

EXHIBIT 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
Case No. 12012447CI-011
-----)
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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S:

HARDER MIRELL & ABRAMS, LLP

Attorneys for Plaintiff

1801 Avenue of the Stars Ste. 1120

Los Angeles, California 90067

BY: DOUGLAS E. MIRELL, ESQ.

(424) 203-1603

dmirell@hmafirm.com

LEVINE SULLIVAN KOCH & SCHULZ, LLP

Attorneys for Defendants

1899 L Street Ste. 200

Washington, D.C. 20036

BY: SETH D. BERLIN, ESQ.

(202) 508-1122

sberlin@lskslaw.com

BY: ALIA L. SMITH, ESQ.

asmith@lskslaw.com

ALSO PRESENT:

ANDREW RITCHIE, Videographer

HEATHER L. DIETRICK, Counsel, Gawker Media

1 S. Kidder

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

S. Kidder

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 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 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 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

S. Kidder

more than a 30-day period and a particular unique visitor visited the site on more than one occasion, within more than one 30-day period that individual would count as two or three or however many visitors under new unique visitors; is that correct?

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

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

A. It is.

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

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

Q. No, I understand.

A. -- fill that in.

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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