

EXHIBIT 4

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

_____]
TERRY GENE BOLLEA,]
professionally known as]
HULK HOGAN,]

Plaintiff]

Case No.: 12012447-CI-011]

vs.]

GAWKER MEDIA, LLC]
aka GAWKER MEDIA; et al,]

Defendants]
_____]

**Examination on Discovery
Deposition of Brett Goldenberg**

APPEARANCES:

Mr. SHANE VOGT (Via videoconference),
attorney for the Plaintiff

Mr. MIKE BERRY (Via videoconference),
attorney for the Defendants

Me ANTHONY PENHALE,
in-house counsel, MindGeek
attorney for the witness

Mr. MARK BRYN (Via videoconference),
outside counsel, MindGeek
attorney for the witness

Also present: Mr. Jason Fisher (Via videoconference);
François Thibault, videographer

CJ160218A

**Carri Chaitman, o.c.r.
February 18, 2016**

INDEX

PAGE

LIST OF EXHIBITS 3

EXAMINATION ON DISCOVERY

BRETT GOLDENBERG

Examined by Mr. Mike Berry 4

Examined by Mr. Shane Vogt 19

Examined by Mr. Mike Berry 51

Examined by Mr. Shane Vogt 55

LIST OF EXHIBITS

	<u>PAGE</u>
EX. 574: Web page screenshot	9
EX. 272: Video	13
EX. A: Multiple-page document titled: "Terms & Conditions"	24
EX. B: Multiple-page document with e-mail cover dated January 21, 2013	34

1 In the year two thousand sixteen (2016), on this
2 eighteenth (18th) day of February, PERSONALLY CAME AND
3 APPEARED:

4
5 BRETT GOLDENBERG, date of birth being January 14,
6 1986, residing at 5012 Jean Briand, Montreal, Quebec
7 H3W 1T7;

8
9 WHO, after having made a Solemn Affirmation, doth
10 depose and say as follows:

11
12 EXAMINED BY Mr. MIKE BERRY,
13 on behalf of the Defendants:

14 Q- Mr. Goldenberg, my name is Mike Berry, and I
15 represent Gawker Media, Nick Denton and A.J.
16 Daulerio, who are Defendants in this action.

17 Before we actually start with the formal
18 deposition, I want to just talk to you a little
19 bit about how it's going to proceed. Have you ever
20 been deposed before?

21 A- No, never.

22 Q- Have you ever testified in court before?

23 A- No.

24 Q- Okay. Well, I'll just take a minute then and just
25 explain what's going to happen. I suspect that

1 your counsel has told you this before, but
2 basically, during the course of the deposition
3 today, I'll be asking you a series of questions,
4 Mr. Vogt will be asking you a series of questions,
5 you will be providing answers, and from time to
6 time there may be objections, either by one of us
7 or by Mr. Bryn in Miami.

8 Because everything is being taken down by
9 the court reporter, it's important that all your
10 answers be verbal, that you answer "yes" or "no",
11 instead of just nodding your head. Does that make
12 sense?

13 A- Yes.

14 Q- I don't think this will be an issue, because we're
15 doing this by videoconference, but from time to
16 time, when people have conversations, they tend to
17 interrupt each other, finish each other's
18 sentences, you kind of anticipate what I might
19 ask, I might anticipate what your answer might be.
20 It's important for the court reporter and for us
21 to make sure that we give each other time to ask
22 our questions and for you to give your answers,
23 and try not to interrupt each other. Does that
24 make sense?

25 A- Yes.

1 Q- The other thing is, and this is, I guess,
2 particularly important as we're doing it by video,
3 if any of my questions are unclear, you don't
4 understand or don't hear, please let me know.
5 Sometimes, as Mr. Vogt can tell you, I get
6 talking, I talk quickly, I sometimes mumble. I'm
7 from Philadelphia, so sometimes I don't talk
8 clearly. If for any reason you don't understand
9 something, just let me know, okay?

10 A- Sure, sounds good.

11 Q- Is there any reason that you can't testify
12 truthfully today?

13 A- No.

14 Q- Okay. The other just sort of housekeeping thing is
15 that during the course of the deposition, I'll be
16 virtually showing you some exhibits, Mr. Vogt may
17 be showing you some exhibits; the court reporter
18 has copies of those already. As we introduce the
19 exhibits, we'll give them a number and she will
20 provide you with copies. And during the
21 deposition, take as much time as you want to
22 review the exhibits, make sure that you understand
23 what they are. I think I speak for Mr. Vogt that
24 we want to just make sure that you have a full
25 opportunity to read everything and that you feel

1 comfortable before we start asking any questions
2 about stuff. Okay?

3 A- Sure.

4 Q- So it's my understanding that you're appearing for
5 this deposition today voluntarily. Yes?

6 A- Correct.

7 Q- Who is your employer?

8 A- So it's MindGeek Canada Enterprises, which is
9 9219-1568 Canada Inc.

10 Me ANTHONY PENHALE
11 in-house counsel, MindGeek:
12 Quebec.

13 A- Sorry, excuse me, Quebec Inc.

14 Mr. MIKE BERRY:

15 Q- Is that the address or the name of the company?

16 A- That's the name of the company.

17 Q- And what is your... for short, can we just call it
18 MindGeek Canada?

19 A- MindGeek Canada, yeah.

20 Q- What is your title with MindGeek Canada?

21 A- So my title is director of product management.

22 Q- And what are your responsibilities as director of
23 product management?

24 A- So my responsibilities are I manage a team of
25 product managers that implement features into Web

1 sites, I manage the marketing team, as well as a
2 data and analytics team.

3 Q- Does MindGeek Canada operate a Web site called
4 "Pornhub"?

5 A- No, we provide services to the company that
6 does.

7 Q- What services do you provide?

8 A- So, similar to what I just explained, so product
9 management services, marketing services, data
10 analytics. Those are the ones that I'm familiar
11 with.

12 Q- What is Pornhub?

13 A- So Pornhub is a video-sharing platform that, you
14 know, specializes in adult... adult content.

15 Q- And by "adult content", do you mean pornography?

16 A- Yes.

17 Q- Can somebody... from your responsibilities with
18 MindGeek Canada then, you are familiar with the
19 content on Pornhub? Is that right?

20 A- I do not directly oversee the content, but I am
21 familiar with it.

22 Q- Can somebody watch pornography for free at
23 Pornhub?

24 A- Yes.

25 Q- How much pornography can somebody watch for free

1 on Pornhub?

2 A- As much as they want.

3 Q- Does the company place any limits on the number of
4 pornographic videos that somebody can watch on
5 Pornhub?

6 A- No.

7 Q- Does your company place any limit on how much time
8 people can watch pornographic videos on Pornhub?

9 A- No.

10 Q- Are you familiar with a video that's posted on
11 Pornhub that's titled, "Kim Kardashian Sex Tape
12 with Ray J"?

13 A- Yes, I am familiar.

14 Q- Is that video posted on Pornhub?

15 A- Yes.

16 Q- I'd like to go ahead and mark Defendants' Trial
17 Exhibit 574, which is a screenshot from a Web
18 page. Would you mind showing the witness
19 Defendants' Exhibit 574? It's a screenshot that,
20 at the top, says, "Kim Kardashian Sex Tape With
21 Ray Jay-Pornhub.com".

22 **Exhibit 574**

23 A- All right, I have it.

24 Q- Are you familiar with this Web page?

25 A- Yes.

1 Q- What is it?

2 A- This is a video page, and the video would be, "Kim
3 Kardashian Sex Tape With Ray J", as it's titled
4 there.

5 Q- And this is a Web page that is on Pornhub,
6 correct?

7 A- Correct.

8 Q- Is there a video that's posted on this Web page?

9 A- It's not visible in the screenshot, but yes, there
10 would be a video there.

11 Q- So, if I understand what you're saying, if a
12 person went to this Web page, there would be a
13 video posted on...

14 A- Correct.

15 Q- ... this Web page? What is that video?

16 A- So that is the "Kim Kardashian Sex Tape With Ray
17 J".

18 Q- Are you familiar with the video that's posted on
19 this page?

20 A- Yes, I'm familiar with it.

21 Q- How long is the video that's posted on this page?

22 A- I don't know the exact length.

23 Q- Can you approximate?

24 A- It's around...
25

1 Mr. SHANE VOGT

2 on behalf of the Plaintiff:

3 Objection.

4 A- ... five (5) minutes long.

5 Mr. MIKE BERRY:

6 Q- What is contained on that video?

7 A- There would be sexual acts with Kim Kardashian and
8 Ray J.

9 Q- Does the video include graphic sexual content?

10 A- Yes.

11 Mr. SHANE VOGT:

12 Objection to form.

13 Mr. MIKE BERRY:

14 Q- Just to be clear, when either Mr. Vogt or I object
15 to each other's questions, you can answer unless
16 Mr. Bryn or Mr. Penhale tell you otherwise.

17 A- Okay.

18 Q- I think the question that I asked was, does the
19 video include graphic sexual content?

20 A- So, yes, it does.

21 Q- How much time, approximately, on the video
22 includes graphic sexual content?

23 A- I don't know the exact amount.

24 Q- Does the video show Kim Kardashian performing oral
25 sex?

1 A- Yes.

2 Q- Does the video show Kim Kardashian receiving oral
3 sex?

4 A- Yes.

5 Q- Does the video show Kim Kardashian having sexual
6 intercourse?

7 A- Yes.

8 Q- Is the video in colour?

9 A- Yes.

10 Q- Does it include close-up images of Ms.
11 Kardashian's vagina?

12 A- I don't know.

13 Q- Does it include close-up images of Ray J's penis?

14 A- Yes.

15 Q- Does it include close-up images of Ray J and Ms.
16 Kardashian engaging in oral sex?

17 A- Yes.

18 Q- Does it include close-up images of Ray J and Ms.
19 Kardashian during sexual intercourse?

20 A- Yes.

21 Q- How much does Pornhub charge people to watch the
22 video that's posted on the Web page that's marked
23 as Defendants' Trial Exhibit 574?

24 A- Nothing.

25 Q- I'd like to mark as Defendants' Trial Exhibit 272,

1 a video that is approximately five (5) minutes
2 long.

3 **Exhibit 272**

4 And what I would propose to do is to go off
5 the record to allow you to watch the video that's
6 been marked as Defendants' Exhibit 272, and once
7 you've had an opportunity to review it, we can go
8 back on the record, if that's okay.

9 A- Yeah, that's fine.

10 Q- Is that okay to you?

11 Mr. SHANE VOGT:

12 Yes, that's fine.

13 Mr. MIKE BERRY:

14 Mr. Bryn, is that all right with you?

15 Mr. MARK BRYN:

16 Yes, that's fine.

17

18 OFF RECORD

19

20 Mr. MIKE BERRY:

21 Q- Mr. Goldenberg, you've had an opportunity to
22 review the video on Defendants' Trial Exhibit 272?

23 A- Yes.

24 Q- What was on that video?

25 A- There were sexual acts between Kim Kardashian and

1 Ray J.

2 Q- Did it appear to be substantially similar to the
3 video that's posted on the Web page that we looked
4 at previously?

5 A- Yes, to my knowledge.

6 Q- Did you notice any differences?

7 A- To my knowledge, no.

8 Q- Looking at the video, does it refresh your
9 recollection of whether there were close-up images
10 of Ms. Kardashian's vagina?

11 A- Yes, there were.

12 Q- There were images...

13 A- Yes.

14 Q- ... of her vagina?

15 A- Yes.

16 Q- Going back to the screenshot of the Web page
17 that's been marked as Defendants' Exhibit 574...

18 A- M'hm. Yes.

19 Q- ... looking at that screenshot, there's a line
20 midway through the first page that says "Views";
21 do you see that?

22 A- Yes, I do.

23 Q- What does "Views" mean on this Web page?

24 A- That means how many times the page was loaded.

25 Q- How many times the Web page was loaded or the

1 video?

2 A- The Web page.

3 Q- I'll represent to you that this screenshot was
4 made on or about March eighteenth (18th), two
5 thousand and fifteen (2015). How many views of
6 this Web page were there as of that date?

7 A- A hundred and five million seven hundred and
8 seventy-one thousand a hundred and nineteen
9 (105,771,119).

10 Q- Do you know how many people actually watched the
11 video?

12 A- I don't know how many would be unique views.

13 Q- Do you know how many people of those views would
14 have actually watched the video?

15 A- The full video?

16 Q- Or any aspect of it.

17 A- I would... I don't know the exact amount. Someone
18 could have loaded the page and left without
19 watching it.

20 Q- Does the video automatically play when the page is
21 loaded?

22 A- Yes, it does.

23 Q- Next to the portion of the Web page that says
24 "Views", right next to it it has the word "From".
25 Do you see that?

1 A- Yes.

2 Q- And next to the word "From", it says "Vivid
3 Celebs".

4 A- Yes.

5 Q- Do you see that?

6 A- Yes.

7 Q- What does that mean?

8 A- That means the username or the channel that
9 uploaded the video.

10 Q- Can you explain what you mean by that?

11 A- So, when a video is uploaded to Pornhub, the
12 username is displayed there. If it's official...

13 Q- And here...

14 A- Sorry, if it's an official channel, then it will
15 say the channel name instead, which in this case
16 it is.

17 Q- What is the Vivid Celebs official channel?

18 A- That would be the channel that Vivid uploads
19 videos to.

20 Q- So on this page, if I understand what you're
21 saying correctly... I apologize. Does this mean
22 that Vivid Celebs uploaded the video that appears
23 on this Web page?

24 A- Yes.

25 Q- On the video itself, does Vivid's name appear?

1 A- Yes, there's a watermark.

2 Q- And that watermark appears throughout the video,
3 right?

4 A- Right.

5 Q- Do people who watch this video on Pornhub's Web
6 site have to pay Vivid to watch the Kim Kardashian
7 video?

8 A- No, they do not.

9 Mr. MARK BRYN:

10 Objection. Can you repeat the question,
11 please?

12 Mr. MIKE BERRY:

13 Sorry, yes, I probably asked it in a
14 somewhat garbled way.

15 Q- Do the people who watch the video of "Kim
16 Kardashian Sex Tape With Ray J" on Pornhub's Web
17 site have to pay Vivid to watch that video?

18 Mr. MARK BRYN:

19 Objection. I don't know if the witness know
20 whether they have to pay Vivid or not. You said
21 they have to pay Vivid.

22 Mr. MIKE BERRY:

23 Right.

24 Q- Somebody can go... I apologize, I didn't mean to
25 ask it that way.

1 Somebody can watch this... somebody can
2 watch this video on Pornhub's Web page without
3 paying any money, correct?

4 A- Yes, correct.

5 Q- Just a couple last background questions.

6 A- Sure.

7 Q- Earlier you had given your address to the court
8 reporter. Are you a citizen of Canada?

9 A- Yes, I am.

10 Q- Does your company, MindGeek Canada, have any
11 offices in Florida?

12 A- No, they do not.

13 Q- I have no further questions.

1 EXAMINED BY Mr. SHANE VOGT,
2 on behalf of the Plaintiff:

3 Q- Good afternoon.

4 A- Hi.

5 Q- My name is Shane Vogt, I represent Terry Bollea,
6 who is the Plaintiff in this case, and I'm going
7 to have a few follow-up questions for you.

8 A- Sure.

9 Q- How long have you been working for MindGeek
10 Canada?

11 A- Since December two thousand and eleven (2011), so
12 over four (4) years.

13 Q- Have you always been in the same position?

14 A- No.

15 Q- What was your position prior to your current
16 position?

17 A- Product manager.

18 Q- Were your job duties and responsibilities similar?

19 A- More or less similar, yes.

20 Q- Have you ever worked for any other MindGeek-
21 affiliated companies?

22 A- No.

23 Q- And I think you said MindGeek Canada does not
24 operate the Web site Pornhub; is that correct?

25 A- No, we provide services.

1 Q- Do you know which company operates Pornhub?

2 A- MG Freesites.

3 Q- And does MG Freesites operate any other adult-
4 content Web sites?

5 A- Yes.

6 Q- Does it operate YouPorn?

7 A- To my knowledge, yes.

8 Q- Does it operate Tube 8?

9 Mr. MIKE BERRY:

10 I'm going to object to this line of
11 questioning on relevance grounds. But again, you
12 can answer.

13 A- Should I answer?

14 Q- I'm objecting for the record here, for the judge
15 here in the United States.

16 Mr. MARK BRYN,
17 outside counsel, MindGeek:

18 Brett, you can go ahead and answer. I'm
19 going to let it go a couple more questions. This
20 is really beyond the scope, and we're not here to
21 get into MindGeek's corporate structure. But,
22 Brett, you can answer that question.

23 A- Okay.

24 Q- You said you know the answer.

25 A- Yes. The answer is yes.

1 Mr. SHANE VOGT:

2 Q- Okay. And in your job duties and responsibilities,
3 do you provide support to those three (3) Web
4 sites?

5 A- No, only...

6 Mr. MIKE BERRY:

7 Objection.

8 Mr. SHANE VOGT:

9 Q- Did you say "only Pornhub"

10 A- Only Pornhub and Tube 8.

11 Q- Okay.

12 A- Yes.

13 Q- Now, Pornhub and Tube 8, are those what are known
14 as hosting sites?

15 A- I've heard them referred to that in the past, yes.

16 Q- Are Pornhub or Tube 8, are they producers or
17 secondary producers of pornography?

18 Mr. MIKE BERRY:

19 Objection. Relevance, outside the scope.

20 Mr. MARK BRYN:

21 Objection to the extent that the words
22 "secondary producer" is a legal term.

23 Me ANTHONY PENHALE:

24 As is "primarily".

25

1 Mr. MARK BRYN:

2 Brett, you can go ahead and answer. If you
3 understand the meaning of "producer", you can
4 answer to the best of your knowledge.

5 A- I don't know what "secondary" means. I can say we
6 don't produce pornography.

7 Mr. SHANE VOGT:

8 Q- Okay. And if you look, the first exhibit that you
9 were handed should be a... what was the number?
10 574, it should be three (3) pages. On the third
11 page...

12 A- Yes.

13 Q- ... you see at the bottom there's a number of
14 links there?

15 A- Yes.

16 Q- And there's one that says "Information", and
17 there's "Terms and conditions", "Privacy policy",
18 "DMCA" and "2257". Do you see that?

19 A- Yes.

20 Q- Do you know what those are?

21 A- To the best of my knowledge, yeah.

22 Q- What are they?

23 Mr. MIKE BERRY:

24 Objection. Outside the scope, and relevance.
25

1 Mr. MARK BRYN:

2 Brett, go ahead and answer, but this is
3 beyond the scope and it's getting into areas that
4 go beyond our voluntary agreement to appear. But
5 go ahead and answer; let's see if it goes any
6 further.

7 A- Yes, they... what you're referring to are links to
8 our terms and conditions, privacy policy, our DMCA
9 policy and our 2275 policy. Statement, sorry.

10 Mr. SHANE VOGT:

11 Q- And are you... I'm sorry, I didn't mean to
12 interrupt. Go ahead.

13 A- I was just saying, our 2275 statement.

14 Q- And are you generally familiar with those terms
15 and conditions and the privacy policy?

16 Mr. MIKE BERRY:

17 Same objections.

18 A- I'm generally familiar, yeah. They are large
19 documents.

20 Mr. SHANE VOGT:

21 Q- Okay. And you should have... one of the materials
22 that I sent to Madame court reporter today was a
23 copy of a page there that's the "Terms and
24 conditions."

25

1 Mr. MIKE BERRY:

2 I'm going to object to the use of this
3 exhibit under the order that was rendered by Judge
4 Case in June of two thousand and fourteen (2014)
5 about providing five (5) days' notice of the
6 exhibits. Also, again, continuing to have the
7 relevance and outside-the-scope objections.

8 Mr. SHANE VOGT:

9 And what I'd like to do is just mark this as
10 Exhibit A to the deposition.

11 **Exhibit A**

12 Mr. MIKE BERRY:

13 And for the record, I'm going to just have a
14 standing objection to any questions pertaining to
15 this exhibit on the grounds of Judge Cases's June
16 two thousand and fourteen (2014) order requiring
17 five (5) days' notice of exhibits, and the whole
18 line of questioning as to scope of the direct, as
19 well as relevance. I'm not going to continue to
20 object, I'll have the standing objection.

21 Mr. SHANE VOGT:

22 Q- Have you had a chance to look through Exhibit A?

23 A- Yes.

24 Q- Okay. If one were to click on the link for "Terms
25 and conditions" in Exhibit 574 that you looked at,

1 the Kim Kardashian video, would it take you to
2 that Exhibit A that you're looking at?

3 A- It would, yes.

4 Q- And I just wanted to go over a couple of the
5 provisions in here, and then I'm going to ask you
6 these questions in connection with the Kim
7 Kardashian video that we've been talking about
8 today.

9 Do you see the section "Content posted by
10 users"?

11 A- I do, yes.

12 Q- Okay. Does that accurately reflect Pornhub's terms
13 and conditions concerning content posted by users?

14 Mr. MARK BRYN:

15 I'm going to object and I'm going to
16 instruct the witness not to answer. He's not a
17 lawyer, he's here as the person most knowledgeable
18 with respect to the matters listed in Schedule A
19 of Mr. Berry's notice. He doesn't review the
20 terms, and I'm not going to ask him to review the
21 terms and opine as to the accuracy of the terms
22 versus the process.

23 Mr. SHANE VOGT:

24 Okay. So he's instructed not to answer?
25

1 Mr. MARK BRYN:

2 That is correct.

3 Mr. SHANE VOGT:

4 Okay.

5 Q- Let's go back to the Kim Kardashian video then.

6 A- Okay.

7 Q- And I think your testimony earlier was that this
8 video would have been uploaded by Vivid. Is that
9 correct?

10 A- Correct.

11 Q- Do you know whether Pornhub has any affiliation or
12 business relationships with Vivid?

13 Mr. MIKE BERRY:

14 Objection. Outside the scope, relevance.

15 Mr. MARK BRYN:

16 You can answer, Brett, please, if you know.

17 A- As far as I know, they have the same terms and
18 conditions that they agreed to that any other
19 content partner uploading to Pornhub would have
20 agreed to.

21 Mr. SHANE VOGT:

22 Q- And that would be the terms and conditions that we
23 were looking through in Exhibit A, correct?

24 Mr. MIKE BERRY:

25 Same objection.

1 Me ANTHONY PENHALE:

2 I apologize, I'm assuming you're not
3 referring to those specific, but those prevailing
4 at the time of the upload.

5 Mr. SHANE VOGT:

6 Yes, correct.

7 A- So I can answer?

8 Me ANTHONY PENHALE:

9 So you can answer, yes.

10 A- So, making an account, they would have agreed to
11 our terms and conditions, yes.

12 Mr. SHANE VOGT:

13 Q- And let me ask you, with respect to Exhibit 574,
14 the Kim Kardashian video, can you tell me when
15 that video was first posted on Pornhub?

16 A- I don't know the exact date.

17 Q- Can you tell me whether it was posted in two
18 thousand and twelve (2012)?

19 A- To my knowledge, it was posted before that.

20 Me ANTHONY PENHALE:

21 But you can't tell from that...

22 A- But I don't know the exact date.

23 Mr. SHANE VOGT:

24 Q- Is there anywhere to tell from Exhibit 574 when
25 that video was first posted?

1 A- Not on this screenshot. If you were to press "Show
2 more", it would show it, but not in this
3 screenshot, no.

4 Q- Okay. And then over to the right of where the
5 video box is, there's a panel there for Vivid
6 Celeb. You know what Vivid Celeb is?

7 A- I assume it's one of their sites underneath Vivid.

8 Q- And what would happen if someone clicked on that
9 panel?

10 A- They would be sent to Vivid Celeb's landing page.

11 Q- And then underneath that panel, there's some
12 writing that says "Ads by TrafficJunky".

13 A- Correct.

14 Q- Do you know what that is?

15 Mr. MIKE BERRY:

16 Objection. Outside the scope.

17 A- Do you want me to answer?

18 Mr. MARK BRYN:

19 Brett, you can answer that, to the extent
20 you know.

21 A- Okay. It's under every single right side of the
22 video, because it's under every ad that we have on
23 the site, or most of them.

24 Mr. SHANE VOGT:

25 Q- So is that an advertisement, where it says "Kim

1 Kardashian, Vivid Celeb"? That panel there, is
2 that an advertisement?

3 A- Yes.

4 Q- Do you know whether that's a pay-per-click or pay-
5 per-view advertisement?

6 Mr. MIKE BERRY:

7 Objection. Relevance.

8 Mr. MARK BRYN:

9 Brett, if you know, you can answer.

10 A- Neither.

11 Mr. SHANE VOGT:

12 Q- Does Vivid Celeb generate revenue from that
13 advertisement?

14 Mr. MIKE BERRY:

15 Objection.

16 Mr. MARK BRYN:

17 If you know, Brett, you can answer.

18 A- They get sign-ups to their Web site from that
19 advertisement and generate revenue from it.

20 Me ANTHONY PENHALE:

21 You assume.

22 A- I assume. I don't... I don't control Vivid, so I
23 don't know exactly what they're doing on their
24 page.

25

1 Mr. SHANE VOGT:

2 Q- The individuals depicted in the video on this page
3 that we've been looking at, Exhibit 574, that's
4 Kim Kardashian and Ray J, correct?

5 A- To my knowledge, yes.

6 Q- Do you know whether they consented to their video
7 being used by Vivid?

8 Mr. MIKE BERRY:

9 Objection. Relevance, outside the scope.

10 Mr. MARK BRYN:

11 Brett, you can answer if you know.

12 A- I don't know.

13 Mr. SHANE VOGT:

14 Q- Do you know whether Pornhub's terms and conditions
15 of use require users to ensure that the
16 participants in videos that they post on the site
17 have consented?

18 A- Yes.

19 Mr. MARK BRYN:

20 Brett, you can...

21 Mr. MIKE BERRY:

22 Objection.

23 Mr. MARK BRYN:

24 ... answer if you know.

25 A- Yes, they do.

1 Mr. SHANE VOGT:

2 Q- And do you know whether the terms and conditions
3 of Pornhub require users who post videos on the
4 Pornhub Web site to ensure that they are not
5 violating the rights of publicity of the
6 individuals depicted in the video?

7 Me ANTHONY PENHALE:

8 Sorry...

9 Mr. MIKE BERRY:

10 Objection. Relevance.

11 Me ANTHONY PENHALE:

12 I also object. It's the same line of
13 questioning that you were trying to target by
14 looking at the actual terms and conditions.

15 Mr. MARK BRYN:

16 Yes, and I'm going to instruct Brett not to
17 answer. The terms speak for themselves. And I've
18 tried to give you as much leeway as I can, because
19 we're here voluntarily and we're trying to help
20 you guys. You're going far afield. The terms speak
21 for themselves.

22 Mr. SHANE VOGT:

23 Okay, I understand.

24 Q- I believe you testified that when someone would
25 click on the page that we've been looking at,

1 Exhibit 574, that the video would play
2 automatically. Is that correct?

3 A- Only on desktop devices. On mobile and tablet,
4 they won't play automatically. But the page
5 we're...

6 Q- And does the...

7 A- ... looking at is from a desktop device.

8 Q- Okay. Are you familiar with any videos of Terry
9 Bollea being posted on Pornhub?

10 Mr. MIKE BERRY:

11 Objection. Outside the scope. You can
12 answer.

13 A- No, I'm not.

14 Mr. SHANE VOGT:

15 Q- You can answer.

16 A- I'm not.

17 Q- And, Madame court reporter, you should have a
18 document that has three (3) pages with screenshots
19 from... the first two (2) are from Pornhub and the
20 last one is from Tube 8.

21 Mr. MIKE BERRY:

22 I'm going to just again object to these on a
23 couple bases, but principally concerning Judge
24 Case's order of June two thousand and fourteen
25 (2014) concerning the five (5) days' notice in

1 providing copies of documents prior to
2 depositions.

3 Mr. SHANE VOGT:

4 This is our Trial Exhibit Number 5 that has
5 been produced previously.

6 Mr. MIKE BERRY:

7 These are exhibits?

8 Mr. SHANE VOGT:

9 Yes, they're all within Trial Exhibit 5.

10 Q- And I just wanted to ask you whether or not these
11 pages refresh your recollection at all as to a
12 Terry Bollea or Hulk Hogan sex video being posted
13 on Pornhub or Tube 8.

14 Mr. MIKE BERRY:

15 I'll object on lack of foundation.

16 A- I can answer?

17 Me ANTHONY PENHALE:

18 To the extent that they give you any
19 information.

20 A- No, they don't recollect my... there are millions
21 of videos on the site, so I don't... I don't know
22 these ones.

23 Mr. SHANE VOGT:

24 Q- There should also be an exhibit that's multiple
25 pages, it's covered with an e-mail. It's dated

1 January twenty-first (21st) of two thousand and
2 thirteen (2013).

3 A- I have it.

4 Q- If you could look through that.

5 A- Okay.

6 Mr. MIKE BERRY:

7 I'm going to object to this as outside the
8 scope. And second, the document is not a single
9 document, many of these pages were not in the
10 original document. And third, the pages after the
11 first page have not been produced in accordance
12 with Judge Case's order.

13 Mr. SHANE VOGT:

14 And I'm going to mark this as Exhibit B to
15 the deposition.

16 **Exhibit B**

17 Q- And I just want to ask if you've ever seen this
18 document before, either the e-mail on the first
19 page or the printout of the blog on the second
20 page.

21 A- I've seen neither.

22 Q- Do you know who jude@youporn.com is?

23 A- Yes, I know who he... who he is.

24 Q- Who is he?

25

1 Mr. MIKE BERRY:

2 Objection. Outside the scope.

3 A- Do you want me to answer?

4 Mr. MARK BRYN:

5 Yes, go ahead and answer, Brett.

6 Me ANTHONY PENHALE:

7 Answer...

8 A- Yes?

9 Q- ... generically.

10 A- He was a social media coordinator.

11 Mr. SHANE VOGT:

12 Q- Do you know which MindGeek company he worked for?

13 A- He worked in the office here.

14 Q- In your office?

15 A- Yes.

16 Q- And just so we're clear, because it's... this will
17 be read or played back later, but when I say your
18 office, I'm talking about your physical location
19 where you're at right now. Correct?

20 A- Correct, he was in this office, yes.

21 Q- And did he work for Pornhub and Tube 8 as well?

22 Me ANTHONY PENHALE:

23 I object.

24 Mr. MIKE BERRY:

25 Objection. Relevance.

1 Mr. SHANE VOGT:

2 And let me clarify the question, I'm sorry.

3 Q- Did he perform social-media-related services for
4 Pornhub and Tube 8 as well?

5 Mr. MIKE BERRY:

6 Objection. Relevance, outside the scope.

7 Mr. MARK BRYN:

8 Brett, answer if you know the answer.

9 A- No, he did not, he only worked for YouPorn,
10 provided social media for YouPorn.

11 Mr. SHANE VOGT:

12 Q- Okay. And when you say he provided social media,
13 what does that mean?

14 A- So he ran the Twitter account, he blogged,
15 Instagram, I suppose, other generic social media
16 marketing.

17 Q- And so, by "social media marketing", you mean
18 marketing the YouPorn Web site?

19 Mr. MIKE BERRY:

20 Objection.

21 Mr. MARK BRYN:

22 Brett, answer if you know.

23 A- Correct, yes.

24 Mr. SHANE VOGT:

25 Q- And then if you turn to the second page of this

1 exhibit, starting after the e-mail...

2 A- M'hm.

3 Q- ... is this a blog?

4 Mr. MIKE BERRY:

5 Objection. Lack...

6 Me ANTHONY PENHALE:

7 Objection.

8 Mr. MIKE BERRY:

9 ... of foundation.

10 Me ANTHONY PENHALE:

11 Brett is not involved with YouPorn, so
12 you're asking him to comment on YouPorn's
13 operations.

14 Mr. SHANE VOGT:

15 Okay, and I don't want to... I'm not going
16 to ask him about the inner workings of YouPorn, I
17 just want to ask him if he's familiar with this
18 being a blog.

19 Me ANTHONY PENHALE:

20 I think the... if you believe the
21 screenshot, it's got the blog title in it, so I'm
22 assuming the document speaks for itself.

23 Mr. SHANE VOGT:

24 Okay, but can I have him answer?
25

1 Mr. MARK BRYN:

2 Brett, go ahead and answer, and then we're
3 going to stop at this point.

4 A- Yes, this is the YouPorn blog.

5 Mr. SHANE VOGT:

6 Q- And are you familiar, at least, with the YouPorn
7 blog?

8 Mr. MIKE BERRY:

9 Objection.

10 A- No. I mean, I'm aware it exists, but... because I
11 run Pornhub and Tube 8, I've never... I don't...
12 I'm not involved with it at all.

13 Mr. SHANE VOGT:

14 Q- Okay. Do you know, for Pornhub and Tube 8, do they
15 have blogs?

16 Mr. MIKE BERRY:

17 Objection. Relevance.

18 A- Yes, they do.

19 Mr. SHANE VOGT:

20 Q- Do you know whether or not, in two thousand and
21 twelve (2012) or two thousand and thirteen (2013),
22 whether or not the blogs for Pornhub or Tube 8 had
23 any similar types of blogs concerning numbers and
24 hard facts such as this YouPorn blog that you're
25 looking at?

1 Mr. MIKE BERRY:

2 Objection on numerous grounds.

3 A- Yes, so Tube 8, no, but Pornhub has a blog called
4 Pornhub Insights where we have posts like this
5 that talk about numbers and analytics and stats.

6 Mr. SHANE VOGT:

7 Q- And part of your job duties and responsibilities
8 are dealing with analytics and stats, is that
9 right?

10 A- Correct.

11 Q- And on the first page of the blog that we were
12 looking at before... I'm not going to ask you this
13 question with respect to YouPorn, but do you see
14 the total two thousand and twelve (2012) traffic
15 numbers there?

16 A- Yes.

17 Q- Okay. Do you know just approximations of what the
18 visits would have been in two thousand and twelve
19 (2012) for Pornhub?

20 Mr. MIKE BERRY:

21 Objection. Relevance.

22 Me ANTHONY PENHALE:

23 If you know, you know, but...

24 A- Do you want me to give a guess?

25

1 Mr. SHANE VOGT:

2 Q- Yes.

3 Mr. MIKE BERRY:

4 Objection. Relevance, speculation.

5 Mr. MARK BRYN:

6 I normally don't let a witness speculate,
7 but if you want to take a guess, Brett, it's
8 totally a guess, then go ahead.

9 A- Pornhub traffic is normally double YouPorn's, so I
10 would guess around ten billion (10,000,000,000).

11 Mr. SHANE VOGT:

12 Q- That's ten billion (10,000,000,000), with a "B"?

13 A- Correct.

14 Q- Okay. And can you tell me the same... with respect
15 to Pornhub, there's a figure here, at least for
16 YouPorn, for pages per visit; can you give me an
17 approximation of what the pages per visit would
18 have been for Pornhub in two thousand and twelve
19 (2012)?

20 Mr. MIKE BERRY:

21 Objection. Relevance.

22 Mr. MARK BRYN:

23 Yes, and, you know, it's enough, we're
24 just... we're just guessing here. I don't know
25 what.. I don't mean to be stepping into your

1 shoes, but I don't know what benefit having a
2 witness guess... but I'm going to tell the witness
3 not to continue guessing.

4 Mr. SHANE VOGT:

5 So you're instructing him not to answer?

6 Mr. MARK BRYN:

7 Yes, I just... I don't... can you explain...
8 it's not my case, we're just here to... yes, I'm
9 instructing him not to answer.

10 Mr. SHANE VOGT:

11 Q- Do you have any knowledge as to the current pages-
12 per-visit metric for Pornhub?

13 Mr. MIKE BERRY:

14 Objection. Relevance.

15 Mr. MARK BRYN:

16 Brett, go ahead and answer that if you know
17 the answer.

18 A- Yes, I know approximately for last month. Is that
19 enough?

20 Mr. SHANE VOGT:

21 Q- Yes. What was the pages-per-visit metric for
22 Pornhub for last month?

23 Mr. MIKE BERRY:

24 Objection. Relevance.

25 A- Again, I can't be a hundred percent (100%)

1 accurate, but it was around eight (8) pages per
2 visit.

3 A- So we also have a blog like this, like I said
4 before, for Pornhub, and we publish statistics and
5 analytics. The question you just answered is
6 available there.

7 Mr. SHANE VOGT:

8 Q- Okay. And just let me ask you generally, is the...
9 since the time that you've been working with
10 Pornhub, since two thousand and eleven (2011), has
11 the pages-per-visit number been fairly consistent?

12 Mr. MIKE BERRY:

13 Objection. Relevance.

14 Mr. MARK BRYN:

15 Go ahead and answer, to the extent you know.

16 A- It's been increasing very slightly, but generally
17 pretty stable.

18 Mr. SHANE VOGT:

19 Q- And just so we're clear for the jury with respect
20 to what a page per visit is, that would be the
21 number of pages, different pages, on the Web site
22 that a visitor would open and view during the
23 course of one (1) visit, is that right?

24 Mr. MIKE BERRY:

25 Objection. Relevance.

1 Mr. MARK BRYN:

2 Go ahead and answer, Brett.

3 A- Yes.

4 Mr. SHANE VOGT:

5 Q- Do you know whether Pornhub... in this blog for
6 YouPorn, there are some statistics and data on top
7 celebrity searches; do you know whether Pornhub
8 keeps statistics on top celebrity searches?

9 Mr. MIKE BERRY:

10 Objection. Relevance, outside the scope.

11 Mr. MARK BRYN:

12 Go ahead and answer, Brett, if you know.

13 A- We keep data on every search on Pornhub, but...
14 everything. Not specifically celebrities, just
15 every single search.

16 Mr. SHANE VOGT:

17 Q- And given that you keep data on all searches, is
18 there a way to rank celebrities in terms of how
19 often they've been searched on Pornhub?

20 Mr. MIKE BERRY:

21 Objection. Relevance, outside the scope.

22 A- Yeah...

23 Mr. MARK BRYN:

24 Brett, go ahead...

25 A- Sorry, go ahead.

1 Q- I'm sorry, you were already doing it, go ahead.

2 A- If I was given a list of celebrities, I can rank
3 them for you, if that's what the question is.

4 Mr. SHANE VOGT:

5 Q- And how would you go about doing that?

6 Mr. MIKE BERRY:

7 Same objections.

8 A- So I would look... if you were to give me a list
9 of any search terms, I could tell you, you know,
10 where they are in popularity versus other search
11 terms.

12 Mr. SHANE VOGT:

13 Q- Is there any way for someone such as myself, that
14 I could go about finding out that information from
15 resources that are available on the site online?

16 Mr. MIKE BERRY:

17 Objection. Relevance, outside the scope,
18 lack of foundation.

19 A- We do publish certain analytics on our Insights
20 blog.

21 Mr. SHANE VOGT:

22 Q- And on that blog, is there a way to go back
23 historically, say, for certain years, like two
24 thousand and twelve (2012), and search that
25 information?

1 Mr. MIKE BERRY:

2 Same objections.

3 A- We launched the blog... I'm not exactly sure, but
4 it was after two thousand and twelve (2012). But
5 every post that we've published is still available
6 on that blog.

7 Mr. SHANE VOGT:

8 Q- Okay. In Pornhub, there are categories of
9 videos that are available on the site, is
10 that correct?

11 A- Correct.

12 Mr. MIKE BERRY:

13 Objection. Relevance.

14 Mr. SHANE VOGT:

15 Q- Is one of those categories "celebrities"?

16 Mr. MIKE BERRY:

17 Same objection.

18 A- Yes.

19 Mr. SHANE VOGT:

20 Q- And is there analytical data that's kept which
21 would rank the categories available on Pornhub by
22 popularity?

23 Mr. MIKE BERRY:

24 Objection.

25 A- Yeah, we can track the page views that each

1 category would get. We do, we do track the pages.

2 Mr. SHANE VOGT:

3 Q- And what's the measure used to rank those
4 categories?

5 Mr. MIKE BERRY:

6 Objection.

7 A- Sorry, you'll have to go into more detail. Rank
8 them where?

9 Mr. SHANE VOGT:

10 Q- So, if I wanted to find out the popularity amongst
11 the different categories that are available on
12 Pornhub, is there a way to go about doing that?

13 Mr. MIKE BERRY:

14 Objection. Lack of foundation, relevance,
15 outside the scope.

16 Me ANTHONY PENHALE:

17 And unless it's been published, we don't
18 generally publish that either.

19 A- I can answer, there's a sort... I mean, you can go
20 and look at categories and there's a "Sort by
21 popularity", if that's what you're referring to.

22 Mr. SHANE VOGT:

23 Q- That would be underneath the category on the Web
24 site?

25 A- No, that is in a listing of all categories on the

1 Web site.

2 Q- Okay. And does Tube 8 have a similar blog to the
3 Insight blog for Pornhub?

4 A- No.

5 Mr. MIKE BERRY:

6 Objection. Relevance.

7 A- No.

8 Mr. SHANE VOGT:

9 Q- No? Let me look at my notes for one second, and
10 then I think I'm probably done.

11 Going back to Exhibit D-574, the screenshot
12 page...

13 A- Yes.

14 Q- ... of the Kim Kardashian tape, who owns the
15 content depicted in that video?

16 Mr. MIKE BERRY:

17 Objection.

18 Mr. MARK BRYN:

19 Objection. I don't know that... you're
20 asking him for a legal conclusion and... Brett, I
21 guess answer if you know who owns, but don't
22 guess.

23 A- No, I don't know who owns it.

24 Mr. SHANE VOGT:

25 Q- Do you know whether the video content depicted in

1 Exhibit 574, is that owned by Pornhub?

2 A- No.

3 Q- If you look underneath the video box, there's a
4 "Subscribe" button.

5 A- Yes.

6 Q- What does that "Subscribe" button do?

7 A- So, if you were to make a free account on Pornhub,
8 you can sign up with an e-mail and a username and
9 password, and then you could subscribe to channels
10 or users, and then you'll be... you'll see future
11 uploads in your stream when you log in.

12 Q- And does that cost anything, to subscribe to user
13 channels?

14 A- No.

15 Q- And then the boxes of videos that are down on the
16 bottom of the page...

17 A- Yes.

18 Q- ... what are those?

19 A- Those are related videos.

20 Q- And are those related videos that have been posted
21 by the same user?

22 A- Some of them could be, but they're not all... I
23 have no way to tell if they're all from that same
24 user.

25 Q- And what would happen if a visitor clicked on one

1 of those videos, down underneath the "Video" box
2 we've been talking about?

3 A- It would go to another video page, like the one
4 we're looking at.

5 Q- There would be another video page on Pornhub?

6 A- Correct.

7 Q- And then over to the right of that area we were
8 talking about, there's two (2) tabs, it says
9 "Related videos" and "Premium videos".

10 A- Correct.

11 Q- What are premium videos?

12 A- These are...

13 Mr. MIKE BERRY:

14 Objection. Outside the scope.

15 A- At the time this screenshot was taken, it was an
16 ad for a premium white label.

17 Mr. SHANE VOGT:

18 Q- And what's a premium white label?

19 Mr. MIKE BERRY:

20 Objection.

21 A- Basically, it's... it was Movie Box, which is a
22 subscription service that used our brand, Pornhub
23 Premium.

24 Mr. SHANE VOGT:

25 Q- Okay. That's all the questions I have for you.

Case No.: 12012447-CI-011
February 18, 2016

BRETT GOLDENBERG
ON DISCOVERY
Mr. Shane Vogt

1 Thank you very much for your patience.

2 A- No problem.

1 EXAMINED BY Mr. MIKE BERRY:

2 Q- Mr. Goldenberg, I have just a couple follow-up
3 questions on Mr. Vogt's last questions about this
4 page.

5 A- Sure.

6 Q- Mr. Vogt had asked you about the "Subscribe"
7 button.

8 A- Yes.

9 Q- On Defendants' Exhibit 574, you see the
10 "Subscribe" button that he asked you about?

11 A- Yes.

12 Q- Next to that there's a number; what is that
13 number?

14 A- That number is the total subscribers that Vivid
15 Celebs has.

16 Q- And what is that number on this page?

17 A- Oh, sorry. It's fifteen thousand and ninety-nine
18 (15,099).

19 Q- So, of... and that's the number of subscribers to
20 the Vivid Celebs page on Pornhub?

21 A- Correct. The channel, not page, the Vivid Celebs
22 channel.

23 Q- Mr. Vogt had asked you about the videos underneath
24 the Kim Kardashian sex tape.

25 A- Yes.

1 Q- On Defendants' Exhibit 574, if somebody were to
2 click on the first video, they would see the
3 Kendra Wilkinson sex tape? Is that right?

4 A- Based on what I see here, that's the title, they
5 would see that, yes, "Kendra Wilkinson Exposed Sex
6 Tape".

7 Q- What would happen if they pressed the video next
8 to that?

9 A- They would be taken to a video titled, "Tila
10 Tequila Lesbian Sex Tape".

11 Q- And the one next to that?

12 A- "Tila Tequila Lesbian Raw Sex Tape".

13 Q- And there's a video underneath the Kendra
14 Wilkinson sex tape; what would they be taken to if
15 they clicked on that?

16 A- I believe you're referring to "Chyna's New Porno".

17 Q- And each of those videos could be viewed on the
18 Pornhub Web site?

19 Mr. SHANE VOGT:

20 Objection to form.

21 A- Correct.

22 Mr. MIKE BERRY:

23 Q- Could each of those four (4) videos that we just
24 discussed be viewed on the Pornhub Web site?

25

1 Mr. SHANE VOGT:

2 Objection to form.

3 A- Yes, as far as my knowledge at the time of the
4 screenshot, yes.

5 Mr. MIKE BERRY:

6 Q- Would anybody have to pay to watch those four (4)
7 videos on Pornhub?

8 Mr. SHANE VOGT:

9 Objection to form.

10 A- No.

11 Mr. MIKE BERRY:

12 Q- Do you know whether those four (4) videos are
13 Vivid Celeb videos?

14 A- I can't be certain.

15 Q- Do you know for any of them whether they're Vivid
16 Celeb...

17 Mr. SHANE VOGT:

18 Objection to form.

19 Mr. MIKE BERRY:

20 Q- Do you know whether any of them are Vivid Celeb
21 videos?

22 A- I know that "Tila Tequila" is a Vivid video. I
23 don't know if it's Vivid Celeb, but to my
24 knowledge, they own that video. The other ones
25 I... I... also... yeah, for the ones you

1 mentioned, I... actually, I see "Chyna" there has
2 a similar watermark to the video that we watched
3 earlier.

4 Q- Meaning that it, too, has the Vivid watermark?

5 A- It's a little small and blurry on the screenshot,
6 but it looks as close... it looks the same as the
7 watermark that was shown on the video before.

8 Q- And on that screenshot, it also has "Montana
9 Fishburne Exposed Sex Tape"; do you see that?

10 A- Yes.

11 Q- Is that a Vivid video as well?

12 A- Yes, I can see the watermark.

13 Q- Is that something that's available on Pornhub's
14 Web site?

15 A- Right now, I... I can't tell you for certain, but
16 at the time of the screenshot, definitely.

17 Q- And somebody could watch that Montana Fishburne
18 video for free on Pornhub, is that right?

19 A- Correct.

20 Q- Thank you. I have no further questions.

1 EXAMINED BY Mr. SHANE VOGT:

2 Q- I have a couple follow-ups based on those, because
3 I think you just testified, if I'm not mistaken,
4 that your understanding is that Vivid owned the
5 Tila Tequila video. Is that correct?

6 A- I apologize...

7 Mr. MARK BRYN:

8 You're correct, I heard him say "owns" as
9 well. Brett, were you making a statement regarding
10 actual ownership?

11 A- No, I assumed... it would be a part of the Vivid
12 Celebs channel, I don't know if they own... I
13 don't know what we're talking about here by
14 owning. You'd have to clarify.

15 Mr. SHANE VOGT:

16 Q- I was just going off the term that you had used,
17 so I just wanted to clarify what you meant by
18 owned.

19 Mr. MARK BRYN:

20 You're absolutely right, Shane.

21 Me ANTHONY PENHALE:

22 You may say that you used the word "owned",
23 but what you meant...

24 Mr. SHANE VOGT:

25 Q- Yes, can you just clarify, so it's clear for the

1 record, what you meant by "own" so there's no
2 misunderstanding?

3 A- I can assume that Vivid owns that video, but I
4 have no... I can't be certain.

5 Q- Okay. And would the same be true for the Kim
6 Kardashian video?

7 A- Yeah, I would assume that they would, but I cannot
8 be a hundred percent (100%) certain.

9 Mr. MARK BRYN:

10 And if I may, Brett... and I don't mean to
11 lead the witness, but, Brett, are you saying that
12 you believe that Vivid had the rights to post the
13 video on Pornhub?

14 A- Yeah, I believe so, to the best of my knowledge.

15 Mr. SHANE VOGT:

16 Q- Okay. Let me ask that so we're clear for the
17 record, and then I'll be done. You believe that
18 Vivid has the rights to post the Kim Kardashian
19 video on Pornhub, is that correct?

20 A- Yes. I mean, to my knowledge, I believe that they
21 would have the rights to, to post that.

22 Q- Okay. Thank you. I have no further questions.

23

24 AND FURTHER DEPONENT SAITH NOT

25
