

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

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

5 PLAINTIFF :
6 :

7 VS. :
8 :

9 ALBERTO R. GONZALES, :
10 IN HIS OFFICIAL CAPACITY AS :
11 ATTORNEY GENERAL OF THE :
12 UNITED STATES :
13 :

14 DEFENDANT : NO. 98-05591

15 TUESDAY, NOVEMBER 7, 2006
16 COURTROOM 17-A
17 PHILADELPHIA, PA 19106

18 BEFORE THE HONORABLE LOWELL A. REED, JR. SJ

19 NON-JURY TRIAL
20 DAY 10

21 APPEARANCES:

22 CHRISTOPHER A. HANSEN, ESQUIRE
23 ADEN J. FINE, ESQUIRE
24 BEN WIZNER, ESQUIRE
25 CATHERINE CRUMP, ESQUIRE
26 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
27 125 BROAD STREET
28 NEW YORK, NY 10004-2400
29 (212)549-2606 FOR THE PLAINTIFFS

30 SUZANNE R. WHITE, CM
31 FEDERAL CERTIFIED REALTIME REPORTER
32 FIRST FLOOR U. S. COURTHOUSE
33 601 MARKET STREET
34 PHILADELPHIA, PA. 19106
35 (215)627-1882

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

1 APPEARANCES: (CONTINUED)

2 CHRISTOPHER HARRIS, ESQUIRE
3 KATHARINE MARSHALL, ESQUIRE
4 BENJAMIN SAHL, ESQUIRE
5 JEROEN VAN KWAWEGEN, ESQUIRE
6 ADDISON F. GOLLODAY, ESQUIRE
7 STEFANIE LAUGHLIN, ESQUIRE
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FOR THE PLAINTIFFS

8
9 U.S. DEPARTMENT OF JUSTICE
10 CIVIL DIVISION
11 RAPHAEL O. GOMEZ, ESQUIRE
12 THEODORE HIRT, ESQUIRE
13 ERIC J. BEANE, ESQUIRE
14 KENNETH E. SEALLS, ESQUIRE
15 TAMARA ULRICH, ESQUIRE
16 JOEL MCELVAIN, ESQUIRE
17 JAMES TODD, ESQUIRE
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FOR THE DEFENDANT

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1 (THE CLERK OPENS COURT.)

2 THE COURT: MISS WHITE, WELCOME BACK.
3 WE'RE GLAD TO HAVE YOU ON OUR PERMANENT STAFF DURING
4 THIS TRIAL.

5 MR. GOMEZ: YOUR HONOR, WITH YOUR
6 PERMISSION, I WILL BE AWAY FOR JUST A SHORT TIME AND BE
7 BACK. I WILL BE HERE IN THE BUILDING.

8 THE COURT: MISS ULRICH IS IN CHARGE OF
9 ALL MATTERS ON THIS DEPOSITION.

10 MR. GOMEZ: AND MR. HIRT.

11 MR. VAN KWAWEGEN: GOOD MORNING, YOUR
12 HONOR.

13 THE COURT: GOOD MORNING, MR. VAN
14 KWAWEGEN.

15 MR. VAN KWAWEGEN: WE WILL BE READING THE
16 DEPOSITION TRANSCRIPT OF GINGER BERGMAN, B-E-R-G-M-A-N.
17 THIS DEPOSITION TOOK PLACE ON MARCH 6, 2006. MISS
18 BERGMAN IS A DIRECTOR IN THE CORPORATE RISK AND
19 COMPLIANCE DEPARTMENT AT VISA.

20 THE COURT: TELL ME AGAIN WHAT
21 DEPARTMENT.

22 MR. VAN KWAWEGEN: CORPORATE RISK AND
23 COMPLIANCE DEPARTMENT, YOUR HONOR. SHE WAS PROFFERED AS
24 A WITNESS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE
25 30(B)(6).

1 THE COURT: I HAVE ALREADY RULED IT'S
2 ADMISSIBLE IN GENERAL.

3 MR. VAN KWAWEGEN: THE FIRST DESIGNATION
4 WILL BE ON PAGE 14, LINE 16, THROUGH PAGE 16, LINE 18
5 AND IT WAS DESIGNATED BY THE PLAINTIFFS.

6 Q. I WANT TO ASK YOU NOW WHAT, IF ANYTHING, DOES
7 POSSESSION OF A PAYMENT CARD INDICATE REGARDING THE AGE
8 OF THE PERSON IN POSSESSION OF THE CARD?

9 A. IT WOULD MAKE NO DESIGNATION AS TO WHAT AGE A
10 CONSUMER IS.

11 Q. AND DOES POSSESSION OF PAYMENT CARD SIGNIFY THAT
12 A CARDHOLDER IS 17 YEARS OF AGE OR OLDER?

13 A. NO, IT DOES NOT.

14 Q. AND DOES ACCESS TO A PAYMENT CARD SIGNIFY THAT A
15 CARDHOLDER IS 17 YEARS OF AGE OR OLDER?

16 A. I WOULD LOOK AT ACCESS TO A CARD AS VERY, VERY
17 BROAD. I CAN HAVE ACCESS TO A CARD BY BEING AN
18 AUTHORIZED SIGNER OR SOMEBODY WHO IS 17 OR UNDER CAN
19 ACCESS A CARD BY TAKING IT OUT OF A PARENT'S WALLET AND
20 USING IT. SO IT DOES NOT SIGNIFY THAT ANYBODY WHO HAS
21 THE CARD WOULD BE OVER THE AGE OF 18.

22 Q. OR 17?

23 A. 17, CORRECT.

24 Q. AND DOES SUBMISSION OF A PAYMENT CARD ACCOUNT
25 INFORMATION SIGNIFY ANYTHING ABOUT THE AGE OF THE PERSON

1 WHO SUBMITS THE ACCOUNT INFORMATION?

2 A. NO, IT DOES NOT.

3 Q. AND DOES SUBMISSION OF THE PAYMENT CARD ACCOUNT
4 INFORMATION INDICATE THAT THE PERSON WHO IS INDICATING
5 IT IS 17 YEARS OF AGE OR OLDER?

6 A. NO.

7 Q. ARE PAYMENT CARDS A PROXY FOR AGE?

8 A. NO.

9 Q. WHY NOT?

10 A. THERE ARE A NUMBER OF DIFFERENT PRODUCTS, AS WE
11 TALKED EARLIER, THAT COULD BE ISSUED TO SOMEONE WHO IS
12 UNDER THE AGE OF 17. FOR EXAMPLE, A PREPAID CARD.
13 ANYBODY CAN GO AND PURCHASE A PREPAID CARD AND GIVE IT
14 TO SOMEONE WHO IS 14, 15. AGE IS IRRELEVANT IN THAT
15 SITUATION BECAUSE IT'S PRETTY MUCH A GUARANTEED CARD AT
16 THAT POINT. FUNDS ARE THERE.

17 VISA ALSO HAS WHAT'S CONSIDERED THE BUXX
18 CARD PROGRAM, WHICH IS TARGETED FOR TEENAGERS BETWEEN
19 THE AGES OF 13 AND UP INTO FOLKS IN THEIR EARLY
20 TWENTIES. IT'S SOMETHING THAT THE CHILD HAS POSSESSION
21 OF THE CARD. THE PARENTS HAVE ACCESS TO THE CARD AS
22 WELL. THERE'S ALSO TIMES WHERE A CARDHOLDER WHO IS AN
23 ADULT MAY DESIGNATE THEIR CHILD AS AN AUTHORIZED USER OF
24 A CARD AND ACTUALLY HAVE A CARD PRINTED IN THEIR NAME.

25 AND AS WE TALKED EARLIER, YOU CAN ALSO

1 HAVE CHILDREN WHO OBTAIN ACCESS TO THEIR PARENTS' CARDS
2 THROUGH OTHER MEANS AND USE THEM.

3 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
4 DESIGNATED BY THE PLAINTIFFS. IT RUNS FROM PAGE 16,
5 LINE 22, THROUGH PAGE 18, LINE 17.

6 Q. YOU MENTIONED CARDHOLDERS CAN DESIGNATE THEIR
7 CHILDREN AS AUTHORIZED USERS. CAN YOU EXPLAIN WHAT THAT
8 MEANS?

9 A. THAT WOULD MEAN THAT THE CARDHOLDER WHO SIGNED
10 AS THE RESPONSIBLE PERSON FOR THE ACCOUNT, SO YOU WOULD
11 HAVE TO HAVE AN ADULT IN THIS CASE, CAN ASK FOR ANOTHER
12 CARD TO BE ISSUED AS AN AUTHORIZED USER IN THE CHILD'S
13 NAME, IF WE'RE TALKING SOMEBODY UNDER THE AGE OF 17.
14 AND AT THAT POINT, THE CHILD COULD USE THAT CARD
15 WHEREVER VISA IS ACCEPTED TO MAKE A PURCHASE.

16 Q. AND IT WOULD FUNCTION EXACTLY THE SAME AS THE
17 CARD IN THE PARENT'S NAME?

18 A. CORRECT.

19 Q. AND IT WOULD BE TREATED BY MERCHANTS EXACTLY THE
20 SAME AS A CARD IN THE PARENT'S NAME?

21 A. CORRECT.

22 Q. DURING THE PROCESSING OF THE CARD, IT WOULD BE
23 TREATED EXACTLY THE SAME AS THE PARENT'S CARD?

24 A. CORRECT.

25 Q. CAN A PARENT -- CAN A CARDHOLDER AUTHORIZE

1 -- WHICH CARDS DOES THIS APPLY TO? DOES IT APPLY -- I
2 ASSUME BY CARDS DOES THIS APPLY TO --

3 A. IT WOULD APPLY TO ALL TYPES OF CONSUMER CREDIT
4 PRODUCTS.

5 Q. DOES IT APPLY TO DEBIT CARDS?

6 A. YOU COULD CONCEIVABLY HAVE SOMEONE ON YOUR
7 ACCOUNT AS AN AUTHORIZED USER FOR A DEBIT CARD PROGRAM.
8 THAT TYPE OF DECISION WOULD BE AT THE ISSUING BANK'S
9 DISCRETION.

10 Q. BUT VISA WOULD PERMIT THAT?

11 A. VISA HAS NO RULES THAT PROHIBIT IT.

12 Q. AND ARE THERE ANY RESTRICTIONS ON THE AGE OF THE
13 PERSON THAT YOU CAN MAKE AN AUTHORIZED USER OF THE CARD?

14 A. THERE ARE NO RULES IN VISA'S OPERATING
15 REGULATIONS THAT SPEAK TO THAT.

16 MR. VAN KWAWEGEN: THE NEXT DESIGNATION
17 WAS DESIGNATED BY THE PLAINTIFFS, PAGE 18, LINES 13
18 THROUGH 19.

19 Q. OKAY. SO YOU DISCUSSED -- IN ADDITION TO MAKING
20 THEIR CHILDREN AN OFFICIAL AUTHORIZED USER, CAN PARENTS
21 ALSO INFORMALLY PERMIT OR AUTHORIZE THEIR CHILDREN TO
22 USE THE PARENT'S CARD -- CREDIT CARD?

23 A. THERE WOULD BE NOTHING IN THE VISA OPERATING
24 REGULATIONS THAT WOULD PROHIBIT IT. ANY USE OF THAT
25 TYPE WOULD BE AT THE ISSUING BANK'S DISCRETION.

1 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
2 DESIGNATED BY THE PLAINTIFFS. IT'S FROM PAGE 18, LINE
3 25, THROUGH PAGE 19, LINE 3.

4 Q. ARE YOU AWARE THAT PARENTS DO AUTHORIZE CHILDREN
5 UNDER THE AGE OF 17 TO USE VISA PAYMENT CARDS?

6 A. I'M AWARE IT'S AN OPTION. AND IT MOST LIKELY
7 OCCURS THROUGHOUT THE INDUSTRY, YES.

8 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
9 DESIGNATED BY THE PLAINTIFFS. IT RUNS FROM PAGE 19,
10 LINE 12, THROUGH PAGE 21, LINE 11.

11 Q. IS IT COMMON FOR PARENTS TO AUTHORIZE THEIR KIDS
12 TO BE OFFICIAL CARDHOLDERS?

13 A. I DON'T KNOW THAT I COULD SAY SPECIFICALLY IF
14 IT'S COMMON. I DO KNOW THAT IT CAN OCCUR.

15 Q. OKAY. FAIR ENOUGH.

16 I WANT TO ASK YOU NOW ABOUT WHAT I
17 BELIEVE YOU -- WHAT I'M GOING TO CHARACTERIZE AS
18 UNAUTHORIZED USE OF PAYMENT CARDS BY MINORS.

19 YOU EXPLAINED THAT THERE WERE MANY WAYS
20 IN WHICH A MINOR CAN COME INTO POSSESSION OF A CREDIT
21 CARD.

22 LET ME ASK YOU, IS THAT ACCURATE?

23 A. WELL, I WOULD SAY THAT CHILDREN CAN COME INTO
24 POSSESSION OF A PARENT'S CREDIT CARD THROUGH ONE WAY OR
25 ANOTHER. THE WAY THAT I STATED EARLIER, IS THAT THEY

1 COULD TAKE IT OUT OF THE PARENT'S WALLET IS ONE EXAMPLE.

2 Q. AND IS VISA AWARE THAT THAT OCCURS FROM
3 TIME-TO-TIME?

4 A. WE HAVE SEEN SOME REPORTING THAT THAT OCCURS,
5 YES.

6 Q. ARE THERE ANY OTHER CIRCUMSTANCES IN WHICH
7 PAYMENT CARDS CAN BE USED WITHOUT AUTHORIZATION?

8 A. I WOULD SAY IT'S POSSIBLE. VERSUS GETTING THE
9 ACTUAL CARD OUT OF THE PARENT'S WALLET, YOU CAN GET THE
10 STATEMENT OUT OF THE MAIL. THERE ARE A VARIETY OF
11 DIFFERENT WAYS A CHILD COULD CONCEIVABLY COME INTO
12 POSSESSION OF AN ADULT'S CREDIT CARD NUMBER.

13 Q. OKAY. LET'S FOCUS NOW ON -- NOT JUST ON THE
14 PARENTS' CARDS. ARE THERE OTHER WAYS IN WHICH MINORS
15 CAN GET ACCESS TO PAYMENT CARD INFORMATION?

16 A. I WOULD SAY THERE'S A VARIETY OF WAYS A CHILD
17 COULD DO IT. OFF THE TOP OF MY HEAD, THEY COULD STEAL
18 IT FROM SOMEBODY THEY DON'T KNOW.

19 Q. WHAT ARE THE OTHER VARIETY OF WAYS?

20 A. THEY COULD GET IT FROM THEIR FRIENDS. THEY
21 COULD -- THEIR FRIENDS' PARENTS, ANOTHER FAMILY
22 RELATIONSHIP. JUST A NUMBER OF DIFFERENT OPTIONS.

23 MR. VAN KWAWEGEN: THE NEXT SECTION IS
24 FROM PAGE 27, LINE 8, THROUGH PAGE 23, LINE 17. IT WAS
25 DESIGNATED BY THE DEFENDANT. OBJECTIONS WERE WAIVED.

1 Q. AND HOW WIDESPREAD -- ARE THERE OTHER WAYS IN
2 WHICH CREDIT CARD INFORMATION IS BEING DISTRIBUTED OR
3 SOLD OVER THE INTERNET?

4 A. THERE MAY BE LOTS OF WAYS. I'M NOT AWARE OF ALL
5 OF THE DIFFERENT SCHEMES THAT ARE OUT THERE.

6 Q. IS IT FAIR TO SAY THAT ALL -- THAT THE NUMBER
7 AND TYPE OF DIFFERENT SCHEMES HAVE BEEN INCREASING?

8 A. I WOULDN'T NECESSARILY SAY THEY'VE BEEN
9 INCREASING. I THINK THERE'S A LOT MORE AWARENESS ABOUT
10 IT.

11 Q. AND IS IT A SIGNIFICANT ISSUE? DOES VISA TAKE
12 ANY STEPS TO COMBAT THE DISTRIBUTION OR SALE OF CREDIT
13 CARD INFORMATION?

14 A. VISA DOES HAVE STAFF THAT THEY WORK WITH FOLKS
15 WHO BECOME AWARE OF AN INTRUSION. IF THERE ARE ANY
16 SITES ON THE INTERNET THEY BECOME AWARE OF THAT CREDIT
17 CARD INFORMATION IS POSTED, WE TAKE AGGRESSIVE STEPS TO
18 TAKE CARE OF THAT AND ANY OTHER SITUATIONS WHERE WE
19 BECOME AWARE OF UNPROTECTED CARDHOLDER DATA.

20 Q. AND DO YOU KNOW HOW WIDESPREAD THIS IS?

21 A. THE MAJORITY OF ACCOUNT COMPROMISED INFORMATION
22 OR AVAILABLE INFORMATION WE HAVE TENDS TO BE THE TYPE OF
23 COMPROMISES YOU HEAR WHERE DATA IS COMPROMISED OR OFF
24 MERCHANT OR PROCESSOR SYSTEM. OTHER TYPES OF
25 COMPROMISES OUT THERE FOR ACCOUNT GENERATION OR NUMBERS

1 POSTED FOR OTHER REASONS ARE FAIRLY INSIGNIFICANT AND
2 NOT THAT FREQUENT IN OCCURRENCE.

3 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
4 DESIGNATED BY THE PLAINTIFFS. IT'S FROM PAGE 23, LINES
5 18 THROUGH 22.

6 Q. AND IS THERE ANYTHING TO STOP A MINOR FROM
7 PURCHASING A CREDIT CARD INFORMATION?

8 A. THERE'S NOTHING OUT THERE THAT VISA HAS IN THE
9 SYSTEM THAT WOULD PREVENT A MINOR FROM PURCHASING
10 ACCOUNT INFORMATION.

11 MR. VAN KWAWEGEN: THE NEXT SECTION RUNS
12 FROM PAGE 30, LINES 16 THROUGH PAGE 38, LINE 4. IT'S
13 DESIGNATED BY THE PLAINTIFFS.

14 Q. OKAY. AND JUST TO MAKE CLEAR FOR THE RECORD, IS
15 THIS A VISA DOCUMENT, DEPOSITION EXHIBIT 1?

16 A. YES.

17 Q. AND IS IT PREPARED AND MAINTAINED IN THE REGULAR
18 COURSE OF VISA'S OPERATIONS?

19 A. YES.

20 Q. I WANT TO SHOW YOU NOW A DOCUMENT WE ARE GOING
21 TO MARK AS DEPOSITION EXHIBIT NUMBER 2.

22 DO YOU RECOGNIZE THIS?

23 A. YES, I DO.

24 Q. WHAT IS IT?

25 A. IT'S A COPY OF THE TESTIMONY THAT MARK MCCARTHY,

1 A SENIOR VICE-PRESIDENT WITHIN VISA, MADE BEFORE THE
2 COMMISSION ON ONLINE PROTECTION ON JUNE 9TH, 2000.

3 Q. AND DID HE MAKE THIS PRESENTATION IN THE REGULAR
4 COURSE OF VISA'S BUSINESS?

5 A. YES, HE DID.

6 Q. DO YOU KNOW WHY MR. MCCARTHY MADE THIS
7 PRESENTATION?

8 A. HE TESTIFIED BEFORE THE COMMISSION ON ONLINE
9 PROTECTION TO RESPOND TO THE BELIEF THAT VISA CREDIT
10 CARDS ARE A GOOD APPROXIMATION FOR SOMEONE OVER THE AGE
11 OF 17 MAKING A PURCHASE WITH A VISA CARD.

12 Q. AND DID HE DO THAT IN HIS CAPACITY AS A SENIOR
13 VICE-PRESIDENT FOR PUBLIC POLICY FOR VISA?

14 A. YES, HE DID.

15 Q. AND DOES HE REGULARLY TESTIFY BEFORE A
16 CONGRESSIONAL COMMISSION AS PART OF HIS RESPONSIBILITIES
17 AS SENIOR -- DOES HE REGULARLY TESTIFY -- YOU'RE HERE AS
18 A 30(B)(6) WITNESS ON BEHALF OF VISA.

19 DOES VISA HAVE KNOWLEDGE THAT MR.
20 MCCARTHY REGULARLY TESTIFIES BEFORE CONGRESSIONAL
21 COMMISSIONS?

22 A. IT IS ONE OF HIS JOB FUNCTIONS.

23 Q. OKAY.

24 AND I WANT TO ASK YOU NOW TO TURN TO PAGE
25 3 OF THIS DOCUMENT, THE SECOND SENTENCE, "ACCESS TO A

1 CREDIT CARD OR A DEBIT CARD IS NOT A GOOD PROXY FOR
2 AGE." DO YOU SEE THAT?

3 A. YES, I DO.

4 Q. AND WAS THAT STATEMENT ACCURATE WHEN MR.
5 MCCARTHY MADE IT? ARE YOU AWARE THAT MR. MCCARTHY
6 SUBMITTED THIS TESTIMONY TO THE COPA COMMISSION?

7 A. YES, I AM.

8 Q. AND HE DID SO IN HIS CAPACITY AS A SENIOR
9 VICE-PRESIDENT FOR VISA?

10 A. YES, HE DID.

11 Q. AND IS VISA AWARE OF THE ACCURACY OF THE
12 TESTIMONY PROVIDED BY MR. MCCARTHY TO THE COPA
13 COMMISSION?

14 A. YES.

15 Q. AND IS THE TESTIMONY THAT MR. MCCARTHY PROVIDED
16 -- WAS THE TESTIMONY THAT MR. MCCARTHY PROVIDED TO THE
17 COPA COMMISSION ACCURATE?

18 A. YES, IT WAS.

19 Q. AND IS THIS A TRUE AND ACCURATE COPY OF THE
20 TESTIMONY THAT MR. MCCARTHY PROVIDED TO THE COPA
21 COMMISSION?

22 A. IT DOES APPEAR TO BE ACCURATE.

23 Q. FOCUSING ON THE SECOND SENTENCE ON PAGE 3.
24 ACCESS TO A CREDIT CARD OR DEBIT CARD IS NOT A GOOD
25 PROXY FOR AGE. WAS THAT AN ACCURATE STATEMENT?

1 A. YES, IT WAS.

2 Q. AND IS THAT STATEMENT STILL ACCURATE TODAY?

3 A. YES, IT IS.

4 Q. THE NEXT SENTENCE: THE MERE FACT THAT A PERSON
5 USES A CREDIT CARD OR A DEBIT CARD IN CONNECTION WITH A
6 TRANSACTION DOES NOT MEAN THAT THIS PERSON IS AN ADULT.
7 DO YOU SEE THAT?

8 A. YES, I DO.

9 Q. WAS THAT AN ACCURATE STATEMENT?

10 A. YES, IT WAS.

11 Q. AND IS IT STILL AN ACCURATE STATEMENT TODAY?

12 A. YES, IT IS.

13 Q. THE FIRST SENTENCE OF THE NEXT PARAGRAPH: MANY
14 INDIVIDUALS UNDER THE AGE OF 17 HAVE LEGITIMATE ACCESS
15 TO, AND REGULAR USE OF, CREDIT CARDS AND DEBIT CARDS.
16 WAS THAT AN ACCURATE STATEMENT?

17 A. YES, IT WAS.

18 Q. AND IS THAT STILL AN ACCURATE STATEMENT TODAY?

19 A. YES, IT IS.

20 Q. AND I'M GOING TO READ THE NEXT TWO SENTENCES
21 TOGETHER. FOR EXAMPLE: PARENTS MAY DESIGNATE THEIR
22 CHILD AS AN AUTHORIZED USER OF THE PARENT'S CREDIT CARD
23 OR DEBIT CARD. THIS ACTUALLY IS QUITE COMMON,
24 PARTICULARLY FOR CREDIT CARDS.
25 DO YOU SEE THAT?

1 A. YES, I DO.

2 Q. AND ARE BOTH OF THOSE STATEMENTS ACCURATE?

3 A. YES, THEY ARE.

4 Q. AND ARE THEY STILL ACCURATE TODAY?

5 A. YES, THEY ARE.

6 Q. THE NEXT PARAGRAPH: IN ADDITION, MANY CHILDREN
7 UNDER THE AGE OF 17 HAVE THEIR OWN DEPOSIT ACCOUNTS AND
8 MAY HAVE ACCESS TO A DEBIT CARD THAT ACCESSES SUCH
9 ACCOUNT.

10 WAS THAT AN ACCURATE STATEMENT?

11 A. YES, IT WAS.

12 Q. AND IS IT STILL AN ACCURATE STATEMENT TODAY?

13 A. YES, IT IS.

14 Q. I'M GOING TO NOW SHOW YOU A DOCUMENT THAT WE ARE
15 GOING TO MARK AS DEPOSITION EXHIBIT 3.

16 DO YOU RECOGNIZE THIS DOCUMENT?

17 A. YES, I DO.

18 Q. AND WHAT IS IT?

19 A. IT'S A COPY FROM A VISA'S WEBSITE FOR THE VISA
20 BUXX CARD.

21 Q. AND IS THIS A TRUE AND ACCURATE COPY OF THE WEB
22 PAGE FROM VISA'S WEBSITE?

23 A. IT GENERALLY APPEARS ACCURATE. ALL THE
24 CONTENT -- I HAVE NOT LOOKED AT IT WITHIN THE LAST FEW
25 DAYS. IT DOES APPEAR TO HAVE CORRECT INFORMATION.

1 Q. AND IS THIS DOCUMENT PREPARED AND MAINTAINED IN
2 THE REGULAR COURSE OF VISA'S OPERATIONS?

3 A. YES, IT IS.

4 Q. FOCUSING ON THE SECOND PAGE OF DEPOSITION
5 EXHIBIT 3. FIRST OF ALL, DO YOU KNOW WHAT THIS
6 DOCUMENT -- WHAT ITS PURPOSE IS?

7 A. THIS DOCUMENT APPEARS TO BE AN EDUCATION PIECE
8 OF THE BUXX CARD, EDUCATING FOLKS ON HOW TO SHOP SAFELY,
9 ESPECIALLY AS IT PERTAINS TO THE INTERNET.

10 Q. OKAY. TURNING TO PAGE 2. THE FIRST BULLET
11 POINT ON PAGE 2 IN BOLD READS: NEVER PROVIDE YOUR CARD
12 NUMBER AS PROOF OF YOUR AGE.

13 AND THEN THE SECOND SENTENCE THERE SAYS:
14 NEVER PROVIDE ANY OF THIS INFORMATION AS THE CARD NUMBER
15 DOES NOT VALIDATE AN AGE.

16 DO YOU SEE THAT?

17 A. YES, I DO.

18 Q. IS THAT AN ACCURATE STATEMENT?

19 A. THAT IS CORRECT.

20 Q. FOR THE REASONS YOU DISCUSSED EARLIER?

21 A. YES.

22 Q. OKAY.

23 WHAT POLICIES OR PROCEDURES DOES VISA
24 HAVE REGARDING ONLINE SALES, INTERNET SALES OF
25 AGE-RESTRICTED MERCHANDISE?

1 A. THERE ARE NO POLICIES THAT PROHIBIT
2 AGE-RESTRICTED MERCHANDISE, PROVIDED THAT IT'S LEGAL.
3 OUR ACQUIRING BANKS ARE PERMITTED TO SIGN THESE
4 MERCHANTS UP. THERE IS NOTHING THAT VALIDATES AGE
5 WITHIN THE VISA SYSTEM TO BE ABLE -- FROM A POLICY OR
6 PROCEDURE PERSPECTIVE -- TO REQUIRE MERCHANTS OR
7 ACQUIRERS TO VALIDATE AGE THAT WOULD BE TRANSMITTED
8 THROUGH THE VISA PAYMENT SYSTEM.

9 Q. OKAY. AND IS IT SUFFICIENT, TOO, FOR ONE OF
10 THESE MERCHANTS WHO ARE SELLING ON AGE-RESTRICTED SITES,
11 SUCH AS TOBACCO, TO SIMPLY REQUIRE USE OF A VISA PAYMENT
12 CARD TO VALIDATE AGE?

13 A. USE OF A VISA PAYMENT CARD AS PROOF OF AGE WOULD
14 BE INACCURATE.

15 Q. AND AGAIN, THAT'S FOR THE REASONS YOU DISCUSSED
16 EARLIER?

17 A. CORRECT.

18 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
19 DESIGNATED BY THE PLAINTIFFS. IT RUNS FROM PAGE 38,
20 LINE 21, THROUGH PAGE 41, LINE 4.

21 Q. OKAY.

22 LET ME SHOW YOU A DOCUMENT THAT I'M GOING
23 TO MARK AS DEPOSITION EXHIBIT 4. FOR THE RECORD, THIS
24 IS BATES NUMBER VISA 00130 TO 131.

25 DO YOU RECOGNIZE THIS DOCUMENT?

1 A. YES, I DO.

2 Q. AND WHAT IS IT?

3 A. IT'S A COPY OF A VISA BUSINESS REVIEW ARTICLE.
4 THE SUBJECT, ILLEGAL TRANSACTIONS MAY NOT BE SUBMITTED
5 INTO THE VISA PAYMENT SYSTEM, FROM SEPTEMBER 2002.

6 Q. AND IS THIS A TRUE AND ACCURATE COPY?

7 A. IT DOES APPEAR TO BE AN ACCURATE COPY.

8 Q. AND WHAT IS THE VISA BUSINESS REVIEW?

9 A. IT'S A TYPE OF NEWSLETTER COMMUNICATION THAT IS
10 SENT OUT TWICE A MONTH TO MEMBERS ON DIFFERENT THINGS IN
11 THE VISA PAYMENT SYSTEM, WHETHER FROM A SYSTEMS CHANGE
12 TO COMPLIANCE REGULATIONS TO INFORMATION ON BEST
13 PRACTICES. A VARIETY OF DIFFERENT SUBJECTS TO HELP
14 EDUCATE THE MEMBERS ON THEIR OBLIGATIONS.

15 Q. AND DOES THIS DOCUMENT EDUCATE THE MEMBERS ON
16 WHAT THEIR OBLIGATIONS ARE REGARDING ILLEGAL
17 TRANSACTIONS?

18 A. IT DOES QUOTE ONE OPERATING REGULATIONS SECTION
19 THAT STATES THAT THEY'RE NOT ALLOWED TO PUT AN ILLEGAL
20 ACTIVITY INTO THE PAYMENT SYSTEM.

21 Q. AND I'M GOING TO REFER YOU TO THE LAST TWO
22 SENTENCES OF THE FIRST PARAGRAPH UNDER VISA OPERATING
23 REGULATIONS PROHIBIT ILLEGAL TRANSACTIONS. IT READS:
24 THE ISSUANCE OF A VISA CARD IS NOT RESTRICTED TO
25 INDIVIDUALS ABOVE 18 YEARS OF AGE.

1 NEXT SENTENCE: THEREFORE, MERCHANTS MAY
2 NOT RELY ON POSSESSION OF A VISA CARD OR SUBMISSION OF
3 VISA ACCOUNT INFORMATION TO VERIFY CARDHOLDER AGE.

4 DO YOU SEE THAT?

5 A. YES, I DO.

6 Q. AND IS THAT AN ACCURATE STATEMENT?

7 A. THIS IS AN ACCURATE STATEMENT.

8 Q. AND DOES THIS REFRESH YOUR RECOLLECTION AS TO
9 WHETHER MEMBER BANKS -- AS TO WHETHER MEMBERS, VISA
10 MEMBERS, HAVE AN OBLIGATION TO INFORM MERCHANTS WHO ARE
11 SELLING AGE-RESTRICTED PRODUCTS THAT THE VISA PAYMENT
12 CARDS ARE NOT AN EFFECTIVE PROXY FOR AGE?

13 A. IT IS ONE METHOD THAT AN ACQUIRER IN THIS CASE
14 WOULD BE ABLE TO USE TO COMMUNICATE WITH THE MERCHANTS
15 ABOUT THE PROPER USE OF THE MERCHANT ACCOUNT, AND THAT
16 CREDIT CARDS CANNOT BE USED TO VALIDATE AGE.

17 Q. OKAY.

18 THE VERY LAST SENTENCE OF THE DOCUMENT:
19 MERCHANTS MAY NOT RELY ON POSSESSION OF A VISA CARD OR
20 SUBMISSION OF VISA ACCOUNT INFORMATION TO VERIFY
21 CARDHOLDER'S AGE.

22 DO YOU SEE THAT?

23 A. YES, I DO.

24 Q. AND IS THAT STILL A TRUE STATEMENT?

25 A. THAT IS CORRECT.

1 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
2 DESIGNATED BY THE PLAINTIFFS. IT RUNS FROM PAGE 46,
3 LINE 6, THROUGH PAGE 50, LINE 22.

4 Q. OKAY.

5 EARLIER, WHEN YOU WERE TALKING ABOUT WHY
6 PAYMENT CARD INFORMATION IS NOT AN EFFECTIVE PROXY FOR
7 AGE, YOU REFERRED TO THE EXISTENCE OF, I BELIEVE, DEBIT
8 CARDS. DOES VISA HAVE ANY POLICIES ABOUT WHO ITS MEMBER
9 BANKS CAN ISSUE DEBIT CARDS TO?

10 A. THERE IS NOTHING SPECIFIC IN OUR OPERATING
11 REGULATIONS THAT SPEAKS TO THE ISSUANCE OF A DEBIT CARD.

12 Q. SO THERE'S NO REGULATION OR POLICY OR GUIDELINE
13 STOPPING VISA MEMBERS FROM PROVIDING DEBIT CARDS TO
14 INDIVIDUALS UNDER 17 YEARS OF AGE?

15 A. THERE IS NOTHING CONTAINED IN THE VISA OPERATING
16 REGULATIONS THAT SPEAKS TO THAT.

17 Q. AND OTHER THAN THE VISA OPERATING REGULATIONS,
18 ARE THERE ANY OTHER REGULATIONS OR GUIDELINES ON THIS
19 ISSUE?

20 A. NOT THAT I'M AWARE OF.

21 Q. OKAY. AND IS VISA AWARE THAT BANKS REGULARLY
22 GIVE DEBIT CARDS TO INDIVIDUALS UNDER THE AGE OF 17?

23 LET ME ASK THE QUESTION AGAIN.

24 IS VISA AWARE THAT THE BANKS -- THAT
25 BANKS GIVE DEBIT CARDS TO INDIVIDUALS UNDER THE AGE OF

1 17?

2 A. YES.

3 Q. AND IS VISA AWARE THAT BANKS REGULARLY DO THAT?

4 A. IT'S SOMETHING THAT WE WOULD ANECDOTALLY BELIEVE
5 IS WITHIN THEIR PRACTICES. HOWEVER, WE DON'T HAVE AGE
6 SPECIFIC INFORMATION TO PROVIDE ALL THE DETAILS.

7 Q. I'M GOING TO REFER YOU BACK TO DEPOSITION
8 EXHIBIT 2, THE THIRD PARAGRAPH. IT SAYS: IN ADDITION,
9 MANY CHILDREN UNDER THE AGE OF 17 HAVE THEIR OWN DEPOSIT
10 ACCOUNTS AND MAY HAVE ACCESS TO A DEBIT CARD TO
11 ACCESS -- THAT ACCESSES SUCH ACCOUNT.

12 DOES THAT INDICATE TO YOU THAT VISA IS
13 AWARE THAT MANY CHILDREN UNDER THE AGE OF 17 MAY HAVE
14 ACCESS TO DEBIT CARDS?

15 A. THAT IS CORRECT.

16 Q. OKAY. YOU EARLIER ALSO MADE REFERENCE TO A VISA
17 PAYMENT CARD CALLED VISA BUXX?

18 A. YES.

19 Q. CAN YOU TELL ME A LITTLE BIT MORE ABOUT THE VISA
20 BUXX?

21 A. THE VISA BUXX CARD IS BASICALLY A PREPAID-TYPE
22 PRODUCT THAT WAS DESIGNED AND INTENDED FOR USE BY
23 TEENAGERS AND FOLKS INTO THEIR EARLY TWENTIES. IT'S
24 SOMETHING THAT BOTH THE CHILD HAS ACCESS TO AND THE
25 PARENT HAS ACCESS TO. IT'S A MEANS TO HELP GIVE

1 CHILDREN EASY ACCESS TO FUNDS, ESPECIALLY THOSE IF YOU
2 LOOK IN A SEGMENT THAT MAY BE GOING OFF TO SCHOOL,
3 WHETHER IT'S PRIVATE SCHOOL OR SOME TYPE OF HIGH SCHOOL
4 WHERE IT'S OFFSITE OR GOING OFF TO COLLEGE, TO WHERE
5 PARENTS CAN LOAD FUNDS ONTO THE CARD. THEY CAN ALSO
6 TRACK THE SPENDING. IT'S DESIGNED TO HELP PROMOTE
7 FINANCIAL LITERACY AND DISCIPLINE.

8 Q. AND YOU MENTIONED THAT IT'S TARGETED TO
9 TEENAGERS. WHAT SPECIFIC AGES?

10 A. FROM 13 UP UNTIL YEAR EARLY TWENTIES.

11 Q. OKAY. AND HOW DOES THE CARD WORK?

12 A. IT'S BASICALLY A VISA PREPAID CARD. FUNDS ARE
13 LOADED ONTO THE CARD. THE CONSUMER, IN THAT CASE THE
14 PERSON BETWEEN THE AGE OF 13 AND THEIR EARLY TWENTIES,
15 WOULD HAVE ACCESS TO THE CARD AND BE ABLE TO TAKE AND
16 USE IT AT ANY MERCHANT THAT ACCEPTED VISA.

17 Q. OKAY. AND DOES IT FUNCTION THE SAME AS ANY
18 OTHER VISA PAYMENT CARD?

19 A. YES, IT DOES.

20 Q. AND IT CAN BE USED JUST LIKE ANY OTHER VISA
21 PAYMENT CARD?

22 A. YES, IT CAN.

23 Q. AND IT'S ACCEPTED EVERYWHERE THAT OTHER VISA
24 PAYMENT CARDS ARE ACCEPTED?

25 A. IN ESSENCE, YES.

1 Q. WHEN YOU SAY "IN ESSENCE"?

2 A. THE REASON I HESITATE IS THAT IF YOU HAVE A
3 MERCHANT WHO CHOOSES TO ONLY ACCEPT ONE TYPE OF PRODUCT,
4 IT MAY NOT BE ACCEPTED THERE.

5 Q. OKAY. BUT IF A MERCHANT HAS A VISA LOGO AND IS
6 ACCEPTING ALL VISA CARDS, THERE IS NO REASON WHY THAT
7 MERCHANT WOULDN'T ACCEPT THE VISA BUXX CARD?

8 A. YOU'RE CORRECT.

9 Q. AND IS IT ACCEPTED BY ONLINE MERCHANTS?

10 A. I WOULD SUSPECT SO. THERE WOULD BE NO REASON TO
11 DIFFERENTIATE IT.

12 Q. SO ANY ONLINE MERCHANT WHO ACCEPTS VISA PAYMENT
13 CARDS WOULD ACCEPT THE VISA BUXX CARD?

14 A. YES.

15 Q. AND THEY'RE PROCESSED THE SAME AS ALL OTHER VISA
16 PAYMENT CARDS?

17 A. YES.

18 Q. MAKES NO DIFFERENCE TO THE MERCHANT?

19 A. NO.

20 Q. LET ME NOW SHOW YOU A DOCUMENT THAT I'M GOING TO
21 MARK AS EXHIBIT 5.

22 DO YOU RECOGNIZE THIS DOCUMENT?

23 A. YES, I DO.

24 Q. WHAT IS IT?

25 A. IT'S THE MEMBER IMPLEMENTATION GUIDE FOR THE

1 VISA BUXX CARD, DATED JANUARY 28TH OF 2003.

2 Q. WAS IT PREPARED AND MAINTAINED IN THE REGULAR
3 COURSE OF VISA'S OPERATIONS?

4 A. YES.

5 Q. AND IS IT A TRUE AND ACCURATE COPY?

6 A. IT APPEARS TO BE SO.

7 MR. VAN KWAWEGEN: THE NEXT SECTION
8 DESIGNATED BY THE DEFENDANT. IT RUNS FROM PAGE 52, LINE
9 18, THROUGH PAGE 53, LINE 9. THE OBJECTIONS WERE
10 WAIVED.

11 Q. OKAY. IF YOU TURN TO THE SECOND PAGE NOW, PAGE
12 VISA 00011. UNDER ACCOUNT SERVICES, ABOUT A LITTLE MORE
13 THAN HALFWAY DOWN THERE, THERE'S AN ENTRY: E-MAIL
14 NOTIFICATION ON QUESTIONABLE MCC'S, (SUCH AS THOSE
15 INDICATING GAMING OR PORNOGRAPHY, PARENTS, SPONSOR'S
16 OPTION).

17 DO YOU SEE THAT?

18 A. YES, I DO.

19 Q. AND WHAT DOES THAT MEAN?

20 A. THIS MEANS THAT AN E-MAIL NOTIFICATION COULD BE
21 SENT TO THE PARENT OR GUARDIAN OF THE CARD NOTIFYING THE
22 TRANSACTION HAD OCCURRED AT AN MCC, WHICH WOULD BE
23 GAMING, PORNOGRAPHY. THE SERIES THERE, LISTED ELSEWHERE
24 IN THE DOCUMENT, SPECIFIC MERCHANT CATEGORY CODES.

25 Q. AND IS THIS A REQUIRED OR AN OPTIONAL FEATURE?

1 A. ACCORDING TO THIS DOCUMENT, IT IS REQUIRED.

2 MR. VAN KWAWEGEN: THE NEXT SECTION
3 DESIGNATED BY THE PLAINTIFFS RUN FROM LINES 10 THROUGH
4 14 ON PAGE 53.

5 Q. OKAY. SO IS IT FAIR TO SAY THAT THIS INDICATES
6 THAT VISA IS AWARE THAT IT'S POSSIBLE FOR VISA BUXX
7 CARDHOLDERS TO GO TO WEBSITES THAT INVOLVE GAMING OR
8 PORNOGRAPHY?

9 A. THAT IS CORRECT.

10 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
11 DESIGNATED BY THE PLAINTIFFS. IT'S ON PAGE 56, LINES 11
12 THROUGH 21.

13 Q. AND HOW DOES VISA DECIDE WHO FITS IN, WHICH
14 WEBSITES FIT INTO THIS CATEGORY 5967?

15 A. WE DON'T DIFFERENTIATE BETWEEN TYPES. YOU COULD
16 BE SELLING PICTURES OF YOUR GRANDMA'S 90TH BIRTHDAY. IF
17 YOU ARE CHARGING A FEE OVER THE NETWORK AND SOMEONE IS
18 PAYING WITH THEIR VISA CARD TO ACCEPT IT, THAT WOULD
19 HAVE TO BE A 5967. IT COULD BE FROM THAT EXTREME TO THE
20 MOST EXPLICIT CONTENT OUT THERE. DOES NOT MATTER. WE
21 DON'T DISTINGUISH. ANY DIGITAL CONTENT OVER THE OPEN
22 NETWORK, THE INTERNET, FOR A FEE IS GOING TO BE IN THIS
23 MCC.

24 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
25 DESIGNATED BY THE PLAINTIFFS, PAGE 58, LINES 4 THROUGH

1 19.

2 Q. I'M NOW GOING TO SHOW YOU A DOCUMENT THAT WE ARE
3 GOING TO MARK AS DEPOSITION EXHIBIT 6.

4 DO YOU RECOGNIZE THIS?

5 A. IT APPEARS TO BE A PRINTOUT FROM THE VISA
6 WEBSITE PERTAINING TO THE VISA BUXX CARD AND HOW IT
7 OPERATES.

8 Q. AND IS IT A TRUE AND ACCURATE COPY?

9 A. IT DOES APPEAR TO BE SO.

10 Q. AND IT'S PREPARED AND MAINTAINED IN THE REGULAR
11 COURSE OF VISA'S OPERATIONS?

12 A. THAT IS CORRECT.

13 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
14 DESIGNATED BY PLAINTIFFS. IT RUNS FROM PAGE 62, LINE
15 17, THROUGH PAGE 63, LINE 5.

16 Q. NOW THAT WE'RE BACK FROM BREAK, IS THERE
17 SOMETHING YOU NEED TO CLARIFY?

18 A. YES, I WOULD.

19 THE NUMBERS I GAVE YOU EARLIER FOR THE
20 100,000 CARDS IN CIRCULATION WAS SPECIFIC TO THE PREPAID
21 -- TO THE BUXX CARD. SO THAT'S SPECIFIC TO THE BUXX
22 PROGRAM. DO NOT HAVE ANY TRACKING FOR THE PREPAID
23 PRODUCT AS A WHOLE. SO THERE'S NO INFORMATION ON THE
24 NUMBER OF CARDS THAT ARE IN CIRCULATION AVAILABLE AT
25 THIS TIME.

1 Q. BUT IT'S --

2 A. SIGNIFICANTLY GREATER THAN FOR THE BUXX CARD.

3 Q. OKAY. WE'RE TALKING INTO THE MILLIONS?

4 A. VERY POSSIBLY SO.

5 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
6 DESIGNATED BY THE PLAINTIFFS. IT RUNS FROM PAGE 64,
7 LINE 20, THROUGH PAGE 67, LINE 18.

8 Q. LET ME ASK THE QUESTION AGAIN. I'M SORRY. DOES
9 VISA PERMIT MERCHANTS TO PROCESS PAYMENT CARD
10 INFORMATION IN THE ABSENCE OF FINANCIAL TRANSACTION?

11 A. NO, WE DO NOT.

12 Q. WHAT ABOUT FOR A ZERO DOLLAR AMOUNT?

13 A. NO.

14 Q. WHAT IS THE MINIMUM PERMITTED TRANSACTION VALUE?

15 A. IT WOULD BE WHATEVER THE VALUE OF THE SALES
16 TRANSACTION FOR WHATEVER GOODS OR SERVICES ARE BEING
17 PROVIDED.

18 Q. BUT IT HAS TO BE SOMETHING GREATER THAN A ZERO
19 DOLLAR AMOUNT?

20 A. CORRECT.

21 Q. WHY DOESN'T VISA PERMIT MERCHANTS TO PROCESS
22 PAYMENT CARD INFORMATION IN THE ABSENCE OF A FINANCIAL
23 TRANSACTION?

24 A. THE VISA PAYMENT SYSTEM IS DESIGNED FOR THE USE
25 OF PROCESSING TRANSACTIONS. IF YOU LOOK AT VISA AND ITS

1 MEMBERSHIP, IT'S REALLY A JOINT VENTURE WHICH IS
2 DESIGNED TO DO SOMETHING WHICH EACH BANK COULDN'T DO ON
3 THEIR OWN. THIS IS TO HELP ACCEPT CREDIT CARDS FOR THE
4 PURCHASE OF GOODS OR SERVICES.

5 IF YOU TRY TO DO THIS INDIVIDUALLY
6 WITHOUT A BRAND OR A LOGO, YOU COULDN'T BE ABLE TO
7 ACCEPT THAT, WOULDN'T BE ABLE TO HAVE THE SAME
8 ACCEPTANCE AS VISA DOES. IT'S PRIMARILY INTENDED FOR
9 THE PURPOSE OF TRANSACTIONS. AND TO HAVE OTHER TYPES OF
10 ACTIVITY GOING THROUGH THE SYSTEMS CREATES OTHER
11 PROBLEMS SUCH AS CAPACITY. WE'RE NOW FLOODING THE
12 SYSTEM WITH TRANSACTIONS AND ACTIVITY THAT DON'T WORK
13 TOWARD THE GOAL OF A PAYMENT SYSTEM. USING OTHER
14 ACCOUNT NUMBERS IN THE SYSTEM OR DATA CAN LEAD TO
15 INCREASED COMPROMISE OR MORE ACCOUNT NUMBERS OUT THERE
16 THAT ARE BEING USED THAT PROVIDE AN OPPORTUNITY FOR MORE
17 DATA TO BE STORED.

18 Q. SO YOU MENTIONED CAPACITY ISSUES?

19 A. WELL, THERE COULD VERY POSSIBLY BE CAPACITY
20 ISSUES. IF YOU START TO THINK OF LOTS OF ZERO ONE
21 DOLLAR TRANSACTIONS FLOODING THROUGH THE SYSTEM, THERE
22 IS A NUMBER OF DIFFERENT REASONS WHY SOMEBODY WOULD WANT
23 TO DO THAT.

24 BUT IF THE SYSTEM BECOMES FLOODED WITH
25 THOSE TYPES OF THINGS, YOU HAVE PERFORMANCE-TYPE ISSUES

1 TO WHERE LEGITIMATE TRANSACTIONS BECOME MUCH SLOWER. OR
2 IN THE CASE OF SOME TYPE OF AN ATTACK, AS YOU SEE IN
3 OTHER DIFFERENT TYPES OF MERCHANTS, ZERO TRANSACTIONS
4 COULD BRING A SYSTEM DOWN. SO THE PAYMENT SYSTEM IS
5 ONLY INTENDED FOR USE OF A PAYMENT TRANSACTION FOR GOODS
6 OR SERVICES.

7 Q. YOU JUST REFERENCED AN ATTACK OF A SYSTEM. CAN
8 YOU EXPLAIN WHAT YOU MEAN BY THAT?

9 A. THERE HAVE BEEN HISTORICAL INSTANCES WHERE FOLKS
10 WHO HAVE ACCOUNT NUMBERS, SUCH AS THOSE WE TALKED ABOUT
11 EARLIER, WHERE THE ACCOUNT GENERATION TYPE SITUATION
12 WHERE I HAVE NOW CREATED A BUNCH OF ACCOUNT NUMBERS, I
13 DON'T KNOW IF THEY ARE VALID, IF I HAVE A MERCHANT
14 ACCOUNT THAT I HACK INTO, I CAN NOW GO OUT AND TRY ZERO
15 AND ONE DOLLAR TRANSACTIONS TO GET AN AUTHORIZATION TO
16 DETERMINE IF THEY'RE GOOD. IF YOU'VE GOT A LOT OF THIS
17 GOING ON, MAJOR TYPES OF THINGS, YOU'RE PUTTING ACTIVITY
18 THROUGH THE SYSTEM THAT COULD BRING MERCHANTS DOWN OR
19 ACQUIRERS DOWN, PROCESSORS DOWN. SO THAT IS A MISUSE OF
20 THE PAYMENT SYSTEM VERSUS LEGITIMATE TRANSACTION.

21 Q. AND I TAKE IT WHEN YOU REFER TO THE ATTACK OF
22 THE SYSTEM, YOU'RE TALKING ABOUT PERMITTING ZERO DOLLAR
23 TRANSACTIONS WOULD INCREASE THE LIKELIHOOD THAT THERE
24 WOULD BE FRAUDULENT ACTIVITY?

25 A. CORRECT.

1 Q. AND IT COULD COMPROMISE VISA'S SYSTEM?

2 A. IT COULD COMPROMISE VISA'S SYSTEM, OR IT COULD
3 CAUSE PERFORMANCE DELAYS. A NUMBER OF DIFFERENT ISSUES.

4 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
5 DESIGNATED BY THE PLAINTIFFS. IT'S ON PAGE 74, LINES 12
6 THROUGH 16.

7 Q. DO ALL ADULTS HAVE CREDIT CARDS?

8 A. I COULDN'T ANSWER THAT. I WOULD SAY THAT A
9 LARGE, VAST MAJORITY OF THE POPULATION HAS CREDIT CARDS
10 BUT I WOULDN'T VENTURE SO FAR AS TO SAY ALL ADULTS HAVE
11 CREDIT CARDS.

12 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
13 DESIGNATED BY THE PLAINTIFFS. IT'S ON PAGE 75, LINES 2
14 THROUGH 10.

15 Q. WHAT ABOUT FOR DEBIT CARDS, IS VISA AWARE WHAT
16 SEGMENT OF THE POPULATION HAS DEBIT CARDS?

17 A. AGAIN, I DON'T HAVE ANY SPECIFIC DETAILS ON IT.

18 Q. GENERALLY?

19 A. I WOULD SAY THAT A LARGE MAJORITY OF CONSUMERS
20 PROBABLY HAVE DEBIT CARDS. A VAST MAJORITY OF US HAVE
21 CHECKING ACCOUNTS, AND OFTEN WITH A CHECKING ACCOUNT A
22 DEBIT CARD IS LINKED TO THE PRODUCT.

23 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
24 DESIGNATED BY THE PLAINTIFFS. IT RUNS FROM PAGE 76,
25 LINE 6, THROUGH PAGE 77, LINE 3.

1 Q. DOES VISA EVER CATEGORIZE SOME MERCHANTS AS HIGH
2 RISK?

3 A. THERE ARE CERTAIN CATEGORIES OF SOME MERCHANTS
4 THAT ARE CONSIDERED HIGH RISK.

5 Q. WHAT ARE THOSE?

6 A. MCC 5962, WHICH IS THE DIRECT MARKETING OF
7 TRAVEL-RELATED PACKAGES; MCC 5967, WHICH IS THE INBOUND
8 TELEMARKETING; AND MCC 5966, WHICH IS THE OUTBOUND
9 TELEMARKETING.

10 Q. AND THE LAST CATEGORY, MCC 5966, IS THE CATEGORY
11 THAT WOULD INCLUDE WEBSITES THAT HAVE SEXUALLY EXPLICIT
12 MATERIAL FOR -- WELL, REMIND ME WHAT 5966 CUSTOMERS ARE.

13 A. 5966 IS OUTBOUND. SO THAT WOULD BE INDIVIDUALS
14 MAKING CALLS OUT TO CONSUMERS, SOLICITING FROM SALES.
15 MCC 5967 WOULD BE THE ONE THAT CONTAINS ONLINE CONTENT
16 OR AUDIO, PHONE TYPE CONTENT.

17 Q. AND THAT'S ONLY IF IT'S ACCESS -- IF THERE'S A
18 FEE ASSOCIATED?

19 A. SO IT'S NOT SPECIFIC TO ADULT CONTENT. IT IS
20 FOR ANY ONLINE CONTENT OVER AN OPEN NETWORK FOR A FEE.
21 SO WE DO NOT HAVE ANY MCCS IN OUR PAYMENT SYSTEM THAT
22 ARE SPECIFIC TO PORNOGRAPHY THAT WOULD FALL INTO 5967.

23 MR. VAN KWAWEGEN: THE NEXT SECTION IS
24 DESIGNATED BY THE PLAINTIFFS. IT RUNS FROM PAGE 83,
25 LINE 22, TO THROUGH PAGE 84, LINE 3.

1 Q. ARE THERE ANY DIFFERENCES UNDER THAT PROCESS
2 THAT YOU FOLLOW FOR ALL MERCHANTS? FOR EXAMPLE, ARE
3 THERE ADDITIONAL REVIEWS GIVEN TO NONHIGH-RISK
4 MERCHANTS?

5 A. WE DON'T -- VISA DOES NOT SPECIFICALLY REVIEW
6 PERFORMANCE, ONGOING PERFORMANCE OF HIGH-RISK MERCHANTS.
7 THAT'S THE RESPONSIBILITY OF THE ACQUIRER.

8 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
9 DESIGNATED BY THE DEFENDANT. IT'S ON PAGE 84, LINES 4
10 THROUGH 10. THE OBJECTION WAS WAIVED.

11 Q. DOES VISA IMPOSE ADDITIONAL REQUIREMENTS ON
12 ACQUIRERS FOR DEALING WITH HIGH-RISK MERCHANTS?

13 A. ACQUIRERS ARE RESPONSIBLE FOR MONITORING
14 HIGH-RISK MERCHANTS ON A DAILY BUSINESS BASIS, LOOKING
15 AT THEIR SALES ACTIVITY, CHARGEBACKS, CREDITS, ROUTINE
16 MONITORING THAT AS A BEST PRACTICE YOU WOULD DO
17 REGARDLESS OF ANY VISA REQUIREMENTS.

18 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
19 DESIGNATED BY THE PLAINTIFFS. IT'S ON PAGE 84, LINES 11
20 THROUGH 22.

21 Q. AND IF ACQUIRING BANKS DON'T ADEQUATELY MONITOR
22 HIGH-RISK MERCHANTS, ARE THERE FINANCIAL CONSEQUENCES
23 FOR THOSE ACQUIRERS?

24 A. THERE WOULD NOT BE SO MUCH FINANCIAL
25 CONSEQUENCES FOR THE ACQUIRER. IF WE BECAME AWARE THAT

1 AN ACQUIRER WAS NOT MONITORING THEIR MERCHANTS
2 APPROPRIATELY, THE MOST LIKELY COURSE OF ACTION WOULD BE
3 THAT WE WOULD WORK TO BRING THEM INTO COMPLIANCE.

4 AGAIN, THAT WOULD BE RISK DEPENDENT. YOU
5 WOULD HAVE TO LOOK AT THE BANK, THE TYPE OF PORTFOLIO
6 THEY HAD ON BOARD FOR MERCHANTS AND WHAT RISK IT POSED
7 TO THE FINANCIAL PAYMENT SYSTEM AS A WHOLE.

8 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
9 DESIGNATED BY THE DEFENDANT. IT RUNS FROM PAGE 84, LINE
10 23, THROUGH PAGE 85, LINE 10. THE OBJECTION WAS WAIVED.

11 Q. AND DOES VISA FROM TIME-TO-TIME ASSESS FINES
12 AGAINST ACQUIRERS OR MEMBER BANKS?

13 A. THERE ARE OCCASIONS WHEN WE DO THAT, YES.

14 Q. AND DO YOU KNOW WHAT THE AMOUNTS OF THOSE FINES
15 ARE?

16 A. WELL, THERE ARE A VARIETY OF DIFFERENT FEES AND
17 FINES THAT COULD BE ASSESSED TO AN ACQUIRER.

18 Q. FOCUSING ON LACK OF ADEQUATE COMPLIANCE WITH
19 HIGH-RISK MERCHANTS.

20 A. IF YOU'RE TALKING GENERAL COMPLIANCE FEES, IT
21 COULD BE ANYWHERE FROM \$500 UP TO SEVERAL HUNDRED
22 THOUSANDS OF DOLLARS, DEPENDING ON THE SEVERITY OF THE
23 ISSUE.

24 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
25 DESIGNATED BY THE DEFENDANT. IT'S ON PAGE 89, LINES 9

1 THROUGH 21.

2 Q. DOES VISA HAVE ANY SPECIFIC REGULATIONS OR
3 PROCEDURES OR GUIDELINES REGARDING INTERNET PAYMENT
4 SERVICE PROVIDERS?

5 A. THERE ARE -- YES, THERE ARE.

6 Q. AND WHAT ARE THOSE?

7 A. DEPENDING ON THE TYPE OF INTERNET PAYMENT
8 SERVICE PROVIDER, IN GENERAL, THERE ARE RULES THAT
9 REQUIRE NAMING CONVENTION IN THAT YOU HAVE THE ORIGINAL
10 NAME, SUCH, FOR EXAMPLE, GINGER, WITH AN ASTERISK, AND
11 THE NAME OF THE SPONSOR AFTER THAT. SO IT'S CLEAR TO
12 THE CONSUMER WHO THEY MADE THE PURCHASE FROM. A CLEAR
13 PHONE NUMBER FOR THE CONSUMER TO GET A HOLD OF THEM. IN
14 THE HIGH-RISK SPACE, THERE ARE OTHER REQUIREMENTS.

15 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
16 DESIGNATED BY THE DEFENDANT. IT RUNS FROM PAGE 91, LINE
17 24, THROUGH PAGE 92, LINE 4.

18 Q. AND HOW MANY HIGH-RISK INTERNET PAYMENT SERVICE
19 PROVIDERS ARE THERE?

20 A. CURRENTLY IN THE U.S., THERE ARE THREE.

21 Q. WHO ARE THOSE?

22 A. PAYCOM, CCBILL, AND ONE JUST COMING UP KNOWN AS
23 365 BILL.

24 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
25 DESIGNATED BY THE PLAINTIFFS. IT IS ON PAGE 96, LINES 3

1 THROUGH 22.

2 Q. I'M NOW GOING TO SHOW YOU A DOCUMENT THAT WE'RE
3 GOING TO MARK AS DEPOSITION EXHIBIT 7.

4 DO YOU RECOGNIZE THIS DOCUMENT?

5 A. YES, I DO.

6 Q. AND WHAT IS IT?

7 A. IT'S A COPY OF SOME SELECTED OPERATING
8 REGULATIONS FROM THE VISA U.S.A. OPERATING REGULATIONS,
9 VOLUME 1 GENERAL RULES, DATED NOVEMBER 15, 2005.

10 Q. AND ARE THESE THE CURRENT VISA U.S.A. INC.
11 OPERATING REGULATIONS?

12 A. YES.

13 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
14 DESIGNATED BY THE PLAINTIFFS. IT RUNS FROM PAGE 99,
15 LINE 14, THROUGH PAGE 103, LINE 2.

16 Q. I'M NOW GOING TO SHOW YOU A DOCUMENT WE ARE
17 GOING TO MARK AS DEPOSITION EXHIBIT 8. AND IT'S VISA
18 000099, CAPTIONED: VISA U.S.A. HIGH-RISK CHARGEBACK
19 MONITORING PROGRAM.

20 DO YOU RECOGNIZE THIS DOCUMENT?

21 A. YES, I DO.

22 Q. WHAT IS IT?

23 A. IT'S A COPY OF A TIMELINE FOR THE HIGH-RISK
24 CHARGEBACK MONITORING PROGRAM. IT OUTLINES THE STATUS A
25 MERCHANT MAY BE IDENTIFIED IN, ACQUIRER RESPONSIBILITY,

1 PROGRAM FEES AND ACTIONS, DATED MARCH 4TH OF 2004.

2 Q. WAS THIS PREPARED IN THE REGULAR COURSE AND
3 MAINTAINED IN THE REGULAR COURSE OF VISA'S OPERATIONS?

4 A. YES.

5 Q. IS THIS A TRUE AND ACCURATE COPY?

6 A. YES.

7 Q. AND JUST TO BACK UP A STEP. I APOLOGIZE. WITH
8 RESPECT TO DEPOSITION EXHIBIT 7, THE EXCERPTS OF THE
9 VISA U.S.A. OPERATING REGULATIONS, ARE THESE OPERATING
10 REGULATIONS PREPARED AND MAINTAINED IN THE REGULAR
11 COURSE OF VISA'S BUSINESS OPERATIONS?

12 A. YES.

13 Q. I'M NOW GOING TO SHOW YOU WHAT I'M GOING TO MARK
14 AS DEPOSITION EXHIBIT 9, WHICH IS A DOCUMENT BATES
15 NUMBERED VISA 00105.

16 DO YOU RECOGNIZE THIS?

17 A. YES, I DO.

18 Q. WHAT IS IT?

19 A. IT'S A COPY OF U.S. CORPORATE RISK AND
20 COMPLIANCE PROCEDURES FOR HIGH-RISK INTERNET PAYMENT
21 SERVICE PROVIDERS REGISTRATION PROGRAM. THE DATE ON THE
22 TOP OF THIS IS JUNE 29 OF 2005.

23 Q. AND IS THIS A DOCUMENT THAT IS PREPARED AND
24 MAINTAINED IN THE REGULAR COURSE OF VISA'S BUSINESS
25 OPERATIONS?

1 A. YES, IT IS.

2 Q. IS THIS A TRUE AND ACCURATE COPY?

3 A. IT DOES APPEAR TO BE SO.

4 Q. I'M NOW GOING TO SHOW YOU A DOCUMENT THAT WE ARE
5 NOW GOING TO MARK AS DEPARTMENT EXHIBIT 10, WHICH IS
6 BATES NUMBERED VISA 00109 TO 116. IT'S CAPTIONED:
7 INTERNET PAYMENT SERVICE PROVIDERS AND SPONSORED
8 MERCHANTS.

9 DO YOU RECOGNIZE THIS DOCUMENT?

10 A. YES, I DO.

11 Q. WHAT IS IT?

12 A. IT'S A SERIES OF TWO VBR AND ONE OTHER SHEET
13 WITH THE ENHANCED ISO/SERVICE PROVIDER RISK STANDARDS.

14 THE FIRST DOCUMENT IS A VISA BUSINESS
15 REVIEW ARTICLE NAMED: INTERNET PAYMENT SERVICE
16 PROVIDERS AND SPONSORED MERCHANTS, DATED MAY 15, 2002.
17 THE SECOND IS HIGH-RISK INTERNET PAYMENT SERVICE
18 PROVIDER REGISTRATION PROGRAM, DATED NOVEMBER 15, 2002.
19 THE LAST, AGAIN, IS THE ENHANCED ISO/SERVICE PROVIDER
20 RISK STANDARDS, DATED JULY 2002.

21 Q. AND WERE THESE DOCUMENTS PREPARED AND MAINTAINED
22 IN THE REGULAR COURSE OF VISA'S BUSINESS OPERATIONS?

23 A. YES.

24 Q. IS IT A TRUE AND CORRECT COPIES?

25 A. THEY APPEAR TO BE SO.

1 Q. AND REFERRING BACK TO DEPOSITION EXHIBIT 2,
2 WHICH IS THE TESTIMONY OF MARK MCCARTHY BEFORE THE
3 COMMISSION ON ONLINE PROTECTION, HAVE YOU EVER REVIEWED
4 THIS DOCUMENT BEFORE?

5 A. YES, I HAVE.

6 Q. AND IS THAT THE BASIS FOR YOUR FAMILIARITY WITH
7 THIS DOCUMENT?

8 A. YES.

9 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
10 DESIGNATED BY THE DEFENDANT. IT'S ON PAGE 103, LINES 6
11 THROUGH 13.

12 (BY ORDER OF COURT, PAGE 103, LINES 6
13 THROUGH 13 REDACTED.)

14 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
15 DESIGNATED BY THE DEFENDANT. IT RUNS FROM PAGE 103,
16 LINE 22, THROUGH PAGE 104, LINE 2.

17 (BY ORDER OF COURT, PAGE 103, LINE 22,
18 THROUGH 25 REDACTED.)

19 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
20 DESIGNATED BY THE DEFENDANT. IT RUNS FROM PAGE 107,
21 LINE 22, THROUGH PAGE 108, LINE 16. THE OBJECTIONS WERE
22 WAIVED.

23 Q. I'LL DIRECT YOUR ATTENTION TO PAGE 3 OF EXHIBIT
24 2, AND IN THE SECOND PARAGRAPH WHICH BEGINS: MANY
25 INDIVIDUALS UNDER THE AGE OF 17. WHEN IT REFERS TO

1 MANY, DO YOU KNOW HOW MANY -- WHAT MANY MEANS IN TERMS
2 OF A NUMERICAL NUMBER?

3 A. NO. I'D THINK IT WOULD BE A FAIRLY SMALL NUMBER
4 ON THE SCOPE OF THE PAYMENT SYSTEM BUT NOT SOMETHING
5 THAT WOULD BE INSIGNIFICANT IN TERMS OF ACTUAL USAGE.
6 SO IF YOU LOOK AT -- GOSH, IS 100,000 CARDS ISSUED TO
7 PEOPLE UNDER THE AGE OF 17 INSIGNIFICANT, NO. BUT IN
8 TERMS OF USAGE WITHIN THE ENTIRE PAYMENT SYSTEM AND
9 APPROXIMATE NUMBER OF CARDS THAT WOULD BE ISSUED, IT IS
10 INSIGNIFICANT.

11 Q. THAT'S NOT MY QUESTION.

12 MY QUESTION IS, CAN YOU IDENTIFY ANY
13 STATISTICS WITH RESPECT -- OR THE NUMBER OF WHAT "MANY"
14 MEANS? IS IT ONE? IS IT TWO? IS IT 100? IS IT A
15 MILLION INDIVIDUALS? ARE THERE ANY STATISTICS YOU
16 REVIEWED FOR THAT PURPOSE WHAT MANY MEANS?

17 A. THERE WERE NO STATISTICS THAT I COULD LOCATE.

18 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
19 DESIGNATED BY THE PLAINTIFFS. IT RUNS FROM PAGE 108,
20 LINE 17, THROUGH PAGE 109, LINE 4.

21 Q. SO WHEN YOU'RE MAKING A STATEMENT ABOUT MANY,
22 IT'S PURE SPECULATION ON YOUR PART, ISN'T IT? ISN'T
23 THAT TRUE? YOU CAN ANSWER.

24 A. I WOULD SAY THAT IT'S A REASONABLE APPROXIMATION
25 OF WHAT'S OUT THERE IN THE MARKETPLACE.

1 Q. AND WHAT IS THE BASIS FOR YOUR STATEMENT THAT
2 IT'S REASONABLE?

3 A. BASED ON VARIOUS CONVERSATIONS THAT THE FOLKS
4 WITHIN VISA WOULD HAVE HAD WITH ISSUERS ABOUT TRENDS
5 WITHIN THEIR PORTFOLIO.

6 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
7 DESIGNATED BY THE DEFENDANT. IT'S ON PAGE 109, LINES 5
8 THROUGH 9. OBJECTIONS WERE WAIVED.

9 Q. AND WITH RESPECT TO ANY OF THOSE CONVERSATIONS,
10 WERE ANY NUMBERS EVER IDENTIFIED WITH RESPECT TO
11 INDIVIDUALS UNDER THE AGE OF 17 THAT ARE REFERRED TO IN
12 THIS SENTENCE?

13 A. NOT THAT I'M AWARE OF.

14 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
15 DESIGNATED BY THE PLAINTIFFS. IT'S ON PAGE 109, LINES
16 10 THROUGH 19.

17 Q. THE THIRD SENTENCE IN THAT PARAGRAPH READS:
18 THIS ACTUALLY IS QUITE COMMON, PARTICULARLY FOR CREDIT
19 CARDS.

20 WHAT IS THAT REFERRING TO, "QUITE
21 COMMON"?

22 A. YOU WOULD LOOK AT THAT AS SOMETHING THAT IS
23 COMMON KNOWLEDGE WITHIN THE INDUSTRY, THAT IT'S A
24 PRACTICE WHICH OCCURS.

25 Q. BUT IS IT REFERRING TO THE SENTENCE BEFORE

1 -- I'M JUST ASKING -- PARENTS MAY DESIGNATE THEIR CHILD
2 AS AN AUTHORIZED USER?

3 A. YES.

4 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
5 DESIGNATED BY THE DEFENDANT. IT'S ON PAGE 109, LINES 20
6 THROUGH 24. OBJECTIONS WERE WAIVED.

7 Q. DO YOU HAVE ANY STATISTICS OR ARE YOU AWARE OF
8 ANY STATISTICS OF HOW MANY INSTANCES THAT PARENTS HAVE,
9 WHO HAVE VISA CARDS, DESIGNATED THEIR CHILD AS AN
10 AUTHORIZED USER OF THE PARENT'S CREDIT OR DEBIT CARDS?

11 A. I DO NOT HAVE ANY STATISTICS.

12 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
13 DESIGNATED BY THE PLAINTIFFS. IT RUNS FROM PAGE 111,
14 LINE 21, THROUGH 112, LINE 3.

15 Q. AND WHILE YOU WERE AT BANK OF AMERICA, I ASSUME
16 YOU SAW APPLICATION FORMS FOR INDIVIDUALS WHO WANTED A
17 VISA CREDIT CARD?

18 A. NOT THAT FREQUENTLY. I DID SEE THEM
19 INFREQUENTLY AS PART OF THE JOB.

20 Q. AND DO YOU RECALL WHETHER THE AGE OF THE
21 INDIVIDUAL WAS REQUESTED?

22 A. I DON'T SPECIFICALLY RECALL THAT.

23 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
24 DESIGNATED BY THE DEFENDANT. IT IS ON PAGE 112, LINES 4
25 THROUGH 14. OBJECTIONS WERE WAIVED.

1 Q. IS IT FAIR TO SAY THAT FROM THE APPLICATION
2 FORM, EITHER THROUGH GOING THROUGH THE SOCIAL SECURITY
3 NUMBER ON A CREDIT REPORT OR THE INDIVIDUAL ACTUALLY
4 IDENTIFYING THE DATE OF BIRTH, THAT THAT INFORMATION
5 WOULD BE ABLE TO BE OBTAINED BY THE ISSUING BANK WHEN
6 SOMEONE SUBMITS AN APPLICATION FOR A VISA CREDIT CARD?
7 YOU CAN ANSWER.

8 A. THEY SHOULD BE ABLE TO, BASED ON THE STANDARD
9 TYPE OF INFORMATION THEY WOULD TYPICALLY COLLECT.

10 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
11 DESIGNATED BY THE DEFENDANT. IT'S ON PAGE 113, LINES 1
12 THROUGH 12. OBJECTIONS WERE WAIVED.

13 Q. AND WHAT KIND OF INFORMATION WOULD ONE TYPICALLY
14 FIND WITH RESPECT TO OPENING A BANK ACCOUNT IN YOUR
15 EXPERIENCE?

16 A. NAME, ADDRESS, PHONE NUMBER, SOCIAL SECURITY
17 NUMBER.

18 Q. AND WOULD ONE BE ABLE TO, WITH RESPECT TO THE
19 CHECKING ACCOUNT, ALSO BE ABLE TO IDENTIFY EITHER WHO
20 THE SOCIAL SECURITY NUMBER OR DIRECT PROVISION OF THE
21 DATE OF BIRTH, THE AGE OF THE PERSON?

22 A. BASED ON THE INFORMATION THEY WOULD TYPICALLY
23 COLLECT, THEY SHOULD BE ABLE TO DETERMINE THAT
24 INFORMATION.

25 MR. VAN KWAWEGEN: THE NEXT SECTION WAS

1 DESIGNATED BY THE PLAINTIFFS. IT RUNS FROM PAGE 113,
2 LINE 13 THROUGH PAGE 114, LINE 25.

3 Q. NOW, VISA ISSUES CREDIT CARDS TO A CHILD UNDER
4 THE PARENT'S CREDIT CARD, ISN'T THAT CORRECT?

5 A. VISA DOES NOT ISSUE CARDS TO CHILDREN ON THE
6 CREDIT CARD. ISSUING BANKS WOULD BE THE ONE TO MAKE
7 THAT LENDING DECISION.

8 Q. AND MANY OF YOUR ISSUING BANKS ISSUE CREDIT
9 CARDS -- WELL, DO YOU KNOW OF ANY ISSUING BANK OF VISA'S
10 THAT DOESN'T ISSUE -- DOESN'T PERMIT THE ISSUANCE OF A
11 CREDIT CARD TO A CHILD UNDER THE PARENT'S CARD?

12 A. I'M NOT AWARE OF ANY SPECIFIC BANK THAT WOULD
13 PRECLUDE IT.

14 Q. AND YOU ARE AWARE OF ISSUING BANKS THAT DO
15 PERMIT THE ISSUANCE OF A CREDIT CARD TO A CHILD UNDER
16 THE PARENT'S CARD?

17 A. I'M AWARE OF INDUSTRY PRACTICE, BUT I COULD NOT
18 TELL YOU SPECIFICALLY WHICH BANKS DO GIVE THAT SERVICE.

19 Q. WHAT KIND OF INFORMATION WOULD BE PROVIDED IN
20 THAT KIND OF -- WHEN AN ISSUING BANK ISSUES A CREDIT
21 CARD TO A CHILD UNDER THE PARENT'S CARD, WHAT KIND OF
22 INFORMATION CONCERNING THE CHILD?

23 A. THERE MAY NOT -- MAY NOT BE INFORMATION
24 COLLECTED. FREQUENTLY, APPLICATIONS FOR A CREDIT CARD,
25 THERE'S A BLANK OR A COUPLE LINES SOMEWHERE ON THE

1 APPLICATION THAT YOU CAN CHECK IF A CONSUMER WANTS
2 ANOTHER AUTHORIZED CARDHOLDER ON THE ACCOUNT AND THEY
3 CAN WRITE THAT INFORMATION IN ON THE ACCOUNT. THEN A
4 SECOND CARD WOULD BE ISSUED IN THAT PERSON'S NAME. SO
5 IN THAT REGARD, YOU PROBABLY WOULDN'T HAVE A LOT OF
6 INFORMATION.

7 Q. I ASSUME YOU'D HAVE THE NAME OF THE PERSON?

8 A. CORRECT.

9 Q. I ASSUME YOU WOULD ALSO HAVE THE RELATIONSHIP?

10 A. NOT NECESSARILY.

11 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
12 DESIGNATED BY THE DEFENDANT. IT'S ON PAGE 116, LINES 10
13 THROUGH 14.

14 Q. BUT YOU ARE AWARE OF SOME STATES THAT DO PERMIT
15 THAT?

16 A. I CAN'T TELL YOU SPECIFICALLY WHICH STATES THERE
17 ARE. I DO KNOW THERE ARE CERTAIN STATES WHERE THE AGE
18 OF MAJORITY VARIES, WHICH WOULD HELP DICTATE WHEN A
19 CREDIT CARD WOULD BE ABLE TO BE ISSUED TO A CHILD,
20 POSSIBLY UNDER THE AGE OF 17.

21 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
22 DESIGNATED BY THE DEFENDANT. IT'S ON PAGE 118, LINES 7
23 THROUGH 13.

24 Q. A PREPAID CARD. I APOLOGIZE. THANK YOU.

25 A. IT WOULD ASK FOR THE BASIC INFORMATION SUCH AS

1 MINIMUM NAME, ADDRESS, PHONE NUMBER. THE INFORMATION
2 REQUIRED TO MEET THE KNOW-YOUR-CUSTOMER RULES AND TO
3 MAKE SURE THERE WERE NO ANTI-MONEY-LAUNDERING
4 IMPLICATIONS.

5 MR. VAN KWAWEGEN: THE NEXT SECTION IS
6 DESIGNATED BY THE DEFENDANT. IT'S ON PAGE -- STARTS ON
7 PAGE 126, LINE 21, AND GOES THROUGH PAGE 127, LINE 3.
8 OBJECTIONS WERE WAIVED.

9 Q. DOES VISA ISSUE ANY REGULATIONS WITH RESPECT TO
10 THE MINIMUM DOLLAR AMOUNT OR MINIMUM, I WILL CALL IT,
11 DOLLAR -- IT MIGHT BE ONE CENT -- WITH RESPECT TO USING
12 A VISA CREDIT CARD?

13 A. NO. THERE ARE RULES IN PLACE THAT PROHIBIT A
14 MERCHANT FROM ESTABLISHING MINIMUM OR MAXIMUM
15 TRANSACTION AMOUNTS. SO THERE'S -- IN EFFECT, YOU COULD
16 SAY THERE IS A RULE THAT SAYS MERCHANTS MUST ACCEPT ALL
17 TRANSACTIONS FOR ALL VALUE, WHICH YOU COULD THEN
18 TRANSFER. IF A CUSTOMER WANTED TO BUY A TEN CENT PIECE
19 OF GUM AND USE THEIR VISA CARD, THEY WOULD BE OBLIGATED
20 TO ACCEPT IT.

21 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
22 DESIGNATED BY THE DEFENDANT. IT'S ON PAGE 134, LINE 22
23 THROUGH PAGE 135, LINE 3.

24 MR. GOMEZ: YOUR HONOR, THE DEFENDANT
25 WITHDRAWS THIS PORTION OF THE DEPOSITION READING.

1 THE COURT: THANK YOU.

2 WHAT PAGE AGAIN, PLEASE?

3 MR. VAN KWAWEGEN: PAGE 134, LINE 22
4 THROUGH PAGE 135, LINE 3, YOUR HONOR.

5 THE NEXT SECTION WAS DESIGNATED BY THE
6 PLAINTIFFS. IT'S ON PAGE 137, LINE 11 THROUGH LINE 20.

7 THE COURT: I DON'T THINK YOU READ THE
8 TESTIMONY ON PAGE 134.

9 MR. VAN KWAWEGEN: I THINK IT WAS JUST
10 WITHDRAWN, YOUR HONOR.

11 THE COURT: I'M SORRY. I THOUGHT HE SAID
12 OBJECTION WAS WITHDRAWN.

13 MR. VAN KWAWEGEN: I THINK THE
14 DESIGNATION IS WITHDRAWN. IT WAS DESIGNATED BY THE
15 DEFENDANT.

16 MR. GOMEZ: THE DESIGNATION WAS
17 WITHDRAWN, YOUR HONOR.

18 THE COURT: EXCUSE ME FOR NOT HEARING.
19 SORRY TO INTERRUPT.

20 MR. VAN KWAWEGEN: THE NEXT DESIGNATION
21 IS ON PAGE 137, LINES 11 THROUGH 20. IT WAS DESIGNATED
22 BY THE PLAINTIFFS.

23 Q. IF UNDER THE BUXX CARD, IF A PARENT WANTS TO
24 BLOCK A SITE OR A MERCHANT, TYPE OF MERCHANT, CAN THE
25 PARENT DO THAT?

1 A. THERE'S NOTHING THAT I'M AWARE OF FOR THE
2 PRODUCT THAT WOULD HELP BLOCK A PARTICULAR SITE. THE
3 ONLY INFORMATION THAT I'M AWARE OF THAT THE CARD
4 PROVIDES IS THE ABILITY TO SEE WHEN ONE OF THOSE SITES
5 -- AND ACTUALLY NOT ONE OF THOSE SITES, WHEN THE CHILD,
6 THE ACTUAL CARDHOLDER, HAS GONE TO A WEBSITE THAT IS
7 5962, 66, 67 OR 7995, WHICH IS GAMING.

8 MR. VAN KWAWEGEN: THE NEXT SECTION WAS A
9 JOINT DESIGNATION BY PLAINTIFFS AND DEFENDANT. IT RUNS
10 FROM PAGE 137, LINE 21, THROUGH PAGE 138, LINE 10.

11 Q. AND IN THOSE INSTANCES, HOW WOULD THE PARENT
12 KNOW THAT A CHILD, A MINOR, HAD GONE TO ONE OF THOSE
13 SITES?

14 A. THEY COULD LOOK AT THE TRANSACTION ON THE CARD.
15 IT WOULD PROBABLY GIVE THEM EITHER A PHONE NUMBER OR A
16 WEBSITE URL. THEY COULD THEN RESEARCH AND DETERMINE IF
17 IT WAS ADULT CONTENT TYPE MATERIAL.

18 WHAT'S GUARANTEED IN THE PRODUCT IS THAT
19 THERE WOULD BE COMMUNICATION TO THE PARENT OR THE
20 GUARDIAN OF THE CARD THAT THE CARDHOLDER, YOUR CHILD,
21 HAD GONE TO A SITE IN ONE OF THOSE MERCHANT CATEGORY
22 CODES. SO IT'S NOT A GUARANTEE IT IS ADULT CONTENT
23 MATERIAL, JUST THAT ONE OF THOSE -- A SITE OR A MERCHANT
24 WITHIN THAT MERCHANT CATEGORY HAD BEEN VISITED AND A
25 TRANSACTION HAD OCCURRED.

1 MR. VAN KWAWEGEN: THE NEXT SECTION WAS
2 DESIGNATED BY THE DEFENDANT. IT IS ON PAGE 143, LINES 9
3 THROUGH 23. OBJECTIONS WERE WITHDRAWN OR WAIVED.

4 Q. WHAT'S VISA'S CAPACITY FOR TRANSACTIONS IN THE
5 U.S.?

6 A. I HAVE NO SPECIFIC INFORMATION TO WHAT LOAD
7 CAPACITY VISA COULD HANDLE.

8 Q. SO WHEN YOU ANSWERED QUESTIONS ABOUT MILLIONS
9 AND MILLIONS OF TRANSACTIONS FOR ONE GAS STATION, YOU
10 REALLY HAVE NO INFORMATION TO DATE ON WHETHER THAT WOULD
11 BE -- WOULD HAVE AN IMPACT ON VISA OR NOT BECAUSE YOU
12 DON'T HAVE ANY KNOWLEDGE ABOUT THE CAPACITY THAT VISA
13 HAS FOR TRANSACTIONS, DO YOU?

14 A. I CAN'T SPEAK TO THE SPECIFIC AMOUNT OF IMPACT
15 IT WOULD HAVE ON THE SYSTEM. I CAN SPEAK FROM GENERAL
16 KNOWLEDGE. THOSE TYPES OF USAGE OF THE CARD AND THAT
17 TYPE OF VOLUME WOULD IMPACT THE SYSTEM. BUT I CAN'T
18 SPECIFICALLY STATE TO WHAT DEGREE.

19 MR. VAN KWAWEGEN: THAT CONCLUDES THE
20 DESIGNATIONS OF THE DEPOSITION OF GINGER BERGMAN, YOUR
21 HONOR.

22 MR. GOMEZ: YOUR HONOR, MAY I HAVE A
23 SIDE-BAR WITH COUNSEL.

24 (SIDE-BAR HELD.)

25 MR. GOMEZ: THERE IS THE PUBLIC HERE I

1 WAS CONCERNED THAT THERE SHOULD NOT HAVE BEEN A READING
2 OF THIS SECTION ON PAGE 103, AND IT NEEDS TO BE
3 WITHDRAWN. IT'S ACTUALLY THIS. SO IT'S LINE 6 THROUGH
4 13.

5 THE COURT: DO YOU HAVE OBJECTION TO
6 WITHDRAWING IT?

7 MR. VAN KWAWEGEN: NOT AT ALL.

8 THE COURT: LET ME GET MY PAGE.

9 WELL, YOU CAN STATE ON THE RECORD THAT IT
10 IS WITHDRAWN. YOU DON'T HAVE TO READ IT.

11 MR. GOMEZ: THE PROBLEM IS IT HAS BEEN
12 READ INTO THE TRANSCRIPT, AND IF IT'S --

13 MR. VAN KWAWEGEN: WE CAN REDACT IT.

14 MR. GOMEZ: IF IT IS REDACTED OR PULLED
15 OUT IT IS FINE, BUT I WANTED TO BE SURE HOW YOU WANT TO
16 HANDLE THAT.

17 THE COURT: I DON'T KNOW. I GUESS THE
18 TRANSCRIBER CAN REDACT IT, IF I ORDER IT.

19 (SIDE-BAR CONCLUDED.)

20 THE COURT: ALL RIGHT. UPON APPLICATION
21 OF THE DEFENDANT THAT THE DESIGNATION OF TESTIMONY IN
22 THE TRANSCRIPT ON PAGE 103 OF THE BERGMAN DEPOSITION,
23 LINES 6 THROUGH 13 AND LINES 22 THROUGH 25, ARE
24 WITHDRAWN. IT IS FURTHER ORDERED THAT THE TESTIMONY OF
25 THE SURROGATE WITNESS READING DURING THIS PRIOR SECTION

1 THIS MORNING SHALL BE PHYSICALLY REDACTED FROM THE
2 TRANSCRIPT BY THE COURT REPORTING SERVICE.

3 THE COURT: IS THERE SOME POSSIBILITY
4 THAT THE PAGE NUMBERS MIGHT BE DIFFERENT? WAS IT PAGE
5 134 THAT WE WERE WORKING ON?

6 MR. VAN KWAWEGEN: PAGE 103, YOUR HONOR.

7 THE COURT: OKAY.

8 MR. GOMEZ: PAGE 103.

9 THE COURT: I HAVE TO MAKE SOME NOTES TO
10 GET BACK INTO THE SYSTEM. SO WE ARE FINISHED WITH THAT
11 DEPOSITION.

12 MR. VAN KWAWEGEN: THERE ARE TWO EXHIBITS
13 BUT WE ARE FINISHED WITH THE READING.

14 THE COURT: GO RIGHT AHEAD.

15 MR. VAN KWAWEGEN: PLAINTIFFS OFFER
16 DEPOSITION EXHIBIT NUMBER 2, WHICH IS PLAINTIFFS'
17 EXHIBIT 139, AND DEPOSITION EXHIBIT NUMBER 4, WHICH IS
18 PLAINTIFFS' EXHIBIT 141.

19 THE COURT: ANY OBJECTION?

20 MS. ULRICH: YOUR HONOR, AS TO EXHIBIT 2,
21 THE DEFENDANT DOES NOT OBJECT. THE DEFENDANT BELIEVES
22 THAT THE FOUNDATION WAS LAID FOR -- WE ORIGINALLY
23 OBJECTED ON HEARSAY, YOUR HONOR, BUT I BELIEVE THROUGH
24 THE DEPOSITION TESTIMONY A BUSINESS RECORD FOUNDATION
25 WAS LAID.

1 AS FOR EXHIBIT 4, WE DO MAINTAIN OUR
2 HEARSAY OBJECTION TO THAT AND STATE THAT NO FOUNDATION
3 WAS LAID FOR THE BUSINESS RECORD EXCEPTION TO THE
4 HEARSAY RULE AS WITH RESPECT TO EXHIBIT 4.

5 THE COURT: REFER BACK TO THE DEPOSITION
6 TRANSCRIPT, PLEASE.

7 MR. VAN KWAWEGEN: PAGE 39, YOUR HONOR.

8 MS. ULRICH: DEFENDANT'S POSITION IS THAT
9 THE WITNESS AUTHENTICATED THIS DOCUMENT BUT DID NOT LAY
10 A FOUNDATION FOR THE HEARSAY EXCEPTION FOR THE BUSINESS
11 RECORD.

12 THE COURT: LET ME READ IT TO MYSELF JUST
13 FOR A MINUTE.

14 (PAUSE.)

15 THE COURT: THIS IS THE VISA BUSINESS
16 REVIEW ARTICLE?

17 MR. VAN KWAWEGEN: YES, YOUR HONOR.

18 THE COURT: DOES ALL THE TESTIMONY YOU
19 NEED FOR AUTHENTICATION UNDER BUSINESS RECORD STATUS
20 APPEAR ON 39? DO I HAVE TO LOOK ANYWHERE ELSE IN THE
21 TRANSCRIPT?

22 MR. VAN KWAWEGEN: ACTUALLY, YOUR HONOR,
23 IT CONTINUES ON PAGE 40 WHEN IT IS ACTUALLY TALKING
24 ABOUT THE CONTENT. AND IN ADDITION TO THE FACT THAT
25 PLAINTIFFS WOULD SUBMIT THAT A FOUNDATION WAS LAID --

1 THE COURT: THE OBJECTION IS OVERRULED.
2 IT'S CONSTRUCTIVELY IDENTIFIED AS KEPT IN THE ORDINARY
3 COURSE OF BUSINESS BY THE TESTIMONY OF THE WITNESS WHO
4 SAYS, IN PART, IT'S A TYPE OF NEWSLETTER COMMUNICATION
5 THAT IS SENT OUT TWICE A MONTH TO MEMBERS ON DIFFERENT
6 THINGS IN THE VISA SYSTEM, ET CETERA. AND THEN -- THAT
7 IS ON PAGE 39. THAT IS ENOUGH. THE REGULAR COURSE OF
8 BUSINESS, IT'S A NEWSLETTER TWICE A MONTH. THAT IS PART
9 OF THE ORDINARY BUSINESS PRACTICES OF THE COMPANY. THE
10 OBJECTION IS OVERRULED. THE DEFENDANT'S EXHIBIT --
11 PLAINTIFFS' EXHIBIT 39 AND PLAINTIFFS' EXHIBIT 41 ARE
12 RECEIVED INTO EVIDENCE.

13 MR. VAN KWAWEGEN: 139, JUST TO BE SURE,
14 AND 141.

15 THE COURT: I'M SORRY. I CORRECT MYSELF,
16 PLAINTIFFS' EXHIBIT 139 AND PLAINTIFFS' EXHIBIT 141 ARE
17 RECEIVED INTO EVIDENCE.

18 (PLAINTIFFS' EXHIBITS EXHIBIT 139 AND 141
19 RECEIVED INTO EVIDENCE.)

20 THE COURT: YOU DON'T HAVE STAMPS ON IT.
21 THIS ENTIRE TRIAL ALL THE EXHIBITS HAD STAMPS EXCEPT
22 THESE. I DID NOT PAY CLOSE ATTENTION.

23 MR. VAN KWAWEGEN: THIS CONCLUDES THE
24 READING OF DEPOSITIONS, YOUR HONOR.

25 THE COURT: YOU ARE EXCUSED.

1 NEXT PLAINTIFFS' EVIDENCE, PLEASE.

2 MR. HANSEN: PLAINTIFFS HAVE NO FURTHER
3 WITNESSES TO CALL, YOUR HONOR. THERE ARE THREE MINOR
4 ITEMS LEFT TO CLEAR UP. THE FIRST HAS TO DO WITH
5 EXHIBITS THAT WERE PRESENTED TO YOUR HONOR AT THE END OF
6 LAST NIGHT. THEY ARE EXHIBITS 43 THROUGH 46 AND 118
7 CONSISTING OF SAMPLE WEB PAGES OF NONTESTIFYING
8 PLAINTIFFS, AND PLAINTIFFS MOVE THE ADMISSION OF THOSE
9 EXHIBITS.

10 THE COURT: THERE IS AN OBJECTION. I
11 RESERVE MY RULING, AND YOU WILL HAVE MY DECISION AS SOON
12 AS I MAKE IT. I'M IN THE MIDST OF MAKING IT. THERE WAS
13 AN EXCHANGE OF LETTERS SETTING FORTH THE POSITIONS OF
14 THE PARTIES ON EVIDENCE FROM THE PRELIMINARY INJUNCTION
15 HEARING IN 1999, WHICH IS STILL UNDER ADVISEMENT. I'M
16 REPORTING TECHNICAL AT ITEM ONLY, AND THAT IS THAT WE'LL
17 FILE THOSE RECORDS WITH THE CLERK. SO WE WILL HAVE THE
18 ARGUMENTS IN THE RECORD RATHER THAN SIT AND READ THEM
19 INTO THE RECORD IN THE COURTROOM.

20 I APPRECIATE RECEIVING THE LETTERS. THEY
21 ARE SUCCINCT AND VERY HELPFUL ON WORKING ON THE PROBLEM.
22 I HATE TO GIVE AN EXPECTATION, BUT DEPENDING ON HOW
23 THINGS GO TODAY, MY GOAL IS TO TRY TO HAVE A RULING ON
24 THAT BY THIS AFTERNOON.

25 MR. HANSEN: THERE IS ONLY ONE FINAL

1 MATTER, YOUR HONOR. YESTERDAY OR THE DAY BEFORE WHEN WE
2 PUT ON THE RULESPACE DEPOSITION, THERE WERE TWO OR THREE
3 EXHIBITS THAT WE SOUGHT TO MOVE IN. YOUR HONOR INVITED
4 US TO SUBMIT A LETTER BRIEF ON THOSE TWO OR THREE
5 EXHIBITS. THEY HAD TO DO WITH WHITE PAPERS OF
6 RULESPACE, AND THE ISSUE WAS WHETHER THEY HAD BEEN
7 SUFFICIENTLY DESCRIBED AS BUSINESS RECORDS. I JUST WANT
8 TO NOTE THAT WE RESERVE THE RIGHT -- AND YOUR HONOR SAID
9 WE COULD SUBMIT THAT LETTER PRIOR TO THE END OF THE
10 TRIAL. AND WE RESERVE THE RIGHT TO SUBMIT THAT.

11 SUBJECT TO THAT, THE PLAINTIFFS HAVE NO
12 FURTHER EVIDENCE AND THE PLAINTIFFS REST.

13 THE COURT: DO YOU REMEMBER WHAT THE
14 EXHIBIT NUMBERS WERE TO REFRESH ME? I CAN DIG THEM OUT
15 BUT, JUST AS A REMINDER.

16 MR. HANSEN: THEY WERE EXHIBITS 123, 124
17 AND 126, YOUR HONOR.

18 THE COURT: DO YOU REMEMBER THE DAY WHEN
19 WE HAD THAT CONVERSATION?

20 MR. HANSEN: I BELIEVE IT WAS YESTERDAY,
21 YOUR HONOR.

22 YOUR HONOR, I'M SORRY, BUT PERHAPS I
23 SHOULD SAY ONE MORE THING ABOUT EXHIBITS 43 THROUGH 46
24 AND 118. YOUR HONOR SPECIFICALLY ASKED ME YESTERDAY
25 AFTERNOON WHETHER THOSE EXHIBITS WERE IDENTICAL TO THE

1 INTERROGATORY RESPONSES TO WHICH I REFERRED, AND I
2 DIDN'T KNOW THE ANSWER WHEN YOUR HONOR ASKED ME THAT
3 QUESTION.

4 THE COURT: I REMEMBER ASKING.

5 MR. HANSEN: THEY ARE NOT. THERE ARE
6 SOME -- THEY ARE PRIMARILY -- THEY ARE LARGELY
7 DUPLICATIVE, BUT THEY ARE NOT IDENTICAL. THERE WERE
8 SOME INSTANCES IN WHICH AFTER THE INTERROGATORY ANSWERS
9 WERE SUBMITTED, THE PAGES HAD DISAPPEARED FROM THE
10 WEBSITE AND SUBSTITUTE PAGES WERE THEREFORE ADDED.

11 THE COURT: OTHER THAN FOR THE --
12 WHATEVER RESIDUAL OBJECTION THERE MAY BE FROM THE
13 DEFENSE ON THE BASIS OF TIMELINESS OF SUBMISSION, THE
14 DEFENSE HAS ADMITTED THE DE FACTO ACCURACY OF THESE
15 DOCUMENTS. THAT IS, THAT THEY DID COME FROM THE
16 WEBSITES WHENEVER THEY WERE PULLED OFF, AS I RECALL.

17 MS. ULRICH: YOUR HONOR, THAT IS CORRECT.
18 AND JUST TO BE CLEAR FOR THE RECORD, OUR OBJECTION IS
19 NOT SOLELY BASED ON THE TIMELINESS OF WHEN
20 THOSE EXHIBITS WERE OFFERED.

21 THE COURT: I KNOW THAT.

22 ALL RIGHT. I'M NOT TRYING TO MISSTATE
23 THE STATUS OF THE MATTER. THERE ARE OTHER OBJECTIONS
24 WHICH WE HAVE NOTED, AND WE WILL TAKE INTO
25 CONSIDERATION, ALL OF THEM FROM THE DEFENSE, OF COURSE.

1 MS. ULRICH: THAT'S CORRECT. AND
2 AUTHENTICITY IS NOT ONE OF THOSE OBJECTIONS.

3 THE COURT: RIGHT. THAT IS WHY I THOUGHT
4 I WOULD LIMIT MY COMMENT TO THAT ISSUE.

5 ALL RIGHT. SUBJECT TO THE COMPLETION OF
6 THE RULINGS BY THE COURT, THE COURT ACCEPTS THE
7 STATEMENT OF THE PLAINTIFFS THAT THEIR CASE-IN-CHIEF IS
8 CONCLUDED, AND WE WILL MARK THE RECORD THAT THE
9 PLAINTIFFS' CASE-IN-CHIEF IS COMPLETED WITH THE PROVISIO
10 THAT THE COURT WILL REOPEN IT FOR THE RULINGS TO BE MADE
11 LATER. IT'S AWKWARD NOT TO CONCLUDE THE CASE BECAUSE
12 THE DEFENSE HAS THINGS TO DO.

13 THE DEFENDANT IS WELCOME TO PROCEED WITH
14 SUCH MATTERS THAT HE DEEMS APPROPRIATE.

15 MR. GOMEZ: YOUR HONOR, IT WASN'T CLEAR
16 TO ME IF YOU WOULD WANT US, THE DEFENDANT, TO ADDRESS
17 ITS MOTION UNDER RULE 52 AT THIS POINT.

18 THE COURT: NOW IS THE TIME TO DO IT.

19 MR. GOMEZ: YES, YOUR HONOR.

20 THE COURT: UNLESS THERE IS SOME REASON
21 TO PUT IT OFF, THAT WOULD BE A PROBLEM FOR YOU.

22 MR. GOMEZ: YOUR HONOR, PURSUANT TO RULE
23 52(C) UNDER THE FEDERAL RULES OF CIVIL PROCEDURE, THE
24 DEFENDANT RESPECTFULLY MOVES FOR JUDGMENT. PLAINTIFFS
25 HAVE NOT MET THEIR BURDEN OF ESTABLISHING THEIR CLAIMS

1 THROUGH TESTIMONY AND EVIDENCE IN THEIR CASE-IN-CHIEF.
2 THEY HAVE FOUR CLAIMS IN THEIR AMENDED COMPLAINT. THEY
3 HAVE NOT DEMONSTRATED -- THROUGH THE TESTIMONY AND
4 EVIDENCE IN THE CASE, HAVE NOT ESTABLISHED THEIR CLAIMS
5 IN THEIR CASE-IN-CHIEF.

6 IN ITS SEPTEMBER 27, 2006 ORDER, THE
7 COURT DENIED DEFENDANT'S MOTION TO DISMISS BASED ON OUR
8 ARGUMENT THAT PLAINTIFFS LACKED STANDING TO CHALLENGE
9 THE CHILD ON-LINE PROTECTION ACT, BUT RECOGNIZE THAT IT
10 WOULD BE PLAINTIFFS' BURDEN TO CONTINUE TO MAINTAIN ITS
11 STANDING AT TRIAL.

12 THE DEFENDANT INCORPORATES BY REFERENCE
13 HIS MOTION TO DISMISS, HIS REPLY, AND THE TRIAL
14 MEMORANDUM SUBMITTED IN THIS ACTION, YOUR HONOR, IN
15 SUPPORT OF THIS MOTION.

16 THE PLAINTIFFS HAVE FAILED TO SHOW A
17 REASONABLE FEAR OF PROSECUTION THROUGH OBJECTIVE
18 EVIDENCE AS OPPOSED TO PLAINTIFFS' PURELY SUBJECTIVE
19 BELIEFS. PLAINTIFFS HAVE ALSO FAILED TO DEMONSTRATE
20 THAT THE CHILD ON-LINE PROTECTION ACT WILL IMPAIR THEIR
21 BUSINESS OPERATIONS.

22 SECOND, PLAINTIFFS HAVE NOT SUBMITTED
23 EVIDENCE THAT DEMONSTRATES THAT THE CHILD ON-LINE
24 PROTECTION ACT IS NOT THE LEAST RESTRICTIVE MEANS OF
25 ESTABLISHING ITS GOAL, OR THAT THE CHILD ON-LINE

1 PROTECTION ACT IS OVERLY BROAD.

2 PLAINTIFFS HAVE FAILED TO SHOW THAT
3 FILTERS ARE MORE EFFECTIVE THAN THE CHILD ON-LINE
4 PROTECTION ACT, IN TERMS OF ADDRESSING ADULT
5 ENTERTAINMENT WEBSITES. THE TESTIMONY BY DR. CRANOR,
6 FOR EXAMPLE, WAS NOT BASED ON ANY SYSTEMATIC STUDY OF
7 FILTERS BUT WAS SIMPLY AN ANECDOTAL PRESENTATION AND THE
8 SUPPORT FOR HER OPINION WAS SIMPLY ANECDOTAL.

9 FINALLY, PLAINTIFFS' OTHER CAUSES OF
10 ACTION, THE ALLEGED RIGHT OF OLDER MINORS TO ACCESS
11 MATERIAL ON THE INTERNET AND THE ALLEGED RIGHT TO ACCESS
12 INFORMATION ANONYMOUSLY ARE LEGAL CLAIMS. PLAINTIFFS
13 HAVE NOT DISPUTED THE CASE AS CONSTRUING STATE TO
14 HARMFUL LAWS THAT APPLY AN OLDER MINOR STANDARD, YOUR
15 HONOR.

16 AND THAT CONCLUDES THE DEFENDANT'S
17 MOTION, YOUR HONOR.

18 THE COURT: THANK YOU.

19 MR. GOMEZ, I WOULD APPRECIATE IT IF YOU
20 COULD CAPTURE THE MOTION THAT YOU MADE AND FILE IT OF
21 RECORD, PLEASE.

22 MR. GOMEZ: YES, YOUR HONOR.

23 THE COURT: THEN WE WILL HAVE A WRITTEN
24 STATEMENT AND IT WILL NOT GO UNNOTICED.

25 MR. HANSEN: YOUR HONOR, I THINK

1 PLAINIFFS CAN BE EQUALLY BRIEF IN ADDRESSING THE
2 MOTION.

3 I THINK THE PLACE I WOULD LIKE TO START
4 IS QUOTING THE SUPREME COURT'S OPINION IN THIS CASE, THE
5 SUPREME COURT'S SECOND OPINION IN THIS CASE. I'M
6 QUOTING FROM 124 SUPREME COURT 2783, AT PAGES 2791 TO
7 2792. THE COURT SAYS: THE GOVERNMENT BEARS THE BURDEN
8 OF PROOF ON THE ULTIMATE QUESTION OF COPA'S
9 CONSTITUTIONALITY. THE SHORTEST ANSWER TO THE
10 GOVERNMENT'S MOTION IS THE GOVERNMENT BEARS THE BURDEN
11 OF PROOF HERE AND THEREFORE THE MOTION SHOULD BE DENIED.

12 WITH RESPECT TO THE ISSUE OF STANDING --
13 THE COURT: EXCUSE ME FOR INTERRUPTING.
14 JUST SO THE RECORD IS CLEAR, COULD YOU STATE THE
15 PREDICATE THAT GIVES THE BURDEN TO THE GOVERNMENT? THE
16 PLAINTIFF HAS TO DO SOMETHING TO SET THE ISSUE MOVING
17 OVER TO THE GOVERNMENT.

18 MR. HANSEN: I THINK -- YES, I AGREE,
19 YOUR HONOR. THE PLAINTIFFS HAVE THE OBLIGATION TO PUT
20 FORWARD A PRIMA FACIE CASE THAT THE STATUTE IS IN FACT A
21 CONTENT-BASED DISCRIMINATION. I THINK THE VERY FACE OF
22 THE STATUTE ESTABLISHED THAT IT'S CONTENT-BASED
23 DISCRIMINATION ON THE BASIS OF SPEECH. IT IS THAT
24 DISTINCTION THAT SHIFTS THE BURDEN OF PROOF TO THE
25 GOVERNMENT.

1 WITH RESPECT TO THE STANDING ARGUMENTS
2 THAT MR. GOMEZ MADE. HIS ARGUMENT IS THAT THE
3 PLAINTIFFS HAVE FAILED TO ESTABLISH BY OBJECTIVE
4 EVIDENCE THAT THEY HAVE A REASONABLE FEAR OF
5 PROSECUTION. THE PRECISE LANGUAGE OF THE STATUTE IS
6 THAT THE PEOPLE WHO POST MATERIAL ON THE INTERNET ARE
7 POTENTIALLY AT RISK IF THEY POST AN ACTUAL OR SIMULATED
8 SEXUAL ACT OR SEXUAL CONTACT, AN ACTUAL OR SIMULATED
9 NORMAL OR PERVERTED SEXUAL ACT, OR A LEWD EXHIBITION OF
10 THE GENITALS OR THE POST-PUBESCENT FEMALE BREAST.

11 THE COURT: CITATION FOR THAT STATUTE.

12 MR. HANSEN: 231(E)(6)(B).

13 THE COURT: (E)(6)(B)?

14 MR. HANSEN: YES. EVERY SINGLE ONE OF
15 THE SPEECH WITNESSES WHO TESTIFIED, INCLUDING THE
16 PLAINTIFFS AND THE OTHER SPEECH WITNESSES, TESTIFIED
17 THAT THEY DO ENGAGE IN SPEECH THAT FITS THAT CRITERIA.

18 IN ADDITION TO THAT, PROFESSOR REICHMAN
19 TESTIFIED TO THE DEGREE TO WHICH SPEECH SIMILARLY
20 DESCRIBED IS SUBJECT TO CENSORSHIP EFFORTS THROUGHOUT
21 THE NATION REPEATEDLY AND COMMONLY. THOSE FACTS ARE
22 SUFFICIENT TO ESTABLISH STANDING FOR THE PURPOSES OF
23 THIS MOTION.

24 THE COURT: YOU DON'T CHOOSE TO COMMENT
25 ON THE OTHER ISSUE?

1 MR. HANSEN: I THINK GIVEN THE BURDEN ON
2 THE GOVERNMENT I DON'T THINK THE OTHER ISSUES REQUIRE
3 COMMENT.

4 THE COURT: MR. GOMEZ, ANY NECESSARY
5 RESPONSE?

6 MR. GOMEZ: LET ME HAVE ONE MOMENT, YOUR
7 HONOR.

8 (PAUSE.)

9 MR. GOMEZ: NO, YOUR HONOR.

10 THE COURT: MR. GOMEZ, WHEN YOU FILE YOUR
11 MOTION, YOU CAN INCORPORATE BY REFERENCE THE MOTION YOU
12 MADE IN COURT HERE TODAY.

13 MR. GOMEZ: YES, YOUR HONOR.

14 THE COURT: IT'S SORT OF BELT AND
15 SUSPENDERS, BUT SOMETIMES THINGS GET LOST IN THE
16 TRANSCRIPTS. IF THE PLAINTIFF COULD FILE A BRIEF
17 RESPONSE. NO LEGAL MEMORANDA ARE NECESSARY; JUST THE
18 MOTION AND A RESPONSE TO THE MOTION, AND THEN I WILL
19 INCORPORATE THE ORDER THAT I GIVE HERE TODAY.

20 MR. HANSEN: WE WILL, YOUR HONOR.

21 THE COURT: THE MOTION OF THE DEFENDANT
22 UNDER FEDERAL RULES OF CIVIL PROCEDURE ON THE GROUND
23 THAT THE PLAINTIFF HAS NOT MADE OUT A PRIMA FACIE CASE
24 FOR THE FACT-FINDER OR AS A MATTER OF LAW IS DENIED.

25 THE COURT RECOGNIZES THE CONTINUING

1 BURDEN TO SHOW STANDING. AND WHILE THIS RULING IS
2 COMPLETE AS I HAVE GIVEN IT, IT'S ALWAYS SUBJECT TO
3 RECONSIDERATION ON THE ISSUE OF STANDING AS LONG AS IT
4 IS BEFORE THIS COURT.

5 NOW IT'S TIME FOR OUR MID-MORNING RECESS.
6 DO YOU HAVE A WITNESS READY TO GO?

7 MR. GOMEZ: YES, YOUR HONOR.

8 THE COURT: WE WILL BE BACK AT 10 MINUTES
9 AFTER 11.

10 WE ARE OFF THE RECORD AND COUNSEL ARE
11 EXCUSED.

12 (BREAK TAKEN.)

13 THE COURT: WILL THE DEFENDANT PLEASE
14 CALL HIS FIRST WITNESS.

15 MR. MCELVAIN: YOUR HONOR, THE DEFENDANT
16 CALLS PAUL MEWETT.

17 THE COURT: IDENTIFY YOURSELF FOR THE
18 RECORD, PLEASE.

19 MR. MCELVAIN: MY NAME IS JOEL MCELVAIN,
20 M-C-E-L-V-A-I-N, FOR THE DEFENDANT.

21 THE COURT: GOOD MORNING.

22 MR. MCELVAIN: GOOD MORNING, YOUR HONOR.
23 I HAVE A SET OF EXHIBITS FOR YOU. MAY I APPROACH?

24 THE COURT: THANK YOU.

25 MR. MCELVAIN: AND I SHOULD SAY

1 INITIALLY, YOUR HONOR, THAT SOME OF THE EXHIBITS HAVE
2 EXPLICIT IMAGES. OUR INTENTION, WHEN WE GET TO THOSE,
3 IS TO PROCEED WITH THE PAPER COPIES; NOT WITH THE
4 MONITOR.

5 THE COURT: FINE.

6 PAUL MEWETT, DEFENDANT WITNESS, SWORN.

7 THE CLERK: STATE AND SPELL YOUR FULL
8 NAME FOR THE RECORD, PLEASE.

9 THE WITNESS: PAUL MEWETT, M-E-W-E-T-T.

10 DIRECT EXAMINATION

11 BY MR. MCELVAIN:

12 Q. GOOD MORNING, MR. MEWETT.

13 A. GOOD MORNING.

14 THE COURT: GOOD MORNING, MR. MEWETT.

15 THE WITNESS: GOOD MORNING, YOUR HONOR.

16 BY MR. MCELVAIN:

17 Q. MR. MEWETT, HAVE YOU ATTENDED A UNIVERSITY?

18 A. I ATTENDED A MILITARY ACADEMY IN ENGLAND TO DO
19 THOSE STUDIES.

20 Q. AND DID YOU RECEIVE A DEGREE OR QUALIFICATION?

21 A. YES, I DID. I HAD A DEGREE IN -- A BSC,
22 COVERING ELECTRONIC ENGINEERING, MATHS AND SCIENCE.

23 Q. OKAY. AND WHAT DID YOU DO AFTER YOUR UNIVERSITY
24 STUDIES?

25 A. I THEN WENT ON WITH A MILITARY CAREER FOR 12

1 YEARS.

2 Q. OKAY. AND WAS THAT WITH THE BRITISH MILITARY?

3 A. THAT'S CORRECT.

4 Q. AND WHAT DID YOU DO FOR THEM?

5 A. I WAS AN ELECTRONICS ADVISOR IN A NUMBER OF
6 DIFFERENT PLACES, THE FIRST OF WHICH WAS WEST BERLIN.

7 Q. AND WHAT DID YOU DO IN WEST BERLIN?

8 A. I HAD A NUMBER OF ROLES BUT PRIMARILY ANY
9 DECISIONS TO DO WITH ELECTRONIC TECHNOLOGY, I WAS THE
10 MAIN ADVISOR FOR THESE DECISIONS.

11 Q. DID THAT WORK INVOLVE WORKING WITH SOFTWARE?

12 A. YES, IT DID. ONE OF THE AREAS WITHIN BERLIN WAS
13 THAT I HAD A PROGRAMMING TEAM IN BERLIN AND ANY AREAS
14 WHERE THEY WERE PROGRAMMING REQUIRED TO BE WRITTEN, THEN
15 THAT WAS ONE OF MY AGREEMENTS WAS TO CONTROL THE TEAM.

16 Q. WERE YOU EVER BASED ELSEWHERE WITH THE BRITISH
17 MILITARY?

18 A. YES, I WAS, A NUMBER OF PLACES. AFTER BERLIN, I
19 WAS THEN BASED IN DUSSELDORF IN WEST GERMANY.

20 Q. WHAT WERE YOUR RESPONSIBILITIES IN DUSSELDORF?

21 A. LESS RESTRICTIVE THAN BERLIN, BUT EQUALLY I RAN
22 A PROGRAMMING TEAM IN DUSSELDORF WHERE I HAD REMITS OF
23 BOTH DEVELOPING SOFTWARE AND WRITING SOFTWARE THAT WOULD
24 TALK TO THE SOFTWARE I HAD ALREADY PREVIOUSLY WRITTEN IN
25 BERLIN.

1 Q. AND WHAT YEARS DID YOU WORK FOR THE BRITISH
2 MILITARY?

3 A. FROM '76 THROUGH TILL '88, '89.

4 Q. OKAY. WHAT DID YOU DO AFTER THAT?

5 A. I CAME OUT OF THE MILITARY AND I TOOK ON A ROLE
6 AS AN INFORMATION TECHNOLOGY TROUBLESHOOTER.

7 Q. AND WHAT DOES THAT MEAN, INFORMATION TECHNOLOGY
8 TROUBLESHOOTER?

9 A. I BASICALLY WORKED INDEPENDENTLY WITH COMPANIES
10 LIKE APPLE, IBM, HONEYWELL BULL. AND THE SITUATION
11 WOULD BE THAT THESE COMPANIES WOULD SUPPLY COMPUTER
12 SYSTEMS TO THEIR END-USER CLIENTS. BUT FREQUENTLY, AS
13 WE PROBABLY ALL HAVE EXPERIENCED, THESE THINGS DON'T
14 ALWAYS GO TO PLAN. AND THE CLIENT WOULD THEN COMPLAIN
15 THAT THEY DIDN'T GET WHAT THEY HAD ASKED FOR OR IT WAS
16 NOT WORKING CORRECTLY. AND THEY WOULD GENERALLY REFRAIN
17 FROM PAYING FOR THE ITEM UNTIL IT WAS RESOLVED. AND SO
18 MY JOB WAS TO VISIT THE CLIENT AND TO EFFECTIVELY PACIFY
19 THE CLIENT, RESOLVE THE PROBLEM AND BRING THE MONEY
20 BACK.

21 Q. I NOTICE YOU USED THE TERM "PACIFYING THE
22 CLIENT," I IMAGINE THAT THAT TERM MEANS SOMETHING
23 DIFFERENT THAN IT WOULD HAVE IN YOUR MILITARY CAREER?

24 A. FORTUNATELY, YES.

25 Q. IN YOUR WORK IN IT TROUBLESHOOTING, HAVE YOU

1 FOLLOWED DEVELOPMENTS IN THE SOFTWARE INDUSTRY?

2 A. YES, I HAVE. IT WOULD BE ESSENTIAL. OTHERWISE
3 BY THE TIME I ACTUALLY GOT TO A CLIENT, I PROBABLY WOULD
4 BE RATHER CONFUSED OF WHAT THE PROBLEM WAS ABOUT. SO IT
5 WAS ESSENTIAL TO KEEP UP WITH ALL TECHNOLOGIES.

6 Q. AND DO YOU MAINTAIN CONTACTS WITH OTHER
7 CONSULTANTS IN THE SOFTWARE INDUSTRY?

8 A. YES, I DO. I THINK IT'S ONE OF THOSE THINGS
9 WHERE CONSULTANTS IN THE SOFTWARE INDUSTRY KIND OF
10 ALMOST DO THE JOB BECAUSE THEY ENJOY DOING IT. SO WE
11 ARE KIND OF BORING AT PARTIES. WE END UP JUST TALKING
12 SOFTWARE ALL THE TIME.

13 Q. AND WOULD YOU DISCUSS DIFFERENT KINDS OF
14 SOFTWARE WITH OTHER PEOPLE IN YOUR FIELD?

15 A. YES, WE WOULD. THE SUBJECTS WOULD EITHER ARISE
16 BECAUSE THERE WAS AN AREA OF INTEREST, OR BECAUSE A
17 PERSON WE WOULD BE WORKING WITH MIGHT HAVE A PROBLEM AND
18 WE WOULD ALL TRY AND JOINTLY BRAINSTORM HOW TO SOLVE A
19 SOLUTION.

20 Q. AND WOULD YOU DISCUSS FILTERING SOFTWARE?

21 A. WE HAVE IN THE PAST, YES.

22 Q. AND WHAT IS FILTERING SOFTWARE?

23 A. FILTERING SOFTWARE IS SOFTWARE THAT WOULD BE
24 INSTALLED ON A MACHINE AND -- SO THAT IF A PARTICULAR
25 CATEGORY OF SUBJECT MATTER WAS SELECTED, THE MACHINE

1 WOULD ATTEMPT TO BLOCK THAT PARTICULAR CATEGORY FROM THE
2 USER.

3 IF I COULD JUST GIVE A VERY BRIEF
4 EXAMPLE. IF A USER WERE TO SELECT SEXUALLY EXPLICIT
5 CONTENT, THEN WHAT THEY WOULD EXPECT IS ALL SEXUALLY
6 EXPLICIT CONTENT TO BE BLOCKED AND ALL OTHER CONTENT TO
7 BE SENT THROUGH TO THE USER'S MACHINE.

8 Q. AND WHY DO YOU MAINTAIN THESE CONTACTS AND
9 CONTINUE THESE DISCUSSIONS REGARDING SOFTWARE MATTERS?

10 A. WELL, JUST PARTLY INTEREST IN ALL TECHNOLOGIES.
11 BUT ALSO BECAUSE WHEN A PROBLEM DOES ARISE, I HAVE TO BE
12 UP TO SPEED WITH NEW TECHNOLOGIES AND PROBLEMS. AND
13 THIS IS THE EASIEST WAY TO DO IT, IS TO BRAINSTORM
14 EITHER REAL LIVE PROBLEMS OTHER PEOPLE ARE HAVING OR
15 JUST TO READ AS MUCH AS I CAN ABOUT DIFFERENT
16 TECHNOLOGIES.

17 Q. I BELIEVE YOU MENTIONED THAT THE WORK YOU HAVE
18 DONE, THE WORK YOU DESCRIBED SO FAR IN IT
19 TROUBLESHOOTING YOU DID INDEPENDENTLY?

20 A. THAT'S CORRECT.

21 Q. HOW LONG DID YOU WORK INDEPENDENTLY?

22 A. FOR ABOUT 10 YEARS THROUGH UNTIL ABOUT '98, '99.

23 Q. WHAT DID YOU DO NEXT?

24 A. I CREATED A COMPANY. BECAUSE I HAD A BACKGROUND
25 ALSO FROM THE MILITARY IN SURVEILLANCE AS WELL AS

1 TECHNOLOGY, I CREATED A COMPANY WHOSE MAIN GOAL WAS TO
2 MINE INFORMATION FROM THE INTERNET USING A TECHNOLOGY
3 SOLUTION THAT I HAD DEVELOPED AND I THEN TOOK THAT
4 COMPANY PUBLIC IN 2000.

5 Q. AND WHEN DID YOU CREATE THE COMPANY INITIALLY?

6 A. IT WAS CREATED IN EARLY '99. I THEN RAISED SEED
7 FUNDING AND THEN TOOK THE COMPANY PUBLIC IN EARLY 2000.

8 Q. WHAT'S THE NAME OF THAT COMPANY?

9 A. THE COMPANY IS CALLED IBNET.

10 Q. OKAY. AND WHAT RESPONSIBILITIES DID YOU HOLD
11 WITH IBNET?

12 A. ALTHOUGH I WAS THE FOUNDER, MY SKILLS WERE
13 BETTER DEPLOYED ELSEWHERE THAN BEING THE CEO. SO IN
14 FACT I TOOK ON THE POSITION AS THE BUSINESS DEVELOPMENT
15 DIRECTOR.

16 Q. AND WHAT CLIENTS DID YOU HAVE AT IBNET?

17 A. NUMEROUS CLIENTS. BUT THE KIND OF CLIENTS WE
18 HAD, WE HAD MAJOR BIG BANKS LIKE HONG KONG SHANGHAI BANK
19 AND LLOYDS BANK. WE HAD COMPANIES IN THE AUTOMOTIVE
20 INDUSTRY LIKE BMW AND AUDI. WE HAD ROLLS ROYCE
21 ENGINEERING. PHARMACEUTICAL COMPANIES LIKE PFIZER. WE
22 HAD VISA INTERNATIONAL, THINGS LIKE THIS.

23 Q. AND YOU MENTIONED THAT THE WORK YOU DID INVOLVED
24 MINING THE INTERNET. WHAT IS MINING THE INTERNET?

25 A. MINING THE INTERNET IS A CASE OF -- BECAUSE THE

1 INTERNET IS SO LARGE, IT'S A PROCESS OF CREATING TOOLS
2 AND METHODOLOGIES TO ATTEMPT TO EXTRACT VERY SPECIFIC
3 INFORMATION FROM THE INTERNET, SOME OF WHICH MAY BE
4 THERE BUT JUST IN THE ENORMITY OF THE INTERNET IT FEELS
5 LIKE IT IS LOST AND OTHER ITEMS ARE ATTEMPTING TO BE
6 HIDDEN. AND SO THE JOB IS GENERALLY TO TRY AND FIND
7 INFORMATION ON THE INTERNET THAT A CLIENT WOULD FIND
8 USEFUL. THAT WOULD BE THE MINING PROCESS.

9 Q. AND WHY WOULD YOUR CLIENTS WANT YOU TO BE MINING
10 THE INTERNET?

11 A. INITIALLY, IBNET'S MARKETPLACE WAS TO DEAL WITH
12 CLIENTS WITH POWERFUL BRANDS. SO THE KIND OF WORK THAT
13 THEY WOULD REQUIRE US TO DO GENERALLY CAME ABOUT ON ONE
14 OF TWO AREAS. THE FIRST WOULD BE IF A CLIENT WANTED TO
15 FIND OUT MORE INFORMATION ABOUT THEIR BRAND, MAYBE FOR
16 COMPETITIVE INTELLIGENCE REASONS, OR IF THEY THOUGHT
17 THAT THERE WAS COMMENTARY ON THE INTERNET THAT WOULD BE
18 OF USE TO THEM IN THEIR MARKETING. WE WOULD EXTRACT
19 THIS KIND OF INFORMATION. THE OTHER SIDE IS WHEN A
20 CLIENT CONSIDERS THAT THEIR BRAND IS BEING ABUSED IN
21 SOME WAY. PROBABLY GOOD IF I CAN GIVE AN EXAMPLE HERE.
22 ONE OF THE CLIENTS WE HAD WAS FROM THE MOBILE TELEPHONE
23 INDUSTRY AND THEY PRODUCED MOBILE TELEPHONES. AND SO
24 WHEN I -- WE ARRANGED SOME DISCUSSIONS WITH THE CLIENT.
25 THE CLIENT TOLD US THAT THEY HAD FOUND INFORMATION ON

1 THE INTERNET WHICH SHOULD NOT BE THERE. IT WAS THEIR
2 OWN INTELLECTUAL PROPERTY. AND IN FACT IT WAS THE
3 ENGINEERING MANUALS OF SOME TELEPHONES. SO THEY WERE
4 CONCERNED THAT THEIR INTELLECTUAL PROPERTY HAD NOW
5 LEAKED OUT OF THE COMPANY. AND SO WE HAD TO PUT
6 TOGETHER A PROCESS WHEREBY WE COULD LOOK AROUND THE
7 INTERNET USING TECHNOLOGY, AND IDENTIFY ITEMS OF THEIR
8 INTELLECTUAL PROPERTY THAT WAS RELATING TO THEIR MOBILE
9 TELEPHONES THAT SHOULD NOT BE THERE AND CLEARLY REPORT
10 THAT BACK TO THEM SO WE COULD FOLLOW UP AND HELP THEM.

11 Q. YOU MENTIONED THE USE OF TECHNOLOGY. WOULD THIS
12 INVOLVE THE DEVELOPMENT OF SOFTWARE?

13 A. YES, IT DOES. IN THE ROLE I WAS IN IN IBNET, I
14 DID NOT DEVELOP THE SOFTWARE. I WROTE THE PROCESSES BY
15 WHICH I WANTED THE SOFTWARE TO OPERATE, BECAUSE I HAD A
16 BACKGROUND HERE. BUT IT WOULD HAVE BEEN THE WRONG USE
17 OF MY SKILLS. SO I HAD A TECHNOLOGY DEVELOPMENT TEAM IN
18 IBNET AND THEY PROCESSED THE REQUIREMENTS AND I JUST DID
19 THE QUALITY CONTROL AND CHECKED THAT THEY WERE DOING --

20 Q. AND WHAT WAS THE SOFTWARE THAT WAS CREATED
21 THROUGH THIS PROCESS?

22 A. THE SOFTWARE GENERALLY IS CALLED SPIDERING
23 TECHNOLOGY.

24 Q. AND WHAT IS THE --

25 THE COURT: CALLED WHAT?

1 THE WITNESS: A SPIDER AS IN EIGHT LEGS.

2 BY MR. MCELVAIN:

3 Q. WHAT IS SPIDERING TECHNOLOGY?

4 A. SPIDERING TECHNOLOGY IS A TERM FOR TECHNOLOGY
5 THAT ATTEMPTS TO REPLICATE THE WAY THAT AN INDIVIDUAL
6 WILL SURF THE INTERNET BUT DOES IT IN AN AUTOMATED
7 PROCESS.

8 Q. AND HOW DOES IT GO ABOUT DOING THAT?

9 A. QUICKLY, AND WITH DIFFICULTY.

10 THE WAY IT DOES IT IS, IF WE IMAGINE A
11 NORMAL PERSON WHEN THEY WERE SURFING THE INTERNET, WOULD
12 GO TO A WEB PAGE, THEY WOULD READ IT WITH THEIR EYES,
13 AND THEY WOULD ASSIMILATE THE CONTENT. AND THEN THEY
14 WILL MAKE DECISIONS ABOUT LINKS THAT THEY CLICK TO
15 TRAVERSE TO ANOTHER PAGE. THE WAY THAT THE TECHNOLOGY
16 ATTEMPTS TO DO THIS IS, WE HAVE TO -- THE GOAL IS TO TRY
17 AND GET INITIALLY AS MUCH INFORMATION ABOUT A PARTICULAR
18 SUBJECT AS POSSIBLE. GOING BACK TO THE PREVIOUS EXAMPLE
19 OF THE MOBILE TELEPHONE INDUSTRY, WE NEED TO GET AS MUCH
20 INFORMATION ABOUT THIS PARTICULAR CLIENT AND ANYTHING TO
21 DO WITH THE MOBILE TELEPHONE INDUSTRY. SO WHAT WILL
22 HAPPEN IS THE PROGRAM THAT HAS BEEN WRITTEN WILL READ A
23 PARTICULAR PAGE ON THE INTERNET. BY READ, I MEAN PICK
24 UP ALL THE WORDS AND BRING THEM BACK TO A DATABASE. IT
25 WILL THEN TAKE ALL THE LINKS ON THAT PAGE, AND IT WILL

1 SEQUENTIALLY FOLLOW THOSE LINKS TO THEIR DESTINATION
2 PAGES AND GATHER ALL THE TEXT ON THOSE PAGES AND BRING
3 THEM BACK. SO THE GOAL HERE IS TO TRY AND INITIALLY, IN
4 THE FIRST PHASE, GATHER AS MUCH INFORMATION ABOUT A
5 PARTICULAR SUBJECT VERY QUICKLY. AND WE WERE ABLE TO
6 EXTRACT MILLIONS OF PAGES PER DAY ON PARTICULAR
7 SUBJECTS.

8 THEN THE SECOND PART OF THE PROCESS IS
9 THAT BECAUSE WE HAVE TAKEN A BRIEF FROM THE CLIENT ON
10 WHAT THEIR CONCERNS MIGHT BE, WE THEN HAVE TO CREATE A
11 COMPLICATED QUERY THAT ATTEMPTS -- THAT ACTS LIKE A
12 FILTER TO THEN TRY TO EXTRACT FROM THIS DATA, WHICH IS
13 MARKET SPECIFIC, JUST THE INFORMATION THE CLIENT WOULD
14 BE INTERESTED IN. THIS QUERY WOULD HAVE VOCABULARY VERY
15 SPECIFIC TO THE PARTICULAR CLIENT'S INDUSTRY. SO THAT
16 MOBILE TELEPHONE, MAYBE THEIR NUMBERS AND TERMS RELATING
17 TO MAYBE HACKERS OR THEFT OR THINGS LIKE THIS.

18 Q. AND ARE THERE SIMILARITIES BETWEEN THE SPIDERING
19 SOFTWARE THAT YOU DESCRIBED AND FILTERING SOFTWARE?

20 A. YES, THERE ARE.

21 THE EASIEST ANALOGY WOULD BE THAT IF YOU
22 TAKE THE INTERNET AS A GREAT BIG ROUND CAKE, AND OUR JOB
23 WAS TO TAKE A VERY SPECIFIC BRIEF FROM A CLIENT AND
24 ALMOST USE, LIKE A COOKIE CUTTER, TO EXTRACT FROM THE
25 CAKE JUST THE PIECE THAT THE CLIENT IS INTERESTED IN.

1 IN OTHER WORDS, JUST THE SUBJECT THAT THEY WANT WITHOUT
2 ANY OTHER ITEMS.

3 NOW, WHAT WE DO IS, WE DELIVER THE PIECE
4 WE EXTRACT ABOUT THE DATA. WHAT THE FILTERING COMPANY
5 WILL DO IS THE OPPOSITE. THEY WILL TAKE THAT PIECE OUT
6 FROM THE COOKER CUTTER AND GIVE THE CLIENT THE CAKE WITH
7 THE HOLE.

8 Q. DID YOUR WORK AT IBNET INVOLVE MANAGING TEAMS OF
9 OTHER PEOPLE?

10 A. YES. BECAUSE OF MY ROLE AND BECAUSE I WAS A
11 FOUNDER, THERE WERE A NUMBER OF TEAMS I HAD. I HAD A
12 TECHNOLOGY TEAM FOR DEVELOPING SOFTWARE. I HAD A
13 RESEARCH TEAM WHOSE JOB WAS TO WORK WITH ME VERY CLOSELY
14 WITH THE CLIENT IN THE EARLY PHASE AND DEVELOP THE
15 VOCABULARY FOR THE QUERIES. AND THEN THE RESEARCH TEAM
16 ALSO HAD A SECONDARY ROLE AS AN ANALYST TEAM, WHOSE JOB
17 WAS TO WORK ON CONTENT THAT WAS FOUND FOR THE CLIENT TO
18 MAKE SURE THAT IT WAS GRADED AND IT MET THE RIGHT
19 CRITERIA.

20 Q. AND DID YOUR WORK AT IBNET INVOLVE IDENTIFYING
21 ADULT CONTENT ON THE INTERNET OR ON THE WEB?

22 A. YES, IT DID, IN A NUMBER OF DIFFERENT WAYS. IF
23 I COULD JUST DESCRIBE THEM ONE AT A TIME. THE FIRST ONE
24 WOULD BE WHERE WE WOULD FREQUENTLY SAY, ON THE INTERNET,
25 THAT WHEN A BRAND IS SUCCESSFUL, IT GENERALLY GETS

1 ASSOCIATED WITH PORNOGRAPHY, BECAUSE A BRAND IS -- THE
2 BRAND NAME WOULD THEN BE MORE FREQUENTLY USED ON THE
3 INTERNET, AND THEREFORE SOME PORNOGRAPHY SITES WILL USE
4 THIS WORD TO TRY TO ATTRACT TRAFFIC TO THE PORNOGRAPHY
5 SITES. SO THE FIRST AREAS WE WOULD WORK WITH THIS KIND
6 OF SUBJECT WOULD BE WHEN A CLIENT WANTED US TO FIND
7 SITES THAT HAVE THEIR BRAND ASSOCIATED WITH PORNOGRAPHY
8 SITES. BECAUSE WHAT THEY WANT TO DO CLEARLY IS TO FIND
9 THE SITES THAT HAVE THEIR BRAND ON THEM SO THEY CAN TAKE
10 SOME KIND OF LEGAL ACTION.

11 THE SECOND AREA WOULD BE WHEN WE WERE
12 WORKING WITH A CLIENT AND WE WOULD HAVE TO FIND
13 INFORMATION FOR A CLIENT THAT WAS BRAND DAMAGING. AND
14 ONE OF THOSE AREAS MIGHT BE SEXUAL CONTENT TO DO WITH
15 THE BRAND. AND THE CLIENT MAY NOT BE INTERESTED IN
16 THAT, ONLY IN VERY SPECIFIC CONTENT LIKE THE
17 INTELLECTUAL PROPERTY THAT I WAS DESCRIBING EARLIER. IN
18 THAT CASE, WE WOULD HAVE TO EXTRACT THE PORNOGRAPHIC
19 CONTENT FROM THE WHOLE THAT WE WERE ACTUALLY
20 IDENTIFYING. SO IT WAS A SECOND LEVEL OF FILTERING
21 REALLY. AND THE THIRD ONE IS, WE DID A CONTRACT, A LONG
22 CONTRACT, FOR VISA INTERNATIONAL, IN WHICH I TRACKED
23 CHILD PORNOGRAPHY FOR THEM.

24 THE COURT: WHAT IS THE NAME OF THE
25 COMPANY, PLEASE?

1 THE WITNESS: WHICH COMPANY, YOUR HONOR?

2 THE COURT: YOU JUST MENTIONED SOMETHING
3 INTERNATIONAL.

4 THE WITNESS: VISA INTERNATIONAL, SIR.
5 BY MR. MCELVAIN:

6 Q. AND WHAT DID YOUR WORK FOR VISA INVOLVE?

7 A. IDENTIFYING COMMERCIAL CHILD PORNOGRAPHY THAT
8 WAS USING THE VISA PAYMENT MECHANISM TO BUY THE
9 PORNOGRAPHY.

10 Q. AND WHY DID VISA WANT YOU TO DO THAT?

11 A. THERE WAS A SITUATION IN EARLY 2001 WHERE AN
12 ARTICLE WAS RELEASED IN THE U.S.A. SUGGESTING THAT VISA
13 WERE MAKING A PROFIT FROM THE WAY THAT THEIR CARD WAS
14 BEING USED ON CHILD PORNOGRAPHY SITES. AND SO VISA
15 IDENTIFIED THIS AS BEING CLEARLY DAMAGING TO THE BRAND.
16 AND I WAS ASKED TO CREATE A PROGRAM THAT WOULD IDENTIFY
17 CHILD PORNOGRAPHY ON THE INTERNET THAT WAS USING THE
18 VISA BRAND AND BUILD A PROGRAM THAT WOULD ALLOW THEM TO
19 WORK TOGETHER WITH LAW ENFORCEMENT TO RESOLVE THE
20 PROBLEM.

21 Q. DID THAT WORK ALSO INVOLVE IDENTIFYING ADULT
22 CONTENT IN GENERAL ON THE WEB?

23 A. YES, IT DID. THE DIFFICULTY WITH TRYING TO
24 IDENTIFY SOMETHING AS EXTREME AS CHILD PORNOGRAPHY IS
25 THAT THE VOCABULARY THAT IS USED ON THE SITES IS VERY

1 SIMILAR TO CONVENTIONAL PORNOGRAPHIC SITES. SO IN A
2 PROCESS LIKE THIS, ALTHOUGH THE METHODOLOGY IS VERY
3 SIMILAR TO THE MOBILE TELEPHONE EXAMPLE I GAVE YOU
4 EARLIER, WHAT YOU HAVE TO DO INITIALLY IS TO FIND PSEUDO
5 ADULT CONTENT. AND THEN WHAT YOU HAVE TO DO IS TO
6 FILTER THE ADULT CONTENT, WHICH INCLUDES A SMALL SUBSET
7 WHICH IS THE CHILD PORNOGRAPHY TO JUST END UP WITH THE
8 CHILD PORNOGRAPHY. SO PART OF THAT PROCESS REALLY --
9 AND YOU CAN REDUCE ADULT CONTENT DOWN TO SOME DEGREE TO
10 TRY TO GET THE CHILD PORNOGRAPHY, BUT EVENTUALLY IT
11 BECOMES SUBJECTIVE. AND SO THE ANALYST TEAM THEN HAVE
12 TO LOOK AT THE PAGES BY EYE AND WE USE A PROCESS VERY
13 SIMILAR TO THEN AS LAW ENFORCEMENT USED FOR IDENTIFYING
14 WHETHER THE PAGE MEETS THE CRITERIA.

15 Q. DID YOUR WORK AT IBNET INVOLVE FILTERING
16 SOFTWARE?

17 A. APART FROM THE DISCUSSION WE JUST HAD WHERE THE
18 SIMILARITIES BETWEEN OUR OWN TECHNOLOGY, THE OTHER
19 INVOLVEMENT I HAD WITH FILTERING TECHNOLOGY WAS THAT I
20 WAS ASKED BY MY BOARD TO DO A DUE DILIGENCE ON A
21 RESIDENTIAL FILTERING SOFTWARE COMPANY, BECAUSE MY BOARD
22 FELT THAT THERE WAS A GOOD FIT AND WE WERE -- THEY
23 WANTED TO CONSIDER AN ACQUISITION.

24 Q. WHICH COMPANY WERE YOU ASKED TO INVESTIGATE?

25 A. THE COMPANY WAS SURFCONTROL.

1 Q. AND WHY WOULD THERE HAVE BEEN A FIT BETWEEN
2 SURFCONTROL AND YOUR COMPANY?

3 A. WELL, OUR COMPANY WAS SELLING LOW-VOLUME,
4 HIGH-COST SERVICES. SO THE BOARD CONSIDERED THAT TO TRY
5 AND ACQUIRE A COMPANY WHO HAD LOW-COST HIGH-VOLUME
6 SERVICES, WHERE THERE WAS SOME OVERLAP IN THE
7 TECHNOLOGY, WOULD BE A SENSIBLE SOLUTION. AND AS WE
8 PREVIOUSLY DESCRIBED, THE FACT IS THAT MY COMPANY HAD
9 ALREADY INVESTED IN EXCESS OF TEN MILLION DOLLARS ON
10 TECHNOLOGY AND THE LIKELIHOOD IS THAT WE COULD HAVE
11 SHARED THAT KIND OF TECHNOLOGY AS -- IN THE
12 MARKETPLACES.

13 Q. YOU MENTIONED THAT YOUR BOARD ASKED YOU TO
14 INVESTIGATE THIS COMPANY. HOW DID YOU GO ABOUT YOUR
15 INVESTIGATION OF SURFCONTROL?

16 A. WE DID -- I THINK PROBABLY THE FIRST THING WE
17 DID WAS MINE THE WEB FOR INFORMATION ABOUT THEM. BUT WE
18 ASKED FOR VARIOUS PAPERS AND WHITE PAPERS FROM THEM. WE
19 MET ON A NUMBER OF OCCASIONS. WE DISCUSSED THEIR
20 TECHNOLOGY WITH THEM AND WITH THEIR TECHNOLOGY TEAM.
21 AND I THINK WE WENT THROUGH A WHOLE PROCESS OF A NUMBER
22 OF MEETINGS. WE LOOKED AT THEIR PRODUCTS AND THE
23 MARKETPLACE THEY ACTUALLY HAD.

24 Q. DID YOU ULTIMATELY DECIDE TO ACQUIRE
25 SURFCONTROL?

1 A. NO, WE DIDN'T.

2 Q. I SUPPOSE I SHOULD FIRST ASK YOU, WERE YOU
3 SEEKING TO -- WERE YOU CONSIDERING ACQUIRING THE ENTIRE
4 COMPANY OR A PORTION OF THEIR BUSINESS?

5 A. NO. THE BOARD CONSIDERED THAT THE RESIDENTIAL
6 COMPONENT WAS THE ONE THEY WANTED BECAUSE IT WAS THE
7 HIGH-VOLUME LOW-COST COMPONENT THAT WOULD BE A GOOD FIT
8 FOR OUR COMPANY.

9 Q. WHY DID YOU ULTIMATELY DECIDE NOT TO ACQUIRE
10 THAT BUSINESS?

11 A. I RECOMMENDED NOT TO DO IT. NOT BECAUSE IT WAS
12 PROBABLY A PROBLEM WITH SURFCONTROL IN GENERAL, BUT
13 MAYBE BECAUSE IT WAS A GENERIC REASON FOR THE
14 RESIDENTIAL MARKETPLACE WITHIN FILTERING IN GENERAL.
15 AND THAT WAS -- THE MARKETPLACE SEEMED -- THEY SAID
16 THEMSELVES THAT THE COST OF A SALE WAS VERY HIGH. WHEN
17 THEY WERE SELLING A PRODUCT WHICH, IN SOME CASES, WAS 30
18 OR \$40, THEY WOULD OFTEN LOSE AS MUCH AS 50 PERCENT OF
19 THE COST OF THAT PRODUCT JUST IN TRYING TO CREATE A
20 SALE. AND IN THE DISCUSSIONS I HAD WITH THEM, IT SEEMED
21 VERY CLEAR THAT IF THE COST OF SALE WAS QUITE HIGH, THEN
22 THERE DIDN'T SEEM TO BE THE RETURN ON INVESTMENT TO BE
23 ABLE TO INVEST IN NEW TECHNOLOGY. SO I WAS CONCERNED
24 THAT IT WOULD BE PROBABLY SAPPING THE MONEY OF OUR OWN
25 COMPANY RATHER THAN A GOOD INVESTMENT AS A PARTNER.

1 Q. DID YOU AT THAT TIME CONTINUE TO MAINTAIN YOUR
2 CONTACTS WITHIN THE SOFTWARE CONSULTING INDUSTRY?

3 A. YES, I DID. THE SYNERGY IS SUCH THAT ONE OF THE
4 MEMBERS OF THE PEOPLE I WAS REGULARLY MEETING WITH AS AN
5 IT CONSULTANT IN FACT WAS THE THEN HEAD OF MY TECHNOLOGY
6 DEVELOPMENT TEAM WITH IBNET. AND WE MET WITH OTHER
7 PEOPLE AGAIN. WE DON'T LOSE CONTACT WITH PEOPLE WHILST
8 WE'RE IN THIS INDUSTRY.

9 Q. DID YOU CONTINUE TO FOLLOW DEVELOPMENTS IN THE
10 SOFTWARE INDUSTRY?

11 A. YES. WHEN SOMEBODY HAD A PROBLEM RESOLVING,
12 THAT THEY NEEDED HELP RESOLVING, WE WOULD BRAINSTORM IT
13 AND TRY TO HELP EVERYBODY FIND A SOLUTION.

14 Q. NOW, WHEN DID YOU WORK FOR IBNET?

15 A. EARLY '99 UNTIL LATE 2002.

16 Q. WHAT DID YOU DO NEXT?

17 A. I MOVED ON FROM IBNET AND RAN TWO COMPANIES. I
18 CREATED A COMPANY CALLED ASP SOLUTIONS. AND I ALSO GOT
19 INVOLVED WITH A COMPANY CALLED ONOMATION. IT'S LIKE
20 AUTOMATION, BUT IT'S O-N-O, MATION. AND THEY WERE A
21 DATA MINING COMPANY. AND THEY LACKED LEADERSHIP, SO I
22 CEO'D THAT COMPANY FOR A WHILE. I WAS THEIR CEO.

23 Q. AND DID YOUR WORK WITH ONOMATION INVOLVE THE USE
24 OF SOFTWARE?

25 A. WE WERE A SOFTWARE DEVELOPMENT COMPANY, SO THAT

1 WAS ALL THE TIME. WE HAD PROPRIETARY DATA MINING
2 TECHNOLOGY AND PATTERN MATCHING SOFTWARE. SO MY JOB WAS
3 TO IDENTIFY MARKET OPPORTUNITIES FOR THEM AND ALSO
4 DESCRIBE AND HELP THEM DEVELOP NEW PRODUCTS.

5 Q. AND DID YOUR WORK AT ONOMATION INVOLVE THE USE
6 OF THE INTERNET?

7 A. WE DID, BECAUSE OUR TECHNOLOGY WOULD WORK EITHER
8 INDEPENDENT OF THE INTERNET OR THE INTERNET. SO IT
9 WAS A PERIOD IN THE EARLY 2000 WHEN -- OR EARLY 2002,
10 2003 WHERE MANY COMPANIES WANTED TO PUT DATA ONTO THE
11 INTERNET AND THEN MAKE IT ACCESSIBLE FOR THEIR EMPLOYEES
12 OR OTHER COMPANIES. SO THE INTERNET WAS A GLOBAL PART
13 OF THE PROPOSITIONS WE WOULD OFFER.

14 Q. AND YOU MENTIONED THERE WAS A SECOND COMPANY
15 YOU WERE WORKING WITH AT THE SAME TIME. WHAT WAS THAT
16 COMPANY?

17 A. ASP SOLUTIONS.

18 THE COURT: S, AS IN SUGAR?

19 THE WITNESS: YES.

20 BY MR. MCELVAIN:

21 Q. WHAT IS THAT COMPANY?

22 A. IN FACT, ASP SOLUTIONS WAS IN THE SAME
23 MARKETPLACE AS IBNET. SO IT WAS A COMPANY I SET UP TO
24 CONTINUE WORKING WITH LARGE CORPORATES, OFFERING
25 SOLUTIONS TO MINE THE INTERNET FOR INFORMATION THAT THEY

1 WOULD FIND USEFUL.

2 Q. AND HOW DID YOU GO ABOUT MINING THE INTERNET
3 WITH ASP SOLUTIONS?

4 A. THE WAY I DID IT WITH ASP SOLUTIONS WAS TO --
5 RATHER THAN WITH IBNET, WHERE WE SPENT, AS I SAID, IN
6 EXCESS OF TEN MILLION DOLLARS ON DEVELOPING OUR OWN
7 TECHNOLOGY, WITH ASP SOLUTIONS I HAD CREATED
8 RELATIONSHIPS WITH MANY OF THE COMPETITORS OF IBNET.
9 AND I WORKED WITH THESE COMPANIES TO HELP THEM DEVELOP
10 THEIR SOLUTIONS. AND SO WHAT WE WOULD DO IS, WHEN WE
11 SPOKE TO A CLIENT AND THE CLIENT DESCRIBED THEIR
12 PROBLEM, I WAS ABLE TO HAVE THE KNOWLEDGE TO KNOW WHAT
13 OTHER SOLUTIONS WERE ON THE MARKETPLACE AND TO CHOOSE
14 WHICH ONE WOULD BEST FIT THAT CLIENT'S NEEDS, BEST OF
15 BREED SOLUTION. AND ONLY WHEN THERE WASN'T A QUALITY
16 SOLUTION OR A QUALITY FIT WOULD WE SPEND SOME TIME AND
17 DEVELOP SOFTWARE OURSELVES.

18 Q. AND COULD YOU DESCRIBE SOME OF THE CLIENTS THAT
19 YOU HAD WITH ASP SOLUTIONS?

20 A. WELL, VISA INTERNATIONAL MOVED WITH ME FROM
21 IBNET TO ASP SOLUTIONS, BASICALLY BECAUSE I HAD
22 DEVELOPED ALL THE PROCESSES FOR THEM. SO I THINK THAT
23 MADE SENSE FOR THEM.

24 WE ALSO WORKED FOR A NUMBER OF MOBILE
25 TELEPHONE COMPANIES IN THE UK MARKET. HUTCHINSON 3G WAS

1 ONE. I WORKED FOR -- ONE OF OUR BIG CLIENTS WAS THE
2 COMPUTER GAMES MARKETPLACE IN THE U.S.A., SO WE WORKED
3 FOR ACTIVISION AND OTHER BIG COMPUTER GAMES COMPANIES
4 OVER HERE, TRACKING THE THEFT OF COMPUTER GAMES.

5 WE WORKED FOR BRITISH TELECOM IN THE UK.
6 SO, AGAIN, SIMILAR KIND OF PROFILE OF CLIENT, GENERALLY
7 LARGE BRANDED CLIENTS WITH A PROBLEM.

8 Q. SPEAKING ABOUT THE COMPUTER GAMES CLIENTS, HOW
9 DID YOU TRACK THE THEFT OF THEIR PROPERTY?

10 A. THEIR CONCERNS WERE THAT THEY -- THESE
11 COMPANIES, THE MINUTE THEY RELEASE EITHER A COMPUTER
12 GAME OR AN XBOX GAME OR SOMETHING, THERE IS A MENTALITY
13 AMONGST A PARTICULAR GROUP OF PEOPLE ON THE INTERNET TO
14 TRY AND BREAK THE SECURITY OF THE GAME AND THEN SHARE IT
15 AMONGST THEMSELVES. AND SO THE GAMES COMPANIES WERE
16 VERY CONCERNED THAT THE MOMENT THAT THE PRODUCT WAS
17 RELEASED INTO THE SHOP, THAT THERE WOULD BE TENS OF
18 THOUSANDS OF STOLEN PRODUCTS AND THIS WOULD DAMAGE THEIR
19 REVENUE. AND SO WE DID TYPICAL RESEARCH TO IDENTIFY
20 WHERE THESE KIND OF PEOPLE WERE ON THE INTERNET. AND
21 THEN THIS PRODUCT ACTUALLY INVOLVED AN ELEMENT OF SOCIAL
22 ENGINEERING WITH THESE PEOPLE, SO THAT WE INTEGRATED
23 OURSELVES WITHIN THE GROUPS. AND THEN WE COULD DESCRIBE
24 BACK TO OUR CLIENT WHAT WAS GOING ON. AND WE COULD GET
25 COPIES OF THE STOLEN GAMES WHEN THE GROUPS RELEASED

1 THEM. WE WOULD HAND THESE COPIES BACK TO OUR CLIENTS TO
2 ANALYZE.

3 Q. YOU MENTIONED YOU ALSO HAD MOBILE PHONE
4 COMPANIES AS CLIENTS. WHAT DID YOU DO FOR THEM?

5 A. A NUMBER OF THINGS. WITH THE -- GENERALLY THE
6 CLIENTS IN THE MOBILE PHONE INDUSTRY ARE CONCERNED THAT
7 PEOPLE ARE TRYING TO EITHER HACK INTO THEIR PHONES OR
8 TRYING TO COMPROMISE THEIR MOBILE TELEPHONE NETWORK.
9 THERE IS ALWAYS SOMEBODY ON THE WEB WHO HAS GOT A
10 PARTICULAR KIND OF HACK WHO THINKS THEY CAN ALLOW YOU TO
11 USE YOUR MOBILE TELEPHONE FOREVER AND THE OPERATOR DOES
12 NOT GET ANY MONEY. SO OF COURSE, THESE KIND OF THINGS
13 ARE ALWAYS HAPPENING. AND SO THE MOBILE TELEPHONE
14 COMPANIES WANTED US TO FIND THEM. AND SOMETIMES THE
15 COMPANY WOULD COME TO US AND SAY, WE HAVE HEARD A RUMOR
16 ABOUT A PARTICULAR ISSUE, CAN YOU FIND ANY INFORMATION
17 ABOUT IT. AND THEN THE TASK IS THE OPPOSITE WAY AROUND.
18 WE ARE NOW LOOKING FOR A VERY PARTICULAR ISSUE. AND
19 BECAUSE OF MY EXPERIENCE WITH THE CHILD PORNOGRAPHY
20 TRACKING, THEY HAVE, ON A NUMBER OF OCCASIONS, JUST
21 ASKED OPINION ABOUT WHAT MY THOUGHTS WOULD BE AS TO THE
22 DIFFICULTY OF TRYING TO TRACK THIS KIND OF CONTENT OVER
23 THE MOBILE PHONE INDUSTRY. BUT WE DID NOT DO THAT
24 COMMERCIALY AS A LONG PROJECT. IT WAS REALLY JUST IN
25 DISCUSSIONS.

1 Q. AND WHAT SORT OF DISCUSSIONS DID YOU HAVE ON
2 THAT SCORE WITH THE MOBILE PHONE CLIENTS?

3 A. WELL, IT'S EARLY STAGES FOR THE MOBILE PHONE
4 MARKET BECAUSE IT WAS STILL 2003. SO THAT THE MOBILE
5 PHONE MARKET WAS NOT EXTENSIVELY OFFERING INTERNET
6 CONTENT AT THE TIME. SO WE HAD DISCUSSIONS ABOUT THE
7 FEASIBILITY OF PUTTING TOGETHER WHAT THE MOBILE INDUSTRY
8 CALLS -- OR MOBILE PHONE INDUSTRY CALLS WALLED GARDENS,
9 BLOCKING, WHERE THE MOBILE OPERATOR WAS ASKING OUR
10 OPINION AS TO WHETHER I THOUGHT PEOPLE WOULD MOVE TO
11 ANOTHER MOBILE PHONE OPERATOR IF THEY WERE TO HAVE
12 MOBILE PHONES THAT HAD THE ABILITY TO SURF THE WEB, BUT
13 THAT THEY AS AN OPERATOR DID NOT ALLOW IT. SO WE HAD
14 THESE KIND OF DISCUSSIONS.

15 CAN I JUST CLARIFY WHAT A WALLED GARDEN
16 IS POSSIBLY?

17 Q. PLEASE.

18 A. A WALLED GARDEN IS A TERM THAT THE MOBILE
19 OPERATORS USE QUITE FREQUENTLY. AND IT'S WHERE THEY ARE
20 OFFERING INTERNET ACCESS TO THE USER OF THE TELEPHONE,
21 BUT THE RESTRICTION THAT THEY ARE PUTTING ON THAT USER
22 IS THAT THAT USER CAN ONLY VISIT WEBSITES THAT THEY HAVE
23 CHOSEN. AND IT TENDS TO BE A VERY SAFE OPTION FOR
24 PEOPLE WITH MOBILE TELEPHONES, BECAUSE THE MOBILE
25 TELEPHONE PROVIDER GENERALLY CHOOSES PARTNERS FOR THIS

1 WALLED GARDEN VERY CAREFULLY.

2 AN EXAMPLE WOULD BE THAT SOMEBODY LIKE
3 VODAFONE POSSIBLY WOULD MAYBE CHOOSE --

4 MR. HANSEN: OBJECTION, YOUR HONOR. I
5 THINK THIS IS ALL IN PREPARATION FOR HIS QUALIFICATIONS.
6 I THINK WE ARE NOW GOING WAY FAR AFIELD OF HIS
7 QUALIFICATIONS. HE IS NOW SPECULATING ON WHAT MOBILE
8 PHONES DO.

9 THE COURT: I WILL TAKE IT AS A MOTION TO
10 STRIKE IT. AT A CERTAIN POINT THE ANSWER IS WAY BEYOND
11 THE QUESTION. WE WILL STOP IT RIGHT THERE AND DIRECT
12 COUNSEL TO THE QUALIFICATIONS.

13 MR. MCELVAIN: YES, YOUR HONOR.

14 BY MR. MCELVAIN:

15 Q. HOW LONG DID YOU WORK FOR ASP SOLUTIONS?

16 A. FROM -- ABOUT THREE YEARS, FROM LATE 2002 UNTIL
17 MID 2005.

18 Q. AND WHAT DID YOU DO NEXT?

19 A. DURING THE PERIOD THAT I WAS WITH ASP SOLUTIONS,
20 I WAS ACTUALLY ALSO WORKING VERY CLOSELY WITH CRA
21 INTERNATIONAL AS A CONSULTANT ON SOME OF THE PROJECTS
22 THEY HAD. SO IN 2005, I ACTUALLY MOVED TO CRA
23 INTERNATIONAL FULL TIME.

24 Q. AND IS THAT WHERE YOU WORK NOW?

25 A. YES, IT IS.

1 Q. AND WHAT IS CRA INTERNATIONAL?

2 A. IT'S A GLOBAL ECONOMICS AND BUSINESS CONSULTING
3 COMPANY.

4 Q. DO YOU HOLD A TITLE WITH THEM?

5 A. I'M A PRINCIPAL WITH CRA INTERNATIONAL. I HEAD
6 UP THE INTERNET INTELLIGENCE UNIT THERE.

7 Q. WHAT IS THE INTERNET INTELLIGENCE UNIT?

8 A. IT'S A PRACTICE WITH A NUMBER OF PEOPLE WHO HAVE
9 SKILLS AND KNOWLEDGE ON THE STRUCTURE OF THE INTERNET
10 AND TRACING THINGS, LIKE ANONYMOUS E-MAILS AND MINING
11 THE INTERNET FOR INFORMATION.

12 Q. AND PLEASE DESCRIBE SOME OF YOUR CLIENTS YOU
13 HAVE IN THE INTERNET INTELLIGENCE UNIT.

14 A. THE INTERNET INTELLIGENCE UNIT OPERATES BOTH
15 ALONE AND ALSO IN SUPPORT OF THE COMPUTER FORENSICS TEAM
16 AND THE FRAUD INVESTIGATIONS TEAM. SO AT ANY TIME THAT
17 FRAUD IS BEING INVESTIGATED COMMERCIALY, THE INTERNET
18 INTELLIGENCE TEAM WILL BE INVOLVED WITH THEM ON MANY
19 DIFFERENT LEVELS TO GATHER INTELLIGENCE FOR THEM OR
20 GATHER INFORMATION FOR THEM BY MINING THE INTERNET.

21 AND EQUALLY, IF WE ARE WORKING WITH
22 EITHER LAW FIRMS OR LARGE CORPORATES OR LAW ENFORCEMENT,
23 AND THE COMPUTER FORENSICS TEAM ARE ACTUALLY DOING WORK
24 FOR THEM, THEN ANY INFORMATION THAT IS BEING FOUND ON
25 DEVICES THAT THEY ARE ANALYZING FOR THESE CLIENTS, IF

1 THEY HOLD ANY DETAILS LIKE E-MAIL ADDRESSES, THEN THE
2 INTERNET INTELLIGENCE UNIT GETS THIS DETAIL TO TRY AND
3 MINE THE INTERNET WITH THIS INFORMATION IN MIND TO TRY
4 AND GET A BETTER PICTURE OF WHO OWNS THE E-MAIL ADDRESS
5 MAYBE, HOW MUCH IT'S BEING USED, TRACE IT, THINGS LIKE
6 THAT.

7 Q. AND DO YOU USE SOFTWARE TO MINE THE INTERNET IN
8 THIS WAY?

9 A. YES, I DO. SIMILAR METHODOLOGIES TO WHAT I
10 WOULD HAVE DONE IN ASP SOLUTIONS.

11 Q. HAVE YOU DONE WORK FOR LAW ENFORCEMENT CLIENTS?

12 A. I WORKED WITH LAW ENFORCEMENT ON A NUMBER OF
13 DIFFERENT LEVELS. I DO -- WE DO HAVE A CLOSE
14 RELATIONSHIP ANYWAY IN MY LONDON OFFICE WITH LOCAL LAW
15 ENFORCEMENT IN THE VICE ARENA. BUT I ALSO CONTINUE TO
16 WORK WITH -- THE PROJECT WITH VISA INTERNATIONAL DIDN'T
17 COME WITH ME TO CRA, BUT I CONTINUED -- I CREATED A
18 SEPARATE PROJECT WITH THE NATIONAL CENTER FOR MISSING
19 AND EXPLOITED CHILDREN OUT OF DC. THAT PROJECT INVOLVED
20 TRACKING CHILD PORNOGRAPHY AGAIN AND WORKING WITH --

21 THE COURT: TAKE A MOMENT AND IDENTIFY
22 THE ORGANIZATION THAT YOU JUST --

23 THE WITNESS: THE NATIONAL CENTER FOR
24 MISSING AND EXPLOITED CHILDREN.

25 BY MR. MCELVAIN:

1 Q. WHAT DID YOUR WORK FOR THAT ORGANIZATION
2 INVOLVE?

3 A. IT WAS AN EXTENSION OF THE TRACING COMMERCIAL
4 CHILD PORNOGRAPHY, BUT IT HAD -- THE PROJECT WAS
5 EXTENDED BECAUSE IT HAD THE INCREASED FUNCTIONALITY OF
6 WORKING TOGETHER WITH LAW ENFORCEMENT. AND THEN IT ALSO
7 HAD AN AUTOMATED CEASE AND DESIST PROGRAM BUILT IN.

8 Q. WHAT DO YOU MEAN BY AN AUTOMATED CEASE AND
9 DESIST PROGRAM?

10 A. IF LAW ENFORCEMENT -- WE WOULD GENERATE -- WE
11 WOULD IDENTIFY CONTENT WHICH MET THEIR -- THE CRITERIA
12 OF THE CLIENT, WHICH WAS TO FIND COMMERCIAL CHILD
13 PORNOGRAPHIC SITES. AND LAW ENFORCEMENT WOULD HAVE THE
14 OPPORTUNITY TO HAVE A FIRST PICK ON WHICH ONES THEY
15 WANTED TO INVESTIGATE. BUT BECAUSE THESE INVESTIGATIONS
16 ARE VERY RESOURCE-INTENSIVE, IF THEY WERE NOT GOING TO
17 INVESTIGATE IMMEDIATELY, THEN THE PROGRAM I DEVELOPED
18 WOULD SEND OUT BY E-MAIL AUTOMATIC CEASE AND DESIST
19 TAKEDOWN NOTICES TO THE INTERNET SERVICE PROVIDERS. IN
20 OTHER WORDS, APPLYING PRESSURE TO THE INTERNET SERVICE
21 PROVIDERS TO ATTEMPT TO REMOVE THE CONTENT.

22 Q. AND DID THIS WORK INVOLVE IDENTIFYING ADULT
23 CONTENT ON THE WEB?

24 A. CERTAINLY THE CHILD PORNOGRAPHIC CONTENT IT DID,
25 YES.

1 Q. AND WOULD THIS HAVE BEEN IN THE SAME MANNER
2 -- WERE THERE SIMILARITIES IN THE MANNER BETWEEN -- IN
3 YOUR WORK YOU DID FOR VISA IN IDENTIFYING ADULT CONTENT
4 AND THE WORK YOU DID FOR LAW ENFORCEMENT CLIENTS?

5 A. CERTAINLY THE PROCESS IS VERY SIMILAR WHERE YOU
6 IDENTIFY ADULT CONTENT AND THEN YOU REDUCE THAT DOWN TO
7 CHILD PORNOGRAPHIC. I SUPPOSE THE ONLY DIFFERENCE
8 REALLY IS THAT HAVING WORKED ON THIS PARTICULAR SUBJECT
9 FOR SO LONG, WE WERE VERY GOOD AT KNOWING WHERE THE
10 CHILD PORNOGRAPHIC SITES WERE ACTUALLY MOVING TO. SO IT
11 WAS A FASTER PROCESS FOR US. WE REFINED IT OVER THE
12 YEARS.

13 Q. WHEN YOU DID THE WORK YOU DID FOR VISA, WHERE
14 WAS VISA BASED?

15 A. VISA WAS BASED IN SAN FRANCISCO.

16 Q. AND WHERE WERE YOU BASED WHEN YOU WERE WORKING
17 FOR VISA?

18 A. THE MAJORITY OF THE TIME IN MY LONDON OFFICE,
19 ALTHOUGH I DID HAVE AN OFFICE IN DC AS WELL.

20 Q. AND YOU HAVE DONE WORK FOR -- THE NATIONAL
21 CENTER FOR MISSING AND EXPLOITED CHILDREN IS BASED IN
22 WHICH COUNTRY?

23 A. IN DC.

24 Q. AND WHERE WERE YOU PERFORMING YOUR WORK FOR
25 THEM?

1 A. THE SAME, THE MAJORITY OF THE TIME IN LONDON,
2 AND A SMALL AMOUNT IN WASHINGTON.

3 Q. WERE YOUR CLIENTS AWARE THAT YOU WERE PERFORMING
4 YOUR WORK IN THE UNITED KINGDOM?

5 A. YES, THEY WERE. AND THEY VISITED ON A NUMBER OF
6 OCCASIONS.

7 Q. AND HAVE ANY OF YOUR CLIENTS EVER COMPLAINED TO
8 YOU THAT YOU HAD IDENTIFIED ONLY WHAT WOULD HAVE BEEN
9 CALLED ADULT CONTENT IN THE UNITED KINGDOM BUT NOT IN
10 THE UNITED STATES?

11 MR. HANSEN: OBJECTION, HEARSAY.

12 THE COURT: SUSTAINED.

13 BY MR. MCELVAIN:

14 Q. DOES YOUR WORK INVOLVE RESEARCH INTO DIFFERENT
15 PROTOCOLS ON THE INTERNET?

16 A. I HAVE TO HAVE A FAIRLY COMPREHENSIVE KNOWLEDGE
17 OF ALL OF THE PROTOCOLS THAT ARE BEING USED ON THE
18 INTERNET BECAUSE WHEN A CLIENT COMES TO ME IN MY JOB AND
19 WITH A PROBLEM, THEY DON'T KNOW THE INTERNET AS WELL
20 ENOUGH -- WELL ENOUGH TO DESCRIBE WHERE THE PROBLEM MAY
21 BE. SO A CLIENT MAY SAY THEY HAVE A BRANDING ISSUE. MY
22 JOB IS TO ACTUALLY LOOK AT THE INTERNET AS A WHOLE AND
23 IDENTIFY A SOLUTION FOR THEM THAT COVERS THE NECESSARY
24 PARTS OF THE INTERNET. AND IT MAY BE -- A PORTION MAY
25 BE ON E-MAIL, A PORTION MAY BE ON THE WEB. BUT MY JOB

1 IS TO KNOW THE NECESSARY COMPONENTS. I LOOK INTO MOST
2 OF THEM BEFORE PUTTING A TITLE SOLUTION TOGETHER FOR A
3 CLIENT.

4 Q. AT CRA, HAVE YOU CONTINUED TO MAINTAIN THE
5 CONTACTS THAT YOU HAVE HAD IN THE SOFTWARE CONSULTING
6 INDUSTRY?

7 A. YES, I HAVE. BECAUSE -- IT'S ACTUALLY EASY FOR
8 ME, BECAUSE MY RELATIONSHIP WITH THE COMPUTER FORENSICS
9 TEAMS FOR A START WITH MY COMPANY ARE -- THEY ARE ALL IT
10 PROFESSIONALS ANYWAY --

11 THE COURT: EXCUSE ME. WOULD YOU JUST
12 ANSWER THE QUESTION, BECAUSE YOU HAVE A LOT OF HELPFUL
13 INFORMATION BUT THE LAWYER MAY WANT DIFFERENT
14 INFORMATION. SO PLEASE LISTEN TO THE QUESTION AND
15 ANSWER THE QUESTION. YOU HAVE SO MUCH KNOWLEDGE THAT
16 IT'S HARD FOR US TO GATHER IT ALL IN CORRECTLY AND THAT
17 IS HIS JOB, TO GET YOU TO FOCUS WHERE WE ARE GOING.
18 THANK YOU.

19 THE WITNESS: YES, I HAVE.

20 BY MR. MCELVAIN:

21 Q. AND HAVE YOU CONTINUED TO DISCUSS DEVELOPMENTS
22 IN SOFTWARE TECHNOLOGY?

23 A. YES, I HAVE.

24 Q. AND HAVE YOU CONTINUED TO DO YOUR OWN RESEARCH
25 INTO DEVELOPMENTS IN THE SOFTWARE INDUSTRY?

1 A. YES, THAT IS PART OF MY JOB.

2 Q. WHY IS THAT PART OF YOUR JOB?

3 A. BECAUSE I NEED A LEVEL OF EXPERTISE TO BE ABLE
4 TO ADDRESS THE VARIETY OF PROBLEMS THAT I GET ASKED TO
5 LOOK INTO.

6 Q. AND, IN PARTICULAR, DO YOU FOLLOW DEVELOPMENTS
7 IN THE FIELD OF FILTERING SOFTWARE?

8 A. I DON'T FOLLOW THEM INTENTIONALLY BUT THE
9 SUBJECT -- IF THE SUBJECT IS RAISED BY PEOPLE WITHIN MY
10 PEER GROUP THEN WE DISCUSS IT.

11 Q. AND WHY WOULD THESE DISCUSSIONS COME UP?

12 A. IF THE SUBJECT WERE RAISED, IT WOULD BE BECAUSE,
13 MOST LIKELY, ONE OF THE INDIVIDUALS THAT I WAS TALKING
14 TO WAS PROBABLY EITHER HAVING A PROBLEM IN HIS OWN WORK
15 ENVIRONMENT REGARDING TRYING TO ADDRESS PROBLEMS OR
16 MAYBE A COMPANY THAT HE WAS GOING TO BE ASKED TO WORK ON
17 SUPPORT WAS CONSIDERING INSTALLING SOMETHING LIKE THIS,
18 AND HE WAS BEING ASKED AN OPINION SO HE WOULD CANVASS
19 THAT OPINION TO THE OTHER PEOPLE HE KNEW.

20 Q. I REFER YOU TO WHAT HAS BEEN MARKED AS
21 DEFENDANT'S EXHIBIT 84.

22 MR. MCELVAIN: MR. BYRDSONG, WOULD YOU
23 CALL THAT UP.

24 BY MR. MCELVAIN:

25 Q. DO YOU RECOGNIZE THIS DOCUMENT?

1 A. YES, I DO.

2 Q. WHAT IS IT?

3 A. IT'S MY RESUME FROM CRA INTERNATIONAL.

4 MR. MCELVAIN: YOUR HONOR, AT THIS TIME I
5 WOULD MOVE THAT MR. MEWETT BE QUALIFIED AS AN EXPERT
6 REGARDING COMPUTER TECHNOLOGY, THE INTERACTION OF
7 COMPUTERS WITH THE INTERNET AND THE WORLDWIDE WEB AND
8 THE IDENTIFICATION OF CONTENT ON THE INTERNET.

9 THE COURT: ANY OBJECTION?

10 MR. HANSEN: YOUR HONOR, THERE ARE
11 CERTAIN ASPECTS OF HIS REPORT THAT WE WILL OBJECT TO HIS
12 EXPERTISE ON, BUT HE IS CLEARLY QUALIFIED TO TESTIFY TO
13 MOST OF THE THINGS IN HIS REPORT. WE WILL BRING UP THE
14 OBJECTIONS WHEN THEY ARISE.

15 THE COURT: ALL RIGHT. THE COURT WILL
16 HEAR THE EVIDENCE AND OPINIONS OF THE WITNESS SUBJECT TO
17 CROSS EXAMINATION AND MOTIONS TO STRIKE, IF ANY, IN THE
18 FIELDS OFFERED BY THE DEFENDANT.

19 BY MR. MCELVAIN:

20 Q. MR. MEWETT, WERE YOU RETAINED TO PREPARE EXPERT
21 REPORTS FOR THIS LITIGATION?

22 A. YES, I WAS.

23 Q. I WOULD LIKE TO SHOW YOU WHAT HAS BEEN MARKED
24 AS -- FIRST OF ALL, WHO RETAINED YOU?

25 A. THE DEPARTMENT OF JUSTICE.

1 Q. I WOULD LIKE TO SHOW YOU WHAT HAS BEEN MARKED AS
2 DEFENDANT'S EXHIBIT 82.

3 DO YOU RECOGNIZE THIS DOCUMENT?

4 A. YES, I DO. IT'S MY EXPERT REPORT.

5 Q. I WOULD ALSO LIKE TO SHOW YOU WHAT HAS BEEN
6 MARKED AS DEFENDANT'S EXHIBIT 83.

7 DO YOU RECOGNIZE THAT DOCUMENT?

8 A. YES, THE REBUTTAL REPORT I COMPILED.

9 Q. WHAT IS THE WORLDWIDE WEB?

10 A. IT'S A NETWORK OF DEVICES THAT PREDOMINANTLY
11 USES THE HYPERTEXT PROTOCOL TO COMMUNICATE.

12 Q. WHAT IS THE HYPERTEXT PROTOCOL?

13 A. IT'S A PROTOCOL THAT HAS BEEN DESIGNED TO MAKE
14 EFFICIENT THE COMMUNICATION BETWEEN HYPERLINKED PAGES ON
15 THE WORLDWIDE WEB.

16 Q. AND WHAT IS A HYPERLINKED PAGE?

17 A. A HYPERLINKED PAGE WOULD BE A PAGE -- OR A
18 POSITION WITHIN A PAGE THAT IF YOU WERE TO CLICK ON IT,
19 IT COULD TAKE YOU DIRECTLY TO ANOTHER PAGE OR ANOTHER
20 POSITION WITHIN A PAGE.

21 Q. AND YOU MENTIONED THE TERM WEB PAGE. WHAT IS A
22 WEB PAGE?

23 A. A WEB PAGE IS SOME CODING IN A LANGUAGE CALLED
24 THE HYPERTEXT MARKUP LANGUAGE. AND WHEN THE CODING ALL
25 COMES TOGETHER, IT IDENTIFIES AND CREATES DIFFERENT

1 COPY, PICTURES, AND COLORS ON A PAGE, AND IT LAYS OUT --
2 IT'S VERY MUCH LIKE -- WE ALL VERY PROBABLY EXPERIENCE
3 THE SAME WHEN WE LOOK ON OUR COMPUTER SCREENS, ON A
4 NORMAL BROWSER. A PAGE LIKE GOOGLE, THERE WOULD BE AN
5 HTML PAGE, A WEB PAGE.

6 Q. YOU MENTIONED A BROWSER. WHAT IS A WEB BROWSER?

7 A. A WEB BROWSER IS A PROGRAM SPECIFICALLY DESIGNED
8 TO ALLOW A USER TO VIEW WEB PAGES.

9 Q. OKAY. AND HOW DOES THE BROWSER GO ABOUT DOING
10 THAT?

11 A. WELL, THE BROWSER HAS A SECTION, USUALLY AT THE
12 TOP, CALLED THE BROWSER BAR. AND IN THAT BROWSER BAR,
13 YOU WOULD PUT A URL OR WEB ADDRESS, AND THE BROWSER
14 WOULD THEN USE THAT ADDRESS TO COMMUNICATE TO THE
15 WORLDWIDE WEB THAT IT WANTS THAT PAGE. THE PAGE WOULD
16 THEN BE SENT BACK OVER THE INTERNET AND THE PAGE WOULD
17 THEN BE CREATED ON THE SCREEN AND RENDERED WITH THE
18 NECESSARY COLORS AND TEXT AND IMAGES.

19 Q. AND WHAT IS A SEARCH ENGINE?

20 A. IN THIS CONTEXT, A SEARCH ENGINE IS A PROGRAM
21 THAT IS DESIGNED FOR SOMEBODY TO FIND INFORMATION. AND
22 IT OPERATES BY WHAT YOU WOULD PUT A WORD OR A PHRASE
23 INTO A BOX ON THE SCREEN AND THEN WHEN YOU CLICKED THE
24 BUTTON IT WOULD GO AWAY TO AN AREA WHERE THERE WAS
25 RESOURCES. AND IT WOULD SEARCH THE RESOURCES, FIND

1 INFORMATION THAT IT FELT MATCHED THAT CRITERIA THAT YOU
2 WERE SEARCHING AND DISPLAY SOME SHORT LINKS BACK ON THE
3 SCREEN OF THE USER.

4 Q. COULD YOU PROVIDE SOME EXAMPLES OF COMMON SEARCH
5 ENGINES?

6 A. WE MUST ALL BE FAMILIAR WITH GOOGLE, YAHOO, MSN,
7 THINGS LIKE THIS.

8 Q. DO SEARCH ENGINES SEARCH THE ENTIRE WORLDWIDE
9 WEB?

10 A. NO. THE SEARCH ENGINE SEARCHES AN INDEX. SO
11 THE WAY THIS WOULD WORK IS THAT GOOGLE WOULD, AS AN
12 EXAMPLE, WOULD GENERATE AN INDEX OF CONTENT THAT IT HAD
13 COMPILED FROM THE WORLDWIDE WEB, AND THEN FOR SPEED AND
14 EFFICIENCY THE SEARCH ENGINE WOULD ONLY SEARCH THE
15 INDEX.

16 Q. AND HOW DO SEARCH ENGINES COMPILE THESE INDICES?

17 A. THEY COMPILE THEM USING A SIMILAR PROCESS TO
18 WHAT I WAS DESCRIBING WHEN I WAS MINING THE WEB. THEY
19 DO USE SPIDERS TO DO THIS. THE SPIDERS DON'T NEED TO BE
20 AS COMPLICATED BECAUSE THE WHOLE CONCEPT OF A SEARCH
21 ENGINE IS TO GET AS MUCH INTERRELATED CONTENT AS
22 POSSIBLE INTO THE INDICES. SO THEY WOULD USE THE
23 SPIDERS TO NAVIGATE AROUND THE WEB, PICKING UP PAGES,
24 BRINGING THEM BACK AND INDEXING THEM, AND THAT WOULD BE
25 BUILDING THE INDEX TO WHICH THE USER WOULD THEN HAVE

1 ACCESS.

2 Q. HOW DOES THE SEARCH ENGINE DETERMINE WHICH PAGES
3 ON A WEBSITE THAT IT WILL GATHER FOR ITS INDEX?

4 A. WELL, IF A SEARCH -- THE SEARCH ENGINE SPIDER
5 WOULD BE NAVIGATING AROUND THE WEB LOOKING FOR PAGES TO
6 INDEX, AND THE GOAL INITIALLY IS TO INDEX AS MUCH AS
7 POSSIBLE. SO IF THE SPIDER GETS TO A PAGE, IT WILL
8 DETERMINE -- OR WEBSITE INITIALLY -- WHICH IS A
9 COLLECTION OF WEB PAGES, IT WILL ATTEMPT, WITHOUT ANY
10 INTERFERENCE, TO INDEX AS MUCH AS IT CAN. HOWEVER, ON A
11 WEBSITE, THERE IS A SMALL FILE THAT A WEBSITE DEVELOPER
12 CAN PUT CALLED A ROBOT.TEXT FILE. THAT IS ACTUALLY THE
13 NAME OF THE FILE --

14 MR. HANSEN: OBJECTION, YOUR HONOR. THE
15 WITNESS IS GOING BEYOND ANYTHING THAT IN HIS EXPERT
16 WITNESS REPORT AT THIS STAGE.

17 MR. MCELVAIN: YOUR HONOR, THERE WAS A
18 GENERAL DISCUSSION OF HOW SEARCH ENGINES WORK AND HOW
19 THEY GATHER THEIR INDICES. THE PLAINTIFFS --

20 THE COURT: SHOW ME WHERE IT IS. IT'S A
21 LONG REPORT.

22 MR. MCELVAIN: YOUR HONOR, THERE'S A
23 REFERENCE AT PAGE 8 OF HIS INITIAL REPORT, EXHIBIT 82,
24 DISCUSSES SEARCH ENGINES. PLAINTIFFS' EXPERTS WERE
25 GIVEN SOME LEEWAY TO PROVIDE SOME FILLING MATERIAL TO

1 WHAT WAS INCLUDED IN THEIR REPORTS AS TO MATTERS THAT
2 WERE FAIRLY DISCLOSED AS SUBJECTS OF THEIR TESTIMONY.
3 CLEARLY, THE SUBJECT OF SEARCH ENGINES IS SOMETHING THAT
4 WAS FAIRLY DISCLOSED AS THE SUBJECT OF MR. MEWETT'S
5 TESTIMONY.

6 THE COURT: SPEAK MORE SLOWLY AND KEEP
7 THE VOLUME OF YOUR VOICE UP, SIR.

8 MR. MCELVAIN: YES, YOUR HONOR.

9 THE COURT: I THINK SO FAR THE WITNESS IS
10 IN THE GENERAL AREA OF HIS REPORT. I DON'T KNOW HOW
11 ESOTERIC IT HAS BECOME. I DON'T THINK TOO MUCH. THE
12 OBJECTION IS OVERRULED.

13 I CAUTION THE WITNESS TO LISTEN TO THE
14 QUESTION AND ANSWER THE QUESTION INSTEAD OF ELABORATING
15 ON IT. BECAUSE YOU HAVE THE EXPERTISE TO ELABORATE BUT
16 YOU MAY OR MAY NOT BE ALLOWED -- NEED THE INFORMATION
17 THAT YOU ARE VOLUNTEERING. SO LISTEN TO THE COUNSEL'S
18 QUESTION AND ANSWER THE QUESTION, PLEASE.

19 THE WITNESS: YES.

20 THE COURT: IF I DIDN'T, I OVERRULE THE
21 OBJECTION.

22 BY MR. MCELVAIN:

23 Q. ACTUALLY I'M NOT SURE WHERE WE LEFT OFF, SO LET
24 ME ASK THE QUESTION THIS WAY.

25 CAN A WEBSITE OPERATOR DESIGNATE WHICH

1 WEB PAGES IT WILL ALLOW TO BE INDEXED?

2 A. YES, THEY CAN.

3 Q. HOW DOES IT DO THAT OR HOW DOES HE DO THAT?

4 A. THEY FILL OUT A FILE -- THEY FILL OUT THE
5 CONTENTS OF A FILE CALLED THE ROBOT.TEXT FILE. AND IN
6 THAT FILE THEY IDENTIFY WHICH PAGES THEY ALLOW TO BE
7 INDEXED AND WHICH ONES THEY DON'T.

8 Q. OKAY. IS IT POSSIBLE FOR A SEARCH ENGINE TO
9 INDEX PAGES ON A WEBSITE THAT ARE BEHIND AN AGE
10 VERIFICATION SCREEN?

11 A. IT WOULD DEPEND ON THE SPIDERS THAT ARE BEING
12 USED AND THE AGE VERIFICATION COMPANY. BUT IT'S
13 CERTAINLY POSSIBLE JUST TO IDENTIFY PAGES BEHIND THE
14 SCREEN AND THE SEARCH ENGINE COULD SEE THEM.

15 Q. AND HOW WOULD THE LINK TO SUCH A PAGE APPEAR ON
16 THE SEARCH ENGINE RESULTS PAGE, IF IT SHOWED UP IN THE
17 INDEX?

18 A. IF A SITE HAD AN AGE VERIFICATION SCREEN AT THE
19 FRONT, AND A SPIDER HAD INDEXED IT FOR A SEARCH ENGINE,
20 THEN WHEN THE INDIVIDUAL USED THE SEARCH ENGINE THE
21 RESULT WOULD COME UP IN THE RESULTS LISTS AS NORMAL.
22 WHEN THEY CLICK ON THE LINK, THE CODE ON THE SITE COULD
23 FORCE ONE OF TWO THINGS TO HAPPEN. IT COULD BRING UP
24 THE AGE VERIFICATION SCREEN, AND AS LONG AS THE SCREEN
25 WAS SUCCESSFULLY FILLED IN, THE VISITOR, THE SURFER

1 COULD CONTINUE ONTO THE PAGE THEY WERE ORIGINALLY TRYING
2 TO GET TO, OR THE AGE VERIFICATION SOFTWARE COULD BE
3 CONFIGURED SO THAT WHEN THE AGE VERIFICATION SOFTWARE
4 HAS TAKEN THE CORRECT INFORMATION, THE USER CAN BE
5 RESTEERED TO THE TOP OF THE SITE, THE HOME SITE, SORRY,
6 THE HOME PAGE.

7 Q. WHAT IS THE SURFACE WEB?

8 A. THE SURFACE WEB IS A TERM THAT IS USED FOR THE
9 PIECE OF THE INTERNET WHICH IS HEAVILY INDEXED AND
10 INTERLINKED.

11 Q. AND WHAT IS THE DEEP WEB?

12 A. THAT IS THE OTHER PART. IT IS THE PIECE OF THE
13 WEB WHICH IS EITHER BADLY INDEXED OR DIFFICULT OR
14 IMPOSSIBLE TO INDEX.

15 Q. AND WHAT IS THE DIFFERENCE BETWEEN THE SURFACE
16 WEB AND DEEP WEB?

17 A. THE SURFACE WEB HAS PAGES WHICH ARE INTERLINKED
18 WITH HYPERLINKS. SO THE EXPERIENCE OF CLICKING ON ONE
19 LINK TO JUMP TO ANOTHER PAGE IS LIKE A BIG HONEYCOMB.
20 THE DEEP WEB IS EITHER MADE UP OF FILES WHICH ARE
21 DIFFICULT TO INDEX FOR SEARCH ENGINES OR IMPOSSIBLE.

22 Q. AND HOW LARGE IS THE WORLDWIDE WEB?

23 A. THERE HAVE BEEN MANY STUDIES BUT IF -- I THINK
24 WITHIN MY REPORT, I SUGGESTED THAT SOMEWHERE BETWEEN --
25 THE SURFACE WEB WOULD BE SOMEWHERE BETWEEN 25 BILLION

1 AND 64 BILLION PAGES.

2 Q. AND IS THE DEEP WEB BIGGER THAN THE SURFACE WEB?

3 A. THERE ARE COMPANIES IN THE U.S.A.

4 MR. HANSEN: OBJECTION, FOUNDATION.

5 BY MR. MCELVAIN:

6 Q. DO YOU KNOW IF THE DEEP WEB IS BIGGER THAN THE
7 SURFACE WEB?

8 THE COURT: LET'S BACK OFF. THERE IS AN
9 OBJECTION. I WANT TO RULE ON IT BEFORE YOU PROCEED.

10 THE OBJECTION IS SUSTAINED. WE WILL
11 STRIKE THE QUESTION AND ANSWER AND START OVER.

12 BY MR. MCELVAIN:

13 Q. DO YOU KNOW IF THE DEEP WEB IS BIGGER THAN THE
14 SURFACE WEB?

15 A. YES, IT IS.

16 THE COURT: WHAT IS BIGGER THAN WHAT?

17 MR. MCELVAIN: DEEP WEB IS BIGGER THAN
18 THE SURFACE WEB.

19 BY MR. MCELVAIN:

20 Q. AND HOW DO YOU KNOW WHETHER THE DEEP WEB IS
21 BIGGER THAN THE SURFACE WEB?

22 A. TWO REASONS. ONE WOULD BE THERE HAVE BEEN MANY
23 STUDIES DONE ON IT. AND THE SECOND ONE IS THAT IF YOU
24 LOOK AT THE KIND OF CONTENT THAT HAS TO EXIST WITHIN THE
25 DEEP WEB, BY DEFINITION, THERE ARE MANY MILLIONS OF

1 PAGES MORE IN THE DEEP WEB THAN THE SURFACE WEB, JUST
2 BECAUSE OF THE KIND OF CONTENT THAT EXISTS.

3 Q. IS THE WORLDWIDE WEB GROWING?

4 A. DAILY.

5 Q. ARE BOTH THE SURFACE WEB AND DEEP WEB GROWING?

6 A. YES, THEY ARE.

7 Q. DO YOU HAVE AN ESTIMATE AS TO HOW MUCH IT IS
8 GROWING PER DAY?

9 A. THE PROJECTION IS THAT THERE ARE SOMEWHERE IN
10 THE REGION OF 50 MILLION PAGES ADDED TO THE DEEP WEB
11 EVERY DAY, SORRY, THE SURFACE WEB EVERY DAY.

12 Q. WHAT IS INTERNET CONTENT FILTERING SOFTWARE?

13 A. INTERNET CONTENT FILTERING SOFTWARE IS SOFTWARE
14 THAT IS INSTALLED ON A -- GENERALLY INSTALLED ON A
15 MACHINE SO THAT A USER CAN SELECT TO BLOCK PARTICULAR
16 CATEGORIES OF CONTENT.

17 Q. AND WHAT SORT OF TECHNIQUES DOES THIS TYPE OF
18 SOFTWARE USE?

19 A. THE SOFTWARE TENDS TO USE A COMBINATION OF TWO
20 TECHNIQUES. ONE IS A CREATION OF A THING CALLED A BLACK
21 LIST, AND THE OTHER ONE IS A FEATURE CALLED DYNAMIC
22 FILTERING.

23 Q. OKAY. WHAT IS A BLACK LIST?

24 A. A BLACK LIST IS A PRECOMPILED AND CHECKED LIST
25 OF URLS OR PAGES OR LOCATIONS ON THE WEB WHERE A COMPANY

1 HAS DETERMINED THAT THAT CONTENT MEETS A PARTICULAR
2 CRITERIA. SO IF WE JUST LOOK AT SEXUALLY EXPLICIT
3 MATERIAL, IT WOULD BE A LIST OF LOCATIONS WHERE A
4 COMPANY HAS IDENTIFIED WITH -- LIMITED OUT THAT THERE IS
5 SEXUALLY EXPLICIT CONTENT IN THAT LIST.

6 Q. AND TAKING AN EXAMPLE OF SEXUALLY EXPLICIT
7 MATERIAL. IF A FILTER WAS ATTEMPTING TO FILTER OUT THAT
8 MATERIAL, COULD IT WORK EFFECTIVELY THROUGH THE USE OF
9 BLACK LISTS ALONE?

10 A. NO, IT COULDN'T.

11 Q. WHY NOT?

12 A. THE WEB IS GROWING TOO FAST AND CHANGING ON A
13 DAILY BASIS SUCH THAT IT WOULD BE A MAMMOTH TASK TO KEEP
14 A BLACK LIST UPDATED WITH THE CORRECT INFORMATION.

15 Q. YOU MENTIONED THERE IS A SECOND TECHNIQUE THAT
16 FILTERING SOFTWARE USES. WHAT IS THAT TECHNIQUE?

17 A. DYNAMIC FILTERING.

18 Q. WHAT IS DYNAMIC FILTERING?

19 A. DYNAMIC FILTERING IS THE PROCESS THAT IF A WEB
20 -- JUST PRIOR TO A PAGE LOADING ON A USER'S SCREEN, THE
21 PAGE CONTENT WILL BE INTERCEPTED BY THE FILTERING
22 PROGRAM, AND THE FILTERING PROGRAM WILL ATTEMPT TO
23 IDENTIFY WHETHER THAT PAGE MEETS THE CRITERIA, IN OUR
24 EXAMPLE, SEXUAL CONTENT, BY ANALYZING THE WORDS THAT
25 EXIST ON THE PAGE, THE PHRASES OF THOSE WORDS, THE

1 PROXIMITY OF SOME WORDS WITH -- TO OTHER WORDS. AND IF
2 IT FEELS THAT THE VOCABULARY ON THE PAGE MEETS THAT
3 CRITERIA THEN IT WILL BLOCK THE PAGE BEFORE THE USER
4 GETS TO SEE IT.

5 Q. ARE THERE REASONS THAT DYNAMIC FILTERING COULD
6 BE INEFFECTIVE ALSO?

7 MR. HANSEN: OBJECTION, FOUNDATION.

8 THE COURT: OBJECTION FOR LACK OF
9 FOUNDATION. IT IS ALSO LEADING. SO LET'S START OVER.

10 OBJECTION IS SUSTAINED.

11 BY MR. MCELVAIN:

12 Q. DO YOU KNOW WHETHER THERE ARE DIFFICULTIES WITH
13 DYNAMIC FILTERING PROCESSES THAT COULD LEAD THEM TO BE
14 INEFFECTIVE?

15 A. DYNAMIC FILTERING IS --

16 MR. HANSEN: OBJECTION. THAT WAS A YES
17 OR NO QUESTION.

18 THE COURT: SUSTAINED.

19 BY MR. MCELVAIN:

20 Q. IF YOU COULD ANSWER THIS QUESTION YES OR NO. DO
21 YOU KNOW WHETHER THERE ARE REASONS THAT DYNAMIC
22 FILTERING PROCESSES COULD BE INEFFECTIVE?

23 THE COURT: YES OR NO.

24 THE WITNESS: YES, THERE ARE.

25 BY MR. MCELVAIN:

1 Q. AND HOW DO YOU KNOW THIS?

2 A. BECAUSE I HAVE TESTED THEM. I ALSO KNOW HOW THE
3 PROCESSES WORK.

4 Q. AND WHAT ARE THOSE REASONS?

5 A. THE DYNAMIC PROCESS -- DYNAMIC FILTERING OR PAGE
6 DOES NOT PICK UP, FOR INSTANCE, TEXT THAT HAS BEEN PUT
7 ON A PAGE DESIGNED AS AN IMAGE. AND SO THAT WOULD ALLOW
8 TEXT TO EXIST, BUT FOR THE FILTER NOT TO BE ABLE TO SEE
9 IT. DYNAMIC FILTERING FREQUENTLY ACTS ON TEXT ALONE AND
10 NOT ON IMAGES. SO EXPLICIT IMAGES COULD STILL GET
11 THROUGH, REASONS LIKE THIS.

12 Q. ARE YOU FAMILIAR WITH THE TERM UNDERBLOCKING?

13 A. YES, I AM.

14 Q. WHAT IS THAT?

15 A. UNDERBLOCKING IS WHEN A FILTER IS SET TO A
16 CATEGORY AND IT FAILS TO BLOCK ALL THAT CONTENT. SO
17 IT'S A FAILURE TO BLOCK THE CONTENT THAT SHOULD BE
18 BLOCKED.

19 Q. ARE YOU FAMILIAR WITH THE TERM OVERBLOCKING?

20 A. YES, I AM.

21 Q. AND WHAT IS THAT?

22 A. OVERBLOCKING IS WHEN A FILTER IS SET TO A
23 PARTICULAR SUBJECT OR TOPIC AND IT THEN BLOCKS
24 ADDITIONAL CONTENT THAT HAS NOTHING TO DO WITH THE
25 ORIGINAL BLOCKED SUBJECT.

1 Q. AND CAN FILTERS BE INEFFECTIVE IN TERMS OF
2 UNDERBLOCKING?

3 A. YES, THEY CAN.

4 Q. IS IT POSSIBLE FOR FILTERS TO BE INEFFECTIVE IN
5 TERMS OF OVERBLOCKING?

6 A. YES, THEY CAN.

7 Q. FOR PURPOSES OF THIS LITIGATION, HAVE YOU
8 PERFORMED A STUDY OF THE INEFFECTIVENESS OF FILTERS?

9 A. YES.

10 Q. DID YOU WORK WITH ANY OTHER PEOPLE IN PERFORMING
11 THIS STUDY?

12 A. I WORKED WITH DR. PHILIP STARK AND ALSO I HAD
13 TEAMS I CREATED WITHIN CRA.

14 Q. AND WHY DID YOU PERFORM THE STUDY?

15 A. BECAUSE I WAS ASKED TO PERFORM IT BY THE
16 DEPARTMENT OF JUSTICE.

17 Q. DID YOU SELECT DIFFERENT BRANDS OF FILTERING
18 SOFTWARE TO TEST?

19 A. YES, I DID.

20 MR. MCELVAIN: MR. BYRDSONG, IF YOU CAN
21 CALL UP THE CHART AS A DEMONSTRATIVE EXHIBIT.

22 BY MR. MCELVAIN:

23 Q. WHICH FILTERS DID YOU SELECT TO TEST?

24 A. I SELECTED TWO GROUPS OF FILTERS. THE FIRST WAS
25 A GROUP OF WHAT ARE CALLED PC CLIENT SIDE FILTERS, WHICH

1 ARE FILTERS THAT RESIDE ON A COMPUTER, WHICH ARE
2 CONTENTPROTECT, CYBERPATROL, CYBERSITTER AND MCAFEE AND
3 ALSO NET NANNY AND NORTON IN THAT GROUP. AND I ALSO
4 CHOSE THREE ISP FILTERS, AOL, MSN AND VERIZON.

5 Q. I SHOULD ASK YOU WHAT IS THE DIFFERENCE BETWEEN
6 A PC-BASED FILTER AND AN ISP FILTER?

7 A. IF WE IMAGINE THE MODEL THAT WE SIT AT HOME WITH
8 OUR COMPUTER, AND THAT IS EFFECTIVELY THE CLIENT AS FAR
9 AS THIS MODEL IS CONCERNED. SO PC FILTERS GENERALLY ARE
10 ONES THAT WE INSTALL ONTO OUR HOME COMPUTER, AND THE
11 PROGRAM RESIDES THERE. ISP FILTERS ARE WHERE THE
12 RESPONSIBILITY OF FILTERING ACTUALLY TAKES PLACE AT THE
13 ISP. SO WE DON'T INSTALL GENERALLY ANY FURTHER SOFTWARE
14 ON OUR OWN COMPUTER, ALTHOUGH WE CAN, BUT AS WE ACCESS
15 THE INTERNET VIA OUR ISP, THEY ACTUALLY TAKE THE
16 RESPONSIBILITY OF FILTERING WHAT WE ARE REQUESTING FOR
17 AT THAT LEVEL.

18 Q. TURNING TO THE SET OF FILTERS THAT ARE IN THE
19 LEFTMOST BAR ON THAT CHART, WHY DID YOU SELECT THOSE
20 FILTERS TO TEST?

21 A. I IDENTIFIED A WEBSITE WHICH I HAVE KNOWN BEFORE
22 CALLED TOP 10 REVIEWS, A SITE THAT IDENTIFIES THROUGH
23 SURVEY TOP PRODUCTS IN PARTICULAR CATEGORIES. AND THE
24 FOUR PRODUCTS ON THE LEFT-HAND SIDE WERE ACTUALLY RATED
25 1, 2, 3 AND 4 IN THEIR TOP 10 BEST PURCHASES AS MOST

1 EFFECTIVE SOFTWARE IN THIS CATEGORY.

2 Q. TURNING TO THE FILTERS THAT ARE LISTED IN THE
3 MIDDLE PART OF THAT CHART, WHY DID YOU PICK OUT THOSE
4 FILTERS TO TEST?

5 A. I PICKED THESE TWO BECAUSE THEY ARE RATED, I
6 THINK, NUMBER 6 AND 7 IN THE SAME REVIEW, BUT I PICKED
7 THEM BECAUSE THEY ARE BRAND NAMES WITHIN THIS
8 MARKETPLACE OF CONTENT FILTERING THAT ARE VERY HIGH
9 PROFILE, AND ALSO BOTH THESE PRODUCTS ARE OFTEN GIVEN
10 AWAY FREE WITH NEW COMPUTERS AS PART OF A PROMOTION.

11 Q. TURNING TO THE THIRD BAR, WHY DID YOU PICK THOSE
12 FILTERS?

13 A. AOL AND MSN I PICKED BECAUSE THEY ARE POPULAR
14 ISPS THAT HAVE FILTERING SOLUTIONS AND VERIZON I DID A
15 LITTLE BIT FURTHER ON IN THE TESTING BECAUSE I WANTED TO
16 TEST THE RULESPACE DETAILS AND VERIZON USES RULESPACE.

17 Q. DO THESE FILTERS -- DO SOME OF THESE FILTERS
18 HAVE DIFFERENT SETTINGS?

19 A. THEY ALL HAVE DIFFERENT SETTINGS.

20 Q. AND WHICH SETTINGS DID YOU PICK TO TEST THE
21 FILTERS OUT?

22 THE COURT: FIND OUT WHAT HE DID BEFORE
23 WE START GOING INSIDE OF WHAT HE DID.

24 MR. MCELVAIN: I APOLOGIZE, YOUR HONOR.
25 I DID NOT FOLLOW YOU.

1 THE COURT: YOU ARE ASKING QUESTIONS
2 ABOUT THE RESULTS OF WHAT HE DID WITHOUT TELLING US WHAT
3 WORK HE DID TO FIND THE INFORMATION.

4 MR. MCELVAIN: OUR INTENTION IS FIRST TO
5 IDENTIFY THE FILTERS, AND THEN WE WILL -- THEN WE WILL
6 MOVE ON TO THE DATASET THAT WERE TESTED AGAINST THE
7 FILTERS. I HOPE I CAN GET TO --

8 THE COURT: GO AHEAD.

9 BY MR. MCELVAIN:

10 Q. ONCE YOU IDENTIFIED THE FILTERS YOU WANTED TO
11 TEST, YOU THEN GATHERED -- WHAT DID YOU DO NEXT AS THE
12 NEXT STEP IN THE TESTING PROCESS?

13 A. I IDENTIFIED A PROCESS BY WHICH I COULD CREATE
14 SOME DATASETS TO TEST THE FILTERS AGAINST.

15 Q. AND WHAT KINDS OF DATA SETS DID YOU GO ABOUT
16 GATHERING?

17 A. I CREATED A DATASET OF RANDOM INFORMATION,
18 RANDOM URL PAGES FROM TWO SOURCES, GOOGLE AND MSN, WHICH
19 I WAS GOING TO USE FOR A PARTICULAR KIND OF -- PART OF
20 THE TEST. I ALSO CREATED ANOTHER SET OF DATA WHERE I
21 HAD RANDOM QUERIES THAT INDIVIDUALS HAD ENTERED INTO
22 SEARCH ENGINES. AND I USED A RANDOM SET OF THESE
23 QUERIES TO GENERATE URLS FROM THE QUERIES. AND A THIRD
24 SET OF DATA THAT I CREATED, I HAD A LIST OF THE MOST
25 POPULAR QUERIES THAT ARE USED ON THE INTERNET OVER A

1 PARTICULAR PERIOD OF TIME FROM A COMPANY CALLED
2 WORDTRACKER. I ENTERED THESE INTO A SEARCH ENGINE AND I
3 TOOK URLS FROM THAT. IT GAVE ME THREE SETS OF RANDOM
4 DATA.

5 Q. TURNING TO THE FIRST SET, HOW WERE THESE SAMPLES
6 COLLECTED, THE SAMPLES FROM THE SEARCH ENGINES THAT ARE
7 REFERENCED AT THE TOP OF THAT CHART?

8 A. THE SAMPLE WHICH IS FROM THE RANDOM SAMPLE OF
9 URLS FROM SEARCH ENGINES WERE RANDOM URLS THAT WERE
10 SUPPLIED BY THE SEARCH ENGINES, AND A RANDOM SUBSET WAS
11 GIVEN TO ME VIA DR. STARK.

12 Q. TURNING TO THE SECOND SET OF WEB PAGES, HOW WERE
13 THOSE WEB PAGES DERIVED?

14 A. QUERIES WERE SUPPLIED TO US FROM THE THREE
15 SOURCES, AOL, MSN AND YAHOO, AND A RANDOM SUBSET WAS
16 TAKEN FROM THE SUPPLIED QUERIES, AND THEN THE QUERIES
17 WERE PUT INTO THE RESPECTIVE SEARCH ENGINES. SO IN THE
18 CASE OF YAHOO, THE QUERIES ARE PUT BACK INTO YAHOO, AND
19 10 QUERIES FROM EACH OF THE QUERIES WERE CAPTURED AS
20 PART OF OUR CREATING A DATASET.

21 Q. SO I BELIEVE YOU SAID 10 QUERIES WERE RETURNED
22 FROM --

23 A. 10 RESULTS WERE RETURNED FROM EACH QUERY.

24 Q. AND WHY WOULD YOU USE 10 RESULTS PER QUERY?

25 A. THERE ARE A NUMBER OF SURVEYS. THERE WAS ONE I

1 QUOTED IN MY REPORT THAT STATED THAT SOMETHING LIKE 62
2 PERCENT OF INDIVIDUALS DON'T ACTUALLY LOOK BEYOND THE
3 FIRST PAGE OF RESULTS WHEN THEY ARE USING A SEARCH
4 ENGINE. SO A FIRST PAGE RESULT BY DEFAULT IS 10
5 RESULTS. SO I TOOK THE FIRST 10 RESULTS FROM EACH OF
6 THE QUERIES.

7 Q. TURNING TO THE THIRD SET OF WEB PAGES, HOW WERE
8 THESE WEB PAGES GATHERED?

9 A. THESE WEB PAGES WERE GATHERED BECAUSE A COMPANY
10 CALLED WORDTRACKER ACTUALLY ACCUMULATES QUERIES THAT ARE
11 USED ALL AROUND THE WEB IN DIFFERENT PLACES AND COMPILES
12 A LIST OF THE MOST POPULAR QUERIES USED. SO I TOOK -- I
13 HAD THEM SUPPLY ME WITH A LIST OF THE TOP 1,000 QUERIES
14 AND I COMPILED A LIST OF EVENTUALLY 685 QUERIES WHICH I
15 THEN PUT INTO A SEARCH ENGINE CALLED DOGPILE. AND I
16 AGAIN TOOK 10 RESULTS FROM EACH OF THE QUERIES.

17 Q. WHY DID YOU USE 685 QUERIES AT THIS STAGE?

18 A. THE LIST THAT WORDTRACKER SUPPLIED, ALTHOUGH I
19 ASKED FOR THE FIRST 1,000 OR THE TOP 1,000 QUERIES, IT
20 HAD FOUR DIFFERENT SUBSETS. THE FIRST SUBSET WAS JUST
21 THE TOP 1,000 QUERIES WITHOUT ANY KIND OF PREFILTERING
22 FROM THEIR COMPANY, AND THEN THERE WERE OTHER SUBSETS
23 LIKE THE TOP 1,000 ADULT TERMS, THE TOP 1,000 TERMS WITH
24 ANY SEXUAL TERMS OR CONNOTATIONS REMOVED. AND SO WHAT I
25 DID WAS, I TOOK THE TOP 1,000 TERMS, CUT MY LIST BACK TO

1 500, THE TOP 500, AND I ALSO TOOK THE TOP 500 TERMS THAT
2 HAD NO EXPLICIT TERMS -- SEXUAL TERMS IN THERE AT ALL.
3 I MERGED THE TWO LISTS, ENDING UP WITH 685.

4 Q. ONCE YOU HAD THE 685 QUERIES, WHAT DID YOU DO
5 WITH THOSE QUERIES?

6 A. I PUT THEM INTO THE META SEARCH ENGINE DOGPILE
7 -- I PUT THEM INTO THE META SEARCH ENGINE DOGPILE, AND I
8 TOOK THE FIRST 10 RESULTS GENERATED BY EACH QUERY.

9 Q. PERHAPS WE SHOULD EXPLAIN.

10 THE COURT: EXCUSE ME FOR INTERRUPTING,
11 DID I MISS SOMETHING? DID YOU ASK THE WITNESS WHAT A
12 QUERY WAS?

13 MR. MCELVAIN: I WILL DO SO.

14 THE COURT: I NEVER -- YOU'VE BOTH BEEN
15 THROWING IT AROUND, BUT I HAVE NOT HEARD A DEFINITION.
16 BY MR. MCELVAIN:

17 Q. WHAT IS A QUERY IN TERMS OF THE CONTEXT THAT WE
18 HAVE BEEN USING THAT TERM?

19 A. A QUERY IN THIS CONTEXT IS A WORD OR PHRASE THAT
20 AN INDIVIDUAL HAS USED WHEN TRYING TO RESEARCH THE WEB
21 FOR INFORMATION. SO IF WE WERE USING GOOGLE AND WE
22 WANTED TO FIND INFORMATION ABOUT 1957 FORDS, WE TYPED IN
23 1957 FORD, THEN THE WHOLE OF THAT TERMINOLOGY WOULD BE
24 OUR QUERY.

25 THE COURT: IS IT LIKE WHEN YOU ARE USING

1 A SEARCH ENGINE, THE INFORMATION YOU PUT IN THE LITTLE
2 BLOCK BEFORE YOU CLICK?

3 THE WITNESS: YES, IT IS.

4 THE COURT: THANK YOU.

5 BY MR. MCELVAIN:

6 Q. AND JUST TO BE CLEAR ON THE PROCESS WITH THE
7 SECOND AND THIRD OF THESE TWO SETS THAT WE HAVE
8 DESCRIBED, ONCE YOU HAD IDENTIFIED THE QUERIES THAT YOU
9 WOULD USE, WHAT DID YOU DO WITH THE QUERIES?

10 A. THE QUERY -- WE HAVE THE QUERY. WHAT HAPPENS IS
11 THE QUERY IS ACTUALLY PUT INTO THE SEARCH ENGINE. IN
12 THE FIRST SET, THE ONE THAT USES AOL, MSN, AND YAHOO,
13 THE QUERY WAS PUT INTO THE SEARCH ENGINE THAT ACTUALLY
14 SUPPLIED THE QUERY, AND THE SEARCH ENGINE THEN WOULD
15 HAVE GENERATED SOME RESULTS, AND I CAPTURED THE FIRST 10
16 RESULTS OF THAT DATASET.

17 Q. OKAY. AFTER YOU GATHERED THE WEB PAGES FROM
18 EACH OF THESE THREE PROCESSES, WHAT DID YOU DO NEXT?

19 A. ONE OF THE GOALS HERE IS TO ATTEMPT TO CREATE
20 SOME DATASETS FOR TESTING THE FILTERS. SO THE END GOAL
21 WAS TO CREATE ONE EXTREMELY CLEAN DATASET THAT HAD NO
22 SEXUALLY EXPLICIT CONTENT IN IT. THE OTHER WAS TO
23 CREATE A DATASET THAT HAD SEXUALLY EXPLICIT ADULT
24 ENTERTAINMENT CONTENT THAT WAS UNAMBIGUOUS. SO THE
25 PAGES THAT -- THE WEB PAGES THAT WE HAD IDENTIFIED

1 THROUGH THIS PREVIOUS PROCESS WERE NOW ANALYZED BY
2 INDIVIDUALS IN MY TEAMS TO TRY TO CATEGORIZE THESE PAGES
3 INTO A PROCESS OF WHETHER THEY WERE CLEAN CONTENT OR
4 WHETHER THEY WERE BY VIRTUE OF A PROCESS, ADULT
5 ENTERTAINMENT, SEXUALLY EXPLICIT CONTENT.

6 Q. WHO DID THIS CODING AT THIS STAGE OF THE
7 PROCESS?

8 A. I HAD TWO TEAMS RUNNING, ONE IN NEW YORK AND ONE
9 IN LONDON. THE DATA WAS INITIALLY SHARED WITH THE TEAM
10 IN NEW YORK, AND THEIR JOB WAS TO VISUALIZE THE PAGE AND
11 DECIDE WHETHER THE PAGE WAS -- THE PAGE HAD ANY SEXUAL
12 CONTENT OR NUDITY. AND IF THE PAGE HAD ANY SEXUAL
13 CONTENT OR NUDITY, IT WOULD HAVE BEEN GOING DOWN WHAT WE
14 SEE ON THE SCREEN AS THE RIGHT HAND CHANNEL, IT WOULD
15 HAVE BEEN IN B. IF IT HAD NO SEXUAL CONTENT OR NUDITY
16 IT BECAME AN A.

17 Q. WHY DID YOU DESIGNATE THIS CATEGORY OF NO SEXUAL
18 CONTENT OR NUDITY?

19 A. BECAUSE THIS WAS GOING TO MAKE UP MY SUBSET THAT
20 I WAS LOOKING TO TEST THE FILTERS ON THAT HAD NO SEXUAL
21 CONTENT BECAUSE I WANTED TO EVENTUALLY SEE WHETHER THE
22 FILTERS ATTEMPTED TO BLOCK CONTENT WHEN SET TO SEXUAL --
23 TO BLOCK SEXUAL CONTENT, WHETHER THEY BLOCKED CONTENT
24 THAT HAD NO SEXUAL CONTENT AT ALL, IN OTHER WORDS
25 WHETHER THEY OVERBLOCKED.

1 Q. WITH REGARD TO THE SECOND SET OF WEB PAGES THAT
2 YOU IDENTIFIED AS HAVING SOME SEXUAL CONTENT OR NUDITY,
3 WHAT HAPPENED NEXT WITH THOSE WEB PAGES?

4 A. THE B COLUMN PAGES THAT HAD SOME SEXUAL CONTENT
5 OR NUDITY WERE SHARED WITH THE LONDON TEAM, WHICH WAS A
6 SMALLER TEAM, AND THEIR JOB WAS TO WORK THROUGH A
7 PROCESS THAT I HAD DEVELOPED TO ANALYZE WHAT WAS ON THE
8 PAGE AND ASK SOME QUESTIONS ABOUT WHAT WAS ON THE PAGE
9 TO CATEGORIZE THE PAGE FURTHER. THE FINAL PART OF THAT
10 PROCESS WAS TO ACTUALLY IDENTIFY WHAT THE PURPOSE OF THE
11 PAGE WAS. AND SO IF THE PAGE HAD SOME KIND OF SEXUAL
12 CONTENT OR NUDITY, BUT HAD WHAT WAS PERCEIVED TO BE AN
13 EDUCATIONAL TARGET MARKET, THEN THEY WOULD IDENTIFY THIS
14 AS EDUCATIONAL OR SCIENTIFIC OR LITERARY OR POLITICAL OR
15 ARTISTIC. AND ONLY WHEN A PAGE WAS IDENTIFIED AS ADULT
16 ENTERTAINMENT, SEXUALLY EXPLICIT CONTENT, WAS IT PUT
17 INTO THE ADULT ENTERTAINMENT CATEGORY.

18 Q. AND WHAT DOES THAT CATEGORY OF ADULT
19 ENTERTAINMENT WEB PAGES, WHAT DOES THAT REPRESENT?

20 A. THE CATEGORY IS THERE TO REPRESENT CONTENT WHICH
21 WAS -- THEY'RE TO BE BUILT INTO A SET FOR FILTERS TO BE
22 TESTED ON THAT SHOULD BE PERCEIVED AS UNAMBIGUOUS SEXUAL
23 CONTENT THAT I FELT A FILTER SET TO SEXUALLY EXPLICIT
24 CONTENT WOULD BE KEEN TO BLOCK.

25 Q. DID SOME OF THE WEB PAGES FALL INTO NEITHER THE

1 CATEGORY OF NO SEXUAL CONTENT NOR THE CATEGORY OF
2 SPECIFICALLY FOR ADULT ENTERTAINMENT?

3 A. YES. I CREATED A CATEGORY CALLED OTHER AND
4 THE -- IF A PAGE WAS SEXUAL BUT I FELT THAT IT DIDN'T
5 FALL INTO THE EDUCATIONAL, THE ARTISTIC AREAS LIKE THIS,
6 I PUT IT INTO THE CATEGORY OF OTHER.

7 Q. HOW MANY WEB PAGES WERE CODED OVERALL IN THIS
8 PROCESS?

9 A. THE WHOLE PROCESS I STARTED OUT WITH AROUND
10 68,000 PAGES, PAGES SO DYNAMIC ON THE WEB THAT SOME
11 DON'T WORK BY THE TIME YOU TEST THEM. SO, IN FACT, FOR
12 THE TEST PROCESS, SOMETHING LIKE 62,000 PAGES WERE
13 CATEGORIZED.

14 Q. AND HOW MANY OF THE WEB PAGES WERE CODED AS NOT
15 HAVING SEXUAL CONTENT?

16 A. 60,500.

17 Q. AND HOW MANY WEB PAGES WERE -- ACTUALLY, IF YOU
18 CAN RECITE THE --

19 A. 60,533.

20 Q. AND HOW MANY WEB PAGES WERE ULTIMATELY
21 CLASSIFIED AS FALLING INTO THE ADULT ENTERTAINMENT
22 CATEGORY.

23 A. 1,382.

24 THE COURT: EXCUSE ME. WHAT WAS THE
25 60,533 NUMBER, WHAT DID THAT REPRESENT?

1 THE WITNESS: WHAT THAT REPRESENTED, YOUR
2 HONOR, IS PAGES THAT WHEN WE TESTED THEM, THEY HAD NO
3 SEXUAL CONTENT OR NUDITY ON THE PAGE AT ALL.

4 THE COURT: I'M CONFUSED BECAUSE THE
5 FIRST TIME YOU GAVE 60,500.

6 THE WITNESS: YES, SIR. UNFORTUNATELY I
7 WAS REMEMBERING THAT IT WAS UP AROUND THERE SOMEWHERE
8 AND I WASN'T LOOKING AT THE SCREEN TO READ IT TOTALLY
9 CORRECT. IT IS 60,533.

10 THE COURT: ALL RIGHT. THANK YOU. THANK
11 YOU.

12 WE ARE GOING TO TAKE A NOON RECESS,
13 PLEASE. THE COURT IS IN RECESS UNTIL 1:30. MAYBE 1:35.
14 SINCE WE USED UP PART OF IT. COUNSEL ARE EXCUSED. WE
15 ARE OFF THE RECORD.

16 (LUNCHEON RECESS TAKEN.)

17 AFTERNOON SESSION

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

20 THE COURT: GOOD AFTERNOON, EVERYONE.
21 PLEASE BE SEATED.

22 THE COURT: COUNSEL, PROCEED.

23 MR. MCELVAIN: THANK YOU, YOUR HONOR.

24 BY MR. MCELVAIN:

25 Q. BEFORE THE BREAK, MR. MEWETT, WE WERE USING THE

1 TERM URLS TOGETHER AND IT OCCURS TO ME THAT PERHAPS WE
2 SHOULD DEFINE THAT TERM. WHAT IS A URL?

3 A. THE TERM URL ACTUALLY MEANS UNIVERSAL RESOURCE
4 LOCATOR. BUT TO MOST PEOPLE ACTUALLY IT'S WHAT WE SEE
5 AT THE TOP OF OUR BROWSER BAR WHEN WE ARE IN SOMETHING
6 LIKE INTERNET EXPLORER. IT'S THE PIECE THAT IS WWW,
7 WHATEVER THE NAME OF THE DOMAIN IS AND THEN THE
8 REFERENCE TO A PAGE.

9 Q. BEFORE THE BREAK, WE WERE DISCUSSING THE
10 CATEGORIZATIONS THAT YOU USED. YOU MENTIONED THAT THERE
11 WAS AN ADULT ENTERTAINMENT CATEGORY THAT YOU USED TO
12 CODE SOME OF THE WEB PAGES. DO YOU RECALL THAT?

13 A. YES, I DO.

14 Q. WOULD YOU SAY THAT YOU WERE REQUIRED TO USE SOME
15 JUDGMENT IN ARRIVING AT THAT CATEGORIZATION?

16 A. MOST DEFINITELY.

17 Q. DOES THIS CONCERN YOU IN TERMS OF THE PROCESS OF
18 THE CODING?

19 A. NO, IT DOESN'T.

20 Q. WHY NOT?

21 A. BECAUSE THERE IS ALWAYS GOING TO BE AN ELEMENT
22 OF JUDGMENT. BUT IF YOU LOOK AT A PARTICULAR DATASET,
23 LIKE THE ONE I WAS CREATING HERE FOR ADULT
24 ENTERTAINMENT, THE VERY, VERY LARGE PERCENTAGE ARE
25 UNAMBIGUOUS. SO THE ONLY AREA THAT THERE IS GOING TO BE

1 AN ELEMENT OF JUDGMENT IS RIGHT ON THE CROSSOVER OF THE
2 FRINGE.

3 Q. AFTER YOU HAVE GONE THROUGH THIS PROCESS OF
4 CATEGORIZING THE CATEGORY OF WEB PAGES WITHOUT SEXUAL
5 CONTENT AND THE SECOND STAGE, CATEGORIZING WEB PAGES
6 WITHOUT -- SPECIFICALLY OF WEB PAGES THAT ARE
7 CATEGORIZED AS ADULT ENTERTAINMENT, WHAT HAPPENED NEXT
8 WITH THAT FIRST CATEGORY OF WEB PAGES?

9 A. ARE WE REFERRING TO THE CLEAN -- THE ONE I
10 REFERRED TO AS THE CLEAN DATASET, THE 60,533.

11 Q. YES.

12 A. WHAT I HAD TO DO FOR GOING FORWARD WITH THE
13 TESTING, IS TO REDUCE THAT 60,533 DOWN TO A MUCH MORE
14 MANAGEABLE SIZE FOR TESTING. SO I HAD A RANDOM SAMPLE
15 TAKEN FROM THAT SET THAT REDUCED IT DOWN MUCH CLOSER TO
16 THE SIZE OF THE ORIGINAL SET OF DATA I HAD FOR THE ADULT
17 ENTERTAINMENT.

18 Q. AND WHO DREW THAT SAMPLE?

19 A. I GAVE THE DETAILS TO DR. STARK AND HE DREW THE
20 SAMPLE.

21 Q. AND THEN AFTER THAT SAMPLE WAS TAKEN, WHAT
22 HAPPENED NEXT WITH THE WEB PAGES?

23 A. WELL, AT THAT STAGE, WHAT I HAVE NOW GOT IS TWO
24 DATASETS, ONE WHICH IS THE NONSEXUAL CONTENT AND ONE
25 WHICH IS ADULT ENTERTAINMENT SEXUAL CONTENT SO AT THAT

1 STAGE I CAN THEN MOVE FORWARD TO DO THE TESTING WITH THE
2 FILTERS.

3 Q. NOW, I THINK WE CAN RETURN TO THE QUESTIONS OF
4 HOW THE FILTERS WERE TESTED.

5 DO THESE FILTERS HAVE DIFFERENT SETTINGS?

6 A. YES, THEY DID.

7 Q. AND WHICH SETTINGS DID YOU PICK TO TEST THE
8 FILTERS?

9 THE COURT: EXCUSE ME FOR INTERRUPTING.
10 WHAT FILTERS ARE THESE FILTERS?

11 MR. MCELVAIN: I'M SORRY.

12 BY MR. MCELVAIN:

13 Q. IF WE COULD RETURN TO THE FIRST PAGE OF THIS
14 CHART. AND YOU SELECTED CERTAIN FILTERS THAT YOU WOULD
15 BE USED?

16 A. YES. I SELECTED SIX FILTERS WHICH WERE
17 INSTALLED DIRECTLY ONTO THE COMPUTERS, AND I ALSO
18 SELECTED THREE ISP FILTERS TO TEST.

19 THE COURT: YOU DON'T HAVE TO GO THROUGH
20 THE WHOLE THING AGAIN. I JUST DIDN'T KNOW. IF YOU SAID
21 THE FILTERS THAT WERE THE SUBJECT OF YOUR STUDY, THAT
22 WOULD HAVE BEEN FINE.

23 MR. MCELVAIN: YES, YOUR HONOR.

24 THE COURT: EXCUSE ME FOR INTERRUPTING.
25 ARE THESE CHARTS GOING TO BE MARKED AS EXHIBITS?

1 MR. MCELVAIN: THIS WAS A DEMONSTRATIVE
2 EXHIBIT. WE HAD NOT MARKED IT AS A DEFENDANT'S EXHIBIT
3 BUT WE WOULD BE HAPPY TO.

4 THE COURT: WE SHOULD TALK ABOUT THAT
5 LATER. I MAY WANT TO LOOK AT IT. WE WILL TALK ABOUT
6 THAT.

7 MR. MCELVAIN: WE WILL BE HAPPY TO TALK
8 ABOUT IT.

9 THE COURT: I WILL BURDEN YOU WITH
10 BRINGING IT UP LATER.

11 BY MR. MCELVAIN:

12 Q. NOW, TURNING BACK TO THE FIRST PAGE OF THE
13 CHART, WHICH HAS THE LIST OF THE FILTERS, WHICH SETTINGS
14 DID YOU PICK TO TEST THESE FILTERS OUT?

15 A. THE FILTERS ALL HAVE DIFFERENT SETTINGS. IN
16 FACT, SOME FILTERS HAVE AS MANY AS 35 DIFFERENT
17 CONFIGURATIONS. SO WHAT I DID IS, I CHOSE SETTINGS
18 WHICH, AS FAR AS POSSIBLE, WERE ABLE TO DEFINE THAT THEY
19 WOULD BE BLOCKING SEXUALLY EXPLICIT MATERIAL, BUT NOT
20 BLOCKING ANY OTHER CONTENT. SO I TRIED TO FIND
21 CATEGORIES AS CLOSE AS POSSIBLE TO JUST SEXUAL CONTENT
22 AND NOT BLOCK ANY OTHER CRITERIA.

23 Q. AND DO SOME OF THE FILTERS HAVE DEFAULT
24 SETTINGS?

25 A. YES, THEY DO.

1 Q. AND DID YOU TEST THE FILTERS AT THOSE SETTINGS?

2 A. YES, I DID.

3 Q. AND WHY DID YOU DO THAT?

4 A. I TESTED THE FILTERS THAT HAD DEFAULT SETTINGS
5 ON THIS SETTING AS WELL, BECAUSE I FEEL THERE WAS A
6 STRONG POSSIBILITY THAT SOME PEOPLE INSTALL THE FILTER
7 AND DON'T SPEND TIME CONFIGURING THEM. AND SO I WANTED
8 TO LOOK AT -- SEE WHAT THE PERFORMANCE OF THE FILTER
9 WOULD BE LIKE IN THE DEFAULT SETTINGS AS WELL.

10 Q. AND WHICH VERSIONS OF THE FILTERS DID YOU SELECT
11 FOR THE TESTING?

12 A. ALL OF THE LATEST VERSIONS AT THE TIME OF THE
13 TEST.

14 Q. NOW, WERE CERTAIN STATISTICAL CONCLUSIONS
15 REACHED AS A RESULT OF THIS TESTING PROCESS?

16 A. YES, THEY WERE.

17 Q. AND I UNDERSTAND THAT THE FULL RANGE OF
18 STATISTICAL RESULTS WILL BE THE SUBJECT OF DR. STARK'S
19 TESTIMONY TOMORROW. BUT I WOULD LIKE TO GO OVER SOME OF
20 THE RESULTS WITH YOU. IF I COULD START WITH QUESTIONS
21 REGARDING YOUR TESTING OF THE WEB PAGES DRAWN FROM THE
22 SEARCH ENGINE INDICES, AND IF WE COULD TURN TO THAT PAGE
23 OF THE RESULT.

24 DID YOUR STUDY REACH A CONCLUSION AS TO
25 THE PREVALENCE OF SEXUALLY EXPLICIT MATERIAL ON THE

1 SEARCH ENGINE INDICES?

2 A. YES, IT DID.

3 Q. WHAT DID YOUR STUDY FIND?

4 A. THE STUDY IDENTIFIED THAT THERE WAS 1.1 PERCENT
5 OF THE URLS QUALIFIED AS ADULT CONTENT.

6 Q. AND WE DISCUSSED EARLIER HOW LARGE THE SURFACE
7 WEB IS. CAN YOU REACH A CONCLUSION FROM THIS AS TO HOW
8 MANY ADULT WEB PAGES THERE ARE ON THE SURFACE WEB?

9 A. ON THE BASIS OF THE ESTIMATES I GAVE EARLIER,
10 THIS WOULD EXTRAPOLATE TO BE AROUND 700 MILLION PAGES OF
11 ADULT CONTENT.

12 Q. WITH RESPECT TO THE TESTING OF THE WEB PAGES
13 DRAWN FROM THE SEARCH ENGINE INDICES, DID YOUR STUDY
14 REACH ANY CONCLUSIONS AS TO WHETHER FILTERS UNDERBLOCK
15 ADULT WEB PAGES?

16 A. YES, IT DID. THE TEST SHOWED THAT THE FILTERS
17 WERE MISSING ANYWHERE BETWEEN 8.6 AND 60 PERCENT OF THE
18 ADULT CONTENT.

19 Q. DID YOUR STUDY REACH ANY CONCLUSIONS AS TO
20 WHETHER FILTERS OVERBLOCK WHAT WE WILL CALL CLEAN
21 CONTENT FROM THE WEB PAGES DRAWN FROM THE SEARCH ENGINE
22 INDICES?

23 A. YES, IT DID. FROM THE RESULTS, I IDENTIFIED
24 THAT ANYWHERE FROM .7 PERCENT TO 23.6 PERCENT OF CLEAN
25 PAGES, OR PAGES WITH NO ADULT CONTENT, WERE ALSO BEING

1 BLOCKED.

2 Q. AND DID YOU REACH A CONCLUSION AS TO WHETHER
3 THERE WAS ANY RELATIONSHIP AMONG THE INDIVIDUAL FILTERS
4 BETWEEN UNDERBLOCKING AND OVERBLOCKING?

5 A. YES, I DID. THE RELATIONSHIP IS THAT THE MORE
6 EFFICIENT THAT THE FILTER IS AT BLOCKING CONTENT, THE
7 HIGHER THE FILTER OVERBLOCKS.

8 Q. I WOULD LIKE TO TURN TO THE NEXT SET OF DATA,
9 WHICH IS THE SET OF DATA OF WEB PAGES DRAWN FROM QUERIES
10 ON THE SEARCH ENGINES.

11 DID YOU REACH -- WITH RESPECT TO THIS SET
12 OF WEB PAGES, DID YOUR STUDY REACH CONCLUSIONS AS TO THE
13 PREVALENCE OF WEB PAGES THAT QUALIFIED AS ADULT CONTENT?

14 A. YES, IT DID. THE TEST IDENTIFIED THAT 1.7
15 PERCENT OF THE URLS THAT WE TESTED ACTUALLY QUALIFIED AS
16 ADULT ENTERTAINMENT CONTENT.

17 Q. DID YOUR STUDY REACH ANY CONCLUSIONS AS TO
18 WHETHER FILTERS UNDERBLOCKED THESE WEB PAGES?

19 A. THESE PAGES WERE UNDERBLOCKED BY BETWEEN 6
20 PERCENT -- 6.2 PERCENT AND 43.4 PERCENT OF THE TIME.

21 Q. AND DID YOUR STUDY REACH A CONCLUSION AS TO
22 WHETHER FILTERS OVERBLOCK CLEAN CONTENT ON THIS SET OF
23 WEB PAGES?

24 A. YES, I DID. THE PAGES WERE OVERBLOCKED ON THIS
25 DATASET BETWEEN ZERO AND 20.7 PERCENT OF THE TIME.

1 Q. AND I NOTICE THAT SOME OF THE FILTERS BLOCKED
2 ACTUALLY ZERO PERCENT OF WHAT WAS CALLED THE CLEAN
3 CONTENT. DOES THAT MEAN THAT THOSE FILTERS HAD NO OTHER
4 PROBLEMS?

5 A. NO, IT DOESN'T. THE TRADEOFF BETWEEN
6 OVERBLOCKING AND UNDERBLOCKING IS THE SAME, SO TO GET
7 THE ZERO PERCENT OVERBLOCKING, WE HAVE TO ACCEPT A 43.4
8 PERCENT UNDERBLOCKING. SO A LARGE AMOUNT OF THE PAGES
9 WHICH HAD CLEARLY GOT ADULT CONTENT ON THEM WERE BEING
10 LET THROUGH, JUST SO THAT WE COULD GET A PERCENTAGE OF
11 ZERO PERCENT OVERBLOCKING.

12 Q. AND TURNING TO THE THIRD SET OF DATA, AND WHAT
13 WAS THAT THIRD SET OF DATA AGAIN?

14 A. THE THIRD SET OF DATA WAS DATA DERIVED FROM
15 USING 685 OF THE MOST POPULAR TERMS QUERIED ON THE WEB.

16 Q. AND FOR THIS SET OF DATA, DID YOU REACH ANY
17 CONCLUSIONS AS TO THE PREVALENCE OF WEB PAGES THAT
18 QUALIFIED AS ADULT CONTENT AMONG THIS DATASET?

19 A. YES, I DID. 14.1 PERCENT OF THE URLS TESTED
20 ACTUALLY HAD ADULT ENTERTAINMENT CONTENT ON THEM.

21 Q. AND WITH RESPECT TO THIS SET OF DATA, DID YOUR
22 STUDY REACH ANY CONCLUSIONS WITH REGARD TO WHETHER WEB
23 PAGES QUALIFYING AS ADULT CONTENT WITHIN THIS SET OF
24 DATA WERE UNDERBLOCKED?

25 A. YES, I DID. 1.3 TO 12.6 PERCENT OF THE ADULT

1 WEB PAGES WERE UNDERBLOCKED IN THIS DATASET.

2 Q. AND I WILL ASK YOU THE SAME QUESTION WITH REGARD
3 TO OVERBLOCKING. DID YOUR STUDY REACH A CONCLUSION AS
4 TO WHETHER WHAT QUALIFIED AS CLEAN WEB PAGES WITHIN THIS
5 SET OF DATA WERE OVERBLOCKED?

6 A. YES, I DID. 4.8 TO 19.9 PERCENT OF THE CLEAN
7 WEB PAGES WERE BLOCKED.

8 Q. AND DID YOU REACH A CONCLUSION AS TO WHETHER
9 THERE WAS ANY RELATIONSHIP BETWEEN UNDERBLOCKING AND
10 OVERBLOCKING?

11 A. THE SAME RELATIONSHIP THAT WAS SEEN IN THE
12 PREVIOUS TWO DATASETS WAS ALSO SEEN, AND THAT IS FOR
13 EFFICIENT BLOCKING OF THE WEBSITE, YOU HAVE TO HAVE A
14 TRADEOFF OF FAIRLY LARGE OVERBLOCKING.

15 Q. I WOULD LIKE TO REFER YOU NEXT TO EXHIBIT 88.

16 MR. MCELVAIN: AND, YOUR HONOR, THIS IS
17 ONE OF THE EXHIBITS THAT WE WILL PROCEED WITH PAPER
18 COPIES ON.

19 THE COURT: WHAT DID YOU JUST SAY? I'M
20 SORRY.

21 MR. MCELVAIN: WITH RESPECT TO EXHIBIT
22 88, WE WILL REFER ONLY TO THE PAPER COPY. WE WON'T BE
23 PUTTING THIS EXHIBIT ONTO THE SCREEN.

24 THE COURT: OKAY.

25 BY MR. MCELVAIN:

1 Q. DO YOU RECOGNIZE THIS EXHIBIT?

2 A. YES, I DO.

3 Q. WHAT IS IT?

4 A. IT'S ONE OF THE URLS THAT WE TESTED FROM ONE OF
5 THE DATASETS. THE DATASET -- ONE OF THE SEARCH ENGINE
6 DATASETS.

7 Q. DID SOME OF THE FILTERS FAIL TO BLOCK THIS WEB
8 PAGE THAT IS REPRODUCED ON THE FIRST PAGE OF THIS
9 EXHIBIT?

10 A. YES, THEY DID.

11 Q. HOW MANY?

12 A. I BELIEVE IT WAS THREE OR FOUR FROM MY TESTS.

13 Q. AND IF WE TURN TO EACH OF THE SUBSEQUENT PAGES
14 IN THIS EXHIBIT, I WILL ASK YOU THE SAME QUESTIONS AND
15 PERHAPS WE CAN DO THIS COLLECTIVELY. DO YOU RECOGNIZE
16 THE OTHER PAGES THAT COMPRISE THIS EXHIBIT?

17 A. YES, I DO. THESE PAGES WERE ALL A SET THAT --
18 OF MY DATA THAT I EXTRACTED BECAUSE THEY ALL FAILED TO
19 BE BLOCKED BY AT LEAST THREE OR FOUR OF THE FILTERS.

20 THE COURT: ARE THESE DISCRETE PAGE
21 NUMBERS IN THIS EXHIBIT OR WHAT?

22 MR. MCELVAIN: PAGE NUMBERS AT THE
23 BOTTOM, YOUR HONOR.

24 THE COURT: YOU FIRST YOU WENT OVER WITH
25 THE WITNESS THAT THREE OR FOUR FILTERS BLOCKED CERTAIN

1 MATERIAL. BUT NOW YOU ARE TALKING ABOUT OTHER MATERIAL.
2 I DON'T KNOW IF THERE ARE DISCRETE PAGES OR NOT.

3 MR. MCELVAIN: I WILL TRY TO ASK SOME
4 QUESTIONS TO CLARIFY, YOUR HONOR.

5 BY MR. MCELVAIN:

6 Q. IF I COULD TURN YOUR ATTENTION SPECIFICALLY TO
7 THE FIRST PAGE OF THIS EXHIBIT, WHICH IS MARKED AS
8 D88-0001 AT THE BOTTOM.

9 DO YOU SEE THAT?

10 A. YES, I DO.

11 Q. AND WHAT IS THIS PARTICULAR PAGE?

12 A. IT'S A PAGE FROM THE SEARCH ENGINE -- THE SEARCH
13 ENGINE DATASET THAT I HAD, WHICH I HAD CATEGORIZED AS
14 SEXUAL EXPLICIT ADULT MATERIAL. AND IT IS A PAGE THAT
15 WAS NOT BLOCKED BY A NUMBER OF THE FILTERS.

16 Q. AND AGAIN HOW MANY OF THE FILTERS?

17 A. THREE OR FOUR OF THE FILTERS EACH TIME.

18 Q. TURNING YOUR ATTENTION TO THE SECOND PAGE, WHICH
19 IS MARKED AS -0002 AT THE BOTTOM.

20 DO YOU RECOGNIZE THIS?

21 A. YES, I DO.

22 Q. AND WHAT IS IT?

23 A. IT'S ANOTHER PAGE FROM THE SEXUALLY EXPLICIT
24 DATASET I HAD, AND IT WAS FAILED TO BE BLOCKED AGAIN BY
25 A NUMBER OF THE FILTERS.

1 Q. AND WOULD EACH OF THE PAGES IN THIS EXHIBIT
2 -- DO EACH OF THE PAGES IN THIS EXHIBIT REFLECT IMAGES
3 FROM WEB PAGES THAT WERE IN YOUR DATASET?

4 A. YES, THEY ARE ALL FROM THE SEXUALLY EXPLICIT
5 DATASET THAT I HAD.

6 Q. AND FOR EACH OF THE IMAGES REFLECTED IN EACH OF
7 THESE PAGES, DID SOME OF THE FILTERS FAIL TO BLOCK THESE
8 WEB PAGES?

9 A. YES.

10 THE COURT: ARE YOU NOW INCLUDING THE
11 REST OF THE EXHIBIT IN THE QUESTION?

12 MR. MCELVAIN: I BELIEVE SO, BUT I CAN
13 REASK IT.

14 THE COURT: I JUST --

15 MR. MCELVAIN: I INTENDED TO. I MAY NOT
16 HAVE.

17 THE COURT: THE QUESTION WAS FOR EACH OF
18 WHAT IS REFLECTED IN ONE OF THESE PAGES. I DON'T KNOW
19 WHETHER YOU MEANT THE FIRST TWO OR ALL OF THE EXHIBITS.

20 BY MR. MCELVAIN:

21 Q. DO EACH OF THE PAGES THAT IS INCLUDED IN THIS
22 EXHIBIT REFLECT THE IMAGE THAT WAS FOUND ON ONE OF THE
23 WEB PAGES THAT WAS IN YOUR SETS OF DATA?

24 A. YES, THEY ARE. JUST TO CLARIFY, ALL THESE PAGES
25 ACTUALLY WERE FAILED TO BE BLOCKED BY THREE OR FOUR OF

1 THE FILTERS.

2 Q. DO YOU HAVE AN OPINION AS TO WHETHER THE FILTERS
3 THAT YOU TESTED SUCCESSFULLY REDUCED THE AMOUNT OF ADULT
4 CONTENT THAT IS RETURNED TO A USER WHO IS USING THOSE
5 FILTERS?

6 A. AS A RESULT OF THE TESTS --

7 MR. HANSEN: OBJECTION. IT WAS A YES/NO
8 QUESTION.

9 THE WITNESS: REPEAT THE QUESTION,
10 PLEASE.

11 BY MR. MCELVAIN:

12 Q. DO YOU HAVE AN OPINION AS TO WHETHER THE FILTERS
13 THAT YOU TESTED SUCCESSFULLY REDUCED THE AMOUNT OF ADULT
14 CONTENT THAT WOULD BE RETURNED TO A USER OF THOSE
15 FILTERS?

16 THE COURT: THE ANSWER IS YES OR NO, IF
17 YOU UNDERSTAND THE QUESTION.

18 THE WITNESS: I'M DEBATING OVER THE
19 MEANING OF THE WORD SUCCESSFULLY, UNFORTUNATELY, YOUR
20 HONOR.

21 THE COURT: TAKE IT UP WITH THE
22 QUESTIONER.

23 BY MR. MCELVAIN:

24 Q. DO THE FILTERS THAT YOU TESTED REDUCE --

25 THE COURT: ARE YOU WITHDRAWING THE OTHER

1 QUESTION?

2 MR. MCELVAIN: YES, AND TRYING ANOTHER
3 ANGLE.

4 BY MR. MCELVAIN:

5 Q. DO THE FILTERS THAT YOU TESTED REDUCE THE AMOUNT
6 OF ADULT CONTENT THAT WOULD BE RETURNED TO A USER OF
7 THOSE FILTERS?

8 A. YES, THEY DO.

9 Q. DO THE FILTERS ALSO ALLOW ADULT CONTENT THROUGH?

10 A. YES, THEY DO.

11 Q. IS THERE A PRICE TO THE USER OF THE FILTER FOR
12 THE REDUCTION IN THE ADULT CONTENT THAT COMES THROUGH?

13 A. THE PRICE IS THAT IF YOU WANT THE FILTER TO BE
14 EFFICIENT AT REDUCING CONTENT, THEN YOU HAVE TO ACCEPT A
15 HIGH OVERBLOCKING RATE.

16 Q. DO YOU HAVE PARTICULAR EXAMPLES OF WHAT WE WILL
17 CALL CLEAN WEB PAGES THAT WERE OVERBLOCKED IN YOUR
18 STUDY?

19 A. A NUMBER SPRINGS TO MIND. ONE WAS THE CALENDAR
20 PAGE FROM THE ACLU'S OWN WEBSITE WAS BLOCKED BY A NUMBER
21 OF THE FILTERS. IN FACT, THE CIA FACT BOOK WAS ALSO
22 BLOCKED ON A NUMBER OF OCCASIONS.

23 Q. YOU TESTED WHETHER THESE FILTERS THAT WERE --
24 THAT WE DESCRIBED SO FAR, WHETHER ANY OF THESE FILTERS
25 BLOCK WEBSITES OF THE PLAINTIFFS IN THIS LITIGATION?

1 A. YES, I DID TEST THEM.

2 Q. AND IF I COULD REFER YOUR ATTENTION TO WHAT HAS
3 BEEN MARKED AS DEFENDANT'S EXHIBIT 85.

4 DO YOU RECOGNIZE THIS EXHIBIT?

5 A. YES, I DO.

6 Q. WHAT IS IT?

7 A. IT WAS A TABLE THAT I CREATED WITH DOWN THE
8 LEFT-HAND SIDE THE URLS OF THE PLAINTIFFS' WEBSITES AND
9 ACROSS THE TOP THE NAMES OF THE VARIOUS FILTERS THAT I
10 WAS TESTING.

11 Q. I SEE THAT ON THIS CHART THERE ARE SOME X'S AND
12 P'S. WHAT DO THOSE SYMBOLS MEAN?

13 A. THE SYMBOLS MEAN, WHEN TESTING, IF I TESTED A
14 PARTICULAR PAGE ON A SITE AND IT WAS BLOCKED
15 IMMEDIATELY, THEN THE X ACTUALLY INDICATES THIS, IN THAT
16 IT BLOCKED IT TOTALLY. THE P MEANS IT'S A PARTIAL
17 BLOCK.

18 Q. WHAT DO YOU MEAN BY A PARTIAL BLOCK?

19 A. THE FILTERS, IF THEY ARE WORKING ON THEIR
20 DYNAMIC FILTERING PROCESS, THEY HAVE -- MANY OF THE
21 FILTERS HAVE THE ABILITY TO DO THIS THING CALLED A
22 PARTIAL BLOCK, WHICH IS THAT THEY WILL ATTEMPT TO PUT UP
23 LIKE A SMALL SQUARE ON THE SCREEN TO BLOCK OUT ONLY THE
24 COMPONENT OF CONTENT ON THAT SCREEN WHICH THE PROGRAM
25 FAILS -- CONTRAVENES THE BLOCKING. I CAN PROBABLY MAKE

1 THIS A BIT CLEARER.

2 THEY -- THE PAGE WILL ATTEMPT TO BE
3 DISPLAYED AND MAYBE THERE IS AN IMAGE OR A FEW WORDS ON
4 THE PAGE WHICH THE FILTER IDENTIFIES AS HAVING AN ADULT
5 THEME. SO WHAT WILL HAPPEN WITH SOME OF THE FILTERS IS
6 THE FILTER WILL ATTEMPT TO DISPLAY THE PAGE BUT PUT A
7 SMALL SQUARE OR A VARIABLE SIZE SQUARE OVER THE AREA
8 WHERE THE IMAGE OR THE TERMS EXIST, AND SO IT'S TRYING
9 TO BLOCK OUT JUST THE COMPONENT OF THAT PAGE THAT MEETS
10 THE CRITERIA OF ADULT CONTENT.

11 Q. IF I CAN TURN YOUR ATTENTION TO ONE ROW IN THE
12 CHART THAT IS MARKED AT THE LEFT, WWW.SEXUALHEALTH.COM.

13 DO YOU SEE THAT ROW?

14 A. YES, I DO.

15 Q. WHAT DOES THAT ROW SIGNIFY?

16 A. WELL, THE ROW SIGNIFIES THE TEST RESULTS FOR
17 TESTING THE SITE SEXUALHEALTH.COM. AND THE RESULTS
18 ACROSS THE PAGE SHOW THAT THAT SITE WAS BLOCKED OR
19 PARTIALLY BLOCKED BY EVERY SINGLE ONE OF THE FILTERS.

20 Q. IN YOUR OPINION, DO THE RESULTS OF YOUR STUDY
21 REFLECT WHAT A TYPICAL USER IN THE HOME WOULD
22 EXPERIENCE?

23 A. I THINK THE RESULTS ARE CONSERVATIVE BECAUSE IF
24 THE USER IN THE HOME HAS CONTENT FILTERING INSTALLED,
25 AND IT IS THE MOST RECENT VERSION, THEN THE RESULTS

1 WOULD BE REFLECTED.

2 Q. IN OUR DISCUSSIONS SO FAR, WE HAVE BEEN
3 REFERRING TO TESTING OF WEB PAGES. WHY DID YOU MEASURE
4 WEB PAGES AND THE BLOCKING OR FAILURE TO BLOCK ON
5 PARTICULAR WEB PAGES AS OPPOSED TO WEBSITES?

6 A. WELL, WE HAVE TO REALIZE THAT THE TEST WAS TO
7 TEST FILTER SOFTWARE AND FILTER SOFTWARE ANALYZES WEB
8 PAGES RATHER THAN WEBSITES.

9 Q. IN ADDITION TO THE PC--BASED FILTERS AND THE ISP
10 FILTERS THAT WE HAVE DISCUSSED SO FAR, DID YOU ALSO
11 PERFORM A TEST OF SEARCH ENGINE FILTERS?

12 A. YES, I DID.

13 Q. AND WHAT IS A SEARCH ENGINE FILTER?

14 A. A SEARCH ENGINE FILTER IS A PIECE OF
15 FUNCTIONALITY WITHIN A SEARCH ENGINE THAT GIVES THE USER
16 OF THE SEARCH ENGINE THE ABILITY TO SELECT TO HAVE THE
17 SEARCH ENGINE FILTER RESULTS BACK TO THEM. AN EXAMPLE
18 WOULD BE THAT IF A SEARCH ENGINE GENERALLY WOULD HAVE
19 ONE OR TWO -- SORRY, TWO OR THREE POSITIONS ON THIS
20 SWITCH, IT WOULD BE -- THE FILTER WOULD BE OFF,
21 MODERATE, OR ON, AND THAT MEANS THAT WHEN YOU MAKE
22 QUERY, AS WE DESCRIBED EARLIER, INTO THE SMALL BOX ON
23 THE SEARCH ENGINE, WE PUSH THE GO BUTTON, THE SEARCH
24 ENGINE WILL ANALYZE THE RESULTS IT'S GOING TO GIVE YOU
25 BACK, BUT IT WILL TRY TO EXTRACT FROM THOSE ANY THAT

1 HAVE SEXUAL CONTENT AND ONLY DELIVER THOSE BACK THAT
2 DON'T.

3 Q. WHICH SEARCH ENGINE FILTERS DID YOU STUDY?

4 A. I STUDIED GOOGLE AND MSN.

5 Q. WERE THERE ANY OTHERS?

6 A. I ACTUALLY HAVE A MENTAL BLANK. I THINK YAHOO
7 AS WELL.

8 Q. IF I COULD TURN YOUR ATTENTION TO WHAT HAS BEEN
9 MARKED AS EXHIBIT 83. I'M SORRY, EXHIBIT 82. I
10 APOLOGIZE.

11 MR. MCELVAIN: IF I MAY HAVE A MOMENT,
12 YOUR HONOR, WITH YOUR INDULGENCE.

13 BY MR. MCELVAIN:

14 Q. IF I COULD TURN YOUR ATTENTION TO PAGE 28 OF
15 WHAT HAS BEEN MARKED AS EXHIBIT 82, SPECIFICALLY TO
16 PARAGRAPH 65.

17 DOES THAT REFRESH YOUR RECOLLECTION AS TO
18 WHICH SEARCH ENGINES --

19 A. YES, IT DOES. I APOLOGIZE. IT WAS GOOGLE,
20 YAHOO AND VERIZON.

21 Q. AND WHAT WERE THE RESULTS OF YOUR STUDY OF THESE
22 THREE SEARCH ENGINE FILTERS?

23 A. THE RESULTS OF THE -- CAN I -- I FIND IT
24 DIFFICULT ACTUALLY TO DESCRIBE THE RESULTS WITHOUT
25 DESCRIBING THE PROCESS OF WHICH I TOOK.

1 Q. LET'S BEGIN WITH THAT. HOW DID YOU GO ABOUT
2 TESTING THESE FILTERS?

3 A. I TOOK A LIST OF THE TOP 100 QUERIES FROM MY
4 PREVIOUS LIST OF QUERIES, AND I PUT THE 100 QUERIES INTO
5 EACH OF THE SEARCH ENGINES IN TURN WITH THE FILTERING
6 SET TO THE MAXIMUM. AND I TOOK THE RESULTS THAT CAME
7 BACK FROM THE QUERIES OF THE URLS, AND I TOOK 10 FROM
8 EACH OF THE QUERIES SO --

9 THE COURT: HOW MANY?

10 THE WITNESS: I TOOK 10 RESULTS FROM EACH
11 OF THE QUERIES, YOUR HONOR.

12 AND WHAT I THEN DID IS, I ANALYZED THE
13 RESULTS THAT WERE RETURNED TO IDENTIFY WHETHER THEY HAD
14 ADULT CONTENT OR NOT. AND THE RESULTS I FOUND WERE THAT
15 WHEN USING THE MOST POPULAR QUERIES INTO A SEARCH ENGINE
16 WITH THE FILTERING SWITCHED TO ITS MAXIMUM, I HAD THE
17 FOLLOWING RESULTS. GOOGLE GAVE ME ADULT CONTENT BACK ON
18 THREE PERCENT OF THE QUERIES THAT I SUBMITTED.

19 AND LET ME JUST CONFIRM FOR ONE MOMENT.

20 THE RESULTS FOR YAHOO WERE THAT 8 PERCENT
21 OF THE QUERIES -- THE MOST POPULAR QUERIES -- RETURNED
22 ADULT CONTENT. AND FOR VERIZON 10 PERCENT OF THE
23 QUERIES RETURNED ADULT CONTENT WITH THE FILTER SWITCHED
24 ON.

25 Q. IF WE BREAK DOWN THOSE RESULTS AS TO HOW MANY OF

1 THE WEB PAGES THAT WERE RETURNED WERE ADULT CONTENT, DO
2 YOU KNOW WHAT THE RESULTS OF YOUR STUDY WERE, IF YOU
3 LOOK AT IT THAT WAY?

4 A. YES, I DO. LOOKING AT WHAT YOU HAVE ON THE
5 DISPLAY, THE THREE PERCENT THROUGH GOOGLE ACTUALLY
6 RETURNED FOUR RESULTS. SO FOUR OUT OF THE THOUSAND
7 RESULTS. THE EIGHT PERCENT THROUGH YAHOO RETURNED 19
8 RESULTS. AND THE 10 PERCENT THROUGH VERIZON RETURNED
9 14.

10 SO IF I COULD JUST CLARIFY HOW THIS
11 WORKS. I START WITH 100 OF THE MOST POPULAR QUERIES.
12 AND I TURN THE FILTERING ON ON THE SEARCH ENGINE SO I
13 DON'T EXPECT TO GET ANY SEXUAL RESULTS BACK. AND IF WE
14 TAKE THE 10 PERCENT AS AN EXAMPLE, 10 PERCENT OF THE
15 QUERIES THAT I PUT INTO VERIZON RETURNED SEXUALLY
16 EXPLICIT CONTENT ON AT LEAST ONE OF THE URLS, BUT THAT
17 CONSTITUTED 12 RESULTS. SO WE MUST HAVE HAD ONE ON EACH
18 OF THOSE, AND ONE OR TWO ON TWO OTHERS.

19 THE COURT: I THOUGHT YOU SAID SOMETHING
20 ABOUT CHOOSING 10. HOW DID THAT FIGURE INTO ALL OF
21 THIS?

22 THE WITNESS: YES, I DID, YOUR HONOR.
23 I'M PROBABLY NOT EXPLAINING IT CORRECTLY.

24 WE START OUT WITH 100 MOST POPULAR
25 QUERIES INTO THE SEARCH ENGINE WITH THE FILTERING ON.

1 WE PUT THE QUERY INTO THE SEARCH ENGINE, AND WE TAKE 10
2 RESULTS BACK. AND THEN I DO AN ANALYSIS ON THOSE 10
3 RESULTS TO WORK OUT WHETHER ONE OR MORE HAVE SEXUAL
4 CONTENT ON THEM. SO LOOKING AT THE LAST RESULTS HERE, I
5 CAN SEE THAT 10 PERCENT OF MY 100 QUERIES GENERATED
6 ADULT CONTENT ON ONE OR MORE OF THE RESULTS.

7 THE COURT: I THOUGHT YOU WERE TESTING
8 ONLY 10 OF THE HUNDRED FOR EACH SEARCH ENGINE. YOU JUST
9 SAID YOU CHOSE 10 FROM THE HUNDRED?

10 ALL OF A SUDDEN, THE NUMBERS ARE NOT
11 HIGHER THAN 10.

12 MR. MCELVAIN: I APOLOGIZE. I DID NOT
13 MEAN TO INTERRUPT YOU. PERHAPS I COULD ASK SOME
14 QUESTION THAT WOULD CLARIFY THIS ISSUE.

15 THE COURT: OKAY. GO AHEAD.

16 BY MR. MCELVAIN:

17 Q. HOW MANY QUERIES DID YOU USE FOR THIS PROCESS OF
18 TESTING?

19 A. THIS PROCESS STARTS WITH 100 QUERIES.

20 Q. AND REMIND US, AGAIN, WHAT A QUERY IS FOR THIS
21 PURPOSE.

22 A. A QUERY IS WHAT AN INDIVIDUAL WOULD TYPE INTO
23 THE BOX ON A GOOGLE, AND THEN PUSH THE GO BUTTON.

24 Q. AND WHERE DID YOU OBTAIN THESE QUERIES?

25 A. THESE QUERIES ARE FROM THE WORD TRACKER LIST OF

1 THE MOST POPULAR TERMS USED FOR QUERYING ON THE
2 INTERNET.

3 Q. ONCE YOU HAD THOSE QUERIES, WHAT DID YOU DO WITH
4 THEM?

5 A. THE QUERIES WERE SUBMITTED INTO THE SEARCH
6 ENGINE, AND WHEN THE GO BUTTON WAS PRESSED, 10 RESULTS
7 FROM EACH ONE WERE COLLECTED INTO A DATASET.

8 Q. WHAT DO YOU MEAN BY "A RESULT" IN THIS CONTEXT?

9 A. URLS BEING RETURNED.

10 Q. DO YOU MEAN URLS THAT ARE REPORTED BY THE SEARCH
11 ENGINE IN RESPONSE TO THE QUERY?

12 A. YES, I DO.

13 Q. SO IF I COULD TAKE YAHOO AS AN EXAMPLE, YOU
14 MENTIONED THAT THERE WERE 1,000 RESULTS, AND 19 OF THOSE
15 RESULTS WERE QUALIFIED AS ADULT CONTENT. IF IT WAS 19
16 OUT OF 1,000, DOES THAT MEAN THAT YAHOO WAS 98.1 PERCENT
17 EFFECTIVE?

18 A. NO, IT DOES NOT BECAUSE I DID NOT DO PART OF
19 THIS TEST TO IDENTIFY WITH THE FILTERS SWITCHED OFF HOW
20 MANY OF THOSE RESULTS WOULD HAVE RETURNED ADULT CONTENT.
21 THE IDEA OF THIS TEST IS TO WORK OUT WITH THE MOST
22 POPULAR TERMS AND WITH THE SEARCH ENGINES SWITCHED ON
23 THE LIKELIHOOD OF AN INDIVIDUAL ACTUALLY RECEIVING ADULT
24 CONTENT BACK ON THOSE URLS, I'M SORRY, ON THOSE QUERIES.

25 Q. DID YOU ALSO TEST AS TO WHETHER SEARCH ENGINE

1 FILTERS OVERBLOCK?

2 A. I DIDN'T DO IT AS PART OF MY TESTING, BUT I HAVE
3 READ OTHER REPORTS, WHICH I HAVE INCLUDED THE REFERENCES
4 TO IN MY REPORT, BUT THEY DO OVERBLOCK.

5 Q. AND WHAT DO YOU CONCLUDE WITH REGARD TO WHETHER
6 SEARCH ENGINE FILTERS OVERBLOCK?

7 A. SEARCH ENGINE FILTERS CERTAINLY DO OVERBLOCK
8 ANYWAY, JUST LIKE ANY OF THE FILTERING PRODUCTS WE HAVE
9 REVIEWED.

10 Q. WHAT IS A REDIRECTED URL?

11 A. A REDIRECTED URL IS WHEN SOMEBODY TYPES INTO A
12 BROWSER THE URL WHERE THEY WANT TO GO TO, AND THERE WAS
13 AN AUTOMATIC PROCESS THAT TAKES THE USER STRAIGHT TO
14 ANOTHER LOCATION.

15 I CAN EXPAND ON HOW THAT WORKS OR WHY
16 THAT WORKS, IF YOU WISH.

17 Q. HOW DOES THAT WORK?

18 A. THE LEGITIMATE WAY THAT THIS WAS BEING DESIGNED
19 IS THAT IF A COMPANY HAD A WEBSITE AND IT WAS CALLED
20 A.COM AND THEY WOULD HAVE THEIR WEBSITE THERE AND THEIR
21 CLIENTS WOULD KNOW WHERE THEY WERE AND THAT IS HOW THEY
22 WOULD VISIT THE WEBSITE. IF THE COMPANY CHANGED THEIR
23 NAME TO -- AND THEIR SUBSEQUENT WEBSITE TO B.COM, IT
24 WOULD BE NORMAL STRATEGY TO TAKE THE NEW -- THE OLD
25 WEBSITE AND PUT IT ON THE URL OF THE NEW ONE BECAUSE

1 THAT IS WHERE THE NEW COMPANY RESIDES. BUT YOU DON'T
2 WANT TO LOSE THE OLD CUSTOMERS WHO ONLY KNEW YOUR OLD
3 NAME. SO WHAT YOU WOULD DO IS, IF YOU TYPED IN A.COM
4 INTO A BROWSER, THERE'S A SYSTEM OF JUST ALLOWING THAT
5 A.COM TO REDIRECT IMMEDIATELY TO THE NEW LOCATION. IT'S
6 AN AUTOMATIC REDIRECT, IS WHAT IT IS CALLED.

7 Q. DO ADULT WEBSITES USE THIS PROCESS ALSO?

8 A. YES, THEY DO, BUT WITH SLIGHTLY MORE CREATIVITY.

9 Q. HOW DO YOU MEAN BY THAT?

10 A. THEY, THE PROCESS -- ADULT WEBSITES ARE LOOKING
11 FOR INCREASED TRAFFIC BECAUSE TRAFFIC IS REVENUE. SO
12 WHAT THE WEBSITES WILL OFTEN DO IS TO TAKE ONE STARTING
13 POINT, LIKE WE WERE DESCRIBING IN THE ORIGINAL EXAMPLE,
14 BUT THEY WILL HAVE A PROCESS WHERE, WHEN THEY REDIRECT,
15 THEY CAN REDIRECT INTO A LIST OF 10, 20, 30 DIFFERENT
16 PLACES. SO EVERY TIME A PERSON TYPES A.COM, AS IN MY
17 EXAMPLE, YOU WOULD BE REDIRECTED TO ANOTHER ADULT
18 WEBSITE. AND THE LIST COULD BE NEVER ENDING. SO THEY
19 MAKE SURE THAT ANYBODY COMING INTO THE ORIGINAL STARTING
20 URL CAN BE DRAWN DOWN INTO TENS OF ADULT WEBSITES. IT'S
21 A PROCESS THAT THE ADULT SITES USE FAIRLY FREQUENTLY.

22 MR. HANSEN: OBJECTION AND MOVE TO
23 STRIKE. DID NOT ESTABLISH A FOUNDATION FOR KNOWING THE
24 FREQUENCY WITH WHICH ADULT WEBSITES DO THAT.

25 THE COURT: THE OBJECTION IS OVERRULED.

1 EITHER COUNSEL CAN ASK HIM OR YOU CAN ASK HIM.

2 BY MR. MCELVAIN:

3 Q. DID YOU FIND EXAMPLES OF THIS PROCESS OF URL
4 REDIRECTION IN THE DATA THAT YOU ANALYZED?

5 A. IN THE DATA THAT I ANALYZED DURING THE TESTING,
6 I FOUND NUMEROUS EXAMPLES OF REDIRECTION TO LARGE
7 QUANTITIES OF URLS.

8 Q. CAN THIS TECHNIQUE OF USING REDIRECTED URLS POSE
9 A PROBLEM FOR THE OPERATION OF FILTERS?

10 A. YES, IT CAN.

11 Q. HOW SO?

12 A. WELL, IF WE REMEMBER BACK TO THE FACT THAT THE
13 FILTERS WILL ATTEMPT TO FILTER USING TWO TECHNOLOGIES,
14 ONE IS THE BLACK LIST COMPONENT, AND ONE IS THE DYNAMIC
15 COMPONENT OF THE FILTERING, IT CREATES A PROCESS WHEREBY
16 THE MOST EFFICIENT COMPONENT OF FILTERING IS BLACK
17 LISTING BECAUSE IT'S EITHER ON OR OFF. A COMPANY THAT
18 IDENTIFIES AN URL HAS SEXUAL CONTENT AND THE BLACK LIST
19 SAYS, I WILL NOT LET SOMEBODY GO THERE. THAT IS A
20 DEFINED DECISION.

21 THE TECHNOLOGY INVOLVED IN ANALYZING
22 WHETHER -- WITH THE DYNAMIC FILTERING WHETHER A PAGE HAS
23 CONTENT IS MORE DIFFICULT TO DEPLOY. SO IF YOUR COMPANY
24 IS USING A URL REDIRECTION, WHAT TENDS TO HAPPEN IS THE
25 URLS THAT ARE IN THE REDIRECTION LIST ARE READILY NOT IN

1 THE BLACK LISTS, AND SO A FILTER THEN FALLS BACK ON A
2 RELIANCE ON THE DYNAMIC FILTERING ALONE.

3 Q. ARE YOU FAMILIAR WITH THE TERM "MOUSETRAPPING"?

4 A. YES, I AM.

5 Q. WHAT'S THAT?

6 A. MOUSETRAPPING IS A TECHNIQUE THAT IS USED BY
7 SEXUAL CONTENT WEBSITES TO STOP A SURFER LEAVING THIS
8 SITE ONCE THEY GET THERE. IF I CAN JUST DESCRIBE AGAIN
9 HOW THIS WORKS.

10 AN INDIVIDUAL MAY TYPE IN A SEEMINGLY
11 HARMLESS URL AND BE REDIRECTED TO A SITE WITH SEXUAL
12 CONTENT. ONCE THEY GET THERE, THERE IS A DISTINCT
13 POSSIBILITY THAT PERSON MAY NOT WANT TO BE ON THE SITE
14 AND MAY ATTEMPT TO PUSH THE BACK BUTTON ON THE BROWSER
15 OR CLOSE THE BROWSER WINDOW. THE TERM MOUSETRAPPING
16 ACTUALLY INVOLVES OPERATING A PIECE OF CODE
17 AUTOMATICALLY THAT STOPS THE BACK BUTTON WORKING, OR THE
18 CLOSE BUTTON ON THE WEB SITE, WEB PAGE WORKING. SO THE
19 INDIVIDUAL CAN'T GET OFF THE PAGE, THAT ALL THEY CAN DO
20 IS EITHER CLICK OTHER ADULT CONTENT LINKS ON THE PAGE OR
21 CLOSE THE BROWSER TOTALLY.

22 Q. DO THE OPERATORS OF ADULT WEBSITES RELY ON THEIR
23 DOMAIN NAMES TO ATTRACT TRAFFIC?

24 A. SOME DO.

25 Q. AND WITH RESPECT TO THE OTHERS, DO SOME NOT DO

1 SO?

2 A. OH, CERTAINLY. FROM THE TESTING IT WOULD BE
3 CLEAR THAT THE LARGER PERCENTAGE IN MY TESTS DID NOT
4 RELY ON DOMAIN NAMES THAT WERE DESCRIPTIVE TO DRAW
5 TRAFFIC TO THEIR WEBSITES OR USERS TO THEIR WEBSITES.

6 Q. WHAT IS IMAGE FILTERING?

7 A. IMAGE FILTERING IS A PROCESS WHEREBY IF SOFTWARE
8 WERE INSTALLED ON A MACHINE AND A PARTICULAR IMAGE WAS
9 -- AND IMAGES OF A PARTICULAR KIND WERE SELECTED TO BE
10 BLOCKED, THEN THE FILTERING SOFTWARE SHOULD TRY TO -- OR
11 WOULD TRY TO IDENTIFY WHETHER THE CONTEXT OF THE IMAGES,
12 AND IF THEY MET A PARTICULAR CRITERIA THAT THEY WERE,
13 FOR INSTANCE, SEXUALLY EXPLICIT CONTENT THEN THE
14 FILTERING WOULD BLOCK THE PAGE BECAUSE OF THE CONTENT OF
15 THE IMAGES.

16 Q. DO ANY RESIDENTIAL INTERNET CONTENT FILTERING
17 PROGRAMS OFFER IMAGE FILTERING IN THE MANNER THAT YOU'VE
18 DESCRIBED?

19 A. NO, THEY DON'T.

20 Q. DO SOME PROGRAMS ATTEMPT OTHER TECHNIQUES TO TRY
21 TO IDENTIFY THOSE IMAGES?

22 A. WELL, A TECHNIQUE THAT IS USED IS -- WITHIN THE
23 TEXT FILTERING, IS THAT THE PROGRAMS WILL -- THE CONTENT
24 FILTERING PROGRAM WILL ATTEMPT TO IDENTIFY WHAT THE
25 IMAGE IS BY ITS TITLE. SO IF THE IMAGE WAS CALLED

1 CAR.JPG, THEN THE PROGRAM WOULD DETERMINE THAT THAT
2 IMAGE WAS PROBABLY OF A CAR.

3 Q. PLEASE EXPLAIN TO ME THIS PROCESS. HOW WOULD
4 THE FILTERING SOFTWARE FIND ANYTHING THAT SAYS CAR.JPG
5 ON THE WEB PAGE?

6 A. WHEN THE DYNAMIC PROCESS OF SCANNING A WEB PAGE
7 ACTUALLY HAPPENS, THE IMAGE FILTERING SOFTWARE SCANS
8 BOTH THE WORDS IT SEES ON THE VISUAL PAGE THAT WE SEE
9 WHEN WE ARE LOOKING AT THE COMPUTER SCREEN, BUT ALSO
10 SCANS ADDITIONAL INFORMATION WHICH IS LIKE THE
11 PROGRAMMING INFORMATION CALLED SOURCE CODE, WHICH
12 ACTUALLY IS -- IT'S AVAILABLE TO THE SEARCH ENGINE AND
13 TO THE BROWSERS BUT IT'S NOT VIEWABLE BY THE USER. IN
14 THIS INFORMATION, IT HAS THE DETAILS ON THE NAMES OF ANY
15 IMAGES THAT WILL APPEAR ON THE PAGE.

16 Q. CAN FILTERS ANALYZE THESE FILE NAMES THAT YOU
17 HAVE DESCRIBED TO EFFECTIVELY DETERMINE WHAT THE CONTENT
18 OF AN IMAGE IS ON A WEB PAGE?

19 A. THE ANSWER, IN SHORT, HAS TO BE NO, BECAUSE THE
20 -- FOR THE FILTERING SOFTWARE TO BE EFFECTIVE, YOU ARE
21 RELYING ON THE IMAGES HAVING VERY DESCRIPTIVE NAMES.
22 AND LOOKING AT THE CONTENT OF THE DATA THAT I HAVE
23 LOOKED AT DURING THIS TEST, MANY OF THE ADULT SITES DO
24 SEEM TO JUST CALL THEIR IMAGES, A, B, C, D, E OR 1, 2,
25 3, AND SO THAT THE SOFTWARE HAS NO IDEA WHAT THE IMAGE

1 IS ACTUALLY ABOUT.

2 Q. WHAT IS A METATAG?

3 A. A METATAG IS A PIECE OF THIS INVISIBLE SOURCE
4 CODE THAT I WAS DESCRIBING EARLIER. AND IT'S AN AREA IN
5 THIS SOURCE CODE WHERE A WEBSITE OPERATOR CAN PUT TERMS
6 THAT DESCRIBE WHAT THEIR WEBSITE DOES. AND THIS IS
7 GENERALLY USED BY THINGS LIKE SEARCH ENGINES WHICH READ
8 THE METATAG AND THEREFORE UNDERSTAND THAT THIS SITE IS
9 ABOUT WHATEVER THE WORDS ARE. IT HELPS THE SEARCH
10 ENGINE CATEGORIZE THE PAGE WHEN YOU ARE SEARCHING FOR
11 IT.

12 Q. DO SOME ADULT WEBSITES -- DO SOME ADULT WEBSITES
13 NOT USE METATAGS?

14 A. YES, THEY DO.

15 Q. I ASKED A NEGATIVE AND UNFORTUNATELY IT CREATED
16 A BAD TRANSCRIPT.

17 DO ALL ADULT WEBSITES USE METATAGS?

18 A. NO, THEY DON'T.

19 IT TENDS TO FALL INTO TWO AREAS. IF THEY
20 USE METATAGS, IT'S BECAUSE THEY ARE WANTING TO BE FOUND
21 BY SEARCH ENGINES. AND IF THEY DON'T USE METATAGS, IT'S
22 BECAUSE THEY FREQUENTLY HAVE OTHER WAYS OF ATTRACTING
23 USERS.

24 Q. WHY WOULD AN ADULT WEBSITE NOT WANT TO BE FOUND
25 BY THE SEARCH ENGINE?

1 A. IT'S NOT ABOUT NOT BEING FOUND BY A SEARCH
2 ENGINE SO MUCH AS THERE ARE MUCH MORE EFFICIENT WAYS OF
3 GETTING USERS TO YOUR WEBSITE. YOU CAN, AS WE DESCRIBED
4 EARLIER WITH THE URL REDIRECTION, YOU CAN GUARANTEE MUCH
5 MORE TRAFFIC THIS WAY THAN YOU COULD BY PUTTING ONE OR
6 TWO WORDS INTO A SEARCH ENGINE, ESPECIALLY WHEN WE
7 CONSIDER THERE ARE BILLIONS OF PAGES ON THE WEB.

8 Q. IN YOUR STUDY, DID YOU FIND EXAMPLES OF ADULT
9 WEBSITES THAT WERE NOT USING METATAGS?

10 A. I DID. I ACTUALLY WENT OUT ORIGINALLY TO
11 DOCUMENT THE METATAGS THAT WERE BEING USED BECAUSE I
12 PRESUMED THAT THEY WOULD STILL BUILD THESE PAGES IN THE
13 NORMAL WAY. HOWEVER, WHEN I DID MY STUDY, I FOUND THAT
14 THE LARGE MAJORITY OF ADULT SITES HAD NO METADATA AT
15 ALL. THEY WERE ALL USING ALTERNATIVE WAYS TO GATHER
16 TRAFFIC.

17 Q. IF AN ADULT WEBSITE IS NOT USING A METATAG, CAN
18 THIS POSE A PROBLEM FOR THE FUNCTIONING OF THE FILTERING
19 SOFTWARE?

20 A. IT WON'T POSE A PROBLEM FOR THE FILTERING
21 SOFTWARE. IT WILL JUST GIVE THE FILTERING SOFTWARE
22 ANOTHER THING THAT IT CAN'T CHECK TO WORK OUT THE
23 CONTENT OF THE PAGE.

24 Q. AND CAN THIS LIMIT THE EFFECTIVENESS OF THE
25 FILTER?

1 A. OH, MOST DEFINITELY.

2 Q. IS IT POSSIBLE FOR WEBSITE OPERATORS TO USE
3 METADATA TO SELF-GRADE THEIR WEBSITES?

4 A. WHAT HAS HAPPENED IN THE PAST WITH EXAMPLES, AND
5 I HAVE SEEN IT IN SOME OF THE DATA THAT WE GOT, IS THAT
6 WEBSITE OPERATORS WILL TAKE COMMONLY USED TERMS THAT
7 PEOPLE QUERY ON THE WEB, OFTEN FROM LISTS LIKE THE WORD
8 TRACKER LIST. AND THEY WILL PUT THEM INTO THEIR
9 METADATA BECAUSE IF THESE ARE TERMS THAT PEOPLE
10 FREQUENTLY USE TO FIND INFORMATION ON THE WEB, WELL,
11 THEN IF YOU PUT IT INTO YOUR METADATA, THERE IS A
12 STRONGER CHANCE THAT YOU MAY ATTRACT THAT PERSON WHO IS
13 LOOKING FOR INFORMATION EVEN IF YOUR WEBSITE HAS NOTHING
14 TO DO WITH THAT CONTENT. SO THEY ARE USED, YES.

15 Q. SUPPOSE THERE WERE A PROPOSAL EITHER TO REQUIRE
16 OR TO VOLUNTARILY ENCOURAGE WEBSITE OPERATORS TO USE
17 METADATA TO SELF-RATE THEMSELVES FOR THE CONTENT. WHAT
18 WOULD BE THE EFFECT IF THE WEBSITE OPERATOR WERE
19 REQUIRED OR URGED TO DO SO AT THE LEVEL OF THE ENTIRE
20 WEBSITE?

21 MR. HANSEN: OBJECTION. SPECULATION.

22 THE COURT: NO FOUNDATION LAID.

23 SUSTAINED.

24 BY MR. MCELVAIN:

25 Q. ARE YOU FAMILIAR WITH ANY VOLUNTARY EFFORTS TO

1 ENCOURAGE WEBSITES TO USE METADATA TO CREATE THEIR
2 WEBSITES AS QUALIFYING AS ADULT CONTENT OR NOT TO?

3 A. YES, I AM.

4 Q. AND COULD YOU PLEASE DESCRIBE WHAT THOSE
5 VOLUNTARY EFFORTS ARE?

6 A. THERE HAS BEEN A NUMBER OF EFFORTS OVER THE
7 YEARS FOR PEOPLE TO SELF-GRADE THEIR WEBSITES.

8 MR. HANSEN: I'M SORRY, YOUR HONOR,
9 EXCUSE ME. I OBJECT TO THIS. THIS IS -- THERE IS NO
10 DISCUSSION OF THIS IN ANY OF HIS REPORTS. THIS IS NEW
11 DATA THAT WE NEVER HEARD BEFORE.

12 MR. MCELVAIN: THIS IS ALSO A NEW LESS
13 RESTRICTIVE ALTERNATIVE THAT WE HAD NOTICE OF ONLY AFTER
14 THE PROPOSED FINDINGS OF FACT.

15 THE COURT: YOU HAD NOTICE OF IT WHEN?

16 MR. MCELVAIN: WHEN THEY SUBMITTED THEIR
17 PROPOSED FINDINGS OF FACT. THERE WAS NO PRIOR NOTICE.

18 MR. HANSEN: THIS IS, INDEED, A LESS
19 RESTRICTIVE ALTERNATIVE THAT WAS DISCUSSED IN THE CDA
20 CASE. IT WAS DISCUSSED AT EARLIER STAGES IN THIS CASE.
21 IT HAS BEEN DISCUSSED ENDLESSLY FOR THE LAST 10 YEARS.
22 THE WITNESS HAD PLENTY OF OPPORTUNITY TO PUT THIS IN HIS
23 REPORT IF HE WANTED TO, AND THERE IS IN MENTION OF IT IN
24 HIS REPORT.

25 THE COURT: MR. MCELVAIN, IS THIS

1 CORRECT, IT IS NOT IN HIS REPORT?

2 MR. MCELVAIN: IT IS NOT IN HIS REPORT
3 BUT IT'S IN FAIR RESPONSE TO WHAT HAS COME UP IN THEIR
4 PROPOSED FINDINGS OF FACT. AND IT'S WITHIN THE GENERAL
5 CATEGORY OF DISCUSSIONS OF THE USE OR FAILURE TO USE
6 METATAGS, WHICH IS A SUBJECT THAT IS IN HIS REPORT.

7 THE COURT: THIS WITNESS PREPARED A
8 REPORT AND A REBUTTAL REPORT, IS THAT CORRECT?

9 MR. MCELVAIN: THAT'S CORRECT, YOUR
10 HONOR.

11 THE COURT: HOW WOULD YOU CHARACTERIZE
12 WHAT HE WAS REBUTTING IN HIS REBUTTAL REPORT? WAS THIS
13 MATERIAL IN HIS REBUTTAL REPORT, DISCUSSION OF THIS?

14 MR. MCELVAIN: THIS SPECIFIC DISCUSSION
15 IS NOT IN HIS REBUTTAL REPORT.

16 THE COURT: OBJECTION SUSTAINED.
17 BY MR. MCELVAIN:

18 Q. SUPPOSE THE GOVERNMENT SPONSORED A LIST OF
19 WEBSITES THAT IT HAD DETERMINED QUALIFIED AS ADULT
20 CONTENT AND GAVE THOSE LISTS TO FILTERING COMPANIES.
21 WOULD THAT BE AN EFFECTIVE METHODOLOGY?

22 MR. HANSEN: OBJECTION. ALSO NOT IN HIS
23 REPORT. THIS IS ALSO NEW INFORMATION.

24 THE COURT: MR. MCELVAIN.

25 MR. MCELVAIN: THIS SPECIFIC DISCUSSION

1 IS NOT IN HIS REPORT, YOUR HONOR. IT'S ALSO A RESPONSE
2 TO SOMETHING THAT CAME UP FOR THE FIRST TIME IN THE
3 PROPOSED FINDINGS OF FACT.

4 THE COURT: WELL, YOU KNOW, IF A TRIAL
5 COULD ALLOW IN EVERY BIT OF EVIDENCE THAT COMES UP
6 DURING THE TRIAL, WE WOULD HAVE AN AWFULLY LONG DEFENSE.
7 AND IT'S HARD FOR BOTH SIDES, THEN, TO PREPARE, TO HAVE
8 A FAIR ACCESS TO THE INFORMATION THEY WANT TO GET IN THE
9 RECORD. THERE HAS TO BE AN END SOMEWHERE. YOU HAVE A
10 GENTLEMAN WHO DID A LOT OF WORK, DID A REPORT AND A
11 REBUTTAL REPORT, BUT DID NOT COVER THIS INFORMATION.
12 HOW IS YOUR OPPONENT GOING TO FAIRLY FIGURE OUT HOW TO
13 DEFEND AGAINST THE NEW INFORMATION? SO THE OBJECTION IS
14 SUSTAINED.

15 BY MR. MCELVAIN:

16 Q. WE HAVE PREVIOUSLY DISCUSSED THE USE OF BLACK
17 LISTS. AND YOU OFFERED AN OPINION AS TO WHETHER BLACK
18 LISTS COULD BE EFFECTIVE ALONE. COULD YOU RESTATE THAT
19 OPINION?

20 A. IT IS UNREASONABLE TO EXPECT BLACK LISTS TO BE
21 EFFECTIVE ALONE BECAUSE OF THE CONTINUING CHANGING
22 DYNAMIC STYLE OF THE WEB AND NUMBER OF DOMAINS
23 CONTINUING TO BE REGISTERED.

24 Q. WOULD YOUR OPINION CHANGE WITH REGARD TO THE
25 IDENTITY OF THE PERSON OR ORGANIZATION WHO IS COMPILING

1 THE BLACK LIST?

2 A. NONE AT ALL.

3 Q. ARE YOU FAMILIAR WITH THE DOMAIN NAME BY THE
4 NAME OF WWW.KIDS.US?

5 A. YES, I AM.

6 Q. HOW MANY WEBSITES ARE ON THAT DOMAIN?

7 A. 22 LISTED, BUT THEY DON'T ALL WORK.

8 Q. DURING YOUR TESTING, DID YOU INSTALL FILTERS ON
9 COMPUTERS THAT YOU USED AT CRA?

10 A. YES, I DID. AS PART OF THE PROCESS WE HAD TO
11 INSTALL ALL THE FILTERS.

12 Q. FROM THAT PROCESS, DID YOU REACH A CONCLUSION AS
13 TO WHETHER THE OPERATIONS OF THE FILTERS HAD AFFECTED
14 THE PROCESSING SPEED OF THE COMPUTER?

15 A. YES, I DID.

16 Q. WHAT IS THAT OPINION?

17 A. WITHOUT EXCEPTION, ALL THE COMPUTERS RAN SLOWER
18 WITH THE FILTERING SOFTWARE INSTALLED.

19 Q. CAN FILTERING SOFTWARE BE CIRCUMVENTED?

20 A. ON OCCASIONS.

21 Q. ARE THERE WEBSITES THAT PROVIDE INSTRUCTIONS ON
22 HOW TO DO THIS?

23 A. YES, THERE ARE.

24 Q. IS IT POSSIBLE TO REACH THESE WEBSITES EVEN WITH
25 FILTERING SOFTWARE ON?

1 A. YES, IT IS.

2 Q. HOW EASY WOULD YOU SAY IT IS TO FIND THESE TYPES
3 OF WEBSITES?

4 A. I DID SOME TESTS AND IT WAS NOT DIFFICULT AT
5 ALL.

6 Q. I WOULD LIKE TO TURN YOUR ATTENTION TO EXHIBIT
7 89, WHAT HAS BEEN MARKED AS EXHIBIT 89.

8 DO YOU RECOGNIZE THAT DOCUMENT?

9 A. YES, I DO.

10 Q. AND WHAT IS THAT?

11 A. IT WAS A DOCUMENT ON A WEBSITE THAT I FOUND BY
12 PUTTING IN A QUERY WITH THE FILTERING SOFTWARE ON AND I
13 QUERIED FOR -- A QUERY SUCH AS HOW TO DISABLE NET NANNY,
14 HOW TO DISABLE PARENTAL CONTROLS, AND THESE DOCUMENTS
15 CAME UP.

16 Q. IS THIS EXHIBIT A PRINTOUT OF THE PAGE THAT YOU
17 FOUND?

18 A. YES, IT IS.

19 Q. I WOULD LIKE TO TURN YOUR ATTENTION TO WHAT HAS
20 BEEN MARKED -- WE HAVE IT LISTED AS DEMONSTRATIVE
21 EXHIBIT NUMBER 3 IN YOUR PACKAGE THERE.

22 WHAT IS THIS EXHIBIT?

23 A. THIS IS THE FRONT PAGE OF A SITE CALLED
24 WWW.CEXX.ORG, AND IT WAS AS A RESULT OF PUTTING A QUERY
25 INTO A SEARCH ENGINE ON REQUESTING ON HOW TO DISABLE NET

1 NANNY.

2 MR. HANSEN: OBJECTION, YOUR HONOR. THE
3 DEMONSTRATIVE EXHIBIT, WHICH WAS NOT LISTED IN THE
4 DEFENDANT'S EXHIBIT LIST, DISCUSSES A TEST THAT MR.
5 MEWETT DID AFTER HIS DEPOSITION WAS CONCLUDED. HE WAS
6 -- ABOUT WHETHER CIRCUMVENTION CAN BE SUCCESSFUL OR NOT.
7 HE WAS SPECIFICALLY ASKED AT HIS DEPOSITION: HAVE YOU
8 DONE ANY TESTS ABOUT WHETHER CIRCUMVENTION CAN BE
9 SUCCESSFUL OR NOT? HE SAID, NO, I HAVE DONE NO TESTS.
10 NOW HE IS PURPORTING TO PROVIDE A DEMONSTRATIVE EXHIBIT
11 THAT ESSENTIALLY INCLUDES SUCH A TEST. IT IS WHOLLY AND
12 COMPLETELY BEYOND WHAT HE DID IN HIS REPORT AND BEYOND
13 WHAT HE TESTIFIED TO IN HIS DEPOSITION. WE OBJECT TO
14 THE USE OF THIS DEMONSTRATIVE EXHIBIT AND TO THIS
15 TESTIMONY.

16 THE COURT: BEAR WITH ME A MINUTE.

17 MR. HANSEN, WHAT ABOUT THE REBUTTAL
18 REPORT? DID THAT COVER IT?

19 MR. HANSEN: IT DID NOT, YOUR HONOR.

20 THE COURT: MR. MCELVAIN.

21 MR. MCELVAIN: YOUR HONOR, THERE WAS A
22 DISCUSSION IN MR. MEWETT'S INITIAL EXPERT REPORT OF HOW
23 TO CIRCUMVENT FILTERS AND HE DESCRIBED THIS PROCESS.
24 AND HE WAS ASKED IN HIS DEPOSITION --

25 THE COURT: WHERE IS IT IN HIS ORIGINAL

1 REPORT?

2 MR. MCELVAIN: I COULD FIND IT IN A
3 MOMENT.

4 THE COURT: MR. HANSEN DID NOT SAY HE DID
5 NOT DISCUSS IT AT HIS DEPOSITION.

6 MR. HANSEN: TO CLARIFY, YOUR HONOR, HE
7 DID DISCUSS THE SUBJECT OF CIRCUMVENTION IN HIS EXPERT
8 WITNESS REPORT. HE WAS THEN ASKED: DID YOU DO A TEST
9 TO DETERMINE WHETHER THE CIRCUMVENTION THAT YOU ARE
10 DISCUSSING WILL WORK OR WON'T WORK?

11 AND HE SAID: I HAVE NEVER DONE SUCH A
12 TEST.

13 THEY NOW PURPORT TO GIVE US THE RESULTS
14 OF SUCH A TEST AS A SO-CALLED DEMONSTRATIVE EXHIBIT.

15 MR. MCELVAIN: THIS IS FAIRLY WITHIN THE
16 SUBJECT OF THE CATEGORY OF MATERIAL THAT'S DISCUSSED IN
17 THE EXPERT REPORT. WE DISCUSSED THE ISSUE OF
18 CIRCUMVENTING FILTERS IN THE EXPERT REPORT. HE WAS
19 ASKED AT HIS DEPOSITION IF HE HAD PERSONALLY CONDUCTED
20 THIS TEST AND THE ANSWER AT THAT TIME WAS NO, THAT HE
21 HAD NOT. WE HAVE SINCE DONE THIS TESTING. IT IS FAIRLY
22 WITHIN THE RANGE OF THE MATERIAL THAT WAS THE SUBJECTS
23 THAT MR. MEWETT WAS PREPARED TO TESTIFY TO.

24 THE COURT: WELL, I STARTED OUT WITH A
25 CONCERN ABOUT THESE DEMONSTRATIVE EXHIBITS TO START

1 WITH, WHETHER THEY ARE EVIDENCE OR NOT EVIDENCE, WHETHER
2 THEY ARE IN THE RECORD OR NOT IN THE RECORD. NOW YOU
3 HAVE A DEMONSTRATIVE EXHIBIT THAT PURPORTS TO HAVE
4 SUBSTANTIVE EVIDENCE IN IT. I DON'T KNOW HOW THE
5 PLAINTIFFS CAN OBJECT TO AN EXHIBIT AT THE PRETRIAL
6 PROCESS OF LISTING OBJECTIONS TO EXHIBITS WHEN THERE IS
7 NO EXHIBIT.

8 MR. MCELVAIN: YOUR HONOR, WE ARE NOT
9 SUBMITTING THIS INTO THE RECORD. THIS IS SIMPLY MADE TO
10 DESCRIBE THE PROCESS THAT MR. MEWETT USED TO IDENTIFY
11 THE CIRCUMVENTION PROCESS.

12 MR. HANSEN: AT THE RISK OF REPEATING
13 MYSELF, IT IS A WHOLE NEW TEST THAT HE --

14 THE COURT: SLIPPERY SLOPE. IF WE
15 LETTING THINGS DONE AFTER-THE-FACT, THERE WILL NEVER BE
16 A LIMIT AS TO WHAT YOU CAN BRING IN HERE.

17 OBJECTION SUSTAINED.

18 EXCUSE ME. I GATHER FROM DISCUSSION OF
19 COUNSEL THAT THE CARRYING OUT OF THIS TEST, PURPORTED
20 CARRYING OUT OF THE TEST, AND THE CREATION OF THE
21 DEMONSTRATIVE EXHIBIT WAS NOT PROVIDED TO THE
22 PLAINTIFFS' SIDE OF THE CASE BEFORE TODAY.

23 MR. MCELVAIN: WE PROVIDED THIS
24 DEMONSTRATIVE ON SUNDAY, YOUR HONOR.

25 THE COURT: OKAY. IN THE MIDST OF THE

1 TRIAL. OKAY. THANK YOU.

2 BY MR. MCELVAIN:

3 Q. NOW, WE HAVE DISCUSSED WEBSITES THAT OFFER
4 INSTRUCTIONS ON HOW TO CIRCUMVENT FILTERS. DO FILTERING
5 SOFTWARE PROGRAMS TRY TO FIND AND BLOCK THESE TYPES OF
6 WEBSITES?

7 A. I DON'T KNOW WHETHER THEY ATTEMPT TO FIND AND
8 BLOCK THEM. THEY CERTAINLY DON'T SUCCESSFULLY BLOCK
9 THEM.

10 Q. IF I CAN TURN YOUR ATTENTION TO WHAT HAS BEEN
11 MARKED AS EXHIBIT 90.

12 DO YOU RECOGNIZE THIS EXHIBIT?

13 A. YES, I DO.

14 Q. AND WHAT IS IT?

15 A. IT WAS A RESULT OF, AGAIN, A QUERY THAT I PUT IN
16 TO IDENTIFY MEANS OF BLOCKING INTERNET CONTENT FILTERING
17 WHILST THE FILTERS WERE ACTUALLY ON.

18 Q. AND IS THIS A PRINTOUT OF A WEB PAGE THAT YOU
19 FOUND?

20 A. YES, IT IS.

21 Q. I TURN YOUR ATTENTION TO PAGE 2. IS THERE A
22 DISCUSSION OF WEB PROXIES ON THIS PAGE?

23 A. YES, THERE IS.

24 Q. WHAT IS A WEB PROXY SITE?

25 A. A WEB PROXY IN THIS CONTEXT IS A COMPUTER WHICH

1 SITS BETWEEN THE USER WANTING TO SURF THE WEB AND THE
2 PLACE WHERE THEY WANT TO GO.

3 SO JUST TO CLARIFY FOR AN EXAMPLE. IF
4 I'M AT HOME AND SITTING ON MY COMPUTER AND I WANT TO
5 ACCESS A PARTICULAR WEBSITE ON THE INTERNET, I CAN TYPE
6 IN THE DOMAIN AND THE CONTENT COMES DOWN TO MY COMPUTER.
7 A WEB PROXY EFFECTIVELY SITS BETWEEN THE TWO. SO IT
8 SITS BETWEEN MY COMPUTER AND THE ONE ON THE INTERNET
9 THAT HAS THE WEB PAGES. AND DEPENDING ON THE KIND OF
10 PROXY IT CAN DO DIFFERENT ACTIONS.

11 Q. AND WHAT IS A CGI PROXY?

12 A. A CGI PROXY IS A PARTICULAR KIND OF PROXY
13 SERVER, AND WHAT IT ATTEMPTS TO DO IS TO CHANGE PART OF
14 THE INDIVIDUAL'S IDENTITY WHEN TRYING TO ACCESS THAT
15 SITE. SO WHAT IT WILL GENERALLY TRY AND DO IS CHANGE
16 THE INTERNET PROTOCOL ADDRESS, WHICH IS A NUMBER
17 ASSOCIATED WITH THE DOMAIN NAME.

18 Q. IS IT POSSIBLE TO USE A CGI PROXY TO ATTEMPT TO
19 GET AROUND FILTERING SOFTWARE?

20 A. YES, IT IS QUITE SUCCESSFULLY.

21 Q. WHAT IS CACHE AS THAT TERM IS USED IN THE
22 CONTEXT OF THE WEB, C-A-C-H-E?

23 A. A CACHE IS A FEATURE THAT SEARCH ENGINES EMPLOY.
24 AND WHAT IT IS IS THE SEARCH ENGINE WILL OFTEN TAKE A
25 SNAPSHOT IN TIME, A FROZEN IMAGE OF A PAGE ON THE

1 INTERNET AND MAKE THAT FEATURE AVAILABLE TO SOMEBODY WHO
2 IS SURFING THE WEB.

3 Q. IS IT POSSIBLE TO USE THESE CACHE FEATURES TO
4 ATTEMPT TO GET AROUND FILTERS?

5 A. YES, IT IS.

6 Q. IF I CAN REFER YOUR ATTENTION TO WHAT HAS BEEN
7 MARKED AS EXHIBIT 86.

8 DO YOU RECOGNIZE THIS DOCUMENT?

9 A. YES, I DO.

10 Q. WHAT IS IT?

11 A. IT'S A PAGE FROM -- A SNAPSHOT PAGE OF A QUERY
12 THAT I PUT INTO GOOGLE.

13 Q. AND WHY DID YOU PUT THE QUERY INTO GOOGLE?

14 A. IT WAS TO ATTEMPT TO IDENTIFY WHETHER WITH NET
15 NANNY FILTER INSTALLED, I COULD BYPASS THE FILTERING BY
16 USING THE CACHE FUNCTION WITHIN GOOGLE.

17 Q. AND COULD YOU?

18 A. YES, I CAN. AND I CAN DESCRIBE HOW IT WORKS, IF
19 YOU WISH.

20 Q. PLEASE DO SO.

21 A. OKAY. WHAT HAPPENS INITIALLY, THE FIRST SCREEN
22 IS A RESULT OF NET NANNY'S FILTER BEING ON AND SWITCHED
23 SO THAT -- OR SELECTED SO THAT IT SHOULD BE BLOCKING
24 ADULT CONTENT, OR SEXUALLY EXPLICIT CONTENT. THE TERM
25 THAT HAS BEEN PUT INTO THE GOOGLE SEARCH BOX IS BOOBS.

1 AND ONE OF THE RESULTS AT THE BOTTOM OF THIS PAGE IS A
2 SITE CALLED JUICYBOOBS. AND IF WE GO TO THE NEXT PAGE,
3 CLICKING ON THE LINK OF JUICYBOOBS, IT ACTUALLY SHOWS US
4 A PAGE TO SHOW THAT IN FACT NET NANNY HAS BLOCKED THAT
5 PAGE. SO NET NANNY IN THAT CASE IS WORKING CORRECTLY.

6 IF WE GO TO THE NEXT IMAGE, IT'S
7 IDENTICAL TO THE FIRST ONE, EXCEPT THAT RIGHT AT THE
8 BOTTOM --

9 Q. RIGHT AT THE BOTTOM OF WHAT ARE WE REFERRING TO?

10 A. OF THE PAGE OF RESULTS.

11 THE COURT: PAGE 0003?

12 THE WITNESS: THAT'S CORRECT, YOUR HONOR.

13 BY MR. MCELVAIN:

14 Q. ARE WE REFERRING TO A WEB PAGE FROM THE GOOGLE
15 SEARCH?

16 A. THAT'S RIGHT.

17 Q. AND THEN WHAT HAPPENS NEXT IN THIS PROCESS?

18 A. WHAT HAPPENS NEXT IS THAT RATHER THAN CLICK ON
19 THE LINK THAT TAKES US TO THE WEBSITE WHICH WE DID
20 EARLIER AND WAS BLOCKED, I CLICKED ON THE LINK MARKED
21 CACHE INSTEAD. NOW, WHAT HAPPENS THEN IS THE NEXT PAGE
22 ACTUALLY APPEARS.

23 Q. I'M SORRY. PLEASE TAKE THAT DOWN FROM THE
24 MONITOR. WE WILL PROCEED WITH THE PAPER.

25 A. THEN IT APPEARS WITH SEXUALLY EXPLICIT CONTENT.

1 Q. SO THIS NEXT PAGE THAT IS MARKED 0004 AT THE
2 BOTTOM, WHAT ARE -- IS THIS THE RESULT OF ATTEMPTING TO
3 REACH THIS CACHED PAGE FROM GOOGLE?

4 A. YES, IT IS. WHAT IT HAS DONE IS, THE USER ON
5 THE MACHINE WHICH WAS ME AT THE TIME IS NOW ABLE TO VIEW
6 THE PAGE FROM THE WEBSITE WHICH WAS PREVIOUSLY BLOCKED.
7 THIS IS A CACHED PAGE, WHICH MEANS THAT IT'S NOT THE
8 MOST RECENT PAGE THAT THE WEBSITE HAS ON ITS SITE. IT'S
9 A SNAPSHOT WHICH COULD BE ANYTHING FROM A FEW DAYS TO A
10 FEW MONTHS OLD, DEPENDING ON WHEN THE SEARCH ENGINE LAST
11 INDEXED IT. BUT THE PAGE IS COMPLETE IN ITS ENTIRETY.

12 Q. AND WAS THE FILTER ON WHEN YOU ACCESSED THIS
13 PAGE?

14 A. YES, IT WAS.

15 Q. WHY WOULD A FILTER BE ABLE TO SUCCESSFULLY
16 FILTER THE MAIN CONTENT OF THE WEB PAGE BUT NOT THE
17 CACHED WEB PAGE?

18 A. WELL, WHEN -- IF A PAGE IS BEING BLOCKED BY A
19 CONTENT FILTER BY USE OF A BLACK LIST, THEN -- AND IN
20 THIS CASE THE DOMAIN NAME WOULD HAVE BEEN
21 JUICYBOOBS.COM, THEN THOSE WORDS WOULD HAVE BEEN IN THE
22 BLACK LIST AND WHEN I ATTEMPTED TO VIEW THE SITE WITH
23 NET NANNY ON, THE NET NANNY WOULD HAVE SAID, THIS IS IN
24 THE BLACK LIST, IT'S THE WRONG PLACE, YOU CAN'T GO
25 THERE, AND, THEREFORE, IT WOULD HAVE JUST BLOCKED ME

1 IMMEDIATELY.

2 WHEN GOOGLE HOLDS A CACHED PAGE, THEY
3 DON'T HOLD IT ON ITS DOMAIN NAME. THEY HOLD IT ON THEIR
4 OWN SITE. SO IN FACT THIS NOW IS NOT ON JUICYBOOBS.
5 IT'S ACTUALLY STORED IN AN ARCHIVE AREA ON GOOGLE'S OWN
6 ARCHIVE SITE. SO NOW THIS PAGE DOES NOT HAVE A DOMAIN
7 NAME OF JUICYBOOBS.COM, IT ACTUALLY HAS AN IP ADDRESS.
8 AND IF I LOOK AT THE TOP IN THE BAR HERE, IT IS ACTUALLY
9 HTTP 7214207. IT'S THE NUMBER OF THE SERVER WHERE
10 THEY'VE GOT IT INSTALLED. BECAUSE THIS IS NOT NOW IN
11 THE BLACK LIST, THE BLACK LIST ALLOWS IT THROUGH AND THE
12 ONLY REASON THIS PAGE COULD EVER NOW GET FILTERED IS IF
13 IT WAS BEING PASSED BY THE DYNAMIC FILTERING. SO WHAT
14 WE HAVE TO ASSUME FROM HERE IS, THE DYNAMIC FILTERING
15 HAS FAILED TO BLOCK THIS PAGE, AND THE BLACK LIST HAS
16 BEEN BYPASSED BY ACCESSING IT THROUGH A CACHE PAGE.

17 Q. WHAT ARE TRANSLATION TOOLS IN THE CONTEXT OF THE
18 WORLDWIDE WEB?

19 A. THERE ARE A NUMBER OF WEBSITES ON THE WEB WHERE
20 AS A RESOURCE TO SOMEBODY SURFING THE WEB, YOU CAN GO TO
21 A PAGE AND TYPE IN A WORD OR A PHRASE OR A PARAGRAPH OR
22 SO IN A PARTICULAR LANGUAGE, AND THEN SELECT THAT YOU
23 WANT TO TRANSLATE THAT FROM A LANGUAGE INTO ANOTHER
24 LANGUAGE. AND THE PAGE WILL DO ITS BEST ENDEAVORS TO
25 ATTEMPT TO TRANSLATE THAT PAGE INTO THE NEW LANGUAGE.

1 THE COURT: YOU ARE NOT TALKING ABOUT
2 COMPUTER LANGUAGE? YOU ARE TALKING ABOUT --

3 THE WITNESS: VOCABULARY LANGUAGE.
4 TRANSLATION ENGLISH TO FRENCH OR SOMETHING LIKE THAT.
5 BY MR. MCELVAIN:

6 Q. IS IT POSSIBLE TO USE THESE TRANSLATION TOOLS TO
7 GET AROUND FILTERS?

8 A. YES, IT IS.

9 Q. IF I CAN TURN YOUR ATTENTION TO WHAT HAS BEEN
10 MARKED AS EXHIBIT 87.

11 DO YOU RECOGNIZE THAT EXHIBIT?

12 A. YES, I DO.

13 Q. AND WHAT IS IT?

14 A. IT'S ACTUALLY THE TRANSLATION PAGE FROM GOOGLE.
15 I CAN DESCRIBE WHAT'S ON THE PAGE AND BRIEFLY HOW IT
16 WORKS.

17 Q. PLEASE DO SO.

18 A. OKAY. THE PAGE HAS A NUMBER OF BOXES ON IT.
19 THE SECOND BOX DOWN IS THE BOX YOU TYPE IN WHAT YOU WANT
20 TO HAVE TRANSLATED, THE TEXT YOU WANT TO TRANSLATE.

21 THE BOX ABOVE IT IS WHERE THE TRANSLATION
22 INTO THE NEW LANGUAGE WILL APPEAR. AND UNDERNEATH THE
23 SECOND BOX DOWN, THERE IS A BOX WHICH ACTUALLY SAYS WHAT
24 LANGUAGE DO YOU WANT TO TRANSLATE FROM AND WHAT LANGUAGE
25 DO YOU WANT TO TRANSLATE TO.

1 SO IN THIS CASE, I HAVE TYPED IN A NUMBER
2 OF TERMS INTO THE TRANSLATION BOX WHICH HAVE A SEXUAL
3 INNUENDO, AND THEN PUSHED -- SELECTED TRANSLATION FROM
4 ENGLISH TO KOREAN. AND I THEN CLICKED THE TRANSLATE
5 BUTTON. AND THE TOP WIDOW NOW HAS WHAT I'M TOLD BY
6 GOOGLE, BECAUSE MY KOREAN IS NOT VERY GOOD, THAT THAT IS
7 A TRANSLATION OF THOSE SEXUAL TERMS.

8 Q. THEN WHAT WOULD HAPPEN NEXT, IF YOU WERE USING
9 THOSE TERMS?

10 A. IF I WAS USING THOSE TERMS TO ATTEMPT TO BYPASS
11 FILTERING SOFTWARE, WHAT I WOULD THEN DO IS TAKE THE
12 KOREAN TERMS AND SELECT THEM, COPY THEM AND PASTE THEM
13 STRAIGHT INTO GOOGLE'S SEARCH BOX, AS IF I WAS TYPING IN
14 A QUERY IN THE NORMAL WAY. BUT WHAT I'M NOW ASKING
15 GOOGLE TO DO IS TO GO AND FIND CONTENT IN ITS INDEX
16 WHICH HAS THESE KOREAN CHARACTERS IN IT. AND SO THIS IS
17 WHAT I DID. AS YOU CAN SEE ON THE SCREEN, I HAVE PASTED
18 IN THE KOREAN TRANSLATION AND UP HAS COME A PAGE WITH
19 VARIOUS RESULTS ON IT WITH THIS PARTICULAR PHRASE IN
20 KOREAN IN THE CONTENT.

21 I THEN CLICKED ON THE LINK THAT IS
22 CIRCLED ON THE SCREEN, AND IT TOOK ME TO A PAGE WITH
23 ADULT CONTENT IMAGES ON IT, ALTHOUGH THE TEXT ON THE
24 PAGE IT TOOK ME TO WAS STILL IN KOREAN.

25 Q. AND WAS THIS PROCESS PERFORMED WITH THE FILTER

1 ON?

2 A. THIS PROCESS WAS PERFORMED WITH THE FILTER ON,
3 YES.

4 Q. ARE RESIDENTIAL FILTERING PRODUCTS SIMILAR TO
5 ENTERPRISE FILTERING PRODUCTS?

6 A. THE GENERAL CONCEPT IS THE SAME. THEY HAVE TO
7 USE BLACK LISTS AND DYNAMIC PARSING, YES.

8 Q. WHAT IS AN ENTERPRISE FILTERING PRODUCT, I
9 SHOULD SAY FIRST?

10 A. AN ENTERPRISE PRODUCT WOULD BE THE KIND OF
11 PRODUCT THAT A LARGE CORPORATION WOULD INVEST IN TO
12 CONTROL CONTENT TO THEIR EMPLOYEES.

13 Q. ARE THERE DIFFERENCES IN THE TYPE OF HARDWARE
14 THAT WOULD BE REQUIRED FOR AN ENTERPRISE PRODUCT AS
15 OPPOSED TO A RESIDENTIAL PRODUCT?

16 A. MOST DEFINITELY.

17 Q. WHAT ARE THOSE DIFFERENCES?

18 A. IF WE LOOK AT THE SITUATION, A HOME USER COULD
19 HAVE ANY NUMBER OF DIFFERENT KINDS OF MACHINES,
20 DIFFERENT KINDS OF SOFTWARE AND DIFFERENT AGES OF THE
21 MACHINES. IN A CORPORATE CLIENT, THIS PROCESS IS MUCH
22 MORE LIKELY TO BE CONTROLLED AND THE MACHINES WILL BE OF
23 SPECIFIC TYPES, THEY WILL HAVE VERY CONTROLLED CONTENT
24 ON THEM. I THINK WE'VE ALL WORKED IN COMPANIES WHERE
25 YOU CAN'T INSTALL THINGS ON YOUR OWN AND YOU DAREN'T.

1 THE SYSTEMS ADMINISTRATOR INSTALLS THINGS ON YOUR
2 MACHINE POSSIBLY. THE CORPORATION GENERALLY HAS
3 HIGH-QUALITY FAIRLY EXPENSIVE INFRASTRUCTURE IN PLACE,
4 AND THESE THINGS REALLY DO DIFFERENTIATE THE HOME USER
5 ENVIRONMENT FROM THE CORPORATION ENVIRONMENT.

6 Q. DO ENTERPRISE FILTERS USE PROXY SERVERS?

7 A. YES, THEY DO, AS ONE OF THEIR COMPONENTS THEY
8 DO.

9 Q. WHAT IS A PROXY SERVER?

10 A. WELL, THE PROXY SERVER IN THIS CASE IS STILL AS
11 I DESCRIBED EARLIER A COMPUTER THAT SITS IN THE WAY OF A
12 PERSON WANTING TO DO THE WORK AND THE MACHINE WITH THE
13 CONTENT. BUT THE WHOLE IDEA IN THIS CASE IS, IF I AM A
14 USER AND ON THE OTHER SIDE OF THE ROOM THERE IS THE
15 MACHINE WITH THE INFORMATION I WANT TO ACCESS, THE PROXY
16 SERVER SITS IN THE WAY. IT INTERCEPTS ALL MY TRAFFIC.
17 SO IF I REQUEST SOMETHING OF THAT MACHINE, A PARTICULAR
18 WEB PAGE, IT GOES THROUGH THE PROXY SERVER, AND THEN IT
19 CARRIES ON GOING TO THE OTHER MACHINE. AND WHEN IT
20 COMES BACK, IT COMES BACK TO THE PROXY SERVER AND THEN
21 BACK TO ME. SO THIS MACHINE ACTUALLY IS NOW ABLE TO
22 UNDERSTAND EVERYTHING I ASKED FOR, AND EVERYTHING I'M
23 RETURNED.

24 Q. CAN RESIDENTIAL USERS BUY PROXY SERVERS?

25 A. THEY COULD. PROXY SERVERS FALL INTO A NUMBER OF

1 DIFFERENT AREAS. CORPORATIONS WOULD USE PHYSICAL
2 COMPUTERS WITH FAST PROXY SERVER SOFTWARE ON THEM, AND
3 THIS WOULD BE POSSIBLY PROHIBITIVE TO HOME USERS. THE
4 EXPENSE IS QUITE HIGH. SO HOME USERS WOULD PROBABLY BE
5 RESTRICTED BY COST, BUT THEY COULD BUY THEM IF THEY
6 WISHED.

7 Q. DO INSTITUTIONS THAT USE ENTERPRISE FILTERS HAVE
8 -- TYPICALLY HAVE TECHNICIANS ASSIGNED TO OPERATE THOSE
9 FILTERS?

10 A. THESE ENVIRONMENTS WOULD GENERALLY BE --
11 ENTERPRISE SOLUTIONS WOULD GENERALLY BE INSTALLED INTO
12 CORPORATIONS, AND THEREFORE THERE WOULD GENERALLY BE
13 SYSTEMS ADMINISTRATOR PEOPLE WHO ARE TECHNICALLY
14 QUALIFIED TO LOOK AFTER THE SYSTEMS AND TECHNICALLY
15 AWARE.

16 Q. DOES THAT HAVE AN EFFECT ON THE OPERATIONS OF
17 THE FILTERING SOFTWARE?

18 A. IT DOES MEAN THAT THE FILTERING SOFTWARE CAN BE
19 SLIGHTLY MORE COMPLICATED BECAUSE THERE IS AN INDIVIDUAL
20 THERE WITH TECHNICAL KNOWLEDGE THAT CAN CONFIGURE THEM
21 IN A VERY PARTICULAR WAY. IF YOU TAKE AWAY THE PERSON
22 WITH TECHNICAL KNOWLEDGE, THEN YOU HAVE TO IMMEDIATELY
23 MAKE THE SOFTWARE MUCH MORE FAMILIAR TO SOMEBODY WITHOUT
24 TECHNICAL ADVANTAGE.

25 Q. HAVE YOU HEARD OF A COMPANY CALLED RULESPACE,

1 R-U-L-E-S-P-A-C-E?

2 A. YES, I HAVE.

3 Q. ARE YOU AWARE THAT THEY OFFER A PRODUCT THAT
4 PURPORTS TO IDENTIFY CONTENT ON THE WORLDWIDE WEB?

5 A. YES, I AM.

6 Q. AND ARE YOU AWARE WHETHER THEY HAVE MADE ANY
7 CLAIMS AS TO THE EFFECTIVENESS OF THEIR PRODUCT?

8 A. I HAVE SEEN A CLAIM THAT THEIR PRODUCT WAS --
9 HAD A VERY HIGH PERCENTAGE EFFECTIVENESS.

10 Q. DO YOU HAVE AN OPINION REGARDING THAT CLAIM?

11 A. WELL, CERTAINLY, IT WAS INCREDIBLY HIGH.

12 MR. HANSEN: OBJECTION. IT WAS A YES/NO
13 QUESTION. THERE HAS BEEN NO FOUNDATION FOR A
14 SUBSTANTIVE ANSWER.

15 THE COURT: WE WANT TO KNOW WHERE HE GOT
16 THAT INFORMATION TO RELY ON. SUSTAINED. LAY A
17 FOUNDATION, PLEASE.

18 BY MR. MCELVAIN:

19 Q. IN YOUR WORK AS AN IT TECHNICIAN, DO YOU HAVE
20 THE OCCASION TO EVALUATE CLAIMS MADE BY CERTAIN VENDORS
21 AS TO THE EFFICACY OF THEIR PRODUCTS?

22 A. I HAVE DONE IN THE PAST, YES.

23 Q. DO YOU HAVE AN OPINION HAS TO CLAIMS MADE
24 GENERALLY BY VENDORS REGARDING THEIR OWN PRODUCTS?

25 A. YES, ON OCCASIONS.

1 Q. AND REGARDING PARTICULARLY THE WEIGHT THAT
2 SHOULD BE GIVEN TO THOSE TYPES OF CLAIMS?

3 A. IT'S VERY EASY TO SEE STATISTICS ON MARKETING
4 MATERIAL. INFORMATION IS OFTEN PUT OUT ON MARKETING
5 MATERIAL THAT DOES SEEM A LITTLE ABSTRACT. IT SEEMS
6 UNREALISTIC SOMETIMES.

7 Q. REGARDING RULESPACE'S CLAIM IN PARTICULAR, HAVE
8 YOU REVIEWED ANY DOCUMENTS FROM RULESPACE REGARDING WHAT
9 THEIR PARTICULAR CLAIM OF EFFECTIVENESS WOULD BE?

10 A. YES, I HAVE. I'VE READ THE RULESPACE
11 DOCUMENTATION.

12 Q. IN YOUR EXPERIENCE, HAVE YOU FORMED AN OPINION
13 REGARDING THE WAY THAT RULESPACE CAME ABOUT TO MAKE THAT
14 CLAIM?

15 A. RULESPACE CLAIM A VERY HIGH PERCENTAGE OF
16 SUCCESS WITH THEIR FILTERING, BUT IN READING HOW, WITHIN
17 THEIR DOCUMENTATION, THEY ARRIVED AT THIS FIGURE, IT
18 WOULD SEEM TO ME THAT THE DATASET THEY WERE TESTING
19 AGAINST WAS A CONTROLLED SET. AND SO WITH A CONTROLLED
20 SET RATHER THAN A RANDOM SET OF DATA, ONE COULD CONTRIVE
21 ANY STATISTICS ONE WANTS TO.

22 Q. HAVE YOU TESTED FILTERING SOFTWARE PROVIDED BY
23 RULESPACE?

24 A. I HAVE TESTED FILTERING SOFTWARE THAT USES
25 RULESPACE TECHNOLOGY.

1 Q. WHICH SOFTWARE IS THAT?

2 A. I TESTED VERIZON SOFTWARE.

3 Q. AND WHAT DID YOUR TESTS DETERMINE WITH REGARD TO
4 THAT SOFTWARE?

5 A. I DID THE TESTS, AND I DETERMINED THAT THE LEVEL
6 OF UNDERBLOCKING AND OVERBLOCKING WERE WITHIN THE SAME
7 BOUNDARIES AS THOSE TESTS I HAD DONE ON THE PREVIOUS
8 PRODUCTS I HAD TESTED. THEY CERTAINLY WERE NOT ANYWHERE
9 NEAR THE LEVEL OF UNDERBLOCKING THAT RULESPACE WAS
10 DECLARING THE PRODUCT WOULD DO.

11 Q. IF I CAN TURN YOUR ATTENTION TO WHAT HAS BEEN
12 MARKED AS EXHIBIT 83, SPECIFICALLY TO PAGE 8 AND PAGE 9.

13 THE COURT: DEFENDANTS 83?

14 MR. MCELVAIN: DEFENDANT'S 83.

15 BY MR. MCELVAIN:

16 Q. DOES THIS DOCUMENT REFRESH YOUR RECOLLECTION OF
17 WHAT THE PARTICULAR RESULTS WERE FOR THE VERIZON
18 SOFTWARE TESTING FOR THE THREE DIFFERENT TYPES OF
19 DATASETS THAT YOU USED?

20 A. YES, IT DOES.

21 Q. WHAT WERE THE RESULTS FOR YOUR TESTING OF
22 VERIZON FOR THE WEB PAGES DRAWN FROM THE SEARCH ENGINE
23 INDICES?

24 A. FOR THE WEB PAGES FROM THE SEARCH ENGINE INDICES
25 THE VERIZON SOFTWARE FAILED TO BLOCK 41.8 PERCENT OF THE

1 CONTENT FOR THE GOOGLE SEARCH ENGINE RESULTS AND 40.3
2 PERCENT WHEN REFERRING TO THE MSN RESULTS. READ ANOTHER
3 WAY, THAT IS EFFECTIVELY A 60 PERCENT EFFICIENCY.

4 Q. AND DID YOU REACH CONCLUSIONS AS TO WHETHER THE
5 VERIZON SOFTWARE OVERBLOCKED THE CLEAN PAGES FROM THESE
6 SETS OF WEB PAGES?

7 A. OVERBLOCKING WAS BETWEEN -- WAS 5.7 PERCENT WITH
8 THE DATA FROM MSN AND 9.4 PERCENT OVERBLOCKING WITH THE
9 DATA FROM GOOGLE.

10 Q. FROM THE NEXT SET OF DATA WHICH WAS THE WEB
11 PAGES DRAWN FROM THE QUERIES ON SEARCH ENGINES, WHAT DID
12 YOUR TESTING SHOW WITH REGARD TO HOW VERIZON PERFORMS IN
13 TERMS OF BLOCKING WEB PAGES THAT WERE IDENTIFIED AS
14 ADULT IN THAT DATASET?

15 A. IT IDENTIFIED THAT 23.1 PERCENT OF THE URLS WERE
16 NOT BLOCKED.

17 Q. AND WHAT DID IT CONCLUDE WITH REGARD TO
18 OVERBLOCKING OF CLEAN PAGES IN THIS DATASET?

19 A. THERE WAS AN OVERBLOCKING RATE OF 1.3 PERCENT.

20 Q. TURNING TO THE THIRD SET WHICH WAS THE
21 WORDTRACKER SET -- OR I'M SORRY, THE WEB PAGES THAT WERE
22 DRAWN FROM THE WORDTRACKER QUERIES, WHAT DID YOUR STUDY
23 CONCLUDE WITH REGARD TO THE PERFORMANCE OF VERIZON ON
24 THOSE WEB PAGES?

25 A. IT CONCLUDED THAT 4.4 PERCENT OF THE CONTENT WAS

1 UNDERBLOCKED.

2 Q. AND WHAT DID IT CONCLUDE WITH REGARD TO
3 OVERBLOCKING OF THE CLEAN PAGES IN THAT DATASET?

4 A. THERE WAS A 16.1 PERCENT OVERBLOCKING RATE.

5 Q. YOU'VE HEARD OF THE OPERATING SYSTEM CALLED
6 VISTA THAT IS PROPOSED BY MICROSOFT?

7 A. YES, I HAVE.

8 Q. DO YOU KNOW HOW THAT FILTERING SOFTWARE WOULD
9 -- I'M SORRY.

10 DID VISTA OFFER FILTERING SOFTWARE AS
11 PART OF ITS PACKAGE?

12 A. YES, IT DOES. IT'S IN THE OPERATING SYSTEM AT
13 THE MOMENT, AND IT'S STILL IN BETA RELEASE, BUT IT DOES
14 ACTUALLY OFFER A FEATURE OF BEING ABLE TO FILTER CONTENT
15 WITHIN ITS OWN OPERATING SYSTEM.

16 Q. DO YOU HAVE AN OPINION AS TO WHETHER VISTA WILL
17 EFFECTIVELY FILTER CONTENT ON THE WORLDWIDE WEB?

18 A. YES, I DO.

19 Q. WHAT IS THAT OPINION?

20 A. MY OPINION IS THAT THE -- FIRST OF ALL, I HAVE
21 LOOKED AT THE BETA RELEASE OF VISTA.

22 MR. HANSEN: OBJECTION, YOUR HONOR.
23 THERE IS NOTHING IN HIS REPORT SUGGESTING HE LOOKED AT
24 THE BETA VERSION OF VISTA. THIS IS THE FIRST WE HEARD
25 OF THIS.

1 MR. MCELVAIN: YOUR HONOR, THE BETA
2 RELEASE ONLY CAME OUT VERY RECENTLY.

3 THE COURT: THAT IS NOT EVEN IN THE
4 RECORD. DID YOU SHARE ANY SUBSEQUENT OPINION OF THIS
5 WITNESS WITH THE PLAINTIFFS?

6 MR. MCELVAIN: NO, YOUR HONOR.

7 THE COURT: DOES THE PLAINTIFF HAVE AN
8 EXPERT THAT REVIEWED BETA OF VISTA?

9 MR. HANSEN: WE DO NOT, YOUR HONOR. WE
10 HAD -- DR. CRANOR TESTIFIED THAT SHE HAD SPOKEN TO THE
11 MICROSOFT PEOPLE ABOUT HOW THE VISTA OPERATING SYSTEM
12 WAS GOING TO WORK AND HOW THE PARENTAL CONTROLS WERE
13 GOING TO WORK THROUGH VISTA. SHE DID NOT DISCUSS ANY
14 TESTS THAT HAD BEEN DONE EITHER BY MICROSOFT OR BY
15 HERSELF ABOUT THE EFFECTIVENESS OF THE VISTA PRODUCT.

16 THE COURT: MR. MCELVAIN, WHY SHOULD YOU
17 BE ABLE TO BRING THIS IN WITHOUT DISCLOSING IT EITHER IN
18 THE EXPERT REPORT, JUST BECAUSE -- I'M NOT ANNOYED OR
19 ANYTHING LIKE THAT -- BECAUSE IT CAME OUT RECENTLY,
20 WHATEVER THAT MEANS. WHY SHOULD YOU BE ABLE TO BRING
21 THIS BEFORE THE COURT IN THIS FASHION?

22 MR. MCELVAIN: IT WOULD NOT HAVE BEEN IN
23 THE INITIAL REPORTS BECAUSE THERE WAS NO VERSION OF THE
24 VISTA PRODUCT AVAILABLE TO LOOK AT, TO STUDY UNTIL -- I
25 DON'T KNOW EXACTLY, I DON'T WANT TO MISSTATE, BUT I

1 BELIEVE WITHIN THE LAST MONTH OR SO.

2 THE COURT: I CERTAINLY WOULDN'T KNOW,
3 YOU DON'T HAVE ANY DIRECT -- YOU ARE NOT INVOLVED WITH
4 VISTA, SO YOU DON'T KNOW WHEN IT CAME OUT.

5 MR. MCELVAIN: IT ACTUALLY HAS NOT COME
6 OUT FOR RESIDENTIAL USE YET.

7 THE COURT: I MEANT THE BETA VERSION OR
8 ANY VERSION.

9 MR. MCELVAIN: THAT'S CORRECT, YOUR
10 HONOR.

11 THE COURT: OBJECTION SUSTAINED. STRIKE
12 OUT THE QUESTION AND THE ANSWER.

13 BY MR. MCELVAIN:

14 Q. I BELIEVE WE DISCUSSED THIS PREVIOUSLY, BUT TO
15 REMIND US, WHAT IS HYPERTEXT TRANSFER PROTOCOL?

16 A. HYPERTEXT TRANSFER PROTOCOL OR HTTP IS THE
17 PROTOCOL BY WHICH HYPERLINKS ARE GOVERNED AS THEY
18 CONNECT EITHER INTERCONNECTED PAGES OR PARTS OF PAGES ON
19 THE WEB.

20 Q. IS THAT PROTOCOL USED ON THE WORLDWIDE WEB?

21 A. YES, IT IS.

22 Q. WHAT IS FILE TRANSFER PROTOCOL?

23 A. FILE TRANSFER PROTOCOL OR FTP IS A PROTOCOL THAT
24 IS ACTUALLY USED PREDOMINANTLY FOR TRANSFERRING OF FILES
25 BETWEEN FILE TRANSFER PROTOCOL SERVERS AND CLIENT

1 MACHINES.

2 Q. WHY DO THESE TWO PROTOCOLS EXIST?

3 A. BECAUSE BOTH TASKS ARE QUITE DIFFERENT AND OFFER
4 UP THEIR OWN CHALLENGES. SO A PROTOCOL HAS BEEN DERIVED
5 FOR EACH ONE SO THAT EACH OPERATES AT ITS MAXIMUM
6 EFFICIENCY.

7 Q. IS IT POSSIBLE FOR THE OPERATOR OF AN ADULT
8 WEBSITE TO CONVERT THAT SITE TO BE DELIVERED OVER THE
9 FTP PROTOCOL?

10 A. IT'S CERTAINLY POSSIBLE.

11 Q. DO YOU HAVE AN OPINION AS TO WHETHER ADULT
12 WEBSITE OPERATORS WOULD BE LIKELY TO SWITCH THEIR
13 WEBSITES TO FTP?

14 MR. HANSEN: OBJECTION, SPECULATION.

15 THE COURT: SUSTAINED. LAY THE
16 GROUNDWORK FOR IT.

17 BY MR. MCELVAIN:

18 Q. IN YOUR WORK, HAVE YOU STUDIED THE OPERATIONS OF
19 ADULT WEBSITES?

20 A. YES, I HAVE.

21 Q. AND HAVE YOU STUDIED THE TYPES OF FILES THAT
22 ADULT WEBSITE OPERATORS PLACE ON THOSE WEBSITES?

23 A. YES, I HAVE.

24 Q. HAVE YOU STUDIED THE MANNERS IN WHICH ADULT
25 WEBSITES SEEK TO GATHER TRAFFIC TO THOSE SITES?

1 A. YES.

2 Q. ON THE BASIS OF THOSE STUDIES, DO YOU HAVE AN
3 OPINION AS TO WHETHER THERE ARE CERTAIN FACTORS THAT
4 WOULD BE RELEVANT AS TO WHICH PROTOCOL AN ADULT WEBSITE
5 OPERATOR WOULD CHOOSE TO USE TO DELIVER THEIR CONTENT?

6 A. YES, I DO.

7 Q. WHAT IS THAT OPINION?

8 A. MY OPINION IS THAT WEBSITES EXIST ON THE HTTP
9 PROTOCOL FOR A NUMBER OF REASONS, BUT ONE OF THEM IS
10 THAT IT'S THE PLACE WHERE WEBSITES ARE EXPECTED TO BE
11 FOUND. AND SO BY DEFINITION, IT'S THE PLACE WHERE
12 SEARCH ENGINES LOOK FOR WEBSITES TO INDEX THEM. SO IF
13 YOU MOVED A WEBSITE AWAY FROM THE HTTP PROTOCOL FOR ANY
14 REASON, THERE IS A STRONG LIKELIHOOD THAT SEARCH ENGINES
15 AND ANY TRAFFIC FROM SEARCH ENGINES WOULD BE MISSED.

16 Q. WHAT IS A PORT AS THAT TERM IS USED IN THE
17 CONTEXT OF COMPUTERS?

18 A. A PORT -- A PORT AS FAR AS COMPUTERS ARE
19 CONCERNED IS LIKE AN IMAGINARY CHANNEL OR AREA OF
20 CONNECTION ONTO A COMPUTER. WITHOUT GETTING TOO
21 TECHNICAL, IT'S A LITTLE LIKE SAYING A COMPUTER CAN
22 CONNECT TO, FOR INSTANCE, THE INTERNET BY A NUMBER OF
23 DIFFERENT PORTS OR CHANNELS OR PROTOCOLS, AND EACH ONE
24 OF THESE PORTS HAS A NUMBER. SO THEY ARE NOT PHYSICAL
25 ITEMS, BUT THEY ARE SOMETHING THAT A PROGRAMMER CAN

1 ADDRESS PORT 80 OR PORT SOMETHING. AND WHEN COMPUTERS
2 TALK TO EACH OTHER, THEY TALK ACROSS OR TOGETHER BY
3 DIFFERENT PORTS. SO IF TWO COMPUTERS ARE TALKING OVER
4 HTTP ON THE INTERNET, THEY WOULD GENERALLY TALK OVER
5 PORT 80. THAT IS PART OF THE PROTOCOL. SO ONE OF THE
6 REASONS FOR HAVING THESE PORTS IS TO BE ABLE TO CONTROL
7 THE PROGRAMMING OF HOW COMPUTERS TALK TO EACH OTHER, BUT
8 THE OTHER ONE IS THAT YOU CAN SECURE A COMPUTER BY --
9 FROM HACKERS BY WHAT THEY CALL CLOSING DOWN PORTS OR
10 LOCKING PORTS TO STOP ANY TRAFFIC. THE REASON YOU DO
11 THIS IS, YOU SAY I'M ONLY GOING TO COMMUNICATE OVER HTTP
12 SO I ONLY NEED PORT 80 OPEN. I'M NOT GOING TO LET ANY
13 HACKERS COME IN ON ANY OTHER PORTS. THEREFORE YOU STAND
14 LESS LIKELIHOOD OF OBTRUSION OR OBTRUSIVE PEOPLE HACKING
15 YOUR MACHINE.

16 Q. ARE THERE PARTICULAR PORTS THAT ARE REQUIRED FOR
17 THE USE OF THE FTP PROTOCOL?

18 A. FTP OPERATES OVER 20 AND 21.

19 Q. AND DOES THE FACT THAT THESE PARTICULAR PORTS
20 ARE REQUIRED HAVE AN EFFECT ON THE COMMERCIAL VIABILITY
21 OF FTP AS A PROTOCOL?

22 A. IT COULD HAVE AN EFFECT INASMUCH AS IF AN
23 INDIVIDUAL WAS EXPECTING TO FIND WEBSITES ON HTTP, THEN
24 THERE IS NO REASON WHY THEY WOULD NOT LOCK DOWN THE REST
25 OF THEIR PORTS ON THEIR MACHINE. AND THEREFORE IF A

1 USER WERE TO MOVE A WEBSITE TO FTP WITHOUT ANY CHANGES,
2 THAT WEBSITE WOULD NOT BE ACCESSIBLE BECAUSE PORTS 20
3 AND 21 ARE NOW LOCKED DOWN.

4 Q. WHAT IS -- I'M SORRY. EXCUSE ME. WHAT ARE
5 EMBEDDED CGI SCRIPTS?

6 A. EMBEDDED CGI SCRIPTS ARE A PIECE OF CODE THAT
7 GETS EMBEDDED WITHIN A WEB PAGE. IT IS A PROCESS THAT
8 IS USED BY WEBSITE OPERATORS WHEN THEY NEED A WEB PAGE
9 TO COMMUNICATE WITH A SERVER ON THE WORLDWIDE WEB THAT
10 IS EXCHANGING INFORMATION. SO REGISTRATION INFORMATION,
11 PAYMENT INFORMATION, THESE KIND OF PROCESSES WHERE IF
12 YOU HAVE TO TAP SOMETHING INTO YOUR OWN SCREEN, AND THEN
13 YOU PUSH A BUTTON, IT GETS SENT TO ANOTHER MACHINE ON
14 THE WEB, GENERALLY SOMEWHERE IN THE BACKGROUND IS AN
15 EMBEDDED CGI SCRIPT RUNNING.

16 Q. CAN THESE TYPES OF SCRIPTS BE CONVERTED TO AN
17 FTP PAGE WITHOUT MODIFICATION?

18 A. THEY -- IF YOU MOVED A WEB PAGE TO AN FTP
19 SERVER, AND IT HAD AN EMBEDDED CGI SCRIPT ON IT, IT'S
20 UNLIKELY TO WORK IMMEDIATELY. THE AMOUNT OF WORK
21 REQUIRED IN REPROGRAMMING TO GET THAT TO WORK WILL
22 DEPEND ON HOW MUCH INFORMATION THE PERSON IS ATTEMPTING
23 TO SHARE AND ALSO WHAT KIND OF INFORMATION. IT'S
24 UNLIKELY TO WORK IMMEDIATELY, AND THEN THE AMOUNT OF
25 WORK IS DEPENDENT ON WHAT YOU ARE EXCHANGING.

1 THE COURT: EXCUSE ME, COUNSEL. WE ARE
2 GOING TO TAKE A TEN-MINUTE RECESS. WE ARE OFF THE
3 RECORD. COUNSEL ARE EXCUSED. 10 MINUTES, PLEASE.

4 (RECESS TAKEN.)

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

7 PROCEED, MR. MCELVAIN.

8 MR. MCELVAIN: THANK YOU, YOUR HONOR.

9 BY MR. MCELVAIN:

10 Q. CAN FINANCIAL INFORMATION BE PROCESSED THROUGH
11 THE USE OF THE FTP PROTOCOL?

12 A. IT CAN, BUT THE LIMITATIONS WOULD BE --
13 INITIALLY THE ONE I HAVE ALREADY DISCUSSED WITH CGI
14 SCRIPTS, BECAUSE THAT WOULD HAVE TO BE ADDRESSED AND THE
15 OTHER AREA WHICH WOULD HAVE TO BE ADDRESSED IS THE FTP
16 AS IT STANDS IS NOT A SECURE PROTOCOL. SO INFORMATION
17 IN STANDARD FTP IS ACTUALLY TRANSMITTED IN CLEAR. AND
18 THERE IS NO ENCRYPTION. SO THERE ARE WAYS TO ADDRESS IT
19 BUT THAT IS A PROBLEM FROM THE START.

20 Q. IN LIGHT OF THAT, DO YOU HAVE AN OPINION AS TO
21 WHETHER IT IS LIKELY THAT COMMERCIAL WEBSITES WOULD
22 CONVERT TO THE FTP PROTOCOL?

23 A. I THINK IT IS UNLIKELY BECAUSE I CAN'T SEE THE
24 ADVANTAGES BUT I CAN SEE A LOT OF HURDLES.

25 Q. WHAT IS PEER-TO-PEER DISTRIBUTION?

1 MR. HANSEN: OBJECTION. THIS IS NOT A
2 SUBJECT COVERED IN HIS EXPERT REPORT -- ANY OF HIS
3 EXPERT REPORTS.

4 THE COURT: MR. MCELVAIN.

5 MR. MCELVAIN: THIS WAS NOT ADDRESSED IN
6 HIS REPORT. IT IS LAYING FACTUAL BACKGROUND. WE ARE
7 NOT GOING TO BE VENTURING FARTHER INTO OPINION ON THIS.

8 THE COURT: FACTUAL BACKGROUND ON WHAT?

9 MR. MCELVAIN: WHAT IS PEER-TO-PEER
10 DISTRIBUTION, WHAT IS THAT PARTICULAR TECHNOLOGY.

11 THE COURT: OBJECTION IS SUSTAINED.

12 BY MR. MCELVAIN:

13 Q. MR. MEWETT, ARE YOU AWARE THAT PLAINTIFFS
14 PRESENTED THE TESTIMONY OF A WITNESS NAMED JONJIE SENA,
15 FROM AN ORGANIZATION CALLED ACECOMM, A-C-E-C-O-M-M,
16 REGARDING FILTERING ON MOBILE PHONES?

17 A. YES, I AM.

18 Q. AND ARE YOU AWARE WHETHER ANY MOBILE PHONE
19 OPERATORS IN THE UNITED STATES CURRENTLY OFFER FILTERING
20 PRODUCTS?

21 MR. HANSEN: OBJECTION. THIS IS NOT IN
22 ANY OF HIS EXPERT REPORTS.

23 MR. MCELVAIN: THIS IS RESPONDING TO A
24 NEW FACT WITNESS THAT WAS NOT DISCLOSED UNTIL A MONTH
25 BEFORE TRIAL, AND WE DID NOT HEAR HIS TESTIMONY.

1 THE COURT: I'M NOT SURE I HAVE THE
2 WITNESS PROPERLY IDENTIFIED. WHO IS SHE?

3 MR. MCELVAIN: IT'S A HE, YOUR HONOR.
4 JONJIE SENA, J-O-N-J-I-E, S-E-N-A.

5 THE COURT: REMIND ME OF WHAT HE
6 TESTIFIED ABOUT AND WHY YOU HAVE TO REBUT IT.

7 MR. MCELVAIN: HE WAS FROM AN
8 ORGANIZATION CALLED ACECOMM, WHICH OFFERS A PRODUCT --
9 THAT THEY INTEND TO OFFER TO USE FOR FILTERING IN MOBILE
10 PHONES. WE WOULD LIKE THE OPPORTUNITY TO --

11 THE COURT: THE WITNESS WAS NOT DISCLOSED
12 UNTIL THE PRETRIAL.

13 MR. MCELVAIN: HE WAS A FACT WITNESS, NOT
14 AN EXPERT WITNESS. SO WE HAD NO NOTICE UNTIL THE
15 PRETRIAL ORDER WAS FILED. WE DID NOT KNOW WHAT HIS
16 TESTIMONY WOULD BE UNTIL LAST WEEK.

17 THE COURT: WELL, I WILL LET YOU QUESTION
18 THE WITNESS BECAUSE OF THE WAY IN WHICH -- WHAT WAS
19 JONJIE'S LAST NAME?

20 MR. MCELVAIN: SENA.

21 THE COURT: BECAUSE THE FIRST KNOWLEDGE
22 YOU HAD OF HIS TESTIMONY, BUT AS A FACT WITNESS, I DON'T
23 KNOW. I HAVE TO TREAT EACH QUESTION AS WE GO.

24 OVERRULED.

25 BY MR. MCELVAIN:

1 Q. ARE YOU AWARE OF WHETHER ANY MOBILE PHONE
2 OPERATORS IN THE UNITED STATES CURRENTLY OFFER FILTERING
3 PRODUCTS?

4 A. I HAVE NOT MANAGED TO IDENTIFY ANY THAT ARE
5 OFFERING FILTERING PRODUCTS.

6 Q. DO SOME -- IF THEY DON'T OFFER FILTERING, DO
7 SOME PHONES OFFER CONTROLS THAT WILL TURN THE WEB OFF
8 ENTIRELY, IF YOU ASK THEM TO?

9 A. SOME OPERATORS HAVE THE OPTION OF FILTERING BY
10 TOTALLY EXEMPTING THE USE OF THE WEB, YES.

11 Q. AND IF THIS CONTROL IS USED, DOES THIS MEAN THAT
12 ALL OF THE CLEAN CONTENT WOULD BE BLOCKED AS WELL?

13 A. THAT'S CORRECT.

14 Q. DO SOME MOBILE PHONES OFFER WHAT'S CALLED A
15 WALLED GARDEN APPROACH?

16 A. THEY DO.

17 Q. WHAT IS A WALLED GARDEN?

18 A. A WALLED GARDEN IS A FACILITY WHEREBY A MOBILE
19 OPERATOR WILL GENERALLY MAKE AVAILABLE TO THE OWNER OF
20 THE MOBILE PHONE A LIMITED NUMBER OF WEBSITES WHICH HAVE
21 BEEN SPECIALLY MODIFIED SO THAT THEY DON'T VENTURE OUT
22 INTO THE WORLDWIDE WEB AND THEREFORE THEY GIVE AN
23 ELEMENT OF SECURITY FOR THE USER. OFTEN IT IS A PROCESS
24 USED FOR THINGS LIKE CHILDREN AS WELL. YOU CAN BUY A
25 KIDDY PHONE WITH A FEW LITTLE SITES THAT THEY CAN USE.

1 IT IS A SMALL WALLED GARDEN. BUT IT'S NOT ONLY
2 CHILDREN'S SITES.

3 Q. HOW RESTRICTIVE ARE THESE WALLED GARDENS?

4 MR. HANSEN: OBJECTION, FOUNDATION.

5 BY MR. MCELVAIN:

6 Q. DO YOU KNOW HOW RESTRICTIVE THESE WALLED GARDENS
7 ARE?

8 THE COURT: THE QUESTION WAS WITHDRAWN.

9 MR. MCELVAIN: THE QUESTION IS WITHDRAWN.

10 I WILL ASK A FOUNDATIONAL QUESTION.

11 BY MR. MCELVAIN:

12 Q. DO YOU KNOW HOW RESTRICTIVE THESE WALLED GARDENS
13 ARE?

14 A. YES, I DO.

15 Q. HOW DO YOU KNOW?

16 A. THE BASIC PRINCIPLE OF A WALLED GARDEN IMPLIES
17 RESTRICTION.

18 Q. AND HAVE YOU --

19 THE COURT: EXCUSE ME FOR INTERRUPTING,
20 BUT THAT IS NOT AN ANSWER TO THE QUESTION. THE QUESTION
21 WAS, HOW DO YOU KNOW ABOUT THE RESTRICTIONS INVOLVING
22 THE WALLED GARDEN AND YOU ANSWERED THE CONCLUSION, NOT
23 HOW YOU FOUND OUT ABOUT IT.

24 THE WITNESS: OKAY, YOUR HONOR. I WILL
25 REPHRASE THAT.

1 THE COURT: I BELIEVE THE QUESTION WAS
2 NOT ASKED --

3 MR. MCELVAIN: I WILL TRY TO ASK THE
4 QUESTION AGAIN.

5 THE COURT: YOU ENTRAPPED ME BY SAYING
6 YOU ARE GOING TO LAY A FOUNDATION.

7 THE COURT: EXCUSE ME, I DON'T MEAN TO
8 UNNECESSARILY INTERRUPT. I APOLOGIZE.

9 MR. MCELVAIN: NOT AT ALL, YOUR HONOR.
10 BY MR. MCELVAIN:

11 Q. IN YOUR WORK IN THE IT INDUSTRY, HAVE YOU
12 REVIEWED WHAT SORT OF WALLED GARDEN APPROACHES MOBILE
13 PHONE OPERATORS OFFER?

14 A. YES, I HAVE.

15 Q. DO YOU KNOW, FROM THAT REVIEW, HOW RESTRICTIVE
16 THESE WALLED GARDENS ARE?

17 A. YES, I DO.

18 Q. AND HOW RESTRICTIVE ARE THEY?

19 THE COURT: YOU DID THE SAME THING. YOU
20 DID NOT ASK HIM WHERE HE GOT THE DATA.

21 BY MR. MCELVAIN:

22 Q. WHERE HAVE YOU OBTAINED THIS KNOWLEDGE FROM?

23 A. IN REVIEWS I'VE READ AND IN COMMUNICATIONS WITH
24 FELLOW IT SPECIALISTS WORKING IN THIS INDUSTRY. AND
25 ALSO, AS I SAID AT THE BEGINNING, I'VE ACTUALLY WORKED

1 WITH A UK TELEPHONE OPERATOR COMPANY WHO LOOKED INTO
2 INSTALLING WALLED GARDENS, AND WE DISCUSSED THE ISSUE
3 THEN.

4 Q. AND HOW RESTRICTIVE ARE THESE WALLED GARDENS?

5 A. WALLED GARDENS ARE EXTREMELY RESTRICTIVE BECAUSE
6 THEY DO NOT ALLOW A USER TO VENTURE OUT ONTO THE
7 WORLDWIDE WEB IN ITS ENORMITY. AND ALSO THEY GENERALLY
8 ONLY HAVE A RELATIVELY SMALL NUMBER OF LOCATIONS TO
9 VISIT COMPARED TO THE SIZE OF THE WEB.

10 Q. WOULD A WALLED GARDEN BLOCK ALL THE CLEAN
11 CONTENT OUTSIDE OF THAT WALL AS WELL?

12 A. OH, MOST DEFINITELY.

13 Q. ARE THERE PARTICULAR WEB PAGES THAT ARE DESIGNED
14 SPECIFICALLY FOR VIEWING OVER MOBILE DEVICES?

15 A. YES, THERE ARE.

16 Q. DO THOSE WEB PAGES HAVE LESS TEXT THAN REGULAR
17 WEB PAGES?

18 A. YES, THEY DO.

19 Q. WOULD THIS HAVE AN EFFECT ON THE ABILITY OF
20 CONTENT FILTERS TO ANALYZE THOSE WEB PAGES?

21 A. YES, IT WILL.

22 Q. WHAT WOULD THE EFFECT BE?

23 A. WELL, THE EFFECT WILL BE -- BECAUSE WE HAVE
24 ALREADY DISCUSSED THE MECHANISMS BY WHICH FILTERS
25 OPERATE THAT IF THERE IS LESS TEXT ON A PAGE, THEN THE

1 FILTER HAS LESS OPPORTUNITY TO TRY AND WORK OUT THE
2 CONTEXT OF THE PAGE. AND IF THERE ARE EQUALLY GRAPHICS
3 ON THE PAGE THAT THE PROGRAM IS UNABLE TO WORK OUT WHAT
4 THE CONTENT OF THAT GRAPHIC IS, THEN THE LIKELIHOOD OF
5 BEING ABLE TO CORRECTLY CATEGORIZE THAT PAGE WILL BE
6 LESS.

7 Q. ARE YOU AWARE THAT THE PLAINTIFFS HAVE PRESENTED
8 THE TESTIMONY OF A WITNESS NAMED MATTHEW ZOOK?

9 A. YES, I AM.

10 Q. AND THAT HE OFFERED TESTIMONY REGARDING THE
11 DISTRIBUTION OF ADULT AND -- FOREIGN AND DOMESTIC ADULT
12 WEBSITES?

13 A. YES, I AM.

14 Q. DO YOU HAVE AN OPINION AS TO PROFESSOR ZOOK'S
15 USE OF DATA TO ARRIVE AT THAT CONCLUSION?

16 A. YES.

17 Q. AND WHAT IS THAT OPINION?

18 A. MY OPINION IS THAT HE WAS HEAVILY RELIANT ON
19 WHAT WE CALL REGISTRATION INFORMATION. AND CAN I
20 EXPOUND ON THIS? OTHERWISE IT'S A LITTLE OUT OF
21 CONTEXT.

22 Q. PLEASE DO.

23 A. WHEN -- IF I LOOK AT ANY WEB PAGE, OR IF I LOOK
24 AT ANY DOMAIN, THAT DOMAIN GENERALLY CAN GO ONTO THE WEB
25 AND IDENTIFY THE DETAILS THAT THE INDIVIDUAL REGISTERED.

1 THEIR PERSONAL DETAILS WHEN THEY REGISTERED THAT DOMAIN,
2 EITHER WHEN THEY BOUGHT IT OR SUBSCRIBED TO IT. AND
3 THAT IS THE REGISTER INFORMATION.

4 ALONGSIDE THAT INFORMATION IN THE SAME
5 KIND OF DATABASE ON THE WEB IS THE DETAILS OF THE ISP,
6 THE INTERNET SERVICE PROVIDER, THAT IS PHYSICALLY
7 HOSTING THAT SITE ON THE WEB ITSELF. AND MY RESERVATION
8 IS THAT THE REPORT USED THE REGISTRATION INFORMATION TO
9 GIVE AN IDEA OF WHETHER A SITE WAS IN THE U.S.A. OR
10 WHETHER IT WAS OUTSIDE THE U.S.A. AND FROM MY
11 EXPERIENCE IN WORKING WITH -- IN MY OWN INDUSTRY AND ON
12 DOMAINS IN GENERAL, AND ALSO BECAUSE OF A REPORT I HAD
13 READ FROM THE U.S. AUDIT COMMITTEE, IT IS VERY CLEAR
14 THAT THE INFORMATION THAT A REGISTRANT PUTS INTO THIS
15 INFORMATION IS FREQUENTLY INCORRECT. THE U.S. AUDIT
16 INFORMATION I SAW SHOWED ALMOST 10 PERCENT INACCURACY ON
17 THE THREE DOMAINS, THE .COMS, .ORGS AND .NETS. IT
18 CONSTITUTES LESS THAN HALF OF THE REGISTERED DOMAIN
19 NAMES. AND THEY ALREADY HAD A 10 PERCENT ERROR. AND
20 THIS ERROR WAS ONLY ON WHAT THEY COULD VISUALLY SEE AS
21 BEING DEFINITELY INCORRECT, TELEPHONE NUMBERS AS 9999
22 AND NAMES AS MR. X OR THINGS LIKE THIS.

23 Q. COULD THERE HAVE BEEN MORE DATA THAT WAS NOT
24 OBVIOUSLY INCORRECT IN THAT SURVEY?

25 MR. HANSEN: OBJECTION. SPECULATION.

1 BY MR. MCELVAIN:

2 Q. DO YOU HAVE PERSONAL EXPERIENCE IN ANALYZING
3 REGISTRATION DATA?

4 THE COURT: THE QUESTION IS WITHDRAWN.

5 MR. MCELVAIN: QUESTION WITHDRAWN.

6 BY MR. MCELVAIN:

7 Q. DO YOU HAVE PERSONAL EXPERIENCE IN YOUR WORK IN
8 THE IT INDUSTRY IN ANALYZING REGISTRATION DATA?

9 A. YES, I DO.

10 Q. AND HAVE YOU ENCOUNTERED EXAMPLES OF
11 REGISTRATION DATA THAT TURNS OUT TO BE INACCURATE?

12 A. YES.

13 Q. FROM THAT EXPERIENCE, DO YOU HAVE AN OPINION AS
14 TO HOW OFTEN REGISTRATION DATA TURNS OUT TO BE
15 INACCURATE?

16 A. IT WOULD ALWAYS BE DIFFICULT TO IDENTIFY THE
17 EXACT PERCENTAGE OF ITEMS WHICH ARE INACCURATE, BUT
18 THERE ARE TWO ISSUES TO CONSIDER HERE.

19 ONE IS THE REPORT THAT I READ FROM THE
20 U.S. AUDIT COMMITTEE THAT HAD ALREADY IDENTIFIED 10
21 PERCENT INACCURACY IN THE DATA, WAS DOWN TO DATA THAT
22 WOULD -- COULD VISUALLY BE SEEN TO BE INCORRECT,
23 IMMEDIATELY WHEN ONE LOOKED AT IT, SO EITHER NO
24 INFORMATION ON THE REGISTRANT OR INFORMATION WHICH WAS
25 BLATANTLY INCORRECT.

1 THE REPORT ITSELF GOES ON TO SAY THAT ON
2 MANY OCCASIONS INDIVIDUALS USE STOLEN IDENTITIES TO PUT
3 INTO THESE AREAS, SO THAT THEIR IDENTITIES CAN'T BE
4 IDENTIFIED.

5 IN FACT, WHEN -- ON MANY OCCASIONS I HAVE
6 TO VIEW REGISTRANT INFORMATION IN MY DAILY WORK. I DO
7 SEE EXAMPLES WHICH ARE QUITE CLEARLY INCORRECT.

8 I CAN GIVE ONE EXAMPLE, IF YOU WISH.

9 Q. PLEASE DO SO.

10 A. EVEN DURING THE PROCESS OF THIS PROJECT, I HAD
11 ONE THAT I WAS LOOKING AT. AND IT WAS A WEBSITE
12 REGISTERED TO GEORGE BUSH, TALIBAN STRAZZER AFGHANISTAN.
13 AND IT'S THIS KIND OF DATA THAT DOES NOT GET PICKED UP
14 BY THE AUDIT COMMITTEE INITIALLY OF BEING BLATANTLY
15 INCORRECT BECAUSE THEY ARE THE CORRECT WORDS IN THE
16 CORRECT FIELDS, BUT WHEN ONE VIEWS IT THEY ARE QUITE
17 CLEARLY INCORRECT. AND THERE ARE MANY EXAMPLES.

18 Q. IS THERE ANOTHER FORM OF DATA BESIDES THE
19 REGISTRATION DATA THAT COULD BE USED TO STUDY THE
20 LOCATIONS OF WEBSITES?

21 A. YES, THERE IS.

22 Q. WHAT IS THAT FORM OF DATA?

23 A. ATTACHED TO THE REGISTRATION DATA IS INFORMATION
24 CALLED THE HOSTING DATA. AND THE HOSTING DATA IS THE
25 PHYSICALLY OF DETAILS OF THE ISP THAT IS HOSTING THAT

1 WEBSITE ON THE INTERNET. AND THAT WILL HAVE THE DETAILS
2 OF THE ISP AS AN ORGANIZATION, PLUS WHAT THEY CALL AN IP
3 ADDRESS, WHICH IS PHYSICALLY THE NUMBER ASSOCIATED WITH
4 THAT DOMAIN.

5 Q. ARE YOU AWARE THAT FOR PURPOSES OF A STUDY
6 PROFESSOR ZOOK USED A CATEGORY THAT HE CALLED FREE
7 FOREIGN ADULT SITES OR FEEDER FOREIGN ADULT SITES?

8 A. YES, I AM.

9 Q. AND THAT IN CLASSIFYING THOSE SITES AS FOREIGN
10 SITES, HE RELIED ON REGISTRATION DATA?

11 A. YES.

12 Q. DO YOU HAVE AN OPINION AS TO THE HOSTING
13 LOCATIONS OF WHAT -- OF WHAT PROFESSOR ZOOK WOULD HAVE
14 CALLED FREE FOREIGN ADULT SITES?

15 A. YES, I DO.

16 Q. AND WHAT IS THAT OPINION?

17 A. MY OPINION IS THAT I WENT AND LOOKED AT THE
18 HOSTING DATA FOR EACH OF THE PLACES THAT HE CONSIDERED
19 TO BE FOREIGN AND IDENTIFIED THAT 56 PERCENT OF THEM
20 ACTUALLY ARE HOSTED OUT OF THE U.S.A.

21 Q. AND TO BE CLEAR, WAS THIS AN ANALYSIS OF YOUR
22 OWN DATA FOR THE STUDY THAT WE HAVE DESCRIBED EARLIER?

23 A. YES, IT WAS.

24 Q. HOW DID YOU GO ABOUT IDENTIFYING THE WEB PAGES
25 IN YOUR DATABASE THAT PROFESSOR ZOOK WOULD HAVE CALLED

1 FREE FOREIGN WEBSITES?

2 A. I IDENTIFIED PAGES IN MY DATABASE THAT DIDN'T
3 HAVE A COMMERCIAL COMPONENT TO IT, SO A BILLING
4 MECHANISM OR SUBSCRIPTION OR CONTENT ON THE FRONT PAGE
5 THAT WAS PHYSICALLY BEING SOLD. SO WHEN TAKING AWAY
6 THAT COMMERCIAL ELEMENT, WHAT I'M LEFT WITH IS A
7 NONCOMMERCIAL SITE.

8 Q. DO YOU HAVE AN OPINION AS TO HOW MANY OF WHAT
9 PROFESSOR ZOOK WOULD HAVE CALLED FREE FOREIGN SITES IN
10 FACT HAVE A COMMERCIAL CONNECTION TO THE UNITED STATES?

11 A. YES, I HAVE.

12 Q. AND HOW -- WELL, INITIALLY I SHOULD ASK, FOR
13 THIS PURPOSE, WHAT DO YOU MEAN BY A COMMERCIAL
14 CONNECTION TO THE UNITED STATES?

15 A. AGAIN, WHAT I'M LOOKING AT HERE IS FOR A
16 COMMERCIAL CONNECTION, I WAS LOOKING FOR A SITE THAT HAD
17 -- EITHER WAS SELLING SOMETHING, OR WHETHER IT BE A
18 SUBSCRIPTION OR PRODUCT, WHERE THERE WAS A BILLING
19 MECHANISM WHERE EITHER AMERICAN EXPRESS OR VISA CREDIT
20 CARDS WERE REQUIRED. IN OTHER WORDS, A BILLING
21 MECHANISM COMING BACK TO THE U.S.A.

22 Q. AND WHAT DID YOU CONCLUDE IN TERMS OF STUDYING
23 WEB PAGES THAT MET THOSE CRITERIA?

24 A. I FOUND THAT 90 PERCENT OF THE PAGES I ANALYZED
25 ACTUALLY HAD -- WERE LINKED TO AN ELEMENT THAT CAME BACK

1 TO THE U.S.A. COMMERCIALLY.

2 Q. ARE YOU AWARE THAT THE PLAINTIFFS IN THIS
3 LITIGATION SUBMITTED A REPORT FROM A PERSON BY THE NAME
4 OF CHRISTOPHER RACICH, R-A-C-I-C-H?

5 A. YES, I AM.

6 Q. AND THAT HE REPORTED ON A PARTICULAR -- HIS
7 TESTING OF PARTICULAR FILTERS, OF TWO PARTICULAR
8 FILTERS?

9 A. YES.

10 Q. AND DID YOU PERFORM YOUR OWN STUDIES OF THOSE
11 FILTERS?

12 A. YES, I DID.

13 Q. DO YOU RECALL WHAT THE RESULTS OF THOSE STUDIES
14 WERE?

15 A. I DON'T REMEMBER THE EXACT NUMBERS, BUT I RECALL
16 THAT THE -- THE RESULTS WERE SUCH THAT THE FILTERS FELL
17 INTO THE SAME BOUNDARIES OF THE PREVIOUS FILTERS I
18 TESTED.

19 MR. MCELVAIN: YOUR HONOR, I HAVE AN
20 EXHIBIT THAT WOULD REFRESH THE WITNESS' RECOLLECTION. I
21 UNDERSTAND THAT PLAINTIFFS HAVE NO OBJECTION TO MY
22 BRINGING THE EXHIBIT TO THE WITNESS.

23 THE COURT: WHAT IS IT?

24 MR. MCELVAIN: THIS IS ACTUALLY A
25 SUPPLEMENTAL REPORT THAT WAS PREPARED IN THIS LITIGATION

1 THAT WE HAVE NOT SUBMITTED AS AN EXHIBIT BUT IT REPORTS
2 THE RESULTS OF THIS TESTING OF TWO OTHER FILTERS BEYOND
3 THE FILTERS THAT WERE DESCRIBED EARLIER IN MR. MEWETT'S
4 TESTIMONY.

5 MR. HANSEN: WE DON'T OBJECT TO THE USE
6 OF THIS, YOUR HONOR.

7 THE COURT: ALL RIGHT. FINE.

8 BY MR. MCELVAIN:

9 Q. AND TAKE YOUR TIME TO REVIEW IT.

10 A. OKAY.

11 Q. DOES THIS REFRESH YOUR RECOLLECTION AS TO THE
12 RESULTS OF THE STUDY?

13 A. YES, IT DOES. THANK YOU.

14 Q. AND WAS ONE OF THE FILTERS THAT YOU TESTED THE
15 SAFEEYES FILTER?

16 A. YES, IT WAS.

17 Q. AND WHAT DID YOUR STUDY CONCLUDE WITH REGARD TO
18 THE SAFEEYES FILTER?

19 A. IT CONCLUDED THAT WHEN I LOOKED AT THE SEARCH
20 ENGINE DATA THAT SAFEEYES WAS NOT EFFECTIVE 16.2 PERCENT
21 OF THE TIME WITH RESPECT TO THE GOOGLE DATA AND 15.2
22 PERCENT OF THE TIME WITH RESPECT TO THE MSN DATA. THAT
23 WAS MY UNDERBLOCKING RATES.

24 Q. THAT WAS THE UNDERBLOCKING RATE FOR THE WEB
25 PAGES FROM THE SEARCH ENGINE INDICES?

1 A. THAT'S CORRECT.

2 Q. AND WHAT DID YOUR STUDY CONCLUDE WITH REGARD TO
3 THE OVERBLOCKING RATE?

4 A. THE OVERBLOCKING RATES WERE 3.3 PERCENT OF THE
5 TIME WITH RESPECT TO GOOGLE AND 3.2 PERCENT OF THE TIME
6 WITH RESPECT TO MSN.

7 Q. AND WITH REGARD TO THE WEB PAGES THAT WERE DRAWN
8 FROM THE QUERIES, WHAT DID YOUR STUDY CONCLUDE WITH
9 REGARD TO THE SAFEEYES FILTER?

10 A. IT CONCLUDED THAT CONTENT WAS NOT BLOCKED BY THE
11 SAFEEYES FILTER 13.7 PERCENT OF THE TIME, OR PUT ANOTHER
12 WAY, THE PRODUCT WAS 86.3 PERCENT EFFECTIVE.

13 Q. AND WITH REGARD TO OVERBLOCKING OF CLEAN WEB
14 PAGES WITHIN THAT SET OF WEB PAGES, WHAT DID IT
15 CONCLUDE?

16 A. THE OVERBLOCKING RATE WAS 1.9 PERCENT.

17 Q. AND WITH REGARD TO THE SET OF WEB PAGES THAT
18 WERE DRAWN FROM THE WORD TRACKER QUERIES, WHAT DID YOUR
19 STUDY CONCLUDE WITH REGARD TO SAFEEYES?

20 A. IT CONCLUDED THAT THE PAGES WERE NOT BLOCKED 2
21 PERCENT OF THE TIME, SO 2 PERCENT UNDERBLOCKING RATE.

22 Q. AND BY THAT, YOU ARE REFERRING TO THE WEB PAGES
23 THAT WERE CLASSIFIED AS HAVING ADULT CONTENT?

24 A. YES, I AM.

25 Q. AND WHAT DID YOUR STUDY CONCLUDE WITH REGARD TO

1 THE BLOCKING OF CLEAN WEB PAGES IN THAT SET OF WEB
2 PAGES?

3 A. IT CONCLUDED THERE WAS A 16.5 PERCENT
4 OVERBLOCKING RATE.

5 Q. I WOULD ALSO LIKE TO ASK YOU THE SAME SET OF
6 QUESTIONS WITH REGARD TO THE SECOND FILTER. WHAT WAS
7 THE SECOND FILTER?

8 A. THE SECOND FILTER IS ACTUALLY CALLED 8E6.

9 Q. WHAT DID YOUR STUDY CONCLUDE WITH REGARD TO
10 UNDERBLOCKING OF ADULT WEB PAGES FROM THE SET OF WEB
11 PAGES FROM THE SEARCH ENGINE INDICES?

12 A. IT CONCLUDED THAT THE UNDERBLOCKING RATE FOR THE
13 GOOGLE DATA WAS 18.3 PERCENT AND FOR THE MSN DATA 23
14 PERCENT.

15 Q. WHAT DID IT CONCLUDE WITH REGARD TO OVERBLOCKING
16 OF CLEAN WEB PAGES FROM THAT SAME SET OF WEB PAGES?

17 A. THE OVERBLOCKING RATES WERE 9.4 PERCENT FOR THE
18 GOOGLE DATA AND 7.5 PERCENT FOR THE MSN.

19 Q. AND TURNING TO THE NEXT DATASET OF WEB PAGES
20 THAT WERE RETURNED FROM THE SET OF QUERIES, WHAT DID
21 YOUR STUDY CONCLUDE WITH REGARD TO UNDERBLOCKING OF
22 ADULT WEB PAGES IN THAT DATASET --

23 A. IT CONCLUDED --

24 Q. -- FOR THE 8E6 FILTER?

25 I'M SORRY?

1 A. IT CONCLUDED THAT THE UNDERBLOCKING RATE WAS 7.3
2 PERCENT.

3 Q. AND WHAT DID YOU CONCLUDE FOR THE OVERBLOCKING
4 RATE?

5 A. THE OVERBLOCKING RATE WAS 7.5 PERCENT.

6 Q. AND WITH REGARD TO THE THIRD SET OF DATA, THE
7 WEB PAGES RETURNED FROM WORDTRACKER QUERIES?

8 A. THE STATISTICS WERE THAT THERE WAS A 3.4 PERCENT
9 UNDERBLOCKING RATE AND A 25.1 PERCENT OVERBLOCKING RATE.

10 MR. MCELVAIN: YOUR HONOR, MAY I HAVE A
11 MOMENT TO CONFER WITH COUNSEL?

12 THE COURT: YES.

13 (PAUSE.)

14 MR. MCELVAIN: YOUR HONOR, I WOULD HAVE
15 SOME OTHER QUESTIONS FOR THIS WITNESS WITH REGARD TO THE
16 TESTING BY MR. RACICH. IT IS MY UNDERSTANDING THAT
17 PLAINTIFFS DO NOT INTEND TO CALL MR. RACICH AS A
18 REBUTTAL WITNESS ANYMORE. AND WITH THAT UNDERSTANDING I
19 WON'T PURSUE THIS LINE OF QUESTIONING.

20 THE COURT: CORRECT, MR. HANSEN?

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

22 MR. MCELVAIN: YOUR HONOR, AT THIS TIME,
23 I MOVE INTO EVIDENCE DEFENDANT'S EXHIBIT 82 THROUGH 90,
24 AND ALSO THAT FIRST DEMONSTRATIVE EXHIBIT WHICH WAS THE
25 CHART WHICH WE DON'T HAVE NUMBERED AS AN EXHIBIT.

1 THE COURT: 82 THROUGH 90?

2 MR. HANSEN: YOUR HONOR, WITH RESPECT --

3 THE COURT: WHICH ONE ARE YOU TALKING
4 ABOUT THAT YOU DID NOT NUMBER AS AN EXHIBIT?

5 MR. MCELVAIN: IF YOU RECALL, THERE WAS
6 THE INITIAL DEMONSTRATIVE EXHIBIT WHICH HAD THE CHART OF
7 THE PROCESS OF --

8 THE COURT: THERE WAS MORE THAN ONE PAGE.

9 MR. MCELVAIN: I'M SORRY?

10 THE COURT: THERE WAS MORE THAN ONE PAGE.

11 MR. MCELVAIN: I BELIEVE THERE WERE FIVE
12 PAGES ON THAT. WE HAD THAT AS ONE EXHIBIT. WE HAVE NOT
13 NUMBERED THAT AS AN EXHIBIT, BECAUSE WE TREATED IT AS
14 JUST A DEMONSTRATIVE. BUT WE WOULD BE HAPPY TO MOVE
15 THAT INTO EVIDENCE IF THAT WOULD HELP THE COURT'S
16 INQUIRY.

17 THE COURT: DO YOU KNOW WHAT YOUR LAST
18 EXHIBIT IS?

19 MR. MCELVAIN: MAY I HAVE A MOMENT, YOUR
20 HONOR?

21 (PAUSE.)

22 MR. MCELVAIN: YOUR HONOR, AT THIS TIME,
23 WE WOULD LIKE TO REFER TO IT AS DEFENDANT'S
24 DEMONSTRATIVE EXHIBIT 1, AND WE CAN CORRECT THAT TO A
25 SEQUENTIAL EXHIBIT NUMBER LATER IF THE COURT PREFERS

1 THAT WE DO SO.

2 THE COURT: LET'S GO BACK. THAT IS FINE.
3 ANY OBJECTION TO EXHIBIT 82 THROUGH 90?

4 MR. HANSEN: YOUR HONOR, PLAINTIFFS DO
5 NOT OBJECT TO EXHIBITS 84 THROUGH 90. 82 --

6 THE COURT: 84 THROUGH 90 IS RECEIVED
7 INTO EVIDENCE.

8 (DEFENDANT'S EXHIBITS 84 THROUGH 90
9 RECEIVED INTO EVIDENCE.)

10 MR. HANSEN: 82 AND 83 ARE THE WITNESS'
11 EXPERT WITNESS REPORTS. WE DO NOT OBJECT TO THE
12 PORTIONS OF THE EXPERT WITNESS REPORTS THAT THE
13 DEFENDANTS ARE PROFFERING GOING INTO EVIDENCE. AND I
14 BELIEVE THE DEFENDANTS HAVE AGREED THAT IT'S NOT THE
15 ENTIRE REPORT. THEY ARE ONLY PUTTING IN A PORTION OF
16 THE REPORT. THEY ARE NOT INCLUDING THE APPENDICES. I
17 BELIEVE DEFENDANTS ARE WILLING TO LET THE PLAINTIFFS PUT
18 IN THE APPENDICES. AND SUBJECT TO THAT AGREEMENT, WE
19 DON'T HAVE A PROBLEM WITH 82 AND 83 BEING ADMITTED.

20 MR. MCELVAIN: I UNDERSTAND THE REFERENCE
21 IS TO CERTAIN DVD DATABASES THAT ACCOMPANIED THE
22 REPORTS, WHICH PLAINTIFFS INTEND TO USE AS EXHIBITS.
23 AND WE HAVE NO OBJECTION TO THAT.

24 MR. HANSEN: GIVEN THAT, WE HAVE NO
25 OBJECTION TO 82 AND 83.

1 THE COURT: 82 AND 83 ARE RECEIVED INTO
2 EVIDENCE.

3 (DEFENDANT'S EXHIBITS 82 AND 83 ARE
4 RECEIVED INTO EVIDENCE.)

5 MR. HANSEN: WE ALSO HAVE NO OBJECTION TO
6 WHAT IS, I GATHER, NOW BEING CALLED DEMONSTRATIVE
7 EXHIBIT 1.

8 THE COURT: DEMONSTRATIVE EXHIBIT NUMBER
9 1 OF DEFENDANT IS RECEIVED INTO EVIDENCE.

10 (DEFENDANT'S DEMONSTRATIVE EXHIBIT 1
11 RECEIVED INTO EVIDENCE.)

12 MR. MCELVAIN: I HAVE NO FURTHER
13 QUESTIONS ON DIRECT, YOUR HONOR.

14 THE COURT: ALL RIGHT.

15 MR. HANSEN: YOUR HONOR, I HAVE SOME
16 EXHIBITS TO USE WITH THE WITNESS.

17 THE COURT: MR. HANSEN.

18 CROSS EXAMINATION

19 BY MR. HANSEN:

20 Q. MR. MEWETT, GOOD AFTERNOON.

21 A. GOOD AFTERNOON TO YOU.

22 Q. ALL OF THE SUCCESS OR FAILURE NUMBERS THAT YOU
23 GAVE, LIKE THE ONES YOU JUST GAVE US WITH RESPECT TO 8E6
24 AND SAFEEYES, THOSE ALL COME DIRECTLY FROM DR. STARK,
25 CORRECT?

1 A. YES.

2 Q. AND YOU DID NOT INDEPENDENTLY VERIFY WHETHER
3 THOSE NUMBERS ARE CORRECT OR WHETHER THEY ARE NOT
4 CORRECT, CORRECT?

5 A. THAT'S CORRECT.

6 Q. NOW I WOULD LIKE TO FIRST TALK ABOUT WHAT YOU
7 DID NOT DO, IF I COULD. IT IS FAIR TO SAY THAT YOU DID
8 NOT ATTEMPT TO CATEGORIZE SPEECH AS OBSCENE OR NOT
9 OBSCENE WITHIN THE LEGAL MEANINGS IN THE UNITED STATES,
10 ISN'T THAT CORRECT?

11 MR. MCELVAIN: OBJECTION TO THE
12 CHARACTERIZATION OF "SPEECH," YOUR HONOR.

13 MR. HANSEN: I WILL REPHRASE IT.
14 BY MR. HANSEN:

15 Q. IT IS CORRECT, ISN'T IT, THAT YOU DID NOT
16 ATTEMPT TO CATEGORIZE WEB PAGES AS EITHER OBSCENE OR NOT
17 OBSCENE WITHIN THE MEANING OF U.S. LAW?

18 A. THAT'S CORRECT.

19 Q. YOU DID NOT ATTEMPT TO CATEGORIZE WEB PAGES
20 WHETHER THEY WERE HARMFUL TO MINORS OR NOT HARMFUL TO
21 MINORS WITHIN THE MEANING OF U.S. LAW, ISN'T THAT
22 CORRECT?

23 A. THAT IS ALSO CORRECT.

24 Q. AND YOU DID NOT ATTEMPT TO DETERMINE WHETHER THE
25 WEB PAGES WERE PATENTLY OFFENSIVE ACCORDING TO

1 CONTEMPORARY COMMUNITY STANDARDS UNDER U.S. LAW, ISN'T
2 THAT CORRECT?

3 A. THAT IS ALSO CORRECT.

4 Q. INDEED, THE PEOPLE WHO CATEGORIZED THE WEB PAGES
5 WITHIN THE SEXUALLY EXPLICIT CATEGORY WERE BRITISH
6 CITIZENS, CORRECT?

7 A. THAT'S RIGHT. ONE WAS A FRENCH BUT THEY WERE
8 BASED IN LONDON.

9 Q. FAIR ENOUGH. AND COMMUNITIES -- EVEN WITHIN
10 ENGLAND, COMMUNITY STANDARDS VARY AROUND THE COUNTRY AS
11 THEY DO IN ANY OTHER COUNTRY, CORRECT?

12 A. THAT'S RIGHT.

13 Q. YOU ALSO DID NOT ATTEMPT TO DETERMINE -- YOU DID
14 ATTEMPT TO DETERMINE WHETHER THE PAGES HAD SOME VALUE OR
15 NOT, DID YOU NOT?

16 A. IF BY VALUE YOU MEAN WHETHER THEY FELL INTO
17 ARTISTIC OR ADULT CONTENT, THEN, YES.

18 Q. AND IN MAKING IN A JUDGMENT, YOU DID NOT APPLY
19 THE STANDARD OF WHETHER THEY WERE EDUCATIONAL FOR
20 MINORS, ISN'T THAT CORRECT?

21 A. THAT'S CORRECT.

22 Q. AND THE DEPARTMENT OF JUSTICE DID NOT ADVISE YOU
23 THAT ALL OF THE SITES THAT YOU CATEGORIZED AS 5F OR
24 SEXUALLY EXPLICIT WERE LEGALLY OBSCENE OR WERE NOT
25 LEGALLY OBSCENE, ISN'T THAT CORRECT?

1 A. THAT IS CORRECT.

2 Q. AND THE DEPARTMENT OF JUSTICE DID NOT ADVISE YOU
3 THAT ALL OF THE SITES YOU CATEGORIZED AS SEXUALLY
4 EXPLICIT WERE HARMFUL TO MINORS OR WERE NOT HARMFUL TO
5 MINORS, ISN'T THAT CORRECT?

6 A. THAT'S CORRECT.

7 Q. YOU ALSO DID NOT SPECIFICALLY APPLY THE CRITERIA
8 OF THE INDIVIDUAL FILTERS THEMSELVES, CORRECT?

9 A. I DON'T FOLLOW THE QUESTION.

10 Q. IN MAKING THE DECISION AS TO CATEGORIZE SITES AS
11 SEXUALLY EXPLICIT, THE DEFINITION YOU USED WAS ONE YOU
12 CREATED FOR YOURSELF, CORRECT?

13 A. THAT'S CORRECT.

14 Q. IT WAS NOT NECESSARILY THE SAME DEFINITION THAT
15 WAS USED BY ANY OF THE FILTERS YOU TESTED, CORRECT?

16 A. CORRECT.

17 Q. YOU ALSO DID NOT TEST ANY OF THE OTHER TYPES OF
18 FEATURES OFFERED BY FILTERS, SUCH AS TIME OF DAY
19 RESTRICTIONS, OR NUMBER OF HOUR RESTRICTIONS, OR
20 MONITORING OF WEBSITES, IS THAT CORRECT?

21 A. THAT'S CORRECT.

22 Q. AND THE COST OF THE STUDY THAT YOU HAVE DONE FOR
23 THE DEPARTMENT OF JUSTICE TO DATE IS OVER A MILLION
24 DOLLARS, IS THAT CORRECT?

25 A. I'M LED TO BELIEVE THAT IS CORRECT. I DID NOT

1 BILL IT MYSELF SO --

2 Q. NOW, THE SOURCE -- YOU DISCUSSED AT SOME LENGTH
3 IN YOUR DIRECT TESTIMONY THE SOURCES OF THE WEB PAGES OR
4 URLS THAT YOU RECEIVED AND USED AS PART OF YOUR
5 ANALYSIS, CORRECT?

6 A. THAT'S RIGHT.

7 Q. AND ONE OF THE SOURCES WAS A RANDOM SAMPLE OF
8 URLS IN THE GOOGLE INDEX, CORRECT?

9 A. CORRECT.

10 Q. EXPLAIN EXACTLY HOW -- WHAT THE GOOGLE INDEX IS.

11 A. THE GOOGLE INDEX IS A VAST NUMBER OF URLS THAT
12 GOOGLE HAS AVAILABLE TO THEM. AND WHEN AN INDIVIDUAL
13 WERE TO QUERY THE GOOGLE SEARCH ENGINE, THEY THEN -- THE
14 SEARCH ENGINE WOULD LOOK IN THIS VAST ARRAY OF URLS TO
15 SUPPLY THE RESULTS.

16 Q. AND YOU TOOK A STATISTICALLY SIGNIFICANT -- YOU
17 TOOK A RANDOM SAMPLE -- I WITHDRAW STATISTICALLY
18 SIGNIFICANT. YOU TOOK A RANDOM SAMPLE OF THE WEB PAGES
19 OR URLS FROM THE GOOGLE INDEX, CORRECT?

20 A. CAN I CLARIFY? ARE YOU ASKING WHETHER I WAS
21 SUPPLIED A RANDOM SAMPLE OR WHETHER I TOOK ONE?

22 Q. AS PART OF YOUR STUDY, YOU UTILIZED A RANDOM
23 SAMPLE OF WEB PAGES OR URLS FROM THE GOOGLE INDEX, IS
24 THAT CORRECT?

25 A. THAT'S CORRECT.

1 Q. AND PEOPLE DON'T ACCESS WEB PAGES RANDOMLY, DO
2 THEY?

3 A. NO, I'M NOT QUALIFIED TO SAY THAT. BUT I WOULD
4 SAY THAT PEOPLE GENERALLY GO LOOKING FOR SOMETHING
5 SPECIFIC.

6 Q. SO, IN FACT, THE PROCESS OF LOOKING AT A RANDOM
7 SAMPLE OF, FOR EXAMPLE, GOOGLE URLS OR WEB PAGES, IS NOT
8 SOMETHING THAT ANY HUMAN BEING WOULD EVER ACTUALLY DO,
9 CORRECT?

10 A. I WOULD AGREE WITH THAT.

11 Q. OKAY.

12 NOW, WHAT IS A -- YOU EXPLAINED A LITTLE
13 BIT DURING YOUR DIRECT TESTIMONY ABOUT A SPIDER. IS A
14 SPIDER ALSO CALLED A BOT?

15 A. A BOT IS A FORM OF SPIDER, YES.

16 Q. OKAY. AND EXPLAIN AGAIN WHAT A SPIDER IS.

17 A. WELL, THERE ARE DIFFERENT CONTEXTS. BUT
18 BASICALLY A SPIDER IS A FORM -- A BOT IS A FORM OF
19 SPIDER, AND THE SPIDER CAN -- AS AN AUTOMATED PIECE OF
20 PROGRAMMING CODE, CAN FOLLOW THE LINKS FROM ONE WEB PAGE
21 TO ANOTHER WEB PAGE. AND THERE CAN BE A CONTROL PUT ON
22 THIS AS TO HOW FAR IT WANDERS, BUT THAT IS THE BASICS.

23 Q. AND THE GOOGLE URLS OR WEB PAGES THAT YOU
24 UTILIZE AS PART OF YOUR STUDIES WERE FOUND BY GOOGLE
25 THROUGH THE USE OF SPIDERING OR BOT TECHNOLOGY, CORRECT?

1 A. NOT ENTIRELY.

2 Q. IN SUBSTANTIAL NUMBERS?

3 A. IN SUBSTANTIAL NUMBERS, THE SEARCH ENGINES DO DO
4 THAT. BUT THERE IS THE OTHER ELEMENT WHERE WEBSITES
5 SUBMIT THEMSELVES TO THE SEARCH ENGINE.

6 Q. WE DON'T KNOW WHETHER ANY HUMAN BEING OTHER THAN
7 YOU AND YOUR TEAM HAS EVER ACTUALLY VIEWED THE GOOGLE
8 URL WEB PAGES THAT YOU UTILIZED AS PART OF YOUR REPORT,
9 ISN'T THAT CORRECT?

10 A. THAT'S CORRECT.

11 Q. AND THE SAME WOULD BE TRUE OF MSN URLS THAT YOU
12 UTILIZED IN YOUR REPORT, CORRECT?

13 A. THAT'S RIGHT.

14 Q. WE ALSO DON'T KNOW WHAT SEARCH TERMS A PERSON
15 WOULD INSERT INTO GOOGLE, FOR EXAMPLE, TO FIND THOSE
16 URLS, ISN'T THAT CORRECT?

17 A. THAT'S CORRECT.

18 Q. NOW, LET'S TALK FOR A SECOND ABOUT THE SEARCH
19 QUERIES ANALYSES YOU DID WITH RESPECT TO YAHOO, MSN AND
20 AOL. THERE IS NO WAY TO KNOW WHETHER THOSE SEARCHES
21 WERE DONE BY ACTUAL HUMAN BEINGS OR BY BOTS, ISN'T THAT
22 CORRECT?

23 A. THAT'S CORRECT.

24 Q. THERE IS ALSO NO WAY OF KNOWING WHETHER THAT --
25 THE SEARCH WHEN ORIGINALLY DONE ON YAHOO OR MSN OR AOL

1 PRODUCED THE SAME 10 RESULTS THAT IT PRODUCED WHEN YOU
2 RAN THE SEARCH, ISN'T THAT CORRECT?

3 A. CORRECT.

4 Q. AND THE SAME WOULD BE TRUE OF THE WORDTRACKER
5 SEARCHES THAT YOU RETURNED. THERE IS NO WAY TO KNOW
6 THAT WHEN THE ACTUAL SEARCH WAS DONE, IT RETURNED THE
7 SAME RESULTS THAT YOU GOT, CORRECT?

8 A. CORRECT.

9 Q. NOW, I UNDERSTOOD YOU TO BE REASONABLY CLEAR IN
10 YOUR DIRECT TESTIMONY ABOUT THIS POINT, BUT I WANT TO GO
11 OVER IT ONE MORE TIME.

12 THE UNIT OF ANALYSIS THAT YOU UTILIZED
13 HERE WAS WEB PAGE, NOT WEBSITE, CORRECT?

14 A. THAT'S RIGHT.

15 Q. SO THAT IF ONE OF THE PAGES THAT YOU CLASSIFIED
16 AS SEXUALLY EXPLICIT WAS ON THE DISNEY WEBSITE AND THE
17 DISNEY WEBSITE AS A WHOLE IS SOMETHING YOU WOULD HAVE
18 CATEGORIZED AS NOT SEXUALLY EXPLICIT, YOU WOULD HAVE
19 STILL CATEGORIZED THAT PAGE AS SEXUALLY EXPLICIT,
20 CORRECT?

21 A. CAN I RESPOND SLIGHTLY DIFFERENTLY?

22 Q. YES.

23 A. YOU ARE CORRECT THAT I WOULD HAVE CATEGORIZED
24 THE PAGE AS SEXUALLY EXPLICIT BECAUSE I'M ONLY ASSESSING
25 PAGES. I'D WONDER WHETHER THERE WAS AN INFERENCE

1 WHETHER I WOULD HAVE CATEGORIZED THE WHOLE OF A SITE AS
2 ANYTHING DIFFERENT. MY JOB WAS ONLY TO CATEGORIZE AT
3 ANY TIME INDEPENDENT PAGES.

4 Q. AND THE CONVERSE IS ALSO TRUE, RIGHT, IF THE
5 PAGE WAS NOT SEXUALLY EXPLICIT AT THE TIME YOU PULLED IT
6 UP AND CATEGORIZED IT, BUT IT WAS NEVERTHELESS IN THE
7 CONTEXT OF A VERY SEXUALLY EXPLICIT WEBSITE, YOU WOULD
8 HAVE CATEGORIZED IT AS NONSEXUALLY EXPLICIT, CORRECT?

9 A. CAN YOU RUN THAT BY ME AGAIN? I NEED TO
10 CLARIFY.

11 Q. ASSUME THERE IS A PAGE ON A WEBSITE THAT IS
12 FILLED WITH SEXUALLY EXPLICIT CONTENT, BUT THE
13 PARTICULAR PAGE AT THE TIME YOU DRAW IT UP AND
14 CATEGORIZED IT IN YOUR STUDY HAD NOTHING ON IT BUT A
15 PHOTOGRAPH OF MICKEY MOUSE DRAWN FROM DISNEY, YOU WOULD
16 HAVE CATEGORIZED THAT AS NOT SEXUALLY EXPLICIT, CORRECT?

17 A. THAT'S CORRECT. I HAVE NO KNOWLEDGE OF THE
18 OTHER PAGES ON THE SITE ANYWAY.

19 Q. NOW, AS I UNDERSTAND THE PROCESS BY WHICH YOU
20 DID THE CATEGORIZATION, THE FIRST CUT WAS DONE BY THE
21 TEAM THAT WAS ASSIGNED IN NEW YORK, CORRECT?

22 A. THAT'S RIGHT.

23 Q. AND TO USE YOUR DEMONSTRATIVE EXHIBIT, IF YOU
24 WOULD LOOK AT DEMONSTRATIVE EXHIBIT NUMBER 1, PAGE 3.

25 A. OKAY.

1 Q. THE STEP THAT WAS TAKEN BY THE TEAM IN NEW YORK
2 WAS WHAT IS COLORED ON THE PURPLE COLOR, CORRECT?

3 A. THAT'S RIGHT.

4 Q. NOW, THE PEOPLE WHO DID THE CATEGORIZING BETWEEN
5 THE PURPLE A AND THE PURPLE B ON DEMONSTRATIVE EXHIBIT
6 1, PAGE 3, THOSE WERE ASSISTANTS WHO WERE EMPLOYED BY
7 CRA IN NEW YORK CITY, CORRECT?

8 A. THAT'S RIGHT.

9 Q. AND THOSE ASSISTANTS, YOU DON'T KNOW THEIR
10 QUALIFICATIONS, CORRECT?

11 A. CORRECT.

12 Q. AND YOU DON'T EVEN KNOW IF ANY OF THEM HAD HIGH
13 SCHOOL DIPLOMAS, CORRECT?

14 A. THAT'S RIGHT.

15 Q. AND YOU DESCRIBED THEM AS PERSONAL ASSISTANTS,
16 CORRECT?

17 A. I BELIEVE SO. I'M NOT LOOKING AT THE REFERENCE
18 AT THE MOMENT.

19 Q. YOU AGREED WITH ME AT THE DEPOSITION -- I
20 WITHDRAW THAT.

21 IN ADDITION, THEY ARE PEOPLE WHO ANSWER
22 THE PHONES FOR OTHER PEOPLE AT CRA, CORRECT?

23 A. THAT MAY BE ONE OF THEIR TASKS BUT THEY ALSO DO
24 OTHER MORE COMPLICATED WORK.

25 Q. THEY TYPE FOR OTHER PEOPLE AT CRA, CORRECT?

1 A. CORRECT.

2 Q. AND THEY ANSWER THE PHONE -- I'M SORRY. I
3 WITHDRAW THAT.

4 THEY WERE ALL WHITE AS WELL, CORRECT?

5 A. I CAN'T REMEMBER.

6 Q. AND THERE WAS A HEAD OF THE TEAM IN NEW YORK,
7 CORRECT?

8 A. THAT'S RIGHT.

9 Q. YOU DON'T KNOW WHETHER THE HEAD OF THE TEAM HAD
10 A BACHELOR'S DEGREE, IS THAT CORRECT?

11 A. THAT IS CORRECT.

12 Q. AND YOU DON'T KNOW WHETHER SHE HAD ANY
13 EXPERIENCE PRIOR TO THIS PROJECT ON CODING SITES, ISN'T
14 THAT CORRECT?

15 A. THAT'S CORRECT.

16 Q. AND YOU DON'T KNOW WHETHER SHE HAD ANY
17 EXPERIENCE PRIOR TO THIS PROJECT IN SOCIAL SCIENCE
18 RESEARCH, CORRECT?

19 A. CORRECT.

20 Q. NOW, THE SECOND TEAM THAT WORKED ON YOUR
21 CATEGORIZATION WAS IN LONDON, CORRECT?

22 A. THAT'S RIGHT.

23 Q. AND THAT CONSISTED OF THREE WOMEN?

24 A. YES.

25 Q. ONLY ONE OF WHOM HAD THE EQUIVALENT OF A

1 BACHELOR'S DEGREE?

2 A. AS FAR AS MY KNOWLEDGE IS, CORRECT, YES.

3 Q. AND WHAT THOSE WOMEN DID, AGAIN REFERRING TO
4 DEMONSTRATIVE EXHIBIT 1, PAGE 3, WAS TAKE THE PURPLE
5 B'S, AND DIVIDE THEM AMONG ALL OF THE VARIOUS YELLOWS ON
6 THIS PAGE, ISN'T THAT CORRECT?

7 A. YES.

8 Q. SO IT WAS THESE THREE WOMEN IN BRITAIN THAT WERE
9 DECIDING WHETHER OR NOT A PAGE HAD EDUCATIONAL OR
10 ARTISTIC VALUE, OR WHETHER IT WAS ADULT ENTERTAINMENT,
11 CORRECT?

12 A. UNDER MY SUPERVISION, YES.

13 Q. NOW, ONE OF THE FORMS OF ANALYSIS YOU DID WAS --
14 FOR VIRTUALLY ALL OF YOUR DATASETS WAS AN OVERBLOCKING
15 ANALYSIS, CORRECT?

16 A. THAT'S RIGHT.

17 Q. AND IF A -- EXPLAIN HOW YOU DID THE OVERBLOCKING
18 ANALYSIS.

19 A. THE WAY THE OVERBLOCKING ANALYSIS WAS DONE, IS
20 THAT A FILTER WAS SWITCHED ON TO A CATEGORY
21 REPRESENTATIVE OF SEXUALLY EXPLICIT MATERIAL. AND THEN,
22 ONCE THE FILTER WAS ON, THE URLS FROM THE -- IF I CAN
23 REFER TO AS THE CLEAN DATASET, THE SET THAT HAD -- THE A
24 SET, THE NO SEXUALLY EXPLICIT CONTENT, THESE URLS WERE
25 FED INTO A BROWSER BY AN INDIVIDUAL, ONE AT A TIME. AND

1 THE URL WAS PUT IN WITH THE FILTER ON AND THEN ONE OF
2 THREE STATUS WAS RECORDED. ONE WAS THAT IT WAS NOT
3 WORKING, TWO WAS THAT IT WAS BLOCKED, AND THE THREE WAS
4 THAT IT WAS NOT BLOCKED. AND THEY SEQUENTIALLY WENT
5 DOWN THE LIST OF URL, THE CLEAN URLS, AND USED IT ON
6 EACH OF THE PARTICULAR FILTERS.

7 Q. AND THE ONLY DECISION THAT WAS MADE IN DECIDING
8 WHETHER IT WAS WHAT YOU HAVE BEEN CALLING A CLEAN URL OR
9 NOT CLEAN URL WAS THIS PURPLE DECISION, CORRECT?

10 A. THAT'S RIGHT. NO NUDITY OR SEXUAL CONTENT IN
11 ANY WAY.

12 Q. SO I COULD BE A VERY VIOLENT SITE AND STILL BE
13 IN YOUR PURPLE A'S, CORRECT?

14 A. AS LONG AS THERE WAS NO NUDITY ON IT, YES.

15 Q. AND I COULD BE A GAMBLING SITE AND STILL BE IN
16 YOUR PURPLE A'S, CORRECT?

17 A. DEFINITELY.

18 Q. AND I COULD BE A DRUGS OR ALCOHOL SITE AND STILL
19 BE IN YOUR PURPLE A'S, CORRECT?

20 A. YES.

21 Q. AND IF THE FILTER THAT YOU WERE TESTING BLOCKED
22 THE URL OR THE WEB PAGE BECAUSE IT WAS A VIOLENT SITE,
23 OR A GAMBLING SITE, OR A DRUGS OR ALCOHOL SITE, YOU
24 STILL WOULD HAVE COUNTED THAT AS AN OVERBLOCK, CORRECT?

25 A. THERE WOULD HAVE BEEN NO WAY TO KNOW WHY THE

1 FILTER BLOCKED IT. SO IT COULD HAVE BLOCKED FOR THOSE
2 REASONS. OR IT COULD HAVE BLOCKED BECAUSE IT WAS
3 INADEQUATE AT BLOCKING AS A SEXUAL CONTENT SITE.

4 Q. AND SOME OF THE FILTERS, THE WAY YOU SET THEM UP
5 WERE DESIGNED TO BLOCK VIOLENT SITES, OR GAMBLING SITES,
6 OR DRUG OR ALCOHOL SITES, CORRECT?

7 A. IF THE FILTER WAS TESTED -- IF A FILTER HAD A
8 DEFAULT POSITION THEN IT WAS TESTED ON THAT DEFAULT
9 POSITION AND ALSO ON ONE THAT WAS REPRESENTATIVE OF
10 SEXUAL CONTENT. SO MY INTERPRETATION OF THE SETTINGS
11 WOULD BE THAT IF IT WAS SWITCHED TO SOMETHING WHICH WAS
12 SPECIFICALLY SEXUAL CONTENT, I WOULD NOT HAVE EXPECTED
13 IT TO BLOCK THE SITES THAT YOU DESCRIBED. BUT EQUALLY
14 IF IT WAS DEFAULT, THERE IS A POSSIBILITY THAT IT WOULD
15 AND WOULD BE EXPECTED TO.

16 Q. SO THERE ARE INSTANCES THAT YOU COUNTED AS
17 OVERBLOCKS IN WHICH THE FILTER WAS PERFORMING EXACTLY AS
18 IT WAS SUPPOSED TO. CORRECT?

19 A. IT COULD HAVE BEEN PERFORMING AS IT WAS SUPPOSED
20 TO.

21 Q. NOW, I THINK YOU AGREED ON DIRECT TESTIMONY THAT
22 THERE WAS AN ELEMENT OF JUDGMENT INVOLVED IN BOTH THE
23 PURPLE CATEGORIZATION, THE ANY SEXUAL CONTENT OR NUDITY
24 CATEGORIZATION, AND THEN ALSO IN THE YELLOW
25 CATEGORIZATIONS, THAT IS, WHETHER THERE WAS -- WHETHER

1 THEY WERE EDUCATIONAL AND SO ON, CORRECT?

2 A. THAT'S CORRECT.

3 Q. AND THERE WERE SOME WEB PAGES THAT FELL INTO
4 GRAY AREAS, IS THAT CORRECT?

5 A. YES.

6 Q. OKAY. NOW, I WOULD LIKE TO GO OVER SOME
7 EXAMPLES OF PAGES. BUT BEFORE I DO THAT, I WOULD LIKE
8 TO WALK YOU THROUGH A LITTLE BIT HOW ONE WOULD GO ABOUT
9 DETERMINING WHAT PAGES YOU CATEGORIZED IN WHAT FASHION.
10 SO WHAT I WOULD LIKE TO DO FIRST IS HAVE MISS WOOD CALL
11 UP PLAINTIFFS' EXHIBIT 169 AND DISPLAY THAT ON THE
12 SCREEN FOR US, PLEASE.

13 MR. HANSEN: THAT IS ONE OF THE CDS, YOUR
14 HONOR, OR DVDS, MAYBE.

15 BY MR. HANSEN:

16 Q. DO YOU RECOGNIZE WHAT THIS IS DISPLAYING AT THIS
17 POINT MR. MEWETT?

18 A. IT'S A DIRECTORY OF CONTENT I THINK WE SUPPLIED.

19 Q. YOU CREATED IT, CORRECT?

20 A. YES.

21 Q. AND YOU RECOGNIZE THIS AS A COPY OF SOMETHING
22 THAT YOU CREATED AS PART OF YOUR WORK?

23 A. THAT'S RIGHT.

24 Q. NOW, IF MISS WOOD COULD CLICK ON ATTACHMENT A.

25 WHILE THAT IS COMING UP, WHAT IS

1 ATTACHMENT A, MR. MEWETT?

2 A. ATTACHMENT A IS AN ACCESS DATABASE OF THE URLS
3 PLUS THE GRADING THAT EACH ONE WAS GIVEN, AND ALSO THE
4 PERFORMANCE THAT EACH FILTER EFFECTED ON THAT GRADING.

5 Q. IT IS A STATISTICAL SPREADSHEET, CORRECT?

6 A. CORRECT.

7 Q. AND IT HAS A WHOLE -- VERY LONG NUMBER OF ROWS
8 AND A VERY LONG NUMBER OF COLUMNS, CORRECT?

9 A. YES.

10 Q. AND EACH OF THE ROWS IN THIS DATABASE -- I'M
11 SORRY. WE HAVE SUCCESSFULLY GOTTEN ONTO THE MENU OF
12 ATTACHMENT A, THE MASTER DATABASE, CORRECT?

13 A. THAT'S RIGHT.

14 Q. AND NOW WHAT ARE THE FOLDERS THAT WE SEE IN THIS
15 MENU?

16 A. WHAT YOU ARE LOOKING AT HERE ARE THE SOURCES OF
17 EACH OF THE DATASETS.

18 Q. SO THAT, FOR EXAMPLE, THE SECOND ONE HERE IS THE
19 GOOGLE URL ANALYSIS THAT YOU TESTIFIED ABOUT, CORRECT?

20 A. THAT'S RIGHT.

21 Q. LET'S CLICK ON THE GOOGLE URL ANALYSIS AND SEE
22 IF IT PULLS UP THIS LONG SPREADSHEET THAT WE STARTED TO
23 TALK ABOUT.

24 IS THIS THE SPREADSHEET THAT WE JUST
25 STARTED TO TALK ABOUT?

1 A. YES, IT IS.

2 Q. AND THIS IS A SPREADSHEET THAT YOU CREATED,
3 CORRECT?

4 A. THAT'S CORRECT. I CREATED IT IN EXCEL AND
5 IMPORTED IT INTO ACCESS.

6 Q. NOW, WOULD YOU EXPLAIN, FIRST OF ALL, WHAT THE
7 ID NUMBER COLUMN IS.

8 A. THE ID COLUMN NUMBER IS A UNIQUE NUMBER THAT WE
9 COULD -- I COULD REFER BACK TO ANY POINT -- ANY ONE
10 PARTICULAR URL. SO ALTHOUGH I HAVE HANDLED A GREAT DEAL
11 OF URLS DURING THE TESTING, ANY URL SHOULD BE ABLE TO BE
12 TRACKED BACK TO, FIRST, ITS SOURCE AND THEN ITS ID
13 NUMBER.

14 Q. AND WHAT DOES THE COLUMN UNDER URL REFLECT?

15 A. THIS REPRESENTS EITHER THE URL THAT WAS SUPPLIED
16 IN THIS CASE FROM THE RANDOM CONTENT FROM -- IT
17 REPRESENTS THE RANDOM URLS THAT WERE SUPPLIED BY GOOGLE
18 IN THIS CASE.

19 Q. AND IF WE LOOK AT THE 8TH COLUMN THERE, WHICH IS
20 LABELLED Q1A, WHAT DOES THAT COLUMN REPRESENT?

21 A. THIS REPRESENTS THE FACT THAT THE INITIAL
22 SELECTION OF THAT PAGE, AS WE WERE DESCRIBING EARLIER,
23 THIS WAS A PIECE THAT WAS DONE BY THE NEW YORK TEAM AND
24 THEY WOULD HAVE IDENTIFIED IN THE EXAMPLE THAT WE ARE
25 LOOKING AT, THAT ROW 1, THE URL WWW.NQB WAS ACTUALLY

1 IDENTIFIED AS A 1A, AND THAT IS NO SEXUAL CONTENT.

2 Q. SO THAT COLUMN TELLS ME THAT THE GOOGLE ENTRY
3 NUMBER 1 IS A PURPLE A USING PAGE 3 OF DEMONSTRATIVE
4 EXHIBIT 1, CORRECT?

5 A. THAT'S CORRECT.

6 Q. AND NOW, WHERE WOULD I FIND ON THIS SPREADSHEET
7 THAT IT WAS LABELLED ADULT ENTERTAINMENT OR SEXUALLY
8 EXPLICIT?

9 A. IT WILL BE IN COLUMN -- AS WE GO -- SCROLL
10 RIGHT, IT WOULD BE IN COLUMN 5F.

11 Q. SO THE FACT THAT -- IF A -- IF A URL OR WEB PAGE
12 WERE CODED BY YOU AS ADULT ENTERTAINMENT OR SEXUALLY
13 EXPLICIT, THERE WOULD BE A 1 IN THAT COLUMN?

14 A. THAT'S CORRECT.

15 Q. NOW, CAN I ALSO USE THE SPREADSHEET TO DETERMINE
16 WHICH FILTERS, IF ANY, BLOCKED THAT PARTICULAR ROW OR
17 THAT PARTICULAR WEB PAGE OR URL?

18 A. YES, YOU COULD. BY SCROLLING RIGHT AND STAYING
19 IN THE SAME ROW, THE COLUMNS TO THE RIGHT OF Q5H, WHICH
20 WAS THE LAST QUESTION, ARE BROKEN INTO THREES. SO THERE
21 WILL BE THREE COLUMNS FOR EACH FILTER. AND THE FIRST
22 COLUMN WILL BE FOR NOT WORKING, THE NEXT ONE FOR -- I
23 THINK THE ORDER IS NOT WORKING, BLOCKED, OR NOT BLOCKED,
24 AND THEN THEY WORK IN THREES ACROSS ALL THE FILTERS.

25 Q. SO LET'S STAY WITH THIS FIRST -- VERY FIRST ROW.

1 SO WE ARE LOOKING AT GOOGLE ID NUMBER 1. THE AOL MATURE
2 TEEN COLUMN DOES NOT HAVE A 1 IN IT, WHICH MEANS THAT
3 THAT SITE WAS WORKING AT THE TIME YOU DID THE TEST?

4 A. CORRECT.

5 Q. AND THE SECOND COLUMN, WHICH IS -- WHICH ALSO
6 APPEARS TO BE AOL MATURE TEEN, REPRESENTS WHAT?

7 A. IT REPRESENTS THE FACT THAT THE SITE WAS TESTED
8 AND IT WAS BLOCKED.

9 Q. SO THERE IS A 1 IN THAT COLUMN WHICH MEANS THAT
10 THAT ROW, THE GOOGLE ROW 1, WAS IN FACT BLOCKED BY AOL
11 WHEN AOL WAS RUNNING?

12 A. I THINK YOU'RE ONE COLUMN ACROSS. IT SAYS IT IS
13 NOT BLOCKED. AND THE 1 IS IN THE BLOCKED. I'M SORRY,
14 IT IS NOT A 1 IN THE BLOCKED COLUMN. THERE IS A 1 IN
15 THE NOT BLOCKED COLUMN. SO IN THIS CASE IT WAS NOT
16 BLOCKED.

17 Q. OKAY. AND WE COULD DO THAT FOR ESSENTIALLY ANY
18 URL THAT YOU TESTED USING THE VARIOUS DATABASES THAT YOU
19 TESTED, CORRECT?

20 A. DEFINITELY.

21 Q. NOW, I ALSO HAVE A PAPER VERSION OF THE SAME
22 THING, IF IT'S EASIER. IF YOU WOULD LOOK IN YOUR BINDER
23 AT PLAINTIFFS' EXHIBIT 171. DO YOU RECOGNIZE THIS?

24 A. YES, IT'S A SUBSET OF WHAT WE ARE LOOKING AT ON
25 THE SCREEN.

1 Q. AND THIS ACTUALLY GOES FOR MULTIPLE PAGES
2 BECAUSE THE SPREADSHEET DOES NOT FIT ON A SINGLE
3 8 AND-A-HALF BY 11 PAGE, CORRECT?

4 A. YES, DEFINITELY.

5 Q. SO ALL OF THE PAGES IN PLAINTIFFS' EXHIBIT 171,
6 PAGES 001 THROUGH 009, ALL REPRESENT THE SAME FIRST 23
7 ROWS, CORRECT?

8 A. YES.

9 Q. AND THIS EXHIBIT IS AN ACCURATE REFLECTION OF
10 THE DATABASE THAT YOU CREATED FOR THIS CASE, CORRECT?

11 A. I DIDN'T PRINT IT, BUT IT LOOKS CORRECT.

12 Q. NOW, IF YOU WOULD LOOK AT PLAINTIFFS' EXHIBIT
13 172 IN YOUR BINDER.

14 DO YOU RECOGNIZE THIS?

15 A. YES, I DO.

16 Q. AND WHAT IS THIS?

17 A. IT'S A PIECE OF A DATABASE FROM THE AOL QUERY
18 DATABASE.

19 Q. AND THIS DATABASE WORKS SIMILAR TO THE GOOGLE
20 ONE THAT WE HAVE BEEN LOOKING AT?

21 A. YES, IT DOES. THE ONLY THING IT HAS,
22 ADDITIONALLY IS IT HAS A REFERENCE TO A QUERY NUMBER.

23 Q. AND THAT IS IN THE FOURTH COLUMN, CORRECT?

24 A. THAT'S RIGHT.

25 Q. AND THAT QUERY NUMBER, TAKING THE VERY FIRST

1 LINE, FOR EXAMPLE, 25987, CORRESPONDS TO A WORD OR
2 PHRASE THAT YOU CAN DETERMINE, CORRECT?

3 A. THAT'S RIGHT. IT'S A REFERENCE NUMBER TO THE --
4 A QUERY NUMBER THAT WAS ACTUALLY SUPPLIED TO US BY, IN
5 THIS CASE, AOL.

6 Q. SO I DON'T KNOW RIGHT OFF THE TOP OF MY HEAD
7 WHAT QUERY NUMBER 25987 IS, BUT ASSUMING IT WAS DOG,
8 WHAT THIS WOULD BE TELLING US IS THAT THE URL TWO
9 COLUMNS LATER WAS PRODUCED IN RESPONSE TO THE QUERY DOG,
10 CORRECT?

11 A. THAT'S RIGHT.

12 Q. NOW, IF YOU WOULD LOOK AT THE NEXT -- NO, I
13 THINK WE ARE DONE WITH THE PAPER EXHIBITS FOR A SECOND.

14 NOW, I WANT TO TALK ABOUT THE CATEGORY
15 THAT YOU CALLED 5G. WHAT WAS 5G?

16 A. 5G WAS A CATEGORY CALLED OTHER. AND BECAUSE MY
17 INTENTION WAS TO CREATE A DATASET WHICH WAS UNAMBIGUOUS
18 AS FAR AS SEXUAL CONTENT WAS CONCERNED FOR TESTING THE
19 FILTER, I WAS IDENTIFYING SOME CONTENT WHICH, TO USE ONE
20 OF YOUR COMMENT PHRASES EARLIER, MAYBE FELL JUST INTO A
21 SLIGHTLY GRAY AREA. AND SO ALTHOUGH THE CONTENT, I
22 FELT, PROBABLY WOULD BE BLOCKED BY A CONTENT FILTER ON
23 SEXUAL CONTENT, I DID NOT WANT THE 5F GROUP, WHICH WAS
24 MY ADULT CONTENT, IN ANY WAY AMBIGUOUS, SO I MOVED THESE
25 RECORDS INTO THE NEXT COLUMN.

1 Q. SO THE 5G'S ARE A ROUGH ESTIMATE OF THE GRAY
2 AREAS HERE, CORRECT?

3 A. DARKER RATHER THAN LIGHTER, BUT YES.

4 Q. REALLY CLOSE TO BEING ADULT ENTERTAINMENT BUT
5 YOU JUST WERE NOT QUITE READY TO PUT THEM THERE,
6 CORRECT?

7 A. I DIDN'T WANT TO SOUR THE DATASET, YES.

8 Q. AND HOW MANY 5G'S WERE THERE IN YOUR COMBINED
9 DATASETS?

10 A. I DON'T KNOW, OFF THE TOP OF MY HEAD. I THINK
11 BETWEEN 6 AND 700.

12 Q. AGAIN, ON DEMONSTRATIVE EXHIBIT 1, PAGE 3, THIS
13 PAGE I HAVE BEEN REPEATEDLY USING. THE 5G'S ARE WHAT
14 ARE LABELLED ON HERE, OTHER?

15 A. THAT'S CORRECT.

16 Q. SOME PEOPLE WOULD PROBABLY CATEGORIZE AT LEAST
17 SOME OF YOUR 5G'S AS ADULT ENTERTAINMENT, CORRECT?

18 A. QUITE POSSIBLY.

19 Q. IT'S A SUBJECT ABOUT WHICH REASONABLE PEOPLE
20 COULD DISAGREE?

21 A. YEAH.

22 Q. YOU ALSO TESTIFIED ON DIRECT THAT THE
23 PLAINTIFFS, SOME OF -- AT LEAST SOME OF THE PLAINTIFFS
24 WERE BLOCKED BY FILTERS, CORRECT?

25 A. THAT'S CORRECT, ON TWO SEPARATE OCCASIONS.

1 Q. AND AT LEAST SOME OF THEM WERE BLOCKED AS 5G'S,
2 WERE THEY NOT?

3 A. THE SITUATION IS THAT, JUST TO CLARIFY. I DID A
4 TEST ON THE PLAINTIFFS' WEBSITES, AND THAT WAS A CASE OF
5 BLOCKED OR NOT BLOCKED, WHICH WAS A SEPARATE TEST. BUT
6 SOME OF THE PLAINTIFFS' WEBSITES' URLS DID TURN UP IN
7 THE RANDOM DATA AND THEY WERE BLOCKED AS 5G'S.

8 Q. I STAND CORRECTED.

9 AND IF YOU WOULD LOOK AT PLAINTIFFS'
10 EXHIBIT 176.

11 DO YOU RECOGNIZE THE FIRST PAGE OF
12 PLAINTIFFS' EXHIBIT 176?

13 A. YES, I DO.

14 Q. IS IT FAIR TO SAY THIS IS A TRUNCATED VERSION OF
15 THE DATABASE WE HAVE BEEN LOOKING AT FOR THE YAHOO
16 QUERIES?

17 A. YES, IT IS.

18 Q. AND IT REFLECTS THAT ONE OF THE URLS IN YOUR
19 DATABASE WAS A SALON.COM URL, IS THAT CORRECT?

20 A. THAT'S CORRECT.

21 MR. MCELVAIN: OBJECTION, YOUR HONOR,
22 BEST EVIDENCE. THE DATABASE IS IN THE RECORD. WE CAN
23 LOOK AT THE DATABASE. WE DON'T HAVE TO LOOK AT
24 PLAINTIFFS --

25 MR. HANSEN: HE HAS IDENTIFIED IT AS

1 ACCURATE. I DON'T KNOW WHY WE NEED TO DO IT AGAIN. I
2 CAN DO IT. IT WILL TAKE A VERY LONG TIME TO PULL THESE
3 UP.

4 THE COURT: OVERRULED. I CAN'T TELL WHAT
5 HE IS GOING TO DO WITH IT. HE HAS A SHORT ANSWER AND A
6 SHORT QUESTION.

7 BY MR. HANSEN:

8 Q. AND THIS SALON.COM PAGE APPEARED IN YOUR
9 DATABASE, CORRECT?

10 A. THAT'S CORRECT.

11 Q. AND YOU CATEGORIZED IT AS A 5G, CORRECT?

12 A. CORRECT.

13 Q. AND THE PAGE THAT WE ARE SPECIFICALLY TALKING
14 ABOUT IS PLAINTIFFS' EXHIBIT 176-002, CORRECT?

15 A. I CERTAINLY COULD NOT TELL THIS WITHOUT LOOKING
16 AT THE ACTUAL IMAGES. I LOOKED AT AN AWFUL LOT OF
17 PAGES.

18 Q. ALL RIGHT.

19 HOW WOULD ONE GO ABOUT FINDING FROM YOUR
20 DATABASES, WHETHER THIS PAGE THAT IS PLAINTIFFS' EXHIBIT
21 176, PAGE 002, WAS IN FACT THE PAGE LABELLED 2677 IN THE
22 YAHOO QUERY DATABASE?

23 A. THERE SHOULD BE A DOCUMENT WHICH HAS THE IMAGES,
24 AND THE IMAGE FILES ARE BROKEN DOWN BY THE SOURCES, SO
25 IDENTIFYING THE YAHOO IMAGES FILE AND THEN SCROLLING

1 DOWN IT WOULD BE LABELLED YAHOO 2677.

2 Q. ALL RIGHT. SO IF WE GO INTO -- WHERE ARE WE
3 HERE? WHAT YOU ARE LOOKING AT HERE IS THE DVD OR CD
4 THAT CONTAINS THE DATA YOU SUBMITTED AS PART OF YOUR
5 FIRST REPORT, CORRECT?

6 A. THAT'S CORRECT.

7 Q. OKAY. AND IF WE WANT TO FIND THE IMAGE, THIS
8 YAHOO 2677, HOW DO WE DO THAT WITH THIS DATABASE?

9 A. WE OPEN THE ATTACHMENT B FOLDER HERE, AND THEN
10 GO INTO THE YAHOO QUERY FOLDER. AND THIS IS 2677. SO
11 THE SECOND ONE UP FROM THE BOTTOM, THE WORD DOCUMENT
12 SHOULD HAVE THIS IMAGE IN IT.

13 MR. HANSEN: MISS WOOD, BEFORE YOU CALL
14 THAT UP, CAN YOU TAKE IT OFF THE SCREEN AND FIND THE
15 IMAGE AND THEN BRING IT BACK ON THE SCREEN, PLEASE.

16 BY MR. HANSEN:

17 Q. AND WHILE SHE IS DOING THAT, COULD WE LOOK AT
18 PAGE 000 -- I'M SORRY, 003 OF PLAINTIFFS' EXHIBIT 176.

19 THAT ALSO SUGGESTED A SALON.COM PAGE.
20 INDEED IT'S THE EXACT SAME PAGE THAT WAS ALSO IN YOUR
21 DATABASE WITH A DIFFERENT NUMBER, CORRECT?

22 A. CORRECT.

23 Q. AND YOU ALSO CATEGORIZED THAT ONE AS 5G WHEN IT
24 CAME UP A SECOND TIME IN YOUR DATABASE, CORRECT?

25 A. CORRECT.

1 Q. AND BECAUSE IT'S THE EXACT SAME PAGE, WE AGAIN
2 THE EXACT SAME PAGE THAT FOLLOWS IT AS PLAINTIFFS'
3 EXHIBIT 176-004, CORRECT?

4 A. THAT'S RIGHT.

5 Q. OKAY. NOW, MISS WOOD HAS JUST PERFORMED THE
6 INSTRUCTIONS THAT YOU GAVE HER TO FIND YAHOO IMAGE 2677
7 IN THE Q1B FOLDER FROM THE DATASET ATTACHED TO YOUR
8 FIRST REPORT.

9 THIS IS THE PAGE THAT IS CONTAINED IN
10 PLAINTIFFS' EXHIBIT 17-6002, CORRECT?

11 A. THAT'S RIGHT.

12 Q. OKAY. SO WE HAVE NOW VERIFIED THAT THIS SALON
13 PAGE CAME UP TWICE IN YOUR DATABASE AND BOTH TIMES YOU
14 CATEGORIZED IT AS 5G. CORRECT?

15 A. THAT'S RIGHT.

16 Q. I WOULD LIKE YOU NEXT TO LOOK AT PLAINTIFFS'
17 EXHIBIT 177, WHICH IS IN YOUR BOOK. AND STARTING WITH
18 THE VERY FIRST ENTRY ON PAGE 001 OF PLAINTIFFS' EXHIBIT
19 177, WHAT DOES THIS REFLECT?

20 A. IT REFLECTS A URL FROM THE DATABASE FROM THE MSN
21 URLS.

22 Q. AND IT SHOWS THAT THE URL THAT WAS IN THE
23 DATABASE BEGAN TERMINAL2.WEBBLOGGER.COM. CORRECT?

24 A. THAT'S RIGHT.

25 Q. AND WHAT IS THE REDIRECT COLUMN HERE NOW?

1 A. THE REDIRECT COLUMN IS THE PLACE -- OR THE PAGE
2 THAT -- THE PAGE IMMEDIATELY REDIRECTED TO WHEN TESTING
3 WAS ATTEMPTED.

4 Q. AND SO THE PAGE THAT YOU ACTUALLY CATEGORIZED
5 WAS THE REDIRECT PAGE, NOT THE ORIGINAL URL PAGE,
6 CORRECT?

7 A. THAT'S RIGHT.

8 Q. OKAY. AND YOU CATEGORIZED THE REDIRECT PAGE
9 HERE AS A 5G?

10 A. THAT'S RIGHT.

11 Q. WOULD YOU LOOK AT THE NEXT PAGE OF PLAINTIFFS'
12 EXHIBIT 177, WHICH IS 002. THIS IS ONE OF THOSE DARK
13 GRAY PAGES THAT YOU THINK SHOULD BE -- IS VERY CLOSE TO
14 BEING ADULT ENTERTAINMENT. IS THAT CORRECT?

15 A. I'M NOT SURE. WHAT I SAID WAS SOME OF THE
16 IMAGES ARE ACTUALLY VERY CLOSE, BUT NOT ALL OF THEM.

17 Q. SO WHY IS THIS A 5G?

18 A. BECAUSE ACTUALLY IT WAS IN THE OTHER CATEGORY,
19 AND THERE ISN'T ANOTHER CATEGORY THAT I COULD IDENTIFY
20 THAT THAT SHOULD GO INTO. IT DID NOT LOOK LIKE IT WAS
21 EDUCATIONAL, HEALTH OR -- SO IT BECAME AN OTHER.

22 Q. AND YOU CATEGORIZED IT AS SEXUAL CONTENT OR
23 NUDITY BECAUSE OF THE IMAGE OF THE SMALL CHILD IN THE
24 PAINTING ON THE WALL?

25 A. THAT'S CORRECT.

1 Q. OKAY. WOULD YOU LOOK AT THE NEXT PAGE, 003, IN
2 PLAINTIFFS' EXHIBIT 177. THIS SHOWS THAT THERE WAS AN
3 MSNBC PAGE IN YOUR WORDTRACKER DATABASE, CORRECT?

4 A. THAT'S RIGHT.

5 Q. AND YOU CATEGORIZED IT AS 5G?

6 A. THAT'S RIGHT.

7 Q. AND WOULD YOU LOOK AT PAGE 004 OF PLAINTIFFS'
8 EXHIBIT 177. THIS IS A PAGE WITH SEXUAL CONTENT OR
9 NUDITY, OTHER?

10 A. WELL, I THINK TO PUT THIS IN CONTEXT WHAT I
11 WOULD ALSO LIKE TO SAY IS THAT IF -- WE NEED TO LOOK AT
12 THIS IMAGE ON THE STORED IMAGES BECAUSE THERE IS -- I
13 MAY HAVE GRADED THIS PAGE ALONE, BUT THERE IS A STRONG
14 LIKELIHOOD THAT IT COULD HAVE ALSO GENERATED POP-UPS AND
15 THE POP-UPS WOULD THEN HAVE BEEN GRADED ALONGSIDE IT.
16 SO I DON'T KNOW WHETHER IT'S STILL ON ITS OWN OR WITH
17 SOMETHING ELSE.

18 Q. LET'S ASSUME, FOR THE SAKE OF ARGUMENT, WHILE
19 MISS WOOD CALLS THIS PAGE UP, THAT THERE WERE NO
20 POP-UPS. DO YOU STILL THINK THIS IS ONE OF THOSE
21 BORDERLINE CASES, ONE OF THOSE DARK GRAY CASES THAT YOU
22 CORRECTLY CATEGORIZED AS A 5G?

23 A. I THINK IT'S CORRECTLY CATEGORIZED AS A 5G. I
24 WOULD JUST SAY THAT IT'S NOT ONE THAT IS GOING NATURALLY
25 TO FALL INTO MY 5F CATEGORY.

1 Q. IS IT CORRECTLY CATEGORIZED AS A 5G BECAUSE IT'S
2 AN MSNBC ARTICLE ON TEENAGERS HAVING ORAL SEX?

3 A. IT DOESN'T FALL INTO ANY OTHER CATEGORY AND I
4 ONLY GOT SO MANY SUBSETS.

5 Q. IF YOU WOULD LOOK AT THE SCREEN IN FRONT OF YOU,
6 MR. MEWETT. THIS IS THE WEB PAGE THAT WE HAVE BEEN
7 TALKING ABOUT.

8 A. YES.

9 Q. WOULD YOU LIKE TO HAVE MISS WOOD SCROLL DOWN
10 SLIGHTLY -- IF THERE WAS A POP-UP, IT WOULD APPEAR
11 UNDERNEATH THE ORIGINAL IMAGE. CORRECT?

12 A. THAT'S RIGHT. IT WOULD BE A SCREEN SHOT. I
13 JUST NEED TO SCROLL DOWN UNTIL WE GET TO THE NEXT RECORD
14 JUST IN CASE.

15 NO. THAT IS FINE.

16 Q. SO THERE WERE NO POP-UPS THERE?

17 A. THAT'S CORRECT.

18 Q. OKAY. LET'S LOOK AT THE NEXT ONE ON THIS LIST.

19 THIS IS A WEB PAGE FROM NEWYORKMETRO.COM,
20 CORRECT?

21 A. THAT'S RIGHT.

22 Q. AND YOU CATEGORIZED IT AS A 5G?

23 A. CORRECT.

24 Q. AND IF YOU LOOK AT PAGE 006, THIS IS AN ARTICLE
25 FROM NEW YORK MAGAZINE, CORRECT?

1 A. THAT'S RIGHT.

2 Q. AND THE REASON YOU CLASSIFIED IT AS HAVING
3 SEXUAL CONTENT OR NUDITY IS BECAUSE IT'S ABOUT
4 PORNOGRAPHY?

5 A. BECAUSE IT HAD VOCABULARY ON THE PAGE ABOUT
6 PORNOGRAPHY OR NUDITY. AND IT DID NOT FALL INTO ANY
7 OTHER CATEGORIES I HAD.

8 Q. WHAT IS THE VOCABULARY THAT CAUSED YOU TO
9 CATEGORIZE THIS AS SEXUAL CONTENT OR NUDITY?

10 A. IT'S DIFFICULT TO IDENTIFY THE EXACT WORDS, BUT
11 CERTAINLY ITEMS ON THE PAGE LIKE PORNOGRAPHY, PORN, PORN
12 STARS. I'M JUST GLANCING DOWN. PORN WORTHY. PORN
13 CRAZED.

14 AND THEN TO ADD TO THAT, YOU WOULD HAVE
15 HAD IN CONTEXT BIG STUD, SEXUAL NEEDS. AND THAT IS --
16 THAT IS -- AS A FIRST PASS, THE PAGE I GENERALLY TAKE
17 LONGER TO LOOK AT BUT THAT'S IT.

18 Q. SO IN YOUR VIEW, THIS WAS CORRECTLY CATEGORIZED
19 AS A 5G?

20 A. CORRECT.

21 Q. OKAY. WOULD YOU LOOK AT THE NEXT ONE, PLEASE.
22 THIS IS A PAGE FROM MCLRIGHTS.ORG, IS THAT CORRECT?

23 A. THAT'S RIGHT.

24 Q. YOU CATEGORIZED IT AS 5G, CORRECT?

25 A. YES.

1 Q. WOULD YOU LOOK AT PAGE 008 OF PLAINTIFFS'
2 EXHIBIT 177. THIS APPEARS TO BE THE HOME PAGE OF THE
3 NATIONAL CENTER FOR LESBIAN RIGHTS. CORRECT?

4 A. THAT'S RIGHT.

5 Q. AND WHY DO YOU CLASSIFY THIS AS HAVING SEXUAL
6 CONTENT OR NUDDITY?

7 A. BECAUSE THE CATEGORIZATION, MY GOAL IS TO GET
8 DOWN TO A SET OF URLS WHICH ARE UNAMBIGUOUS FOR DOING
9 THE TESTING OF THE FILTER REGARDING SEXUAL CONTENT. SO
10 THIS PAGE WOULD HAVE MADE IT INTO THE AREA INITIALLY,
11 BECAUSE IT'S GOT TERMINOLOGY WHICH HAS SEX, OR
12 TERMINOLOGY AS FAR AS -- THAT HAS THE WORD SEX ON THERE,
13 SAME SEX COUPLES, LESBIANS. AND I'M PARSING THE PAGE
14 VERY QUICKLY. SO THIS VOCABULARY WOULD ACTUALLY HAVE
15 MADE IT NOT A 1A, AND THEN THIS DOES NOT SEEM TO ME WHEN
16 WE WERE DOING THE TESTING TO HAVE EITHER AN ARTISTIC
17 SLANT OR EDUCATIONAL OR POLITICAL. IN OTHER WORDS, IT
18 WOULD HAVE BECOME AN OTHER.

19 Q. YOU THINK THE NATIONAL CENTER FOR LESBIAN RIGHTS
20 IS NOT A POLITICAL ORGANIZATION?

21 A. THAT IS THE CONCLUSION I DREW FROM THAT ONE
22 PAGE; NOT FROM ORGANIZATIONS OR WHAT THE ACTUAL WEBSITE
23 WAS.

24 Q. AND IS IT PRIMARILY THE FACT THAT IT REFERS TO
25 LESBIANS THAT MAKES IT A SEX SITE?

1 A. NO, IT'S NOT. IT'S THE FACT THAT THE WORD SEX
2 IS ACTUALLY ON THE SITE IN THE FIRST PART OF THE
3 CATEGORIZATION TO BREAK IT DOWN FROM SEXUAL SITES WITH
4 SEXUAL VOCABULARY OR CONTENT OR NUDITY WAS TO MAKE SURE
5 THAT I HAD A DATASET INITIALLY THAT I COULD TEST AGAINST
6 A FILTER WHICH WAS TOTALLY UNAMBIGUOUS AS TO HAVE ANY
7 SEXUAL TERMS IN IT AT ALL. SO IF I PUT THIS IN A 1A, I
8 DID NOT WANT THE FILTER TO PICK THIS PAGE UP BECAUSE IT
9 HAD THE WORD SEX IN IT. I WANTED TO MAKE SURE IT WAS
10 UNAMBIGUOUS.

11 Q. DO YOU KNOW WHAT WESTLAW IS?

12 A. NO, I DON'T.

13 Q. LET'S ASSUME THAT YOU HAVE AN ELECTRONIC
14 DATABASE THAT CONSISTS ENTIRELY OF REPORTED OPINIONS BY
15 UNITED STATES COURTS. AND YOU HAVE TURNED UP A PAGE ON
16 ONE OF THOSE OPINIONS THAT INCLUDED THE WORD SEX IN IT.
17 WOULD YOU HAVE THEN CLASSIFIED IT AS A PAGE THAT
18 INCLUDED SEXUAL CONTENT OR NUDITY, EVEN THOUGH IT WAS
19 PUBLISHED BY A UNITED STATES COURT?

20 A. IN THE PROCESS OF TRYING TO CREATE TWO VERY
21 EXPLICIT DATASETS, YES, I WOULD.

22 Q. WOULD YOU LOOK AT THE NEXT ONE, PLEASE, WHICH IS
23 GLMA.ORG. YOU CLASSIFIED THIS AS A 5G, IS THAT CORRECT?

24 A. THAT'S RIGHT.

25 Q. WOULD YOU LOOK AT PAGE 10 OF PLAINTIFFS' EXHIBIT

1 178. THIS IS A PAGE THAT WELCOMES PEOPLE TO THE GAY AND
2 LESBIAN MEDICAL ASSOCIATION, CORRECT?

3 A. THAT'S CORRECT.

4 Q. THE WORD SEX DOES NOT APPEAR ON THIS PAGE,
5 CORRECT?

6 A. THAT'S RIGHT.

7 Q. THE ONLY REFERENCE THAT YOU COULD EVEN
8 CONCEIVABLY MAKE TO SEX IS THAT THIS REFERS TO GAYS AND
9 LESBIANS. CORRECT?

10 A. IF THERE ARE NO POP-UPS ASSOCIATED WITH THIS
11 PAGE, THEN YES.

12 Q. LET'S PULL UP WORDTRACKER 396, MISS WOOD.

13 WHILE SHE IS DOING THAT, IF IT HAD SAID,
14 WELCOME TO THE HETEROSEXUAL MEDICAL ASSOCIATION, WOULD
15 YOU HAVE CLASSIFIED IT AS HAVING SEXUAL CONTENT OR
16 NUDITY?

17 A. YES, I WOULD.

18 Q. WHILE SHE IS PULLING UP THE GAY AND LESBIAN
19 MEDICAL ASSOCIATION, WHICH I GATHER YOU NOW BELIEVE THIS
20 IS CORRECTLY CATEGORIZED AS A 5G. ASSUMING -- LET'S
21 WAIT, BECAUSE I KNOW YOU WANT TO SEE THE POP-UPS. SO WE
22 WILL WAIT FOR A SECOND.

23 OKAY. IT IS NOW ON YOUR SCREEN IN FRONT
24 OF YOU.

25 A. OKAY. I JUST NEED TO SCROLL DOWN. THAT'S FINE.

1 Q. SO THERE ARE NO POP-UPS ON THIS RECORD?

2 A. THAT'S RIGHT.

3 Q. AND YOU STILL BELIEVE THIS WAS CORRECTLY
4 CATEGORIZED AS A SEXUAL CONTENT OR NUDITY SITE?

5 A. IN THE PROCESS OF TRYING TO CREATE TOTALLY
6 UNAMBIGUOUS NONSEXUAL CONTENT DATASET, YES.

7 Q. OKAY. LET'S LOOK AT THE NEXT ONE, PLEASE.

8 ACTUALLY, RATHER THAN CONTINUING TO GO
9 THROUGH THESE ONE AT THAT TIME, WHY DON'T YOU LOOK
10 THROUGH THE REMAINING PAGES IN THIS EXHIBIT, IF YOU
11 WOULD, UP TO PAGE 18.

12 THESE ALL APPEAR TO BE PAGES THAT YOU
13 CATEGORIZED AS 5G?

14 A. YES, THEY ARE.

15 Q. YOU THINK THEY ARE ALL CORRECTLY CATEGORIZED?

16 A. YES, I DO.

17 Q. LOOK AT PAGE -- LET ME DO ONE MORE SPECIFICALLY.
18 PAGE 014.

19 A. OKAY.

20 Q. WHAT IS IT ABOUT THIS THAT MAKES IT SEXUAL
21 CONTENT OR NUDITY?

22 A. THE PROCESS HERE IS THAT THE SITE HAS SEXUAL
23 TERMS ON IT, AS IN SAFER SEX. AND THE SITE MAY HAVE --
24 I DON'T KNOW WITHOUT LOOKING AT THE SCROLLING -- IT MAY
25 HAVE BEEN PICKED UP AS THE FACT THAT THE CHAP IS BARE

1 CHESTED.

2 Q. THE FACT THAT WE CAN SEE THE BACK OF A MAN'S --
3 THE NAKED BACK OF A MAN COULD CLASSIFY IT AS SEXUAL
4 CONTENT OR NUDDITY UNDER YOUR CLASSIFICATION SYSTEM?

5 A. NO. WHAT I'M SAYING IS THAT THE -- I'M NOT SURE
6 WHETHER THAT COMPONENT OF THE PICTURE WAS ACTUALLY
7 PICKED UP. BUT CERTAINLY THE WORD SEX IS ON THE PAGE.
8 AND WHAT WE'VE GOT TO REMEMBER IS, THIS IS NOT ABOUT
9 SEPARATING OUT THIS SITE FROM ANYTHING. IT'S ABOUT
10 CREATING TWO DATASETS. ONE CLEAN AND ONE UNAMBIGUOUS.
11 SO MOVING THIS SITE OUT FROM THE ORIGINAL SET OF CLEAN
12 SITES IS ACTUALLY ONLY THERE TO MAKE SURE THAT IT CAN'T
13 UNAMBIGUOUSLY BE PICKED UP BY A FILTER BECAUSE IT HAS
14 THE WORD SEX ON IT.

15 Q. WE ARE DONE WITH EXHIBIT 177.

16 AS YOUR CLASSIFIERS WERE GOING THROUGH
17 AND CLASSIFYING WEB PAGES, EITHER IN THE PURPLE A VERSUS
18 PURPLE B, OR AMONG THE VARIOUS YELLOWS, THERE WERE
19 INSTANCES IN WHICH THEY ASKED YOU FOR ADVICE BECAUSE
20 THEY COULD NOT DECIDE HOW TO CATEGORIZE A SITE, WEREN'T
21 THERE?

22 A. THAT'S CORRECT.

23 Q. AND THERE WERE INSTANCES IN WHICH YOU CHANGED
24 THE CATEGORY GIVEN BY ONE OF YOUR CODERS, CORRECT?

25 A. THAT'S RIGHT.

1 Q. AND THERE WERE SOME TIMES WHEN THE CODERS
2 REALIZED ABOUT MIDWAY THROUGH THE PROCESS THAT THEY
3 CODED SOMETHING BACK AT THE BEGINNING WRONG AND HAD TO
4 GO BACK AND CHANGE IT, ISN'T THAT CORRECT?

5 A. THAT'S RIGHT.

6 Q. AND BETWEEN YOUR ORIGINAL REPORT AND YOUR
7 REBUTTAL REPORT, DEFENDANT'S EXHIBITS 82 AND 83, YOU
8 CHANGED ABOUT 60 CATEGORIES YOURSELF, DID YOU NOT?

9 A. I CAN'T REMEMBER THE NUMBER, BUT I CERTAINLY DID
10 CHANGE A SMALL NUMBER.

11 Q. AND SOME OF THE ONES THAT YOU CHANGED INVOLVED
12 MOVING PAGES INTO OR OUT OF THE ADULT ENTERTAINMENT
13 CATEGORY, CORRECT?

14 A. THAT'S RIGHT.

15 Q. NOW, INDEED, AT THAT POINT, YOU FOUND THAT THERE
16 WERE -- THERE WAS ONE WEBSITE THAT APPEARED THREE TIMES
17 IN YOUR DATABASE AND HAD BEEN CODED THREE DIFFERENT WAYS
18 BY YOUR CODER, CORRECT?

19 A. I CAN'T RECALL THAT BUT IT WOULD NOT BE OUT OF
20 THE QUESTION.

21 Q. DO YOU RECALL THE WEB PAGE LITEROTICA.COM?

22 A. I SAW AN AWFUL LOT OF WEB PAGES.

23 Q. LOOK AT PLAINTIFFS' EXHIBIT 178, IF YOU WILL.
24 THIS IS DRAWN FROM YOUR FIRST REPORT PRIOR TO THE TIME
25 YOU MADE CORRECTIONS IN YOUR SECOND REPORT.

1 AND IT SHOWS THREE DIFFERENT CODINGS FOR
2 THE EXACT SAME PAGE, CORRECT?

3 A. THAT'S CORRECT.

4 Q. AND THIS IS ONE YOU ACTUALLY DID FIX BETWEEN
5 YOUR ORIGINAL REPORT AND YOUR REBUTTAL REPORT. CORRECT?

6 A. YES.

7 Q. OR YOU HOPE SO?

8 A. I HOPE SO.

9 Q. ALL RIGHT. NOW, WE DISCUSSED A LITTLE BIT
10 DURING YOUR DEPOSITION THE CATEGORY OF SITES THAT HAD
11 ARTISTIC VALUE. THAT IS, THE ARTISTIC BOX IN YELLOW ON
12 DEMONSTRATIVE EXHIBIT 1, PAGE 3, CORRECT?

13 A. THAT'S RIGHT.

14 Q. APPROXIMATELY HOW MANY SITES DID YOU CODE AS
15 ARTISTIC?

16 A. I REALLY HAVE NO IDEA.

17 Q. DOES 50 SOUND ABOUT RIGHT?

18 A. IT COULD BE.

19 Q. AND THAT IS OUT OF 2,248?

20 A. YES.

21 Q. AND WE DISCUSSED A LITTLE BIT WHETHER OIL
22 PAINTINGS WOULD ALWAYS BE ARTISTIC, OR WHETHER AN OIL
23 PAINTING COULD EVER FALL INTO THE CATEGORY OF ADULT
24 ENTERTAINMENT, CORRECT?

25 A. I DO REMEMBER THE CONVERSATION.

1 Q. I THOUGHT YOU MIGHT.

2 AND AS I UNDERSTAND IT, IF YOU FOUND AS A
3 RESULT -- IN THE PROCESS OF DOING YOUR CATEGORIZATION,
4 IF YOU FOUND A WEB PAGE THAT HAD NOTHING ON IT EXCEPT AN
5 OIL PAINTING SHOWING SERIOUS BESTIALITY, YOU WOULD HAVE
6 CATEGORIZED THAT AS ARTISTIC RATHER THAN ADULT
7 ENTERTAINMENT, CORRECT?

8 A. THE CAVEAT, I THINK, WOULD BE THAT WHEN LOOKING
9 AT THE IMAGE IT WAS QUITE CLEARLY AN OIL PAINTING.

10 Q. AND IF SO, YOU WOULD HAVE CATEGORIZED IT AS
11 ARTISTIC?

12 A. YES, I WOULD.

13 THE COURT: COUNSEL, WE ARE NEAR THE END
14 OF THE COURT DAY.

15 MR. HANSEN: THIS IS A PERFECTLY FINE
16 PLACE TO STOP, YOUR HONOR.

17 THE COURT: THEN COURT WILL BE IN RECESS
18 UNTIL TOMORROW MORNING AT 9:30. THE WITNESS IS EXCUSED
19 FROM THE STAND FOR NOW. CAN YOU BE BACK TOMORROW
20 MORNING, SIR?

21 THE WITNESS: YES, I WILL, SIR.

22 MR. HANSEN: THANK YOU, YOUR HONOR.

23 (WITNESS EXCUSED.)

24 MR. HANSEN: YOUR HONOR, BEFORE WE START
25 THE 4:30 DISCUSSION, CAN WE HAVE JUST A MINUTE TO CONFER

1 WITH THE DEFENDANTS TO SEE WHETHER WE CAN MAKE A DISPUTE
2 GO AWAY OR NOT?

3 THE COURT: SURE. I WILL WORK ON
4 SOMETHING I HAVE HERE.

5 (DISCUSSION OFF THE RECORD.)

6 THE COURT: WE ARE IN A TIME MANAGEMENT
7 MODE. I HAVE ONE OF MY TASKS FINISHED AND HANDED OUT A
8 COURTESY COPY OF AN ORDER EARLIER THIS AFTERNOON. IN
9 3.2 MINUTES, MR. LANG WILL BE BACK WITH A WRITTEN
10 DECISION ON THE WEB PAGES OF THE NONTESTIFYING
11 PLAINTIFFS. SO THOSE TWO WILL BE DONE.

12 LET'S TALK ABOUT -- MR. GOMEZ, ANYTHING
13 YOU NEED TO BRING UP NOW?

14 MR. GOMEZ: NO, YOUR HONOR. I WAS JUST
15 GOING TO IDENTIFY THE WITNESSES FOR TOMORROW.

16 THE COURT: OKAY.

17 MR. GOMEZ: WE WOULD ANTICIPATE HAVING
18 DR. PHILIP STARK. AND THE EXHIBITS THAT WE WOULD BE
19 USING WILL BE EXHIBITS 62 -- DEFENDANT'S EXHIBIT 62
20 THROUGH 79.

21 THE COURT: 63?

22 MR. GOMEZ: 62 THROUGH 79.

23 THE COURT: INCLUSIVE?

24 MR. GOMEZ: YES, YOUR HONOR.

25 THE COURT: WITH THE CROSS EXAMINATION OF

1 THE PRESENT WITNESS AND DR. STARK, THE DAY WILL BE
2 TAKEN, OR DO YOU HAVE ANOTHER WITNESS?

3 MR. GOMEZ: IT MAY BE, BUT IF IT'S NOT,
4 WE WILL BE CALLING DR. STEPHEN NEALE. AND WE WOULD BE
5 USING DEFENDANT'S EXHIBITS 59 THROUGH 61 INCLUSIVE.

6 THE COURT: 59 THROUGH 61 INCLUSIVE?

7 MR. GOMEZ: YES, YOUR HONOR.

8 THE COURT: THAT SHOULD TAKE UP THE DAY
9 IN THE EVENT THAT WE NEED HIM.

10 MR. GOMEZ: IT WILL GO BEYOND THE DAY IF
11 WE START.

12 MR. HANSEN: YOUR HONOR, CAN I ASK ABOUT
13 THURSDAY? THERE HAS BEEN SOME CONFUSION, BUT WE HAVE
14 BEEN TALKING AMONGST OURSELVES OBVIOUSLY ABOUT THIS
15 ISSUE. AND THERE HAS BEEN SOME DIFFICULTY ABOUT WHAT
16 MIGHT HAPPEN ON THURSDAY. THERE MAY BE SOME WITNESSES
17 THAT WE HAD THOUGHT WERE GOING TO BE NEXT WEEK THAT MAY
18 BE ON THURSDAY. IF WE COULD GET SOME INDICATION OF THAT
19 TODAY IT WOULD BE HELPFUL.

20 THE COURT: CAN YOU HELP OUT WITH THAT,
21 MR. GOMEZ?

22 MR. GOMEZ: YOUR HONOR, I BELIEVE WE
23 WOULD HAVE MR. -- DEPENDING ON HOW LONG DR. NEALE, IT
24 DEPENDS ON WHAT HAPPENS TOMORROW, BUT HIS TESTIMONY MAY
25 TAKE SOME TIME. WE WOULD HAVE TWO OTHER WITNESSES

1 AVAILABLE FOR THURSDAY TO FILL OUT THE DAY AFTER DR.
2 NEALE. AND THAT WOULD BE -- I BELIEVE IT'S DOUGLAS
3 KNOPPER AND JOHN DANCU.

4 THE COURT: SPELL THEIR LAST NAMES FOR
5 THE RECORD.

6 MR. GOMEZ: IT WOULD BE K-N-O-P-P-E-R,
7 AND THEN DANCU, IS D-A-N-C-U.

8 THE COURT: DOES THAT HELP YOU, MR.
9 HANSEN?

10 MR. HANSEN: YES. THANK YOU, YOUR HONOR.

11 THE COURT: ANY EXHIBITS WITH THOSE
12 WITNESSES?

13 MR. GOMEZ: YOUR HONOR, I NEED TO
14 IDENTIFY THOSE EXHIBITS TOMORROW.

15 THE COURT: ALL RIGHT. FINE.

16 THE COURT DAY IS CONCLUDED. COUNSEL ARE
17 EXCUSED. WE ARE OFF THE RECORD.

18 (CONCLUDED AT 4:35 P.M.)

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16

I CERTIFY THAT THE FOREGOING IS A CORRECT

17

TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE

18

ABOVE-ENTITLED MATTER.

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DATE

OFFICIAL COURT REPORTER

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24

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