

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

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AMERICAN CIVIL LIBERTIES UNION, et al	:	CIVIL ACTION NO. 98-5591
	:	
	:	
v.	:	Philadelphia, Pennsylvania
	:	November 2, 2006
ALBERTO R. GONZALES,	:	
IN HIS OFFICIAL CAPACITY	:	
AS ATTORNEY GENERAL OF	:	
THE UNITED STATES	:	
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NON-JURY TRIAL (DAY 7)
BEFORE THE HONORABLE LOWELL A. REED, JR.
UNITED STATES DISTRICT COURT SENIOR JUDGE

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(Proceedings recorded by For The Record Gold digital sound recording; transcript provided by AAERT-certified transcribers.)

1 (The following occurred in open court at 9:40
2 o'clock a.m.)

3 THE COURT: Good morning, everyone.

4 ALL: Good morning.

5 THE COURT: Milahn, good morning. Thanks for
6 helping us. Please be seated.

7 Is plaintiff prepared to present the next witness?

8 MR. KWAWEGEN: Plaintiffs are, your Honor.

9 THE COURT: All right.

10 MR. KWAWEGEN: Plaintiffs call Iris Tava Smathers.

13 IRIS TAVA SMATHERS, Plaintiff's Witness, Sworn.

14 AUDIO OPERATOR: Please state your full name and
15 spell your last name for the record.

16 THE COURT: Spell both names for the record, please.

17 THE WITNESS: My name is Iris, I-r-i-s, Tava,
18 T-a-v-a, Smathers, S-m-a-t-h-e-r-s.

19 THE COURT: Ms. Smathers, good morning.

20 THE WITNESS: Good morning.

21 THE COURT: Counsel?

22 MR. KWAWEGEN: Good morning, your Honor.

23 THE COURT: Good morning.

24 MR. KWAWEGEN: For the court reporter my name is
25 Jeroen Van Kwawegen, J-e-r-o-e-n V-a-n K-w-a-w-e-g-e-n.

1 DIRECT EXAMINATION

2 BY MR. VAN KWAWEGEN:

3 Q Good morning, Ms. Smathers.

4 A Good morning.

5 Q What is your current position?

6 A I am a teacher, librarian, media specialist at Telluride
7 Schools in Telluride, Colorado.

8 Q How long have you been a librarian at Telluride?

9 A This is my second year at this particular school.

10 Q Where did you work before?

11 A I was a school librarian in Corvallis, Montana for five
12 years before I moved to Colorado.13 Q Please tell the Court about your educational background
14 following high school, please.15 A I have a bachelor's degree in French, a master's degree
16 in English Literature. I also have certification to teach
17 French, Spanish, library and I have a K12 principal's
18 endorsement as well. And I'm almost finished with my
19 doctorate in educational leadership.

20 Q Have you always been a librarian?

21 A No. I was a classroom teacher. I taught French and
22 Spanish and English for a lot of years.

23 Q How long have you been a librarian in total?

24 A In Telluride this is my second year. In total it's seven
25 years.

1 Q Are you a member of any professional organizations?
2 A Yes. I'm a member of library associations in Colorado.
3 I'm a member of the National Education Association. I'm a
4 member of of course the state and local education
5 associations that are connected with NEA. I'm a member of
6 and a board of directors member of the Northwest Council For
7 Computer Education. And I am a member of ASCD which is the
8 Association of Supervision of Curriculum Development which is
9 a national organization as well.

10 Q Does the Northwest Council for Computer Education go by
11 the acronym NCCE?

12 A It does.

13 Q What does the NCCE do?

14 A The purpose of the organization is to provide training
15 for teachers to integrate technology in appropriate ways into
16 their teaching and learning.

17 Q How does the NCCE do that?

18 A We offer professional development seminars. We offer a
19 conference once a year in generally in Washington, Portland
20 area, and it's a three-day conference at which they can take
21 workshops from experts in the field, at which they can take
22 sessions from teachers who are actually using the technology
23 in the classroom in really innovative ways. And sometimes
24 they get to see actually the students, some of their work as
25 well.

1 Q Have you personally taught such workshops?

2 A Yes, I have. I have taught workshops in technology to
3 teach Shakespeare and technology to teach foreign languages,
4 and ways to use the internet to teach things slightly
5 differently than just telling the kids to go on Google and
6 search for things.

7 Q Are you involved with any other committees or
8 organizations at the district level?

9 A Yes, I am. I'm one of the members of the curriculum
10 development committee. I'm a member of the professional
11 development committee. I am a member of district
12 accountability committee and I spend a lot of time with the
13 technology committee at my district.

14 Q What does the technology committee do?

15 A We look at the technology that's out there. We look at
16 best practices on how to use it. We review and test pieces
17 of equipment and how they'll work in our school, and we
18 select and purchase those technologies.

19 Q Are you here today to testify on behalf of the Telluride
20 High School?

21 A I'm here to testify on behalf of myself as a librarian.

22 Q What are your responsibilities as a librarian?

23 A Well, I do some of the old-style library stuff. I check
24 out books and stamp them and I "shhh" sometimes. (Laughter.)
25 But also I teach the kids to use --

1 THE COURT: Is there a special course in "shhh"?

2 (Laughter.)

3 THE WITNESS: Oh, yes, absolutely, your Honor.

4 A And I teach kids and teachers to use the technology in
5 appropriate ways. I select and purchase materials. I'm in
6 charge of all the AV equipment, and I'm in charge of 24
7 student computers and two checkout center computers in my
8 library as well.

9 Q How would you describe your level of competence with
10 computers?

11 A I think I have a high level of confidence with computers
12 and competence as well because I have to, to keep them
13 running. The kids would -- these days the kids don't go for
14 the books, they go for the computers first, so you have to
15 really be on task with computers.

16 Q How did you gain that level of competency and confidence
17 in working with computers?

18 A I started long ago like in the '80s with an old Apple
19 computer creating music on the computers because I'm a
20 musician as well, and became interested in computers and
21 started learning different ways to use them. I started
22 taking them apart, much to my husband's dismay, and, you
23 know, seeing if I could get them back together. And then I
24 moved into IBM computers in the old days and learned how to
25 use those, and spent a lot of time playing with software,

1 which I still do a lot.

2 Q Outside your duties in school, have you ever trained
3 other in the use of computers?

4 A Yes. I often teach teachers in workshops at the district
5 level, or on individual basis, especially if they have a
6 special project they want to do, and hopefully new ways to
7 keep students engaged. And I was part in Montana where I was
8 the librarian, I was part of a five-year federal technology
9 innovation challenge fund grant. It's a long title, the
10 whole purpose of which was to teach teachers to use
11 technology to teach, to teach them to make web pages, to
12 teach them to, you know, use the internet hopefully in
13 innovative ways, to use PowerPoint, Publisher, and other
14 pieces of software that help them be more productive but also
15 help them present information in more modern ways for kids so
16 that it's not like the old days where "read the book and
17 answer the questions."

18 Q I want to move on to Telluride School District. Could
19 you tell the Court a little bit more about the socioeconomic
20 makeup of the school district?

21 A It's a very small district. It is a very affluent
22 community in general. We have a high stratification of very
23 wealthy families, a very small middle class, and we have what
24 the kids call the servant class for kids whose parents work
25 in the service industries and who actually are servants at

1 the millionaires' houses on the hills.

2 Q How many schools are there in the district?

3 A There are three schools: an elementary school, an
4 intermediate school, and then the school where I work which
5 is a middle/high school.

6 Q How does the Telluride school that you work at compare
7 with your previous school and school district in Montana?

8 A The school in Montana was bigger. I had nearly 500 kids
9 just at the high school level. In Montana it was mostly
10 ranchers and it was a much more conservative district. A
11 high amount of kids with very, very conservative religious
12 backgrounds of various types. And Telluride, it's a much
13 more liberal community as far as the kinds of materials we
14 can have in the library, the kinds of films that are in the
15 theater and kids are encouraged to see.

16 Q How many librarians are there at Telluride, the school
17 you work at now?

18 A There are three librarians, two of which are classroom
19 teachers who are in charge of the library. I'm the only
20 fully certified school librarian in the district.

21 Q What kinds of resources does the Telluride library have?

22 A We have about 13,000 volumes which includes books and
23 videos that the kids can use, those kinds of resources, maps,
24 globes.

25 Q Are there any computers?

1 A I have 24 student computers and two checkout station
2 computers.

3 Q Outside of the library, are there any computers at
4 Telluride?

5 A Yes. We have three computer labs. We have a wireless
6 laptop lab that goes around from classroom to classroom, and
7 then each teacher has a computer for the school business in
8 the classroom.

9 Q How are these computers used?

10 A They are used for, you know, for information for the
11 student information system, attendance, those kinds of
12 things, for grading, and they're used for internet access as
13 well.

14 Q Do all of the computers have internet access?

15 A Yes.

16 Q How do you know?

17 A Because each classroom is wired for internet, and
18 sometimes I help with those things and troubleshoot, so I
19 know that there are -- I do a lot of wiring, so I know that
20 they are on the internet. And everyone who logs into the
21 network, to the local area network, has access to the
22 internet.

23 Q Can the network track student web use?

24 A I believe that it's able to.

25 Q Do you know how?

1 A We have -- students have to log into a specific server,
2 so we can see where a student is, what computer they've
3 logged onto and, you know, the time that they've spent at
4 that particular IP address.

5 Q Can the students use computers outside of faculty
6 supervision?

7 A They can occasionally. They tend to want to be where the
8 good computers are, so they're in the library or the computer
9 labs, and there are teachers there.

10 Q Do you teach any research skills, online research skills
11 to students?

12 A Yes. We have Colorado Library Standards, one of the
13 things that requires us to teach our research skills. We
14 tend to use the Big 6 skills which are -- it's an
15 organizational research process to teach kids how to break up
16 a research project or question into little bites that make
17 sense and that are sequential.

18 Q Could you explain those little bites?

19 A For example, the first step is to actually look at the
20 task and make sure you understand what you're expected to do.
21 Because a lot of times research, that's where it falls apart,
22 if you don't understand exactly what you're looking for.

23 And then step two is, you know, where might we
24 locate these materials, and that's where the librarian is
25 extremely involved at that point and hopefully the classroom

1 teacher at suggesting resources and places to look so that
2 they learn that skill.

3 And then the third step is going and finding those
4 materials, and the fourth step is actually taking pieces that
5 make sense and go back to the task and keep checking back to
6 make sure that those things are what you're supposed to be
7 doing.

8 And the fifth is the synthesis of the information,
9 and a big, big requirement for us is learning how to cite
10 your sources. So that especially when they go to college
11 they're not plagiarizing them. They know that they can
12 borrow good information correctly and use it properly. And
13 then the last step is evaluating the project and the process,
14 as well as the final product.

15 Q Is part of the Big 6 method -- when you're teaching the
16 Big 6 method, are you teaching students how to verify the
17 authority of the information that they're looking at?

18 A Yes. And that's also -- very often it's a separate
19 lesson that we work with kids at all times one on one as well
20 as in classroom to look at web resources and evaluate whether
21 or not it makes sense, whether it's a good authority, what
22 kinds of sites are going to have the information that's
23 authoritative and that is good information.

24 Q How do you teach that? What do you teach them to look
25 at?

1 A There's lots of ways, but I like to use fake websites
2 that are actually set up, you know, sometimes just to fool
3 people, and then I teach the kids to look at it and ask
4 questions like, does this make sense? Could this happen?
5 And then there's also a site called Easywhois.com. You can
6 type in a URL and it will tell you who's responsible for the
7 site. And at a conference I learned that
8 MartinLutherKing.org is owned by a white supremacist group.
9 I didn't believe it, and we went immediately and looked and
10 it is actually owned by a white supremacist group. And kids
11 have learned that .org is a good place to look for
12 information. So the scary thing is that that those people --
13 it starts out the page looks really good. When you get a
14 little further down into it, they're asking you if you want
15 to buy AK47's or if you want to have these kinds of
16 information, you know, do you want to join this group. It's
17 pretty scary.

18 Q When do you teach the children to evaluate the authority
19 of websites and the Big 6 method that you were just
20 describing?

21 A I had specific library sessions with students, and I have
22 to fit those in with the teachers' specific lessons so I
23 don't take up too much of their time. So I get their lesson
24 plans and I see where library research will fit into there,
25 and I ask them for 15 minutes here or 15 minutes there. And

1 always one on one, if kids are doing research, I'm walking
2 through the library and saying, what are you looking at?
3 What do you need? Wow, did you know about this? Here's a
4 really cool site. Here's a great book. And I talk to them
5 when I see them looking at things that are probably okay, but
6 that are wasting a lot of their time, like being stuck in
7 Google, for example. Google is a great website -- I mean a
8 great search engine area, but it's not really the best for
9 research, because Google can be manipulated to have certain
10 results turn up on the top. And so we have them go to
11 Answers.com or Ask.com because those kinds of sites actually
12 are more set up sort of like directories in that they can't
13 be manipulated. I can't have 58 people log into my site and
14 cause my numbers to go up. So it makes a lot more sense that
15 kids are going to find authoritative information doing it
16 that way.

17 Q In your experience, are students less likely to come into
18 contact with inappropriate materials when they apply the
19 research skills that you teach them?

20 A Yes.

21 Q Why do you think that?

22 A Well, for one thing, the research process is such an
23 intense focus of attention that if they follow the steps of
24 the process, and if the teachers require them to report at
25 those intervals of the research process, they don't have time

1 to do other things, they really don't.

2 Q Does your school district have any policies regarding the
3 use of school computers?

4 A We have an acceptable use policy that all kids and their
5 parents must sign.

6 Q What happens if either the parents or the student have
7 not signed this policy?

8 A Students don't have rights, computer rights. They can't
9 use a computer at all, because to use a computer you have to
10 log into the network. And without a log-in that's enabled,
11 they can't log in.

12 Q What happens if a student violates the policy?

13 A It depends on the violation a great deal. The first
14 thing we try to do is, you know, that's a great "just in
15 time" teaching method, to talk to a kid and going, What are
16 you doing? You're not following the acceptable use policy.
17 You know, what are you trying to do? Are you trying to do
18 something, you're getting in the wrong place, or did you just
19 not know? And so they can always say I didn't know even if
20 they signed it, but that's when you give them, okay, this is
21 your warning, you'll lose your computer privileges for two
22 weeks, and they would rather lose anything than computer
23 privileges.

24 Q What does the acceptable use policy cover? What types of
25 internet use or computer use?

1 A Well, it says that they won't use inappropriate words and
2 things and e-mail, because they are allowed to use e-mail, it
3 says that they won't waste time with chatting. It says that
4 they won't try to download things, and actually they can't
5 because they don't have the rights set up through sort of our
6 window server for them to download. And it says that they
7 won't try to access sites that are inappropriate for reasons
8 of content, for reasons of band width, hogging, and for
9 anything but educational purposes.

10 Q In your experience, is the acceptable use policy helpful
11 in preventing your students to come into contact with
12 inappropriate materials on the internet?

13 A Well, I can't really say yes or no to that. I think it's
14 a tool that we have. It's a bit of leverage in a sense that
15 we can say you signed this, you acknowledged that you know
16 what these terms mean, and so therefore, you know, you can't,
17 if you want to keep your privileges you have to follow this
18 policy. So I think it's a little bit -- I think it's a
19 little bit like a marriage in a sense. The paper is the
20 paper, but what makes a marriage is commitment. So we try to
21 teach them the commitment to doing the right thing and to
22 making good decisions where they are, and the piece of paper
23 is on the site. It's good to have, I think you have to have
24 it, but I think that's all the power it has.

25 Q Does the district use any content-filtering software in

1 the schools?

2 A Yes, we do. We use a product called Squidguard. We
3 picked that one over some of the other ones --

4 THE COURT: S-q-u-i-d?

5 THE WITNESS: Yes, sir.

6 THE COURT: Thank you.

7 A We chose it because it was free.

8 Q Do you know what the purpose is of using internet content
9 filtering software in the school?

10 A Absolutely. It helps keep kids away from sites that we
11 hope that they would only access by accident, and it does a
12 pretty good job of that, I think.

13 Q As a librarian, are you aware of any federal or state
14 laws that require the use of filtering software?

15 A Yes. We started using filtering last year as a result of
16 the CIPA, the C-I-P-A Act, or whatever it's called.

17 Q I'd like to discuss a little bit more Squidguard. Were
18 you personally involved in selecting Squidguard?

19 A I was not. That was the beginning of my tenure at
20 Telluride. So they didn't know my tech skills at that time.
21 But, you know, I have been involved in working with
22 Squidguard now.

23 Q Do you know who selected the product?

24 A The district technology coordinator makes the final
25 decision.

1 Q Are you aware of the criteria that were used in selecting
2 Squidguard?

3 A Yes. We wanted something that would look at --

4 MR. CAMPBELL: Objection, your Honor. Calls for
5 speculation.

6 THE COURT: Well, a different reason, objection
7 sustained. Lay a foundation.

8 BY MR. VAN KWAWEGEN:

9 Q First question is -- it's a yes/no question.

10 A Okay.

11 Q Are you aware of the criteria that were used in selecting
12 this product?

13 A Yes, I am.

14 Q How have you become so aware?

15 A It's part of our technology plan, so it's actually
16 written down.

17 Q Could you explain to the Court what criteria were used to
18 select the Squidguard product?

19 A Well, a big concern, I've already said that it was free.
20 It was open source software, so that it meant that they can
21 go in and we can add to -- there's a black list that's a
22 default global blacklist, and then we're able to add and
23 subtract to that list as we want to by changing the code.

24 Q Do you know where it is installed?

25 A Yes, I do. We have a system of servers. The students go

1 first through a proxy server, and then the Squidguard is on
2 the web servers. So they're actually going through two kind
3 of, I don't know if gateway is the right word, but that's how
4 I think of it.

5 Q Which computers in the school are covered by the filter?
6 A All of them.

7 Q Is it possible for a computer not to be covered by the
8 filter?

9 A No. Because everyone who uses the local area network has
10 to go in through that gateway.

11 Q In your experience, have you seen any evidence that
12 students have successfully circumvented the filter?

13 A No, I have not.

14 Q Does the Squidguard filter cover web browsing?

15 A Yes, it does.

16 Q Does it cover peer to peer networks?

17 A It does, as far as they can see those particular places,
18 but they can't download, and that's a Windows-level
19 administrative thing that keeps them from being able to
20 download things. They can't even download Acrobat Reader.

21 We have to do that.

22 Q How would you describe the end user's experience, for
23 example, a student, when they attempt to access a website
24 that is blocked by a filter?

25 A Well, they aren't very happy. They get a message that

1 says you've attempted to access a restricted site, and then
2 we have our reasons for restriction. It's just a word
3 document, but that's the page that they get and that's the
4 only page that they can see that says, you know, these are
5 the reasons that we restrict sites. And P.S., you signed the
6 acceptable use policy.

7 THE COURT: What reasons might be on a particular
8 blocking screen?

9 THE WITNESS: Inappropriate content, time wasting,
10 sites that have to do with, you know, gambling, those casino
11 sites. Personal social networking sites. Those are the big
12 ones. The violence and hatred sites.

13 BY MR. VAN KWAWEGEN:

14 Q If you personally wanted to add or remove a website from
15 the filter, could you do that?

16 A Yes.

17 Q How would you go about that?

18 A The server room is actually downstairs in the library,
19 and so we just go into the software and you can add --
20 there's a string of code that you can use that's, you know,
21 that's open source code, and you can go into that server and
22 put that entire string, and then there's a place for the URL,
23 and you can put that in there. And then they get the word
24 document. It automatically directs them to the restricted
25 site page.

1 Q Physically speaking, who has access to this computer that
2 allows you to add or delete sites?

3 A There are four people with server administration
4 privileges. So that's the technology director, the district
5 technician, I do as the district librarian, and there is a
6 computer teach in that same building connected that all of us
7 can get there fairly quickly and work on the computers if we
8 need to.

9 Q And when you say get there fairly quickly, where is
10 "there"?

11 A Through this little server room that's actually
12 downstairs in my library.

13 Q Who has access to the server room?

14 A Teachers are allowed to go in because the technology
15 director is there. But only the four people I mentioned have
16 access to the actual -- you know, have passwords to work in
17 the server.

18 Q Is the server room locked?

19 A During the hours when the technology director or one of
20 us is not there, yes.

21 Q Do you know of any sites that were blacklisted by the
22 school?

23 A Or different reasons. Sometimes not -- it doesn't have
24 to do with content but what the teacher wants the student to
25 experience. For example, a site that is perfectly fine is

1 Cliff Notes. But, you know, perhaps the teacher who's
2 teaching the Scarlet Letter doesn't want them to have that
3 access in school that day. So we can block and unblock
4 content for that reason. A specific site that we block for
5 inappropriate content. Actually we're blocking
6 MartinLutherKing.org now except when we're teaching website
7 evaluation. So we can block and unblock it within minutes.

8 Q And what is Cliff Notes?

9 A Cliff Notes is a summary by chapter of particular novels
10 that kids are reading. And so sometimes they read the Cliff
11 Notes instead of the novel. And the teachers are not very
12 happy about that.

13 Q Did the school district where you worked in Montana
14 before coming to Telluride have a content filter on its
15 computers?

16 A Yes, we did.

17 Q How does your experience in Montana compare to your
18 experience in Telluride, Colorado with the content filter?

19 A In Montana, we used the BESS, I think N2H2 as the people
20 who created BESS, and it's --

21 THE COURT: How do you spell that, please?

22 THE WITNESS: BESS, B-E-S-S.

23 THE COURT: Sounded like it. Thank you.

24 THE WITNESS: Like Bess Truman, I think.

25 A And it was much -- it was a much bigger piece of software

1 we paid a lot of money for. And pretty much it had the same
2 -- it had a black list, it had a white list, and we were able
3 to, you know, work with it very easily as well. And I was in
4 charge of that software, so anyone who wanted to block or
5 unblock something would come and talk to me.

6 Q Were the same categories blocked in Montana as they are
7 right now in Colorado?

8 A Yes.

9 Q In your school district?

10 A Yes.

11 Q At Telluride, are you aware of any students that were not
12 able to access necessary and appropriate websites because of
13 the Squidguard filter?

14 A No, I don't think so, because I think filtering software
15 has gotten more sophisticated, and also because the people in
16 charge, including, you know, the teachers and the
17 administrators, can actually tweak it to make sure that it
18 covers what it's supposed to cover. And it doesn't cover,
19 you can unblock a site that's accidentally blocked. But I
20 haven't seen that in three or four years.

21 Q Are you aware of any instances where the Squidguard
22 filter was not able to block inappropriate materials before a
23 student gained access?

24 A Not so far.

25 Q Overall, in your experience, would you say that you're

1 satisfied with the Squidguard filtering program that is used
2 in your school district?

3 A I think it's a good tool. I think it works. I think the
4 best filter is librarians and teachers and parents who pay
5 attention and who talk to kids and say, you know, this is
6 good information. Here's how you decide what's good
7 information. Here's how you decide what's not going to
8 accomplish your task. And there are things that are bad
9 decisions for you to look at. But I think you need to, I
10 think you need to tell kids why and, you know, teach them to
11 reason because if we throw up a lock on the door and they
12 don't know what is on the other side, when they get into a
13 position where they have to be on the other side, how are
14 they going to navigate if they don't have those skills. And
15 I think that is my job and a teacher's job, and then
16 hopefully the parents' jobs to teach them to discern in cases
17 like that.

18 Q No further questions, your Honor.

19 THE COURT: Cross-examination?

20 MR. CAMPBELL: May it please the Court.

21 THE COURT: Good morning. Would you state your name
22 for our new court reporter, please?

23 MR. CAMPBELL: Certainly. My name is Isaac,
24 I-s-a-a-c, Campbell.

25 CROSS-EXAMINATION

1 BY MR. CAMPBELL:

2 Q Good morning, Ms. Smathers. How are you?

3 A Good morning. I'm fine. And you, Isaac?

4 Q I am doing well. It is nice to meet you.

5 A You too, yes.

6 Q As I've told you previously, but I'll state this for the
7 record, I am an attorney for the defendant in this case. The
8 Squid Guard filtering produce your school uses is an
9 enterprise filtering product, isn't it?

10 A Yes, it is.

11 Q And the SquidGuard filtering produce runs off of a
12 server, doesn't it?

13 A Yes, it does.

14 Q The product you use services your entire district, is
15 that correct?

16 A That is correct.

17 Q The school district that you work in has a technology
18 director.

19 A Yes, it does.

20 Q And the name of the technology director is Crystal Lane.

21 A Yes.

22 Q The technology director for your district handles the
23 installation of the filter products, is that correct?

24 A That is correct.

25 Q Your district also has a technology committee, doesn't

1 it?

2 A It does.

3 Q And the technology committee is comprised of Crystal

4 Lane, the technology director.

5 A Yes.

6 Q I need you to answer audibly for the court reporter.

7 A Oh, I'm -- yes. Yes.

8 Q Thank you. And it is also comprised of a technician, Ken

9 Olsen?

10 A Yes, it is.

11 Q And you believe the technician Ken Olsen to be

12 technologically savvy, don't you?

13 A Absolutely.

14 Q It is also comprised, the technology committee that is,

15 of three technical teachers.

16 A Yes.

17 Q And three librarians from the three schools in the

18 district.

19 A Yes.

20 Q Now, your school district conducted no studies of the

21 amount of sexually explicit materials minors encountered

22 before filters were implemented in the district. Isn't that

23 correct?

24 A That is correct.

25 Q Do you know what the term overblocking means?

1 A Yes, I do.

2 Q And could you give me that definition, the definition
3 please?

4 A Overblocking is blocking material that shouldn't be
5 blocked. For example, the word breast has a lot of
6 connotations, so it depends on the context. If it is beside
7 chicken or if it is beside cancer, then the software should
8 not block it. It's the context that it should block are the
9 words that go with it that seem sexually explicit.

10 Q Okay. Now using that definition that you just gave for
11 the term overblocking, there have been no studies at your
12 school on the overblocking rate since the SquidGuard has been
13 installed. Isn't that correct?

14 A That is correct.

15 Q And there have been no studies on the overblocking rate
16 of the SquidGuard filtering in your district since the
17 SquidGuard filter was installed. Isn't that correct?

18 A That is correct.

19 Q Do you know what the term underblocking means?

20 A Yes, I do.

21 Q And could you give me your definition for underblocking?

22 A Underblocking lets things through that shouldn't be let
23 through, like sexual content or hate things, or those kinds
24 of things that we don't want kids to have access to.

25 Q Okay, now using your definition that you just provided

1 for underblocking, there have been no studies at your school
2 on underblocking rates since the SquidGuard filter has been
3 installed.

4 A Correct.

5 Q And there have been no studies of the underblocking rates
6 of the SquidGuard filter in your district since the
7 SquidGuard filter was installed.

8 A Correct.

9 Q When a child's attempts to access restricted materials,
10 if it is blocked by the filter, the child receives a Word
11 document web page indicating that the material is blocked,
12 correct?

13 A Correct.

14 Q But you don't generally, you don't routinely generate
15 reports of how often students are attempting to access
16 inappropriate material, isn't that correct?

17 A That is correct.

18 Q And you would only be aware of, or you would be aware of
19 a pornographic site that had not be blocked only if you found
20 it or it was reported to you. Isn't that correct?

21 A We, the server can log instances where the restricted
22 page has come up. Whether or not they track it in terms of
23 how much time they have to deal with that, I can't. I don't
24 know. It's it can. Whether they do.

25 Q A moment to confer with counsel, your Honor.

1 THE COURT: Sure.

2 Q I have no further questions. Thank you very much.

3 A Thank you.

4 THE COURT: I have one or two questions, ma'am. How
5 many students are in the school where you work?

6 THE WITNESS: I have 277, grades 7 through 12.

7 THE COURT: Have any of your students or teachers
8 reported to you any incidents of underblocking or
9 overblocking?

10 THE WITNESS: No, they have not, sir.

11 THE COURT: That's all I have. If I have generated
12 any questions from anybody else, you are welcome to ask them.

13 MR. CAMPBELL: No, your Honor.

14 THE COURT: Redirect?

15 MR. VAN KWAWEGEN: No further questions, your Honor.

16 THE COURT: Okay. You are excused.

17 THE WITNESS: Thank you.

18 THE COURT: Thank you. Be careful getting down. Is
19 plaintiff prepared for the next witness?

20 (Witness excused.)

21 MS. CRUMP: We are, your Honor. Your Honor, as our
22 next witness, plaintiff --

23 THE COURT: Could you state your name for our new
24 reporter, please?

25 MS. CRUMP: I'm sorry. My name is Catherine Crump.

1 As our next witness, plaintiffs call Jonjie Sena.

2 THE COURT: Would you remain standing and take the
3 oath, please?

4 JONJIE SENA, Sworn.

5 COURTROOM DEPUTY: Please state your full name for
6 the record and spell your entire name.

7 THE WITNESS: My full name is Guido Jonjie Sena.

8 That is G-u-i-d-o, the first name, Jonjie, J-o-n-j-i-e, last
9 name is Sena, S-e-n-a.

10 THE COURT: Good morning, Mr. Sena.

11 THE WITNESS: Good morning.

12 THE COURT: You could position the microphone so you
13 don't have to keep moving toward it, so it just sort of sits
14 in front of you. Thank you.

15 DIRECT EXAMINATION

16 BY MS. CRUMP:

17 Q Mr. Sena, what is your educational background?

18 A I have a bachelors in computer science and a masters also
19 in computer science, focused on distributed systems and
20 networks.

21 Q Do you have any kids?

22 A I have two children, a teenager and a 5-year-old.

23 Q And where do you work?

24 A I work for Ace*Comm corporation in Maryland.

25 Q What is Ace*Comm?

1 A Ace*Comm is about a 25-year-old company and we sell
2 software products to the telecommunications industry. In
3 particular we sell software to operators, fixed line, data,
4 mobile and provide software solutions for them.

5 Q Can you describe the kinds of companies to which you
6 supply products?

7 A Again, most of the operators, so somebody like a Nextell
8 or Sprint, PLDT. We are installing in about 70 countries
9 right now. It is about 300 operators, so they are going to
10 be the equivalents of the Verizons of the world, both large
11 and small. So we have several large customers that have
12 millions of subscribers. We also have some that have 5,000
13 lines. It depends on where they are.

14 Q And how long has Ace*Comm been in existence?

15 A A little over, I think it is 1983 officially in the
16 incarnation. So that is about 25 years, give or take.

17 Q Can you describe generally some of the products that
18 Ace*Comm offers to mobile carriers?

19 A Well we provide several. We come from what they call the
20 OSS based, the operations support system base. So
21 traditionally we've provided things like billing systems,
22 data collection systems, provisioning systems. This is what
23 allows a subscriber to use a service, any service, to
24 configure it, to bill for it, to analyze it. And more
25 recently we have offered value added applications, and that

1 is part of the testimony I have today around controls of
2 services on a mobile phone or other communication devices.

3 Q How long have you been at Ace*Comm?

4 A I've been there about 13 and a half years.

5 Q And what is your current position?

6 A I am the director of product management.

7 Q What does that involve?

8 A I lead up a, I own a product line is one way to look at
9 it. So I own the particular services that we call the patrol
10 suite. So I manage the, all, I guess, the product life
11 cycle, features, how we price it, how we market it, who we go
12 after, comparisons to competitors, marketing sales and
13 development of the product line.

14 Q And how long have you had your current position?

15 A About four years, focused on the parental control
16 solution probably coming on about a year and a half, two
17 years.

18 Q And before you were in your current position, can you
19 describe generally the types of work that you did at
20 Ace*Comm?

21 A I've come from the technical side of the house, so I was
22 initially a software developer, a team league for development
23 for the products that we sell to the operators base, and then
24 that was approximately say seven or eight years. I moved
25 into architecture, which again is a technical position more

1 into looking at technology standards that we need to satisfy
2 when we build the product. So compliance and technology
3 choices.

4 Q Does your company offer a product that enables mobile
5 carriers to provide parental controls?

6 A Yes, it is called Parent Patrol.

7 THE COURT: Spell it for the record, please.

8 A Parent, P-a-r-e-n-t, Patrol, P-a-t-r-o-l.

9 THE COURT: Thank you.

10 Q And what, if any, is your involvement with Parent Patrol?

11 A I was part of the team that conceptualized it. I draft
12 up all of the requirements for it and I coordinate with the
13 development team to create it and I work with the marketing
14 guys to, you know, evangelize it, and I work with the sales
15 team to hopefully sell it.

16 Q So this is part of the product line that you manage?

17 A This is the produce line I manage exclusively today.

18 Q When did Ace*Comm first offer Parent Patrol?

19 A We first announced it about spring 2005 from an avail,
20 from a feature capability. We actively started selling it
21 about fall of 2005.

22 Q Why did Ace*Comm decide to offer Parent Patrol?

23 A There is a variety of different reasons. As a company
24 selling product we were trying to satisfy what we thought was
25 a market need. There have been solutions in the space to

1 provide similar functionality for internet services, web
2 services, and there was the concern of being able as phones
3 started evolving. And more recently as mobile phones started
4 having broad-band like capabilities it became more, it became
5 more reasonable to expect that the same user experience on a
6 mobile phone might be available as you might get on a PC. So
7 we were trying to bridge that gap of taking that capability
8 on the web and enforcing the same type of phones on the
9 mobile phone. There was probably one other aspect and that
10 is in the industry there has been some movement of, I call
11 them codes of conduct. CTIA has created some guidelines and
12 in about 2004, the IMCB, the Independent Mobile
13 Classification Board in the U.K. drafted a more specific
14 guidelines of use, of acceptable use as an operator. It is
15 very similar to the CTIA guidelines and the MMA guidelines.
16 And many countries have started doing that. Since about 2004
17 give or take.

18 Q I'm sorry, Mr. Sena, you references something called the
19 CTIA. What is that?

20 A The CTIA is an industry body that, it is not regulatory,
21 but it is more of a collection of operators and vendors that
22 serve the telecom industries, specifically the wireless
23 industry. And put guidelines or suggestions or how to
24 address certain issues. So...

25 Q I'm sorry, guidelines for?

1 A It is guidelines of, it is recommendations and
2 guidelines. It covers many things. One of the things that
3 they have rolled out that is specific to this case is the
4 mobile content guidelines.

5 Q All right, what generally does Parent Patrol do?

6 A Well, parent control, the general concept of it, is to
7 provide a parent or an administrator the ability to define a
8 profile of acceptable use. So in one instance it might allow
9 a parent to go over a web page and configure say, for their
10 child, the concept of usage limits, how much they can use the
11 phone, be it for voice, be it for messaging, be it for how
12 often they surf. It gives them the ability to define time of
13 day restrictions, so after 10:00 at night you can't use the
14 phone for any of those services I've mentioned. It has the
15 concept of content categories. And the previous witness
16 talked about, you know, pornographic sites, alcohol sites,
17 and drug-related sites. So broad categorization of
18 restricted nature. And we also have the concept of the black
19 list and light list that sort of override some of the those
20 higher level definitions.

21 Q All right. I'd like to talk about those in more detail,
22 but first, for what kinds of mobile devices does Parent
23 Patrol allow parents to restrict mobile phone usage?

24 A The solution that we are offering is a network-based
25 solution. What that means is it is independent of the

1 handset. So it allows you to control any mobile device that
2 is offered by a mobile operator. That means mobile phones,
3 blackberries, laptops with data cards that go through the
4 cellular network. So it is something that you use that goes
5 through the operator for those services. You can control all
6 of those.

7 Q All right and where is Parent Patrol installed?

8 A It is installed within the carrier's network, so there is
9 nothing that needs to be installed on a phone. I am probably
10 going to use the example that was given. So if you sort of
11 follow the previous testimony, they have servers. They have
12 a proxy, something, and that SquidGuard is really a form of
13 the classification as you understand it, but they do have a
14 proxy. And ultimately we provide a very, very similar
15 architecture for the mobile web. The key difference really
16 between the mobile and the web capability is the way you
17 access that service, so there is a smaller screen and there
18 is an air interface. But ultimately to access any type of IP
19 capability, it goes through a gateway, which really a simple
20 way to look at it is it translates between the air interface
21 and the IP interface. And those are usually called GGSN's or
22 PVSM's, depending on the technology of the operator. And
23 those technologies, the reason I give those as an example is
24 because Sprint and Verizon have a very different technology
25 from say Cingular and TMobile. The first is a CDMA carrier,

1 the other is a GSM carrier.

2 Q All right. So to whom do you market Parent Patrol?

3 A Well, there are two marketing approaches. We are
4 marketing to the broad market with parents in mind because
5 the expectation is the parents want this type of service.
6 But we are selling to the mobile operators directly, not to
7 the end users.

8 Q All right, so can parents buy Parent Patrol?

9 A Not directly from us.

10 Q But the theory is that they will be able to buy it
11 through the mobile carrier?

12 A Yes.

13 Q Okay. All right. You mentioned a number of different
14 forms of restrictions that a parent using Parent Patrol can
15 place on mobile phone usage. I believe one of the things
16 that you mentioned are time of day restrictions. What, could
17 you describe what that means?

18 A A time of day restriction is sort of setting limits. It
19 is, again, I have children so a lot of this comes from
20 personal that I've applied that. Think of TV. All right,
21 you can say, look, after 10:00 at night, you can't watch. So
22 we've taken that same concept because we believe it is a
23 similar discipline requirement. So I can do things like at
24 10:00 at night you can't use the phone any more. Now there
25 are exception. We don't block 9-1-1. We allow white listed

1 numbers, like a parent to always call. But we can restrict
2 access to particular services between certain time ranges.
3 You can do other things like, I can restrict SMS services
4 during school hours. And part of the reasoning there is SMS
5 or text messaging has become an issue around the issues of
6 cheating, for example.

7 Q Okay. So are these time of day restrictions available
8 for voice calls?

9 A They are available for voice calls, actually, they are
10 available for the voice, the messaging and the data services.
11 Our general concept is that because we are aiming for a mass
12 market penetration, you have to simplify the solution. You
13 can't have that whole battery of technical folks setting this
14 up. And so we make sure it has the same semantics for any of
15 the services on the phone. So I can restrict voice, I can
16 restrict SMS, I can restrict data, either independently or as
17 a whole.

18 Q Okay and you've used the term SMS. What does that mean?

19 A SMS refers to a short messaging systems, which is the
20 actual text messaging that children are very, very, I guess,
21 very active in the use of that technology today.

22 Q And you use the term data. What is that?

23 A Yeah, data is sort of a catch-all. It is the different
24 services available on the phone above and beyond the
25 messaging and the voice calls. And a great example of that

1 would be mobile web.

2 Q Okay. And just to be clear, the time of day restrictions
3 work for all of these means of communication?

4 A Yes, they can apply to all of those services.

5 Q Okay. You also mentioned that Parent Patrol permits
6 black list restrictions. What are those?

7 A Black lists are, well it depends on the service. So if
8 we are talking about voice calls, I can put somebody on the
9 black list. Let's say your child has a friend that, is an
10 undesirable friend or an old girlfriend that we don't want to
11 talk to your child. We have the ability to put that person
12 on the list so that no calls to or from that person would be
13 allowed. It will similarly also be used for the messaging,
14 so the SMS you can block those messages. In a concept of
15 content, it is more about providing sites. So again, the
16 example provided, certain sites could be put on that that
17 would be blocked at all times.

18 Q Okay. And you also mentioned a white list restrictions.
19 What are those?

20 A White lists is sort of the opposite of that. So white
21 lists are usually those that you always allow. We call them
22 always allow lists. And the concept of it is you are always
23 able to reach that person or to reach that content. And the
24 key example of that is when you put restrictions on a phone,
25 one of the primary reasons parents get a phone is for safety.

1 So that they need to reach their kid. So if you block calls
2 and you block messages after 10:00 at night and the kid
3 doesn't come home, it still allows a parent or whoever is
4 specified to reach that child, by messaging, by voice. And
5 similarly with content, the example of, there was a question
6 on blocking and underblocking. A good example that I've
7 personally encountered from web usage is my child was
8 researching on Catholic saints are part of a confirmation
9 process. And so she went and it blocked the site. And I
10 looked into it and it turned out it was blocked, our church
11 site was blocked because it fell into a category of
12 religious/cult. So it is such a broad category, I don't
13 necessarily want her accessing cult, but what I did was I
14 added that to a white list. So I carried that concept over
15 as an ability to refine the broad categorization of
16 restricted content.

17 Q All right, you also mentioned usage restrictions. What
18 are those?

19 A Usage restrictions, you can think of them as allowances.
20 Very similar to the concept of pre-paid. So it gives you the
21 ability to do things, again, depends on the service. A voice
22 call, a telephone call might be measured in terms of minutes
23 of use. So you are allowed to talk for 15 minutes a day or
24 20 minutes a week or 500 minutes a month. So we can restrict
25 that similar to a pre-paid. For messaging it might be the

1 number of SMS messages I send. So you can say I am going to
2 give you only 20 a week. You've got to manage it. So it
3 resets after the week, but you only get 20 this week. For
4 data it might be packets, or megabytes. Very typical, and
5 the reason you would do that is a lot of the billing
6 solutions by operators today are focused on those metrics.

7 Q Okay. And the restrictions you've been mentioning, time
8 of day, black lists, white lists, usage restrictions, are
9 these all available for the mobile web?

10 A Yes. Again, the general concept is make the same
11 solution available for the different services. Because I
12 don't think most parents distinguish between voice, messaging
13 or data. To them it is a phone and it's used. So we are
14 trying to make sure that we apply that to the different
15 services available on the mobile phone.

16 Q All right. You also mentioned content filtering
17 restrictions. What are those?

18 A Yes. Content filtering achieves a variety of different
19 purposes. It is really a broad categorization of a class of
20 content. So again, I am going to go back to some of the
21 descriptions. So there are many ways people do this. It is
22 either for age-appropriate restrictions, for example
23 pornography should not be reached by children. Or it might
24 be of a sort of a ethical-type restriction, such as the
25 example of the MartinLutherKing, because of the beliefs of

1 one community, that they don't want to expose that. So
2 content filtering is the ability to specify a profile of
3 acceptable use, similar to the list. But what we do is we
4 can customize that and we enforce that on the fly.

5 Q All right. And that is available on the mobile web?

6 A That is also available for the mobile web, yes.

7 Q All right. From now on I would like to ask you some
8 questions about the web content filtering you mentioned.

9 A Okay.

10 Q Can you describe generally how Parent Patrol engages in
11 web content filtering?

12 A Engage, how it works technically?

13 Q Yes, how does it work technically?

14 A Under the covers?

15 THE COURT: Excuse me for interrupting. I don't
16 understand the question, so I won't understand the answer.

17 MS. CRUMP: Okay. Sorry, your Honor.

18 THE COURT: Can you break it down?

19 MS. CRUMP: I can ask, I can try to ask a clearer
20 question.

21 BY MS. CRUMP:

22 Q How technically does Parent Patrol engage in mobile web
23 content filtering?

24 A Okay. There are two different steps. I've sort of
25 outlined this. There are three different major steps that

1 are required to be able to do content classification. The
2 first, as a user, a request is made. And this is true, this
3 is similar on a web page when you type in a URL and you send
4 the click or you go to a website and you click on a link
5 which ultimately does the same thing. It submits a request.
6 And what we do is we intercept that request. Similarly on a
7 mobile phone you can do the same thing. You can enter an
8 actual URL or you can go through a menu-based system to
9 submit a similar request. And the first object of the day is
10 to capture, to be aware of that request and to capture it.
11 That is what the Squid application does in the internet
12 capability. We have a very similar concept in the mobile
13 web. There is a proxy that is aware of the different
14 requests for content. That is the first step. So you have
15 to be aware and you have to intercept that request. Once you
16 have that request, the second step that we do is we submit it
17 for classification. Classification means you get that
18 website, either the URL or the actual content and you say,
19 what is this and in what category does it fall. And that
20 categorization will return to you one or more categories.
21 And it could be a business site, it could be a pornography
22 site, it could be a gambling site, or some broad
23 categorization. And that is the second step. Once we
24 receive those set of categories, we then compare that to the
25 profile of acceptable use. Again, I am assuming it has been

1 personalized for a child, but it could be generalized for a
2 large number of people. It could be a profile for example.
3 We compare those categories and look at that list and say, is
4 this blocked or not. Understanding that there is also the
5 ability to override that through white lists. So it might be
6 block, like the religious/cult, but my church site might be
7 an exception. And based on that profile, we decide whether
8 or not to permit it or to block it. And when we block it we
9 also show, we redirect it right now to an image. Again,
10 similar to the Word document, today we pop up an icon that
11 has sort of a, you know, restricted signs. The red with a
12 slash through it.

13 THE COURT: The big circle with the red slash
14 through it?

15 A Exactly. The no smoking bar. Same concept, or depending
16 on, now that restriction can also be by time of day. So you
17 get a different icon. So you get a different indication
18 depending on the reason for blocking it.

19 Q All right. Let's go back to the first step for a second.
20 How does Parent Patrol know what content a mobile user is
21 trying to access?

22 A We can provide a proxy or can we can interface with an
23 existing proxy. So it is a very typical architecture in any
24 web service deployment today. Be it web or mobile web, its
25 IP --

1 MR. GOMEZ: Objection. The witness is repeatedly
2 engaging in narrative responses to --

3 THE COURT: The answers are overbroad and not
4 answers to questions usually and goes well beyond that
5 because of his expertise. He is a human being so you'll have
6 to figure out how to manage that.

7 MS. CRUMP: All right.

8 THE COURT: Answer the question, please. That's the
9 best thing to do. Don't get any more than the question asks
10 for. If they want more, they'll ask.

11 THE WITNESS: Okay.

12 BY MS. CRUMP:

13 Q All right. You used the term proxy device. What is
14 that?

15 A Proxy device is an intermediate server within a web
16 infrastructure that requests are first sent to before
17 ultimately going to the requested content server.

18 Q Okay. And Parent Patrol uses a proxy device?

19 A Yes.

20 Q Okay. So after Parent Patrol intercepts the request
21 using the proxy, what is the second step you mentioned?

22 THE COURT: Could you speak up, please. You speak
23 very softly.

24 Q After Parent Patrol intercepts the content request using
25 a proxy, what happens next?

1 A It submits it for classification.

2 Q Okay. And does Parent Patrol do the classification?

3 A Yes. We actually work with partners to provide the
4 classification capability.

5 Q Okay. And what partners does Parent Patrol work with?

6 A We have several. The primary partner is a company called
7 RuleSpace.

8 Q Are there any others?

9 A Yes, we also work with a company called Fast Data
10 Technologies.

11 Q All right. In addition to Fast Data Technologies and
12 RuleSpace, are there other companies in the market who
13 provide classification services?

14 A Yes. There is actual several of them. The ones I am
15 familiar with are websites.

16 MR. GOMEZ: Objection, your Honor. We are having,
17 this is a witness who is a fact witness and now we are
18 engaging in lay opinions. He has not been proffered as a lay
19 opinion --

20 THE COURT: The objection is overruled. I haven't
21 heard him asked a request for lay opinions. He is talking
22 about factual information. If you think no foundation has
23 been laid, that is a proper objection. But the inferences he
24 is stating are from personal knowledge. I have no other way
25 to infer.

1 MR. GOMEZ: Well, the witness has not established
2 that he is, that he has personal knowledge of these
3 companies.

4 THE COURT: Then the objection is sustained and
5 we'll strike the answer unless counsel, if she wants to
6 proceed with this line, she has to establish a foundation.

7 MS. CRUMP: Yes, your Honor.

8 BY MS. CRUMP:

9 Q Based on your personal knowledge, are you aware of any
10 other companies, in addition to RuleSpace and Fast Data that
11 classify contents?

12 A Yes. I've actually --

13 Q How do you, how are you aware of those other companies?

14 THE COURT: How did you become aware? How do you,
15 why and how did you get the information?

16 A I have spoken to the company as part of being my product
17 management, I guess, responsibilities. So I have spoken
18 specifically to WebSense. I have spoken also to NetSweeper.
19 I have spoken to PeerSite.

20 Q Okay. And given that there are a variety of companies
21 that offer classification services, why did you choose to
22 partner with RuleSpace and Fast Data?

23 A A variety of business reasons and technical reasons. The
24 main technical reasons were RuleSpace has one of the larger
25 list based classification data bases around. It is about 60

1 million entries. And also the fact that they came from an ISP
2 space, which we viewed as an advantage.

3 Q All right. After RuleSpace, you used the RuleSpace. Or
4 let's take RuleSpace as an example. After you use RuleSpace
5 to classify the content, what happens next?

6 A We compare the categories returned to the profile and
7 determine whether or not to allow or block that content
8 request.

9 THE COURT: Excuse me for interrupting. It turns
10 out to be euphemism. You refer to the, and I assume you mean
11 some technical device manager control by your company. But
12 you use the term we as if a person were doing something. The
13 inference is the machine is doing it. But you don't explain
14 that.

15 A Well, yeah. Let me make that more accurate. I
16 apologize. The parent --

17 THE COURT: Don't answer anything now. Just be
18 aware of what you are doing. I am making the jump from the
19 we to the equipment, but that is just a guess on my part.

20 Q All right. You mentioned that Parent Patrol decides what
21 content a user can access through reference to a user
22 profile. What kind of user profile does Parent Patrol use?

23 A There is a web page that a parent can set up through a
24 web server that allows you to select the categories of
25 restricted use, plus the ability to provide the white lists

1 and black lists to override those settings.

2 Q All right. I understand that you've prepared a
3 presentation showing the Parent Patrol user interface. Is
4 that correct?

5 A Yes.

6 MS. CRUMP: All right. Your Honor, may I approach
7 the witness to give him a binder with that presentation and
8 also your Honor.

9 THE COURT: Sure, do you have one for me?

10 MS. CRUMP: Yes.

11 THE COURT: That's good. Thank you.

12 BY MS. CRUMP:

13 Q Please refer to the document that has been previously
14 marked as Plaintiff's Exhibit 70. Is that the presentation
15 that you've prepared?

16 A Yes.

17 Q All right. Please turn to, specifically, to page 4 of
18 Plaintiff's Exhibit 70.

19 A Okay.

20 Q What are we seeing on this page?

21 A This is the web interface that is given to a parent to be
22 able to configure for the child.

23 Q All right and I see there are a number of different
24 buttons on this screen. Can you describe what they are?

25 A The buttons on the lower part, they remove and add, allow

1 you to add other categories of restricted use. So if you
2 want to add another restrictions, say religious/cult, you
3 would click on that and select it on the next screen.

4 Q All right. And in this example, what categories are
5 activated?

6 A Alcohol, chat, drugs, gambling and pornography.

7 Q All right. I see there are a list of tabs across the top
8 of the screen. What are those tabs?

9 A Those tabs are different sub screens that give you the
10 control for the different restriction mechanisms. So limits
11 give you the usage limits we talked about, blocked time, or
12 time of day restrictions. And they always allow, never
13 allow, give you the black list, white list capabilities.

14 Q All right. And what does the line that starts,
15 subscriber, indicate?

16 A This is to show the child and the phone number for that
17 child that this profile applies to.

18 Q So in this example, is the restrictions being placed on a
19 user named Andy?

20 A Yes.

21 Q How does Parent Patrol work if a parent has more than one
22 child?

23 A There is another screen that you can get, that you select
24 the subscriber first. Once you select the subscriber, you
25 fall into the screen for that particular subscriber.

1 Q Okay. And do parents have to place the same restrictions
2 on each child?

3 A No, these are personalized on an individual basis.

4 Q Do you know how long using the web interface it takes
5 parents to configure Parent Patrol blocking for their
6 children?

7 MR. GOMEZ: I'd like a foundation.

8 THE COURT: No, the question is a yes or no question
9 and the objection is overruled.

10 A Yes.

11 Q How do you know?

12 A Part of the operators we engage with ran user focus
13 groups and exposed it to some of their subscribers and
14 parents to evaluate the product.

15 Q Are there any other reasons you know the time it takes?

16 A We also submitted it to a usability expert as part of the
17 product design.

18 Q All right. How long does it take a parent to configure
19 Parent Patrol for a child?

20 A Expectation is in the two to three minute range per
21 child.

22 Q In addition to using a web interface, are there any other
23 ways a parent can configure Parent Patrol for their child?

24 A Yes. The customer service has a similar screen, so a
25 parent can go through customer service. And we provide an

1 IVR interface as well, interactive voice response interface
2 over the phone.

3 Q Do you know how complicated or easy it is to circumvent
4 Parent Patrol restrictions?

5 A We believe it is actually very difficult.

6 MR. GOMEZ: Objection, your Honor. Calls for yes or
7 no response. The witness is engaging in a narrative.

11 BY MS. CRUMP:

12 Q Mr. Sena, will you please tell me, do you know how easy
13 it is to circumvent Parent Patrol?

14 THE COURT: Yes or no, sir.

15 A No.

16 Q Why not?

17 A It is dependent on how it is rolled out in a carrier.

18 THE COURT: Could you say that again, please?

19 A The architecture of the system, it depends on how it is
20 rolled out. We have, we expose a variety of firewalls in the
21 recommended structure for an operator which hides it from
22 open hacking. That uses standard web architectures.

23 THE COURT: Okay, for what it is worth, I don't
24 understand anything that you just said.

25 (Laughter.)

1 Q Okay.

2 A Okay.

3 THE COURT: I'm not being critical though.

4 A No.

5 Q Does Ace*Comm make any particular recommendations to
6 carriers in terms of how to prevent, how to configure the
7 system such that it is difficult to circumvent?

8 A Yes.

9 Q What are those recommendations?

10 A The servers that provide access to open subscribers over
11 the internet are placed into a DMZ, a demilitarized zone
12 which are protected by firewall and users require a password
13 to access to the capability and the actual application
14 servers are behind additional firewalls.

15 Q All right, think we need to unpack that a little bit.

16 You mentioned password capability. What is that?

17 A A parent to access the site that is shown here must go
18 through an authentication. A user name password mechanism.

19 Q And by the site that is shown here, do you mean the web
20 interface?

21 A The web interface, yes.

22 Q So the web interface is password protected?

23 A It is, yes.

24 Q All right. You also mentioned something about a
25 firewall. What is a firewall?

1 A A firewall is a system installed by the operator that
2 detects traffic coming in that can have its own configuration
3 of acceptable sites or requests coming in. Think of it as
4 the black list, white list concept from an IP address point
5 of view typically.

6 Q Okay and how does that relate to preventing circumvention
7 of the Parent Patrol?

8 A It is a standard methodology today to restrict to certain
9 domains that can access it. So particular webs, IP
10 addresses, different, it is not a solution we provide, so it
11 is something that you put in front of any server exposed to
12 additional, that the operator already defines rules. They do
13 that for their portals today.

14 Q So is a firewall something that protects a server from
15 circumvention?

16 A Yes. It protects from unauthorized use.

17 Q All right. I want to go back for a second to the three
18 steps necessary to implement, that Parent Patrol uses to
19 implement filtering. How do you, do you know how long it
20 takes for these three steps to occur?

21 A In some --

22 THE COURT: Yes or no, please.

23 A Yes.

24 Q How do you know?

25 A We conducted some tests.

1 Q Okay. So between the time a user requests a web page and
2 Parent Patrol decides whether access is appropriate, how long
3 does that take?

4 A A sub-second, probably under 200 milliseconds total.

5 Q Does Parent Patrol cause any noticeable user delay?

6 A Not to a normal user, no.

7 Q Does any mobile carrier currently offer Parent Patrol to
8 its customers?

9 A No.

10 Q Do you know whether any mobile carriers in the United
11 States currently offer a parental controls other than the
12 Parent Patrol product?

13 A Yes, I do.

14 Q How do you know?

15 A Market research and I've spoken to most of the mobile
16 operators.

17 Q What mobile operators offer a parent parental controls?

18 A The majority of, Cingular provides capability for media,
19 Disney Mobile provides a wall garden, TMobile provides a wall
20 garden.

21 Q What is a wall garden?

22 A A wall garden is a set of sites that you can access only
23 from that set that is normally offered by the operator
24 directly. You can go outside. It is the model that AOL took
25 initially. It publishes sort of content, you can only access

1 that content. You can't hit the open internet.

2 Q All right. Do you know whether mobile carriers in the
3 United States are actively soliciting bids for mobile web
4 content filtering?

5 A Yes.

6 Q How do you know?

7 A We've --

8 MR. GOMEZ: Objection, your Honor. This is
9 speculation. Calls for speculation.

10 THE COURT: Well we haven't asked him how he got the
11 knowledge. In this set of questions you left that out as I
12 recall it. You asked him if he had the knowledge. He said
13 yes and then you went right to the knowledge, rather than how
14 he gained it. I think that's what happened.

15 MR. CAMPBELL: All right, your Honor. May I --

16 THE COURT: If you think differently, then ask
17 whatever question you want.

18 BY MR. CAMPBELL:

19 Q All right. Mr. Sena, how do you know that mobile
20 carriers are actively soliciting bids for mobile web content
21 filtering?

22 A We are actively engaged in the sales process with most of
23 them today. We have responded to some RFP's and we are
24 helping them in some of the pre-RFP activities right now.

25 Q So has Ace*Comm participated in bids for mobile web

1 content filtering by U.S. carriers?

2 A Yes.

3 Q Can you specifically tell me which United States mobile
4 carriers are soliciting bids from mobile web content
5 filtering?

6 A The top five largest operators, Cingular, Verizon,
7 TMobile, Sprint and AllTell all have initiatives right now.

8 THE COURT: What was the last one, sir?

9 A AllTell.

10 THE COURT: Thank you.

11 Q In about how many bids by U.S. mobile carriers for web
12 content filtering has Ace*Comm participated?

13 A Around 10, 15 maybe.

14 Q Do you know generally how the bidding process works?

15 A There are three main areas. Normally we approach the --

16 THE COURT: Excuse me, sir. Just answer whether you
17 know or not.

18 A Yes.

19 THE COURT: We are having a structural, we have our
20 rules, you have yours. You don't understand ours may be the
21 trick.

22 A Sorry.

23 THE COURT: Tit for tat, you see.

24 A Yes.

25 Q How do you know?

1 A That is part of my job function.

2 Q Okay. What are the steps generally in the bidding
3 process?

4 A Normally we engage the marketing team who determine the
5 feasibility of a service and whether or not to roll it out.
6 Next stage we normally go to the technical teams to show them
7 a proof of concept to show that it will work. And once we
8 get beyond that, we normally proceed to an actual bid, an
9 actual proposal with pricing and a technology description.

10 Q Can you describe how far Ace*Comm has gotten in the
11 bidding process?

12 A We have gone to the technical discussions with most of
13 the mobile operators in North America.

14 Q Have you gotten any further with any of them?

15 A We've gotten one customer who has gone all the way and
16 has accepted the contract. And we have made proposals to
17 others, but have not, they have not yet decided.

18 Q All right. What customer has acquired the Parent Patrol
19 product?

20 A It is a North American provider.

21 Q Can you tell us specifically which North American
22 provider?

23 A No.

24 Q Why not?

25 A We are under an NVA restriction, not to pre-empt their

1 marketing initiatives.

2 Q All right. And for what aspects of the Parent Patrol
3 products is there a contract with this North American
4 carrier?

5 A Right now it is for voice services.

6 Q Do you know whether the carrier may implement other
7 aspects of the Parent Patrol product?

8 MR. GOMEZ: Objection. Leading question.

9 THE COURT: Well the question implies do you or do
10 you not. That is the implication. Overruled.

11 A Yes.

12 Q What do you know?

13 A I have been told they want to go in the early 2007 time
14 frame.

15 MR. GOMEZ: Lacks foundation, your Honor.

16 THE COURT: Overruled. This gentlemen knows all
17 about his company, helped them get all of this material. I'm
18 not going to keep asking for something that is part of his
19 regular job to lay a foundation. It doesn't make any sense.
20 We are overusing the technique I think with all due respect,
21 Mr. Gomez.

22 MR. GOMEZ: Yes, sir.

23 Q I'm sorry, Mr. Sena. I missed your answer?

24 A Yes, I know that they are considering data content
25 filtering.

1 Q All right.

2 THE COURT: You said something about early 2007?
3 You didn't quite get it out.

4 THE WITNESS: Yes, early 2007 is the time line.

5 THE COURT: Thanks.

6 BY MS. CRUMP:

7 Q Does Ace*Comm have any competitors in the mobile web
8 content filtering area?

9 A Yes.

10 Q Who are your competitors?

11 A BCGI, Redney (ph) and a lot of the IM providers, so
12 Ericson has offerings. Blue Coat.

13 Q Are there any other?

14 A There are several others.

15 MS. CRUMP: Your Honor, may I have a moment to
16 confer with my co-counsel?

17 THE COURT: Sure.

18 (Pause.)

19 BY MS. CRUMP:

20 Q Mr. Sena, I just have a couple of additional questions
21 for you. Can you tell us the date on which the first part of
22 Parent Patrol's product will be rolled out by the North
23 American carrier?

24 A November 13, 2006.

25 Q All right. And can you describe the differences between

1 filtering web content for a mobile phone versus on a
2 traditional personal computer?

3 A Yes.

4 Q What are the differences?

5 A The classification strategy is the same. The main
6 difference is how you can intercept the content to direct it
7 to the proxy.

8 Q And how is it different?

9 A You configure different devices essentially. For mobile
10 networks you deal with a new network element called a GGSM
11 and a PDSM, which is what converts the air into an IP
12 interface. For most web services you are dealing with some
13 kind of web server.

14 MS. CRUMP: Okay. Your Honor, at this time,
15 plaintiffs would move Plaintiff's Exhibit 70 into evidence.

16 MR. GOMEZ: No objection, your Honor.

17 THE COURT: Plaintiff's Exhibit Number 70 is
18 received into evidence.

19 (Plaintiff's Exhibit 70 admitted into evidence.)

20 MS. CRUMP: We have no further questions, your
21 Honor.

22 THE COURT: We'll do the cross after a mid-morning
23 recess. Ten minute recess, please. We're off the record.
24 Counsel are excused.

(Court in recess 11:06 to 11:16 o'clock a.m.)1

1 MR. GOMEZ: Your Honor, before we start up again, I
2 just want to alert you that the next witness is the one about
3 whom there has been a declaration.

4 THE COURT: All right, I have a protocol for that.

5 You're welcome to be seated.

6 Is the cross-examiner going to use any documents
7 other than plaintiff's exhibits?

8 MR. GOMEZ: No, your Honor.

9 THE COURT: Thank you. Mr. Gomez, go right ahead.

10 CROSS-EXAMINATION

11 BY MR. GOMEZ:

12 Q Good morning, Mr. Sena, my name is Raphael Gomez and I
13 represent the defendant in this action.

14 A Good morning.

15 Q You were speaking about a contract with respect to Parent
16 Patrol before the break. I want to make clear, your company,
17 Ace*Comm does not have a current contract with any carrier
18 for parent controls filtering product, does it?

19 A Right now, no.

20 Q And the company that you have a contract with, you
21 indicated that a company that -- or carrier that you cannot
22 disclose the name, is that correct?

23 A That's correct.

24 Q Now, you indicated that the carrier is located somewhere
25 in North America, is that correct?

1 A Yes.

2 Q You cannot identify whether that carrier is, in fact, in
3 the United States, is that correct?

4 A That's right.

5 Q And the contract with the carrier that you cannot
6 disclose the name of, is a contract for voice services, is
7 that correct?

8 A Yes.

9 Q So, when this contract starts out, there will be no
10 services or provided for filtering, is that correct?

11 A Yes.

12 Q Now, when you were speaking about categorization, you
13 indicated that there is relationship, a partnership with
14 other entities and I believe RuleSpace and Fast Track were
15 two of those, is that correct?

16 A Yes.

17 Q Now, Ace*Comm has not done any testing of RuleSpace or
18 Fast Track's categorization other than some general spot
19 checking, isn't that correct?

20 A That is correct, yes.

21 Q So, and Ace*Comm has not conducted or contracted with any
22 independent third parties to test the categorization service
23 that's being provided by RuleSpace or Fast Track, isn't that
24 correct?

25 A Yes.

1 Q And the only testing that Ace*Comm has done is of the
2 categorization that we're speaking of is some general spot
3 checking, is that correct?

4 A Yes.

5 Q Now, are you familiar with the term mobile optimized web
6 page?

7 A Yes.

8 Q Could you just briefly tell me what that is?

9 A Web pages are usually large, given the screen size of
10 mobile phones. They reduce or shrink down some of the
11 content so that it is more efficient and fits into the real
12 estate of a mobile phone.

13 Q And are you familiar with the term Wap?

14 A Yes.

15 Q Would you tell us what that means?

16 THE COURT: Can you spell the word, please?

17 MR. GOMEZ: W-A-P.

18 THE WITNESS: Wap is a, it is a similar technology
19 to HTML of a much more limited subset, focused on browsing on
20 a mobile phone. Done -- it's still available today, but it's
21 an older technology.

22 Q So, with respect to testing, Ace.com has not or you are
23 not aware of Ace.com doing any specific testing on mobile
24 optimized web pages, have you?

25 A No, that's right.

1 Q Okay. Now, you used the term, walled garden when you
2 were referring to filtering services that may be provided by
3 other competitors, if I understand you correctly.

4 A Provided by operators.

5 Q By operators, excuse me. Could you just tell me briefly
6 whether, well, walled garden, when you use that term, you're
7 talking about a white list, essentially, aren't you?

8 A Yeah, effectively, I guess.

9 Q Okay. Just so it's clear, you know, when the customer
10 has a, you know, a Verizon phone, let's say. And it's a
11 fairly limited phone, but it has access to the internet. Are
12 you aware that Verizon uses a walled garden approach for such
13 phones in terms of access to the internet?

14 A Yes.

15 Q Now, what that means is there is -- well, explain briefly
16 what that means?

17 A To be able to restrict a particular subscriber to a
18 certain number of content, there is something provisioned per
19 subscriber that tells you what your capabilities are.

20 Usually, for data content, it points you to a gateway
21 effectively, which has rules of where you can go. When you
22 get to that web page, it allows only the content that they
23 offer themselves and you are not able to go to an arbitrary
24 site.

25 Q So, in other words, in a walled garden approach, in terms

1 of filtering, the provider, let's say, will essentially
2 identify those websites that the customer could go to, is
3 that correct?

4 A Yes.

5 Q So, it wouldn't function the same as if one were at home,
6 let's say, with a PC or a MacIntosh and were accessing the
7 internet, let's say through a DSL, through a browser, et
8 cetera, through an ISP, in terms of having, let's say, I'll
9 describe it as a more unlimited access to the internet, is
10 that correct?

11 A Actually, no.

12 Q No, okay.

13 A When you have a walled garden, the same concept exists in
14 the internet. If you look at the AOL model, I think there's
15 sites like Kid Zones that give you, if you can get -- it's
16 the ISP provides restrictions about where you can go. In
17 effect, that is a walled garden approach.

18 Q Okay. So, just to be clear then, in the walled garden
19 approach, the ISP identifies those sites that you can go to?

20 A Yes. They own the content usually. They host that
21 content.

22 Q I see. Now, Ace.com with respect to its parent control
23 product, has some recommendations to companies that it would
24 like to sell its product to in terms of a recommendation as a
25 cost per month for parent control as an add-on, is that

1 correct?

2 A Yes.

3 Q And Ace.com recommends approximately \$3 to \$5 per month
4 per child as an add-on for the parent control product?

5 A It's less of a recommendation. We've run that as a part
6 of the surveys with the operators themselves.

7 Q And what that means is that that's about -- that would be
8 a reasonable cost for that service, is that correct?

9 A Yes.

10 Q And so, that additional cost would amount to
11 approximately \$36 to, let's say, \$60 per year, per child for
12 the product. Is that correct?

13 A Yes.

14 MR. GOMEZ: If I may just have a moment, your Honor.
15 (Pause.)

16 Q Just so the record is clear, when I referred to RuleSpace
17 and I think I may have referred to a company, Fast Track, it
18 is Fast Track or Fast Data Tech.

19 A Fast Data Tech.

20 Q That's correct, thank you.

21 THE COURT: Can you spell that for me?

22 THE WITNESS: Fast in quick.

23 THE COURT: Yes.

24 THE WITNESS: Data, D-A-T-A, Tech -- Technologies,
25 T-E-C-H.

1 THE COURT: Thank you.

2 MR. GOMEZ: No further questions, your Honor.

3 THE COURT: Any redirect?

4 MS. CRUMP: No redirect, your Honor.

5 THE COURT: Mr. Sena, you're excused.

6 THE WITNESS: Thank you.

7 THE COURT: Take care getting down.

8 (Witness excused.)

9 THE COURT: Mr. Hansen?

10 MR. HANSEN: Your Honor, plaintiffs next witness is

11 Heather Corinna, she will be presented by Mr. Wizner. As I

12 advised the Court, this is the witness who submitted the

13 declaration at the end of the day yesterday, concerning the

14 way in which she testified.

15 THE COURT: All right, let me tell you what I'm

16 going to do. Do I understand, well, let's back up a minute.

17 Does the defendant have any objection to the Court allowing

18 the witness to appear by synonym?

19 MR. GOMEZ: The defendant takes no position on this

20 and will defer to the Court.

21 THE COURT: My intention is to anticipating granting

22 the request to appear by synonym. I've prepared an order

23 that depends upon the witness verifying under oath the facts

24 set forth in the declaration, since it's not notarized and

25 isn't even -- reflect the usual or some common devices at the

1 end to assure it's reliability. So, I will ask the witness a
2 few questions when she is sworn in. But I decided she will
3 be sworn in by the name that she usually uses.

4 MR. WIZNER: Thank you, your Honor. Your Honor,
5 plaintiffs call Heather Corinna.

6 THE COURT: Spell her last name for the record,
7 please.

8 MR. WIZNER: Her name is C-O-R-I-N-N-A.

9 THE COURT: Good morning.

10 THE WITNESS: Good morning, your Honor.

11 THE COURT: Please remain standing to take the oath.

12 THE WITNESS: Oh, sorry.

13 HEATHER CORINNA, Plaintiff's Witness, Sworn.

14 THE CLERK: Please state and spell your full name
15 for the record.

16 THE WITNESS: It's Heather Corinna. Heather is
17 H-E-A-T-H-E-R. Corinna is C-O-R-I-N-N-A.

18 MR. WIZNER: And your Honor, I would like to give
19 you and the witness a binder of exhibits.

20 THE COURT: I have a few questions of the witness.

21 THE WITNESS: Of course.

22 THE COURT: Ms. Corinna, could you look at this
23 document, please. Take a minute to look at both pages
24 carefully.

25 THE WITNESS: Okay.

1 THE COURT: Is that your declaration of facts?

2 THE WITNESS: Yes, it is.

3 THE COURT: Are those facts true and correct?

4 THE WITNESS: Yes, they are.

5 THE COURT: Does that document bear your signature
6 at the end?

7 THE WITNESS: Yes, it does.

10 THE WITNESS: Yes.

21 DIRECT EXAMINATION

22 BY MR. WIZNER:

23 O Good morning, Ms. Corinna.

24 A Good morning.

25 0 And can you tell us how you're employed?

1 A I am self-employed.

2 Q In what ways are you self-employed?

3 A Mostly by running several internet sites on which I do
4 professional sex education, writing and photography.

5 Q And where do you live?

6 A I live in Seattle, Washington.

7 Q Briefly describe your educational background.

8 A Okay, I attended a performing arts high school and then I
9 went to an alternative liberal arts college for three and a
10 half years. Later, I also did Montessori teacher training.

11 Q What are your principal sources of income?

12 A They are again from most of my freelance work. They are
13 from payments for individual photography clients, publishers
14 and writing clients, as well as donations and private grants
15 for Scarleteen.com.

16 Q Where has your writing been published?

17 THE COURT: Excuse me, you mentioned a website,
18 could you spell it for the record, please?

19 THE WITNESS: Sure, it's S-C-A-R-L-E-T-E-E-N.C-O-M.

20 THE COURT: Thank you.

21 THE WITNESS: You're welcome.

22 Q I'll repeat the question. Where has your writing been
23 published?

24 A My writing has been published on the websites which I
25 maintain independently. As well as on a number of other

1 websites, both adult erotic websites, as well as feminist and
2 sex education sites. In addition, it's been published in
3 various magazines, as well as anthologies.

4 Q Where has your photography appeared?

5 A My photography, much in the same way, has appeared at
6 several of my websites, as well as other websites, including
7 online gallery exhibits, as well as in-person gallery
8 exhibits, books and magazines.

9 Q Have you done any consulting work?

10 A I have done consulting work before. Generally, that's in
11 issues of women's issues when it comes to sexuality and
12 internet use, as well as young adult use and sex information.

13 Q How long have you been involved with the world wide web?

14 A Since about 1996.

15 Q You mentioned some of your own websites. Which websites
16 do you operate?

17 A I operate Scarleteen.com, Scarletletters.com.

18 Q Maybe you should spell each one when you mention it for
19 the first time.

20 A Sure, scarletletters is S-C-A-R-L-E-T-L-E-T-T-E-R-S.COM.

21 Then there is also Femmerotic.com, that's F-E-M-M-E-R-O --
22 yeah, see, spelling bee -- E-R-O-T-I-C.COM. And then
23 heathercorinna.com, spelled like my first and last name. And
24 allgirlarmy.org.

25 Q Let's start with scarletletters, what is

1 scarletletters.com?

2 A Scarletletters.com is a website that we brought live in
3 February of 1998, run by myself and several other women which
4 intended to deliver sexuality information as well as
5 entertainment by women for female users.

6 Q What is scarletletters' mission?

7 A Essentially, scarletletters' mission is to showcase work
8 pertaining to or around issues central to sexuality and
9 women's sexuality specifically, by various artists and
10 authors. And to make that visible to, again, a largely a
11 female audience.

12 Q Why did you decide to publish scarletletters online?

13 A There were several reasons that I decided to do that.
14 The print media was limited in terms of both women's content
15 and being able to publish frank sexual content. It's also
16 very expensive. So, it was cost restrictive to do it that
17 way. And we have the capability of reaching a much wider
18 audience, especially when it comes to women and sexuality
19 with the internet, than we would with print media.

20 Q About how many daily visitors does scarletletters.com
21 have?

22 A Right now it's about 2,000.

23 Q And what's the most that it's ever had?

24 A In good years, it was more like 6,000 a day.

25 Q What is scarleteen.com?

1 A Scarleteen.com is a sex education and information
2 clearing house that's aimed at teenagers and young adults.

3 Q When did you start scarleteen.com?

4 A We started scarleteen in December of 1998.

5 Q What is scarleteen's mission?

6 A Scarleteen's mission is to do pretty much just that.
7 It's to provide sexuality information and education for young
8 adults and teenagers that is comprehensive, accurate and age
9 appropriate as determined by them.

10 Q Is scarleteen's content available for free?

11 A Yes, it is.

12 Q Why did you decide to publish scarleteen online instead
13 of in a print magazine?

14 A I can't for the life of me figure out how I would be
15 allowed in a print magazine to publish scarleteen.

16 Q Are there any particular benefits associated with the
17 internet?

18 A Absolutely. Again, like with women and all the more so
19 with teenagers, the internet allows young adults, especially
20 in more conservative areas or in countries where sex
21 information is particularly hard to find, to have access that
22 they wouldn't have otherwise to that information.

23 Q And how many people visit scarleteen's website in a
24 typical day?

25 A Right now it's about 25,000 users a day.

1 Q Finally, what is femmerotic.com?

2 A Femmerotic.com, much like scarletletters is, again,
3 sexuality information by women pertaining to women, except
4 the woman that it's by is me. So, it's a more personal site
5 than scarletletters.com is.

6 Q And how many people visit femmerotic's website?

7 A It's again about 2,000 a day.

8 Q And just briefly, you mentioned two other websites, what
9 is heathercorinna.com?

10 A Heathercorinna.com is my broader, more professional
11 portfolio, so if I have photo clients that are pretty much
12 already at the go stage or publishers who are searching,
13 that's where they're going to go.

14 Q And you mentioned a site called allgirlarmy.org?

15 A Allgirlarmy.org is young radical feminists networking
16 site for women under 23.

17 Q Are you generally aware of the law being challenged in
18 this case?

19 A Yes, I am.

20 Q And are you able to determine precisely what speech the
21 law prohibits?

22 A No, I am not.

23 Q Do you have an understanding of exactly what the law
24 means when it refers to speech that is "patently offensive"
25 with respect to minors?

1 A No, I do not.

2 Q Do you have an understanding of what the law means when
3 it refers to material that "taken as a whole, lacks serious
4 literary, artistic, political or scientific value for
5 minors"?

6 A No, I do not.

7 Q Do you believe any of the contents on scarletletters,
8 scarleteen or femmerotic might be prohibited by the act?

9 A Absolutely.

10 Q Why do you fear that?

11 A Because even as I function under the Government that I
12 live in in this country, they have made clear that the sex
13 information that I give to teenagers isn't what they want in
14 schools and isn't what they're willing to pay for. So, if I
15 were to find community standards just as my federal
16 government and no one else, I'd be told right there and then
17 that what I do is inappropriate and not sexually appropriate.

18 Q Let's start with scarleteen and talk about it in some
19 more detail. Describe in general the content that appears on
20 scarleteen.

21 A Sure. Scarleteen has two main portions of the site. It
22 has a static portion of the site, meaning the articles that
23 myself or other authors and volunteers pen. Users read
24 those, but they don't interact with them. This is kind of
25 what we give them as a foundation and basis of their sex

1 information. And then there's an interactive portion of the
2 site, which is the message boards where they come and they
3 can ask any kind of question they either have about the
4 material or when they don't read the materials -- plenty of
5 them don't -- general sexuality questions that they have of
6 myself, of my volunteers and of other users.

7 Q Who writes the static content for scarleteen?

8 A It's primarily myself, but again, we've also had other
9 guest authors and other volunteers have written it as well.

10 Q Who is responsible for the design of the website?

11 A I am.

12 Q Who is responsible for the editorial decisions?

13 A That's me again.

14 Q And generally, what standards do you apply in determining
15 whether content is appropriate for scarleteen?

16 A The way that I've run scarleteen in terms of what I aim
17 to do is that I really try and let our users dictate to me
18 what's appropriate. If they've asked me the question, by my
19 standards, generally it's appropriate. That said, I also
20 apply standards of feeling out how many battles I want to
21 fight in a given day. And to me, as an adult and not a
22 teenager, what feels socially and age appropriate pretty much
23 by my gut and what feels safe to me.

24 Q Does scarleteen include content that is sexually
25 explicit?

1 A Yes, it does.

2 Q Why does scarleteen include content that's sexually
3 explicit?

4 A Because I say that it's a comprehensive and accurate sex
5 information site and there is really no way to give them that
6 information without being explicit sometimes.

7 Q I have put a binder of materials in front of you. And if
8 you could open that binder of materials and turn to what's
9 marked as page 10 of Plaintiff's Exhibit 42 and maybe we can
10 put that on the screen as well. Do you recognize that page?

11 A Yes, I do.

12 Q What is that page?

13 A That is the front page for the scarleteen website.

14 Q And if we could take a look at the top-left corner of
15 that page, in what I think is pink, there are a list of words
16 down the top left-hand column. What do those words
17 represent?

18 A Those words represent different sections of the website.

19 Q Let's look at a couple of them. The first word is skin
20 deep, what does skin deep refer to?

21 A Skin deep is particularly a physiology and body issues,
22 so sexual anatomy, anatomy of the breast, things like that.

23 Q Below that is the word sexuality, i don't know if that's
24 how you pronounce it, what section of the site does that word
25 refer to?

1 A That's the most generally sexuality section. So, in that
2 section, you'll have things like am I ready for sex with
3 someone else, how do you practice safer sex, how do you
4 evaluate when you want to use birth control, is everything
5 normal.

6 Q Below that is the word reproduction, what section of the
7 site does that refer to?

8 A It is what it sounds like it is. It's where did I come
9 from.

10 Q Below that it says infection?

11 A Okay.

12 Q And what is that about?

13 A That's generally a sexually transmitted diseases and
14 infection information.

15 Q And then next word that's displayed is -- the next words
16 are pink slip, what does pink slip represent?

17 A Pink slip is a section of the site that's primarily
18 geared at the female readers of the site.

19 Q And what kind of content appear in that section?

20 A Oh, there are things like what to expect are your first
21 gynecologist exam and explaining the menstrual cycle.

22 Q The next section is boyfriend, what is that section?

23 A That, like pink slip, is the section of the site that are
24 articles geared towards male readers.

25 Q And below that, it says take two, what is take two?

1 A Take two is relationship stuff.

2 Q And the next word is gaydar, can you tell us what
3 material appears in the gaydar section of scarleteen?

4 A Sure, the gaydar section is the queer, gay and lesbian
5 section. So, there will be things like explaining what those
6 terms mean, what's homosexuality, what's bisexuality, what's
7 it mean to be queer. Is it is a sin. How do I come out of
8 the closet.

9 Q And if we could turn to page 22 of Plaintiff's Exhibit
10 42. And maybe make the top part a little larger so we can
11 see what it is. Do you know what this document is?

12 A Yes, I do.

13 Q What is it?

14 A This is an article that's published in the gaydar section
15 at scarleteen.

16 Q What is the title of the article?

17 A It's the Making of a Homo.

18 Q What's the article about?

19 A The article is a first-person narrative by a now adult
20 author about coming into his own, being queer at 15.

21 Q And is the article sexually explicit?

22 A Yes, it is.

23 Q And if we could go back to page 10. The word scarleteen
24 shop appear on that page. What is the scarleteen shop?

25 A The scarleteen shop is essentially this small place where

1 we can try and make some money. We have affiliate agreements
2 with Palace Books, for instance and a reading list of books
3 they might want to purchase. Some sexuality products, things
4 like menstrual products, condoms, dental dams, as well as
5 t-shirts promoting the scarleteen site, things like that.

6 Q And looking just below those words, it says current top
7 ten articles at ST and I'm just going to ask you about a
8 couple of those articles. The first -- the second one is
9 masturbation. What is that article about?

10 A Well, the masturbation article that that links to
11 specifically, it's generally just about if it's okay to
12 masturbate. Is it something you need to feel ashamed about.
13 Pretty big basics on masturbation.

14 Q Does it describe masturbation?

15 A Yes, it does.

16 Q And below that, it says first time memoir, what does the
17 first time memoir refer to?

18 A The first time memoir is a first-person narrative about
19 first opposite sex intercourse, dealing with expectations as
20 they meet reality. Not so well. And basically, offering
21 comfort to readers who find that their expectations and
22 reality did not meet.

23 Q One of the articles is called painful sex. What is that
24 article about?

25 A Painful sex is about an article for young women who are

1 experiencing pain during vaginal intercourse. Describing
2 various reasons why they might be experiencing that pain. And
3 other sexual activities they could engage in, so that they no
4 longer are feeling that pain.

5 Q And does it describe those other sexual activities?

6 A In part, yes.

7 Q Below that is an article called orgasm and sexual
8 response. What is that article about?

9 A That article simply outlines the human sexual response
10 cycle, pretty much from arousal through orgasm and resolution
11 in terms of explaining how it works. Different symptoms your
12 body will have when you're aroused or experiencing orgasm.

13 Q In the middle of page 10, the words got questions, get
14 answers appear. And if you click on those words, what
15 section of the site would you be taken to?

16 A That would take you to the message boards, which is the
17 interactive part of the site.

18 Q And explain how the message boards work?

19 A Sure, the message boards are staffed pretty much 24 hours
20 a day by myself and several other volunteers. Users who want
21 to use the boards have to go through a simple registration
22 process. They just need a valid e-mail to have a password
23 sent back to. They have to be over the age of 13 because of
24 the COPPA regulations. And then they're in. They can post
25 questions any time they want, to myself, to my volunteers, to

1 other users. They can also initiate other kinds of
2 discussions. They also use it just as community, because
3 they like it there.

4 Q Can anyone over the age of 13 participate in the message
5 boards?

6 A Yes, they can.

7 Q And what categories of content are discussed on the
8 message board?

9 A Pretty much everything that we have discussed in the
10 static part of the site, so they can discuss things like am I
11 pregnant, how do I take a pregnancy test. Where might I get
12 an abortion. How do I decide these things. How do I decide
13 when it's time to have sex with my boyfriend. How do I even
14 know how to have sex with my same sex girlfriend. Things
15 like this.

16 Q And what are some examples of discussions that have taken
17 place in the message boards in recent weeks?

18 A Actually, I just doubly looked --

19 THE COURT: The ones she just described?

20 MR. WIZNER: Yes.

21 THE COURT: She did describe a whole list of them.

22 MR. WIZNER: Okay.

23 THE COURT: I'm not trying to stop what you're
24 doing, but I just think she would repeat the ones she already
25 gave.

1 MR. WIZNER: No, I'm sorry, your Honor, my other
2 question was generally what kinds of content. Then I was
3 asking for some specific examples. But we can move on.

4 Q Are discussions on the message boards sexually explicit?

5 A They can be, yes.

6 Q Are there some sexual subjects that you consider
7 inappropriate for the message boards?

8 A Yes.

9 Q What are some of those?

10 A I don't want to discuss things that are patently illegal,
11 statutory rape situations in depth and detail, bestiality. I
12 also, besides the legal stuff, try and teach them not to be
13 what I could consider tacky. And have them ask overmuch for
14 sexual techniques that both strikes me as less tasteful than
15 it could be and pretty unnecessary.

16 Q Would you fear prosecution under COPPA for any of the
17 material on scarleteen?

18 A Yes.

19 Q Why?

20 A Well, for starting, talking about the message boards.
21 You know, some of it is I don't have control over what the
22 users post. And that's a lot of users. We have 30,000
23 registered users at those message boards. They're
24 international. They're of all ages and you know, mixes. And
25 I moderate those boards, but there's only so much I can do

1 and there's only so much I would want to do. As well, even
2 in terms of what I can control what I post, what my
3 volunteers say. We speak in sexually explicit terms a lot of
4 the time because we're providing sexuality information as
5 asked for.

6 Q Would you fear prosecution for each individual page of
7 scarleteen?

8 A In total?

9 Q No, each individual -- are there some pages on scarleteen
10 for which you would not fear prosecution?

11 A Yes.

12 Q In the bottom left-hand corner of page 10, it indicates
13 that scarleteen is part of something called the Sex Ed Web
14 Circle, what is that?

15 A The Sex Ed Web Circle is a link ring, meaning that there
16 had been a site before ours that had that same link.
17 Somebody would have hit next on the list and come to us and
18 then they next on our list, they go to another site on that
19 ring. The Sex Ed Web Circle, in particular, is both young
20 adult and adult sexuality information and education sites.

21 Q Do any of those sites provide content that's similar to
22 scarleteen?

23 A Not identical, but similar, yes.

24 Q Let's discuss scarletletters. In general, what kind of
25 content does scarletletters provide?

1 A Scarletletter is a mix of arts as pertains to eroticism
2 and sexuality, visual arts, short fiction, poetry, creative
3 non-fiction, as well as non-fiction topical articles about
4 sexuality.

5 Q Who contributes the content to scarletletters.com?

6 A It's a very wide mix of different authors and artists,
7 including myself.

8 Q Who is responsible for the editorial decisions on
9 scarletletters.com?

10 A I am.

11 Q What standards, if any, do you apply in selecting content
12 for scarletletters?

13 A The standards for scarletletters are completely different
14 than they are for scarleteen, because I am serving legal
15 adults. So, generally, again with me, it's a matter of
16 picking them by quality and taste. Is it good art? Is it a
17 good story. As well as a couple small quasi-legal issues for
18 us like, if safer sex is in there. If the stories seem
19 exploitive to us, but that's pretty much it.

20 Q Is the content on scarletletters intended for minors?

21 A No, it is not.

22 Q What is the first page that a visitor to scarletletters
23 typically sees?

24 A They'll see a splash page.

25 Q Can you explain what a splash page is?

1 A Oh, sure, it's kind of old school, nobody does it but me
2 anymore, but there -- rather than getting when we see the
3 front page to the scarleteen site where you open it and
4 immediately there's all this information and you're in the
5 site. With the splash page, this is a short text, it's a
6 pretty blank page that tells you in summation what is inside
7 the site. What the content of the site is. The splash page
8 of scarletletters explains our general mission in terms of
9 our content. Just in terms of quality. Explains that it's
10 primarily sexual content. And explains that I do not intend
11 for minors to view it.

12 Q What's the reason for putting a splash page on
13 scarletletters?

14 A It's -- there are several reasons for doing it. One of
15 the reasons is that again, you know, my particular approach
16 to sex and sexuality is that I feel like everybody has it
17 thrown in their face enough that I want anyone reading my
18 material to make a choice. To see my material and have it be
19 something they want to do, rather than something they fall
20 onto or it's, you know, tossed in their face. Again, too,
21 when it comes to minors, I don't feel like scarletletters is
22 the most appropriate place for them. And on that splash
23 page, I direct them to scarleteen, which I do feel is an
24 appropriate place for them, obviously.

25 Q Let's look at some of the visual art that appears in

1 scarletletters. First, does any of the visual art on
2 scarletletters depict an actual or simulated sexual act or
3 sexual contact? An actual or simulated normal or perverted
4 act? Or a lewd exhibition of the genitals or post-pubescent
5 female breast?

6 A Other than not knowing what perverted means, yes.

7 Q If we could turn to page 16 of Plaintiff's Exhibit 42 and
8 display it? And maybe we could enlarge it as well. Do you
9 recognize this page?

10 A Yes, I do.

11 Q What is it?

12 A This is one of the pages in the visual arts section at
13 scarletletters. It would be artist Melvin Motin's gallery.

14 Q And how is Melvin Motin?

15 A Melvin Motin is a photographic artist, it's what he does.

16 Q For the record, are Melvin Motin's photographs sexually
17 explicit?

18 A Yes, some of them are.

19 Q Do you believe his photographs have artistic value for
20 adults?

21 A Yes, I do.

22 Q If we could turn to page 12 of Plaintiff's Exhibit 42.
23 And maybe enlarge the art work. Do you recognize this page?

24 A Yes, I do.

25 Q What is it?

1 A That is artist, Carolyn Weltman's gallery page. Again,
2 in the visual arts section.

3 Q And who is Carolyn Weltman?

4 A Carolyn Weltman is a Welsh artist from New York that does
5 line illustration, that is almost always sexual.

6 Q Let's turn to the fiction section of scarletletters.com
7 and first, does any fiction on scarletletters describe an
8 actual or simulated sexual act or sexual contact? An actual
9 or simulated normal or perverted sexual act or lewd
10 exhibition of the genitals or post-pubescent female breast?

11 A Most of those things, most of them do.

12 Q And if we could turn to page 13 of Plaintiff's Exhibit
13 42. And maybe enlarge the top so we can see it's title. Do
14 you recognize this document?

15 A Yes, I do.

16 Q What is it?

17 A It's a short story from Cynthia Richie that's in the
18 prose and poetry section of scarletletters.

19 Q Are you familiar with the story?

20 A Yes, I am.

21 Q Is this story sexually explicit?

22 A Very much so.

23 Q And is it generally indicative of the kind of fiction
24 that's published on scarletletters?

25 A Yes, it is.

1 Q Do you think scarletletters fiction has value for adults?

2 A I absolutely do.

3 Q Does scarletletters have links to any other websites?

4 A Yes, it does.

5 Q Do you know which websites scarletletters links to?

6 A In any -- any time the authors or artists publish
7 something, they get to put up their biography. So, anything
8 they want to link to, for the most part, they can do those
9 links. So, there's thousands of links at this point. Also,
10 on the splash page and in other parts of the site, I link to,
11 by my choice, to other sites. On the splash page, some of
12 those are promotional sites, which are intended to either
13 recognize larger sites which have given us reviews and give
14 us traffic or be part of other sites who haven't done
15 reviews, but they're intended to generate traffic for our
16 site.

17 Q Could you identify two or three sites for which you have
18 placed links on the front page of scarletletters?

19 A Sure, there's a link to janesguide on there. There's a
20 link to zenporn, there's a link to mondoerotica, there's a
21 link to persiankitty.

22 Q What is persiankitty?

23 A Persiankitty is what's kind of known as a link farm.
24 It's a site that's mainly a pornographic websites, listed in
25 different sections. You put a link to them on your front

1 page, they put a link to you, so that they are sending you
2 traffic by people who are using it as a kind of menu.

3 Q What is janesguide?

4 A Janesguide is an adult sexuality site review.

5 Q Would scarletletters link to a site like hustler.com?

6 A No.

7 Q Why not?

8 A Because I don't want to. Because a lot of what is done
9 at hustler, to me, is not sexy, it's sexist and misogynist
10 and it doesn't support my goals for what I do. Now, some of
11 those other sites, all of their goals aren't in line with
12 that, but enough that I feel comfortable.

13 Q Do you consider any of scarletletters content
14 pornographic?

15 A I don't know. By my personal standards, I guess, yes,
16 some of it. By anyone's standards but mine, I don't know.

17 Q Would you fear prosecution under COPPA for the material
18 in scarletletters?

19 A Yes, I would.

20 Q Why?

21 A Because I know that it falls under pornography for other
22 people's standards, as well as my standards.

23 Q Let's discuss the femmerotic website. And if you could
24 describe generally the content that appears on femmerotic?

25 A Sure, femmerotic is primarily text and photography.

1 Sometimes other mixed media art. It includes a section of my
2 photography work, as well as my written work including a
3 journal that I've kept on line there since 1999.

4 Q And just to be clear, is all of the work that appears on
5 femmerotic your own work?

6 A Not all of it, most of it.

7 Q And if we could turn to page nine of Plaintiff's Exhibit
8 42. And is this what you described earlier as a splash page?

9 A Yes, it is.

10 Q Why do you have this page on femmerotic?

11 A It's the same reason that I have it for scarletletters.
12 I want people to making a choice to come in and see work and
13 know where they're going and be in the right space to see it.

14 Q If someone linked to femmerotic from another website,
15 would that person automatically be directed to the splash
16 page?

17 A No, they would not.

18 Q If we could turn to page 26 of Plaintiff's Exhibit 42.
19 Do you recognize this page?

20 A Yes, I do.

21 Q And is this the page that users would see if they clicked
22 photo and art at the top of the femmerotic site?

23 A Yes, it is.

24 Q Towards the bottom of this page there's some text. And I
25 know it's quite small. I don't know if it will be easier for

1 you to read it in your exhibit book or on the screen, but
2 it's on the screen in front of you, as well.

3 A Okay.

4 Q If you could start at the word blending and read very
5 slowly and clearly. Would you read some of that text out
6 loud?

7 A Of course.

8 THE COURT: Wait a minute, some of the --

9 MR. WIZNER: All right, would you read --

10 THE COURT: Decide what you want.

11 Q Yes, would you read two paragraphs aloud?

12 A Of course. "Blending more traditional styles, archetypes
13 and themes with new approaches. Keeping the physical and
14 emotional tone real, grounded, varied and intense, I try to
15 step outside genre by creating work that explores sexuality,
16 gender and personal identity within fine art, without a
17 typical fine art genericism or loss of personal identity of
18 the subject.

19 Material that aims to protest stereotype, to be
20 feminist, queer, body image and sexually healthy and
21 expressive that runs the gamut from tackling major issues to
22 having a damn good time and which can be enjoyed and
23 appreciated by viewers of varied genders and sexual
24 orientations. I aim to put a diverse array of real body,
25 real mind, real heart and real sexuality out there with my

1 own, in hopes of making a dent in the homogenous, hetero,
2 male-directed, over-glossed and often vapid pit of mass
3 produced and mainstream sexual material. In which the image
4 usually starts and stops on the one dimensional surface and
5 reflects male fantasy and ideal put upon women, rather than
6 female directed sexual and artistic expression.

7 In my mind, the difference between my work and
8 pornography of various types isn't as simple as not shaving
9 my armpits sometimes, being over 30, being queer, not having
10 fake breasts, often going without makeup or including other
11 models or lovers who may not or certainly do not fit
12 mainstream beauty standards or simple sexual or gender
13 identities. It's a complex combination of creative,
14 political, personal and artistic motivation, very different
15 business practices, socio-economics and context. And
16 certainly, different aims than most mainstream sexuality
17 content or photography of women and/or the body."

18 Q And do the words that you just read accurately describe
19 the goals of the photography section at femmerotic?

20 A Yes, they do.

21 Q And are these photographs in this exhibit generally
22 indicative of the kind of photographs that appear on
23 femmerotic?

24 THE COURT: In those on page 26?

25 Q Those on page 26 and 27, and for the record, 28, as well.

1 A Yes, they do.

2 Q What happens when a user clicks on one of these
3 photographs?

4 A It enlarges to a slightly larger, they're not full-sized,
5 version of the image.

6 Q If we could look at page 17 of Plaintiff's Exhibit 42.
7 Is this what would appear if the user clicked on one of the
8 photographs?

9 A In a smaller window, yes.

10 Q And for the record, do the photographs on femmerotic
11 depict an actual or simulated sexual act or sexual contact,
12 an actual or simulated normal or perverted sexual act or a
13 lewd exhibition of the genitals or post-pubescent female
14 breast?

15 A Sometimes, yes.

16 Q You mentioned a journal section on this site. What is
17 that?

18 A The journal section is the kind of journal that people
19 with better boundaries would write for themselves and keep on
20 their own desk, except thousands of people read mine.

21 Q And is the journal section ever sexually explicit?

22 A Not often, but every now and then, yes.

23 Q And why is it sometimes sexually explicit?

24 A Because my life isn't always sexually explicit.

25 Q Is the content on femmerotic available for free?

1 A Some of it, yes.

2 Q Which content is not available for free?

3 A The great archive of all of the photography work that
4 I've done. You know, there's I think, at this point, 6,000
5 photographs in the pay section. As well as some of the
6 archive of my journal and short fiction and other written
7 work is in the subscription section.

8 Q And what is the subscription section?

9 A The subscription section is a section that's password
10 protected. So, in order for a user to go into that area,
11 they would have had to have used a merchant service to obtain
12 a subscription after going through my rules and guidelines
13 for what's okay for them to be subscribers. Pay me and then
14 they get a password.

15 Q Why did you create a subscription section on this site?

16 A I need to get paid and that's kind of a big part of it.
17 I mean, the other part of it is that, you know, I'm one
18 person alone doing sexuality work and it's very personal work
19 and I'd like to have a little bit of a boundary in terms of
20 not everyone, everyone being able to see all of it all the
21 time.

22 Q And at this time, how many subscribers does femmerotic
23 have?

24 A Right now it's like 40.

25 Q You said 4-0?

1 A 40.

2 Q Okay. Do you know the gender of your subscribers?

3 A I have an idea.

4 Q And how do you know?

5 A From e-mails, from the names on their credit cards, from
6 when we do demographic studies, things like that.

7 Q And by your estimate, what percentage of your subscribers
8 are women?

9 A It's usually around 75 percent.

10 Q Do you think the content on femmerotic has value for
11 adults?

12 A Yes, I do.

13 Q Would you fear prosecution under COPPA for any of the
14 material on femmerotic?

15 A Yes, I would.

16 Q Why?

17 A Just by virtue of the descriptions of what is included in
18 COPPA. I can think of endless numbers of things which would
19 easily fall under those descriptions.

20 Q And are the materials in Plaintiff's Exhibit 42, please
21 take a minute to look through the rest of the materials in
22 Plaintiff's Exhibit 42.

23 (Pause.)

24 Q Are the materials in Plaintiff's Exhibit 42 accurate
25 printouts of web pages from scarleteen, scarletletters and

1 femmerotic?

2 A Yes, they are.

3 MR. WIZNER: Your Honor, at this time, plaintiffs
4 would like to move exhibit 42 into evidence.

5 THE COURT: Any objection?

6 MS. ULRICH: Your Honor, defendant has an objection
7 to just a few of the pages. Specifically, defendant objects
8 to page 1 and page 2. These pages are blow-up images that
9 appear elsewhere within the exhibit. The image on page 1 is
10 a duplicate of page 17 and as the witness explained, page 17
11 is how that image appears when somebody clicks on the link.
12 The image on page two is a duplicate of a photo on page 26.
13 And it's defendant's position that those other pages are more
14 representative of the actual images on the website. And so,
15 defendant does object to pages 1 and 2.

16 MR. WIZNER: Your Honor, I can make this very easy
17 for you. We're very willing to remove pages 1 and 2 from the
18 exhibit and have the rest admitted into evidence.

19 MS. ULRICH: And one more thing. And this --

20 THE COURT: Both will be removed, please.

21 MS. ULRICH: This is not so much of an objection,
22 but just a statement for the record. As to page 3 of
23 plaintiff's exhibit, it appears that the content did not
24 printout from scarleteen and I would just like to note for
25 the record that when I typed in that URL last night, the

1 content, I did not get the same page that it was blocked.
2 But it appeared that the skin deep content did appear.
3 So, I don't object to this, I would just like to note for the
4 record, I don't know that this is always an accurate
5 representation of the material.

6 THE COURT: You mean this particular page is not?

7 MS. ULRICH: This particular page, just page 3.

8 MR. WIZNER: Your Honor, it appears that when we put
9 the exhibits together, there was some kind of error in the
10 functionality of the site and so this page appeared instead
11 of the site that would appear when skin deep is ordinarily
12 put in. So, the Court can either remove or ignore this page
13 and plaintiffs don't care either way.

14 MS. ULRICH: And like I said, your Honor, this is
15 not a formal objection, I just wanted to make that clear for
16 the record.

17 THE COURT: The page is not responsive to the
18 search, so the Court will ignore it. There is no need to
19 take it out.

20 MR. WIZNER: That's fine.

21 THE COURT: It just makes the exhibit clumsy if you
22 don't have sequential pages. Okay. Well, Plaintiff's
23 Exhibit 42 is received in evidence with the exception of
24 pages 1 and 2.

25 (Plaintiff's Exhibit 42 received in evidence.)

1 BY MR. WIZNER:

2 Q Ms. Corinna, do you operate scarleteen, scarletletters
3 and femmerotic with the objective of making a profit?

4 A That's not the whole of my objective, but that's part of
5 my objective.

6 Q How does scarleteen generate income?

7 A Scarleteen generates income both in very small part by,
8 as I said before, those shop links or the affiliate
9 agreements with books stores, with other merchants. We also
10 accept donations. We'll get private grants. And then within
11 the next year, I'll be using that same space to sell copies
12 of my book for them, which is also coming out on the spring.

13 Q What book are you referring to?

14 A The title of the book is S-E-X and it will be a young
15 adult sexuality guide, much in the same vein as scarleteen,
16 which is published by Avalon Publishing Group and we'll be
17 selling on the site and via the book affiliates.

18 Q Does scarleteen accept advertising?

19 A Yes, it does. We don't get offered advertising very
20 often, unfortunately, but we accept it.

21 Q Has it ever had advertising?

22 A Yes, we have one advertiser right now, which is Lunapods
23 and then we also use, as part of an affiliate arrangement,
24 Condomania for advertising, as well.

25 Q And how do you generate income from scarletletters?

1 A As right now I don't. But when I do, from scarletletters
2 again, it's banner advertising in which the client would pay
3 us for placing the banner on the site.

4 Q And how do you generate income from femmerotic?

5 A From femmerotic, it's two-fold. It's both by virtue of
6 the few people who choose to subscribe, subscribing. But
7 femmerotic, like my personal portfolio, also is a jumping off
8 point for me to cultivate other work. So, fans and readers
9 of mine will hire me to do photo sections with them. Other
10 publishers have hired me to do work for magazines or
11 anthologies through that site, as well.

12 Q Is maintaining the femmerotic site important to your
13 livelihood?

14 A Yes, it is.

15 Q Are you generally aware that COPPA describes some steps
16 you could take to avoid prosecution?

17 A Yes, I am.

18 Q Please describe your understanding of those steps.

19 A My understanding of those steps is that I could either
20 not publish whatever it is they're describing, at all. Or I
21 could put up some kind of method for screening age to keep
22 people who are under 18 away from that material.

23 Q Are you aware of any products or services that accurately
24 clarify age?

25 A No, I am not.

1 Q Is it important to you to provide content for free?

2 A Yes, it is.

3 Q Starting with scarleteen, why is it important for you to
4 offer your content for free?

5 A There is many reasons for that. One, I'm serving a
6 population in which a great part of that population doesn't
7 have income. More to the point, again, sex information for
8 teenagers and young adults, in many countries, including --
9 not recently unfortunately, this one - is really difficult
10 for them to obtain. And there are many barriers to them not
11 getting that information. Especially when it's inclusive,
12 especially when it's accurate. So, it's important to give
13 that for free. And that way, as well.

14 Q Let me ask the same question about scarletletters. Why
15 is it important for you to offer content on scarletletters
16 for free?

17 A Again, it's slightly different. We are trying very hard
18 with the kind of work that we publish and do at
19 scarletletters to both get healthy sexuality more visible, as
20 well as authors and artists for whom that's the genre in
21 which they work. And in a different way, but similar to
22 scarleteen, most of my readership, it's a readership to whom
23 there are special barriers often put up to them being able to
24 find and enjoy that kind of material.

25 Q Have you ever considered using an age verification system

1 for scarleteen?

2 A No.

3 Q Why not?

4 A Because it's like saying I'm running a coffee shop, but
5 I'm turning away people who drink coffee. I can't serve my
6 user base that I'm intended to serve if I put that up there.

7 Q You testified earlier that you provided consulting
8 services regarding women and sexual content. What kind of
9 work did you do?

10 A I have a couple different internet companies for Netflix
11 kind of adult video company, like Blue Door Video, For
12 janesguide sometimes. For an old and no longer in existence,
13 young women's network of sites called chickclick.

14 Q Would you spell that, I'm sorry.

15 A Sure. It's C-H-I-C-K-C-L-I-C-K. But for any of those,
16 it would usually be the managers or operators of those sites
17 asking me about how to make a site more friendly to women
18 and/or young people in the context of sexuality.

19 Q And during the course of that consulting work, what did
20 you learn about the particular concerns of women on the
21 internet, when it comes to sexual content?

22 A Okay, well, I'm confused.

23 Q Well, let me ask that question another way, so it's not
24 confusing. In the course of that consulting work, what kind
25 of advice did you give to websites about women's unique

1 concerns in obtaining sexual content on the internet?

2 A Generally, what I would talk about are issues of privacy

3 and anonymity, expressly because -- especially in certain

4 populations -- even a credit card that a woman might have to

5 use for anything she'd get on the internet isn't hers. It

6 might be her husband's. As well, it's my impression that

7 there are certain cultural barriers to women feeling

8 comfortable even exploring their sexuality. And feeling a

9 little secure, feeling like it's more private like their

10 personal information won't be shared. And that they are in

11 certain company is important, as well as the kind of

12 language, often that's used on internet sites.

13 Q Ms. Corinna, if you could make the same income from your

14 various sites by charging money for the content, would you do

15 so?

16 A No.

17 Q What would you do if COPPA were to take effect?

18 A It really depends on, it depends on the site. You know,

19 I'd say I'd move to Canada, but I said that when Kerry lost,

20 too. And here I am. So, it's a hollow threat coming from

21 me. You know, so given, I probably wouldn't do that. You

22 know, in scarleteen's case, I would keep doing exactly what I

23 do. I'd feel like I was at risk. I'd know that I was

24 choosing to take those risks. In the case of the other two

25 sites, it would again depend on what the policy ended up

1 saying I needed to have. Might I try and do what they said I
2 needed? I might. But on the other hand, I'm not a salon,
3 I'm just me. And so, a lot of these things are cost
4 restrictive. I don't even have a personal merchant account
5 for the work that I do, because it's cost restrictive to me.

6 MR. WIZNER: At this time, your Honor, plaintiffs
7 have no further questions.

8 THE COURT: You may cross-examine, Ms. Ulrich.

9 MS. ULRICH: Yes, your Honor. And your Honor, I do
10 have exhibits for both you and the witness, if I may
11 approach.

12 (Pause.)

13 MS. ULRICH: And for the record, my name is Tamara,
14 T-A-M-A-R-A, last name Ulrich, U-L-R-I-C-H, attorney for
15 defendant.

16 CROSS-EXAMINATION

17 BY MS. ULRICH:

18 Q Good morning.

19 A Good morning.

20 Q I'd like to start with scarleteen, if we could. And
21 scarleteen, as you've described it, is a sex education
22 website, right?

23 A That's correct.

24 Q And you started scarleteen to have a website specifically
25 for teenagers, didn't you?

1 A Right.

2 Q And the content is geared toward teenagers?

3 A Teenagers and young adults.

4 Q And the language is geared toward teenagers, as well,
5 isn't it?

6 A Again, teenagers and young adults.

7 Q You gear your material on the scarleteen website towards
8 15 to 16 year olds as a median age, don't you?

9 A Yes, that's correct.

10 Q If we could take a look at what has been marked as
11 Defendant's Exhibit 462, that you have both in hard copy and
12 if we can switch over to the defendant's, we'll be able to
13 get it electronically, as well.

14 A Oh, here.

15 Q And Defendant's Exhibit 462 is a page from the scarleteen
16 website, is that correct?

17 A That is.

18 Q Let me just catch up with everybody else. If you could
19 please read the second paragraph on the first page and
20 slowly, for the benefit of the court reporter.

21 A Of course. "While we at scarleteen do not hold to the
22 notion that telling young adults to go have sex is a better
23 solution, we strongly feel that the belying judgment and
24 furnishing them with the facts they need to regardless of
25 whether or not they are sexually active, readies them to

1 learn to make their own choices and that often unheard
2 perspectives help develop their own systems of ethics and
3 values when combined with the perspectives of peers, schools,
4 parents, other mentors and their overall culture and
5 communities. One cannot make a decision from a position of
6 informed consent without actually being informed."

7 Q And does this fairly summarize the mission of scarleteen?

8 A I think so.

9 Q I note that this document states that scarleteen
10 currently serves from 15,000 to 30,000 young adults, parents
11 and educators every day.

12 A That's correct.

13 Q And I believe earlier you gave an estimate of around
14 25,000 for scarleteen?

15 A That's the average right now.

16 Q Are those unique visitors each day?

17 A Those are unique.

18 Q Looking to page 2 of this same exhibit, 462, could you
19 please read the last sentence, last full sentence on that
20 page that starts, "scarleteen is the highest-ranking"?

21 A I can. "Scarleteen is the highest-ranking sex ed site
22 online, despite the fact that we don't have a big
23 organization behind us or any public funding, nor have we
24 ever run any advertising."

25 Q And the following sentence, please, which rolls on to the

1 next page.

2 A "Scarleteen is as popular and as well known as it is
3 because of word of mouth among young adults and we think that
4 says quite a bit."

5 Q On page 3 of Defendant's Exhibit 462, you list several
6 organizations that have featured or applauded scarleteen, is
7 that correct?

8 A Yes, it is.

9 Q And those include Advocates for Youth?

10 A Yes.

11 Q The Feminists Womens Health Center?

12 A That's correct.

13 Q The Oxygen network?

14 A That's correct.

15 Q The Sexuality Information and Education Council of the
16 United States?

17 A Yes.

18 Q Teen Voices?

19 A Yes.

20 Q And Wikipedia?

21 A Yup.

22 Q And in fact, well, just back up one step, Wikipedia is an
23 online encyclopedia, is that correct?

24 A That's correct.

25 Q And Wikipedia links to scarleteen, doesn't it?

1 A Wikipedia recommends several articles, it's anatomy,
2 actually anatomy guides that we have as good anatomy guides.

3 Q And in fact, doesn't Exhibit 462 state that scarleteen is
4 used as a curriculum for sex education for some parents home
5 schooling their children?

6 A That's correct.

7 Q I'd like to show you now what's been marked as
8 Defendant's Exhibit 200. This is a page from scarleteen
9 about how shopping works on scarleteen, isn't it?

10 A Yes, it is.

11 Q And this explains that you don't sell items directly on
12 the scarleteen website, do you?

13 A No, we do not.

14 Q And you use other websites, like drugstore.com, is that
15 right?

16 A That's correct.

17 Q And you do powells.com for books?

18 A Yes, we do.

19 Q And cafepress.com for items such as t-shirts?

20 A That's correct.

21 Q This exhibit also explains that you have certain
22 standards about the merchants you link to, doesn't it?

23 A Yes, we do.

24 Q Could you please read the top paragraph of Exhibit 200,
25 please?

1 A Of course, it says, "How to shop here. The scarleteen
2 shop is an intensive series of links to other merchants whom
3 we know from experience and reputation to be reliable. We
4 have chosen merchants who support our mission, who accept a
5 variety of payment methods, who do not put age limitations on
6 the products linked to and who ship expediently and
7 reliably". Do you want me to continue? I'm sorry.

8 Q No, that's fine, thank you. This exhibit also cautions
9 the users of your website not to use other people's credit
10 cards without permission, doesn't it?

11 A Yes, it does.

12 Q Turning to scarleteen's revenue, 98 percent of
13 scarleteen's revenue comes from private donations, is that
14 correct?

15 A Right now, yes.

16 Q And one private donor makes up the majority of the
17 donation revenue?

18 A Over the last couple years, yes.

19 Q So, two percent of scarleteen's revenue comes from
20 advertising?

21 A That's accurate, I'd say.

22 Q And does that include the money you would get from sales
23 of materials, as well?

24 A In the shopping part?

25 Q In the shopping?

1 A Yes, it does.

2 Q The material on scarleteen is not for salacious or
3 titillating purpose, is it?

4 A The material I put there I don't intend that way.

5 Q And it's for educational purposes, right?

6 A Again, what I put there, yes.

7 Q There are no photographs on scarleteen, are there?

8 A There may be one or two very small in graphic, like the
9 title graphics of those articles, but otherwise, no.

10 Q What scarleteen does have are illustrations for
11 educational purposes, is that correct?

12 A That's correct.

13 Q And you believe the articles in scarleteen have
14 scientific value for teenagers, don't you?

15 A I would say so.

16 Q And it bothers you that scarleteen is blocked by filters,
17 doesn't it?

18 A Yes, it does.

19 Q You mentioned briefly the scarleteen message board. And
20 I'd like to show you Defendant's Exhibit 206. This is a page
21 from the message boards on scarleteen, isn't it?

22 A Yes, it is.

23 Q And this lists topics of the various message boards on
24 scarleteen?

25 A That's correct.

1 Q Topics like sex basics and sexual health?

2 A Correct.

3 Q And support groups is also a topic, right?

4 A Yes.

5 Q I think you mentioned earlier that users need to sign up
6 to post messages on the boards, is that right?

7 A That's right.

8 Q We could turn to Defendant's Exhibit 205. Defendant's
9 Exhibit 205 contains the guidelines for posting on the
10 message boards at scarleteen, doesn't it?

11 A Yes, it does.

12 Q And it states that all posters on to the boards are held
13 to these guidelines, correct?

14 A That's correct.

15 Q If we could turn to page 2 of the exhibit. If you could
16 read the bold section in the second paragraph, that starts,
17 "Scarleteen cannot"?

18 A Of course. "Scarleteen cannot and will not answer
19 questions which pertain to explicit sexual technique or
20 illegal activity. And posts which request such material will
21 be closed or deleted. Which includes, but is not limited to
22 such questions and subjects as how to perform specific sexual
23 activities, i.e., how do I give a blowjob, what are some new
24 sexual positions, illegal drug use or drug abuse including
25 alcohol use under the legal drinking age. Illegal or

1 patently unsafe sexual activities, i.e., bestiality,
2 statutory rape, incest, purposely transmitting disease or
3 infection, et cetera. Stated intent to engage in potentially
4 dangerous or illegal activities or practices."

5 Q Thank you. Page 3 of this exhibit also states,
6 "considering the real time nature of this bulletin board, it
7 is impossible for us to review all messages or confirm the
8 validity of all information posted." Is that correct?

9 A That is correct.

10 Q In fact, you don't know the content of the messages until
11 they are place on the boards, is that correct?

12 A Yes.

13 Q Once you see a message, if you believe a message is in
14 violation of your policies, you reserve the right to take it
15 down, right?

16 A Yes.

17 Q And you seek to keep the language on the messages boards
18 at a PG13 level, don't you?

19 A That's correct.

20 Q And this is to keep filters from blocking the website, is
21 that right?

22 A No. The reason that we do that is because I want to
23 instill in the users a sense of using plain language and
24 accurate language to talk about sex rather than language that
25 they'd pick up in pornography or in peer to peer discussion.

1 I mean, sometimes, it's helpful, I think it's probably
2 helpful with filters that we keep it at that level, but
3 that's not my primary motivation.

4 Q You recall having deposition in this matter, don't you?

5 A Yes, I do.

6 Q And you were under oath in that deposition?

7 A That's correct.

8 Q And in the deposition, do you recall that I asked you
9 about the guidelines for the message boards at scarleteen?

10 MR. WIZNER: Your Honor, if I could ask that the
11 deposition be displayed before she is asked what she
12 remembers?

13 THE COURT: Yes, please do that.

14 BY MS. ULRICH:

15 Q Can you turn to page 110 and 111 of the deposition
16 transcript.

17 THE COURT: Date of the deposition, please?

18 MS. ULRICH: The date of the deposition February 23,
19 2006.

20 Q And on page 110, line 14, I asked the question, "What are
21 the guidelines for the message boards at scarleteen?"

22 MR. WIZNER: Your Honor, can I ask that the
23 deposition be removed from the screen briefly, do you mind?

24 MS. ULRICH: Okay.

25 MR. WIZNER: And Ms. Ulrich, do you have a hard copy

1 that you could show the witness and not display it on the
2 screen? And one for the Judge, as well?

3 MS. ULRICH: Yes.

4 THE COURT: I don't need one, the screen is adequate
5 for me.

6 MR. WIZNER: I understand, your Honor, but there's a
7 reason why plaintiff would prefer that the deposition not be
8 displayed on the screen that is related to the order you
9 intended to enter this morning.

10 THE COURT: Okay.

11 MS. ULRICH: If I can just confer with my technical
12 person one moment, your Honor, I think we should be able to
13 take care of this.

14 THE COURT: You might be able to do, might be able
15 to restrict the image.

16 (Pause.)

17 BY MS. ULRICH:

18 Q And do you see where I asked about the guidelines for the
19 message boards at scarleteen?

20 A Yes, I do.

21 Q And the answer goes on for about a page. But if we could
22 and I would be happy to read the whole thing, but I would
23 like to focus specifically on page 111, lines 11 through 15.
24 And didn't you state, "We asked them to keep their language
25 kind of a PG13 clean, mostly so that the filters don't keep

1 too many users out, basically because language does make a
2 difference with those."

3 A Yes, I did.

4 Q Did I read that correctly?

5 A Yes.

6 Q If we could turn now to the scarletletters website. And
7 I'd like to show you, well, one preliminary question. I
8 believe you testified on direct that the scarletletters
9 website got approximately 2,000 daily visitors?

10 A That's correct.

11 Q And are those unique visitors?

12 A Those are uniques.

13 THE COURT: Do you have a particular defense
14 exhibit?

15 MS. ULRICH: No, that was just a clarifying
16 question.

17 Q Turning now to Defendant's Exhibit 187. And Defendant's
18 Exhibit 187 is the splash page for scarletletters, about
19 which you testified earlier, is that correct?

20 A Yes, it is.

21 Q And the splash page lets users know what kind of website
22 they're going to, right?

23 A Yes.

24 Q And your policy at scarletletters is not to allow other
25 websites to link to the middle of scarletletters, but to link

1 to the splash page, is that right?

2 A I don't get a choice as to whether or not they do that.

3 My policy is to ask -- to state that I would prefer that they
4 do.

5 Q If you could please read and this may be more challenging
6 than it sounds, the first sentence of the first paragraph of
7 Exhibit 187.

8 A Of course, "Since February of 1998, scarletletters has
9 been one of the web's premier publishers or humanist,
10 feminist, sex positive, original and visionary creative and
11 artistic work of all kinds, unifying our erotic and sexuality
12 content with an array of other types of work, we break
13 boundaries and bridge gaps, crashing the genre of barricades
14 in favor of a collection of constantly updated work from some
15 of the most inventive, independent authors and artists
16 online. Our goal is to give your readers an intimate and
17 unique perspective on artistic expression without pretension
18 or arbitrary limits. Get ready to look at sexuality,
19 erotica, creativity and online media in a whole new way."

20 Q Thank you. This splash page also makes clear that
21 scarletletters is intended for adults, right?

22 A Yes, it does.

23 Q And you refer people under 18 to the scarleteen website
24 on this splash page, don't you?

25 A That's correct.

1 Q If we could turn now to Defendant's Exhibit 188. This is
2 the table of contents for scarletletters, right?

3 A Yes, it is.

4 Q On this page, it notes that you marked some of the
5 material on scarletletters with a symbol, is that right?

6 A That's correct.

7 Q And this symbol indicates that the material is so noted
8 because it contains adult content, right?

9 A That's correct.

10 Q Could you please read the text under the symbol with the
11 heading, what's this? We might need to blow it up for you to
12 be able to read that.

13 A Read one more?

14 Q Yes, thank you.

15 A It says, "What's this? That little scarletletter notes
16 adult content. Clicking on pieces of that symbol mean you
17 are certifying you are of an age and in a location to legally
18 view sexual explicit material."

19 Q And if we could turn now to Defendant's Exhibit 195?
20 This is another page from scarletletters, right?

21 A That's correct.

22 Q And on this page, we see the symbol denoting the adult
23 contents, right?

24 A Correct.

25 Q So, people clicking on these pictures to get the images

1 from that artist are one, that the material inside includes
2 adult content, right?

3 A That's correct.

4 Q People can subscribe to scarletletters, right?

5 A Technically, they can view scarletletters archives, but
6 they would be subscribing to femmerotic in order to do that.

7 Q Okay, if we could look at Defendant's Exhibit 190. This
8 is a page from the scarletletters website, correct?

9 A That's correct.

10 Q And this explains the subscription for scarletletters?

11 A Yes, it does.

12 Q And do I understand correctly then that a subscription is
13 a joint subscription for both scarletletters and femmerotic?

14 A All of the subscription content for all of my sites, is
15 housed on femmerotic. So, I think the answer to you is yes.

16 Q Well, if a person got a subscription for scarletletters,
17 they would also be able to use that subscription to view
18 material on femmerotic, correct?

19 A They would, in fact, be redirected to femmerotic in order
20 to view that subscription, because it all lives there.

21 Q Okay. And you accept credit cards or online checks to
22 subscribe to scarletletters or femmerotic, right?

23 A I use a third-party server that accepts those things.
24 So, I don't personally, but we do via that service.

25 Q Why don't we turn to the femmerotic website now and I

1 will refer you back to the Plaintiff's Exhibit, if you still
2 have that binder in front of you, Plaintiff's Exhibit 42,
3 page 9.

4 THE COURT: Want some help from their tech people?
5 Or do you have it?

6 MS. ULRICH: We should be able to pull it up, your
7 Honor, thank you.

8 Q And Plaintiff's Exhibit 42, page 9, is the splash page
9 for femmerotic, is that correct?

10 A It's that bad scan of the splash page, but yes.

11 Q And this splash page also makes clear that femmerotic is
12 intended for adults, right?

13 A That's correct.

14 Q And you have the splash page for femmerotic for the same
15 reasons that you have ones for scarletletters, right?

16 A Yes.

17 Q And people can subscribe to femmerotic, right?

18 A That's correct.

19 Q And the people who subscribe to femmerotic have access to
20 more content than non-subscribers on the website, is that
21 right?

22 A Yes, it is.

23 Q We could turn to Defendant's Exhibit 351.

24 THE COURT: Ms. Ulrich, I don't want to hurry you at
25 all, but I need to know whether you think you'll be much

1 longer, because we're past the time we usually recess.

2 MS. ULRICH: Your Honor --

3 THE COURT: But again, I'm not trying to pressure
4 you.

5 MS. ULRICH: Your Honor, I would guess I have
6 approximately ten minutes left.

7 THE COURT: We'll take a midday recess. Court's in
8 recess until 20 minutes to 2:00.

9 THE CLERK: All rise.

10 THE COURT: We're off the record and counsel are
11 excused.

12 (Court in recess; 12:36 to 1:40 o'clock p.m.)

13 THE COURT: Ms. Ulrich, go right ahead.

14 MS. ULRICH: Thank you, your Honor.

15 BY MS. ULRICH:

16 Q I believe when we left off you were discussing your
17 website, Femmerotic. And people can subscribe to the
18 Femmerotic website, correct?

19 A Yes.

20 Q And the people that subscribe have access to more content
21 than the non-subscribers on the Femmerotic website, right?

22 A That's correct.

23 Q I'd like to show you Defendant's Exhibit 351. This
24 exhibit describes the subscriptions for Femmerotic, right?

25 A Yes.

1 Q And on Page 2 of this document it contains terms of use
2 for the subscriptions, right?

3 A That's correct.

4 Q One of those terms is a certification that the subscriber
5 is 18 years of age or older, right?

6 A Right.

7 Q And people can pay for a subscription with a credit card,
8 right?

9 A They can.

10 Q If you have photos on Femmerotic that show -- would show
11 people having sex, those would be for subscribers only,
12 correct?

13 A It really depends on how you define sex.

14 Q Isn't it fair to say the more graphic photos are for
15 members only on Femmerotic?

16 A Yes.

17 Q I'd like to show you Defendant's No. 179. This is a
18 table of contents from the Femmerotic website, isn't it?

19 A Yes, it is.

20 Q And if we look in this first page, the center of the page
21 where it says Decoratifs -- I'm not sure if I'm pronouncing
22 that right, I'll spell it -- D-e-c-o-r-a-t-i-f-s. At the end
23 of that paragraph there's the word "members," do you see
24 that?

25 A I do.

1 Q And this indicates that members can log in to see a full
2 set of photographs, right?

3 A That's right.

4 Q And then there's the word "guests," do you see that?

5 A Yes, I do.

6 Q And guests are non-subscribers, right?

7 A That's correct.

8 Q And this indicates that guests can access or save samples
9 on Flickr, F-l-i-c-k-r, correct?

10 A That is correct.

11 Q And Flickr is a community photo site, right?

12 A Yes.

13 Q And Worksafe samples means less sexually explicit,
14 correct?

15 A That's correct.

16 Q If we could look at the second page of Defendant's
17 Exhibit 179 there's the title Loie, L-o-i-e, Fuller,
18 F-u-l-l-e-r, on a bender. And this entry has 50 photos,
19 right?

20 A That's correct.

21 Q And members can access all 50 photos, right?

22 A That's right.

23 Q And non-members can access Worksafe samples, right?

24 A Correct.

25 Q If we could turn to Page 4, for this item, Jewel, you

1 need to be a member to access any of the photos, isn't that
2 right?

3 A That's correct.

4 Q I believe you stated in your direct examination that you
5 do not fear prosecution for each page on the Scarleteen
6 website, is that correct?

7 A That is correct.

8 Q For example, you do not fear prosecution on the section
9 of the Scarleteen website called Take Two, do you?

10 A Not that I can think of.

11 Q And you have never received threats of prosecution from
12 Federal or State officials for any of the sexual content on
13 the Scarleteen website, have you?

14 A No, I have not.

15 Q You've never received any threats of prosecution from
16 Federal or State officials for any of the sexual content on
17 the Scarlett Letters website, have you?

18 A No, I have not.

19 Q You have never received threats of prosecution from
20 Federal or State officials for any of the sexual content on
21 the Femmerotic website, have you?

22 A I have not.

23 MS. ULRICH: Your Honor, if I may have a moment to
24 confer with counsel?

25 THE COURT: Surely.

1 (Discussion off the record.)

2 MS. ULRICH: Your Honor, at this time defendant
3 would like to move into the record certain exhibits. I will
4 list them for you: Exhibit 462, Defendant's Exhibit 200, 206,
5 205, 187, 188, 195, 190, 351 and 179.

6 THE COURT: Have all these been subjects of
7 questioning with the witness?

8 MS. ULRICH: Yes, your Honor, we've gone over all of
9 these on cross-exam.

10 THE COURT: Any objection?

13 THE COURT: Defendant's Exhibit 462, 200, 206, 205,
14 187, 188, 195, 190, 351 and 179 are received in evidence.

15 (Defendant's Exhibits 462, 200, 206, 205, 187, 188,
16 195, 190, 351 and 179 received in evidence.)

17 MS. ULRICH: Your Honor, I have no further
18 questions.

19 THE COURT: Thank you.

20 Any redirect?

21 MR. WIZNER: Yes, your Honor, just a few questions.
22 I won't say a number and...

23 THE COURT: Give yourself a little leeway.

24 (Laughter.)

25 REDIRECT EXAMINATION

1 BY MR. WIZNER:

2 Q Ms. Corinna, you testified that Scarlett Letters accepts
3 subscriptions as well, is that correct?

4 A That's correct.

5 Q And what material on Scarlett Letters is available only
6 to subscribers?

7 A That would -- we archive that just by age so after
8 something is -- it depends. I haven't updated Scarlett
9 Letters in a really long time so the standards right now are
10 different than usual, but usually after a year that content
11 has been live we put it in the archive.

12 Q So all the material that has been posted, at least in the
13 last year, is available to non-members?

14 A And I think at this time it's actually the last two
15 years.

16 Q And is there any difference in the kind of content that's
17 available to members versus non-members on Scarlett Letters?

18 A No, there's not.

19 Q You testified about the adult icon that appears next to
20 some of the content on Scarlett Letters?

21 A That's correct.

22 Q Is there any restriction on what users can see on
23 Scarlett Letters?

24 A No, there is not.

25 Q So anyone who visits Scarlett Letters can see any content

1 in Scarlett Letters that's not archived?

2 A That's correct.

3 THE COURT: Even in the face of the adult contents

4 icon?

5 MR. WIZNER: Right. Maybe I can ask it another way.

6 BY MR. WIZNER:

7 Q Do you place any restrictions on the material that users
8 can see on Scarlett Letters?

9 A No, I do not.

10 Q And you testified that Femmerotic also has a member
11 section?

12 A Yes, it does.

13 Q And for the record is there content on Femmerotic that's
14 available to non-members that depicts nudity and sexual
15 content?

16 A Yes, there is.

17 MR. WIZNER: I don't have any more questions, your
18 Honor.

19 THE COURT: Anything else, Ms. Ulrich?

20 MS. ULRICH: No, your Honor.

21 THE COURT: You're excused from the stand.

22 THE WITNESS: Thank you.

23 THE COURT: You're finished. Just leave the papers
24 behind.

25 THE WITNESS: Okay, thanks.

1 THE COURT: Let the lawyers worry about it.

2 (Witness excused.)

3 THE COURT: Plaintiff's next witness?

4 MR. HANSEN: Your Honor, plaintiff's next witness
5 will be presented by Mr. Seth Friedman.

6 THE COURT: And the witness is who?

7 MR. FRIEDMAN: Mr. Wayne Snellen, your Honor.

8 THE COURT: Okay.

9 MR. FRIEDMAN: Your Honor, I have a binder with an
10 exhibit. Can I bring it up to you?

11 THE COURT: Sure.

12 Remain standing and take the oath, please.

13 WAYNE SNELLEN, Plaintiff's Witness, Sworn.

14 THE COURT CLERK: Please state and spell your full
15 name for the record.

16 THE WITNESS: Wayne Snellen, W-a-y-n-e, Snellen,
17 S-n-e-l-l-e-n.

18 THE COURT: Good afternoon, sir.

19 THE WITNESS: Hi.

20 MR. HIRT: Your Honor, this is Mr. Hirt for the
21 defendant. Before counsel proceeds I'd just note our
22 continuing objection, not only to the issue of disclosure,
23 which your Honor ruled on, but that this is, in our view, a
24 non-plaintiff chill witness and cumulative.

25 THE COURT: And you're incorporating the same

1 objection you've had for other non-plaintiffs?

2 MR. HIRT: Yes, this is -- I think this is the final
3 time I need to have it stated.

4 THE COURT: Which in summary includes disclosure and
5 cumulativeness?

6 MR. HIRT: Yes.

7 THE COURT: And maybe relevance, I'm not sure.

8 MR. HIRT: Yes, well, I will probably add relevance
9 at some point specifically.

10 THE COURT: Objections are noted.

11 MR. FRIEDMAN: May I proceed, your Honor?

12 THE COURT: Yes, indeed.

13 DIRECT EXAMINATION

14 BY MR. FRIEDMAN:

15 Q Good afternoon, Mr. Snellen.

16 A Good afternoon.

17 Q What is your profession?

18 A I'm an artist and the director of a foundation, non-
19 profit foundation.

20 Q How long have you been an artist?

21 A About 30, 35 years.

22 Q How did you become an artist?

23 A Well, I've always been interested in drawing, painting
24 since I was a young -- since I was in grade school and -- but
25 I did not pursue that after high school. Other practical

1 matters ensued and I went to the Army, I actually got married
2 and after -- after I was married we lived on a farm, rented a
3 house, and the landlord's wife was an artist. And she saw
4 some of my drawings and paintings and suggested to me that
5 she liked my work and that she thought I should seriously
6 consider going to school which started my thinking, and I
7 did.

8 Q You did go to art school?

9 A Yes, I did.

10 Q What art school?

11 A I got my BFA at the Kansas City Art Institute and my
12 Master's at the Maryland Institute College of Art.

13 THE COURT: Last institution, can you spell that
14 please?

15 THE WITNESS: Oh, the Maryland Institute.

16 THE COURT: Maryland.

17 THE WITNESS: Yes, uh-huh.

18 THE COURT: Thank you.

19 BY MR. FRIEDMAN:

20 Q Do you have any children or grandchildren, Mr. Snellen?

21 A Yes, I have one daughter and four grandchildren.

22 Q How much interaction do you have with your grandchildren?

23 A Considerable, we live together.

24 Q What is the Leslie Loman Gay Art Foundation?

25 A It's a nonprofit foundation set up to further to be able

1 to show and exhibit work by gay and lesbian artists that
2 generally is not shown in most galleries due to sexual
3 content or the fact that they are gay and lesbian.

4 Q When was the foundation established?

5 A 1990.

6 Q By whom?

7 A By whom?

8 Q Yes.

9 A By Charles Leslie and Fritz Loman.

10 Q How long have you personally been involved with the
11 foundation?

12 A Since 1992, I believe.

13 Q What was your first position with the foundation?

14 A I started as a volunteer.

15 Q What was your next position?

16 A I had been there long enough that when one of the
17 directors resigned they asked me to become director and I
18 said yes.

19 Q Does the foundation have a mission?

20 A Yes, it does.

21 Q What is that mission?

22 A It is to show work by gay and lesbian artists that
23 normally is not accessible to the general public or it's not
24 accessible to the normal gallery system.

25 Q Do you think that mission is important?

1 A Yes, I do.

2 Q Why; why is it important?

3 A Well, the work that the foundation shows generally is
4 work that is of a sexual nature and specifically surrounding
5 the gay and lesbian issue. And those works, although legit,
6 are not generally available to the viewing public.

7 Q What does the foundation engage in -- I'm sorry -- what
8 activities does the foundation engage in to promote this
9 mission?

10 A Well, we have a physical gallery space in New York City
11 in Soho and we have extensive web presence. We also publish
12 a quarterly newsletter and we -- we send out announcements
13 for the current exhibitions throughout the year.

14 Q What is your role in connection with the physical
15 gallery?

16 A I'm the director.

17 Q Where is it located?

18 A 26 Wister Street in New York City.

19 Q Is there an exhibition currently on display at the
20 physical gallery?

21 A Yes, there is.

22 Q Can you briefly describe the exhibition for the Court?

23 A It is a four-person show. The first artist is Chelso
24 (ph.) Castro who is a Columbian --

25 THE COURT: Spell the last name, please?

1 THE WITNESS: C-a-s-t-r-o.

2 THE COURT: Thank you.

3 THE WITNESS: And he is a photographer, they are
4 collages. The next artist is Duncan Grant who was associated
5 with the Bloomsbury Group in England and his work has rarely,
6 this work that we're showing has rarely if ever been seen,
7 due to its sexual content.

8 The other artist is a Harlem Renaissance artist by
9 the name of Richard Bruce Legent (ph.) and he was a writer, a
10 poet, very well known in the Harlem Renaissance era and he
11 was also a visual artist. And the work that we're showing of
12 his has never really been published or seen either.

13 The other artist is an AIDS activist, Eric Rhein,
14 R-h-e-i-n.

15 BY MR. FRIEDMAN:

16 Q You said that the Leslie Loman Gay Art Foundation runs an
17 Internet site, is that right?

18 A Yes.

19 Q What is the URL for that website?

20 A WWW.LeslieLoman.Org.

21 MR. HIRT: Your Honor, at this time I'd want to
22 object and ask for a proffer of relevance for this testimony.
23 The witness has already stated that he's the director of a
24 nonprofit foundation and he's just given the URL as
25 www.LeslieLoman.org. Since COPA applies to enterprises

1 engaged in the business of making a profit, I don't see the
2 relevance, so far at least, of this witness' testimony.

3 THE COURT: Response?

4 MR. FRIEDMAN: Yes, your Honor. If you permit me a
5 few questions we'll get into how the fact that Mr. Snellen
6 himself actually sells art for profit on the Internet, as do
7 other people, through the use of the site on Leslie Loman --
8 through the use of the Leslie Loman site.

9 THE COURT: Based on the offer, the objection is
10 overruled at this time.

11 BY MR. FRIEDMAN:

12 Q Is art available for purchase on the website?

13 A Yes, it is.

14 Q What kind of art, generally?

15 A Generally, this is art by lesbian and gay artists and a
16 great deal of it is sexually explicit.

17 Q And do you create some of the art that is available for
18 sale on the website?

19 A Yes, I do.

20 Q Do some of the paintings for sale on the website depict
21 male genitalia?

22 A Yes.

23 Q Do some of the paintings for sale on the website depict
24 sexual acts including by same sex couples?

25 A Yes, sir.

1 Q Briefly, can you explain what your role is in connection
2 with the website?

3 A I put up the website, I started it myself originally
4 several years ago and I maintain it myself.

5 Q Does the website further the foundation's mission in any
6 way?

7 A Yes, it does.

8 Q Can you explain how?

9 A Well, it makes our website viewable worldwide. Only so
10 many people who live or visit New York can come into the
11 gallery. And part of our mission is to -- to be available to
12 as many people as possible to establish a history, a
13 continuity of gay art throughout the ages.

14 Q How does the fact that the website can be accessed
15 internationally assist in furthering the foundation's
16 mission?

17 A I suppose it makes it, well, besides being seen
18 internationally, I mean being able to be seen by other
19 people, it would -- it helps to establish a presence and
20 helps to -- what's the word I want to use -- validate, not
21 sure that's a word, to verify that gay and lesbian people
22 exist worldwide and that they have always existed and that
23 through art at least they have been a very important
24 visibility.

25 Q Can individuals access the website anonymously?

1 A Yes, they can.

2 Q Do they need to enter any personal or credit card
3 information in order to access the site?

4 A No.

5 Q Was that a conscious decision?

6 A Yes, sir, it was.

7 Q Were you involved in making that decision?

8 A Yes.

9 Q Why was that decision made?

10 A Well, I think if one has to put up a splash page, so to
11 speak, or a -- give a password, even though it may not cost
12 anything, I think it immediately limits access. I know when
13 I go to a website that requires a credit card information or
14 some kind of name verification or age verification I
15 generally go to -- I leave it simply because it -- it leads
16 me to think that perhaps there's something untoward about it
17 or that there's not -- the people who run the website aren't
18 really looking for my input.

19 MR. HIRT: Your Honor, I want to renew my objection
20 again. It sounds like this testimony has been Mr. Snellen
21 stating an objection to the foundation's website having to do
22 verification or some sort of screening of identity, but again
23 I renew my objection that this is a nonprofit foundation.

24 THE COURT: All we have so far is that he sells
25 artwork on the website, that's the only commercial statement

1 we have. I don't know if there's any more testimony but I'll
2 overrule at this time, subject to a motion to strike.

3 BY MR. FRIEDMAN:

4 Q Do you prefer to access websites that contain sexually
5 explicit gay material anonymously?

6 A Yes, I do.

7 Q Why?

8 A Because if I have to put in a credit card number or
9 verification of some sort there's a record of my presence and
10 I don't --

11 MR. HIRT: Your Honor, this is a lack of foundation
12 objection as he goes into this.

13 THE COURT: Well, I don't know what the relevance of
14 his own personal views are, he's not being offered as an
15 expert on human behavior.

16 MR. FRIEDMAN: Yes, your Honor.

17 THE COURT: Sustain the objection. Strike out the
18 last question and answer.

19 BY MR. FRIEDMAN:

20 Q Do you have reason to believe that individuals would
21 prefer to access the Leslie Loman Gay Art Foundation
22 anonymously?

23 A Yes, I do.

24 Q What reason do you have to believe that?

25 A Well, there's a couple of reasons. We have had in the

1 past artists who have their own website, in one specific
2 instance especially I can think of an artist who had his own
3 website, we also have his work on our website. AOL took his
4 website down.

5 MR. HIRT: Your Honor, lack of foundation.

8 MR. HIRT: I agree, your Honor.

13 MR. FRIEDMAN: Yes.

14 BY MR. FRIEDMAN:

15 Q Do you have any other reason to believe that individuals
16 would prefer to access the content on the Leslie Loman
17 Foundation's website anonymously?

18 A Well, on the website --

19 THE COURT: Excuse me, sir, just answer that yes or
20 no, please.

21 THE WITNESS: Yes, yes, I do.

22 BY MR. FRIEDMAN:

23 Q And what reason do you have to believe?

24 A Well, in one specific instance we were requested to take
25 this artist's images off of our website because he feared

1 prosecution or feared that he would be perceived to be a
2 pornographer. We also --

3 THE COURT: Of your website as to which you're the
4 manager?

5 THE WITNESS: Yes.

6 THE COURT: You said "we," I don't know what that
7 means.

8 THE WITNESS: Oh, I guess I refer to the foundation,
9 I speak of it as we. I take -- I maintain the website myself
10 but I guess I think of the whole thing as we.

11 THE COURT: I understand that but --

12 THE WITNESS: Yeah.

13 THE COURT: -- we're trying to make an accurate
14 record, we don't know who "we" is.

15 THE WITNESS: I'm sorry, yes.

16 THE COURT: Thank you.

17 BY MR. FRIEDMAN:

18 Q Outside the context of the Internet have you had any
19 experiences that indicate to you that individuals prefer to
20 keep their interest in the type of art that you prepare and
21 sell confidential?

22 A Yes.

23 Q Can you explain that experience?

24 A Quite often when we send out announcements for shows
25 which are not placed in envelopes, and this was a conscious

1 decision on the foundation's effort part, to make sure that
2 the card specifically says The Leslie Loman Gay Art
3 Foundation. We do get objections every once in a while,
4 practically every show, to remove a person's name from the
5 mailing list because they don't want to be identified.

6 MR. HIRT: Your Honor, this now becomes hearsay,
7 again I object.

8 THE COURT: And further this information he came
9 upon was in the ordinary course of his business and has a, it
10 has the indicia of reliability connected to it and the
11 objection is overruled. I'm not saying whether I believe it
12 or not believe it, I'm talking about the legal reliability.

13 Thank you.

14 BY MR. FRIEDMAN:

15 Q Will you continue?

16 A Well, when we get those requests to remove their name
17 from our list because they don't want their -- the usual
18 response is I don't want my mailman to know or my neighbors
19 to see something arriving in the mail with the word "gay" on
20 it, we certainly will honor that request.

21 Q In your mind is there any particular importance for older
22 minors, 15 or 16 year olds, to be able to access the type of
23 paintings you do anonymously?

24 A Surely, yes.

25 Q Why is that particularly important?

1 A Well, so many younger people are still searching for
2 their identity, are looking to see if there's somebody else
3 out there like them or if there's another artist of a gay and
4 lesbian persona and they're trying to, I guess you would
5 say, to discovery who they are. And I think this kind of
6 thing helps them. They discover that they're not alone, that
7 they're not -- they're not perverts or that they're not
8 abnormal.

9 Q Do you know how the Leslie Loman website would have
10 affected you if it were available when you were growing up?

11 MR. HIRT: Your Honor, this calls for speculation.

12 THE COURT: Sustained.

13 BY MR. FRIEDMAN:

14 Q What type of artist are you, Mr. Snellen?

15 A I'm a figurative painter.

16 Q And what types of figurative paintings do you do?

17 A They're generally of male, nude mails with -- in sexual
18 positions perhaps.

19 Q Do you sell your paintings?

20 A Yes, I do.

21 Q Do you sell your paintings on the Leslie Loman Foundation
22 website?

23 A Yes, I do.

24 Q Where else could one buy one of your paintings?

25 A Well, I have my own website separate and apart from

1 Leslie Loman so one could purchase it there and through
2 Leslie Loman. And there are also works of mine in the
3 gallery, in the physical gallery that one could purchase.
4 And then I have shown in other exhibitions throughout the
5 city or in places I have lived, Maryland and Baltimore and
6 Kansas City, in Jefferson City, my hometown.

7 Q How would one locate the Leslie Loman website on the
8 Internet?

9 A Through a search engine, one would put in certain key
10 words. Certainly you could put in Leslie Loman and the site
11 would come up but you could also put in key words like
12 homoerotic gay lesbian art, possibly figurative art. It has
13 a lot to do with the key words that one sets up.

14 Q Is the ability of people to locate your website through
15 the use of key word searches such as those affect the
16 website's ability to further its mission?

17 A Yes, it does.

18 Q How does it affect that ability?

19 A Well, it allows people to find it, for one thing, and I
20 guess that's the basic reason, that's the only way you would
21 be able to find the site.

22 Q Does the Leslie Loman Gay Art Foundation charge a fee for
23 people to enter its gallery, on-line gallery?

24 A No.

25 Q Do you charge a fee for people to enter your personal

1 site?

2 A No.

3 Q Why?

4 A Well, for my personal site I just don't think it's
5 necessary. I don't want to be able -- I don't want to make
6 money on that. I wouldn't mind making money on the sale of
7 my art but --

8 Q How about on the Leslie Loman Foundation's website?

9 A I think --

10 THE COURT: You keep interrupting, I don't know what
11 that question is, how about something.

12 MR. FRIEDMAN: Okay, I'm sorry. Before I asked --
13 I'm sorry, your Honor?

14 THE COURT: Go ahead.

15 MR. FRIEDMAN: I asked if the Leslie Loman Gay Art
16 Foundation charges a fee for people to enter its Internet
17 site.

18 THE WITNESS: And he said no.

19 THE WITNESS: No.

20 BY MR. FRIEDMAN:

21 Q Right. Why does it not charge a fee?

22 A Because I think that would deter more people than it
23 would attract.

24 Q How would a visitor access images of art for sale on the
25 website?

1 A On our home page there is an icon and a line that says
2 "Consigned work art for sale." You would click on that and
3 that will take you to a page that I call the virtual gallery.
4 And on that page is listed all of the artists that have pages
5 on our website. So you would click on their name or on their
6 image and it would take you to a page that has several images
7 of that artist's work.

8 Q Is one of the gallery pages a gallery complete with works
9 of art that you have painted?

10 A Yes.

11 Q You should have in front of you Plaintiff's Exhibit 49, a
12 binder?

13 A Yes.

14 Q Please take a look at the exhibit? And once you've had a
15 chance to review it can you tell the Court if you recognize
16 its contents?

17 A Yes, I do recognize it.

18 Q What do you recognize it as?

19 A They are all artists on our consignment gallery pages, on
20 the Leslie Loman Gallery.

21 Q They're all -- they're all artists or they're all works
22 of art?

23 A They're all works of art by artists on our website.

24 Q Are they all for sale on the website?

25 A Yes, they are.

1 Q If you could turn to the first page and take a look at
2 them individually for a moment?

3 Do you recognize this image?

4 A Yes, I do.

5 Q And what is it?

6 A It's a painting by myself.

7 Q What is it a painting of?

8 A It's a painting of two men having sex in the woods.

9 Q Is this image for sale on the foundation's website?

10 A Yes, it is.

11 Q And is this exhibit a true and accurate representation of
12 how it appears on the website?

13 A Yes, sir.

14 Q Can you turn to the next page? Do you recognize this
15 image?

16 A Yes, sir.

17 Q What is it?

18 A It is also a painting, an acrylic painting on paper by
19 myself.

20 Q What is it a painting of?

21 A It is a painting of a man's genitalia.

22 Q Is this image for sale on the foundation's website?

23 A Yes.

24 Q Is this exhibit a true and accurate representation of how
25 the image appears on the website?

1 A Yes.

2 Q Turn to the next page, please. Do you recognize this
3 image?

4 A Yes, I do.

5 Q And what is it?

6 A It is a photograph by the artist Howard Rothman.

7 Q What is it a photograph of?

8 A It's a photograph of three young men fondling one
9 another.

10 Q Is this image for sale on the foundation's website?

11 A Yes.

12 Q And is this exhibit a true and accurate representation of
13 how the image appears on the website?

14 A Yes, sir, it is.

15 Q Turn the page, please. Do you recognize this image?

16 A Yes, I do.

17 Q What is it?

18 A It's a photograph by the artist, Seymour Tunig (ph.) of a
19 group of naked people lying on the ground.

20 Q Is this image for sale on the foundation's website?

21 A Yes, sir.

22 Q And is this exhibit a true and accurate representation of
23 how the image appears on the website?

24 A Yes, it is.

25 Q Turn the page, please. Do you recognize this image?

1 A Yes, I do.

2 Q What is it?

3 A It's a lithograph by a lesbian artist, Becky Jane

4 Harlson.

5 Q Is this image for sale on the foundation's website?

6 A Yes, it is.

7 Q Is this exhibit a true and accurate representation of how
8 the image appears on the website?

9 A Yes.

10 Q Turn the page, please. Do you recognize this image?

11 A Yes, I do.

12 Q What is it?

13 A It is a painting by an artist by the name of Avatile
14 (ph.) Greenberg.

15 Q Is this image for sale on the website?

16 A Yes, it is.

17 Q Is this exhibit a true and accurate representation of how
18 the image appears on the website?

19 A Yes.

20 Q Take a look at one more, if you'd turn the page, please.

21 THE COURT: That was 0006?

22 MR. FRIEDMAN: Yes, your Honor.

23 THE COURT: Go ahead.

24 BY MR. FRIEDMAN:

25 Q Do you recognize this image?

1 A Yes, I do.

2 THE COURT: From the next page?

3 MR. FRIEDMAN: Yes, please.

4 THE COURT: Thank you.

5 THE WITNESS: Yes, it is.

6 BY MR. FRIEDMAN:

7 Q What is this image?

8 A This is actually a tile by Charles Bryant.

9 Q And what's depicted in the tile?

10 A It's a male, a nude male figure with an erection.

11 Q Is this image for sale on the foundation's website?

12 A Yes, it is.

13 Q Is this exhibit a true and accurate representation of how
14 the image appears on the website?

15 A Yes, it is.

16 Q Are the remainder of the images in Plaintiff's Exhibit 49
17 of a similar nature?

18 A Yes, they are.

19 Q Are they, too, available for purchase --

20 MR. HIRT: Your Honor --

21 MR. FRIEDMAN: -- on the Leslie -- I'm sorry.

22 MR. HIRT: Your Honor, I don't like to feel like I'm
23 not helping things along but I think to say something is of
24 a, quote, "similar nature," I don't think fairly speaks to at
25 least one of these images. I think counsel should pursue

1 these, in other words.

2 THE COURT: In the interests of efficiency, and I
3 see no substantive prejudice to the defense, I overrule the
4 objection. If you want to cross-examine him about these
5 pages you can do that. But give the page numbers that you're
6 including in the group, would you, please, Counsel?

7 MR. FRIEDMAN: Sure. Page numbers are Plaintiff's
8 Exhibit 49, 001 --

9 THE COURT: No, no, no, the ones you're putting in a
10 group.

11 MR. FRIEDMAN: Oh, I'm sorry.

12 BY MR. FRIEDMAN:

13 Q Are plaintiff -- are pages of Plaintiff's Exhibit 49,
14 0008 through 0015, also available for purchase on the Leslie
15 Loman site?

16 A Yes, they are.

17 Q Are there other works of art available for purchase on
18 the site with similar content to those that are contained in
19 the Plaintiff's Exhibit 49?

20 A Yes, there are.

21 MR. FRIEDMAN: At this point, your Honor, I'd like
22 to move the Court to admit Plaintiff's Exhibit 49 into
23 evidence.

24 THE COURT: Any objection?

25 MR. HIRT: Your Honor, I just want to note my

1 continuing objection to admission of paintings or other works
2 of art from this nonprofit website but I'll...

3 THE COURT: Objection's overruled. Plaintiff's 49
4 is received in evidence.

5 (Plaintiff's Exhibit 49 received in evidence.)

6 BY MR. FRIEDMAN:

7 Q How would an individual purchase a piece of art such as
8 those located in Exhibit 49 once they've located it on the
9 consignment gallery website?

10 A At the top of each page -- or I'm sorry -- at the top of
11 each page the person is directed to the bottom of the page
12 where there's an explanation of how to go about purchasing
13 this work. And, first of all, they would e-mail the --
14 actually e-mail me. I would check to make sure that the work
15 is still available and the accuracy of the price and I would
16 e-mail the gentleman back and say yes, it is available, how
17 are you going to pay and whenever we receive your check then
18 the artist will ship the work directly to you.

19 Q Does the website actually state the price of the art?

20 A Yes, it does.

21 Q Does the artist make money from the sale of its art?

22 A Yes.

23 Q Have you personally made money from the sale of your
24 paintings on this website?

25 A Yes, I have.

1 Q Have you personally made money from the sale of your
2 paintings on your personal website?

3 A Yes.

4 Q Sir, are you familiar with the Child On-line Protection
5 Act?

6 A Yes, I am.

7 Q Do you fear prosecution under the act?

8 A Yes, I do.

9 Q Why?

10 A Because my understanding of it is that it is based on
11 community standards. And I think while in New York we're
12 rather privileged, we have different community standards
13 than, for instance, my hometown in Missouri. And I think
14 those differences are quite significant.

15 Q Community standards for what?

16 A For what is appropriate for young people to view.

17 Q Are the paintings that we just looked at in Plaintiff's
18 Exhibit 49 the type of material that you fear others might
19 not consider appropriate?

20 A Yes.

21 Q Why do you fear that others might not think this material
22 is appropriate?

23 MR. HIRT: Your Honor, this calls for speculation at
24 this point.

25 THE COURT: Overruled.

1 THE WITNESS: Because it depicts sexual acts that
2 many people might consider pornographic.

3 BY MR. FRIEDMAN:

4 Q Have you had any experiences that lead you to believe
5 that people might consider the acts in these pictures and
6 other pictures like it on your and the Leslie Loman website
7 to be pornographic?

8 A Yes, we have had a couple of instances where an artist
9 who had his own website was removed by the ISP --

10 MR. HIRT: Your Honor, this is hearsay at this
11 point, I object.

12 MR. FRIEDMAN: Your Honor, if I may?

13 THE COURT: Let me hear from you.

14 MR. FRIEDMAN: Yes, the question goes to why he
15 fears prosecution and why it is that he fears that others
16 will consider the material to be pornographic. And that's
17 the point of the story, to understand his state of mind on
18 that matter.

19 THE COURT: Overruled on state of mind grounds.

20 Not offered for the truth of the reasons, background, truth
21 of the background.

22 BY MR. FRIEDMAN:

23 Q You can complete your explanation.

24 A Okay. This particular artist, his work was removed from
25 the website with no explanation. He was -- became so

1 paranoid about his work being on the Internet that he asked
2 me to take his work off of our website so that the work was
3 no longer available. There are occasions also we'd get
4 letters occasionally from probably a religious right person
5 who objects to --

6 MR. HIRT: Your Honor, I object to speculation, lack
7 of foundation.

8 THE COURT: Strike out "probably" and the word after
9 that, whatever the words were.

11 THE WITNESS: Yes, sir.

12 BY MR. FRIEDMAN:

13 Q If you know who the letters are from you can say,
14 otherwise you don't.

15 A Well, the letters simply state that God would not, to the
16 effect of God would not approve of this work and that they
17 consider it pornographic.

18 Q Have any Governmental prosecutions contributed to your
19 concern that others might consider the materials sold on the
20 website and on your personal site to be inappropriate or
21 pornographic?

22 MR. HIRT: Your Honor, I have to object, from
23 Government prosecutions --

24 THE COURT: Sustained. I never heard any such thing
25 from this witness. I heard him talk about some acronyms but

1 I don't know what they meant. You never asked him.

2 MR. FRIEDMAN: Okay.

3 BY MR. FRIEDMAN:

4 Q I think we should clear up the acronym that you said
5 before, do you recall what acronym that was?

6 A Acronym --

7 THE COURT: You can't just, he said acronyms
8 throughout his testimony, better focus on what you're doing.

9 BY MR. FRIEDMAN:

10 Q I think you used the acronym ISP?

11 A Oh, Internet service provider.

12 Q And do you -- is there anything else that contributes to
13 your concern that others might consider materials sold on the
14 site to be inappropriate?

15 A Yes, a prime example is the Robert Mapplethorpe. The
16 exhibit, A Perfect Moment in Cincinnati. The curator and
17 director of the museum was forced to close the show due to
18 perceived pornographic content of the exhibition. Ultimately
19 everyone was exonerated but it is -- and then there's another
20 instance, one that does have to do with visual art, the
21 famous NEA Fuller (ph.).

22 MR. HIRT: Your Honor, this is not a prosecution,
23 Mr. Snellen is now speaking about based on the testimony of a
24 prior witness.

25 THE COURT: What's your response, Counsel?

1 MR. FRIEDMAN: I don't -- I'm not sure I understand
2 the second part of -- I'm not sure I understand the
3 objection --

4 MR. HIRT: I'll restate it, your Honor.

5 THE COURT: Because he says the witness is
6 inaccurately stating or is trying to get across, there was in
7 the view of counsel, I don't know how he knows this, claims
8 that it was not a prosecution.

9 MR. FRIEDMAN: I can say that, your Honor. The
10 question was about Mr. Snellen's fears based on prosecutions.
11 Mr. Snellen did speak of a Maplethorpe exhibit. However, in
12 context of NEA grants I believe Mr. Snellen's testimony deals
13 with artists whose grants, Government grants from the NEA
14 were either not awarded or were revoked, which is obviously
15 not a criminal prosecution.

16 THE COURT: The question is withdrawn by the Court.
17 Start over, Counsel, you have a clean slate as far as
18 questions go.

19 MR. FRIEDMAN: Okay. Yes.

20 BY MR. FRIEDMAN:

21 Q You discussed a Maplethorpe --

22 A Yes.

23 Q -- is that right? Can you describe generally for the
24 Court what you understand about that proceeding?

25 THE COURT: He already did.

1 MR. FRIEDMAN: Okay. I want to --

2 BY MR. FRIEDMAN:

3 Q Are Maplethorpe's images similar in content to yours?

4 A Yes.

5 Q Are Maplethorpe's images similar in content to other art

6 for sale on the Leslie Loman site?

7 A Yes, it is.

8 Q Do you think that, do you personally think that your art

9 and other art for sale on the website is appropriate for

10 artists, for other individuals under the age of 17?

11 A Yes, I do.

12 Q Why?

13 A Well, simply because I think an artist, a young person

14 who is still looking for their identity, knows that there is

15 something there for them, is trying to find it and it would

16 be a revelation to discover that there are like-minded people

17 out there.

18 Q Does the Leslie Loman site contain any warnings?

19 A One, yes.

20 Q And what does that warning say?

21 A It says at the top of the home page that, the initial

22 page that this site contains fine art by lesbian and gay

23 artists that are sexually explicit and may not be appropriate

24 for anyone under 18.

25 Q Can you describe the size and location of the warning?

1 A It's at the top, it's about five lines at the top of the
2 page, of the home page.

3 Q Is there content on the page aside from the warning?

4 A Yes, there is.

5 Q And what type of content is that?

6 A There are images from or samples from the collection and
7 you click on the images or you click on the words under the
8 images to go to various parts of the website.

9 Q I believe you said before that in your opinion the art on
10 the website is appropriate, is that right?

11 A Yes.

12 Q Do you think it's appropriate for individuals under the
13 age of 17?

14 A Yes, I do.

15 Q Then why have this warning?

16 A One of our board members asked us to put it up, asked me
17 to put it up because he feared -- and we discussed this quite
18 a lot because I really didn't want to put it up -- he thinks
19 that it would help in some sense if we were prosecuted for
20 pornography. And he asked that we also put it on the door of
21 the physical gallery.

22 Q Are you aware that COPA only applies to material on the
23 Internet that lacks serious artistic value for individuals
24 under the age of 17?

25 A Yes, I do.

1 Q Do you believe that your art lacks serious artistic value
2 for individuals under the age of 17?

3 A No.

4 Q Do you fear that others might not agree with you?

5 A Yes, that's true.

6 Q Why do you have that fear?

7 MR. HIRT: Your Honor, I think this has been gone
8 over already.

9 THE COURT: So do I but maybe counsel doesn't
10 remember.

11 MR. FRIEDMAN: Your Honor, I remember. These
12 questions are focused on the artistic value. I'd like to
13 explore why, to the extent if he believes others might not
14 similarly think it has artistic value, why that is.

15 THE COURT: Overruled.

16 BY MR. FRIEDMAN:

17 Q Why do you think that others might not consider it to
18 contain serious artistic value?

19 A Well, artistic value is very difficult to define and I
20 don't, because of the community standard issue, I think
21 people in different parts of the country will view it
22 differently than we will in New York City or in most other
23 large metropolitan communities.

24 Q Does the consignment gallery contain the works of any
25 famous artists like Picasso and Renoir?

1 A No, it does not.

2 Q Does that fact contribute in any way to your fear that
3 others might not consider the works to have serious artistic
4 value?

5 A Yes, I doubt whether anyone would question Picasso's
6 artistic value if -- or which he did actually do a sexually
7 explicit piece. Whereas most of the artists, I wouldn't say
8 all, but the vast majority of artists on our website are
9 either unknown or under-represented and don't have the
10 background or the clout yet to establish a history of being,
11 quote, unquote, "a serious artist."

12 Q Is there other art on the Internet similar to the art
13 that you sell on the Internet?

14 A Yes, there is.

15 Q Is there a significant amount of such art?

16 A Yes.

17 MR. FRIEDMAN: Your Honor, I have no further
18 questions at this time.

19 THE COURT: Mr. Hirt, you may cross-examine.

20 (Pause.)

21 MR. HIRT: Your Honor, if I may approach, I have a
22 short binder with a few exhibits, although Mr. Birdsong (ph.)
23 will have them up on the screen, I hope, as well.

24 THE COURT: I have to push the button to get it on
25 the defense side. Here we go.

1 (Pause.)

2 CROSS-EXAMINATION

3 BY MR. HIRT:

4 Q Good afternoon, Mr. Snellen.

5 A Good afternoon.

6 Q My name is Ted Hirt from the Department of Justice and I
7 represent the defendant.

8 MR. HIRT: Court reporter, H-i-r-t. Thank you.

9 BY MR. HIRT:

10 Q In your direct examination, Mr. Snellen, if I understood
11 it correctly, you stated that you're the director of the
12 Leslie Loman Gay Art Foundation, isn't that correct?

13 A Yes, it is.

14 Q And I believe you did describe the foundation as a
15 nonprofit foundation, is that correct?

16 A Yes, I did.

17 Q Okay. And if you could turn to what has been marked,
18 it's in your little binder as Defendant's Exhibit 461, do you
19 see that in front of you?

20 A Yes, I do.

21 Q Okay. And just for the record, could you take a look at
22 it? It appears to be a four-page document, is that correct?

23 A Yes.

24 Q And do you recognize that document?

25 A Yes, I do.

1 Q nd does that come from the website of the Leslie Loman
2 Gay Art Foundation?

3 A Yes, it does.

4 Q And under the logo of your foundation, it's called the
5 foundation FAQ's, isn't that correct?

6 A Yes.

7 Q And describes, for example, the goals of the foundation?

8 A Yes.

9 Q Okay. And if you could turn down to No. 7, which is on
10 Page 2 of the document?

11 A Yes.

12 Q And could you read that question and answer into the
13 record, please?

14 A No. 7 is: "Is the foundation supported by any Government
15 moneys."

16 Q And the answer?

17 A And the answer is "No."

18 Q Would you continue?

19 A "No, the foundation is a tax-exempt, public, nonprofit
20 foundation, does not receive any Government funds."

21 Q And actually it says nonprofit institution, at least on
22 my copy.

23 A I'm sorry, yes, you're right.

24 Q I wanted to have you turn back just briefly to
25 Plaintiff's Exhibit 49, counsel for plaintiffs did describe

1 with you or ask you to describe several of the images and I
2 just wanted to go through them very briefly.

3 The very first image, which is Page 1, now will you
4 describe the title of that document or, excuse me, the title
5 of that painting, did you?

6 A I don't think I stated the title of it but at the moment
7 I don't remember the title.

8 Q Okay.

9 A It's my own painting but --

10 Q That's fine. And you've described it as picturing two
11 individuals having intercourse?

12 A Yes.

13 Q Will you just point out where their bodies are entwined?

14 A Yes, at the bottom in the lower third of the painting
15 there are two men, their legs are crossed and you can see the
16 genitals of one of them. I know it's a little difficult to
17 see it on this, the image is a little dark but it's there.

18 Q Okay.

19 A It's two men having sexual intercourse.

20 Q Okay. And could you turn in your binder from Plaintiff's
21 Exhibit 49 to Page 0008?

22 A Yes.

23 Q And what does that depict?

24 A That is a sculpture, it's a maquet (ph.) of what is hoped
25 to be someday a larger memorial to gay men and the AIDS

1 crisis. It's actually called, I believe it's called Memorial
2 to Love.

3 Q And it's -- there's an intention to place it in some
4 memorial setting?

5 A That is the intent, yes. It hasn't happened because the
6 funding, since this would be life -- over life size, the
7 funding would be tremendous. So the funding has not been,
8 the artist has not been able to secure funding for that.
9 However, she has done an edition of images that it's about
10 this size.

11 THE COURT: The maquet is?

12 THE WITNESS: Yes, yes.

13 BY MR. HIRT:

14 Q And where would this be placed? Is there a location?

15 A Hopefully in a reflecting pool.

16 Q Excuse me?

17 A In a reflecting pool.

18 Q In what location?

19 A Well, she proposed it in -- to the Gay and Lesbian
20 Community Services Center in San Francisco which were
21 actually considering it. However, they weren't able to raise
22 the money. She has also approached --

23 Q Thank you, Mr. Snellen.

24 A I'm sorry.

25 Q That answers my question, thank you. And if you could

1 turn to same exhibit, Page 0012?

2 A Okay.

3 Q And I know that's not your painting, is that a painting
4 by someone named Rush?

5 A Yes, Steve Rush.

6 Q Do you know offhand the title of this painting?

7 A No, I don't.

8 Q Okay. And just -- okay. Mr. Snellen, if I understand
9 your direct testimony you also have your own website, is that
10 correct?

11 A Yes, I do.

12 Q And is the title of that website Velvet Caverns?

13 A Yes, it is.

14 Q Okay.

15 THE COURT: Velvet, how do you spell the second
16 word?

17 MR. HIRT: Oh, caverns, c-a-v-e-r-n-s.

18 BY MR. HIRT:

19 Q Correct?

20 A Yes.

21 Q All right. And could I show you or could you look at
22 what I think has been put in your binder, 463?

23 A Yes.

24 Q And do you recognize that document?

25 A Yes, I do.

1 Q And just for the record can you tell us just briefly what
2 it is?

3 A It's my statement as to what is called an artist
4 statement.

5 Q And could you just read for the Court the first paragraph
6 of that statement?

7 A Mm-hmm. "Art is a discovery and that art is one of the
8 most important tools for understanding the human condition as
9 evident in the work of all artists. For me it is a coming to
10 grips with understanding life and the putting it in order so
11 that I can make heads or tails out of the chaos."

12 Q And I assume that much of your art is motivated by that
13 sentiment?

14 A Yes.

15 Q Now, Mr. Snellen, if I understand your testimony you've
16 stated that much of your work has erotic content, is that
17 fair to say?

18 A Yes, it is, yes.

19 Q Is it also fair to say, however, that you paint abstracts
20 and figuratives that don't have sexual content?

21 A I have in the past, yes.

22 Q And you have some for sale on your website currently, I
23 believe?

24 A Current -- yes.

25 Q Okay.

1 MR. HIRT: Your Honor, I just want to confer with my
2 colleagues for a minute.

3 THE COURT: You may.

4 (Discussion off the record.)

5 MR. HIRT: Your Honor, at this time I'd like to move
6 into evidence Exhibit 463, the mission statement from Velvet
7 Caverns and also 461 which is the Leslie Loman Gay Art
8 Foundation Frequently Asked Questions pages.

9 THE COURT: Anything else?

10 MR. HIRT: No, that's it, your Honor.

11 THE COURT: Any objection?

12 MR. FRIEDMAN: No objection, your Honor.

13 THE COURT: Defendant's 463 and 461 are received in
14 evidence.

15 (Defendant's Exhibits 463 and 461 received in
16 evidence.)

17 THE COURT: Any redirect?

18 MR. FRIEDMAN: No further questions, your Honor.

19 MR. HIRT: Your Honor, I -- well, maybe I should
20 approach the lectern. I continue to move to strike Mr.
21 Snellen's testimony, at least as to any sales or offers of
22 purchase of portraits or other paintings or works of art out
23 of the nonprofit's website. They are not covered by the
24 statute.

25 THE COURT: The objection is overruled.

1 MR. HIRT: Thank you, your Honor.

2 THE COURT: You may argue that at the end of the
3 case.

4 You're excused, sir.

5 THE WITNESS: Thank you.

6 THE COURT: Be careful getting down on the steps.

7 THE WITNESS: Yes.

8 (Witness excused.)

9 MR. HANSEN: Your Honor, we have some deposition
10 designations to read for the rest of the afternoon but before
11 we do that there is a handful of exhibits I'd like to move
12 into evidence that are not going to be discussed by a
13 particular witness.

14 I have a copy for your Honor in case there are
15 objections to them, you need to review them.

16 (Pause.)

17 MR. HANSEN: The first document in the packet I gave
18 your Honor is Plaintiff's Exhibit 27. Plaintiff's Exhibit 27
19 is entitled "File Sharing Programs and Use of Peer to Peer
20 Networks to Access Pornography." It is a report by the
21 United States Governmental -- Government Accountability
22 Office, the GAO, has done as a result of a Congressional
23 request. It contains 74 pages and therefore it runs from
24 0001 to 0074. Plaintiff's move the admission of Exhibit 27.

25 THE COURT: Any objection?

1 MR. GOMEZ: No objection, your Honor.

2 THE COURT: Plaintiff's 27 is received in evidence.

3 (Plaintiff's Exhibit 27 received in evidence.)

4 MR. HANSEN: Your Honor, before we move on to the
5 next one, your Honor indicated at one point during one of the
6 pretrial conferences that if we were moving in a big, fat
7 document it would be helpful to your Honor if we identified
8 those portions that were of significance. Would you like me
9 to do that for this document?

10 THE COURT: Sounds like a good thing that I said. I
11 don't remember saying it.

12 (Laughter.)

13 THE COURT: I'll accept your compliment.

14 MR. HANSEN: We would draw the Court's particular
15 attention to Page 0002 which is the findings by the GAO.
16 There's two particular findings, one that is Easy to Find
17 Pornography on Peer to Peer Networks and, two, that at least
18 one --

19 THE COURT: Where is that located in the document?

20 MR. HANSEN: That is on 0002 and it's in the second
21 paragraph under "What GAO found."

22 MR. GOMEZ: Your Honor --

23 MR. HANSEN: It's the paragraph beginning
24 "Pornographic images."

25 MR. GOMEZ: Defendant objects. What defendant is

1 now doing is acting as a witness and testifying and this is
2 not appropriate, identifying what he wants the Court to
3 address. This is not being raised in connection with a
4 witness. We may have addressed this particular point, an
5 expert or some other witness, it's counsel now just
6 testifying or attempting to through this presentation.

7 THE COURT: Objection overruled. I don't view it as
8 testimony at all, it's a lawyer arguing that there's places
9 in here he wants the Court to look at.

10 MR. HANSEN: Second thing on Page 2, your Honor --

11 THE COURT: Where on that page is it?

12 MR. HANSEN: The first one is in the second
13 paragraph under "What GAO Found," the paragraph beginning
14 "Pornographic Images."

15 THE COURT: Okay.

16 MR. HANSEN: Which indicates the pornographic images
17 were easy to find on peer to peer. The second thing on that
18 page is the fourth paragraph on that page beginning "The
19 filters for the three leading Internet search engines." I'm
20 sorry, I'm misstating.

21 The third paragraph which begins "Two of the three P
22 to P programs" talks about the fact that P to P programs
23 offer content filters and discusses the effectiveness of the
24 content filters.

25 We would further draw the Court's attention to Pages

1 13 through 15 which are the pages in which the GAO explains
2 the methodology that led to its conclusion that it was
3 possible to find pornographic images on peer to peer. Pages
4 16 to 17 which discuss the methodology used by the GAO to
5 measure the effectiveness of pier-to-pier filters.

6 Pages 26 to 35 which are a much more detailed
7 discussion of the results of the GAO's efforts to find
8 pornography on peer to peer and Pages 37 to 49 which is a
9 much more detailed explanation of the results of the use of
10 filters offered by peer-to-peer networks.

11 THE COURT: Go to the next exhibit.

12 MR. HANSEN: The next exhibit, your Honor, is
13 labeled Joint Exhibit 1 which I guess I'm moving in on behalf
14 of both parties since I labeled it Joint Exhibit 1.

15 This is the stipulations that were contained in the
16 pretrial order, along with a handful of other stipulations
17 that were reached by the parties directly after the pretrial
18 order was submitted. Your Honor suggested we make this a
19 joint exhibit and we've done so.

20 THE COURT: Do you expect to have a list of joint
21 exhibits ultimately, do you have -- do you think there will
22 be others?

23 MR. HANSEN: At this point I do not think there will
24 be others, your Honor.

25 THE COURT: Joint Exhibit No. 1 is received in

1 evidence.

2 (Joint Exhibit 1 received in evidence.)

3 MR. HANSEN: The next exhibit, your Honor, has been
4 labeled Plaintiff's Exhibit 161, it is entitled "Defendant's
5 responses and objections to Plaintiff American Civil
6 Liberties Union's request to admit." It's a 13-page document
7 going from 0001 to 0013.

8 With respect to this document, your Honor,
9 plaintiffs only offer those responses to requests to admit
10 No. 1 through 8, 14 through 21 and 23 and 24.

11 THE COURT: Those are paragraph numbers?

12 MR. HANSEN: Those are the requests to admit
13 numbers, your Honor.

14 Just for example one of the items I just mentioned
15 was No. 1. No. 1 begins on Page 0002. It's a request to
16 admit and the defendant's response.

17 THE COURT: Any objection?

18 MR. GOMEZ: Your Honor, we have no objection but we
19 think the entire response should be submitted instead of just
20 portions of it.

21 THE COURT: It will be.

22 MR. HANSEN: That's fine.

23 THE COURT: Plaintiff's Exhibit 161 is received in
24 evidence.

25 (Plaintiff's Exhibit 161 received in evidence.)

1 MR. HANSEN: Your Honor, the next --

2 THE COURT: Well, let me say what that means to me.

3 It means to me that either side can argue whatever is in
4 there that they think is relevant to their position in the
5 case.

6 MR. HANSEN: The next thing, I think, in your
7 Honor's binder is, I think puts together three exhibits,
8 Plaintiff's Exhibit 162, 163 and 164.

9 162 is defendant's objections and responses to
10 plaintiff's initial interrogatories.

11 163 is defendant's supplemental responses to
12 plaintiff's initial interrogatories and that document is
13 dated January 27th, 2006. It's four pages long.

14 And then Plaintiff's Exhibit 164, which is two
15 pages, is entitled "Defendant's Supplemental Response to
16 Plaintiff's Initial Interrogatories," dated March 13, 2006.

17 I should have said Plaintiff's Exhibit 162 is 13
18 pages. They have been clipped together because these are all
19 responses to the same sets of interrogatories.

20 THE COURT: I remember the history. Any objection?

21 MR. GOMEZ: No objection, your Honor.

22 THE COURT: Plaintiff's 162 is received in evidence,
23 being a three-part -- oh, sorry. 162, 163 and 164 are
24 received in evidence.

25 (Plaintiff's Exhibits 162, 163 and 164 received in

1 evidence.)

2 MR. HANSEN: The final set, your Honor, are
3 Plaintiff's Exhibits 165 through 167. Plaintiff's Exhibit
4 165 is Plaintiff American Civil Liberties Union's first set
5 of contention interrogatories to Alberto R. Gonzales, in his
6 capacity as Attorney General of the United States. It is a
7 document that is 116 pages long, primarily because of
8 attachments.

9 Plaintiff's Exhibit 166 is defendant's supplemental
10 response to plaintiff's first set of contention
11 interrogatories. Plaintiff's Exhibit 166 is, I believe, 39
12 pages long.

13 And then the final exhibit is Plaintiff's Exhibit
14 167 which is entitled "Defendant's Second Supplemental
15 Response to Plaintiff's First Set of Contention
16 Interrogatories." That exhibit is 16 pages.

17 There is also, among the attachments to Plaintiff's
18 Exhibit 165 is a CD-ROM which was attached to the original
19 contention interrogatories.

20 With respect, your Honor, there's one complication
21 with respect to one of these exhibits and that is Exhibit
22 166. As your Honor will recall, these are the contention
23 interrogatories that there's been much discussion about with
24 the Court.

25 One of the questions in the contention

1 interrogatories asks the defendant to produce examples of
2 speech that defendant believed to be legally obscene. So the
3 one -- there is an attachment to contention interrogatory
4 five that consists of a handful of pages that the defendant
5 has determined to be legally obscene and I believe the
6 defendant's preference would be that that particular
7 attachment go in only under seal.

8 THE COURT: That's 166?

9 MR. HANSEN: It's an attachment to contention
10 interrogatory five in Plaintiff's Exhibit 166. It's a series
11 of printed pages of images. If that procedure is acceptable
12 to the Court we can mechanically accomplish all of that by
13 amongst ourselves, pull the pages out and make sure that the
14 parties agree on which pages go in under seal.

15 (Pause.)

16 THE COURT: Is that the defense position?

17 MR. GOMEZ: Yes, your Honor.

18 MR. HANSEN: For the record, those images begin at
19 Plaintiff's Exhibit 166, Page 0030, and I believe they go
20 through and including Plaintiff's Exhibit 166, Page 0039.

21 THE COURT: They seem to start on 0020 but I made a
22 note that you might have said 30.

23 MR. HANSEN: Your Honor, Plaintiff's 20 is an
24 exhibit to contention interrogatory four which has not been
25 labeled by the defendants as obscene. Plaintiff's Exhibit,

1 the exhibit, the contention interrogatory four is examples of
2 speech that the defendant considers to be harmful to minors.
3 So those from 0020 to 0029 are images the defendant has
4 labeled as harmful to minors.

5 The images from 0030 to the end of 166 are images
6 that the defendant has labeled as obscene.

7 THE COURT: What's the -- I believe I can make up
8 one but what do you concede is the purpose for putting them
9 under seal?

10 MR. HANSEN: It's not my request, your Honor, it's
11 the defendant's request. And I don't -- I don't feel --

12 THE COURT: That all of the photos may fall within
13 your, the defense reason for the request.

14 MR. GOMEZ: Well, there are -- the photos are
15 contraband, your Honor, and, frankly, if someone were to use
16 those, take those photos and put them on the Internet they
17 would be -- or otherwise use them, they'd be subject to
18 prosecution for transmitting or communicating obscene
19 material.

20 THE COURT: 0030 to 0039?

21 MR. GOMEZ: Yes, your Honor.

22 THE COURT: That's the ones you're talking about?

23 MR. GOMEZ: Yes, your Honor.

24 THE COURT: Okay. Otherwise, does the defense have
25 any objection to these or the three exhibits?

1 MR. GOMEZ: No, your Honor.

2 THE COURT: It's a group of three exhibits you were
3 talking about, Mr. --

4 MR. HANSEN: That's correct, your Honor, 165, 166
5 and 167.

6 THE COURT: I will put the 30 to 39 under seal but
7 other than that objection do you have any objection?

8 MR. GOMEZ: No, your Honor.

9 THE COURT: Plaintiff's Exhibit 166 and 167 are
10 received in evidence, provided however that Plaintiff's
11 Exhibit 166, Pages 0030 to 0039 inclusive will be placed
12 under a sealing order for the reasons proffered by the
13 defendant.

14 (Plaintiff's Exhibits 166 and 167 received in
15 evidence.)

16 THE COURT: And I'm going to put my copy of these
17 photographs that you've given me to assist this afternoon
18 under a sealing order and counsel should be aware that when
19 assembling the exhibits that perhaps you might put the
20 sealing order in the place, in the packet of exhibits where
21 these pictures would otherwise have been.

22 MR. HANSEN: We will do that, your Honor.

23 THE COURT: And I'll get that sealing order done in
24 due course.

25 MR. GOMEZ: Yes, your Honor.

1 MR. HANSEN: And Exhibit 165 also is admitted, your
2 Honor? That's the first of three, it's the first one.

3 THE COURT: Oh, I see. There being no objection,
4 165 is received in evidence.

5 (Plaintiff's Exhibit 165 received in evidence.)

6 MR. HANSEN: Thank you, your Honor. That's all the
7 exhibits I have to move in at this point. We're prepared to
8 begin reading contention interrog-- deposition designations,
9 if it please the Court. And we have the same efficient team
10 ready to do them this afternoon as we used the last two.

11 THE COURT: Who is the deponent in the first one?

12 MR. KWAWEGEN: Would be Mr. Alistair Allen, your
13 Honor, that's the CEO of RuleSpace. We have a color-coded
14 copy of those exhibits, your Honor, if I may approach and
15 I'll take them back at the end of the day.

16 THE COURT: I'm going to take a mid-afternoon break
17 now so that we can get ourselves properly prepared for this
18 thrilling experience. Court is in recess for 10 minutes,
19 back at five after, six minutes after on that clock, not on
20 your clock, on that one. Counsel are excused, we're off the
21 record.

22 (Court in recess; 2:57 to 3:06 o'clock p.m.)

23 THE COURT: We're back on the record. Please be
24 seated.

25 MR. KWAWEGEN: Your Honor, the first transcript,

1 hopefully the only transcript of today, is the transcript of
2 Mr. Alistair Allan, that is A-l-l-a-n. The deposition took
3 place on February 28th, 2006. Mr. Allan is the CEO of a
4 company called RuleSpace. RuleSpace was referenced earlier
5 today during the testimony of Mr. Sena. RuleSpace is a
6 company that provides filtering products; those filtering
7 products are provided to ISPs and other companies that then
8 provide their services to customers and consumers.

9 As before, your Honor, but because we have a new
10 court reporter, the --

11 THE COURT: I would like counsel to identify
12 themselves for the record, please. Who will do the
13 questioning?

14 MR. DOBBS: Elan, E-l-a-n D-o-b-b-s.

15 THE COURT: And who will be the surrogate for the
16 witness?

17 MR. SERRITELLA: Paul Serritella, P-a-u-1
18 S-e-r-r-i-t-e-l-l-a.

19 THE COURT: I have the transcript, so you may
20 proceed -- well, are there any special rules for either --
21 the color I understand and you're going to follow that code,
22 but are there any objections in the text of the deposition
23 that you're aware of?

24 MR. KWAWEGEN: Your Honor, yes, there are
25 defendant's objections. The plaintiffs have waived all

1 objections to all designations in all transcripts, but there
2 are still defendant's objections noted in the transcript to
3 the designations and --

4 THE COURT: Are they marked with a box around the
5 objected material?

6 MR. GOMEZ: Yes, your Honor. And also, with respect
7 to Page 86 -- excuse me, 82-7 through 82-25, the defendant is
8 withdrawing that objection.

9 THE COURT: Let me just make a mark so I don't have
10 to worry about it.

11 MR. GOMEZ: The first objection is going to occur on
12 86-8.

13 (Pause.)

14 THE COURT: The first one is on what page?

15 MR. GOMEZ: Page 86, Line 8.

16 THE COURT: Thank you. Okay, thank you.

17 You may proceed, Mr. Dobbs.

18 MR. DOBBS: Your Honor, the first designation is on
19 Page 8, from Line 6 through 20, designated by the plaintiffs.

20 THE COURT: You may proceed.

21 (At this time the deposition testimony of Alistair
22 Allan was read into the record as follows; questions read by
23 Mr. Dobbs, answers read by Mr. Serritella.)

24 A And after Sequent Computer Systems, I went to RuleSpace
25 at that point.

1 Q And what was that date?

2 A That was April of 2000.

3 Q And is that where you are currently employed?

4 A Yes.

5 Q And what is your job description at RuleSpace?

6 A Today?

7 Q Today.

8 A President and CEO.

9 Q When you started the company, what position did you start
10 with?

11 A Server team project manager.

12 Q When did you become president?

13 A In March of last year, March 31st.

14 MR. DOBBS: Page 12, Line 24, through Page 14, Line
15 19, designated by the plaintiffs.

16 Q I want to focus briefly on how the RuleSpace product
17 gathers sites to filter, does it have an automated system to
18 look for sites on the Web?

19 A Yes, it does.

20 Q And how does that automated system work?

21 A There are multiple feeds, essentially, to the automated
22 system, the primary feed is from what we call unknowns. When
23 one of our customers does a query against our system,
24 essentially they pass a URL; if we've seen that URL before,
25 we give them a response back. In other words, we tell them

1 it's clean or it's pornography. It's a site which is known
2 to generate content dynamically. And then the other response
3 we can get back is it's unknown, we've never seen that URL
4 before, this is a new site, just appeared. So that -- when
5 that happens, we automatically send a spider out to crawl
6 that site, and we pull up to 150 pages from that site and
7 classify those pages using our artificial-intelligence
8 engines and some supplemental technologies, and then by
9 approximately the next day that URL has been categorized and
10 is in the system and is no longer unknown. That's the
11 primary feed for it, there's a couple of others. We have
12 agreements with the DNS registrars where we're allowed to get
13 access to the complete, what they call zone files, that would
14 be a list of all of the dot coms in the world, all of the dot
15 nets in the world, and we read through those zone files and
16 we pull pages, again, from every single entry in those zone
17 files, run them through our categorization engines and
18 populate our system with the responses from the -- the
19 results of those categorizations.

20 And then there's two other sources of automated
21 population. We have what we call aggregator crawls. An
22 aggregator site is essentially a site that focuses on a
23 particular topic, such as pornography or drugs, and it's a
24 site where commercial porn sites register themselves, they
25 want to be found. So what we do is we get a list of

1 aggregator sites and we will run our software across those
2 aggregator sites, find all the porn sites we can find from
3 those sites and then pull pages from all of them.

4 And then the final feed is a manual discovery;
5 essentially, we have people that sit down and look for new
6 sites.

7 MR. DOBBS: Page 14, Line 20, through Page 15, Line
8 4, designated by the defendant.

9 Q Okay. The agreements that you have with the DNS
10 registrars, I believe you said --

11 A Yeah.

12 Q -- and you said that you looked through those files, is
13 that something that's done manually or automatic?

14 A It's automatic.

15 Q How often do you get those files?

16 A We like to do it -- I would like to do it a couple times
17 a year, but realistically, it takes so long, we really only
18 do it but once a year.

19 MR. DOBBS: Page 15, Line 19, through Page 16, Line
20 16, designated by the plaintiffs.

21 Q Actually, let me just not even qualify it as a blacklist,
22 but do you purchase URL lists from companies?

23 A We are -- we have not yet. We are in the process of
24 evaluating buying lists from one company.

25 Q Which company is that?

1 A Verso Communications.

2 Q Would you spell that for me?

3 A V-e-r-s-o. It's -- actually, Verso Technologies is the

4 name of the company.

5 Q But that's not something that you do at this present

6 time, is that correct?

7 A That's correct, it's under evaluation.

8 Q And why is RuleSpace considering purchasing URL lists

9 from Verso Technologies?

10 A Because it's a different type of category than we

11 specialize in ourselves. We specialize in the inappropriate

12 categories, the child-protection categories, the Verso

13 categories are just the opposite, they're enterprise-

14 filtering categories, the type of categories you use to

15 prevent employees looking at business, sports, shopping-type

16 things while they're at work. So, they are enterprise-

17 filtering categories rather than parental-control categories.

18 MR. DOBBS: Page 16, Line 22, through Page 17, Line

19 22, designated by the defendant.

20 Q Does RuleSpace have a relationship with Yahoo! as far as

21 gathering sites to filter?

22 A Yes.

23 Q And what is that relationship?

24 A The Yahoo! Search Technology Group allows us to gather

25 any of the URLs in their database that we have not previously

1 seen.

2 Q And how often do you review these URLs from the Yahoo!
3 Search Technology Group?

4 A I would estimate once a year.

5 Q Is that something that's manually done or automatically
6 done?

7 A There's a combination; a person has to go out and run a
8 program on their system to gather them.

9 Q And, once they're gathered, what does RuleSpace do with
10 those?

11 A We treat them the same way -- the unknowns I mentioned
12 earlier that are automatically gathered when somebody does a
13 look-up, we treat those the exact same. These are -- again,
14 they're unknowns, they're just coming from a different
15 source.

16 Q And do you know how many URLs you receive from the Yahoo!
17 Search Technology Group for review?

18 A I believe the last time we -- we call it harvesting --
19 the last time we harvested unknowns from Yahoo! Search we
20 gathered approximately six million URLs.

21 MR. DOBBS: Page 18, Lines 12 through 22, designated
22 by the plaintiffs.

23 Q Okay. I'd like to show you a document.

24 MR. DOBBS: Deposition Exhibit 1 was marked for
25 identification.

1 Q Do you recognize Exhibit 1?

2 A Yes, I do.

3 Q And is this RuleSpace's response to the subpoena served
4 in this case?

5 A Yes, it is.

6 MR. DOBBS: Page 19, Lines 4 through 9, designated
7 by the plaintiffs.

8 Q So do these figures represent the Websites that RuleSpace
9 filters?

10 A Yes.

11 Q Does this include both foreign and domestic Websites?

12 A Yes, it does.

13 MR. DOBBS: Page 20, Lines 6 through 22, designated
14 by the defendant.

15 Q There is also a row on Page 5 of Exhibit 1 that talks
16 about pornography sites, is that about the number of sites
17 that RuleSpace has classified as pornography?

18 A Yes, it is.

19 Q And in this chart are we talking about Websites or Web
20 pages?

21 A It's actually a combination. The -- we call them nodes,
22 n-o-d-e, it's a rating node. The node could be at the domain
23 level, it could be at the directory level or it could be at
24 the page level. In general, the vast majority of these sites
25 are at the domain level, there's very few page-level URLs in

1 the database; there are lots of directories, in other words,
2 personal home pages where you've got a hosting site like
3 aol.com and you've got your personal directory in there, we
4 would potentially classify that different from aol.com.

5 MR. DOBBS: Page 20, Line 23, through Page 22, Line
6 , designated by the plaintiffs.

7 Q So when RuleSpace categorizes content as inappropriate
8 does it categorize the whole Website from the domain level as
9 inappropriate?

10 A Only if that's the correct place to put the rating. Our
11 software examines the correct places within a domain to put
12 the rating. So it's entirely possible you can get different
13 ratings at different directories within a single domain, it
14 may be on the top-level domain if it's a porn site, then it
15 might be right at the top.

16 Q So if the top-level domain is categorized as pornography,
17 does RuleSpace categorize that whole Website as pornography?

18 A Yes.

19 Q And then, by contrast, if there's a Website where the
20 home page would not have pornography on it, but there would
21 be pornography further down in the Website --

22 A Right.

23 Q -- does RuleSpace categorize the pornography at the level
24 where that pornography exists on the Website?

25 A That's correct.

1 Q Does it categorize it as pornography for all of the pages
2 below that?

3 A Yes. There is an exception to that, but it's highly
4 unlikely. We could manually find that there is what we call
5 a clean pocket underneath inappropriate content, that's very
6 unlikely or very infrequent on pornography sites, but it's
7 actually quite common on other inappropriate sites. For
8 example, GI Joe's, they sell guns and ammunition, but they
9 also sell fishing gear, right? So you might have a clean
10 node under a rated node.

11 MR. DOBBS: Page 22, Lines 4 through 24, designated
12 by the defendant.

13 Q And is this the exception that you were talking about?

14 A Yeah.

15 Q And that's done by manually finding the --

16 A That's almost always manually.

17 Q -- the clean pocket?

18 A Right.

19 Q You state on Page 5 in that paragraph right below the
20 chart, "The number of pornographic sites has remained fairly
21 static." Is this still true today, this statement?

22 A Yes, it is.

23 Q And what is the evidence that you have of this?

24 A Our current master database statistics still indicate
25 that there's about five or six million porn sites in our

1 master database.

2 Q When you're searching for Websites, are there parts of
3 the Internet besides the World Wide Web, that RuleSpace does
4 not search; for example, chat rooms, IM programs or Internet-
5 related chat?

6 A That's correct, we don't search any of those that you've
7 just mentioned.

8 MR. DOBBS: Page 22, Line 25, through Page 23, Line
9 19, designated by the plaintiffs.

10 Q Are there any parts of the Web when you're searching for
11 Websites that RuleSpace feels safe in bypassing based on the
12 domain name, for example, dot g-o-v?

13 A Yes, we do, and dot gov is a prime example. We just
14 don't even bother pulling ratings from the dot gov sites.

15 Q What about other domain names that you would not worry
16 about?

17 A There are some, I don't know them off the top of my head.

18 Q Are there any other parts of the Web that RuleSpace
19 bypasses?

20 A There are parts of the Web that we can't get to because
21 they're secured, you're required passwords, et cetera, to get
22 into those domains, and there are foreign country codes that,
23 you know, we don't have agreements with the registrars to get
24 the zone files so we can't automatically pull content from
25 those. We do tend to find those in the Yahoo! Search

1 Technology's database, though. To answer your question,
2 there's no area that we intentionally ignore.

3 MR. DOBBS: Page 25, Line 16, through Page 28, Line
4 1, designated by the defendant.

5 Q Once RuleSpace has categorized a URL as being on a
6 blacklist, how often is that URL checked and updated?
7 A We periodically, as I mentioned, scan the entire zone
8 files, right? So, if that URL appears on a zone file that we
9 are scanning, it will appear -- it will at that point be
10 updated. So, in that particular case, approximately once a
11 year.

12 Q And that is if the URL is on the zone file?

13 A That's right.

14 Q And if it's not on the zone file?

15 A If it's not on the zone file, we remove it from our
16 master database.

17 Q Why do you remove it from the master database if it's not
18 on the zone file?

19 A If it's not on the zone file, it doesn't exist. We
20 actually hide it, we don't remove it, we hide it so it
21 doesn't become visible, but it's still got a record in the
22 database usually.

23 Q Okay. I just want to clarify a little bit to make sure I
24 understand how the zone files work.

25 A Uh-huh.

1 Q Do I understand correctly that the zone files, their
2 lists you get from the DNS registrars?

3 A That's right.

4 Q And that's in the United States?

5 A The ones we get are, yes.

6 Q What if there would be a foreign site on your blacklist
7 that then did not show up in the zone files, is that a
8 possibility?

9 A No.

10 Q And why is that?

11 A Zone files all -- let me clarify this a little bit, just
12 to explain how zone files work a little bit. Everything that
13 has the same top-level domain, top-level domain being dot com
14 or dot net or a country code, dot UK, is in a zone file
15 specific to that top-level domain, right? So, if there is a
16 dot com in our database which isn't in a dot com zone file,
17 it means that site no longer exists, right? If there's a dot
18 UK file -- sorry, dot UK Website which isn't in the dot com
19 zone file, that's two different pieces of information, they
20 don't relate to each other at all, right? We don't remove a
21 dot UK because it's not in the dot com zone file.

22 Q I understand. Do you have zone files for dot UK?

23 A No. We only have the American-registered top-level
24 domains, we don't have the foreign country codes.

25 Q Okay. So when you state that you remove a URL from the

1 master database or hide it, that would apply to the dot com
2 Websites, is that correct?

3 A Dot com and -- yeah, and any of the other U.S.-
4 administered top-level domains that we have access to.

5 Q And is this updating based on the zone file, is that
6 something that's automated or done through human review?

7 A It's primarily automated; there is a review stage of the
8 output, but it's primarily automated.

9 Q And do I understand correctly that the automation would
10 just be looking for a match between the zone list and URL
11 list?

12 A Yeah.

13 MR. DOBBS: Page 28, Line 2, to Page 29, Line 13,
14 designated by the plaintiffs.

15 Q What then happens in the review process of that?

16 A For sites that are candidates for being deleted, in other
17 words, it's in our master database but it's not in the zone
18 file before we delete it, there's the review stage. And the
19 reason we do the review is the zone file might be two days
20 out of date, maybe the -- maybe that site came back alive
21 between the time that we took a copy of the zone file and the
22 site coming back alive. So we generate a candidate list
23 essentially of sites that at least one point were dead but
24 may have come alive again and we automatically feed those
25 candidate URLs into a program that checks to see if that site

1 is alive and, if that site responds to our test, then it
2 comes off the deletion-candidate list.

3 Q And how many sites -- and let's just for this example
4 take the last time you went through this process --

5 A Uh-huh.

6 Q -- how many sites came off the deletion list through that
7 process?

8 A Man, I don't know off the top of my head, I wish I knew
9 that.

10 Q Do you have any sort of estimate?

11 A For dot coms, again, it would probably be -- it would be
12 in the low millions. I would assume, if there was
13 approximately 25 million dot coms, that maybe one or two
14 percent -- sorry, maybe one or two million of our database
15 URLs would disappear.

16 Q And I just want to clarify to make sure I'm
17 understanding.

18 A Okay.

19 Q Are you saying one to two million would be deleted or one
20 to two million that were marked for deletion would be tested
21 and not deleted?

22 A No, the former. One to two million would be marked for
23 deletion and then, out of that one to two million, you might
24 have a five or ten percent had actually come back alive
25 again, so a few tens of thousands.

1 MR. DOBBS: Page 32, Line 23, to Page 33, Line 13,
2 designated by the defendant.

3 Q Now, for the clean-under-dirty issue, if there was a
4 pornography Website that had a clean element to it, do I
5 understand from your answer that the entire Website would be
6 categorized as pornography?

7 A That's correct.

8 Q And is that something that is different than other -- for
9 other inappropriate sites? For example, I think you
10 mentioned earlier weapons.

11 A Right.

12 Q What I'm trying to figure out is, when do you categorize
13 -- recategorize something as clean if the Website in general
14 is considered to be an inappropriate site?

15 A Can you say that one more time?

16 Q Do you understand my question?

17 A No, I don't -- I thought I did, but can you say it one
18 more time?

19 MR. DOBBS: Page 33, Line 14, through Page 34, Line
20 5, designated by the plaintiffs.

21 Q Do you recategorize sections of a site that are clean if
22 the entire site is inappropriate?

23 A We will do that, usually manually, where somebody finds a
24 clean node within the domain and it's worthwhile actually
25 flagging that as a clean directory, unlike porn sites. The

1 only clean nodes in porn sites are the credit card page,
2 right? There's no inappropriate content there, so the
3 engines aren't going to fire. It's still a porn site, which
4 is just the opposite of where you actually find a worthwhile
5 clean node within another site. You know, you could have --
6 you could have a new site, right? That's got a lot of stuff
7 you don't particularly want your kids reading, right? But
8 there may be some interesting sites directly inside that
9 domain, so you go ahead and mark that as clean even though
10 there might be sexual advice at a higher-level node within
11 that domain, and those are usually found manually.

12 MR. DOBBS: Page 34, Lines 6 through 8, designated
13 by the defendant.

14 Q And how often do you have people doing this manual review
15 for the clean-under-dirty?

16 A Manually, it's ad hoc, it's not on a schedule.

17 MR. DOBBS: Page 41, Line 5, through Page 44, Line
18 17, designated by the defendant.

19 Q So do I understand correctly that the RuleSpace product
20 that you provide to the ISPs allows for a real-time analysis
21 of a dynamic site and it's up to the ISP whether or not they
22 want to utilize that feature?

23 A Right. None of the ISPs have bought the real-time
24 analyzers, they all make policy decisions.

25 Q So the RuleSpace products that the ISPs use that you

1 currently have contracts with, is it based on the -- what we
2 discussed earlier as the blacklists, that they base their
3 filtering decisions based upon the URLs that you have deemed
4 to be inappropriate?

5 A Not -- excuse me, not just those that we've deemed
6 inappropriate, it's the entire database, you know, the
7 blacklist being ten percent of the whole database, right. So
8 they make a decision based on whether it's on the blacklist
9 or whether it's not on the blacklist, right.

10 Q I guess what I'm trying to understand is, if the ISPs
11 don't use the real-time analysis that RuleSpace offers -- and
12 the blacklist covers, I believe you said, ten percent of that
13 database?

14 A Roughly, yeah.

15 Q What happens with the other 90 percent?

16 A So I should define what the other 90 percent is. That
17 other 90 percent is what we refer to as no-cats, n-o-c-a-t-s,
18 that's short for no categories. What that means is, we've
19 seen that site, we've pulled pages from it, and none of the
20 inappropriate engines fired, right? So it's a pretty good
21 indication that there's no inappropriate content on that
22 site. And so when they do a look-up, 90 percent of the time
23 they're going to get a response back from us that says it's a
24 no-cat, we've seen that site, there's no inappropriate
25 content on it. So that's why I didn't want to just state

1 that it's a blacklist, because it's the other part of the
2 database that gets most of the traffic, that's what they use
3 to make the decision whether it's a no-cat, whether it's an
4 inappropriate site or whether it's an unknown or dynamic.

5 Q Are there any dynamic Websites that are in the no-cat
6 category?

7 A No.

8 Q And what if RuleSpace has not seen a site before and how
9 -- how is that categorized by the ISP using the RuleSpace
10 product?

11 A If we've never seen it before, we send a response back
12 saying this is unknown, that's the response they get back.
13 They have the option at that point whether to allow or block
14 access to that site, usually based upon a subscriber policy.

15 Q Do you know for the unknowns whether ISPs usually allow
16 or block on the unknown?

17 A There's no general answer. I know that most of them make
18 an age-specific decision that if -- in general, if you're an
19 adult and you're a subscriber, they'll probably allow, but if
20 you're a young child -- at least this is the way AOL did it,
21 I believe when AOL was our customer this is how they did it,
22 they would allow adults to get unknowns they would block
23 young children; I couldn't say for a fact that Yahoo! does
24 the same.

25 Q Is the same true for a dynamic Website, that it's the

1 ISP's decision whether to allow or block?

2 A That's correct.

3 Q Something that's categorized as dynamic?

4 A That's correct.

5 Q How much of the RuleSpace database has -- is dynamic

6 Websites?

7 A I don't know the exact number, it's a very small

8 percentage.

9 Q I want to make sure I understand the RuleSpace database.

10 We have what we have termed as blacklist sites, the no-cats,

11 no categories, there's dynamic Websites, and then there would

12 be unknown sites if they were not in the database?

13 A That's correct.

14 Q Are there any other categories that I'm missing?

15 A Yes.

16 Q Forgive me if you've answered this already, but if

17 something -- if a URL is on what RuleSpace has deemed to be

18 an inappropriate site and a user attempts to pull up that

19 site, do I understand correctly that there is not then a

20 real-time analysis of that site?

21 A That's the ISP's decision. And today none of our ISP

22 customers are using the real-time analysis, so that's

23 correct.

24 Q Okay. For all of the sites that you have as

25 inappropriate sites, are those lists -- do those lists go

1 under human review?

2 A Not generally, no.

3 MR. DOBBS: Page 51, Line 19, through Page 54, Line
4 20, designated by the plaintiffs.

5 Q Okay. And I think an exhibit actually may be helpful
6 here. If we can mark this as Exhibit 2?

7 MR. DOBBS: Deposition Exhibit 2 was marked for
8 identification.

9 Q Do you recognize Exhibit 2?

10 A Yes, I do.

11 Q Is this a RuleSpace document?

12 A Yes, it is.

13 Q And it's entitled, "RuleSpace Mobile Internet Content
14 Categorization Technical Overview"?

15 A That's correct.

16 Q So do I understand correctly that the RuleSpace
17 technology doesn't look for keywords, doesn't just look for
18 keywords in Web pages, but uses a statistical pattern
19 recognition?

20 A That's correct.

21 Q And if you turn to Page 3 of Exhibit 2, it states, "The
22 basic unit of RuleSpace technology is the category model."

23 And then goes on to state, "A category model is the output of
24 a patented process that constructs one or more classifiers
25 derived from features that were deemed important in

1 separating target content from anti-target content.

2 RuleSpace technology is based on statistical pattern

3 recognition, not semantic or linguistic techniques." Is that

4 an accurate statement?

5 A That's correct.

6 Q So from this statement do I understand correctly that

7 natural language parsers are not used by our software?

8 A I don't really know what a natural language parser is.

9 Q Does the software itself attempt to classify strings of

10 words into well-formed units?

11 A I don't know.

12 Q The software is not based on linguistic techniques, is

13 that correct?

14 A That's my understanding.

15 Q And I presume then that the software does not function

16 like a dictionary or a thesaurus to analyze words, does it?

17 A That's correct.

18 Q And just to make sure, since I asked the question in a

19 roundabout way, that's correct that it does not analyze --

20 let me just ask the question differently.

21 Does the software work as a dictionary to analyze

22 words or not?

23 A It doesn't act as a dictionary.

24 Q And is the software program to spot lexical or structural

25 ambiguities in words that would be detected by humans?

1 A It can be, yes. If those ambiguities are present in the
2 training data, then yes; if the engine was trained to
3 recognize those, it will certainly recognize them. That's
4 not something that just happens, right? You have to train
5 the engine to recognize those. And so if there are lexical
6 ambiguities in either the content set or anti-content set, it
7 will find them.

8 Q In order to train the program, is that something that has
9 been input by people?

10 A Yes.

11 Q To define the ambiguities?

12 A Yes.

13 Q So it would be the people defining the ambiguities and
14 relaying that to the software, is that correct?

15 A That's correct. I'm just now understanding your
16 question. We intentionally put maybe -- if I'm answering the
17 question properly, we intentionally put bad data, badly
18 formed data, into the training sets, because you're going to
19 come across badly formed Web pages in the real world, such as
20 misspellings, et cetera, so the engines are trained to
21 recognize that.

22 Q Through the input into the program from the programmers?

23 A From the graders. It's actually graders that find that,
24 yeah.

25 MR. DOBBS: Page 58, Line 6, through Page 59, Line

1 21, designated by the defendant.

2 Q Okay. And the first step is, quote, "Library scientists
3 and categorization specialists create a detailed category
4 definition of subject category," end quote, is that what you
5 mean when you say that pages are classified as either a porn
6 page or a clean page?

7 A No, this is the step before that.

8 Q Okay.

9 A Before you can make that definition, this is porn versus
10 this is clean, you have to define what porn is, and that's
11 what this first step is, defining what's porn, what's drugs,
12 what's alcohol.

13 Q And how does RuleSpace define what porn is?

14 A Our library scientist creates that definition.

15 Q And what training does the library scientist have?

16 A Usually a linguistics background, our current one has a
17 linguistic background.

18 Q Do you have one person or are there more people who do
19 this?

20 A At the moment, there's only one.

21 Q And the categorization specialists, would that be a
22 different job at RuleSpace?

23 A Today, that's the same person.

24 Q So once they define what the category is, then they would
25 label it? When we talk about the porn versus clean pages, is

1 that what you're talking about in Step 2 as target and anti-
2 target content?

3 A That's right.

4 Q And how is this a crucial step to highly accurate
5 categorization?

6 A Because if you mark a clean page as porn incorrectly,
7 then the engine is going to be trained incorrectly and, when
8 it runs in the real world, it's going to fire on clean pages
9 instead of porn pages.

10 Q And then what we've been talking about previously as far
11 as what the automated process is, that is what is termed in
12 Exhibit 2 as feature extraction and feature selection?

13 A That's correct.

14 Q And this is based on a statistical method, is that
15 correct?

16 A That's correct.

17 MR. DOBBS: Page 63, Line 8, to Page 65, Line 1,
18 designated by the plaintiffs.

19 Q Just a few more questions on the technology itself. Can
20 you explain to me what it means to be -- to have, quote,
21 "RuleSpace technology is based on a statistical pattern
22 recognition, not semantic or linguistic techniques," end
23 quote?

24 A I believe what that's saying is that, regardless of the
25 linguistics involved, the language that -- the dialects, et

1 cetera, it's a statistical analysis that's performed, it's
2 not -- in other words, it can be applied to multiple
3 languages, multiple categories, it doesn't -- it's not
4 pertinent how the language is phrased, it's a statistical
5 analysis of features that have been discovered in essentially
6 a body of text.

7 Q How does the system come up with new features to -- for
8 which the system to be trained on, for example, new slang
9 terms?

10 A We retrain the engines periodically by gathering new
11 data. You essentially go through the whole engine-training
12 process again. What we do is, we measure the accuracy of the
13 engines and if we determine that the accuracy is dropping or,
14 more likely, one of our customers may report that we're not
15 doing so well in one of the categories, we will retrain an
16 engine. You go and gather current content from the Web. Our
17 definition, the category definition, hasn't changed, but the
18 content that's feeding that definition may well have changed.

19 Q And how often do you retrain the engines?

20 A We've actually only had to retrain the pornography --
21 we've only had to retrain one of the pornography engines,
22 that was the Japanese porn engine, we have had no complaints
23 about any of the other engines.

24 Q And you mentioned that there are different porn engines;
25 are those language-based?

1 A Yes.

2 Q And how many different porn engines do you have?

3 A We have -- there's two answers here: We have 14
4 language-specific porn engines that are based on our HTML
5 pages that are directed at PCs; we have two additional
6 engines, both in English, for pornography that are directed
7 at mobile Internet content. So you've actually got three
8 English porn engines, but they're directed at different types
9 of porn.

10 MR. DOBBS: Page 65, Line 13, through Page 66, Line
11 16, designated by the plaintiffs.

12 Q I'd like to mark another exhibit. This will be Exhibit
13 3.

14 MR. DOBBS: Deposition Exhibit 3 was marked for
15 identification.

16 Q This is a document entitled, "RuleSpace Category
17 Definitions and Category Language Pairs." Do you recognize
18 this document?

19 A Yes, I do.

20 Q And is this a RuleSpace document?

21 A Yes, it is.

22 Q When we were talking about the categories of
23 inappropriate sites, does this accurately list the
24 inappropriate categories for RuleSpace?

25 A I think this is accurate, as of the date it was published

1 there, November, 2004.

2 Q Have the categories changed since November of 2004?

3 A We have added some, yes.

4 Q What categories have you added?

5 A Mobile pornography. And a subset of these categories are
6 only targeted at the mobile Internet: Mobile pornography,
7 mobile gambling, mobile dating. I also think -- I'll just
8 scan through here -- I think we've added suicide -- I don't
9 think suicide is in here -- actually, I take it back, we have
10 added suicide, it's in here. Okay, I've got to correct that.
11 Suicide was already in here, it must have been added just
12 about the time this came out. So, other than that, it's
13 complete, yes.

14 MR. DOBBS: Page 68, Line 7, through Page 70, Line
15 13, designated by the plaintiffs.

16 Q When we left off before the lunch break, we were talking
17 a little bit about the categories that RuleSpace has; do you
18 know how the categories used by RuleSpace relate to the
19 categories offered to the end users of your product?

20 A Not exactly. Again, that's really the ISP that decides
21 how to map our categories to the filtering that they offer,
22 we -- we help them have ideas, we tell them these categories
23 are probably appropriate for these age groups, but whether
24 they implement that or not I honestly don't know.

25 Q When you talk about certain categories being appropriate

1 for age groups, do you have specific age groups delineated?

2 A In broad terms, yes; young kids, young teens, mature

3 teens and adults. Sort of three or four bands usually. And,

4 you know, we'll recommend -- you know, a mature teen can

5 probably see sexual advice or mature content or sexual

6 education, those types of assignments of categories to age

7 groups.

8 Q What would the age range for young kids be?

9 A Probably up to about eight.

10 Q And then young teens?

11 A 13, roughly.

12 Q So, eight to 13?

13 A Eight to 13, probably.

14 Q And then mature teens?

15 A And these are guidelines.

16 Q Sure.

17 A 14 to 18, something like that.

18 Q Would adults be over 18?

19 A Right.

20 Q So, for example, if an ISP wanted to filter out Websites

21 relating to sex, which categories of the RuleSpace categories

22 would be triggered?

23 A Just sex in general?

24 Q Right.

25 A I have to look at -- refer to the company list here.

1 Q It's Exhibit 3.

2 A Exhibit 3. For just sex, lifestyle, mature content,
3 probably personals and dating as well, pornography, and,
4 again, just sex and sex education as well. I think that's
5 it.

6 Q Would abortion fall into that category?

7 A Not if we're just talking about sex.

8 Q Do you know whether an end user of the RuleSpace product
9 can change the categorization on their own computers?

10 A We recommend to all of our licensees that they put what
11 we call a local-override process in place where the end user
12 can, with, you know, password-type protection, override the
13 RuleSpace categorization.

14 Q Do you know if any of the ISPs that you contract with use
15 this local-override process?

16 A Yahoo! certainly does.

17 MR. DOBBS: Page 70, Line 14, through Page 71, Line
18 1, designated by the defendant.

19 Q Do you know if anybody else does?

20 A Well, the only other one we have is Bell South and I
21 don't know whether they do or not.

22 Q If an end user recategorizes a Website, does RuleSpace
23 keep track of that?

24 A We're not even notified of that.

25 Q For the universe of Websites that you categorize, how

1 often does RuleSpace revisit the categorization of a Website?
2 A Like I said earlier, usually at least once a year. We
3 tend to do the DNS, so -- the file scans, so they're going to
4 -- if they're dot coms or if they're in a top-level domain
5 that we have access to, then at least once a year.

6 MR. DOBBS: Page 71, Line 24, through Page 72, Line
7 7, designated by the defendant.

8 Q How large is the staff at RuleSpace?

9 A 12 full-time employees.

10 Q And how many of those are what I'll call technical
11 employees that work with the RuleSpace program?

12 A All but two; we've got one sales guy and an office
13 manager.

14 Q Is your staff located inside the United States?

15 A Primarily -- they're all here, yeah. We have -- our
16 salesman spends time overseas, but he's based here.

17 MR. DOBBS: Page 73, Lines 4 through 6, designated
18 by the plaintiffs.

19 Q Okay. And how many languages does the RuleSpace product
20 cover?

21 A I believe it's 17 at the moment.

22 MR. DOBBS: Page 73, Lines 7 through 11, designated
23 by the defendant.

24 Q So for your traders in those languages, are they native
25 speakers of the language they're grading in or not?

1 A As close as we can find, they usually are. Occasionally,
2 we couldn't find a Fin, so we got a Dane-type thing, right?
3 But generally yes.

4 MR. DOBBS: Page 75, Lines 4 through 14, designated
5 by the defendant.

6 Q So do I understand correctly that the graders categorize
7 Websites as porn or not porn rather than looking at specific
8 elements in that Website?

9 A That's correct.

10 Q Do they do it on a per-Website basis or a per-page basis?

11 A It depends what task they've been asked to do. If
12 they're gathering training data for an engine, it's on a
13 page-by-page basis; if we're building a list for a category
14 that won't be supported by an engine, then it's on a domain-
15 by-domain.

16 MR. DOBBS: Page 75, Lines 15 through 19, designated
17 by the plaintiffs.

18 Q And then, if I understand it correctly, after the
19 training data is input into the computer system, the computer
20 looks for certain features of that page, is that correct?

21 A That's correct.

22 MR. DOBBS: Page 78, Lines 8 through 14, designated
23 by the plaintiffs.

24 Q What training is given to the graders?

25 A Specifically, they start with the category definition,

1 make sure they really understand the difference between the
2 content set definition and the anti-content set, and then
3 basic Web navigation, how to identify -- how to find pages
4 and how to identify the difference between a good page and a
5 bad page for training data.

6 MR. DOBBS: Page 78, Lines 15 through 21, designated
7 by the defendant.

8 Q How do you teach somebody to identify the difference
9 between a good and a bad page?

10 A We tell them enough information about the engines to
11 recognize that, the text, so even if you get a highly-
12 pornographic page, it's all images with no text on it, it's
13 not going to make a good training page for a text recognizer,
14 so we teach them that.

15 MR. DOBBS: Page 78, Line 22, through Page 79, Line
16 24, designated by the plaintiffs.

17 Q And after the grader is trained, how they are supervised?

18 A There's two ways. Each grader that is actually entering
19 training data using a software program, and that program
20 identifies who graded the page, right? And so we can -- when
21 it comes to a training process, if we find an engine isn't
22 behaving properly, it has really low accuracy, you can go
23 back and see, you know, this particular grader had a really
24 high error rate, for example, he misclassified a lot of
25 pages, and so we can trace that. That's the software-level

1 supervision. Beyond that, it's just, you know, a manager-
2 supervisor-type thing. Again, it depends on the grader. If
3 it's somebody we've never used before, my library scientist
4 would be -- she sits next to them in the next cubicle and
5 will be talking to them all the time, making sure if they get
6 stuck or something she's available, she can help them make
7 close decisions, right? Is this or is this not porn, right?
8 We've got some other contractors that we've used off-and-on
9 for years that work pretty much unsupervised, we know their
10 accuracy is great.

11 Q If a grader misclassifies a lot of pages, will that
12 grader be terminated?

13 A Yep, we've done that.

14 Q How many graders have been terminated for
15 misclassification?

16 A One that I'm aware of.

17 MR. DOBBS: Page 81, Line 18... to Page 87, Line 22,
18 designated by the plaintiffs.

19 Q I think we touched briefly before on the imagining
20 technology; does RuleSpace identify visual imaging?

21 A That's the part we license from the First Four Internet
22 Company in the U.K., it does recognize pornographic images.

23 Q How long has RuleSpace had this capability?

24 A It's within the last six months.

25 Q And I take it this technology addresses still images,

1 photographs?

2 A That's correct.

3 Q Does it address video files?

4 A I don't know; that's a good question, I don't know.

5 Q Does RuleSpace address audio files?

6 A No.

7 Q What does the visual-imaging program look for in

8 characterizing images as pornography?

9 A It looks for several things. The ones I know about for

10 sure are texture analysis, so it differentiates between sand

11 and skin; it looks for contrast as well; it examines facial

12 features, looks for facial features. Beyond that, I don't

13 know.

14 Q How does the system understand images?

15 A I don't know what you mean by understand.

16 Q For example, how does the system distinguish between a

17 picture of a baby that may have a lot of flesh tones in the

18 image versus a pornographic image that may have a lot of

19 flesh tones in the image?

20 A Okay. It's my understanding that the image-recognizer is

21 trained in a very similar manner to the text classifiers

22 where it's essentially being fed a lot of clean images and a

23 lot of pornographic images and, again, it does feature

24 extraction, feature selection, and uses those technologies to

25 differentiate.

1 Q Do you know whether human review is part of the process
2 of checking images?

3 A It's -- I know it's part of the quality assurance
4 process, I don't know whether or not it's part of the actual
5 training process.

6 Q Do you know what sort of criteria are applied for human
7 review of the image filtering?

8 A I don't know what the vendor first for Internet applies
9 for human review. We have the grader -- sorry, the library
10 scientist to do quality assurance on it, again, she runs --
11 will run images through it, find out which ones fire as
12 pornography, and then we examine those to make sure they're
13 getting them right.

14 Q And of the ones that are viewed by your library
15 scientist, how many images -- or what is the accuracy rate?

16 A We measure at 87 percent.

17 Q And does that 87 percent take into account false-
18 positives or false-negatives, or both?

19 A It takes both. Our definition of accuracy is probably
20 the question there, right? We define accuracy to be the
21 total number of true-positives plus the total number of true-
22 negatives divided by the total number of porn and the total
23 number of non-porn in the test set. So, what you're saying
24 is this, how many times the engine got it right, it fired
25 when it should and it doesn't fire when it shouldn't, divided

1 by the total number of images in this case that it was run
2 across, and that gives you a percentage accuracy. So it does
3 include true-positives, true-negatives, false-positives and
4 false-negatives.

5 Q Does the image capability look at advertisements on a
6 Website?

7 A It depends upon the application that calls it.

8 Q What does that mean exactly?

9 A If you're the ISP, it's up to you as the ISP whether
10 you're going to run the image recognizer on every image on
11 the site or if you're going to do some other level of
12 essentially screening of the images before you call the
13 recognizer, that's out of our control.

14 Q Do you know how many ISPs that RuleSpace contracts with
15 use the image recognizer?

16 A None.

17 Q And does that none use it at all or none use it for
18 advertisements?

19 A No ISPs use it at all.

20 Q And why don't you think they use it?

21 A For the regular Internet, they're already getting
22 sufficiently accurate coverage from the text classifiers and
23 the look-up system, they really don't -- in general, don't
24 need the image recognizer for the regular Internet.

25 Q For the image-recognition software, which would you say

1 it does, does it err on the side of -- would it be over-
2 blocking or under-blocking?

3 A It can be tuned either way. It has a sensitivity
4 threshold that, when you call it, it comes back and it tells
5 you this is kind of porn, it's more or less porn or it's
6 definitely porn, and so you, as the user of that, can tune
7 your application whichever way you want.

8 Q So the answer would depend on how you have it set to?

9 A Yeah; it's configurable, essentially.

10 Q And do I understand correctly that RuleSpace does not
11 create the technology for image filtering?

12 A That's correct.

13 Q Do you know whether image filtering works with video
14 streaming?

15 A It's a good -- I don't know; it's a good question, I just
16 don't know.

17 Q We spoke a little bit earlier about mobile technology and
18 the RuleSpace products; can the RuleSpace product be used on
19 Blackberrys?

20 A The RuleSpace product for mobile is -- uses the same
21 architecture as RuleSpace products for ISPs. In other words,
22 the technology runs at the carrier rather than at the ISP.
23 So, if your Blackberry is receiving data from the carrier,
24 yes, we will be able to analyze that content.

25 Q And that's a determination that's not made by RuleSpace,

1 I take it, but made by the carrier?

2 A That's right.

3 Q Does RuleSpace technology filter WAP sites?

4 A Yes, it does.

5 THE COURT: There's an objection here?

6 MR. GOMEZ: Objection, your Honor, to the next
7 section, which is essentially this witness --

8 THE COURT: What are the grounds?

9 MR. GOMEZ: The grounds is speculation, calling for
10 speculation, it's not in compliance with Rule 62 where the
11 witness -- the witness may not testify when he doesn't have
12 personal knowledge. This witness specifically states, "I
13 don't know what GPRS is." The testimony that precedes this
14 is starting to get into testimony about what carriers do and
15 then, when he gets into a more technical aspect of what a
16 carrier -- or the process for a carrier, this particular
17 witness is just -- is acknowledging that he doesn't have that
18 personal knowledge.

19 In addition, this witness is not a lay opinion
20 witness and lay opinion wouldn't apply here because lay
21 opinion, under 701, applies to perception, it is not based on
22 scientific or technical or specialized knowledge, your Honor.

23 MR. KWAWEGEN: Your Honor --

24 THE COURT: Let me read it, I haven't had time, I've
25 been busy listening, I want to read it to myself.

1 (Pause.)

2 THE COURT: Your response?

3 MR. KWAWEGEN: Your Honor, although plaintiffs do
4 not necessarily agree with everything that Mr. Gomez just
5 said, plaintiffs will withdraw the designation on Page 86,
6 Line 8, through Page 86, Line 21.

7 THE COURT: Done. Proceed with Line 22, please?

8 Q Does RuleSpace have an entirely different produce from
9 mobile technology or does it use the product, the same
10 product, for PC use?

11 A There's a combination. There's some new components being
12 specifically designed for the mobile content, but some of the
13 old technology is also used.

14 Q I'd like to show you another exhibit. I believe we're up
15 to 4, Exhibit 4.

16 MR. DOBBS: Deposition Exhibit 4 was marked for
17 identification.

18 Q Do you recognize Exhibit 4?

19 A Yes, I do.

20 Q Is this a RuleSpace document?

21 A Yes, it is.

22 Q And it's entitled, "Response to CTIA's RFI on Wireless
23 Internet Content Restriction Technologies." Who is CTIA?

24 A It's the Cellular Telecommunications and Internet
25 Association.

1 Q What was this document prepared for?

2 A The CTIA sent out a request for information on the
3 technologies that are available to date to recognize
4 inappropriate content on the mobile Internet.

5 Q And is this a document that was created in August of
6 2005?

7 A Yes.

8 MR. DOBBS: Page 87, Line 23, to Page 89, Line 9,
9 designated by the defendant.

10 Q If you could look at Page 4 of this document, it states
11 that classification of mobile content is different, most
12 mobile Web pages have very different physical characteristics
13 from traditional HTML PC-oriented Web pages, and under that
14 point it states that they are much smaller, far less text on
15 the page, more difficult to classify. Can you explain why it
16 is more difficult to classify mobile Web pages?

17 A Going back to the training process where we talked about
18 feature selection and feature extraction, on a traditional
19 Internet Web pages which was designed for a PC, you've
20 probably got a 20-k-byte page and on that 20-k-byte page you
21 may find in the order of 15 or 20 features that identify that
22 page as being pornographic or clean. Now, on a mobile
23 Internet page, which is probably one-k or two-k, there's a
24 lot less text on the page, because it's designed specifically
25 for a cell phone as opposed to a PC, and your engine has to

1 be capable of differentiating between pornography and non-
2 pornography based on finding maybe one or two features on a
3 page versus 15 or 20.

4 Q The image filtering that RuleSpace has, does that work
5 with mobile technology as well or not?

6 A It does.

7 Q Does it have the same accuracy rate for mobile technology
8 as it does for non-mobile technology, the PC?

9 A It depends on the content. The larger the image, the
10 more accurate the image rater; the smaller the image, the
11 less accurate. And then the other factor involved in that
12 accuracy is the quality of the picture. You know, if you're
13 taking a professional image for a commercial porn site with a
14 real expensive camera versus snapping one with your cell
15 phone camera, the engine is going to be less accurate on the
16 cell phone camera than on the commercially taken image.

17 MR. DOBBS: Page 89, Line 10, to Page 92, Line 12,
18 designated by the plaintiffs.

19 Q So what would you say is the accuracy rate on the image
20 filtering for mobile technology?

21 A I think that 87 percent number was done on mobile
22 content. The point -- the reason we got the image recognizer
23 was for the mobile Internet, not for the ISP work.

24 Q Okay.

25 A So I think we measured it on mobile content.

1 Q Page 4 of Exhibit Number 4 also discusses latency; can
2 you explain the latency issue?

3 A So there's two different models that need to be
4 considered; one is where you're just doing a look-up of a
5 URL, it's already been preclassified, there's no latency
6 involved generally. If you design your application properly,
7 there's no latency incurred by doing a look-up, because what
8 happens is the carrier is fetching the Website, the Web page,
9 from the Internet and then, parallel with that, they're doing
10 a look-up to our system and, since our system and the mobile
11 Internet is actually running on the network device, on the
12 carrier, they're going to get a response back from us long
13 before they've actually fetched back the page from the
14 Internet. So there is no latency incurred with the -- and
15 URL look-up. If you're doing a real-time classification
16 using either the text or the image classifier, then you have
17 to have previously fetched the content off the Internet and
18 then passed it to our real-time analyzer and then, yes, there
19 is latency involved at that time.

20 Q You said for the real-time classification you have to
21 have previously fetched the page off the Internet; what
22 happens if somebody is looking at a page that has not been
23 previously captured by RuleSpace?

24 A It will -- the way that works is the carrier fetches the
25 page, the -- once they have reassembled that page, they run

1 it through our real-time analyzers. If they do a look-up of
2 the URL and it comes back and says it's unknown, we've never
3 seen it before, then they take the page and they run it
4 through the real-time classifiers, and it will go through
5 both the text and the image classifier at that time, and then
6 they make the policy decision whether or not to display it to
7 the handset.

8 Q And is this where the latency issue comes in?

9 A That's right.

10 Q Why do you say that minimal latency is critical to mobile
11 carriers?

12 A Because of the volume that's going through the network
13 equipment. There's millions of concurrent cell phones going
14 through the same piece of equipment at Cingular or Sprint and
15 we can't be adding any overhead to that.

16 Q Is latency also an issue for PC users?

17 A Nowhere near as much. The bandwidth that you're
18 generally using on a PC is really fast and pretty much
19 dedicated to you, whether you're on a DSL line or a cable
20 line or something, but when you're on a cell phone it's a
21 much slower communications media and so any part of that time
22 that's spent rating content is critical.

23 Q It also states on Page 4 of Exhibit 4, I think, quote,
24 "It is absolutely critical that the solution includes a
25 component that can rate dynamically generated mobile

1 content." Why is this a critical factor?
2 A The mobile Internet is very different from the
3 traditional Internet. On the traditional Internet, you can
4 classify the vast majority, 90 percent or more, of Websites
5 as being always clean or always inappropriate. The mobile
6 Internet is a very different world, the exact same URL can
7 generate porn or clean content. The example I like to use is
8 on your cell phone, right? You'll see -- if you go to, you
9 know, some of these portals, if you go to a mobile Internet
10 portal, that's literally, you know, press 1 for sports, press
11 2 for news, press 3 for adult content, and they all go to the
12 same site, so you can't pre-categorize that URL as always
13 being clean or always being dirty. So you have to -- in a
14 much larger percentage of the cases you have to analyze the
15 content in real time because the same site can serve up clean
16 or inappropriate content.

17 MR. DOBBS: Page 92, Lines 13 through 18, designated
18 by the defendant.

19 Q I believe you stated earlier that none of the ISPs that
20 you contract with have contracts for real-time analysis, is
21 that correct?

22 A None of the ISPs, is that what you said?

23 Q Correct.

24 A Correct, none of the ISPs do.

25 MR. DOBBS: Page 92, Line 19, through Page 93, Line

1 15, designated by the plaintiffs.

2 Q Do you have clients using your real-time technology for
3 mobile Internet?

4 A They're all in evaluation at this point, none of the
5 carriers have actually deployed a solution yet -- let me
6 rephrase that, none of the U.S. carriers have deployed a
7 solution yet, some of the European carriers have.

8 Q Okay. Which ones have?

9 A (Name redacted)

10 Q Where is that located?

11 A U.K.

12 Q Anybody else?

13 A That's the only one I'm aware of.

14 Q And who are you in talks with in the U.S. for this
15 technology?

16 A At the carrier level?

17 Q Yes.

18 A (Name redacted), and that includes (names redacted); just
19 about to start negotiations with (name redacted), haven't
20 done that just yet. I was supposed to do that yesterday, the
21 meeting got cancelled. I don't think I'm missing any of them
22 at this point, it's all of the major -- oh, (name redacted),
23 they're a second-tier carrier.

24 MR. DOBBS: Page 97, Lines 4 through 14, designated
25 by the defendant.

1 Q If you could turn to Page 3 -- I'm sorry, Page 13 of
2 Exhibit 4, and this page is entitled, "Accuracy," it states,
3 quote, "When a carrier passes a URL to RuleSpace, we
4 guarantee we will return correct rating if it exists in the
5 OLS known as known porn or known clean site," end quote. Can
6 you explain this statement?

7 A What we're saying is, if we have really looked at it,
8 somebody has looked at it, we're guaranteeing, you know, that
9 if we have seen it before and we recognize it as porn, we're
10 guaranteeing that it's a porn site or it's a clean site.

11 MR. DOBBS: Page 97, Line 15, through Page 101, Line
12 15, designated by the plaintiffs.

13 Q So this is comparing it -- so the OLS is the list that
14 you have, what we were referring to earlier as the blacklist?

15 A The combination of the blacklist, the white list and the
16 no-cats.

17 Q If it falls -- I'm sorry?

18 A I was going to say, I wanted to clarify that a little
19 bit. Within the -- making sure that we're still within the
20 context of mobile rating versus the overall online look-up
21 service, bearing in mind this document is about mobile
22 filtering, and so the reason we're guaranteeing that is the
23 known porn and the known clean mobile sites have all been
24 looked at by a human, there wasn't an engine that generated
25 those, so that's why we're guaranteeing those.

1 Q If something was in the no-cats category, would it show
2 up on the OLS as known porn or known clean?

3 A Neither, it would show up as no category.

4 Q Page 13 also says, "If the URL doesn't exist in the OLS
5 or is a known dynamic site, we'll classify it correctly 99.48
6 percent of the time." Can you explain this statement?

7 A Yeah. So what that's saying is, you do a look-up of a
8 URL, it has not been classified as always clean, it has not
9 been classified as always porn, so it's either dynamic or
10 we've never seen it before, in which case what we're saying
11 is, you take the page content, the actual Web page that
12 you're getting to, and you pass that to the real-time
13 analyzer, and the real-time analyzer has been measured to be
14 99.48 percent accurate.

15 Q What if something is in a no-cats?

16 A It becomes at that point a policy decision for the
17 carrier as to what to do with no-cats.

18 Q Does the 99.48-percent figure take into consideration the
19 no-cats sites?

20 A The engine is only -- let me make sure I say that
21 properly -- the engine is going to tell you with 99.48-
22 percent accuracy whether or not the page contains
23 pornography, it's not going to tell you whether there's
24 gambling or alcohol on the page or shipping, which would be a
25 no-cat.

1 Q And what were the testing conditions for these
2 statistics?

3 A We gathered -- if you look at the line that says, "RMAT
4 Accuracy," those numbers there are the counts of the true-
5 positives, true-negatives, and the number of content set and
6 the number of anti-content set pages that were used in this
7 test, all of those pages were manually graded where somebody
8 actually looked at them and decided whether they were porn or
9 whether they were not porn. And then, when the engine was
10 run across that, we looked at the counts of the ones that it
11 got wrong and that's how we calculated the accuracy.

12 Q So the -- is the 2,676 figure the -- what does that
13 represent?

14 A 2,676 is, if you look at the form up above where it says,
15 "Accuracy equals," so 2,676 is NCS, which is the number of
16 content set. So what that means, that's the number of porn
17 pages that were in the test. And ACS is the number of anti-
18 content set, so 5,473 is the number of clean pages that were
19 in the test.

20 Q So when you ran this test of 2,676 porn pages, the
21 software caught 2,639 of them?

22 A That's correct.

23 Q As porn?

24 A That's correct.

25 Q And of the 5,473 clean pages, the software caught 5,468

1 as clean?

2 A That's correct.

3 Q Where did you get the Web pages for this test?

4 A The graders manually find them.

5 Q Did you have any criteria for pulling the samples for
6 this test?

7 A Pulling the samples?

8 Q Yes.

9 A Yeah, okay. The way you have to pull wireless Web pages
10 is very different than the way you have to pull regular
11 Internet Web pages. For regular Internet Web pages, you just
12 use a browser, you go, you get the page; for wireless pages,
13 you have to pretend you're a cell phone so that you can get
14 the right page. So what we did is, we licensed a product
15 that you can use on your PC that makes your PC appear to be a
16 cell phone to a wireless site, and so that's how we pulled
17 them, right?

18 Q Were the -- I'm sorry, you said the graders were pulling
19 them?

20 A The graders go get -- the graders find the pages. To
21 actually pull all of the content, I think we've got -- I know
22 we've got a program, a wireless program, that uses what we
23 call a user agent and that user agent identifies the software
24 as being a cell phone. You can say, I'm a Nokia, or, I'm a
25 Motorola phone, or whatever.

1 Q So what were the instructions that the graders were given
2 for identifying the pornography pages?

3 A The category definitions, they see the, in this case,
4 pornography or gambling, we teach them the category
5 definitions and they use that to find the pages.

6 Q What were the graders told to use for clean pages?

7 A I don't know, good question.

8 MR. DOBBS: Page 104, Line 21, to Page 105, Line 10,
9 designated by the plaintiffs.

10 Q In Page 8, the document also states, "In addition to the
11 above list of parental controls customers, America Online and
12 Microsoft purchased a perpetual license to use the then-
13 current RuleSpace technology in their parental-control
14 software." When did America Online purchase this license?

15 A Approximately April, 2001.

16 Q And when did Microsoft?

17 A It was in August of -- was that 2002 or 2003? It was in
18 August of, I think, 2002.

19 Q Okay. And do I understand correctly from this document
20 that the license that AOL and Microsoft purchased was the
21 RuleSpace product at the time they purchased it?

22 A That's correct.

23 MR. DOBBS: Page 105, Line 25, through Page 108,
24 Line 5, designated by the defendant.

25 Q There's a filtered search heading on Page 8; how does the

1 filtered search work?

2 A So, to differentiate between filtered search and parental

3 controls, parental controls is where you're browsing --

4 you're sitting your Web browser navigating to different sites

5 and, as you browse through a site, our software is invoked to

6 tell you whether or not that Website contains inappropriate

7 content. A filtered search is where, suppose you go to

8 Google or Yahoo!, and you go into the preferences option,

9 they have what they call a safe-search preference, which by

10 default is set to a medium level of sensitivity, and if you

11 search for terms that are going to return inappropriate

12 sites, those sites will be demoted in the search results more

13 so depending on the level of filtering that you have

14 activated. So, if you have a high level of filtering turned

15 on, you're not going to get any porn sites back in your

16 search results; if you have no filtering turned on, you're

17 going to get porn sites returned.

18 Q And is this filtered search a RuleSpace product?

19 A The filtered search itself is the -- in this case, a

20 Yahoo! or Microsoft product, the technology that identifies

21 the search results as being inappropriate is the RuleSpace

22 product.

23 Q So do I understand correctly that if somebody turns on

24 the safe-search feature at MSN, that would be using the

25 RuleSpace technology to determine the content of the

1 Websites?

2 A Yeah. It has previously determined that, none of that is
3 done in real-time. Microsoft and Yahoo! have their own
4 databases of Web content and they run our software across
5 that and we pre-categorize those sites as being porn or being
6 clean. So, when you turn on the safe-search filter, those
7 are already demoted based on already having run our software
8 across those sites.

9 Q How do you get the URLs from those, do those come from
10 MSN and Yahoo! itself?

11 A MSN doesn't ever provide us with URLs, the URLs that go
12 into their databases they find themselves. Yahoo! Search, as
13 I mentioned before, they do give us URLs from their database
14 that we use to put into our system.

15 Q And are those URLs from customers using the filter or not
16 using the filter, or both?

17 A I have no idea where Microsoft or Yahoo! gets their URLs.

18 Q You have stated that Microsoft finds the URLs themselves,
19 how do they then -- how is it that RuleSpace has pre-
20 categorized those URLs?

21 A We think -- we -- we -- there's two different things
22 here. We provide Microsoft with a dump of our master
23 database periodically, they use that database dump to get
24 categorization information, the URLs that we've already seen.
25 I have no idea how much of our database -- how much of

1 Microsoft's database is covered by ours, I have no visibility
2 into that.

3 MR. DOBBS: Page 109, Lines 9 through 13, designated
4 by the plaintiffs.

5 Q Okay. If you could turn to Page 9 and the heading for
6 this is, "Image Filtering Accuracy." Do I understand
7 correctly from this page that you state your product has an
8 87-percent accuracy rate?

9 A The image-filtering product does, yes.

10 MR. DOBBS: Page 110, Line 11, through Page 111,
11 Line 2, designated by the defendant.

12 Q So the image recognition has a lower percentage than the
13 text recognition for mobile technology?

14 A That's correct.

15 Q And going back to Exhibit 1 on Page 9, this test, do I
16 understand this document correctly that out of 3,193
17 pornographic images the filter caught 2,468 as pornographic?

18 A That's correct.

19 Q And of the 2,943 clean images, the filter caught 200 --
20 888 as clean?

21 A 2,888, yeah.

22 Q For this test, did you also have the graders pull the
23 pages to be used in this test?

24 A For the image test?

25 Q For the image test.

1 A I don't know where the pages came from for the image
2 test.

3 MR. DOBBS: Page 112, Line 23, through Page 113,
4 Line 21, designated by the plaintiffs.

5 Q Okay. What is your accuracy percentage for -- I don't
6 know if I should call it your regular product or how you want
7 to refer to it, it's not the image product.

8 A Sure. The regular, the -- let me put this in the right
9 terms -- the HTML English porn engine real-time recognizer
10 has 99.52-percent accuracy.

11 Q And what -- where do you get the images for that test?

12 A That was a text accuracy, that wasn't image.

13 Q Okay. Where do you get the Web pages for this test?

14 A The graders find them.

15 Q And do the graders use the definition of pornography to
16 pull the pornography pages?

17 A To identify the pornography pages, yes.

18 Q Do you know how they identify the clean pages?

19 A No, I don't.

20 Q Do you know whether any sex education pages are included
21 in the clean pages?

22 A I don't know specifically whether sex education pages are
23 included. I do know that what we referred to as close anti-
24 content pages are always included. So what that means is
25 pages that have sexual content but are not pornographic, in

1 all likelihood that would include sex ed. or sex advice.

2 MR. DOBBS: Page 113, Line 22, to Page 115, Line 13,

3 designated by the defendant.

4 Q And how many of the close anti-content pages do you have

5 included in the test scenario?

6 A I don't know.

7 Q And do you know with the text-based product for the

8 portion that does not accurately categorize, is it more

9 likely to over-block or under-block?

10 A I'm not sure what you mean by not accurately categorize.

11 Q Well, you stated that there's a 99.52-percent accuracy

12 rate?

13 A Right.

14 Q So, for the remainder.

15 A Well, let's refer to it, it should tell you right in here

16 the number of false negatives.

17 Q Which exhibit?

18 A The 99.48 -- is that the one you were talking about?

19 Yeah, I know. I was going to show you the example, it was in

20 one of the exhibits that had the accuracy definition -- oh,

21 just for traditional, I'm sorry.

22 Q Right.

23 A I'm sorry, I got confused. I don't know what the true-

24 positive and true-negative counts were for that test off the

25 top of my head, so I can't tell you whether it was more one

1 way or the other.

2 Q And for the text-based test, did you pull the Web pages
3 or did you identify the Web pages from any particular search
4 engines?

5 A I don't know which engines they used to find them.

6 Q And for the text-based tests, were these pre-categorized
7 sites?

8 A No, these were sites that were discovered.

9 Q Discovered how?

10 A By having the graders sit with a browser and go find
11 them.

12 MR. DOBBS: Page 123, Lines 12 through 25,
13 designated by the plaintiffs.

14 Deposition Exhibit 5 was marked for identification.

15 Q My first question is going to be, have you seen this
16 document before?

17 A I have, yes.

18 Q Is this a RuleSpace document?

19 A Yes, it is.

20 Q For the record, it's a document entitled, "Contextion
21 Services Technical Overview," it's a March, 2001 white paper.
22 I'll refer to it as the March, 2001 white paper, will you
23 understand what I mean by that?

24 A Yes.

25 MR. DOBBS: Page 133, Lines 8 through 23, designated

1 by the plaintiffs.

2 Q Following up on that, though, how do you know that the
3 Web is organized and operated in a highly associative manner
4 without having access to the traffic data we just discussed?

5 A We know from analyzing Websites that they tend to have
6 links to each other or similar-type Websites without actually
7 seeing the subscriber's navigate from one Website to another.
8 Sport sites often point to other sport sites, gun sites point
9 to ammo sites, fishing sites point to government sites for
10 licenses. So there are associations on the sites based on
11 links to analyze the sites without having visibility into the
12 actual navigation, user navigation.

13 Q And do you use those links to analyze and categorize
14 Websites?

15 A Yes, we do.

16 MR. DOBBS: Page 138, Line 10, through Page 139,
17 Line 11, designated by the plaintiffs.

18 Q Okay. Are you aware of any initiatives in Utah --

19 A Yes.

20 Q -- to require --

21 A Sorry.

22 Q -- to require URLs to be included in filtering databases?

23 A Yes, I am.

24 Q What do you know about this initiative?

25 A House Bill 260, I think. Is that what it was? I forget

1 the number. I know that the Utah law, as it's been referred
2 to, was requiring that a database be created that lists the
3 IP addresses of sites that are known to contain inappropriate
4 content and it was -- I think it was passed March last year
5 and was supposed to be enforced in January of this year,
6 don't know whether it actually was enforced or not. I know
7 it was being challenged by a couple different parties, the
8 King's English being one and then I believe the ACLU being
9 another.

10 Q And would RuleSpace be compatible with such a list?

11 A Sure, yes.

12 MR. GOMEZ: Your Honor, the defendant withdraws this
13 objection.

14 THE COURT: Thank you.

15 Q And if the DOJ would provide you with such a list?

16 A Yeah, we could populate. If I'm understanding the
17 question correctly, are you asking could we take a list of IP
18 addresses from an external source and put it into the online
19 look-up system?

20 Q A trusted external source.

21 A Yes, that would be a trusted external source, yes.

22 MR. DOBBS: Page 140, Line 18, to Page 144, Line 19,
23 designated by the plaintiffs.

24 Q Is RuleSpace able to filter content -- or, sorry, I
25 should say -- strike that.

1 Is RuleSpace able to block access to pornographic
2 Websites that have sex chat rooms?

3 A Yes.

4 Q Is RuleSpace able -- going down the bullet points, is
5 RuleSpace able to block access to pornographic Websites that
6 permit or offer phone sex or live video?

7 A Yes.

8 Q If you could turn to Page 12, the final page of this
9 document, I want to talk briefly about the languages that you
10 offer.

11 A Okay.

12 Q And at the top of the page it says, "Pornography" -- or
13 actually at the top of the page it says, "Category Language
14 Matrix," and the first category is pornography, is that
15 correct?

16 A That's correct.

17 Q Does RuleSpace provide language support for English,
18 Chinese, Dutch, French, German, Japanese, Portuguese,
19 Spanish, Danish, Finnish, Italian, Korean, Norwegian and
20 Swedish?

21 A Yes, we do.

22 Q What does that mean?

23 A We recognize pornographic content, according to our
24 definition, in each of those languages, so we would
25 recognize, for example, Italian pornographic text content on

1 a Web page.

2 Q So that I understand correctly, if a Website has

3 pornographic content in Italian, RuleSpace would be able to

4 block that site?

5 A That's correct.

6 Q Previously you talked about having a master database and

7 having a real-time analysis?

8 A Yes.

9 Q Are these languages supported for both projects?

10 A For HTML on the traditional Internet, yes.

11 Q Then a little bit below it says, "Parental Controls," do

12 you see that?

13 A Yes.

14 Q It includes peer-to-peer?

15 A Yes.

16 Q Does RuleSpace block peer-to-peer content?

17 A Partially. RuleSpace recognizes the well-known port

18 addresses that are used by peer-to-peer software programs

19 and, if you browse to one of those ports, we will recognize

20 that and identify it as a peer-to-peer site.

21 Q What are examples of well-known ports?

22 A Kazaa, K-a-z-a-a, and File Sharing.

23 Q Going down the page it says, "Mature Content"?

24 A Yes.

25 Q Is RuleSpace able to analyze and/or block mature content

1 in English, Chinese, Dutch, French, German, Japanese,
2 Portuguese and Spanish?

3 A That's correct.

4 Q Same question for sex education?

5 A Yes.

6 Q There's another document I'd like to show you.

7 A Can I clarify the last couple of answers?

8 Q Yes.

9 A Just to make sure they weren't ambiguous. RuleSpace
10 identifies the mature content, the pornography and the sex
11 education in each of the languages you specified, we don't
12 actually block it, that's up to the Internet service provider
13 or the carrier to block.

14 Q Thank you. So just so that I understand correctly, you
15 provide information to the Internet service provider
16 identifying a category and then the Internet service
17 provider, based on its use policies between the Internet
18 service provider and the end user, decides to allow or not
19 allow access?

20 A That's correct.

21 Q Thank you for that clarification.

22 So the document I just put in front of you is
23 Exhibit 8; have you seen that document before?

24 A Yes.

25 Q Is it a RuleSpace document?

1 A Yes, it is.

2 Q Just for the record, it says, "Company Background," and
3 the first word is, "SBC Communications, Inc." Could you
4 generally describe what this document is?

5 A I'm assuming this came from our customer section of our
6 Website and this would be a description of SBC, which is a
7 large telephone company, North American telephone company,
8 they use the Yahoo! access group's parental controls bundle,
9 which is powered by the RuleSpace solution, and this is a
10 description of that product being released to the SBC
11 customer base.

12 Q And so there -- you said a large telephone company, are
13 they also an Internet service provider?

14 A Yeah, certainly. In fact, this part of SBC is the
15 Internet service provider.

16 Q And they are one of your customers?

17 A They are actually a Yahoo! customer using our technology.

18 MR. DOBBS: Page 145, Line 12, through Page 147,
19 Line 22, designated by the plaintiffs.

20 Q Could you explain more about the interaction between
21 RuleSpace and the Internet service provider in the sense that
22 -- I think I understand, I just want to make sure that I do -
23 - how does the categorization allow Yahoo! to determine the
24 settings for different children of different age groups?

25 A We work with Yahoo! to provide them a recommendation of

1 the types of categories that we believe are appropriate to be
2 viewed by certain age groups, those age groups being,
3 generally, very young kids, young teens, mature teens and
4 adults. Yahoo! then creates policies that will allow the
5 subscriber to map their users of their PCs into one of those
6 age groups should they elect to activate parental controls.
7 We have no direct contact with the ISP themselves; we talk to
8 Yahoo!, Yahoo! talks to the ISP.

9 Q You previously discussed that the end user, depending on
10 the contract that they have with the ISP, may or may not
11 have a local override function?

12 A Correct.

13 Q And just so that I understand correctly, a local override
14 function would be a password-enabled function that would
15 allow the end user to grant access to a Website that would
16 otherwise be blocked?

17 A That -- yes, and the converse, right.

18 Q What do you mean by the converse?

19 A It would block access to a site that would otherwise be
20 allowed, both those.

21 Q I just wanted to briefly refer you back to Exhibit 2 on
22 Page 9. On Page 9, where it says, "Master Database," in
23 bold --

24 A Yes.

25 Q -- and then the second paragraph underneath.

1 A Yes.

2 Q It says, quote, "The review and override sub-system
3 allows category ratings automatically generated by the
4 context-analysis process to be manually reviewed and
5 overridden, if necessary"?

6 A Yes.

7 Q Is this a different overriding process than we just
8 discussed or is it the same?

9 A It's different.

10 Q What is this override process?

11 A This is a centralized override system versus a local
12 override system. The one we previously described is a
13 facility whereby a subscriber, an end user, can change the
14 category mapping provided by RuleSpace, assuming they have
15 the correct authority to do so. Now, the system that we're
16 looking at, the review and overriding system, is where
17 RuleSpace itself has examined the category mapping and
18 decided it was wrong and wants to change it. And so this
19 category mapping would be propagated to all carriers, all
20 ISPs, and all subscribers obviously, to be locally overridden
21 if somebody had an override in place.

22 Q And so if an end user comes across a situation where they
23 believe that access should be granted, notwithstanding the
24 categorization or the prevention of such access by the
25 Internet service provider, they can manually override

1 depending on the contract that they have with the ISP?

2 A Correct.

3 MR. DOBBS: Page 148, Line 22, to Page 158, Line 11,
4 designated by the plaintiffs.

5 Q I have another document for you, this is Exhibit 9.

6 MR. DOBBS: Deposition Exhibit 9 was marked for
7 identification.

8 Q Have you seen this document? Is this a printout of a Web
9 page?

10 A This looks like a printout of a Web page, yes.

11 Q Does it look like a printout of the RuleSpace Website Web
12 page?

13 A Yes, it does.

14 Q Is it a RuleSpace document?

15 A Yes, it is.

16 Q For the record, it says, "Company Background," then the
17 first words are, "Broadcom Corporation"?

18 A Correct.

19 Q At the bottom it says, "RuleSpace powers the solution"?

20 A Yes.

21 Q And then the first sentence reads, "To ensure a family-
22 friendly Internet experience, Broadcom has integrated
23 RuleSpace solutions directly into the cable modem"?

24 A Yes.

25 Q Are there many customers of RuleSpace that directly

1 integrate the RuleSpace solution directly into the cable
2 modem?

3 A No, not at this point.

4 Q Is it a solution that you support?

5 A Yes. A clarification: Broadcom specifically I don't
6 believe have ever deployed this product, but we have other
7 cable modems, home gateways, that do have the RuleSpace
8 solution in them.

9 Q Now, it reads further here that "the system is very
10 difficult to circumvent, unlike software packages that can be
11 easily un-installed," is the final sentence of this
12 paragraph. Would the same be true of the cable modems that
13 you have deployed that have the RuleSpace technology
14 integrated into them?

15 A That's correct.

16 MR. DOBBS: Page 154, Line 16, through Page 155,
17 Line 22, designated by the plaintiffs.

18 Q I have another document for you. I wanted to say it's
19 the final Web page I printed out, but it's not true. This
20 will be Exhibit 10.

21 MR. DOBBS: Deposition Exhibit 10 was marked for
22 identification.

23 Q For the record, this document is entitled, "Company
24 Background," and then the first words are, "Rogers
25 Communications, Inc." Mr. Allan, is this a true and accurate

1 copy of -- or a printout, I should say, of a RuleSpace Web
2 page?

3 A It would appear to be so, yes.

4 Q Have you seen it before today?

5 A Yes.

6 Q Did you write it?

7 A Nope.

8 Q This document seems to discuss Rogers Communications,
9 Inc.; what is Rogers Communications, Inc.?

10 A They're a Canadian cable company that also provides
11 Internet service, they're an ISP.

12 Q The second heading again reads, "RuleSpace powers the
13 solution." And then the final sentence there reads, "This
14 RuleSpace solution is securely integrated into the Yahoo!
15 infrastructure in a manner that makes it impossible to bypass
16 from the end user's PC." How does that work?

17 A The -- I don't know exactly how Yahoo! has implemented
18 their clients, I know that it's inside the TCP stack within
19 the Windows operating system, so that you can't just
20 deactivate or kill a process and it will go away.

21 Specifically how they've done that, I don't know, that's
22 Yahoo!'s secret sauce.

23 MR. DOBBS: Page 157, Line 6, through Page 159, Line
24 19, designated by the plaintiffs.

25 Q Does the RuleSpace product make any distinction between

1 commercial sites and non-commercial Websites?

2 A We certainly have business-type categories.

3 Q Fair enough. For the pornography and mature-content

4 categories only --

5 A I see what you're saying.

6 Q -- does the RuleSpace filtering product make a

7 distinction between commercial Web pages and non-commercial

8 Web pages?

9 A No. As long as the content meets our definition of

10 pornography, we call it pornography, regardless of whether

11 it's commercial or amateur.

12 Q I believe you testified earlier to this, but I want to

13 make sure that I understood correctly. When categorizing

14 Websites or Web pages, the RuleSpace product also takes the

15 links to adult sites into account?

16 A Correct.

17 Q I think you referred to that as guilt by association?

18 A Correct.

19 Q Does the RuleSpace product categorize non-HTTP Web pages

20 or Websites?

21 A The system is capable of storing URLs that are from HTTPS

22 or FTP Websites or RTSP Websites.

23 Q What is HTTPS?

24 A Secure HTTP, it's been encrypted.

25 Q What is RTSP?

1 A Yes, real-time streaming protocol. Those are the sites
2 that you would go to to actually watch a video online, and we
3 can discover those and put that URL into the master database
4 so we would be able to recognize you going to a RTSP site.

5 Q How is that different from an HTTP site?

6 A The content is formatted. The actual communication
7 protocol between the RTSP client and the RTSP server is not
8 HTTP, it's a different message-passing protocol, examples
9 being -- you can imagine an RTSP site as being like your
10 video recorder where it's got play buttons and pause buttons
11 and rewind and fast-forward, which are all functionalities
12 you don't have on HTTP, but RTSP does support them, so you
13 can stop the video in midstream and rewind it. So it's a
14 different communication protocol than HTTP.

15 Q What is an FTP site?

16 A FTP is a file transfer protocol site where, rather than
17 having HTML Web pages, it actually has files that you can
18 download; these can be images, they can be text files; and
19 you can go to that site to download a file rather than to
20 browse the Web page. Again, it's a different communication
21 protocol than HTTP.

22 Q And so the RuleSpace master database contains URLs that
23 lead to HTTP sites, HTTPS sites, RTSP sites and FTP sites?

24 A No. Let me clarify something. I thought the original
25 question was, can RuleSpace --

1 Q Yes, it was.

2 A Okay.

3 Q I'm just trying to understand as well.

4 A So the RuleSpace master database is capable of storing
5 URLs of all of those types, today we don't, primarily because
6 nobody has asked for them, but it's -- the technology is
7 built into the system to do that.

8 Q So if you were provided with a list of those sites you
9 would be able to integrate them?

10 A That's exactly correct.

11 MR. DOBBS: Page 159, Line 20, through Page 160,
12 Line 21, designated by the defendant.

13 Q What about the real-time analysis, would it be able to
14 recognize sites that are configured in RTSP?

15 A It depends. Some of the streaming media, audio in
16 particular, have a header record that says, "The next message
17 you're going to see is an audio file," and that header is a
18 piece of text that we can recognize in real time, because
19 those are what we call self-labeling sites. I am about to
20 send you an adult audio or an adult video file, our real-time
21 recognizers are capable of recognizing those labels if they
22 have self-labeled, they are not capable of analyzing the
23 actual stream of audio or video data.

24 Q And actually the same question for an FTP site, would the
25 real-time analysis be able to identify and categorize FTP

1 sites?

2 A No.

3 Q To the extent an RTSP site contains both text and images
4 -- sorry, both text and video, would a real-time analysis be
5 able to categorize, accurately categorize the Web page in
6 question?

7 A I don't know, that's not something we have tried.

8 Q Does the RuleSpace product categorize content that is
9 transmitted in the form of applications?

10 A Can you expand on that?

11 Q Any app-lets (ph.) that are being sent?

12 A No -- I see -- no, we don't do that, application-level
13 blocking.

14 MR. DOBBS: Page 1 --

15 MR. KWAWEGEN: I apologize. Reading ahead, I see
16 that there is an error in the transcript that was provided to
17 you, I just noticed it now; it is still to come, I just
18 wanted to draw your attention to it that there is a problem.

19 THE COURT: Well, stop us when we get there, will
20 you, please?

21 MR. KWAWEGEN: Actually, it's now, your Honor.

22 (Laughter.)

23 THE COURT: Pardon?

24 MR. KWAWEGEN: It's now, your Honor --

25 THE COURT: Oh.

1 MR. KWAWEGEN: -- that's why I stand up now.

2 THE COURT: Before we go further, my -- I have no

3 idea how much more you have, but it seems to me tidy to

4 finish it, but it's getting late. So, I don't know how much

5 more there is --

6 MR. KWAWEGEN: There is --

7 THE COURT: -- how would it affect that we do on

8 Monday morning?

9 MR. KWAWEGEN: Your Honor, it's no problem for the

10 plaintiffs to carry it over until Monday morning. There's

11 still quite a lot to go and there's still exhibits to

12 discuss.

13 THE COURT: Then we may have to argue with some of

14 those, which is quite appropriate, that's all right. Let's

15 finish for the day, we'll resume on Monday morning.

16 So, we stopped at Page 160 of the Allan deposition?

17 MR. KWAWEGEN: Yes, your Honor, at Line 21.

18 THE COURT: And where is the mistake?

19 MR. KWAWEGEN: Something is designated that should

20 not be designated at this time based on the discussions with

21 RuleSpace, your Honor.

22 THE COURT: And is it on this page?

23 MR. KWAWEGEN: Yes, your Honor, in the next line.

24 THE COURT: Line 22?

25 MR. KWAWEGEN: 160, Line 22, through 161, Line 9,

1 your Honor. We will resolve it.

2 THE COURT: And you're withdrawing those?

3 MR. KWAWEGEN: Yes, your Honor.

4 THE COURT: Any problem from the defense with the
5 withdrawal?

6 MR. GOMEZ: No, your Honor.

7 THE COURT: And what about the objection right below
8 that, do we have to discuss that?

9 MR. GOMEZ: No, your Honor -- uh -- no, your Honor,
10 we'll withdraw the objection.

11 THE COURT: All right. We're still at the bottom of
12 -- well, then really, because we've eliminated something, we
13 start at Page 161, Line 10, correct?

14 MR. KWAWEGEN: Yes, your Honor.

15 THE COURT: Someone make a record of it and we'll be
16 sure to be there.

17 (Pause.)

18 THE COURT: This falls under the rule of, we don't
19 deal in masochism unless we can justify it.

20 (Laughter.)

21 THE COURT: We need some help for the rest of
22 Monday, let me get some notes here.

23 The two protagonists in the deposition reading are
24 excused from their current location.

25 MR. DOBBS: Thank you, your Honor.

1 THE COURT: Allan depo continued. Okay. What else
2 happens then, Mr. Hansen?

3 MR. HANSEN: Your Honor, plaintiffs only have one
4 more live witness to call and he will be Monday morning; his
5 name is Professor Ronald Mann, he's a payment card expert.
6 We anticipate using with Professor Mann Exhibits 6, 17, 33
7 through 34, and 90 to 101.

8 After we complete Professor Mann, we have three more
9 deposition designation -- depositions to read in, Cingula,
10 Discover and Visa. The Cingula and Discover ones are
11 completely done, the Visa ones we're still waiting for the
12 defendants to clear with Visa.

13 THE COURT: All right, we've got a couple more days.
14 How are you doing with that, Mr. Gomez?

15 MR. GOMEZ: Your Honor, we haven't -- the section on
16 the -- there were two mailings to Visa, and Visa had filed a
17 motion as to the first counter designations of defendant and
18 the original designation of the plaintiffs. The defendant
19 will -- is prepared to withdraw the designations that the
20 plaintiffs -- excuse me, that Visa had raised, filed its
21 motion concerning. Visa, however, has not responded to the
22 counter counter-designation and the time for the five days
23 runs as of today, we have not heard back from Visa as to
24 that, so we would assume --

25 THE COURT: So you might be in communication with

1 them tomorrow or try to --

2 MR. GOMEZ: Yes, we're going to --

3 THE COURT: -- recommunicate?

4 MR. GOMEZ: Yes. But, again, they have had our --
5 since October 26th our FedEx communication and --

6 THE COURT: And you may have a reason not to discuss
7 it with them.

8 MR. GOMEZ: Well, they -- apparently, they haven't
9 identified it as being a problem, but we'll try to reach them
10 and just confirm that.

11 THE COURT: All right. Thank you.

12 MR. HANSEN: Two more items, I think, your Honor,
13 that it would be helpful to discuss this afternoon. The
14 first is the use of the testimony that was taken at the
15 preliminary-injunction stage.

16 THE COURT: Yes.

17 MR. HANSEN: Your Honor asked us to do a letter on
18 that, I have that letter for the Court.

19 THE COURT: Have you reached any -- have you and the
20 defendant reached any agreement on any of this?

21 MR. HANSEN: No, we have reached no agreement on
22 this, your Honor.

23 THE COURT: Okay.

24 MR. HANSEN: But I have a letter which I have given
25 -- a copy of which I have given to the defendants.

1 MR. GOMEZ: And we will be reviewing that letter,
2 your Honor.

3 THE COURT: All right. I can get a report on this
4 on Monday, I gather?

5 MR. GOMEZ: Yes, your Honor.

6 MR. HANSEN: Yeah, I -- I just wanted your Honor to
7 have the letter so that you could review it, so that when it
8 came up on Monday your Honor was prepared.

9 The only other thing I have on my list, your Honor,
10 is it is possible that plaintiffs will be completed prior to
11 the end of the day on Monday, I think it's -- I just honestly
12 don't know for sure. I think it would be helpful to the
13 plaintiffs if your Honor indicated whether you would want the
14 defendants to start in the middle of the afternoon on Monday
15 or whether you would anticipate letting the defendants start
16 on Tuesday morning. And then I also think it would be
17 helpful if we could confirm who the defendants anticipate
18 calling next week.

19 THE COURT: Well, let's start with the completion of
20 the plaintiffs' case in chief. I don't know how you get so
21 hopeful --

22 (Laughter.)

23 THE COURT: -- if that's what you're doing. You
24 have three depositions to read and, assuming they're all
25 ready to be read -- I don't have any idea how long they are,

1 but that's one thing.

2 MR. HANSEN: The three that remain are significantly
3 shorter than RuleSpace, which your Honor is hearing this
4 afternoon. Professor Mann could easily go --

5 THE COURT: I thought you'd never say it.

6 MR. HANSEN: -- the full morning.

7 THE COURT: Pardon?

8 MR. HANSEN: Professor Mann could easily go the full
9 morning.

10 THE COURT: I would think so. Would the defendant
11 have any evidence ready on Monday if we got that far? Let's
12 say we finished at 3:00 in the afternoon with the plaintiffs'
13 case, I just picked that out of the air.

14 MR. GOMEZ: Yes, your Honor, the defendant could be
15 ready; we would prefer to start on Tuesday, but that's --
16 whatever the Court prefers, we would be --

17 THE COURT: Well, why don't you plan on something
18 being done on Monday, it may not be a long witness, it may be
19 something that you --

20 MR. GOMEZ: It's going to be a long witness, your
21 Honor, very long.

22 THE COURT: Then maybe we need to start on Monday.

23 (Laughter.)

24 MR. GOMEZ: That's -- if the Court --

25 THE COURT: Who will that be?

1 MR. GOMEZ: It will be Mr. Mewett.

2 THE COURT: Okay. And who do you think the

3 succeeding witnesses will be after him, the next two or three

4 people?

5 MR. GOMEZ: Dr. Stark, Philip Stark, and --

6 actually, they -- depending on when we start, but then

7 Jeffrey Eisenach.

8 THE COURT: How do you spell his last name?

9 MR. GOMEZ: Excuse me, I apologize, your Honor, I

10 left Dr. Steven Neale. So, it would be Paul Mewett, Dr.

11 Philip Stark, Dr. Steven Neale, and I'm not sure we'll reach

12 Mr. Eisenach, but that's --

13 THE COURT: You mean next week we may not reach him?

14 MR. GOMEZ: Yes.

15 THE COURT: Does that help the plaintiff?

16 MR. HANSEN: It does, your Honor. Thank you.

17 THE COURT: Then on Monday -- well, over the

18 weekend, better tomorrow, Mr. Gomez, let the plaintiff know

19 what exhibits you're going to be offering with these

20 witnesses.

21 MR. GOMEZ: Yes, your Honor.

22 THE COURT: Just a list, so they can consider them.

23 Would you do that, please?

24 MR. GOMEZ: Yes, your Honor.

25 THE COURT: My guess is you can't do it off the top

1 of your head, so --

2 MR. GOMEZ: No, your Honor.

3 THE COURT: -- it's late in the day, let's not do it
4 now.

5 MR. GOMEZ: I would prefer, if we could, provide,
6 since they're going to be, we believe, lengthy testimony,
7 that we provide for the exhibits for Dr. -- for Paul Mewett
8 and Dr. Philip Stark, which I'm sure will carry through
9 Tuesday and into Wednesday.

10 THE COURT: All right. Then you'll be in a better
11 position to know what to do with Neale?

12 MR. GOMEZ: Yes, your Honor.

13 THE COURT: That's good enough.

14 MR. HANSEN: That's totally fine, your Honor.

15 THE COURT: All right, fine. Do that. Do that
16 tomorrow, if you could, please, with e-mail or some other
17 way.

18 MR. GOMEZ: Yes, your Honor.

19 MR. HANSEN: Plaintiffs have nothing else that we
20 think needs to be raised this afternoon, your Honor.

21 THE COURT: Mr. Gomez, anything else this afternoon?

22 MR. GOMEZ: No, your Honor.

23 THE COURT: Okay. At the risk of having to knock on
24 wood, I want to compliment everybody for their timely

1 appearance at Court-designated hours. You do sometimes
2 better than I do. Sometimes I can't come in because you're
3 working on something with my law clerk, so --

4 (Laughter.)

5 THE COURT: -- that's -- we don't know who that
6 problem goes to, but I compliment you.

7 Okay, then the court day is finished. Court is in
8 recess until Monday morning at 9:30. Counsel are excused.
9 We're off the record.

10 (Court adjourned at 4:46 o'clock p.m.)

11 * * *

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