

EXHIBIT 3

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

TERRY GENE BOLLEA, professionally)
known as HULK HOGAN,)

Plaintiff,)

vs.)

Case No.:

12012447 CI-011

HEATHER CLEM, GAWKER MEDIA, LLC)
AKA GAWKER MEDIA; GAWKER MEDIA)
GROUP, INC., AKA GAWKER MEDIA, et al.,)

Defendants.)

VIDEOTAPED DEPOSITION OF SHANTI SHUNN

April 24, 2015

1 BE IT REMEMBERED THAT, the videotaped deposition of
2 SHANTI SHUNN was reported by Bridget Montero, CSR No.
3 08-0408, on Friday, April 24, 2015, commencing at the
4 hour of 9:37 a.m., the proceedings being reported at
5 Stoel Rives LLP, 900 SW Fifth Avenue, Suite 2600,
6 Portland, Oregon.

7 APPEARANCES

8 BAJO CAVA COHEN TURKEL

9 By Mr. Shane B. Vogt

10 100 North Tampa Street, Suite 1900

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12 and

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18
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21 1760 Market Street, Suite 1001

22 Philadelphia, Pennsylvania 19103

23 Appearing for Defendants

24
25 Also Present: Mick Irwin - Videographer

1 Q. Could you just state your full name for the
2 record?

3 A. Yes. My full name Shanti Gabriel Shunn.

4 Q. What is your address?

5 A. It's 327 May Street in Medford, Oregon.

6 Q. Okay. Tell me just a bit about your
7 education. Where did you go to college?

8 A. I went to college at University of the
9 Pacific, the Eberhardt School of Business there, and
10 majored in marketing and entrepreneurship; a dual
11 major.

12 Q. And that was for undergrad?

13 A. Uh-huh.

14 Q. What kind of degree did you ultimately get,
15 a BA?

16 A. A bachelor's of science in marketing and
17 business -- or business administration.

18 Q. When did you graduate?

19 A. In 1998.

20 Q. Did you go to graduate school?

21 A. I did not.

22 Q. Tell me, just in a nutshell, what you do
23 for a living?

24 A. I do Internet marketing, and currently, for
25 the last two years, have been doing E-commerce

1 consulting.

2 Q. What does that mean, by E-commerce
3 consulting?

4 A. It actually covers a whole gambit of
5 things; anywhere from Internet marketing -- so SEO,
6 search engine marketing, so paid search, Google and so
7 on and so forth -- to comparison shopping engines,
8 affiliate marketing, to consulting with clients on
9 E-commerce strategy or even small businesses who are
10 looking to expand into E-commerce.

11 Q. When you say E-commerce, that means just
12 selling stuff through the Internet?

13 A. It's an online website with some form of
14 transaction, whether it be lead generation or an
15 actual purchasable product.

16 Q. What is lead generation?

17 A. Lead generation is the gathering of leads
18 to follow up on, so much like what an online insurance
19 company does where you fill in a form, and that's the
20 conversion that happens on that website.

21 Q. Okay. You mentioned some terms like SEO
22 and a couple other things in your answer just now. I
23 want to ask you about some of them, and I thought the
24 easiest way to do that may be to go through a document
25 that has a bunch of stuff that I want to make sure

1 So it's that migration of information data tracking
2 and set up of the new vendor while exiting out of the
3 old vendor.

4 It could also actually mean migrating
5 entire E-commerce platforms, to go back up to that
6 other section you asked about. So going from
7 something like an IBM Web sphere E-commerce platform
8 to something like an ATG E-commerce platform.

9 Q. So then in that sixth bullet,
10 Simultaneously manage the four brands running on two
11 different E-commerce platforms to a third platform,
12 that refers back to what you were you just discussing?

13 A. Exactly.

14 Q. And all of this is geared -- all of these
15 three areas, the professional summary, management
16 experience, technical summary is all geared towards
17 marketing in the E-commerce arena?

18 A. Yeah.

19 Q. Okay. What I'd like to do now is just go
20 through your jobs and work experience from this CV,
21 and I thought that the easiest way to do it might be
22 to go in chronological order from the back, so we you
23 could just go up through the years, as it were.

24 A. Okay.

25 Q. I want to touch on each of them briefly,

1 again to make sure I understand each of these.

2 Start with Teleflora in 2001. What is
3 Teleflora?

4 A. Teleflora is a florist wire service, much
5 like FTD; essentially the largest competitor to FTD.
6 They enable florists to take an order -- so let's say
7 I want to send you flowers in Alabama from Medford. I
8 can do that by walking into my local florist and
9 saying, I want to buy flowers, but I want them
10 delivered in a state that, obviously, you're not going
11 to drive and drop off that. They then can take that
12 order and use the Teleflora wire service to wire it to
13 an Alabama florist near you to drop off those flowers.

14 Q. What is Web Marketing Pros, the next --

15 A. Web Marketing Pros was a business of mine.
16 I was doing independent consulting, and that was my
17 DBA at the time.

18 Q. Again, the kind of work you were doing
19 there is the kinds of things we've been talking about?

20 A. Same thing. I've kept a very focused
21 career path.

22 Q. What is over sea corp?

23 A. Oversee Corp. is a -- they're still around.
24 It's a large company. They own lots and lots of
25 different websites; you know, everything from

1 Revenue.net, which is listed here, which was a
2 marketing platform -- so display marketing. So banner
3 ads and such.

4 Domain Sponsor was where -- let's say you
5 owned 10,000 different URLs. Domain Sponsor was a
6 parking service where you would park that domain, and
7 then they would essentially populate it with kind of
8 like paid search listings, and each click would
9 generate income for the owner of that domain.

10 Q. And your title there was search marketing
11 revenue manager, right?

12 A. Yes.

13 Q. What was it that you actually did at
14 Oversee?

15 A. I did a couple of different things there.
16 One was I managed the testing of several of the CEO's
17 URL, so the company's own domain portfolio, building
18 out essentially publisher websites; so websites that
19 published content that you build up to drive traffic
20 to other sites to get that percentage of transaction
21 from that affiliate.

22 So it's basically building an -- being an
23 affiliate of other companies and building out websites
24 that have domains. So it would be like having a
25 website like Travelnow.com, for instance, and driving

1 traffic to Expedia for a commission on sales.

2 Q. You then went to Shoes.Com?

3 A. Yes.

4 Q. I gather they sell shoes.

5 A. They do.

6 Q. And you were the director of online
7 marketing there?

8 A. Yes.

9 Q. Briefly, tell me just what kind of work did
10 you do for Shoes.com.

11 A. Essentially, I oversaw all of their
12 marketing channels from paid search, search engine
13 optimization, affiliate program, comparison shopping
14 engines, partnerships, so on and so forth.

15 So essentially managed all of their
16 acquisition marketing.

17 Q. Again, acquisition marketing, marketing to
18 the people who would buy shoes?

19 A. Yes. I was the one who was initially
20 getting the customers, and then there was another
21 director at that company who was managing the
22 retention channels, so the CRM marketing.

23 Q. Why did you stop working at Shoes.com?

24 A. The company was owned by Brown Shoe, which
25 is one of the largest shoe companies in the world, but

1 they're based in St. Louis. It had been a privately
2 owned -- basically an Internet startup that was
3 purchased by Brown Shoe. I lived in LA at the time,
4 and Brown Shoes had plans to move the company to
5 St. Louis, and I was not looking to move to St. Louis.

6 Q. So I gather you were then an independent
7 contractor for four and a half, five years, and also
8 worked at Musician's Friend and Guitar Center at the
9 same time.

10 A. Yes. I actually was an independent
11 contractor, with the approval of my bosses at both of
12 those companies, during -- or it overlapped with both
13 Musician's Friend/Guitar Center, as well as some of
14 the Shoes.com work.

15 Q. As an independent contractor from that
16 period in December 2006 to February 2011, you did the
17 same kind of work that we've been discussing already,
18 just with -- on your own?

19 A. Yes. Essentially, it was kind of like
20 after-hours work, so I could would do my work during
21 the day with Musician's Friend and Guitar Center, and
22 then in the evenings I might do work for Territory
23 Ahead or Naturalizer.com, as long as they were
24 businesses that did not compete with the musical
25 instrument businesses of Musician's Friend and Guitar

1 Center.

2 Q. So Naturalizer.com sold shoes, right?

3 A. Yes. They're actually owned by Brown Shoe.

4 Q. What is Foamheads.Com?

5 A. Foamheads is -- was a -- is a company
6 that's based out of Seattle. They basically make
7 sports -- licensed sports memorabilia.

8 Q. TerritoryAhead.com, what is that?

9 A. They are a clothing or apparel company.

10 It's not really something that I would wear, but I had
11 apparel marketing experience, and they needed somebody
12 to do an SEO audit of their website; so basically
13 taking a look at how their infrastructure was set up,
14 what data elements they had; looking at all of those
15 search engine optimization aspects.

16 Q. And Musician's Friend and Guitar Center,
17 what kind of companies are those?

18 A. Very, very large. Musician's Friend --
19 Musician's Friend is the largest -- well, was the
20 largest online retailer of musical instruments based
21 out of Medford, Oregon, initially; it was founded
22 there. Guitar Center purchased them.

23 And I was brought in to basically help
24 continue the launch of E-commerce for
25 GuitarCenter.com, because up until about six to eight

1 months before I started there, Guitar Center promoted
2 their -- GuitarCenter.com promoted their stores, which
3 you can find almost everywhere.

4 And so it was building out E-commerce for
5 them, as well as for the MusiciansFriend.com brand and
6 other brands that they owned and/or purchased after I
7 started there.

8 Q. And then in your resumé, under that first
9 bullet, it mentions several different websites. Each
10 of those, I guess, are sites that sell music products.

11 A. Musical instruments, except for Harmony
12 Central, which actually is a community website for
13 musicians.

14 Q. What do you mean?

15 A. It's a forum of sorts where online
16 musicians can talk about, you know, their favorite
17 strings or their favorite drumsticks and why, and so
18 on and so forth, or, you know, even things as mundane
19 as did you hear this new album, did you like it; that
20 type of stuff.

21 Q. And then why did you leave Musician's
22 Friend/Guitar Center?

23 A. Guitar Center had plans to close the
24 Medford office and move and centralize everything down
25 in southern California, which I had already owned a

1 house in Medford, so I wasn't going to move again.

2 Q. So then you went to work at Harry &
3 David's?

4 A. Yes.

5 Q. What is Harry & David's?

6 A. Harry & David is a very large food gifting
7 company.

8 Q. Like gift baskets?

9 A. Gift baskets, chocolates. They're most
10 known for their pears, which we grow in the Rogue
11 Valley, which is all around Medford.

12 Q. And you had a couple different jobs there;
13 senior manager for SEO and project management, right?

14 A. Yes.

15 Q. And then director of online marketing?

16 A. Uh-huh.

17 Q. And then director of site architecture and
18 SEO?

19 A. Yes. I basically moved up the ladder very
20 quickly.

21 Q. What did you do in each of those positions?

22 A. When I started there, I started
23 specifically just looking at search engine
24 optimization for their websites, building out projects
25 and processes and so on and so forth, to better manage

1 data going to that front end of that website to make
2 it more relevant -- or actually provide it more
3 content so that people looking for a pear gift basket
4 or a pear gift box or comice pears or so on and so
5 forth would find that website.

6 So essentially building it up so that it
7 actually supported what it is that it does so that
8 Google gives it more relevancy for keywords that are
9 related to it.

10 Q. And then as director of online marketing,
11 your portfolio expanded?

12 A. Yes. So then I had to not only manage the
13 search engine optimization but then paid search,
14 affiliate programs, and managed the team that managed
15 all of that.

16 Q. And then as director of site architecture
17 and SEO --

18 A. That was -- I was moved into a special
19 role, essentially managing all of the back end and
20 mid-tier working directly with the I.T. team to
21 basically build a better foundation for the website so
22 that the data flowed more smoothly.

23 A lot of it was process development with --
24 you know, working with multiple departments. So
25 merchandising, purchasing, you know, I.T., marketing

1 itself, so on and so forth.

2 Q. Now, under director of site architecture
3 and SEO on your resumé, the fifth bullet there
4 mentions some of the terms that we were talking about
5 earlier, like KPI. So what KPI were you focused on?

6 A. We were focused on site ranking as well as
7 conversion, bounce rates; just general key performance
8 indicators, whether the website was doing well or not.

9 Q. Again, at Harry & David, conversion meant
10 somebody actually ordering a gift basket?

11 A. Yes, somebody actually placing an order.

12 Q. And then there's a reference to the user
13 engagement. What is that?

14 A. User engagement was -- essentially, it was
15 how people interacted with the website; making sure
16 that the website was easy to use, which, obviously, if
17 a website is easy to use, you can find what you want
18 on it. Your conversion is going to go up, unless you
19 don't -- you know, it's too expensive.

20 Q. So it might look at how long somebody is on
21 the website?

22 A. Yeah. We may look at how many pages
23 somebody looked at, how long they were on the site,
24 what they -- what they looked at, so on and so forth.

25 Q. And why is that important?

1 MR. VOGT: Objection to form.

2 THE WITNESS: It's to understand the user
3 behavior on the website. So looking for pinch points.
4 If you see lots of people going and ending up on a
5 product and for some reason that product's page is not
6 creating a conversion, maybe there's something broken
7 on that page, maybe that product doesn't have
8 inventory anymore, and for some reason, it's just
9 broken. Pull it off the site. Those types of things.

10 BY MR. BERRY: (Continuing)

11 Q. Then why did you stop working at Harry &
12 David?

13 A. I was laid off in March, as they prepared
14 to get their books ready for sale. The company was
15 recently sold to 800-Flowers.

16 Q. And at that point you started your own
17 consulting business?

18 A. Yes.

19 Q. And does the business have a name?

20 A. No. It's self-employed.

21 Q. The consulting that you do kind of goes
22 back to what we were talking about originally; it's
23 sort of the broad gamut of stuff that we were
24 discussing with respect to E-commerce?

25 A. Yes.

1 Q. And a lot of this appears in your résumé?

2 A. Yeah. It's an online professional website
3 that describes your -- what it is that you've done.
4 So essentially it's an online CV.

5 Q. I just want to ask you about one thing on
6 here. In number -- the second page --

7 A. Okay.

8 Q. -- it has E-commerce marketing and
9 technology consultant, and then under the -- there's a
10 section that says, What I Get Contracted For.

11 A. Uh-huh.

12 Q. The last bullet says, Legal expert for
13 cases related to online technology or marketing.

14 Other than this case, have you been engaged
15 as an expert in any other legal cases?

16 A. No. That speaks to this case.

17 Q. This is the only time that you've served as
18 an expert?

19 A. Yes. To date.

20 Q. A couple seconds ago we were talking about
21 conversion rates. When you were at Guitar
22 Centers/Musician's Friend -- let me just ask you a
23 question about that.

24 On your résumé, when it says Musician's
25 Friend/Guitar Center, you worked for Musician's Friend

1 that then got bought by Guitar Center, so you
2 ultimately worked for Guitar Center? Is that --

3 A. They actually kept the two businesses
4 siloed while I was still there. When I left was while
5 they were starting to complete -- start the process of
6 merging the two, in terms of tax nexus and all of
7 those other aspects that really bring an owner --
8 owned company to an owner company.

9 Q. Okay. When you worked for those companies,
10 what was the click-through rate for the various
11 websites that you worked with?

12 MR. VOGT: Objection to form.

13 THE WITNESS: The click-through rates for
14 the various websites, are you referring to from
15 organic listings, paid listings?

16 BY MR. BERRY: (Continuing)

17 Q. Well, let's start with paid listings.

18 A. Paid listings --

19 MR. VOGT: Objection. Just objection to
20 form and to scope.

21 THE WITNESS: Essentially, it was the best
22 click-through rate we could attain. So it was, you
23 know, working with our third-party paid search vendors
24 to write ads that caught people's attention to bring
25 them in to click through it.

1 had videos showing that. We may have had videos
2 showcasing super high-end guitars, so kind of more
3 that 360 model video. Sometimes we had celebrity
4 signed guitars, and so you would want to show a video
5 of the guitar in complete, as well as the signatures
6 and such that were on it.

7 Q. When you were at those two companies, were
8 you involved with the video at all?

9 A. I was involved with the making sure that
10 the videos were conducive to selling that product as
11 well as making sure that the analytics tracked
12 interaction with those videos.

13 Q. What does that mean?

14 A. So tracking video views, page views for
15 that video page, making sure that people could access
16 the video. So looking at, you know, the analytics of
17 what technologies were entering to view that video.
18 So those types of things.

19 Q. What content delivery network did you use
20 for the videos at those companies?

21 A. So at Musician's Friend and Guitar Center,
22 we actually hosted most of the videos on our own
23 servers.

24 Q. And then how did you track the counts of
25 views for those?

1 A. Basically, creating an action script, so
2 that once somebody interacted with the play video
3 button, it would create a count of how many times that
4 play button was clicked.

5 Q. What is an action script?

6 A. It's basically just saying when somebody
7 interacts with this -- perform this action and record,
8 hit as a one, for instance.

9 Q. So that's something that's coded into the
10 website?

11 A. Coded into whatever media player you are
12 using.

13 Q. What media player did y'all use.

14 A. We had a proprietary one there.

15 Q. Was that script accessible to people who
16 viewed the website?

17 A. No. You would not be able to go in and see
18 the -- the actual back-end aspect of that, but you
19 would be able to see the signals and the labels that
20 we applied to that.

21 Q. What does that mean?

22 A. Essentially what -- so when somebody
23 interacts with that play button, it would then send to
24 our analytics that somebody hit play, so somebody is
25 viewing the video, and then it would, you know, count

1 back in updating the video counts, as well as show
2 us -- and we may even have the -- you know, in some
3 places we used the technology that actually
4 recorded -- did they watch the complete video, so did
5 the video actually reach its end; did they move off of
6 the video midway, you know; so we may be able to
7 record partial watches. But that would not be
8 accessible on the front end to anybody.

9 Q. And the script itself would not be
10 accessible on the front end?

11 A. You would just be able to kind of see how
12 we were labeling it and basically being able to review
13 what was -- how we tagged that within the source code.

14 Q. When say how you tagged that, that means
15 how you're calling the number?

16 A. Exactly.

17 Q. How it's identified?

18 A. Exactly.

19 Q. At those two companies, the script said
20 that it counted as a play if the play button was
21 clicked; is that --

22 A. Yes.

23 Q. And so you would count plays by that
24 number, right?

25 A. Uh-huh.

1 Q. And then if I understand what you were
2 saying, there were also deeper analytics to look at
3 the length of play, whether the play was completed?

4 A. Yes. In some cases, in some of the videos.

5 Q. Could you tell in the back-end analytics
6 whether there were unique visits to play?

7 A. You could look at the number of unique IP
8 addresses that looked at it, but there would be no way
9 to say, okay, was there two or three people at that
10 computer looking at it at the same time.

11 Q. But you might have, say, a hundred plays
12 and only a percentage of those would be from unique IP
13 addresses?

14 A. Potentially, yes. Like I said, at the same
15 time, it's just that one IP address. There's no way
16 to identify whether there was all of us starting
17 around the computer or just one person watching from
18 that computer.

19 Q. Right. But if Bridget went to, you know,
20 the self-tuning guitar video and clicked play, that
21 would show up as one --

22 A. One unique.

23 Q. -- one unique and one play?

24 A. Yes. Right. It would show up as one view.

25 Q. Okay. And then if I went to the same

1 computer, hit play again, it would show as a second
2 play, but the same -- just -- it would still only be
3 one unique?

4 A. It would be one unique view.

5 Q. And then if you went to the same computer
6 and you hit play again, that would be the third play?

7 A. A third play, but one -- it's still one
8 unique view.

9 Q. And the uniques were something that was
10 accessible to you in the back-end reporting?

11 A. Only in the back-end reporting.

12 Q. Not to the front-end viewer?

13 A. No.

14 Q. On Harry & David's website, were there
15 videos?

16 A. Yes.

17 Q. What kind of videos?

18 A. It may be showcasing a certain gift box or
19 gift product. You know, we had things like gift
20 towers, so it's a picture of boxes stacked on top of
21 each other. So we may have a video that shows those
22 boxes being opened so you can see the pears at the
23 bottom and chocolate and the sweets on the next one,
24 so on and so forth.

25 Q. And when you worked at Harry & David, did

1 A. Typically, yes. You want to identify that
2 you're embedding that video.

3 Q. Right. But to a viewer -- to the average
4 website, you know, traffic person going to -- there,
5 if it's not YouTube and labeled as such, would you
6 know if a video was embedded from somewhere else?

7 MR. VOGT: Objection to form.

8 THE WITNESS: Totally depends on who is
9 originally hosting that video and the type of embed
10 code that they use. But most people label their
11 players. They're proud of their technology.

12 BY MR. BERRY: (Continuing)

13 Q. So there were -- at Harry & David, it
14 sounds like there were two kinds of videos; YouTube
15 posted and --

16 A. Natively hosted, yes.

17 Q. At Harry & David, was it like at Music --
18 Musician Friend and Guitar Center where you had them
19 hosted on your own server?

20 A. It was hosted on our own server with our
21 own proprietary video player.

22 Q. And just talking about that, did y'all
23 track views there?

24 A. We did.

25 Q. Just talking about the proprietary player,

1 how were views tracked there?

2 A. The same way. We tracked plays, amount of
3 interaction, page views of that page prior to play.
4 So we could see a video conversion rate, for instance.

5 So a thousand people visit this page, ten
6 watch it, that's not the greatest of video
7 conversions.

8 Q. And then did the technology that
9 facilitated the counting work the same, where it was
10 in a script?

11 A. Yes. It was -- it was coded across the --
12 basically, hosted on the back end, encapsulated in
13 that mid-tier, and then presented through a front-end
14 layer to the user through the actual video player
15 itself.

16 Q. But the counting itself, that was done
17 through a script like it was at Musician Friend and
18 Guitar Center?

19 A. Yes. A tracking script.

20 Q. And that script at Harry & David would not
21 be accessible to just somebody going to the website,
22 right?

23 A. No. It was tied in the analytics package
24 that we use to track that.

25 Q. How then did you count views at Harry &

1 David?

2 A. Same thing; an interaction within -- with
3 the video play button.

4 Q. So if somebody were to hit the play button,
5 that would count as a view?

6 A. As long as the video was actually allowed
7 to start, yes.

8 Q. And then separately, it sounds like you had
9 analytics looking at depth of play and other stuff.

10 A. Yeah. Optimally. I mean, if you're going
11 to put production time into it, you want to understand
12 what it's doing for you.

13 Q. Right. But that is what you did --

14 A. Exactly.

15 Q. -- at Harry & David?

16 A. That's -- yeah, that's one of the areas,
17 from the architectural perspective, that I had to
18 manage, was making sure that things were being tracked
19 appropriately, numbers were accurate, and so on and so
20 forth.

21 Q. And then at Harry & David, just with this
22 proprietary viewer, like with Musician Friend, you
23 could track unique IP addresses, right?

24 A. Yes. Analytics software does that
25 automatically. And we used a third-party analytics

1 Q. So if I understand what you're saying, this
2 chart -- and you included two other charts where you
3 looked at similar terms. Those didn't affect how many
4 people viewed it; you looked at that -- it was rather
5 making sure that you were looking at the right
6 technology in the right period of time?

7 A. Exactly. It was -- it was setting a
8 timeline so that I was looking at appropriate research
9 based on the time of this video's release.

10 Q. On -- then under that -- on the bottom of
11 page 5, there's a table, YouTube video View Counts,
12 that runs on to the next page. Based on what you said
13 earlier, you prepared this chart -- or this table?

14 A. Yes. So I -- you mentioned that
15 consolidated count spreadsheet. This is one of the
16 tables pulled out of that.

17 Because of the -- YouTube being its own
18 technology, I isolated YouTube from everybody else so
19 that we could differentiate, A -- based on time frame,
20 based on more information available, based on the
21 process and procedures that YouTube uses to count, I
22 wanted to isolate those so that -- because of the fact
23 that they were their -- a known commodity that was
24 using the same technology at the same time.

25 Q. And then ultimately your conclusion at the

1 bottom of the table that runs on to the following
2 page, 6, is that the total views were 99,149 on
3 YouTube?

4 A. Yes. Based on the screenshots that were
5 captured and provided to me, these are the numbers
6 straight from those screenshots.

7 Q. Okay. So if I understand what you're
8 saying, you looked at the screenshots, saw the number
9 of views on those screens, and then just added them
10 up?

11 A. Exactly.

12 Q. Okay. How did you verify that the numbers
13 on those screens were correct?

14 A. Can you rephrase that?

15 Q. What did you do to verify that the numbers
16 on the screenshots were correct?

17 A. Well, obviously, this video was not
18 available, so I was not able to go look at the
19 specific video instances anymore. However, I was able
20 to look at existing videos and review that -- the
21 counts technology and then back up using the
22 information and research that I did, based on how they
23 counted at that time frame.

24 Q. I'd like to mark as Exhibit 330 -- this may
25 require just a moment of explanation for you --

1 (Exhibit 330 marked for identification.)

2 BY MR. BERRY: (Continuing)

3 Q. Is Exhibit 330 -- this front page, right,
4 is your consolidated count spreadsheet, right?

5 A. For YouTube, yes.

6 Q. Okay. And what I've done for simplicity's
7 sake, for the deposition, is where you have User,
8 Video Views, and Filename, I've attached as Exhibit 1
9 the first line here, the -- what I think is the
10 screenshot for Exhibit 2, and down the line. If you
11 want to take a second and just double-check.

12 A. It's just that second one that -- was the
13 one I couldn't read the actual user name.

14 Q. Right, right, right.

15 A. Yeah. That's the one. Yes.

16 Q. So -- so you agree that the pages behind
17 exhibit -- exhibit tabs 1 through 10 correspond with
18 the pages that you're referencing in the ten lines on
19 the table?

20 A. Yes.

21 Q. Turning first to tab 1, which has a
22 screenshot that has been Bates labeled Bollea 4628 to
23 4629 --

24 A. It's --

25 Q. I'm sorry. I'm doing it more for the

1 transcript than for you.

2 A. Understood.

3 Q. If you turn to Exhibit 1, did you visit
4 this actual web page?

5 A. This web page was not available at the time
6 of -- this video was taken down prior to me doing my
7 research.

8 Q. So you didn't visit this actual page?

9 A. No. I would not have been able to visit
10 this actual page.

11 Q. From what you had said before, you looked
12 at the screenshot of the page, right?

13 A. Yes. This exact copy that you've provided.

14 Q. Was -- did you do anything to verify that
15 the 18,463 number on the screenshot is accurate with
16 respect to the number of views of this video on this
17 page?

18 A. No. This was -- the video was a raw -- or
19 it was a raw screen capture. I assume it was
20 unadulterated.

21 Q. But there was nothing that you could
22 independently do to verify that that number was
23 correct?

24 A. No. I had to depend that it was an actual
25 just screenshot that had not been manipulated.

1 Q. Do you know whether that view count, the
2 18,463 number, was impacted by artificial inflation?

3 A. I do not.

4 Q. Do you know whether YouTube froze this view
5 count because of concerns with inflation?

6 A. No.

7 Q. Did you contact YouTube to find out?

8 A. No.

9 Q. And I take it from what you said earlier,
10 you didn't look at any of the coding on this
11 particular page, right?

12 A. No. This particular page, this instance
13 with this video did not exist, as this video had been
14 removed from as many sources online as possible.

15 Q. Turning to tab 4 -- and behind this tab
16 there's a screenshot that's labeled Bollea 4632 to
17 4633. Do you see that?

18 A. Uh-huh. I thought that was for her again.

19 Q. Sorry. I just want to make sure you're
20 with me.

21 Did you visit this web page?

22 A. Again, this particular video wasn't hosted
23 anymore.

24 Q. You just looked at this screenshot, right?

25 A. Yes.

1 Q. So is it possible that this wasn't even the
2 full video?

3 A. I would -- yes, it is possible.

4 Q. Do you know for each of these screenshots
5 whether the video that was actually posted on Gawker's
6 website was fully displayed on any of these
7 screenshots from Exhibits 1 through 10?

8 A. I would not have been able to visually
9 verify that, no.

10 Q. For each of these that we didn't talk
11 about -- No. 2, 3, 5, 6, 7, 8, 9, 10 -- I take it you
12 weren't able to visit any of those actual web pages,
13 right?

14 A. No. This video had been pretty well
15 scrubbed from the Internet at that point.

16 Q. You had just looked at the screenshots for
17 those pages, right?

18 A. Yes.

19 Q. And you weren't able to do anything to
20 independently verify that the numbers reflected on
21 those screenshots accurately reflected the views
22 through YouTube, right?

23 A. No, I was not able to physically and
24 visually verify each of these exact instances, no.

25 Q. And you don't know whether any of the

1 numbers shown on those screenshots were reflecting
2 artificial inflation of views, right?

3 A. That -- no. I would have no way to tell
4 that.

5 Q. You don't know whether any of those views
6 were frozen by YouTube because of concerns with
7 inflation, right?

8 A. No.

9 Q. And I take it you didn't contact YouTube
10 about any of those views, did you?

11 A. No.

12 Q. And you weren't able to look at the coding
13 on any of these pages, right?

14 A. Not on these exact pages, no.

15 MR. BERRY: Do you want to take a break?
16 This would be, like, a natural point. I'm happy to
17 keep going.

18 MR. HARDER: Sure.

19 MR. VOGT: It's noon.

20 THE VIDEOGRAPHER: Off the record at 11:53.

21 (Recess: 11:53 - 12:03 p.m.)

22 THE VIDEOGRAPHER: The time is 12:03. We
23 are back on the record.

24 BY MR. BERRY: (Continuing)

25 Q. Mr. Shunn, switch gears from YouTube.

1 Q. And in that table on page 7 that runs then
2 on to page 8, there's a total views that's shown of
3 4,452,266, right?

4 A. Yes.

5 Q. And that reflects your conclusion about how
6 many total views there were on all of those various
7 web pages?

8 A. Yes, as displayed on the various
9 screenshots.

10 Q. Okay. How did you reach that conclusion?
11 Just giving me the sort of big picture, how you got to
12 that point.

13 A. In terms of the --

14 Q. The --

15 A. -- the sum of these or --

16 Q. The sum, I take it you took just from
17 counting the video views of the individual pages,
18 right?

19 A. Yes.

20 Q. How about -- with respect to within a
21 reasonable degree of certainty that the following
22 video view counts of the video are accurate, how did
23 you reach that conclusion?

24 A. So I visited the sites that were in
25 question and looked at their current counter tags, so

1 their data on pages unique to their URL, their
2 instance of that, so that they can track and use that
3 to look at advertising revenues, advertising
4 impressions, all of that to make sure that their data
5 is -- is unique to them. Because people will
6 specifically come in and say, Hey, that video is
7 getting a lot of views. I want to put my ad on that
8 video. And they'll do things like that because of
9 that.

10 So it behooves them to have that number be
11 a true unique number for that source to keep their
12 revenue stream clean.

13 Q. Do you know -- do these sites have
14 incentives to inflate their views?

15 A. Probably not, due to that advertising
16 aspect. Because if you lose your revenue stream, the
17 site just goes away, right?

18 So if DailyMotion makes no advertising
19 money, they lose their website, essentially. They
20 can't afford hosting, they can't afford employees to
21 find and post this kind of stuff, so on and so forth.

22 Q. Just for record's sake, what we've been
23 talking about here is Exhibit 331. And why don't we
24 just go ahead explain what that is, since we haven't
25 done that on the record here.

1 The first page of Exhibit 331 is your
2 consolidated view count from Other Video View Counts,
3 right?

4 A. Yes.

5 Q. This is what you prepared?

6 A. This represents the count from the
7 screenshots that were non-YouTube screenshots.

8 Q. And then the tabs to here, No. 1 through
9 23, correspond with the various screenshots that line
10 up with your table that you created, right?

11 A. Yes.

12 Q. Do you know whether the websites that are
13 reflected in -- other than DailyMotion, that are
14 reflected in tabs 1 through 23 are ad-based sites that
15 generate revenue in the manner that you were
16 discussing before?

17 A. That would be an apt assumption, yes.
18 There's -- they're not making you pay to watch the
19 videos, so -- and their pages are covered with ads.
20 You know, they're not always the nicest ads to look
21 at, but they're pertinent to the type of sexual
22 content that was being displayed on these pages.

23 Q. For those advertisers, would the
24 advertisers be concerned with page impressions or
25 video view counts?

1 actually loaded in.

2 Q. Do you know whether anybody, though,
3 counts -- any websites count views based on the video
4 loading?

5 A. Again it's the same answer.

6 Q. Okay. Do you know if some websites only
7 count video plays if the video actually plays for a
8 certain percentage of its total length?

9 A. Yes. YouTube has -- will sometimes --
10 well, they actually will only count it if so much of
11 that video has been viewed.

12 Q. Right. So YouTube does not count views
13 based on just clicking play, right?

14 A. No.

15 Q. You have to watch a certain amount of the
16 video?

17 A. Yes. The video has to start, and then I
18 believe it's a certain percentage has to be watched
19 before it counts as a view.

20 Q. For the sites that you look at -- you
21 looked at here, do you know what they counted as
22 playing a video?

23 A. No. I don't have access to that level of
24 detail.

25 Q. That be would in the scripts?

1 A. That would be something that you would need
2 from that organization, or access to their back-end
3 technology or analytic software, so on and so forth.

4 Q. Why don't we talk about a couple of those
5 examples that you have in your report to make sure
6 that I understand what's going on here.

7 The first one is on page 6, the
8 CrazyShit.com. I'll mark this as 332.

9 (Exhibit 332 marked for identification.)

10 MR. VOGT: What number is this?

11 MR. BERRY: 332.

12 BY MR. BERRY: (Continuing)

13 Q. So on page 6 of your report, there's a
14 section on CrazyShit.com and a little screen grab
15 there --

16 A. Yes.

17 Q. -- then it has source code?

18 Part of that source code is drawn from
19 Exhibit 332; is that right?

20 A. Yes.

21 Q. And 332 is a screenshot that you took of
22 the CrazyShit website?

23 A. Yes.

24 Q. And you looked at a specific page on that
25 site, right?

1 from images.crazyshitter.com/star_on.gif. So that is
2 the actual star image being called in based on a
3 number of stars this video has been given by users.

4 Q. Okay. Basically, then, it kind of goes on
5 from there, right?

6 A. It -- yeah.

7 Q. Describing what they think is all stars
8 after this point?

9 A. Yeah. This is just the snippet of the code
10 pertinent to this area.

11 Q. Okay. And so basically this is the HTML
12 code showing how this text appears on the screen; how
13 viewed 9485 appears on the screen, right?

14 A. Yes. It represents how they're labeling
15 these things and the data element that they're
16 bringing in to show in this case video count or how
17 many times it was socially emailed out or the ratings
18 that people have given this video.

19 Q. It doesn't show how views are counted, does
20 it?

21 A. No. But it shows how they actually labeled
22 this as their views for both users and advertisers.

23 Q. Okay. Where does the number for views come
24 from? Like, where did the number 9485 come from?

25 A. It would come from their back-end analytics

1 for this video.

2 Q. How do you know that?

3 A. Because that is -- represents the count of
4 video views of this video on this site, and it's
5 being -- it has to be recorded somewhere, because,
6 again, they do advertising.

7 And so this is representative of this
8 video's been watched 9,485 times. That number comes
9 in if their analytics and is pulled in via that. This
10 is just the clear labeling of that data pull.

11 Q. How do you know that that's not page views?

12 A. In this case, it could be page views, but
13 does not -- every other video had that exact same, and
14 it says "viewed," as in past tense, so contextually,
15 it would relate to the actual video view.

16 Q. But you don't know, right?

17 A. Not without having access to their code and
18 developers.

19 Q. And how do you know that the number 9485
20 was not typed in?

21 A. Because not every video had the same
22 number. If you looked at other videos on this site,
23 that viewed, colon, number, it wasn't part of, like, a
24 hard-coded style sheet.

25 Q. But looking at this page, how would you

1 know one way or another that whoever coded the page
2 just didn't type in viewed, colon, 9485?

3 A. I wouldn't be able to tell you that without
4 speaking to a developer. Like I said, most of the
5 stuff that feeds into these things are fed in from a
6 back-end aspect of a website.

7 Q. And you don't have access to those -- that
8 back-end part, right?

9 A. No.

10 Q. Do you know what action it considered to be
11 a view?

12 A. Of watching the video.

13 Q. How do you know that?

14 A. Because of the context of where it's
15 labeled at, and the fact that it shows that whether it
16 was emailed out.

17 So the other two were based on an action.
18 So within a reasonable doubt, the viewed should be
19 tied to some other action happening on this page.

20 Q. Do you know whether it was clicking play?

21 A. It could be clicking play or clicking this.
22 Rating is based on this 1 through 10 piece here, so
23 everything else was interaction within this area of
24 the page, specific to this video.

25 Q. Do you know, though, if it was clicking

1 play counted as a view?

2 A. No. Again, not without having access to
3 their --

4 Q. Do you know whether the video had to play
5 for a certain length for this site to count it as a
6 view?

7 A. No, not having worked at CrazyShit.com.

8 Q. Can you tell from this the number of unique
9 views?

10 A. No.

11 Q. Can you tell how long people watched the
12 video?

13 A. No. But also couldn't tell how many people
14 were looking at the screen when this video was
15 playing, either.

16 So it's a similar aspect to did they
17 actually count unique views or did they count -- you
18 know, there's always -- there's going to be that
19 nebulous aspect of how many people stood behind the
20 computer when that video was actually played. It's
21 the same aspect.

22 Without actually being there on site, in
23 that person -- viewer's room, you can't tell if
24 there's four people watching that video or one person
25 watching that video. It's the same, without having

1 access to their back-end analytics code.

2 Q. But you also wouldn't know if it was
3 counting the same IP address, going loading -- you
4 know, I'm going to the website 14 times, whether that
5 counts as 14 views or one?

6 A. No. Again, I would not be able to confirm
7 their methodology on this without some back-end access
8 or access to an individual that actually coded that.

9 MR. BERRY: I'm going to mark this as
10 Exhibit 333.

11 (Exhibit 333 marked for identification.)

12 BY MR. BERRY: (Continuing)

13 Q. So the next website that's mentioned page 6
14 of your report is DailyMotion.com, which you mentioned
15 earlier.

16 A. Yes.

17 Q. And what Exhibit 333 is, I believe -- tell
18 me if this is right -- is the screenshot of the web
19 page you looked at that then you derived the source
20 code that's pasted into your report from, right?

21 A. Yes.

22 Q. Looking at Exhibit 333, when did you go to
23 this website?

24 A. It was about the exact same time as this
25 one, so late February, early March.

1 Q. And you didn't go to the pages on
2 DailyMotion where the Gawker video was posted because
3 those pages were not accessible, right?

4 A. Those pages did not exist anymore.

5 Q. In this coding, I take it you did the same
6 sort of steps that you talked about with respect to
7 332.

8 A. Exact same steps. However, one thing I can
9 say about DailyMotion is that they actually had a lot
10 more labeling in terms of what -- in terms of
11 transparency of what their count shows.

12 You can see that -- here in the code, that
13 it's actually pulling in from data. It's pulling from
14 stat. So you can see that it's actually interacting
15 with something.

16 They've also provided an I.D. An I.D.
17 typically feeds into an analytics program. So Google
18 analytics, Omniture, so on and so forth. That's
19 creating an element I.D. so that there's an actual
20 tangible way to tie that into a different program.

21 Q. Okay. So here, the element I.D. that
22 you're pointing out is video, underscore, views,
23 underscore, count, right?

24 A. Yes.

25 Q. How do you know that that I.D. actually

1 refers to view counts?

2 A. They specifically define it as video view
3 counts.

4 Q. But they could have called it purple,
5 right; it's just the I.D.?

6 A. Well, yes. It's whatever they've mapped
7 this as. DailyMotion, being a little bit more
8 legitimate than some of these other sites or not so
9 porn-content specific, is actually -- basically
10 provides a little bit more clarity to someone who
11 would be looking at their site.

12 So if you wanted to advertise on this site,
13 as in the ad that didn't load prior to me capturing
14 the screenshot, for instance, they provide that
15 because they're more of a site that's going to host
16 different -- more advertising.

17 You know, a site like CrazyShit.com, you're
18 not going to see a Pizza Hut ad, whereas in the
19 screenshot in Exhibit 331 here, that first
20 DailyMotion, you actually see an ad from Pizza Hut,
21 which may or may not have wanted to be tied up with
22 pornographic content.

23 Q. Did you talk to anybody at DailyMotion to
24 know what the id video, underscore, views, underscore,
25 count meant?

1 A. No.

2 Q. Earlier you mentioned, like, that first
3 line, the div data tool stats title.

4 A. Uh-huh.

5 Q. What is that?

6 A. That's essentially what they've -- what
7 they're pulling content into this div. So, as
8 mentioned before, a div is a defined section within an
9 HTML page. This div happens to include the -- just
10 their views content, hence the slash div at the end of
11 the actual views, 91 views number, and text.

12 The reason that they actually highlight
13 that this is being pulled from a data tool is that
14 data tool equals stats. They're actually bringing
15 this in from some data source to populate the number,
16 which is pulling in from an analytics program, for
17 instance, and then they're rendering that out.

18 You can see that they actually pull it in
19 in the background, hence the title equals, and then
20 there's the count, plus the word views, and then
21 that's actually rendered outside of the carets, right
22 before the slash div as the actual displayable text,
23 as well.

24 Q. Okay. So the data, dash, tool equals stats
25 shows that something is getting pulled in?

1 A. It shows that this is specifically -- you
2 know, they've exposed what they're pulling this data
3 from.

4 Q. Okay.

5 A. Whereas that doesn't actually necessarily
6 have to be the case, as we saw with the CrazyShit
7 code.

8 Q. And the line, class equals foreground font,
9 and on from there, just shows how the views is
10 rendered on the page?

11 A. That's styling, yes.

12 Q. And you don't -- you don't have access to
13 the data that this is pulling in from, right?

14 A. No. That would be something proprietary to
15 people who work and have that -- have access at
16 DailyMotion.com.

17 Q. How do you know whether the number 91
18 actually reflects the number of times that video he
19 was viewed?

20 A. Because they actually highlight it
21 specifically as a video view. There would be no point
22 in tagging that as that specific value unless it was
23 an actual video view count.

24 Q. But, again, you're just assuming that,
25 right?

1 A. I'm assuming that as someone who makes
2 money off the advertising, DailyMotion wants to track
3 any and all interactions with their content as
4 accurately as possible so that they can increase
5 advertising.

6 Q. Do you know for this particular page what
7 action it -- DailyMotion considered to be a view?

8 A. I -- my assumption, as stated before, would
9 be that it was an actual click on play, since it's
10 specifically calling it a video view count versus just
11 a page view count.

12 Q. Do you know whether they required the video
13 to play for a certain amount to be counted as a view
14 count?

15 A. I would not know that without access to
16 their back end.

17 Q. Can you tell from this the number of unique
18 views?

19 A. I cannot tell whether this is counting
20 unique views or counting all views.

21 Q. Can you tell how long the people watch this
22 video?

23 A. Not from my accessibility to this.

24 Q. I apologize.

25 A. Yeah. This next one is --

1 MR. BERRY: Mark as Exhibit 334.

2 (Exhibit 334 marked for identification.)

3 BY MR. BERRY: (Continuing)

4 Q. 334 is a printout from -- is a screenshot
5 from DeviantClip.com, right?

6 A. Yes.

7 Q. This is the web page that you went to to
8 derive the code that's replicated on page 6 of your
9 report?

10 A. Yes.

11 Q. When did you go to this site?

12 A. It was at the same time; late February,
13 early March.

14 Q. Again, you didn't go to the actual page
15 that posted the Hogan video, right?

16 A. Again, that page did not exist anymore.

17 Q. In your report, you write, The website's
18 view counter is an actual video views.

19 How do you know that?

20 A. Because of the way they define it. It's a
21 views label. So they've created it to be views, and
22 then they pull in a total views number, as displayed
23 underneath that.

24 Q. So why don't we walk through that coding,
25 then. Starting with the first line, div id equals

1 for views label and total is on top of each other.

2 Q. So again, the coding here just shows how --
3 the word "views" and the number displayed, right?

4 A. Yes. And I.D.s it as ratings and views.

5 Q. Right. It does not show how views are
6 counted, does it?

7 A. No. Again, that's not something people
8 expose within their code.

9 Q. Do you know where the number is coming
10 from?

11 A. My assumption would be an analytics program
12 or a database back end, but you can't -- you can't
13 confirm that without more access than I had to their
14 website.

15 Q. Do you know whether that number 45035 was
16 typed in?

17 A. I could not tell you that.

18 Q. Do you know what this page -- what this
19 website considered to be a view?

20 A. I -- it appeared to be tied to the view
21 count of the videos because each video had a different
22 type of count, so that -- my assumption is that it's
23 actually view counts.

24 Q. Could it have been page views?

25 A. Possibly, but they would have labeled it as

1 page views.

2 Q. How do you know that?

3 A. Again -- again, it's based on the fact that
4 they, obviously, have advertising that fits their
5 demographic here. And, you know, even with the
6 in-ad -- you know, the in-ad display or in-video ad
7 display, you know, they want to be able to count that
8 accurately because places like Camplace.com want to
9 know if their impressions are accurate and what videos
10 they're showing up against and what types of -- be
11 able to target against those videos of which ones they
12 want to show up against.

13 Q. Did you discuss that with anybody at
14 DeviantClip?

15 A. No.

16 Q. Do you know that from anybody at
17 Camplace.Com?

18 A. No. I just know --

19 Q. Do you know anything about either of those
20 companies?

21 A. No. Actually, I had not heard of either of
22 these websites -- any of those websites before going
23 to this page.

24 Q. Do you know -- can you tell whether there
25 is any connection between the numbers that's displayed

1 there and the actual number of times the video played?

2 A. Only that they attempted to label it as
3 such.

4 Q. But you yourself, you can't verify that one
5 way or the other?

6 A. Again, not without back-end access to their
7 website developers.

8 Q. Can you tell the number of unique views?

9 A. No.

10 Q. Can you tell how long this video was
11 watched?

12 A. No. Again, without access to their
13 analytics and back end, I cannot.

14 Q. The next one you talk about is
15 MyFreeBlack.Com. The screen that you looked at, I
16 take it the same -- rather than marking that as an
17 exhibit here, the source code that's reflected in your
18 report on page 7 is the same as the source code that's
19 reflected on the screenshot that you had provided?

20 A. Yes. I captured them at the same time.

21 Q. And that time period, again, was the same
22 as the other websites; late February, early March?

23 A. Uh-huh.

24 Q. And, again, you didn't go to the page with
25 the Hogan video because that page was no longer

1 accessible, right?

2 A. Exactly.

3 Q. You write at the bottom of page 6, The
4 website's view counter also specifically references
5 that it is counting, quote, video, dash, views.

6 How do you know that it is actually
7 counting video views?

8 A. Because they've I.D. it as such. So that
9 I.D. would tie to analytics aspect that they're
10 pulling in or feeding in, and they've labeled it
11 specifically as video views.

12 Q. Unlike the DailyMotion source code we
13 looked at, there's nothing that actually shows that
14 it's getting pulled in from somewhere, right?

15 A. Again, this is being fed in from something.
16 You would have to look at the back end to see how they
17 are doing that.

18 Q. Do you know where the number there, 593416,
19 was pulled in or whether somebody typed that?

20 A. I would not be able to tell you that
21 without accessing the back end.

22 Q. Do you know that it even refers to the
23 number of times that the video was viewed?

24 A. I would assume so because of their specific
25 I.D. tagging of that value.

1 Q. But they could have tagged it as anything,
2 right?

3 A. Yes, but it wouldn't make much sense to tag
4 it as that without --

5 Q. Did you talk to anybody at MyFreeBlack.com?

6 A. No.

7 Q. And the coding here that's rendered on
8 page 7 is just how the views are displayed on the
9 page, right?

10 A. It ties to how they've I.D.'d that view and
11 then, yes, where they're -- the div that they're
12 displaying that text in.

13 Q. And the div being that section of the web
14 page that somebody actually --

15 A. Exactly.

16 Q. It doesn't show how views are counted, does
17 it?

18 A. No.

19 Q. And you don't know what action
20 MyFreeBlack.Com considers to be a view?

21 A. No.

22 Q. You can't tell how many unique views there
23 were?

24 A. Not without access to their back end and
25 analytics.

1 Q. And you can't tell how long the video was
2 watched for?

3 A. No. In terms of their -- the length of
4 their trigger to record that as a view, no.

5 Q. Or even just how long somebody watched this
6 actual video; whether it was a second or ten seconds
7 or fifteen, you would not --

8 A. Exactly. Same as like I mentioned earlier.
9 I couldn't tell you if one of these views had five
10 people starting at the computer.

11 Q. The next one you mention is MrPopat.com.

12 MR. HARDER: Can we take a lunch break at
13 some point?

14 MR. BERRY: Sure.

15 MR. HARDER: You want to get through the
16 next one?

17 MR. BERRY: Yeah, maybe we can get through
18 the next one. I mean, can -- I could probably wrap up
19 this line of stuff in 20 minutes.

20 MR. HARDER: Twenty minutes? It's almost
21 one o'clock. We haven't even had a break in the last
22 hour.

23 MR. BERRY: We went back on the record at
24 12:03.

25 MR. HARDER: So it's been 55 minutes we've

1 been going.

2 MR. BERRY: Why don't we do MrPopat, and
3 then we'll come back and finish the rest.

4 BY MR. BERRY: (Continuing)

5 Q. So the next -- on page 7, the next page
6 that you mention is MrPopat.com.

7 A. Uh-huh.

8 Q. And, again, the code that's reflected on
9 page 7 is the same as the code that was on the
10 screenshot of MrPopat that you had provided?

11 A. Yes.

12 Q. You went to that site in the same time
13 period; late February, early March of this year?

14 A. No. This site I went to in April, because
15 the screenshot was provided at that time period.

16 Q. Okay. But you didn't go to the page that
17 actually had posted the Hogan video, right?

18 A. I did not because it did not exist anymore.

19 Q. For MrPopat you write, The website's view
20 counter also specifically references views and allows
21 for easy re-embedding of any listed video. Do you see
22 that?

23 A. Uh-huh.

24 Q. How do you know what views mean?

25 A. Just that they've defined it as views and

1 displayed it on the page in the right corner of the
2 video where typically people will display view counts.

3 Q. Do you know that -- whether that's actually
4 counting views of the video?

5 A. I do not, but my assumption is yes, based
6 on the placement.

7 Q. Do you know whether it could be page views?

8 A. No.

9 Q. Looking at the box that's printed here on
10 page 7 with the source code, what this box shows is
11 just how the views and number -- the word "views" and
12 the number "13133" show up on the web page, right?

13 A. Yes. It shows how they decided to display
14 and define that numeric value.

15 Q. Again, unlike the DailyMotion code, that
16 doesn't show that this number is being drawn in from
17 somewhere, right?

18 A. No. It's just providing you the styling
19 information, and then they pull -- they have just
20 their -- the number with the span and views label.

21 Q. And so it's possible that somebody just
22 typed in the number 13133, right?

23 A. It's possible, but kind of unlikely.

24 Q. Based on what?

25 A. Based on the fact that other videos on the

1 MrPopat.com site had different counts.

2 Q. Did you ask anybody at MrPopat how their
3 numbers populated?

4 A. No.

5 Q. It's possible, I guess, that this is
6 generated from a script, right, the number?

7 A. That it's generated from a script pulling
8 from analytics, yes.

9 Q. But you wouldn't have access to the script
10 or analytics, right?

11 A. Same answer as all the others. Without
12 access to their developers and their back-end
13 analytics, you would not be able to hundred percent
14 confirm that this is in unique views or anything like
15 that.

16 However, based on the placement near the
17 video, it's where you standardized -- standard put
18 your views, in view count.

19 Q. But, again, you have no way of knowing one
20 way or another what that number is?

21 A. Exactly. Not without a lot more access to
22 their system.

23 Q. And you can't tell if that number reflects
24 unique views?

25 A. No.

1 Q. And you can't tell how long somebody would
2 have watched the video?

3 A. Again, no.

4 Q. Do you know for any of the websites that
5 are in this Exhibit 331 whether their view counts have
6 ever been audited?

7 A. I have no idea.

8 Q. Do you know whether any of those view
9 counts are artificially inflated?

10 A. I couldn't answer that, either.

11 Q. I take it from the five different pages
12 that you looked at that we talked about source code
13 from, you didn't pay to watch any of those videos,
14 right?

15 A. No.

16 Q. On page -- actually, why don't we take the
17 break.

18 THE VIDEOGRAPHER: Off the record at one
19 o'clock.

20 (Luncheon recess: 1:00 - 1:45 p.m.)

21 THE VIDEOGRAPHER: The time is 1:45. We
22 are back on the record.

23 BY MR. BERRY: (Continuing)

24 Q. If you'd turn to Exhibit 331, which is that
25 consolidated view count spreadsheet with the 23

1 different web pages, I take it that the analysis that
2 you did to calculate the -- let me start over.

3 The numbers reflected in this table reflect
4 the numbers for views on the various pages listed,
5 right?

6 A. Yes. It reflects the number of page views
7 labeled on the screenshots originally provided to me.

8 Q. Okay. So I just want to talk about this
9 for a couple minutes. If you would turn to the tab 1,
10 which is the CrazyShit website, screenshot that shows
11 43,719 views?

12 A. Uh-huh.

13 Q. Did you go to this actual web page?

14 A. As stated before, these pages did not exist
15 at the time of my review. They had already been
16 pulled down.

17 Q. So for each of these 23 tabs, you didn't go
18 to any of the web pages?

19 A. No. I went to the websites but not these
20 individual web pages, as they did not exist anymore.

21 Q. How did you verify the number of views here
22 listed as 43,719, for this CrazyShit page?

23 A. Based on the placement and the fact that
24 they need to keep track of real analytics based on the
25 fact that they actually are paid advertisers on the

1 site.

2 Q. All of that, though, is based on
3 assumptions, right?

4 A. I assume that their advertisers want them
5 to keep real analytics and actually not lie about
6 what's going on on their website, yes.

7 Q. For this particular page, do you know where
8 the number 43,719 came from?

9 A. Yes. Viewed, colon, 43,719.

10 Q. Do you know, though, where the actual
11 number 43,719 came from?

12 A. No. Just that that is meant to represent
13 the views to users of this website.

14 Q. Did you talk to anybody at CrazyShit about
15 what viewed means?

16 A. No. As stated before, I did not call and
17 speak to anybody at any of these specific companies.

18 Q. Do you know whether viewed counted page
19 views?

20 A. No. My assumption is, is that if those are
21 views, they represent a smaller number of page
22 views -- or smaller number than page views.

23 Q. But you don't know one way or the other?

24 A. No.

25 Q. Do you know whether that number, 43,719,

1 was typed in by somebody?

2 A. I could not tell you that without speaking
3 to people at CrazyShit.com.

4 Q. Do you know whether this website's video
5 view counts have -- sorry.

6 This is implicit in what you said, but you
7 didn't look at the coding for this actual web page
8 then, right?

9 A. Yes. These web pages did not exist at the
10 time of my review. They had already been removed.

11 Q. So you don't know what the actual coding
12 for this particular web page behind tab 1 says?

13 A. Behind tab 1 through 23, none of these
14 pages were actually accessible.

15 Q. Do you know if the coding for this
16 CrazyShit website changed between the time that the
17 video shown in the page on tab 1 from the time --
18 sorry.

19 Let me ask this: Do you know if the coding
20 for CrazyShit changed between the time that the Hogan
21 video apparently was posted and the time that you
22 looked at a different CrazyShit page this year?

23 A. I do not. However, the style that they're
24 using, so the actual style where it's displayed, how
25 it's displayed, is exactly the same today as it was at

1 this time.

2 Q. Is that the same for each of the 23 tabs?

3 A. I believe so.

4 Q. But you don't know if the underlying coding
5 changed?

6 A. No.

7 Q. Do you know when the scripts on the site
8 changed?

9 A. No.

10 Q. Do you know if the content delivery network
11 changed?

12 A. No.

13 Q. Do you know if -- how videos are hosted
14 changed?

15 A. No.

16 Q. Do you know what the content delivery
17 network was for CrazyShit with respect to the Hogan
18 video on this page?

19 A. Clarify "content delivery network." Are
20 you -- because CDN is a totally different technology
21 than what we're talking about here, so I'm trying
22 to --

23 Q. What delivered the video to this page; what
24 video player was used?

25 A. Oh. That's -- that's much more clear.

1 Q. Sorry.

2 A. CDN is a totally different technology.

3 No, I could not tell you whether it's the
4 exact same player from this as it is to the other one.
5 All I can tell you is that based on the styling and
6 the way they've done their embeds and everything, it
7 looks to be exactly the same.

8 Q. But you're saying that just based on the
9 screenshot, not actually seeing the page?

10 A. Based on the front end and the way they've
11 styled the page and the content around this player,
12 everything looks to be the same.

13 Q. Do you know the length of play for the
14 views, if this was an actual view counter?

15 A. As stated, that's all back-end information
16 that would have to come from someone at CrazyShit.com.

17 Q. Do you know how many unique views there
18 were for this video?

19 A. Same answer.

20 Q. Which was?

21 A. You would have to speak to somebody from
22 CrazyShit.com who has access to that information.

23 Q. So you don't know how many people actually
24 watched this video?

25 A. No.

1 Q. Do you know if this number was artificially
2 inflated?

3 A. No.

4 Q. Do you know if it was inflated by bots?

5 A. No.

6 Q. Do you know if it was inflated by whoever
7 posted the video?

8 A. No. Again, now, the fact that they have
9 advertising on here means that they really should try
10 to keep these statistics as accurate as possible, just
11 because it's detrimental to their advertising revenue
12 stream.

13 Q. But you don't have any personal knowledge
14 of that one way or the other?

15 A. No, no. I'm just -- that's why I said I
16 assume. Because if their business model is not
17 charging to watch these videos, it's making money off
18 this advertising. If you're going to have people pay
19 to advertise on your site, they're going to demand
20 accurate statistics, since they're going to be paying
21 based on those statistics.

22 Q. But you don't know that one way or the
23 other?

24 A. No, I don't. Like I said, that's why I
25 started with "I assume."

1 Q. So that's right under the phrase marked as
2 approved, comma, featured?

3 A. Uh-huh.

4 Q. Okay. Above -- under the video, there's a
5 notation that says, Plays, 717,781. What does that
6 number refer to?

7 A. That -- well, based on the fact that they
8 break it out between embedded and plays, my guess is
9 this is people who have embedded this video from here
10 and not specifically tagged it to count uniques, and
11 then this would potentially be the unique plays of
12 this video, based on the number variance there.

13 So my guess is, based on looking at this
14 and my initial view when I looked at this, is that
15 they actually probably are recording unique views in
16 this upper section whereas this one may be total views
17 of this site.

18 Q. When you talk about this section, you mean
19 the play 717,581 versus views at the bottom, 910,483?

20 A. Yes. Either that or it represents actually
21 completely embedded views from off site, which means
22 that it would be the sum of both of those,
23 potentially.

24 Q. But you don't know one way or the other
25 what views plays or embed refers to?

1 A. In terms of the way they've tagged it and
2 what it's supposed to mean to them, again, I can only
3 confirm, based on the regular placement of these, what
4 they infer, but without access to their back end,
5 we -- I could not tell you exactly what these
6 statistically are recording, what's the duration
7 triggers of these things, so on and so forth.

8 Q. Or even if they're recording anything,
9 right? I mean, it could be that somebody typed in
10 717,581?

11 A. It could be, if -- you could assume that,
12 again, that they -- because they have advertising,
13 that they would want to be accurate on those numbers,
14 but yes, there's always the potential of them conning
15 every user that comes to their site.

16 Q. And it could be that the views number might
17 be page views, right?

18 A. Could be.

19 Q. But -- I mean, the site itself calls one
20 things views and one thing plays?

21 A. Uh-huh.

22 Q. And the plays might record total times the
23 play is clicked on the video, right?

24 A. Uh-huh. Yes. You could assume that plays
25 is plays and views is views, or that views are

1 actually views of the video and that plays is unique.
2 Just depends on how you want to assume against it.

3 Q. Right. And so -- I mean, if you assumed
4 wrong, the number could be 200,000 less?

5 A. Potentially, yes. Or as you keep saying,
6 it could be fake.

7 Q. Exactly.

8 A. But without proof of that from someone at
9 Live Leak, you would have to prove that these are what
10 these really mean.

11 Q. And you didn't contact anybody at Live
12 Leak?

13 A. No.

14 Q. Do you know whether Live Leaks video view
15 counts have ever been independently audited?

16 A. No.

17 Q. Do you know if the coding on Live Leak was
18 the same at the time of the Hogan sex tape apparently
19 being posted as when you looked at Live Leak's web
20 page this year?

21 A. It looked very similar, in terms of layout
22 and everything, including, like, being uploaded by a
23 user versus being loaded as something like CrazyShit
24 where it's obviously something that they've taken time
25 to put their label on.

1 Q. But you have no firsthand knowledge of
2 whether the coding changed between the time of this
3 screenshot and the time that you looked at it this
4 year, right?

5 A. No.

6 Q. And you didn't have access to their -- the
7 back-end analytics for Live Leak, did you?

8 A. No.

9 Q. You didn't have access to their scripts
10 either, right?

11 A. No. As I stated, I did not have access to
12 any of the back-end information for any of these.

13 Q. Do you know what video player Live Leak
14 used?

15 A. No. It looks like a fairly standard video
16 player, though.

17 Q. But you don't know what it was?

18 A. (No audible response.)

19 Q. Do you know the length of play for any of
20 the views?

21 A. No. As stated, without access to their
22 analytics, you can't tell that information.

23 Q. Can you tell the number of unique views for
24 this video?

25 A. Same answer. Without access to their back

1 end and someone who has that sort of access, you would
2 not be able to see that.

3 Q. So sitting here today, you do not know how
4 many actual people watched this video, correct?

5 A. No. I can tell you that based on their
6 information, this is what I would assume is the number
7 of people who saw this video.

8 However, just like I couldn't tell you that
9 there was five people standing behind a computer
10 watching this one video, the same thing is true; I
11 couldn't -- you couldn't -- I couldn't say, you know,
12 there's five people watching through the video screen
13 for one IP of a unique view or five people watching it
14 six times as a view, no.

15 Q. You don't know -- you can't say with
16 certainty how many actual views there were for this
17 page, right?

18 A. No. Only that I can go by what it is that
19 they're publishing on their page.

20 Q. Do you know if that number was artificially
21 inflated?

22 A. I would not know that.

23 Q. So you wouldn't know if it was inflated by
24 bots?

25 A. I would not know that, without being able

1 to audit their analytic system and their programming
2 and tagging of all of this.

3 Q. And you wouldn't know if it was inflated by
4 somebody who posted that number, right?

5 A. No. I couldn't tell you if tubezzz
6 inflated his video or not.

7 Q. And you didn't actually do anything to
8 actually audit these numbers?

9 A. No. I looked at the code on the site at
10 the time of late February, early March in comparison
11 to see how they had tagged these different elements of
12 the page.

13 Q. Okay. If you could turn to tab 22, tab 22
14 is a screenshot from WorldStarUncut.com, right?

15 A. Uh-huh.

16 Q. And for this one, did you look at
17 WorldStarUncut.com, a different page in February or
18 March this year?

19 A. I did.

20 Q. You looked at the source code for that?

21 A. Yes.

22 Q. Do you have a copy of that source code?

23 A. No. Not that I recorded.

24 Q. And you didn't actually look at the code
25 for this page that's reflected in tab 22 that

1 apparently posted the Hogan video, right?

2 A. No. Again, this page did not exist at the
3 time of my review.

4 Q. Do you know how World Star Uncut counted
5 views?

6 A. No. I just know that the only numeric
7 value is labeled as hit, and it's at 1.6 million
8 something; 1,640,214.

9 Q. So you don't know if hits means plays?

10 A. No. It could mean plays. It could mean
11 page views. It could mean unique views.

12 Q. You don't know where that number came from,
13 the 1.6 million number?

14 A. Not without access to their back end and
15 their analytics.

16 Q. Did you talk to anybody at World Star
17 Uncut?

18 A. No. Again, though, my assumption is, is
19 that because they actually have advertising on here,
20 that they would want to make sure that their
21 statistics both displayed and back end are accurate.

22 Q. But you have no firsthand knowledge of that
23 one way or another?

24 A. No. Just experience, in terms of wanting
25 to show statistics and analytics that are real.

1 Q. Do you know whether World Star Uncut has
2 that same experience?

3 A. Nope. Just that that's something that
4 advertisers care about.

5 Q. Do you know what technology it used to host
6 the video that's shown in Exhibit 22 -- or in tab 22?

7 A. Just that it's a fairly standard-looking
8 video player.

9 Q. But you don't know what the video player
10 is?

11 A. No. It's got a custom branding on it, with
12 that WSHH in the corner. So whatever player they are,
13 they've just branded it.

14 Q. Do you know the length of play for anybody
15 who watched this video?

16 A. No. As I stated before, without access to
17 their back end, I couldn't tell go through and tell
18 you what their trigger length is or how many people
19 watched it, just like I couldn't tell you how many
20 people stood behind a computer to look at that one
21 view.

22 Q. And you don't know how many unique views
23 there were?

24 A. No.

25 Q. Do you know if this number was artificially

1 inflated?

2 A. I couldn't tell you, without access to
3 their back end.

4 Q. Did you do anything to audit that
5 1.6 million number?

6 A. No. I just viewed that number, took a look
7 at how they tagged it, and took a look at the player
8 to see whether it was a standard format type of
9 player.

10 Q. But you weren't able to see the scripts for
11 it?

12 A. No.

13 Q. And you weren't able to see if somebody had
14 actually just typed in that number, right?

15 A. No.

16 Q. Rather than go through all of these, I'm
17 going to ask you a series of questions.

18 For any of these screenshots in tabs 1
19 through 23, do you know where any of the numbers that
20 you counted as video views actually came from?

21 A. I could not tell you that without access to
22 their back end and getting a rundown of how they --
23 their processes for publishing and recording that
24 analytical data.

25 Again, the only thing I can assume is, is

1 given that all of these sites have some form of paid
2 advertising on them, that they're going to try to keep
3 those analytical stats as accurate as possible so that
4 they can charge appropriately for advertising and
5 performance.

6 Q. But they would make more money if they
7 could sell more ads, right?

8 A. No. They would actually lose advertisers
9 should they get caught with false numbers.
10 Advertisers would not trust their analytics or their
11 reporting on that analytics should any of their --
12 even their front-end information be falsified.

13 Q. Other than DailyMotion, do you know
14 anything about any of the people or companies that run
15 any of these websites?

16 A. No.

17 Q. Do you know anything about their
18 advertising models?

19 A. Just that they have advertising on them.

20 Q. Do you know anything, other than the Pizza
21 Hut, about any of the advertisers that appear on
22 these?

23 A. No. Many of these advertisers are not the
24 type of content I would seek out.

25 Q. Do you know, with respect to any of these

1 sites, how they counted views at the time?

2 A. No. As stated before, across all of these,
3 without access directly to resources within this
4 company or within any of these companies who are tied
5 to either the analytic systems, the development
6 systems, or the databases, I wouldn't be able to tell
7 you that.

8 Q. Do you know what the coding on any of these
9 sites said at the time that these screenshots were
10 taken?

11 A. No. Again, as I said, I was not able to
12 visit any of these pages because this content had
13 already been removed from the Internet.

14 Q. For any of these other -- sorry.

15 For any of the web pages listed in -- shown
16 in tabs 1 through 23, do you know what video player
17 was used?

18 A. No. But not at -- the exact type player.
19 I know that some were branded players. Some were
20 unbranded players. Some of the videos were -- had a
21 brand added to them, which means that that video was
22 reprocessed to build that element into the video.

23 But no, I couldn't -- couldn't tell you the
24 exact make and model of each of these types of
25 different players.

1 Q. For each of these site -- for each of these
2 pages in tabs 1 through 23, do you know what was
3 considered a view?

4 A. Nope. Just that the assumption of users is
5 that a view would be a video view.

6 Q. But you don't know if it was page views,
7 right?

8 A. No, I don't know if they're using page
9 views as that statistic or not.

10 Q. And you don't know whether it was just one
11 click of the view button, right?

12 A. Yes. Again, I can't tell you whether the
13 play button was the trigger for the play counts or
14 that that play button plus a certain time of video run
15 was counted, would trigger that play count.

16 All I can tell you is that the video view
17 counts are in standardized areas that are frequently
18 used, kind of like the YouTube model of where you
19 place that, and they're meant to represent, at least
20 visually, to a user the popularity of that video.

21 Q. Do you know whether any of the numbers
22 reflected on those pages were typed in by the person
23 coding the site?

24 A. No, I could not tell you the exact coding
25 ethic of these companies.

1 Q. Do you know whether any of the view numbers
2 were artificially inflated?

3 A. No, not without -- not without auditing
4 their analytics, their programming, everything else.

5 Q. And you didn't have access to any of that?

6 A. No.

7 Q. For any of these sites, do you know the
8 length of play for the views that are reflected?

9 A. Same answer. Again, without access to how
10 they built their analytical model and tracking for the
11 different types of videos, I couldn't answer that.

12 Q. Do you know how many of the views are
13 unique views for any of these sites?

14 A. Same answer again.

15 Q. For each of these sites, did you do
16 anything to audit the numbers that are reflected?

17 A. I just verified how they tagged it within
18 their source code to confirm whether or not they were
19 tagging these things as views or that they were tied
20 to this particular page.

21 So I would confirm that, A, multiple videos
22 across these sites had multiple different counts, so
23 they hadn't just dropped standardized code, which
24 typically the player is a standard sized code and it
25 calls in a certain video file.

1 So these things were -- were, obviously,
2 not wrapped with the same hits number or views number
3 from video to video to video.

4 Q. But somebody could have coded a script to
5 insert a random number, right, on each page?

6 A. Possibly. It would be a lot of work,
7 though, to fool your users.

8 Q. But somebody could have scripted it to come
9 up with, you know, view counts from a video on some
10 other page, right?

11 A. That would actually be more difficult than
12 just building it the right way, because then you would
13 be artificially tagging some other video, hoping it
14 got more views than the video that you actually are
15 trying to apply the number to. That would -- it would
16 kind of defeat the purpose.

17 You would have to take a video, and hope
18 that one went viral so that it would drive a number
19 for another video, but if you did that at the same
20 time, some other video would inherit that number,
21 which would have some low number, potentially. It's
22 still triggering tracking.

23 If you're going to build your analytical
24 tracking, you wouldn't count on one video to feed a
25 views count for another video and vice versa down the

1 chain, because at some point you're either going to
2 end up with one video feeding them all, to simplify
3 your hack, or you're just going to hard code a generic
4 number for every video, which then becomes fairly
5 obvious, which means you'd lose advertisers and you'd
6 lose users because you don't have their trust.

7 Q. Your assumption on how this is all done is
8 based on your experience at Harry & David and
9 Musician --

10 A. Yes. My experience of -- as a head of
11 marketing, wanting to know how people interact with my
12 websites and how I can drive better conversion and
13 sales, and at the end of the day, make the company
14 more money.

15 Q. On page 2 and 3 of your report, kind of 2
16 running on to 3, which is this page, the Video View
17 Counter Validation Synopsis, you write at the bottom,
18 I conclude with a reasonable degree of certainty
19 that -- and it carries over to the next page -- most
20 of the view counters accurately represent the number
21 of views of the video and are notated as such even
22 within the source code.

23 Which of the view counters that you
24 reviewed are not accurate?

25 A. I couldn't tell you whether they were

1 accurate. You've asked several times. All I can tell
2 you is, is that within a reasonable doubt, based on
3 the fact that they're publishing this as a visible
4 fact on the page or visible asset on the page, that
5 they would want that to accurately reflect the actual
6 views of that video versus lie to users and
7 advertisers.

8 Q. But in this sentence you said most of the
9 view counters accurately. Which ones were you
10 referring to that didn't?

11 A. None.

12 Q. Why don't we shift gears and talk about
13 your other report.

14 MR. VOGT: 332?

15 MR. BERRY: Sorry. 335. Sorry. I should
16 have said that. And then what I'll go ahead and do,
17 actually, is mark Exhibit 336, as well.

18 (Exhibits 335 - 336 marked for
19 identification.)

20 BY MR. BERRY: (Continuing)

21 Q. So Exhibit 335 is a copy of a report that
22 you prepared on March -- dated March 5th, 2015, right?

23 A. Yes.

24 Q. And then Exhibit 336 is titled "Exhibit 14"
25 because it was Exhibit 14 to some documents that

1 membership fee is required.

2 That's what you mean?

3 A. Exactly.

4 Q. So you weren't being asked to look at how
5 much it would cost to view a celebrity sex tape
6 online, were you?

7 A. I actually was not.

8 Q. You were only asked to view the -- look at
9 the cost to view a celebrity sex tape when a
10 membership fee was involved, correct?

11 A. I was asked to determine the highest
12 ranking website that was a licensed provider of
13 celebrity sex videos that had a membership fee
14 associated to it.

15 Q. And you weren't asked to consider how much
16 a person would actually need to pay to watch a sex
17 tape, right?

18 A. Rephrase that.

19 Q. You weren't asked to consider how much a
20 person would actually need to pay to watch a celebrity
21 sex tape online, right?

22 A. I still don't get that question. I think
23 it's the "consider" part that you're putting in there.
24 Doesn't make sense.

25 Q. You weren't asked -- you weren't asked to

1 watched the video that was posted on Gawker of Hulk
2 Hogan and Heather Clem.

3 A. No.

4 Q. Looking at the same page 3, under the
5 Methodology, explain what it is that you actually did.

6 A. So there were essentially a couple of
7 steps. One was identifying the keywords that people
8 would search for to find a sex tape video involving a
9 celebrity. Then the second step was actually
10 performing queries in Google to find out who the --
11 what website had the highest rank within Google, based
12 on those queries. That included a membership.

13 So essentially what I looked for was
14 keyword research, enter the keyword into Google, find
15 the first site that actually was a purveyor of this
16 content that included a membership fee. So
17 essentially using Google as the canonical source for
18 ranking a site up as high as possible based on them
19 being relevant to these terms.

20 Q. Okay.

21 A. And then recording it, obviously.

22 Q. So prior to this assignment, you had no
23 knowledge of the sex tape industry?

24 A. No. I knew it existed, because you can't
25 not know it exists if you ever read anything. So yes,

1 I know that because there's lots of sex tapes out
2 there that get all sorts of buzz that involve
3 celebrities.

4 It's not something I seek out, because it's
5 not interesting to me, but lots of people do, and I
6 know that it's big business, in terms of the amount of
7 monies that people will pay for these videos.

8 Q. How do you know that?

9 A. Just articles like, you know, Sex.com
10 wanting to open up their checkbook for stuff. Like
11 oh, we'll pay you gobs of money if we can have the
12 licensed rights to your video. Sites like
13 VividCeleb.com pay for the rights to those videos.
14 There has to be money in it if you're going to spend
15 money.

16 So if you're going spend, say -- just throw
17 out a random number. Let's say you're a celebrity,
18 you film yourself having sex, and then you want to
19 make money off of that because, well, you enjoyed the
20 act and you want to show it off; therefore, you can
21 then ask -- you know, you could go to Vivid Celeb and
22 say, How much will you pay for my celebrity sex tape.

23 Q. But you have no firsthand knowledge about
24 Sex.com, Vivid Celeb -- celebrities getting paid for
25 sex tapes; you don't know anything about that?

1 A. No. I've never had I membership on any
2 porn site.

3 Q. Okay. But -- and you've never worked for a
4 porn site?

5 A. Nope.

6 Q. And you've never had any business
7 connection, other than this expert report, with
8 celebrity sex tapes?

9 A. No.

10 Q. And so prior to this assignment, I take it
11 from your answer that you hadn't run any Google
12 searches for celebrity sex tapes.

13 A. No. My query history was clear of this
14 sort of query, yes.

15 Q. I understand if -- I think I understand --
16 tell me if I'm wrong -- that the way that you picked
17 your search terms was to perform a keyword analysis
18 that was specific to users searching for celebrity sex
19 videos.

20 A. Yes. So specifically to the broader
21 nature. So not with a certain name defined or
22 anything like that. Essentially just searching for
23 celebrity sex tape, celebrity sex video,
24 membership-based celebrity sex video; those things.
25 So not specifically, like, a specific query for Hulk

1 VividCeleb.com?

2 A. Yes.

3 Q. There's another site, PornHub.Com, that's
4 ranked second, third, fourth, fifth, sixth, right?

5 A. Uh-huh.

6 Q. Do you know what PornHub is?

7 A. It's an aggregator of porn videos.

8 Q. Where people can watch pornography for
9 free?

10 A. Yes.

11 Q. Looking at search two in the next page, you
12 ran a search for celebrity sex videos, right?

13 A. Uh-huh.

14 Q. And here --

15 A. Yes.

16 Q. -- this is a printout of page 2, correct?

17 A. Yes. This is the second page of rankings.

18 Q. And that also shows VividCeleb.com?

19 A. Yes. Ranking at No. 13.

20 Q. If you could just run the Google search now
21 for celebrity sex videos --

22 MR. VOGT: I'm going to object to the form
23 of the question, as well as to the re-creation and the
24 demonstration taking place during the deposition.

25 BY MR. BERRY: (Continuing)

1 Q. Do you have anywhere printed out what the
2 results were that preceded page 2 from the search that
3 you ran?

4 A. No. My -- my specific task on this was to
5 document where that first well-known membership-based
6 website that spoke to a membership in the search
7 listing showed up.

8 Q. The next search that you ran was celebrity
9 sex tape?

10 A. Yes. Tapes.

11 Q. You don't -- don't, don't, don't.
12 Celebrity sex tape?

13 A. Uh-huh.

14 Q. That's the next search that you ran, right?

15 A. Yes.

16 Q. And so if you turn the page, this is a
17 printout of that page, correct?

18 A. Yes. Of page -- search results page 1.

19 Q. Okay. And Vivid Celeb is at the bottom of
20 that page?

21 A. Yes. Number 10.

22 Q. And what is number one?

23 A. PornHub.

24 Q. Turn to the next page. Your next search
25 was celebrity sex, right?

1 A. That's the catch of Vivid Celeb. All of
2 this was interesting to learn. Trust me. Not really.

3 But the -- Vivid Celeb was the only site
4 that specifically called out that they had a
5 membership in their search engine listing, as in they
6 would be prescreening people with that, the fact that
7 it calls out minimum you're going to pay is 4.95
8 there.

9 It was the top-ranked one for celebrity sex
10 videos with the word membership included, even though
11 many of those other ones ranked because they either
12 have the phrase no membership or free membership or
13 those types of keywords.

14 And so this query determined the website
15 that I was targeting to identify for the rest of the
16 different queries to make sure that it was still
17 relevant to the broader gambit of keywords, but,
18 generically, there's several thousand websites that
19 ranked for all of these queries. In fact, there's
20 almost always more than at least a million that rank
21 on any of these queries.

22 MR. BERRY: Why don't we take a quick break
23 so we get the screen back up.

24 MR. VOGT: I want to do one thing, if you
25 don't mind. Can I ask a question out of order before

1 Q. Do you know if there's any other
2 membership-based websites to view celebrity sex tapes?

3 A. There may be, but this one is the only one
4 that I found that was very specific to celebrity sex
5 tapes versus just being a porn site that happened to
6 host a celebrity sex tape.

7 Q. Did you study traffic that went to any of
8 the websites that came up on your search results?

9 A. That's unavailable to the public.

10 Q. Did you look at any Google analytics data
11 about traffic to any --

12 A. Google analytics, again, is a private
13 aspect.

14 Q. But you had access to it in doing the video
15 view count study, right?

16 A. No, no. Google analytics is a back-end
17 analytic software that has to be programmed and
18 activated and tied to a specific domain, which means
19 that Vivid Celeb may have Google analytics running,
20 however, they have to provide express permission for
21 people to see that.

22 The things that I've talked about, Google
23 AdWords, which is the paid search account, and Google
24 Trends, which is accessible to anybody, are a
25 completely different beast.

1 Google analytics is recording personal
2 information both to the business as well as to that
3 business's users. So it is very secure, and
4 permission is only given out for specific reasons.

5 Q. So you don't know what the traffic is to
6 Vivid Celeb?

7 A. No. Not without getting permission to
8 access their analytical data, no.

9 Q. And you don't know what the traffic is to,
10 say, PornHub?

11 A. No.

12 Q. Could you specifically look -- or start
13 over.

14 Did you study how people found their way to
15 Vivid Celeb website?

16 A. Hence the initial keyword research to
17 determine which keywords would relate to specifically
18 celebrity sex tapes or celebrity sex videos, hence the
19 reason the first query that I did included that broad
20 term with the word membership.

21 Q. But I guess like when you were at Harry &
22 David, you were able to have access to find out how
23 people got -- you had analytics that could find out
24 how people were getting to your site?

25 A. Yes. At companies I've worked with, I have

1 realtime users on a website, I can go in and see
2 demographics of those realtime users, I could go to a
3 website from here and then go on to another computer
4 analytics and actually see myself as a user and look
5 up demographic information about myself.

6 It's very, very deep information, hence the
7 reason it's specifically protected by these
8 organizations because it's basically like personal
9 identifiable information.

10 Q. In your report on page 4 -- going back to
11 your report itself, Exhibit 335, on page 4, there's
12 the page with your conclusions.

13 A. Yes.

14 Q. The first bullet says, VividCeleb.com per
15 Google's search ranking algorithms is an appropriate
16 measure of membership fees for access to licensed
17 celebrity sex videos.

18 That's your opinion, right?

19 A. That was my opinion based on the fact that
20 their site was dedicated to that exact form of
21 content, in that they specified that the videos were
22 licensed videos and they had a membership fee to
23 access the actual videos.

24 Q. Prior to being engaged to work on this
25 case, had you ever assessed what an appropriate

1 membership fee for a website would be?

2 A. Not in this industry, no.

3 Q. In other industries?

4 A. Well, we discussed it with brands like
5 Harmony Central and stuff like that, to see whether we
6 should monetize it. We decided not to because we
7 found that in that case, where the content wasn't
8 something that we paid for -- in many cases we were
9 being paid for, like, paid advertorial-type content --
10 there was no point in gatewaying it with a cost to the
11 general user.

12 Q. Here the membership fee -- sorry.

13 Vivid.com -- sorry.

14 VividCeleb.com is, in your opinion, an
15 appropriate measure of the amount charged by a website
16 for licensed celebrity celeb tapes, right?

17 MR. VOGT: Objection to form.

18 THE WITNESS: It was the only website that
19 announced that it was a membership-based website
20 specific for celebrity videos directly in its listing
21 on Google. So it wasn't -- it wouldn't -- they had
22 outright called that out versus having to click
23 through and then find out it was a membership fee.

24 So because they were that up front about
25 the fact that they have this, it essentially is meant

1 as a textual qualifier by them expressly putting that
2 in their page descriptions.

3 Q. Right. But the amount, then -- it's just
4 an appropriate measure of the amount being charged by
5 the site, correct?

6 MR. VOGT: Objection to form.

7 THE WITNESS: It would be based on math
8 that their executives and management and analytics
9 teams did at some point in time.

10 BY MR. BERRY: (Continuing)

11 Q. But that is not an amount that's paid to an
12 individual who appears in the video, right?

13 A. I would have no idea what they pay any of
14 these individuals.

15 Q. Do you know if the membership fee for Vivid
16 Celeb has changed over time?

17 A. I do not. It was the same the last time I
18 looked at it, which was a few weeks ago.

19 Q. Did you look at it in 2012?

20 A. No.

21 Q. Did you look at it in 2013?

22 A. No. It's not really a site -- I'm not a
23 frequenter of porn.

24 Q. Does the membership fee -- do you know
25 whether the membership fee changes when more videos

1 become available?

2 A. No idea.

3 Q. Do you know whether it changed when Kendra
4 Wilkinson's sex tape was posted?

5 A. Who is Kendra Wilkinson.

6 Q. Do you know whether the membership fee
7 changed when Tom Sizemore's sex tape was posted?

8 A. Okay. No idea. I couldn't even -- can't
9 even picture -- the name sounds familiar, but I can't
10 picture who that would be.

11 Q. Do you know if it changed when Jimmy
12 Hendrix's sex tape was posted?

13 A. No idea. Jimmy Hendrix had a sex tape?
14 Wait. Actually, I saw that in one of these listings.
15 That was kind of depressing.

16 Q. Do you know why you're measuring membership
17 fees for access to celebrity sex tapes?

18 MR. VOGT: Objection to form.

19 THE WITNESS: Specifically, I was just -- I
20 wasn't actually measuring any cost or value. I was
21 purely in this task meant to identify, based on the
22 Google's ranking algorithms, what memberships-based
23 site, so a celebrity sex video site, that had a
24 membership fee.

25 Q. Do --

1 A. I was not valuing anything.

2 Q. Do you know whether the subscription
3 business is healthy in the pornography industry?

4 MR. VOGT: Objection to form.

5 THE WITNESS: I have no idea, given that --
6 I mean, obviously, the fact that there's very few
7 sites that seem to actually charge to see that
8 content, I -- that's -- hence the reason, when we
9 talked about other document, I kept speaking to the
10 advertising revenue.

11 My guess is they don't make -- if you're
12 presenting lots and lots of content for free, you're
13 not really making any money, because it costs you to
14 host them, it costs you for the bandwidth, it costs
15 you for the servers, it costs you for everything else.

16 They have to be making money somewhere, and
17 the only evidence of money making on sites -- on these
18 sites that did not have a membership fee was the fact
19 that they were covered in advertising. So --

20 BY MR. BERRY: (Continuing)

21 Q. Then you looked to verify the membership
22 cost, then, for Vivid Celeb, correct?

23 A. Essentially, I just went to the site to see
24 what it would cost. Obviously, per their -- like I
25 said, their prescreening that they do within their

1 site description, they call out 4.95.

2 Q. And that -- that's shown on this last page
3 of Exhibit 336, right?

4 A. The full charge aspects of their site, yes,
5 is -- this is their sign-up -- their sign-up page to
6 see celebrity porn content.

7 Q. Okay. And so you can get a four-day
8 membership for 4.95, right?

9 A. Yes.

10 Q. And then the monthly membership for 39.95,
11 right?

12 A. Yes. And then --

13 Q. And a yearly membership for 95.40?

14 A. Yes. And only the yearly membership
15 specifically calls out no rebilling. The four day and
16 the monthly on -- actually are automatically rebilled.

17 Now, whether this means that it's the four
18 days rebilled every four days or it kicks into billing
19 you the monthly rate, I don't know. I wasn't going to
20 spend money to look at this content.

21 Q. If you pay this fee, you get access to all
22 the videos on Vivid Celeb, right?

23 A. You do.

24 Q. Do you get access -- you get -- you get
25 access to all the videos on Vivid itself, right?

1 A. Vivid.com -- I don't know if the membership
2 crosses over between the two websites.

3 Q. You didn't look at that one way or another?

4 A. No. Like I said, I was specifically
5 looking for a celebrity-based pornography website that
6 had a membership.

7 Q. In the page that you pointed to that has
8 the listing of the various membership costs, at the
9 top it says you're getting all of the most popular sex
10 tapes, right?

11 A. Well, I'm assuming, yeah, based on the ones
12 that they've licensed here.

13 Q. And then you -- with over 30,000 scenes of
14 exclusive Vivid bonus content, right?

15 A. That is exactly what it reads in the
16 header, yes.

17 Q. Yes. So when you sign up for Vivid Celeb,
18 do you get more than Vivid Celeb sex tapes?

19 A. Well, you -- yes.

20 MR. VOGT: Objection to form.

21 THE WITNESS: Based on this, you get access
22 to all of the videos that they host on this, but even
23 if you just wanted to go see the Tila Tequila video,
24 then you would still have to pay that 4.95. You
25 would -- to access one or many, it still costs the

1 same.

2 BY MR. BERRY: (Continuing)

3 Q. Do you know how many people pay these
4 amounts?

5 A. I have no idea.

6 Q. Do you know how many members Vivid has?

7 A. No idea. I'm sure I'd be surprised at the
8 number, though.

9 Q. Do you know how many members it has who pay
10 for a four-day pass?

11 A. I couldn't tell you how many people paid
12 for a four-day versus a monthly versus a yearly.

13 Q. Do you know how much the people featured in
14 these tapes were paid?

15 A. No idea.

16 Q. Do you know how much revenue is generated
17 by Vivid for these memberships?

18 A. No idea.

19 Q. Do you know how much profit is generated?

20 A. No idea.

21 Q. On page 4 of your report, again, this part
22 with the conclusions --

23 A. Uh-huh.

24 Q. -- it says, The lowest cost -- the second
25 bullet says, the lowest cost available to view videos

1 MR. VOGT: Objection to form.

2 THE WITNESS: I would assume so, given that
3 these sites are around in plenty of numbers. I mean,
4 when you see a rank of 2.2 million, you know --

5 BY MR. BERRY: (Continuing)

6 Q. But this is the only membership-based site
7 you found, right?

8 A. This was the top ranking membership site.

9 Q. And it was the only one that you looked at,
10 correct?

11 A. It was, because it was the top ranked by
12 Google.

13 Q. Does the fact that people watch the Gawker
14 video for free mean they would pay to watch that
15 video?

16 MR. VOGT: Objection to form.

17 THE WITNESS: That would be speculation on
18 my point.

19 BY MR. BERRY: (Continuing)

20 Q. Do you know anything about price and demand
21 in the pornography industry?

22 A. No.

23 Q. Do you know anything -- do you have any
24 reason to think that the 4.4 million view counts from
25 your other report would translate into 4.4 million

1 people paying a Vivid membership fee?

2 MR. VOGT: Objection to form.

3 THE WITNESS: That had nothing to do with
4 the type of research I was doing. I wasn't doing any
5 value evaluation for the cost of what that video may
6 produce. All I was looking for was what site was the
7 top-ranked celebrity sex tape site that included a
8 membership fee.

9 BY MR. BERRY: (Continuing)

10 Q. Do you have any factual basis to believe
11 that 4.4 million people who watched the video,
12 according to your first report, would pay the Vivid
13 4.95 membership fee?

14 MR. VOGT: Objection to form.

15 THE WITNESS: Again, it would be pure
16 speculation.

17 BY MR. BERRY: (Continuing)

18 Q. You never watched the video that Gawker
19 posted, right?

20 A. No.

21 MR. VOGT: Objection to form.

22 BY MR. BERRY: (Continuing)

23 Q. What?

24 A. No.

25 Q. Do you know how long it is?

1 A. Based on the notes, I believe it was, like,
2 what, two minutes and something or something like
3 that.

4 Q. Do you know how long the full video was?

5 A. Based on one of the articles, I think it
6 was, like, supposed to be a half hour or something
7 like that.

8 Q. Do you know what material was left out of
9 the excerpts that Gawker posted?

10 A. Of course not.

11 Q. Do you know the length of time that any
12 sexual activity was seen on the Gawker video?

13 A. No, I don't.

14 Q. Describe to me what you think is on the
15 Gawker video that was posted.

16 MR. VOGT: Objection to form.

17 THE WITNESS: I have no idea. The only
18 thing I can say is that lots of the previews had
19 actual, like, CCTV text showing up. Some of them
20 talked about a white bum, a bunch of other random
21 stuff, but that's about it.

22 Having not seen the video, not that I want
23 to see the video, but having not seen the video,
24 either the long form or the short form, I can't answer
25 any questions about what that content was other than

CERTIFICATE

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The State of Oregon)
SS.)
County of Multnomah)

I, BRIDGET MONTERO, CSR, CRR, RMR, a
Certified Shorthand Reporter for the States of Oregon
and California, hereby certify that said witness
personally appeared before me at the time and place set
forth in the caption hereof; that at said time and place
I reported in stenotype all testimony adduced and other
oral proceedings had in the foregoing matter; that
thereafter my notes were transcribed through
computer-aided transcription, under my direction; and
that the foregoing going pages constitute a full, true,
and accurate record of all such testimony adduced and
oral proceedings had, and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto
set my hand and affixed my seal at Portland, Oregon,
this 29th day of April, 2015.



Bridget Montero

Bridget Montero, OR CSR No. 08-0408, CRR, RMR
CA CSR No. 10020