

EXHIBIT 9

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IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

Case No. 12012447CI-011

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TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

vs.

HEATHER CLEM, GAWKER MEDIA, LLC a/k/a
GAWKER MEDIA, GAWKER MEDIA GROUP, INC.
a/k/a GAWKER MEDIA, GAWKER ENTERTAINMENT,
LLC, GAWKER TECHNOLOGY, LLC, GAWKER SALES,
LLC, NICK DENTON, A.J. DAULERIO,
KATE BENNERT and BLOGWIRE HUNGARY SZELLEMI
ALKOTAST HASZNOSITO KFT a/k/a GAWKER MEDIA,

Defendants.

-----)

VIDEOTAPED DEPOSITION OF

SCOTT KIDDER

New York, New York

Tuesday, October 1, 2013

Reported by:
Toni Allegrucci
JOB NO. 10069

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October 1, 2013
10:07 a.m.

Videotaped Deposition of
SCOTT KIDDER, held at the offices of
Esquire Deposition Solutions,
1384 Broadway, New York, New York 10018,
pursuant to Notice, before
Toni Allegrucci, a Notary Public of the
State of New York.

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ALSO PRESENT:

ANDREW RITCHIE, Videographer

HEATHER L. DIETRICK, Counsel, Gawker Media

1 S. Kidder

2 the questions to the best of his
3 ability.

4 MR. MIRELL: Okay. Thank you very
5 much.

6 A. The officers of Gawker Media Group,
7 Inc. are Nicholas Denton and Scott Kidder.

8 Q. And when was Gawker Media Group
9 formed?

10 A. I don't know the specific date, but
11 it was, I can speculate it was around 2009 as
12 part of a restructuring.

13 Q. And what is your title within
14 Gawker Media Group?

15 A. You are asking me personally?

16 Q. Yeah.

17 A. Vice president of operations.

18 Q. Can you describe for me the
19 relationship between Gawker Media Group, the
20 functional relationship between Gawker Media
21 Group, Inc. and Gawker Media, LLC?

22 A. Gawker Media Group, Inc. owns
23 100 percent of the equity of Gawker Media,
24 LLC.

25 Q. And where is it incorporated?

1 S. Kidder

2 A. Cayman Islands.

3 Q. Does it have an agent for service
4 of process?

5 A. I would imagine so. I would
6 speculate that, that it does but I'm not
7 familiar with the service of process process
8 in Cayman Islands.

9 Q. Are there any other officers of
10 Gawker Media Group, Inc. other than yourself
11 and Mr. Denton?

12 A. Not that I'm aware of.

13 Q. Are there any directors of the
14 entity?

15 A. Yes.

16 Q. Who are the directors?

17 A. There are three directors, Nick,
18 Nick Denton, Gaby Darbyshire and Adrian
19 Weinbrecht.

20 Q. Can you spell Adrian Weinbrecht's
21 name?

22 A. A-d-r-i-a-n, W-e-i-n-b-r-e-c-h-t.

23 Q. And Ms. Darbyshire remains a
24 director of this entity even though she's no
25 longer employed by Gawker Media, LLC?

1 S. Kidder

2 A. Yes, currently.

3 Q. When did you become a director of
4 this entity?

5 A. I'm not a director, I'm an officer.

6 Q. I'm sorry. When did you become an
7 officer?

8 A. I don't recall the specific date,
9 but it would have been likely sometime last
10 summer in consultation with my, with my job
11 change.

12 Q. Okay.

13 Do you receive compensation from
14 Gawker Media Group, Inc.?

15 A. No.

16 Q. Do any of the individuals who
17 are -- who you've named who are affiliated
18 with it in any way receive compensation
19 through that entity?

20 A. Can you elaborate on compensation?

21 Q. Does that -- does Gawker Media
22 Group, Inc. pay money to Mr. Denton or
23 Ms. Darbyshire or Ms. Weinbrecht?

24 A. Not in the regular course of
25 business, no.

1 S. Kidder

2 Q. How does it do so not in any manner
3 other than in the regular course of business?

4 A. The sole purpose of Gawker Media
5 Group Incorporated is to facilitate ownership
6 in Gawker Media, LLC and Kinja Hungarian
7 Corporation, as part of that sometimes
8 Gawker Media Group, Incorporated undertakes
9 stock buybacks in which it will purchase back
10 some of its own stock from any shareholders.

11 Q. Okay. In your last response you
12 identified a Kinja Hungary entity?

13 A. Yes.

14 Q. What entity is that specifically?

15 A. Kinja KFT.

16 Q. What kind of an entity is that?

17 A. Kinja is an intellectual property
18 holding and technology development company.

19 Q. What is the relationship between
20 Kinja KFT and Gawker Media, LLC?

21 A. They are 100 percent fully owned by
22 Gawker Media Group Incorporated and they have
23 entered into various agreements between each
24 other.

25 Q. When was Kinja -- is Kinja KFT a

1 S. Kidder

2 corporation?

3 A. It's a Hungarian corporation.

4 Q. When was it incorporated?

5 A. I don't know the specific date, but
6 it would have been in the early 2000s.

7 Q. Who are the officers of that
8 entity?

9 A. I am -- Scott Kidder is the
10 managing director.

11 Q. Any other officers?

12 A. I'm, I'm not aware of any other
13 officers.

14 Q. Any directors?

15 A. I'm a managing director. I'm not
16 aware of any other directors.

17 Q. You indicated that Kinja KFT --
18 well, let me go back. What is the
19 relationship between Kinja KFT and -- strike
20 that.

21 So Kinja KFT then is in effect a
22 wholly-owned subsidiary of Gawker Media
23 Group, Inc.?

24 A. Yes.

25 Q. Okay. And when you say it holds

1 S. Kidder
2 the -- it's an IP holding and technology
3 company, does that mean that it, for example,
4 holds the trademark rights to Gawker and
5 its -- to any Gawker Media trademarks?

6 A. It owns trademarks and domain names
7 for all of the sites that Gawker Media, LLC
8 currently operates.

9 Q. Do you know whether Kinja KFT has
10 an agent for service process?

11 A. I do not.

12 Q. Does Kinja KFT maintain bank
13 accounts?

14 A. Yes.

15 Q. And where are those located?

16 A. In banks in Hungary and the
17 United States.

18 Q. Same question with respect to
19 Gawker Media Group, Inc., does it maintain
20 bank accounts?

21 A. It has a bank account in the
22 United States.

23 Q. Does it maintain bank accounts in
24 the Cayman Islands as well?

25 A. No.

1 S. Kidder

2 Q. Okay. All right. We have
3 identified also as another -- strike that.

4 Does Gawker Media Group, Inc. have
5 any other subsidiaries other than Kinja KFT?

6 A. And Gawker Media, LLC, no.

7 Q. All right. Are you familiar with
8 an entity by the name of
9 Gawker Entertainment, LLC?

10 A. Yes.

11 Q. What is Gawker Entertainment, LLC?

12 A. Gawker Entertainment, LLC is a
13 dissolved New York Limited Liability Company.

14 Q. When was it dissolved?

15 A. At the end of last year.

16 Q. And why was it dissolved?

17 A. Gawker Entertainment, LLC was a
18 wholly owned subsidiary of Gawker Media, LLC
19 and in the interest of simplification and in
20 consultation with discussion with counsel we
21 decided to dissolve all of Gawker Media,
22 LLC's wholly owned subsidiaries.

23 MR. BERLIN: Let me just caution
24 the witness not to disclose the
25 substance of communications with

1 S. Kidder

2 Gawker Technology, LLC.

3 Q. And does that advertising -- strike
4 that.

5 Has that advertising sales function
6 now been subsumed under Gawker Media, LLC?

7 A. Yes.

8 Q. When these three entities that we
9 have just been discussing,
10 Gawker Entertainment, LLC, Gawker Technology,
11 LLC and Gawker Sales, LLC were dissolved,
12 were there individuals who were employed by
13 those entities who ceased to be employed?

14 A. All employees of those three
15 entities were immediately employed by
16 Gawker Media, LLC.

17 Q. Okay. No layoffs of employees
18 resulted from the dissolution of any of those
19 three entities?

20 A. There, there may have been some
21 layoffs of employees at the end of, at the
22 end of last year, but they would have been
23 wholly unrelated to the dissolution of the
24 entities.

25 Q. Are you familiar with an entity

1 S. Kidder
2 called Blogwire Hungary, and I'll spell the
3 next name, S-z-e-l-l-e-m-i, new word
4 A-l-k-o-t-a-s-t, new word
5 H-a-s-z-n-o-s-i-t-o, KFT?

6 A. Yes.

7 Q. And what is that entity?

8 A. Blogwire Hungary has been renamed
9 to Kinja KFT.

10 Q. When did that renaming occur?

11 A. Earlier this year.

12 Q. To your enormous relief, I hope?

13 A. Yes; I can't pronounce it either.

14 Q. And why was it renamed, do you
15 know?

16 A. Because Kinja is the name of our
17 platform which is owned and development --
18 and developed in Hungary and so it was
19 decided to rename it with a name more
20 consistent with its activities. I'm not sure
21 what a Blogwire is.

22 Q. Okay. Aside from the entities we
23 have already discussed are there any other
24 affiliated, parent, subsidiary or related
25 companies to Gawker Media, LLC?

1 S. Kidder

2 A. Can, can you define affiliated and
3 related?

4 Q. Well, I'm not -- since I don't know
5 your corporate structure I'm not sure that I,
6 I necessarily can. Are there any other
7 entities -- well, let's start it this way.
8 Are there any other entities of which you are
9 an officer or director?

10 A. No.

11 Q. Are there any other entities that
12 Ms. Darbyshire is a director of other than
13 Gawker Media Group, Inc.?

14 A. I can't speak to whether Gaby is or
15 isn't a director of any other entities. I'm
16 not aware of any other Gawker affiliated
17 entities to which she is a director.

18 Q. Are there any other entities which
19 derive revenue from the operation of
20 Gawker Media, LLC?

21 MR. BERLIN: Object, assumes facts
22 not in evidence. You can answer the
23 question.

24 A. I mean, Gawker Media, LLC pays
25 vendors tens if not hundreds of thousands of

1 S. Kidder
2 dollars every month so, yes, there are other
3 entities that derive revenue from
4 Gawker Media, LLC.

5 Q. Okay. That's a poor question. I
6 appreciate your response. Are there any
7 other entities who -- strike that.

8 Are there any entities who receive
9 profits from the rations of Gawker Media,
10 LLC?

11 MR. BERLIN: Again, same objection.
12 You can answer the question.

13 A. Outside of those discussed, no,
14 none that I'm aware of.

15 Q. Okay. And by those discussed we're
16 talking about Kinja KFT and Gawker Media
17 Group, Inc.?

18 A. Gawker Media, LLC has never made a
19 distribution to Gawker Media Group, Inc. and
20 Kinja KFT receives a royalty payment from
21 Gawker Media, LLC. I'm not aware of any
22 other companies or entities that have
23 received any profits from Gawker Media, LLC.

24 Q. You talked about, when we were
25 discussing Gawker Media Group, Inc. you

1 S. Kidder
2 talked about stock buy backs that it had
3 undertaken.

4 A. Yes.

5 Q. Do you recall that testimony? What
6 stock buy backs occurred and when?

7 A. I mean, Gawker Media --

8 MR. BERLIN: Let me just object.
9 This is, I think, fairly far afield from
10 anything that's covered by the notice,
11 but you can answer it if you can.

12 A. Gawker Media Group Incorporated has
13 made a number of stock buybacks. I don't
14 recall -- they're generally once every year
15 at the end of each year. I don't recall the
16 details of them.

17 Q. Have you, do you receive stock or
18 options for stock in any of the entities
19 we've discussed?

20 MR. BERLIN: Objection, relevance
21 and not covered by the notice. You can
22 answer the question.

23 A. Yes.

24 Q. Which entities are those?

25 A. I have stock and options in

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S. Kidder
Gawker Media Group Incorporated.
Q. And any other entity?
A. None of the other entities
discussed today.
Q. Who else within the broader
Gawker Media family have stock or stock
option rights?
A. Gawker --
MR. BERLIN: Let me object. This I
think is, A, beyond the notice and, B,
is now venturing into something that's
improper. I'm not sure where we're
headed with this, but this is not
something that is a proper subject of
questioning at this time in this case.
MR. MIRELL: Well, this is my last
question in this line so...
MR. BERLIN: Well, if you can try
and answer the question, I will try and
afford you some courtesy and latitude.
But I do want to note I want the
question marked as objected to, and you
can answer the question if you can.
A. Gawker Media, LLC allows all

1 S. Kidder
2 employees to purchase stock in, in
3 Gawker Media Group Incorporated.

4 Q. Not in any of the other entities
5 we've discussed?

6 A. No.

7 Q. And is -- are any of these -- none
8 of these entities are publicly traded
9 companies, correct?

10 A. Correct.

11 Q. Do, do the employees of
12 Gawker Media -- strike that.

13 Have the employees of Gawker Media,
14 in fact, purchased stock in Gawker Media,
15 LLC?

16 MR. BERLIN: Same objection.

17 You can answer the question if you
18 can.

19 A. Gawker Media Group Incorporated
20 owns 100 percent of the equity in
21 Gawker Media, LLC as discussed. There are
22 some employees, yes, who have purchased --
23 there are some employees of Gawker Media, LLC
24 who have purchased stock in Gawker Media
25 Group Incorporated.

1 S. Kidder

2 A. There we go. I'm like, it's been
3 so long.

4 Q. Okay. When we last broke,
5 Mr. Kidder, we were, you were -- you know you
6 are still under oath, correct?

7 A. Yes.

8 Q. When we last broke we were
9 discussing Erin, E-r-i-n, Pettigrew. She's
10 currently vice president of development; is
11 that correct?

12 A. Vice president of business
13 development.

14 Q. Business development. And what are
15 her responsibilities as vice president of
16 business development?

17 A. To oversee and grow ancillary
18 revenue streams.

19 Q. Can you give me an example of an
20 ancillary revenue stream?

21 A. We have a commerce team that
22 creates post design to showcase products to
23 buy to readers, and when readers buy one of
24 those products from, say Amazon.com, we get a
25 percentage.

1 S. Kidder

2 Q. Any other sorts of ancillary
3 revenue streams?

4 A. Yes.

5 Q. Can you tell me about those?

6 A. The primary revenue streams are
7 commerce, licensing -- I'm sorry, the primary
8 ancillary revenue streams are commerce,
9 licensing, international.

10 Q. Licensing of what?

11 A. Licensing of content.

12 Q. And what is the international
13 ancillary stream?

14 A. Both international ad sales deals
15 as well as licensing our brands for operation
16 in other countries.

17 Q. Okay. To the best of your
18 knowledge, have -- has the content of
19 Gawker.com ever been licensed?

20 A. Any content ever on Gawker.com?

21 Q. Yes.

22 A. Yes, I'm sure some content from
23 Gawker.com has been licensed.

24 Q. Has the content, including any of
25 the stories relating to Hulk Hogan and his

1 S. Kidder

2 sex tape, ever been licensed?

3 A. Not to my knowledge, no.

4 Q. Okay. Ms. Pettigrew held
5 this -- I'm sorry, is there anything else
6 that Ms. Pettigrew currently does as vice
7 president of business development for
8 Gawker Media, LLC?

9 A. Not primarily, no.

10 Q. Now, are there any ancillary
11 functions that she performs?

12 A. I'm sure. For example, she might
13 advise Andrew Gorenstein on specific matters
14 but similar to my position it's impossible to
15 give an exhaustive job description.

16 Q. And in addition to Mr. Gorenstein
17 who else reports to Ms. Pettigrew?

18 A. No, Erin reports to Andrew
19 Gorenstein.

20 Q. Oh, okay.

21 A. Andrew Gorenstein's the chief
22 revenue officer, one of his direct reports is
23 Erin Pettigrew.

24 Q. Okay. Before June of 2013 when the
25 vice president title came into use

1 S. Kidder

2 that.

3 Does Gawker Media license any
4 trademarks or brand names to international
5 entities?

6 A. Gawker Media, LLC does not own
7 trademarks or brand names so it does not
8 license any of them to international
9 entities.

10 Q. Okay. And the entity that does
11 hold those rights is Gawker, is Gawker Media
12 Group, Inc.; is that correct?

13 A. No, the entity that owns the
14 intellectual property is Kinja.

15 Q. I'm sorry, is Kinja KFT currently?

16 A. Correct.

17 Q. Okay. And that is the entity that
18 licenses Gawker trademarks or brand names
19 internationally?

20 A. Yes.

21 Q. And is it response -- does it do so
22 domestically as well?

23 A. I mean, Kinja KFT licenses the
24 Gawker brand names to Gawker Media, LLC in
25 the U.S.

1 S. Kidder

2 Q. Okay. Is there any entity other
3 than Gawker Media, LLC to which any of the
4 Gawker trademarks or brand names have been
5 licensed domestically?

6 A. No.

7 Q. So Gawker Media, LLC is the
8 exclusive licensee of those, of all Gawker
9 related trademarks and brand names in the
10 United States?

11 A. Correct.

12 Q. Thank you. If I can direct your
13 attention back again to page 6 of Exhibit 6.
14 I think the only other Gawker related
15 individual that we haven't talked about is
16 Diane Schwartz, I believe is listed as
17 director of account services Gawker Media.

18 Do you see that?

19 A. Yes.

20 Q. Does Ms. -- is Ms. Schwartz
21 currently employed by Gawker Media?

22 A. Yes.

23 Q. And is that her current title?

24 A. Yes.

25 Q. And what is her function as

1 S. Kidder
2 director of account services?

3 A. She oversees our account services
4 group which is responsible for liaising with
5 advertisers once the campaigns are running.

6 Q. Can you describe for me a little
7 bit more about what that entails?

8 A. So the salesperson is the person
9 who is the primary contact with the client
10 while a campaign's being sold but once it's
11 sold and it's running it's Diane's team that
12 takes over. There's a number of aspects,
13 there's a number of reasons there need to be
14 communication once a campaign has been sold,
15 whether it's getting the assets or the
16 specific banner ads, whether it's approving
17 copy for sponsored posts, whether it's
18 changing the advertising products on the
19 dates they display or a whole host of other
20 issues.

21 Q. Okay. So it's sort of care and
22 maintenance of, of existing advertisers then?

23 A. Care and maintenance of existing ad
24 campaigns.

25 Q. Okay. All right. And in the box

1 S. Kidder
2 describing her involvement with this matter
3 the, the sentence reads, this witness is
4 knowledgeable about the fact that Gawker did
5 not post any advertisements on the web page,
6 therefore, derived no revenue directly from
7 publication of the web page and/or the
8 excerpts.

9 What I'd like to focus you on in
10 that sentence is the word "directly" and ask
11 you whether there is any revenue stream that
12 resulted to Gawker Media, LLC or to any of
13 its related entities as a result of the
14 posting of the Hulk Hogan sex tape video?

15 A. There's -- as, as we described in
16 the interrogatory, there's no direct revenue.
17 It's impossible to know if there's any
18 indirect revenue. The various indirect
19 revenue streams we have generally can't be
20 measured with that level of granularity.

21 Q. Okay. All right. I'd like to
22 review with you then before we take our lunch
23 break what indirect revenue streams could
24 have benefited from the posting of the Hulk
25 Hogan sex tape video?

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S. Kidder
Gawker.com that contained the Hulk Hogan sex
tape video, that story was licensed. Was
that story licensed to any other entities who
posted it on other websites?

A. Not that I'm aware of, no.

Q. What are the other potential
indirect streams of revenue?

A. There's, there's, there's none
others that come to my mind.

Q. So if I'm understanding you
correctly, what could have happened in this
case is that individuals who, who searched
for and located the Hulk Hogan sex tape web
page could have clicked from that web
page onto other web pages which contained
advertising?

A. Yes.

Q. Does the act of clicking onto
another web page that contains advertising
result in any revenue to Gawker Media?

A. Yes.

Q. And how, how does that work?

A. We sell advertising based on what's
called a CPM basis, costs per thousand

1 S. Kidder
2 impressions, for a certain amount of money,
3 depending on the ad product, the site, the
4 level of targeting, a host of other issues.
5 We only recognize that revenue internally in
6 our own accounting once that impression or
7 once those impressions have been viewed.

8 Q. Can you, can you help me figure out
9 what you mean by that last answer?

10 A. Sure. So if we enter into a
11 contract or what's an called an insertion
12 order for \$10,000 worth of advertising in
13 exchange for 10 million impressions -- I'm
14 making these numbers up -- we haven't
15 actually recognized the revenue until those
16 10 million impressions have been viewed by
17 readers, and we don't invoice until after all
18 that is finished.

19 Q. Okay. But it is not necessary then
20 for Gawker Media to recognize revenue by
21 having an individual actually click onto an
22 ad that appears on a different page, a
23 different web page of the site?

24 A. All of the advertising, all the
25 display advertising that we sell is on a

1 S. Kidder
2 viewed basis not, say, a click basis,
3 correct.

4 Q. Okay. Does Gawker Media receive
5 any revenue in addition to the revenue it
6 received, it receives from a view when an
7 individual clicks on to a specific ad that
8 appears on that web page?

9 A. Generally not. There's some ways
10 that we generate revenue. For example, the
11 commerce example I gave earlier where if you
12 buy a product through a site we might get a
13 percentage of that. Sometimes we display
14 house ads that we're not -- no one pays us
15 for it on an impression basis, but we make
16 money if we, if we click or if the reader
17 clicks, but generally with direct display
18 advertising sold by our ad sales team to
19 advertisers there's no additional revenue
20 received for, for a click. Excuse me.

21 Q. How do house -- how does someone
22 clicking onto a house ad result in revenue to
23 Gawker Media?

24 A. Well, if the house ad is, say for a
25 product that we'd like you to purchase

1 S. Kidder
2 through Amazon.com, we won't receive revenue
3 merely for clicking on the ad, but we will
4 receive should you ultimately make the
5 purchase at Amazon.com, for example.

6 Q. Gawker Media maintains a lot of
7 information about how its viewers, readers
8 behave. You indicated in your initial answer
9 to this series of questions, though, that you
10 did not maintain records with sufficient
11 granularity to permit you to quantify, I
12 suspect, the ways in which Gawker might have
13 obtained revenue from the appearance of the
14 Hulk Hogan sex tape video; is that accurate?

15 A. Yes.

16 Q. Is there, is there no resource that
17 could be tapped to identify how many
18 individuals who viewed the Hulk Hogan sex
19 tape video in its original iteration clicked
20 from that page to another page within
21 Gawker Media?

22 A. No.

23 Q. That information does not exist at
24 all?

25 A. We undertook a review of the

1 S. Kidder

2 12:40 p.m. Going off the record.

3 (Recess taken 12:40 p.m. until
4 12:46 p.m.)

5 THE VIDEOGRAPHER: The time now is
6 12:46 p.m. We're back on the record.

7 Q. Mr. Kidder, you understand you are
8 still under oath, correct?

9 A. Yes.

10 Q. In October of 2012 did the
11 employees of Gawker.com received -- strike
12 that.

13 In October of 2012 were the
14 employees of Gawker.com entitled to receive
15 bonus payments based upon a traffic to the
16 Gawker.com website?

17 A. Yes.

18 Q. Who was eligible to receive such
19 payments in October 2012?

20 A. Bonus payments or the distribution
21 of the site bonus pool was at the discretion
22 of the site's editor in chief, all editorial
23 employees and free-lancers are eligible.

24 Q. Would that have included Kate
25 Bennert at the time?

1 S. Kidder

2 A. Yes.

3 Q. And who makes the
4 determination -- strike that.

5 Are there any parameters that are
6 given to site editors to determine how they
7 should exercise their discretion in making
8 said bonus payments?

9 A. The bonus pool is calculated as a
10 percentage over target. So, for example, if
11 the site is 10 percent over target it will
12 receive 10 percent of its payroll, its labor
13 budget as a bonus pool. We generally say
14 every staffer should then get 10 percent, get
15 a 10 percent bonus, however, it's at the site
16 lead's discretion whether to increase or
17 lower that amount based on specific
18 performance of the individual writers.

19 Q. Is the bonus pool -- what is the
20 metric used to determine traffic for purposes
21 of calculating bonuses?

22 A. It's the U.S. people number per
23 Quantcast.

24 Q. Can you tell me what that -- can
25 you define that more specifically?

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2 A. Quantcast is a web analytics
3 company. We have Quantcast tracking tags on
4 all of our sites and Quantcast tracks a
5 number of metrics, including people, which we
6 believe closely resembles the number of
7 people that visit one of our sites in a given
8 month, and that is the metric that we
9 generally pay most attention to and that is
10 the metric used for a site bonus pool.

11 Q. Was that the case in October of
12 2012?

13 A. Yes.

14 Q. Okay. Does that metric correlate
15 to unique visitors?

16 A. Yes.

17 Q. Is there a metric for visitors as
18 opposed to unique visitors?

19 A. There's a metric called visits. I
20 should disclaim more broadly that different
21 analytics companies and services use similar
22 and different terminology not always in the
23 same way, so it can be, it's rarely an apples
24 to apples comparison. But, yes, some common
25 metrics are unique visitors, which is

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sometimes received to as people, sometimes they are similar, sometimes there's different qualities. Another common metric is page views, and another common metric is visits which are unique, unique sessions.

Q. Can you tell me how visits differs from page views?

A. So if I visit a website and go to five different pages I will generate five page views but only one visit. If I go to that same website several hours later and go to eight web pages, I will generate only a second visit and eight page views. One alternate term one can often use of visits is sessions.

Q. At a prior point in time prior to October of 2012, do I understand correctly that page views was the metric used as the base for calculating the bonus pool?

A. The overall methodology was different but it is correct that several years ago editorial bonuses were based on page views, not unique visitors.

Q. Okay. And when did that metric

1 S. Kidder

2 change?

3 A. I don't recall the specific timing.
4 I could give you a window.

5 Q. Sure.

6 A. Somewhere between 2009 and 2011.
7 It was, it was when the technology was ready
8 to be able to track people as opposed to
9 page views.

10 Q. Was there anything that needed to
11 be done in order to, technologically, in
12 order to effect that change?

13 A. Well, we -- again, as I said,
14 there's a number of different analytics
15 systems that we use, some are internal, some
16 are external. We specifically internally
17 started tracking unique visitors at a certain
18 day and time, at the same time Quantcast kind
19 of was around and was able to measure people
20 in a much more eloquent way than previous
21 systems were able to. Quantcast is also open
22 and accessible to everyone, which is an
23 important metric in defining numbers for us.

24 Q. Okay. And it's important to be
25 open in order to provide transparency to

1 S. Kidder

2 those who are potential recipients of
3 bonuses?

4 A. And just to everyone in general.
5 We, we live in a glass house and you can
6 prove anything with numbers, or you can try
7 to, and so it's important for us that we use
8 numbers that are verifiable by a third-party.

9 Q. Okay. So once Gawker Media moved
10 from utilization of page views to unique
11 visitors, did it rely exclusively upon the
12 data generated by Quantcast?

13 A. For what purpose?

14 Q. For purposes of calculating unique
15 visitors, for purposes of calculating bonus
16 pools?

17 A. Yes, the bonus pool has
18 always -- since the bonus pools were
19 reintroduced we've always used the Quantcast
20 30 day people number, U.S. people number as
21 the metric.

22 Q. Okay. There are a couple things
23 you said there that I need to follow-up on.
24 First, the bonus pool was reintroduced, when
25 was it, when was it previously utilized and

1 S. Kidder

2 when was it not?

3 A. In 2009 editorial bonuses were
4 temporarily suspended due to cost cutting
5 generally. Bonuses had existed in some way,
6 shape or form for much of the company's
7 history prior to 2009 and it was
8 reintroduced, I don't know the specific time,
9 but it would have been somewhere in let's say
10 mid 2010 to mid 2011.

11 Q. And does it continue in existence
12 today?

13 A. Yes.

14 Q. And you said the metric was 30 day
15 U.S. people?

16 A. Yes.

17 Q. What does that mean?

18 A. So it's the -- by Quantcast's best
19 calculation it's the number of U.S. people or
20 people in the United States that have visited
21 that site in the past 30 days.

22 Q. And is this a metric that focuses
23 upon people who have visited the site or who
24 have visited specific web pages within the
25 site?

1 S. Kidder

2 A. People who visited any web page
3 within, within the site. The entire purpose
4 was that page views can reward the same
5 people who kind of come once a day or come a
6 hundred times a day and visit a lot of
7 stories, whereas unique visitors rewards
8 actual growth.

9 Q. So if, so if an individual visited
10 any Gawker.com web page several times a day,
11 on that day would they be counted as a single
12 unique visitor?

13 A. Which, which metric?

14 Q. The one you are using to calculate
15 the bonus pool?

16 A. Okay. In terms of Quantcast
17 people, yes, they'd only be counted once, and
18 if they visited -- on Quantcast you can look
19 at things by day, by week, by month so you
20 are going to see different numbers depending
21 what you do.

22 Q. Okay. And if it -- but by using
23 the 30 day U.S. people, if that individual
24 repeated the same pattern each day during a
25 given month would they be counted 30 times or

1 S. Kidder

2 once?

3 A. They would only be counted once.

4 Q. Okay. All right. So what you are
5 looking for are individuals, you are trying
6 to identify the total number of unique
7 individuals who visit one of your sites
8 during a 30 day window?

9 A. That's correct.

10 Q. All right. And if that individual,
11 same individual visits the site month in and
12 month out they are still, they are counted as
13 one visitor during each of the 30 day
14 periods?

15 A. Ultimately Quantcast determines how
16 that works, but yes, that's my understanding
17 of it.

18 Q. All right. So it's really unique
19 visitors within a given month?

20 A. Correct.

21 Q. Or within a given 30 day period?

22 A. Yeah. I mean for purposes of bonus
23 calculation we look at it by month, a 30 day
24 period is the month. It's possible to view
25 it in another way should you want.

1 S. Kidder

2 Q. Okay. And bonuses are, at least at
3 one point in time bonuses were calculated on
4 a quarterly basis?

5 A. There have been bonus programs
6 since the company's inception. At one point
7 there were editor in chief bonuses that I
8 believe were calculated on a quarterly basis,
9 but since the program was reintroduced in
10 early 2010 it's, it's been a monthly
11 calculation on a monthly payout for all
12 editorial employees.

13 Q. And for, for purposes of this
14 program editors in chief are not treated
15 differently from any of the other individuals
16 who work on the Gawker.com website?

17 A. Correct. Any bonus for the editor
18 in chief is out of the same bonus pool.

19 Q. All right. What is the
20 discretionary element of the bonus then that
21 the editor in chief controls?

22 A. It's the entire amount, they get to
23 put -- they have a total budget for the
24 month, let's say it's \$10,000 in a given
25 month, and they get to choose how much to

1 S. Kidder

2 allocate to each staffer.

3 Q. Is the editor in chief entitled to
4 take 100 percent of the bonus pool?

5 A. They, in theory they could but
6 bonuses are reviewed by people in finance and
7 ultimately myself and they'd have some
8 questions to answer about that. In general
9 the guidance is it should be relative to an
10 individual employee's compensation or it
11 should be -- let me, give me a moment --

12 Q. Sure.

13 A. -- to think how to best explain
14 this.

15 In general the allocation of bonus
16 should be relative to how much of that
17 individual employee's pay makes out, makes up
18 the entire, that entire site's budget. So
19 again, using my earlier example, if a site is
20 10 percent over budget, everyone should make
21 10 percent of that monthly pay. So if
22 someone makes, you know, \$4,000 a month they
23 should get 10 percent of that, if someone
24 makes \$10,000 a month they should get
25 10 percent of that, and then those can be

1 S. Kidder
2 adjusted up or down at the editor in chief's
3 discretion, but that's the guideline.

4 Q. And who and how are the budgets
5 determined?

6 A. The site editorial budgets are
7 ultimately determined by Nick Denton but
8 ownership of those budgets is one of the
9 things I do as vice president of operations.

10 Q. Do you confer with the editor in
11 chief of each site, in selecting and
12 identifying what the site editorial budget is
13 going to be?

14 A. Yes. The editors in chief drive
15 the process, not us.

16 Q. And is this a zero based budgeting
17 system or is the budget more or less constant
18 over time?

19 A. It's constant over time. It's
20 evaluated relative to the sites, that same
21 Quantcast 30 day people metric on a regular
22 basis, but it's, it's not a zero based
23 budget.

24 Q. Okay. Are you able to identify
25 what the bonus pool was for Gawker.com for

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the month of October 2012?
A. Not off the top of my head.
Q. Okay. Is that information
available?
A. To me?
Q. Yes.
A. Yes, I could venture a guess and
say they hit the max which is 20 percent but
I'd want to double-check to be sure.
Q. There is an upper limit on the
bonus --
A. Correct.
Q. -- pool?
A. It's capped at 20 percent of any
site's payroll budget every month.
Q. And why is it your belief that,
without holding you to it, why is it your
belief that it hit the max during that month?
A. Because that in aggregate the
number of people that visited Gawker.com
exceeded the target by at least 20 percent.
Q. And that was attributable to the
appearance of the Hulk Hogan sex tape video?
A. It was attributable to the many

1 S. Kidder
2 stories that were published on Gawker.com
3 during that month, but the Hulk Hogan sex
4 tape video certainly was one of them.

5 Q. Was there any story on, that
6 appeared on Gawker.com that was, that had
7 more unique visitors that month than the Hulk
8 Hogan sex tape video story?

9 A. I don't know off the top of my
10 head. I, I believe we provided a number of
11 documents to you that if I reviewed them I, I
12 might be able to answer better.

13 Q. Okay. We'll go over those.

14 THE VIDEOGRAPHER: Counsel, I have
15 about two minutes left.

16 MR. MIRELL: Why don't we change
17 tapes now then.

18 THE VIDEOGRAPHER: Okay. The time
19 now is 1:03 p.m. This marks the end of
20 tape No. 2. Going off the record.

21 (Recess taken 1:03 p.m. until 1:07
22 p.m.)

23 THE VIDEOGRAPHER: The time now is
24 1:07 p.m. This marks the beginning of
25 tape No. 3. We're back on the record.

1 S. Kidder

2 THE WITNESS: Tape 2.

3 THE VIDEOGRAPHER: 3.

4 Q. And you understand we're back on
5 the record and you're under oath, correct?

6 A. Yes.

7 Q. All right. So what I'd like to try
8 to do then is quantify on the assumption that
9 the bonus pool maxed out for Gawker.com
10 during the month of October 2012. I'd like
11 to try to quantify what that would have meant
12 in terms of dollars available in the pool.

13 A. Okay.

14 Q. Can you tell me what that would,
15 what that figure would be?

16 A. I can't provide a specific amount,
17 but if you'll let me provide a guess I'm
18 happy to do that.

19 Q. All right. I'll take whatever you
20 can give me.

21 A. My recollection is the editorial
22 budget of Gawker.com at that time was
23 something like \$100,000 a month, so
24 20 percent of that would be, what, \$20,000.

25 Q. In terms of calculating the

1 S. Kidder
2 editorial budget, what does that represent in
3 terms of unique visitors?

4 A. I'm not sure, can you elaborate on
5 the question? I'm sorry.

6 Q. Well, what I'm, what I'm trying to
7 figure out is how the formula actually
8 worked, and if you can take a look at
9 Exhibit 1 from yesterday. I appreciate this
10 is not the way --

11 A. It's okay.

12 Q. -- the way it worked in
13 October 2012. But if you would turn, this is
14 Mr. Daulerio's agreement, employment
15 agreement, with respect to his being hired as
16 editor of Deadspin, so this is rather
17 ancient, but if you'll look on appendix B,
18 site lead bonus policy.

19 A. What or -- would you like to ask a
20 question, or?

21 Q. If you can explain it to me that
22 would be, I think we'd all appreciate it.

23 A. I mean, this, this specific policy,
24 I was not director of actual operations at
25 the time and this was unique to the site

1 S. Kidder
2 lead, to the, to the site lead bonus policy.
3 I'm not entirely sure where this, where this
4 came from, but it spells out what the formula
5 is and, and it's on page views, I'd say not,
6 not people or unique visitors, and it
7 specifies how, how it's to be calculated.

8 Q. All right. So, but the editorial
9 budget in October of 2012 was calculated
10 based upon unique visitors, correct?

11 A. Excuse me. No, I mean what I said
12 earlier was the editorial budget is often
13 reviewed against unique visitors, as in we
14 should be getting more bang for the buck, as
15 it were, the audience should increase as the
16 site's budget increases.

17 Q. Okay. And how is the monthly bonus
18 pool budget -- well, strike that.

19 Is the editorial budget that we
20 hypothetically talked about at \$100,000 per
21 month, is that the, is that the compensation
22 to the editorial employees or is that the
23 amount of the, or is that the amount of a
24 bonus pool that would be available? I'm
25 having difficulty here.

1 S. Kidder

2 A. Okay. The \$100,000 in this example
3 is the site's payroll budget which is a
4 compensation to its employees as well as
5 employment costs, like health insurance and
6 FICA taxes and all these other exciting
7 things. I said if they had -- so if that's
8 the budget, if they hit 20 percent, if they
9 hit the 20 percent cap you'd then multiply
10 \$100,000 times 20 percent.

11 Q. Okay. But how do we calculate the
12 20 percent cap?

13 A. Okay. So the 20 percent in this
14 example is the percentage over target that
15 they were for that specific month.

16 Q. All right. Percentage over target
17 of unique visitors?

18 A. Of U.S. people, what I'll say to be
19 consistent.

20 Q. All right. Percentage of U.S.
21 people within that 30 day window?

22 A. In that month, yes.

23 Q. What was the target figure in the
24 month of October 2012?

25 A. So I don't know the specific number

1 S. Kidder
2 but the target is a rolling six-month average
3 of that U.S. people number for each site.

4 Q. And so if the actual figures turned
5 out to be 20 percent or more in excess of
6 that rolling six-month average that would
7 then trigger a bonus payment of \$20,000 on
8 our hypothetical \$100,000 payroll, including
9 all other expenses?

10 A. Correct.

11 Q. Okay, okay. All right. So that,
12 that helps me determine that.

13 Is there any document -- are there
14 any documents, to your knowledge, that you
15 provided to us which would permit us to
16 identify more precisely what the target U.S.
17 people per month was for the October 2012
18 time frame?

19 A. I know we provided you with a
20 significant number of documents. I'm not
21 sure if any of the documents provided to you
22 would help you calculate that.

23 Q. All right. Well, we'll try to get
24 there and see if any of them do.

25 So if I understand the way this

1 S. Kidder
2 bonus pool would have been calculated, if
3 hypothetically each of the unique visitors
4 had visited only the Hulk Hogan sex tape
5 story that would have counted every bit as
6 much toward this bonus pool as if each of
7 those unique visitors had visited any other
8 page of the Gawker, of the Gawker.com
9 website?

10 A. Yes.

11 Q. Okay. So the fact that there was
12 no advertising that appeared on the Hulk
13 Hogan sex tape video web page was irrelevant,
14 would have been irrelevant to the bonus pool
15 calculation?

16 A. Yes.

17 Q. Does that pose a problem from
18 Gawker's perspective that it is compensating
19 people for generating traffic to pages where
20 no advertising appears?

21 A. Gawker Media's mission first and
22 foremost is to tell the truth even when, even
23 when inconvenient. There are very few
24 decisions, if any, editorially that have
25 anything to do with current or future

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S. Kidder

commercial, commercial success or viability, so no, especially given that it's capped at 20 percent in any given month.

Q. It could be a recipe for disaster if one were to carry that forward, I mean, one does need to -- these are profit-making enterprises, correct?

A. Yes. You know, making a profit is not Gawker's first and foremost mission.

Q. Let me show you a document that I'll ask you to take a look at. We'll ask the reporter to mark this as Exhibit 24.

(Exhibit 24, document, marked for identification, as of this date.)

Q. This is, I'll represent to you, a story that our firm pulled off of the Digiday website from July of 2013. And what I'd like to direct your attention to, it purports to be an interview of Nick Denton by BuzzFeed. And what I'd like to direct your attention is the question and answer that begins at the bottom of the page which reads, so how much money are you making from alternative revenue sources like affiliates, and the response is,

1 S. Kidder
2 that she's spearheading and she's been making
3 significant progress in that regard.

4 Q. Okay. Is there -- are there other
5 additional business models or new business
6 models that have come into, come into play
7 since this original model?

8 A. I mean, there's always been a
9 revenue mix, so if you can be more specific I
10 might be able to be more helpful.

11 Q. Well, I'm just trying to understand
12 what, what the business model of Gawker Media
13 is at this point in time. The article speaks
14 to an original business model which implies
15 to me that there has been a subsequent
16 business model or an evolution of the
17 business models of Gawker Media and I'm trying
18 to understand what those are?

19 A. The majority of our revenue now and
20 for many years in the past has been through
21 display advertising and affiliated revenues
22 like Nick discusses in this story have been a
23 relatively small percentage.

24 Q. And when you say "relatively
25 small," can you quantify that in gross terms?

1 S. Kidder

2 A. Under 10 percent.

3 Q. With display advertising
4 constituting what percent?

5 A. I believe we provided some, some
6 documents that could probably help me give,
7 give a more specific recollection. Display
8 advertising's been the majority, I'd guess
9 around 80 percent.

10 Q. And what would -- that leaves us
11 with about 10 percent, what would the other
12 revenue streams be?

13 A. It should be licensing and other,
14 other types of just non-directly sold
15 advertising.

16 Q. What sort of advertising is
17 non-directly sold?

18 A. There are things called ad networks
19 that Gawker generally doesn't use very often
20 but basically you can -- they, they sell
21 advertising themselves and then they decide
22 where to place that. So it's still display
23 advertising but there's a non-direct
24 relationship, meaning Gawker Media sales team
25 doesn't sell that advertising.

1 S. Kidder

2 Q. These are sort of brokered ads then
3 as it were?

4 A. Something like that. The term
5 generally is ad networks. We traditionally,
6 we used them a lot in the beginning and we
7 haven't used them for many years. It's
8 varied. You are talking about a long period
9 of time.

10 Q. Were you employed by Gawker during
11 the Gawker Stalker era?

12 A. I was working with Gawker, I'm not
13 sure if I was a salaried employee versus a
14 contractor or some other type but, yes, I was
15 around.

16 Q. Okay. Has that, has that program
17 ceased?

18 A. Yes.

19 Q. To the best of your knowledge, did
20 that program result in advertising revenue to
21 Gawker Media?

22 A. To the best of my knowledge there
23 were ads on that page, so yes, to that
24 extent.

25 Q. And did that increase, did that

1 S. Kidder

2 A. But...

3 Q. It wasn't my fault.

4 A. But, no, I can't imagine why
5 any -- the, the general idea of brand
6 advocates is that they will discuss topic
7 matter relative to their brand. So if it's
8 an auto maker they might want to respond to a
9 negative view about their own car or respond
10 to a positive review about someone else's
11 car. But no, I don't see any comments I
12 would believe to be from a brand advocate on
13 page 822.

14 Q. Before we leave this document for
15 the moment, can you just take a look at on
16 page 819, the figure next to the date and
17 time stamp is 3,578,708, what does that
18 figure represent?

19 A. That would be the page views
20 recorded as of the date this printout was
21 made.

22 Q. And that's updated in realtime?

23 A. Something very close to realtime.
24 Every few minutes, certainly.

25 Q. And given that, given your prior

1 S. Kidder
2 testimony about the way in which Netcast --

3 A. Quantcast.

4 Q. I'm sorry, Quantcast calculates
5 unique visitors or U.S. people visitors for
6 you, why -- and was doing so in October of
7 2012, why is it that the page view metric
8 appears here as opposed to a unique visitor
9 metric?

10 A. Well, the page view metric that we
11 just discussed is calculated by our internal
12 system. Quantcast calculates its own stats
13 in its own way, and for whatever reason
14 that's -- what appears there is driven by the
15 internal system.

16 Q. Okay. And why is -- why does the
17 page view metric appear at all?

18 A. Page views are the traditional
19 metric we've always used, we were among the
20 first people to ever show the number of
21 page views next to a writer's byline. It's a
22 pretty powerful thing and something you
23 wouldn't expect to, say, The New York Times
24 to do. Page views are accrued metric but
25 still some metric for popularity and interest

1 S. Kidder

2 of readership.

3 Q. Given how unique visitors are
4 calculated, as we just discussed, would it
5 even be possible to include a unique visitor
6 metric on, on a given web page?

7 A. We do keep a unique visitor metric
8 internally, but that's not displayed there,
9 the page views are displayed there.

10 Q. Okay. But how does that work, if a
11 unique visitor initially lands on the
12 Gawker.com homepage, let's say, and then
13 clicks to this story, do you record unique
14 visitors to each web page as -- do you record
15 unique visitors for each web page on which
16 that unique visitor lands?

17 A. The, the way that our internal
18 system, which is not -- which is a lot more
19 rudimentary than, say, Quantcast, records
20 unique visitors is the first post, and it's
21 not the homepage, but a specific post that
22 sees a reader that it hasn't seen within the
23 past 30 days that that will get the credit.

24 So in your example previously, if I
25 go to Gawker.com that's the homepage, that

1 S. Kidder
2 doesn't count, but the first thing I click on
3 is this story then in our internal system the
4 new unique visitor will be recorded for this
5 story.

6 Q. Okay. But if the -- so then if
7 that same reader got to the Hulk Hogan story
8 by having read a prior story on the
9 Gawker.com website, they would not be counted
10 as a unique visitor?

11 A. In our specific internal metrics,
12 correct, they would not be counted as a
13 unique visitor.

14 Q. Okay. And the metrics that
15 Netcast --

16 A. Quantcast.

17 Q. I keep doing that.

18 A. Get you a tattoo.

19 Q. I have to write that down
20 somewhere. The metric that Quantcast
21 provides you is a site based on metric as
22 opposed to a page based metric?

23 A. Quantcast does not provide
24 page based metrics.

25 Q. Okay. And that, that is only

1 S. Kidder

2 accomplished internally?

3 A. In a separate system internally,
4 yes, we store things on a page-by-page basis.

5 Q. Okay, all right, I understand.
6 Thank you. From your point of view, is
7 publicity good for Gawker?

8 A. Can you elaborate on the question?
9 I'm sorry.

10 Q. Gawker is, has, has been and
11 continues to be the subject of commentary
12 discussion on other websites and elsewhere in
13 the more traditional media.

14 MR. BERLIN: Before you answer can
15 I just, we had this discussion a little
16 bit yesterday, do you mean Gawker.com or
17 Gawker Media?

18 MR. MIRELL: Well, let's ask about
19 both.

20 Q. First let's talk about
21 Gawker Media.

22 A. So your question is is discussion
23 about Gawker Media on other sites a good
24 thing for Gawker Media?

25 Q. Yes.

1 S. Kidder

2 they work cooperatively as opposed to simply
3 being focused on their own subject areas?

4 A. Because editorial bonuses depend on
5 that site's U.S. people metric, as we've
6 discussed their incentive is generally on
7 their own sites, not others.

8 Q. Okay. That's actually a question I
9 just wanted to clean up. The bonus pools
10 exist per site, relate exclusively to unique
11 visitors to that site and not to any other
12 Gawker Media site?

13 A. Correct.

14 Q. And that's the way that Quantcast
15 segregates results, which is to say on a, on
16 a site by site basis as opposed to an
17 aggregate unique, an aggregate set of unique
18 visitors to all of the Gawker Media sites?

19 A. Quantcast can do both.

20 Q. Okay. Do you have -- does
21 Quantcast provide a service that you pay for
22 or does it -- is it available to the general
23 public?

24 A. Well, we don't pay Quantcast, and
25 the general -- to my understanding the

1 S. Kidder
2 general public can sign up for the same
3 service we receive from Quantcast for their
4 publishers may choose to do differently.

5 Q. Okay. But that's, but you've
6 chosen to be transparent with respect to all
7 of the sites under the Gawker Media umbrella?

8 A. Yes.

9 Q. Are you familiar with the
10 circumstances surrounding the appearance of
11 a, of a story on Gawker.com concerning a sex
12 tape of Eric Dane?

13 MR. BERLIN: Let me just object. I
14 don't think that's covered. I haven't
15 reviewed all the topics.

16 I don't think that's actually
17 covered by the topics, but I don't have
18 an objection. We are not waiving our
19 objection to having the witness answer
20 the question.

21 A. Yes, I'm certainly aware of at
22 least some of the circumstances.

23 Q. Okay. Can you tell me what you,
24 what you know about that matter?

25 A. There was a portion of a sex tape

1 S. Kidder

2 Ms. Carmichael and Mr. Daulerio in

3 December of 2012?

4 A. I'm happy to guess. If -- so no, I
5 don't know specifically why but I'm happy to
6 guess.

7 Q. Yeah. What was your, what would be
8 your guess?

9 A. It's my belief that at the end of
10 the year sites frequently like to go back and
11 acknowledge what their biggest stories of the
12 year were. The end of the year's generally a
13 slow time period and it's a great way to, to
14 promote what you've done that year. This
15 appears to be a ranking of stories on
16 Gawker.com. I'm not sure if it's ranked by
17 unique visitors or page views as it's
18 unmarked, but that would be my guess.

19 Q. Okay. Well, in terms of that
20 question, the question whether this is
21 page views or unique visitors, going back to
22 the article that we looked at which showed on
23 page 819 of Exhibit 7 3,578,708 page views on
24 October the 4th, does that help you figure
25 out what this --

1 S. Kidder

2 A. So given that my guess would be it
3 would be unique visitors. So it would also
4 be consistent, but that's generally how we
5 rank stories as I mentioned before.

6 Q. Okay, okay. So then just so I'm
7 perfectly clear here, your response in the
8 interrogatories with respect to the second
9 most page views is correct, but it is also
10 true that this story had the third highest
11 number of unique visitors during the year
12 2012, or at least up until December 18 of
13 2012?

14 A. Based on how I've defined those
15 terms previously, that it's with our internal
16 stat system, yes.

17 Q. Okay. Does your internal stat
18 system have a different metric for
19 calculating unique visitors than Quantcast
20 does?

21 A. Quantcast has a team of data
22 scientists and much of their business is
23 trying to calculate the number of actual
24 people, so the metric is different. I'd
25 imagine the general idea is the same, but I

1 S. Kidder
2 can't speak to specifically how Quantcast
3 calculates that number.

4 Q. Have you ever looked to see how
5 your internal statistics with respect to
6 unique visitors compare to a comparable
7 statistics from Quantcast for a given, for
8 any given period of time?

9 A. They vary. For example, all the
10 unique visitor figure that our internal stat
11 system counts is global whereas Quantcast
12 would generally look at you as only. That's
13 one example. But as I've stated, there's a
14 number of differences in how these terms are
15 defined and recorded by all the different
16 providers and so it's difficult to get an
17 apples to apples comparison.

18 Q. When you do look, when you and
19 Quantcast look, either when you look globally
20 or Quantcast looks at U.S. only you are
21 looking at doing GO location by IP address?

22 A. I can't speak to Quantcast specific
23 methods. But that would be -- that wouldn't
24 surprise me if that's the manner in which
25 they do that.

1 S. Kidder

2 Q. Is that the way you do it
3 internally?

4 A. We don't --

5 Q. Or you don't care?

6 A. The nice thing about global is you
7 don't -- well, we care but, like I said, our
8 system's rudimentary. That's a great example
9 of why this is a complicated issue. And so
10 we just track global, which makes it easy,
11 unless they are on the moon.

12 Q. Okay. Unless they are
13 Sandra Bullock in Gravity, I don't know.

14 A. I haven't seen that movie.

15 Q. It's tough to see it unless you
16 pirated it. All right. All right.

17 So in any event, what I'm looking
18 at here in Exhibit 25 is not anything
19 generated by Quantcast, this is internally
20 generated based upon your own internal
21 statistics?

22 A. That's my understanding given the
23 context, yes.

24 Q. Okay. And do you have any
25 understanding of what the "I am Adam Lanza's

1 S. Kidder

2 nakedness or are specifically labeled NSFW.

3 Do you see that?

4 A. I'm not sure a number of them, but
5 yes, there are other stories here that
6 contain nudity or labeled NSFW.

7 Q. Okay. And is it your understanding
8 that Gawker.com features nudity and nakedness
9 as a regular part of the diet of stories that
10 it promulgates?

11 A. I wouldn't characterize it that
12 way. I think generally visuals overall are a
13 very important, important thing.

14 Adam Lanzer's Mother was an exception to
15 that. There I'd say emotion wasn't -- was,
16 was important.

17 There's a lot of these stories are
18 visuals. The fourth is, appears to be a
19 video of a speech, for example, that to my
20 knowledge doesn't contain nudity or NSFW
21 content. But sure, if the editor determines
22 that the nudity is, is newsworthy for
23 whatever reason, it's something Gawker would
24 post.

25 Q. Okay. In terms of setting rates

1 S. Kidder
2 for advertising for Gawker.com, what metric
3 does, does Gawker use?

4 A. So earlier I explained that
5 advertising's generally sold on what we call
6 a CPM basis or cost per thousand impressions,
7 so the rate card ultimately generally lists a
8 CPM which would be a cost per thousand
9 impressions.

10 Q. And is that a, is that a rate that
11 is calculated based upon page views?

12 A. I mean, it's ultimately not a
13 calculation but setting rates is an art not a
14 science. It's not the result of some very
15 specific calculation, it's based on half part
16 analysis, half part gut instinct about what
17 we think the market will bear.

18 Q. All right. But I'm trying to get
19 an understanding of a thousand impressions
20 meaning a thousand page views --

21 A. No.

22 Q. -- or a thousand U.S. people?

23 A. Meaning neither. It may be
24 confusing. Meaning an ad appearing a
25 thousand times, a thousand ad impressions.

1 S. Kidder

2 So if you have an advertisement and I charge
3 you \$10 CPM, you would pay me \$10 once your
4 ad had been viewed, had been viewed a
5 thousand times. There can be multiple ad
6 slots on a single page, so sometimes a
7 page view can generate more than one ad
8 impression.

9 Q. Okay. Well, I'm trying to get a
10 handle on this. If theoretically I landed
11 on, on a Gawker.com page with advertising on
12 it and I refreshed that page ten times, would
13 that constitute ten impressions?

14 A. It depends how many ad slots were
15 on that page. If that page only had one ad
16 slot then yes, it would constitute ten
17 impressions.

18 Q. Okay. If the ad, ads, I understand
19 ads rotate on the web as well, correct?

20 A. They rotate and there's a number
21 of, of targeting and impression caps and
22 frequency caps and a lot of tools that
23 advertisers can use to ensure that the ads
24 are seen how they want them to be.

25 Q. Okay. So there's a separate then

1 S. Kidder
2 method of capturing the total number of
3 impressions that result from an individual
4 visiting the Gawker.com website, separate
5 from your calculation of page views and
6 separate from your internal statistics that
7 you keep with respect to unique visitors?

8 A. Yes, there's an ad server that,
9 that ultimately captures that.

10 Q. Okay. And under whose aegis would
11 that ad server's information be provided?
12 Who, who within the Gawker Media hierarchy is
13 the individual who is ultimately responsible
14 for that aspect of the business?

15 A. John Price is our director of
16 advertising operations.

17 Q. And he reports to?

18 A. Andrew Gorenstein, chief revenue
19 officer.

20 Q. And the ad server that you have, I
21 take it, is not sufficiently sophisticated,
22 I'm not meaning to be pejorative here, but is
23 not sufficiently sophisticated to be able to
24 identify how many people got to a particular
25 ad from a Hulk Hogan sex videotape page?

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S. Kidder

A F T E R N O O N S E S S I O N

(Time noted: 2:58 p.m. and
Ms. Heather Dietrick exits.)

S C O T T K I D D E R, resumed and
testified as follows:

EXAMINATION (Cont'd.)

BY MR. MIRELL:

THE VIDEOGRAPHER: The time now is
2:58 p.m. This marks the beginning of
tape No. 4. We're back on the record.

Q. Mr. Kidder, I hope you had a good
lunch.

A. I hope you did as well.

Q. Thank you. And we're still on the
record and still under oath.

A. I understand.

Q. Before we broke for lunch you had
given me a hypothetical scenario about
employee compensation pursuant to your bonus
structure on the assumption that the
editorial budget in October of 2012 was
\$100,000. And we talked about \$20,000 being
the component above that that would be
attributable to the success of the site

1 S. Kidder

2 during that month.

3 Do you recall that conversation?

4 A. Yes, with respect to Gawker.com --

5 Q. Right.

6 A. -- that whole discussion.

7 Q. So what I'm trying to find out now
8 is what the actual figure was. Do you know
9 what the editorial budget was in actuality in
10 October of 2012?

11 MR. BERLIN: Objection. Asked and
12 answered. You can answer the question.

13 A. So again, specifically I don't know
14 the exact dollar amount but my recollection
15 was the editorial budget is about, or was at
16 that time about \$100,000 for Gawker.com. And
17 I'd be surprised if Gawker did not hit their
18 20 percent max.

19 Q. Right.

20 A. So I think \$20,000 is probably
21 pretty close to what the bonus pool in
22 Gawker.com was for that month.

23 Q. Do you have records that would
24 specifically reflect that?

25 A. Gawker Media, LLC has records that

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S. Kidder
guess specifically as to why that was, that
was the case, other than to say I guess that
advertising revenue by site generally is, can
be volatile.

Q. Well, you are aware, are you not,
that the Hulk Hogan sex tape video was
labeled NSFW, correct?

A. Yes.

Q. And what does NSFW stand for?

A. Not safe for work.

Q. And are you aware of the policy
within Gawker Media that NSFW articles should
run without ads?

A. Yes.

Q. And does the drop in revenue then
indicate that, indicate to you, that at least
one of the reasons for this phenomenon is
that the web page that people were clicking
on that month was a web page that contained
no ads because it was the web page containing
the Hulk Hogan sex video?

A. That could be one reason it's not
say higher than it was. But there's not a
finite amount of impressions available to

1 S. Kidder
2 Gawker.com in any given month. In other
3 words, if there's a story that gets
4 several million page views those are
5 additive, not in lieu of other, other
6 impressions.

7 Q. Do you know of anything else that
8 was going on in October of 2012, anything
9 unusual in Gawker.com's world that could have
10 resulted in this precipitous drop?

11 A. No. I mean, candidly, we don't
12 generally review revenue by month because, as
13 discussed earlier, advertising revenue has no
14 direct relation to how we choose to invest
15 editorially into properties.

16 Q. And it also has no relationship to
17 how you compensate those who are employed by
18 the site?

19 A. In an editorial capacity, yes.

20 Q. Does it have any relationship to
21 how you compensate those who are not employed
22 in an editorial capacity?

23 A. Not specifically. But our, our
24 salespeople and other people that work in the
25 sales and marketing group do receive variable

1 S. Kidder

2 compensation based on overall revenue.

3 Q. Okay. Are they commissioned or
4 salaried or both?

5 A. They are salaried. And it's, it's
6 not a commission in the traditional sense of
7 the word. It's a variable. It's, it's an
8 aspect of the compensation which is variable
9 depending on the median they are exceeding of
10 various targets.

11 Q. All right. In any event, the
12 exhibit we've just been looking at Exhibit
13 No. 26 is not an exhibit that would help us
14 identify exactly what the editorial budget
15 was for the month of October 2012 for
16 Gawker.com?

17 A. That's correct.

18 MR. MIRELL: Let me just ask on the
19 record, Mr. Berlin, that to the extent
20 that there are other records that we
21 have not yet seen that reflect what that
22 editorial budget was, we would be
23 interested in obtaining those from the
24 period October 2012 through the present.

25 I believe they are the subject of

1 S. Kidder
2 sure exactly how Google Analytics defines a
3 unique page view. I can guess, but it's
4 generally not a term or metric that I or
5 anyone else at Gawker I'm aware of pays
6 attention to.

7 Q. So in terms of understanding the
8 potential significance of this document, if
9 any, it's really more in relation to the
10 other items on this chart as opposed to being
11 able to correlate it with anything that
12 Quantcast or, or Gawker generates internally?

13 A. It's true that this, this exhibit
14 references a number of statistics that aren't
15 collected by other systems such as Quantcast
16 and/or internal stats system.

17 Q. All right. And what does this
18 document show with respect to the web page
19 containing the Hulk Hogan sex video?

20 A. Well, during this time period it
21 appears to be number three and it displays
22 the different numbers for each of the one,
23 two, three, four, five, six, seven columns.

24 Q. All right. Well, first it's --
25 actually in terms of web pages it's number

1 S. Kidder

2 two, isn't it?

3 A. Well, it's, it's numbered as in
4 there's a number three, at least on my copy
5 right before even, even for a minute --

6 Q. No. I, I guess that's not my
7 specific question. The item number one
8 appears to me to be Gawker's homepage?

9 A. Yes, that's my belief as well.

10 Q. Okay. And so, in terms of the
11 stories that appear on Gawker's website
12 throughout the year of 2012, the Hulk Hogan
13 sex tape video would be the number two story,
14 correct?

15 A. Correct. As, as ranked by what
16 appears to be page views.

17 Q. Okay. And according to this
18 listing that story received 8 million plus
19 page views that year?

20 A. That's what it says here, yes.

21 Q. And in terms of the category unique
22 page views it received 4.8 plus million
23 page views, unique page views that year?

24 A. That's what it says here, yes.

25 Q. Okay. And again, what

1 S. Kidder

2 would -- what is your best understanding of
3 how Google Analytics defines unique page
4 views?

5 A. Again, I'm guessing, but I'd
6 imagine it's some hybrid of, of unique
7 visitors and page views. I would guess that,
8 for example, if I sit here and reload the
9 same page ten times that would count for ten
10 page views, but only one unique page view.

11 Q. And the third column over is
12 average time on the page. And in that regard
13 the time shown is, I believe this is read as
14 one minute 47 seconds?

15 A. That's my belief, yes.

16 Q. And do you happen to know the
17 length of the video clip that was part of the
18 Hulk Hogan story?

19 A. I don't off the top of my head. I
20 know it's been identified both in the post
21 and, and some documents that we provided to
22 you.

23 Q. If I told you that it was a minute
24 forty-one seconds, would that refresh your
25 recollection?

1 S. Kidder

2 A. That would not surprise me if that
3 were correct.

4 Q. And so if I'm reading this
5 correctly then it would appear that the
6 average viewer of the page actually viewed
7 the entirety of the video?

8 A. Not necessarily. It could be that
9 they scrolled down and spent a minute in the
10 comments, for example. I wouldn't want to
11 speculate what their activities were during
12 that time on page.

13 Q. What does the next column over
14 refer to?

15 A. It looks like it says entrances.

16 Q. Right.

17 A. So that I'd be even further
18 speculating. But generally an entry point is
19 where someone enters, enters the website. So
20 it could mean the number of people who
21 arrived directly at that story onto
22 Gawker.com.

23 I, I should note also that there's
24 little question marks next to the, the column
25 headings, and if one were to click those

1 S. Kidder

2 Google Analytics would provide a description
3 in its own language, which I would trust more
4 than mine. And I imagine that information is
5 also available on Google's website.

6 Q. Okay. And the question marks you
7 see are -- oh, I think I see them.

8 A. Yeah. They're not the clearest
9 things here but...

10 Q. Is it a question mark that appears
11 next to entrances?

12 A. Yes, that's my belief.

13 Q. All right. And what is your
14 understanding what bounce rate is?

15 A. Bounce rate, it is my understanding
16 is the number of people who bounced or
17 basically left the site after being on that
18 particular page.

19 However, I will say that
20 traditionally we haven't placed much credence
21 in the bounce rate number on Google
22 Analytics. And that historically it kind of
23 varies tremendously and we don't always
24 understand why. One guesses that it has to
25 do with some technical features of our, of

1 S. Kidder

2 our site, but it's neither here nor there.

3 Q. And what do you understand to be
4 reflected in the percentage under exit?

5 A. So I'd imagine it's -- or, actually
6 I, that I can't even venture a guess. I
7 don't, I don't know.

8 Q. Okay. Do you know when the Kate
9 Middleton story ran?

10 A. Not off the top of my head, no.

11 Q. You do know that it occurred
12 earlier in the year than October, correct?

13 A. That's my belief, yes.

14 Q. And the spike that is reflected in
15 the graph above the chart that we've just
16 been looking at is a spike that is
17 attributable in significant, if not mostly to
18 the, to the Hulk Hogan sex tape video,
19 correct?

20 MR. BERLIN: Objection.

21 You can answer the question.

22 A. Which spike are you referring to?

23 Q. The spike during the month of
24 October which exceeds any spike in any other
25 month in that, on that graph?

1 S. Kidder

2 A. I mean, I see three spikes very
3 close to each other and they all seem to be
4 at a very similar height.

5 Q. All around the month, centered
6 around the month of October?

7 A. Yeah. I mean, it's unclear to me
8 when October ends and -- yes, the text below
9 it reads October 2012, I see three prominent
10 spikes separated by what looks like some
11 time.

12 Q. And you are aware that there was --
13 subsequent to the posting of the Hulk Hogan
14 sex tape web page there was significant
15 further publicity outside of Gawker
16 concerning that posting, correct?

17 A. I mean -- yes, I'm aware there was
18 attention outside of Gawker concerning the
19 posting.

20 Q. Let's take a look at
21 Exhibit 1148 -- I'm sorry, page 1148. I'll
22 have the reporter mark it as Exhibit 28 to
23 this deposition.

24 (Exhibit 28, document, marked for
25 identification, as of this date.)

1 S. Kidder

2 A. Thank you.

3 Q. All right. Now, Mr. Kidder, can
4 you tell me what this document is?

5 A. This, this appears to be another
6 screen shot from Google Analytics for the
7 time period of October 4, 2012 through
8 January 30, 2013 which shows --

9 MR. BERLIN: Pardon me I think it's
10 June 30.

11 THE WITNESS: Isn't that what I
12 said? Sorry.

13 MR. BERLIN: You said January.

14 A. Oh, I apologize. Let's try it
15 again.

16 MR. BERLIN: I didn't mean to
17 interrupt, but I thought it was just a
18 reading --

19 A. I want it to be correct.
20 October 14, 2012 through June 30, 2012
21 showing statistics on all pages on Gawker.com
22 containing the unique identifier associated
23 with the post in question.

24 Q. So to the extent that there were
25 follow-up articles or re-postings of the

1 S. Kidder
2 original article, those are what are captured
3 on this page?

4 A. No. This would not -- let me give
5 some context. Every post on our content
6 management system has what we call a post ID,
7 a post ID is found in the URL of the website
8 -- I'm sorry, in the URL of the post. The
9 post ID in question here is 5948770.

10 Q. Right.

11 A. And so in the search box you'll see
12 it says that post ID 5948770. And so, that
13 would call up every post on Gawker.com that
14 has that post ID. And as you can see under
15 the column that says page there's different
16 URLs. For example, some have question marks
17 after them and various phrases which will
18 control the stories that appear on the right,
19 some don't specify, don't, don't have the
20 complete URL and are shorter and only have
21 the number, which is required.

22 And so it's my belief that this
23 page endeavors to capture all traffic data
24 surrounding that one specific post even if
25 the URL was different at various times.

1 S. Kidder

2 Q. All right. So this is, this is the
3 same original post, is that what you are
4 saying?

5 A. Correct.

6 Q. So to the extent that there were
7 postings of stories that spoke about
8 subsequent developments, for instance, court
9 rulings or the like, those would not be
10 reflected on Exhibit 28?

11 A. That's correct.

12 Q. Is this page of Google -- from
13 Google Analytics available to the public?

14 A. No.

15 Q. It's available exclusively to
16 Gawker Media as the site owner?

17 A. Correct.

18 Q. If you'd look on the left-hand side
19 of this document there is a box that has the
20 word content and then a bunch of subheadings
21 underneath that.

22 A. Um-hm.

23 Q. Do you see that?

24 A. Yes.

25 Q. What -- which, if any, of the links

1 S. Kidder

2 on that, underneath that box are we looking
3 at in this -- on this page?

4 A. The one that says all pages under
5 site content, you can see it's marginally
6 bolded.

7 Q. Right.

8 A. And so if you were to hit all pages
9 normally it would show you all pages ever
10 during that time period. And so then the
11 search, in the search box above the entrances
12 and bounce rate columns you'll see a search
13 box, there the post ID 5948770 is entered,
14 which would show only page, only page URLs
15 with that specific post ID.

16 Q. Okay. What is the heading two
17 entries above that, behavior flow?

18 A. I wouldn't want to speculate. But
19 it would be however Google has designated
20 that, that, that section to work.

21 Q. You have no idea what that
22 contains?

23 A. I mean, generally my understanding
24 is the functionality that's provided for this
25 in Google Analytics can help you understand

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S. Kidder
how many pages people look at when they come
from various sources. However, it doesn't
let you identify it on a post-by-post basis.

Q. Do any of the Google Analytics --
does -- strike that.

Does any information available to
you from Google Analytics permit you to
determine what web pages of Gawker.com were
visited after someone viewed the Hulk Hogan
sex tape web page?

A. Not to my knowledge, no.

Q. And the cumulative, if I'm reading
this correctly, the cumulative number of
page views for the period October 4, 2012
through June 30, 2013 for just the Hulk Hogan
web page containing the sex tape video is
8,610,124; is that your understanding?

A. Yes, it's my reading as well.

Q. And the unique page views for the
same page for the same period 5,357,572?

A. That's my understanding as well.

Q. And average time on the page is one
minute 52 seconds?

A. That's my understanding as well.

1 S. Kidder

2 Q. Okay. And the other columns, if I
3 were to ask you about your understanding of
4 what is embodied in the other columns to the
5 right of any average time on page, that would
6 be the same as the exhibit we just looked at?

7 A. That's correct.

8 Q. Exhibit 27. Okay, thank you.

9 Next let me show you a
10 multi-page document that Gawker has produced
11 to us. This will be Exhibit 29.

12 (Exhibit 29, document, marked for
13 identification, as of this date.)

14 A. Thank you.

15 Q. Mr. Kidder, what does Exhibit 29
16 depict?

17 A. Give me one moment to review it.

18 Q. Sure. Of course.

19 A. It appears to be a listing of top
20 500 Gawker stories as determined by
21 page views as of June 21, 2013. I'm not sure
22 what the front end of the time period is.

23 Q. That was my first question. You
24 don't know whether it's the beginning of
25 2013?

1 S. Kidder
2 corresponds to the Hulk Hogan sex tape
3 web page, correct?

4 A. That's correct.

5 Q. And the, that then represents the
6 fifth item listed on the first page of this
7 document page 1175?

8 A. That's correct.

9 Q. Okay. And there's the column, this
10 is an internally generated Gawker document,
11 correct?

12 A. Correct. This uses our internal
13 statistics system.

14 Q. Right. And so can you identify for
15 me what, describe for me what Gawker new
16 unique visitors means?

17 A. As discussed previously, my
18 understanding of a Gawker unique visitor is
19 as follows: The Gawker new unique visitor
20 metric is only recorded on post pages. And
21 if the stats system has not seen that user in
22 the past 30 days then that article will get a
23 credit for one new unique visitor.

24 (Ms. Alia Smith, Esq., exits.)

25 Q. All right. If this document covers

1 S. Kidder
2 more than a 30-day period and a particular
3 unique visitor visited the site on more than
4 one occasion, within more than one 30-day
5 period that individual would count as two or
6 three or however many visitors under new
7 unique visitors; is that correct?

8 A. Yes. If someone were to visit one
9 of these pages, say every 45 days and they
10 never visited any other Gawker post, they
11 could count as multiple times in the new
12 unique visitor metric.

13 Q. Okay. And the page view metric is
14 the standard page view metric that you use
15 and that you post next to the article on each
16 web page?

17 A. It is.

18 MR. MIRELL: Okay. It would be
19 very helpful for us to know what time
20 frame this document actually --

21 A. As I said, I wouldn't want to
22 speculate. We'll, we'll fill --

23 Q. No, I understand.

24 A. -- fill that in.

25 MR. BERLIN: If we can go off the

1 S. Kidder

2 A. That's what it appears, yes.

3 Q. And the spike in page views -- I'm
4 sorry, the, the spike in unique views occurs
5 at approximately the fourth and fifth of that
6 month, correct?

7 A. The metric is unique visitors, but
8 yes --

9 Q. Unique visitors.

10 A. -- between those days.

11 Q. Okay. So if you could just walk me
12 through what above the chart, above the graph
13 the word for -- the word uniques means in
14 connection with this chart?

15 A. Quantcast has among the most
16 sophisticated metrics to try and determine
17 the difference between unique visitors and
18 people. Many people have multiple devices,
19 say a phone and a computer at home and maybe
20 a computer at work and maybe a tablet at home
21 and, therefore, electronically it's
22 impossible to tell if the same person visits
23 each, visits the site on each one of those
24 devices that they are actually only one
25 person instead of, say, four people. And so

1 S. Kidder
2 Quantcast makes a differentiation between
3 uniques and people by using a panel similar
4 to how Nielsen does, and some other more
5 sophisticated agencies do, and tries to
6 determine the difference between unique
7 visitors and people.

8 So I'm not sure specifically how
9 Quantcast defines it. But unique visitors is
10 intended to be a more encompass, more broadly
11 encompassing metric than people, which
12 endeavors to be a better estimation of the
13 actual number of human beings visiting.

14 Q. Which metric does, does
15 Gawker Media rely upon?

16 A. We use the people metric for the
17 bonus pool as described earlier and
18 generally.

19 Q. Okay. So this is the U.S. people
20 metric that you had previously referred to?

21 A. Correct. You'll see it says
22 United States in parenthesis next to the word
23 uniques. There's a way to make it global,
24 but in this screen shot it's showing only the
25 U.S. uniques.

1 S. Kidder

2 Q. I see. All right. But there's a
3 difference between uniques in this chart and
4 people?

5 A. Quantcast makes a differentiation,
6 yes.

7 Q. Okay. But I'm -- I guess I'm
8 trying to figure out which, which is the
9 number you're -- you would use off this?

10 A. We use people, people.

11 Q. All right. So that would be the
12 436387?

13 A. That's correct.

14 Q. What does, what does the
15 percentage, plus percentage next to those
16 figures indicate?

17 A. That represents the percentage
18 increase or decrease from the prior time
19 period.

20 Q. And what prior time period are we
21 talking about?

22 A. It's difficult for me to tell from
23 this screen shot. If I had to guess I'd say
24 the previous week, but that would be
25 conjecture.

1 S. Kidder

2 Q. The "previous week" meaning the
3 last week in September?

4 A. Correct.

5 Q. Of 2012?

6 A. Yes.

7 Q. And what does the visits number
8 represent?

9 A. The visits is the number of
10 sessions to Gawker.com irrespective of the
11 number of page views that they visited.

12 Q. And page views?

13 A. Is again, as I've said among the
14 simpler, simplest metrics in every unique
15 loading of a specific page.

16 Q. Is this information available to
17 the public --

18 A. Yes.

19 Q. -- that appears on Exhibit 30?

20 A. Yes.

21 Q. Okay. Through the Quantcast
22 website?

23 A. Correct. The URL's at the bottom
24 there.

25 Q. Right. All right. I have another

1 S. Kidder

2 at the time?

3 A. The company was called Blogwire
4 Hungary still at the time.

5 Q. Okay. And is the reason why
6 MarkMonitor is advising Kinja KFT of this
7 claim because Kinja KFT holds the
8 intellectual property rights including the
9 copyrights in the works created for
10 Gawker.com?

11 A. Kinja KFT owns the brands, meaning
12 the domain names and the intellectual
13 property. The content itself and the
14 copyright and the content is owned by
15 Gawker Media, LLC.

16 Q. Okay. So you -- when we earlier
17 spoke about this I guess I was not clear and
18 let me follow-up now. Copyrights in and to
19 the stories that are posted on Gawker.com
20 are, are held by whom?

21 A. Gawker Media, LLC.

22 Q. Okay. And is the same true with
23 respect to all the other Gawker Media
24 websites?

25 A. Yes.

1 S. Kidder

2 Q. Okay. Does the Gawker.com website
3 hold any copyrights of its own?

4 A. I'm not sure I understand the
5 question.

6 Q. Does -- are copyrights registered
7 under Gawker. -- are any copyrights for
8 content that appears on Gawker.com registered
9 under Gawker.com as opposed to the
10 Gawker Media, LLC?

11 A. I don't believe Gawker.com is an
12 entity.

13 Q. Is Gawker.com listed as an author
14 of any articles that have ever been
15 registered with the copyright office by
16 Gawker Media, LLC?

17 A. I personally am not aware of any
18 articles appearing on Gawker.com that have
19 ever been registered with the copyright
20 office.

21 Q. Okay. In any event, though, Kinja
22 KFT does not today hold any, hold the
23 copyright to any content that has appeared on
24 any Gawker Media websites?

25 A. That's correct.

1 S. Kidder

2 Gawker Media aren't, you know, the same
3 managers you'd find in Corporate America.

4 Q. And that Gawker does not operate
5 along the same rules as corporate America,
6 correct?

7 A. Certainly, no, Gawker Media does
8 not function in all the same ways as
9 corporate America.

10 MR. BERLIN: Would we be able to
11 take a brief break?

12 MR. MIRELL: Sure.

13 THE VIDEOGRAPHER: Time now is 4:08
14 p.m. This marks the end of tape No. 4.
15 Going off the record.

16 (Recess taken 4:08 p.m. until 4:19
17 p.m.)

18 THE VIDEOGRAPHER: The time now is
19 4:19 p.m. This marks the beginning of
20 tape No. 5. We are back on the record.

21 Q. Okay. And you are still under
22 oath, you know that?

23 A. Yeah.

24 Q. All right. Mr. Kidder, when ads
25 are purchased that appear on Gawker.com are

1 S. Kidder
2 those advertisements purchased exclusively
3 for Gawker.com or do companies purchase
4 across the platforms, the nine platforms of
5 sites that are run by Gawker Media?

6 A. It varies.

7 Q. Okay. In terms of assessing
8 impressions attributable to Gawker.com in
9 those sorts of situations, how is that
10 calculated, or is it? Do the impressions
11 that are achieved on Gawker.com count every
12 bit as much as the impressions achieved on
13 Gizmodo for instance?

14 A. Generally in those cases no,
15 there's no difference in the rate, depending
16 on which site the impression appears on.

17 Q. Okay. And in terms of ascertaining
18 whether a particular threshold of impressions
19 has been reached, the impressions achieved on
20 each of the sites are aggregated?

21 A. Yeah. It's handled by the ad
22 server, and you can specify 10 million
23 impressions across two sites or five sites or
24 whatever you want and it will figure out the
25 best way to do it, where there's the most

1 S. Kidder

2 space, etc., and then endeavor to serve the
3 ad within the time frame given.

4 Q. So what I'm really getting at here
5 is whether it is possible that impressions
6 achieved on Gawker.com web pages result in
7 revenue to non-Gawker.com entities?

8 A. Well, we don't -- I mean, the only
9 entity is Gawker Media, LLC which owns and
10 operates all of those, all of those sites.
11 And so I don't -- as I discussed earlier, we
12 don't really track except when asked to, or
13 not tracked, we don't really segregate
14 revenue by site very frequently, except when
15 necessary in instances such as this. But if
16 we were to track it that way or when we slice
17 and dice it that way I don't see a way that
18 an impression on Gizmodo.com could affect
19 revenue on Gawker.com.

20 Q. Why is that?

21 A. Well, because if it appeared on
22 Gizmodo.com we wouldn't group it with revenue
23 from Gawker.com.

24 Q. Okay. But in terms of the, the
25 metric that creates the revenue stream, that

1 S. Kidder

2 metric is impressions?

3 A. Yes.

4 Q. And those impressions can be
5 obtained from any one -- in our, in our
6 hypothetical where you have an advertiser who
7 has decided to advertise across all of the
8 Gawker Media platforms those impressions can
9 be obtained on, on any one of the, on any one
10 of the sites, correct?

11 A. Correct, assuming ads are
12 displaying on a specific post, yes.

13 Q. Okay. And so if -- so it is
14 possible then, is it not, that ad revenues
15 generated from those impressions could be --
16 could result in income to Gawker.com even if
17 there were no impressions actually obtained
18 from visits to the Gawker.com site?

19 A. I mean, I suppose I disagree with
20 the underlying premise of the question, which
21 is that all the entities are owned by
22 Gawker Media, LLC. We don't -- we track a
23 lot of things internally, but we rarely
24 review revenue by site, But if revenue was
25 earned by an impression appearing on a

1 S. Kidder
2 different site I don't see why we would then
3 allocate it to Gawker.com if it indeed
4 appeared on a different site.

5 Q. All right. I hear what you are
6 saying, we'll move on.

7 To the best of your knowledge, did
8 Gawker make any attempt to determine whether
9 it was legal to post the Hulk Hogan sex tape
10 video prior to its publication?

11 A. Outside of any discussion with
12 counsel, which is my understanding would be
13 privileged, no.

14 Q. Okay. Same question with respect
15 to the, to the written sex narrative that
16 accompanied the, the excerpts on the video?

17 MR. BERLIN: Objection to the
18 description of it as a sex narrative.
19 You can answer the question.

20 A. I mean, again it's not uncommon for
21 editors to consult with legal, of course
22 those discussions would be privileged,
23 outside of that, no.

24 Q. Were any memos or other documents
25 or e-mails generated that analyzed that issue

1 S. Kidder

2 Hulk -- on which the Hulk Hogan sex tape
3 appeared, was Gawker excited to receive that
4 video?

5 A. I'm not sure if I understand. Was
6 Gawker Media, LLC excited to receive the
7 video?

8 Q. Yeah.

9 A. I don't -- I mean, I don't often
10 associate emotion with entities.

11 Q. Were you as a representative of
12 Gawker Media, LLC excited to receive it?

13 A. I wasn't even aware that it was
14 received at the time it was received.

15 Q. Okay. Did Gawker Media feel that
16 publishing the video would generate traffic?

17 A. I think Gawker Media felt that,
18 that the video along with the narrative was
19 extremely newsworthy and that was the primary
20 motivation in publishing it.

21 Q. And what, from your perspective,
22 was the newsworthiness?

23 A. The, the video when taken with the
24 post looked at a well-known American
25 celebrity who had put himself out there by

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S. Kidder
appearing in television shows, showing
himself as a 1950s style father, had written
at length in a book about, about his
marriage, contemplating suicide, cheating,
cheating on his wife. The video had been
rumored on line, but there was no, no
evidence that it, that it truly exists. And
in addition to that A.J.'s narrative
described how celebrity sex at the end of the
day is rather boring and pedestrian just like
many other people believe or may believe
their sex is as well.

Q. You are aware that the existence of
the sex tape had been made known prior to its
appearance in excerpted form on the
Gawker.com website, correct?

A. I'm aware it had been reported on,
yes.

Q. Okay. So it wasn't news that, that
the sex tape existed, correct?

A. I, I don't believe that the sex
tape was verified previously.

Q. Are you aware of the fact that
still images from the videotape appeared on

1 S. Kidder

2 other websites months prior to the Gawker.com
3 story?

4 A. That's my understanding, yes.

5 Q. Did Gawker believe that publishing
6 the Hulk Hogan sex tape video would generate
7 traffic?

8 A. Didn't we just have, have this
9 question. Gawker Media certainly hopes that
10 everything it publishes attracts traffic, but
11 that's never the single motivation to do
12 anything.

13 Q. Well, did it -- did the publication
14 of this video promote the Gawker brand?

15 A. I don't -- I mean, when I think
16 back of kind of the iconic Gawker stories the
17 Hulk Hogan sex tape is certainly not one of
18 them.

19 Q. Well, what, what are the iconic
20 stories that you reflect upon that Gawker.com
21 published?

22 A. Gawker.com or Gawker Media?

23 Q. Gawker.com.

24 A. So, for example, the I am
25 Adam Lanza piece that we referenced earlier,

1 S. Kidder

2 A. It, it seemed to.

3 Q. Do you have any idea for how long
4 the Hulk Hogan sex tape video excerpts were
5 unavailable?

6 A. I don't know a specific time frame,
7 But I, I'm sure that we noticed rather
8 quickly, so I'd imagine, you know, somewhere
9 between 24 and 36 hours, but that's just a
10 guess.

11 Q. All right. So you are not aware of
12 any period longer than that 24 to 36 hour
13 time frame when the Hulk Hogan sex tape video
14 was unavailable prior to the court order that
15 was entered in this matter?

16 A. No.

17 Q. Okay. If the story was unavailable
18 for 24 to 36 hours, why would that have been
19 of concern to Gawker Media?

20 A. Because Gawker Media publish --
21 published the story and Gawker Media, LLC is
22 solely responsible for its content and
23 Gawker Media gets to make the determination
24 when and if any stories come down outside of
25 a court order, not a random vendor.

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S. Kidder

see below, discussed with Nick Denton the publication of the excerpts from the video.

Is that a correct statement?

A. Yes.

Q. What did you and Mr. Denton discuss about publication of the excerpts of the video?

A. To the extent I spoke to Nick at all about the video, outside the presence of counsel, it solely would have been FYI, for his information that this story was coming.

Q. You spoke to him prior to the actual appearance of the story on the website?

A. Yes.

Q. And did he express any concern about the appearance of the story?

A. Not that I recall.

Q. Can you recall with any greater detail what you said to him and what he said to you?

A. No. It would have been extremely brief.

Q. Do you know whether Mr. Denton had

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S. Kidder

any conversations with anyone other than you about the excerpts from the video?

A. I do not.

Q. Or about any other aspects of the story?

A. Prior, prior to publication, or?

Q. Yes, prior to publication.

A. No, I'm not aware of any, but I don't know.

Q. Under -- do you recall anything else about your conversation with Mr. Denton on this subject?

A. No.

Q. On this subject. Mr. Kidder, the next entry is under your name and it reads A.J. Daulerio discussed with this witness the publication of the excerpts from the video.

Do you see that?

A. Yes.

Q. And that's a correct statement?

A. Yes.

Q. The discussion you had with Mr. Daulerio occurred prior to publication?

A. Yes.

1 S. Kidder

2 Q. And can you recall what was said by
3 each of you during that conversation?

4 A. Again it was a very short
5 discussion. He notified me that he was close
6 to being finished with the post that
7 contained excerpts of this video and I
8 immediately directed him towards counsel.

9 Q. And counsel in this case was?

10 A. Cameron Stracher.

11 Q. And Mr. Stracher is?

12 A. What, what about him?

13 Q. Who is Mr. Stracher?

14 A. He was at that time counsel,
15 outside counsel on retainer.

16 Q. Without revealing anything that was
17 said, if you were -- were you a participant
18 in any of those conversations?

19 A. Yes.

20 Q. Do you recall discussing anything
21 else with Mr. Daulerio outside the presence
22 of counsel prior to publication of the
23 excerpts from the video about this subject?

24 A. No.

25 Q. Do you recall having any

1 S. Kidder
2 conversations with Mr. Daulerio about the
3 Hulk Hogan sex tape video or story outside
4 the presence of counsel subsequent to its
5 publication?

6 A. Meaning after its publication? I'm
7 sure it's something I discussed with A.J.,
8 but I don't have any specific recollections
9 of any specific discussions.

10 Q. You can't recall the substance of
11 what he or you might have said during any of
12 those conversations?

13 A. No.

14 Q. By whom was Mr. Stracher employed
15 at the time?

16 A. I mean, he, he had, had his own
17 outside practice.

18 Q. And his last name is
19 S-t-r-a-c-h-e-r?

20 A. It's S-t-r-a-t-c-h-e-r, Stratcher.

21 MR. BERLIN: I don't think there's
22 a second "T." I think it's
23 S-t-r-a-c-h-e-r.

24 THE WITNESS: Did I mess it up?

25 MR. BERLIN: Sorry. Just trying to

1 S. Kidder

2 be helpful.

3 THE WITNESS: I spelled so many
4 names properly today, you know, I'm
5 pretty pleased with myself, if I do say
6 so myself.

7 Q. When you discussed the Hulk Hogan
8 sex tape video -- strike that.

9 Did you at any time, Mr. Kidder,
10 see the entire approximately 30 minutes of
11 the sex tape?

12 A. No.

13 Q. Do you have a recollection of
14 having spoken to Mr. Daulerio prior to
15 publication of the Hulk Hogan sex tape story
16 in which the subject of the surreptitious
17 recording of the conversation and of the
18 encounter was discussed?

19 A. Not outside of with counsel.

20 Q. Did you -- aside from anything you
21 might have discussed with counsel, did you
22 have any independent understanding prior to
23 publication of the Hulk Hogan sex tape post
24 that the video was recorded using a hidden
25 camera?

1 S. Kidder

2 A. Any discussions about
3 the -- anything to do with the tape would
4 have been with, with counsel.

5 Q. Okay.

6 A. And I did not view the video prior
7 to publication.

8 Q. Okay. Did you have any role in
9 connection with the editing of the sex tape
10 video to create the excerpt?

11 A. No.

12 Q. Did you have any role in the
13 assignment of Kate Bennert in connection with
14 that task?

15 A. No.

16 Q. Let me see if there are any other
17 documents that I need to speak to you about.
18 Can you pull Exhibit 12 from your pack?

19 A. Okay.

20 Q. Do you recognize Exhibit 12?

21 A. Yes.

22 Q. What is it?

23 A. It's a post alert sent to Diane
24 Schwartz that was then sent to various ad
25 operations staff.

1 S. Kidder

2 Q. And what was the purpose in sending
3 this e-mail?

4 A. Post alerts are generated when any
5 posts are published that contain certain tags
6 or phrases and then generally used to
7 proactively ensure that our account services
8 team makes sure that no ads are aligned with
9 content that for whatever reason we don't
10 believe advertisers choose to be associated
11 with.

12 Q. Okay. Is the post alert intended
13 to identify words or tags that appear within
14 the visible text of the article or as
15 meta-tags?

16 A. Can you define what you mean by
17 meta-tags?

18 Q. A, any verbiage that is not visible
19 to the viewer when clicking onto a particular
20 site.

21 A. These are all, all, all tags -- let
22 me try this again. The post alert searches
23 for two things, one are phrases in the body
24 of the post which is obviously visible --

25 Q. Right.

1 S. Kidder

2 A. -- to the reader, and all the tags
3 are also visible to the reader upon mouse
4 over on any individual story, so given that
5 I'd guess the answer or I'd say the answer is
6 visible tags.

7 Q. Okay. Just before the long list of
8 search phrases and tags there's the words
9 terms found, colon, sex, comma, safe and then
10 beneath that tags found, NSFW, sex and top.
11 What's the distinction in a post alert
12 between terms and tags?

13 A. Terms appear anywhere in the post,
14 tags appear in a special section of the post
15 that contains tags.

16 Q. In this case, in the case of the
17 Hulk Hogan sex tape, the only tag I believe
18 that's found as a tag is NSFW; is that
19 correct?

20 A. We've, we've changed the design
21 several times on the page. It's my
22 understanding that at the time, the design at
23 the time the post was published if you were
24 to mouse over the NSFW tag additional tags
25 would appear to its right.

1 S. Kidder

2 Q. Okay. So in your view then, as of
3 October the 4, 2012, if you were to roll over
4 or mouse over the word NSFW these words sex
5 and top would then appear to the right of
6 that?

7 A. Top, top is a functional tag and my
8 definition of a functional tag is a tag used
9 to affect the page or site layout and design,
10 they are not used by readers to categorize
11 posts. It's possible that functional tags
12 were hidden, I'm not entirely sure, but at
13 least NSFW and sex would have appeared to the
14 right of it.

15 Q. Okay. Above those, the items we've
16 just been referring to, are the words bad
17 post in splash. What does that mean?

18 A. So that's the name of the alert.
19 The design at that time there is one story on
20 the homepage that was very prominent, we
21 called that the "splash," and the homepage,
22 the advertising on the homepage is often more
23 valuable than the advertising on, on other
24 pages. And so when there's a bad post in the
25 splash you want to make sure any roadblocks

1 S. Kidder
2 are basically, the ad product available for
3 purchase on the front page is, is hidden and
4 disappears. And that's what Diane's
5 instruction is at the top, please collapse
6 ads on the Homepage of Gawker, please.

7 Q. And collapsing ads means run the
8 page without any ads appearing?

9 A. Correct.

10 Q. Do you know for how long the
11 Hulk Hogan story appeared on the homepage of
12 Gawker.com?

13 A. I do not.

14 Q. Do you know whether it was less or
15 more than a week?

16 A. Week sounds extreme. I mean,
17 there's the splash and then there's a number
18 of other, there were a number of other boxes
19 that are available.

20 Q. The splash, another word for that
21 would be the lead story?

22 A. Yeah, the most prominent story, the
23 lead story. I would be very surprised if it
24 was the lead story for a week. It's possible
25 it appeared on the homepage in other boxes

1 S. Kidder
2 for as long as a week, but again I don't know
3 personally.

4 Q. Have you ever heard the term super
5 NSFW used?

6 A. Not that I can recall.

7 Q. If Mr. Daulerio, if I told you that
8 Mr. Daulerio characterized the Hulk Hogan sex
9 tape posting as super NSFW, would that assist
10 you in --

11 A. I mean, NSFW by itself is an
12 ambiguous term if it means not safe for work.
13 It depends where you are employed is what you
14 would consider not safe for work. Applying
15 modifiers on top of that I think it's
16 possible, but I couldn't speak to what A.J.
17 was, was thinking.

18 Q. Did you consider the Hulk Hogan sex
19 tape video suitable for work viewing?

20 A. At Gawker Media, sure. At, at most
21 companies, no, I'd imagine it's not.

22 Q. Did you have any role whatsoever in
23 creating or editing the headline --

24 A. No.

25 Q. -- of the post?

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, Toni Allegrucci, a Notary Public
within and for the State of New York, do
hereby certify:

That SCOTT KIDDER, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that
such deposition is a true record of the
testimony given by the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I
am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 3 day of October, 2013.



TONI ALLEGRUCCI