

6 A. THERE IS A SEPARATE FORM FOR SIGNING UP TO BE A
7 VOLUNTEER.

8 Q. AND DO YOU KNOW THE AGE -- DO YOU ASK THE AGE OF
9 THOSE VOLUNTEERS?

10 A. NO.

11 Q. DO YOU KNOW WHETHER ANY OF THEM MIGHT BE UNDER
12 17?

13 A. NO.

14 Q. I HAVE PUT A BINDER IN FRONT OF YOU AND IF YOU
15 OPEN THAT, THERE'S A DOCUMENT IN IT THAT IS MARKED
16 PLAINTIFFS' EXHIBIT 57. IT'S THE -- SHOULD BE THE FINAL
17 PAGE IN THAT BINDER, SECOND TO LAST PAGE IN THAT BINDER.
18 CAN YOU IDENTIFY THAT DOCUMENT?

19 A. THIS IS A PAGE FROM MY WEBSITE. SPECIFICALLY
20 THESE ARE THE GUIDELINES THAT I GIVE MY VOLUNTEER
21 EDITORS BEFORE THEY MAKE DECISIONS.

22 Q. IF WE CAN MAKE THIS SOMEHOW A LITTLE BIT MORE
23 LEGIBLE ON THE SCREEN. WHO DEVELOPS THE GUIDELINES IN
24 EXHIBIT 57?

25 A. I WROTE THESE.

33

1 Q. IN GENERAL, WHAT IS THE PURPOSE OF THESE
2 GUIDELINES?

3 A. MY EDITORS NEEDED SOME DIRECTION ABOUT WHICH
4 DEFINITIONS SHOULD BE PUBLISHED AND WHICH SHOULD NOT. I
5 WANTED TO SUGGEST THAT THIS IS WHAT URBAN DICTIONARY IS.

6 URBAN DICTIONARY IS ABOUT DOCUMENTING THE VOCABULARY OF
7 EVERYDAY LIFE AND THIS IS HOW I PROPOSE WE DO IT.

8 Q. LET'S TAKE A LOOK AT SOME OF THESE GUIDELINES.
9 WOULD YOU PLEASE READ THE FIRST GUIDELINE ALOUD SLOWLY?

10 A. YES. THE FIRST GUIDELINE SAYS, PUBLISH
11 CELEBRITY NAMES, BUT REJECT FRIENDS' NAMES. PUBLISH
12 DEFINITIONS OF JENNIFER LOPEZ BECAUSE SHE IS FAMOUS, BUT
13 REJECT MY GIRLFRIEND SALLY. DO YOU WANT ME TO CONTINUE?

14 Q. PLEASE.

15 A. FIRST NAMES WITHIN THE ENTRY ARE OKAY BECAUSE
16 THEY DON'T IDENTIFY AN INDIVIDUAL. SAME FOR BANDS AND
17 SCHOOLS. PUBLISH IF POPULAR, REJECT IF UNKNOWN.

18 Q. AND CAN YOU EXPLAIN, WHAT IS YOUR REASON FOR
19 REJECTING FRIENDS' NAMES?

20 A. BECAUSE FREQUENTLY DEFINITIONS THAT NAME FRIENDS
21 BY FIRST AND LAST NAME ARE ONES THAT ARE INSIDE JOKES.
22 WHEN I PUBLISH INSIDE JOKES, I'M STRAINING THE PATIENCE
23 OF PEOPLE WHO READ THEM IN THE FUTURE, BECAUSE IF YOU
24 DON'T GET AN INSIDE JOKE, YOU ARE NOT LIKELY TO BE
25 ENTERTAINED OR WANT TO CONTINUE READING THE SITE. SO A

34

1 LOT OF THESE GUIDELINES REVOLVE AROUND THAT THEME. I
2 WANT TO MAKE SURE THE CONTENT OF THE SITE IS RELEVANT TO
3 MOST PEOPLE WHO ARE READING IT.

4 Q. READ THE SECOND GUIDELINE ALOUD, AGAIN SLOWLY.

5 A. PUBLISH RACIAL AND SEXUAL SLURS, BUT REJECT
6 RACIST AND SEXIST ENTRIES. ENTRIES CAN DOCUMENT
7 DISCRIMINATION BUT NOT ENDORSE IT. PEOPLE USE SLURS IN

8 EVERYDAY SPEECH SO THEY SHOULD BE PUBLISHED.

9 Q. WHY DID YOU DECIDE TO DOCUMENT DISCRIMINATION BY
10 INCLUDING SEXUAL AND RACIAL SLURS?

11 A. FOR SIMILAR REASONS, BECAUSE THOSE WORDS EXIST
12 IN OUR LANGUAGE AND BECAUSE THERE ARE PEOPLE WHO WOULD
13 HEAR THOSE WORDS AND WANT TO KNOW WHAT THEY MEAN. I
14 IMAGINE A SCENARIO WHERE SOMEBODY IS WALKING DOWN THE
15 STREET AND THEY HEAR ONE OF THESE WORDS. THEY SHOULD BE
16 ABLE TO REFER TO URBAN DICTIONARY AND FIND OUT WHAT IT
17 MEANS.

18 Q. WOULD YOU PLEASE READ THE SEVENTH GUIDELINE
19 ALOUD, AGAIN SLOWLY.

20 A. THE SEVENTH GUIDELINE SAYS: REJECT SEXUAL
21 VIOLENCE. REJECT MADE UP VIOLENT SEXUAL ACTS.

22 Q. AND WHAT IS THE REASON FOR REJECTING MADE UP
23 VIOLENT SEXUAL ACTS?

24 A. IN MY EXPERIENCE, MANY OF THE DEFINITIONS THAT I
25 WOULD HAVE PREFERRED TO NOT PUBLISH WERE SEXUAL ACTS

35

1 THAT HAD BEEN MADE UP SPECIFICALLY FOR INCLUSION IN THE
2 DICTIONARY. I'M NOT SURE WHAT MOTIVATED PEOPLE TO WRITE
3 THESE, BUT I WANTED TO ENCOURAGE MY EDITORS TO REJECT
4 THOSE.

5 Q. ARE YOU ABLE TO ENFORCE THESE GUIDELINES?

6 A. NO.

7 Q. WHY NOT?

8 A. BECAUSE PERSONALLY I DON'T HAVE ENOUGH TIME TO
9 REVIEW ALL OF THE INCOMING DEFINITIONS AND APPLY THESE

10 10 GUIDELINES. I HAVE HANDED OVER EDITORIAL CONTROL OF
11 THE SITE TO THESE VOLUNTEERS. I CAN ONLY TRUST THAT
12 THEY READ THESE GUIDELINES AND THAT THEY UNDERSTAND THEM
13 AND APPLY THEM.

14 Q. IF YOU LOOK AT THE TENTH AND FINAL GUIDELINE,
15 WOULD YOU PLEASE READ THE TENTH GUIDELINE ALOUD SLOWLY.

16 A. THE TENTH GUIDELINE SAYS FINALLY, PUBLISH IF IT
17 LOOKS PLAUSIBLE. IT'S BETTER TO PUBLISH A PLAUSIBLE
18 ENTRY THAN TO REJECT IT. YOU MIGHT NOT HAVE HEARD THE
19 WORD, BUT IT COULD BE THE NEXT HYPHY.

20 Q. FOR OUR EDIFICATION, WHAT IS HYPHY?

21 A. HYPHY MEANS HYPERACTIVE. IT'S A SAN FRANCISCO
22 BAY AREA SLANG.

23 Q. WHY IS IT YOUR POLICY TO ERR ON THE SIDE OF
24 INCLUSION AS OPPOSED TO EXCLUSION?

25 A. BECAUSE I HAVE SEEN IT HAPPEN BEFORE WHERE NEW

36

1 WORDS COME INTO VOGUE THAT NOBODY KNEW OF BEFORE. I
2 KNOW IT'S HAPPENING RIGHT NOW. RIGHT NOW THERE'S SOME
3 WORD MAYBE BEING SUBMITTED TO URBAN DICTIONARY THAT IS
4 GOING TO BE POPULAR IN THE NEXT FEW MONTHS. JUST
5 BECAUSE NOBODY KNOWS ABOUT THAT, ABOUT THE WORD, I DON'T
6 WANT THAT TO BE A REASON FOR IT TO BE EXCLUDED NOW.
7 WHEN THE WORD IS POPULAR, I WANT IT TO HAVE BEEN ALREADY
8 DOCUMENTED ON MY WEBSITE.

9 Q. AND LOOKING AT YOUR GUIDELINES AS A WHOLE, ASIDE
10 FROM THE RULE ON MADE UP SEXUAL VIOLENCE, DO YOU HAVE
11 ANY RESTRICTIONS ON SEXUALLY EXPLICIT CONTENT?

12 A. NO.

13 Q. AND WHY DO YOU PERMIT SEXUALLY EXPLICIT WORDS
14 AND DEFINITIONS?

15 A. FOR THE SAME REASONS I PERMIT RACIAL AND SEXUAL
16 SLURS. BECAUSE THEY EXIST IN OUR LANGUAGE. THEY EXIST
17 IN OUR CULTURE. THEY NEED TO BE EXPLAINED AND
18 DOCUMENTED SOMEWHERE SO THAT PERHAPS SOMEBODY WHO IS NEW
19 TO OUR CULTURE CAN READ URBAN DICTIONARY AND UNDERSTAND
20 WHAT IS GOING ON AROUND HIM.

21 Q. DO YOU THINK THAT SEXUALLY EXPLICIT WORDS AND
22 DEFINITIONS HAVE VALUE EVEN FOR MINORS?

23 A. YES.

24 Q. WHY DO YOU THINK THAT?

25 A. BECAUSE I REMEMBER BEING A THIRD GRADER. I

37

1 THINK MAYBE WE ALL HAD SIMILAR EXPERIENCES WHERE THERE
2 WAS A VOCABULARY THAT I WANTED TO UNDERSTAND BUT THE
3 DICTIONARY SIMPLY DENIED THAT THAT WORD EXISTED. THE
4 DICTIONARY DID NOT INCLUDE THE WORD, SO I COULDN'T FIND
5 OUT WHAT IT MEANT. I THINK IT IS USEFUL TO HAVE A SITE
6 LIKE URBAN DICTIONARY, A PLACE WHERE MINORS CAN GO AND
7 FIND OUT WHAT VOCABULARY MEANS THAT THEIR FRIENDS ARE
8 USING.

9 Q. SO IF A VOLUNTEER SCREENER APPROVES A DEFINITION
10 ACCORDING TO THESE GUIDELINES, DOES THE WORD THEN APPEAR
11 ON URBAN DICTIONARY?

12 A. NO, NOT EXACTLY.

13 Q. CAN YOU EXPLAIN?

14 A. A NUMBER OF EDITORS ARE REQUIRED TO VOTE ON AN
15 INDIVIDUAL DEFINITION BEFORE A FINAL DECISION TO REJECT
16 IT OR ACCEPT IT IS MADE.

17 Q. AND HOW LONG DOES THAT PROCESS TAKE?

18 A. FROM THE TIME THE DEFINITION IS SUBMITTED UNTIL
19 THE TIME THAT IT IS REJECTED OR ACCEPTED IS ABOUT 24
20 HOURS RIGHT NOW.

21 Q. AND ONCE A WORD OR A DEFINITION IS POSTED ON
22 URBAN DICTIONARY, CAN IT BE REMOVED?

23 A. YES. IN TWO WAYS.

24 Q. AND HOW CAN THE WORD BE REMOVED?

25 A. EITHER I CAN CHOOSE TO REMOVE IT, WHICH DOES NOT

38

1 HAPPEN VERY OFTEN, OR AN EDITOR WHO HAS SUFFICIENT
2 EXPERIENCE CAN ELECT A PARTICULAR DEFINITION TO GO
3 THROUGH THE SAME PROCESS. SO A DEFINITION THAT HAS BEEN
4 ON THE SITE FOR A CERTAIN AMOUNT OF TIME CAN BE REVIEWED
5 BY EDITORS IN THE SAME WAY AND THEY CAN DECIDE TO NOT
6 PUBLISH IT. THE REASON FOR THAT PROCEDURE IS THAT
7 EDITORS HAVE ONLY BEEN AROUND FOR A YEAR AND-A-HALF, BUT
8 THE SITE HAS BEEN AROUND FOR SEVEN YEARS, SO THERE IS A
9 SIGNIFICANT AMOUNT OF CONTENT THAT IS UNREVIEWED RIGHT
10 NOW.

11 Q. ONCE A WORD OR DEFINITION HAS CLEARED THE ENTIRE
12 SCREENING PROCESS, WHAT HAPPENS?

13 A. ONCE ENOUGH EDITORS HAVE DECIDED TO PUBLISH
14 SOMETHING AND IT GOES ONTO THE WEBSITE.

15 Q. I THINK THAT IS THE ANSWER?

16 A. RIGHT, PEOPLE CAN READ IT.

17 Q. MY QUESTION IS UNCLEAR. SORRY.

18 CAN THERE BE MULTIPLE DEFINITIONS OF A
19 SINGLE WORD?

20 A. YES. THAT'S ONE OF THE THINGS THAT
21 DISTINGUISHES URBAN DICTIONARY FROM OTHER
22 COMMUNITY-POWERED WIKI-LIKE SITES.

23 Q. CAN YOU EXPLAIN, WHAT IS A WIKI SITE?

24 A. THE MOST POPULAR ONE IS CALLED WIKIPEDIA, AN
25 ENCYCLOPEDIA THAT IS WRITTEN BY THE PEOPLE. INSIDE

39

1 WIKIPEDIA, W-I-K-I-P-E-D-I-A, THERE ARE ARTICLES ON A
2 HUGE NUMBER OF TOPICS. EACH ONE OF THESE ARTICLES CAN
3 BE EDITED AT ANY TIME BY ANY PERSON. IT'S AN
4 INTERESTING CONCEPT. IT IS ONE THAT LEADS TO A SITE
5 THAT CAN BE VERY USEFUL BUT IT HAS A DIFFERENT GOAL THAN
6 MINE. WIKIPEDIA TRIES TO BE OBJECTIVE. THEY TRY TO
7 BE -- TRIES TO REMOVE A LOT OF THE EMOTION ASSOCIATED
8 WITH A WORD OR CONCEPT. URBAN DICTIONARY'S DEFINITIONS,
9 IN CONTRAST, REPRESENT AN INDIVIDUAL'S INTERPRETATION OF
10 WHAT THIS WORD MEANS AND IT CAN BE UNTOUCHED. I DID NOT
11 MENTION IT, BUT THE EDITORS DON'T HAVE THE POWER TO EDIT
12 ANY OF THE PUNCTUATION, SPELLING, GRAMMAR OR ANYTHING
13 LIKE THAT INSIDE THE DEFINITION BEFORE IT APPEARS ON THE
14 SITE. SO WHEN IT APPEARS ON THE SITE IT IS EXACTLY AS
15 THE AUTHOR INTENDED. WIKIPEDIA DOES NOT HAVE THE SAME
16 KIND OF RESTRICTION, BUT IT LEADS TO A SITE THAT HAS A
17 SLIGHTLY DIFFERENT FOCUS.

18 Q. AND IF THERE ARE MULTIPLE DEFINITIONS OF ONE
19 WORD, HOW ARE THOSE DEFINITIONS ARRANGED?

20 A. ONE OF THE OTHER FEATURES THAT I HAVE NOT
21 MENTIONED YET ON THE SITE IS THAT FOR EVERY DEFINITION,
22 AS YOU ARE READING IT, THIS IS FOR PEOPLE WHO ARE NOT
23 NECESSARILY AUTHORS, NOT NECESSARILY EDITORS, YOU GO TO
24 THE WEBSITE AND YOU LOOK UP A PARTICULAR WORD. IF YOU
25 LIKE IT, YOU CAN CLICK ON THE THUMBS UP ICON, THAT

40

1 REGISTERS A VOTE IN MY SYSTEM THAT SAYS SOMEBODY LIKED
2 THIS. ALTERNATIVELY IF YOU DID NOT LIKE IT, YOU CAN
3 CLICK THUMBS DOWN AND MY SYSTEM REGISTERS THAT ALSO. SO
4 BASED ON THAT FEATURE, IF THERE ARE MULTIPLE DEFINITIONS
5 FOR A WORD, THEY ARE ORDERED BY HOW MANY PEOPLE LIKE
6 THEM VERSUS HOW MANY DIDN'T. SO AT THE TOP OF THE PAGE
7 YOU WILL SEE THE ONE THAT HAS THE MOST NUMBER OF THUMBS
8 UP AND THE LEAST NUMBER OF THUMBS DOWN.

9 Q. JUST TO GIVE A CONCRETE EXAMPLE, IS THERE MORE
10 THAN ONE DEFINITION ON URBAN DICTIONARY OF URBAN
11 DICTIONARY?

12 A. YES. THERE ARE MANY DEFINITIONS OF URBAN
13 DICTIONARY ON URBAN DICTIONARY.

14 Q. AND WHICH ONE WOULD APPEAR AT THE TOP OF THE
15 PAGE?

16 A. I'M SORRY.

17 Q. OF THE MANY DEFINITIONS OF URBAN DICTIONARY,
18 WHICH ONE WOULD APPEAR FIRST?

19 A. THE ONE THAT PEOPLE CLICKED THUMBS UP ON THE

20 MOST.

21 Q. IF YOU LOOK AGAIN AT THE BINDER OF MATERIALS
22 THAT I GAVE YOU, THE FIRST SEVERAL PAGES ARE MARKED AS
23 PLAINTIFFS' EXHIBIT 41. DO YOU RECOGNIZE THE DOCUMENTS
24 IN PLAINTIFFS' EXHIBIT 41?

25 A. DO YOU MIND IF I REVIEW THEM?

41

1 Q. PLEASE.

2 A. THESE ARE ALL PAGES FROM MY WEBSITE.

3 Q. DO THEY APPEAR TO BE ACCURATE PRINTOUTS OF PAGES
4 FROM YOUR WEBSITE?

5 A. YES.

6 Q. IF WE CAN TURN TO PAGE 24 OF PLAINTIFFS' EXHIBIT
7 41, I'M GOING TO ASK YOU TO READ THESE DEFINITIONS. IT
8 APPEARS THAT THERE ARE SEVEN DEFINITIONS OF THE WORD
9 PEARL NECKLACE. AM I CORRECT?

10 A. NO.

11 Q. WHY AM I NOT CORRECT?

12 A. THERE ARE MORE THAN SEVEN.

13 Q. AND HOW DO YOU KNOW THAT?

14 A. THERE IS A SECOND PAGE. PAGE 25, AT THE BOTTOM
15 OF THE PAGE IT SAYS THAT THERE ARE 32 DEFINITIONS. WHEN
16 A VISITOR COMES TO THE WEBSITE AND LOOKS UP A WORD THAT
17 HAS MULTIPLE DEFINITIONS, SUCH AS PEARL NECKLACE, THE
18 VISITOR ONLY SEES 10 AT A TIME SO NOT TO OVERWHELM THE
19 VISITOR.

20 Q. AND IF WE COULD GO BACK TO PAGE 24, THERE ARE A
21 NUMBER OF WORDS THAT APPEAR JUST ON TOP OF THE FIRST

22 DEFINITION ON PAGE 24. WHAT ARE THOSE WORDS?

23 A. THESE ARE WORDS THAT MY SOFTWARE HAS IDENTIFIED
24 AS BEING RELATED TO THE ONE THE USER'S LOOKED UP.

25 Q. THERE IS ANOTHER BUNCH OF WORDS DOWN THE

42

1 LEFT-HAND COLUMN OF THE PAGE. AND WHAT ARE THOSE WORDS?

2 A. THESE ARE THE WORDS THAT APPEAR CLOSE TO PEARL
3 NECKLACE IN ALPHABETICAL ORDER. THE ALPHABETICAL LIST
4 ON THE LEFT AND THE TOPICAL LIST ACROSS THE TOP ARE MY
5 TWO EFFORTS TO ALLOW PEOPLE TO NAVIGATE THE SITE IN THE
6 WAY THAT IS MOST NATURAL FOR THEM EITHER BY TOPIC OR
7 ALPHABETICALLY LIKE A CLASSICAL DICTIONARY.

8 Q. IF WE CAN TURN TO PAGE 26 OF PLAINTIFFS' EXHIBIT
9 41, NEXT TO THE WORD TEABAGGING, T-E-A-B-A-G-G-I-N-G,
10 IT INDICATES 716 UP, 77 DOWN. WHAT DO THOSE NUMBERS
11 MEAN?

12 A. THAT INDICATES THAT FOR THIS FIRST DEFINITION
13 APPEARING ON THE PAGE, THE ONE WRITTEN BY ANONYMOUS ON
14 NOVEMBER 6, 2002, FOR THIS DEFINITION, 716 PEOPLE HAVE
15 CLICKED THUMBS UP AND 77 PEOPLE HAVE CLICKED THUMBS
16 DOWN. BECAUSE SO MANY PEOPLE HAVE CLICKED THUMBS UP,
17 THIS IS THE DEFINITION THAT APPEARS AT THE TOP OF THE
18 PAGE WHEN YOU LOOK UP TEABAGGING.

19 Q. CAN ANY VISITOR TO URBAN DICTIONARY VOTE?

20 A. YES.

21 Q. AND DO VISITORS TO URBAN DICTIONARY HAVE TO
22 PROVIDE ANY INFORMATION TO VOTE?

23 A. NO.

24 Q. IS VOTING AN IMPORTANT FEATURE OF URBAN
25 DICTIONARY?

43

1 A. YES.

2 Q. WHY?

3 A. FOR MANY DEFINITIONS, FOR MANY WORDS -- SORRY,
4 THERE ARE MANY DEFINITIONS. FOR ONE PARTICULAR WORD,
5 EMO, E-M-O, THERE ARE HUNDREDS OF DEFINITIONS. I WANT
6 THE DEFINITION THAT IS FIRST TO BE THE ONE THAT IS MOST
7 RELEVANT, BECAUSE I KNOW MY VISITORS HAVE LITTLE
8 PATIENCE, AND THEY ARE NOT ABOUT TO READ ALL SEVERAL
9 HUNDRED DEFINITIONS.

10 Q. IF WE COULD TURN TO PAGE 3 OF EXHIBIT 41. THERE
11 IS AN IMAGE THAT APPEARS ON THIS PAGE. DO IMAGES PASS
12 THROUGH THE SAME SCREENING PROCESS AS WORDS?

13 A. NO.

14 Q. WHAT IS THE PROCESS FOR IMAGES TO APPEAR ON THE
15 SITE?

16 A. DEFINITIONS GO THROUGH MY VOLUNTEER EDITOR
17 SYSTEM, BUT IMAGES AND SOUNDS ARE HANDLED DIFFERENTLY.
18 BECAUSE THE FOCUS OF THE SITE IS ON DEFINITIONS, AND
19 BECAUSE THE VAST MAJORITY OF THE CONTENT THAT USERS
20 SUBMIT IS TEXTUAL -- BECAUSE MOST OF IT IS TEXTUAL, I
21 HAD TO CREATE THAT SYSTEM TO ALLOW ME TO FILTER IT, THE
22 SYSTEM THAT INVOLVES VOLUNTEERS. WHEREAS FOR IMAGES AND
23 SOUNDS, THE AMOUNT OF CONTENT SUBMITTED THERE IS FAR
24 SMALLER, AND SO IT'S ACTUALLY AT A SIZE WHERE I CAN
25 REVIEW IT MYSELF.

1 Q. AND ARE THERE IMAGES ON URBAN DICTIONARY THAT
2 DEPICT GENITALS OR POST-PUBESCENT FEMALE BREASTS?

3 A. YES.

4 Q. CAN YOU GIVE SOME EXAMPLES?

5 A. YES. UNDER THE DEFINITIONS OF BREAST, THERE IS
6 A PICTURE OF POST PUBESCENT FEMALE BREASTS. ALSO IF YOU
7 RECALL, THERE WAS AN INCIDENT AT A SUPER BOWL RECENTLY,
8 A WARDROBE MALFUNCTION WITH JANET JACKSON. SO WARDROBE
9 MALFUNCTION IS THE WORD THAT CAME ABOUT AFTER THE
10 INCIDENT. IT IS WELL-DEFINED IN URBAN DICTIONARY, AND
11 FORTUNATELY THERE'S PICTURE THERE THAT REMINDS US OF
12 THAT EVENT, DEPICTING A POST-PUBESCENT FEMALE BREAST.

13 MR. WIZNER: YOUR HONOR, AT THIS TIME I
14 WOULD LIKE TO MOVE THE PRINTOUTS IN PLAINTIFFS' EXHIBIT
15 41 AND 57 INTO EVIDENCE.

16 THE COURT: ANY OBJECTION?

17 MR. GOMEZ: IF I MAY HAVE ONE MOMENT,
18 YOUR HONOR.

19 (PAUSE.)

20 NO OBJECTION, YOUR HONOR.

21 THE COURT: PLAINTIFFS' EXHIBIT 41 AND 57
22 ARE RECEIVED INTO EVIDENCE.

23 (P 41 AND P 57 ADMITTED INTO EVIDENCE.)

24 BY MR. WIZNER:

25 Q. MR. PECKHAM, WOULD YOU FEAR PROSECUTION UNDER

1 COPA FOR THE MATERIAL CONTAINED IN EXHIBIT 41?

2 A. YES.

3 Q. WHY?

4 A. BECAUSE MUCH OF THE MATERIAL HERE IS SEXUALLY
5 EXPLICIT, AND I BELIEVE THAT THERE ARE COMMUNITIES THAT
6 WOULD INTERPRET SEXUALLY EXPLICIT CONTENT AS BEING
7 HARMFUL TO MINORS.

8 Q. YOU TESTIFIED EARLIER THAT URBAN DICTIONARY IS A
9 FOR-PROFIT VENTURE. DESCRIBE GENERALLY HOW URBAN
10 DICTIONARY MAKES MONEY.

11 A. URBAN DICTIONARY MAKES MONEY THROUGH
12 ADVERTISING.

13 Q. HOW DOES URBAN DICTIONARY MAKE MONEY THROUGH
14 ADVERTISING?

15 A. THERE ARE TWO MAIN METHODS. ONE IS THROUGH A
16 PRODUCT CALLED GOOGLE ADCENTS. GOOGLE ADCENTS PAYS
17 BASED ON THE NUMBER OF PEOPLE WHO HAVE VIEWED YOUR AD OR
18 THE NUMBER OF PEOPLE WHO HAVE CLICKED ON YOUR AD. AND
19 THE SECOND MAIN PROGRAM IS ONE THAT IS COMMISSION BASED,
20 SO IF A USER CLICKS ON AN AD AND MAKES A PURCHASE, THEN
21 I GET PAID.

22 Q. IS THE AMOUNT OF TRAFFIC TO URBAN DICTIONARY'S
23 WEBSITE RELEVANT TO ITS ADVERTISING REVENUES?

24 A. YES.

25 Q. HOW SO?

46

1 A. THE MORE PEOPLE I HAVE VISITING THE WEBSITE, THE
2 MORE PEOPLE ARE GOING TO CLICK ON THOSE ADS, BECAUSE A
3 RELIABLE PERCENTAGE OF PEOPLE WILL CLICK ON ADS, SO THE

4 MORE PEOPLE I HAVE, THE MORE ADS WILL GET CLICKED, THE
5 MORE ADS THAT GET CLICKED, THE MORE MONEY I RECEIVE.

6 Q. OTHER THAN ADVERTISING, DO YOU HAVE ANY OTHER
7 SOURCE OF REVENUE FROM URBAN DICTIONARY?

8 A. COMPARATIVELY IT IS INSIGNIFICANT, BUT YES, I
9 RECEIVE MONEY FOR URBAN DICTIONARY, THE BOOK.

10 Q. WHAT'S URBAN DICTIONARY, THE BOOK?

11 A. URBAN DICTIONARY, THE BOOK IS A 300-PAGE SMALL
12 VOLUME THAT IS AVAILABLE IN BORDERS AND BARNES AND NOBLE
13 PUBLISHED ABOUT A YEAR AND-A-HALF AGO THAT CONTAINS 2000
14 OF URBAN DICTIONARY'S BEST DEFINITIONS.

15 Q. AND HOW MANY COPIES OF THIS BOOK HAVE SOLD?

16 A. SINCE THE BOOK WAS RELEASED ABOUT A YEAR
17 AND-A-HALF AGO, I HAVE SOLD 20,000 COPIES.

18 Q. AND DURING THAT YEAR AND A HALF, DO YOU KNOW HOW
19 MANY UNIQUE VISITORS HAVE VISITED URBAN DICTIONARY'S
20 WEBSITE?

21 A. IN THAT AMOUNT OF TIME, ABOUT 40 MILLION
22 PEOPLE -- SORRY, 45 MILLION PEOPLE HAVE VISITED URBAN
23 DICTIONARY.

24 Q. MR. PECKHAM, ARE YOU GENERALLY AWARE THAT COPA
25 DESCRIBES STEPS THAT YOU COULD TAKE TO AVOID PROSECUTION

47

1 FOR POSTING SEXUALLY EXPLICIT CONTENT?

2 A. YES.

3 Q. AND PLEASE DESCRIBE YOUR UNDERSTANDING OF THOSE
4 STEPS.

5 A. AS I UNDERSTAND IT, I COULD REQUIRE MY VISITORS

6 TO SUBMIT A CREDIT CARD BEFORE ALLOWING THEM TO VIEW THE
7 CONTENT, AND THEN I WOULD BE EXEMPT FROM POSSIBLE
8 PROSECUTION.

9 Q. DOES URBAN DICTIONARY HAVE CONTENT THAT IS NOT
10 SEXUALLY EXPLICIT?

11 A. YES.

12 Q. AND IT WOULD BE POSSIBLE FOR URBAN DICTIONARY TO
13 SEPARATE THE SEXUALLY EXPLICIT CONTENT FROM THE CONTENT
14 THAT IS NOT SEXUALLY EXPLICIT?

15 A. NO.

16 Q. WHY NOT?

17 A. FOR TWO MAIN REASONS. ONE, I SIMPLY HAVE TOO
18 MUCH CONTENT. THERE IS A MILLION DEFINITIONS VISIBLE ON
19 THE WEBSITE RIGHT NOW AND I DON'T HAVE THE RESOURCES TO
20 IDENTIFY WHICH OF IT IS SEXUALLY EXPLICIT AND WHICH
21 ISN'T. THE SECOND REASON IS THAT THERE IS NO CLEAR
22 DEFINITION OF SEXUALLY EXPLICIT. WHAT IS MY DEFINITION
23 OF SEXUALLY EXPLICIT MIGHT NOT EVEN BE SHARED BY MY
24 VOLUNTEER EDITORS, MIGHT NOT BE SHARED BY ANY OTHER
25 READER OF URBAN DICTIONARY.

48

1 Q. SO WHERE ON URBAN DICTIONARY'S WEBSITE WOULD YOU
2 HAVE TO PLACE THE CREDIT CARD SCREEN TO BE PROTECTED
3 FROM PROSECUTION?

4 A. BECAUSE I CAN'T IDENTIFY WHICH IS SEXUAL AND
5 WHICH IS NOT, I WOULD HAVE TO PLACE THE CREDIT CARD
6 SCREEN ON THE WHOLE WEBSITE.

7 Q. ARE YOU AWARE OF ANY PRODUCTS OR SERVICES THAT

8 ACCURATELY VERIFY AGE ONLINE?

9 A. NO.

10 Q. MR. PECKHAM, DOES URBAN DICTIONARY POSSESS ANY
11 INFORMATION ABOUT HOW USERS ARRIVE AT THE WEBSITE?

12 A. YES.

13 Q. AND HOW DO YOU POSSESS THAT INFORMATION?

14 A. THE PRODUCT I MENTIONED EARLIER, GOOGLE
15 ANALYTICS, KEEPS TRACK OF WHERE THE USER WAS IMMEDIATELY
16 BEFORE THEY CAME TO URBAN DICTIONARY.

17 Q. DO YOU KNOW, FOR EXAMPLE, HOW MANY USERS ARE
18 DIRECTED TO URBAN DICTIONARY BY A SEARCH ENGINE SUCH AS
19 GOOGLE?

20 A. YES.

21 Q. AND HOW MANY?

22 A. ACCORDING TO GOOGLE ANALYTICS 60 PERCENT OF MY
23 VISITORS COME FROM GOOGLE SEARCHES. THAT IS, THEY DID A
24 SEARCH FOR SOMETHING ON GOOGLE AND ON THE RESULTS PAGE
25 URBAN DICTIONARY IS LISTED, THEY CLICKED ON OUR RESULT.

49

1 Q. WHEN A USER IS DIRECTED TO URBAN DICTIONARY BY
2 GOOGLE, IS THE USER ALWAYS DIRECTED TO URBAN
3 DICTIONARY'S HOME PAGE?

4 A. NO. FREQUENTLY WHEN A USER SEARCHES FOR A WORD
5 ON GOOGLE, AND URBAN DICTIONARY APPEARS IN THE SEARCH
6 RESULTS, WHEN THE USER CLICKS ON A PAGE, THEY ARE
7 DIRECTED TO THE PAGE ON URBAN DICTIONARY THAT HAS THE
8 DEFINITION OF THE WORD THAT THEY WERE SEARCHING FOR.

9 Q. SO IF COPA WERE ENFORCED, WOULD YOU HAVE TO

10 RECONFIGURE THE SITE TO INSURE PROTECTION FROM
11 PROSECUTION?

12 A. YES. I WOULD HAVE TO ADD AN ADDITIONAL STEP.

13 Q. WOULD YOU EXPLAIN WHAT THE ADDITIONAL STEP WOULD
14 BE?

15 A. THE USER WOULD SEARCH -- CONSIDERING THE SAME
16 SCENARIO, THE USER WOULD SEARCH FOR THEIR WORD ON
17 GOOGLE, WOULD SEE URBAN DICTIONARY IN THE SEARCH
18 RESULTS, CLICK ON THE RESULT.

19 MR. GOMEZ: OBJECTION, YOUR HONOR. THE
20 WITNESS IS ENGAGING IN SPECULATION AT THIS POINT.

21 THE COURT: OVERRULED.

22 BY MR. WIZNER:

23 Q. CAN YOU CONTINUE OR DO YOU NEED ME TO ASK THE
24 QUESTION AGAIN?

25 A. I CAN CONTINUE.

50

1 THE USER SEARCHES FOR THE WORD ON GOOGLE,
2 USER SEES URBAN DICTIONARY IN THE SEARCH RESULTS, CLICKS
3 ON URBAN DICTIONARY, AND THEN THEY ARE TAKEN TO THE
4 ADDITIONAL PAGE THAT REQUIRES THEM TO ENTER CREDIT CARD
5 INFORMATION BEFORE SEEING ANY OF MY CONTENT. SO THAT
6 PAGE THAT REQUIRES THEM TO ENTER A CREDIT CARD, AS I
7 UNDERSTAND IT, WOULD NOT EVEN CONTAIN ANY OF THE CONTENT
8 THAT THEY WOULD SEE AFTER ENTERING THEIR CREDIT CARD.

9 Q. AND DO YOU KNOW FROM GOOGLE ANALYTICS HOW MANY
10 PAGES VISITORS TO URBAN DICTIONARY SEE? DO YOU HAVE
11 STATISTICS FOR HOW MANY PAGES VISITORS TO URBAN

14 DID YOU SAY?

15 MR. WIZNER: NO, IT WAS A YES OR NO
16 QUESTION. I SAID DO YOU KNOW WHETHER URBAN DICTIONARY
17 USERS WOULD BE WILLING TO PROVIDE CREDIT CARD
18 INFORMATION BEFORE VIEWING URBAN DICTIONARY'S CONTENT?

19 THE COURT: ANSWER YES OR NO. OBJECTION
20 OVERRULED.

21 THE WITNESS: YES.

22 BY MR. WIZNER:

23 Q. HOW DO YOU KNOW THAT?

24 MR. GOMEZ: OBJECTION, CALLING FOR
25 SPECULATION.

52

1 THE COURT: WE'RE TRYING TO GET
2 INFORMATION FROM HIM. OVERRULED.

3 THE WITNESS: BECAUSE I FREQUENT --

4 THE COURT: DO YOU UNDERSTAND THE
5 QUESTION?

6 THE WITNESS: I THINK SO.

7 THE COURT: HOW DO YOU KNOW THE ANSWER?
8 YOU ANSWERED YES. THE QUESTION IS, HOW DO YOU KNOW THAT
9 IT IS YES?

10 THE WITNESS: OKAY. BECAUSE I FREQUENTLY
11 ASK MY USERS FOR SMALLER AMOUNTS OF INFORMATION AND THEY
12 ARE UNWILLING TO EVEN GIVE THAT INFORMATION.

13 BY MR. WIZNER:

14 Q. CAN YOU GIVE AN EXAMPLE?

15 A. WHEN MY EDITORS SIGN UP TO SCREEN INCOMING

16 CONTENT, I REQUIRE VERY LITTLE INFORMATION AT THAT STAGE
17 BECAUSE I WANT ALL THE HELP I CAN GET, FRANKLY. I ASK
18 THEM FOR AN E-MAIL ADDRESS AND A PSEUDONYM. THEY DON'T
19 EVEN HAVE TO GIVE THEIR REAL NAME. AND I HAVE OBSERVED
20 THAT MANY PEOPLE ARE SHARING THEIR LOGINS TO THE SYSTEM
21 BECAUSE THEY DON'T EVEN WANT TO GIVE THAT AMOUNT OF
22 INFORMATION. I KNOW THIS BECAUSE THERE'S A WEBSITE
23 CALLED BUGMENOT.COM.

24 Q. SPELL THAT.

25 A. B-U-G-M-E-N-O-T.

53

1 Q. WHAT IS THAT WEBSITE?

2 A. IT'S A WEBSITE THAT COLLECTS USER NAMES AND
3 PASSWORDS FOR OTHER WEBSITES THAT DON'T ALLOW ACCESS TO
4 CONTENT UNLESS YOU HAVE SUCH A USER NAME AND PASSWORD.
5 IT'S POPULATED BY PEOPLE WHO WANT TO HELP EVERYBODY
6 ELSE. THESE PEOPLE LIKE COME TO A WEBSITE THAT REQUIRES
7 A LOGIN, CREATE A FALSE USER AND THEN POST THAT
8 INFORMATION -- THAT INFORMATION NECESSARY TO GAIN ACCESS
9 TO THAT USER'S ACCOUNT. THEY POST THAT INFORMATION ON
10 BUGMENOT. I HAVE SEEN THAT URBAN DICTIONARY INFORMATION
11 IS INSIDE BUGMENOT AND THAT INDICATES TO ME THAT PEOPLE
12 WOULD RATHER GIVE FALSE INFORMATION THAN GIVE THEIR OWN
13 INFORMATION WHEN SIGNING UP FOR THE EDITOR SYSTEM.

14 Q. AND WHAT PERSONAL INFORMATION DO YOU REQUIRE
15 FROM USERS IN ORDER TO SUBMIT A WORD OR A DEFINITION?

16 A. IT'S SLIGHTLY DIFFERENT THAN THE EDITOR SYSTEM.
17 THE EDITOR SYSTEM REQUIRES VERY LITTLE INFORMATION. THE

18 DEFINITION SYSTEM REQUIRES SLIGHTLY MORE INFORMATION.
19 WHEN YOU SUBMIT A DEFINITION, YOU ARE REQUIRED TO HAVE A
20 VALID WORKING E-MAIL ADDRESS. WHEN YOU BECOME AN
21 EDITOR, THE E-MAIL ADDRESS DOES NOT EVEN HAVE TO BE
22 VALID.

23 Q. DOES A USER HAVE TO HAVE GIVE A REAL NAME IN
24 ORDER TO POST A WORD OR DEFINITION?

25 A. NO, I DON'T EVER REQUIRE REAL NAMES.

54

1 Q. WHAT PERCENTAGE OF VISITORS TO URBAN
2 DICTIONARY'S WEBSITE SUPPLY WORDS OR DEFINITIONS?

3 A. IN AN AVERAGE DAY, URBAN DICTIONARY SERVES ABOUT
4 340,000 PEOPLE AND RECEIVES ABOUT 2000 DEFINITIONS
5 WRITTEN BY DIFFERENT PEOPLE. I'M SAYING MOST OF THE
6 TIME PEOPLE ONLY WRITE ONE DEFINITION.

7 Q. YOUR MATHEMATICS ARE BETTER THAN MINE. ABOUT
8 WHAT PERCENTAGE OF VISITORS TO THE WEBSITE CONTRIBUTE
9 CONTENT ON A DAILY BASIS?

10 A. LESS THAN ONE.

11 Q. MR. PECKHAM, HAS URBAN DICTIONARY EVER UPGRADED
12 THE TECHNOLOGY THAT POWERS THE SITE?

13 A. YES. BECAUSE OF URBAN DICTIONARY'S RAPID
14 GROWTH, I HAVE TO DO THAT FREQUENTLY.

15 Q. WHAT STEPS DID YOU TAKE TO INCLUDE THE
16 TECHNOLOGY?

17 A. SOMETIMES I PURCHASE ADDITIONAL MACHINES FOR
18 LARGER CAPACITY. SOMETIMES I SIMPLY UPGRADE THE
19 MACHINES THAT I ALREADY HAVE.

20 Q. DO YOU HAVE INFORMATION ABOUT THE PERFORMANCE OF
21 THOSE MACHINES?

22 A. YES, I KEEP A CLOSE TRACK OF THAT.

23 Q. HOW DO YOU KEEP CLOSE TRACK OF THAT INFORMATION?

24 A. I USE A PRODUCT CALLED MUNIN --

25 Q. CAN YOU SPELL THAT?

55

1 A. M-U-N-I-N.

2 -- THAT DISPLAYS TO ME IN REAL TIME HOW
3 EACH OF MY MACHINES ARE DOING IN TERMS OF THINGS LIKE
4 TEMPERATURE OF THE SYSTEM, PERCENTAGE OF CAPACITY THAT
5 IS FULL UNTIL -- HOW MUCH DATA IT'S SENDING RIGHT NOW,
6 STUFF LIKE THAT.

7 Q. DO YOU KNOW WHETHER THERE IS A RELATIONSHIP
8 BETWEEN THE PERFORMANCE OF YOUR SERVERS AND THE TRAFFIC
9 AT YOUR SITE? YOU CAN ANSWER YES OR NO.

10 A. YES.

11 Q. HOW DO YOU KNOW THAT?

12 A. I KNOW THAT WHEN THE PERFORMANCE OF MY SERVERS
13 GOES DOWN, THAT IS, SOME OF MY MACHINES ARE AT OR
14 EXCEEDING THEIR CAPACITY, THAT PEOPLE ARE NOT AS WILLING
15 TO STAY AROUND, THAT I GET FEWER VISITORS WHEN MY
16 WEBSITE IS PERFORMING POORLY.

17 Q. MR. PECKHAM, IF YOU COULD MAKE THE SAME INCOME
18 BY CHARGING USERS FOR ACCESS TO URBAN DICTIONARY, WOULD
19 YOU BE WILLING TO DO SO?

20 A. NO.

21 Q. WHY NOT?

22 A. BECAUSE CHARGING PEOPLE FOR ACCESS TO THIS
23 CONTENT IS INCONSISTENT WITH MY MISSION, TO DOCUMENT THE
24 WORLD'S ENGLISH AND TO MAKE IT AS ACCESSIBLE AS
25 POSSIBLE. URBAN DICTIONARY WOULD NOT BE THE SAME SITE

56

1 IF I HAD TO REQUIRE PEOPLE TO ENTER CREDIT CARD
2 INFORMATION, IF I PUT ANY SORT OF SCREEN IN FRONT OF
3 THIS INFORMATION, BECAUSE URBAN DICTIONARY IS MEANT TO
4 SERVE EVERYBODY. IT'S NOT MEANT TO BE A SMALL CLUB OF
5 PEOPLE WHO USE URBAN DICTIONARY JUST TO TALK WITH EACH
6 OTHER.

7 Q. MR. PECKHAM, HAVE YOU CONSIDERED WHAT URBAN
8 DICTIONARY WOULD DO IF COPA WERE TO TAKE EFFECT? YOU
9 CAN ANSWER YES OR NO.

10 A. NO. CAN I EXPLAIN?

11 Q. HAVE YOU GIVEN ANY THOUGHT TO THE QUESTION OF
12 WHAT URBAN DICTIONARY MIGHT DO IF COPA WERE TO TAKE
13 EFFECT?

14 A. YES.

15 Q. AND CAN YOU DESCRIBE WHAT YOU HAVE CONSIDERED,
16 WHAT YOU THOUGHT ABOUT?

17 A. I FEEL THAT SINCE THERE IS NO WAY FOR URBAN
18 DICTIONARY TO CONTINUE AS -- I HAVE CONCLUDED THAT THERE
19 IS NO WAY FOR URBAN DICTIONARY TO CONTINUE ITS MISSION
20 AS IT IS NOW IF COPA IS IN EFFECT. I'M NOT SURE EXACTLY
21 WHAT I WOULD DO. THIS INFORMATION FROM MY PERSPECTIVE
22 NEEDS TO BE OUT THERE IN THE WORLD. I WOULD HAVE TO
23 FIND SOME WAY TO GET IT OUT THERE. I DON'T KNOW HOW I

24 WOULD DO THAT.

25 Q. THANK YOU.

57

1 MR. WIZNER: NO MORE QUESTIONS AT THIS
2 TIME, YOUR HONOR.

3 THE COURT: ANY CROSS EXAMINATION?

4 MR. GOMEZ: YES, YOUR HONOR.

5 YOUR HONOR, I HAVE SOME EXHIBITS FOR YOU
6 AND FOR THE WITNESS IF I MAY APPROACH THE BENCH?

7 THE COURT: YES, INDEED.

8 CROSS EXAMINATION

9 BY MR. GOMEZ:

10 Q. GOOD MORNING, MR. PECKHAM.

11 A. GOOD MORNING.

12 Q. MY NAME IS RAPHAEL GOMEZ, AND I REPRESENT THE
13 DEFENDANT IN THIS CASE. I WANTED TO GET A LITTLE MORE
14 BACKGROUND IN TERMS OF WHO YOU ARE AND WHAT URBAN
15 DICTIONARY IS.

16 IS IT TRUE THAT YOU WERE RAISED IN
17 SACRAMENTO, CALIFORNIA?

18 A. THAT'S TRUE.

19 Q. AND WHEN YOU STARTED URBAN DICTIONARY, YOU WERE
20 AN UNDERGRADUATE AT POLY TECH?

21 A. YES.

22 Q. WERE YOU A FRESHMAN?

23 A. YES.

24 Q. SO WHEN YOU STARTED URBAN DICTIONARY, IS IT TRUE
25 THAT YOU STARTED OUT WITH 40 TO 50 SLANG WORDS THAT YOU

1 HAD IDENTIFIED?

2 A. YES.

3 Q. AND IS IT ALSO TRUE THAT WHEN YOU STARTED URBAN
4 DICTIONARY, YOU DID NOT REALLY HAVE A SPECIFIC PURPOSE
5 IN MIND AT THAT POINT?

6 A. YES.

7 Q. WELL, URBAN DICTIONARY CERTAINLY HAS CAUGHT ON
8 NOW, HASN'T IT?

9 A. YES.

10 Q. YOU SEE URBAN DICTIONARY ENABLING PEOPLE TO COME
11 AND DOCUMENT POP CULTURE AND EXPLAIN THE WORLD, DON'T
12 YOU?

13 A. YES.

14 Q. YOU HAVE CHARACTERIZED URBAN DICTIONARY AS AN
15 ONLINE DICTIONARY OF CONTEMPORARY AND MOSTLY NORTH
16 AMERICAN SLANG, ISN'T THAT TRUE?

17 A. I MAY HAVE AT ONE TIME.

18 Q. SO NOW IT'S EVOLVING INTO A BROADER, I GUESS,
19 ONLINE DICTIONARY RELATING TO ENGLISH LANGUAGE?

20 A. YES.

21 Q. IT IS MORE FOCUSED ON ENGLISH SLANG OR IS IT
22 BROADER?

23 A. CAN I EXPLAIN?

24 Q. YES.

25 A. URBAN DICTIONARY SAYS IT IS A SLANG DICTIONARY.

1 Q. YES.

2 A. BUT REALLY IT DOCUMENTS MORE THAN THAT. IT'S
3 ALL ABOUT POP CULTURE, THINGS THAT ARE GOING ON IN OUR
4 LIVES. MANY OF THE WORDS THAT ARE DEFINED IN URBAN
5 DICTIONARY ARE ALSO DEFINED IN A REGULAR DICTIONARY.
6 THAT IS ONE OF THE GUIDELINES, I THINK, I GAVE MY
7 EDITORS. JUST BECAUSE SOMETHING APPEARS IN A REGULAR
8 DICTIONARY DOES NOT MEAN IT CAN'T APPEAR HERE, BECAUSE
9 URBAN DICTIONARY'S PURPOSE IS SO DIFFERENT. IT IS ABOUT
10 WHAT THIS WORD MEANS TO ONE PERSON FROM THIS PART OF THE
11 GLOBE, POTENTIALLY VERY OPINIONATED AND VERY USEFUL TO
12 PEOPLE WHO ARE READING IT.

13 Q. SO URBAN DICTIONARY IS A DICTIONARY AVAILABLE TO
14 SORT OF DOCUMENT WHAT THE REALITY IS FOR CERTAIN
15 INDIVIDUALS OR FOREIGN INDIVIDUALS, IS THAT CORRECT?

16 A. I HOPE SO.

17 Q. YOU ARE FAMILIAR WITH THE TERM -- I MAY BE
18 MISPRONOUNCING THIS AND BEING IN CHARGE OF A DICTIONARY,
19 YOU WILL PROBABLY BE ABLE TO HELP ME, NEOLOGISM?

20 A. YES.

21 Q. N-E-O-L-O-G-I-S-M. THAT ESSENTIALLY MEANS
22 COINING A NEW WORD?

23 A. YES.

24 Q. NEOLOGISM IS DEFINED IN URBAN DICTIONARY, ISN'T
25 IT?

60

1 A. I DIDN'T KNOW THAT.

2 Q. WELL, YOU ARE FAMILIAR WITH THE TERM, CORRECT MY

3 PRONUNCIATION IF I HAVE THIS WRONG, LEXICOGRAPHY?

4 A. YES.

5 Q. L-E-X-I-C-O-G-R-A-P-H-Y. THAT ESSENTIALLY MEANS
6 THE PENNING OF DICTIONARIES, DOESN'T IT?

7 A. YES.

8 Q. URBAN DICTIONARY IS INVOLVED WITH COINING NEW
9 WORDS AND PENNING OF DICTIONARIES, ISN'T IT?

10 A. YES.

11 Q. LET'S TAKE A LOOK AT DEFENDANT'S EXHIBIT 234.

12 MR. GOMEZ: YOUR HONOR, IF YOU CAN SWITCH
13 THE SCREENS.

14 MR. GOMEZ: THANK YOU, YOUR HONOR.

15 BY MR. GOMEZ:

16 Q. NOW, YOU CAN IDENTIFY THIS PAGE, THIS IS A WEB
17 PAGE?

18 A. YES.

19 Q. THIS IS YOUR WEB PAGE FROM URBAN DICTIONARY?

20 A. YES.

21 Q. NOW AT THE BOTTOM OF THE PAGE IT IDENTIFIES A
22 PARTICULAR DATE, 10/31/2006, IS THAT CORRECT?

23 A. MINE SAYS 10/3/2006.

24 Q. 10/3/2006?

25 A. YES.

61

1 Q. LET ME GET MY NEW GLASSES HERE.

2 A. NO PROBLEM.

3 Q. SO EACH DAY, IS THERE A NEW WEB PAGE, FIRST WEB
4 PAGE?

5 A. YES.

6 Q. SO THIS PARTICULAR DAY ON THE LEFT-HAND SIDE
7 THERE IS A WORD. ACTUALLY IT SAYS UNDERNEATH THE DATE,
8 SEPTEMBER 22, 2006, I BELIEVE, IT HAS A WORD CALLED
9 MIRRORFACE.

10 THE COURT: M-I-R-R-O-R-F-A-C-E, ALL ONE
11 WORD.

12 MR. GOMEZ: THANK YOU, YOUR HONOR.

13 BY MR. GOMEZ:

14 Q. MIRRORFACE IS A -- I WILL TRY TO REMEMBER, YOUR
15 HONOR, AS WE GO THROUGH THIS, THERE ARE COUPLE OTHER
16 WORDS LIKE THIS -- MIRRORFACE IS A WORD THAT APPEARED ON
17 URBAN DICTIONARY, ISN'T IT?

18 A. YES.

19 Q. WOULD YOU READ UNDERNEATH MIRRORFACE I GUESS
20 THAT FIRST SENTENCE?

21 A. THE UNINTENTIONAL LOOK OF COOLNESS, FOCUS AND
22 DETERMINATION THAT APPEARS ON ONE'S GRILL WHEN PUT IN
23 FRONT OF A MIRROR.

24 Q. NOW, THAT IS -- WAS THAT INTENDED AS, OR IS THAT
25 A DEFINITION OF MIRRORFACE?

62

1 A. YES.

2 Q. THERE IS ANOTHER SENTENCE BELOW THAT. WOULD YOU
3 READ THAT?

4 A. A SELF PRESERVATION TECHNIQUE IN WHICH ONE
5 FANTASIZES ABOUT LOOKING WAY BETTER THAN THEY REALLY DO,
6 USUALLY OCCURRING PRIOR TO A SIGNIFICANT SOCIAL OUTING.

7 Q. MAYBE BOTH OF US ARE SORT OF IN A MIRRORFACE
8 PHASE.

9 IS THAT A DEFINITION OF MIRRORFACE THAT
10 HAS APPEARED ON URBAN DICTIONARY?

11 A. YES.

12 Q. I WANT TO EXPLORE JUST A LITTLE BIT MORE ABOUT
13 HOW URBAN DICTIONARY ACTUALLY OPERATES. SO WHEN SOMEONE
14 WANTS TO SUBMIT A WORD OR A PHRASE TO BE ADDED TO URBAN
15 DICTIONARY, THEY NEED TO GO THROUGH SOME REGISTRATION
16 PROCESS?

17 A. NO.

18 Q. IF YOU HAVE NEVER SUBMITTED A WORD OR PHRASE FOR
19 CONSIDERATION, DO YOU -- DO YOU NEED TO -- CAN ANYONE
20 SUBMIT A WORD OR PHRASE?

21 A. YES.

22 Q. AND IS THERE -- WOULD YOU EXPLAIN TO ME WHEN --
23 SO THAT WHEN SOMEONE SUBMITS A WORD OR PHRASE, IS THERE
24 AT ANY POINT A NEED TO REGISTER OR GIVE YOUR NAME?

25 A. NO.

63

1 Q. NOW, WHEN A REVIEWER, WHEN SOMEONE WANTS TO BE A
2 REVIEWER, ARE THEY REQUESTED FOR ANY INFORMATION? IS
3 ANY INFORMATION REQUESTED FROM THEM?

4 A. YES.

5 Q. IS IT ESSENTIALLY JUST A NAME AND AN E-MAIL
6 ADDRESS?

7 A. YES. SORRY. MAYBE I DID NOT UNDERSTAND YOUR
8 QUESTION EARLIER.

9 Q. PREVIOUSLY?

10 A. YES.

11 Q. THEY ARE REQUIRED TO GIVE A NAME, BUT IT DOES
12 NOT NECESSARILY HAVE TO BE THEIRS. IT SAYS NAME OR
13 HANDLE. SO IN BOTH CASES THE NAME THAT YOU GIVE DOES
14 NOT NECESSARILY HAVE TO BE YOUR REAL NAME.

15 Q. OKAY.

16 BUT AN E-MAIL ADDRESS IS REQUIRED. IS AN
17 E-MAIL ADDRESS, A REAL E-MAIL ADDRESS REQUIRED FOR
18 SOMEONE THAT IS SUBMITTING A WORD?

19 A. YES.

20 Q. NOW, THE VOLUNTEER PROCESS OR COMPONENT OF URBAN
21 DICTIONARY IS, I GUESS, AN ASPECT OF THE SELF EDITING
22 OPERATION OF THE WEBSITE, IS THAT CORRECT?

23 A. YES.

24 Q. DID YOU ATTEMPT TO TRY TO ADDRESS THIS, I GUESS
25 SELF EDITING FEATURE, OR EXCUSE ME, THE EDITING FEATURE

64

1 THROUGH TRYING TO DEVELOP SOME KIND OF SOFTWARE TO MEET
2 THAT?

3 A. YES.

4 Q. AND IT DID NOT WORK, DID IT?

5 A. NO.

6 Q. IN FACT YOU PRETTY MUCH CONCLUDED THAT MAYBE
7 COMPUTERS CAN'T DO EVERYTHING, IS THAT CORRECT?

8 A. CAN I EXPLAIN?

9 Q. IT'S A YES OR NO.

10 A. YES.

11 Q. NOW, URBAN DICTIONARY -- URBAN DICTIONARY HAS
12 BEEN RECOGNIZED BY ALL KINDS OF MEDIA, THAT'S CORRECT?

13 A. YES.

14 Q. NPR, WEEKEND EDITION, ALL THINGS CONSIDERED, IS
15 THAT CORRECT?

16 A. YES.

17 Q. IN FACT, YOU HAVE SPOKEN ON NPR, NATIONAL PUBLIC
18 RADIO, HAVE YOU NOT?

19 A. YES.

20 Q. AND URBAN DICTIONARY HAS BEEN I GUESS NOTED OR
21 COMMENTED UPON BY BBC NEWS ONLINE, HASN'T IT?

22 A. YES.

23 Q. NEW YORK DAILY NEWS?

24 A. YES.

25 Q. IN FACT, YOUR OWN SACRAMENTO BEE?

65

1 A. YES.

2 Q. LET'S TAKE A LOOK BRIEFLY AT DEFENDANT'S EXHIBIT
3 452. WOULD YOU TAKE A LOOK AT 452. AND IS THAT
4 ESSENTIALLY -- LET'S SEE, I THINK IT IS ABOUT 9 PAGES.
5 I NEED TO CHECK THAT. IS THAT ESSENTIALLY I GUESS THE
6 PRESS COVERAGE OR NOTICE THAT'S CONTAINED IN AT LEAST AT
7 THIS STAGE IN URBAN DICTIONARY?

8 A. YES.

9 Q. YOU NORMALLY KEEP SORT OF IDENTIFICATION OF
10 PRESS MENTIONS FOR URBAN DICTIONARY ON YOUR WEBSITE,
11 DON'T YOU?

12 A. YES.

13 Q. LET'S LOOK AT SOME OF THE DIFFERENT MEDIA
14 ENTITIES THAT, YOU KNOW, HAVE MENTIONED URBAN
15 DICTIONARY. ON THE FIRST PAGE, D 452, PAGE 1, IF YOU
16 LOOK IN ALMOST THE MIDDLE OF THE PAGE, U.S.A. TODAY
17 MENTIONS URBAN DICTIONARY, DIDN'T IT?

18 A. YES.

19 Q. THE L A TIMES JUST BELOW THAT MENTIONED URBAN
20 DICTIONARY, DIDN'T IT?

21 A. YES.

22 Q. THE RALEIGH NEWS AND OBSERVER MENTIONED URBAN
23 DICTIONARY, DIDN'T IT?

24 A. YES.

25 Q. LOOK AT THE SECOND PAGE. THERE ARE A VARIETY OF

66

1 DIFFERENT MEDIA ENTITIES THAT HAVE RECOGNIZED URBAN
2 DICTIONARY BUT UNDER SEPTEMBER D 452, PAGE 2, LET ME
3 JUST IDENTIFY A COUPLE. CLEVELAND PLAIN DEALER, CHICAGO
4 SUN-TIMES, TORONTO STAR, THEY HAVE ALL MENTIONED URBAN
5 DICTIONARY, HAVEN'T THEY?

6 A. YES.

7 Q. EVEN THE PHILADELPHIA WEEKLY HAS MENTIONED URBAN
8 DICTIONARY, HASN'T IT?

9 A. YES.

10 Q. SO AS YOU GO THROUGH THESE PAGES, I WILL PICK A
11 COUPLE MORE, PAGE 3. THERE IS THE PITTSBURGH TIMES
12 REVIEW IN THE MIDDLE OF THAT PAGE, IS THAT CORRECT?

13 A. YES.

14 Q. AND THEN THE NEW YORK TIMES?

15 A. YES.

16 Q. SO THERE HAVE BEEN AN EXTRAORDINARY NUMBER OF
17 MEDIA PUBLICATIONS THAT HAVE IDENTIFIED OR REFERENCED
18 URBAN DICTIONARY, AND IN FACT EVEN RELIED UPON URBAN
19 DICTIONARY FOR SOME DEFINITIONS OF WORDS, HAVEN'T THEY?

20 A. YES.

21 Q. I BELIEVE THERE WAS A CASE ACTUALLY IN ENGLAND
22 THAT AROSE BACK IN 2003 IN WHICH A COURT IN ENGLAND HAD
23 REFERENCED OR USED URBAN DICTIONARY AS A REFERENCE FOR
24 DEFINING A WORD, IS THAT CORRECT?

25 A. YES.

67

1 Q. IN FACT, ABOUT THAT TIME I GUESS IN 2003 WHEN
2 THAT I GUESS PUBLICATION OR MEDIA PUBLICATION OF THE
3 FACT THAT AN ENGLISH COURT HAD USED URBAN DICTIONARY AS
4 A REFERENCE, IT COINCIDED WITH A RISE IN THE POPULARITY
5 OF URBAN DICTIONARY, DIDN'T IT?

6 A. YES.

7 Q. I WOULD LIKE TO DIRECT YOUR ATTENTION TO
8 DEFENDANT'S EXHIBIT 448, AND THAT PARTICULAR DOCUMENT IS
9 THE CONFETTI RECORDS AND OTHERS VERSUS WARNER MUSIC UK
10 LIMITED AND IT'S JUNE 5TH, 2003 AND IT'S THE ENGLISH
11 CASE THAT ACTUALLY REFERENCED YOUR -- REFERENCED URBAN
12 DICTIONARY AND USED URBAN DICTIONARY. WOULD YOU TAKE A
13 LOOK AT THAT.

14 NOW, YOU BELIEVE THAT IS THE CASE THAT --

15 A. YES.

16 Q. NOW, ONE OF THE WORDS THAT WAS DEFINED IN THAT

17 CASE WAS, IF I READ THIS DECISION CORRECTLY, WAS
18 FOSHIZZLE, F-O-S-H-I-Z-Z-L-E. IS THAT CORRECT?

19 A. YES.

20 Q. AND URBAN DICTIONARY HAD ACTUALLY DEFINED THE
21 PHRASE OR IS THAT A SLANG TERM, FOSHIZZLE?

22 A. YES.

23 Q. ACTUALLY DEFINED THAT PARTICULAR TERM AND WHAT
24 DOES IT MEAN?

25 A. IT MEANS FOR SURE, FOSHIZZLE.

68

1 THE COURT: IT MEANS WHAT?

2 THE WITNESS: FOR SURE.

3 THE COURT: FOR SURE.

4 THE WITNESS: FOR SURE.

5 BY MR. GOMEZ:

6 Q. SO IN ORDER TO RESOLVE A DISPUTE IN THIS
7 PARTICULAR CASE REGARDING A MATTER THAT WAS AT ISSUE IN
8 THAT CASE, THE COURT LOOKED -- IT IS YOUR UNDERSTANDING
9 THAT THE COURT LOOKED TO URBAN DICTIONARY FOR AT LEAST A
10 DEFINITION OF THAT PARTICULAR WORD, IS THAT CORRECT?

11 A. YES.

12 Q. NOW, THERE HAVE BEEN OTHER COURTS THAT HAVE, I
13 GUESS, USED URBAN DICTIONARY AS A REFERENCE, AND I GUESS
14 I WOULD LIKE TO DIRECT YOUR ATTENTION TO MAYBE A COUPLE
15 OF THOSE. FIRST, DEFENDANT'S EXHIBIT 451, IF YOU COULD
16 PULL THAT UP. NOW DEFENDANTS 451, IT'S A CASE IN THE
17 SOUTHERN DISTRICT OF NEW YORK, A FEDERAL COURT CASE
18 WHICH WAS NOT REPORTED, BUT IT'S IN WESTLAW AND IT'S

19 BOONE VERSUS JACKSON, B-O-O-N-E. IN THAT PARTICULAR
20 CASE, THERE WAS, I GUESS -- COULD YOU TAKE A LOOK AT
21 THAT CASE? IN PARTICULAR, I WOULD LIKE YOU TO LOOK AT D
22 451, PAGE 4, FOOTNOTE 5.

23 Q. NOW, ACCORDING TO THAT FOOTNOTE -- ACTUALLY,
24 WOULD YOU JUST READ THAT FOOTNOTE?

25 A. AS CITED IN THE DEFENDANT'S EXHIBIT 6, THE URBAN

69

1 DICTIONARY IS AN ONLINE DICTIONARY WHICH ALLOWS USERS TO
2 CREATE AND SUBMIT DEFINITIONS OF SLANG WORDS AND PHRASES
3 FOR PUBLICATION. "HOLLA BACK" IS DEFINED AS A TERM THAT
4 CAN BE USED AS A GOODBYE GREETING OR WHEN ENDING A
5 CONVERSATION OR AT THE END OF TRYING TO PROVE A POINT.

6 Q. IS HOLLA BACK -- IS IT YOUR UNDERSTANDING THAT
7 HOLLA BACK IS A PHRASE OR TERM DEFINED IN URBAN
8 DICTIONARY?

9 A. YES.

10 Q. I WOULD LIKE TO DIRECT YOUR ATTENTION TO ANOTHER
11 CASE, D 450. THAT CASE IS ALSO REPORTED IN WESTLAW, 819
12 NORTHEAST 2ND, 516. THE TITLE OF THE CASE IS DORN
13 VERSUS STATE, INDIANA APPELLATE COURT, 2004.

14 NOW, I WOULD LIKE TO DIRECT YOUR
15 ATTENTION TO D 450, PAGE 4. NOW IN THIS PARTICULAR CASE
16 THERE WAS SOME DISPUTE APPARENTLY ABOUT THE USE OF THE
17 TERM HO, H-O, AND WHAT THAT PARTICULAR TERM MEANT. AND
18 IN THE CASE INVOLVING A POLICEMAN, AN INDIVIDUAL WAS
19 TRYING TO TELL THE POLICEMAN THAT HO MEANT, WITH RESPECT
20 TO A WOMAN, A WOMAN WHO STOOD UP FOR HERSELF. NOW, I

21 WOULD LIKE YOU TO JUST READ IF YOU WOULD ON D 450, PAGE
22 4, IF YOU SEE ABOUT -- ON THE LEFT-HAND SIDE ABOUT SIX
23 OR SEVEN LINES DOWN OF THE TRANSCRIPT AT 54. IT BEGINS
24 DORN CLAIMS. IF YOU COULD READ THAT COUPLE OF SENTENCES
25 DOWN TO SEE URBAN DICTIONARY.

70

1 A. DORN CLAIMS UPON APPEAL THAT HO IS A TERM
2 SUSCEPTIBLE TO SEVERAL MEANINGS, SOME OF WHICH ARE
3 DEROGATORY, BUT SOMETIMES IT IS USED TO COMPLIMENT A
4 WOMAN'S ABILITY TO STAND UP FOR HERSELF. APPELLANT'S
5 BRIEF AT 6, 7. THAT MAY BE THE CASE, BUT IT IS ALSO A
6 STREET SLANG TERM, SYNONYM, FOR PROSTITUTE.

7 Q. IS IT YOUR UNDERSTANDING THAT HO IS A TERM THAT
8 IS DEFINED IN URBAN DICTIONARY?

9 A. YES.

10 Q. NOW, LASTLY, I WOULD LIKE -- IN TERMS OF CASES,
11 I WOULD LIKE YOU TO TAKE A LOOK AT DEFENDANT'S EXHIBIT D
12 449 AND SPECIFICALLY -- D 449 IS A CASE REPORTED IN
13 WESTLAW, OUT OF A NEW YORK SUPERIOR COURT CASE IN 2006,
14 AND IT'S TITLED, IF I PRONOUNCE THIS CORRECTLY, GREISMAN
15 VERSUS GREISMAN. I WOULD LIKE TO DIRECT YOUR ATTENTION
16 TO D 449, PAGE 2, OVER ON THE LEFT-HAND SIDE. GREISMAN
17 VERSUS GREISMAN WAS AN UNCONTESTED DIVORCE MATTER IN
18 WHICH ONE OF THE PARTIES WANTED TO, I GUESS IN TERMS OF
19 THIS LAWSUIT, I GUESS, WITHDRAW OR -- AND THE INDIVIDUAL
20 USED A PARTICULAR PHRASE AS TO WHY THAT PERSON WANTED TO
21 WITHDRAW IN THAT PARTICULAR CASE. I WOULD LIKE YOU TO
22 JUST READ WHERE IT SAYS -- THAT BEGINS, PLAINTIFF

23 ALLEGES, AND THAT IS LIKE ON THE LEFT-HAND SIDE, IF YOU
24 CAN SEE WHERE IT HAS, TO LIVE TO FIGHT ANOTHER DAY.
25 WOULD YOU READ THAT?

71

1 A. PLAINTIFF ALLEGES THAT HE HAS AN ABSOLUTE RIGHT
2 TO DISCONTINUE THE ACTION NOTWITHSTANDING THE EXTENSIVE
3 LITIGATION IN THIS MATTER IN THAT NO ANSWER HAS EVER
4 BEEN PROVIDED. PLAINTIFF PRO SE MOVES FOR THE RIGHT TO
5 VOLUNTARILY DISCONTINUE THIS ACTION AND STATES, TO LIVE
6 TO FIGHT ANOTHER DAY AS DEFINED BY THE URBAN DICTIONARY,
7 TO WITHDRAW INSTEAD OF SURRENDER AND SAVE FACE BY
8 RETURNING STRONGER THAN BEFORE WITH THE KNOWLEDGE OF
9 PAST MISTAKES BEHIND AND KNOWING WHERE TO ATTACK THE
10 ENEMY. IT IS BETTER TO LIVE AND FIGHT ANOTHER DAY THAN
11 TO DIE DEFENDING THE UNDEFENDABLE.

12 Q. NOW, IS THAT PHRASE, TO LIVE TO FIGHT ANOTHER
13 DAY, DEFINED IN URBAN DICTIONARY?

14 A. AS FAR AS I KNOW, YES.

15 Q. SO THERE IS AT LEAST FOUR CASES NOW THAT THAT
16 HAVE ACTUALLY RELIED UPON URBAN DICTIONARY FOR A
17 DEFINITION OF A TERM OR SLANG WORD, IS THAT CORRECT?

18 A. YES.

19 MR. WIZNER: I OBJECT. JUST TO MAKE SURE
20 THE RECORD IS CLEAR, IT DOES NOT APPEAR THAT IN THAT
21 LAST CASE THE COURT WAS RELYING ON URBAN DICTIONARY, BUT
22 THAT ONE OF THE PARTIES WAS. SO FOR WHAT IT IS WORTH, I
23 WOULD LIKE TO RECORD TO BE CORRECT.

24 BY MR. GOMEZ:

25 Q. WITH RESPECT TO THAT PARTICULAR ITEM, LET ME

72

1 MAKE SURE, IN TERMS OF GREISMAN VERSUS GREISMAN, A PARTY
2 WAS RELYING UPON IN A COURT CASE IN GREISMAN VERSUS
3 GREISMAN THE URBAN DICTIONARY FOR A DEFINITION OF A TERM
4 THAT THAT PARTY WAS USING, TO LIVE OR TO FIGHT FOR
5 ANOTHER DAY. IS THAT CORRECT? IS THAT YOUR
6 UNDERSTANDING?

7 A. YES.

8 Q. NOW, URBAN DICTIONARY -- I JUST WANT TO CLEAR UP
9 A COUPLE OTHER POINTS. URBAN DICTIONARY HAS THREE
10 REVENUE SOURCES, THE BOOK YOU PUBLISHED, URBAN
11 DICTIONARY THESAURUS, STREET SLANG DEFINED, IS THAT
12 RIGHT?

13 A. YES.

14 Q. BANNER ADS?

15 A. YES.

16 Q. AND I BELIEVE YOU MAY HAVE REFERRED TO TEXT ADS,
17 WHICH ARE LIKE GOOGLE AD WORDS. IS THAT OR IS THERE
18 ANOTHER TERM FOR THAT?

19 A. I WOULD SAY -- I WOULD SAY I ONLY HAVE TWO
20 REVENUE STREAMS, ONE IS THE BOOK AND ONE IS ADVERTISING,
21 BECAUSE WHETHER IT IS A TEXT AD OR A BANNER AD IS NOT MY
22 DECISION.

23 Q. OKAY.

24 BUT YOU HAVE -- YOU GENERATE REVENUE FROM
25 WHETHER IT IS A BANNER OR TEXT AD, IS THAT CORRECT?

73

1 A. YES.

2 Q. LET'S TAKE A QUICK LOOK AT DEFENDANT'S EXHIBIT

3 453. DO YOU RECOGNIZE THAT PARTICULAR PAGE OR EXHIBIT?

4 A. YES, THIS IS A PAGE FROM MY WEBSITE.

5 Q. AND WHAT IS IT? WHAT DOES IT ADDRESS?

6 A. THIS PAGE PROMOTES THE BOOK.

7 Q. URBAN DICTIONARY, IS THAT CORRECT?

8 A. URBAN DICTIONARY, YES.

9 Q. NOW, ON THE RIGHT-HAND SIDE OF THAT PAGE, IT

10 IDENTIFIES SOME OF THE -- IF I UNDERSTAND CORRECTLY,

11 THIS PARTICULAR BOOK WAS A COMPILATION OF SOME OF THE

12 MORE POPULAR TERMS USED BY URBANDICTIONARY.COM, IS THAT

13 CORRECT?

14 A. IT CONTAINS 2000 OF WHAT I THOUGHT WERE THE BEST

15 DEFINITIONS, NOT NECESSARILY THE MOST POPULAR.

16 Q. 2000 OF WHAT YOU HAVE VIEWED AS THE BEST

17 DEFINITIONS?

18 A. YES.

19 Q. NOW, I ASSUME -- NOW ON THE RIGHT-HAND SIDE

20 THERE ARE SEVERAL DEFINITIONS IDENTIFIED, WORDS

21 IDENTIFIED, IF I UNDERSTAND CORRECTLY, IS THAT CORRECT?

22 A. YES.

23 Q. LET'S GO THROUGH SOME OF THOSE. THOSE ARE IN

24 THE BOOK URBAN DICTIONARY, IS THAT CORRECT?

25 A. YES.

74

1 Q. THESE ARE SOME OF THE WORDS THAT YOU THOUGHT

2 WERE IMPORTANT TO PUT IN THIS PARTICULAR BOOK, IS THAT

3 CORRECT?

4 A. YES, YES.

5 Q. WOULD YOU JUST READ THE FIRST ONE?

6 A. COMMUNICATE, TO CHAT WITH SOMEONE IN THE SAME

7 ROOM VIA INSTANT MESSAGING SERVICE INSTEAD OF IN PERSON.

8 Q. READ THE SECOND.

9 A. BUSINESS PROVOCATIVE, ATTIRE USED TO PROVOKE

10 SEXUAL ATTENTION IN THE WORKPLACE.

11 Q. AND THE NEXT DEFINITION?

12 A. DANDRUFF, A PERSON WHO FLAKES OUT AND DITCHES

13 THEIR FRIENDS.

14 Q. AND RING TONE DJ?

15 A. AN ANNOYING PERSON WHO SHUFFLES THROUGH ALL OF

16 THEIR RING TONES INCESSANTLY.

17 Q. THERE IS -- FINALLY THERE IS APPEARS TO BE ONE

18 LAST WORD THERE LISTED. I WILL LET YOU PRONOUNCE IT.

19 A. I THINK IT IS PRONOUNCED GINORMOUS, THE

20 COMBINATION OF GIGANTIC AND ENORMOUS.

21 Q. YOU ARE WRITING A NEW BOOK BASED ON URBAN

22 DICTIONARY, AREN'T YOU?

23 A. YES.

24 Q. WHEN WOULD THAT BE COMING OUT?

25 A. 2007, FALL '2007.

75

1 Q. IS THAT ALSO GOING TO CONTAIN WORDS THAT YOU

2 BELIEVE ARE I GUESS SIGNIFICANT? OR HOW DID YOU

3 CHARACTERIZE THE WORD -- THE WORDS THAT YOU INCLUDED IN

4 THE FIRST DEFINITION BOOK?

5 A. ON THIS PAGE, I WROTE THAT THEY ARE 2000 OF
6 URBAN DICTIONARY'S FUNNIEST, SMARTEST, CRUNKEST
7 DEFINITIONS.

8 Q. ARE THOSE THE KINDS OF WORDS THAT YOU WOULD BE
9 INCLUDING -- NOT THE EXACT SAME WORDS BUT MAYBE THE
10 KINDS OF WORDS THAT YOU WILL BE INCLUDING IN YOUR NEW
11 BOOK?

12 A. YES.

13 Q. URBAN DICTIONARY HAS NEVER BEEN CONVICTED FOR
14 CONTENT ON THE SITE FOR BEING IN VIOLATION OF ANY
15 FEDERAL LAW, HAS IT?

16 A. NO.

17 Q. URBAN DICTIONARY HAS NEVER BEEN CONVICTED FOR
18 CONTENT ON THE SITE FOR BEING IN VIOLATION OF ANY STATE
19 LAW, HAS IT?

20 A. NO.

21 Q. AND URBAN DICTIONARY HAS NEVER BEEN CONVICTED
22 FOR CONTENT ON THE SITE FOR BEING IN VIOLATION OF ANY
23 LOCAL LAW, HAS IT?

24 A. NO.

25 Q. LET'S GO THROUGH THE BOOK. HOW LONG HAS THE

76

1 BOOK BEEN OUT?

2 A. IT CAME OUT IN SEPTEMBER, I THINK.

3 THE COURT: MR. GOMEZ, WE ARE GOING TO
4 TAKE A MORNING RECESS, I THOUGHT YOU MAY BE FINISHING
5 BUT YOU HAVEN'T.

6 MR. GOMEZ: I HAVE JUST A COUPLE OF -- WE

7 CAN BREAK OR --

8 THE COURT: IF YOU ARE READY TO FINISH.

9 MR. GOMEZ: I'M READY TO FINISH, YOUR
10 HONOR.

11 THE COURT: ALL RIGHT.

12 BY MR. GOMEZ:

13 Q. AND WITH RESPECT TO THE BOOK, I WILL JUST TRY TO
14 BE QUICK ON THIS.

15 THE COURT: YOU DON'T HAVE TO BE QUICK.

16 MR. GOMEZ: I WILL BE CLEARER.

17 BY MR. GOMEZ:

18 Q. YOU HAVE NEVER BEEN CONVICTED FOR CONTENT IN
19 YOUR BOOK ON URBAN DICTIONARY BY ANY FEDERAL, STATE OR
20 LOCAL LAW, ISN'T THAT CORRECT?

21 A. CORRECT.

22 Q. NOW, SOME MIGHT SAY THAT YOU ARE AN RASTERBATOR,
23 IS THAT CORRECT?

24 A. RASTERBATOR, YES.

25 Q. WOULD YOU AGREE WITH THAT CHARACTERIZATION?

77

1 A. YES.

2 Q. URBAN DICTIONARY DEFINES THAT WORD, DOESN'T IT?

3 A. YES.

4 Q. AND AT LEAST ONE OF THE DEFINITIONS ON YOUR
5 WEBSITE FOR RASTERBATOR IS SOMEONE WHO SPENDS TOO MUCH
6 TIME ON THE INTERNET OR ON A COMPUTER, ISN'T THAT
7 CORRECT?

8 A. YES.

9 Q. I GUESS THAT AS AN RASTERBATORM. YOU CERTAINLY
10 HAVE CAPITALIZED ON THAT PROCLIVITY, HAVE YOU NOT?

11 A. THANK YOU.

12 MR. GOMEZ: NO FURTHER QUESTIONS, YOUR
13 HONOR. WHAT I WOULD LIKE TO MOVE INTO -- MOVE EXHIBITS
14 D 234, WHICH IS THE FIRST PAGE OF THE WEBSITE, D 290 --
15 OR EXCUSE ME, D 234; D 452, THE PRESS COVERAGE PAGES; D
16 448, WHICH IS THE ENGLISH CASE; D 451, WHICH IS THE
17 BOONE CASE; D 450, WHICH IS THE DORN CASE; D 449, WHICH
18 IS THE GREISMAN CASE; AND D 453, WHICH IS THE BOOK PAGE.

19 MR. WIZNER: PLAINTIFF HAS NO OBJECTION
20 TO ANY OF DEFENDANT'S EXHIBITS.

21 THE COURT: D 234, D 452, D 290, D 451, D
22 450, D 448, D 449 AND D 453 ARE RECEIVED INTO EVIDENCE.

23 (D 234, D 452, D 290, D 450, D 448,
24 D 449, D 453 ADMITTED INTO EVIDENCE.)

25 MR. WIZNER: I HAVE A COUPLE OF REDIRECT

78

1 QUESTIONS. I WILL BE SURPRISED IF IT TAKES MORE THAN
2 TWO OR THREE MINUTES.

3 THE COURT: GO AHEAD.

4 REDIRECT EXAMINATION

5 BY MR. WIZNER:

6 Q. REFERRING TO THE URBAN DICTIONARY BOOK, DID YOU
7 HAVE SOLE DISCRETION OVER THE CONTENT THAT APPEARED IN
8 THAT BOOK?

9 A. NO.

10 Q. WHO ELSE SHARED RESPONSIBILITY FOR DECIDING WHAT

11 CONTENT APPEARED IN THE BOOK?

12 A. I COLLABORATED WITH EDITORS AND THE PUBLISHER TO
13 DECIDE WHICH CONTENT WOULD BE PUBLISHED.

14 Q. DO THE EDITORS OR PUBLISHERS INDICATE ANY
15 CONTENT THAT SHOULD NOT BE PUBLISHED?

16 A. THEY SUGGESTED THAT IF I PUBLISHED CERTAIN
17 CONTENT, THAT THE BOOK WOULD NOT HAVE AS WIDE A
18 DISTRIBUTION.

19 Q. AND ANY CONTENT IN PARTICULAR?

20 A. I BELIEVE IN SOME OF THE STAGES OF EDITING WE
21 REMOVED A LOT OF THE WORDS. DO YOU WANT ME TO SAY
22 EXACTLY WHAT WORDS?

23 Q. WOULD YOU PLEASE GIVE EXAMPLES OF WORDS THAT THE
24 EDITORS SUGGESTED THAT YOU REMOVE?

25 A. WELL, WE REMOVED ALMOST ALL OF THE WORDS THAT I

79

1 HAD ADDED TO THE MANUSCRIPT THAT STARTED WITH F-U-C-K.
2 THAT WAS A LOT OF DEFINITIONS.

3 Q. YOU TESTIFIED BEFORE THAT 18 OF THE 20 MOST
4 POPULAR WORDS IN URBAN DICTIONARY ARE SEXUALLY EXPLICIT
5 WORDS. DO YOU KNOW IF ANY OF THOSE WORDS APPEAR IN THE
6 PRINTED VERSION OF URBAN DICTIONARY?

7 A. I DON'T KNOW FOR SURE BECAUSE I DON'T HAVE THE
8 18 IN FRONT OF ME, BUT I KNOW THAT THE TYPE OF WORDS
9 THAT THOSE 18 REPRESENT ARE NOT INCLUDED IN THE BOOK.

10 MR. WIZNER: THANKS. NO MORE QUESTIONS.

11 THE COURT: WHAT KIND OF WORDS ARE NOT
12 INCLUDED?

13 THE WITNESS: WE ARE TALKING ABOUT THE 20
14 MOST POPULAR WORDS THAT ARE LOOKED UP ON THE WEBSITE, 18
15 OF THOSE ARE SEXUALLY EXPLICIT. SEXUALLY EXPLICIT WORDS
16 ARE NOT INCLUDED IN THE BOOK.

17 THE COURT: THAT IS WHAT I'M TRYING TO
18 FIGURE OUT.

19 MR. WIZNER: PLAINTIFF HAS NO MORE
20 QUESTIONS.

21 THE COURT: MR. GOMEZ?

22 MR. GOMEZ: NO QUESTIONS, YOUR HONOR.

23 THE COURT: THE WITNESS HAS CONCLUDED.
24 MR. PECKHAM, YOU ARE EXCUSED FROM THE STAND. COUNSEL
25 ARE EXCUSED, WE ARE OFF THE RECORD FOR A TEN-MINUTE

80

1 RECESS.

2 (BREAK TAKEN.)

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

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

7 ARE PLAINTIFFS READY TO CALL ANOTHER
8 WITNESS?

9 MS. CRUMP: YES, YOUR HONOR.

10 THE COURT: MS. CRUMP, GOOD MORNING.

11 MS. CRUMP: GOOD MORNING, YOUR HONOR, AS
12 OUR NEXT WITNESS PLAINTIFFS CALL MARILYN J. LEWIS.

13 MS. ULRICH: YOUR HONOR, AS WITH THE
14 PREVIOUS WITNESS, MISS SMITH, DEFENDANT WOULD LIKE TO

15 NOTE HIS OBJECTION TO THIS WITNESS ON THE SAME THREE
16 GROUNDS: ONE, OF THE NON-DISCLOSURE OF A TESTIFYING
17 WITNESS DURING DISCOVERY; TWO, RELEVANCE; AND THREE, THE
18 CUMULATIVE NATURE OF THE TESTIMONY.

19 THE COURT: OKAY. FOR THE REASONS STATED
20 FOR AND TO BE STATED IN A WRITTEN ORDER THAT I WILL
21 ISSUE AS TO ALL OF THE WITNESSES, THE OBJECTIONS ARE
22 OVERRULED.

23 THE COURT: MISS LEWIS, BE CAREFUL
24 STEPPING UP. STAND UP AND TAKE THE OATH FROM THE COURT
25 REPORTER.

81

1 MARILYN J. LEWIS, GOVERNMENT WITNESS,
2 SWORN.

3 THE CLERK: STATE AND SPELL YOUR FULL
4 NAME FOR THE RECORD.

5 THE WITNESS: MARILYN, M-A-R-I-L-Y-N,
6 JAYE, J-A-Y-E, LEWIS, L-E-W-I-S.

7 MS. CRUMP: YOUR HONOR, MAY I APPROACH
8 AND HAND YOU THE EXHIBIT BINDER FOR THIS WITNESS?

9 THE COURT: YES, YOU MAY.

10 DIRECT EXAMINATION

11 BY MS. CRUMP:

12 Q. GOOD MORNING, MISS LEWIS.

13 A. HI.

14 Q. THANKS FOR JOINING US.

15 PLEASE TELL US, WHAT IS YOUR PROFESSION?

16 A. I'M A WRITER, PUBLISHER AND EDITOR.

17 Q. CAN YOU TELL US GENERALLY, WHAT IS THE EROTIC
18 AUTHORS ASSOCIATION?

19 A. IT'S AN INTERNATIONAL WRITERS ORGANIZATION FOR
20 WRITERS AND PUBLISHERS OF EROTIC FICTION AND NONFICTION.

21 Q. AND WHAT IS THE MISSION OF THE EROTIC AUTHORS
22 ASSOCIATION?

23 A. WE HONOR LITERARY MERIT AND ACHIEVEMENT IN THE
24 WRITING AND PUBLISHING OF EROTIC FICTION AND NONFICTION.

25 Q. WHAT IS YOUR CONNECTION TO THE EROTIC AUTHORS

82

1 ASSOCIATION?

2 A. I FOUNDED IT AND I'M THE DIRECTOR.

3 Q. DOES THE EROTIC AUTHORS ASSOCIATION HAVE A
4 WEBSITE?

5 A. YES. IT ONLY EXISTS ON THE WEB, IN FACT.

6 Q. YOU MENTIONED THAT YOU ARE A WRITER. HOW LONG
7 HAVE YOU BEEN A WRITER?

8 A. I HAVE BEEN A WRITER SINCE I LEARNED HOW TO
9 WRITE. I HAVE HAD AN INTEREST IN WRITING FICTION SINCE
10 PROBABLY JUNIOR HIGH SCHOOL. I ALSO BECAME A
11 PROFESSIONAL SONG WRITER. I CONTINUED THAT INTO THE
12 EARLY '90S AND AT THAT TIME I SWITCHED OVER TO WRITING
13 EROTICA PROFESSIONALLY. I HAD BEEN DOING THAT FOR A
14 WHILE BY THEN.

15 Q. HOW DID YOU GET STARTED WRITING EROTICA
16 PROFESSIONALLY?

17 A. FOR SOME INEXPLICABLE REASON THE FICTION THAT I
18 HAVE WRITTEN HAS ALWAYS INCLUDED EROTIC ELEMENTS. IN

19 THE MID TO LATE '80S, A NUMBER OF LITERARY MAGAZINES --
20 AS OPPOSED TO THE MEN'S MAGAZINES, THERE WERE A NUMBER
21 OF LITERARY MAGAZINES THAT POPPED UP IN THE MARKETPLACE
22 THAT WERE LOOKING TO PUBLISH EROTIC FICTION. AT THAT
23 POINT I STARTED TO SUBMIT MY STORIES FOR PUBLICATION AND
24 THEY BECAME PUBLISHED RIGHT AWAY.

25 Q. AND HOW LONG HAVE YOU BEEN WRITING EROTICA?

83

1 A. PROFESSIONALLY FOR ABOUT 18 YEARS.

2 Q. YOU MENTIONED THAT YOU HAVE BEEN PUBLISHED. CAN
3 YOU GIVE US SOME SENSE OF HOW EXTENSIVELY YOU HAVE BEEN
4 PUBLISHED?

5 A. IN THE MID '80S, IT WAS STRICTLY IN MAGAZINES.
6 FROM THE MID '90S ON I HAVE HAD SHORT STORIES PUBLISHED
7 IN ABOUT 60 ANTHOLOGIES. I HAVE WRITTEN FOUR NOVELS. I
8 HAVE EDITED SEVEN ANTHOLOGIES AND DONE A LOT OF WEB
9 WORK.

10 Q. IN WHAT LANGUAGES HAVE YOU BEEN PUBLISHED?

11 A. IT HAS BEEN TRANSLATED INTO FRENCH, SPANISH,
12 GERMAN -- NO, NOT SPANISH, ITALIAN, GERMAN AND JAPANESE.

13 Q. TELL US, WHAT WAS YOUR FIRST MAJOR WORK?

14 A. MY FIRST MAJOR WORK WAS A BOOK CALLED NEPTUNE
15 AND SURF. IT WAS PUBLISHED IN JUNE OF 1999. AND WITHIN
16 DAYS OF IT COMING OUT IT WAS SELECTED BY THE UK
17 NEWSPAPER THE GUARDIAN AS ONE OF THE TOP 10 READS FOR
18 SUMMER, AND IT WOUND UP BEING AN AWARD WINNING BOOK. IT
19 IS STILL IN PRINT.

20 Q. COULD YOU TELL US -- MAYBE GIVE US AN EXAMPLE OF

21 SOME OF YOUR OTHER NOTABLE WORKS?

22 A. MOST RECENTLY, I EDITED STIRRING UP A STORM,
23 TALES OF THE SENSUAL, THE SEXUAL AND EROTIC, WHICH IS A
24 COLLECTION OF EROTIC AS WELL AS SENSUAL STORIES WRITTEN
25 EXCLUSIVELY BY WOMEN AUTHORS WHO ARE POPULAR IN THEIR

84

1 FIELD, INCLUDING TOP EROTICA WRITERS AS WELL AS WOMEN
2 SUCH AS JOYCE CAROL OATES, MARGARET ATWOOD AND DOROTHY
3 ALLISON. AND IT WAS NOMINATED FOR THREE PUSHCART PRIZES
4 FOR SHORT FICTION THAT CAME OUT LAST YEAR.

5 Q. COULD YOU ALSO DESCRIBE YOUR CURRENT PROJECT?

6 A. RIGHT NOW, I HAVE A BOOK CALLED YAOI, Y-A-O-I.
7 IT'S A FORM OF POPULAR JAPANESE EROTIC FICTION WRITTEN
8 BY WOMEN FOR WOMEN, BUT IT'S GAY MALE EROTIC ROMANCES.

9 Q. HAVE YOU WON ANY AWARDS FOR YOUR WORK?

10 A. YES.

11 Q. COULD YOU LIST SOME OF THEM?

12 A. NEPTUNE AND SURF WON ME THE EROTIC WRITER OF THE
13 YEAR AWARD IN THE UK FOR 2001. OTHER EROTIC WORKS, I
14 GOT THE NEW CENTURY WRITER'S AWARD, AND I FINALED IN THE
15 WILLIAM FAULKNER WRITING COMPETITION AND ABOUT FIVE OR
16 SIX TIMES I RECEIVED HONORARY MENTION IN THE L.A. SCREEN
17 WRITER AND FICTION WRITER AWARDS.

18 Q. NOW, YOU DEFINE YOURSELF AS A WRITER OF EROTICA.
19 WHAT DOES THAT TERM MEAN?

20 A. TO ME IT MEANS THAT I'M WRITING LITERARY FICTION
21 THAT IS GOING TO INCLUDE THE SEX LIVES OF MY CHARACTERS
22 AS PART OF THEIR IDENTITIES.

23 Q. AND IN YOUR VIEW, HOW IS EROTICA DIFFERENT FROM
24 PORNOGRAPHY?

25 A. IN MY PROFESSIONAL OPINION, PORNOGRAPHY GOES

85

1 AFTER PEOPLE'S WALLETS. THEY GO AFTER THE INITIAL
2 IMPACT OF TESTOSTERONE, AS OPPOSED TO EROTICA, WHICH IS
3 GOING TO INVOLVE THE READER'S MIND AND THE INTELLECT,
4 THE EMOTION, THE HEART. IT'S GOING TO BE A MUCH SLOWER
5 PROCESS. IT IS GOING TO BE -- HAVE A SEXUAL INVOLVEMENT
6 WITH THE READER, BUT IT'S NOT GOING TO HAVE THE
7 IMMEDIATE IMPACT OF WHAT I WOULD CONSIDER PORNOGRAPHY.

8 Q. AND OUT OF ALL OF THE TOPICS YOU COULD HAVE
9 CHOSEN TO WRITE ABOUT, OUT OF ALL OF THE GENRES, WHY DID
10 YOU CHOOSE EROTICA?

11 A. WELL, IT WAS A PERSONAL DECISION AS WELL AS A
12 DIFFICULT DECISION, BUT I FELT THAT I WAS FOR SOME
13 REASON GOOD AT IT. I FELT THAT SEXUALITY AS WELL AS
14 LANGUAGE IS A GOD GIVEN GIFT TO PEOPLE, TO EVERYBODY AND
15 SINCE I HAD A TALENT BEING GOOD AT IT, I FELT THAT IT
16 WAS MY DUTY TO DEVELOP IT.

17 Q. DO YOU CONSIDER EROTICA TO BE VALUABLE?

18 A. I DO.

19 Q. WHY?

20 A. BECAUSE I BELIEVE THAT HUMAN SEXUALITY IS
21 VALUABLE TO HUMAN BEINGS.

22 Q. DO YOU PROMOTE AND SELL YOUR WORK?

23 A. YES.

24 Q. DO YOU DO SO ONLINE?

25 A. PRIMARILY ON THE INTERNET, YES.

86

1 Q. WHAT ARE SOME OF THE EXAMPLES OF PLACES WHERE
2 IT'S POSSIBLE TO BUY YOUR WORK ONLINE?

3 A. I HAVE MY OWN WEBSITE, MARILYNJLEWIS.COM, WHERE
4 ALL OF MY BOOKS AND ANTHOLOGIES ARE AVAILABLE FOR SALE
5 THROUGH ONLINE BOOK STORES. I ALSO HAVE THE EROTIC
6 AUTHORS ASSOCIATION WEBSITE WHICH SELLS -- HAS LINKS TO
7 SALE FOR MY BOOKS AS WELL AS OTHER WRITERS' BOOKS.

8 Q. DO YOU PROVIDE SOME OF YOUR WORK FOR FREE
9 ONLINE?

10 A. GENERALLY ONLY AS EXCERPTS FOR SOMETHING THAT IS
11 CURRENTLY BECOMING AVAILABLE IN THE MARKETPLACE, AS AN
12 INCENTIVE TO GET READERS TO WANT TO BUY THE ENTIRE WORK.

13 Q. YOU MENTIONED EARLIER THAT YOU ARE THE DIRECTOR
14 OF AN ORGANIZATION CALLED THE EROTIC AUTHORS
15 ASSOCIATION. WHAT ARE YOUR RESPONSIBILITIES?

16 A. I DESIGNED THIS SITE, I FOUNDED THE COMPANY. I
17 MAINTAIN THE SITE, I DO ALL THE UPDATES. I DECIDE -- WE
18 ALSO PUBLISH E BOOKS OF OUR MEMBERS, FROM OUR MEMBERS,
19 AND I DECIDE WHICH BOOKS WE ARE GOING TO PUBLISH OR NOT
20 PUBLISH.

21 Q. I DON'T THINK I ASKED YOU, WHY DID YOU FOUND THE
22 EROTIC AUTHORS ASSOCIATION?

23 A. BECAUSE HISTORICALLY, EROTIC FICTION WRITERS
24 HAVE BEEN TREATED AS LESS THAN EQUAL OF ALL OF THE OTHER
25 GENRE FICTION WRITERS IN TERMS OF WHAT WE ARE PAID FOR

87

1 OUR WORK, EVEN THOUGH IT TAKES JUST AS LONG IF NOT
2 LONGER TO WRITE HIGH QUALITY EROTIC FICTION. I USED IT
3 HISTORICALLY, THE SCIENCE FICTION WRITERS AND THE HORROR
4 WRITERS BANDED TOGETHER, CREATED THEIR OWN WRITERS'
5 ORGANIZATION TO GIVE OUT AWARDS TO EACH OTHER TO HELP
6 RAISE THE PROFILE OF THE GENRE OVERALL IN THE OPINION OF
7 THE PUBLISHING MARKETPLACE AND READERS. I FELT THAT IF
8 WE FORMED OUR OWN ORGANIZATION, WE COULD ACCOMPLISH THE
9 SAME GOAL, ACHIEVEMENT.

10 Q. YOU MENTIONED WHEN YOU DESCRIBED THE EROTIC
11 AUTHORS ASSOCIATION EARLIER THAT IT HONORS LITERARY
12 MERIT AND ACHIEVEMENT. HOW DOES THE ORGANIZATION
13 PROMOTE THAT GOAL?

14 A. PRIMARILY WE GIVE OUT AWARDS. WE GIVE OUT
15 LIFETIME ACHIEVEMENT AWARDS TO WRITERS AS WELL AS
16 EDITORS AND PUBLISHERS. WE ALSO GIVE OUT AWARDS TO
17 INDIVIDUAL WRITERS FOR NOVELS, NONFICTION BOOKS, EDITORS
18 OF ANTHOLOGIES, POETRY, SCREENWRITERS, ANYONE WHO HAS
19 WRITTEN OUTSTANDING LITERATURE THAT HAS -- THAT INCLUDES
20 EROTIC, SOME EROTIC ELEMENT TO IT.

21 Q. I WOULD LIKE TO ASK YOU A FEW QUESTIONS ABOUT
22 MEMBERSHIP IN THE EROTIC AUTHORS ASSOCIATION. HOW DOES
23 A PERSON JOIN THE EROTIC AUTHORS ASSOCIATION?

24 A. THEY HAVE TO E-MAIL ME WITH A CHECKABLE
25 REFERENCE OF SOMETHING THAT THEY HAVE HAD PUBLISHED.

1 EITHER IN A PRINT, MAGAZINE, A BOOK OR ONLINE THAT IS

2 CONSIDERED EROTIC, AND THEN AT THAT POINT THEY CAN
3 BECOME A MEMBER.

4 Q. IS IT POSSIBLE TO BECOME A MEMBER AT ANY POINT?

5 A. RIGHT NOW, IT'S ONLY -- WE HAVE A MEMBERSHIP
6 DRIVE ONCE A YEAR BECAUSE IT GOT TO BE -- TOO MANY
7 PEOPLE WERE WANTING TO JOIN, AND I WASN'T GETTING MY
8 REGULAR WORK DONE.

9 Q. ARE THERE ANY DUES ASSOCIATED WITH IT?

10 A. NOT ANYMORE. IT USED TO BE \$20 A YEAR AND A LOT
11 OF WRITERS FOUND THAT PROHIBITIVE, SO WE DID AWAY WITH
12 THE MEMBERSHIP DUES IN ORDER TO GET AS MANY MEMBERS AS
13 WE COULD.

14 Q. ABOUT HOW MANY MEMBERS DOES THE ASSOCIATION
15 HAVE?

16 A. RIGHT NOW WE HAVE 225 MEMBERS, MOSTLY FROM THE
17 UNITED STATES, BUT ALSO FROM CANADA, ENGLAND, FRANCE,
18 NEW ZEALAND, AUSTRALIA, GERMANY, SPAIN, AND WE JUST HAD
19 A MEMBER JOIN FROM GREECE.

20 Q. COULD YOU OFFER A DESCRIPTION OF THE MEMBERSHIP?
21 WHO TENDS TO JOIN THE EROTIC AUTHORS ASSOCIATION?

22 A. WHEN WE FIRST LAUNCHED, IT WAS ESTABLISHED
23 WRITERS IN THE FIELD OF EROTICA AND THAT IS GAY,
24 STRAIGHT, BISEXUAL, FETISH, MORE SENSUAL AS WELL AS
25 EXPLICIT, BUT PEOPLE WHO WERE ESTABLISHED IN THE FIELD.

89

1 NOW THAT WE HAVE BEEN AROUND A WHILE, MOST OF OUR
2 MEMBERS ARE BRAND NEW WRITERS. THEY HAVE A NEW BOOK
3 COMING OUT, THEY WANT TO JOIN THE ORGANIZATION.

4 Q. DO MEMBERS OF THE EROTIC AUTHORS ASSOCIATION
5 HAVE BOOKS FOR SALE IN MAINLINE BOOK STORES?

6 A. YES. THEY DO.

7 Q. WHY WOULD SOMEONE JOIN THE EROTIC AUTHORS
8 ASSOCIATION?

9 A. IDEALLY BECAUSE THEY WANT TO BE PART OF OUR
10 COMMUNITY AND PROMOTE THE GOALS OF THE EAA IN TERMS OF
11 RAISING THE PROFILE OF EROTIC WRITERS AND HOW SERIOUS WE
12 ARE TAKEN BY PUBLISHERS. BUT IT'S ALSO A WAY FOR THEM
13 TO PROMOTE OR GET SOME KIND OF PUBLICITY FOR THEIR NEW
14 WORKS.

15 Q. ALL RIGHT. AND IN WHAT WAY DOES IT ALLOW THEM
16 TO GET PUBLICITY FOR THEIR NEW WORKS?

17 A. ONCE THEY BECOME A MEMBER, THEY GET LISTED ON
18 OUR MEMBERS' PAGE. THAT IS GOING TO INCLUDE LINKS
19 DIRECTLY TO THEIR BLOGS OR THEIR WEBSITES OR THEIR
20 NEWSLETTERS SO READERS CAN FIND OUT ABOUT THEM, GO TO
21 THEIR WEBSITE, PERHAPS PURCHASE THEIR BOOKS THROUGH
22 THOSE LINKS.

23 Q. WE TALKED EXTENSIVELY ABOUT THE EAA WEBSITE
24 ALREADY. I WANT TO ASK YOU A FEW MORE QUESTIONS ABOUT
25 IT. HOW WOULD AN INDIVIDUAL FIND THE EROTIC AUTHORS

90

1 ASSOCIATION WEBSITE?

2 A. PRIMARILY THROUGH A SEARCH ENGINE, PUTTING OUR
3 NAME OR EROTIC AUTHOR OR EROTICA IN THE SEARCH ENGINE OR
4 THEY MIGHT BE ON A WRITER'S SITE AND FIND -- IF THEY ARE
5 A MEMBER OF THE EAA THEY WILL FIND A LINK THERE, FIND

6 OUR SITE THROUGH THAT LINK.

7 Q. AND WHAT IS THE SPECIFIC ADDRESS OF THE
8 ASSOCIATION'S HOME PAGE?

9 A. EROTICAUTHORSASSOCIATION.COM.

10 Q. WHAT IS THE FIRST PAGE A USER WOULD SEE ON THE
11 EAA WEBSITE?

12 A. OUR HOME PAGE, WHICH GIVES AN OVERVIEW. RIGHT
13 NOW WE HAVE CURRENTLY LISTED THE HONOREES OF THE
14 LIFETIME ACHIEVEMENT AWARDS WHICH ARE COMING UP IN THE
15 SPRING OF 2007, A SAMPLE OF SOME OF THE E BOOKS THAT WE
16 PUBLISH BY OUR MEMBERS, ANY PERTINENT ANNOUNCEMENTS ANY
17 OF OUR MEMBERS HAVE, ESPECIALLY IF THEY ARE
18 TIME-SENSITIVE, THEY WILL BE LINKED ON THE HOME PAGE.
19 WE ALSO HAVE LINKS TO THE FEATURED FICTION SECTION, THE
20 MONTHLY INTERVIEW, BOOK REVIEWS. THERE ARE A COUPLE OF
21 LITERARY AWARDS FOR EROTIC WRITERS THAT ARE NOT
22 AFFILIATED WITH THE EAA, BUT LINKS TO THEM ARE LISTED
23 THERE FOR OUR MEMBERS AND THEN OUR ARCHIVES ARE ALL ON
24 THE HOME PAGE.

25 Q. LET'S DISCUSS THE CONTENT OF SOME OF THESE

91

1 SECTIONS. FIRST, YOU MENTIONED THAT THERE IS A SECTION
2 DEVOTED TO E BOOKS. COULD YOU OFFER SOME MORE
3 EXPLANATION OF WHAT THAT IS?

4 A. YES. IN JANUARY WE LAUNCHED AN E BOOK AND PRINT
5 ON DEMAND PUBLISHING COMPANY. PRIMARILY WE GET OUT OF
6 PRINT BOOKS FROM OUR MEMBERS THAT ARE NO LONGER
7 AVAILABLE IN THE BOOK STORE OR BRAND NEW BOOKS FROM

8 MEMBERS THAT THEY ARE KIND ENOUGH TO LET US HAVE. WE
9 PUBLISH THEM EITHER AS AN E BOOK OR A PRINT ON DEMAND
10 BOOK. WE TAKE A SMALL PERCENTAGE. 10 PERCENT OF EACH
11 SALE GOES TO FUND THE EAA AND THE REST OF IT GOES TO
12 THE -- IS AUTHOR'S ROYALTY.

13 Q. FOR THE SAKE OF CLARITY, PLEASE DESCRIBE WHAT IS
14 AN E BOOK.

15 A. IT'S AN ELECTRONIC DOWNLOADABLE MANUSCRIPT. YOU
16 CAN ALSO OPT TO, FOR A HIGHER PRICE, HAVE IT SENT TO YOU
17 AS A PRINTED BOOK.

18 Q. IS ANY OF THE CONTENT ON THE E BOOK SECTION OF
19 THE SITE SEXUALLY EXPLICIT?

20 A. YES. WE PROVIDE FREE PREVIEWS OF EACH OF THE
21 BOOKS THAT WE SELL WHICH WE -- THEY ARE SEXUALLY
22 EXPLICIT PREVIEWS.

23 Q. NOW, YOU MENTIONED ANOTHER SECTION OF THE SITE
24 CALLED THE FEATURED FICTION SITE SECTION, WHAT IS THAT?

25 A. EVERY MONTH WE CHOOSE EITHER AN EXCERPT FROM A

92

1 MEMBER WHO HAS A NOVEL COMING OUT OR THEY HAVE JUST
2 RECENTLY HAD A SHORT STORY PUBLISHED THAT WAS --
3 RECEIVED SOME SORT OF ACCLAIM AND WE WANT TO PUBLICIZE
4 IT ON THE SITE FOR VIEWERS TO BE ABLE TO READ.

5 Q. IS ANY OF THE CONTENT IN THE FEATURE FICTION
6 SECTION SEXUALLY EXPLICIT?

7 A. IT ALWAYS IS.

8 Q. YOU MENTIONED THAT THERE'S A MONTHLY INTERVIEW
9 SECTION?

10 A. YES.

11 Q. COULD YOU OFFER A LITTLE MORE EXPLANATION OF
12 WHAT THAT IS?

13 A. USUALLY IT'S THE AUTHOR OF -- A MEMBER WHO IS AN
14 AUTHOR OF A BOOK COMING OUT THAT THEY ARE LOOKING FOR
15 PUBLICITY FOR OR SOMETIMES IT IS JUST SOMEONE IN THE
16 FIELD THAT A MEMBER FEELS LIKE INTERVIEWING BECAUSE THEY
17 FEEL THAT THAT PERSON'S CAREER WOULD BE OF INTEREST TO
18 THE MEMBERS OF THE EAA. THERE IS ALWAYS SOMEBODY
19 CONNECTED, EITHER THE INTERVIEWER OR THE INTERVIEWEE OR
20 BOTH WHO ARE MEMBERS OF THE EAA.

21 Q. IS THAT CONTENT EVER SEXUALLY EXPLICIT?

22 A. IT MIGHT BE IF THEY ARE REFERENCING THE WORK.
23 USUALLY IT'S ABOUT THE PERSON AND THE PERSON'S CAREER,
24 THE WRITER, WHOEVER IS BEING INTERVIEWED.

25 Q. YOU MENTIONED EARLIER THAT THERE IS A MEMBER

93

1 WEBS AND BLOGS SECTION. COULD YOU GIVE US HOW MANY
2 MEMBERS' BLOGS OR WEBSITES ARE LISTED THERE?

3 A. I WOULD SAY OUT OF 225 MEMBERS PROBABLY AT LEAST
4 200, MAYBE 210 OF THOSE MEMBERS HAVE THEIR OWN BLOGS AND
5 WEBSITES THAT ARE LINKED TO THROUGH THAT PAGE.

6 Q. AND WHAT IS THE PURPOSE OF THOSE BLOGS AND
7 WEBSITES?

8 A. TO HELP GENERATE NEW READERS FOR THOSE WRITERS,
9 A WAY TO PUBLICIZE THE WRITER'S NEW WORKS OR EVEN OLD
10 WORKS THAT ARE NO LONGER AVAILABLE IN BOOKSTORES.

11 Q. I WOULD LIKE TO ASK YOU A COUPLE OF QUESTIONS

12 ABOUT THE EAA, READERSHIP OF THE WEBSITE. APPROXIMATELY
13 HOW MANY VISITORS COME TO THIS SITE?

14 A. ANYWHERE BETWEEN 1,500 AND 2000 UNIQUE VISITORS
15 PER NIGHT.

16 Q. AND CAN ANYONE READ THE EAA WEBSITE?

17 A. YES.

18 Q. IS THAT TRUE FOR ALL OF THE SECTIONS OF THE
19 SITE?

20 A. YES.

21 Q. DO VISITORS HAVE TO PROVIDE ANY INFORMATION
22 ABOUT THEMSELVES IN ORDER TO VIEW MATERIAL ON THE SITE?

23 A. NO.

24 Q. AS THE OPERATOR OF THE SITE, ARE YOU ABLE TO
25 TELL WHETHER A PARTICULAR VISITOR IS A MINOR OR AN

94

1 ADULT?

2 A. NO.

3 Q. DO VISITORS HAVE TO PAY TO VIEW MATERIAL ON THE
4 EAA WEBSITE?

5 A. NO.

6 Q. DO YOU HAVE ANY WARNINGS ON THE WEBSITE?

7 A. THERE IS ONE SMALL FOR ADULTS ONLY MENTION,
8 PRIMARILY GOING INTO THE E BOOK SECTION.

9 Q. WHY DID YOU PLACE THAT ON THE SITE?

10 A. I FELT IT WAS THE RIGHT THING TO DO, TO WARN
11 PEOPLE THAT THERE WAS GOING TO BE MORE SEXUALLY EXPLICIT
12 WRITING AVAILABLE IN THAT SECTION OF THE WEBSITE.

13 Q. FORGIVE ME IF WE HAVE COVERED THIS ALREADY, BUT

14 DOES THE EAA MAKE MONEY?
15 A. VERY LITTLE, BUT IT DOES. IT WILL MAKE 10
16 PERCENT OF EVERY E BOOK THAT WE SELL.
17 Q. AND IS THAT THE PRIMARY SOURCE OF REVENUE, THE E
18 BOOK?
19 A. RIGHT NOW IT IS, YES.
20 Q. WHAT IS THE RELATIONSHIP BETWEEN THE REVENUE
21 GENERATED BY THE E BOOK PROJECT AND THE AMOUNT OF
22 TRAFFIC THAT COMES TO THE SITE?
23 A. I'M SORRY. WHAT WAS THAT QUESTION?
24 Q. YOU MENTIONED THAT -- YOU KNOW, I WILL WITHDRAW
25 THE QUESTION.

95

1 A. OKAY.
2 Q. ARE YOU FAMILIAR WITH THE CHILD ON-LINE
3 PROTECTION ACT?
4 A. YES.
5 Q. ARE YOU FAMILIAR WITH ITS USE OF THE PHRASE
6 "HARMFUL TO MINORS" AND ITS DEFINITION OF THAT PHRASE?
7 A. I READ IT, YES.
8 Q. DO YOU KNOW WHAT SPEECH IS HARMFUL TO MINORS
9 UNDER THE LAW?
10 A. NOT REALLY ANY SPECIFIC SPEECH.
11 Q. WHY NOT?
12 A. I THINK IT'S SUBJECTIVE.
13 THE COURT: WHAT? PARDON ME?
14 THE WITNESS: SUBJECTIVE. I THINK THAT
15 THE TERM "MINOR" IS ACTUALLY SUBJECTIVE.

16 BY MS. CRUMP:

17 Q. DO YOU HAVE AN UNDERSTANDING OF WHAT IT MEANS
18 FOR SPEECH TO BE PATENTLY OFFENSIVE WITH RESPECT TO
19 MINORS?

20 A. NO.

21 Q. DO YOU HAVE AN UNDERSTANDING OF WHAT IT MEANS
22 FOR SPEECH TO BE PRURIENT WITH RESPECT TO MINORS?

23 A. NO.

24 Q. DO YOU HAVE AN UNDERSTANDING OF WHAT THE LAW
25 MEANS WHEN IT REFERS TO SPEECH TAKEN, THAT TAKEN AS A

96

1 WHOLE, LACKS SERIOUS, LITERARY, ARTISTIC, POLITICAL OR
2 SCIENTIFIC VALUE FOR MINORS?

3 A. NO.

4 Q. DO YOU BELIEVE THAT ANY OF THE CONTENT ON THE
5 EAA WEBSITE MIGHT BE CONSIDERED HARMFUL TO MINORS?

6 A. YES.

7 Q. WHY?

8 A. BECAUSE IT'S SEXUALLY EXPLICIT, AND I KNOW THAT
9 THERE ARE MEMBERS OF THE COMMUNITY OR SOCIETY IN GENERAL
10 THAT FEEL THAT ANYTHING SEXUALLY EXPLICIT IS NOT
11 APPROPRIATE FOR MINORS.

12 Q. DOES ANY OF THE MATERIAL ON YOUR WEBSITE EVER
13 DEPICT OR DESCRIBE AN ACTUAL OR SIMULATED SEXUAL ACT OR
14 SEXUAL CONTACT, AN ACTUAL OR SIMULATED NORMAL OR
15 PERVERTED SEXUAL ACT OR A LEWD EXHIBITION OF THE
16 GENITALS OR POST-PUBESCENT FEMALE BREAST?

17 MS. ULRICH: OBJECTION TO THE EXTENT THIS

18 CALLS FOR A LEGAL CONCLUSION, YOUR HONOR.

19 THE COURT: CALLS FOR WHAT?

20 MS. ULRICH: TO THE EXTENT THAT THIS
21 CALLS FOR A LEGAL CONCLUSION, DEFENDANT OBJECTS.

22 THE COURT: THERE IS NOTHING IN THE
23 QUESTION THAT SUGGESTS ONE WAY OR THE OTHER WHETHER IT
24 IS LEGAL.

25 MS. ULRICH: OTHER THAN THE QUOTATION OF

97

1 THE STATUTE. I WOULD JUST LIKE THE RECORD TO REFLECT
2 THAT ANY ANSWER WOULD NOT BE A LEGAL ANSWER.

3 THE COURT: I AGREE WITH YOU, BUT THE
4 QUESTION DOES NOT SAY ONE WAY OR ANOTHER. OVERRULED. I
5 DON'T VIEW HER ANSWER AS BEING LEGAL. SHE IS NOT A
6 LAWYER. SHE IS NOT HERE AS A LEGAL EXPERT. I DON'T
7 THINK IT'S A PERMISSIBLE INFERENCE FROM HER TESTIMONY.
8 BY MS. CRUMP:

9 Q. DO YOU REMEMBER THE QUESTION OR WOULD YOU
10 LIKE --

11 THE COURT: LONG QUESTION. DO IT AGAIN
12 PLEASE.

13 MS. CRUMP: I WILL RESTATE IT.

14 BY MS. CRUMP:

15 Q. DOES ANY OF THE MATERIAL ON YOUR WEBSITE DEPICT
16 OR DESCRIBE AN ACTUAL OR SIMULATED SEXUAL ACT OR SEXUAL
17 CONTACT?

18 A. YES.

19 Q. HOW ABOUT AN ACTUAL OR SIMULATED NORMAL OR

20 PERVERTED SEXUAL ACT?

21 A. YES.

22 Q. HOW ABOUT A LEWD EXHIBITION OF THE GENITALS OR
23 POST-PUBESCENT FEMALE BREAST.

24 A. YES.

25 Q. DO YOU BELIEVE THAT THE CONTENT OF YOUR WEBSITE

98

1 IS VALUABLE FOR ADULTS?

2 A. YES.

3 Q. WHY?

4 A. BECAUSE I FEEL THAT IN PARTICULAR WITH ADULTS,
5 SEXUALITY IS A DIFFICULT SUBJECT. IT'S HIGHLY
6 COMPARTMENTALIZED, ESPECIALLY IN LITERATURE. OUR SITE
7 SHOWS THE NUMBER OF WRITERS WHO TAKE HUMAN SEXUALITY
8 SERIOUSLY AND ALSO LITERATURE SERIOUSLY AND INCORPORATE
9 HUMAN SEXUALITY IN STORYTELLING THAT I THINK IS
10 BENEFICIAL TO ADULTS WHO ENJOY READING.

11 Q. LET'S NOW TAKE A LOOK AT SOME OF THE CONTENT ON
12 THE EAA WEBSITE. WOULD YOU PLEASE OPEN THE BINDER THAT
13 IS IN FRONT OF YOU AND REFER TO THE DOCUMENT THAT HAS
14 BEEN PREVIOUSLY MARKED AS PLAINTIFFS' EXHIBIT 52. IT'S
15 THE ONLY DOCUMENT IN THE BINDER.

16 A. OKAY.

17 Q. DO YOU RECOGNIZE THIS DOCUMENT?

18 A. YES, I DO.

19 Q. WHAT IS IT?

20 A. IT'S AN EXCERPT FROM ETERNAL BONDAGE, A NOVEL
21 WRITTEN BY MARIA ISABEL PITA, P-I-T-A. SHE IS ONE OF OUR

22 MEMBERS, A POPULAR EROTIC ROMANCE NOVELIST AS WELL AS
23 NOVELS OF FEMALE SEXUAL SUBMISSIVENESS.

24 Q. I THINK IT MIGHT BE HELPFUL TO START AT A MORE
25 GENERAL LEVEL.

99

1 COULD YOU TAKE A MOMENT TO FLIP THROUGH
2 THE EXHIBIT AND TELL ME GENERALLY WHAT THESE PAGES ARE?

3 THE COURT: BEYOND THE FACT THAT SHE SAID
4 IT IS AN EXCERPT FROM A BOOK.

5 MS. CRUMP: YES.

6 THE WITNESS: THESE ARE SEVERAL EXCERPTS
7 FROM A COUPLE OF DIFFERENT BOOKS THAT WE PUBLISH AS E
8 BOOKS.

9 BY MS. CRUMP:

10 Q. ARE THESE EXCERPTS AVAILABLE ON YOUR WEBSITE?

11 A. THE EXCERPTS, YES. THE ONE BY MARIA HERE WAS
12 ALSO PART OF A FEATURED FICTION EXCERPT AT ONE POINT A
13 COUPLE OF MONTHS AGO. AND THEN THIS EXCERPT FROM
14 LESBIAN CAMP GIRLS, WHICH IS CALLED LCG.

15 Q. ALL RIGHT. IN A MOMENT WE WILL GO THROUGH THESE
16 PAGES MORE SPECIFICALLY, BUT AS A GROUP, ARE THEY
17 ACCURATE COPIES OF PAGES ON YOUR WEBSITE?

18 A. YEAH. YEAH.

19 Q. ALL RIGHT.

20 WHY DON'T WE LOOK AT THE FIRST ONE, THE
21 FIRST STORY IN THE COLLECTION WHICH IS PLAINTIFFS'
22 EXHIBIT 52 BEGINNING ON PAGE 1.

23 A. OKAY.

24 Q. COULD YOU REMIND ME -- YOU ALREADY MENTIONED IT,
25 BUT REMIND ME OF THE NAME OF THE AUTHOR?

100

1 A. MARIA ISABEL PITA.

2 THE COURT: IS THIS EXCERPT LIMITED TO
3 ONE PAGE?

4 MS. CRUMP: THIS EXCERPT IS PAGES 1
5 THROUGH 7, YOUR HONOR.

6 THE COURT: THANK YOU.

7 BY MS. CRUMP:

8 Q. WHERE ON THE EAA WEBSITE IS THIS EXCERPT
9 LOCATED?

10 A. RIGHT NOW, YOU COULD FIND IT IN THE FEATURED
11 FICTION ARCHIVES AS WELL AS I BELIEVE IT'S A FREE
12 PREVIEW OF THE ACTUAL E BOOK.

13 Q. AND DID YOU PLACE THIS STORY ON THE EAA WEBSITE?

14 A. YES, I DID.

15 Q. AND WHAT IS THE STORY ABOUT?

16 A. IT'S ABOUT A WOMAN WHO IS RECENTLY WIDOWED. SHE
17 HAVE TAKES A TRIP TO EGYPT WHERE SHE BELIEVES SHE
18 ENCOUNTERS THE GHOST OF HER DEAD HUSBAND AND GETS
19 INVOLVED IN A SEXUALLY OBSESSIVE RELATIONSHIP WITH THE
20 GHOST OF HER DEAD HUSBAND. IT HAPPENS TO TAKE PLACE IN
21 THE PYRAMIDS AND PLACES IN EGYPT.

22 Q. DO YOU THINK THIS STORY IS VALUABLE FOR ADULTS?

23 A. YEAH. I DO.

24 Q. WHY?

25 A. BECAUSE IT'S A VERY WELL WRITTEN NOVEL. IT'S

1 VERY ENTERTAINING AND ORIGINAL AND IT'S A FUN BOOK.

2 Q. DO YOU THINK THAT OTHERS MIGHT CONSIDER THE
3 STORY HARMFUL TO MINORS?

4 MS. ULRICH: OBJECTION. CALLS FOR
5 SPECULATION, HEARSAY.

6 MS. CRUMP: IT'S A STATE OF MIND
7 QUESTION.

8 THE COURT: WHAT'S YOUR RESPONSE?

9 MS. CRUMP: YOUR HONOR, I'M NOT ASKING
10 FOR THE TRUTH OF THE MATTER. MERELY ASKING FOR THE
11 STATE OF MIND OF THE WITNESS, WHETHER SHE FEARS THAT
12 OTHERS WOULD CONSIDER THIS EXCERPT HARMFUL TO MINORS.

13 MS. ULRICH: IT CALLS FOR SPECULATION AS
14 WELL, YOUR HONOR.

15 THE COURT: OVERRULED.

16 THE WITNESS: YES.

17 BY MS. CRUMP:

18 Q. WHY?

19 A. BECAUSE IT'S SEXUALLY EXPLICIT AND IT'S DEALING
20 WITH A TYPE OF SEXUALITY THAT MIGHT BE CONSIDERED
21 EXTREME.

22 Q. ALL RIGHT.

23 NOW, MISS LEWIS, I WOULD LIKE YOU TO
24 INDICATE A PARTICULAR PASSAGE WITHIN THIS EXCERPT THAT
25 UNDERLIES YOUR CONCERNS, AND WITHOUT READING THE

1 PASSAGE, COULD YOU INDICATE THE PAGE ON WHICH IT IS

2 LOCATED AND PERHAPS REFERENCE WHERE ON THE PAGE IT IS
3 LOCATED?

4 A. WELL, I GUESS, ON PAGE 3, THE SECOND PARAGRAPH
5 AT THE TOP: HER LIPS SLOWLY AND REVERENTLY SHEATHED
6 MARK'S SILKY FORCE, WOULD BE ONE OF THOSE PASSAGES.

7 MS. CRUMP: YOUR HONOR, RATHER THAN HAVE
8 THE WITNESS READ THE ENTIRE PASSAGE, I WOULD LIKE TO
9 PAUSE FOR A MOMENT.

10 THE COURT: RATHER THAN HAVE HER READ IT,
11 YOU WHAT?

12 MS. CRUMP: I WOULD LIKE TO PAUSE FOR A
13 MOMENT TO OFFER YOU AND OTHERS TO HAVE THE OPPORTUNITY
14 TO READ IT.

15 MS. ULRICH: TO THE EXTENT PLAINTIFFS'
16 COUNSEL IS ASKING THE COURT TO READ THINGS, I THINK IT
17 SHOULD BE PUT IN THE RECORD EXACTLY WHAT IS BEING READ.

18 THE COURT: THIS IS NOT IN EVIDENCE YET,
19 FOR ONE THING.

20 I ASSUME PLAINTIFFS' EXHIBIT 52, PAGE
21 0003 WITH A DATE OF PRINTING OF SEPTEMBER 28TH, 2006.
22 THE TOP OF THE PAGE IS THE FIRST FULL PARAGRAPH. THAT'S
23 PINPOINT REFERENCE TO THAT MATERIAL. DO YOU MEAN TO
24 INCLUDE IN YOUR REFERENCE, MISS CRUMP, THE ENTIRE
25 PARAGRAPH?

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1 THE WITNESS: YES.

2 MS. CRUMP: IN TERMS OF -- IF I'M
3 UNDERSTANDING RIGHT WHAT SHE THINKS IS A PASSAGE THAT IS

4 INDICATIVE OF WHAT I THINK MIGHT BE OFFENSIVE TO SOME
5 READERS.

6 THE COURT: I GUESS THAT IS THE QUESTION.

7 MS. CRUMP: YES.

8 THE COURT: I JUST WANT TO KNOW IF IT IS
9 THE ENTIRE PARAGRAPH.

10 MS. CRUMP: YES, YOUR HONOR.

11 THE COURT: THANK YOU.

12 BY MS. CRUMP:

13 Q. WHY DON'T WE TURN TO THE SECOND STORY IN THIS
14 COLLECTION WHICH BEGINS ON -- WHICH IS PLAINTIFFS'
15 EXHIBIT 52 BEGINNING ON THE PAGE BATES STAMPED 8.

16 THE COURT: 008.

17 MS. CRUMP: YES. WHERE ON THE EAA SITE
18 IS THIS STORY LOCATED?

19 THE WITNESS: AGAIN, THIS WAS FEATURED
20 FICTION A FEW MONTHS AGO SO IT WOULD BE IN THE FEATURED
21 FICTION ARCHIVES. IT IS ALSO AN EXCERPT, A FREE EXCERPT
22 OF ONE OF THE E BOOKS THAT WE OFFER.

23 BY MS. CRUMP:

24 Q. AND DID YOU PLACE THIS STORY ON THE EAA SITE?

25 A. YES.

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1 Q. WHAT IS THIS STORY ABOUT?

2 A. THIS IS CALLED LESBIAN CAMP GIRLS. IT IS
3 WRITTEN BY ONE OF OUR MEMBERS WHOSE PEN NAME IN THIS
4 INSTANCE IS FORBES MURRAY.

5 THE COURT: WHAT IS THE FIRST NAME?

6 THE WITNESS: FORBES, F-O-R-B-E-S. AND
7 THIS IS HIS HOMAGE REALLY TO THE PORNOGRAPHIC NOVELS
8 FROM THE EARLY '70S. IT'S WRITTEN IN THAT STYLE. IT IS
9 SPECIFICALLY A PLAY ON THAT GENRE OF EROTICA, BUT IT'S
10 ALSO WELL WRITTEN. IT'S A SATIRE, BASICALLY.

11 BY MS. CRUMP:

12 Q. DO YOU CONSIDER THE STORY VALUABLE TO ADULTS?

13 A. I DO, ESPECIALLY IF YOU ARE INTERESTED IN ALL
14 DIFFERENT TYPES OF EROTICA OR THE OLDER STYLE OF EROTIC
15 NOVELS THAT USED TO BE POPULAR.

16 Q. DO YOU BELIEVE THAT OTHERS MAY CONSIDER THIS
17 STORY HARMFUL TO MINORS?

18 A. YES.

19 Q. WHY?

20 A. BECAUSE IT'S ABOUT GIRLS WHO GO AWAY TO CAMP AND
21 DISCOVER THAT THEY ARE LESBIANS.

22 Q. WOULD YOU PLEASE INDICATE FOR THE COURT A
23 SPECIFIC PASSAGE THAT MAKES YOU FEARFUL OF PROSECUTION?

24 A. PROBABLY JUST PART WAY DOWN THE PAGE THERE.

25 Q. WE ARE REFERRING TO PAGE PLAINTIFFS' EXHIBIT 52

105

1 PAGE 8?

2 A. I THINK THAT --

3 THE COURT: LET'S IDENTIFY THE PARAGRAPH
4 OR PARAGRAPHS.

5 THE WITNESS: WELL, MY EYE JUST WENT TO
6 THE ONE THAT WAS THE SIXTH ONE DOWN, NO, 7: THEN CASEY
7 PULLED LISA'S HEAD DOWN AGAIN AND FIT HER NIPPLE INTO

8 LISA'S MOUTH, SUCK IT, PLEASE, BREATHED THE BLONDE.
9 THAT WHOLE PARAGRAPH.

10 THE COURT: 7TH PARAGRAPH FROM THE TOP.
11 52, PAGE 0008.

12 BY MS. CRUMP:

13 Q. LET'S TURN TO THE THIRD EXCERPT WHICH BEGINS ON
14 PAGE 11 OF PLAINTIFFS' EXHIBIT 52. WHERE ON THE EAA
15 WEBSITE IS THIS STORY LOCATED?

16 A. THIS IS AN EXCERPT FROM A BOOK CALLED HOTTER
17 THAN HELL THAT WE NOW HAVE THE RIGHTS TO, WE PUBLISH AS
18 E BOOK OR PRINT ON DEMAND. THIS IS A BOOK WRITTEN BY A
19 LONGTIME WRITER OF GAY MALE EROTICA NAMED SIMON
20 SHEPHARD. THIS WAS AN AWARD-WINNING BOOK. WE GAVE HIM
21 THE AWARD, IN FACT, AS THE BEST SINGLE AUTHOR ANTHOLOGY
22 OF EROTICA BACK IN 2002, I BELIEVE.

23 Q. I'M SORRY, I THINK I -- DID YOU MENTION WHERE ON
24 THE WEBSITE THIS IS LOCATED?

25 A. AS A FREE PREVIEW IN THE E BOOK SECTION. WE NOW

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1 OWN THE RIGHTS TO PRINT IT ELECTRONICALLY.

2 Q. DID YOU PLACE THIS STORY ON THE EAA WEBSITE?

3 A. YES, I DID.

4 Q. WHAT IS THE STORY ABOUT?

5 A. THIS PARTICULAR STORY IS ABOUT A GAY MAN WHO
6 BECOMES OBSESSED WITH MESSAGES, ANONYMOUS MESSAGES THAT
7 ARE BEING LEFT ON HIS ANSWERING MACHINE, ANONYMOUS
8 SEXUALLY EXPLICIT MESSAGES THAT ARE BEING LEFT ON HIS
9 ANSWERING MACHINE. I THINK THE ENTIRE STORY IS CALLED

10 BEEP. I'M NOT POSITIVE OF THAT.

11 THE COURT: ENTIRE STORY WHAT?

12 I DIDN'T HEAR WHAT YOU SAID. THE ENTIRE
13 STORY WHAT?

14 THE WITNESS: I THINK IT IS CALLED BEEP,
15 THE TITLE OF THE ENTIRE SHORT STORY.

16 BY MS. CRUMP:

17 Q. DO YOU THINK THIS STORY IS VALUABLE FOR ADULTS?

18 A. I DO. IT IS EXTREMELY WELL WRITTEN. THE ENTIRE
19 BOOK IS A VERY WELL WRITTEN COLLECTION OF GAY MALE
20 EROTICA.

21 Q. DO YOU THINK THAT OTHERS MIGHT CONSIDER THIS
22 STORY HARMFUL TO MINORS?

23 MS. ULRICH: OBJECTION. CALLS FOR
24 SPECULATION.

25 THE COURT: OVERRULED.

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1 THE WITNESS: YES, BECAUSE IT DEALS NOT
2 ONLY WITH SEXUAL EXPLICITNESS, BUT GAY MALE SEXUAL
3 EXPLICITNESS.

4 BY MS. CRUMP:

5 Q. CAN YOU INDICATE A SPECIFIC PASSAGE THAT
6 UNDERLIES YOUR FEAR?

7 A. I GUESS EVEN THE TOP OPENING PARAGRAPH THERE:
8 THE NEXT DAY HE SPENDS MUCH OF THE AFTERNOON THINKING
9 ABOUT GETTING HOME FROM WORK AND CHECKING HIS ANSWERING
10 MACHINE. THE HOURS CRAWL BY. HE IS SO HORNY HE HAS TO
11 GO INTO THE MEN'S ROOM AND BEAT OFF. WITHIN A HALF-HOUR

12 HE IS HORNY AGAIN.

13 Q. THAT WAS THE FIRST PARAGRAPH ON PAGE 11,
14 CORRECT?

15 A. YEAH.

16 Q. LET'S TURN TO THE FINAL EXCERPT WHICH BEGINS ON
17 PAGE 13 OF PLAINTIFFS' EXHIBIT 52. WHERE ON THE EAA
18 SITE IS THIS EXCERPT LOCATED?

19 A. THIS IS A FREE PREVIEW OF AN E BOOK THAT WE SELL
20 ON THE SITE WRITTEN BY MICHAEL HEMMINGSON WHO IS ONE OF
21 THE TOP HETEROSEXUAL EROTIC FICTION WRITERS IN
22 PUBLISHING RIGHT NOW.

23 Q. DID YOU PLACE THIS STORY ON THE EAA SITE?

24 A. YES.

25 Q. WHAT IS THE STORY ABOUT?

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1 A. THIS IS ABOUT A MAN WHO IS RECALLING ALL THE
2 VARIOUS WOMEN HE HAS HAD SEXUAL RELATIONSHIPS WITH WHERE
3 THEY HAD ANAL SEX.

4 Q. DO YOU THINK THIS STORY IS VALUABLE FOR ADULTS?

5 A. I DO. IT'S REALLY WELL WRITTEN AND IT SHOWS HOW
6 YOU CAN TAKE -- WHAT CAN BE DONE WITH EROTICA WHEN YOU
7 ARE AT THE TOP OF YOUR CRAFT.

8 Q. COULD YOU -- DO YOU THINK THAT THIS STORY MIGHT
9 BE CONSIDERED -- LET ME TRY THAT AGAIN.

10 DO YOU THINK THAT OTHERS MIGHT CONSIDER
11 THIS STORY HARMFUL TO MINORS?

12 A. ABSOLUTELY.

13 Q. WHY?

14 A. BECAUSE IT'S EXPLICIT SEXUAL WRITING ABOUT ANAL
15 SEX.

16 Q. COULD YOU PLEASE INDICATE A PARTICULAR PASSAGE
17 WHICH IS THE BASIS OF YOUR FEAR?

18 A. I GUESS EVEN STARTING AT THE SECOND PARAGRAPH OR
19 LINE: I WANT YOU IN ME, SHE SAID, BUT, SHE SAID, WILL
20 YOU LICK MY ASSHOLE A LITTLE BIT BEFORE? THAT AND
21 EVERYTHING ELSE.

22 Q. ARE THE PAGES WE'VE REVIEWED GENERALLY
23 INDICATIVE OF THE CONTENT AVAILABLE ON THE EROTIC
24 AUTHORS ASSOCIATION WEBSITE?

25 A. YES.

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1 Q. DO YOU UNDERSTAND THAT UNDER COPA A WEBSITE CAN
2 ESTABLISH AN AFFIRMATIVE DEFENSE AGAINST PROSECUTION BY
3 PLACING CONTENTS BEHIND A CREDIT CARD OR OTHER AGE
4 VERIFICATION SCREEN?

5 A. YES.

6 Q. HOW WOULD PUTTING UP SUCH A SCREEN -- WELL,
7 FIRST OF ALL, WOULD PUTTING UP SUCH A SCREEN IMPACT EAA?

8 A. YES, BECAUSE IT'S TOO EXPENSIVE FOR ME TO HAVE
9 IT DONE.

10 Q. HOW DO YOU KNOW THAT?

11 A. WELL, I'VE ALREADY DONE A NUMBER OF OTHER
12 WEBSITES. MARILYNSROOM.COM, DOTTAHOUSE.COM.
13 MASQUERADEBOOKS.COM, EROTICBOOKSSOCIETY.COM, WHERE WE
14 DID HAVE PROGRAMMING IN PLACE THAT HANDLED CREDIT CARD
15 VERIFICATION AND IT WAS EXTREMELY EXPENSIVE.

16 Q. HOW WOULD PUTTING UP A SCREEN AFFECT THE EAA
17 WEBSITE?

18 A. I WOULD NOT BE ABLE TO AFFORD IT. I DO THE
19 ENTIRE SITE MYSELF, BASICALLY BECAUSE I CAN'T AFFORD TO
20 HAVE ANY PROGRAMMERS. SO IF IT GOES BEYOND MY ABILITY,
21 WHICH IS PRETTY OUTDATED; I STOPPED STUDYING HTML AND
22 THAT KIND OF THING BACK IN PROBABLY ABOUT 2000. IF IT
23 GOES BEYOND MY CAPABILITIES, I CAN'T AFFORD TO HIRE
24 ANYBODY TO DO IT FOR ME.

25 Q. AND TO BE CLEAR, REFERRING BACK TO THE EXCERPTS

110

1 WE REVIEWED EARLIER, DO YOU FEAR PROSECUTION UNDER COPA
2 BECAUSE OF THOSE EXCERPTS?

3 A. ABSOLUTELY, YEAH.

4 Q. AND WHAT WOULD YOU DO IF COPA WERE TO GO INTO
5 EFFECT?

6 A. I WOULD CLOSE DOWN THE SITE THE MINUTE I FIND
7 OUT THAT IT WENT INTO EFFECT.

8 Q. WHY?

9 A. BECAUSE I'M NOT IN EROTICA WRITING AND
10 PUBLISHING TO CHALLENGE ANY LAWS OR ANY, FOR ANY
11 POLITICAL REASONS. I DO IT FOR EMOTIONAL AND CREATIVE
12 REASONS, AND I CAN'T AFFORD TO FIGHT ANY PROSECUTION AND
13 I DON'T WANT TO GO TO JAIL.

14 MS. CRUMP: YOUR HONOR, MAY I HAVE A
15 MINUTE TO CONFER WITH MY CO-COUNSEL?

16 THE COURT: YES.

17 MS. CRUMP: PLAINTIFFS WOULD LIKE TO MOVE

18 EXHIBIT 52 INTO EVIDENCE.

19 THE COURT: ANY OBJECTION?

20 MS. ULRICH: NO OBJECTION, YOUR HONOR.

21 THE COURT: P 52 IS RECEIVED INTO

22 EVIDENCE.

23 (P 52 ADMITTED INTO EVIDENCE.)

24 MS. CRUMP: WE HAVE NO FURTHER QUESTIONS,

25 YOUR HONOR.

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1 THE COURT: CROSS EXAMINE.

2 MS. ULRICH: VERY BRIEFLY, YOUR HONOR.

3 THE COURT: PROMISES, PROMISES.

4 MS. ULRICH: I THINK I CAN KEEP TO THIS

5 PROMISE, YOUR HONOR.

6 CROSS EXAMINATION

7 BY MS. ULRICH:

8 Q. YOU MENTIONED IN YOUR TESTIMONY -- I'M SORRY.

9 GOOD MORNING. MY NAME IS TAMARA ULRICH. I'M AN

10 ATTORNEY FOR THE DEPARTMENT OF JUSTICE IN THIS CASE.

11 YOU MENTIONED EARLIER IN YOUR TESTIMONY

12 THAT THE EROTIC AUTHORS ASSOCIATION LAUNCHED A

13 PUBLISHING COMPANY IN JANUARY, AND DO I UNDERSTAND

14 CORRECTLY THAT THIS IS FOR SALES OF BOOKS?

15 A. YES.

16 THE COURT: WHICH BOOK ARE YOU TALKING

17 ABOUT?

18 MS. ULRICH: SALES OF BOOKS OF THE EROTIC

19 AUTHORS ASSOCIATION, YOUR HONOR.

20 THE COURT: EXCUSE ME.

21 BY MS. ULRICH:

22 Q. AND THROUGH THAT PROCESS THE EROTIC AUTHORS
23 ASSOCIATION ACCEPTS CREDIT CARDS FOR THE PURPOSE OF
24 THOSE BOOKS ONLINE, DOESN'T IT?

25 A. NO. WE USE A PUBLISHING SITE CALLED LULU.COM

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1 THAT HANDLES ALL THE DOWNLOADS, TRANSACTIONS AND
2 SHIPPING OF ALL OF THE E BOOKS OR PRINT ON DEMAND BOOKS.

3 Q. SO DO I UNDERSTAND CORRECTLY THAT THE EROTIC
4 AUTHORS ASSOCIATION DOES NOT SELL BOOKS ON ITS OWN
5 WEBSITE?

6 A. WE SELL THE LINKS TO THOSE BOOKS. LULU.COM DOES
7 NOT ALLOW DIRECT LINKS OF ANY ADULT CONTENT ON THE
8 LULU.COM SITE, SO THE ONLY WAY ANYBODY COULD FIND THE
9 BOOK OR PURCHASE IT WOULD BE THROUGH THE LINKS THAT ARE
10 ON THE EAA E BOOK SITE.

11 Q. BUT YOU DO NOT SELL THE BOOKS THEMSELVES ON THE
12 WEBSITE, CORRECT?

13 A. RIGHT.

14 MS. ULRICH: NO FURTHER QUESTIONS, YOUR
15 HONOR.

16 MS. CRUMP: NO REDIRECT, YOUR HONOR.

17 THE COURT: MISS LEWIS, YOU ARE EXCUSED
18 FROM THE STAND.

19 THE WITNESS: OKAY.

20 THE COURT: LEAVE THE PAPERS BEHIND
21 UNLESS THEY BELONG TO YOU. BE CAREFUL GETTING DOWN,

22 PLEASE.

23 (WITNESS EXCUSED.)

24 THE COURT: NEXT WITNESS, PLEASE.

25 MR. HANSEN: YOUR HONOR, UNFORTUNATELY

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1 THAT WAS THE LAST WITNESS WE HAVE FOR TODAY. WE HAVE
2 PLANNED FOR THIS AFTERNOON TO DO DEPOSITION DESIGNATIONS
3 READINGS. BUT WE THOUGHT WE WOULD RUN TO 12:30 WITH THE
4 WITNESSES. I APOLOGIZE. WE WILL BE READY AT 1:30. WE
5 CAN BE READY EARLIER IF YOU WANT TO START READING
6 DEPOSITION DESIGNATIONS.

7 THE COURT: LET'S TALK A LITTLE BIT ABOUT
8 THAT. WE WILL GET TO THE TIMING LATER.

9 WHICH DEPOSITIONS DO YOU PLAN TO READ?

10 MR. HANSEN: I'M NOT CERTAIN OF THAT,
11 YOUR HONOR. I BELIEVE CINGULAR IS THE FIRST ONE WE ARE
12 INTENDING TO READ. BOTH COUNSEL FOR THE PLAINTIFFS AND
13 COUNSEL FOR THE DEFENDANTS HAVE BEEN DISCUSSING THIS
14 MORNING, AS I UNDERSTAND IT, OUTSIDE OF THE COURT, ALL
15 OF THE VARIOUS OBJECTIONS THAT EACH OF THE PARTIES HAS,
16 TRYING TO RESOLVE AS MANY OF THOSE AS POSSIBLE. WHAT WE
17 WOULD LIKE TO DO IS PRESENT AS MANY AS POSSIBLE WHERE
18 THERE ARE NOT OBJECTIONS BEFORE WE GET INTO THE MORE
19 PROBLEMATIC ONES.

20 THE COURT: DO YOU THINK CINGULAR IS
21 VIRTUALLY READY TO GO?

22 MR. HANSEN: YES, WE DO.

23 MR. GOMEZ: NO, YOUR HONOR. IT IS MY

24 UNDERSTANDING IS THAT CINGULAR HAS AN OBJECTION TO ONE
25 ITEM THAT WE HAD COUNTERDESIGNATED, AND WE HAVE BEEN

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1 TRYING TO REACH THEM, BUT THEY HAVE NOT BEEN RETURNING
2 OUR CALLS. NOW, WE ARE STILL TRYING TO REACH THEM THIS
3 MORNING BUT THEY --

4 THE COURT: THEY DID NOT FILE A MOTION
5 FOR PROTECTIVE ORDER?

6 MR. HANSEN: THEY DID NOT, YOUR HONOR.

7 MR. GOMEZ: I WANT TO MAKE CLEAR ON THE
8 RECORD. THEY HAD CONTACTED US, WE HAD CALLED THEM BACK
9 BUT WE HAVE NOT BEEN ABLE TO GET BACK WITH THEM.

10 THE COURT: JUST ASSUMING FOR THE MOMENT
11 YOU CAN'T RESOLVE THAT BY WHENEVER WE RESUME, WHAT WOULD
12 THE NEXT DEPOSITION BE?

13 MR. HANSEN: I APOLOGIZE, YOUR HONOR.
14 I'VE FORGOTTEN WHAT THE NEXT ONE IS LINED UP. I KNOW
15 THAT I WAS ADVISED THIS MORNING THAT WE HAVE FOUR OR
16 FIVE THAT I THINK ARE READY TO GO, SO I DON'T THINK WE
17 WILL HAVE A PROBLEM FILLING THE AFTERNOON.

18 THE COURT: WELL, I JUST WANT -- WHAT YOU
19 JUST SAID A LITTLE WHILE AGO IS A GOOD EXAMPLE. YOU
20 SAID CINGULAR IS PROBABLY READY TO GO.

21 MR. HANSEN: AND I WAS WRONG.

22 THE COURT: THAT IS WHY I DON'T WANT TO
23 COME HERE WHEN WE RESUME AND FIND OUT WE ARE GOING TO
24 SPEND ALL THIS TIME. SOMETHING CAN BE DONE OVER THE
25 MID-DAY BREAK TO SOLVE SOME OF THE GLITCHES THAT MAY BE

1 HERE. I WOULD LIKE YOU TO BRING BEFORE THE COURT THE
2 LAWYER THAT CAN TELL US THE ANSWER.

3 MR. HANSEN: I WILL DO THAT, YOUR HONOR.
4 I APOLOGIZE FOR NOT HAVING HIM HERE THIS MORNING.

5 THE COURT: IS THERE SOMEONE HERE THAT
6 YOU CAN TALK TO?

7 MR. HANSEN: UNFORTUNATELY NOT. THE
8 LAWYER WHO HAS BEEN WORKING ON THAT IS NOT IN THE
9 COURTHOUSE AT THE MOMENT.

10 THE COURT: ALL RIGHT. THEN WE WILL BE
11 BACK AT 1:15. WE ARE IN RECESS UNTIL 1:15. WE ARE OFF
12 THE RECORD. COUNSEL ARE EXCUSED.

13 (LUNCH BREAK TAKEN.)

14 AFTERNOON SESSION

15 THE CLERK: ALL RISE. COURT IS NOW IN
16 SESSION.

17 THE COURT: HELLO, EVERYONE.

18 ALL COUNSEL: GOOD AFTERNOON, YOUR HONOR.

19 THE COURT: WELCOME TO THE FRAY. MISS
20 WHITE, HOW ARE YOU?

21 THE COURT REPORTER: GOOD.

22 MR. HANSEN: HOPEFULLY, YOUR HONOR, WE
23 HAVE A MORE EFFICIENT FRAY THIS AFTERNOON THAN WE HAD
24 THIS MORNING.

25 THE COURT: EXCEPT FOR MR. HANSEN, YOU

1 ARE ALL WELCOME TO BE SEATED.

2 MR. HANSEN: WE HAVE, I BELIEVE AS MANY
3 AS FIVE DEPOSITION DESIGNATIONS THAT WE CAN DO THIS
4 AFTERNOON. I THINK WE CAN START WITH CHOICEPOINT. I
5 DON'T THINK THERE ARE ANY PROBLEMS WITH READING THE
6 CHOICEPOINT DEPOSITION AS OUR FIRST DEPOSITION.

7 THE COURT: I HAVEN'T LOOKED BEHIND ANY
8 OF THESE ARRANGEMENTS WITH THE THIRD PARTIES. I ASSUME
9 THEY ARE TAKEN CARE OF AND YOU ARE NOT ASKING THE COURT
10 FOR ANY RULINGS.

11 MR. HANSEN: YES. CHOICEPOINT IS THE
12 PARTY THAT DID APPEAR BEFORE YOUR HONOR.

13 THE COURT: WE DID HAVE A HEARING AND I
14 CAJOLED EVERYBODY INTO AN AGREEMENT.

15 MR. HANSEN: WE HAVE -- THE READINGS THAT
16 WILL BE DONE, WILL BE CONSISTENT WITH THE AGREEMENT THAT
17 THE PARTIES REACHED AT THAT POINT.

18 THE COURT: DO YOU WANT TO START WITH
19 CHOICEPOINT? DO YOU HAVE A READER?

20 MR. VAN KWAWEGEN: YES. I WANTED TO
21 INTRODUCE THEM TO YOUR HONOR. WE HAVE ELON DOBBS AND
22 PAUL SERRITELLA.

23 THE COURT: GOOD AFTERNOON, GENTLEMEN.

24 MR. SERRITELLA: GOOD AFTERNOON.

25 MR. DOBBS: GOOD AFTERNOON.

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1 THE COURT: DOBBS, D-O-B-B-S?

2 MR. VAN KWAWEGEN: YES. MR. DOBBS IS

3 GOING TO BE ASKING THE QUESTIONS. MR. SERRITELLA WILL
4 BE PROVIDING THE ANSWERS. MR. DOBBS WILL INDICATE FOR
5 EACH SECTION OF THE TRANSCRIPT WHO DESIGNATED THE
6 TRANSCRIPT IN THE FIRST PLACE. AND WITH YOUR HONOR'S
7 POSITION, I WOULD LIKE TO GIVE YOUR HONOR A COLOR-CODED
8 COPY, IN CASE YOU WOULD LIKE TO READ ALONG.

9 THE COURT: FINE.

10 MR. VAN KWAWEGEN: IF I CAN GIVE YOU THE
11 TWO.

12 THE COURT: JUST PUT IT ON THE DESK
13 THERE. IS THIS THE WHOLE AFTERNOON OR IS THIS ONE
14 WITNESS?

15 MR. VAN KWAWEGEN: THAT IS JUST THE
16 FIRST, YOUR HONOR. WE ARE NOT READING THE ENTIRE
17 TRANSCRIPT OBVIOUSLY INTO THE RECORD BUT WE THOUGHT IT
18 WOULD BE A GOOD IDEA IF WE GAVE YOUR HONOR THE ENTIRE
19 TRANSCRIPT.

20 THE COURT: SURE.

21 MR. VAN KWAWEGEN: THE FIRST DEPOSITION
22 WILL BE THE DESIGNATIONS FROM THE DEPOSITION OF KEN
23 MEISER, M-E-I-S-E-R, FROM CHOICEPOINT. THIS WAS A
24 DEPOSITION THAT WAS TAKEN ON MARCH 29, 2006.

25 THE COURT: WILL YOU GIVE ME A VERY

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1 ABBREVIATED OFFER OF PROOF? THAT IS, WHO THIS MR.
2 MEISER WAS, HIS ORGANIZATION AND THE GIST OF WHAT YOU
3 EXPECT TO SHOW.

4 MR. VAN KWAWEGEN: MR. MEISER WORKS FOR A

5 COMPANY THAT WAS REFERRED TO EARLIER IN THESE
6 PROCEEDINGS AS A DVS COMPANY, A DATA VERIFICATION
7 SERVICE. CHOICEPOINT, GENERALLY SPEAKING, ACCUMULATES
8 DATA AND OFFERS SERVICES TO MERCHANTS WHO WOULD LIKE TO
9 VERIFY THAT DATA AGAINST THE DATABASES THAT CHOICEPOINT
10 HAS ACCESS TO. WE BELIEVE THAT IT IS DIRECTLY RELEVANT
11 FOR THE AFFIRMATIVE DEFENSES THAT ARE AT ISSUE IN THIS
12 CASE, YOUR HONOR. I COULD EXPAND IF YOUR HONOR WOULD
13 LIKE TO HEAR ADDITIONAL INFORMATION.

14 THE COURT: THAT IS GOOD ENOUGH. I
15 WANTED THE GIST OF WHAT'S HAPPENING. I THINK WHEN THE
16 WITNESS IS NOT GIVING TESTIMONY, I WANT THE WITNESS TO
17 AFFIRM TO THE COURT THAT YOU WILL HONESTLY AND TRULY
18 READ THE ANSWERS TO THE QUESTIONS.

19 MR. VAN KWAWEGEN: I SHALL.

20 THE COURT: THANK YOU.

21 MR. VAN KWAWEGEN: YOUR HONOR, THE FIRST
22 DESIGNATION IS ON PAGE 7, LINES 15 THROUGH 19. IT WAS
23 DESIGNATED BY THE PLAINTIFFS.

24 THE COURT: LET ME GET ORIENTED TO THIS
25 PACKAGE, WHERE THE PAGE NUMBERS ARE AND SO FORTH. WHERE

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1 ARE THE PAGE NUMBERS?

2 THE AUDIENCE: ON THE TOP LEFT-HAND
3 CORNER, YOUR HONOR.

4 THE COURT: HERE THEY ARE.

5 MR. DOBBS: LINE 15. IT WAS DESIGNATED
6 BY THE PLAINTIFFS.

7 THE COURT: WHEN YOU START A PAGE OR A
8 READING THAT IS CONTIGUOUS, ANNOUNCE THE CONTIGUOUS
9 LINES AND PAGES. YOU MIGHT HAVE ONE THAT RUNS OVER INTO
10 THE NEXT PAGE. IF YOU CAN SAY PAGE 7, LINES 15 THROUGH
11 19, AND IT'S AN ANNOUNCEMENT, THEN WE CAN GO AHEAD AND
12 DO THE READING.

13 MR. DOBBS: YES.

14 THE COURT: WILL YOU DO THAT, PLEASE.

15 MR. DOBBS: YES, YOUR HONOR.

16 Q. AND WHAT IS YOUR CURRENT POSITION?

17 A. I'M THE VICE-PRESIDENT OF PRODUCT DEVELOPMENT
18 FOR CHOICEPOINT PUBLIC RELATIONS.

19 Q. HOW LONG HAVE YOU BEEN AT CHOICEPOINT?

20 A. IT WILL BE SIX YEARS IN JUNE.

21 MR. DOBBS: PAGE 29, LINES 8 THROUGH 17
22 DESIGNATED BY THE DEFENDANT.

23 Q. SIR, DO YOU HAVE ANY CUSTOMERS WHO USE YOUR AGE
24 VERIFICATION SERVICE TO HELP THEM VERIFY THE AGE OF AN
25 END USER WHO IS SEEKING TO USE -- TO GAIN ACCESS TO

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1 THEIR WEBSITE?

2 A. I HAVE CUSTOMERS WHO USE AGE VERIFICATION TO
3 DETERMINE WHETHER OR NOT SOMEONE CAN REGISTER TO
4 INTERACT WITH THEM, BUT THE WEBSITE EXISTS SOLELY AS A
5 MEANS FOR REGISTRATION, NOT FOR ANY ONGOING CUSTOMER
6 RELATIONSHIP OR CONTENT DISTRIBUTION.

7 MR. DOBBS: PAGE 29 LINE 25, THROUGH PAGE
8 30, LINE 5. DESIGNATED BY THE PLAINTIFFS.

9 Q. DO YOU HAVE ANY CUSTOMERS WHO USE YOUR AGE
10 VERIFICATION SERVICE FOR THE PURPOSE OF VERIFYING THE
11 AGE OF AN END USER ON THEIR WEBSITE THAT SEEKS TO OBTAIN
12 ACCESS TO CONTENT ON THEIR WEBSITE?

13 A. NO.

14 MR. DOBBS: PAGE 34, LINE 14 THROUGH PAGE
15 35, LINE 23, DESIGNATED BY THE DEFENDANT.

16 Q. BACK TO EXHIBIT 3. ON PAGE 10, THAT'S BATES
17 NUMBERED 10, CAN YOU JUST READ PARAGRAPH 6 TO YOURSELF.
18 HAVE YOU FINISHED?

19 A. YES, I HAVE.

20 Q. I WOULD LIKE TO FOCUS IN ON THE LAST TWO
21 SENTENCES. CAN YOU JUST READ THOSE INTO THE RECORD FOR
22 ME?

23 A. SUBSCRIBER ACKNOWLEDGES THAT CHOICEPOINT PUBLIC
24 RELATIONS IS PROVIDING DATA TO SUPPORT SUBSCRIBER'S OWN
25 PROCESSES AND DECISIONS AND SUBSCRIBER'S CUSTOMERS

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1 SHOULD NOT BE DENIED ANY SERVICE OR ACCESS BASED SOLELY
2 ON THE DATA OR RESULTS PROVIDED BY CHOICEPOINT PUBLIC
3 RELATIONS. SUBSCRIBER IS RESPONSIBLE FOR ANY DENIAL OF
4 SERVICES OR ACCESS TO ITS CUSTOMER, AND SUBSCRIBER WILL
5 NOT DENY SUCH SERVICE OR ACCESS WITHOUT FIRST CONDUCTING
6 AN APPROPRIATE REVIEW AND ADJUDICATION PROCESS.

7 Q. WHY IS IT THAT THIS SAYS THAT SUBSCRIBER'S
8 CUSTOMERS SHOULD NOT BE DENIED ANY SERVICE OR ACCESS
9 BASED SOLELY ON DATA OR RESULTS PROVIDED BY CPPR?

10 A. REPEAT THE QUESTION.

11 Q. SURE.

12 MR. DOBBS: PAGE 35, LINE 24 THROUGH PAGE
13 37, LINE 3, DESIGNATED BY THE PLAINTIFF.

14 Q. IT SAYS -- THE PART OF THE SENTENCE THAT SAYS,
15 "SUBSCRIBER'S CUSTOMERS SHOULD NOT BE DENIED ANY SERVICE
16 OR ACCESS BASED SOLELY ON DATA OR RESULTS PROVIDED BY
17 CPPR," WHY IS IT THAT A SUBSCRIBER'S CUSTOMER -- WHICH I
18 THINK IS ALSO AN END USER -- IS THAT RIGHT? IS THAT THE
19 SAME AS WE HAVE BEEN USING THOSE TERMS?

20 A. THAT'S A FAIR --

21 Q. WHY IS IT THAT AN END USER SHOULD NOT BE DENIED
22 ANY SERVICE OR ACCESS BASED SOLELY ON DATA OR RESULTS
23 PROVIDED BY CHOICEPOINT?

24 A. BECAUSE THESE ARE PUBLIC RECORDS AND BECAUSE WE
25 ARE AWARE OF THE POTENTIAL FOR INACCURACIES WITHIN

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1 PUBLIC RECORDS. WHAT WE ARE TRYING TO SAY HERE IS THAT
2 WE DON'T WANT OUR DETERMINATION TO BE THE FINAL ANSWER
3 IN ANY SITUATION LIKE THIS.

4 AND SO WHAT I BELIEVE THAT WE ARE
5 ESSENTIALLY ASKING FOR HERE IS FOR THE CUSTOMER TO SET
6 UP AN EXCEPTION PROCESS TO ALLOW FOR REVIEW AND
7 ADJUDICATION ON THEIR SIDE. IF OUR RESULTS COME BACK
8 EITHER AS -- IN THE CASE OF AGE VERIFICATION, FOR
9 EXAMPLE, AS A NO, I DON'T AGREE THAT THAT IS HIS DATE OF
10 BIRTH, OR I AM UNABLE TO VALIDATE THE DATE OF BIRTH ON
11 THIS INDIVIDUAL. AND ALL OF THE CUSTOMERS THAT I HAVE
12 TODAY HAVE AN EXCEPTION PROCESS WHICH THEY HAVE PUT IN

13 PLACE TO ALLOW ALTERNATE ACCESS TO THE SERVICES THAT
14 THEY PROVIDE.

15 MR. DOBBS: PAGE 37, LINE 22, THROUGH
16 PAGE 39, LINE 1, DESIGNATED BY THE PLAINTIFFS.

17 Q. WHEN YOU SAID YOU WERE AWARE FOR POTENTIAL OF
18 INACCURACIES WITHIN PUBLIC RECORDS, CAN YOU EXPAND ON
19 THAT AWARENESS?

20 A. IT IS POSSIBLE FOR ANY GIVEN RECORD RECEIVED
21 FROM A PUBLIC PROVIDER TO NOT BE ACCURATE EITHER THROUGH
22 CLERICAL ERROR OR THROUGH MISREPRESENTATION BY THE
23 INDIVIDUAL WHEN THE -- WHEN THE TRANSACTION WAS MADE OR
24 FOR ANY NUMBER OF REASONS.

25 Q. CAN YOU THINK OF ANY OTHERS?

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1 A. I THINK I WOULD CLASSIFY THEM AS EITHER
2 INADVERTENT ERRORS OR WILLFUL MANIPULATION OF THE DATA
3 AT THE TIME THE SERVICES WERE PROVIDED.

4 Q. WHAT WOULD BE AN EXAMPLE OF AN INADVERTENT
5 ERROR? BY WHOM? LET'S START THERE.

6 A. AN EXAMPLE WOULD BE A KEYPUNCHING ERROR, TO
7 DETERMINE THAT -- FOR EXAMPLE, IT TRANSPOSED LETTERS IN
8 MY LAST NAME.

9 Q. AND THAT KEYPUNCHING COULD HAVE BEEN DONE BY
10 WHOM?

11 A. IT WOULD HAVE BEEN DONE AT THE TIME THAT THE
12 RECORD WAS SOURCED.

13 Q. SO, IF, FOR EXAMPLE, WE'RE TALKING ABOUT A
14 VOTING RECORD, AND IT'S THE PERSON AT THE MUNICIPALITY

15 THAT INPUTTED THE INFORMATION, THERE COULD HAVE BEEN A
16 KEYPUNCHING ERROR AT THAT STAGE?

17 A. THAT IS A GOOD EXAMPLE.

18 Q. THAT WOULD RESULT IN -- THAT IS AN EXAMPLE OF A
19 POTENTIAL FOR INACCURACY?

20 A. THAT'S CORRECT.

21 MR. DOBBS: PAGE 40, LINE E, THROUGH PAGE
22 41 LINE 12, DESIGNATED BY THE PLAINTIFFS.

23 Q. STICKING WITH THE INADVERTENT ERRORS. ASIDE
24 FROM THE KEYPUNCHING ERROR THAT WE DISCUSSED, CAN YOU
25 THINK OF ANY OTHERS THAT YOU KNOW OF OR THAT YOU CAN

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1 THINK OF?

2 A. CERTAINLY. IN THE COURSE OF RECORDS PROCESSING
3 AND RECORDS TRANSFER, INFORMATION CAN BECOME GARBLED. A
4 GOOD EXAMPLE OF THIS IS FUNCTIONS AROUND THINGS LIKE
5 ADDRESS STANDARDIZATION COULD CONCEIVABLY REMOVE UNIT
6 NUMBERS FROM RECORDS AS THEY ARE LOADED. I MEAN, THE
7 FORMATTING OF THAT DATA COULD -- COULD CAUSE A
8 PROCESSING ERROR AT SOME POINT OR OTHER, SO THAT THE
9 RECORD THAT WENT IN ONE SIDE OF THE MUNICIPAL SYSTEM AND
10 THE RECORD THAT WAS EXPORTED OUT THE OTHER SIDE OF THAT
11 MUNICIPAL SYSTEM MIGHT HAVE CHANGED DURING THE COURSE OF
12 WHATEVER INTERNAL PROCESSING THAT MUNICIPALITY HAD DONE.

13 Q. IT SEEMS LIKE THERE IS SORT OF A WAY THAT
14 DISCUSSIONS MIGHT BE IN SOME SENSE CHRONOLOGICALLY THE
15 INFORMATION GETS INPUTTED AT THE MUNICIPALITY AS AN
16 EXAMPLE AND THERE'S AN INTERNAL PROCESSING AT THE

17 MUNICIPALITY OF THAT INFORMATION, RIGHT?

18 A. CORRECT.

19 Q. AND IN BOTH INSTANCES, THERE IS POTENTIAL FOR
20 INADVERTENT ERRORS?

21 A. CORRECT.

22 Q. WHAT ABOUT WHEN THAT INFORMATION IS THEN
23 COMMUNICATED TO CHOICEPOINT, IS THERE A POTENTIAL FOR
24 INADVERTENT ERRORS IN THAT PROCESS?

25 A. ARE YOU ASKING ME IF IT'S POSSIBLE THAT I CAN

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1 -- THAT MY SYSTEMS CAN MAKE A MISTAKE?

2 Q. YES.

3 A. CERTAINLY IT'S POSSIBLE.

4 MR. DOBBS: PAGE 41, LINES 13 THROUGH 15,
5 DESIGNATED BY DEFENDANT.

6 Q. AND DO YOU HAVE A SENSE OF HOW OFTEN THAT
7 MISTAKE IS MADE?

8 A. IT'S VERY RARE BUT IT EXISTS.

9 MR. DOBBS: PAGE 41, LINE 23 THROUGH PAGE
10 43, LINE 1, DESIGNATED BY THE DEFENDANT.

11 Q. HOW ABOUT IN THE SEARCH OF YOUR SYSTEM WHEN
12 THESE SORT OF AGE VERIFICATION ACTIVITIES ARE UNDERWAY,
13 HOW ABOUT IN THAT PROCESS, IS THERE A POSSIBILITY OF
14 INADVERTENT ERROR AT THAT POINT?

15 A. I THINK THAT THERE IS ALWAYS A POSSIBILITY.
16 HOWEVER, IN THAT CIRCUMSTANCE, WHAT YOU WOULD NOT SEE IS
17 AN ISSUE WHERE AN ERROR TOOK PLACE ONLY OCCASIONALLY.
18 WHAT YOU WOULD SEE IS A GENERALIZED ERROR. COMPUTERS DO

19 THE SAME THING THE SAME WAY EVERY TIME, BECAUSE THE
20 PROGRAM HAS BEEN WRITTEN THAT WAY. AND SO IF THERE WAS
21 AN ERROR, IT WOULD -- IT WOULD MANIFEST ITSELF VERY,
22 VERY QUICKLY AND BE VISIBLE. IN ADDITION TO THAT, AS WE
23 BUILD OUR PROGRAMS, WE HAVE A PRETTY RIGOROUS DISCIPLINE
24 AROUND THE CONCEPT OF VALIDATING AGAINST A SET OF
25 BUSINESS REQUIREMENTS WHICH WERE ORIGINALLY LAID OUT,

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1 AND QUALITY ASSURANCE TESTING, WHICH SAYS, IS WHAT WAS
2 ASKED FOR ACTUALLY WHAT WAS DELIVERED, TO INCLUDE, YOU
3 KNOW, KNOWN TEST CASES, TO MAKE SURE THAT THE END RESULT
4 THAT YOU WERE LOOKING FOR HAPPENS WHEN THE PROCESS IS
5 RUN, AS WELL AS TESTING WHICH WOULD TAKE PLACE -- THAT
6 WOULD TAKE UNKNOWN CASES, RUN THOSE THROUGH THE SYSTEM,
7 THE ALGORITHMS IN THE SYSTEM, PRODUCE A SET OF RESULTS
8 AND THEN HAVE SOMEONE GO BACK AND MANUALLY VERIFY, BY
9 LOOKING THROUGH THE DATA, WHETHER OR NOT THEY AGREED
10 WITH THE RESULTS AS THEY CAME OUT.

11 MR. DOBBS: PAGE 43, LINE 2, THROUGH PAGE
12 44, LINE 16, DESIGNATED BY THE PLAINTIFFS.

13 Q. WHEN WE'RE TALKING ABOUT THE POTENTIAL FOR
14 ERRORS, BEFORE YOU HAD BROKEN IT DOWN TO INADVERTENT AND
15 INTENTIONAL. WHERE IS THE POTENTIAL FOR INTENTIONAL
16 ERRORS?

17 A. CLEARLY THERE IS KNOWN FRAUD AND
18 MISREPRESENTATION IN THOSE DATA SETS.

19 Q. IN THOSE DATA SETS, WHEN YOU SAY "THOSE DATA
20 SETS, END QUOTE, YOU MEAN THE DATA THAT YOU'RE ACCESSING

21 WHEN YOU PERFORM THE AGE VERIFICATION ACTIVITY?

22 A. THAT'S CORRECT.

23 Q. CAN YOU BE MORE SPECIFIC OF THE KNOWN FRAUD?

24 A. WELL, AGAIN, THIS IS AN EXTREMELY RARE INSTANCE.

25 AND WE HAVE LOAD AND HYGIENE PROCESSES WHICH WOULD FLAG

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1 THOSE RECORDS, WHICH ARE ESSENTIALLY TELLING US
2 SOMETHING WHICH IS DEMONSTRABLY DIFFERENT FROM SOMETHING
3 THAT WE HAD KNOWN BEFORE. FOR EXAMPLE, RECORDS WHICH
4 ARE RECEIVED FROM THE CONSUMER REPORTING AGENCIES, IF I
5 ATTEMPT TO APPLY FOR A CREDIT CARD, IF I'M STEALING
6 SOMEONE'S IDENTITY AND ATTEMPT TO APPLY FOR A CREDIT
7 CARD AND PLACE A NEW ADDRESS ASSOCIATED WITH A KNOWN
8 INDIVIDUAL'S SOCIAL SECURITY NUMBER AND DATE OF BIRTH
9 AND NAME, THEN IT'S POSSIBLE THAT THAT INCORRECT ADDRESS
10 COULD CONCEIVABLY MAKE ITS WAY INTO THE CONSUMER
11 REPORTING AGENCY DATA AND THEREFORE BE PASSED TO
12 CHOICEPOINT.

13 Q. CAN YOU THINK OF ANY OTHER EXAMPLES OF KNOWN
14 SORT OF INTENTIONAL MISREPRESENTATION OF FACTS THAT CAN
15 MAKE IT INTO THE DATA POOL INTO WHICH CHOICEPOINT DIPS
16 INTO VERIFYING AGE?

17 A. I THINK THAT THERE'S PROBABLY A NUMBER OF OTHER
18 SIMILAR EXAMPLES, BUT THE EXAMPLE THAT I HAVE PROVIDED
19 IN ASSOCIATION WITH THE CREDIT CARD APPLICATION IS A
20 PROCESS WHICH COULD BE REPLICATED, TO USE YOUR PREVIOUS
21 EXAMPLE, AT A VOTER REGISTRATION OFFICE. THE SAME LOGIC
22 COULD CONCEIVABLY APPLY.

23 MR. DOBBS: PAGE 46, LINE 4 THROUGH 19,
24 DESIGNATED BY THE PLAINTIFF.

25 Q. IN THOSE SITUATIONS, ONCE THE AGE IS VERIFIED,

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1 TO YOUR KNOWLEDGE, NOTHING ELSE IS DONE REGARDING
2 WHETHER OR NOT THE END USER IS THE AGE HE OR SHE OR IT
3 HAS CLAIMED TO BE?

4 A. NOT BY CHOICEPOINT.

5 Q. OR TO YOUR KNOWLEDGE, THE CUSTOMERS OF
6 CHOICEPOINT?

7 A. I DON'T HAVE INSIGHT INTO ALL OF THE INTERNAL
8 BUSINESS PROCESSES OF MY CUSTOMER.

9 Q. I'M JUST ASKING YOU, TO YOUR KNOWLEDGE, THAT
10 THIS EXCEPTION PROCESS, TO YOUR KNOWLEDGE, I THOUGHT YOU
11 SAID BEFORE, DOESN'T EXIST.

12 A. I'M NOT AWARE THAT ANY CUSTOMER, ANY SUBSCRIBER
13 OF CHOICEPOINT, REQUIRES ANY FURTHER VERIFICATION OF
14 PROCESSING IN REGARDS TO THE AGE OF AN INDIVIDUAL ONCE
15 WE HAVE VERIFIED THAT AGE.

16 MR. DOBBS: PAGE 51, LINE 20 THROUGH PAGE
17 54, LINE 14.

18 Q. I THINK YOU SAID EARLIER --

19 THE COURT: DESIGNATED BY THE PLAINTIFFS?

20 MR. DOBBS: DESIGNATED BY THE PLAINTIFFS,
21 YOUR HONOR.

22 Q. I THINK YOU SAID EARLIER -- AND I DON'T MEAN TO
23 PUT WORDS IN YOUR MOUTH, BUT I RECALL YOU SAYING

24 SOMETHING ALONG THE LINES THAT YOU WOULD ENTERTAIN

25 OPPORTUNITIES TO PROVIDE AGE VERIFICATION SERVICES AND

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1 PART OF THAT ANALYSIS BY CHOICEPOINT WOULD DEPEND ON THE
2 LIABILITY ASSOCIATED WITH THE POTENTIAL CUSTOMER.

3 A. WHAT I BELIEVE I SAID THERE WAS -- THAT WE WOULD
4 EVALUATE ANY CUSTOMER ON THE CONDITIONS PRESENT AT THAT
5 CUSTOMER. AND THOSE CONDITIONS COULD INCLUDE ANY -- TO
6 AMPLIFY ON THAT, THOSE CONDITIONS COULD INCLUDE THE
7 FINANCIAL VALUE OF THE DEAL, THE FINANCIAL STABILITY OF
8 THE ENTITY, THE BACKGROUND OF THE PRINCIPALS AND WHETHER
9 OR NOT THEY COULD PASS OUR CUSTOMER CREDENTIALING AND
10 SCREENING REQUIREMENTS THAT HAVE BEEN IMPOSED UPON US BY
11 THE PEOPLE WE LICENSE DATA FROM, AS WELL AS OUR OWN
12 INTERNAL DECISIONS ABOUT WHO WE WANT TO DO BUSINESS
13 WITH.

14 AND THEN AS REGARDS THE LIABILITY
15 QUESTION, WHETHER OR NOT THEY WERE LOOKING FOR US TO
16 ASSUME A GREATER LIABILITY THAN POTENTIALLY IS LAID OUT
17 HERE IN THE SUBSCRIBER AGREEMENT.

18 Q. YOU SAID THE TYPE OF CUSTOMER THAT YOU WOULD
19 WANT TO DO BUSINESS WITH. CAN YOU REPEAT HIS ANSWER?
20 WHAT DID YOU MEAN WHEN YOU SAID "INTERNAL DECISIONS
21 ABOUT WHO WE WANT TO DO BUSINESS WITH"?

22 A. LET ME USE AN EXAMPLE. WE, IN OUR CUSTOMER
23 CREDENTIALING PROCESSES, WILL NOT DO BUSINESS WITH A
24 CUSTOMER WHOSE LOCATION WE CANNOT PHYSICALLY VERIFY, WHO
25 IS NOT -- WHO DOES NOT PROVIDE US WITH VALID BUSINESS

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1 LICENSES OR ARTICLES OF INCORPORATION.

2 Q. ANYTHING ELSE?

3 A. WE HAVE A -- WE HAVE A WIDE VARIETY OF
4 CREDENTIALING PROCESSES IN ORDER TO BECOME A CUSTOMER OF
5 CHOICEPOINT. THOSE -- THOSE CREDENTIALING PROCESSES ARE
6 STANDARDIZED AND AREN'T SOMETHING THAT ARE SPECIFIC, TO
7 MY KNOWLEDGE, TO AGE VERIFICATION CLIENTS VERSUS BANKING
8 AND FINANCE CLIENTS VERSUS PEOPLE WHO ARE USING OUR
9 ONLINE INVESTIGATIVE TOOLS.

10 Q. DO YOU KNOW OF ANY OTHERS -- DO YOU KNOW ANY OF
11 THE OTHER STANDARDIZED CREDENTIALS?

12 A. THERE IS A VERY, VERY LONG CHECKLIST THAT OUR
13 FOLKS GO THROUGH IN TERMS OF WHAT DOCUMENTATION NEEDS TO
14 BE PROVIDED IN ORDER TO BECOME A CHOICEPOINT CUSTOMER.
15 I CAN'T -- I CAN'T, OFF THE TOP OF MY HEAD, COME UP WITH
16 THAT LIST, NOR CAN I COME UP WITH ANY OTHER EXAMPLES OF
17 THINGS THAT I THINK THAT WE GATHER.

18 MR. DOBBS: PAGE 64, LINE 23, TO PAGE 68,
19 LINE 11, DESIGNATED BY THE PLAINTIFFS.

20 Q. CHOICEPOINT HAS OVER (BLANK) RECORDS OF
21 DATABASES THAT IT USES IN A VARIETY OF SERVICES TO MEET
22 THE NEEDS OF ITS CUSTOMER AND THE CUSTOMERS. LISTED
23 BELOW ARE THE DATE SOURCES THAT AGE VERIFICATION
24 SERVICES USES. DID I READ THAT CORRECTLY?

25 A. I THINK YOU SAID CUSTOMERS AND CUSTOMERS TWICE.

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1 CUSTOMER AND THE CONSUMERS.

2 Q. IT SAYS: "LISTED BELOW ARE THE DATE SOURCES

3 THAT THE AGE VERIFICATION SERVICES USES." CORRECT?

4 A. YES.

5 Q. AND THEN IT LISTS CERTAIN SOURCES, TRUE?

6 A. YES.

7 Q. CAN YOU JUST READ WHAT THOSE SOURCES ARE? NO
8 NEED TO READ THE DESCRIPTION OF THEM. JUST TELL ME WHAT
9 THE SOURCES ARE.

10 A. CONSUMER REPORTING AGENCIES, COMPOSITE DATA.
11 THOSE ARE THE MAIN CATEGORIES. DID YOU WANT ME TO GO
12 DETAILED BELOW THAT?

13 Q. WELL, I SEE IT LISTS THE OTHER PUBLIC RECORDS.
14 IS THAT ALL PART OF COMPOSITE DATA? IS THAT WHY YOU
15 STOPPED READING?

16 A. I ORIGINALLY READ THAT AS THAT, BUT YOU'RE
17 CORRECT. CONSUMER REPORTING AGENCIES, COMPOSITE DATA,
18 OTHER PUBLIC RECORDS AND OTHER PUBLIC RECORDS.

19 Q. IS THIS A FAIR ASSEMBLY OF ALL OF THE SOURCES OF
20 DATA THAT THE AVS USES?

21 A. YES. MY ONLY COMMENT TO THIS IS THAT THE OTHER
22 PUBLIC RECORDS IS REALLY A SUBCOMPONENT OF THE COMPOSITE
23 DATA FILE. SO I WOULD -- I WOULD SAY THAT YOU HAVE
24 CONSUMER REPORTING AGENCIES, COMPOSITE DATA AND OTHER
25 PUBLIC RECORDS. AND THE COMPOSITE DATA IS COMPRISED OF

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1 SOURCES WHICH INCLUDE DATA AND OTHER PUBLIC RECORDS.

2 Q. ARE THERE ANY OTHER -- I REALIZE I ASKED YOU IF
3 THIS IS A FAIR ASSEMBLY. BUT LET ME ASK IT ANOTHER WAY.
4 DO YOU KNOW OF ANY OTHER SOURCES THAT THE AGE

5 VERIFICATION SERVICE USES?

6 A. THIS DOCUMENT IS A COMPLETE LISTING, TO MY
7 KNOWLEDGE.

8 Q. CAN YOU READ FOR ME WHAT THE CONSUMER REPORTING
9 AGENCIES ARE?

10 A. CHOICEPOINT OBTAINS CREDIT HEADER AND CREDIT
11 HEADER-LIKE DATA FROM REDACTED, REDACTED AND REDACTED.
12 THE INFORMATION CONTAINED WITHIN THESE DATA SOURCES IS
13 NAME, ADDRESS, PHONE, SOCIAL SECURITY NUMBER, IN SOME
14 CASES, AND DOB IN SOME CASES. THE MAJORITY OF THIS DATA
15 IS PROTECTED BY GLB PERMISSIBLE USES.

16 Q. WHAT ARE GLB PERMISSIBLE USES?

17 A. I THINK IF YOU LOOK A COUPLE OF PARAGRAPHS
18 ABOVE, WE TALK ABOUT RESTRICTIONS. GLB IS THE
19 GRAMM-LEACH-BLILEY ACT, WHICH GOVERNS THE USE OF CERTAIN
20 DATA FROM CREDIT REPORT AGENCIES AND PERMISSIBLE USE OF
21 THE DATA.

22 Q. AND THESE -- WE'LL CALL THEM THREE CATEGORIES OF
23 SOURCES, RIGHT?

24 A. (NODS HEAD.)

25 Q. DO THEY COLLECTIVELY HAVE INFORMATION ON THE

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1 DATES OF BIRTHS OF INDIVIDUALS?

2 A. YES.

3 Q. DO THEY HAVE ALL OF THE DATE OF BIRTH OF
4 INDIVIDUALS THAT'S IN THEIR SYSTEM?

5 A. NO. AS A MATTER OF FACT, I THINK I EVEN POINT
6 OUT THAT DOB IS NOT PROVIDED IN ALL CASES.

7 Q. HOW OFTEN ARE THESE DIFFERENT SOURCES, IS THE
8 INFORMATION IN THESE DIFFERENT SOURCES UPDATED?

9 A. IT DEPENDS ON THE SOURCE FROM WHICH WE GET THAT
10 DATA. I HAVE SOME SOURCES WHICH UPDATE AS FREQUENTLY AS
11 REDACTED AND OTHERS WHICH UPDATE ON A REDACTED BASIS AND
12 OTHERS WHICH POTENTIALLY UPDATE ON A REDACTED BASIS.

13 MR. DOBBS: PAGE 69, LINES 8 THROUGH 12,
14 DESIGNATED BY THE PLAINTIFFS.

15 Q. SO A PARTICULAR SOURCE THAT UPDATES MORE
16 FREQUENTLY WILL HAVE A BETTER ABILITY TO ACCOUNT FOR
17 CHANGES IN THE INFORMATION RELATING TO PARTICULAR
18 INDIVIDUALS?

19 A. IT'S A PRESUMPTION, YES.

20 Q. PAGE 71, LINE 23, THROUGH 72, LINE 11,
21 DESIGNATED BY THE PLAINTIFFS.

22 CAN YOU READ UNDER OTHER PUBLIC RECORDS
23 NOW?

24 A. SURE. CHOICEPOINT HAS ACCESS TO CERTAIN DATA
25 CONTAINED ON PUBLIC RECORD REPORTS. THAT DATA WOULD

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1 INCLUDE NAME, ADDRESS, DATE OF BIRTH AND, IN SOME CASES,
2 THE SSN AND OTHER PUBLIC RECORD.

3 Q. AND IT SAYS TO CERTAIN DATA CONTAINED ON PUBLIC
4 RECORD REPORTS. DO YOU HAVE ACCESS TO ALL OF THE OTHER
5 PUBLIC RECORD REPORTS THROUGHOUT THE NATION?

6 A. FOR AGE VERIFICATION SERVICE?

7 Q. YES.

8 A. NO, I DO NOT.

9 MR. DOBBS: PAGE 74, LINE 21, THROUGH
10 PAGE 76, LINE 8, DESIGNATED BY THE PLAINTIFFS.
11 Q. I WOULD LIKE TO TAKE THEM ONE-BY-ONE FOR A
12 SECOND. THE DEPARTMENT OF MOTOR VEHICLES. IF AN
13 INDIVIDUAL IS SEEKING TO HAVE THEIR AGE VERIFIED BUT THE
14 CAR THEY OWN IS REGISTERED IN, LET'S SAY, STATE X AND
15 THEIR LICENSE IS IN STATE X, BUT CHOICEPOINT DOES NOT
16 HAVE ACCESS TO STATE X'S DEPARTMENT OF MOTOR VEHICLES
17 FOR AGE VERIFICATION SERVICES, THEN WOULD THE DEPARTMENT
18 OF MOTOR VEHICLES IN STATE X HELP IN ANY WAY IN
19 VERIFYING AGE?

20 A. I THINK IT WOULD BE FAIR TO SAY IF THE DATA IS
21 NOT PRESENT FROM STATE X THEN DATA FROM STATE X CANNOT
22 BE USED AS PART OF THE VERIFICATION PROCESS.

23 Q. NOW, UNDER MOTOR VEHICLE REGISTRATIONS, IF THE
24 MVR REPORT IS IN THAT SAME STATE X, THEN YOUR MOTOR
25 VEHICLE REGISTRATION SOURCE WOULD NOT ASSIST AT ALL IN

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1 THE AGE VERIFICATION SERVICE, IS THAT RIGHT?

2 A. SIMILAR TO THE ANSWER THAT I GAVE BEFORE. IF
3 DATA IS NOT PRESENT FROM STATE X, THEN THAT DATA CANNOT
4 BE USED TO VERIFY OR REFUTE AN AGE.

5 Q. HOW ABOUT UNDER VOTER REGISTRATION, IF STATE X
6 IS NOT ON ONE OF THE 11 STATES, THEN WOULD VOTER
7 REGISTRATION BE SOMETHING THAT -- WOULD THE SAME BE TRUE
8 THAT WHATEVER VOTER REGISTRATION STATISTICS OR
9 INFORMATION THERE IS IN STATE X, THAT THAT WOULD NOT
10 ASSIST IN ALL IN VERIFYING AGE?

11 A. IF THE DATA IS NOT PRESENT IN THE DATABASE, IT
12 CAN'T BE USED AS PART OF THE VERIFICATION PROCESS.

13 MR. DOBBS: PAGE 76, LINE 19, THROUGH
14 PAGE 77, LINE 6, DESIGNATED BY THE PLAINTIFFS.

15 Q. SO AS FAR AS YOU KNOW, IS IT POSSIBLE THAT THERE
16 IS A STATE OUT THERE, OR MORE THAN ONE STATE -- WE'LL
17 START WITH, AS FAR AS YOU KNOW, IS IT POSSIBLE THAT
18 THERE IS A STATE OUT THERE FOR WHICH CHOICEPOINT DOES
19 NOT HAVE ACCESS TO ITS DEPARTMENT OF MOTOR VEHICLES,
20 MOTOR VEHICLE REGISTRATIONS AND VOTER REGISTRATION FOR
21 AGE VERIFICATION SERVICES?

22 A. IT IS POSSIBLE.

23 Q. IS IT ALSO POSSIBLE THAT THERE ARE MULTIPLE
24 STATES THAT FALL WITHIN THAT SAME CATEGORY?

25 A. IT IS POSSIBLE.

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1 MR. DOBBS: PAGE 77, LINE 21, THROUGH
2 PAGE 78, LINE 2, DESIGNATED BY THE PLAINTIFFS.

3 Q. THOSE SOURCES OF COMPOSITE DATA THAT YOU ARE NOT
4 DISCUSSING, DO THOSE COVER ALL PEOPLE IN EVERY STATE?

5 A. ARE YOU ASKING ME IF MY DATABASE HAS INFORMATION
6 ON EVERY PERSON IN THE UNITED STATES?

7 Q. SURE.

8 A. NO.

9 MR. DOBBS: PAGE 78, LINES 3 THROUGH 15,
10 DESIGNATED BY THE DEFENDANT.

11 Q. WHAT PERCENTAGE DOES IT HAVE?

12 A. I DON'T KNOW WITH ANY CERTAINTY. NO ONE KNOWS

13 WITH ANY CERTAINTY HOW MANY PEOPLE THERE ARE IN THE
14 UNITED STATES. THEREFORE, THE DENOMINATOR OF WHATEVER
15 CALCULATIONS YOU DO TO DETERMINE WHAT PERCENTAGE WAS
16 PRESENT IS AN IMPOSSIBLE NUMBER TO KNOW. WE ESTIMATE
17 FROM SOME STATISTICAL SAMPLING AND FROM THE VENDORS FROM
18 WHOM WE LICENSE DATA, THAT WE BELIEVE THAT WE HAVE
19 SOMEWHERE BETWEEN 92 AND 95 PERCENT OF THE ADULT
20 POPULATION OF THE UNITED STATES PRESENT IN SOME FORM OR
21 ANOTHER IN OUR DATABASES.

22 MR. DOBBS: PAGE 78, LINE 16 THROUGH 17,
23 DESIGNATED BY THE PLAINTIFFS.

24 Q. HOW IS ADULT DEFINED?

25 A. 18 AND OVER.

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1 MR. DOBBS: PAGE 98, LINES 14 THROUGH 24,
2 DESIGNATED BY THE PLAINTIFFS.

3 Q. BUT WILL THERE BE A BETTER CHANCE OF OBTAINING
4 ACTUAL BIRTH DATE INFORMATION IN STATES WHERE YOU HAVE
5 ACCESS TO PUBLIC RECORDS?

6 A. POTENTIALLY, YES.

7 Q. IS THE ANSWER YES?

8 A. POTENTIALLY, YES.

9 MR. DOBBS: PAGE 98, LINE 25 THROUGH PAGE
10 99, LINE 3, DESIGNATED BY THE DEFENDANT.

11 Q. SO IN THE STATES WHERE YOU DO NOT HAVE ACCESS TO
12 THE DMV, IT'S POSSIBLE THAT YOU HAVE THE SAME ABILITY TO
13 DETERMINE ACTUAL BIRTH DATE?

14 A. YES.

15 MR. DOBBS: PAGE 99, LINES 4 THROUGH 15,
16 DESIGNATED BY THE PLAINTIFFS.

17 Q. BUT IN STATES WHERE YOU DO HAVE ACCESS TO DMV,
18 POTENTIALLY THAT'S GOING TO INCREASE YOUR ABILITY TO DO
19 SO?

20 A. YES.

21 Q. YOU SAID BEFORE, THE MORE SOURCES YOU HAVE
22 ACCESS TO, THE MORE ROBUST THE PICTURE IS, CORRECT?

23 A. YES.

24 Q. AND THE MORE SOURCES YOU HAVE ACCESS TO, DOES
25 THAT CREATE A BETTER CHANCE OF HAVING DISAGREEING DATA

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1 AMONGST THE DIFFERENT SOURCES?

2 A. YES.

3 MR. DOBBS: PAGE 103, LINE 5, TO PAGE
4 105, LINE 4, DESIGNATED BY THE PLAINTIFFS.

5 Q. THE QUESTION IS WHETHER A PARTICULAR PERSON IS A
6 PARTICULAR AGE ON A PARTICULAR DATE AND THERE IS ONE
7 DOCUMENT THAT ANSWERS THAT AFFIRMATIVELY YES, OKAY?

8 A. UH-HUH.

9 Q. BUT IT TURNS OUT THAT DOCUMENT WAS WRONG, THEN
10 WOULD THAT RESULT IN A FALSE POSITIVE?

11 A. IF THE INPUT DATE OF BIRTH MATCHED EXACTLY IN
12 THAT CIRCUMSTANCE, YEAR, MONTH AND DATE, THE ERRONEOUS
13 RECORD WHICH WAS PRESENT IN THE DATABASE, IT WOULD ONLY
14 PRODUCE A FALSE POSITIVE IN THE CIRCUMSTANCE WHERE BOTH
15 THE RECORD IN THE SYSTEM WAS WRONG AND THE PURPORTED
16 DATE OF BIRTH BEING VERIFIED MATCHED EXACTLY.

17 Q. RIGHT. SO THAT WOULD BE A FALSE POSITIVE -- IT
18 WOULD BE -- THE VERIFICATION OF THE PERSON BEING A
19 PARTICULAR AGE WOULD BE WRONG?

20 A. IT WOULD BE -- IT WOULD BE A CORRECT MATCH.

21 Q. I UNDERSTAND IT WOULD BE A CORRECT MATCH. BUT
22 THE HYPOTHETICAL WE ARE USING IS THAT THE INFORMATION
23 INPUTTED WAS WRONG, NOT INPUTTED BY CHOICEPOINT.
24 INPUTTED BY WHOEVER PUT IT INTO THE SOURCE WAS WRONG.
25 THAT IS THE HYPOTHETICAL WE HAVE ON THE RECORD.

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1 A. I THINK THIS GOES BACK TO YOU ASKED ME A
2 QUESTION EARLIER, IS IT POSSIBLE THAT AN ERRONEOUS
3 RESULT COULD BE GENERATED OUT OF THE SYSTEM.

4 Q. YES.

5 A. IT IS CERTAINLY POSSIBLE. AND I THINK -- I
6 THINK I CONFIRMED TO YOU THAT THAT IS THE CASE. IN THAT
7 CIRCUMSTANCE, THAT YOU HAVE JUST DESCRIBED, ALTHOUGH THE
8 MATCH LOGIC WORKED EXACTLY THE WAY THAT IT WAS SUPPOSED
9 TO, AND YOU HAD A SITUATION WHERE BOTH THE ENTERED
10 RECORD AND THE CANDIDATE SELECTION CRITERION WERE BOTH
11 INCORRECT, THEN, YES, WE COULD PRODUCE A PERFECTLY VALID
12 ANSWER WHICH HAD NO REFLECTION NECESSARILY ON REALITY,
13 WHICH IS ANOTHER REASON WHY I BELIEVE THAT THE
14 DOCUMENT -- THE SUBSCRIBER AGREEMENT -- SPEAKS TO THE
15 FACT THAT WE'RE NOT WARRANTING THE DATA WHICH IS USED IN
16 THE SYSTEM.

17 Q. SO IN THAT HYPOTHETICAL, THERE WOULD BE AN
18 ERRONEOUS RESULT? THROUGH NO FAULT OF CHOICEPOINT THERE

19 WOULD BE AN ERRONEOUS RESULT?

20 A. IT WOULD NOT REFLECT THE ACTUAL AGE OF THE
21 INDIVIDUAL ON THAT DATE.

22 MR. DOBBS: PAGE 121, LINE 14, THROUGH
23 PAGE 122, LINE 19, THROUGH PAGE 123 -- PAGE 122, LINE
24 24, I APOLOGIZE, YOUR HONOR, DESIGNATED BY THE
25 PLAINTIFFS.

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1 Q. ARE THERE PROFILES OF INDIVIDUALS THAT, AS A
2 GENERAL MATTER, CHOICEPOINT WILL HAVE LESS RECORDS ON?

3 A. YES.

4 Q. WHAT ARE THOSE PROFILES?

5 A. CERTAINLY THE OLDER THAT YOU ARE, THE MORE TIME
6 THERE HAS BEEN FOR DATA TO COLLECT. SO I, IN GENERAL,
7 HAVE MORE INFORMATION ON A 65-YEAR OLD INDIVIDUAL THAN I
8 HAVE ON AN 18-YEAR OLD. AS A MATTER OF FACT, I HAVE
9 LITTLE, IF ANY, DATA AT ALL ON MINORS. WE DON'T COLLECT
10 OR PROVIDE DATA FOR COMMERCIAL PURPOSES TO MINORS OR ON
11 MINORS FOR COMMERCIAL PURPOSES. I THINK PEOPLE LIKE
12 RECENT IMMIGRANTS, FOR EXAMPLE, PEOPLE WHO ARE
13 ESSENTIALLY SHOWING UP ON -- SHOWING UP IN SOCIETY AS
14 NEW ENTRANTS, EITHER PEOPLE WHO AGE UP, OR PEOPLE WHO
15 HAVE JUST RECENTLY IMMIGRATED, TEND TO HAVE THINNER DATA
16 RECORDS THAN FOLKS WHO HAVE BEEN AROUND FOR A WHILE.

17 Q. AGE UP, YOU MEAN TURN -- GO FROM MINOR TO MAJOR?

18 A. THAT'S CORRECT.

19 Q. ANY OTHER TYPES OF PEOPLE?

20 A. I THINK IF YOU -- IF YOU HAVE CONDUCTED A LIFE

21 WHICH DOES NOT INVOLVE SIGNIFICANT INTERACTION WITH THE
22 GOVERNMENT OR WITH COMMERCIAL SERVICES, THEN MY ABILITY
23 TO GATHER DATA ON YOU IS SOMEWHAT RESTRICTED. HOWEVER,
24 IF YOU LIVED IN A CABIN IN THE WOODS IN MONTANA, I'VE
25 GOT PEOPLE WHO LIVE IN THE CABIN IN THE WOODS IN

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1 MONTANA.

2 Q. SO YOU SAY THE MORE INTERACTION YOU HAVE WITH
3 GOVERNMENT AND COMMERCIAL SERVICES THEN THE BETTER THE
4 INFORMATION IS THAT --

5 A. THE MORE RECORDS LIKELY HAVE BEEN COLLECTED ON
6 YOU.

7 MR. DOBBS: PAGE 122, LINE 25, THROUGH
8 PAGE 123, LINE 11, REDACTED, PAGE 123, LINES 12-14,
9 DESIGNATED BY DEFENDANT.

10 A. IT'S AMAZING HOW MANY THINGS PEOPLE DO, THOUGH,
11 THAT PRODUCE RECORDS THAT CAN BE USED IN THIS
12 CIRCUMSTANCE.

13 MR. DOBBS: PAGE 123, LINE 15, THROUGH
14 18, DESIGNATED BY THE PLAINTIFFS.

15 Q. I UNDERSTAND THAT. WE'RE TALKING AS A GENERAL
16 MATTER THE TYPES OF THINGS PEOPLE DO OR DON'T DO THAT
17 WILL IMPROVE THE CHANCES OF HAVING A GREATER NUMBER OF
18 RECORDS.

19 MR. DOBBS: PAGE 123, LINES 19 THROUGH 25
20 DESIGNATED BY THE PLAINTIFFS ARE REDACTED.

21 PAGE 124, LINE 11, THROUGH PAGE 125, LINE
22 11, DESIGNATED BY THE PLAINTIFFS.

23 Q. BUT IF YOU DO DRIVE, THE CHANCES OF BEING IN
24 THAT FILE ARE GREATER?

25 A. IF DO YOU DRIVE, THE CHANCES OF YOU BEING IN

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1 THAT FILE ARE GREATER.

2 Q. HOW ABOUT IF YOUR -- AS A GENERAL PROFILE POINT,
3 PEOPLE WHO HAVE PSYCHOLOGICAL OR MENTAL PROBLEMS, SUCH
4 THAT THEY DON'T INTERACT WITH COMPANIES, GENERALLY, DO
5 YOU HAVE ANY SORT OF SENSE ON THE LEVEL OF RECORDS
6 REGARDING PEOPLE WHO ARE PSYCHOLOGICALLY OR MENTALLY
7 DISABLED?

8 A. NO, I DO NOT.

9 Q. HOW ABOUT NON-AMERICAN CITIZENS, PEOPLE WHO
10 DON'T LIVE IN THE UNITED STATES OF AMERICA, DO YOU HAVE
11 MORE OR LESS RECORDS GENERALLY FOR THOSE INDIVIDUALS?

12 A. IS THE QUESTION ABOUT NON-AMERICAN CITIZENS OR
13 IS IT ABOUT PEOPLE WHO DON'T LIVE IN THE UNITED STATES?

14 Q. PEOPLE WHO DON'T LIVE IN THE UNITED STATES.

15 A. IF THEY DO NOT AND HAVE NOT LIVED IN THE UNITED
16 STATES, HAVE NOT INTERACTED WITH -- COMMERCIALY WITH
17 THE UNITED STATES BUSINESSES, THEN, NO, I DON'T HAVE
18 -- I DON'T MAINTAIN INFORMATION ON FOREIGN INDIVIDUALS
19 FOR AGE VERIFICATION. IT'S A DOMESTIC PROGRAM.

20 MR. DOBBS: PAGE 125, LINES 12 THROUGH
21 20, DESIGNATED BY THE DEFENDANT.

22 Q. HOW ABOUT PEOPLE WHO MIGHT LIVE IN THE UNITED
23 STATES -- HOW ABOUT PEOPLE WHO LIVE IN THE UNITED
24 STATES, BUT ARE NOT CITIZENS? AS A GENERAL MATTER, WILL

25 YOU HAVE LESS RECORDS RELATING TO THOSE INDIVIDUALS?

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1 A. I'M NOT AWARE OF ANY -- I'M NOT AWARE OF ANY
2 RESEARCH THAT WE'VE DONE TO INDICATE ONE WAY OR THE
3 OTHER. I DO KNOW THAT I HAVE LOTS OF DATA ON
4 NONCITIZENS.

5 MR. DOBBS: PAGE 126, LINE 25, THROUGH
6 PAGE 128, LINE 2, DESIGNATED BY THE PLAINTIFFS.

7 Q. SO YOU CANNOT DO IT IF YOU DON'T HAVE A SOCIAL
8 SECURITY NUMBER?

9 A. I NEED -- I NEED A LAST -- A SOCIAL OR A LAST
10 FOUR DIGITS OF A SOCIAL SECURITY NUMBER OR A TAX
11 IDENTIFICATION NUMBER.

12 Q. YOU ALSO NEED A STREET, CITY, STATE AND ZIP
13 CODE, CORRECT?

14 A. FOR THIS SERVICE, YES.

15 Q. SO THEN YOU COULDN'T VERIFY SOMEONE WHO WAS
16 HOMELESS IF THEY DIDN'T HAVE A CURRENT ADDRESS?

17 A. IF THEY -- THE PURPOSE OF GATHERING THIS
18 INFORMATION IS TO FIND RECORDS TO MAKE A MATCH ON. SO
19 IN THE CIRCUMSTANCE WHERE I DID NOT HAVE A CURRENT
20 ADDRESS -- A GOOD EXAMPLE FOR ME, BECAUSE I'M CURRENTLY
21 IN BETWEEN HOMES -- I COULD USE MY PREVIOUS ADDRESS IN
22 ORDER TO FIND RECORDS THAT MATCH THAT INDIVIDUAL.

23 Q. IS THERE ANY WAY TO KNOW, FROM CHOICEPOINT'S
24 PERSPECTIVE, IF AN INDIVIDUAL IS PROVIDING FALSE
25 INFORMATION? IN OTHER WORDS, PROVIDING INFORMATION THAT

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1 IS NOT ACTUALLY THEIR OWN INFORMATION?

2 A. FOR THE AGE VERIFICATION SERVICE, IN ISOLATION,
3 NO. HOWEVER, ONE OF THE RECOMMENDATIONS THAT WE MAKE TO
4 CUSTOMERS IS THAT THEY ATTEMPT TO LINK THIS SERVICE WITH
5 SOME OTHER FORM OF IDENTITY VERIFICATION OR VALIDATION.

6 MR. DOBBS: PAGE 128, LINES 17 THROUGH
7 20, DESIGNATED BY THE PLAINTIFFS.

8 Q. SO THAT PERSON COULD BE PROVIDING A SOCIAL
9 SECURITY NUMBER THAT IS NOT THEIRS AND CHOICEPOINT WOULD
10 HAVE NO WAY OF KNOWING THAT?

11 A. THAT'S CORRECT.

12 MR. DOBBS: PAGE 128, LINE 21 THROUGH
13 PAGE 129, LINE 12, DESIGNATED BY THE DEFENDANT.

14 Q. OR THEY COULD BE PROVIDING A NAME THAT IS NOT
15 THEIRS AND CHOICEPOINT WOULD HAVE NO WAY OF KNOWING
16 THAT?

17 A. THEY WOULD HAVE TO PROVIDE A VERY COMPLETE --
18 THEY WOULD HAVE TO -- THEY WOULD HAVE TO PROVIDE A
19 COMPLETE IDENTITY ON THAT INDIVIDUAL, THE NAME, THE
20 ADDRESS, THE ZIP CODE, THE SOCIAL SECURITY NUMBER OR
21 LAST FOUR, IN ORDER TO DO THAT. THEY COULD NOT TAKE MY
22 NAME AND YOUR LAST FOUR AND GET A MATCH. THAT WOULD
23 ESSENTIALLY EQUATE TO A "NO-RECORDS-FOUND" SITUATION.

24 Q. I UNDERSTAND THAT. I'M NOT SPEAKING ABOUT THAT.
25 I'M SAYING CHOICEPOINT WOULD HAVE NO WAY TO KNOW IF

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1 SOMEONE IS USING A NAME THAT IS NOT THEIR OWN. RIGHT?

2 A. I HAVE -- I HAVE NO ABILITY TO SEE INTO THE MIND
3 OF ANY END USER OF THE SYSTEM.

4 MR. DOBBS: PAGE 134, LINE 21, THROUGH
5 PAGE 136, LINE 17, DESIGNATED BY THE DEFENDANT.

6 Q. SO THE CLIENT MIGHT SET IT UP WHERE JOHN SMITH
7 HAS A CODE OR A PASSWORD WHERE HE TYPES IT IN AND THEN
8 DOES NOT GET VERIFIED AGAIN OR, AS FAR AS YOU KNOW,
9 CHOICEPOINT IS NOT ASKED TO VERIFY IT AT THAT POINT?

10 A. THAT'S -- THAT'S POTENTIALLY A WAY THAT A
11 CUSTOMER COULD HANDLE THAT.

12 Q. HAVE YOU HEARD OF IT BEING HANDLED THAT WAY?

13 A. A CODE, NO. I BELIEVE -- I BELIEVE THAT MOST OF
14 OUR CUSTOMERS ARE MAINTAINING SOME INDICATION THAT THEY
15 HAVE SEEN THIS CUSTOMER BEFORE. LET'S USE THE WINE
16 EXAMPLE. THE AGE VERIFICATION IS PART OF A SERIES OF
17 INTERACTIONS THAT THEY ARE HAVING WITH THOSE CUSTOMERS
18 AND CHECKS THAT THEY ARE DOING.

19 I COME TO A VINEYARD'S WEBSITE OR I
20 SUBMIT A WRITTEN REQUEST TO A VINEYARD THROUGH A FORM TO
21 ORDER WINE. FIRST, THEY ARE GOING TO CHECK THEIR
22 INVENTORY, SECOND, THEY ARE GOING TO CHECK THEIR
23 SHIPPING CAPABILITY, THIRD, THEY ARE GOING TO SEE
24 WHETHER OR NOT THEY HAVE KNOWN THIS CUSTOMER BEFORE,
25 WHETHER THEIR PAYMENT TERMS ARE GOOD, ALL OF THOSE

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1 THINGS.

2 SO SOMEWHERE WITHIN THE CUSTOMER PROFILE
3 OF THAT INDIVIDUAL, I BELIEVE THAT MOST OF OUR CUSTOMERS

4 ARE MAINTAINING SOME RECORD TO INDICATE THAT THEY HAVE
5 BEEN TO CHOICEPOINT AND AGE-VERIFIED THIS CUSTOMER, AND
6 WHAT THE RESULTS OF THAT AGE VERIFICATION WAS. THE
7 METHOD, MANNER AND DETAILS AROUND HOW THEY STORE THAT
8 INFORMATION VARIES FROM CUSTOMER TO CUSTOMER. AND I
9 REALLY DON'T HAVE ANY INSIGHT INTO EXACTLY WHAT THEY ARE
10 DOING WITH THAT ONCE THEY GET IT BACK.

11 Q. HAVE YOU SEEN USE OF A PASSWORD FOR THAT
12 PURPOSE?

13 A. AGAIN, I DON'T NECESSARILY KNOW -- I DON'T
14 NECESSARILY KNOW THAT THE ABC WINE COMPANY HAS JUST SET
15 UP A PASSWORD OR SET UP A USER ID OR JUST KNOWS
16 SOMEWHERE IN THE BACK END THAT KEN MEISER HAS ALREADY
17 BEEN VERIFIED. I WOULD ASSUME THERE IS SOME METHOD BY
18 WHICH THEY RECOGNIZE A RETURNING CUSTOMER, FOR REASONS
19 OTHER THAN AGE VERIFICATION. FOR LOG-IN PURPOSES, FOR
20 CUSTOMER RELATIONSHIP MANAGEMENT, FOR ALL OF THOSE OTHER
21 THINGS. THE ONE VARIABLE THEY ARE HOLDING IN THAT IS
22 WERE THEY AGE VERIFIED OR NOT.

23 MR. DOBBS: PAGE 137, LINES 2 THROUGH 21,
24 DESIGNATED BY THE PLAINTIFFS.

25 Q. ONCE IT GETS VERIFIED, IS IT THE SAME PRICE TO

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1 VERIFY EACH TIME THOUGH?

2 A. YES.

3 Q. WHAT IS THE PRICE RANGE FOR THAT?

4 A. IT VARIES FROM CUSTOMER TO CUSTOMER BUT IT'S IN
5 THE SUB \$1 RANGE.

6 Q. WHATEVER IT IS, THAT WOULD REPEAT EVERY TIME THE
7 VERIFICATION WAS REQUESTED?

8 A. CERTAINLY. SUBJECT TO POTENTIALLY WITHIN A
9 CONTRACT, YOU COULD NEGOTIATE TIERS, THE FIRST 5,000
10 VERIFICATIONS AT PRICE X, THE SECOND 5,000 VERIFICATIONS
11 AT PRICE Y, BUT YES.

12 Q. BUT WHEN A CUSTOMER COMES BACK FOR A SECOND OR
13 THIRD TIME, CHOICEPOINT IS STARTING AT POINT ZERO?

14 A. I TREAT EACH VERIFICATION INSTANCE AS COMPLETELY
15 INDEPENDENT OF ANY WORK THAT HAS EVER BEEN DONE BEFORE.

16 Q. AND CHARGE ACCORDINGLY?

17 A. AND CHARGE ACCORDINGLY.

18 MR. DOBBS: PAGE 140, LINE 10, TO PAGE
19 141, LINE 3, DESIGNATED BY THE PLAINTIFFS.

20 Q. BUT WHEN YOU'RE TALKING ABOUT THE CREDENTIALING,
21 IN DETERMINING WHO AS A GENERAL MATTER CHOICEPOINT WOULD
22 ENTER INTO A CUSTOMER RELATIONSHIP WITH, ONE THING I
23 THINK YOU SAID WAS THEY HAVE TO HAVE ARTICLES OF
24 INCORPORATION OR OTHERWISE BE FORMED? IS THAT --

25 A. MY PURPOSE IN SAYING THAT AS AN EXAMPLE IS

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1 CHOICEPOINT DOES BUSINESS WITH BUSINESSES. WE DO NOT DO
2 BUSINESS WITH CONSUMERS. AND THEREFORE, IN ORDER FOR ME
3 TO ACCEPT YOU AS A CUSTOMER OF CHOICEPOINT, REGARDLESS
4 OF AGE VERIFICATION OR ANY OTHER VERIFICATION,
5 AUTHENTICATION, RESEARCH SERVICE THAT WE PROVIDE, YOU
6 NEED TO BE A BUSINESS, AND YOU NEED TO PROVE TO US THE
7 EXISTENCE OF YOUR BUSINESS, BOTH FROM THE STANDPOINT OF

8 THE FORMED NATURE OF LEGAL INCORPORATION, LICENSURE,
9 WHATEVER OF THAT BUSINESS, AS WELL AS DEMONSTRATE TO US
10 PHYSICAL PRESENCE AS A BUSINESS.

11 MR. DOBBS: PAGE 148, LINE 17, THROUGH
12 PAGE 151, LINE 12, DESIGNATED BY THE DEFENDANT.

13 Q. SUPPOSE A USER'S TRANSACTION IS DECLINED AS A
14 RESULT OF HIGH VARIABILITY. DOES CHOICEPOINT OFFER
15 ALTERNATE METHODS FOR A USER TO VERIFY HIS OR HER AGE?

16 A. THE REASON THAT THE PERSON COULD END UP BEING
17 DECLINED, AND, AGAIN, I GO BACK TO THE ISSUE OF WHAT A
18 CUSTOMER DOES WITH THE RESULT OF THE VERIFICATION IS
19 ESSENTIALLY UP TO THE CUSTOMER. BUT IN THIS CASE, LET'S
20 PRESUME THE ANSWER OF NO, I CAN'T VALIDATE THAT THIS
21 PERSON IS OVER 21, I EITHER AFFIRMATIVELY DO NOT BELIEVE
22 THAT THIS PERSON IS THE AGE THAT THEY HAVE SAID THAT
23 THEY ARE OR I'M UNABLE TO VALIDATE THAT. OUR
24 RECOMMENDATION BACK TO OUR CUSTOMER IS ESSENTIALLY THAT
25 THEY PUT IN PLACE SOME SORT OF AN EXCEPTION PROCESS.

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1 AND IN SOME CASES, THAT INVOLVES THE CHANCE FOR A
2 CUSTOMER TO SUBMIT A COPY OF A PHYSICAL CREDENTIAL.

3 USING THE WINE VERIFICATION EXAMPLE, IN
4 ADDITION TO PROVIDING AGE VERIFICATION, ELECTRONIC AGE
5 VERIFICATION AS A CONVENIENCE TO THEIR CUSTOMERS, THE
6 WINERIES TRADITIONALLY HAVE ASKED FOLKS TO SUBMIT, WHO
7 ORDER WINE VIA MAIL OR EVEN VIA E-MAIL, TO SUBMIT A COPY
8 OF A DRIVER'S LICENSE OR SOME SORT OF GOVERNMENT ID CARD
9 WHICH INDICATES THEIR AGE. THIS IS ESSENTIALLY A

10 PROCESS WHICH IS DESIGNED TO AUTOMATE THAT. BUT IN THE
11 CASE OF A NONVERIFICATION BY CHOICEPOINT, THEY CAN GO
12 BACK TO THE PROCESS WHICH CURRENTLY EXISTS WHICH WOULD
13 CONTINUE TO ALLOW THEM TO SERVE THAT CUSTOMER.

14 Q. SO SOMEBODY COULD SEND OR FAX SOME OTHER FORM OF
15 IDENTIFICATION?

16 A. YES. AND, AGAIN, THE DETERMINATION OF WHAT
17 MEETS THE RISK TOLERANCE OF A GIVEN CLIENT IS REALLY UP
18 TO THAT CLIENT. WE JUST SAY, AGAIN, KIND OF AS
19 INDICATED IN THE SUBSCRIBER AGREEMENT, WE DON'T EXPECT
20 OUR ANSWER TO BE THE FINAL ANSWER IN ANY OF THESE
21 CIRCUMSTANCES, THAT YOU NEED TO BE PREPARED TO REVIEW
22 AND ADJUDICATE THOSE RESULTS.

23 Q. ARE YOU ABLE TO ASK QUESTIONS BASED ON
24 SOMEBODY'S PERSONAL HISTORY THAT YOU HAVE IN THEIR DATA
25 SET TO BE SURE THAT YOU'RE GETTING AN IDENTITY MATCH?

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1 A. SURE. AND WE HAVE SOME CLIENTS, I THINK I
2 ALLUDED TO THIS EARLIER, WHO HAVE LINKED AGE
3 VERIFICATION IN CHAIN WITH IDENTITY VALIDATION AND
4 VERIFICATION.

5 SO IN THOSE CIRCUMSTANCES, THE FIRST
6 QUESTION WOULD BE, CAN I FIND RECORDS ABOUT KEN MEISER,
7 AND HAS WHAT HE TOLD ME -- DOES IT APPEAR TO BE
8 CONSISTENT, IS THE SOCIAL SECURITY NUMBER WHICH IS
9 PROVIDED VALID, IS THE SOCIAL SECURITY NUMBER NOT -- WAS
10 IT NOT ISSUED PRIOR TO THE DATE -- PRIOR TO THE DATE OF
11 BIRTH. AND THEN POTENTIALLY, EVEN TO GO AS DEEP INTO A

12 SET OF QUESTIONS WHICH MIGHT ASK A SERIES OF WHAT WE
13 CALL OUT-OF-WALLET QUESTIONS. GIVEN THE INFORMATION
14 THAT YOU PROVIDED TO US, IF YOU ARE INDEED KEN MEISER
15 THEN WHICH OF THESE OTHER HOUSEHOLD -- WHICH OF THESE
16 OTHER ADDRESSES USED TO BE YOURS, FOR EXAMPLE, OR WHAT
17 OTHER PHONE NUMBERS. WE HAVE THE CAPABILITY TO ASK A
18 QUESTION ABOUT THE SQUARE FOOTAGE OF A HOUSE, WHETHER OR
19 NOT FIREPLACES ARE IN THAT HOUSE, THINGS LIKE THAT. WE
20 TERM THOSE OUT-OF-WALLET DATA PRECISELY BECAUSE IF I
21 PICK UP YOUR WALLET UP OFF THE GROUND, THIS SYSTEM WOULD
22 BE ASKING YOU QUESTIONS THAT WOULD NOT BE PRESENT IN THE
23 DOCUMENTS THAT YOU HAD IN FRONT OF YOU.

24 MR. DOBBS: PAGE 167, LINE 12, TO PAGE
25 170, LINE 4, DESIGNATED BY THE DEFENDANT.

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1 Q. MR. FRIEDMAN POSED A HYPOTHETICAL EARLIER ABOUT
2 JOHN SMITH MAKING A PURCHASE ON A WEBSITE ON, SAY, DAY
3 1, AND GETTING A MATCH FROM CHOICEPOINT. AND THEN HE
4 ASKED WHETHER JOHN SMITH COULD COME BACK ON DAY 2 AND DO
5 ANOTHER TRANSACTION WITHOUT AGE VERIFICATION. DID I
6 UNDERSTAND YOU CORRECTLY THAT YOU LEAVE IT UP TO YOUR
7 CUSTOMER TO DECIDE WHETHER SOMEBODY CAN DO THAT?

8 A. YES, THAT'S CORRECT.

9 Q. BASED ON YOUR UNDERSTANDING OF THE TECHNOLOGICAL
10 FEASIBILITY, DO YOU THINK IT'S POSSIBLE FOR CHOICEPOINT
11 TO ISSUE AN ADULT ACCESS CODE OR SOME PIN NUMBER, ISSUE
12 IT TO SOMEBODY FOR WHOM YOU HAVE VERIFIED AGE AND ALLOW
13 THEM TO GO TO A WEBSITE ON DAY 2?

14 A. IT IS TECHNOLOGICALLY POSSIBLE. IT WOULD
15 REQUIRE A CHANGE TO OUR BUSINESS MODEL. IN THAT
16 CIRCUMSTANCE, WE WOULD NEED TO RETAIN KNOWLEDGE OF THE
17 INDIVIDUAL STATUS OF AN APPLICANT AND WHETHER OR NOT
18 THEY WERE AGE VERIFIED OR NOT AND TO ISSUE SOME FORM OF
19 A CREDENTIAL THAT WOULD FOLLOW THAT INDIVIDUAL AROUND,
20 BE IT A USER ID AND PASSWORD OR WHATEVER, AS WELL AS A
21 -- AN AGREEMENT FROM THE SERVICE PROVIDERS, THE CONTENT
22 PROVIDERS, AS TO A COMMON STANDARD OF VERIFICATION.
23 BECAUSE, AGAIN, TODAY, I'VE GOT ONE CLIENT WHO DOES --
24 WHO SETS A VERY HIGH STANDARD AND ANOTHER WHO SETS A
25 SLIGHTLY LESS STRICT STANDARD. IN THIS CASE, YOU WOULD

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1 HAVE TO HAVE ALL PARTIES AGREE THAT THE RULE WAS X, AND
2 THEN AGREE TO ACCEPT THAT CREDENTIAL AS WAS PROVIDED.

3 Q. LET'S ASSUME THAT WEBSITE 1 AND WEBSITE 2 HAVE
4 THE EXACT SAME STANDARD, AND THEY'RE BOTH CUSTOMERS OF
5 CHOICEPOINT. CAN JOHN SMITH ON DAY ONE GO TO WEBSITE 1,
6 TECHNOLOGICALLY SPEAKING, GET SOME PIN NUMBER, AND THEN
7 ON DAY 2, GO TO WEBSITE 2 AND USE THAT?

8 A. SURE. WEBSITE 1 AND WEBSITE 2 COULD AGREE ON
9 THEIR OWN TO SHARE THE AUTHENTICATED STATUS OF JOHN
10 SMITH, OR WEBSITE 1 AND WEBSITE 2 COULD CONTRACT WITH
11 CHOICEPOINT OR ANY OTHER PROVIDER TO MAINTAIN SOME
12 PERSISTENCE INFORMATION ON THAT CREDENTIAL. OR,
13 FRANKLY, WEBSITE 1 AND WEBSITE 2 COULD GO OUT TO ANOTHER
14 DATA PROVIDER WHO ESSENTIALLY COULD MAINTAIN THOSE
15 CUSTOMER RECORDS BUT NOT PROVIDE ANY AGE VERIFICATION

16 SERVICE. SO THAT WHEN WEBSITE 1 CAME TO US, BEFORE
17 WEBSITE 2 CAME TO US, THAT THEY WOULD FIRST ASK THE
18 INDEPENDENT PROVIDER, DO YOU HAVE ANY INFORMATION ON
19 JOHN SMITH WITH THIS PASSCODE. THEY WOULD SAY YES,
20 WEBSITE 1 HAS ALREADY CREDENTIALLED THOSE INDIVIDUALS.
21 CHOICEPOINT COULD EITHER BE INVOLVED IN THAT TRANSACTION
22 OR NOT BE INVOLVED IN THAT TRANSACTION. BUT IT IS
23 TECHNOLOGICALLY FEASIBLE FOR THE WEBSITES TO SHARE THAT
24 INFORMATION, IF THEY DESIRE TO DO SO.

25 MR. DOBBS: PAGE 173, LINE 11, TO PAGE

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1 174, LINE 25, DESIGNATED BY THE DEFENDANT.

2 Q. DO YOU HAVE ANY THOUGHTS IN THE FUTURE OF THE
3 AGE VERIFICATION AND IDENTITY VERIFICATION INDUSTRY IN
4 TERMS OF BIOMETRICS AND DIGITAL SIGNATURES?

5 A. I THINK THAT OUR DESIRE IS TO BE
6 CREDENTIAL-AGNOSTIC. AND THIS TERM I USE, THE CONCEPT
7 OF YOU HAVE A VERIFICATION AND THEN YOU HAVE A
8 CREDENTIAL UPON WHICH THAT VERIFICATION IS LOADED, AND
9 IN SOME CASES THAT CREDENTIAL COULD BE TWO FACTOR
10 AUTHENTICATION, A USER IDENTIFICATION AND A PASSWORD, OR
11 IT COULD BE A SMART CARD, OR IT COULD BE A TOKEN, OR IT
12 COULD BE THE ASSOCIATION OF THE AGE VERIFICATION ANSWER
13 WITH A THUMBPRINT WHICH IS PROVIDED BY AN END USER. OUR
14 DESIRE IS TO BE AGNOSTIC AS TO THE CREDENTIAL, BUT TO
15 PERFORM -- BUT TO RIGHT NOW CONCENTRATE ON PERFORMING
16 THE VERIFICATION ITSELF.

17 Q. SO WOULD YOU SAY THAT AGE VERIFICATION AND

18 IDENTITY VERIFICATION IS AS GOOD TODAY, TECHNOLOGICALLY
19 SPEAKING, THE PRODUCTS ARE AS GOOD TODAY AS THEY'RE EVER
20 GOING TO GET, OR DO YOU THINK IT'S FAIR TO EXPECT OVER
21 THE NEXT 5 TO 10 YEARS THEY MAY GET EVEN BETTER?

22 A. I THINK CERTAINLY THEY WILL BE BETTER, SOLELY
23 BASED ON WE'LL HAVE MORE EXPERIENCE, THAT THERE ARE
24 OTHER ENTRANTS INTO THIS MARKET. THE BASIC ECONOMIC
25 PREMISE IS THAT LOTS OF PLAYERS IN THE MARKET SORT OF

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1 LIFT ALL BOATS, THAT SOMEONE ELSE COMES OUT WITH A
2 TECHNOLOGICAL CAPABILITY WHICH I THEN NEED TO MATCH IN
3 ORDER TO STAY IN THIS BUSINESS, AND THAT COMPETITION IS
4 USUALLY GOOD FOR CONSUMERS BOTH FROM A PRICE AND FROM A
5 CAPABILITY STANDPOINT.

6 MR. DOBBS: PAGE 175, LINE 10, THROUGH
7 PAGE 176, LINE 3, DESIGNATED BY THE DEFENDANT.

8 Q. I HAVE JUST A FEW FOLLOW-UP BASED ON HIS
9 QUESTIONS.

10 YOU SAID IN ORDER TO DO THE
11 AUTHENTICATION SERVICES -- LET ME BACK UP.
12 AUTHENTICATION SERVICES AND OUT-OF-WALLET DATA, IS THAT
13 THE SAME THING?

14 A. ONE OF THE SERVICES WE PROVIDE WITHIN
15 AUTHENTICATION SERVICES IS THAT OUT-OF-WALLET QUIZ. WE
16 WOULD GENERALLY CATEGORIZE AUTHENTICATION SERVICES TO BE
17 THE QUESTION OF -- ANSWERING THE QUESTION OF, IS THERE A
18 KEN MEISER, DOES THIS APPEAR TO BE A KEN MEISER. AND
19 THEN THE THIRD QUESTION OF, IS KEN MEISER AUTHORIZED TO

20 PARTICIPATE IN WHATEVER ACTIVITY IS PRESENT. IN THIS
21 CASE, IT COULD BE AN AGE VERIFICATION CIRCUMSTANCE. IN
22 OTHER CASES, IT'S A PROFESSIONAL LICENSE VERIFICATION OR
23 SOMETHING ALONG THESE LINES.

24 MR. DOBBS: PAGE 176, LINES 4 THROUGH 15,
25 DESIGNATED BY THE PLAINTIFFS.

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1 Q. DID I UNDERSTAND BEFORE THAT YOU SAID TO DO
2 AUTHENTICATION SERVICES, OR TO ASK THESE QUESTIONS, THAT
3 YOU NEED TO HAVE MORE RECORDS?

4 A. YES. IN GENERAL. I THINK WHAT I SAID WAS, IT
5 IS EASIER -- I HAVE FOUND IT IS GENERALLY EASIER FOR ME
6 TO PROVIDE AN AGE VERIFICATION THAN TO PROVIDE AN
7 AUTHENTICATION SERVICE.

8 Q. BECAUSE THE AUTHENTICATION SERVICE REQUIRES MORE
9 RECORDS?

10 A. THAT'S CORRECT, FOR THOSE CUSTOMERS WHO HAVE
11 ELECTED TO ADD QUIZ QUESTIONS TO THEIR PROCESS.

12 MR. DOBBS: PAGE 178, LINE 3, THROUGH
13 PAGE 179, LINE 19, DESIGNATED BY THE PLAINTIFFS.

14 Q. AND HAS CHOICEPOINT EVER BEEN ENGAGED BY A
15 CUSTOMER TO PROVIDE AGE VERIFICATION SERVICES IN
16 DETERMINING WHETHER THE END USER IS 18, TO YOUR
17 KNOWLEDGE?

18 A. I DON'T KNOW.

19 Q. IS THAT SOMETHING YOU THINK YOU WOULD KNOW,
20 THOUGH?

21 A. I DO BELIEVE THAT IT'S SOMETHING THAT I WOULD

22 KNOW. I DON'T RECALL ANY CUSTOMER SETTING THE THRESHOLD
23 AT 18.

24 Q. DO YOU THINK CHOICEPOINT WOULD BE CAPABLE OF
25 DOING 18, GIVEN THE RELATIVE LACK OF INFORMATION

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1 REGARDING 18-YEAR OLDS OR RECENTLY AGED UP?

2 A. I BELIEVE THAT WE WOULD STILL BE ABLE TO PROVIDE
3 RELEVANT RESULTS. I THINK THAT -- I WOULD EXPECT THAT
4 IT WOULD BE MORE DIFFICULT AND THAT WE MIGHT SEE SOME
5 VARIANCES IN OUR ABILITY TO AFFIRMATIVELY ANSWER YES OR
6 NO FOR THOSE INDIVIDUALS WHO HAVE JUST AGED UP.

7 Q. SO IT WOULD BE HARDER TO DO IT FOR 18 THAN 21?

8 A. HARDER -- I BELIEVE IT WOULD BE MORE DIFFICULT
9 FOR ME TO FIND RECORDS, AS I'VE INDICATED BEFORE, ON
10 THOSE INDIVIDUALS WHO HAVE JUST AGED UP.

11 Q. YOU SAID BEFORE IT WOULD BE TECHNOLOGICALLY
12 POSSIBLE TO USE CODES. DO YOU REMEMBER THE DISCUSSION
13 YOU JUST HAD? IT WOULD BE TECHNOLOGICALLY POSSIBLE TO
14 USE CODES SO YOU WOULDN'T HAVE TO REVERIFY AGE EACH
15 TIME. IS THAT RIGHT?

16 A. THAT'S CORRECT. I BELIEVE I TESTIFIED A CODE
17 WOULD BE AN EXAMPLE OF SOME METHOD TO DO THAT. IT IS
18 TECHNOLOGICALLY POSSIBLE FOR ME OR ANY OTHER DATA -- ANY
19 OTHER PERSON WHO COULD MAINTAIN A GOOD DATABASE TO
20 MAINTAIN PERSISTENCE INFORMATION TO BE SHARED BY
21 MULTIPLE PROVIDERS.

22 Q. AND IN THE USE OF A CODE, WOULD THERE BE ANY WAY
23 FOR CHOICEPOINT TO KNOW IF PEOPLE WERE SHARING CODES?

24 A. NO.

25 MR. DOBBS: THAT'S ALL THE DESIGNATIONS

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1 FOR THE CHOICEPOINT DEPOSITION.

2 THE COURT: THE END OF THE READING OF THE
3 DEPOSITION OF KEN MEISER.

4 MR. DOBBS: YES, SIR.

5 MR. VAN KWAWEGEN: THE SECOND DEPOSITION
6 THAT WE WOULD LIKE TO HAVE THE DESIGNATIONS READ INTO
7 THE RECORD IS THAT OF IRA CADWELL, C-A-D-W-E-L-L. IT'S A
8 DEPOSITION THAT TOOK PLACE ON MARCH 7, 2006. WE HAVE
9 ANOTHER COLOR-CODED COPY FOR YOUR HONOR, IF I MAY
10 APPROACH.

11 THE COURT: YES, PLEASE.

12 MR. VAN KWAWEGEN: YOUR HONOR, I WILL
13 GIVE A SHORT INTRODUCTION AGAIN TO WHAT THIS DEPOSITION
14 IS ABOUT. BEFORE DOING SO, HOWEVER, I WOULD LIKE TO
15 ALERT YOUR HONOR'S ATTENTION TO THE FACT THAT THE
16 DEFENDANT HAS OBJECTIONS TO THREE SHORT DESIGNATIONS
17 THAT WERE DESIGNATED BY THE PLAINTIFFS. WE WERE NOT
18 REALLY SURE HOW YOU WOULD LIKE TO HANDLE THIS, WHETHER
19 THE DESIGNATIONS SHOULD BE READ INTO THE RECORD AND THEN
20 THE OBJECTIONS WOULD BE RAISED, OR IF THERE IS ANY OTHER
21 WAY THAT YOUR HONOR WOULD LIKE US TO APPROACH THIS.

22 THE COURT: FIRST OF ALL, I JUST LIKEN IT
23 TO THE OTHER ONE. WHEN YOU GET TO THE OBJECTION, BRING
24 IT TO MY ATTENTION. I WILL LOOK AT WHAT IS THERE, I
25 WILL MAKE A RULING.

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

2 THE COURT: AS IF WE WERE IN OPEN COURT.

3 IF I CAN'T, I WILL TELL YOU. I DON'T ANTICIPATE A
4 PROBLEM.

5 MR. VAN KWAWEGEN: MR. CADWELL, TO GIVE
6 YOU A SHORT OVERVIEW, MR. CADWELL IS THE CEO OF CCBILL,
7 WHICH IS C-C-B-I-L-L. CCBILL IS ONE OF THE INTERNET
8 PAYMENT SERVICE PROVIDERS THAT YOUR HONOR HAS HEARD OF
9 EARLIER IN THE WEEK, ESSENTIALLY IT PROCESSES PAYMENT
10 CARD INFORMATION ON BEHALF OF MERCHANTS.

11 MR. DOBBS: YOUR HONOR, MAY I CONFER FOR
12 ONE SECOND?

13 THE COURT: PARDON?

14 MR. DOBBS: MAY I CONFER WITH COUNSEL?

15 THE COURT: SURE.

16 (COUNSEL CONFERRING.)

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

18 MR. DOBBS: THANK YOU, YOUR HONOR.

19 THE FIRST DESIGNATION IS PAGE 17, LINES 8
20 THROUGH 10, DESIGNATED BY THE PLAINTIFFS.

21 Q. SINCE WHEN HAVE YOU BEEN THE CEO OF CCBILL AND
22 CWIE HOLDING?

23 A. SINCE DAY ONE.

24 MR. DOBBS: PAGE 18, LINE 18 THROUGH 23,
25 DESIGNATED BY THE DEFENDANT.

1 Q. WHAT ARE THOSE?

2 A. WE HAVE CUSTOMER SUPPORT, CLIENT SUPPORT, POLICY
3 REVIEW, ACCOUNTING, SALES, NEW PRODUCT DEVELOPMENT,
4 MAINTENANCE DEVELOPMENT, FRAUD AND RISK -- OR SECURITY,
5 A SECURITY DEPARTMENT FOR THERE, AND JUST GENERAL
6 TECHNICAL WEENIES.

7 MR. DOBBS: PAGE 20, LINE 9, THROUGH PAGE
8 21, LINE 15, DESIGNATED BY THE DEFENDANT?

9 Q. JUST TO REFRESH MY MEMORY, WHAT DOES THE POLICY
10 REVIEW DEPARTMENT DO?

11 A. THEY REVIEW OUR CLIENTS' WEBSITES.

12 Q. THEY REVIEW YOUR CLIENTS' WEBSITES. NOW,
13 EARLIER I BELIEVE YOU ALSO MENTIONED VISA AND MASTERCARD
14 IN RELATIONSHIP TO THE POLICY REVIEW DEPARTMENT. COULD
15 YOU EXPLAIN HOW THAT INTERACTS WITH THE POLICY REVIEW
16 DEPARTMENT REVIEWING YOUR CLIENTS' WEBSITES?

17 A. WELL, HOW DO I SAY THIS? WE LOOK FOR ANYTHING
18 THAT WOULD BE SOMEBODY DOING SOMETHING ILLEGAL, THAT
19 WOULD BE TRYING TO HURT OUR BRAND, YOU KNOW, SO, YOU
20 KNOW, SOMEBODY COULD PUT UP SOMETHING, SO THAT'S WHAT
21 THEY'RE CONSTANTLY REVIEWING.

22 Q. AND WHEN YOU SAY "OUR BRAND," WHAT BRAND ARE YOU
23 REFERRING TO?

24 A. CCBILL.

25 Q. AND THE REFERENCE TO VISA AND MASTER CARD

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1 EARLIER?

2 A. THEY ALSO HAVE RULES AND REGULATIONS THAT MUST
3 BE FOLLOWED FOR COMPLIANCE.

4 Q. AND IS THE POLICY REVIEW BOARD -- SORRY -- THE
5 POLICY REVIEW DEPARTMENT ENGAGED IN REVIEWING YOUR
6 CLIENTS' WEBSITES IN THAT RESPECT AS WELL?

7 A. YES.

8 Q. HOW MANY PEOPLE ARE THERE IN THE POLICY REVIEW
9 DEPARTMENT?

10 A. EIGHT TO 10.

11 Q. AND WHAT IS THEIR GENERAL BACKGROUND? WHEN I
12 MEAN GENERAL BACKGROUND, IT'S VERY VAGUE. I MEAN LIKE
13 EDUCATIONAL OR FORMATION.

14 A. I DON'T KNOW. THEY'RE NOT NECESSARILY COLLEGE
15 GRADUATES BUT I DON'T KNOW. I'M NOT INVOLVED IN THAT
16 HIRING DEPARTMENT.

17 MR. DOBBS: PAGE 34, LINE 15, THROUGH
18 PAGE 36, LINE 12, DESIGNATED BY THE DEFENDANT.

19 Q. EARLIER, YOU REFERRED TO THAT SITUATION WHERE
20 VISA REQUIRES SIGN-UPS TO OCCUR -- SORRY. I GUESS I
21 JUST DIDN'T REALLY UNDERSTAND WHAT YOU WERE SAYING.

22 CAN YOU EXPLAIN THAT, HOW VISA IMPLICATES
23 THE SETTING UP OF CCBILL EU?

24 A. VISA REQUIRES -- IS BROKEN INTO FIVE REGIONS.
25 VISA REQUIRES THAT THERE IS NO CROSS-BORDER INQUIRY.

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1 VISA REQUIRES THAT AN ENTITY MUST BE -- A U.S. ENTITY
2 MUST PROCESS FOR U.S. ENTITIES ONLY, U.S. BUSINESSES.
3 VISA INTERNATIONAL, THE EU REGION REQUIRES THAT EU
4 COMPANIES PROCESS IN THE EU REGION WITH AN EU BANK.

5 Q. WHAT ARE THE FIVE REGIONS, TO THE BEST OF YOUR

6 KNOWLEDGE?

7 A. VISA U.S., VISA EU, VISA ASIA, VISA LATIN
8 AMERICA, AND I FORGET WHAT THEY CALL THE -- THE MIDDLE
9 EAST. I THINK IT'S VISA MIDDLE EAST.

10 Q. AND SO DO I UNDERSTAND IT CORRECTLY THAT THE EU
11 REGION WAS EXTENDED TO INCLUDE THE CZECH REPUBLIC,
12 ESTONIA, HUNGARY, LATVIA, LITHUANIA, POLAND, SLOVAKIA
13 AND SLOVENIA?

14 A. UNDER VISA INTERNATIONAL PROCESSING POLICIES.

15 Q. AND THIS IS FOR THE PURPOSES OF SOMETHING YOU
16 REFERRED TO AS ACQUIRING. WHAT IS ACQUIRING?

17 A. ACQUIRING IS WHEN A MERCHANT, AS IN CCBILL,
18 ACQUIRES FROM A BANK, SUCH AS BANK OF AMERICA. IN ORDER
19 TO DO PROCESSING, A MERCHANT MUST HAVE AN ACQUIRING BANK
20 TO PROCESS. THAT BANK MUST BE IN THE REGION OF THAT
21 BUSINESS ORIENTATION.

22 Q. SO REFERRING BACK TO THE DISTINCTION BEFORE,
23 WHEN WE TALKED ABOUT CLIENTS AND CUSTOMERS, UNDER THE
24 REQUIREMENTS THAT YOU JUST DESCRIBED, THE VISA
25 REQUIREMENTS, IS IT REQUIRED THAT THE CLIENT IS -- LET

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1 ME BACK UP A LITTLE BIT.

2 FIRST YOU SAID THAT UNDER THE VISA RULES
3 -- AND CORRECT ME IF I'M WRONG -- ACQUIRING MUST OCCUR
4 WITHIN THE REGION, AND THAT CROSS-BORDER ACQUIRING IS
5 NOT ALLOWED.

6 A. CORRECT.

7 Q. AND WHEN YOU DISCUSSED ACQUIRING, YOU SAID THAT

8 THIS WAS THE RELATIONSHIP BETWEEN A MERCHANT, SUCH AS
9 CCBILL, AND A BANK, CORRECT?

10 A. YES.

11 Q. AND THAT THEREFORE, BOTH THE MERCHANT AND THE
12 BANK MUST BE LOCATED IN THE SAME VISA REGION?

13 A. CORRECT.

14 Q. IS THERE ANY REQUIREMENT THAT CLIENTS OF THE
15 MERCHANT, AS DISCUSSED EARLIER, THE WEBSITE OWNERS, ARE
16 LOCATED IN THE SAME REGION AS THE MERCHANT OR THE BANK?

17 A. YES, THAT IS A REQUIREMENT ALSO.

18 MR. DOBBS: PAGE 46, LINE 19, TO PAGE 48,
19 LINE 3, DESIGNATED BY THE PLAINTIFFS.

20 Q. SO THAT I UNDERSTAND CORRECTLY, IMAGINE A
21 CUSTOMER HAS SIGNED UP THROUGH THE PROCESS WE JUST
22 DISCUSSED, HAS OBTAINED AN E-TICKET, A USER NAME AND A
23 PASSWORD. CAN THAT E-TICKET BE USED FOR MULTIPLE VISITS
24 TO THE CLIENT'S WEBSITE?

25 A. YES.

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1 Q. AND WHEN THE CUSTOMER GOES TO THE CLIENT'S
2 WEBSITE AFTER THE INITIAL PURCHASE OF THE E-TICKET, WILL
3 THAT CUSTOMER HAVE TO INPUT THE USER NAME AND PASSWORD
4 IN ORDER TO GAIN ACCESS TO THE CLIENT'S WEBSITE?

5 A. THAT IS ONE METHOD OF AUTHENTICATION.

6 Q. THAT PAGE REQUIRING INPUT OF USER NAME AND
7 PASSWORD, WOULD IT REQUIRE INPUT OF ANY OTHER
8 INFORMATION?

9 BASED ON YOUR KNOWLEDGE OF THE INDUSTRY

10 AND OF YOUR CLIENTS?

11 A. USUALLY IT'S JUST A USER NAME AND PASSWORD OR A
12 URL.

13 Q. WHY WOULD IT BE A URL?

14 A. SOME AUTHENTICATION, SOME TYPES OF COMPUTERS
15 DON'T ALLOW -- DON'T COME STANDARD. I SHOULD SAY WITH
16 MICROSOFT, FOR EXAMPLE, IT DOESN'T COME STANDARD WITH A
17 USER AUTHENTICATION SCHEME THAT IS USED. PEOPLE WITH
18 THOSE WILL USE RANDOMLY CHANGING URLS. THEY DON'T HAVE
19 TO HAVE A USER NAME AND PASSWORD. THEY CAN HAVE A URL
20 THAT IS -- JUST MEANS NOTHING, THAT COULD BE A RANDOMLY
21 CHANGING ONE. THEY CHANGE ON A DAILY, WEEKLY BASIS AND
22 THAT'S WHERE THEY AUTHENTICATE TO.

23 Q. AND SO THAT I UNDERSTAND THAT CORRECTLY, THE
24 E-TICKET CAN EITHER GENERATE A USER NAME AND A PASSWORD
25 OR A RANDOMLY CHANGING URL?

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1 A. YES.

2 MR. DOBBS: PAGE 48, LINES 9 THROUGH 16,
3 DESIGNATED BY THE DEFENDANT.

4 Q. DISCUSSING THE RANDOMLY GENERATED URL AS YOU
5 JUST REFERRED TO, GENERALLY SPEAKING, WHO GENERATES THAT
6 RANDOMLY CHANGING URL?

7 A. THAT'S GENERATED ON OUR SIDE. THEY ENTER IN A
8 USER NAME AND PASSWORD ON OUR SIDE. THEY HAVE A URL
9 THAT THEY'RE TELLING THEM TO GO TO, AND OUR SYSTEM
10 REDIRECTS THEM TO THAT. IT'S AN OLD SYSTEM THAT IS NOT
11 USED VERY MUCH ANYMORE.

12 MR. DOBBS: PAGE 49, LINE 5 THROUGH 7,
13 DESIGNATED BY THE DEFENDANT.

14 Q. YOU SAID THAT WAS AN OLDER SYSTEM?

15 A. CORRECT. IT MAY NOT EVEN BE IN OPERATION
16 ANYMORE. WE'RE IN THE PROCESS OF TAKING IT OFF.

17 MR. DOBBS: PAGE 55, LINE 19 THROUGH 22,
18 DESIGNATED BY THE DEFENDANT.

19 Q. SO GOING BACK TO EXHIBIT 3, THIS SCREEN, A
20 CLIENT, A WEBSITE OWNER, WILL HAVE ACCESS TO AFTER THE
21 EIGHT STEPS HAVE BEEN CONCLUDED IN EXHIBIT 3?

22 A. CORRECT.

23 MR. DOBBS: PAGE 57, LINE 16, THROUGH
24 PAGE 62, LINE 12, DESIGNATED BY THE DEFENDANT.

25 Q. GOING DOWN THE PAGE, YOU SEE WHERE IT SAYS AVS?

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1 A. YES.

2 Q. WHAT DOES AVS STAND FOR?

3 A. ADDRESS VERIFICATION SERVICE.

4 Q. AND THEN IT SAYS, EXACT MATCH. WHAT DOES THAT
5 MEAN?

6 A. THE AVS SYSTEM RESPONDS BACK IN DIFFERENT
7 DEGREES OF MATCHES, MEANING THE POSTAL CODE, AS YOU SEE
8 FARTHER ALONG THERE, THE FIVE-DIGIT POSTAL CODE WAS AN
9 EXACT MATCH FOR THE ONE THAT WAS ISSUED THAT THE BANK
10 HAS ON FILE ISSUED FOR THAT CREDIT CARD NUMBER.

11 Q. AND YOU SEE WHERE IT SAYS HERE "EXACT MATCH,
12 COLON, ADDRESS AND FIVE DIGIT POSTAL CODE"?

13 A. CORRECT.

14 Q. THE EXACT MATCH, DOES IT REFER BOTH TO THE
15 ADDRESS AND THE DIGITAL POSTAL CODE OR ONE OR THE OTHER
16 OR NEITHER?

17 A. BOTH.

18 Q. SO JUST TO BE CLEAR --

19 A. BOTH. IT WAS AN EXACT MATCH FOR BOTH THE POSTAL
20 AND THE ADDRESS.

21 Q. AND WHAT KIND OF INFORMATION WOULD YOU HAVE
22 COLLECTED WITH RESPECT TO THE ADDRESS BESIDES THE POSTAL
23 CODE?

24 A. THE SYSTEM ONLY CHECKS THE DIGITS IN FRONT,
25 MEANING LIKE AN ADDRESS, 1125 EAST FIRST STREET. IT'S

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1 ONLY GOING TO LOOK AT 1125. AND IF THAT 1125 WAS AN
2 EXACT MATCH, IT WILL COME UP AS AN EXACT MATCH OR
3 PARTIAL MATCH, OR WHATEVER. BUT IT WILL NOT SHOW UP --
4 IF IT WAS 1126, AND THE BANK HAD 1125, IT WOULD NOT COME
5 UP WITH AN EXACT MATCH.

6 Q. SO THAT I UNDERSTAND CORRECTLY, IT REFERS TO THE
7 HOUSE NUMBER?

8 A. THE HOUSE NUMBER.

9 Q. HOW DOES THAT WORK WHEN THERE ARE DIFFERENT
10 APARTMENTS IN A BUILDING WITH THE SAME NUMBER? IS THE
11 APARTMENT NUMBER CHECKED AS PART OF THIS ADDRESS
12 VERIFICATION?

13 A. I'M NOT SURE ON THAT.

14 Q. GOING DOWN THE PAGE, DO YOU SEE WHERE IT SAYS,
15 CVV2?

16 A. YES.

17 Q. WHAT DOES THAT MEAN?

18 A. IT'S THE -- WHAT IS IT? -- CREDIT CARD

19 VERIFICATION. IT'S THE FOUR DIGIT NUMBERS ON THE BACK

20 OF -- EITHER ON THE BACK OR THE FRONT OF YOUR CREDIT

21 CARD, DEPENDING ON THE TYPE OF CARD.

22 Q. AND ON THIS PAGE, THAT ENTRY IS BLANK, CORRECT?

23 A. YES.

24 Q. WHAT DOES THAT MEAN?

25 A. I'M NOT SURE EXACTLY IF OUR SYSTEM -- I'M NOT

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1 SURE WHY IT'S BLANK. IF THAT MEANS THAT IT WASN'T

2 PROVIDED OR NOT. THAT'S A TECHNICAL ISSUE THAT I'M NOT

3 AWARE OF. I'M NOT SURE.

4 Q. I HAVE ANOTHER DOCUMENT THAT WILL LOOK VERY

5 SIMILAR TO YOU. EXHIBIT 5.

6 FOR THE RECORD, THIS IS A DOCUMENT WITH A

7 BATES NUMBER CCBILL00042, AGAIN, MARKED CONFIDENTIAL.

8 AT THE TOP OF THE PAGE, IT SAYS, "CCBILL.COM WEBMASTER

9 ADMIN."

10 MR. CADWELL, HAVE YOU SEEN THIS DOCUMENT

11 BEFORE?

12 A. YES. WELL, NOT THIS DOCUMENT BUT THIS SCREEN.

13 Q. IS THIS THE SAME TYPE OF SCREEN YOU JUST

14 DESCRIBED WITH REGARD TO EXHIBIT 4?

15 A. YES.

16 Q. GOING DOWN THE PAGE ON THE LEFT-HAND SIDE WHERE

17 IT SAYS, AVS?

18 A. YES.
19 Q. DOES THAT STILL MEAN ADDRESS VERIFICATION
20 SERVICE?
21 A. YES.
22 Q. DO YOU SEE WHERE IT SAYS, ZIP MATCH?
23 A. YES.
24 Q. WHAT DOES THAT MEAN?
25 A. THAT THE ZIP CODE WAS THE ONLY THING THAT

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1 MATCHED. THE ADDRESS DID NOT MATCH DURING THAT
2 TRANSACTION. IT'S PART OF THE PARTIAL RESPONSES.
3 Q. AND WHEN YOU SAY THE ADDRESS DID NOT MATCH, YOU
4 MEAN THE HOUSE NUMBER DID NOT MATCH?
5 A. THE HOUSE NUMBER.
6 Q. JUST SO THAT I AM CLEAR ABOUT THIS.
7 A. OKAY.
8 Q. AND THEN DO YOU SEE WHERE IT SAYS "CVV2 MATCH"?
9 A. YES.
10 Q. WHAT DOES THAT MEAN?
11 A. THIS MEANS THAT THE CVV2 NUMBER PROVIDED ON THAT
12 CARD MATCHED WITH WHAT THE CARD ASSOCIATIONS -- THE
13 BANKS HAD FOR THAT PARTICULAR CARD NUMBER.
14 Q. NOW, GOING BACK TO EXHIBIT 4, WHERE THE CVV2 WAS
15 BLANK, DOES THAT MEAN THAT THE CVV2 WAS NOT PROVIDED OR
16 THAT IT WAS NOT A MATCH?
17 A. I'M NOT SURE SPECIFICALLY ON THAT SCREEN WHAT
18 OUR RESPONSE IS IF IT'S NOT PROVIDED OR NOT.
19 Q. GOING BACK TO EXHIBIT 5, THEN, THE CUSTOMER WHO

20 HAS ENTERED THIS INFORMATION PROVIDED A ZIP CODE THAT
21 MATCHED BUT NOT A HOUSE NUMBER THAT MATCHED, AND ALSO
22 PROVIDED A CVV2 NUMBER THAT MATCHED. WILL THAT CUSTOMER
23 HAVE GAINED ACCESS TO CONTENT PROVIDED BY ONE OF YOUR
24 CLIENTS?

25 A. WELL, THE SUBSCRIPTION WAS APPROVED -- WAS

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1 APPROVED HERE BECAUSE THERE WAS A SUBSCRIPTION ID
2 ISSUED. WHETHER THEY WENT AHEAD AND LOOKED AT CONTENT I
3 HAVE NO CLUE WHETHER THEY JUST PAID FOR IT AND DIDN'T DO
4 IT.

5 Q. DID CCBILL PROVIDE AN E-TICKET TO THIS CUSTOMER?

6 A. YES.

7 Q. GOING BACK TO EXHIBIT 4, WHERE THE CUSTOMER
8 PROVIDED INFORMATION THAT LED TO AN EXACT MATCH OF THE
9 HOUSE NUMBER AND THE ZIP CODE NUMBER, AND WHERE IT'S NOT
10 CLEAR WHETHER THIS CUSTOMER PROVIDED A CVV2 NUMBER, WAS
11 AN E TICKET PROVIDED TO THIS CUSTOMER?

12 A. YES.

13 Q. AND THE REASON FOR THAT IS BECAUSE THE DETAILS
14 FOR SUBSCRIPTION, THERE IS SUPPOSED TO BE A SUBSCRIPTION
15 NUMBER THAT WAS BLACKED OUT IN THIS SPECIFIC DOCUMENT?

16 A. YES.

17 MR. DOBBS: PAGE 62, LINE 20, THROUGH
18 PAGE 66, LINE 4, DESIGNATED BY THE DEFENDANT.

19 Q. MR. CALDWELL -- MR. CADWELL, IS THIS A SCREEN
20 THAT YOU HAVE SEEN BEFORE SIMILAR TO EXHIBITS --

21 A. YES.

22 Q. -- 4 AND 5?

23 NOW, I NOTICE THAT THE SCREEN LOOKS
24 SOMEWHAT DIFFERENT FROM THE SCREEN THAT WAS REPRESENTED
25 IN EXHIBITS 4 AND 5. IS THERE ANY SPECIFIC REASON FOR

170

1 THAT?

2 A. I'M NOT SURE WHY -- THIS HAS ADDITIONAL
3 TRANSACTIONS FOR REBILLS DOWN BELOW.

4 Q. I WAS ACTUALLY SPECIFICALLY REFERRING TO THE TOP
5 OF THE PAGE, WHERE IT SAYS, "CCBILL.COM WEBMASTER
6 ADMIN." WHEN YOU COMPARE EXHIBITS 4 AND 5 TO EXHIBIT 6,
7 ARE EXHIBITS 4 AND 5 THE BOX, FOR LACK OF A BETTER WORD,
8 THAT IS EXHIBITED ON OR SHOWN ON EXHIBIT 6?

9 A. OKAY. SAY THE QUESTION AGAIN? SEEING THE PART
10 UP TOP? IS THAT WHAT YOU'RE SAYING?

11 Q. YEAH. I'M JUST TRYING TO UNDERSTAND WHETHER THE
12 BOX ON EXHIBIT 6, THE ONE ON YOUR RIGHT SIDE --

13 A. UH-HUH.

14 Q. -- IS THE SAME TYPE OF BOX, THE SAME TYPE OF
15 SCREEN, AS SHOWN ON EXHIBITS 4 AND 5?

16 A. I'M SURE THAT THERE'S -- THEY'VE JUST CUT OFF
17 THE, YOU KNOW, THE TOP PART OF IT THERE.

18 Q. SURE.

19 DISCUSSION HELD OFF THE RECORD.

20 WE CAN GO BACK ON THE RECORD.

21 Q. DURING A BRIEF DISCUSSION OFF THE RECORD,
22 MR. FLYNN INDICATED THAT IT'S JUST A MATTER OF TIMING.
23 AND SO I WOULD JUST LIKE TO DISCUSS BRIEFLY EXHIBIT 6

24 WITH YOU.

25 YOU SEE WHERE IT SAYS AT THE TOP,

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1 "DETAILS FOR SUBSCRIPTION," AND THEN THERE IS A
2 BLACKED-OUT LINE?

3 A. YES.

4 Q. WOULD THIS STILL REFER TO THE SUBSCRIPTION ID
5 NUMBER?

6 A. YES.

7 Q. AND THAT WOULD STILL SIGNIFY THAT AN E-TICKET
8 WAS ISSUED?

9 A. YES.

10 Q. GOING DOWN THE LINE -- GOING DOWN ON THE
11 LEFT-HAND SIDE, YOU SEE WHERE IT SAYS, PROCESSOR, AND
12 THEN IT'S BLACKED OUT?

13 A. PROCESSOR, YES.

14 Q. WHAT TYPE OF INFORMATION WOULD THAT REFER TO?

15 A. THAT WOULD BE THE -- WHICH E PROCESSING ENTITY
16 THAT WE SENT THAT THROUGH, WHICH GATEWAY.

17 Q. THESE ARE THE NETWORK GATEWAYS THAT YOU REFERRED
18 TO EARLIER?

19 A. YES.

20 Q. DO YOU SEE UNDERNEATH WHERE IT SAYS AVS?

21 A. YES.

22 Q. DOES THAT STILL MEAN ADDRESS VERIFICATION
23 SERVICES?

24 A. YES.

25 Q. DO YOU SEE WHERE IT SAYS, "ZIP MATCH, FIVE-DIGIT

1 POSTAL CODE MATCH ONLY."

2 A. YES.

3 Q. WHAT DOES THAT REFER TO?

4 A. IT REFERS TO THE ADDRESS -- THE HOUSE NUMBER WAS

5 NOT A MATCH ON THIS. IT WAS JUST -- THE ONLY PART THAT

6 MATCHED WAS THE FIVE-DIGIT ZIP CODE.

7 Q. DO YOU SEE UNDERNEATH WHERE CVV2 IS BLANK, RIGHT

8 UNDERNEATH AVS?

9 A. CVV2, YES.

10 Q. AGAIN, YOU DON'T KNOW WHETHER THAT MEANS THAT

11 THE CVV2 WAS PROVIDED OR WHETHER IT WAS INCORRECT,

12 RIGHT?

13 A. I'M NOT ONE HUNDRED PERCENT SURE.

14 Q. WAS AN E-TICKET PROVIDED TO THIS --

15 A. YES.

16 Q. -- CONSUMER?

17 A. YES.

18 Q. SO IF I UNDERSTAND CORRECTLY, GOING THROUGH THE

19 E-TICKET FLOW DEMO UNDER STEP 3, AND THIS WOULD BE ON

20 EXHIBIT 3, WHERE IT SAYS "COLLECT INFO." THE CONSUMER

21 OR CUSTOMER WHO IS PROVIDED WITH AN E-TICKET UNDER

22 EXHIBIT 6 PROVIDED WITH A ZIP CODE -- PROVIDED A ZIP

23 CODE IN ADDITION TO CREDIT CARD INFORMATION AND WAS

24 PROVIDED WITH AN E-TICKET?

25 A. CORRECT.

1 MR. DOBBS: PAGE 66, LINE 22 THROUGH PAGE
2 67, LINE 8, DESIGNATED BY THE DEFENDANT.

3 Q. OKAY. BESIDES THE E-MAIL ADDRESS, IP ADDRESS,
4 PHONE NUMBER, ZIP CODE AND CREDIT CARD NUMBER, IS THERE
5 ANY OTHER INFORMATION REQUESTED FROM THE CONSUMER FROM
6 WHOM YOU COLLECT THE INFORMATION AS SHOWN ON PAGE 3 OF
7 EXHIBIT 3?

8 A. OKAY. IS THE QUESTION IS THERE ANY MORE ON THIS
9 PAGE THAT THERE IS OR --

10 Q. IN GENERAL.

11 A. I MEAN, THERE'S NAME, ADDRESS, CREDIT CARD
12 INFORMATION, CVV2, PHONE NUMBER. I DON'T THINK THERE'S
13 -- TYPE OF CARD. I'D HAVE TO LOOK AT A FORM TO GET THEM
14 ALL. I'M SURE I'M MISSING ONE.

15 MR. DOBBS: PAGE 68, LINE 11, THROUGH
16 PAGE 69, LINE 8, DESIGNATED BY THE DEFENDANT.

17 Q. OKAY, YOU SAID THAT THE CREDIT CARD INFORMATION,
18 THE EXPIRATION DATE AND THE CVV2 NUMBER ARE NOT PROVIDED
19 TO THE CLIENT?

20 A. CORRECT.

21 Q. THE OTHER CUSTOMER INFORMATION, THE E-MAIL, THE
22 ADDRESS, THE ZIP CODE, IS THAT PROVIDED TO THE CLIENT?

23 A. YES.

24 Q. THE INFORMATION THAT IS PROVIDED TO THE CLIENT,
25 IS THAT INFORMATION SENT TO THE NETWORK GATEWAY

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1 PROCESSORS AND THEN ON TO THE CREDIT CARD ASSOCIATION?

2 A. THE ONLY PART THAT'S SENT TO THE CREDIT CARD

3 COMPANIES IS A VERY SPECIFIC STRING THAT IS THE -- THAT,
4 YOU KNOW, HAS THE ACTUAL CREDIT CARD NUMBER, THE
5 EXPIRATION DATE, CVV2. FOR AVS, YOU HAVE THE FIVE-DIGIT
6 IN THE U.S., THEIR FIVE-DIGIT POSTAL CODES, AS WELL AS
7 THE NUMBER -- AND IT GETS HARDER AND HARDER AT THIS
8 POINT WHEN YOU GET TO THE ADDRESS CODES, BECAUSE NOT
9 EVERYBODY'S ADDRESS STARTS WITH NUMBERS. SO THE SYSTEM,
10 VISA, MASTER CARD IS EXTREMELY OLD, EXTREMELY ARCHAIC
11 AND DOES NOT PROVIDE MUCH OTHER INFORMATION, NO.

12 Q. SO -- SORRY.

13 A. SO NONE OF THE OTHER E-MAILS AND IP'S AND PHONE
14 NUMBERS OR ANYTHING ARE PASSED THROUGH.

15 MR. DOBBS: PAGE 69, LINE 21, THROUGH
16 PAGE 70, LINE 16, DESIGNATED BY THE DEFENDANT.

17 YOUR HONOR, PAGE 70, LINE 1 THROUGH 16 IS
18 DESIGNATED BY THE PLAINTIFFS AS WELL, SO PAGE 70, LINE 1
19 THROUGH 16, IS A JOINT DESIGNATION.

20 Q. JUST SO THAT I'M CLEAR, THE ONLY INFORMATION YOU
21 PROVIDE TO THEM, BEING THE CREDIT CARD ASSOCIATIONS,
22 CREDIT CARD COMPANIES, IS THE CREDIT CARD INFORMATION,
23 MEANING THE CREDIT CARD NUMBER, THE EXPIRATION DATE, THE
24 ZIP CODE AND THE HOUSE NUMBER AND THE CVV2, TO WHAT
25 EXTENT ARE YOU PROVIDING E TICKETS IN THE ABSENCE OF A

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1 CVV2 NUMBER. IS A CVV2 NUMBER A REQUIRED PART OF THE
2 INFORMATION THAT YOU SEND TO THE CREDIT CARD
3 ASSOCIATIONS OR CAN YOU PROCESS AND GET AUTHORIZATION
4 RESPONSES WITHOUT THE CVV2 NUMBER?

5 A. YOU CAN GET APPROVALS WITHOUT A CVV2 NUMBER.
6 NOT ALL BANKS HAVE COMPLIED TO THAT STANDARD AND HAVE
7 THEM.

8 Q. CAN YOU GET AUTHORIZATIONS IN THE ABSENCE OF A
9 HOUSE NUMBER?

10 A. YES.

11 Q. CAN YOU GET AUTHORIZATIONS IN THE ABSENCE OF A
12 NAME?

13 A. YES.

14 Q. CAN YOU GET AUTHORIZATIONS IN THE ABSENCE OF A
15 ZIP CODE?

16 A. YES.

17 MR. DOBBS: PAGE 73, LINES 1 THROUGH 19,
18 DESIGNATED BY THE PLAINTIFFS.

19 MR. GOMEZ: YOUR HONOR, THE DEFENDANT HAS
20 AN OBJECTION WITH RESPECT TO THIS SECTION, ESSENTIALLY A
21 RELEVANCE AND VAGUENESS OBJECTION. THIS PARTICULAR
22 WITNESS IS BEING ASKED QUESTIONS ABOUT WHAT IS REQUIRED
23 FROM A CONSUMER WITH RESPECT TO DEBIT CARD INFORMATION.
24 AND THE FIRST OBJECTION WE HAVE IS THAT THEY ARE ASKING
25 IN THAT FIRST QUESTION WHEN PROCESSING DEBIT CARD

176

1 INFORMATION AS PART OF THE AUTHORIZATION PROCESS, WHAT
2 INFORMATION WOULD YOU NEED AT A MINIMUM TO PROCESS THE
3 CARD INFORMATION. WE OBJECT TO THE -- IN TERMS OF
4 MINIMUM AS VAGUE. AND ALSO THIS -- THIS PARTICULAR
5 INDIVIDUAL DOESN'T HANDLE THE PROCESSING FROM CONSUMERS
6 TO THE -- TO ACTUALLY -- WHAT INFORMATION THEY ACTUALLY

7 WOULD BE NEEDING TO SUBMIT. AND IF YOU NOTICE, ON
8 LINE -- HE GIVES AN ANSWER ON LINE 4 OF THE CARD NUMBER
9 AND EXPIRATION DATE, AND THEN HE GOES DOWN, LINE 6, I'M
10 NOT ONE HUNDRED PERCENT SURE ON THE EXPIRATION DATE. IT
11 IS QUITE OBVIOUS FROM THIS LINE OF QUESTIONING, THIS
12 PARTICULAR WITNESS, IT IS BEYOND HIS SCOPE OF KNOWLEDGE,
13 YOUR HONOR.

14 THE COURT: RESPONSE.

15 MR. VAN KWAWEGEN: YES, YOUR HONOR. A
16 COUPLE OF THINGS. I THINK THAT THE SECTION THAT IS
17 DESIGNATED HERE BY THE PLAINTIFFS IS NOT VAGUE AT ALL.
18 THERE IS NO REFERENCE TO MINIMUM, BUT IT'S ACTUALLY AT A
19 MINIMUM, SO THE MINIMUM REQUIRED INFORMATION IN ORDER TO
20 PROCESS THE TRANSACTIONS BEING DISCUSSED HERE, THIS
21 DIRECTLY FOLLOWS THE TESTIMONY THAT YOUR HONOR HAS JUST
22 HEARD A MOMENT AGO, WHERE MR. CADWELL WAS GOING THROUGH
23 THE DIFFERENT ELEMENTS THAT ARE REQUIRED OR ARE NOT
24 REQUIRED IN ORDER TO PROCESS A CREDIT CARD TRANSACTION.

25 YOUR HONOR HAS HEARD HOW THE FUNNEL OF

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1 INFORMATION, IF YOU WILL, HAS BEEN NARROWED FROM THE
2 INFORMATION THAT IS ACTUALLY COLLECTED FROM THE CONSUMER
3 TO THE INFORMATION THAT IS ACTUALLY PROVIDED TO THE
4 CREDIT CARD ASSOCIATIONS. THIS IS A LOGICAL
5 CONTINUATION OF THAT IN THAT IT EXPLAINS THAT QUITE
6 CLEARLY, IN MY OPINION, THE CREDIT CARD INFORMATION IS
7 THE MINIMUM REQUIRED INFORMATION AND THAT MR. CADWELL IS
8 NOT EVEN SURE IF HE WOULD ALSO, IN ADDITION TO THAT,

9 NEED TO SUBMIT AN EXPIRATION DATE.

10 SO RESPECTFULLY, YOUR HONOR, WE DON'T
11 BELIEVE THAT THIS IS VAGUE OR IRRELEVANT FOR THE ISSUES
12 IN THIS CASE.

13 THE COURT: I FIND THAT THE WITNESS HAS
14 DEMONSTRATED THROUGH ANSWERS TO OTHER QUESTIONS THAT HE
15 HAS AT LEAST A MINIMAL AMOUNT OF KNOWLEDGE ABOUT THE
16 REQUIREMENTS HERE AND CERTAINLY THERE IS NO SHOWING THAT
17 HE DOES NOT HAVE ANY KNOWLEDGE. SO THE OBJECTION ON THE
18 GROUND THAT HE IS NOT COMPETENT IN SOME WAY OR
19 KNOWLEDGEABLE IS OVERRULED.

20 I CAN'T REMEMBER WHAT THE TITLE OF THE
21 SECOND OBJECTION WAS. THAT IS THE HEART OF YOUR
22 OBJECTION, MR. GOMEZ?

23 MR. GOMEZ: YES, IT WAS RELEVANCE AND
24 VAGUENESS, BUT I THINK YOU HAVE ADDRESSED THAT, YOUR
25 HONOR.

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1 THE COURT: I FIND IT RELEVANT AND ANY
2 VAGUENESS IS A QUESTION OF ARGUMENT. OBJECTION IS
3 OVERRULED.

4 Q. WHEN PROCESSING DEBIT CARD INFORMATION, AS PART
5 OF THE AUTHORIZATION PROCESS, WHAT INFORMATION WOULD YOU
6 NEED AT A MINIMUM TO PROCESS THE CARD INFORMATION?

7 A. THE CARD NUMBER AND THE EXPIRATION DATE.

8 Q. SO PROVIDED -- SORRY, YOU WERE NOT FINISHED?

9 A. AND AGAIN, I'M NOT A HUNDRED PERCENT SURE ON THE
10 EXPIRATION DATE. I KNOW THE MINIMUM IS A CREDIT CARD

11 NUMBER.

12 Q. AND WHEN YOU SAY THE CREDIT CARD NUMBER, YOU
13 MEAN THE NUMBER THAT IS DISPLAYED ON THE DEBIT CARD AS
14 WELL?

15 A. YES.

16 Q. SO PROVIDED WITH A DEBIT CARD -- STRIKE THAT.

17 SO IN THE EVENT THAT A CUSTOMER SEEKS
18 AUTHORIZATION, THE MINIMUM INFORMATION REQUIRED WOULD BE
19 A DEBIT CARD NUMBER AND PERHAPS AN EXPIRATION DATE?

20 A. CORRECT.

21 Q. GOING BACK TO EXHIBIT 7, DOES CCBILL ACCEPT
22 PAYMENTS THROUGH AMERICAN EXPRESS?

23 A. NO.

24 MR. DOBBS: PAGE 74, LINE 23, THROUGH
25 PAGE 77, LINE 8.

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1 Q. SO WHAT I'M TRYING TO UNDERSTAND IS, WHEN WE
2 LOOK AT EXHIBIT 7, WHEN IT LISTS VISA, MASTERCARD,
3 DISCOVER AND JCB, WHAT TYPES OF CREDIT CARDS WOULD BE
4 ACCEPTED IN ORDER TO ISSUE E-TICKETS? SO, FOR EXAMPLE,
5 TO THE EXTENT THAT THERE IS A VISA CHARGE CARD, WOULD
6 THAT BE INCLUDED?

7 A. YES. VISA HAS NUMEROUS -- LET ME SEE IF THIS IS
8 WHAT YOU ARE SAYING.

9 Q. UM-HUM.

10 A. VISA HAS -- BANKS HAVE DIFFERENT CREDIT POLICIES
11 ON A VISA. FOR EXAMPLE, A VISA CARD, THEY HAVE
12 DIFFERENT CREDIT POLICIES, WHETHER YOU HAVE TO PAY A

13 REVOLVING LINE OF CREDIT THAT YOU GET TO KEEP FOR, I
14 DON'T KNOW, LIFE ALMOST, YOU KNOW, OR THEY HAVE ONES
15 WHERE YOU HAVE TO PAY IMMEDIATELY, OR THEY ALSO HAVE
16 ONES WHERE A NEW CARD MIGHT BE GIVEN TO SOMEBODY WHERE
17 THEY HAVE NO PAYMENT FOR SIX MONTHS, OR ZERO INTEREST
18 FOR SIX MONTHS, DIFFERENT ENTICEMENTS, BUSINESS
19 ENTICEMENTS TO SELL. THERE'S ALSO PREPAID DEBIT CARDS,
20 PREPAID CARDS THAT ARE THERE. THOSE ARE ALL -- FALL
21 UNDER THE VISA BRAND. THERE'S MULTIPLE TYPES.

22 Q. AND DOES CCBILL PROCESS INFORMATION AND PROVIDE
23 E-TICKETS FOR ALL OF THESE TYPES OF CARDS?

24 A. YES.

25 Q. SO TO THE EXTENT A CUSTOMER PRESENTS A PREPAID

180

1 CARD, THAT CUSTOMER WOULD BE -- PROVIDING THE OTHER
2 STEPS OF THE PROCESS HAVE BEEN MET, WOULD BE PROVIDED
3 WITH AN E-TICKET?

4 A. YES.

5 Q. IN ORDER TO PROCESS THAT INFORMATION --

6 THE COURT: THERE IS A BOX AROUND THAT
7 MATERIAL. IS THAT RELEVANT?

8 MR. GOMEZ: EXCUSE ME, YOUR HONOR. I
9 APOLOGIZE, WITH RESPECT TO -- WITH RESPECT TO -- WE HAVE
10 THE SAME OBJECTION WITH RESPECT TO -- ON PAGE 76, LINE 2
11 THROUGH 6, THAT WE HAD PREVIOUSLY. IT'S BEING REPEATED
12 AGAIN, THE SAME LINE OF QUESTIONING.

13 THE COURT: THE OBJECTION IS OVERRULED
14 FOR THE SAME REASON.

15 MR. GOMEZ: YES, SIR.

16 Q. IN ORDER TO PROCESS THAT INFORMATION FOR THAT
17 PREPAID CREDIT CARD OR PREPAID DEBIT CARD, I THINK YOU
18 REFER TO THEM, YOU WOULD ONLY REQUIRE THE CREDIT CARD
19 NUMBER AND PERHAPS THE EXPIRATION DATE?

20 A. CORRECT.

21 Q. YOU MENTIONED A VISA PREPAID CARD. TO THE BEST
22 OF YOUR KNOWLEDGE, IS THERE A MASTERCARD PREPAID CARD?

23 A. YES.

24 Q. WOULD MASTERCARD PREPAID CARDS, COULD THEY BE
25 USED TO OBTAIN E-TICKETS?

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1 A. YES.

2 Q. SIMILAR TO -- AND THAT WOULD BE SIMILAR TO A
3 VISA PREPAID CARD?

4 A. YES.

5 Q. AND THAT WOULD BE SIMILAR TO ANY VISA CREDIT
6 CARD?

7 A. YES.

8 Q. TO THE BEST OF YOUR KNOWLEDGE, DOES DISCOVER
9 HAVE ANY PREPAID CARDS?

10 A. THEY DON'T CURRENTLY, BUT THEY JUST ANNOUNCED
11 THAT THEY'RE GOING TO AND I DON'T REMEMBER THE EXACT
12 ROLLOUT DATE.

13 Q. AND JCB?

14 A. I'M NOT AWARE. I'M NOT SURE WHETHER THEY DO OR
15 NOT.

16 Q. AND TO THE EXTENT THAT THEY HAVE OR WILL HAVE

17 THOSE CARDS IN THE FUTURE, THOSE PREPAID CARDS,
18 E-TICKETS COULD BE OBTAINED SIMILAR AND ANALOGOUS TO THE
19 VISA AND MASTERCARD PREPAID CARDS?

20 A. YES.

21 Q. OR ANY VISA OR MASTERCARD?

22 A. OR ANY VISA OR MASTER.

23 MR. DOBBS: PAGE 86, LINE 13, THROUGH
24 PAGE 87 LINE 17, DESIGNATED BY THE PLAINTIFFS.

25 Q. MOVING ON TO SCHEDULE D ON PAGE CCBILL00071, DO

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1 YOU SEE WHERE IT SAYS, "BLANK SHALL BE PERMITTED TO
2 DISCUSS WITH POTENTIAL MERCHANTS VISA AND MASTERCARD AND
3 APPROVED ONLINE DEBIT CARD TRANSACTION PROCESSING
4 SERVICES OFFERED BY BLANK."

5 WHAT DO YOU UNDERSTAND THIS TO MEAN? I'M
6 JUST TRYING TO UNDERSTAND THE DIFFERENT BLANKS AND HOW
7 THEY WORK TOGETHER.

8 A. YEAH. I UNDERSTAND.

9 I'M NOT SURE EXACTLY WHAT THEY'RE TRYING
10 SAY HERE. BASIC -- THEY ARE JUST SAYING WE ARE ALLOWED
11 TO TALK ABOUT WHAT OUR SERVICES ARE.

12 Q. AND THOSE WOULD INCLUDE DEBIT CARD TRANSACTIONS?

13 A. YES.

14 Q. MOVING ON TO SCHEDULE F, CCBILL00073, WHERE IT
15 SAYS "OTHER BUSINESSES OF BLANK."

16 A. YES.

17 Q. DO YOU SEE THAT IT INCLUDES AMERICAN EXPRESS
18 PROCESSING AND SETTLEMENT?

19 A. YES.

20 Q. DOES CCBILL PROVIDE AMERICAN EXPRESS PROCESSING
21 AND SETTLEMENT?

22 A. NO.

23 Q. FURTHER DOWN, IT SAYS DINERS CARD PROCESSING AND
24 SETTLEMENT. DOES CCBILL PROCESS DINERS CARD
25 INFORMATION?

183

1 A. NO.

2 MR. DOBBS: PAGE 89, LINE 4, THROUGH PAGE
3 90, LINE 18.

4 Q. AND FURTHER DOWN THE LINE, THE SECOND TO THE
5 LAST --

6 MR. DOBBS: DESIGNATED BY THE PLAINTIFFS,
7 YOUR HONOR.

8 Q. AND FURTHER DOWN THE LINE, THE SECOND TO THE
9 LAST PARAGRAPH, DO YOU SEE WHERE IT DISCUSSES AN INITIAL
10 -- A REGISTRATION FEE OF \$750?

11 A. YES.

12 Q. WHAT IS THE PURPOSE OF THIS INITIAL REGISTRATION
13 FEE?

14 A. IT'S A FEE THAT VISA AND MASTERCARD OR VISA, I
15 SHOULD SAY, REQUIRES OUR CLIENTS TO PAY TO BE ACCEPTED
16 AS A REGISTERED SPONSORED MERCHANT TO PROCESS.

17 Q. WHAT IF THEY DO NOT PAY THIS FEE?

18 A. THEY ARE NOT ALLOWED TO PROCESS THE VISA BRAND.

19 Q. AND WHEN YOU SAY "THEY'RE NOT ALLOWED TO PROCESS
20 A VISA BRAND," DOES THAT MEAN THEY'RE NOT ALLOWED TO

21 PROCESS VISA CREDIT CARD INFORMATION?

22 A. CORRECT.

23 Q. SO IF A CUSTOMER, AS OPPOSED TO A CLIENT, A
24 CUSTOMER WOULD ATTEMPT TO ENTER A VISA CREDIT CARD
25 INFORMATION, INFORMATION FROM A VISA CREDIT CARD,

184

1 REGARDLESS WHAT KIND OF VISA CREDIT CARD, UNLESS YOUR
2 CLIENT IS A SPONSORED MERCHANT UNDER THE VISA RULES,
3 THAT CUSTOMER WOULD HAVE TO BE TURNED DOWN?

4 A. CORRECT.

5 Q. CONTINUING, DO YOU SEE WHERE IT DISCUSSES IN THE
6 SECOND SENTENCE OF THAT PARAGRAPH AN ANNUAL RENEWAL FEE?

7 A. YES.

8 Q. HOW MUCH IS THAT?

9 A. ABOUT 375.

10 Q. DOLLARS?

11 A. DOLLARS.

12 Q. IS THAT STILL \$375, TO THE BEST OF YOUR
13 KNOWLEDGE?

14 A. YES.

15 Q. AND WHAT IS THAT ANNUAL RENEWAL FEE FOR?

16 A. IT'S A FEE THAT IS REQUIRED BY VISA ONLY TO
17 PROCESS TRANSACTIONS FOR THEIR CARD.

18 Q. AND SIMILAR TO THE INITIAL REGISTRATION FEE OF
19 \$750, IF A CLIENT DECIDES NOT TO PAY THIS ANNUAL RENEWAL
20 FEE, WHAT ARE THE CONSEQUENCES OF THAT?

21 A. THAT CLIENT CANNOT ACCEPT CONSUMERS WITH A
22 VISA -- FROM A VISA-BASED CARD.

23 MR. DOBBS: PAGE 92, LINE 23, THROUGH
24 PAGE 93, LINE 11, DESIGNATED BY THE DEFENDANT.

25 Q. GENERALLY SPEAKING, WHAT ARE THE ACCEPTABLE USE

185

1 POLICIES OF CCBILL? WHAT IS THE NATURE OF THOSE
2 POLICIES?

3 A. I'M NOT UNDERSTANDING THE QUESTION.

4 Q. WHO DO THEY APPLY TO?

5 A. THEY APPLY TO OUR CLIENTS.

6 Q. WHAT IF YOUR CLIENTS DO NOT ABIDE BY ACCEPTABLE
7 USE POLICIES? WHAT ARE THE CONSEQUENCES?

8 A. WE WOULD TERMINATE BUSINESS RELATIONSHIPS WITH
9 THEM. WE COULD.

10 Q. WHEN YOU SAY "WE COULD," WHAT DO YOU MEAN?

11 A. THERE'S LOTS OF DIFFERENT -- THERE'S LOTS OF
12 DIFFERENT AUP VIOLATIONS. SOME WOULD WARRANT IMMEDIATE
13 TERMINATION, SOME WOULD WARRANT -- YOU KNOW -- YOU KNOW,
14 A NOTICE OF VIOLATION.

15 MR. DOBBS: PAGE 95, LINE 18, TO PAGE 96,
16 LINE 9.

17 Q. FOCUSING YOUR ATTENTION --

18 THE COURT: DESIGNATED BY THE DEFENDANT?

19 MR. DOBBS: YES.

20 Q. FOCUSING YOUR ATTENTION ON GROUND P?

21 A. YES.

22 Q. DO YOU SEE WHERE IT SAYS, "USING ANY WORDING
23 RELATED TO CREDIT CARD USE FOR AGE VERIFICATION
24 PURPOSES."

25 A. YES.

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1 Q. WHAT DO YOU UNDERSTAND THIS TO MEAN?

2 A. THE CARD ASSOCIATIONS STRICTLY PROHIBIT
3 UTILIZING THEIR CREDIT CARDS FOR AGE VERIFICATION.

4 Q. AND WHEN YOU REFER TO CREDIT CARD ASSOCIATIONS,
5 WHO DO YOU REFER TO?

6 A. VISA AND MASTERCARD.

7 Q. SO BOTH VISA AND MASTERCARD?

8 A. VISA AND MASTERCARD.

9 Q. IF A CLIENT VIOLATES THIS POLICY, WHAT ARE THE
10 CONSEQUENCES OF THAT?

11 A. IT CAN BE AS SEVERE AS TERMINATION.

12 MR. DOBBS: PAGE 96, LINE 17, THROUGH
13 PAGE 97, LINE 8, DESIGNATED BY THE DEFENDANT.

14 Q. HAS CCB EVER TERMINATED CLIENTS FOR VIOLATING
15 THIS SPECIFIC POLICY, I.E., THE USE OF WORDING RELATED
16 TO CREDIT CARD USE FOR AGE VERIFICATION PURPOSES?

17 A. ALL I -- I DO KNOW THAT WE'VE HAD PEOPLE CHANGE
18 THEIR WEBSITES IN ORDER TO COMPLY. IF FAILURE TO DO SO
19 THEY WOULD HAVE RESULTED IN TERMINATION.

20 Q. DO YOU REMEMBER HOW ORIGINALLY WE TALKED ABOUT
21 THE DIFFERENT DEPARTMENTS WITHIN CCBILL AND WE TALKED A
22 LITTLE BIT ABOUT THE POLICY REVIEW DEPARTMENT?

23 A. YES.

24 Q. WOULD THE POLICY REVIEW DEPARTMENT BE REVIEWING
25 CLIENTS' WEBSITES FOR COMPLIANCE WITH POLICY P UNDER

187

1 SUBJECT HEADING 3 IN EXHIBIT 10?

2 A. YES.

3 MR. DOBBS: PAGE 97, LINE 9, THROUGH PAGE
4 98, LINE 3, DESIGNATED BY THE PLAINTIFFS.

5 Q. YOU JUST INDICATED THAT SOME CLIENTS WERE ASKED
6 TO CHANGE THE CONTENT OF THEIR WEBSITE FOR VIOLATION OF
7 THIS POLICY?

8 A. YES.

9 Q. I'M NOTICING THE SPECIFIC WORDING. IT SAYS,
10 "USING ANY WORDING RELATING TO CREDIT CARD USE FOR AGE
11 VERIFICATION PURPOSES." THE USE OF THE WORD "CREDIT
12 CARD," IS THAT MEANT TO ENCOMPASS DEBIT CARDS?

13 A. YES.

14 Q. IS THAT MEANT TO ENCOMPASS ANY TYPE OF CREDIT
15 CARD, INCLUDING PREPAID CREDIT CARDS, CHARGE CARDS OR
16 ANY OTHER FORM OF CREDIT CARD?

17 A. YES.

18 Q. IS IT MEANT TO INCLUDE ANY OTHER PAYMENT METHOD
19 ON THE INTERNET BESIDES CREDIT CARDS OR DEBIT CARDS, TO
20 THE BEST OF YOUR KNOWLEDGE?

21 A. IT'S SPECIFICALLY A RULE IN OUR SYSTEM FOR THE
22 CARD ASSOCIATIONS, MEANING VISA AND MASTERCARD PROHIBIT
23 THE USE OF AGE VERIFICATION.

24 MR. DOBBS: PAGE 99, LINE 24, THROUGH PAGE
25 100, LINE 8, DESIGNATED BY THE DEFENDANT.

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1 Q. THE SECOND SENTENCE READS, "CCBILL MAY ALSO BE
2 REQUIRED TO PROVIDE ACCESS TO CLIENTS' WEBSITES TO

3 REPRESENTATIVES OF THE CARD ASSOCIATIONS AND/OR THEIR
4 ACQUIRING MEMBERS FOR MONITORING FOR COMPLIANCE WITH
5 THEIR OPERATING RULES." THE CLIENT REFERRED TO HERE,
6 THIS IS CCBILL'S CLIENT?

7 A. YES.

8 Q. THAT IS THE WEBSITE OWNER?

9 A. YES.

10 MR. DOBBS: PAGE 100, LINES 15 THROUGH
11 19.

12 MR. VAN KWAWEGEN: YOUR HONOR WILL NOTICE
13 A BOX AROUND THAT DESIGNATION, DESIGNATED BY THE
14 DEFENDANT. PLAINTIFFS HAVE WAIVED ALL OBJECTIONS TO
15 DEFENDANT'S DESIGNATIONS IN ANY OF THESE TRANSCRIPTS,
16 YOUR HONOR, SO THIS BOX CAN BE IGNORED.

17 THE COURT: THE MATERIAL ON PAGE 100,
18 LINE 15 THROUGH 19, IS APPROPRIATE TO BE READ?

19 MR. VAN KWAWEGEN: YES.

20 THE COURT: WILL YOU DO THAT.

21 Q. TO THE BEST OF YOUR KNOWLEDGE, DO THE CREDIT
22 CARD ASSOCIATIONS' REPRESENTATIVES GO TO THE WEBSITES OF
23 CCBILL'S CLIENTS IN ORDER TO MONITOR COMPLIANCE WITH THE
24 RULES SET BY THE CREDIT CARD ASSOCIATIONS?

25 A. YES.

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1 MR. DOBBS: PAGE 101, LINES 9 THROUGH 17.

2 Q. TO THE BEST OF YOUR KNOWLEDGE, DO THE
3 REPRESENTATIVES OF THE ACQUIRING MEMBERS MONITOR
4 COMPLIANCE WITH THE CREDIT CARD ASSOCIATIONS' OPERATING

5 RULES?

6 A. YES.

7 Q. YOU TESTIFIED EARLIER THAT USING WORDING RELATED
8 TO CREDIT CARD USE FOR AGE VERIFICATION WOULD BE A
9 VIOLATION OF THE CREDIT CARDS ASSOCIATIONS' RULES?

10 A. YES.

11 MR. DOBBS: PAGE 104, LINE 23, THROUGH
12 PAGE 105, LINE 18, DESIGNATED BY THE PLAINTIFFS.

13 Q. SO WE JUST DISCUSSED A MINIMUM AMOUNT OF TIME
14 THAT AN E-TICKET IS VALID. WHAT IS THE MAXIMUM AMOUNT
15 OF TIME THAT AN E-TICKET IS VALID?

16 A. ONE YEAR. NO, I TAKE THAT BACK. I THINK WE DO
17 HAVE A FEW SITES THAT ALLOW LIFETIME MEMBERSHIP OF THE
18 SITE.

19 Q. SO THAT I UNDERSTAND CORRECTLY, THERE ARE A FEW
20 CCBILL CLIENTS THAT ALLOW CUSTOMERS ACCESS FOR THE REST
21 OF THEIR LIFE BY PROVIDING --

22 A. NO. THE REST OF THE LIFE OF THE SITE.

23 Q. OKAY.

24 A. NOT -- YOU KNOW, HOW LONG IS LIFE? YOU KNOW,
25 ONLY THAT SITE. IF IT GOES AWAY, THEN IT ENDS.

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1 Q. AND SO THIS LIFETIME ACCESS TIED TO THE SITE
2 LIFE SPAN IS BASED ON PROVIDING USER NAME AND PASSWORD
3 OR RANDOMLY GENERATED URL?

4 A. USER NAME AND PASSWORD.

5 Q. SO AS LONG AS THE SITE IS ACTIVE AND OPERATED,
6 SOMEONE WITH A USER NAME AND PASSWORD WOULD HAVE ACCESS

7 TO THIS SITE?

8 A. YES.

9 MR. DOBBS: PAGE 106, LINE 6 THROUGH 23.

10 MR. GOMEZ: YOUR HONOR, THE DEFENDANT HAS
11 AN OBJECTION ON THIS PAGE -- ACTUALLY IT IS PROBABLY
12 FROM 8 THROUGH 23, BUT ESSENTIALLY, THIS PARTICULAR
13 WITNESS IS A WITNESS THAT ADDRESSES CREDIT CARDS
14 PROCESSING AND ADULT CREDIT CARDS. HE IS NOW BEING
15 ASKED TO OPINE ABOUT AND GIVE STATEMENTS ABOUT HOW THE
16 INTERNET -- HOW A BROWSER WORKS, HOW SETTING UP
17 BOOKMARKING AND WHETHER YOU CAN BYPASS -- WHETHER THERE
18 IS A WAY TO USE BOOKMARKING TO BYPASS CERTAIN SOFTWARE.
19 AND THIS PARTICULAR WITNESS, THAT IS NOT HIS JOB, THAT
20 IS NOT WHAT HE DOES. THE DEFENDANT OBJECTS ON GROUNDS
21 OF RELEVANCE, YOUR HONOR.

22 HE WAS ALSO -- IN THE AREA THAT HE WAS --
23 THAT THE PLAINTIFFS REQUESTED THAT HE TESTIFY WAS IN
24 CONNECTION WITH THE CREDIT CARD PROCESSING FOR ADULT,
25 NOT HOW BROWSERS WORK AND BOOKMARKS FUNCTION. IT IS

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1 BEYOND THE SCOPE OF THE DEPOSITION.

2 THE COURT: RESPONSE.

3 MR. VAN KWAWEGEN: YOUR HONOR,
4 MR. CADWELL HERE IS NOT ASKED TO COMMENT ON HOW BROWSERS
5 WORK AT ALL. HE IS ASKED TO COMMENT ON THE PLACEMENT OF
6 A PAYMENT CARD SCREEN, AND HE IS ASKED TO COMMENT ON A
7 DOCUMENT THAT IS A CCBILL DOCUMENT. IT'S A DOCUMENT
8 THAT HIS COMPANY PROVIDES TO CLIENTS OF THEIRS. AND

9 ESSENTIALLY, HE IS ASKED TO EXPLAIN ONE OF THE POLICIES
10 THAT ARE IMPLEMENTED BY HIS COMPANY WHEN INTERACTING
11 WITH THEIR CLIENTS WITH REGARD TO THE USE OF THESE
12 PAYMENT CARD SCREENS. AND IN THAT SENSE, HE IS ASKED
13 WHY A CERTAIN POLICY IN PLACE. AND IN THIS CASE THE
14 POLICY THAT IS IN PLACE IS NOT TO ALLOW THE HIDDEN URLS
15 TO BE BOOKMARKED. THAT IS DIRECTLY RELEVANT, YOUR
16 HONOR, AND IT IS SQUARELY WITHIN THE SCOPE OF THE
17 KNOWLEDGE AND ALSO THE KNOWLEDGE OF THE DEPONENT AND
18 ALSO THE SUBJECTS THAT WERE COVERED BY THIS DEPOSITION.

19 THE COURT: EXCUSE ME. I'M JUST READING.

20 THE WITNESS WAS ASKED -- I NOTE
21 IMPORTANTLY, THE WITNESS WAS ASKED WHETHER HE UNDERSTOOD
22 BOOKMARKING TO WORK IN A CERTAIN MANNER. AND HE SAID
23 YES, HE DID, AFTER HAVING THE BOOKMARKING PROCESS
24 DESCRIBED TO HIM. IF HE SAID, NO, OR I DON'T KNOW, THEN
25 HE WOULD NOT BE QUALIFIED. BUT HE IS BASICALLY, BY HIS

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1 OWN LANGUAGE, QUALIFIED TO ANSWER THE QUESTION OR HE
2 WOULD NOT HAVE ANSWERED IT. THAT IS MY TAKE.

3 I THINK IT'S SUCH A MINIMAL PART OF THE
4 KNOWLEDGE OF THIS WITNESS AS TO BE RELATIVELY MODESTLY
5 IMPORTANT. BUT IN ANY EVENT, IT HAS A MINIMAL RELEVANCY
6 AND HE HAS KNOWLEDGE. THE OBJECTION IS OVERRULED.

7 MR. DOBBS: PAGE 106, LINES 6 THROUGH 23,
8 DESIGNATED BY THE PLAINTIFFS.

9 Q. THEN, REFERRING YOU DOWN THE PAGE WHERE IT
10 SAYS -- JUST THE NEXT PARAGRAPH, ACTUALLY, OF EXHIBIT

11 11, WHERE IT SAYS "BOOKMARKING." DO YOU SEE THAT?

12 A. YES.

13 Q. IT SAYS THAT, THIS IS REFERRED TO IN THIS
14 DOCUMENT AS QUOTE, THE ACT OF PLACING A URL INTO A
15 TEMPORARY FILE ON THE SUBSCRIBER'S BROWSER SO THAT THE
16 SUBSCRIBER MAY RETURN TO THAT PAGE AT A FUTURE DATE
17 DIRECTLY, WITHOUT PASSING THROUGH ANY PAGES THAT MAY
18 HAVE PRECEDED.

19 IS THAT HOW YOU UNDERSTAND BOOKMARKING TO
20 WORK GENERALLY?

21 A. YES.

22 Q. WOULD IT BE POSSIBLE FOR A CUSTOMER TO BOOKMARK
23 A URL AND THEREBY BYPASS THE SCREEN THAT REQUIRES
24 ENTERING A USER NAME OR PASSWORD?

25 A. YES, IF THEY DID NOT HAVE USER NAME AND PASSWORD

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1 PROTECTION ON THAT PARTICULAR URL THAT WAS BOOKMARKED.

2 MR. DOBBS: PAGE 11, LINE 24, THROUGH
3 PAGE 112, LINE 19.

4 Q. OKAY. NOW I NOTICE THAT AMEX IS NOT LISTED ON
5 HERE. IS THERE A REASON WHY AMEX --

6 A. AMEX IS NOT AN ASSOCIATION. AMEX HAS CHOSEN NOT
7 TO PROCESS FOR THE ADULT-RELATED INDUSTRY. THEY'RE A
8 PRIVATE ORGANIZATION.

9 Q. SO FROM ANY TIME FROM '97 TO THE PRESENT, WAS
10 AMEX A COMPANY BY WHICH YOU WERE PROVIDING PROCESSING?

11 A. YES.

12 Q. AND TO WHOM WERE YOU PROVIDING THAT PROCESSING

13 TO?

14 A. TO ADULT-BASED CUSTOMERS AT THAT TIME, AS WELL
15 AS NONADULTS.

16 Q. I'M NOT SURE IF I FOLLOW YOU. SO AMERICAN
17 EXPRESS --

18 A. DID PROCESS CREDIT CARDS. THEY STOPPED
19 PROCESSING, AND I DON'T REMEMBER THE EXACT YEAR, '99 OR
20 SOMEWHERE IN THAT AREA.

21 Q. I SEE.

22 A. THE DIFFERENCE IS THAT -- THE REASON THEY
23 STOPPED IS THEY DIDN'T HAVE THE FACILITIES TO HANDLE
24 CHARGEBACK MANAGEMENT.

25 MR. DOBBS: PAGE 117, LINES 11 THROUGH

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1 16, DESIGNATED BY THE PLAINTIFFS.

2 Q. FROM '97 TO THE PRESENT, HAS CCBILL PROVIDED ANY
3 SERVICES IN CONNECTION WITH AGE VERIFICATION?

4 A. NO. THERE IS NO FORM OF AGE VERIFICATION.

5 MR. DOBBS: YOUR HONOR, THAT COMPLETES
6 THE DESIGNATIONS FOR THE CCBILL DEPOSITION.

7 THE COURT: THE PLAINTIFFS OFFER
8 TESTIMONY FROM IRA RONALD CADWELL, DEPOSITION ON MARCH
9 7, 2006.

10 MR. VAN KWAWEGEN: YOUR HONOR, JUST FOR
11 THE RECORD, I NOTICED THAT TWO DEPOSITION DESIGNATIONS
12 WERE ERRONEOUSLY IDENTIFIED AS DESIGNATED BY DEFENDANT
13 WHEN THEY WERE IN FACT DESIGNATED BY THE PLAINTIFFS. IF
14 I CAN CORRECT THE RECORD TO BASICALLY REFLECT WHO

15 DESIGNATED THOSE QUESTIONS.

16 THE COURT: ASK YOUR QUESTIONER TO HELP
17 YOU WITH THAT OR YOU CAN RECITE THEM, IF YOU LIKE.

18 MR. VAN KWAWEGEN: I CAN GIVE YOU THE
19 PAGE AND LINE NUMBERS, IF YOU WOULD LIKE.

20 THE COURT: SURE. I'LL JUST VERIFY WHEN
21 I LOOK IN HERE.

22 MR. VAN KWAWEGEN: YES. IT IS PAGE 95,
23 LINE 18, THROUGH PAGE 96, LINE 9. I BELIEVE THEY WERE
24 DESIGNATED BY THE PLAINTIFFS, NOT BY THE DEFENDANT.
25 PAGE 96 --

195

1 THE COURT: WAIT A MINUTE. WAIT A
2 MINUTE. I'M STILL LOOKING.

3 MR. VAN KWAWEGEN: YOUR HONOR, IN YOUR
4 COPY IT WILL BE GREEN. YOUR HONOR MAY RECALL THAT THERE
5 WAS SOME DISCUSSIONS ABOUT DESIGNATIONS,
6 COUNTERDESIGNATIONS, COUNTER-COUNTERDESIGNATIONS, ET
7 CETERA. GREEN IN YOUR COPY SIGNIFIES THAT IT WAS
8 DESIGNATED BY THE PLAINTIFFS.

9 THE COURT: COUNTER-COUNTERDESIGNATION.

10 MR. VAN KWAWEGEN: EXACTLY, YOUR HONOR.

11 THE COURT: ON BOTH PAGES 95, 96 AND 97.

12 MR. VAN KWAWEGEN: THAT'S CORRECT.

13 THE COURT: 95, LINE 18 THROUGH 25, 96,
14 LINE 1 THROUGH 9, LINE 17 THROUGH 25, AND PAGE 97, LINE
15 1 THROUGH 8, IS THAT CORRECT?

16 MR. VAN KWAWEGEN: WITH ONE MINOR

17 MODIFICATION. THE FIRST LINE IS 96, LINE 17; NOT LINE
18 18, YOUR HONOR. BUT OTHER THAN THAT, YES, THAT IS
19 ABSOLUTELY CORRECT THAT THESE WERE DESIGNATED BY THE
20 PLAINTIFFS.

21 THE COURT: OKAY.

22 MR. VAN KWAWEGEN: FINALLY, I BELIEVE
23 THAT MY COLLEAGUE FORGOT TO INDICATE ON PAGE 101 --
24 ACTUALLY THERE ARE TWO MORE CORRECTIONS. I APOLOGIZE,
25 YOUR HONOR. ON PAGE 101, THERE'S SIMILARLY A GREEN

196

1 DESIGNATION THAT I BELIEVE RIGHT NOW IS ERRONEOUSLY
2 IDENTIFIED AS DESIGNATED BY THE DEFENDANT. THAT IS PAGE
3 101, LINES 14 THROUGH 17, YOUR HONOR.

4 THE COURT: THE RECORD SHALL SO REFLECT.

5 MR. VAN KWAWEGEN: FINALLY, YOUR HONOR, I
6 MAY HAVE NOT HEARD IT -- I JUST WANT TO MAKE SURE FOR
7 THE RECORD, THAT DESIGNATIONS ON PAGE 111 AND PAGE 112,
8 111, LINE 24, THROUGH 112, LINE 19, WERE ALSO DESIGNATED
9 BY THE PLAINTIFFS. THOSE ARE IN YELLOW, YOUR HONOR.

10 THE COURT: YELLOW. I DON'T REMEMBER
11 WHAT THE COUNSEL READ.

12 MR. VAN KWAWEGEN: I BELIEVE COUNSEL DID
13 NOT MAKE ANY REPRESENTATIONS, YOUR HONOR. I THINK IT
14 WAS OMITTED AND HE STARTED TO READ.

15 THE COURT: NOW IT'S NOT OMITTED ANYMORE.

16 ARE YOU FINISHED WITH THIS DEPOSITION?

17 MR. VAN KWAWEGEN: YES, YOUR HONOR.

18 THE COURT: SO I WILL BE, TOO.

19 DO YOU HAVE ANOTHER DEPOSITION OR A
20 WITNESS?

21 MR. VAN KWAWEGEN: WE HAVE ANOTHER
22 DEPOSITION, YOUR HONOR. THIS WILL BE THE DEPOSITION OF
23 AMERICA ONLINE. IT'S MISS ANNIK WHITTLE, W-H-I-T-T-L-E,
24 A-N-N-I-K. AND THIS DEPOSITION TOOK PLACE ON MARCH 2ND,
25 2006. YOUR HONOR, IF I MAY APPROACH, I HAVE A

197

1 COLOR-CODED COPY FOR YOU.

2 THE COURT: OKAY.

3 BEFORE WE START THIS SO WE CAN MAKE TOTAL
4 MASOCHISTS OF OURSELVES, TAKE A RECESS NOW. WE CAN DO
5 THAT BETTER WHEN WE GET BACK.

6 MR. VAN KWAWEGEN: THANK YOU.

7 THE COURT: WE STARTED A LITTLE EARLY.
8 10-MINUTE RECESS.

9 WE ARE OFF THE RECORD.

10 COUNSEL ARE EXCUSED.

11 (RECESS TAKEN.)

12 THE COURT: WELCOME. BE SEATED.

13 INTRODUCE THE NEXT WITNESS.

14 MR. VAN KWAWEGEN: YES, YOUR HONOR. THE
15 NEXT ONE IS THE DEPOSITION OF ANNIK WHITTLE. I SPELLED
16 IT BEFORE.

17 THE COURT: OH, YES.

18 MR. VAN KWAWEGEN: OF AOL, AMERICA
19 ONLINE, YOUR HONOR.

20 THE COLOR-CODED DEPOSITION DESIGNATIONS I

21 GAVE YOU INCLUDE SOME DESIGNATIONS IN RED. I WANT TO
22 ALERT YOUR ATTENTION TO THAT.

23 THOSE INDICATIONS IN RED SIGNIFY ERRATA
24 THAT WERE PROVIDED BY AMERICAN ONLINE. THERE ARE NO
25 CONFIDENTIALITY ISSUES SURROUNDING THIS DEPOSITION

198

1 TRANSCRIPT, EXCEPT THAT AMERICA ONLINE DID INSIST THAT
2 WE WOULD USE THE ERRATA AS PROVIDED BY AMERICA ONLINE.
3 WHAT I WOULD SUGGEST TO DO, WITH YOUR HONOR'S
4 PERMISSION, IS WHEN THE ANSWERS ARE READ INTO THE
5 RECORD, THAT THE CHANGE, THE CORRECTED ANSWER, WILL BE
6 READ INTO THE RECORD, EVEN THOUGH THE TRANSCRIPT THAT
7 YOUR HONOR HAS SHOWS THE OLD ERRATA. THE ERRATA SHEETS.

8 THE COURT: DOES THE SURROGATE HAVE THE
9 CHANGES IN HIS COPY?

10 MR. VAN KWAWEGEN: YES, YOUR HONOR. AND
11 YOUR HONOR ALSO HAS THE CHANGES AT THE END OF THE
12 COLOR-CODED DESIGNATIONS, THE COMPLETE TRANSCRIPT THAT
13 YOUR HONOR WAS PROVIDED.

14 THE COURT: I'M GOING TO RELY ON THE
15 WITNESS TO DO IT ON AN ONGOING BASIS SO I DON'T HAVE TO
16 CHANGE IT AROUND.

17 MR. VAN KWAWEGEN: YES, YOUR HONOR.

18 THE COURT: THE WITNESS IS PREPARED TO DO
19 THAT?

20 MR. VAN KWAWEGEN: YES, YOUR HONOR.

21 MR. HIRT: DO YOU HAVE THE ERRATA FOR US?

22 MR. VAN KWAWEGEN: YOU CAN USE MY COPY.

23 MR. HIRT: WE DON'T PHYSICALLY HAVE IT.
24 YOU HAVE IT, IF WE NEED TO LOOK AT IT.
25 SORRY, YOUR HONOR.

199

1 MR. VAN KWAWEGEN: YOUR HONOR, WOULD YOUR
2 HONOR LIKE AN INTRODUCTION TO THE GIST OF THE
3 DEPOSITION?

4 THE COURT: YES, PLEASE.

5 MR. VAN KWAWEGEN: MISS WHITTLE IS THE
6 PRODUCT MANAGER FOR PARENTAL CONTROLS AT AMERICA ONLINE,
7 YOUR HONOR, AND THEREFORE, IS TESTIFYING ABOUT THE
8 PARENTAL CONTROL SOFTWARE THAT IS PROVIDED BY AMERICA
9 ONLINE TO ITS CUSTOMERS. THIS WOULD INCLUDE FILTERING,
10 FOR EXAMPLE.

11 THE COURT: THANK YOU.

12 MR. VAN KWAWEGEN: THANK YOU.

13 MR. DOBBS: PAGE 5 --

14 THE COURT: THE DEPOSITION WAS TAKEN --

15 MR. DOBBS: MARCH 2, 2006, YOUR HONOR.

16 THE COURT: MARCH 2, 2006. I'M SORRY.

17 OF MISS WHITTLE. THAT IS THE TRANSCRIPT WE ARE WORKING
18 FROM. GO AHEAD.

19 MR. DOBBS: PAGE 5, LINE 18, THROUGH PAGE
20 6, LINE 1.

21 Q. MISS WHITTLE, WHERE ARE YOU CURRENTLY EMPLOYED?

22 A. AMERICA ONLINE.

23 Q. WHAT IS YOUR POSITION THERE?

24 A. I'M THE PRODUCT MANAGER FOR PARENTAL CONTROLS.

25

MR. DOBBS: PAGE 7, LINE 9, THROUGH PAGE

200

1 8, LINE 4.

2 Q. LET'S START WITH THE FILTERING PRODUCT. CAN YOU
3 DESCRIBE WHAT THE FILTERING PRODUCT IS?

4 A. WE PROVIDE WEB FILTERS THAT PARENTS CAN CHOOSE
5 BASED ON VARIOUS AGE CATEGORIES FROM THE KIDS LEVEL OF
6 WEB FILTERING TO A MATURE TEEN LEVEL OF WEB FILTERING.
7 WE HAVE A DATABASE THAT WE USE TO MAKE WEB FILTERING
8 DECISIONS AS WELL AS DYNAMIC ENGINES THAT CAN MAKE
9 DECISIONS ON THE FLY FOR ONE OF OUR AGE CATEGORIES. WE
10 HAVE A WEB UNLOCK PRODUCT WHERE PARENTS CAN MAKE
11 OVERRIDE DECISIONS TO THE DEFAULT FILTERS THAT AOL HAS,
12 IF THEY WANT TO BLOCK OR ALLOW A SITE WHERE AOL THINKS
13 DIFFERENTLY. THAT IS THE WEB FILTERING FEATURES THAT WE
14 HAVE.

15 WE HAVE ALSO FILTERED SEARCH PRODUCTS --
16 WE ALSO HAVE FILTERED SEARCH PRODUCTS.

17 MR. DOBBS: PAGE 11, LINE 1, THROUGH PAGE
18 -- THROUGH LINES 1 THROUGH 15.

19 THE COURT: THERE'S A QUESTION SOMEWHERE
20 HERE.

21 MR. DOBBS: PAGE 10 -- EXCUSE ME, YOUR
22 HONOR, LINE 18, THROUGH PAGE 11, LINE 15, DESIGNATED BY
23 THE PLAINTIFFS.

24 Q. IF A USER HAS ENGAGED THE PARENTAL CONTROLS
25 PRODUCT AND COMES UPON ONE OF THE SITES THAT IS ON THIS

201

1 LIST THAT WE HAVE BEEN TALKING ABOUT, THE USER WILL NOT
2 THEN BE ABLE TO GET TO THAT SITE?

3 A. IF THAT SITE WAS MARKED AS INAPPROPRIATE.

4 Q. THE SECOND PART OF THE FILTERING, I THINK YOU
5 SAID, WAS THAT THERE IS A DYNAMIC FILTERING COMPONENT,
6 IS THAT CORRECT?

7 A. YES.

8 Q. HOW DOES THAT WORK?

9 A. THAT IS ONLY AVAILABLE FOR OUR MATURE TEENS
10 CATEGORY. A WEBSITE REQUEST FIRST GOES TO THE PARENT'S
11 CUSTOMIZED LIST OF ALLOWED AND BLOCKED WEBSITES. IF THE
12 WEBSITE REQUESTS DOES NOT HAPPEN ON THAT LIST, IT THEN
13 GO TO THE STATIC DATABASE THAT WE HAVE. IF ENTRY IS NOT
14 IN THE DATABASE AND IT IS FOR A MATURE TEEN, IT WOULD GO
15 TO THE DYNAMIC FILTERS, WHICH RATES A PAGE ON THE FLY
16 FOR INAPPROPRIATE CONTENT ANALYZING THE TEXT ON THE PAGE
17 AS WELL AS WHAT CONTENT -- CONTEXT THAT TEXT IS USED IN.

18 MR. DOBBS: PAGE 15, LINE 2, TO PAGE 25
19 LINE 1, DESIGNATED BY THE PLAINTIFFS.

20 Q. NOW, LET'S STAY WITH THE FILTERING FOR JUST A
21 SECOND. FIRST ON THE LIST FILTER. IS THAT AN OKAY WAY
22 TO REFER TO IT?

23 A. THE DATABASE?

24 Q. THE DATABASE FILTER. FINE.

25 A. YES.

202

1 Q. ARE THERE WEBSITES ON THE DATABASE FILTERING

2 LIST THAT ARE OVERSEAS AS WELL AS DOMESTIC?

3 A. YES.

4 Q. ARE THERE WEBSITES ON THE LIST THAT ARE IN
5 LANGUAGES OTHER THAN ENGLISH?

6 A. YES.

7 Q. ARE THERE WEBSITES ON THE LIST THAT ARE
8 NONCOMMERCIAL?

9 A. YES.

10 Q. ARE THERE WEBSITES ON THE LIST THAT ARE NOT IN
11 HTTP FORMAT?

12 A. YES. HTTPS.

13 Q. WHAT DO YOU DO WITH FTP?

14 A. THAT IS HANDLED THROUGH A DIFFERENT MECHANISM
15 FOR BLOCKING. WE HAVE AN ACCESS CONTROL LIST THAT
16 SERVES AS A WHITE LIST OF PORTS OR IP ADDRESSES THAT ARE
17 ALLOWED FOR PARENTALLY CONTROLLED ACCOUNTS. FTP GOES
18 THROUGH A PORT THAT IS NOT ON OUR WHITE LIST. SO IT
19 WOULD BE BLOCKED FOR A PARENTAL CONTROL ACCOUNT.

20 Q. DO YOU BLOCK CATEGORIES OTHER THAN SEX?

21 A. YES.

22 Q. DO YOU KNOW HOW MANY CATEGORIES IT IS THAT YOU
23 OFFER BLOCKING FOR?

24 A. THERE IS 11.

25 Q. IS THERE MORE THAN ONE SEX CATEGORY?

203

1 A. YES. I MEAN, THERE IS A PORNOGRAPHY CATEGORY
2 AND THERE IS A SEX EDUCATION CATEGORY.

3 Q. MAYBE BEFORE I GO A LITTLE FURTHER IN THIS, WE

4 SHOULD GO BACK OVER THE KIDS, YOUNG TEENS, OLDER MINORS.
5 I GATHER FROM THAT THERE IS A CUSTOMIZATION FEATURE THAT
6 ALLOWS YOU, IF YOU ARE THE PARENT TO SET THE BLOCKING UP
7 TO REFLECT THE AGE OF YOUR CHILDREN?
8 A. CORRECT.
9 Q. THE FIRST IS KIDS ONLY, CORRECT?
10 A. CORRECT.
11 Q. WOULD YOU DESCRIBE A LITTLE BIT OF WHAT GETS
12 BLOCKED IF I ENGAGE THE KIDS ONLY FEATURES?
13 A. KIDS ONLY IS OUR MOST RESTRICTIVE SETTING FOR
14 WEB FILTERING. AND IF A USER IS IN THE KIDS ONLY
15 CATEGORY, THEY WILL ONLY BE ALLOWED TO SEE SITES THAT WE
16 RATE AS CLEAN IN OUR DATABASE, OR WHICH WOULD BE GENERAL
17 INTEREST, OR KID APPROPRIATE.
18 Q. AND THOSE ARE SITES THAT SOME HUMAN BEING AT AOL
19 HAS REVIEWED TO DETERMINE THAT THEY ARE APPROPRIATE FOR
20 CHILDREN?
21 A. YES.
22 Q. AND INDEED, THEY HAVE REVIEWED THEM TO DETERMINE
23 THAT THEY ARE APPROPRIATE EVEN FOR THE YOUNGEST
24 CHILDREN?
25 A. YES.

204

1 Q. THE NEXT CATEGORY IS CALLED WHAT?
2 A. YOUNG TEENS.
3 Q. AND IF I ENGAGED THE YOUNG TEENS CATEGORY, WHAT
4 HAPPENS TO ME?
5 A. YOU WOULD BE ALLOWED ACCESS TO ALL CLEAN SITES

6 IN OUR DATABASES AS WELL AS SEX EDUCATION SITES AND SOME
7 ONLINE SHOPPING SITES.

8 Q. HAS AOL REVIEWED THOSE SEX EDUCATION AND
9 SHOPPING SITES? DOES A HUMAN BEING AT AOL REVIEW THOSE?

10 A. THEY HAVE ALL BEEN REVIEWED BY A HUMAN.

11 Q. AND THAT HUMAN BEING HAS DETERMINED, ON BEHALF
12 OF AOL, THAT THOSE SITES ARE SAFE TO BE VIEWED BY YOUNG
13 TEENAGERS?

14 A. YES.

15 Q. WHAT IS THE NEXT OLDER CATEGORY?

16 A. MATURE TEEN.

17 Q. WHAT HAPPENS IF I AM A PARENT AND I ENGAGE THE
18 MATURE TEEN FOR ONE OF MY CHILDREN?

19 A. FOR A MATURE TEEN, YOU WOULD GET ACCESS TO ALL
20 SITES RATED IN OUR DATABASE AS CLEAN, SEX EDUCATION,
21 ABORTION, AND MATURE, AS WELL AS ONLINE SHOPPING SITES.
22 AND THEN, IF THE SITE IS DYNAMIC OR IT IS UNKNOWN, YOU
23 WOULD ALSO BE SENT THROUGH THE DYNAMIC FILTERS TO MAKE A
24 DECISION ABOUT WHETHER THAT PAGE SHOULD BE DISPLAYED OR
25 BLOCKED.

205

1 Q. SO IF I UNDERSTAND THIS CORRECTLY, ONCE I GOT TO
2 THE MATURE TEEN, I AM NOW OUT OF THE WHITE LIST CONTEXT
3 AND HAVE ACCESS TO ALL OF THE WEB EXCEPT FOR THOSE
4 THINGS THAT ARE ON THE BLOCK LIST AND ALSO THOSE THINGS
5 THAT THE DYNAMIC PRODUCT DETERMINES ARE INAPPROPRIATE.

6 A. I WOULDN'T PHRASE IT QUITE LIKE THAT. YOU STILL
7 COULD BE PUTTING IN CLEAN SITES AND IT WOULD GO THROUGH

8 OUR DATABASE AND IF IT IS CLEAN, WE WOULD RETURN IT AS
9 ALLOWED. THE DIFFERENCE IS THAT IF A SITE IS NOT ON THE
10 PARENT'S CUSTOMIZED LIST, AND IS NOT IN OUR DATABASE, OR
11 IF IT IS A DYNAMIC SITE, IT WOULD BE RUN THROUGH THE
12 DYNAMIC FILTER BEFORE WE MAKE A DECISION.

13 Q. I'M STILL NOT TOTALLY SURE I UNDERSTAND. LET ME
14 JUST ASK A LITTLE MORE.

15 FOR EXAMPLE, IF ACLU.ORG, WHICH IS THE
16 ORGANIZATION THAT I WORK FOR, WERE NOT ON YOUR CLEAN
17 SITES LIST -- I AM SURE IT IS, BUT IF IT WEREN'T AND I
18 WERE A MATURE TEEN, I COULD TRY TO GO TO ACLU.ORG, BUT
19 BEFORE I COULD GET THERE, YOUR DYNAMIC FILTERING PRODUCT
20 WOULD CHECK TO SEE IF IT WAS APPROPRIATE FOR ME TO BE
21 THERE OR NOT?

22 A. CORRECT, UNLESS THE SITE WAS RATED IN OUR
23 DATABASE AS OBJECTIONABLE FOR A MATURE TEEN OR UNLESS
24 THE SITE IS ON THE PARENT'S CUSTOMIZED LIST FOR A MATURE
25 TEEN.

206

1 Q. HAVE WE FINISHED ALL OF THE CATEGORIES?

2 A. YES.

3 Q. AT ONE POINT YOU HAD AN 18 PLUS CATEGORY?

4 A. GENERAL. BUT THAT DOESN'T HAVE ANY WEB
5 FILTERING ASSOCIATED WITH IT. IF YOU HAVE A GENERAL
6 LEVEL OF WEB FILTERING, IT IS OPEN ACCESS.

7 Q. WHO DECIDES WHICH CATEGORY THE USER IS PLACED
8 INTO?

9 A. THE PARENT.

10 Q. HOW DOES THE PARENT DO THAT?

11 A. WHEN THEY ARE SETTING UP THE PARENTAL CONTROLS
12 FOR THEIR CHILD BASED ON THEIR CHILD'S SCREEN NAME.

13 Q. WHAT'S THE AGE BORDERLINE BETWEEN KIDS ONLY AND
14 YOUNG TEENS?

15 A. KIDS ONLY IS 12 AND BELOW AND YOUNG TEEN IS 13
16 TO 15.

17 Q. SO SUPPOSE I HAVE AN 11-YEAR OLD OR A 10-YEAR
18 OLD THAT I HAPPEN TO BELIEVE IS QUITE MATURE, I COULD
19 STILL PUT MY CHILD INTO THE YOUNG TEEN CATEGORY EVEN
20 THOUGH YOU HAVE RECOMMENDED I PUT THAT CHILD INTO THE
21 KIDS ONLY CATEGORY, CORRECT?

22 A. YES.

23 Q. AGAIN, STICKING STILL JUST WITH BLOCKING. CAN A
24 PARENT ALSO DO ANY OTHER CUSTOMIZATION OF THE PRODUCT?

25 A. YES.

207

1 Q. HOW DOES THAT WORK?

2 A. THE PARENT -- FOR WEB FILTERING, THE PARENT CAN
3 GO IN AND SET UP A SPECIFIC ALLOW OR BLOCK LIST OF
4 WEBSITES, AND THAT WOULD BE THE FIRST THING THAT WE
5 CHECK WHEN A SCREEN NAME ENTERS A WEBSITE.

6 Q. SO IF MY PARENTS HAVE SET THE SYSTEM UP IN SUCH
7 A WAY THAT I AM A MATURE TEEN AND YOU HAVE DECIDED, AOL
8 HAS DECIDED, THAT ACLU.ORG IS FINE FOR MATURE TEENS, AND
9 THE PARENT DOES NOT WANT THEIR CHILD TO GET TO ACLU.ORG,
10 THE PARENT CAN PREVENT A CHILD FROM DOING SO?

11 A. CORRECT.

12 Q. DOES IT WORK THE OTHER WAY AROUND? THAT IS, IF
13 YOU HAVE DECIDED THAT A SITE IS INAPPROPRIATE FOR A
14 MATURE TEEN, CAN THE PARENT NEVERTHELESS ALLOW ACCESS TO
15 IT?

16 A. YES.

17 Q. NOW, YOU ALSO TALKED ABOUT A COMMUNICATIONS PART
18 OF THE PRODUCT. WHAT IS THE COMMUNICATIONS PART OF THE
19 PRODUCT?

20 A. WE OFFER THE ABILITY FOR PARENTS TO CUSTOMIZE
21 E-MAIL CONTROLS, I-M CONTROLS, OR CHAT CONTROLS FOR
22 THEIR CHILD'S SCREEN NAME.

23 Q. LET'S TAKE THOSE ONE AT A TIME.

24 WHAT SORT OF CUSTOMIZATION CAN I DO FOR
25 E-MAIL?

208

1 A. YOU COULD LIMIT WHO CAN SEND YOUR CHILD E-MAIL.
2 YOU COULD LIMIT WHETHER YOUR CHILD COULD RECEIVE E-MAILS
3 WITH ATTACHMENTS OR HYPERLINKS. YOU COULD CONTROL OR
4 BLOCK E-MAILS IF THEY CONTAIN INAPPROPRIATE WORDS THAT
5 YOU HAVE ENTERED.

6 Q. ON THAT LAST ONE, IF I HAVE PUT IN A PARTICULAR
7 INAPPROPRIATE WORD IN THE E-MAIL CONTROL, WILL THE
8 ENTIRE E-MAIL COME THROUGH WITH THE WORD BLOCKED OR WILL
9 THE ENTIRE E-MAIL BE BLOCKED?

10 A. THE ENTIRE E-MAIL WILL BE BLOCKED.

11 Q. CAN I PREVENT IMAGES FROM COMING THROUGH BY
12 E-MAIL?

13 A. AS ATTACHMENTS.

14 Q. HAVE WE FINISHED THE METHODS BY WHICH I CAN
15 CUSTOMIZE THE E-MAIL?
16 A. PARENTS CAN ALSO SET THE LEVEL OF SPAM CONTROLS
17 APPLIED TO THEIR CHILD'S SCREEN NAME.
18 Q. THE SECOND CATEGORY YOU LISTED WAS CHAT. HOW
19 CAN I CUSTOMIZE THE CHAT FUNCTION?
20 A. PARENTS CAN BLOCK THEIR CHILD'S ACCESS TO
21 VARIOUS CHAT ROOMS ON THE AOL SERVICE.
22 Q. CAN THE PARENT BLOCK ALL ACCESS TO CHAT?
23 A. YES, ON THE AOL SERVICE.
24 Q. WHAT ABOUT CHAT OFF THE AOL SERVICE?
25 A. THAT WOULD BE HANDLED THROUGH OUR DATABASE. SO

209

1 IF THERE WAS A CHAT ROOM THAT WAS PART OF A WEBSITE, WE
2 COULD BLOCK THAT WEBSITE AS PART OF OUR DATABASE, OR THE
3 PARENT COULD DO IT THROUGH THE WEB UNLOCK LIST.
4 Q. SO IF THERE WERE A WEBSITE -- THIS IS THE
5 HYPOTHETICAL I USE IN ALL OF THESE DEPOSITIONS -- CALLED
6 DISGUSTING.COM AND THAT WEBSITE HAD A CHAT, A PAGE BY
7 WHICH PEOPLE WHO WENT TO DISGUSTING.COM COULD ENGAGE IN
8 CHAT. AS A PARENT, I COULD PREVENT MY CHILD FROM
9 ENGAGING IN ANY CHAT ON THAT SITE?
10 A. YES.
11 Q. ARE THERE ANY OTHER METHODS BY WHICH THE CHAT
12 CAN BE CUSTOMIZED?
13 A. AS FAR AS I KNOW, NO.
14 Q. NOW, THE THIRD ONE YOU LISTED WAS I-M. WHAT
15 CUSTOMIZATION FEATURES ARE AVAILABLE FOR I-M?

16 A. PARENTS CAN CHOOSE TO BLOCK THEIR CHILD FROM
17 I-MING OR ALLOW THEM ONLY TO I-M WITH AN APPROVED LIST
18 OF PEOPLE THAT THE PARENT HAS ENTERED. THEY CAN ALSO
19 CHOOSE TO BLOCK FILE TRANSFERS THROUGH I-M OR VIDEO OR
20 VOICEOVER I-M.

21 Q. I SUPPOSE I SHOULD HAVE ASKED THIS AS THE FIRST
22 QUESTION. WHEN YOU AND I ARE BOTH REFERRING TO I-M, WE
23 ARE TALKING ABOUT INSTANT MESSAGING?

24 A. YES.

25 MR. DOBBS: PAGE 25, LINE 13, THROUGH

210

1 PAGE 29, LINE 6, DESIGNATED BY THE PLAINTIFFS.

2 Q. I AM TRYING TO GET AT -- DO YOUR I-M CONTROLS
3 BLOCK ALL INSTANT MESSAGING, WHETHER OR NOT IT IS
4 INSTANT MESSAGING USING THE AOL SOFTWARE FOR INSTANT
5 MESSAGING?

6 A. OUR I-M CONTROLS APPLY TO THE AOL I-M SOFTWARE.
7 HOWEVER, WE DO HAVE WAYS TO BLOCK OTHER INSTANT
8 MESSAGING PROGRAMS ENTIRELY.

9 Q. THAT IS EXACTLY WHAT I WAS TRYING TO FIND OUT.
10 ARE THERE OTHER COMMUNICATIONS COMPONENTS TO THE
11 PARENTAL CONTROLS THAT AOL OFFERS?

12 A. FOR CHAT, FOR THE KIDS ONLY CATEGORY, ALL CHAT
13 IS A HUNDRED PERCENT MONITORED FOR THE CHAT ROOMS THEY
14 ARE ALLOWED TO ACCESS. AND THEN WE HAVE RESTRICTIONS ON
15 MESSAGE BOARDS OR JOURNALS THAT ARE ALSO MONITORED.

16 Q. MONITORED MEANING THERE IS AN AOL EMPLOYEE OR
17 CONTRACTOR THAT IS IN THE ROOM AT ALL TIMES?

18 A. A MONITOR ON BEHALF OF AOL.

19 Q. YOU ALSO MENTIONED THAT THERE WAS A TIME
20 COMPONENT TO THE AOL PARENTAL CONTROLS. HOW DOES THAT
21 WORK?

22 A. PARENTS CAN GO IN AND LIMIT THE AMOUNT OF TIME
23 THEIR CHILDREN SPEND ON THE AOL SERVICE. THERE ARE
24 VARIOUS LEVELS OF CUSTOMIZATION THAT THEY CAN USE TO SET
25 UP TIME RESTRICTIONS THAT ARE APPROPRIATE FOR THEIR

211

1 CHILD.

2 Q. I GATHER THAT AT LEAST PART OF THAT INCLUDES THE
3 NUMBER OF HOURS PER DAY, FOR EXAMPLE?

4 A. YES.

5 Q. DOES PART OF IT ALSO INCLUDE HOURS OF THE DAY,
6 THAT IS, YOU CAN ONLY ACCESS THE INTERNET AT NIGHT AND
7 YOU CAN'T DO IT DURING THE DAY OR VICE VERSA?

8 A. WE HAVE THAT TYPE OF CUSTOMIZATION.

9 Q. ARE THERE ANY OTHER TIME CUSTOMIZATIONS THAT AOL
10 OFFERS?

11 A. YOU CAN FULLY CUSTOMIZE HOW MANY HOURS, WHICH
12 DAYS, HOW MANY HOURS PER DAY, WHAT HOURS PER DAY.

13 Q. JUST TO BE CLEAR. I COULD SET IT UP IN SUCH A
14 WAY THAT MY CHILD COULD NEVER ACCESS THE INTERNET EXCEPT
15 WHEN I WAS HOME, COULDN'T I?

16 A. YOU WOULD HAVE TO GO IN AND SET UP, YOU KNOW,
17 SUNDAY THROUGH SATURDAY, THEY ARE ONLY ALLOWED TO ACCESS
18 FROM THREE TO FIVE, IF THAT IS WHEN YOU ARE HOME.

19 Q. BUT I COULD DO THAT?

20 A. YOU COULD.

21 Q. YOU ALSO SAID THAT THERE WAS AN ACTIVITY REPORT
22 FEATURE TO THE PARENTAL CONTROLS MECHANISMS. WHAT IS
23 THE ACTIVITY REPORT FEATURE?

24 A. THE ACTIVITY REPORT FEATURE IS CALLED AOL
25 GUARDIAN AND IT IS BOTH AN E-MAIL AND AN ONLINE REPORT

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1 THAT GIVES PARENTS INFORMATION ON WHAT WEBSITES THEIR
2 CHILD VISITED, WHAT WEBSITES THEIR CHILD TRIED TO VISIT
3 BUT WERE BLOCKED FROM, THEIR E-MAIL -- EXCUSE ME, THEIR
4 I-M AND E-MAIL ACTIVITY, BOTH NUMBER OF I-M'S AND
5 E-MAILS AND WHO THEY WERE I-M'ING AND E-MAILING.

6 Q. THE CUSTOMIZATION FEATURES THAT THE PARENTS CAN
7 USE, DO I UNDERSTAND THAT THOSE CAN BE SET OR CHANGED
8 REMOTELY? IN OTHER WORDS, I DON'T HAVE TO BE AT THE
9 HOME COMPUTER IN ORDER TO CHANGE THOSE?

10 A. YES.

11 Q. SO THAT IF I AM AT WORK AND I WANTED TO CHANGE
12 THE SETTINGS FOR MY CHILD WHO IS AT HOME, I CAN DO THAT?

13 A. YES.

14 Q. NOW, LET'S GO BACK OF THE FILTERING LISTS. I
15 THINK YOU SAID ONE OF THE CATEGORIES WAS PORNOGRAPHY?

16 A. YES.

17 Q. HOW DO YOU DEFINE THAT CATEGORY?

18 A. THERE IS ACTUALLY A DOCUMENT, BATES STAMPED
19 AOL001126-AOL001146 THAT I WOULD LIKE TO REFER TO.

20 Q. OBVIOUSLY YOU ARE WELCOME TO REFER TO DOCUMENTS
21 WHENEVER YOU WANT. THAT IS TOTALLY FINE.

22 A. A PORNOGRAPHIC WEBSITE IS A SITE CONTAINING
23 SEXUALLY EXPLICIT MATERIAL FOR THE PURPOSE OF AROUSING A
24 SEXUAL OR PRURIENT INTEREST.

25 MR. DOBBS: PAGE 30, LINE 14, THROUGH

213

1 PAGE 32, LINE 4, DESIGNATED BY THE PLAINTIFFS.

2 Q. OKAY. THANK YOU.

3 DO ANY OF THE PARENTAL CONTROL MECHANISMS
4 OR ANY OF THE OTHER PRODUCTS THAT AOL OFFERS ALLOW
5 BLOCKING OF FILE SHARING APPLICATIONS?

6 A. YES.

7 Q. HOW DOES THAT WORK?

8 A. AGAIN, IT IS THROUGH THIS ACCESS CONTROL LIST
9 THAT IF AN IP ADDRESS IS NOT ON THE ACCESS CONTROL LIST,
10 A CHILD WILL NOT HAVE ACCESS TO IT.

11 Q. TELL ME WHAT KINDS OF THINGS CAN GET BLOCKED
12 UNDER THE ACCESS CONTROL LIST BECAUSE I GUESS I DON'T
13 FULLY UNDERSTAND THAT.

14 A. INSTANT MESSAGING PROGRAMS, PEER TO PEER
15 PROGRAMS, FTP PROGRAMS.

16 Q. THE LIST, THE BLOCK SITES LIST ARE ALL OF THE
17 SITES ON THE BLOCK SITES LISTED BY URL OR ARE SOME
18 LISTED BY IP ADDRESS?

19 A. THEY CAN BE BOTH.

20 Q. THERE HAVE BEEN SOME EFFORTS AT RATING SYSTEMS
21 FOR WEBSITES. DO THE PARENTAL CONTROL PRODUCTS INTERACT
22 AT ALL WITH SELF-RATING, WITH WEBSITES THAT ARE
23 SELF-RATING?

24 A. NO, NOT TO MY KNOWLEDGE?

25 MR. CAMPBELL: OBJECTION, YOUR HONOR, TO

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1 THE NEXT SET OF -- TO THE NEXT SET OF QUESTIONS. AND IN
2 THIS SECTION, THE DEPONENT IS ASKED TO SPECULATE ABOUT
3 THE ABILITY OF MINORS TO CIRCUMVENT THE AOL PARENTAL
4 CONTROLS PRODUCT. SO WE OBJECT ON THE GROUNDS OF
5 SPECULATION.

6 THE COURT: LET ME READ IT. WE ARE
7 TALKING ABOUT PAGE 31, LINES 15 THROUGH 22, PAGE 32,
8 LINES 1 THROUGH 4?

9 MR. CAMPBELL: YES, YOUR HONOR.

10 THE COURT: LET ME HAVE A MINUTE, PLEASE.

11 (PAUSE.)

12 THE COURT: I HAVE REVIEWED THE EARLY
13 PART OF THE DEPOSITION, PARTICULARLY AT PAGES 6 AND 7,
14 TO REFRESH MYSELF AS TO THE POSITION THE DEPONENT
15 OCCUPIES AT AOL AND THE GENERAL RESPONSIBILITIES OF THE
16 POSITION ON PAGE 6, FROM LINES 12 THROUGH 19, AND PAGE
17 7, LINES 1 THROUGH 22, PAGE 8, LINES 1 THROUGH 3, AND,
18 AGAIN, ALTHOUGH NOT DESIGNATED BY THE PARTIES, LINES 5
19 THROUGH 22 ON PAGE 8, AND THEN ALL OF THE DESIGNATED
20 MATERIAL SHOWING THE KNOWLEDGE OF THIS WITNESS OF THE
21 SYSTEM THAT AOL USES FOR PARENTAL CONTROLS. AND I
22 CONCLUDE THAT THE WITNESS HAS LAID SUFFICIENT BACKGROUND
23 FOR HER KNOWLEDGE AND ABILITY TO ANSWER DETAILED
24 QUESTIONS ON THE PARENTAL CONTROL SYSTEM OF AOL. THAT
25 GIVES HER THE BASIS FOR -- MINIMAL BASIS FOR ANSWERING

1 THE QUESTION. I CONCLUDE THAT THUS HER ANSWER IS NOT
2 SPECULATION. I LEAVE FOR THE WEIGHT OF THE EVIDENCE
3 WHAT THE RESULT OF THAT STATEMENT MIGHT BE.

4 SO THE OBJECTION IS OVERRULED.

5 MR. CAMPBELL: THANK YOU, YOUR HONOR.

6 THE COURT: FOR THE REASONS MENTIONED.

7 Q. YOU CONSTANTLY HEAR JOKES FROM PEOPLE ABOUT HOW
8 THEIR KID UNDERSTANDS THE COMPUTER BETTER THAN THEY
9 UNDERSTAND THE COMPUTER.

10 CAN A BRIGHT 14-YEAR OLD SUBVERT THE AOL
11 PARENTAL CONTROLS?

12 A. I THINK THAT IF THE PARENT HAS SET UP PARENTAL
13 CONTROLS AND USES THE FULL SUITE OF PARENTAL CONTROLS
14 THAT WE HAVE, IT IS HARD TO BYPASS THEM.

15 MR. DOBBS: PAGE 33, LINES 5 THROUGH 16,
16 DESIGNATED BY BOTH THE PLAINTIFFS AND BY DEFENDANT.

17 Q. THAT IS 14 QUESTIONS AT A TIME. LET'S START
18 WITH ONE AT A TIME. DOES AOL OFFER A SERVICE BY WHICH I
19 CAN ACCESS THE WEB ON A PHONE OR A PDA?

20 A. WE HAVE AN AOL SEARCH SERVICE THAT YOU CAN USE
21 ON A MOBILE PHONE.

22 Q. WHICH ALLOWS ME TO SEARCH WEBSITES?

23 A. YOU CAN USE AOL SEARCH TO SEARCH WEBSITES, YES.

24 Q. DID THE PARENTAL CONTROL PRODUCTS THAT WE HAVE
25 TALKED ABOUT WORK IF SOMEONE IS USING THAT SERVICE?

1 A. NOT TODAY.

2 MR. DOBBS: PAGE 33, LINE 17, THROUGH
3 PAGE 34, LINE 7, DESIGNATED BY THE PLAINTIFFS.

4 Q. ARE THERE PLANS TO HAVE IT WORK FOR THAT
5 SERVICE? ALL I NEED IS A YES OR A NO.

6 A. IT IS UNDER RESEARCH RIGHT NOW.

7 MR. DOBBS: PAGE 41, LINE 19, THROUGH
8 PAGE 42, LINE 1.

9 Q. IS IT ALSO ACCURATE TO SAY THAT CONSUMER REPORTS
10 HAS RATED THE AOL PARENTAL CONTROL MECHANISMS THE BEST?

11 A. THEY RATED IT AS THE BEST AT BLOCKING
12 PORNOGRAPHY.

13 MR. DOBBS: PAGE 43, LINE 3, THROUGH 13,
14 DESIGNATED BY THE PLAINTIFFS.

15 Q. OKAY. I DIDN'T UNDERSTAND THIS. THE DYNAMIC
16 FILTERING PRODUCT IS USED FOR THE MATURE TEEN IN THE
17 MATURE TEEN CATEGORY. I THINK YOU SAID IT ANALYZES
18 WORDS AND PHRASES ON THE FLY IN ORDER TO DETERMINE
19 WHETHER THE SITE SHOULD BE ALLOWED THROUGH. DOES THE
20 LIST OF WORDS AND PHRASES THAT IT ANALYZES ON THE FLY
21 INCLUDE NON-ENGLISH WORDS?

22 A. WE HAVE DYNAMIC ENGINES IN OTHER LANGUAGES, SO
23 THOSE ENGINES WOULD LOOK AT FOREIGN WORDS.

24 MR. DOBBS: PAGE 44, LINE 12, THROUGH
25 PAGE 46, LINE 4, DESIGNATED BY THE PLAINTIFFS.

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1 Q. RATHER THAN JUST HAVE YOU SPECULATE ABOUT THE
2 REASONS, LET ME JUST SHOW YOU ONE OF THE DOCUMENTS THAT
3 AOL PRODUCED TO US. IT IS A DOCUMENT BATES STAMPED 551.

4 DO YOU HAVE THAT?

5 IF YOU DON'T HAVE IT, I WILL JUST SHOW
6 YOU MINE, BECAUSE I AM JUST GOING TO ASK YOU ABOUT THE
7 SENTENCE AT THE TOP OF THIS PAGE. READ IT TO YOURSELF
8 FOR JUST A SECOND, AND THEN I WILL SHOW IT TO ISAAC AND
9 THEN WE WILL TALK ABOUT IT.

10 YOU DON'T EVEN NEED TO GET INTO THE TEXT
11 ALTHOUGH, OF COURSE, YOU ARE WELCOME TO READ THE WHOLE
12 PAGE.

13 A. CAN I GET IT BACK AFTER WHEN HE ASKS THE
14 QUESTION?

15 Q. THAT APPEARS TO BE A REPORTING ON A STUDY DONE
16 BY AOL.

17 MR. CAMPBELL: OBJECTION, YOUR HONOR. WE
18 ARE GETTING INTO THE SECOND AREA WHERE THE DEFENDANT HAS
19 AN OBJECTION.

20 THE COURT: OKAY. THAT IS FOUND ON PAGES
21 45 AND 46?

22 MR. CAMPBELL: YES, PAGE 45 FROM LINE 15
23 TO THE END, AND THEN ON PAGE 46 FROM LINE 1 TO 4, YOUR
24 HONOR.

25 AND TO THE EXTENT -- THE OBJECTION IS

218

1 SPECULATION HERE AS WELL, TO THE EXTENT THAT THE WITNESS
2 IS ANSWERING THIS IN ANY WAY OTHER THAN READING WHAT WAS
3 THE REPORT -- TO THE EXTENT THAT THE WITNESS IS
4 ATTEMPTING TO ANSWER THIS QUESTION, THE OBJECTION IS
5 SPECULATION -- TO THE EXTENT THAT SHE IS DOING ANYTHING

6 MORE THAN ANSWERING THE QUESTION BASED ON THE MATERIALS
7 THAT WERE JUST PUT BEFORE HER. IN SETTING UP THE
8 CONTEXT FOR THIS, THERE WAS A REPORT THAT WAS PROVIDED,
9 PUT IN FRONT OF HER, SHE WAS ASKED TO SPECULATE AS TO
10 THE REASONS WHY PARENTS DON'T USE FILTERING PRODUCTS.
11 AND SHE RESPONDS, YOU KNOW, LOOKING AT THE SURVEY, WELL,
12 THIS IS WHAT IT SEEMS TO SAY. BUT TO THE EXTENT THAT
13 SHE IS ANSWERING BEYOND ANYTHING OTHER THAN LOOKING AT
14 WHAT THE SURVEY SHOWS THE OBJECTION WOULD BE
15 SPECULATION.

16 THE COURT: LET ME READ IT FIRST. IF I
17 NEED HELP, I WILL COME FORTH.

18 MR. CAMPBELL: CERTAINLY, YOUR HONOR.

19 THE COURT: I UNDERSTAND THE DEFENDANT
20 DOES NOT OBJECT IF I RECEIVE THE QUESTION AND ANSWER
21 BASED ONLY ON THE SURVEY. YOU HAVE NO OBJECTION TO
22 THAT?

23 MR. CAMPBELL: CORRECT, YOUR HONOR.

24 THE COURT: THAT IS WHAT HER ANSWER SAYS,
25 BASED ON THE SURVEY. THE OBJECTION IS OVERRULED. IN

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1 LIGHT OF THE QUALIFIED OBJECTION AND THE ANSWER IS
2 LIMITED TO THE SURVEY, SO IT FALLS WITHIN THE
3 QUALIFICATION OF THE OBJECTION.

4 YOU MAY PROCEED.

5 Q. THAT APPEARS TO BE REPORTING ON A STUDY DONE BY
6 AOL ABOUT THE REASONS FOR PARENTS WHO DON'T USE THE
7 PARENTAL CONTROL MECHANISMS. IS THAT THE WAY YOU

8 INTERPRET THAT AS WELL?

9 A. YES.

10 Q. IT APPEARS TO SUGGEST THAT AOL HAS DETERMINED
11 THAT THE MOST COMMON REASON FOR PARENTS WHO DON'T USE
12 PARENTAL CONTROL PRODUCTS IS THAT THEY TRUST THEIR
13 CHILDREN AND THEREFORE DON'T FEEL A NEED TO ENGAGE THE
14 PRODUCT, IS THAT CORRECT?

15 A. BASED ON THE SURVEY, YES.

16 MR. DOBBS: PAGE 48, LINE 9, THROUGH PAGE
17 49, LINE 10, DESIGNATED BY THE PLAINTIFFS.

18 YOUR HONOR, LINE 11 HAS BEEN DESIGNATED
19 BY THE DEFENDANT CONTIGUOUS WITH THE ANSWER TO THE
20 PLAINTIFF'S DESIGNATIONS.

21 THE COURT: ON WHAT PAGE?

22 MR. DOBBS: ON PAGE 49, YOUR HONOR.

23 THE COURT: IT ONLY HAS ONE WORD ON IT.

24 MR. DOBBS: IT APPEARS TO BE A
25 CORRECTION, YOUR HONOR.

220

1 THE COURT: I DON'T UNDERSTAND, BUT GO
2 AHEAD AND READ THE MATERIAL THAT IS ROUTINE. WE WILL
3 GET TO LINE 11 ON PAGE 49 WHEN WE GET THERE.

4 MR. DOBBS: YES, YOUR HONOR.

5 Q. I HAVE JUST ONE OR TWO OTHER QUESTIONS AND THEN
6 I AM DONE.

7 I THINK YOU SAID THAT ONE OF THE
8 CATEGORIES IN THE BLOCKED SITES LIST WAS SEX EDUCATION?

9 A. YES.

10 Q. SO THAT IF I AM A PARENT AND I CHOSE TO BLOCK
11 SEX EDUCATION SITES TO MY CHILDREN, I CAN DO THAT?

12 A. YOU CAN ADD IT TO THE CUSTOMIZED LIST THAT ANY
13 PARENT HAS ACCESS TO FOR THEIR CHILD.

14 Q. THE ONLY OTHER THING I WANT TO ASK ABOUT IS
15 DOWNLOADS. IS THERE A METHOD BY WHICH I CAN PREVENT MY
16 CHILD FROM DOWNLOADING MATERIAL FROM THE NET?

17 A. THROUGH OUR E-MAIL CONTROLS, YOU CAN PREVENT ANY
18 E-MAILS WITH ATTACHMENTS. YOU CAN DO THE SAME IN I-M.
19 AND THEN WE CAN RESTRICT WEBSITES THAT HAVE DOWNLOADS ON
20 OUR DATABASE.

21 Q. AND A PARENT COULD PUT ON HIS OR HER "I DON'T
22 WANT MY CHILD TO SEE THIS LIST" WEBSITES THAT ALLOW THE
23 DOWNLOADING OF MATERIAL THAT THE PARENT DIDN'T APPROVE
24 OF?

25 A. THEY COULD PUT A SPECIFIC SITE ON THAT LIST.

221

1 THE COURT: I DON'T MEAN TO BE TRIVIAL
2 BUT I DON'T UNDERSTAND WHAT THE DARKENING OF THE WORD
3 "LIST" MEANS.

4 MR. CAMPBELL: IF I MAY, YOUR HONOR, IT
5 WAS SIMPLY BECAUSE THAT WAS PART OF THE ANSWER, IT WAS
6 SIMPLY A CORRECTION TO INCLUDE THAT WORD TO COMPLETE THE
7 ANSWER. THERE WAS NO SPECIFIC --

8 THE COURT: THE YELLOW MARKER DID NOT GO
9 THAT FAR?

10 MR. CAMPBELL: YES, YOUR HONOR, THAT'S
11 CORRECT.

12 THE COURT: I DON'T KNOW WHY SOMEONE DID
13 NOT SAY THAT, BUT ANYWAY, GO AHEAD. THE WORD "LIST" IS
14 IN.

15 MR. DOBBS: PAGE 68, LINE 15, THROUGH
16 LINE 71, LINE 16, DESIGNATED BY THE DEFENDANT.

17 Q. IS THE YOUNG TEENS SITE LIMITED TO JUST A WHITE
18 LIST OR JUST SITES THAT YOU HAVE PERSONALLY IDENTIFIED
19 AND ALLOWED?

20 A. YOUNG TEENS IN THE DATABASE, THEY HAVE ACCESS TO
21 THE CLEAN SITES AS WELL AS SITES THAT HAVE BEEN RATED AS
22 SEX EDUCATION.

23 Q. FOR THE MATURE TEENS, WHICH INCLUDES THE DYNAMIC
24 SEARCHING, LET'S TALK ABOUT THAT FOR A SECOND, HOW THE
25 DYNAMIC SEARCHING WORKS. DOES THAT SYSTEM LOOK AT TEXT

222

1 ASSOCIATED WITH PARTICULAR SITES IN MAKING ITS
2 DETERMINATION ABOUT WHETHER THE CONTENT IS APPROPRIATE?

3 A. THE DYNAMIC ENGINE WILL ANALYZE THE TEXT ON A
4 WEB PAGE AS WELL AS THE CONTEXT IN WHICH THAT TEXT IS
5 USED TO MAKE A DECISION ABOUT WHETHER IT SHOULD BE
6 DISPLAYED OR NOT FOR THE MATURE TEEN.

7 Q. AND ACTUALLY THE CONTEXT IS WHERE I WAS GOING
8 NEXT. YOU MENTIONED THAT BEFORE. YOU SAID THEY LOOK AT
9 CONTEXT. CAN YOU DISCUSS THAT A LITTLE BIT MORE? CAN
10 YOU DISCUSS IN TERMS OF HOW THIS SYSTEM VIEWS TEXT IN A
11 CERTAIN CONTEXT? BUT IF YOU UNDERSTAND YOU CAN ANSWER.

12 A. I MEAN, THE ENGINE USES VARIOUS ALGORITHMS TO
13 DETERMINE WHETHER THIS PAGE SHOULD BE DISPLAYED OR NOT.

14 Q. WHAT I AM TRYING TO UNDERSTAND IS WHEN YOU
15 MENTION VARIOUS ALGORITHMS, I AM JUST TRYING TO
16 UNDERSTAND WHAT THAT MEANS. I UNDERSTAND WHEN YOU SAY
17 THAT IT LOOKS AT TEXT. THAT IS CLEAR TO ME. HERE IS A
18 WORD AND YOU CAN IDENTIFY IT. BUT WHEN YOU SAY IT LOOKS
19 AT IT IN CONTEXT, I DON'T UNDERSTAND WHAT THAT MEANS.
20 SO CAN YOU WALK ME THROUGH A BIT MORE ABOUT WHAT YOU
21 MEAN BY CONTEXT, HOW YOUR SYSTEM ANALYZES THE WORD IN
22 ITS CONTEXT?

23 A. IT DOES A REVIEW OF THE FULL WEB PAGE, LOOKING
24 AT THE TEXT ON THAT WEB PAGE TO MAKE A DECISION ABOUT
25 WHETHER THAT PAGE SHOULD BE RETURNED OR NOT.

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1 Q. I UNDERSTAND THAT. IT LOOKS AT THE WEB PAGE AND
2 IT LOOKS AT THE TEXT. BUT WHEN YOU MENTION IT LOOKS AT
3 THE TEXT IN ITS CONTEXT, HOW EXACTLY DOES THE SYSTEM DO
4 THAT?

5 A. I DON'T HAVE THAT KNOWLEDGE. THERE ARE
6 DEVELOPERS WHO WORK ON THE ALGORITHMS TO ANALYZE
7 INDIVIDUAL WEB PAGES.

8 Q. BUT JUST TO BE CLEAR, BECAUSE I AM SEPARATING
9 WHAT YOU CAN ANSWER AND WHAT MAY NEED TO BE ANSWERED BY
10 SOMEONE ELSE, DO YOU HAVE ANY UNDERSTANDING OF HOW THE
11 ALGORITHMS ANALYZE THE TEXT TO DETERMINE THE CONTEXT IN
12 WHICH THE WORD IS USED?

13 A. I AM NOT.

14 MR. DOBBS: PAGE 71, LINE 17 THROUGH 22,
15 DESIGNATED BY THE PLAINTIFFS.

16 Q. SO YOU SAID THAT THE DYNAMIC SYSTEM LOOKS AT
17 TEXT. DOES IT LOOK AT URLS TO DETERMINE WHETHER THE
18 CONTENT IS APPROPRIATE?

19 A. YES.

20 MR. DOBBS: PAGE 72, LINES 1 THROUGH 3,
21 DESIGNATED BY THE DEFENDANT.

22 Q. DOES IT LOOK AT METATAGS TO DETERMINE WHETHER OR
23 NOT THE CONTENT IS APPROPRIATE?

24 A. I DO NOT KNOW.

25 MR. DOBBS: PAGE 75, LINES 6 THROUGH 13,

224

1 DESIGNATED BY THE DEFENDANT.

2 Q. FOR YOUNG KIDS ONLY AND YOUR YOUNG TEENS SITES,
3 ONCE A SITE IS PUT ON THAT LIST, DO YOU DO ANY PERIODIC
4 REVIEW OF THOSE SITES TO DETERMINE THAT IT IS STILL IN
5 COMPLIANCE?

6 A. THE TEAM THAT IS RESPONSIBLE FOR MAINTAINING
7 THAT DATABASE DOES DO PERIODIC REVIEW.

8 Q. AND HOW OFTEN IS THAT REVIEW?

9 A. I DON'T KNOW.

10 MR. DOBBS: PAGE 85, LINE 11, THROUGH
11 PAGE 87, LINE 13, DESIGNATED BY THE DEFENDANT.

12 Q. LET'S TALK ABOUT THE SYSTEMS THAT YOU HAVE. YOU
13 MENTIONED THERE WERE CERTAIN SITES IN YOUR DATABASE,
14 SOME OF WHICH ARE DEEMED OBJECTIONABLE, SOME OF WHICH
15 AREN'T. FOR THE PURPOSES OF THIS DISCUSSION, I WILL
16 CALL THOSE A BLACK LIST AND WHITE LIST. THE BLACK LIST
17 BEING THOSE SITES THAT YOU DEEMED OBJECTIONABLE, THE

18 WHITE LIST BEING THOSE SITES THAT YOU DETERMINED ARE
19 CLEAN. HOW OFTEN DO YOU UPDATE YOUR BLACK LIST?
20 A. I DON'T KNOW.
21 Q. WHEN THERE IS A SITE THAT IS ON THE BLACK LIST,
22 IS THAT SITE CATEGORIZED BY ITS URL?
23 A. THE DATABASE IS COMPRISED OF URLS.
24 Q. OKAY. THAT IS WHAT I WAS ASKING.
25 FOR A SITE IN WHICH THIS URL IS LISTED,

225

1 DO YOU LIST THE IP ADDRESS AS WELL?
2 A. WE CAN LIST IP ADDRESSES IN THE DATABASE.
3 Q. DO YOU KNOW IF THAT IS ROUTINELY WHAT IS DONE?
4 A. I DON'T KNOW HOW MANY IP ADDRESSES ARE IN THE
5 DATABASE.
6 Q. DO YOU KNOW IF IP ADDRESSES ARE USUALLY LISTED
7 WITH THE URL?
8 A. NOT TO MY KNOWLEDGE.
9 Q. WHEN THERE IS A URL IN THIS BLACK LIST, DO YOU
10 FLAG INDIVIDUAL PAGES, OR IS THE MAIN URL FLAGGED?
11 A. WE HAVE THE FLEXIBILITY TO DO BOTH.
12 Q. WHAT IS THE NORMAL PROCEDURE FOR FLAGGING A URL?
13 I UNDERSTAND YOU CAN DO BOTH. I AM TRYING TO UNDERSTAND
14 WHAT THE SYSTEM GENERALLY DOES. DO YOU NORMALLY FLAG
15 INDIVIDUAL PAGES OR DO YOU FLAG THE MAIN URL?
16 A. THE HUMAN REVIEWERS WOULD LOOK AT THE WEBSITE
17 AND MAKE A DECISION ABOUT WHETHER TO INPUT THE FULL
18 WEBSITE OR PARTICULAR PAGES.
19 Q. BUT THAT IS SOMETHING THAT THE HUMAN REVIEWERS

20 WOULD DO?

21 A. YES.

22 MR. DOBBS: PAGE 88, LINES 3 THROUGH 8,
23 DESIGNATED BY THE DEFENDANT.

24 Q. I ASKED YOU THIS QUESTION ABOUT THE BLACK LIST.
25 JUST FOR PURPOSES OF CONSISTENCY, I WILL ASK ABOUT THE

226

1 WHITE LIST AS WELL.

2 DO YOU KNOW HOW OFTEN THE WHITE LIST
3 PAGES ARE UPDATED, IF AT ALL?

4 A. I DON'T.

5 MR. DOBBS: PAGE 99, LINE 21, THROUGH
6 PAGE 100, LINE 7, DESIGNATED BY THE PLAINTIFFS.

7 Q. TO YOUR KNOWLEDGE, HAVE YOU DONE ANY STUDIES
8 REGARDING ANY DELAY IN THE TIME IN WHICH YOU CAN RECEIVE
9 CONTENT WHEN THE DYNAMIC ENGINE IS BEING USED?

10 A. WHAT DO YOU MEAN BY "STUDIES"?

11 MR. DOBBS: PAGE 100, LINES 8 THROUGH 19,
12 DESIGNATED BY BOTH THE PLAINTIFFS AND BY DEFENDANT.

13 Q. SINCE THE DYNAMIC SEARCH ENGINE WAS PUT INTO
14 USE, HAVE YOU DONE ANY RESEARCH INTO WHETHER THE DYNAMIC
15 SEARCH ENGINE RESULTS IN A DELAY IN RECEIVING
16 INFORMATION WHEN THE DYNAMIC ENGINE IS BEING UTILIZED TO
17 FILTER A WEB PAGE?

18 A. THERE WAS ONE THING I JUST WANT TO CLARIFY. IT
19 IS NOT A DYNAMIC SEARCH ENGINE. IT IS A DYNAMIC RATING
20 ENGINE. AS PART OF THE DEVELOPMENT EFFORTS, WE LOOKED
21 AT HOW THESE ENGINES PERFORMED AND WE DID NOT DEEM IT TO

22 HAVE TO HAVE A SIGNIFICANT PERFORMANCE IMPACT ON
23 RENDERING A WEBSITE.

24 MR. DOBBS: PAGE 100, LINE 20, TO PAGE
25 101, LINE 4.

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1 Q. FIRST LET ME SAY I KEEP SAYING DYNAMIC SEARCH
2 ENGINE. I MEAN TO SAY DYNAMIC RATING ENGINE. I KEEP
3 SAYING SEARCH ENGINE.

4 BUT YOU SAID THAT YOU DETERMINED THAT
5 THERE WAS NOT A SIGNIFICANT IMPACT. WHAT DOES THAT
6 MEAN?

7 A. WE DID NOT THINK IT IMPACTED PERFORMANCE.

8 MR. DOBBS: PAGE 114, LINES 16 THROUGH
9 20, DESIGNATED BY DEFENDANT. PLAINTIFFS HAVE DESIGNATED
10 LINE 16 TO COMPLETE THE QUESTION THAT WAS NOT FULLY
11 DESIGNATED BY DEFENDANTS.

12 SIMILAR TO THE WORD "LIST" PREVIOUSLY,
13 YOUR HONOR.

14 THE COURT: OKAY.

15 IS THERE AN OBJECTION TO THIS QUESTION?

16 MR. DOBBS: I BELIEVE THAT PLAINTIFFS
17 HAVE WAIVED THEIR OBJECTION TO THIS QUESTION.

18 THE COURT: OKAY. THANK YOU.

19 Q. OKAY. I AM CLEAR ON THAT. WE WENT THROUGH A
20 BUNCH OF TEXT QUESTIONS. WHAT I AM JUST ASKING NOW IS
21 OUTSIDE THE TEXT, DOES IT RECOGNIZE IMAGES, FOR EXAMPLE?

22 A. NO.

23 MR. DOBBS: PAGE 116, LINE 17 THROUGH 22,

24 DESIGNATED BY DEFENDANT.

25 Q. DRE, THIS WILL MAKE IT A LITTLE EASIER SO THAT I

228

1 DON'T HAVE TO KEEP FOCUSING ON THAT. IF I SAY DRE, WILL
2 YOU UNDERSTAND THAT I AM TALKING ABOUT DYNAMIC RATING
3 ENGINES?

4 A. YES.

5 MR. DOBBS: PAGE 117, LINES 1 THROUGH 7,
6 DESIGNATED BY THE PLAINTIFFS.

7 Q. ASSUMING A SITE IS BLOCKED THROUGH THE DRE, DOES
8 IT GO BACK TO ANYONE TO BE REVIEWED THROUGH SOME SORT OF
9 HUMAN REVIEW?

10 A. THE HUMAN REVIEW TEAM MAY INDEPENDENTLY COME
11 UPON A SITE THAT HAD BEEN BLOCKED BY A DYNAMIC RATING
12 ENGINE AND GO THROUGH A HUMAN REVIEW OF THAT SITE AND
13 THEN ADD IT TO OUR DATABASE OR NOT.

14 MR. DOBBS: PAGE 117, LINES 8 THROUGH 12,
15 DESIGNATED BY DEFENDANT.

16 Q. WHEN YOU SAY THAT THAT MAY -- WHEN YOU SAY THAT
17 THAT MAY OR COULD OCCUR, IS IT THE ROUTINE PRACTICE THAT
18 SITES THAT ARE FLAGGED BY THE DRE, THAT THERE IS SOME
19 SORT OF HUMAN REVIEW FOR THAT SITE?

20 A. NOT TODAY.

21 MR. DOBBS: PAGE 129, LINES 9 THROUGH 17,
22 DESIGNATED BY THE DEFENDANT.

23 PLAINTIFFS HAVE WAIVED THE OBJECTION,
24 YOUR HONOR.

25 Q. THE HUMAN REVIEWERS THAT ARE USED, DO YOU KNOW

1 WHERE THEY ARE LOCATED? BY THAT, LET ME BE MORE
2 SPECIFIC. DO YOU KNOW IF THE REVIEWERS ARE LOCATED
3 INSIDE OR OUTSIDE OF THE UNITED STATES?

4 A. BOTH.

5 Q. FOR THE REVIEWERS OUTSIDE OF THE UNITED STATES,
6 DO YOU KNOW WHERE THEY ARE LOCATED?

7 A. THEY ARE LOCATED IN BANGALORE, INDIA.

8 MR. DOBBS: PAGE 130, LINES 2 THROUGH 22,
9 DESIGNATED BY PLAINTIFFS.

10 Q. DO THE REVIEWERS IN BANGALORE, INDIA HAVE THE
11 SAME RESPONSIBILITIES AS THOSE INSIDE THE UNITED STATES?

12 A. YES.

13 Q. CAN YOU REPEAT YOUR ANSWER AGAIN FOR THE
14 REPORTER BECAUSE YOU WERE SPEAKING OVER EACH OTHER.

15 A. THERE IS A TEAM IN INDIA, BUT THEY ARE MANAGED
16 BY THE TEAM IN THE U.S.

17 Q. WHEN YOU SAY THAT THE REVIEWER TEAM IN THE U.S.
18 MANAGES THE REVIEWER TEAM IN INDIA, WHAT DO YOU MEAN BY
19 "MANAGE"? YOU MAY ANSWER.

20 A. THE TEAM IN THE U.S. PROVIDES THE GUIDELINES AND
21 THE TRAINING AND THE ASSISTANCE FOR THE HUMAN REVIEWERS
22 IN INDIA.

23 MR. DOBBS: PAGE 131, LINES 7 THROUGH 11,
24 DESIGNATED BY THE DEFENDANT.

25 A. I NEED TO CORRECT A PREVIOUS ANSWER. WE HAVE

1 REVIEWERS IN OTHER COUNTRIES THAN INDIA. WE HAVE
2 REVIEWERS IN THE UK, CANADA, FRANCE, GERMANY AND MEXICO.
3 I JUST FORGOT.

4 MR. DOBBS: PAGE 133, LINE 18, THROUGH
5 PAGE 137, LINE 9, DESIGNATED BY THE DEFENDANT.

6 PLAINTIFFS HAVE MADE THE OBJECTION IN THE
7 BOX, YOUR HONOR.

8 Q. THE REVIEWERS IN THE SIX COUNTRIES OUTSIDE OF
9 THE U.S., DO THEY HAVE THE SAME RESPONSIBILITIES AS THE
10 REVIEWERS INSIDE THE U.S.? YOU MAY ANSWER.

11 A. ALL HUMAN REVIEWERS ARE RESPONSIBLE FOR
12 MAINTAINING THE DATABASE.

13 Q. ARE THE DUTIES OF THE REVIEWERS OUTSIDE OF THE
14 U.S. THE SAME AS THE DUTIES OF THE REVIEWERS INSIDE THE
15 U.S.? YOU MAY ANSWER.

16 A. THE GUIDELINES AND POLICIES ARE SET BY AOL
17 EMPLOYEES IN THE UNITED STATES.

18 Q. THE REVIEWERS IN THE UNITED STATES, ARE THEY
19 FULL-TIME EMPLOYEES? YOU MAY ANSWER.

20 A. WE HAVE BOTH FULL-TIME AND CONTRACT EMPLOYEES.

21 Q. FOR THE REVIEWERS OUTSIDE OF THE U.S., ARE THOSE
22 FULL-TIME EMPLOYEES? YOU MAY ANSWER.

23 A. YES.

24 Q. DO YOU HAVE CONTRACT EMPLOYEES THAT WORK AS
25 REVIEWERS OUTSIDE OF THE U.S.? YOU MAY ANSWER.

231

1 A. WE MAY.

2 Q. FOR THE REVIEWERS IN THE UNITED STATES, WHAT IS

3 OR WHAT ARE THE HIRING CRITERIA?

4 A. I DON'T KNOW.

5 Q. FOR THE REVIEWERS OUTSIDE OF THE UNITED STATES,
6 WHAT ARE THE HIRING CRITERIA?

7 A. I DON'T KNOW.

8 Q. FOR THE WORKERS OUTSIDE OF THE U.S., IS FLUENCY
9 IN ENGLISH A CRITERION FOR HIRE?

10 A. I DON'T KNOW.

11 Q. FOR THE REVIEWERS INSIDE OF THE UNITED STATES
12 ARE THERE MORE THAN 100 INDIVIDUALS COMPRISING THE
13 REVIEW TEAM?

14 A. NO.

15 Q. FOR THE REVIEWERS IN THE UNITED STATES, ARE
16 THERE MORE THAN 50 INDIVIDUALS COMPRISING THE REVIEW
17 TEAM?

18 A. I DON'T BELIEVE SO.

19 Q. FOR THE REVIEWERS IN THE UNITED STATES, ARE
20 THERE MORE THAN 25 INDIVIDUALS COMPRISING THE REVIEW
21 TEAM?

22 A. I DON'T BELIEVE SO.

23 Q. FOR THE REVIEWERS IN THE UNITED STATES, ARE
24 THERE MORE THAN A DOZEN INDIVIDUALS COMPRISING THE
25 REVIEW TEAM? YOU MAY ANSWER.

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1 A. I BELIEVE THERE ARE LESS THAN A DOZEN.

2 MR. DOBBS: PAGE 137, LINES 10 THROUGH
3 13, DESIGNATED BY THE PLAINTIFFS.

4 Q. FOR THE REVIEWERS INSIDE THE UNITED STATES, ARE

5 THERE MORE THAN 5 REVIEWERS?

6 A. YES.

7 MR. DOBBS: PAGE 141, LINES 10 THROUGH
8 12, DESIGNATED BY THE DEFENDANT.

9 Q. DO YOU KNOW HOW MANY URLS A REVIEWER LOOKS AT
10 EACH DAY ON AVERAGE?

11 A. I DON'T.

12 MR. DOBBS: PAGE 141, LINE 21, THROUGH
13 PAGE 142, LINE 5.

14 Q. IF THERE IS SEXUALLY EXPLICIT MATERIAL ON ONE
15 PAGE OF A WEBSITE COMPRISED OF MORE THAN ONE PAGE, DOES
16 THE REVIEWER CATEGORIZE THE WHOLE SITE AS INAPPROPRIATE?

17 A. THE REVIEWER HAS THE ABILITY TO CHARACTERIZE A
18 PAGE AS DIFFERENT FROM THE PAGES ON THE WEBSITE.

19 MR. DOBBS: PAGE 149, LINES 1 THROUGH 13,
20 DESIGNATED BY THE DEFENDANT.

21 Q. THANK YOU. SO UNDERSTANDING THEN THAT THESE ARE
22 THE CATEGORIES, LET'S GO BACK THEN TO THE REVIEWERS. DO
23 THE REVIEWERS SPECIALIZE IN ANY OF THE PARTICULAR
24 CATEGORIES IN TERMS OF DETERMINING WHETHER CONTENT IS
25 APPROPRIATE OR NOT? YOU MAY ANSWER.

233

1 A. THEY MAY.

2 Q. DO YOU KNOW IF THEY DO?

3 A. I DON'T KNOW.

4 MR. DOBBS: PAGE 149, LINE 21, THROUGH
5 PAGE 150, LINE 20, DESIGNATED BY THE DEFENDANT.

6 Q. DO YOU KNOW IF REVIEWERS ARE EXPECTED TO

7 COMPLETE A QUOTA REVIEW FOR A CERTAIN NUMBER OF SITES
8 WITHIN A WEEK?

9 A. I DON'T KNOW.

10 Q. IF A REVIEWER MAKES A DECISION REGARDING
11 CONTENT, IS THAT DECISION REVIEWED BY ANY OTHER HUMAN?

12 A. IT MIGHT BE.

13 Q. DO YOU KNOW IF IT IS?

14 A. I DON'T KNOW.

15 Q. JUST SO WE ARE CLEAR, ANYTHING I AM ASKING, IF
16 YOU KNOW, DO YOU KNOW WHAT THE TURNOVER RATE FOR
17 REVIEWERS ARE?

18 A. I DON'T KNOW.

19 MR. DOBBS: PAGE 152, LINE 10, THROUGH
20 PAGE 153, LINE 18, DESIGNATED BY THE DEFENDANT.

21 Q. WELL, TAKING WHAT YOU SAID FOR THE U.S. BASED
22 EMPLOYEES, THAT THEY ARE GIVEN A PERFORMANCE REVIEW, DO
23 YOU KNOW IF ANY REVIEWERS HAVE EVER BEEN FIRED FOR POOR
24 PERFORMANCE?

25 A. I DON'T KNOW.

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1 Q. DO YOU KNOW IF A REVIEWER WAS FIRED FOR POOR
2 PERFORMANCE, THAT THERE IS ANY WAY TO GO BACK AND FIND
3 THE WEBSITES THAT THE REVIEWER HAD CATEGORIZED?

4 A. I DON'T KNOW.

5 Q. DO YOU KNOW WHAT TYPE OF TRAINING IS GIVEN OR
6 PROVIDED TO REVIEWERS?

7 A. THE INTEGRITY ASSURANCE DEPARTMENT TRAINS ALL
8 REVIEWERS.

9 Q. DO YOU KNOW WHAT TYPE OF TRAINING THE INTEGRITY
10 ASSURANCE DEPARTMENT PROVIDES REVIEWERS?

11 A. I DON'T KNOW.

12 Q. DO YOU KNOW IF THE INTEGRITY ASSURANCE
13 DEPARTMENT PROVIDES TRAINING FOR NON U.S. BASED
14 REVIEWERS?

15 A. YES.

16 Q. DOES THE INTEGRITY ASSURANCE DEPARTMENT PROVIDE
17 TRAINING TO NON U.S. BASED REVIEWERS?

18 A. YES.

19 Q. ARE YOU FAMILIAR WITH THE TRAINING GIVEN TO
20 NON-U.S. BASED REVIEWERS?

21 A. NO.

22 MR. DOBBS: PAGE 154, LINE 21, THROUGH
23 PAGE 155, LINE 7, DESIGNATED BY THE DEFENDANT.

24 Q. DO YOU KNOW IF REVIEWERS ARE TOLD TO LOOK FOR
25 MATERIAL THAT FITS THE LEGAL DEFINITION OF HARMFUL TO

235

1 MINORS WHEN THEY ARE CONDUCTING THEIR REVIEW? YOU MAY
2 ANSWER.

3 A. I DON'T KNOW.

4 MR. DOBBS: PAGE 155, LINES 13 THROUGH
5 18, DESIGNATED BY THE DEFENDANT.

6 Q. DO YOU KNOW IF EVERY SITE BLOCKED BY DRE IS
7 REVIEWED BY A HUMAN AFTER IT'S BLOCKED?

8 A. NO.

9 Q. CLARIFY YOUR ANSWER. ARE YOU SAYING NO, IT IS
10 NOT CHECKED OR NO, YOU DON'T KNOW?

11 A. NO, IT IS ROUTINELY CHECKED BY A HUMAN AFTER IT
12 IS BLOCKED BY THE DRE, BUT IT MAY BE CHECKED BY A HUMAN
13 REVIEWER IN THE PROCESS OF MAINTAINING OUR STATIC
14 DATABASE.

15 MR. SERRITELLA: YOUR HONOR, THERE MAY BE
16 A TYPO IN THE PROPOSED CORRECTION.

17 THE COURT: I DON'T HAVE IT IN FRONT OF
18 ME SO YOU ARE IN CHARGE. YOU CORRECTED IT AS YOU READ
19 IT?

20 MR. SERRITELLA: I DID NOT CORRECT IT,
21 YOUR HONOR. THAT IS THE CORRECTION THAT IS PROVIDED BY
22 AOL. I'M NOT SURE IT MAKES GRAMMATICAL SENSE BUT --

23 THE COURT: I'LL READ WHAT THE COURT
24 REPORTER WROTE DOWN, QUESTION: CLARIFY YOUR ANSWER.
25 ARE YOU SAYING NO, IT IS NOT CHECKED OR NO, YOU DON'T

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1 KNOW? NO, IT IS ROUTINELY CHECKED BY A HUMAN AFTER IT
2 IS BLOCKED BY THE DRE.

3 THE COURT: IS THAT WHAT YOU THINK YOU
4 READ?

5 MR. SERRITELLA: THAT IS WHAT I HAVE,
6 YOUR HONOR.

7 THE COURT: OKAY. THANK YOU.

8 MR. DOBBS: PAGE 170, LINE 22, THROUGH
9 PAGE 171, LINE 3, DESIGNATED BY THE PLAINTIFFS.

10 Q. IS THERE ANY COST ASSOCIATED WITH UTILIZING
11 PARENTAL CONTROLS?

12 A. NO, OTHER THAN THE STANDARD AOL MEMBERSHIP. YOU

13 NEED TO PAY TO BE AN AOL MEMBER.

14 MR. DOBBS: PAGE 212, LINES 11 THROUGH
15 18, DESIGNATED BY PLAINTIFFS.

16 Q. SURE. ARE YOU AWARE OF ANY -- I AM JUST TRYING
17 TO CLOSE THE LOOP ON THIS -- ANY BROWSERS WITH WHICH THE
18 INTERNET ACCESS CONTROLS MAY SLOW OR DELAY THE TIME IN
19 WHICH WEB PAGES ARE PROCESSED?

20 A. THERE MAY BE SOME DELAY, BUT WE DO NOT DEEM IT
21 TO BE A BIG PERFORMANCE IMPACT. IT MAY BE MILLISECONDS.

22 MR. DOBBS: PAGE 214, LINE 11, THROUGH
23 PAGE 215, LINE 5, DESIGNATED BY THE DEFENDANT.

24 Q. LET ME SEE IF I CAN CLARIFY. MY UNDERSTANDING
25 WAS THAT IF I AM A PARENT, I CAN PREVENT MY CHILD FROM

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1 RECEIVING FILES THAT ARE ATTACHMENTS TO AN INTERNET
2 DOWNLOAD. AM I UNDERSTANDING THAT CORRECTLY?

3 A. I SAID THAT PARENTS CAN PREVENT THEIR CHILD FROM
4 RECEIVING ATTACHMENTS BY E-MAIL OR INSTANT MESSENGER.

5 Q. OKAY.

6 NOW, I HAVE GOTTEN E-MAILS THAT HAVE HAD
7 PICTURES. SOMETIMES THEY WILL BE SEPARATE ATTACHMENTS.
8 SOMETIMES THEY ARE IN THE BODY OF AN E-MAIL. DOES THE
9 PRODUCT PREVENT E-MAIL FROM COMING THROUGH IF SOMETHING
10 IS CONTAINED IN THE BODY OF AN E-MAIL AND NOT AS AN
11 ATTACHMENT?

12 A. I DON'T KNOW.

13 MR. DOBBS: YOUR HONOR, THAT COMPLETES
14 THE DESIGNATIONS FOR THE DEPOSITION OF MISS WHITTLE OF

15 AMERICA ONLINE.

16 MR. CAMPBELL: YOUR HONOR, IF I MAY MAKE
17 ONE CLARIFICATION. THE DESIGNATIONS ON PAGE 170 FROM
18 LINES 22 TO --

19 THE COURT: SPEAK UP, PLEASE.

20 MR. CAMPBELL: I'M SORRY, YOUR HONOR.
21 THE DESIGNATION ON PAGE 170 -- PAGE 170, LINE 22, TO
22 PAGE 171, LINE 3 WAS DESIGNATED BY THE DEFENDANTS. IT
23 WAS MISSTATED THAT IT WAS DESIGNATED BY THE PLAINTIFFS.

24 THE COURT: OKAY. IF THERE WAS A
25 MISSTATEMENT, IT'S CORRECTED.

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1 MR. VAN KWAWEGEN: I, TOO, HAVE A
2 CLARIFICATION, YOUR HONOR. ON PAGE 100, LINE 20,
3 THROUGH PAGE 101, LINE 4, I DO NOT BELIEVE CURRENTLY IT
4 WAS IDENTIFIED WHO DESIGNATED THIS PART OF THE
5 TRANSCRIPT, YOUR HONOR. THAT WOULD BE THE PLAINTIFFS.

6 THE COURT: THANK YOU.

7 THAT CONCLUDES THE PRESENTATION OF THE
8 TESTIMONY OF ANNIK, A-N-N-I-K, WHITTLE, W-H-I-T-T-L-E,
9 FOR HER DEPOSITION ON MARCH 2ND, 2006 BY THE PLAINTIFFS.

10 OKAY. DO WE HAVE ANOTHER WITNESS?

11 MR. VAN KWAWEGEN: WE DO HAVE ANOTHER
12 DEPOSITION DESIGNATION, YOUR HONOR. THIS WOULD BE THE
13 MASTERCARD DEPOSITION OF JOSHUA PEIREZ THAT TOOK PLACE
14 ON MARCH 31, 2006.

15 THE COURT: ALL RIGHT.

16 MR. VAN KWAWEGEN: I HAVE A COLOR-CODED

17 COPY FOR YOUR HONOR, IF I MAY APPROACH.

18 THE COURT: YES, PLEASE.

19 MR. VAN KWAWEGEN: WITH REGARD TO THE
20 EXHIBITS I JUST PROVIDED YOU, ONE OF THESE EXHIBITS WAS
21 THE SUBJECT OF A STIPULATION THAT WAS FILED EARLIER AND
22 HAS SINCE BEEN REVISED, AS PER YOUR HONOR'S INSTRUCTIONS
23 AND GUIDANCE. THE LANGUAGE HAS BEEN AGREED TO BY BOTH
24 PARTIES AT THIS POINT IN TIME. IT JUST STILL NEEDS TO
25 BE FILED, YOUR HONOR.

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1 THE COURT: THIS STACK YOU JUST GAVE ME?

2 MR. VAN KWAWEGEN: I DID NOT, YOUR HONOR.
3 WOULD YOU LIKE TO HAVE A COPY?

4 THE COURT: IS IT GOING TO BE REFERRED TO
5 IN THE DEPOSITION?

6 MR. VAN KWAWEGEN: NO, YOUR HONOR. IT'S
7 NOT.

8 THE COURT: THEN I DON'T THINK I NEED IT
9 NOW.

10 MR. VAN KWAWEGEN: WOULD YOUR HONOR LIKE
11 TO HAVE A BRIEF INTRODUCTION WHAT THIS DEPOSITION IS
12 ABOUT?

13 THE COURT: YES, PLEASE.

14 MR. VAN KWAWEGEN: THE DEPOSITION IS OF
15 JOSHUA PEIREZ OF MASTERCARD. AND MASTERCARD IS ONE OF
16 THE LARGEST CREDIT CARD ASSOCIATIONS IN THE UNITED
17 STATES. THE DEPOSITION IS THEREFORE LARGELY ABOUT
18 PAYMENTS USING THE MASTERCARD CARD, YOUR HONOR.

19 THE COURT: ALL RIGHT. YOU MAY PROCEED.

20 MR. DOBBS: MAY I HAVE A BRIEF MOMENT TO
21 CONFER?

22 THE COURT: SURE.

23 (PAUSE.)

24 MR. VAN KWAWEGEN: IN THE MEANTIME, YOUR
25 HONOR, MAYBE I CAN SPELL PEIREZ FOR THE COURT REPORTER,

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1 THE NAME OF THE DEPONENT.

2 THE COURT: I'M SURE SHE WOULD BE HAPPY
3 TO HAVE IT.

4 MR. VAN KWAWEGEN: IT IS PEIREZ.
5 P-E-I-R-E-Z. HIS FIRST NAME IS JOSHUA, J-O-S-H-U-A. THE
6 DATE OF DEPOSITION IS MARCH 31, 2006.

7 MR. DOBBS: PAGE 9, LINES 6 THROUGH 21,
8 DESIGNATED BY THE PLAINTIFFS.

9 Q. CAN A MINOR BE AN AUTHORIZED USER OF A PAYMENT
10 CARD?

11 A. MASTERCARD HAS NO SPECIFIC DATA ON, YOU KNOW,
12 WHAT MINORS DO OR DON'T HAVE CARDS. HOWEVER, THE
13 INDUSTRY DOES RECOGNIZE THAT THERE ARE PEOPLE UNDER 18
14 THAT PROBABLY HAVE CARDS, AND CERTAINLY WE HAVE TWO
15 PROGRAMS THAT ARE TARGETED FOR FINANCIAL INSTITUTIONS TO
16 OFFER TO PARENT FOR THEIR TEENAGERS, OUR TEEN CARD AND
17 OUR FAMILY ACCOUNT CARD. SO WE HAVE CERTAINLY
18 RECOGNIZED WHAT WE BELIEVE TO BE DEMAND IN THE
19 MARKETPLACE.

20 Q. IS MASTERCARD AWARE THAT SOME OF ITS PAYMENT

21 CARDS ARE MARKETED FOR USE BY TEENS?

22 A. YES. AS I SAID, THERE'S TWO PROGRAMS WE'VE
23 DESIGNATED TO BE MARKETED BY PARENTS FOR USE BY THEIR
24 TEENS.

25 MR. DOBBS: PAGE 9, LINE 22, THROUGH PAGE

241

1 10, LINE 9, DESIGNATED BY THE DEFENDANT.

2 Q. LET'S TALK FOR A MOMENT ABOUT THE TWO PROGRAMS
3 MASTERCARD HAS THAT PROVIDE CARDS FOR USE BY TEENS.
4 WHAT IS A MASTERCARD FAMILY ACCOUNT?

5 A. MASTERCARD FAMILY ACCOUNT IS REALLY A PRODUCT
6 CONSTRUCT MORE THAN ANYTHING ELSE THAT MASTERCARD
7 DESIGNED FOR FINANCIAL INSTITUTIONS TO UTILIZE THAT
8 ALLOWS A CARD HOLDER WHO'S THE PRIMARY ACCOUNT HOLDER TO
9 HAVE ADDITIONAL CARDS ATTACHED TO THAT ACCOUNT WITH
10 VARIOUS FEATURES THAT CAN BE DIFFERENT AMONG THOSE
11 DIFFERENT CARDS.

12 MR. DOBBS: PAGE 10, LINE 19, THROUGH
13 PAGE 11, LINE 13, DESIGNATED BY THE PLAINTIFFS.

14 Q. I WOULD LIKE TO SHOW YOU ONE OF THE DOCUMENTS WE
15 RECEIVED FROM MASTERCARD YESTERDAY. WOULD YOU MIND
16 MARKING THIS FOR US?

17 AT WHICH POINT EXHIBIT 1 WAS MARKED.

18 Q. DO YOU RECOGNIZE THIS DOCUMENT?

19 A. YES, I DO.

20 Q. IS IT A MASTERCARD DOCUMENT?

21 A. IT'S A DOCUMENT CREATED BY MASTER CARD, YES.

22 Q. AND IS IT PREPARED AND MAINTAINED IN THE COURSE

23 OF MASTER CARD'S BUSINESS?

24 A. YES, IT WAS.

25 Q. COULD YOU DESCRIBE IN GENERAL TERMS THE

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1 DOCUMENT?

2 A. THE DOCUMENT IS A DOCUMENT THAT DESCRIBES THE
3 MASTERCARD FAMILY ACCOUNT PROGRAM.

4 MR. DOBBS: PAGE 14, LINES 16 THROUGH 21,
5 DESIGNATED BY THE DEFENDANT.

6 Q. IN ADDITION TO THE FAMILY ACCOUNT CARD, DOES
7 MASTERCARD -- WHAT IS THE TEEN ACCOUNT CARD?

8 A. THE MASTERCARD TEEN CARD IS A PROGRAM THAT'S
9 DESIGNED AS A -- GENERALLY A PREPAID CARD FOR PARENTS TO
10 GET FOR THEIR KIDS.

11 MR. DOBBS: PAGE 15, LINES 3 THROUGH 24,
12 DESIGNATED BY THE DEFENDANTS.

13 Q. I'D LIKE TO SHOW YOU ONE GROUP OF DOCUMENTS
14 ASSOCIATED WITH THE TEEN CARD.

15 PLAINTIFF'S EXHIBIT 2, PRINTOUTS FROM
16 BRAND STANDARDS DATABASE. MARKED FOR IDENTIFICATION.

17 Q. DO YOU RECOGNIZE THIS DOCUMENT?

18 A. IT'S A LONG DOCUMENT. I'M JUST LOOKING AT THE
19 FIRST PAGE. SO ARE YOU ASKING JUST ABOUT THAT, OR DO
20 YOU WANT ME TO LOOK THROUGH THE WHOLE THING?

21 Q. WOULD YOU MIND LOOKING THROUGH THE WHOLE
22 DOCUMENT?

23 WITNESS REVIEWS THE DOCUMENT.

24 DISCUSSION OFF THE RECORD.

25 Q. WILL YOU PLEASE DESCRIBE THESE DOCUMENTS, THIS

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1 DEPOSITION EXHIBIT?

2 A. YEAH. THESE APPEAR TO BE PRINTOUTS FROM OUR
3 DATABASE, OUR BRAND STANDARDS DATABASE.

4 THE COURT: DO YOU HAVE ANY PURPOSE FOR
5 IDENTIFYING THE EXHIBITS FOR LATER OFFER INTO EVIDENCE?
6 IT IS NOT BEING DONE HERE.

7 MR. VAN KWAWEGEN: THAT'S CORRECT, YOUR
8 HONOR. WE THOUGHT THAT WE WOULD OFFER THEM AT THE END
9 OF THE DEPOSITION DESIGNATIONS, BUT WE WOULD GLADLY --

10 THE COURT: YOU ARE NOT HANGING NUMBERS
11 ON THEM AS YOU GO ALONG BECAUSE MAYBE THE LANGUAGE HAS
12 NOT BEEN DESIGNATED.

13 MR. VAN KWAWEGEN: YOUR HONOR, WE HAVE
14 DESIGNATED IN OUR PRETRIAL ORDER THAT, FOR EXAMPLE,
15 EXHIBIT 1 TO THIS DEPOSITION CORRESPONDS TO PLAINTIFF'S
16 EXHIBIT 148. IF YOUR HONOR WOULD PREFER, WE COULD
17 CERTAINLY MOVE TO ENTER THESE DOCUMENTS INTO EVIDENCE AS
18 WE GO ALONG WITH THE DEPOSITION DESIGNATION.

19 THE COURT: I'M ONLY CONCERNED ABOUT
20 MAKING A RECORD. I DON'T CARE WHEN YOU OFFER THEM, BUT
21 THE DESIGNATED DISCUSSION OF THE DEPOSITION IS NOT
22 PUTTING NUMBERS ON THEM. IF YOU HAVE ANOTHER WAY TO DO
23 IT, I WILL APPLAUD.

24 MR. VAN KWAWEGEN: I WILL TRY.

25 THE COURT: IT SOUNDS LIKE YOU HAVE

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1 ANOTHER METHOD SO WE WILL RELY ON THAT. THANK YOU.

2 MR. DOBBS: PAGE 17, LINE 16, THROUGH
3 PAGE 18, LINE 4, DESIGNATED BY THE PLAINTIFFS.

4 Q. I'D LIKE TO SHOW YOU ONE ADDITIONAL DOCUMENT.

5 PLAINTIFF'S EXHIBIT 3, EXCERPTS FROM
6 FAMILY IMPLEMENTATION GUIDE, MARKED FOR IDENTIFICATION.

7 Q. COULD YOU DESCRIBE THIS DOCUMENT?

8 WHAT IS THIS DOCUMENT? WHAT IS THIS
9 EXHIBIT?

10 A. THE EXHIBIT APPEARS TO BE EXCERPTS FROM THE
11 MASTERCARD FAMILY IMPLEMENTATION GUIDE.

12 MR. DOBBS: PAGE 19, LINE 24, THROUGH
13 PAGE 20, LINE 9, DESIGNATED BY THE PLAINTIFFS.

14 Q. ARE PAYMENT CARDS EVER STOLEN?

15 A. YES.

16 Q. COULD A MINOR STEAL A PAYMENT CARD?

17 A. YES.

18 Q. COULD A MINOR USE A STOLEN PAYMENT CARD?

19 A. YES.

20 Q. IS MASTERCARD AWARE OF PAYMENT CARD NUMBERS
21 BEING MADE AVAILABLE FOR SALE ONLINE?

22 A. YES.

23 MR. DOBBS: PAGE 21, LINES 8 THROUGH 10,
24 DESIGNATED BY DEFENDANT.

25 Q. AND WHAT VOLUME OF SALES ARE FRAUDULENT?

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1 A. WELL, LESS THAN 1-10TH OF ONE PERCENT.

2 MR. DOBBS: PAGE 21, LINE 19, THROUGH

3 PAGE 22, LINE 22, DESIGNATED BY THE PLAINTIFFS.

4 PLAINTIFF'S EXHIBIT 4, AN E-MAIL FROM ART
5 CLARK TO HEIDI DAVIDSON MARKED FOR IDENTIFICATION.

6 Q. WHO'S HEIDI DAVIDSON?

7 A. HEIDI DAVIDSON IS ON MY TEAM.

8 Q. WHAT IS HER POSITION?

9 A. SHE RUNS THE GLOBAL PUBLIC POLICY FUNCTION.

10 Q. WHO IS ART CLARK?

11 A. I BELIEVE ART IS IN THE ROOM HERE WITH US TODAY.

12 Q. WHAT'S YOUR UNDERSTANDING OF HIS POSITION?

13 A. HE HAD CONTACTED ME FOR GENERAL INFORMATION AND
14 IDENTIFIED HIMSELF AS A CONSULTANT FOR THE DEPARTMENT OF
15 JUSTICE.

16 Q. WHEN HE IDENTIFIED HIMSELF AS A CONSULTANT FOR
17 THE DEPARTMENT OF JUSTICE, DID HE INDICATE HE WAS
18 INVOLVED IN ONGOING LITIGATION?

19 A. NOT THAT I RECALL.

20 Q. IS THIS EXHIBIT AN E-MAIL FROM ART CLARK TO
21 HEIDI DAVIDSON?

22 A. YEAH. I MEAN, ON THE FIRST PAGE IT APPEARS --
23 THE FIRST PAGE AT LEAST APPEARS TO BE. THE SECOND PAGE
24 APPEARS TO BE PART OF A STRING ON THE E-MAIL SO --

25 MR. DOBBS: PAGE 25, LINE 19, THROUGH

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1 PAGE 26, LINE 2, DESIGNATED BY THE DEFENDANT.

2 Q. DOES MASTERCARD PERMIT MERCHANTS TO PROCESS
3 PAYMENT CARD INFORMATION WHEN PAYMENT IS IN THE AMOUNT
4 OF ZERO DOLLARS?

5 A. AS A GENERAL MATTER, MASTERCARD PROHIBITS THE
6 PROCESSING OF PAYMENT CARD INFORMATION WHEN THERE IS NOT
7 A TRANSACTION TAKING PLACE. HOWEVER, THERE ARE SOME
8 LIMITED EXCEPTIONS TO THAT.

9 MR. DOBBS: PAGE 40, LINE 25, THROUGH
10 PAGE 41, LINE 11, DESIGNATED BY THE PLAINTIFFS.

11 YOUR HONOR, THE LINES 12 THROUGH 16, ALSO
12 ON PAGE 41, WHICH ARE CONTIGUOUS WITH THE ANSWERS ARE
13 DESIGNATED BOTH BY PLAINTIFFS AND DEFENDANT.

14 THE COURT: HOW ABOUT LINES 21 THROUGH
15 25?

16 MR. DOBBS: SAME THING WITH THAT, YOUR
17 HONOR.

18 THE COURT: THANK YOU.

19 MR. DOBBS: LINES 17 THROUGH 20 ON PAGE
20 41 WERE DESIGNATED BY PLAINTIFFS AS WELL AS THE
21 CONTINUOUS ANSWER ON PAGE 42. BACKING OFF FOR ONE
22 SECOND. LINES 21 -- ON PAGE 41, LINE 21, THROUGH LINE 7
23 ON PAGE 42 WERE DESIGNATED BOTH BY PLAINTIFFS AND BY
24 DEFENDANT.

25 AND TO CLARIFY, LINE 25 ON PAGE 40

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1 THROUGH LINE 17 ON PAGE 42 ARE DESIGNATED IN THEIR
2 ENTIRETY BY PLAINTIFFS. AND THOSE SECTIONS IN PINK ARE
3 DESIGNATED BOTH BY PLAINTIFFS AND DEFENDANT.

4 THE COURT: THANK YOU.

5 Q. DOES MASTERCARD PLAN TO PERMIT ZERO DOLLAR
6 TRANSACTIONS IN THE FUTURE OUTSIDE OF THE -- OKAY. YOU

7 MENTIONED THAT THERE WERE A LIMITED NUMBER OF INSTANCES
8 IN WHICH MASTERCARD PERMITS TRANSACTIONS FOR NO VALUE.
9 WHAT ARE THOSE SITUATIONS?

10 A. WELL, JUST TO BE CLEAR. I THINK I SAID WE DON'T
11 ALLOW TRANSACTIONS FOR NO VALUE. IN FACT, IT WOULDN'T
12 BE A TRANSACTION IF THERE WERE NO VALUE. WHAT I SAID IS
13 THAT THERE WERE LIMITED INSTANCES WHERE WE ALLOWED THE
14 PROCESSING OF INFORMATION THROUGH OUR SYSTEM WHERE IT
15 WAS NOT PART OF A TRANSACTION ON ONE OF OUR CARDS AT A
16 MERCHANT. SO, I'M SORRY, I DON'T KNOW IF I ANSWERED
17 YOUR QUESTION. BUT WITH THAT CLARIFICATION, DO YOU HAVE
18 A DIFFERENT QUESTION FOR ME?

19 Q. THAT'S HELPFUL. THANK YOU.

20 WHAT ARE THOSE LIMITED INSTANCES?

21 A. MASTERCARD HAS TWO DIFFERENT SYSTEMS. WE HAVE
22 AN AUTHORIZATION SYSTEM WHICH IS UTILIZED AT THE TIME
23 PEOPLE ARE MAKING PURCHASES, AND THOSE MESSAGES ARE
24 SIMPLY TO AUTHORIZE TRANSACTIONS GENERALLY. WITHIN THAT
25 SYSTEM, I'M AWARE OF THREE GENERAL EXCEPTIONS TO WHAT WE

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1 HAVE BEEN DISCUSSING. ONE RELATED TO AN ADDRESS
2 VERIFICATION SERVICE USAGE, WHERE IT WAS ONLY THE
3 ADDRESS VERIFICATION WITHOUT A PURCHASE TO A CREDIT CARD
4 TOGETHER AS WELL. THE SECOND WOULD BE A BALANCE LOOKUP.
5 THE THIRD WOULD BE IN CONNECTION WITH HEALTHCARE
6 ELIGIBILITY ON A HEALTHCARE CARD THAT TYPICALLY IS NOT
7 EVEN A MASTERCARD CARD.

8 I'M SORRY. THE OTHER SYSTEM, THE

9 CLEARING SYSTEM, I'M AWARE OF ONE TRANSACTION TYPE,
10 WHICH IS WHERE TWO DIFFERENT FINANCIAL INSTITUTIONS ARE
11 PROCESSING FEES BETWEEN THEMSELVES THAT ARE NOT RELATED
12 TO A PARTICULAR TRANSACTION NECESSARILY.

13 MR. DOBBS: PAGE 42, LINE 18, THROUGH
14 PAGE 43, LINE 4, DESIGNATED BY THE DEFENDANT.

15 Q. LEAVING THE CLEARING SYSTEM ASIDE AND GOING BACK
16 TO THE ADDRESS VERIFICATION, DOES ADDRESS VERIFICATION
17 HAPPEN FOR -- WHEN DOES THIS ADDRESS VERIFICATION SYSTEM
18 GET USED?

19 A. YEAH. I'M NOT SURE THAT I CAN TELL YOU EVERY
20 TIME IT GETS USED, OR EVEN GENERALLY THE TIMES IT GETS
21 USED, BECAUSE IT'S A SERVICE THAT IS PROVIDED TO
22 ACQUIRING BANKS THAT THEY CAN UTILIZE TO REDUCE FRAUD IN
23 PARTICULAR IN CONNECTION WITH NON-FACE-TO-FACE
24 TRANSACTIONS.

25 MR. DOBBS: PAGE 73, LINES 6 THROUGH 18,

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1 DESIGNATED BY THE DEFENDANT.

2 Q. DOES MASTERCARD GIVE ANY GUIDELINES OR POLICY TO
3 ACQUIRING BANKS REGARDING MERCHANTS?

4 A. YES, WE DO.

5 Q. ARE THOSE POLICIES ANY DIFFERENT FOR FOREIGN
6 MERCHANTS?

7 A. I'M SORRY. WHAT DO YOU MEAN BY FOREIGN
8 MERCHANTS?

9 Q. MERCHANTS THAT ARE OUTSIDE THE UNITED STATES.

10 A. NO, THEY'RE NOT. GENERALLY NO, THEY'RE NOT.

11 THERE MAY BE SOME DISTINCTIONS IN SOME MARKETPLACES
12 BASED ON LOCAL LAW.

13 MR. DOBBS: PAGE 74, LINE 3, THROUGH PAGE
14 75, LINE 24, DESIGNATED BY PLAINTIFFS AND DEFENDANTS
15 JOINTLY.

16 Q. DO THE POLICIES THAT YOU GIVE TO ACQUIRING BANKS
17 REGARDING MERCHANTS REQUIRE THE MERCHANTS TO COMPLY WITH
18 U.S. LAW OR RISK TERMINATION OF THEIR AGREEMENT WITH THE
19 ACQUIRING BANK?

20 A. AGAIN, I'M NOT ENTIRELY SURE. BUT LET ME TRY TO
21 GIVE AN ANSWER THAT MAY OR MAY NOT BE ANSWERING THE
22 QUESTION YOU'RE ASKING ME. AND YOU'RE USING THE WORD
23 "POLICIES" BUT MASTERCARD HAS A RULE THAT PROHIBITS ANY
24 ISSUING BANK OR ACQUIRING BANK FROM PROCESSING ANY
25 TRANSACTIONS THROUGH THE MASTERCARD SYSTEM THAT VIOLATE

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1 LAW, PERIOD. SO IN THAT REGARD, ON THE ACQUIRING SIDE
2 OF THE BUSINESS, ACQUIRING BANKS ARE REQUIRED TO
3 UNDERTAKE DUE DILIGENCE OF THE MERCHANTS THAT THEY SIGN
4 UP TO ACCEPT MASTER CARD CARDS. PART OF THAT DUE
5 DILIGENCE IS ENSURING THAT THE TRANSACTIONS THEY ENGAGE
6 IN WITH MASTERCARD CARDS COMPLY WITH LAW.

7 Q. TO YOUR KNOWLEDGE, IS THERE ANY DIFFERENCE IN
8 THAT REQUIREMENT FOR THE MASTER CARDS RULES GIVEN TO
9 ACQUIRING BANKS FOR FOREIGN MERCHANTS WITH THAT
10 REQUIREMENT?

11 A. THE REASON I'M STRUGGLING WITH THE QUESTION IS
12 MASTERCARD'S A GLOBAL PAYMENT SYSTEM. WE HAVE FINANCIAL

13 INSTITUTIONS THAT WE HAVE LICENSED ALL OVER THE WORLD TO
14 SIGN UP MERCHANTS AS WELL AS TO ISSUE CARDS. MERCHANTS
15 ARE GIVEN GEOGRAPHIC LICENSES GENERALLY, AS WELL AS THE
16 LICENSE TO ENGAGE IN THE BUSINESS. THERE IS USUALLY A
17 GEOGRAPHIC LIMITATION ON THE AREAS THAT ARE LICENSED TO
18 DO THAT BUSINESS, SO YOUR TERM IS FOREIGN, AND I'M JUST
19 STRUGGLING WITH THAT.

20 THAT BEING SAID, THE OBLIGATION ANYWHERE
21 IN THE WORLD IS TO ENSURE THAT THE MERCHANT IN THE
22 BUSINESS IT'S ENGAGING IN IS COMPLYING WITH ALL
23 APPLICABLE LAWS.

24 Q. SO, FOR EXAMPLE, IF A FOREIGN MERCHANT IS DOING
25 BUSINESS WITH A U.S. CUSTOMER, DO THE MASTERCARD RULES

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1 REQUIRE THE FOREIGN MERCHANT TO COMPLY WITH APPLICABLE
2 U.S. LAW?

3 A. IT WILL DEPEND ON WHETHER THAT LAW IS
4 APPLICABLE, ASSUMING IT APPLIES, YES.

5 MR. DOBBS: PAGE 76, LINE 7 THROUGH 10,
6 AND 15 THROUGH 19, DESIGNATED BY THE DEFENDANT.

7 Q. DOES MASTERCARD HAVE AN ESTIMATE OF WHAT
8 PERCENTAGE OF TOTAL SALES OF ITS PRODUCTS ISSUED BY
9 ISSUING BANKS OR ACQUIRING BANKS IS MADE OVER THE
10 INTERNET?

11 A. I DON'T THINK I CAN ANSWER THAT QUESTION. WHAT
12 I CAN SAY IS THAT OUR BEST ESTIMATE IS THAT 6 PERCENT OF
13 TRANSACTIONS ON MASTERCARD BRANDED CARDS TAKE PLACE ON
14 THE INTERNET AS OF -- THAT'S SORT OF A 2005 NUMBER.

15 MR. DOBBS: PAGE 76, LINES 20 THROUGH 25,
16 DESIGNATED BY THE PLAINTIFFS.

17 Q. DOES MASTERCARD HAVE RULES FOR ISSUING BANKS
18 REGARDING THE AGES OF PERSONS TO WHOM THOSE BANKS MAY
19 ISSUE CREDIT CARDS?

20 A. NO.

21 MR. DOBBS: PAGE 78, LINES 11 THROUGH 14,
22 DESIGNATED BY THE DEFENDANT.

23 Q. COULD YOU EXPLAIN WHAT THAT MEANS?

24 A. SELECTIVE AUTHORIZATION PROVIDES A MECHANISM FOR
25 AN ISSUING BANK TO LIMIT IN SOME WAY WHERE CARDS THAT IT

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1 HAS ISSUED CAN BE USED.

2 MR. DOBBS: PAGE 80, LINE 20, THROUGH
3 PAGE 81, LINE 7, DESIGNATED BY THE DEFENDANT.

4 Q. SO MASTERCARD RULES ALLOW THE ISSUING BANK TO
5 PROVIDE AN OPTION FOR PARENTS TO RESTRICT PURCHASES, YOU
6 KNOW, FROM CERTAIN IDENTIFIED MERCHANT CATEGORY CODES?

7 A. WELL, AGAIN, AS I THINK I DESCRIBED, IN
8 CONNECTION WITH THE PARAGRAPH YOU ASKED ME HERE,
9 MASTERCARD SELECTIVE AUTHORIZATION RULES DO PROVIDE A
10 MECHANISM FOR ISSUERS TO PROVIDE PRODUCTS THAT CAN BE
11 RESTRICTED TO CERTAIN MCC CODES. AND I BELIEVE I
12 TESTIFIED THAT THAT WAS THE SAME FOR THESE OTHER
13 PRODUCTS AS ANYTHING ELSE, SO I THINK THAT ANSWERS YOUR
14 QUESTION.

15 MR. DOBBS: YOUR HONOR, THAT IS THE FINAL
16 DESIGNATION FOR THE DEPOSITION OF MR. PEIREZ.

17 THE COURT: THE RECORD IS COMPLETE THEN
18 FOR THE DEPOSITION OF JOSHUA PEIREZ, ON MARCH 31, 2006.

19 MR. VAN KWAWEGEN: YOUR HONOR, AS
20 INDICATED BEFORE, PLAINTIFFS MOVE CERTAIN DESIGNATED
21 DEPOSITION EXHIBITS INTO EVIDENCE. FOR EASE OF
22 REFERENCE, I WILL INDICATE TO YOUR HONOR WHICH
23 DEPOSITION EXHIBIT CORRESPONDS TO WHICH PLAINTIFF'S
24 EXHIBIT THAT WAS PREVIOUSLY IDENTIFIED BOTH TO THE COURT
25 AND TO THE DEFENDANT. IT IS OUR UNDERSTANDING THAT THE

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1 DEFENDANT HAS OBJECTIONS TO THE ENTERING INTO EVIDENCE
2 OF THE EXHIBITS THAT I'M ABOUT TO IDENTIFY TO YOUR
3 HONOR, BUT LET ME FIRST JUST MAKE SURE WE ARE ALL
4 TALKING ABOUT THE SAME DOCUMENTS.

5 THE COURT: SURE.

6 MR. VAN KWAWEGEN: DEPOSITION EXHIBIT
7 NUMBER 1 IS PLAINTIFF'S EXHIBIT 148. DEPOSITION EXHIBIT
8 NUMBER 2 --

9 THE COURT: WHY DON'T YOU IDENTIFY THE
10 DOCUMENT AS YOU GO ALONG.

11 MR. VAN KWAWEGEN: YES, YOUR HONOR. THE
12 DOCUMENT IS ENTITLED MASTERCARD FAMILY ACCOUNT. IT
13 STARTS WITH BATES STAMP MC00135 AND IT ENDS WITH BATES
14 STAMP MC00142.

15 THE COURT: IDENTIFIED AT THE DEPOSITION
16 OF MR. PEIREZ?

17 MR. VAN KWAWEGEN: YES, YOUR HONOR. ON
18 PAGES 10, 11 OF THE TRANSCRIPT THAT WAS JUST READ BEFORE

19 YOUR HONOR.

20 THE COURT: WHAT IS THE OBJECTION TO THAT
21 DOCUMENT?

22 MR. GOMEZ: YOUR HONOR, FIRST OF ALL, IF
23 WE GO BACK TO THE DEPOSITION TRANSCRIPT AT PAGE 11, LINE
24 1 THROUGH --

25 THE COURT: LET ME GET THAT IN FRONT OF

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1 ME, PLEASE.

2 MR. GOMEZ: YES.

3 THE COURT: GO AHEAD.

4 MR. GOMEZ: LINE 1 THROUGH 9, THE
5 QUESTION WAS, DO YOU RECOGNIZE THIS DOCUMENT? YES, I
6 DO. IS IT A MASTER CARD DOCUMENT?

7 ANSWER: IT'S A DOCUMENT CREATED BY
8 MASTER CARD, YES.

9 QUESTION: IS IT PREPARED AND MAINTAINED
10 IN THE COURSE OF MASTERCARD'S BUSINESS? YES.

11 AND THAT, YOUR HONOR, THE DEFENDANT
12 OBJECTS TO THE ADMISSION OF THIS PARTICULAR EXHIBIT ON
13 THE GROUNDS OF HEARSAY. IT DOES NOT MEET THE
14 REQUIREMENTS OF 803(6), WHICH REQUIRES ONE, THAT IT BE A
15 RECORD; TWO, THAT IT BE MADE AT OR NEAR THE TIME OF THE
16 INFORMATION BEING OBTAINED; THREE, IT'S INFORMATION FROM
17 A PERSON WITH KNOWLEDGE; FOUR, KEPT IN THE COURSE OF
18 REGULARLY CONDUCTED BUSINESS.

19 IF YOU WILL NOTE, THE QUESTION THAT WAS
20 ASKED OF THE WITNESS WAS JUST, IS IT CREATED BY MASTER

21 CARD? IS IT PREPARED, MAINTAINED IN THE COURSE OF
22 MASTERCARD'S BUSINESS? THERE IS NO ESTABLISHING THAT IT
23 WAS A REGULARLY CONDUCTED BUSINESS THAT IT WAS KEPT IN.
24 THAT IT WAS A REGULAR -- FIVE, THAT IT WAS A REGULAR
25 PRACTICE TO RECORD, AND THAT, SIX, THAT IT IS SHOWN THAT

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1 THE CUSTODIAN OR OTHER QUALIFIED WITNESS IS CERTIFYING
2 AS TO THIS PARTICULAR DOCUMENT, YOUR HONOR.

3 NOW, THERE IS TESTIMONY ABOUT THE
4 DOCUMENT. IT'S SEVERAL PAGES. BUT ESSENTIALLY WHAT THE
5 PLAINTIFFS ARE ATTEMPTING TO DO, WHICH EVEN WITH AN
6 EXPERT, YOU WOULDN'T BE ABLE TO GET IN DOCUMENTS THAT
7 ARE BEING SUBMITTED FOR THE TRUTH OF THE MATTER
8 ASSERTED. THEY MAY HAVE ASKED QUESTIONS OF THIS
9 MASTERCARD WITNESS BUT THEY ARE NOW TRYING TO GET AN
10 ENTIRE DOCUMENT IN, AND THEY HAVE NOT ESTABLISHED THAT
11 IT HAS MET -- THAT IT'S NOT HEARSAY OR MET ONE OF THE
12 EXCEPTIONS UNDER THE HEARSAY RULE, YOUR HONOR.

13 THE COURT: RESPONSE.

14 MR. VAN KWAWEGEN: YES, YOUR HONOR. I
15 HEAR TWO POINTS IN COUNSEL'S REMARKS. ONE REGARDING THE
16 FOUNDATION AND THE OTHER ONE WITH REGARD TO THE HEARSAY
17 OR PURPORTED HEARSAY NATURE OF THIS DOCUMENT.
18 PLAINTIFFS RESPECTFULLY SUBMIT THAT THE FOUNDATION WAS
19 LAID AT THE DEPOSITION INCLUDING IN THE TRANSCRIPT THAT
20 WAS JUST READ BACK TO YOUR HONOR BY COUNSEL FOR THE
21 DEFENDANT. MR. PEIREZ IS AN EMPLOYEE FOR MASTERCARD.
22 HE IDENTIFIES THIS DOCUMENT AS A MASTERCARD DOCUMENT.

23 HE EXPRESSES THAT HE IS FAMILIAR WITH IT AND THAT IT WAS
24 MAINTAINED IN THE COURSE OF BUSINESS. PLAINTIFFS
25 RESPECTFULLY SUBMIT THAT THAT IS SUFFICIENT TO LAY A

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1 FOUNDATION FOR THIS DOCUMENT.

2 WITH REGARD TO THE HEARSAY, IT ACTUALLY
3 TOUCHES UPON THE SAME ISSUES. THE DESIGNATION THAT WAS
4 IDENTIFIED TO YOUR HONOR SPECIFICALLY INDICATES THAT
5 THIS DOCUMENT WAS MAINTAINED IN THE COURSE OF BUSINESS.
6 IT OMITTS THE WORD "REGULAR." BUT FROM THE CONTEXT OF
7 THIS ANSWER, I THINK IT CAN BE INFERRED THAT THIS IS A
8 REGULARLY MAINTAINED DOCUMENT, YOUR HONOR.

9 AND SO PLAINTIFFS RESPECTFULLY SUBMIT
10 THAT IT DOES MEET THE REQUIREMENTS OF 803(6) OF THE
11 FEDERAL RULES OF EVIDENCE.

12 THE COURT: I FIND FROM THE RECORD THAT
13 THE TESTIMONY IN ITS ENTIRETY OF THE WITNESS IN THE FORM
14 AND NATURE AND CONTENT OF THE DOCUMENT SHOW THAT IT IS
15 KEPT IN THE REGULAR COURSE OF BUSINESS OF MASTERCARD.
16 THE WITNESS SAID IT WAS A MASTERCARD DOCUMENT. THERE IS
17 NOTHING TO SHOW IT WAS ESPECIALLY CREATED FOR PURPOSES
18 OF LITIGATION OR ANYTHING ELSE. IT IS PATENTLY, TO THIS
19 PRESIDING JUDGE, A DOCUMENT KEPT IN THE REGULAR COURSE
20 OF BUSINESS. AND AS SUCH, IT'S AN EXCEPTION TO THE
21 HEARSAY RULE. THE OBJECTION IS OVERRULED, AND THE
22 DOCUMENT IS RECEIVED INTO EVIDENCE. PLAINTIFF'S EXHIBIT
23 NUMBER 148.

24 (PLAINTIFFS' EXHIBIT 148 RECEIVED INTO

25 EVIDENCE.)

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1 MR. VAN KWAWEGEN: THE SECOND DOCUMENT,
2 YOUR HONOR, IS DEPOSITION EXHIBIT NUMBER 2, WHICH HAS
3 PREVIOUSLY BEEN IDENTIFIED AS PLAINTIFFS'S EXHIBIT 149.
4 THIS IS A DOCUMENT THAT IS ENTITLED, GRAND STANDARDS
5 CONTROL SYSTEM, AND STARTS WITH BATES STAMP MC00054, AND
6 THE FINAL PAGE IS BATES STAMP MC00134. YOUR HONOR, THIS
7 IS ALSO THE DOCUMENT THAT WAS SUBJECT TO THE STIPULATION
8 BETWEEN THE PARTIES WITH REGARD TO THE REDACTION OF
9 CERTAIN CONFIDENTIAL INFORMATION THAT MASTERCARD HAS
10 REQUESTED THE PARTIES TO REDACT BEFORE CONSIDERING THIS
11 DOCUMENT.

12 THE COURT: WHAT'S THE RELEVANCE OF WHAT
13 YOU JUST SAID? COUNSEL, DO YOU MIND STEPPING ASIDE FROM
14 THE PODIUM. YOUR HANDSOME FACE IS DISTRACTING ME.

15 MR. VAN KWAWEGEN: HE IS HANDSOME.

16 THE COURT: 15 MINUTES OF GLORY FOR YOUR
17 COLLEAGUE.

18 WHAT IS THE RELEVANCE OF THE STIPULATION?

19 MR. VAN KWAWEGEN: YOUR HONOR, THE
20 DOCUMENT, AS IT WAS PRODUCED BY MASTER CARD PURSUANT TO
21 THIRD-PARTY DISCOVERY, CONTAINS SOME INFORMATION THAT
22 MASTERCARD DEEMED CONFIDENTIAL. MASTERCARD WAS NOTIFIED
23 OF OUR INTENT TO ENTER THIS DOCUMENT INTO EVIDENCE, AND
24 MASTERCARD HAS INDICATED THAT THERE IS NO OBJECTION TO
25 ENTERING THIS DOCUMENT INTO EVIDENCE FROM A

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1 CONFIDENTIALITY PERSPECTIVE OF MASTERCARD IF CERTAIN
2 INFORMATION ON THIS DOCUMENT WERE TO BE REDACTED. WE
3 HAVE AGREED WITH THE DEFENDANT THAT THESE REDACTIONS ARE
4 ACCEPTABLE. AND THE DOCUMENT THAT IS CURRENTLY BEFORE
5 YOUR HONOR IS REDACTED TO CONFORM WITH THE REQUEST OF
6 MASTERCARD AND THE STIPULATION THAT WAS ENTERED INTO AND
7 WILL BE FILED SHORTLY MERELY CONFIRMS THAT, YOUR HONOR.

8 THE COURT: ANY OBJECTION TO THE
9 ADMISSION, MR. GOMEZ?

10 MR. GOMEZ: YES, YOUR HONOR. FIRST OF
11 ALL, I THINK IF WE GO AGAIN TO THE TESTIMONY GIVEN BY
12 THE WITNESS IN AN ATTEMPT TO IDENTIFY THIS DOCUMENT, IF
13 WE GO TO PAGE 15 --

14 THE COURT: BEAR WITH ME A MINUTE SO I
15 CAN GET IT IN FRONT OF ME.

16 THE COURT: YES, SIR.

17 MR. GOMEZ: THE FIRST QUESTION IS, I
18 WOULD LIKE TO SHOW YOU ONE GROUP OF DOCUMENTS ASSOCIATED
19 WITH A TEEN CARD. KEEP IN MIND, YOUR HONOR, THIS IS
20 ABOUT 70 PAGES IN THIS DOCUMENT, IN THIS EXHIBIT. IT
21 GOES ON -- THE QUESTION GOES ON: DO YOU RECOGNIZE THIS
22 DOCUMENT, AT LINE 8.

23 ANSWER: IT'S A LONG DOCUMENT.

24 THEN WE GO DOWN TO LINE 21: WILL YOU
25 PLEASE DESCRIBE THESE DOCUMENTS, THIS DEPOSITION

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1 EXHIBIT?

4 HEAR, AGAIN, TWO POINTS, FOUNDATION AND HEARSAY. TO
5 START WITH THE FOUNDATION OBJECTION AND THE FACT THAT
6 THIS IS A SOMEWHAT LONGER DOCUMENT. ON PAGE 15, WHICH
7 MAY STILL BE IN FRONT OF YOUR HONOR, IT IS SPECIFICALLY
8 ASKED OF THE WITNESS TO LOOK THROUGH THE ENTIRE
9 DOCUMENT. AND THERE IS INDICATED ON THE RECORD THAT THE
10 WITNESS DOES SO. AND SO THERE IS EVERY REASON TO
11 BELIEVE THAT THE WITNESS HAS IDENTIFIED THIS DOCUMENT IN
12 ITS ENTIRETY.

13 THEN, ASKED WHETHER THE WITNESS ACTUALLY
14 RECOGNIZES THE DOCUMENT OR IS ASKED TO DESCRIBE THIS
15 DOCUMENT, THE WITNESS SAYS: YES, THESE APPEAR TO BE
16 PRINTOUTS FROM OUR DATABASE. AND LOOKING AT THE
17 DOCUMENT, THAT IS PERFECTLY CONSISTENT WITH A MASTERCARD
18 DOCUMENT. SO HE SPECIFICALLY IDENTIFIES THESE DOCUMENTS
19 AS COMING FROM MASTERCARD. IT IS MERELY A FIGURE OF
20 SPEECH TO SAY THAT THEY APPEAR TO BE. IT IS CLEAR FROM
21 THE CONTEXT OF THIS PAGE AND THE REST OF THE TESTIMONY
22 THAT THIS WITNESS HAS KNOWLEDGE AND THAT HE IDENTIFIES
23 THESE DOCUMENTS AS MASTER CARD DOCUMENTS.

24 GOING TO THE HEARSAY OBJECTION, YOUR
25 HONOR, THESE ARE IDENTIFIED BY THE WITNESS AS PRINTOUTS

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1 FROM A DATABASE CLEARLY NOT PREPARED FOR LITIGATION,
2 CLEARLY MAINTAINED, THEREFORE, ALSO IN THE COURSE OF
3 BUSINESS. THIS IS A DATABASE WHERE SOMEBODY DECIDED TO
4 PRINT OFF CERTAIN PAGES. AND WE RESPECTFULLY SUBMIT
5 THAT THIS FULFILLS THE REQUIREMENTS UNDER FEDERAL RULE

6 OF EVIDENCE 803(6) AS BUSINESS RECORDS.

7 THE COURT: WHAT ARE YOU OFFERING TO
8 PROVE BY THIS DOCUMENT? IT SEEMS TO BE AN
9 EXTRAORDINARILY LENGTHY AND RAMBLING SET OF PAPERS TO
10 THE COURT. WHAT ARE YOU OFFERING TO PROVE WITH THIS
11 DOCUMENT?

12 MR. VAN KWAWEGEN: YOUR HONOR, THIS
13 DOCUMENT SPECIFICALLY DISCUSSES THE BRAND STANDARDS
14 CONTROL SYSTEM AND IT CONTAINS VARIOUS TYPES OF
15 INFORMATION THAT ARE ATTESTED TO BY THE DEPONENT.
16 SPECIFICALLY HAS INFORMATION WITH REGARD TO THE VARIOUS
17 TYPES OF PAYMENT CARDS THAT ARE OFFERED BY MASTERCARD,
18 WHICH IS OBVIOUSLY DIRECTLY RELEVANT TO MANY ISSUES IN
19 THIS CASE, DIRECTLY GOES TO ONE OF THE AFFIRMATIVE
20 DEFENSES UNDER COPA.

21 THE COURT: WHAT CONCERNS ME IS THE
22 EXCERPTS FROM THE DEPOSITION THAT WERE OFFERED INTO
23 EVIDENCE DON'T GIVE THE COURT ANY FEELING FOR THESE
24 DOCUMENTS AT ALL, THEY'RE A PRINTOUT FROM A WEBSITE, I
25 HAVE A LOT OF DIFFICULTY WITH WHAT THEY REALLY SHOW.

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1 AND THERE IS NO TESTIMONY -- IF THIS IS IN EVIDENCE IN
2 ITS ENTIRETY, YOU MIGHT ARGUE IN CLOSING THAT A DOCUMENT
3 MEANS SOMETHING OR OTHER ON ITS FACE WHEN YOU HAVE NO
4 TESTIMONY ABOUT IT.

5 I'M HAVING TROUBLE WITH -- NOT WITH
6 NECESSARILY THE AUTHENTICITY BUT WITH THE BREADTH OF THE
7 DOCUMENT. JUST SEEMS TO BE -- IN THE ABSENCE OF

8 TESTIMONY BEYOND WHAT YOU HAVE ALREADY. I FIND THE
9 DOCUMENT IS EXTRAORDINARILY OVERBROAD FOR WHAT I
10 PERCEIVE YOU ARE TRYING TO DO.

11 MR. GOMEZ, YOU WANTED TO SAY SOMETHING IN
12 REPLY?

13 MR. GOMEZ: I THINK THE COURT HAS TOUCHED
14 ON THE POINT THAT I WANTED TO RAISE. BESIDES NOT
15 IDENTIFYING WHAT THIS DOCUMENT IS, ONE OF THE
16 DIFFICULTIES.

17 THE COURT: HE SAID IT'S PRINTOUTS FROM
18 OUR WEBSITE.

19 MR. GOMEZ: HE SAYS IT APPEARS TO BE.
20 WHAT'S DIFFICULT ABOUT THIS --

21 THE COURT: DON'T WASTE TIME ON THIS.
22 I'M THE FACT-FINDER. I INFER THAT HE MEANS --

23 MR. GOMEZ: I UNDERSTAND, YOUR HONOR.
24 BUT THE PROBLEM WITH THIS IS, WE DON'T KNOW, IS THIS THE
25 ENTIRE SET OF DOCUMENTS -- IS THIS PART OF A SET OF

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1 DOCUMENTS? WE DON'T KNOW IF THIS IS, YOU KNOW, A
2 COMBINATION OF DOCUMENTS. THERE IS NO SHOWING. THAT IS
3 TROUBLESOME. AND THAT IS THE ONLY REASON I WAS RAISING.
4 "APPEAR" IS THAT THERE IS REALLY NO IDENTIFICATION OF
5 WHAT THIS IS. AND WHILE THERE MAY BE CERTAIN PAGES THAT
6 SOMEBODY MAY SAY IT APPEARS TO BE, IF WE LOOK AT
7 -- THERE REALLY WAS NO FOLLOW-UP IN TERMS OF -- THE
8 QUESTION WAS: WOULD YOU MIND LOOKING THROUGH THE
9 DOCUMENT. IT SAYS THE WITNESS REVIEWS THE DOCUMENT.

10 THEN THE MASTERCARD ATTORNEY OBJECTS. WHILE HE IS
11 LOOKING, I WILL OBJECT TO THE FORM OF THE QUESTION.
12 THIS IS NOT A SINGLE DOCUMENT.

13 THIS IS MASTERCARD MAKING THIS STATEMENT,
14 COUNSEL, THEN DISCUSSION OFF THE RECORD, THEN WILL YOU
15 PLEASE DESCRIBE THESE DOCUMENTS. THAT IS THE POINT I
16 WANTED TO MAKE, YOUR HONOR.

17 THE COURT: OBJECTION TO THE DOCUMENT IS
18 SUSTAINED ON THE GROUND THAT IT'S NOT PROPER FOUNDATION
19 LAID. MINIMAL ATTEMPT TO PROVE THE BUSINESS -- THE
20 REGULAR BUSINESS NATURE OF THIS DOCUMENT, WHICH IS
21 REALLY NOT ONE DOCUMENT. IT IS PROBABLY, TAKING YOUR
22 LEAD, MR. GOMEZ, 60 OR 70 PAGES OF, AT BEST, PRINTOUTS
23 FROM MC MASTERCARD WEBSITE. IT'S NOT ADEQUATELY
24 IDENTIFIED AND THE RELEVANCE IS FAR FROM CLEAR. SO THE
25 OBJECTION IS SUSTAINED. PLAINTIFFS' EXHIBIT 2 OF THE

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1 DEPOSITION MASTER CARD EXHIBIT PLAINTIFF 149 IS NOT
2 RECEIVED INTO EVIDENCE.

3 MR. VAN KWAWEGEN: YOUR HONOR, THE NEXT
4 DOCUMENT IS DEPOSITION EXHIBIT NUMBER 3, PLAINTIFFS'
5 EXHIBIT NUMBER 150. THE DOCUMENT IS ENTITLED,
6 MASTERCARD FAMILY ACCOUNT IMPLEMENTATION GUIDE. IT IS A
7 FIVE-PAGE DOCUMENT. THE FIRST PAGE IS BATES STAMPED
8 MC00145. THE FINAL PAGE IS BATES STAMPED MC00162, YOUR
9 HONOR.

10 THE COURT: WHERE WAS IT IDENTIFIED IN
11 THE DEPOSITION?

12 MR. VAN KWAWEGEN: PAGE 18, YOUR HONOR.

13 THE COURT: CAN I HEAR THE OBJECTION,
14 PLEASE?

15 MR. GOMEZ: YES, YOUR HONOR. AND I WOULD
16 JUST READ TO YOU, YOUR HONOR, THE IDENTIFICATION OF THE
17 DOCUMENT BY THIS WITNESS.

18 THE QUESTION IS, WHAT IS THIS EXHIBIT?

19 AGAIN, THE EXHIBIT APPEARS TO BE EXCERPTS
20 FROM THE MASTERCARD FAMILY IMPLEMENTATION GUIDE.

21 AGAIN, THIS IS HEARSAY. LACKS
22 FOUNDATION. IT DOES NOT MEET THE REQUIREMENTS UNDER
23 803.6. AND AT THE SAME GROUNDS THAT I RAISED FOR THE
24 PRIOR DOCUMENT.

25 ALSO, I DIRECT YOUR ATTENTION, YOUR

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1 HONOR, IF YOU LOOK AT PAGE MC162 IN THIS DOCUMENT, AT
2 THE BOTTOM OF THE PAGE, IT HAS 15, WHICH I ASSUME IS
3 PAGE 15, BUT THERE IS NO WAY TO KNOW.

4 IF YOU GO TO THE PRIOR PAGE, 161, THERE
5 IS NO NUMBERING. IF YOU LOOK AT THE PAGE AFTER -- WELL,
6 I GUESS THERE IS NO PAGE AFTER. YOU DON'T SEE ANY PAGE
7 NUMBERS WITH RESPECT TO THIS DOCUMENT, BUT ONE OF THE
8 PAGES DOES HAVE A PAGE NUMBER APPARENTLY AT THE BOTTOM.

9 AGAIN, THIS IS -- WHICH IS ACKNOWLEDGED
10 IN THE -- IN THE ANSWER. IT APPEARS TO BE EXCERPTS OF A
11 DOCUMENT. AND THERE IS NO SHOWING THAT THIS PARTICULAR
12 DOCUMENT MEETS THE BUSINESS RECORDS EXCEPTION IN THAT
13 THIS IS THE -- THAT THE ENTIRE DOCUMENT IS BEING

14 SUBMITTED. AND PLAINTIFFS ARE SUBMITTING -- AT LEAST IT
15 APPEARS TO BE SUBMITTING PART OF A DOCUMENT, FOR THE
16 TRUTH OF THE MATTER ASSERTED. AND WHATEVER THEY MAY
17 HAVE ADDRESSED IN THE DEPOSITION IS A DIFFERENT MATTER,
18 YOUR HONOR.

19 THE COURT: I UNDERSTAND.

20 RESPONSE, PLEASE.

21 MR. VAN KWAWEGEN: YOUR HONOR, AGAIN,
22 THERE ARE TWO POINTS, I BELIEVE. THERE IS THE
23 FOUNDATION AND THERE IS THE HEARSAY. WITH REGARD TO THE
24 FOUNDATION OBJECTION, IT IS PLAINLY IDENTIFIED BY
25 MR. PEIREZ AS A MASTERCARD DOCUMENT. HE, AGAIN, USED

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1 THE SAME WORDS, "IT APPEARS." IT IS CLEAR THAT HE IS
2 LOOKING AT THIS DOCUMENT. HE IDENTIFIES IT AS A
3 MASTERCARD DOCUMENT, OR AT LEAST AN EXCERPT OF A MASTER
4 CARD DOCUMENT.

5 WITH REGARD TO THE HEARSAY OBJECTION,
6 YOUR HONOR, THIS DOCUMENT IS NOT NECESSARILY OFFERED TO
7 PROVE THE TRUTH OF THE MATTER ASSERTED. IT IS OFFERED
8 TO PROVE THAT MASTERCARD HAS POLICIES WITH REGARD TO
9 DEALING WITH PAYMENT CARDS THAT ARE HELD BY PEOPLE THAT
10 ARE UNDER 18, BY MINORS. IT'S NOT NECESSARILY OFFERED
11 TO SHOW WHAT THAT POLICY IS, YOUR HONOR, IT IS MERELY TO
12 SHOW THAT MASTERCARD CURRENTLY HAS A POLICY IN PLACE
13 THAT SPECIFICALLY DEALS WITH THE SITUATION WHERE A
14 PAYMENT CARD IS USED BY SOMEBODY WHO IS A MINOR.

15 THE COURT: I INFER FROM THE TESTIMONY

16 THAT THIS IS A DOCUMENT IS KEPT IN THE REGULAR COURSE OF
17 BUSINESS BY REASON OF THE STATURE OF THE WITNESS WHO WAS
18 THERE, IN THE COMPANY HIERARCHY. AND THE FACT THAT HE
19 IDENTIFIED IT, THE WORD "APPEARS TO ME" IS NOT SUCH A
20 LIMITING WORD THAT WOULD PREVENT ME FROM REACHING THAT
21 CONCLUSION. HOWEVER, IN THE 00145 TO 00162 PAGES,
22 SOMETHING ODD ABOUT THIS, IT'S 145, 146, 147, THEN THERE
23 ARE NO OTHER PAGES UNTIL 161 AND 162.

24 MR. VAN KWAWEGEN: YOUR HONOR, IF I MAY
25 ADDRESS THAT. 145, 146 AND 147 SHOW THE INDEX OF A MUCH

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1 LARGER DOCUMENT. AND SO IT SHOWS ON PAGE 147, FOR
2 EXAMPLE, THAT THERE IS A SECTION FOUR OF THIS MUCH
3 LARGER DOCUMENT CALLED KEY ACQUIRER, MERCHANT IMPACT.
4 AND THEN IF WE GO TO PAGE 161, IT'S THE FIRST PAGE OF
5 THIS SECTION THAT SAYS, SECTION FOUR, KEY ACQUIRER,
6 MERCHANT IMPACT. AND THEN 162 IS CLEARLY THE NEXT
7 FOLLOWING PAGE. THIS DOCUMENT WAS EXCERPTED, YOUR
8 HONOR, BECAUSE IT WAS A VERY VOLUMINOUS DOCUMENT. AND
9 WE ONLY -- PLAINTIFFS ONLY NEEDED PART OF THIS DOCUMENT
10 TO ASK QUESTIONS DURING THE DEPOSITION. THE DEFENDANT
11 WAS PRESENT AT THE DEPOSITION. THE DEFENDANT WAS
12 PROVIDED WITH THE COMPLETE DOCUMENT BEFORE. THE
13 DEFENDANT WAS THEREFORE ABLE TO TALK ABOUT THE DOCUMENT
14 AS PRESENTED BY PLAINTIFFS AT THE DEPOSITION, ALSO ABLE
15 TO OBJECT TO THE USE OF THIS DOCUMENT. PLAINTIFF HAS
16 NOT DONE SO. PLAINTIFF WAS NOT PREJUDICED AT ALL, YOUR
17 HONOR.

18 I'M SORRY, DEFENDANT. WHENEVER I SAY
19 PLAINTIFF I MEAN --

20 THE COURT: YOU WANT TO PROVE THAT THERE
21 IS A CARD THAT ALLOWS MINORS TO USE A CREDIT CARD. YOUR
22 OFFER OF PROOF THERE IS NOTHING IN THIS DOCUMENT THAT
23 REFLECTS ON THAT AT ALL.

24 MR. VAN KWAWEGEN: I'M SORRY IF I WAS NOT
25 CLEAR.

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1 IT IS NOT OFFERED TO PROVE THAT THERE ARE
2 PAYMENT CARDS THAT ARE AVAILABLE TO MINORS. AT LEAST
3 THIS DOCUMENT IS THE NOT OFFERED TO PROVE THAT.

4 THE COURT: THAT IS WHAT YOU SAID.

5 MR. VAN KWAWEGEN: WHAT I MEANT TO SAY IN
6 THAT CASE, YOUR HONOR, WAS THAT MASTERCARD HAS POLICIES
7 IN PLACE THAT IT DISCUSSES WITH THE BANKS THAT ACTUALLY
8 ACCEPT PAYMENT, THOSE POLICIES HOW TO DEAL WITH THE FACT
9 THAT THERE ARE MINORS THAT HAVE PAYMENT CARDS, YOUR
10 HONOR. SO IT'S --

11 THE COURT: EXCUSE ME FOR INTERRUPTING.
12 THIS DOCUMENT DOES NOT PROVE THAT AT ALL. THE OBJECTION
13 IS SUSTAINED.

14 ARE THERE OTHER DOCUMENTS THAT YOU WOULD
15 LIKE TO PUT IN FROM OTHER DEPOSITIONS?

16 MR. VAN KWAWEGEN: ONE FINAL DOCUMENT
17 FROM THE SAME DEPOSITION, YOUR HONOR. THIS IS
18 DEPOSITION EXHIBIT NUMBER 4, WHICH WAS PLAINTIFF'S
19 EXHIBIT 151 AS IDENTIFIED TO YOUR HONOR AND TO THE

20 DEFENDANT, YOUR HONOR.

21 THE COURT: WHAT IS THAT DOCUMENT?

22 MR. VAN KWAWEGEN: IT IS A DOCUMENT THAT
23 IS A PRINTOUT OF AN E-MAIL CHAIN. THE FIRST WORD ON THE
24 PAGE --

25 THE COURT: THE ONE THAT HAS REDACTED ALL

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1 OVER IT?

2 MR. VAN KWAWEGEN: YES, YOUR HONOR. THAT
3 IS THE SAME DOCUMENT. BATES STAMP MC00199 THROUGH
4 MC00200. AND, YOUR HONOR, THERE IS A BLANK PAGE AT THE
5 END WHICH WE CAN JUST RIP UP, IT'S A THREE-PAGE
6 DOCUMENT.

7 THE COURT: I ONLY HAVE THREE PAGES.
8 00199, I THINK THAT NUMBER WAS UP THERE. CHECK THAT.

9 MR. VAN KWAWEGEN: AS I SAID, YOUR HONOR,
10 IT'S A PRINTOUT.

11 THE COURT: WHERE WAS THIS IDENTIFIED IN
12 THE DEPOSITION?

13 MR. VAN KWAWEGEN: ON PAGES 21 AND 22 OF
14 THE DEPOSITION TRANSCRIPT, YOUR HONOR, WHERE IT SAYS --
15 PLAINTIFFS' EXHIBIT 4. SORRY.

16 THE COURT: MR. GOMEZ, YOUR OBJECTION?

17 MR. GOMEZ: YES, YOUR HONOR. AGAIN, THIS
18 IS A HEARSAY DOCUMENT. IT'S A HEARSAY OBJECTION AS TO
19 THIS DOCUMENT. AGAIN, IT DOES NOT MEET THE BUSINESS
20 RECORDS EXCEPTION. IT'S UNDER --

21 THE COURT: JUST GIVE ME A ONE-LINER.

22 MR. GOMEZ: ESSENTIALLY, WHAT WE ARE
23 LOOKING AT, IF WE LOOK AT WHAT WE HAVE HERE, YOUR HONOR,
24 WE HAVE JOSHUA PEIREZ IS THE WITNESS BEING EXAMINED IN
25 THIS DEPOSITION. IN THE SECTION -- PAGE 22, 1 THROUGH

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1 22, IT'S NOTING THAT -- FIRST OF ALL, IT APPEARS THAT
2 IT'S AN E-MAIL FROM ART CLARK, NOT TO JOSHUA PEIREZ, BUT
3 TO HEIDI DAVIDSON. IT ALSO -- WHEN THE WITNESS SAYS --
4 THE FIRST PAGE AT LEAST APPEARS WHEN IT IS ASKING WHAT
5 THE DOCUMENT IS, THE FIRST PAGE HE SAYS, IT APPEARS TO
6 BE. THE SECOND PAGE HE SAYS, APPEARS TO BE PART OF A
7 STRING, APPARENTLY OF THE E-MAIL.

8 YOUR HONOR, I SUBMIT TO YOU, WE DON'T
9 EVEN HAVE THE WITNESS WHO -- THIS WITNESS IS NOT SAYING
10 THIS IS A MASTERCARD DOCUMENT THAT IS PREPARED IN THE
11 REGULAR COURSE OF THEIR BUSINESS. THIS IS NOT A
12 DOCUMENT THAT WAS EVEN -- THAT THE WITNESS IS SAYING, I
13 RECEIVED AN E-MAIL FROM ANOTHER PERSON, WHICH WOULD
14 STILL BE HEARSAY. AND, YOUR HONOR, THE GOVERNMENT
15 OBJECTS TO THE SUBMISSION OF THIS PARTICULAR DOCUMENT.

16 THE COURT: RESPONSE.

17 MR. VAN KWAWEGEN: YOUR HONOR, WITH
18 REGARD TO THE FOUNDATION OBJECTION, THE DOCUMENT CLEARLY
19 -- FIRST OF ALL, THE TESTIMONY OF JOSHUA PEIREZ
20 SPECIFICALLY IDENTIFIES THE RECIPIENT OF THIS E-MAIL,
21 HEIDI DAVIDSON, AS ONE OF THE PEOPLE ON HIS STAFF. THIS
22 IS NOT A STRANGER, HE KNOWS HEIDI DAVIDSON, IF YOUR
23 HONOR LOOKS AT THE FIRST LINE ON THE PAGE, IT SAYS

24 HEIDIDAVIDSON@MASTERCARD.COM. THIS IS CLEARLY A
25 DOCUMENT THAT WAS PROVIDED BY MASTERCARD. IT WAS

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1 IDENTIFIED AS SUCH BY MR. PEIREZ, BOTH BY THE
2 IDENTIFICATION OF HEIDI DAVIDSON AND BY HIS FURTHER
3 TESTIMONY.

4 WITH REGARD TO THE HEARSAY, YOUR HONOR,
5 THE DOCUMENT ITSELF, THE E-MAIL CHAIN ITSELF DISCUSSES
6 NUMBERS OF PREPAID CARDS THAT ARE IN CIRCULATION IN THE
7 UNITED STATES TODAY. THE PLAINTIFFS DO NOT OFFER THIS
8 DOCUMENT FOR THE TRUTH OF THE MATTER ASSERTED, YOUR
9 HONOR. WE ARE NOT CONTENDING THAT MASTERCARD'S NUMBERS
10 ARE RIGHT. WE ARE JUST OFFERING THIS DOCUMENT BECAUSE
11 WE BELIEVE IT SHOWS THAT THE NUMBERS THAT ARE MASTERCARD
12 ARE AVAILABLE TO IT IN ITS CORPORATE LIBRARY. THOSE
13 NUMBERS, WE BELIEVE. SO WE DON'T BELIEVE NECESSARILY
14 THAT MASTERCARD'S NUMBERS ARE TRUE OR CORRECT. WE
15 BELIEVE THAT IT SHOWS WHAT MASTERCARD BELIEVES TO BE
16 TRUE OR CORRECT, WHICH IS NOT THE SAME.

17 THE COURT: WHY IS THE STATE OF MIND OF
18 MASTERCARD RELEVANT TO THIS CASE?

19 MR. VAN KWAWEGEN: BECAUSE, YOUR HONOR,
20 MASTERCARD IS UNIQUELY POSITIONED TO COLLECT THIS KIND
21 OF INFORMATION SINCE IT IS ONE OF THE LARGEST CARD
22 ISSUERS IN THE UNITED STATES. SO WE RESPECTFULLY SUBMIT
23 THAT THIS IS ACTUALLY NOT HEARSAY.

24 THE COURT: WHAT IS THE PURPOSE OF THE
25 REDACTION? IS THAT FOR CONFIDENTIAL MATERIAL? I DON'T

1 UNDERSTAND.

2 MR. VAN KWAWEGEN: THESE DOCUMENTS WERE
3 PRODUCED BY MASTERCARD AS REDACTED, AND WE DO NOT KNOW
4 WHAT WAS UNDERNEATH THE REDACTIONS. SO WE DO NOT KNOW
5 WHAT THE PURPOSE OF THE REDACTIONS WAS, TO BEGIN WITH.

6 THE COURT: I HAVE LITTLE DOUBT THAT THIS
7 E-MAIL CAME OUT OF THE RECORDS OF MASTERCARD. THE
8 WITNESS, AGAIN, HIS STYLE OF TALKING USES THE WORD
9 "APPEARS TO BE." THE DOCUMENT HAS SOME INTEGRITY WHEN
10 HE TALKS ABOUT A STRING. THE FIRST E-MAIL WAS FROM
11 HEIDI DAVIDSON TO ART CLARK, FEBRUARY 2ND AT 2:39 PM,
12 AND THE RESPONSE IS DATED FEBRUARY 2ND, 2006 AT 2:57 PM,
13 WHICH IS CHRONOLOGICALLY WHEN ONE WOULD THINK A RESPONSE
14 WOULD BE LATER ON THE CLOCK THAN THE ORIGINAL DOCUMENT,
15 SO IT HAS SOME INTEGRITY.

16 THERE IS NO TESTIMONY OF WHO MR. CLARK IS
17 OR WHY THIS DOCUMENT WAS PREPARED. I FIND THAT THE
18 PLAINTIFFS HAVE FAILED TO PROVE IT WAS KEPT IN THE
19 ORDINARY COURSE OF BUSINESS. IT SEEMS TO BE A
20 SPECIALIZED DOCUMENT CREATED TO SATISFY MR. CLARK. IT'S
21 NOT A RECORD OF MASTERCARD'S ORIGINAL ENTRY SHOWING
22 THEIR OWN STATISTICS. THIS IS WHAT SOMEBODY HAD
23 SUMMARIZED OR TAKEN FROM RECORDS AT BEST. AND I DON'T
24 THINK IT PROVED THAT IT WAS KEPT IN THE ORDINARY COURSE
25 OF BUSINESS.

1 THE OBJECTION IS SUSTAINED.

2 ANY OTHER OFFERS OF EXHIBITS?

3 MR. VAN KWAWEGEN: NO, YOUR HONOR.

4 THE COURT: ARE YOU GOING TO MAKE A
5 RECORD OF WHAT I LET IN AND WHAT I DIDN'T? I'M SURE.

6 MR. VAN KWAWEGEN: YES, YOUR HONOR.

7 THE COURT: I MUST SAY, FIRST OF ALL, WE
8 HAVE COME TO THE END OF THE DAY. BUT BEFORE WE HAVE OUR
9 SHORT DAY-END MEETING, THIS ENTIRE DISTRICT COURT AND
10 ALL OF ITS RULES AND PRACTICES AND FORMS THAT IT USES
11 AND LOCAL RULES AND MANAGING THE PARTIES TO AGREE ON THE
12 AUTHENTICITY OF DOCUMENTS. INORDINATE -- THERE WAS NOT
13 MUCH OF A WASTE OF TIME HERE, ONLY OUR OWN IN THIS
14 COURTROOM. BUT IF THE PLAINTIFF HAD TO CALL A WITNESS
15 TO AUTHENTICATE THESE DOCUMENTS WE WOULD HAVE BEEN HERE
16 FOR ANOTHER HOUR. SO I WOULD ENCOURAGE THE PARTIES TO
17 AGREE ON AUTHENTICITY OF DOCUMENTS. IT'S A TROUBLING
18 AREA OF EFFICIENCY IN RUNNING A TRIAL, AND EVERYBODY HAS
19 A RIGHT TO OBJECT TO WHAT THEY OBJECT TO. I'M NOT
20 EXPRESSING ANY DISAPPOINTMENT WITH MR. GOMEZ OR THE
21 DEFENDANT FOR OBJECTING TO THESE DOCUMENTS. IT'S MY JOB
22 TO RULE ON THEM AND I DID IT AND THAT IS THAT. BUT I
23 URGE THE PARTIES TO AVOID THIS KIND OF BATTLE OVER
24 THINGS THAT, TO MY MIND, IT'S CLEAR THAT THESE PAPERS
25 CAME FROM MASTERCARD, THEY DID NOT MAKE THEM UP. AND

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1 THE OBJECTION THAT THEY ARE NOT MASTERCARD DOCUMENTS OR
2 GENERALLY THE OTHER THREE WERE NOT KEPT IN THE ORDINARY
3 COURSE OF BUSINESS, TO MY MIND, IS NOT AN OBJECTION THAT

4 GOES VERY FAR.

5 THE LAST ONE, I THINK, OBVIOUSLY I
6 THOUGHT DIFFERENTLY OF, BECAUSE IT'S A DIFFERENT KIND OF
7 A DOCUMENT. THE OTHER THREE HAD MASTERCARD ALL OVER THE
8 TOP OF THEM. SO THINK ABOUT THAT. OUR SURROGATE
9 WITNESS IS VERY PATIENT SITTING OVER THERE. I GUESS HE
10 HAD HIS OWN AGENDA. I'M SORRY YOU HAD TO PUT UP WITH
11 OURS.

12 THE WITNESS: THANK YOU, YOUR HONOR.

13 THE COURT: YOU ARE WELCOME TO STEP DOWN.

14 THE WITNESS: THANK YOU.

15 (WITNESS EXCUSED.)

16 THE COURT: WE HAVE COME TO THE END OF
17 THE DAY. WHAT IS HAPPENING TOMORROW?

18 I WILL PASS OFF THE LAST HOUR AS TRICK OR
19 TREAT.

20 MR. HANSEN: TOMORROW, PLAINTIFFS HAVE
21 THREE WITNESSES SCHEDULED. THE FIRST WITNESS IS BARBARA
22 DEGENEVIEVE. WE INTEND TO USE WITH MISS DEGENEVIEVE
23 PLAINTIFFS' EXHIBIT 53. PLAINTIFFS' EXHIBIT 53, YOUR
24 HONOR, CONSISTS OF TWO DVDS. THEY ARE ART WORKS THAT
25 HAVE BEEN CREATED BY THE WITNESS. WE DON'T INTEND TO

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1 PLAY EITHER OF THE DVDS IN FULL. THEY ARE APPROXIMATELY
2 20 MINUTES EACH. WE DO INTEND TO PLAY FOUR TO
3 FIVE-MINUTE SEGMENTS OUT OF THE DVD.

4 THE COURT: IF THEY ARE IMAGES AND THEY
5 ARE NOT AVAILABLE ANY OTHER PLACE, I HAVE TO SEE THEM.

6 MR. HANSEN: THEY ARE ON A DVD WHICH HAS
7 BEEN GIVEN TO YOUR HONOR. THE FULL MOVIE IS ON THE DVD
8 GIVEN TO YOUR HONOR. BUT CONSISTENT, FOR EXAMPLE, WITH
9 WHAT WE DID WITH THE RAP ARTIST, WE WILL PLAY A PORTION
10 OF IT IN THE COURTROOM, AND THE REST WILL BE AVAILABLE
11 TO THE COURT AS PART OF THE EXHIBIT.

12 AFTER MISS DEGENEVIEVE, WE INTEND TO CALL
13 TERRY KIRK AND THEN CLOVER TAYLOR. WE HAVE --

14 THE COURT: TERRY WHO?

15 MR. HANSEN: TERRY KIRK, K-I-R-K, AND
16 CLOVER TAYLOR, T-A-Y-L-O-R. MISS KIRK AND MISS TAYLOR
17 ARE SCHOOL LIBRARIANS. WE HAVE NO EXHIBITS WITH EITHER
18 OF THOSE WITNESSES.

19 THE COURT: YOU HAVE LISTED THREE
20 LIBRARIANS. ARE YOU ONLY CALLING TWO?

21 MR. HANSEN: TWO TOMORROW AND ONE THE
22 FOLLOWING DAY, YOUR HONOR. WE THEN -- I SUSPECT THAT
23 STILL WILL NOT FILL THE DAY, YOUR HONOR. WE WOULD LIKE
24 TO DO ADDITIONAL DEPOSITION DESIGNATIONS TOMORROW.

25 THE COURT: TOMORROW, YOU MEAN? YES.

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1 MR. HANSEN: THE PARTIES HAVE AGREED ON
2 ONE ADDITIONAL DEPOSITION THAT WE CAN DO DESIGNATIONS ON
3 AND THAT IS PAYCOM. WITH RESPECT TO THE REMAINING FIVE
4 DEPOSITIONS, THERE ARE TWO CINGULAR AND VISA, WHERE
5 PLAINTIFFS HAVE COMPLETED ALL THE WORK THAT NEEDS TO BE
6 DONE AND ARE PREPARED TO READ THE EXCERPTS THAT WE HAVE
7 DESIGNATED, BUT DEFENDANTS ARE STILL IN NEGOTIATION WITH

8 THE THIRD-PARTIES CONCERNING CONFIDENTIALITY. AND IT'S
9 SORT OF OUT OF OUR CONTROL HOW SOON THE DEFENDANTS CAN
10 ACCOMPLISH THAT PROCESS.

11 THE COURT: WE WILL KEEP THEM WORKING.

12 MR. HANSEN: WITH RESPECT TO THE
13 REMAINING THREE, RULESPACE, SURFCONTROL AND LOOKSMART,
14 AGAIN, PLAINTIFFS ARE PREPARED TO PROCEED. THE
15 DEFENDANTS HAVE NOT YET ADVISED US WHETHER THEY HAVE
16 ADDITIONAL WORK THEY WANT TO DO ON THOSE THREE
17 DEPOSITIONS BEFORE THEY CAN BE PREPARED.

18 THE COURT: RULESPACE, SURFCONTROL, AND
19 WHAT IS THE THIRD ONE?

20 MR. HANSEN: LOOKSMART. BUT I THINK IF
21 THEY CAN RESOLVE THEIR CONCERNS WITH RESPECT TO THOSE
22 THREE BY TOMORROW MORNING, WE SHOULD BE IN A POSITION TO
23 FILL THE AFTERNOON WITH DEPOSITION DESIGNATIONS IF IT
24 BECOMES NECESSARY.

25 THE COURT: DO THESE CONCERNS ARISE OUT

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1 OF THE GOVERNMENT'S CROSS DESIGNATIONS, MR. GOMEZ?

2 MR. GOMEZ: YES, YOUR HONOR. RULESPACE,
3 WE HAVE BEEN ABLE TO RESOLVE THE ISSUES WITH RULESPACE
4 THIS AFTERNOON. SO RULESPACE IS NOW AVAILABLE.

5 THE COURT: SO THE PLAINTIFF CAN WORK IN
6 PREPARING THAT?

7 MR. GOMEZ: YES. WE ARE STILL -- THE
8 TIME FOR SURFCONTROL -- ACTUALLY I BELIEVE IT'S
9 SURFCONTROL, CINGULAR AND I BELIEVE LOOKSMART HAS NOT

10 RUN AND WE ARE STILL TRYING TO NEGOTIATE WITH THEM TO
11 SEE --

12 THE COURT: WHETHER IT IS RUN OR NOT,
13 THEY HAVE NOTICE AND THEY ACKNOWLEDGE THEY HAVE NOTICE.

14 MR. GOMEZ: YES.

15 THE COURT: IT BECOMES A MATTER OF
16 HISTORY ONCE THEY GOT NOTICE. THE NOTICE OF THE
17 FIVE-DAY NOTICE IS TO GIVE THEM NOTICE. ONCE THEY
18 ACKNOWLEDGE THEY HAVE IT, WE SHOULD MOVE RIGHT IN ON
19 THEM THE BEST WE CAN.

20 MR. GOMEZ: WE WOULD BE LOOKING AT THE
21 FIVE-DAY NOTICE FOR THOSE COMPANIES ACTUALLY BEING
22 COMPLETED BY THE CLOSE OF BUSINESS THIS FRIDAY.

23 THE COURT: HAVEN'T THEY ALREADY
24 RESPONDED IN SOME WAY?

25 MR. GOMEZ: WE HAVE SENT INITIAL LETTERS.

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1 FOR EXAMPLE, WITH SURFCONTROL, WE HAVE SENT A LETTER OUT
2 OCTOBER 16TH BY FEDERAL EXPRESS. THEY HAD INDICATED
3 THAT THEY HAD NOT RECEIVED IT. WE HAD FOLLOWED UP WITH
4 ANOTHER LETTER WITH SOME ADDITIONAL MATERIAL. THAT IS
5 WHEN WE DISCOVERED THAT. I BELIEVE NOW THEY SAID THEY
6 HAVE IDENTIFIED THE OCTOBER 16TH LETTER, I GUESS IT WAS
7 MISPLACED AT THEIR OFFICE. BUT IN ANY EVENT, WE HAVE AN
8 OCTOBER 25TH LETTER THAT WE HAD TO FOLLOW UP WITH THEM.
9 SO THEY STILL HAVE TIME THAT IS RUNNING, FIVE-DAY
10 NOTICE.

11 THE COURT: YOU STOPPED THEM IN THEIR

12 TRACKS BECAUSE THE NOTICE -- I WOULD LIKE YOU TO WORK
13 WITH THEM TO SOLVE THE PROBLEM. INSTEAD OF SITTING
14 AROUND AND WAIT FOR THE NOTICE, IT DOES NOT MEAN
15 ANYTHING. I REPEAT, THEY HAVE NOTICE. THEY ARE
16 ENGAGED. PLEASE KEEP WORKING WITH THEM.

17 MR. GOMEZ: YES, YOUR HONOR.

18 THE COURT: WHAT ABOUT CINGULAR AND
19 LOOKSMART? WHAT'S GOING ON THERE?

20 MR. GOMEZ: CINGULAR, WE HAVE FOLLOWED UP
21 WITH THEM WITH SEVERAL CALLS AND E-MAILS. THEY ARE
22 ACTUALLY -- THEIR TIME WOULD BE RUNNING AT CLOSE OF
23 BUSINESS FRIDAY. WE HAVE BEEN TRYING TO GET THIS
24 RESOLVED WITH THEM. THEY HAVE NOT RETURNED OUR CALLS OR
25 E-MAILS, BUT WE ARE GOING TO CONTINUE TO CALL THEM TO

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1 TRY TO GET THAT RESOLVED.

2 THE COURT: I'M TEMPTED TO LET THE TIME
3 RUN AND LET THEM NOT FILE A MOTION AND THAT WILL BE THE
4 END OF IT. MORE APPROPRIATE TO BE IN TOUCH WITH THEM.

5 MR. GOMEZ: ACTUALLY, I HAVE BEEN HAVING
6 OUR ATTORNEYS, SINCE WE ARE NOT GETTING A RESPONSE, TO
7 ACTUALLY TELL THEM THAT IN AN E-MAIL THAT IF, YOU KNOW,
8 THEY ARE NOT RESPONDING, THE FIVE DAYS DOES RUN, THEY
9 DON'T FILE A MOTION.

10 THE COURT: TELL THEM THEY HAVE TO COME
11 TO PHILADELPHIA TO HAVE A HEARING.

12 MR. GOMEZ: FROM SEATTLE.

13 THE COURT: TELL THEM THAT IS WHAT I

14 SAID, IF THEY DON'T COOPERATE.

15 MR. GOMEZ: YES, YOUR HONOR.

16 THE COURT: IF THEY ARE TOO BUSY I WILL
17 GET THEM ON TOP OF THE PILE.

18 MR. GOMEZ: IF WE CAN GET THEM ON THE
19 PHONE, WE THINK IT MAY BE ABLE TO BE WORKED OUT. THAT
20 IS THE PROBLEM, IS GETTING --

21 THE COURT: SEND E-MAILS. TELL THEM THE
22 JUDGE SAID IF THEY DON'T WORK IT OUT THERE IS GOING TO
23 BE A HEARING IN PHILADELPHIA MONDAY MORNING AT 9 A.M.
24 THAT IS NOT A HOLIDAY, IS IT?

25 THERE'S ONE COMING UP ON A MONDAY, I

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1 KNOW.

2 MR. HANSEN: YOUR HONOR, I THINK THERE
3 ARE TWO MORE ISSUES THAT WOULD BE HELPFUL TO DISCUSS
4 BEFORE WE BREAK FOR THE DAY. FIRST IS TO SIMPLY BRING
5 YOUR HONOR UP TO SPEED ON THE FLASH NETWORK MOTION.
6 YOUR HONOR WILL RECALL THAT WE PROPOSE TO CALL A WITNESS
7 FROM FLASH NETWORK. THEY FILED A MOTION TO PREVENT THAT
8 WITNESS FROM HAVING TO TESTIFY.

9 THE COURT: SOME WERE FROM NEW JERSEY AND
10 ISRAEL.

11 MR. HANSEN: YES. WE HAVE DISCUSSED --

12 THE COURT: I READ THAT PACKAGE AND THEY
13 CONTEND THAT THE PEOPLE THAT YOU WOULD LIKE
14 THEORETICALLY WANTED TO COME EXCEPT FOR THE GENTLEMAN
15 WHO WAS OUT OF THE COUNTRY, WHICH YOU PROBABLY DID NOT

16 KNOW ABOUT, DON'T HAVE ANY KNOWLEDGE OF THE INFORMATION
17 YOU'RE ASKING FOR. THAT IS WHAT THEY CLAIM.

18 MR. HANSEN: THAT IS CERTAINLY WHAT THEY
19 CLAIM. WE HAVE DISCUSSED IT WITH FLASH NETWORKS. IN
20 SOME RESPECTS, THE TESTIMONY WE SOUGHT TO ELICIT FROM
21 THE FLASH NETWORK WITNESS WAS IN THE NATURE OF
22 ANTICIPATORY REBUTTAL, TESTIMONY WE MIGHT NEED DEPENDING
23 UPON WHAT ONE OF THE DEFENDANT'S WITNESS WOULD TESTIFY
24 TO.

25 THE COURT: THAT HAS TO DO WITH FILTERS

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1 ON WIRELESS EQUIPMENT?

2 MR. HANSEN: THAT'S CORRECT. SO WHAT WE
3 AGREED WITH FLASH NETWORK IS THAT WE WOULD PUT OFF THE
4 DISPUTE ABOUT WHETHER THEIR WITNESS HAD TO APPEAR OR NOT
5 UNTIL WE HEAR WHAT THE DEFENDANT'S WITNESS SAYS AND SEE
6 WHETHER WE NEED IT ON REBUTTAL. IF IT TURNS OUT WE
7 DON'T NEED IT ON REBUTTAL, THE PROBLEM WILL GO AWAY. IF
8 IT TURNS OUT WE DO WE CAN ADDRESS IT AT THAT POINT.

9 THE COURT: THESE THINGS FLY BY ME.
10 THERE ARE SO MANY OF THEM. WAS THERE A MOTION FOR
11 PROTECTIVE ORDER ON THAT?

12 MR. HANSEN: YES.

13 THE COURT: A WOMAN LAWYER FROM NEW YORK
14 CITY.

15 MR. HANSEN: YES. WE HAVE AGREED WITH
16 HER THAT WE WILL PUT THAT OFF UNTIL SUCH TIME AS IT --

17 THE COURT: I DON'T WANT TO BE DERELICT.

18 AS LONG AS SHE IS NOT SEEKING RELIEF INSTANTLY, THEN WE
19 WON'T HAVE A HEARING UNTIL WE NEED ONE.

20 MR. HANSEN: I CAN REPRESENT TO YOUR
21 HONOR THAT SHE DOES NOT NEED IMMEDIATE HEARING ON THAT.

22 THE FINAL MATTER I WANTED TO RAISE WITH
23 YOUR HONOR, WE HAVE A WITNESS SCHEDULED FOR THE END OF
24 THE DAY THURSDAY WHO WOULD LIKE TO TESTIFY UNDER HER
25 PROFESSIONAL NAME AS OPPOSED TO HER LEGAL NAME. THIS IS

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1 A WITNESS WHO IS A PLAINTIFF. SHE HAS PREVIOUSLY BEEN
2 THE SUBJECT OF A STALKER AND IS EXTREMELY ANXIOUS THAT
3 HER REAL NAME NOT RECEIVE WIDER PUBLICITY THAN IS
4 ABSOLUTELY NECESSARY. HER REAL NAME IS KNOWN TO THE
5 COURT AND KNOWN TO THE DEFENDANTS, BUT WE WOULD PREFER
6 TO SIMPLY USE HER PROFESSIONAL NAME WHEN WE CALL HER AS
7 A WITNESS AT THE END OF THE DAY ON THURSDAY.

8 THE COURT: DO THE DEFENDANTS HAVE ANY
9 CONCERN ABOUT THAT?

10 MR. GOMEZ: WE TAKE THE REPRESENTATIONS
11 MADE BY THE PLAINTIFF AS BEING CORRECT AND WE TAKE NO
12 POSITION, BUT THERE IS A LITTLE CONCERN THAT WE HAVE
13 ACTUALLY SOMEONE LISTED ON THE COMPLAINT AS NOT EVEN AS
14 A JANE DOE, AS JUST A DIFFERENT NAME, NOT A PERSON'S
15 REAL NAME. I JUST RAISE THAT -- I THINK IF THERE IS
16 SOME WAY WE CAN HANDLE IT, THE DEFENDANT IS TAKING NO
17 POSITION AND WAS OPEN TO TRYING TO RESOLVE IT, BUT THERE
18 IS SOME QUESTION ABOUT HAVING --

19 THE COURT: IT'S A PSEUDONYM. THERE IS

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- - -

19 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
 20 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED
 21 MATTER.

22

23

24 DATE OFFICIAL COURT REPORTER

25