

EXHIBIT F

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

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12 and

13 HARDER MIRELL & ABRAMS LLP

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23 Appearing for Defendants

24
25 Also Present: Mick Irwin - Videographer

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1 THE VIDEOGRAPHER: Here begins the
2 videotaped deposition of Mr. Shanti Shunn in the
3 matter of Terry Gene Bollea, professionally known as
4 Hulk Hogan, vs. Heather Clem and Gawker Media, LLC, et
5 al., Case No. 12012447 CI-011, in the Circuit Court of
6 the Sixth Judicial Circuit in and for Pinellas County,
7 Florida.

8 Can the attorneys present please state
9 their appearances for the record?

10 MR. BERRY: Mike Berry of Levine Sullivan
11 Koch & Schulz, representing Gawker Media, LLC, Nick
12 Denton, and A.J. Delaurio.

13 MR. VOGT: Shane Vogt on behalf of Terry
14 Bollea.

15 MR. HARDER: Charles Harder for Plaintiff
16 Terry Bollea.

17 /////

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25 /////

1 SHANTI SHUNN,
2 was thereupon produced as a witness and, after having
3 been first duly sworn on oath, was examined and
4 testified as follows:

5

6 DIRECT EXAMINATION

7 BY MR. BERRY:

8 Q. Good morning, Mr. Shunn.

9 A. Good morning.

10 Q. How are you doing?

11 A. I'm doing well.

12 Q. I appreciate you traveling up from Medford
13 today.

14 Have you ever been deposed before?

15 A. To where?

16 Q. Have you ever been deposed before?

17 A. No.

18 Q. Have you ever testified in court before?

19 A. No.

20 Q. Okay. What I'd like to do at the beginning
21 is just sort of tell you a little bit about it. I
22 imagine that Shane and Charles have already filled you
23 in on the process, but I just want to kind of go over
24 it here.

25 Basically, during the course of the day

1 today, I'm going to be asking you a series of
2 questions, and you'll be answering them. From time to
3 time Shane may jump in and object, but, generally,
4 we'll go forward like that, and unless Shane instructs
5 you not to answer a question, you just answer the
6 question, even if he's objected. It's generally for
7 the record for later, for judge and the court.

8 Because Bridget is taking everything down,
9 typing it in a transcript, all of our communication
10 has to be oral. So, you know, nodding heads, saying
11 huh-huh, uh-huh, you know, those kind of things, yes,
12 no works a lot better.

13 A. Understood.

14 Q. Mick is also taking things down on video,
15 so we'll have a video record of it, but it's helpful
16 to make sure that Bridget is able to type.

17 Along those lines, I'll do my best and try
18 to not interrupt you as you're talking. If you would
19 try and wait until I'm done with my questions before
20 you start giving an answer, it will make Bridget's job
21 easier and give us a cleaner transcript.

22 During the course of the deposition,
23 sometimes I tend to talk a little fast, sometimes I
24 mumble, sometimes I say things that aren't clear. My
25 questions come out garbled. If you don't understand

1 for any of those reasons, let me know, and I'll you
2 know either resay the question and sort of slower or
3 clearer; I'll rephrase it in a way that you understand
4 it. I just want to make sure that we're both on the
5 same page.

6 The other thing is we'll be here for some
7 time today. It's not a test of your endurance. Feel
8 free to take a break, if you want to go to the
9 bathroom, grab some coffee, some water, whatever.
10 Just let me know. The one thing is if I've asked a
11 question, go ahead and answer the question, and we'll
12 break right afterward.

13 A. Understood.

14 Q. The other thing is during the course of the
15 deposition, you know, here you've written two
16 different expert reports, and so we'll be talking
17 about a bunch of different things during the course of
18 the day today.

19 If at some point during the deposition
20 we've talked about something early, and then later on
21 you're like, Holy cow, now that I've gotten to this
22 point, I remember, you know, back before I was talking
23 about that, and what I said wasn't exactly right, or I
24 remember something else. Feel free to tell me. We'll
25 stop. We'll go back and talk about whatever that was.

1 You know, we'll kind of go through the
2 discussion, but a lot of times people remember things
3 later or want to clarify things, and feel free to do
4 that.

5 A. Okay.

6 Q. Are you taking any medications or other
7 substances that would affect your ability to remember
8 things or testify truthfully today?

9 A. No.

10 Q. Any other reason that you can't testify
11 truthfully?

12 A. No.

13 Q. Just one other bit of housekeeping. During
14 the course of deposition, I'll be showing you
15 different pieces of paper, documents from your report
16 and whatnot, and we mark them as exhibits. And you're
17 coming in towards the end of the case, and what we've
18 tried to do is mark exhibits chronologically
19 throughout. So we're coming in at, I think, number
20 320. And so I just want to explain why. It's not
21 that we're just picking some number out of the air.

22 Between the time that you completed your
23 report and now, did you review any additional
24 documents that would affect your opinions?

25 A. No.

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 that I understand.

2 MR. BERRY: So this will be first thing
3 that we'll mark today. It will be Exhibit 320.

4 (Exhibit 320 marked for identification.)

5 BY MR. BERRY: (Continuing)

6 Q. Are you familiar with this document, 320?

7 A. Yes. This is my résumé.

8 Q. Did you prepare it?

9 A. Yes.

10 Q. I gather this reflects all of your jobs
11 basically since college.

12 A. No. This reflects all of my jobs from
13 about 2005 or 2004 forward. No. Actually, this goes
14 back to 2001.

15 Q. Okay. But all of your tech-related jobs,
16 would that be fair?

17 A. It covers the majority of my full-time
18 employment and regular employment.

19 Q. Okay.

20 A. So not the very early days of post college.

21 Q. But basically since the early 2000s on?

22 A. Yes.

23 Q. What I wanted to do first is just kind of
24 talk about the first three sections on the first page
25 here --

1 A. Okay.

2 Q. -- of 320, and ask you about some of these
3 terms.

4 So first, under Professional Summary, in
5 that first bullet it says search engine marketing,
6 SEM, what does that mean?

7 A. Search engine marketing is the active
8 marketing of your website or online presence. It can
9 be done through a plethora of channels.

10 Q. Okay. But it's something where a business
11 is marketing itself through search engines like Google
12 or Yahoo?

13 A. Yes.

14 Q. Is that a big focus of your work?

15 A. That is one of the bigger focuses of my
16 work, yes.

17 Q. What are the other bigger focuses of your
18 work?

19 A. Search engine optimization, so SEO is one
20 of my larger ones. I have a specialty in technical
21 search engine optimization.

22 Q. What is search engine optimization?

23 A. Essentially, it's building the proper
24 architecture for your website to get it to appear
25 better in the search results of Google, Yahoo, Bing.

1 Essentially, it's building that
2 infrastructure -- key word densities, things like
3 that -- to where the very large, complicated, unknown
4 algorithms of Google or Bing -- basically trying to
5 make sure that they position you correctly and target
6 it based on whatever it is you're doing online.

7 Q. When you talk about site architecture,
8 that's literally how you build the back end of the
9 site?

10 A. It has to do with the back end, the front
11 end, the middle-ware. Essentially, it's the entire
12 structure of the website going back down to the base
13 code and the type of server and such that you're
14 running on.

15 Q. So give me an example of the kinds of
16 things that you might do to -- to improve search
17 engine optimization.

18 A. It could be things like writing proper
19 metadata or writing metadata that's more legible to
20 users so that it's more descriptive of whatever that
21 web page may contain.

22 It could be taking a look at the content
23 management systems -- so this would be kind of more of
24 that mid-tier technology -- to look at how you can
25 basically -- what elements you already have from a

1 data element perspective and how you can put those and
2 use -- basically insert those to be able to create
3 more of the dynamic aspects so you don't have to go
4 in, let's say, on a site with 50-, 60,000 pages and
5 handwrite every single page title or page description.

6 Q. And the overall goal of that, then, would
7 be to make your site, or whatever site you're working
8 for, appear higher in the search rankings for Google
9 or Bing or whatever the search engine is?

10 A. That is the goal, yes.

11 Q. What is some of the other bigger focuses of
12 your work?

13 A. Affiliate marketing, project management;
14 you know, several different other aspects.
15 Essentially, I cover all of the marketing side of
16 things. Some of it is, like, marketplace, so helping
17 people refine their ability to sell things through
18 Amazon or New Egg or Sears Marketplace, and so on and
19 so forth.

20 Q. When you talk about affiliate marketing,
21 what is that?

22 A. The best way to describe affiliate
23 marketing is -- essentially it's like having an army
24 of commission-only salespeople, but digitally.

25 Essentially, they drive you traffic, that

1 traffic is tracked, and if that traffic transacts
2 within a certain amount of time and the last cookie
3 that was placed on that user is from that affiliate,
4 they get a percentage of that transaction.

5 Q. Give me, like, a real-world example of,
6 like, what that might be.

7 A. So Amazon has what's considered the
8 advertiser. Amazon has one of the largest affiliate
9 programs. And then there's publishers of their
10 content.

11 That content -- so let's say you're on --
12 let's say you're on a website that's talking about dog
13 food, and they have links to Amazon to buy this dog
14 food that they're writing a review about, for
15 instance. You can click on that.

16 And then let's say you decide to buy and
17 order that dog food online through Amazon.com. If
18 they are a publisher, when you click through that
19 link, that URL that it sends you to will have tracking
20 data that identifies the website it came from and who
21 they are within that affiliate program.

22 And then upon that transaction, they would
23 get a certain percentage of that transaction based on
24 what the payout is for that vertical of product.

25 Q. And you help set that up, then?

1 A. Yes. And manage it, as well.

2 Q. Back on the resumé here, 320, under
3 Professional Summary, in that first bullet, there's a
4 reference to pay per click, PPC, what is that?

5 A. Pay per click is essentially the purchasing
6 of listings on Google or Bing and Yahoo. It's those
7 links that show up with the little sponsor tag either
8 above in the color background or down the right side
9 of the page.

10 Q. And then somebody -- the advertiser pays
11 when a person actually goes and clicks that link?

12 A. Yeah. Hence, the pay per click.
13 Essentially, you put in a bid saying I would pay up to
14 X number of dollars or cents, depending on what key
15 word volume is for that, and then based on your
16 relevancy and everybody else who is bidding on that,
17 Google or Bing and Yahoo basically charge you when
18 somebody actually does engage with that ad via click.

19 Q. In the second bullet here, it says -- it
20 refers to CRM channel marketing. What is that?

21 A. CRM stands for customer retention
22 management or marketing. It's things like email. So
23 things that people have opted in that you can then
24 re-communicate with them.

25 Q. So I stay at a Marriott Hotel, they get my

1 email address, and I start getting Marriott emails;
2 that kind of thing?

3 A. That kind of thing or a loyalty program, or
4 down to, like, more of a brick or mortar aspect of
5 your little Vons tag or Safeway tag where you swipe,
6 that's essentially that same type of thing.

7 Q. It talks about acquisition channel
8 messaging.

9 A. Acquisition channel messaging is
10 essentially -- acquisition is more of that active
11 marketing where -- so there's kind of a division
12 between the two. There's retention marketing and then
13 there's acquisition marketing.

14 Acquisition is things like SEO, so search
15 engine optimization, paid search, affiliate programs,
16 where you're trying to actively trying to acquire that
17 customer.

18 The retention marketing side of it is then
19 once you've acquired that customer, is maintaining
20 that relationship from a business consumer
21 perspective.

22 Q. That makes sense.

23 Moving down, I guess, to the third bullet
24 here, it mentions at the end of that bullet E-commerce
25 platforms. So we talked about a little bit about

1 E-commerce. What is E-commerce platform?

2 A. E-commerce platform is essentially the
3 technology hardware and software that run a website.

4 Q. If you were to go to Amazon to buy, like
5 you said, dog food, it's how that is set up; you go
6 and look, and there's Purina and whatever?

7 A. No. It's actually the server technology
8 that they're running, the programming languages that
9 are used, that mid-tier technology. So whether
10 they're using a different, specific type of CRM or --
11 not CRM, contact management system, CMS system. It's
12 taking a look at those types of aspects. It's the
13 technology, and that basically powers what you see on
14 that front end.

15 Q. In the next bullet it talks about a couple
16 of things, and in the second line there mentions
17 something, conversion rates. What is a conversion
18 rate?

19 A. A conversion rate is the percentage of
20 total visitors who actually create whatever
21 transaction that website is trying to do.

22 So if you have one person out of every
23 hundred taking the action that that -- that that --
24 your purposes of that website, so buying dog food on
25 Amazon, that would be a 1 percent conversion rate.

1 Essentially, it's the percentage of total
2 visitors who actually complete a transaction.

3 Q. In the -- so -- sorry.

4 So a conversion rate is measured by the
5 total page views on your site to the rel -- relative
6 to the number of people who actually make a purchase?

7 A. Yes.

8 Q. And in the E-commerce industry, what is,
9 like, a standard conversion rate?

10 A. It varies by vertical, but on average, a
11 lot of people will say it probably averages around a
12 one, one and a half percent.

13 Q. What is a vertical?

14 A. A vertical would be dog food, so pet
15 supplies versus business verticals.

16 Q. So the kind of products that somebody is
17 selling --

18 A. Exactly.

19 Q. -- it might vary, based on that?

20 Okay. In that same bullet, the next phrase
21 talks about back-end reporting. What is back-end
22 reporting?

23 A. Back-end reporting is essentially the
24 tracking of users. So Google analytics is an analytic
25 system that you would use as back-end tracking.

1 There's a bunch of other more -- you know, paid ones
2 that people use, Omniture, Coremetrics, and these are
3 essentially analytical packages that allow you to
4 track behaviors and user interactions within your
5 website.

6 Q. So like going to back to the conversion
7 rate, you can see how many people come to your site?

8 A. Exactly. Those are the things that
9 actually provide that ability to track people so that
10 you can see how many people came and then how many
11 people took that action that you were wanting to have
12 happen on your website.

13 Q. Is that information accessible to the
14 public?

15 A. No.

16 Q. Okay. Going down to the fifth bullet,
17 actually, we talked a little bit about front end and
18 mid-tier designs. So front end is what is forward
19 facing?

20 A. Front end is what you see when you go type
21 in `www.website.com`, for instance.

22 Q. And mid-tier is what?

23 A. Mid-tier is the technology that basically
24 takes the data -- raw data that's on the server and
25 converts it to be presentable at the front end.

1 Q. And then in that same bullet, it says with
2 the objective of increasing site conversion rates. So
3 the idea being that you're changing the appearance on
4 the front end, doing the mid-tier stuff, so that
5 ultimately somebody comes to the site and takes the
6 transaction, purchases the product, whatever the end
7 conversion ought to be?

8 A. Yes. It's essentially creating a better
9 experience for that -- for a user so you get more
10 conversion in business.

11 Q. In the sixth bullet it says building highly
12 successful KPI-driven marketing teams. What is KPI?

13 A. Key performance indicator.

14 Q. And what are key performance indicators
15 that you look at to assess performance?

16 A. For retail, that would be conversion rate,
17 average order size. It's basically the data metrics
18 of whatever that website is tracking. So it could be,
19 you know, bounce rate, which is essentially a user
20 coming in, how quickly do they leave the site; those
21 types of things.

22 KPIs, there's a lot of different KPIs, and
23 it varies based on each business type, each business
24 type of vertical, and what type of interaction is
25 happening on that website.

1 Q. But in the E-commerce industry, the biggest
2 KPI would be conversion rate; who actually -- how many
3 people are actually buying the --

4 A. Yes.

5 MR. VOGT: Objection to form.

6 You can answer.

7 THE WITNESS: Yes.

8 BY MR. BERRY: (Continuing)

9 Q. All right. Moving down to the next
10 section, Management Experience, in that first bullet
11 it talks -- it mentions marketing metrics. What is --
12 what metrics is it?

13 A. Metrics are essentially those KPIs, so
14 being able to take look at the business and figure out
15 which KPIs are the most important to look at to
16 understand whether their business is successful or has
17 room for improvement and such.

18 Q. And then going down to the third bullet, at
19 the end of that bullet it says, Driving KPI goal
20 successes. So, again, you're trying to help people
21 ultimately improve their KPIs?

22 A. Yes.

23 Q. Then in the third section, Technical
24 Summary --

25 A. Uh-huh.

1 Q. -- in that first bullet there's the
2 reference to PPC vendor. What is a PPC vendor?

3 A. A PPC vendor is essentially a third party
4 who would manage your paid search, so pay per click.

5 Q. Right after that it says, platform --
6 sorry. It says, and platforms, and then in
7 parentheses says, Kenshoo, RKG, Adlucent. What are
8 those?

9 A. Those are three actual retailers who do
10 paid search management.

11 Q. So they're not selling products; what
12 they're selling is managing the pay per click
13 advertising program?

14 A. Exactly.

15 Q. In a nutshell, summarize what it is that
16 bullet one means, like, what it is that you do.

17 A. It's speaking to actually implementing
18 these vendors. So there's tracking code you have to
19 be placed. You have to basically do quality assurance
20 to make sure that tracking code is working.

21 In the case of email, you need to make sure
22 that you're tracking, you know, your spam quotient.
23 You have to be able to look at when somebody opts out,
24 making sure they don't get more emails, so you're in
25 compliance with the I Can Spam acts and all of those

1 types of things.

2 Within paid search, it's setting up, making
3 sure that there's tracking on all the pages so that
4 the platform or vendor can actually track performance
5 and try to hit the goals that you've set for them as a
6 business.

7 Q. Okay. Then in that second bullet, give me
8 an example of the work you do in this area.

9 A. In terms of I.T. architecture and
10 projects --

11 Q. Right. The whole thing there.

12 A. Essentially, what it really says there it's
13 developing an architecture for a website that
14 basically facilitates ease of purchase or ease of
15 transaction, depending on what that the transaction
16 is, and at the same time, it's taking those general
17 marketing principles of, you know, are you building a
18 brand, is your brand engaging with the people who
19 would -- you know, you want to be engaged with your
20 brand. Essentially it speaks to the growth of a
21 digital business.

22 Q. And then No. 3, the third bullet right
23 under that, it talks about enhanced data feed. What
24 is an enhanced data feed?

25 A. So a data feed is essentially a format

1 where you're sending data off to -- basically, making
2 that data accessible to a third party. That third
3 party could be your affiliate program.

4 So let's say you sell widgets and you have
5 3,000 different widgets. The data feed may include
6 elements that describe each of those 3,000 elements.
7 It could have things like the price of widget 1 versus
8 widget 3,000. It could have, you know -- it will have
9 things like the URL to that individual product. It
10 could have things like URL to images of that product.

11 Q. At the end of that bullet, it talks about
12 flat file and XML formats. What is that?

13 A. Flat file is typically what you would see,
14 like, from a -- working in Excel, for instance. So a
15 CSV, so comma delimited file or a tab delimited file,
16 whereas XML is actually a more complex -- it's similar
17 to HTML, hence the "ML" at the end. It's mark-up
18 language. But it's just servers can basically digest
19 it much more rapidly because their specific types of
20 tags you can use.

21 Q. With respect to this third bullet, give me
22 an example of the kind of work that you do.

23 A. It would be things -- well, you know, it
24 could be as simple as creating an XML site map for a
25 website. So essentially something that search engines

1 can digest very quickly so they're not having to spend
2 a lot of time on your website, but they can still get
3 to all of your pages and all of your content.

4 It could also be as complex as Amazon
5 putting out a listing of every product that they have
6 on their website for their affiliates to pick up and
7 build websites to show off that catalog.

8 Q. The fourth bullet point then under that --
9 I think we've talked about this a little bit --
10 designed various E-commerce infrastructure projects,
11 kind of continuing on, that's the work you described
12 earlier; the actual programming and building the site?

13 A. Yes. Working with the I.T. teams to make
14 sure that that's built so that everything flows
15 through properly.

16 Q. The fifth bullet point, it says,
17 Experienced at planning and managing technical
18 migrations. Give me an example of what that is.

19 A. So to use the names of the first bullet
20 point, let's say you've been working with Adlucent for
21 your paid search as your paid search vendor, ad
22 migration is okay, we've now decided to switch to RKG,
23 for instance, so there's that management of transition
24 not only all of the technical tracking aspects that
25 you need to set up, you need to -- whichever vendor.

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. On your résumé there's a reference on the
2 first page, right under where it says Independent
3 E-commerce Marketing Consultant -- a reference to
4 DiscoverWithDrCool.com. Do you have a permanent
5 position there?

6 A. No. I am essentially the contract chief
7 marketing office and chief technical officer. I
8 manage the direct consumer presence of that company.

9 Q. What is DiscoverWithDrCool.Com?

10 A. They sell educational science kits for
11 kids.

12 Q. There's a number of other websites then
13 mentioned on page 2, all related to your work current
14 work?

15 A. Uh-huh.

16 Q. I'd like to just kind of run through, and
17 if could me give me like a one-sentence explanation of
18 what each of these does.

19 A. No problem.

20 Q. Makaboo.com?

21 A. Makaboo was a personalizable baby and
22 children clothing website.

23 Q. Under the next bullet there's Double Prime,
24 which mentions GoGenLab.com.

25 A. Double Prime is a platform development

1 company, so they basically build and launch websites
2 for companies. GoGenLab is one of their clients.
3 It's a laboratory supply company, essentially.

4 Q. And what is BoydTech, that firm?

5 A. BoydTech is a scientific materials company.

6 Q. MyJewelryBox.Com?

7 A. MyJewelryBox was a large jewelry retailer
8 based in Canada.

9 Q. Then in the next bullet it mentions
10 PODHotel.Com?

11 A. PODHotel is a hotel chain that started in
12 New York. It's kind of the mini hotel room. And I
13 worked with RDA International, who is a New York
14 design consulting firm, to provide SEO services for
15 the build out of that website.

16 Q. Then under the Vantage Quarter, it mentions
17 several different websites. HuskyLiners.com?

18 A. Husky Liners makes basically stuff for your
19 truck. It could be protective bed liners. It could
20 be grills for the rear -- you know, your back window,
21 window shades; those types of things.

22 Q. ToBeFast.Com?

23 A. ToBeFast is a performance vehicle or
24 automotive seller specializing mostly in motorcycles
25 and UTVs.

1 Q. PowerSports.com.au?

2 A. That's an Australia company that sells
3 tires.

4 Q. ThrottleRocker.com?

5 A. So Throttle Rocker and Cramp Buster, both
6 of which are there, are two products that essentially
7 are for motorcycles. It's to -- rather than having to
8 hold your throttle back, it gives you a pad where you
9 can kind of rest your hand, so if you're riding for
10 miles and miles, you're not constantly doing this.
11 You can just kind of rest and hold that throttle
12 rather -- without having to constantly flex your
13 wrist. It's a comfort thing.

14 Q. The next one, ScarlettPlus.com?

15 A. It's a small boutique, plus-sized women's
16 retail company. They have one location in North
17 Carolina, and they wanted to launch a website that
18 actually had E-commerce versus just supporting their
19 store presence.

20 Q. EShopWorld.com?

21 A. EShopWorld is an international company that
22 provides globalization E-commerce services, so it
23 facilitates websites who want to sell, let's say, to
24 China or Europe or Russia or -- so on and so forth.

25 Q. And they help facilitate those sales?

1 A. Yes. They help facilitate the -- not the
2 sales but the infrastructure to sell. So it could be
3 helping to get the website in the native language of a
4 country. It could be making sure that the website's
5 promoting local holidays.

6 So, you know, obviously, President's Day
7 here is a holiday in the United States, but it doesn't
8 really mean anything in, you know, Germany, for
9 instance.

10 Q. Hadley Pottery?

11 A. Hadley Pottery is a company that's been
12 around for a lot of years. They're handmade stoneware
13 pottery. People collect it, but people also still use
14 it day to day. But it's all handmade stoneware
15 pottery made in Kentucky, I believe.

16 Q. I think I skipped the ReStockIt.com.

17 A. ReStockIt is a company based out of
18 Florida, if I remember correctly. They sell things
19 that you would need to re-up on, so it might be
20 printer cartridges, office supplies; those types of
21 things.

22 Q. Then the last thing on here is
23 eCommerceConsulting.com. It says you're a
24 volunteering contributing staff writer.

25 A. Yes. I did that when I initially started

1 consulting. And then as business got busy, it kind of
2 was something that I still want to do, but I just
3 haven't had the time to.

4 Q. But it's not a consulting business itself;
5 it's a -- you're publishing articles?

6 A. It's purely a content website providing
7 where you can -- where we -- basically, a group of us
8 publish articles to help other E-commerce
9 professionals based on our experiences. So --

10 Q. And for that you weren't building the site;
11 you were writing articles?

12 A. I was purely writing articles, yes.

13 Q. What kind of articles did you write?

14 A. Everything from articles about search
15 engine optimization to articles about tag management,
16 so on and so forth. So it kind of covered the gambit
17 of what it is that I do.

18 Q. I'm going to mark as Exhibit 321 this
19 document. Are you familiar with this?

20 (Exhibit 321 marked for identification.)

21 THE WITNESS: This is my LinkedIn profile.

22 BY MR. BERRY: (Continuing)

23 Q. Did you enter the information on the
24 LinkedIn profile?

25 A. I did.

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 BY MR. BERRY: (Continuing)

2 Q. But what would be considered a good
3 click-through rate for those?

4 MR. VOGT: Same objection.

5 THE WITNESS: A good click-through rate for
6 a paid search ad is anywhere between 3 to 5 percent.

7 BY MR. BERRY: (Continuing)

8 Q. And that means clicking from the ad to the
9 actual website?

10 A. Yes.

11 Q. What about for organic?

12 A. Organic, the click-through rate is
13 typically less than that, so as mentioned before, a
14 good organic click-through rate is probably in that
15 one and a half percent mark.

16 MR. VOGT: Can I just have a standing
17 objection to scope on all of these?

18 MR. BERRY: Absolutely.

19 BY MR. BERRY: (Continuing)

20 Q. This is just for -- again, like, for the
21 record, like I was saying, so that somebody later --
22 the judge can look at this and determine what's
23 appropriate.

24 When you talk about organic, you mean like
25 something shows up in a search engine like Google or

1 Bing; that's considered organic?

2 A. On a Google search result page, there may
3 be sponsored ads, so paid search ads, and organic ads.

4 Q. But if I ran a search for buy guitar and
5 Guitar Centers website came up as just a search
6 result, I clicked on that, that's the kind of organic
7 you mean rather than the sponsored, you know, Guitar
8 Center advertisement?

9 A. Yes. You may see both on the same query,
10 but yes.

11 Q. For the websites that you worked with at
12 Guitar Center and Musician's Friend, once a visitor
13 came to the site, what was the conversion rate?

14 A. I can't actually discuss that because it's
15 business specific. It's something that is tied to
16 their business. I would need permission to talk about
17 very specific things like that.

18 Q. There's a confidentiality order in the case
19 that ensures that everything that is -- you know, not
20 everything -- that if you want something to be deemed
21 confidential -- I think Charles and Shane may have
22 explained this to you -- can be deemed confidential
23 and used only for purposes of this litigation, not
24 shared outside.

25 MR. BERRY: Is it something where you're

1 instructing him not to answer?

2 MR. VOGT: Yeah.

3 (INSTRUCTION BY COUNSEL)

4 BY MR. BERRY: (Continuing)

5 Q. If I were to ask you the conversion rate
6 for Harry & David, it would be the same?

7 A. Yeah. It's a professional obligation not
8 to disclose their business information.

9 Q. And the various other websites that we went
10 through from DiscoverWithDrCool, Makaboo, Hadley
11 Pottery, those same --

12 A. Yeah, I would not feel comfortable
13 discussing their specific KPI performances.

14 Q. When you were at Guitar Center and
15 Musician's Friends -- or Musician's Friend, I
16 apologize, were there any videos on those websites?

17 A. There were.

18 Q. What kind of videos?

19 A. It could be videos of the guitar. You
20 know, so one guitar was a self-tuning guitar. So
21 essentially you would set how you wanted it to tune
22 versus having to turn the headstock to tighten the
23 strings or loosen them --

24 Q. Right.

25 A. -- it would tune it automatically, so we

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 you have any role with the video?

2 A. Yes. As part of the architecture in
3 managing, making sure we were tagging those videos, as
4 well. Also in support of the YouTube channel. So
5 sometimes we would use embedded YouTube videos versus
6 hosting them directly.

7 Q. What do you mean by "embedded"?

8 A. Embedded is essentially taking code that
9 ports that video on to a web page.

10 Q. So if I were to go to Harry & David's
11 website, I'd see whatever is on the Harry & David
12 website, and then there be would a video box in it?

13 A. Yes.

14 Q. Would I be able to tell that I was looking
15 at a video on a different website?

16 A. Yes. If -- when we used videos from
17 YouTube, you would always be able to see the YouTube
18 links on the bottom, and there's always that link that
19 link that says watch on YouTube. Even from our
20 consumer website with that embedded video, you could
21 always leave our website and go watch that video in
22 its native environment, essentially.

23 Q. When websites embed videos, is that always
24 the case that you can tell that you're looking at a
25 different site's video?

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 software. We just had to tag the videos and aspects
2 of the video that we wanted to track.

3 Q. And so the view track -- total view count
4 would potentially be higher than the unique IP address
5 views?

6 A. Typically, yes. There's always the
7 potential that somebody may repeat view that video.
8 Not -- it doesn't happen very often within a consumer
9 environment, though.

10 Q. Right. But like in the example before, if
11 Bridget looked on her computer at a video on Harry &
12 David about a gift basket, that would be the one
13 unique and one view, right?

14 A. Uh-huh.

15 Q. And then if I went on the same thing and
16 looked and -- she said, Mike, you got to check out
17 this gift basket, she plays the video, second view but
18 only one unique, correct?

19 A. Exactly. But we wouldn't know -- again, we
20 wouldn't know that both of you were watching it that
21 second time.

22 Q. And if she went back and watched it again,
23 she's looking at a competitor's and she goes and she
24 views it a second time, it would count as another view
25 but still only one unique?

1 A. Yes. There we actually didn't count views.
2 We counted unique views. So what we presented in --
3 the front-end label of this video had so many views.
4 We only counted unique views and only presented that
5 to the consumer.

6 Q. Okay.

7 A. Because, again, we wanted the truthfulness
8 of how many actual people we could assume watched the
9 video. Like I said, we couldn't assume that there was
10 four people watching the video, and we couldn't assume
11 that every time that video was re-watched from that
12 same IP, that it was not the same person. So we
13 always consolidated those down and displayed the
14 unique view number.

15 Q. And that would be displayed on the Harry &
16 David site so that if I went to look at the site, that
17 is what I would see?

18 A. Yeah. In some of our players, yeah. A lot
19 of times we actually -- in the consumer realm, the
20 views -- people wouldn't -- we wouldn't display the
21 views in that arena. It's -- it just doesn't have any
22 pertinence to the customer.

23 It's not something that, Oh, look. This
24 video -- we don't have a video landing page, so it's
25 not like, Oh, look. This video is number one.

1 There's no point in ranking them like that.

2 If somebody is looking at a tower of
3 products, they would -- a gift tower, for instance,
4 that would be the only time they'd interact with the
5 video.

6 So showing a count in the front end wasn't
7 really pertinent to ours, but tracking it on the back
8 end was very important.

9 Q. Then with the YouTube embedded videos,
10 would y'all track counts for that, as well?

11 A. Yes. So within an embedded video, you can
12 track unique views of that embedded content.

13 Q. I'm not so technologically savvy, so bear
14 with me.

15 If I understand what you're saying, that
16 means that Harry & David would count the number of
17 views that somebody had from Harry & David's website
18 of that video?

19 A. We would see loads of the embed code.
20 YouTube would track the stats of the unique views of
21 that embedded instance of that video.

22 Q. So when you say "loads," what does that
23 mean?

24 A. We would only be able to see that we loaded
25 the embed code that would load that video. We would

1 not be able to tap in, like our proprietary videos,
2 and say, Did somebody click the play button. Only
3 YouTube has that information because, essentially,
4 it's their code encapsulated within our website.

5 Q. When you talk about loads, does that mean
6 like I'd go to the website and the video -- it comes
7 on to the page, but it doesn't mean that it's played;
8 it's just that it -- the video box appears?

9 A. Yes. And that's the -- that's what makes
10 an advantage of hosting your own videos and a
11 disadvantage of using your YouTube channel, for
12 instance, to embed videos over.

13 Q. Because with the YouTube videos, you can't
14 tell, other than what YouTube tells you, the number of
15 plays, the depth of play, the --

16 A. You'd have to look at the YouTube
17 statistics to identify your analytics. It's not going
18 to flow into your own proprietary analytic system, for
19 instance.

20 Q. Does YouTube provide analytics beyond just
21 a view number?

22 A. They do. Maybe look at some of the
23 duration of play, those types of things. There's --
24 they track, obviously, a lot, lot more on the back
25 end, because they have advertisers, so -- but not as

1 a -- as just a general YouTube account, you only --
2 you have limited access to certain amounts of numbers.

3 Q. So what kind of numbers could you see for
4 Harry & David through YouTube?

5 A. We could see things like, you know, the
6 number of times the video was viewed; you know, the
7 technology sometimes that looked at that. So whether
8 they were on an Apple computer or an IBM; those types
9 of things.

10 Q. Could you look at length of play?

11 A. Not so much. They kind of kept that to
12 themselves, because that's more of a -- something that
13 was valuable from an advertiser perspective.

14 Q. What about unique IPs?

15 A. They tracked unique views, so that's --
16 that was part of their -- it's one of the reasons why
17 people like using YouTube, is they do all of the
18 scrubbing of that so that it's only showing unique
19 views. So they wouldn't track, you know, four watches
20 from this computer, for instance.

21 Q. And so the data that you see visibly on
22 YouTube, the views is a unique view?

23 A. Yes.

24 Q. So they count as a view, like in the
25 example before, if Bridget, then me, then you all

1 looked at the video on YouTube, that counts as on one
2 view on the YouTube --

3 A. On YouTube.

4 MR. HARDER: It's time for a break.

5 THE WITNESS: I was thinking the same
6 thing.

7 THE VIDEOGRAPHER: The time is 10:39. We
8 are off the record.

9 (Recess: 10:39 - 10:52 a.m.)

10 THE VIDEOGRAPHER: The time is 10:52, and
11 we are back on the record.

12 BY MR. BERRY: (Continuing)

13 Q. I still want to talk to you a moment about
14 your professional experience.

15 Do you belong to any professional
16 organizations?

17 A. I do, through LinkedIn; there's a whole
18 bunch of different groups that I belong to.

19 Q. Like LinkedIn groups, not like an actual
20 organization where you're a paid member or --

21 A. No, I'm not a paid member of any groups.

22 Q. Do you belong to any organizations dealing
23 with video view technologies?

24 A. No.

25 Q. Do you belong to any organizations devoted

1 to the pornography industry?

2 A. No.

3 Q. Before we had talked about the articles
4 that you had written for the website the
5 Consulting.com website.

6 A. Uh-huh.

7 Q. Other than the articles that are there,
8 have you published any articles, books, or papers?

9 A. No.

10 Q. Were any of your articles on that website
11 related to video view counters?

12 A. No.

13 Q. Have you ever written anything on the
14 pornography industry?

15 A. No.

16 Q. Have you ever taught any classes?

17 A. Not formal classes, but I've had to teach
18 classes within business organizations that I worked
19 for.

20 Q. Like training programs?

21 A. Exactly.

22 Q. What kind of training programs?

23 A. It may be actually training executives
24 above me about what search engine optimization is, for
25 instance, or doing training classes with merchandising

1 teams so that they understand how the data that they
2 build around a product contributes to the website and
3 its presence online.

4 Q. Have you ever done any training relating to
5 video view counters?

6 A. Only from an analytics tagging perspective.
7 So working with I.T. to make that different elements
8 were tagged so that we could record things like unique
9 plays versus video views.

10 Q. When you use the word "tag," what does that
11 mean?

12 A. So a tag -- the word tag in that instance
13 is referencing the use of basically creating an
14 identification for some element on a web page. It
15 could be the play button in a video. It could be
16 the -- the framework of the embedded video loading.
17 It could be somebody clicking on an add to cart button
18 or looking at an ultimate image of a product, so on
19 and so forth.

20 Q. And for each of those things, there's
21 separate coding?

22 A. Yes. You need to tag things individually;
23 otherwise, you count things as the same thing.

24 Q. Do you have any experience working with
25 subscription-based websites?

1 A. Subscription based, as in --

2 Q. Generating revenue through subscriptions.

3 A. No.

4 Q. Do you know what the conversion rate is for
5 subscription-based websites?

6 A. It varies. I've seen or I've read
7 different things about it. It really depends on what
8 type of conversion -- what content that you're signing
9 up to get.

10 Q. But you have no firsthand experience with
11 it?

12 A. No.

13 Q. Have you had any experience working with
14 websites where video content was the site's product?

15 A. Harmony Central had some of that, but it
16 wasn't their primary.

17 Q. What did they -- in what was video content
18 their product?

19 A. It could be working with Gibson to, you
20 know, post content or to publish content about a new,
21 upcoming guitar, for instance, on Harmony Central, for
22 that community to get, you know, pre-community
23 feedback for the Gibson brand or Fender or E-drum, so
24 on and so forth.

25 Q. Let me ask it a different way. Have you

1 ever worked at a site that sells video content?

2 A. No.

3 Q. Have you ever worked for a company that
4 advertises its video content, like it tries to get
5 people to come and watch video on its site?

6 A. No.

7 Q. Have you had any experience working with
8 any media company?

9 A. Well, I've worked with YouTube to basically
10 host videos and embed them within a website.

11 Q. But have you in your employment history or
12 consulting work, like, literally worked for a media
13 company?

14 A. For a video production company?

15 Q. For a media company, whether it's, you
16 know, a publishing website, you know, a newspaper kind
17 of website, television, movie, like where it's a media
18 company, as opposed to E-commerce.

19 A. Can you re-clarify the question again?

20 Q. Where the website is devoted to providing
21 content rather than selling a product.

22 MR. VOGT: Objection to form.

23 THE WITNESS: So content can mean lots of
24 things. So you're specifically -- I'm just asking for
25 clarification.

1 BY MR. BERRY: (Continuing)

2 Q. I understand.

3 A. Are you specifically referring to just
4 video content or, like, article content?

5 Q. Either, yeah. Let's start with video
6 content. You've already sort of said no.

7 A. No to video content.

8 Q. What about article content?

9 A. Yes. E-commerce consulting is one of
10 those. We would write an article, and then you would
11 have to publish it -- you know, it would be published
12 on that website. You would then have to promote that
13 article. It may be a post to your LinkedIn community.
14 It could be on Facebook. You know, it could be other
15 writers promoting that article.

16 Q. Other than your work with that website,
17 have you worked with any other article-based websites?

18 A. Harmony Central.

19 Q. What kind of articles did they have?

20 A. Like I said, it was a forum website. It
21 may have included press releases about upcoming
22 products, articles about the NAM show, which is one of
23 the largest musical instrument industry trade shows.

24 So we did specific coverage of those big
25 musical instrument shows. And the content, including

1 some videos, as I mentioned before, would be published
2 on that website so that we -- you know, for the
3 community.

4 But we would -- you know, at Musician's
5 Friend, for instance, and/or Guitar Center, either
6 branch of that company would send representatives to
7 go film it, you know, produce the videos and then
8 publish them, and kind of live -- sometimes even
9 live-document -- not tweet -- we used Twitter, but not
10 specifically for that -- what was going on at the
11 show, what celebrity showed up to sponsor things;
12 those types of thing.

13 Q. And did that site derive revenue?

14 A. That site derived revenue through some
15 advertising. So it might be, like, Gibson, for
16 instance, again, having -- putting advertising on that
17 website, so selling an advertising spot.

18 Q. Was the principal driver of that site --
19 sorry. Let me ask it a different way.

20 Was the principal business for that website
21 generating revenue for the company or generating
22 attention for the products that were being sold by the
23 other Musician Friend/Guitar Center websites.

24 A. We actually kept that website very brand
25 agnostic, for a very specific reason; that it had been

1 a long-standing existing musicians' forum community,
2 so we -- we didn't really make anything blatant, like
3 this product is only here, but we did eventually --
4 when I was leaving, they started -- we built out a
5 program where we did provide links to our multiple
6 brands, and other brands could pay for advertising
7 there.

8 So one of our competitors that wasn't owned
9 by Guitar Center -- there's a company called Sweet
10 Water, for instance. So Sweet Water may buy
11 advertising on a certain page because they're
12 promoting that product, for instance.

13 Q. Have you ever worked for or done any
14 consulting with any business in the pornography
15 industry?

16 A. No. I had been inquired about it, but
17 I've -- never actually did.

18 Q. When were you inquired about it?

19 A. A long time ago, when I was doing
20 independent consulting.

21 Q. Like back in the mid-2000s?

22 A. Yeah.

23 Q. So no experience in the Web-based
24 pornography industry?

25 A. No. It's kind of a vertical that I was --

1 didn't feel like it would do benefit to my
2 professional career.

3 Q. Do you have any experience with which
4 videos sell well in the pornography industry?

5 A. No idea.

6 Q. Any experience with marketing in the
7 pornography industry?

8 A. No.

9 Q. Do you know what the conversion rate is for
10 websites that sell pornographic videos?

11 A. No.

12 Q. Are you familiar with the term "shopping
13 cart abandonment"?

14 A. Yes.

15 Q. What is that?

16 A. That is people who have added a product to
17 their shopping cart and then gone to the check-out
18 page but then left. So essentially they -- at least
19 took -- they had put a product in their cart, they
20 then at least went and looked at the cart page itself
21 versus the little thing in the corner, and then left.

22 Q. In E-commerce industry, what is a standard
23 shopping cart abandonment rate?

24 A. Oh, it's all over the board. I wouldn't
25 even feel comfortable giving an average of it. It

1 depends how it is built.

2 Q. Do you know the shopping abandonment rate
3 for websites that sell pornographic videos?

4 A. No.

5 Q. In this litigation, you did sort of two
6 different kinds of analyses, right?

7 A. Yes.

8 Q. Did anybody else assist you in your
9 analysis for either of those projects?

10 A. No.

11 Q. You then wrote reports on two different --
12 these two different subjects, right?

13 A. Yes.

14 Q. Did those reports offer your opinions in
15 this case?

16 A. Yes, they're my opinions.

17 Q. And you are not offering any opinions other
18 than what's in those reports, are you?

19 A. No.

20 Q. So we as testified -- when were you first
21 contacted about being an expert in this case?

22 A. It was the end of February.

23 Q. Of this year?

24 A. Yes.

25 Q. How were you contacted?

1 A. There was -- I was referred to -- for this
2 by someone else who had been looking at doing it and
3 for some reason could not do it; for some family
4 reason, I believe.

5 What was his name? I want to say it was
6 Jason something.

7 Q. Was it somebody that you knew before?

8 A. It was -- I was actually referred over
9 there for -- I was referred to him for a potential
10 consulting thing, to help out. It's a search
11 optimization agency that he runs. He couldn't afford
12 my rates.

13 But he was in the situation where he kind
14 of opted in to do this work, but then had to drop out.
15 So he, knowing my background and my experience, said,
16 You have the same background as me. Would you be
17 interested in taking a look at this?

18 Q. When were you actually retained?

19 A. Probably within a week after that, once the
20 introductions were made.

21 Q. How much were you paid -- are you being
22 paid?

23 A. I am being paid \$400 an hour for non-trial
24 time.

25 Q. And how much for trial time?

1 A. \$550 an hour.

2 Q. How much time have you spent in total
3 working on this litigation?

4 A. At this point, probably right around the
5 30-hour mark.

6 Q. In the project that you did on video view
7 counts, how much time did you spend on that?

8 A. Probably about 16 to 18 hours on that one.

9 Q. And then on the celebrity sex tape
10 membership project?

11 A. That one was probably only about seven
12 hours.

13 Q. I'd like to now turn and talk to you
14 about -- first about the video view count report. And
15 I'm going to mark two exhibits, 322 and 323.

16 (Exhibit 322 marked for identification.)

17 MR. BERRY: And this will be 323.

18 (Exhibit 323 marked for identification.)

19 BY MR. BERRY: (Continuing)

20 Q. So I've handed you two documents. One
21 is --

22 A. These two are the exact same, aren't they?

23 Q. That's what I was going to ask you.

24 A. Oh.

25 Q. Exhibit 322 is an expert report in this

1 case presented by you that's dated March 5th, 2015?

2 A. Yes.

3 Q. And then there is -- 323 is an expert
4 report prepared by you that's dated April 4th, 2015?

5 A. Yes.

6 Q. What is the difference in the two reports?

7 A. Essentially more information was found, and
8 I was requested to double-check that information on
9 top of what I had already published.

10 Q. The additional information was additional
11 websites that you were asked to verify video view
12 counts for?

13 A. Yes. It was additional screenshots of
14 websites that had displayed this video.

15 Q. And when we talk about "this video," you
16 mean the video that was posted on Gawker where it was
17 the Hulk Hogan and Heather Clem --

18 A. Yes.

19 Q. Okay. So everything that's contained in
20 the second report, 323, is also contained in 322,
21 right?

22 A. Yes.

23 Q. All right. So you can put 322 aside. What
24 we'll focus on then is 323.

25 This report expresses your opinions on

1 video view counts, right?

2 A. Yes, of these different resources.

3 Q. What I'd like to do is -- there's a few
4 different parts of the report -- to kind of walk
5 through each of the parts, to make sure I understand.

6 On the first page of the report, after the
7 cover, is a letter from you to Sarah Luppen, and it
8 says that you were asked to render an opinion
9 confirming the accuracy of video view counters of
10 websites capture displaying the Gawker.com edited
11 version of a video of Mr. Bollea engaged in private
12 consensual sexual relations with Heather Clem,
13 parenthesis, the video, which Gawker.com originally
14 posted on its website. The purpose of my engagement
15 is to compile and determine the accuracy of the view
16 counts of the video from these third-party websites.

17 That was your assignment here?

18 A. Yes.

19 Q. Okay. What is a video view counter?

20 A. A video view counter counts the number of
21 views that video has had.

22 Q. And how does that work? We talked a little
23 bit about this before with Harry & David and with
24 Musician's Friend/Guitar Center. Is that the way that
25 it generally works in technology?

1 A. Yes. They basically take a count of the
2 number of unique users who click on that video.

3 Q. And the count is derived through a script
4 that's written?

5 A. It's a tracking script that's attached to
6 that play button, for instance.

7 Q. Through the video player?

8 A. Exactly.

9 Q. Is it the same for every website?

10 A. Yes. Every website's -- to be able to
11 track a view, you need to be able to track interaction
12 with that play button. To just present views outside
13 of that would be a form of kind of false advertising.

14 Q. Do you know if view counts are measured the
15 same across all websites?

16 A. It depends on how -- how that website
17 determines what it wants to show as views.

18 Q. Before, you had mentioned that YouTube
19 shows just unique IP views.

20 A. Yes.

21 Q. But somebody else might show total
22 aggregate views?

23 A. That is a possibility, yes.

24 Q. Turning to page 3 of the report -- the
25 pages aren't numbered, so I'll show you as we go

1 along -- this is a page that has the background and
2 scope of the assignment.

3 A. Okay.

4 Q. Before we get there, I'll just mark one
5 thing, for efficiency's sake. This will be marked as
6 Exhibit 324.

7 (Exhibit 324 marked for identification.)

8 BY MR. BERRY: (Continuing)

9 Q. Have you seen Exhibit 324 before?

10 A. No. I mean, I recognize some of the things
11 on here, but I did not write this.

12 Q. And you hadn't seen it before?

13 A. No.

14 Q. Okay. I'll represent to you that this is a
15 document that was provided with your expert report by
16 the plaintiff's counsel that, as it says, documents
17 relied upon by you in your report.

18 A. Yes.

19 Q. And it shows various pages that were
20 provided to you and then documents not produced by
21 parties. It has online articles, demonstrative
22 screenshots, and some Google trends data.

23 A. Yes. I recognize the not provided by
24 parties because those are different resources that I
25 had to look at for my research, yes.

1 Q. Okay.

2 A. And then on the top section, I don't
3 recognize the number scheme there, so I can only
4 assume that those represent the screenshots that were
5 sent to me, so on and so forth.

6 Q. Right. And we'll get to those later.

7 A. Okay.

8 Q. But that is my understanding, also.

9 On page 2, then it talks about consolidated
10 video view counts spreadsheet. Did you prepare a
11 spreadsheet?

12 A. I did.

13 Q. So now, going back to your report itself,
14 in the Background section, there's the second
15 paragraph that says, My opinions are based on the
16 following: One, information and documents produced in
17 this case by HMA.

18 Do you see where I'm at? It's under the
19 bullet under Background.

20 A. Okay.

21 Q. Do you see where, My opinions are based on
22 the following?

23 A. Yes.

24 Q. HMA refers to Charles's firm, right?

25 A. Yes.

1 Q. The documents produced, I guess, refers
2 to --

3 A. That top section, yes.

4 Q. What information was provided to you by
5 Charles's firm separate from the documents?

6 MR. VOGT: I'm going to object, to the
7 extent that it's invading work product.

8 BY MR. BERRY: (Continuing)

9 Q. Let me ask you a slightly different
10 question, a more precise question. What information
11 provided by Charles's firm were your opinions based on
12 other than the things that are listed in Exhibit 324?

13 A. My opinions weren't based on those
14 documents. Those documents just informed where to
15 start my research.

16 Q. Right. The sentence says information and
17 documents produced in this case, so these are the
18 documents. Was there information conveyed beyond
19 these documents that you based your opinions on?

20 A. Just that what this video was of. Since
21 the video was not available -- I wasn't interested in
22 watching the video anyway, but just the description of
23 what this video was. And, honestly, I did not know
24 Hulk Hogan's real name, so that was extra information
25 that I learned.

1 Q. Okay. But, generally, you're -- it sounds
2 like your opinions were ultimately based on the things
3 that are listed in Exhibit 324.

4 A. Yes. In terms of the section that I put
5 together, yes.

6 Q. Okay. And the screenshots that you were
7 provided showing the various pages where the video was
8 posted?

9 A. Those just informed where I needed to
10 research.

11 Q. Okay. In the -- underneath that same
12 paragraph in No. 3, it says, Detailed research into
13 the technology with the time of Gawker's --
14 Gawker.com's release of the video. Just in the big
15 picture, what research did you perform?

16 A. So the research included looking at
17 specifically what type of counting functionality
18 YouTube was using at the time of the video. YouTube
19 has had three different formats, like, published
20 formats, that they talked about in terms of video
21 counting, so I had to, obviously, relate that to the
22 time frame of this video.

23 The other research would be taking a look
24 at basically the trend -- so when did this video
25 occur, when did the search volume spike for this -- so

1 that I could create -- you know, really understand
2 that timeline of how that happened.

3 And then in terms of technology, digging
4 into the different formats and aspects of video
5 technology that existed. So being able to count
6 embedded videos uniquely from the actual source video,
7 for instance.

8 Q. Was that knowledge that you had prior to
9 this engagement, or was it something that you learned
10 for the first time?

11 A. No. It was knowledge that I had
12 previously, as we spoke about, in terms of my work at
13 companies that used video; however, it was taking a
14 look, as well, into -- it was more of the research to
15 make sure that timeframe-wise and technology-wise that
16 I was considering the technologies that existed at
17 that time, in terms of that initial research.

18 Q. So further down on page 3, it mentions that
19 you reviewed published works by other technology
20 experts and companies. That's what you're talking
21 about?

22 A. That was some of it, yes, to verify what it
23 is that I knew, to make sure that that was consistent
24 with this time frame.

25 Q. And do you recall what those published

1 works were?

2 A. Some of them spoke -- were articles
3 specifically about the different time cycles of the
4 different formats of YouTube. Counting, for instance.
5 There was an article specifically about embedded
6 videos and uniquely counting embedded videos versus
7 the source video. Resources like that.

8 They're covered right here. Those are
9 online articles.

10 Q. That's what you're referring to?

11 A. Yes.

12 Q. Those fives things on that list?

13 A. Yes.

14 Q. I want to ask you briefly about each of
15 those five articles.

16 MR. BERRY: I'll mark this as 325.

17 (Exhibit 325 marked for identification.)

18 MR. BERRY: Actually, why don't I just go
19 ahead and mark them all, and we'll just do this sort
20 of quickly that way.

21 This will be 326.

22 (Exhibit 326 - 329 marked for
23 identification.)

24 BY MR. BERRY: (Continuing)

25 Q. I just gave you, I think, 325 through 329,

1 and we'll just go through each of them really quickly
2 here.

3 A. Okay.

4 Q. These are the five articles that are the
5 published work that you were referring to?

6 A. Yes.

7 Q. The first one is an article from The Verge,
8 Exhibit 325. What is The Verge?

9 A. It's a website that covers a lot of
10 different topics, but one of them is marketing and
11 technology.

12 Q. Do you know Andrew Webster?

13 A. I do not know Andrew Webster.

14 Q. Do you know anything about Andrew Webster?

15 A. I know that based on his profile on this
16 website, this is one of his areas of specialty.

17 Q. Why did you read this article?

18 A. Because when I was querying within Google
19 to get an idea of the different formats that YouTube
20 used to count over these different time frames, this
21 was one of the highest ranking articles within Google.

22 Q. What does it have to do with your analysis?

23 A. It was an article that was related closely,
24 in terms of time. I mean, it happens in the beginning
25 of the summer before the October of the video release,

1 so it had a tangible timeline tie-in aspect. Plus it
2 spoke to the count aspect of the 301 views that
3 YouTube had done in the past where run up to 301, and
4 then they would just kind of stop, pause the count --
5 actually updating for a while -- until they reviewed
6 to make sure that it wasn't getting spam views.

7 Q. Okay. You can set that one aside.

8 The next is Exhibit 326, which is an
9 article from Blue Fountain Media. What is Blue
10 Fountain Media?

11 A. It's a marketing company.

12 Q. Do you know who wrote this article?

13 A. I did not know the person who had written
14 it initially, no.

15 Q. Have you read Blue Fountain Media articles
16 before?

17 A. I have actually ended up on their website
18 for resources, in terms of things -- research for work
19 or those types of things, yes.

20 Q. And why did you read this particular
21 article?

22 A. A, because it really talked a lot about the
23 specifics of YouTube video view counting, and I really
24 wanted to make sure that my understanding of how
25 that -- they were using that technology.

1 Again, being able to look at the timeline
2 of the changes to that technology, as well. And it
3 kind of really spoke to this in length about, you
4 know, how it counts, the functionality that they use,
5 you know, how they integrate it, so on and so forth.

6 Q. Do you know when this article was written?

7 A. It was written -- no. It doesn't have a
8 year on it here.

9 Q. Actually, it does at the third page.

10 A. At the end there?

11 Q. August of 2010. And it's since been
12 updated?

13 A. Yeah. It's --

14 Q. Do you know -- do you know when it was
15 updated?

16 A. There were some content in here that,
17 obviously, it had been updated probably in around the
18 2012 aspect, because there were references to things
19 that were pertinent to the change in counting
20 technology.

21 Q. I want to ask you on the second page of the
22 article -- actually, the third page of the article, in
23 the fourth paragraph there, it says, Despite the
24 combined technical prowess of YouTube and Google, it
25 is still possible to inflate views artificially. The

1 most common attempts occur through spam bots/malware
2 but can also happen by the video's up-loader.

3 That's correct, right?

4 A. That was pertinent to the original initial
5 count way Google or YouTube counted views. That's why
6 they switched to the second process. And now they
7 have completely another new process that they use, as
8 well.

9 At the time of the video's release, they do
10 a batch system, so essentially they would -- you know,
11 views would happen over a certain amount of time.
12 They wouldn't display that to the front end. They
13 would then take that data, analyze it to remove any of
14 those spam malware to make sure that their counts are
15 clean.

16 They have to answer to advertisers, so
17 making sure that that view count is as accurate as
18 possible is important to them. That's how they make
19 their money. So --

20 Q. But is it still possible to inflate views
21 artificially?

22 A. Not that I know of. Especially with the
23 most modern counting functionality that they use.

24 Q. Back in the fall of 2012 --

25 A. Back at this time -- at this time of the

1 article, in terms of the 2012 timeline, there may have
2 been. But like I said, it was done through a batch
3 scrub, so I wouldn't be able to, you know, testify
4 what percentage was able to be done, if any at all.

5 Google -- once Google purchased YouTube and
6 they put in this second phase, the idea was to
7 eliminate that excess count aspect where people would
8 use a bot to trigger their video play over and over
9 again.

10 Q. Looking down at the last paragraph on this
11 page, it says -- with the paragraph that says, YouTube
12 has sophisticated technology to count views
13 consistently. If this technology detects that there
14 has been an attempt to inflate a video's view count
15 artificially, that video's view count will be frozen,
16 according to YouTube guidelines, do you see that?

17 A. Uh-huh.

18 Q. Is that correct?

19 A. Yes. That was the initial premise of the
20 301 aspect, was to see if somebody had inflated a
21 video up to that point.

22 This is referring to if there were
23 obvious -- you know, when they did a batch, for
24 instance, if there were obvious numbers of inflated
25 views, they'd correct that out and then freeze it so

1 that that video wouldn't float to YouTube's home page,
2 for instance.

3 Q. Do you know whether -- if any of the
4 YouTube pages you looked at were subject to artificial
5 inflation?

6 A. I wouldn't know that.

7 Q. Do you know whether any of their view
8 counts had been frozen by YouTube?

9 A. I wouldn't have known that, either.

10 Q. Turning now to Exhibit 327, 9 to 5 Google,
11 what is 9 to 5 Google?

12 A. It's specifically a website about Google,
13 Google algorithms, video, YouTube -- Google
14 properties, essentially.

15 Q. Do you know Chance Miller?

16 A. No, I don't.

17 Q. Do you know anything about him?

18 A. Just that he wrote this article and it had
19 some pertinent aspects to what I was looking at.

20 Q. What was pertinent from this article to
21 your analysis?

22 A. In terms of their periodically aspect of
23 validating the view counts and removing fraud view
24 counts.

25 Q. When you say "they," you mean YouTube?

1 A. YouTube/Google.

2 Q. Next exhibit, 328, this is from Stack
3 Overflow. What is Stack Overflow?

4 A. Stack Overflow is a technical forum.

5 Q. So it's a forum where people can go and
6 post questions and answers?

7 A. Post questions, share code, those types of
8 things, yes. It's a technical community.

9 Q. Do you know who posted the question or
10 answer on Exhibit 328?

11 A. I do not.

12 Q. Why did you review this?

13 A. Because it caught my eye in terms of the
14 embedded view count aspect. Like I said, I wanted to
15 make sure that the -- if I was looking at something
16 that had been embedded, that that view count -- I
17 wanted to confirm that that view count could be a
18 unique view count versus inheriting a view count from
19 a parent video.

20 Q. How do you know that the information
21 contained in Exhibit 328 is correct?

22 A. I actually recognize the iframe code that
23 they actually reference here in terms of the embedded
24 video code. It's very similar to YouTube's one that
25 you can just copy to snippet to embed it.

1 So say you have a family website, and you
2 want to post a video on your family website that you
3 posted to your YouTube of your kids watching a spring
4 training baseball game, for instance. You would
5 download a similar code base to insert it to your
6 website.

7 Q. So what you're referring to here is this
8 middle of the page where it says, I'm using iframe to
9 display YouTube videos, for example?

10 A. Uh-huh.

11 Q. And it has this coding starting with the
12 caret iframe?

13 A. Uh-huh.

14 Q. In that coding, there's then a section
15 that's in blue. It starts, YouTube.com, and then it
16 looks kind of like a Web address.

17 A. Uh-huh.

18 Q. What is that?

19 A. It's a URL to a YouTube video.

20 Q. Okay. And so this shows how it's embedded,
21 right?

22 A. Essentially, they're wrapping an iframe
23 around that video.

24 Q. And the iframe is, if you're looking at the
25 website, just a box that the video appears in; it's

1 the frame?

2 A. In the most laymen terms, yes.

3 Q. Probably safest to stay with laymen. So
4 this just shows that you can embed a YouTube video.

5 And then the next -- it says, Use below
6 link, and then it has, like, a point to video counter?

7 A. Yes.

8 Q. What does that mean?

9 A. Essentially, this was another user showing
10 them how to make sure that their embedded video had a
11 unique view count.

12 Q. How does that happen?

13 A. Essentially, they basically are adding
14 this -- or adding an additional statement that speaks
15 to require once. So it's essentially looking at that
16 one instance of that video versus every instance of
17 that video.

18 Q. That's played on that particular website?

19 A. Yes. It's isolating it to that one web
20 page and one video display.

21 Q. Okay. Put that one aside and look at
22 Exhibit 329 now. This is also another printout from
23 Stack Overflow?

24 A. Yes.

25 Q. Do you know the folks who posted the

1 question or answer here?

2 A. No, not personally.

3 Q. This is asking about tracking play counts
4 for embedded videos, also, right?

5 A. Again, yes.

6 Q. Then there's a gray box here that has a
7 bunch of code in it, right?

8 A. Uh-huh.

9 Q. What does this code mean?

10 A. That's essentially -- so this a sample web
11 page with an embedded video here. So you can see the
12 iframe start, the iframe close, you know, embedding
13 that YouTube video. You can see that they're also
14 embedding a Vimeo video, another video from Meta Cafe,
15 and it looks like another one -- no, that's just the
16 Flash player to check to make sure that somebody has
17 Flash.

18 Q. So they've embedded the video, and the
19 question then is how can I track play counts for each
20 of these videos, right?

21 A. Uh-huh.

22 Q. Then at the end it says, Ryan, the only way
23 to do this is to use the video sharing site's player
24 API(s), as HTML and JavaScript have no native support
25 for that -- for this. What does that mean?

1 A. What they're referring to is that you can
2 use the -- the -- so rather than -- this code is
3 showing he's manually creating his own iframe and
4 manually calling in that video.

5 What this guy's next -- that first answer
6 is specifically speaking to using -- just grabbing the
7 actual embed code from the Vimeo website or YouTube
8 website versus coding your own.

9 Q. And that's how to actually put the video on
10 to your page; that's what he's saying?

11 A. Anybody can create an Iframe and call in
12 any content. Maybe I should describe the iframe a
13 little bit more, out of laymen's terms.

14 An iframe allows you to essentially call
15 any URL or any content via its URL into a defined
16 space on any web page.

17 In terms of a search engine, an iframe --
18 search engines don't really look at iframes because an
19 iframe only contains remote content from a different
20 source. So it's essentially a way to create a wrapper
21 of -- aspect and bring in code.

22 So, again, if you had that family website
23 and I, on my personal blog, wanted to share your page,
24 but I didn't want to copy and paste your content, I
25 could just put in the that page and just show your

1 page within my page.

2 Q. But this coding does not refer to how views
3 are counted, right?

4 A. This -- this is speaking to -- he's trying
5 to make sure he gets play counts for each video. The
6 problem here is he's -- also has multiple videos from
7 four -- three different sources in this example. And
8 like I said, he's not using the native embed video, so
9 he can't do, like in the other article that speaks to,
10 oh, you just need to create a method once type of view
11 of this.

12 Q. And so on the second page, then, under the
13 Lightning Chart advertisement, it says this works for
14 Vimeo. Triggers a JavaScript alert on the play event,
15 but there are a number of other events like finished,
16 pause, playProgress.

17 This is the script you were talking about
18 earlier, on the counting?

19 A. Exactly. This is an example of the aspects
20 that you can actually see -- you can see on click, you
21 know, to your point. It's taking a look at what has
22 been done.

23 You can see that one of these functions is
24 dude done, which is kind of a funny comment, but it's
25 essentially saying that video actually reached its

1 completion versus the video was paused or so on and so
2 forth.

3 Q. So where on the -- you're looking in the
4 gray box under that?

5 A. Yes.

6 Q. Where in that gray box does it include the
7 script on counting?

8 A. In terms of being able to count it
9 uniquely?

10 Q. In the count views.

11 A. Well, it's -- I'll show you right here. So
12 there's the attach event, so that's the onMessage. So
13 that's messages from the player. So that first
14 section is saying does this computer have the right
15 technology.

16 The second one, using the JSON.parse,
17 starts to look at what -- play, so you can see it
18 creates a -- here's the video, the video actually
19 loaded, and the preview is ready to be played.

20 And then you can see case play onPlay,
21 that's your actual tracking for that play click.

22 Q. And then the next sections deal with
23 specific actions within the -- once the video is
24 already playing?

25 A. Yeah. So this one is calling the API -- as

1 mentioned by that other, previous person, saying, Use
2 that APIs -- is calling that API to create a unique
3 count for that video; Vimeo, in this case.

4 Q. And now in this -- in this gray box, is
5 that JavaScript?

6 A. Actually, there's a few different languages
7 here. The overall thing is a JavaScript, but they're
8 also calling JSON scripts here. So there's a couple
9 of different things that they are using within this,
10 mostly to facilitate the calls to, in this case, the
11 Vimeo API.

12 Q. Kind of going back to our earlier
13 discussion about your work at Musician's Friend/Guitar
14 Center and Harry & David, these are the scripts that
15 would be doing -- the kinds of scripts that would be
16 doing the counting of video views? It may have been
17 similar, but --

18 A. Yes. These have that same function, is to
19 count different types of interaction.

20 A lot of times these things are wrapped up
21 in a remote script that called so all you see is you
22 know, video dot JS or whatever, and it may -- that
23 video JS may just call in that one file from a
24 remote -- you know, from another place on the server.
25 That actually does all of this.

1 Q. So -- but you're referring to, then, is
2 what you see in the actual source code on the web
3 page, then might refer the script somewhere else?

4 A. Yes. This script could actually be
5 offloaded, so it would just call video dot JS, for
6 instance, and that might be this script here that
7 would do all of these actions, which means you would
8 not be able to view it in the source code.

9 Q. Other than those five things, you didn't
10 look at any other resources or published work?

11 A. No. These were the only ones that I used.

12 Q. So your report mentions looking at
13 documentation about changes to YouTube. That's what
14 we were -- the three exhibits?

15 A. Yeah. I believe it was the first three
16 speak to YouTube and the different timelines for
17 counting.

18 Q. And then in your report you talk about also
19 relying on your own knowledge base. That's -- means
20 your work that you had done previously that we
21 discussed at Harry & David?

22 A. Exactly. So how to tag those things, you
23 know, how -- you know, when you're looking at the
24 source code, how would you tag it, the display code of
25 how you might display it, so on and so forth.

1 Q. Looking back at your report, Exhibit 323,
2 on the second page, which starts with the executive
3 summary, under Video View Counter Validation Synopsis,
4 you write, I validated the accuracy of several
5 different video view counter technologies.

6 How did you do that?

7 A. Essentially, I went to the different
8 websites that were screenshot of having shown the
9 Bollea video, and I went and looked at the source code
10 of their view count, looked at the snippet of code
11 that was wrapped around that, how they were labeling
12 it, whether there was any div labeling that was going
13 on invisibly to a user on that, as well.

14 Q. What's a div?

15 A. A div is an HTML function, essentially.
16 It's like a small HTML container on page.

17 Q. In a little bit we'll talk about the source
18 code that -- you included screenshots of those, right?

19 A. Those snippets, yes.

20 Q. So we'll talk about those in a second.

21 First, you -- the first part of your
22 report, then, in dealing with view counts talked about
23 YouTube, right, in places where the video apparently
24 was posted on YouTube, right?

25 A. Yes. There were several screenshots

1 provided of it being on a YouTube page.

2 Q. And if you turn to page 3 of your report,
3 in the bullets at the top, it says, YouTube video view
4 counts of the video are accurate based on the date
5 April 26, 2013.

6 That's your opinion, right?

7 A. Yes. Well, that's based on my research
8 supporting what it was that I looked at -- was asked
9 to look at.

10 Q. But that's your ultimate conclusion?

11 A. Yes.

12 Q. How do you know that?

13 A. Based on the information, you know, found
14 in these articles that spoke to how YouTube was
15 counting their video counts, how YouTube was scrubbing
16 those to make sure that they were, you know, as
17 spam-free as possible, and then looking at the
18 screenshots provided to see what video count was
19 captured -- or video view count was captured at the
20 time of the screenshot capture.

21 Q. In your report on page 4, under the section
22 that says Video YouTube Counter --

23 A. Yes.

24 Q. -- about halfway through that paragraph
25 there's a line that says, There is potential that the

1 video counts captured on April 26, 2013, may not have
2 captured the complete number of views at that time.

3 Do you see where I am?

4 A. Yes.

5 Q. Why is that?

6 A. Because the -- if I remember the time stamp
7 on the screenshots accurately, it was around, like,
8 12:44 p.m., so quarter to one, most companies will run
9 batches at certain periods of time, but usually the
10 most rapid is on a quarter of an hour count, but the
11 most common is every hour.

12 Because at the time of this video being on
13 these sites, the date of the -- the date on these
14 screenshots, YouTube was doing that batch count, which
15 means that if they were doing -- let's say they were
16 doing batch counts on every hour at that point, there
17 would be 44 minutes of unprocessed video views that
18 could have still have occurred on those videos.

19 So if they were scrubbing every hour on the
20 hour, the last scrub for these would have been done at
21 noon versus -- and prior to that 1:00 p.m. scrub.

22 Q. But what you're saying, then, is just
23 theoretical; you don't know one way or the other?

24 A. Theoretically, there's the possibility that
25 that count of the capture of those screenshots did not

1 include every legitimate view.

2 Q. Did you run any or see any analytics of
3 when the views occurred on those various pages
4 timewise between the times that they were posted and
5 April 26?

6 A. No.

7 Q. On page 5 there's this Google trends --

8 A. Yes.

9 Q. -- print.

10 A. Yeah.

11 Q. Why did you include that Google trends
12 data?

13 A. This was used to establish my timeline, so
14 I could make sure -- specifically on YouTube, with
15 known technology, known player, wanted to make sure
16 that the research that I did provided the proper count
17 methodology that YouTube was using at the time of the
18 video.

19 So what this is showing is that that
20 biggest spike -- the largest spike right here is the
21 release of the video. So that gave me the timeline
22 from about the beginning of October to probably
23 mid-November/December of the player -- the Bollea
24 video being online, so accessible to show up on these
25 sites.

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 there was nothing that you could do to
2 independently verify that the number 9,377 was an
3 accurate reflection of views, correct?

4 A. Just that at the time I could verify it
5 through the methodology that YouTube was using to
6 count, but other than that, no, I could not physically
7 go to this web page and look at it on my own.

8 Q. You don't know whether that number was
9 artificially inflated at all?

10 A. No.

11 Q. And do you know whether that number was
12 frozen because of YouTube's concern with artificial
13 inflation?

14 A. No.

15 Q. Looking at this particular page, there's
16 under -- do you see where it says, Published on
17 October 5, 2012?

18 A. Uh-huh.

19 Q. It says, Finally I found the sex tape of
20 Hulk Hogan. Watch it free here. And there's a link.
21 Do you see that?

22 A. Uh-huh.

23 Q. Then going above, this actual video is only
24 14 seconds, right, with the play -- in the play area?

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 A. Okay.

2 Q. You talked about -- right after the YouTube
3 videos, you talked about other video counter
4 technologies.

5 A. Yes.

6 Q. And under that section on page 7, like
7 after the screenshots, there's a paragraph right above
8 the table on page 7 -- the next page. Sorry.

9 A. Yes.

10 Q. Two more pages. Sorry. The other
11 direction. Yeah, right there.

12 A. Oh, got it. You're at the end of that?

13 Q. Yeah. Sorry.

14 So it says, My research into the various
15 view counters used on the websites in question
16 validates with a reasonable degree of certainty that
17 the following video view counts of the video are
18 accurate based on my knowledge of video view counters
19 and the annotations included on the various websites
20 both on the page and within their code, and then
21 there's another table there, right?

22 A. Yes.

23 Q. That ultimately is your conclusion from
24 your work, right?

25 A. Yes.

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 view counts, you know, number and views or views
2 number, looked at the source code, so the actual
3 on-page code that's accessible to anybody, and looked
4 at specifically how they were tagging that element of
5 the web page.

6 Q. I want to walk through that -- the analysis
7 that you did. I understand that you went to certain
8 websites that had previously posted the Gawker video
9 and looked at that coding, right?

10 A. Yes.

11 Q. You looked at CrazyShit?

12 A. Yes.

13 Q. DailyMotion?

14 A. Yes.

15 Q. DeviantClip?

16 A. Yes.

17 Q. MyFreeBlack?

18 A. Yes.

19 Q. MrPopat, P-O-P-A-T?

20 A. Yes.

21 Q. Did you look at any other websites?

22 A. Just those that were represented in this
23 screenshots that had hosted this video.

24 Q. So in your report on pages 6 and 7, there's
25 screen grabs of source code from the five websites I

1 mentioned?

2 A. Yes.

3 Q. Did you look at the source code for other
4 websites, as well?

5 A. For -- yes. I looked at all of these, and
6 I pulled a sampling of the ones that I had looked at,
7 but I did go confirm that all of them either had that
8 specifically viewed label or had some form of coding
9 around that that specifically called it a view count.

10 Q. Do you have a record of which pages that
11 you went to on the various sites to do that?

12 A. No. It might be in my Internet history,
13 but --

14 Q. Do you have the source code that you looked
15 at for any of the sites other than ones that are
16 mentioned specifically in the report on page 6 and 7?

17 A. No.

18 Q. Do you have notes about the source code for
19 any of the sites other than the sites that are
20 identified on pages 6 and 7 with the pull-out boxes?

21 A. No. I included anything that I
22 specifically saved and recorded within this report.

23 Q. In -- I'm going to jump -- I want to come
24 back to this in a second, but first I want to ask you
25 about the next section of the report that is on

1 page 8, Embedded Video View Counters.

2 A. Yes.

3 Q. Okay. On the screenshots that you looked
4 at for these various 23 websites or 23, I guess --

5 A. Instances.

6 Q. -- web pages --

7 A. Yes.

8 Q. Did you know whether in any of those
9 instances the Gawker video had been embedded?

10 A. No.

11 Q. On page 4 of your report, you had written
12 that you reviewed and analyzed technologies to
13 independently count video views for embedded videos.

14 What technologies did you look at?

15 A. I looked at the articles that you
16 referenced earlier to confirm that you -- you did have
17 the ability to uniquely count if it was an embedded
18 video.

19 Since I was unable to go to any of these
20 actual pages in a live environment, I wanted to make
21 sure that if -- because I couldn't verify whether they
22 were using embedded. If they were embedded, that
23 these counts were -- would have been accurate accounts
24 unique to that website or that instance.

25 Q. For the website -- if a website had

1 embedded the video, it would have had to have coded it
2 the way that you looked at earlier in that article to
3 show views unique to its website, right?

4 A. Yes. But I assumed that these were counted
5 uniquely because they did not reflect the count from
6 the original video that was on Gawker.com.

7 Q. When you say that you looked at, you looked
8 at different web pages than those that were
9 attached -- that actually had the screenshots where
10 the video was displayed, right?

11 A. Yes. Again, like YouTube, this content had
12 already been removed, so you could not see these
13 actual live pages anymore.

14 Q. So the pages that you did look at showed
15 that the videos that were posted on those pages, if
16 they had been embedded, were counting just views of
17 that video unique to the site?

18 A. Yes. And, in fact, most of these videos
19 of -- when I looked at other videos hosted by these
20 websites, they were not embedded.

21 Q. They were --

22 A. However many of them had the ability to
23 download and embed this video somewhere else.

24 Q. So if site A posted a video, that video
25 could be embedded on to site B? That's what you saw?

1 A. Yes. So -- exactly. So to elaborate, what
2 I saw was that many of these -- in the screenshots
3 that I took of them recently, you can see that these
4 videos were able to be embedded very easily anywhere
5 else.

6 Q. But you don't know whether the video of the
7 Hulk Hogan/Heather Clem sex tape had been embedded or
8 not on any of these particular pages that are -- that
9 you -- that were the screenshots that you looked at,
10 right?

11 A. Yes. I cannot confirm that these were
12 embedded videos on these instances, and I was not able
13 to confirm whether people had embedded the video from
14 these sources to other sources.

15 Q. If a video is embedded -- let me ask this
16 in a more concrete way.

17 If one of these sites had embedded the
18 video from Gawker and had video counts on its website
19 unique to its website, would that show up on the view
20 counter that Gawker used?

21 A. No.

22 Q. How do you know that?

23 A. The code that makes it a unique count
24 excludes it from a count at the originating source.
25 It isolates it to that individual instance of that

1 video.

2 (Exhibit 331 marked for identification.)

3 BY MR. BERRY: (Continuing)

4 Q. So in some of these other sites that posted
5 it -- if CrazyShit had embedded the video from World
6 Star Hip Hop, you would see a count on CrazyShit,
7 right?

8 A. Uh-huh.

9 Q. How do you know that it wouldn't also be
10 counted on World Star Hip Hop where the video actually
11 was hosted?

12 A. You wouldn't typically. However, I notice
13 that many of these embedded players are -- were
14 branded, so Crazy Shit in Exhibit 331, you can see
15 that the player is labeled over the actual video play
16 as Crazyshit.com. I didn't see that -- that labeling
17 on any others.

18 Actually, like the DailyMotion one -- so
19 section 2 of Exhibit 331 -- it actually may have been
20 embedded from somewhere else because there is a logo
21 that does not look like DailyMotion in the bottom
22 right, which means that this count may not include
23 actual views from whatever source that was.

24 Q. And if you went to that other source's
25 website with this video, you don't know whether it's

1 counting the hits that it also got from being played
2 on DailyMotion or not; you would have to look at that
3 website's source code, right?

4 A. I would have had to be able to look at this
5 exact page's, when it existed, code to be able to
6 verify whether they were using an embedded video,
7 first off, and secondly, whether they had coded it to
8 count uniquely. But, again, only if they actually let
9 that code be displayed.

10 I would not be able to tell if that code
11 was not displayed. So like the earlier example being
12 able to just call in a promote JavaScript, for
13 instance, if they had done it that way, I still
14 wouldn't have been able to tell exact -- you know, the
15 exact method that they used to count it uniquely.

16 Q. Okay. So it's possible that from site to
17 site, it could be double counted, and you can see a
18 count on one site that also could be counted from the
19 site on which it was embedded initially?

20 A. It's possible. The reason I would say it's
21 unlikely is that these sites, DailyMotion, for
22 instance, makes money based on the display of these
23 videos triggering views because they make their money
24 off of advertising, like Pizza Hut, for instance.

25 It behooves them to make sure that all of

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 A. Both. So page impressions -- so the
2 impressions to the page -- so if you're paying on a
3 cost per thousand for your banner ad, like, let's say,
4 Pizza Hut here on DailyMotion is paying for this ad
5 spot, this ad spot -- they may decide that people who
6 are watching this video like to buy pizza or that this
7 video, because of the number of views it happens to be
8 getting, this instance of this video, they want to
9 advertise there because they can get branding out of
10 it, for instance.

11 So they may specifically ask for this spot
12 based on the data that's displayed here and/or data
13 that they request specifically from, in this case,
14 DailyMotion, or that may be based on targeting that
15 they've created within a different ad provider, and
16 DailyMotion, as a publisher of those ads, makes money.

17 Much like that affiliate relationship I
18 spoke about earlier, sometimes there's massive --
19 there's huge ad agencies that run display ads, and
20 they buy inventory all over the place. Google buys
21 inventory all over millions of websites.

22 And then you can create targeting based on
23 the content that you'd be interested in showing up on;
24 you can include, exclude sites. There's a whole lot
25 of different things. But you basically can create and

1 look at the different metrics that you would want to
2 appear against.

3 Many of these have ads that are probably
4 not done through a Google or a mainstream advertiser
5 because of the type of content. It's probably a
6 pornography specialty display advertiser. But at the
7 same time, the numbers are still important whether --
8 whatever they're selling, because it trues up the
9 actual responsiveness and what their publishers are
10 paying for.

11 Q. But you have no firsthand experience with
12 any of these -- working with any of these websites,
13 right?

14 A. No, I have not. The only website out of
15 any of these that I had been to previously was
16 DailyMotion, and it was not for content like this.

17 Q. What you're saying is just that -- your
18 explanation there was just an assumption? It is not
19 based on any --

20 A. That's why I started with I assume that
21 these numbers are true because otherwise, A, they
22 would be lying to their users, and, B, it would skew
23 their advertising numbers, which means that they would
24 be detrimental to these company's revenue streams.

25 Q. You had mentioned before that the videos

1 were posted for free. Did you assess whether any of
2 the people who watched the video would have paid to
3 watch it?

4 A. Rephrase that.

5 Q. Did you do any analysis of whether any of
6 the people who watched the Gawker video would have
7 paid to watch it?

8 A. Specific to the screenshots that were
9 provided for this particular piece of research, all of
10 these sites had no paid gateways, so there was no
11 pay-to-view content.

12 Q. But you didn't analyze whether somebody
13 would have paid to watch the video?

14 A. No. I don't -- I don't think that was
15 pertinent to it, in terms of this. My specific task
16 was to look at the video view counters for these sites
17 and provide this count, as well review those
18 screenshots.

19 Q. So you don't know if anybody who watched
20 the video would have paid to watch it?

21 MR. VOGT: Objection to scope.

22 THE WITNESS: No. I have no idea if there
23 was somebody with their computer charging people to
24 come into their dorm room, for instance, to see this
25 video, no.

1 BY MR. BERRY: (Continuing)

2 Q. Right. Or whether somebody would have paid
3 a website to watch the video?

4 MR. VOGT: Objection to form.

5 THE WITNESS: I -- honestly, I'm pretty
6 sure somebody would pay to watch this type of content
7 because this type of content gets paid for all the
8 time.

9 BY MR. BERRY: (Continuing)

10 Q. But of the 4 million plus people, you don't
11 know how many would pay for the ability to watch it?

12 A. No, not without speaking to each and every
13 4-point-million people, no.

14 Q. Turning back to your analysis of these
15 video view counters, do different video players use
16 different technology to count views?

17 A. The -- so the video view counting
18 technology is pretty standardized in terms of the type
19 of format it's counted in. So an actual click of a
20 play button.

21 You know, typically, like that example in
22 one of those articles where it says did the video
23 actually start, did they hit play and then abandon, or
24 did they play and the video actually start, the
25 methodologies are consistent across all different

1 players in terms of a view count aspect.

2 Where you get variation is the type of
3 video it is. So a Flash video versus an Ajax-run
4 video, so on and so forth. There's different video
5 formats called Fusion -- you know, that's why on an
6 iPad, sometimes you go and it says that video is not
7 accessible to that device because Apple does not
8 use -- will not use will not run Flash.

9 Q. Do each of those technologies count views
10 the same?

11 A. They use the same methodology for counting
12 views, yes.

13 Q. How -- on page 3 of your report, under the
14 Methodology section, the last line of the second
15 paragraph, you said that you had identified the type
16 of technology being used to perform the video -- video
17 view counts to identify any and all potentially known
18 factors, notations, et cetera, to validate their
19 accuracy. How did you identify the type of technology
20 that was being used?

21 A. It was that methodology of whether they
22 were -- how they were triggering the count of that
23 video or videos on their sites, because I wasn't able
24 to look the these exact pages. And so basically
25 looking at that -- the methodology of how they were

1 counting these videos; whether the count started on a
2 play action, for instance.

3 Q. And how did you determine that?

4 A. Basically looked at how they were tagging
5 that element that was defined as user views.

6 Q. Okay. And we can talk about that in a
7 second.

8 When we looked at the source code, that's
9 what you were talking about?

10 A. Uh-huh.

11 Q. With YouTube, do you know what it takes to
12 trigger a view in YouTube; like when it's counting
13 views, what action it requires to count as a view?

14 A. An actual click on the play button to watch
15 the video with the video actually starting.

16 So on YouTube, many videos will start with
17 an ad, right? So the video view count doesn't start
18 until that video has loaded, after that ad, for
19 instance.

20 Q. And are you certain that YouTube counts
21 views based on when the video actually starts, as you
22 just described it?

23 A. Yes. It's specifically something that they
24 speak about.

25 Q. Do some websites count web-page views as

1 video views?

2 A. I don't think so. It would not be
3 beneficial for them.

4 Q. It's my understanding from what you said
5 that some count views based on each person that clicks
6 play, right?

7 A. Uh-huh.

8 Q. Do some websites count views based on
9 whether a viewer is open?

10 A. Rephrase that.

11 Q. That the video loads on the page.

12 A. In terms of the preview of the video?

13 Q. No. Earlier you talked about the video
14 loading on a page.

15 A. Yes. So --

16 Q. Do some people count that video load as a
17 view count?

18 A. An accurate view count is based on someone
19 taking the action to start the video and then the
20 video actually starting.

21 So you would not want to count a view count
22 if somebody clicked play and their browser crashed,
23 because maybe they need an update or something like
24 that. That wouldn't count as a view because even
25 though they took the initial action, the video never

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 A. I went to the website and clicked on one of
2 the videos that was on the home page.

3 Q. This is one this you looked at, right?

4 A. Yes. This was kind of the least offensive
5 one at the time.

6 Q. When did you go to this site?

7 A. It was during the beginning of my research,
8 so that would have been the end of February, very
9 beginning of March.

10 Q. And why did you not go to the CrazyShit
11 page where the Gawker video was apparently posted?

12 A. Because it no longer existed.

13 Q. And what you did here, if I understand
14 the -- the text box is right on the -- or the drawing
15 right on the Exhibit 332, you right clicked on the
16 view box, right?

17 A. Yes. But first I highlighted that element
18 so that I could isolate it when I looked at view
19 source, and I actually -- on Exhibit 332, I show the
20 exact process of doing that quick check to look at the
21 views aspect of how they were labeling it in the
22 source code.

23 Q. So in this particular instance, you
24 highlighted viewed, and then the number 945 on the one
25 page?

1 A. Uh-huh.

2 Q. You then right click on your mouse and you
3 get view selection source?

4 A. Uh-huh.

5 Q. And you did that and pulled up a box with
6 dom source of selection, right?

7 A. Yes.

8 Q. Okay. What is dom source of selection?

9 A. This is a snippet of the source code from
10 the website that's particular to this section of the
11 website.

12 Q. Okay. And I just want to walk through what
13 the coding means, going from the top down to the first
14 few lines that are pertinent to this.

15 A. Uh-huh.

16 Q. What does the coding mean? Let's start
17 with the first line. There's a caret, div, id equals,
18 quote, content, dash, right, closed quote, caret?

19 A. Yes. So that defines that section that all
20 of this content exists in. So what that's saying is
21 this is the right content underneath the video.

22 Q. And the next line says, Emailed to BR.
23 What does that mean?

24 A. That essentially is the count of how many
25 times somebody emailed this video through their social

1 share links to someone else.

2 Q. And then the next line, I guess, is the
3 line that is highlighted that -- you highlighted this?

4 A. Yes.

5 Q. And this says, Viewed, colon, 9485 BR --

6 A. Yes.

7 Q. -- right?

8 Okay. What is the BR?

9 A. The BR is just a line break.

10 Q. Like hitting return on your keyboard?

11 A. It's like a soft return, yes.

12 Q. And "Viewed" is the text that appears on
13 this web page, right?

14 A. Yes.

15 Q. And "9485" is the text that appears, right?

16 A. Yes.

17 Q. Then underneath it has rating, colon, img
18 style equals, and it goes on. What is that?

19 A. That's essentially -- so it starts with
20 talking about the style sheet for the rating of the
21 video, so my guess is if that box -- if I hadn't put
22 this box right there, you would see, like, three stars
23 or four stars or whatever.

24 And then it's essentially speaking to
25 the -- the calling of the gif. So in this case it's

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 underscore views class equals view, what does that
2 mean?

3 A. Essentially, this is an area where they can
4 show ratings and views. They're defining it. The
5 class is the view, so that's how that should be
6 labeled in terms of the styling of the text and
7 number, and then they've actually broken out below
8 that in their span class to -- for the view's label,
9 which is the word views, and then they've actually
10 pulled in the total, which is the numeric value.

11 Q. What does span class refer to?

12 A. Span is just an area within a div. It's
13 like an encapsulated cell, for instance.

14 Q. So here it's saying that the span, this
15 area of the web page, is views, right?

16 A. Yes.

17 Q. And then it has span class total and then
18 the number 45035. That's just referring to the place
19 on the web page where that number is actually located,
20 right?

21 A. The top part, the div defines where the
22 entire -- entirety of this section is going to show
23 up, and then the spans are within that section, hence
24 the reason that these are actually stacked on top of
25 each other. So whatever span class they've defined

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. If you turn to tab 10, this is a screenshot
2 from Live Leak, right?

3 A. Right.

4 Q. Did you look at any Live Leak video?

5 A. I did.

6 Q. Do you have the coding from that?

7 A. I did not record the recording of it, but I
8 did look at their site.

9 Q. When did you do that?

10 A. Late -- early March, late February.

11 Q. As with these other sites, you didn't go to
12 this particular page where the Hogan video was posted?

13 A. No. It was unavailable.

14 Q. You just looked at this screenshot that was
15 provided to you?

16 A. Looked at the screenshot and then went to
17 their live site and looked at another video.

18 Q. Okay. On the front -- on the consolidated
19 view count on the first page of Exhibit 331, it says
20 the video views was 910,433, right?

21 A. Uh-huh.

22 Q. And that comes from the bottom left-hand
23 corner of this Exhibit 10 page that says views,
24 910,433, right; in the bottom left-hand corner?

25 A. Yes.

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 Plaintiff provided to us -- Plaintiff's counsel
2 provided to us.

3 But if you want to flip through there,
4 these are documents that were relied upon in your
5 report?

6 A. Yes. Let me make sure that all of these
7 are from me.

8 Yes, these are all related to the
9 membership research.

10 Q. Okay. Turning to the first page of this
11 report, Exhibit 335, there's a letter from you to
12 Sarah Luppen, and in that first paragraph you said
13 that you were asked to render an opinion regarding the
14 subscription fee for websites providing licensed
15 access to celebrity sex video content.

16 That's the scope of your assignment?

17 A. That was. The scope of the assignment was
18 that, plus basically defining that site based on which
19 one was ranked the highest based on typical queries
20 for this type of celebrity sex video type of consent.

21 Q. Okay. So that's what, like, the next
22 paragraph says: I completed this assignment by
23 determining the membership site with the highest
24 Google ranking for celebrity sex videos and verifying
25 the cost to view this type of video online when a

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 look at how much somebody would actually need to pay
2 to watch a celebrity sex tape online, right?

3 A. I was asked to document the -- a purveyor
4 of this sort of content that had a membership for
5 licensed videos of this nature.

6 Q. Okay. Looking at page 3 of your report, so
7 two pages down from where we were, in the second
8 paragraph, it says, My opinions are based on the
9 following: Information and documents produced in this
10 case by HMA, defining the type of content the Bollea
11 video represented.

12 The documents that you mention are these
13 documents provided in our Exhibit 336?

14 A. Yes, as well as the ones that are included
15 in the back of my report here.

16 Q. Was there information that was provided to
17 you, other than the documents that we've referred to,
18 on which you based your opinion?

19 A. No. Actually, this was completely
20 independent research into the highest ranking
21 membership site that was a purveyor of celebrity sex
22 videos.

23 Q. Okay. And from what you had said earlier,
24 you had never watched -- sorry.

25 From what you said earlier, you have never

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 Hogan sex tape.

2 Q. How did you do your keyword analysis?

3 A. A couple ways. So one was looking within
4 Google AdWords, which is their paid search management
5 system. Looking at keyword volume within that tool.

6 But primarily what I used was looking at
7 Google analytics data -- not Google analytics, Google
8 Trends data to understand what -- the volume of
9 certain keywords and keyword phrases against each
10 other.

11 And then within Google Trends there's
12 another section that can provide other terms based on
13 increasing volume and decreasing volume.

14 So basically putting in things like the
15 broadest search aspect of this, which would be
16 celebrity sex tapes, celebrity sex video, seeing how
17 those stack up against each other as two independent
18 phrases within Google system, and then looking at
19 the -- essentially the associated keywords that --
20 that Google Trends data provides.

21 Q. Do --

22 A. And then performing queries of those and
23 recording the highest ranking.

24 Q. And that -- those steps are reflected in
25 the pages that are attached as Exhibit 336?

1 A. Yes. So you can see the Google AdWords
2 research here. Here's Google Trends data.

3 Q. Yeah. Why don't we walk through these one
4 at a time.

5 A. No problem.

6 Q. The first one at the top says "Google
7 Keyword Tool Data for Paid Search Research for Bollea
8 Case"?

9 A. Yes.

10 Q. What is this?

11 A. So this is the Google AdWords Keyword
12 Planner that I spoke about. Google AdWords is the
13 paid search tool program, brand, whatever want to call
14 it, that Google uses for paid advertising.

15 It gives you really good, rich data based
16 on keywords that you enter, and it breaks it out all
17 sorts of different ways.

18 So I started here to get an understanding
19 of the bits and pieces, in terms of key words that
20 would relate to these phrases. So you can see here
21 sexy tapes celebs, Hollywood celebrities, leaked, so
22 on and so form. It breaks it out into a variety of
23 smaller bits.

24 So this was -- provides that kind of more
25 granular view of each word in each of these phrases,

1 which this first page goes through the two broadest,
2 celebrity sex video, celebrity sex tape. So it's
3 pulling keywords based on those things -- those two
4 phrases, and it's pulling out the breakouts of those.
5 That's why you see it concentrated on related words
6 like sexy tape, celebs, Hollywood celebrities.

7 The second one.

8 Q. Wait. Let's do one at a time. I don't
9 mean to be rude, but I want to make sure I understand
10 this page and --

11 A. No problem. We'll go through it as you
12 like.

13 Q. This Google AdWords, is this something any
14 member of the public has access to, or do you, like,
15 pay to access Google AdWords?

16 A. Anybody can access Google AdWords, but to
17 be active on Google AdWords, you have to spend money,
18 because you have to pay per click and actually run
19 ads. However, this tool, anybody with a Gmail.com
20 email would be able to access Google AdWords.

21 You would have to set up an account within
22 Google AdWords tied to your Gmail account; however,
23 once you did that and defined the account information
24 it required, you would then have access to this
25 Keyword Planner tool.

1 Q. Once you went to this tool -- it says, Your
2 product or service, in the red box here. You type in
3 celebrity sex video, celebrity sex tape, right?

4 A. That's exactly what I did.

5 Q. It then tells you -- if I understand what
6 you're saying right, it then tells you here's some
7 other terms?

8 A. It provides me a breakout of an -- a
9 breakout view of just tons of different possible
10 variations of these two queries.

11 So things like -- you can -- in this
12 preview, you can see, like, under sexy, the first
13 keyword phrase is sexy movies. Probably not one that
14 I would use to define because it doesn't define
15 celebrity, but it provides that sort of broad-scale
16 breakout of the keywords.

17 Q. And when it says at the top, Paid Search,
18 what is -- what does paid search refer to?

19 A. Google AdWords is how you manage paid
20 search through Google. It's the system accounts that
21 you have to use to be able to do paid search on
22 Google. This tool, the Keyword Planner, is only
23 accessible through Google AdWords.

24 Q. And the information that it's then
25 providing at the bottom is telling you which of these

1 terms have higher or lower monthly searches, like
2 which is the most popular search term?

3 A. It's telling me out of these groups -- so
4 this -- you can notice that it says Ad group and then
5 in parentheses, by reference -- or relevance.
6 Essentially all it's done is Google has analyzed the
7 two phrases that I put in, not only the phrases but
8 the individual words that are part of those phrases,
9 and provided me with a pool of keywords that might be
10 related but are somehow close and possibly associated
11 with my initial queries that I enter.

12 Q. Okay. And then the next page in
13 Exhibit 336 is what?

14 A. This is -- so on page 1 you'll see that
15 there's -- the second AdWord -- Ad group's category is
16 tape.

17 Q. Uh-huh.

18 A. This is the actual click into that -- the
19 recommendation, granular keywords that Google broke
20 out in that category -- in that section, hence the
21 reason it says Ad group, colon, tape, below the entry
22 box.

23 Q. What did you use -- so this shows specific
24 keywords tied to that second tape listing on the first
25 page, right?

1 A. It's the more granular view of that, yes.

2 Q. And then going through the various columns,
3 it suggests keywords by relevance, right?

4 A. Keywords that are -- it feels may have some
5 relevance to what it is that I'm trying to do with
6 these. As it says, my product or service. In this
7 case, the product or service I entered is celebrity
8 sex videos and celebrity sex tapes.

9 Q. The next column is Average Monthly
10 Searches. What is that?

11 A. That is how many paid advertising queries
12 that these may represent.

13 Q. What is --

14 A. So.

15 Q. -- paid advertising?

16 A. So it's how many times they may display a
17 paid ad against a query for this keyword phrase.

18 Q. And so when it has the number 3,600, what
19 does that mean?

20 A. That means that potentially for the exact
21 match on celebrity tapes, Google is saying that
22 paid-wise, it's only going to show up to about 3600 --
23 it's only going to appear -- their estimate is that it
24 gets about 3600 queries per month.

25 Q. So like celebrity sex tapes, the second

1 one, that would only get 720 queries a month?

2 A. Yes. Now, what I can't remember is if it
3 is represented as thousands. I should have expanded
4 out that question mark for you, but --

5 Q. And then when it says, Competition low,
6 this is part of the bidding process?

7 A. That has to do with paid advertising.
8 Essentially, there's not a lot of people who bid on
9 this keyword because of the fact that Google is kind
10 of restrictive on who is allowed to do advertising
11 against adult keywords, hence the reason these numbers
12 are also lower, due to the fact that this represents
13 the paid advertising pool.

14 Q. In what ways is Google restrictive?

15 A. In terms of paid search advertising?

16 Q. Yeah.

17 A. Well, they -- they restrict the type of
18 content. It's like, you know, Google isn't -- doesn't
19 want to be known as facilitating lots and lots of
20 pornography type of advertising. They try to keep
21 that clean, because advertising can come through the
22 adult on/off switch that you have on a Google query.

23 So every Google query -- and when you go
24 into your Google account, there's a setting that you
25 can say, Show all or moderate where -- or, you know,

1 it's basically the strictness of the results that
2 Google will show you.

3 If you have kids at home, which we talked
4 about, and you do, you would want that set to hide
5 permission so that it wouldn't show stuff that you
6 would not want your kids looking at.

7 There's a permission setting that's in
8 there, and that's kind of what restricts some of this
9 display against the paid search side.

10 Q. And then the next page in Exhibit 336 is
11 what?

12 A. This is the Google Trends view. So this is
13 accessible to anybody. Just go to Google.com/trends.
14 You can enter up to five keywords or phrases separated
15 by commas, and it will give you a breakout of how
16 those stack in terms of their relationship to each
17 other.

18 So you can see here that the highest query
19 was the yellow query, which if you look in the red box
20 that I put there, that's just the broadest term of
21 celebrity sex; whereas red, which is the second
22 highest volume, is the second one, which is celebrity
23 sex tapes, plural; while blue, celebrity sex videos,
24 is actually a lower volume query than the other two.

25 Q. And you went through these three steps to

1 ultimately determine which keywords you would use to
2 run searches on Google, looking for the highest
3 ranking membership site?

4 A. Essentially, yes, to try to get an
5 understanding of the different scales of search volume
6 associated with these phrases related to celebrity sex
7 tapes.

8 Q. Okay. And that then is how you decide what
9 searches to then run?

10 A. Yes. In terms of this research, I took a
11 look at how this stacked up and then, you know --
12 like, you can see, like, the ones that included new
13 celebrity video or new celebrity sex tape, there was
14 really no volume, so I didn't do a lot of querying
15 around that aspect.

16 The only modification I did was add the
17 word membership to my first query since I wanted to at
18 least get some idea of identifying sites that may have
19 a membership, which the next page shows.

20 Q. Okay.

21 A. So essentially I did that celebrity sex
22 videos query with the word membership on it, as well,
23 and interestingly enough, this whole first page is --

24 Q. What page are you looking at now?

25 A. Page 3 of Exhibit 14 or --

1 Q. Page 4.

2 A. -- Exhibit 336, I think that says.

3 Q. It's the one that you did celebrity sex
4 videos membership search on Google?

5 A. Yes. Exactly. Which is interesting
6 because a lot of the others -- you know, as I went
7 through, you know, page 1 of this stuff, all of these
8 others were -- you know, the only reason they ranked
9 against that word membership was because somewhere on
10 their page they called that no membership fees,
11 whereas the only one on this page that actually really
12 had a membership was that first one, which is the
13 VividCeleb.com site.

14 Q. Okay. And I want to talk about the
15 searches in just a second.

16 I know this may be a complicated
17 question -- or it's a simple question, but may involve
18 a complicated answer. Give me the sort of a thumbnail
19 description of how Google determines what is ranked
20 highly in a search.

21 A. Okay. There's nobody who really has that
22 full equation.

23 Q. I understand. But just based on your
24 understanding.

25 A. Based on my understanding of doing search

1 engine optimization for many, many years now,
2 essentially there's anywhere between 600 to a thousand
3 variables, and these variables can be really, really
4 small or very, very large.

5 It could be based on the content on the
6 page, your URL, your main domain that starts your URL,
7 the code on your page, the -- how fast your site loads
8 the content on that page. And like I said, that only
9 covers maybe five of the 600-plus variables that they
10 look at.

11 But they look at -- they look at all of
12 those things. And they continue to evolve the -- the
13 algorithm that ranks this, just like Bing does, too.

14 Bing claims to have over a thousand
15 variables within theirs. Google is -- claims to have
16 around that same amount of number.

17 But they're all meant to algorithmically
18 determine, based on the keywords entered in a query,
19 what is most relevant to a searcher.

20 So to take it away from the celebrity sex
21 tape, if you want to buy a blue car, Google's going to
22 look for blue cars that are for sale at web pages that
23 have some content that ties to that, whether it
24 includes all of those words or variations of those
25 words.

1 So you might say I want to sell a car and,
2 you know, page 3, 4, 5, 6, 7 down might have, you
3 know, buy a car because sell and buy have a
4 relationship. Or sold cars versus selling cars, you
5 know, those types of things.

6 So there's a lot of different algorithmic
7 aspects that Google builds in here. If you do a
8 search for video, singular, it's going to be bring
9 back things that are relevant to the plural as well,
10 hence the reason that this four-word query of
11 celebrity sex videos membership has more than
12 2.2 million results.

13 Q. Right. So why don't we go through the
14 various searches here. Before we do, can we just take
15 a quick break?

16 THE VIDEOGRAPHER: Off the record at 2:39.
17 (Recess: 2:39 - 2:41 p.m.)

18 THE VIDEOGRAPHER: Back on the record at
19 2:41.

20 BY MR. BERRY: (Continuing)

21 Q. So looking back at Exhibit 336, the first
22 search that you ran was celebrity sex videos
23 membership, right?

24 A. Uh-huh.

25 Q. And the top response that you got was

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. You can go forward.

2 What are the first three results there?

3 A. They're PornHub.

4 Q. Search No. 3 that you did, the next one was
5 celebrity sex tape, the next search that you did?

6 MR. VOGT: Are you doing screen captures or
7 anything on this?

8 MR. BERRY: That's what we're videoing.

9 MR. VOGT: I'm going to object to that, as
10 well.

11 MR. BERRY: What's the objection?

12 MR. VOGT: I don't think the videotape is
13 accurately -- accurately recording the content of the
14 entire searches that are being conducted, so it's not
15 accurately recording the evidence of what you're
16 asking him to do right now.

17 MR. BERRY: Do you want him to scroll
18 through the rest of the page?

19 MR. VOGT: I'd like him to scroll through
20 it, but I'd also like for there to be some documentary
21 evidence of what he's doing and what he's showing.

22 MR. BERRY: Other than the video?

23 MR. VOGT: Uh-huh.

24 MR. BERRY: Just make sure that you can see
25 the search results.

1 BY MR. BERRY: (Continuing)

2 Q. And Mr. Shunn, if you could just scroll
3 down so that the page results are shown on there.
4 Freeze it for a second so that -- you can go back up
5 to the top.

6 MR. VOGT: Actually, can he go to page 2?

7 BY MR. BERRY: (Continuing)

8 Q. Okay. Go to page 2.

9 A. See, doing it by location and this computer
10 being a different computer -- and I don't know what
11 history this computer has for Google -- the rankings
12 are different, but rankings are different for
13 everybody.

14 Q. But there's -- again, Vivid Celeb is on
15 there?

16 A. Yes.

17 Q. Just like your search --

18 MR. VOGT: Can you zoom in on the number of
19 results, too, up at the top?

20 THE WITNESS: 183 million. About 183.

21 MR. HARDER: Let me ask: If this computer
22 has a particular search history, can you clear that
23 history and have a fresh -- you know what I'm talking
24 about?

25 THE WITNESS: I should be able to clear all

1 the cookies. As long as this computer has never
2 logged into a Gmail account, it should be fine, but if
3 it's logged into a Gmail account, there will be some
4 still hard-coded aspects to it.

5 MR. VOGT: Who's computer is it?

6 THE VIDEOGRAPHER: It's our firm's
7 computer, and I can't say one way or the other whether
8 it has or has not. I would suspect it probably has,
9 but --

10 MR. BERRY: Right. I can tell you I
11 checked my Gmail account on this computer.

12 BY MR. BERRY: (Continuing)

13 Q. Do you recall --

14 MR. VOGT: I don't want you doing anything.
15 Just do what he asks you to do, but you're not going
16 to touch this or alter this device.

17 BY MR. BERRY: (Continuing)

18 Q. Mr. Shunn, when you ran this celebrity
19 sex -- sorry.

20 When you ran the search that we were
21 talking about, celebrity sex videos, do you recall
22 what the first three results were? Not today, but
23 when you ran the search for your report.

24 A. No. I was specifically scrolling, looking
25 for a specific membership site.

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. Yes.

2 Q. And Vivid Celeb appears third there, right?

3 A. So No. 13, yes.

4 Q. Because this is the second page of --

5 A. Yes. Page 2 of 327 million.

6 Q. Do you recall what was on page 1?

7 A. No.

8 Q. The first item that appears on page 2, what
9 website is that?

10 A. Red Tube.

11 Q. Do you know what Red Tube is?

12 A. I don't. But I can -- looking at their
13 URL, I wouldn't have used it. It's using a search
14 query URL.

15 Q. What does that mean?

16 A. Essentially it means it's not a static
17 page. It's Redtube.com, slash, question mark, search
18 equals, means all it's doing is yet another search on
19 that website, which means that it's not going to a
20 static page. It's going to something that changes all
21 the time. So I wouldn't use that. Essentially, it's
22 a dynamic URL that's ranking there.

23 Q. Do you know whether Red Tube shows free
24 pornography?

25 A. No, but I would assume so, because it

1 doesn't talk about any costs associated with watching
2 it.

3 Q. If you could run the search for celebrity
4 sex --

5 MR. VOGT: Same objections as before.

6 MR. BERRY: I understand.

7 BY MR. BERRY: (Continuing)

8 Q. And what's the second result there?

9 A. PornHub.

10 Q. And what's the first?

11 A. XNXX.com.

12 Q. Do you know anything about XNXX.com?

13 A. No. Just that, apparently, evergreen or
14 some Japanese stepmom reality sex.

15 Q. For the record, would you mind just
16 scrolling through the first page so that you can see
17 the results.

18 Actually, on this one, Vivid Celeb comes up
19 on the first page?

20 A. Yes, it does. Number ten, nine, eight.

21 Q. The next search that you ran that's
22 reflected in Exhibit 336 is new celebrity sex videos?

23 A. Uh-huh.

24 Q. For this, Vivid Celeb ranks on the eleventh
25 page, right?

1 A. Yes.

2 Q. Do you know what appeared on the prior ten
3 pages?

4 A. Lots of other websites involving new
5 celebrity sex videos.

6 Q. Do you have any record of what was on those
7 ten pages, when you actually ran this search?

8 A. No. I didn't record the ten previous
9 pages.

10 Q. Would you mind running this search here for
11 new celebrity sex videos?

12 MR. VOGT: Same objections.

13 BY MR. BERRY: (Continuing)

14 Q. What are the top two results?

15 A. PornHub.com.

16 Q. For both one and two, right?

17 A. One and two. Followed by Ranker.com, which
18 is just a list of sex tapes, apparently.

19 Q. Would you mind just scrolling through so we
20 can capture all of it.

21 The next search that you ran that's shown
22 in Exhibit 336 is new celebrity sex tapes, right?

23 A. Yes.

24 Q. And Vivid appeared for the first time on
25 page 5 of that search?

1 A. Uh-huh.

2 Q. Do you know what appears on the prior four
3 pages?

4 A. Same answer. I didn't record those pages.

5 Q. And you don't have copies of them now?

6 A. No.

7 Q. Do you know whether PornHub was on those
8 first four pages?

9 A. Given where they've ranked on everything
10 else, I would assume that PornHub was somewhere on
11 there.

12 Q. Prior to Vivid Celeb, what is the search
13 result that shows up on your printout; the Racine,
14 Wisconsin, Yellow Pages?

15 A. Oh, I didn't quite understand. I thought
16 you were asking about previous pages.

17 Yes. Yellow Pages ranks there.

18 Q. The next search that you did run --

19 A. Which is kind of odd because that's a
20 dynamic insertion. I don't think Yellow Pages would
21 be too happy about realizing -- I don't think Racine,
22 Wisconsin, might be too happy about that either.

23 Q. The next search that you ran was watch
24 famous sex tapes, right?

25 A. Uh-huh.

1 Q. And on that page, Vivid Celeb appears as
2 number five, right?

3 A. Yes.

4 Q. And as number three is PornHub?

5 A. Number three is PornHub.

6 Q. The next search that you ran was high
7 quality celebrity sex videos, right?

8 A. Yes.

9 Q. And VividCeleb.com showed up on the fourth
10 page there?

11 A. Yes.

12 Q. Do you recall what was on the previous
13 three pages?

14 A. No.

15 Q. Do you know whether PornHub was on the
16 prior three pages?

17 A. No, I don't remember.

18 Q. Do you have any record of what appeared on
19 those first three pages when you ran the search?

20 A. No, I didn't record those pages. At this
21 point in time, I had already, based on looking at the
22 first query, determined which one actually ranked the
23 highest for -- with a membership. Essentially, the
24 rest of these queries are to identify that Vivid Celeb
25 is actually still ranking and pertinent to all of

1 these other queries.

2 Q. And so, ultimately, if I understand, your
3 conclusion was that the highest ranked membership
4 website specializing in celebrity sex videos is
5 VividCeleb.com?

6 A. Yes, as stated in my -- my write-up.
7 Specifically it was to determine the highest ranking
8 membership-based celebrity sex video website as per
9 Google's ranking algorithms, which Google assumed was
10 the most relevant to that query.

11 Q. But Vivid Celeb is not the highest ranking
12 site for viewing celebrity sex tapes, right?

13 MR. VOGT: Objection to form.

14 THE WITNESS: Rephrase that.

15 BY MR. BERRY: (Continuing)

16 Q. For somebody who does searches for
17 celebrity sex tapes, as the searches you ran, it would
18 not -- Vivid Celeb would not be highest ranking site,
19 correct?

20 MR. VOGT: Objection to form.

21 THE WITNESS: They would not be the highest
22 ranking website, unless you're looking for a
23 membership to a legitimate website.

24 BY MR. BERRY: (Continuing)

25 Q. What do you mean by "legitimate"?

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 you take this one down, because it's about that one
2 right there?

3 MR. BERRY: Yeah.

4 MR. VOGT: The top item on the search that
5 you're looking at on the screen right now, the PornHub
6 search --

7 THE WITNESS: Uh-huh.

8 MR. VOGT: You had mentioned before about
9 Red Tube, that there's a static search and a different
10 kind of search?

11 THE WITNESS: Oh, yes.

12 MR. VOGT: What is that one that's up there
13 for PornHub?

14 THE WITNESS: The first is essentially a
15 search query. It just happens to be a page that's
16 indexed with this exact query that I typed in. So
17 essentially what they've done is -- and even Google
18 recommends not to do this, but what they've done is
19 created massive amounts of pages with different sorts
20 of search terms.

21 So essentially like all of that keyword
22 research I did, they've now done those queries on
23 those pages and then submitted those to Google to
24 basically have those pages float up based on a keyword
25 relevance in the URL itself.

1 MR. VOGT: That's it.

2 THE WITNESS: That's why the descriptions
3 are always the same. If you look at version one and
4 version two, both of them have the exact same or
5 pretty close to it description. They both start out
6 with the same thing of watch celebrity sex tapes, you
7 know. You can even see where they're inserting the
8 keyword in the search one versus the static video one.

9 MR. VOGT: All right.

10 MR. BERRY: Why don't we take a quick break
11 to put the screen back.

12 THE VIDEOGRAPHER: Off the record at 2:57.

13 (Recess: 2:57 - 3:02 p.m.)

14 THE VIDEOGRAPHER: The time is 3:02, and we
15 are back on the record.

16 BY MR. BERRY: (Continuing)

17 Q. Other than Vivid Celeb, did you look at any
18 other membership-based websites?

19 A. No. Because this is the specific one that
20 had a specific call-out for celebrity sex tapes,
21 highlighted that it had a membership within its search
22 listings, so it would be prescreening people; and it
23 actually had listings of actual celebrity sex tapes,
24 so it referenced the commonly known ones that are out
25 there.

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 had access to their back-end analytical data to be
2 able to be able to analyze that to make sure that our
3 website or websites were being used appropriately and
4 were actually useable by people.

5 Q. And here -- I'm sorry.

6 A. I mean, analytics is meant to determine the
7 type of people who are visiting your site, what they
8 do on your website, whether there's something that's
9 broken on your website.

10 You may find a page that one day was doing
11 really well, had lots of user engagement KPIs that
12 were positive, and then, you know, has a break in it.
13 Sometimes it doesn't get noticed for a month or two
14 because users don't report it or, you know, whatever,
15 but you can look at the analytics and you can
16 identify, Look. This page did really well. Now this
17 page is doing nothing. We need to look at this page.
18 Sometimes you go there and there's something that got
19 broken.

20 Q. But you didn't have access to that for
21 Vivid, I guess, is what you're saying.

22 A. No. You'd have to be -- I don't think
23 Vivid Celeb is going to give access to that
24 information to just anybody off the street, especially
25 since with Google analytics I can go in and see

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 on VividCeleb.com is 4.95 for a four-day pass with
2 re-occurring billings happening every four days unless
3 the subscription is manually cancelled. The result is
4 that it would cost a minimum of \$4.95 to view a
5 specific celebrity sex video on VividCeleb.com.

6 That's your conclusion?

7 A. Yes. That's what I stated earlier, is that
8 even if you just wanted to watch one of those videos,
9 you still would have to pay that lowest tier of
10 membership fee.

11 Q. If somebody wanted to go and watch a
12 celebrity sex tape, that is not the minimum amount
13 that they would need to pay --

14 MR. VOGT: Objection to form.

15 BY MR. BERRY: (Continuing)

16 Q. -- is it?

17 A. Can you rephrase it?

18 Q. This is just the minimum amount that they
19 would need to pay at Vivid Celeb, correct?

20 A. Yes. So based on to be able to view a
21 licensed celebrity porn video, they would have to pay
22 that 4.95 at Vivid Celeb to see that.

23 Q. If somebody wanted to see a licensed
24 celebrity sex tape on the Internet, could they do so
25 without paying 4.95 to Vivid Celeb?

1 A. I'm sure they could, but it doesn't mean
2 that it's actually licensed to be there.

3 Q. How do you know that?

4 MR. VOGT: Same objection.

5 THE WITNESS: Just -- I'm just assuming
6 that the fact that the celebrities got paid to list
7 their videos here or had, I'm assuming, some
8 compensation based on the fact that they're licensed
9 videos, which implies that there was some agreement
10 made to host these videos, that these are the
11 legitimate videos versus what would be out there
12 cowboy style, for instance.

13 BY MR. BERRY: (Continuing)

14 Q. Are you suggesting, through your report,
15 that anyone would pay this 4.95 to watch the video
16 that Gawker posted of Hulk Hogan and Heather Clem?

17 MR. VOGT: Objection to form.

18 THE WITNESS: My guess is people would pay
19 4.95 to see that. If they were huge Hulk Hogan fans,
20 they may also pay that to watch the entire video
21 versus the clipped video that was posted by Gawker.

22 BY MR. BERRY: (Continuing)

23 Q. Do you know if anybody would actually pay
24 that amount to watch the clipped version that was
25 posted on Gawker?

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

1 it was called the Hulk Hogan sex tape.

2 BY MR. BERRY: (Continuing)

3 Q. Do you know whether it showed closeups of
4 anybody's body parts?

5 MR. VOGT: Objection to form; asked and
6 answered.

7 MR. HARDER: It's ridiculous.

8 THE WITNESS: No idea. I've never seen the
9 video, so --

10 BY MR. BERRY: (Continuing)

11 Q. Okay. Do you know how graphically the sex
12 acts were depicted?

13 MR. VOGT: Objection to form; asked and
14 answered.

15 THE WITNESS: Again, I've never seen the
16 video.

17 BY MR. BERRY: (Continuing)

18 Q. Are you -- do you know whether it's a
19 strategy in the pornography industry to distribute
20 clips of pornography videos based on the theory that
21 somebody will then buy the videos?

22 MR. VOGT: Objection to form.

23 THE WITNESS: No idea.

24 BY MR. BERRY: (Continuing)

25 Q. You're familiar with the concept in regular

1 movies that they show trailers, right?

2 A. Yes, I am familiar with trailers of movies,
3 or teasers.

4 Q. Yeah. The movie studio will show you a
5 trailer in hopes that you will buy a ticket later to
6 watch the movie, right?

7 A. Uh-huh.

8 MR. VOGT: Objection to form and scope.

9 BY MR. BERRY: (Continuing)

10 Q. Are you familiar with that in the
11 pornography industry?

12 MR. VOGT: Objection to form and scope.

13 THE WITNESS: No.

14 BY MR. BERRY: (Continuing)

15 Q. When you did you research for this case,
16 you went to Vivid website, right?

17 MR. VOGT: Objection; form; asked and
18 answered multiple times.

19 THE WITNESS: Yes, I went to the site,
20 obviously. I took I screen shot of it.

21 BY MR. BERRY: (Continuing)

22 Q. When you went to the Vivid Celeb website,
23 did you see whether it showed clips from the sex tapes
24 of celebrities?

25 A. No. That was not anything I'd be

1 interested in. Just this gateway page.

2 MR. BERRY: Can we go off the record?

3 THE VIDEOGRAPHER: Off the record at 3:24.

4 (Recess: 3:24 - 3:38 p.m.)

5 THE VIDEOGRAPHER: Back on the record at
6 3:38.

7 BY MR. BERRY: (Continuing)

8 Q. Mr. Shunn, there's a small laptop in front
9 of you, and we've gone to the website Vivid Celeb.com,
10 right?

11 A. Yes.

12 Q. And this is the website that you went to to
13 find the membership amounts that we talked about a
14 moment ago?

15 A. Yeah. Well, it was the site that ranked
16 highest in Google for celebrity sex tapes with a
17 membership fee.

18 Q. But this is the actual page that you went
19 to?

20 A. Yes. I'm looking at the home page of
21 VividCeleb.com.

22 Q. Okay. What I'd like you to do -- the top
23 video on that page is Kim Kardashian's sex tape,
24 right? Do you see that?

25 A. Yes.

1 MR. VOGT: Before you start, I'm going to
2 note my objection to form, scope, as well as to the
3 use of the video during the course of the deposition.

4 MR. BERRY: Understood.

5 And we have produced the video that's going
6 to be played is at disk -- which we can mark as an
7 exhibit, if y'all would like, or we can just have it
8 for the record, as Gawker 27121, and that includes a
9 number of videos including one that's labeled as
10 Trailer Video from Vivid.

11 BY MR. BERRY: (Continuing)

12 Q. So if you see on that page, there's a video
13 box there for Kim Kardashian, correct?

14 A. Yes. There's a picture of her in a dress,
15 Ray J standing next to her in a leather jacket, and
16 then a video -- not even a video player, but just a
17 window that has a play button in the middle of it.

18 Q. What's in that picture?

19 A. Her laying on her stomach and him pressed
20 up against her ass.

21 Q. Can you click play on that video? You can
22 also use the mouse, if it's easier.

23 A. Unable to load media data. Please try
24 again.

25 Q. Can you try again?

1 A. F5, see if it refreshes.

2 No, it's not coming back. Refresh again.

3 Okay. Do you want me to try clicking play
4 again?

5 Q. Did it refresh?

6 A. It refreshed.

7 Q. Yeah, if you would try again.

8 A. Just a black picture box right now.

9 Q. It may take a second to load.

10 MR. BERRY: Can we go off the record?

11 THE VIDEOGRAPHER: Off the record at 3:41.

12 (Recess: 3:41 - 4:43 p.m.)

13 THE VIDEOGRAPHER: Back on the record at
14 3:43.

15 BY MR. BERRY: (Continuing)

16 Q. So we've switched out the computers, but
17 we're back on VividCeleb.com, right?

18 A. Yes. It's the home page again.

19 Q. Looking at that home page again, you're
20 seeing the same thing that you described before with
21 Kim Kardashian's sex tape being the first one listed
22 and the same images you described previously?

23 A. Same images. So it's not scrolled down
24 now, so I can see the header where it says, Members
25 log in and get all celebrities sex tapes for one low

1 price, click here.

2 Q. Do you see the same video box next to the
3 Kim Kardashian sex tape?

4 A. Yeah. It's got, like I said, her in the
5 dress on the left next to Ray J underneath the Vivid
6 Celeb logo, and then Kim K. Superstar with the video
7 picture underneath.

8 Q. And the video box has the same image of her
9 lying down that you described before?

10 A. Yes.

11 Q. Okay. Now if you could click play on that
12 video box.

13 A. Okay. So it's just some scrolling text.

14 MR. HARDER: Just wait for a question.

15 (Video played.)

16 BY MR. BERRY: (Continuing)

17 Q. It's now done running, right?

18 A. It's asking you to log in or pay money now.

19 Q. Okay. So you saw excerpts from the sex
20 tape there, right?

21 A. I assume so. You couldn't really see
22 anything.

23 Q. Right. You saw images of Ray J and Kim
24 Kardashian in different places, right?

25 A. Yeah. On a beach, talking to each other, a

1 night vision, a couple of other random kind of
2 aspects.

3 Q. Did you see Kim Kardashian engaged in sex
4 acts?

5 A. Actually, no, you did not.

6 Q. You saw her engage in sex acts, but you
7 didn't see any private parts, right?

8 MR. VOGT: Objection to form and asked and
9 answered.

10 THE WITNESS: No.

11 BY MR. BERRY: (Continuing)

12 Q. When she was saying, Oh, baby, what were
13 you seeing?

14 A. Actually, they were showing her on a beach
15 coming out of the water.

16 Q. Did you see her on the bed having sex?

17 MR. VOGT: Objection to form; asked and
18 answered.

19 THE WITNESS: No. I saw a bed, I saw them
20 in night vision on the bed, but there was no actual
21 sex shown.

22 BY MR. BERRY: (Continuing)

23 Q. Okay. If you could now scroll down the
24 page to Montana Fishburne.

25 A. There's no scroll bar on this.

1 MR. BERRY: Can we go off the record for a
2 minute?

3 (Discussion off the record.)

4 THE VIDEOGRAPHER: Back on the record.

5 BY MR. BERRY: (Continuing)

6 Q. We've scrolled down that same page to a
7 section of the website dealing with a woman named
8 Montana Fishburne, right?

9 A. Yes.

10 Q. And there's a video box of her topless
11 there, correct?

12 A. There is.

13 Q. In a second, I'm going to ask you to click
14 play.

15 And that video also is on the same Gawker
16 27121, and it's labeled B-205 -- 2015-03-18,
17 underscore, 12-22-25.

18 If you could click play.

19 A. Okay. Like I say, I'm not really
20 comfortable watching porn, so --

21 Q. Is it playing?

22 A. (No audible response.)

23 (Video played.)

24 BY MR. BERRY: (Continuing)

25 Q. Did you see excerpts from a sex tape there?

1 MR. VOGT: Objection to form.

2 MR. HARDER: Objection.

3 THE WITNESS: Yes.

4 BY MR. BERRY: (Continuing)

5 Q. Did you see frontal nudity there?

6 A. Yes.

7 Q. Did you see Montana Fishburne engaged in
8 sex acts?

9 MR. VOGT: Objection to form.

10 THE WITNESS: No. Just topless.

11 BY MR. BERRY: (Continuing)

12 Q. Was she in the process of having -- of
13 engaging in sex acts in any of those topless shots?

14 MR. VOGT: Objection to form.

15 THE WITNESS: Not sure.

16 BY MR. BERRY: (Continuing)

17 Q. Did you pay anything to watch that?

18 MR. VOGT: Objection to form.

19 THE WITNESS: Did what?

20 BY MR. BERRY: (Continuing)

21 Q. Did you have to pay anything to watch that
22 on Vivid Celeb?

23 MR. VOGT: Objection to form.

24 THE WITNESS: No.

25 BY MR. BERRY: (Continuing)

1 Q. Do you know -- do you know whether Vivid
2 Celeb distributes its content through PornHub?

3 A. No idea. Like I said, I'm not part of this
4 business.

5 Q. Do you know whether it provides more
6 graphic sex excerpts from these sex tapes than you saw
7 for free through PornHub?

8 MR. VOGT: Objection to form.

9 THE WITNESS: No idea.

10 Can I close this window now?

11 BY MR. BERRY: (Continuing)

12 Q. Oh, yeah. Absolutely.

13 A. Thanks.

14 MR. BERRY: I'd like to mark this document
15 as 337.

16 (Exhibit 337 marked for identification.)

17 BY MR. BERRY: (Continuing)

18 Q. And I'll represent to you that what Exhibit
19 337 is a printout from the PornHub website that
20 displays a video that is five minutes long of the Kim
21 Kardashian sex tape with Ray J that's sold on Vivid.
22 That video is also on Gawker 27121, and the file
23 number is B, underscore, 2015, underscore -- or dash,
24 03-18, underscore, 11-48-28.

25 On this page there's advertisements for

1 Vivid Celeb, correct?

2 A. Yes. It's on the right side.

3 Q. On the bottom under the -- well -- and
4 there's the -- also one that's underneath the video
5 player, right, that says KimKsuperstar.com?

6 A. Yes.

7 Q. Under that box, what's the views?

8 A. 105,771,119.

9 Q. On the right-hand side there's a button
10 that says, Subscribe, correct?

11 A. Yes. There's an orange button that says,
12 Subscribe.

13 Q. And next to that on the left it says, From
14 Vivid Celebs, correct?

15 A. To the left of the button?

16 Q. Yes.

17 A. Yes. It says that -- yeah, Vivid Celebs is
18 the user name.

19 Q. Right. It says, From Vivid Celebs. Then
20 it has a little icon, 18 videos. Do you see where I
21 am?

22 A. Uh-huh.

23 Q. And then it says, Subscribe, right?

24 A. Yeah. It's got that orange subscribe
25 button we talked about.

1 Q. And then what's the number next to
2 subscribe?

3 A. 15,099.

4 Q. If that subscribe button allows
5 subscriptions to be obtained, would that suggest what
6 the conversion rate would be on this?

7 MR. VOGT: Objection to form.

8 BY MR. BERRY: (Continuing)

9 Q. 105 million views, 15,000 subscriptions?

10 A. Do you have a --

11 MR. VOGT: Objection to form.

12 THE WITNESS: Do you have a screenshot of
13 where that subscribe button goes?

14 BY MR. BERRY: (Continuing)

15 Q. I'll represent to you that it takes you to
16 Vivid Celeb.

17 A. And it takes you to the sign-up page?

18 Q. Correct. Correct.

19 MR. VOGT: Objection to form.

20 THE WITNESS: I don't know if it would
21 represent a conversion rate because this is -- this
22 essentially represent advertising. So they're
23 advertising here, so it's one channel of many.

24 BY MR. BERRY: (Continuing)

25 Q. Right. And of those 105 million views, it

1 yielded, at least according to this, 15,000 --

2 A. That just represents how many were tracked
3 to this website. It doesn't represent how many
4 actually convert from that site.

5 So a conversion rate -- to go back to the
6 very, very beginning of our conversation, a conversion
7 rate is represented based on traffic on -- on the
8 actual website and then conversions of that traffic.

9 This would be a single advertising channel,
10 and it would only represent the conversion
11 specifically cookied and tagged back to this. So if
12 one of these 105-million-plus people had gone and --
13 let's say, like retail shoppers, which I'm more
14 familiar with, went and did a search for Vivid Celeb
15 coupon code, they may click on another site, and then
16 it wouldn't record here because they broke that cookie
17 link.

18 So I -- I -- I will be honest. I could not
19 state that that would represent a percentage
20 conversion rate.

21 Q. Okay. Other than what we've discussed
22 today, do you have any other opinions concerning this
23 litigation?

24 A. Not at all. Just the facts that I covered
25 within my write-ups.

1 Q. Having testified today, do those opinions
2 remain the same?

3 A. Yes, they do.

4 Q. Do you plan to do any additional work on
5 this case?

6 A. Only if requested or new materials need to
7 be looked at.

8 MR. BERRY: I have no further questions.

9 MR. VOGT: He'll read.

10 THE VIDEOGRAPHER: The time is 3:55. We
11 are off the record.

12 (Proceedings concluded at 3:55 p.m.)

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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