

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 AMERICAN CIVIL LIBERTIES : CIVIL ACTION  
4 UNION, ET AL :  
5 :  
6 PLAINTIFF :  
7 :  
8 VS. :  
9 :  
10 JANET RENO :  
11 IN HER OFFICIAL CAPACITY AS :  
12 ATTORNEY GENERAL OF THE :  
13 UNITED STATES :  
14 :  
15 DEFENDANT : NO. 98-05591

MONDAY, OCTOBER 23, 2006  
COURTROOM 17-A  
PHILADELPHIA, PA 19106

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BEFORE THE HONORABLE LOWELL A. REED, JR. SJ

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NON-JURY TRIAL  
DAY 1

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APPEARANCES:

17 CHRISTOPHER A. HANSEN, ESQUIRE  
18 ADEN J. FINE, ESQUIRE  
19 BEN WIZNER, ESQUIRE  
KATHARINE MARSHALL, ESQUIRE  
20 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
125 BROAD STREET, 18TH FLOOR  
NEW YORK, NY 10004-2400  
(212) 549-2606 FOR THE PLAINTIFFS

SUZANNE R. WHITE, CM  
22 FEDERAL CERTIFIED REALTIME REPORTER  
23 FIRST FLOOR U. S. COURTHOUSE  
601 MARKET STREET  
24 PHILADELPHIA, PA. 19106  
(215) 627-1882

25 PROCEEDINGS RECORDED BY STENOTYPE-COMPUTER,  
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

1 APPEARANCES: (CONTINUED)

2 CHRISTOPHER HARRIS, ESQUIRE  
3 BENJAMIN SAHL, ESQUIRE  
4 JEROEN VAN KWEGEN, ESQ.  
5 ADDISON F. GOLLODAY, ESQ.  
6 LATHAM & WATKINS  
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FOR THE PLAINTIFFS

7  
8 U.S. DEPARTMENT OF JUSTICE  
9 CIVIL DIVISION  
10 RAPHAEL O. GOMEZ, ESQUIRE  
11 ERIC J. BEANE, ESQUIRE  
12 KENNETH E. SEALLS, ESQUIRE  
13 TAMARA ULRICH, ESQUIRE  
14 JOEL MCELVAIN, ESQUIRE  
15 JAMES TODD, ESQUIRE  
16 ERIC J. BEANE, ESQUIRE  
17 ISAAC R. CAMPBELL, ESQUIRE  
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FOR THE DEFENDANT

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1 (THE CLERK OPENS COURT.)

2 THE COURT: GOOD MORNING, EVERYONE.

3 ALL COUNSEL: GOOD MORNING.

4 THE COURT: YOU ARE WELCOME TO BE SEATED.

5 GOOD MORNING.

6 GOOD MORNING, MISS WHITE.

7 THE COURT REPORTER: GOOD MORNING.

8 THE COURT: FOR THE RECORD, THE TRIAL IS  
9 COMMENCING BEFORE THIS COURT IN THE MATTER OF AMERICAN  
10 CIVIL LIBERTIES UNION AND OTHERS VERSUS GONZALES, CIVIL  
11 ACTION 98-5591. WE ARE PREPARED FOR OPENING STATEMENTS.  
12 HOWEVER, I'M NOT SURE WHAT THE DEFENSE NEEDS TO DO WITH  
13 RESPECT TO THEIR POSSIBLE USE OF DEMONSTRATIVE EXHIBITS  
14 DURING THE OPENING. IS THE DEFENSE GOING TO USE ANY OR  
15 WOULD LIKE TO USE SOME?

16 MR. GOMEZ: YES, YOUR HONOR. THE  
17 EXHIBITS THAT THE DEFENDANTS INTEND TO USE OR WOULD SEEK  
18 TO USE ARE THE EXHIBITS THAT WE HAD FORWARDED TO THE  
19 COURT. I INDICATED TO THE COURT IN A SEPARATE E-MAIL  
20 THAT ESPECIALLY THERE ARE -- THE EXHIBITS THAT WE HAD  
21 PROVIDED ON FRIDAY, AND THERE WERE FOUR PLAINTIFFS'  
22 EXHIBIT PAGES THAT WE HAD INTENDED TO USE, THESE ARE --

23 THE COURT: WHICH FOUR? YOU MEAN THE NEW  
24 ONES YOU SENT THIS MORNING?

25 MR. GOMEZ: YES, YOUR HONOR. THERE ARE

1 TRIAL EXHIBITS FROM THE RECORD THAT HAVE BEEN FILED.  
2 THERE ARE PAGES FROM THE PLAINTIFFS' EXHIBITS. THE  
3 ENTIRE SET THAT WE HAD SENT ON FRIDAY TO THE PLAINTIFFS,  
4 THEY HAD RECEIVED THE ENTIRE SET. THROUGH INADVERTENT  
5 ERROR WE DID NOT PROVIDE THOSE FOUR PLAINTIFFS' WEBSITES  
6 TO THE COURT.

7 THE COURT: IT'S ALWAYS BEST TO PROVIDE  
8 THE COURT WITH COPIES.

9 MR. GOMEZ: I UNDERSTAND. AND I  
10 APOLOGIZE.

11 MR. HANSEN: IF I MIGHT ADDRESS THAT  
12 ISSUE. IT APPEARS TO US THAT THERE ARE PROBLEMS WITH  
13 TWO OF THE CATEGORIES OF DEMONSTRATIVE EXHIBITS THAT THE  
14 DEFENDANTS PROPOSE TO USE. THE FIRST, THERE ARE A  
15 SERIES OF EXHIBITS THAT DEFENDANTS PROPOSE TO USE THAT  
16 ARE DERIVED FROM MR. FINKELHOR'S REPORT. YOUR HONOR HAS  
17 RESERVED DECISION ABOUT WHETHER MR. FINKELHOR WILL BE  
18 PERMITTED TO TESTIFY AND ABOUT WHETHER THE REPORT WILL  
19 BE PREPARED TO BE ADMITTED. IT SEEMS TO US UNTIL YOUR  
20 HONOR RULES ON THAT QUESTION, IT WOULD BE INAPPROPRIATE  
21 FOR THE DEFENDANTS TO BE ABLE TO USE THAT EVIDENCE IN  
22 THEIR OPENING.

23 THE SECOND CATEGORY HAS TO DO WITH  
24 EXHIBITS THAT THE DEFENDANTS DERIVED FROM PLAINTIFFS'  
25 EXHIBITS. MR. RACICH -- AS I ADVISED THE COURT LAST

1 THURSDAY, IT'S VERY LIKELY THAT MR. RACICH WILL NOT  
2 TESTIFY. HE IS REBUTTAL. HE IS ONLY NECESSARY IN THE  
3 EVENT -- HE MAY BE ENTIRELY UNNECESSARY AND THEREFORE IT  
4 APPEARS TO US THAT THOSE EXHIBITS, AS WELL, ARE  
5 PREMATURE AND IT WOULD BE INAPPROPRIATE FOR THE  
6 DEFENDANT TO USE THEM IN THEIR OPENING.

7 THE COURT: OTHER THAN THE TIME LIMIT,  
8 WHICH IS ENORMOUS, THE PARTIES HAVE AGREED OPENING  
9 STATEMENTS WILL TAKE 30 MINUTES, OR SO OR SOMETHING IN  
10 THAT NEIGHBORHOOD. IF YOU USED ALL THESE EXHIBITS,  
11 WHICH YOU WILL NOT BE ALLOWED TO, YOU WILL SPEND THE  
12 TIME DEMONSTRATING THE EXHIBITS.

13 MR. GOMEZ: THE DEFENDANT'S OPENING WILL  
14 NOT TAKE LONGER THAN 30 MINUTES. IN FACT, MAYBE  
15 ACTUALLY LESS THAN 30 MINUTES. WE DO NOT INTEND TO HAVE  
16 THE PHOTOS OR THE EXHIBITS REMAINING ON SCREENS. THEY  
17 WILL BE USED DURING THE OPENING. THEY WILL BE TAKEN  
18 DOWN IMMEDIATELY. THERE WILL NOT BE ANY EXHIBITS THAT  
19 WE WOULD -- JUST HAVE ANY EXTENDED DISCUSSION IN TERMS  
20 OF HAVING EXCEPT FOR FIVE MINUTES OR EVEN LESS THAN A  
21 MINUTE. MOST OF THE EXHIBITS WILL BE GONE THROUGH AND  
22 USED AS ILLUSTRATIVE, DEMONSTRATIVE EXHIBITS, IN TERMS  
23 OF SHOWING OUR CASE, WHAT THE DEFENDANT BELIEVES IT  
24 INTENDS TO DEMONSTRATE THROUGH THIS TRIAL, IN TERMS OF  
25 THE EVIDENCE THAT WILL BE PRESENTED IN THE CASE.

1                    WITH RESPECT TO THE POINT RAISED BY THE  
2                    PLAINTIFFS IN TERMS OF OBJECTIONS, THERE ARE NUMEROUS  
3                    OBJECTIONS THAT THE DEFENDANT HAS WITH RESPECT TO  
4                    PLAINTIFFS' WITNESSES, FACT WITNESSES, EXPERTS. UNDER  
5                    PLAINTIFFS' THEORY, IT SHOULD NOT MAKE ANY DIFFERENCE  
6                    WHETHER THERE IS AN EXHIBIT OR THERE IS ACTUAL  
7                    STATEMENTS MADE DURING THE OPENING. UNDER THAT THEORY,  
8                    PLAINTIFFS WOULD NOT BE ABLE TO RAISE ANY MATTER THAT IS  
9                    UNDER OBJECTION AND, YOUR HONOR, SINCE THERE HAS NOT  
10                    BEEN A RULING AT THIS POINT, THIS IS WHAT WE INTEND TO  
11                    PRESENT. THIS IS NOT A JURY TRIAL AND WE WILL BE VERY  
12                    EXPEDITIOUS AND MOVE QUICKLY THROUGH THE OPENING, YOUR  
13                    HONOR.

14                    THE COURT: I'M VERY CONCERNED ABOUT THE  
15                    FINKELHOR EXHIBITS. WHETHER HE WILL TESTIFY OR WHETHER  
16                    THE REPORT OR SURVEY WILL BE IN EVIDENCE IS YET TO BE  
17                    DECIDED BY THE COURT. IF THE PURPOSE OF THE OPENING IS,  
18                    AS I HAVE ASKED THE PARTIES TO DO, DIRECT THE COURT TO  
19                    THE THEORIES, THE DIRECTION OF EACH OF THE PARTIES'  
20                    CASES AS A GUIDEPOST FOR OPENING STATEMENTS, AS A  
21                    GUIDEPOST, A LITTLE MAP OF WHAT THE RESPECTIVE PARTIES'  
22                    CASES WILL BE. THE COURT ALREADY KNOWS WHAT THESE  
23                    EXHIBITS ARE FROM PRETRIAL PROCEEDINGS. IT BEING A  
24                    NON-JURY TRIAL, AND I WILL ALLOW YOU TO USE MR.  
25                    FINKELHOR'S EXHIBITS FOR THIS PURPOSE. SINCE HE IS

1 PROFFERED AS A POTENTIAL REBUTTAL WITNESS, I WILL ALLOW  
2 THE PLAINTIFF TO USE THE RACICH EXHIBIT IN THE  
3 DEMONSTRATIVE IN THE OPENING. I DON'T HAVE A LIST FOR  
4 SOME REASON, A LIST OF DEMONSTRATIVE ITEMS THAT YOU  
5 PROVIDED ME ON THURSDAY OR FRIDAY. I DID LOOK AT ALL OF  
6 THEM. I CAN CHARACTERIZE A GROUP OF THEM AS PICTURES OF  
7 REPRODUCTIONS OF THE FIRST PAGE OF SOME WEBSITES THAT  
8 REPORT TO HAVE SEXUALLY EXPLICIT MATERIAL ON THEM. I  
9 SEE NO PURPOSE TO BE SERVED BY USING THOSE IN THE  
10 OPENING STATEMENT. YOU CAN DESCRIBE WHAT IS IN THOSE.  
11 THE PURPOSE OF THE COURT IS TO PROTECT THE EVIDENCE, THE  
12 EFFICACY OF THE PROCEEDINGS AND NOT BRING UNNECESSARY  
13 SEXUALLY EXPLICIT MATERIAL TO THE ATTENTION OF THE  
14 AUDIENCE OR THE PUBLIC UNLESS IT IS NECESSARY. I FIND  
15 IT IS UNNECESSARY HERE. YOU CAN DESCRIBE THOSE PAGES.

16 MR. GOMEZ: MAY I BE HEARD ON THIS POINT,  
17 YOUR HONOR?

18 THE MATERIAL THAT WE HAVE IDENTIFIED IN  
19 THE OPENING, AND IT IS ALSO EXHIBITS THAT WOULD BE  
20 USED -- THERE ARE A NUMBER OF EXHIBITS THAT WE DON'T  
21 HAVE IN THE OPENING THAT ARE GOING TO BE USED DURING THE  
22 TRIAL. BUT THESE PARTICULAR EXHIBITS ARE VERY  
23 INFORMATIVE. IN THIS SENSE, YOUR HONOR, THESE ARE  
24 EXHIBITS OR PAGES THAT FILTER PRODUCTS AND THE  
25 PLAINTIFFS' OWN EXPERTS RAN A FILTER PRODUCT. THESE ARE

1 PAGES THAT THE FILTER PRODUCT DID NOT STOP. WHEN YOU  
2 LOOK AT THE FIRST PAGE OF THE PLAINTIFFS' WEBSITES, YOU  
3 KNOW WHERE YOU ARE, AND WHEN YOU LOOK AT THE PORNOGRAPHY  
4 SITE, SUCH AS THE ONES WE HAVE IN THIS, THAT WE WOULD  
5 SEEK TO USE HERE IN THE OPENING AND THAT WE WILL USE  
6 DURING TRIAL, IT IS UNEQUIVOCAL THAT WHEN YOU GO TO THE  
7 PORNOGRAPHY SITE AND YOU SEE THE TEASER PAGE, YOU KNOW  
8 YOU ARE AT A PORNOGRAPHY SITE AND IT IS VERY CLEAR WHEN  
9 YOU ACTUALLY SEE THEM COMPARED.

10 THE COURT: MR. GOMEZ, I HAVE SEEN THEM.  
11 IF YOU ARE GOING TO DIRECT THE COURT TO HOW THE DEFENSE  
12 CASE IS GOING TO GO, YOU CAN REFER TO THEM. I HAVE  
13 ALREADY SEEN THEM.

14 MR. GOMEZ: YES, YOUR HONOR.

15 THE COURT: SO AS THE PERSON THAT IS THE  
16 RECIPIENT OF THE OPENING STATEMENT, I KNOW WHAT YOU ARE  
17 TALKING ABOUT WHEN YOU DESCRIBE THEM SO I WANT YOU TO  
18 DESCRIBE THEM FOR THE RECORD IN YOUR OPENING, IF YOU  
19 WOULD LIKE TO DO THAT. WE WON'T USE THE PAGES  
20 THEMSELVES.

21 MR. GOMEZ: YES, YOUR HONOR.

22 THE COURT: EXPRESSLY DIRECT THAT THE --  
23 IS THE PLAINTIFF GOING TO USE ANY DEMONSTRATIVE EVIDENCE  
24 IN THE OPENING?

25 MR. HANSEN: WE ARE NOT, YOUR HONOR.



1 THE COURT: MR. GOMEZ, I EXPRESSLY DIRECT  
2 YOU NOT TO USE A FORM OF PRESENTATION CALLED VOICE OVER.  
3 AS YOU MENTIONED, IF YOU USE A PIECE OF DEMONSTRATIVE  
4 EVIDENCE, YOU ARE GOING TO SHOW IT, TALK ABOUT IT AND  
5 TAKE IT OFF THE SCREEN. IS THAT YOUR INTENTION?

6 MR. GOMEZ: YES.

7 THE COURT: THAT IS THE GIST OF WHAT YOU  
8 JUST TOLD ME.

9 MR. GOMEZ: YES, YOUR HONOR.

10 THE COURT: BE SURE THAT HAPPENS. I  
11 DON'T WANT TO INTERRUPT OPENINGS. IT IS TOO IMPORTANT  
12 TO DO THAT. I THINK, FOR THE PURPOSES OF THE RECORD, I  
13 WANT TO MAKE CLEAR THAT THE COURT ALLOWING THE DEFENDANT  
14 TO PRESENT PIECES OF EVIDENCE THAT THEY BELIEVE WILL BE  
15 ADMITTED DURING THE TRIAL, PARTICULARLY SO-CALLED MR.  
16 FINKELHOR AND RACICH EXHIBITS, IS NOT A DEMONSTRATION TO  
17 THE COURT THAT THE COURT HAS RULED ON EITHER OF THESE  
18 EVIDENTIARY ISSUES, ANY OF THE EVIDENTIARY ISSUES THAT  
19 UNDERLIE THOSE TWO WITNESSES, OR WHAT I WOULD CALL MR.  
20 FINKELHOR OR SECOND SURVEY OR FIRST SURVEY. THE COURT  
21 STILL HAS NOT REACHED A CONCLUSION ON THOSE, AND I DON'T  
22 FEEL ANY URGENCY TO DO THAT BECAUSE, I MEAN,  
23 HOUR-TO-HOUR, DAY-TO-DAY, WE HAVE MANY DAYS OF TRIAL  
24 BEFORE WE ARE EVER GOING TO GET THERE. I WILL DO IT AS  
25 SOON AS I CAN.

1                   OKAY. THE PARTIES ARE ON THE CLOCK.  
2                   PLAINTIFF MAY OPEN.

3                   MR. HANSEN, DO SO FROM THE PODIUM AND MR.  
4                   GOMEZ, WE ARE GOING TO USE THE PODIUM FOR THE DEFENSE  
5                   OPENING AS WELL, PLEASE.

6                   MR. GOMEZ: YES, YOUR HONOR.

7                   THE COURT: THANK YOU.

8                   MR. HANSEN: GOOD MORNING, YOUR HONOR.

9                   THE COURT: GOOD MORNING, AGAIN.

10                  MR. HANSEN: AGAIN. THIS, YOUR HONOR, IS  
11                  ABOUT FREE SPEECH. IT IS ABOUT THE FIRST AMENDMENT, AND  
12                  THE FIRST AMENDMENT HAS ALWAYS BEEN CONTROVERSIAL  
13                  THROUGHOUT THE NATION'S HISTORY. MORE PARTICULARLY,  
14                  EVERY TIME A NEW TECHNOLOGY COMES INTO EXISTENCE, PEOPLE  
15                  BECOME CONCERNED THAT THE SPEECH THAT WILL TAKE PLACE  
16                  OVER THAT NEW TECHNOLOGY WILL SOMEHOW BE ABUSIVE OR  
17                  FRIGHTENING OR SCARY. AS A RESULT, EVERY TIME THERE IS  
18                  A NEW TECHNOLOGY THERE IS A MOVE TO CENSOR THAT NEW  
19                  TECHNOLOGY. WE ARE TALKING HERE ABOUT MOVES TO CENSOR  
20                  SPEECH ON THE INTERNET. IT BEGAN WITH THE COMMUNICATION  
21                  DECENCY ACT IN THE MID '90S. CONGRESS PASSED COPA IN  
22                  THE LATE '90S. COPA, OF COURSE, IS A CRIMINAL STATUTE.  
23                  IT PROVIDES CRIMINAL PUNISHMENT, BOTH IMPRISONMENTS AND  
24                  FINES. IT IS A CONTENT-BASED RESTRICTION OF SPEECH THAT  
25                  IS, BY DEFINITION, VALUABLE AT LEAST FOR ADULTS, SPEECH

1 THAT IS, BY DEFINITION, CONSTITUTIONALLY PROTECTED, AT  
2 LEAST FOR ADULTS, GIVEN THAT THE LEGAL STANDARD THAT THE  
3 COURT IS TO APPLY IN THIS CASE IS WHETHER THE GOVERNMENT  
4 HAS COMPELLING INTEREST IN THE PURPOSES OF THE LAW AND  
5 WHETHER THE LAW IS NARROWLY TAILORED TO ACHIEVE THOSE  
6 PURPOSES.

7 THE CASE WILL NOT PRIMARILY BE ABOUT THE  
8 COMPELLING INTERESTS PART OF THAT TEST. THE PLAINTIFFS  
9 RECOGNIZE THAT THE SUPREME COURT HAS SAID ON A NUMBER OF  
10 OCCASIONS THAT THERE IS A COMPELLING INTEREST IN  
11 PROTECTING MINORS FROM CERTAIN KINDS OF SPEECH ABOUT  
12 SEX. IT IS WORTH SAYING A COUPLE OF THINGS ABOUT THE  
13 COMPELLING ISSUE BEFORE WE TURN TO NARROWLY TAILORED  
14 MATERIAL WHICH IS WHERE THE HEART OF THIS CASE IS.  
15 THERE IS NO OTHER MEDIUM OF COMMUNICATION THAT HAS A  
16 FEDERAL CRIMINAL HARMFUL TO MINORS LAW. IT IS NOT A  
17 CRIME TO ENGAGE IN HARMFUL TO MINORS SPEECH IN BOOKS OR  
18 MAGAZINES OR LEAFLETS. IT IS NOT A CRIME TO ENGAGE IN  
19 HARMFUL TO MINORS SPEECH ON RADIO, ON RECORDS, ON  
20 MOVIES, ON VIDEOS OR EVEN, INDEED, ON BROADCASTS OR  
21 CABLE T.V. IN ALL OF THOSE INSTANCES, THERE IS EITHER  
22 NO FEDERAL LAW AT ALL OR THE FEDERAL APPROACH TO  
23 REGULATING HARMFUL TO MINORS SPEECH OR SIMILAR SPEECH  
24 HAS BEEN REGULATORY, NOT CRIMINAL. APPROXIMATELY HALF  
25 OF THE STATES HAVE NO HARMFUL TO MINORS LAWS AT ALL.

1       THERE ARE OBSCENITY LAWS, AND MUCH OF THE DISCUSSION IN  
2       THIS CASE WILL TURN ON THE NATURE OF OBSCENITY LAWS AND  
3       WHETHER OR NOT HARMFUL TO MINORS IS NECESSARY IN LIGHT  
4       OF OBSCENITY LAWS. BUT IT IS WORTH NOTING THAT THE  
5       FEDERAL GOVERNMENT DOES NOT VIGOROUSLY ENFORCE THE  
6       OBSCENITY LAW, CASTING DOUBT ON THE SINCERITY OF ITS  
7       CLAIM THAT IT NEEDS TO PROTECT MINORS ABOUT SPEECH ABOUT  
8       SEX.

9                       FEWER THAN ONE-TENTH OF ONE PERCENT OF  
10       ALL FEDERAL PROSECUTIONS ARE FOR OBSCENITY. INDEED, THE  
11       GOVERNMENT OPPOSED THE PASSAGE OF COPA TO CONGRESS ON  
12       THE GROUNDS THAT IT ALREADY HAD THE TOOLS TO USE TO  
13       PROTECT CHILDREN FROM SPEECH ABOUT SEX AND YET THEY ARE  
14       NOT USING THOSE TOOLS.

15                      BUT, AS I SAY, THE PRIMARY ISSUE HERE IS  
16       NOT COMPELLING GOVERNMENT INTEREST. THE PRIMARY ISSUE  
17       IS A LESS RESTRICTIVE ALTERNATIVE AND NARROW TAILORING.  
18       AND IN THAT CONNECTION, THERE ARE ESSENTIALLY THREE  
19       OVERARCHING FACTUAL ISSUES THAT WILL BE PRESENTED TO THE  
20       COURT.

21                      FIRST, IS THERE VALUABLE SPEECH AT RISK  
22       UNDER THE STATUTE THAT IS EITHER CRIMINALIZED OR CHILLED  
23       AS A RESULT OF THE STATUTE?

24                      SECOND, ARE THERE LESS RESTRICTIVE, MORE  
25       NARROWLY TAILORED ALTERNATIVES TO COPA THAT CAN BE USED

1 TO PROTECT CHILDREN FOR THOSE PARENTS WHO BELIEVE THEIR  
2 CHILDREN NEED NOT BE PROTECTED FROM THIS KIND OF SPEECH.

3 AND FINALLY, THE THIRD OVERARCHING  
4 FACTUAL DISPUTE BETWEEN THE PARTIES IS, DO THE DEFENSES  
5 CONTAINED IN COPA RESOLVE THE OTHERWISE EXISTING  
6 PROBLEMS WITH THE STATUTE? SO I'LL TALK FIRST ABOUT THE  
7 VALUABLE SPEECH THAT IS AT RISK UNDER COPA. AS I SAID,  
8 ALL OF THE SPEECH THAT IS CRIMINALIZED UNDER COPA IS  
9 CONSTITUTIONALLY PROTECTED SPEECH FOR ADULTS, AS A  
10 MATTER OF DEFINITION. THE SPEECH THAT IS AFFECTED IS  
11 SPEECH ON THE INTERNET. THE VAST MAJORITY OF THE SPEECH  
12 ON THE INTERNET IS PROVIDED FOR FREE AND WITHOUT ANY  
13 RESTRICTION.

14 INTERNET SPEAKERS DO THAT FOR TWO  
15 REASONS. FIRST, IT IS A BUSINESS DECISION. THE PRIMARY  
16 METHOD OF BUSINESS ON THE INTERNET THESE DAYS IS  
17 ADVERTISING, AND THEY WANT PEOPLE TO COME TO THEIR  
18 WEBSITES WITHOUT RESTRICTIONS SO THAT THEY WILL SEE THE  
19 ADS THAT THEY ARE RUNNING.

20 BUT SECOND, AND EQUALLY IMPORTANT, IT IS  
21 A MATTER OF PRINCIPLE. MOST SPEAKERS ON THE INTERNET,  
22 INCLUDING ALL OF THE PLAINTIFFS AND ALL OF THE SPEAKER  
23 WITNESSES THAT YOU WILL HEAR FROM, DO NOT RESTRICT  
24 ACCESS TO THEIR SPEECH BECAUSE THEY BELIEVE THEIR SPEECH  
25 IS IMPORTANT. AS A MATTER OF PRINCIPLE, THEY WANT THEIR

1 SPEECH TO BE AS WIDELY READ AS CAN POSSIBLY BE.

2 THE SPEECH THAT YOU WILL HEAR ABOUT  
3 COVERS A WIDE VARIETY OF TOPIC AREAS. SAY, FOR SEX  
4 INFORMATION, GAY AND LESBIAN SPEECH, ONLINE MAGAZINES  
5 AND OTHER THINGS, ALL OF WHICH ARE OF UNQUESTIONED  
6 VALUE. NOW, BECAUSE THE SPEECH IS, IN OUR VIEW, OF  
7 UNQUESTIONED VALUE, THE DEFENDANTS HAVE COVERED THAT IT  
8 IS NOT COVERED BY COPA AND PLAINTIFFS NEED NOT WORRY  
9 ABOUT COPA. LET'S LOOK AT THAT A LITTLE MORE CLOSELY.

10 ALL OF OUR CLIENTS ENGAGE IN SPEECH THAT  
11 EASILY MEETS THE PRURIENT PRONG OF 231(E) (6) (A). ALL OF  
12 IT IS SEXUALLY EXPLICIT. INDEED MUCH OF IT IS DESIGNED  
13 FOR EROTIC PURPOSES. ALL OF IT DEPICTS, DESCRIBES OR  
14 REPRESENTS ACTUAL OR SIMULATED SEXUAL ACTS OR SEXUAL  
15 CONTACT, ACTUAL OR SIMULATED NORMAL OR PERVERTED SEXUAL  
16 ACTS OR A LEWD EXHIBITION OF THE GENITALS OR  
17 POST-PUBESCENT BREAST AS PROVIDED IN 231(E) (6) (B). ALL  
18 OF THE PLAINTIFFS' SPEECH AND ALL OF THE CHILLED  
19 WITNESSES' SPEECH FIT THOSE TWO CATEGORIES WITHOUT ANY  
20 REAL SERIOUS QUESTION. THE ONLY THING THAT IS LEFT IN  
21 TERMS OF PLAINTIFFS, IN TERMS OF THE DEFINITION, IS  
22 WHETHER IT HAS VALUE OR NOT.

23 231(E) (6) (C) SAYS, IN ORDER FOR THE  
24 SPEECH TO BE HARMFUL TO MINORS, IT MUST BE FOUND TO LACK  
25 VALUE FOR MINORS. IT IS MORE THAN A LITTLE DIFFICULT TO

1 KNOW WHAT IT IS THAT LACKS VALUE FOR MINORS. IT'S  
2 LARGELY AN UNTESTED CONCEPT. BRAND NEW TO THE FEDERAL  
3 CRIMINAL STATUTE AND FRANKLY DETERMINING WHAT HAS VALUE  
4 FOR ADULTS BUT DOES NOT HAVE VALUE FOR MINORS IS MORE  
5 THAN A CHALLENGING TASK.

6 THE QUESTION THEN IS WHETHER IT IS  
7 REASONABLE FOR THE PLAINTIFFS TO FEEL CHILLED. THE  
8 ANSWER, THE EVIDENCE WILL SHOW THAT IT IS REASONABLE.

9 FIRST, YOUR HONOR WILL HEAR FROM  
10 PROFESSOR REICHMAN WHO WILL TALK ABOUT THE INNUMERABLE  
11 INSTANCES ALL OVER THE COUNTRY IN WHICH PEOPLE TRY TO  
12 SUPPRESS SPEECH ABOUT SEX, SPEECH SIGNIFICANTLY MORE  
13 HARMLESS THAN THAT PROVIDED BY THE PLAINTIFFS IN THE  
14 NAME OF PROTECTING CHILDREN. THERE ARE VERY SIGNIFICANT  
15 AND LARGE SEGMENTS OF OUR COUNTRY THAT BELIEVE THAT MOST  
16 SPEECH ABOUT SEX NEEDS TO BE PROTECTED FROM CHILDREN.

17 SECOND, ALL OF THE PLAINTIFFS ARE BLOCKED  
18 BY AT LEAST ONE OF THE MAJOR INTERNET CONTENT FILTERS IN  
19 WHOLE OR IN PART. THAT IS A SIGN THAT THE BUSINESS  
20 ENTITIES THAT CREATE INTERNET CONTENT FILTERS BELIEVE  
21 THAT THE PLAINTIFFS ARE IN THE KIND OF SPEECH THAT  
22 PARENTS WANT TO KEEP FROM THEIR CHILDREN.

23 THIRD, WE HAVE ASKED THE GOVERNMENT  
24 REPEATEDLY, AND YOUR HONOR IS WELL AWARE OF THIS  
25 DISCUSSION, TO MORE CAREFULLY DEFINE WHAT IT IS THAT IS

1 COVERED BY COPA. AND THE WHOLE ISSUE OF DEFINING WHAT  
2 IS HARMFUL TO A 16-YEAR OLD BUT NOT HARMFUL TO A 17-YEAR  
3 OLD AND THE ISSUE OF TRYING TO DISTINGUISH BETWEEN THE  
4 PLAYBOY PICTURE, WHICH THE GOVERNMENT SAYS IS NOT  
5 HARMFUL TO MINORS AND THE PENTHOUSE PICTURE THAT THE  
6 GOVERNMENT SAYS IS HARMFUL TO MINORS, IN ALL OF THE  
7 ANSWERS TO THE CONTENTION INTERROGATORIES, IT IS  
8 LITERALLY IMPOSSIBLE FOR THE PLAINTIFFS TO KNOW, BASED  
9 ON THOSE DESCRIPTIONS, WHAT IS HARMFUL TO MINORS AND  
10 WHAT IS NOT HARMFUL TO MINORS.

11 IT IS WORTH NOTING THAT MANY OF THE  
12 PLAINTIFFS HAVE PARTICIPATED IN STATE CASES CHALLENGING  
13 HARMFUL TO MINORS LAWS, AND A NUMBER OF OTHER ENTITIES  
14 PARTICIPATED IN STATE CASES CHALLENGING HARMFUL TO  
15 MINORS LAWS. SOMEWHERE BETWEEN HALF A DOZEN AND A DOZEN  
16 OF THOSE HAVE BEEN DECLARED UNCONSTITUTIONAL. BUT IN NO  
17 INSTANCE HAS THERE BEEN SERIOUS DOUBT ABOUT THE STANDING  
18 OF THE PLAINTIFFS IN THOSE CASES AND THE RISKS THAT THEY  
19 FACE UNDER HARMFUL TO MINORS LAWS.

20 AND FINALLY, THERE IS UNITED STATES  
21 VERSUS ECKERT, 11TH CIRCUIT DECISION FROM OCTOBER 4TH,  
22 2006. ECKERT IS AN OBSCENITY CASE. THE DEPARTMENT OF  
23 JUSTICE PROSECUTED MR. ECKERT ON THE GROUNDS OF  
24 OBSCENITY, AND THE EVIDENCE WILL SHOW, AND WE WILL BRING  
25 THIS TO YOUR HONOR, THAT THE SPEECH ENGAGED IN BY MR.



1 ECKERT WAS MUCH MORE MILD THAN ANY OF THE SPEECH THAT  
2 THE PLAINTIFFS ENGAGE IN. IF THE SPEECH IN ECKERT IS  
3 OBSCENE, THEN SURELY IT IS REASONABLE FOR THE PLAINTIFFS  
4 TO BELIEVE THAT THEIR SPEECH MIGHT BE PROSECUTED BY THE  
5 DEPARTMENT OF JUSTICE AS HARMFUL TO MINORS.

6 THE SECOND OVERARCHING FACTUAL ISSUE IS  
7 THE LESS RESTRICTIVE ALTERNATIVE NARROW TAILORING.  
8 THERE IS NO QUESTION THAT COPA IS OVERINCLUSIVE, THAT IT  
9 DOES PRECISELY WHAT IT DOES BY BUTLER VERSUS MICHIGAN:  
10 BARS ADULTS FROM HAVING ACCESS TO SPEECH THAT THEY ARE  
11 CONSTITUTIONALLY PROTECTED TO HAVE IN THE NAME OF  
12 PROTECTING CHILDREN. AS LONG AGO AS BUTLER, THE SUPREME  
13 COURT SAID THAT IS IMPERMISSIBLE.

14 IT IS ALSO GROSSLY UNDERINCLUSIVE AS I  
15 NOTED. THERE IS NO HARMFUL TO MINORS LAW IN ANY OTHER  
16 MEDIA OF COMMUNICATION. COPA DOES NOT REACH OVERSEAS  
17 SITES.

18 YOUR HONOR WILL HEAR FROM PROFESSOR ZOOK  
19 WHO WILL TELL YOU THAT OVER HALF OF ALL OF SEXUALLY  
20 EXPLICIT MATERIAL SITES THESE DAYS ARE OVERSEAS, BASED  
21 OVERSEAS, AND THAT NUMBER IS INCREASING RAPIDLY. SO FAR  
22 AS THE PLAINTIFFS ARE AWARE, THE UNITED STATES  
23 GOVERNMENT HAS NEVER SOUGHT TO EITHER EXTRADITE OR  
24 PROSECUTE A FOREIGN NATIONAL FOR ENGAGING IN SPEECH  
25 ABOUT SEX THAT IS ILLEGAL IN THE UNITED STATES.

1                   THEY WILL MAKE AN ARGUMENT ABOUT OVERSEAS  
2 PROSECUTIONS BUT IN LIGHT OF THE FACT THAT THEY HAVE  
3 NEVER DONE IT, THAT ARGUMENT IS GOING TO BE WEAK AT  
4 BEST.

5                   NOT ONLY DOES COPA NOT REACH THE 50  
6 PERCENT OF ALL SPEECH THAT IS OVERSEAS, IT DOES NOT  
7 REACH NONCOMMERCIAL SPEECH ON THE INTERNET. IT DOES NOT  
8 REACH MANY OF THE FORMS OF COMMUNICATIONS ON THE  
9 INTERNET INCLUDING SOME THAT ARE BECOMING THE MOST  
10 POPULAR. IT DOES NOT REACH E-MAIL WHICH IS, OF COURSE,  
11 THE MOST POPULAR OF ALL POSSIBLE INTERNET  
12 COMMUNICATIONS. IT DOES NOT REACH INSTANT MESSAGING  
13 WHICH IS AN EXTREMELY POPULAR FORM OF COMMUNICATION FOR  
14 YOUNG PEOPLE. IT DOES NOT REACH PEER-TO-PEER  
15 COMMUNICATIONS. YOUR HONOR WILL HEAR FROM PROFESSOR  
16 FELTEN WHO WILL EXPLAIN THE NATURE OF THESE FORMS OF  
17 COMMUNICATION AND WHY THEY WERE NOT COVERED BY COPA.

18                   THERE ARE ALTERNATIVES TO THE COPA EFFORT  
19 TO PROTECT CHILDREN, AND THOSE ALTERNATIVES WILL NOT  
20 ONLY BE LESS RESTRICTIVE AND NOT ONLY EQUALLY EFFECTIVE,  
21 THEY WILL BE MORE EFFECTIVE. AND THE EVIDENCE FROM  
22 WITNESSES FROM BOTH PARTIES WILL SHOW THAT.

23                   NO PARTY IS GOING TO CLAIM THAT INTERNET  
24 CONTENT FILTER IS PERFECT. IT ISN'T. NO PARTY, I  
25 THINK, IS GOING TO CLAIM THAT COPA IS PERFECT. IT

1 ISN'T. THE QUESTION REALLY IS THE RELATIVE COMPARISON  
2 HERE.

3 FILTERING SOLVES THE UNDERINCLUSIVENESS  
4 PROBLEM. IT REACHES OVERSEAS SITES. IT REACHES  
5 NONCOMMERCIAL SITES. IT CAN BE USED TO BLOCK ACCESS TO  
6 E-MAIL AND I-M AND PEER-TO-PEER AND OTHER FORMS OF  
7 INTERNET COMMUNICATIONS. IN OTHER WORDS, MOST OF THE  
8 UNDERINCLUSIVENESS AS REPRESENTED BY COPA IS SOLVED  
9 THROUGH FILTERS. IT SOLVES THE OVERINCLUSIVENESS  
10 PROBLEM. ADULTS DON'T HAVE TO USE FILTERS. THEY CAN  
11 SET UP THEIR COMPUTER; THAT ONLY THEIR CHILDREN ARE  
12 COVERED BY FILTERS AND THEY ARE NOT. IT ALSO ADDS  
13 ADDITIONAL LEVELS OF PROTECTION FOR CHILDREN, INCLUDING  
14 MONITORING THE SITES THAT THE CHILDREN GO TO AND  
15 TAILORING THE DEGREE OF FILTERING TO THE AGE AND  
16 MATURITY OF THE CHILD AND TO THE VALUES OF THE FAMILY.

17 THE EVIDENCE WILL SHOW THAT FILTERS ARE  
18 LARGELY SUCCESSFUL. THE DEPARTMENT OF JUSTICE HAS  
19 STIPULATED THAT IT USES INTERNET CONTENT FILTERS ON THE  
20 DEPARTMENT OF JUSTICE'S WEBSITES, ON THE FBI'S WEBSITES,  
21 ON THE BUREAU OF PRISON WEBSITES AND SO ON. THEY HAVE  
22 STIPULATED THOSE FILTERS ARE EFFECTIVE IN BLOCKING  
23 ACCESS TO SEXUALLY EXPLICIT MATERIAL FOR THE EMPLOYEES  
24 OF THE DEPARTMENT OF JUSTICE.

25 YOUR HONOR WILL HEAR FROM THREE SCHOOL

1 LIBRARIANS. THE THREE SCHOOL LIBRARIANS HAVE INTERNET  
2 CONTENT FILTERING ON THEIR COMPUTERS. THEY ARE AN  
3 EFFECTIVE MEANS OF PREVENTING CHILDREN FROM HAVING  
4 ACCESS TO SEXUALLY EXPLICIT MATERIAL.

5 YOUR HONOR WILL HEAR FROM PROFESSOR  
6 CRANOR, PLAINTIFFS' PRINCIPAL EXPERT ON FILTERING WHO  
7 WILL TESTIFY THAT THERE ARE A NUMBER OF STUDIES THAT  
8 HAVE BEEN DONE ON THE EFFECTIVENESS OF FILTERS. THEY  
9 ARE GENERALLY EFFECTIVE, NOT PERFECT, BUT GENERALLY  
10 EFFECTIVE IN PROTECTING THE CHILDREN FROM HAVING ACCESS  
11 TO IMAGES THAT THE PARENTS DON'T WANT THEM TO HAVE  
12 ACCESS TO.

13 FINALLY, YOUR HONOR, YOU WILL HEAR FROM  
14 MR. MEWETT, THE DEFENDANT'S WITNESS. PLAINTIFFS DO NOT  
15 CONCEDE MR. MEWETT'S EXPERTISE, OR EVEN THE QUALITY OF  
16 THE WORK HE HAS DONE, BUT IT IS WORTH NOTING THAT HIS  
17 EVIDENCE IS, IN FACT, MORE SUPPORTIVE OF PLAINTIFFS'  
18 POSITION THAN IT IS OF DEFENDANT'S POSITION.

19 MR. MEWETT TESTIFIED IN HIS DEPOSITION IN  
20 THIS CONNECTION, I THINK I NEED TO BACK UP A HALF A  
21 STEP. IT'S USEFUL TO DISTINGUISH BETWEEN THE PROBLEM OF  
22 CHILDREN COMING ACROSS SEXUALLY EXPLICIT MATERIAL SITES  
23 ACCIDENTLY AND THE PROBLEM OF CHILDREN WHO ARE SETTING  
24 OUT DELIBERATELY TO LOOK FOR SEXUALLY EXPLICIT MATERIAL  
25 SITES, BECAUSE THEY PRESENT SLIGHTLY DIFFERENT PROBLEMS.

1 MR. MEWETT SAYS THAT INTERNET CONTENT FILTERS ARE  
2 ADEQUATE TO DEAL WITH THE INADVERTENCE PROBLEM. WHAT IS  
3 THE DANGER THAT A CHILD WILL ACCIDENTALLY COMES ACROSS A  
4 SEXUALLY SITE? IT WORKS FINE FOR THAT PURPOSE. THE  
5 EVIDENCE FROM HIS OWN STUDIES SHOW THAT.

6 IT IS VERY, VERY UNLIKELY A CHILD WILL  
7 COME ACROSS A SEXUALLY EXPLICIT SITE INADVERTENTLY. HE  
8 DID ONE STUDY ON A FILTER BY AOL. HE TESTED IT AGAINST  
9 A RANDOM OF URLS, WEBSITES, WEB PAGES DRAWN FROM THE  
10 GOOGLE DIRECTORY, AND THE INCIDENCE OF DOMESTIC,  
11 UNBLOCKED WEBSITES WAS .04 PERCENT, FOUR OUT OF 10,000.  
12 IN THE DESIGNS OF DOMESTIC UNBLOCK SITES, IF A CHILD  
13 WENT TO A SINGLE WEBSITE EACH DAY FOR YEARS, AND  
14 RANDOMLY CHOSE THAT WEBSITE, IT WOULD BE 6.8 YEARS  
15 BEFORE THE CHILD WOULD COME ACROSS THAT DOMESTIC  
16 UNBLOCKED WEBSITE USING THE AOL FILTER.

17 OTHER TESTS OF THE DANGER OF CHILDREN  
18 COMING ACROSS A RANDOM WEBSITE SHOW NOT THAT GOOD -- NOT  
19 QUITE AS GOOD A SUCCESS AS THAT, BUT SHOW SIGNIFICANT  
20 SUCCESS IN SHOWING THE DANGER OF INADVERTENCE.

21 NOW, THE SECOND ISSUE THEN IS THE  
22 DELIBERATE CHILD WHO SETS OUT TO TRY AND FIND SEXUALLY  
23 EXPLICIT MATERIAL WEBSITES. COPA GOES INTO EFFECT, THAT  
24 CHILD WILL BE ABLE TO FIND THAT OVERSEAS IF NO OTHER  
25 PLACE. IF FILTERS ARE IN EFFECT, THAT CHILD MAY BE ABLE

1 TO FIND SEXUALLY EXPLICIT WEBSITES. BUT THE ODDS ARE  
2 LESS. MEWETT DID A STUDY OF THE MOST COMMON SEARCH  
3 TERMS. AND WHEN YOU THINK ABOUT THE MOST COMMON SEARCH  
4 TERMS, THAT IS WHAT KIDS ARE GOING TO USE WHEN THEY ARE  
5 TRYING TO FIND SEXUALLY EXPLICIT SITES. FILTERS ARE THE  
6 MOST EFFECTIVE. ALMOST ALL OF THE FILTERS THAT MR.  
7 MEWETT TESTED WERE AT LEAST 35 PERCENT EFFECTIVE. THINK  
8 ABOUT THE FIVE PERCENT EFFECTIVENESS COMPARED TO WHERE  
9 WE START WITH COPA BEING 50 PERCENT INEFFECTIVE, BECAUSE  
10 OF THE OVERSEAS SITES. ALMOST BY A STARTLING  
11 PERCENTAGE, FILTERS ARE SIGNIFICANTLY MORE EFFECTIVE  
12 THAN COPA WOULD BE.

13 NOW, MR. GOMEZ HAS PRESENTED THE IMAGES  
14 TO YOUR HONOR THAT YOUR HONOR REFERRED TO BEFORE, BEFORE  
15 WE BEGAN, AND IS GOING TO DISCUSS THEM IN HIS OPENING  
16 STATEMENT. I WOULD LIKE TO MAKE A COUPLE OF POINTS  
17 ABOUT THOSE IMAGES.

18 FIRST, HE USED SOME IMAGES DERIVED FROM  
19 MR. MEWETT'S STUDY. FOUR OF THE SIX IMAGES THAT HE WILL  
20 USE FROM MR. MEWETT'S STUDY ARE OVERSEAS SITES. THEY  
21 ARE SCARY IMAGES, UNPLEASANT IMAGES, BUT THEY WON'T BE  
22 AFFECTED BY COPA AT ALL. FOR HIM TO GET UP IN A  
23 SENSATIONALIST WAY AND SAY, THIS IS WHAT WILL HAPPEN IF  
24 COPA IS NOT IN EFFECT IS SIMPLY WRONG. THOSE IMAGES  
25 WILL STILL BE AVAILABLE TO EVERY U.S. CHILD, EVEN IF

1 COPA GOES FULLY INTO EFFECT.

2 ALL OF THE IMAGES FROM MR. MEWETT THAT  
3 MR. GOMEZ IS GOING TO PRESENT WERE BLOCKED BY AT LEAST  
4 ONE OF THE FILTERS. INDEED, ALL WERE BLOCKED BY AT  
5 LEAST SIX OF THE FILTERS IN THAT MR. MEWETT TEST. SOME  
6 WERE NOT BLOCKED BY SOME OF THE FILTERS THAT MR. MEWETT  
7 TESTED BUT THERE ARE FILTERS OUT THERE THAT BLOCKED  
8 EVERY SINGLE ONE OF THE IMAGES THAT HE IS GOING TO SHOW  
9 YOU THAT COME FROM MR. MEWETT. HIS SENSATIONALIST  
10 EFFORT TO SCARE THE COURT BY BELIEVING THESE PICTURES  
11 WILL BE PROTECTED IF COPA GOES INTO EFFECT AND  
12 UNPROTECTED UNDER FILTERS SIMPLY SHOULD BE REJECTED.

13 NOW, THE DEFENDANT, AS YOUR HONOR KNOWS,  
14 HAS MADE A POINT OF MAKING A DISTINCTION BETWEEN  
15 SO-CALLED ENTERPRISE FILTERS AND SO-CALLED HOME-USE  
16 FILTERS. THAT IS A DISTINCTION THAT IS LARGELY ILLUSORY  
17 AND LARGELY MADE UP BY THE DEFENDANTS. THE SO-CALLED  
18 ENTERPRISE FILTERS AND SO-CALLED HOME-USE FILTERS DR.  
19 CRANOR WILL TESTIFY AND YOUR HONOR WILL HEAR USE THE  
20 SAME TECHNOLOGY. THEY USE THE SAME BLACK LIST  
21 TECHNOLOGY, AND THAT WILL BE EXPLAINED TO YOUR HONOR,  
22 THE SAME WHITE LIST TECHNOLOGY AND SAME DYNAMIC  
23 FILTERING TECHNOLOGY. TECHNOLOGY IS THE SAME.  
24 MOREOVER, MORE AND MORE FILTERING TECHNOLOGY IS MOVING  
25 TO A NETWORK LEVEL. YOU USED THE AOL FILTER, FOR

1       EXAMPLE, THROUGH THE AOL NETWORK. IN THAT RESPECT, THE  
2       ENTERPRISE FILTER AND HOME USE FILTER BECOME ABSOLUTELY  
3       IDENTICAL.

4                   AND FINALLY, VISTA. MICROSOFT IS COMING  
5       OUT WITH A NEW OPERATING SYSTEM THAT WILL REPLACE  
6       WINDOWS. THE MICROSOFT VISTA PRODUCT HAS IN IT, AS DR.  
7       CRANOR WILL TESTIFY, PARENTAL CONTROL FILTERS, SO THERE  
8       WILL NO LONGER BE ANY DISTINCTION BETWEEN THE SO-CALLED  
9       ENTERPRISE FILTERS AND SO-CALLED HOME-USE FILTERS. THEY  
10      WILL WORK THE SAME WAY AND THEY WILL WORK WITH MICROSOFT  
11      PRODUCTS.

12                   ALTHOUGH THEY WON'T QUITE PUT IT THIS  
13      CRUDELY, THE DEFENDANTS ARGUE THAT PARENTS ARE TOO  
14      STUPID TO BE ABLE TO USE FILTERS. INSULTING ARGUMENT.  
15      AND IT IS WRONG. USE OF FILTERS IS QUITE SIMPLE. IT IS  
16      JUST AS SIMPLE AS MOST OTHER COMPUTER PROGRAMS. IT IS  
17      PROBABLY MORE SIMPLE THAN WORD, FOR EXAMPLE.

18                   FILTERS, HOWEVER, ARE NOT THE ONLY  
19      ALTERNATIVE THAT PARENTS CAN USE IF THEY ARE CONCERNED  
20      ABOUT PROTECTING THEIR CHILDREN. ONE VERY IMPORTANT  
21      ALTERNATIVE IS EDUCATING YOUR CHILD AS TO THE NATURE OF  
22      THE INTERNET, HOW TO ENGAGE IN SEARCHES, WHAT IS  
23      INAPPROPRIATE FOR THEM AND WHAT IS APPROPRIATE FOR THEM.

24                   THE SCHOOL LIBRARIAN WITNESSES THAT YOUR  
25      HONOR WILL HEAR FROM WILL TALK ABOUT THE FACT THAT THE



1 SCHOOLS DON'T RELY SOLELY ON FILTERS. IN FACT, THEY  
2 SPEND CONSIDERABLE TIME EDUCATING THE STUDENTS ABOUT THE  
3 NATURE OF THE INTERNET, ABOUT HOW TO CONDUCT SEARCHES  
4 AND ABOUT HOW TO FIND WHAT IT IS THAT THEY WANT TO FIND  
5 WITHOUT FINDING THINGS THEY DON'T WANT TO FIND.

6 PARENTAL EDUCATION, SCHOOL EDUCATION,  
7 LIBRARIAN EDUCATION ALL PLAY A VERY SIGNIFICANT ROLE IN  
8 PROTECTING CHILDREN.

9 THERE ARE OTHER TECHNIQUES, AND DR.  
10 CRANOR WILL TESTIFY TO THOSE OTHER TECHNIQUES,  
11 MONITORING THE WAY IN WHICH YOUR CHILD USES THE  
12 INTERNET, KEEPING THE COMPUTER IN THE LIVING ROOM, SO  
13 THAT THE CHILD KNOWS THERE IS ALWAYS A DANGER THAT AN  
14 ADULT WILL WALK BY AND SEE WHAT THE CHILD IS DOING AND  
15 OTHERS THAT SHE WILL DISCUSS.

16 THERE ARE ALSO, AS I REFERRED, OTHER  
17 ALTERNATIVES THAT THE GOVERNMENT COULD BE USING TO  
18 PROTECT CHILDREN. THE PRIMARY ONE OF THOSE, OF COURSE,  
19 IS THE OBSCENITY LAWS. IN DEFINING WHAT IS OBSCENE AND  
20 WHAT IS NOT OBSCENE, IN RESPONSE TO THE CONTENTION  
21 INTERROGATORIES, THE DEFENDANT SAID VIOLENCE AGAINST  
22 WOMEN IS ONE OF THE CATEGORIES THAT WE THINK OF AS  
23 OBSCENE. IT IS SO MUCH WORSE THAN -- WHAT IS WORSE THAN  
24 HARMFUL TO MINORS; VIOLENCE TO WOMEN COUNTS AS OSCENITY.

25 AS YOUR HONOR HAS SEEN, ONE OF THE IMAGES

1            THAT MR. GOMEZ IS GOING TO TALK ABOUT THIS MORNING  
2            INVOLVES VIOLENCE AGAINST WOMEN. IT FITS THE PRECISE  
3            DEFINITION THEY GAVE IN THE CONTENTION INTERROGATORY AS  
4            OBSCENE. ONE WOULD ASK MR. GOMEZ WHETHER THAT WAS  
5            REFERRED TO THE CRIMINAL DIVISION FOR PROSECUTION AND,  
6            IF NOT, WHY NOT?

7                            AGAIN, THE GOVERNMENT COULD ALSO USE  
8            OTHER TECHNIQUES THAT -- MISLEADING, THE DOMAIN NAME  
9            STATUTE. THE GOVERNMENT COULD FUND FILTERS IF IT  
10           THOUGHT PARENTS WERE INSUFFICIENTLY ADOPTING FILTERS OR  
11           THEY WANTED -- FINANCES WERE PREVENTING PARENTS FROM  
12           ADOPTING FILTERS, THE GOVERNMENT COULD CREATE THEIR OWN  
13           LIST OF SITES, SOMEONE MAKE IT AVAILABLE TO PARENTS.

14                           MOST SIGNIFICANTLY, AGAIN, THE GOVERNMENT  
15           COULD CREATE CIVIL OR REGULATORY DEVICES FOR PROTECTING  
16           CHILDREN OR, ALTERNATIVELY, ONLY REACH IMAGES RATHER  
17           THAN TEXT AS WELL AS IMAGE. THE GOVERNMENT HAS CHOSEN  
18           TO DO NONE OF THOSE. INSTEAD, USE A DEVICE THAT WILL BE  
19           INEFFECTIVE, IN PART, BECAUSE OF OVERSEAS SITES AND  
20           SIGNIFICANTLY LESS EFFECTIVE THAN FILTERS AND OTHER  
21           TECHNIQUES.

22                           NOW, FINALLY, IN RESPONSE TO ALL OF THIS,  
23           WE GET TO THE THIRD BIG PRIMARY ISSUE THAT IS BEFORE THE  
24           COURT, AND THAT IS THE DEFENSES -- THE GOVERNMENT MAY  
25           WELL SAY THAT, EVEN IF I'M RIGHT ABOUT ALL OF WHAT I

1 HAVE JUST SAID, THE DEFENSE SOLVE THE PROBLEM AND THEY  
2 DON'T. THE GOVERNMENT HAS IDENTIFIED TWO TECHNIQUES  
3 THAT WEB OPERATORS CAN USE IN ORDER TO PROTECT  
4 THEMSELVES UNDER COPA. FIRST, THEY CAN USE PAYMENT  
5 CARDS, SUCH AS CREDIT CARDS OR DEBIT CARDS OR PREPAID  
6 CARDS.

7 SECOND, THEY CAN USE WHAT WE CALL DVS  
8 PRODUCTS, DATA VERIFICATION PRODUCTS. NEITHER OF THESE  
9 IS A SATISFACTORY SOLUTION. BOTH WILL HAVE A  
10 SIGNIFICANT NEGATIVE EFFECT ON THE SPEECH THAT IS  
11 AVAILABLE TO ADULTS.

12 WITH RESPECT TO PAYMENT CARDS, THE NOTION  
13 THAT PAYMENT CARDS ARE A SUBSTITUTE FOR AGE IS SIMPLY  
14 FALSE. IT IS FALSE. SO FALSE THAT AT LEAST ONE OF THE  
15 CREDIT CARD COMPANIES PROHIBITS ITS MERCHANTS FROM  
16 SAYING THAT A CREDIT CARD CAN BE USED AS A SURROGATE FOR  
17 AGE.

18 MINORS HAVE CREDIT CARDS. YOUR HONOR  
19 WILL HEAR FROM PROFESSOR MANN ABOUT THE NUMBER AND EASE  
20 WITH WHICH MINORS GET ACCESS TO PAYMENT CARDS. THERE  
21 ARE ADULTS THAT DON'T HAVE PAYMENT CARDS. YOUR HONOR  
22 WILL HEAR FROM MR. MANN ABOUT THE NUMBER OF ADULTS THAT  
23 WERE NOT ABLE TO GET ACCESS TO PAYMENT CARDS.

24 IN ADDITION, PAYMENT CARDS WILL STILL NOT  
25 DO ZERO DOLLAR TRANSACTIONS. IN OTHER WORDS, IF I'M A

1 WEBSITE OPERATOR, I'M PUTTING UP A CREDIT CARD SCREEN OR  
2 A PAYMENT CARD SCREEN AT THE FRONT OF MY WEBSITE,  
3 SOMEBODY IS GOING TO HAVE TO PAY FOR IT. VISA, MASTER  
4 CARD OR NOT, A PUBLIC CARD SERVICE IS GOING TO VALIDATE  
5 A CREDIT CARD NUMBER UNLESS THERE IS A SALE THAT TAKES  
6 PLACE, BECAUSE THE PLAINTIFFS DON'T WANT TO SELL THEIR  
7 SPEECH, BUT MAKE IT PRINCIPLE AS A MATTER OF BUSINESS  
8 AND PRINCIPLE FOR FREE. THE PAYMENT CARD SOLUTION DOES  
9 NOT WORK.

10 DATA VERIFICATION SERVICES ARE THE SECOND  
11 OPTION THAT THE GOVERNMENT OFFERS. WITH A DATA  
12 VERIFICATION SERVICE, YOU GIVE THE WEBSITES A WHOLE LOT  
13 OF INFORMATION ABOUT YOURSELF, YOUR NAME, YOUR ADDRESS,  
14 YOUR SOCIAL SECURITY NUMBER, WHATEVER ELSE YOU CAN GIVE  
15 THEM. THEY THEN SEND THAT OFF TO A THIRD PARTY, THE  
16 DATA VERIFICATION SERVICE, WHO THEN DETERMINES WHETHER  
17 THAT INFORMATION MATCHES UP WITH OTHER DATABASES THAT  
18 THE SERVICES HAVE COLLECTED. IT IS SORT OF LIKE A  
19 CREDIT CHECK. THE MORE INFORMATION YOU GIVE TO THE DATA  
20 VERIFICATION SERVICE THE MORE LIKELY THEY WILL BE ABLE  
21 TO FIND OTHER RECORDS ABOUT YOU, WHICH MEANS THAT IN  
22 ORDER TO GET ACCESS TO THE SPEECH, YOU ARE GOING TO HAVE  
23 TO GIVE UP AN AWFUL LOT OF PERSONAL INFORMATION ABOUT  
24 YOURSELF. BUT EVEN UNDER THOSE CIRCUMSTANCES, IT IS NOT  
25 GOING TO WORK.

1                   FIRST OF ALL, IT DOES NOT WORK FOR A LOT  
2                   OF ADULTS BECAUSE THERE ARE NO RECORDS FOR A LOT OF  
3                   ADULTS THAT THE DATA VERIFICATION SERVICE CAN CHECK.

4                   SECOND, PARTICULARLY, IT DOES NOT WORK  
5                   FOR YOUNG ADULTS BECAUSE YOUNG ADULTS HAVE HAD LESS OF  
6                   AN OPPORTUNITY TO CREATE A RECORD ABOUT THEMSELVES.

7                   THIRD, IT DOES NOT WORK FOR ANYBODY NOT  
8                   IN THE UNITED STATES. LARGE PARTS OF THE AUDIENCE FOR  
9                   THE PLAINTIFFS ARE PEOPLE OVERSEAS. THEY WOULD HAVE TO  
10                  BE ALL BARRED, BECAUSE WE COULD NOT VERIFY THROUGH THE  
11                  DATA VERIFICATION SERVICES.

12                  FINALLY, VERY SIGNIFICANT, COSTS ATTACHED  
13                  FOR EACH PERSON THAT MUST BE VERIFIED. NEITHER DATA  
14                  VERIFICATION SERVICES WILL PROVIDE AN EFFECTIVE DEFENSE  
15                  FOR THOSE PEOPLE WHO WANT TO MAKE THEIR SPEECH AVAILABLE  
16                  FOR FREE.

17                  FINALLY, BOTH PAYMENT CARDS AND DVS  
18                  OPTIONS WILL DETER PEOPLE FROM GOING TO WEBSITES. YOUR  
19                  HONOR WILL HEAR FROM ALL OF THE PLAINTIFFS, AND MANY OF  
20                  THE OTHER WEBSITE WITNESSES THAT THEY HAVE SPECIFIC AND  
21                  CONCRETE EXPERIENCE WITH PUTTING UP BARRIERS. IT IS  
22                  THEIR EXPERIENCE THAT THE MORE BARRIERS YOU PUT UP, THE  
23                  MORE PEOPLE GO AWAY, THE LESS SUCCESSFUL YOU CAN BE,  
24                  BOTH AS A BUSINESS AND AS A SPEAKER, BECAUSE PEOPLE  
25                  SIMPLY DON'T WANT TO HAVE TO GET SPEECH ON THE INTERNET,

1 ONLY AFTER THEY HAVE GONE THROUGH SOME SORT OF SCREEN.

2 THOSE ARE THREE PRINCIPAL FACTUAL ISSUES  
3 THAT YOUR HONOR IS GOING TO HEAR ABOUT. THAT THERE IS  
4 VALUE SPEECH THAT IS CHILLED. THERE IS LESS RESTRICTIVE  
5 AND MORE EFFECTIVE ALTERNATIVES, AND DEFENSES UNDER COPA  
6 DON'T WORK. THE EFFECT OF COPA WILL BE TO DEPRIVE  
7 ADULTS OF SPEECH TO WHICH THEY ARE ENTITLED. THE EFFECT  
8 OF COPA IS TO VIOLATE THE FIRST AMENDMENT.

9 THANK YOU, YOUR HONOR.

10 THE COURT: THANK YOU, MR. HANSEN.

11 DEFENSE OPENING STATEMENT, PLEASE.

12 MR. GOMEZ: YOUR HONOR, ERIC BEANE WILL  
13 BE PRESENTING THE OPENING STATEMENT FOR THE DEFENDANT.

14 THE COURT: GOOD MORNING, MR. BEANE.

15 MR. BEANE: GOOD MORNING, YOUR HONOR.

16 THE COURT: I BELIEVE YOU UNDERSTAND MY  
17 INSTRUCTIONS TO THE DEFENSE FOR THE OPENING.

18 MR. BEANE: YES.

19 YOUR HONOR, THE UNITED STATES WILL  
20 DEMONSTRATE AT THIS TRIAL THAT CONGRESS REASONABLY  
21 EXERCISED ITS POWER IN ENACTING THE CHILD ON-LINE  
22 PROTECTION ACT, COPA BECAUSE GOVERNMENT ACTION IS  
23 NECESSARY TO ADDRESS THE PORNOGRAPHY PROBLEM ON THE WEB.

24 PLAINTIFFS HAVE ARGUED THAT COPA IS NOT  
25 NEEDED BECAUSE FILTERING SOFTWARE OFFERS A BETTER

1 SOLUTION. YOUR HONOR, THE UNITED STATES IS NOT ARGUING  
2 AGAINST THE PRIVATE USE OF FILTERING SOFTWARE. BUT  
3 FILTERING SOFTWARE IS PART OF THE STATUS QUO. TO  
4 SUPPORT FILTERING AS AN ALTERNATIVE TO COPA IS TO STATE  
5 THAT THINGS SHOULD PROCEED IN THE SAME MANNER THAT THEY  
6 HAVE SINCE THE STATUTE WAS ENJOINED IN 1998.

7 ALTHOUGH THERE IS A CERTAIN APPEAL TO  
8 DEFERRING TO FAMILIES AND TESTING WHETHER PRIVATE  
9 SOLUTIONS WORK BETTER THAN GOVERNMENT ACTION MIGHT WORK,  
10 THIS EXPERIMENT HAS BEEN ATTEMPTED AND THIS EXPERIMENT  
11 HAS FAILED.

12 THE EVIDENCE WILL SHOW THAT A SHOCKING  
13 AMOUNT OF PORNOGRAPHY SLIPS THROUGH THESE FILTERS AND  
14 INTO THE HANDS OF CHILDREN. THE EVIDENCE WILL SHOW THAT  
15 THE PATCHWORK OF STATUS QUO SOLUTIONS IS NOT WORKING  
16 WELL ENOUGH.

17 THAT THE ONLY WAY TO ADEQUATELY PROTECT  
18 CHILDREN IS TO REGULATE THE PROBLEM AT ITS SOURCE, THE  
19 COMMERCIAL PORNOGRAPHY INDUSTRY.

20 DESPITE THE COMMERCIALIZATION OF THE  
21 WORLDWIDE WEB, THE PORNOGRAPHY INDUSTRY REMAINS  
22 UNREGULATED. LEGAL AND SOCIAL NORMS THAT GOVERN ADULT  
23 ENTERTAINMENT HAVE NOT CAUGHT UP WITH THE INTERNET.

24 LEGISLATIVE HISTORY MAKES CLEAR WHAT  
25 CONGRESS HAD IN MIND, THAT CONGRESS ACTED WITH A VERY

1 NARROW PURPOSE. IT INTENDED TO REGULATE THE COMMERCIAL  
2 PORNOGRAPHY INDUSTRY. COPA WOULD REQUIRE A VERY MINOR  
3 CHANGE IN THE WAY THEY DO BUSINESS. COPA DOES NOT BAN  
4 ANYTHING OR CENSOR THE MATERIAL THAT IT COVERS.

5 COPA IS NOTHING MORE THAN THE  
6 TECHNOLOGICAL EQUIVALENT OF THE PLASTIC WRAPPER ON  
7 PENTHOUSE MAGAZINE IN A BOOK STORE, OR CONVENIENCE  
8 STORE. COPA IS NOTHING MORE THAN THE TICKET BOOTH AT AN  
9 ADULT THEATER, OR THE BOUNCER WHO CHECKS ID'S BEFORE YOU  
10 ENTER A BAR. THESE ADULT WEBSITES HAVE FREE TEASERS ON  
11 FULL DISPLAY, BUT CHILDREN DON'T SEE THESE FREE TEASERS  
12 FROM ANY OTHER MEDIUM OF COMMUNICATION. WE PROVIDED  
13 SOME OF THESE PICTURES TO YOU BUT CHILDREN DO NOT SEE  
14 PHOTOGRAPHIC IMAGES IN BOOK STORES, DON'T SEE COVERS OF  
15 VIDEOS NEXT TO THE CHILDREN'S SECTION IN VIDEO STORES.  
16 WHEN THEY GO TO A VIDEO STORE, CHILDREN DON'T SEE THE  
17 FREE 30-SECOND PORNOGRAPHY VIDEOS BEFORE WATCHING PG  
18 MOVIES IN A MOVIE THEATER. WHY SHOULD THE WEB BE  
19 TREATED DIFFERENTLY THAN ANY OTHER MEDIUM OF  
20 COMMUNICATION? OF COURSE ANY LEGISLATION THAT REGULATES  
21 COMMERCIAL SPEECH MUST BE EXAMINED CLOSELY, BUT THERE IS  
22 A HISTORY OF ACCOMMODATION BETWEEN FIRST AMENDMENT  
23 VALUES AND THE GOVERNMENT'S NEED TO PROTECT CHILDREN.

24 LAWS GOVERNING MAGAZINE SALES AND MOVIE  
25 THEATERS HAVE BEEN UPHELD BY THE COURTS AND REGULATIONS



1 OF RADIO BROADCASTS. OTHER MEDIA, LIKE CABLE AND  
2 NETWORK TELEVISION, ARE ALSO REGULATED. THE WORLDWIDE  
3 WEB SHOULD NOT BE TREATED ANY DIFFERENTLY THAN THESE  
4 OTHER MEDIA.

5 DEFENDANTS' CASE-IN-CHIEF WILL START AT  
6 SQUARE ONE, DEFINING THE PROBLEM. THE HARMFUL EFFECT OF  
7 CHILDHOOD EXPOSURE TO PORNOGRAPHY.

8 YOU WILL HEAR FROM ERNIE ALLEN, THE  
9 PRESIDENT OF THE NATIONAL CENTER FOR MISSING AND  
10 EXPLOITED CHILDREN. HE WILL TESTIFY THAT UNWANTED  
11 EXPOSURE TO PORNOGRAPHY ON THE INTERNET IS ONE OF HIS  
12 ORGANIZATION'S CHIEF CONCERNS. CHILDHOOD EXPOSURE TO  
13 HARDCORE PORNOGRAPHY. IT ACTUALLY DAMAGES A CHILD'S  
14 DEVELOPMENT.

15 PROFESSOR DAVID FINKELHOR, A RENOWNED  
16 PROFESSOR AT THE UNIVERSITY OF NEW HAMPSHIRE AND  
17 DIRECTOR OF THE CRIMES AGAINST CHILDREN RESEARCH CENTER  
18 WILL TESTIFY THAT, EVEN THOUGH MORE AND MORE PARENTS ARE  
19 TRYING TO USE FILTERS TO PROTECT THEIR KIDS, MORE AND  
20 MORE KIDS ARE BEING EXPOSED TO PORNOGRAPHY.

21 UNWANTED EXPOSURE TO PORNOGRAPHY HAS  
22 INCREASED FROM 25 PERCENT TO 34 PERCENT, OVER THAT  
23 FIVE-YEAR PERIOD. DURING THE SAME PERIOD, THAT FILTER  
24 USE HAS GONE UP. PROFESSOR FINKELHOR WILL ALSO SHARE  
25 COMMENTS HE RECEIVED FROM CHILDREN WHO PARTICIPATED IN

1 HIS STUDY. FOR EXAMPLE, A 14-YEAR OLD BOY SAID THAT FOR  
2 A SCHOOL PROJECT I TYPED IN, "SAY NO TO DRUGS" AND IT  
3 SHOWED NAKED PEOPLE USING DRUGS.

4 A 14-YEAR OLD GIRL SAID, "I WAS JUST VERY  
5 BORED. I TYPED IN MY DOG'S NAME AND PICTURES OF NAKED  
6 GIRLS JUST KEPT POPPING UP. I TRIED CLOSING THE SCREEN  
7 AND THE POP-UPS KEPT COMING."

8 THE UNITED STATES WILL NOT BE OFFERING  
9 CHILDREN AS WITNESSES. BUT IT'S IMPORTANT ENOUGH NOT TO  
10 LOSE SIGHT ENTIRELY OF WHAT THIS TRIAL IS. IT'S  
11 IMPORTANT NOT TO LET THIS TRIAL BECOME A PURELY  
12 INTELLECTUAL EXERCISE. IT'S IMPORTANT NOT TO BECOME  
13 EMOTIONALLY DETACHED FROM THE ISSUE.

14 THAT IS WHY DISPLAYING GRAPHIC IMAGES IS  
15 IMPORTANT. BECAUSE IF PHOTOGRAPHS ARE TOO PROVOCATIVE  
16 AND GRAPHIC IN SOME CIRCUMSTANCES, PLEASE TAKE A MOMENT  
17 TO THINK PERIODICALLY THROUGHOUT THIS TRIAL TO THINK  
18 ABOUT THEIR IMPACT ON CHILDREN.

19 OUR TESTIMONY WILL SHOW THAT EXPOSURE TO  
20 HARD CORE PORNOGRAPHY SERIOUSLY DAMAGES A CHILD'S  
21 DEVELOPMENT. IT CAN AFFECT A CHILD'S DAILY LIFE AND A  
22 CHILD'S FUTURE. THE PATCHWORK OF SOLUTIONS LIKE  
23 OVERSIGHT AND EDUCATION AND PROMOTION OF THE VOLUNTARY  
24 USE OF FILTERS HAS SCRATCHED THE SURFACE OF THE PROBLEM  
25 BUT THEY HAVE NOT SOLVED IT AND THE STATUS QUO OPTIONS

1 ARE JUST NOT ENOUGH.

2 THIS CASE COMES BEFORE YOU OF COURSE  
3 BECAUSE A SHARPLY DIVIDED SUPREME COURT REMANDED THIS  
4 CASE FOR A TRIAL ON THE MERITS. ONE JUSTICE CONCLUDED  
5 THAT HARMFUL TO MINORS MATERIAL IS ENTITLED TO NO  
6 PROTECTION BY THE FIRST AMENDMENT, AND THREE OTHERS  
7 FOUND THAT FILTERING CANNOT BE A LESS RESTRICTIVE  
8 ALTERNATIVE, BECAUSE THE PRIVATE USE OF FILTERING  
9 SOFTWARE IS, BY DEFINITION, NOT A LESS RESTRICTIVE  
10 ALTERNATIVE FOR THE GOVERNMENT. AND THE GOVERNMENT HAS  
11 AN INDEPENDENT INTEREST RECOGNIZED BY THE CONSTITUTION  
12 IN PROTECTING CHILDREN. BUT FIVE JUSTICES UPHELD THE  
13 PRELIMINARY INJUNCTION AGAINST ENFORCEMENT OF THE LAW  
14 WHILE NOTING THAT THE RECORD LACKS FRESH EVIDENCE  
15 REGARDING THE EFFECTIVENESS OF FILTERS.

16 YOUR HONOR, THE SUPREME COURT WOULD NOT  
17 HAVE REMANDED THIS CASE IF UNRESOLVED FACTUAL ISSUES  
18 WERE NOT CRITICAL TO THE OUTCOME. AND FOREMOST AMONG  
19 THESE ISSUES IS ONE MAJOR FACT THAT SIMPLY CAN'T BE  
20 DISPUTED, FILTERS HAVE NOT SOLVED THE PROBLEM.

21 WE PROVIDED PICTURES TO YOU THAT GOT  
22 THROUGH FILTERS TESTED BY PLAINTIFFS' OWN EXPERT. EACH  
23 OF THOSE PAGES HAD GOTTEN THROUGH A FILTER. AND YOU ARE  
24 ALSO GOING TO HEAR TESTIMONY FROM OUR EXPERTS, PAUL  
25 MEWETT AND PHILIP STARK, DESCRIBING THEIR COMPREHENSIVE

1 STUDY OF THE EFFECTIVENESS OF THE FILTERS.

2 THE RESULTS OF THE STUDY CONFIRM WHAT THE  
3 PUBLIC ALREADY KNOWS. FILTERS DON'T SOLVE THE PROBLEMS.  
4 ONE FILTER FAILED TO BLOCK OVER 60 PERCENT OF THE  
5 SEXUALLY EXPLICIT WEB PAGES IT WAS TESTED AGAINST, OVER  
6 60 PERCENT. WE REFER TO THIS PROBLEM AS UNDERBLOCKING.  
7 MANY OTHER FILTERS MISSED MORE THAN 25 PERCENT OF THOSE  
8 SEXUALLY EXPLICIT WEBSITES.

9 EVEN THE FILTER THAT UNDERBLOCKED THE  
10 LEAST SEXUALLY EXPLICIT PAGES STILL ALLOWED 8.6 PERCENT  
11 OF THE SEXUALLY EXPLICIT PAGES THROUGH. DON'T LET A  
12 SMALL PERCENTAGE FOOL YOU. THIS PERCENTAGE TRANSLATES  
13 TO HUNDREDS OF MILLIONS OF SEXUALLY EXPLICIT PAGES.

14 IF A WATER SOURCE WAS MIXED WITH A SEWER  
15 SYSTEM, AND YOU HAD A FILTER THAT SCREENED OUT BUT 6.6  
16 PERCENT OF IT, WOULD THAT BE A SOLUTION TO THE PROBLEM?  
17 WOULD THAT CURE THE PROBLEM OF THE DRINKING WATER? I  
18 THINK THAT ANALOGY WORKS HERE WITH KIDS. IT'S THE FACT  
19 THAT THERE ARE STILL ALL OF THESE IMAGES THERE, THERE  
20 WERE SPEECHES THAT CAN BE DONE DIRECTED AT THE SOURCE  
21 THAT CAN ADDRESS THAT PROBLEM WHERE FILTERS WILL NEVER  
22 BE ABLE TO.

23 A LOW UNDERBLOCKING RATE ALSO COMES AT A  
24 COST. THE FILTERS THAT ARE MOST SUCCESSFUL AT BLOCKING  
25 OUT SEXUALLY EXPLICIT PAGES ALSO BLOCK OUT MANY OTHER

1 PAGES THAT CONTAIN NO SEXUAL CONTENT AT ALL. 23.6  
2 PERCENT OF THE PAGES THAT WERE BLOCKED HAD NO SEXUAL  
3 EXPLICIT CONTENT.

4 FOR EXAMPLE, ONE FILTER EVEN BLOCKED A  
5 WEBSITE PROMOTING A MARATHON TO RAISE FUNDS FOR BREAST  
6 CANCER RESEARCH. PART OF THE CIA'S WORLD FACT BOOK WAS  
7 BLOCKED. AND A PAGE WITH AN ACLU CALENDAR. IN FACT  
8 EACH OF THE PLAINTIFFS WEBSITES IN THIS CASE WAS BLOCKED  
9 BY AT LEAST ONE FILTER, AND THE UNITED STATES HAS  
10 CONSISTENTLY TAKEN THE POSITION THAT NONE OF THE  
11 PLAINTIFFS' WEBSITES ARE COVERED BY COPA.

12 SO IN THE ABSENCE OF THE SOLUTION OFFERED  
13 BY COPA, PARENTS ARE LEFT WITH A VERY DIFFICULT CHOICE  
14 OF ALLOWING THEIR CHILDREN TO BE EXPOSED TO SEXUALLY  
15 EXPLICIT MATERIAL OR OF CUTTING OFF THEIR CHILDREN'S  
16 ACCESS TO A SIGNIFICANT PORTION OF OTHER MATERIALS ON  
17 THE WORLDWIDE WEB, MATERIALS THAT IN MANY CASES ARE  
18 NECESSARY FOR A CHILD TO COMPLETE HIS HOMEWORK.

19 UNFORTUNATELY, THE EVIDENCE WILL SHOW  
20 THAT FILTERING SOFTWARE IS NOT GOING TO GET MUCH BETTER.  
21 MOST FILTERING SOFTWARE RELIES ON SO-CALLED BLACK LISTS,  
22 A LIST OF SITES WITH PROHIBITED CONTENT.

23 AS YOU MIGHT IMAGINE THE TASK OF KEEPING  
24 AN UP-TO-DATE BLACK LIST IS MAMMOTH. IT IS SIMPLY  
25 IMPOSSIBLE TO CATALOG THE ENTIRE WORLDWIDE WEB. SO THE

1 OVERALL EFFECTIVENESS OF A FILTER WILL ALWAYS DEPEND ON  
2 THE PERFORMANCE OF AUTOMATED CLASSIFICATION SOFTWARE OR  
3 DYNAMIC FILTERING.

4 ON THIS POINT YOU WILL HEAR FROM DR.  
5 STEPHEN NEALE WHO IS A NATIONALLY RENOWNED EXPERT IN  
6 LINGUISTICS. HE WILL EXPLAIN THAT IMAGE FILTERING DOES  
7 NOT WORK AND THAT ROBOT FILTERS THAT OPERATE BY SORTING  
8 LANGUAGE AND TEXT WILL NEVER BE ABLE TO STOP  
9 PORNOGRAPHIC IMAGES FROM REACHING CHILDREN.

10 DOCTOR JEFFREY EISENACH, AN EXPERT ON THE  
11 INTERNET AND ITS IMPACT ON MARKETS AND PUBLIC POLICIES  
12 WILL TESTIFY THERE IS AN ECONOMIC PROBLEM, STRUCTURAL  
13 PROBLEM IN THE MARKET.

14 FILTERING PRODUCTS WILL NEVER CATCH UP  
15 WITH THE EFFORTS OF THE PORNOGRAPHY INDUSTRY TO PUSH  
16 THEIR WARES. THE MARKET IS SMALL, NOT VERY PROFITABLE,  
17 AND THEY FACE THE GOLIATH PORNOGRAPY INDUSTRY WITH DEEP  
18 POCKETS AND EVERY INCENTIVE TO FIND WAYS TO EVADE THESE  
19 FILTERS.

20 ALL THE FILTERING PRODUCTS TESTED BY THE  
21 UNITED STATES WERE RATED TOP TEN IN THE MARKET.  
22 CLEARLY, EVEN THOSE PARENTS WHO RESEARCH A FILTER'S  
23 EFFECTIVENESS ARE UNABLE TO DISTINGUISH THE RELATIVELY  
24 GOOD PRODUCTS FROM THE BAD PRODUCTS. SO THE PRODUCERS  
25 DON'T HAVE INCENTIVE TO IMPROVE THE PRODUCT EVEN IF IT

1 WAS POSSIBLE TO DO SO.

2 THE POOR PERFORMANCE OF FILTERING  
3 PRODUCTS IS JUST PART OF THE PROBLEM. THE USE OF  
4 FILTERING SOFTWARE REQUIRES TECHNOLOGICAL  
5 SOPHISTICATION. FILTERING SOFTWARE COST MONEY.

6 AND THERE IS ANOTHER PROBLEM, A  
7 SIGNIFICANT ONE. FOR A VARIETY OF REASONS, PARENTS  
8 DON'T USE IT. DIFFERENT STUDIES HAVE COME UP WITH  
9 DIFFERENT ESTIMATES, BUT AT MOST, 55 PERCENT OF  
10 HOUSEHOLDS WITH MINOR CHILDREN USE FILTERING SOFTWARE.  
11 EVEN IF FILTERS WERE AN EFFECTIVE WAY TO PROTECT MINORS,  
12 THEY ARE ONLY PROTECTING MOST 50 PERCENT OF FAMILIES TO  
13 THE LIMITED DEGREE THAT FILTERS ARE ACTUALLY EFFECTIVE.  
14 SO EVEN IF THE FILTERS ACTUALLY DID WORK, IT WOULD NOT  
15 SOLVE THAT LACK OF INTEREST.

16 ANOTHER PROBLEM IS THAT PARENTS MUST BE  
17 ABLE TO MONITOR HOW THE FILTERING SOFTWARE IS USED. AND  
18 A LOT OF CHILDREN UNDERSTAND TECHNOLOGY BETTER THAN  
19 THEIR PARENTS DO. MANY KIDS THESE DAY REFER TO THEIR  
20 PARENTS AS COMPUTER DUMB. HERE IS A COMIC STRIP. "WHAT  
21 BOTHERS ME MOST IS THAT I HAD TO SHOW THEM HOW TO  
22 ACTIVATE THE PARENTAL CONTROLS."

23 FOR ALL OF THESE REASONS, IT'S CLEAR THAT  
24 THE PORNOGRAPHY PROBLEM CAN'T BE SOLVED BY PARENTAL  
25 CONTROL AT EVERY POINT OF ACCESS TO THE INTERNET. IN

1 EVERY KIDS' HOME, IN EVERY KIDS' FRIENDS'S HOME, ON  
2 EVERY SCHOOL AND LIBRARY COMPUTER, ON EVERY LAPTOP,  
3 PERSONAL DIGITAL ASSISTANTS, ON EVERY MOBILE PHONE OR  
4 PLAY STATION. EVEN THE MOST PROTECTIVE PARENT CAN'T  
5 SOLVE THE PROBLEM ALONE.

6 BUT THE PROBLEM DOES NOT NEED TO BE  
7 SOLVED AT EVERY POINT OF ACCESS, BECAUSE THE GOVERNMENT  
8 CAN ADDRESS THE PROBLEM BY REGULATING PORNOGRAPHY AT ITS  
9 SOURCE, WHICH BRINGS US TO WHERE WE ARE TODAY. THIS  
10 TRIAL.

11 YOUR HONOR, THE ISSUES AT TRIAL MAY  
12 APPEAR MORE MURKY THAN THEY REALLY ARE. BECAUSE NO ONE  
13 FROM THE COMMERCIAL PORNOGRAPHY INDUSTRY WILL BE HERE TO  
14 TESTIFY. WHEN CONGRESS PASSED COPA, IT WAS NOT  
15 ADDRESSING SERIOUS NEWS AND ENTERTAINMENT WEBSITES LIKE  
16 SALON.COM OR SERIOUS EDUCATIONAL WEBSITES LIKE SEXUAL  
17 HEALTH NETWORK. IT APPLIES TO PENTHOUSE.COM. COPA  
18 APPLIES TO JUICYBOOBS.COM.

19 THE BENEFICIARY OF THIS INJUNCTION IS THE  
20 PORNOGRAPHY INDUSTRY, AN INDUSTRY THAT DOES NOT NEED  
21 PROTECTION. THIS IS AN INDUSTRY THAT HAS NO PROBLEM  
22 WITH SELF IDENTIFICATION. THE INDUSTRY THAT IN REALITY  
23 IS SUBJECT TO COPA, IS FULLY AWARE THAT THEY ARE THE  
24 TARGET OF THE STATUTE, AND THIS INDUSTRY HAS BEEN FULLY  
25 PROTECTED FROM COPA'S REASONABLE REQUIREMENTS SINCE



1 1998.

2 AS MR. GOMEZ ALLUDED TO, WHEN YOU GET TO  
3 THE FIRST PAGE OF A PORNOGRAPHIC WEBSITE, YOU KNOW WHERE  
4 YOU ARE. I WON'T DO A SIDE-BY-SIDE COMPARISON TODAY BUT  
5 HERE IS THE FRONT PAGE OF SCARLETEEN.COM. THE SITE  
6 PROVIDES SEXUAL EDUCATION FOR ADOLESCENTS AND YOUNG  
7 ADULTS. IF YOU LOOKED AT THAT SIDE-BY-SIDE WITH SOME OF  
8 THE EXHIBITS WE PROVIDED THAT WAS AS MANY AS TEN, 20  
9 GRAPHIC PICTURES OF SEXUAL ACTS WITH EXPLICIT FOCUS ON  
10 THE GENITALS, ALL ON THE FRONT PAGE WITH VIRTUALLY NO  
11 TEXT, AFTER LOOKING AT THOSE TWO SIDE-BY-SIDE, THERE IS  
12 NO REASONABLE PERSON WHO WOULD BE CONFUSED ABOUT WHICH  
13 OF THOSE TWO WEBSITES IS PORNOGRAPHIC.

14 YOU WILL ALSO HEAR TESTIMONY FROM  
15 NERVE.COM, AN AWARD-WINNING WEBSITE THAT FEATURES  
16 LITERATURE AND PHOTOGRAPHY. IF YOU LOOK AT THAT  
17 SIDE-BY-SIDE WITH ONE OF THOSE PORNOGRAPHIC WEBSITES, NO  
18 REASONABLE PERSON WOULD BE CONFUSED ABOUT WHICH OF THOSE  
19 TWO WEBSITES IS ENGAGED IN THE BUSINESS OF DISSEMINATING  
20 HARMFUL TO MINORS MATERIAL.

21 YOU WILL HEAR FROM URBANDICTIONARY.COM,  
22 AN ONLINE DICTIONARY WITH CONTEMPORARY SLANG. NO  
23 REASONABLE PERSON WOULD BE CONFUSED ABOUT WHETHER THIS  
24 SITE OR THOSE PORNOGRAPHIC SITES IS KNOWINGLY AND WITH  
25 KNOWLEDGE OF THE NATURE OF THE MATERIAL COMMUNICATING

1 HARMFUL TO MINORS MATERIAL AS A REGULAR COURSE OF ITS  
2 BUSINESS.

3 MR. HANSEN TALKED ABOUT CRIMINAL  
4 PROSECUTIONS. IT IS WORTH NOTING THAT PENALTY ONLY  
5 APPLIES WHEN IT IS INTENTIONAL, WHEN SOMEBODY KNOWS THAT  
6 THEIR MATERIAL IS HARMFUL TO MINORS AND THEY  
7 DELIBERATELY FLOUT THE LAW.

8 FINALLY YOU WILL HEAR FROM SALON.COM,  
9 MS. JOAN WALSH. THIS IS A NEWS AND ENTERTAINMENT SITE  
10 THAT COMPETES WITH SLATE AND EVEN THE NEW YORK TIMES.  
11 NO REASONABLE PERSON WOULD BE CONFUSED ABOUT WHETHER  
12 THIS SITE OR THOSE OTHER PORNOGRAPHIC SITES THAT WE  
13 PROVIDED TO YOU HAVE THE INTENT OR DESIGN TO APPEAL OR  
14 PANDER TO THE PRURIENT INTEREST OR WHICH ONE OF THEM HAS  
15 MATERIAL THAT IS PATENTLY OFFENSIVE WITH RESPECT TO  
16 MINORS, OR LEWD, OR WHICH ONE OF THOSE LACKS ANY  
17 LITERARY, ARTISTIC, POLITICAL OR SCIENTIFIC VALUE.

18 THE ACLU IN ITS ZEAL TO PREVENT THE  
19 GOVERNMENT FROM HYPOTHETICAL AND HIGHLY IMPROBABLE  
20 OVERREGULATION WOULD CAUSE THE REAL PROBLEM, THOSE  
21 PORNOGRAPHIC WEBSITES TO REMAIN UNREGULATED.

22 THIS HARMFUL TO MINORS DEFINITION, THIS  
23 VARIABLE OBSCENITY STANDARD, HAS BEEN AROUND FOR  
24 DECADES. IT HAS SURVIVED MULTIPLE CHALLENGES IN THE  
25 COURTS, WHICH BRINGS ME TO THE SOLUTION TO THE

1 PORNOGRAPHY PROBLEM. COPA. FIRST, IT'S EASY FOR  
2 WEBSITES TO COMPLY WITH COPA. THE INDUSTRY IS PERFECTLY  
3 CAPABLE OF SEGREGATING IMAGES TO COMPLY WITH COPA. ALL  
4 THESE WEBSITES HAVE TO DO IS MOVE THE EXPLICIT CONTENT  
5 THAT THEY HAVE ON THEIR FRONT PAGES, MOVE IT BEHIND THE  
6 VERIFICATION SCREEN. UNDER THE STATUTE, CREDIT CARDS  
7 ARE AN EFFECTIVE MEANS TO RESTRICT ACCESS TO MINORS.  
8 DEFENDANT'S EXPERT, MR. ART CLARK, WILL TESTIFY THAT  
9 VERY FEW MINORS HAVE PAYMENT CARDS. PARENTS CAN EASILY  
10 MONITOR THE USE OF THOSE WHO DO, BECAUSE CHILDREN'S  
11 CARDS ARE LINKED TO THEIR PARENTS' ACCOUNT. UNLIKE  
12 FILTERS, THEY ARE WIDELY USED BY ADULTS, EASY TO USE,  
13 AND IT'S EASY FOR PARENTS TO SUPERVISE THEIR USE.

14 NOW, THERE ARE NEW TYPES OF CARDS,  
15 PREPAID GIFT CARDS. THEY COME LOADED WITH A FIXED  
16 DOLLAR AMOUNT. YOU CAN USE THEM IN ONE STORE OR  
17 SOMETIMES GROUPS OF STORES. ALTHOUGH MINORS HAVE ACCESS  
18 TO MANY OF THESE GIFT CARDS, THE EVIDENCE WILL SHOW THAT  
19 MERCHANTS CAN DISTINGUISH GIFT CARDS FROM CREDIT AND  
20 DEBIT CARDS AND CAN REFUSE TO ACCEPT THEM. BUT YOU  
21 DON'T EVEN NEED A CREDIT CARD TO COMPLY WITH COPA. NEW  
22 COMPANIES HAVE EMERGED IN RECENT YEARS THAT PROVIDE AGE  
23 AND IDENTITY VERIFICATION SERVICES OVER THE INTERNET.  
24 CURRENTLY, THEY WORK WITH COMPANIES WHO SELL WINE OR  
25 TOBACCO ONLINE AND OTHER INDUSTRIES THAT NEED TO VERIFY

1 AGE OR IDENTITY OF A CUSTOMER.

2 THESE SERVICES TAKE BASIC PERSONAL  
3 INFORMATION LIKE YOUR NAME, YOUR ADDRESS, LAST FOUR  
4 DIGITS OF YOUR SOCIAL SECURITY NUMBER, THEY CHECK IT  
5 AGAINST A VAST DATABASE OF PUBLIC RECORDS.

6 BUT THAT IS NOT ALL THEY DO. IN ORDER TO  
7 PROVIDE AN ADDITIONAL LEVEL OF SECURITY, THEY CAN ALSO  
8 GENERATE BIOGRAPHICAL HISTORICAL QUESTIONS THAT ARE OUT  
9 OF WALLET, SO-TO-SPEAK, MEANING IF SOMEBODY WOULD NOT  
10 KNOW THE ANSWERS TO IT, IF THEY ONLY LOOKED AT THE  
11 INFORMATION IN THEIR WALLET, THEY CAN ASK QUESTIONS,  
12 WHAT WAS THE MAKE OF A CERTAIN CAR, OR WHICH OF THESE  
13 ADDRESSES DID YOU PREVIOUSLY LIVE, AND WHAT WAS YOUR  
14 MAIDEN NAME.

15 YOU WILL HEAR FROM JOHN DANCU AND PATTIE  
16 DILLON. THEY WILL TESTIFY ABOUT THAT THEY PROVIDE AGE  
17 AND VERIFICATION SERVICES. THE AMERICAN CIVIL LIBERTIES  
18 UNION HAS POINTED OUT THAT THESE AFFIRMATIVE DEFENSES  
19 ARE NOT PERFECT, THAT SOME CUNNING MINORS MIGHT FIND  
20 WAYS AROUND THESE VERIFICATION BARRIERS. THAT IS NOT A  
21 PROBLEM THAT IS UNIQUE TO ONLINE TRANSACTIONS. MINORS  
22 CAN AND DO PURCHASE AGE RESTRICTED PRODUCTS ALL THE  
23 TIME, LOTTERY TICKETS, ALCOHOL AND TOBACCO. THAT DOES  
24 NOT MEAN THAT THE AGE VERIFICATION LAWS THEMSELVES ARE  
25 INVALID. THE ACLU HAS SUGGESTED COPA WILL HAVE A

1 CRUSHING IMPACT ON THESE BUSINESS. THESE CHICKEN LITTLE  
2 ASSERTIONS ARE SIMPLY NOT TRUE.

3 THE ADULT ENTERTAINMENT INDUSTRY IS  
4 ESTIMATED TO MAKE BILLIONS OF DOLLARS A YEAR. THIS CASE  
5 IS ABOUT THE MULTI-BILLION DOLLAR PORNOGRAPHY INDUSTRY,  
6 SELLING PORNOGRAPHY OVER THE WEB WITHOUT ANY STANDARDS,  
7 OR REGULATIONS OR CONCERN FOR WHO SEES THE CONTENT.

8 SECONDLY, IT IS EASY FOR CONSUMERS TO  
9 COMPLY WITH COPA. DR. SCOTT SMITH, AN EXPERT ON  
10 INTERNET BUSINESSES AND CONSUMER BEHAVIOR WILL TESTIFY  
11 THAT COMPLIANCE WITH COPA WILL NOT BE A BIG DEAL. IT'S  
12 NOT GOING TO HAVE A BIG IMPACT ON EITHER BUSINESSES OR  
13 CONSUMERS. THE PROCESS OF MAKING A PURCHASE ONLINE OR  
14 PROVIDING AGE VERIFICATION IS VIRTUALLY SEAMLESS AND  
15 WILL ONLY GET BETTER WITH TIME.

16 ANY PERCEIVED BURDENS SIMPLY DO NOT  
17 SURVIVE CLOSE INSPECTION. EVEN WITH COPA, IT IS MUCH  
18 EASIER TO PURCHASE OR VIEW PORNOGRAPHY ON THE INTERNET  
19 THAN IT IS FOR MANY OTHER MEDIUM LIKE A MOVIE THEATER OR  
20 A VIDEO STORE OR A CONVENIENCE STORE. EVEN WITH COPA,  
21 THERE IS GREATER PRIVACY, GREATER ANONYMITY AND LESS  
22 RISK INTO RUNNING INTO YOUR NEIGHBOR OR COLLEAGUE. IT  
23 IS NOTHING MORE THAN THE ELECTRONIC EQUIVALENT OF A  
24 BOUNCER. PORNOGRAPHY CAN BE ACCESSED IN ONE OWN'S HOME  
25 WITH JUST A FEW TAPS ON THE KEYBOARD OR A FEW CLICKS OF

1 THE MOUSE.

2 LET'S EXAMINE THE PRINCIPLE THAT  
3 UNDERLINES THE AMERICAN CIVIL LIBERTY UNION'S ARGUMENT  
4 ABOUT CONSUMERS. CHILDREN AND YOUNG TEENAGERS CANNOT BE  
5 PROTECTED BECAUSE A MARGINAL CHANGE IN THE CONVENIENCE  
6 OF ACCESS TO PORNOGRAPHY IS OF PARAMOUNT SIGNIFICANCE.  
7 THIS SIMPLY CANNOT BE TRUE. IF THE GOVERNMENT CANNOT  
8 REGULATE TO PROTECT MINORS THEN CHILDREN ARE THE LOSERS  
9 IN THIS NEW TECHNOLOGICAL REVOLUTION. INSTANT ACCESS TO  
10 PORN IS SIMPLY NOT MORE IMPORTANT THAN PROTECTING  
11 CHILDREN. IT'S NOT A BIG BURDEN TO PASS THROUGH A  
12 VERIFICATION SCREEN, ESPECIALLY AFTER YOU DO IT THE  
13 FIRST TIME; ANY TIME YOU GO BACK THAT SITE WILL  
14 RECOGNIZE YOU.

15 AND THE FINAL POINT I WILL HIGHLIGHT  
16 ABOUT EFFECTIVENESS IS THAT COPA OFFERS A WORLDWIDE  
17 SOLUTION. I'M NOT GOING TO DWELL ON THIS HERE BECAUSE  
18 IT WAS COVERED IN OUR PRETRIAL BRIEF AND PROPOSED  
19 FINDINGS OF FACT AND CONCLUSIONS OF LAW. COPA, BY ITS  
20 TERMS, APPLIES WORLDWIDE. OTHER INTERNET LAWS HAVE BEEN  
21 APPLIED OUTSIDE OF THE UNITED STATES, MOST FAMOUSLY THE  
22 LAWS INVOLVING INTERNET GAMBLING. COURTS HAVE FOUND NO  
23 DIFFICULTLY ESTABLISHING JURISDICTION OVER FOREIGN-  
24 BASED WEBSITES THAT SEEK BUSINESS IN THE UNITED STATES  
25 AND PROCESS PAYMENTS FROM U.S. CONSUMERS.

1                   NOW, DOES COPA REGULATE ALL PORNOGRAPHY  
2           EVERYWHERE, TRANSMITTED THROUGH EVERY MEDIUM OF  
3           COMMUNICATION? THE ANSWER TO THAT QUESTION IS POSSIBLY  
4           NO. BUT CONGRESS CAN CHOOSE TO REGULATE AN INDUSTRY  
5           INCREMENTALLY. REGULATION OF NETWORK T.V. BROADCASTS IS  
6           NOT UNCONSTITUTIONAL BECAUSE IT DOES NOT APPLY TO CABLE  
7           TELEVISION. THE REGULATION OF TELEVISION GENERALLY IS  
8           NOT UNCONSTITUTIONAL BECAUSE IT DOES NOT APPLY TO RADIO  
9           AND THE REGULATION OF RADIO BROADCASTS IS NOT  
10          UNCONSTITUTIONAL BECAUSE IT DOES NOT APPLY TO  
11          DIAL-A-PORN.

12                   SIMILARLY, COPA IS NOT UNCONSTITUTIONAL  
13          BECAUSE IT APPLIES ONLY TO THIS WORLDWIDE WEB WHERE  
14          EVIDENCE WILL PROVE THAT THE VAST MAJORITY OF COMMERCIAL  
15          PORNOGRAPHY IS ACCESSED. LET'S NOT LOSE SIGHT OF  
16          CONGRESS' EFFORT TO REGULATE INTERNET PORNOGRAPHY.  
17          CONGRESS DRAFTED THIS LEGISLATION TO ADDRESS  
18          CONSTITUTIONAL CONCERNS THAT WERE EXPRESSED BY THE  
19          SUPREME COURT IN AN EARLIER CASE.

20                   COPA IS NOT A PERFECT SOLUTION, BUT THE  
21          COURT SHOULD NOT LET THE PERFECT BE THE ENEMY OF THE  
22          GOOD. GIVEN THAT THE GOVERNMENT HAS A COMPELLING  
23          CONSTITUTIONAL INTEREST IN ADDRESSING THE PORNOGRAPHY  
24          PROBLEM, THERE MUST BE SOME WAY IN WHICH CONGRESS CAN  
25          ACT.

1 MR. HANSEN HAS ALSO SUGGESTED THAT THE  
2 GOVERNMENT SHOULD PROSECUTE MORE WEBSITES FOR OBSCENE  
3 MATERIAL. THIS ARGUMENT IS A RED HERRING. COPA APPLIES  
4 TO MATERIAL THAT IS OBSCENE FOR MINORS, NOT OBSCENE FOR  
5 ADULTS. COPA APPLIES TO MATERIAL THAT KIDS SHOULD NOT  
6 SEE. IT IS NOT MATERIAL THAT IS SO PATENTLY OFFENSIVE  
7 AND UTTERLY LACKING IN REDEEMING VALUE THAT NO ONE  
8 SHOULD SEE IT. COPA APPLIES TO A MIDDLE CATEGORY OF  
9 MATERIAL THAT SHOULD NOT BE BANNED ENTIRELY BUT THAT  
10 PARENTS DON'T WANT THEIR KIDS TO SEE.

11 YOUR HONOR, THE STAKES COULD NOT BE  
12 HIGHER. THE UNITED STATES IS THE DEFENDANT IN THE CASE  
13 BUT THE ACLU IS NOT JUST CHALLENGING THE GOVERNMENT.  
14 THERE IS PERHAPS NO CATEGORY OF LAWS THAT ENJOYS BROADER  
15 AND MORE ENTHUSIASTIC BIPARTISAN SUPPORT THAN LAWS THAT  
16 PROTECT THE MOST VULNERABLE MEMBERS OF OUR SOCIETY,  
17 CHILDREN. CONGRESS HAS FASHIONED IN A SOLUTION THAT  
18 SOLVES THE PROBLEM OF CHILDHOOD EXPOSURE TO PORNOGRAPHY  
19 AT THE SOURCE OF THE PROBLEM. IT PUTS THE BURDEN ON THE  
20 PURVEYORS OF PORNOGRAPHY, NOT ON FAMILIES. ALL THE  
21 ALTERNATIVE SOLUTIONS MENTIONED ADDRESS ONLY A FRACTION  
22 OF THE PROBLEM, THAT IS NOT ENOUGH.

23 YOUR HONOR, AT THE END OF THIS TRIAL, WE  
24 WILL ASK FOR YOU TO FIND THAT FILTERS DON'T SOLVE THE  
25 PROBLEM, THAT THE STATUS QUO JUST IS NOT WORKING, AND



1 THAT PARENTS HAVE A RIGHT TO DEMAND SOLUTIONS FROM THE  
2 GOVERNMENT.

3 GIVEN THAT THIS GOVERNMENT HAS AN  
4 INTEREST IN PROTECTING CHILDREN ABOVE AND BEYOND ITS  
5 INTEREST IN ASSISTING PARENTS, AS JUSTICE BREYER NOTED,  
6 IT IS ALSO LESS RESTRICTIVE TO DO NOTHING THAN TO DO  
7 SOMETHING. AN IMPORTANT QUESTION WILL LURK IN THE  
8 BACKGROUND OF THESE PROCEEDINGS. IF COPA IS NOT  
9 CONSTITUTIONAL, THEN WHAT GOVERNMENTAL SOLUTION WOULD  
10 BE? ALTHOUGH THE DEFENDANT DOES NOT MINIMIZE THE  
11 IMPORTANCE OF FIRST AMENDMENT VALUES, THE FIRST  
12 AMENDMENT IS NOT A TRUMP CARD THAT YOU CAN PLAY AND  
13 CROWD OUT ALL OTHER CONSTITUTIONAL PRINCIPLES. THERE IS  
14 A HISTORY OF ACCOMMODATION BETWEEN FIRST AMENDMENT  
15 VALUES, ON THE ONE HAND, AND THE NEED TO PROTECT MINORS  
16 FROM HARMFUL EXPOSURE TO PORNOGRAPHY ON THE OTHER.  
17 FILTERS DON'T SOLVE THE PROBLEM. WE KNOW THEY DON'T  
18 WORK WELL ENOUGH. WE KNOW THAT COMMERCIAL PORNOGRAPHY  
19 ON THE WORLDWIDE WEB IS PERVASIVE. IT IS NOT JUST EASY  
20 TO FIND. IT'S TOUGH TO AVOID. PARENTS ARE EXASPERATED.  
21 SO CONGRESS HAS CREATED A SOLUTION AND THE DEFENDANT  
22 BELIEVES AND WILL PROVE AT TRIAL THAT PARENTS AND  
23 CHILDREN DESERVE THIS SOLUTION.

24 THANK YOU.

25 THE COURT: THANK YOU.

1                   IS PLAINTIFF PREPARED TO PRESENT THEIR  
2       FIRST WITNESS?

3                   MR. HANSEN:   WE ARE, YOUR HONOR.

4                   THE COURT:   DO YOU WANT A RECESS NOW?

5                   MR. HANSEN:   MIGHT BE.

6                   THE COURT:   COURT WILL HAVE A 10-MINUTE  
7       RECESS.

8                   (RECESS TAKEN.)

9                   THE CLERK:   COURT IS NOW IN SESSION.

10                  THE COURT:   THE COURT WOULD PREFER  
11       QUESTIONING FROM THE PODIUM, BUT IF IT IS NECESSARY FOR  
12       COUNSEL, THAT IS ABSOLUTELY NECESSARY, QUESTIONING FROM  
13       THE COUNSEL'S SEAT IS ALL RIGHT.  IF THE COURT REPORTER  
14       FINDS IT DIFFICULT TO UNDERSTAND THE LAWYER, SHE IS  
15       GOING TO TELL ME, WE WILL CALL YOU UP TO THE PODIUM.

16                  MR. HANSEN.

17                  MR. HANSEN:   YOUR HONOR, THE FIRST  
18       WITNESS FOR THE PLAINTIFF WILL BE PRESENTED BY  
19       MR. WIZNER.

20                  THE COURT:   MR. WIZNER, GOOD MORNING.

21                  MR. WIZNER:   GOOD MORNING, YOUR HONOR.  
22       PLAINTIFF CALLS RUFUS GRISCOM.

23                  THE CLERK:   REMAIN STANDING, PLEASE.

24                  RUFUS GRISCOM, PLAINTIFFS' WITNESS,  
25       SWORN.

1 THE CLERK: PLEASE BE SEATED. STATE AND  
2 SPELL YOUR FULL NAME FOR THE RECORD.

3 THE WITNESS: RUFUS GRISCOM. IT'S  
4 R-U-F-U-S, G-R-I-S-C-O-M.

5 THE COURT: GOOD MORNING, MR. GRISCOM.

6 THE WITNESS: GOOD MORNING.

7 DIRECT EXAMINATION

8 BY MR. WIZNER:

9 Q. GOOD MORNING, MR. GRISCOM.

10 A. GOOD MORNING MR. WIZNER.

11 Q. CAN YOU TELL THE COURT HOW YOU ARE CURRENTLY  
12 EMPLOYED.

13 A. I'M THE CEO AND PUBLISHER OF NERVE.COM.

14 Q. HOW LONG HAVE YOU HELD THAT POSITION?

15 THE COURT: WHAT?

16 MR. WIZNER: IT'S NERVE. IT'S CALLED  
17 NERVE, N-E-R-V-E.

18 THE COURT: I'M WELL AWARE OF THE NAME OF  
19 IT, BUT I DID NOT UNDERSTAND WHAT YOU SAID.

20 BY MR. WIZNER:

21 Q. REMEMBER TO SPEAK SLOWLY. HOW LONG HAVE YOU  
22 HELD THAT POSITION?

23 A. IT'S SINCE I CO-FOUNDED THE COMPANY IN 1997, SO  
24 NINE YEARS.

25 Q. CAN YOU BRIEFLY DESCRIBE YOUR EDUCATIONAL

1 BACKGROUND?

2 A. I GRADUATED FROM BROWN UNIVERSITY IN 1991.

3 Q. AND BRIEFLY WHAT HAVE YOU DONE SINCE THEN?

4 A. FOR A FEW YEARS AFTER GRADUATING I WAS A  
5 FREELANCE WRITER AND EDITOR. I THEN WORKED AS AN EDITOR  
6 AT A PUBLISHING HOUSE IN LITTLE ROCK, ARKANSAS AND THEN  
7 NEW YORK AND THEN FOUNDED NERVE IN 1997.

8 Q. WHERE DO YOU LIVE?

9 A. I LIVE IN NEW YORK CITY.

10 Q. ARE YOU MARRIED?

11 A. YES, I'M MARRIED AND I HAVE A 20-MONTH OLD SON.

12 Q. WHAT IS NERVE.COM?

13 A. NERVE IS, IN THEORY AND HOPEFULLY IN PRACTICE, A  
14 SMART MAGAZINE ABOUT SEX AND CULTURE.

15 Q. WHEN DID NERVE COME INTO BEING, ON WHAT DATE?

16 A. IT WAS ACTUALLY -- JUNE 26TH, 1997 WAS THE DATE  
17 WE LAUNCHED, WHICH WAS NOT COINCIDENTALLY THE DATE OF  
18 THE SUPREME COURT DECISION ON RENO VERSUS ACLU, THE CDA  
19 CASE.

20 Q. AND WHERE IS NERVE LOCATED?

21 A. NERVE IS LOCATED IN DOWNTOWN MANHATTAN, IN NEW  
22 YORK.

23 Q. WHERE IS NERVE INCORPORATED?

24 A. IN DELAWARE.

25 Q. AND IS NERVE A FOR-PROFIT VENTURE?

1 A. YES, IT IS.

2 Q. WHY DID YOU START NERVE.COM?

3 A. I FIRST STARTED -- WE STARTED NERVE BACK IN '97  
4 BECAUSE WE THOUGHT THAT PLAYBOY BACK IN THE '50S AND  
5 '60S HAD ACTUALLY BEEN A SORT OF INTERESTING  
6 PUBLICATION, BUT THE MAGAZINE FAILED TO RESPOND TO THE  
7 WOMEN'S RIGHTS MOVEMENT AND THAT WAS NO LONGER KIND OF  
8 AN IMPORTANT AND APPROPRIATE SORT OF MAGAZINE IN THE  
9 MODERN WORLD. WE WANTED TO CREATE AN HONEST INTELLIGENT  
10 MAGAZINE FOR MEN BUT, VERY IMPORTANTLY, FOR WOMEN AS  
11 WELL. WE HAVE ALWAYS TRIED TO HAVE A KIND OF 50-50  
12 READERSHIP OF BOTH MEN AND WOMEN THAT WOULD BE CANDID,  
13 HONEST, COMPELLING AND CAUSE PEOPLE TO SHARE THEIR  
14 EXPERIENCES ABOUT THE HUMAN EXPERIENCE OF SEXUALITY AND  
15 RELATIONSHIPS AND SO ON.

16 Q. WHAT DOES THE TITLE NERVE MEAN?

17 A. WE PICKED THE TITLE BECAUSE WE LIKED THAT IT  
18 CONNOTED MOXIE AND SORT OF HAVING THE NERVE TO DO  
19 SOMETHING AND ALSO THE CONNOTATION OF SORT OF NERVE  
20 ENDINGS OF NERVES IN YOUR BODY.

21 Q. AND WHY DID YOU DECIDE TO PUBLISH ONLINE?

22 A. WE DECIDED TO PUBLISH ONLINE FOR A NUMBER OF  
23 REASONS, THE FIRST OF WHICH WAS SHEAR ECONOMICS, THAT WE  
24 DIDN'T HAVE A LOT OF MONEY. IT WAS CLEARLY THE MOST --  
25 THE LEAST EXPENSIVE WAY TO LAUNCH A MAGAZINE.

1                   ALSO, BECAUSE FOR US THE TWO-WAY PART OF  
2                   THE ONLINE EXPERIENCE IS VERY IMPORTANT, THE FACT THAT  
3                   OUR READERS GOT TO DISCUSS ARTICLES AND PHOTOGRAPHY AND  
4                   THE VARIOUS STUFF, THINGS THAT WE PUBLISH. AND I THINK  
5                   THAT TODAY -- I REMEMBER READING LAST WEEK A TIME  
6                   MAGAZINE EDITOR SAYING THAT WERE TIME MAGAZINE LAUNCHED  
7                   TODAY, THAT THEY PROBABLY WOULD LAUNCH IT ONLINE. I  
8                   THINK THAT, IN THE MODERN WORLD, IT'S REALLY THE PRIMARY  
9                   MEDIUM IN WHICH ONE COMMUNICATES WITH YOUNG PEOPLE IN  
10                  AMERICA.

11                Q.           HAS NERVE BEEN RECOGNIZED OR WON ANY AWARDS?

12                A.           VERY NICE OF YOU TO ASK. YES. LAST YEAR, WE  
13                WERE ONE OF FIVE FINALISTS FOR THE NATIONAL MAGAZINE  
14                AWARD FOR GENERAL EXCELLENCE ONLINE. THIS YEAR, WE WON  
15                THE POPULAR VOTE IN THE WEBBIE AWARDS FOR THE BEST  
16                WRITING ONLINE. WE HAVE WON QUITE A FEW AWARDS FOR THE  
17                QUALITY OF OUR PHOTOGRAPHY AND WRITING AND PUBLICATIONS  
18                OVER THE LAST NINE YEARS.

19                Q.           WHO ARE SOME OF NERVE'S CONTRIBUTORS?

20                A.           WE PUBLISH WRITERS LIKE RICK MOODY, A.M. HOMES  
21                AND MARY GAITSKILL. WE'VE DONE INTERVIEWS WITH NORMAN  
22                MAILER, JOHN UPDIKE, MAUREEN DOWD, MARTIN AMIS. WE  
23                PUBLISH PHOTOGRAPHERS LIKE NORMAN GOLDEN, ANDRE SERRANO,  
24                SPENCER TUNIC.

25                Q.           HOW MANY PEOPLE VISIT NERVE'S WEBSITES IN AN

1 AVERAGE MONTH?

2 A. ABOUT A MILLION PEOPLE A MONTH. ABOUT A MILLION  
3 UNIQUE VISITORS A MONTH.

4 Q. HOW DO YOU CALCULATE THAT NUMBER?

5 A. WE HAVE A VARIETY OF WAYS OF PULLING TRAFFIC  
6 DATA. ONE IS FROM OUR AD SERVER WHICH SERVES ALL THE  
7 ADVERTISEMENTS THAT YOU SEE ON THE WEBSITES AND THAT IS  
8 HOSTED BY A THIRD-PARTY SITE CALLED OAS, 24, 7, OAS, AND  
9 THEN ALSO JUST DIRECTLY FROM OUR OWN SERVER LOGS.

10 THE COURT: AND WHAT?

11 THE WITNESS: DIRECTLY FROM OUR OWN  
12 SERVER LOGS. AND THOSE ARE THE PRIMARY WAYS.

13 BY MR. WIZNER:

14 Q. DO YOU HAVE ANY DEMOGRAPHIC DATA ABOUT NERVE'S  
15 AUDIENCE?

16 A. YEAH, WE HAVE QUITE A BIT OF DEMOGRAPHIC DATA,  
17 AND THAT IS ONE OF THE NICE THINGS ABOUT BEING ONLINE,  
18 IT'S VERY EASY TO DO POLLS AND FIND OUT WHO YOUR READERS  
19 ARE. ROUGHLY 60 PERCENT OF OUR READERS ARE MEN, 40  
20 PERCENT WOMEN. SO WE ARE NOT QUITE AT 50-50, THAT WAS  
21 PART OF OUR MISSION, BUT CLOSE. QUITE SURPRISINGLY TO  
22 ME, BETWEEN 30 AND 35 PERCENT OF OUR READERS HAVE  
23 GRADUATE DEGREES. THAT SURPRISES ME, BECAUSE I DON'T  
24 HAVE A GRADUATE DEGREE. IT IS AN EXTREMELY EDUCATED  
25 AUDIENCE. I HAVE NEVER SEEN A WEBSITE WITH A HIGHER

1 EDUCATIONAL LEVEL THAN OURS, 99 PERCENT COLLEGE  
2 EDUCATED, VERY URBAN. WE ASK THEM, WHAT IS YOUR  
3 FAVORITE PRINT MAGAZINE. NUMBER ONE IS THE NEW YORKER.  
4 NUMBER TWO IS ROLLING STONE. I SOMETIMES DESCRIBE IT TO  
5 ADVERTISERS AS SORT OF A -- KIND OF BOTH SMART AND ROCK  
6 AND ROLL, KIND OF DOWNTOWN, EDUCATED AUDIENCE.

7 Q. DO YOU KNOW WHETHER YOU HAVE READERS WHO ARE  
8 UNDER 17?

9 A. THE MEDIAN AGE OF NERVE READERS IS AROUND 30,  
10 AND THE ANSWER IS, NO, I DON'T KNOW. I THINK THAT -- MY  
11 GUESS IS THAT ANY PUBLICATION WHERE THERE'S A READERSHIP  
12 OF A MILLION PEOPLE HAS SOME PEOPLE WHO ARE 17 OR 16 WHO  
13 ARE READING IT. WE HAVE NO WAY OF KNOWING THAT.

14 Q. DO YOU KNOW WHETHER YOU HAVE READERS FROM OTHER  
15 COUNTRIES?

16 A. ROUGHLY 15 PERCENT OF OUR READERSHIP IS  
17 OVERSEAS.

18 Q. ARE YOU GENERALLY AWARE OF THE LAW THAT IS BEING  
19 CHALLENGED IN THIS CASE?

20 A. I'M GENERALLY AWARE OF IT, YES. I UNDERSTAND  
21 THAT IT WOULD BASICALLY -- THAT IT WOULD CRIMINALIZE THE  
22 PUBLICATION OF MATERIAL DEEMED INAPPROPRIATE FOR MINORS.

23 Q. ARE YOU ABLE TO DETERMINE PRECISELY WHAT SPEECH  
24 THE LAW PROHIBITS?

25 A. I'M REALLY NOT ABLE TO KNOW. I THINK, YOU KNOW,



1 YOU HAVE -- IN A DAY WHEN YOU'VE GOT JOHN ASHCROFT  
2 COVERING STATUTES WITH EXPOSED BREASTS THAT APPARENTLY  
3 HE THINKS IS PORNOGRAPHIC AND ON THE OTHER HAND THE  
4 CURATORS OF THE NATIONAL MUSEUM OF ART FEEL VERY  
5 DIFFERENTLY, BECAUSE CHILDREN WALK THROUGH THE NATIONAL  
6 MUSEUM OF ART EVERY DAY. I REALLY HAVE NO IDEA WHAT --  
7 HOW OTHER PEOPLE ARE LIKELY TO RESPOND TO CONTENT.

8 Q. DO YOU HAVE AN UNDERSTANDING OF EXACTLY WHAT IT  
9 MEANS FOR SPEECH TO BE "PATENTLY OFFENSIVE WITH RESPECT  
10 TO MINORS"?

11 A. NO, I DON'T. I REALLY DON'T. I FIND THAT  
12 CONFUSING.

13 Q. DO YOU HAVE AN UNDERSTANDING OF WHAT THE LAW  
14 MEANS WHEN IT REFERS TO SPEECH THAT "TAKEN AS A WHOLE  
15 LACKS SERIOUS LITERARY, ARTISTIC, POLITICAL OR  
16 SCIENTIFIC VALUE FOR MINORS"?

17 A. I DON'T. BOTH THE "FOR MINORS" PART CONFUSES ME  
18 AND "TAKEN AS A WHOLE," PART. DOES "TAKEN AS A WHOLE"  
19 MEAN A SPECIFIC WEB PAGE OR A SPECIFIC ARTICLE? DOES IT  
20 MEAN THE ENTIRE WEBSITE? IT'S NOT CLEAR TO ME WHAT THAT  
21 MEANS.

22 Q. DO YOU UNDERSTAND WHAT THE LAW MEANS WHEN IT  
23 SAYS "MINORS"?

24 A. YEAH, I GUESS. IT DOES SEEM TO ME, CLEARLY  
25 MINORS, I GUESS, WOULD BE ANYBODY UNDER 18, A DRAMATIC

1 DIFFERENCE BETWEEN A 16 OR 17-YEAR OLD AND A 5-YEAR OLD  
2 OR A 6-YEAR OLD.

3 Q. DO YOU BELIEVE THAT ANY OF NERVE'S CONTENT MIGHT  
4 BE CONSIDERED HARMFUL TO MINORS?

5 A. YEAH, I'M CERTAIN THAT IT WOULD. YES.

6 Q. AND WHY ARE YOU CERTAIN THAT IT WOULD?

7 A. BECAUSE WE PUBLISH NUDE PHOTOGRAPHY. WE PUBLISH  
8 QUITE A BIT OF EXPLICIT PHOTOGRAPHY THAT WE CONSIDER TO  
9 BE ARTISTICALLY COMPELLING. THAT IS WHY WE PUBLISH IT.  
10 HOWEVER, I'M CERTAIN THAT MANY PEOPLE WOULD DISAGREE  
11 WITH US. AND WE ALSO PUBLISH A LOT OF WRITING THAT IS  
12 VERY FRANK AND DIRECT AND DESCRIBES SEXUAL ACTS. AND SO  
13 I THINK WE WOULD BE QUITE NERVOUS, YOU KNOW --

14 Q. DO YOU CONSIDER NERVE'S CONTENT TO BE VALUABLE  
15 FOR ADULTS?

16 A. YEAH, I CERTAINLY DO. THAT IS WHY WE PUBLISH  
17 IT. WE REALLY DIDN'T GET INTO THIS BUSINESS TO BECOME  
18 BILLIONAIRES. WE WERE IN IT TO PUBLISH A MAGAZINE THAT  
19 WE CARE ABOUT.

20 Q. DO YOU CONSIDER NERVE'S CONTENT TO BE VALUABLE  
21 FOR OLDER MINORS?

22 A. I PERSONALLY DO. I THINK THAT -- I THINK THAT  
23 THERE ARE MANY HIGH SCHOOL STUDENTS WHO READ LITERATURE,  
24 GREAT NOVELS THAT CONTAIN SEX SCENES, QUITE COMMON,  
25 PROBABLY AGE APPROPRIATE. I THINK, YOU KNOW, IT'S A

1       HARD THING -- I HAVE A 20-MONTH OLD SON. YOU KNOW, WHEN  
2       HE IS 16, IT MAY BE A WHOLE OTHER THING TO THINK ABOUT.  
3       MY IMPRESSION IS THAT YES, FOR SOME CHILDREN -- SOME  
4       17-YEAR-OLDS, YES.

5       Q.       DO YOU FEAR THAT OTHER PEOPLE MIGHT DISAGREE  
6       WITH YOU?

7       A.       YES, I DO.

8       Q.       MR. GRISCOM, I PUT A BINDER OF MATERIALS IN  
9       FRONT OF YOU. CAN YOU OPEN IT UP? CAN YOU IDENTIFY THE  
10      MATERIALS IN THE BINDER IN GENERAL?

11                   THE COURT: IF WE ARE GOING TO USE THE --

12                   MR. WIZNER: WE ARE. I JUST WANT HIM TO  
13      IDENTIFY THEM AS A GROUP AND THEN WE ARE GOING TO USE  
14      THE SCREEN, YOUR HONOR.

15                   THE WITNESS: YES, THESE ARE PRINTOUTS OF  
16      PAGES OF OUR WEBSITE.

17      BY MR. WIZNER:

18      Q.       DO THEY APPEAR TO BE ACCURATE REPRESENTATIONS OF  
19      YOUR WEBSITE?

20      A.       YES, WITH THE EXCEPTION OF A FEW PRINTING  
21      PROBLEMS THAT MAKE IT SLIGHTLY LESS ATTRACTIVE THAN IT  
22      WOULD LOOK ONLINE. YEAH, IT IS OUR WEBSITE, YES.

23      Q.       OKAY.

24                   CAN WE TURN TO PAGE 14 OF EXHIBIT 38?

25                   THE COURT: PLAINTIFF'S EXHIBIT 38?

1 MR. WIZNER: EXACTLY RIGHT. I DON'T  
2 THINK THAT IS PAGE 14.

3 THE COURT: MR. GRISCOM, IF YOU CANNOT  
4 EASILY READ WHAT IS ON THE SCREEN, LET US KNOW RIGHT  
5 AWAY, THIS SMALL SCREEN.

6 THE WITNESS: YES. I ALSO HAVE A  
7 PRINTOUT HERE.

8 MR. WIZNER: CAN WE ENLARGE THE FIRST TWO  
9 PARAGRAPHS?

10 BY MR. WIZNER:

11 Q. CAN YOU DESCRIBE THIS DOCUMENT?

12 A. THIS IS THE MISSION STATEMENT THAT WE WROTE NINE  
13 YEARS AGO TO DESCRIBE THE MISSION OF THE MAGAZINE.

14 Q. AND WOULD YOU PLEASE READ THE FIRST TWO  
15 PARAGRAPHS OUT LOUD?

16 A. YES.

17 WE HAVE CREATED NERVE BECAUSE WE THINK  
18 SEX IS BEAUTIFUL AND ABSURD, REMARKABLY FUN AND RELIABLY  
19 TRAUMA-INDUCING. IN SHORT, IT'S A SUBJECT IN NEED OF A  
20 FEARLESS INTELLIGENT FORUM FOR BOTH GENDERS. WE BELIEVE  
21 THAT WOMEN (MEN, TOO, BUT ESPECIALLY WOMEN) HAVE WAITED  
22 LONG ENOUGH FOR A SMART, HONEST MAGAZINE ON SEX WITH  
23 CUNTSURE (AND COCKSURE) PROSE AND FICTION AS WELL AS  
24 STRIKING PHOTOGRAPHS OF NAKED PEOPLE THAT CAPTURE MORE  
25 THAN THEIR FLESH. NERVE INTENDS TO BE MORE GRAPHIC,

1 FORTHRIGHT AND TOPICAL THAN EROTICA, BUT LESS  
2 BLOCK-HEADEDLY MASCULINE THAN PORNOGRAPHY. IT'S ABOUT  
3 SEXUAL LITERATURE, ART, AND POLITICS, AS WELL AS ABOUT  
4 GETTING OFF -- AND WE REALIZE THAT THESE INTERESTS  
5 SOMETIMES CONFLICT. EROTICA DOES NOT ALWAYS UNDERSTAND  
6 THIS -- BUT ONCE OUR DESIRE REACHES A CERTAIN CLIP,  
7 ATTEMPTS AT ARTISTRY BECOME ANNOYING OBSTACLES IN THE  
8 PATH OF THE NOUNS AND VERBS (OR PRECIOUS PIXELS) THAT  
9 DELIVER THE GOODS. WE FIND OURSELVES HUNTING FOR THE  
10 NAKED DETAILS IN EROTICA, LIKE RUSHED SHOPPERS IN A  
11 CROWDED STORE. NERVE INTENDS TO BE DIRECT WITH BOTH  
12 WORD AND IMAGE IN THIS SPACE, WHETHER THE RESULT IS  
13 FLUSHED FACES, GENITALS OR PERHAPS JUST REFLECTIVE  
14 THOUGHT.

15 Q. DOES THAT STATEMENT STILL ACCURATELY DESCRIBE  
16 NERVE'S MISSION?

17 A. YES, IT DOES. WE BROADENED OUR PURVIEW THAT WE  
18 HAVE MORE SORT OF CULTURE COVERAGE AND REVIEWS OF FILMS  
19 AND MUSIC. SO WE'VE EVOLVED INTO A SLIGHTLY BROADER  
20 GENERAL INTEREST MAGAZINE, BUT WE ABSOLUTELY SEE THAT AS  
21 OUR CORE CONTENT, YES.

22 Q. AND WHAT KINDS OF CONTENT, WHAT CATEGORIES OF  
23 CONTENT, ARE AVAILABLE UNDER --

24 A. SO WE PUBLISH -- FROM THE START WE PUBLISHED  
25 ORIGINAL FICTION, PERSONAL ESSAYS, COLUMNS, AND SINCE

1 THEN WE HAVE STARTED PUBLISHING AS WELL -- AND, OF  
2 COURSE, PHOTOGRAPHY. SINCE THEN, WE HAVE ALSO STARTED  
3 PUBLISHING VIDEO, WE HAVE A SEPARATE SITE ON OUR  
4 VIDEO.COM AND BLOGS AND QUIZZES AND POLLS AND CROSSWORD  
5 PUZZLES, AND YOU NAME IT.

6 Q. CAN YOU JUST BRIEFLY EXPLAIN WHAT A BLOG IS? WE  
7 WILL TALK ABOUT THAT LATER.

8 A. A BLOG IS SORT OF A DIARY FORM OF PUBLISHING  
9 ONLINE, WHERE PEOPLE PUBLISH IN A SHORT FORMAT, SERIES  
10 OF SORT OF INFORMAL POSTS ABOUT THEIR THOUGHTS.

11 Q. AND WHAT ARE SOME EXAMPLES OF CONTENT POSTED TO  
12 NERVE IN THE LAST FEW DAYS?

13 A. IN THE LAST FEW DAYS, WE PUBLISHED SEX ADVICE  
14 FROM YOGEES, FROM YOGA EXPERTS, WHICH IS PART OF OUR  
15 CONTINUING SEX ADVICE SERIES. WE HAVE ALSO PUBLISHED  
16 SEX ADVICE FROM PUBLIC DEFENDERS, SEX ADVICE FROM  
17 COWBOYS AND SO ON. AND THAT ACTUALLY IS NOW A BOOK THAT  
18 IS SOLD IN BARNES AND NOBLE.

19 WE RECENTLY JUST FINISHED A MUSIC ISSUE.  
20 AND IN THE MUSIC ISSUE, ONE OF MY FAVORITE PIECES WAS A  
21 --SORT OF A PLAY ON HYMN OF PRAISE TO THE SEXUALITY OF  
22 DOLLY PARTON.

23 WE HAVE HAD A SERIES WHICH IS CALLED  
24 HISTORY OF SINGLE LIFE, WHICH IS ABOUT HISTORICAL  
25 MATTERS. AND JUST A FEW DAYS AGO, ONE CAME OUT WITH A

1 HISTORY OF PREMARITAL SEX IN EARLY COLONIAL AMERICA,  
2 WHICH WAS MUCH MORE PREVALENT THAN PEOPLE THINK.

3 SO A WIDE RANGE OF CONTENT, FICTION,  
4 STORIES AND SO ON.

5 Q. WHO HAS RESPONSIBILITY FOR EDITORIAL DECISIONS?

6 A. WE HAVE A NUMBER OF EDITORS ON STAFF AND AN  
7 EDITOR-IN-CHIEF, MICHAEL MARTIN, WHO IS RESPONSIBLE FOR  
8 EVERYTHING WE PUBLISH EVERY DAY. AS PUBLISHER, OF  
9 COURSE, I FEEL RESPONSIBLE AT THE END OF THE DAY FOR  
10 WHAT WE PUBLISH.

11 Q. AND WHAT KINDS OF STANDARDS, IF ANY, DO YOU  
12 APPLY IN CHOOSING CONTENT FOR NERVE?

13 A. YOU KNOW, WE -- THE MOST CRITICAL STANDARD FOR  
14 US IS THAT IT BE GOOD. YOU KNOW, PEOPLE HAVE ASKED US,  
15 FOR INSTANCE, WITH PHOTOGRAPHY, IS THERE A LINE, SOME  
16 KIND OF ANATOMICAL LINE THAT YOU WILL NOT CROSS. AND  
17 THE ANSWER FOR US IS NO. THERE IS NO WORD THAT WE  
18 PROHIBIT WRITERS FROM USING. THERE IS NO BODY PART THAT  
19 WE PROHIBIT PHOTOGRAPHERS FROM INCLUDING. BUT IT'S  
20 IMPORTANT TO US THAT IT BE ORIGINAL, THAT IT BE WHAT WE  
21 SORT OF CONSIDER ARTISTIC INTEGRITY, THAT IT NOT BE  
22 CLICHE. OR WE BASICALLY ARE LOOKING FOR INSPIRED  
23 WRITING AND PHOTOGRAPHY, THAT IS RESONANT, THAT PEOPLE  
24 REMEMBER AND SORT OF WELL EXECUTED.

25 I WILL SAY THAT IT'S IMPORTANT TO US THAT

1 IT BE NONEXPLOITATIVE. WE CERTAINLY HAVE OUR OWN  
2 ETHICAL STANDARDS FOR WHAT WE PUBLISH, BUT I THINK IT'S  
3 PROBABLY VERY DIFFERENT FROM THAT OF SOME OTHER  
4 COMMUNITIES.

5 Q. IS ALL OF NERVE'S CONTENT AVAILABLE FOR FREE?

6 A. NO. MOST OF OUR CONTENT IS AVAILABLE FOR FREE,  
7 BUT A PORTION OF THE PHOTOGRAPHY AND WRITING AND  
8 PORTIONS OF THE WRITING IS ONLY AVAILABLE TO PAID  
9 PREMIUM SUBSCRIBERS.

10 Q. WHICH CONTENT IS AVAILABLE ONLY TO PAID PREMIUM  
11 SUBSCRIBERS?

12 A. THE MOST EXPLICIT PHOTOGRAPHS ARE ONLY AVAILABLE  
13 TO PREMIUM SUBSCRIBERS.

14 Q. AND WHICH NONPHOTOGRAPHIC MATERIAL WOULD BE  
15 AVAILABLE ONLY TO A PREMIUM SUBSCRIBERS?

16 A. ANY WRITTEN CONTENT THAT HAS BEEN ON THE SITE  
17 FOR MORE THAN 30 DAYS GOES INTO ARCHIVES AND IS ONLY  
18 ACCESSIBLE TO PREMIUM SUBSCRIBERS. HOWEVER, WE HAVE  
19 STARTED MAKING ALL WRITTEN CONTENT FREE. SO, FOR  
20 INSTANCE, ALL OF OUR MUSIC AND FILM AND TELEVISION  
21 REVIEWS ARE AVAILABLE FOR FREE FOR EVERYBODY, AND MORE  
22 AND MORE OF OUR WRITTEN CONTENT. BUT TO JUST TO MAKE  
23 SURE THAT IS CLEAR, ALL OF OUR WRITTEN CONTENT IS FREE  
24 FOR AT LEAST 30 DAYS AND SOME OF IT IS FREE AND  
25 ACCESSIBLE PERMANENTLY.



1 Q. WHY DID YOU CREATE PREMIUM MEMBERSHIP?

2 A. WE CREATED PREMIUM MEMBERSHIP FOR TWO REASONS.  
3 ORIGINALLY, THE FIRST ONE WAS JUST AN ECONOMIC REASON,  
4 WHICH WAS THAT FOUR OR FIVE YEARS AGO, THERE WAS NOT A  
5 LOT OF ADVERTISING ONLINE. WE NEEDED TO KEEP THE SHIP  
6 AFLOAT. THERE WAS AN ECONOMIC INCENTIVE TO START  
7 PREMIUM. THE SECOND REASON IS THAT WE WANTED TO  
8 INSULATE OUR ADVERTISERS. WE HAVE QUITE A FEW  
9 MAINSTREAM ADVERTISERS, FROM MORE EXPLICIT PHOTOGRAPHY.

10 Q. HOW MUCH DO PREMIUM MEMBERS --

11 THE COURT: WHAT DO YOU MEAN BY INSULATE  
12 ADVERTISERS?

13 THE WITNESS: BY THAT I MEAN THAT, YOU  
14 KNOW, ADVERTISERS LIKE ABSOLUT VODKA AND STOLI AND  
15 MIRAMAX AND SONY PICTURES ALL ADVERTISE REGULARLY ON  
16 NERVE. AND THEY ADVERTISE -- THEY BUY ADVERTISING  
17 SPECIFICALLY ON THE NONEXPLICIT PHOTOGRAPHY PORTIONS OF  
18 THE SITE. SO, BY HAVING A REGISTRATION WALL, AND, YOU  
19 KNOW -- BETWEEN THE MOST EXPLICIT PHOTOGRAPHY AND THE  
20 ADVERTISERS' PORTION, IT MAKES THE ADVERTISERS HAPPY.  
21 HAVING SAID THAT, THERE IS EXPLICIT WRITING THAT --  
22 BESIDES WHICH THE ADVERTISING APPEARS. THAT DOES NOT  
23 SEEM TO BOTHER THE ADVERTISERS.

24 BY MR. WIZNER:

25 Q. HOW MUCH DO PREMIUM SUBSCRIBERS PAY?

1 A. THEY PAY EITHER \$7 A MONTH OR \$35 A YEAR.

2 Q. AND HOW MANY PREMIUM MEMBERS DOES NERVE HAVE?

3 A. WE HAVE ABOUT A LITTLE OVER 20,000 PAYING  
4 PREMIUM MEMBERS.

5 Q. AND SO WHAT PERCENTAGE OF OVERALL VISITORS TO  
6 THE NERVE SITE ARE PREMIUM MEMBERS?

7 A. WELL, I MEAN, IF YOU LOOK AT A MILLION UNIQUE  
8 VISITORS IN A GIVEN MONTH AND 20,000 PAYING SUBSCRIBERS,  
9 THAT WOULD BE TWO PERCENT OF OUR READERSHIP THAT HAS  
10 PURCHASED PREMIUM. HOWEVER, IT IS ACTUALLY -- THE REAL  
11 NUMBER WOULD BE MUCH LOWER THAN THAT, BECAUSE, FOR  
12 INSTANCE, IN A GIVEN MONTH, ABOUT 1,000 PEOPLE BUY A  
13 PREMIUM MEMBERSHIP, SO THAT WOULD BE .1 PERCENT OF THE  
14 MILLION PEOPLE WHO COME. SO, OVER THE COURSE OF A YEAR,  
15 FOR INSTANCE, WE MIGHT HAVE FOUR OR FIVE MILLION UNIQUE  
16 VISITORS, AND SO IT'S REALLY PROBABLY LESS THAN ONE  
17 PERCENT.

18 Q. TAKING A LOOK AT EXHIBIT 38, DO YOU SEE ANYTHING  
19 IN THE EXHIBIT BINDER THAT WOULD BE AVAILABLE ONLY TO  
20 PREMIUM SUBSCRIBERS?

21 THE COURT: WHAT IS EXHIBIT 38?

22 MR. WIZNER: EXHIBIT 38 --

23 THE COURT: IS IT MORE THAN ONE PAGE?

24 MR. WIZNER: 25 PAGES, YOUR HONOR.

25 THE COURT: DESCRIBE IT FOR THE RECORD.

1 THE WITNESS: SURE. IN LOOKING THROUGH  
2 IT, THIS IS -- THIS HAS AN IMAGE OF OUR NERVE VIDEO HOME  
3 PAGE, OUR FICTION SECTION, OUR BLOG-A-LOG, WHICH IS A  
4 SECTION IN WHICH WE HAVE SIX PEOPLE -- WE ALSO HAVE AN  
5 ONLINE DATING PLATFORM, AND SIX PEOPLE IN THE NERVE  
6 PERSONAL DATING THING BLOG ABOUT THEIR DATING  
7 EXPERIENCES. THE HOME PAGES OF OUR FULL, BLOG SECTION  
8 WHICH INCLUDES PHOTO LOGS AND MEDIA BLOGS.

9 MR. BEANE: YOUR HONOR, I WOULD LIKE TO  
10 OBJECT. I WOULD LIKE THE PAGES BE IDENTIFIED SO WE KNOW  
11 WHAT HE IS REFERRING TO, WHICH IS IN THIS EXHIBIT, THE  
12 PAGE NUMBERS.

13 MR. WIZNER: WE WILL GO THROUGH THESE  
14 INDIVIDUALLY. I WANTED HIM TO IDENTIFY AS A GROUP  
15 WHETHER ANY OF THEM WERE AVAILABLE ONLY TO PREMIUM  
16 SUBSCRIBERS.

17 BY MR. WIZNER:

18 Q. IS ANYTHING IN THAT BINDER AVAILABLE ONLY TO A  
19 PAID PREMIUM SUBSCRIBER?

20 A. EVERYTHING HERE IS AVAILABLE FOR FREE TO  
21 EVERYBODY, TO ALL VISITORS.

22 BY MR. WIZNER:

23 Q. IF WE COULD GET PAGE 5 ON THE SCREEN.

24 CAN YOU IDENTIFY THIS PAGE?

25 A. YES. THIS IS OUR FICTION HOME PAGE.

1 Q. MAYBE WE COULD MAGNIFY THOSE NINE BOXES.

2 A. ALTHOUGH IT REALLY DOES LOOK MUCH BETTER IN REAL  
3 LIFE ON THE WEBSITE.

4 THE COURT: YOU ARE ENTITLED TO THAT  
5 OPINION.

6 MR. WIZNER: THAT IS NOT OPINION  
7 TESTIMONY?

8 BY MR. WIZNER:

9 Q. WHAT IS NERVE FICTION?

10 A. WE PUBLISH -- EVERY FALL, WE HAVE A FICTION  
11 ISSUE AND, FOR INSTANCE, RICK MOODY WHO WROTE THE ICE  
12 STORM WAS THE GUEST EDITOR OF OUR LAST FICTION ISSUE.  
13 WE PUBLISHED A LOT OF BOTH ESTABLISHED NOVELISTS,  
14 PULITZER PRIZE-WINNING WRITERS AND ALSO EMERGING TALENTS  
15 IN OUR FICTION SECTION.

16 Q. DOES NERVE'S FICTION EVER DESCRIBE AN ACTUAL OR  
17 SIMULATED SEXUAL ACT OR SEXUAL CONTACT, AN ACTUAL OR  
18 SIMULATED NORMAL OR PERVERTED SEXUAL ACT OR A LEWD  
19 EXHIBITION OF THE GENITALS OR POST-PUBESCENT FEMALE  
20 BREASTS?

21 A. YES. IF OUR EDITORS ARE DOING THEIR JOBS, IT  
22 DESCRIBES THOSE THINGS FREQUENTLY.

23 Q. DO YOU KNOW WHETHER ANY OF THE STORIES DEPICTED  
24 ON PAGE 5 OF PLAINTIFFS' EXHIBIT 38 INCLUDES SEXUALLY  
25 EXPLICIT MATERIAL?

1 A. YES. MOST ALL OF THEM DO. YES.

2 Q. AT THE TOP OF THIS PAGE, THERE IS A LINK TO  
3 SOMETHING CALLED THE HENRY MILLER AWARDS. WHAT ARE THE  
4 HENRY MILLER AWARDS?

5 A. THE HENRY MILLER AWARDS, IT'S A FEATURE WHERE  
6 EVERY MONTH WE PUBLISH EXCERPTS FROM SIX NEW NOVELS OF  
7 SEX SCENES. SO WE WILL HAVE 500 WORDS OF A SEX SCENE  
8 FROM A NEW NOVEL GENERALLY PUBLISHED BY SIMON AND  
9 SCHUSTER OR RANDOM HOUSE, MAJOR PUBLISHERS, AND THEN OUR  
10 READERS VOTE ON EACH OF THOSE SEX SCENES ACCORDING TO  
11 THEIR EDITORIAL OR LITERARY QUALITY, HEAT AND  
12 ORIGINALITY. SO BASED ON THE RESULT OF THESE VOTES, AT  
13 THE END OF THE YEAR, WE PRESENT AN AWARD TO THE ANNUAL  
14 NERVE HENRY MILLER AWARD, AND THE WINNER RECEIVES  
15 \$1,934.

16 Q. CAN WE PUT PAGES 17 AND 18 ON THE SCREEN  
17 TOGETHER?

18 THE COURT: NUMBERS AGAIN?

19 MR. WIZNER: PAGES 17 AND 18 OF  
20 PLAINTIFFS' EXHIBIT 38.

21 BY MR. WIZNER:

22 Q. WHY IS THE AWARD \$1,934.

23 A. IT'S THAT AMOUNT BECAUSE IN 1934, HENRY MILLER  
24 PUBLISHED THE TROPIC OF CANCER, WHICH WAS BANNED IN THE  
25 UNITED STATES UNTIL THE LATE '60S. I THINK IT IS NOW

1 BROADLY ASSIGNED IN COLLEGE, IN AMERICAN UNIVERSITIES AS  
2 ONE OF THE GREAT ALL-TIME BOOKS. SO IT'S A  
3 COMMEMORATION OF TROPIC OF CANCER.

4 Q. AND ARE THE MATERIALS IN THE HENRY MILLER AWARD  
5 SEXUALLY EXPLICIT?

6 A. YES, THEY ARE. I MEAN THE WHOLE PURPOSE -- IT  
7 IS ACTUALLY EXCERPTING SEX SCENES FROM, YOU KNOW, THE  
8 BEST AMERICAN NOVELS. IT IS, BY DEFINITION, ALL VERY  
9 EXPLICIT.

10 Q. ARE ANY OF THE EXAMPLES ON PAGES 17 AND 18  
11 SEXUALLY EXPLICIT?

12 A. YES, ALL OF THEM ARE. I THINK -- I THINK -- THE  
13 THIRD DOWN IS PROBABLY A GOOD CHOICE.

14 MR. WIZNER: CAN WE HAVE A CLOSEUP OF THE  
15 THIRD ONE? IS EVERYONE ABLE TO READ THAT.

16 THE COURT: IF I DIDN'T HAVE A HARD COPY,  
17 I COULDN'T READ IT. I DON'T KNOW WHAT THE QUALITY --  
18 WHAT'S HAPPENED HERE. IT IS ALL FUZZY.

19 MR. WIZNER: YES. I APOLOGIZE FOR THAT.

20 THE COURT: WE ALL HAVE A HARD COPY. THE  
21 DEFENSE HAS IT, AS WELL.

22 BY MR. WIZNER:

23 Q. IF WE CAN GO BACK TO PAGES 17 AND 18 TOGETHER.  
24 IT'S SMALL AND HARD TO SEE, BUT IT LOOKS LIKE THERE IS A  
25 BUTTON THAT SAYS, "READ MORE." WHAT DOES THAT FEATURE?

1 A. IF YOU CLICK ON THAT, YOU GET TO READ THE REST  
2 OF THE SCENE.

3 Q. IT ALSO LOOKS LIKE THERE IS A FEATURE THAT SAYS  
4 READ OR LEAVE FEEDBACK. WHAT IS THAT?

5 A. THAT PERMITS READERS OF THE WEBSITE TO LEAVE  
6 COMMENTS ABOUT THE DIFFERENT PASSAGES AND READ OTHER  
7 PEOPLE'S COMMENTS.

8 Q. IS THAT FEATURE ONLY FOR THE HENRY MILLER AWARD?

9 A. NO. THAT EXISTS THROUGHOUT THE ENTIRE WEBSITE.

10 Q. IS THE FEEDBACK SCREENED BY ANYBODY BEFORE IT IS  
11 POSTED?

12 A. NO. WE DON'T SCREEN THE FEEDBACK BEFORE IT IS  
13 POSTED, BUT WE DO RESERVE THE RIGHT TO TAKE DOWN  
14 ANYTHING THAT WE CONSIDER TO BE HATEFUL OR  
15 INAPPROPRIATE.

16 THE COURT: COUNSEL, DID YOU HAVE THE  
17 WITNESS IDENTIFY AN ITEM YOU LATER SAID WAS  
18 REPRESENTATIVE? I THOUGHT YOU SAID SOMETHING ABOUT THE  
19 THIRD ITEM. I DON'T KNOW WHAT -- IF YOU EXPECT TO HAVE  
20 THAT IN THE RECORD. IT'S NOT CLEARLY IDENTIFIED TO ME.

21 MR. WIZNER: I DID NOT WANT TO EMBARRASS  
22 THE WITNESS BY MAKING HIM READ IT OUT LOUD.

23 THE COURT: I WANT TO CLARIFY WHERE IT IS  
24 IN THE EXHIBIT, SO IF SOMEONE WANTS TO READ IT, IF THEY  
25 WANT TO --

1 THE WITNESS: THERE ARE FIVE ENTRIES,  
2 YOUR HONOR, ON THE HENRY MILLER AWARD. THE THIRD ONE  
3 THAT BEGINS ON PAGE 17 AND ENDS ON PAGE 18.

4 THE COURT: READ THE TITLE OF THE BOOK OR  
5 SOMETHING TO IDENTIFY IT.

6 BY MR. WIZNER:

7 Q. CAN YOU DO THAT, MR. GRISCOM?

8 A. YES.

9 THE COURT: THE TITLE OF THE BOOK AND  
10 NAME OF THE AUTHOR.

11 THE WITNESS: I WILL STEAL YOU AWAY IS  
12 THE TITLE OF THE BOOK. I UNFORTUNATELY CANNOT READ THE  
13 NAME OF THE AUTHOR.

14 MR. WIZNER: THE AUTHOR IS NICOLO  
15 AMMANITI, A-M-M-A-N-I-T-I. THE TITLE IS, I WILL STEAL  
16 YOU AWAY.

17 BY MR. WIZNER:

18 Q. IF WE CAN TURN TO PAGES 11 AND 12 OF EXHIBIT 38.

19 THE COURT: PAGE AGAIN? I'M SORRY.

20 MR. WIZNER: PAGES 11 AND 12.

21 THE COURT: I WAS RECOVERING FROM THE  
22 LAST ONE.

23 DO YOU HAVE A QUESTION PENDING ON THOSE  
24 TWO PAGES?

25 MR. WIZNER: NO. I WAS WAITING FOR THEM



1 TO BE DISPLAYED, OR JUST PAGE 11 WILL BE FINE.

2 BY MR. WIZNER:

3 Q. CAN YOU DESCRIBE WHAT'S SHOWN ON PAGE 11 OF  
4 PLAINTIFFS' EXHIBIT 38?

5 A. YES. THIS IS OUR BLOG HOME PAGE WHERE WE SHOW  
6 ALL THE VARIOUS BLOGS THAT WE POST.

7 Q. WHAT TYPES OF BLOGS DOES NERVE HAVE?

8 A. WE HAVE A FEW DIFFERENT CATEGORIES OF BLOGS.  
9 ONE IS PHOTO BLOGS, WHERE YOUNG PHOTOGRAPHERS PUBLISH  
10 BOTH PHOTOGRAPHS AND NARRATIVE WRITTEN CONTENT IN BLOG  
11 FORMAT, WHICH IS A SERIES OF POSTS. AND SO WE HAVE FOUR  
12 PHOTO BLOGGERS. WE HAVE SOMETHING CALLED BLOG-A-LOG,  
13 WHICH WE HAVE SIX DIFFERENT PEOPLE WHO WOULD USE -- WE  
14 HAVE A DATING SITE CALLED NERVE PERSONALS, WHICH IS  
15 PRETTY POPULAR. AND SO EVERY MONTH SIX OF THESE  
16 BLOG-A-LOGGERS WRITE ABOUT THEIR HYPERACTIVE DATING  
17 LIVES AND EXPERIENCES IN ONLINE DATING. AND THE  
18 LEAST -- THEY ARE RATED BY READERS. SO THE LEAST  
19 POPULAR AT THE END OF EVERY MONTH IS REMOVED AND  
20 REPLACED BY SOMEBODY NEW.

21 Q. YOU CAN DISPLAY PAGE 7 WHEN YOU GET A CHANCE.

22 A. JUST TO FINISH, WE ALSO HAVE, FOR INSTANCE,  
23 MEDIA BLOGS. WE HAVE A BLOG ABOUT THE INDEPENDENT FILM  
24 WORLD AND A BROADER MEDIA BLOG AS WELL.

25 Q. DO NERVE'S BLOGS INCLUDE SEXUALLY EXPLICIT

1 MATERIAL?

2 A. YES. THEY CERTAINLY DO. IN PARTICULAR, THE  
3 PHOTO-BLOG BUT ALSO THE BLOG-A-LOG CONTAINS PEOPLE'S  
4 ANECDOTES ABOUT THEIR DATING EXPERIENCES AS YOUNG SINGLE  
5 PEOPLE IN AMERICAN CITIES. FOR BETTER OR FOR WORSE, A  
6 LARGE PERCENTAGE OF THEM DO END UP IN SEXUAL SITUATIONS.

7 Q. IS THERE ANY CONTENT IN THE BLOG-A-LOG OTHER  
8 THAN TEXT?

9 A. THERE ARE SOME PHOTOGRAPHS, BUT RARELY EXPLICIT  
10 PHOTOGRAPHS. UNFORTUNATELY THEY WOULD -- THEY WOULD GET  
11 HIGHER RATINGS IF THEY HAD MORE EXPLICIT PHOTOGRAPHS,  
12 BUT THEY DON'T.

13 Q. ARE ANY OF THE BLOG-A-LOGGERS GAY OR LESBIAN?

14 A. YES. RIGHT NOW THERE IS ONE GAY MALE  
15 BLOG-A-LOGGER.

16 Q. DOES THE BLOG-A-LOG SECTION EVER DESCRIBE  
17 HOMOSEXUAL SEX?

18 A. YES, IT DOES. IN THE COURSE OF WRITING ABOUT --  
19 THESE ARE -- YOU CAN THINK OF THESE AS DIARIES,  
20 BASICALLY, PEOPLE KEEPING DIARIES ONLINE. AND THEY --  
21 YEAH, HE WOULD, AS THEY ALL DO, YOU KNOW, KEEP QUITE  
22 EXPLICIT DIARY ENTRIES ABOUT HIS EXPERIENCE. IT IS A  
23 SUBSET OF THE POST, BUT IT IS CERTAINLY THERE.

24 Q. DISPLAY PAGE 19 OF EXHIBIT 38.

25 IF YOU DON'T WANT TO WAIT FOR IT, YOU CAN

1           TURN TO IT IN YOUR BINDER.   THERE IT IS.

2                           CAN YOU DESCRIBE WHAT APPEARS ON PAGE 19  
3           OF PLAINTIFFS' EXHIBIT 38?

4           A.           YES.   THIS IS A POPULAR COLUMN THAT WE HAVE BEEN  
5           RUNNING FOR YEARS.   IT'S CALLED: "I DID IT FOR SCIENCE."  
6           AND VARIOUS INTREPID YOUNG REPORTERS IN THE NAME OF  
7           SCIENCE CONDUCT VARIOUS EXPERIMENTS AND WRITE ABOUT THEM  
8           IN THE FORMAT OF A HIGH SCHOOL SCIENCE EXPERIMENT.   SO  
9           THEY LIST THE MATERIALS THAT THEY USED AND THEIR  
10          HYPOTHESIS AND CONCLUSIONS AND SO ON.   IN THIS ONE, THIS  
11          WRITER, JEN MILLER, WRITES ABOUT TANTRIC SEX, ABOUT HER  
12          EXPERIENCE GOING TO CLASSES, LEARNING ABOUT TANTRIC SEX  
13          AND ATTEMPTING IT WITH HER BOYFRIEND.

14          Q.           WHAT ARE OTHER EXAMPLES OF "I DID IT FOR  
15          SCIENCE" COLUMNS THAT NERVE HAS PUBLISHED?

16          A.           SO PRIOR TO THIS, SHE HAS BEEN OUR "I DID IT FOR  
17          SCIENCE" COLUMNIST FOR ABOUT A YEAR NOW.   PRIOR TO THIS,  
18          SHE DID ONE IN WHICH SHE THREW A KEY PARTY IN THE GREAT  
19          '70 TRADITION OF KEY PARTIES.   SHE DID A SEX TOY  
20          OLYMPICS COLUMN IN WHICH SHE TESTED A LOT OF DIFFERENT  
21          SEX TOYS.   IT'S REALLY VERY FUNNY, BUT IT'S ALSO  
22          EXPLICIT.

23          Q.           IS THIS FEATURE AVAILABLE FOR FREE?

24          A.           YES, IT IS.

25          Q.           CAN WE IDENTIFY A PARTICULAR PARAGRAPH OR

1 PARAGRAPHS IN THIS ARTICLE THAT INCLUDES SEXUALLY  
2 EXPLICIT MATERIAL?

3 THE COURT: ON PAGE 19?

4 MR. WIZNER: BEGINNING ON PAGE 19 AND  
5 RUNNING THROUGH PAGE 25.

6 THE WITNESS: YEAH, YOU COULD ALMOST PICK  
7 UP ANY PARAGRAPH IN THE MIDDLE OF IT, BUT I WOULD SAY --  
8 BY MR. WIZNER:

9 Q. WHAT PAGE ARE YOU ON?

10 A. I'M LOOKING AT 21. WELL, HERE, YOU COULD START  
11 ON THE BOTTOM OF PAGE 38 -- I'M SORRY. IT'S PAGE 23.

12 Q. DISPLAY PAGE 23, PLEASE, PAGE 23.

13 IS THERE A SECTION IN PARTICULAR THAT YOU  
14 WANT TO DIRECT OUR ATTENTION TO? CAN YOU IDENTIFY A  
15 PORTION OF THIS COLUMN THAT CONTAINS SEXUALLY EXPLICIT  
16 MATERIAL?

17 A. I WOULD SAY RIGHT IN THE MIDDLE, THE PARAGRAPH  
18 THAT BEGINS, "STRADDLING HIM."

19 Q. IS THERE A WAY THAT YOU CAN MAGNIFY THAT AT ALL?

20 THE COURT: I READ IT.

21 BY MR. WIZNER:

22 Q. TURN TO PAGE 1 OF PLAINTIFFS' EXHIBIT 38,  
23 PLEASE?

24 WHAT DOES THIS PAGE DEPICT?

25 A. THIS IS OUR VIDEO, OUR NERVE VIDEO.COM HOME

1 PAGE.

2 Q. WHAT IS NERVE VIDEO?

3 A. NERVE VIDEO, IT'S A SECTION OF THE SITE WHERE WE  
4 FEATURE A RANGE OF DIFFERENT VIDEOS WHICH INCLUDES  
5 ORIGINAL VIDEOS THAT WE COMMISSION AND CREATE AND ALSO  
6 FOUND VIDEOS THAT WE FIND ELSEWHERE ON THE INTERNET.

7 Q. IS NERVE VIDEO AVAILABLE FOR FREE TO  
8 SUBSCRIBERS?

9 A. YES, IT IS.

10 Q. DOES NERVE VIDEO EVER INCLUDE LEWD EXHIBITIONS  
11 OF THE GENITALS OR POST-PUBESCENT FEMALE BREASTS?

12 A. YES. YES. WE HAVE A VERY STRICT POLICY OF  
13 NEVER INCLUDING ANY PRE-PUBESCENT FEMALE BREASTS, BUT IT  
14 DOES INCLUDE POST-PUBESCENT FEMALE BREASTS.

15 Q. WHAT ARE SOME EXAMPLES OF CONTENT THAT HAVE  
16 APPEARED ON NERVE VIDEO?

17 A. YOU KNOW, ANYTHING FROM -- LOOKING AT THIS PAGE,  
18 ANYTHING FROM -- ANY MAID IS AN ANIMATED CARTOON THAT WE  
19 RUN THAT IS ABOUT THE ADVENTURES OF A YOUNG WOMAN LIVING  
20 IN NEW YORK. IT IS A CARTOON ANIMATION. THERE IS A  
21 SORT OF A SOAP-OPERAESQUE SERIES CALLED YOUNG AMERICAN  
22 BODIES CREATED BY A YOUNG FILMMAKER IN CHICAGO THAT IS  
23 REALLY WELL DONE. IT DOES INCLUDE SOME NUDITY. AND  
24 ANOTHER EXAMPLE WOULD BE, WE HAVE A PERIODIC PHOTO  
25 CONTESTS OR VIDEO CONTESTS. WE HAD ONE IN WHICH WE

1 CHALLENGED NERVE READERS TO COME UP WITH THE SEXIEST  
2 60-SECOND OR SHORTER VIDEO FEATURING JOHN ASHCROFT. AND  
3 ACTUALLY WE HAD PEOPLE LIKE FROM COMEDY CENTRAL AND  
4 PROFESSIONAL ANIMATORS, AND A LOT OF PEOPLE DO FUNNY  
5 STUFF. IT'S NOT TERRIBLY EXPLICIT THIS STUFF, BUT THERE  
6 IS CERTAINLY SOME CONTENT THAT WE WOULD BE NERVOUS ABOUT  
7 UNDER COPA.

8 Q. CAN WE TURN TO PAGE 10 OF THIS EXHIBIT? AND  
9 WHAT DOES THIS PAGE DEPICT?

10 A. THIS IS THE PAGE THAT YOU WOULD SEE IF YOU WENT  
11 TO LOOK AT CONTENT THAT IS FREE BUT REQUIRES A FREE  
12 NERVE MEMBERSHIP TO SEE.

13 Q. WHAT KIND OF CONTENT REQUIRES A FREE NERVE  
14 MEMBERSHIP TO SEE?

15 A. BASICALLY, NONPREMIUM PHOTOGRAPHY. SO TO SEE  
16 PHOTOGRAPHY THAT IS NOT PREMIUM YOU WOULD HAVE TO AT  
17 LEAST REGISTER, WHICH INVOLVES GIVING US YOUR -- AN  
18 E-MAIL ADDRESS, DATE OF BIRTH AND ZIP CODE.

19 Q. AND DO YOU VERIFY ANY OF THE INFORMATION THAT  
20 YOU COLLECT FROM FREE MEMBERS?

21 A. NO, WE DON'T. WE HAVE NO WAY OF VERIFYING. THE  
22 ONLY THING WE DO VERIFY IS THE E-MAIL ADDRESS.

23 Q. DOES ANY OF NERVE'S PHOTOGRAPHY DEPICT AN ACTUAL  
24 OR SIMULATED SEXUAL ACT OR SEXUAL CONTACT AND ACTUAL OR  
25 SIMULATED NORMAL OR PERVERTED SEXUAL ACT OR A LEWD

1 EXHIBITION OF GENITALS OR POST-PUBESCENT FEMALE BREASTS?

2 MR. BEANE: OBJECTION, YOUR HONOR. IT'S  
3 A LEADING QUESTION. CALLS FOR A LEGAL CONCLUSION.

4 THE COURT: THE LATTER HALF IS OVERRULED  
5 THE FIRST HALF IS SUSTAINED.

6 BY MR. WIZNER:

7 Q. DOES ANY OF NERVE'S PHOTOGRAPHY DEPICT SEXUALLY  
8 EXPLICIT CONTENT?

9 A. YES, PROBABLY IN THE EYES OF THE AVERAGE  
10 AMERICAN, ALL OF IT DOES, YES.

11 Q. IS THERE NERVE CONTENT THAT IS AVAILABLE FOR  
12 FREE THAT DEPICTS NUDITY?

13 A. YES. YES, THERE IS. YES.

14 MR. WIZNER: YOUR HONOR, AT THIS TIME, I  
15 WOULD LIKE TO MOVE PLAINTIFF'S EXHIBIT 38 INTO EVIDENCE.

16 MR. BEANE: YOUR HONOR, WE WOULD LIKE TO  
17 RESTATE OUR OBJECTION THAT CERTAIN OF THESE PAGES WERE  
18 NOT DISCLOSED OR PROVIDED DURING THE DISCOVERY PROCESS.

19 MR. WIZNER: MY UNDERSTANDING IS THAT  
20 OBJECTION WAS OVERRULED ON THURSDAY.

21 MR. BEANE: WE WOULD JUST LIKE TO  
22 PRESERVE OUR OBJECTION, YOUR HONOR.

23 THE COURT: THANK YOU. THE OBJECTION IS  
24 OVERRULED. PLAINTIFFS' EXHIBIT 38 IS RECEIVED IN  
25 EVIDENCE.

1 (PLAINTIFFS' EXHIBIT 38 IS RECEIVED INTO  
2 EVIDENCE.)

3 BY MR. WIZNER:

4 Q. MR. GRISCOM, ARE THE PAGES IN 38 GENERALLY  
5 INDICATIVE OF NERVE CONTENT IN THE RESPECTIVE AREAS?

6 A. YES, IT IS.

7 Q. WOULD YOU FEAR PROSECUTION UNDER COPA FOR  
8 MATERIAL CONTAINED IN EXHIBIT 38?

9 A. YES. YES. I CERTAINLY WOULD.

10 Q. WHY?

11 A. YOU KNOW -- WELL, I THINK THAT IT SEEMS THE  
12 LANGUAGE IS VERY CLEAR ABOUT EXPLICIT NUDITY AND SEX  
13 ACTS. CLEARLY OUR WEBSITE CONTAINS BOTH WRITING AND  
14 PHOTOGRAPHY THAT MEET THAT DESCRIPTION. AND I THINK  
15 THAT A LARGE PORTION OF PEOPLE OUT THERE WOULD CONSIDER  
16 IT HARMFUL TO MINORS, AND WE DO NOT PUBLISH IT FOR  
17 MINORS. WE PUBLISH IT FOR ADULTS.

18 Q. ARE YOU AWARE OF OTHER WEBSITES THAT OFFER  
19 CONTENT SIMILAR TO NERVE'S?

20 A. YES, I AM.

21 MR. BEANE: OBJECTION, YOUR HONOR. CALLS  
22 FOR HEARSAY.

23 THE COURT: OVERRULED. HE IS ASKING FOR  
24 STATE OF MIND. IS HE AWARE OF THEM OR ISN'T HE? THAT  
25 IS NOT OBJECTIONABLE. OVERRULED.



1 THE WITNESS: WE --

2 THE COURT: THE ANSWER TO THE QUESTION IS  
3 YES OR NO.

4 THE WITNESS: YES.

5 BY MR. WIZNER:

6 Q. HOW ARE YOU AWARE --

7 A. ALL OF OUR -- MOST OF OUR PHOTOGRAPHERS, FOR  
8 INSTANCE, HAVE THEIR OWN WEBSITES. WE'VE PUBLISHED OVER  
9 14,000 PHOTOGRAPHS FROM PROBABLY HUNDREDS, MAYBE 500  
10 DIFFERENT PHOTOGRAPHERS. AND I WOULD ESTIMATE THAT  
11 THERE ARE HUNDREDS, IF NOT THOUSANDS, OF OTHER WEBSITES  
12 THAT CONTAIN SIMILAR CONTENT, WHICH IS WHAT I WOULD  
13 CONSIDER TO BE CONTENT WITH GENUINE ARTISTIC AND  
14 EDITORIAL OBJECTIVES, BUT VERY CLEARLY EXPLICIT AND  
15 WOULD NOT BE CONSIDERED ARTISTIC BY A LARGE PORTION OF  
16 THE AMERICAN POPULATION.

17 Q. YOU TESTIFIED THAT NERVE IS A FOR-PROFIT  
18 VENTURE. HOW DOES NERVE MAKE MONEY?

19 A. WE HAVE FOUR REVENUE STREAMS. THE FIRST AND  
20 LARGEST IS ADVERTISING. THAT HAS ACTUALLY GROWN QUITE A  
21 BIT, AND IT'S THE FASTEST GROWING REVENUE STREAM. THE  
22 SECOND PREMIUM WOULD BE WHICH I DESCRIBED. IT'S PEOPLE  
23 PAYING \$35 A YEAR OR \$7 A MONTH TO HAVE ACCESS TO THE  
24 ENTIRETY OF THE WEBSITE. AND THE THIRD IS OUR ONLINE  
25 DATING SERVICE, FOR WHICH PEOPLE PAY A MONTHLY FEE. AND

1 THE FOURTH IS WHAT I CALL BRAND LICENSING. WE PUBLISH  
2 -- THE BIGGEST CATEGORY OF BRAND LICENSING IS BOOKS. WE  
3 PUBLISHED SEVEN BOOKS WITH DOUBLEDAY, RANDOM HOUSE,  
4 CHRONICLE. OUR BOOKS HAVE BEEN PUBLISHED IN NINE  
5 LANGUAGES. IN FACT, WE JUST CLOSED A DEAL WITH  
6 CHRONICLE BOOKS IN SAN FRANCISCO TO PUBLISH 10  
7 NERVE-BRANDED BOOKS IN THE NEXT TWO AND-A-HALF YEARS.  
8 SO WE'VE PUBLISHED A LOT OF BOOKS. THE BOOKS TEND TO  
9 CONTAIN THE EXACT SAME CONTENT THAT IS ON THE WEBSITE.  
10 AND THOSE BOOKS ARE ALWAYS ON THE -- AVAILABLE IN EVERY  
11 BARNES AND NOBLE FOR EVERY MAN, WOMAN AND CHILD.

12 Q. YOU MENTIONED ADVERTISING FIRST. HOW DOES NERVE  
13 MAKE MONEY THROUGH ADVERTISING?

14 A. ADVERTISERS, LIKE I MENTIONED, STOLI, ABSOLUT,  
15 SKY, LIQUOR ADVERTISERS, FASHION ADVERTISERS LIKE ARE  
16 ARMANI AND PUMA AND AMERICAN APPAREL, AND OUR BIGGEST  
17 CATEGORY IN ADVERTISING FOR US IS MEDIA. BASICALLY ALL  
18 THE FILM STUDIOS, SONY PICTURES, MIRAMAX, YOU NAME IT,  
19 ALL ADVERTISE UNDER THE CABLE CHANNELS, LIKE HBO, BBC,  
20 ET CETERA, ET CETERA. AND SO BASICALLY THEY COME TO US  
21 AND WE CREATE ADVERTISING PACKAGES FOR THEM. AND SO AT  
22 ANY GIVEN TIME IF YOU GO TO NERVE.COM YOU WILL PROBABLY  
23 SEE, YOU KNOW, A DOZEN DIFFERENT ADVERTISERS.

24 Q. AND VERY GENERALLY HOW ARE RATES DETERMINED FOR  
25 ADVERTISERS?

1 A. IT'S REALLY A SUPPLY AND DEMAND THING, BUT  
2 CLEARLY THERE IS CPM OR COST PER THOUSAND AD IMPRESSIONS  
3 THAT HAS GONE UP OVER THE YEARS BECAUSE --

4 THE COURT: DID YOU USE AN ACRONYM, CPM?

5 THE WITNESS: CPM STANDS FOR COST PER  
6 MILLION OR COST PER THOUSAND. IT IS A TERM ALSO IN  
7 PRINT PUBLISHING. IT'S A STANDARD ADVERTISING TERM.

8 BUT IT'S BASICALLY THE DEMOGRAPHICS OF  
9 THE AUDIENCE. AND OUR DEMOGRAPHIC IS VERY VALUABLE TO  
10 THOSE ADVERTISERS BECAUSE THEY ARE DEEMED TO BE SORT OF  
11 TASTEMAKERS AND EARLY ADOPTERS AND ALL THAT SORT OF  
12 THING. AND OBVIOUSLY, THE QUANTITY OF ADVERTISING THAT  
13 WE CAN OFFER, THE NUMBER OF PAGE VIEWS PER MONTH, FOR  
14 INSTANCE, IS OBVIOUSLY VERY IMPORTANT TO THEM.

15 BY MR. WIZNER:

16 Q. APPROXIMATELY WHAT SHARE OF NERVE'S REVENUE IS  
17 DERIVED FROM ADVERTISING?

18 A. ADVERTISING IS OUR LARGEST SOURCE OF REVENUE. I  
19 WOULD SAY IT IS AROUND 35 PERCENT.

20 Q. ABOUT WHAT SHARE OF NERVE'S REVENUE IS DERIVED  
21 FROM PREMIUM MEMBERSHIP?

22 A. THAT WOULD -- THAT IS ROUGHLY 20 PERCENT.

23 Q. AND HOW EXACTLY DOES A READER BECOME A PREMIUM  
24 MEMBER?

25 A. YOU KNOW, THEY COME TO THE SITE MORE OFTEN THAN

1 NOT. WE DO THE ENTRANCE POLLS AND EXIT POLLS FOR OUR  
2 PREMIUM SUBSCRIBERS. WHEN SOMEBODY JOINS PREMIUM, WE  
3 ASK THEM, WHY DID YOU JOIN? AND, IN FACT, WE WILL ASK,  
4 DID YOU JOIN FOR THE PHOTOGRAPHY? DID YOU JOIN FOR THE  
5 ARCHIVE WRITING? DID YOU JOIN TO SUPPORT THE CAUSE OR  
6 THE EDITORIAL MISSION OF THE MAGAZINE? WE HAVE BEEN  
7 PLEASED TO FIND THAT QUITE A FEW PEOPLE SAY THEY JOINED  
8 BASICALLY TO SUPPORT THE MAGAZINE BECAUSE THEY BELIEVE  
9 IN IT. BUT THE MOST INTERESTING STATISTIC WE HAVE  
10 GOTTEN FROM THAT IS THAT THE AVERAGE PERSON WHO BUYS A  
11 NERVE PREMIUM SUBSCRIPTION HAS BEEN READING THE MAGAZINE  
12 FOR AT LEAST SIX MONTHS. SO BASICALLY THEY HAVE ALREADY  
13 DEVELOPED A RELATIONSHIP WITH OUR FREE CONTENT, AND THEY  
14 MAKE THE DECISION TO BECOME A PREMIUM SUBSCRIBER.

15 Q. CAN NERVE FUNCTION AS A PREMIUM ONLY WEBSITE?

16 A. WE REALLY COULDN'T. I MEAN, AS I MENTIONED,  
17 IT'S A SMALL FRACTION OF OUR REVENUE. IF WE COULD NOT  
18 PROVIDE USERS WITH FREE CONTENT THAT THEY COULD, YOU  
19 KNOW, CONSUME AND ENJOY FOR MANY MONTHS BEFORE MAKING  
20 THE DECISION TO ACTUALLY PURCHASE A PREMIUM MEMBERSHIP,  
21 I THINK WE WOULD HAVE ALMOST NO NEW -- IF EVERYTHING WAS  
22 BEHIND A CREDIT CARD WALL, I DON'T SEE HOW WE WOULD  
23 ATTRACT ANY PREMIUM SUBSCRIBERS AT ALL. I BELIEVE IT  
24 WOULD PRETTY MUCH PUT US OUT OF BUSINESS COMPLETELY.  
25 SEPARATE FROM THAT, EVEN HYPOTHETICALLY, IF WE HAD -- WE

1       COULD HYPOTHETICALLY HAVE 30 READERS WHO PAY US \$100,000  
2       A YEAR EACH, IN ORDER TO READ NERVE. WE WOULD HAVE --  
3       WE WOULD HAVE 3 MILLION IN REVENUE, WHICH IS ROUGHLY  
4       WHAT WE HAVE, A LITTLE BIT MORE THAN THAT. AND SO WE  
5       WOULD HAVE A SUSTAINABLE BUSINESS. BUT THAT IS NOT WHY  
6       WE PUBLISH A MAGAZINE. WE PUBLISH A MAGAZINE TO  
7       COMMUNICATE WITH OUR READERSHIP. AND IN THAT SCENARIO,  
8       ALL OF US WOULD SHUT IT DOWN AND GO DO SOMETHING ELSE  
9       BECAUSE, YOU KNOW, WE STARTED THE MAGAZINE, AND ALL THE  
10      EDITORS AND EVERYBODY ON OUR STAFF COMES TO WORK EVERY  
11      DAY BECAUSE WE WANT TO MAKE A CULTURAL IMPACT. WE WANT  
12      TO BE PART OF THE CULTURAL CONVERSATION. WE BELIEVE IN  
13      WHAT WE DO. AND WE WOULD MUCH RATHER THAT THE ENTIRE  
14      THING BE FREE AND THAT WE REACHED MANY MORE PEOPLE. IN  
15      FACT, THE TRENDS ONLINE ARE TOWARDS MORE CONTENT  
16      BECOMING FREE, AND WE ARE FOLLOWING THOSE TRENDS FOR  
17      ECONOMIC REASONS.

18                   MR. BEANE: OBJECTION, LACK OF  
19      FOUNDATION. THIS IS ALSO NARRATIVE BEYOND THE SCOPE.

20                   THE COURT: STRIKE EVERYTHING AFTER THE  
21      VOLUNTEERING WHAT OTHER WEBSITES MIGHT CONTAIN. THERE  
22      IS A STAKE POINT IN OFFERING THIS TESTIMONY. SUSTAINED.  
23      I'M NOT SAYING IT IS IRRELEVANT. YOU DON'T HAVE A  
24      FOUNDATION FOR IT.

25      BY MR. WIZNER:

1 Q. ARE YOU GENERALLY AWARE THAT COPA DESCRIBES  
2 STEPS THAT YOU COULD TAKE TO AVOID PROSECUTION FOR  
3 POSTING SEXUALLY EXPLICIT CONTENT?

4 A. YES, I AM. I MEAN, I UNDERSTAND THAT WE COULD  
5 HAVE A CREDIT CARD BARRIER TO ALL OF OUR CONTENT, OR  
6 PRESUMABLY THERE IS SOME OTHER WAY OF VERIFYING AGE BUT  
7 I'M NOT AWARE OF IT.

8 Q. AND ARE YOU AWARE OF ANY PRODUCT OR SERVICE THAT  
9 ACCURATELY VERIFIES AGE ON ONLINE?

10 MR. BEANE: OBJECTION, YOUR HONOR,  
11 LEADING QUESTION. CALLS FOR --

12 THE COURT: OVERRULED. HE IS ASKING  
13 WHETHER HE IS AWARE. YES OR NO?

14 THE WITNESS: NO, I'M NOT AWARE OF IT.  
15 MY UNDERSTANDING --

16 THE COURT: SIR, EXCUSE ME. THAT IS THE  
17 END OF YOUR ANSWER.

18 BY MR. WIZNER:

19 Q. AT RISK OF A CHICKEN LITTLE OBJECTION, WHAT  
20 WOULD -- DO YOU KNOW WHAT THE EFFECT WOULD BE OF  
21 REQUIRING THE USE OF A CREDIT CARD TO ENTER NERVE'S  
22 WEBSITE?

23 A. I DO IT. IT WOULD CUT OUR TRAFFIC DOWN TO CLOSE  
24 TO ZERO.

25 MR. BEANE: OBJECTION, LACK OF

1 FOUNDATION.

2 BY MR. WIZNER:

3 Q. HOW DO YOU KNOW?

4 THE COURT: OVERRULED.

5 THE WITNESS: I KNOW BECAUSE IT'S VERY  
6 COMMON. THERE ARE LOTS OF BOOKS WRITTEN ABOUT CUSTOMER  
7 BEHAVIOR ONLINE, AND IT'S WIDELY KNOWN THAT ANY TIME YOU  
8 INTRODUCE AN EXTRA HURDLE FOR A READER OR A CUSTOMER,  
9 YOU DRAMATICALLY REDUCE THE NUMBER OF USERS WHO COME  
10 THROUGH.

11 SO, FOR INSTANCE, WHEN WE PUT UP AND WE  
12 HAVE SPECIFIC, YOU KNOW, TRAFFIC DATA ABOUT, YOU KNOW,  
13 HOW MANY PEOPLE SEE EACH PAGE OF OUR WEBSITE, SO IF WE  
14 PUT UP A WALL THAT SAYS, OKAY, YOU CAN READ THIS, YOU  
15 CAN SEE THIS PHOTOGRAPH, IF YOU JUST TAKE 30 SECONDS TO  
16 GIVE US SOME INFORMATION ABOUT YOURSELF, WE WILL DROP  
17 FROM, SAY, 100,000 PEOPLE TO SAY 3 OR 4,000, JUST BY  
18 PUTTING UP --

19 MR. BEANE: OBJECTION. LACK OF  
20 FOUNDATION, SPECULATION.

21 THE COURT: DOES PLAINTIFF EXPECT TO HAVE  
22 TESTIMONY FROM EXPERTS ON THIS SUBJECT? DO THE  
23 PLAINTIFFS EXPECT TO HAVE EXPERT TESTIMONY ON THE  
24 SUBJECT THAT HE HAS JUST VOLUNTEERED?

25 MR. WIZNER: I BELIEVE HE IS TESTIFYING

1 FROM PERSONAL EXPERIENCE, YOUR HONOR.

2 THE COURT: HE DID NOT SAY SO. HE SAID,  
3 I KNOW THAT. I DON'T KNOW HOW HE KNOWS.

4 THE WITNESS: I DO MEAN THAT TO BE --

5 THE COURT: EXCUSE ME. LET THE LAWYER  
6 ASK THE QUESTION. DON'T VOLUNTEER.

7 BY MR. WIZNER:

8 Q. BASED ON YOUR EXPERIENCE, WOULD THERE BE AN  
9 EFFECT ON TRAFFIC BY REQUIRING THE USE OF A CREDIT CARD  
10 TO ENTER NERVE'S WEBSITE?

11 A. YES. WE HAVE OUR -- WE CAN TRACK HOW MANY  
12 PEOPLE SEE EACH PAGE ON THE WEBSITE. SO, FOR INSTANCE,  
13 WE CAN SEE THAT -- AND ALL WEBSITES CAN SEE THIS, HOW  
14 MANY PEOPLE SEE THE FIRST PAGE OF YOUR REGISTRATION  
15 FORM, HOW MANY SEE THE SECOND PAGE, AND HOW MANY, YOU  
16 KNOW -- WE CAN SEE THE ATTRITION, THE LOSS OF READERS AS  
17 YOU PUT EXTRA STEPS IN THEIR WAY. SO ON OUR WEBSITE, IN  
18 MY EXPERIENCE, SIMPLY PUTTING UP A FREE REGISTRATION  
19 STEP THAT TAKES 30 SECONDS WOULD DROP -- WOULD REMOVE 95  
20 PERCENT OF OUR VISITORS TO A PAGE.

21 Q. BASED ON --

22 MR. BEANE: OBJECTION. LACK OF  
23 FOUNDATION.

24 THE COURT: DO THE PLAINTIFFS EXPECT TO  
25 PRODUCE EXPERT TESTIMONY IN THIS AREA?



1 MR. WIZNER: I'M SORRY, YOUR HONOR.

2 EXPERT TESTIMONY ON AN ATTRITION RATE?

3 THE COURT: HE VOLUNTEERED A LOT OF  
4 INFORMATION -- NOT VOLUNTEERING, BUT ANSWERING YOUR  
5 QUESTIONS ABOUT THE NUMBER OF -- EFFECT OF PUTTING UP A  
6 BARRIER AND ALL THAT SORT OF THING, WENT IN THE RECORD  
7 WITHOUT OBJECTION. BUT I KNOW -- I HAVE BEEN TOLD, THAT  
8 THE PLAINTIFFS EXPECT TO PRESENT OTHER TESTIMONY IN THIS  
9 AREA LATER IN THE TRIAL.

10 MR. WIZNER: THERE WILL BE OTHER  
11 TESTIMONY IN THIS AREA. I HAVE ASKED THE WITNESS TO  
12 RESTRICT HIS TESTIMONY TO PERSONAL EXPERIENCE AND NOT TO  
13 SPECULATION OR PREDICTION.

14 MR. BEANE: I CONTINUE TO OBJECT, YOUR  
15 HONOR, BECAUSE I THINK THOSE PROPOSED FINDINGS ALL CITE  
16 TO THE PLAINTIFFS AND NOT EXPERTS.

17 THE COURT: OBJECTION IS OVERRULED. THE  
18 WITNESS IS TESTIFYING FROM PERSONAL EXPERIENCE. TO THAT  
19 EXTENT HIS TESTIMONY IS ADMISSIBLE. THE TESTIMONY THAT  
20 PURPORTS TO REFER TO -- THERE HAVE BEEN A LOT OF STUDIES  
21 ON THIS OR THAT HE DID BEFORE IS ADMISSIBLE BECAUSE THE  
22 PLAINTIFFS WILL PRESENT TESTIMONY TO THAT EFFECT LATER  
23 IN THEIR CASE. OVERRULED.

24 BY MR. WIZNER:

25 Q. MR. GRISCOM, BASED ON YOUR PERSONAL EXPERIENCE

1 ARE NERVE READERS CONCERNED ABOUT ANONYMITY?

2 A. YES, THEY ARE.

3 Q. AND BASED ON YOUR PERSONAL EXPERIENCE, ARE NERVE  
4 READERS WILLING TO PAY TO SEE NERVE'S CONTENT?

5 MR. BEANE: OBJECTION. SPECULATION.  
6 LACK OF FOUNDATION.

7 THE COURT: OVERRULED. IF ANYBODY WOULD  
8 KNOW, IT IS HIS MAGAZINE.

9 THE WITNESS: YES. AS I MENTIONED, WE  
10 HAVE HAD 20,000 PEOPLE -- I MEAN, ROUGHLY LESS THAN 1  
11 PERCENT OF THE PEOPLE WHO VISIT IN A GIVEN YEAR BUY  
12 PREMIUM SUBSCRIPTIONS SO, YES. AND THOSE PEOPLE, ONCE  
13 AGAIN, HAVE BEEN READING THE SITE FOR AT LEAST SIX  
14 MONTHS OF FREE CONTENT. YES. IT WOULD REDUCE OUR  
15 AUDIENCE TO A TEENY FRACTION OF ITS CURRENT SIZE.

16 Q. WOULD IT BE POSSIBLE FOR NERVE TO SEPARATE THE  
17 SEXUALLY EXPLICIT CONTENT FROM THE NONSEXUALLY EXPLICIT  
18 CONTENT?

19 A. YES, WE COULD. I MEAN, THE PROBLEM IS THAT MOST  
20 OF OUR CONTENT IS SEXUALLY EXPLICIT, SO THERE WOULD NOT  
21 BE MUCH LEFT.

22 Q. BASED ON YOUR EXPERIENCE, WHAT WOULD HAPPEN TO  
23 NERVE'S BUSINESS IF ALL READERS HAD TO ENTER A CREDIT  
24 CARD INFORMATION TO ENTER THE SITE?

25 MR. BEANE: OBJECTION, YOUR HONOR. THE

1 SITE HAS NEVER HAD, TO MY KNOWLEDGE, UNLESS THERE IS A  
2 FOUNDATION THAT CAN BE ESTABLISHED, CREDIT CARD ONLY  
3 ACCESS.

4 THE COURT: SUSTAINED. LAY A FOUNDATION,  
5 IF YOU CAN.

6 BY MR. WIZNER:

7 Q. I THINK YOU HAVE ANSWERED THE QUESTION BEFORE.  
8 WHAT WOULD NERVE DO IF COPA WERE TO TAKE EFFECT?

9 A. I HAVE NO IDEA WHAT WE WOULD DO. I THINK NINE  
10 YEARS AGO, WHEN I FIRST STARTED IT, WE PROBABLY WOULD  
11 HAVE JUST SAILED FORWARD WITHOUT CONCERN, BECAUSE WE  
12 WERE YOUNG AND FEARLESS. AND NOW, WITH A 20-MONTH OLD  
13 SON, AND ALSO FIDUCIARY RESPONSIBILITY TO INVESTORS WHO  
14 HAVE BACKED THE COMPANY OVER THE YEARS, WE WOULD HAVE TO  
15 THINK LONG AND HARD ABOUT WHAT TO DO. BASED ON WHAT I  
16 HAVE HEARD TODAY, I THINK MAYBE MOVING OVERSEAS WOULD BE  
17 A CONSIDERATION.

18 MR. WIZNER: PLAINTIFFS HAVE NO MORE  
19 QUESTIONS.

20 THE COURT: CROSS EXAMINE.

21 CROSS EXAMINATION

22 BY MR. BEANE:

23 Q. GOOD MORNING, MR. GRISCOM. I BELIEVE WE MET AT  
24 A DEPOSITION BACK IN FEBRUARY. DO YOU RECALL THAT?

25 A. YES, I DO. GOOD TO SEE YOU.

1 Q. YOU REMEMBER ALL THE FORMALITIES, THE TESTIMONY  
2 UNDER OATH AND WHATNOT?

3 A. I SURE DO.

4 Q. GOOD. I'M GOING TO GO BACK TO WHAT SEEMED LIKE  
5 ONE OF YOUR FAVORITE TOPICS, THE AWARDS THAT NERVE HAS  
6 WON. YOU MENTIONED ONE OF THEM YOU WERE NOMINATED FOR;  
7 YOU'VE WON NUMEROUS OTHER AWARDS, HAVEN'T YOU?

8 A. YES, WE HAVE.

9 Q. IN 2004, FOR EXAMPLE, YOU WON AN AWARD FOR  
10 AMERICAN PHOTOGRAPHY, ISN'T THAT RIGHT?

11 A. YES, THAT IS TRUE.

12 Q. AND IN 2001, DIDN'T YOU WIN AN AWARD FOR  
13 OUTSTANDING DIGITAL JOURNALISM?

14 A. THAT SOUNDS RIGHT.

15 Q. YOU MENTIONED THE NATIONAL MAGAZINE AWARD.  
16 NERVE WAS NOMINATED FOR THIS AWARD ALONG WITH ATLANTIC  
17 MONTHLY, CONSUMER REPORTS, BUSINESS WEEK, AND STYLE.COM,  
18 ISN'T THAT RIGHT?

19 A. YES, THAT IS CORRECT.

20 Q. AND DON'T YOU HAVE EDITORS ON YOUR STAFF WHO  
21 HAVE WORKED AT PLACES SUCH AS THE NEW YORK TIMES?

22 A. NOT THE NEW YORK TIMES, BUT THE NEW YORKER AND  
23 NEW YORK MAGAZINE, OTHER TOP PUBLICATIONS, YES.

24 Q. HAVE SOME OF THE EDITORS CHANGED SINCE YOUR  
25 DEPOSITION AND THE DOCUMENTS THAT WE DISCUSSED AT YOUR

1 DEPOSITION?

2 A. I THINK IT WAS THE NEW YORKER THAT WAS IN THE  
3 DEPOSITION.

4 Q. DOES SAM APPLE -- IS HE STILL --

5 A. YES.

6 Q. -- AMONG YOUR EDITORS?

7 A. HIS WORK IS PUBLISHED. HIS WORK IS PUBLISHED IN  
8 THE NEW YORK TIMES. SO YEAH, A NUMBER OF OUR -- A  
9 NUMBER OF OUR EDITORS WRITE FOR THE NEW YORK TIMES.

10 Q. INCLUDING -- I'M SORRY.

11 A. BUT NOT -- THEY ARE NOT ON THE STAFF BUT, YEAH.

12 Q. ADA CALHOUN, YOUR EDITOR, SHE HAS WRITTEN FOR  
13 THE NEW YORK TIMES AS WELL, ISN'T THAT RIGHT?

14 A. THAT'S CORRECT.

15 Q. ISN'T THERE ALSO AN EDITOR WHO USED TO WORK FOR  
16 GUGGENHEIM.COM?

17 A. YES, THAT IS CORRECT.

18 Q. YOU ALREADY MENTIONED NEW YORK MAGAZINE?

19 A. YES.

20 Q. I WOULD LIKE TO SHOW YOU WHAT HAS BEEN PREMARKED  
21 AS DEFENDANT'S EXHIBIT 127.

22 THE COURT: DO WE HAVE A STREAM, PLEASE.

23 MR. BEANE: YES, WE WILL.

24 CAN YOU ZOOM ON?

25 BY MR. BEANE:

1 Q. WELL, FIRST, LET ME ASK YOU, IS THIS A PAGE FROM  
2 YOUR WEBSITE?

3 A. YES, IT IS.

4 MR. BEANE: MR. BYRDSONG, CAN YOU PLEASE  
5 ZOOM INTO THE HIGHLIGHTED PORTION OF THAT PAGE.

6 BY MR. BEANE:

7 Q. DO YOU MIND READING THAT SECTION UNDER, WHAT IS  
8 NERVE?

9 A. YES. IT SAYS NERVE IS A MULTIMEDIA COMPANY  
10 DEDICATED TO ALL THINGS SMART, SEXY --

11 THE COURT: READ MORE SLOWLY, PLEASE.

12 MR. BEANE: SORRY, YOUR HONOR.

13 BY MR. BEANE:

14 Q. GO AHEAD.

15 A. IT'S A MULTIMEDIA COMPANY DEDICATED TO ALL  
16 THINGS SMART, SEXY AND CULTURALLY IMPORTANT AND  
17 ENTERTAINING. NERVE.COM IS THE ONLINE COMMUNITY FOR  
18 ORIGINAL AWARD-WINNING WRITING AND PHOTOGRAPHY, AS WELL  
19 AS DISCERNING COVERAGE OF THE BEST FILMS, TELEVISION,  
20 BOOKS AND MUSIC. NERVE ALSO HOUSES THE LEADING ONLINE  
21 DATING DESTINATION FOR YOUNG URBAN TREND-SETTERS.

22 THIS, BY THE WAY, IS A PAGE THAT IS FOR  
23 ADVERTISERS. IT'S INFORMATION FOR ADVERTISERS.

24 Q. I WOULD LIKE TO MOVE ON, SINCE YOU ANSWERED THE  
25 QUESTION THERE.

1 I WOULD LIKE TO NOW SHOW YOU WHAT HAS  
2 BEEN PREMARKED AS DEFENDANT'S EXHIBIT 126. THIS IS THE  
3 FRONT PAGE OF YOUR WEBSITE, ISN'T IT?

4 A. YES, IT IS.

5 Q. ON THIS FRONT PAGE, YOU HAVE LINKS TO DIFFERENT  
6 SECTIONS OF YOUR WEBSITE, RIGHT?

7 A. YES.

8 Q. IT INCLUDES PERSONALS, PHOTOGRAPHY, FEATURES,  
9 ARTS AND ENTERTAINMENT LOUNGE, BLOGS, VIDEO, IS THAT  
10 RIGHT?

11 A. YES, THAT IS RIGHT.

12 Q. AND SOME OF THE CONTENT IN THESE SECTIONS IS  
13 AVAILABLE ONLY TO PREMIUM MEMBERS, ISN'T THAT RIGHT?

14 A. THAT'S CORRECT.

15 Q. I WOULD LIKE TO SHOW YOU DEFENDANT'S EXHIBIT  
16 139. IS THIS A PAGE FROM YOUR WEBSITE?

17 A. YES, IT IS.

18 Q. SO VISITORS WOULD REACH A PAGE LIKE THIS, IF  
19 THEY CLICKED ON CONTENT THAT IS AVAILABLE ONLY TO  
20 PREMIUM MEMBERS, ISN'T THAT RIGHT?

21 A. THAT'S CORRECT.

22 Q. IF SOMEONE IS ALREADY A MEMBER, THEN ALL THEY  
23 HAVE TO DO IS ENTER A PASSWORD UP IN THE UPPER RIGHT  
24 CORNER OF THIS SCREEN, IS THAT RIGHT?

25 A. THAT'S CORRECT.

1 Q. BUT IF THEY ARE NOT A MEMBER, THEY HAVE TO CLICK  
2 ON THE TAB AT THE BOTTOM TO SUBSCRIBE, IS THAT RIGHT?

3 A. THAT'S CORRECT.

4 Q. I WOULD LIKE TO SHOW YOU NOW DEFENDANT'S EXHIBIT  
5 132. IS THIS ALSO A PAGE FROM YOUR WEBSITE?

6 A. YES, IT IS.

7 Q. THIS IS A REGISTRATION PAGE, RIGHT?

8 A. YES.

9 Q. SO A POTENTIAL SUBSCRIBER WOULD TYPE IN HIS NAME  
10 HERE, RIGHT?

11 A. THAT'S RIGHT.

12 Q. AND CHOOSE A MEMBER NAME AND PASSWORD?

13 A. YES.

14 Q. AND TYPE IN HIS FIRST AND LAST NAME?

15 A. CORRECT.

16 Q. CAN WE MOVE TO THE NEXT PAGE OF THAT.

17 THERE IS A SPACE ON THIS PAGE FOR AN  
18 E-MAIL ADDRESS, ISN'T THAT RIGHT?

19 A. YES.

20 THE COURT: IS THIS PART OF EXHIBIT 132?

21 MR. BEANE: PAGE 2 OF 132.

22 BY MR. BEANE:

23 Q. THEN THERE IS A SPACE FOR GENDER?

24 A. YES.

25 Q. AND THEN SPACES FOR AN ADDRESS, INCLUDING CITY,



1 STATE, COUNTRY, ZIP?

2 A. YES, THAT'S RIGHT.

3 Q. AND THEN NEXT, YOU ASKED FOR DATE OF BIRTH,  
4 RIGHT?

5 A. YES, THAT'S CORRECT.

6 Q. AND THEN THESE ARE ALL ADDITIONAL STEPS TO  
7 COMPLETE THE REGISTRATION PROCESS, ISN'T THAT RIGHT?

8 A. YES. YES. FOR PREMIUM SUBSCRIBERS, YES.

9 Q. I WOULD LIKE TO SHOW YOU DEFENDANT'S EXHIBIT  
10 133. DOES THIS SHOW THE NEXT STEP IN THE REGISTRATION  
11 PROCESS?

12 A. YES, IT DOES.

13 Q. TO REGISTER, YOU HAVE TO ENTER YOUR BILLING  
14 ADDRESS?

15 THE COURT: EXCUSE ME FOR INTERRUPTING.

16 IS THIS REGISTRATION FOR PREMIUM STATUS OR NORMAL  
17 REGISTRATION? I DON'T KNOW.

18 THE WITNESS: THIS IS FOR PREMIUM.

19 THE COURT: THANK YOU.

20 BY MR. BEANE:

21 Q. IN ORDER TO REGISTER FOR PREMIUM STATUS, YOU  
22 HAVE TO ENTER YOUR BILLING ADDRESS AND YOUR CREDIT CARD  
23 INFORMATION, ISN'T THAT RIGHT?

24 A. THAT'S CORRECT, YEAH.

25 Q. AND THEN THERE ARE TWO DIFFERENT PREMIUM

1           PACKAGES AVAILABLE. I BELIEVE YOU MENTIONED THESE  
2           EARLIER, A MONTHLY SUBSCRIPTION FOR \$7 OR A YEARLY  
3           SUBSCRIPTION FOR \$35?

4           A.           THAT'S RIGHT.

5           Q.           NOW, I WOULD LIKE TO SHOW YOU DEFENDANT'S  
6           EXHIBIT 139 ONE MORE TIME.

7                                SO IF SOMEONE WAS INTERESTED IN VIEWING  
8           THIS PIECE, WHICH IS RED LIGHT SPECTERS, AND THEY WERE  
9           NOT ALREADY A MEMBER, THEY WOULD HAVE TO GO THROUGH ALL  
10          OF THOSE STEPS WE JUST WALKED THROUGH, ISN'T THAT RIGHT?

11          A.           I'M SORRY. IF SOMEBODY WAS INTERESTED IN  
12          VIEWING THIS PIECE --

13                                THE COURT: YOU GAVE IT A NAME. SAY IT  
14          AGAIN.

15                                MR. BEANE: RED LIGHT SPECTERS.  
16          S-P-E-C-T-E-R-S.

17                                THE WITNESS: THAT IS THE NAME OF THE  
18          PHOTO GALLERY, RIGHT, AND THAT IS CORRECT. A PORTION OF  
19          OUR PHOTO GALLERIES REQUIRE PREMIUM SUBSCRIPTIONS.

20                                MR. BEANE: THANK YOU. YOU ANTICIPATED  
21          THE NEXT SECTION OF MY QUESTIONING.

22          BY MR. BEANE:

23          Q.           ISN'T IT TRUE THAT A PORTION OF CONTENT NERVE IS  
24          -- OF THE PHOTOGRAPHY SECTION ON NERVE IS PREMIUM  
25          CONTENT?

1 A. THAT'S RIGHT.

2 Q. FOR EXAMPLE, THE MONTHLY PHOTO CONTEST SECTION  
3 IS FOR SUBSCRIBERS ONLY. ISN'T THAT TRUE?

4 A. YES, THAT'S CORRECT.

5 Q. IN FACT, THE VAST MAJORITY OF THE PHOTOGRAPHY  
6 SECTION IS PREMIUM CONTENT AT THIS TIME, ISN'T THAT  
7 RIGHT?

8 A. I WOULD SAY THAT, YES, MORE THAN 50 PERCENT,  
9 ALTHOUGH THERE ARE THOUSANDS AND THOUSANDS OF NUDE  
10 PHOTOGRAPHS THAT ARE AVAILABLE FOR FREE.

11 Q. AND ISN'T IT TRUE THAT YOU PUT THE MOST EXPLICIT  
12 PHOTOGRAPHY IN THE PREMIUM SECTION FROM THE BEGINNING  
13 WITHOUT SHOWING IT FOR FREE?

14 A. NO, THAT IS NOT TRUE. WE INTRODUCED PREMIUM  
15 ABOUT ROUGHLY THREE YEARS AGO. SO FOR THE FIRST FIVE,  
16 SIX YEARS OF NERVE, IT WAS ALL FREE. AND NOW IT'S JUST  
17 A PORTION OF THE PHOTOGRAPHS THAT ARE FREE.

18 Q. SO AT THIS TIME, THE MOST EXPLICIT STUFF IS ONLY  
19 FOR PREMIUM?

20 A. YES. AT THIS TIME, THAT'S CORRECT, YES.

21 Q. IN FACT, YOU SEGREGATE WHAT YOU HAVE TERMED IN  
22 THE PAST THE MORE REVEALING PHOTOGRAPHS IN THE PHOTOS  
23 WITH A HIGHER PERCENTAGE OF BODY PARTS, DON'T YOU?

24 A. YES. I WOULD SAY THE MORE -- THE MOST, THE MOST  
25 EXPLICIT PHOTOGRAPHS ARE IN THE PREMIUM SECTION.

1 Q. BUT IN THE PAST, YOU'VE REFERRED TO IT AS, AND I  
2 QUOTE, MORE REVEALING. I ALSO QUOTE, HIGHER PERCENTAGE  
3 OF BODY PARTS, DIDN'T YOU?

4 A. THAT SOUNDS PLAUSIBLE OR LIKELY, YES.

5 Q. YOU TESTIFIED EARLIER THAT ONE OF THE REASONS  
6 YOU DO THIS IS BECAUSE YOU WANT TO INVITE MORE SEXUALLY  
7 EXPLICIT CONTENT FROM YOUR ADVERTISERS. THAT'S CORRECT,  
8 RIGHT?

9 A. THAT'S RIGHT.

10 Q. I WOULD LIKE TO SHOW YOU EXHIBIT 130. THIS IS A  
11 PAGE FROM YOUR WEBSITE, ISN'T IT?

12 A. YES, IT IS.

13 Q. THIS DOCUMENT LISTS MANY OF YOUR ADVERTISERS AND  
14 PARTNERS, DOESN'T IT?

15 A. YES. I'M EMBARRASSED TO SAY ITS WOEFULLY  
16 OUTDATED. IT'S MANY YEARS OLD. YES, IT DOES.

17 Q. IT INCLUDES HBO, TIME OUT NEW YORK, DKNY,  
18 SALON.COM, DIMENSION FILMS, ISN'T THAT RIGHT?

19 A. YES.

20 Q. NONE OF THESE, WHAT YOU CALL PARTNERS ARE IN THE  
21 BUSINESS OF COMMERCIAL PORNOGRAPHY, ARE THEY?

22 A. I DON'T KNOW WHAT THE WORD "PORNOGRAPHY" MEANS.  
23 I MEAN HBO, FOR INSTANCE, SHOWS LOTS OF NUDITY THAT MANY  
24 PARENTS WOULD NOT WANT THEIR CHILDREN TO SEE. SO, I  
25 MEAN, I THINK THAT, YOU KNOW --

1 Q. TO YOUR KNOWLEDGE, IS ALL OF THE CONTENT ON HBO  
2 WHAT YOU MIGHT CALL PORNOGRAPHY?

3 A. NOT ALL OF IT, NO.

4 Q. IN FACT, DON'T YOU HAVE A POLICY NOT TO ACCEPT  
5 EXPLICIT ADVERTISING, CORRECT?

6 A. YES, THAT'S CORRECT. IN OTHER WORDS --

7 Q. AND YOU TESTIFIED EARLIER THAT THAT POLICY IS  
8 BECAUSE YOU FEEL PRESSURE TO KEEP MAINSTREAM  
9 ADVERTISERS, CORRECT?

10 A. THAT'S RIGHT. YES. I THINK WHAT I WAS SAYING  
11 WAS, WE DO NOT ACCEPT ADVERTISING FROM CONVENTIONAL PORN  
12 MAGAZINES OR WEBSITES, THAT'S CORRECT.

13 Q. AND SO AMONG THOSE PORN MAGAZINES THAT YOU WOULD  
14 NOT INCLUDE IS HUSTLER, ISN'T THAT RIGHT?

15 A. YES, THAT'S CORRECT.

16 Q. IN FACT, IN THE PAST, YOU HAVE REFUSED  
17 ADVERTISEMENTS FROM PORNOGRAPHY WEBSITES, CORRECT?

18 A. YES, THAT'S CORRECT.

19 Q. ISN'T IT ALSO TRUE THAT ON THE PAGES OF YOUR  
20 WEBSITE THAT YOU CALL THE FREE TOUR, YOU COVER GENITALS  
21 AND BREASTS WITH STARS SO AS NOT TO DISCOURAGE  
22 ADVERTISERS?

23 A. NO. I DON'T THINK THAT IS WHY WE HAVE THEM. I  
24 THINK IT IS MORE OF A MARKETING STRATEGY. THERE IS  
25 PLENTY OF NUDITY THAT IS AVAILABLE FOR FREE ON NERVE.

1 Q. IS THAT ONE OF THE REASONS THAT YOU HAVE IT  
2 THERE?

3 A. YEAH. IN GENERAL, WE ARE MINDFUL OF NOT SCARING  
4 AWAY ADVERTISERS. IT IS TERRIBLE TO GET A PHONE CALL  
5 FROM AN ADVERTISER SAYING, WE'RE PULLING A CAMPAIGN.

6 Q. DO YOU RECALL TESTIFYING AT YOUR DEPOSITION THAT  
7 ONE OF THE REASONS THAT YOU DON'T SHOW NUDITY IN THE  
8 FREE TOUR, THAT YOU COVER GENITALS AND BREASTS WITH  
9 STARS, BECAUSE YOU DON'T WANT TO DISCOURAGE ADVERTISERS?

10 A. YEAH. THAT SOUNDS RIGHT.

11 Q. I THINK THERE IS A PORTION OF DEPOSITION  
12 TRANSCRIPT.

13 MR. BEANE: YOU CAN PUT THAT BACK UP,  
14 MR. BYRDSONG?

15 THE COURT: WHAT DID YOU JUST SAY?

16 MR. BEANE: I CAN MOVE ON, YOUR HONOR.

17 THE COURT: HE AGREED THAT THAT IS  
18 PROBABLY WHAT HE JUST SAID.

19 BY MR. BEANE:

20 Q. IN YOUR JUDGMENT, NERVE IS VERY DIFFERENT THAN  
21 PLAYBOY AND HUSTLER. HAVEN'T YOU SAID THAT?

22 A. YES.

23 Q. IN YOUR JUDGMENT, THE MARKETPLACE VIEWS NERVE AS  
24 VERY DIFFERENT THAN PLAYBOY AND HUSTLER, ISN'T THAT  
25 RIGHT?

1 A. I DON'T KNOW EXACTLY WHAT "THE MARKETPLACE"  
2 MEANS, BUT I WOULD SAY BROADLY THAT ADVERTISERS AND OUR  
3 BUSINESS PARTNERS SEE US AS BEING DIFFERENT, YES.

4 Q. ISN'T IT TRUE THAT WHATEVER YOU THINK OF AS THE  
5 MARKETPLACE, THE TERM YOU USED AT YOUR DEPOSITION, YOU  
6 SAID THAT TO THE MARKETPLACE NERVE IS VERY DIFFERENT  
7 THAN PLAYBOY AND HUSTLER, WHATEVER IT MEANS TO YOU?

8 A. THAT'S RIGHT. YES.

9 Q. YOU TESTIFIED THAT NERVE HAS NEVER ADVERTISED  
10 WITH ANY PORNOGRAPHY SITES, PLACED ADVERTISEMENTS ON  
11 PORNOGRAPHY SITES, ISN'T THAT RIGHT?

12 A. THAT'S CORRECT.

13 Q. YOU ALSO TESTIFIED THAT YOU'VE NEVER TAKEN ANY  
14 STEPS TO TRY TO ASSOCIATE WITH PORNOGRAPHY SITES, ISN'T  
15 THAT RIGHT?

16 A. THAT'S RIGHT.

17 Q. YOU HAVE NEVER BEEN CONVICTED OR CHARGED OR  
18 ARRESTED OR THREATENED FOR PROSECUTION UNDER ANY HARMFUL  
19 TO MINORS LAW, HAVE YOU?

20 A. NO.

21 Q. AND YOU TESTIFIED BEFORE THAT YOU SELL BOOKS IN  
22 BOOK STORES. YOU HAVE NOT BEEN CONVICTED OR CHARGED, OR  
23 ARRESTED, OR THREATENED FOR PROSECUTION UNDER STATE  
24 HARMFUL TO MINORS LAWS FOR BOOKS, HAVE YOU?

25 A. NO.

1 Q. AND TO YOUR KNOWLEDGE, YOU HAVE NEVER BEEN  
2 INVESTIGATED BY ANY AUTHORITY FOR POSTING ON YOUR  
3 WEBSITE?

4 A. THAT'S CORRECT.

5 Q. NERVE.COM IS BLOCKED BY MANY FILTERING SOFTWARE  
6 PRODUCTS, ISN'T IT?

7 A. I FEAR THAT THAT IS TRUE, YEAH.

8 Q. IN FACT, YOU TESTIFIED THAT TRAFFIC TO YOUR  
9 WEBSITE AND I'LL QUOTE, IS "SUBSTANTIALLY LOWER AS A  
10 RESULT OF FILTERING PRODUCTS," DIDN'T YOU?

11 A. YES.

12 Q. BUT GENERALLY SPEAKING, YOU AREN'T AGAINST THE  
13 USE OF FILTERS, ISN'T THAT RIGHT?

14 A. NO. NO. NO. WE ARE ALL FOR IT.

15 Q. BUT YOU ARE BOTHERED THAT NERVE.COM IS BLOCKED  
16 IN LIBRARIES AND BY OTHER FILTERING PRODUCTS, ISN'T THAT  
17 RIGHT?

18 A. I MEAN, I'M NOT BOTHERED THAT NERVE.COM WOULD BE  
19 BLOCKED IN A LIBRARY THAT CHILDREN ENTER. I THINK IT IS  
20 CLEARLY AT THE DISCRETION OF EACH LIBRARY. I WOULD SAY,  
21 IF IT IS A LIBRARY THAT NOTHING BUT ADULTS ARE ENTERING,  
22 I WOULD THINK -- IT SHOULD BE AT THE DISCRETION OF THE  
23 INDIVIDUAL PLACES, I GUESS. BUT I THINK THAT GENERALLY  
24 THE INDIVIDUALS AND FAMILIES SHOULD MAKE THOSE  
25 DECISIONS, NOT INSTITUTIONS.



1 Q. DIDN'T YOU SAY DURING THE DEPOSITION THAT YOU  
2 DON'T THINK FILTERING SOFTWARE SHOULD BE FEDERALLY  
3 MANDATED, INCLUDING IN LIBRARIES?

4 A. PERHAPS I DID. YEAH. I MEAN, I THINK THAT THAT  
5 -- PERSONALLY, YEAH, I WOULD NOT BE IN FAVOR OF  
6 FEDERALLY MANDATING FILTERING SOFTWARE IN ALL UNIVERSITY  
7 LIBRARIES.

8 Q. JUST A COUPLE OF FINAL QUESTIONS. YOU MENTIONED  
9 THAT -- YOU DO HAVE ACCESS TO SOME GEOGRAPHIC  
10 INFORMATION ABOUT VISITORS TO YOUR WEBSITE, IS THAT  
11 RIGHT?

12 A. YES, THAT'S RIGHT.

13 Q. AND THAT INFORMATION INCLUDES THE ABILITY FOR  
14 YOU TO TELL WHAT COUNTRY SOMEONE IS ACCESSING YOUR  
15 WEBSITE FROM, DOESN'T IT?

16 A. YES.

17 MR. BEANE: YOUR HONOR, I WOULD LIKE TO  
18 JUST CONFER BRIEFLY WITH COUNSEL BEFORE I CONCLUDE.

19 THE COURT: CERTAINLY.

20 (OFF THE RECORD DISCUSSION.)

21 MR. BEANE: YOUR HONOR, AT THIS POINT, I  
22 WOULD LIKE TO MOVE THE FOLLOWING DEFENDANT'S EXHIBITS  
23 INTO EVIDENCE, 127, 126, 139, 132 --

24 THE COURT: 127, 126 --

25 MR. BEANE: YES, 127, 126, 139, 132, 133,

1 AND 130.

2 THE COURT: ANY OBJECTION?

3 MR. WIZNER: NO.

4 MR. BEANE: THAT IS ALL WE HAVE FOR THIS  
5 WITNESS.

6 THE COURT: DEFENDANT'S EXHIBITS 126,  
7 127, 139, 132, 133 AND 130 ARE RECEIVED INTO EVIDENCE.

8 MR. BEANE: YES.

9 (DEFENDANT'S EXHIBITS 126, 127, 139, 132,  
10 133 AND 130 ARE RECEIVED INTO EVIDENCE.)

11 THE COURT: ANY REDIRECT?

12 MR. WIZNER: YOUR HONOR, PLAINTIFFS HAVE  
13 NO FURTHER QUESTIONS.

14 THE COURT: ALL RIGHT, SIR. YOU ARE  
15 EXCUSED FROM THE STAND. WATCH YOUR STEP GETTING DOWN,  
16 PLEASE.

17 (WITNESS EXCUSED.)

18 THE COURT: THE NEXT WITNESS.

19 MR. HANSEN: MR. FINE WILL PRESENT  
20 PLAINTIFFS' NEXT WITNESS.

21 MR. FINE: BEFORE WE BEGIN, I'M GOING TO  
22 HAND THE BINDERS THAT JUST FELL ONTO THE GROUND.

23 AS PLAINTIFFS' NEXT WITNESS, PLAINTIFFS  
24 WOULD LIKE TO CALL JOAN WALSH TO THE STAND.

25 JOAN WALSH, PLAINTIFFS' WITNESS, SWORN.

1 THE CLERK: PLEASE STATE AND SPELL YOUR  
2 FULL NAME FOR THE RECORD.

3 THE WITNESS: JOAN WALSH, J-O-A-N,  
4 W-A-L-S-H.

5 DIRECT EXAMINATION

6 BY MR. FINE:

7 Q. GOOD MORNING, MS. WALSH.

8 A. GOOD MORNING, ADEN.

9 THE COURT: GOOD MORNING.

10 THE WITNESS: GOOD MORNING, YOUR HONOR.

11 BY MR. FINE:

12 Q. WOULD YOU PLEASE TELL US WHERE YOU ARE EMPLOYED.

13 A. I'M EMPLOYED AT SALON.COM.

14 Q. AND TELL US JUST BRIEFLY, WHAT IS SALON.COM?

15 A. SALON.COM IS AN INTERNET MAGAZINE DEVOTED TO  
16 NEWS, POLITICS, CULTURE, ARTS AND LIFE-STYLE ISSUES.

17 Q. WHAT IS YOUR POSITION AT SALON?

18 A. I'M THE EDITOR-IN-CHIEF.

19 Q. WHAT ARE SOME OF YOUR RESPONSIBILITIES AS  
20 EDITOR-IN-CHIEF?

21 A. I AM RESPONSIBLE, FIRST AND FOREMOST, FOR THE  
22 DAY-TO-DAY QUALITY AND DECISION MAKING ABOUT WHAT GOES  
23 ON THIS SITE. I'M RESPONSIBLE FOR OVERALL PERSONNEL  
24 MATTERS ON THE EDITORIAL SIDE. I'M RESPONSIBLE FOR  
25 FOLLOWING TRENDS IN THE INDUSTRY AND TRYING TO KEEP US A

1 LITTLE BIT AHEAD OF AN ALWAYS CHANGING MARKETPLACE. AND  
2 I'M RESPONSIBLE FOR REPRESENTING THE SALON IN MEDIA  
3 CONFERENCES, OTHER PUBLIC VENUES LIKE THAT.

4 Q. THANK YOU. HOW LONG HAVE YOU BEEN THE  
5 EDITOR-IN-CHIEF OF SALON?

6 A. IN FEBRUARY IT WILL BE TWO YEARS.

7 Q. HOW LONG HAVE YOU BEEN EMPLOYED AT SALON?

8 A. JUST OVER EIGHT YEARS.

9 Q. SO CAN YOU TELL US A LITTLE BIT ABOUT WHAT YOU  
10 WERE DOING AT SALON BEFORE YOU BECAME EDITOR-IN-CHIEF?

11 A. YES. SURE. I WAS SALON'S FIRST FULL-TIME NEWS  
12 EDITOR. I DID THAT, I GUESS, FOR ABOUT FIVE YEARS. AND  
13 THEN IN ABOUT A YEAR BEFORE I TOOK OVER AS EDITOR, I  
14 BECAME MANAGING EDITOR, STILL WITH A MAJOR EMPHASIS ON  
15 NEWS.

16 Q. AND AT YOUR TIME AT SALON, DID YOU EVER WRITE  
17 ANY ARTICLES?

18 A. LOTS OF ARTICLES. I HAVE ALWAYS PRIMARILY BEEN  
19 AN EDITOR, BUT I HAVE WRITTEN A LOT ON MAINLY NATIONAL  
20 TOPICS, AND I HAVE WRITTEN A LOT ABOUT FEMINISM AND  
21 ISSUES OF FAMILY AND CULTURE.

22 Q. AND WHAT DID YOU DO BEFORE YOU CAME TO WORK FOR  
23 SALON?

24 A. I STARTED MY CAREER WORKING FOR A COUPLE OF  
25 WEEKLY NEWSPAPERS, AND THEN I FAIRLY QUICKLY DEVELOPED A

1 LITTLE BIT OF A SPLIT -- I REACHED A FORK IN THE ROAD  
2 WHERE I WAS WORKING AS A FREELANCE WRITER AND I ALSO  
3 DEVELOPED A CONSULTING BUSINESS ON ISSUES OF COMMUNITY  
4 DEVELOPMENT AND URBAN EDUCATION. AND SO FOR SEVERAL  
5 YEARS I WAS BOTH FREELANCING FOR MAGAZINES LIKE THE  
6 NATION OR VOGUE OR MOTHER JONES, BUT AT THE SAME TIME I  
7 WAS CONSULTING TO FOUNDATIONS ON ISSUES MAINLY TO  
8 IMPROVE URBAN AREAS THROUGH EDUCATION AND COMMUNITY  
9 DEVELOPMENT.

10 Q. I DON'T THINK I ASKED YOU THIS. CAN YOU TELL US  
11 BRIEFLY WHAT YOUR EDUCATIONAL BACKGROUND IS?

12 A. YES. I GOT A BA IN HISTORY FROM THE UNIVERSITY  
13 OF WISCONSIN, MADISON.

14 Q. WHERE DID YOU GROW UP?

15 A. I WAS BORN IN BROOKLYN, LIVED ON LONG ISLAND  
16 UNTIL I WAS 13, AND THEN MOVED TO WISCONSIN TO A SUBURB  
17 OF MILWAUKEE.

18 Q. WHERE DO YOU CURRENTLY LIVE?

19 A. SAN FRANCISCO.

20 Q. I WANT TO NOW FOCUS YOUR ATTENTION ON SALON A  
21 LITTLE BIT MORE. FIRST, TELL US WHERE SALON IS LOCATED.

22 A. OUR MAIN OFFICE IS IN SAN FRANCISCO.

23 Q. YOU STARTED DESCRIBING A LITTLE BIT ABOUT SALON.  
24 CAN YOU GIVE US A LITTLE BIT MORE DETAIL ABOUT WHAT  
25 SALON IS EXACTLY?

1           A.           YEAH. I CONSIDER SALON MAINLY A NEWS  
2 ORGANIZATION. WE DO A LOT OF DAILY BREAKING NEWS. WE  
3 DO A LOT OF NEWS ANALYSIS. WE DO A LOT OF POLITICAL  
4 COVERAGE. BUT AT LEAST HALF OF OUR CONTENT, AND I WOULD  
5 SAY ROUGHLY HALF OF OUR TRAFFIC COMES FROM OUR CULTURAL  
6 COVERAGE. WE HAVE BOOK REVIEWERS, MOVIE REVIEWERS, A  
7 GREAT T.V. REVIEWER, AND WE ALSO -- MAYBE A THIRD OF OUR  
8 CONTENT HAS TO DO WITH PERSONAL ISSUES, FAMILY ISSUES,  
9 RELATIONSHIPS, GENDER ISSUES AND SEXUALITY.

10          Q.           TELL US, WHEN WAS SALON FOUNDED?

11          A.           IN NOVEMBER OF 1995.

12          Q.           WHY WAS SALON FOUNDED?

13          A.           SALON WAS FOUNDED, I THINK, TO CHALLENGE A TIDE  
14 OF CONFORMITY AND MEDIOCRITY IN THE MEDIA. IT WAS  
15 BEFORE THE DAYS OF THE HAND WRINGING WE HEAR NOW ABOUT  
16 THE NEWSPAPER INDUSTRY. THINGS WERE NOT QUITE SO DARK  
17 FOR NEWSPAPERS, BUT A LOT OF FOUNDERS WERE REFUGEES FROM  
18 NEWSPAPERS WHO FELT THAT THE PREVAILING ETHIC AT  
19 NEWSPAPERS WAS VERY TIMID, WAS NOT PUSHING THE ENVELOPE  
20 ENOUGH, WHETHER ON QUESTIONS OF POLITICS OR PERSONAL  
21 LIFE, AND THAT THE TIME WAS RIPE FOR A NEW KIND OF  
22 HYBRID THAT COMBINED NEWS REPORTING, CULTURE COMMENTARY  
23 AND A LITTLE BIT MORE COURAGE.

24          Q.           AND WHY DOES SALON PUBLISH ONLY ON THE WEB?

25          A.           CANDIDLY BECAUSE IT'S A LOT CHEAPER THAN

1 NEWSPRINT AND PAPER AND INK AND TRUCKS AND MAILING  
2 COPIES. THE BARRIER TO ENTRY WAS MUCH LOWER. SEVERAL  
3 OF US HAD EXPERIMENTED AND ACTUALLY TRIED TO RAISE MONEY  
4 FOR PRINT PUBLICATIONS, AND IT WAS JUST A LOT EASIER TO  
5 GET STARTED ON THE WEB.

6 Q. AND YOU EARLIER -- YOU JUST MENTIONED SOMETHING  
7 ABOUT PUSHING THE ENVELOPE. WHAT, IF ANY, IMPACT TO THE  
8 PUSHING THE ENVELOPE DOES THE INTERNET POSE FOR SALON?

9 A. I THINK THAT THE INTERNET IS A PLACE OF  
10 EXPERIMENTATION, AND THE INTERNET IS A PLACE WHERE YOU  
11 CAN QUICKLY GET FEEDBACK AND LEARN IF THERE IS AN  
12 AUDIENCE FOR WHAT YOU ARE DOING, AN APPRECIATIVE  
13 AUDIENCE, AN ANGRY AUDIENCE, AND SO I THINK IT  
14 ENCOURAGES MORE ENVELOPE-PUSHING AND RISK-TAKING.

15 Q. YOU TOLD US EARLIER WHY SALON WAS FOUNDED. HOW  
16 WOULD YOU DESCRIBE SALON'S PRESENT EDITORIAL MISSION?

17 A. I THINK IT IS VERY SIMILAR. I THINK WE HAVE  
18 LEARNED FROM EXPERIENCE THAT WE CAN MAKE A DIFFERENCE BY  
19 BREAKING NEWS, BY COVERING STORIES NO ONE ELSE IS  
20 COVERING. WE CAN BUILD AN AUDIENCE THAT WAY. I THINK  
21 WE ARE COMMITTED TO THE BEST QUALITY WRITING ON THE WEB.  
22 I THINK WE ARE COMMITTED INCREASINGLY TO A PLACE AT THE  
23 TABLE FOR OUR READERS. USER-GENERATED CONTENT HAS  
24 BECOME A BIGGER PART OF SALON. SO IT'S AN EVOLUTION,  
25 NOT A REAL CHANGE IN OUR MISSION, TAKING ADVANTAGE OF

1 THE CHANGES ON THE WEB.

2 Q. HOW DOES SALON DISTINGUISH ITSELF FROM OTHER  
3 NEWS SOURCES THAT ARE OUT THERE?

4 A. I THINK -- I WOULD HOPE BY OUR FEARLESSNESS, I  
5 WOULD HOPE BY OUR ACCURACY. I THINK WE ARE ALWAYS  
6 PUTTING THE HIGHEST PREMIUM ON ACCURACY, AND I WOULD  
7 HOPE BY THE CREATIVITY OF THE QUESTIONS WE ASK, AND ALSO  
8 ADAPTING TO THE MEDIUM. WE NOW OFFER MUSIC, VIDEO  
9 DOWNLOADS. WE NOW OFFER VIDEO BLOG -- AUDIO DOWNLOADS,  
10 I'M SORRY. I MISSPOKE. WE HAVE A LOT MORE  
11 USER-GENERATED CONTENT, SO I HOPE ALSO BY BEING PARTNERS  
12 WITH OUR AUDIENCE.

13 Q. WHERE DID THE NAME SALON COME FROM?

14 A. THE FOUNDER'S WIFE, CAMILLE PERRY, WOULD LIKE TO  
15 GIVE HER CREDIT IN PUBLIC, CAME UP WITH IT IN A  
16 BRAINSTORMING SESSION. AND IT REFERS TO THE KIND OF  
17 FRENCH SALON, THE NOTION OF A LARGE GATHERING PLACE  
18 WHERE PEOPLE ENJOY ONE ANOTHER'S COMPANY AND TALK AND  
19 DEBATE.

20 Q. IS SALON A FOR-PROFIT COMPANY?

21 A. YES, IT IS.

22 Q. WHO IS SALON'S TARGET AUDIENCE?

23 A. WE HAVE A PRETTY BROAD INTENDED TARGET AUDIENCE.  
24 I WOULD SAY WE ARE LOOKING FOR EDUCATED, INDEPENDENT  
25 THINKERS, DECISION MAKERS. BUT WE VERY MUCH WANT TO



1 HAVE A MASS AUDIENCE. WE ARE NOT LOOKING TO BE A NICHE  
2 PUBLICATION, AND SO WE CAST OUR NET VERY BROADLY.

3 Q. AND ARE MINORS INCLUDED IN THAT MASS AUDIENCE  
4 THAT YOU ARE SEEKING?

5 A. I WOULD SAY OLDER MINORS. WE WOULD BE HAPPY IF  
6 OLDER MINORS WERE READING SALON. I WOULD SAY THAT OUR  
7 -- CERTAINLY OUR POLITICAL COVERAGE, OUR CULTURE  
8 COVERAGE FOR ENTERPRISING, SMART, CURIOUS HIGH SCHOOL  
9 STUDENTS, MOST OF WHAT WE PUBLISH WOULD BE APPROPRIATE.

10 Q. DO YOU KNOW IF ANY MINORS READ SALON?

11 A. I DO KNOW THAT SOME MINORS READ SALON. I HAVE A  
12 16-YEAR OLD DAUGHTER. I HAVE A LITTLE FOCUS GROUP AT MY  
13 HOUSE. AND I ALSO KNOW THROUGH OUR -- WE LAST YEAR  
14 AUTOMATED OUR LETTERS TO THE EDITOR, WHICH REALLY  
15 INCREASED THE AMOUNT OF INTERACTIVITY AND AMOUNT OF  
16 FEEDBACK THAT WE GOT FROM OUR READERS. WE GET LETTERS  
17 FROM TEENAGERS, PRAISING, CRITICIZING, SHARING. SO I  
18 DON'T THINK IT'S A LARGE SEGMENT OF OUR AUDIENCE, BUT IT  
19 EXISTS.

20 Q. LET ME BACK UP A STEP. WHO CAN ACCESS SALON'S  
21 MATERIAL?

22 A. ANYONE WITH AN INTERNET CONNECTION.

23 Q. IS IT GEOGRAPHICALLY LIMITED?

24 A. NO. WE HAVE A GLOBAL AUDIENCE.

25 Q. DO YOU KNOW HOW MANY OF YOUR VIEWERS RESIDE

1 OUTSIDE THE UNITED STATES?

2 A. WE DO. WE WORK WITH A WEB ANALYTICS COMPANY  
3 CALLED WEBSITE STORY. THEY HAVE A PRODUCT CALLED  
4 HITBOX. WE HAVE VARIOUS WAYS. BUT WHEN I SPEAK TODAY,  
5 I WILL MOSTLY BE REFERRING TO DATA THAT I HAVE ACQUIRED  
6 THAT WAY AND IF YOU HAVE --

7 THE COURT: TELL US THE NAME OF THE  
8 SERVICE YOU JUST MENTIONED.

9 THE WITNESS: IT IS A COMPANY CALLED  
10 WEBSITE STORY AND THE SERVICE -- THE TOOL THAT WE  
11 ACTUALLY USED IS CALL HITBOX.

12 THE COURT: SPELL IT, PLEASE.

13 THE WITNESS: H-I-T-B-O-X. AND ON A  
14 DAY-TO-DAY BASIS, YEAR-TO-YEAR, BUT DAY-TO-DAY,  
15 SOMETIMES HOUR-TO-HOUR, I CAN LOOK AT THAT TOOL AND I  
16 CAN TELL WHAT PERCENTAGE OF OUR AUDIENCE IS READING WHAT  
17 CONTENT. I CAN ALSO TELL WHERE THEY ARE COMING FROM.  
18 AND WE GET ROUGHLY 20 PERCENT OF OUR TRAFFIC NOW FROM  
19 INTERNATIONAL READERS.

20 BY MR. FINE:

21 Q. EXPLAIN TO US A LITTLE BIT MORE ABOUT WHAT  
22 HITBOX DOES, HOW THEY TRACK YOUR TRAFFIC.

23 A. SURE. WITH THE PROVISIO THAT I'M THE  
24 EDITOR-IN-CHIEF AND NOT THE WEB MASTER. SO, I WILL TRY  
25 TO STICK TO WHAT I KNOW, AND EXPLAIN IT AS WELL AS I

1 CAN.

2                   BASICALLY, WE CODE ALL OF OUR PAGES. WE  
3 WORK WITH THIS COMPANY TO CODE ALL OF OUR PAGES SO THAT  
4 WE CAN TELL HOW A READER ACCESSES SALON. WE CAN TELL  
5 WHAT A READER DOES. DOES SHE GO FROM OUR POLITICS BLOG  
6 TO OUR WOMEN'S BLOG, TO OUR TOP STORY TODAY? ON THE  
7 IPOD, DOES SHE TURN OFF AFTER ONE STORY AND GO TO SLATE,  
8 GO TO NERVE. AND WE CAN TELL SORT OF WHAT THE BARRIERS  
9 ARE. WE CAN FIGURE OUT THAT A LOT OF PEOPLE READ THE  
10 FIRST PAGE OF OUR COVER STORY AND THEN DIDN'T PROCEED  
11 OR, CONVERSELY, A LOT OF PEOPLE READ ALL FIVE PAGES. SO  
12 THE WAY WE CODE OUR PAGES, LETS US HAVE A LOT OF  
13 INFORMATION ABOUT HOW OUR READERS MOVE AROUND AND ACCESS  
14 THE SITE.

15 Q.           THANK YOU FOR EXPLAINING THAT. BACK TO THE  
16 OVERSEAS VISITORS. HOW IMPORTANT TO SALON IS IT TO HAVE  
17 OVERSEAS VISITORS?

18 A.           I THINK IT IS EXTREMELY IMPORTANT. IT HAS GONE  
19 UP IN THE LAST COUPLE OF YEARS. NOT TO GET ON A SOAP  
20 BOX, BUT I THINK GIVEN THE FRAGMENTATION -- AT A TIME OF  
21 GLOBALIZATION, TENSION IN THE WORLD, THE PLACE OF THE  
22 UNITED STATES IN THE WORLD, WE REALLY CONSIDER OURSELVES  
23 PART OF THE GLOBAL CONVERSATION, VERY MUCH WANT TO HAVE  
24 GLOBAL CONVERSATION, AND ARE THRILLED THAT WE HAVE THE  
25 LEVEL OF INTERNATIONAL READERSHIP THAT WE DO.

1 Q. HOW MANY PEOPLE VISIT SALON'S WEBSITE IN AN  
2 AVERAGE MONTH?

3 A. OUR AVERAGE MONTHLY UNIQUE TOTAL IS NOW 3.1  
4 MILLION UNIQUE VISITORS.

5 Q. AND THIS IS ALWAYS A DIFFICULT SUBJECT TO  
6 EXPLAIN. CAN YOU TELL US A LITTLE BIT ABOUT WHAT YOU  
7 MEAN WHEN YOU SAY "UNIQUE VISITORS."

8 A. SURE. AGAIN, TO THE BEST OF OUR ABILITY, WE ARE  
9 TRYING TO IDENTIFY SEPARATE UNIQUE INDIVIDUALS WHO ARE  
10 COMING TO THE SITE. WE --

11 THE COURT: SEPARATE FROM WHAT?

12 THE WITNESS: SEPARATE FROM ONE ANOTHER.  
13 SO THAT, FOR EXAMPLE, YOU, YOUR HONOR, MAY VISIT 30  
14 TIMES IN A MONTH, BUT WE WORK WITH TECHNOLOGY TO TRY TO  
15 COUNT YOU ONCE. IT'S NOT AN EXACT SCIENCE. IF YOU COME  
16 TO US FROM SEVERAL DIFFERENT COMPUTERS, YOU MIGHT BE  
17 COUNTED MORE THAN ONCE. BUT IT'S THE INDUSTRY'S BEST  
18 EFFORT TO SEPARATE OUT PEOPLE WHO LOVE US AND VISIT ALL  
19 THE TIME FROM SOMEBODY WHO JUST COMES ONCE AND  
20 DISTINGUISH THEM AS INDIVIDUALS.

21 BY MR. FINE:

22 Q. WHAT IS THE MOST VISITORS YOU EVER HAD IN A  
23 SINGLE MONTH?

24 A. I BELIEVE BACK IN 2000, AROUND THE CONTESTED  
25 PRESIDENTIAL ELECTION, WE WERE UP OVER FOUR MILLION

1 UNIQUES.

2 Q. WHY DO YOU MEASURE THE NUMBER OF PEOPLE THAT  
3 COME TO YOUR WEBSITE?

4 A. FOR ONE THING, WE WANT TO KNOW HOW POPULAR WE  
5 ARE, HOW WIDELY OUR MATERIAL IS BEING READ. OBVIOUSLY,  
6 FOR ANOTHER REASON, IT'S VERY IMPORTANT TO ADVERTISERS.  
7 AND THE MORE TRAFFIC YOU HAVE, THE MORE READERS YOU  
8 HAVE, IN GENERAL, THE HIGHER RATES YOU CAN COMMAND, THE  
9 MORE ADVERTISING YOU ARE GOING TO BE ABLE TO SELL.

10 Q. HOW DOES SALON TRAFFIC COMPARE TO OTHER NEWS  
11 SOURCES OUT THERE ON THE WEB?

12 A. SMALLER. SALON IS DEFINITELY SMALLER THAN THE  
13 BIG SITES, LIKE THE NEW YORK TIMES.COM OR THE WASHINGTON  
14 POST.COM OR PROBABLY ROUGHLY A QUARTER OF THEIR SIZE, A  
15 THIRD TO A QUARTER.

16 Q. AND SINCE IT WAS ASKED OF ONE OF YOUR  
17 COMPETITORS ON THE WEB, HAS SALON EVER RECEIVED ANY  
18 AWARDS?

19 A. WHY, YES, WE HAVE. THANKS FOR ASKING, ADEN.  
20 WE'VE WON SEVERAL AWARDS. WE HAVE WON ONLINE NEWS  
21 ASSOCIATION, GENERAL EXCELLENCE AWARD, AS WELL AS  
22 SEVERAL ONLINE NEWS ASSOCIATION SPECIFIC AWARDS FOR  
23 INDIVIDUAL STORIES. WE HAVE WON MANY WEBBIE AWARDS OVER  
24 THE YEARS AND THEN REGIONAL AWARDS AS WELL. INDIVIDUAL  
25 WRITERS HAVE WON AWARDS.

1 Q. I WANT TO GET YOU BACK TO THE TYPE OF CONTENT  
2 THAT IS ON SALON.

3 YOU WERE EARLIER GIVING US SOME  
4 GENERALITIES. CAN YOU, IN MORE DETAIL, DESCRIBE WHAT  
5 TYPES OF MATERIAL YOU HAVE ON THE WEBSITE.

6 A. DO YOU MEAN LIKE DEPARTMENTS THAT WE OFFER OR --

7 Q. SURE.

8 A. WE DIVIDE OUR CONTENT INTO ARTS AND  
9 ENTERTAINMENT, BOOKS, NEWS AND POLITICS, OPINION. WE  
10 HAVE A BROAD CATEGORY CALLED LIFE, WHERE WE DEAL WITH  
11 QUESTIONS OF PARENTING, RELATIONSHIPS, CHILDREN'S  
12 SEXUALITY, AND WE HAVE A TECHNOLOGY DEPARTMENT. WE HAVE  
13 A SEPARATE -- WE BREAK OUT OUR LETTERS. WE ALSO OFFER  
14 COMMENTS. AND THEN WITHIN THOSE BROAD OUTLINES, WE HAVE  
15 SIX DAILY BLOGS, WE HAVE AN AUDIO DOWNLOAD BLOG, A VIDEO  
16 BLOG. WE HAVE A WOMEN'S NEWS BLOG CALLED BROAD SHEET.  
17 WE HAVE A VERY POPULAR POLITICAL BLOG CALLED WAR ROOM, A  
18 TECHNOLOGY AND GLOBALIZATION BLOG CALLED HOW THE WORLD  
19 WORKS. WE HAVE A BLOG ABOUT BLOGS, CALLED THE DOW  
20 REPORT THAT LETS YOU -- IF YOU ARE NOT IN THE  
21 BLOGOSPHERE BUT YOU WANT TO SEE WHAT IT'S ABOUT, CHECK  
22 OUT WHAT IS BEING DEBATED. AND THEN WE HAVE LOTS OF  
23 INDIVIDUAL STORIES ON YOU KNOW, NEWS, CURRENT EVENTS,  
24 OPINION, CULTURE.

25 Q. CAN YOU GIVE US A FEW RECENT EXAMPLES OF MAJOR

1 STORIES THAT HAVE BEEN FEATURED ON SALON?

2 A. SURE. TODAY, WE HAVE AN APPRECIATION OF THE  
3 IPOD AS WELL AS A LOOK AT SOME OF THE DRAWBACKS TO ALL  
4 OF US HAVING ACCESS TO OUR MUSIC SO READILY. WE HAVE A  
5 STORY TODAY ABOUT A WOMAN REGRETTING AN ABORTION. THE  
6 STORY THAT WAS USED AS AN EXHIBIT AS WE BEGAN THIS  
7 MORNING, WE WERE THE NEWS ORGANIZATION THAT REVEALED  
8 THAT SENATOR GEORGE ALLEN HAD IN THE PAST FREQUENTLY  
9 USED THE N WORD. WE HAVE A REPORT ON THE NANCY JOHNSON  
10 CONGRESSIONAL RACE TODAY IN CONNECTICUT. PRETTY BROAD.

11 Q. WHAT SORT OF STANDARDS DO YOU APPLY IN DECIDING  
12 WHAT GOES ON THE SITE?

13 A. WE PLACE ACCURACY AS THE HIGHEST STANDARD FOR  
14 US. AS A NEWS ORGANIZATION, WE ALSO LOOK AT  
15 ORIGINALITY. WE WANT IT TO BE SOMETHING THAT HAS NOT  
16 APPEARED BEFORE, AS WELL AS SOMETHING ORIGINAL AS IN YOU  
17 WON'T FIND IT ANYWHERE ELSE. IT'S COMING OUT -- MIGHT  
18 BE COMING AT AN OLD TOPIC WITH A NEW ANGLE. MIGHT BE  
19 COMING AT A TOPIC THAT EVERYONE IS TALKING ABOUT, BUT  
20 WITH WE HOPE A FRESH ANGLE. AND THEN, YOU KNOW, THE  
21 SUBJECTIVE -- WELL MANY OF THESE ARE SUBJECTIVES, BUT  
22 JUST HIGH-QUALITY EXCELLENT WRITING AND THINKING.

23 Q. WHAT ROLE, IF ANY, DOES APPROPRIATENESS FOR  
24 MINORS AFFECT YOUR DECISIONS?

25 A. IT REALLY DOESN'T.

1 Q. YOU MENTIONED USER-GENERATED ASPECTS OF YOUR  
2 SITE. CAN YOU LIST WHAT DIFFERENT ASPECTS OF YOUR SITE  
3 THERE ARE?

4 A. YES. FROM THE BEGINNING, SALON HOSTED A READER  
5 FORUM CALLED TABLE TALK. AND WE THEN PURCHASED A  
6 COMMUNITY SITE CALLED THE WELL. WE ADDED USER-GENERATED  
7 LETTERS. YOU COULD POST YOUR OWN LETTERS TO THE EDITOR  
8 LAST YEAR. AND WE ALSO USED THE SAME PERSONAL SERVICE  
9 AS NERVE. SO WE HAVE A PERSONAL SECTION WHICH I GUESS  
10 WOULD BE CONSIDERED USER-GENERATED CONTENT AS WELL.

11 Q. LET'S START WITH TABLE TALK. WHAT IS TABLE  
12 TALK?

13 A. TABLE TALK IS A FORUM FOR READERS. WHEN WE  
14 STARTED, WE EXPECTED THAT IT WOULD BE ALL ABOUT OUR  
15 FABULOUS CONTENT, AND EVERYBODY WOULD ONLY WANT TO TALK  
16 ABOUT SALON STORIES. WHAT WE LEARNED VERY QUICKLY IS  
17 THAT PEOPLE SOMETIMES WANT TO TALK ABOUT OUR STORIES,  
18 BUT, QUITE FREQUENTLY, WANTED TO TALK ABOUT THEIR  
19 CHILDREN, THE POLITICAL SITUATION, WAR, THEIR PERSONAL  
20 LIVES. AND SO IT HAS GROWN INTO A REALLY KIND OF  
21 SEPARATE FROM -- IT'S A PART OF SALON BUT VERY SEPARATE  
22 AND INDEPENDENT FROM SALON, A PLACE WHERE READERS TO  
23 GATHER AND TALK ABOUT WHAT IS GOING ON IN THEIR LIVES.

24 Q. AND HOW DO THEY TALK ABOUT WHAT'S GOING ON IN  
25 THEIR LIVES? HOW DOES THIS FORUM WORK?



1           A.           SURE.  BASICALLY, AT THIS POINT, AND I KNOW WE  
2           WILL WALK THROUGH THIS MORE SYSTEMATICALLY BUT, IF YOU  
3           WANT TO READ TABLE TALK, ANYONE CAN READ TABLE TALK.  
4           ANYBODY CAN READ THE POSTS ON TABLE TALK.  IF YOU WANT  
5           TO POST, HOWEVER, YOU HAVE TO BECOME A SALON MEMBER.  
6           AND SO WE GENERATE TENS OF THOUSANDS OF PAGES A DAY TO  
7           TABLE TALK, BUT ONLY PROBABLY A FEW HUNDRED POSTS  
8           BECAUSE YOU HAVE TO BE A MEMBER TO POST.

9           Q.           AND WHEN YOU SAY THERE ARE TENS OF THOUSANDS OF  
10          PAGE VIEWS, WHAT DOES THAT INDICATE TO YOU?

11          A.           IT INDICATES THAT THERE IS A LOT OF INTEREST IN  
12          PEOPLE READING WHAT OTHERS HAVE TO SAY, THAT THE ACTION  
13          ON SALON IS NOT ONLY WITH MY WRITERS AND EDITORS, BUT  
14          IT'S READERS VERY CURIOUS ABOUT WHAT OTHER READERS HAVE  
15          TO OFFER.

16          Q.           AND WHO CAN READ THE THREADS ON TABLE TALK?

17          A.           ANYBODY CAN READ THEM, BUT ONLY MEMBERS CAN  
18          POST.

19          Q.           YOU MENTIONED SOMETHING CALLED THE WELL.

20          A.           YES.

21          Q.           WHAT IS THE WELL?

22          A.           THE WELL IS A SMALLER AND MORE RESTRICTED  
23          COMMUNITY.  IT WAS FOUNDED ABOUT 20 YEARS AGO.  IT IS A  
24          REAL WEB ORIGINAL.  IT'S QUITE FAMOUS, VERY SMALL  
25          COMMUNITY.  UNLIKE TABLE TALK, YOU CAN'T READ IT IF YOU

1 ARE NOT A MEMBER. THERE ARE SMALL AREAS THAT WE PUT  
2 OUTSIDE THE GATE TO TRY TO ENTICE PEOPLE INTO BECOMING  
3 MEMBERS, BUT IN GENERAL, KIND OF THE DRAW OF THE WELL IS  
4 THAT IT IS A PRIVATE CONVERSATION. IT'S NOT QUITE  
5 INVITATION ONLY, BUT MEMBERS ONLY.

6 Q. I BELIEVE YOU ALSO MENTIONED YOUR AUTOMATED  
7 LETTERS SECTION?

8 A. YES. THAT IS KIND OF MORE THE WILDER WILD WEST  
9 BECAUSE YOU CAN -- YOU DON'T HAVE TO BE A MEMBER TO  
10 POST, ANYONE CAN POST. WE DO ASK FOR AN E-MAIL ADDRESS,  
11 BUT WE DON'T VERIFY IT. SO IT'S REALLY COME ONE, COME  
12 ALL, AND IT'S INCREDIBLY POPULAR. IT HAS GROWN BEYOND  
13 OUR EXPECTATION WHEN WE LAUNCHED IT A YEAR AGO.

14 Q. WHEN YOU SAY IT'S INCREDIBLY POPULAR, WHAT DO  
15 YOU MEAN BY THAT?

16 A. HUNDREDS OF LETTERS A DAY AND ANYWHERE FROM 40  
17 TO 70,000 PAGE VIEWS A DAY.

18 Q. AND AGAIN, I'M SORRY IF I ASKED YOU THIS BEFORE,  
19 CAN YOU TELL US WHAT PAGE VIEWS REPRESENTS?

20 A. PAGE VIEWS REPRESENTS SOMEONE CONSUMING, AT  
21 LEAST LOOKING AT THAT PAGE. THEY CLICK ON A PAGE, AND  
22 BRING IT UP. I CAN'T NECESSARILY PROMISE THAT THEY READ  
23 IT, BUT THAT IS THE METRICS.

24 Q. WHAT ARE THE SUBJECTS OF THE LETTERS?

25 A. THE LETTERS -- UNLIKE TABLE TALK, THE LETTERS

1       REALLY ARE ABOUT OUR STORIES OR OUR BLOG POSTS SO THAT  
2       AT THE END OF EVERY ARTICLE YOU CAN -- THERE IS A LINK  
3       TO POST A LETTER, AND SO YOU COMMENT OR CRITIQUE OR ADD  
4       TO WHAT YOU HAVE READ ON SALON.

5       Q.        AND YOU ALSO MENTIONED BLOGS.  TELL US A LITTLE  
6       BIT ABOUT THE BLOGS THAT ARE FOUND ON SALON.

7       A.        THERE ARE TWO SORTS OF BLOGS.  THERE ARE THE  
8       BLOGS THAT I TALKED ABOUT BEFORE THAT ARE EDITORIAL  
9       BLOGS OF OUR STAFF AND FREELANCERS.  WE ALSO POST A BLOG  
10      PROGRAM, A BLOGGING PROGRAM WHERE WE PROVIDE YOU WITH  
11      THE SOFTWARE AND THEN YOUR BLOGS -- YOUR BLOG IS  
12      AFFILIATED WITH SALON.

13     Q.        WHAT ARE THE SUBJECTS OF THESE BLOGS?

14     A.        ANYTHING YOU WANT.  ANYTHING FROM COOKING TO  
15     TECHNOLOGY, TO RELIGION, TO IN SOME CASES SEXUALITY.

16     Q.        WHO CAN READ THESE BLOGS?

17     A.        ANYONE CAN READ THEM.

18     Q.        WHO CAN POST COMMENTS TO BLOGS?

19     A.        PRETTY MUCH ANYONE CAN POST COMMENTS.

20     Q.        YOU ALSO MENTIONED SOMETHING ABOUT THE  
21     PERSONALS.

22     A.        RIGHT.

23     Q.        ARE THESE PERSONAL ADS FOR CARS?  WHAT ARE THEY?

24     A.        NO.  THESE ARE PERSONAL ADDS FOR PEOPLE, FOR  
25     RELATIONSHIPS, DATING PERSONALS.

1 Q. YOU HAVE JUST BEEN DESCRIBING VARIOUS DIFFERENT  
2 ASPECTS THAT ARE USER GENERATED CONTENT. I'M GOING TO  
3 ASK YOU SOME QUESTIONS NOW ABOUT ALL OF THESE USER  
4 GENERATED CONTENT. WHAT IF ANY LIMITS ARE THERE ON WHAT  
5 CAN BE POSTED BY YOUR USERS?

6 A. FIRST OF ALL, WE RESERVE THE RIGHT TO TAKE DOWN  
7 ANYTHING FOR ANY REASON, A RIGHT THAT WE DON'T USUALLY  
8 USE ARBITRARILY, BUT WE STATE THAT AT THE OUTSET. WE --  
9 YOU CAN POST AUTOMATICALLY, THERE IS NO PRESCREENING.  
10 WE DO HAVE STAFFERS READING THE LETTERS AND COMMENTS,  
11 AND THEY DO ON OCCASION TAKE THINGS DOWN. IT'S RARE.  
12 THEY MIGHT TAKE SOMETHING DOWN -- OBSCENITY WILL NOT GET  
13 YOUR POST YANKED. BEING SEXUALLY EXPLICIT OR  
14 PROVOCATIVE WILL NOT NECESSARILY GET YOUR POST REMOVED.  
15 THE MOST COMMON REASON THAT WE WOULD REMOVE A POST WOULD  
16 HAVE TO DO WITH BEING ABUSIVE TOWARD ANOTHER READER. WE  
17 ARE MUCH MORE TOLERANT OF BEING ABUSIVE TOWARD OUR  
18 WRITERS, WE THINK THAT COMES WITH THE TERRITORY, BUT THE  
19 LARGEST SINGLE PROBLEM WE HAVE IN LETTERS THAT LEADS US  
20 TO PULL SOMETHING DOWN IS SOMEONE BEING ABUSIVE TO  
21 SOMEONE ELSE'S POST IT.

22 Q. CAN USERS POST SEXUALLY EXPLICIT CONTENT?

23 A. THEY CAN.

24 Q. DO THEY?

25 A. THEY DO.

1 Q. WHY DO YOU PERMIT THAT?

2 A. WE PERMIT IT IF WE THINK IT IS RELEVANT. DO YOU  
3 WANT AN EXAMPLE?

4 Q. SURE. GIVE US ONE. THAT WOULD BE GREAT.

5 A. WE HAVE A REALLY WONDERFUL ADVICE COLUMN. HE  
6 OFFERS ADVICE ON EVERYTHING. HE IS A RECOVERED  
7 ALCOHOLIC. HE OFFERS ADVICE ON EVERYTHING FROM DRINKING  
8 AND DRUG PROBLEMS TO PARENTING ISSUES, TO SEXUALITY.  
9 RECENTLY WE -- HE RESPONDS TO LETTERS. SO IN THAT SENSE  
10 THAT IS USER GENERATED CONTENT, TOO. I HAD NOT THOUGHT  
11 OF IT THAT WAY. HE RESPONDS TO LETTERS, AND HE GOT A  
12 LETTER RECENTLY FROM A MIDDLE AGED WOMAN WHO WAS REALLY,  
13 REALLY CONCERNED AND TORN ABOUT THE CURRENT VOGUE FOR  
14 BIKINI WAXING AND PERHAPS EVEN MORE THAN BIKINI WAXING  
15 AND THAT KIND OF GROOMING ISSUE. AS A MIDDLE AGED  
16 MARRIED MAN, HE FELT LIKE HE DIDN'T HAVE ADEQUATE  
17 EXPERIENCE TO GIVE THIS READER A GOOD ANSWER, GOOD  
18 ADVICE ABOUT WHAT SHE SHOULD DO AND WHY. AND SO WE  
19 OPENED IT UP TO READERS AND WE SAT THERE AND WATCHED THE  
20 LETTERS POUR IN BY THE DOZENS AND THEN THE HUNDREDS AND  
21 YOU KNOW, SOME OF THEM WERE QUITE STRAIGHTFORWARD AND  
22 HELPFUL AND ADVISED. OTHERS WERE SEXUALLY EXPLICIT  
23 BECAUSE IT'S A TOPIC THAT COULD HAVE A SEXUAL ELEMENT.  
24 SO, YOU KNOW, WE HAD PEOPLE READING THEM TO MAKE SURE --  
25 I DON'T KNOW WHAT WE WERE TRYING TO MAKE SURE, JUST TO

1 MAKE SURE THAT IT DIDN'T JUST BECOME OVERWHELMED WITH  
2 SOME THINGS THAT WERE NOT PRODUCTIVE, ADDITIONS TO THE  
3 CONVERSATION. WE WERE FINE.

4 MR. TODD: OBJECTION -- JAMES TODD FOR  
5 THE GOVERNMENT. OBJECTION, YOUR HONOR. ARE ANY OF  
6 THESE LETTERS COMING INTO EVIDENCE?

7 MR. FINE: SHE IS SIMPLY TESTIFYING AND  
8 PROVIDING AN ANSWER.

9 MR. TODD: OBJECTION. HEARSAY.

10 MR. FINE: SHE IS NOT OFFERING THIS  
11 TESTIMONY --

12 THE COURT: OVERRULED. THE TESTIMONY IS  
13 BEING OFFERED TO CHARACTERIZE THE MATERIAL, NOT TO PROVE  
14 THAT WHAT THEY SAID IN THE LETTERS ARE TRUE. DO I HAVE  
15 THAT CORRECT?

16 MR. FINE: YES.

17 THE COURT: OVERRULED.

18 BY MR. FINE:

19 Q. CAN USERS ALSO POST IMAGES ON THESE USER  
20 GENERATED ASPECTS?

21 A. NOT IN LETTERS YET. THEY CAN IN TABLE TALK.  
22 THEY CAN IN THE WELL. PERSONAL FEATURES PHOTOGRAPHS. I  
23 THINK THAT IS THE ONLY PLACE.

24 Q. DO YOU HAVE ANY -- DOES SALON HAVE ANY EMPLOYEES  
25 WHO MONITOR WHAT THOSE ARE, USER GENERATED -- DOES SALON

1 HAVE ANY EMPLOYEES WHO MONITOR WHAT GOES ON ON THESE  
2 USER GENERATED ASPECTS?

3 A. WE DO.

4 Q. WHAT DO THEY DO?

5 A. SURE. WE -- IN TABLE TALK WE HAVE A HOST. SHE  
6 IS NOT QUITE FULL-TIME ON THAT JOB. SHE BOTH TRIES TO  
7 READ THINGS WITH AN EYE TOWARD WHAT IS INTERESTING, WHAT  
8 WE MIGHT HIGHLIGHT. SHE IS THE PERSON WHO SOMEONE MIGHT  
9 GO TO TO ASK HER TO REMOVE A POST, TO ASK HER TO MAYBE  
10 MEDIATE IN A CONVERSATION THAT HAS GOTTEN A LITTLE BIT  
11 WILD. WITH OUR LETTERS, WE HAVE A COUPLE OF STAFF  
12 PEOPLE WHO TAKE TURNS THROUGHOUT THE DAY READING  
13 EVERYTHING. ONE THING WE DO IS AWARD EDITORS CHOICE  
14 STARS TO THINGS THAT WE THINK ARE GOOD LETTERS, BUT WE  
15 DO TAKE A FEW DOWN DURING THE COURSE OF A DAY.

16 Q. HOW IMPORTANT IT IS TO SALON TO HAVE THESE USER  
17 GENERATED ASPECTS OF THE WEBSITE?

18 A. IT IS VERY IMPORTANT. I THINK ANYONE FOLLOWING  
19 WEB TRENDS TODAY KNOWS THAT USER GENERATED CONTENT IS  
20 REALLY THE FASTEST GROWING CORNER OF THE WEB.

21 MR. TODD: OBJECTION, HEARSAY.

22 THE COURT: SUSTAINED ONLY AS TO LACK OF  
23 FOUNDATION.

24 BY MR. FINE:

25 Q. DO YOU KNOW WHAT -- IN YOUR ROLE AS

1 EDITOR-IN-CHIEF OF SALON, DO YOU KNOW -- DO YOU FOLLOW  
2 THE WEB TRENDS?

3 A. IT'S MY JOB TO FOLLOW WEB TRENDS.

4 Q. WHAT DO YOU DO TO FOLLOW THOSE WEB TRENDS?

5 A. I READ THE INDUSTRY PUBLICATIONS, I WATCH  
6 TRAFFIC PATTERNS AND LOOK AT WHICH SITES ARE GROWING IN  
7 TRAFFIC AND WHICH SITES ARE FLAT. THIS SPRING, ONE OF  
8 MY BOARD MEMBERS MADE ME AWARE OF A STUDY THAT SHOWED  
9 THAT THE MAJOR NEWS SITES LIKE CNN, NEW YORK TIMES,  
10 MSNBC, FOX NEWS, THEIR WEBSITES WERE FAIRLY FLAT IN  
11 TERMS OF TRAFFIC AND THAT THE FASTEST GROWING SITES ON  
12 THE WEB WERE HEAVILY USER GENERATED CONTENT, SUCH AS MY  
13 SPACE, FLICKER, FACE BOOK, YOU TUBE, WHICH WAS PURCHASED  
14 BY GOOGLE.

15 MR. TODD: OBJECTION. THIS IS THE LAY  
16 OPINION TESTIMONY. THE WITNESS WAS NOT DESIGNATED TO  
17 OFFER LAY OPINION.

18 MR. FINE: SHE IS SOLELY GIVING HER  
19 PERSONAL EXPERIENCE AS EDITOR-IN-CHIEF OF A MAJOR  
20 WEBSITE.

21 THE COURT: I VIEW IT AS FOUNDATION FOR  
22 WHAT SHE VIEWS THE TRENDS IN HER JOB AS THE SENIOR  
23 PERSON AT THE MAGAZINE, NOT TO PROVE THE TRUTH OF THE  
24 STUDY, BUT THAT SHE SAW IT AND RELIED UPON IT AND HAD  
25 SOME FEELING ABOUT IT. OBJECTION IS OVERRULED.



1 BY MR. FINE:

2 Q. WHAT COULD SALON DO TO MAKE SURE THAT ITS USER  
3 GENERATED CONTENT WAS ONLY AVAILABLE TO ADULTS? HOW  
4 COULD SALON DO THAT?

5 A. I GUESS FROM WHAT I HAVE HEARD HERE THAT WE  
6 COULD PUT UP SOME SORT OF CREDIT CARD VERIFICATION  
7 SYSTEM OR SOME SORT OF AGE VERIFICATION SYSTEM.

8 Q. WHERE WOULD SALON HAVE TO PUT THOSE AGE  
9 VERIFICATION SCREENS WITH RESPECT TO ITS USER GENERATED  
10 CONTENT?

11 A. I GUESS SOMEHOW GENERATE SUCH A SCREEN IN FRONT  
12 OF -- BEFORE YOU ACCESSED LETTERS OR BEFORE YOU ACCESS  
13 TABLE TALK.

14 Q. LET ME ASK YOU THIS QUESTION. DOES SALON  
15 PRESCREEN ANY MATERIAL THAT IS POSTED FROM USER  
16 GENERATED ASPECTS?

17 A. NO, NOT AT THIS POINT WE DON'T.

18 Q. IS THERE ANY NONSEXUALLY EXPLICIT MATERIAL THAT  
19 IS POSTED ON SALON'S USER GENERATED?

20 A. ANY NON? MOST OF IT IS NONSEXUALLY EXPLICIT,  
21 THE VAST MAJORITY.

22 Q. WHAT WOULD HAPPEN TO THAT NONSEXUALLY EXPLICIT  
23 MATERIAL IF YOU HAD TO POST AN AGE VERIFICATION SCREEN?

24 MR. TODD: OBJECTION, SPECULATION, CALLS  
25 FOR SPECULATION.

1 THE COURT: THE QUESTION IS CONFUSING,  
2 TOO. WHAT WOULD HAPPEN?

3 THE QUESTION IS WITHDRAWN.

4 MR. FINE: WITHDRAWN.

5 BY MR. FINE:

6 Q. YOU JUST MENTIONED THAT SALON DOES NOT PRESCREEN  
7 ANY USER GENERATED CONTENT.

8 A. RIGHT.

9 Q. IF A USER WANTED -- IF A 15-YEAR-OLD WANTED TO  
10 SEE SOME OF THE NONSEXUALLY EXPLICIT CONTENT ON THE USER  
11 GENERATED ASPECT OF THE SITE AND THERE WAS A CREDIT CARD  
12 SCREEN, WHAT WOULD -- WOULD THAT USER BE ABLE TO SEE  
13 THAT MATERIAL?

14 MR. TODD: OBJECTION, CALLS FOR  
15 SPECULATION.

16 MR. FINE: LET ME WITHDRAW THE QUESTION.  
17 IT IS VERY CONFUSING.

18 BY MR. FINE:

19 Q. LET ME ASK YOU. WHAT IS SALON DOING TO KEEP UP  
20 WITH THE OTHER SITES ON THE WEB THAT HAVE USER GENERATED  
21 CONTENT?

22 A. BEFORE THE END OF THE YEAR OR AT THE VERY  
23 LATEST, I HOPE, JANUARY, WE ARE GOING TO BE ADDING A NEW  
24 SUBSITE OF SALON CALLED OPEN SALON THAT WILL BE  
25 EXCLUSIVELY USER GENERATED CONTENT.

1 Q. TELL US A LITTLE BIT ABOUT OPEN SALON. WHAT IS  
2 IT?

3 A. SURE. WELL, IT IS REALLY SOMETHING THAT HAS  
4 GROWN OUT OF POPULARITY LETTERS. CURRENTLY, WE GROUP  
5 PEOPLE -- WE LET PEOPLE GROUP THEIR LETTERS. IF YOU  
6 REALLY WANT TO KNOW MORE ABOUT THAT BRILLIANT LETTER  
7 WRITER, ADEN FINE, YOU CAN GO AND CLICK, AND HIS LETTERS  
8 ARE GOING ALL BE COLLECTED ON ONE PAGE. WE ARE EVOLVING  
9 FROM THAT SYSTEM TO LET PEOPLE, STARTING WITH LETTERS,  
10 CREATE PROFILE PAGE ABOUT THEMSELVES. THAT PROFILE PAGE  
11 WILL POST ALL OF THEIR LETTERS ON SALON, BUT IT WILL  
12 ALSO LET THEM POST SOME PHOTOGRAPHS, TELL A LITTLE BIT  
13 ABOUT THEMSELVES, POST SOME LINKS TO OTHER SITES THAT  
14 THEY ARE READING. THAT WILL BE KIND OF THE FOUNDATION  
15 OF OPEN SALON, BUT WE WILL ALSO QUICKLY, I HOPE -- IN  
16 THE TECH WORLD YOU CAN ONLY HOPE THINGS HAPPEN QUICKLY  
17 -- WE WILL BE ADDING A BLIGHTING FUNCTION TO OPEN  
18 SALON, WE WILL BE ADDING WRITE AND ADD AND POST YOUR OWN  
19 ARTICLE FUNCTION TO OPEN SALON AND AS WELL AS POST  
20 PHOTOS AND THEN, A LA YOU TUBE, POST YOUR OWN VIDEOS ON  
21 SALON.

22 Q. WHAT IF ANY LIMITS WILL THERE BE?

23 A. RIGHT NOW WE ARE THINKING THAT IT WILL BE MUCH  
24 LIKE OUR LETTER SYSTEM, WHERE WE WILL LET YOU POST FIRST  
25 AND WE WILL ASK QUESTIONS LATER. WE WILL BE MONITORING

1 IT, BUT WE -- YOU WILL BE ABLE TO POST, AND THEN WE WILL  
2 LOOK AT ISSUES LIKE, JUST OVERALL APPROPRIATENESS. AS  
3 YOU KNOW, ONE OF THE BIG ISSUES WITH USER GENERATED  
4 CONTENT IS COPYRIGHT. AND SO IF SOMEONE WERE TO ASK US  
5 TO TAKE SOMETHING DOWN BASED ON COPYRIGHT ISSUES, WE  
6 WOULD DO THAT. IT'S A GROWING AREA OF INTEREST AND A  
7 GROWING AREA OF CONTROVERSY. SO WE WILL BE LOOKING AT  
8 IT VERY CLOSELY.

9 Q. AND WILL PEOPLE BE ABLE TO POST SEXUALLY  
10 EXPLICIT CONTENT?

11 A. YES, AS OF NOW I BELIEVE THEY WILL BE.

12 Q. WILL THERE BE ANY REGISTRATION OR LOGGING  
13 REQUIREMENTS?

14 A. THAT IS A GOOD QUESTION. YES, THERE WILL BE.  
15 WE ARE GOING TO BE MORE -- WE ARE GOING TO BE A LITTLE  
16 BIT MORE DEMANDING THAN WE ARE WITH LETTERS. WE ARE  
17 GOING TO WANT A VALID E-MAIL ADDRESS THAT WE ARE GOING  
18 TO VERIFY BECAUSE WE ARE GOING TO WANT TO BE IN TOUCH  
19 WITH APPROPRIATE PEOPLE. WE ARE NOT GOING TO REQUIRE A  
20 WHOLE LOT. AND IF YOU WANT TO HAVE A USER NAME THAT IS  
21 MADE UP, YOU CAN PROBABLY DO THAT, BUT WE ARE GOING TO  
22 NEED TO KNOW WHO YOU ARE.

23 Q. WHO'S GOING TO BE ABLE TO VIEW THE MATERIAL THAT  
24 IS POSTED ON OPEN SALON?

25 A. EVERYONE. EVERYONE WHO CAN READ SALON.

1 Q. WILL READERS BE ABLE TO RESPOND TO THE CONTENT  
2 THAT IS ON OPEN SALON?

3 A. YES, ABSOLUTELY. WE WILL CONTINUE TO HAVE  
4 COMMENTS AND LETTERS THAT YOU CAN POST. WE ALSO THINK  
5 THAT WE WILL HAVE A LOT OF PERSONALIZATION AND USER  
6 READINGS SO THAT IT WILL BE -- A LITTLE BIT OF A WAY FOR  
7 THE EDITOR TO CEDE CONTROL SO THAT YOUR VERSION OF OPEN  
8 SALON MIGHT FILTER WHAT YOU LIKE BEST OR YOU MIGHT WANT  
9 TO LOOK AT IT IN TERMS OF HOW READERS HAVE RATED STORIES  
10 OR MOST READ STORIES OR MOST E-MAILED STORIES THAT YOU  
11 WANT TO FILTER THAT WAY. THERE WILL BE A LOT OF ROOM  
12 FOR THE READER TO KIND OF SET IT UP THE WAY HE OR SHE  
13 WANTS TO.

14 Q. HOW MANY OF YOUR CURRENT TRAFFIC IS GENERATED  
15 FROM YOUR USER GENERATED CONTENT?

16 A. IF YOU COUNT IN TABLE TALK PLUS LETTERS, IT'S  
17 PROBABLY IN THE REALM OF 10 TO 15 PERCENT.

18 Q. HOW OFTEN -- I'M GOING TO SWITCH SUBJECTS A  
19 LITTLE BIT NOW. HOW OFTEN DOES SALON MAKE CHANGES TO  
20 THE WEBSITE?

21 A. IN TERMS OF POSTING TO THE WEBSITE AND ADDING TO  
22 WHAT IS THERE?

23 Q. YES, HOW OFTEN DOES THE WEBSITE CHANGE?

24 A. MINUTE BY MINUTE. I MEAN BETWEEN OUR BLOG  
25 POSTS, LETTERS THAT READERS ADD, WIRE STORIES AS WELL AS

1 WE POST STORIES WHEN THEY ARE READY. IT'S CERTAINLY  
2 MORE THAN ONCE AN HOUR AND SOME DAYS IT MIGHT BE EVERY  
3 SINGLE MINUTE.

4 Q. WHEN YOU FIRST STARTED AT SALON, SOUNDS LIKE  
5 EIGHT YEARS AGO, WAS USER GENERATED CONTENT AS IMPORTANT  
6 AS IT IS TODAY?

7 A. NO. WE DID START WITH TABLE TALK, SO WE KNEW  
8 THAT IT WAS GOING TO BE IMPORTANT. AND WE WANTED A  
9 PLACE AT THE TABLE FOR OUR READERS, BUT CANDIDLY I THINK  
10 IT WAS NOT UNTIL THE LAST COUPLE OF YEARS THAT WE SAW  
11 HOW IMPORTANT IT WAS GOING TO BE. WE HAVE A REALLY  
12 AMAZING LITERATE AUDIENCE, AND WE REALLY SAW THAT WE  
13 WERE KIND OF UNDERUTILIZING A KEY RESOURCE BY NOT  
14 PRINTING MORE OF THEIR CONTRIBUTIONS.

15 Q. HOW IMPORTANT IS TO IT SALON TO BE ABLE TO  
16 MODIFY YOUR BUSINESS PLANS TO ADAPT TO CHANGES IN WHAT  
17 IS GOING ON ON THE INTERNET?

18 MR. TODD: OBJECTION, LEADING.

19 THE COURT: SUSTAINED.

20 BY MR. FINE:

21 Q. WHAT I'M TRYING TO ASK IS, IS IT IMPORTANT TO  
22 SALON TO BE ABLE TO MODIFY YOUR BUSINESS PLANS?

23 A. IT IS VERY IMPORTANT TO SALON. THE WEB IS STILL  
24 A RELATIVELY NEW PLACE, AND IT'S CHANGING ALL THE TIME.  
25 WE HAVE CERTAINLY MODIFIED OUR BUSINESS PLAN MANY, MANY

1 TIMES IN 11 YEARS.

2 Q. AND WHY HAVE YOU HAD TO MODIFY YOUR BUSINESS  
3 PLANS?

4 A. I THINK BECAUSE JUST THE CHANGES IN WEB  
5 PUBLISHING, THE CHANGES IN PUBLISHING GENERALLY. PEOPLE  
6 ARE FAIRLY WELL AWARE OF THE BIG HYPE AROUND THE  
7 INTERNET IN THE LATE '90S. THE .COM BOOM WAS THEN  
8 FOLLOWED BY THE .COM BUST, WHICH HAS NOW BEEN FOLLOWED  
9 BY A .COM MINI BOOM WITH A LOT OF VENTURE CAPITALISTS  
10 GIVING AWAY A LOT OF MONEY AGAIN, AND AGAIN, PROBABLY A  
11 OVERSTATED BELIEF THAT THE WEB WILL CHANGE EVERYTHING.  
12 BUT WE HAVE LIVED THROUGH KIND OF SILLY TIMES OF PLENTY  
13 AND DIFFICULT TIMES OF NOT ENOUGH, SO WE HAVE HAD TO  
14 ADAPT TO SURVIVE.

15 Q. ARE YOU GENERALLY AWARE OF THE ACT THAT IS AT  
16 ISSUE IN THIS LAWSUIT?

17 A. I AM.

18 Q. WHAT DO YOU KNOW ABOUT THE ACT?

19 A. I KNOW THAT IT WOULD CRIMINALIZE PUBLISHING  
20 MATERIAL THAT COULD BE DEEMED PRURIENT, PATENTLY  
21 OFFENSIVE TO MINORS.

22 Q. ARE YOU ABLE TO DETERMINE EXACTLY WHAT SPEECH  
23 COPA PROHIBITS?

24 A. NO, NOT EXACTLY.

25 Q. WHY NOT?

1 A. BECAUSE EVEN CLOSELY READING THE LAW, I FIND  
2 THAT THE TERMS ARE SOMEWHAT SUBJECTIVE.

3 Q. I'M GOING TO FOCUS YOU ON SOME OF THE TERMS OF  
4 THE STATUTE AND ASK YOU THE SAME QUESTION. DO YOU HAVE  
5 AN UNDERSTANDING OF WHAT IT MEANS FOR SPEECH TO  
6 BE "PATENTLY OFFENSIVE" WITH RESPECT TO MINORS?

7 A. NO, I REALLY DON'T.

8 Q. AGAIN, WHY NOT?

9 A. BECAUSE I THINK THAT TERM AND THAT -- THINKING  
10 ABOUT THAT VARIES FROM COMMUNITY TO COMMUNITY AND FROM  
11 FAMILY TO FAMILY, PRESUMABLY.

12 Q. DO YOU HAVE AN UNDERSTANDING OF WHAT IT MEANS  
13 FOR SPEECH TO BE "PRURIENT" WITH RESPECT TO MINORS?

14 A. NOT CLEARLY.

15 Q. AND AGAIN, IS THE EXPLANATION THE SAME?

16 A. YES, I WOULD SAY IT IS.

17 Q. DO YOU KNOW WHAT PRURIENT MEANS?

18 A. SEXUALLY AROUSING, EXPLICIT, I GUESS.

19 Q. DOES ADDING THE WORDS "PRURIENT WITH RESPECT TO  
20 MINORS" ADD ANY CONFUSION TO YOU?

21 A. YEAH.

22 MR. TODD: OBJECTION, LEADING.

23 THE COURT: OVERRULED.

24 BY MR. FINE:

25 Q. DO YOU HAVE AN UNDERSTANDING OF WHAT THE LAW



1 MEANS WHEN IT REFERS TO SPEECH THAT "TAKEN AS A WHOLE  
2 LACKS SERIOUS LITERARY, ARTISTIC, POLITICAL OR  
3 SCIENTIFIC VALUE FOR MINORS"?

4 A. YES. I DON'T REALLY KNOW WHAT "TAKEN AS A  
5 WHOLE" ADDS.

6 Q. DO YOU BELIEVE THAT ANY OF SALON'S CONTENT MIGHT  
7 BE CONSIDERED HARMFUL TO MINORS?

8 MR. TODD: OBJECTION, RELEVANCE TO THIS  
9 WHOLE LINE OF QUESTIONING. THE WITNESS IS NOT A LAWYER.

10 THE COURT: I GUESS THERE ARE GOING TO BE  
11 A LOT OF NONLAWYERS THAT HAVE TO COMPLY WITH THIS LAW.  
12 THE OBJECTION IS OVERRULED. RELEVANCY IS ACCEPTED BY  
13 THE COURT.

14 BY MR. FINE:

15 Q. LET ME ASK YOU AGAIN THIS QUESTION. DO YOU  
16 BELIEVE THAT ANY OF SALON'S CONTENT MIGHT BE CONSIDERED  
17 HARMFUL TO MINORS?

18 A. IT MIGHT BE.

19 Q. WHY DO YOU HAVE THAT BELIEF?

20 A. BECAUSE WE HAVE PUBLISHED SEXUALLY EXPLICIT  
21 STORIES AS WELL AS IMAGES. WE HAVE PUBLISHED PIECES  
22 HAVING TO DO WITH CONTROVERSIES OVER SEXUALITY. AND AS  
23 A PARENT OF A TEENAGER, I KNOW THAT WHAT I THINK IS FINE  
24 FOR MY DAUGHTER IS NOT FINE FOR EVEN SOME OF HER  
25 FRIENDS. SO I CAN IMAGINE THAT THERE WOULD BE PARENTS

1 WHO WOULD LOOK AT SALON AND SAY THIS IS NOT APPROPRIATE  
2 FOR MY SON OR DAUGHTER.

3 Q. DO YOU HAVE AN UNDERSTANDING AS TO WHICH  
4 COMMUNITY STANDARDS DETERMINE WHAT IS HARMFUL TO MINORS  
5 UNDER THE STATUTE?

6 A. NO, BECAUSE THE COMMUNITY IS NATIONWIDE, RIGHT?  
7 I MEAN --

8 Q. LET ME ASK YOU. DO YOU HAVE ANY UNDERSTANDING  
9 AS TO WHICH COMMUNITY?

10 A. NO, I DON'T.

11 Q. DO YOU BELIEVE SALON'S CONTENT IS VALUABLE FOR  
12 ADULTS?

13 A. YES, I DO.

14 Q. DO YOU BELIEVE SALON CONTENT IS VALUABLE FOR  
15 OLDER MINORS?

16 A. I DO BELIEVE IT'S VALUABLE FOR OLDER MINORS.

17 Q. DO YOU THINK EVERYONE ACROSS THE COUNTRY HAS THE  
18 SAME OPINIONS AS YOU?

19 A. SADLY, NO.

20 MR. TODD: OBJECTION, SPECULATION.

21 MR. FINE: I'M ASKING FOR HER PERSONAL  
22 BELIEF.

23 THE COURT: THE QUESTION AND ANSWER IS  
24 STRICKEN. START OVER.

25 MR. FINE: SURE.

1 BY MR. FINE:

2 Q. FROM YOUR PERSONAL EXPERIENCE AND YOUR PERSONAL  
3 OPINION, DO YOU BELIEVE THAT EVERYONE ACROSS THE COUNTRY  
4 HAS THE SAME OPINIONS AS YOU?

5 MR. TODD: SAME OBJECTION.

6 THE COURT: SUSTAINED.

7 BY MR. FINE:

8 Q. WHY DON'T WE MOVE FORWARD A LITTLE BIT. MISS  
9 WALSH, I'M GOING TO NOW ASK YOU TO TURN TO WHAT IS IN  
10 THE BINDER IN FRONT OF YOU, WHAT HAS PREVIOUSLY BEEN  
11 MARKED AS PLAINTIFFS' EXHIBIT 39.

12 A. SURE.

13 Q. I'M GOING TO ASK YOU TO LOOK AT ALL OF THESE  
14 DOCUMENTS. JUST TREAT THEM AS A GROUP FOR NOW.

15 A. OKAY.

16 Q. EVERYTHING THAT IS MARKED AS PLAINTIFFS' EXHIBIT  
17 39.

18 A. SO JUST PAGE BY PAGE GO THROUGH?

19 Q. PLEASE FLIP THROUGH AND THEN WHEN YOU ARE DONE  
20 FLIPPING THROUGH, IDENTIFY WHAT THESE PAGES ARE.

21 A. SURE.

22 MR. TODD: OBJECTION, CALLS FOR A  
23 NARRATIVE.

24 THE COURT: PARDON?

25 MR. TODD: IT CALLS FOR A NARRATIVE.

1 THE COURT: FRANKLY, I WAS JUST TRYING TO  
2 IDENTIFY P 39 MYSELF. I DID NOT PAY CLOSE ATTENTION.

3 BY MR. FINE:

4 Q. THE QUESTION IS SIMPLY, CAN YOU IDENTIFY WHAT  
5 THESE PAGES IN PLAINTIFFS' EXHIBIT 39 ARE.

6 THE COURT: HIGHLY THEORETICALLY IT WILL  
7 TAKE AN HOUR AND-A-HALF BUT GENERALLY THE QUESTION IS  
8 PERMISSIBLE. OVERRULED.

9 THE WITNESS: THEY ARE PAGES FROM SALON,  
10 FROM ALL OVER SALON.

11 BY MR. FINE:

12 Q. ARE THEY ACCURATE REPRESENTATIONS OF PAGES FROM  
13 SALON'S WEBSITE?

14 A. I'M TAKING THIS SERIOUSLY. I'M LOOKING.

15 Q. TAKE YOUR TIME.

16 THE COURT: DO YOU EXPECT TO GO THROUGH  
17 EVERY PAGE?

18 THE WITNESS: JUST GENERALLY.

19 THE COURT: I DON'T KNOW WHETHER SHE HAS  
20 SEEN IT BEFORE.

21 LET'S START WITH THAT.

22 THE WITNESS: IT ALL LOOKS LIKE -- EVERY  
23 SINGLE THING I FLIP TO I RECOGNIZE.

24 BY MR. FINE:

25 Q. HOW DO YOU KNOW THAT?

1 A. BECAUSE I'M THE EDITOR OF SALON. BECAUSE I HAVE  
2 SEEN MANY OF THEM, IF NOT ALL OF THEM, BEFORE. I  
3 RECOGNIZE OUR FONT, OUR TEMPLATES, OUR ADVERTISING.

4 Q. IF WE LOGGED ON TO SALON WEBSITE RIGHT NOW,  
5 COULD WE FIND THESE SAME WEB PAGES?

6 A. YES, WE COULD.

7 Q. HOW OFTEN DOES SALON DELETE ARTICLES THAT IT  
8 PUBLISHES ON THE WEBSITE?

9 A. ALMOST NEVER.

10 Q. DO ANY OF SALON'S ARTICLES EVER DEPICT AN ACTUAL  
11 OR SIMULATED SEXUAL ACT OR SEXUAL CONTACT, AN ACTUAL OR  
12 SIMULATED NORMAL OR PERVERTED SEXUAL ACT OR A LEWD  
13 EXHIBITION OF THE GENITALS OR POST-PUBESCENT FEMALE  
14 BREASTS?

15 MR. TODD: OBJECTION, LEADING, COMPOUND.

16 THE COURT: OVERRULED.

17 THE WITNESS: YES.

18 BY MR. FINE:

19 Q. I WANT TO NOW DIRECT YOU TO THE PAGES THAT ARE  
20 WITHIN PLAINTIFFS' EXHIBIT 39 THAT ARE NUMBERED 61  
21 THROUGH 63.

22 A. GOT IT.

23 Q. WHAT ARE PAGES 61 THROUGH 63?

24 A. THEY ARE -- IT WOULD BE THE FIRST PAGE OF WHAT  
25 WE CALL OUR SEX DIRECTORY.

1 Q. WHAT IS THE PURPOSE OF YOUR SEX DIRECTORY?

2 A. ONE OF THE MANY WAYS THAT WE DIVIDE CONTENT ON  
3 SALON IS SEMIAUTOMATICALLY. NOTHING IS AUTOMATIC, BUT  
4 WE USE KEY WORDS TO CATEGORIZE STORIES. AND IN THIS  
5 INSTANCE OUR SEX CONTENT WOULD BE KEY WORDED WITH SEX.  
6 ANYTHING WITH THAT KEY WORD WOULD SHOW UP ON THIS  
7 AUTOMATED DIRECTORY PAGE.

8 Q. AND LOOKING AT PAGE 61, HOW MANY DIFFERENT  
9 ARTICLES DOES PAGE 61 INDICATE THERE ARE IN THE SEX  
10 CATEGORY?

11 A. ONLY ON PAGE 61. SEVEN.

12 Q. I'M SORRY. HOW MANY DIFFERENT ARTICLES DOES  
13 PAGE 61 INDICATE THERE ARE IN THE SEX CATEGORY?

14 A. GOT IT. 1,699.

15 Q. IF YOU LOOK LOWER ON THE PAGE, WHAT ARE THOSE  
16 ITEMS THAT ARE LISTED ON THE REST OF THE PAGE?

17 A. THEY ARE THE HEADLINES OF INDIVIDUAL STORIES AS  
18 WELL AS A COUPLE OF BLOG POSTS FROM OUR DIFFERENT BLOGS  
19 THAT HAPPEN TO HAVE SEXUAL MATERIAL ON THEM.

20 Q. CAN YOU PLEASE READ FOR US WHAT THE TITLES OF  
21 THE FIRST FIVE ARTICLES ARE?

22 A. SURE. LET'S GET IT ON. DOES MARRIAGE SMOTHER  
23 SEX? AUTHOR ESTHER PEARL TALKS ABOUT HOW TO UNLEASH  
24 EROTIC DESIRE INSIDE LONG TERM RELATIONSHIPS.

25 30 YEAR OLD VIRGIN. IT WAS ONCE A BADGE

1 OF HONOR, BUT TO THE SURPRISING NUMBER OF ADULT WOMEN  
2 TODAY WHO HAVE NOT HAD SEX, VIRGINITY IS NOTHING BUT A  
3 CURSE.

4 LOST GIRLS. ALLEN MOORE AND MELINDA  
5 GEBBY'S SHOCKING X RATED MASTERPIECE TAKES THREE  
6 CHILDHOOD HEROINS AND PLUNGES THEM INTO SEX-SOAKED  
7 ADULTHOOD.

8 Q. CAN I ASK YOU NOW HOW POPULAR IS YOUR SEX  
9 DIRECTORY?

10 A. IT'S VERY POPULAR.

11 Q. WHEN YOU SAY IT'S VERY POPULAR, DO YOU HAVE ANY  
12 IDEA WHERE IT RANKS?

13 A. SURE. AGAIN, YOU CAN USE THE HITBOX SERVICE  
14 THAT I TALKED ABOUT EARLIER. ON ANY GIVEN DAY, TRAFFIC  
15 TO THE OVERALL SEX DIRECTORY IS IN OUR TOP FIVE  
16 EDITORIAL OFFERINGS.

17 Q. AND THE ARTICLES -- THE TITLES THAT YOU WERE  
18 JUST READING, ARE THOSE ARTICLES INDICATIVE OF OTHER  
19 ARTICLES THAT CAN BE FOUND IN YOUR SEX DIRECTORY?

20 MR. TODD: OBJECTION, LEADING.

21 THE COURT: EXCUSE ME?

22 MR. TODD: LEADING.

23 THE COURT: OVERRULED.

24 THE WITNESS: YEAH, ROUGHLY. YOU HAD ME  
25 READ THREE. YEAH, THEY ARE THE TYPES OF THINGS THAT WE

1 WRITE ABOUT REGULARLY.

2 BY MR. FINE:

3 Q. SURE. I WANT TO NOW DIRECT YOU TO THE PAGES

4 THAT ARE NUMBERED 75 THROUGH 78 IN PLAINTIFFS' EXHIBIT

5 39. AGAIN, PAGES 75 THROUGH 78.

6 A. YES, GOT IT.

7 Q. AND NOW, I WILL ASK YOU WHAT DO THESE PAGES

8 REPRESENT?

9 A. THEY REPRESENT A STORY ABOUT SOMEONE'S

10 EXPERIENCE WITH A VIRTUAL SEX MACHINE.

11 Q. CAN YOU PLEASE JUST TELL US WHAT IS THE TITLE OF

12 THIS STORY?

13 A. MY DATE WITH THE VIRTUAL SEX MACHINE. I

14 INSERTED MYSELF INTO THE PINK SIMULATION CHAMBER, AND

15 HIT PLAY.

16 Q. WHO CAN VIEW THIS ARTICLE?

17 A. ANYONE.

18 Q. IS THERE ANYTHING IN THIS ARTICLE THAT DEPICTS

19 AN ACTUAL OR SIMULATED SEXUAL ACT OR SEXUAL CONTACT?

20 A. YES, THERE IS.

21 Q. I'M GOING TO DIRECT YOUR ATTENTION -- I'M GOING

22 TO ASK YOU IF YOU CAN TURN TO PAGE 76, FOCUSING ON THE

23 THIRD PARAGRAPH.

24 A. YES.

25 Q. DOES THAT PARAGRAPH -- I'M GOING TO ASK YOU TO



1 JUST TO IDENTIFY FOR THE RECORD HOW THAT PARAGRAPH  
2 BEGINS. WHY DON'T YOU DO THAT FIRST?

3 A. I THINK IT'S THE ONE THAT BEGINS "FOR MY CHERRY  
4 POPPING FORAY INTO TECHNO JACKING OFF." IS THAT ENOUGH?

5 Q. YES, THAT IS ENOUGH. DOES THAT DEPICT AN ACTUAL  
6 -- OR DOES THIS PARAGRAPH DEPICT AN ACTUAL OR A  
7 SIMULATED SEXUAL ACT OR SEXUAL CONTACT?

8 A. YES.

9 Q. WHY WOULD SALON PUBLISH SOMETHING LIKE THIS?

10 MR. TODD: OBJECTION, CALLS FOR  
11 NARRATIVE:

12 MR. FINE: SIMPLE QUESTION.

13 THE COURT: OVERRULED.

14 THE WITNESS: YOU KNOW THIS -- THIS  
15 ARTICLE WOULD BE CONSIDERED KIND OF IN OUR SWEET SPOT OF  
16 TECHNOLOGY, CULTURE AND SEXUALITY. WE HAVE A HUGE --  
17 READERSHIP IS HUGELY INTERESTED IN TECHNOLOGY, SO THIS  
18 IN PARTICULAR GIVEN THE TECH SIDE OF VIRTUAL SEXUALITY  
19 WOULD BE INTERESTING. AND YOU KNOW, WE ARE INTERESTED  
20 IN STORIES ABOUT TRENDS THAT CHALLENGE OUR CONVENTIONAL  
21 WAY OF LIVING AND THINKING AND CONVENTIONAL IDEAS ABOUT  
22 SEXUALITY.

23 BY MR. FINE:

24 Q. CAN YOU NOW TURN TO THE PAGES OF EXHIBIT 39  
25 WHICH ARE MARKED 64 THROUGH 74. 64 THROUGH 74. TELL US

1 WHAT THESE PAGES REPRESENT.

2 A. IT'S AN ARTICLE HEADLINED "RECTAL ROMANCE." AND  
3 IT IS AN INTERVIEW, I GUESS -- YES, IT'S AN INTERVIEW  
4 WITH AN AUTHOR WHO WROTE A MEMOIR ABOUT HER EXPERIENCES  
5 WITH ANAL SEX.

6 Q. DOES SALON HAVE ANY ART WORK ON ITS SITE?

7 A. YES, WE DO.

8 Q. AND DOES ANY OF THAT ART WORK DEPICT AN ACTUAL  
9 OR SIMULATED SEXUAL ACT OR SEXUAL CONTACT, AN ACTUAL OR  
10 SIMULATED NORMAL OR PERVERTED SEXUAL ACT OR A LEWD  
11 EXHIBITION OF THE GENITALS OR POST-PUBESCENT FEMALE  
12 BREASTS?

13 A. THERE IS ART LIKE THAT ON SALON, YES.

14 Q. IF YOU COULD NOW TURN TO PAGE 92 OF PLAINTIFFS'  
15 EXHIBIT 39. AGAIN, PAGE 92.

16 A. YES.

17 Q. CAN YOU TELL US WHAT THAT PAGE REPRESENTS?

18 A. SURE. THIS PAGE IS DIRECTORY PAGE THAT IS A  
19 GUIDE TO OUR SEX GALLERIES.

20 Q. AND WHEN YOU SAY YOUR SEX GALLERIES, IS THIS  
21 LIMITED TO ANY SUBJECT?

22 A. ART WORK DEPICTING FAIRLY EXPLICIT SEXUAL ACTS  
23 AND POSES.

24 Q. I WILL NOW HAVE YOU FOCUS ON PAGES 94 THROUGH  
25 100. AGAIN, PAGES 94 THROUGH 100.

1 A. OKAY.

2 Q. WHAT ARE THESE PAGES?

3 A. THEY ARE JAPANESE WOOD CUTS WITH A VARIETY OF  
4 POSES, BUT ALL OF THEM FAIRLY SEXUALLY EXPLICIT, FROM A  
5 BOOK OF SUCH WOOD CUTS.

6 Q. AGAIN, WHO CAN VIEW THESE ART GALLERIES?

7 A. ANYONE WHO HAS ACCESS TO SALON, ANYONE WHO COMES  
8 TO SALON.

9 Q. NOW, I'M GOING TO ASK YOU TO LOOK FORWARD A  
10 LITTLE BIT TO PAGES 101 TO 111.

11 A. I'M THERE. YES.

12 Q. CAN YOU TELL US WHAT THOSE PAGES ARE?

13 A. THEY ARE A SEX GALLERY THAT INCLUDED PHOTOGRAPHS  
14 FROM THE KINSEY INSTITUTE.

15 Q. CAN YOU FOCUS ON PAGE 106.

16 A. YES.

17 Q. TELL US WHAT THAT IS.

18 A. ITS DEPICTING PENETRATION OF A MAN AND A WOMAN.

19 Q. WHERE DOES THIS PHOTOGRAPH COME FROM?

20 A. AGAIN, I BELIEVE IT'S A BOOK OF KINSEY INSTITUTE  
21 PHOTOGRAPHS THAT WE PUBLISHED ON SALON.

22 Q. AND WHO CAN VIEW THIS PARTICULAR PHOTOGRAPH ON  
23 PAGE 106?

24 A. ANYONE WHO COMES TO SALON.

25 Q. I WILL NOW ASK YOU TO TURN TO PAGES 119 TO 135.

1 OF EXHIBIT 39. AGAIN, 119 TO 135.

2 A. GOT IT.

3 Q. WHAT IS REPRESENTED IN THESE PRINTOUTS?

4 A. THESE ARE PHOTOGRAPHS FROM ONE OF OUR ARCHIVE  
5 ABU GHRAIB PHOTOS, PHOTOS THAT WERE TAKEN OF THE TORTURE  
6 AND SEXUAL HUMILIATION OF PRISONERS AT ABU GHRAIB.

7 Q. I WANT YOU TO FOCUS NOW ON PAGE 126, PLAINTIFF'S  
8 EXHIBIT 39. AGAIN, PAGE 126.

9 A. OKAY.

10 Q. WHAT DOES THIS PHOTOGRAPH DEPICT?

11 A. IT SEEMS TO DEPICT A PRISONER WHO WAS DESCRIBED  
12 AS MENTALLY DERANGED APPEARING TO SODOMIZE HIMSELF.

13 Q. WHO CAN VIEW THIS PHOTOGRAPH, PAGE 126?

14 A. ANYONE WHO COMES TO SALON.

15 Q. ARE ALL OF -- ARE THESE ALL OF THE ABU GHRAIB  
16 PHOTOGRAPHS THAT ARE AVAILABLE ON SALON?

17 A. NO. ACTUALLY THEY ARE NOT. THEY ARE THE FIRST  
18 GROUP THAT WE PUBLISHED IN FEBRUARY AND THEN WE  
19 SUBSEQUENTLY PUBLISHED ANOTHER 279 PHOTOGRAPHS AND 19  
20 VIDEOS THAT WERE ALSO GIVEN TO US BY A SOURCE IN THE  
21 MILITARY.

22 Q. WHAT ARE THE SUBJECTS OF THOSE OTHER  
23 PHOTOGRAPHS?

24 A. THEY'RE VERY SIMILAR. IT'S MANY, MANY PHOTOS OF  
25 OR TORTURE, HUMILIATION, SEXUAL HUMILIATION OF PRISONERS

1 AND PRISONERS ABUSING THEMSELVES WITH MILITARY PEOPLE  
2 LOOKING ON, IF NOT SUPERVISING.

3 Q. IS THERE FULL FRONTAL NUDITY?

4 A. THERE IS.

5 MR. TODD: OBJECTION. BEST EVIDENCE.  
6 THOSE PHOTOGRAPHS ARE NOT BEFORE THE COURT.

7 MR. FINE: WE JUST MOVED ON TO ASK IF  
8 THERE ARE OTHER PHOTOGRAPHS AVAILABLE ON THE SITE, AND I  
9 BELIEVE THE WITNESS IS TESTIFYING BASED ON HER PERSONAL  
10 KNOWLEDGE.

11 MR. TODD: SHE IS TESTIFYING.

12 THE COURT: THE QUESTION IS SO GENERAL.  
13 I MEAN OTHER PHOTOGRAPHS OF ABU GHRAIB?

14 MR. FINE: YES. THE PRECISE QUESTION I  
15 CAN ASK AGAIN.

16 THE COURT: QUESTION IS WITHDRAWN.  
17 BY MR. FINE:

18 Q. ARE THESE ALL OF THE ABU GHRAIB PHOTOS THAT ARE  
19 AVAILABLE ON SALON'S WEBSITE?

20 A. NO, THEY ARE NOT.

21 Q. THE FOLLOW-UP QUESTION WAS, WHAT DO THE OTHER  
22 PHOTOGRAPHS, AND I BELIEVE YOU MENTIONED VIDEOS THAT ARE  
23 ON SALON, WHAT ARE THE SUBJECTS OF THOSE PHOTOGRAPHS?

24 MR. TODD: SAME OBJECTION.

25 THE COURT: SUSTAINED.

1                   IF YOU WANT TO BRING THE PHOTOGRAPHS IN,  
2           BRING THEM IN. THEY WILL SHOW WHAT THEY WILL SHOW. WE  
3           WILL RECESS FOR THE MID-DAY RECESS UNTIL TWO O'CLOCK.  
4           WILL THE WITNESS PLEASE COME BACK AT TWO O'CLOCK. THE  
5           COURT IS IN RECESS UNTIL TWO O'CLOCK. COUNSEL ARE  
6           EXCUSED. WE ARE OFF THE RECORD.

7                   (LUNCH BREAK TAKEN.)

8                   AFTERNOON SESSION

9                   THE CLERK: PLEASE REMAIN SEATED. COURT  
10          IS NOW IN SESSION.

11                  THE COURT: WHILE THE WITNESS IS TAKING  
12          THE STAND, YOU ARE WELCOME TO BE SEATED. WHILE THE  
13          WITNESS IS TAKING THE STAND, I WOULD JUST LIKE TO  
14          ANNOUNCE FOR THOSE PEOPLE IN THE AUDIENCE THAT HAVE ANY  
15          INTEREST IN FOLLOWING THE PROCEEDINGS, THAT ARE NOT  
16          COUNSEL, OR RELATED TO THE PARTIES, THE TYPICAL MID-DAY  
17          RECESS IS 12:30 TO 1:30. BECAUSE OF A JUDICIAL MEETING,  
18          I HAD TO GO AT A DIFFERENT TIME TODAY. TYPICALLY, WE  
19          END AT 4:30 WITH TESTIMONY EACH DAY, FOLLOWING WHICH IN  
20          OPEN COURT THERE WILL BE DISCUSSIONS OF HOUSEKEEPING  
21          MATTERS AND EVIDENTIARY MATTERS AND OTHER THINGS THAT  
22          TYPICALLY WORK THEIR WAY THROUGH THE TRIAL. SO IN EACH  
23          OF THE MORNING AND AFTERNOON SESSIONS, WE HAVE A MID  
24          SESSION RECESS FOR ABOUT 10 MINUTES. SO IF THOSE IN THE  
25          AUDIENCE WHO HAVE TO LEAVE PLEASE, COULD WAIT TO THE

1 RECESS, IT WOULD HELP US TO KEEP THE COURT A LITTLE MORE  
2 ORDERLY. THAT WOULD BE HELPFUL. I'M NOT GOING TO TIE  
3 YOU TO THE CHAIR, BUT YOU GET THE MESSAGE.

4 IF COUNSEL COULD RESUME DIRECT  
5 EXAMINATION, PLEASE.

6 DIRECT EXAMINATION (CONTINUED)

7 BY MR. FINE:

8 Q. GOOD AFTERNOON, MISS WALSH.

9 A. GOOD AFTERNOON.

10 Q. BEFORE WE BROKE FOR LUNCH, WE WERE DISCUSSING  
11 THE ABU GHRAIB PHOTOGRAPHS, I WANT TO ASK YOU NOW, HOW  
12 MANY PEOPLE HAVE VIEWED THOSE PHOTOGRAPHS ON SALON'S  
13 WEBSITE?

14 A. BASED ON OUR TRAFFIC REPORTS, I WOULD SAY IN THE  
15 HUNDREDS OF THOUSANDS.

16 Q. DO YOU KNOW IF THESE PHOTOGRAPHS WERE PRINTED IN  
17 MORE MAINSTREAM MEDIA?

18 A. A FEW OF THEM WERE, BUT NOT OF THEM.

19 Q. WHY DID YOU PRINT THESE PHOTOGRAPHS?

20 A. WE FELT THAT IN SOME WAYS THE SHEAR NUMBER OF  
21 THE PHOTOGRAPHS WAS PART OF THE NEWS STORY. IT WAS NOT  
22 MERELY THAT THERE WERE FIVE OR SIX ICONIC IMAGES THAT WE  
23 HAD SEEN THAT WERE DISTURBING. IT WAS REALLY THE NUMBER  
24 OF IMAGES, THE VARIETY OF IMAGES, THE REPETITION OF  
25 CERTAIN THEMES. AND WE FELT THAT SINCE WE HAD THE

1 ARCHIVE MAKING THE WHOLE THING AVAILABLE WOULD SHOW THE  
2 SCOPE OF WHAT WENT ON THERE.

3 Q. AND EARLIER, WE WERE TALKING ABOUT THE  
4 USER-GENERATED CONTENT THAT IS AVAILABLE ON SALON. I  
5 WANT TO NOW TURN YOUR ATTENTION, IF WE CAN, TO PAGE 1  
6 THROUGH 5 OF PLAINTIFFS' EXHIBIT 39.

7 A. YES.

8 Q. AGAIN, THE FIRST 5 PAGES, ONE THROUGH 5. CAN  
9 YOU TELL US -- ARE YOU THERE?

10 A. I'M THERE.

11 Q. CAN YOU TELL US WHAT THOSE PAGES REPRESENT?

12 A. THEY ARE PAGES FROM A USER BLOG THAT IS CALLED  
13 MY SO-CALLED LESBIAN LIFE, AND THEY FEATURE A FEW FAIRLY  
14 EXPLICIT PHOTOS, ONE OF TWO WOMEN HAVING SOME SORT OF  
15 SEX AND SOME POSTS ABOUT HER LIFE.

16 Q. WHO CAN VIEW THIS BLOG ON SALON'S WEBSITE?

17 A. ANYONE WHO COMES TO SALON.

18 MR. FINE: YOUR HONOR, AT THIS TIME, I  
19 WOULD LIKE TO MOVE PLAINTIFFS' EXHIBIT 39 INTO EVIDENCE.

20 MR. TODD: OBJECTION, YOUR HONOR. FOR  
21 THE RECORD, DEFENDANTS RESTATE THEIR OBJECTION THAT MANY  
22 OF THESE INDIVIDUAL ARTICLES WERE NOT DISCLOSED TO  
23 DEFENDANT DURING THE DISCOVERY PERIOD DESPITE REPEATED  
24 REQUESTS FOR ALL ARTICLES IN WHICH SALON BASED ITS FEAR  
25 OF PROSECUTION.



1 THE COURT: OBJECTION IS OVERRULED. MY  
2 RULING HAS BEEN THERE IS NO SHOWING THAT THE PLAINTIFF  
3 AVOIDED ANSWERING THE INTERROGATORIES THE WAY THEY WERE  
4 WORDED. AND IF HE DIDN'T PICK UP EVERY PIECE OF PAPER,  
5 THEN IT WAS A RESULT OF DISCOVERY PROCESS. AND  
6 SECONDLY, ALL OF THIS MATERIAL IS READILY AVAILABLE AND  
7 WAS TO THE DEFENDANT THROUGHOUT THE PRETRIAL PROCESS, SO  
8 THE OBJECTION IS OVERRULED.

9 PLAINTIFFS' EXHIBIT 39 IS RECEIVED INTO  
10 EVIDENCE.

11 (PLAINTIFFS' EXHIBIT 39 RECEIVED INTO  
12 EVIDENCE.)

13 BY MR. FINE:

14 Q. MS. WALSH, ARE THE PAGES IN PLAINTIFFS' EXHIBIT  
15 39 GENERALLY INDICATIVE OF THE TYPES OF CONTENT THAT CAN  
16 BE FOUND ON SALON?

17 A. YES.

18 Q. DO YOU FEAR PROSECUTION UNDER COPA FOR THE  
19 MATERIAL CONTAINED IN PLAINTIFFS' EXHIBIT 39?

20 A. I DO.

21 Q. AND WHY IS THAT?

22 A. BECAUSE SOME OF THE PHOTOS, AS WELL AS THE TEXT,  
23 ARE SEXUALLY EXPLICIT AND MIGHT BE DEEMED HARMFUL TO  
24 MINORS, PATENTLY OFFENSIVE TO MINORS.

25 Q. DO YOU THINK ALL OF THE PAGES IN PLAINTIFFS'

1 EXHIBIT 39 HAVE SERIOUS VALUE FOR MINORS?

2 A. IT'S A VERY SUBJECTIVE STANDARD. I WOULD BE  
3 FINE WITH MY DAUGHTER LOOKING AT THEM ACTUALLY, BUT I'M  
4 SURE OTHER PARENTS WOULD NOT BE.

5 MR. TODD: OBJECTION. CALLS FOR  
6 SPECULATION.

7 THE COURT: I TAKE IT IS A MOTION TO  
8 STRIKE. OVERRULED. MOTION DENIED.

9 BY MR. FINE:

10 Q. I WANT TO NOW TURN YOUR ATTENTION TO A DIFFERENT  
11 SUBJECT. HAS SALON EVER RECEIVED ANY COMPLAINTS ABOUT  
12 THE CONTENT ON ITS WEBSITE?

13 A. YES.

14 Q. HOW OFTEN?

15 A. DAILY.

16 Q. FROM WHOM?

17 A. A WIDE VARIETY OF READERS AND PEOPLE AROUND THE  
18 WORLD.

19 Q. HAS SALON EVER RECEIVED COMPLAINTS BECAUSE OF  
20 THE SEXUALLY EXPLICIT NATURE OF THE CONTENT ON THE  
21 WEBSITE?

22 A. WE HAVE, YES.

23 Q. WHAT TEND TO BE THE USERS' COMPLAINTS ABOUT THE  
24 SEXUALLY EXPLICIT MATERIAL?

25 A. I THINK WE HAVE USERS WHO ARE CONSERVATIVE IN

1 SOME WAYS AND WOULD -- RATHER NOT SEE SEXUALLY EXPLICIT  
2 MATERIAL MIXED UP WITH OTHER TOPICS OF MORE, PERHAPS,  
3 GENERAL INTEREST, LIKE NEWS AND MOVIE REVIEWS.

4 Q. HAS SALON EVER CONSIDERED TONING DOWN THE  
5 CONTENT OF SOME OF YOUR MATERIAL?

6 A. NO, NOT REALLY.

7 Q. WHY NOT?

8 A. BECAUSE WE REALLY THINK THE MIX OF TOPICS THAT  
9 WE PRESENT IS WHAT MAKES US SALON. WE DO THINK THAT IT  
10 IS THE STORIES ABOUT THE EVOLUTION OF WOMEN'S SEXUALITY  
11 AND OUR EXPOSES ON ABU GHRAIB AND OUR GREAT MOVIE  
12 REVIEWS THAT KIND OF DEFINES SALON.

13 Q. HAS SALON EVER SUFFERED ANY FINANCIAL  
14 CONSEQUENCES AS A RESULT OF ANY OF THESE COMPLAINTS?

15 A. WE HAVE.

16 Q. DO YOU HAVE ANY EXAMPLES? CAN YOU DESCRIBE A  
17 PARTICULAR STORY THAT CAUSED SALON TO SUFFER SOME  
18 FINANCIAL CONSEQUENCES?

19 A. YES, THERE HAVE BEEN SEVERAL, BUT THE ONE THAT  
20 STANDS OUT IS AT THE HEIGHT OF THE CONCERN OVER PRIEST  
21 SEXUAL ABUSE, WE DID RUN A STORY BY AN ADULT GAY MAN, A  
22 VERY THOUGHTFUL NUANCED STORY ABOUT HOW SOMETIMES PART  
23 OF THE COMING OUT PROCESS FOR AN OLDER GAY TEEN MIGHT BE  
24 A RELATIONSHIP WITH AN OLDER GAY MAN. IT WASN'T A POINT  
25 OF VIEW WE PARTICULARLY ENDORSED, BUT IT WAS WELL

1 WRITTEN AND IT WAS ON A TOPIC THAT WAS IN THE NEWS AND  
2 WAS A POINT OF VIEW NOT WIDELY -- NOT WIDELY EXPRESSED.  
3 AND SO WE RAN IT, AND WE HAD A LOT OF COMPLAINTS ABOUT  
4 THAT. WE LOST SOME ADVERTISING OVER THAT.

5 Q. IS THAT ARTICLE STILL AVAILABLE ON SALON'S  
6 WEBSITE?

7 A. IT IS.

8 Q. WHO HAS ACCESS TO IT?

9 A. ANYONE WHO COMES TO SALON.

10 Q. WHAT HAS THE RESPONSE BEEN TO YOUR PUBLICATION  
11 OF THE ABU GHRAIB PHOTOGRAPHS?

12 A. YOU KNOW, I WOULD SAY OVERWHELMINGLY POSITIVE.  
13 YOU KNOW, A LOT OF OTHER NEWS ORGANIZATIONS WOUND UP  
14 WRITING ABOUT THE PHOTOGRAPHS, ABOUT OUR DECISION TO  
15 PUBLISH. IN THE END, THE PENTAGON DID RELEASE THEM TO  
16 THE ACLU CITING OUR DECISION TO PUBLISH THEM, AND THE  
17 FACT THAT IT DIDN'T RESULT IN GRAVE HARM TO OUR SOLDIERS  
18 OR ANYONE ELSE, BUT WE CERTAINLY GOT COMPLAINTS.

19 Q. WAS ANY OF THAT CRITICISM DIRECTED AT THE  
20 SEXUALLY EXPLICIT CONTENT OF THOSE PHOTOGRAPHS?

21 A. IT WAS. THERE WAS CERTAINLY A MINORITY BUT A  
22 VOCAL MINORITY OF PEOPLE WHO FELT THAT WE COULD HAVE  
23 DESCRIBED THE PHOTOGRAPHS, WE DID NOT NEED TO SHOW THEM.  
24 THERE WAS A VOCAL MINORITY THAT FELT THAT SOMEHOW  
25 SHOWING THEM POSSIBLY EVEN INCREASED THE DAMAGE TO THE

1 PEOPLE WHO WERE DEPICTED BEING TORTURED, THAT SINCE  
2 HUMILIATION WAS PART OF THE SEXUAL EXPERIENCE THAT WE  
3 WERE INCREASING THE HUMILIATION.

4 Q. WHAT IMPACT ON SALON DO ALL THESE COMPLAINTS  
5 THAT YOU'VE RECEIVED HAVE ON SALON'S FEAR OF PROSECUTION  
6 UNDER COPA?

7 A. THEY INCREASED. THE COMPLAINTS THAT WE RECEIVED  
8 OVER THE YEARS DO INCREASE OUR FEAR OF PROSECUTION. WE  
9 ARE A HIGH-PROFILE PUBLICATION THAT RUNS A LOT OF  
10 CONTROVERSIAL MATERIAL, NOT ONLY THE SEXUALLY EXPLICIT  
11 MATERIAL. AND WE HAVE CERTAINLY COME IN FOR OUR SHARE  
12 OF CRITICISM OF OUR DECISION. SO WE ARE NOT SOMEONE WHO  
13 WOULD FLY UNDER THE RADAR OR DOES FLY UNDER THE RADAR IN  
14 TERMS OF WHAT WE PUBLISH. WE HAVE A LARGE AUDIENCE, AND  
15 WE HAVE CRITICS.

16 Q. THANK YOU.

17 AND AT THE VERY BEGINNING OF YOUR  
18 TESTIMONY, YOU TESTIFIED THAT SALON IS A FOR-PROFIT  
19 VENTURE. I WANT TO NOW ASK YOU, HOW DOES SALON MAKE  
20 MONEY?

21 A. PRIMARILY, WE MAKE MONEY NOW WITH ONLINE  
22 ADVERTISING. IT IS MORE THAN HALF OF OUR REVENUES. WE  
23 ALSO HAVE A PREMIUM MEMBERSHIP PROGRAM THAT USED TO BE A  
24 SUBSCRIPTION SERVICE, BUT IT'S EVOLVED A LITTLE BIT. WE  
25 HAVE PERSONALS, AS WE DESCRIBED BEFORE. WE DO A LITTLE

1 BIT OF SYNDICATION. OTHER PUBLICATIONS REPRINT OUR  
2 STORIES AND PAY US. THE WELL IS A MEMBERSHIP COMMUNITY,  
3 SO THE WELL IS A REVENUE SOURCE. AND I'M PROBABLY  
4 FORGETTING A COUPLE OF TINY THINGS.

5 Q. FOCUSING ON ADVERTISING --

6 A. SURE.

7 Q. -- APPROXIMATELY HOW MUCH MONEY DOES SALON  
8 ANNUALLY TAKE IN?

9 A. THIS YEAR, IT SHOULD BE ABOUT 5 MILLION.

10 Q. AND HOW IMPORTANT IS TRAFFIC TO SALON'S  
11 ADVERTISING REVENUES?

12 A. IT IS VERY IMPORTANT.

13 Q. WHY?

14 A. BECAUSE THE NUMBER OF READERS -- A COUPLE OF  
15 REASONS. OBVIOUSLY, THE NUMBER OF PAGE VIEWS INCREASES  
16 THE NUMBER OF ADVERTISING IMPRESSIONS. SALON ALSO HAS A  
17 SOMEWHAT UNIQUE ADVERTISING UNIT CALLED A SITE PASS, SO  
18 THAT IF YOU DON'T SUBSCRIBE -- YOU DON'T HAVE TO  
19 SUBSCRIBE ANYMORE, BUT YOU CAN LOOK AT AN ADVERTISEMENT  
20 AND THEN READ ALL OF SALON FOR FREE. BUT THAT  
21 PARTICULAR UNIT REQUIRES THAT YOU BASICALLY DOWNLOAD THE  
22 AD. AND SO THAT -- THE MORE UNIQUE VISITORS -- WITH THE  
23 SITE PASS UNIT, WE REALLY NEED A LOT OF PEOPLE, NOT  
24 MERELY 10 PEOPLE CONSUMING 100 PAGES OF SALON.

25 Q. SO IT IS THE NUMBER OF PEOPLE?

1           A.           IT IS THE NUMBER OF PEOPLE FOR THAT UNIT, THE  
2           NUMBER OF PAGE VIEWS FOR AD IMPRESSIONS.

3           Q.           HOW IMPORTANT TO SALON IS ADVERTISING -- ARE THE  
4           ADVERTISING REVENUES?

5           A.           CRUCIAL.

6           Q.           WHY?

7           A.           BECAUSE WE DID EXPERIMENT WITH A SUBSCRIPTION  
8           SERVICE AT THE BOTTOM -- THE HEIGHT OF THE DOT COM BUST,  
9           HOWEVER YOU WOULD PHRASE THAT. THINGS WERE BAD AND WE  
10          WERE REALLY RUNNING OUT OF ADVERTISING MONEY. WE WERE  
11          JUST -- ADVERTISING, HAD AT LEAST TEMPORARILY LEFT THE  
12          WEB. THERE WAS A LOT OF DOOM AND GLOOM AND  
13          HAND-WRINGING. PEOPLE WERE GOING OUT OF BUSINESS. WE  
14          COULD NOT SUPPORT OUR STAFF. WE ACTUALLY LAID OFF A LOT  
15          OF PEOPLE, BUT WE TURNED TO A SUBSCRIPTION SERVICE TO  
16          SEE IF THAT COULD BRING IN ENOUGH REVENUE TO SUPPORT  
17          SALON, AND REALLY IT COULDN'T. SO LUCKILY AT THE POINT  
18          WE REALIZED THAT, ADVERTISING BEGAN COMING BACK. SO WE  
19          HAVE BEEN LUCKY IN THAT WE HAVE BEEN ABLE TO RIDE THE  
20          NEXT WAVE OF ONLINE ADVERTISING GROWTH, AND IT'S REALLY  
21          CRUCIAL TO OUR CONTINUED SUCCESS.

22          Q.           I WANT TO GO INTO A LITTLE BIT MORE FOLLOWUP ON  
23          WHAT YOU JUST DISCUSSED. BUT, BEFORE WE GET THERE, IN  
24          COMPARISON TO PAST YEARS, HOW IS INTERNET ADVERTISING  
25          DOING TODAY?

1 A. IT'S CONTINUING TO CLIMB. THIS YEAR IS A LITTLE  
2 BIT LESS STEEP A CLIMB FOR THE ENTIRE INDUSTRY THAN THE  
3 PREVIOUS YEAR, I BELIEVE, FOR US.

4 MR. TODD: OBJECTION, LAY OPINION.

5 THE COURT: THERE IS NO FOUNDATION LAID  
6 FOR IT. THAT IS SUSTAINED JUST AS TO THAT LAST COMMENT  
7 ABOUT WHAT THE INDUSTRY IS SUPPOSEDLY DOING.

8 BY MR. FINE:

9 Q. DO YOU KNOW WHAT THE TRENDS ARE IN THE INTERNET  
10 WORLD TODAY?

11 THE COURT: ANSWER YES OR NO, PLEASE.

12 THE WITNESS: YES.

13 BY MR. FINE:

14 Q. HOW DO YOU KNOW THAT?

15 A. IT IS MY BUSINESS TO KNOW IT AND STUDY IT. AND  
16 WE ARE IN CONSTANT COMMUNICATION WITH ADVERTISERS AND  
17 RESEARCHERS.

18 Q. AND WHAT HAS THAT CONSTANT COMMUNICATION,  
19 INTERACTION -- WHAT HAS THAT SHOWN YOU?

20 A. IT HAS SHOWN US THAT ONLINE ADVERTISING --

21 MR. TODD: OBJECTION.

22 THE COURT: OVERRULED.

23 THE WITNESS: IT SHOWS US THAT ONLINE  
24 ADVERTISING IS CONTINUING TO CLIMB. THE CLIMB IS NOT  
25 QUITE AS STEEP AS IT WAS IN THE COUPLE OF PREVIOUS



1 YEARS, BUT IT'S STILL GROWING, BUT IT'S GROWING FASTER  
2 FOR US, ACTUALLY, THAN FOR OUR PEERS.

3 BY MR. BEANE:

4 Q. IS ALL OF SALON'S CONTENT AVAILABLE FOR FREE  
5 TODAY?

6 A. YES, IT IS.

7 Q. HAS IT ALWAYS BEEN?

8 A. NO. AS I ALLUDED TO BEFORE, WE STARTED A  
9 SUBSCRIPTION SERVICE IN EARLY 2001. THAT EXPERIMENT  
10 WENT THROUGH MANY ITERATIONS. WE BEGAN BY ADDING A FEW  
11 FEATURES THAT WE HOPED PEOPLE WOULD WANT TO PAY FOR SO  
12 IN THE BEGINNING, ALL OF -- VIRTUALLY ALL OF SALON  
13 STAYED FREE. BUT IF YOU SUBSCRIBED, YOU GOT A FEW EXTRA  
14 FEATURES, ADDITIONAL POLITICAL COLUMN, A GOSSIP COLUMN,  
15 OCCASIONALLY CELEBRITY INTERVIEWS. WE QUICKLY REALIZED  
16 THAT WAS NOT GOING TO BE ENOUGH TO GET PEOPLE TO DECIDE  
17 TO SUBSCRIBE TO SALON. SHORTLY AFTER SEPTEMBER 11TH,  
18 TWO THINGS HAPPENED. THE ADVERTISING SITUATION GOT  
19 WORSE, BUT FOR US, OUR TRAFFIC INCREASED BECAUSE THERE  
20 WAS SO MUCH INTEREST -- THE NEWS ENVIRONMENT WAS REALLY  
21 UNIQUE. WE WERE FORCED TO PUT MOST OF OUR CONTENT  
22 BEHIND OUR PREMIUM GATE IN OCTOBER OF 2001 BECAUSE  
23 ONLINE ADVERTISING WAS VIRTUALLY GONE FOR US. IT WAS  
24 REALLY THE ONLY WAY TO SURVIVE.

25 Q. AND YOU JUST MENTIONED THAT YOU QUICKLY REALIZED

1 THAT YOU NEEDED TO CHANGE THAT, AT LEAST THE INITIAL  
2 EXPERIMENT WITH SUBSCRIPTION SERVICE. WHY DID YOU  
3 QUICKLY REALIZE THAT? HOW DID YOU -- WHAT LED YOU TO  
4 REACH THOSE REALIZATIONS?

5 A. BECAUSE WE REALLY TOOK A SERIOUS TRAFFIC HIT.  
6 IF I CAN GIVE AN EXAMPLE. BEFORE WE DID THAT, ON ANY  
7 GIVEN DAY, A POPULAR COVER STORY MIGHT GET 100,000 PAGE  
8 VIEWS. ONCE WE PUT THOSE STORIES BEHIND THE PREMIUM  
9 GATE, THE SAME SORT OF STORY WOULD GET MORE LIKE 6 OR  
10 7,000 PAGE VIEWS. WE REALLY, REALLY CUT THE AUDIENCE  
11 FOR OUR CONTENT DRAMATICALLY.

12 Q. AND TELL US, HOW DID YOU KNOW THIS? HOW DID YOU  
13 MAKE THOSE CALCULATIONS?

14 A. SURE. AS I EXPLAINED BEFORE, WE WORK WITH A  
15 TRAFFIC ANALYTIC SERVICE. WE CODE ALL OUR PAGES SO WE  
16 KNOW WHO IS READING THEM AND WHAT THE TRAFFIC FLOW IS,  
17 SO WE CAN SEE SPECIFIC STORIES. WE CODED CERTAIN THINGS  
18 PREMIUM AND CERTAIN THINGS NP, NOT PREMIUM, VERY  
19 SOPHISTICATED. AND WE COULD SEE THAT THE PREMIUM PAGES  
20 GOT MUCH LOWER TRAFFIC THAN THE NP PAGES. SO OVER TIME,  
21 FOR A WHILE, THE OVERALL IMPACT TO SALON DID NOT SEEM TO  
22 BE SO SEVERE, BECAUSE WE GET A LOT OF TRAFFIC TO OUR  
23 OLDER -- WHERE WE HAVE BEEN IN BUSINESS 11 YEARS AT THAT  
24 POINT. HELP ME WITH THE MATH. IT WAS SIX YEARS. SO WE  
25 STILL HAD A LOT OF ARCHIVE TRAFFIC THAT WAS UNAFFECTED

1 BY THE PREMIUM EXPERIMENT. BUT OVER TIME, AS ALL THE  
2 NEW STORIES WERE PUT BEHIND THE GATE, WE REALLY WATCHED  
3 OUR TRAFFIC START TO DECLINE.

4 Q. AND YOU MENTIONED THAT, I THINK IT WAS, AROUND  
5 OCTOBER 2001 YOU DECIDED TO CHANGE THE MODEL A LITTLE  
6 BIT. HOW DID YOU CHANGE THE BUSINESS MODEL?

7 A. THAT WAS THE POINT AT WHICH WE PUT ALL OF OUR  
8 NEWS AND POLITICS AND MOST OF OUR OTHER POPULAR CONTENT,  
9 BEHIND THE PREMIUM GATE.

10 Q. WHAT WAS THE IMPACT OF USING THAT NEW MODEL?

11 A. IT REALLY DIMINISHED TRAFFIC TO THOSE STORIES.

12 Q. AND CAN YOU EXPLAIN, AGAIN, WHY THAT WAS?

13 A. BECAUSE PEOPLE REALLY DIDN'T -- LET ME STATE  
14 THIS ACCURATELY. WE WERE LUCKY THAT OUR MOST LOYAL  
15 SUBSCRIBERS -- READERS DID SUBSCRIBE. CERTAINLY WE GOT  
16 TO ABOUT 89,000 SUBSCRIBERS EVENTUALLY. THAT WAS 2004.  
17 WE CERTAINLY DID HAVE, MAYBE AT THAT POINT, 30 TO 40,000  
18 PEOPLE WHO WERE WILLING TO PAY OUR SUBSCRIPTION RATES.  
19 IT WAS NOT ENOUGH TO REALLY SUSTAIN SALON. IT ALSO, YOU  
20 KNOW, ESPECIALLY IF YOU THINK ABOUT THE PERIOD AFTER  
21 SEPTEMBER 11TH, WHICH WAS FOR ALL OF US SUCH A DIFFICULT  
22 PERIOD AND SUCH A TIME OF -- IF YOU EVER HAD A SENSE OF  
23 A MISSION BEING A PUBLISHER, THAT WAS THE TIME. TO  
24 WATCH OUR TRAFFIC TO IMPORTANT STORIES DROP WAS REALLY  
25 DISHEARTENING. SO WE BEGAN ALMOST IMMEDIATELY LOOKING

1 FOR WAYS TO COME UP WITH A MODEL THAT OPENED OUR GATES A  
2 LITTLE BIT MORE TO THE WIDER WEB.

3 Q. WHEN DID SALON STOP USING THAT MODEL  
4 APPROXIMATELY?

5 A. WE BEGAN TO LOOSEN IT PRETTY QUICKLY, BUT IT  
6 WAS, I BELIEVE, THE END OF 2002, EARLY 2003, THAT WE  
7 REALLY DEVELOPED WHAT IS STILL ESSENTIALLY OUR MODEL,  
8 WHICH IS THE SITE PASS MODEL. IF YOU WATCH A BRIEF AD,  
9 YOU CAN READ ALL OF SALON OR YOU CAN SUBSCRIBE. AND NOW  
10 IF YOU SUBSCRIBE OR BECOME A MEMBER, YOU GET TO SEE  
11 SALON WITHOUT ADVERTISING, WHICH IS A LURE TO SOME  
12 PEOPLE. YOU ALSO GET A BUNCH OF MAGAZINES. IT'S KIND  
13 OF A GREAT READING CLUB. BUT WE REALLY MOVED IT FROM  
14 SUBSCRIPTION SERVICE AND SUBSCRIPTION LANGUAGE TO MUCH  
15 MORE OF A MEMBERSHIP PROGRAM.

16 Q. AND WHAT INFORMATION DO USERS HAVE TO PROVIDE  
17 TODAY TO PASS THROUGH WHAT YOU ARE CALLING THE SITE  
18 PASS?

19 A. NOTHING.

20 Q. DID SALON MAKE A CONSCIOUS CHOICE NOT TO REQUIRE  
21 THE USERS TO PROVIDE ANY INFORMATION?

22 A. WE DID.

23 Q. WHY?

24 A. WE HAD EXPERIMENTED ON A COUPLE OF DIFFERENT  
25 OCCASIONS WITH REQUIRING. WE NEVER FULL ON REQUIRED

1 REGISTRATION. BUT TO GET OUR NEWSLETTER THERE WAS SOME  
2 DESIRE ON OUR SALES TEAM TO GET MORE INFORMATION ABOUT  
3 THE GENDER OF OUR READERS, GEOGRAPHY AND AGE. AND SO WE  
4 HAD TRADITIONALLY ONLY REQUIRED THAT YOU GIVE US AN  
5 E-MAIL ADDRESS TO RECEIVE OUR NEWSLETTER, AND FOR A TIME  
6 WE EXPERIMENTED WITH REQUIRING ZIP CODE, BIRTH DATE AND  
7 GENDER. WE REALLY WATCHED --

8 THE COURT: ZIP CODE, BIRTH DATE --

9 THE WITNESS: ZIP CODE, BIRTH DATE AND  
10 GENDER. AND WE REALLY WATCHED OUR SUBSCRIPTION TO OUR  
11 NEWSLETTER FALL. PEOPLE JUST REALLY RESISTED THE  
12 ADDITIONAL FIELD. SO BECAUSE WE FELT LIKE GETTING THE  
13 NEWSLETTER OUT TO MORE PEOPLE OUTWEIGHED THE BENEFIT OF  
14 GETTING THAT ADDITIONAL INFORMATION, WE BENT BACK TO THE  
15 SINGLE FIELD OF, JUST GIVE US YOUR E-MAIL AND WE WILL  
16 SEND YOU THE NEWSLETTER.

17 Q. FOCUSING ON YOUR SITE PASS, JUST TO BE CLEAR, IS  
18 THE SITE PASS MODEL STILL THE CURRENT BUSINESS MODEL FOR  
19 SALON?

20 A. YES. IT IS STILL THE CURRENT BUSINESS MODEL.  
21 HOWEVER, WE ARE REALLY EXPERIMENTING EVEN WITH THE SITE  
22 PASS. IT'S ONE LONG EXPERIMENT HERE ON THE WEB. AND WE  
23 REALLY -- THE SITE PASS HAS BEEN A REALLY -- IT IS A  
24 LUCRATIVE AD UNIT, BECAUSE WHAT WE HAVE IS AN AUDIENCE  
25 THAT WANTS OUR CONTENT SO MUCH THAT SOME OF THEM AT

1 LEAST WILL SIT THROUGH THIS ADVERTISING UNIT AND WAIT 10  
2 TO 30 SECONDS TO GET THAT WONDERFUL STORY. THAT IS A  
3 BLESSING. ON THE OTHER HAND, WE KNOW FROM THE INTERNAL  
4 TRAFFIC REPORTING THAT I HAVE DISCUSSED THAT ANYWHERE  
5 FROM 40 TO 90 PERCENT OF READERS SIMPLY GO AWAY RATHER  
6 THAN PROCEED THROUGH THAT SITE PASS BARRIER.

7 Q. AND CAN YOU GIVE US AN EXAMPLE OF ANY STORIES  
8 WHERE YOU HAVE SEEN A LOSS OF TRAFFIC AS A RESULT OF  
9 SITE PASS?

10 A. YES. ACTUALLY, IT WAS JUST ABOUT A YEAR AGO,  
11 AND THERE IS A PHILADELPHIA CONNECTION, A GREAT SALON  
12 WRITER, CAMILLE PAGLIA, WHO IS FROM PHILADELPHIA, WROTE  
13 A STORY ABOUT MADONNA AND SHE GOT A LINK ON THE DRUDGE  
14 REPORT, WHICH IS REALLY -- THE DRUDGE REPORT DOES NOT  
15 OFTEN LINK TO SALON. HOWEVER, HE LOVES CAMILLE PAGLIA,  
16 SO HE LINKED TO HER STORY. WE WERE VERY EXCITED. WE  
17 COULD SEE THE TRAFFIC WAS SPIKING, BUT WHEN WE LOOKED  
18 CLOSELY AT OUR TRAFFIC LOGS, WE SAW THAT 90 PERCENT OF  
19 THE PEOPLE HAD CAME FROM DRUDGE, AND IT WAS IN THE  
20 HUNDREDS OF THOUSANDS, WHEN THEY GOT TO THE SITE PASS,  
21 THEY STOPPED, THEY WENT AWAY. THEY LEFT SALON. THEY  
22 DID KNOW GO THROUGH THE SITE PASS AND ACTUALLY READ THE  
23 ARTICLE. SO ONLY 10 PERCENT OF THAT TRAFFIC ACTUALLY  
24 WOUND UP CONSUMING THE STORY. SO WE SAW THEN THAT WE  
25 REALLY NEEDED TO START EXPERIMENTING WITH OTHER WAYS OF

1 LETTING NEW READERS ESPECIALLY VISIT SALON WITHOUT A  
2 BARRIER.

3 Q. WHAT IMPACT ON YOUR ADVERTISING REVENUES DOES  
4 THE SITE PASS BARRIER ITSELF HAVE?

5 A. IT'S A VERY -- IT'S A MIXED BLESSING BECAUSE  
6 CERTAINLY IT'S A GREAT UNIT FOR SOME ADVERTISERS. SOME  
7 OF THEM CAN ACTUALLY RUN -- THEY CAN REPURCHASE A  
8 TELEVISION COMMERCIAL. ON THE OTHER HAND, PEOPLE WHO  
9 WANT A LOT OF REACH, THERE IS A BRANDING CAMPAIGN,  
10 ADVERTISING CAMPAIGNS THAT REALLY REQUIRE A LARGE REACH  
11 OUT TO THE WEB, WILL NOT USE SALON OFTEN -- LET ME SAY  
12 SOMETIMES, I WON'T GO SO FAR AS TO SAY OFTEN -- BECAUSE  
13 WE DON'T HAVE THAT REACH. AND THE SITE PASS LIMITS OUR  
14 REACH. SO IT IS CERTAINLY A TRADE-OFF FOR US.

15 Q. HOW MUCH DO PEOPLE PAY TO BECOME A SALON PREMIUM  
16 MEMBER?

17 A. IT'S \$35 A YEAR.

18 Q. CURRENTLY HOW MANY PREMIUM MEMBERS DOES SALON  
19 HAVE?

20 A. AROUND -- JUST UNDER 60,000.

21 Q. SINCE IT WAS A LONG TIME AGO, CAN YOU REMIND US  
22 HOW MANY MONTHLY VISITORS TO THE WEBSITE SALON HAS ON  
23 AVERAGE?

24 A. 3.1 MILLION MONTHLY VISITORS.

25 Q. AT THE RISK OF TESTING YOUR MATHEMATICAL

1 SKILLS --

2 THE COURT: YOU WERE SAYING SOMETHING.  
3 YOUR VOICE DROPPED.

4 MR. FINE: I APOLOGIZE.

5 BY MR. FINE:

6 Q. WITH THE RISK -- PERHAPS IT WAS BECAUSE I WAS  
7 POTENTIALLY GOING TO EMBARRASS THE WITNESS.

8 THE COURT: DON'T ANNOUNCE IT. MAYBE IT  
9 WON'T.

10 BY MR. FINE:

11 Q. TESTING YOUR MATHEMATICAL SKILLS, WHAT  
12 PERCENTAGE APPROXIMATELY OF SALON'S READERS ARE PREMIUM  
13 MEMBERS?

14 A. ROUGHLY TWO PERCENT.

15 Q. COULD SALON FUNCTION AS A PREMIUM ONLY WEBSITE?

16 A. WE TRIED.

17 Q. WHAT HAPPENED?

18 A. THE HIT TO OUR TRAFFIC WAS TOO BIG AND THE  
19 NUMBER OF READERS WILLING TO PAY TO SUBSCRIBE WAS TOO  
20 SMALL.

21 Q. HOW WOULD SWITCHING TO A PREMIUM-ONLY WEBSITE  
22 AFFECT SALON'S EDITORIAL MISSION?

23 A. IT WOULD FORCE US TO CUT BACK OUR STAFFING  
24 LEVELS ENORMOUSLY, SO THAT I WOULD NOT HAVE REPORTERS IN  
25 THE PLACES THAT I HAVE REPORTERS, AND WE WOULD BE ABLE



1 TO PRODUCE MUCH LESS CONTENT. SO I THINK IT WOULD  
2 AFFECT IT A LOT.

3 Q. I'M TRYING TO FOCUS ON, WHAT ARE -- WHAT IS  
4 SALON'S GOAL? IS SALON'S PRIMARY GOAL TO MAKE THE MOST  
5 MONEY POSSIBLE?

6 A. WE ARE A PUBLICLY TRADED COMPANY, SO I HAVE TO  
7 PAY ATTENTION TO THAT. BUT CERTAINLY WE HAVE HIGHER  
8 GOALS. WE REALLY BELIEVE IN OUR MISSION. WE REALLY  
9 WANT OUR STORIES AND OUR APPROACH TO THE WORLD AND  
10 GLOBAL ISSUES AND GLOBAL CHALLENGES TO BE READ BY THE  
11 WIDEST POSSIBLE AUDIENCE.

12 Q. MISS WALSH, ARE YOU GENERALLY AWARE THAT COPA  
13 DESCRIBES STEPS THAT YOU COULD TAKE TO AVOID  
14 PROSECUTION?

15 A. I AM GENERALLY AWARE, YES.

16 Q. WHAT IS YOUR GENERAL UNDERSTANDING?

17 A. I BELIEVE THAT IF WE REQUIRED EITHER SOME KIND  
18 OF CREDIT CARD VERIFICATION OR ANOTHER FORM OF AGE  
19 VERIFICATION SYSTEM, WE COULD -- THAT WOULD BE AN  
20 AFFIRMATIVE DEFENSE.

21 Q. AND ARE YOU AWARE OF ANY PRODUCTS OR SERVICES  
22 THAT ACCURATELY VERIFY AGE?

23 A. ACCURATELY IS THE IMPORTANT WORD, NO.

24 MR. TODD: OBJECTION, FOUNDATION.

25 MR. FINE: ASKING HER IF SHE IS AWARE.

1 THE COURT: THAT'S STRICKEN FOR THE  
2 RECORD. LAY A FOUNDATION, PLEASE.

3 BY MR. FINE:

4 Q. DO YOU KNOW IF THERE ARE ANY PRODUCTS OR  
5 SERVICES THAT ACCURATELY VERIFY AGE?

6 A. NO, I DON'T.

7 Q. WHAT WOULD BE THE EFFECT ON SALON OF REQUIRING  
8 EVERY USER TO ENTER A CREDIT CARD TO ENTER SALON'S  
9 WEBSITE?

10 A. JUDGING FROM OUR PRIOR EXPERIENCE WITH PREMIUM,  
11 I THINK OUR TRAFFIC WOULD FALL PRECIPITOUSLY.

12 Q. ASIDE FROM YOUR MEMBERSHIP PROGRAM, DOES SALON  
13 REQUIRE USERS TO PROVIDE ANY PERSONAL INFORMATION?

14 A. AN E-MAIL ADDRESS TO RECEIVE OUR NEWSLETTER AND,  
15 AS I SAID BEFORE, WITH OUR AUTOMATED LETTERS FEATURE, WE  
16 ASK YOU FOR AN E-MAIL ADDRESS. WE DON'T VERIFY IT.

17 Q. DO MOST OF THE PEOPLE WHO WRITE IN LETTERS TO  
18 THE EDITOR PROVIDE THEIR TRUE NAMES?

19 A. NO. ACTUALLY THEY DON'T. IT IS VERY  
20 INTERESTING. I WOULD SAY ROUGHLY MAYBE HALF DO, MAYBE  
21 NOT EVEN QUITE HALF.

22 Q. YOU SAY IT'S VERY INTERESTING. WHY IS THAT  
23 INTERESTING TO YOU?

24 A. OH, I DON'T KNOW. I GUESS I WOULD HAVE THOUGHT  
25 IF YOU HAD ASKED ME BEFORE WE STARTED THE PROGRAM, I

1 WOULD HAVE THOUGHT IT WOULD BE A HIGHER PROPORTION OF  
2 PEOPLE WANTING TO HAVE THEIR NAMES ON SALON AND SAY,  
3 LOOK, MOM, I'M ON SALON TODAY. SO I WAS SURPRISED BY  
4 THE PERCENTAGE OF PEOPLE WHO CHOSE TO BE ANONYMOUS.

5 Q. BASED ON YOUR EXPERIENCE, ARE SALON READERS  
6 WILLING TO PAY TO SEE SALON'S CONTENT?

7 A. A SMALL MINORITY OF SALON READERS ARE WILLING TO  
8 PAY. THE VAST MAJORITY ARE NOT WILLING TO PAY.

9 Q. AND TELL US WHY YOU THINK THAT IS THE CASE?

10 MR. TODD: OBJECTION. CALLS FOR  
11 SPECULATION.

12 THE COURT: OBJECTION IS SUSTAINED. LACK  
13 OF FOUNDATION.

14 BY MR. FINE:

15 Q. DO YOU KNOW WHY SALON USERS -- DO YOU KNOW WHY A  
16 SALON USERS WOULD NOT BE WILLING TO PAY?

17 THE COURT: ANSWER YES OR NO, PLEASE.

18 THE WITNESS: YES.

19 BY MR. FINE:

20 Q. HOW DO YOU KNOW THAT?

21 A. WE HAVE DONE A LOT OF READER SURVEYS IN THE FIVE  
22 YEARS THAT WE BEGAN THE PREMIUM PROGRAM, AND EVEN IN THE  
23 MONTHS BEFORE WE BEGAN THE PREMIUM PROGRAM AND WE ALWAYS  
24 LEARNED, BEFORE WE STARTED THE PROGRAM AND SUBSEQUENT TO  
25 IT, THAT MOST READERS HAD NO INTEREST IN PAYING FOR

1 SALON. WE HAD MULTIPLE CHOICE SURVEYS. WE HAD  
2 FILL-IN-YOUR-OWN-SCREEN AND TELL US IN YOUR OWN WORDS,  
3 SURVEYS. AND OVERWHELMINGLY, AMONG PEOPLE, THE MAJORITY  
4 SAID THEY WOULD NOT PAY. AND OF THOSE WHOSE, THE  
5 OVERWHELMING REASON WAS, THERE IS SO MUCH FREE CONTENT  
6 ON THE WEB.

7 ANOTHER VERY PROMINENT REASON WAS, I AM  
8 NOT GIVING YOU OR ANYBODY ELSE MY CREDIT CARD  
9 INFORMATION. I JUST DON'T WANT TO DO THAT ON THE WEB.

10 Q. WOULD IT BE POSSIBLE FOR SALON TO SEPARATE THE  
11 SEXUALLY EXPLICIT MATERIAL ON THE SITE FROM THE  
12 NONSEXUALLY EXPLICIT MATERIAL?

13 A. IT WOULD THEORETICALLY BE POSSIBLE TO SEPARATE  
14 IMAGES LIKE YOU SHOWED ME. IT WOULD BE TECHNOLOGICALLY  
15 A LITTLE BIT CHALLENGING AND IT WOULD REALLY DIMINISH  
16 TRAFFIC TO THOSE AREAS, BUT IT IS THEORETICALLY  
17 POSSIBLE.

18 Q. HOW MANY PAGES APPROXIMATELY ARE IN SALON'S  
19 WEBSITES?

20 A. HUNDREDS OF THOUSANDS, MAYBE OVER A MILLION. I  
21 DON'T KNOW. WE HAVE BEEN AROUND 11 YEARS.

22 Q. AND WHAT WOULD HAPPEN TO SALON'S READERSHIP IF  
23 EVERY READER HAD TO ENTER THEIR CREDIT CARD INFORMATION?

24 A. JUDGING FROM OUR EXPERIENCE WITH PREMIUM.

25 MR. TODD: OBJECTION.

1 THE COURT: WAIT A MINUTE.

2 AS YOU LEARNED, WHEN THERE IS AN  
3 OBJECTION, FULL STOP.

4 MR. TODD: OBJECTION. SPECULATION. LACK  
5 OF FOUNDATION.

6 MR. FINE: I'M HAPPY TO LAY THE SAME  
7 FOUNDATION AGAIN.

8 THE COURT: THE QUESTION IS WITHDRAWN.  
9 BY MR. FINE:

10 Q. DO YOU KNOW WHAT WOULD HAPPEN TO SALON'S  
11 READERSHIP IF YOU REQUIRED USERS TO ENTER CREDIT CARD  
12 INFORMATION EVERY TIME?

13 A. YES.

14 Q. HOW DO YOU KNOW THAT?

15 A. FROM OUR EXPERIENCE, TRYING TO GET THEM TO DO  
16 THAT IN 2001 AND 2002.

17 Q. BASED ON THAT EXPERIENCE, WHAT WOULD HAPPEN TO  
18 YOUR READERSHIP?

19 A. BASED ON THAT EXPERIENCE, OUR READERSHIP WOULD  
20 PLUMMET.

21 Q. WHAT WOULD SALON DO IF COPA WERE TO GO INTO  
22 EFFECT?

23 A. I HONESTLY DON'T KNOW. I REALLY DON'T KNOW WHAT  
24 WE WOULD DO.

25 MR. FINE: NO FURTHER QUESTIONS RIGHT

1 NOW, YOUR HONOR.

2 THE COURT: CROSS-EXAMINE.

3 DO YOU HAVE ANY SPECIAL EXHIBITS THAT YOU  
4 WANT TO SHARE WITH ME, HARD COPY OR NOT?

5 MR. TODD: IF I COULD HAVE A MOMENT TO  
6 CONFER WITH COUNSEL. WE HAD ONE OBJECTION AS TO THE  
7 COMPLETENESS OF THE EXHIBIT. I WANT TO SEE IF IT'S BEEN  
8 RESOLVED.

9 THE COURT: WE'LL WORK ON THIS LATER  
10 TODAY, BUT THE SQUARE INCHES OF SCREEN THAT I HAVE  
11 AVAILABLE, PLUS THE FUZZY IMAGES MAKES THEM USELESS FROM  
12 THE LAPTOP. THE FACT THAT YOU GAVE ME HARD COPIES THIS  
13 MORNING SAVED THE DAY.

14 WE WILL TALK ABOUT WHAT TO DO ABOUT THAT  
15 LATER.

16 MR. TODD: LET ME TALK TO COUNSEL ABOUT  
17 THE COMPLETENESS OBJECTION.

18 (OFF THE RECORD DISCUSSION.)

19 MR. TODD: YOUR HONOR, THIS IS A HARD  
20 COPY OF SOME OF THE EXHIBITS WE MIGHT USE. WE MAY NOT  
21 USE ALL OF THEM. THESE ARE ALL PREVIOUSLY -- EACH ONE  
22 IS -- YES.

23 CROSS EXAMINATION

24 BY MR. TODD:

25 Q. GOOD AFTERNOON, MISS WALSH.

1 A. GOOD AFTERNOON.

2 Q. MY NAME IS JAMES TODD, COUNSEL FOR THE  
3 DEFENDANT. WE MET AT YOUR FEBRUARY 17, 2000 DEPOSITION?

4 A. NICE TO SEE YOU AGAIN.

5 Q. THANKS. YOU, TOO.

6 MISS WALSH, AT YOUR DEPOSITION, YOU ARE  
7 AWARE THAT -- YOU TESTIFIED THAT YOU ARE AWARE THAT  
8 CALIFORNIA HAS A HARMFUL TO MINORS STATUTE, IS THAT  
9 CORRECT?

10 A. YES, I THINK I DID.

11 Q. AND SALON DOES NOT FEAR PROSECUTION UNDER THAT  
12 STATUTE FOR ANY MATERIAL ON ITS WEBSITE, IS THAT  
13 CORRECT?

14 A. THAT'S CORRECT.

15 Q. SALON -- YOU ARE ALSO AWARE THAT OTHER STATES  
16 HAVE HARMFUL TO MINORS LAWS THAT PROHIBIT THE SALE OR  
17 DISPLAY OF SEXUALLY EXPLICIT MATERIAL TO MINORS, IS THAT  
18 CORRECT?

19 A. YES.

20 Q. SALON DOES NOT FEAR PROSECUTION UNDER ANY OF  
21 THOSE STATUTES FOR ANY CONTENT ON ITS WEBSITE, CORRECT?

22 A. CAN I QUALIFY THAT?

23 THE COURT: YOU CAN ANSWER YES, YOU CAN  
24 ANSWER NO, YOU CAN ANSWER I CAN'T ANSWER YES OR NO AND  
25 STATE WHY.

1 THE WITNESS: I CAN'T ANSWER YES OR NO  
2 EXACTLY. I THINK MY COMFORT LEVEL HAS BEEN THAT THOSE  
3 LAWS EXIST, AND WE HAVE NOT BEEN PROSECUTED. THIS FEELS  
4 LIKE A DIFFERENT SORT OF LAW AND SO I AM MORE FEARFUL OF  
5 THIS.

6 THE COURT: WHAT DO YOU MEAN BY "THIS"?  
7 I'M SORRY.

8 THE WITNESS: COPA.

9 BY MR. TODD:

10 Q. AT YOUR DEPOSITION, WHEN I ASKED YOU ABOUT OTHER  
11 HARMFUL TO MINORS LAWS, YOU SAID YOU DON'T ACTIVELY FEAR  
12 PROSECUTION OF THEM, CORRECT?

13 A. I DON'T ACTIVELY FEAR PROSECUTION, THAT'S  
14 CORRECT.

15 Q. HAS SALON EVER BEEN THREATENED UNDER STATE LAW  
16 FOR ANY CONTENT ON ITS WEBSITE WITH PROSECUTION  
17 CONSTITUTION?

18 A. NO.

19 Q. HAVE YOU EVER BEEN THREATENED WITH PROSECUTION  
20 UNDER OBSCENITY LAWS FOR ANY CONTENT ON YOUR WEBSITE?

21 A. NO.

22 Q. MISS WALSH, YOU HAVE TESTIFIED THAT SALON'S  
23 MISSION IS TO BE THE MOST ACCURATE, WELL READ SOURCE OF  
24 NEWS AND CULTURAL REPORTING AND ANALYSIS ON THE WEB, IS  
25 THAT CORRECT?



1 A. THAT IS CORRECT.

2 Q. YOU SAID THAT SALON'S PRIMARY COMPETITORS ARE  
3 THE NEW YORK TIMES AND THE POLITICAL BLOGS, IS THAT  
4 CORRECT?

5 A. THAT IS CORRECT.

6 Q. NOW, YOU TESTIFIED EARLIER THAT SALON'S CURRENT  
7 BUSINESS MODEL IS EITHER A SITE PASS OR A MEMBERSHIP, IS  
8 THAT CORRECT?

9 A. YES.

10 Q. AND TO OBTAIN A MEMBERSHIP, SALON ASKS A READER  
11 FOR THEIR CREDIT CARD NUMBER, IS THAT CORRECT?

12 A. YES, THAT'S CORRECT.

13 Q. AND SALON HAD A SUBSCRIPTION ONLY MODEL FOR MORE  
14 THAN A YEAR, IS THAT CORRECT?

15 A. YES.

16 Q. DO YOU KNOW EXACTLY THE NUMBER OF MONTHS?

17 A. NO, I DON'T. IT WAS ALWAYS A LITTLE LOOSE. I  
18 HONESTLY WOULD NOT DESCRIBE IT AS SUBSCRIPTION ONLY  
19 BECAUSE YOU COULD READ OLDER CONTENT. THERE WERE  
20 CERTAIN PARTS OF THE SITE THAT WERE FREE SO PROBABLY  
21 UPWARDS OF 70 PERCENT OF NEW CONTENT WAS SUBSCRIPTION  
22 ONLY.

23 Q. BUT HOW MANY MONTHS DID YOU HAVE THE  
24 SUBSCRIPTION AND NOT THE SITE PASS MODEL?

25 A. ROUGHLY FROM OCTOBER 2001 TO JANUARY OF 2003.

1 Q. SO FOR MORE THAN 16 MONTHS, SALON TRIED TO GET  
2 BY ON THE SUBSCRIPTION MODEL?

3 A. I WOULD NOT ANSWER THAT WAY. I WOULD NOT SAY  
4 THAT. WE DID HAVE SIGNIFICANT -- MORE THAN HALF OF OUR  
5 TRAFFIC WAS GOING TO CONTENT THAT DID NOT REQUIRE THAT  
6 YOU SUBSCRIBE, AND WE WERE Eeking BY ON ADVERTISING TO  
7 THOSE PAGES, BUT IT WAS NOT SUBSCRIPTION ONLY.

8 Q. AT YOUR DEPOSITION, YOU TESTIFIED THAT THE  
9 REASON YOU TRIED THE SUBSCRIPTION MODEL WAS THAT YOU  
10 NEEDED TO MONETIZE YOUR READERS, IS THAT CORRECT?

11 A. YES.

12 Q. AND HOW MUCH REVENUE DO YOU GENERATE FROM YOUR  
13 PREMIUM MEMBERS?

14 A. IT WAS ABOUT -- IT WAS A HIGH OF OVER 2 MILLION,  
15 1.4, AND I BELIEVE IT IS NOW DOWN TO 1.4, 1.5 MILLION A  
16 YEAR.

17 Q. WHAT PERCENT OF THAT IS OF YOUR REVENUE?

18 A. RIGHT NOW, THIS YEAR IT WILL PROBABLY BE LESS  
19 THAN A QUARTER, CERTAINLY LESS THAN A QUARTER.

20 Q. SO A QUARTER OF YOUR REVENUES STILL COMES FROM  
21 THE PREMIUM MEMBERS IF THEY GIVE A CREDIT CARD NUMBER?

22 A. LESS THAN A QUARTER.

23 Q. AND DURING THE PREMIUM -- DURING THE SUBSCRIBER  
24 BUSINESS MODEL, YOU DID PUT VARIOUS PARTS OF YOUR SITE  
25 IN THE PREMIUM AREA, IS THAT CORRECT?

- 1 A. THAT IS CORRECT.
- 2 Q. AND SALON HAS ALSO OCCASIONALLY PUT CONTENT  
3 BEHIND A WARNING SCREEN, IS THAT CORRECT?
- 4 A. THAT'S CORRECT.
- 5 Q. AND YOU HAVE TESTIFIED THAT THE REASON YOU'VE  
6 PUT CERTAIN MATERIAL BEHIND A WARNING SCREEN IS BECAUSE  
7 YOU HAD DETERMINED THAT IT WAS SO DISTURBING OR BEYOND  
8 THE NORM THAT READERS WERE ENTITLED TO SOME SORT OF  
9 WARNING, IS THAT CORRECT?
- 10 A. THAT IS CORRECT.
- 11 Q. NOW, YOU HAVE TESTIFIED THAT YOU ALSO HAVE THE  
12 SITE PASS MODEL CURRENTLY, IS THAT CORRECT?
- 13 A. YES, THAT'S CORRECT.
- 14 Q. AND YOU HAVE TESTIFIED THAT AT LEAST AT THE TIME  
15 OF YOUR DEPOSITION, ABOUT 70,000 PEOPLE A DAY OBTAINED A  
16 SITE PASS, IS THAT CORRECT?
- 17 A. THAT'S CORRECT.
- 18 Q. SO ABOUT 60,000 MEMBERS TO YOUR PREMIUM AREA AND  
19 ABOUT 70,000 GET THE SITE PASS?
- 20 A. THAT'S -- YES, THAT'S CORRECT. IT DOES CHANGE  
21 FROM DAY-TO-DAY BUT --
- 22 Q. YOU HAVE TESTIFIED THAT YOU HAVE A VERY LOYAL  
23 LEADERSHIP, IS THAT CORRECT?
- 24 A. THAT IS CORRECT.
- 25 Q. SO THEY ARE WILLING TO EITHER GIVE THEIR CREDIT

1 CARD NUMBER OR GO THROUGH THE SITE PASS BARRIER, IS THAT  
2 CORRECT?

3 A. THOSE READERS WHO DO THAT, YES, THEY ARE  
4 WILLING.

5 Q. OKAY. YOU HAVE ALSO SAID THAT 40 TO 90 PERCENT  
6 OF SALON'S VISITORS DON'T GET THE SITE PASS, IS THAT  
7 CORRECT?

8 A. YES.

9 Q. SO BY USING YOUR SITE PASS SUBSCRIPTION MODEL,  
10 YOU'VE MADE A BUSINESS DECISION TO LIVE WITH THE LOSS OF  
11 THOSE VIEWERS, IS THAT CORRECT?

12 A. THAT IS CORRECT.

13 Q. NOW, YOU SAID THAT YOUR ADVERTISERS SEEK OPINION  
14 LEADERS, IS THAT CORRECT?

15 A. YES.

16 Q. YOU SEE THAT THE SITE PASS IS THE MAJORITY OF  
17 YOUR ADVERTISING REVENUE, IS THAT CORRECT?

18 A. YES, IT IS PROBABLY CORRECT. IT'S A COMPONENT.  
19 EVERY AD-BUY CONTAINS SOME ELEMENT OF SITE PASS. THERE  
20 ARE OTHER COMPONENTS TO IT.

21 Q. THE NEW YORK TIMES IS ONE OF YOUR BIGGEST  
22 ADVERTISERS, IS THAT CORRECT?

23 A. THAT PROBABLY WAS CORRECT WHEN YOU DEPOSED ME.  
24 THEY ARE STILL THERE, BUT I THINK THERE ARE A COUPLE OF  
25 OTHERS THAT HAVE TAKEN THE LEAD.

- 1 Q. WHO ARE THE OTHER LARGE ADVERTISERS?
- 2 A. INFINITY, AMERICAN EXPRESS, SONY, MARRIOTT.
- 3 Q. YOU HAVE NEVER RUN AN AD FOR A COMPANY LIKE
- 4 HUSTLER.COM, IS THAT CORRECT?
- 5 A. TO MY KNOWLEDGE, THAT'S CORRECT.
- 6 Q. AND YOU TESTIFIED EARLIER THAT SALON HAS A WAY
- 7 OF TRACKING YOUR FOREIGN VERSUS YOUR U.S. VIEWERS, IS
- 8 THAT CORRECT?
- 9 A. YES.
- 10 Q. AND YOU TESTIFIED BACK AT YOUR DEPOSITION THAT
- 11 SOME OF YOUR ADVERTISERS WOULD BE INTERESTED IN
- 12 TARGETING THEIR ADS TO SPECIFIC GEOGRAPHIC AREAS WITHIN
- 13 THE U.S., IS THAT CORRECT?
- 14 A. THAT IS CORRECT.
- 15 Q. SO KAISER PERMANENTE YOU MENTIONED AT THE
- 16 DEPOSITION, FOR EXAMPLE, WOULD BE INTERESTED IN
- 17 TARGETING ONLY CALIFORNIA READERS, IS THAT CORRECT?
- 18 A. YES.
- 19 Q. YOU TESTIFIED THAT BECAUSE YOU ARE ALWAYS
- 20 INTERESTED IN HAVING MORE ADVERTISING REVENUE THAT YOU
- 21 WOULD BE INTERESTED IN EXPLORING A WAY TO LIMIT YOUR
- 22 ADVERTISING TO CERTAIN GEOGRAPHIC AREAS?
- 23 A. YES.
- 24 Q. CAN YOU PLEASE TURN TO PLAINTIFFS' EXHIBIT 39,
- 25 PAGE 119 TO 135?

1 A. YES.

2 Q. THESE ARE THE ABU GHRAIB PHOTOS, IS THAT  
3 CORRECT?

4 A. YES, IT IS.

5 Q. THE WEEK I TOOK YOUR DEPOSITION IN NEW YORK ON  
6 FEBRUARY 17TH YOU HAD JUST BEEN INTERVIEWED ON A NUMBER  
7 OF NEWS PROGRAMS ABOUT THESE PHOTOS, IS THAT CORRECT?

8 A. THAT IS CORRECT.

9 Q. AND THESE PHOTOS GOT A LOT OF MEDIA ATTENTION,  
10 IS THAT CORRECT?

11 A. YES.

12 Q. WHY DO YOU THINK THEY GOT SO MUCH MEDIA  
13 ATTENTION?

14 A. ABU GHRAIB WAS AN ENORMOUS NEWS STORY GENERALLY.  
15 THE GOVERNMENT HAD FOUGHT THE RELEASE OF THESE  
16 ADDITIONAL PHOTOS AND WAS ALLEGING THAT HARM WOULD  
17 BEFALL OUR SOLDIERS AND OTHERS IF THEY WERE RELEASED.  
18 AND THERE WERE SOME ADDITIONAL IMAGES THAT HAD NOT BEEN  
19 SEEN BEFORE.

20 Q. AND YOU TESTIFIED IT WAS IMPORTANT THAT PEOPLE  
21 SEE THESE IMAGES, IS THAT CORRECT?

22 A. YES.

23 Q. WHY IS IT IMPORTANT?

24 A. BECAUSE I THINK MERE DESCRIPTION DOES NOT DO  
25 THEM JUSTICE. I THINK SEEING THE LEVEL OF HUMILIATION

1 AND THE LEVEL OF CRUELTY IS IMPORTANT.

2 Q. AND SO THIS IS HUMILIATION AND CRUELTY THAT WAS  
3 CAUSED BY U.S. SOLDIERS, IS THAT CORRECT?

4 A. THAT IS CORRECT.

5 Q. AND YOU STATED THAT YOU PUT THESE BEHIND A  
6 WARNING SCREEN, IS THAT CORRECT?

7 A. THESE 17 PHOTOS, YES, THAT'S CORRECT.

8 Q. YOU TESTIFIED THAT YOU FEAR PROSECUTION UNDER  
9 COPA FOR THESE PHOTOGRAPHS, IS THAT CORRECT?

10 A. THAT'S CORRECT.

11 Q. SO YOU THINK THAT THESE DON'T HAVE SERIOUS  
12 VALUE?

13 A. I DIDN'T SAY THAT.

14 Q. WAS SALON'S INTENT IN PUBLISHING THESE PHOTOS TO  
15 PANDER TO THE PRURIENT INTEREST?

16 A. CERTAINLY THAT WAS NOT OUR INTENT.

17 Q. WAS SALON'S INTENT IN PUBLISHING THESE PHOTOS  
18 THAT THEY BE PATENTLY OFFENSIVE WITH RESPECT TO ADULTS?

19 A. NO. WE ASSUMED THAT THEY ARE OFFENSIVE, BUT WE  
20 DID NOT PUBLISH THEM TO OFFEND.

21 Q. AND DID YOU PUBLISH THEM TO OFFEND MINORS?

22 A. NO, WE DID NOT PUBLISH THEM TO OFFEND MINORS.

23 Q. COULD YOU TURN TO PAGE 64 THROUGH 73 OF YOUR  
24 SAME EXHIBIT, 39.

25 A. YES.

1 Q. THIS IS THE ARTICLE, RECTAL ROMANCE, IS THAT  
2 CORRECT?

3 A. THAT IS CORRECT.

4 Q. WE TALKED ABOUT THIS ARTICLE DURING YOUR  
5 DEPOSITION, IS THAT CORRECT?

6 A. YES, WE DID.

7 Q. AND YOU TESTIFIED THAT THIS WAS AN ARTICLE THAT  
8 YOU IDENTIFIED IN THE AMENDED COMPLAINT IN THIS LAWSUIT,  
9 IS THAT CORRECT?

10 A. YES.

11 Q. YOU TESTIFIED THAT YOU RAN THIS ARTICLE BECAUSE  
12 IT WAS A WIDELY REVIEWED BOOK BY A SERIOUS WRITER, IS  
13 THAT CORRECT?

14 A. YES.

15 Q. YOU TESTIFIED THAT THIS WAS A SERIOUS PIECE OF  
16 JOURNALISM, IS THAT CORRECT?

17 A. THAT IS CORRECT.

18 Q. YOU TESTIFIED THAT IT WAS NOT DESIGNED TO APPEAL  
19 TO THE PRURIENT INTEREST, THE ARTICLE, IS THAT CORRECT?

20 A. YES, THAT'S CORRECT.

21 Q. CAN YOU TURN TO PAGE -- I'M SORRY.

22 YOU TESTIFIED THAT YOU DID NOT FEEL THAT  
23 THIS ARTICLE ROSE TO THE LEVEL OF BEING SO DISTURBING  
24 THAT YOU NEEDED TO PUT IT BEHIND A WARNING SCREEN, IS  
25 THAT CORRECT?



1 A. THAT'S CORRECT.

2 Q. COULD YOU TURN TO -- I'M GOING TO SHOW YOU  
3 ACTUALLY WHAT HAS BEEN MARKED AS DEFENDANT'S EXHIBIT  
4 294. THIS IS SALON'S RESPONSE TO DEFENDANT'S  
5 INTERROGATORIES, IS THAT CORRECT?

6 A. YES, THAT'S CORRECT.

7 Q. AND I'M GOING TO ASK MR. BYRDSONG TO TURN TO  
8 PAGE 11.

9 THIS IS INTERROGATORY 13?

10 A. YES.

11 Q. WE ASKED FOR A REPRESENTATIVE SAMPLE OF WEB  
12 PAGES ABOUT WHICH SALON FEARS PROSECUTION, AND ON PAGE  
13 11 AND 12, SALON PROVIDED THE WEBSITE ADDRESSES TO SEVEN  
14 OF ITS INDICES, IS THAT CORRECT?

15 A. I SEE SEVEN NOW.

16 THE COURT: WHAT PAGE IS THAT?

17 MR. TODD: 11 AND 12, SIR.

18 THE COURT: RESPONSES TO INTERROGATORY  
19 NUMBER 13.

20 MR. TODD: YES.

21 THE COURT: THANK YOU.

22 BY MR. TODD:

23 Q. ONE OF THESE INDICES WAS SEX, IS THAT CORRECT?

24 A. YES.

25 Q. WE WILL TAKE THAT OFF THE SCREEN. WE WILL COME

1 BACK TO IT IN A MINUTE, IF WE NEED TO.

2 A. OKAY.

3 Q. COULD WE TURN -- - OR COULD I HAVE MR. BYRDSONG  
4 PUT ON THE SCREEN WHAT HAS BEEN MARKED AS DEFENDANT'S  
5 EXHIBIT 164? THIS IS AN ARTICLE ENTITLED, SOUTH KOREAN  
6 WOMEN CAN'T GET NO SATISFACTION, IS THAT CORRECT?

7 A. YES.

8 Q. AND THIS WAS AN ARTICLE THAT WE DISCUSSED AT THE  
9 DEPOSITION, IS THAT CORRECT?

10 A. RIGHT.

11 Q. AND THE SECOND SENTENCE OF THIS ARTICLE STATES:  
12 REUTERS TODAY REPORTED ON A MULTI-NATIONAL SURVEY OF  
13 MARRIED COUPLES' SEXUAL SATISFACTION, IS THAT CORRECT?

14 A. YES.

15 Q. AND THE NEXT SENTENCE STATES THAT THE SURVEY WAS  
16 CONDUCTED BY ELI LILY, IS THAT CORRECT?

17 A. THAT IS CORRECT.

18 Q. AND I DON'T KNOW IF YOU CAN SEE IT ON THAT PAGE  
19 THERE, BUT AT THE TOP OF THE PAGE IS THE URL. DO YOU  
20 SEE THAT? DOES IT SHOW ON THIS?

21 A. I AM NOT SEEING THE URL. MAYBE AT THE BOTTOM.  
22 IT'S VERY BLURRY AND --

23 Q. I WILL JUST ASK, DO YOU RECALL THAT AT THE TIME  
24 OF THE DEPOSITION, YOU TESTIFIED THAT THIS WAS AN  
25 ARTICLE THAT APPEARED IN YOUR INDEX SEX?

1 A. IT DID. I REMEMBER THAT. I CAN'T SEE IT, BUT I  
2 REMEMBER US CONVERSING ABOUT IT.

3 Q. SURE. AT THE DEPOS, YOU SAID THAT SALON FEARED  
4 PROSECUTION ABOUT THIS ARTICLE, IS THAT CORRECT?

5 A. I DON'T THINK I SAID THAT. I MEAN,  
6 THEORETICALLY, THIS IS ONE OF THE TAMER ARTICLES IN OUR  
7 SEX DIRECTORY.

8 Q. THAT IS RIGHT. I BELIEVE, YOU ACTUALLY -- TO  
9 USE YOUR WORDS -- SAID YOU WOULD GIVE IT A FOUR OUT OF  
10 TEN ON FEAR OF PROSECUTION, IS THAT CORRECT?

11 A. I BELIEVE I SAID THAT, YES.

12 Q. THAT IS NOT A ZERO OR A ONE?

13 A. NO, IT IS NOT ZERO. I MIGHT DIAL IT BACK DOWN  
14 TO A TWO NOW THAT I HAVE SEEN EVERYTHING THAT WE ARE  
15 TALKING ABOUT HERE.

16 Q. DID SALON DESIGN THIS STORY TO APPEAL TO THE  
17 PRURIENT INTEREST?

18 A. NO.

19 Q. DID IT INTEND IT TO BE PATENTLY OFFENSIVE?

20 A. NO.

21 Q. DO YOU THINK THE ARTICLE DISCUSSES IMPORTANT --  
22 SOMETHING THAT IS A VALUE TO SOCIETY?

23 A. YES, I DO.

24 Q. BUT THIS WAS AN ARTICLE THAT WAS IN THE INDICES  
25 THAT YOU GAVE THE GOVERNMENT AS SOMETHING ABOUT WHAT YOU

1 FEAR PROSECUTION?

2 A. RIGHT. BECAUSE THERE WERE MANY OTHER THINGS IN  
3 THERE THAT ARE MORE EXPLICIT AND PROBABLY A LITTLE BIT  
4 MORE REASON TO WORRY.

5 Q. BUT YOU DIDN'T GIVE ANY OF THOSE TO US. THE ONE  
6 YOU IDENTIFIED WAS THE INDICES. YOU HAVE TOLD THE  
7 GOVERNMENT TO GO FIND IT, IS THAT CORRECT?

8 A. YES. THE WAY YOU PUT IT, IT SOUNDS RUDER THAN  
9 WE INTENDED IT, BUT THAT IS TECHNICALLY CORRECT.

10 Q. WELL, TO TRY -- TO SOUND LESS RUDE, WE ENJOYED  
11 READING A LOT OF ARTICLES --

12 A. THANK YOU. THANK YOU VERY MUCH.

13 Q. -- IN THOSE INDICES.

14 COULD I HAVE MR. BYRDSONG PUT DEFENDANT'S  
15 EXHIBIT 160 UP ON THE SCREEN.

16 THIS IS A COMPLETE VERSION NOW OF AN  
17 ARTICLE ENTITLED, GO OUT AND GET A PIECE, SON.

18 I BELIEVE AT THE DEPOSITION, WE ONLY HAD  
19 THE FIRST PAGE OF THIS ARTICLE.

20 A. UH-HUH.

21 Q. NOW, AT THE DEPOSITION, YOU TESTIFIED THAT  
22 SEXUALITY WAS ANOTHER INDEX IDENTIFIED IN SALON'S  
23 RESPONSE TO INTERROGATORY 13, IS THAT CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND THIS IS AN ARTICLE ABOUT A PHOTOGRAPHER

1 CATCHING A SEXUAL ASSAULT ON FILM AT MARDI GRAS, IS THAT  
2 CORRECT?

3 A. YES, THAT'S CORRECT.

4 Q. THE ARTICLE TALKS ABOUT SEXUAL ASSAULT IS ABOUT  
5 POWER, NOT SEX, IS THAT CORRECT?

6 A. YES.

7 Q. AND ABOUT HOW IT WAS AN ACT OF VIOLENCE, IS THAT  
8 CORRECT?

9 A. YES.

10 Q. NOW, AT THE DEPOSITION, YOU TESTIFIED THAT YOU  
11 FEARED PROSECUTION ABOUT THIS ARTICLE, IS THAT CORRECT?

12 A. CONCEIVABLY.

13 Q. DID SALON DESIGN THIS STORY TO APPEAL TO THE  
14 PRURIENT INTEREST?

15 A. NO.

16 Q. DID SALON INTEND IT TO BE PATENTLY OFFENSIVE?

17 A. NO.

18 Q. COULD I DIRECT YOUR ATTENTION TO WHAT HAS BEEN  
19 MARKED -- I'M SORRY, HAVE MR. BYRDSOON PUT ON WHAT HAS  
20 BEEN MARKED AS DEFENDANT'S EXHIBIT 161?

21 THIS IS AN ARTICLE ENTITLED MIKE  
22 BLOOMBERG'S COMING OUT STORY?

23 A. YES.

24 Q. THIS WAS ANOTHER ARTICLE THAT WE DISCUSSED IN  
25 THE DEPOSITION, CORRECT?

1 A. YES.

2 Q. AT THE DEPOSITION, YOU TESTIFIED THAT LESBIAN  
3 WAS ANOTHER INDEX IDENTIFIED IN SALON'S RESPONSE TO  
4 INTERROGATORY 13, IS THAT CORRECT?

5 A. YES.

6 Q. AND YOU TESTIFIED THAT THIS ARTICLE CAME FROM  
7 THAT INDEX, IS THAT CORRECT?

8 A. YES.

9 Q. AND THIS IS AN ARTICLE ABOUT MAYOR BLOOMBERG  
10 BEING MADE AN HONORARY LESBIAN BY A FORMER CITY  
11 COUNCILWOMAN, IS THAT CORRECT?

12 A. YES, THAT'S CORRECT.

13 Q. AND YOU TESTIFIED THAT YOU FEAR PROSECUTION  
14 ABOUT THIS ARTICLE, IS THAT CORRECT?

15 A. AGAIN, IT WAS LOWER ON THE SCALE, BUT  
16 THEORETICALLY.

17 Q. SALON DID NOT DESIGN THIS STORY TO APPEAL TO THE  
18 PRURIENT INTEREST, DID IT?

19 A. NO.

20 Q. AND IT IN NO WAY DEPICTS OR DESCRIBES GENITALIA,  
21 SEXUAL EXPLICIT CONDUCT OR THE POST-PUBESCENT FEMALE  
22 BREAST, IS THAT CORRECT?

23 A. NO. I MEAN, YES, THAT IS CORRECT.

24 Q. COULD I DIRECT YOUR ATTENTION TO DEFENDANT'S  
25 EXHIBIT 163? THIS IS AN ARTICLE ENTITLED, ROME'S LATEST

1 WITCH HUNT.

2 THIS IS ANOTHER ARTICLE THAT WE DISCUSSED  
3 AT THE DEPOSITION, IS THAT CORRECT?

4 A. YES.

5 Q. AT THE DEPOSITION YOU TESTIFIED THAT  
6 HOMOSEXUALITY WAS ANOTHER INDEX IDENTIFIED IN SALON'S  
7 RESPONSE TO INTERROGATORY 13, IS THAT CORRECT?

8 A. YES.

9 Q. AND YOU TESTIFIED THAT THIS ARTICLE CAME FROM  
10 THAT INDEX, IS THAT CORRECT?

11 A. YES.

12 Q. AND NOW, THIS IS AN ARTICLE ABOUT THE VATICAN'S  
13 GAY PRIEST POLICY IN THE CATHOLIC CHURCH, IS THAT  
14 CORRECT?

15 A. YES, IT IS.

16 Q. AND YOU TESTIFIED THAT YOU FEAR PROSECUTION  
17 ABOUT THIS ARTICLE, IS THAT CORRECT?

18 A. VERY LOW ON THE SCALE, BUT CONCEIVABLY.

19 Q. TO USE YOUR 1 TO 10 SCALE, DID YOU NOT GIVE IT A  
20 ZERO?

21 A. I DON'T REMEMBER WHAT I GAVE IT.

22 Q. I THINK THAT YOU USED THAT -- YOU BASICALLY  
23 INDICATED THE SAME FEAR OF PROSECUTION FOR ALL OF THESE,  
24 RIGHT, FOUR OUT OF TEN?

25 A. I HONESTLY REALLY DON'T REMEMBER SAYING FOUR OUT

1 OF 10 FOR ALL OF THEM, BUT IF YOU HAVE IT IN FRONT OF  
2 YOU THAT I DID.

3 Q. THIS ARTICLE DOES NOT DEPICT OR DESCRIBE  
4 SEXUALLY EXPLICIT CONDUCT, DOES IT?

5 A. NO, I DON'T BELIEVE IT DOES.

6 Q. IT DOES NOT DEPICT OR DESCRIBE THE  
7 POST-PUBESCENT FEMALE BREAST?

8 A. NO, IT DOESN'T.

9 Q. AND SALON DID NOT PUBLISH THIS ARTICLE TO APPEAL  
10 TO THE PRURIENT INTEREST, IS THAT CORRECT?

11 A. THAT IS CORRECT.

12 Q. COULD YOU TURN TO THE SCREEN? I WILL SHOW YOU  
13 WHAT HAS BEEN MARKED AS DEFENDANT'S EXHIBIT 165.

14 A. YES.

15 Q. THIS IS AN ARTICLE ENTITLED THE VIRGINITY HOAX?

16 A. YES.

17 Q. THIS WAS ANOTHER ARTICLE THAT WE DISCUSSED IN  
18 THE DEPOSITION, IS THAT CORRECT?

19 A. I THINK SO.

20 Q. AT YOUR DEPOSITION YOU TESTIFIED THAT ORAL SEX  
21 WAS ANOTHER INDEX IDENTIFIED IN SALON'S RESPONSE TO  
22 INTERROGATORY NUMBER 13, IS THAT CORRECT?

23 A. YES.

24 Q. YOU TESTIFIED THAT THIS ARTICLE CAME FROM THAT  
25 INDEX, IS THAT CORRECT?



1 A. YES.

2 Q. NOW, THIS ARTICLE IS ABOUT A STUDY OF  
3 ADOLESCENTS WHO TOOK A VIRGINITY PLEDGE, IS THAT  
4 CORRECT?

5 A. YES.

6 Q. AND YOU TESTIFIED THAT SALON FEARS PROSECUTION  
7 ABOUT THIS ARTICLE?

8 A. THEORETICALLY, SOMEONE COULD FIND IT OFFENSIVE,  
9 FIND SOMETHING IN IT OFFENSIVE, AND THEORETICALLY TRY TO  
10 PROSECUTE US FOR IT. IT'S NOT SOMETHING -- THIS IS NOT  
11 ONE OF THE ARTICLES THAT I WOULD STAY AWAKE NIGHTS  
12 WORRYING ABOUT.

13 Q. RIGHT.

14 A. BUT --

15 Q. NOW, AT THE DEPOSITION, I DID ASK YOU, WHEN WE  
16 WENT THROUGH THESE ARTICLES, IF THERE WERE OTHER  
17 ARTICLES THAT YOU SPECIFICALLY WOULD LIKE TO DRAW THE  
18 GOVERNMENT'S ATTENTION TO, THAT YOU FEARED PROSECUTION  
19 ABOUT. DO YOU RECALL THAT?

20 A. YES.

21 Q. AND DO YOU RECALL YOUR ANSWER?

22 A. I DON'T REALLY RECALL MY ANSWER.

23 Q. YOU TESTIFIED NO, THERE ARE NO OTHER ARTICLES  
24 THAT YOU WOULD LIKE TO DIRECT THE GOVERNMENT'S ATTENTION  
25 TO. DO YOU RECALL THAT?

1 A. VAGUELY, YEAH, BUT...

2 THE COURT: READ IT OUT LOUD AND READ THE  
3 PAGE NUMBER.

4 MR. TODD: SURE.

5 BY MR. TODD:

6 Q. WE CAN ACTUALLY PUT UP PAGE 130 OF YOUR  
7 DEPOSITION, BEGINNING AT LINE 17. I THINK THAT IS WHERE  
8 I ASKED YOU, I'M JUST TRYING TO UNDERSTAND, BEGINNING ON  
9 LINE -- ACTUALLY JUMPING AHEAD TO 23, I SAID, I'M JUST  
10 ASKING YOU YES OR NO -- NO, I'M SORRY.

11 THE COURT: SPEAK UP, PLEASE, SO THE  
12 COURT REPORTER CAN HEAR YOU.

13 MR. TODD: I HAD THE WRONG PAGE NUMBER,  
14 YOUR HONOR. LET ME LOOK THROUGH THIS SOME MORE. I HAVE  
15 IT MARKED ON MY OWN COPY.

16 THE COURT'S INDULGENCE, JUST A MOMENT.

17 (PAUSE.)

18 MR. TODD: IF WE COULD GO TO PAGE 140,  
19 LINE 25, AND CONTINUING ON THE NEXT PAGE. SORRY. I HAD  
20 THE WRONG ARTICLE.

21 THE COURT: ALL I WAS SAYING, IF YOU WANT  
22 HER TO AGREE WITH YOU WITH SOME PRECISE THING IN THE  
23 DEPOSITION --

24 MR. TODD: YES, YOUR HONOR.

25 THE COURT: IT IS FAIR TO BRING IT TO HER

1 ATTENTION, PAGE NUMBER, AND READ IT TO HER.

2 BY MR. TODD:

3 Q. I ASKED YOU; ARE THERE ANY OTHER ARTICLES THAT  
4 YOU'D SPECIFICALLY LIKE TO DRAW THE GOVERNMENT'S  
5 ATTENTION?

6 THE COURT: WHAT PAGE AND LINE NUMBER ARE  
7 YOU TALKING ABOUT?

8 MR. TODD: 140, LINE 25, YOUR HONOR.

9 THANK YOU.

10 BY MR. TODD:

11 Q. BEGINNING ON LINE 25, AND CONTINUING ON THE NEXT  
12 PAGE, I ASKED: ARE THERE ANY OTHER ARTICLES THAT YOU  
13 WOULD SPECIFICALLY LIKE TO DRAW THE GOVERNMENT'S  
14 ATTENTION TO, THAT YOU FEAR, OR CONTENT ON YOUR WEBSITE  
15 THAT YOU FEAR PROSECUTION ABOUT?

16 YOU ANSWERED: NO.

17 A. I ANSWERED NO, WHY COURT TROUBLE, WHICH WAS SORT  
18 OF FLIPPANT. I MEAN, IF YOU READ THIS WHOLE EXCHANGE,  
19 WE COULD REPLAY IT HERE IN THE COURTROOM TODAY.

20 THE COURT: ALL YOU HAVE TO DO IS ANSWER  
21 HIS QUESTION YES OR NO, OR YOU CAN'T ANSWER IT YES OR  
22 NO.

23 THE WITNESS: I CAN'T ANSWER IT YES OR  
24 NO. IT WAS VERY COMPLICATED.

25 BY MR. TODD:

1 Q. WOULD YOU LIKE TO EXPLAIN IT TO US TODAY?

2 A. YEAH. WE PROVIDED YOU WITH DIRECTORY PAGES THAT  
3 PULLED TOGETHER MANY DIFFERENT TYPES OF SEXUALLY  
4 PROVOCATIVE CONTENT, SOME OF WHICH WERE QUITE EXPLICIT  
5 AS WE SAW THIS MORNING, AND OTHERS OF WHICH HAD CONTENT  
6 WITH SEXUAL THEME, SEXUAL NATURE, WHICH WOULD PROBABLY  
7 PUT US LESS AT RISK. AND SO YOU AND I HAD AN  
8 ENTERTAINING BACK AND FORTH ABOUT WHY YOU CHOSE CERTAIN  
9 THINGS. AND THOSE THINGS DID, IN THE CONTEXT OF OTHER  
10 MORE EXPLICIT MATERIAL, LOOK RELATIVELY HARMLESS, AND  
11 MAKE ME LOOK LIKE I WAS BEING KIND OF A CHICKEN LITTLE.  
12 SO THESE ARE NOT -- THESE THINGS THAT YOU'VE READ ARE  
13 NOT THE THINGS THAT I THINK ARE THE MOST  
14 ENVELOPE-PUSHING STORIES THAT WE PUBLISHED ON SALON.  
15 BY MR. TODD:

16 Q. BUT YOU DID NOT PROVIDE ANY OF THOSE EXPLICIT  
17 STORIES TO US?

18 A. WELL, WE HAVE SUBSEQUENTLY. AND THERE WERE  
19 OTHER THINGS THAT YOU COULD HAVE CHOSEN, I MEAN, IN THE  
20 DIRECTORIES.

21 Q. THANK YOU.

22 NOW, EARLIER TODAY, YOU WERE ASKED IF YOU  
23 UNDERSTOOD SOME OF THE TERMS IN THE COPA STATUTE. DO  
24 YOU RECALL THAT?

25 A. YES.

1 Q. AND YOU TESTIFIED THAT YOU WEREN'T FAMILIAR WITH  
2 THE TERM "PRURIENT"?

3 A. I DIDN'T TESTIFY THAT I WASN'T FAMILIAR WITH IT.  
4 I TESTIFIED THAT I WASN'T EXACTLY SURE OF ITS MEANING IN  
5 RELATION TO MINORS, WHAT MADE SOMETHING PRURIENT TO  
6 MINORS AS OPPOSED TO PRURIENT TO ADULTS.

7 Q. DO YOU UNDERSTAND WHAT PRURIENT TO ADULTS MEANS?

8 A. I THINK SO.

9 Q. OKAY. IN THE DEPOSITION, YOU USED THE TERM  
10 "PRURIENT" SEVERAL TIMES, IS THAT CORRECT?

11 A. I BELIEVE SO, YES.

12 MR. TODD: THANK YOU. IF I COULD HAVE A  
13 MOMENT TO CONFER, YOUR HONOR?

14 THE COURT: SURE.

15 (PAUSE.)

16 MR. TODD: THANK YOU FOR THE COURT'S  
17 INDULGENCE.

18 BY MR. TODD:

19 Q. MISS WALSH, YOU RECALL YOU TESTIFIED AT SOME  
20 LENGTH ABOUT USER-GENERATED CONTENT ON SALON, IS THAT  
21 CORRECT?

22 A. YES.

23 Q. AND YOU TESTIFIED THAT YOU HAVE, I BELIEVE, ONE  
24 OR TWO PEOPLE THAT REVIEW THAT CONTENT AS IT IS POSTED?

25 A. TABLE TALK, WE HAVE ROUGHLY ONE. AND THEN FOR

1       LETTERS, WE ROTATE THAT RESPONSIBILITY. SO THERE IS NO  
2       FULL-TIME PERSON RESPONSIBLE FOR IT, BUT IT PROBABLY  
3       ADDS UP TO MORE THAN A FULL-TIME PERSON.

4       Q.        UNTIL THAT PERSON REVIEWS THE CONTENT, SALON  
5       DOES NOT HAVE KNOWLEDGE OF WHAT IS IN ANY ONE OF THOSE  
6       POSTINGS, IS THAT CORRECT?

7       A.        THAT'S CORRECT.

8       Q.        OKAY. NOW, IF SOMEONE POSTED A DESCRIPTION OR A  
9       DEPICTION OF CHILD MOLESTATION, SALON WOULD CONSIDER  
10      TAKING THAT DOWN, IS THAT CORRECT?

11     A.        THAT IS CORRECT.

12     Q.        AND I BELIEVE YOU'VE ALSO TESTIFIED THAT IF  
13     THERE WAS SOME VERY DEGRADING PORNOGRAPHY, YOU WOULD  
14     TAKE THAT DOWN, IS THAT CORRECT?

15     A.        THAT'S CORRECT.

16     Q.        SO SALON DOES HAVE THE ABILITY TO TAKE DOWN THE  
17     USER-GENERATED CONTENT?

18     A.        AFTER-THE-FACT.

19     Q.        AFTER-THE-FACT, ONCE IT HAS GAINED KNOWLEDGE OF  
20     THE CONTENT OF THE MATERIAL?

21     A.        YES.

22                   MR. TODD: AT THIS TIME, YOUR HONOR, I  
23     WOULD LIKE TO MOVE THE EXHIBITS INTO EVIDENCE THAT WE  
24     DISCUSSED. I BELIEVE --

25                   THE COURT: OKAY.

1 MR. TODD: DEFENDANT'S EXHIBIT 294,  
2 DEFENDANT'S EXHIBIT 164, DEFENDANT'S EXHIBIT 160,  
3 DEFENDANT'S EXHIBIT 161, DEFENDANT'S EXHIBIT 163,  
4 DEFENDANT'S EXHIBIT 165.

5 THE COURT: ANY OBJECTION?

6 MR. FINE: NO OBJECTION, YOUR HONOR.

7 THE COURT: DEFENDANTS 294, 164, 160,  
8 161, 163 AND 165 ARE RECEIVED INTO EVIDENCE.

9 (DEFENDANT'S EXHIBITS 294, 164, 160, 161,  
10 163 AND 165 RECEIVED INTO EVIDENCE.)

11 MR. TODD: THANK YOU, YOUR HONOR. I HAVE  
12 NO MORE QUESTIONS FOR THIS WITNESS.

13 THANK YOU, MISS WALSH.

14 THE COURT: ANY REDIRECT?

15 MR. FINE: JUST ONE QUESTION, YOUR HONOR.

16 THE COURT: RARELY A LAWYER THAT SAYS ONE  
17 QUESTION. BE AWARE OF A JUDGE THAT SAYS THAT.

18 REDIRECT EXAMINATION

19 BY MR. FINE:

20 Q. DOES SALON HAVE KNOWLEDGE THAT ITS USERS -- TO  
21 MAKE SURE I TRY TO GET THIS IN ONE QUESTION, FOCUS YOU  
22 ON THE USER-GENERATED.

23 THE COURT: YOU CAN ASK MORE THAN ONE.  
24 WE KNOW THAT IS A FAILING, HUMAN FAILING.

25 BY MR. FINE:

1 Q. DOES SALON HAVE KNOWLEDGE THAT ITS USERS MAY  
2 POST SEXUALLY EXPLICIT MATERIAL IN THE USER-GENERATED  
3 SECTIONS OF THE WEBSITE?

4 A. YES.

5 MR. FINE: NO FURTHER QUESTIONS, YOUR  
6 HONOR.

7 THE COURT: YOU ARE EXCUSED FROM THE  
8 STAND. THANK YOU VERY MUCH.

9 MR. TODD: ONE RECROSS, YOUR HONOR.

10 THE COURT: I'M SORRY.

11 RECROSS EXAMINATION

12 BY MR. TODD:

13 Q. JUST TO CONFIRM. SALON DOES NOT HAVE KNOWLEDGE  
14 ABOUT THE CONTENT OF ANY PARTICULAR POSTING IN THE  
15 USER-GENERATED SECTION UNTIL IT REVIEWS IT, IS THAT  
16 CORRECT?

17 A. THAT IS CORRECT.

18 MR. TODD: THANK YOU, YOUR HONOR.

19 THANK YOU, MA'AM.

20 THE COURT: YOU ARE EXCUSED NOW, I THINK.

21 THE WITNESS: THANK YOU, YOUR HONOR.

22 (WITNESS EXCUSED.)

23 THE COURT: GOOD TIME TO RECESS NOW.

24 COURT IS IN RECESS FOR 10 MINUTES.

25 (RECESS TAKEN.)



1 THE COURT: PLAINTIFFS' NEXT WITNESS,  
2 PLEASE.

3 MR. FINE: PLAINTIFFS WOULD NOW LIKE TO  
4 CALL DR. LORRIE FAITH CRANOR TO THE STAND.

5 THE COURT: WATCH YOUR STEP WITH ALL THE  
6 WIRES. I HOPE IT IS NOT TOO BAD.

7 LORRIE FAITH CRANOR, PLAINTIFFS' WITNESS,  
8 SWORN.

9 MR. FINE: FOR THIS WITNESS, THERE ARE  
10 TWO BINDERS WITH THE EXHIBITS THAT THE WITNESS WILL BE  
11 REFERRING TO.

12 THE CLERK: STATE AND SPELL YOUR FULL  
13 NAME FOR THE RECORD.

14 THE WITNESS: LORRIE FAITH CRANOR,  
15 L-O-R-R-I-E, C-R-A-N-O-R.

16 MR. FINE: FOR THIS WITNESS, THERE ARE  
17 TWO BINDERS WITH THE EXHIBITS THAT THE WITNESS WILL BE  
18 REFERRING TO.

19 THE COURT: GOOD AFTERNOON.

20 THE WITNESS: GOOD AFTERNOON.

21 DIRECT EXAMINATION

22 BY MR. FINE:

23 Q. GOOD AFTERNOON, PROFESSOR CRANOR. CAN YOU TELL  
24 US WHERE YOU ARE EMPLOYED?

25 A. I'M CURRENTLY EMPLOYED AT CARNEGIE MELLON

1 UNIVERSITY.

2 Q. WHAT'S YOUR POSITION AT CARNEGIE MELLON?

3 A. I'M AN ASSOCIATE RESEARCH PROFESSOR IN THE  
4 SCHOOL OF COMPUTER SCIENCE.

5 Q. WHAT ARE YOUR PRIMARY AREAS OF FOCUS FOR YOUR  
6 TEACHING AND YOUR RESEARCH?

7 A. I DO RESEARCH ON USABLE PRIVACY AND SECURITY AS  
8 WELL AS ONLINE PRIVACY IN GENERAL, COMPUTERS AND SOCIETY  
9 AND POLICY ISSUES REGARDING THE INTERNET.

10 Q. DO YOU HAVE ANY OTHER APPOINTMENTS AT THE  
11 UNIVERSITY?

12 A. YES, I'M IN THE DEPARTMENT OF ENGINEERING AND  
13 PUBLIC POLICY. AND WITHIN THE SCHOOL OF COMPUTER  
14 SCIENCE, I'M IN THE INSTITUTE FOR SOFTWARE RESEARCH AS  
15 WELL AS THE HUMAN COMPUTER INTERACTION INSTITUTE.

16 Q. WHAT IS THE HUMAN COMPUTER INTERACTION  
17 INSTITUTE?

18 A. THAT IS A DEPARTMENT WHICH FOCUSES ON THE  
19 INTERACTION BETWEEN PEOPLE AND COMPUTERS. SO THAT  
20 INCLUDES USEABILITY ISSUES AND USER INTERFACES AND  
21 THINGS ALONG THOSE LINES.

22 Q. CAN YOU EXPLAIN, WHAT DO YOU MEAN BY USEABILITY?

23 A. USEABILITY REFERS TO THE EXPERIENCE THAT A USER  
24 WILL HAVE WITH THE COMPUTER AND HOW EASY IT IS FOR THEM  
25 TO USE THE COMPUTER TO COMPLETE THE TASKS THAT THEY ARE

1 TRYING TO USE IT FOR OR HARD.

2 THE COURT: YOU SAID HOW EASY?

3 THE WITNESS: HOW EASY OR HARD. YES. IN  
4 SOME CASES IT IS VERY HARD.

5 BY MR. FINE:

6 Q. AND ASIDE FROM YOUR TEACHING, WHAT OTHER ROLES  
7 DO YOU PLAY AT THE UNIVERSITY?

8 A. I PERFORM RESEARCH AND I DIRECT A LAB CALLED THE  
9 CMU USABLE PRIVACY AND SECURITY LABORATORY OR CUPS.

10 Q. AND CAN YOU TELL US -- I WILL TRY NOT TO GARBLE  
11 THESE WORDS. CAN YOU TELL US WHAT YOU DO AT THE CMU  
12 USABLE PRIVACY AND SECURITY LAB?

13 A. YES. I DIRECT THE LAB WHICH HAS ABOUT A DOZEN  
14 GRADUATE STUDENTS AND SOME OTHER FACULTY WORKING IN IT.  
15 OUR LAB LOOKS INTO USEABILITY ISSUES RELATED TO A  
16 VARIETY OF PRIVACY AND SECURITY-RELATED SOFTWARE. WE  
17 ACTUALLY HAVE A USER TESTING LABORATORY WHERE WE RUN  
18 STUDIES WHERE WE ACTUALLY BRING IN HUMANS TO USE VARIOUS  
19 COMPUTER TOOLS, AND WE OBSERVE THEM AND SEE HOW EASY OR  
20 HARD IT IS FOR THEM TO USE THE SOFTWARE.

21 Q. AND EXPLAIN, IF YOU CAN GIVE US A TINY BIT MORE  
22 DETAIL ABOUT THESE USEABILITY STUDIES THAT YOU CONDUCT.  
23 WHAT DO YOU DO IN THESE STUDIES?

24 A. WELL, EACH STUDY IS DIFFERENT. BUT TYPICALLY WE  
25 WILL HAVE SOME SOFTWARE --

1 THE COURT: THE LAWYER JUST PUT THEM  
2 ALTOGETHER AND YOU TOOK THEM APART. THAT IS FINE. PICK  
3 ONE BECAUSE HE DIDN'T PICK.

4 THE WITNESS: RIGHT. SO, TYPICALLY, WE  
5 WILL HAVE SOME SOFTWARE THAT WE WANT TO TEST, AND SO  
6 RIGHT NOW, WE ARE LOOKING AT A SEARCH ENGINE THAT  
7 PROVIDES PRIVACY INFORMATION. AND SO WE ARE DOING A  
8 STUDY WHERE PEOPLE COME INTO THE LABORATORY AND WE GIVE  
9 THEM SOME TASKS, WE ASK THEM TO SEARCH FOR SOME THINGS  
10 USING OUR SEARCH ENGINE, WE WATCH THEM DO THAT. WE SEE  
11 HOW LONG IT TAKES THEM TO DO THAT. WE SEE WHAT THEY DO.  
12 AND IN SOME CASES, YOU KNOW, WE ARE TIMING THEM. IN  
13 SOME CASES WE ARE SEEING HOW ACCURATELY THEY CAN  
14 COMPLETE THE TASK. WE ALSO GET THEIR COMMENTS AS THEY  
15 ARE DOING IT, THEN INTERVIEW THEM WHEN THEY ARE  
16 FINISHED. SO WE WANT TO SEE HOW FRUSTRATED WERE THEY  
17 WHILE THEY WERE COMPLETING THE TASK, DID THEY UNDERSTAND  
18 THE TASK, HOW ENJOYABLE AN EXPERIENCE WAS IT, THINGS  
19 ALONG THOSE LINES.

20 BY MR. FINE:

21 Q. HOW MANY OF THESE USEABILITY STUDIES HAVE YOU  
22 CONDUCTED IN THE PAST YEAR?

23 A. WE HAVE DONE ABOUT HALF A DOZEN IN THE PAST  
24 YEAR.

25 Q. AND WHAT OTHER EXPERIENCE HAVE YOU HAD STUDYING

1 USEABILITY ISSUES?

2 A. WELL, BESIDES OUR LABORATORY STUDIES, WE ALSO  
3 WILL DO SURVEYS OF USERS, AND WE WILL ALSO JUST LOOK AT  
4 THE SOFTWARE ITSELF. THERE IS A LOT THAT SOMEBODY WHO  
5 IS EXPERIENCED CAN LEARN JUST BY INSPECTING THE  
6 SOFTWARE, RUNNING IT THEMSELVES, AND LOOKING FOR THINGS  
7 THAT ARE KNOWN TO BE PROBLEMATIC. ALSO DOING TESTS OF  
8 THE SOFTWARE TO SEE HOW WELL IT PERFORMS.

9 Q. FOCUSING ON THE USER SURVEYS THAT YOU JUST  
10 MENTIONED, HOW MANY OF THESE USER SURVEYS HAVE YOU  
11 CONDUCTED?

12 A. I HAVE BEEN INVOLVED IN SEVERAL DOZEN SURVEYS.  
13 SOME OF THEM ARE SPECIFICALLY ON USEABILITY ISSUES AND  
14 SOME OF THEM ARE ON OTHER TOPICS.

15 Q. AND WHAT SORTS OF QUESTIONS DO YOU ASK TO TRY TO  
16 GET AT HOW USABLE A SOFTWARE IS?

17 A. SO SOMETIMES WE WILL ASK QUESTIONS ON WHAT IS  
18 KNOWN AS THE LIKERT, L-I-K-E-R-T SCALE, WHERE WE SAY ON  
19 A SCALE OF 1 TO 5 OR 1 TO 7 OR SOMETHING LIKE THAT, HOW  
20 EASY OR DIFFICULT WAS IT TO DO A PARTICULAR TASK. AND  
21 TYPICALLY WE WILL ASK THAT ABOUT SEVERAL DIFFERENT  
22 TASKS, RANGING FROM INSTALLING THE SOFTWARE IN THE FIRST  
23 PLACE TO SOME SPECIFIC TASKS THAT YOU WOULD NEED TO DO  
24 TO USE THE SOFTWARE. AND WE CAN USE THAT TO GAUGE WHICH  
25 WERE THE PARTS THAT PEOPLE FOUND DIFFICULT AND WHICH

1 WERE THE PARTS THAT PEOPLE FOUND EASY.

2 Q. JUST GENERALLY, WHAT SUBJECT MATTERS HAVE YOU  
3 BEEN CONDUCTING THESE USEABILITY -- BOTH THE USEABILITY  
4 SURVEYS AND USEABILITY STUDIES THAT YOU WERE DESCRIBING  
5 EARLIER?

6 A. MOSTLY ON PRIVACY AND SECURITY RELATED SOFTWARE.

7 Q. AND YOU ALSO MENTIONED YOU CONDUCTED SOME  
8 SOFTWARE TESTING. CAN YOU TELL US A LITTLE BIT ABOUT  
9 THAT TESTING.

10 A. RIGHT. SO WE HAVE DONE SOME TESTING OF  
11 SOFTWARE. MOST RECENTLY, WE DID A STUDY OF SOMETHING  
12 KNOWN AS AN ANTI-FISHING TOOL BAR. SO THIS IS SOFTWARE  
13 THAT HELPS PEOPLE AVOID FALLING FOR INTERNET SCAMS. AND  
14 SO THERE ARE A NUMBER OF DIFFERENT COMPANIES THAT MAKE  
15 THESE TOOLS. AND IT WASN'T CLEAR HOW WELL THEY ACTUALLY  
16 WORKED, SO WE OBTAINED SEVERAL OF THEM. AND WE GOT A  
17 LIST OF WEBSITES THAT PROPAGATE SCAMS AND THEN WE TESTED  
18 EACH TOOL BAR AGAINST EACH WEBSITE TO SEE HOW ACCURATE  
19 THE TOOL BARS WERE.

20 Q. PROFESSOR CRANOR, ARE YOU HERE TO GIVE AN  
21 OPINION ABOUT INTERNET FILTERING PRODUCTS?

22 A. YES, I AM.

23 Q. HAVE YOU REACHED AN OPINION?

24 A. YES.

25 Q. ARE YOU ALSO HERE TO GIVE AN OPINION ABOUT

1 NONFILTERING BASED TOOLS FOR PARENTS TO USE TO CONTROL  
2 ACCESS TO MATERIAL ON THE INTERNET?

3 A. YES.

4 Q. HAVE YOU REACHED AN OPINION?

5 A. YES.

6 Q. BEFORE WE GET TO THOSE OPINIONS --

7 THE COURT: YOU SAID IT WAS A NON WHAT,  
8 THE SECOND AREA?

9 MR. FINE: NONFILTERING BASED PARENTAL  
10 CONTROL TOOLS.

11 THE COURT: THANK YOU.

12 BY MR. FINE:

13 Q. BEFORE WE GET TO THOSE OPINIONS, I WANT TO ASK  
14 YOU A LITTLE BIT MORE ABOUT YOUR BACKGROUND, AND WHAT  
15 ENTITLES YOU TO GIVE THOSE EXPERT OPINIONS. I'M GOING  
16 TO NOW SHOW YOU WHAT HAS PREVIOUSLY BEEN MARKED AS  
17 PLAINTIFFS' EXHIBIT 1 AND ASK YOU TO TAKE A LOOK AT  
18 THAT. IT SHOULD APPEAR ON THE MONITOR, BUT IT WILL ALSO  
19 BE IN ONE OF THOSE BINDERS. PLAINTIFFS' EXHIBIT 1. DO  
20 YOU RECOGNIZE THIS DOCUMENT?

21 A. YES. IT IS MY RESUME.

22 Q. IS IT AN ACCURATE COPY OF YOUR RESUME?

23 A. YES. AS OF THE DATE THAT IT WAS TAKEN, WHICH  
24 WAS IN -- IT LOOKS LIKE MAY.

25 Q. AND HAVE YOU UPDATED -- STRIKE THAT.

1 I WANT TO NOW ASK YOU A LITTLE BIT TO  
2 GIVE US A BRIEF OVERVIEW OF YOUR EDUCATIONAL BACKGROUND.

3 A. OKAY. I RECEIVED AN UNDERGRADUATE DEGREE IN  
4 ENGINEERING AND PUBLIC POLICY AND THEN TWO MASTERS  
5 DEGREES, ONE IN TECHNOLOGY AND HUMAN AFFAIRS, THE OTHER  
6 ONE IN COMPUTER SCIENCE. AND THEN I ALSO RECEIVED A  
7 DOCTOR OF SCIENCE DEGREE IN ENGINEERING AND POLICY. ALL  
8 OF THESE WERE FROM WASHINGTON UNIVERSITY IN ST. LOUIS.

9 Q. WHEN DID YOU RECEIVE YOUR PH.D.?

10 A. D.SC. IN 1996.

11 Q. THANK YOU.

12 HAVE YOU BEEN EMPLOYED AT CARNEGIE MELLON  
13 SINCE RECEIVING YOUR D.SC.

14 A. NO. I WAS AT AT&T LABS FOR SEVEN YEARS BEFORE I  
15 CAME TO CARNEGIE MELLON.

16 Q. WHAT'S AT&T LABS?

17 A. AT&T LABS, MOST PEOPLE ARE MORE FAMILIAR WITH  
18 BELL LABS. IT IS WHAT IT USED TO BE CALLED. IN 1996  
19 PART OF IT -- PART OF THE COMPANY WENT TO LUCENT AND  
20 BECAME BELL LABS, THE OTHER PART STAYED WITH AT&T, AND  
21 BECAME AT&T LABS, I WAS WITH THE AT&T LAB SIDE. BUT  
22 BASICALLY IT'S THE RESEARCH ARM OF AT&T. AND IT DOES A  
23 LOT OF VERY FORWARD-LOOKING RESEARCH FOR THE COMPANY,  
24 AND IT'S WELL-KNOWN FOR HAVING SOME OF THE BEST THINKERS  
25 IN THE COMPANY AND FOR PUBLISHING IN VERY PRESTIGIOUS



1 PLACES, THE RESEARCH OF AT&T.

2 Q. AND WHAT SPECIFICALLY WERE YOU FOCUSING ON?

3 WHAT SUBJECT AREAS WERE YOU CONDUCTING RESEARCH ON?

4 A. MOST OF MY RESEARCH WAS IN SECURITY AND PRIVACY.

5 Q. AND CAN YOU EXPLAIN WHAT YOU MEAN A LITTLE BIT

6 BY SECURITY AND PRIVACY?

7 A. SO A LOT OF MY WORK WAS MORE SPECIFICALLY IN THE  
8 PRIVACY AREA. WE WERE LOOKING AT PRIVACY POLICIES. AND  
9 RIGHT NOW, MANY WEBSITES INCLUDE PRIVACY POLICIES, BUT  
10 MOST PEOPLE DON'T READ THEM BECAUSE THEY ARE VERY LONG  
11 AND FULL OF LEGALESE. WE DEVELOPED A COMPUTER STANDARD  
12 SO THAT YOU COULD HAVE YOUR WEB BROWSER READ A PRIVACY  
13 POLICY FOR YOU AND PROVIDE INFORMATION. SO I CHAIRED AN  
14 INTERNATIONAL WORKING GROUP THAT DEVELOPED THE STANDARD,  
15 AND THEN WE ALSO DEVELOPED SOFTWARE THAT COULD READ  
16 PRIVACY POLICIES USING THIS STANDARD.

17 Q. CAN YOU TELL US A LITTLE BIT ABOUT THE

18 INTERNATIONAL WORKING GROUP THAT YOU CHAIRED?

19 A. YES. SO THIS WAS A WORKING GROUP POSTED BY THE  
20 WORLDWIDE WEB CONSORTIUM WHICH MAKES ALL THE STANDARDS  
21 FOR THE WORLDWIDE WEB, AND THE WORKING GROUP WAS CALLED  
22 THE PLATFORM FOR PRIVACY PREFERENCES OR P3P. AND WE  
23 WORKED INITIALLY FOR ABOUT FIVE YEARS IN COMING UP WITH  
24 THIS STANDARD CALLED W3C RECOMMENDATION.

25 Q. AND YOU SAID YOU WORKED ON THIS FOR FIVE YEARS.

1       WHAT WERE YOU DOING DURING THOSE FIVE YEARS? TELL US A  
2       LITTLE BIT MORE IN DETAIL.

3       A.       SURE. SO THE WORKING GROUP HAD TO START WITH  
4       QUESTIONS LIKE, WELL, IF WE ARE GOING TO STANDARDIZE  
5       PRIVACY POLICIES IN A COMPUTER READABLE FORMAT, FIRST OF  
6       ALL, WHAT ARE THE FIELDS IN A PRIVACY POLICY? AND SO WE  
7       STARTED WITH DISCUSSIONS BETWEEN INDUSTRY GROUPS AS WELL  
8       AS CONSUMER GROUPS IN THE U.S., AS WELL AS OUTSIDE THE  
9       U.S. SO WE DEALT WITH DATA PROTECTION AUTHORITIES IN  
10      EUROPE TO FIND OUT WHAT SHOULD THERE BE IN A PRIVACY  
11      POLICY. AND THEN ONCE WE HAD A LIST OF FIELDS, WE ALSO  
12      HAD TO FIGURE OUT THE LEVEL OF DETAIL THAT WE WANTED IN  
13      THE FIELDS, SHOULD IT BE MULTIPLE CHOICE, SHOULD IT BE  
14      YES/NO. EVEN SOMETHING AS SIMPLE AS DOES THIS COMPANY  
15      SHARE DATA WITH THIRD PARTIES? ON THE ONE HAND, YOU  
16      MIGHT SAY THAT IS A YES/NO, ANSWER, BUT IN FACT THERE  
17      ARE MANY SHADES OF GRAY IN THERE. SO A COMPANY MAY SAY,  
18      WELL, WE SHARE DATA WITH OUR AFFILIATES OR WITH OUR  
19      PARENT COMPANY OR WE SHARE DATA, BUT ONLY WHEN THERE IS  
20      A CONTRACTUAL OBLIGATION NOT TO DO ANYTHING BAD WITH IT.  
21      AND SO THERE WAS -- IT TOOK A LONG TIME TO REACH A  
22      CONSENSUS IN THE WORKING GROUP ON WHAT ALL THE FIELDS  
23      SHOULD BE. ONCE WE HAD DONE THAT, THEN WE HAD TO  
24      TRANSLATE IT INTO THE COMPUTER READABLE TECHNOLOGY AND  
25      WORK OUT THE DETAILS OF HOW TO MAKE IT EASY FOR THE

1 COMPUTER TO DO ALL THIS WITHOUT SLOWING DOWN YOUR WEB  
2 BROWSING EXPERIENCE.

3 Q. AND WHAT WAS THE RESULT? I THINK THIS IS WHAT  
4 YOU WERE JUST DESCRIBING. WHAT WAS THE RESULT OF THESE  
5 FIVE YEARS OF WORK?

6 A. WE CAME UP WITH THIS W3C RECOMMENDATION, THAT IS  
7 WHAT THEY CALLED STANDARDS OR RECOMMENDATIONS, CALLED  
8 P3P, WHICH HAS SUBSEQUENTLY BEEN BUILT INTO NETSCAPE WEB  
9 BROWSERS AS WELL AS MICROSOFT INTERNET EXPLORER WEB  
10 BROWSER.

11 Q. WHO ELSE WAS ON THIS WORKING GROUP THAT YOU  
12 CHAIRED?

13 A. THERE WERE REPRESENTATIVES FROM A NUMBER OF  
14 LARGE COMPANIES IN THIS SPACE INCLUDING MICROSOFT AND  
15 IBM, AOL. THERE WERE ALSO REPRESENTATIVES FROM  
16 GOVERNMENT AGENCIES, BOTH IN THE U.S. AND IN OTHER  
17 COUNTRIES, AS WELL AS SOME NON-PROFITS SUCH AS THE  
18 CENTER FOR DEMOCRACY AND TECHNOLOGY.

19 Q. YOU ALSO MENTIONED THAT YOU DEVELOPED SOFTWARE  
20 DURING YOUR TIME AT AT&T. CAN YOU TELL US A LITTLE BIT  
21 ABOUT THAT SOFTWARE, WHAT YOU DID?

22 A. RIGHT. SO WE WANTED TO HAVE SOME SOFTWARE THAT  
23 COULD DEMONSTRATE THE USE OF THE P3P STANDARD, AND SO WE  
24 DEVELOPED A TOOL CALLED PRIVACY BIRD THAT YOU ADD TO  
25 YOUR WEB BROWSER. AND WHEN YOU GO TO A WEBSITE, THE

1 LITTLE BIRD GOES AND READS THE P3P POLICY. IF IT  
2 MATCHES YOUR PERSONAL PRIVACY PREFERENCES THAT YOU HAVE  
3 CONFIGURED INTO THE BROWSER, THEN YOU GET A LITTLE GREEN  
4 HAPPY BIRD.

5 THE COURT: PERSONAL PRIVACY PREFERENCES.

6 THE WITNESS: WHEN YOU HAVE A MATCH, YOU  
7 HAVE -- A GREEN HAPPY BIRD ICON APPEARS IN THE BROWSER  
8 WINDOW TO ALERT YOU THAT THE WEBSITE MATCHES YOUR  
9 PREFERENCES. WHEN YOU GO TO A WEBSITE THAT DOES NOT  
10 MATCH, YOU GET A RED ANGRY BIRD. WE HAVE A RED ANGRY  
11 BIRD THAT CAWS IN THE WINDOW AS WELL. AND THEN YOU CAN  
12 CLICK ON THE BIRD AND WE TAKE THE COMPUTER CODE FOR THE  
13 PRIVACY POLICY AND TRANSLATE IT BACK INTO ENGLISH AND  
14 DISPLAY IT IN A FORMAT, KIND OF LIKE A NUTRITION LABEL,  
15 SO THAT IT IS VERY EASY FOR PEOPLE TO GET AN IDEA OF HOW  
16 WEBSITES ARE USING THEIR PERSONAL DATA.

17 Q. THANK YOU FOR EXPLAINING THAT TO ALL OF US.

18 DO YOU SERVE ON ANY ADVISORY COMMITTEES  
19 OR BOARDS?

20 A. YES, I DO.

21 Q. WHICH ADVISORY COMMITTEES OR BOARDS?

22 A. CURRENTLY, I SERVE ON A PRIVACY RELATED ADVISORY  
23 BOARD FOR IBM, AND I ALSO SERVED ON MICROSOFT'S  
24 TRUSTWORTHY COMPUTING ACADEMIC ADVISORY BOARD.

25 Q. TELL US A LITTLE BIT. PICK THE MICROSOFT BOARD.

1 WHAT DO YOU DO ON THAT BOARD?

2 A. SO TWICE A YEAR I GO OUT TO REDMAN AND MEET WITH  
3 VARIOUS PEOPLE AT MICROSOFT WHO ARE DEVELOPING SECURITY  
4 AND PRIVACY RELATED PRODUCTS FOR THE COMPANY. AND THEY  
5 TYPICALLY GIVE US PRESENTATIONS ABOUT WHAT THEY ARE  
6 WORKING ON AND GET THE BOARD'S FEEDBACK ON THE  
7 DIRECTIONS THAT THEY ARE GOING IN.

8 Q. AND DO YOU SERVE ON ANY EDITORIAL BOARDS?

9 A. YES. ON SEVERAL EDITORIAL BOARDS AS WELL.

10 Q. HOW MANY?

11 A. I BELIEVE CURRENTLY SIX.

12 Q. AND ARE THERE ANY THAT ANY OF US WOULD HAVE EVER  
13 HEARD ABOUT?

14 A. DEPENDS WHETHER OR NOT YOU READ ACADEMIC  
15 JOURNALS. BUT THERE IS THE ACM TRANSACTIONS ON INTERNET  
16 TECHNOLOGY IS A VERY WELL RESPECTED JOURNAL. BUT THERE  
17 ARE SEVERAL OTHER JOURNALS, INCLUDING THE INTERNET  
18 SOCIETY, THE ELECTRONIC COMMERCE RESEARCH JOURNAL AND A  
19 NUMBER OF OTHERS.

20 Q. AND WHAT DO YOU DO ON THESE EDITORIAL BOARDS?

21 A. THE WAY ACADEMIC JOURNALS WORK IN THE COMPUTER  
22 SCIENCE FIELD IS THAT WHEN PEOPLE WRITE JOURNAL  
23 ARTICLES, THEY SUBMIT THEM TO A JOURNAL FOR PEER REVIEW,  
24 AND THE EDITORIAL BOARD MEMBERS ARE RESPONSIBLE FOR  
25 OVERSEEING THE PEER REVIEW. SO I WILL GET A PAPER. I

1 THEN HAVE TO FIND USUALLY TWO OR THREE OTHER EXPERTS IN  
2 THE FIELD TO REVIEW THE PAPER AND PROVIDE THEIR  
3 ANONYMOUS COMMENTS. I THEN LOOK AT THEIR COMMENTS, MAKE  
4 A JUDGMENT AS TO WHETHER THE PAPER IS GOOD ENOUGH FOR  
5 PUBLICATION OR WHETHER WE SHOULD SEND IT BACK TO THE  
6 AUTHORS TO MAKE CHANGES OR WHETHER IT IS SO BAD THAT WE  
7 SHOULD JUST REJECT IT OUTRIGHT. AND THEN I USUALLY --  
8 IT USUALLY TAKES SEVERAL ROUNDS OF ITERATIONS ON THIS  
9 WITH THE AUTHORS UNTIL EITHER THE PAPER IS REJECTED OR  
10 THE PAPER IS GOOD ENOUGH THAT I THEN RECOMMEND IT TO THE  
11 EDITOR-IN-CHIEF THAT WE SHOULD PUBLISH THE PAPER.

12 Q. I WANT TO FOCUS YOU NOW, ASIDE FROM YOUR  
13 EDITORIAL TASKS, HAVE YOU EVER PUBLISHED ANY MATERIAL  
14 YOURSELF?

15 A. YES.

16 Q. HOW MANY PUBLICATIONS DO YOU HAVE?

17 A. ABOUT 50.

18 Q. AND WHAT HAVE THE SUBJECTS OF THOSE PUBLICATIONS  
19 BEEN?

20 A. ALL OF THE DIFFERENT TOPICS THAT I DO RESEARCH  
21 ON. MOST OF THEM HAVE TO DO WITH PRIVACY, SECURITY,  
22 USEABILITY.

23 Q. AND WHERE HAVE THESE PUBLICATIONS BEEN, IN WHAT  
24 SORT OF FORM?

25 A. I HAVE WRITTEN TWO BOOKS, AND THEN I PUBLISHED A

1 NUMBER OF JOURNAL PAPERS. I ALSO PUBLISH AT ACADEMIC  
2 CONFERENCES AND WORKSHOPS AND I HAVE WRITTEN A NUMBER OF  
3 CHAPTERS FOR BOOKS AND ALSO MAGAZINE ARTICLES.

4 Q. THE TWO BOOKS THAT YOU WROTE, JUST TELL US THE  
5 TITLES OF EACH OF THE BOOKS.

6 A. ONE OF THEM WAS CALLED WEB PRIVACY WITH P3P.  
7 AND THE OTHER ONE WAS SECURITY AND USEABILITY.

8 Q. AND HAVE ANY OF YOUR PUBLICATIONS BEEN PEER  
9 REVIEWED?

10 A. YES.

11 Q. AND HAVE YOU EVER RECEIVED ANY AWARDS FOR ANY OF  
12 YOUR WORK?

13 A. YES. I HAVE RECEIVED A NUMBER OF AWARDS. I  
14 RECEIVED SOME BEST PAPER AWARDS FOR PAPERS, AND I  
15 RECEIVED AN AWARD FROM IBM FOR THE PRIVACY WORK THAT I  
16 DO. I ALSO RECEIVED AN AWARD FROM MIT TECHNOLOGY REVIEW  
17 MAGAZINE FOR BEING ONE OF THE TOP INNOVATORS UNDER AGE  
18 35 AT THE TIME.

19 Q. DO YOU HAVE ANY EXPERIENCE WITH INTERNET  
20 FILTERING PRODUCTS?

21 A. YES, I DO.

22 Q. DO YOU HAVE ANY EXPERIENCE WITH  
23 NONFILTERING-BASED PARENTAL CONTROL TOOLS?

24 A. YES.

25 Q. HOW DID YOU FIRST GET INVOLVED WITH INTERNET

1 FILTERING TECHNOLOGIES?

2 A. WHEN I FIRST STARTED WORKING FOR AT&T LABS IN  
3 1996, I WAS WORKING WITH PAUL RESNICK, WHO AT THE TIME  
4 WAS ONE OF THE LEADING EXPERTS ON FILTERING TECHNOLOGY.  
5 AND SO I DID A LOT OF WORK WITH HIM. AND THEN ABOUT A  
6 YEAR LATER, HE ENDED UP LEAVING AT&T AND I BECAME THE  
7 AT&T SUBJECT MATTER EXPERT ON FILTERS.

8 Q. AS AT&T SUBJECT MATTER EXPERT ON FILTERS, WHAT  
9 DID YOU DO?

10 A. SO I WAS SOMETIMES CALLED UPON TO CONSULT WITH  
11 THE BUSINESS UNITS ON FILTERING, ESPECIALLY THE INTERNET  
12 SERVICE PROVIDER THAT AT&T RAN. AND I ALSO ASSISTED  
13 WITH THE STAFF OF THE PUBLIC POLICY ARM IN WASHINGTON OF  
14 AT&T WHEN THEY WERE WORKING WITH OTHER INDUSTRY GROUPS  
15 AND IN TALKING TO CONGRESS ABOUT THE CAPABILITIES OF  
16 FILTERS.

17 Q. I WANT TO FOCUS YOU ON THE CONSULTING WITH  
18 AT&T'S ISP. GENERALLY WHAT SORT OF SUBJECT AREAS DID  
19 YOU CONSULT WITH THEM ON?

20 A. SIR, THIS WAS A WHILE LAG, SO I DON'T REMEMBER  
21 EXACTLY. BUT THEY WOULD SOMETIMES ASK ME ABOUT SOME OF  
22 THE FILTERING PRODUCTS THAT THEY WERE CONSIDERING USING  
23 IN THE COMPANY AS WELL AS EDUCATIONAL MATERIALS THAT  
24 THEY MIGHT PROVIDE TO PARENTS ABOUT HOW TO PROTECT  
25 CHILDREN ONLINE.



1 Q. AND WHILE YOU WERE AT AT&T, DID YOU CONDUCT ANY  
2 RESEARCH ON INTERNET FILTERING PRODUCTS OR OTHER  
3 PARENTAL CONTROL TOOLS FOR USE ON THE INTERNET?

4 A. YES. I DID A STUDY WHERE WE DEVELOPED A CATALOG  
5 OF THE VARIOUS TECHNOLOGY TOOLS AS WELL AS THE THINGS  
6 THAT PARENTS CAN DO AND SOME OF THE MATERIALS AVAILABLE  
7 FOR PARENTS.

8 Q. AND WHEN YOU SAY THAT YOU PUT TOGETHER A  
9 CATALOG, BEFORE WE GET TO THE CATALOG, WHAT DID YOU DO  
10 TO PUT THAT CATALOG TOGETHER?

11 A. SO FIRST I DEVELOPED A SURVEY WHICH WE  
12 DISTRIBUTED TO THE VARIOUS TECHNOLOGY VENDORS ASKING  
13 THEM WHAT KINDS OF TECHNOLOGIES THEY OFFERED THAT THEY  
14 WERE RELEVANT IN THE SPACE AND WHAT THEIR CAPABILITIES  
15 WERE, HOW MUCH THEY COST. WE HAD A WHOLE SERIES OF  
16 QUESTIONS FOR THEM TO FILL OUT. WE ALSO SURVEYED  
17 VARIOUS CHILD ADVOCACY GROUPS AND CONSUMER GROUPS ABOUT  
18 WHAT MATERIALS THEY HAD AVAILABLE FOR PARENTS ABOUT  
19 PROTECTING CHILDREN ON THE INTERNET.

20 Q. I'M GOING TO BACK UP A STEP. I HAVE BEEN  
21 REFERRING TO NONFILTERING BASED PARENTAL CONTROL TOOLS,  
22 CAN YOU TELL US WHAT YOU UNDERSTAND THAT TO MEAN?

23 A. I UNDERSTAND THAT TO MEAN BASICALLY THINGS THAT  
24 PARENTS CAN DO IN THEIR HOME TO PROTECT CHILDREN ON THE  
25 INTERNET THAT DON'T INVOLVE SPECIFICALLY FILTERING

1           CONTENT WITH TECHNOLOGY.

2                           SO THERE ARE TECHNOLOGY TOOLS THAT DON'T  
3           INVOLVE FILTERS, FOR EXAMPLE, THE TOOLS THAT MONITOR  
4           RATHER THAN FILTERING, BUT THERE ARE ALSO NONTECHNOLOGY  
5           THINGS THAT PARENTS CAN DO, SUCH AS HAVING FAMILY RULES  
6           ABOUT USING THE INTERNET AND SITTING WITH THEIR CHILD  
7           WHEN THEY GO ONLINE.

8           Q.           THANK YOU.

9                           FOCUSING BACK ON THE QUESTIONNAIRES THAT  
10          YOU SENT TO THE TECHNOLOGY COMPANIES, WHAT SORT OF  
11          INFORMATION WERE YOU ASKING FOR?

12          A.           WE WERE ASKING FOR A DESCRIPTION OF THEIR  
13          PRODUCTS, WHAT TYPES OF FEATURES THE PRODUCTS HAD, HOW  
14          MUCH THEY COST, WHETHER THE PRODUCTS WERE SOFTWARE THAT  
15          YOU HAD TO DOWNLOAD OR WHETHER IT WAS ON A SERVER,  
16          THINGS ALONG THOSE LINES.

17          Q.           YOU ALSO MENTIONED THAT YOU SENT THE  
18          QUESTIONNAIRE TO ADVOCACY ORGANIZATIONS --

19          A.           YES.

20          Q.           -- AND THE LIKE? WHAT SORT OF INFORMATION WERE  
21          YOU ASKING FROM THOSE ORGANIZATIONS?

22          A.           MOSTLY WE WERE LOOKING FOR REFERENCES TO  
23          GUIDELINES FOR PARENTS THAT THEY THOUGHT WOULD BE USEFUL  
24          IN HELPING THEM PROTECT CHILDREN ONLINE.

25          Q.           AND WHAT DID YOU DO WITH ALL OF THIS RESEARCH

1 THAT YOU CONDUCTED?

2 A. SO WE PUT IT TOGETHER INTO A CATALOG AND THEN  
3 ALSO WROTE AN INTRODUCTION WHICH PROVIDES AN OVERVIEW OF  
4 THE SPACE, LOOKING AT WHAT TYPES OF FEATURES ARE  
5 AVAILABLE, WHAT TYPES OF PRODUCTS, WHAT ARE ALL THE  
6 DIFFERENT TYPES OF FUNCTIONS THAT YOU COULD EXPECT SO --  
7 AND THEN WE PUT ALL THAT TOGETHER AND ACTUALLY PUBLISHED  
8 A BOOKLET AS WELL AS BUILT A WEBSITE WITH THIS  
9 INFORMATION.

10 Q. AND WHAT WAS THAT RESEARCH CONDUCTED FOR? WHY  
11 DID YOU CONDUCT THAT RESEARCH?

12 A. THERE WAS AN INDUSTRY EFFORT TO PUT TOGETHER A  
13 SUMMIT FOCUSING ON PROTECTING CHILDREN ONLINE. AND THEY  
14 WANTED TO BE ABLE TO TALK ABOUT THE TECHNOLOGY AT THE  
15 SUMMIT AND SO THEY ASKED ME IF I WOULD PUT TOGETHER THIS  
16 CATALOG TO DISTRIBUTE IT AT THE SUMMIT.

17 Q. AND WHEN YOU SAID IT WAS AN INDUSTRY EFFORT,  
18 WHAT INDUSTRY?

19 A. SO I DON'T REMEMBER THE EXACT PLAYERS INVOLVED  
20 BESIDES AT&T, I BELIEVE AOL, MICROSOFT, IBM. BIG  
21 COMPANIES WHO EITHER ARE INTERNET SERVICE PROVIDERS OR  
22 COMPUTER HARDWARE OR SOFTWARE VENDORS WERE THE MOST  
23 PART, BUT THERE WERE ALSO SOME NON-PROFITS THAT WERE  
24 ALSO INVOLVED IN ORGANIZING THE SUMMIT AS WELL.

25 Q. WHAT WAS THE SUMMIT?

1           A.           SO THAT IT WAS -- THE INTERNET ONLINE SUMMIT.  
2           SO IT WAS LIKE A CONFERENCE SORT OF EVENT WHERE THERE  
3           WERE A NUMBER OF SPEAKERS, INCLUDING AL GORE WAS ONE OF  
4           THE SPEAKERS, AND THEN THERE WERE -- THERE WERE  
5           TECHNOLOGISTS. I PRESENTED THE OVERVIEW OF THE  
6           TECHNOLOGY AT THE SUMMIT, AND THEN THERE WERE EXPERTS ON  
7           CHILDREN WHO SPOKE AND VARIOUS OTHER PEOPLE WHO  
8           PRESENTED THEIR VIEWS ON WHAT WERE THE BEST WAYS OF  
9           PROTECTING CHILDREN ON THE INTERNET.

10          Q.           I DON'T KNOW IF I ASKED YOU THIS BEFORE, WHEN  
11          WAS THE SUMMIT?

12          A.           I BELIEVE IT WAS IN 1998.

13          Q.           HOW MUCH TIME DID YOU SPEND PUTTING THIS CATALOG  
14          TOGETHER AND MAKING THE PRESENTATION?

15          A.           I STARTED A FEW MONTHS BEFORE THE SUMMIT.

16          Q.           AND HAVE YOU EVER UPDATED THAT RESEARCH THAT YOU  
17          CONDUCTED?

18          A.           THERE WAS ANOTHER EVENT ABOUT A YEAR LATER, AND  
19          I DID UPDATE IT FOR THAT EVENT.

20          Q.           AND SINCE THAT TIME, HOW HAVE YOU MAINTAINED --  
21          LET ME BACK UP. HAVE YOU MAINTAINED YOUR RESEARCH  
22          INTEREST IN INTERNET FILTERING PRODUCTS AND OTHER  
23          PARENTAL CONTROL TOOLS?

24          A.           YES.

25          Q.           HOW?

1 A. SO THERE HAVE BEEN A NUMBER OF STUDIES THAT HAVE  
2 COME OUT SINCE THEN THAT ARE RELEVANT TO THIS AND, AS  
3 THEY HAVE COME OUT, I READ MOST OF THESE STUDIES, AND I  
4 HAVE ALSO PERIODICALLY OBTAINED COPIES OF SOME OF THE  
5 FILTERING SOFTWARE RELATED PRODUCTS AND ACTUALLY  
6 INSTALLED IT ON MY COMPUTER AND TRIED IT OUT TO SEE HOW  
7 IT WORKED.

8 Q. WHAT OTHER INVOLVEMENT SINCE, LET'S TAKE THE  
9 SECOND CONFERENCE OR SUMMIT, SINCE THEN, HAVE YOU HAD  
10 WITH INTERNET FILTERS AND OTHER PARENTAL CONTROL, TOOLS?

11 A. THE NEXT THING AFTER THAT WAS THAT I TESTIFIED  
12 FOR THE COPA COMMISSION.

13 Q. AND WHAT IS THE COPA COMMISSION?

14 A. SO THE COPA COMMISSION WAS CREATED BY CONGRESS  
15 AS PART OF THE COPA LEGISLATION TO LOOK INTO THE VARIOUS  
16 TECHNOLOGICAL SOLUTIONS AS WELL AS OTHER SOLUTIONS TO  
17 PROTECTING CHILDREN ON THE INTERNET.

18 Q. DO YOU KNOW WHO SERVED ON THE COMMISSION,  
19 ROUGHLY?

20 A. SO THERE WAS LIKE 15 OR 20 PEOPLE. I KNEW A FEW  
21 OF THEM BECAUSE I HAD WORKED WITH THEM ON THE SUMMIT.  
22 SO, FOR EXAMPLE, GERRY BERGMAN AND DONNA RICE HUGHES, I  
23 HAD WORKED WITH PRETTY CLOSELY ON THE SUMMIT AND THEY  
24 WERE ON THE COMMISSION.

25 Q. WHAT DID YOU PROVIDE TESTIMONY TO THE COPA

1 COMMISSION ON?

2 A. MY TESTIMONY WAS ABOUT FILTERS AND OTHER  
3 TECHNOLOGY SOLUTIONS, AS WELL AS SOME OF THE OTHER  
4 PARENTAL EMPOWERMENT TOOLS. BUT I PROVIDED KIND OF THE  
5 OVERVIEW TO KICK OFF THE TECHNOLOGIES SECTION OF THEIR  
6 HEARING. AFTER ME, I BELIEVE THEY HAD A NUMBER OF  
7 TECHNOLOGY VENDORS WHO SPOKE. BUT MY JOB WAS TO KIND OF  
8 PROVIDE THE BACKGROUND AND PROVIDE THE FRAMEWORK FOR THE  
9 TECHNOLOGY DISCUSSION.

10 Q. WHAT DID YOU DO TO PREPARE FOR YOUR TESTIMONY TO  
11 THE COPA COMMISSION?

12 A. SO I REVIEWED THE MATERIALS THAT I HAD DEVELOPED  
13 PREVIOUSLY FOR THE SUMMIT, BUT I ALSO LOOKED AT SOME OF  
14 THE NEW -- NEW MATERIALS THAT HAD COME OUT SINCE THEN,  
15 AND LOOKED AT SOME OF THE FILTERING PRODUCTS AS WELL.

16 Q. I APOLOGIZE. I THINK I FORGOT TO ASK YOU THIS.  
17 BEFORE YOU PUT TOGETHER YOUR CATALOG ON INTERNET FILTERS  
18 AND OTHER PARENTAL CONTROL TOOLS, WERE THERE ANY OTHER  
19 EXISTING RESOURCES OF THAT NATURE?

20 A. NOTHING THAT WAS THAT COMPREHENSIVE.

21 Q. AND HAVE YOU EVER SERVED AS AN EXPERT IN  
22 LITIGATION ON INTERNET FILTERS AND OTHER PARENTAL  
23 CONTROL TOOLS?

24 A. YES, I HAVE.

25 Q. HOW MANY TIMES?

1 A. FIVE TIMES BEFORE NOW.

2 Q. I'M NOW GOING TO ASK YOU TO LOOK AT PAGE 5,  
3 PLAINTIFFS' EXHIBIT 1. AND I'M SPECIFICALLY GOING TO  
4 REFER YOU TO THE FIFTH BULLET POINT ON PAGE 5.

5 DO YOU SEE THAT?

6 A. YES.

7 Q. ARE THOSE THE FIVE CASES THAT YOU WERE JUST  
8 REFERRING TO?

9 A. YES.

10 Q. I'M GOING TO NOW ASK YOU TO START WITH THE FIRST  
11 CASE. WHAT WAS THAT CASE?

12 A. SO THAT WAS THE CYBERSPACE V ENGLER CASE IN THE  
13 STATE OF MICHIGAN.

14 Q. WHAT DID THAT CASE INVOLVE?

15 A. THAT WAS THE STATE OF MICHIGAN'S HARMFUL TO  
16 MINORS LAW. IT WAS A CHALLENGE OF THAT LAW.

17 Q. AND WHEN DID THAT CASE OCCUR?

18 A. IN 1999.

19 Q. WERE YOU QUALIFIED AS AN EXPERT BY THE COURT IN  
20 THAT CASE?

21 A. YES, I WAS.

22 Q. WHAT WERE YOU QUALIFIED AS AN EXPERT ON?

23 A. I DON'T REMEMBER PRECISELY, BUT SOMETHING ALONG  
24 THE LINES OF INTERNET COMMUNICATIONS TECHNOLOGY, IN  
25 GENERAL, AS WELL AS FILTERING TECHNOLOGIES IN

1 PARTICULAR.

2 Q. DID YOU PROVIDE AN EXPERT OPINION IN THAT CASE?

3 A. YES, I DID.

4 Q. WHAT WAS THAT OPINION?

5 A. MY OPINION WAS THAT THERE WERE EFFECTIVE  
6 ALTERNATIVES TO THE MICHIGAN LEGISLATION, INCLUDING THE  
7 TECHNOLOGY TOOLS AS WELL AS THE OTHER PARENTAL  
8 EMPOWERMENT TOOLS.

9 Q. TURNING TO THE SECOND CASE, WHAT WAS THAT CASE?

10 A. THAT WAS THE PSINET VERSUS CHAPMAN CASE IN  
11 VIRGINIA.

12 Q. AND TELL US AGAIN WHAT WAS THAT CASE INVOLVING?

13 A. THIS WAS A CASE THAT WAS CHALLENGING THE  
14 VIRGINIA HARMFUL TO MINORS LEGISLATION.

15 Q. AND WHEN WAS THAT CASE?

16 A. THAT WAS IN 2000.

17 Q. DID YOU SUBMIT AN EXPERT REPORT IN CONNECTION  
18 WITH THAT CASE?

19 A. YES, I DID.

20 Q. DID YOU PROVIDE AN EXPERT OPINION IN THAT CASE?

21 A. YES, I DID.

22 Q. WHAT WAS THAT OPINION?

23 A. IT WAS VERY SIMILAR TO THE PREVIOUS CASE, BUT  
24 REGARDING THE VIRGINIA LEGISLATION.

25 Q. NEXT CASE, WHAT WAS THE THIRD CASE?



1 A. SO THAT WAS AMERICAN BOOKSELLERS V DEAN IN  
2 VERMONT.

3 Q. AND WHEN WAS THAT CASE?

4 A. THAT WAS IN 2002.

5 Q. WERE YOU QUALIFIED AS AN EXPERT BY THE COURT IN  
6 THAT CASE?

7 A. YES, I WAS.

8 Q. WHAT WERE YOU QUALIFIED AS AN EXPERT ON?

9 A. IT WAS SIMILAR TO THE MICHIGAN CASE.

10 Q. AND DID YOU PROVIDE AN EXPERT OPINION --

11 A. YES.

12 Q. -- IN THAT CASE?

13 WHAT WAS THAT OPINION?

14 A. AGAIN, SIMILAR TO THE MICHIGAN CASE, IT WAS.

15 THERE WERE EFFECTIVE ALTERNATIVES TO THE VERMONT

16 LEGISLATION.

17 Q. THE NEXT CASE, TELL US A LITTLE BIT ABOUT THAT

18 ONE.

19 A. THAT WAS THE BOOKFRIENDS V TAFT IN THE STATE OF

20 OHIO.

21 Q. WHEN WAS THAT CASE?

22 A. THAT WAS IN 2002.

23 Q. WERE YOU QUALIFIED AS AN EXPERT BY THE COURT IN

24 THAT CASE?

25 A. YES.

1 Q. WHAT WERE YOU QUALIFIED AS AN EXPERT ON?

2 A. SIMILAR TO THE PREVIOUS CASES.

3 Q. AND DID YOU PROVIDE AN EXPERT OPINION IN THAT

4 CASE?

5 A. YES.

6 Q. AND AGAIN, WHAT WAS THAT OPINION?

7 A. AGAIN, SIMILAR TO THE PREVIOUS CASES, THAT THERE

8 WERE EFFECTIVE ALTERNATIVES TO THE OHIO LEGISLATION.

9 Q. THE FIFTH CASE?

10 A. THAT WAS THE SOUTHEAST BOOKSELLERS V MCMASTERS

11 IN SOUTH CAROLINA.

12 Q. WHEN DID THAT CASE OCCUR?

13 A. 2004.

14 Q. DID YOU SUBMIT AN EXPERT OPINION IN CONNECTION

15 WITH THAT CASE?

16 A. YES, I DID.

17 Q. DID YOU PROVIDE AN EXPERT OPINION IN THAT CASE?

18 A. YES.

19 Q. WHAT WAS THAT OPINION?

20 A. THAT WAS THAT THERE WERE EFFECTIVE ALTERNATIVES

21 TO THE SOUTH CAROLINA LEGISLATION.

22 Q. AND IN CONNECTION WITH -- I'M GOING TO REFER TO

23 ALL FIVE OF THESE CASES. WHAT DID YOU DO IN CONNECTION

24 WITH THOSE CASES TO PREPARE YOURSELF TO PROVIDE THOSE

25 EXPERT OPINIONS?

1           A.           SO I REVIEWED THE MATERIALS THAT I PREVIOUSLY  
2           WORKED ON RELATED TO THE SUMMIT. I ALSO REVIEWED A  
3           NUMBER OF STUDIES WHICH HAD BEEN DONE SINCE THEN. AND I  
4           ACTUALLY USED SOME OF THE FILTERING SOFTWARE, FILTERING  
5           TOOLS. I TRIED THEM OUT MYSELF.

6                       MR. FINE: YOUR HONOR, PLAINTIFFS OFFER  
7           PROFESSOR CRANOR AS AN EXPERT IN THE AREA OF INTERNET  
8           FILTERING PRODUCTS AND OTHER PARENTAL CONTROL TOOLS FOR  
9           PARENTS TO USE TO CONTROL ACCESS TO MATERIAL ON THE  
10          INTERNET.

11                      THE COURT: ANY OBJECTION TO THE DEFENSE  
12          AND, IF SO, DO YOU WANT TO CROSS EXAMINE NOW OR DURING  
13          YOUR REGULAR CROSS EXAMINATION?

14                      MR. CAMPBELL: PURSUANT TO YOUR  
15          PREVIOUSLY STATED PREFERENCE, WE WILL DO THAT DURING OUR  
16          CROSS, YOUR HONOR.

17                      THE COURT: THANK YOU.

18                      SUBJECT TO CROSS EXAMINATION, THE WITNESS  
19          IS RECEIVED -- HER OPINIONS WILL BE RECEIVED INTO  
20          EVIDENCE AS AN EXPERT IN FILTERING DEVICES AND USE OF  
21          THE COMPUTER AND THE INTERNET, AS SHE TESTIFIED.

22          BY MR. FINE:

23          Q.           PROFESSOR CRANOR, DID YOU PREPARE AN EXPERT  
24          REPORT IN CONNECTION WITH THIS CASE?

25          A.           YES, I DID.

1                   MR. FINE: I'M SORRY. BEFORE I DO THAT,  
2 YOUR HONOR, WE WOULD LIKE TO MOVE PLAINTIFFS' EXHIBIT 1,  
3 DR. CRANOR'S RESUME, INTO EVIDENCE AT THIS TIME.

4                   THE COURT: ANY OBJECTION?

5                   MR. CAMPBELL: NO OBJECTION, YOUR HONOR.

6                   THE COURT: P 1 IS RECEIVED INTO  
7 EVIDENCE.

8                   (PLAINTIFFS' EXHIBIT 1 IS RECEIVED INTO  
9 EVIDENCE.)

10 BY MR. FINE:

11 Q.           DID YOU PREPARE AN EXPERT REPORT IN CONNECTION  
12 WITH THIS CASE?

13 A.           YES, I DID.

14 Q.           HOW MANY DID YOU PREPARE?

15 A.           I PREPARED A REPORT AND THEN LATER A REBUTTAL  
16 REPORT SO TWO.

17 Q.           I NOW SHOW YOU WHAT'S PREVIOUSLY BEEN MARKED AS  
18 PLAINTIFFS' EXHIBIT 2. I WANT TO FOCUS YOU ON THE FIRST  
19 46 PAGES OF THAT EXHIBIT. PAGE 1 TO 46 OF EXHIBIT 2.

20                   DO YOU RECOGNIZE THAT DOCUMENT?

21 A.           YES, I DO.

22 Q.           WHAT IS IT?

23 A.           THAT IS THE INITIAL REPORT THAT I PREPARED.

24 Q.           DOES IT APPEAR TO BE A TRUE AND ACCURATE  
25 REPRESENTATION OF YOUR INITIAL REPORT?

1 A. IT LOOKS LIKE IT.

2 Q. AND IF YOU TURN ON THE FIRST PAGE IN, I BELIEVE  
3 IT CONTINUES ONTO THE SECOND PAGE OF YOUR PLAINTIFFS'  
4 EXHIBIT 2, THE PAGE MARKED PAGE 1, THERE ARE A NUMBER OF  
5 CITATIONS TO LEGAL CASES. ARE THOSE THE LEGAL CITATIONS  
6 FOR THE CASES THAT YOU WERE DESCRIBING EARLIER IN WHICH  
7 YOU SERVED AS AN EXPERT?

8 A. YES, THEY ARE.

9 Q. I WANT TO NOW SHOW YOU WHAT PREVIOUSLY HAS BEEN  
10 MARKED AS PLAINTIFFS' EXHIBIT 2, PAGES 47 TO 52, ASK YOU  
11 IF YOU RECOGNIZE THOSE PAGES, PAGES 47 TO 52?

12 A. OKAY.

13 Q. DO YOU RECOGNIZE THAT?

14 A. YES.

15 Q. WHAT IS IT?

16 A. THAT IS MY REBUTTAL REPORT.

17 MR. FINE: YOUR HONOR, WE WOULD LIKE TO  
18 MOVE EXHIBIT 2 INTO EVIDENCE.

19 MR. CAMPBELL: YOUR HONOR, WE OBJECT TO  
20 THE ADMISSION OF THIS EVIDENCE. THE REBUTTAL REPORT  
21 CONTAINS CONFIDENTIAL INFORMATION AND, TO OUR KNOWLEDGE,  
22 THAT COMPANY FOR WHICH THE CONFIDENTIAL INFORMATION  
23 APPLIES HAS NOT BEEN CONTACTED OR GIVEN NOTICE THAT THIS  
24 WILL BE MOVED INTO EVIDENCE.

25 MR. FINE: YOUR HONOR, I'M NOT SURE

1 EXACTLY WHAT DEFENDANT'S COUNSEL IS REFERRING TO.

2 THE COURT: FIRST OF ALL, THE PARTIES  
3 HAVE AGREED THAT THE REPORTS ARE GOING TO GO INTO  
4 EVIDENCE. I'M NOT SUGGESTING THAT CONFIDENTIALITY IS  
5 NOT AN ISSUE. THERE WAS A GENERAL AGREEMENT ON THE  
6 RECORD LAST THURSDAY THAT THE REPORTS SHOULD GO INTO  
7 EVIDENCE.

8 MR. CAMPBELL: WHAT I'M REFERRING TO  
9 SPECIFICALLY, THE CONFIDENTIAL PORTIONS OF THE REPORT.

10 THE COURT: I DON'T KNOW WHAT THOSE ARE  
11 BUT --

12 MR. FINE: WE CAN --

13 THE COURT: BEFORE WE RECEIVE IT INTO  
14 EVIDENCE, WHY DON'T YOU CONSULT EITHER AT THE END OF THE  
15 DAY OR BETWEEN NOW AND TOMORROW, AND WE WILL SORT IT  
16 OUT. MY RULING IS COUNSEL AND THE WITNESS CAN USE BOTH  
17 OF THESE REPORTS FOR PURPOSES OF THE TESTIMONY. IF  
18 THERE IS A CONFIDENTIALITY ISSUE THAT ARISES, I WILL  
19 TASK THE DEFENSE COUNSEL WITH BRINGING IT TO OUR  
20 ATTENTION.

21 MR. CAMPBELL: CERTAINLY, YOUR HONOR.

22 THE COURT: THANK YOU.

23 BY MR. FINE:

24 Q. DR. CRANOR, HAVE YOU REACHED AN OPINION IN THIS  
25 CASE AS TO WHETHER INTERNET FILTERING PRODUCTS PROVIDE

1 AN EFFECTIVE MEANS FOR PARENTS TO LIMIT ACCESS TO  
2 MATERIALS COMMUNICATED ON THE INTERNET?

3 A. YES, I HAVE.

4 Q. WHAT IS THAT OPINION?

5 A. MY OPINION IS THAT THEY DO PROVIDE AN EFFECTIVE  
6 MEANS.

7 Q. HAVE YOU REACHED AN OPINION AS TO WHETHER ARE  
8 NONFILTERING-BASED PARENTAL CONTROL TOOLS FOR PARENTS TO  
9 USE TO CONTROL ACCESS TO MATERIAL ON THE INTERNET?

10 A. YES. I HAVE REACHED THE OPINION THAT THERE ARE  
11 SUCH TOOLS.

12 Q. HAVE YOU REACHED ANY OPINION AS TO THE  
13 EFFECTIVENESS OF THOSE NONFILTERING BASED PARENTAL  
14 CONTROL TOOLS?

15 A. YES, THERE ARE EFFECTIVE PARENTAL TOOLS,  
16 NON-FILTERING BASED PARENTAL TOOLS.

17 MR. FINE: YOUR HONOR, AT THIS POINT.

18 IT'S NEARING THE FOUR O'CLOCK HOUR, WE ARE ABOUT TO MOVE  
19 INTO, I BELIEVE, A COMPLETELY DIFFERENT SUBJECT AREA, SO  
20 I'M HAPPY TO PROCEED OR --

21 THE COURT: WE CAN GO TO 4:30.

22 MR. FINE: FINE.

23 THE COURT: THAT IS WHAT WE SAID IN THE  
24 BEGINNING. THE TYPICAL COURT DAY WOULD END AT 4:30.

25 MR. FINE: FAIR ENOUGH.

1 THE COURT: DIDN'T YOU KNOW THAT?

2 MR. FINE: I WAS UNDER THE IMPRESSION  
3 THAT A TYPICAL COURT DAY WOULD END AT 4 AND AT 4:30 WE  
4 WOULD HAVE OUR MEETING.

5 THE COURT: I DON'T THINK I EVER SAID  
6 THAT. IF I DID, I APOLOGIZE. I THOUGHT WE TALKED ABOUT  
7 SUMMIT MEETINGS AT 4:30 MORE THAN ONCE. MR. FINE, GO  
8 AHEAD.

9 MR. FINE: SURE.

10 BY MR. FINE:

11 Q. DR. CRANOR, BEFORE WE GET FURTHER INTO YOUR  
12 OPINIONS, I WANT TO ASK YOU -- ACTUALLY, BEFORE WE DO  
13 THAT, DR. CRANOR, TELL US, JUST BACKING UP TO SQUARE  
14 ONE, WHAT IS INTERNET FILTERING SOFTWARE?

15 A. INTERNET FILTERING SOFTWARE IS SOFTWARE THAT CAN  
16 BE USED TO SELECTIVELY BLOCK CERTAIN TYPES OF CONTENT ON  
17 THE INTERNET.

18 Q. WHEN YOU SAY IT CAN BE SELECTIVELY USED TO BLOCK  
19 CERTAIN TYPES OF CONTENT, WHAT KIND OF CONTENT?

20 A. WELL, IT REALLY DEPENDS ON HOW IT IS CONFIGURED,  
21 BUT TYPICALLY, IT'S SET TO BLOCK MATERIALS THAT SOME  
22 PEOPLE DON'T WANT CHILDREN TO SEE. SO, FOR EXAMPLE,  
23 PORNOGRAPHIC MATERIALS OR HATE SPEECH OR VIOLENT  
24 MATERIALS OR MATERIALS ABOUT DRUG AND ALCOHOL, OR  
25 SOMETIMES WHEN IT'S USED BY, SAY, AN EMPLOYER, IT MIGHT



1 BLOCK ACCESS TO JOB SEARCH WEBSITES OR THINGS LIKE THAT.

2 Q. AND HOW DOES A USER -- HOW DOES A PARENT WHO IS  
3 USING A FILTERING PRODUCT DECIDE WHAT MATERIAL GETS  
4 BLOCKED?

5 A. IT DEPENDS ON THE SOFTWARE PRODUCT, BUT  
6 TYPICALLY THERE WILL BE A NUMBER OF CHOICES, AND THE  
7 PARENT JUST CHECKS THE BOXES OR PRESSES THE BUTTON TO  
8 SAY WHICH TYPES OF MATERIAL THEY WANT TO HAVE BLOCKED.

9 Q. WHEN YOU SAY THERE ARE A NUMBER OF CHOICES, CAN  
10 YOU TELL US A LITTLE BIT MORE ABOUT WHAT YOU MEAN BY  
11 THAT?

12 A. SO IT DEPENDS ON THE PRODUCT. SOME PRODUCTS  
13 PROVIDE CHOICES FOR AGE RANGES OF CHILD, SO THEY WILL  
14 SAY THAT IF YOU ARE TRYING TO PROTECT A YOUNG CHILD THEN  
15 ONE SET OF MATERIAL WILL BE BLOCKED. IF YOU ARE TRYING  
16 TO PROTECT A TEENAGER, OLDER TEENAGER OR YOUNGER  
17 TEENAGERS, OTHER TYPES OF MATERIALS WILL BE BLOCKED.  
18 SOME PRODUCTS ACTUALLY LIST SEVERAL DOZEN CATEGORIES OF  
19 MATERIAL, AND PARENTS CAN ACTUALLY INDIVIDUALLY CHECK  
20 EACH CATEGORY AND DECIDE WHICH CATEGORY THEY WANT TO  
21 HAVE BLOCKED.

22 Q. AND CAN YOU GIVE US A FEW EXAMPLES OF THE TYPES  
23 OF CATEGORIES THAT THERE ARE?

24 A. SO A CATEGORY MIGHT INCLUDE THINGS LIKE NUDITY,  
25 VIOLENCE, ADULT LANGUAGE, DRUGS AND ALCOHOL, TOBACCO

1 PRODUCTS. THEY ARE A FEW EXAMPLES.

2 Q. AND ASIDE FROM BLOCKING THESE SORTS OF MATERIAL  
3 THAT YOU HAVE JUST BEEN DESCRIBING, WHAT OTHER FEATURES  
4 DO FILTERING PRODUCTS PERFORM?

5 A. SO SOME FILTERING PRODUCTS ALSO HAVE THE ABILITY  
6 TO MONITOR WHAT TYPES OF MATERIALS ARE BEING ACCESSED.  
7 SOME OF THEM HAVE THE ABILITY TO WARN. SO INSTEAD OF  
8 BLOCKING THE MATERIAL, THEY JUST PUT UP A WARNING THAT  
9 YOU MIGHT NOT WANT TO GO TO THIS SITE. SOME OF THEM  
10 ALSO HAVE TIME LIMITING FEATURES. SO YOU CAN SAY, YOU  
11 CAN ONLY USE THE INTERNET FOR AN HOUR A DAY OR BETWEEN A  
12 SPECIFIC SET -- BETWEEN A SPECIFIC TIME FRAME, BETWEEN 3  
13 AND 5 PM OR SOMETHING ALONG THOSE LINES.

14 Q. I WANT TO NOW ASK YOU TO DESCRIBE IN A LITTLE  
15 BIT MORE DETAIL HOW FILTERS WORK. HOW DO FILTERING  
16 PRODUCTS GO ABOUT BLOCKING CONTENT?

17 A. SO THERE ARE A VARIETY OF DIFFERENT WAYS THAT  
18 THEY CAN BLOCK CONTENT. SOME OF THE MOST COMMON WAYS  
19 INCLUDE USING BLACK LIST, WHITE LISTS AND DYNAMIC  
20 FILTERING.

21 Q. WHY DON'T WE WALK THROUGH EACH OF THOSE IN TURN?  
22 TELL US, WHAT IS A BLACK LIST?

23 A. SO A BLACK LIST IS A LIST OF CONTENT THAT SHOULD  
24 BE BLOCKED.

25 Q. AND HOW EXTENSIVE ARE THESE BLACK LISTS?

1           A.           SO FROM THE DEPOSITIONS OF SOME OF THE  
2           COMPANIES, THEY SAY THAT THEY ARE IN THE MILLIONS OF  
3           SITES.

4           Q.           AND TELL US HOW ARE THESE BLACK LISTS COMPILED?

5           A.           THERE ARE A VARIETY OF DIFFERENT WAYS THEY CAN  
6           BE COMPILED, AND THERE ARE A NUMBER -- THEY TYPICALLY  
7           WILL USE MULTIPLE TECHNIQUES. SO ONE THING IS THAT  
8           PEOPLE WHO USE THE SOFTWARE CAN REPORT SITES AND SAY,  
9           THIS SHOULD BE ON THE BLACK LIST. BUT THE BIGGER WAY  
10          THAT THEY ARE COMPILED IS THAT THE COMPANIES ARE  
11          ACTIVELY LOOKING FOR SITES TO BLOCK. ONE WAY THEY CAN  
12          DO THAT IS THEY CAN HAVE SOFTWARE KNOWN AS A CRAWLER  
13          THAT GOES OUT AND LOOKS FOR CONTENT THAT LOOKS LIKE IT  
14          SHOULD BE BLOCKED. IN SOME CASES, THE COMPUTER PROGRAM  
15          WILL AUTOMATICALLY DETERMINE, YES, THIS SHOULD BE  
16          BLOCKED AND PUT IT ON THE BLACK LIST, BUT OTHER  
17          COMPANIES ACTUALLY HAVE A HUMAN DOUBLE CHECK EVERYTHING  
18          THAT THE COMPUTER HAS FOUND TO VERIFY THAT IT BELONGS ON  
19          THE BLACK LIST.

20                        ANOTHER THING THAT COMPANIES DO IS THEY  
21          LOOK AT SITES, LOOK AT LISTS OF THE MOST POPULAR  
22          WEBSITES WHICH THEY ARE UPDATED ON A REGULAR BASIS. AND  
23          SO EVERY WEEK OR SO, WHEN THEY GET THE NEW LISTS OF THE  
24          MOST POPULAR WEBSITES, THEY WILL GO AND CHECK THOSE TO  
25          SEE IF ANY OF THEM SHOULD BE ADDED TO THE BLACK LIST.

1                   ANOTHER THING THAT COMPANIES DO IS, THEY  
2           HAVE A LIST OF SEARCH TERMS THAT PEOPLE TYPICALLY USE IN  
3           ORDER TO FIND CONTENT IN THE CATEGORIES THAT THEY ARE  
4           TRYING TO BLOCK. AND SO THEY WILL, ON A REGULAR BASIS,  
5           GO TO THE MAJOR SEARCH ENGINES AND RUN THESE SEARCH  
6           TERMS IN THE SEARCH ENGINE AND SEE WHAT RESULTS COME  
7           BACK. THEN THEY WILL CHECK ALL THOSE SITES TO SEE IF  
8           THEY SHOULD BE ADDED TO THE BLACK LIST.

9                   SO THOSE ARE SOME OF THE WAYS THAT THE  
10          BLACK LISTS ARE COMPILED AND MAINTAINED.

11          Q.           FOCUSING ON THE LAST THING THAT YOU ARE  
12          DESCRIBING, THE USE OF SEARCH ENGINES. WHY DO FILTERING  
13          COMPANIES DO THAT?

14          A.           WELL, WHEN A CHILD IS LOOKING FOR ANY SORT OF  
15          MATERIAL, USUALLY THE WAY THEY GO ABOUT FINDING IT, THEY  
16          USE A SEARCH ENGINE. AND SO IF THERE IS A PARTICULAR  
17          CATEGORY OF MATERIAL THAT YOU WANT TO BLOCK, ONE OF THE  
18          BEST WAYS OF FINDING IT TO BLOCK IT, IS TO DO WHAT THE  
19          CHILD WOULD DO, GO TO THE SEARCH ENGINE AND LOOK FOR THE  
20          MATERIAL THAT WAY, BECAUSE THAT IS THE FIRST THING THAT  
21          IS GOING TO COME TO THEIR ATTENTION.

22          Q.           AND YOU ALSO MENTIONED THAT COMPANIES REVIEW  
23          LISTS OF MOST POPULAR WEBSITES. WHY DO THEY DO THAT?

24          A.           WELL, THE MOST POPULAR WEBSITES, AGAIN, ARE THE  
25          ONES THAT ARE LIKELY FOR A CHILD TO BE ABLE TO FIND.

1 AND SO, YOU KNOW, EVEN THOUGH THE INTERNET AND THE  
2 WORLDWIDE WEB ARE VERY LARGE, THERE IS ONLY A SMALL  
3 FRACTION OF ITS THAT ARE ACTUALLY VIEWED FREQUENTLY. SO  
4 IT'S REALLY IMPORTANT TO MAKE SURE THAT THE PART THAT  
5 PEOPLE ARE ACTUALLY LOOKING AT HAS BEEN CHECKED BY THE  
6 FILTERING COMPANIES AND, WHERE APPROPRIATE, ADDED TO THE  
7 BLACK LISTS.

8 Q. HOW DO THESE COMPANIES, THESE FILTERING  
9 COMPANIES, KEEP THEIR BLACK LISTS UPDATED?

10 A. SO THEY ARE CONSTANTLY UPDATING THEIR BLACK  
11 LISTS ON A REGULAR BASIS. AND THEY, DEPENDING ON HOW  
12 THE FILTER FUNCTIONS -- FOR EXAMPLE, IF THE FILTER IS  
13 BUILT INTO THE INTERNET SERVICE PROVIDER SERVICE, THEN  
14 THEY JUST, AS THEY UPDATE THE BLACK LIST, IT'S VERY EASY  
15 FOR THEM TO PUT THE NEW SITES IN THE LIST. IF IT IS A  
16 FILTER THAT SOMEBODY HAS TO RUN ON THEIR HOME COMPUTER,  
17 THEN THEY HAVE TO PROVIDE UPDATES TO THE HOME COMPUTER  
18 AND SO THIS IS SIMILAR TO --

19 THE COURT: WHO IS "THEY"? I'M SORRY.

20 THE WITNESS: THE FILTERING COMPANY.

21 THIS IS SIMILAR TO THE WAY AN ANTIVIRUS COMPANY  
22 DISTRIBUTES UPDATES TO THE ANTIVIRUS SOFTWARE TO HOME  
23 COMPUTER USERS. TYPICALLY, WHEN YOU BUY ANTIVIRUS  
24 SOFTWARE, YOU ALSO BUY A SUBSCRIPTION AND ONCE A WEEK OR  
25 WHENEVER THERE'S A BIG VIRUS OUTBREAK, PEOPLE WILL GO

1 AND GET THE UPDATES. WELL, THE FILTERING SOFTWARE CAN  
2 WORK THE SAME WAY, WHERE YOUR COMPUTER CAN PERIODICALLY  
3 GET THE UPDATES TO THE BLACK LIST.

4 Q. AND HOW OFTEN DO THE FILTERING COMPANIES SEND  
5 OUT THESE UPDATES?

6 A. I BELIEVE IT VARIES BY COMPANY, BUT IT COULD BE  
7 EVERY DAY OR ONCE A WEEK OR SOMETHING ALONG THOSE LINES.

8 Q. FAIR ENOUGH.

9 EARLIER, YOU MENTIONED WHITE LISTS. WHAT  
10 IS A WHITE LIST?

11 A. A WHITE LIST IS GOOD CONTENT THAT SHOULD NOT BE  
12 BLOCKED.

13 Q. AND HOW DOES A COMPANY DETERMINE WHAT SHOULD BE  
14 ON A WHITE LIST?

15 A. THEY CAN USE A VARIETY OF TECHNIQUES SIMILAR TO  
16 FINDING THE BLACK LIST, BUT THEY WILL TAKE  
17 RECOMMENDATIONS. THEY WILL LOOK AT THE MOST POPULAR  
18 SITES, THEY WILL RUN SEARCH QUERIES. A NUMBER OF  
19 DIFFERENT WAYS THAT THEY CAN COME UP WITH A WHITE LIST.

20 Q. AND CAN A PARENT OPT TO ONLY ALLOW CONTENT THAT  
21 IS ON A WHITE LIST THROUGH?

22 A. YES. MOST SOFTWARE HAD THAT AS ONE OF THE  
23 OPTIONS.

24 Q. AND LET'S SAY A COMPANY HAS 50 WEBSITES ON A  
25 WHITE LIST. CAN A PARENT ADD ANY ADDITIONAL SITES TO

1 THAT WHITE LIST?

2 A. YEAH. MOST OF THE FILTERING TOOLS LET PARENTS  
3 ADD THEIR OWN SITES, BOTH FOR THE WHITE AND BLACK LIST.  
4 THEY CAN CUSTOMIZE IT AS THEY SEE FIT.

5 Q. HOW MANY URLS CAN PARENTS ADD -- LET'S FOCUS,  
6 FIRST, ON THE WHITE LISTS. HOW MANY WEBSITES CAN  
7 PARENTS ADD TO THE WHITE LIST?

8 A. I DON'T KNOW OF ANY SPECIFIC LIMITS.

9 Q. WHAT ABOUT FOR BLACK LISTS?

10 A. AGAIN, I DON'T KNOW OF ANY SPECIFIC LIMITS.

11 Q. LET ME ASK YOU NOW, WHAT IF A PARENT HAS MORE  
12 THAN ONE CHILD, LET'S SAY A 16-YEAR OLD AND 10-YEAR OLD.  
13 WHAT CAN A PARENT DO WITH THE FILTERING PRODUCT?

14 A. SO MOST OF THE PRODUCTS ALLOW PARENTS TO SET UP  
15 ACCOUNTS FOR EACH CHILD IN THEIR FAMILY, AND THEY CAN  
16 SELECT DIFFERENT CATEGORIES TO BLOCK FOR EACH CHILD AS  
17 THEY SEE APPROPRIATE FOR THE AGE OF THAT CHILD.

18 Q. AND ARE THERE ANY LIMITS -- SAY A PARENT HAS NOW  
19 FOUR CHILDREN, 16-YEAR OLD, 10-YEAR OLD, 7-YEAR OLD AND  
20 A 4-YEAR OLD. CAN A PARENT HAVE DIFFERENT SETTINGS FOR  
21 EACH OF THOSE CHILDREN?

22 A. YES, THEY CAN.

23 Q. I WANT TO NOW FOCUS ON, YOU ALSO MENTIONED, I  
24 BELIEVE, REALTIME FILTERING, OR DYNAMIC FILTERING. WHAT  
25 DO YOU MEAN BY THAT?

1           A.           DYNAMIC FILTERING OR REALTIME FILTERING, INSTEAD  
2           OF RELYING ON A WHITE LIST OR A BLACK LIST, THERE IS  
3           SOFTWARE THAT ACTUALLY ANALYZES THE CONTENT AS IT IS  
4           BEING FETCHED AND MAKES A DETERMINATION AS TO WHETHER OR  
5           NOT IT SHOULD BE BLOCKED.

6           Q.           AND TELL US A LITTLE BIT MORE ABOUT WHAT THE  
7           SOFTWARE IS DOING TO ANALYZE THE CONTENT.

8           A.           THE SOFTWARE ANALYZES THE CONTENT BY LOOKING AT  
9           EVERYTHING IN THE CONTENT. SO THAT INCLUDES THE WORDS,  
10          THE PICTURES, AND THEN EVEN SOME HIDDEN INFORMATION ON  
11          WEB PAGES, METADATA, WHICH PROVIDES INFORMATION TO THE  
12          SOFTWARE. IT LOOKS AT ALL OF THAT IN ORDER TO MAKE THE  
13          JUDGMENT.

14                           TYPICALLY, THE SOFTWARE USES MACHINE  
15          LEARNING OR ARTIFICIAL INTELLIGENCE TECHNIQUES. AND  
16          JUST TO GIVE YOU A BASIC IDEA OF HOW THESE WORK, WHAT A  
17          COMPANY MIGHT DO IS THAT THEY WILL COLLECT A LARGE  
18          NUMBER OF EXAMPLES OF THE TYPES OF CONTENT THAT SHOULD  
19          BE BLOCKED, AND IT WILL ALSO COLLECT A LARGE NUMBER OF  
20          EXAMPLES OF CONTENT THAT SHOULD NOT BE BLOCKED, AND THEY  
21          WILL GO THROUGH A PHASE OF TRAINING THE SOFTWARE BY  
22          SHOWING IT ALL THE BAD CONTENT AND SAYING, THIS IS BAD,  
23          AND THEN SHOWING IT ALL THE GOOD CONTENT AND SAYING,  
24          THIS IS GOOD. AND THE SOFTWARE IS SUPPOSED TO LEARN TO  
25          DISTINGUISH THE GOOD FROM THE BAD. THEN THEY WILL SHOW



1 THE SOFTWARE CONTENT IT HAS NOT SEEN BEFORE AND ASK IT  
2 TO CATEGORIZE IT. WHEN IT MAKES A MISTAKE, THEY TELL  
3 THE SOFTWARE THAT IT MADE A MISTAKE, AND THEY RETRAIN  
4 IT. AND THEY GO THROUGH THIS PROCESS A NUMBER OF TIMES  
5 UNTIL THE SOFTWARE IS HIGHLY ACCURATE IN BEING ABLE TO  
6 DISTINGUISH THE GOOD CONTENT FROM THE BAD CONTENT.

7 Q. ARE THESE MACHINE LEARNING TECHNIQUES USED IN  
8 ANY OTHER FIELDS?

9 A. YEAH, THEY ARE WIDELY USED IN A VARIETY OF  
10 SOFTWARE APPLICATIONS. SO ONE EXAMPLE THAT YOU MIGHT BE  
11 FAMILIAR WITH IS IF YOU HAVE A SPAM FILTER ON YOUR  
12 E-MAIL PROGRAM, SOME OF THE SPAM FILTERS USE THESE VERY  
13 SAME TECHNIQUES IN ORDER TO DETERMINE WHETHER IT IS JUNK  
14 MAIL OR WHETHER IT'S GOOD E-MAIL.

15 Q. I WANT TO JUST ASK YOU TO EXPLAIN A LITTLE BIT  
16 MORE WHAT THESE REALTIME FILTERS ARE LOOKING AT. WHEN  
17 YOU STARTED, YOU MENTIONED SOMETHING CALLED METADATA.  
18 TELL US, WHAT IS METADATA?

19 A. METADATA ARE SOME OF THE CODES THAT ARE IN THE  
20 WEB PAGE THAT YOU DON'T ACTUALLY SEE ON THE SCREEN, BUT  
21 THEY PROVIDE INFORMATION THAT HELP YOUR WEB BROWSER  
22 RENDER THE PAGE, OR THEY MAY HELP A SEARCH ENGINE KNOW  
23 HOW TO CATEGORIZE A PAGE. THE AUTHOR OF A WEBSITE MIGHT  
24 PUT IN KEY WORDS, FOR EXAMPLE, AND THIS ALLOWS THE  
25 SEARCH ENGINE TO BE ABLE TO HELP CLASSIFY THE PAGE BY

1 USING THE KEY WORDS.

2 THERE IS ALSO OTHER INFORMATION ABOUT  
3 FONTS AND COLORS AND THINGS LIKE THAT. SO THIS IS  
4 EMBEDDED IN ALL WEB PAGES. AND WHEN A FILTER IS  
5 ANALYZING A WEB PAGE, SOMETIMES THAT INFORMATION CAN BE  
6 VALUABLE, BECAUSE IF THERE IS A KEY WORD THAT SAYS XXX,  
7 THAT IS A GOOD CLUE THAT THIS IS PROBABLY PORN, FOR  
8 EXAMPLE.

9 Q. AND IS THERE MORE MATERIAL, AND MAYBE THIS IS  
10 WHAT YOU WERE REFERRING TO BY THE METADATA -- IF WE ARE  
11 ON THE INTERNET RIGHT NOW, AND WE ARE LOOKING AT THE  
12 PAGE THAT IS IN FRONT OF US, IS THAT THE ONLY THING THE  
13 ONLY TEXT, THE ONLY PICTURES THAT SEARCH ENGINES ARE  
14 LOOKING AT, OR WHAT DO SEARCH ENGINES EXAMINE?

15 A. THE SEARCH ENGINES LOOK AT NOT ONLY WHAT YOU  
16 SEE, BUT ALSO THIS METADATA WHICH YOU DON'T SEE, THAT IS  
17 HIDDEN BEHIND THE SCENES. THE SEARCH ENGINE CAN SEE ALL  
18 THE BEHIND THE SCENES DATA AND USE THAT TO HELP MAKE ITS  
19 CATEGORIZATION. FILTERS CAN ALSO SEE ALL THAT METADATA  
20 AND USE THAT TO HELP IN THEIR CATEGORIZATION AS WELL.

21 Q. AND HOW DO THE TWO INTERACT? THE STUFF WE CAN  
22 ALL SEE AND THE STUFF WE CAN'T SEE, HOW DO FILTERING  
23 PRODUCTS, IS THERE ANY RELATIONSHIP BETWEEN THE TWO?

24 A. WELL, THE FILTERING PRODUCTS LOOK AT BOTH WHAT  
25 WE CAN SEE AND WHAT WE CAN'T SEE. AND THE PRODUCTS THAT

1 USE THIS MACHINE LEARNING TECHNIQUES, THEY ACTUALLY  
2 DON'T REALLY CARE WHETHER THE HUMAN CAN SEE IT OR NOT.  
3 THEY ARE LOOKING AT ALL OF THIS. THEY ARE TAKING IN ALL  
4 THIS INFORMATION THAT THEY USE TO MAKE THEIR JUDGMENT.

5 Q. WHAT ROLE DOES CONTEXT PLAY IN THE REALTIME  
6 FILTERING?

7 A. SO CONTEXT IS IMPORTANT BECAUSE THERE ARE --  
8 AVERY SIMPLE WAY TO DO FILTERING WOULD BE TO SIMPLY GIVE  
9 YOU A LIST OF BAD WORDS AND SAY, ANY PAGE THAT HAS THIS  
10 BAD WORD MUST BE BAD. BUT WE ALL KNOW THAT THE BAD  
11 WORDS DEPEND ON CONTEXT. SO A VERY COMMON EXAMPLE IS  
12 THE WORD "BREAST." SO IF IT'S A PAGE ABOUT COOKING AND  
13 IT MENTIONS A CHICKEN BREAST, WE DON'T WANT TO BLOCK  
14 THAT. BUT IF IT'S A PAGE THAT HAS SOME SORT OF  
15 PORNOGRAPHY AND IT IS TALKING ABOUT LARGE, SEXY BREASTS  
16 THEN WE MIGHT WANT TO BLOCK IT. AND SO WE NEED TO HAVE  
17 SOFTWARE THAT CAN TELL THE DIFFERENCE BETWEEN THE  
18 PORNOGRAPHY WEBSITE AND THE REST OF THE PEOPLE. BY  
19 USING THIS MACHINE LEARNING TECHNIQUES, THEY ARE NOT  
20 LOOKING FOR ONE WORD BREAST, BUT THEY ARE LOOKING FOR  
21 THE WHOLE PATTERN OF THE WEBSITE. AND SO THE MACHINE  
22 LEARNING SOFTWARE CAN NOTICE THAT IN THE GOOD EXAMPLES  
23 BREAST APPEARS ALONG WITH THE WORD CHICKEN AND ALONG  
24 WITH THE WORD CANCER AND ALONG WITH THE WORD FEEDING AND  
25 THINGS LIKE THAT, WHEREAS IN THE BAD EXAMPLES THERE IS A

1 DIFFERENT SET OF WORDS THAT IT APPEARS WITH.

2                   THEY MAY ALSO NOTICE THAT IN THE BAD  
3 EXAMPLES, THERE TEND TO BE A LOT OF VERY LARGE  
4 PHOTOGRAPHS. THERE IS ALL SORTS OF INFORMATION THAT THE  
5 MACHINE LEARNING ALGORITHM CAN PICK UP ON IN ORDER TO  
6 PROVIDE THAT CONTEXT.

7 Q.           AND YOU JUST MENTIONED LOOKING AT WHETHER THERE  
8 ARE LARGE IMAGES OR PHOTOGRAPHS. SO IS MY UNDERSTANDING  
9 CORRECT SO THE REALTIME FILTERS ARE NOT JUST LOOKING AT  
10 TEXT?

11 A.           THAT'S RIGHT.

12                   WELL, SOME OF THEM PERHAPS ARE, BUT MANY  
13 OF THEM ACTUALLY DO LOOK AT THE IMAGES AS WELL AND THEY  
14 CAN LOOK AT THE NAME OF THE IMAGE. SO IS THE IMAGE  
15 NAMED GIRL DOT GIFT OR SOMETHING LIKE THAT, OR IS IT  
16 CHICKEN, AND THEY CAN -- IN SOME CASES, THEY CAN ALSO  
17 LOOK AT ANALYZING THE CONTENT OF THE IMAGE; NOT IN ALL  
18 CASES.

19 Q.           AND HOW MANY OF TODAY'S FILTERING PRODUCTS  
20 UTILIZE REALTIME FILTERING? LET ME BACK UP. DO ANY OF  
21 TODAY'S FILTERING PRODUCTS UTILIZE REALTIME FILTERING?

22 A.           YES.

23 Q.           HOW MANY?

24 A.           I DON'T REALLY KNOW HOW MANY. THEY CAN UTILIZE  
25 IT IN TWO DIFFERENT WAYS. SOME OF THEM DO REALTIME

1       ACTUALLY AS YOU ARE LOADING THE PAGES.  SOME OF THEM USE  
2       THOSE ALGORITHMS IN ORDER TO BUILD THEIR BLACK LIST.  
3       THAT WAY, THEY CAN KEEP THE BLACK LIST VERY FRESH,  
4       BECAUSE THEY ARE CONSTANTLY LOOKING FOR NEW CONTENT AND  
5       USING THESE MACHINE LEARNING TECHNIQUES TO CLASSIFY  
6       CONTENT.

7       Q.        YOU MENTIONED SEVERAL DIFFERENT TECHNIQUES THAT  
8       FILTERING PRODUCTS USE, YOU MENTIONED BLACK LISTS, WHITE  
9       LISTS AND NOW REALTIME FILTERING.  DO FILTERING PRODUCTS  
10      USE ALL OF THESE TECHNIQUES IN COMBINATION?

11     A.        MANY OF THEM DO USE THEM IN COMBINATION.

12     Q.        AND TELL US, HOW DOES THAT WORK?

13     A.        SO, FOR EXAMPLE, A FILTERING PRODUCT MIGHT START  
14      WITH THE WHITE LIST.  AND IF A PARTICULAR WEB PAGE IS ON  
15      THE WHITE LIST, THEN IT GOES -- IT GETS THROUGH.  AND  
16      THEN, IF IT'S NOT ON THE WHITE LIST, THEN IT CHECKS THE  
17      BLACK LIST.  IF IT IS ON THE BLACK LIST, THEN IT BLOCKS  
18      IT.  IF IT IS NOT ON THE WHITE LIST OR THE BLACK LIST,  
19      THEN IT WOULD FALL BACK TO THE REALTIME FILTERING AND  
20      SEE WHAT THE REALTIME FILTERING SAYS AND DECIDE BASED ON  
21      THAT.

22     Q.        SO JUST TO MAKE SURE I UNDERSTAND THIS  
23      CORRECTLY, IF A FILTERING COMPANY HAS NEVER SEEN WEBSITE  
24      X, NOT ON THE BLACK LIST OR THE WHITE LIST, CAN A  
25      FILTERING COMPANY BLOCK THAT WEBSITE?

1 A. YES. IF THEY USE REAL TIME FILTERING, THEY CAN  
2 BLOCK IT. THERE IS ALSO SOME THAT IF IT IS NOT ON THE  
3 WHITE LIST, IT IS AUTOMATICALLY BLOCKED.

4 Q. AND YOU EARLIER WERE DISCUSSING -- LET ME ASK  
5 YOU THIS QUESTION. FILTERING PRODUCTS ALWAYS USED BOTH  
6 BLACK LISTS AND WHITE LISTS AND REALTIME FILTERING?

7 MR. CAMPBELL: OBJECTION, LACK OF  
8 FOUNDATION.

9 THE COURT: SUSTAINED. I CAN'T TELL  
10 EVERYTHING THAT SHE IS AN EXPERT IN.

11 BY MR. FINE:

12 Q. LET ME ASK YOU THIS QUESTION. HAS REALTIME  
13 FILTERING -- DO YOU KNOW IF REALTIME FILTERING  
14 TECHNOLOGY HAS ALWAYS BEEN USED BY THE FILTERING  
15 PRODUCTS?

16 THE COURT: ANSWER YES OR NO, PLEASE.

17 THE WITNESS: CAN YOU REPEAT THE  
18 QUESTION, PLEASE?

19 BY MR. FINE:

20 Q. SURE. DO YOU KNOW IF FILTERING PRODUCTS HAVE  
21 ALWAYS USED REALTIME FILTERING?

22 A. YES.

23 Q. HOW DO YOU KNOW THAT?

24 A. FROM THE CATALOG OF FILTERS THAT I CREATED, I  
25 KNOW WHAT TECHNIQUES PEOPLE WERE USING.

1 Q. AND WHAT WERE THOSE TECHNIQUES?

2 A. WELL, SO THE OLDER PRODUCTS, FOR THE MOST PART,  
3 FOCUSED ON THE BLACK LISTS AND WHITE LISTS, AND THEN  
4 LATER THEY STARTED ADDING THE REALTIME FILTERING  
5 TECHNIQUES.

6 Q. AND WHAT IS THE PRINCIPAL ADVANTAGE OF REALTIME  
7 FILTERING TECHNIQUES?

8 A. IT ALLOWS YOU TO CATEGORIZE SITES THAT THE  
9 SOFTWARE HAS NEVER SEEN BEFORE.

10 Q. YOU EARLIER WERE DISCUSSING IMAGES. I WANT TO  
11 FOCUS YOU NOW ON FILTERING OF IMAGES. HOW CAN IMAGES BE  
12 BLOCKED BY FILTERING PRODUCTS?

13 A. THEY CAN BE BLOCKED BECAUSE THEY ARE EMBEDDED IN  
14 PAGES THAT ARE FOUND TO BE BLOCKED OR FOUND TO MEET THE  
15 BLOCKING CRITERIA. SO SOME SOFTWARE WILL JUST BLOCK THE  
16 WHOLE PAGE. IN SOME CASES, THEY ARE BLOCKED DUE TO A  
17 BLACK LIST OF IMAGES OR BASED ON THE METADATA  
18 SURROUNDING THE IMAGE OR BY AN ANALYSIS OF THE IMAGE.

19 Q. THE FIRST THING YOU MENTIONED WAS SOMETIMES  
20 THEY'RE EMBEDDED IN PAGES. WHAT DO YOU MEAN BY THAT?

21 A. SO MANY OF THE IMAGES AVAILABLE ON THE WORLDWIDE  
22 WEB ARE ACTUALLY PACKAGED AS PART OF A WEB PAGE, SO  
23 THERE MIGHT BE A HEADLINE ASSOCIATED WITH THE IMAGE OR  
24 TEXT AROUND THE IMAGE. AND SO SINCE THE IMAGE IS  
25 USUALLY LOADED AS PART OF THAT WEB PAGE, THE FILTERING

1 PRODUCT CAN EVALUATE THE WEB PAGE AS A WHOLE TO MAKE THE  
2 DETERMINATION ABOUT THE IMAGE.

3 Q. WHAT ELSE DO FILTERING PRODUCTS LOOK AT TO BLOCK  
4 IMAGES?

5 A. SO THEY WILL LOOK AT THE TEXT ON THE PAGE, THEY  
6 WILL LOOK AT THE METADATA ON THE PAGE. THEY WILL LOOK  
7 AT THE NAME OF THE IMAGE ITSELF AND, IN SOME CASES, THEY  
8 WILL ACTUALLY ANALYZE THE IMAGE.

9 Q. AND WHEN YOU SAY THEY LOOK AT THE NAME OF THE  
10 IMAGE, WHAT ARE YOU REFERRING TO?

11 A. SO EVERY IMAGE HAS A FILE NAME ASSOCIATED WITH  
12 IT. SO JUST LIKE YOU WOULD NAME A WORD DOCUMENT, YOU  
13 WOULD GIVE IT A FILE NAME. THE IMAGES ALSO HAVE FILE  
14 NAMES.

15 Q. DOES THE AVERAGE USER SEE THE FILE NAME OR IS  
16 THIS ANOTHER PART OF THE HIDDEN DATA?

17 A. TYPICALLY, YOU WOULD NOT SEE THE FILE NAME  
18 UNLESS YOU WERE LOADING THE IMAGE DIRECTLY.

19 Q. AND WHY DO WEBSITES INCLUDE FILE NAMES FOR  
20 IMAGES?

21 A. THAT IS JUST THE WAY YOU PUT IMAGES ON WEBSITES.

22 Q. AND IS IT NECESSARY TO HAVE A FILE NAME FOR  
23 EVERY IMAGE?

24 A. YES. YOU CAN'T HAVE AN IMAGE THAT DOES NOT HAVE  
25 A FILE NAME.



1 Q. AND FILTERING PRODUCTS ANALYZE FILE NAMES OF  
2 IMAGES?

3 A. SOME OF THEM DO.

4 Q. I WANT TO NOW MOVE TO A DIFFERENT SUBJECT AREA.  
5 YOU EARLIER MENTIONED THAT THE FILTERING PRODUCTS OFFER  
6 ADDITIONAL FEATURES BESIDES BLOCKING OF CONTENT. IF I  
7 CAN ASK YOU GENERALLY JUST TO REMIND US, WHAT ARE THOSE  
8 OTHER FEATURES?

9 MR. CAMPBELL: OBJECTION. FOUNDATION.  
10 COUNSEL IS REFERRING TO FILTERING PRODUCTS, BUT HE IS  
11 NOT SPECIFYING WHICH FILTERING PRODUCTS HE IS TALKING  
12 ABOUT OR THE SPECIFIC FILTERING PRODUCTS TO WHICH HE IS  
13 REFERRING.

14 THE COURT: REWORD THE QUESTION, PLEASE.  
15 BY MR. FINE:

16 Q. DR. CRANOR, WHAT IS YOUR UNDERSTANDING OF THE  
17 TERM "FILTERING PRODUCTS"?

18 A. MY UNDERSTANDING IS THAT THESE ARE PRODUCTS THAT  
19 CAN SELECTIVELY BLOCK INTERNET CONTENT AND ALSO PERFORM  
20 A NUMBER OF RELATED FUNCTIONS.

21 Q. AND FOR THE PURPOSE OF MY QUESTIONS, I'M GOING  
22 TO ASK YOU TO KEEP YOUR DEFINITION OF FILTERING PRODUCTS  
23 IN MIND.

24 WHAT ARE THE OTHER FEATURES THAT  
25 FILTERING PRODUCTS OFFER?

1           A.           SO SOME OF THEM WILL PROVIDE WARNINGS INSTEAD OF  
2           OUTRIGHT BLOCKING MATERIAL.   SOME OF THEM WILL ALLOW  
3           PARENTS OR SUPERVISORS TO MONITOR INTERNET ACTIVITY, AND  
4           SOME OF THEM WILL ALLOW FOR TIME LIMITATIONS AS WELL.

5           Q.           LET'S START WITH THE WARNING.   HOW DOES THAT  
6           WORK?

7           A.           SO INSTEAD OF BLOCKING CONTENT THAT WOULD BE  
8           CLASSIFIED AS BAD, OR HAVING MET THE CRITERION, INSTEAD,  
9           THERE WOULD BE A POP-UP THAT WOULD SAY, THIS MAY BE  
10          MATERIAL THAT COULD BE HARMFUL OR SOMETHING.   THERE IS  
11          SOME SORT OF MESSAGE THAT POPS UP AND ASKS THE VIEWER  
12          WHETHER THEY WANT TO PROCEED, AND, YOU KNOW, THE IDEA  
13          BEING THAT IF A CHILD -- IF YOU DON'T WANT A CHILD TO  
14          ACCIDENTLY STUMBLE ACROSS CERTAIN TYPES OF MATERIAL THEN  
15          HAVING THAT WARNING WILL CAUSE THEM TO SAY, NO, I DON'T  
16          WANT TO GO THERE.   AND SO FOR SOME FAMILIES THAT IS A  
17          USEFUL SOLUTION.

18          Q.           MONITORING, TELL US A LITTLE BIT ABOUT WHAT YOU  
19          MEAN BY MONITORING FEATURES OF FILTERS.

20          A.           SO MONITORING BASICALLY RECORDS WHAT IS GOING ON  
21          WITH THAT COMPUTER AND THE INTERNET.   SO TYPICALLY IT  
22          WILL RECORD ALL THE WEBSITES THAT ARE VISITED, YOU KNOW,  
23          THE NAMES OF WEBSITES.   AND IN SOME CASES, ALSO, IT WILL  
24          MONITOR WHO YOU GOT E-MAIL FROM, OR WHAT KINDS OF OTHER  
25          ACTIVITIES, LIKE CHATTING, PEER-TO-PEER THAT ARE BEING

1 USED ON A PARTICULAR COMPUTER.

2 Q. AND WHAT DOES IT DO FOR A PARENT? HOW DOES A  
3 PARENT DO THIS MONITORING?

4 A. SO A PARENT TURNS ON THE MONITORING, AND THEN  
5 THE SOFTWARE WILL PRODUCE REPORTS OF ALL OF THE INTERNET  
6 ACTIVITY. AND DEPENDING ON THE SOFTWARE, THERE ARE A  
7 FEW DIFFERENT OPTIONS FOR VIEWING THE REPORTS. IN SOME  
8 CASES, THE PARENT HAS TO GO BACK TO THAT COMPUTER AND  
9 VIEW IT. BUT SOME OF THE SOFTWARE NOW CAN BE SET UP TO  
10 ACTUALLY E-MAIL REPORTS TO PARENTS, OR IF THE CHILD  
11 ATTEMPTS TO ACCESS BLOCKED CONTENT, THEN IT WILL TRIGGER  
12 E-MAIL ALERTS. I RECENTLY READ OF ONE SOFTWARE THAT  
13 WILL EVEN SEND A MESSAGE TO A PARENT'S CELL PHONE TO  
14 TELL THEM RIGHT NOW YOUR CHILD IS TRYING TO ACCESS  
15 MATERIAL ON THE INTERNET THAT YOU DIDN'T WANT THEM TO.

16 Q. WHY ARE THOSE FEATURES USEFUL TO PARENTS?

17 A. THEY ARE USEFUL FOR TWO REASONS. ONE, IF THE  
18 PARENT CHOOSES TO TELL THEIR CHILD THAT THEY HAVE SET UP  
19 THIS MONITORING, IN MANY CASES THE FACT THAT THE CHILD  
20 KNOWS THAT THEY ARE BEING WATCHED IS ENOUGH THAT THEY  
21 ARE NOT GOING TO ATTEMPT TO FIND MATERIAL THAT THEIR  
22 PARENTS HAVE SAID THEY SHOULD NOT BE ACCESSING.

23 THE OTHER IS, IF A CHILD DOES ATTEMPT TO  
24 ACCESS THIS MATERIAL, THEN THE PARENT KNOWS ABOUT IT AND  
25 CAN THEN DISCUSS IT WITH THE CHILD LATER.

1 THE COURT: I THINK WE HAVE REACHED THE  
2 4:30 MARK. WE WILL RECESS THE MAIN TRIAL AND THE  
3 WITNESS WILL BE EXCUSED UNTIL TOMORROW MORNING. COUNSEL  
4 WILL REMAIN. IN THE INTERIM, WE WILL BE OFF THE RECORD  
5 FOR A FEW MINUTES UNTIL WE GET ORGANIZED FOR THE  
6 AFTERNOON SESSION. COME BACK TOMORROW MORNING, PLEASE.

7 THE WITNESS: YES.

8 THE COURT: BACK ON THE RECORD. LET'S  
9 START WITH THE EASY PART.

10 WHEN DR. CRANOR IS FINISHED AT 4:30  
11 TOMORROW AFTERNOON, WHO WILL THE NEXT WITNESS BE?

12 MR. HANSEN: UNFORTUNATELY, YOUR HONOR,  
13 THAT IS NOT THE EASY PART OF THIS AFTERNOON, I'M AFRAID.  
14 AS YOUR HONOR WILL RECALL, THE WITNESS SCHEDULE  
15 PREVIOUSLY CALLED FOR THE NEXT WITNESS TO BE THE DOJ  
16 DEFINITIONS WITNESS. YOUR HONOR HAS NOT RULED ON THAT,  
17 AND EVEN IF YOUR HONOR WERE TO ALLOW THAT WITNESS, IT  
18 DOES NOT APPEAR LIKELY THAT THAT WOULD OCCUR TOMORROW  
19 AFTERNOON UNDER ANY CIRCUMSTANCES.

20 THE COURT: DO YOU HAVE A SUBSTITUTE  
21 PLAN?

22 MR. HANSEN: WE HAVE TWO.

23 THE COURT: WE HAVE PLAN B?

24 MR. HANSEN: WE HAVE A PLAN B AND A PLAN  
25 C, YOUR HONOR, ONE OF WHICH, I HOPE, WILL WORK.

1                   OUR PLAN B WAS TO BEGIN THE READING OF  
2                   THE DEPOSITION DESIGNATIONS. WE HAVE PREPARED ALL OF  
3                   THE DEPOSITION DEPOSITIONS AND ARE READY TO READ THEM.  
4                   THE PROBLEM WITH THOSE IS THAT THERE ARE CONFIDENTIALITY  
5                   PROBLEMS WITH VIRTUALLY ALL OF THEM. AS YOUR HONOR MAY  
6                   BE AWARE --

7                   THE COURT: I'M CURRENTLY AWARE OF ONE  
8                   SPECIFICALLY.

9                   MR. HANSEN: I'M AWARE OF TWO.

10                  THE COURT: MOTION FILED.

11                  MR. HANSEN: THERE'S A MOTION BEEN FILED  
12                  BY CHOICEPOINT ON ONE OF THEM. THERE IS A MOTION BEEN  
13                  FILED BY RULESPACE, I'M TOLD, TODAY, ON AT LEAST ONE OF  
14                  THEM. SOME OF THE DEPOSITIONS -- WE COULD READ OUR  
15                  DESIGNATION PORTIONS TOMORROW AFTERNOON. UNFORTUNATELY,  
16                  IN THE PROCESS OF THE BACK-AND-FORTH, THE DEFENDANTS DID  
17                  NOT SEND THEIR CONFIDENTIALITY LETTERS OUT IN TIME. SO  
18                  THE FIVE-DAY NOTICE PERIOD HAS NOT QUITE RUN, I THINK,  
19                  FOR SOME OF THEM. SO THEIR DESIGNATIONS WE MAY NOT BE  
20                  ABLE TO DO, AND MY ASSUMPTION IS THAT YOUR HONOR WILL  
21                  WANT TO HEAR ALL OF A SINGLE WITNESS AT ONCE, RATHER  
22                  THAN HAVE IT CHOPPED UP.

23                  THE COURT: I THINK THE RULES IN THE CASE  
24                  SUGGEST IT SHOULD BE DONE AT THE SAME TIME, SO THERE IS  
25                  NO DISCONNECT.

1                   MR. HANSEN: WE ARE STILL LOOKING TO SEE  
2 WHETHER THERE IS ANY WITNESS THAT WE CAN DO THE  
3 DEPOSITION DESIGNATIONS TOMORROW AFTERNOON, CAN READ  
4 THEM WITHOUT WORRYING ABOUT THE CONFIDENTIALITY  
5 PROBLEMS.

6                   THE COURT: DO I HAVE IN MY HAND THE  
7 CROSS DESIGNATIONS, ANY OBJECTIONS OR NOT, OF THESE?

8                   MR. HANSEN: I BELIEVE YOU HAVE, YES.  
9 THE ANSWER IS YES, YOUR HONOR, YOU DO.

10                  THE COURT: I HAVE NOT RULED ON THOSE.

11                  MR. HANSEN: OF COURSE.

12                  MR. CAMPBELL: YOUR HONOR, WE HAVE SOME  
13 OBJECTIONS TO THE DEPO DESIGNATIONS, IF YOU HAVE THEM  
14 THERE.

15                  THE COURT: I'M NOT SURE I HAVE THEM ON  
16 MY BENCH NOW.

17                  MR. CAMPBELL: THERE WERE DESIGNATIONS,  
18 AND WE BROUGHT COUNTERDESIGNATIONS. PLAINTIFFS ALSO  
19 PROVIDED COUNTER COUNTERDESIGNATIONS TO WHICH WE OBJECT,  
20 SO THERE IS THAT ISSUE.

21                  THE COURT: I NEED TO GET THAT  
22 INFORMATION IN HAND SO I CAN BEGIN TO WORK ON IT. I'M  
23 NOT SURE I CAN DO IT THRICE.

24                  MR. HANSEN: YOUR HONOR, MY UNDERSTANDING  
25 IS THAT THE PLAINTIFFS GAVE WHAT THEY ARE CALLING THE

1 COUNTER COUNTERDESIGNATIONS TO THE DEFENDANTS LAST  
2 THURSDAY. WE HAVE BEEN WAITING FOR A RESPONSE. WE ARE  
3 PREPARED. WE HAVE BEEN WILLING TO DISCUSS IT. WE  
4 CONTINUE TO BE WILLING TO DISCUSS IT.

5 THE COURT: WILL THERE COME A POINT WHERE  
6 EITHER THE COURT DOES NOT LET YOU BRING THEM IN BECAUSE  
7 YOU HAVE NOT DONE ENOUGH DISCUSSION TO SATISFY THE COURT  
8 THAT THERE IS NO CHANCE OF SUCCESS, OR THE COURT RULES  
9 ON THEM AS SOON AS POSSIBLE, ONE WAY OR THE OTHER.

10 AS I SIT HERE WITH THE VOLUME OF  
11 DOCUMENTS THAT HAVE BEEN SUBMITTED, I CAN'T TELL YOU  
12 WHERE THAT MATERIAL IS. MR. LANG WILL HELP ME AFTER THE  
13 CONFERENCE TODAY, AND WE WILL FIND IT. BUT I DON'T  
14 REMEMBER SEEING COUNTER COUNTERDESIGNATIONS. I MIGHT  
15 HAVE OVERLOOKED THEM.

16 MR. CAMPBELL: I DON'T THINK IT WAS  
17 PHRASED THAT WAY ON THE DOCUMENT THE PLAINTIFFS  
18 PREPARED. I THINK THEY LABELLED THEM AS PLAINTIFFS'  
19 DESIGNATIONS, DEFENDANT'S DESIGNATIONS, PLAINTIFFS'  
20 COUNTERDESIGNATIONS, IF MEMORY SERVES ME CORRECTLY.  
21 HOWEVER, THAT WOULD BE THE COUNTER COUNTERDESIGNATIONS.  
22 THE DEFENDANT'S DESIGNATIONS WERE THE  
23 COUNTERDESIGNATIONS.

24 MR. HANSEN: THEY ARE COLOR CODED ON THE  
25 COPIES THAT WE GAVE YOUR HONOR. THE GREEN ONES ARE THIS

1           CATEGORY THAT WE ARE TALKING ABOUT THAT WE HAVE NOT GOT  
2           A NAME FOR EXACTLY.

3                           WE DO HAVE A PLAN C.

4                           THE COURT:   IS THE PLAINTIFF ABLE TO PUT  
5           OFF ALL OF THESE THIRD-PARTY DEPOSITION READINGS AND  
6           SUBSTITUTE ANOTHER WITNESS WHILE YOU ARE CONTINUING TO  
7           WORK WITH THE DEFENSE ON IT?

8                           MR. HANSEN:   I WAS ABOUT TO SAY, YOUR  
9           HONOR, WE HAVE A PLAN C, BECAUSE I RECOGNIZE THE  
10          PROBLEMS WITH THE DEPOSITION DESIGNATIONS.

11                          THE WITNESS SCHEDULED TO TESTIFY ON  
12          WEDNESDAY, PROFESSOR ED FELTEN, IS AVAILABLE TOMORROW  
13          AFTERNOON, AND COULD TESTIFY TOMORROW AFTERNOON.   WE MAY  
14          THEN BE SHORT WITNESSES ON WEDNESDAY, BECAUSE HE WAS  
15          SCHEDULED TO TAKE UP A HALF-DAY ON WEDNESDAY.   BUT AT  
16          LEAST AS OF -- IF IT'S THE COURT'S PREFERENCE, TOMORROW  
17          PROFESSOR FELTEN COULD COME IN AND TESTIFY IN THE  
18          AFTERNOON.

19                          THE ONLY OTHER WITNESS WE HAVE SCHEDULED  
20          FOR WEDNESDAY IS MR. RUSSO.   MR. RUSSO IS AT LEAST A  
21          HALF-DAY WITNESS, BUT THERE IS A HALF-DAY SHORT IN HERE  
22          SOMEWHERE AND WE ARE TRYING HARD TO FILL IT AS MUCH AS  
23          WE CAN.

24                          THE COURT:   WHAT I NEED TO DO IS FIND THE  
25          MATERIAL AND RULE ON SOME OF IT.   BUT IF THERE ARE



1 CONFIDENTIALITY PROBLEMS THAT YOU ARE STILL TRYING TO  
2 RESOLVE, MY DOING THAT IS NOT GOING TO SOLVE THE PROBLEM  
3 BY MAKING THEM AVAILABLE. I'M A LITTLE CONFUSED OVER --  
4 THE ONLY MOTION THAT I SAW WAS THE CHOICEPOINT.

5 MR. HANSEN: AS I SAY, I THINK THERE WAS  
6 ONE FILED TODAY FROM RULESPACE. I UNDERSTAND THE  
7 CONFUSION. I CAN TRY TO EXPLAIN IT ANYWAY.

8 THE COURT: ANSWER THE QUESTION I HAD IN  
9 MIND. AND THAT WAS, I'M A LITTLE CONFUSED AS TO HOW  
10 CHOICEPOINT'S LAWYERS THINK THAT THE DEPOSITION  
11 TRANSCRIPT CAN BE USED, AND SOMEHOW PROTECTED FROM  
12 PUBLIC VIEW, IF THERE IS GOING TO BE TESTIMONY IN COURT  
13 THAT INCLUDES THE PROPRIETARY INFORMATION. IN THAT  
14 CONNECTION, IS THERE ANY WAY TO ELIMINATE THE  
15 PROPRIETARY INFORMATION FROM THE TRANSCRIPT THAT IS  
16 BEING READ?

17 MR. HANSEN: AT LEAST WITH RESPECT TO THE  
18 CHOICEPOINT MOTION, WHICH IS THE ONLY ONE I HAVE READ SO  
19 FAR, THEY SEEM TO THINK THAT EVERYTHING IS -- THEY SEEM  
20 TO WANT EVERYTHING TO BE CONFIDENTIAL. SO I THINK THE  
21 ANSWER IS NO, AT LEAST WITH RESPECT TO CHOICEPOINT. I  
22 HAVE NOT SEEN THE RULESPACE MOTION YET.

23 THE COURT: I HAVE NOT HEARD THE RESPONSE  
24 OF THE PLAINTIFF TO CHOICEPOINT'S MOTION. I HAVE NOT  
25 ONLY NOT HEARD IT, BUT HAVE NOT SEEN IT. IT MAY NOT

1 HAVE BEEN FILED YET.

2 MR. HANSEN: WE DID NOT FILE A RESPONSE,  
3 YOUR HONOR. AND OUR RESPONSE IS QUOTED IN THE  
4 CHOICEPOINT MOTION, WHICH IS WE NEITHER OPPOSE NOR DENY  
5 -- WE NEITHER OPPOSE OR SUPPORT THE MOTION. WE WANT THE  
6 TESTIMONY FROM CHOICEPOINT IN. WE THINK IT IS  
7 INSUFFICIENT -- THAT THEY HAVE MADE INSUFFICIENT SHOWING  
8 OF CONFIDENTIALITY. BUT IF THE COURT CHOOSES TO KEEP  
9 THAT INFORMATION CONFIDENTIAL, THAT IS FINE WITH US. IF  
10 THE COURT CHOOSES TO OVERRULE THE CONFIDENTIALITY, THAT  
11 IS ALSO FINE.

12 THE COURT: DOES THAT AMOUNT TO CLOSING  
13 THE COURTROOM AND PUTTING THE TRANSCRIPT UNDER SEAL?

14 MR. HANSEN: WE WOULD HOPE NOT, YOUR  
15 HONOR. WE ARE WELL AWARE OF YOUR VIEWS ON THAT SUBJECT.

16 THE COURT: THAT IS WHAT MAKES IT VERY  
17 DIFFICULT.

18 MR. HANSEN: IN OUR VIEW, CHOICEPOINT HAS  
19 NOT MADE OUT A CASE FOR THE FACT THAT THEY ARE  
20 LEGITIMATE BUSINESS SECRETS. BUT IT IS A LITTLE AWKWARD  
21 ARGUING THAT WITHOUT THEM BEING IN THE ROOM.

22 THE COURT: RIGHT. YOU MAY HAVE TO TAKE  
23 SOME TIME TO BRING THEM IN AND USE TRIAL TIME TO DEAL  
24 WITH IT. I WILL LOOK AT THAT WHEN I GET BACK INTO MY  
25 CHAMBERS. I DIDN'T KNOW WHETHER ANYBODY WAS GOING TO

1 FILE A RESPONSE UNTIL THIS VERY MOMENT, AT LEAST THE  
2 DEFENSE HAS NOT.

3 MR. GOMEZ: THE DEFENSE HAS NOT FILED A  
4 RESPONSE, BUT WE HAVE NOT ACTUALLY SEEN, I GUESS, THE  
5 MOTIONS. SO WE ARE GOING TO HAVE TO -- PARTICULARLY THE  
6 LAST ONE THAT HAS BEEN FILED.

7 THE COURT: I HAVE NOT SEEN THAT EITHER.

8 MR. GOMEZ: WE WOULD HAVE TO REVIEW THEM.  
9 THE DEFENDANT'S POSITION IS THAT WE NEED TO SEE ACTUALLY  
10 WHAT IS THE BASIS FOR THE THIRD PARTY CLAIMING  
11 PROPRIETARY -- OR CLAIMING PRIVILEGE.

12 THE COURT: PROPRIETARY. MAYBE THAT IS  
13 NOT THE WORD THEY USED.

14 MR. GOMEZ: THEY MAY NOT HAVE USED THAT  
15 LANGUAGE. BUT THE CONCERN THE DEFENDANT HAS IS THAT  
16 MANY OF THE THIRD PARTIES JUST BLANKETLY CLASSIFIED  
17 THEIR ENTIRE DEPOSITION AS PRIVILEGED. WE POINTED THE  
18 PROBLEM OUT TO THEM. BUT I DON'T KNOW. THERE MAY BE  
19 SOME THAT MAY BE WILLING TO ALLOW SOME FORM OF THE  
20 TESTIMONY TO GO FORWARD, IF THEY DON'T. IF THERE IS  
21 SOME PARTICULAR INFORMATION THAT IS NOT, YOU KNOW,  
22 RAISED IN OPEN COURT. AND WE JUST HAVE NOT SEEN THE  
23 MOTIONS TO SEE WHETHER THAT IS WHAT THEY WANT TO DO OR  
24 NOT.

25 MR. HANSEN: WITH RESPECT TO THE OTHER

1 DEPOSITION DESIGNATIONS, BESIDES THE CHOICEPOINT AND  
2 RULESPACE, THE WAY THE CONFIDENTIALITY ORDER IN THIS  
3 CASE WORKED, THE PARTIES WERE REQUIRED TO NOTIFY THE  
4 THIRD PARTY FIVE DAYS IN ADVANCE. THAT FIVE DAYS  
5 EXPIRES, I THINK -- THE LETTERS THAT THE DEFENDANT SENT  
6 OUT, THAT FIVE DAYS EXPIRES WEDNESDAY. SO WE MAY BE  
7 ABLE TO START -- IF NONE OF THE OTHER DEPOSITION  
8 DESIGNEES OBJECTS, WE MAY BE ABLE TO START DOING  
9 DEPOSITION DESIGNATIONS ON WEDNESDAY OR THURSDAY.

10 THE COURT: LET'S MAKE SURE THAT WE HAVE  
11 ENOUGH EVIDENCE. AND I THINK YOU BROKE IT DOWN IN A WAY  
12 THAT YOU HAVE ENOUGH EVIDENCE TO GO AT LEAST UNTIL HALF  
13 A DAY ON WEDNESDAY.

14 MR. HANSEN: ABSOLUTELY, YOUR HONOR.

15 THE COURT: AND ROUGHLY AND SUPERFICIALLY  
16 PLAN TO SPEND WEDNESDAY AFTERNOON HAVING A HEARING ON A  
17 MOTION TO -- PROTECTIVE ORDER OR OTHERWISE, WRANGLE AN  
18 AGREEMENT OUT OF SOME OF THE -- IF WE HAVE TWO MOTIONS  
19 AND WE ORDER THEM DOWN FOR A HEARING ON WEDNESDAY  
20 AFTERNOON, WE WILL GET THE LAWYERS HERE, AND YOU CAN SEE  
21 WHAT YOU CAN DO TO SOLVE THE PROBLEM INFORMALLY.

22 REMEMBER, NOT THE SAME ISSUE, BUT THE  
23 SAME KIND OF A PROBLEM AROSE DURING THE PRELIMINARY  
24 INJUNCTION HEARING WITH THE GENERAL PRESS. WE HAD  
25 FINANCIAL INFORMATION FOR ONE OF THE DEFENDANTS. I KNOW

1 WHO IT WAS. AND I KNOW THAT SOMETHING HAS BEEN REVEALED  
2 IN COURT TODAY THAT SHOWS THAT WHAT THEY WERE UP TO.  
3 YOU WOULD HAVE TO BE AN INSIDER TO KNOW WHAT THAT IS.  
4 IT'S NOTHING PECULIAR. BUT WE WERE ABLE TO GET THE --  
5 YOU WERE ABLE TO WORK OUT AN AGREEMENT WITH THE PRESS.

6 MR. HANSEN: WE WERE, YOUR HONOR.

7 THE COURT: AND WHILE IT IS NOT THE SAME  
8 THING, IT HAS THE SAME AURA TO IT.

9 MR. HANSEN: I THINK IF WE HAVE THE  
10 LAWYERS FROM CHOICEPOINT AND/OR RULESPACE IN THE ROOM, I  
11 THINK THERE IS SOME POSSIBILITY THAT WE CANNOT ELIMINATE  
12 THE PROBLEM, CERTAINLY SIGNIFICANTLY MINIMIZE IT.

13 THE COURT: MINIMIZE IT. WE'LL COME UP  
14 WITH A SOLUTION, WHICH I CAN'T CONCEIVE OF RIGHT NOW,  
15 BUT WE WILL DO IT.

16 I CAN'T MAKE ANY PROMISES, BUT I'M  
17 ACTIVELY WORKING ON THE UNNAMED GOVERNMENT WITNESS  
18 ISSUE. MOVING RIGHT ALONG ON THAT.

19 MR. HANSEN: ON THAT ISSUE, YOUR HONOR,  
20 AS THE COURT MAY BE AWARE, THE GOVERNMENT HAS FILED A  
21 WRITTEN MOTION ON THAT ISSUE, EITHER THIS MORNING OR  
22 LAST WEEK, I'M NOT SURE WHICH.

23 MR. GOMEZ: WE FILED A MOTION LAST NIGHT,  
24 YOUR HONOR.

25 THE COURT: I DIDN'T SEE THAT. I HAVE

1 BEEN WITH YOU TODAY.

2 MR. GOMEZ: PARDON?

3 THE COURT: I HAVE BEEN WITH YOU TODAY.

4 MR. GOMEZ: I UNDERSTAND. AND  
5 UNFORTUNATELY, WE HAD SOME TECHNICAL DIFFICULTIES WITH  
6 OUR EQUIPMENT LAST NIGHT. BUT WE E-MAILED A COPY OF THE  
7 MOTION TO THE COURT THIS MORNING. WE COULDN'T GET THE  
8 SYSTEM WORKING LAST NIGHT.

9 THE COURT: WE WILL DEFINITELY NEED THAT  
10 AND USE IT. I JUST WAS DOING SOME RESEARCH AND THINKING  
11 AND SO FORTH.

12 MR. GOMEZ: YES, YOUR HONOR. WE HAVE  
13 HARD COPIES.

14 THE COURT: I WAS NOT ABOUT TO -- PARDON  
15 ME.

16 THE CLERK: WE DON'T NEED THEM.

17 MR. GOMEZ: SORRY, YOUR HONOR.

18 THE COURT: LET'S DO SOME PRELIMINARY  
19 PLANNING TO READ ONE OR MORE DEPOSITIONS ON THURSDAY.

20 MR. HANSEN: THAT WILL BE FINE.

21 THE COURT: I THINK THAT WILL BE --

22 MR. HANSEN: YOUR HONOR, THURSDAY, WE  
23 HAVE A VERY FULL DAY SCHEDULED, SO I'M NOT SURE WE NEED  
24 TO FILL -- THURSDAY, WE HAVE PLENTY OF WITNESSES.

25 THE COURT: ALL RIGHT. I WAS JUST TRYING

1 TO KEEP THEM AS CLOSE TO WHERE YOU WANTED THEM AS  
2 POSSIBLE. I SHOULD LET YOU WORRY ABOUT THAT.

3 MR. HANSEN: I'M STILL TRYING A LITTLE  
4 BIT TO SEE IF I CAN MOVE A THURSDAY WITNESS, BUT I'M NOT  
5 OPTIMISTIC. THERE ARE JUST A COUPLE OF OTHER -- IF WE  
6 ARE DONE WITH THAT, YOUR HONOR, I JUST WANTED TO ALERT  
7 THE COURT. THERE ARE TWO OR THREE ISSUES THAT ARE STILL  
8 OPEN. THERE IS NO PARTICULAR REASON WHY ANY OF THEM  
9 NEEDS TO BE RESOLVED THIS AFTERNOON. I JUST THOUGHT IT  
10 WOULD BE HELPFUL IF THE COURT AND THE PARTIES HAD A LIST  
11 OF THE ISSUES WE KNOW ARE OPEN.

12 THE COURT: YES.

13 MR. HANSEN: THE FIRST IS THE ONE YOUR  
14 HONOR REFERRED TO, WHICH IS THE DOJ DEFINITIONS WITNESS.

15 THE SECOND IS THE ALLEN AND FINKELHOR  
16 OBJECTIONS.

17 THE COURT: I'M WORKING ON THAT ACTIVELY.

18 MR. HANSEN: THE THIRD IS THE PRELIMINARY  
19 INJUNCTION TESTIMONY.

20 AFTER LAST THURSDAY, YOUR HONOR ASKED THE  
21 PLAINTIFFS TO SEND AN OFFER OF PROOF ON THE PRELIMINARY  
22 INJUNCTION -- THE INCORPORATION OF THE PRELIMINARY  
23 INJUNCTION TESTIMONY.

24 THE COURT: OR PART OF IT. YOU OFFERED  
25 THE WHOLE THING. I WAS URGING YOU TO TAKE A HARD LOOK.

1                   MR. HANSEN: WE DID PRECISELY THAT. WE  
2                   SENT AN OFFER OF PROOF TO THE DEFENDANT. MR. GOMEZ AND  
3                   I HAD A CONVERSATION ABOUT THAT. IT APPEARS WE HAVE  
4                   REACHED AN IMPASSE SO THAT THAT ISSUE WILL ULTIMATELY  
5                   REQUIRE RESOLUTION OF THE COURT.

6                   JUST TO PREVIEW FOR THE COURT, THE  
7                   PLAINTIFFS SUGGESTED THAT THE ONLY PORTIONS OF THE  
8                   PRELIMINARY INJUNCTION TESTIMONY TO BE INCORPORATED WERE  
9                   THE TESTIMONY OF THE PLAINTIFFS IN THAT CASE, AND THERE  
10                  WERE FOUR OF THEM WHO TESTIFIED AT THE PRELIMINARY  
11                  INJUNCTION STAGE, AND THEN DR. HOFFMAN. THE FOUR  
12                  PLAINTIFFS WHO TESTIFIED WERE NORMAN LAURELET OF A  
13                  DIFFERENT LIGHT BOOK STORE, MR. TALBOT OF SALON,  
14                  MR. BARR FROM THE AMERICAN BOOKSELLERS AND MR. TEPPER.  
15                  I DON'T THINK --

16                  THE COURT: SAY THE LAST TWO AGAIN,  
17                  PLEASE.

18                  MR. HANSEN: I'M SORRY. I SAID MR. BARR  
19                  FROM AMERICAN BOOKSELLERS AND I FORGOT TO SAY, BUT I  
20                  SHOULD HAVE, MR. REILLY FROM PLANET OUT. THERE WAS YET  
21                  ONE MORE, A PLAINTIFF WHO TESTIFIED THE FIRST TIME  
22                  AROUND. THAT WAS MR. TEPPER. HE IS GOING TO TESTIFY  
23                  AGAIN THIS TIME SO THERE IS NO REASON TO USE HIS  
24                  PRELIMINARY INJUNCTION TESTIMONY. SO IT'S THE FOUR  
25                  WITNESSES, LAURELET, TALBOT, BARR AND REILLY, AND THEN



1 DR. DONNA HOFFMAN, WHO YOUR HONOR WILL RECALL WAS  
2 PLAINTIFFS' PRINCIPAL EXPERT AT THE PRELIMINARY  
3 INJUNCTION STAGE.

4 THE COURT: WELL, I NEED THE OFFER OF  
5 PROOF. IF IT IS ONLY A LIST OF PEOPLE, THAT IS NOT  
6 ADEQUATE FOR ME TO MAKE A RULING. I NEED TO KNOW THE  
7 RELEVANCE, GIVE THE GOVERNMENT TIME TO RESPOND TO THE  
8 RELEVANCE ISSUE, THE DATED TESTIMONY ISSUE. IT MIGHT BE  
9 THE SAME AS RELEVANCE OR SIMILAR. SO I TASK THE  
10 PLAINTIFF WITH FILING A DOCUMENT, WHICH I DON'T KNOW  
11 WHAT YOU WOULD CALL IT SO FAR. WE ALREADY HAD ONE  
12 MOTION TO ALLOW THE TESTIMONY UNDER RULE 32. THAT HAS  
13 BEEN RULED ON. THIS IS, I SUPPOSE, A SUPPLEMENTAL  
14 ISSUE. YOU CAN WORD IT ANYWAY THAT IS DESCRIPTIVE. WE  
15 WILL GIVE THE GOVERNMENT TIME TO RESPOND TO IT.

16 MR. HANSEN: WE WILL DO THAT, YOUR HONOR.  
17 THANK YOU.

18 MR. GOMEZ: THANK YOU.

19 THE COURT: AND MY OVERVIEW AND  
20 OBSERVATION IS NOT THAT WE WILL BE SITTING ON OUR HANDS.  
21 BUT IT'S NOT A RUSH DAY-TO-DAY ISSUE. IF WE CAN CLEAN  
22 THAT UP BY THE END OF THE PLAINTIFFS' CASE THAT IS GOING  
23 TO BE ADEQUATE PROBABLY.

24 MR. HANSEN: I CONCUR COMPLETELY, YOUR  
25 HONOR.

1 THE COURT: UNLESS YOU ARE GOING TO USE  
2 IT WITH OTHER WITNESSES, DIRECT THEIR ATTENTION TO IT OR  
3 SOMETHING.

4 MR. HANSEN: WE ARE NOT, YOUR HONOR.

5 THE COURT: IS DR. HOFFMAN THE WOMAN FROM  
6 VANDERBILT?

7 MR. HANSEN: YES, SHE IS. IN FACT, SHE  
8 JUST LEFT VANDERBILT AND WENT TO ONE OF THE UNIVERSITIES  
9 OF CALIFORNIA. BUT, YES, THAT IS WHO THE WITNESS IS.

10 THE COURT: YES, SIR.

11 MR. GOMEZ: YOUR HONOR, I THINK THE  
12 DEFENDANT WOULD DEFINITELY -- WELL, WOULD RESPOND TO THE  
13 SUBMISSION BY THE PLAINTIFFS. I JUST WANT TO MAKE IT  
14 CLEAR, THOUGH, YOUR HONOR. FOR INSTANCE, PLANET OUT, I  
15 GUESS THE PLAINTIFFS ARE IDENTIFYING THEY WANT TO SUBMIT  
16 AS NOT EVEN A PLAINTIFF ANYMORE. I MEAN, WE WILL  
17 ADDRESS THIS IN OUR RESPONSE, BUT WE ARE REALLY TALKING  
18 ABOUT AN HISTORICAL, A TIME PERIOD OF 1998, '99.

19 THE COURT: THAT IS A BIG HURDLE.

20 THE PLAINTIFF WILL TRY TO GET OVER THAT  
21 HURDLE.

22 MR. GOMEZ: AND WITH RESPECT TO DR.  
23 HOFFMAN, WE ARE TALKING ABOUT PLAINTIFFS WANTING TO  
24 SUBMIT TESTIMONY OF A WITNESS FROM BACK IN THAT TIME. A  
25 WITNESS, BY THE WAY, THEY HAD SUBMITTED AN EXPERT REPORT

1 AND WHO WASN'T MADE AVAILABLE FOR DEPOSITION AND WHOSE  
2 EXPERT REPORT WAS NOT SUBMITTED.

3 SO THE DEFENDANT WOULD STRENUOUSLY OBJECT  
4 TO HAVING DR. HOFFMAN'S TESTIMONY SOMEHOW BE RELIED UPON  
5 AS TO THE FACTS OF TODAY. BUT WE CAN ADDRESS THAT IN  
6 OUR RESPONSE.

7 THE COURT: THE POWER OF HER TESTIMONY  
8 WAS IN THE RESEARCH THAT SHE DID TO COME TO THE  
9 CONCLUSION THAT'S GOING TO BE ALL OVER THIS COURTROOM  
10 FROM OTHER PEOPLE NOW AT THIS STAGE, THAT HUMAN BEINGS  
11 WHO ACCESS THE WEBSITES ARE DETERRED FROM ACCESSING  
12 INTER PAGES OF THE WEBSITES BY SOME SORT OF STOP AND  
13 GIVE US YOUR CREDIT CARD INFORMATION, OR BY SOMETHING,  
14 OR WHATEVER YOU HAVE TO DO. THAT WAS THE MAIN THRUST OF  
15 HER TESTIMONY.

16 MR. GOMEZ: THAT IS RIGHT.

17 THE COURT: I THOUGHT THAT WAS REASONABLY  
18 NOVEL AT THE TIME. I DON'T KNOW THAT IT IS ALL THAT  
19 NOVEL ANYMORE. WE HAVE ALREADY HAD AT LEAST -- WE WILL  
20 HAVE, I'M SURE, SOME EXPERTISE FROM THE WITNESS ON THE  
21 STAND NOW, AND AT LEAST ONE OF THE -- MISS WALSH  
22 TESTIFIED TO THEIR EXPERIENCE WITH IT. SO I JUST MADE  
23 THAT LIKE YOU DID, AS A PRELIMINARY PROCEEDING.

24 MR. GOMEZ: YES, YOUR HONOR.

25 THE COURT: WE WILL DO A BETTER JOB WHEN

1 WE GET THE MATERIAL.

2 WOULD YOU LIKE TO FINISH YOUR LIST?

3 MR. HANSEN: I THINK THAT'S IT, YOUR  
4 HONOR. I ONLY HAD ONE OTHER THING WHICH IS THE FIRST  
5 THING THIS MORNING, WE OMITTED INTRODUCING THE OTHER  
6 MEMBERS OF THE PLAINTIFF LEGAL TEAM. I THOUGHT, AS A  
7 COURTESY TO THE COURT, I COULD INTRODUCE THE REST OF THE  
8 MEMBERS OF THE PLAINTIFF LEGAL TEAM TO YOU.

9 THE COURT: THAT WOULD BE NICE.

10 MR. HANSEN: YOU'VE MET MR. FINE AND MR.  
11 WIZNER BOTH ALREADY THIS MORNING. ALSO FROM THE ACLU IS  
12 KATHERINE CRUMP.

13 THE COURT: MISS CRUMP, HOW DO YOU DO.

14 I ASSUME THESE ARE COUNSEL.

15 MR. HANSEN: THESE ARE ALL LAWYERS.

16 THE COURT: HOW DO YOU SPELL CRUMP, WITH  
17 A C OR A K?

18 MR. HANSEN: C-R-U-M-P, YOUR HONOR.

19 THE COURT: SO MANY LAWYERS IN AND OUT,  
20 SO MANY ON THE DOCKET OR NOT ON THE DOCKET, I WOULD NOT  
21 KNOW AT THIS POINT. THERE HAVE BEEN SO MANY LAWYERS  
22 BEEN IN AND OUT OF THE APPEARANCE DOCKET THAT --

23 MR. HANSEN: THERE HAVE BEEN, YOUR HONOR,  
24 YES.

25 THE COURT: -- IT'S DIZZYING ME.

1                   MR. HANSEN: AS YOUR HONOR IS AWARE, THE  
2                   PLAINTIFFS IN THIS CASE HAVE BEEN ASSISTED ABLY BY  
3                   LAWYERS FROM THE LAW FIRM OF LATHAM & WATKINS. I WOULD  
4                   LIKE TO INTRODUCE THE LATHAM & WATKINS LAWYERS WHO ARE  
5                   WORKING ON THE CASE. TO MY IMMEDIATE LEFT IS  
6                   CHRISTOPHER HARRIS. MR. HARRIS IS A PARTNER AT LATHAM &  
7                   WATKINS.

8                   THE COURT: AN AFFIANT.

9                   MR. HANSEN: ALSO THAT.

10                  TO MR. HARRIS' LEFT IS JEROEN VAN  
11                  KWAWEGEN. HE IS ASSOCIATED WITH LATHAM & WATKINS.

12                  BEHIND ME IS KATHARINE MARSHALL. MISS  
13                  MARSHALL IS ALSO ASSOCIATED WITH LATHAM.

14                  THE COURT: I MET HER LAST WEEK.

15                  MR. HANSEN: YOU DID, YOUR HONOR.

16                  AND AT THE END OF THE FIRST ROW, BENJAMIN  
17                  SAHL AND ADDISON GOLLODOY. BOTH ARE ASSOCIATED WITH  
18                  LATHAM & WATKINS. BOTH HAVE PROVIDED INVALUABLE  
19                  ASSISTANCE TO THE PLAINTIFFS ON THIS CASE.

20                  THE COURT: OKAY. DOES THE DEFENSE HAVE  
21                  ANYTHING TO BRING TO MY ATTENTION NOW?

22                  MR. GOMEZ: NO, YOUR HONOR, BUT I WOULD  
23                  ALSO LIKE TO -- I KNOW THAT THE COURT HAS MET, AT  
24                  DIFFERENT TIMES, THE DIFFERENT MEMBERS OF THE  
25                  DEFENDANT'S TEAM.

1 THE COURT: SOMETIMES I MEET THEM AT THE  
2 PODIUM.

3 MR. GOMEZ: THAT'S CORRECT, YOUR HONOR.  
4 BUT I THINK I SHOULD GO AHEAD, AND I WOULD LIKE TO GO  
5 AHEAD AND INTRODUCE KEN SEALLS, WHO'S WORKING WITH THE  
6 DEFENDANT'S TEAM.

7 THE COURT: SPELL PEOPLE'S LAST NAMES SO  
8 THE REPORTER WILL HAVE A LIST, SO SHE HAS SOMEWHERE TO  
9 GO GET THEM.

10 MR. GOMEZ: AND OF COURSE ERIC BEANE, WHO  
11 PROVIDED THE OPENING AND CROSS.

12 TAMARA ULRICH.

13 THE COURT: I GOT A LETTER FROM HER  
14 TODAY. WE'RE NOT TALKING.

15 ONE FROM CATHERINE CRUMP AND ONE FROM  
16 TAMARA ULRICH.

17 MR. GOMEZ: AND ISAAC CAMPBELL OF COURSE,  
18 YOUR HONOR.

19 THE COURT: MR. CAMPBELL.

20 MR. CAMPBELL: YOUR HONOR.

21 MR. GOMEZ: AND JAMES TODD.

22 THE COURT: WE MET MR. TODD.

23 MR. GOMEZ: AND JOEL MCELVAIN AND TED  
24 HIRT, WHO IS ALSO HERE.

25 THE COURT: THAT IS EVERYONE FORMALLY.

1 MR. LANG, DO YOU INSTRUCT ME TO ASK THE  
2 LAWYERS ANY QUESTIONS?

3 THE CLERK: NO, I HAVE NOTHING FURTHER.

4 THE COURT: OUR COURT DAY IS CONCLUDED.  
5 WE ARE OFF THE RECORD AND COUNSEL ARE EXCUSED.

6 (CONCLUDED AT 4:55 P.M.)

7

8 I CERTIFY THAT THE FOREGOING IS A CORRECT  
9 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
10 ABOVE-ENTITLED MATTER.

11

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13

14 DATE

OFFICIAL COURT REPORTER

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