

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 VS. :

7 ALBERTO R. GONZALES, :
8 IN HIS OFFICIAL CAPACITY AS :
9 ATTORNEY GENERAL OF THE :
10 UNITED STATES :

11 DEFENDANT : NO. 98-05591

12 THURSDAY, NOVEMBER 9, 2006
13 COURTROOM 17-A
14 PHILADELPHIA, PA 19106

15

BEFORE THE HONORABLE LOWELL A. REED, JR. SJ

16

NON-JURY TRIAL
17 DAY 12

18

APPEARANCES:

19 CHRISTOPHER A. HANSEN, ESQUIRE
20 ADEN J. FINE, ESQUIRE
21 BEN WIZNER, ESQUIRE
22 CATHERINE CRUMP, ESQUIRE
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PROCEEDINGS RECORDED BY STENOGRAPHY-COMPUTER,
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FOR THE DEFENDANT

23
24
25

1 (THE CLERK OPENS COURT.)

2 THE COURT: GOOD MORNING EVERYONE.

3 HAVE A SEAT.

4 THE COURT: MISS WHITE, GOOD MORNING.

5 THE COURT REPORTER: GOOD MORNING, YOUR

6 HONOR.

7 THE COURT: THE DAY BEGINS.

8 MR. GOMEZ: GOOD MORNING, YOUR HONOR.

9 THE COURT: GOOD MORNING, MR. GOMEZ.

10 MR. GOMEZ: GOOD MORNING, DR. NEALE.

11 THE WITNESS: GOOD MORNING.

12 CONTINUED DIRECT EXAMINATION

13 BY MR. GOMEZ:

14 Q. DR. NEALE, WHAT WERE YOU TASKED TO DO IN THIS
15 CASE?

16 A. I WAS ASKED TO IDENTIFY AND EXAMINE ANY
17 LINGUISTIC, LOGICAL OR FOUNDATIONAL PROBLEMS INVOLVED IN
18 TEXT CLASSIFICATION, TEXT-BASED CLASSIFICATION AND
19 THEREBY ANY LINGUISTIC OR LOGICAL PROBLEMS THAT BORE ON
20 THE EFFICACY OF AUTOMATED SYSTEMS OF TEXT-BASED
21 CLASSIFICATION AND ANY TECHNOLOGY THAT EMPLOYED
22 TEXT-BASED CLASSIFICATION, IN PARTICULAR, INTERNET
23 FILTERING TECHNOLOGY WHICH EMPLOYS TEXT-BASED
24 CLASSIFICATION SYSTEMS.

25 Q. NOW, DR. NEALE, I BELIEVE THAT THERE WAS IN

1 CONNECTION WITH THE SCIENCE OF LANGUAGE AND INFORMATION,
2 THERE WAS AN ISSUE THAT YOU HAD RAISED YESTERDAY
3 CONCERNING THE PROBLEM OF INFORMATION CONTENT. COULD
4 YOU JUST DESCRIBE WHAT THAT IS?

5 A. IT'S THE PROBLEM OF IDENTIFYING WHAT THE CONTENT
6 ACTUALLY IS THAT IS BEING REPRESENTED OR COMMUNICATED OR
7 TRANSMITTED BY ANY SEQUENCE OF WORDS, WHETHER THEY ARE
8 CHISELED INTO STONE, WRITTEN ON PAPER DOCUMENTS,
9 PAPYRUS, BLACKBOARD, DOCUMENTS, ELECTRONIC DOCUMENTS.

10 THE COURT: COMPUTER SCREENS.

11 THE WITNESS: COMPUTER SCREENS FOR
12 EXAMPLE, CHISELED IN OR OTHERWISE. IT'S THE GENERAL
13 PROBLEM OF DETERMINING OR IDENTIFYING THE CONTENT OF ANY
14 PARTICULAR SEQUENCE OF WORDS THAT ARE DISPLAYED TO YOU
15 IN ANY FORM, FROM A SIMPLE STOP SIGN TO A TEXT DOCUMENT.

16 THE COURT: WHAT DO YOU MEAN BY
17 IDENTIFYING?

18 THE WITNESS: WORKING OUT WHAT CONTENT IS
19 BEING CARRIED BY THOSE WORDS ON THAT OCCASION,
20 RETRIEVING THE CONTENT THAT THE TRANSMITTER WAS TRYING
21 TO GET ACROSS.

22 THE COURT: DID I GET IT RIGHT IN MY MIND
23 YESTERDAY? SOMEONE SAYS IT IS RAINING OUT, THE
24 COMMUNICATION IS IT'S RAINING OUT, BUT SAYS, I LEFT THE
25 TOP DOWN ON MY CONVERTIBLE, I WONDER IF I'M GOING TO BE

1 ABLE TO PLAY BALL TOMORROW. I REMEMBER WHEN I WAS A KID
2 IT RAINED AND DA, DA, DA, THE WHOLE WORLD OF RAIN COMES
3 SHOVELING IN WITH THIS JUST SHORT EXPRESSION. SO THE
4 CONTENT OF IT IS RAINING OUT BECOMES MUCH MORE
5 INCLUSIVE. IS THAT A CONCEPT THAT MAKES ANY SENSE?

6 THE WITNESS: ALMOST. THERE IS A VERY
7 IMPORTANT DIVISION HERE BETWEEN WHAT WE USUALLY CALL THE
8 OVERT OR ALMOST OVERT CONTENT OF A STATEMENT LIKE IT'S
9 RAINING AND THEN THE IMPLICIT CONTENT. SO YOU CAN THINK
10 OF IT LIKE THIS. SUPPOSE I SAY TO YOU RIGHT NOW, IT'S
11 RAINING. ALMOST CERTAINLY YOU WOULD TAKE ME TO BE
12 SAYING THAT IT IS RAINING HERE IN PHILADELPHIA. I DID
13 NOT MENTION THE WORD PHILADELPHIA, BUT OUR PHYSICAL
14 LOCATION SETS THAT PARAMETER. HOWEVER, IF YOU WERE ON
15 THE PHONE TO A RELATIVE IN SOME OTHER PART OF THE
16 COUNTRY AND THAT PERSON SAID TO YOU -- OR IF YOU ASKED,
17 IS IT RAINING? IT DOES NOT FOLLOW THAT YOU WERE TALKING
18 ABOUT PHILADELPHIA BECAUSE YOU ARE IN PHILADELPHIA.
19 SOME INFERENCE IS MADE ON THE OTHER END OF THE PHONE
20 LINE, THEY WORK OUT AH, THEY'RE ASKING WHETHER IT'S
21 RAINING HERE.

22 THE COURT: MORE SUBTLE ASPECTS.

23 THE WITNESS: THAT IS AT THE VERY SIMPLE
24 LEVEL OF RETRIEVING INFORMATION CONTENT. YOU DON'T
25 MENTION THE PLACE YOU'RE AT OR ANY OTHER PLACE THAT YOU

1 ARE TALKING ABOUT, YET PEOPLE INFER THIS. SO IF I SAY,
2 OH, THE MAYOR OUGHT TO BE IMPEACHED BECAUSE THE ROADS
3 ARE ALL BUMPY OR SOMETHING, YOU WILL NATURALLY TAKE ME
4 TO MEAN THE MAYOR OF THE TOWN THAT WE ARE DRIVING
5 THROUGH, EVEN THOUGH I DID NOT SAY THAT, FOR EXAMPLE.
6 THE OTHER BIT YOU MENTIONED, ALL THIS OTHER INFORMATION
7 WHICH CAN GET CONVEYED, IT CERTAINLY CAN. WE CALL THAT
8 IMPLICIT CONTENT. SO YOU MIGHT SAY TO ME, IT'S RAINING,
9 AS TO GET ACROSS TO ME THE IDEA, YOU WANT ME TO GO DOWN
10 THERE AND PULL THE LID UP ON -- THE ROOF UP ON YOUR CAR
11 BECAUSE YOU DON'T WANT IT TO GET WET. YOU MIGHT JUST
12 SAY TO ME, IT'S RAINING, KNOWING THAT I WOULD LIKE TO GO
13 AND DO THAT FOR YOU IN A CERTAIN CONTEXT. AND IN THE
14 ARMY, IT WOULD BE TAKEN AS AN ORDER. AMONGST PEOPLE NOT
15 IN THE ARMY, IT WOULD BE TAKEN AS A SUGGESTION, REQUEST
16 OR SOMETHING LIKE THIS. ALL OF THESE SORT OF BACKGROUND
17 INFORMATION ABOUT THE ROLES OF THE PARTICULAR
18 INDIVIDUALS INVOLVED BEAR ON WHAT CONTENT IS BEING
19 CONVEYED IN A PARTICULAR OCCASION. THE POINT IS IT'S
20 NOT -- THE WORD IT IS RAINING, THAT JUST GETS THE THING
21 GOING. THEN THERE IS A WHOLE OTHER CONTENT WHICH GETS
22 CONVEYED ON TOP OF IT AFTERWARD.

23 THE COURT: THANK YOU.

24 BY MR. GOMEZ:

25 Q. DR. NEALE, DIRECTLY ADDRESSING THE PARTICULAR

1 POINT THAT JUDGE REED JUST RAISED, IN THE SCIENCE OF
2 LANGUAGE AND INFORMATION, ARE THERE VARIOUS TERMS OR
3 ANALYSES THAT ONE WOULD EMPLOY TO DESCRIBE THE
4 DIFFICULTIES THAT MIGHT BE INVOLVED IN ADDRESSING THE
5 TYPE OF, SAY, PROBLEM THAT THE JUDGE WAS RAISING?

6 A. RIGHT. I MEAN THERE IS A WHOLE RANGE. THERE
7 ARE 20 OR 30 DIFFERENT TYPES OF PROBLEM HERE THAT NEED
8 TO BE SOLVED, AND UNFORTUNATELY IT'S RATHER LIKE SOLVING
9 A SIMULTANEOUS EQUATION IN ALGEBRA. YOU SOLVE FOR ONE,
10 AND YOU MESSED THINGS UP FOR THE OTHER, AND YOU HAVE TO
11 DO A LOT OF THESE SIMULTANEOUSLY. SIMPLE EXAMPLES
12 INCLUDE PRONOUNS. I MEAN, IF I KEEP THE EXAMPLES REALLY
13 SIMPLE I THINK THIS WILL HELP. IF I SAY JOHN TOLD PAUL
14 TO TELL RINGO NOT TO PUT ANY MONEY ON HIS HORSE. YOU
15 DON'T KNOW WHO THE HE AND HIS REFER TO JUST BY LOOKING
16 AT THE SENTENCE. ALL SORTS OF CONTEXTUAL INFORMATION IS
17 GOING TO -- OR BACKGROUND INFORMATION ABOUT WHO LIKES
18 HORSES, WHO BETS, WHO'S LIKELY TO SAY THINGS TO PEOPLE,
19 WILL COME TO BEAR TO RESOLVE THIS TYPE OF AMBIGUITY. WE
20 CALL THAT ANAPHORA.

21 THE COURT: WHAT IS IT CALLED?

22 THE WITNESS: ANAPHORA. A-N-A-P-H O-R-A,
23 FROM THE GREEK, TO CARRY BACK.

24 BY MR. GOMEZ:

25 Q. NOW, WHAT, IF ANYTHING, DOES SYNTAX PLAY WITH

1 THESE TYPES OF ISSUES OR PROBLEMS IN I GUESS ADDRESSING
2 LANGUAGE?

3 A. RIGHT. SO IT'S GOOD TO DISTINGUISH BETWEEN THE
4 PURELY SYNTACTIC ISSUES THAT BEAR ON INFORMATION
5 CONTENT, THAT IS THE GRAMMATICAL CONTRIBUTION, IT'S A
6 VERY NONTRIVIAL CONTRIBUTION THAT GRAMMAR MAKES AND THE
7 ISSUES THAT INVOLVE THIS SORT OF UNDERSPECIFICATION OF
8 THE SORT I WAS TALKING ABOUT WITH IT'S RAINING EXAMPLE
9 OR THE PRONOUNS OR WITH LEXICAL AMBIGUITIES, INDIVIDUAL
10 WORDS THAT ARE AMBIGUOUS. HERE IS -- I THINK THIS IS
11 DUE TO RANDOLPH HEARST, I'M NOT SURE, BUT GIVE ME A
12 STORY THAT MAN BITES DOG, AND WE ARE IN BUSINESS WE HAVE
13 GOT A STORY. BUT DOG BITES MAN WHO CARES, THAT IS NOT
14 REALLY A STORY. SAME THREE WORDS, DIFFERENT WORD ORDER,
15 LITTLE BIT MORE COMPLICATED THAN THAT, DIFFERENT
16 SYNTACTIC STRUCTURE. IF YOU'RE LOOKING FOR STORIES
17 ABOUT MEN BITING DOGS, YOU DON'T WANT ALL THE DOGS
18 BITING MAN STORIES COMING UP, YET THE SAME THREE WORDS
19 ARE INVOLVED THERE. CLEARLY THE GRAMMATICAL STRUCTURE,
20 WHICH IS THE SUBJECT AND WHICH IS THE OBJECT OF THE
21 VERB, PLAY A PART. OTHERWISE YOU MIGHT START RETRIEVING
22 ALL SORTS OF INFORMATION THAT IS NOT RELEVANT. IT'S A
23 LITTLE BIT MORE COMPLICATED THAN THAT, BUT THERE IS A
24 SIMPLE EXAMPLE INVOLVING JUST WORD ORDER.

25 Q. WELL, YOU WERE TALKING A BIT, I BELIEVE, ABOUT

1 ANAPHORA, BUT I WOULD LIKE DEFENDANT'S EXHIBIT 4 BROUGHT
2 UP. IT'S DEMONSTRATIVE EXHIBIT 4.

3 A. RIGHT. THAT IS AN EXAMPLE.

4 Q. NOW, IS THIS -- WHAT, IF ANYTHING, DOES
5 AMBIGUITY PLAY IN THE DISCUSSION YOU JUST HAD?

6 A. HERE IS ANOTHER POINT WHERE WE HAVE THIS
7 UNDERSPECIFICATION.

8 THE SENTENCE ITSELF, THE WORDS IN THE
9 SENTENCE DON'T TELL YOU HOW THE USER IS USING THE WORD
10 PEN. YOU MIGHT SAY -- IF I SAID TO YOU, I BOUGHT A PEN
11 FOR MY WIFE, YOU MIGHT SAY WAS IT A SCHAEFER, WAS IT A
12 PARKER. I WOULD SAY NO, IT'S GOT LOTS OF WOODEN POLES
13 AND A BIG GATE ON THE FRONT WITH A PADLOCK. YOU WOULD
14 THINK, OH, HE IS USING PEN IN THAT SENSE. IN THE
15 FARMING SITUATION, THAT MIGHT BE THE -- IF SOMEBODY SAID
16 I BOUGHT A PEN FOR MY WIFE BECAUSE MY WIFE IS A FARMER
17 AND SHE WANTED A NEW PEN FOR HER PIGS, THAT WOULD BE A
18 VERY NATURAL INTERPRETATION. BUT IF I'M TALKING ABOUT A
19 PEN, A DIFFERENT TYPE OF CONTEXT, THE WRITING IMPLEMENT
20 WOULD COME UP AS A NATURAL INTERPRETATION. IT IS
21 SOMETHING WE DON'T KNOW HOW TO FORMALIZE ANY PROCESSES
22 THAT WILL RESOLVE THIS TYPE OF AMBIGUITIES. FOR VERY,
23 VERY LIMITED CASES WITH VERY, VERY TIGHTLY DELINEATED
24 CONTEXTUAL INFORMATION, WE CAN JUST ABOUT COME UP WITH
25 PROCEDURES THAT DO IT, BUT NOWHERE NEAR AS WELL AS

1 HUMANS DO IT. WE DO IT ALL DAY LONG. THAT WHAT'S WE
2 DO, WE RESOLVE THESE AMBIGUITIES AND PRONOUN RESOLUTIONS
3 AND SO ON, WE DO IT LIKE THIS ALL DAY LONG BECAUSE WE
4 ARE DRAWING ON A WHOLE WEALTH OF BACKGROUND INFORMATION
5 TO DO THIS.

6 Q. NOW, YOU HAD PREVIOUSLY SPOKEN ABOUT ANAPHORA.
7 I WOULD LIKE DEFENDANT'S EXHIBIT DEMONSTRATIVE 5 BROUGHT
8 UP.

9 A. THAT IS MORE OR LESS THE EXAMPLE THAT I WAS
10 TALKING ABOUT A MOMENT AGO. I GUESS IT IS EASIER TO SEE
11 WHAT THE ISSUE IS NOW. EVEN THE FACT THAT I MIGHT BE
12 TALKING ABOUT THE BEATLES, I DIDN'T MENTION THE BEATLES
13 THERE, BUT SOMEONE MIGHT NATURALLY INTERPRET ME AS
14 TALKING ABOUT THE BEATLES WHEN I SAID JOHN SAID THAT
15 PAUL SAID THAT GEORGE SAID THAT RINGO TOLD HIM, HE'S
16 LOST A LOT OF MONEY ON HIS HORSE. BUT WHO DOES THE HIM
17 REFER TO, WHO DOES THE HE REFER TO, WHO DOES THE HIS
18 REFER TO. IT'S AMAZING THAT IN CONTEXT WHERE YOU GET
19 THREE PRONOUNS LIKE THIS AND THREE OR FOUR DIFFERENT
20 NAMES THAT THEY COULD BE REFERRING BACK TO, PEOPLE JUST
21 GET IT BECAUSE THEY BRING TO BEAR ALL SORTS OF
22 CONTEXTUAL INFORMATION ABOUT WHO LIKES TO BET ON HORSES,
23 WHO HAS A HORSE, WHO'S LIKELY TO TELL PEOPLE THINGS AND
24 SO ON. THEY JUST RESOLVE THESE THINGS AUTOMATICALLY.
25 THERE IS NO PROCEDURE, WE HAVE MANAGED TO FORMALIZE IT

1 WHEN WE DO THIS SORT OF THING.

2 Q. WELL, HOW MANY COMBINATIONS OF PRONOUNS MIGHT BE
3 INVOLVED IN THIS PARTICULAR EXAMPLE?

4 A. WELL, LET'S HAVE A LOOK AT THIS PARTICULAR ONE,
5 I GUESS ANY OF HIM, HE AND HIS COULD REFER TO ANY OF
6 JOHN, PAUL, GEORGE OR RINGO SO...

7 Q. IS THERE A NUMBER?

8 A. THERE IS, YES.

9 Q. DO YOU HAVE AN IDEA APPROXIMATELY WHAT THAT
10 MIGHT BE?

11 A. YES. IT'S GOT TO BE 64.

12 Q. HOW MANY?

13 A. 64.

14 Q. SO 64 DIFFERENT INTERPRETATIONS ARISING FROM THE
15 PRONOUNS?

16 A. YEP. SEEMS THAT WAY. THERE IS A SLIGHT
17 COMPLICATION BECAUSE OF ISSUES ABOUT BINDING WHICH
18 ACTUALLY INTERFERES WITH THIS TO MAKE IT SLIGHTLY HARDER
19 BECAUSE THE POSSESSIVE PRONOUN HAS CERTAIN PROPERTIES
20 THE OTHER TWO DON'T HAVE. ACTUALLY CREATES
21 INTERFERENCE, IT MAKES IT SLIGHTLY MORE COMPLICATED. WE
22 CAN PASS OVER THAT.

23 Q. I'D LIKE TO DIRECT YOUR ATTENTION TO DEFENDANT'S
24 EXHIBIT DEMONSTRATIVE EXHIBIT 6. IS THIS ANOTHER
25 EXAMPLE OF THE KIND OF PROBLEMS THAT ARISE THAT YOU HAVE

1 BEEN DISCUSSING?

2 A. YES, THIS IS EXTREMELY COMMON. PRACTICALLY ALL
3 LANGUAGE INVOLVES ELLIPSIS OF SOME FORM OR ANOTHER,
4 PRAGMATIC ELLIPSIS AS WE OFTEN CALL IT, SPEECH ACT
5 ELLIPSIS, IN THE FOLLOWING SENSE. A CHILD FALLS OVER.
6 THE MOTHER SAYS -- AND CRIES, LET'S SAY, CUTS ITS LEG
7 AND THE MOTHER SAID YOU ARE NOT GOING TO DIE. CLEARLY,
8 THE MOTHER IS TO BE UNDERSTOOD IN THIS CONTEXT AS SAYING
9 YOU ARE NOT GOING TO DIE AS A RESULT OF THAT PARTICULAR
10 INJURY. I MEAN ONLY AN EXTREMELY UNCHARITABLE PERSON
11 COULD INTERPRET THE REMARK AS YOU ARE NOT GOING TO DIE,
12 PERIOD. IF THE CHILD LATER AT 90 YEARS OLD ON HIS DEATH
13 BED HE IS BEING TOLD HE HAS ONLY DAYS TO LIVE, SAYS, MY
14 MOTHER WAS A LIAR, SHE TOLD ME YOU ARE NOT GOING TO DIE.
15 THAT IS COMPLETELY IRRATIONAL INTERPRETATION OF THAT
16 PARTICULAR, HOW THAT SENTENCE WAS USED WHEN THE 90 YEAR
17 OLD WAS SIX YEARS OLD. WE WOULD NEVER COME UP WITH THAT
18 INTERPRETATION. IT IS RULED OUT BY ALL SORTS OF
19 BACKGROUND CONSIDERATIONS.

20 SIMILARLY, IF I INVITE PEOPLE OVER FOR A
21 BEER, AND I OPEN THE FRIDGE AND SAY THERE IS NO BEER. I
22 HAZARD THAT THE PEOPLE IN THE ROOM WOULD NOT THINK, THIS
23 DR. NEALE GUY IS A BIT CRAZY. WE WERE IN MILWAUKEE LAST
24 WEEK, WE SAW THOUSANDS OF GALLONS OF BEER, HE SAYS
25 THERE'S NO BEER. NOBODY WOULD COME UP WITH SUCH AN

1 UNCHARITABLE INTERPRETATION OF WHAT I'M TRYING TO
2 COMMUNICATE, YET THE WORDS THEMSELVES JUST SAY THERE IS
3 NO BEER. THIS IS JUST ENDEMIC. IT'S UBIQUITOUS IN
4 LANGUAGE, BECAUSE WE HAVE TO GET OUR MESSAGES ACROSS
5 EFFICIENTLY, QUICKLY AND ACCURATELY AND SO WE HAVE TO
6 LEAVE OUT ALL SORTS OF DETAILS. WE CAN FILL THESE
7 THINGS OUT IN ENORMOUS DETAIL IF WE WANT TO, AND PEOPLE
8 LIKE THAT ARE REGARDED AS BORES OR LAWYERS, IF THEY JUST
9 FILL OUT ALL THE DETAILS SO THAT NOBODY COULD POSSIBLY
10 MISUNDERSTAND THEM.

11 THE COURT: CAREFUL NOW. CAREFUL NOW.
12 DON'T TELL MY WIFE THAT.

13 THE WITNESS: I WAS VERY CAREFUL NOT TO
14 SAY JUDGES.

15 THE COURT: JUDGES WERE ONCE LAWYERS.
16 STILL DABBLE IN IT.

17 BY MR. GOMEZ:

18 Q. WELL, DR. NEALE, WHAT IS THE SIGNIFICANCE, THE
19 MORAL OF THESE EXAMPLES WITH RESPECT TO THE SCIENCE OF
20 LANGUAGE AND INFORMATION AND TEXT CLASSIFICATION?

21 A. UNDERSTANDING WHAT IS BEING TRANSMITTED BY ANY
22 SEQUENCE OF WORDS IS A HORRIBLY COMPLEX BUSINESS AND
23 MERELY RECOGNIZING THE WORDS AND KNOWING THE MEANINGS OF
24 THE WORDS, THAT IS JUST THE TIP OF THE ICEBERG IN TRYING
25 TO ACTUALLY DISCERN THE CONTENT, IDENTIFY, RETRIEVE THE

1 CONTENT THAT IS BEING CONVEYED ON A GIVEN OCCASION. AND
2 IT GOES WELL BEYOND THIS BECAUSE OF CASES LIKE THE ONE
3 THAT YOUR HONOR BROUGHT UP EARLIER ABOUT IT'S RAINING
4 WHERE THERE COULD BE ALL SORTS OF IMPLICIT INFORMATION
5 THAT YOU ARE TRYING TO GET ACROSS OVER AND ABOVE THAT.
6 THE LETTER OF RECOMMENDATION CASE THAT I MENTIONED
7 YESTERDAY, SMITH HAS GREAT HAND WRITING AND HE IS ALWAYS
8 PUNCTUAL. IT CONTAINS A LOT OF INFORMATION ABOUT MY
9 IMPRESSION OF SMITH AND WHETHER HE SHOULD BE ACCEPTED
10 INTO THE PARTICULAR DOCTORAL PROGRAM. WORDS ARE JUST
11 THE BEGINNING. THEY ARE LIKE PRIMARY EVIDENCE, THE
12 INITIAL EVIDENCE ON WHICH YOU BASE AN INTERPRETATION.
13 THAT IS THE WAY WE ACTUALLY TALK ABOUT -- WE TALK ABOUT
14 THE EVIDENTIAL BASIS OF INTERPRETATION AND THE WORDS
15 USED ARE JUST THE FIRST PIECE OF EVIDENCE YOU'VE GOT
16 ABOUT WHAT THE PERSON IS TRYING TO COMMUNICATE. THEN
17 YOU NEED A LOT MORE THAN THAT IN ORDER TO IDENTIFY THE
18 INFORMATION CONTENT.

19 Q. IN THE SCIENCE OF LANGUAGE AND INFORMATION IS
20 THE TERM TEXT BASED CLASSIFICATION USED?

21 A. YES.

22 Q. WOULD YOU DEFINE WHAT THAT IS?

23 A. BEING ABLE TO CLASSIFY A TEXT DOCUMENT, FOR
24 INSTANCE, A WRITTEN DOCUMENT, ON THE BASIS OF THE WORDS
25 THAT IT CONTAINS AND ANY OTHER LINGUISTIC FEATURES THAT

1 YOU MAY HAVE WORKED OUT A WAY OF TAKING INTO ACCOUNT IN
2 ORDER TO EFFECT THE AFOREMENTIONED CLASSIFICATION.

3 Q. CAN YOU EXPLAIN BRIEFLY THE RELEVANCE OF YOUR
4 WORK TO SYSTEMS OF TEXT-BASED CLASSIFICATION?

5 A. YEAH. I MEAN, IT'S EASIER IF I GO BACK TO THE
6 -- I MEAN, THE ISSUES ABOUT SYNTACTIC STRUCTURE AT ONE
7 AREA, I MENTIONED THE CASE EARLIER WHERE THE SYNTACTIC
8 STRUCTURE OF A SENTENCE PLACES ENORMOUS CONSTRAINTS ON
9 WHAT INFORMATION CAN BE CONVEYED BY THAT SENTENCE. AND
10 THERE ARE CERTAIN VERY DEEP STRUCTURAL CONSTRAINTS THAT
11 TRANSCEND INDIVIDUAL LANGUAGES, AND CHOMSKIAN
12 LINGUISTICS IS VERY MUCH INVOLVED IN FINDING THESE
13 UNDERLYING CONSTRAINTS ABOUT, FOR INSTANCE, HOW PRONOUN
14 CONSTRUCTIONS WORK, BECAUSE SOME OF THEM REALLY ARE SET
15 BY THE GRAMMAR. FOR INSTANCE, IF I SAY, JOHN SAID PAUL
16 SHAVES HIMSELF, THE HIMSELF HAS TO REFER TO PAUL. IT
17 CAN'T REFER TO JOHN. IF I WANT TO REFER TO JOHN I HAVE
18 TO SAY, JOHN SAID THAT PAUL SHAVES HIM. SO IN CERTAIN
19 CASES THE USE OF A REFLEXIVE OR A NONREFLEXIVE PRONOUN
20 FIXES IT. SO CERTAIN PRONOUNS ARE ACTUALLY FIXED BY THE
21 GRAMMAR ITSELF. BUT IF YOU GO TO ANY OTHER LANGUAGES,
22 ICELANDIC, FOR EXAMPLE, IF YOU SAY, JOHN SAID PAUL
23 SHAVES HIMSELF, THE HIMSELF COULD BE EITHER JOHN OR PAUL
24 FOR -- AND THE REASON THAT -- WHY THE UNDERLYING
25 STRUCTURE OF THIS, WHY THIS IS ACTUALLY PERMITTED, IS

1 EXTREMELY COMPLEX IN TRYING TO UNDERSTAND HOW THESE
2 SYNTACTIC ISSUES BEAR ON INTERPRETATION, VERY COMPLEX
3 MATTER. THERE ARE CERTAIN FACTS, THE DEEP FACTS
4 TRANSCEND ANY INDIVIDUAL LANGUAGES. THE SURFACE FACTS
5 LOOK LIKE A MESS AND LOOK AS IF YOU CAN'T GET ANY
6 INTERESTING GENERALIZATIONS BY JUST LOOKING AT THE
7 SURFACE STRINGS OF THE SENTENCES THAT YOU ARE TALKING
8 ABOUT. SO, YOU KNOW, WHEN YOU ARE CLASSIFYING TEXT,
9 MANY TIMES THE PARTICULAR LANGUAGE YOU ARE LOOKING AT IS
10 VITAL, AND TO CLAIM THAT WE CAN CLASSIFY TEXT WITHOUT
11 LOOKING AT THE DETAILED SYNTAX OF ANY PARTICULAR
12 LANGUAGE IS OUTRIGHT ERROR.

13 Q. I WOULD LIKE YOU TO DIRECT YOUR ATTENTION TO
14 YOUR EXPERT REPORT, DEFENDANT'S EXHIBIT 59 AT PAGE 55.
15 I THINK YOU HAVE AN EXAMPLE THERE.

16 A. I FORGOT MY GLASSES.

17 THE COURT: 55 OF THE REPORT OR 55 OF THE
18 EXHIBIT?

19 MR. GOMEZ: EXHIBIT IS 59. THE PAGE IS
20 55.

21 THE COURT: MY QUESTION IS, PAGE OF THE
22 REPORT OR THE PAGE OF THE EXHIBIT?

23 MR. GOMEZ: I APOLOGIZE, YOUR HONOR.

24 BATES PAGE OF THE EXHIBIT. SO IT'S PAGE
25 51 OF THE REPORT AND THE BATES NUMBER IS 55.

1 THE COURT: 0055.

2 MR. GOMEZ: 0055.

3 MR. GOMEZ: YOUR HONOR, IF I MAY HAVE A
4 MOMENT, I THINK DR. NEALE NEEDS HIS GLASSES.

5 THE WITNESS: I CAN MANAGE, IT'S OKAY.

6 BY MR. GOMEZ:

7 Q. ARE THEY HERE?

8 A. I THINK THEY ARE IN THERE SOMEWHERE.

9 Q. WE WILL TRY TO PROCEED. IF YOU CAN'T READ THE
10 TEXT, TELL ME.

11 A. OKAY.

12 Q. I DIRECT YOUR ATTENTION IN DEFENDANT'S EXHIBIT
13 59 TO BATES NUMBER 0055 AND THERE IS A -- ALMOST IN THE
14 MIDDLE OF THE PAGE, IT SAYS THREE AND THEN, DO YOU SEE
15 THAT?

16 A. YEAH, I DO.

17 Q. WOULD YOU READ THAT?

18 A. THE EXAMPLE IS: NO SMALL CHILDREN OR PETS
19 ALLOWED.

20 Q. WHAT IS THE SIGNIFICANCE OF THIS PARTICULAR
21 EXAMPLE?

22 A. THIS IS TO GET ACROSS THE FACT THAT IT IS NOT
23 JUST WORD ORDER THAT IS IMPORTANT. IN THE MAN BITES DOG
24 VERSUS DOG BITES MAN, IT'S VERY EASY TO BE DRAWN TO THE
25 CONCLUSION, OH, IT IS JUST WORD ORDER THAT MATTERS, THE

1 LINEAR ORDER OF THE WORDS, BUT THAT IS JUST NOT THE
2 CASE. MEANINGS OF INDIVIDUAL SENTENCES ARE NOT
3 CONSTRUCTED ON THE BASIS OF LINEAR ORDER. THEY ARE
4 CONSTRUCTED ON THE BASIS OF HIERARCHICAL STRUCTURE, OF
5 WHICH LINEAR ORDER IS A VERY SMALL COMPONENT. IF
6 CHOMSKY'S RIGHT, MAYBE THE LINEAR ORDER REALLY DOESN'T
7 MATTER. THE WORDS HAVE TO COME OUT IN SOME SORT OF
8 ORDER. THAT IS THE WAY WE ARE DESIGNED. SO THIS
9 EXAMPLE, WHAT IT SHOWS, I MEAN YOU CAN SEE WHAT THE
10 AMBIGUITY IS THERE. IF YOU SAW A SIGN THAT SAID NO
11 SMALL CHILDREN OR PETS ALLOWED, AND YOU SAID I CAN TAKE
12 MY PET ELEPHANT THERE BECAUSE MY PET ELEPHANT IS BIG.
13 THE QUESTION IS WHAT IS THE SCOPE, AS IT'S CALLED, OF
14 THE WORD SMALL THERE. DOES SMALL ATTACH TO CHILDREN IN
15 THE SYNTACTIC, IN THE GRAMMATICAL TREE FOR THE SENTENCE,
16 TO GIVE US NO SMALL CHILDREN OR PETS, OR DOES CHILDREN
17 COMBINE WITH ALL PETS TO FORM A UNIT WHICH THEN SMALL
18 OPERATES ON TO CREATE A BIGGER UNIT, IN WHICH CASE THE
19 SCOPE OF SMALL WOULD INCLUDE CHILDREN OR PETS.
20 OTHERWISE THE SCOPE WOULD BE SMALLER AND IT WOULD ONLY
21 APPLY TO CHILDREN. IT'S JUST AN EXAMPLE DESIGNED TO
22 SHOW THAT LINEAR ORDER IS NOT THE MOST IMPORTANT FACTOR.
23 Q. I WOULD LIKE TO DIRECT YOUR ATTENTION TO ANOTHER
24 EXAMPLE AND IT'S IN DEFENDANT'S EXHIBIT 59, AT BATES
25 PAGE 0059, WHICH IS ALSO PAGE 55 OF THE EXPERT REPORT.

1 THERE IS AN EXAMPLE THERE, NUMBER 7, WHICH IS AN EXAMPLE
2 THAT -- WELL, I WILL LET YOU ADDRESS, WHAT IS THE
3 SIGNIFICANCE OF THAT?

4 A. WELL, ACTUALLY IT'LL EASE SLIGHTLY IF I CHANGE
5 BRUNETTE TO DOCTOR, JUST TAKE AWAY AN ADDED COMPLICATION
6 TO THE EXAMPLE. THE DOCTOR BANGED THE FINGER THE BLONDE
7 BROKE. SO THE DOCTOR WAS TRYING TO FIX THE FINGER AND
8 HE BANGED THE FINGER. NOBODY WHO INTERPRETS THIS
9 SENTENCE, EXCEPT PEOPLE WHO HAVE READ THIS BEFORE WHO
10 HAVE READ MY EXPERT REPORT, ARE GOING TO THINK OF FINGER
11 THE BLONDE AS A SYNTACTIC UNIT IN THAT SENTENCE. YOU
12 CAN SEE WHY IN A CERTAIN CONTEXT, WHERE SEXUALLY
13 EXPLICIT MATERIAL IS BEING TALKED ABOUT OR IS INVOLVED,
14 ONE MIGHT DESIGN A CLASSIFIER IN SUCH A WAY THAT IF IT
15 SAW NOT THE WORD FINGER ON ITS OWN OR NOT THE WORD THE
16 BLONDE OR WOMAN. BUT PUTTING THEM NEXT TO EACH OTHER IT
17 MIGHT BE DESIGNED TO THINK, OH, THAT IS SEXUALLY
18 EXPLICIT. THIS IS DESIGNED TO SHOW THAT SIMPLY THE WORD
19 ORDER ITSELF IS NOT GOING TO TELL WHETHER YOU SOMETHING
20 IS SEXUALLY EXPLICIT. NO ONE WOULD ACTUALLY INTERPRET
21 THAT SENTENCE IN THAT WAY BECAUSE THE WAY WE ARE BUILT,
22 WE SIMPLY -- THE BRUNETTE BANGED THE FINGER. BRUNETTE
23 BANGED THE FINGER THE BLONDE BROKE, IT'S A WHOLE PHRASE.
24 YOU DON'T THINK OF FINGER THE BLONDE AS A VERB THERE
25 OPERATING ON A NOUN PHRASE. YOU DON'T GET THAT MEANING,

1 WHICH A CLASSIFIER WHICH SIMPLY LOOKS AT LINEAR ORDER
2 MIGHT SAY, OOPS, THERE IS SOMETHING THAT HAS SEXUALLY
3 EXPLICIT CONTENT BECAUSE IT'S PROGRAMMED TO RECOGNIZE
4 THAT PARTICULAR LINEAR SEQUENCE OF WORDS. SIMILAR
5 EXAMPLES 8 AND 9, THEY MAKE THE SAME POINT.

6 Q. WHAT ARE THE CONSEQUENCES OF THIS LINGUISTIC
7 POINT THAT YOU ARE RAISING NOW FOR TEXT CLASSIFICATION?

8 A. JUST THAT A TEXT CLASSIFIER THAT SIMPLY LOOKS
9 FOR WORDS IS GOING TO BE -- FOR INDIVIDUAL WORDS,
10 HOWEVER THEY APPEAR ON THE PAGE, IS GOING TO BE AT A
11 DISADVANTAGE TO A TEXT CLASSIFIER THAT LOOKS FOR
12 SEQUENCES OF WORDS BECAUSE THAT IS GOING TO HAVE MORE --
13 BE MORE DISCRIMINATING, AND WHEN IT LOOKS FOR SEQUENCES
14 OF WORDS IS GOING TO BE AT A DISADVANTAGE TO ONE THAT
15 LOOKS AT STRUCTURES OF WORDS OF THE SORT WE FIND IN
16 GRAMMATICAL THEORY. IT'S REALLY, THE SUCCESS OF A
17 TEXT-BASED CLASSIFIER, TO THE EXTENT THAT IT'S LOOKING
18 AT THE -- TREATING THE TEXT AS TEXT, IS CLEARLY GOING TO
19 BE AFFECTED BY WHETHER IT IS LOOKING AT INDIVIDUAL
20 WORDS, WHETHER IT IS LOOKING AT SEQUENCES OF WORDS,
21 MAKING IT A LITTLE BETTER, OR WHETHER IT IS LOOKING AT
22 STRUCTURES OF WORDS. SO YOU NEED TO KNOW FOR ANY
23 PARTICULAR TEXT CLASSIFIER THAT YOU ARE LOOKING AT, IS
24 IT OPERATING ON UNORDERED COLLECTIONS OR WORDS,
25 SEQUENCES OF WORDS OR STRUCTURED COLLECTIONS OF WORDS IN

1 THE LINGUIST'S SENSE. IT WILL MAKE A BIG DIFFERENCE TO
2 HOW EFFECTIVE YOUR CLASSIFICATION IS.

3 Q. NOW, WHEN YOU PREVIOUSLY WERE DISCUSSING
4 TEXT-BASED CLASSIFICATION, YOU -- I BELIEVE YOU RAISED A
5 TERM UNDERSPECIFICATION OF INFORMATION CONTENT. CAN YOU
6 EXPLAIN WHAT THAT MEANS?

7 A. YEAH. THAT IS BASICALLY ALL SORTS OF EXAMPLES I
8 WAS TALKING ABOUT BEFORE INVOLVING CASES WHERE YOU CAN'T
9 IDENTIFY OR RETRIEVE THE INFORMATION CONTENT JUST BY
10 LOOKING AT THE WORDS IN THE SENTENCE. IN FACT, NOT EVEN
11 BY LOOKING AT THE WORDS IN THE SENTENCE AS A SENTENCE,
12 THAT IS, AS A STRUCTURE OF WORDS IN THE LINGUIST'S
13 SENSE, YOU STILL CAN'T GET THE FULL INFORMATION CONTENT
14 BECAUSE OF THINGS LIKE ANAPHORA, ELLIPSIS, LIMITATIONS,
15 AMBIGUITY, WHETHER THEY ARE LEXICAL AMBIGUITIES
16 INVOLVING INDIVIDUAL WORDS -- LIKE HUMP, FOR EXAMPLE,
17 HAS A PERFECTLY NONSEXUAL MEANING AND HAS AN OVERT
18 MEANING, APPARENTLY SEXUAL MEANING -- OR WHETHER IT'S A
19 STRUCTURAL AMBIGUITY OF THE SORT THAT WE SAW WITH THE
20 SMALL CHILDREN AND PETS ARE NOT ALLOWED.

21 OR WITH AN EXAMPLE, I MEAN, MAYBE THIS IS
22 AN EASIER ONE TO SEE, UNDERAGE DRINKING AND SEXUAL
23 ACTIVITY ARE THE MAJOR PROBLEMS IN SPRINGFIELD. NOW IS
24 UNDERAGE OPERATING ON DRINKING OR IS IT OPERATING ALSO
25 DRINKING AND SEXUAL ACTIVITY. IF IT IS OPERATING ON

1 UNDERAGE DRINKING AND SEXUAL ACTIVITY, THEN IT'S ALSO
2 ABOUT UNDERAGE SEX. IF IT IS NOT, THEN IT'S JUST ABOUT
3 UNDERAGE DRINKING. SO YOU WOULD NOT WANT THIS
4 CLASSIFIED AS BEING ABOUT UNDERAGE SEX, YOU WOULD WANT
5 IT ABOUT UNDERAGE DRINKING. THESE ARE THE SORTS OF
6 UNDERSPECIFICATION PROBLEMS THAT ARISE AND THAT CAN
7 AFFECT TEXT-BASED CLASSIFICATION.

8 Q. AS FAR AS YOUR OWN WORK IS CONCERNED, DR. NEALE,
9 IS THERE A THEORETICAL DIFFERENCE, IF ANY, BETWEEN
10 CLASSIFYING TEXT THAT APPEARS IN PAPER DOCUMENTS, AND
11 CLASSIFYING TEXT THAT APPEARS IN OTHER MEDIA?

12 A. NO. THERE IS NO THEORETICAL DIFFERENCE. THE
13 DIFFERENCES ARE PURELY PRACTICAL. IF YOU ARE TRYING TO
14 FIND OUT WHO DIED IN APRIL IN A PARTICULAR GRAVEYARD,
15 ANY APRIL, YOU KNOW, YOU COULD GO AROUND THE GRAVEYARD
16 AND TAKE NOTES AND MAKE A LIST OF ALL THE ONES THAT HAD
17 AN APRIL DEATH. THAT'S ONE WAY OF CLASSIFYING THE APRIL
18 DEATHS, FINDING APRIL DEATHS. YOU COULD GO AND AND LOOK
19 AT THE REGISTER AT THE CEMETERY, LOOK THROUGH AND THAT
20 WAY, OR YOU COULD LOOK AT THE DATABASE THAT THEY HAVE ON
21 THE COMPUTER AT THE CEMETERY. THEY ARE ALL -- THE SAME
22 BASIC IDEA IS INVOLVED, YOU ARE SEARCHING TEXT FOR THE
23 ANSWERS TO YOUR QUESTIONS. HIGH TECH, LOW TECH, MIDDLE
24 TECH, IT'S ALL THE SAME.

25 Q. ARE THERE ANY THEORETICAL PRINCIPLES INVOLVED IN

1 CLASS -- ARE THEORETICAL PRINCIPLES INVOLVED IN
2 CLASSIFICATION THE SAME WHEN IT IS DONE BY HUMANS AND BY
3 AUTOMATED CLASSIFICATION?

4 A. AT THE HIGHEST LEVEL, YES, THE BASIC PRINCIPLES
5 OF CLASSIFICATION ARE IDENTICAL. THAT IS TRUE.

6 Q. IS THERE -- WHEN YOU SAY AT THE HIGHEST LEVEL,
7 IS THERE AT ANY LEVEL, ANY DISTINCTION AT ALL BETWEEN
8 LET'S SAY HUMANS AND AUTOMATED CLASSIFICATION?

9 A. ONLY INSOFAR AS THERE IS A VERY IMPORTANT
10 BACKGROUND ASSUMPTION THAT IS IN PLAY IN THINKING ABOUT
11 HUMAN CLASSIFICATION, AND THAT'S -- THERE IS A REAL
12 ASYMMETRY AS REGARDS THE BACKGROUND BECAUSE WHAT A TEXT
13 CLASSIFIER IS SUPPOSED TO DO, THE WHOLE POINT OF A TEXT
14 CLASSIFIER IS TO CLASSIFY THE TEXT THE WAY A HUMAN WOULD
15 IF WE HAD THE TIME TO HAVE HUMANS WADE THROUGH ALL THE
16 TEXT TO DO IT. THAT IS WHAT WE DESIGNED THEM -- THAT IS
17 WHAT THEY ARE DESIGNED TO DO. I MEAN, THAT IS
18 UNDENIABLE. IF YOU THINK THAT THAT IS NOT WHAT THEY ARE
19 DESIGNED TO DO, THEN THE WHOLE DEBATE ABOUT THE EFFICACY
20 OF CLASSIFICATION SYSTEM BECOMES JUST MEANINGLESS DRIVEL
21 BECAUSE HOW CAN YOU EVEN DESCRIBE WHAT IT IS THAT THEY
22 ARE SUPPOSED TO DO IF YOU -- IF THEY ARE NOT SUPPOSED TO
23 PUT THINGS IN CATEGORIES THAT WE, THE PEOPLE WHO DESIGN
24 THE SYSTEMS, WANT THEM TO GO INTO. IF THAT IS NOT THE
25 CASE, THEN THERE IS NOTHING THAT WE CAN ACTUALLY DESIGN

1 IF THERE ARE NO CATEGORIES IN PARTICULAR THAT WE WANT TO
2 PUT THEM IN. THAT'S LIKE PUTTING THEM IN RANDOM
3 CATEGORIES. WE CHOOSE PARTICULAR CATEGORIES -- WE
4 DESIGN THEM TO PUT THINGS INTO THOSE CATEGORIES. AND IF
5 THAT WEREN'T THE CASE, WE COULD NOT DESCRIBE WHAT IT IS
6 THEY DO, THEREFORE WE COULD NOT DESIGN SUCH SYSTEMS,
7 THERE WOULD BE NOT SUCH SYSTEMS. BUT THERE ARE SUCH
8 SYSTEMS, THEY EXIST, THEREFORE IT IS SIMPLY AS A MATTER
9 OF LOGIC IT HAS TO BE THE CASE THAT THE AIM OF SUCH
10 SYSTEMS IS TO PUT TEXT INTO THE CATEGORIES THAT HUMANS
11 WOULD PUT THEM IN, IF THERE WERE HUMAN RESOURCES, TIME
12 AND SO ON TO ACTUALLY DO THAT.

13 Q. WELL, WHAT, IF ANYTHING, DOES AN AUTOMATED
14 CLASSIFIER LOOK AT WITH RESPECT TO CONTENT?

15 A. THAT IS THE BIG PROBLEM. THEY LOOK AT FORM. WE
16 ANALYZE TEXT FOR CONTENT DIRECTLY. WE LOOK AT THE FORM
17 OF A SENTENCE, WE LOOK AT THE SYNTACTIC STRUCTURE, WE
18 SOMEHOW DISCERN THE SYNTACTIC STRUCTURE ON THE BASIS OF
19 THESE VERY DEEP PRINCIPLES OF GRAMMAR WHICH ARE BURIED
20 IN OUR KNOWLEDGE OF LANGUAGE. ALL OUR BACKGROUND
21 INFORMATION AND SO ON AND CONTEXTUAL PROCESSES AND
22 INFERENCE PROCESSES, NORMS OF INTERPRETATION, GENERAL
23 NORMS ABOUT RATIONAL COMMUNICATION, LOCAL NORMS ABOUT
24 PARTICULAR -- WE BRING ALL THAT TO BEAR IN DISCERNING
25 THE CONTENT. WHAT AN AUTOMATED PROCESS DOES, IT SCANS

1 THE WORDS, EITHER JUST LOOKS AT THE WORDS AS WORDS OR
2 SEQUENCES OF WORDS OR STRUCTURES OF WORDS, AND IT MAKES
3 A CALL ON THE BASIS OF LOOKING AT THE WORDS. THAT IS,
4 IT OPERATES ON FORM RATHER THAN CONTENT, THE FORM OF THE
5 WORDS.

6 Q. WHAT DO YOU MEAN BY FORM WHEN YOU SAY AUTOMATED
7 CLASSIFIERS CLASSIFY ON THE BASIS OF FORM?

8 A. WELL, AN EXAMPLE MAYBE WILL MAKE THIS CLEARER.
9 SUPPOSE THAT YOU AND I AND YOUR HONOR,
10 SUPPOSE WE FORM SOME LITTLE COMPANY BECAUSE WE ARE VERY
11 GOOD AT RECOGNIZING THIS PARTICULAR SQUIGGLE, WE ARE THE
12 WORLD'S BEST AT RECOGNIZING THIS PARTICULAR SQUIGGLE,
13 THE FASTEST, AND ANOTHER ONE, SQUOGGLE. AND WE JUST ARE
14 REALLY GOOD AT IT. SO WE FORM THIS LITTLE COMPANY, AND
15 PEOPLE ASK US TO CLASSIFY THESE DOCUMENTS ON THE BASIS
16 OF WHETHER THEY HAVE SQUIGGLE AND SQUOGGLE NEXT TO THEM.
17 WE HAVE NO IDEA WHAT THEY MEAN AND WE CLASSIFY MILLIONS
18 OF DOCUMENTS INTO THE PILE THAT HAVE SQUIGGLE AND
19 SQUOGGLE NEXT TO THEM AND THE PILE THAT DON'T. AND WE
20 HAVE DONE OUR JOB, WE GET THE CHECK, WE GO HOME, WE'RE
21 HAPPY, WE HAVE DONE THE JOB THAT WE AIMED TO DO. AND
22 THEN SOMEBODY COMES UP TO US AND SAYS, FANCY YOU GUYS
23 WORKING FOR THE CHINESE GOVERNMENT ON CENSORSHIP. WE
24 ARE TAKEN ABACK. WE SAY WHAT DO YOU MEAN WORKING FOR
25 THE CHINESE GOVERNMENT ON CENSORSHIP? YOU JUST

1 CLASSIFIED ALL THESE DOCUMENTS FOR THEM ON THE BASIS OF
2 WHETHER THE SYMBOL FOR TIANANMEN SQUARE AND MASSACRE
3 OCCUR NEXT TO EACH OTHER. YOU HAVE JUST FILTERED OUT --
4 YOU HAVE CLASSIFIED INTO TWO PILES ALL THOSE DOCUMENTS
5 THAT WERE ABOUT -- THAT HAVE TIANANMEN SQUARE AND
6 MASSACRE IN THEM AND ALL THOSE THAT DON'T. THERE IS A
7 REASON FOR THIS, WHAT THE CHINESE WANT TO DO WITH THIS,
8 THEY ARE NOT GOING TO ALLOW THIS PILE TO BE SEEN. YOU
9 ARE INVOLVED IN A PROCESS OF CENSORSHIP. WE WOULD
10 OBVIOUSLY BE TAKEN ABACK BECAUSE WE WOULD SAY, LOOK, WE
11 DIDN'T KNOW THAT WHAT IS WE WERE DOING. WE DID NOT
12 UNDERSTAND SQUIGGLE AND SQUOGGLE. THEY ARE JUST MARKS
13 ON THE PAGE FOR US, WE ARE JUST PAID TO IDENTIFY THEM,
14 SEPARATE THESE PAGES OUT. NO MORE THAN THAT. WE DIDN'T
15 KNOW WHAT THEY MEANT. WE DIDN'T KNOW THAT THEY WERE
16 ANYTHING TO DO WITH TIANANMEN SQUARE OR MASSACRES. THAT
17 IS BECAUSE WE JUST OPERATED ON THE FORM OF THE PAGES WE
18 WERE LOOKING AT. THEY COULD HAVE BEEN PAGES OF CHINESE
19 TEXT OR JAPANESE TEXT OR SOME OTHER TEXT THAT WE DIDN'T
20 KNOW, SAY CHINESE, BUT WE DID NOT KNOW WHAT ANY CHINESE
21 CHARACTERS MEANT. WE JUST HAD THESE REALLY GOOD
22 RECOGNITIONAL CAPACITIES, WE WERE FAST RECOGNIZERS OF
23 SQUIGGLE AND SQUOGGLE. NOBODY WOULD SAY THAT WE
24 UNDERSTOOD WHAT WE WERE DOING AT THAT CONTENT LEVEL.
25 THEY WOULD SAY WE UNDERSTOOD WHAT WE WERE DOING AT THE

1 LEVEL OF FORM, SELECTING CHARACTERS, PATTERN MATCHING.
2 WE WERE DOING PATTERN MATCHING. WE DID NOT KNOW WHAT
3 THE PATTERNS MEANT. BASICALLY A COMPUTER OR ANY SORT OF
4 AUTOMATED SYSTEM THAT'S CLASSIFIED DOCUMENTS IS IN, AT
5 BEST, THE SITUATION THAT THE THREE OF US WOULD HAVE BEEN
6 IN WHEN WE WERE IDENTIFYING SQUIGGLE AND SQUOOGLE. THEY
7 DON'T UNDERSTAND WHAT THE SYMBOLS MEAN. THEY JUST
8 FOLLOW THE INSTRUCTIONS TO SEE THEM AND PUT THEM IN
9 DIFFERENT PILES. THAT IS THE SITUATION THAT ANY
10 AUTOMATED CLASSIFIER IS IN.

11 Q. DR. NEALE, YOU SAID EARLIER THAT YOU WERE TASKED
12 WITH IDENTIFYING AND EXAMINING, IF I RECALL, THE
13 LINGUISTIC, LOGICAL AND FOUNDATIONAL ISSUES BEARING ON
14 EFFICACY OF TEXT-BASED CLASSIFICATION SYSTEMS. LET'S
15 START WITH LINGUISTIC. WHAT DO YOU MEAN BY LINGUISTIC
16 HERE?

17 A. ALL I MEAN THERE WAS EXACTLY THE SORTS OF THINGS
18 I WAS TALKING ABOUT EARLIER, ABOUT THE
19 UNDERSPECIFICATION ISSUES INVOLVED BECAUSE OF THE NATURE
20 OF LANGUAGE AND THE WAY LANGUAGE IS ACTUALLY USED AND
21 THE SYNTACTIC CONSIDERATIONS WHICH BEAR ON INFORMATION
22 CONTENT. SO THE SORTS OF EXAMPLES THAT I HAVE DISCUSSED
23 ALREADY WERE ALL OF THE LINGUISTIC PROBLEMS BEARING ON
24 TEXT CLASSIFICATION AND BEARING ON SYSTEMS OF TEXT
25 CLASSIFICATION.

1 Q. AND WHAT DO YOU MEAN BY LOGICAL AND FOUNDATIONAL
2 ISSUES BEARING ON EFFICACY OF TEXT-BASED CLASSIFICATION
3 SYSTEMS?

4 A. ALL I MEAN BY LOGICAL AND FOUNDATIONAL ISSUES
5 ARE ISSUES THAT TRANSCEND ANY PARTICULAR CURRENT STATE
6 OF THE ART OF ANY SYSTEM OF CLASSIFICATION. THESE ARE
7 GENERAL, MATHEMATICAL OR CONCEPTUAL LIMITS THAT MIGHT BE
8 IMPOSED ON ANY TYPE OF SYSTEM OF CLASSIFICATION, FOR
9 EXAMPLE, THE LIMIT THAT IS IMPOSED BY THE FACT THAT AN
10 AUTOMATED SYSTEM DOES NOT ACTUALLY UNDERSTAND THE
11 CONTENT OF SYMBOLS, IT JUST OPERATES ON THE FORM OF THE
12 SYMBOLS. SO THERE IS AN INHERENT LIMITATION BUILT IN
13 THERE.

14 AND THEN THERE ARE VARIOUS TYPES OF
15 MATHEMATICAL LIMITATIONS THAT ARE BUILT IN BY THE
16 DIFFERENT TYPES OF WAYS YOU MEASURE THE SUCCESS OF A
17 CLASSIFIER. YOU NEED TO MEASURE THE EXTENT TO WHICH IT
18 PUTS -- YOU'VE GOT SOME TARGET CATEGORY X. YOU WANT TO
19 MEASURE THE PERCENTAGE OF THINGS THAT IT ACTUALLY PUTS
20 IN CATEGORY X THAT REALLY ARE CATEGORY X, AND YOU ALSO
21 WANT TO GET THE PERCENTAGE OR PROPORTION OF THINGS OUT
22 THERE THAT ARE IN CATEGORY X THAT IT ACTUALLY MANAGES TO
23 CAPTURE.

24 THOSE ARE TWO DIFFERENT MEASURES OF THE
25 SUCCESS OF ANY CLASSIFICATION SYSTEM AND THEY GO

1 TOGETHER IN -- THEY'RE CALLED PRECISION AND RECALL
2 USUALLY IN INFORMATION THEORY. THEY GO TOGETHER AND
3 THERE IS A SORT OF A IMMUTABLE TRADEOFF BETWEEN THE TWO
4 OF THEM.

5 Q. DR. NEALE, IN PREPARING YOUR EXPERT REPORT, WHAT
6 DOCUMENTS DID YOU REVIEW?

7 A. THEY ARE ALL LISTED IN MY EXPERT REPORT, NEAR
8 THE BEGINNING OF MY EXPERT REPORT.

9 Q. I DIRECT YOUR ATTENTION TO DEFENDANT'S EXHIBIT
10 59, BATES PAGE 009. BY THE WAY, THE DEFENDANT'S EXHIBIT
11 59, IS THAT YOUR EXPERT REPORT?

12 A. IT IS.

13 Q. NOW WHEN YOU SAY MATERIALS THAT YOU REVIEWED,
14 ARE THEY SET FORTH IN 1.5 MATERIALS SET FORTH IN
15 DEFENDANT'S EXHIBIT 59 AT 0009?

16 A. IF THAT IS WHAT THIS IS, YES.

17 Q. YOU HAVE A HARD COPY.

18 A. YES. YES. YES.

19 Q. NOW, DO YOU NEED YOUR GLASSES?

20 A. NO, I'M FINE. I CAN READ THIS.

21 Q. CAN YOU JUST IDENTIFY WHAT DOCUMENTS YOU
22 ACTUALLY REVIEWED?

23 A. YEAH.

24 Q. ACTUALLY --

25 A. SHOULD I READ THIS OUT.

1 Q. WOULD YOU JUST READ THAT PARAGRAPH?

2 A. I EXAMINED A VARIETY OF MATERIALS SUPPLIED BY
3 COMPANIES THAT PRODUCE OR LICENSE THE DOMINANT INTERNET
4 FILTERING SOFTWARE THAT CAN BE INSTALLED ON HOME
5 COMPUTERS OR ON THE SERVERS OF ISPS AND SEARCH ENGINES.
6 THIS MATERIAL INCLUDED DOCUMENTS SUPPLIED IN RESPONSE TO
7 SUBPOENA BY AOL, BELL SOUTH, COMPUTER ASSOCIATES,
8 CONTENTWATCH, CYBERSENTINEL, EARTHLINK, LOOKSMART.
9 MCAFEE, MSN, RULESPACE, SAFEBCROWSE, SECURE COMPUTING,
10 SOLID OAK, SURFCONTROL, SYMANTEC, VERIZON AND YAHOO; THE
11 DEPOSITIONS OF CONTENTWATCH, MCAFEE, RULESPACE AND
12 SURFCONTROL; THE WEBSITES OF THE AFOREMENTIONED
13 COMPANIES; INDEPENDENT STUDIES OF THE RANGE AND
14 DISTRIBUTION OF CONTENT FREELY AVAILABLE ON THE WEB;
15 INDEPENDENT REPORTS ON FILTERING TECHNOLOGY AND OTHER
16 ASPECTS OF INTERNET SEARCHES; AND THE OPINION OF THE
17 COURT IN AMERICAN LIBRARY ASSOCIATION INC. ET AL V.
18 UNITED STATES ET AL. MULTNOMAH COUNTY PUBLIC LIBRARY,
19 ET AL V. UNITED STATES, CIVIL ACTION NOS. 01-1301,
20 01-1322, (E.D. PA MAY 31, 2002); AND THE EXPERT REPORT
21 OF DR. GEOFFREY NUNBERG ON THE EFFECTIVENESS OF
22 FILTERING SOFTWARE SUBMITTED BY THE PLAINTIFFS IN THE
23 AFOREMENTIONED CASE.

24 Q. ARE THOSE THE DOCUMENTS THAT YOU RELIED UPON IN
25 PREPARING YOUR EXPERT REPORT?

1 A. YES, THEY ARE.

2 Q. DID YOU RELY ON DR. NUNBERG'S ANALYSIS OF
3 TEXT-BASED CLASSIFICATION WHEN YOU PREPARED YOUR EXPERT
4 REPORT?

5 A. YES, I DID.

6 MR. GOMEZ: IF I MAY HAVE A MOMENT, YOUR
7 HONOR.

8 BY MR. GOMEZ:

9 Q. I DIRECT YOUR ATTENTION TO DEFENDANT'S EXHIBIT
10 59, BATES PAGE 0037 AND TO FOOTNOTE 53 AND ASK IF YOU
11 WOULD READ THE -- I THINK IT'S ABOUT FOUR SENTENCES IN
12 THAT FOOTNOTE.

13 THE COURT: FOUR SENTENCES OF WHAT?

14 MR. GOMEZ: IN FOOTNOTE -- BEGINNING WITH
15 "AN EXAMPLE" IN FOOTNOTE 53. AN EXAMPLE WOULD BE
16 RULESPACE.

17 BY MR. GOMEZ:

18 Q. HAVE YOU IDENTIFIED THAT?

19 A. YES.

20 Q. AN EXAMPLE WOULD BE RULESPACE, WHICH HAS
21 SUPPLIED INFORMATION ABOUT ITS STATISTICALLY-BASED
22 KEYWORD CLASSIFICATION SYSTEM. THE FOLLOWING REMARK IS
23 EXPLICIT: RULESPACE OFFERS A SUITE OF PRODUCTS THAT
24 PROVIDE AUTOMATED WEB CONTENT RECOGNITION AND
25 CATEGORIZATION FOR BOTH TRADITIONAL AND MOBILE INTERNET

1 APPLICATIONS. THESE PRODUCTS INCORPORATE A PATENTED
2 TECHNOLOGY THAT EMULATES THE HUMAN PROCESS OF INFERRING
3 THE MEANING OR INTENT OF TEXTUAL AND OTHER INFORMATION
4 BY CONSIDERING BOTH THE CONTENT ITSELF AND THE CONTEXT
5 IN WHICH IT EXISTS. RULESPACE MOBILE INTERNET CONTENT
6 CATEGORIZATION: TECHNICAL OVERVIEW, WHITE PAPER, APRIL
7 2005, PAGE 1.

8 Q. WITH RESPECT TO DR. NUNBERG'S ANALYSIS OF
9 TEXT-BASED CLASSIFICATION UPON WHICH YOU RELIED AND THIS
10 PARTICULAR FOOTNOTE, WHAT OPINION, IF ANY, DID YOU REACH
11 ABOUT THE RELATION BETWEEN TEXT-BASED CLASSIFICATION AND
12 INTERNET FILTERING SOFTWARE?

13 A. THAT RULESPACE, IN PARTICULAR, USES TEXT-BASED
14 CLASSIFICATION AS A CORE COMPONENT OF ITS INTERNET
15 FILTERING TECHNOLOGY. AND LOOKING THROUGH THE VARIOUS
16 DEPOSITIONS AND OTHER DOCUMENTS SUPPLIED BY RULESPACE
17 AND OTHER FILTER VENDORS THE SAME WAS TRUE OF THEM, THAT
18 TEXT-BASED FILTERING APPEARS TO BE -- TEXT-BASED
19 CLASSIFICATION SYSTEMS APPEAR TO FUNCTION AS THE CORE OF
20 TEXT-BASED FILTERING SYSTEMS, WHICH THEMSELVES FORM THE
21 CORE OF FILTERING SYSTEMS SIMPLICITER.

22 MR. WIZNER: I OBJECT TO THE LAST
23 STATEMENT, WHICH THEMSELVES WOULD FORM THE CORE OF
24 FILTERING. I DON'T THINK THERE IS ANY FOUNDATION THAT
25 HAS BEEN ESTABLISHED THAT PROFESSOR NEALE KNOWS IN

1 GENERAL HOW FILTERS OPERATE. I HAVE NO OBJECTION TO HIS
2 TESTIFYING ABOUT THE LINGUISTIC FUNCTIONS AND
3 CAPABILITIES OF FILTERS. I THINK THERE IS A WAY THAT WE
4 CAN GET THIS TESTIMONY IN WHERE HE IS NOT TESTIFYING AS
5 TO THE TRUTH OF HOW FILTERS OPERATE IN GENERAL OUTSIDE
6 THE LINGUISTIC CONTEXT. BUT I WOULD OBJECT TO THE LAST
7 STATEMENT THAT HE MADE AND ASK THAT IT BE STRUCK.

8 THE COURT: MR. GOMEZ.

9 MR. GOMEZ: YOUR HONOR, DR. NEALE IS AN
10 EXPERT IN THE SCIENCE OF LANGUAGE AND INFORMATION. HE
11 IS AN EXPERT WITH RESPECT TO TEXT CLASSIFICATION. HE
12 HAS TESTIFIED THAT THERE IS NO THEORETICAL OR
13 FOUNDATIONAL DIFFERENCE BETWEEN TEXT CLASSIFICATION IN A
14 DOCUMENT OR IF IT'S ON -- IN AN ELECTRONIC FORMAT. DR.
15 NEALE IS TESTIFYING THAT HE'S ACTUALLY REVIEWED
16 DEPOSITIONS AND DOCUMENTS FROM FILTERING COMPANIES AND
17 IDENTIFIED THAT THOSE FILTERING COMPANIES ARE USING
18 TEXT-BASED CLASSIFICATION FOR THEIR INTERNET FILTERING
19 SOFTWARE PROGRAMS. AND IT DOES NOT REQUIRE AN EXPERT TO
20 HAVE TO ACTUALLY HAVE BUILT A CAR IF THE EXPERT, FOR
21 EXAMPLE, KNOWS HOW TO DESIGN A CAR, TO BE ABLE TO
22 TESTIFY ABOUT HOW A CAR ACTUALLY FUNCTIONS. AND I THINK
23 IN THIS INSTANCE THERE IS NO QUESTION THAT DR. NEALE IS
24 AN EXPERT IN TEXT-BASED -- TEXT CLASSIFICATION.

25 MR. WIZNER: I AGREE WITH EVERYTHING THAT

1 MR. GOMEZ JUST SAID. I JUST DON'T THINK THAT IT LEADS
2 TO THE CONCLUSION THAT THE LAST STATEMENT THAT PROFESSOR
3 NEALE MADE IS ADMISSIBLE. AGAIN, OBVIOUSLY, PROFESSOR
4 NEALE REVIEWED ALL OF THESE MATERIALS PROVIDED BY
5 FILTERING COMPANIES. I THINK THAT THE WAY THAT WE COULD
6 MOVE FORWARD WOULD BE IF HE WERE TO SAY THAT WE ASSUME
7 THAT THE MATERIALS THAT HE READ THERE ARE TRUE, BUT HE
8 CERTAINLY DOES NOT HAVE THE INDEPENDENT EXPERTISE TO
9 EVALUATE, ON THE BASIS OF DOCUMENTS PROVIDED BY
10 FILTERING COMPANIES AND DEPOSITION TRANSCRIPTS HOW
11 FILTERS ACTUALLY OPERATE OUTSIDE OF THEIR LINGUISTIC
12 FUNCTIONS, WHICH I'M NOT GOING TO OBJECT TO.

13 THE COURT: I WILL ACCEPT THE FINAL
14 SENTENCE AS A STATEMENT OF HIS OPINION AND NOT FACTUAL
15 BECAUSE HE HAS NOT LAID A GROUNDWORK FOR HAVING -- TO BE
16 ABLE TO MAKE THAT CONCLUSION FACTUALLY. SO THE
17 OBJECTION IS OVERRULED WITH THAT IN MIND.

18 MR. GOMEZ: YES, YOUR HONOR.

19 THE COURT: YOU CAN COVER IT IN CROSS IF
20 YOU LIKE.

21 BY MR. GOMEZ:

22 Q. DR. NEALE --

23 THE COURT: EXCUSE ME FOR INTERRUPTING.
24 WHAT I MEAN IS WHAT IS AT THE CORE OR NOT AT THE CORE IS
25 A FACT. I ADMIT THAT THEORETICALLY IT COULD BE -- IN

1 ONE LINGUISTIC PACKAGE IT COULD BE AN OPINION, BUT THE
2 ONE I'M TALKING ABOUT, I'M ACCEPTING AS A FACT. OKAY.
3 EXCUSE ME. GO AHEAD.

4 BY MR. GOMEZ:

5 Q. WITH RESPECT TO THE REFERENCES OR YOUR REVIEW OF
6 DR. NUNBERG'S -- COULD YOU BRIEFLY STATE WHAT YOUR
7 UNDERSTANDING AND WHAT YOU TOOK FROM DR. NUNBERG'S
8 REPORT REGARDING TEXT-BASED CLASSIFICATION, JUST IN A
9 VERY GENERAL SENSE.

10 MR. WIZNER: YOUR HONOR, I HAVE TO OBJECT
11 AGAIN TO THIS QUESTION. DR. NUNBERG'S REPORT WAS
12 PREPARED FOR SEPARATE LITIGATION. IS NOT ADMISSIBLE
13 HERE IN THE SAME WAY THAT COREY FINNEL'S REPORT WAS NOT
14 ADMISSIBLE WHICH WAS A REPORT PREPARED FOR THE SAME
15 LITIGATION WHEN DR. CRANOR WAS ON THE STAND. SO I DON'T
16 SEE THE RELEVANCE OF DR. NUNBERG'S REPORT TO PROFESSOR
17 NEALE'S OPINION.

18 THE COURT: I DON'T KNOW ABOUT RELEVANCE,
19 BUT THERE IS NO SHOWING THAT THIS REPORT HAS ANY
20 EFFICACY, STANDING IN THE PROFESSION, USES STANDARD
21 ANALYTICAL PROCEDURES. AN EXPERT CAN RELY ON A LOT OF
22 MATERIALS AND IDENTIFY THEM IN COURT, BUT THERE HAS BEEN
23 NO SHOWING OF WHAT NUNBERG'S REPORT REALLY IS.

24 SUSTAINED.

25 MR. GOMEZ: YES, YOUR HONOR.

1 YOUR HONOR, I MAY BE ADDRESSING THIS AT A
2 LATER POINT, BUT TO THE EXTENT THAT AN EXPERT REVIEWS
3 AND RELIES UPON MATERIAL FOR HIS EXPERT REPORT, I WOULD
4 SUBMIT THAT DR. NEALE COULD REFER TO AND LOOK AT DR.
5 NUNBERG'S REPORT IN PART.

6 THE COURT: HE MIGHT IF DR. NUNBERG'S
7 REPORT IS OF A STATURE IN LOGIC AND THE LAW THAT PERMITS
8 HIM TO DO THAT. THERE IS CASE LAW ON WHAT HE CAN RELY
9 UPON.

10 MR. GOMEZ: WELL, YOUR HONOR, I THINK
11 THIS PARTICULAR -- DR. NUNBERG'S EXPERT REPORT WAS
12 ACCEPTED BY A THREE JUDGE COURT IN THIS CIRCUIT AS AN
13 EXPERT REPORT.

14 THE COURT: YOU DON'T HAVE TO TELL ME.
15 THE WITNESS HAS TO TESTIFY TO WHAT HE KNOWS ABOUT IT.

16 MR. GOMEZ: YES, YOUR HONOR.

17 THE COURT: OR YOU HAVE TO GIVE A
18 HYPOTHETICAL IN WHICH YOU BEAR THE BURDEN OF PROVING THE
19 FACT.

20 MR. GOMEZ: YES, YOUR HONOR. WE WILL
21 YOUR HONOR.

22 BY MR. GOMEZ:

23 Q. WELL, WITH RESPECT TO THE MATERIAL THAT YOU HAVE
24 REVIEWED IN TERMS OF INTERNET FILTERING DEPOSITIONS,
25 DOCUMENTS, WHAT OPINION, IF ANY, DID YOU REACH ABOUT THE

1 RELATION BETWEEN TEXT-BASED CLASSIFICATION AND INTERNET
2 FILTERING SOFTWARE?

3 A. THAT TEXT-BASED CLASSIFICATION FORMS A CORE
4 COMPONENT OF INTERNET FILTERING SOFTWARE.

5 THE COURT: I THINK YOU ASKED THAT
6 QUESTION BEFORE. HE ANSWERED IT.

7 MR. GOMEZ: YES, YOUR HONOR.

8 BY MR. GOMEZ:

9 Q. DR. NEALE, WHAT OVERALL CONCLUSIONS DID YOU
10 REACH ABOUT THE EFFICACY OF TEXT-BASED FILTERING
11 SOFTWARE INSOFAR AS IT PURPORTS TO BLOCK ACCESS TO
12 CONTENT, TEXT-BASED CONTENT?

13 A. THAT IT CAN NEVER BE FULLY EFFECTIVE AT BLOCKING
14 ACCESS TO A -- TO ANY CONTENT IN SOME PARTICULAR TARGET
15 CATEGORY. AND THAT IT'S NEVER GOING TO BE -- IN THE
16 FORESEEABLE FUTURE, THERE IS NO REASON TO THINK THAT IT
17 IS GOING TO BE FULLY EFFECTIVE IN BLOCKING ACCESS TO ANY
18 PARTICULAR TARGET CATEGORY.

19 Q. WHEN YOU REFER TO EFFICACY OF TEXT-BASED
20 CLASSIFICATION SYSTEMS, WHAT ARE YOU REFERRING TO
21 EXACTLY?

22 A. I'M REFERRING TO TWO MEASURES, THE PROPORTION OF
23 THE MATERIAL THAT A CLASSIFIER SAYS IS IN CATEGORY X,
24 THAT REALLY IS IN CATEGORY X AND THE PROPORTION OF THE
25 CATEGORY OUT THERE IN CATEGORY X THAT THE CLASSIFIER

1 ACTUALLY RECOGNIZES AND PULLS IN AND CLASSIFIES AS
2 CATEGORY X. THOSE TWO MEASURES ARE PRETTY STANDARD
3 MEASURES OF ANY TYPE OF PROCEDURE FOR BIFURCATING, FOR
4 SPLITTING A RANGE OF OBJECTS INTO TWO CATEGORIES BY
5 USING SOME PROCEDURE, WHETHER IT'S WELL FORMED SENTENCES
6 OF A LANGUAGE VERSUS NOT WELL FORMED SENTENCES, STRINGS
7 OF WORDS THAT ARE, STRINGS OF WORDS THAT ARE NOT
8 SENTENCES, WHATEVER YOUR FIELD IS, THOSE ARE THE TWO
9 BASIC PROPORTIONAL MEASURES THAT ARE TAKEN INTO ACCOUNT
10 IN EVALUATING THE EFFICACY OF A THEORY OR AN ACTUAL
11 PROCEDURE THAT IS BASED ON A THEORY.

12 MR. GOMEZ: MAY I HAVE ONE MOMENT, YOUR
13 HONOR?

14 (PAUSE.)

15 BY MR. GOMEZ:

16 Q. DR. NEALE, DID YOU REVIEW THE DEPOSITION OF
17 ALISTAIR ALLEN FROM RULESPACE WHOSE DEPOSITION WAS TAKEN
18 ON FEBRUARY 28TH, 2006?

19 A. YES, I DID REVIEW THAT.

20 Q. I DIRECT YOUR ATTENTION TO PAGE 58 OF THAT
21 DEPOSITION.

22 THE COURT: DO YOU HAVE THAT AVAILABLE TO
23 YOU, SIR?

24 THE WITNESS: AM I FAMILIAR WITH IT?

25 YES, I AM.

1 BY MR. GOMEZ:

2 Q. ARE YOU FAMILIAR WITH THIS PARTICULAR

3 DEPOSITION?

4 A. YES, I AM.

5 Q. NOW, I WOULD ASK THAT YOU READ LINES 4 -- EXCUSE

6 ME.

7 THE COURT: PAGE FIRST.

8 MR. GOMEZ: EXCUSE ME. PAGE 58, LINE --

9 LET'S JUST READ FROM LINE 2 THROUGH 59, LINE 9. IT

10 BEGINS WITH QUESTION.

11 THE WITNESS: QUESTION: AND IF YOU COULD

12 TURN TO PAGE 4, MAYBE THIS WILL HELP US. IS THIS

13 PROCESS THAT WE HAVE BEEN TALKING ABOUT THE FEATURE

14 EXTRACTION PROCESS?

15 ANSWER: IT'S A COMBINATION OF FEATURE

16 EXTRACTION AND FEATURE SELECTION.

17 QUESTION: OKAY. AND THE FIRST STEP

18 IS "LIBRARY SCIENTISTS AND CATEGORIZATION SPECIALISTS

19 CREATE A DETAILED CATEGORY DEFINITION OF SUBJECT

20 CATEGORY." IS THAT WHAT YOU MEAN WHEN YOU SAY THAT

21 PAGES ARE CLASSIFIED AS EITHER A PORN PAGE OR A CLEAN

22 PAGE?

23 ANSWER: NO. THIS IS THE STEP BEFORE

24 THAT.

25 QUESTION: OKAY.

1 ANSWER: BEFORE YOU CAN MAKE THAT
2 DEFINITION, THIS IS PORN VERSUS THIS IS CLEAN, YOU HAVE
3 TO DEFINE WHAT PORN IS AND THAT'S WHAT THIS FIRST STEP
4 IS, DEFINING WHAT'S PORN, WHAT'S DRUGS, WHAT'S ALCOHOL.

5 QUESTION: AND HOW DOES RULESPACE DEFINE
6 WHAT PORN IS?

7 ANSWER: OUR LIBRARY SCIENTIST CREATES
8 THAT DEFINITION.

9 QUESTION: AND WHAT TRAINING DOES THE
10 LIBRARY SCIENTIST HAVE?

11 ANSWER: USUALLY A LINGUISTICS
12 BACKGROUND. OUR CURRENT ONE HAS A LINGUISTICS
13 BACKGROUND.

14 QUESTION: AND DO YOU HAVE ONE PERSON OR
15 ARE THERE MORE PEOPLE WHO DO THIS?

16 ANSWER: AT THE MOMENT, THERE'S ONLY ONE.

17 QUESTION: AND THE CATEGORIZATION
18 SPECIALIST, WOULD THAT BE A DIFFERENT JOB AT RULESPACE?

19 ANSWER: TODAY THAT'S THE SAME PERSON.

20 QUESTION: SO ONCE THEY DEFINE WHAT THE
21 CATEGORY IS, THEN THEY WOULD LABEL IT. WHEN WE TALK
22 ABOUT THE PORN VERSUS CLEAN PAGES, IS THAT WHAT YOU'RE
23 TALKING ABOUT IN STEP TWO AS TARGET AND ANTI-TARGET
24 CONTENT?

25 ANSWER: THAT'S RIGHT.

1 QUESTION: AND HOW IS THIS A CRUCIAL STEP
2 TO HIGHLY ACCURATE CATEGORIZATION?

3 BY MR. GOMEZ:

4 Q. NOW, HAD YOU PREVIOUSLY READ THAT PORTION OF THE
5 DEPOSITION, DR. NEALE?

6 A. YES.

7 THE COURT: FOR SOME REASON HE DID NOT
8 READ THE ANSWER.

9 MR. GOMEZ: I APOLOGIZE.

10 THE COURT: I HAVE NOT READ IT YET.

11 THE WITNESS: THE ANSWER TO THAT
12 QUESTION.

13 THE COURT: REPEAT THE QUESTION.

14 THE WITNESS: I WILL.

15 QUESTION: AND HOW IS THIS A CRUCIAL STEP
16 TO HIGHLY ACCURATE CATEGORIZATION?

17 ANSWER: BECAUSE IF YOU MARK A CLEAN PAGE
18 AS PORN INCORRECTLY, THEN THE ENGINE IS GOING TO BE
19 TRAINED INCORRECTLY AND WHEN IT RUNS IN THE REAL WORLD,
20 IT'S GOING TO FIRE ON CLEAN PAGES INSTEAD OF PORN PAGES.

21 BY MR. GOMEZ:

22 Q. NOW, DR. NEALE, BASED ON YOUR REVIEW OF THIS
23 DEPOSITION AND OTHER MATERIAL THAT YOU REVIEWED FROM
24 FILTER VENDORS, DEPOSITIONS AND DOCUMENTS, CAN YOU
25 EXPLAIN, BASED ON THAT REVIEW HOW THEY SELECT

1 CATEGORIES, HOW THEY USE TO CLASSIFY WEB PAGES AND WHERE
2 THE CATEGORIES COME FROM.

3 A. TO THE BEST OF MY UNDERSTANDING, ON THE BASIS OF
4 THE DOCUMENTS SUPPLIED BY THE FILTER VENDORS AND THE
5 DEPOSITIONS OF FILTER COMPANIES, THEY CONSTRUCT
6 CATEGORIES THAT THEY THINK ARE GOING TO BE USEFUL TO THE
7 USERS OF THEIR PRODUCTS. AND THEY THEN PROVIDE
8 DEFINITIONS OF THESE CATEGORIES, WHICH ARE USED IN THE
9 FIRST RUN OF CATEGORIZING THE PAGES THAT THEY ARE
10 INTERESTED IN. SO THAT THEY COME FROM US, HUMANS, THAT
11 IS THE PEOPLE WHO BUILD THE STUFF, THEY DECIDE WHAT THE
12 CATEGORIES ARE.

13 Q. NOW, BASED ON YOUR REVIEW OF THE MATERIALS
14 SUPPLIED BY FILTER VENDORS, WHAT ARE -- IS YOUR
15 UNDERSTANDING ARE THE PRACTICAL METHODS THEY USE FOR
16 CLASSIFYING WEB PAGES? DO THEY DO IT MANUALLY ONLY?

17 A. SOME OF THEM -- SOME OF THE FILTER COMPANIES SAY
18 IN THEIR DOCUMENTATION OR IN DEPOSITIONS THAT THEY DO
19 SOME CLASSIFICATION OF WEB PAGES MANUALLY, BUT THE POINT
20 IS MADE SEVERAL TIMES BY COMPANIES, AND I SUPPOSE THIS
21 IS AN OBVIOUS POINT, THAT THE WEB IS HUGE, BILLIONS OF
22 PAGES I'M LED TO BELIEVE BY EXPERTS AND SOMETHING HIGHLY
23 IMPRACTICAL ABOUT THINKING THAT YOU COULD GET A LARGE
24 GROUP OF INDIVIDUALS TO GO AND CLASSIFY ALL OF THESE OR
25 A SMALL GROUP OF INDIVIDUALS TO CLASSIFY ALL OF THESE

1 WEB PAGES MANUALLY. A PROPORTION IT SEEMS TO BE DONE
2 MANUALLY BY SOME COMPANIES, BUT THE LION'S SHARE OF THE
3 WORK CERTAINLY BY RULESPACE ACCORDING TO THEIR
4 DOCUMENTATION AND BY OTHERS IS DONE BY AUTOMATED
5 CLASSIFICATION BECAUSE OF OBVIOUS PROBLEMS OF SCALE.

6 Q. WELL, BASED ON YOUR REVIEW OF THE MATERIALS
7 SUPPLIED BY FILTER VENDORS, HOW DO FILTER COMPANIES DEAL
8 WITH THE PRACTICAL PROBLEM THAT ONLY A SMALL PORTION OF
9 WEB PAGES CAN BE CLASSIFIED MANUALLY?

10 A. THEY USE AUTOMATED CLASSIFICATION TO OVERCOME
11 THAT PROBLEM.

12 Q. AND IS THE AUTOMATED CLASSIFICATION TEXT-BASED
13 CLASSIFICATION?

14 A. TO THE BEST OF MY KNOWLEDGE, GIVEN WHAT I HAVE
15 READ BY THE FILTER COMPANIES, IN THEIR OWN
16 DOCUMENTATION, IT'S PREDOMINANTLY A TEXT-BASED BUSINESS,
17 CLASSIFICATION OF TEXT, AND FILTERING WEB PAGES IS
18 PREDOMINANTLY A TEXT-BASED BUSINESS.

19 Q. AND BASED ON YOUR UNDERSTANDING AND REVIEW OF
20 THE MATERIAL THAT WAS AVAILABLE TO YOU AND THAT YOU
21 REVIEWED IN TERMS OF DEPOSITIONS AND MATERIAL FROM
22 VENDORS, DEPOSITION OF VENDORS, AND OTHER MATERIALS THAT
23 YOU RELIED UPON, ARE THE -- IS THE CLASSIFICATION
24 CONDUCTED BASED ON YOUR UNDERSTANDING BY FILTER VENDORS
25 ON THE BASIS OF FORMAL FEATURES OF TEXT OR FOR A WEB

1 PAGE OR WHAT BASIS?

2 A. YES, IT IS. BECAUSE THAT IS THE ONLY -- THOSE
3 ARE THE ONLY FEATURES OF TEXT THAT ARE AVAILABLE TO
4 ANYTHING OTHER THAN A HUMAN AGENT TO ACTUALLY UNDERSTAND
5 THE CONTENT OF TEXT.

6 Q. IN YOUR REVIEW OF THE FILTER VENDORS'
7 DEPOSITIONS AND DOCUMENTS, WHAT, IF ANYTHING, DID YOU
8 CONCLUDE -- DID THOSE DEPOSITIONS OR DOCUMENTS ADDRESS
9 CLASSIFICATION OF IMAGES THAT YOU IDENTIFIED?

10 A. MANY OF THE DOCUMENTS -- SOME OF THE DOCUMENTS I
11 ADDRESSED CERTAINLY DID ADDRESS THE MATTER OF
12 IMAGE-BASED CLASSIFICATION, AND I DO NOT CLAIM TO BE AN
13 EXPERT ON IMAGE-BASED CLASSIFICATION.

14 Q. AND BASED ON YOUR REVIEW OF THE DEPOSITIONS OF
15 THE VENDORS AND THE DOCUMENTS, DO YOU HAVE AN OPINION AS
16 TO HOW THE FILTER VENDORS OF INTERNET CONTENT FILTERING
17 THAT YOU REVIEWED CLASSIFY IMAGES.

18 MR. WIZNER: YOUR HONOR, OBJECTION. THE
19 WITNESS HAS JUST STATED ON THE RECORD THAT HE DOES NOT
20 CLAIM TO BE AN EXPERT ON IMAGE-BASED CLASSIFICATION, SO
21 I DON'T SEE WHY HIS ANSWER TO THIS QUESTION SHOULD BE
22 ADMISSIBLE.

23 THE COURT: IT MAY OR MAY NOT INTERDICT
24 WHAT HE COULD BE AUTHORIZED TO SAY, BUT THE QUESTIONER
25 HAS NOT LAID ANY FOUNDATION FOR HOW HE WOULD COME TO ANY

1 CONCLUSION OTHER THAN REVIEWING THE MATERIAL.
2 THEORETICALLY I DON'T KNOW WHAT IS IN THE MATERIAL THAT
3 WOULD ALLOW HIM TO GIVE AN OPINION ON HOW THEY CLASSIFY
4 IMAGES, WHEN HE SAID HE IS NOT AN EXPERT ON IMAGES, BUT
5 THERE MAY BE A FOUNDATION THAT COULD BE LAID. THE
6 OBJECTION IS SUSTAINED ON THAT GROUND ONLY.

7 MR. GOMEZ: YES, YOUR HONOR.

8 THE COURT: THERE IS A LIMITATION TO
9 EXPERTISE THAT HE CONCEDES.

10 BY MS. GOMEZ:

11 Q. DR. NEALE, WHAT ARE EXACTLY THE LINGUISTIC
12 FEATURES THAT AUTOMATED TEXT BASED CLASSIFIERS ARE
13 RESPONDING TO BASED ON YOUR REVIEW OF FILTER VENDORS AND
14 THEIR DOCUMENTS WITH RESPECT TO WEB PAGES? WHAT
15 LINGUISTIC FEATURES ARE THEY LOOKING FOR?

16 A. THEY LOOK AT THE TEXT ON WEB PAGES IN
17 PARTICULAR, AND THAT INCLUDES THE TEXT THAT APPEARS IN
18 THE WEB BROWSER WHEN YOU FIRE UP THE WEB PAGE. IT
19 APPEARS ALL SORTS OF OTHER TEXT WHICH MAY OR MAY NOT BE
20 HIDDEN FROM THE USER OF THE WEB PAGE, FOR EXAMPLE THE
21 NAMES OF FILES THAT ARE EMBEDDED IN THE WEB PAGE, THE
22 NAMES OF IMAGE FILES FOR EXAMPLE, THE NAMES OF SOUND
23 FILES, THE NAMES OF VIDEO FILES. IT'S EXTREMELY
24 IMPORTANT TO DISTINGUISH TEXT-BASED FILTERING OF IMAGES
25 FROM IMAGE FILTERING. TEXT-BASED FILTERING OF IMAGES IS

1 CERTAINLY WITHIN MY AREA OF EXPERTISE, UNLIKE
2 IMAGE-BASED FILTERING. IT'S A VERY IMPORTANT
3 DISTINCTION THAT NEEDS TO BE MADE AND CAN CERTAINLY --
4 CERTAIN DISPUTES COULD CERTAINLY BE AVOIDED IF THIS VERY
5 IMPORTANT DISTINCTION WERE TAKEN INTO ACCOUNT,
6 TEXT-BASED FILTERING IMAGES VERSUS IMAGE-BASED
7 FILTERING. TEXT-BASED FILTERING OF IMAGES IS CERTAINLY
8 SOMETHING THAT HAPPENS BECAUSE TEXT-BASED FILTERS MAY
9 LOOK AT THE NAMES OF VIDEO FILES, AUDIO FILES, IMAGE
10 FILES IN PARTICULAR THAT ARE EMBEDDED IN WEB PAGES. SO
11 TO THAT EXTENT TEXT-BASED FILTERS MAY CERTAINLY FILTER
12 OUT IMAGES. THE URL WHICH IS THE NAME OF THE WEBSITE,
13 ADDRESS OF THE WEBSITE THAT IS MORE TEXT, ALL OF THESE
14 THINGS ARE MORE TEXT. SO THE URL IN THE WEBSITE CAN BE
15 SCANNED, LOOKED AT BY A TEXT-BASED FILTER. HYPERLINKS
16 IN THE TEXT, THAT IS TEXT WHICH TAKES YOU, IF YOU CLICK
17 ON IT TAKES YOU TO ANOTHER SITE, MORE TEXT. HIDDEN HTML
18 COMMANDS USED BY THE DESIGNER OF THE WEBSITE, MORE TEXT
19 ON THE WEB PAGE. THIS REALLY SHOWS THERE'S A LOT OF
20 TEXT ON A WEB PAGE OVER AND ABOVE WHAT YOU ACTUALLY SEE
21 WHEN YOU FIRE UP A WEB PAGE. THIS IS GOOD NEWS FOR
22 TEXT-BASED FILTERING BECAUSE IT MEANS IT'S JUST MORE
23 TEXT TO LOOK AT, INCLUDING ESPECIALLY IMPORTANT FOR THE
24 FILTER COMPANIES WHOSE DOCUMENTS I LOOKED AT, THE NAMES
25 OF THE IMAGE FILES WHICH THEMSELVES ARE JUST TEXT.

1 Q. NOW, ARE THERE -- HAVE YOU -- ARE THERE
2 RESOLUTION ALGORITHMS? ARE YOU FAMILIAR WITH THAT TERM,
3 RESOLUTION ALGORITHMS?

4 A. I AM.

5 Q. WOULD YOU DEFINE WHAT THAT IS?

6 A. WELL, ALGORITHMS, IT'S A PROCEDURE, A FORMAL
7 PROCEDURE WHICH WILL ENABLE YOU TO RESOLVE SOME FORMAL
8 PROBLEM. SO IN THE CASE OF AMBIGUITY, AN AMBIGUITY
9 RESOLUTION ALGORITHM WOULD BE SOME PROCEDURE --
10 MECHANICAL PROCEDURE IF YOU LIKE THAT YOU COULD RUN
11 THROUGH WHICH WOULD RESOLVE A CERTAIN AMBIGUITY, FOR
12 INSTANCE, AMBIGUITY INVOLVING A WORD WHICH HAD A SEXUAL
13 AND A NONSEXUAL MEANING, LIKE HUMP, FOR EXAMPLE.

14 Q. NOW, I DIRECT YOUR ATTENTION TO DEFENDANT'S
15 EXHIBIT 59, BATES PAGE 0034.

16 A. YES.

17 Q. DIRECT YOUR ATTENTION WITH RESPECT TO -- I
18 BELIEVE AT THE BOTTOM OF THAT PAGE AT 5.1.3 ARE
19 KEYWORDS THAT CREATE AMBIGUITIES.

20 A. YES.

21 Q. WHAT IS -- WHAT SIGNIFICANCE IF ANY DO THESE KEY
22 WORDS REGARDING AMBIGUITIES HAVE WITH RESPECT TO, LET'S
23 SAY, RESOLUTION ALGORITHMS?

24 A. WELL, EACH OF THESE WORDS IS AMBIGUOUS LIKE THE
25 EXAMPLE I GAVE A MINUTE AGO WHICH PROBABLY IS ON THE

1 LIST. EACH OF THESE WORDS IS USED -- CAN BE USED IN A
2 SEXUAL WAY OR NONSEXUAL WAY. SO A RESOLUTION ALGORITHM
3 WOULD HAVE TO MAKE A CALL EVERY TIME IT CAME ACROSS A
4 WORD LIKE THIS ON WHETHER IT WAS BEING USED IN A SEXUAL
5 OR NONSEXUAL WAY. SO A TEXT-BASED-FILTER MIGHT, FOR
6 EXAMPLE, LOOK FOR WORDS LIKE THIS, AND IF IT SAW THEM,
7 MAKE A DECISION BASED ON HOWEVER THE FILTER IS ACTUALLY
8 BUILT, TAKE INTO ACCOUNT THE OCCURRENCE OF A WORD LIKE
9 THIS. BUT OF COURSE IT WOULD BE IMMEDIATELY CONFRONTED
10 WITH THE FACT THAT THESE WORDS THEMSELVES ARE ACTUALLY
11 AMBIGUOUS BETWEEN SEXUAL AND NONSEXUAL MEANINGS. SO
12 THESE KEYWORDS -- IF A FILTER WERE TO, PURELY
13 HYPOTHETICAL CASE, YOU HAD A FILTER THAT HAD A SET OF
14 WORDS, AND THE IDEA WAS IT'S GOING TO FILTER OUT EVERY
15 WEB PAGE THAT HAS ONE OF THOSE WORDS OR SIX OF THOSE
16 WORDS OR THREE OF THOSE WORDS OR WHATEVER, SOME
17 DISTRIBUTION OF THOSE WORDS. THEN IT WOULD FILTER ON
18 THE BASIS OF DISTRIBUTIONS OF THOSE WORDS, BUT THE WORDS
19 THEMSELVES MIGHT, OF COURSE, BE AMBIGUOUS WHICH WOULD
20 ITSELF CREATE A PROBLEM. AND TO GET AROUND THAT PROBLEM
21 WHAT YOU MIGHT DO IS THEN TRY TO HAVE KEY PHRASES OR KEY
22 EXPRESSIONS WHICH WOULD MAYBE REDUCE THE RATE OF
23 MISCLASSIFICATIONS. SO AN EXAMPLE WHICH IS USED MANY
24 TIMES BY FILTER COMPANIES, I BELIEVE IT'S USED BY
25 ALISTAIR ALLEN IN HIS DEPOSITION, IT'S CERTAINLY USED IN

1 RULESPACE DOCUMENTATION AND IT DOES NOT NEED MUCH
2 JUSTIFICATION ANYWAY, IS THE FOLLOWING: ONE WOULD LIKE
3 NOT TO CLASSIFY WEB PAGES THAT HAD THE PHRASE "BREAST
4 FETISH" TOGETHER WITH THOSE THAT HAD THE PHRASE "BREAST
5 CANCER", JUST BECAUSE OF THE WORD "BREAST" FOR EXAMPLE.
6 SO ONE OF THINGS YOU MIGHT WANT TO DO IS, NOT IN FACT
7 HAVE A FILTER PROGRAM TO EXPLICITLY IGNORE BREAST WHEN
8 IT OCCURRED NEXT TO CANCER, BUT TO EXPLICITLY TAKE IT
9 INTO ACCOUNT WHEN IT WAS NEXT TO FETISH. WHAT THIS
10 ACTUALLY MEANS, IT'S NOT REALLY USING CONTEXT IN THE
11 INTERESTING SENSE, YOU'RE JUST MAKING LONGER WORDS. YOU
12 TREAT THE SPACE BETWEEN THE WORD AS AN EXTRA CHARACTER.
13 SO BREAST BLANK FETISH BECOMES ONE WORD, AND BREAST
14 BLANK CANCER BECOMES ANOTHER WORD. SO THEY TREAT IT AS
15 TWO INDEPENDENT WORDS IN YOUR DATABASE OF WORDS THAT YOU
16 ARE USING TO CLASSIFY WEB PAGES.

17 Q. WELL, DR. NEALE, WHEN WE HEAR AND LET'S JUST SAY
18 FOR THE SAKE OF THIS DISCUSSION, WHEN WE HEAR THE
19 QUESTION, WHEN WE HEAR AMBIGUOUS WORDS, DON'T WE USUALLY
20 RESOLVE THOSE AMBIGUITIES WITHOUT MUCH TROUBLE? DON'T
21 WE USE COMMON SENSE, FOR INSTANCE?

22 A. YEAH. THAT IS EXACTLY THE PROBLEM. WE DO IT
23 ALL DAY LONG, NO PROBLEM. WE RESOLVE ALL THESE ISSUES
24 USING CONTEXT AND COMMON SENSE. AND THE BIG PROBLEM IN
25 COGNITIVE SCIENCE AND SCIENCE OF LANGUAGE AND

1 INFORMATION IS HOW ON EARTH CAN WE FORMALIZE COMMON
2 SENSE AND CONTEXT? AND WE HAD -- BASICALLY THE SHORT
3 ANSWER IS, WE REALLY HAVE NO IDEA BECAUSE COMMON SENSE,
4 IT'S JUST A LABEL. IT'S NOT A THEORY TO SAY WE USE
5 COMMON SENSE. AND YOU CAN SEE WHY A LAY REACTION TO
6 THIS, WELL, IT'S JUST COMMON SENSE HE IS REFERRING TO
7 RINGO, IT'S JUST COMMON SENSE, HE IS USING IT THIS WAY,
8 ABSOLUTELY. BUT HOW DO WE BUILD A DEVICE OR CONSTRUCT A
9 PROCESS WHICH EMPLOYS COMMON SENSE? I MEAN, THAT IS
10 THE -- OFTEN CALLED -- IT'S AI HARD, ARTIFICIAL
11 INTELLIGENCE HARD, THIS PARTICULAR PROBLEM.

12 WE JUST DON'T KNOW BECAUSE ALL OF THE
13 INFORMATION THAT WE HAVE ACCESS TO, ALL THE BACKGROUND
14 ASSUMPTIONS ABOUT THE WAYS PEOPLE BEHAVE, ABOUT THE
15 LOCATION WE ARE IN, ABOUT NORMS OF -- LOCALIZED NORMS
16 ABOUT THE WAY PEOPLE BEHAVE, INFORMATION IN MEMORY,
17 INFORMATION RETRIEVED FROM CONTEXT, VERY GENERAL
18 ASSUMPTIONS ABOUT THE NATURE OF REALITY, ALL IMPOSE
19 CONSTRAINTS ON HOW WE RETRIEVE INFORMATION CONTENT.
20 THAT IS SOMETHING THAT WE HAVE SIMPLY NOT BEEN ABLE TO
21 REPLICATE IN ANY WAY. WE HAVE NO FORMAL PROCEDURES
22 FOR -- WE NEED A THEORY OF EVERYTHING TO DO WITH THE
23 MIND, WHOLE THEORY OF THE MIND. THIS IS THE REASON THAT
24 PEOPLE LIKE NOAM CHOMSKY AND JERRY FODOR HAVE SORT OF
25 THROWN IN THE TOWEL ON THAT PARTICULAR ISSUE, SAYING

1 IT'S JUST TOO BIG. IT REQUIRES AN ENTIRE THEORY OF THE
2 HUMAN MIND AND EVERYTHING IT TAKES IN IN ORDER TO DO
3 WHAT WE LIKE TO SAY WE DO BRIEFLY BY USING COMMON SENSE.
4 IT INCLUDES TOO MUCH.

5 Q. WELL, WITH RESPECT TO AUTOMATED CLASSIFICATION,
6 WHY IF ANY IS IT IMPORTANT TO HAVE SOME THEORY FOR
7 RESOLVING SOMETHING THAT MAN RESOLVES THROUGH COMMON
8 SENSE, RESOLVING AMBIGUITY?

9 A. IF YOU CAN'T STATE WHAT THE PROBLEM IS OR BETTER
10 WHAT THE SOLUTION -- ONCE YOU STATED WHAT THE PROBLEM
11 IS, IF YOU CAN'T STATE WHAT THE SOLUTION IS IN SOME
12 FORMAL WAY AS A SET OF PROCEDURES THAT COULD BE FOLLOWED
13 BY SOME ARBITRARY DEVICE THAT YOU DESIGN, THEN YOU HAVE
14 NO IDEA HOW TO FORM, HOW TO IMPLEMENT THIS
15 COMPUTATIONALLY. A COMPUTATIONAL PROCESS IS JUST A
16 PROCESS BASED ON A PROCEDURE WHICH YOU'VE SORT OF MAPPED
17 OUT PRIOR TO GETTING NEAR A COMPUTER. YOU DON'T NEED TO
18 BE ANYWHERE NEAR A COMPUTER TO COME UP WITH A MECHANICAL
19 PROCEDURE AS IT IS CALLED TO SOLVE SOME PARTICULAR
20 PROBLEM. AND WITHOUT A PROCEDURE, YOU CAN'T IMPLEMENT
21 THIS COMPUTATIONALLY. SO THIS BARRIER CAUSED BY LACK OF
22 UNDERSTANDING AND FORMALIZATION OF COMMON SENSE MEANS
23 THAT WE CAN'T IMPLEMENT COMMON SENSE OR CONTEXT THE WAY
24 THEY INTERACT WITH ONE ANOTHER COMPUTATIONALLY.

25 Q. WELL, BASED ON YOUR REVIEW OF THE DEPOSITIONS OF

1 FILTER VENDORS AND THEIR USE OF TEXT CLASSIFICATION AND
2 THE DOCUMENTS THAT YOU REVIEWED, THAT THEY PRODUCED IN
3 THIS CASE, HAVE FILTER VENDORS BEEN ABLE TO ACHIEVE
4 SOMETHING THAT PHILOSOPHERS, LINGUISTS, NOAM CHOMSKY,
5 JERRY FODOR, DONALD DAVIDSON, THE LEADING LINGUISTS I
6 BELIEVE IN THE WORLD HAVE NOT BEEN ABLE TO DO? HAVE
7 THEY SOMEHOW ACCOMPLISHED SOMETHING THAT HAS NOT BEEN
8 ABLE TO BE ACCOMPLISHED IN THE GENERAL SCIENCE OF
9 LANGUAGE AND INFORMATION WITH RESPECT TO CLASSIFICATION
10 OF TEXT AND RESOLVING THIS AMBIGUITIES?

11 A. SORRY. I DIDN'T FOLLOW THE QUESTION.

12 Q. THE QUESTION IS, IS THERE -- HAVE FILTER VENDORS
13 RESOLVED THE PROBLEM THAT LINGUISTS HAVE NOT BEEN ABLE
14 TO RESOLVE IN THE FIELD OF SCIENCE OF LANGUAGE AND
15 INFORMATION?

16 A. I JUST MISSED THE FIRST BIT OF THE SENTENCE.
17 HAVE FILTER VENDORS --

18 Q. I APOLOGIZE.

19 A. NO.

20 Q. AND IS THERE -- WHEN YOU SAY NO, IS THERE ANY
21 INDICATION THAT SOMEHOW -- IS THERE ANYTHING THAT YOU
22 READ, THAT YOU REVIEWED FROM FILTER VENDORS' DEPOSITIONS
23 FROM DOCUMENTS, THAT SOMEHOW INDICATE THAT MAYBE THEY
24 HAVE SOME INROAD THAT LINGUISTS IN THE FIELD OF SCIENCE
25 OF LANGUAGE AND INFORMATION HAVE BEEN UNABLE TO RESOLVE

1 THIS OVER THE LAST 50 YEARS, THAT SOMEHOW THERE IS
2 SOMETHING THAT THEY HAVE IDENTIFIED THAT MAYBE IS A
3 KERNEL OF SOMETHING THAT WOULD LEAD TO A RESOLUTION OF
4 THIS PROBLEM?

5 A. NO. THEY TALK AS DO PEOPLE IN ARTIFICIAL
6 INTELLIGENCE OF VERY LOCALIZED PROCEDURES WHICH GIVE YOU
7 LITTLE BIT OF A LEG UP. SO, FOR INSTANCE, YOU'LL GET
8 TALK OF CONTEXT OCCASIONALLY BY FILTER VENDORS.
9 RULESPACE USES THE WORD CONTEXT A LOT. AND OF COURSE
10 WHEN IN THE SCIENCE OF LANGUAGE AND INFORMATION WHEN WE
11 TALK ABOUT CONTEXT, WE MEAN ALL SORTS OF INFORMATION
12 THAT CAN BEAR ON THE INTERPRETATION PROCESS. WHAT
13 RULESPACE ACTUALLY MEANS BY THE WORD CONTEXT, VERY
14 EXPLICIT ABOUT THIS, IS SIMPLY EVERY OTHER WORD ON THE
15 PAGE, ALL THROWN IN A BAG AND IN NO PARTICULAR ORDER.
16 SO THE CONTEXT OF A WORD IS SIMPLY ALL THE OTHER WORDS
17 ON THE PAGE, NO PARTICULAR ORDER. THAT IS NOT WHAT WE
18 MEAN BY CONTEXT. IT'S NOT WHAT WE MEAN BY LINGUISTIC
19 CONTEXT, THE IMMEDIATE GRAMMATICAL CONTEXT WHERE THE
20 STRUCTURE, THE RELATIONSHIP BETWEEN WORDS IS IMPORTANT.
21 MORE IMPORTANTLY IT'S NOT WHAT WE MEAN BY CONTEXT WHEN
22 WE WANT TO TAKE INTO ACCOUNT ALL THE BACKGROUND
23 ASSUMPTIONS, INFORMATION, GENERALIZED KNOWLEDGE ABOUT
24 ONE ANOTHER'S ABILITIES, EXPECTATIONS, CAPACITIES,
25 MAXIMS OF INTERPRETATION. THAT IS WHAT WE MEAN WHEN WE

1 START TALKING ABOUT THE ROLE OF CONTEXT, NOT JUST A LIST
2 IN NO PARTICULAR ORDER OF ALL OF THE OTHER WORDS THAT
3 APPEAR ON THE PAGE WITH THE PARTICULAR WORD YOU'RE
4 INTERESTED IN. THAT IS NOT A CONTEXT IN ANY INTERESTING
5 SENSE THEORETICALLY.

6 Q. I BELIEVE EARLIER YOU HAVE TESTIFIED THAT YOUR
7 WORK -- THERE IS A THIRD WAY IN WHICH YOUR WORK WAS
8 RELEVANT TO TEXT-BASED CLASSIFICATION CONCERNING
9 LINGUISTIC METHODOLOGY AND -- WHAT DO YOU MEAN BY THAT?

10 A. YEAH. I THINK I SAID LINGUISTIC METHODOLOGY AND
11 THEORY EVALUATION METRICS. WHAT DO I MEAN?

12 Q. YES.

13 A. JUST THE METHODOLOGY OF MEASURING -- OF
14 MEASURING THE EFFICACY OF THEORY, OF THEORIES THAT YOU
15 ARE CONSTRUCTING IN THE REALM OF LANGUAGE.

16 Q. AND HAVE YOU -- IN THE SCIENCE OF LANGUAGE AND
17 INFORMATION, IS THE TERM OVERGENERATION OR
18 UNDERGENERATION EVER USED?

19 A. YEAH. WE USE THOSE TWO PHRASES ALL THE TIME.
20 WE CONSTANTLY ACCUSE ONE ANOTHER OF HAVING THEORIES THAT
21 OVERGENERATE AND UNDERGENERATE.

22 Q. WOULD YOU EXPLAIN WHAT THAT MEANS.

23 A. YEAH. A SIMPLE EXAMPLE FROM SOME SYNTAX, THEORY
24 OF GRAMMAR IS THE FOLLOWING: YOU TAKE LET'S SAY, ALL THE
25 STRINGS OF ENGLISH WORDS OF LESS IN LENGTH, 20 WORDS,

1 LET'S SAY, TAKE THE WHOLE SET OF THEM. NOW YOU WANT
2 SOME FORMAL PROCEDURE THAT BREAKS THEM INTO TWO CLASSES,
3 THE CLASSES THAT REALLY ARE SENTENCES AND THEN ALL THE
4 REST, THE JUNK, THE NONSENTENCES, THESE STRINGS OF --
5 OF, THE, AND, TABLE, UNDER, OF, THE, AN, RUBBISH, WHICH
6 IS WHAT MOST OF THEM ARE GOING TO BE. AND THEN YOU WANT
7 SOME FORMAL PROCEDURE WHICH BIFURCATES THIS CLASS OF
8 SENTENCE INTO -- BIFURCATES THIS CLASS OF STRINGS INTO
9 THE SENTENCES AND THE NONSENTENCES.

10 AND WE CALL THAT A GRAMMAR IN THE -- AT
11 THE LOWEST LEVEL. SO TO THE EXTENT THAT YOU HAVE A
12 THEORY, A GRAMMAR THAT ACTUALLY DOES THIS, THAT SPLITS
13 THE CLASS, IT'S SAID TO BE OBSERVATIONALLY ADEQUATE.
14 THIS IS THE SORT OF BASIC LEVEL OF ADEQUACY FOR ANY
15 THEORY OF THIS TYPE. CERTAINLY -- WE HAVE NOT ACTUALLY
16 ACHIEVED IT, BUT WE DON'T THINK THAT IT'S WHERE WE WANT
17 TO END UP. WE WANT TO HAVE A MUCH HIGHER LEVEL OF
18 ADEQUACY THAN THAT, WHICH CHOMSKY HAS LAID OUT VERY
19 CLEARLY. LET'S TAKE THIS BASIC LEVEL OF ADEQUACY. A
20 THEORY OF GRAMMAR, SYNTAX, IS GOING TO BE
21 OBSERVATIONALLY ADEQUATE TO THE EXTENT THAT IT CORRECTLY
22 CLASSIFIES THESE SETS OF STRINGS INTO THOSE THAT REALLY
23 ARE SENTENCES AND THE REST, THE JUNK. AND SO YOU HAVE
24 TO MEASURE TWO THINGS HERE TO GET THIS RIGHT, THE
25 PROPORTION OF THE SENTENCES -- THE PROPORTION OF THE

1 STRINGS THAT IT DOES CLASSIFY AS SENTENCES, THAT REALLY
2 ARE SENTENCES, WHERE IT IS MAKING THE RIGHT CALL, AND
3 THEN THE PROPORTION OF THE TOTAL NUMBER OF SENTENCES IN
4 THE CLASS THAT IT ACTUALLY GETS. SO TO THE EXTENT THAT
5 IT SAYS THERE IS MORE IN THE CLASS OR PUTS IN THE CLASS
6 OF STRINGS THAT ARE SENTENCES THINGS THAT ARE NOT, IT IS
7 OVERGENERATING WITH RESPECT TO SENTENCES. OKAY, THAT IS
8 CALLED FAILURE -- IT'S A FAILING OF PRECISION, OKAY.
9 WHEN IT IS OVERGENERATING, IT IS FAILURE OF PRECISION.

10 ON THE OTHER SIDE TO THE EXTENT THAT IT
11 IS NOT GETTING ALL THE SENTENCES, IT'S UNDERGENERATING,
12 IT'S UNDERGENERATING THE CLASS OF SENTENCES. AND TO
13 THAT EXTENT IT'S A FAILURE OF RECALL, AND YOU HAVE TO
14 TAKE THE TWO TOGETHER TO GET ANY SENSIBLE MEASURE OF THE
15 OVERALL EFFECTIVENESS OF THE THEORY OR SYSTEM THAT YOU
16 ARE INTERESTED IN.

17 Q. WELL, NOW, IS THIS DISCUSSION OR DEFINITION OF
18 OVERGENERATION AND UNDERGENERATION SPECIFIC TO
19 LINGUISTICS?

20 A. NO.

21 THE COURT: SPECIFIC TO WHAT?

22 MR. GOMEZ: TO LINGUISTICS, TO THE
23 SCIENCE OF LANGUAGE AND INFORMATION.

24 THE WITNESS: NO. YOU FIND IT IN SYNTAX
25 IN LINGUISTICS, YOU FIND IT IN SEMANTICS IN LINGUISTICS.

1 ANY TIME YOU'VE GOT TO SPLIT A CLASS OF OBJECTS INTO
2 TWO, LET'S SAY, IT'S EASIEST TO THINK OF IT IN TERMS OF
3 TWO, YOU'VE GOT THIS ISSUE. YOU WANT A FORMAL PROCEDURE
4 THAT SPLITS THE CLASS OF OBJECTS INTO TWO, THE ONES YOU
5 WANT AND ONES YOU DON'T WANT. AND A GRAMMATICAL THEORY
6 IS JUST ONE INSTANCE OF THIS.

7 SO YOU GET -- AND ANOTHER CASE WHERE YOU
8 GET IT STRAIGHTFORWARDLY, IS IN FILTERING TECHNOLOGY.
9 IT'S THE SAME IDEA, SAME PRINCIPLE. IT'S OVERBLOCKING
10 AND UNDERBLOCKING. THEY ARE BOTH JUST INSTANCES OF
11 PRECISION AND RECALL. PRECISION IS THE EXTENT TO WHICH
12 YOU HAVE OVERGENERATION -- TO THE EXTENT TO WHICH YOU
13 ARE OVERGENERATING CREATES A LEVEL OF PRECISION OR
14 OVERBLOCKING, PRECISION. UNDERGENERATION OF SENTENCES,
15 UNDERBLOCKING OF CONTENT, WHATEVER, THAT IS A MEASURE OF
16 HOW DEFICIENT YOU ARE IN RESPECT OF RECALL. THOSE ARE
17 THE -- PRECISION AND RECALL IS SORT OF THE GENERIC
18 NAMES. IN STATISTICS THEY TALK ABOUT TYPE 1 AND TYPE 2
19 ERRORS. IT'S ALL THE SAME.

20 Q. DR. NEALE, WHAT'S THE IMPORTANCE OF THIS POINT
21 ABOUT PRECISION AND RECALL OR OVERBLOCKING,
22 UNDERBLOCKING, TO EVALUATING -- WITH RESPECT TO
23 EVALUATING AUTOMATED TEXT-BASED CLASSIFICATION SYSTEMS?

24 A. YEAH. IF YOU ARE GOING TO HAVE A REALLY USEFUL
25 MEASURE OF THE EFFECTIVENESS OF ANY TEXT-BASED

1 CLASSIFICATION SYSTEM, YOU ARE GOING TO HAVE TO TAKE
2 INTO ACCOUNT THE PRECISION, THE LEVEL OF PRECISION AND
3 THE LEVEL OF RECALL, THE NUMBER OF TYPE 1 ERRORS, THE
4 NUMBER OF TYPE 2 ERRORS, THE OVERBLOCKING AND THE
5 UNDERBLOCKING. WITHOUT THAT, IF YOU DON'T TAKE INTO
6 ACCOUNT BOTH, YOU CAN GET VERY, VERY SKEWED FIGURES
7 ABOUT HOW EFFECTIVE OR ACCURATE THE FILTER IS. IT'S AN
8 UNFORTUNATE FACT THAT ALTHOUGH IN ACADEMIA THESE ARE THE
9 STANDARD MEASURES USED ACROSS THE DISCIPLINES, THOSE ARE
10 NOT ALWAYS THE MEASURES THAT ARE USED BY FILTER
11 COMPANIES TO MEASURE THE EFFECTIVENESS OF THEIR PRODUCT.

12 A SHINING EXAMPLE, I SHOULD SAY, IS
13 WEBSense, WHO HAVE A VERY NICE APPENDIX TO THE
14 DOCUMENTATION THEY SUPPLIED IN THIS PARTICULAR CASE.
15 AND THEY ARE VERY UP FRONT AND PROVIDE A VERY ELEGANT
16 SUMMARY OF WHY YOU HAVE TO MEASURE BOTH PRECISION AND
17 RECALL IN ORDER TO GET AN ACCURATE ACCOUNT OF
18 EFFECTIVENESS OF THE FILTER. YOU CAN GET VERY SKEWED
19 FIGURES AS WEBSense THEMSELVES POINT OUT, AS I POINT OUT
20 IN MY EXPERT REPORT IF YOU DON'T TAKE INTO ACCOUNT
21 OVERBLOCKING RATE AND UNDERBLOCKING RATE.

22 Q. WELL, TO PUT THIS IN A LITTLE MORE DEFINED
23 CONTEXT, CAN YOU GIVE -- CAN YOU GIVE US AN EXAMPLE,
24 FROM YOUR OWN FIELD, OF THE DIFFERENCE BETWEEN THESE TWO
25 MEASURES, PRECISION AND RECALL?

1 A. YEAH, OKAY. SO HERE IS A CASE, YOU HAVE, LET'S
2 SAY, A THOUSAND STRINGS OF ENGLISH SENTENCES -- OF
3 STRINGS OF ENGLISH WORDS, I'M SORRY, JUST RANDOM STRINGS
4 OF ENGLISH WORDS. LET'S SUPPOSE THAT EXACTLY 200 OF
5 THEM ARE IN FACT REAL SENTENCES. THE OTHER 800 ARE JUST
6 JUNK. OKAY? AND NOW YOU BUILD A LITTLE SYSTEM, A
7 GRAMMATICAL THEORY WHICH IS SUPPOSED TO PREDICT WHICH
8 ONES ARE ACTUALLY -- WHICH OF THOSE THOUSAND REALLY ARE
9 SENTENCES AND WHICH OF THOSE THOUSAND REALLY AREN'T.
10 REMEMBER THERE ARE 200 THAT REALLY ARE. AND SUPPOSE IT
11 ACTUALLY GETS 80. IT SAYS, I'VE GOT 80. OKAY. 80.
12 BUT REMEMBER THERE WERE 200. SO THAT IS A MEASURE OF
13 ITS RECALL. IT GOT 40 PERCENT OF THEM RIGHT, 80 OVER
14 200, 40 PERCENT OF THE ONES IT SHOULD HAVE GOT. SO IT
15 HAS A RECALL MEASURE OF 40 PERCENT. THAT IS IT
16 UNDERCAPTURED, IT UNDERGENERATED BY 60 PERCENT. OKAY.
17 LET'S SUPPOSE OF THE 80 THAT IT GOT, THE
18 80 THAT IT GOT THAT WERE RIGHT WERE -- IT ALSO GOT 20
19 OTHERS THAT IT SHOULD NOT HAVE GOT. IT ACTUALLY
20 CAPTURED 100 TOTAL, OF WHICH 80 -- OF WHICH 80 REALLY
21 WERE SENTENCES. SO IT OPERATED WITH A LEVEL OF
22 PRECISION OF 80 PERCENT. THAT IS, OF THE HUNDRED THAT
23 IT IN TOTAL DECLARED TO BE SENTENCES, ONLY 80 OF THEM
24 WERE, 80 OUT OF HUNDRED, 80 PERCENT ON THE PRECISION
25 LEVEL. THAT IT IS OVERGENERATED BY 20 PERCENT. SO IT

1 UNDERGENERATED BY 60 PERCENT BECAUSE IT ONLY HAD A 40
2 PERCENT RECALL OR RECALL FIGURE, AND IT OVERGENERATED BY
3 20 PERCENT BECAUSE ONLY 80 PERCENT OF THE STUFF IT GOT
4 REALLY IT SHOULD HAVE GOT. AND YOU CAN SEE HOW THE
5 FIGURES -- YOU CAN PROBABLY SEE HOW THE FIGURES ARE
6 RELATED TO ONE ANOTHER.

7 Q. NOW, ARE THERE ANY SPECIAL SKILLS THAT ONE NEEDS
8 TO CALCULATE PRECISION AND RECALL?

9 A. WELL, YOU HAVE TO BE SKILLED IN YOUR -- YOU HAVE
10 TO BE AN EXPERT IN YOUR OWN FIELD TO SEE WHERE YOU ARE
11 GOING TO GET THESE TRADE-OFFS OF PRECISION AND RECALL,
12 THAT IS FOR SURE. AND YOU HAVE TO KNOW HOW TO COUNT AND
13 BE ABLE TO DIVIDE FRACTIONS AND PERCENTAGES. I MEAN SO
14 YOU NEED ELEMENTARY ARITHMETIC TO -- BUT I GUESS THAT IS
15 JUST SORT OF BACKGROUND SKILL RATHER THAN AN AREA OF
16 EXPERTISE, BEING ABLE TO CONVERT 80 OUT OF 200, 40
17 PERCENT. SO YOU NEED THAT SKILL, TOO.

18 Q. DR. NEALE, WHAT IS MORE IMPORTANT, PRECISION OR
19 RECALL?

20 A. THAT'S A TRICK QUESTION IN A WAY. YOU CAN'T
21 HAVE YOUR CAKE AND EAT IT. IT DEPENDS WHAT YOU ARE
22 AFTER. FOR SOME PURPOSES YOU MIGHT REALLY BE AFTER
23 PRECISION BECAUSE TO THE EXTENT THAT YOU ARE DEFICIENT
24 IN PRECISION, YOU'RE CREATING COLLATERAL DAMAGE. IF YOU
25 GO BACK TO THE CASE I JUST TALKED ABOUT A MINUTE AGO, I

1 GOT 80 PERCENT OF THE THINGS, OF THE SENTENCES, BUT I
2 SAID -- THE MACHINE SAID THERE WERE 100. THE OTHER 20
3 WERE COLLATERAL DAMAGE. THEY WERE BROUGHT IN, AND THEY
4 SHOULD NOT HAVE BEEN BROUGHT IN. SO TO THE EXTENT THAT
5 YOU ARE TRYING TO MINIMIZE COLLATERAL LANGUAGE, YOU'LL
6 TRY TO MINIMIZE OVERGENERATION OR OVERBLOCKING IN THE
7 CASE OF A FILTERING.

8 TO THE EXTENT THAT YOU DON'T REALLY CARE
9 ABOUT THAT, YOU GO IN THE OTHER DIRECTION AND MY OVERALL
10 AIM IS TO GET ALL THIS STUFF I WANT. I'M NOT GOING TO
11 WORRY TOO MUCH ABOUT THE OTHER STUFF. IF I BRING IN ALL
12 THE DOLPHINS WITH THE TUNA THAT IS TOO BAD, I WANT THE
13 TUNA, HOWEVER YOU WANT TO THINK ABOUT THIS. I WANT TO
14 GET EVERYTHING OUT THERE THAT I'M LOOKING FOR, THE
15 TARGET CATEGORY, THIS SET OF SENTENCES. IF I DRAG A
16 WHOLE LOT OF OTHER STUFF IN THERE AS WELL, TOO BAD.

17 Q. OKAY.

18 A. SO YOU CAN'T SAY, YOU KNOW, IS ONE MORE
19 IMPORTANT THAN THE OTHER. LOOK, IF YOU READ THE
20 RULESPACE DEPOSITION, FOR INSTANCE, THIS IS JUST TO
21 POINT OUT HOW ONE PERSON MIGHT WANT ONE THING RATHER
22 THAN ANOTHER, THERE IS A PASSAGE WHERE MISS ALLEN SAYS,
23 OVERBLOCKING IS PROBABLY THE RIGHT DIRECTION TO GO IF
24 YOU ARE TRYING TO PRODUCE A FILTER THAT IS GOING TO
25 BLOCK SEXUALLY EXPLICIT CONTENT. YOU ARE GOING TO HAVE

1 TO OVERBLOCK TO DO THIS, TO MAKE SURE THAT YOU DON'T
2 UNDERBLOCK TOO MUCH. IT'S LIKE BEING ON A SEESAW. YOU
3 KNOW, YOU CAN EASILY RATCHET UP PRECISION BY BRINGING
4 DOWN RECALL. YOU CAN EASILY RATCHET UP RECALL BY
5 PRECISION.

6 THERE'S A REALLY SIMPLE EXAMPLE I THINK
7 SHOULD MAKE THIS CLEAR. IT IS USED OVER AND OVER AGAIN
8 IN INFORMATION SCIENCE. YOU HAVE GOT SOME ROBINS IN
9 YOUR GARDEN AND YOU LIKE THEM AND YOU WANT TO PROTECT
10 THEM, BUT THEY KEEP GETTING EATEN BY HAWKS. I DON'T
11 KNOW IF HAWKS EAT ROBINS. I'M NOT CLAIMING EXPERTISE IN
12 ORNITHOLOGY. YOU GET THE IDEA. SO WHAT YOU DECIDE TO
13 DO YOU BUILD A BIRD HOUSE WITH A HOLE THERE SO THE
14 ROBINS CAN ALL GET IN BEFORE THE HAWKS GET THEM. YOU
15 HAVE TO BUILD THAT HOLE SOME SIZE OR OTHER. WHAT YOU
16 WANT IS A HOLE THAT IS BIG ENOUGH TO LET ALL THE ROBINS
17 THROUGH, BUT NOT SO BIG THAT IT LETS ANY OF THE HAWKS
18 THROUGH. YOU HAVE TWO AIMS WHICH IS SORT OF INTENTIONAL
19 A LITTLE BIT. YOU WANT TO GET ALL THE ROBINS IN, YOU
20 DON'T WANT TO LET ANY OF THE HAWKS IN. NOW, A CHUBBY
21 ROBIN COMES ALONG. WHAT DO YOU DO? CHUBBY ROBIN CAN'T
22 GET IN. WHAT I WILL DO -- IT LOOKS LIKE WE HAVE A FEW
23 CHUBBY ROBINS AROUND, I'D BETTER MAKE THE HOLE A BIT
24 BIGGER. SO YOU MAKE THE HOLE A BIT BIGGER SO THE CHUBBY
25 ROBINS CAN GET IN. UNFORTUNATELY THERE ARE ALSO SOME

1 SUPER SLEEK HAWKS THAT ARE QUITE THIN, WHICH ARE ACTUALY
2 ABOUT THE SAME DIAMETER AS THE CHUBBY ROBINS. SO NOW
3 YOU RUN THE RISK OF LETTING THE VERY SLIM HAWK IN THERE.
4 SO WHAT YOU DO TO STOP THE SLIM HAWKS GETTING THROUGH?
5 YOU NARROW THE SIZE OF THE HOLE. NOW YOUR CHUBBY ROBIN
6 GETS STUCK OUT. THAT IS THE SITUATION YOU ARE IN WITH
7 FILTERING. HOW BIG DO YOU MAKE THE HOLE? YOU'VE GOT TO
8 MAKE IT SOME SIZE OR OTHER AND YOU'VE GOT TO SACRIFICE
9 SOMETHING. YOU EITHER HAVE TO CUT DOWN -- YOU'RE ALWAYS
10 IN THIS TRADEOFF POSITION. WHAT YOU WOULD LIKE IS 100
11 PERCENT ACROSS THE BOARD, RIGHT. WE NEVER REACH THAT
12 SITUATION. NOBODY HAS EVER CLAIMED TO REACH THAT
13 SITUATION IN ANY ISSUES TO DO WITH PRECISION AND RECALL.
14 SO YOU JUST MAKE A CALL ON HOW BIG YOU WANT YOUR HOLE
15 FOR YOUR ROBINS, TO GET ROBINS IN AND HAWKS OUT. YOU
16 ARE TRYING TO DO TWO THINGS SIMULTANEOUSLY, LET THE
17 ROBINS IN, KEEP THE HAWKS OUT, AND THAT IS WHERE THE
18 TROUBLE LIES BECAUSE --

19 THE COURT: MR. GOMEZ, WE ARE GOING TO
20 TAKE A TEN-MINUTE RECESS.

21 MR. GOMEZ: YES, YOUR HONOR.

22 THE COURT: COURT IS IN RECESS FOR 10
23 MINUTES. COUNSEL ARE EXCUSED. WE ARE OFF THE RECORD.

24 (BREAK TAKEN.)

25 THE COURT: WELCOME BACK, EVERYBODY.

1 MR. GOMEZ: YES, YOUR HONOR. DR. NEALE?

2 THE WITNESS: THANK YOU.

3 BY MR. GOMEZ:

4 Q. NOW, DR. NEALE, YOU WERE SPEAKING ABOUT STANDARD
5 MEASURES, PRECISION AND RECALL AND OVERBLOCKING,
6 UNDERBLOCKING AS USED BY FILTER COMPANIES. I JUST WANT
7 -- I WANT TO BE SURE, IS PRECISION AND RECALL BASED ON
8 YOUR REVIEW OF THE VENDORS' DEPOSITIONS AND DOCUMENTS,
9 ARE THEY MEASURES USED BY FILTER COMPANIES IN EVALUATING
10 THEIR PRODUCTS?

11 A. THEY ARE NOT THE DOMINANT MEASURE USED. TO THE
12 BEST OF MY KNOWLEDGE, THE WEBSense DOCUMENT IS THE ONLY
13 ONE THAT REALLY STRESSES THIS THAT I RECALL. THERE IS A
14 MEASURE THAT IS NORMALLY USED BY RULESPACE, FOR EXAMPLE,
15 CALLED ACCURACY, WHICH IS A RATHER DIFFERENT MEASURE,
16 AND A HIGHLY MISLEADING MEASURE.

17 Q. WELL, LET'S PUT UP DEFENDANT'S EXHIBIT,
18 DEMONSTRATIVE EXHIBIT 7.

19 MR. WIZNER: PLAINTIFFS OBJECT TO THE USE
20 OF DEMONSTRATIVE EXHIBIT 7, WHICH WAS NOT PROVIDED TO
21 PLAINTIFFS UNTIL YESTERDAY, WAS NOT INCLUDED IN THE
22 REPORT, INCLUDES NUMBERS AND CALCULATIONS THAT WERE NOT
23 CONDUCTED FOR THE REPORT. ALSO FOR A SECOND REASON,
24 THIS IS A PAGE OF STATISTICAL ANALYSIS. PROFESSOR NEALE
25 HAS NOT BEEN PROFFERED AS AN EXPERT IN STATISTICS.

1 YESTERDAY WE HAD PROFESSOR STARK HERE FOR SEVERAL HOURS
2 WHO COULD HAVE AND IN FACT DID TESTIFY ABOUT
3 CALCULATIONS LIKE THIS. DEFENDANTS HAD SEVEN YEARS TO
4 ASK PROFESSOR STARK TO PREPARE AN EXHIBIT LIKE THIS AND
5 INCLUDE IT IN HIS REPORT. SO WE OBJECT TO THE USE AND
6 DISCUSSION OF THIS DEMONSTRATIVE EXHIBIT.

7 MR. GOMEZ: YOUR HONOR, WE WILL GO
8 FORWARD WITH THE QUESTIONING WITHOUT THE EXHIBIT.

9 THE COURT: ALL RIGHT.

10 BY MR. GOMEZ:

11 Q. NOW, DR. NEALE, I BELIEVE YOU JUST TESTIFIED
12 THAT FILTER COMPANIES USE A NOTION CALLED ACCURACY BASED
13 ON YOUR REVIEW OF THEIR DOCUMENTS AND DEPOSITIONS, IS
14 THAT CORRECT?

15 A. IT IS, YES.

16 Q. WOULD YOU JUST RELATE WHAT YOUR UNDERSTANDING OF
17 WHAT THE FILTER COMPANIES ARE INDICATING WHEN THEY ARE
18 USING ACCURACY WITH RESPECT TO FILTERS?

19 A. YES. IT'S A DIFFERENT MEASURE.

20 THE COURT: EXCUSE ME FOR INTERRUPTING,
21 BUT HE SAID RULESPACE USED IT. I DON'T KNOW THAT HE
22 SAID ANY OTHER COMPANY.

23 BY MR. GOMEZ:

24 Q. LET'S LEAVE IT TO RULESPACE.

25 MR. GOMEZ: YES, YOUR HONOR.

1 THE WITNESS: YES. RULESPACE USES A
2 MEASURE OF ACCURACY. IT'S A VERY EASY IDEA, AGAIN, IT
3 DOES NOT REQUIRE ANY KNOWLEDGE OF STATISTICS TO
4 UNDERSTAND THE BASIC IDEA. YOU LOOK AT THE NUMBER OF
5 TIMES THE CLASSIFIER MAKES THE RIGHT CALL. THAT IS, YOU
6 LOOK AT THE TRUE POSITIVES AND THE TRUE NEGATIVES AND
7 YOU DIVIDE IT BY THE TOTAL SIZE OF THE SAMPLE WHICH
8 INCLUDES ALL -- THE POSITIVE SET AND THE NEGATIVE SET.
9 SO YOU JUST LOOK. IT SOUNDS GREAT, DOESN'T IT, THE
10 NUMBER OF TIMES IT MAKES THE RIGHT CALL.

11 NOW THAT IS JUST ONE MEASURE AND YOU CAN
12 SEE WHY IT'S A BAD MEASURE. IF YOU JUST THINK ABOUT
13 SKEWING THE SAMPLE YOU ARE LOOKING AT IN SUCH A WAY THAT
14 NOT 50 PERCENT OF THE MATERIAL IS TARGET MATERIAL. SO
15 LET'S SAY -- I DON'T KNOW WHAT THE PROPORTION OF
16 PORNOGRAPHY ON THE WEB IS, I HAVE HEARD FIGURES LIKE 1
17 PERCENT, 2 PERCENT, 5 PERCENT. IT'S NOT REALLY THAT
18 IMPORTANT. THE MAIN THING IS, IT'S A VERY SMALL PORTION
19 OF THE TOTAL CONTENT ON THE WEB. LET'S TAKE SOMETHING
20 LIKE THIS. LET'S SUPPOSE WE TAKE A SAMPLE NOW OF LET'S
21 SAY A THOUSAND, A TEST SET OF A THOUSAND PAGES, AND
22 LET'S SUPPOSE THAT JUST 2 PERCENT, LET'S SAY, FALL INTO
23 THE TARGET CATEGORY, 2 PERCENT OF PORNOGRAPHY, SO IT
24 WOULD BE 20 -- 200 PAGES, OKAY. 20 PAGES. OKAY. SO
25 NOW WE LOOK AT THIS SET AND WE SEE HOW WELL THE

1 CLASSIFIER ACTUALLY PERFORMS WITH THIS SET. NOW,
2 REMEMBER 98 PERCENT OF THE SAMPLE, 98 PERCENT OF THE
3 SAMPLE SETS IS NON, LET'S SAY, PORN. SO IF YOU CLASSIFY
4 THE 98 PERCENT -- I THINK WE SAID 2 PERCENT. IF YOU
5 CLASSIFY THE 98 PERCENT CORRECTLY, YOU'VE IMMEDIATELY
6 GOT 98 PERCENT TRUE NEGATIVES AND ALL YOU ARE GOING TO
7 ADD TO THAT IS THE TRUE POSITIVES. YOU START OUT
8 IMMEDIATELY WITH 98 PERCENT ACCURACY BY THIS MEASURE AS
9 LONG AS YOU GET ALL THE NON-PORN.

10 NOW SUPPOSE YOU DON'T ACTUALLY GET ANY OF
11 THE PORN. IT'S STILL 98 PERCENT ACCURATE BECAUSE 98
12 PERCENT OF THE TIME IT MADE THE RIGHT CALL, THAT IS WITH
13 THE 98 PERCENT OF THE SAMPLE THAT WAS NOT PORN IT MADE
14 THE RIGHT CALL, SO 98 PERCENT ACCURACY. THAT IS THE
15 SAME AS NOT HAVING A FILTER, 98. MY COMPUTER HAS NO
16 FILTERS, 98 PERCENT ACCURATE IF ONLY 2 PERCENT OF THE
17 SAMPLES THAT I'M LOOKING AT IS PORNOGRAPHY BECAUSE IT
18 LETS EVERYTHING THROUGH. IT DOES NOT MATTER ABOUT THE 2
19 PERCENT THAT IS PORN, THAT'S ONLY 2 PERCENT. ONLY 98
20 PERCENT, GOT THEM. 98 PERCENT ACCURATE FILTER. SOUNDS
21 GOOD, BUT CLEARLY IS NOT. SO THIS IS JUST ILLUSTRATION
22 OF WHY THAT PARTICULAR MEASURE OF ACCURACY IS A BAD
23 MEASURE. I'M NOT MAKING ANY CLAIMS ABOUT WHAT ACCURACY
24 MEASURES PEOPLE GIVE OR HOW THEY ACTUALLY -- HOW THEIR
25 SAMPLE SETS ARE ACTUALLY DERIVED. I'M MAKING NO ACTUAL

1 CLAIMS ABOUT THAT. IT'S JUST TO ILLUSTRATE THE FACT
2 THAT THE PROPORTION OF TARGET CONTENT HAS A HUGE IMPACT
3 ON THE NUMBER YOU ARE GOING TO COME UP WITH AT THE END,
4 BECAUSE IF 98 PERCENT OF IT IS STUFF YOU DON'T CARE
5 ABOUT AND YOU GET ALL THAT RIGHT, SO YOU COULD HAVE A
6 FILTER WHICH IN EFFECT STOPPED NO PORN AND BE CONSIDERED
7 98 PERCENT ACCURATE. AND THAT SEEMS -- ANY MEASURE THAT
8 ALLOWS FOR THAT SORT OF THING IS UNHELPFUL, AT LEAST.

9 MR. GOMEZ: THANK YOU, DOCTOR NEALE. THE
10 DEFENDANT HAS NO FURTHER QUESTIONS AT THIS TIME.

11 THE COURT: GOOD MORNING AGAIN.

12 MR. WIZNER: I WAS CHECKING TO SEE IF IT
13 WAS MORNING OR AFTERNOON. I THOUGHT IT WAS GOING TO BE
14 AFTERNOON.

15 THE COURT: TIME GOES FAST WHEN YOU ARE
16 HAVING FUN.

17 MR. WIZNER: DO YOU PREFER PROFESSOR
18 NEALE OR DR. NEALE?

19 THE WITNESS: I DON'T REALLY CARE. I
20 HEARD MANY WORSE NAMES.

21 CROSS EXAMINATION

22 BY MR. WIZNER:

23 Q. GOOD MORNING, PROFESSOR NEALE.

24 A. GOOD MORNING.

25 Q. IF I USE THE TERM COPA, WOULD YOU UNDERSTAND

1 THAT I'M REFERRING TO THE CHILD ON-LINE PROTECTION ACT,
2 WHICH IS THE LAW BEING CHALLENGED IN THIS CASE?

3 A. YES, I WILL.

4 Q. YOU DON'T HAVE ANY OPINION AS TO WHETHER FILTERS
5 ARE MORE OR LESS EFFECTIVE THAN COPA IN PREVENTING
6 MINORS FROM GAINING ACCESS TO SEXUALLY EXPLICIT CONTENT,
7 IS THAT CORRECT?

8 A. NO OPINION.

9 Q. YOUR ANALYSIS OF THE EFFECTIVENESS OF FILTERING
10 TECHNOLOGY ADDRESSES THE LINGUISTIC FUNCTIONS AND
11 LIMITATIONS OF FILTERS, IS THAT CORRECT?

12 A. THAT IS PART OF WHAT I ADDRESS.

13 Q. YOU ARE AWARE THAT SOME FILTERING COMPANIES
14 UTILIZE NONLINGUISTIC CLASSIFICATION METHODS THAT YOU
15 CHOSE NOT TO DISCUSS IN YOUR REPORT, CORRECT?

16 A. NO. I CHOSE NON-LINGUISTIC -- I ACTUALLY DID
17 DISCUSS THEM AT SOME LENGTH, STATISTICAL CLASSIFICATION
18 SYSTEMS OF THE SORT USED BY RULESPACE WAS EXPLICITLY
19 DISCUSSED IN MY REPORT.

20 Q. AND THERE ARE OTHER NONLINGUISTIC NOTIONS OF
21 CONTEXT THAT FILTERING COMPANIES EMPLOY THAT YOU DID NOT
22 DISCUSS IN YOUR REPORT, IS THAT CORRECT?

23 A. YES, THERE IS ONE. I CAN SAY WHAT IT IS.

24 Q. I WILL ASK YOU, IF WE COULD LOOK AT PAGE 65
25 WHICH I THINK IS BATES STAMPED NUMBER 69 OF DEFENDANT'S

1 EXHIBIT 59.

2 A. IS THAT MY REPORT?

3 Q. YES, IT IS YOUR REPORT. IT'S PAGE 65 OF YOUR
4 REPORT, BATES STAMP NUMBER 69 OF THE DEFENDANT'S
5 EXHIBIT.

6 A. LOOKS LIKE -- I HAVE BEEN CHEATED OUT OF A
7 NUMBER OF PAGES OF MY REPORT.

8 Q. YOU DO NOT HAVE --

9 A. IT LOOKS LIKE --

10 Q. I CAN'T DISPLAY IT ON THE SCREEN, IT IS THEIR
11 EXHIBIT. I CAN ACTUALLY GIVE YOU MY COPY OF IT.

12 A. YES, THAT IS FINE.

13 THE COURT: YES.

14 MR. WIZNER: HERE IS THE PAGE.

15 THE COURT: SECTION 6.6.3.

16 MR. WIZNER: I JUST HANDED IT TO HIM. IT
17 IS PAGE 65. I'M SPECIFICALLY REFERRING TO FOOTNOTE 91.
18 BY MR. WIZNER:

19 Q. PROFESSOR NEALE, IF YOU COULD READ FOOTNOTE 91
20 ALOUD. YOU DON'T NEED TO READ THE CITATION AT THE END
21 BUT YOU CAN IF YOU LIKE.

22 A. RULESPACE TECHNOLOGY ALSO UTILIZES A QUITE
23 DIFFERENT NON-LINGUISTIC NOTION OF CONTEXT THAT I SHALL
24 NOT DISCUSS HERE. "THE WEB IS ORGANIZED AND OPERATED IN
25 A HIGHLY ASSOCIATIVE MANNER. WEB SITES ARE GENERALLY

1 CENTERED ON SPECIFIC TOPICS. SUBDIRECTORIES CONTAIN
2 LARGELY HOMOGENOUS SUBJECT MATTER. USER TRAFFIC LEADS TO
3 OTHER SITES THAT CONTAIN RELATED CONTENT. BECAUSE OF
4 THESE RELATIONSHIPS, THE CONTEXT THAT ENVELOPS A WEB
5 PAGE CAN BE COLLECTIVELY ANALYZED AND USED TO INFER A
6 CATEGORY RATING FOR THE PAGE."

7 AND THIS IS FROM A RULESPACE DOCUMENT
8 CALLED CONTEXION, C-O-N-T-E-X-I-O-N, SERVICES TECHNICAL
9 OVERVIEW, WHITE PAPER, MARCH 2001, PAGE 6.

10 Q. THANK YOU. YOU UNDERSTAND THAT FOOTNOTE TO MEAN
11 THAT RULESPACE WILL TAKE INTO ACCOUNT NOT ONLY WHAT
12 APPEARS ON A PAGE, BUT WHERE THAT PAGE APPEARS AND EVEN
13 WHAT THAT PAGE IS LINKED TO IN CLASSIFYING THE PAGE, IS
14 THAT CORRECT?

15 A. THAT'S CORRECT. IT'S AN ARCHITECTURAL POINT.

16 Q. YOU CHOSE NOT TO DISCUSS THIS ELEMENT OF
17 FILTERING BECAUSE IT'S OUTSIDE OF YOUR AREA OF
18 EXPERTISE, IS THAT CORRECVCT?

19 A. THE WEB ARCHITECTURE IS OUTSIDE MY AREA OF
20 EXPERTISE.

21 Q. BUT YOU ALSO AGREE THAT A FULLER CONCLUSION
22 ABOUT THE OVERALL EFFECTIVENESS OF FILTERING WOULD BE
23 INCOMPLETE WITHOUT INCLUDING AN ANALYSIS OF THIS ASPECT
24 OF FILTERS OPERATION, IS THAT CORRECT?

25 A. QUITE SO, IN THE SAME SENSE THAT IT WOULD BE --

1 WOULD'N'T BE A FULL ANALYSIS WITHOUT TAKING INTO ACCOUNT
2 THE LINGUISTIC, LOGICAL AND CONCEPTUAL ISSUES,
3 INSTALLATION ISSUES, FOUNDATIONAL ISSUES THAT BEAR ON
4 THE EFFICACY OF INTERNET FILTERS, AND ISSUES TO DO WITH
5 IMPLEMENTATION AND INSTALLATION AND MAINTENANCE, ALL OF
6 THESE THINGS, YES, AFFECT THE OVERALL EFFECTIVENESS OF
7 INTERNET FILTERS.

8 Q. IN OTHER WORDS, YOU WERE DISCUSSING A SPECIFIC
9 PART OF THE EFFECTIVENESS OF FILTERING TECHNOLOGY, NOT
10 PURPORTING TO PROVIDE A FULL CONCLUSION ABOUT HOW
11 EFFECTIVE THEY ARE IN PREVENTING MINORS FROM SEEING
12 SEXUALLY EXPLICIT CONTENT. IS THAT FAIR?

13 A. YES. THAT IS EXACTLY RIGHT AND EXPLICITLY SO.

14 Q. PROFESSOR NEALE, YOU IN FACT DON'T BELIEVE THAT
15 THERE IS ANY FULLY EFFECTIVE MEANS OF PROTECTING MINORS
16 FROM EXPOSURE TO COMMERCIAL SEXUALLY EXPLICIT MATERIAL
17 ON THE WEB SHORT OF DISMANTLING THE INTERNET, IS THAT
18 CORRECT?

19 A. I DON'T THINK THAT FILTERS OFFER A FULLY
20 EFFECTIVE METHOD. I HAVE YET TO BE CONFRONTED WITH ANY
21 OTHER METHOD. CERTAINLY PULLING THE PLUG ON THE WEB IS
22 THE ONLY THING I CAN THINK OF OFF THE TOP OF MY HEAD.

23 MR. WIZNER: PLAINTIFFS HAVE NO MORE
24 QUESTIONS AT THIS TIME.

25 THE COURT: ANY OTHER QUESTIONS, MR.

1 GOMEZ?

2 MR. GOMEZ: IF I MAY HAVE ONE MOMENT.

3 YOUR HONOR.

4 THE COURT: SURELY.

5 (PAUSE.)

6 MR. GOMEZ: YOUR HONOR, DEFENDANT WOULD

7 LIKE TO MOVE IN THE DEFENDANT'S EXHIBIT 59 AND 60.

8 THE COURT: BEING DR. NEALE'S REPORT AND

9 HIS CV?

10 MR. GOMEZ: YES, YOUR HONOR.

11 MR. WIZNER: PLAINTIFFS OBVIOUSLY HAVE NO

12 OBJECTION TO THE CV. WITH RESPECT TO THE REPORT,

13 PLAINTIFFS WOULD ONLY OBJECT TO THE ADMISSION OF THOSE

14 SECTIONS OF THE REPORT THAT WERE NOT DISCUSSED AT ALL

15 TODAY AND ALSO THOSE SECTIONS OF THE REPORT THAT PERTAIN

16 TO AREAS IN WHICH DR. NEALE HAS DISCLAIMED ANY

17 EXPERTISE. IN PARTICULAR, SECTIONS 3 AND 4 OF THE

18 REPORT, WHICH I BELIEVE DR. NEALE DESCRIBED AS

19 BACKGROUND INFORMATION FOR HIS CONCLUSIONS AND ALSO IN

20 PARTICULAR, SECTION 7.3, WHICH ADDRESSES CIRCUMVENTION

21 OF FILTERS. I DON'T BELIEVE WE HEARD THE WORD

22 CIRCUMVENTION IN TESTIMONY TODAY. IF MR. GOMEZ WOULD

23 LIKE TO QUESTION DR. NEALE ABOUT CIRCUMVENTION, I WOULD

24 CERTAINLY CROSS EXAMINE HIM ON THAT SUBJECT.

25 THE COURT: HARD FOR ME TO DEAL WITH

1 EXCEPTIONS TO THE ADMISSION WITHOUT HAVING IT IN FRONT
2 OF ME. YOU DON'T HAVE ANY QUESTION ABOUT AUTHENTICITY
3 SO WE CAN ARGUE THIS AFTER YOU ARTICULATE PRECISELY WHAT
4 YOU ARE OBJECTING TO.

5 MR. WIZNER: YES. I HAVE NO OBJECTION
6 WHATSOEVER WITH REGARD TO AUTHENTICITY.

7 THE COURT: PARDON ME?

8 MR. WIZNER: WE HAVE NO AUTHENTICITY
9 OBJECTION.

10 THE COURT: I UNDERSTAND THAT. I WOULD
11 LIKE YOU TO BE MORE SPECIFIC SO MR. GOMEZ CAN DEAL WITH
12 IT AND THE COURT CAN DEAL WITH IT.

13 MR. WIZNER: THERE ARE SECTIONS OF
14 PROFESSOR NEALE'S REPORT. TAKE 7.3 FOR EXAMPLE. DOES
15 YOUR HONOR HAVE EXHIBIT 59?

16 THE COURT: SURE. I DON'T WHERE 7.3 IS.

17 MR. WIZNER: LET ME TURN TO THE PAGE. I
18 BELIEVE IT BEGINS ON PAGE 83, BATES STAMP PAGE 87. IT
19 ENDS AT THE REPORT PAGE 85 AND BATES STAMP PAGE 89.

20 THE COURT: YES.

21 MR. WIZNER: AND THOSE PAGES DISCUSS THE
22 POSSIBILITY THAT FILTERS --

23 THE COURT: I UNDERSTAND THERE HAS BEEN
24 NO TESTIMONY ON THE SUBJECT.

25 MR. WIZNER: THERE HAS BEEN NO TESTIMONY

1 ON THIS SUBJECT WHATSOEVER, THAT'S CORRECT.

2 THE COURT: THE OTHER SECTIONS YOU WANT
3 TO EXCLUDE?

4 MR. WIZNER: YES, YOUR HONOR. SECTION 4
5 IN ITS ENTIRETY.

6 THE COURT: ON PAGE WHAT?

7 MR. WIZNER: BEGINNING ON BATES STAMP
8 PAGE 23, THE REPORT PAGE 19. IT ENDS ON REPORT PAGE 27
9 WHICH WOULD BE BATES STAMP PAGE 31, AND THIS SECTION IS
10 A FACTUAL DISCUSSION ABOUT HOW FILTERING TECHNOLOGY
11 OPERATES. AND I DON'T BELIEVE THERE WAS MUCH TESTIMONY
12 ABOUT THAT TODAY. IN FACT, I THINK THAT ANY QUESTIONS
13 THAT DID BEAR ON THAT TODAY, PROFESSOR NEALE WAS QUITE
14 CAREFUL IN STATING THAT HE IS NOT AN EXPERT AND WAS
15 SIMPLY RELYING ON MATERIALS THAT HE READ THAT WERE
16 PROVIDED IN DISCOVERY BY FILTERING COMPANIES.

17 THE COURT: YOU DON'T HAVE ANY OBJECTION
18 TO THE NOTION THAT THIS MATERIAL WAS BROUGHT TO HIS
19 ATTENTION AND HE CONSIDERED IT IN REACHING HIS OPINIONS,
20 DO YOU?

21 MR. WIZNER: NO.

22 THE COURT: THAT PROTECTS THE DEFENDANT
23 FROM THAT PROBLEM.

24 MR. WIZNER: THAT'S CORRECT. WE DON'T
25 OBJECT TO THAT AT ALL.

1 THE COURT: YOU JUST DON'T WANT TO ALLOW
2 THE DEFENDANT TO OFFER 4.1.2 AND PAGES 23 TO 31 FOR THE
3 TRUTH OF THE MATTER STATED.

4 MR. WIZNER: THAT WOULD PERTAIN TO
5 SECTION 3 OF THE REPORT AS WELL, WHICH BEGINS AT PAGE 9
6 OF THE REPORT, BATES STAMP 13, AND ENDS AT PAGE 18,
7 BATES STAMP 22.

8 YOUR HONOR IS CORRECT. WE OBJECT TO
9 THOSE SECTIONS BEING ADMITTED FOR THEIR TRUTH, BUT NOT
10 AS RELIANCE MATERIAL FOR PROFESSOR NEALE'S CONCLUSIONS
11 ABOUT LINGUISTICS.

12 THE COURT: DO THOSE CONSTITUTE YOUR
13 OBJECTIONS, SIR?

14 MR. WIZNER: THEY DO.

15 THE COURT: MR. GOMEZ.

16 MR. GOMEZ: FIRST OF ALL, YOUR HONOR, THE
17 EXPERT REPORTS TO THIS POINT HAVE BEEN ADMITTED EVEN IF
18 THE EXPERTS HAVE NOT ADDRESSED EACH AND EVERY POINT
19 RAISED IN THE EXPERT REPORTS, BOTH FOR PLAINTIFFS AND
20 DEFENDANT.

21 THE COURT: EXCUSE ME FOR A POINTED
22 ASIDE. WE BROUGHT THIS UP BEFORE THE TRIAL STARTED AND
23 THE PARTIES AGREED THAT THE REPORTS WOULD GO INTO
24 EVIDENCE. I HAD RESERVATIONS ABOUT THAT BECAUSE THERE
25 ARE PROBLEMS WITH THAT. THE PARTIES AGREED TO IT. SO

1 WE HAVE NOT DONE THE KIND OF ANALYSIS THAT IS BEING
2 REQUIRED HERE BY THE PLAINTIFFS WITH RESPECT TO OTHER
3 REPORTS.

4 MR. WIZNER: I AGREE, YOUR HONOR.
5 PLAINTIFFS ALSO RAISED THESE OBJECTIONS WITH RESPECT TO
6 TESTIMONY WITH THE PRETRIAL ORDER IN DOCUMENT 329. YOU
7 ARE CORRECT, WE DID NOT RAISE IT SPECIFICALLY WITH
8 REGARD TO SECTIONS OF THE REPORT. AGAIN, WE ARE NOT
9 GOING TO OBJECT TO IT BEING ADMITTED. WE ARE GOING TO
10 OBJECT TO IT BEING RELIED ON FOR ITS TRUTH EXCEPT FOR
11 SECTION 7.3.

12 THE COURT: WELL, MR. GOMEZ, WE HAVE A
13 TINY BIT OF RENEGING HERE.

14 MR. GOMEZ: YES, YOUR HONOR, AND IT SEEMS
15 TO ME, AS THE COURT CORRECTLY POINTED OUT, THE PARTIES
16 DID BIND THEMSELVES AT THE PRETRIAL CONFERENCE THAT THE
17 EXHIBITS DESPITE THE RESERVATIONS PRESENTED BY THE
18 COURT, THAT THE EXPERT REPORTS WERE TO BE -- THE PARTIES
19 WANTED THE EXPERT REPORTS TO BE SUBMITTED. I THINK THE
20 MOST IMPORTANT POINT HERE, ASIDE FROM THAT POINT WHICH I
21 THINK IS CONTROLLING, IS THAT THE MATERIAL, PARTICULARLY
22 IN SECTION 3 AND 4, IS MATERIAL THAT IS SPECIFICALLY
23 REFERENCED AND IDENTIFIED TO DEPOSITIONS, TO EXHIBITS
24 THAT WERE REVIEWED BY THIS WITNESS, AND ARE THE BASIS --
25 WHAT IS SET FORTH IN HIS REPORT IS THE INFORMATION THAT

1 IN FACT WAS DERIVED FROM THAT, FROM THAT DEPOSITION,
2 EXHIBITS AND WAS THE BASIS FOR IN PART FOR HIS OPINION
3 AND RELIANCE ON HOW FILTERS OPERATED. AND THE VENDORS
4 THEMSELVES TESTIFIED, VENDORS' DEPOSITIONS OR EVEN
5 RULESPACE IN PARTICULAR HAD BEEN READ INTO THE RECORD,
6 YOUR HONOR. AND SO THE DEFENDANT WOULD SUBMIT THAT THE
7 EXPERT REPORT SHOULD GO IN AND THAT THE COURT SHOULD
8 OBVIOUSLY ADDRESS IN ITS REVIEW THE TESTIMONY OF EACH OF
9 THE EXPERTS AND THEIR EXPERT REPORTS. BUT IF WHAT
10 PLAINTIFFS ARE NOW SAYING IS THAT ONLY WHAT THE EXPERT
11 TESTIFIED ABOUT SHOULD THE EXPERT REPORT BE APPLIED,
12 THEN IT SHOULD BE APPLIED TO ALL OF THE EXPERT REPORTS,
13 ALL THE TESTIMONY THAT HAS BEEN SUBMITTED BY THE
14 PLAINTIFFS, BY THEIR EXPERTS. AND IF THEY DID NOT
15 ADDRESS A PARTICULAR POINT, IT SHOULD NOT GO IN. THERE
16 SHOULDN'T BE A SPECIAL EXCEPTION, PARTICULARLY IN THIS
17 INSTANCE WHERE THE PLAINTIFFS DESPITE THE ADMONITION OF
18 THE COURT UNEQUIVOCALLY AGREED THAT THE EXPERT REPORTS
19 WOULD GO IN.

20 MR. WIZNER: I THINK I CAN RESOLVE THIS
21 AND POSSIBLY WITHDRAW THE OBJECTION IF YOU PERMIT ME
22 FOUR FIVE OR SIX ADDITIONAL QUESTIONS ON CROSS
23 EXAMINATION. THEN WE WON'T HAVE TO -- IS THAT OKAY?

24 THE COURT: SURE.

25 BY MR. WIZNER:

1 Q. PROFESSOR NEALE, YOU HAVE NO SPECIFIC EXPERTISE
2 OR TRAINING IN THE SOFTWARE OR HARDWARE ASSOCIATED WITH
3 INTERNET CONTENT FILTERS, IS THAT CORRECT?

4 A. THAT'S CORRECT.

5 Q. AND PRIOR TO BEING RETAINED BY THE DEPARTMENT OF
6 JUSTICE, YOU HAD NOT CONDUCTED ANY RESEARCH OR PUBLISHED
7 ANY WORK ADDRESSING THE CAPABILITIES OF INTERNET CONTENT
8 FILTERS. IS THAT ALSO CORRECT?

9 A. THAT'S CORRECT.

10 Q. AND PRIOR TO BEING RETAINED BY THE DEPARTMENT OF
11 JUSTICE, YOU HAD NOT CONDUCTED ANY RESEARCH OR PUBLISHED
12 ANY WORK SPECIFICALLY ADDRESSING THE WORLDWIDE WEB. IS
13 THAT ALSO CORRECT?

14 A. THAT'S CORRECT.

15 Q. MORE SPECIFICALLY, PRIOR TO BEING RETAINED BY
16 THE DEPARTMENT OF JUSTICE, YOU HAD NOT CONDUCTED ANY
17 RESEARCH OR PUBLISHED ANY WORK RELATING TO MATERIAL THAT
18 APPEARS IN SECTION 3 OF YOUR EXPERT REPORT ENTITLED
19 CLASSIFYING WEB PAGES, IS THAT CORRECT?

20 A. I WILL NEED TO HAVE A LOOK. SORRY. I THINK THE
21 COMPLEX ANSWER IS THAT SOME OF IT I MAY WELL HAVE DONE
22 AND A LARGE PART OF IT I PROBABLY DID NOT.

23 Q. PRIOR TO BEING RETAINED BY THE DEPARTMENT OF
24 JUSTICE, YOU HAD NOT CONDUCTED ANY RESEARCH OR PUBLISHED
25 ANY WORK RELATING TO MATERIAL THAT APPEARS IN SECTION 4

1 OF YOUR EXPERT REPORT ENTITLED FILTERING AND BLOCKING,
2 IS THAT CORRECT?

3 A. I WOULD ENTER THE SAME CAVEAT IN RESPONDING TO
4 THAT QUESTION, THAT TO THE EXTENT THAT LINGUISTIC
5 TECHNIQUES ARE ADDRESSED IN SECTION 3 AND SECTION 4, I
6 THINK THERE PROBABLY IS MATERIAL IN THERE THAT I HAVE
7 DONE RESEARCH ON OR PUBLISHED ON, BUT CERTAINLY NOT THE
8 MAJORITY OF THE MATERIAL IN EITHER OF THOSE TWO
9 SECTIONS.

10 Q. IN FACT YOU HAVE NO EXPERT OPINIONS ON THE
11 INFORMATION CONTAINED IN SECTION 3 AND SECTION 4 OF YOUR
12 REPORT, IS THAT CORRECT?

13 A. YEAH, THAT IS TRUE. I MADE IT VERY CLEAR IN THE
14 DEPOSITION ACTUALLY THAT SECTION 3 AND SECTION 4 WERE
15 DESIGNED TO JUST PROVIDE A LITTLE BIT OF BACKGROUND IN
16 ORDER FOR ME TO ACTUALLY GET DOWN TO BUSINESS IN
17 SECTIONS 5, 6, AND 7, WITHOUT WHICH THE DISCUSSION MIGHT
18 NOT HAVE MADE SENSE TO PEOPLE TRYING TO UNDERSTAND IT.

19 Q. THANK YOU. EVEN AFTER BEING RETAINED BY THE
20 DEPARTMENT OF JUSTICE, YOU DIDN'T CONDUCT ANY TESTS TO
21 DETERMINE THE EFFECTIVENESS OF FILTERS IN BLOCKING
22 SEXUALLY EXPLICIT CONTENT, IS THAT CORRECT?

23 A. NO FORMAL TESTS. I HAVE CERTAINLY PLAYED AROUND
24 WITH FILTERS JUST TO SEE WHAT HAPPENS.

25 Q. YOU DESCRIBED THAT AS HALF AN HOUR OF PLAYING

1 AROUND?

2 A. SOMETHING LIKE THAT.

3 Q. TURNING TO --

4 A. I MEAN, ONE THING I HOPE THAT HAS COME ACROSS IN
5 MY TESTIMONY IS, I'M TALKING ABOUT THE CLASSIFICATION OF
6 CONTENT IN THE ABSTRACT, INDEPENDENTLY OF ANY PARTICULAR
7 TECHNOLOGICAL ADVANCES OR IDEAS THAT HAVE BEEN INVOKED
8 IN PRODUCING ANY PARTICULAR SOFTWARE PRODUCT. AND I
9 MAINTAIN THAT THE FOUNDATIONAL, PHILOSOPHICAL ISSUES
10 BEARING ON THE EFFICACY OF INTERNET FILTERING TECHNOLOGY
11 ARE THERE FOR GOOD. THEY ARE NOT SPECIFIC TO THE
12 DETAILS OF ANY PARTICULAR FILTER PRODUCT. TO THE EXTENT
13 THAT ANY PARTICULAR FILTER PRODUCT OPERATES IN
14 ACCORDANCE WITH WORD SELECTIONS IN THE WAY I HAVE
15 INDICATED, THEN I WOULD SAY THE TESTIMONY ON THOSE
16 PARTICULAR ISSUES HOLDS GOOD AS AN EXPERT'S OPINION.

17 Q. IN SECTION 7.3 OF YOUR EXPERT REPORT, YOU
18 DISCUSS METHODS OF CIRCUMVENTING FILTERS. YOU DON'T
19 HAVE ANY EVIDENCE ABOUT THE EFFECTIVENESS OF
20 CIRCUMVENTION METHODS, DO YOU?

21 A. MY ONLY EVIDENCE IS PLAYING AROUND FOR A BIT
22 AND SEEING WHAT I COULD GET AWAY WITH.

23 Q. YOU DON'T PURPORT TO OFFER AN EXPERT OPINION
24 ABOUT THE EFFECTIVENESS OF CIRCUMVENTION METHODS, DO
25 YOU?

1 A. I DO NOT.

2 MR. WIZNER: WITH THOSE QUESTIONS AND
3 ANSWERS, PLAINTIFFS WITHDRAW THEIR OBJECTIONS TO THE
4 ADMISSIBILITY OF ANY OF PROFESSOR NEALE'S EXPERT REPORT.

5 THE COURT: DEFENDANT'S EXHIBITS 59 AND
6 60 ARE RECEIVED INTO EVIDENCE.

7 (D 59 AND D 60 ADMITTED INTO EVIDENCE.)

8 MR. GOMEZ: YOUR HONOR, MAY I JUST RAISE
9 ONE QUESTION IN RESPONSE TO THE RECROSS BY PLAINTIFF?

10 THE COURT: OR YOU CAN DO REDIRECT ON IT
11 IF YOU HAVE TO.

12 MR. GOMEZ: YES.

13 THE COURT: WHAT WAS BEFORE THE COURT WAS
14 THE OFFER OF THE EXHIBIT.

15 MR. GOMEZ: YES, YOUR HONOR. I AGREE.

16 REDIRECT EXAMINATION

17 BY MR. GOMEZ:

18 Q. COUNSEL RAISED A QUESTION WITH RESPECT TO
19 CIRCUMVENTION OF FILTERS. AND BASED ON YOUR REVIEW AND
20 YOUR LOOKING AT THIS PARTICULAR ISSUE, DID IT REQUIRE
21 -- DO YOU BELIEVE THAT IT REQUIRED YOU TO BE AN EXPERT
22 TO AT LEAST IDENTIFY WHETHER FILTERS COULD BE
23 CIRCUMVENTED?

24 A. IN MY NONEXPERT OPINION, IT DID NOT REQUIRE ME
25 TO BE AN EXPERT ON CIRCUMVENTION IN ORDER TO BE ABLE TO

1 SEE INFORMALLY WHETHER OR NOT THEY WERE -- WHETHER THEY
2 COULD BE CIRCUMVENTED.

3 Q. AND YOUR INQUIRY IS REFLECTED IN SECTION 7.3, IS
4 THAT CORRECT?

5 A. MY INFORMED BUT NONEXPERT OPINION IS IN SECTION
6 7.3.

7 MR. GOMEZ: NO FURTHER QUESTIONS.

8 MR. WIZNER: PLAINTIFFS HAVE NO FURTHER
9 QUESTIONS EITHER, YOUR HONOR.

10 THE COURT: I WILL GIVE THE REPORT THE
11 WEIGHT IT DESERVES, EACH SECTION ACCORDINGLY.

12 DR. NEALE, YOU ARE EXCUSED. THANKS FOR
13 YOUR HELP.

14 THE WITNESS: THANK YOU VERY MUCH.

15 (WITNESS EXCUSED.)

16 MR. TODD: GOOD MORNING, YOUR HONOR.

17 JAMES TODD FOR THE DEFENDANT. THE DEFENDANT CALLS DOUG
18 KNOPPER.

19 MR. FINE: PLAINTIFFS NEED TO RAISE A
20 PRELIMINARY MATTER WITH RESPECT TO MR. KNOPPER'S
21 TESTIMONY. PLAINTIFFS ARE GOING TO SEEK TO EXCLUDE MR.
22 KNOPPER FROM TESTIFYING ON THE GROUND OF RELEVANCE. WE
23 HAD A TELEPHONE INTERVIEW WITH MR. KNOPPER YESTERDAY IN
24 WHICH MR. KNOPPER STATED THAT HIS -- MR. KNOPPER HAS
25 BEEN PROFFERED AS A FACT WITNESS TO DISCUSS HIS

1 COMPANY'S PRODUCTS. IN OUR TELEPHONE INTERVIEW
2 YESTERDAY, MR. KNOPPER STATED THAT HIS COMPANY CAN NOT
3 AND WILL NOT EVER DO ANY BUSINESS WITH ANY COMPANY THAT
4 HAS SEXUALLY EXPLICIT CONTENT ON THEIR WEBSITES. GIVEN
5 THAT FACT, TESTIMONY ABOUT PRODUCTS OFFERED BY MR.
6 KNOPPER'S COMPANY HAVE NO RELEVANCE TO THIS LAWSUIT AND
7 CAN BE OF NO USE TO ANY WEBSITE THAT IS COVERED BY THE
8 STATUTE AT ISSUE IN THIS LAWSUIT.

9 THE COURT: REMIND ME OF THE PRODUCT.

10 MR. FINE: THE PRODUCT IS ESSENTIALLY AN
11 ALTERNATIVE PAYMENT MECHANISM FOR USE BY WEBSITES AND BY
12 INTERNET USERS. THERE APPEAR TO BE VARIOUS ITERATIONS
13 OF THIS PRODUCT AND MR. KNOPPER HAS STATED THAT HIS
14 COMPANY WILL NOT DO BUSINESS WITH ANY WEBSITE THAT HAS
15 SEXUALLY EXPLICIT CONTENT AND SO ANY TESTIMONY ABOUT ANY
16 OF THESE PRODUCTS HAS ABSOLUTELY NO RELEVANCE TO THIS
17 LAWSUIT.

18 THE COURT: WAS MR. KNOPPER'S DEPOSITION
19 TAKEN?

20 MR. FINE: NO, YOUR HONOR. THIS WAS ONE
21 OF THE WITNESSES THAT WAS IDENTIFIED ONLY IN THE
22 PRETRIAL ORDER.

23 THE COURT: MR. TODD, YOUR RESPONSE.

24 MR. TODD: YES, YOUR HONOR. MR. KNOPPER
25 WILL TESTIFY THAT BITPASS REVIEWED EACH OF THE

1 PLAINTIFFS' WEBSITES IN THIS LAWSUIT, DISCUSSED THE
2 PLAINTIFFS' WEBSITES WITH ITS BOARD.

3 THE COURT: WITH WHOM?

4 MR. TODD: DISCUSSED THE PLAINTIFFS'
5 WEBSITE WITH MEMBERS OF THE BITPASS BOARD OF DIRECTORS
6 AND CONFIRMED THAT BITPASS WOULD BE WILLING TO DO
7 BUSINESS WITH EACH OF THE PLAINTIFFS IN THIS CASE. NOW,
8 THE PLAINTIFFS ARE FREE TO CROSS EXAMINE MR. KNOPPER
9 ABOUT WHAT HE MEANT BY, THEY DO NOT DO BUSINESS WITH
10 SEXUALLY EXPLICIT WEBSITES. I THINK THEY WILL FIND HE
11 MEANT HE WOULD NOT DO BUSINESS WITH HUSTLER.COM. BUT AT
12 THIS POINT HIS TESTIMONY IS RELEVANT SINCE HE WILL
13 TESTIFY THAT BITPASS IS WILLING TO DO BUSINESS WITH THE
14 PLAINTIFFS IN THIS CASE.

15 THE COURT: MR. FINE.

16 MR. FINE: YOUR HONOR, YESTERDAY -- I'M
17 NOT SURE WHAT MR. KNOPPER WILL TESTIFY TO TODAY, BUT
18 YESTERDAY DURING OUR TELEPHONE INTERVIEW, HE INDICATED
19 THAT HE WAS SPECIFICALLY PROHIBITED FROM WORKING WITH
20 ANY WEBSITE THAT HAS ANY SEXUALLY EXPLICIT CONTENT BY
21 TWO OF HIS INVESTORS. I'M NOT SURE IF THESE INVESTORS
22 ARE ON THE BOARD THAT MR. TODD WAS JUST REFERRING TO.
23 BUT THAT IS WHAT HE TOLD US YESTERDAY AND TO THE EXTENT
24 THAT HE IS GOING TO SAY THAT TODAY, IT WOULD SAVE US ALL
25 A LOT OF TIME IF WE JUST EXCLUDED HIS TESTIMONY RIGHT

1 NOW, BUT WE ARE CERTAINLY --

2 THE COURT: THERE IS NO QUESTION FOR HIS
3 BENEFIT, MR. KNOPPER IS IN THE COURTROOM. ARE YOU, MR.
4 KNOPPER. GOOD MORNING.

5 MR. KNOPPER: YES.

6 THE COURT: THERE IS NO QUESTION THAT
7 WITHOUT EVALUATING ANY ONE OF THE PLAINTIFFS' WEBSITE
8 THAT THERE ARE WEBSITES IN THE PLAINTIFFS' ARRAY THAT
9 HAVE SEXUALLY EXPLICIT MATERIAL IN THEM. THERE IS NO
10 DOUBT ABOUT THAT IN THE MIND OF THE COURT. I'M NOT
11 MAKING ULTIMATE FACTUAL FINDINGS HERE, I'M JUST MAKING
12 OBSERVATIONS OF WHAT THE COURT KNOWS AS A MATTER OF
13 PROCEDURAL HISTORY IN THE CASE. SO I DON'T KNOW HOW
14 THAT AFFECTS WHAT YOU ARE DOING BECAUSE I DON'T KNOW HOW
15 IT AFFECTS HIS COMPANY'S THINKING. MR. FINE, WHAT IS,
16 EXCUSE THE EXPRESSION, SO WHAT, SO WHAT HIS COMPANY
17 WON'T DO BUSINESS WITH A SEXUALLY EXPLICIT WEBSITE?

18 MR. FINE: HE'S BEEN PROFFERED SOLELY AS
19 A FACT WITNESS TO DISCUSS HIS COMPANY'S PRODUCTS. IF
20 HIS COMPANY WON'T SELL HIS PRODUCTS TO ANY WEBSITE THAT
21 HAS SEXUALLY EXPLICIT CONTENT, THEN HE HAS NOTHING TO
22 OFFER US TODAY THAT IS OF ANY RELEVANCE. HE IS SOLELY A
23 FACT WITNESS TO TALK ABOUT HIS COMPANY'S PRODUCTS.

24 THE COURT: MR. TODD, LIMIT YOURSELF TO
25 THAT OBSERVATION, WOULD YOU PLEASE. WHAT IS THE

1 RELEVANCE OF HIS -- IF IN FACT HIS COMPANY WON'T DO
2 BUSINESS WITH --

3 MR. TODD: WELL, AGAIN, YOUR HONOR, THE
4 PLAINTIFFS ARE FREE TO CROSS EXAMINE MR. KNOPPER ON WHAT
5 HE MEANT BY SEXUALLY EXPLICIT CONTENT AND FLESH OUT THE
6 FULL DETAILS OF IT, BUT WHAT WILL BE CLEAR IS THAT IT IS
7 RELEVANT BECAUSE IN THAT PLAINTIFFS CLAIM TO FEAR
8 PROSECUTION UNDER COPA, MR. KNOPPER'S TESTIMONY IS
9 RELEVANT TO SHOWING HOW THEY CAN EASILY COMPLY WITH THE
10 STATUTE WITHOUT SCARING AWAY THE USERS THAT THEY CLAIM
11 WOULD BE SCARED AWAY BY THE AGE VERIFICATION OR PAYMENT
12 CARD BARRIERS REQUIRED BY THE STATUTE.

13 THE COURT: IS THAT THE WAY HIS PRODUCT
14 WORKS?

15 MR. TODD: HE IS GOING TO TALK ABOUT THE
16 WAY HIS PRODUCT WORKS AND HE IS GOING TO TALK ABOUT THAT
17 -- HE IS GOING TO TESTIFY THAT HIS COMPANY DID IN FACT
18 REVIEW THE PLAINTIFFS' WEBSITES IN THIS CASE AND THEY
19 ARE WILLING TO DO BUSINESS WITH EACH OF THE PLAINTIFFS
20 IN THIS CASE. SO HIS TESTIMONY IS RELEVANT TO HOW THE
21 PLAINTIFFS COULD COMPLY WITH COPA. IF THIS COURT WERE
22 TO FIND THAT NONE OF THE PLAINTIFFS ARE SUBJECT TO THE
23 STATUTE, THEN HIS TESTIMONY WOULD BECOME POTENTIALLY
24 MOOT, BUT UNLESS AND UNTIL THE COURT MAKES SUCH A
25 FINDING, HIS TESTIMONY IS RELEVANT IN THIS CASE.

1 MR. FINE: YOUR HONOR, TO THE EXTENT THAT
2 DEFENDANT NOW APPEARS TO BE PROFFERING MR. KNOPPER AND
3 HIS COMPANY'S PRODUCTS AS PROVIDING AN AFFIRMATIVE
4 DEFENSE, ALTERNATIVE TECHNOLOGY FOR WEBSITES TO COMPLY
5 WITH THE STATUTE, PLAINTIFFS ISSUED INTERROGATORIES TO
6 DEFENDANT IN 2005 ASKING THEM TO IDENTIFY ANY REASONABLE
7 ALTERNATIVE TECHNOLOGIES THAT COULD BE USED TO COMPLY
8 WITH THE STATUTE. THE DEFENDANT REFUSED TO ANSWER THAT
9 AT FIRST. PLAINTIFFS THEREFORE FILED A MOTION TO
10 COMPEL. THE COURT ORDERED THE DEFENDANT TO ANSWER THAT
11 QUESTION IN ORDER TO LIMIT -- TO ENABLE THE PLAINTIFFS
12 TO KNOW WHAT DISCOVERY SHOULD BE CONDUCTED. THE
13 DEFENDANT FILED A SUPPLEMENTAL RESPONSE. THEY DID NOT
14 IDENTIFY MR. KNOPPER'S COMPANY OR ANY PRODUCTS OFFERED
15 BY MR. KNOPPER'S COMPANY. THEY THEN FILED A FURTHER
16 SUPPLEMENTAL RESPONSE. THEY AGAIN DID NOT IDENTIFY MR.
17 KNOPPER'S COMPANY OR ANY OF HIS PRODUCTS. PLAINTIFFS
18 HAD NO OPPORTUNITY TO CONDUCT ANY DISCOVERY OF MR.
19 KNOPPER'S COMPANY OR ANY OF THE TECHNOLOGIES OR PRODUCTS
20 THAT HE IS APPARENTLY GOING TO TESTIFY ABOUT TODAY AND
21 SO ON THAT GROUND AS WELL, MR. KNOPPER SHOULD BE
22 PRECLUDED FROM TESTIFYING.

23 MR. TODD: IF I MAY, YOUR HONOR.

24 THE COURT: YES, MR. TODD.

25 MR. TODD: FIRST, PLAINTIFFS'

1 INTERROGATORIES CONCERNED SPECIFICALLY AGE VERIFICATION
2 TECHNOLOGIES, TECHNOLOGIES TO VERIFY AGE. MR. KNOPPER
3 DISCUSSED IN A TELEPHONE CONVERSATION YESTERDAY AND WILL
4 TESTIFY TODAY ON DIRECT AND PROBABLY ADMIT ON CROSS THAT
5 HIS COMPANY IS NOT -- DOES NOT DO AGE VERIFICATION.
6 SECONDLY, YOUR HONOR, THIS TESTIMONY IS IN RESPONSIVE TO
7 STATEMENTS MADE BY THE PLAINTIFFS ABOUT USERS BEING
8 UNWILLING TO PROVIDE CUSTOMER INFORMATION BECAUSE OF
9 FEARS OF LOSS OF ANONYMITY AND SO ON AND SO FORTH. THE
10 TESTIMONY IS RELEVANT TO RESPOND TO THAT. IN FACT, THAT
11 TESTIMONY CAME IN DESPITE DEFENDANT'S STRONG OBJECTIONS
12 BECAUSE IT DID NOT COME IN THROUGH AN EXPERT TESTIMONY.
13 SO HIS TESTIMONY IS RESPONSIVE TO PLAINTIFFS' CONCERN
14 ABOUT THE WILLINGNESS OF CUSTOMERS TO DEAL, YOU KNOW,
15 PROVIDE SOME INFORMATION TO ONE COMPANY RATHER THAN
16 HAVING TO PROVIDE THEIR INFORMATION TO EVERY WEBSITE
17 THEY MIGHT WANT TO VISIT. AGAIN, PLAINTIFFS ARE WELCOME
18 TO EXPLORE THIS ON CROSS EXAMINATION.

19 THE COURT: IS MR. KNOPPER'S COMPANY'S
20 PRODUCT CONSIDERED BY THE DEFENSE TO BE AN AFFIRMATIVE
21 DEFENSE UNDER THE STATUTE?

22 MR. TODD: NO, SIR. IT FACILITATES THE
23 USE OF A PAYMENT CARD. A PAYMENT CARD IS CONSIDERED --
24 WE WILL HEAR TESTIMONY FROM OUR EXPERTS NEXT WEEK ABOUT
25 THE EFFECTIVENESS OF THE CREDIT CARD AND DEBIT CARD

1 AFFIRMATIVE DEFENSE IN THE STATUTE. I BELIEVE LATER
2 THIS AFTERNOON WE WILL HEAR TESTIMONY FROM ANOTHER
3 COMPANY THAT DOES HAVE AN AGE VERIFICATION PRODUCT.
4 THIS IS ABOUT FACILITATING THE USE OF A PAYMENT CARD AND
5 AGAIN, THERE IS NO REPRESENTATION THAT IT IS AN AGE
6 VERIFICATION TECHNOLOGY.

7 MR. FINE: YOUR HONOR, WITH RESPECT TO
8 THE POINT THAT COUNSEL MADE THAT MR. KNOPPER IS HERE TO
9 TESTIFY ABOUT THE WILLINGNESS OF USERS TO PROVIDE
10 PERSONAL INFORMATION ON THE INTERNET, HE IS NOT AN
11 EXPERT WITNESS. HE HAS BEEN PROFFERED AS A FACT WITNESS
12 AND IN THEIR PROFFER, ALL THE DEFENDANT SAID THAT MR.
13 KNOPPER WAS GOING TO TESTIFY ABOUT WAS HIS COMPANY'S
14 PRODUCTS. HE CAN TESTIFY ABOUT --

15 THE COURT: YOU MEAN THE SUMMARY OF THE
16 TESTIMONY IN THE PROPOSED PRETRIAL ORDER?

17 MR. FINE: IN ADDITION TO THAT, WE
18 SPECIFICALLY ASKED DEFENDANT FOR AN OFFER OF PROOF.
19 DEFENDANT PROVIDED THAT AND WE PREMARKED THAT AS AN
20 EXHIBIT. AND IN THAT OFFER OF PROOF, WHAT THEY STATE
21 THAT MR. KNOPPER IS GOING TO TESTIFY ABOUT IS HIS
22 COMPANY, HIS COMPANY'S PRODUCTS.

23 MR. TODD: THAT'S CORRECT. HE IS GOING
24 TO TESTIFY ABOUT HIS COMPANY AND HIS COMPANY'S PRODUCTS.

25 THE COURT: MR. TODD IS IMPLYING THAT

1 THERE MAY BE A PERMISSIBLE INFERENCE THAT PEOPLE
2 WILL USE THIS KIND OF A PRODUCT SOMEHOW OR OTHER OUT OF
3 THE TESTIMONY. THAT IS WHAT I GET.

4 MR. TODD: THAT IS AN ARGUMENT THAT WE
5 MAY MAKE AT CLOSING, YOUR HONOR, THEY ARE WELCOME TO
6 RESPOND TO IT AT CLOSING.

7 THE COURT: MR. KNOPPER WILL TESTIFY, AND
8 COUNSEL WILL CROSS EXAMINE AND MOVE TO STRIKE ANYTHING
9 THAT IS IMPROPER IN THE VIEW OF THE PLAINTIFFS.

10 MR. TODD: THANK YOU, YOUR HONOR.

11 THE COURT: DON'T THANK ME FOR MAKING MY
12 RULING.

13 MR. KNOPPER, COME ON UP, PLEASE, RIGHT
14 ALONG THERE. THERE IS A LITTLE WALL GO AROUND THE
15 LITTLE WALL UP THE STEPS AND REMAIN STANDING.

16 DOUGLAS KNOPPER, PLAINTIFF'S WITNESS,
17 SWORN.

18 THE CLERK: STATE AND SPELL YOUR FULL
19 NAME FOR THE RECORD, PLEASE.

20 THE WITNESS: DOUGLAS KNOPPER,
21 D-O-U-G-L-A-S, K-N-O-P-P-E-R.

22 MR. TODD: YOUR HONOR, MAY I APPROACH --
23 MAY I HAVE PERMISSION TO APPROACH THE BENCH AND WITNESS?

24 THE COURT: YES, YOU MAY.

25 MR. TODD: THANK YOU, YOUR HONOR.

1 DIRECT EXAMINATION

2 BY MR. TODD:

3 Q. GOOD MORNING, MR. KNOPPER.

4 A. GOOD MORNING.

5 Q. MY NAME IS JAMES TODD, COUNSEL FOR DEFENDANT.

6 MR. KNOPPER, WHERE ARE YOU EMPLOYED?

7 A. BITPASS.

8 Q. WHAT IS YOUR POSITION THERE?

9 A. I'M THE CEO.

10 Q. HOW LONG HAVE YOU HELD THAT POSITION?

11 A. JUST UNDER ONE YEAR.

12 Q. AND WHAT WAS YOUR PRIOR POSITION?

13 A. I WAS GENERAL MANAGER AT DOUBLECLICK.

14 Q. THAT IS A DIFFERENT COMPANY FROM BITPASS?

15 A. YES.

16 Q. WHAT IS BITPASS?

17 A. BITPASS IS A COMPANY THAT MAKES A TECHNOLOGY FOR
18 WEB PUBLISHERS AND MERCHANTS TO HELP THEM HANDLE THEIR
19 TRANSACTIONS FROM CONTENT SALES.

20 Q. NOW, I HAVE HANDED YOU AND THE COURT AND
21 PLAINTIFFS A COPY OF WHAT HAS BEEN MARKED AS DEFENDANT'S
22 EXHIBIT 107 A. THIS IS A DOCUMENT THAT BITPASS CREATED?

23 A. CORRECT.

24 Q. CAN WE TURN TO PAGE 2. WHEN WAS BITPASS
25 STARTED?

1 A. 2003.

2 Q. WHERE DOES BITPASS OPERATE?

3 A. SAN MATEO, CALIFORNIA.

4 Q. WHERE DOES BITPASS DO BUSINESS?

5 A. PRIMARILY IN THE U.S., BUT ALSO IN CANADA AND
6 AUSTRALIA.

7 Q. AND WHAT DOES BITPASS DO AGAIN?

8 A. WE PROVIDE A TECHNOLOGY, A PLATFORM FOR WEB
9 PUBLISHERS AND MERCHANTS TO ALLOW THEM TO DO EVERYTHING
10 THEY NEED TO DO TO MANAGE ONLINE DIGITAL CONTENT SALES.

11 Q. AND WHAT DO YOU MEAN BY CONTENT?

12 A. DIGITAL CONTENT IS ANYTHING THAT YOU CAN CLICK
13 ON ESSENTIALLY, AUDIO FILES, SONGS, MUSIC, AND ARTICLES
14 AND PHOTOS.

15 Q. CAN WE TURN TO PAGE 3. WHO ARE SOME OF
16 BITPASS'S CLIENTS?

17 A. MY CUSTOMERS INCLUDE MICROSOFT, UNITED MEDIA,
18 ZIFF DAVIS, TIME, INC., ABC, AND ABOUT 4,000 SMALLER
19 MERCHANTS.

20 Q. WHAT DO THESE CLIENTS HAVE IN COMMON?

21 A. THEY ALL SELL OR PROVIDE DIGITAL CONTENT TO
22 THEIR CUSTOMERS ON THEIR SITES.

23 Q. HOW MANY USERS DOES BITPASS HAVE?

24 A. ABOUT 500,000.

25 Q. AND USERS IS ANOTHER WORD FOR BUYERS?

1 A. YES.

2 Q. THESE ARE PEOPLE THAT BUY?

3 A. YES, INDIVIDUAL USERS.

4 Q. WHY DID BITPASS CREATE ITS PRODUCT?

5 A. IT WAS CREATED TO FILL A NEED FOR TWO REASONS.
6 THE FIRST WAS THAT DIGITAL CONTENT SALES WERE BOOMING,
7 MUSIC AND VIDEO AND ALL THE THINGS THAT YOU BUY ONLINE.
8 AS A RESULT OF THAT, THE PUBLISHERS AND MERCHANTS WERE
9 LOOKING FOR WAYS TO MANAGE THOSE TRANSACTIONS AND MAKE
10 THEM MORE EFFICIENT.

11 Q. CAN WE TURN TO PAGE 4. WHAT IS THIS?

12 A. SO THIS GRAPH SHOWS ESSENTIALLY A PROJECTION FOR
13 THE DIGITAL CONTENT SALES IN THE U.S. AND WHAT YOU CAN
14 SEE IS THAT DIGITAL CONTENT SALES IN THE YEAR 2009 ARE
15 PROJECTED TO BE AROUND \$45 BILLION, SLIGHTLY HIGHER THAN
16 THAT.

17 Q. IS THIS YOUR COMPANY'S --

18 MR. FINE: YOUR HONOR, I OBJECT ON THE
19 GROUNDS THAT THIS IS CLEARLY IMPERMISSIBLE OPINION
20 TESTIMONY. THIS WITNESS IS OFFERED HERE SOLELY AS A
21 FACT WITNESS ABOUT HIS COMPANY'S PRODUCTS.

22 MR. TODD: I WAS JUST GOING TO CLARIFY --

23 THE COURT: OBJECTION IS SUSTAINED,
24 QUESTION AND ANSWER ARE STRICKEN. YOU CAN START OVER.
25 BY MR. TODD:

1 Q. IS THIS A CHART THAT YOUR COMPANY PREPARED?

2 A. NO. WELL, WE PREPARED THIS CHART, BUT THE
3 UNDERLYING DATA IS NOT SOMETHING THAT WE PREPARED.

4 Q. OKAY. WHAT DO YOU UNDERSTAND THIS CHART TO MEAN
5 -- WHAT DOES BITPASS UNDERSTAND THIS CHART TO MEAN?

6 A. THAT CONTENT --

7 MR. FINE: SAME OBJECTION, YOUR HONOR,
8 AGAIN, OPINION TESTIMONY.

9 THE COURT: OFFERED FOR THE TRUTH OR SOME
10 OTHER PURPOSE?

11 MR. TODD: IT'S BEING OFFERED AS AN
12 EXPLANATION OF WHY BITPASS ENGAGED IN THIS BUSINESS,
13 YOUR HONOR, NOT FOR THE TRUTH OF THE MATTER ASSERTED.

14 THE COURT: OVERRULED.

15 BY MR. TODD:

16 Q. AGAIN, TO REPEAT THE QUESTION. WHAT DOES
17 BITPASS INTERPRET THIS CHART TO MEAN?

18 A. THAT CONTENT SALES ARE GROWING DRAMATICALLY. AS
19 A RESULT, THERE IS A NEED AMONG THE PUBLISHERS AND
20 MERCHANTS TO HAVE A SOLUTION TO HELP THEM MANAGE IT.

21 Q. OKAY.

22 CAN WE HIGHLIGHT THE BULLET POINT AT THE
23 BOTTOM OF THE PAGE AND ZOOM IN ON IT. READ ALOUD THE
24 LAST BULLET, PLEASE.

25 A. MONTHLY SUBSCRIPTIONS DOMINATE THE PURCHASING

1 MODEL, BUT INDIVIDUAL BUYS, FOR EXAMPLE, PPV OR PAY PER
2 VIEW, ARE GROWING STEADILY.

3 Q. EXPLAIN WHAT THAT MEANS.

4 A. THE PRIMARY MODEL RIGHT NOW FOR SELLING CONTENT
5 ONLINE IS A MONTHLY SUBSCRIPTION OR -- IS A MONTHLY
6 SUBSCRIPTION, BUT INDIVIDUAL BUYS, A ONE TIME SONG
7 DOWNLOAD, A VIDEO DOWNLOAD, ARE INCREASING DRAMATICALLY
8 AND AT A DRAMATIC RATE.

9 Q. CAN THAT INCLUDE ACCESS TO AN ARTICLE?

10 A. YES.

11 Q. OR A PHOTOGRAPH?

12 A. YES.

13 Q. CAN WE TURN TO PAGE 5. WHAT DOES BITPASS OFFER
14 WEB PUBLISHERS?

15 A. WE OFFER FOUR PRIMARY AREAS OF VALUE. WE HELP
16 THEM GROW THEIR REVENUE FROM DIGITAL CONTENT. WE HELP
17 THEM DEEPEN THEIR RELATIONSHIPS WITH THEIR CUSTOMERS.
18 WE HELP THEM PROTECT THEIR VALUABLE CONTENT. WE HELP
19 THEM CUT THEIR TECHNOLOGY COSTS.

20 Q. WHAT DO YOU MEAN BY GROW REVENUE?

21 A. INCREASE THE SALES OF DIGITAL CONTENT.

22 Q. WHAT DO YOU MEAN BY DEEPEN CUSTOMER
23 RELATIONSHIPS?

24 A. WE HELP THEM UNDERSTAND THEIR CUSTOMER BASE AND
25 WHAT THEY ARE SELLING AND WHAT IS SELLING WELL, WHAT'S

1 NOT SELLING WELL SO THEY CAN HAVE BETTER CUSTOMER
2 RELATIONSHIPS.

3 Q. WHAT DO YOU MEAN BY PROTECT CONTENT?

4 A. SO CONTENT IS VERY VALUABLE AND YOU WANT TO MAKE
5 SURE THAT IF YOU SELL SOMETHING, IT THEN DOES NOT GET
6 DISTRIBUTED FOR FREE OR IF YOU SELL IT FOR ONE TIME, YOU
7 WANT THEM TO ONLY SEE IT ONE TIME AND NOT TWICE.

8 Q. SO IT MEANS YOU KEEP IT FROM BEING GIVEN AWAY
9 FOR FREE?

10 A. YES, EXACTLY OR REDISTRIBUTED.

11 Q. WHAT DO YOU MEAN BY CUT COSTS?

12 A. CUT COSTS, MAKE IT CHEAPER.

13 Q. CAN WE TURN TO PAGE 6. SO WHAT SPECIFICALLY
14 DOES BITPASS DO?

15 A. SO WHAT WE DO IS, AT THE SIMPLEST LEVEL, WE
16 PROVIDE THE BUY BUTTON, THE CLICK HERE BUTTON TO BUY FOR
17 OUR PUBLISHERS AND MERCHANTS, AND ALL THE
18 INFRASTRUCTURE, ALL THE PLUMBING THAT GOES BEHIND THAT
19 TO DO EVERYTHING THEY NEED TO DO TO SELL CONTENT.

20 Q. NOW, ON PAGE 8 HERE, THERE ARE TWO SCREENS.

21 THE COURT: PAGE 8 OR PAGE 6?

22 MR. TODD: PAGE 6, THERE ARE TWO SCREENS.

23 CAN WE ZOOM IN ON THE SCREEN ON THE LEFT. AND IF WE
24 LOOK AT THE HIGHLIGHTED OBJECT ON THERE, WHAT IS THAT?

25 THE WITNESS: SO WHAT YOU SEE THERE IS

1 THE BUY BUTTON AND THE PRICE NEXT TO IT. WE PROVIDE AND
2 POWER THAT BUY BUTTON. WHEN SOMEBODY CLICKS ON THAT
3 ESSENTIALLY WHAT THEY ARE DOING IS CLICKING ON -- THEY
4 ARE BUYING THAT SONG, AM I ON YOUR MIND, FOR \$1.50.

5 BY MR. TODD:

6 Q. BACK UP FOR A MINUTE. WHAT ARE WE LOOKING AT ON
7 THIS WHOLE PAGE? ZOOM BACK IN, WHAT IS THE LEFT SCREEN?

8 A. WHAT YOU ARE LOOKING AT IS A MUSIC SITE WHERE
9 MUSIC SONGS OR TRACKS ARE PROVIDED FOR SALE. AND WHAT
10 YOU SEE ON THE BOTTOM RIGHT THAT'S CIRCLED IS THE BUY
11 BUTTON WHERE YOU ACTUALLY START THE TRANSACTION.

12 Q. OKAY.

13 SO THAT ALLOWS YOU TO PURCHASE THE
14 INDIVIDUAL SONG, CORRECT?

15 THE COURT: YOU MEAN THE CUSTOMER.

16 THE WITNESS: END USER, CORRECT.

17 THE COURT: YOU SAID YOU, SO.

18 MR. TODD: THANK YOU, YOUR HONOR FOR
19 CLARIFYING THAT. IF WE COULD GO TO THE SCREEN ON THE
20 RIGHT ON THE SAME PAGE.

21 BY MR. TODD:

22 Q. AND WHAT IS THIS PAGE?

23 A. THIS IS A PAGE FROM A RADIO STATION IN BOSTON
24 THAT IS PROVIDING A SUBSCRIPTION SERVICE FOR PEOPLE TO
25 ACCESS THEIR CONTENT ON THE WEB, THEIR AUDIO CONTENT ON

1 THE WEB.

2 Q. WHAT IS THE HIGHLIGHTED PORTION?

3 A. THE HIGHLIGHTED PORTIONS ARE THE BUTTONS THAT
4 ALLOW YOU TO SUBSCRIBE TO THIS CONTENT, TO ESSENTIALLY
5 BE A MEMBER, TO ACCESS THEIR CONTENT.

6 Q. AND ARE THOSE BITPASS BUTTONS?

7 A. CORRECT.

8 Q. WHAT DO YOU MEAN BY SUBSCRIPTION?

9 A. IN THIS CASE, IT IS A SUBSCRIPTION WHERE PEOPLE
10 GET RECURRING ACCESS TO A LIBRARY OF CONTENT, IF YOU
11 WILL. THEY PAY I BELIEVE IN THIS CASE IT'S 3.99 A
12 MONTH. ON A RECURRING BASIS EVERY MONTH, 3.99 IS
13 CHARGED USING OUR SYSTEM.

14 Q. OKAY. SO IF I'M A USER, HOW DOES THIS SYSTEM
15 WORK FOR ME?

16 A. IF YOU WERE THE END USER, YOU ARE GOING TO BUY
17 SOMETHING?

18 Q. YES.

19 A. YOU CLICK ON THE BUY BUTTON, AND IF IT'S YOUR
20 FIRST TIME BUYING WITH BITPASS, YOU ARE PRESENTED WITH A
21 REGISTRATION SCREEN, PUT YOUR NAME AND CREDIT CARD.

22 Q. CAN WE BRING UP PAGE 8. NOW, WHAT IS THIS PAGE?

23 A. SO WHAT YOU SEE HERE ARE TWO SCREENS ACTUALLY,
24 THE BACK SCREEN, THIS IS A MOCKUP OR A REPLICATION, THE
25 BACK SCREEN.

1 Q. WHAT DO YOU MEAN BY MOCKUP?

2 A. IT'S AN ARTIST'S RENDITION, AN EXAMPLE.

3 Q. THIS IS NOT A REAL WEBSITE?

4 A. IT MAY BE A REAL WEBSITE.

5 Q. BUT IT'S NOT A BITPASS CUSTOMER?

6 A. NO.

7 Q. SO AGAIN, THE BACK SCREEN IS WHAT AGAIN?

8 A. THE BACK SCREEN WOULD BE THE ACTUAL WEBSITE. IN

9 THIS CASE IT IS CALLED COLLEGEDRINKS.COM JUST FOR AN

10 EXAMPLE.

11 Q. WHY IS THERE ANOTHER SCREEN IN FRONT OF IT?

12 A. SO IF YOU HAD CLICKED A BUY BUTTON ON COLLEGE

13 DRINKS.COM, LET'S SAY YOU ARE BUYING AN ARTICLE, RECIPE

14 OR SOMETHING LIKE THAT, YOU CLICK THE BUY BUTTON AND

15 THAT FRONT SCREEN, THE SMALLER SCREEN WOULD COME UP,

16 WHICH IS THE BITPASS REGISTRATION SCREEN.

17 Q. OKAY. NOW IF WE CAN HIGHLIGHT ON THE TOP IT

18 SAYS COLLEGEDRINKS.COM AND IT SAYS BITPASS.

19 A. YES.

20 Q. SO WHAT ARE THOSE AGAIN?

21 A. SO COLLEGE DRINKS.COM WOULD BE THE WEBSITE WHERE

22 YOU ARE PURCHASING FROM. BITPASS WOULD BE THE POWER

23 BEHIND THE FINANCIAL TRANSACTION.

24 Q. AND IF WE CAN HIGHLIGHT THE SECTION THAT SAYS

25 STEP 1, REGISTER, THE WHOLE -- JUST THE STEP 1 ACTUALLY.

1 SO WHAT IS THIS?

2 A. THIS WOULD BE THE INITIAL REGISTRATION PORTION
3 WHERE YOU PUT IN YOUR E-MAIL ADDRESS AND YOUR PASSWORD.

4 Q. AND DOES A USER HAVE TO ENTER THIS INFORMATION
5 EVERY TIME?

6 A. NO. IF YOU HAVE ALREADY REGISTERED, YOU WOULD
7 CLICK THE -- WHERE IT'S UNDERLINED THAT SAYS SIGN IN
8 HERE ON THE RIGHT-HAND SIDE.

9 Q. CAN WE HIGHLIGHT THE PARAGRAPH THAT SAYS STEP 2?
10 WHAT IS THIS?

11 A. THIS IS WHERE YOU WOULD ENTER YOUR CREDIT CARD
12 INFORMATION.

13 Q. AND WHAT INFORMATION IS THAT?

14 A. NAME, ADDRESS, THE CREDIT CARD DETAILS, THE
15 NUMBER, THE EXPIRATION DATE AND SO ON.

16 Q. DOES IT ALWAYS HAVE TO BE A CREDIT CARD?

17 A. IT CAN BE A CREDIT CARD OR PAYPAL.

18 Q. DOES A USER HAVE TO ENTER THEIR PAYMENT
19 INFORMATION EVERY TIME?

20 A. NO. ON SUBSEQUENT VISITS, ONCE YOU ARE
21 REGISTERED, YOU WOULD GET A VERY SIMPLE REGISTRATION
22 SCREEN, SORRY, VERY SIMPLE PURCHASE SCREEN.

23 THE COURT: EXCUSE ME FOR INTERRUPTING,
24 DID YOU SAY IN ORDER TO FILL OUT THIS SECTION YOU WOULD
25 GIVE NAME, ADDRESS, CREDIT CARD NUMBER?

1 THE WITNESS: CREDIT CARD NUMBERS AND
2 EXPIRATION DATE.

3 BY MR. TODD:

4 Q. ANY OTHER PAYMENT INFORMATION TO YOUR KNOWLEDGE?

5 A. YOU GENERALLY WOULD HAVE TO GIVE WHAT'S CALLED
6 -- I BELIEVE IT'S THE CVV, WHICH IS THE SECRET CODE ON
7 THE BACK OF YOUR CREDIT CARD. IT'S FAIRLY STANDARD IN
8 INTERNET PURCHASING.

9 Q. AND AGAIN, DO YOU HAVE --

10 THE COURT: YOU HAVE THE EXPIRATION DATE,
11 SORRY.

12 MR. TODD: YOUR HONOR, DO YOU HAVE ANY
13 OTHER QUESTIONS?

14 THE COURT: NO.

15 MR. TODD: AT ANY TIME, PLEASE, YOUR
16 HONOR.

17 BY MR. TODD:

18 Q. NOW DOES THE USER HAVE TO ENTER THIS PAYMENT
19 INFORMATION EVERY TIME?

20 A. NO. AFTER THE FIRST INITIAL REGISTRATION, THE
21 USER NO LONGER HAS TO ON SUBSEQUENT PAYMENTS.

22 Q. WHY NOT?

23 A. BECAUSE THE WHOLE GOAL HERE IS TO MAKE IT SIMPLE
24 FOR THE USERS, TO MAKE THE NEXT PURCHASE MUCH EASIER.

25 Q. WHAT HAPPENS TO THAT INFORMATION?

1 A. WE CAPTURE THE INFORMATION, WE MAINTAIN THE
2 INFORMATION IN OUR DATABASE.

3 Q. OKAY. AND IF WE COULD GO BACK TO PAGE 6 AS A
4 WHOLE. HIGHLIGHT THE SECTION THAT SAYS ACCESS
5 VERIFICATION.

6 NOW, WHAT IS THIS SECTION?

7 A. SO THIS SECTION IS ESSENTIALLY THE HEADER THAT
8 WOULD TELL YOU THAT IN THIS CASE WHAT WE ARE DOING IS
9 USING THE BITPASS SYSTEM TO PROVIDE ACCESS VERIFICATION
10 TO GAIN PERMISSION TO ENTER AN AREA OR SEE SOME CONTENT.

11 Q. YOU SAID IN THIS CASE. IS THAT TRUE RIGHT NOW?

12 A. WELL, WE HAVE ACTUALLY NOT STARTED THE ACCESS
13 VERIFICATION COMPONENT.

14 Q. OKAY. SO WE WILL COME BACK TO THIS IN A MOMENT.

15 SO WHAT DOES IT COST A USER TO OPEN A
16 BITPASS ACCOUNT?

17 A. NOTHING.

18 THE COURT: WHO'S THE USER, PLEASE?

19 MR. TODD: THE BUYER.

20 THE COURT: RETAIL BUYER.

21 MR. TODD: I WILL TRY TO USE THAT TERM,
22 YOUR HONOR. THANK YOU FOR CLARIFYING.

23 BY MR. TODD:

24 Q. AND HOW DOES A RETAIL BUYER FUND THE ACCOUNT?

25 A. USING A CREDIT CARD OR PAYPAL.

1 Q. ARE THERE ANY OTHER WAYS TO FUND THE ACCOUNT?

2 A. THERE ARE. YOU CAN -- AN ACCOUNT CAN BE FUNDED
3 WITH INCENTIVES OR GIFTS FROM A MERCHANT OR PUBLISHER OR
4 WHAT WE CALL WALK-IN PAYMENTS.

5 Q. WHAT DO YOU MEAN BY A WALK-IN PAYMENT?

6 A. WALK-IN PAYMENT IS WHERE YOU WOULD GO TO A
7 PHYSICAL LOCATION AND ACTUALLY ADD MONEY, ADD CASH INTO
8 YOUR BITPASS ACCOUNT.

9 Q. AND WHERE ARE THESE WALK-IN PAYMENT CENTERS
10 LOCATED?

11 A. AT THIS POINT ONLY IN AUSTRALIA, NOT IN THE U.S.

12 Q. YOU CAN'T DO THAT IN THE U.S.?

13 A. CORRECT.

14 Q. YOU ALSO MENTIONED INCENTIVE. WHAT DO YOU MEAN
15 BY THAT?

16 A. INCENTIVES ARE WHERE A MERCHANT OR PUBLISHER
17 WOULD ACTUALLY PUT MONEY INTO YOUR ACCOUNT AS A REWARD.
18 IT'S NOT ACTUALLY YOUR MONEY GOING INTO THE ACCOUNT.

19 Q. WHAT'S AN EXAMPLE WHERE A PUBLISHER MIGHT DO
20 THAT?

21 A. IF YOU -- IF A PUBLISHER WANTED TO REWARD YOU
22 FOR MAKING 10 PURCHASES AND GIVE YOU \$2 INTO YOUR
23 ACCOUNT OR SOMETHING LIKE THAT.

24 Q. ARE THERE ANY OTHER WAYS TO FUND THE ACCOUNT?

25 A. THERE ARE SOME OTHER WAYS, BUT PRACTICALLY THEY

1 ARE NOT USED.

2 Q. SO PRESENTLY, BITPASS DOES NOT REQUIRE THAT
3 EVERY CUSTOMER'S ACCOUNT BE TIED TO A CREDIT CARD, IS
4 THAT CORRECT?

5 A. THAT'S CORRECT.

6 Q. AND WHAT IS THE MINIMUM AMOUNT TO FUND AN
7 ACCOUNT?

8 A. \$3.

9 Q. \$3. AND WHEN A USER MAKES A PURCHASE, WHAT
10 INFORMATION IS PROVIDED TO THE WEB PUBLISHER?

11 A. THE -- WHAT WAS TRANSACTED, SO WHAT WAS ACTUALLY
12 PURCHASED AND THE AMOUNT OF THE PURCHASE AND SOME
13 INFORMATION LIKE DAY, DATE AND TIME, THOSE TYPES OF
14 THINGS.

15 Q. ANYTHING ELSE?

16 A. NO.

17 Q. SO FROM A USER'S PERSPECTIVE, WHAT ELSE IS
18 INVOLVED IN THE TRANSACTION?

19 A. THEY CLICK ON THE CONFIRM SCREEN AND THEY GET
20 WHATEVER THE CONTENT IS THAT THEY PURCHASED.

21 Q. NOW, CAN WE TURN TO PAGE 10. HOW DOES A WEB
22 PUBLISHER START USING BITPASS?

23 A. THERE IS REALLY TWO PRIMARY THINGS THEY NEED TO
24 DO. THE FIRST IS SIGN AN AGREEMENT WITH BITPASS AND
25 AGREE TO THE TERMS. AND THEN THE SECOND IS, THEY WOULD

1 NEED TO INSTALL, EXCUSE ME, SOME FAIRLY LIGHTWEIGHT CODE
2 ON THEIR SIDE AND PLACE THE BUY BUTTONS, DECIDE HOW MUCH
3 THE CONTENT IS GOING TO BE PRICED AT AND THINGS LIKE
4 THAT.

5 Q. AND YOU SAID THE MERCHANT DOES THIS, THE WEB
6 PUBLISHER?

7 A. MERCHANT OR WEB PUBLISHER, YES.

8 Q. HOW MUCH DOES IT COST THE WEB PUBLISHER TO START
9 USING YOUR PRODUCT?

10 A. WELL, IT VARIES ON WHAT THEY ARE SELLING, WHAT
11 THE -- WHAT SERVICES THEY TAKE FROM BITPASS.

12 Q. WHEN YOU SAY IT VARIES, WHAT IS THE MINIMUM
13 START-UP COST?

14 A. IN GENERAL, THERE IS NO START-UP COST. IT'S A
15 TRANSACTIONAL FEE.

16 Q. WHAT DO YOU MEAN BY TRANSACTIONAL FEE?

17 A. WE TAKE ON EACH TRANSACTION, SO FOR EVERY SONG
18 OR ARTICLE THAT IS SOLD WE TAKE A PERCENTAGE OF THAT
19 TRANSACTION.

20 Q. AND WHAT PERCENTAGE OF THAT TRANSACTION DO YOU
21 TAKE?

22 A. IT VARIES BETWEEN 5 AND 15 PERCENT.

23 Q. DO YOU HAVE DIFFERENT FEATURES THAT YOU OFFER TO
24 MERCHANTS?

25 A. YES.

1 Q. AND WHAT ARE THOSE FEATURES?

2 A. WELL, THE FEATURES VARY, BUT ESSENTIALLY WHAT WE
3 PROVIDE ARE FOUR OR FIVE THINGS IN OUR GENERAL PRODUCT.
4 THAT WOULD INCLUDE MERCHANDISING CAPABILITIES OF PRICING
5 AND REFUNDING AND THINGS LIKE THAT, INCLUDES THE PAYMENT
6 TYPE AND TRANSACTIONAL CAPABILITIES. IT INCLUDES
7 CONTENT PROTECTION OR ACCESS CONTROL. IT INCLUDES
8 REPORTING, FINANCIAL REPORTING AND CUSTOMER REPORTING.
9 THOSE ARE THE GENERAL BROAD CATEGORIES.

10 Q. WHAT DO YOU MEAN BY MANAGEMENT OF PRICING?

11 A. SO WHEN A MERCHANT OR A SELLER WANTS TO SELL A
12 SONG OR AN ARTICLE OR A PHOTO, THEY HAVE TO DECIDE WHAT
13 THE PRICE IS, THEY MAY DECIDE THAT THEY WANT TO SELL IT
14 AT A DIFFERENT PRICE TODAY THAN THEY SELL IT AT
15 TOMORROW. THEY MAY WANT TO SAY WHAT THE REFUNDING RULES
16 ARE, WHAT IF I WANT A DISCOUNT ON THIS. THERE'S ALL
17 SORTS OF THINGS INVOLVED IN MERCHANDISING OR PRICING.

18 Q. WHAT ROLE DOES BITPASS PLAY IN THAT?

19 A. WE PROVIDE A SYSTEM THAT LETS THEM CHANGE THE
20 PRICING ON THE FLY, DO PRICING FOR DIFFERENT GROUPS --
21 THE SECOND TIME YOU COME AND BUY THAT SAME THING, IT MAY
22 BE CHEAPER OR MORE EXPENSIVE, DEPENDING. WE HAVE A
23 FACILITY TO ALLOW ALL OF THOSE TYPES OF CHANGES DONE ON
24 THE FLY.

25 Q. YOU SAID YOU DO PAYMENT, YOU PROVIDE PAYMENT

1 MANAGEMENT?

2 A. YES.

3 Q. WHAT DO YOU MEAN BY THAT?

4 A. SO WE CAN HELP MANAGE WHAT THE MERCHANTS OR THE
5 PUBLISHER, WHAT PAYMENT TYPE, WHETHER IT IS CREDIT CARD,
6 PAYPAL AND SO ON, DO THEY TAKE VISA OR MASTERCARD, DO
7 THEY TAKE BITPASS, WHAT WE CALL THE BITPASS STORED VALUE
8 ACCOUNT.

9 Q. COULD YOU EXPLAIN WHAT YOU MEAN BY STORED VALUE
10 ACCOUNT?

11 A. A STORED VALUE ACCOUNT IS SIMILAR TO A PREPAID
12 TELEPHONE CARD. YOU DEPOSIT MONEY IN ADVANCE, AND THEN
13 YOU USE THAT AS YOU GO ALONG. SO THAT IS -- THAT IS A
14 SYSTEM THAT -- TRANSACTIONAL SYSTEM THAT WE PROVIDE.

15 Q. I THINK YOU MENTIONED CONTENT PROTECTION.

16 A. YES.

17 Q. JUST SO I'M CLEAR, WHAT DO YOU MEAN BY CONTENT
18 PROTECTION?

19 A. AGAIN, CONTENT PROTECTION, THE PUBLISHER OR THE
20 MERCHANT WANTS TO PROTECT TO MAKE SURE THAT THEIR
21 CONTENT IS NOT ACCESSED TOO MANY TIMES OR BY THE WRONG
22 PEOPLE OR DISTRIBUTED TO THE WRONG PLACE.

23 Q. AND YOU ALSO SAID THAT YOU OFFER CUSTOMER
24 REPORTING?

25 A. YES.

1 Q. WHAT DO YOU MEAN BY THAT?

2 A. SO WE WILL TELL THE MERCHANT HOW MANY PEOPLE
3 BOUGHT, WHEN THEY BOUGHT, WHAT TIME THEY BOUGHT, HOW
4 MUCH THEY SOLD, WHAT THE RECOGNIZABLE REVENUES,
5 FINANCIAL AND PERFORMANCE REPORTING.

6 Q. YOU ARE NOT GIVING THE CUSTOMER'S IDENTITY?

7 A. NO, CORRECT.

8 Q. DOES BITPASS OFFER ADDITIONAL FEATURES?

9 A. WE DO IN SOME CASES.

10 Q. WHAT ARE SOME OF THOSE ADDITIONAL FEATURES?

11 A. WELL, IF A CUSTOMER MAY WANT A CUSTOM DATA
12 REPORT OR THEY MAY WANT THEIR DATA FORMATTED IN A
13 CERTAIN WAY, THEY MIGHT WANT DIFFERENT TYPES OF PAYMENT
14 TECHNOLOGY OR AN INCENTIVE PROGRAM OR SOMETHING LIKE
15 THAT.

16 Q. IS THERE A MINIMUM AMOUNT A MERCHANT HAS TO
17 CHARGE FOR ACCESS TO CONTENT?

18 A. NO. WELL, TO SELL CONTENT, IT WOULD BE ONE
19 CENT.

20 Q. TO SELL CONTENT IT WOULD BE ONE CENT?

21 A. YES.

22 Q. BUT DON'T CREDIT CARD COMPANIES HAVE MINIMUM
23 CHARGE AMOUNTS?

24 A. THEY DON'T HAVE MINIMUM CHARGE AMOUNTS, BUT THE
25 AMOUNT THAT CREDIT CARDS CHARGE ESSENTIALLY CREATES A DE

1 FACTO MINIMUM BECAUSE THEIR FEES ARE HIGH ON LOWER
2 TRANSACTION LINES.

3 MR. FINE: OBJECTION, MOVE TO STRIKE,
4 LACK OF FOUNDATION.

5 THE COURT: SUSTAINED, STRIKE IT. LAY A
6 FOUNDATION IF YOU WANT.

7 BY MR. TODD:

8 Q. WELL, HOW CAN BITPASS CHARGE ONLY ONE CENT FOR
9 CONTENT?

10 A. BECAUSE --

11 Q. CAN A MERCHANT USING BITPASS CHARGE?

12 A. BECAUSE WHEN WE -- THE CHARGE THAT WE MAKE IS
13 WITH THAT INITIAL \$3 FUNDING OF THE ACCOUNT, WHICH IS
14 WHAT THE CREDIT CARD FEES ARE BASED ON. AT THAT POINT,
15 A MERCHANT CAN CHARGE ONE CENT AND DO 300 ONE CENT
16 TRANSACTIONS, BUT THEY ARE ONLY PAYING THE CREDIT CARD
17 FEE ESSENTIALLY ON THE THREE DOLLARS.

18 Q. IF THE SELLER CHARGES ONE CENT FOR BITPASS, DOES
19 IT ACTUALLY COST HIM MORE THAN THAT? DOES BITPASS
20 CHARGE HIM SOMETHING BEYOND THAT ONE CENT?

21 A. BITPASS CHARGES THE MERCHANT THE TRANSACTION FEE
22 THAT I HAVE DESCRIBED EARLIER.

23 Q. OKAY. THAT WAS 5 TO 15 PERCENT?

24 A. 5 TO 15 PERCENT, GENERALLY.

25 Q. IS THERE ANYTHING ELSE FROM THE MERCHANT'S

1 PERSPECTIVE ABOUT HOW THIS WORKS?

2 A. NOT THAT I CAN THINK OF.

3 Q. TURNING TO ANOTHER SUBJECT, DOES BITPASS PERFORM
4 AGE VERIFICATION?

5 A. WE DO NOT.

6 Q. SO THIS IS ALL BITPASS CURRENTLY HAS TO OFFER?

7 A. GENERALLY, YES.

8 Q. YOU SAY GENERALLY. IS THERE SOMETHING ELSE
9 BITPASS OFFERS?

10 A. WE DO SOME OTHER SERVICES IN THE WAY OF
11 INCENTIVES AND PROMOTIONAL PROGRAMS.

12 Q. AND THIS BUSINESS MODEL IS NOT CHANGING?

13 A. NO.

14 Q. ARE THERE FEATURES THAT BITPASS MAY OFFER OR IS
15 CONSIDERING OFFERING IN THE FUTURE?

16 A. THERE IS HUNDREDS OF FEATURES THAT WE ARE
17 CONSIDERING OFFERING. WE PROBABLY HAVE A LIST OF
18 150-SOME THINGS THAT ARE EITHER BEING EXPLORED, IN EARLY
19 STAGES OF DEVELOPMENT, EARLY STAGES OF UNDERSTANDING
20 THEM, AND SOME ACTUALLY IN DEVELOPMENT AND ABOUT TO BE
21 RELEASED.

22 Q. WHAT ARE THE THINGS THAT BITPASS HAS GIVEN
23 SERIOUS CONSIDERATION TO OFFERING?

24 A. WELL, THERE ARE A NUMBER OF THEM, BUT ONE OF THE
25 ONES THAT IS PROBABLY RELEVANT HERE IS THE IDEA TO BE

1 ABLE TO PROTECT ACCESS WITHOUT ACTUALLY REQUIRING A
2 DOLLAR PAYMENT BEING MADE.

3 Q. AND WHAT DO YOU MEAN PROTECT ACCESS WITHOUT
4 REQUIRING A DOLLAR PAYMENT?

5 A. SO IT WOULD BE IN THE CASE THAT WE SHOWED
6 EARLIER ON THE COLLEGEDRINKS.COM, BEING ABLE TO ACCESS A
7 PORTION OF CONTENT WITHOUT ACTUALLY MAKING A PAYMENT TO
8 ACCESS THAT SITE.

9 Q. CAN WE BRING UP THAT PAGE AGAIN, PAGE 9. CAN WE
10 HIGHLIGHT THE SECTION THAT SAYS ACCESS VERIFICATION.

11 SO THIS -- IS THIS WHAT YOU WERE JUST
12 TALKING ABOUT?

13 A. RIGHT.

14 Q. THIS IS NOT SOMETHING THAT IS CURRENTLY OFFERED?

15 A. THAT'S CORRECT.

16 Q. BUT SOMETHING THAT YOU ARE CONSIDERING?

17 A. WE ARE CONSIDERING IT.

18 Q. HOW WOULD YOU GO ABOUT OFFERING THIS FEATURE?

19 A. WELL, WE WOULD OFFER IT TO PUBLISHERS AND
20 MERCHANTS FOR AREAS OF THEIR SITE THAT THEY WANTED TO
21 PROTECT TO A CERTAIN SEGMENT.

22 MR. FINE: YOUR HONOR, I OBJECT TO THIS
23 ENTIRE LINE OF QUESTIONING. THE WITNESS HAS JUST
24 TESTIFIED THAT THIS PRODUCT DOES NOT EXIST, THAT THEY
25 ARE SIMPLY CONSIDERING IT. THIS IS COMPLETELY PURE

1 SPECULATION.

2 THE COURT: PROBABLY MORE IMPORTANTLY, DO

3 WE HAVE ANY IDEA HOW IT WORKS OR WHETHER IT WILL WORK?

4 MR. TODD: LET ME TRY ANOTHER QUESTION

5 AND THE PLAINTIFFS CAN RENEW THEIR OBJECTION IF THEY

6 LIKE.

7 THE COURT: THE QUESTION IS WITHDRAWN.

8 BY MR. TODD:

9 Q. WHAT STEPS HAS BITPASS TAKEN TO IMPLEMENT THIS
10 FEATURE?

11 A. WE HAVE DONE EARLY EXPLORATION AND INITIAL SPECS
12 REQUIREMENTS OR SPECIFICATION REQUIREMENTS IN ORDER TO
13 UNDERSTAND WHAT WOULD BE NEEDED.

14 Q. OKAY. AND WHEN DID BITPASS BEGIN CONSIDERING
15 IMPLEMENTING THIS FEATURE?

16 A. EARLIER THIS YEAR.

17 Q. AND YOU MENTIONED INCREASED CONTENT PROTECTION.
18 HOW WOULD YOU INCREASE YOUR CONTENT PROTECTION
19 CAPABILITIES?

20 MR. FINE: OBJECTION, SPECULATION.

21 MR. TODD: HOW HAS BITPASS --

22 THE COURT: QUESTION IS WITHDRAWN.

23 MR. TODD: THANK YOU, YOUR HONOR.

24 THE COURT: THAT WAS YOUR WARNING --

25 MR. TODD: THAT'S TWO.

1 THE COURT: YOUR OPPONENT SAYS IT'S
2 THREE. THE JOKE IS THAT SOMEBODY ALONG THE SIDE OF THE
3 ROAD WITH THE BUGGY GOT SHOT. YOU HAVE TO KNOW IT.
4 IT'S AN INSIDE JOKE.

5 MR. TODD: YOU ARE NOT GOING TO TELL ME?

6 THE WITNESS: NO PUNCH LINE?

7 BY MR. TODD:

8 Q. HAS BITPASS CONSIDERED INCREASING CONTENT
9 PROTECTION CAPABILITIES?

10 A. WE HAVE CONSIDERED IT.

11 Q. HOW?

12 A. WE HAVE DISCUSSED IT INTERNALLY. WE LOOKED AT
13 WHAT OUR SYSTEMS CAN HANDLE AND WHAT THE DEVELOPMENT
14 REQUIRED WOULD BE.

15 Q. AND WHAT -- SPECIFICALLY WHAT FEATURES HAVE YOU
16 CONSIDERED ADDING?

17 A. THE CONCEPT OF TYING OR REQUIRING A CREDIT CARD
18 TO BE PART OF THE ACCOUNT IN ORDER TO GAIN ACCESS TO
19 SOMETHING.

20 Q. WHY HAS BITPASS CONSIDERED THIS FEATURE?

21 A. FOR A COUPLE OF REASONS. AT THIS POINT IT'S
22 POSSIBLE RIGHT NOW FOR SOMEBODY TO HAVE MONEY IN THEIR
23 ACCOUNT THAT WAS PROVIDED THROUGH INCENTIVES OR SOME
24 OTHER SYSTEM, AND THERE IS AN ADDED SECURITY FEATURE, AN
25 ADDED SECURITY CAPABILITY BY TYING A CREDIT CARD TO THE

1 INITIAL ACCOUNT.

2 Q. ADDED SECURITY TO WHOM?

3 A. TO THE MERCHANT.

4 THE COURT: WHAT DO YOU MEAN BY SECURITY?

5 THE WITNESS: SO IN THIS CASE THE
6 MERCHANT WOULD SAY -- THE MERCHANT MAY NOT WANT TO USE
7 FUNDS THAT ARE PROVIDED BY AN INCENTIVE OR A GIFT OR
8 SOMETHING LIKE THAT. THEY WANT TO MAKE SURE THE FUNDS
9 ARE COMING FROM NEW FRESH MONEY FROM THE USER'S CREDIT
10 CARD SO THERE IS A CONFIDENCE OR SECURITY THAT IS
11 PROVIDED AS A RESULT OF THAT.

12 THE COURT: FINANCIAL SECURITY, IS THAT
13 WHAT YOU ARE TALKING ABOUT?

14 THE WITNESS: YES.

15 THE COURT: I DID NOT UNDERSTAND THAT.

16 THE WITNESS: SORRY.

17 BY MR. TODD:

18 Q. IF WE CAN GO BACK TO PAGE 9. IT'S STILL ON THE
19 SCREEN. IF WE CAN HIGHLIGHT THE ACCESS VERIFICATION.
20 SO AGAIN TO BE CLEAR, THIS IS NOT SOMETHING THAT YOU
21 CURRENTLY OFFER, BUT THIS IS WHAT IT MIGHT LOOK LIKE?

22 A. THAT'S CORRECT.

23 Q. WHEN IT IS ACTUALLY IMPLEMENTED?

24 A. THIS IS A MOCKUP OF SOMETHING THAT WE ARE
25 CONSIDERING.

1 Q. AND IF BITPASS WERE TO HAVE A MERCHANT REQUEST
2 THIS FEATURE, HOW QUICKLY, HOW LONG IT WOULD TAKE
3 BITPASS TO ROLL IT OUT?

4 MR. FINE: OBJECTION, SPECULATION.
5 BY MR. TODD:

6 Q. HAS BITPASS --
7 THE COURT: QUESTION WITHDRAWN. YOU CAN
8 WITHDRAW YOUR OWN QUESTION.

9 MR. TODD: THANK YOU.

10 THE COURT: SAVE ME THE EFFORT.

11 MR. TODD: OKAY.

12 BY MR. TODD:

13 Q. HAS BITPASS CONSIDERED HOW LONG IT WOULD TAKE TO
14 ROLL THIS FEATURE OUT AND OFFER IT TO A MERCHANT?

15 A. YES.

16 Q. HOW LONG?

17 A. THREE TO SIX MONTHS.

18 Q. MR. KNOPPER, ARE YOU FAMILIAR WITH THE
19 PLAINTIFFS IN THIS CASE?

20 A. YES.

21 Q. EXPLAIN THAT TO ME, PLEASE.

22 A. I HAVE SEEN THE LIST OF PLAINTIFFS.

23 Q. HAVE YOU SEEN THEIR WEBSITES?

24 A. YES, SOME OF THEM.

25 Q. IN FACT, DID THE DEPARTMENT PROVIDE YOU WITH A

1 LIST OF THE PLAINTIFFS' WEBSITES?

2 A. YES.

3 Q. WHAT DID BITPASS DO WITH THAT LIST OF WEBSITES?

4 A. I HAVE REVIEWED A NUMBER OF THE SITES.

5 Q. DID YOU ACTUALLY --

6 MR. FINE: OBJECTION, YOUR HONOR, THIS IS
7 OUTSIDE THE SCOPE OF THE OFFER OF PROOF THAT THE
8 DEFENDANT PROVIDED TO THE PLAINTIFFS.

9 THE COURT: I DON'T THINK I HAVE SEEN IT,
10 HAVE I? THE ONE YOU GAVE ME YESTERDAY OR WAS THAT A
11 DIFFERENT ONE?

12 MR. FINE: THAT IS A DIFFERENT ONE, YOUR
13 HONOR. I CAN PROVIDE TO IT THE COURT IF THE COURT WOULD
14 LIKE THAT AT THIS TIME.

15 THE COURT: I DON'T HAVE IT IN FRONT OF
16 ME, SO YOU HAVE TO HELP ME.

17 MR. FINE: I UNDERSTAND. MAY I APPROACH
18 THE BENCH?

19 THE COURT: SURELY.

20 MR. TODD: TO SAVE SOME TIME, YOUR HONOR,
21 I CAN DO THIS ON REDIRECT. I HAVE A FUNNY SENSE THIS IS
22 GOING TO COME UP DURING CROSS EXAMINATION.

23 THE COURT: IF YOU HAVE AN OBJECTION, WE
24 WILL DEAL WITH IT.

25 THE COURT: I'M LOOKING AT A DOCUMENT

1 CALLED PLAINTIFFS' EXHIBIT 272, A LETTER DATED OCTOBER
2 27TH, 2006 TO MR. HANSEN FROM LEAD COUNSEL MR. GOMEZ.
3 IT PURPORTS TO CONTAIN THE OFFER OF PROOF OF THE
4 TESTIMONY OF MR. KNOPPER, WHICH I WILL NOW READ TO
5 MYSELF SO I CAN FIGURE OUT WHAT IT MEANS.

6 NOTHING IN THE OFFER OF PROOF THAT
7 DISCUSSES THAT THE WITNESS WILL TESTIFY ABOUT HIS
8 CONTACT WITH ANY OF THE PLAINTIFFS OR WITH THEIR
9 WEBSITES, NOTHING WHATSOEVER IN THE OFFER.

10 MR. TODD: I WILL WITHDRAW THE LINE OF
11 QUESTIONING, YOUR HONOR.

12 THE COURT: ALL RIGHT.

13 BY MR. TODD:

14 Q. MR. KNOPPER, ARE THERE ANY RESTRICTIONS ON WHOM
15 BITPASS -- WITH WHOM BITPASS WOULD DO BUSINESS?

16 A. YES.

17 Q. WHAT ARE THOSE RESTRICTIONS?

18 A. WE'RE NOT ALLOWED TO ENABLE THE TRANSACTIONS, TO
19 ENABLE THE SELLING OF SEXUALLY EXPLICIT MATERIALS.

20 Q. WHAT DO -- WHAT DOES BITPASS MEAN BY THAT?

21 A. THAT'S NOT AN EASY ANSWER, BUT WHEN I SAY
22 ENABLE, THE BUSINESS MODEL THAT I SHOWED YOU PUTTING THE
23 BUY BUTTON OR SUBSCRIBE BUTTON I COULD NOT DO FOR ADULT
24 OR PORN SITES.

25 Q. WHAT DO YOU MEAN BY ADULT OR PORN SITES?

1 A. I THINK ANYTHING THAT SOME OF MY INVESTORS WOULD
2 OBJECT TO.

3 Q. CAN YOU EXPLAIN WHY YOUR INVESTORS MIGHT OBJECT?

4 A. SOME OF MY INVESTORS ARE -- DON'T WANT TO BE
5 ASSOCIATED WITH COMPANIES THAT ARE IN THE ADULT OR PORN
6 BUSINESS.

7 Q. DON'T WANT TO ASSOCIATE WITH COMPANIES THAT ARE
8 IN THE ADULT OR THE PORN BUSINESS?

9 A. YES. THEY DON'T WANT US TO ENABLE THE SALE OF
10 THAT CONTENT.

11 MR. TODD: IF I COULD HAVE A MOMENT TO
12 CONFER WITH MY COUNSEL, YOUR HONOR.

13 THE COURT: SURE.

14 MR. TODD: YOUR HONOR, AT THIS TIME I
15 MOVE DEFENDANT'S EXHIBIT 107-A INTO EVIDENCE.

16 THE COURT: ANY OBJECTION?

17 MR. FINE: YES, YOUR HONOR.

18 THE COURT: REMIND ME, IS 107-A THIS
19 DOCUMENT?

20 MR. TODD: YES, YOUR HONOR.

21 MR. FINE: PLAINTIFFS DO OBJECT. THIS IS
22 A HEARSAY DOCUMENT. WITNESS HAS ALREADY TESTIFIED THAT
23 THIS DOCUMENT CONTAINS INFORMATION THAT HE CREATED
24 SOLELY FOR PURPOSES OF THIS LITIGATION. THE PAGE THAT
25 COUNSEL HAS BEEN REFERRING TO, PAGES 8 AND 9, ARE

1 CLEARLY FICTIONAL PAGES, A MOCKUP, AS THE WITNESS HAS
2 TESTIFIED, AND IT'S JUST PURE HEARSAY AND HAS NO
3 RELIABILITY.

4 THE COURT: MR. TODD.

5 MR. TODD: CAN I WITHDRAW THAT MOTION AND
6 REPLACE IT WITH THE MOTION THAT WE ADMIT CERTAIN PAGES
7 OF THE EXHIBIT, YOUR HONOR?

8 THE COURT: ALL RIGHT.

9 WITHDRAW SOMETHING.

10 MR. TODD: I WITHDRAW DEFENDANT'S REQUEST
11 THAT THIS EXHIBIT BE MOVED INTO EVIDENCE IN WHOLE.
12 INSTEAD DEFENDANT REQUESTS THAT THIS COURT ADMIT
13 DEFENDANT'S -- CERTAIN PAGES OF DEFENDANT'S EXHIBIT
14 107-A, PAGE 1, PAGE 2, PAGE 3, PAGE 5, PAGE 6, PAGE 7,
15 PAGE 10, PAGE 11.

16 THE COURT: ANY OBJECTION?

17 MR. FINE: PLAINTIFFS HAVE NO OBJECTION
18 TO THE FIRST --

19 THE COURT: 1, 2, 3, 5, 6, 7.

20 MR. FINE: -- THREE PAGES, YOUR HONOR.
21 THE REST IS JUST PURE HEARSAY AND THE WITNESS HAS
22 ALREADY TESTIFIED ABOUT THIS. THIS IS ESSENTIALLY A
23 DEMONSTRATIVE EXHIBIT.

24 MR. TODD: THAT ONLY CONCERNED PAGES 8
25 AND 9, AND THE DEFENDANT DID NOT MOVE THOSE PAGES INTO

1 EVIDENCE.

2 MR. FINE: ALL OF THE OTHER PAGES ARE
3 ALSO CREATED SOLELY FOR THE PURPOSES OF THIS LITIGATION,
4 YOUR HONOR. IT'S AN OUT-OF-COURT STATEMENT. IT APPEARS
5 TO BE OFFERED FOR THE TRUTH OF THE MATTER.

6 THE COURT: PAGES 1, 2 AND 3 OF EXHIBIT
7 DEFENDANT 107-A ARE RECEIVED INTO EVIDENCE.

8 (D 107-A, PAGES 1, 2, AND 3 ADMITTED INTO
9 EVIDENCE.)

10 MR. TODD: IF I MAY, YOUR HONOR, BEFORE
11 THIS COURT ISSUES A RULING, COULD I ACTUALLY EXAMINE THE
12 WITNESS AND ASK HIM WHICH SPECIFIC PAGES WERE CREATED
13 FOR THIS LITIGATION AND WHICH WEREN'T? WITH THE
14 REMAINDER PAGES.

15 THE COURT: YES, YOU MAY.

16 MR. TODD: THANK YOU, YOUR HONOR.

17 BY MR. TODD:

18 Q. MR. KNOPPER, IF YOU CAN TURN TO PAGE 5. WAS
19 THIS PAGE SPECIFICALLY CREATED FOR THIS LITIGATION?

20 A. NO.

21 Q. IF I COULD HAVE YOU TURN TO PAGE 6. WAS THIS
22 PAGE SPECIFICALLY CREATED FOR THIS LITIGATION?

23 A. NO.

24 Q. IF I COULD HAVE YOU TURN TO PAGE 7. WAS THIS
25 PAGE SPECIFICALLY CREATED FOR THIS LITIGATION?

1 A. YES.

2 Q. IF I COULD HAVE YOU TURN TO PAGE 10. WAS THIS
3 PAGE CREATED FOR THIS LITIGATION?

4 A. YES.

5 Q. IF I COULD HAVE YOU TURN TO PAGE 11. WAS THIS
6 PAGE CREATED FOR THIS LITIGATION?

7 A. THIS ONE IS HARD. YES, I THINK SO.

8 MR. TODD: AT THIS TIME DEFENDANT MOVES
9 THAT PAGES 5 AND 6 BE ADMITTED INTO EVIDENCE AND
10 WITHDRAWS ITS MOTION TO ADMIT THOSE REMAINING PAGES.

11 MR. FINE: PLAINTIFFS HAVE NO OBJECTION
12 TO PAGES 5 AND 6.

13 MR. TODD: TOTAL OF PAGES 1 THROUGH 6 TO
14 BE CLEAR -- 1, 2, 3, 5 AND 6, YOUR HONOR.

15 THE COURT: DEFENDANT'S EXHIBIT 107-A,
16 PAGES 5 AND 6 ARE RECEIVED INTO EVIDENCE.

17 (D 107-A, PAGES 5 AND 6 ADMITTED INTO
18 EVIDENCE.)

19 THE COURT: I HAVE ALREADY ADMITTED THE
20 OTHER THREE.

21 MR. TODD: NO MORE QUESTIONS FOR THIS
22 WITNESS.

23 THE COURT: WE ARE GOING TO HAVE A MIDDAY
24 RECESS. BE BACK AT 20 MINUTES TO 2, PLEASE. COURT IS
25 IN RECESS. COUNSEL ARE EXCUSED AND WE ARE OFF THE

1 RECORD.

2 MR. HANSEN: YOU ASKED US TO SUBMIT

3 LETTERS BY LUNCH BREAK.

4 THE COURT: I NEED THE LETTERS.

5 MR. HANSEN: WE HAVE THEM.

6 THE COURT: YOU ARE WELCOME TO STEP DOWN.

7 (LUNCHEON RECESS TAKEN.)

8 AFTERNOON SESSION

9 THE CLERK: ALL RISE. COURT IS NOW IN

10 SESSION.

11 THE COURT: WELCOME BACK, EVERYONE.

12 ALL COUNSEL: GOOD AFTERNOON.

13 THE COURT: YOU ARE WELCOME TO BE SEATED.

14 MR. KNOPPER, HELLO.

15 THE WITNESS: HELLO.

16 THE COURT: YOU MAY PROCEED WITH CROSS.

17 MR. FINE: YOUR HONOR, MAY I APPROACH THE

18 WITNESS AND PROVIDE HIM WITH A BINDER?

19 THE COURT: YES.

20 MR. FINE: YOUR HONOR PREVIOUSLY HAS BEEN

21 GIVEN A BINDER OF EXHIBITS FOR USE.

22 THE COURT: THIS?

23 MR. FINE: YES.

24 CROSS EXAMINATION

25 BY MR. FINE:

1 Q. GOOD AFTERNOON, MR. KNOPPER.

2 A. GOOD AFTERNOON.

3 Q. YOU CHARGE WEBSITES TO USE YOUR SERVICES FOR

4 EVERY TRANSACTION, CORRECT?

5 A. YES.

6 Q. AND FOR SMALL REVENUE WEBSITES?

7 A. FOR EVERY FINANCIAL TRANSACTION.

8 Q. CORRECT. AND FOR SMALL WEBSITES, A 15 PERCENT

9 TRANSACTION FEE?

10 A. GENERALLY.

11 Q. FOR EVERY TRANSACTION?

12 A. CORRECT.

13 Q. THERE CAN ALSO BE ADDITIONAL FEES, CAN'T THERE?

14 A. YES.

15 Q. ADDITIONAL REPORTING FEES?

16 A. YES.

17 Q. AND ADDITIONAL SET-UP FEES?

18 A. YES.

19 Q. THERE ARE MILLIONS AND MILLIONS OF WEBSITES ON

20 THE WEB, RIGHT?

21 A. CORRECT.

22 Q. AND ONLY A FEW THOUSAND USE YOUR SERVICES?

23 A. CORRECT.

24 Q. AND OUT OF THE HUNDREDS OF MILLIONS OF INTERNET

25 USERS, ONLY A TINY PERCENTAGE USE YOUR SERVICES?

1 A. CORRECT.

2 Q. YOUR PRODUCTS ARE NOT FOR USE BY WEBSITES THAT
3 ONLY SELL PHYSICAL GOODS, IS THAT CORRECT?

4 A. THAT'S CORRECT.

5 Q. SO A WEBSITE THAT SOLD TEE SHIRTS WOULD NOT USE
6 YOUR PRODUCT?

7 A. CORRECT.

8 Q. AND YOUR PRODUCT IS NOT OF ANY USE FOR A WEBSITE
9 THAT DOES NOT SELL ANYTHING EITHER, IS IT?

10 A. CORRECT. THERE MAY BE OCCASIONS WHERE THAT
11 WOULD BE THE CASE.

12 Q. BUT CURRENTLY THERE IS -- THERE ARE NO WEBSITES
13 CURRENTLY WHO DON'T SELL ANYTHING THAT USE YOUR
14 SERVICES, ARE THERE?

15 A. YES.

16 Q. AND --

17 A. WAIT. LET ME ANSWER THAT PROPERLY. THERE ARE
18 WEBSITES WHO DON'T SELL THINGS THAT MAY USE OUR
19 SERVICES.

20 Q. BUT THERE AREN'T ANY THAT DO NOW?

21 A. THERE ARE SOME THAT DO NOW, YES.

22 Q. OKAY. AND YOU HAVE NEVER MADE A PROFIT, HAVE
23 YOU?

24 A. NO.

25 Q. NEVER EVEN CAME CLOSE TO MAKING PROFIT?

1 A. NO.

2 Q. YOU HAVE LOST MONEY EVERY YEAR, HAVEN'T YOU?

3 A. YES. WE ARE A START-UP COMPANY. START-UP
4 COMPANIES LOSE MONEY IN THE BEGINNING IN THE TECHNOLOGY
5 BUSINESS.

6 Q. AND THAT IS WHAT YOU HAVE DONE, YOU HAVE LOST
7 MONEY?

8 A. HOW IT WORKS. YEP.

9 Q. THERE ARE NO AGE RESTRICTIONS ON WHO CAN OPEN A
10 BITPASS ACCOUNT, ARE THERE?

11 A. CORRECT.

12 Q. SO A 14-YEAR OLD CAN OPEN A BITPASS ACCOUNT?

13 A. CORRECT.

14 Q. YOUR COMPANY HAS A PRIVACY POLICY, RIGHT?

15 A. CORRECT.

16 Q. AND THAT PRIVACY POLICY GOVERNS THE USE OF YOUR
17 USERS' PERSONAL INFORMATION?

18 A. UM-HUM.

19 Q. YES?

20 A. THAT'S CORRECT.

21 Q. AND UNDER YOUR PRIVACY POLICY, BITPASS CAN SELL
22 YOUR USERS' PERSONAL INFORMATION IF YOU WANT TO, CAN'T
23 YOU?

24 A. I BELIEVE THAT IS CORRECT.

25 Q. YOU CAN SELL THEM TO A VARIETY OF THIRD PARTIES?

1 A. YES. CORRECT.

2 Q. CAN RENT THE USERS' PERSONAL INFORMATION?

3 A. I WOULD NEED TO REVIEW OUR PRIVACY POLICY. I'M
4 NOT PREPARED TO SPEAK TO THAT AT THIS POINT.

5 Q. OKAY. WHY DON'T I SHOW YOU YOUR PRIVACY POLICY.
6 IT'S IN THE BINDER IN FRONT OF YOU MARKED PLAINTIFFS'
7 EXHIBIT 278.

8 A. OKAY.

9 Q. SO PLAINTIFFS' EXHIBIT 278, DO YOU SEE THAT
10 DOCUMENT?

11 A. YES.

12 Q. AND THAT IS A COPY OF YOUR PRIVACY POLICY?

13 A. YES.

14 Q. AND I WANT TO HAVE YOU FOCUS ON PAGES 8 AND 9 OF
15 PLAINTIFFS' EXHIBIT 278.

16 A. OKAY.

17 Q. AND ON PAGE 8 TOWARD THE BOTTOM, PLAINTIFFS'
18 EXHIBIT 278, IT SAYS -- THERE IS A CAPTION: OUR USE OF
19 PERSONAL INFORMATION. DO YOU SEE THAT?

20 A. YES.

21 Q. AND AT THE VERY BOTTOM OF THE PAGE 8, THERE IS
22 ANOTHER CAPTION, SUBCAPTION, THAT SAYS: DISCLOSURE TO
23 THIRD PARTIES. DO YOU SEE THAT?

24 A. YES.

25 Q. IF YOU TURN THE PAGE NOW TO THE NEXT PAGE, PAGE

1 9. I WANT YOU TO LOOK AT THE FOURTH BULLET POINT. THE
2 ONE LABELLED: MARKETING PURPOSES.

3 A. UH-HUH.

4 Q. CAN YOU READ THAT FIRST SENTENCE?

5 A. WE MAY DISCLOSE YOUR PERSONAL INFORMATION TO
6 THIRD PARTIES SO THEY CAN INFORM YOU ABOUT THEIR
7 PRODUCTS OR SERVICES.

8 Q. THE NEXT BULLET POINT. THE ONE LABELLED: OUR
9 AFFILIATES. READ THE FIRST SENTENCE TO ME?

10 A. WE MAY PROVIDE ALL OF THE NONPUBLIC PERSONAL
11 INFORMATION WE COLLECT ABOUT YOU TO OUR AFFILIATES TO
12 ENABLE THEM TO ENHANCE OUR ABILITY TO OFFER YOU NEW OR
13 ADDITIONAL PRODUCTS OR SERVICES, IMPROVE THE QUALITY OF
14 THE PRODUCTS AND SERVICES WE CURRENTLY OFFER TO YOU AND
15 TO AID US AND THEM IN THE ASSESSMENT OF OUR EXISTING
16 PRODUCTS AND SERVICES AND THE DEVELOPMENT OF NEW
17 PRODUCTS OR SERVICES.

18 Q. I'M GOING TO NOW ASK YOU -- YOU CAN PUT THAT
19 BINDER AWAY FOR NOW.

20 I'M GOING TO NOW ASK YOU, ON DIRECT
21 EXAMINATION YOU WERE DISCUSSING DEFENDANT'S EXHIBIT 107

22 A. YOU HAD AN EARLIER VERSION OF THAT DOCUMENT, DIDN'T
23 YOU?

24 A. YES.

25 Q. AND YOU CHANGED IT, DIDN'T YOU?

1 A. YES.

2 Q. YOU CHANGED IT ON TUESDAY NIGHT?

3 A. THERE WERE A NUMBER OF EARLIER REVISIONS AS
4 EARLY AS STARTING, I BELIEVE, THE FIRST ONE WAS DATED
5 AUGUST 29TH. IT'S HAD A NUMBER OF REVISIONS.

6 Q. AND YOU CHANGED THAT DOCUMENT ON TUESDAY NIGHT,
7 DIDN'T YOU?

8 A. YES.

9 Q. AND YOU CHANGED IT AFTER THE DEPARTMENT OF
10 JUSTICE CONTACTED YOU, DIDN'T YOU?

11 A. YES.

12 Q. AND AFTER THEY ASKED YOU TO CHANGE IT?

13 A. WELL, WE DISCUSSED IT. IT WAS NOT A SPECIFIC
14 REQUEST BUT WE DID DISCUSS IT.

15 Q. YOU DISCUSSED CHANGES THAT SHOULD BE MADE?

16 A. CORRECT.

17 THE COURT: KEEP YOUR VOICE UP, SIR.

18 THE WITNESS: SORRY.

19 BY MR. FINE:

20 Q. AND YOU DID MAKE SOME CHANGES TO THAT DOCUMENT?

21 A. WE DID MAKE CHANGES TO THE DOCUMENT, YES.

22 Q. AFTER YOU HAD THOSE DISCUSSIONS WITH THE
23 DEPARTMENT OF JUSTICE?

24 A. CORRECT.

25 Q. IN FACT, THE EARLIER VERSION OF THE DOCUMENT HAD

1 A MOCKUP OF THE COLLEGEDRINKS.COM WEBSITE THAT YOU WERE
2 DISCUSSING EARLIER THAT USED THE WORDS ADULT
3 VERIFICATION, DIDN'T IT?

4 A. CORRECT.

5 Q. YOU TOOK OUT ALL REFERENCES TO ADULT
6 VERIFICATION?

7 A. CORRECT.

8 Q. CHANGED IT TO ACCESS VERIFICATION?

9 A. CORRECT.

10 Q. AND YOU DID THAT BECAUSE THE DOJ ASKED YOU TO,
11 DIDN'T YOU?

12 A. WE HAD A DISCUSSION ABOUT IT AND REALIZED THAT
13 ADULT VERIFICATION WAS NOT AN ACCURATE PORTRAYAL OF WHAT
14 WE WERE DOING THERE.

15 Q. AND IT WAS NOT AN ACCURATE PORTRAYAL BECAUSE
16 CREDIT CARDS DON'T VERIFY AGE, CORRECT?

17 A. CORRECT.

18 Q. I WANT TO FOCUS YOU NOW ON THE PRODUCT THAT YOU
19 WERE DISCUSSING ON DIRECT EXAMINATION, WHAT YOU CALL
20 THIS POTENTIAL PRODUCT FOR ACCESS VERIFICATION.

21 THAT PRODUCT THAT YOU WERE DESCRIBING HAS
22 NOT BEEN DEVELOPED YET, HAS IT?

23 A. IT IS THE BASIC BITPASS PRODUCT BUT IT'S A NEW
24 FEATURE OR, YOU KNOW, ESSENTIALLY AN ADDITION TO THE
25 BASIC PRODUCT.

1 Q. AND THAT NEW FEATURE, THAT ADDITION HAS NOT BEEN
2 DEVELOPED YET, HAS IT?

3 A. CORRECT.

4 Q. NO BUSINESS PLAN HAS BEEN DRAWN UP FOR IT?

5 A. THERE WOULD NOT BE A BUSINESS PLAN DRAWN UP FOR
6 IT IN ANY CASE.

7 Q. YOU HAVE NO APPROVAL TO GO AHEAD AND LAUNCH THAT
8 FEATURE?

9 A. THE APPROVAL WOULD BE MINE TO GRANT.

10 Q. AND YOU HAVE NOT GRANTED IT?

11 A. I HAVE NOT GRANTED IT.

12 Q. THERE IS NO TIMETABLE FOR RELEASE?

13 A. THAT'S CORRECT.

14 Q. NO PRICING IN PLACE?

15 A. CORRECT.

16 Q. NO ONE HAS AGREED TO USE IT?

17 A. CORRECT.

18 Q. AND THE PRODUCT IS NOT READY TO BE IMPLEMENTED?

19 A. CORRECT.

20 Q. YOU ARE NOT AT A POINT WHERE YOU CAN SAY IT'S
21 ACTUALLY GOING TO HAPPEN?

22 A. CORRECT.

23 Q. IT MAY NEVER BE DEVELOPED FURTHER?

24 A. CORRECT.

25 Q. MAY NEVER HAPPEN?

1 A. CORRECT.

2 Q. IN FACT, YOUR COMPANY HAS SPENT ONLY 20 HOURS

3 TOTAL IN DEVELOPING THIS PRODUCT, ISN'T THAT RIGHT?

4 A. GENERALLY SPEAKING, PROBABLY.

5 Q. AND AT LEAST 15 OF THOSE HOURS HAVE BEEN SPENT

6 IN THE PAST FEW MONTHS, ISN'T THAT CORRECT?

7 A. THAT'S CORRECT.

8 Q. AFTER THE DEPARTMENT OF JUSTICE ASKED YOU TO

9 TESTIFY?

10 A. THAT'S CORRECT.

11 Q. SO, AT MOST, YOUR COMPANY SPENT FIVE HOURS ON

12 THIS PRODUCT BEFORE YOU WERE CONTACTED BY THE DEPARTMENT

13 OF JUSTICE?

14 A. I THINK ROUGHLY. THAT IS OBVIOUSLY A GROSS

15 ESTIMATE.

16 MR. FINE: PLAINTIFFS HAVE NO FURTHER

17 QUESTIONS AT THIS TIME, YOUR HONOR.

18 THE COURT: ANY REDIRECT?

19 MR. TODD: I WILL REGRET SAYING IT BUT

20 ONE QUESTION, YOUR HONOR.

21 THE COURT: OKAY.

22 REDIRECT EXAMINATION

23 BY MR. TODD:

24 Q. GOOD AFTERNOON, MR. KNOPPER.

25 A. GOOD AFTERNOON.

1 Q. CAN YOU OPEN UP PLAINTIFFS' EXHIBIT 278, PAGE
2 0009?

3 A. YES.

4 Q. THE FOURTH BULLET POINT SAYS: MARKETING
5 PURPOSES?

6 A. YES.

7 Q. CAN YOU CONTINUE READING ALOUD AFTER THE FIRST
8 SENTENCE?

9 A. IF YOU DO NOT WISH TO RECEIVE THESE TYPES OF
10 THIRD-PARTY COMMUNICATIONS YOU CAN TELL US YOUR
11 PREFERENCES.

12 KEEP GOING?

13 Q. YES, PLEASE.

14 A. WHILE YOU MAY CHOOSE NOT TO RECEIVE DIRECT
15 MARKETING INFORMATION FROM THIRD PARTIES, YOU WILL
16 CONTINUE TO RECEIVE INVOICES, SERVICE IMPACTING
17 NOTIFICATIONS AND OTHER SIMILAR INFORMATION FROM US
18 ELECTRONICALLY OR OTHERWISE AS WELL AS GENERAL
19 ADVERTISEMENTS THROUGH OUR SITE, IF ANY.

20 MR. TODD: THANK YOU MR. KNOPPER. NO
21 MORE QUESTIONS.

22 THE COURT: YOU ARE EXCUSED FROM THE
23 STAND, SIR. LEAVE THE BOOKS, UNLESS THEY ARE YOURS.

24 THE WITNESS: NO, THEY ARE NOT MINE.

25 (WITNESS EXCUSED.)

1 COMING UP THE STEPS. REMAIN STANDING, PLEASE. TAKE THE
2 OATH.

3 JOHN CHARLES DANCU, DEFENDANT'S WITNESS,
4 SWORN.

5 MR. BEANE: MY NAME IS ERIC BEANE. I
6 REPRESENT THE DEFENDANT.

7 YOUR HONOR, I HAVE HARD COPIES OF
8 EXHIBITS. MAY I APPROACH THE BENCH?

9 THE COURT: YES, INDEED.

10 DIRECT EXAMINATION

11 BY MR. BEANE:

12 Q. GOOD AFTERNOON, MR. DANCU.

13 A. HELLO.

14 Q. WHERE DO YOU LIVE?

15 A. I LIVE IN ATLANTA, GEORGIA.

16 Q. AND WHERE ARE YOU EMPLOYED?

17 A. I'M EMPLOYED AT IDOLOGY INC. WHICH IS CAPITAL I,
18 CAPITAL D, O-L-O-G-Y, INC.

19 Q. WHAT IS IDOLOGY?

20 A. IDOLOGY IS A TECHNOLOGY COMPANY. IT'S FOCUSED
21 ON PROVIDING AGE AND IDENTITY VERIFICATION SOLUTIONS.

22 Q. AND WHAT IS YOUR POSITION AT IDOLOGY?

23 A. I'M THE PRESIDENT, CEO, AND ALSO A DIRECTOR.

24 Q. BEFORE WE DISCUSS YOUR WORK AT IDOLOGY, LET'S
25 BACK UP AND TALK ABOUT YOUR BACKGROUND VERY BRIEFLY.

1 WHERE DID YOU GO TO COLLEGE?

2 A. I WENT TO COLLEGE AT EMORY UNIVERSITY.

3 Q. WHAT DID YOU STUDY THERE?

4 A. ACCOUNTING.

5 Q. AND WHEN DID YOU GRADUATE?

6 A. 1981.

7 Q. AND WHAT DID YOU DO AFTER THAT?

8 A. AFTER THAT, I JOINED A COMPANY CALLED DELOITTE,
9 HASKINS AND SELLS. THAT'S D-E-L-O-I-T-T-E,
10 H-A-S-K-I-N-S, S-E-L-L-S, WHICH IS A BIG 8 ACCOUNTING
11 FIRM. I JOINED THAT FIRM INITIALLY IN ITS AUDIT
12 DEPARTMENT WHERE I DID AUDITS ON CORPORATIONS. AND THEN
13 I MOVED TO THE EMERGING BUSINESS SERVICES GROUP THAT DID
14 AUDIT WORK AND ALSO TAX AND GENERAL ADVISORY WORK FOR
15 HIGH-TECHNOLOGY AND EMERGING GROWTH BUSINESSES.

16 Q. AND HOW LONG DID YOU WORK THERE?

17 A. FOR ROUGHLY THREE YEARS.

18 Q. WHAT DID YOU DO AFTER THAT?

19 A. I WENT TO GRADUATE SCHOOL AT CARNEGIE MELLON
20 UNIVERSITY AND GOT MY MASTER'S OF SCIENCE IN INDUSTRIAL
21 ADMINISTRATION, WHICH IS THE EQUIVALENT OF A MASTER'S OF
22 BUSINESS ADMINISTRATION.

23 Q. WHEN DID YOU GRADUATE?

24 A. IN 1986.

25 Q. WHAT DID YOU DO AFTER THAT?

1 A. AFTER THAT, I MOVED BACK TO ATLANTA AND JOINED
2 AN INVESTMENT BANKING FIRM CALLED THE ROBINSON-HUMPHREY
3 COMPANY.

4 Q. AND WHAT DID YOU DO AT THE INVESTMENT BANKING
5 FIRM?

6 A. I SERVED IN THE INVESTMENT BANKING DEPARTMENT.
7 AND IN THAT DEPARTMENT, I HELPED COMPANIES RAISE
8 CAPITAL, BOTH PRIVATELY AND ALSO THROUGH PUBLIC
9 OFFERINGS, THROUGH INITIAL PUBLIC OFFERINGS, THROUGH
10 SECONDARY OFFERINGS, AND ALSO DID WORK WITH MERGERS AND
11 ACQUISITIONS.

12 Q. WAS YOUR WORK FOCUSED ON CERTAIN INDUSTRIES?

13 A. INITIALLY, I WORKED ON A WIDE RANGE OF
14 INDUSTRIES. AT THE LATTER PART OF MY CAREER THERE, I
15 FOCUSED ON WORKING WITH RETAIL COMPANIES, TRANSPORTATION
16 COMPANIES IN THE TRUCKING AND REGIONAL AIRLINE BUSINESS,
17 AND THEN ALSO WITH -- IN THE TEXTILE AND APPAREL
18 BUSINESS.

19 Q. HOW LONG DID YOU WORK THERE?

20 A. I WORKED AT ROBINSON-HUMPHREY FOR APPROXIMATELY
21 NINE YEARS.

22 Q. WHAT DID YOU DO AFTER THAT?

23 A. AFTER THAT, I JOINED A COMPANY CALLED K&G MEN'S
24 CENTER, WHICH IS A SUPERSTORE MEN'S RETAILER, INITIALLY
25 AS ITS CHIEF FINANCIAL OFFICER, AND THEN BECAME ALSO THE

1 CHIEF OPERATING OFFICER AND A DIRECTOR OF THE COMPANY.

2 Q. WHAT WAS YOUR ROLE IN K&G MENSWEAR?

3 A. I HAD ALL SEGMENTS OF THE COMPANY EXCEPT
4 MERCHANDISING REPORTING TO ME, SO THAT MEANT MARKETING,
5 ADVERTISING, REAL ESTATE, HUMAN RESOURCES. PRETTY MUCH
6 ALL ASPECTS OF THE OPERATIONS OF THE BUSINESS REPORTED
7 TO ME.

8 Q. WHEN DID YOU LEAVE K&G?

9 A. I LEFT K&G IN JUNE OF 1999.

10 Q. WHY?

11 A. WE SOLD THE BUSINESS TO MEN'S WAREHOUSE.

12 Q. WHAT DID YOU DO AFTER THAT?

13 A. AFTER THAT, I JOINED A BUSINESS CALLED NETZIP,
14 N-E-T-Z-I-P.

15 THE COURT: SPELL THAT AGAIN, PLEASE.

16 THE WITNESS: N-E-T-Z-I-P.

17 BY MR. BEANE:

18 Q. WHAT IS NETZIP?

19 A. NETZIP WAS A COMPANY THAT PROVIDED TOOLS TO HELP
20 PEOPLE BETTER HANDLE ISSUES ON THE INTERNET. THERE WERE
21 TWO PARTICULARLY THAT WE HELPED WITH. ONE WAS THAT WE
22 HAD A ZIP COMPRESSION PRODUCT THAT WOULD TAKE A FILE AND
23 COMPRESS IT, AND THEN YOU COULD TRANSPORT THAT FILE
24 EASIER BECAUSE IT'S OF LESS SIZE.

25 AND THE OTHER PRODUCT THAT WE HAD WAS A

1 PRODUCT CALLED DOWNLOAD DEMON, D-E-M-O-N. AND DOWNLOAD
2 DEMON SOLVED THE PROBLEM OF DOWNLOADING ON THE INTERNET
3 BECAUSE BACK THEN, IF YOU REMEMBER, IN THE EARLY DAYS OF
4 THE INTERNET, YOU WERE DEALING WITH 56 K CONNECTIONS,
5 VERY SLOW, YOU ARE TRYING TO DOWNLOAD A VERY LARGE FILE,
6 A MUSIC FILE, AND IT CAUSED A LOT OF PROBLEMS FOR PEOPLE
7 IN THE DOWNLOADING PROCESS. AND WE DEVELOPED A LITTLE
8 APP THAT WOULD MANAGE THAT DOWNLOAD PROCESS AND GOT
9 DISTRIBUTED THROUGH PROPERTIES LIKE NETSCAPE, AND CNET
10 AND ENDED UP BEING ON MILLIONS OF DESKTOPS.

11 Q. WHAT DO YOU MEAN BY APP?

12 A. APPLICATION, EXCUSE ME.

13 Q. OKAY. AND WAS THIS AN EMERGING MARKET THAT
14 NETZIP WAS INVOLVED IN?

15 A. ABSOLUTELY.

16 Q. AND WHY DID YOU LEAVE NETZIP?

17 A. WE SOLD NETZIP TO REAL NETWORKS IN JANUARY OF
18 2000.

19 Q. AND WHAT DID YOU DO AFTER THAT?

20 A. AFTER THAT, I JOINED A COMPANY CALLED
21 SYNCHROLOGIC, THAT'S S-Y-N-C-H-R-O-L-O-G-I-C, INC.

22 Q. WHAT WAS YOUR POSITION WITH SYNCHROLOGIC?

23 A. I WAS PRESIDENT, CHIEF OPERATING OFFICER AND
24 ALSO A DIRECTOR.

25 Q. WHAT KIND OF COMPANY IS SYNCHROLOGIC?

1 A. WELL, IT WAS DIFFERENT FROM THE OTHER ONES. IT
2 WAS STILL IN THE TECHNOLOGY BUSINESS BUT WE SOLD
3 ENTERPRISE SOFTWARE TO LARGE CORPORATIONS THAT ASSISTED
4 THEM WITH THEIR WIRELESS INFRASTRUCTURE SOFTWARE. SO
5 LET ME GIVE YOU AN EXAMPLE OF WHAT WE WOULD DO THERE.

6 WE HAD AS A CUSTOMER, PFIZER, A LARGE
7 PHARMACEUTICAL COMPANY, AND THEY HAD OVER 14,000 PEOPLE
8 THAT WOULD GO CALL ON DOCTORS IN THE FIELD THAT ACCESSED
9 BUSINESS APPLICATIONS FROM PFIZER ON THEIR LAPTOPS. AND
10 THEY ACCESSED IT ON A DISCONNECTED BASIS. IN OTHER
11 WORDS, THEY WERE NOT CONNECTED TO THE SERVER, TO THE
12 ENTERPRISE. SO WHEN THEY WOULD DO THEIR WORK ALL DAY,
13 AND THEN AT NIGHT, THEY WOULD SYNCHRONIZE BACK THE DATA
14 FROM THE LAPTOP TO THE SERVER. AND WE HAD THE SOFTWARE
15 THAT BASICALLY WOULD SYNCHRONIZE DATA FROM THE LAPTOP,
16 ANY REALLY REMOTE DEVICE, BACK TO THE ENTERPRISE AND THE
17 OTHER WAY ALSO.

18 Q. WHAT OTHER TYPES OF BUSINESS WAS SYNCHROLOGIC
19 INVOLVED IN?

20 A. WE HAD OTHER TYPES OF SYNCHRONIZATION SOFTWARE.
21 WE HAD TECHNOLOGY THAT WOULD SYNCHRONIZE E-MAIL. IF YOU
22 HAVE A VERIZON TREQ DEVICE, THE E-MAIL CLIENT OR
23 APPLICATION ON THAT WAS BUILT BY SYNCHROLOGIC. WE ALSO
24 SYNCHRONIZED FILES, WORD FILES, POWERPOINT FILES, WEB
25 PAGES. AND THEN WE ALSO HAD MANAGEMENT SOFTWARE THAT

1 WOULD MANAGE THE WHOLE PROCESS OF THE SYNCHRONIZATION.

2 Q. WHEN DID YOU LEAVE SYNCHROLOGIC?

3 A. I LEFT IN DECEMBER OF 2003.

4 Q. WHY DID YOU LEAVE?

5 A. WE SOLD THAT BUSINESS TO INTELLISYNC. THAT'S
6 I-N-T-E-L-L-I-S-Y-N-C.

7 Q. AND WHAT DID YOU DO AFTER SELLING SYNCHROLOGIC?

8 A. WELL, AFTER GROWING THREE RAPIDLY GROWING
9 BUSINESSES OVER A LONG PERIOD OF TIME I FELT LIKE I
10 NEEDED TO TAKE SOME TIME OFF, WHICH IS WHAT I DID. AND
11 I TOOK A YEAR OFF AND TRAVELLED WITH MY FAMILY AND JUST
12 KIND OF RESTED.

13 Q. AND THEN WHAT WAS YOUR NEXT STEP AFTER THAT?

14 A. AFTER TAKING SOME TIME OFF, I STARTED LOOKING
15 FOR ANOTHER COMPANY TO WORK WITH. AND I PUT OUT A
16 SEARCH RELATIVE TO THE TYPES OF COMPANIES THAT I WANTED
17 TO WORK WITH AND SEE AND FOUND IDOLOGY IN THE AGE AND
18 IDENTITY VERIFICATION SPACE AND REALLY LIKED THEIR
19 BUSINESS AND THEIR TECHNOLOGY, SO I JOINED THEM AS THEIR
20 CHIEF EXECUTIVE OFFICER AND PRESIDENT.

21 Q. HOW LONG HAD IDOLOGY BEEN IN BUSINESS BEFORE YOU
22 JOINED?

23 A. ROUGHLY THREE YEARS.

24 Q. AND SO DO YOU KNOW WHEN IDOLOGY OPENED AS A
25 BUSINESS?

1 A. I THINK IT WOULD HAVE BEEN RIGHT AT THE END OF
2 2003.

3 Q. AND WHEN YOU JOINED IDOLOGY, WHAT WAS YOUR
4 POSITION?

5 A. I WAS THE PRESIDENT, CEO AND DIRECTOR.

6 Q. WHAT ARE YOUR MAIN RESPONSIBILITIES AS CEO AND
7 PRESIDENT?

8 A. WELL, IN ESSENCE, I HAVE RESPONSIBILITIES FOR
9 RUNNING THE BUSINESS. AND ALL AREAS OF THE BUSINESS
10 REPORT TO ME. THAT WOULD INCLUDE PRODUCT DEVELOPMENT,
11 DEVELOPMENT OF THE PRODUCT, MARKETING, SALES, BUSINESS
12 DEVELOPMENT, ALL ASPECTS OF THE BUSINESS.

13 Q. DO YOU KNOW IF THE MARKET FOR AGE AND IDENTITY
14 VERIFICATION EXISTED, SAY, 10 YEARS AGO?

15 A. NOT --

16 MR. HARRIS: OBJECTION, YOUR HONOR. IF
17 THIS IS JUST A YES OR NO QUESTION, I HAVE NO OBJECTION.
18 BUT IF THE WITNESS IS GOING TO TESTIFY AS TO THE MARKET
19 THAT EXISTED 10 YEARS AGO I WOULD OBJECT TO LACK OF
20 FOUNDATION.

21 MR. BEANE: MY QUESTION WAS, DO YOU KNOW.

22 THE COURT: THE ANSWER IS YES OR NO.

23 DO YOU REMEMBER THE QUESTION, SIR?

24 MR. BEANE: I CAN REASK IT, YOUR HONOR.

25 BY MR. BEANE:

1 Q. DO YOU KNOW IF THE MARKET FOR ONLINE AGE AND
2 IDENTITY VERIFICATION EXISTED 10 YEARS AGO?

3 THE COURT: THE ANSWER IS YES OR NO, SIR.

4 THE WITNESS: DO I KNOW THE MARKET
5 EXISTED? WELL, I KNOW THE MARKET DIDN'T EXIST. I CAN'T
6 QUITE KNOW IF THAT IS YES OR NO.

7 THE COURT: YOU EITHER KNOW OR YOU DON'T
8 KNOW. THEN WE WILL GO ON FROM THERE. THAT IS A YES OR
9 NO QUESTION.

10 THE WITNESS: YES.

11 BY MR. BEANE:

12 Q. HOW DO YOU KNOW?

13 A. JUST FROM BEING IN THE BUSINESS FOR THIS PERIOD
14 OF TIME, YOU LEARN ABOUT THE HISTORY OF WHAT'S GOING ON
15 WITH THE BUSINESS.

16 Q. IS IT YOUR UNDERSTANDING THAT THE MARKET CAME
17 INTO BEING MORE RECENTLY THAN THE LAST -- THAN 10 YEARS
18 AGO?

19 A. YES.

20 Q. I WOULD LIKE TO TURN NOW TO DEFENDANT'S EXHIBIT
21 464. WHAT IS THIS EXHIBIT?

22 A. THIS IS A POWERPOINT SLIDE THAT WE WILL SHOW TO
23 OUR POTENTIAL CLIENTS WHEN WE GO TALK TO THEM ABOUT
24 IDOLOGY.

25 Q. WHAT TYPES OF PRODUCTS OR SERVICES DOES IDOLOGY

1 PROVIDE?

2 A. WE PROVIDE ELECTRONIC IDENTITY AND AGE
3 VERIFICATION SOLUTIONS.

4 Q. AND WHAT IS THE MARKET FOR IDOLOGY'S AGE AND
5 IDENTITY VERIFICATION PRODUCTS?

6 A. OUR MARKET IS VERY BROAD. WE LOOK AT OUR MARKET
7 AS REALLY ANY TYPE OF TRANSACTION WHICH HAPPENS ON THE
8 INTERNET, OR IN A CALL CENTER ENVIRONMENT WHERE AN
9 IDENTITY OR AGE NEEDS TO BE VERIFIED.

10 Q. DO YOU REFER TO IDOLOGY AS A DATA VERIFICATION
11 SERVICE?

12 A. NO, SIR.

13 Q. WHY NOT?

14 A. THE TERM OF ART THAT WE UTILIZE IS IDENTITY AND
15 AGE VERIFICATION.

16 Q. IS DATA VERIFICATION SERVICE AN ACCURATE WAY TO
17 DESCRIBE THE SERVICE THAT IDOLOGY PROVIDES?

18 A. NO, SIR.

19 Q. WHY NOT?

20 A. WE ARE GOING THROUGH THE PROCESS WITH OUR
21 CUSTOMER -- EXCUSE ME, OUR CLIENTS OF VALIDATING AN
22 IDENTITY.

23 Q. WHAT INDUSTRIES DO YOU SERVE?

24 A. WE SERVE MANY DIFFERENT INDUSTRIES. YOU SEE A
25 BUNCH OF THEM UP HERE ON THE SLIDE.

1 Q. LET'S START WITH ONE AS AN EXAMPLE. HOW ABOUT
2 THE FINANCIAL SERVICE INDUSTRY?

3 A. SURE. SO THE FINANCIAL SERVICES INDUSTRY, WE
4 WOULD PROVIDE IDENTITY VERIFICATION --

5 THE COURT: EXCUSE ME, SIR. THERE IS NO
6 QUESTION PENDING. JUST THAT YOU SERVE THE FINANCIAL
7 SERVICE INDUSTRY. I DON'T KNOW WHAT HE IS GOING TO SAY
8 NOW.

9 BY MR. BEANE:

10 Q. MR. DANCU, CAN YOU GIVE AN EXAMPLE OF A CLIENT
11 THAT YOU SERVE -- OF THE TYPE OF CLIENT THAT YOU SERVE
12 IN THE FINANCIAL SERVICES INDUSTRY?

13 A. YES.

14 Q. CAN YOU PLEASE DESCRIBE THAT.

15 A. ONE EXAMPLE WOULD BE FINANCIAL SERVICES
16 COMPANIES THAT ISSUE STORED VALUE CARDS.

17 Q. WHAT DO YOU MEAN BY STORED VALUE CARD?

18 A. IT'S SIMILAR TO A CREDIT CARD BUT IT HAS A FIXED
19 MONETARY VALUE ON IT.

20 Q. AND SO WHAT SERVICE DOES IDOLOGY PROVIDE TO A
21 COMPANY THAT ISSUES THESE CARDS?

22 A. SO IF I GO ON THE INTERNET AND I WANT TO HAVE A
23 STORED VALUE CARD ISSUED IN MY NAME, I GO THROUGH A
24 PROCESS ON THE WEBSITE THAT IS GOING TO ISSUE THAT CARD
25 RELATIVE TO GIVING THEM MY IDENTITY INFORMATION, MY

1 NAME, ADDRESS, OTHER INFORMATION. AND THE COMPANY --
2 OUR CLIENTS WILL USE US TO, IN ESSENCE, VERIFY THAT
3 INFORMATION THAT THE CUSTOMER HAS PROVIDED THAT WANTS TO
4 BE GRANTED A STORED VALUE CARD.

5 Q. SO IDIOLOGY IS INVOLVED AT THE MOMENT THAT AN
6 ACCOUNT ORIGINATES?

7 A. YES. IN THAT CASE, WHEN AN ACCOUNT ORIGINATES
8 OR ALSO WHEN YOU WANT TO RELOAD THE STORED VALUE CARD,
9 WE CAN ALSO REVERIFY THE PERSON AT THAT POINT ALSO.

10 Q. ARE THESE CARDS AVAILABLE TO PEOPLE WHO DON'T
11 HAVE ESTABLISHED BANK ACCOUNTS?

12 MR. HARRIS: OBJECTION. LACK OF
13 FOUNDATION.

14 THE COURT: SUSTAINED.

15 BY MR. BEANE:

16 Q. DO YOU KNOW IN YOUR BUSINESS CAPACITY WHAT TYPES
17 OF CUSTOMERS USE THESE STORED VALUE CARDS?

18 A. YES.

19 Q. HOW DO YOU KNOW?

20 A. WE TALK TO OUR CLIENTS ABOUT THE TYPE OF
21 DEMOGRAPHICS OF THEIR CUSTOMERS.

22 Q. AND WHAT DO YOU KNOW ABOUT THE DEMOGRAPHICS OF
23 CUSTOMERS?

24 MR. HARRIS: OBJECTION, LACK OF
25 FOUNDATION AND HEARSAY. THE WITNESS TESTIFIED HE KNOWS

1 ABOUT THIS FROM WHAT HIS CLIENTS TOLD HIM.

2 THE COURT: SUSTAINED.

3 BY MR. BEANE:

4 Q. IN YOUR BUSINESS CAPACITY, DO YOU HAVE FREQUENT
5 CONVERSATIONS WITH THE CLIENTS THAT YOU SERVE IN THE
6 VARIOUS INDUSTRIES?

7 A. YES.

8 Q. AND IN THE PROCESS OF WORKING THROUGH THOSE
9 BUSINESS RELATIONSHIPS, DO YOU LEARN AND DEVELOP
10 PERSONAL KNOWLEDGE OF THE TYPES OF INDUSTRIES THAT THEY
11 ARE INVOLVED IN?

12 A. YES.

13 Q. WHAT IS YOUR UNDERSTANDING ABOUT WHAT TYPES OF
14 CUSTOMERS USE STORED VALUE CARDS?

15 MR. HARRIS: OBJECTION, YOUR HONOR. THIS
16 IS THE SAME QUESTION.

17 THE COURT: SUSTAINED.

18 MR. BEANE: I WILL MOVE ON.

19 THE COURT: IF HE HAS GENERIC INPUT OF
20 THINGS HE HAS LEARNED DURING HIS BUSINESS, IT DOES NOT
21 ANSWER THE SPECIFIC OBJECTION THAT COUNSEL IS RAISING.

22 BY MR. BEANE:

23 Q. I WILL DIRECT YOUR ATTENTION NOW TO ANOTHER ITEM
24 ON THE LIST. PAYMENT PROCESSORS. WHAT ARE PAYMENT
25 PROCESSORS?

1 A. A PAYMENT PROCESSOR WOULD BE A COMPANY WHICH
2 ASSISTS WITH PROCESSING A CREDIT CARD, BY WAY OF
3 EXAMPLE, CREDIT CARD PAYMENTS FOR CUSTOMERS IN THE
4 COMPANY THAT THE CUSTOMER IS DOING THE TRANSACTION WITH.

5 Q. ARE YOU INVOLVED WITH ANYBODY IN THE BUSINESS OF
6 PAYMENT PROCESSING?

7 A. YES.

8 Q. AND DO YOU PROVIDE A SERVICE TO THE PAYMENT
9 PROCESSORS?

10 A. YES. WHAT WE DO IS WE ASSIST THE PAYMENT
11 PROCESSORS WHEN THEY OPEN UP MERCHANT ACCOUNTS. IN
12 OTHER WORDS, A MERCHANT ACCOUNT WOULD BE, FOR INSTANCE,
13 A WEBSITE THAT IS SELLING PRODUCTS ON THE INTERNET. AND
14 THEY ARE ESTABLISHING A PAYMENT PROCESSING RELATIONSHIP
15 WITH THE COMPANY LIKE FIRST DATA CORPORATION, WHICH IS A
16 PAYMENT PROCESSOR. THEY WILL UTILIZE -- PAYMENT
17 PROCESSORS WILL UTILIZE US TO VERIFY THE IDENTITY OF THE
18 PERSON THAT IS OPENING THE MERCHANT ACCOUNT.

19 Q. AND SO YOUR AGREEMENT IS WITH THE PAYMENT
20 PROCESSOR, OR IS IT WITH THE MERCHANT BASE, THE PEOPLE
21 WHO ARE ACTUALLY SELLING SOMETHING TO CONSUMERS?

22 A. WITH THE MERCHANT PROCESSOR -- WITH THE PAYMENT
23 PROCESSORS, EXCUSE ME.

24 Q. LET'S MOVE ON TO ANOTHER ITEM ON THE LIST,
25 ALTERNATIVE PAYMENTS. WHAT ARE ALTERNATIVE PAYMENTS?

1 A. AN EXAMPLE OF AN ALTERNATIVE PAYMENT WOULD BE A
2 PAYDAY LOAN-TYPE ARRANGEMENT, WHERE AN INDIVIDUAL, SAY
3 SOMEBODY WHO MAY NOT HAVE A BANK ACCOUNT OR DOES NOT
4 HAVE A LOT OF EXCESS FUNDS NEEDS TO BORROW AGAINST THEIR
5 PAYCHECK ON A SHORT-TERM BASIS.

6 Q. AND DO YOU HAVE CLIENTS WHO WILL GIVE LOANS TO
7 PEOPLE IN THESE CIRCUMSTANCES?

8 A. YES.

9 Q. WHAT SERVICE DO YOU PROVIDE TO THEM?

10 A. WE AGAIN DO THE IDENTITY VERIFICATION PROCESS
11 FOR THEM. SO WHEN THEY COME TO OPEN AN ACCOUNT, WE WILL
12 PARTICIPATE IN THE ACCOUNT ORIGINATION PROCESS OF
13 VALIDATING THE IDENTITY OF THAT INDIVIDUAL WHO IS
14 OPENING UP AN ACCOUNT AT THE PAYDAY LOAN COMPANY.

15 Q. DO YOU KNOW WHY CLIENTS IN THE ALTERNATIVE
16 PAYMENT INDUSTRY USE IDOLOGY FOR IDENTITY VERIFICATION?

17 A. YES.

18 Q. HOW DO YOU KNOW?

19 A. WELL, WE SELL OUR SERVICES TO THEM TO DO ID
20 VERIFICATION.

21 Q. AND WHAT IS YOUR UNDERSTANDING OF THE NEED FOR
22 IDENTITY VERIFICATION IN THIS MARKET?

23 MR. HARRIS: OBJECTION, LACK OF
24 FOUNDATION. IF I UNDERSTAND IT, THE LINE OF QUESTIONING
25 IS WHY ARE THE CLIENTS USING THIS SERVICE.

1 THE COURT: HE SELLS SERVICES TO THE
2 CLIENTS, HE WOULD KNOW. OVERRULED.

3 BY MR. BEANE:

4 Q. WHAT IS YOUR UNDERSTANDING OF WHY PEOPLE IN THE
5 ALTERNATIVE PAYMENT INDUSTRY UTILIZE YOUR IDENTITY
6 VERIFICATION SERVICE?

7 A. THEY WANT TO USE OUR IDENTITY VERIFICATION
8 SERVICE TO VERIFY THAT THE CUSTOMER IS WHO THEY SAY THEY
9 ARE BEFORE THEY ENTER INTO A TRANSACTION WITH THEM
10 OVER -- THESE ARE ALL INTERNET TRANSACTIONS. SO THEY
11 ARE NOT ACTUALLY SEEING THE PERSON. SO THEY USE US TO
12 VERIFY THAT THE PERSON IS WHO THEY SAY THEY ARE.

13 Q. LET'S MOVE ON TO ANOTHER ITEM. YOU ALSO
14 INCLUDED TRAVEL ON THIS DOCUMENT. WHO ARE YOUR CLIENTS
15 IN THE TRAVEL INDUSTRY, OR WHAT TYPES OF CLIENTS WOULD
16 NEED IDENTITY OR AGE VERIFICATION?

17 A. I THINK WE HAVE ALL PROBABLY MADE TRAVEL
18 ARRANGEMENTS ON THE INTERNET, BOOKING AN AIRPLANE FLIGHT
19 OR BOOKING A HOTEL OR VACATION. AND SO TRAVEL CLIENTS
20 WILL UTILIZE US FROM THE STANDPOINT OF, AGAIN,
21 VALIDATING THE IDENTITY OF AN INDIVIDUAL, MAKING SURE
22 THEY ARE WHO THEY SAY THEY ARE, AS THEY ARE SELLING AN
23 AIRLINE TICKET OR SELLING A VACATION PACKAGE OVER THE
24 INTERNET.

25 Q. CAN YOU GIVE AN EXAMPLE OF AN INSTANCE IN WHICH

1 THAT IDENTITY VERIFICATION MIGHT TAKE PLACE?

2 A. SURE. SO WITH A LOT OF THESE COMPANIES, A
3 TRANSACTION COMES IN, AND THE TRAVEL COMPANY MAY HAVE
4 CERTAIN FRAUD FLAGS THAT THEY WILL LOOK AT THESE
5 TRANSACTIONS FROM THAT WILL REQUIRE THAT THEY DO AN
6 ADDITIONAL IDENTITY VERIFICATION ON THE PERSON. SO AN
7 EXAMPLE WOULD BE IF ALL OF A SUDDEN I WENT TO A TRAVEL
8 WEBSITE AND DECIDED THAT I WANTED TO BOOK A ONE-WAY
9 TICKET TO LONDON TOMORROW. THAT WOULD PROBABLY BE A
10 TYPE OF TRANSACTION THAT THE TRAVEL COMPANY WOULD WANT
11 TO TAKE A VERY CLOSE LOOK AT, AND WOULD UTILIZE OUR
12 TECHNOLOGY TO VERIFY THAT THE PERSON THAT IS PURCHASING
13 THAT TICKET REALLY IS WHO THEY SAY THEY ARE BECAUSE THEY
14 DON'T WANT SOMEBODY WHO IS NOT THAT PERSON COMMITTING
15 FRAUD TO PURCHASE THAT TICKET.

16 Q. YOU MENTIONED THE TERM FRAUD FLAGS. WHAT DO YOU
17 MEAN BY FRAUD FLAGS?

18 A. WHEN A TRANSACTION COMES INTO AN INTERNET-BASED
19 COMPANY, THE COMPANY IS GOING TO HAVE CERTAIN TYPES OF
20 TECHNOLOGY WHICH ACTUALLY LOOKS AT THAT TRANSACTION TO
21 DETERMINE WHERE IT CAME FROM, WHAT IP ADDRESS IT CAME
22 FROM. IT WILL LOOK AT CERTAIN COMPONENTS OF WHAT'S ON
23 THE CREDIT CARD VERSUS WHAT'S ON THE INFORMATION THAT
24 THE CONSUMER PROVIDED. SO THERE'S A WHOLE BUNCH OF
25 VARIABLES THAT THEY WILL LOOK AT RELATIVE TO REVIEWING

1 THAT TRANSACTION. AND IF SOME OF THE VARIABLES LOOK OUT
2 OF PLACE, THAT COULD KICK OFF A FRAUD FLAG, A FLAG THAT
3 WOULD BASICALLY ENCOURAGE THE COMPANY TO TAKE A FURTHER
4 STEP TO DO AN IDENTITY VERIFICATION.

5 Q. LET'S MOVE ON TO ANOTHER ITEM ON THE LIST.

6 MEDICAL. DO YOU HAVE CLIENTS IN THE MEDICAL INDUSTRY?

7 A. SURE. A GREAT EXAMPLE OF A CLIENT WE HAVE IN
8 THE MEDICAL BUSINESS IS A COMPANY CALLED SECURE MEDICAL.
9 SECURE MEDICAL IS AN E-PHARMACY COMPANY. THEY SELL
10 PRESCRIPTIONS OVER THE INTERNET. AND THEY ARE SELLING
11 LIFE-STYLE DRUGS, THINGS LIKE VIAGRA AND BIRTH CONTROL
12 PILLS. AND THEY USE BOTH OUR AGE VERIFICATION
13 TECHNOLOGY AND IDENTITY VERIFICATION TECHNOLOGY. THEY
14 WANT TO MAKE SURE THAT THE PERSON IS WHO THEY SAY THEY
15 ARE. AND IN ADDITION, THEY WANT TO MAKE SURE IF THEY
16 ARE PRESCRIBING A DRUG LIKE VIAGRA THAT THERE IS NOT A
17 20-YEAR OLD BUYING IT, THAT THE PERSON IS OF THE
18 APPROPRIATE AGE TO RECEIVE THAT DRUG.

19 Q. LET'S MOVE ON TO RESTRICTED PRODUCTS. WHAT DO
20 YOU MEAN WHEN YOU REFER TO RESTRICTED PRODUCTS?

21 A. THESE ARE THE PRODUCTS THAT -- LIKE WINE,
22 ALCOHOL, TOBACCO, RELATED-TYPE PRODUCTS.

23 Q. AND DID YOU HAVE CLIENTS THAT SELL RESTRICTED
24 PRODUCTS ON THE INTERNET?

25 A. YES, WE DO. A GREAT EXAMPLE WOULD BE A NAME

1 PROBABLY EVERYBODY IS FAMILIAR WITH. KENDALL JACKSON, A
2 WINERY.

3 Q. AND WHAT SERVICE DO YOU PROVIDE TO KENDALL
4 JACKSON?

5 A. KENDALL JACKSON UTILIZES OUR TECHNOLOGY TO
6 VERIFY THE AGE OF A CUSTOMER WHO IS PURCHASING WINE
7 THROUGH THEIR INTERNET WEB PAGE.

8 Q. THE NEXT ITEM ON YOUR LIST IS RESTRICTED
9 CONTENT. WHAT DO YOU MEAN BY THAT?

10 A. CONTENT -- RESTRICTED CONTENT WOULD BE CONTENT
11 THAT IS RESTRICTED BY THE NATURE OF IT. IT MAY BE
12 ADULT-ORIENTED TYPE CONTENT.

13 Q. ARE THERE OTHER EXAMPLES OF RESTRICTED CONTENT
14 ON THE INTERNET?

15 A. YES. ANOTHER EXAMPLE WOULD BE, FOR INSTANCE,
16 TOBACCO COMPANIES. IF I GO AND WANT TO ACCESS A TOBACCO
17 WEBSITE TODAY, I WILL BE AGE VERIFIED BEFORE I CAN, IN
18 ESSENCE, ACCESS THAT CONTENT. AND THAT CONTENT IS NOT
19 PRODUCTS. IT'S JUST INFORMATION ABOUT THE BRANDS OF THE
20 TOBACCO OR IT MAY BE WHERE I ACCESS TO TRY TO GET
21 DISCOUNTS SO I CAN GET A LOWER PRICE ON MY CIGARETTES.

22 MR. HARRIS: OBJECTION, YOUR HONOR. I
23 DON'T BELIEVE THE WITNESS HAS TESTIFIED THAT HE PROVIDES
24 THIS SERVICE TO THESE COMPANIES. THIS WOULD BE
25 SPECULATION.

1 MR. BEANE: YOUR HONOR, THIS IS INCLUDED
2 ON A LIST WITH THE HEADING INDUSTRIES WE SERVE.

3 THE COURT: I SEE IT. I CAN'T REMEMBER
4 WHETHER HE SAID HE ACTUALLY DID IT. ASK HIM.

5 BY MR. BEANE:

6 Q. DO YOU HAVE CLIENTS IN THE TOBACCO INDUSTRY?

7 A. YES.

8 Q. AND DO THE CLIENTS IN TOBACCO INDUSTRY -- YOU
9 MENTIONED THAT THEY REQUIRE AGE VERIFICATION FOR ACCESS
10 TO THE WEBSITE?

11 A. CORRECT.

12 Q. DO THEY REQUIRE AGE VERIFICATION BEFORE THERE IS
13 A SALE?

14 A. WELL, THEY ARE NOT SELLING ANYTHING ON THAT
15 WEBSITE.

16 Q. I WOULD LIKE TO MOVE NOW TO TELECOMMUNICATIONS.
17 DO YOU HAVE ANY CLIENTS IN THE TELECOMMUNICATIONS
18 INDUSTRY?

19 A. YES.

20 Q. WHAT TYPES OF CLIENTS DO YOU SERVE?

21 A. THE BEST EXAMPLE THERE WOULD BE THAT WE HAVE AN
22 ARRANGEMENT WITH VERISIGN. THAT IS V-E-R-I-S-I-G-N.
23 THAT IS A NAME PRETTY MUCH EVERYBODY IS FAMILIAR WITH.
24 YOU SEE IT ON ALL THE WEB PAGES YOU GO TO. THEY PROVIDE
25 A LOT OF SECURITY FOR THE INTERNET.

1 IN THEIR TELECOMMUNICATIONS SIDE OF THEIR
2 BUSINESS, WHICH IS A MULTI-BILLION DOLLAR BUSINESS,
3 REVENUE BUSINESS, THEY UTILIZE OUR AGE VERIFICATION
4 TECHNOLOGY IN A PRODUCT THAT THEY SELL TO WIRELESS
5 CARRIERS, WHERE WIRELESS CARRIERS ARE CONSIDERING
6 ACCESSING RESTRICTED CONTENT.

7 Q. CAN YOU EXPLAIN WHAT YOU MEAN BY WIRELESS
8 CARRIERS?

9 A. SURE. AN EXAMPLE OF A WIRELESS CARRIER WOULD BE
10 VERIZON, T-MOBILE.

11 Q. AND WHAT TYPE OF PRODUCTS ARE YOU REFERRING TO
12 THAT VERIZON OR T-MOBILE WOULD HAVE?

13 A. WELL, RESTRICTED CONTENT CAN BE DEFINED IN
14 DIFFERENT WAYS. IT CAN BE SOMETHING AS, LIKE THE
15 SOPRANOS, OR IT COULD BE SOMETHING A LOT RACIER THAN
16 THAT. IT COULD BE NUDE WOMEN.

17 Q. NOW, LET'S MOVE ON TO E-RETAILERS. WHAT DO YOU
18 MEAN BY E-RETAILERS?

19 A. THE BEST WAY, AGAIN, IS TO DO AN EXAMPLE HERE.
20 AN E-RETAILER IS SOMEONE WHO IS SELLING GOODS ON THE
21 INTERNET. AN EXAMPLE THERE FOR US IS A COMPANY CALLED
22 TIGER, T-I-G-E-R, DIRECT. AND TIGERDIRECT IS A COMPANY
23 THAT YOU CAN GO ACCESS THEIR WEBSITE AND PURCHASE PLASMA
24 TELEVISIONS AND COMPUTERS AND OTHER COMPUTER PERIPHERALS
25 AND ELECTRONICS.

1 Q. AND WHAT SERVICE DOES TIGERDIRECT USE FROM
2 IDOLOGY?

3 A. THEY USE US FOR IDENTITY VERIFICATION IS WHAT
4 THEY USE US FOR.

5 Q. LET'S TURN TO THE FINAL ITEM ON THE LIST, SOCIAL
6 NETWORKS. WHAT IS A SOCIAL NETWORK?

7 A. WELL, I THINK PROBABLY EVERYBODY IS FAMILIAR
8 WITH MYSPACE. THAT IS A GREAT EXAMPLE OF A SOCIAL
9 NETWORK. XANGA, THAT'S X-A-N-G-A, ZOEY'S ROOM. THAT'S
10 Z-O-E-Y-'-S.

11 Q. DO YOU HAVE ANY CLIENTS IN THE SOCIAL NETWORK
12 MARKET?

13 A. YES, WE DO.

14 Q. CAN YOU GIVE AN EXAMPLE?

15 A. ZOEY'S ROOM WOULD BE AN EXAMPLE OF A CLIENT OF
16 OURS. ZOEY'S ROOM IS A SOCIAL NETWORK FOR TEENAGE GIRLS
17 FOCUSED ON HELPING THEM STUDY MATH AND SCIENCE.

18 Q. WHAT SERVICE DO YOU PROVIDE TO ZOEY'S ROOM?

19 A. WE PROVIDE AGE VERIFICATION -- IDENTITY AND AGE
20 VERIFICATION FOR THE PARENTS WHO ARE SIGNING UP THEIR
21 CHILDREN FOR THE WEBSITE.

22 Q. SO YOU VERIFY THE IDENTITY AND AGE OF A PARENT
23 AS OPPOSED TO THE CHILD?

24 A. CORRECT. AND THEN THE PARENT GRANTS ACCESS TO
25 THE CHILD AND THEY ALSO HAVE OTHER STEPS THAT THEY TAKE

1 TO VERIFY THE INDIVIDUAL.

2 Q. DO YOU KNOW WHY YOUR CLIENTS USE IDOLOGY?

3 A. YES.

4 Q. HOW DO YOU KNOW?

5 A. WELL, WE KNOW BECAUSE WE ARE OUT SELLING OUR
6 SERVICES TO THEM. AND WE TALK WITH THEM, AND WE ALSO
7 HAVE A WHOLE CUSTOMER SERVICE DEPARTMENT THAT CONTINUES
8 DIALOGUE WITH THESE COMPANIES TO HELP THEM UTILIZE OUR
9 PRODUCTS APPROPRIATELY.

10 Q. WHAT IS YOUR UNDERSTANDING OF WHY SEVERAL OF THE
11 INDUSTRIES THAT YOU MENTIONED USE IDOLOGY FOR AGE OR
12 IDENTITY VERIFICATION?

13 A. WELL, THEY USE US FOR A COUPLE OF PURPOSES.

14 ONE IS ON -- THEY WILL USE US TO HELP
15 THEM DECREASE THE AMOUNT OF FRAUD THAT COMES THROUGH
16 THEIR WEBSITES. AS I MENTIONED, TIGERDIRECT, RELATIVE
17 TO THE SELLING OF PLASMA TELEVISIONS AND SO FORTH, THEY
18 REALLY WANT TO KNOW THE PERSON THAT IS BUYING A PLASMA
19 TELEVISION IS WHO THEY SAY THEY ARE.

20 THE OTHER REASON THAT THEY WILL USE US IS
21 THAT BECAUSE OF THESE FRAUD FLAGS THAT WE TALKED ABOUT
22 BEFORE. WHEN YOU COME INTO A WEBSITE, EVEN THOUGH YOU
23 MAY BE A VERY LEGITIMATE TRANSACTION, THE FRAUD FLAGS
24 MAY KICK YOU OUT AND GIVE THE WEBSITE PAUSE RELATIVE TO
25 WHETHER OR NOT THEY ARE GOING TO COMPLETE THAT

1 TRANSACTION. WHAT OUR TECHNOLOGY DOES IS IT GIVES THEM
2 THE ABILITY TO BASICALLY COMPLETE THAT TRANSACTION BY
3 DOING AN IDENTITY VERIFICATION SO THEY GET ENOUGH
4 COMFORT TO KNOW THAT A PERSON IS WHO THEY SAY THEY ARE,
5 AND THEY CAN GO FORWARD AND COMPLETE THE TRANSACTION
6 EVEN THOUGH A FRAUD FLAG HAS BEEN APPARENT.

7 THE OTHER REASON WHY PEOPLE WILL USE US
8 IS FOR AGE VERIFICATION, TO CONFIRM THE AGE OF THE
9 PERSON BEFORE THEY SHIP A GOOD OR GRANT ACCESS TO
10 CONTENT.

11 Q. OKAY. I WOULD LIKE TO TURN NOW TO A DIFFERENT
12 TOPIC AND DESCRIBE -- HAVE YOU DESCRIBE HOW YOUR AGE AND
13 IDENTITY VERIFICATION PRODUCTS WORK. BUT BEFORE WE GET
14 THERE, I WOULD LIKE YOU TO DEFINE A COUPLE OF TERMS,
15 JUST FOR EASE OF REFERENCE.

16 WHEN YOU REFER TO A CLIENT, WHO ARE YOU
17 REFERRING TO?

18 A. THE CLIENT IS THE PERSON, THE ENTERPRISE THAT WE
19 HAVE OUR CONTRACT WITH, THAT WE DO THE BUSINESS WITH.

20 Q. ARE ALL OF YOUR CLIENTS ONLINE BUSINESSES?

21 A. YES.

22 Q. AND DO YOU HAVE ANY CLIENTS WHO SELL -- ARE THEY
23 ALL CONSUMER-NOT-PRESENT TRANSACTIONS?

24 A. YES.

25 THE COURT: CONSUMER, WHAT?

1 MR. BEANE: CONSUMER-NOT-PRESENT.

2 BY MR. BEANE:

3 Q. CAN YOU EXPLAIN WHAT CONSUMER-NOT-PRESENT MEANS?

4 A. THINK OF IT, WHEN YOU GO TO A STORE, AND YOU USE
5 YOUR CREDIT CARD. YOU ARE THERE AND THE CHECK-OUT
6 PERSON CAN ACTUALLY LOOK AT YOU. WHEN IT'S A
7 CONSUMER-NOT-PRESENT TRANSACTION, YOU ARE USING YOUR
8 CREDIT CARD OR YOU ARE GAINING ACCESS BUT YOU ARE NOT
9 THERE. YOU ARE CONDUCTING THE TRANSACTION THROUGH THE
10 INTERNET, SO YOU ARE NOT PRESENT.

11 Q. OKAY. WHEN YOU REFER TO A CUSTOMER, WHO ARE YOU
12 REFERRING TO?

13 A. A CUSTOMER WOULD BE THE PERSON THAT OUR CLIENT
14 IS DOING BUSINESS WITH. SO IN OTHER WORDS, AN EXAMPLE
15 WOULD BE A CUSTOMER AT TIGERDIRECT WOULD BE THE PERSON
16 THAT IS ENTERING THE WEBSITE TO PURCHASE GOODS.

17 Q. I WOULD LIKE TO REFER NOW TO DEFENDANT'S EXHIBIT
18 109.

19 DO YOU RECOGNIZE THIS DOCUMENT?

20 A. YES.

21 Q. WHAT IS THIS DOCUMENT?

22 A. THIS IS A SLIDE THAT SHOWS PART OF OUR PRODUCT
23 OF WHAT WE CALL AN ID CREDENTIAL.

24 Q. WHAT'S AN ID CREDENTIAL?

25 A. ID CREDENTIAL --

1 THE COURT: PAGE 1, YOU ARE LOOKING AT?

2 MR. BEANE: YES, I'M SORRY, PAGE 1 OF

3 EXHIBIT 109.

4 THE WITNESS: SO AN ID CREDENTIAL, AS YOU

5 CAN SEE HERE, IS WHAT IS IN THE BOX. AND IT WILL GIVE

6 YOU THE -- THIS IS THE PLACE WHERE YOU CAN INPUT

7 INFORMATION ABOUT THE CUSTOMER SO THAT YOU CAN PERFORM

8 THE VERIFICATION.

9 BY MR. BEANE:

10 Q. OKAY. BEFORE WE FOCUS ON THE BOX HERE, THE

11 GRAPHIC IN THE MIDDLE, WHAT IS EXPECTID AGE?

12 A. EXPECTID AGE IS A PRODUCT THAT IDOLOGY SELLS.

13 AND WHAT THAT PRODUCT DOES IS IT VERIFIES THE AGE OF THE

14 CONSUMER.

15 Q. WHAT INFORMATION DOES IDOLOGY NEED IN ORDER TO

16 VERIFY SOMEONE'S AGE?

17 A. IT CAN DEPEND ON THE CIRCUMSTANCES OF WHAT TYPE

18 OF INFORMATION WE WANT TO USE, OR I SHOULD SAY OUR

19 CLIENT WANTS TO USE. BUT IN THIS EXAMPLE, WHAT YOU SEE,

20 AT A MINIMUM, IF WE HAVE FIRST NAME, LAST NAME, STREET

21 ADDRESS AND ZIP CODE, THAT IS SUFFICIENT FOR US TO

22 PROCESS AN AGE VERIFICATION.

23 Q. WHAT OTHER INFORMATION CAN CUSTOMERS PROVIDE?

24 A. YOU CAN ALSO INCLUDE YOUR CITY AND STATE, YOU

25 CAN INCLUDE YOUR SSN, THE LAST FOUR DIGITS. THAT IS

1 YOUR SOCIAL SECURITY NUMBER, LAST FOUR DIGITS OF THAT
2 SOCIAL SECURITY NUMBER, AND ALSO YEAR OF BIRTH, OR WE
3 CAN ALSO DO MONTH AND YEAR OF BIRTH ALSO.

4 Q. OKAY. YOU INCLUDED WHAT APPEARS TO BE A GRAPHIC
5 THAT APPEARS TO BE A WEB PAGE, IS THAT RIGHT?

6 A. YES.

7 Q. WHO WOULD SEE THIS WEB PAGE?

8 THE COURT: ARE WE STILL ON PAGE 1?

9 MR. BEANE: YES, WE ARE STILL ON PAGE 1.

10 BY MR. BEANE:

11 Q. WHO WOULD SEE THIS WEB PAGE?

12 A. THIS WOULD BE AN ID CREDENTIAL THAT WOULD COME
13 FORWARD THROUGH OUR PORTAL. OUR PORTAL IS THE PLACE
14 WHERE CUSTOMER SERVICE REPRESENTATIVES, THE CLIENT -- I
15 SHOULD BACK UP, THIS CLIENT WOULD BASICALLY ACCESS AN ID
16 VERIFICATION THROUGH THE PORTAL. AND THIS PAGE WOULD
17 POP UP, THAT THEY WOULD INPUT THE INFORMATION INTO THIS
18 TO DO AN AGE VERIFICATION.

19 AND THAT IS ONE WAY YOU CAN DO IT. IT
20 ALSO CAN BE DONE UNDER THE COVERS UTILIZING THE CLIENT'S
21 OWN WEB PAGES. THEY DON'T HAVE TO USE THIS PER SE.

22 Q. AND FOCUSING ON THE ACTUAL FIELDS WITHIN THIS
23 GRAPHIC AND LOOKING AT THE TOP PART, WHO WOULD PROVIDE
24 THE INFORMATION THAT IS INCLUDED HERE?

25 A. THE CUSTOMER WOULD PROVIDE THIS.

1 Q. AND THEN LOOKING NOW TOWARDS THE BOTTOM, THERE
2 ARE THREE DIFFERENT OPTIONS. AND ONE OF THE THREE BOXES
3 IS CHECKED. WHAT DO THOSE THREE CHOICES REPRESENT?

4 A. THESE ARE WHAT YOU CAN CHECK TO INITIATE OUR
5 PRODUCTS. SO THE CURRENT CHECKMARK THAT YOU SEE THERE
6 RIGHT NOW, WHERE IT SAYS CHECK HERE TO PERFORM AGE
7 VERIFICATION, IS WHAT YOU WOULD CHECK TO INITIATE
8 VERIFICATION OF A PERSON'S AGE. THE BOX ABOVE THAT
9 WHERE IT SAYS, CHECK HERE TO FORCE VERIFICATION
10 QUESTIONS, IS A PRODUCT THAT WE CALL EXPECTID IQ AND --

11 Q. BEFORE YOU EXPLAIN THAT, I THINK WE WILL TURN TO
12 THAT AND TALK ABOUT THAT IN MORE DETAIL LATER.

13 WHAT IS THE THIRD BOX?

14 A. THE LAST BOX IS JUST AN OPPORTUNITY THAT IF AN
15 INDIVIDUAL HAS RECENTLY MOVED OR HAS A NAME CHANGE, YOU
16 CAN ALSO INPUT THAT INFORMATION ALSO.

17 Q. SO FOCUSING STILL ON THESE THREE BOXES, WHO
18 WOULD DECIDE WHICH BOX TO CHECK?

19 A. THE CLIENT WOULD DECIDE.

20 Q. AND THEN ONCE THEY HAVE INPUTTED THE
21 INFORMATION, AND ONCE THEY DECIDE WHICH OF THE PRODUCTS
22 FROM IDOLOGY THEY ARE GOING TO USE, WHAT HAPPENS NEXT?

23 A. WELL, THEY HIT THE ID BUTTON.

24 Q. WELL THEN LET'S TURN TO PAGE 2 OF EXHIBIT 109.
25 BEFORE WE EXPLAIN THE RESULTS THAT CAN COME UP, WHAT

1 HAPPENS ONCE THE ID BUTTON IS PUSHED?

2 A. SO YOU HIT THE ID BUTTON, AND ON A SECURE BASIS
3 USING ENCRYPTION TECHNOLOGY, THAT INPUT INFORMATION OF
4 THE NAME, ADDRESS, AND ZIP CODE, BY WAY OF EXAMPLE,
5 WOULD BE SENT TO IDOLOGY THROUGH A SECURE MEANS. THEN
6 WE TAKE THAT INFORMATION AND WE, ON A REALTIME BASIS,
7 ACCESS OUR DATA SOURCES. AND WE ACCESS THOSE DATA
8 SOURCES AND COMPARE THE INFORMATION THAT HAS BEEN
9 PROVIDED BY THE CUSTOMER TO WHAT WE SEE IN THE PUBLIC
10 DATA SOURCES.

11 Q. OKAY. BEFORE WE TALK ABOUT THESE DATA SOURCES,
12 DO YOU SELL THE DATA THAT YOU ACCUMULATE?

13 A. NO, SIR.

14 Q. AND DO YOU TAKE ANY STEPS TO PROTECT THE
15 SECURITY OF THE PERSONAL INFORMATION THAT YOU PROCESS?

16 A. YES, WE DO. WE TAKE QUITE A FEW STEPS.

17 Q. WHAT DO YOU DO?

18 A. AS I MENTIONED, WE ENCRYPT EVERYTHING WHEN WE
19 SEND IT OVER -- THROUGH THE INTERNET. BUT ALSO WHAT WE
20 DO IS, WE ARE VERY CONCERNED RELATIVE TO BEING VIEWED AS
21 A RESPONSIBLE USER OF DATA FOR THE CUSTOMER. AND MANY
22 -- MOST ENTERPRISES TODAY, OUR CLIENTS, DON'T HAVE A LOT
23 OF INTEREST IN SEEING A LOT OF DATA ON A CUSTOMER. WHAT
24 THEY WANT TO SEE IS A RESULT. THEY WANT TO SEE THAT
25 EITHER THE ID HAS BEEN VERIFIED, THAT THE PERSON IS OF

1 AGE, OR THEY WANT TO HAVE A RESPONSE THAT GIVES THEM
2 COMFORT THAT THESE PEOPLE ARE WHO THEY SAY THEY ARE.
3 THEY DON'T WANT TO LOOK AT RAW DATA. SO PART OF THE
4 SOLUTION THAT WE PROVIDE TO OUR CLIENTS IS THAT WE GIVE
5 THEM RESPONSES VERSUS AGGREGATE DATA ON SOMEONE. AND AT
6 THE SAME POINT IN TIME BY DOING THAT, WE ARE PROTECTING
7 THE CONSUMER OR THE CUSTOMER BECAUSE THEIR DATA IS NOT
8 BEING SEEN BY THE ENTERPRISE IN A FASHION THAT ANYBODY
9 COULD LOOK AT ALL THE DETAILS.

10 Q. I WOULD LIKE TO TURN NOW TO YOUR DATA SOURCES.
11 GENERALLY SPEAKING, WHAT ARE YOUR DATA SOURCES?

12 A. WE HAVE OVER 10,000 DATA SOURCES THAT ENCOMPASS
13 CLOSE TO 450 MILLION INDIVIDUALS IN THE UNITED STATES
14 AND TERRITORIES. AND THOSE TYPES OF SOURCES WOULD
15 INCLUDE DATA DERIVED FROM DRIVER'S LICENSES, VOTER
16 REGISTRATIONS, PROPERTY DEEDS, MARRIAGE AND DIVORCES,
17 CRIMINAL RECORDS, SEX OFFENDER LISTS, CREDIT REPORTS,
18 HUNTING AND FISHING LICENSES. AND THE LIST GOES ON.

19 Q. DOES IDOLOGY INTERACT DIRECTLY WITH ALL OF THESE
20 -- I THINK YOU SAID OVER 10,000 DATA SOURCES?

21 A. WE UTILIZE A DATA AGGREGATOR. THEIR ROLE IS
22 THAT THEY GO AGGREGATE THIS DATA FROM THE 10,000 SOURCES
23 AND THEN WE ACCESS THE DATA THAT WE NEED FROM THE DATA
24 AGGREGATOR.

25 Q. SO THE INFORMATION GOES FROM THE CLIENT THROUGH

1 IDOLOGY TO THE DATA SOURCE, AND THEN COMES BACK THROUGH
2 IDOLOGY, IS THAT CORRECT?

3 A. I'M SORRY. ONE MORE TIME.

4 Q. I JUST WANT TO BE CLEAR ABOUT WHERE EXACTLY THE
5 INFORMATION TRAVELS FROM. IT GOES FROM THE CLIENT
6 THROUGH IDOLOGY AND THEN IT IS CHECKED AGAINST THESE
7 DATA AGGREGATORS, IS THAT RIGHT?

8 A. YES, THAT'S CORRECT.

9 Q. NOW --

10 THE COURT: WHAT'S THE NEXT STEP? WHERE
11 DOES IT GO THEN?

12 MR. BEANE: SURE. THAT IS THE NEXT
13 QUESTION.

14 BY MR. BEANE:

15 Q. WHERE DOES THE INFORMATION GO AFTER THE DATA --
16 THE DATA AGGREGATOR VALIDATES OR PROVIDES INFORMATION
17 BACK TO YOU?

18 A. SO THE DATA AGGREGATOR PROVIDES THE DATA BACK TO
19 US. WE APPLY OUR LOGIC AND OUR SOLUTION TO THAT DATA
20 THAT WE GET FROM THE DATA AGGREGATOR AND THEN WE PROVIDE
21 BACK TO OUR CUSTOMERS A RESPONSE RELATIVE TO WHAT THEY
22 HAVE REQUESTED.

23 IN OTHER WORDS, IF THEY HAVE REQUESTED
24 AGE VERIFICATION ON A TRANSACTION, WE WILL INDICATE BACK
25 THAT THE INDIVIDUAL THAT THEY HAVE ASKED US TO LOOK AT

1 IS, FOR INSTANCE, OF AGE.

2 Q. BEFORE WE LEAVE THE TOPIC OF DATA SOURCES, ARE

3 ALL OF YOUR SOURCES OF DATA PUBLIC INFORMATION?

4 A. WELL, I THINK THEY ARE CONSIDERED PUBLIC BUT

5 ALSO NON-PUBLIC, A CREDIT-HEADER TYPE FILE.

6 Q. COULD YOU EXPLAIN WHAT A CREDIT-HEADER IS,

7 PLEASE?

8 A. SO A CREDIT-HEADER FILE WOULD BE INFORMATION

9 THAT IS ACCUMULATED FROM A CUSTOMER ENTERING INTO CREDIT

10 TYPE TRANSACTIONS OUT IN THE WORLD. SO AN EXAMPLE WOULD

11 BE, IF I'M A PERSON THAT GOES AND RENTS AN APARTMENT,

12 THAT APARTMENT IS GOING TO RUN A CREDIT CHECK ON ME. IN

13 THE PROCESS OF DOING THAT CREDIT CHECK, I HAVE A CREDIT

14 RECORD THAT IS CREATED AT THE CREDIT SOURCES, AND THEN

15 THOSE CREDIT SOURCES, THOSE ARE COMPANIES LIKE EQUIFAX

16 AND TRANSUNION AND EXPERION, THEN WILL BREAK OUT JUST

17 THE NAME, ADDRESS AND DATE OF BIRTH OFF THAT INFORMATION

18 AND THAT CAN BE PURCHASED BY THE DATA AGGREGATORS.

19 Q. AND IS THE DATA THAT THE DATA AGGREGATORS

20 COLLECT REFRESHED FROM TIME-TO-TIME?

21 A. YES. IT CAN BE REFRESHED ON A REALTIME BASIS,

22 IT CAN BE REFRESHED EVERY HOUR, EVERY WEEK. AND IN SOME

23 CASES LESS THAN THAT. BUT IT'S VERY -- IT'S DEPENDENT

24 ON THE DATA SOURCE.

25 Q. DO YOU HAVE ACCESS TO DATA FOR ALL U.S.

1 CITIZENS?

2 A. NO.

3 Q. WHY NOT?

4 A. WELL, NOT EVERYONE HAS A DATA RECORD AT OUR --
5 AT THE AGGREGATORS. IT COULD BE --

6 Q. DO YOU KNOW WHAT PERCENTAGE OF PEOPLE IN THE
7 UNITED STATES YOU HAVE ACCESS TO DATA RECORDS ON?

8 A. YES.

9 Q. AND HOW DO YOU KNOW?

10 A. OUR DATA -- ONE OF OUR DATA PROVIDERS PROVIDES
11 THAT INFORMATION TO US.

12 Q. AND DO YOU RELY ON THE INFORMATION THAT THEY
13 PROVIDE WHEN YOU ARE MARKETING YOUR PRODUCT TO CLIENTS
14 OR POTENTIAL BUSINESSES THAT YOU ARE GOING TO ENTER INTO
15 TRANSACTIONS WITH?

16 A. YES.

17 Q. AND WHAT DO YOU KNOW ABOUT THE PERCENTAGE OF
18 PEOPLE THAT THEY HAVE RECORDS FOR?

19 MR. HARRIS: OBJECTION. LACK OF
20 FOUNDATION. THIS WITNESS IS HERE ONLY AS A FACT
21 WITNESS. HE HAS NO PERSONAL KNOWLEDGE AS TO THIS DATA.
22 IT IS ALL HEARSAY INFORMATION.

23 MR. BEANE: YOUR HONOR, THIS FACT IS
24 CENTRAL TO HOW HE DOES BUSINESS AND OBTAINS CLIENTS.

25 THE COURT: IT MAY BE HEARSAY BUT IT MAY

1 BE IMPORTANT. IF HE GETS SOME DOCUMENT BACK FROM --
2 THAT REPORTS ON THIS, YOU ASSUME IF HE HAD A COPY OF IT,
3 THAT WOULD BE ONE THING. IT WOULD BE A BUSINESS RECORD.
4 BUT I WILL SUSTAIN THE OBJECTION.

5 MR. BEANE: WE WILL MOVE ON.

6 THE COURT: FOUNDATION.

7 BY MR. BEANE:

8 Q. YOU MENTIONED THAT YOU HAVE OVER 10,000 SOURCES
9 OF RECORDS. DO YOU KNOW HOW MANY PEOPLE THERE ARE
10 RECORDS ON?

11 A. ABOUT 450 MILLION.

12 MR. HARRIS: THAT IS A YES OR NO
13 QUESTION, YOUR HONOR.

14 THE WITNESS: YES.

15 BY MR. BEANE:

16 Q. AND HOW DO YOU KNOW?

17 A. THAT IS INFORMATION THAT WE GET FROM OUR DATA
18 PROVIDER.

19 Q. AND DO YOU RELY ON THAT INFORMATION WHEN YOU ARE
20 MARKETING YOUR PRODUCT TO POTENTIAL CLIENTS?

21 A. YES.

22 Q. WHAT IS YOUR UNDERSTANDING THAT YOU REPRESENT TO
23 CLIENTS ABOUT THE AMOUNT OF INFORMATION THAT YOU HAVE
24 ACCESS TO?

25 MR. HARRIS: OBJECTION. LACK OF

1 FOUNDATION, HEARSAY.

2 THE COURT: IT'S HARD TO FIGURE OUT IF
3 IT'S RELIABLE IF IT COMES FROM AN UNNAMED THIRD-PARTY.
4 MR. BEANE, DON'T YOU THINK IT'S HEARSAY?

5 MR. BEANE: I THINK -- I'M ASKING HIM
6 ABOUT HIS UNDERSTANDING. I'M NOT ASKING FOR THE TRUTH
7 OF THE MATTER ASSERTED. I'M ASKING FOR HIS
8 UNDERSTANDING. AND IN HIS ORDINARY COURSE OF BUSINESS
9 WHEN HE INTERACTS WITH CLIENTS, WHAT DOES HE REPRESENT
10 TO THESE PEOPLE.

11 MR. HARRIS: NOW WE ARE TALKING TWO
12 DIFFERENT THINGS. HIS UNDERSTANDING IS NOT RELEVANT TO
13 THIS CASE.

14 THE COURT: THAT'S MY QUESTION. HIS
15 STATE OF MIND, HIS UNDERSTANDING, HOW IS THAT RELEVANT
16 TO THIS CASE?

17 MR. BEANE: HE IS HERE AS A FACT WITNESS
18 TO TESTIFY ABOUT HIS PERSONAL EXPERIENCE IN THE AGE AND
19 IDENTITY VERIFICATION MARKET.

20 THE COURT: WELL, I WILL SUSTAIN THE
21 OBJECTION WITH THIS SUGGESTION OR OBSERVATION. IF YOU
22 WANT TO DEVELOP HOW HE GETS THIS INFORMATION, HOW HE
23 ASKS FOR IT, AND WHAT FORM IT IS, AND WHAT HE DOES WITH
24 IT, TO SHORE UP HIS RELIABILITY, YOU ARE WELCOME TO DO
25 THAT. BUT RIGHT NOW, WE HAVE A THIRD-PARTY, A NO NAME,

1 GIVING INFORMATION ON AN UNKNOWN, WITH UNKNOWN
2 FREQUENCY, AND WE DON'T KNOW WHAT HE DOES WITH IT. WITH
3 THESE OVERALL PERCENTAGES, THERE IS JUST NO INFORMATION
4 IN THE RECORD.

5 BY MR. BEANE:

6 Q. DO YOU HAVE ANY RECORDS ON YOUNG ADULTS?

7 A. YES.

8 Q. WHAT RECORDS DO YOU HAVE ON YOUNG ADULTS?

9 A. WELL, WE WOULD GET RECORDS FROM OUR DATA
10 PROVIDER RELATIVE TO INFORMATION ON YOUNG ADULTS.

11 Q. WHAT TYPES OF RECORDS DO YOUR DATA PROVIDERS
12 HAVE ON YOUNG ADULTS?

13 A. WELL, A DATA RECORD IS CREATED FROM DIFFERING
14 TRANSACTIONS WHICH HAPPEN IN THE WORLD. ONE WOULD BE
15 THE ISSUANCE OF A DRIVER'S LICENSE. ANOTHER WOULD BE A
16 VOTER REGISTRATION. ANY TYPE OF CREDIT TRANSACTION THAT
17 A YOUNGER ADULT ENTERS INTO RELATIVE TO PURCHASING A
18 CAR, YOU KNOW, LEASING AN APARTMENT, PURCHASING CERTAIN
19 TYPES OF PROPERTY WOULD CREATE A RECORD FOR A YOUNG
20 ADULT.

21 Q. DO YOU HAVE ANY RECORDS ON PEOPLE WHO ARE IN THE
22 COUNTRY BUT NOT UNITED STATES CITIZENS?

23 A. YES.

24 Q. WHAT TYPES OF RECORDS?

25 A. IT WOULD BE SIMILAR TYPES OF RECORDS, BECAUSE IF

1 SOMEONE COMES INTO THE UNITED STATES THEY START DOING
2 AGAIN TRANSACTIONS THAT ARE GOING TO GET RECORDED IN
3 PUBLIC SOURCES. SO, AGAIN, THEY COULD HAVE A DRIVER'S
4 LICENSE. I HOPE THEY WOULD NOT BE VOTING. THEY HAVE
5 CREDIT RECORDS THAT WOULD -- CREDIT HEADER RECORDS THAT
6 WOULD COME FORWARD FROM TRANSACTIONS THEY WOULD ENTER
7 INTO.

8 Q. OKAY. WE JUST TOOK A DETOUR TO TALK ABOUT YOUR
9 DATA SOURCES A LITTLE BIT. BUT BEFORE WE GOT THERE, YOU
10 WERE DESCRIBING HOW THE DATA IS SENT THROUGH IDOLOGY
11 INTO A DATA AGGREGATOR AND HOW THE INFORMATION COMES
12 BACK. HOW LONG DOES THE PROCESS FOR VERIFYING SOMEONE'S
13 AGE OR IDENTITY TAKE?

14 A. IT'S BELOW ONE SECOND. IN MANY CASES IT'S
15 SUBSECOND.

16 Q. OKAY. LET'S FOCUS NOW ON THE EXHIBIT ON THE
17 SCREEN. IT'S PAGE 2 OF DEFENDANT'S EXHIBIT 109.

18 WHAT IS THIS PAGE?

19 A. THIS IS A PAGE WHICH SHOWS ID RESULTS FOR AN AGE
20 VERIFICATION. IF YOU RECALL, WE HAD A SCREEN UP HERE
21 BEFORE THAT HAD INFORMATION RELATIVE TO, I BELIEVE, JOHN
22 DOE. AND IF YOU HIT THE ID BUTTON FROM THAT ID
23 CREDENTIAL, YOU WOULD, IN ESSENCE, HAVE THREE RESULTS
24 THAT COULD COME FORWARD FROM DOING THAT, ONE OF WHICH
25 WOULD BE THAT JOHN IS OF MINIMUM AGE. THAT MINIMUM AGE

1 IS SET BY EACH CLIENT INDIVIDUALLY. THAT THEY ARE NOT
2 OF MINIMUM AGE, OR THAT THE CLIENT NEEDS TO CONFIRM AGE.

3 Q. OKAY. IN WHAT CIRCUMSTANCES WOULD YOU COME UP
4 WITH THIS SECOND -- THIRD SCREEN, I'M SORRY. CONFIRM
5 AGE?

6 A. WELL, CONFIRM AGE COULD BE THAT JUST BOGUS
7 INFORMATION WAS PUT IN THERE BY THE PERSON TRYING TO
8 COMPLETE A TRANSACTION. SO IT'S JUST A PERSON THAT JUST
9 DOES NOT EXIST.

10 IT COULD ALSO BE THAT THE CONSUMER INPUT
11 INFORMATION THAT WAS JUST TERRIBLY WRONG FROM THE
12 STANDPOINT OF AN INPUT STANDPOINT. WE DO HAVE A LOGIC
13 THAT ADDRESSES TYPOS AND OTHER INCONSISTENCIES. BUT IF
14 THEY REALLY, REALLY BUTCHER IT, IT WOULD BE DIFFICULT
15 FOR US TO VERIFY THAT PERSON AND LOCATE THEM, SO WE COME
16 BACK WITH CONFIRM AGE.

17 Q. LET ME ASK YOU A QUESTION ABOUT THE
18 TYPOGRAPHICAL ERRORS. DOES EVERYTHING THAT A CUSTOMER
19 TYPES INTO THE INTERNET HAVE TO BE AN EXACT MATCH IN
20 ORDER FOR YOU TO BE ABLE TO VERIFY THEIR AGE OR
21 IDENTITY?

22 A. NO.

23 Q. WHY NOT?

24 A. WE HAVE WHAT WE CALL LEVINSTEIN LOGIC. THAT'S
25 L-E-V-I-N-S-T-E-I-N.

1 Q. WHAT IS LEVINSTEIN LOGIC?

2 A. LEVINSTEIN LOGIC GIVES YOU THE ABILITY TO
3 CORRECT DATA INPUT. LET ME GIVE YOU AN EXAMPLE.

4 IF I LIVE ON 500 CONWAY DRIVE, AND I
5 SPELL CONWAY CORRECTLY C-O-N-W-A-Y, THERE IS NO ISSUE
6 THERE. BUT IF I SPELL IT C-O-N-W-Y-A, THAT IS AN
7 INCORRECT SPELLING. AND THE LEVINSTEIN LOGIC WILL
8 CORRECT THAT. IT GIVES YOU THE ABILITY TO CORRECT TYPOS
9 AND BAD INPUT.

10 Q. OKAY. WHAT HAPPENS IF SOMEBODY RECENTLY CHANGED
11 AN ADDRESS AND FORGOT TO UPDATE THEIR RECORDS?

12 A. WE CAN STILL LOCATE THEM AND VERIFY THEIR AGE.

13 Q. HOW?

14 A. THEY HAVE MULTIPLE -- THEY HAVE OTHER RECORDS
15 THAT THEY HAVE IN THEIR PUBLIC DATA SOURCES THAT WE CAN
16 USE TO IDENTIFY THEM. THEY HAVE DIFFERING DATA POINTS
17 FROM THEIR IDENTITY THAT WE CAN UTILIZE TO FIND THEM.

18 FOR INSTANCE, THEIR YEAR OF BIRTH, THEIR
19 SSN4. WE DON'T NEED TO HAVE EXACT MATCH INFORMATION
20 ACROSS A WHOLE ID CREDENTIAL TO LOCATE SOMEONE. WE HAVE
21 THE ABILITY TO REALLY TAKE AN IDENTITY, PARSE IT INTO
22 ITS COMPONENTS, AND USE THOSE COMPONENTS TO MAXIMIZE OUR
23 LOCATE RATE FOR CUSTOMERS.

24 Q. ARE YOU ABLE TO VERIFY SOMEONE'S AGE AND
25 IDENTITY IF THEY RECENTLY HAD A NAME CHANGE BECAUSE OF,

1 SAY, MARRIAGE OR DIVORCE?

2 A. YES.

3 Q. HOW?

4 A. WELL, OUR DATA PROVIDER HAS A LINKING TECHNOLOGY
5 THAT GIVES THEM THE ABILITY TO LINK RECORDS THAT WOULD
6 HAVE DIFFERING NAMES IN THEM. FOR INSTANCE, A MAIDEN
7 NAME AND A MARRIED NAME.

8 Q. LET'S TURN NOW TO THE THIRD PAGE OF DEFENDANT'S
9 EXHIBIT 109.

10 WHAT IS THIS PAGE?

11 A. THIS IS THE EXPECTED AGE CREDENTIAL SETTING
12 PAGE. THIS IS, AGAIN, A PORTION OF WHERE THE CLIENT
13 GOES TO CONFIGURE OUR PRODUCT. IN ESSENCE, WHAT THIS
14 DOES, IT GIVES THEM THE ABILITY TO SET THE MESSAGING FOR
15 THE -- RELATIVE TO WHETHER OR NOT AN AGE IS VERIFIED,
16 YOU SEE ON THE LEFT, VERIFIED OF AGE AND VERIFIED
17 UNDERAGE, AND CAN'T VERIFY, CONFIRM AGE. SO THEY CAN
18 SET THE MESSAGING FOR THAT.

19 Q. BEFORE YOU GO ON, LET ME ASK, WHO WOULD SEE THIS
20 MENU OF OPTIONS?

21 A. THE CLIENT WOULD.

22 Q. AND THE CLIENT WOULD CHOOSE AMONG THE DIFFERENT
23 OPTIONS THAT ARE LISTED IN THIS GRAPHIC?

24 A. YES.

25 Q. OKAY. AND CAN YOU PLEASE DESCRIBE THE DIFFERENT

1 LISTINGS IN THE GRAPHIC.

2 A. YES.

3 SO IF WE -- JUST LOOK ON THE LEFT UNDER
4 WHERE IT SAYS: EXPECTID AGE RESULT TEXT. ON THE THREE
5 LINES THERE, THOSE ARE, IN ESSENCE, THE AGE VERIFICATION
6 RESPONSES THAT WE ARE GOING TO COME BACK WITH WHEN WE DO
7 AN AGE VERIFICATION. SO EITHER THE PERSON IS VERIFIED
8 OF AGE, VERIFIED UNDER AGE, OR WE CAN'T VERIFY, SO THE
9 CLIENT NEEDS TO CONFIRM AGE.

10 Q. SO WERE THOSE THREE RESULTS REPRESENTED ON THE
11 LAST PAGE THAT WE LOOKED AT?

12 A. YES, SIR.

13 Q. OKAY. AND WHAT'S AT THE BOTTOM OF THIS GRAPHIC?

14 A. THEN WE ALSO GIVE THE CLIENT THE ABILITY TO
15 CHOOSE WHAT THE MINIMUM CUSTOMER AGE IS FOR THEIR AGE
16 VERIFICATION. IN THIS CASE, WE -- THE AGE IS SET AT 18
17 BUT THE CLIENT CAN COME IN HERE AND CONFIGURE THIS TO BE
18 19, TO BE 21, WHATEVER THE CLIENT NEEDS TO DO RELATIVE
19 TO ESTABLISHING A MINIMUM AGE. HE CAN COME IN HERE AND
20 CHANGE THIS AT ANY TIME.

21 Q. LET'S TURN NOW TO THE FOURTH PAGE OF DEFENDANT'S
22 EXHIBIT 109.

23 WHAT IS THIS PAGE?

24 A. THIS IS A PAGE WHICH DEMONSTRATES THE
25 AUTHENTICATION METHODS THAT THE CLIENT CAN INITIATE IN

1 DOING AN AGE OR IDENTITY VERIFICATION.

2 Q. AND WHAT DIFFERENT OPTIONS ARE AVAILABLE FOR
3 YOUR CLIENTS?

4 A. WELL, AGAIN, IF YOU START LOOKING ON THE LEFT
5 THERE, AND WE KIND OF WORK OUR WAY DOWN, THE FIRST BOX
6 THAT WE HAVE WHICH IS NOT CHECKED, SAYS, CAPTURE NAME,
7 AND ADDRESS ONLY FOR ALL IDS. AND THAT IS SETTING THE
8 DATA INPUT THAT THEY WOULD REQUIRE THE CUSTOMER TO PUT
9 INTO THE WEB PAGE TO BE AGE VERIFIED. AND IN THAT CASE,
10 IT WOULD ONLY BE NAME, STREET ADDRESS AND ZIP CODE.

11 AND IF YOU GO DOWN TO THE NEXT BOX, YOU
12 CAN REQUEST OTHER UNIQUE IDENTIFIERS. AND THAT BOX
13 WOULD BE -- WHERE IT SAYS, REQUEST SSN4 AND YEAR OF
14 BIRTH, EITHER SSN4 OR YEAR OF BIRTH WILL BE REQUIRED.
15 BOTH WILL BE DISPLAYED.

16 SO THAT WHEN YOU GO DO YOUR AGE
17 VERIFICATION WOULD THEN BRING UP TWO BOXES. ONE THAT
18 WILL GIVE YOU THE ABILITY TO INPUT SSN4 AND THE OTHER
19 WHICH WOULD GIVE YOU THE ABILITY TO INPUT YEAR OF BIRTH.

20 AND YOU CAN ALSO HAVE THOSE BOXES POP UP,
21 IF YOU LOOK AT THE LARGE RECTANGULAR BOXES UNDER THE
22 CHECKS THERE, BASED ON DOLLAR VALUE. SO IF I WANTED TO
23 ASK FOR ADDITIONAL INFORMATION BASED ON A TRANSACTION
24 BEING \$500, OVER \$500, I CAN DO THAT. THERE IS A
25 TREMENDOUS LEVEL OF CONFIGURABILITY HERE RELATIVE TO HOW

1 YOU AUTHENTICATE YOUR CUSTOMER, RELATIVE TO WHAT YOU CAN
2 CHOOSE TO DO AN IDENTITY OR AGE VERIFICATION.

3 Q. DO SOME OF YOUR CLIENTS SET A MINIMUM DOLLAR
4 THRESHOLD BEFORE THEY REQUIRE IDENTITY OR AGE
5 VERIFICATION FOR THEIR CUSTOMERS?

6 A. THEY COULD, YES.

7 Q. ALL RIGHT. LET'S TURN NOW TO PAGE 5 IN
8 DEFENDANT'S EXHIBIT 109.

9 IT SAYS: SAMPLE QUESTIONS. WHAT IS THIS
10 PAGE?

11 A. THIS IS OUR PRODUCT THAT WE CALL EXPECTID IQ.
12 AND EXPECTID IQ PRESENTS A QUESTION SET TO EACH CUSTOMER
13 BASED ON DATA FROM THEIR DATA FILES THAT WE GET ON A
14 REALTIME BASIS.

15 Q. LET'S FOCUS IN ON EACH OF THE FOUR EXAMPLES
16 HERE.

17 MR. BEANE: AND MR. BYRDSONG, IF YOU
18 COULD BLOW UP EACH ONE IN TURN, IT MIGHT BE EASIER TO
19 READ.

20 BY MR. BEANE:

21 Q. WHAT IS THIS QUESTION?

22 A. THIS IS A SAMPLE OF ONE OF THE QUESTIONS THAT WE
23 WOULD UTILIZE. IT ASKS IN WHICH COUNTRY -- IN WHICH
24 COUNTY HAVE YOU LIVED. AND THEN IT GIVES YOU
25 THE ABILITY TO SELECT A CHOICE ON A MULTIPLE CHOICE

1 BASIS.

2 Q. AND WHAT IS THE SECOND EXAMPLE?

3 A. THE SECOND EXAMPLE ASKS WHICH OF THE FOLLOWING
4 PEOPLE DO YOU KNOW. AND IT GIVES YOU AN OPTION TO PICK
5 FROM FIVE INDIVIDUALS PLUS NONE OF THE ABOVE.

6 Q. LET'S TURN NOW TO THE THIRD EXAMPLE.

7 A. THE NEXT QUESTION ASKS IN WHICH CITY IS YOUR
8 FORMER ADDRESS ON CASTLE FALLS DRIVE. AGAIN, IT GIVES
9 YOU A MULTIPLE CHOICE OPTION RELATIVE TO ACTUAL ANSWERS
10 VERSUS NONE OF THE ABOVE.

11 Q. AND FINALLY, THE FOURTH EXAMPLE.

12 A. THE FOURTH EXAMPLE ASKED ON WHICH STREET IS YOUR
13 FORMER ADDRESS WITH THE NUMBER 2304. SO IT'S ASKING YOU
14 TO MATCH THAT STREET NUMBER WITH THE STREET ADDRESS THAT
15 IT WAS ASSOCIATED WITH.

16 Q. SO THESE ARE THE TYPE OF QUESTIONS THAT MIGHT BE
17 GENERATED IF ONE OF YOUR CLIENTS WANTS TO FORCE A
18 SECONDARY LEVEL OF AUTHENTICATION, IS THAT RIGHT?

19 A. THAT'S CORRECT.

20 Q. ARE THERE OTHER TYPES OF QUESTIONS?

21 A. YES. WE HAVE MULTIPLE TYPES OF QUESTIONS.
22 OTHER QUESTION THAT WE CAN ASK RELATE TO VEHICLE
23 QUESTIONS. WE CAN ASK WHAT IS THE COLOR OF YOUR 2002
24 CADILLAC. WE CAN ASK YOU WHAT MODEL YEAR IS YOUR LEXUS.
25 WE CAN ASK QUESTIONS RELATIVE TO MONTH OF BIRTH, YEAR OF

1 BIRTH. AND THESE QUESTIONS, FOR ME, GO BACK OVER 25
2 YEARS.

3 Q. AND HOW ARE THESE QUESTIONS GENERATED?

4 A. THESE QUESTIONS ARE GENERATED FROM THE DATA FILE
5 OF EACH INDIVIDUAL, FROM THE CONSUMER.

6 Q. AND HOW QUICKLY DOES IDOLOGY GENERATE THESE
7 QUESTIONS?

8 A. UNDER A SECOND.

9 Q. ARE THE QUESTIONS THE SAME EACH TIME?

10 A. THE QUESTIONS ARE BROUGHT FORTH ON A RANDOM
11 BASIS SO THEY CAN BE DIFFERENT, BUT THERE COULD ALSO BE
12 A SIMILAR QUESTION. TO GIVE YOU AN EXAMPLE, FOR ME, I
13 THINK I HAVE OVER EIGHT ADDRESSES THAT WILL POP UP. SO
14 I CAN GET A QUESTION RELATIVE TO AN ADDRESS EIGHT
15 SEPARATE TIMES, FROM DIFFERENT ADDRESSES.

16 Q. AND ARE THE QUESTIONS ALWAYS MULTIPLE CHOICE?

17 A. YES.

18 Q. IS THERE ALWAYS A CORRECT ANSWER?

19 A. YES. BUT THE CORRECT ANSWER CAN BE NONE OF THE
20 ABOVE. IT CAN BE -- WE ASK BOTH FACTUAL AND FICTIONAL
21 QUESTIONS.

22 Q. AND WHY DO YOU ASK A FICTIONAL QUESTION?

23 A. WE JUST THINK IT'S THE RIGHT MIX TO REALLY
24 VERIFY WHO SOMEONE IS.

25 Q. AND HOW MANY DIFFERENT QUESTIONS ARE GENERATED

1 IN ORDER TO TEST THE KNOWLEDGE OF ONE'S OWN IDENTITY?

2 A. AGAIN, IT'S UP TO THE CLIENT. TODAY OUR PRODUCT
3 GIVES YOU THE ABILITY TO ASK ANYWHERE BETWEEN THREE TO
4 FIVE QUESTIONS AND THE CLIENT CAN CHOOSE HOW MANY HE
5 WOULD LIKE TO ASK.

6 Q. WHY WOULD A CLIENT CHOOSE TO ASK MORE QUESTIONS?

7 A. IT MIGHT BE THAT IT'S A FINANCIAL TRANSACTION OR
8 A HIGH-RISK TRANSACTION THAT THEY WOULD PREFER TO ASK
9 FOUR QUESTIONS INSTEAD OF THREE QUESTIONS.

10 Q. WHAT HAPPENS IF SOMEONE MISSES A QUESTION?

11 A. AGAIN, IT'S UP TO THE CLIENT. THE CLIENT CAN
12 DECIDE WHAT THE CORRECT PASS RESULT CAN BE. MANY OF OUR
13 CUSTOMERS ARE OKAY IF THE PERSON ANSWERS TWO OUT OF
14 THREE CORRECTLY. THEY WILL STILL MOVE FORWARD WITH THE
15 TRANSACTION ON THAT BASIS. BUT WE DON'T DECIDE. THE
16 CLIENT CAN DECIDE THROUGH OUR PRODUCT, BY CONFIGURING IT
17 APPROPRIATELY, WHAT IS ACCEPTABLE TO THEM.

18 Q. WHY DO YOU OFFER THIS SERVICE?

19 A. THERE IS A REAL MARKET NEED FOR THIS. I MEAN,
20 THERE IS A TREMENDOUS LEVEL OF ACTIVITY ON THE INTERNET.
21 INTERNET COMMERCE CONTINUES TO GROW VERY RAPIDLY. THE
22 BAD GUYS ARE TRYING TO FIGURE OUT MORE AND MORE
23 DIFFERENT WAYS TO TRY TO BEAT THE SYSTEM. AND THIS IS
24 CLEARLY A VERY EFFECTIVE WAY OF US IDENTIFYING --
25 VERIFYING THE IDENTITY OF A PERSON.

1 Q. AND DO YOU HAVE CLIENTS WHO USE THIS SERVICE
2 NOW?

3 A. YES.

4 Q. LET'S TURN NOW TO PAGE 6 OF DEFENDANT'S EXHIBIT
5 109. THE TOP OF THE PAGE SAYS: VELOCITY LIMITS. WHAT
6 DOES THIS PAGE REPRESENT?

7 A. AGAIN, THIS IS ANOTHER PART OF OUR PRODUCT THAT
8 THE CLIENT CAN CONFIGURE. AND THINK OF VELOCITY AS A
9 WAY OF FLAGGING REPEATED TRANSACTIONS THAT COME FROM THE
10 SAME ADDRESS, OR A COMBINATION OF NAME AND ADDRESS AND
11 OTHER INFORMATION.

12 SO LET ME GIVE YOU AN EXAMPLE. LET'S SAY
13 SOMEONE HAS DECIDED THAT THEY WANT TO AGE VERIFY THEIR
14 CUSTOMERS BUT THEY ARE WORRIED ABOUT THE FACT THAT
15 SOMEBODY CAN COME AND REPEATEDLY COME AND DO AN AGE
16 VERIFICATION AND DRIVE UP THEIR COSTS.

17 Q. WHY WOULD SOMEONE DO THAT?

18 A. MAYBE THEY ARE JUST TRYING TO DRIVE UP SOMEBODY
19 ELSE'S COSTS.

20 Q. DO CLIENTS HAVE TO SET A VELOCITY LIMIT?

21 A. THEY DON'T HAVE TO, BUT MOST OF THEM DO.
22 VELOCITY IS PRETTY IMPORTANT.

23 Q. WHO WOULD SEE THIS PAGE WITH THE DIFFERENT
24 TRANSACTION LIMITS?

25 A. AGAIN, THIS IS A PAGE THAT ONLY THE CLIENT SEES.

1 Q. AND WHAT ARE THE DIFFERENT CONDITIONS TO
2 MONITOR?

3 A. IN THIS CASE, WHAT WE HAVE DONE IS WE HAVE SET A
4 VELOCITY MONITOR ON -- WHERE YOU SEE CONDITIONS TO
5 MONITOR ON NAME AND ADDRESS. SO IN THIS INSTANCE, IF
6 THE SAME NAME AND ADDRESS WAS ATTEMPTED ON THIS WEB SITE
7 OVER TWO TIMES OVER A PERIOD OF 48 HOURS, THEN IN THIS
8 INSTANCE, THE CLIENT HAS DECIDED TO INITIATE THE
9 QUESTIONS THAT WE JUST PRESENTED, THAT WE JUST WENT
10 THROUGH, TO VERIFY THAT TRANSACTION. BUT THEY ALSO
11 COULD JUST STOP THE TRANSACTION IF THE VELOCITY FLAG
12 HIT.

13 Q. AND DO SOME OF YOUR CLIENTS USE THESE VELOCITY
14 LIMITS?

15 A. YES.

16 Q. LET'S TURN NOW TO THE SEVENTH AND FINAL PAGE OF
17 DEFENDANT'S EXHIBIT 109. IT SAYS: ZIP CODE
18 RESTRICTIONS ACROSS THE TOP OF THE PAGE. WHAT DOES THIS
19 PAGE REPRESENT?

20 A. WELL, WE GIVE OUR CLIENTS LOTS OF TOOLS TO HELP
21 THEM CONTROL AND MANAGE THEIR BUSINESS. AND THIS IS ONE
22 THAT, IN FACT, OUR CLIENTS REQUESTED. AND WHEN WINERIES
23 ARE SELLING BUSINESS -- EXCUSE ME, WHEN WINERIES ARE
24 SELLING WINE OVER THE INTERNET, THEY WANT TO MAKE SURE
25 THAT THEY DON'T SELL TO AREAS THAT MAY BE ENCOMPASSED

1 ALL BY COLLEGE CAMPUSES. SO THIS WOULD GIVE THEM THE
2 ABILITY TO PUT IN A ZIP CODE THAT IS ALL-ENCOMPASSED BY
3 A COLLEGE CAMPUS -- INCLUDED IN A COLLEGE CAMPUS. AND
4 IF THAT TRANSACTION COMES FORWARD FROM JOHN DOE FROM
5 THAT ZIP CODE, THEY CAN STOP THE TRANSACTION. IT JUST
6 WOULDN'T GET PROCESSED.

7 Q. SO THE CLIENT HAS THE OPTION TO REFUSE SALES TO
8 PEOPLE IN SPECIFIC ZIP CODES?

9 A. CORRECT.

10 Q. DO SOME CLIENTS USE THIS SERVICE?

11 A. YES. THE WINERIES USE IT. AND THE OTHER AREA
12 THAT IT IS USED IS WITH MERCHANTS THAT ARE SELLING
13 GOODS. THERE ARE CERTAIN ZIP CODES THAT HISTORICALLY
14 HAVE MUCH HIGHER RATES OF FRAUD, PLACES LIKE THE BRONX
15 AND MIAMI AND DETROIT AND LOS ANGELES. IF YOU LOOK AT
16 FRAUD STATS, YOU WILL SEE THAT THERE ARE BIG RED ZONES
17 ON THOSE CITIES. THERE ARE FRAUD RINGS THAT ARE WORKING
18 OUT OF THOSE AREAS. AND BY PUTTING IN CERTAIN ZIP CODES
19 THAT THEY CAN LOOK AT ON AN HISTORICAL BASIS FROM THEIR
20 RECORDS, THEY CAN FLAG THOSE AND THEY CAN STOP A
21 TRANSACTION, OR THEY COULD -- MOST OF WHAT THEY DO IS GO
22 TO A HIGHER LEVEL OF VERIFICATION FOR THOSE
23 TRANSACTIONS. THEY WILL GO TO ASK THE QUESTIONS TO
24 REALLY VERIFY THE IDENTITY OF THE INDIVIDUAL.

25 Q. SO SOME OF THE CLIENTS THEN USE THE SECONDARY

1 AUTHENTICATION. THE PRODUCT NAME IS EXPECTID IQ, IS
2 THAT RIGHT?

3 A. YES.

4 Q. SO THROUGH YOUR PRODUCT, YOU HAVE A WAY OF
5 KNOWING THE LOCATION BY ZIP CODE OF THE CLIENTS WHOSE
6 AGE AND IDENTITY YOU VERIFY?

7 A. YES.

8 MR. BEANE: YOUR HONOR, I NOTE THAT WE
9 ARE NEAR THE NORMAL TIME FOR OUR AFTERNOON BREAK AND
10 THIS IS A NATURAL BREAKING POINT.

11 THE COURT: OKAY. WE WILL HAVE OUR
12 AFTERNOON RECESS FOR TEN MINUTES.

13 WE ARE OFF THE RECORD. COUNSEL ARE
14 EXCUSED.

15 (BREAK TAKEN.)

16 THE COURT: PLEASE BE SEATED.

17 MR. BEANE, ARE YOU FINISHED ON DIRECT?

18 MR. BEANE: NO, I'M NOT, YOUR HONOR.

19 BY MR. BEANE:

20 Q. MR. DANCU, BEFORE THE BREAK, YOU MENTIONED THAT
21 SOME OF YOUR CLIENTS SELL TANGIBLE GOODS ONLINE, LIKE
22 WINE AND TOBACCO, AND YOU MENTIONED THAT SOME OF YOUR
23 CLIENTS VERIFY IDENTITY ONLINE, LIKE THE FINANCIAL
24 SERVICE INDUSTRY.

25 DO YOU HAVE ANY CLIENTS WHO SELL ACCESS

1 TO CONTENT?

2 A. YES.

3 Q. CAN YOU GIVE AN EXAMPLE?

4 A. WELL, WE HAVE CLIENTS THAT ARE SELLING ACCESS TO
5 ADULT CONTENT.

6 Q. DO YOU KNOW IF THE CUSTOMERS OF THESE CLIENTS
7 HAVE TO REVERIFY IF THEY VISIT THE WEBSITE A SECOND
8 TIME?

9 A. YES, I KNOW.

10 Q. WHO DECIDES?

11 A. THE CLIENT DECIDES.

12 Q. FROM A TECHNOLOGICAL PERSPECTIVE, CAN A PASSWORD
13 BE REUSED OVER A SPECIFIED PERIOD OF TIME, AS DEFINED BY
14 A CLIENT?

15 A. YES.

16 Q. CAN A CLIENT ALLOW THE SAME PASSWORD TO BE USED
17 ON AN AFFILIATED WEBSITE?

18 A. YES.

19 Q. DOES IDOLOGY OFFER AGE VERIFICATION FOR ANY
20 MOBILE INTERNET PROVIDERS?

21 A. YES. AS I MENTIONED, WE HAVE AN AGREEMENT WITH
22 VERISIGN TO SELL OUR AGE VERIFICATION TECHNOLOGY IN
23 THEIR PRODUCT TO WIRELESS CARRIERS. THAT WOULD BE
24 CONSIDERED A MOBILE -- THEY WOULD BE CONSIDERED MOBILE
25 OPERATORS.

1 Q. WHAT SERVICE DO THEY USE?

2 A. AGE VERIFICATION.

3 Q. ARE YOU AWARE OF ANY WEBSITES THAT CURRENTLY
4 HAVE PLANS TO REQUIRE VERIFICATION FOR ACCESS TO THEIR
5 WEBSITE, EVEN IF THERE IS NOT A SALE?

6 A. YES.

7 MR. HARRIS: OBJECTION. LACK OF
8 FOUNDATION. UNCLEAR FROM HIS QUESTION WHETHER HE IS
9 SPEAKING OF CUSTOMERS.

10 THE COURT: SORRY. YOU'RE SPEAKING
11 SOFTLY. WOULD YOU SPEAK UP, PLEASE.

12 MR. HARRIS: THE OBJECTION WAS LACK OF
13 FOUNDATION. THE QUESTION WAS NOT LIMITED TO CUSTOMERS
14 OF IDOLOGY. HE IS ASKING ABOUT WEBSITES IN GENERAL.
15 OTHER THAN HIS CUSTOMERS, I DON'T BELIEVE HE WOULD HAVE
16 A FOUNDATION TO SPEAK AS TO OTHER WEBSITES.

17 THE COURT: SUSTAINED AS TO FOUNDATION.
18 BY MR. BEANE:

19 Q. OKAY. THE QUESTION IS, ARE YOU AWARE, YES OR
20 NO, OF ANY WEBSITES THAT CURRENTLY HAVE PLANS TO REQUIRE
21 ACCESS -- VERIFICATION FOR ACCESS EVEN IF THERE IS NOT A
22 SALE?

23 A. YES.

24 Q. HOW DO YOU KNOW?

25 A. BECAUSE THEY PUBLICLY RELEASED THAT THEY ARE

1 GOING TO BE DOING AGE VERIFICATION.

2 Q. AND DO YOU, IN THE COURSE OF YOUR BUSINESS,

3 MONITOR --

4 MR. HARRIS: YOUR HONOR. OBJECTION.

5 MOVE TO STRIKE AS HEARSAY.

6 MR. BEANE: YOUR HONOR, HE IS IN THE

7 BUSINESS OF --

8 THE COURT: WAIT A MINUTE. WAIT A

9 MINUTE. ALL HE SAID IS YES HE KNOWS SOMETHING. WE

10 DON'T HAVE ANY HEARSAY YET. WE KNOW THAT HE FOUND OUT

11 FROM SOME PUBLIC DISCLOSURE AND WE HAVE NOT FINISHED THE

12 FOUNDATION YET.

13 BY MR. BEANE:

14 Q. COULD YOU CONTINUE WITH YOUR RESPONSE, HOW DO

15 YOU KNOW?

16 THE COURT: DON'T DO THAT. ASK HIM

17 ANOTHER QUESTION, PLEASE.

18 BY MR. BEANE:

19 Q. HOW DO YOU KNOW?

20 THE COURT: I MEAN, BEYOND FROM THE FACT

21 THAT THERE HAS BEEN SOME PUBLICITY RELEASE, ANY OTHER

22 BASIS FOR KNOWING THIS INFORMATION?

23 THE WITNESS: YES, SIR.

24 THE COURT: WHAT IS THAT, PLEASE?

25 THE WITNESS: WELL, I'M UNDER A

1 NONDISCLOSURE AGREEMENT RELATIVE TO MY DISCUSSIONS, BUT
2 I KNOW FROM DIRECT DISCUSSIONS.

3 THE COURT: WELL, ARE YOU ABLE TO TELL US
4 WHETHER THE DIRECT DISCUSSIONS WERE WITH SOMEONE WHO --
5 OR AN ORGANIZATION THAT PLANS TO USE AGE VERIFICATION
6 SERVICE?

7 THE WITNESS: YES.

8 THE COURT: OKAY. ARE THEY CUSTOMERS OF
9 YOURS NOW?

10 THE WITNESS: NOT YET.

11 THE COURT: AND THE PUBLICALLY RELEASED
12 INFORMATION, IS THAT BY AN ORGANIZATION THAT IS
13 CURRENTLY A CUSTOMER OF YOURS, THE COMPANY?

14 THE WITNESS: IT'S BY THE SAME
15 ORGANIZATION THAT I'M REFERRING TO.

16 THE COURT: AND YOU ARE ACTIVELY TRYING
17 TO SELL SERVICES TO THAT ORGANIZATION?

18 THE WITNESS: YES, SIR.

19 THE COURT: HAVE YOU MET WITH THEIR
20 REPRESENTATIVES ON MORE THAN ONE OCCASION OR ANY
21 OCCASION?

22 THE WITNESS: YES.

23 THE COURT: ALL RIGHT. GO AHEAD.

24 BY MR. BEANE:

25 Q. ARE YOU ABLE TO, DESPITE YOUR NONDISCLOSURE

1 AGREEMENT, TO PROVIDE THE NAME OF THIS EXAMPLE YOU ARE
2 REFERRING TO?

3 A. YES, BECAUSE THEIR INTENTIONS HAVE BEEN PUBLICLY
4 RELEASED.

5 Q. AND WHO IS THAT COMPANY?

6 A. ANHAEUSER BUSCH.

7 Q. WHAT IS YOUR UNDERSTANDING FOR WHY THEY WANT TO
8 USE AGE VERIFICATION?

9 MR. HARRIS: OBJECTION. LACK OF
10 FOUNDATION.

11 THE COURT: SUSTAINED.

12 BY MR. BEANE:

13 Q. DID YOU, IN YOUR CONVERSATIONS WITH THESE
14 REPRESENTATIVES, GAIN AN UNDERSTANDING OF WHY THEY WERE
15 INTERESTED IN AGE VERIFICATION?

16 IF YOU ARE UNCOMFORTABLE IN LIGHT OF YOUR
17 NDA, I WILL MOVE ON.

18 A. I DON'T THINK I SHOULD GO ANY DEEPER WITH
19 REGARDS TO THE SPECIFICS OF THE CONVERSATIONS.

20 Q. OKAY. LET'S TURN NOW TO NEW PRODUCTS IN
21 DEVELOPMENT OR NEW USES FOR YOUR PRODUCT.

22 WHAT IS ONLINE IDENTITY, GENERALLY
23 SPEAKING?

24 A. IT'S THE WAY THAT SOMEONE TAKES THEIR
25 INFORMATION AND, IN ESSENCE, THEIR ONLINE IDENTITY AND

1 USES THAT TO AUTHENTICATE INTO ANOTHER WEBSITE.

2 Q. WHAT TYPES OF INFORMATION ARE INCLUDED IN
3 SOMEONE'S ONLINE IDENTITY?

4 MR. HARRIS: OBJECTION. LACK OF
5 FOUNDATION AND OPINION TESTIMONY. I DON'T KNOW IF WE
6 ARE TALKING ABOUT A CURRENT PRODUCT OR ARE WE SPEAKING
7 STATE OF THE MARKET, WHICH WOULD BE OPINION TESTIMONY.

8 THE COURT: SUSTAINED. I DON'T
9 UNDERSTAND, FIRST OF ALL, WHAT HE WAS TALKING ABOUT. I
10 DON'T KNOW THE FOUNDATION FOR WHAT YOU ARE REFERRING TO.
11 LAY A FOUNDATION, IF YOU WANT TO PURSUE
12 IT, PLEASE.

13 MR. BEANE: CERTAINLY.
14 BY MR. BEANE:

15 Q. DO YOU, MR. DANCU, IN YOUR BUSINESS CAPACITY,
16 STAY ABREAST OF DEVELOPMENTS IN THE MARKET FOR AGE AND
17 IDENTITY VERIFICATION ON THE INTERNET?

18 A. YES.

19 Q. DO YOU, IN YOUR BUSINESS CAPACITY, DO ANY
20 RESEARCH AND DEVELOPMENT WORK RELATED TO THE FUTURE OF
21 THE ONLINE IDENTITY AND VERIFICATION MARKET?

22 A. YES.

23 Q. DOES YOUR COMPANY, IDOLOGY, USE TIME AND
24 RESOURCES TO PREPARE FOR THE NEXT GENERATION OF
25 TECHNOLOGY FOR ONLINE AGE AND IDENTITY VERIFICATION?

1 A. YES.

2 Q. DO YOU, AS THE CEO OF IDOLOGY, PARTICIPATE IN
3 ANY GROUPS OR ACTIVITIES THAT ADDRESS THE FUTURE OF AGE
4 AND IDENTITY VERIFICATION?

5 MR. HARRIS: OBJECTION. LEADING.

6 THE COURT: OVERRULED.

7 THE WITNESS: YES.

8 BY MR. BEANE:

9 Q. WHAT GROUPS?

10 A. ONE OF THE GROUPS THAT WE ARE INVOLVED WITH IS
11 CALLED OPEN ID. THESE ARE GROUPS THAT ARE FOCUSED ON
12 THE NEXT GENERATION INTERNET COMMONLY REFERRED TO AS WEB
13 2.0, AND ALSO RELATIVE TO THE NEXT GENERATION OF HOW
14 IDENTITIES WILL BE ADDRESSED ON THE INTERNET CALLED --
15 REFERRED TO AS IDENTITY 2.0.

16 Q. WHAT DO YOU MEAN BY OPEN ID SYSTEM?

17 A. WELL, AN OPEN ID SYSTEM IS OPEN SOURCE SOFTWARE,
18 SO IT'S SOFTWARE THAT IS BASICALLY AVAILABLE TO ANYONE
19 OUT THERE THAT WANTS TO USE IT, THAT IS A STRUCTURE THAT
20 GIVES COMPANIES THE ABILITY TO AUTHENTICATE IDENTITIES.

21 Q. AND HAVE YOU RESEARCHED THE ISSUE OF AN OPEN ID
22 SYSTEM?

23 A. YES.

24 Q. AND IS THERE A PRODUCT THAT IDOLOGY HAS THAT CAN
25 BE UTILIZED IN THE CONTEXT OF THIS OPEN ID SYSTEM?

1 A. YES.

2 Q. DOES IT REQUIRE ANY MODIFICATION TO YOUR PRODUCT
3 IN TERMS OF THE FUNCTIONALITY OF AGE OR IDENTITY
4 VERIFICATION?

5 A. NO.

6 Q. OKAY. IN ORDER TO EXPLAIN HOW YOUR PRODUCTS
7 OPERATE -- WOULD OPERATE IN THIS SYSTEM, I WOULD LIKE TO
8 DIRECT THE COURT'S ATTENTION TO DEFENDANT'S
9 DEMONSTRATIVE EXHIBIT NUMBER 10.

10 MR. HARRIS: YOUR HONOR, WE OBJECT TO
11 THIS DEMONSTRATIVE EXHIBIT FOR SEVERAL REASONS. ONE IS
12 LACK OF FOUNDATION. THE MAJORITY OF THIS EXHIBIT IS
13 ABOUT A PRODUCT THAT IDOLOGY DOES NOT OFFER. THE ONLY
14 PORTION OF THIS ABOUT IDOLOGY IS THE ORANGE BUBBLE OR
15 CLOUD ON THE LOWER LEFT. EVERYTHING ELSE HERE IS ABOUT
16 A PRODUCT THAT IDOLOGY DOES NOT ITSELF OFFER AND ABOUT
17 THE WITNESS CANNOT HAVE FIRSTHAND KNOWLEDGE. HE CAN
18 ONLY HAVE FIRSTHAND KNOWLEDGE OF THE IDOLOGY PORTION OF
19 THIS.

20 THE SECOND OBJECTION IS THAT THIS DIGITAL
21 WALLET TECHNOLOGY IS APPARENTLY BEING OFFERED AS AN
22 AFFIRMATIVE DEFENSE. WE REQUESTED IN INTERROGATORIES
23 THAT DEFENDANT IDENTIFY ANY AFFIRMATIVE DEFENSE. THEY
24 DID NOT IDENTIFY THIS ONE, EITHER AS A DIGITAL
25 CERTIFICATE OR AS ANY OTHER REASONABLE MEANS.

1 FOR BOTH OF THESE REASONS, WE OBJECT TO
2 THE USE OF THIS DEMONSTRATIVE AND ANY TESTIMONY ABOUT
3 SUCH A PRODUCT.

4 THE COURT: MR. BEANE.

5 MR. BEANE: YOUR HONOR, WHEN I
6 ESTABLISHED THE FOUNDATION FOR THIS, I ASKED MR. DANCU
7 IF HE WAS ABLE TO USE THE PRODUCTS AND SERVICES THAT HE
8 CURRENTLY PROVIDES WITHOUT MODIFICATION. AND THE ANSWER
9 IS YES. HE IS HERE AS A FACT WITNESS TO TALK ABOUT HIS
10 BUSINESS AND HIS PERSONAL EXPERIENCE. I WILL ESTABLISH
11 A FOUNDATION FOR ANY OTHER ENTITY OR COMPANY THAT HE IS
12 GOING TO TALK ABOUT. BUT THIS IS THE FUTURE OF THE
13 INDUSTRY AND HE IS INVOLVED IN THIS. MR. SENA, FOR
14 EXAMPLE, A PLAINTIFFS' WITNESS, WAS HERE TO TALK ABOUT
15 MOBILE -- FILTERING TECHNOLOGY ON THE MOBILE INTERNET.
16 MOREOVER WE, SPECIFICALLY WHEN WE DISCLOSED MR. DANCU AS
17 A WITNESS, SAID THAT HE WOULD BE TALKING ABOUT CURRENT
18 AND FUTURE PRODUCTS. PLAINTIFFS HAD THE OPPORTUNITY TO
19 OBJECT, AND THEY DID STATE SOME OBJECTIONS. THEY DIDN'T
20 WANT LAY OPINION TESTIMONY. BUT THEY DID NOT OBJECT TO
21 HIM TALKING ABOUT THE FUTURE OF THIS MARKET. ALL I'M
22 ASKING FOR IS HIS PERSONAL EXPERIENCE, AND THINGS ABOUT
23 WHICH HE HAS PERSONAL KNOWLEDGE. THIS GETS A LITTLE BIT
24 CONFUSING, BUT IT DOES NOT -- THE DISCUSSION OF IDOLOGY
25 IS EXACTLY -- THERE IS NOTHING DIFFERENT ABOUT HOW

1 IDOLOGY WORKS IN THIS CONTEXT, BUT UNDERSTANDING HOW IT
2 WORKS IN THIS CONTEXT CAN BE DIFFICULT. AND THIS
3 GRAPHIC, I BELIEVE, WILL ASSIST THE COURT IN
4 UNDERSTANDING HOW HIS TECHNOLOGY IN ITS CURRENT FORM CAN
5 BE USED IN THIS -- THE NEXT GENERATION OF ONLINE AND
6 IDENTITY VERIFICATION.

7 MR. HARRIS: YOUR HONOR, IT IS CLEAR THE
8 REASON DEFENDANTS WANT THIS TESTIMONY IN IS ABOUT THE
9 PRODUCT ITSELF, THE LARGER PRODUCT, THE DIGITAL WALLET
10 TECHNOLOGY, ABOUT WHICH THIS WITNESS CANNOT HAVE
11 FIRSTHAND KNOWLEDGE. HE CAN TESTIFY AS TO THE
12 INTERACTION BETWEEN IDOLOGY AND SOMETHING, BUT HE CANNOT
13 TESTIFY AS TO THE OPERATION OF THIS NEW PRODUCT ITSELF.
14 THAT IS ONE SOURCE OF THE OBJECTION.

15 THE SECOND SOURCE, WHICH THEY HAVE NOT
16 RESPONDED TO, IS THAT IF THEY ARE OFFERING THIS AS AN
17 AFFIRMATIVE DEFENSE, THEY FAILED TO IDENTIFY THIS IN THE
18 INTERROGATORIES. DESPITE RESPONDING THREE TIMES TO THE
19 INTERROGATORIES, THEY NEVER IDENTIFIED THIS DIGITAL
20 WALLET TECHNOLOGY. TO DO SO NOW IS TOO LATE. WE DID
21 NOT HAVE A CHANCE TO CONDUCT DISCOVERY ON IT.

22 THE COURT: MR. BEANE, ARE YOU ASSERTING
23 THE DIGITAL WALLET TECHNOLOGY IS EVIDENCE OF
24 AVAILABILITY OF AFFIRMATIVE DEFENSE?

25 MR. BEANE: NO, IT IS NOT ITSELF AN

1 AFFIRMATIVE DEFENSE. THE ONLY AFFIRMATIVE DEFENSE HERE
2 IS IDOLOGY. AND WE DID DISCLOSE THAT AS AN AFFIRMATIVE
3 DEFENSE. THAT IS WHY IT IS CRUCIAL HERE, THAT HE IS
4 USING ID -- THAT THIS FITS INTO THIS LARGER FRAMEWORK.
5 THE AFFIRMATIVE DEFENSE COMES FROM IDOLOGY'S PRODUCTS
6 AND SERVICES AS I ALREADY DESCRIBED THEM. AND THAT IS
7 WHY I ASKED HIM IF IT REQUIRED ANY CHANGE IN ORDER TO
8 FIT INTO THIS FRAMEWORK.

9 THE COURT: WHY IS THE FUTURE RELEVANT TO
10 THIS CASE? WE ARE TALKING ABOUT NOW, AREN'T WE?

11 MR. BEANE: THESE ARE ALL THINGS THAT ARE
12 IN DEVELOPMENT RIGHT NOW. I WILL ASK HIM SPECIFIC
13 QUESTIONS ABOUT WHAT HE HAS DONE TO PREPARE FOR THIS,
14 BUT THIS CASE WAS REMANDED BY THE SUPREME COURT BECAUSE
15 THE RECORD WAS STALE, FRANKLY, ON NOT ONLY ISSUES OF
16 FILTERING TECHNOLOGY, BUT THEY ALSO SPECIFICALLY
17 MENTIONED THE AGE VERIFICATION MARKET. AND JUST AS IT
18 WAS IMPORTANT FOR THE PLAINTIFFS TO DISCUSS THE FUTURE
19 OF FILTERING TECHNOLOGY INCLUDING ITS AVAILABILITY WITH
20 MICROSOFT VISTA, A PRODUCT THAT IS NOT ON THE MARKET
21 YET, IT'S ALSO IMPORTANT FOR US TO TALK ABOUT THINGS
22 THAT ARE WITHIN THE BUSINESS EXPERIENCE OF OUR FACT
23 WITNESSES, AND THAT THEY ARE ALREADY WORKING ON
24 DEVELOPING.

25 OF COURSE WE WOULD NOT BE EXPECTING MR.

1 DANCU TO PROVIDE AN OPINION ABOUT THE EFFECTIVENESS OF
2 PRODUCTS THAT ARE BEING OFFERED BY OTHER COMPANIES. THE
3 COURT WOULD HAVE TO MAKE ANY DETERMINATION ABOUT THAT ON
4 THEIR OWN. WE ARE ONLY ASKING FOR HIS PERSONAL
5 EXPERIENCE BASED ON HIS BUSINESS, AND HE WON'T BE
6 STEPPING OUTSIDE OF THAT AT ALL.

7 MR. HARRIS: YOUR HONOR, IF THE DIGITAL
8 WALLET TECHNOLOGY IS NOT AN AFFIRMATIVE DEFENSE, THERE
9 IS NO RELEVANCE TO THIS TESTIMONY.

10 IN ADDITION, THE WITNESS HERE CANNOT HAVE
11 FIRSTHAND KNOWLEDGE OF ANY OF THIS TECHNOLOGY AND THIS
12 PRODUCT OTHER THAN HIS OWN PRODUCT. ANY OTHER TESTIMONY
13 HE WOULD GIVE WOULD BE BASED ON HEARSAY OR WOULD BE
14 OPINION TESTIMONY.

15 THOSE ARE THE TWO BASES FOR OUR
16 OBJECTION.

17 MR. BEANE: I WILL MAKE ONE FURTHER NOTE,
18 IF I MAY. WE DISCLOSED IN OUR PROPOSED FINDINGS OF FACT
19 THAT WE WOULD BE DISCUSSING DIGITAL WALLET TECHNOLOGY
20 AND THE AVAILABILITY OF DIGITAL WALLET TECHNOLOGY. SO
21 THEY WERE ON NOTICE OF THAT AT THE SAME TIME THEY WERE
22 ON NOTICE OF MR. DANCU'S TESTIMONY.

23 THE COURT: NOTICE OF SOMETHING THAT IS
24 INADMISSIBLE IS NOT NOTICE OF ANYTHING. IT'S A PROPER
25 DISCLOSURE.

1 MY RULING IS THAT THE ULTIMATE RULING IS
2 PUT OFF. THERE IS NO FOUNDATION FOR ANYTHING ON
3 DEFENDANT'S EXHIBIT 10 -- IS THAT WHAT IT IS?

4 MR. BEANE: THAT'S CORRECT. DEFENDANT'S
5 DEMONSTRATIVE EXHIBIT 10.

6 THE COURT: DEFENDANT'S DEMONSTRATIVE
7 EXHIBIT 10, OTHER THAN THE AGE AND IDENTITY VERIFICATION
8 OF IDOLOGY IN THE LOWER LEFT-HAND CORNER. THERE IS JUST
9 NO EVIDENCE OF THE REST OF IT. SO WE DON'T KNOW HOW
10 THIS IS TO BE PRESENTED THROUGH THIS WITNESS.
11 PLAINTIFFS' COUNSEL COULD BE RIGHT. HE COULD NOT BE. I
12 DON'T KNOW HOW WE ARE GOING TO FIND OUT WHERE THIS
13 INFORMATION CAME FROM. SO WITH THE IDEA THAT THE
14 DEFENDANT IS TASKED WITH THE RESPONSIBILITY OF LAYING A
15 FOUNDATION FOR THE ADMISSION OF THIS FACTUAL MATERIAL
16 SURROUNDING A POTENTIAL PRODUCT, I WILL ALLOW THE
17 QUESTIONING TO CONTINUE WITH THE RIGHT OF THE PLAINTIFF
18 TO REASSERT THE OBJECTION AT THE RIGHT TIME.

19 BY MR. BEANE:

20 Q. I WOULD LIKE TO DRAW YOUR ATTENTION NOW TO
21 DEFENDANT'S DEMONSTRATIVE EXHIBIT 10.

22 AT THE BOTTOM OF THE SCREEN IT SAYS:
23 USER, JOHN SMITH. I WOULD LIKE TO GO BACK TO ADDRESSING
24 THE ISSUE THAT YOU STATED BEFORE ABOUT PEOPLE HAVING
25 MULTIPLE PASSWORDS. CAN YOU JUST EXPLAIN GENERALLY WHAT

1 THE PROBLEM IS THAT IS BEING ADDRESSED BY DIGITAL WALLET
2 TECHNOLOGY?

3 MR. HARRIS: OBJECTION.

4 THE COURT: WAIT A MINUTE. YOU ARE NOT
5 DOING WHAT I TOLD YOU TO DO. THE OBJECTION IS
6 SUSTAINED. WHERE DOES THIS COME FROM? HOW DOES HE KNOW
7 THIS INFORMATION? YOU ARE TRYING TO GET IN THE BACK
8 DOOR. YOU HAVE NOT LAID ANY FOUNDATION AT ALL FOR IT
9 OTHER THAN THE ORANGE --
10 BY MR. BEANE:

11 Q. WAS THIS DOCUMENT PREPARED IN PREPARATION FOR
12 YOUR TESTIMONY?

13 A. YES.

14 Q. AND WHY DID YOU PREPARE THIS DOCUMENT?

15 A. I BELIEVE IT'S IMPORTANT RELATIVE TO
16 UNDERSTANDING THE DIRECTION OF WHERE OUR AGE AND
17 IDENTITY VERIFICATION BUSINESS IS GOING TO HEAD HERE IN
18 THE NEAR TERM.

19 Q. OKAY. I WOULD LIKE TO FOCUS NOW TO THE MIDDLE
20 PORTION HERE, WHERE IT SAYS: PERSONAL IDENTITY PROFILE.
21 BEFORE YOU EXPLAIN WHAT THAT IS, WHO PROVIDES THE
22 PERSONAL IDENTITY PROFILE?

23 THE COURT: WAIT A MINUTE. YOU ARE
24 ASKING FACTS THAT ARE NOT -- THE SOURCE OF WHICH IS NOT
25 ON THE RECORD. IT HAS TO BE HEARSAY BASED ON THE

1 CURRENT RECORD. THERE IS NO OTHER SOURCE.

2 BY MR. BEANE:

3 Q. OKAY. BEFORE WE TALK ABOUT THIS DOCUMENT, I
4 WOULD LIKE TO ASK YOU QUESTIONS ABOUT VERISIGN. IS
5 VERISIGN ONE OF YOUR CLIENTS?

6 A. YES.

7 Q. AND WHAT SERVICE DO YOU CURRENTLY PROVIDE TO
8 VERISIGN?

9 A. AGE VERIFICATION.

10 Q. AND IN YOUR BUSINESS CAPACITY, DO YOU MONITOR
11 DEVELOPMENTS IN VERISIGN'S BUSINESS?

12 A. YES.

13 Q. AND ARE YOU AWARE OF VERISIGN'S PERSONAL
14 IDENTITY PROVIDER?

15 A. YES.

16 Q. HOW DO YOU KNOW ABOUT THE PERSONAL IDENTITY
17 PROVIDER?

18 A. I KNOW ABOUT IT FROM THE FACT THAT VERISIGN IS A
19 CLIENT OF OURS, AND ALSO FROM INFORMATION THAT THEY HAVE
20 PROVIDED IN PUBLIC DATA SOURCES -- PUBLIC SOURCES.

21 Q. WHAT INFORMATION IS PUBLICLY AVAILABLE ABOUT
22 VERISIGN'S PERSONAL IDENTITY PROVIDER?

23 MR. HARRIS: OBJECTION, HEARSAY.

24 THE COURT: NOT THE IDENTIFICATION OF. I
25 ASSUME HE IS GOING TO TELL US HOW HE FOUND OUT. HE

1 EITHER READ IT IN A NEWSPAPER OR NATIONAL GEOGRAPHIC OR
2 SAW IT IN A MOVIE ON T.V. OR SOMEPLACE. HE HAS NOT SAID
3 ANYTHING ABOUT IT YET. YOU HAVE TO SHOW WHERE HE GOT
4 THE INFORMATION BEFORE YOU CAN APPROACH GETTING THE
5 INFORMATION IN.

6 BY MR. BEANE:

7 Q. WHERE DID YOU GET INFORMATION ABOUT THE PERSONAL
8 IDENTITY PROFILE?

9 A. FROM MULTIPLE SOURCES. DISCUSSIONS I HAVE HAD
10 WITH EMPLOYEES OF VERISIGN, DISCUSSIONS IN THESE
11 CONFERENCES THAT WE GO TO RELATIVE TO THE NEXT
12 GENERATION OF IDENTITY, THE OPEN ID CONFERENCES, AND
13 THEN VERISIGN IS ALSO PUBLICLY TALKING ABOUT THIS ISSUE.
14 IN FACT, I HAVE A PERSONAL IDENTITY PROFILE MYSELF
15 THAT --

16 THE COURT: HOW DO YOU KNOW THAT VERISIGN
17 IS TALKING ABOUT IT PUBLICLY?

18 THE WITNESS: THEY HAVE BLOGS, AND THEY
19 COME TO THESE CONFERENCES AND TALK ABOUT IT. AND IF YOU
20 GO INTO GOOGLE AND YOU TYPE PERSONAL IDENTITY PROFILE
21 YOU WILL SEE A WHOLE BUNCH OF INFORMATION ON IT.

22 THE COURT: EXCUSE ME. GO AHEAD.

23 BY MR. BEANE:

24 Q. IS THE INFORMATION THAT IS PUBLICLY
25 AVAILABLE, THAT IS NOT PROPRIETARY IN ANY WAY?

1 A. NO.

2 Q. AND YOU MENTIONED BEFORE THAT THIS WAS AN OPEN
3 SOURCE PHASE. WHAT DOES THAT MEAN, OPEN SOURCE PHASE?

4 A. WELL --

5 MR. HARRIS: OBJECTION. LACK OF
6 FOUNDATION. WE OBJECT TO ANY TESTIMONY ABOUT VERISIGN'S
7 PRODUCT. IT IS NOT THIS WITNESS' PRODUCT. IT IS BEYOND
8 HIS FIRSTHAND EXPERIENCE. IF DEFENDANT WISHED TO HAVE A
9 FACT WITNESS COME TO TESTIFY ABOUT VERISIGN'S PRODUCT,
10 THEY SHOULD HAVE CALLED AN EMPLOYEE OF VERISIGN. THIS
11 FACT WITNESS CANNOT TESTIFY AS TO ANOTHER COMPANY'S
12 PRODUCT.

13 MR. BEANE: YOUR HONOR, HE HAS TESTIFIED
14 THAT HE HAS HAD MEETINGS WITH THESE REPRESENTATIVES, HE
15 HAS DISCUSSED IT WITH THEM. THEY TALK ABOUT IT AT
16 CONFERENCES, THERE IS INFORMATION THAT IS PUBLICLY
17 AVAILABLE, THAT IT IS REPORTED IN BLOGS AND NEWSPAPER
18 ACCOUNTS. HE HAS INDICATED THAT HE DOES RESEARCH AND
19 DEVELOPMENT WITH RESPECT TO ONLINE AGE AND IDENTITY
20 VERIFICATION. THIS IS HIS BUSINESS. LIKE USING HIS --
21 HE IS CONSTANTLY, THROUGH THIS TESTIMONY, BEEN SHOWING
22 THAT THEY ARE LOOKING FOR NEW MARKETS FIR THIS, AND NEW
23 WAYS THAT IT CAN BE FIT INTO THE BIGGER SCHEME OF ONLINE
24 IDENTITY.

25 THE COURT: THAT MAY BE TRUE, BUT HE

1 CANNOT TESTIFY ABOUT TECHNICALLY HOW VERISIGN OPERATES
2 UNLESS HE HAS FIRST-HAND KNOWLEDGE OF IT. IF IT WERE IN
3 A SOFTWARE BOX AND HE BOUGHT THE BOX AND PUT IT IN HIS
4 COMPUTER AND WORKED IT, THAT'S ONE THING. THAT IS THE
5 KIND OF FIRST-HAND KNOWLEDGE I'M TALKING ABOUT. YOU
6 HAVE NOT SHOWN THAT SO FAR ON THE PERSONAL IDENTITY
7 PROFILE.

8 BY MR. BEANE:

9 Q. OKAY. I WOULD LIKE TO ASK YOU MORE ABOUT HOW
10 YOU KNOW ABOUT THIS PRODUCT. YOU MENTIONED THAT YOU CAN
11 SET UP A PERSONAL IDENTITY PROFILE ON THE INTERNET. HOW
12 DID YOU DO THAT?

13 A. I WENT TO GOOGLE, I TYPED IN PERSONAL IDENTITY
14 PROFILE, AND INFORMATION CAME UP ABOUT THE PERSONAL
15 IDENTITY PROFILE. AND I WENT AHEAD AND I REGISTERED
16 MYSELF SO I NOW HAVE A PERSONAL IDENTITY PROFILE THAT I
17 CAN UTILIZE TO VERIFY MY IDENTITY ON THE INTERNET.

18 Q. WHAT TYPE OF INFORMATION ARE YOU ABLE TO PUT
19 INTO YOUR PERSONAL IDENTITY PROFILE?

20 MR. HARRIS: OBJECTION. UNCLEAR. IF THE
21 QUESTION IS, WHAT INFORMATION DID THIS WITNESS
22 PERSONALLY INPUT INTO HIS PROFILE, I DON'T KNOW THE
23 RELEVANCE, BUT I HAVE NO OBJECTION.

24 THE COURT: THAT'S NOT WHAT HE SAID, MR.
25 BEANE. IF HE PUT IN WHAT HE DID TO GET HIS NAME IN

1 THERE. YOU ARE ASKING HIM A BROADER QUESTION THAT YOU
2 HAVE NOT SHOWN HE HAS ANY KNOWLEDGE FOR. THE QUESTION
3 IS, WHAT ANYONE CAN PUT IN THERE. HE DOESN'T HAVE
4 KNOWLEDGE. BUT HE DID PUT HIS OWN INFORMATION IN. YOU
5 CAN ASK HIM ABOUT THAT.

6 BY MR. BEANE:

7 Q. WHEN YOU WENT TO THIS WEBSITE AND CREATED A
8 PROFILE, WHAT INFORMATION DID YOU PUT INTO YOUR PERSONAL
9 IDENTITY PROFILE?

10 A. TO THE BEST OF MY RECOLLECTION, I PUT MY NAME,
11 MY ADDRESS, MY BUSINESS ADDRESS, MY BUSINESS E-MAIL, MY
12 BUSINESS PHONE NUMBER. I PUT A PICTURE ON THERE SO --
13 OF MY KIDS IN THEIR SCOUT UNIFORMS SO I COULD REMEMBER
14 MY -- WHEN MY PIP PAGE CAME UP I KNEW THAT IT WAS --
15 THAT IT WAS MINE. THOSE ARE THE THINGS THAT I CAN
16 REMEMBER MOST ABOUT WHAT I PUT INTO IT.

17 Q. AND I WOULD LIKE YOU TO FOCUS JUST ON YOUR
18 FIRSTHAND KNOWLEDGE OF THIS, ABOUT WHAT OTHER THINGS CAN
19 YOU PUT INTO THAT, BASED ON YOUR FIRSTHAND EXPERIENCE
20 EITHER THROUGH READING THESE DOCUMENTS OR THROUGH GOING
21 TO THE WEBSITE YOURSELF?

22 A. I CAN PUT IN MY INSTANT MESSAGING ADDRESS, I CAN
23 PUT IN MY SKYPE PHONE NUMBER, I CAN PUT IN CREDIT CARD
24 INFORMATION.

25 THE COURT: S-K-Y-P-E.

1 THE WITNESS: YES. SKYPE IS A VOICE OVER
2 INTERNET PROTOCOL TELEPHONE NUMBER.

3 I CAN PUT IN MY CREDIT CARD INFORMATION.
4 I CAN PUT IN MY ADDRESS THAT I WANT GOODS TO BE SENT TO
5 THAT I MIGHT BUY. I CAN PUT IN THE ADDRESS THAT -- MY
6 BILLING ADDRESS THAT A CREDIT CARD WOULD UTILIZE. I CAN
7 PUT IN ANY INFORMATION I WANT. I HAVE A BLOG. I PUT MY
8 BLOG IN THERE, I BELIEVE. SO NUMEROUS TYPES OF THINGS
9 THAT YOU ARE ABLE TO PUT IN THE PROFILE.

10 BY MR. BEANE:

11 Q. FOCUSING STILL ON YOUR FIRSTHAND KNOWLEDGE, DOES
12 WHAT YOU LEARNED ABOUT THIS GIVE YOU ANY IDEAS ABOUT
13 IDOLOGY AND WHAT YOU CAN DO WITH YOUR PRODUCTS AND
14 SERVICES AT IDOLOGY?

15 MR. HARRIS: OBJECTION. VAGUE.

16 THE COURT: OVERRULED.

17 IF HE UNDERSTANDS IT, WE WILL BE
18 ILLUMINATED.

19 THE WITNESS: YES, I DO.

20 BY MR. BEANE:

21 Q. WHAT IDEAS DO YOU HAVE ABOUT HOW IDOLOGY CAN BE
22 USED WITH THIS?

23 MR. HARRIS: OBJECTION. RELEVANCE AND
24 CALLS FOR SPECULATION. THERE IS NO EVIDENCE THAT THESE
25 PRODUCTS EXIST OR THERE HAS BEEN ANY DEVELOPMENT OF

1 THEM.

2 THE COURT: OVERRULED.

3 BY MR. BEANE:

4 Q. YOU CAN ANSWER.

5 A. CAN YOU TELL ME WHAT THE QUESTION IS AGAIN,
6 PLEASE.

7 Q. THE QUESTION IS, WHAT IDEAS YOU HAVE ABOUT HOW
8 IDOLOGY CAN USE ITS PRODUCTS AND SERVICES WITH THIS
9 PERSONAL IDENTITY PROVIDER.

10 A. SURE.

11 SO WE THINK THIS IS PRETTY NEAT AND
12 EXCITING IN THAT WHAT THIS PROBLEM SOLVES IS MY ISSUE
13 WHERE I HAVE 50 DIFFERENT LOGINS, RIGHT, USER NAMES AND
14 PASSWORDS TO GET INTO ALL THESE NUMEROUS SITES THAT I GO
15 TO, WHETHER THAT WOULD BE DELTA OR AMAZON OR NATIONAL
16 CAR RENTAL. SO I CAN USE MY PERSONAL IDENTITY PROFILE
17 AS LONG AS THAT COMPANY HAS OPTED INTO THE OPEN ID
18 NETWORK TO BASICALLY AUTHENTICATE MYSELF. SO I DON'T
19 NEED TO HAVE ALL THESE USER NAMES AND PASSWORDS ANYMORE.
20 IT'S A VERY SIMPLE WAY FOR ME TO HAVE AN IDENTITY THAT
21 IS LOCATED IN MY PERSONAL IDENTITY PROFILE THAT HAS
22 THESE INDICATORS ON ME THAT I CAN QUICKLY TAKE AND PUT
23 TO ANOTHER WEBSITE AND GAIN ACCESS TO THOSE WEBSITES.

24 NOW, WHAT IDOLOGY CAN DO THAT WE THINK IS
25 EXCITING FOR US IS THAT WE CAN -- AFTER I PUT MY

1 INFORMATION INTO THE PIP, WE WOULD HAVE THE ABILITY TO
2 VERIFY THAT INFORMATION. SO WE CAN VERIFY MY IDENTITY
3 AND WE CAN VERIFY MY AGE, BY WAY OF EXAMPLE.

4 SO I HAVE THIS INFORMATION IN MY PROFILE
5 NOW THAT HAS BEEN VERIFIED BY AN INDEPENDENT THIRD PARTY
6 AND THAT GIVES ME THE ABILITY TO TAKE THAT TO NUMEROUS
7 TYPES OF WEBSITES AND, IN ESSENCE, HAVE A TRUSTED
8 IDENTITY.

9 MR. HARRIS: YOUR HONOR, MOVE TO STRIKE
10 AS HEARSAY EVERYTHING OTHER THAN THE PORTION THAT
11 DESCRIBED IDOLOGY VERIFYING AGE. EVERYTHING ELSE IS
12 ABOUT A PRODUCT THAT IS NOT OFFERED BY IDOLOGY AND IS
13 NOT WITHIN THE WITNESS' FIRSTHAND EXPERIENCE.

14 THE ONLY PART OF THIS HE CAN TESTIFY TO
15 IS THE INTERACTION BETWEEN HIS PRODUCT AND ANOTHER. HE
16 CANNOT TESTIFY TO THE USES OF THIS OTHER PRODUCT. IT'S
17 NOT WITHIN HIS FIRSTHAND KNOWLEDGE. HE'S NOT HERE TO
18 GIVE OPINION -- EVEN LAY OPINION TESTIMONY.

19 MR. BEANE: YOUR HONOR, THIS ALL GOES TO
20 HIS STATE OF MIND AS THE CEO --

21 THE COURT: THE OBJECTION IS OVERRULED.
22 HE CAN SAY THAT HIS PRODUCT WILL GET HIM TO THE MOON.
23 IT MAY NOT BE BELIEVABLE BUT IT'S RELEVANT IF HE THINKS
24 IT IS GOING TO GET HIS PRODUCT TO THE MOON. SO IT'S
25 RELEVANT TO KNOW WHAT THE STATE OF MIND IS OF SOMEONE IN

1 THE INDUSTRY. SO I WILL LET HIM TESTIFY TO IT, BUT ONLY
2 FROM HIS FIRSTHAND KNOWLEDGE. AND HIS HOPES FOR THE
3 FUTURE ARE UNIQUELY HIS FIRSTHAND KNOWLEDGE BECAUSE THEY
4 ARE IN HIS MIND. HE DIDN'T SAY HE WAS -- SOMEONE ELSE
5 TOLD HIM THIS. HE SAID THESE ARE THINGS HE HAS IN MIND
6 FOR HIS PRODUCT.

7 OVERRULED.

8 BY MR. BEANE:

9 Q. CAN YOU PLEASE EXPLAIN WHAT YOUR VISION IS FOR
10 HOW IDOLOGY MIGHT BE USEFUL IN THIS CONTEXT.

11 A. I THINK AS THE PERSONAL IDENTITY PROFILE GETS
12 MORE DISTRIBUTION IN THE INTERNET COMMUNITY, IT WILL
13 GIVE US THE ABILITY TO COMPLETE HEAVIER-DUTY-TYPE
14 TRANSACTIONS. AND THOSE WOULD BE, TO GIVE YOU AN
15 EXAMPLE OF THAT, IF I HAVE HAD MY INFORMATION VERIFIED
16 IN MY PIP, PERSONAL IDENTITY PROFILE, AND I WANT TO GO
17 ACCESS A SOCIAL WEBSITE, OR I WANT TO GO ACCESS A DATING
18 SITE, AND THOSE SITES HAVE MINIMUM AGES, I CAN USE MY
19 PIP AND MY AUTHENTICATION THROUGH THIS URL TO GAIN
20 ACCESS TO THOSE WEBSITES WITHOUT HAVING TO BE AGE
21 VERIFIED AGAIN.

22 Q. I WOULD LIKE TO TURN -- MOVE ON FROM THIS TOPIC.
23 ARE YOU AWARE OF ANY OTHER PRODUCTS THAT YOU CONSIDER TO
24 BE DIGITAL WALLET TECHNOLOGIES?

25 A. YES.

1 Q. WHAT TECHNOLOGY ARE YOU AWARE OF?

2 MR. HARRIS: OBJECTION. LACK OF
3 FOUNDATION.

4 THE COURT: SUSTAINED. MR. BEANE, YOU
5 KNOW YOU CAN'T DO THAT. WE SPENT THE WHOLE AFTERNOON
6 HERE TALKING ABOUT LAYING A FOUNDATION. DO IT UP FRONT,
7 WOULD YOU, PLEASE.

8 BY MR. BEANE:

9 Q. ARE YOU AWARE OF MICROSOFT VISTA?

10 A. YES.

11 Q. HOW ARE YOU AWARE OF MICROSOFT VISTA?

12 A. FROM VISITS TO MICROSOFT AND FROM INFORMATION
13 THAT IS IN THE PUBLIC DOMAIN.

14 Q. ARE YOU AWARE ABOUT ANY PRODUCTS OR SERVICES
15 THAT MICROSOFT VISTA WILL INCLUDE?

16 A. YES.

17 Q. WHAT PRODUCTS?

18 MR. HARRIS: OBJECTION. LACK OF
19 FOUNDATION. THE WITNESS DOES NOT HAVE FIRSTHAND
20 KNOWLEDGE OF THESE PRODUCTS. HE HAS FIRSTHAND KNOWLEDGE
21 OF HIS OWN PRODUCTS.

22 THE COURT: OBJECTION SUSTAINED. WE
23 DON'T KNOW WHERE HE GOT THE INFORMATION FROM.

24 BY MR. BEANE:

25 Q. OKAY. LET'S BACK UP. HOW ARE YOU AWARE OF

1 MICROSOFT VISTA?

2 A. THROUGH DISCUSSIONS THAT I HAVE IN MY MEETINGS
3 WITH REPRESENTATIVES OF MICROSOFT, THROUGH DISCUSSIONS
4 THAT WE HAVE AT THESE CONFERENCES RELATIVE TO ID 2.0 AND
5 WEB 2.0 AND FROM -- THERE'S A TREMENDOUS LEVEL OF
6 INFORMATION OUT THERE IN THE PUBLIC DOMAIN RELATIVE TO
7 VISTA AND CARDSPACE.

8 Q. YOU REFERRED TO A COUPLE OF CONFERENCES. CAN
9 YOU EXPLAIN WHAT YOU ARE REFERRING TO?

10 A. SURE. WE GO TO THE OPEN ID CONFERENCE.

11 Q. AND WHAT IS THE OPEN ID CONFERENCE?

12 A. THESE ARE CONFERENCES THAT BASICALLY SUPPORT THE
13 CREATION OF THE NEXT GENERATION OF IDENTITY USAGE ON THE
14 WEB, ID 2.0. THEY HAVE REPRESENTATIVES FROM MAJOR
15 CORPORATIONS. AND WE ARE THERE TO SHARE IDEAS, TO BE
16 ABLE TO CREATE AN ENVIRONMENT THAT WOULD BE CONDUCIVE TO
17 MAKING CARDSPACE AND PIP BE VERY PRODUCTIVE IN THE
18 MARKETPLACE.

19 Q. AND IS THERE INFORMATION THAT YOU HAVE LEARNED
20 ABOUT MICROSOFT CARDSPACE AT THESE CONFERENCES?

21 A. YES.

22 Q. AND IS MICROSOFT CARDSPACE IN PROPRIETARY STAGES
23 OF DEVELOPMENT?

24 A. NO.

25 Q. WHAT STAGE OF THE DEVELOPMENT IS IT IN?

1 A. THEIR PRODUCT IS --

2 MR. HARRIS: OBJECTION. LACK OF
3 FOUNDATION. THE WITNESS DOES NOT HAVE ANY PERSONAL
4 KNOWLEDGE OF THIS PRODUCT. A FACT WITNESS CANNOT COME
5 IN TO TESTIFY ABOUT PRESS REPORTS AND OTHER HEARSAY
6 DOCUMENTS.

7 MR. BEANE: YOUR HONOR, I'M NOT SEEKING
8 TESTIMONY FROM HIM ABOUT THE EFFECTIVENESS OF THIS
9 PRODUCT. I'M INTERESTED IN HIS STATE OF MIND ABOUT THE
10 FUTURE OF IDOLOGY AND POTENTIAL WAYS IN WHICH HIS
11 EXISTING PRODUCT AND SERVICE CAN BE USED. HE OBVIOUSLY,
12 THROUGH THE COURSE OF HIS BUSINESS AND THE CONFERENCES
13 HE ATTENDS AND THE MEETINGS AND PHONE CONVERSATIONS THAT
14 HE HAS, IS AWARE OF CHANGES IN THE MARKETPLACE THAT
15 INVOLVE ONLINE AGE AND IDENTITY VERIFICATION. I WOULD
16 LIKE TO JUST ESTABLISH THAT HE HAS KNOWLEDGE OF THIS SO
17 HE CAN EXPLAIN HIS STATE OF MIND ABOUT HIS BUSINESS AND
18 HOW HE MIGHT BE ABLE TO MARKET HIS PRODUCTS AND SERVICES
19 IN THIS BUSINESS.

20 THE COURT: I ASSUME YOU ARE OFFERING IT
21 FOR THE TRUTH OF THE LIKELIHOOD OF FURTHER ADVANCEMENT
22 IN THIS TYPE OF BUSINESS. OTHERWISE, HIS STATE OF MIND
23 IS NOT RELEVANT.

24 MR. BEANE: I THINK HIS STATE OF MIND IS
25 VERY RELEVANT BECAUSE THE USE OF AGE VERIFICATION

1 SERVICES IS AN AFFIRMATIVE DEFENSE UNDER COPA. IF HE
2 HAS CURRENT PLANS AND IF HE HAS BEEN DOING RESEARCH AND
3 DEVELOPMENT AND IF HE HAS BEEN STUDYING IN HIS BUSINESS
4 CAPACITY AND IF HE HAS BEEN HAVING PHONE CONVERSATIONS
5 AND ATTENDING CONFERENCES AND HAVING MEETINGS TO
6 DETERMINE WHETHER HIS EXISTING PRODUCT IN ITS CURRENT
7 FORM MIGHT BE ABLE TO BE UTILIZED IN NEW AND DIFFERENT
8 WAYS, THEN THAT OBVIOUSLY IS SOMETHING WITHIN THE SCOPE
9 OF HIS PERSONAL KNOWLEDGE AS THE HEAD OF AN AGE
10 VERIFICATION COMPANY WHICH DOES PROVIDE AN AFFIRMATIVE
11 DEFENSE UNDER COPA.

12 THE COURT: WHAT DOES THAT HAVE TO DO
13 WITH MICROSOFT VISTA? I DON'T KNOW.

14 MR. BEANE: I'M NOT OFFERING HIS
15 TESTIMONY FOR -- TO VOUCH FOR THE EFFECTIVENESS OF THIS
16 PRODUCT ANY MORE THAN OTHER WITNESSES WERE HERE TO VOUCH
17 TO THE EFFECTIVENESS OF MICROSOFT'S VISTA PARENTAL
18 CONTROL FEATURES.

19 MR. HARRIS: YOUR HONOR, THE OTHER
20 PRODUCT -- THE OTHER WITNESSES WHO TESTIFIED ABOUT IT
21 WERE EXPERTS. THEY WERE ALLOWED TO PROVIDE OPINION
22 TESTIMONY AND RELY ON HEARSAY. THIS WITNESS IS NOT --
23 HE HAS NOT EVEN BEEN PROFFERED TO PROVIDE LAY OPINION
24 TESTIMONY. EVERY BASIS HE HAS FOR HIS KNOWLEDGE ABOUT
25 MICROSOFT VISTA IS HEARSAY. HIS PERSONAL STATE OF MIND

1 IS NOT AN ISSUE IN THIS CASE. THE ONLY ISSUE IS IF
2 THERE IS AN AFFIRMATIVE DEFENSE. IT SOUNDS LIKE THE
3 DEFENDANT HAS CONCEDED THAT HE IS NOT ASSERTING THE
4 MICROSOFT VISTA PRODUCT AS AN AFFIRMATIVE DEFENSE. TO
5 THAT EXTENT I'M NOT SURE OF THE RELEVANCE OF ANY OF THIS
6 TESTIMONY.

7 IN ADDITION, THIS WITNESS DOES NOT HAVE
8 FIRSTHAND KNOWLEDGE OF THIS PRODUCT AND COULD NOT SPEAK
9 ABOUT IT IN ANY EVENT. IF THEY WANTED TESTIMONY ABOUT
10 MICROSOFT VISTA, THEY SHOULD HAVE CALLED AN EMPLOYEE OF
11 MICROSOFT VISTA TO SPEAK AS A FACT WITNESS.

12 MR. BEANE: YOUR HONOR, MR. SENA WAS A
13 WITNESS OFFERED BY THE PLAINTIFFS. HE WAS ALSO A FACT
14 WITNESS FROM ACESTAR.COM. ACESTAR.COM, I BELIEVE. AND
15 HE WAS HERE TO TALK ABOUT FILTERING TECHNOLOGY ON MOBILE
16 PHONES. HE DIDN'T HAVE ANY EXISTING CLIENTS WHATSOEVER.
17 HE HAD ONE CONTRACT WITH A COMPANY THAT HE WAS NOT ABLE
18 TO DISCLOSE BECAUSE OF A NONDISCLOSURE AGREEMENT. AND
19 HE STATED THAT THAT CONTRACT DID NOT EVEN INVOLVE MOBILE
20 FILTERING TECHNOLOGY. SO HIS TESTIMONY ABOUT THE
21 CURRENT STATE OF HIS BUSINESS WAS COMPLETELY OUTSIDE
22 -- IT HAD NO RELEVANCE TO ANYTHING THAT IS AVAILABLE
23 RIGHT NOW FOR COPA. BUT HE WAS HERE TO TALK ABOUT THE
24 FUTURE OF HIS BUSINESS, AND IT WAS ACCEPTABLE IN THOSE
25 CIRCUMSTANCES. IF ANYTHING, MR. DANCU'S TESTIMONY IS

1 EVEN MORE PERMISSIBLE BECAUSE HE HAS TESTIFIED THAT HIS
2 PRODUCTS AND SERVICES, AS THEY EXIST NOW, COULD BE
3 INTEGRATED INTO THESE THINGS. I WANT TO PROVIDE THE
4 STATE OF MIND THAT HE HAS ABOUT THE FUTURE OF THIS
5 MARKET SO HE CAN EXPLAIN HOW HIS EXISTING PRODUCTS AND
6 SERVICES, WHICH ARE IN WIDESPREAD USE RIGHT NOW, COULD
7 BE USED IN THESE CIRCUMSTANCES. OF COURSE --

8 THE COURT: I HAVE ALREADY SAID THAT IN
9 GENERAL IT'S ADMISSIBLE, BUT WHAT DOES VISTA HAVE TO DO
10 WITH ANY OF THIS?

11 MR. BEANE: THAT IS WHAT I'M TRYING TO
12 EXPLAIN. I NEEDED TO ESTABLISH THE FOUNDATION THAT IN
13 HIS LINE OF BUSINESS HE KNOWS A LOT ABOUT VISTA. HE
14 KNOWS A LOT ABOUT CARDSpace BECAUSE IT'S GOING TO BE
15 INVOLVED IN ONLINE IDENTITY AND AGE VERIFICATION. IT'S
16 GOING TO PROVIDE THE INSTITUTIONAL STRUCTURE FOR
17 COMMUNICATING BETWEEN PEOPLE'S PERSONAL INFORMATION AND
18 THEIR PERSONAL IDENTITY ON THE INTERNET. AND THERE IS
19 OBVIOUSLY A ROLE FOR AGE VERIFICATION TO PLAY THERE
20 BECAUSE AGE CAN BE VERIFIED, AND THAT AGE VERIFICATION
21 CAN BE STORED. ONLY THAT ONE PERSON HAS ACCESS TO THIS
22 INFORMATION. SO PEOPLE WOULD NOT HAVE TO PROVIDE THEIR
23 PERSONAL INFORMATION WHEN THEY GO TO A WEBSITE LIKE
24 AMAZON TO BUY SOMETHING, OR WHEN THEY GO TO A WEBSITE
25 LIKE HUSTLER.COM WITH AGE RESTRICTED CONTENT.

1 THE FUTURE OF THIS MARKET IS HIGHLY
2 RELEVANT TO ISSUES THAT ARE CENTRAL TO THIS CASE. I'M
3 NOT ASKING HIM TO TESTIFY ABOUT ANYTHING OTHER THAN HIS
4 PERSONAL KNOWLEDGE OF THESE THINGS TO SHOW HIS STATE OF
5 MIND IN ORDER TO EXPLAIN HIS BUSINESS PLANS FOR HOW HE
6 CAN BRANCH OUT FROM THE EXISTING AGE AND IDENTITY
7 VERIFICATION SERVICES THAT HE NOW PROVIDES WITH THAT
8 SAME PRODUCT INTO THESE OTHER THINGS.

9 WHETHER YOU ACCEPT THAT THAT IS FEASIBLE
10 OR NOT IS OBVIOUSLY A DIFFERENT ISSUE. I'M NOT
11 EXPECTING HIM TO VOUCH FOR THAT. I JUST WANT YOU TO
12 UNDERSTAND THAT HE HAS THIS PERSONAL KNOWLEDGE AND TO
13 HEAR WHAT HIS IDEAS ARE FOR WHAT CAN HAPPEN NEXT WITH
14 IDOLOGY.

15 MR. HARRIS: YOUR HONOR, MR. SENA --

16 THE COURT: ONE LAST TIME.

17 MR. HARRIS: MR. SENA ONLY SPOKE ABOUT
18 HIS OWN PRODUCT. HE DID NOT SPEAK ABOUT ANYONE ELSE'S
19 PRODUCT. CONTRARY, THE WITNESS HERE IS SPEAKING ABOUT
20 MICROSOFT'S PRODUCT AND ABOUT THE FUNCTIONALITY OF
21 MICROSOFT'S PRODUCT.

22 I HAVE NO OBJECTION TO THE WITNESS
23 SPEAKING ABOUT HOW HIS PRODUCT MIGHT BE INTEGRATED INTO
24 VISTA, BUT HE IS NOT ALLOWED TO SPEAK AS TO WHAT VISTA'S
25 FUNCTIONALITY WILL BE. AND CHARACTERIZING THIS AS HIS

1 DREAMS AND HOPES AND ATTEMPTING TO GET IT IN THROUGH THE
2 BACK DOOR THAT WAY IS IMPERMISSIBLE. HE IS ONLY ALLOWED
3 TO SPEAK AS TO WHAT HE PERSONALLY KNOWS AS A FACT
4 WITNESS AS TO THE OPERATION OF HIS PRODUCT. THE
5 FUNCTIONALITY OF ANOTHER COMPANY'S PRODUCT IS OUTSIDE OF
6 HIS PERSONAL FIRSTHAND EXPERIENCE.

7 THE COURT: I WILL LET HIM TESTIFY TO
8 WHAT HIS -- EITHER INCIPIENT OR FURTHER THAN THAT FROM
9 HIS ACTUAL PRODUCTION OF A NEW PRODUCT. HIS PLANS FOR
10 HIS PRODUCT ARE RELEVANT AND I WILL LET THEM IN. BUT HE
11 CAN'T TESTIFY ABOUT HOW VISTA WORKS OR -- HE CAN SAY HOW
12 HE THINKS HE MIGHT INTEGRATE TO VISTA. HE IS NOT GOING
13 TO BE ABLE TO TELL US WHAT VISTA DOES OR HOW IT DOES IT.
14 THAT IS ALL HEARSAY.

15 BY MR. BEANE:

16 Q. SETTING ASIDE HOW MICROSOFT CARDSFACE WORKS, I
17 UNDERSTAND THAT YOU CREATED A GRAPHIC THAT EXPLAINS HOW
18 IDOLOGY MIGHT FIT INTO THIS NEW FRAMEWORK. IS THAT
19 CORRECT?

20 A. YES.

21 MR. BEANE: AT THIS POINT, I WOULD LIKE
22 TO DIRECT THE COURT'S ATTENTION TO DEFENDANT'S
23 DEMONSTRATIVE EXHIBIT 11.

24 MR. HARRIS: YOUR HONOR, PLAINTIFFS
25 OBJECT TO THE USE OF THIS DEMONSTRATIVE. OTHER THAN THE

1 PURPLE BOXES ON THE TOP RIGHT-HAND CORNER THAT ARE ABOUT
2 IDOLOGY, THE REMAINDER OF THIS DEMONSTRATIVE DESCRIBES
3 HOW MICROSOFT'S PRODUCT WORKS WHICH, AS THE COURT HAS
4 RULED, IS HEARSAY.

5 MR. BEANE: YOUR HONOR, IN ORDER TO SHOW
6 THE SIGNIFICANCE OF IDOLOGY'S ROLE IN THIS, IT IS
7 HELPFUL TO SEE THIS, JUST SO IT CAN BE PUT INTO CONTEXT.
8 JUST AS MR. SENA WOULD TESTIFY --

9 THE COURT: THE CONTEXT MAY BE LOADED
10 WITH HEARSAY. I DON'T KNOW WHAT TO DO WITH THIS
11 DOCUMENT. IT HAS TO BE PROPERLY AUTHENTICATED. I DON'T
12 EVEN KNOW WHAT HE IS GOING TO SAY ABOUT IT. LET'S FIND
13 OUT SOME MORE ABOUT IT. OVERRULED FOR THE TIME BEING.

14 THE COURT: I DON'T KNOW WHETHER IT'S
15 GOING TO BE VERY USEFUL, BUT WE WILL SEE.

16 BY MR. BEANE:

17 Q. SETTING ASIDE AGAIN THE FUNCTIONALITY OF
18 MICROSOFT, CAN YOU EXPLAIN GENERALLY HOW YOU CREATED
19 THIS SCHEME HERE?

20 A. THIS SCHEME INCLUDES HOW IDOLOGY WOULD
21 PARTICIPATE IN ID AND AGE VERIFICATION AS A PARTICIPANT
22 IN MICROSOFT CARDSPACE.

23 Q. SO YOU ARE NOT --

24 THE COURT: WHAT IS MICROSOFT CARDSPACE?
25 HAVE WE HAD THAT IDENTIFIED IN THE COURTROOM?

1 MR. BEANE: WE WERE GETTING TO THAT BUT
2 THEN OBJECTIONS DERAILED THAT LINE OF QUESTIONING. I'M
3 HAPPY TO GO TO THAT NOW.

4 THE COURT: I'M NOT HAPPY TO DO IT. I
5 DIDN'T KNOW WHAT IT WAS ABOUT. ALL I KNOW IS THAT THERE
6 -- IS PURPORTS TO BE SOME SORT OF FILTER AS A ROUTINE
7 PART OF THE SOFTWARE THAT ACCOMPANIES THE NEW VISTA
8 OPERATING SYSTEM, WHENEVER IT COMES OUT. THAT IS ALL WE
9 HAVE IN THE RECORD, AS FAR AS I KNOW. I NEVER HEARD
10 CARDSPACE UNTIL THE LAST FEW MINUTES.

11 BY MR. BEANE:

12 Q. YOU STATED EARLIER THAT MICROSOFT VISTA'S NEW
13 OPERATING SYSTEM WILL INCLUDE A FEATURE CALLED
14 CARDSPACE. IS THAT RIGHT?

15 A. YES.

16 Q. HOW DO YOU KNOW ABOUT CARDSPACE?

17 A. I KNOW ABOUT IT FROM THE VIEWPOINT THAT I THINK
18 IT CAN BE VERY IMPACTFUL FOR OUR BUSINESS AND WE HAVE
19 BEEN MAKING SURE THAT AS THE TECHNOLOGY GETS RELEASED
20 THAT WE CAN PARTICIPATE WITH IT.

21 THE COURT: THIS WITNESS DOES NOT KNOW
22 THE TECHNICAL ASPECTS OF CARDSPACE AND HE DOES NOT KNOW
23 THE VISTA MACHINE IN ANY DIRECT WAY AT ALL. SO IF YOU
24 CAN TALK TO HIM FURTHER -- YOU WANT TO TALK TO HIM
25 FURTHER ABOUT HIS VISIONS, THAT IS OKAY. BUT THE BASIS

1 FOR SOME OF THE TECHNICAL ASPECTS YOU ARE NOT GOING TO
2 GET IN THROUGH THIS WITNESS.

3 YOU MAY PROCEED.

4 BY MR. BEANE:

5 Q. IS INFORMATION ABOUT MICROSOFT CARDSPACE
6 PUBLICLY AVAILABLE?

7 A. YES.

8 Q. WHAT INFORMATION ABOUT MICROSOFT CARDSPACE --
9 THE COURT: YOU ARE NOT GOING TO GET THAT
10 IN, COUNSEL. I HAVE TOLD YOU THREE TIMES, HE CAN'T
11 TESTIFY ABOUT THE WORKINGS OF -- THE INNERWORKINGS OF
12 THE FUNCTIONALITY OF THE MICROSOFT PRODUCT.

13 MR. BEANE: LET'S MOVE ON FROM THIS
14 EXHIBIT FOR A MOMENT.

15 BY MR. BEANE:

16 Q. YOU WERE TESTIFYING EARLIER ABOUT YOUR BUSINESS
17 PLANS TO USE AGE VERIFICATION WITH RESPECT TO ONLINE
18 IDENTITIES. DO YOU RECALL THAT PORTION OF THE
19 CONVERSATION?

20 A. YES.

21 Q. SETTING ASIDE THE FUNCTIONALITY OF HOW AN ONLINE
22 IDENTITY WOULD BE CREATED, WHAT BUSINESS OPPORTUNITY
23 DOES THAT OPEN FOR YOU AT IDOLOGY?

24 A. WELL, AS THE MOVEMENT OF IDENTITY 2.0 MOVES
25 FORWARD, WHICH IS THE NEXT GENERATION OF WHAT IDOLOGY IS

1 GOING TO PARTICIPATE IN HERE, THE PROBLEM THAT WE
2 BELIEVE THAT WE CAN HELP SOLVE IS THAT YOU CAN HAVE AN
3 IDENTITY UNIQUE TO YOURSELF WHERE THERE ARE CERTAIN
4 CLAIMS THAT YOU MAKE -- I WILL DEFINE A CLAIM IN A
5 SECOND -- THAT ARE VERIFIED.

6 SO A CLAIM -- YOU CAN MAKE CLAIMS ON YOUR
7 IDENTITY. AND A CLAIM CAN BE MY NAME. IT CAN BE MY
8 ADDRESS. IT CAN BE MY DATE OF BIRTH. IT CAN BE A
9 CREDIT CARD NUMBER. AND THOSE CLAIMS THAT I CAN MAKE
10 FOR MY IDENTITY, AND IF I CAN HAVE THOSE IN A CENTRAL
11 REPOSITORY THAT HAVE BEEN VERIFIED BY PEOPLE LIKE US,
12 THEN I HAVE THE ABILITY TO TAKE A VERIFIED CLAIM AND
13 MOVE THEM TO NUMEROUS WEBSITES.

14 Q. WHEN YOU ARE REFERRING TO A CLAIM, IS THAT
15 SIMILAR TO THE EXAMPLES YOU DESCRIBED EARLIER FOR YOUR
16 CURRENT -- WITH THE CLIENTS THAT YOU CURRENTLY SERVE?

17 A. SURE. WE ARE DOING EXACTLY THE SAME THING THAT
18 WE DO TODAY. TODAY WHAT WE DO IS, WE GO TO A SPECIFIC
19 COMPANY, I LOOK AT IT AS THE STANDPOINT OF A SILO FOR AN
20 IDENTITY. RIGHT. WE DO A TRANSACTION FOR TIGERDIRECT,
21 OR SOMEBODY COMES TO PURCHASE A GOOD AT TIGERDIRECT.
22 THAT IDENTITY HAS BEEN VERIFIED IN THAT SPECIFIC SILO
23 FOR TIGERDIRECT. THAT IDENTITY VERIFICATION CANNOT GO
24 OUTSIDE THAT SILO. THERE IS NO BENEFIT TO ME OF THE
25 FACT THAT I HAVE BEEN VERIFIED. IF WE CAN VERIFY PEOPLE

1 IN A SOURCE WHERE I MAINTAIN A TRUSTED IDENTITY, FOR
2 INSTANCE A PIP OR CARDSpace, THEN I HAVE THE ABILITY TO
3 TAKE THAT IDENTITY AND MOVE IT TO MULTIPLE SILOS,
4 UTILIZE IT IN MULTIPLE ASPECTS.

5 MR. HARRIS: OBJECTION. MOVE TO STRIKE
6 THE TESTIMONY ABOUT THESE OTHER PRODUCTS SUCH AS VIP AND
7 CARDSpace AND THEIR FUNCTIONALITY. HE HAS NOW MOVED
8 BEYOND THE USE OF IDOLOGY. HE IS TESTIFYING HOW THESE
9 OTHER PRODUCTS CAN BE USED. THIS IS THE BACK DOOR INTO
10 THE SAME DISCUSSION WE HAD EARLIER.

11 THE COURT: THE OBJECTION IS OVERRULED.
12 IT IS IN FOR WHAT IT IS WORTH. THESE ARE IDEAS THAT HE
13 HAS. WHO KNOWS WHETHER THEY ARE EVER GOING TO COME TO
14 PASS, WHAT WILL HAPPEN ABOUT THEM. THEY ARE BARELY
15 RELEVANT. BUT THE RELEVANCE RULE IS PRETTY BROAD. WE
16 WILL LET IT IN FOR WHAT IT IS WORTH. MEANING NO
17 DISRESPECT.

18 BY MR. BEANE:

19 Q. WHEN YOU WERE REFERRING TO MULTIPLE SILOS, WHAT
20 DO YOU MEAN BY THAT?

21 A. WELL, IF I GO ON THE INTERNET AND I WANT TO DO
22 UNIQUE TRANSACTIONS --

23 THE COURT: EXCUSE ME. YOU KNOW WHAT IS
24 BOTHERING ME? THIS GENTLEMAN IS NOT AN EXPERT. HE IS
25 STARTING TO TESTIFY. PLANS ARE ONE THING. BUT TO

1 TESTIFY HOW ALL THIS STUFF WORKS, HE IS NOT AN EXPERT.
2 THERE IS NO SHOWING HOW HE KNOWS ANYTHING ABOUT SILOS.
3 I DON'T KNOW HOW HE LEARNED THAT. I THINK HE DESCRIBED
4 -- LETTING HIM DESCRIBE WHAT HIS PLANS FOR THE FUTURE
5 ARE ARE ONE THING. BUT TO GO INTO EACH ELEMENT OF THAT
6 AND REACH INTO HEARSAY TO GET THAT IN THE RECORD, YOU
7 CAN'T DO THAT, SIR.

8 MR. BEANE: OKAY. I WILL MOVE ON, YOUR
9 HONOR.

10 BY MR. BEANE:

11 Q. IS IDOLOGY THE ONLY COMPANY IN THE AGE AND
12 VERIFICATION BUSINESS?

13 A. NO.

14 Q. WHO ARE YOUR COMPETITORS?

15 A. THEY WOULD BE PEOPLE LIKE CHOICEPOINT,
16 IDRESPONSE, ARISTOTLE.

17 Q. IS THE MARKET FOR AGE AND IDENTITY VERIFICATION
18 A COMPETITIVE BUSINESS?

19 A. VERY.

20 Q. WHAT ARE THE PRICES FOR THE SERVICES THAT YOU
21 OFFER?

22 A. THE PRICES WILL VARY DEPENDENT ON THE PRODUCT
23 THAT YOU UTILIZE AND THE COMMITMENT THAT YOU ARE WILLING
24 TO MAKE TO US RELATIVE TO THE VOLUME OF TRANSACTIONS.

25 Q. WHAT ARE THE PRICES FOR EXPECTID AGE, THE LIST

1 PRICES?

2 A. BETWEEN 37 AND 42 CENTS.

3 Q. AND WHAT IS THE PRICE FOR EXPECTID IQ?

4 A. 97 CENTS.

5 Q. ARE THERE SET-UP OR APPLICATION FEES?

6 A. YES.

7 Q. AND HOW MUCH ARE THOSE?

8 A. WE HAVE AN APPLICATION FEE OF \$195 AND WE HAVE
9 AN INTEGRATION FEE -- IF YOU CHOOSE TO INTEGRATE, YOU
10 DON'T HAVE TO, BUT IF YOU CHOSE TO INTEGRATE OUR
11 TECHNOLOGY INTO YOUR WEBSITE, THAT IS \$495.

12 Q. WHAT DO YOU MEAN BY INTEGRATE?

13 A. THAT YOU UTILIZE OUR API, WHICH IS AN
14 APPLICATION PROGRAM INTERFACE, TO ACCESS OUR SOLUTION.
15 YOU DON'T USE THE PORTAL. THE SCREENS THAT WE LOOKED AT
16 BEFORE WHERE YOU WOULD COME INTO A PORTAL OR WEBSITE AND
17 DO AN IDENTITY AND AGE VERIFICATION. IF YOU INTEGRATE,
18 THEN ALL OF THIS IS UNDER THE COVERS.

19 THE COURT: THE WEBSITE THAT WAS BEING
20 UTILIZED THAT ULTIMATELY WOULD USE YOUR SERVICE. THEY
21 WOULD JUST PUSH A BUTTON IT WOULD HAPPEN.

22 THE WITNESS: AFTER THEY INTEGRATED, THAT
23 IS CORRECT.

24 THE COURT: THAT IS WHAT I MEANT, AFTER
25 IT IS INTEGRATED.

1 THE WITNESS: YES, SIR.

2 THE COURT: THANK YOU. EXCUSE ME.

3 BY MR. BEANE:

4 Q. DO THE COSTS VARY BASED ON THE CLIENT?

5 A. IT WILL VARY BASED ON COMMITMENTS THAT THEY WILL
6 GIVE US BASED ON VOLUME.

7 Q. AND WHY DOES IT VARY BASED ON VOLUME?

8 A. WELL, IF SOMEONE WANTS TO COMMIT TO MORE
9 TRANSACTIONS, WE WILL GIVE THEM A LOWER PRICE.

10 Q. WHO PAYS FOR THE COST OF VERIFICATION, YOUR
11 CLIENT OR THE CONSUMER?

12 A. WELL, THE CLIENT PAYS US.

13 Q. AND DO YOU DICTATE TO YOUR CLIENTS WHETHER THEY
14 PASS THAT CHARGE ALONG TO CUSTOMERS?

15 A. NO.

16 Q. IS YOUR REVENUE INCREASING?

17 A. YES.

18 Q. IS IDOLOGY A GROWING BUSINESS?

19 A. ABSOLUTELY.

20 Q. IS IT IN A GROWING INDUSTRY?

21 A. YES.

22 Q. DO YOU KNOW HOW OFTEN YOU ARE ABLE TO VERIFY THE
23 AGE OR IDENTITY OF A CUSTOMER?

24 A. YES.

25 Q. HOW DO YOU KNOW?

1 A. WE GO LOOK AT HISTORICAL DATA.

2 Q. WHAT DO YOU MEAN WHEN YOU REFER TO HISTORICAL
3 DATA?

4 A. WE LOOK AT ACTUAL RESULTS FOR OUR PRODUCT.

5 Q. AND DO YOU TRACK THOSE ON A CLIENT-BY-CLIENT
6 BASIS?

7 A. YES.

8 Q. WHAT PERCENTAGE OF THE TIME ARE YOU ABLE TO
9 PROVIDE AN AGE RESPONSE?

10 MR. HARRIS: OBJECTION. LACK OF
11 FOUNDATION.

12 THE COURT: SUSTAINED.

13 BY MR. BEANE:

14 Q. WHEN YOU SAID THAT YOU HAVE RECORDS OF THIS, CAN
15 YOU EXPLAIN FURTHER WHAT YOU MEAN?

16 A. SURE. WE HAVE DETAILED RECORDS OF TRANSACTIONS
17 WITH ACTUAL RESULTS.

18 Q. WHEN YOU REFER TO RESULTS, DO YOU MEAN ON A
19 CUSTOMER-BY-CUSTOMER BASIS?

20 A. YES.

21 Q. SO LET'S TAKE AN EXAMPLE. YOU SAID THAT KENDALL
22 JACKSON IS A CLIENT?

23 A. YES.

24 Q. WOULD YOU BE ABLE TO LOOK INTO YOUR RECORDS AT
25 IDOLOGY AND SEE HOW MANY ATTEMPTS AT VERIFICATION HAD

1 TAKEN PLACE OVER A DEFINED PERIOD OF TIME?

2 A. YES.

3 Q. AND WOULD YOU BE ABLE TO LOOK IN THAT SAME FILE
4 AND SEE HOW MANY OF THE TIMES YOU WERE ABLE TO PROVIDE
5 AN AGE RESPONSE?

6 A. YES.

7 Q. AND HOW DO YOU KNOW THIS?

8 A. THOSE ARE THE FACTS OF THE TRANSACTION.

9 Q. AND YOU KEEP THESE RECORDS IN THE ORDINARY
10 COURSE OF BUSINESS?

11 A. YES.

12 Q. AND YOU REVIEW THESE FROM TIME-TO-TIME?

13 A. YES.

14 Q. WHY DO YOU REVIEW THEM?

15 A. WE REVIEW THEM TO CONTINUE TO MONITOR OUR
16 PERFORMANCE.

17 Q. AND BASED ON YOUR REVIEW OF THESE THINGS, DO YOU
18 KNOW WHAT PERCENTAGE OF THE TIME YOU ARE ABLE TO PROVIDE
19 AN AGE RESPONSE?

20 A. YES.

21 Q. AND WHAT PERCENTAGE OF THE TIME IS THAT?

22 MR. HARRIS: OBJECTION. LACK OF
23 FOUNDATION AND HEARSAY. THERE MAY BE RECORDS OUT THERE
24 THAT WOULD BE BUSINESS RECORDS, BUT THEY ARE NOT IN THIS
25 COURTROOM AND THIS WITNESS CANNOT TESTIFY ABOUT THEM.

1 THE COURT: OVERRULED.

2 BY MR. BEANE:

3 Q. YOU CAN ANSWER.

4 A. GENERALLY WE ARE ABLE TO PROVIDE AGE RESPONSE ON
5 ANYWHERE FROM THE LOW 90S TO THE HIGH 90S ON A
6 PERCENTAGE BASIS.

7 Q. AND DO YOU KNOW WHY YOU AREN'T ABLE TO PROVIDE
8 AN AGE RESPONSE IN SOME INSTANCES?

9 A. YES.

10 Q. WHAT ARE SOME OF THE REASONS?

11 A. IT COULD BE THAT THE PERSON THAT IS TRYING TO BE
12 AGE VERIFIED JUST PUTS IN INCORRECT INFORMATION, BOGUS
13 INFORMATION. IT COULD BE THAT THEY JUST REALLY TERRIBLY
14 MISTYPE OR INPUT THEIR INFORMATION INCORRECTLY.

15 Q. DO YOU KNOW IF YOUR CLIENTS ARE SATISFIED?

16 A. YES.

17 Q. HOW DO YOU KNOW?

18 A. I'M TALKING TO OUR CLIENTS ALL THE TIME.

19 Q. AND WHAT DO YOUR CLIENTS -- ARE YOU AWARE OF ANY
20 -- EXCUSE ME, HAS YOUR PRODUCT EVER BEEN APPROVED BY A
21 GOVERNMENT ENTITY?

22 A. YES.

23 Q. COULD YOU PROVIDE AN EXAMPLE?

24 A. YES.

25 Q. WHAT IS THE EXAMPLE?

1 A. THE STATE OF MICHIGAN APPROVED OUR AGE
2 VERIFICATION TECHNOLOGY FOR USAGE BY WINERIES THAT ARE
3 DOING DIRECT SHIPMENTS OR EXPORTING OF WINE RELATED TO
4 THE STATE OF MICHIGAN.

5 Q. DO YOU KNOW HOW IT GOT APPROVED?

6 A. YES.

7 Q. AND HOW WAS THAT?

8 A. THEY TOOK OUR TECHNOLOGY AND THEY TESTED IT.

9 Q. DO YOU KNOW GENERALLY HOW THEY TESTED IT?

10 A. THEY INPUT NAMES RELATIVE TO THE TECHNOLOGY,
11 KNOWN NAMES, AND THEY DID THEIR OWN TEST RELATIVE TO THE
12 OUTPUT.

13 Q. HAS IDOLOGY'S PRODUCT BEEN APPROVED BY ANY OTHER
14 ENTITIES?

15 A. YES.

16 Q. CAN YOU GIVE AN EXAMPLE?

17 A. YES. WE ARE -- WINE AMERICA, WHICH IS A
18 LOBBYING GROUP FOR THE WINERIES IN WASHINGTON, D.C.,
19 WENT THROUGH AN EXTENSIVE TEST OF AGE VERIFICATION
20 VENDORS AND SELECTED US AS THEIR EXCLUSIVE PROVIDER OF
21 AGE VERIFICATION FOR THEIR MEMBERS.

22 Q. ARE YOU AWARE OF THE PROCESS FOR APPROVAL BY
23 WINE AMERICA?

24 A. YES.

25 Q. AND WHAT WAS THE PROCESS?

1 MR. HARRIS: OBJECTION, LACK OF
2 FOUNDATION.

3 THE COURT: SUSTAINED. FIND OUT HOW HE
4 GOT THE INFORMATION.

5 BY MR. BEANE:

6 Q. WERE YOU IN CONTACT WITH WINE AMERICA BEFORE
7 YOUR PRODUCT WAS APPROVED?

8 A. OUR COMPANY WAS, I WAS NOT DIRECTLY.

9 Q. AND DO YOU KNOW WHAT YOUR COMPANY HAD TO DO IN
10 ORDER TO SEEK APPROVAL FROM WINE AMERICA?

11 A. YES.

12 Q. AND WHAT DO YOU KNOW?

13 A. THEY GAVE US A SET OF NAMES FOR US TO AGE
14 VERIFY. WE RAN THEM THROUGH OUR TECHNOLOGY.

15 Q. WHAT IS WINE AMERICA?

16 A. WINE AMERICA IS A LOBBYING GROUP FOR WINERIES IN
17 THE UNITED STATES.

18 Q. AND HOW MANY WINERIES DO THEY REPRESENT, DO YOU
19 KNOW?

20 A. IT'S A BIG NUMBER. I DON'T KNOW THE EXACT
21 NUMBER.

22 Q. AND HOW MANY AGE VERIFICATION PRODUCTS DID THEY
23 APPROVE?

24 A. ONE.

25 MR. BEANE: I HAVE NO FURTHER QUESTIONS

1 AT THIS TIME.

2 THE COURT: CROSS EXAMINE.

3 MR. HARRIS: YES, YOUR HONOR.

4 MAY I APPROACH THE BENCH?

5 THE COURT: SURE.

6 MR. HARRIS, ARE YOU GOING TO REFER TO ANY
7 OF THE DEFENDANT'S EXHIBITS?

8 MR. HARRIS: NO, I DON'T BELIEVE SO.

9 THE COURT: LET ME SET THEM ASIDE. I
10 NEED ALL THE ROOM I CAN GET.

11 CROSS EXAMINATION

12 BY MR. HARRIS:

13 Q. GOOD AFTERNOON. I WANTED TO CLARIFY A FEW
14 THINGS YOU SAID EARLIER TODAY.

15 YOU MENTIONED ZOEY'S ROOM, AND YOU SAID
16 IT IS SOME SORT OF A WEBSITE ONLINE, A CHAT ROOM, IS
17 THAT RIGHT?

18 A. ZOEY'S ROOM IS A SOCIAL WEBSITE FOR GIRLS
19 BETWEEN THE AGES OF 11 AND 14 FOCUSED ON DEVELOPMENT OF
20 MATH AND SCIENCE SKILLS.

21 Q. AND YOU SAID IN ADDITION TO USING IDOLOGY THEY
22 TAKE OTHER STEPS TO VERIFY THE IDENTITY OF THE PARENTS.
23 IS THAT RIGHT?

24 A. NO. THEY DON'T TAKE DIFFERENT STEPS FOR THE
25 PARENTS. THEY TAKE IT RELATIVE TO THE KIDS.

1 Q. WHAT ARE THE ADDITIONAL STEPS THAT THEY TAKE?

2 A. THEY CONTACT SCHOOL RECORDS FOR CHILDREN.

3 Q. AND IS IDOLOGY CURRENTLY OPERATING ON ZOEY'S
4 ROOM?

5 A. MAYBE. I DON'T KNOW WHERE WE ARE IN THE PROCESS
6 OF GETTING THEM UP. SO I DON'T KNOW IF IT'S DONE QUITE
7 YET, BUT IF IT'S NOT DONE, IT'S GOING TO BE DONE WITHIN
8 THE NEXT COUPLE OF WEEKS.

9 Q. ZOEY'S ROOM CHARGES EVERY VISITOR FOR ACCESS TO
10 THIS CHAT ROOM. CORRECT?

11 A. I DON'T KNOW THEIR ECONOMIC MODEL.

12 Q. YOU DON'T KNOW WHETHER THEY PROVIDE CONTENT FOR
13 FREE OR NOT. RIGHT?

14 A. I KNOW THAT I CAN GO GET ON THE WEBSITE AND LOOK
15 AT IT, AND I CAN CERTAINLY VIEW THE WEBSITE FOR FREE.

16 Q. BUT THE VERIFICATION IS IN ORDER TO ENTER INTO
17 THE CHAT ROOM AND PROVIDE COMMUNICATIONS ON THE CHAT
18 ROOM, ISN'T IT?

19 A. I DON'T UNDERSTAND YOUR QUESTION.

20 Q. COULD YOU TURN TO EXHIBIT 265 IN THE BINDER.

21 DO YOU RECOGNIZE THIS DOCUMENT?

22 A. YES.

23 Q. IT IS A PRESS RELEASE BY YOUR COMPANY ABOUT
24 ZOEY'S ROOM. CORRECT?

25 A. YES.

1 Q. AND IF YOU LOOK AT THE FOURTH PARAGRAPH, IT
2 INDICATES THAT IDOLOGY AND PLATFORM SHOES FORUM ARE
3 CURRENTLY WORKING TOGETHER TO LAUNCH AN AUTOMATED
4 VERIFICATION PROCESS. CORRECT?

5 A. YES.

6 THE COURT: I'D BE MORE COMFORTABLE IF
7 YOU FINISHED THE SENTENCE. IT'S ALL RELATED.
8 BY MR. HARRIS:

9 Q. THE SENTENCE CONTINUES: VERIFICATION PROCESS
10 FOR ZOEY'S ROOM WHICH FOCUSES ON VERIFYING THE
11 PARENT/CAREGIVER AT THE POINT OF SIGNUP.

12 YOU SEE THAT?

13 A. YES.

14 Q. AND YOU DON'T KNOW WHETHER THIS ATTEMPT TO
15 LAUNCH THE PROCESS HAS FINISHED YET. RIGHT?

16 A. WELL, DEFINE THE PROCESS FOR ME.

17 Q. THE VERIFICATION SYSTEM THAT IDOLOGY WILL
18 PURPORT TO PROVIDE FOR ZOEY'S ROOM. YOU DON'T KNOW IF
19 IT HAS BEEN FULLY INTEGRATED YET, DO YOU?

20 A. I KNOW THE VERIFICATION SYSTEM EXISTS AND THAT
21 WE ARE IN THE PROCESS OF INTEGRATING IT INTO ZOEY'S
22 ROOM. I DON'T KNOW YET WHETHER OR NOT IT HAS BEEN
23 COMPLETED. I DO ANTICIPATE IT TO BE COMPLETED VERY
24 SHORTLY, IF IT HAS NOT BEEN COMPLETED ALREADY.

25 Q. AND OTHER THAN -- COULD YOU TURN TO EXHIBIT 264.

1 DO YOU RECOGNIZE THIS DOCUMENT?

2 A. I RECOGNIZE THE WEBSITE AND THE LOGO, THE LITTLE
3 GIRL ON THE LEFT.

4 Q. AND THIS IS THE WEBSITE FOR ZOEY'S ROOM,
5 CORRECT?

6 A. YES.

7 Q. AND YOU SEE IT SAYS: JOIN NOW FOR A ONE-YEAR
8 MEMBERSHIP AT \$20. CORRECT?

9 A. YES.

10 Q. SO DO YOU KNOW IF YOU HAVE ANY CLIENTS THAT USE
11 IDOLOGY TO PROVIDE CONTENT FOR FREE?

12 A. YES.

13 Q. WHO WOULD THAT BE?

14 A. AS I MENTIONED, I'M UNDER NONDISCLOSURE ON SOME
15 OF THESE. I DID MENTION WE HAVE A TOBACCO COMPANY THAT
16 PROVIDES CONTENT FOR FREE.

17 Q. CAN YOU TELL US THE NAME OF THIS TOBACCO
18 COMPANY?

19 A. NO, I'M UNDER NDA.

20 Q. CAN YOU TELL ME THE SIZE OF THIS TOBACCO
21 COMPANY?

22 A. IT'S THE THIRD LARGEST IN THE WORLD.

23 Q. OKAY. SO THEY HAVE MANY BILLIONS OF DOLLARS AT
24 THEIR DISPOSAL. WOULD THAT BE FAIR TO SAY?

25 A. I HAVE NOT LOOKED AT THEIR FINANCIAL STATEMENTS.

1 Q. YOU ARE NOT DISAGREEING WITH ME THAT THEY
2 PROBABLY HAVE A LOT OF REVENUE TO COVER THESE KINDS OF
3 COSTS?

4 A. I'M HAPPY TO TALK ABOUT WHAT I KNOW. I HAVEN'T
5 SEEN THEIR FINANCIAL STATEMENTS, SO I DON'T KNOW WHAT
6 THEIR REVENUES ARE.

7 Q. AND HOW MUCH DO YOU CHARGE THEM PER VISITOR?

8 A. THAT AGAIN WOULD BE UNDER NDA.

9 Q. YOU ARE REFUSING TO TELL ME HOW MUCH YOU CHARGE
10 THIS COMPANY?

11 A. I'M HAPPY TO TELL YOU ABOUT MY LIST PRICE AND
12 WHAT WE CHARGE.

13 Q. WHAT IS YOUR LIST PRICE?

14 A. 37 CENTS.

15 Q. AND YOU SPOKE ABOUT -- THE MAJOR BUSINESS THAT
16 YOU ENGAGE IN IS VERIFYING AGE FOR WEBSITES THAT SELL
17 AGE-RESTRICTED PRODUCTS, CORRECT?

18 A. YES.

19 Q. SUCH AS WINE AND TOBACCO, RIGHT?

20 A. YES.

21 Q. AND YOU HAVE RECOMMENDED BEST PRACTICES FOR
22 COMPANIES THAT SELL AGE RESTRICTED PRODUCTS, RIGHT?

23 A. WE HAVE A DOCUMENT THAT I HAVE DELIVERED TO YOU
24 THAT IS CLOSE TO THREE YEARS OLD THAT DEMONSTRATED SOME
25 BEST PRACTICES THAT WE HAVE NOT UTILIZED UNDER MY

1 LEADERSHIP.

2 Q. AND ONE OF THOSE BEST PRACTICES THAT YOU
3 RECOMMEND IS THAT THE WEBSITE OBTAIN A SIGNATURE AND
4 VERIFY A PHOTO ID WHEN THE PRODUCT IS ACTUALLY
5 PHYSICALLY DELIVERED TO THE CUSTOMER, CORRECT?

6 MR. BEANE: OBJECTION, YOUR HONOR. HE
7 SAID, YOU RECOMMEND. THAT MISCHARACTERIZES HIS
8 TESTIMONY.

9 THE COURT: CROSS EXAMINATION.
10 OVERRULED.

11 THE WITNESS: WOULD YOU LIKE TO SHOW ME
12 THE DOCUMENT THAT YOU ARE REFERRING TO?
13 BY MR. HARRIS:

14 Q. I'M HAPPY TO. TURN TO EXHIBIT 183.

15 A. THIS IS A DOCUMENT THAT WE DO NOT USE IN OUR
16 BUSINESS TODAY.

17 Q. THIS IS A DOCUMENT THAT YOU -- THAT WAS USED IN
18 YOUR ORDINARY COURSE OF BUSINESS AT THE TIME, RIGHT?

19 MR. BEANE: OBJECTION, YOUR HONOR.
20 FOUNDATION. HE HAS NOT ESTABLISHED THAT HE WAS AWARE OF
21 THIS DOCUMENT. HE SAID THEY HAVE NOT USED IT SINCE HIS
22 TENURE AT THE COMPANY.

23 MR. HARRIS: ACTUALLY I BELIEVE THE
24 WITNESS BROUGHT IT UP BEFORE I EVEN MENTIONED IT, BUT
25 I'M HAPPY TO ASK.

1 BY MR. HARRIS:

2 Q. ARE YOU FAMILIAR WITH THIS DOCUMENT?

3 A. YES.

4 Q. IS IT A DOCUMENT CREATED BY IDOLOGY?

5 A. YES.

6 Q. AND IT WAS CREATED AS PART OF THEIR BUSINESS
7 OPERATIONS, RIGHT?

8 A. YES.

9 Q. AND THIS IS ABOUT CONSUMER-NOT-PRESENT
10 AGE-RESTRICTED COMMODITIES, BEST PRACTICES. CORRECT?

11 A. THE TITLE IS: CONSUMER-NOT-PRESENT AGE
12 RESTRICTED COMMODITIES, BEST PRACTICES.

13 Q. THIS DESCRIBES, AT LEAST AT THE TIME WHAT
14 IDOLOGY THOUGHT WERE THE BEST PRACTICES FOR AGE
15 RESTRICTED COMMODITIES?

16 THE COURT: EXCUSE ME FOR INTERRUPTING
17 YOU. AT THE TIME HAS NOT BEEN DEVELOPED, BUT THERE IS A
18 DATE IN THE LOWER LEFT-HAND CORNER.

19 IF YOU SAY TIME, YOU HAVE TO HAVE
20 SOMETHING TO HANG IT ON.

21 BY MR. HARRIS:

22 Q. THIS DOCUMENT IS FROM 2004. CORRECT?

23 A. THAT IS WHAT IT SAYS.

24 Q. AND IN 2004 AT LEAST, IDOLOGY BELIEVED THAT A
25 BEST PRACTICE FOR AGE-RESTRICTED COMMODITIES WAS TO

1 RECEIVE PROOF OF ADULT SIGNATURE AT THE POINT OF
2 DELIVERY, CORRECT?

3 A. I WAS NOT EMPLOYED AT THE COMPANY AT THAT POINT
4 IN TIME, NOR WAS I INVOLVED IN THE DEVELOPMENT OF THIS
5 DOCUMENT.

6 Q. WELL, DO YOU KNOW THE ANSWER TO MY QUESTION?

7 A. I WAS NOT THERE, SO I'M NOT QUITE SURE WHY IT
8 WAS DEVELOPED.

9 Q. OKAY. BUT DO YOU KNOW IF, AT THE TIME IN 2004,
10 IDOLOGY RECOMMENDED AS A BEST PRACTICE THAT WEBSITES
11 RECEIVE PROOF OF ADULT SIGNATURE AT THE POINT OF
12 DELIVERY?

13 A. THAT IS WHAT THE DOCUMENT SAYS.

14 Q. YOU HAVE NO REASON TO THINK THIS IS NOT TRUE,
15 RIGHT?

16 A. I CAN READ THE DOCUMENT. THAT IS WHAT IT SAYS.

17 Q. AND DOES IDOLOGY NO LONGER RECOMMEND THAT AS A
18 BEST PRACTICE FOR THE PHYSICAL DELIVERY OF AGE
19 RESTRICTIVE COMMODITIES?

20 A. UNDER MY LEADERSHIP, WE HAVE NOT DISTRIBUTED
21 THIS DOCUMENT. IT WAS LAST REVISED IN 2004. IT'S OLD.
22 IT'S NOT SOMETHING THAT WE HAVE BEEN UTILIZING IN OUR
23 DAY-TO-DAY OPERATIONS OF THE BUSINESS.

24 Q. THAT WAS NOT QUITE MY QUESTION. DOES IDOLOGY NO
25 LONGER RECOMMEND TO ITS CLIENTS WHO SELL AGE-RESTRICTED

1 COMMODITIES THAT THEY OBTAIN AN ADULT SIGNATURE AT THE
2 POINT OF DELIVERY?

3 A. I THINK OUR POSITION AT THIS POINT IN TIME IS
4 THAT THE COMPANIES THAT WE ARE DEALING WITH ARE
5 SUFFICIENTLY SOPHISTICATED ENOUGH THAT THEY CAN
6 DETERMINE WHAT THEIR BEST PRACTICES OUGHT TO BE.

7 Q. AND DO YOU KNOW IF YOUR CLIENTS, SUCH AS CLIENTS
8 WHO SELL WINE ONLINE, IN FACT REQUIRE AN ADULT SIGNATURE
9 AT THE POINT OF DELIVERY?

10 A. I DON'T.

11 Q. HAVE YOU HEARD ANYTHING INDICATING THEY CHANGED
12 THEIR PRACTICES?

13 A. I DON'T KNOW THEIR PRACTICES.

14 Q. NOW, YOU ALSO MENTIONED VELOCITY LIMITS AS A
15 FEATURE IN YOUR PRODUCT.

16 DO YOU KNOW IF ANY OF YOUR CLIENTS THAT
17 USE VELOCITY LIMITS SELL AGE-RESTRICTED PRODUCTS?

18 A. I DON'T KNOW IF THEY ARE USING IT OR NOT.

19 Q. IN THE PAST, IDOLOGY WAS NOT WILLING TO PERMIT
20 ITS TECHNOLOGY TO BE USED FOR TRANSACTIONS INVOLVING
21 PORNOGRAPHY. CORRECT?

22 A. YES.

23 Q. AND YOU HAVE SINCE CHANGED THIS POLICY, IS THAT
24 RIGHT?

25 A. YES.

1 Q. DO YOU KNOW WHY IN THE PAST IDOLOGY WAS NOT
2 WILLING TO PERMIT ITS TECHNOLOGY TO BE USED FOR
3 TRANSACTIONS INVOLVING PORNOGRAPHY?

4 A. NO.

5 Q. YOU WERE INVOLVED AT THE TIME -- YOU WERE
6 WORKING AT IDOLOGY AT THE TIME THAT POLICY WAS IN
7 EFFECT, RIGHT?

8 A. I WAS WORKING AT IDOLOGY AT THE POINT IN TIME
9 THAT WAS IN OUR CONTRACT. WHETHER OR NOT -- I DON'T
10 THINK WE CAN ASSUME THAT IT WAS A POLICY BECAUSE THERE
11 WAS A STATEMENT IN OUR CONTRACT.

12 Q. ARE YOU SAYING THE STATEMENT MIGHT NOT HAVE BEEN
13 ENFORCED?

14 A. WE DIDN'T HAVE ANY PORNOGRAPHY CUSTOMERS AT THAT
15 POINT IN TIME, SO IT WAS NOT RELEVANT.

16 Q. WHY DID YOU CHANGE YOUR POLICY?

17 A. I THINK IT'S ABOUT PROTECTING CHILDREN. IF A
18 PORNOGRAPHER WANTS TO COME TO ME AND UTILIZE AGE
19 VERIFICATION TO KEEP KIDS OFF THE SITE, I'M HAPPY TO
20 SUPPORT HIM.

21 Q. WHEN DID YOU CHANGE THIS POLICY?

22 A. AGAIN, I WANT TO REITERATE, I DON'T THINK WE HAD
23 A POLICY ON THIS.

24 Q. WHEN DID YOU CHANGE THE STATEMENT OR TAKE OUT
25 THE STATEMENT THAT YOU WOULD NOT PROVIDE SERVICES TO --

1 FOR TRANSACTIONS INVOLVING PORNOGRAPHY?

2 A. I BELIEVE WE DID CHANGE THE CONTRACT EARLIER
3 THIS YEAR.

4 Q. WAS THAT BEFORE OR AFTER YOU WERE CONTACTED BY
5 THE DEPARTMENT OF JUSTICE?

6 A. IT WAS AFTER BUT, QUITE FRANKLY, IT CAME UP IN A
7 DEPOSITION AND YOUR LAWYER POINTED OUT TO ME, AND I
8 THOUGHT THAT IS A GOOD IDEA, I NEED TO TAKE IT OUT SO
9 --

10 Q. YOU TESTIFIED ABOUT THE PER TRANSACTION OR PER
11 VERIFICATION FEES THAT IDOLOGY CHARGES. RIGHT?

12 A. YES.

13 Q. AND YOU SAID THOSE FEES ARE -- RANGE FROM 37 TO
14 42 CENTS FOR THE EXPECTID AGE PRODUCT?

15 A. I SAID THAT THAT WAS THE LIST PRICE AND THAT THE
16 PRICE COULD VARY BASED ON VOLUME DISCOUNTS.

17 Q. CAN YOU TELL THE COURT HOW MUCH THESE VOLUME
18 DISCOUNTS ARE?

19 A. CAN YOU TELL ME HOW MANY TRANSACTIONS YOU WANT
20 TO BUY?

21 Q. SAY I WANTED TO DO A MILLION TRANSACTIONS A
22 YEAR.

23 A. WE COULD GIVE YOU A SIGNIFICANT DISCOUNT. WHAT
24 THAT WOULD BE, I WOULD HAVE TO SIT DOWN AND CALCULATE.

25 Q. CAN YOU TELL ME IF IT WOULD BE OVER 50 PERCENT

1 OFF THE LIST?

2 A. I CAN'T TELL YOU RIGHT NOW. I WOULD HAVE TO SIT
3 DOWN AND LOOK AT THE OPPORTUNITY AND DETERMINE WHAT THE
4 APPROPRIATE IMPACT WOULD BE.

5 Q. SO YOU CANNOT TELL THE COURT HOW MUCH OF A
6 DISCOUNT YOU WOULD PROVIDE?

7 A. THAT IS NOT SOMETHING WE TALK ABOUT IN A PUBLIC
8 FORUM. I THINK IT'S VERY COMPETITIVE TYPE OF
9 INFORMATION. IT IS NOT SOMETHING I WANT TO RELEASE IN A
10 PUBLIC FORUM THAT A COMPANY THAT COMES AND OFFERS TO PAY
11 THAT MUCH, I DON'T WANT THEM TO KNOW WHERE I'M WILLING
12 TO PRICE IT. THAT IS NOT VERY SMART, AS A BUSINESS
13 STANDPOINT FROM US.

14 Q. SO ALL I CAN RELY ON PUBLICLY IS YOUR LISTED
15 FEES. IS THAT RIGHT?

16 A. YOU CAN RELY ON THE FACT THAT IF YOU ARE WILLING
17 TO DO ADDITIONAL TRANSACTIONS I'M CERTAINLY WILLING TO
18 SIT DOWN AND HAVE A DISCUSSION WITH YOU ABOUT WHAT A
19 LOWER PRICE WOULD BE.

20 Q. NOW, YOU TESTIFIED THAT THE MINIMUM INFORMATION
21 REQUIRED TO DO AGE VERIFICATION IS NAME, ADDRESS AND ZIP
22 CODE. IS THAT RIGHT?

23 A. I TESTIFIED THAT WE CAN DO AN AGE VERIFICATION
24 BASED ON THAT MINIMUM LEVEL OF INFORMATION.

25 Q. AND IF THE CLIENT WANTED TO ACQUIRE ADDITIONAL

1 INFORMATION, THAT WOULD COST MORE MONEY. RIGHT?

2 A. IT IS ACTUALLY THE OTHER WAY. IF THEY PROVIDE

3 ME MORE UNIQUE IDENTIFIERS, I WILL CHARGE THEM LESS.

4 Q. THAT IS THE DIFFERENCE BETWEEN THE 42 DOWN TO

5 THE 37 CENTS, IS THAT RIGHT?

6 A. YES.

7 Q. IF I WANTED TO PROVIDE THESE ADDITIONAL

8 CHALLENGE QUESTIONS THAT YOU MENTIONED, SUCH AS WHERE

9 YOU WERE BORN, QUESTIONS LIKE THAT, THAT COSTS AN

10 ADDITIONAL AMOUNT, RIGHT?

11 A. THAT IS A STAND-ALONE PRODUCT THAT HAS ITS OWN

12 PRICE.

13 Q. THAT IS THE 97 CENTS THAT YOU MENTIONED?

14 A. YES.

15 Q. OKAY.

16 AND COULD YOU TURN TO PLAINTIFFS' EXHIBIT

17 262 IN YOUR BINDER.

18 DO YOU RECOGNIZE THIS DOCUMENT?

19 A. YES, SIR.

20 Q. AND WHAT IS IT?

21 A. IT'S A SHEET ON ELECTRONIC AGE VERIFICATION FOR

22 IDOLOGY.

23 Q. THIS IS A DOCUMENT CREATED BY IDOLOGY. RIGHT?

24 A. YES.

25 Q. IN YOUR NORMAL COURSE OF BUSINESS?

1 A. YES.

2 Q. AND IF YOU LOOK AT THE LAST PARAGRAPH ON THE
3 PAGE BEGINNING WITH: OUR SOLUTION, DO YOU SEE THE
4 SECOND SENTENCE SAYS: SINCE WE CAN DO THIS WITH AS
5 LITTLE AS NAME AND ADDRESS ONLY, YOUR CUSTOMERS ARE
6 COMFORTABLE WITH THE AMOUNT OF INFORMATION THEY ARE
7 REQUIRED TO SHARE.

8 DO YOU SEE THAT?

9 A. YES.

10 Q. AND IF YOU COULD TURN TO THE NEXT PAGE, THERE IS
11 A PARAGRAPH ON THE RIGHT SIDE: RESPONSIBLE DATA USE.

12 DO YOU SEE THAT?

13 A. YES.

14 Q. AND IT SAYS -- THE FIRST SENTENCE SAYS: BECAUSE
15 THE IDENTIFICATION PROCESS IS NOT BASED ON SENSITIVE
16 INFORMATION SUCH AS SOCIAL SECURITY NUMBER, YOUR
17 CUSTOMERS ARE COMFORTABLE WITH THE AMOUNT OF INFORMATION
18 THAT THEY ARE REQUIRED TO SHARE.

19 DO YOU SEE THAT?

20 A. YES.

21 Q. AND WHAT DO YOU MEAN BY WHEN YOU SAY -- WHEN
22 THIS DOCUMENT SAYS THAT SOCIAL SECURITY NUMBER IS
23 SENSITIVE INFORMATION?

24 A. WELL, WE DON'T -- WHEN WE REFER TO SOCIAL
25 SECURITY NUMBER THERE, WE ARE REFERRING TO THE -- ALL OF

1 THE DIGITS. AND OUR PRODUCT HAS BEEN DEVELOPED SO THAT
2 IF YOU WANT TO UTILIZE ANY -- THE FINAL FOUR OF THE
3 SOCIAL SECURITY NUMBER, YOU CAN UTILIZE THAT TO -- AS A
4 UNIQUE IDENTIFIER. BUT WE IN NO WAY EVER ASK FOR A FULL
5 SOCIAL SECURITY NUMBER, NOR DO WE STORE A FULL SOCIAL
6 SECURITY NUMBER. THAT IS WHAT WE ARE TALKING ABOUT.
7 THEY'RE RELATIVE TO SENSITIVE INFORMATION.

8 Q. CUSTOMERS WOULD BE EVEN MORE COMFORTABLE WITH
9 JUST PROVIDING A NAME AND ADDRESS. RIGHT?

10 A. I THINK YOU NEED TO TALK TO CUSTOMERS ABOUT
11 THAT. WHEN WE TALK TO CUSTOMERS, WHERE WE HAVE
12 CUSTOMERS THAT ASK FOR A UNIQUE IDENTIFIER LIKE YEAR OF
13 BIRTH OR SSN4, IT'S VERY INTERESTING IN THAT IT IS ABOUT
14 50-50 WHAT PEOPLE OFFER.

15 Q. I'M SORRY. WHAT DO YOU MEAN BY WHAT PEOPLE
16 OFFER?

17 A. WHEN WE DO AN IDENTITY VERIFICATION, SOME OF OUR
18 CUSTOMERS WILL GO THROUGH AND SAY, PLEASE GIVE ME YOUR
19 NAME AND ADDRESS AND ZIP CODE. AND THEN WE WILL ASK, IN
20 ORDER TO HELP VALIDATE YOUR IDENTITY, WOULD YOU BE MORE
21 COMFORTABLE PROVIDING A SOCIAL -- FINAL FOUR DIGITS OF
22 YOUR SOCIAL SECURITY NUMBER OR YEAR OF BIRTH. AND ONE
23 OF OUR CUSTOMERS DID A STUDY ON THAT. IT WAS ACTUALLY
24 50-50, WHICH WE WERE KIND OF SURPRISED ABOUT.

25 Q. FOCUSING ON THE PRODUCT YOU OFFERED TO JUST

1 IDENTIFY -- THAT JUST REQUIRES NAME AND ADDRESS AND ZIP
2 CODE, THAT IS THE MINIMUM INFORMATION THAT YOU REQUIRE
3 IN ORDER TO VERIFY AGE. RIGHT?

4 A. WELL, IT'S A SET OF MINIMUM INFORMATION THAT WE
5 REQUIRE. AS I MENTIONED BEFORE, WE HAVE WAYS OF ALSO
6 LOOKING AT DIFFERING INPUTS RELATIVE TO DOING AN AGE
7 VERIFICATION.

8 FOR INSTANCE, WE CAN DO IT BASED ON LAST
9 NAME, FIRST NAME, ZIP CODE AND SSN4. SOME PEOPLE MIGHT
10 CONSIDER THAT MINIMUM INFORMATION ALSO.

11 Q. OKAY. AND CHILDREN GENERALLY KNOW THEIR
12 PARENTS' NAMES. RIGHT?

13 A. YES.

14 Q. AND THEY ALSO GENERALLY KNOW THEIR PARENTS'
15 ADDRESSES. RIGHT?

16 A. IT DEPENDS ON THE AGE OF THE CHILD.

17 Q. WOULD YOU SAY CHILDREN OVER 10 GENERALLY KNOW
18 THEIR PARENTS' ADDRESS?

19 MR. BEANE: OBJECTION. FOUNDATION.
20 CALLS FOR HEARSAY.

21 THE COURT: CROSS EXAMINATION. IF HE
22 DOESN'T KNOW THE ANSWER, OR HAS A DIFFERENT WAY OF
23 APPROACHING IT, HE WILL BRING IT TO THE QUESTIONER'S
24 ATTENTION.

25 BY MR. HARRIS:

1 Q. DO YOU THINK CHILDREN GENERALLY OVER TEN KNOW
2 THEIR PARENTS' ADDRESS?

3 A. YES.

4 Q. AND WITHOUT PHYSICAL DELIVERY OF A GOOD, YOU
5 HAVE NO WAY OF KNOWING IF IT IS THE PARENT OR THE CHILD
6 WHO ENTERED THE PARENT'S NAME AND ADDRESS INTO THE
7 IDOLOGY SYSTEM. DO YOU?

8 A. I'M SORRY. SAY YOUR QUESTION AGAIN, PLEASE.

9 Q. WITHOUT SOMEONE PHYSICALLY DELIVERING SOME
10 PRODUCT AND GETTING A SIGNATURE RELEASE AND CHECKING AN
11 ID, YOU HAVE NO WAY OF KNOWING WHETHER IT WAS THE PARENT
12 OR THE CHILD WHO ENTERED THE PARENT'S NAME AND ADDRESS,
13 DO YOU?

14 A. WELL, WE SUGGEST THAT OUR WEBSITES HAVE A TERM
15 OF SERVICE AGREEMENT THAT BASICALLY INDICATES THAT IF
16 YOU ARE GOING TO PUT IN INFORMATION THAT IT BE CORRECT.
17 DO WE KNOW WHO IS ON THE OTHER END OF THE COMPUTER? NO.

18 Q. SO THE ANSWER TO MY QUESTION IS NO, YOU DO NOT
19 KNOW WHETHER IT'S THE PARENT OR THE CHILD WHO ENTERED
20 THE PARENT'S NAME AND ADDRESS. RIGHT?

21 A. WELL, THE INPUT INFORMATION, THAT CAN BE -- YES.
22 WHEN IT COMES TO ASKING QUESTIONS IN THE QUIZ, WE THINK
23 IT'S VERY, VERY DIFFICULT FOR A KID TO GET THROUGH THAT
24 EXPERIENCE AND ANSWER THOSE QUESTIONS.

25 Q. SO FOCUSED ON THE PRODUCT THAT REQUIRES NAME AND

1 ADDRESS, YOU DO NOT KNOW IF IT IS THE CHILD OR THE
2 PARENT WHO ENTERED THAT NAME AND ADDRESS INTO THE
3 IDOLOGY SYSTEM, DO YOU?

4 THE COURT: ANSWER THE QUESTION, PLEASE.

5 THE WITNESS: NO.

6 BY MR. HARRIS:

7 Q. CAN YOU TELL ME WHAT'S THE LARGEST VOLUME
8 DISCOUNT YOU HAVE OFFERED ON FEES?

9 A. NO.

10 Q. CAN YOU TURN TO EXHIBIT 185.

11 DO YOU RECOGNIZE THIS DOCUMENT?

12 A. YES.

13 Q. AND WHAT IS IT?

14 A. IT'S AN ENTERPRISE APPLICATION AND MASTER
15 SERVICE AGREEMENT FOR IDOLOGY, INC.

16 Q. THIS WAS PREPARED IN THE ORDINARY COURSE OF
17 IDOLOGY'S BUSINESS?

18 A. YES.

19 Q. IDOLOGY DOESN'T GUARANTEE ITS ABILITY TO VERIFY
20 THE AGE OF ITS CLIENTS' CUSTOMERS. DOES IT?

21 A. I GUESS -- CAN I ASK A QUESTION?

22 Q. YES.

23 A. I MARKED THIS CONFIDENTIAL INFORMATION AND I
24 DON'T KNOW WHY WE ARE PUTTING -- ARE WE PUTTING THIS
25 INTO THE RECORD?

1 Q. THIS DOCUMENT WAS IDENTIFIED IN A LETTER TO
2 IDOLOGY SEVERAL WEEKS AGO TO GIVE YOUR COMPANY NOTICE
3 AND NO RESPONSE WAS MADE.

4 A. I NEVER RECEIVED THAT LETTER.

5 MR. BEANE: YOUR HONOR, THAT IS
6 INACCURATE. THIS EXHIBIT, EXHIBIT 7 TO THE DEPOSITION,
7 WAS NOT A PART OF THAT LETTER.

8 MR. HARRIS: TAKE IT DOWN FROM THE
9 SCREEN.

10 I CAN ASK HIM QUESTIONS WITHOUT PUTTING
11 THE DOCUMENT ON THE SCREEN.

12 THE COURT: IT'S NOT IN EVIDENCE AT THIS
13 POINT. THERE IS NOTHING WRONG WITH ASKING SOMEONE
14 QUESTIONS ABOUT SOMETHING NOT IN EVIDENCE.

15 MR. HARRIS: WE WILL TRY IT THAT WAY.

16 BY MR. HARRIS:

17 Q. COULD YOU TURN TO PAGE 6 OF THE DOCUMENT,
18 PARAGRAPH 10.

19 MR. BEANE: YOUR HONOR, OBJECTION. IF
20 MR. HARRIS IS GOING TO ASK QUESTIONS ABOUT A
21 CONFIDENTIAL DOCUMENT, THE WITNESS SHOULD HAVE THE
22 OPPORTUNITY TO REVIEW IT AND STATE WHETHER HE IS WILLING
23 TO WAIVE CONFIDENTIALITY TO ANSWER QUESTIONS.

24 THE COURT: DOESN'T GO TO PAGE 10.

25 MR. HARRIS: I MISSPOKE. PAGE 6. IT'S

1 PARAGRAPH 10 THERE.

2 THE COURT: I MAY HAVE MISHEARD.

3 MR. HARRIS: I CAN MAKE A SUGGESTION,
4 YOUR HONOR. IT IS 4:30. WE COULD BREAK TO RESOLVE THIS
5 CONFIDENTIALITY ISSUE OVER THE WEEKEND.

6 THE COURT: I GUESS WE WILL HAVE TO. I
7 KNOW THE WITNESS IS NOT FROM PHILADELPHIA, BUT WE CAN'T
8 GO ON FOREVER EITHER. WE HAVE OTHER MATTERS TO HANDLE
9 THIS AFTERNOON.

10 MR. BEANE: YOUR HONOR, I BELIEVE THE
11 DEFENDANT IS WILLING TO GO ON FOR A LIMITED AMOUNT OF
12 TIME IF MR. HARRIS BELIEVES HE COULD FINISH HIS CROSS
13 EXAMINATION WITHIN 15 OR 20 MINUTES.

14 MR. HARRIS: I CAN FINISH BY FIVE
15 O'CLOCK.

16 THE COURT: MAYBE WE DON'T HAVE ANOTHER
17 PROBLEM. IS MR. SLOANE TIME SENSITIVE RIGHT NOW?

18 MR. TODD: YOUR HONOR, HE IS THE NEXT
19 WITNESS THAT WE ARE GOING TO CALL ON MONDAY MORNING.

20 THE COURT: IT WOULD BE ON MONDAY?

21 MR. TODD: YES, SIR.

22 THE COURT: WE HAVE TO RESOLVE THAT
23 TODAY.

24 MR. TODD: I'M SORRY, YOUR HONOR?

25 THE COURT: I SAID WE HAVE TO RESOLVE

1 THAT TODAY.

2 MR. TODD: YES, SIR.

3 THE COURT: SEE IF WE CAN FINISH UP THE
4 CROSS EXAMINATION.

5 BY MR. HARRIS:

6 Q. MR. DANCU, IT'S CORRECT THAT IDOLOGY DOES NOT
7 GUARANTEE ITS ABILITY TO VERIFY THE AGE OF ITS CLIENTS'
8 CUSTOMERS. DOES IT?

9 A. NO. THAT IS NOT CORRECT.

10 Q. IDOLOGY GUARANTEES ITS ABILITY TO VERIFY THE AGE
11 OF ITS CLIENTS' CUSTOMERS?

12 A. WE PROVIDE AGE VERIFICATION BASED ON DATA THAT
13 IS AVAILABLE IN PUBLIC DATA SOURCES.

14 Q. THAT WAS NOT MY QUESTION.

15 THE COURT: ANSWER THE QUESTION, PLEASE.

16 THE WITNESS: GIVE ME YOUR QUESTION

17 AGAIN.

18 BY MR. HARRIS:

19 Q. DOES IDOLOGY GUARANTEE ITS ABILITY TO VERIFY THE
20 AGE OF ITS CLIENTS' CUSTOMERS?

21 A. NO.

22 Q. IN FACT, YOU EXPLICITLY REQUIRE YOUR CLIENTS TO
23 ACKNOWLEDGE THAT THERE IS NO WARRANTY OR GUARANTEE OF
24 THE CORRECTNESS OF THE IDOLOGY SERVICES, DO YOU?

25 A. I THINK, TO BE MORE SPECIFIC, WE REPRESENT AND

1 WARRANT THAT THE INFORMATION WE USE MAY NOT BE CORRECT.

2 Q. AND YOU OBTAIN YOUR DATA FROM THIRD-PARTY

3 SOURCES. RIGHT?

4 A. YES.

5 Q. AND THE SERVICE YOU PROVIDE CAN ONLY BE AS GOOD

6 AS THE DATA YOU GET FROM YOUR DATA AGGREGATOR. CORRECT?

7 A. YES.

8 Q. AND IF THE INFORMATION FROM THE DATA AGGREGATOR

9 IS BAD, THEN THE RESULTS OF YOUR SERVICE WILL BE BAD.

10 RIGHT?

11 A. WHEN WE DO AN AGE VERIFICATION OR ID

12 VERIFICATION, WE ARE LOOKING UP MORE THAN ONE RECORD.

13 AND TYPICALLY WHEN WE GET INFORMATION, WE GET MORE THAN

14 ONE DATA POINT TO DO AN ID VERIFICATION. SO IF YOU ARE

15 IMPLYING THAT THE DATA SOURCES THAT WE USE THAT ALL THE

16 DATA IS BAD, I WOULD SAY THAT IS INCORRECT. IF YOU ARE

17 ASKING ME --

18 THE COURT: THAT IS NOT THE QUESTION,

19 SIR.

20 THE WITNESS: OKAY. SORRY.

21 THE COURT: ASK ANOTHER QUESTION.

22 BY MR. HARRIS:

23 Q. CAN YOU TELL ME WHO YOUR DATA AGGREGATOR IS?

24 A. NO.

25 Q. SO I HAVE NO WAY TO VERIFY, TO KNOW WHETHER THIS

1 IS A GOOD DATA AGGREGATOR OR A BAD ONE?

2 A. SURE. YOU HAVE A GOOD WAY TO KNOW. I'M
3 CONDUCTING BUSINESS, I'M DERIVING REVENUE AND PROVIDING
4 A PRODUCT IN THE MARKETPLACE THAT WORKS OR OTHERWISE
5 PEOPLE WOULD NOT BUY IT.

6 Q. I HAVE NO WAY TO CHECK THIS, RIGHT?

7 A. I DON'T KNOW WHAT YOU HAVE THE ABILITY TO CHECK.

8 Q. AND ISN'T IT RIGHT THAT -- CAN YOU TURN TO PAGE
9 4 OF THIS DOCUMENT.

10 AGAIN, DON'T DISPLAY IT.

11 A. I'M SORRY. WHAT WAS THE EXHIBIT NUMBER AGAIN?

12 Q. EXHIBIT 185.

13 A. SURE.

14 Q. AND I'M LOOKING AT PARAGRAPH NUMBER 3, AND I'M
15 LOOKING AT THE SECOND SENTENCE OF THAT. ISN'T IT RIGHT
16 THAT IDOLOGY MAKES ITS CLIENTS AGREE THAT THEY CANNOT
17 RELY ON IDOLOGY FOR THE ACCURACY OF THE INFORMATION?

18 A. I'M SORRY. I HAVE TO READ IT AGAIN.

19 THE COURT: READ THE EXACT LANGUAGE,
20 WOULD YOU, PLEASE.

21 BY MR. HARRIS:

22 Q. ISN'T IT RIGHT THAT IDOLOGY MAKES ITS CLIENTS
23 ACKNOWLEDGE AND AGREE THAT IDOLOGY OBTAINS ITS DATA FROM
24 THIRD-PARTY SOURCES WHICH MAY OR MAY NOT BE COMPLETELY
25 THOROUGH AND ACCURATE, AND THAT ITS CLIENTS SHALL NOT

1 RELY ON IDOLOGY FOR THE ACCURACY OR COMPLETENESS OF
2 INFORMATION SUPPLIED IN USING THE SERVICES?

3 A. THAT IS STATED IN OUR CONTRACT.

4 THE COURT: IS THAT WHAT IT SAYS, SIR?

5 THE WITNESS: THAT IS WHAT IT SAYS.

6 BY MR. HARRIS:

7 Q. AND YOU HAVE MENTIONED SEVERAL DATA SOURCES THAT
8 YOU USE, OR THAT YOU HAVE ACCESS TO, SUCH AS DMV DATA.

9 DOES IDOLOGY HAVE DMV DATA FROM EVERY STATE?

10 A. NO.

11 Q. YOU MENTIONED VOTING RECORDS. DOES IDOLOGY HAVE
12 VOTING RECORDS FOR EVERY COUNTY?

13 A. NO.

14 Q. YOU MENTIONED PROPERTY RECORDS. DOES IDOLOGY
15 HAVE PROPERTY RECORDS FOR EVERY COUNTY?

16 A. I DON'T KNOW THE ANSWER TO THAT. I WOULD HAVE
17 TO ASK.

18 Q. AND DID IDOLOGY HAVE VEHICLE REGISTRATIONS FOR
19 EVERY STATE?

20 A. I DON'T THINK SO.

21 Q. AND SOME OF THESE DATA SOURCES ARE UPDATED AS
22 INFREQUENTLY AS ONCE A YEAR. ISN'T THAT RIGHT?

23 A. SOME OF? WOULD YOU LIKE TO DEFINE WHICH ONE?

24 Q. I'M JUST ASKING IF SOME OF THE DATA SOURCES ARE
25 UPDATED AS INFREQUENTLY AS ONCE A YEAR, IS THAT RIGHT?

1 A. I'M NOT SURE IF THEY GO THAT LONG. I KNOW THAT
2 THEY ARE UPDATED MORE FREQUENTLY THAN THAT. WHETHER OR
3 NOT THERE ARE DATA SOURCES THAT GO THAT LONG, I WOULD
4 HAVE TO INQUIRE OF OUR DATA PROVIDER.

5 Q. IF YOU COULD TURN TO PLAINTIFFS' EXHIBIT 79.

6 THIS ONE IS MARKED CONFIDENTIAL BUT IT
7 WAS IN THE LETTER THAT WAS PROVIDED TO IDOLOGY'S COUNSEL
8 SEVERAL WEEKS AGO.

9 A. JUST TO BE CLEAR, THEY ARE NOT MY COUNSEL NOW
10 AND I NEVER RECEIVED THE LETTER.

11 Q. UNDERSTOOD. DO YOU RECOGNIZE THIS DOCUMENT?

12 A. YES.

13 Q. AND WHAT IS IT?

14 A. IT SAYS: WEB PORTAL END USER TIPS AGE AND
15 IDENTITY VERIFICATION.

16 Q. AND THIS WAS CREATED IN THE COURSE OF IDOLOGY'S
17 BUSINESS. CORRECT?

18 A. YES.

19 Q. AND IF YOU COULD LOOK AT THE FIRST PARAGRAPH.
20 DO YOU SEE THE SECOND SENTENCE OF THE FIRST PARAGRAPH
21 THAT STARTS: UPDATED DAILY?

22 A. YES.

23 Q. AND DO YOU SEE THAT IT INDICATES THAT IDOLOGY
24 LIMITS ITS DATA TO BUSINESS AND PEOPLE WITHIN THE
25 BORDERS OF THE UNITED STATES, ITS TERRITORIES AND

1 MILITARY INSTALLATIONS?

2 A. YES.

3 Q. DO YOU SEE THAT?

4 A. YES.

5 Q. AND SO IDOLOGY DOES NOT HAVE A WAY TO VERIFY THE
6 IDENTITY OF INDIVIDUALS OUTSIDE OF THE U.S. WHO ARE NOT
7 U.S. CITIZENS. CORRECT?

8 A. WE DO.

9 Q. YOU DON'T COLLECT DATA ON SUCH INDIVIDUALS,
10 THOUGH, DO YOU?

11 A. WE DON'T COLLECT DATA ON ANYBODY.

12 Q. YOU DON'T HAVE DATA ON SUCH INDIVIDUALS, DO YOU?

13 A. WE ARE IN THE PROCESS OF EXPANDING OUR PRODUCT
14 TO CANADA AND TO EUROPE.

15 Q. YOU DON'T CURRENTLY HAVE THAT DATA, DO YOU?

16 A. NOT TODAY. THAT'S CORRECT.

17 Q. IF YOU COULD TURN TO PAGE 4 OF THE DOCUMENT.

18 SEE IN THE MIDDLE OF THE DOCUMENT, THERE IS A HEADING:
19 REASONS A CUSTOMER MAY NOT BE SUCCESSFULLY VALIDATED BY
20 ID LIVE.

21 DO YOU SEE THAT?

22 A. YES.

23 Q. THIS LISTS REASONS WHY THERE MIGHT NOT BE
24 SUCCESSFUL VALIDATION USING YOUR VERIFICATION PRODUCT.
25 CORRECT?

1 A. THIS IS A DOCUMENT THAT IS PROVIDED TO OUR
2 CLIENTS THAT ARE UTILIZING THE CALL CENTER ENVIRONMENT.
3 THIS DOCUMENT IS A TRAINING VEHICLE TO HELP PEOPLE THAT
4 ARE INPUTTING DATA INTO THE ID -- THE CREDENTIAL FOR THE
5 PORTAL, DO A BETTER JOB RELATIVE TO INPUTTING DATA.

6 Q. THAT WASN'T MY QUESTION.

7 THIS LISTS A NUMBER OF REASONS WHY A
8 CUSTOMER MIGHT NOT BE SUCCESSFULLY VALIDATED BY YOUR
9 PRODUCT. RIGHT?

10 A. YES.

11 Q. AND WHAT DOES THAT MEAN, SUCCESSFULLY VALIDATED?

12 A. TO DO AN AGE OR IDENTITY VERIFICATION.

13 Q. THAT MEANS A CUSTOMER -- I'M SORRY. IF YOU LOOK
14 AT THE FIRST REASON. ONE REASON THAT A CUSTOMER MAY NOT
15 BE SUCCESSFULLY VALIDATED IS TYPOGRAPHICAL AND INPUT
16 ERRORS. CORRECT?

17 A. NOT IN ALL CASES, THAT IS NOT CORRECT.

18 Q. THAT IS A REASON THAT THEY MIGHT NOT BE
19 SUCCESSFULLY VALIDATED, CORRECT?

20 A. IT IS A POTENTIAL REASON, CORRECT.

21 Q. WHAT ARE SOME EXAMPLES OF TYPOGRAPHICAL OR INPUT
22 ERRORS THAT WOULD PREVENT A SUCCESSFUL VALIDATION?

23 A. THEY ARE GOING TO HAVE TO BE PRETTY EXTREME
24 BECAUSE OF THE USE OF OUR LEVINSTEIN LOGIC, AS WE WENT
25 THROUGH BEFORE, CAN CORRECT A FAIR AMOUNT OF

1 TYPOGRAPHICAL ERRORS. IF SOMEBODY REALLY BUTCHERS
2 INFORMATION SO THAT WE CAN'T RESOLVE IT VIA LEVINSTEIN
3 LOGIC, THEN WE WON'T BE ABLE TO SUCCESSFULLY VALIDATE
4 IT.

5 Q. YOU THOUGHT THIS WAS A SIGNIFICANT ENOUGH
6 PROBLEM TO INFORM YOUR CLIENTS OF, DIDN'T YOU?

7 A. I THINK IT'S A SIGNIFICANT TRAINING ISSUE, THAT
8 THEY NEED TO KNOW THAT THEIR DATA INPUT PEOPLE PROVIDE
9 THE CORRECT INFORMATION.

10 Q. AND A SECOND REASON IS THAT IDOLOGY MAY NOT
11 SUCCESSFULLY VALIDATE A CUSTOMER IF THE CUSTOMER ENTERS
12 A CORRECT ADDRESS BUT IT'S NOT THE ADDRESS ON THE
13 GOVERNMENT ISSUED ID, RIGHT?

14 A. ACTUALLY THAT IS NOT AS MUCH OF A CONCERN FOR US
15 AT THIS POINT BECAUSE WE ARE ABLE, GIVEN OUR LOGIC
16 TODAY, TO IDENTIFY PEOPLE USING DIFFERING DATA POINTS,
17 AND WHAT WE WILL CONVEY BACK TO OUR CLIENTS WILL
18 INDICATE THAT WE ARE ABLE TO VERIFY THE PERSON BUT THE
19 ADDRESS DOES NOT MATCH.

20 Q. THIS WAS CERTAINLY A CONCERN AT THE TIME THE
21 DOCUMENT WAS CREATED, RIGHT?

22 A. AGAIN, IT'S A CONCERN RELATIVE TO TRAINING DATA
23 INPUT PEOPLE. NOT A CONCERN RELATIVE TO OUR PRODUCT.

24 Q. IT WAS A REASON A CUSTOMER MAY NOT BE
25 SUCCESSFULLY VALIDATED, RIGHT?

1 A. THAT IS WHAT IT SAYS.

2 Q. AND LIKEWISE, A REASON A CUSTOMER MAY NOT BE
3 SUCCESSFULLY VALIDATED, IF THE CUSTOMER HAS MOVED AND
4 FORGOTTEN TO UPDATE THEIR IDENTIFICATION. RIGHT?

5 A. I THINK THAT DOES NOT HAPPEN VERY OFTEN.

6 Q. DOESN'T IT SAY IT HAPPENS MORE FREQUENTLY THAN
7 ONE MIGHT EXPECT?

8 A. NO. IT SAYS MORE FREQUENTLY THAN ONE MIGHT
9 EXPECT, A CUSTOMER MAY HAVE MOVED.

10 Q. AND FORGOTTEN TO UPDATE THEIR IDENTIFICATION IN
11 A TIMELY MANNER. CORRECT?

12 A. UH-HUH.

13 Q. IS THAT YES?

14 A. THAT IS WHAT IT SAYS.

15 Q. AND ANOTHER REASON A CUSTOMER MAY NOT BE
16 SUCCESSFULLY VALIDATED IS IF A MARRIAGE, DIVORCE, OR
17 OTHER REASONS FOR A LEGAL NAME CHANGE HAS OCCURRED.
18 RIGHT?

19 A. AGAIN, I THINK THAT GIVEN OUR LOGIC AND OUR DATA
20 VENDOR, TODAY IS A VERY INFREQUENT REASON WHY AN
21 IDENTITY WOULD NOT BE VALIDATED.

22 Q. AND ANOTHER REASON THAT IS LISTED HERE IS IF THE
23 CUSTOMER IS YOUNG. RIGHT?

24 A. WHICH NUMBER IS THAT?

25 Q. NUMBER 8.

1 A. I'M SORRY. REPEAT YOUR QUESTION.

2 Q. ANOTHER REASON A CUSTOMER MAY NOT BE
3 SUCCESSFULLY VALIDATED IS IF THE CUSTOMER IS YOUNG.
4 RIGHT?

5 A. WELL, IT DOES NOT HAVE TO DO WITH THEIR AGE PER
6 SE. IT HAS TO DO WITH WHETHER OR NOT THEY HAVE DATA
7 RECORDS THAT ARE AVAILABLE. IF THEY ARE YOUNG AND THEY
8 DON'T HAVE DATA RECORDS AVAILABLE, THEN WE COULDN'T
9 VERIFY THEM.

10 Q. GENERALLY THE OLDER A PERSON IS, THE MORE LIKELY
11 THEY ARE TO HAVE MORE DATA RECORDS. RIGHT?

12 A. BUT THE DEPTH OF DATA DOES NOT RELATE TO OUR ID
13 VERIFICATION.

14 Q. YOU DID NOT ANSWER MY QUESTION. GENERALLY THE
15 OLDER A PERSON IS, THE MORE LIKELY THEY ARE TO HAVE MORE
16 DATA RECORDS. RIGHT?

17 A. NO. WHAT IF THEY ARE NEW IN THE COUNTRY? THEY
18 MIGHT ONLY HAVE ONE RECORD.

19 Q. TALKING ABOUT U.S. CITIZENS, A 15-YEAR OLD
20 LIVING IN THE U.S. IS LESS LIKELY TO HAVE DATA RECORDS
21 THAN A 35-YEAR-OLD. RIGHT?

22 A. AGAIN, I'M NOT TRYING TO BE CUTE, BUT IT DEPENDS
23 ON THE CIRCUMSTANCE. IF THAT 35-YEAR-OLD HAS NOT BEEN
24 IN THE STATES FOR 10 YEARS THEN THEY MAY HAVE SIMILAR
25 DATA RECORDS.

1 Q. YOU'RE REALLY NOT FOCUSING ON MY QUESTION.

2 LET'S TAKE --

3 THE COURT: THE QUESTION IS NOT COMPLETE.
4 IF A 35-YEAR-OLD HASN'T BEEN IN THE STATES FOR 35 YEARS,
5 HASN'T BEEN IN PRISON. WHATEVER.

6 THE WITNESS: EXACTLY.

7 THE COURT: YOUR QUESTION DID NOT INCLUDE
8 THAT.

9 BY MR. HARRIS:

10 Q. TALKING ABOUT PEOPLE WHO LIVED IN THE UNITED
11 STATES THEIR WHOLE LIFE. ON AVERAGE, WOULD YOU SAY A
12 17-YEAR-OLD IS MORE LIKELY, IS -- LET ME TRY IT AGAIN.
13 TALKING ABOUT PEOPLE WHO HAVE LIVED IN THE U.S. THEIR
14 WHOLE LIFE, A 17-YEAR-OLD IS LESS LIKELY TO HAVE DATA
15 RECORDS THAN A 35-YEAR-OLD. ISN'T THAT RIGHT?

16 A. YES.

17 Q. AND ALSO LISTED HERE AS A REASON A CUSTOMER MAY
18 NOT BE SUCCESSFULLY VALIDATED IS THAT THE CUSTOMER IS
19 UNDERAGE. RIGHT?

20 A. YES.

21 Q. OR THAT THE CUSTOMER IS A RECENT IMMIGRANT OR
22 VISA HOLDER. RIGHT?

23 A. AGAIN, THAT IS WHAT THE DOCUMENT SAYS.

24 Q. OR THAT THE CUSTOMER IS NOT A U.S. CITIZEN.
25 RIGHT?

1 A. I THINK THESE ARE NOT ABSOLUTES. BUT YOU ARE
2 READING THE LANGUAGE FROM WHAT IT SAYS HERE, BUT THESE
3 ARE NOT --I CAN'T GIVE YOU A YES ABSOLUTE ANSWER THAT
4 WE WOULD NOT SUCCESSFULLY VERIFY SOMEONE WHO IS NOT A
5 U.S. CITIZEN.

6 Q. YOU ARE NOT SAYING -- YOUR POINT IS, IT'S NOT
7 THAT YOU CAN'T VERIFY ANY NON U.S. CITIZENS. IS THAT
8 YOUR POINT?

9 A. I DON'T UNDERSTAND YOUR QUESTION.

10 Q. SORRY. IT WAS NOT A VERY ARTFULLY WORDED
11 QUESTION.

12 CAN YOU EXPLAIN TO ME WHAT THIS LAST ONE
13 MEANS, THE ACCOUNTHOLDER IS NOT THE CUSTOMER PLACING THE
14 ORDER.

15 A. IF I'M PLACING AN ORDER WITH SOMEONE'S CREDIT
16 CARD THAT I DON'T HAVE AUTHORIZATION TO USE AND
17 COMMITTING FRAUD, THEN WE DO NOT WANT TO VALIDATE THAT
18 TRANSACTION.

19 Q. CAN YOU TURN TO NUMBER 13 ON THE NEXT PAGE. THE
20 CUSTOMER IS NOT WHO THEY CLAIM TO BE?

21 A. YES.

22 Q. DO YOU SEE THAT?

23 A. YES.

24 Q. SO 1 THROUGH 12 ARE EXAMPLES WHERE THE CUSTOMER
25 IS WHO THEY CLAIM TO BE BUT WERE NOT ABLE TO

1 SUCCESSFULLY VALIDATE AND 13 IS THE SITUATION WHERE THE
2 CUSTOMER IS NOT WHO THEY CLAIM TO BE. IS THAT RIGHT?

3 A. WELL, I CAN CLAIM TO BE SOMEONE -- NO, THAT IS
4 TOO BROAD -- I CAN'T ANSWER THAT AS NO.

5 BE MORE SPECIFIC FOR ME.

6 Q. WELL, YOU SEE NUMBER 13. THE REASON NUMBER 13
7 IS THE CUSTOMER IS NOT WHO THEY CLAIM TO BE. RIGHT?

8 A. YES.

9 Q. SO REASONS 1 THROUGH 12 ARE DIFFERENT REASONS
10 WHY IDOLOGY WAS NOT ABLE TO SUCCESSFULLY VALIDATE.
11 RIGHT.

12 A. THEY ARE ALL DIFFERENT REASONS.

13 MR. HARRIS: IF I COULD JUST TAKE A
14 MINUTE, YOUR HONOR?

15 (PAUSE.)

16 MR. HARRIS: NO FURTHER QUESTIONS AT THIS
17 TIME.

18 I WOULD LIKE TO MOVE INTO EVIDENCE
19 DEFENDANT'S EXHIBIT 79.

20 I'M SORRY. PLAINTIFFS' EXHIBIT 79.

21 THE COURT: PLAINTIFFS' EXHIBIT 79.

22 OKAY.

23 ANY OBJECTION?

24 MR. BEANE: NO OBJECTION TO 79, YOUR
25 HONOR.

1 THE COURT: PLAINTIFFS' EXHIBIT 79 IS
2 ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF.

3 (PLAINTIFFS' EXHIBIT 79 RECEIVED INTO
4 EVIDENCE.)

5 THE COURT: ANY NECESSARY RECROSS?
6 REDIRECT, SORRY.

7 MR. BEANE: NO REDIRECT, YOUR HONOR. BUT
8 THE DEFENDANT DOES MOVE INTO EVIDENCE EXHIBITS 109 AND
9 464.

10 MR. HARRIS: NO OBJECTION, YOUR HONOR.

11 THE COURT: THE DEFENDANT'S EXHIBITS 109
12 AND 464 ARE RECEIVED INTO EVIDENCE.

13 (DEFENDANT'S EXHIBITS 109 AND 464
14 RECEIVED INTO EVIDENCE.)

15 THE COURT: MR. DANCU, YOU ARE EXCUSED.

16 THE WITNESS: THANK YOU, SIR.

17 THE COURT: BE CAREFUL GETTING DOWN.

18 THE WITNESS: OKAY.

19 (WITNESS EXCUSED.)

20 THE COURT: SORRY WE ARE LATE, MR. LANG.

21 THE CLERK: THAT'S ALL RIGHT.

22 THE COURT: I WANT TO DIRECT -- RECEIPT
23 OF THE EVIDENCE FOR TODAY IS CONCLUDED.

24 WE ARE HERE FOR OUR BREAD AND BUTTER
25 SESSION. JUST TO PICK ON THE THING THAT IS ON MY MIND,

1 THE ISSUE OF THE TESTIMONY OF TIM SLOANE, S-L-O-A-N-E,
2 FIRST NAME TIM, WHICH IS THE SUBJECT OF CONCURRENT
3 LETTERS OF NOVEMBER 9, 2006 TO THE COURT WITH ITS
4 REQUEST DELIVERED ON TIME. LETTERS WERE RELATIVELY
5 COMPREHENSIVE. MY QUESTION IS, IS THERE ANY NEED FOR
6 ANY ADDITIONS OR ARGUMENTS? IT'S THE PLAINTIFFS'
7 MOTION.

8 MR. HARRIS: NOT UNLESS YOUR HONOR HAS
9 ANY QUESTIONS. I BELIEVE THE LETTERS LAY OUT OUR
10 POSITIONS ADEQUATELY.

11 THE COURT: MR. TODD.

12 MR. TODD: YOUR HONOR, I WILL JUST NOTE
13 THAT THERE HAS BEEN -- FOR WHAT IT IS WORTH, THERE HAS
14 BEEN, OVER DEFENDANT'S OBJECTION, OPINION TESTIMONY
15 PROVIDED BY SOME OF THE PLAINTIFFS IN THIS CASE
16 CONCERNING THE BEHAVIOR OF INTERNET CUSTOMERS, SUCH AS
17 THE TESTIMONY OF JOAN WALSH. AND I'M NOT SUGGESTING
18 THAT THIS IS OPINION TESTIMONY. I'M JUST NOTING THAT
19 WHAT MIGHT APPEAR TO BE -- WHAT MIGHT APPEAR TO BE
20 OPINION TESTIMONY IN THE EYES OF ONE PARTY MAY IN THE
21 EYES OF THE COURT OR IN THE EYES OF THE OTHER PARTY BE
22 FACT TESTIMONY, PERMISSIBLE FACT TESTIMONY.

23 THE COURT: EXCUSE ME JUST A MINUTE.

24 COUNSEL, BASED ON THE ARGUMENTS IN COURT
25 YESTERDAY AND THE LETTER BRIEFS OF THE PARTIES, THE

1 COURT IS SUBJECT TO A MORE LENGTHY DETAILED ORDER WHICH
2 HAS ALREADY BEEN PREPARED, BUT WHICH I DON'T HAVE COPIES
3 FOR YOU. THE PLAINTIFFS' OBJECTION TO THE TESTIMONY OF
4 MR. SLOANE IS SUSTAINED, AND MR. SLOANE SHALL NOT
5 TESTIFY. AND MR. SLOANE'S SURVEY DEFENSE EXHIBIT 45 IS
6 NOT ADMISSIBLE BECAUSE THE DEFENDANT HAD MERELY PRODUCED
7 A FACT WITNESS WHO IS NOT PERMITTED TO TESTIFY TO HIS
8 OPINIONS OF THE SURVEY'S CIRCUMSTANTIAL GUARANTEES OF
9 TRUSTWORTHINESS.

10 MR. LANG WILL COPY THOSE FOR YOU AND GIVE
11 YOU A COURTESY COPY. I HAVE NOT SERIATIM MADE AN
12 ANALYSIS SIMILAR TO THE ORDERS I HAVE ISSUED ELSEWHERE
13 IN THIS CASE.

14 WHO WILL BE THE DEFENSE WITNESS ON
15 MONDAY?

16 MR. GOMEZ: JEFFREY EISENACH WILL BE THE
17 WITNESS ON MONDAY.

18 THE COURT: SPELL HIS LAST NAME FOR THE
19 RECORD.

20 MR. GOMEZ: E-I-S-E-N-A-C-H.

21 THE COURT: WILL HE TAKE THE WHOLE DAY,
22 DO YOU THINK?

23 MR. GOMEZ: I THINK HE MAY, YOUR HONOR.
24 THERE ARE A NUMBER OF EXHIBITS THAT ARE ASSOCIATED WITH
25 HIM.

1 THE COURT: DOES PLAINTIFF CONCUR WITH
2 THAT LIKELIHOOD, WITH CROSS?

3 MR. HARRIS: YES, YOUR HONOR.

4 THE COURT: WHAT ARE THE EXHIBITS,
5 PLEASE?

6 MR. GOMEZ: THERE ARE A LONG NUMBER.
7 JOINT EXHIBIT 1.

8 THE COURT: THAT IS THE STIPULATION.

9 MR. GOMEZ: YES.

10 THE COURT: CORRECT?

11 MR. GOMEZ: YES. DEFENDANT EXHIBITS 4
12 THROUGH 6, SO IT IS 4, 5, AND 6, 15 AND 16, 18, 29, 34,
13 36, 37, 40, 42, 44, 49, 51, 58, 426 THROUGH 429, SO THAT
14 IS 426, 427, 428 AND 429, YOUR HONOR.

15 THE COURT: PLAINTIFFS ARE ON NOTICE?

16 MR. HARRIS: YES, YOUR HONOR.

17 THE COURT: WHAT WILL HAPPEN ON TUESDAY,
18 DO YOU THINK, MR. GOMEZ?

19 MR. GOMEZ: I THINK ON TUESDAY WE SHOULD
20 HAVE MR. ARTHUR CLARK. AND IT'S LIKELY THAT HE MAY TAKE
21 THE ENTIRE DAY. I THINK I CAN JUST GIVE YOU WHAT I
22 THINK IS GOING TO BE FOR THE WEEK. WEDNESDAY --

23 THE COURT: IT IS MUCH APPRECIATED, AND
24 THE PLAINTIFFS' COUNSEL JOIN MY COMPLIMENT. I'M AWARE
25 WHEN DO YOU THIS, THINGS CAN CHANGE. I WANT TO TASK YOU

1 WITH THE RESPONSIBILITY OF GETTING IN TOUCH WITH THE
2 PLAINTIFFS TO TELL THEM THAT THE WITNESSES ARE JUGGLED
3 AROUND IN SOME TIMELY FASHION.

4 MR. GOMEZ: YES, YOUR HONOR. THIS IS OUR
5 BEST ESTIMATE AT THIS POINT, BUT I THINK WE WILL BE
6 MAKING -- PROCEEDING ON THIS BASIS. SCOTT SMITH ON
7 WEDNESDAY, AND PATTIE DILLON.

8 THE COURT: EXCUSE ME JUST A MINUTE.
9 TUESDAY IS CLARK.

10 MR. GOMEZ: TUESDAY IS ARTHUR CLARK.

11 THE COURT: SCOTT SMITH ON WEDNESDAY.

12 MR. GOMEZ: YES, YOUR HONOR. PATTIE
13 DILLON. SO SCOTT SMITH AND PATTIE DILLON ON WEDNESDAY,
14 AND THEN I THINK WE WILL HAVE THURSDAY MORNING MARIE
15 ALEXANDER. AND I BELIEVE THAT WOULD CONCLUDE THE
16 DEFENDANT'S WITNESSES, YOUR HONOR.

17 THE COURT: THAT WILL CONCLUDE ALL THE
18 WITNESSES?

19 MR. GOMEZ: YES, YOUR HONOR.

20 I APOLOGIZE, YOUR HONOR. I LEFT OUT ONE
21 EXHIBIT FOR MR. EISENACH, AND I BELIEVE IT'S PLAINTIFFS'
22 EXHIBIT 85.

23 THE COURT: OKAY. THANK YOU.

24 MR. GOMEZ: YOUR HONOR, IF I MAY JUST
25 HAVE ONE MOMENT.

1 THE COURT: PLAINTIFFS SHOULD BE GEARING
2 UP ABOUT REBUTTAL WITNESSES, IF ANY.

3 MR. HANSEN: WE HAVE ALREADY STARTED
4 WORKING ON THAT, YOUR HONOR. AT THIS POINT, WE
5 ANTICIPATE, AT MOST, ONLY ONE REBUTTAL WITNESS,
6 MR. GELMAN, AND HE WOULD -- HE IS AVAILABLE THURSDAY
7 AFTERNOON, IF THE DEFENDANT FINISHES AS HE CURRENTLY
8 ANTICIPATES.

9 MR. GOMEZ: THERE IS ONE REMAINING
10 EXHIBIT, YOUR HONOR.

11 THE COURT: YES, SIR.

12 MR. GOMEZ: FOR MR. EISENACH, I LEFT OFF
13 PLAINTIFFS' EXHIBIT 2.

14 THE COURT: A CV OR A REPORT OR
15 SOMETHING?

16 MR. GOMEZ: I DON'T KNOW, YOUR HONOR.

17 THE COURT: LET ME GRAB THE OR SOMETHING.

18 I WARN THE REBUTTERS TO TAKE A STRICT
19 VIEW OF REBUTTAL. YOU CAN'T WANDER AROUND TOO MUCH.

20 MR. HANSEN: WE CONSIDER OURSELVES
21 WARNED, YOUR HONOR. THANK YOU.

22 THE COURT: I DON'T THINK I'M UNUSUAL BUT
23 -- MAYBE FOR OTHER REASONS, BUT NOT THAT. THANK YOU
24 VERY MUCH. WE ARE CONCLUDED FOR THE DAY. WE WILL
25 RESUME FOR THE DAY. MONDAY MORNING AT 9:30.

1 COUNSEL ARE EXCUSED. WE ARE OFF THE
2 RECORD. HAVE A PLEASANT WEEKEND.

3 (COURT ADJOURNED AT 5:00 P.M.)

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20	ABOVE-ENTITLED MATTER.				
21					
22					
23					
24	DATE				OFFICIAL COURT REPORTER
25					