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

3   AMERICAN CIVIL LIBERTIES   :   CIVIL ACTION
     UNION, ET AL   :
4   :
                   PLAINTIFF   :
5   :
                                 :
6   VS.   :
                                 :
7   :
     ALBERTO R. GONZALES,   :
8   IN HIS OFFICIAL CAPACITY AS :
     ATTORNEY GENERAL OF THE   :
9   UNITED STATES   :
                                 :
10   DEFENDANT   :   NO. 98-05591

11   WEDNESDAY, NOVEMBER 8, 2006
                                 COURTROOM 17-A
12   PHILADELPHIA, PA 19106
     _____
13   BEFORE THE HONORABLE LOWELL A. REED, JR. SJ
     _____
14   NON-JURY TRIAL
                        DAY 11
15   _____
     APPEARANCES:
16
     CHRISTOPHER A. HANSEN, ESQUIRE
17   ADEN J. FINE, ESQUIRE
     BEN WIZNER, ESQUIRE
18   CATHERINE CRUMP, ESQUIRE
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     NEW YORK, NY 10004-2400
20   (212)549-2606   FOR THE PLAINTIFFS

21   SUZANNE R. WHITE, CM
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22   FIRST FLOOR U. S. COURTHOUSE
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23   PHILADELPHIA, PA. 19106
                (215)627-1882
24

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

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 1    APPEARANCES: (CONTINUED)

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      KATHARINE MARSHALL, ESQUIRE
 3    JEROEN VAN KWAWEGEN, ESQUIRE
      ADDISON F. GOLLODAY, ESQUIRE
 4    BENJAMIN SAHL, ESQUIRE
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      U.S. DEPARTMENT OF JUSTICE
 9    CIVIL DIVISION
      RAPHAEL O. GOMEZ, ESQUIRE
10    THEODORE HIRT, ESQUIRE
      ERIC J. BEANE, ESQUIRE
11    KENNETH E. SEALLS, ESQUIRE
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16

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1   (THE CLERK OPENS COURT.)

2   THE COURT: GOOD MORNING, EVERYONE.

3   ALL COUNSEL: GOOD MORNING.

4   THE COURT: GOOD MORNING, MISS WHITE.

5   MAY I SEE MR. HIRT AND MR. HANSEN.

6   (DISCUSSION HELD OFF THE RECORD.)

7   THE COURT: MR. MEWETT, GOOD MORNING,

8   SIR. YOU'VE GOT TO GO BACK TO WORK.

9   (PAUL MEWETT, DEFENSE WITNESS RETAKES THE

10   STAND.)

11   CROSS EXAMINATION (CONTINUED)

12   BY MR. HANSEN:

13   Q.   MR. MEWETT, I WOULD LIKE TO GO BACK TO

14   DEFENDANT'S DEMONSTRATIVE EXHIBIT NUMBER 1, PAGE 3.

15   IT'S THIS PAGE THAT WE WERE LOOKING AT YESTERDAY.

16   YOU HAVE LISTED ON THIS THAT THERE WERE

17   1,382 URLS THAT WERE ADULT -- THAT YOU DESCRIBED ON THIS

18   EXHIBIT AS ADULT ENTERTAINMENT, CORRECT?

19   A.   THAT'S CORRECT.

20   Q.   AND THAT IS NOT THE PRECISE DEFINITION THAT YOU

21   APPLIED WHEN YOU CATEGORIZED URLS OR WEB PAGES AS PART

22   OF YOUR STUDY, CORRECT?

23   A.   CAN YOU REASK THE QUESTION, PLEASE?

24   Q.   SURE. WOULD YOU LOOK AT DEFENDANT'S EXHIBIT 82,

25   WHICH IS YOUR FIRST EXPERT WITNESS REPORT. AND WOULD

1   YOU LOOK AT PAGE 23, WHICH IS WHERE YOU DEFINED THE

2   VARIOUS CATEGORIES THAT YOU USED.

3   A.   THAT'S CORRECT.

4   Q.   ON THE PRECISE DEFINITION FOR THIS CATEGORY,

5   THAT ON THE DEMONSTRATIVE EXHIBIT IS CALLED ADULT

6   ENTERTAINMENT, IS CONTAINED ON PAGE 23 OF YOUR FIRST

7   EXPERT REPORT.

8   A.   THAT'S CORRECT.

9   Q.   AND THAT'S DEFENDANT'S EXHIBIT 82, I BELIEVE.

10   IT'S PARAGRAPH 58E, IS THAT CORRECT?

11   A.   THAT'S CORRECT.

12   Q.   WOULD YOU READ THE FIRST SENTENCE OF THAT --

13   WOULD YOU READ THAT WHOLE PARAGRAPH, PLEASE?

14   A.   CERTAINLY. "THE 5F CATEGORY WAS RESERVED

15   SPECIFICALLY FOR SEXUALLY EXPLICIT MATERIAL THAT WAS

16   CLEARLY DISPLAYED ONLY FOR ADULT ENTERTAINMENT PURPOSES.

17   URLS CODED AS 5F OFTENTIMES FULFILL MANY OF THE CATEGORY

18   2 CRITERIA AND NEARLY ALWAYS CONTAIN PORNOGRAPHIC

19   IMAGES. HOWEVER, IN CERTAIN CASES, EXTREME SEXUAL TEXT

20   ALONE QUALIFIED A URL TO BE CODED AS 5F.

21   Q.   AND WHAT YOU ARE REFERRING TO AS 5F IN THIS

22   REPORT IS WHAT IS ON -- WHAT IS THE 1,382 ON THIS

23   DEMONSTRATIVE EXHIBIT?

24   A.   THAT'S CORRECT.

25   Q.   OKAY. NOW, YOU DID OTHER CODINGS BESIDES THE

 1   PURPLE 1A VERSUS PURPLE 1B, AND THEN THE VARIOUS YELLOWS

 2   THAT ARE ON THE DEMONSTRATIVE EXHIBIT, CORRECT?

 3   A.   THAT'S CORRECT.

 4   Q.   AND IF WE LOOK BACK AT DEFENDANT'S EXHIBIT 82,

 5   PAGE 23, PARAGRAPH 58A, SHOWS THAT YOU DID A WHOLE

 6   SERIES OF CODINGS ON THE TYPE OF CONTENT THAT THE WEB

 7   PAGE POSSESSED, CORRECT?

 8   A.   THAT'S CORRECT.

 9   Q.   YOU DID NOTHING WITH THAT CODING, CORRECT?

10   A.   THAT'S CORRECT.

11   Q.   AND PARAGRAPH B, SMALL B OF PARAGRAPH 59, SAYS

12   YOU CODED FOR TEXT VERSUS PICTURE, CORRECT?

13   A.   THAT'S CORRECT.

14   Q.   AND YOU DID NOTHING WITH THAT, CORRECT?

15   A.   THAT IS ALSO CORRECT.

16   Q.   NOW, WE TALKED A LITTLE BIT ABOUT YESTERDAY

17   ABOUT THE ISSUE OF DUPLICATIVES. AND WE FOUND TWO

18   EXAMPLES IN SALON WHERE THE EXACT SAME WEB PAGE TURNED

19   UP TWICE IN YOUR DATASET, CORRECT?

20   A.   THAT'S RIGHT.

21   Q.   AND THAT HAPPENED IN OTHER INSTANCES, CORRECT?

22   A.   YES, IN A FEW.

23   Q.   LITEROTICA WE TALKED ABOUT YESTERDAY, AS WELL.

24   CORRECT?

25   A.   YES, THAT'S RIGHT.

1   Q.   AND SO YOU DON'T KNOW HOW MANY TIMES THE EXACT

2   DUPLICATE PAGE APPEARED TWICE IN YOUR DATASET, RIGHT?

3   A.   NO, I DON'T.

4   Q.   SO OF THIS 1,382 URLS THAT YOU DESCRIBED AS

5   SEXUALLY EXPLICIT MATERIAL, YOU DON'T KNOW HOW MANY OF

6   THEM ARE UNIQUE PAGES?

7   A.   NO, I DON'T.

8   Q.   AND YOU ALSO HAD MULTIPLE PAGES FROM THE SAME

9   DOMAIN TURN UP IN YOUR DATASET, CORRECT?

10   A.   THAT'S RIGHT.

11   Q.   AND INDEED WE TALKED ABOUT DESTINATION TRIPLE X,

12   DO YOU RECALL THAT?

13   A.   YES, I DO.

14   Q.   AND DESTINATION TRIPLE X IS AN ADULT WEBSITE

15   DOMAIN, CORRECT?

16   A.   CORRECT.

17   Q.   AND SOMETHING IN THE NEIGHBORHOOD OF 180 PAGES

18   FROM ADULT -- FROM DESTINATION TRIPLE X APPEARED IN YOUR

19   DATASET, CORRECT?

20   A.   THAT NUMBER SOUNDS ABOUT RIGHT.

21   Q.   SO NOT ONLY DO YOU NOT KNOW HOW MANY OF THESE

22   1,382 ARE NOT DUPLICATE IN THE EXACT FORM, YOU ALSO

23   DON'T KNOW HOW MANY OF THESE 1,382 ALL COME FROM THE

24   SAME DOMAIN, IS THAT CORRECT?

25   A.   THAT IS ALSO CORRECT.

1   Q.   SO IT COULD BE THAT THERE IS AS FEW AS A

2   THOUSAND OR FEWER THAT ARE FROM SEPARATE DOMAINS AND

3   NONDUPLICATIVE IN YOUR DATASET.   CORRECT?

4   A.   WHATEVER THE NUMBER IS, YES, IT WOULD BE LESS

5   THAN 1,382.

6   Q.   AND IF THERE ARE 180 DESTINATION TRIPLE X, IT'S

7   GOING TO BE LESS THAN 1,200 AS WELL.   RIGHT?

8   A.   THAT'S FAIR.

9   Q.   NOW, I WOULD LIKE YOU TO LOOK NEXT AT

10   PLAINTIFFS' EXHIBIT 179.   AND LOOKING FIRST AT THE FIRST

11   TWO PAGES, 0001 AND 000 -- I'M PUTTING TOO MANY ZEROS

12   IN.   THE FIRST PAGE WHICH IS 001 AND THE SECOND PAGE

13   WHICH IS 002.   WHAT DO THESE REPRESENT?

14   A.   THE FIRST PAGE IS AN EXCERPT FROM OUR DATABASE

15   FROM THE MSN URLS, AND THE SECOND PAGE IS THE SCREEN

16   SHOT OF THE SAME RECORD.

17   Q.   AND THE FIRST PAGE SHOWS THAT YOU CODED THIS AS

18   A SEXUALLY EXPLICIT SITE, CORRECT?

19   A.   THAT'S CORRECT.

20   Q.   AND IF WE LOOK AT THE IMAGE ON 002, THIS

21   REPRESENTS A SITE THAT APPEARS TO BE AIMED AT PEOPLE WHO

22   DERIVE SEXUAL PLEASURE FROM BESTIALITY, DOES IT NOT?

23   A.   THAT'S CORRECT.

24   Q.   YOU SAID YOU WORKED WITH LAW ENFORCEMENT.   DID

25   YOU REPORT THIS SITE TO LAW ENFORCEMENT?

1   A.   SORRY. NO, I DIDN'T.

2   Q.   DID ANYONE AS FAR AS YOU KNOW FROM THE DEFENSE

3   TEAM REPORT THIS TO THE CRIMINAL DIVISION OF THE JUSTICE

4   DEPARTMENT FOR PROSECUTION AS OBSCENITY?

5   A.   I DON'T KNOW.

6   Q.   OKAY. IF YOU WOULD LOOK AT PAGE 000 -- I'M

7   DOING IT AGAIN. IF YOU LOOK AT PAGE 003, WHAT DOES THIS

8   SEEM TO BE?

9   A.   IT'S AN EXCERPT FROM THE DATABASE UNDER THE

10   WORDTRACKER URLS.

11   Q.   AND THIS IS ALSO ONE THAT YOU CLASSIFIED AS

12   SEXUALLY EXPLICIT?

13   A.   YES.

14   Q.   IF YOU WOULD LOOK AT THE IMAGE THAT REFLECTS

15   THAT, WHICH IS ON PAGE 004, DO YOU SEE THAT?

16   A.   YES, I DO.

17   Q.   THIS IS AN IMAGE OF A WOMAN HAVING SEX WITH AN

18   OCTOPUS, CORRECT?

19   A.   THAT'S CORRECT.

20   Q.   BESTIALITY, CORRECT?

21   A.   UNDER MY DEFINITION, YES.

22   Q.   AND DID YOU REFER THIS PAGE TO LAW ENFORCEMENT?

23   A.   NO, I DIDN'T.

24   Q.   DO YOU KNOW WHETHER ANYONE FROM THE DEFENSE TEAM

25   REFERRED THIS TO THE CRIMINAL DIVISION OF THE JUSTICE

1   DEPARTMENT FOR PROSECUTION AS OBSCENITY?

2   A.   NO, I DON'T.

3   Q.   WOULD YOU LOOK AT THE NEXT ONE, PLEASE.

4   THE NEXT ONE IS FROM YOUR WORDTRACKER

5   DATABASE, A URL THAT BEGINS, BLOGCHALKING, IS THAT

6   CORRECT?

7   A.   THAT'S CORRECT.

8   Q.   YOU CLASSIFIED IT AS SEXUALLY EXPLICIT?

9   A.   I DID.

10   Q.   AND IF WE TURN TO THE 006 PAGE, THIS IS ALSO A

11   BESTIALITY SITE?

12   A.   CORRECT.

13   Q.   AND DID YOU REFER THIS TO LAW ENFORCEMENT?

14   A.   NO, I DIDN'T.

15   Q.   DO YOU KNOW WHETHER ANYONE FROM THE JUSTICE

16   DEPARTMENT DID?

17   A.   NO, I DON'T.

18   Q.   AND THE FINAL ONE THAT I WOULD LIKE TO HAVE YOU

19   LOOK AT IS 007 AND 008. THESE ARE PAGES THAT ALSO

20   APPEARED IN DEFENDANT'S EXHIBIT 88, ARE THEY NOT?

21   A.   I'M NOT SURE. I WOULD HAVE TO CHECK.

22   Q.   IF YOU WOULD LOOK AT DEFENDANT'S EXHIBIT 88,

23   PAGE 10.

24   A.   THAT'S CORRECT. THEY ARE THE SAME.

25   Q.   THIS APPEARS TO BE AN IMAGE DIRECTED AT PEOPLE

1   WHO DERIVE SEXUAL PLEASURE FROM EXTREME VIOLENCE AGAINST

2   WOMEN, DOES IT NOT?

3   A.   IT DOES.

4   Q.   DID YOU REFER THIS TO LAW ENFORCEMENT?

5   A.   NO, I DIDN'T.

6   Q.   DO YOU KNOW WHETHER ANYONE FROM THE DEFENDANTS

7   REFERRED THIS TO LAW ENFORCEMENT?

8   A.   NO, I DON'T.

9   Q.   WOULD YOU NEXT LOOK AT PLAINTIFFS' EXHIBIT 180,

10 PLEASE. WE TALKED YESTERDAY A LITTLE BIT ABOUT THE 5G

11 CATEGORY, WHICH ON THE DEMONSTRATIVE EXHIBIT, PAGE 3, IS

12 THE YELLOW OTHER CATEGORY, CORRECT?

13 A.   THAT'S CORRECT.

14 Q.   BEFORE YOU GOT TO THE 5G CLASSIFYING, THE FIRST

15 LEVEL OF CLASSIFYING YOU DID WAS THE PURPLE CLASSIFYING,

16 CORRECT?

17 A.   THAT'S RIGHT.

18 Q.   AND SO A 1A, WHICH IS CALLED A ON THIS

19 DEMONSTRATIVE EXHIBIT, WOULD BE NO SEXUAL CONTENT,

20 CORRECT?

21 A.   OR SEXUAL VOCABULARY. NO SEXUAL CONTENT AT ALL.

22 Q.   AND B IS SOME SEXUAL CONTENT?

23 A.   IT'S THE OTHER GROUP, YES.

24 Q.   NOW, IF YOU WOULD LOOK AT THE PLAINTIFFS'

25 EXHIBIT 180. THESE PAGES APPEAR TO BE PAGES ALL OF

1   WHICH WERE CODED 1B BY YOU AS HAVING SOME SEXUAL CONTENT

2   OR NUDITY?

3   A.   THAT'S CORRECT.

4   Q.   WERE THEY ACCURATELY CODED THAT WAY?

5   A.   I WOULD HOPE ALL MY RESULTS WERE ACCURATELY

6   CODED.

7   Q.   LET'S LOOK AT A FEW OF THEM JUST AS AN EXAMPLE.

8   IF YOU LOOK AT PAGE 006. YOU CODED THIS AS HAVING

9   SEXUAL CONTENT OR NUDITY?

10 A.   THAT'S CORRECT.

11 Q.   AND WHY IS THAT?

12 A.   UNLESS THERE ARE ANY OTHER POP-UPS THAT WERE

13 INCLUDED WITH THIS, AND I DON'T KNOW, THEN THE

14 LIKELIHOOD IS THAT IT WAS CODED THAT WAY BECAUSE OF THE

15 WORD SEXUAL ON THE ACTUAL -- ON THE VOCABULARY ON THE

16 PAGE, THE TOP RIGHT-HAND CORNER.

17 Q.   THIS IS A PAGE, IT APPEARS TO BE A HEALTH

18 KNOWLEDGE PAGE, CORRECT?

19 A.   THAT'S RIGHT.

20 Q.   AND THE ONLY WORD SEXUAL IS A TAB UP AT THE TOP

21 THAT YOU COULD CLICK TO GET TO ANOTHER PAGE, CORRECT?

22 A.   AS FAR AS I CAN SEE.

23 Q.   IT APPEARS TO BE THAT IF YOU CLICKED THAT TAB

24 YOU WOULD GET MEDICAL INFORMATION ABOUT SEXUAL HEALTH,

25 CORRECT?

1   A.   I WOULD PRESUME SO.

2   Q.   DID YOU THINK THAT WAS PROPERLY CODED AS 1B?

3   A.   DEFINITELY.

4   Q.   OKAY. LET'S LOOK AT ANOTHER EXAMPLE, IF WE

5   COULD. 010. THIS APPEARS TO BE A PAGE THAT YOU FOUND

6   THROUGH WORDTRACKER, CORRECT?

7   A.   THAT'S CORRECT.

8   Q.   AND CODED IT A 1B, NAMELY A PAGE THAT HAS SEXUAL

9   CONTENT OR NUDITY?

10   A.   THAT'S CORRECT.

11   Q.   AND WHAT IS IT ABOUT THIS PAGE THAT HAS SEXUAL

12   CONTENT OR NUDITY?

13   A.   THE VOCABULARY ON THE PAGE IN THE TOP LEFT-HAND

14   CORNER USES THE WORD SEXUAL. WITHOUT LOOKING IN MORE

15   DETAIL AT OTHER WORDS, CERTAINLY THAT WOULD WORD HAVE

16   BEEN ENOUGH FOR ME TO CATEGORIZE THAT PAGE IN THE 1B

17   CATEGORIES.

18   Q.   JUST TO BE CLEAR, YOU ARE REFERRING TO THE

19   MISSION OF THE INTERNATIONAL GAY AND LESBIAN HUMAN

20   RIGHTS COMMISSION PARAGRAPH?

21   A.   THAT IS THE PARAGRAPH WHERE THE WORD IS BEING

22   USED, YES.

23   Q.   WOULD YOU READ THAT PARAGRAPH OUT LOUD, PLEASE?

24   A.   CERTAINLY. "THE MISSION OF THE INTERNATIONAL

25   GAY AND LESBIAN HUMAN RIGHTS COMMISSION IS TO SECURE THE

1   FULL ENJOYMENT TO THE HUMAN RIGHTS OF ALL PEOPLE AND

2   COMMUNITIES SUBJECT TO DISCRIMINATION OR ABUSE ON THE

3   BASIS OF SEXUAL ORIENTATION OR EXPRESSION, GENDER

4   IDENTITY OR EXPRESSION AND/OR HIV STATUS."

5   Q.   SO THE FACT THAT THIS PAGE USED THE PHRASE

6   SEXUAL ORIENTATION WAS SUFFICIENT TO MAKE YOU CLASSIFY

7   IT AS HAVING SEXUAL CONTENT OR NUDITY?

8   A.   JUST THE FACT THAT THE WORD SEXUAL EXISTS ON THE

9   PAGE IS GOOD ENOUGH FOR THE CATEGORIZATION.

10   Q.   AND IS THE SAME TRUE THEN OF PAGE 012, WHICH IS

11   THE TEXAS DEPARTMENT OF PUBLIC SAFETY PAGE. YOU BELIEVE

12   YOU PROPERLY CLASSIFIED THAT AS HAVING SEXUAL CONTENT

13   BECAUSE IT DESCRIBES HOW SOMEONE CAN LOOK UP THE SEX

14   OFFENDER REGISTRY IN THE STATE OF TEXAS?

15   A.   THAT'S CORRECT. THE VOCABULARY ON THE PAGE HAS

16   SEXUAL TERMS.

17   Q.   OKAY. WOULD YOU TURN NOW TO PLAINTIFFS' EXHIBIT

18   181, PLEASE. AND WOULD YOU LOOK TO SEE FIRST HOW THESE

19   PAGES WERE CLASSIFIED AND THEN, SECOND, LOOK AT THE

20   IMAGES ON THESE PAGES.

21   A.   DO YOU WANT ME TO GO FURTHER THAN PAGE 1 OR

22   WOULD YOU --

23   Q.   I WANT YOU TO GO TO EXHIBIT 181, AND I WANT YOU

24   TO LOOK THROUGH PAGES 1 THROUGH 11.

25   A.   OKAY.

1   Q.   ALL OF THE IMAGES APPEAR TO BE WHAT YOU WOULD

2   DESCRIBE AS MENU OR DESTINATION PAGES FOR COMMERCIAL

3   PORNOGRAPHY SITES, CORRECT?

4   A.   YES, THEY ARE.

5   Q.   AND THE FIRST TWO YOU CODED AS 5F'S?

6   A.   THAT'S CORRECT.

7   Q.   AND THE SECOND TWO YOU CODED AS 5G'S?

8   A.   THAT'S CORRECT.

9   Q.   AND THE LAST ONE YOU CODED AS 5F?

10   A.   THAT'S CORRECT.

11   Q.   AND, AGAIN, 5F IS, UNDER YOUR CATEGORY, SEXUALLY

12   EXPLICIT MATERIAL, CORRECT?

13   A.   THAT'S RIGHT.

14   Q.   AND 5G IS ANY SEXUAL CONTENT OR NUDITY, OTHER,

15   CORRECT?

16   A.   THAT'S CORRECT.

17   Q.   CAN YOU EXPLAIN WHY SOME OF THESE WERE G'S AND

18   SOME WERE F'S?

19   A.   THE SITUATION HERE IS THAT THE END GAME, OR THE

20   GOAL OF THE -- THIS PART OF THE PROCESS IS TO ACTUALLY

21   END UP WITH CONTENT IN THE 5F CATEGORY, WHICH IS THE

22   ADULT CONTENT, WHICH IS UNAMBIGUOUSLY CONTENT THAT I

23   WOULD EXPECT A SOFTWARE FILTER TO BE ATTEMPTING TO BLOCK

24   WHEN SET TO SEXUAL CONTENT. SO THE FACT THAT TWO OF

25   THESE PAGES ARE 5G'S JUST MEANS ON THAT OCCASION I ERRED

1   ON THE SIDE OF CAUTION AND DECIDED THAT I WASN'T GOING

2   TO PUT THEM INTO THE 5F GROUP. THE FACT IS, IT MAKES NO

3   DIFFERENCE AS LONG AS I DON'T IN ANY WAY DILUTE THE

4   QUALITY OF THE PAGES IN THE 5F GROUP. IT REALLY DOES

5   NOT MATTER HOW I HAVE CATEGORIZED THEM AS LONG AS THEY

6   ARE NOT THE WRONG CATEGORIES IN THE 5F GROUP.

7   Q.   IT DOES MATTER IN THE SENSE THAT IT ILLUSTRATES

8   THAT THERE IS A SIGNIFICANT AMOUNT OF SUBJECTIVITY

9   APPLIED TO YOUR CLASSIFICATIONS, CORRECT?

10   A.   CERTAINLY. I HAVE TO USE MY JUDGMENT ON EVERY

11   PAGE.

12   Q.   AND SOMETIMES, AS IN THESE FIVE EXAMPLES, THE

13   JUDGMENT WAS A VERY, VERY FINE JUDGMENT?

14   A.   THAT'S RIGHT.

15   Q.   AND DIFFERENT PEOPLE MIGHT DISAGREE ABOUT THE

16   CLASSIFICATIONS YOU DID?

17   A.   ON A SMALL PERCENTAGE OF SITES, YES.

18   Q.   OKAY. NOW, LET'S LOOK NEXT AT PLAINTIFFS'

19   EXHIBIT 182, IF WE COULD.

20   NOW, PLAINTIFFS' EXHIBIT 182, PAGE 001,

21   IS ALSO A URL OR WEB PAGE THAT YOU FOUND THAT WAS PART

22   OF YOUR DATASET, CORRECT?

23   A.   THAT'S CORRECT.

24   Q.   AND YOU CODED IT AS A 5F, NAMELY, SEXUALLY

25   EXPLICIT. CORRECT?

1   A.   YES, I DID.

2   Q.   AND IF YOU WOULD LOOK AT PAGE 002, THAT IS THE

3   IMAGE THAT YOU CLASSIFIED AS SEXUALLY EXPLICIT?

4   A.   CORRECT, IF THERE WERE NOT ANY POP-UPS.

5   Q.   AND THERE ARE FOUR PHOTOGRAPHS ON THIS PAGE,

6   CORRECT?

7   A.   THAT'S RIGHT.

8   Q.   AND ONE IS A WOMAN CLOTHED, AND THE OTHER THREE

9   ARE THE SAME WOMAN TOPLESS?

10   A.   CORRECT.

11   Q.   THESE ARE THE KINDS OF IMAGES THAT YOU WOULD

12   SEE, FOR EXAMPLE, IN PLAYBOY?

13   A.   I DON'T READ PLAYBOY BUT I'M SURE YOU'RE RIGHT.

14   Q.   NOW, IF YOU WOULD LOOK NEXT AT PAGE 03 AND 04.

15   THIS IS A PAGE THAT YOU ALSO CODED AS SEXUALLY EXPLICIT?

16   A.   THAT'S CORRECT.

17   Q.   AND WHEN WE LOOK AT THE IMAGE ON 004, IT'S A

18   PAGE DEVOTED TO THE ACTRESS CARMEN ELECTRA, CORRECT?

19   A.   THAT'S CORRECT.

20   Q.   SHE IS A MAINSTREAM ACTRESS, NOT A PORN ACTRESS.

21   RIGHT?

22   A.   I DON'T KNOW HER.

23   Q.   ALL RIGHT.

24   AND THERE ARE 12 IMAGES OF HER ON THIS

25   PAGE?

1   A.   THAT'S CORRECT.

2   Q.   ALL BUT ONE SHE IS CLOTHED, CORRECT?

3   A.   THE IMAGES ARE EXTREMELY SMALL. THEY LOOK TO

4   ME, FROM THE QUALITY OF THE IMAGE, THAT CERTAINLY ONE OF

5   THE IMAGES SHE IS NAKED AND OTHERS SHE MAY BE PARTLY

6   CLOTHED, OR SOME SHE IS WEARING A SWIMSUIT.

7   Q.   THE ONE IN THE UPPER RIGHT-HAND CORNER IS THE

8   ONE YOU THINK SHE MAY BE NAKED?

9   A.   YES.

10   Q.   AND WE CAN SEE HER BREASTS IN THAT IMAGE?

11   A.   RIGHT.

12   Q.   WE CANNOT SEE HER GENITALIA IN THAT IMAGE,

13   RIGHT?

14   A.   I DON'T THINK SO.

15   Q.   SO LIKE THE PRIOR PAGE, THIS ONE IS SOMETHING

16   THAT YOU CODED AS SEXUALLY EXPLICIT FOR THE FACT THAT IT

17   SHOWED A WOMAN'S NAKED BREASTS. CORRECT?

18   A.   NO. THERE ARE SOME PAGES I ACTUALLY REMEMBER,

19   BECAUSE YOU ARE CORRECT INASMUCH AS SOME PAGES THERE IS

20   AN ELEMENT OF DELIBERATION AS TO WHICH CATEGORY THEY GO

21   INTO. AND THIS PAGE, IF YOU LOOK DOWN TOWARD THE BOTTOM

22   UNDERNEATH, IT'S VERY DIFFICULT TO READ ON THIS PAGE.

23   BUT I THINK THE PAGE ACTUALLY HAS 12 IMAGES AT THE TOP.

24   THEN I THINK IT HAS HER BIOGRAPHY IN THE SECTION

25   UNDERNEATH. AND THEN UNDERNEATH THAT, THERE IS AN AREA

1   OF LINKS TO OTHER WEBSITES. AND MY RECOLLECTION SERVES

2   ME CORRECT THESE AREAS GENERALLY HAVE VOCABULARY ON THEM

3   AND LINKS THAT HAVE SEXUAL TERMS. AND THIS PAGE WOULD

4   HAVE BEEN GRADED BASED ON THE NUDITY AND THE CONTENT OF

5   THE LINKS IN THE AREA. WE MAY HAVE TO PULL IT UP ON

6   SCREEN AND ZOOM IN.

7   Q.   OKAY. LET'S DO THAT THEN.

8   THE PAGE FOR THE RECORD IS FROM THE

9   WORDTRACKER DATABASE?

10   A.   THAT'S CORRECT, WORDTRACKER 4592.

11   Q.   AND THE URL, WOULD YOU READ THE URL, PLEASE?

12   A.   IT'S WWW.CELEBSINC.COM.

13   Q.   I'M SORRY. BUT YOU PROBABLY NEED TO READ THE

14   REST OF IT AS WELL.

15   A.   CELEBSINC.COM/PICTURES/CARMENELECTRA/HTML/CARMEN

16   -ELECTRA-01.HTM.

17   Q.   WE ARE CALLING IT UP. WE WILL HAVE IT UP IN A

18   SECOND. WE CAN SEE A MORE EXPANSIVE VERSION OF THIS

19   PARTICULAR IMAGE.

20   BUT WHILE SHE IS DOING THAT, LET'S MOVE

21   ON TO THE NEXT ONE, AND COME BACK TO CARMEN ELECTRA.

22   THE NEXT ONE YOU ALSO CATEGORIZED AS SEXUALLY EXPLICIT?

23   A.   THAT'S RIGHT.

24   Q.   AND IF WE LOOK AT THE PAGE, WHICH IS 006, IT'S A

25   PAGE THAT CONTAINS NO NUDITY, IS THAT CORRECT?

1   A.   NO. I BELIEVE THAT THIS PAGE WAS CODED BECAUSE

2   ON THE TOP RIGHT-HAND CORNER, THERE IS -- ARE WE LOOKING

3   AT THE SAME IMAGE?

4   Q.   WE'RE LOOKING AT TAWNEE STONE.

5   A.   RIGHT. YES. THERE IS AN AREA ON THE RIGHT-HAND

6   SIDE, WHERE IT SAYS, TAKE THE TOUR, TAKE THE FREE TOUR.

7   AND THEN UNDERNEATH THAT THERE IS A SMALLER PICTURE

8   WHICH LOOKS LIKE THE FRONT OF POSSIBLY A DVD COVER. AND

9   ONE OF THE IMAGES OR A NUMBER OF THE IMAGES ON HERE I

10   THINK ARE MUCH MORE EXPLICIT. IF MY MEMORY SERVES ME

11   CORRECTLY, THE TOP TWO ARE QUITE EXPLICIT. I THINK IT'S

12   WORTH REMEMBERING THAT WHEN WE SEE THE PICTURES AS

13   SCREEN SHOTS LIKE THIS, THEY ARE A LOT SMALLER WHEN YOU

14   DO SEE WHEN YOU ARE VIEWING THEM ON THE SCREEN.

15   Q.   WE NOW HAVE ON THE SCREEN THE PAGE THAT IS 004.

16   WOULD YOU TAKE A LOOK AT THAT NOW ON THE SCREEN. WOULD

17   YOU LIKE US TO EXPAND A PORTION OF IT?

18   A.   YES. AT THE BOTTOM OF THE SITE, IT SAYS -- JUST

19   SCROLL DOWN SLIGHTLY, PLEASE.

20   AT THE BOTTOM OF THE SITE IT SAYS: TOP

21   PORN SITES. THIS WOULD HAVE BEEN PICKED UP ANYWAY AS

22   VOCABULARY. IF WE COME UP SLIGHTLY THERE IS A BLACK

23   AREA WHERE WE'VE UNDERLINED CONTENT, WHERE IT SAYS --

24   JUST BELOW WHERE IT SAYS CARMEN ELECTRA LINKS. WE NEED

25   TO ZOOM IN THERE. THESE ARE ALL LINKS TO OTHER

1   WEBSITES. WE'VE GOT SEXY BABES, NUDE CELEBRITIES, GREAT

2   EPORN. CERTAINLY THIS IS SOME OF THE VOCABULARY THAT

3   WOULD HAVE BEEN COMPLEMENTARY TO THE FACT THAT THIS

4   VOCABULARY, THE TOP PORN SITES COMPONENT, AND THE NAKED

5   IMAGE WOULD HAVE BEEN WHAT THE PAGE WAS ASSESSED ON.

6   Q.   SO THE FACT THAT IT CONTAINS ONE NUDE IMAGE OF

7   CARMEN ELECTRA AND THEN HAS THESE LINKS THAT USE WORDS

8   LIKE PORN WAS SUFFICIENT FOR YOU TO CALL IT AN ADULT --

9   A SEXUALLY EXPLICIT WEBSITE?

10   A.   YES, IT WAS.

11   Q.   NOW, IF YOU WOULD NEXT LOOK AT PAGE 008. THIS

12   IS A PAGE THAT YOU CLASSIFIED AS SEXUALLY EXPLICIT,

13   CORRECT?

14   A.   HAVE WE FINISHED WITH THE TAWNEE STONE ONE?

15   Q.   YES.

16   A.   OKAY.

17   Q.   PAGE 008 IS A PAGE THAT WAS FOUND IN YOUR

18   DATABASES AND WHICH YOU CODED AS 5F?

19   A.   YES, THAT'S CORRECT.

20   Q.   AND IT'S FROM WORDTRACKER 1680?

21   A.   THAT'S RIGHT.

22   Q.   AND THIS IS AN EXAMPLE OF THE POP-UPS. YOU HAVE

23   MADE THE POINT A COUPLE OF TIMES ABOUT SOMETIMES POP-UPS

24   APPEARED. THIS IS AN EXAMPLE OF A POP-UP, CORRECT?

25   A.   THAT'S CORRECT.

1   Q.   SO THAT THE ACTUAL PAGE IS THE TOP HALF OF THIS

2   IMAGE AND THEN, WHEN THAT PAGE LOADED, THE BOTTOM HALF

3   OF THE PAGE ALSO POPPED UP. CORRECT?

4   A.   THAT'S RIGHT.

5   Q.   OKAY. AND YOU CLASSIFIED THIS AS SEXUALLY

6   EXPLICIT BECAUSE OF THE ONE NAKED BREAST VISIBLE AT THE

7   TOP OF THE FIRST PAGE?

8   A.   NO. IT WOULD HAVE BEEN GRADED BECAUSE OF THAT

9   AND ALSO BECAUSE OF THE FACT THAT THERE IS VOCABULARY ON

10   HERE, PORN STARS, THE POP-UP HAS NUDE CELEBRITIES. I'M

11   LOOKING DOWN THE REST OF THE VOCABULARY. PORN STAR

12   PICTURES, PORN STAR MOVIES. IT'S QUITE CLEAR IT'S

13   SOMETHING THAT YOU CAN CLICK ON AND IT GOES INTO FURTHER

14   CONTENT LIKE THAT. THIS IS WHY IT'S GOT A CREDIT CARD

15   SYSTEM ON THE FRONT FOR TAKING PAYMENT. AND IT WOULD

16   HAVE BEEN THE VOCABULARY AND THE PORN STAR IMAGE AT THE

17   TOP WITH THE NAKED BREASTS THAT WOULD HAVE BEEN A TOTAL

18   CATEGORY ON THIS ONE. THEY WOULD HAVE ALL BEEN INCLUDED

19   AS THE TOTAL CATEGORY.

20   Q.   OTHER THAN THE ONE NAKED BREAST AT THE TOP OF

21   THE FIRST IMAGE, THERE IS NO OTHER NUDITY ON THIS PAGE.

22   CORRECT?

23   A.   NOT IN IMAGERY, THAT'S CORRECT.

24   Q.   IT WAS THE USE OF THE WORD PORN THAT, IN

25   ADDITION TO THE ONE NAKED BREAST THAT CAUSED YOU TO TIP

1   IT INTO A SEXUALLY EXPLICIT CATEGORY?

2   A.   THE FACT THAT CLEARLY THIS SITE ACTUALLY IS

3   LEADING INTO FURTHER PORNOGRAPHIC SITES BY VIRTUE OF ITS

4   NATURE, AND THAT THERE IS MORE THAN ONE REFERENCE TO THE

5   WORD PORN. THAT IS WHY IT WENT INTO THIS GROUP.

6   Q.   SO LET'S ASSUME THAT NAKED BREAST AT THE TOP HAD

7   NOT BEEN THERE. ASSUME THE WOMAN AT THE TOP HAD BEEN

8   COMPLETELY CLOTHED, AND ALL THAT WE WOULD HAVE HAD WAS

9   THE NOTION THAT THIS IS A SITE THAT YOU CAN CLICK TO

10   OTHER SITES FROM. WOULD YOU HAVE CLASSIFIED IT AS A 5F?

11   A.   IT WOULD HAVE GONE INTO A 5G ON THIS ACCOUNT.

12   Q.   SO A SINGLE BREAST WAS SUFFICIENT TO TIP A PAGE

13   FROM 5G INTO SEXUALLY EXPLICIT?

14   A.   ON THIS OCCASION, YES.

15   Q.   OKAY. NOW, IF YOU WOULD LOOK AT PAGE 010,

16   PLEASE.

17   THIS PAGE DOES CONTAIN A SEXUALLY

18   EXPLICIT IMAGE, DOES IT NOT?

19   A.   YES, IT DOES.

20   Q.   AND YOU CODED THIS ONE AS A 5F, SEXUALLY

21   EXPLICIT, CORRECT?

22   A.   THAT'S CORRECT.

23   Q.   IT IS AN IMAGE FROM A WEBSITE CALLED

24   TOMOFFINLANDFOUNDATION.ORG, CORRECT?

25   A.   YES.

1   Q.   DO YOU KNOW WHO TOM OF FINLAND IS?

2   A.   NO.

3   Q.   DO YOU KNOW THAT HE IS A WORLD REKNOWNED ARTIST

4   OF GAY THEMES?

5   A.   I DIDN'T, BUT IT WOULD NOT MAKE ANY DIFFERENCE

6   TO ME.

7   Q.   DO YOU KNOW THAT HIS WORK IS COLLECTED IN

8   MUSEUMS ALL OVER THE WORLD?

9   MR. MCELVAIN: OBJECTION. ASKED AND

10   ANSWERED.

11   THE COURT: OVERRULED.

12   BY MR. HANSEN:

13   Q.   WHY WOULDN'T IT MAKE A DIFFERENCE TO YOU? WHY

14   WOULDN'T THIS BE AN ARTISTIC SITE, GIVEN THE FACT THAT

15   YOU HAVE AN ARTISTIC EXCEPTION?

16   A.   WELL, IF I CAN JUST CLARIFY. I'M JUDGING THIS

17   PAGE ON WHAT I CAN SEE. SO IT'S IRRELEVANT WHO PUTS THE

18   CONTENT ON THE PAGE FOR A START. AND I'M SURE THAT SOME

19   PEOPLE APPRECIATE HIS WORK. THIS PAGE WOULD HAVE BEEN

20   GRADED BASED ON THE IMAGERY THAT IS ON THE PAGE AND ALSO

21   THE VOCABULARY. AND I THINK IF WE CAN CALL THE PAGE UP,

22   BECAUSE I HAVE LOST MY GLASSES, THAT MY RECOLLECTION IS

23   THAT THERE IS VOCABULARY ON THIS PAGE THAT ALSO DOES

24   MAKE IT PART OF THE COMPONENT OF WHY WE GRADED THIS

25   PAGE.

1   Q.   IF THIS HAD BEEN MICHELANGELO'S WORK WITH THE

2   SAME WORDS YOU WOULD HAVE CODED IT A 5F?

3   A.   I DON'T CARE WHO PUT THE PICTURE UP. THE ANSWER

4   IS YES, I WOULD HAVE GRADED IT THE SAME WAY.

5   Q.   IN YOUR GRADING SYSTEM, YOU HAD A CATEGORY FOR

6   ARTISTIC, CORRECT?

7   A.   YES, I DID. AND I HAVE A FEELING THAT I GRADED

8   THIS PAGE UNDER 5G AND A 5F POSSIBLY. I CERTAINLY DID

9   ON SOME PAGES.

10   Q.   BUT YOU CODED IT AS A 5F FOR PURPOSES OF

11   DETERMINING UNDERBLOCKING?

12   A.   THAT'S CORRECT.

13   Q.   WE ARE CALLING THE IMAGE UP FOR YOU.

14   FOR THE RECORD, IT'S FROM THE AOL

15   DATABASE?

16   A.   THAT'S RIGHT. AOL1041.

17   Q.   NOW, IF YOU WOULD LOOK AT THE SCREEN, WE HAVE

18   CALLED UP THE IMAGE. THIS IS THE IMAGE THAT WE HAVE

19   BEEN TALKING ABOUT. CORRECT?

20   A.   THAT'S RIGHT.

21   Q.   ALL RIGHT. NOW, OTHER THAN THE TWO DRAWINGS ON

22   THIS PAGE, WHAT IS IT -- I UNDERSTOOD YOU TO BE SAYING

23   THERE WERE OTHER THINGS THAT CAUSED YOU TO BELIEVE THAT

24   IT WAS A 5F?

25   A.   CAN YOU SCROLL DOWN THE PAGE FURTHER.

1   Q.   SURE.

2   A.   THAT'S FINE. STOP.

3   WITHOUT SITTING AND READING THE WHOLE

4   PAGE, CERTAINLY THE BOTTOM PARAGRAPH WOULD HAVE -- THE

5   LAST PARAGRAPH WOULD HAVE IMPACTED ON THIS, WHERE THE

6   CHAP SAYS THAT IT WOULD HAVE BEEN SO GREAT BEING ABLE TO

7   DRAW HOT HORNY NAKED MEN ALL DAY LONG. THAT WOULD HAVE

8   CONTRIBUTED CERTAINLY TO THE VOCABULARY ON THE PAGE AND

9   THE IMAGERY.

10   Q.   OKAY. IF YOU WOULD NEXT LOOK COLLECTIVELY AT

11   THE REMAINING IMAGES IN THIS SECTION. PLAINTIFFS'

12   EXHIBIT 182, PAGES 010 THROUGH 017. THESE ARE ALL CODED

13   5F, CORRECT?

14   A.   THAT'S CORRECT.

15   Q.   AND DO YOU THINK THEY WERE CORRECTLY CODED 5F?

16   A.   YES, I DO.

17   Q.   LET'S TAKE JUST ONE MORE EXAMPLE, IF WE COULD,

18   WHICH IS 017. THIS IS FROM A WEBSITE CALLED ROTTEN.COM,

19   CORRECT?

20   A.   THAT'S RIGHT.

21   Q.   DO YOU KNOW ROTTEN.COM?

22   A.   UNFORTUNATELY NOT.

23   Q.   AND IT'S A TEXTUAL BIOGRAPHY OF AN ACTRESS NAMED

24   TRACEY LORDS?

25   A.   THAT'S RIGHT.

1   Q.   AND IT CONTAINS NO NUDITY?

2   A.   NO IMAGERY, NO.

3   Q.   AND YOUR REPORT SAYS, IN CERTAIN CASES EXTREME

4   TEXTUAL -- EXTREME SEXUAL TEXT ALONE QUALIFIED AN URL TO

5   BE CATEGORIZED AS 5F. WHERE IS THE EXTREME SEXUAL TEXT

6   ALONE ON THIS PAGE THAT CAUSED IT TO BE A 5F?

7   A.   IF YOU WILL GIVE ME JUST ONE MOMENT. I ACTUALLY

8   CAN READ THIS ONE. I WILL JUST FIND IT.

9   Q.   OKAY.

10   A.   IN THE PAGE, THERE ARE A NUMBER OF AREAS WHERE

11   VOCABULARY IS USED WHICH CERTAINLY WOULD HAVE PUT THIS

12   PAGE INTO AT LEAST A 1B CATEGORY WHERE -- BUT IF I CAN

13   FOCUS YOUR ATTENTION ON A PARAGRAPH THAT STARTS ABOUT

14   TWO-THIRDS OF THE WAY DOWN THE PAGE, BY THE TIME SHE WAS

15   18.

16   Q.   SO THE TEXT OF THAT PARAGRAPH, YOU THINK, IS

17   WHAT YOU DESCRIBE IN YOUR REPORT AS AN EXTREME SEXUAL

18   TEXT?

19   A.   YES, I AM. SHE IS DESCRIBING A SEX ACT WITH

20   FOUR PEOPLE AT A TIME IN THIS WITH SOME QUITE EXPLICIT

21   VOCABULARY.

22   Q.   OKAY. THANK YOU.

23   NOW, I WOULD LIKE YOU TO GO BACK FOR A

24   SECOND TO DEFENDANT'S EXHIBIT 88. THAT IS THE 40 PAGES

25   OF 5F OR SEXUALLY EXPLICIT SITES THAT TURNED UP IN YOUR

1   DATABASE. DO YOU RECALL THAT?

2   A.   88?

3   Q.   YES. 88.

4   A.   OKAY. I GOT IT. I'M LOOKING AT IT. WHAT AM I

5   FOCUSING ON?

6   Q.   AS I UNDERSTOOD YOUR TESTIMONY ON DIRECT IT WAS

7   THAT THOSE PAGES WERE ALL PAGES THAT FAILED TO BE

8   BLOCKED BY AT LEAST THREE OR FOUR PRODUCTS. CORRECT?

9   A.   THAT'S RIGHT.

10   Q.   OKAY. NOW, YOU ACTUALLY TESTED MORE THAN THREE

11   OR FOUR PRODUCTS, DIDN'T YOU?

12   A.   I DID.

13   Q.   HOW MANY PRODUCTS IN TOTAL DID YOU TEST?

14   A.   I TESTED SIX PC CLIENT SIDE PRODUCTS AND THREE

15   ISP'S, AND A NUMBER OF SEARCH ENGINES. BUT IT DOES NOT

16   FALL INTO THE SAME CATEGORY.

17   Q.   I THINK YOU TESTED 11 DIFFERENT PRODUCTS, AND

18   LET'S GO OVER THEM TO MAKE SURE I'M RIGHT. IF YOU WOULD

19   LOOK AT DEMONSTRATIVE EXHIBIT 1, PAGE 1.

20   A.   OKAY.

21   Q.   THIS REFLECTS NINE DIFFERENT PRODUCTS THAT YOU

22   TESTED, CORRECT?

23   A.   THAT'S RIGHT.

24   Q.   AND IN ADDITION TO THE ONES THAT ARE LISTED ON

25   THIS PAGE, YOU ALSO TESTED SAFEEYES?

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 1    A.      THAT'S CORRECT, SAFEEYES AND 8E6.

 2    Q.      YOU TESTED 11 DIFFERENT PRODUCTS?

 3    A.      I DID.

 4    Q.      AND SOME OF THEM YOU TESTED ON MULTIPLE

 5    SETTINGS, CORRECT?

 6    A.      THAT'S CORRECT.

 7    Q.      SO THERE ARE ACTUALLY A TOTAL OF 15 DIFFERENT

 8    TESTS, RIGHT?

 9    A.      THAT'S RIGHT.

10    Q.      OKAY.  AND THAT IF ALL OF THE PAGES IN

11    DEFENDANT'S EXHIBIT 88 WERE NOT BLOCKED BY THREE TO

12    FOUR, THAT MEANS THEY WERE ALL BLOCKED BY THE MAJORITY

13    OF THE TESTS YOU DID.  CORRECT?

14    A.      NO.  IF THEY WERE NOT BLOCKED BY THREE PRODUCTS,

15    THEY COULD HAVE NOT BEEN BLOCKED BY THREE BLOCKS ON TWO

16    SETTINGS.  SO THAT WOULD BE SIX, SO AT LEAST 50 PERCENT.

17    Q.      SIX IS 50 PERCENT OF 15?

18    A.      OKAY.  WE WILL GO FOR 45.

19    Q.      OKAY.  SO THE MAJORITY OF THE PRODUCTS BLOCKED

20    EVERY SINGLE PAGE IN DEFENDANT'S EXHIBIT 88, CORRECT?

21    A.      THAT'S RIGHT.

22    Q.      OKAY.  NOW, YOU DID A DISCUSSION OF PROFESSOR

23    ZOOK'S TESTIMONY WHEN HE TALKED ABOUT THE NUMBER OF

24    SITES THAT ARE REGISTERED OVERSEAS.  CORRECT?

25    A.      THAT'S RIGHT.
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1   Q.   AND YOUR POINT WAS THAT HE SHOULD HAVE USED

2   HOSTING -- ONE OF YOUR POINTS WAS HE SHOULD HAVE USED

3   HOSTING DATA INSTEAD OF REGISTRATION DATA. RIGHT?

4   A.   I SUGGESTED THAT HOSTING DATA WAS MORE ACCURATE

5   TO GET INFORMATION FROM.

6   Q.   AND YOU HAVE HOSTING DATA ON YOUR DATASETS.

7   CORRECT?

8   A.   THAT'S RIGHT.

9   Q.   WHAT PERCENTAGE OF THE IMAGES THAT YOU CODED 5F

10   WERE HOSTED OVERSEAS, ACCORDING TO YOUR DATASET?

11   A.   I CAN'T REMEMBER. I WOULD HAVE TO LOOK AT MY

12   REPORT.

13   Q.   PLEASE DO.

14   IF IT HELPS ANY, I DON'T THINK THE

15   STATISTIC IS IN YOUR REPORT.

16   A.   IN THAT CASE, IT WOULD BE ACCESSIBLE IN THE

17   DATABASE BUT NOT IN THE REPORT. IT WILL SAVE ME

18   LOOKING, THEN.

19   Q.   IT'S A STATISTIC THAT YOU COULD HAVE CALCULATED

20   AND COULD HAVE REPORTED BUT DID NOT, CORRECT?

21   A.   THAT'S RIGHT.

22   Q.   OKAY. NOW, HOST -- EXPLAIN THE DIFFERENCE

23   BETWEEN HOSTING AND REGISTRATION.

24   A.   WHEN AN INDIVIDUAL PURCHASES A DOMAIN, THEY HAVE

25   TO PUT IN SOME PERSONAL INFORMATION SO THAT THEY CAN

1   PURCHASE THE ITEM. THERE IS NO CHECK AS TO WHETHER THIS

2   INFORMATION IS VALID. AND AS I DESCRIBED EARLIER, SOME

3   PEOPLE JUST WRITE MR. X AT STREET Y; AND OTHER PEOPLE

4   FILL OUT THE INFORMATION MORE ACCURATELY.

5   SO THERE IS NO WAY OF DETERMINING WHETHER

6   ANY CHECK HAS BEEN DONE ON THIS DATA, SO IT WOULD BE

7   DIFFICULT TO RELY ON IT.

8   THE OTHER PIECE OF INFORMATION IS THE ISP

9   HOSTING INFORMATION, WHICH PHYSICALLY IS A PIECE OF

10   INFORMATION THAT DETERMINES WHERE THIS URL DOMAIN IS

11   ACTUALLY PHYSICALLY ATTACHED TO THE WORLDWIDE WEB. AND

12   SO IT'S A PIECE OF INFORMATION THAT CAN'T BE FAKED

13   BECAUSE THERE IS A COMMERCIAL COMPANY'S DETAILS THERE

14   SAYING THAT THIS IS THE POINT OF CONNECTION ONTO THE

15   INTERNET.

16   Q.   IN SHORTHAND TERMS, THE REGISTRATION DATA IS

17   WHERE THE OWNER OF THE WEBSITE LIVES, IF IT'S ACCURATE?

18   A.   IF IT'S ACCURATE, YES.

19   Q.   AND IN SHORTHAND DATA, THE HOSTING IS WHERE THE

20   COMPUTER IS THAT THE BITS AND BITES ARE ON THAT PRODUCE

21   THE WEB PAGE?

22   A.   THAT'S RIGHT.

23   Q.   AND THE HOSTING CAN BE DONE IN A DIFFERENT

24   COUNTRY THAN THE REGISTRATION, CORRECT?

25   A.   YES, IT CAN.

1   Q.   SO A RUSSIAN CITIZEN LIVING IN RUSSIA COULD HAVE

2   HIS WEBSITE HOSTED IN THE UNITED STATES, RIGHT?

3   A.   THAT'S RIGHT.

4   Q.   AND A U.S. CITIZEN LIVING IN THE UNITED STATES

5   COULD HAVE HIS SITE HOSTED IN RUSSIA?

6   A.   CORRECT.

7   Q.   AND IT'S PROBABLY EASIER, IF THIS -- IF THE

8   DIFFERENCE BETWEEN HOSTING AND REGISTRATION MATTERS,

9   IT'S PROBABLY EASIER TO MOVE WHERE YOUR SITE IS HOSTED

10   THAN IT IS TO MOVE YOURSELF. ISN'T THAT RIGHT?

11   A.   CAN YOU ASK ME THE QUESTION AGAIN, PLEASE?

12   Q.   I WILL ASK IT IN A DIFFERENT WAY. IT IS

13   RELATIVELY EASY TO MOVE YOUR HOSTING SITE FROM ONE

14   LOCATION TO ANOTHER, ISN'T IT?

15   A.   YES. IT'S NOT DIFFICULT.

16   Q.   NOW, YOU ALSO DID AN ANALYSIS IN DEFENDANT'S

17   EXHIBIT 83, WHICH IS YOUR REBUTTAL REPORT. IF YOU WOULD

18   LOOK, PLEASE, AT PAGE 18 OF YOUR REBUTTAL REPORT, WHICH

19   IS DEFENDANT'S EXHIBIT 83.

20   A.   OKAY.

21   Q.   WOULD YOU EXPLAIN WHAT YOU ARE DOING HERE IN

22   PARAGRAPH 38?

23   A.   DO YOU MIND IF I JUST TAKE A MOMENT TO READ IT?

24   Q.   OF COURSE.

25   (PAUSE.)

1   A.   OKAY. WHAT I'M DOING HERE IS, I HAVE TAKEN

2   PAGES WHICH FALL WITHIN DR. ZOOK'S DEFINITION OF FREE

3   FOREIGN. AND THAT IS FROM MY 5F CATEGORY WHICH ARE

4   SITES WHICH I HAVE DETERMINED TO DEFINITELY BE SEXUALLY

5   EXPLICIT SITES, I HAVE LOOKED DOWN THE HOSTING DATA OF

6   THE PAGES UNTIL I FIND PAGES THAT HAVE BEEN HOSTED

7   OUTSIDE OF THE U.S.A. AND WHAT I HAVE THEN DONE IS

8   CONDUCT A FURTHER ANALYSIS OF THOSE PAGES TO TRY AND GET

9   A BETTER UNDERSTANDING OF WHETHER THERE IS ANY

10   CONNECTION BACK TO THE U.S.A.

11   Q.   BEFORE YOU DISCUSS WHAT THE NATURE OF THAT

12   ANALYSIS WAS, AND YOU CONCLUDE, FOR EXAMPLE, THAT 90.3

13   PERCENT OF THESE PAGES THAT YOU FOUND IN THE GOOGLE

14   DATABASE YOU SAY HAVE LINKS TO THE UNITED STATES, RIGHT?

15   A.   THAT'S RIGHT.

16   Q.   OKAY. WHAT IS THE DENOMINATOR THAT PRODUCED

17   THAT 90.3 PERCENT NUMBER?

18   A.   I THINK THE DENOMINATOR WOULD BE THE NUMBER OF

19   SITES THAT -- IN THE 5F CATEGORY THAT WERE HOSTED

20   OUTSIDE OF THE U.S.A.

21   Q.   AND I CAN FIND THAT OUT FROM ONE OF THE

22   DATABASES THAT YOU PRODUCED TO US. CORRECT?

23   A.   YES, YOU CAN.

24   Q.   DOES 31 SOUND RIGHT?

25   A.   I REALLY DON'T KNOW.

1   Q.   BUT TELL ME HOW I WOULD GO ABOUT VERIFYING, IF I

2   WANTED TO, THAT 31 WAS IN FACT THE DENOMINATOR THAT LED

3   TO THIS 90.3 PERCENT. WALK ME THROUGH THE STEPS THAT I

4   WOULD DO IN ORDER TO DO THAT.

5   A.   THE STEPS WOULD BE THAT, WE START WITH 1,382

6   5F'S. AND NEXT TO EACH 5F CATEGORY IN THE DATABASE,

7   THERE IS A COLUMN THAT SAYS, HOSTING, AND IT WILL SAY

8   U.S.A. OR ANOTHER COUNTRY. IF WE TAKE ALL THE U.S.A.

9   ONES AWAY, WE ARE LEFT WITH A SMALLER SUBSET OF JUST

10   THOSE SITES THAT WERE HOSTED OUTSIDE OF THE U.S.A. THAT

11   MUST BE OUR DENOMINATOR FOR ANY FURTHER CALCULATIONS.

12   THEN WHAT I WOULD HAVE DONE IS TO GO INTO

13   THE FURTHER TESTING OF ANALYZING THE PAGES. AND WHEN I

14   HAVE ANALYZED, FOR INSTANCE, THAT A NUMBER OF PAGES HAVE

15   CONTENT OR CONNECTIONS BACK TO THE U.S.A., THAT BECOMES

16   MY NUMERATOR.

17   Q.   AND YOU TOOK ANOTHER CUT BEFORE YOU DID THAT,

18   RIGHT, WHICH IS YOU CUT OUT WHAT YOU DESCRIBED AS FREE

19   SITES VERSUS NONFREE SITES. RIGHT?

20   A.   THAT'S RIGHT, SORRY.

21   Q.   SO YOU TAKE THE 1,382 THAT YOU DESCRIBED AS

22   SEXUALLY EXPLICIT FIRST, RIGHT?

23   A.   THAT'S CORRECT.

24   Q.   AND YOU CUT OUT ALL OF THOSE THAT YOU CONCLUDED

25   WERE IN THE UNITED STATES, CORRECT?

1   A.   THAT'S RIGHT.

2   Q.   AND THEN YOU CUT OUT ALL OF THOSE THAT YOU

3   DETERMINED WERE NOT FREE, CORRECT?

4   A.   THAT'S RIGHT.

5   Q.   AND THAT GIVES YOU YOUR DENOMINATOR?

6   A.   CORRECT.

7   Q.   AND IF I LOOKED AT YOUR DATABASE, I MIGHT WELL

8   DETERMINE THAT THAT IS -- THAT MY ANALYSIS IS CORRECT

9   AND THAT 31 IS YOUR DENOMINATOR?

10   A.   QUITE POSSIBLY.

11   Q.   OKAY. AND SIMILARLY, THE DENOMINATOR FOR THE

12   QUERY ANALYSIS THAT WENT INTO YOUR 88.2 PERCENT, THAT

13   DENOMINATOR IS 14, ISN'T IT?

14   A.   I DON'T HAVE THE NUMBER IN FRONT OF ME, BUT IT

15   WOULD SOUND REALISTIC.

16   Q.   AND THE NUMBER THAT GOES INTO THE MSN STATISTIC

17   OF 89.8, THE DENOMINATOR THERE WAS 49, RIGHT?

18   A.   THEY SOUND REASONABLE.

19   Q.   SO YOU CLASSIFIED 70,000 WEB PAGES, AND THESE

20   STATISTICS ARE BASED ON FEWER THAN 50?

21   A.   THESE STATISTICS ARE ACTUALLY --

22   Q.   FIRST SAY YES, AND THEN IF YOU WANT TO EXPLAIN

23   YOUR ANSWER.

24   A.   I APOLOGIZE. THAT'S RIGHT. YES.

25   Q.   OKAY. NOW, EXPLAIN. GO AHEAD, IF YOU WANT TO

1   EXPLAIN.

2   A.   I THINK THAT THE FACT THAT WE CATEGORIZED IN

3   EXCESS OF 60,000 URLS TO GET DOWN TO TWO VERY EXPLICIT

4   DATASETS IS A CORRECT STATEMENT. BUT THIS PERCENTAGE

5   HERE IS ABOUT IDENTIFYING. WE ALREADY UNDERSTAND THAT

6   SEXUALLY EXPLICIT CONTENT IS A SMALL PROPORTION OF THE

7   WEB, BUT UNFORTUNATELY THE WEB IS VERY LARGE. AND THIS

8   SMALL PROPORTION STILL CALCULATES BACK TO A LARGE

9   NUMBER. AND THEREFORE I WOULD NOT BE SURPRISED THAT WE

10   ARE NOW LOOKING AT SMALLER NUMBERS HERE, AND SMALLER

11   PERCENTAGES. BUT THAT IS RIGHT. WE WOULD NOW BE

12   WORKING ON MUCH SMALLER NUMBERS THAN THE 60,000.

13   Q.   OKAY. AND NOW LET'S TALK ABOUT HOW -- THE

14   PROCESS OF HOW YOU DECIDED WHETHER IT WENT INTO THE

15   NUMERATOR OR NOT. THAT IS, WHETHER YOU COUNTED IT AS

16   HAVING LINKS TO THE UNITED STATES. AS I UNDERSTAND IT,

17   YOU USED TWO CRITERIA FOR LINKS TO THE UNITED STATES.

18   IS THAT CORRECT?

19   A.   THAT'S RIGHT.

20   Q.   AND THE FIRST CRITERIA IS, EVEN IF THE PAGE IS

21   HOSTED IN RUSSIA, ARE THERE ANY IMAGES ON THE PAGE THAT

22   ARE HOSTED IN THE UNITED STATES, CORRECT?

23   A.   THAT'S CORRECT.

24   Q.   SO SOMETIMES WEB PAGES CAN BE HOSTED IN MULTIPLE

25   LOCATIONS, CORRECT?

1   I'M SORRY. THAT IS NOT CORRECT.

2   SOMETIMES A WEB PAGE THAT IS HOSTED IN

3   ONE LOCATION HAS IMAGES ON IT THAT ARE HOSTED IN AN

4   ENTIRELY DIFFERENT LOCATION.

5   A.   THAT'S RIGHT. AND THE MODEL TENDS TO BE THAT

6   THE SITE WILL BE SOMEWHERE BUT THE IMAGES FROM THE SITE

7   COULD BE SOMEWHERE ELSE.

8   Q.   BUT IN TERMS OF FINDING A LINK TO THE UNITED

9   STATES, THAT WAS A VERY SMALL PART OF THE NUMERATOR THAT

10   WENT INTO THESE STATISTICS, RIGHT?

11   A.   THAT'S RIGHT.

12   Q.   SO IN FACT FOR THE GOOGLE -- FOR THE MSN

13   ANALYSIS, IT WAS TWO INSTANCES IN WHICH YOU FOUND IMAGES

14   ON THE PAGE OF A FOREIGN-HOSTED SITE THAT WERE HOSTED

15   FROM THE UNITED STATES?

16   A.   I'M NOT LOOKING AT THE DATA, BUT THAT WOULD

17   SOUND REASONABLE.

18   Q.   OKAY. AND THE SECOND WAY IN WHICH YOU WENT TO

19   THE NUMERATOR ON THESE STATISTICS IS YOU LOOKED FOR

20   LINKS TO U.S. CREDIT CARDS. CORRECT?

21   A.   CORRECT.

22   Q.   SO IF IT WAS A WEBSITE IN RUSSIA HOSTED IN

23   RUSSIA, REGISTERED IN RUSSIA, THAT ACCEPTED THE EUROPEAN

24   VERSION OF THE VISA CARD, YOU COUNTED THAT AS LINKED TO

25   THE UNITED STATES?

1   A.   I DON'T KNOW WHAT YOU MEAN BY THE EUROPEAN

2   VERSION OF VISA CARD. I LOOKED TO SEE IF IT HAD A VISA

3   PAYMENT MECHANISM.

4   Q.   AND EVEN IF IT WAS THE VISA -- THE EUROPEAN, THE

5   CORPORATION, THE SUBCORPORATION OF VISA THAT IS IN

6   EUROPE?

7   A.   I DIDN'T CATEGORIZE THAT FAR. I LOOKED FOR THE

8   CREDIT CARD.

9   Q.   SO AS LONG AS IT WAS VISA, REGARDLESS OF WHAT

10   KIND OF VISA, YOU COUNTED IT AS A LINK TO THE UNITED

11   STATES?

12   A.   THAT'S RIGHT.

13   Q.   AND YOU DID ONE MORE THING AS WELL, RIGHT? IF

14   THAT RUSSIAN SITE WAS IN YOUR DATABASE, WAS REGISTERED

15   IN RUSSIA AND HOSTED IN RUSSIA, AND ALL OF THE IMAGES

16   WERE IN RUSSIAN, AND IT DID NOT TAKE ANY CREDIT CARDS AT

17   ALL, YOU LOOKED TO SEE IF IT LINKED TO A SITE THAT TOOK

18   CREDIT CARDS. CORRECT?

19   A.   THAT'S RIGHT.

20   Q.   AND IF THAT SITE HOSTED IN RUSSIA, REGISTERED IN

21   RUSSIA, TAKING NO CREDIT CARDS, WAS LINKED TO A SITE IN

22   RUSSIA, REGISTERED IN RUSSIA, HOSTED IN RUSSIA THAT TOOK

23   VISA CARD, YOU COUNTED IT AS LINKED TO THE UNITED

24   STATES?

25   A.   THAT'S CORRECT.

1   Q.   OKAY. AND THERE IS AT LEAST ONE INSTANCE IN

2   WHICH IT TOOK YOU FIVE DIFFERENT LINKS IN ORDER TO FIND

3   A LINK A VISA CARD OR MASTERCARD. RIGHT?

4   A.   THAT'S CORRECT.

5   Q.   NOW, YOU DID A SERIES -- TO GO TO A DIFFERENT

6   TOPIC. AMONG THE ANALYSES YOU DID, SOME USED QUERIES.

7   CORRECT?

8   A.   THAT'S RIGHT.

9   Q.   SO WOULD YOU EXPLAIN AGAIN WHAT THE QUERY

10   ANALYSIS WAS. TAKE THE WORDTRACKER ONE JUST AS AN

11   EXAMPLE TO EXPLAIN IT.

12   A.   OKAY.

13   JUST TO CLARIFY, THE QUERY IS WHAT WE

14   WOULD GENERALLY, THE WORD OR PHRASE THAT WE WOULD TYPE

15   INTO A SEARCH ENGINE WHEN WE WANT TO FIND INFORMATION

16   ABOUT SOMETHING.

17   Q.   SO YOU WENT TO WORDTRACKER, AND YOU SAID, WHAT

18   ARE THE MOST POPULAR THINGS PEOPLE ARE SEARCHING FOR.

19   CORRECT?

20   A.   THAT'S RIGHT.

21   Q.   AND WORDTRACKER CAME BACK AND SAID, AND I'M SURE

22   THIS WAS NOT THE RIGHT ANSWER, FRANK SINATRA WAS THE

23   MOST POPULAR SEARCH YESTERDAY. CORRECT?

24   A.   YOU ARE RIGHT. IT WAS NOT THE RIGHT ANSWER.

25   Q.   BUT IT ACCURATELY DESCRIBES THE METHODOLOGY.

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1    A.      RIGHT.

2    Q.      OKAY.  AND THEN IF WORDTRACKER TOLD YOU THAT

3    FRANK SINATRA WAS THE MOST POPULAR SEARCH YESTERDAY, YOU

4    WOULD PUT FRANK SINATRA INTO A SEARCH ENGINE AND SEE

5    WHAT RESULTS YOU GOT?

6    A.      THAT'S RIGHT.

7    Q.      AND YOU WOULD GET, AS YOU DO IN GOOGLE, YOU

8    WOULD NORMALLY GET 10 RESULTS ON THE PAGE?

9    A.      THAT'S CORRECT.

10   Q.      AND THOSE WERE THEN THE URLS THAT YOU USED TO

11   ANALYZE WHETHER THEY WERE -- TO CATEGORIZE WHETHER THEY

12   WERE 5F'S OR NOT, RIGHT?

13   A.      THAT'S RIGHT.  TO IDENTIFY WHETHER THE QUERY

14   WOULD RETURN RESULTS OF A SEXUAL CONTENT.

15   Q.      AND YOU DID THIS -- A SIMILAR ANALYSIS WITH THE

16   GOOGLE SEARCH ENGINE -- WITH THE GOOGLE SAFESEARCH

17   PRODUCT.  CORRECT?

18   A.      THAT'S RIGHT.

19   Q.      NOW, LET'S TALK ABOUT THE GOOGLE SAFESEARCH

20   PRODUCT.  IF I GO TO THE REGULAR MAIN SEARCH PAGE OF

21   GOOGLE, ONE OF THE THINGS I WILL SEE IS THE WORD

22   PREFERENCES ON THAT PAGE.  CORRECT?

23   A.      THAT'S CORRECT.

24   Q.      AND IF I CLICK ON THE WORD PREFERENCES, IT WILL

25   TAKE ME TO A GOOGLE PAGE THAT ALLOWS ME TO CUSTOMIZE MY
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1   GOOGLE SEARCHING EXPERIENCE. CORRECT?

2   A.   YES.

3   Q.   AND ONE OF THE WAYS IN WHICH I CAN PERSONALIZE

4   MY GOOGLE SEARCHING EXPERIENCE IS, I CAN TURN ON A

5   PRODUCT THAT THEY CALL SAFESEARCH?

6   A.   CORRECT.

7   Q.   AND IT GIVES ME THREE DIFFERENT OPTIONS. I CAN

8   CLICK A BUTTON THAT SAYS KEEP SAFESEARCH OFF. CORRECT?

9   A.   CORRECT.

10   Q.   AND I CAN CLICK A BUTTON THAT SAYS MODERATE

11   SAFESEARCH, CORRECT?

12   A.   THAT'S RIGHT.

13   Q.   AND THERE'S A THIRD BUTTON THAT'S -- I DON'T

14   REMEMBER WHAT THE WORD IS, BUT IT'S HEAVY SAFESEARCH?

15   A.   I THINK IT IS HEAVY.

16   Q.   OKAY. AND WHAT GOOGLE IS OFFERING YOU THERE IS

17   ESSENTIALLY A PARENTAL CONTROL BLOCKING MECHANISM.

18   CORRECT?

19   A.   I THINK GOOGLE IS OFFERING A FACILITY WHICH

20   ALLOWS PEOPLE TO AVOID ACCIDENTALLY STUMBLING ACROSS

21   IMAGES. IT DOES NOT WORK TOTALLY AS A PARENTAL CONTROL

22   BECAUSE YOU CAN TURN IT OFF, AS YOU DESCRIBED.

23   Q.   BUT OTHER THAN THE FACT THAT YOU CAN TURN IT

24   OFF, IT FUNDAMENTALLY WORKS THE SAME WAY AS NET NANNY

25   AND THE OTHER PRODUCTS THAT YOU TESTED IN THE SENSE THAT

1   IT'S TRYING TO BLOCK SEXUAL IMAGES?

2   A.   YES, BUT ONLY FROM A QUERY ON THE SEARCH ENGINE,

3   BUT YOU ARE RIGHT IN THAT AREA.

4   Q.   OKAY. AND YOU TESTIFIED ON DIRECT THAT WHEN YOU

5   DID THE GOOGLE SAFESEARCH TEST, THREE PERCENT OF THE

6   RESPONSES PRODUCED SEXUAL -- PRODUCED WEB PAGES THAT YOU

7   CATEGORIZED AS SEXUALLY EXPLICIT. RIGHT?

8   A.   THREE PERCENT OF THE QUERIES GENERATED RESULTS

9   THAT HAD SEXUAL CONTENT, YES.

10   Q.   THAT IS EXACTLY THE POINT I WANTED TO RAISE. SO

11   THE DENOMINATOR -- YOU PUT 100 SEARCHES INTO THE GOOGLE

12   SEARCH ENGINE. CORRECT?

13   A.   RIGHT.

14   Q.   YOU GOT A THOUSAND PAGES RETURNED AS A RESULT OF

15   THAT. CORRECT?

16   A.   THAT'S RIGHT.

17   Q.   AND THE THREE PERCENT STATISTIC THAT YOU ARE

18   CITING, THE DENOMINATOR IS 100; NOT A THOUSAND. RIGHT?

19   A.   THAT'S RIGHT.

20   Q.   SO EVEN THOUGH YOU GOT A THOUSAND URLS, GIVEN

21   THE FACT THAT YOU GOT A THOUSAND URLS, WHAT IS THE

22   PERCENTAGE OF URLS THAT WERE RETRIEVED WITH SAFESEARCH

23   ON THAT WERE SEXUALLY EXPLICIT?

24   A.   ON THIS TEST, IT WAS FOUR PERCENT. SORRY --

25   Q.   4-10THS OF ONE PERCENT?

1   A.   YES.   .4 PERCENT.

2   Q.   SO THE INCIDENCE OF UNDERBLOCKING USING GOOGLE

3   SAFESEARCH WAS 4-10THS -- IF OUR MEASURE IS WEB PAGES,

4   IS 4-10THS OF ONE PERCENT, CORRECT?

5   A.   IT IS, BUT THE STATISTIC IS NOW BEING TAKEN OUT

6   OF CONTEXT, I WOULD SUGGEST.

7   Q.   AND SIMILARLY WITH THE YAHOO SEARCH ENGINE QUERY

8   ANALYSIS YOU DID, WE ARE STILL AT LESS THAN ONE PERCENT

9   OF THE WEB PAGES THAT GOT THROUGH WITH THE YAHOO

10   CONTROLS ENABLED, CORRECT?

11   A.   I'M JUST TRYING TO RECALL. IT WAS 19 RESULTS

12   BACK, SO, YEAH.

13   Q.   AND WITH VERIZON IT WAS 14 URLS?

14   A.   YES, THAT'S CORRECT.

15   Q.   SO ACTUALLY I STAND CORRECTED. THAT IS STILL

16   LESS THAN ONE PERCENT, THOUGH, RIGHT?

17   A.   YES.

18   Q.   NOW, YOU TALKED BRIEFLY ABOUT THE SAFEEYES AND

19   8E6 ANALYSIS THAT YOU DID. I WANT TO JUST MAKE ONE -- I

20   WANT TO ASK YOU ONE ADDITIONAL QUESTION ABOUT THE 8E6

21   AND SAFEEYES ANALYSES YOU DID.

22   YOU USED -- ESSENTIALLY, THIS IS TWO

23   DIFFERENT PRODUCTS THAT YOU TESTED. CORRECT?

24   A.   THAT'S RIGHT.

25   Q.   AND YOU TESTED THEM IN EXACTLY THE SAME WAY AS

1   YOU TESTED THE OTHER PRODUCTS THAT ARE LISTED ON PAGE 1

2   OF DEMONSTRATIVE EXHIBIT 1. CORRECT?

3   A.   THAT'S CORRECT.

4   Q.   SO THE SAME METHODOLOGY?

5   A.   TOTALLY.

6   Q.   AND THE CATEGORIES -- SAFEEYES LETS YOU DECIDE

7   WHAT CATEGORIES YOU WANT TO BLOCK AND WHAT CATEGORIES

8   YOU DON'T WANT TO BLOCK. RIGHT?

9   A.   THAT'S CORRECT.

10   Q.   AND WITH SAFEEYES, YOU USED ALL OF THE DEFAULT

11   CATEGORIES PLUS ADULT AND LINGERIE. CORRECT?

12   A.   I WOULD HAVE TO REFER TO THE REPORT TO CHECK.

13   Q.   OKAY. BUT THAT WOULD BE IN YOUR SUPPLEMENTAL

14   REPORT?

15   A.   YES, IT WOULD BE.

16   Q.   AND SIMILARLY, YOU DID THE SAME THING WITH 8E6,

17   WHERE YOU USED ALL THE DEFAULT CATEGORIES INCLUDING

18   OBSCENE AND R RATED. CORRECT?

19   A.   AGAIN, I WOULD HAVE TO REFER, BUT IT SOUNDS

20   REASONABLE.

21   Q.   NOW, LET'S MOVE ON TO A SLIGHTLY DIFFERENT

22   TOPIC, WHICH IS THE TRANSLATION POINT THAT YOU WERE

23   MAKING. YOU GAVE US AN EXHIBIT DURING YOUR DIRECT

24   TESTIMONY IN WHICH YOU TRANSLATED A WORD OR PHRASE INTO

25   KOREAN, AND THEN RETRIEVED A PAGE IN KOREAN THAT HAD

1   SOME SEXUALLY EXPLICIT CONTENT. CORRECT?

2   A.   THAT'S CORRECT.

3   Q.   OKAY. THE PAGE THAT YOU RETRIEVED, WHERE WAS IT

4   HOSTED OR REGISTERED?

5   A.   I DIDN'T CHECK.

6   Q.   WOULD YOU LOOK AT THE -- IT'S IN YOUR -- IT'S IN

7   THE DEFENDANT'S EXHIBITS, I DID NOT WRITE DOWN WHAT THE

8   NUMBER IS.

9   IT MAY BE 87 IN YOUR BOOK.

10   MR. MCELVAIN: IF YOU ARE ASKING ABOUT

11   THE EXHIBIT?

12   MR. HANSEN: YES, THE EXHIBIT.

13   MR. MCELVAIN: I THINK 87.

14   BY MR. HANSEN:

15   Q.   IS IT 87?

16   A.   THIS IS DEFINITELY THE EXHIBIT WHICH IS THE

17   DEMONSTRATION I GAVE ON THE -- HOW THE TRANSLATION

18   SOFTWARE WORKED, YES.

19   Q.   AND USING EXHIBIT 87, IT APPEARS THAT WHEN YOU

20   LOOK AT THE PAGE THAT HAS THE SEXUALLY EXPLICIT CONTENT

21   ON IT, THAT THE DOMAIN IS .UK, DOESN'T IT?

22   A.   I CERTAINLY CAN'T READ IT ON HERE. I WOULD HAVE

23   TO SEE IT ENLARGED.

24   Q.   THAT SITE, IS THAT SITE IN YOUR DATABASE?

25   A.   I DON'T KNOW.

 1   Q.   OKAY. AND YOU DON'T HAVE AN ENLARGED VERSION OF

 2   THAT AT THE MOMENT?

 3   A.   NO, BUT THIS WAS ON THE SCREEN SO WE MUST HAVE

 4   IT AS A SLIDE SOMEWHERE.

 5   Q.   I CAN'T PUT IT -- CAN I PUT IT ON THE SCREEN,

 6   DEFENDANT'S EXHIBIT?

 7   A.   I CERTAINLY CAN'T READ WHETHER THAT IS A UK

 8   DOMAIN OR NOT.

 9   Q.   WELL, WHILE WE SEE WHETHER WE CAN ACCOMPLISH

10   THAT TASK OR NOT. IT WOULD BE -- IF YOU WERE USING THE

11   TRANSLATION TOOL IN RETRIEVING A WEB PAGE IN KOREAN, YOU

12   WOULD NORMALLY EXPECT TO IT BE HOSTED IN KOREA OR SOME

13   OTHER FOREIGN LOCATION, WOULDN'T YOU?

14   A.   NOT NECESSARILY.

15   Q.   NO. BUT THE MAJORITY OF PAGES THAT ARE WRITTEN

16   IN KOREAN ARE PROBABLY HOSTED AND REGISTERED IN KOREA,

17   RIGHT?

18   A.   IT WOULD BE REASONABLE TO EXPECT IT TO BE CLOSE

19   TO THE AUDIENCE THAT HAS THAT LANGUAGE.

20   WE JUST HAVE TO ZOOM IN. THIS IS THE

21   WRONG PAGE.

22   Q.   WE ARE GOING TO KEEP -- WE ARE GOING TO LOOK AND

23   SEE IF WE CAN GET IT OFF OF -- THIS WAS ATTACHED TO YOUR

24   EXPERT WITNESS REPORT?

25   A.   THIS IS THE CACHING EXAMPLE. IT MUST BE THE ONE

1   BEFORE IT.

2   Q.   OH, SO IT'S THE WRONG EXHIBIT. IT IS ALSO

3   ATTACHED TO YOUR ORIGINAL EXPERT WITNESS REPORT. RIGHT?

4   A.   THAT'S RIGHT.

5   Q.   WHY DON'T YOU LOOK AND SEE IF YOU CAN READ IT ON

6   YOUR EXPERT WITNESS REPORT VERSION.

7   A.   I BELIEVE YOU ARE CORRECT. I CAN JUST SEE IT.

8   Q.   OKAY. THANK YOU.

9   THE COURT: WHY DON'T YOU REMIND THE

10   COURT WHAT CORRECT MEANS.

11   MR. HANSEN: OKAY. THAT SEEMS

12   REASONABLE.

13   BY MR. HANSEN:

14   Q.   SO THE SEXUALLY EXPLICIT PAGE THAT YOU FOUND BY

15   PUTTING IN A KOREAN TERM RETURNED A WEB PAGE THAT IS

16   LOCATED IN -- OR AT LEAST HAS A UK DOMAIN?

17   A.   IT HAS A UK DOMAIN, YES.

18   Q.   WHICH IS THE DOMAIN FOR THE UNITED KINGDOM,

19   CORRECT?

20   A.   CORRECT.

21   Q.   NOW, SPEAKING OF THIS OVERSEAS ISSUE AGAIN, THE

22   DEFENDANT'S EXHIBIT 88, THE 40 PAGES THAT YOU SHOWED

23   THAT WERE UNBLOCKED BY AT LEAST THREE OR FOUR OF THE

24   FILTERS. WHAT PERCENTAGE OF THOSE PAGES WERE HOSTED

25   OVERSEAS?

1   A.   I DON'T HAVE THAT STATISTIC AT HAND.

2   Q.   50 PERCENT SOUND PLAUSIBLE?

3   A.   I HAVE NO IDEA.

4   Q.   WE COULD DO THAT, THOUGH, BY GOING BACK THROUGH

5   THE MASTER DATABASE CHART THAT WE WENT THROUGH WHEN WE

6   FIRST STARTED YOUR CROSS EXAMINATION. CORRECT?

7   A.   YES, WE COULD.

8   Q.   SO UTILIZING PLAINTIFFS' EXHIBIT 168 OR 169 OR

9   170, WHICH ARE THE DISKS, WE COULD DETERMINE WHETHER, OF

10   THOSE 40 PAGES, THE NUMBER THAT WERE HOSTED DOMESTICALLY

11   VERSUS HOSTED OVERSEAS. CORRECT?

12   A.   YES, WE COULD.

13   Q.   BUT YOU DID NOT DO THAT?

14   A.   NO.

15   Q.   NOW, TO TURN TO A SLIGHTLY DIFFERENT TOPIC. YOU

16   TALKED ABOUT THE DIFFERENCE BETWEEN ENTER -- WHAT YOU

17   CALLED ENTERPRISE FILTERS AND HOME FILTERS, CORRECT?

18   A.   THAT'S RIGHT.

19   Q.   AND AS I UNDERSTOOD IT, ONE OF THE DISTINCTIONS

20   YOU DREW BETWEEN AN ENTERPRISE FILTER AND A HOME FILTER

21   WAS THAT THE ENTERPRISE FILTER HAS THE TECHNICIAN WHO

22   CAN INSTALL IT AND MAINTAIN IT. CORRECT?

23   A.   THAT'S RIGHT.

24   Q.   THE ISP FILTERS THAT ARE LISTED ON PAGE 1 OF

25   DEMONSTRATIVE EXHIBIT 1 DON'T REQUIRE INSTALLATION.

1   RIGHT?

2   A.   THAT'S RIGHT.

3   Q.   AND VISTA, WHEN IT COMES, IS NOT GOING TO

4   REQUIRE INSTALLATION. IT'S GOING TO COME WITH YOUR

5   COMPUTER. RIGHT?

6   A.   THAT'S RIGHT.

7   Q.   NOW, I ONLY HAVE ONE MORE SUBJECT TO DISCUSS

8   WITH YOU, AND THAT IS THE INFORMATION THAT YOU TESTIFIED

9   TO, AND THAT IS ALSO CONTAINED IN YOUR FIRST REPORT AT

10   THE VERY END, THE CONCLUSION TO THE FIRST REPORT.

11   PARTICULARLY I WOULD LIKE TO DRAW YOUR ATTENTION TO PAGE

12   41 OF DEFENDANT'S EXHIBIT 82.

13   DO YOU SEE THAT IN FRONT OF YOU?

14   A.   YES, I CAN. THANK YOU.

15   Q.   OKAY. AND WHAT YOU ARE DOING HERE IS TRYING TO

16   DETERMINE THE RAW NUMBER OF SEXUALLY EXPLICIT SITES THAT

17   ARE ON THE INTERNET. CORRECT?

18   A.   AVAILABLE ON THE WORLDWIDE WEB, YES.

19   Q.   AND YOU START OUT WITH THE FACT THAT IN YOUR

20   REPORT, YOU FOUND THAT THE INCIDENCE OF SEXUALLY

21   EXPLICIT MATERIAL ON THE WEB IS 1.1 PERCENT. CORRECT?

22   A.   THAT'S RIGHT.

23   Q.   AND YOU MAKE THIS ESTIMATE THAT THERE ARE SOME

24   NUMBER OF SITES ON THE WORLDWIDE WEB, YOU ESTIMATE

25   BETWEEN 24 -- 25 AND 64 BILLION PAGES?

1   A.   ON THE SURFACE WEB, YES.

2   Q.   AND WHEN YOU TESTIFIED YESTERDAY, YOU SAID THAT

3   THAT MEANS THAT THERE ARE 700 MILLION SEXUALLY EXPLICIT

4   SITES, BUT THAT IS NOT WHAT YOUR REPORT SAYS, IS IT?

5   YOUR REPORT SAYS THERE IS SOMEWHERE BETWEEN 275 AND 700

6   MILLION. CORRECT?

7   A.   THE REPORT DOES SAY THAT. AND I BELIEVE I

8   ACTUALLY SAID YESTERDAY THAT THERE COULD BE AS MUCH AS

9   700 MILLION.

10   Q.   NOW, THIS IS ALL SEXUALLY EXPLICIT SITES WHETHER

11   OR NOT BLOCKED BY FILTERS. CORRECT?

12   A.   THIS HAS NOTHING TO DO WITH FILTERS AT ALL.

13   Q.   NOW THE WORDTRACKER -- WHEN AOL WAS RUNNING,

14   WORDTRACKER UNDER YOUR ANALYSIS WAS 98.6 PERCENT

15   EFFECTIVE. CORRECT?

16   A.   I COULD LOOK AT THE STATISTICS BUT I BELIEVE

17   THAT NUMBER IS ABOUT RIGHT.

18   Q.   OKAY. SO OF THOSE, SAY, 275 MILLION WEB PAGES

19   THAT YOU BELIEVE TO BE SEXUALLY EXPLICIT, 98.6 WOULD BE

20   BLOCKED IF I WERE RUNNING THE AOL FILTER. CORRECT?

21   A.   THAT'S CORRECT.

22   Q.   AND HOW MANY OF THOSE 275 MILLION ARE HOSTED

23   OVERSEAS?

24   ONCE AGAIN, THAT IS A STATISTIC THAT YOU

25   DON'T KNOW BECAUSE YOU DIDN'T DO IT. RIGHT?

1   A.   IT'S IN THE DATABASE, YES.

2   Q.   BUT YOU DID NOT CALCULATE IT AND YOU ARE NOT

3   PREPARED TO TESTIFY TO IT?

4   A.   NO. BUT THAT IS NOT THE WHOLE STORY THERE.

5   MR. HANSEN: YOUR HONOR, I HAVE NO MORE

6   QUESTIONS OF THE WITNESS. I WOULD LIKE TO MOVE IN

7   PLAINTIFFS' EXHIBITS 168 THROUGH 182, PLEASE, ALL OF

8   WHICH CONSIST OF DOCUMENTS FROM THE WITNESS' DATABASE.

9   MR. MCELVAIN: NO OBJECTION.

10   THE COURT: PLAINTIFFS' EXHIBITS 168

11   THROUGH 182 INCLUSIVE ARE RECEIVED INTO EVIDENCE.

12   (PLAINTIFFS' EXHIBITS 168 THROUGH 182

13   RECEIVED INTO EVIDENCE.)

14   MR. HANSEN: THANK YOU, YOUR HONOR.

15   THE COURT: ANY REDIRECT?

16   MR. MCELVAIN: YES, YOUR HONOR.

17   YOUR HONOR, WE HAVE AN EXHIBIT THAT WE

18   WOULD LIKE TO USE ON REDIRECT. IF I MAY APPROACH?

19   THE COURT: YES. DIFFERENT FROM THE ONES

20   WE HAVE FROM BEFORE.

21   MR. MCELVAIN: A NEW ONE.

22   THE COURT: HOW REFRESHING.

23   MR. MCELVAIN: MAY I APPROACH THE WITNESS

24   AS WELL?

25   THE COURT: SURELY.

1   WHAT IS THIS DOCUMENT, JUST TO GET IT OFF

2   MY MIND.

3   MR. MCELVAIN: I'M SORRY.

4   THE COURT: WHAT IS THE EXHIBIT NUMBER?

5   MR. MCELVAIN: 465. IT APPEARS IN THE

6   CORNER.

7   THE COURT: DEFENDANT'S 465.

8   YOU MAY PROCEED.

9   REDIRECT EXAMINATION

10   BY MR. MCELVAIN:

11   Q.   GOOD MORNING, MR. MEWETT.

12   A.   GOOD MORNING.

13   Q.   AT THE END OF THE DAY YESTERDAY AND AT THE

14   BEGINNING OF TODAY, YOU WERE ASKED A NUMBER OF QUESTIONS

15   ABOUT DIFFERENT KINDS OF CODING THAT WERE USED IN THE

16   PROCESS, SO I THOUGHT IT WOULD BE USEFUL TO STEP BACK

17   AND GO OVER AN OVERVIEW OF THE PROCESS.

18   IF I COULD CALL UP WHAT IS CALLED

19   DEFENDANT'S DEMONSTRATIVE NUMBER 1 AND REFER TO PAGE 3

20   OF THAT DEMONSTRATIVE EXHIBIT.

21   MR. MCELVAIN: I'M SORRY. ONE MOMENT,

22   YOUR HONOR. I BELIEVE THE MONITORS NEED TO BE CHANGED.

23   THE COURT: DONE.

24   BY MR. MCELVAIN:

25   Q.   WHAT WAS THE FIRST STEP IN THE PROCESS OF CODING

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 1   THE WEB PAGES AS PART OF YOUR PROJECT?

 2   A.      THE FIRST STEP WAS TO VIEW THE PAGE AND IDENTIFY

 3   WHETHER THERE WAS ANY NUDITY ON THE PAGE OR ANY SEXUALLY

 4   EXPLICIT TERMS OR SEXUAL TERMS.

 5   Q.      AND ON THIS CHART, THERE IS A BAR THAT REFERS TO

 6   A, AND DOES THIS REFER TO THE CODINGS OF 1A THAT APPEAR

 7   IN YOUR DATABASE?

 8   A.      YES, IT DOES.

 9   Q.      WHAT WOULD BE REQUIRED FOR A WEB PAGE TO BE

10   CLASSIFIED AS 1A?

11   A.      FOR A PAGE TO BE CLASSIFIED AS 1A, THE PAGE HAD

12   TO HAVE NO NUDITY AT ALL OR ANY SEXUAL TERMS ON THE

13   PAGE.

14   Q.      AND WHY DID YOU USE THIS DEFINITION?

15   A.      I USED IT BECAUSE WE HAVE TO REMEMBER WHAT I WAS

16   TRYING TO ACHIEVE AS AN END RESULT.  I WANTED A SET OF

17   DATA TO TEST THE FILTERS ON THAT WOULD GIVE ME AN

18   OPPORTUNITY TO SEE WHETHER THEY OVERBLOCKED CONTENT THAT

19   HAD NOTHING TO DO WITH ANYTHING SEXUAL.  SO THIS, FOR

20   ME, HAD TO BE AN INCREDIBLY CLEAN SET OF DATA THAT HAD

21   NO AMBIGUITY AT ALL.

22                   AND I CAN GIVE YOU AN EXAMPLE OF THE KIND

23   OF AMBIGUITY THAT YOU CAN GET WITH FILTERS.  IN ENGLAND

24   WE HAVE A COUNTY THAT IS CALLED SUSSEX.  AND FILTERS

25   OFTEN BLOCK CONTENT FROM SUSSEX BECAUSE IT HAS SEX AT
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1   THE END. SO I WANTED A SET OF DATA HERE THAT WAS SO

2   INCREDIBLY CLEAN THAT IT WOULD GIVE THE FILTER THE BEST

3   OPPORTUNITY TO TEST WHETHER IT OVERBLOCKED.

4   Q.   OKAY. AND AT THIS STAGE OF THE CODING, WHAT WAS

5   REQUIRED FOR A WEB PAGE TO FALL INTO THIS CATEGORY OF

6   1B?

7   A.   ALL THE REST. ANYTHING THAT WAS NOT PERFECTLY

8   CLEAN.

9   Q.   OKAY. AND IS THAT DEFINITION OF 1B THE SAME OR

10   IS THAT DIFFERENT FROM THE DEFINITION OF ADULT

11   ENTERTAINMENT WEB PAGES THAT YOU USED?

12   A.   DEFINITELY DIFFERENT. THIS IS JUST PART OF MY

13   PROCESS OF EVENTUALLY GETTING TO A SET OF DATA WHICH WAS

14   CALLED ADULT ENTERTAINMENT, WHICH WAS AN ITERATIVE

15   PROCESS.

16   Q.   IF I COULD TURN YOUR ATTENTION TO PLAINTIFFS'

17   EXHIBIT 177, AND THE FIRST TWO PAGES OF THAT EXHIBIT

18   SPECIFICALLY.

19   AND DO YOU SEE PAGE 2?

20   A.   YES, I DO.

21   Q.   AND I BELIEVE YOU -- WELL, WAS THIS CODED AS A

22   1A OR A 1B?

23   A.   THIS WAS CODED AS A 1B.

24   Q.   AND, AGAIN, REMIND ME WHAT 1B MEANS IN THIS

25   CONTEXT.

1   A.   1B MEANS IN THIS CONTEXT ANY PAGE THAT HAS ANY

2   NUDITY OR SEXUAL TERMS.

3   Q.   DID YOU CODE THIS AS AN ADULT ENTERTAINMENT

4   WEBSITE?

5   A.   ON THIS OCCASION, I DID.

6   Q.   I'M SORRY. IF I COULD REFER YOU BACK TO PAGE 1

7   OF PLAINTIFFS' EXHIBIT 177.

8   A.   I APOLOGIZE. I WAS READING THE WRONG PAGE. THE

9   ANSWER IS I DIDN'T.

10   Q.   AND HOW DO YOU KNOW THAT YOU DID NOT?

11   A.   BECAUSE I'M NOW READING PAGE 001 OF 177 AND IT

12   SHOWS ME THAT IT WAS CATEGORIZED AS Q5G.

13   Q.   AND IS Q5G THE SAME THING AS THE ADULT

14   ENTERTAINMENT CODE?

15   A.   NO, Q5G WAS IN FACT THE OTHER CATEGORY.

16   THE COURT: "OTHER." WORD OF ART.

17   BY MR. MCELVAIN:

18   Q.   DESCRIBE TO ME WHAT THE "OTHER" CATEGORY MEANT.

19   A.   THE OTHER CATEGORY -- SORRY. QUOTE "OTHER"

20   CATEGORY WAS A CATEGORY THAT I CREATED WHEN DOING THIS

21   ANALYSIS THAT WOULD EFFECTIVELY CATCH ANYTHING THAT I

22   DID NOT HAVE A CATEGORY FOR. SO REMEMBERING THAT MY

23   GOAL WAS TO ACTUALLY CREATE A DATASET TO TEST THE

24   FILTERS ON FOR THEIR UNDERBLOCKING, MY Q5F, ADULT

25   CONTENT CATEGORY WAS MY -- ONE I HAD TO BE CONCENTRATING

1   ON ALL THE TIME TO MAKE SURE THAT THAT WAS A SET THAT

2   HAD QUALITY DATA. AND SO IF I HAD AN IMAGE LIKE THIS

3   ONE AND I LOOKED AT IT AND IT DID NOT FALL INTO ANY OF

4   THE OTHER CATEGORIES I HAD, I COULD NOT DETERMINE IT TO

5   BE ART, OR EDUCATION OR ADULT CONTENT, IT BECAME AN

6   OTHER.

7   Q.   AND THIS PARTICULAR IMAGE THAT WE ARE DESCRIBING

8   ON PAGES 1 AND 2 OF PLAINTIFFS' 177, WOULD THIS APPEAR

9   IN THE DATABASE AS MSN URL 777?

10   A.   THAT'S RIGHT.

11   Q.   AND NOW, COULD I TURN YOUR ATTENTION TO WHAT HAS

12   BEEN MARKED AS DEFENDANT'S EXHIBIT 465, WHICH IS THE NEW

13   EXHIBIT.

14   DO YOU KNOW WHETHER THIS WEB PAGE WAS

15   BLOCKED BY ANY OF THE FILTERS THAT YOU TESTED?

16   A.   I CAN CERTAINLY CHECK.

17   Q.   IF I COULD REFER YOU TO PAGE 1 OF DEFENDANT'S

18   EXHIBIT 465, IT MIGHT BE HELPFUL.

19   A.   YES. IT WAS ACTUALLY BLOCKED ON THREE

20   OCCASIONS.

21   Q.   AND WHAT IS DEFENDANT'S EXHIBIT 465?

22   A.   465 IS AN EXCERPT FROM MY DATABASE OF RESULTS.

23   Q.   AND IS THIS AN ACCURATE REFLECTION OF THE

24   ENTRIES THAT -- SOME OF THE ENTRIES THAT APPEAR IN THE

25   DATABASE?

1   A.   YES, IT IS.

2   THE COURT: I MISSED SOMETHING. YOU

3   ASKED WHETHER SOMETHING WAS BLOCKED BY THE FILTER AND

4   THERE WAS A RESPONSE. WHAT WAS BLOCKED BY THE FILTER?

5   MR. MCELVAIN: PERHAPS I CAN CLARIFY,

6   YOUR HONOR.

7   BY MR. MCELVAIN:

8   Q.   CAN I TURN YOUR ATTENTION BACK SPECIFICALLY TO

9   PAGE 2 OF PLAINTIFFS' EXHIBIT 177.

10   A.   OKAY.

11   THE COURT: THAT IS THE CARTOON.

12   MR. MCELVAIN: YES, YOUR HONOR.

13   BY MR. MCELVAIN:

14   Q.   THIS IMAGE WAS DRAWN FROM A WEB PAGE THAT WAS

15   COLLECTED IN YOUR DATABASE?

16   A.   THAT'S CORRECT.

17   Q.   DO YOU KNOW IF THAT WEB PAGE WAS BLOCKED BY SOME

18   OF THE FILTERS THAT YOU TESTED?

19   A.   YES. THIS IMAGE WAS BLOCKED BY THREE OF THE

20   FILTERS.

21   THE COURT: THANK YOU.

22   BY MR. MCELVAIN:

23   Q.   IF I CAN TURN YOUR ATTENTION TO PAGE 7 AND 8 OF

24   PLAINTIFFS' EXHIBIT 177. AND SPECIFICALLY PAGE 8. DO

25   YOU SEE THAT PAGE?

```
1    A.      YES, I DO.

2    Q.      AND DID YOU CODE THIS AS 1A OR 1B?

3    A.      I CODED IT AS A 1 -- SORRY, 1B.

4    Q.      AND WHY DID YOU CODE IT AS A 1B?

5    A.      WELL, THE ANSWER HAS TO BE THAT I DETERMINED

6    THAT THIS PAGE HAD SOME SEXUAL CONTENT, EITHER IMAGERY

7    OR VOCABULARY.  IF YOU LIKE, I CAN READ DOWN THE PAGE

8    UNTIL I FIND THE OCCURRENCE, BUT THAT IS THE REASON I

9    DID IT.

10           OKAY.  A THIRD OF THE WAY DOWN THE PAGE,

11   THERE IS A PARAGRAPH REFERRING TO SAME SEX COUPLES.  AND

12   SO THE FACT THAT THE OCCURRENCE OF THE WORD SEX APPEARS

13   ON THE PAGE I WOULD HAVE REFERRED THIS TO CATEGORY 1B.

14   Q.      AND PLEASE REMIND ME WHAT THE DEFINITION OF 1A

15   WAS.

16   A.      1A IS --

17           THE COURT:  THIS IS 1B, HE SAID.

18   BY MR. MCELVAIN:

19   Q.      I SHOULD ASK IT MORE CLEARLY.  REMIND ME WHAT

20   THE DEFINITION OF 1B WOULD HAVE BEEN.

21   A.      1B IS ANY PAGE THAT WE ARE VIEWING THAT HAS

22   EITHER NUDITY ON IT OR ANY SEXUAL TERMS.

23   Q.      IS THAT DEFINITION THE SAME AS THE DEFINITION

24   FOR ADULT ENTERTAINMENT THAT YOU USED?

25   A.      NO, IT'S NOT.  ADULT ENTERTAINMENT IS A SUBSET
```

1   OF 1B.

2   Q.   DID YOU CODE THIS PAGE AS AN ADULT ENTERTAINMENT

3   WEB PAGE?

4   A.   NO, I DIDN'T.

5   Q.   DO YOU KNOW WHETHER THE WEB PAGE THAT THIS IMAGE

6   WAS DRAWN FROM WAS BLOCKED BY SOME OF THE FILTERS THAT

7   YOU TESTED?

8   A.   YES, I DO. IT WAS BLOCKED BY THREE OF THE

9   FILTERS.

10   Q.   IS THAT REFLECTED IN DEFENDANT'S EXHIBIT 465?

11   A.   YES, IT IS.

12   Q.   IF I COULD TURN YOUR ATTENTION TO PAGES 9 AND 10

13   OF PLAINTIFFS' EXHIBIT 177.

14   DID YOU CODE THIS WEB PAGE AS A 1A OR A

15   1B?

16   A.   IT WAS CODED AS A 1B.

17   Q.   AND WHY DID YOU CODE IT AS A 1B AND NOT A 1A?

18   A.   WITHOUT REFERRING TO THE DATABASE, I BELIEVE IT

19   WAS CODED BECAUSE OF THE REFERENCES TO THE GAY AND

20   LESBIAN ITEMS IN THE TITLE.

21   Q.   WHY WOULD A REFERENCE TO THE TERM GAY OR LESBIAN

22   LEAD TO A CODING OF 1B RATHER THAN 1A?

23   A.   ONLY BECAUSE THE DATASET I WAS LOOKING TO CREATE

24   FOR TESTING THE FILTERS FOR OVERBLOCKING HAD TO BE VERY,

25   VERY CLEAN. AND THEREFORE, I KNOW THAT MANY FILTERS

```
 1    ATTEMPT TO BLOCK TERMS LIKE GAY AND LESBIAN.  AND SO I

 2    WANTED TO MAKE SURE THAT THIS SITE WAS NOT IN A DATASET

 3    THAT WAS GOING TO BE USED FOR TESTING FOR CLEAN DATA.

 4    Q.      AND DID YOU CODE THIS PAGE AS ADULT

 5    ENTERTAINMENT?

 6    A.      NO, I DIDN'T.  I PUT IT IN THE OTHER CATEGORY.

 7    Q.      DO YOU KNOW WHETHER THIS WEB PAGE WAS BLOCKED BY

 8    SOME OF THE FILTERS THAT YOU TESTED?

 9    A.      YES, IT WAS BLOCKED BY FOUR OF THE FILTERS.

10    Q.      TURNING YOUR ATTENTION TO PAGE 11 AND PAGE 12 OF

11    PLAINTIFFS' EXHIBIT 177.

12              DID YOU CODE THIS AS A 1A OR AS A 1B?

13    A.      I CODED IT AS A 1B.

14    Q.      AND WHY DID YOU CODE IT AS A 1B?

15    A.      BECAUSE IT HAS VOCABULARY ON THE PAGE REFERRING

16    TO TEEN SEX AND SEXUALITY AMONGST OTHER THINGS AND

17    THEREFORE THESE WERE SEXUAL TERMS AND SO I DIDN'T WANT

18    IT IN MY 1A CATEGORY WHERE IT WOULD POSSIBLY BE PICKED

19    UP BY FILTERS INADVERTENTLY.  THE 1A CATEGORY HAD TO BE

20    AS CLEAN AS POSSIBLE.

21    Q.      DID YOU CODE THIS AS AN ADULT ENTERTAINMENT

22    WEBSITE?

23    A.      NO, I DIDN'T.

24    Q.      DO YOU KNOW WHETHER THIS WEB PAGE WAS BLOCKED BY

25    SOME OF THE FILTERS THAT YOU TESTED?
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 1    A.       IT WAS ACTUALLY BLOCKED BY NINE OF THE FILTERS.

 2    Q.       AND FOR THE PURPOSES OF THE UNDERBLOCKING

 3    STATISTICS AND OVERBLOCKING STATISTICS THAT YOU

 4    REPORTED, WOULD ANY OF THESE WEB PAGES BE RELEVANT FOR

 5    THE STATISTICS THAT WERE DERIVED FROM YOUR STUDY?

 6    A.       NO, THEY HAVE NO IMPACT AT ALL.

 7    Q.       WHY NOT?

 8    A.       BECAUSE ALL STATISTICS ARE DERIVED BY THE TWO

 9    DATASETS I EVENTUALLY END UP WITH.  I ENDED UP WITH A

10    SUBSET OF THE 1A'S, WHICH WAS IN MY TERMS A VERY CLEAN

11    DATASET WITH NO SEXUAL TERMS AT ALL, AND THAT WAS GOING

12    TO BE USED FOR OVERBLOCKING.  AND MY 5F OR ADULT CONTENT

13    SET WAS THE SET THAT HAD SEXUAL TERMS, SEXUAL CONTENT,

14    AND WAS GOING TO BE USED FOR UNDERBLOCKING.  ANYTHING

15    ELSE IN THE PROCESS THAT WAS OUTSIDE OF THOSE TWO

16    CATEGORIES HAD NO EFFECT AT ALL.  I WAS ONLY USING THOSE

17    TWO DATASETS.

18    Q.       YOU WERE ASKED SOME QUESTIONS ABOUT THE CONTENT

19    OF THE WEB PAGES THAT WERE IN THIS 1A DATASET, WHAT WE

20    CALLED THE CLEAN DATASET.  AND MR. HANSEN ASKED YOU IF

21    IT'S POSSIBLE THAT THERE WERE SOME GAMBLING OR DRUG

22    SITES THAT MIGHT HAVE APPEARED IN THAT DATASET.

23    A.       THAT'S RIGHT.

24    Q.       WHICH SETTING DID YOU SET THE FILTERS AT FOR

25    YOUR TESTING?
```

1   A.   MOST FILTERS WERE SET AT TWO SETTINGS. ONE WAS

2   THE DEFAULT, AND THE SECOND ONE WAS ANY CATEGORIES THE

3   FILTER HAD TO MAKE SURE THAT IT WAS AS CLOSE AS POSSIBLE

4   JUST TO GET SEXUALLY EXPLICIT CONTENT, ADULT CONTENT.

5   Q.   AND WHY DID YOU PICK THAT SETTING?

6   A.   BY PICKING THAT SETTING, IT WAS -- THE GOAL OF

7   THE TEST WAS TO CREATE A DATASET THAT HAD SEXUAL

8   EXPLICIT CONTENT AND THEN TO RUN THAT DATA AGAINST THE

9   FILTER THAT WAS SET TO IT, AND I WOULD EXPECT THEREFORE

10   THAT FILTER TO STAND THE BEST CHANCE OF ONLY BLOCKING

11   CONTENT WHICH WAS EXACTLY WHAT I WAS GIVING IT. I THINK

12   IT'S THE BEST TEST FOR A FILTER, YOU GIVE IT THE CONTENT

13   IT IS EXPECTED TO BLOCK.

14   Q.   YOU WERE ASKED SOME QUESTIONS YESTERDAY ABOUT

15   SOME PAGES THAT WERE CODED AS 5G. AND THERE WAS SOME

16   EXPLORATION AS TO WHY PAGES FELL INTO THE 5G CATEGORY OR

17   NOT. PLEASE TELL ME AGAIN WHAT -- WELL, IF I COULD CALL

18   UP PAGE 3 OF THE DEMONSTRATIVE CHART SO WE CAN LOOK AT

19   THAT AGAIN.

20   PLEASE REMIND ME AGAIN WHERE ON THIS

21   CHART WHAT WE CALLED THE 5G'S APPEAR?

22   A.   THE 5G'S ARE THE CATEGORY UNDER SCIENTIFIC

23   MARKED OTHER.

24   Q.   AND WHAT WAS THE PURPOSE OF THIS CATEGORY?

25   A.   THE PURPOSE OF THE CATEGORY OTHER WAS TO TAKE

1   SITES THAT DID NOT FALL INTO ANY OF THE OTHER CATEGORIES

2   I HAD.

3   Q.   AND THERE WAS SOME DISCUSSION OF PAGES THAT

4   MIGHT HAVE BEEN CONSIDERED CLOSE TO PORNOGRAPHIC CONTENT

5   THAT COULD HAVE APPEARED IN 5G'S. IS IT POSSIBLE THAT

6   THOSE SORTS OF WEB PAGES WOULD HAVE APPEARED IN THAT 5G

7   CATEGORY?

8   A.   YES, IT'S QUITE POSSIBLE.

9   Q.   ARE THOSE THE ONLY TYPES OF WEB PAGES THAT WOULD

10   FALL INTO THAT CATEGORY?

11   A.   NO. WE'VE ALREADY DISCUSSED THAT THE CARTOON

12   WAS IN THERE AS WELL, AMONGST OTHERS.

13   MR. HANSEN: MAY I ASK THAT THE LAST

14   ANSWER BE READ BACK. I'M NOT SURE THAT I HEARD IT.

15   (THE COURT REPORTER READ BACK AS

16   REQUESTED.)

17   BY MR. MCELVAIN:

18   Q.   WHAT DEFINITION DID YOU USE FOR SOMETHING TO

19   BE -- TO FALL INTO THE 5G CATEGORY, THE CATEGORY OF

20   OTHER?

21   THE COURT: HE HAS GIVEN IT SEVERAL TIMES

22   IN HIS TESTIMONY.

23   MR. MCELVAIN: OKAY. WE CAN MOVE ON

24   THEN, OKAY.

25   BY MR. MCELVAIN:

1   Q.   WHICH CATEGORY DID YOU USE TO REPORT YOUR

2   UNDERBLOCKING STATISTICS?

3   A.   MY UNDERBLOCKING STATISTICS ARE ONLY CALCULATED

4   FROM CATEGORY 5F, MY ADULT ENTERTAINMENT CATEGORY.

5   THE COURT: COUNSEL, YOU'RE NOT REALLY

6   DOING REDIRECT. YOU ARE JUST GOING OVER THE SAME

7   TESTIMONY HE PRESENTED ON DIRECT.

8   MR. MCELVAIN: I WILL MOVE ON, YOUR

9   HONOR.

10   BY MR. MCELVAIN:

11   Q.   YOU WERE ASKED SOME QUESTIONS ABOUT CORRECTIONS

12   TO THE CODING THAT HAPPENED AT ONE STAGE OF THE PROCESS?

13   A.   THAT'S RIGHT.

14   Q.   WHY DID YOU DO THAT?

15   A.   THERE WAS A CONTINUAL PROCESS OF QUALITY CONTROL

16   TO MAKE SURE THAT THE DATASETS THAT I WAS GOING TO USE

17   FOR THE TESTING WERE AS GOOD AS POSSIBLE.

18   Q.   AND DO YOU HAVE AN UNDERSTANDING AS TO THE

19   EFFECT ON THE ULTIMATE STATISTICS THAT WERE REPORTED,

20   WHAT EFFECT THOSE CHANGES HAD?

21   A.   THERE WAS A SMALL NUMBER OF 5G PAGES THAT WERE

22   MOVED INTO 5F AS A RESULT OF THE QUALITY CONTROL, AND A

23   SMALL NUMBER OF THE PAGES THAT WERE MOVED OUT OF THE 5F

24   INTO THE 5G. AND THE END RESULT WAS THAT THE 5F

25   CATEGORY ACTUALLY WAS A BETTER SET WITH MORE -- VERY,

1   VERY SLIGHTLY MORE PAGES. SO THE END RESULT WOULD BE

2   THAT I HAD A VERY, VERY GOOD SET OF DATA FOR DOING THE

3   TESTING.

4   Q.   AND DO YOU KNOW HOW THE STATISTICS -- DO YOU

5   KNOW HOW MUCH THE STATISTICS CHANGED AS A RESULT OF

6   THESE CORRECTIONS?

7   A.   IT WOULD HAVE TO BE VERY, VERY SMALL, IF WE ARE

8   TALKING SINGLE FIGURES WITH A DATASET OF ALMOST 1,400.

9   Q.   IF I CAN TURN YOUR ATTENTION NEXT TO PLAINTIFFS'

10   EXHIBIT 179.

11   THE COURT: COUNSEL, WE HAVE COME TO A

12   TIME THAT WE USUALLY HAVE A RECESS. I DON'T WANT TO

13   RUSH YOU, BUT HOW MUCH LONGER WILL YOU BE?

14   MR. MCELVAIN: I HAVE ANOTHER 15 OR 20

15   MINUTES.

16   THE COURT: WE WILL TAKE A RECESS NOW. I

17   WANT TO TALK -- YOU ARE WELL AWARE, COUNSEL HAS SPREAD

18   THE WORD AMONG YOUR GROUP, THAT ANOTHER JUDGE IS GOING

19   TO HOLD A SHORT PROCEEDING IN THIS COURTROOM. SO I WANT

20   TO TALK TO HIS DEPUTY.

21   WE ARE OFF THE RECORD.

22   (RECESS TAKEN.)

23   THE CLERK: ALL RISE. COURT IS NOW IN

24   SESSION.

25   THE COURT: WELCOME BACK, EVERYBODY.

1 THANK YOU FOR YOUR COOPERATION. YOU ARE WELCOME TO BE

2 SEATED. I HOPE SOME OF YOU SAT AND LISTENED TO THAT

3 PROCEEDING. PROBABLY MOST OF YOU DIDN'T.

4   MR. HANSEN: A LITTLE BIT.

5   MR. MCELVAIN: I CONFESS I DID NOT.

6   THE COURT: IF ANYBODY GETS A CHANCE TO

7 WATCH A GUILTY PLEA AGAIN WHILE YOU ARE HANGING AROUND

8 THIS COURTHOUSE, IT'S AN EDUCATION IN CONSTITUTIONAL

9 LAW. A HUGE BOLUS OF CONSTITUTIONAL LAW IS IN THAT

10 PROCEEDING. AND IT'S VERY, VERY INSTRUCTIVE AS TO HOW

11 THIS GUILTY PLEA PROCESS GOES ON ACROSS THE COUNTRY

12 THOUSANDS OF TIMES A DAY. IF IT IS DONE CORRECTLY, ALL

13 OF THE CONSTITUTIONAL RIGHTS OF THE DEFENDANT ARE

14 BROUGHT FORTH AND PUT ON THE RECORD AND DISCUSSED WITH

15 HIM OR HER. IT'S A VERY IMPORTANT PROCEDURE, AND

16 PROFESSIONALLY VERY MOVING IN THE SENSE OF HOW IMPORTANT

17 IT IS. SO IF YOU THINK I THINK THAT, I DO.

18   OKAY. I'M SORRY TO INTERRUPT YOUR

19 TESTIMONY, SIR.

20   THE WITNESS: THAT'S ALL RIGHT, YOUR

21 HONOR.

22   MR. MCELVAIN, YOU CAN PROCEED.

23   MR. MCELVAIN: THANK YOU, YOUR HONOR.

24 BY MR. MCELVAIN:

25 Q.   I BELIEVE WHERE WE LEFT OFF, I WAS TURNING YOUR

1   ATTENTION TO PLAINTIFFS' EXHIBIT 179. IF I COULD REFER

2   YOUR ATTENTION TO PAGE 2 OF PLAINTIFFS' EXHIBIT 179.

3   A.   OKAY.

4   Q.   DO YOU KNOW WHETHER ANY OF THE FILTERS THAT YOU

5   TESTED FAILED TO BLOCK THIS WEB PAGE? AND I CAN REFER

6   YOU TO DEFENDANT'S EXHIBIT 465, IF YOU WISH.

7   A.   SEVEN OF THE FILTERS FAILED TO BLOCK IT.

8   Q.   TURNING YOUR ATTENTION TO PAGE 6 OF DEFENDANT'S

9   EXHIBIT 179, WHICH IS THE URL WORDTRACKER 1375. DO YOU

10   KNOW WHETHER ANY OF THE FILTERS THAT YOU TESTED FAILED

11   TO BLOCK THIS WEB PAGE?

12   A.   FOUR OF THE FILTERS FAILED TO BLOCK THE SITE ON

13   THIS PAGE.

14   Q.   TURNING YOUR ATTENTION TO PAGE 8 OF PLAINTIFFS'

15   EXHIBIT 179. DO YOU KNOW WHETHER ANY OF THE FILTERS

16   THAT YOU TESTED FAILED TO BLOCK THIS WEB PAGE?

17   A.   YES, EIGHT OF THE FILTERS FAILED TO BLOCK THIS

18   PAGE.

19   Q.   IF I COULD TURN YOUR ATTENTION TO PLAINTIFFS'

20   EXHIBIT 180. AND PLEASE REVIEW EACH OF THE PAGES IN

21   THIS EXHIBIT. I CAN ASK THIS AS A COLLECTIVE QUESTION.

22   A.   OKAY.

23   Q.   WERE ANY OF THESE WEB PAGES CODED AS ADULT

24   ENTERTAINMENT IN YOUR DATABASE?

25   A.   NO, THEY WEREN'T.

1   Q.   IF I COULD REFER YOUR ATTENTION TO PAGE 8 OF

2   PLAINTIFFS' EXHIBIT 180. WHAT IS THAT PAGE?

3   A.   IT'S A URL FROM THE YAHOO DATASET NUMBER 2675.

4   Q.   AND DO YOU HAVE AN UNDERSTANDING AS TO WHICH

5   WEBSITE THIS PAGE CAME FROM?

6   A.   YES, IT IS. IT COMES FROM A WEBSITE CALLED

7   PLANNEDPARENTHOOD.ORG.

8   Q.   WAS THIS WEB PAGE BLOCKED BY SOME OF THE FILTERS

9   THAT YOU TESTED?

10   A.   YES, IT WAS. IT WAS BLOCKED BY NINE OF THE

11   FILTERS.

12   Q.   I'M SORRY, IF I CAN REFER YOUR ATTENTION TO

13   DEFENSE EXHIBIT 465. PAGE --

14   A.   I APOLOGIZE. IT WAS BLOCKED BY FOUR OF THE

15   FILTERS.

16   Q.   IF I COULD REFER YOUR ATTENTION TO WHAT WE ARE

17   CALLING DEFENDANT'S DEMONSTRATIVE EXHIBIT 1. WE ARE

18   STILL LOOKING FOR A FINAL NUMBER FOR THAT. PAGE 3 OF

19   THAT CHART. HOW MANY WEB PAGES WERE CODED IN ALL IN

20   THIS, IN THE PROCESS THAT YOU AND CRA USED.

21   A.   WELL, THE TOTAL SUM WAS 60,533 AND 2,248. SO 62

22   THOUSAND -- JUST SHORT OF 63,000.

23   Q.   AND HOW MANY WEB PAGES WERE CODED AS 5F OR ADULT

24   ENTERTAINMENT?

25   A.   1,382.

1   Q.   YOU WERE ASKED SOME QUESTIONS ABOUT DEFENDANT'S

2   EXHIBIT 88. DO YOU RECALL BEING ASKED QUESTIONS ABOUT

3   THAT EXHIBIT?

4   A.   YES, I DO.

5   Q.   AND WHAT IS DEFENDANT'S EXHIBIT 88 AGAIN?

6   A.   IT'S A SELECTION OF IMAGES FROM PAGES ON THE

7   URLS THAT THE FILTER -- A NUMBER OF FILTERS FAILED TO

8   BLOCK, WHICH ARE FROM MY 5F ADULT CONTENT CATEGORY.

9   Q.   AND HOW MANY OF THE FILTERS FAILED TO BLOCK

10   THOSE PAGES THAT WERE -- THOSE PAGES THAT WERE WITHIN

11   THAT EXHIBIT 88?

12   A.   MY RECOLLECTION IS THAT AT LEAST THREE OR FOUR

13   OF THE FILTERS FAILED TO BLOCK EACH ONE.

14   Q.   AND ARE THOSE THE ONLY EXAMPLES OF WEB PAGES

15   THAT WERE CLASSIFIED AS ADULT ENTERTAINMENT THAT WERE

16   BLOCKED BY AT LEAST THREE FILTERS?

17   A.   NO, THERE WERE MORE.

18   Q.   DO YOU KNOW HOW MANY MORE?

19   A.   I DON'T.

20   Q.   OKAY. YOU WERE ASKED SOME QUESTIONS ABOUT A

21   PROCESS THAT YOU USED TO DETERMINE WHETHER WEB PAGES HAD

22   COMMERCIAL CONNECTIONS TO THE UNITED STATES. DO YOU

23   RECALL --

24   A.   YES, I DO.

25   Q.   -- DO YOU RECALL THESE DISCUSSIONS?

1   A.   YES, I DO.

2   Q.   IS THE METHODOLOGY THAT YOU USED TO MAKE THAT

3   DETERMINATION THE SAME METHODOLOGY THAT YOU WOULD USE IN

4   YOUR WORK FOR LAW ENFORCEMENT CLIENTS?

5   A.   YES, IT IS.

6   Q.   AND YOU WERE ASKED SOME QUESTIONS ABOUT THE

7   GOOGLE SEARCH ENGINE FILTER. DO YOU RECALL THAT?

8   A.   YES, I DO.

9   Q.   AND I BELIEVE YOU SAID THAT FOUR OF THE WEB

10   PAGES THAT WERE RETURNED WHEN YOU RAN QUERIES THROUGH

11   THE GOOGLE SEARCH ENGINE WITH THE FILTER ON WERE ADULT

12   CONTENT. IS THAT RIGHT?

13   A.   THAT'S RIGHT.

14   Q.   SUPPOSE THAT THE GOOGLE SEARCH ENGINE FILTER WAS

15   TURNED OFF WHEN YOU RAN THOSE QUERIES THROUGH. DO YOU

16   BELIEVE THAT 1,000 OF THE RESULTS WOULD HAVE BEEN ADULT

17   CONTENT?

18   A.   NO.

19   Q.   DOES THIS MEAN THAT THE GOOGLE SEARCH ENGINE

20   FILTER IS 99.6 PERCENT EFFECTIVE?

21   A.   NO, IT DOES NOT.

22   Q.   WHY DOESN'T IT MEAN THAT?

23   A.   IT DOES NOT MEAN THAT BECAUSE UNLESS YOU KNOW

24   HOW MUCH OF THE -- UNLESS YOU KNOW HOW MANY OF THE URLS

25   WOULD HAVE BEEN RETURNED AS ADULT CONTENT WITH THE

```
1    FILTER SWITCHED OFF, YOU CAN'T THEREFORE DRAW THE

2    CONCLUSION OF HOW EFFECTIVE IT WOULD BE ONCE IT IS IN

3    THE BLOCKING STATE.

4    Q.       AND YOU WERE ASKED SOME QUESTIONS ABOUT THE

5    EFFECTIVENESS RATE OF THE AOL FILTER THAT IS REPORTED IN

6    THE WORDTRACKER DATASET.  IS THAT THE ONLY STATISTIC

7    THAT HAS BEEN REPORTED IN YOUR STUDY AS TO EFFECTIVENESS

8    OF THE AOL FILTER AT AVOIDING UNDERBLOCKING?

9    A.       I DON'T QUITE FOLLOW THE QUESTION.

10   Q.       I WORDED THAT POORLY.

11            WAS THE WORDTRACKER DATASET THE ONLY

12   DATASET THAT YOU STUDIED?

13   A.       NO, IT WASN'T.

14   Q.       AND IN THE OTHER DATASETS THAT YOU STUDIED, WERE

15   THE PERCENTAGES FOR AOL THE SAME FOR UNDERBLOCKING?

16   A.       THEY WERE NOT THE SAME.  THEY WERE FAIRLY

17   SIMILAR.

18   Q.       AND IN THE WORDTRACKER DATASET, DO YOU RECALL

19   WHAT THE PERCENTAGE WAS FOR OVERBLOCKING OF THE CLEAN

20   WEB PAGES IN THE WORDTRACKER DATASET FOR THE AOL FILTER?

21   A.       I CAN'T REMEMBER THE EXACT FIGURE.  I THINK IT'S

22   ABOUT 23 PERCENT.

23   Q.       WELL, WE WILL PURSUE THAT PRECISE NUMBER WITH

24   PROFESSOR STARK.

25            MAY I HAVE A MOMENT TO CONFER, YOUR
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1   HONOR?

2   THE COURT: YES, YOU MAY.

3   MR. MCELVAIN: THANK YOU.

4   (PAUSE.)

5   MR. MCELVAIN: I HAVE NO FURTHER

6   QUESTIONS, YOUR HONOR. THANK YOU.

7   THE COURT: ANY RECROSS?

8   MR. HANSEN: NO, YOUR HONOR.

9   MR. MCELVAIN: I'M SORRY. BEFORE I

10   FINISH, I NEGLECTED TO ASK TO MOVE DEFENDANT'S 465 INTO

11   EVIDENCE.

12   MR. HANSEN: NO OBJECTION.

13   THE COURT: DEFENDANT'S EXHIBIT 465 IS

14   RECEIVED IN EVIDENCE.

15   (DEFENDANT'S EXHIBIT 465 RECEIVED INTO

16   EVIDENCE.)

17   THE COURT: MR. MEWETT, YOU ARE EXCUSED.

18   THE WITNESS: THANK YOU, YOUR HONOR.

19   THE COURT: TAKE CARE GETTING DOWN.

20   LEAVE PAPERS BEHIND THAT YOU DON'T OWN. LAWYERS WILL

21   GET THEM.

22   (WITNESS EXCUSED.)

23   THE COURT: DEFENSE HAVE ANOTHER WITNESS

24   TO PUT ON?

25   MR. MCELVAIN: YOUR HONOR, DEFENDANT

1 CALLS PHILIP STARK.

2   THE COURT: GOOD MORNING, SIR. TAKE CARE

3 GETTING UP. RIGHT AROUND THE LITTLE STEP THERE. REMAIN

4 STANDING AND TAKE THE OATH PLEASE.

5   PHILIP STARK, DEFENSE WITNESS, AFFIRMS.

6   THE CLERK: STATE AND SPELL YOUR FULL

7 NAME FOR THE RECORD, PLEASE.

8   THE WITNESS: PHILIP BRADFORD STARK,

9 P-H-I-L-I-P, B-R-A-D-F-O-R-D, S-T-A-R-K.

10   THE COURT: DO YOU HAVE SOME EXHIBITS?

11   MR. MCELVAIN: I DO, YOUR HONOR. MAY I

12 APPROACH?

13   THE COURT: YES.

14   MR. HIRT: MAY I APPROACH THE WITNESS FOR

15 SOME WATER?

16   MR. MCELVAIN: I ALSO HAVE SOME EXHIBITS

17 FOR THE WITNESS.

18   THE COURT: ARE THE SANDWICHES READY?

19   MR. MCELVAIN: MAY I ALSO APPROACH?

20   I PROMISE THIS WON'T BE A PARADE.

21   THE WITNESS: THANK YOU.

22   DIRECT EXAMINATION

23 BY MR. MCELVAIN:

24 Q.   DR. STARK, I WOULD LIKE YOU TO REVIEW WHAT HAS

25 BEEN MARKED AS DEFENDANT'S EXHIBIT 64.

1   A.   I'M A LITTLE BIT CONFUSED AS TO HOW THIS IS

2   ORGANIZED. OKAY. YES.

3   THE COURT: MR. STARK, THESE LAWYERS HAVE

4   A WAY OF GIVING YOU EXHIBITS AND THEN GOING RIGHT IN THE

5   MIDDLE OF THE PACK SO YOU CAN'T FIND THEM.

6   THE WITNESS: IT WAS UPSIDE DOWN AS WELL,

7   YOUR HONOR.

8   THE COURT: THEY DO THAT REGULARLY.

9   MR. MCELVAIN: JUST TRYING TO KEEP YOU ON

10   YOUR TOES.

11   THE COURT: CAN'T GET USED TO IT.

12   BY MR. MCELVAIN:

13   Q.   DO YOU NOW SEE EXHIBIT 64?

14   A.   YES.

15   Q.   AND DO YOU RECOGNIZE IT?

16   A.   YES. IT'S A COPY OF MY CV, A FEW MONTHS OLD.

17   Q.   OKAY. DO YOU HAVE A BACHELOR'S DEGREE?

18   A.   YES, I DO.

19   Q.   AND WHERE IS THAT FROM?

20   A.   PRINCETON UNIVERSITY.

21   Q.   AND DO YOU HOLD ANY GRADUATE DEGREES?

22   A.   YES. I HAVE A PH.D. FROM THE UNIVERSITY OF

23   CALIFORNIA, SAN DIEGO.

24   Q.   WHEN DID YOU OBTAIN THAT?

25   A.   1986.

1   Q.   AFTER OBTAINING YOUR PH.D., WHAT DID YOU DO?

2   A.   I WENT TO THE UNIVERSITY OF CALIFORNIA BERKELEY

3   TO THE STATISTICS DEPARTMENT AS A POST-DOCTORAL SCHOLAR.

4   MR. HANSEN: YOUR HONOR, COULD I ASK THAT

5   THE WITNESS MOVE THE MICROPHONE SLIGHTLY CLOSER TO --

6   THE COURT: NOT TOO CLOSE BECAUSE IT ENDS

7   UP POPPING. THAT LOOKS GOOD.

8   MR. HANSEN: THANK YOU.

9   THE WITNESS: I WILL TRY TO PROJECT AS

10   WELL.

11   BY MR. MCELVAIN:

12   Q.   IS THAT WHERE YOU STILL WORK TODAY?

13   A.   YES, IT IS.

14   Q.   AND DO YOU TEACH THERE?

15   A.   YES. I'M A PROFESSOR OF STATISTICS.

16   Q.   AND DOES THAT MEAN THAT YOU WORK IN THE

17   STATISTICS DEPARTMENT?

18   A.   YES.

19   Q.   IS THE STATISTICS DEPARTMENT AT BERKELEY HIGHLY

20   RATED?

21   A.   IT'S CONSISTENTLY RANKED EITHER THE TOP

22   DEPARTMENT IN THE WORLD OR TIED WITH STANFORD FOR THAT

23   DISTINCTION.

24   Q.   HAVE YOU RECEIVED TENURE?

25   A.   YES.

1   Q.   WHEN DID YOU RECEIVE TENURE?

2   A.   I DON'T REMEMBER. I HAVE TO LOOK. IN 1994.

3   Q.   HAVE YOU RECEIVED THE PRESIDENTIAL YOUNG

4   INVESTIGATOR AWARD?

5   A.   YES, I HAVE.

6   Q.   WHAT IS THAT?

7   A.   IT'S A HIGHLY COMPETITIVE AWARD THAT IS GIVEN BY

8   THE NATIONAL SCIENCE FOUNDATION, I GUESS UNDER THE

9   IMPRIMATUR OF THE PRESIDENT FOR SCHOLARS OF OUTSTANDING

10   PROMISE, TO PROVIDE THEM RESEARCH SUPPORT, RELATIVELY

11   UNFETTERED, TO ALLOW THEM TO DO RESEARCH FOR ROUGHLY

12   FIVE YEARS.

13   Q.   HAVE YOU BEEN AWARDED A NATIONAL SCIENCE

14   FOUNDATION POST-DOCTORAL FELLOWSHIP?

15   A.   YES, I HAVE.

16   Q.   WHAT IS THAT?

17   A.   IT'S ALSO A COMPETITIVE FELLOWSHIP TO SUPPORT

18   INDEPENDENT RESEARCH AFTER THE PH.D. FOR SOME PERIOD OF

19   TIME.

20   Q.   AND HAVE YOU BEEN AWARDED A MILLER RESEARCH

21   FELLOWSHIP?

22   A.   YES, I WAS.

23   Q.   WHAT IS THAT?

24   A.   IT'S ALSO A COMPETITIVE FELLOWSHIP SPONSORED BY

25   THE MILLER INSTITUTE FOR BASIC RESEARCH IN SCIENCE. IT

1   BRINGS FACULTY TO THE UNIVERSITY OF CALIFORNIA AT

2   BERKELEY FOR SIX MONTHS TO A YEAR TO PURSUE UNFETTERED

3   SCIENTIFIC RESEARCH.

4   Q.   ARE YOU A FELLOW OF THE INSTITUTE OF PHYSICS?

5   A.   YES, I AM.

6   Q.   AND WHAT IS THAT?

7   A.   THE INSTITUTE OF PHYSICS IS AN INTERNATIONAL

8   ORGANIZATION OF PHYSICISTS. BEING A FELLOW IS

9   RECOGNITION OF ACHIEVING A CERTAIN STATURE IN THE FIELD

10   INTERNATIONALLY.

11   Q.   DO YOU BELONG TO ANY SOCIETIES RELEVANT TO YOUR

12   WORK AS A STATISTICIAN?

13   A.   YES. I BELONG TO A COUPLE OF STATISTICAL

14   SOCIETIES, THE BERNOULLI SOCIETY, B-E-R-N-O-U-L-L-I, AND

15   THE INSTITUTE OF MATHEMATICAL STATISTICS.

16   Q.   HAVE YOU WRITTEN ANY ARTICLES PUBLISHED IN

17   ACADEMIC JOURNALS?

18   A.   YES.

19   Q.   HOW MANY?

20   A.   I DON'T RECALL OFFHAND. I HAVE APPROXIMATELY 50

21   REFEREED PUBLICATIONS AND ROUGHLY ANOTHER 20 OR 25 UN

22   REFEREED PUBLICATIONS.

23   Q.   WHAT IS A REFEREED PUBLICATION?

24   A.   IT MEANS IT HAS GONE THROUGH A PEER-REVIEW

25   PROCESS. MANY SCIENTIFIC JOURNALS -- MOST SCIENTIFIC

1   JOURNALS OF NOTE ARE PEER-REVIEWED TRADE JOURNALS.

2   Q.   ARE THERE ANY PARTICULAR ARTICLES THAT HAVE BEEN

3   NOTED WITHIN YOUR FIELD?

4   A.   A FEW. ONE OF MY ARTICLES ON -- I GUESS IT IS

5   NUMBER 9 THERE, SORT OF SPAWNED A NEW AREA OF INQUIRY

6   INVOLVING UNCERTAINTY PRINCIPLES ON GROUPS. AND SOME OF

7   MY PAPERS ARE STANDARD REFERENCE FOR VARIOUS THINGS LIKE

8   STATISTICAL APPROACHES TO INVERSE PROBLEMS. IT WAS A

9   PAPER THAT WAS JOINT WITH STEVE EVANS.

10   SOME OF MY WORK ON EVALUATING EARTHQUAKE

11   PREDICTIONS HAS TAKEN ON A LIFE OF ITS OWN AS WELL.

12   Q.   YOU MENTIONED BEFORE THAT YOU LIVE IN BERKELEY,

13   CALIFORNIA?

14   A.   YES, I DO.

15   Q.   I IMAGINE THAT EARTHQUAKES IS A MATTER OF

16   SPECIAL INTEREST TO YOU?

17   A.   YES.

18   Q.   HAVE YOU SERVED AS AN EDITOR OF ANY ACADEMIC

19   JOURNALS?

20   A.   YES. I'VE BEEN ON THE EDITORIAL BOARD OF THREE

21   JOURNALS.

22   Q.   WHICH JOURNALS?

23   A.   STATISTICAL SCIENCE, INVERSE PROBLEMS, AND THE

24   JOURNAL OF GEOPHYSICAL RESEARCH, IF I'M REMEMBERING

25   CORRECTLY.

1   YES.

2   Q.   HAVE YOU SERVED AS A REFEREE FOR ANY ACADEMIC

3   JOURNALS?

4   A.   YES.

5   Q.   HOW MANY?

6   A.   I WOULD HAVE TO COUNT. IT'S DOZENS.

7   Q.   HAVE YOU EVER BEEN INVITED TO GIVE LECTURES AT

8   SCIENTIFIC CONFERENCES?

9   A.   YES.

10   Q.   HAVE YOU EVER BEEN INVITED TO TESTIFY IN YOUR

11   CAPACITY AS A STATISTICIAN BEFORE CONGRESS?

12   A.   YES.

13   Q.   WHEN WAS THAT?

14   A.   A FEW YEARS AGO. IT WAS BEFORE THE 2000 CENSUS.

15   I DON'T RECALL THE EXACT DATE OF THE TESTIMONY. I'M

16   SURE IT IS LISTED HERE SOMEWHERE. MY GUESS, IT WAS

17   ROUGHLY 1999.

18   CAN SOMEONE POINT ME TO IT?

19   IT WAS IN 1998.

20   THE COURT: IT'S ON THE SCREEN. IS THAT

21   IT?

22   THE WITNESS: THAT WASN'T CONGRESS. THAT

23   WAS A NATIONAL ACADEMY PANEL.

24   IT'S IN 1998.

25   BY MR. MCELVAIN:

1   Q.   WHAT DID YOUR TESTIMONY REGARD?

2   A.   IT REGARDED THE ACCURACY OF STATISTICAL METHODS

3   THAT WERE BEING CONTEMPLATED FOR USE TO ADJUST THE

4   CENSUS FOR UNDERCOUNT.

5   Q.   HAVE YOU EVER BEEN INVITED TO TESTIFY IN YOUR

6   CAPACITY AS A STATISTICIAN BEFORE ANY OTHER LEGISLATIVE

7   BODIES?

8   A.   YES. I TESTIFIED TO THE CALIFORNIA SUBCOMMITTEE

9   ON NATIONAL RESOURCES.

10   Q.   HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT

11   WITNESS IN COURT?

12   A.   YES, I HAVE.

13   Q.   HOW MANY TIMES?

14   A.   I DON'T KNOW THE EXACT COUNT. SEVERAL.

15   Q.   WERE YOU QUALIFIED IN THE FIELD OF STATISTICS?

16   A.   YES, I WAS.

17   Q.   HAVE YOU EVER SERVED AS A CONSULTANT FOR ANY

18   CLIENTS?

19   A.   YES, I HAVE.

20   Q.   PLEASE DESCRIBE SOME OF YOUR CLIENTS.

21   A.   GENERAL ELECTRIC, PACIFIC GAS AND ELECTRIC,

22   CAPITAL ONE, HONG KONG SHANGHAI BANK, FARMERS INSURANCE,

23   VERIZON. I WOULD HAVE TO LOOK AT THE LIST TO --

24   Q.   THAT IS FINE.

25   WHEN YOU WORK AS A CONSULTANT, WERE YOU

1   APPLYING YOUR EXPERIENCE AS A STATISTICIAN IN THAT WORK?

2   A.   YES, THAT IS ALL STATISTICAL WORK.

3   Q.   DOES ANY OF YOUR CONSULTING WORK INVOLVE THE

4   INTERNET?

5   A.   YES.

6   Q.   AND WHICH OF THAT WORK?

7   A.   NONE THAT I MENTIONED SO FAR. I DID WORK FOR A

8   COMPANY CALLED COGIT.COM.

9   THE COURT: SPELL IT, PLEASE.

10   THE WITNESS: C-O-G-I-T, AS IN COGITO.

11   THEY WERE INVOLVED IN BUILDING SOFTWARE

12   TO TARGET ADVERTISEMENTS TO PEOPLE WHO ARE BROWSING THE

13   WEB, TO TRY TO SHOW THEM ADVERTISEMENTS THAT WOULD

14   INDUCE THEM TO BUY THINGS THEY WOULD NOT OTHERWISE BUY,

15   TO TRY TO CUSTOMIZE THOSE ADVERTISEMENTS TO THE

16   CHARACTERISTICS OF THE INDIVIDUAL PEOPLE WHO WERE

17   BROWSING, SO THAT DIFFERENT PEOPLE WOULD SEE DIFFERENT

18   ADS. ADS THAT THEY WERE MORE LIKELY TO RESPOND TO.

19   BY MR. MCELVAIN:

20   Q.   WHAT DID YOU DO FOR COGIT.COM?

21   A.   I SERVED ON THEIR TECHNICAL ADVISORY BOARD AND I

22   SERVED AS A CONSULTANT. I WAS CONCERNED WITH ISSUES

23   RELATED TO NETWORK LATENCY, PROCESSING SPEED, ISSUES

24   RELATING -- HELP THEM DEVISE THE ALGORITHMS THAT THEY

25   WERE USING TO TARGET THE ADVERTISEMENTS AND HELP THEM

1   DEVELOP STATISTICAL TESTS OF WHETHER THOSE ALGORITHMS

2   WERE IN FACT EFFECTIVE AT INDUCING PEOPLE TO BUY MORE.

3   Q.   AND DID YOU APPLY YOUR EXPERIENCE AS A

4   STATISTICIAN IN THAT?

5   A.   YES.

6   Q.   HAS ANY OF YOUR OTHER RESEARCH INVOLVED THE

7   INTERNET?

8   A.   YES.

9   Q.   WHAT IS THAT RESEARCH?

10   A.   I HAVE DONE WORK ON TEXT RETRIEVAL ALGORITHMS

11   AND PRE-PROCESSING -- PRE-PROCESSING DATA FOR OTHER TEXT

12   RETRIEVAL ALGORITHMS.

13   Q.   WHAT'S A TEXT RETRIEVAL ALGORITHM?

14   A.   IT IS BASICALLY A SEARCH ENGINE FOR LOOKING FOR

15   TEXT RATHER THAN LOOKING FOR PICTURES OR WEB PAGES.

16   Q.   AND WHAT DID YOUR RESEARCH ON THAT ISSUE

17   INVOLVE?

18   A.   I CAME UP WITH A METHOD THAT HAD BETTER RECALL

19   AND PRECISION THAN OTHER METHODS THAT IT WAS COMPETING

20   WITH, USING SOME STATISTICAL IDEAS.

21   Q.   DOES ANY OF YOUR WORK AT BERKELEY INVOLVE THE

22   INTERNET?

23   A.   YES.

24   Q.   AND WHAT IS THAT WORK?

25   A.   IT FALLS INTO A NUMBER OF CATEGORIES.

1   I HAVE BEEN WEBMASTER FOR THE DEPARTMENT

2   A NUMBER OF TIMES. I'VE DEVELOPED A VERY EXTENSIVE SET

3   OF ONLINE INTERACTIVE MATERIALS FOR TEACHING

4   INTRODUCTORY STATISTICS, WHICH INCLUDE HTML, JAVA,

5   JAVASCRIPT, SERVER SIDE PEARL AND PYTHON CGI. THE

6   EXAMPLES AND EXERCISES IN THE BOOK CHANGE WHENEVER

7   STUDENTS RELOAD THE PAGE. THEY CAN SUBMIT THEIR

8   HOMEWORK ONLINE. IT'S MACHINE GRADED. THEY CAN THEN

9   QUERY IT TO FIND OUT HOW THEY DID, ET CETERA. SO

10 THERE'S BEEN ROUGHLY 10 YEARS OF DEVELOPMENT THAT I HAVE

11 INVESTED IN THAT. I HAVE DONE THE PROGRAMMING MYSELF.

12   IN ADDITION TO THAT, I HAVE SERVED FOR A

13 COUPLE OF YEARS AS THE FACULTY ASSISTANT FOR EDUCATIONAL

14 TECHNOLOGY TO THE VICE PROVOST FOR UNDERGRADUATE

15 EDUCATION. IN THAT CAPACITY, I WAS RESPONSIBLE FOR

16 PICKING OUR STRATEGIES FOR EDUCATIONAL TECHNOLOGY,

17 INCLUDING COURSE MANAGEMENT SOFTWARE ON THE WEB,

18 PODCASTS, WEBCASTINGS, THINGS LIKE THAT, TRYING TO

19 FIGURE OUT WHAT WE WERE GOING TO DO, WHAT WE WERE GOING

20 TO SPEND MONEY ON.

21   I ALSO SERVED AS CHAIR OF THE EDUCATIONAL

22 TECHNOLOGY COMMITTEE FOR APPROXIMATELY FOUR YEARS.

23   I HAVE DONE A LOT OF THINGS RELATED TO

24 THE WEB.

25 Q.   AND DOES ANY OF YOUR WORK AT BERKELEY INVOLVE

1   THE USE OF COMPUTER TECHNOLOGY?

2   A.   MOST OF IT.

3   MR. MCELVAIN: YOUR HONOR, AT THIS TIME,

4   I MOVE THAT DR. STARK BE QUALIFIED AS AN EXPERT IN THE

5   FIELD OF STATISTICS, IN PARTICULAR WITH RESPECT TO THE

6   APPLICATION OF STATISTICS TO THE WORLDWIDE WEB.

7   THE COURT: ANY OBJECTION?

8   MR. HANSEN: NO, YOUR HONOR.

9   THE COURT: SUBJECT TO RULE 702, THE

10   FEDERAL RULES OF EVIDENCE, I ACCEPT -- I WILL ACCEPT THE

11   OPINIONS OF PROFESSOR STARK IN THE EXPERT AREAS OF

12   STATISTICS AND COMPUTER-RELATED STATISTICS.

13   BY MR. MCELVAIN:

14   Q.   DR. STARK, HAVE YOU PREPARED EXPERT REPORTS FOR

15   THIS LITIGATION?

16   A.   YES, I HAVE.

17   Q.   I WOULD LIKE TO SHOW YOU WHAT HAS BEEN MARKED AS

18   DEFENDANT'S EXHIBIT 62.

19   A.   YES.

20   Q.   AND DO YOU RECOGNIZE THAT EXHIBIT?

21   A.   YES. THIS IS MY EXPERT -- PRIMARY EXPERT REPORT

22   IN THIS MATTER, REDACTED.

23   Q.   OKAY. AND WHAT DO YOU MEAN BY REDACTED?

24   A.   THERE IS SOME INFORMATION THAT THE SEARCH ENGINE

25   COMPANIES FROM WHICH WE GOT SOME DATA DIDN'T WANT

1   DISCLOSED AND FIGURES IN HERE THAT WOULD HAVE REVEALED

2   THAT PROPRIETARY INFORMATION HAVE BEEN REDACTED.

3   Q.   APART FROM THOSE REDACTIONS, IS THIS AN ACCURATE

4   COPY OF YOUR EXPERT REPORT?

5   A.   YES, IT IS.

6   Q.   I WOULD LIKE TO SHOW YOU WHAT HAS BEEN MARKED AS

7   EXHIBIT 63.

8   A.   I HAVE IT.

9   Q.   DO YOU RECOGNIZE THAT DOCUMENT?

10   A.   YES, IT'S MY REBUTTAL REPORT IN THIS MATTER.

11   Q.   WERE YOU ASKED TO CONDUCT A STUDY OF THE

12   EFFECTIVENESS OF FILTERS FOR THIS LITIGATION?

13   A.   YES, I WAS.

14   Q.   AND DID YOU WORK WITH OTHER PEOPLE ON THAT

15   STUDY?

16   A.   YES, I DID.

17   Q.   AND WHO DID YOUR WORK WITH?

18   A.   PAUL MEWETT IN PARTICULAR AND OTHER EMPLOYEES OF

19   CRA.

20   Q.   AND WHAT DID YOU INTEND TO MEASURE IN THIS

21   STUDY?

22   A.   INTENDED TO MEASURE HOW WELL FILTERS WORK, IN

23   PARTICULAR, HOW WELL THEY BLOCK MATERIAL THAT THEY ARE

24   SUPPOSED TO BLOCK AND HOW OFTEN THEY INCORRECTLY BLOCK

25   MATERIAL THAT THEY ARE NOT SUPPOSED TO BLOCK.

1   Q.   AND WHAT DID YOU INTEND THE FILTERS TO BE

2   MEASURED AGAINST, TO BE TESTED AGAINST?

3   A.   FILTERS ARE TESTED AGAINST WEB PAGES.

4   Q.   DOES IT MATTER WHICH WEB PAGES ARE SELECTED TO

5   BE USED FOR THE TESTING?

6   A.   YES, IT DOES.

7   Q.   WHY DOES IT MATTER?

8   A.   BECAUSE FILTERS MAY HAVE DIFFERENT EFFECTIVENESS

9   AGAINST DIFFERENT WEB PAGES.

10 Q.   DID YOU PARTICIPATE IN THE GATHERING OF WEB

11 PAGES FOR THIS STUDY?

12 A.   YES, I DID.

13 Q.   WERE ALL THE WEB PAGES GATHERED IN THE SAME WAY?

14 A.   NO, THEY WERE NOT.

15 Q.   IN WHAT DIFFERENT WAYS WERE THE WEB PAGES

16 GATHERED?

17 A.   SOME OF THE WEB PAGES WERE OBTAINED FROM SEARCH

18 ENGINE COMPANIES. SEARCH ENGINE COMPANIES HAVE, IF YOU

19 LIKE, CATALOGS OF THE WEB CALLED INDEXES, WHICH ARE SETS

20 OF -- I UNDERSTAND THAT PAUL MEWETT HAS TESTIFIED ABOUT

21 THIS SO PERHAPS I CAN SKIP THE DETAIL. BUT SOME OF THE

22 WEB PAGES WERE OBTAINED FROM THE INDEXES OF THE SEARCH

23 ENGINE COMPANIES DIRECTLY.

24 Q.   AND WERE THERE OTHER WAYS IN WHICH THE WEB PAGES

25 WERE GATHERED?

1   A.   YES. SOME OF THE WEB PAGES WERE GATHERED BY

2   RUNNING QUERIES THROUGH SEARCH ENGINES AND THEN

3   HARVESTING THE FIRST 10 RESULTS OF THOSE SEARCHES, EACH

4   OF THE SEARCHES.

5   Q.   I WOULD LIKE TO DESCRIBE THE FIRST SOURCE OF

6   DATA THAT YOU USED. WHERE DID YOU GET THE SET OF WEB

7   PAGES FROM?

8   A.   THEY CAME FROM THREE SEARCH PROVIDERS.

9   Q.   AND WHICH SEARCH PROVIDERS DID YOU OBTAIN WEB

10   PAGES FROM?

11   A.   GOOGLE, MSN AND YAHOO.

12   Q.   AND REFERRING TO GOOGLE, DID YOU GET A RANDOM

13   SAMPLE OF WEB PAGES FROM THE GOOGLE INDEX?

14   A.   YES, I DID, TO THE BEST OF MY KNOWLEDGE.

15   Q.   AND REFERRING TO THE MSN DATA, DID YOU GET A

16   RANDOM SAMPLE OF WEB PAGES FROM MICROSOFT?

17   A.   YES, TO THE BEST OF MY KNOWLEDGE.

18   Q.   AND REFERRING TO YAHOO, WHAT DID YOU OBTAIN FROM

19   YAHOO?

20   A.   A LIST OF WEB PAGES THAT DID NOT APPEAR TO BE A

21   RANDOM SAMPLE FROM THEIR INDEX.

22   Q.   AND WHAT DID YOU DO WITH THOSE WEB PAGES?

23   A.   I DIDN'T USE THEM AFTER I DISCOVERED PROBLEMS

24   WITH THE DATA.

25   Q.   WHY DID YOU GATHER WEB PAGES FROM SEARCH ENGINE

1   INDEXES?

2   A.   WELL, THE PORTION OF THE WORLDWIDE WEB THAT HAS

3   BEEN INDEXED BY THE SEARCH ENGINES IS THE MOST

4   ACCESSIBLE PORTION OF THE WEB. IT'S THE PORTION OF THE

5   WEB THAT GETS VIEWED MOST OFTEN. AND INCREASINGLY,

6   INDIVIDUALS' INTERACTION WITH THE WEB IS THROUGH A

7   SEARCH ENGINE. THAT IS, IT'S INCREASINGLY RARE THAT

8   PEOPLE TYPE THE ADDRESS OF A WEB PAGE DIRECTLY INTO THE

9   BROWSER'S ADDRESS BAR. RATHER, THEY TEND TO START WITH

10   A SEARCH ENGINE BY SEARCHING FOR SOMETHING AND THEN

11   FOLLOWING ON FROM THERE. SO THE SEARCH ENGINE INDEXES

12   REFLECT, IF YOU LIKE, THE MOST ACCESSIBLE PART OF THE

13   WEB.

14   Q.   WHY DID YOU GATHER RANDOM SAMPLES?

15   A.   IN ORDER TO BE ABLE TO EXTRAPOLATE RESULTS THAT

16   WERE MEASURED ON THE SAMPLE TO THE INDEX AS A WHOLE IN A

17   RELIABLE WAY.

18   Q.   AND YOU REFER ALSO TO QUERIES. DID YOU OBTAIN

19   QUERIES FROM SEARCH ENGINES?

20   A.   YES, I DID.

21   Q.   AND FROM WHICH SEARCH ENGINES DID YOU OBTAIN

22   QUERIES?

23   A.   AOL, MSN AND YAHOO.

24   Q.   AND DO YOU HAVE AN UNDERSTANDING AS TO WHERE

25   THOSE SEARCH ENGINES GOT THOSE QUERIES THEMSELVES?

1   A.   IT'S MY UNDERSTANDING THAT THEY WERE DERIVED

2   FROM THE LOGS OF ALL SEARCHES THAT WERE RUN ON THOSE

3   SEARCH ENGINES IN A ONE-WEEK PERIOD LATE LAST SUMMER.

4   Q.   AND ONCE YOU OBTAINED THE QUERIES WHAT HAPPENED

5   NEXT?

6   A.   I TOOK A RANDOM -- I TOOK RANDOM SAMPLES OF THE

7   THREE SETS OF QUERIES AND PASSED THEM TO CRA FOR

8   ANALYSIS.

9   Q.   AND WHY DID YOU DRAW RANDOM SAMPLES?

10   A.   IN ORDER TO BE ABLE TO EXTRAPOLATE THE RESULTS

11   BACK TO THE FULL SET OF QUERIES.

12   Q.   AND DO YOU HAVE AN UNDERSTANDING AS TO WHAT

13   HAPPENED NEXT AFTER YOU PASSED THE QUERIES TO CRA?

14   A.   YES.

15   Q.   AND WHAT IS THAT UNDERSTANDING?

16   A.   I UNDERSTAND THAT CRA RAN THE QUERIES THROUGH

17   THE RESPECTIVE SEARCH ENGINES FROM WHICH THE QUERIES

18   CAME AND HARVESTED THE FIRST 10 RESULTS OF EACH OF THOSE

19   SEARCHES.

20   Q.   AND WHAT DO YOU MEAN BY A RESULT?

21   A.   A RESULT IS A LINK TO A WEB PAGE. SO IT'S THE

22   ADDRESS OF THE WEB PAGE, IF YOU LIKE.

23   Q.   AND WHY DID YOU COLLECT WEB PAGES IN THIS

24   MANNER?

25   A.   WHY DID I COLLECT WEB PAGES FROM QUERIES? FROM

1   RUNNING QUERIES?

2   Q.   YES.

3   A.   THE INDEX DATA, THE FIRST SET OF DATA THAT I

4   DESCRIBED IS A MEASURE OF -- REFLECTS WHAT IS OUT THERE

5   ON THE WEB THAT CAN BE FOUND. THE RESULTS OF QUERIES

6   REFLECT THE MIX OF THINGS THAT PEOPLE ENCOUNTER ON

7   AVERAGE. SO IT INCORPORATES MORE USER BEHAVIOR, IF YOU

8   LIKE. IT'S A MEASURE OF WHAT PEOPLE ACTUALLY TEND TO

9   SEE WHEN THEY BROWSE.

10   Q.   DO YOU KNOW WHAT A BOT IS?

11   A.   YES.

12   Q.   WHAT IS THAT?

13   A.   IT'S A PROGRAM THAT EXECUTES A QUERY

14   AUTOMATICALLY.

15   Q.   DO YOU KNOW WHETHER OR NOT A BOT ENTERED ANY OF

16   THE QUERIES THAT YOU OBTAINED FROM THE SEARCH ENGINES?

17   A.   I DON'T KNOW WITH CERTAINTY BUT I WOULD SUSPECT

18   THAT SOME OF THE QUERIES.

19   MR. HANSEN: OBJECTION, I DON'T KNOW WHAT

20   HIS SUSPICION IS BASED ON.

21   THE COURT: SUSTAINED. WE WILL LEAVE THE

22   ANSWER THERE. YOU CAN ASK ANOTHER QUESTION IN THIS AREA

23   OR LAY A FOUNDATION, WHATEVER YOU WANT.

24   LEAVE THE ANSWER THE WAY IT IS.

25   INCOMPLETE ANSWER. THE OBJECTION IS SUSTAINED TO THAT

1   PARTICULAR FORM OF QUESTION, AND THAT PARTICULAR

2   VOLUNTARY ADDITION TO THE ANSWER. I'M NOT PRECLUDING

3   YOU FROM DISCUSSING THIS AREA FURTHER WITH THE WITNESS.

4   BY MR. MCELVAIN:

5   Q.   IN YOUR WORK, HAVE YOU -- IN YOUR WORK IN THE

6   FIELD OF COMPUTER TECHNOLOGY, HAVE YOU EVER LEARNED WHAT

7   A BOT IS?

8   A.   YES.

9   Q.   AND HAVE YOU LEARNED WHETHER OR NOT BOTS

10   SOMETIMES ENTER QUERIES INTO SEARCH ENGINES?

11   A.   YES. I USE BOTS MYSELF.

12   Q.   OKAY. AND HOW DID YOU GO ABOUT OBTAINING -- HOW

13   DID YOU OBTAIN YOUR UNDERSTANDING OF WHAT BOTS ARE?

14   A.   FROM READING ABOUT THEM. I DON'T RECALL

15   SPECIFICALLY WHERE.

16   Q.   AND DO YOU HAVE AN OPINION AS TO WHETHER IT IS

17   POSSIBLE THAT SOME OF THE QUERIES ON THE -- THAT YOU

18   OBTAINED FROM THE SEARCH ENGINES WERE RUN BY BOTS?

19   A.   YES.

20   Q.   AND WHAT IS THAT OPINION?

21   A.   I THINK IT'S POSSIBLE THAT SOME OF THE QUERIES,

22   IN FACT LIKELY THAT SOME OF THE QUERIES WERE RUN BY

23   BOTS.

24   Q.   DOES THIS AFFECT YOUR OPINION AS TO THE

25   USEFULNESS OF THIS SET OF DATA?

1   A.   NO, IT DOES NOT.

2   Q.   WHY NOT?

3   A.   A VARIETY OF REASONS. ULTIMATELY, THE GOAL OF

4   COLLECTING THE DATA IS TO DEVELOP A REASONABLE SET OF

5   WEBSITES WITH WHICH TO TEST FILTERS. AND USING THE

6   QUERY DATA IN THIS WAY, I BELIEVE, RESULTS IN A

7   REASONABLE MIX OF CLEAN SITES AND SEXUALLY EXPLICIT

8   SITES AS WE'LL DISCUSS LATER, I'M SURE.

9   ALSO VERY OFTEN, PERHAPS EVEN MOST OF THE

10   TIME, THE RESULTS OF QUERIES THAT ARE EXECUTED BY BOTS

11   ARE VIEWED BY INDIVIDUALS. BASICALLY, A BOT IS THERE TO

12   SAVE SOMEONE THE TROUBLE OF ENTERING A QUERY MORE THAN

13   ONCE. IT JUST DOES IT AUTOMATICALLY ON A PERIODIC

14   BASIS. FOR EXAMPLE, I HAVE A BOT SET UP THAT SEARCHES

15   FOR CHILD ON-LINE PROTECTION ACT EVERY DAY.

16   Q.   I BELIEVE YOU SAID A MOMENT AGO THAT WHEN YOU

17   PROVIDED THE QUERIES TO CRA, CRA RAN THEM AND DREW

18   RESULTS?

19   A.   YES.

20   Q.   DO YOU KNOW WHETHER ANY INDIVIDUAL USER OF A

21   SEARCH ENGINE WOULD SEE THE SAME RESULTS THAT CRA HAD

22   OBTAINED?

23   A.   I DON'T KNOW. IT'S LIKELY THERE WOULD BE

24   DIFFERENCES BETWEEN THE RESULTS THAT A GIVEN USER WOULD

25   SEE ON ANY PARTICULAR DAY AND WHAT ANY OTHER USER WOULD

1   SEE ON ANY OTHER DAY BECAUSE THE INTERNET IS CHANGING.

2   THE SEARCH ENGINE INDEXES ARE CHANGING. THE SEARCH

3   ENGINE'S ALGORITHMS ARE CHANGING. ALL OF THESE THINGS

4   ARE MOVING TARGETS.

5   Q.   DOES THAT AFFECT YOUR OPINION AS TO THE

6   USEFULNESS OF THIS SET OF DATA?

7   A.   NO. AGAIN, I BELIEVE THAT IT PRESENTS A

8   REASONABLE MIX OF SITES, OF WEB PAGES ON WHICH TO TEST

9   THE FILTERS.

10   Q.   NOW, I UNDERSTAND THERE WAS A THIRD SET OF DATA,

11   THAT THERE WERE QUERIES OBTAINED ANOTHER WAY. HOW WERE

12   THOSE QUERIES OBTAINED?

13   A.   WORDTRACKER IS A COMPANY THAT REPORTS THE MOST

14   POPULAR SEARCH TERMS. THESE -- THE TOP 500 SEARCH TERMS

15   IN A COUPLE OF -- SORT OF FILTERED AND UNFILTERED

16   ACCORDING TO WORDTRACKER FOR, I THINK IT WAS A 100-DAY

17   PERIOD LAST FALL, WERE OBTAINED BY CRA. AND CRA THEN

18   RAN THOSE QUERIES THROUGH A SEARCH ENGINE AND HARVESTED

19   THE FIRST 10 RESULTS JUST AS THEY DID FOR THE OTHER

20   QUERIES.

21   Q.   AND WHY DID YOU COLLECT WEB PAGES IN THIS WAY?

22   WHY WERE WEB PAGES COLLECTED IN THIS WAY?

23   A.   AGAIN, IT'S A COMPLEMENTARY VIEW OF -- IT

24   PRESENTS A COMPLEMENTARY SET OF WEB PAGES WITH WHICH TO

25   TEST FILTERS. THE INDEX DATA IS A MEASURE OF WHAT IS

1   OUT THERE TO BE FOUND. THE RANDOM SEARCH DATA IS A

2   MEASURE OF WHAT PEOPLE TYPICALLY SEE. AND THE POPULAR

3   QUERY DATA FROM WORDTRACKER IS A MEASURE OF WHAT PEOPLE

4   SEE MOST OFTEN.

5   Q.   AND DO ANY ONE OF THESE SETS OF DATA PROVIDE THE

6   FULL STORY OF THE EFFECTIVENESS OF THE FILTERS?

7   A.   I DON'T THINK SO.

8   Q.   WHY NOT?

9   A.   IT'S LOOKING AT THE ELEPHANT FROM SEVERAL

10   DIFFERENT ANGLES, THEY PROVIDE COMPLEMENTARY VIEWS.

11   Q.   AFTER THE WEB PAGES WERE COLLECTED, DO YOU HAVE

12   AN UNDERSTANDING OF WHAT HAPPENED NEXT WITH THE WEB

13   PAGES?

14   A.   YES.

15   Q.   AND WHAT IS THAT UNDERSTANDING?

16   A.   MY UNDERSTANDING IS THAT CRA CLASSIFIED THE

17   PAGES ACCORDING TO THE CONTENT OF THE PAGES.

18   Q.   DO YOU HAVE AN UNDERSTANDING AS TO WHAT

19   CLASSIFICATIONS THEY MADE AT THIS STAGE OF THE PROCESS?

20   A.   YES.

21   Q.   AND WHAT IS THAT UNDERSTANDING?

22   A.   THE FIRST DIVISION WAS BETWEEN PAGES THAT HAD NO

23   SEXUAL CONTENT, NO SEXUAL REFERENCES, NO NUDITY, NOTHING

24   SEXUALLY EXPLICIT, BASICALLY PAGES THAT WERE SQUEAKY

25   CLEAN AND EVERYTHING ELSE.

1   Q.   AND DID YOU DO ANYTHING FURTHER WITH WHAT WE

2   WILL CALL THE SQUEAKY CLEAN WEB PAGES?

3   A.   YES. THOSE WERE THE BASIS OF THE TESTS OF THE

4   OVERBLOCKING FILTERS.

5   Q.   WERE ALL OF THE CLEAN WEB PAGES USED FOR THE

6   TESTING?

7   A.   NO, THEY WERE NOT. I DREW A RANDOM SAMPLE OF

8   THOSE CLEAN WEB PAGES AND RETURNED THEM TO CRA.

9   Q.   WHY DID YOU DRAW A RANDOM SAMPLE?

10   A.   WELL, I DREW A SAMPLE TO CUT THE WORKLOAD TO A

11   REASONABLE LEVEL. I DREW THE SAMPLE AT RANDOM SO THAT

12   THE RESULTS COULD BE EXTRAPOLATED BACK TO THE ORIGINAL

13   SET.

14   Q.   OKAY. DO YOU HAVE AN UNDERSTANDING AS TO WHAT

15   HAPPENED NEXT WITH THESE SETS OF WEB PAGES?

16   A.   YES. MY UNDERSTANDING IS THAT CRA THEN TESTED

17   THE FILTERS USING THESE WEB PAGES. THEY ATTEMPTED TO

18   VIEW THE WEB PAGES AND RECORDED WHETHER THE WEB PAGES

19   WERE BLOCKED OR WERE PASSED BY THE FILTERS.

20   Q.   AND DO YOU KNOW WHICH CATEGORIES OF WEB PAGES

21   WERE USED IN CRA'S TESTING?

22   A.   MY UNDERSTANDING IS THAT CRA TESTED A RANDOM

23   SAMPLE OF THE CATEGORY 1A, THAT IS THE CLEAN WEB PAGES

24   THAT I HAD SENT TO THEM, AND THAT THEY TESTED ALL OF THE

25   WEB PAGES THAT WERE NOT CATEGORY 1A.

1   Q.   AND WHAT WAS THE PURPOSE OF TESTING THE CLEAN

2   WEB PAGES?

3   A.   IN ORDER TO ESTIMATE THE RATE AT WHICH FILTERS

4   ERRONEOUSLY BLOCKED CLEAN CONTENT.

5   Q.   AND IN TERMS OF TESTING ALL OF THE PAGES THAT

6   WERE NOT 1A, WERE ALL OF THOSE WEB PAGES USED FOR

7   PURPOSES OF REPORTING YOUR STUDY OR WAS A SUBSET USED?

8   A.   NO, MY REPORTS ONLY INVOLVE THE WEBSITES --

9   SORRY, THE WEB PAGES THAT WERE IN CATEGORY 5F WHICH

10   CORRESPONDS TO SEXUALLY EXPLICIT ADULT CONTENT.

11   Q.   AND WHY WAS THAT CATEGORY USED?

12   A.   IT PRODUCES A CONSERVATIVE ESTIMATE OF THE

13   UNDERBLOCKING IN THAT WEB PAGES THAT ARE IN THAT

14   CATEGORY ARE UNAMBIGUOUSLY THOSE THAT THE FILTERS SHOULD

15   BLOCK.

16   Q.   WHAT'S UNDERBLOCKING?

17   A.   UNDERBLOCKING IS FAILING TO BLOCK A SITE THAT

18   SHOULD BE BLOCKED.

19   Q.   WHAT IS OVERBLOCKING?

20   A.   OVERBLOCKING IS ERRONEOUSLY BLOCKING A PAGE THAT

21   SHOULD NOT BE BLOCKED.

22   Q.   ARE BOTH OF THOSE CONCEPTS RELEVANT TO YOUR

23   STUDY?

24   A.   YES.

25   Q.   WHY?

1   A.   NEITHER PRESENTS A COMPLETE PICTURE OF THE

2   EFFECTIVENESS OF THE FILTER.

3   Q.   ARE YOU FAMILIAR WITH THE TERMS TYPE 1 ERROR AND

4   TYPE 2 ERROR?

5   A.   YES.

6   Q.   WHAT ARE THOSE TERMS?

7   A.   THEY ARE TERMS OF ART IN STATISTICS RELATED TO

8   HYPOTHESIS TESTING. A TYPE 1 ERROR IS REJECTING A

9   HYPOTHESIS THAT IS TRUE. A TYPE 2 ERROR IS FAILING TO

10   REJECT A HYPOTHESIS THAT IS FALSE. THE TYPE 1 ERROR IS

11   A FALSE ALARM, A FALSE POSITIVE. AND A TYPE 2 ERROR IS

12   A FALSE NEGATIVE, A FAILURE OF THE ALARM TO GO OFF WHEN

13   IT SHOULD.

14   Q.   AS A STATISTICIAN, WOULD YOU PREFER TO STUDY

15   JUST ONE OF THESE KINDS OF ERRORS OR WOULD YOU PREFER TO

16   STUDY THESE TWO TYPES OF ERRORS TOGETHER?

17   A.   THEY ARE BOTH IMPORTANT IN UNDERSTANDING HOW

18   WELL A HYPOTHESIS TESTING METHOD WORKS.

19   THE COURT: COUNSEL, WE ARE GOING TO

20   RECESS FOR LUNCH. WE WILL RETURN QUARTER OF TWO. WE

21   ARE OFF THE RECORD.

22   PROFESSOR STARK, YOU CAN RELAX FOR AN

23   HOUR. WE WILL SEE YOU BACK THEN.

24   THE WITNESS: THANK YOU.

25   THE COURT: COUNSEL ARE EXCUSED.

1   (LUNCH BREAK TAKEN AT 12:45 P.M.)

2   AFTERNOON SESSION

3   THE CLERK: ALL RISE. COURT IS NOW IN

4   SESSION.

5   THE COURT: MR. MCELVAIN, YOU MAY

6   PROCEED.

7   MR. MCELVAIN: THANK YOU, YOUR HONOR.

8   YOUR HONOR, WE HAVE A DEMONSTRATIVE EXHIBIT THAT WE

9   NEGLECTED TO GIVE YOU AT THE BEGINNING OF PROFESSOR

10   STARK'S TESTIMONY. IF I MAY APPROACH.

11   THE COURT: PROCEED WITH YOUR DIRECT

12   EXAMINATION, PLEASE.

13   MR. MCELVAIN: THANK YOU, YOUR HONOR.

14   BY MR. MCELVAIN:

15   Q.   I BELIEVE WHERE WE LEFT OFF WE WERE DISCUSSING

16   TYPE 1 AND 2 ERRORS, DR. STARK. DO YOU RECALL THAT?

17   A.   YES.

18   Q.   PLEASE PROVIDE AN EXAMPLE OF TYPE 1 AND TYPE 2

19   ERRORS?

20   A.   SURE.

21   IF YOU IMAGINE A METAL DETECTOR AT AN

22   AIRPORT WHERE THEY ARE DOING SECURITY SCREENING, A TYPE

23   1 ERROR IS THE BUZZER GOES OFF WHEN THE PERSON DOES NOT

24   ACTUALLY HAVE A WEAPON, AND THE TYPE 2 ERROR IS SOMEBODY

25   SLIPS THROUGH THE METAL DETECTOR WITH A WEAPON. SO WE

1   ARE TALKING ABOUT FALSE ALARMS VERSUS FAILURE OF THE

2   ALARM TO GO OFF WHEN IT OUGHT TO.

3   Q.   IN YOUR JUDGMENT AS A STATISTICIAN, WOULD YOU

4   PREFER TO STUDY BOTH TYPES OF ERRORS TOGETHER OR ANY ONE

5   TYPE OF ERROR ALONE?

6   A.   YES, THEY BOTH MATTER IN REAL SITUATIONS, AS YOU

7   CAN IMAGINE, FROM THINKING ABOUT AIRPORT SECURITY

8   SCREENING. IF YOU WANT TO GET RID OF ALL THE TYPE 1

9   ERRORS, ALL THE FALSE ALARMS, YOU HAVE TO TURN THE

10   SENSITIVITY OF THE METAL DETECTOR WAY DOWN AND IT MAKES

11   IT EASY FOR PEOPLE TO SLIP THROUGH WITH WEAPONS. IF YOU

12   WANT TO AVOID ANYBODY SLIPPING THROUGH WITH A WEAPON YOU

13   HAVE TO TURN THE SENSITIVITY WAY UP, AND THEN YOU GET

14   LOTS AND LOTS OF FALSE ALARMS.

15   Q.   TURN YOUR ATTENTION TO WHAT HAS BEEN MARKED AS

16   DEFENDANT'S EXHIBIT 65.

17   A.   OKAY.

18   Q.   DO YOU RECOGNIZE THIS DOCUMENT?

19   A.   YES.

20   Q.   WHAT IS IT?

21   A.   IT'S A TABLE THAT I PREPARED THAT SUMMARIZES

22   SOME OF THE FINDINGS FROM MY REPORTS.

23   Q.   AND THERE IS A ROW THAT IS MARKED THAT AT THE

24   LEFT SAYS, PERCENTAGE OF SEXUALLY EXPLICIT WEB PAGES.

25   WHAT DOES THAT ROW MEAN?

1   A.   THOSE ARE ESTIMATES BASED ON THE SAMPLES SO --

2   OF THE FRACTION OF WEB PAGES IN THOSE SOURCES THAT ARE

3   SEXUALLY EXPLICIT. SO, FOR EXAMPLE, THE FIRST ENTRY IN

4   THE TABLE, 1.1 PERCENT UNDER GOOGLE INDEX REPRESENTS THE

5   FACT THAT MY UNBIASED ESTIMATE OF THE FRACTION OF WEB

6   PAGES IN THE GOOGLE INDEX THAT WOULD BE CLASSIFIED BY

7   CRA AS ADULT IS 1.1 PERCENT.

8   Q.   AND YOUR ESTIMATE FOR THE MSN INDEX WOULD BE?

9   A.   ALSO ESTIMATE THAT 1.1 PERCENT OF THE WEB PAGES

10   IN THE GOOGLE INDEX -- THE MSN INDEX RATHER, WOULD BE

11   CLASSIFIED AS CATEGORY 5F, THAT IS ADULT, BY CRA.

12   Q.   AND FOR THE NEXT TWO SETS OF DATA, WHAT ARE THE

13   CONCLUSIONS WITH REGARD TO THOSE SETS OF DATA?

14   A.   SORRY. I ESTIMATE THAT 1.7 PERCENT OF THE

15   SEARCHES -- OF THE RESULTS OF THE SEARCHES ARE WEB PAGES

16   THAT WOULD BE CLASSIFIED BY CRA AS SEXUALLY EXPLICIT.

17   AND THE FINAL ENTRY ISN'T AN ESTIMATE.

18   IT'S A PARAMETER INSTEAD. IT'S, YOU KNOW, OF THE

19   SEARCHES WHAT FRACTION WERE IN FACT CLASSIFIED TO BE --

20   THE WORDTRACKER SEARCHES, WHAT FRACTION OF THE RESULTS

21   WERE IN FACT CLASSIFIED BY CRA -- I'M SORRY, LET ME

22   START AGAIN. WHAT FRACTION OF THE RESULTS OF THE

23   WORDTRACKER SEARCHES WERE CLASSIFIED BY CRA TO BE

24   SEXUALLY EXPLICIT. SO THIS WOULD BE CATEGORY 5F.

25   Q.   AND IS THERE A RELATIONSHIP BETWEEN THE

1   STATISTIC THAT YOU REPORTED FOR THE INDEX STATUS AS IN

2   WHAT WE WILL CALL THE QUERY DATASETS?

3   A.   YES.   THE PREVALENCE -- THE ESTIMATED PREVALENCE

4   OF ADULT WEB PAGES IN THE INDEXES IS LOWER THAN THE

5   ESTIMATED PREVALENCE OF ADULT WEB PAGES IN SEARCH

6   RESULTS.

7   Q.   OKAY. AND TURNING TO THE SECOND ROW OF THAT

8   COLUMN. WHAT DOES THAT COLUMN REPRESENT?

9   A.   THAT IS LOOKING JUST AT THE SEXUALLY EXPLICIT --

10   OR THAT IS ADULT WEB PAGES, AND ESTIMATING THE FRACTION

11   OF THOSE PAGES THAT ARE DOMESTIC.

12   Q.   AND WHAT DO YOU CONCLUDE WITH REGARD TO THE

13   DIFFERENT SETS OF DATA THAT YOU HAVE USED?

14   A.   WELL, DIFFERENT FRACTIONS ARE ESTIMATED TO BE

15   DOMESTIC. THE FRACTIONS RANGE FROM 44 PERCENT TO 88

16   PERCENT. THE FRACTIONS OF ADULT WEB PAGES IN INDEXES

17   THAT ARE DOMESTIC ARE CLOSER 50 PERCENT. THE FRACTIONS

18   OF ADULT WEB PAGES THAT ARE DOMESTIC IN THE SEARCH

19   RESULTS IS CLOSER TO 90 PERCENT.

20   Q.   OKAY. IS THERE ANY RELATIONSHIP BETWEEN THE

21   PERCENTAGES THAT YOU REPORTED FOR THE INDEX DATASETS AND

22   FOR THE QUERY DATASETS?

23   A.   I THOUGHT I JUST ANSWERED THAT.

24   Q.   PERHAPS YOU DID.

25   TURNING TO THE THIRD COLUMN. WHAT DOES

1   THE THIRD ROW REPRESENT?

2   A.   THE THIRD ROW IS AGGREGATING RESULTS BY SEARCH

3   RATHER THAN LOOKING AT EACH WEB PAGE RETURNED BY

4   SEARCHES SEPARATELY.

5   SO THE 6 PERCENT FIGURE UNDER THE AOL,

6   MSN AND YAHOO SEARCHES IS INDICATING MY ESTIMATE OF THE

7   FRACTION OF AOL, MSN AND YAHOO SEARCHES THAT WOULD

8   PRODUCE AT LEAST ONE SEXUALLY EXPLICIT WEB PAGE AMONG

9   THE RESULTS IS 6 PERCENT.

10   Q.   AND WHAT DO YOU CONCLUDE WITH RESPECT TO THE

11   WORDTRACKER SEARCHES?

12   A.   THE FRACTION OF WORDTRACKER SEARCHES THAT

13   PRODUCE AT LEAST ONE ADULT WEB PAGE AMONG THE RESULTS IS

14   37.1 PERCENT.

15   Q.   AND WHAT DOES THE FOURTH ROW IN THIS TABLE

16   REPRESENT?

17   A.   IT'S ESSENTIALLY THE SAME AS THE THIRD ROW, BUT

18   INSTEAD OF TALLYING ALL ADULT WEB PAGES AMONG THE

19   RESULTS, IT ONLY TALLIES THE DOMESTIC ONES. SO I

20   ESTIMATE THAT 5.37 PERCENT OF AOL, MSN AND YAHOO

21   SEARCHES RETURNED AT LEAST ONE ADULT WEB SITE THAT IS A

22   DOMESTIC ADULT WEBSITE, AND THE CORRESPONDING FIGURE FOR

23   WORDTRACKER IS 37 PERCENT.

24   Q.   TURNING YOUR ATTENTION TO EXHIBIT D 66. DO YOU

25   RECOGNIZE THIS DOCUMENT?

1   A.   I'M IN THE PROCESS OF MISFILING THE OTHER

2   DOCUMENT. YES.

3   Q.   WHAT IS THIS DOCUMENT?

4   A.   AGAIN, IT'S A TABLE I PRODUCED LISTING SOME OF

5   THE RESULTS OF THE STUDY. IN PARTICULAR, IT PRESENTS

6   LOWER CONFIDENCE BOUNDS FOR SOME OF THE PREVALENCE

7   ESTIMATES THAT WERE IN THE PREVIOUS TABLE.

8   Q.   WHAT IS A LOWER CONFIDENCE BOUND?

9   A.   THE ESTIMATES FOR THE PREVALENCE OF ADULT

10   MATERIAL IN THE GOOGLE INDEX, THE MSN INDEX, AND AMONG

11   THE SEARCH RESULTS ARE BASED ON RANDOM SAMPLES. AND

12   RANDOM SAMPLES ARE SUBJECT TO THE LUCK OF THE DRAW. ON

13   AVERAGE, THE ESTIMATES WOULD BE CORRECT IF YOU AVERAGED

14   OVER DRAWING SAMPLES OVER AND OVER AND OVER AGAIN. THAT

15   IS WHAT IT MEANS FOR THE ESTIMATE TO BE UNBIASED. BUT

16   IN ANY PARTICULAR CASE IT'S LIKELY TO DEVIATE FROM THE

17   TRUE PREVALENCE BY SOME AMOUNT THAT HAS TO DO WITH THE

18   LUCK OF THE DRAW. CONFIDENCE LIMITS ARE A WAY OF

19   QUANTIFYING THE AMOUNT BY WHICH THE ESTIMATOR IS LIKELY

20   TO BE OFF BECAUSE OF THE LUCK OF THE DRAW. SO THE

21   INTERPRETATION OF THE FIRST ENTRY IN THAT TABLE

22   CORRESPONDING TO GOOGLE INDEX IS WITH 95 PERCENT

23   CONFIDENCE, THE FRACTION OF WEB PAGES IN THE GOOGLE

24   INDEX THAT WOULD BE CLASSIFIED AS ADULT BY CRA IS AT

25   LEAST 1 PERCENT.

1   Q.   AND THAT WOULD BE THE INTERPRETATION OF EACH OF

2   THE FIGURES IN THAT ROW?

3   A.   YES. SO THE CORRESPONDING FIGURE FOR MSN IS AT

4   95 PERCENT CONFIDENCE AT LEAST 1 PERCENT OF THE PAGES IN

5   THE MSN INDEX ARE ADULT. AND AT 95 PERCENT CONFIDENCE,

6   AT LEAST TWO AND-A-HALF PERCENT OF THE AOL, MSN AND

7   YAHOO SEARCHES RETURN AT LEAST ONE WEB PAGE THAT IS

8   SEXUALLY EXPLICIT.

9   Q.   WHAT DOES THE SECOND ROW ON THIS CHART

10   REPRESENT?

11   A.   THOSE ARE CORRESPONDING CONFIDENCE LIMITS, BUT

12   INSTEAD OF LOOKING AT ALL OF THE SEXUALLY EXPLICIT

13   WEBSITES, IT LIMITS ATTENTION TO JUST THE DOMESTIC

14   SEXUALLY EXPLICIT WEBSITES. SO THE FIRST ENTRY SHOWS

15   THAT I'M 95 PERCENT CONFIDENT THAT AT LEAST 4-10THS OF A

16   PERCENT OF THE WEB PAGES IN THE GOOGLE INDEX ARE

17   DOMESTIC WEB PAGES THAT CRA WOULD CLASSIFY AS SEXUALLY

18   EXPLICIT.

19   Q.   WHY DID YOU REPORT CONFIDENCE LIMITS FOR YOUR

20   STUDY?

21   A.   WELL, IN GENERAL, CONFIDENCE LIMITS ARE A WAY OF

22   QUANTIFYING THE UNCERTAINTY THAT COMES FROM THE LUCK OF

23   THE DRAW. I DID THESE CONFIDENCE LIMITS AND SOME OTHERS

24   BASICALLY AS EXEMPLARS TO SHOW THAT IT WAS POSSIBLE

25   TO DEMONSTRATE THE RELIABILITY OF THE APPROACH

1   STATISTICALLY. I CHOSE THESE IN PARTICULAR BECAUSE IT

2   WAS POSSIBLE TO CALCULATE EXACT CONFIDENCE LIMITS FOR

3   THEM.

4   Q.   AND WHY DID YOU REPORT ONLY LOWER CONFIDENCE

5   LIMITS?

6   A.   WELL, BECAUSE THE SCIENTIFIC QUESTION HERE IS

7   NOT AT MOST HOW MUCH OF THE MATERIAL IS ADULT, BUT

8   RATHER AT LEAST HOW MUCH OF THE MATERIAL IS ADULT. IT'S

9   JUST THE RIGHT DIRECTION FOR INFERENCE HERE.

10   Q.   IF I COULD TURN YOUR ATTENTION NEXT TO WHAT HAS

11   BEEN MARKED AS DEFENDANT'S EXHIBIT 68.

12   DO YOU RECOGNIZE THIS DOCUMENT?

13   A.   I RECOGNIZE THAT. I GRABBED THE WRONG DOCUMENT.

14   YES, I DO.

15   Q.   AND WHAT IS IT?

16   A.   THIS IS A TABLE THAT I PREPARED THAT REPORTS THE

17   RESULTS OF TESTING THE VARIOUS FILTERS ON THE CLEAN AND

18   ADULT WEB PAGES THAT WERE DRAWN FROM THE GOOGLE AND MSN

19   INDEXES.

20   Q.   AND THERE'S A COLUMN FOR UNDERBLOCKING. WHAT

21   DOES THAT COLUMN REPRESENT?

22   A.   THERE ARE TWO COLUMNS UNDER THE HEADING OF

23   UNDERBLOCKING. ONE FOR GOOGLE AND ONE FOR MSN. THAT IS

24   THE ESTIMATED FRACTION OF ADULT SITES IN THE GOOGLE

25   INDEX THAT WOULD NOT BE BLOCKED BY THE CORRESPONDING

1   FILTER.

2   SO, FOR EXAMPLE, I ESTIMATE THAT 8.9

3   PERCENT OF THE ADULT SITES IN THE GOOGLE INDEX WOULD

4   PASS THROUGH THE AOL MATURE TEEN FILTER.

5   Q.   THERE IS AN OVERBLOCKING COLUMN. WHAT DOES THAT

6   REPRESENT?

7   A.   THAT IS THE ESTIMATED FRACTION OF CLEAN, THAT IS

8   CATEGORY 1A, SITES THAT WOULD BE ERRONEOUSLY BLOCKED BY

9   THE CORRESPONDING FILTER.

10   SO, FOR EXAMPLE, I ESTIMATE THAT 22.6

11   PERCENT OF THE WEB PAGES IN THE GOOGLE INDEX THAT CRA

12   WOULD CLASSIFY AS CATEGORY 1A, I.E., CLEAN, WOULD BE

13   ERRONEOUSLY BLOCKED BY THE AOL MATURE TEEN FILTER.

14   Q.   DO I UNDERSTAND WITH RESPECT TO THIS DATASET

15   THAT ANY OF THE FILTERS PERFORM PARTICULARLY POORLY AT

16   UNDERBLOCKING?

17   A.   AT UNDERBLOCKING, THE NORTON FILTERS ARE THE

18   WORST THAT WE LOOKED AT. THEY FAILED TO BLOCK IN EXCESS

19   OF 50 PERCENT OF THE ADULT SITES.

20   Q.   AND WERE THERE ANY FILTERS THAT PERFORMED

21   PARTICULARLY POORLY AT OVERBLOCKING?

22   A.   YES. THE AOL MATURE TEEN FILTER AND THE MSN

23   TEEN FILTER HAD PARTICULARLY HIGH RATES OF OVERBLOCKING

24   ON THE ORDER OF, WELL, 19 TO 23 OR 24 PERCENT.

25   Q.   DO YOU FIND A CORRELATION BETWEEN THE

1   UNDERBLOCKING STATISTICS AND THE OVERBLOCKING

2   STATISTICS?

3   A.   YES. GENERALLY FILTERS THAT DON'T UNDERBLOCK,

4   OVERBLOCK INSTEAD. AND FILTERS THAT DON'T OVERBLOCK

5   UNDERBLOCK INSTEAD. AND THIS IS A GENERAL PHENOMENON.

6   IT'S ALMOST A MATH FACT. JUST IF YOU THINK ABOUT IT IN

7   TERMS OF THE METAL DETECTOR EXAMPLE FOR THE AIRPORT. IF

8   YOU WANT TO AVOID MAKING ONE KIND OF MISTAKE, IF YOU

9   WANT TO AVOID FALSE ALARMS, THEN YOU ARE GOING TO LET

10   PEOPLE THROUGH WITH WEAPONS. AND IF YOU WANT TO AVOID

11   LETTING PEOPLE THROUGH WITH WEAPONS, THEN YOU ARE GOING

12   TO HAVE FALSE ALARMS.

13   Q.   IN THE DATASET OF WEB PAGES FROM THE SEARCH

14   ENGINE INDICES, WERE THERE MORE CLEAN WEB PAGES THAN

15   THERE WERE WEB PAGES THAT WERE RATED AS ADULT FOR

16   PURPOSES OF THIS STUDY?

17   A.   YES. THERE WERE SOMETHING LIKE 50 TIMES AS MANY

18   SITES IDENTIFIED AS CATEGORY 1A THAN AS CATEGORY 5F,

19   THAT IS, AS CLEAN RATHER THAN ADULT.

20   Q.   AND DOES THAT AFFECT YOUR INTERPRETATION OF THE

21   OVERBLOCKING NUMBERS REPORTED ON THIS CHART?

22   A.   WELL, YES. IT MEANS THAT IF YOU LOOK AT THE

23   SITES THAT WERE BLOCKED, THE -- FOR, SAY, TAKE THE AOL

24   MATURE TEEN FILTER, FOR EXAMPLE, THE VAST MAJORITY OF

25   THE SITES THAT ARE BLOCKED ARE BLOCKED IN ERROR. A

1   RELATIVELY SMALL FRACTION OF THE SITES THAT WERE BLOCKED

2   WERE CORRECTLY BLOCKED.

3   Q.   IF YOU TURN NEXT TO EXHIBIT P 70, 7-0.

4   A.   OKAY.

5   Q.   WHAT IS THIS DOCUMENT?

6   A.   THIS REPORTS LOWER CONFIDENCE LIMITS FOR THE

7   BLOCKING NUMBERS THAT WE WERE JUST LOOKING AT, THE

8   OVERBLOCKING AND UNDERBLOCKING NUMBERS THAT WE WERE JUST

9   LOOKING AT.

10   SO, FOR EXAMPLE, THE ENTRY THAT IS

11   LABELLED 5.6 PERCENT ENTRY IN THE UPPER LEFT-HAND CORNER

12   INDICATES THAT AT 95 PERCENT CONFIDENCE, THE PERCENTAGE

13   OF ADULT SITES IN THE GOOGLE INDEX THAT WOULD FAIL TO BE

14   BLOCKED BY THE AOL MATURE TEEN FILTER IS AT LEAST 5.6

15   PERCENT.

16   Q.   AND WOULD EACH OF THE STATISTICS IN THIS CHART

17   REPRESENT THE CONFIDENCE LIMIT THAT YOU HAVE REPORTED

18   FOR THE FILTER AND FOR THE UNDERBLOCKING OR OVERBLOCKING

19   NUMBER --

20   A.   YES.

21   Q.   -- RESPECTIVELY?

22   A.   YES.

23   Q.   TURN NEXT TO EXHIBIT D 72.

24   A.   OKAY.

25   Q.   DO YOU RECOGNIZE THIS DOCUMENT?

1   A.   YES. THIS IS ANOTHER TABLE I PREPARED THAT

2   REPORTS RESULTS OF THE STUDY.

3   Q.   AND WHAT RESULTS DOES IT REPORT?

4   A.   THIS REPORTS ESTIMATES OF THE PERCENTAGE OF

5   ADULT SITES THAT WERE NOT BLOCKED BY THE FILTERS THAT

6   WERE DOMESTIC ADULT SITES.

7   Q.   AND WHAT IS YOUR UNDERSTANDING OF WHAT DOMESTIC

8   ADULT WEBSITES MEANS FOR THIS PURPOSE?

9   A.   IT MEANS THAT CRA CODED IT AS A DOMESTIC SITE IN

10   THE DATABASE THAT I WAS WORKING FROM.

11   Q.   TAKING ONE EXAMPLE FOR THE AOL MATURE TEEN

12   FILTER AT THE TOP, THE NUMBERS 40 PERCENT AND 4.6

13   PERCENT. WHAT DO THOSE NUMBERS REPRESENT?

14   A.   OF THE ADULT SITES IN THE GOOGLE INDEX THAT THE

15   AOL MATURE TEEN FILTER DID NOT BLOCK, 40 PERCENT WERE

16   DOMESTIC. AND MY ESTIMATE IS THAT OVERALL, FOR THE

17   GOOGLE INDEX AS A WHOLE, OF THE ADULT SITES THAT THE AOL

18   MATURE TEEN FILTER WOULD NOT BLOCK, 40 PERCENT WOULD BE

19   DOMESTIC.

20   Q.   TURNING NEXT TO EXHIBIT D 74.

21   A.   YES.

22   Q.   DO YOU RECOGNIZE THIS DOCUMENT?

23   A.   YES. IT'S ANOTHER TABLE I PREPARED THAT REPORTS

24   RESULTS OF THE STUDY.

25   Q.   AND WHAT RESULTS -- WELL, ACTUALLY LET'S TAKE

1   THIS ONE AT A TIME. THERE IS A COLUMN THAT IS LABELLED

2   UNDERBLOCKING FOR RESULTS. WHAT DOES THAT COLUMN

3   REPRESENT?

4   A.   THAT COLUMN REPRESENTS THE FRACTION OF SEARCH

5   RESULTS -- FRACTION OF ADULT SEARCH RESULTS THAT WERE

6   NOT BLOCKED BY THE CORRESPONDING FILTER. IT IS AN

7   ESTIMATE OF THE CORRESPONDING NUMBER FOR THE POPULATION

8   OF QUERIES.

9   Q.   AND THERE'S A COLUMN OVERBLOCKING FOR RESULTS.

10   WHAT DOES THAT REPRESENT?

11   A.   THAT IS THE PERCENTAGE OF CLEAN SEARCH RESULTS

12   THAT ARE ERRONEOUSLY BLOCKED BY THE CORRESPONDING

13   FILTER.

14   Q.   AND DID YOU FIND A CORRELATION BETWEEN THE

15   UNDERBLOCKING AND OVERBLOCKING RATES?

16   A.   YES. JUST AS BEFORE, THOSE FILTERS THAT TEND TO

17   MISS THE FEWER OF THE ADULT SITES TEND TO ERRONEOUSLY

18   BLOCK MORE OF THE CLEAN SITES AND VICE VERSA.

19   Q.   I NOTICE THAT SOME OF THE STATISTICS THAT YOU

20   REPORT UNDER THE OVERBLOCKING RESULTS COLUMN ARE

21   ACTUALLY ZERO PERCENT. DOES THIS MEAN THAT THOSE

22   FILTERS ARE DEFECTIVE?

23   A.   IT MEANS THAT FOR THIS PARTICULAR SAMPLE THE

24   FILTER DID NOT HAPPEN TO BLOCK ANY OF THE CLEAN SITES.

25   THOSE FILTERS THAT HAD ZERO OVERBLOCKING HAD AMONG THE

1   LARGER UNDERBLOCKING RATES -- THOSE THAT HAD ZERO

2   OVERBLOCKING TENDED TO HAVE AMONG THE LARGER

3   UNDERBLOCKING RATES.

4   SO, FOR EXAMPLE, ONE OF THEM, THE

5   CONTENTPROTECT FILTER AT THE CUSTOM SETTING HAD AN

6   UNDERBLOCKING RATE OF 20 PERCENT. THE NORTON FILTER AT

7   THE CUSTOM SETTING HAD AN UNDERBLOCKING RATE OF 43.4

8   PERCENT. SO THE OVERBLOCKING NUMBER ALONE IS NOT A

9   COMPLETE PICTURE.

10   Q.   THERE'S A THIRD COLUMN THAT IS CAPTIONED,

11   DOMESTIC UNDERBLOCKING. WHAT DOES THAT COLUMN

12   REPRESENT?

13   A.   IT IS OF THE ADULT SITES THAT WERE NOT BLOCKED

14   BY FILTERS, THE ESTIMATED FRACTION THAT ARE DOMESTIC

15   ADULT SITES, PERCENTAGE.

16   Q.   AND THERE'S A FOURTH COLUMN, UNDERBLOCKING FOR

17   QUERIES. WHAT DOES THAT COLUMN REPRESENT?

18   A.   THAT IS TALLYING THINGS BY QUERY INSTEAD OF

19   LOOKING AT THE INDIVIDUAL RESULTS. SO THE 15.6 PERCENT

20   NUMBER ON THE FIRST ROW INDICATES THAT AN ESTIMATED 15.6

21   PERCENT OF THE QUERIES WOULD GENERATE AT LEAST ONE ADULT

22   RESULT -- ADULT WEB PAGE RESULT THAT WOULD NOT BE

23   BLOCKED BY THE AOL MATURE TEEN FILTER.

24   Q.   WHY DID YOU STUDY BOTH UNDERBLOCKING FOR RESULTS

25   AND UNDERBLOCKING FOR QUERIES?

1   A.   THEY MEASURE DIFFERENT THINGS. THERE ARE --

2   THEY SIGNIFY DIFFERENT THINGS.

3   EACH TIME SOMEBODY EXECUTES A QUERY,

4   THERE IS AN OPPORTUNITY TO BE EXPOSED TO ADULT MATERIAL.

5   AND THE RESULTS OF THE QUERY COME IN GROUPS OF SOMETHING

6   LIKE 10. AND SO EVERY TIME YOU RUN A QUERY, THERE IS AN

7   OPPORTUNITY TO CLICK ON ONE OF THOSE 10 LINKS AND

8   PERHAPS SEE AN ADULT SITE, PERHAPS NOT.

9   THE RANDOM SAMPLE THAT I DREW WAS A

10 RANDOM SAMPLE OF QUERIES, NOT OF SEARCH RESULTS. AND AS

11 A RESULT, THE MOST STRAIGHTFORWARD THING TO WORK WITH

12 AND DEAL WITH SAMPLING ERROR, CONFIDENCE INTERVALS, ET

13 CETERA, IS TO THINK OF THINGS LIKE QUERIES BECAUSE IT

14 WAS QUERIES THAT I DREW SAMPLES OF.

15 Q.   TURNING NEXT TO EXHIBIT D 76. DO YOU RECOGNIZE

16 THIS DOCUMENT?

17 A.   YES, I DO.

18 Q.   AND WHAT IS IT?

19 A.   IT IS A TABLE THAT PRESENTS THE CONFIDENCE

20 LIMITS THAT I CALCULATED FOR THE RATE AT WHICH QUERIES

21 ARE UNDERBLOCKED IN THE SAME SENSE I WAS JUST

22 DISCUSSING.

23   SO, FOR EXAMPLE, AT 95 PERCENT

24 CONFIDENCE, AT LEAST 5.3 PERCENT OF THE QUERIES PRODUCED

25 AT LEAST ONE ADULT SITE THAT WOULDN'T BE BLOCKED, I'M

1   SORRY, ONE ADULT WEB PAGE THAT WOULD NOT BE BLOCKED BY

2   THE AOL MATURE TEEN FILTER.

3   Q.   IF I COULD TURN YOUR ATTENTION NEXT TO DEFENDANT

4   D 78. DO YOU RECOGNIZE THIS DOCUMENT?

5   A.   YES. THIS IS A TABLE OF RESULTS OF THE TESTS ON

6   THE WEB PAGES THAT CAME FROM RUNNING THE WORDTRACKER

7   QUERIES.

8   Q.   AND THERE IS A COLUMN, UNDERBLOCKING FOR

9   RESULTS. WHAT DOES THIS REPRESENT?

10   A.   IT MEANS THE SAME THING AS IT DOES IN THE TABLE

11   WE WERE JUST TALKING ABOUT. SO THE FIRST ENTRY, 1.3

12   PERCENT, SHOWS THAT 1.3 PERCENT OF THE ADULT WEB PAGES

13   AMONG THE WORDTRACKER SEARCH RESULTS WERE NOT BLOCKED BY

14   THE AOL MATURE TEEN FILTER.

15   Q.   AND THERE IS A COLUMN MARKED, OVERBLOCKING FOR

16   RESULTS. WHAT DOES THAT REPRESENT?

17   A.   THAT SHOWS THAT 19.6 PERCENT OF THE CLEAN SEARCH

18   RESULTS WERE ERRONEOUSLY BLOCKED BY THE AOL MATURE TEEN

19   FILTER.

20   Q.   AND WOULD THE STATISTICS BE THE SAME FOR EACH OF

21   -- WOULD THE INTERPRETATION BE THE SAME FOR EACH OF THE

22   STATISTICS REPORTED IN THIS COLUMN FOR EACH OF THE

23   FILTERS?

24   A.   YES.

25   Q.   DO YOU FIND THERE'S A CORRELATION BETWEEN THESE

1   UNDERBLOCKING NUMBERS AND THESE OVERBLOCKING NUMBERS?

2   A.   YES. AGAIN, THOSE FILTERS THAT TEND TO HAVE LOW

3   UNDERBLOCKING NUMBERS TEND TO HAVE BIG OVERBLOCKING

4   NUMBERS AND VICE VERSA. THERE IS A TRADEOFF BETWEEN

5   BEING ABLE TO BLOCK ADULT CONTENT AND ERRONEOUSLY

6   BLOCKING CLEAN CONTENT.

7   Q.   AND I REFER YOU TO THE COLUMN MARKED, DOMESTIC

8   UNDERBLOCKING. WHAT DOES THAT COLUMN REPRESENT?

9   A.   THAT IS OF THE ADULT SITES THAT WERE NOT BLOCKED

10   BY THE FILTER, THE FRACTION THAT WERE DOMESTIC ADULT

11   SITES -- SORRY. I KEEP SAYING SITES. I MEAN WEB PAGES.

12   Q.   AND TURNING TO THE FOURTH COLUMN, UNDERBLOCKING

13   FOR QUERIES. WHAT DOES THAT COLUMN REPRESENT?

14   A.   THAT IS THE FRACTION OF QUERIES THAT PRODUCE AT

15   LEAST ONE ADULT WEB PAGE THAT ISN'T BLOCKED BY THE

16   FILTER. SO 4.3 PERCENT OF THE WORDTRACKER QUERIES

17   PRODUCED AT LEAST ONE ADULT WEB PAGE AMONG THE RESULTS

18   THAT WAS NOT BLOCKED BY THE AOL MATURE TEEN FILTER.

19   Q.   I WOULD LIKE TO TURN YOUR ATTENTION TO ONE

20   PARTICULAR NUMBER REPORTED HERE. THE 1.3 PERCENT NUMBER

21   REPORTED UNDER UNDERBLOCKING FOR RESULTS FOR AOL MATURE

22   TEEN. DOES THIS MEAN THAT THE AOL FILTER IS EFFECTIVE

23   AT FILTERING?

24   A.   IT'S ONLY PART OF A MORE COMPLICATED PICTURE OF

25   TRYING TO UNDERSTAND HOW THE AOL MATURE TEEN FILTER

1   BEHAVES. IT SAYS THAT OF THE ADULT SEARCH RESULTS IN

2   -- FROM THE WEB TRACKER -- FROM THE WORDTRACKER QUERIES,

3   THE AOL FILTER AT THE MATURE TEEN SETTING ONLY FAILED TO

4   BLOCK 1.3 PERCENT. HOWEVER, THERE IS MORE INVOLVED IN

5   UNDERSTANDING WHETHER THAT IS A GOOD NUMBER OR A BAD

6   NUMBER.

7   FOR EXAMPLE, THE SAME FILTER AT THE SAME

8   SETTING ERRONEOUSLY BLOCKED 19.6 PERCENT OF THE CLEAN

9   RESULTS. AND YOU ALSO NEED TO CONSIDER WHAT THE BASE IS

10 IN INTERPRETING THESE PERCENTAGES. SO THE AMOUNT OF

11 ADULT MATERIAL IN THE WORDTRACKER SEARCH RESULTS, IT'S A

12 MUCH HIGHER FRACTION OF THE WORDTRACKER SEARCH RESULTS

13 THAN ADULT MATERIAL IS, SAY, AS A FRACTION OF THE

14 INDEXES OR AS A FRACTION OF THE RANDOMLY SELECTED QUERY

15 RESULTS.

16   IF WE CAN TURN BACK TO A PREVIOUS

17 EXHIBIT.

18 Q.   I CAN REFER YOU BACK TO DEFENDANT'S EXHIBIT 65.

19 A.   SO THE FIRST ROW THERE SHOWS THAT 14.1 PERCENT

20 OF THE WORDTRACKER SEARCH RESULTS WERE ADULT, WHEREAS

21 ONLY 1.7 PERCENT OF THE RESULTS OF AOL, MSN AND YAHOO

22 SEARCHES WERE ADULT. SO THAT IS A FACTOR OF SOMETHING

23 LIKE EIGHT. THERE IS ABOUT EIGHT TIMES AS MUCH ADULT

24 MATERIAL COMING IN THE RESULTS OF THE WORDTRACKER

25 SEARCHES. THE FILTER WAS ONLY PASSING ABOUT 1.3 PERCENT

1   OF THAT MATERIAL BECAUSE I'M REFERRING BACK TO EXHIBIT

2   78, THAT NUMBER OF 1.3 PERCENT THAT YOU HAD REFERRED ME

3   TO PREVIOUSLY. SO SOMETHING LIKE 1.3 PERCENT OF 14

4   PERCENT WOULD GET THROUGH THE FILTERS -- THAT FILTER.

5   IN CONTRAST, IF YOU LOOK AT THE BEHAVIOR OF THE AOL

6   MATURE TEEN FILTER ON SAY THE RESULTS OF THE RANDOM

7   QUERIES, THE MSN AND YAHOO SEARCHES, CAN I LOOK AT THE

8   --

9   Q.   ARE YOU REFERRING TO DEFENSE EXHIBIT 74?

10   A.   I HOPE SO. YES.

11   Q.   HOW DO THE UNDERBLOCKING FOR RESULTS NUMBERS IN

12   DEFENSE EXHIBIT 74 COMPARE TO -- FOR AOL COMPARE TO THE

13   UNDERBLOCKING FOR RESULTS FIGURES FOR AOL IN DEFENDANT'S

14   EXHIBIT 78?

15   A.   OKAY. SO THE AOL FILTER AT MATURE TEEN SETTING

16   FAILED TO BLOCK ABOUT 6.2 PERCENT OF THE ADULT SITES IN

17   THE RESULTS OF THESE RANDOMLY SELECTED SEARCHES. 6.2

18   PERCENT OF 1.7 PERCENT, THAT IS THE FRACTION OF THE

19   ADULT STUFF GOING IN, IS A SMALLER NUMBER THAN 1.3

20   PERCENT OF 14.1 PERCENT.

21   SO IF YOU WANT TO -- IF YOU WANT TO THINK

22   ABOUT WHAT -- WHAT FRACTION OF THE SITES THAT GO IN SLIP

23   THROUGH OR WHAT FRACTION OF THE STUFF THAT GETS THROUGH

24   IS IN FACT ADULT, A LARGER AMOUNT OF ADULT STUFF SLIPS

25   THROUGH IN THE WORDTRACKER TEST THAN IT DOES IN THE

1   RESULT OF THE RANDOM TESTING.

2   Q.   I NOTICE THAT YOU REPORTED CONFIDENCE LIMITS FOR

3   SOME OF YOUR STATISTICS BUT NOT OTHERS. WHY DID YOU DO

4   THAT?

5   A.   WELL, AGAIN, I COMPUTED THE CONFIDENCE LIMITS

6   PRIMARILY AS EXEMPLARS TO DEMONSTRATE THAT IT WAS

7   POSSIBLE TO CALCULATE AN UNCERTAINTY RIGOROUSLY. THE

8   PARTICULAR CASES IN WHICH I DID IT, I DID CASES IN WHICH

9   I WAS -- IT WAS POSSIBLE TO CALCULATE AN EXACT

10   CONFIDENCE LIMIT RATHER THAN AN APPROXIMATE CONFIDENCE

11   LIMIT.

12   Q.   AND SOME OF THE PERCENTAGES YOU REPORTED ARE

13   BASED ON RELATIVELY SMALL NUMBERS OF WEB PAGES. IS IT

14   POSSIBLE TO MAKE ESTIMATES FROM THE SAMPLE SIZES THAT

15   YOU USED?

16   A.   YES. IT'S POSSIBLE TO MAKE ESTIMATES, IT'S

17   POSSIBLE TO MAKE UNBIASED ESTIMATES AND IT IS POSSIBLE

18   TO CALCULATE CONFIDENCE LIMITS. THE ANALOGY IS AS

19   FOLLOWS: IF YOU THINK ABOUT MAKING A HUGE POT OF SOUP,

20   SAY, A 10-GALLON POT OF SOUP ON THE STOVE, AND YOU WOULD

21   LIKE TO KNOW WHETHER THE SOUP IS TOO SALTY, YOU CAN TAKE

22   JUST A LITTLE TEASPOONFUL OF THE SOUP AND TASTE IT AND

23   YOU'LL KNOW WHETHER THE SOUP IS TOO SALTY, IF YOU

24   STIRRED UP THE SOUP. IF YOU HAVE NOT STIRRED THE SOUP,

25   THE SALT MAY ALL BE THERE AT THE BOTTOM AND THE LITTLE

1   SPOONFUL THAT YOU TAKE OUT WOULDN'T NECESSARILY BE

2   REPRESENTATIVE. BUT IT DOESN'T TAKE A BIG SAMPLE TO GET

3   REPRESENTATIVE RESULTS IF YOU USE RANDOMIZATION AND TAKE

4   A RANDOM SAMPLE.

5   Q.   DO YOU BELIEVE THAT THE RESULTS THAT YOU HAVE

6   REPORTED ARE CONSERVATIVE?

7   A.   YES, I BELIEVE THEY ARE CONSERVATIVE IN A NUMBER

8   OF WAYS.

9   Q.   HOW SO?

10   A.   WELL, IN TESTING THE EFFECTIVENESS OF THE

11   FILTERS, WHAT I MEAN BY CONSERVATIVE IS THAT A NUMBER OF

12   DECISIONS WERE MADE THAT TENDS TO MAKE THE FILTERS

13   APPEAR TO PERFORM BETTER THAN THEY MIGHT PERFORM IN

14   PRACTICE.

15   FOR EXAMPLE, THE DEFINITION OF THE

16   CATEGORY 1A WEB PAGES IS VERY RESTRICTIVE. THESE ARE

17   SITES THAT -- THESE ARE WEB PAGES THAT THE FILTERS OUGHT

18   TO HAVE AN EASY TIME OF NOT BLOCKING. AND SIMILARLY,

19   THE DEFINITION OF THE CATEGORY 5F ADULT SITES IS

20   EXTREMELY RESTRICTIVE. THESE SHOULD BE SITES THAT

21   FILTERS HAVE AN ESPECIALLY EASY TIME CATCHING AND

22   BLOCKING. THERE WERE A NUMBER OF OPERATIONAL DECISIONS

23   I MADE ALONG THE WAY WHERE -- THAT TENDED TO ERR ON THE

24   SIDE OF CAUTION. I DON'T REMEMBER SPECIFICALLY WHAT ALL

25   OF THEM WERE. SIMILARLY, THE CONFIDENCE LIMITS THAT I

1   CALCULATED I USED METHODS THAT WERE GUARANTEED TO BE

2   CONSERVATIVE RATHER THAN APPROXIMATE OR OPTIMISTIC.

3   Q.   THERE WAS A POINT IN THIS PROCESS WHERE CRA MADE

4   SOME CORRECTIONS TO SOME OF THE CODING OF THE WEB PAGES.

5   DO YOU RECALL THAT?

6   A.   YES, I DO.

7   Q.   AND DO YOU KNOW WHAT THE EFFECT WAS OF THOSE

8   CORRECTIONS ON THE STATISTICS THAT YOU REPORTED?

9   A.   MANY OF THE ESTIMATES WERE UNCHANGED. MOST OF

10   THE ESTIMATES CHANGED BY LESS THAN TWO-TENTHS OF A

11   PERCENT. A FEW CHANGED BY A BIT MORE THAN THAT.

12   Q.   DR. STARK, HAVE YOU REVIEWED THE TESTIMONY OF

13   LORRIE FAITH CRANOR IN THE TRIAL IN THIS CASE?

14   A.   YES, I HAVE.

15   Q.   DO YOU HAVE AN OPINION REGARDING HER USE OF

16   SOURCES IN SUPPORT OF THE OPINIONS THAT SHE HAS OFFERED?

17   A.   YES, I DO.

18   Q.   AND ARE YOU FAMILIAR WITH THE COPA COMMISSION

19   REPORT?

20   A.   YES, I AM.

21   Q.   AND ARE YOU AWARE WHETHER PROFESSOR CRANOR CITED

22   THAT REPORT AS SUPPORT FOR HER OPINION?

23   A.   YES, SHE DID.

24   Q.   AND IN PARTICULAR, ARE YOU FAMILIAR WITH HER

25   TESTIMONY CONCERNING A RATING SCALE THAT WAS USED BY THE

1   COPA COMMISSION?

2   A.   YES, I AM.

3   Q.   AND WHAT DO YOU UNDERSTAND HER TO HAVE TESTIFIED

4   WITH REGARD TO THAT SCALE?

5   A.   I UNDERSTAND THAT SHE TESTIFIED THAT IT WAS A 20

6   POINT RATING SCALE FROM MINUS 10 TO 10.

7   Q.   AND DO YOU AGREE WITH HER INTERPRETATION?

8   A.   NO, I DON'T.

9   Q.   PULL UP PLAINTIFFS' EXHIBIT 6, PAGE 15.

10   IF I CAN REFER YOUR ATTENTION TO THE

11   SECOND PARAGRAPH OF PAGE 15. IS THIS A PASSAGE FROM THE

12   COPA COMMISSION REPORT?

13   A.   YES.

14   Q.   PLEASE READ THE FIRST SENTENCE OF THAT

15   PARAGRAPH.

16   A.   RATINGS WERE MADE ON A SCALE OF ZERO TO 10

17   REGARDING THE RELATIVE EFFECTIVENESS, ACCESSIBILITY,

18   USER COST, COST IMPOSED ON SOURCES OF LAWFUL HARMFUL TO

19   MINORS MATERIALS, AND ADVERSE IMPACTS ON PRIVACY, FIRST

20   AMENDMENT VALUES AND LAW ENFORCEMENT.

21   Q.   AND HAVE YOU REVIEWED THE PORTIONS OF THE COPA

22   COMMISSION REPORT THAT DISCUSS THE EFFECTIVENESS OF

23   FILTERING SOFTWARE?

24   A.   YES, I HAVE.

25   Q.   AND DO YOU HAVE AN UNDERSTANDING OF HOW THEY

1   RATED THE EFFECTIVENESS OF THE FILTERS?

2   A.   YES. THE RESULTS ARE SUMMARIZED IN A TABLE IN

3   MY REBUTTAL REPORT.

4   Q.   IF WE COULD CALL UP DEFENDANT'S EXHIBIT 63, PAGE

5   11.

6   A.   THE EFFECTIVENESS OF -- SHALL I READ THIS OUT

7   LOUD?

8   Q.   YES.

9   THE COURT: WHAT PART ARE YOU FOCUSING

10 ON?

11   MR. MCELVAIN: PAGE 11 OF PROFESSOR

12 STARK'S REBUTTAL REPORT. I'M ASKING A QUESTION ABOUT

13 WHAT WAS THE COPA COMMISSION'S RATING OF THE

14 EFFECTIVENESS OF SERVER SIDE FILTERING USING URL LISTS.

15   THE WITNESS: IT RATED THE EFFECTIVENESS

16 AS 7.4 OUT OF 10.

17 BY MR. MCELVAIN:

18 Q.   AND WHAT DO YOU UNDERSTAND THE COPA COMMISSION'S

19 RATING TO BE OF CLIENT SIDE FILTERING USING URL LISTS?

20 A.   6 AND-A-HALF OUT OF 10.

21 Q.   AND FILTERING USING TEXT-BASED CONTENT ANALYSIS?

22 A.   5.4 OUT OF 10.

23 Q.   AND DO YOU HAVE AN UNDERSTANDING AS TO WHAT

24 THESE FIGURES REPRESENT?

25 A.   YES.

1   Q.   WHAT IS THAT OPINION? WHAT IS THAT

2   UNDERSTANDING?

3   A.   THEY REPRESENT THE OPINIONS OF THE COMMISSION --

4   OF THE PEOPLE WHO DRAFTED THE REPORT.

5   Q.   DO YOU HAVE AN UNDERSTANDING AS TO WHETHER THE

6   COPA COMMISSION UNDERTOOK ANY EMPIRICAL TESTING ON THE

7   EFFECTIVENESS OF FILTERING SOFTWARE?

8   A.   YES. THE COMMISSION DID NOT DO ANY EMPIRICAL

9   TEST OF THE EFFECTIVENESS OF FILTERING OR ANY OTHER

10   TECHNOLOGIES OR ACCEPTABLE USE POLICIES, ANY OF THESE

11   THINGS MENTIONED HERE. BASICALLY, THESE ARE OPINIONS.

12   THERE IS NOT -- THEY DID NOT DO ANY EXPERIMENTS.

13   Q.   ARE YOU AWARE WHETHER PROFESSOR CRANOR ALSO

14   RELIED ON THE CONCLUSIONS OF THE NATIONAL RESEARCH

15   COUNCIL IN ITS 2002 REPORT?

16   A.   YES, SHE DID.

17   Q.   AND HAVE YOU READ THAT REPORT?

18   A.   MUCH OF IT.

19   Q.   AND BASED ON YOUR REVIEW, HAVE YOU FORMED A

20   CONCLUSION AS TO WHETHER THE NATIONAL RESEARCH COUNCIL

21   CONDUCTED ANY EMPIRICAL TESTING OF FILTERING SOFTWARE?

22   A.   YES, THEY DID NOT DO ANY EMPIRICAL TESTS OF

23   FILTERING.

24   Q.   AND ARE YOU AWARE WHETHER PROFESSOR CRANOR

25   QUOTED A PORTION OF THE NRC REPORT IN HER TESTIMONY TO

1   SUPPORT HER CONCLUSION ON THE EFFECTIVENESS OF FILTERS?

2   A.   YES.

3   Q.   AND DO YOU HAVE AN OPINION AS TO WHETHER SHE

4   ACCURATELY CITED THAT PASSAGE FROM THE REPORT?

5   A.   YES.

6   Q.   AND WHAT IS THAT OPINION?

7   A.   I THINK THAT THE QUOTE IS A LITTLE BIT OUT OF

8   CONTEXT AND THE PORTION THAT SHE READ IS MISLEADING.

9   Q.   IF WE CAN CALL UP PLAINTIFFS' EXHIBIT 54, PAGE

10   447.

11   IS THIS THE PASSAGE THAT YOU UNDERSTAND

12   THAT PROFESSOR CRANOR CITED IN SUPPORT OF HER OPINION?

13   A.   YES.

14   Q.   COULD YOU PLEASE READ THAT PARAGRAPH?

15   A.   RESEARCH INDICATES THAT SUPERVISED LEARNING IS

16   AT LEAST AS GOOD AS EXPERT HUMAN RULE WRITING. THE

17   EFFECTIVENESS OF THESE METHODS IS FAR FROM PERFECT.

18   THERE IS ALWAYS A HIGH ERROR RATE BUT SOMETIMES IT IS

19   NEAR AGREEMENT WITH HUMAN PERFORMANCE LEVELS. STILL,

20   THE RESULTS DIFFER FROM CATEGORY TO CATEGORY AND IT IS

21   NOT CLEAR HOW DIRECTLY IT APPLIES TO, FOR EXAMPLE,

22   PORNOGRAPHY. AS DISCUSSED BELOW, THERE IS AN INEVITABLE

23   TRADEOFF BETWEEN FALSE POSITIVES AND FALSE NEGATIVES,

24   I.E., ATTRIBUTING AN ITEM TO AN CATEGORY WHEN IT SHOULD

25   NOT BE, OR NOT ATTRIBUTING AN ITEM TO A CATEGORY WHEN IT

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1    SHOULD BE.  AND CATEGORIES VARY WIDELY IN DIFFICULTY.

2    SUBSTANTIALLY IMPROVED METHODS ARE NOT EXPECTED IN THE

3    NEXT 10 TO 20 YEARS."

4    Q.      DID PROFESSOR CRANOR CITE THAT FULL PARAGRAPH IN

5    SUPPORT OF HER OPINION?

6    A.      NO, SHE DID NOT.

7    Q.      DO YOU BELIEVE THAT THE FULL PARAGRAPH CHANGES

8    THE CONTEXT OF THAT PARAGRAPH?

9    A.      I DO.

10   Q.      DO YOU RECALL WHETHER PROFESSOR CRANOR CITED A

11   REPORT FROM THE COMMERCE DEPARTMENT AS PART OF -- AS

12   PART OF THE BASIS FOR HER OPINION?

13   A.      YES, SHE DID.

14   Q.      AND HAVE YOU REVIEWED THAT COMMERCE DEPARTMENT

15   STUDY?

16   A.      YES, I HAVE.

17   Q.      AND TO YOUR KNOWLEDGE, DID THE AGENCY UNDERTAKE

18   ANY EMPIRICAL TESTING OF INTERNET CONTENT FILTERING

19   SOFTWARE?

20   A.      NO, IT DID NOT.

21   Q.      OR DID THE AGENCY UNDERTAKE ANY EMPIRICAL

22   TESTING OF ANY OTHER METHODS OF RESTRICTIONS OF ACCESS

23   TO ADULT MATERIAL ON THE WEB?

24   A.      THEY DIDN'T ENGAGE IN ANY EMPIRICAL TESTING AT

25   ALL.
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1 Q.   FROM YOUR REVIEW OF THE REPORT, DID IT RELY ON

2 OTHER SOURCES IN DESCRIBING THE EFFECTIVENESS OF THE

3 FILTERING SOFTWARE?

4 A.   YES, IT DID.

5 Q.   AND WHAT SOURCES IT RELY ON?

6 A.   IT RELIED PRIMARILY ON THE COPA REPORT AND THE

7 NRC REPORT. IT ALSO SOLICITED COMMENTS FROM THE PUBLIC.

8 Q.   DR. STARK, DOES YOUR REBUTTAL REPORT SUMMARIZE

9 YOUR OPINION ON SEVERAL OTHER STUDIES THAT WERE CITED BY

10 PROFESSOR CRANOR?

11 A.   YES, IT DOES.

12 Q.   IF WE CAN CALL UP PAGE 9 OF DEFENDANT'S EXHIBIT

13 63.

14   THE COURT: 63?

15   MR. MCELVAIN: YES.

16 BY MR. MCELVAIN:

17 Q.   DO YOU HAVE AN UNDERSTANDING AS TO WHETHER

18 PROFESSOR CRANOR RELIED ON TWO REPORTS ISSUED BY A

19 COMPANY CALLED E-TESTING?

20 A.   YES.

21 Q.   AND HAVE YOU REVIEWED THOSE REPORTS?

22 A.   YES, I HAVE.

23 Q.   AND DO YOU HAVE AN UNDERSTANDING AS TO HOW THAT

24 COMPANY COLLECTED THE WEB PAGES THAT WERE USED FOR ITS

25 TESTING?

1   A.   YES, I DO.

2   Q.   WHAT IS THAT UNDERSTANDING?

3   A.   WELL, FOR THE FIRST E-TESTING LABS REPORT FROM

4   2001, THEY STARTED BY SEARCHING ON GOOGLE FOR THE PHRASE

5   FREE ADULT SEX, IF I REMEMBER CORRECTLY. AND THEN THEY

6   WENT FROM THERE, CLICKED ON SOME LINKS, COLLECTED SOME

7   MORE SITES, DID SOME SEARCHES FOR SOME OF THE TERMS THAT

8   CAME UP IN THE COURSE OF THEIR SURFING THE ADULT SITES,

9   AND THAT -- THEY ULTIMATELY CONSTRUCTED A TEST SET OF

10   ABOUT 200 ADULT WEB PAGES.

11   Q.   DOES YOUR UNDERSTANDING OF HOW THEY COLLECTED

12   THEIR WEB PAGES AFFECT THE OPINION YOU HAVE OF THIS

13   STUDY?

14   A.   YES.

15   Q.   AND HOW DOES IT DO SO?

16   A.   WELL, BECAUSE THE WEB PAGES THAT THEY TESTED THE

17   FILTERS ON ARE NOT A RANDOM SAMPLE FROM ANY LARGER SET

18   OF WEB PAGES, THEIR RESULTS REALLY CAN'T BE EXTRAPOLATED

19   BEYOND THOSE PAGES THAT THEY TESTED THE FILTERS ON.

20   Q.   DO YOU KNOW WHEN THAT STUDY WAS CONDUCTED?

21   A.   IT WAS PUBLISHED IN 2001. I DON'T KNOW WHEN THE

22   DATA WERE COLLECTED.

23   Q.   DOES THAT HAVE AN EFFECT ON YOUR OPINION OF THE

24   USEFULNESS OF THE STUDY?

25   A.   WELL, IT'S STALE. FILTERS HAVE CHANGED SINCE

1   THEN. THE WEB HAS CHANGED ENORMOUSLY SINCE THEN. THE

2   PERFORMANCE OF THE FILTERS ON THEIR TEST SET, EVEN IF

3   THE TEST SET HAD BEEN CHOSEN AT RANDOM, WOULD NOT BE AS

4   GOOD A MEASURE OF THE PERFORMANCE OF FILTERS NOW AS

5   TESTS ON DATA THAT ARE MORE RECENT, FOR EXAMPLE, THE

6   STUDY THAT THE GOVERNMENT COMMISSIONED.

7   Q.   AND DO YOU BELIEVE THAT THIS STUDY THAT YOU

8   REFERRED TO IS MORE RELIABLE THAN THE E-TESTING STUDY?

9   A.   YES, I DO.

10   Q.   WHY DO YOU BELIEVE THAT?

11   A.   WELL, I BELIEVE THAT IT'S MORE RELIABLE BECAUSE

12   OF THE METHODOLOGY. IT WAS BASED ON RANDOM SAMPLES OF

13   WEB PAGES AND QUERIES, ET CETERA. THE QUERIES --

14   MR. HANSEN: EXCUSE ME, YOUR HONOR. I'M

15   SORRY TO INTERRUPT. I'M A LITTLE LOST AT THE MOMENT.

16   THE WITNESS IS COMPARING THE GOVERNMENT STUDY TO THE

17   E-TESTING STUDY. DR. CRANOR TESTIFIED THE E-TESTING

18   STUDY WAS A GOVERNMENT STUDY. IT WAS COMMISSIONED BY

19   THE DEPARTMENT OF JUSTICE. SO I'M NOT SURE WHAT IT

20   IS -- WE HAVE TWO GOVERNMENT STUDIES. I'M NOT SURE WHAT

21   WE ARE COMPARING HERE. I JUST THINK IT WOULD BE HELPFUL

22   IF THE WITNESS COULD CLARIFY WHAT THE COMPARISON IS THAT

23   HE'S DRAWING.

24   BY MR. MCELVAIN:

25   Q.   WHEN YOU REFER TO THE GOVERNMENT STUDY, ARE YOU

1   REFERRING TO YOUR OWN STUDY, THE STUDY THAT YOU

2   PARTICIPATED IN?

3   A.   THE STUDY THAT I PARTICIPATED IN.

4   Q.   AND YOU BELIEVE THAT YOUR OWN STUDY IS MORE

5   RELIABLE?

6   A.   YES. I BELIEVE IT USED MORE RELIABLE

7   METHODOLOGY AND, MOREOVER, BECAUSE OF THE LARGE PERIOD

8   OF TIME THAT HAS PASSED SINCE THE E-TESTING LABS STUDY,

9   I THINK THAT IT SPEAKS MORE DIRECTLY TO THE CURRENT

10   PERFORMANCE OF FILTERS.

11   Q.   ARE YOU AWARE THAT PROFESSOR CRANOR ALSO CITED A

12   STUDY PREPARED FOR AN ORGANIZATION CALLED NETALERT?

13   A.   YES.

14   Q.   AND HAVE YOU READ THAT STUDY?

15   A.   YES, I HAVE.

16   Q.   AND HAVE YOU LEARNED HOW THAT STUDY GATHERED ITS

17   DATA?

18   A.   YES.

19   Q.   AND TO YOUR KNOWLEDGE, WAS THE STUDY BASED ON

20   RANDOM SAMPLING?

21   A.   NO, IT WAS NOT. I THINK THE WORD RANDOM IS

22   MENTIONED, BUT I THINK THAT WHAT THEY MEANT BY THAT WAS

23   HAPHAZARD RATHER THAN DRAWN BY PROBABILITY METHODS.

24   Q.   IF WE COULD REFER TO PLAINTIFFS' EXHIBIT 5, PAGE

25   26.

1   DO YOU HAVE AN UNDERSTANDING OF HOW MANY

2   WEBSITES THE STUDY TESTED -- USED FOR ITS TESTING?

3   A.   THEY SOUGHT TO GET 30 SITES IN EACH CATEGORY.

4   ONE OF THE CATEGORIES, I BELIEVE, WAS PORNOGRAPHY OR

5   PORNOGRAPHY AND ADULT CONTENT. SO THERE WERE

6   APPROXIMATELY 30 WEB PAGES USED IN THEIR TEST.

7   Q.   DO YOU HAVE AN OPINION AS TO HOW RELIABLE THE

8   RESULTS WOULD BE FROM THESE 30 WEB PAGES COLLECTED IN A

9   NONRANDOM MANNER?

10   A.   I DON'T BELIEVE THAT THE RESULTS COULD BE

11   EXTRAPOLATED RELIABLY TO ANY LARGER SET OF WEB PAGES TO

12   ESTIMATE THE PERFORMANCE OF THE FILTERS IN A DIFFERENT

13   CONTEXT, AND MOREOVER, THE DATA ARE ALREADY QUITE OLD.

14   Q.   DO YOU KNOW WHEN THE TEST WAS CONDUCTED?

15   A.   I DON'T RECALL. WAS IT 2001, BACK TO MY --

16   Q.   WAS THE TEST CONDUCTED PRIOR TO THE TESTING THAT

17   YOU DID IN -- THAT YOU PARTICIPATED IN FOR THIS

18   LITIGATION?

19   A.   THE DATE OF THE STUDY IS REPORTED IN THE TABLE

20   FROM MY REPORT THAT WE WERE JUST LOOKING AT. WE CAN GO

21   BACK TO THAT.

22   Q.   REFER TO PAGE 9 OF DEFENSE EXHIBIT 63.

23   A.   2001.

24   Q.   AND DOES THAT -- DOES THAT AFFECT YOUR OPINION

25   OF THE USEFULNESS OF THE DATA?

1   A.   I THINK IT DECREASES ITS RELEVANCE AS A MEASURE

2   OF WHAT THE PRESENT DAY PERFORMANCE OF ANY OF THESE

3   FILTERS MIGHT BE.

4   Q.   ARE YOU AWARE WHETHER PROFESSOR CRANOR CITED

5   SPECIFICALLY TO PAGE 36 OF THE NETALERT STUDY IN SUPPORT

6   OF HER OPINION ON THE EFFECTIVENESS OF FILTERS?

7   A.   YES, I BELIEVE THAT IT CAME UP IN HER DIRECT

8   TESTIMONY.

9   Q.   AND REFERRING YOU TO WHAT WE HAVE MARKED AS

10   DEFENDANT'S DEMONSTRATIVE EXHIBIT NUMBER 9. AND WHAT IS

11   DEFENDANT'S DEMONSTRATIVE EXHIBIT 9?

12   A.   IT'S A COLOR-CODED BAR CHART THAT DEMONSTRATES

13   THE FRACTION OF SITES IN EACH OF THE CATEGORIES THAT

14   NETALERT TESTED SHOWING WHAT FRACTION WERE BLOCKED AND

15   WHAT FRACTION WERE PASSED.

16   IN PARTICULAR, THIS IS SHOWING IT FOR THE

17   AOL FILTER SET TO THE AGES 13 TO 15 LEVEL, AND THEN

18   BELOW IT SHOWS AOL FILTER FOR THE NEXT AGE RANGE.

19   Q.   DID PROFESSOR CRANOR CITE TO THIS VERSION OR DID

20   SHE CITE TO A BLACK AND WHITE PRINTOUT OF THIS VERSION?

21   A.   I WAS NOT PRESENT IN THE COURTROOM, BUT THE

22   EXHIBITS THAT I HAVE SEEN ARE IN BLACK AND WHITE RATHER

23   THAN IN COLOR.

24   Q.   AND ARE YOU AWARE AS TO HOW PROFESSOR CRANOR

25   INTERPRETED THE PORNOGRAPHY AND EROTICA BARS ON THIS

1   PAGE?

2   A.   ACCORDING TO THE TESTIMONY THAT I READ, SHE SAID

3   ALL OF THESE BARS GO TO 100 PERCENT OR NEARLY 100

4   PERCENT. SO THE BARS DO BUT THE PORTION OF THE BAR THAT

5   CORRESPONDS TO THE FRACTION OF SITES THAT WERE BLOCKED

6   ONLY GOES TO 90 PERCENT IN THIS PARTICULAR CASE. IT

7   DOES NOT GO TO 100 PERCENT.

8   Q.   OVERALL, DO YOU HAVE AN OPINION ON THE

9   USEFULNESS OF THIS NETALERT STUDY IN EVALUATING THE

10   EFFECTIVENESS OF THE FILTERS?

11   A.   YES. I DON'T THINK IT BEARS VERY STRONGLY ON

12   THE PRESENT DAY PERFORMANCE OF ANY OF THESE FILTERS.

13   Q.   ARE YOU AWARE WHETHER PROFESSOR CRANOR TESTIFIED

14   AT TRIAL CONCERNING A REPORT BY COREY FINNEL ON

15   FILTERING SOFTWARE?

16   A.   YES, SHE TESTIFIED ABOUT HIS REPORT.

17   Q.   AND HAVE YOU REVIEWED THAT REPORT?

18   A.   YES, I HAVE.

19   Q.   DID PROFESSOR CRANOR TESTIFY CONCERNING THE

20   REPORT'S USE OF WHAT SHE CALLED OVERBLOCKING RATES?

21   A.   YES.

22   Q.   AND DO YOU BELIEVE THAT THE NUMBERS THAT SHE WAS

23   REFERRING TO WERE ACTUALLY OVERBLOCKING RATES?

24   A.   NO, THEY WERE NOT.

25   Q.   WHY NOT?

1   A.   WELL, THE FIRST FIGURE THAT SHE REFERRED TO, I

2   DON'T RECALL WHICH FILTER IT WAS FOR, IN THE FINNEL

3   REPORT, IT EXPLAINS THAT WHAT THAT FIGURE IS, IS OF THE

4   SITES THAT WERE BLOCKED, THE PERCENTAGE THAT WERE

5   BLOCKED IN ERROR. THAT IS NOT HOW OVERBLOCKING IS

6   DEFINED. OVERBLOCKING RATE IS OF THE SITES THAT SHOULD

7   NOT BE BLOCKED, THE PERCENTAGE THAT WERE BLOCKED IN

8   ERROR. SO THE DENOMINATOR IS WRONG.

9   Q.   AND COULD THE PERCENTAGES THAT -- OF WHAT

10   PROFESSOR CRANOR CALLED OVERBLOCKING RATES FROM MR.

11   FINNEL'S REPORT BE MEANINGFULLY COMPARED TO, SAY, THE

12   OVERBLOCKING RATES THAT YOU REPORTED IN YOUR STUDY?

13   A.   NO, THEY CAN'T, BECAUSE THE RATES ARE CONFOUNDED

14   WITH THE MIXTURE OF SITES THAT ARE GOING INTO THE

15   FILTER.

16   Q.   WHAT DO YOU MEAN BY "CONFOUNDED BY THE MIXTURE"?

17   A.   WELL, FOR EXAMPLE, IF ONLY A VERY SMALL FRACTION

18   OF THE SITES THAT -- EXCUSE ME A MOMENT.

19   CAN I MENTION TWO EXTREME HYPOTHETICALS?

20   THE COURT: I'M A LITTLE CONFUSED WHAT

21   QUESTION IS PENDING, AND HOW MUCH OF IT WAS ANSWERED.

22   DO YOU HAVE ANOTHER QUESTION, PLEASE.

23   BY MR. MCELVAIN:

24   Q.   I BELIEVE YOU TESTIFIED A MOMENT AGO THAT YOU

25   DON'T BELIEVE THAT THE OVERBLOCKING -- WHAT PROFESSOR

1   CRANOR CALLED OVERBLOCKING RATES IN MR. FINNEL'S STUDY

2   COULD BE COMPARED MEANINGFULLY TO THE OVERBLOCKING RATES

3   REPORTED IN YOUR STUDY.

4   A.   THAT'S CORRECT.

5   THE COURT: AS REPORTED WHERE?

6   MR. MCELVAIN: AS REPORTED IN PROFESSOR

7   STARK'S STUDY.

8   BY MR. MCELVAIN:

9   Q.   AND WHY CAN'T THEY BE MEANINGFULLY COMPARED?

10   A.   THEY ARE DEFINED DIFFERENTLY. THEY ARE

11   MEASURING TWO DIFFERENT THINGS.

12   THE NUMBER IN THE FINNEL REPORT ONLY

13   LOOKS AT THE SITES THAT WERE BLOCKED AND ASKS WHAT

14   FRACTION OF THEM SHOULD NOT HAVE BEEN BLOCKED? THAT IS

15   THE NUMBER THAT IS -- THE FIRST NUMBER THAT IS REPORTED.

16   THAT RATIO, THAT PERCENTAGE, IS VERY SENSITIVE TO THE

17   MIX OF SITES THAT ARE GOING INTO THE FILTER.

18   SO, FOR EXAMPLE, IF YOU FEED THE FILTER

19   ONLY SITES THAT SHOULD BE BLOCKED, THEN IT WILL NEVER

20   BLOCK A SITE ERRONEOUSLY. IF YOU FEED THE FILTER ONLY

21   SITES THAT SHOULD -- THAT SHOULD NOT BE BLOCKED, THEN

22   EVERY TIME IT BLOCKS SOMETHING IT IS BLOCKING SOMETHING

23   IN ERROR. SO THIS IS MEASURING SOMETHING THAT CONFLATES

24   BOTH THE PERFORMANCE OF THE FILTER AND THE MIX OF SITES

25   THAT ARE FED INTO THE FILTER. THE OVERBLOCKING RATE IS

1   THE MEASURE OF THE PERFORMANCE OF THE FILTER BY ITSELF

2   SEPARATE FROM THE MIX OF THINGS THAT ARE BEING FED INTO

3   IT.

4   Q.   DO YOU HAVE AN UNDERSTANDING AS TO WHETHER

5   MR. FINNEL REVIEWED DOMAINS OR WEB PAGES IN HIS STUDY?

6   A.   HE WAS LOOKING AT THE RATE AT WHICH DOMAINS WERE

7   BLOCKED, NOT THE RATE AT WHICH WEB PAGES WERE BLOCKED.

8   SO THE MEASURE -- THIS MEASURE THAT HAS TO DO WITH THE

9   FRACTION OF THINGS THAT ARE BLOCKED INCORRECTLY ISN'T

10   EVEN A MEASURE OF THE FRACTION OF MATERIAL THAT -- OF

11   THE MATERIAL THAT WAS BLOCKED, THE FRACTION OF MATERIAL

12   THAT WAS BLOCKED INCORRECTLY. RATHER, IT'S OF THE

13   FRACTION OF DOMAINS THAT WERE BLOCKED, WHAT FRACTION OF

14   THEM WERE BLOCKED INCORRECTLY.

15   Q.   AND DO YOU BELIEVE IT'S USEFUL TO LOOK AT IT IN

16   THIS WAY?

17   A.   WELL, I THINK IT'S MORE INTERESTING TO KNOW HOW

18   MANY TIMES SOMEBODY TRIED TO LOOK AT SOMETHING AND WAS

19   DENIED ACCESS TO IT DUE TO AN ERROR IN THE FILTERING

20   RATHER THAN HOW MANY DISTINCT WEBSITES WERE ATTEMPTED TO

21   BE VIEWED.

22   THE COURT: WHAT WAS THE LAST THING YOU

23   SAID, HOW MANY WEBSITES WHAT?

24   THE WITNESS: I THINK THAT THE AMOUNT OF

25   MATERIAL PEOPLE ARE DENIED ACCESS TO IS MORE RELEVANT

1   THAN THE NUMBER OF WEBSITES THEY WERE DENIED ACCESS TO.

2   A WEBSITE MAY HAVE A LOT OF MATERIAL PEOPLE WANT OR JUST

3   A LITTLE MATERIAL THAT PEOPLE WANT. SO IT SOMEHOW

4   REQUESTS FOR A PAGE OF CONTENT REQUESTS TO SEE SOMETHING

5   THAT SEEM TO ME TO BE RELEVANT RATHER THAN ROLLING THOSE

6   WEB PAGES UP TO THE LEVEL OF WEBSITES AND ASKING HOW

7   MANY WEBSITES WERE BLOCKED.

8   THE COURT: OKAY.

9   THE WITNESS: AM I STILL NOT CLEAR?

10   THE COURT: YOU DIDN'T ANSWER MY

11   QUESTION. IT WAS YOUR LAST WORDS I DIDN'T HEAR. SO I

12   SAID WHAT DID YOU SAY ABOUT THAT OR, PARDON ME. SO I

13   ADDED TO THE CONFUSION, PARDON ME.

14   THE WITNESS: I APOLOGIZE.

15   BY MR. MCELVAIN:

16   Q.   WHY DID YOU USE WEB PAGES FOR YOUR STUDY?

17   A.   THE UNIT OF CONTENT ON THE WEB IS THE WEB PAGE.

18   BROWSERS DISPLAY WEB PAGES, YOU TYPE A URL, AN ADDRESS,

19   AND YOU SEE A WEB PAGE.

20   Q.   ARE YOU AWARE OF WHETHER PROFESSOR CRANOR ALSO

21   RELIED ON A REPORT FOR CONSUMER'S UNION IN SUPPORT OF

22   HER OPINION?

23   A.   YES, SHE DID.

24   Q.   AND HAVE YOU LOOKED AT THAT REPORT?

25   A.   YES, I HAVE.

1   Q.   CALL UP PLAINTIFFS' EXHIBIT 8 ON PAGE 2

2   SPECIFICALLY.

3   THE COURT: WHAT EXHIBIT?

4   MR. MCELVAIN: PLAINTIFFS' EXHIBIT 8.

5   THE COURT: 8, THANKS.

6   BY MR. MCELVAIN:

7   Q.   PLEASE REVIEW THE PORTION UNDER, HOW WE TESTED

8   ON THAT PAGE.

9   A.   THIS IS NOT QUITE SHOWING UP ON MY SCREEN

10   CENTERED. CAN IT BE SHIFTED A LITTLE BIT OR SHRUNK?

11   THANK YOU.

12   "ALL FILTERING SOFTWARE PRODUCTS WE

13   TESTED, INCLUDING THE ONLINE SERVICES, INTERCEPT ALL

14   ATTEMPTS TO VISIT WEBSITES, THEN CONSULT A LIST OF SITES

15   THAT THE SOFTWARE MAKER HAS DEEMED UNSUITABLE FOR

16   CHILDREN. SOME PRODUCTS CAN SNIFF OUT OBJECTIONABLE

17   MATERIAL ON THE FLY. DEPENDING ON THE PRODUCT, CHILDREN

18   TRYING TO ACCESS AN OFFLIMITS SITE MAY INSTEAD BE

19   GREETED WITH A POP-UP STOP SIGN OR A BLANK SCREEN.

20   PARENTS CAN OVERRIDE BLOCKS."

21   Q.   CAN YOU READ --

22   A.   IT'S THE NEXT PARAGRAPH, I THINK, THAT IS MORE

23   RELEVANT.

24   Q.   -- THE FIRST TWO SENTENCES OF THE NEXT

25   PARAGRAPH, PLEASE.

1   A.   "FOR OUR TESTS, WE BUILT A LIST OF OBJECTIONABLE

2   SITES THAT ANYONE CAN EASILY FIND, PLUS INFORMATIONAL

3   SITES TO TEST THE FILTER'S ABILITY TO DISCERN THE

4   OBJECTIONABLE FROM THE MERELY SENSITIVE. WE CONFIGURED

5   EACH FILTER AS IT WOULD BE CONFIGURED BY THE PARENT OF A

6   12 TO 15-YEAR OLD AND THEN TRIED TO ACCESS THE SITES."

7   Q.   AND BASED ON THAT, DO YOU HAVE AN OPINION AS TO

8   THE USEFULNESS OF CONSUMER UNION'S METHODOLOGY?

9   A.   WELL, IT'S AN INTERESTING PRODUCT TEST, BUT THE

10   RESULTS CAN'T BE EXTRAPOLATED RELIABLY TO UNDERSTAND

11   WHAT THE PERFORMANCE OF THOSE FILTERS WOULD BE IN THE

12   HOME OR ANYWHERE ELSE. THEY ASSEMBLED A HAPHAZARD

13   COLLECTION OF WEBSITES FOR THEIR TEST. THE RESULTS

14   REALLY CAN'T BE GENERALIZED BEYOND WHAT THEY DID.

15   Q.   DO YOU HAVE AN UNDERSTANDING AS TO WHAT

16   CONSUMERS UNION CONCLUDED WITH REGARD TO OVERBLOCKING?

17   A.   YES. THEY FOUND THAT ALL FILTERS EITHER

18   OVERBLOCK OR UNDERBLOCK AND THAT THE FILTERS THAT DID --

19   THAT HAD THE LEAST UNDERBLOCKING WERE RATHER DRACONIAN

20   IN THEIR OVERBLOCKING.

21   Q.   CALL UP PAGE 3 OF PLAINTIFFS' EXHIBIT 8.

22   A.   I THINK THE THIRD PARAGRAPH THERE --

23   THE COURT: COUNSEL WILL ASK YOU A

24   QUESTION.

25   BY MR. MCELVAIN:

1   Q.   IF I CAN REFER YOU TO THE THIRD PARAGRAPH, WOULD

2   YOU PLEASE READ THAT PARAGRAPH.

3   A.   "INFORMATIVE SITES ARE SNUBBED, TOO. THE BEST

4   PORN BLOCKERS WERE HEAVY-HANDED AGAINST SITES ABOUT

5   HEALTH ISSUES, SEX EDUCATION, CIVIL RIGHTS AND POLITICS.

6   FOR EXAMPLE, SEVEN PRODUCTS BLOCKED

7   KEEPANDBEARARMS.COM, A SITE ADVOCATING GUNOWNERS'

8   RIGHTS. MOST UNWANTED BLOCKING OCCURRED WITH SITES

9   FEATURING SEX EDUCATION OR GENDER RELATED ISSUES. SOME

10   DRUG EDUCATION SITES WERE BLOCKED. FOR EXAMPLE, FOUR

11   PRODUCTS BLOCKED THE NATIONAL INSTITUTE ON DRUG ABUSE,

12   PART OF THE FEDERAL GOVERNMENT'S NATIONAL INSTITUTES OF

13   HEALTH. KIDSNET INTERFERED THE MOST WITH USEFUL SITES,

14   BLOCKING 73 PERCENT. ALL PROGRAMS EXCEPT CYBERSITTER"

15   -- I CAN'T READ THIS -- "SHOW YOU WHY A SPECIFIC SITE

16   WAS BLOCKED AND LET ADULTS OVERRIDE THE BLOCK."

17   Q.   IS IT YOUR UNDERSTANDING THAT IN HER EXPERT

18   REPORT, PROFESSOR CRANOR ALSO CITED THE DEPOSITION

19   TESTIMONY OF A REPRESENTATIVE FROM A COMPANY CALLED

20   RULESPACE?

21   A.   YES.

22   Q.   AND HAVE YOU READ THE PORTION OF THE DEPOSITION

23   THAT PROFESSOR CRANOR CITED?

24   A.   YES, I HAVE.

25   Q.   AND BASED ON THAT REVIEW, DO YOU HAVE AN OPINION

1   ON THE MEANING OF THE CLAIMS THAT RULESPACE HAS MADE AS

2   TO THE ACCURACY OF ITS FILTER?

3   A.   YES, I DO.

4   Q.   WHAT IS THAT OPINION?

5   A.   WELL, THE FIGURE OF 99.53 PERCENT ACCURACY, IF I

6   RECALL CORRECTLY, REALLY CAN'T BE INTERPRETED WITHOUT

7   ADDITIONAL INFORMATION THAT JUST ISN'T PRESENT THERE.

8   Q.   WHY WOULD YOU NEED MORE INFORMATION?

9   A.   WELL, IT'S A COMBINATION -- IT'S BASICALLY

10   LOOKING AT THE FRACTION -- THE PERCENTAGE OF

11   MISCLASSIFICATIONS THAT THE FILTER MADE. SO THE

12   PERCENTAGE OF THE TIME THAT IT MADE AN ERROR.

13   CONSIDER THE FOLLOWING. SUPPOSE THAT I

14   HAVE A TEST SET OF WEB PAGES, I HAVE 10,000 PAGES, AND

15   47 OF THEM ARE ADULT AND THE REST ARE CLEAN. AND I HAVE

16   A FILTER THAT DOES ABSOLUTELY NOTHING AT ALL. THEN

17   9,953 TIMES OUT OF 10,000, IT DID THE RIGHT THING. ITS

18   ERROR RATE -- ITS ACCURACY IS 99.53 PERCENT, JUST LIKE

19   RULESPACE CLAIMS. BUT IT DID NOT BLOCK ANY OF THE ADULT

20   SITES. THERE IS NO WAY TO TELL WITHOUT KNOWING WHAT THE

21   MIX OF SITES IS GOING IN WHETHER THAT ACCURACY FIGURE IS

22   GOOD, BAD, WHETHER THE FILTER DOES ANYTHING AT ALL.

23   ALSO, THEY DON'T TELL US ANYTHING ABOUT

24   WHERE THE TEST SITES CAME FROM. WE DON'T KNOW WHETHER

25   THEY'RE REPRESENTATIVE, HOW THE LISTS WERE ASSEMBLED.

1   THERE IS CERTAINLY NO INDICATION THAT THE SITES WERE

2   PULLED AT RANDOM FROM ANY LARGER UNIVERSE -- THAT THE

3   PAGES WERE PULLED AT RANDOM FROM ANY LARGER UNIVERSE OF

4   WEB PAGES.

5   Q.   AND WHY WOULD THAT BE RELEVANT?

6   A.   AGAIN, TO BE ABLE TO EXTRAPOLATE FROM THEIR

7   RESULTS OR THEIR PARTICULAR TEST SET TO ANY LARGER

8   UNIVERSE.

9   Q.   DO YOU HAVE AN OPINION IN GENERAL AS TO THE

10   WEIGHT THAT SHOULD BE GIVEN TO CLAIMS BY FILTERING

11   VENDORS OF THE ACCURACY OF THEIR OWN PRODUCTS?

12   A.   YES.

13   THE NRC OFFER A WARNING IN THIS REGARD.

14   MAY I READ FROM --

15   Q.   YEAH. IF I CAN REFER YOU TO PAGE 14 OF YOUR

16   REBUTTAL REPORT, EXHIBIT 63, THE BOTTOM OF THAT PAGE.

17   IS THIS THE QUOTATION FROM THE NRC REPORT THAT YOU ARE

18   REFERRING TO?

19   A.   YES. IT BEGINS: FILTER VENDORS AND THEN

20   CONTINUES ON THE NEXT PAGE.

21   Q.   PLEASE CONTINUE.

22   THE COURT: PAGE 14?

23   MR. MCELVAIN: PAGE 14 OF DEFENDANT'S

24   EXHIBIT 63 AND IT CARRIES OVER TO PAGE 15.

25   THE WITNESS: IT SAYS -- THE NRC REPORT

1   SAYS: "FILTER VENDORS SOMETIMES PROVIDE ESTIMATES OF

2   OVERBLOCK AND UNDERBLOCK RATES BUT WITHOUT KNOWING THE

3   METHODOLOGY UNDERLYING THESE ESTIMATES, THE CAUTIOUS

4   USER MUST BE CONCERNED THAT THE METHODOLOGY IS SELECTED

5   TO MINIMIZE THESE RATES."

6   BY MR. MCELVAIN:

7   Q.   AND DO YOU AGREE WITH THE NATIONAL RESEARCH

8   COUNCIL'S OPINION IN THAT REGARD?

9   A.   YES, I DO. IN THE PARTICULAR CASE OF RULESPACE,

10   THEY HAVE NOT EVEN SEPARATED OUT THE OVERBLOCK AND

11   UNDERBLOCK RATES.

12   Q.   DO YOU HAVE AN OVERALL OPINION AS TO THE

13   METHODOLOGY THAT PROFESSOR CRANOR USED IN ARRIVING AT

14   HER OPINIONS OFFERED IN THIS CASE?

15   A.   YES.

16   Q.   WHAT IS THAT OPINION?

17   A.   WELL, I THINK SHE HAS RELIED PRIMARILY ON

18   SOURCES WHOSE RELIABILITY IS NOT VERY GOOD, IF IT CAN BE

19   ASSESSED AT ALL. SHE IS RELYING ON QUALITATIVE REPORTS

20   RATHER THAN EMPIRICAL TESTS. THE EMPIRICAL TESTS THAT

21   SHE HAS RELIED ON, BY AND LARGE, HAVE NOT USED STANDARD

22   SCIENTIFIC TECHNIQUES LIKE RANDOM SAMPLING.

23   MY RECOLLECTION FROM HER TESTIMONY IS

24   THAT SHE DEEMS A FILTER TO BE EFFECTIVE IF IT WORKS MOST

25   OF THE TIME. AND MOREOVER, THAT SHE CONSIDERS

1   UNDERBLOCKING TO BE THE ISSUE TO FOCUS ON.

2   IF THAT IS THE CASE, IF ALL YOU CARE

3   ABOUT IS DO YOU BLOCK THE ADULT MATERIALS MOST OF THE

4   TIME, AND YOU DON'T REALLY CARE ABOUT THE OTHER

5   MATERIALS THAT YOU BLOCK, THEN A FILTER THAT SIMPLY

6   BLOCKS 80 PERCENT OF ALL PAGES IS AN EFFECTIVE FILTER,

7   EVEN IF IT BLOCKS THEM INDISCRIMINATELY WITHOUT REGARD

8   TO THEIR CONTENT.

9   Q.   I WOULD LIKE TO TURN YOUR ATTENTION NOW TO THE

10   TESTIMONY OF MATTHEW ZOOK IN THIS CASE. ARE YOU AWARE

11   THAT THE PLAINTIFFS OFFERED A WITNESS BY THE NAME OF

12   MATTHEW ZOOK?

13   A.   YES.

14   Q.   AND HAVE YOU REVIEWED HIS TESTIMONY IN THIS

15   CASE?

16   A.   YES, I HAVE.

17   Q.   AND ARE YOU AWARE WHETHER HE OFFERED ANY OPINION

18   REGARDING THE GEOGRAPHIC DISTRIBUTION OF ADULT WEBSITES?

19   A.   YES.

20   Q.   AND DO YOU HAVE AN OPINION REGARDING THE

21   METHODOLOGY THAT PROFESSOR ZOOK USED TO ARRIVE AT THAT

22   CONCLUSION?

23   A.   YES, I DO.

24   Q.   WHAT IS YOUR OPINION?

25   A.   IT'S UNRELIABLE.

1   Q.   WHY DO YOU BELIEVE THAT?

2   A.   WELL, THE WAY DR. ZOOK COLLECTED HIS DATA WAS,

3   HE FOUND FIVE LISTS OF PORN SITES, OR ADULT SITES, ADULT

4   ENTERTAINMENT SITES, ON THE WEB, STARTING FROM A GOOGLE

5   SEARCH FOR LISTS OF SITES. HE THEN COLLECTED THE LINKS

6   THAT WERE IN THOSE LISTS AND PROCESSED THEM WITH

7   SOFTWARE THAT HE WROTE TO COME UP WITH LISTS OF WHAT HE

8   CALLED WEBSITES AS OPPOSED TO WEB PAGES. HIS INFERENCES

9   ARE ALL DERIVED FROM A DATABASE COMING FROM THOSE FIVE

10   LISTS PROCESSED IN THAT WAY.

11   THOSE LISTS ARE NOT ANY KIND OF

12   SCIENTIFIC SAMPLE OR RANDOM SAMPLE OF THE WEB. THEY ARE

13   WHAT IS CALLED A CONVENIENCE SAMPLE. THEY ARE WEB PAGES

14   THAT SOMEBODY HAPPENED TO PUT ON THE WEB SOMEWHERE.

15   Q.   WHAT IS A CONVENIENCE SAMPLE?

16   A.   A CONVENIENCE SAMPLE IS A SAMPLE THAT -- THAT IS

17   TAKEN BECAUSE THE MEMBERS OF THE SAMPLE ARE READILY

18   AVAILABLE, THAT THEY ARE ACCESSIBLE. IT IS EASY TO GET

19   AHOLD OF THEM. IT'S USED IN DISTINCTION TO A TERM OF

20   ART CALLED A PROBABILITY SAMPLE, WHICH IS WHERE EVERY

21   MEMBER OF THE POPULATION FROM WHICH YOU ARE SAMPLING HAS

22   A KNOWN PROBABILITY OF BEING INCLUDED IN THE SAMPLE.

23   Q.   ARE YOU AWARE THAT PROFESSOR ZOOK DESCRIBED HIS

24   METHODOLOGY AS USING A CLUSTER SAMPLE THAT IS NONRANDOM?

25   A.   YES.

1   Q.   DO YOU HAVE AN OPINION AS TO WHETHER A CLUSTER

2   SAMPLE THAT IS NOT RANDOM COULD YIELD RELIABLE RESULTS?

3   A.   A CLUSTER SAMPLE THAT IS NOT RANDOM, THE RESULTS

4   OF ANALYZING SUCH A SAMPLE CAN'T BE EXTRAPOLATED

5   RELIABLY BEYOND THE SAMPLE ITSELF.

6   Q.   ARE THERE ANY AUTHORITIES IN THE FIELD OF

7   STATISTICS THAT WOULD SUPPORT YOUR CONCLUSION IN THIS

8   REGARD?

9   A.   COUNTLESS. I CITE A FEW EXAMPLES IN MY REBUTTAL

10   REPORT.

11   Q.   IF I CAN REFER YOU TO PAGE 4 OF YOUR REBUTTAL

12   REPORT, DEFENDANT'S EXHIBIT 63. ARE THESE THE

13   AUTHORITIES THAT YOU HAVE MENTIONED?

14   A.   THOSE ARE THREE QUOTATIONS FROM AUTHORITIES

15   RELATIVE TO THIS -- RELEVANT TO THIS ISSUE. THE FIRST

16   IS FROM BILL COCHRAN. THIS IS ONE OF THE BIBLES ON

17   SAMPLING TECHNIQUES. HE WRITES: ABOUT THE ONLY WAY OF

18   EXAMINING HOW GOOD A SAMPLE OF CONVENIENCE MAY BE IS TO

19   FIND A SITUATION IN WHICH THE RESULTS ARE KNOWN, EITHER

20   FOR THE WHOLE POPULATION OR FOR A RANDOM SAMPLE, AND TO

21   MAKE COMPARISONS. EVEN IF THE METHOD APPEARS TO DO WELL

22   IN ONE SUCH COMPARISON, THIS DOES NOT GUARANTEE THAT IT

23   WILL DO WELL UNDER DIFFERENT CIRCUMSTANCES.

24   THE SECOND QUOTE IS FROM THE FEDERAL

25   JUDICIAL CENTER REFERENCE MANUAL ON SCIENTIFIC EVIDENCE.

1   THE REFERENCE GUIDE ON SURVEY RESEARCH BY SHERRY

2   DIAMOND. SHE WRITES: THE USE OF RANDOM SAMPLING

3   TECHNIQUES MAXIMIZES BOTH THE REPRESENTATIVENESS OF THE

4   SURVEY RESULTS AND THE ABILITY TO ASSESS THE ACCURACY OF

5   ESTIMATES OBTAINED FROM THE SURVEY.

6   RANDOM SAMPLING OFFERS TWO IMPORTANT

7   ADVANTAGES OVER OTHER TYPES OF SAMPLING. FIRST, THE

8   SAMPLE CAN PROVIDE AN UNBIASED ESTIMATE OF THE RESPONSES

9   OF ALL PERSONS IN THE POPULATION FROM WHICH THE SAMPLE

10   WAS DRAWN.

11   SECOND, THE RESEARCHER CAN CALCULATE A

12   CONFIDENCE INTERVAL THAT DESCRIBES EXPLICITLY HOW

13   RELIABLE THE SAMPLE ESTIMATE OF THE POPULATION IS LIKELY

14   TO BE. QUANTITATIVE VALUES COMPUTED FROM SAMPLES OF

15   CONVENIENCE SHOULD BE VIEWED AS ROUGH INDICATORS RATHER

16   THAN AS PRECISE QUANTITATIVE ESTIMATES. CONFIDENCE

17   INTERVALS SHOULD NOT BE COMPUTED.

18   Q.   CAN YOU PLEASE READ THE THIRD QUOTATION.

19   A.   THE THIRD IS FROM LESLIE KISH'S BOOK SURVEY

20   SAMPLING, WHICH IS ANOTHER AUTHORITATIVE WORK ON SURVEY

21   SAMPLES. HE WRITES: SAMPLES OF CONVENIENCE HAVE A HEAVY

22   DEPENDENCE ON THE VALIDITY OF BROAD ASSUMPTIONS ABOUT

23   THE DISTRIBUTIONS OF THE SURVEY VARIABLES IN THE

24   POPULATION. ON THE CONTRARY, FROM THE RESULTS OF IDEAL

25   RANDOM SAMPLING, THE INFERENCES TO THE POPULATION CAN BE

1   MADE ENTIRELY BY STATISTICAL METHODS WITHOUT ASSUMPTIONS

2   REGARDING THE POPULATION DISTRIBUTIONS.

3   Q.   WOULD YOU CONSIDER THE SOURCES THAT YOU'VE

4   QUOTED TO BE LEARNED TREATISES IN THE FIELD OF

5   STATISTICS?

6   A.   I DO.

7   Q.   IS IT YOUR UNDERSTANDING THAT PROFESSOR ZOOK

8   TESTIFIED THAT IT WOULD NOT BE POSSIBLE NO GET A RANDOM

9   SAMPLE OF ADULT CONTENT FROM THE WEB?

10 A.   YES.

11 Q.   AND DO YOU AGREE WITH THAT OPINION?

12 A.   NO, I DO NOT.

13 Q.   WHY NOT?

14 A.   WELL, AS PART OF THE STUDY THAT I PARTICIPATED

15 IN, WE DID TAKE A RANDOM SAMPLE OF ADULT SITES FROM THE

16 WEB. JUST EXPLAIN HOW THIS SORT OF METHODOLOGY WORKS.

17 IF I WANTED TO GET A RANDOM SAMPLE OF MEN IN THE ROOM

18 OVER AGE 40, I COULD TAKE A RANDOM SAMPLE OF PEOPLE IN

19 THE ROOM OVER AGE 40. AND THEN, FROM THAT, LOOK AT HOW

20 MANY OF THEM -- LOOK AT THOSE WHO TURNED OUT TO BE BOTH

21 MEN AND OVER AGE 40. BY TAKING A RANDOM SAMPLE FROM THE

22 SEARCH ENGINE INDEXES AND THEN SUBSEQUENTLY CATEGORIZING

23 THOSE SITES AS BEING ADULT OR NOT, IT AMOUNTS TO A

24 RANDOM SAMPLE OF ADULT SITES FROM THE INDEXES, WHICH

25 COMPRISE THE MOST ACCESSIBLE PART OF THE WEB.

1   Q.   DO YOU UNDERSTAND THAT PROFESSOR ZOOK CLAIMS

2   THAT HE COULD GENERATE A CONFIDENCE INTERVAL FROM HIS

3   CLUSTER SAMPLE THAT WAS NONRANDOM?

4   A.   YES.

5   Q.   AND DO YOU AGREE WITH THAT CLAIM?

6   A.   NO, I DON'T.

7   Q.   WHY NOT?

8   A.   WELL, ONE OF THE QUOTATIONS I JUST READ, THE ONE

9   FROM THE FEDERAL JUDICIAL CENTER REFERENCE MANUAL, SAYS

10   THAT CONFIDENCE INTERVALS SHOULD NOT BE CALCULATED FROM

11   SAMPLES OF CONVENIENCE. YOU CAN PLUG THE NUMBERS INTO A

12   FORMULA, BUT THE ANSWER DOES NOT MEAN ANYTHING. IT DOES

13   NOT MEAN ANYTHING BECAUSE WHAT A CONFIDENCE INTERVAL IS

14   DOING IS QUANTIFYING THE LUCK OF THE DRAW. IF THERE IS

15   NO RANDOM DRAW, THERE IS NO LUCK OF THE DRAW. IT'S JUST

16   A NUMBER. IT DOES NOT MEAN ANYTHING AT ALL.

17   Q.   HAVE YOU REVIEWED THE DATABASE THAT PROFESSOR

18   ZOOK USED AS THE BASIS FOR HIS REPORT?

19   A.   YES, I HAVE.

20   Q.   AND HAVE YOU REVIEWED PARTICULAR ENTRIES IN THAT

21   DATABASE?

22   A.   YES, I HAVE.

23   Q.   AND HAVE YOU REACHED A CONCLUSION AS TO THE

24   USEFULNESS OF THOSE ENTRIES FOR PURPOSES OF HIS REPORT?

25   A.   YES.

1   Q.   AND WHAT IS YOUR OPINION?

2   A.   WELL, DR. ZOOK PURPORTS TO HAVE CREATED A

3   DATABASE OF ADULT WEBSITES IN DISTINCTION FROM WEB PAGES

4   THAT HAVE ADULT CONTENT. IN FACT, MANY OF THE ENTRIES

5   IN THE DATABASE ARE NOT WEBSITES AND SOME OF THEM THAT

6   ARE WEBSITES ARE CERTAINLY NOT ADULT WEBSITES. THIS IS

7   THE RESULT OF A PROGRAMMING ERROR IN THE SOFTWARE THAT

8   HE WROTE TO COLLECT THE LINKS FROM THOSE FIVE LISTS ON

9   THE WEB AND PROCESS THEM.

10   Q.   WHAT DO YOU MEAN BY A PROGRAMMING ERROR?

11   A.   HE WAS TRYING TO TAKE THE WEB ADDRESS OF

12   INDIVIDUAL PAGES AND TRIM OFF PART OF IT IN ORDER TO GET

13   TO THE WEBSITE CORRESPONDING TO THE PERSON OR ENTITY

14   THAT WAS RESPONSIBLE FOR THE CONTENT, WHO OWNED IT, IN

15   SOME SENSE. HIS SOFTWARE WENT TOO FAR. IT REMOVED TOO

16   MUCH OF THE ADDRESS, IN SOME CASES RESULTING IN ENTRIES

17   THAT WEREN'T WEBSITES AT ALL.

18   FOR EXAMPLE, HE IDENTIFIED THE .COM

19   DOMAINS OF 17 COUNTRIES AS BEING PORN SITES, BEING ADULT

20   ENTERTAINMENT SITES. EACH OF THOSE -- THE FACT THAT,

21   FOR EXAMPLE, CO.IL, WHICH IS THE .COM DOMAIN OF ISRAEL,

22   APPEARS ON HIS LIST. THERE ARE AN UNKNOWN NUMBER OF

23   PAGES IN ISRAEL THAT MIGHT HAVE HAD ADULT CONTENT THAT

24   GOT -- ALL OF WHICH GOT TRUNCATED TOO FAR TO PRODUCE

25   THAT SINGLE ENTRY, CO.IL. SO EACH OF THOSE TRACES OF A

1   BUG EVIDENCED BY AN ADDRESS THAT GOT TRUNCATED TOO FAR

2   IS ACTUALLY THE TRACE OF MANY ERRORS, PERHAPS EVEN TENS

3   OR HUNDREDS OF THOUSANDS OF ERRORS.

4   Q.   IS IT POSSIBLE TO DETERMINE THE NUMBER OF

5   POTENTIAL MISTAKES THAT PROFESSOR ZOOK MADE IN HIS

6   DATABASE?

7   A.   IT IS NOT POSSIBLE TO DETERMINE IT BECAUSE HE

8   DIDN'T SAVE HIS INTERMEDIATE RESULTS.

9   Q.   AND WHY IS THAT? WHY DOES THAT AFFECT THE

10   POSSIBILITY OF DETERMINING HIS ERROR RATE?

11   A.   THERE IS NO WAY TO KNOW HOW MANY PAGES WERE

12   MISTRUNCATED OR OVERTRUNCATED TO PRODUCE THESE, QUOTE,

13   UNQUOTE, WEBSITES THAT ARE THE TRACES OF THOSE ERRORS.

14   HE REMOVED DUPLICATES. SO IF MORE THAN

15   ONE WEB PAGE WAS TRUNCATED TOO FAR TO THE SAME QUOTE,

16   UNQUOTE, WEBSITE, THERE WOULD ONLY BE ONE TRACK OF THAT

17   -- ONE RESIDUAL FROM THAT IN THE DATABASE.

18   Q.   DO YOU HAVE AN OPINION AS TO PROFESSOR ZOOK'S

19   EFFORT TO ESTIMATE THE COMPARATIVE FRACTION OF ADULT

20   SITES THAT ARE FREE VERSUS THE FRACTION OF ADULT SITES

21   THAT ARE PAID -- WHAT HE CALLED PAID ADULT SITES?

22   A.   YES.

23   Q.   WHAT IS THAT OPINION?

24   A.   HIS -- EVEN IF HE HAD DONE HIS PROGRAMMING

25   CORRECTLY, THE ESTIMATE REALLY DOES NOT APPLY BEYOND THE

1   PARTICULAR LISTS THAT HE USED. IT CAN'T BE EXTRAPOLATED

2   TO DETERMINE -- TO ESTIMATE THE FRACTION OF ADULT SITES

3   AT LARGE THAT ARE DOMESTIC VERSUS FOREIGN.

4   Q.   WOULD HIS OPINION DEPEND ON THE SIZES OF THE

5   LISTS OF FREE SITES AND ADULT SITES THAT HE STARTED

6   WITH?

7   A.   WHAT THE ISSUE IS, IS THE REPRESENTATION OF FREE

8   SITES ON HIS LIST, DOES THAT BEAR THE SAME PROPORTION TO

9   THE NUMBER OF FREE SITES ON THE WEB AS THE NUMBER OF

10   PAID SITES ON HIS LIST COMPARES TO THE NUMBER OF PAID

11   SITES ON THE WEB. THERE IS NO REASON TO THINK THAT

12   THOSE TWO PROPORTIONS ARE THE SAME BECAUSE THERE IS NO

13   SYSTEMATIC METHODOLOGY UNDERNEATH THE COLLECTING OF WEB

14   PAGES FOR THOSE LISTS. MOREOVER, THERE WAS NO ATTEMPT

15   MADE TO VERIFY WHETHER THE LINKS IN THOSE LISTS WERE

16   FUNCTIONING. THAT IS, WHETHER THERE WAS IN FACT A

17   WEBSITE AT ALL STILL LIVE ON THE WEB CORRESPONDING TO

18   THAT LINK. NOR WAS THERE ANY ATTEMPT MADE TO DETERMINE

19   IF THERE WAS A LIVE -- IF THE LINKS WERE ALIVE, WHETHER

20   THE SITES WERE IN FACT ADULT SITES.

21   Q.   AND DO YOU HAVE AN OPINION AS TO PROFESSOR

22   ZOOK'S EFFORT TO ESTIMATE THE FRACTION OF WHAT HE CALLED

23   FOREIGN ADULT SITES AS COMPARED TO DOMESTIC ADULT SITES?

24   A.   I'M SORRY. DID I CHANGE THE SUBJECT FROM PAID

25   AND FREE TO FOREIGN AND DOMESTIC?

1   Q.   WOULD YOUR ANSWER BE THE SAME?

2   A.   YES, MY ANSWER WOULD BE THE SAME EITHER WAY.

3   Q.   AND WOULD YOUR ANSWER BE THE SAME FOR THE SAME

4   REASON THAT YOU DESCRIBED?

5   A.   YES.

6   Q.   DO YOU HAVE AN OPINION AS TO CLAIMS THAT

7   PROFESSOR ZOOK OFFERED AS TO THE RATES AT WHICH ADULT

8   SITES ARE MIGRATING OVERSEAS?

9   A.   YES.

10   Q.   WHAT IS THAT OPINION?

11   A.   I DON'T BELIEVE THAT -- LET ME BACK UP. EVEN IF

12   HE HAD NOT MADE PROGRAMMING ERRORS, I DON'T BELIEVE THAT

13   HIS RESULTS COULD BE EXTRAPOLATED FROM HIS LISTS TO DRAW

14   ANY INFERENCE ABOUT THE ADULT INDUSTRY AS A WHOLE.

15   Q.   AND WHY NOT?

16   A.   WELL, THERE IS NO EVIDENCE THAT THE SITES ON THE

17   LIST AT ONE EPOCH, WHEN HE FIRST COLLECTED DATA, ARE THE

18   SAME PROPORTION OF TOTAL NUMBER OF SITES AT THAT EPOCH

19   AS THE NUMBER ON THE LISTS AT A LATER TIME BEAR TO THE

20   TOTAL SITES AT THE LATER TIME. SO THERE IS NO REASON TO

21   THINK THAT THESE TWO THINGS ARE COMMENSURABLE. THE FACT

22   THAT BOTH LISTS COME FROM THE SAME SOURCE DOES NOT MEAN

23   THAT AN EQUAL AMOUNT OF DILIGENCE OR EFFORT OR

24   THOROUGHNESS OR WHATEVER WAS EXERTED AT THOSE TWO TIMES

25   TO COLLECT THE LINKS THAT ARE ON THE LISTS. THERE IS TO

1   REASON TO THINK THAT THEY ARE PROPORTIONAL. MOREOVER,

2   THERE ARE OTHER POSSIBLE EXPLANATIONS FOR THE CHANGING

3   COMPOSITION OF THE LISTS THAT HE OBSERVED.

4   FOR EXAMPLE, HE OBSERVES THAT THE

5   FRACTION OF ADULT SITES THAT ARE DOMESTIC IS DECREASING

6   WITH TIME. ONE WAY THAT THE FRACTION OF ADULT SITES ON

7   HIS LIST THAT ARE DOMESTIC MIGHT DECREASE WITH TIME IS

8   THAT WHOEVER WAS COMPILING THE LIST STARTED BY PUTTING

9   DOMESTIC ADULT SITES ON THE LIST AND EVENTUALLY GREW

10   BORED WITH THAT OR TIRED OF THAT OR RAN OUT OF SITES OR

11   WHATEVER, AND STARTED TO ADD MORE FOREIGN SITES TO THE

12   LIST. THAT WOULD SHOW UP IN HIS DATA EXACTLY THE SAME

13   WAY, AS A DECREASING FRACTION OF DOMESTIC SITES. IT HAS

14   LITTLE, IF ANYTHING, TO DO WITH WHETHER ADULT SITES ARE

15   MIGRATING ABROAD.

16   Q.   IF I CAN REFER YOU TO DEFENDANT'S EXHIBIT 79.

17   THE COURT: EXCUSE ME, MR. MCELVAIN. DO

18   YOU HAVE QUITE A BIT MORE TO GO?

19   MR. MCELVAIN: I'M ACTUALLY VERY CLOSE TO

20   FINISHING.

21   THE COURT: LET'S TAKE OUR RECESS WHEN

22   YOU'RE FINISHED. GET THE DIRECT FINISHED, PLEASE.

23   BY MR. MCELVAIN:

24   Q.   IF I CAN REFER YOU TO DEFENDANT'S EXHIBIT 79.

25   A.   YES.

1   Q.   DID YOU PERFORM A STUDY WITH MR. MEWETT IN

2   RESPONSE TO CLAIMS THAT PROFESSOR ZOOK HAD MADE IN HIS

3   EXPERT REPORT?

4   A.   YES.

5   Q.   AND DOES THIS CHART REPRESENT CONCLUSIONS FROM

6   THAT STUDY?

7   A.   YES, IT DOES.

8   Q.   AND WHAT DOES THIS CHART REPRESENT?

9   A.   IT'S THE ESTIMATED PERCENTAGE OF, QUOTE,

10 UNQUOTE, FREE SEXUALLY EXPLICIT WEB PAGES THAT HAVE A

11 COMMERCIAL TIE TO THE UNITED STATES.

12   THE MEANING OF FREE IS INTENDED TO

13 CORRESPOND TO THE WAY DR. ZOOK USES THE TERM. WHAT I

14 MEAN BY FREE IN COMMERCIAL TIE HERE IS THAT IT WAS CODED

15 BY CRA IN SUCH A FASHION.

16 Q.   AND WHAT DID YOU CONCLUDE WITH REGARD TO THE

17 PERCENTAGES FOR THE DIFFERENT INDEXES THAT YOU STUDIED

18 OR DIFFERENT DATASETS THAT YOU STUDIED?

19 A.   WELL, THAT 90.3 PERCENT OF THE ADULT WEB PAGES

20 IN THE GOOGLE INDEX THAT ARE NOMINALLY FREE HAVE SOME

21 KIND OF COMMERCIAL TIE TO THE UNITED STATES. 89.8

22 PERCENT OF THE ADULT WEB PAGES IN THE MSN INDEX THAT ARE

23 NOMINALLY FREE HAVE SOME COMMERCIAL TIE TO THE UNITED

24 STATES. 88.2 PERCENT OF THE WEB PAGES, THE NOMINALLY

25 FREE ADULT WEB PAGES THAT ARE RETRIEVED BY THE AOL, MSN

1   AND YAHOO QUERIES HAVE SOME KIND OF COMMERCIAL TIE TO

2   THE UNITED STATES. AND NEARLY 96 PERCENT OF THE

3   NOMINALLY FREE ADULT WEB PAGES RETRIEVED BY THE

4   WORDTRACKER QUERIES HAVE SOME KIND OF COMMERCIAL TIE TO

5   THE UNITED STATES.

6   MR. MCELVAIN: YOUR HONOR, MAY I HAVE A

7   MOMENT TO CONFER WITH COUNSEL?

8   THE COURT: SURE.

9   MR. MCELVAIN: WE WOULD MOVE INTO

10 EVIDENCE THE FOLLOWING EXHIBITS, 62, 63 --

11   THE COURT: THESE ARE DEFENDANT'S

12 EXHIBIT?

13   MR. MCELVAIN: YES, YOUR HONOR.

14   THE COURT: START AT THE BEGINNING.

15   MR. MCELVAIN: YES, YOUR HONOR. 62, 63,

16 64, 65, 66, 68, 70, 72, 74, 76, 78, 79, AND WHAT WE HAVE

17 MARKED AS DEFENDANT'S DEMONSTRATIVE EXHIBIT 9.

18   THE COURT: ANY OBJECTION?

19   MR. HANSEN: NO OBJECTION TO ANY OF THE

20 EXHIBITS EXCEPT THE LAST ONE. THE LAST EXHIBIT, WHICH

21 IS THE DEMONSTRATIVE EXHIBIT, WAS CONTAINED IN A

22 PLAINTIFFS' EXHIBIT THAT WAS ADMITTED ONLY FOR THE SAKE

23 THAT DR. CRANOR RELIED ON IT. IT WAS NOT ADMITTED FOR

24 THE TRUTH OF THE MATTER, SO I DON'T SEE HOW IT CAN BE

25 ADMITTED FOR THE TRUTH OF THE MATTER THROUGH THIS

1   WITNESS EITHER. IF IT IS ADMITTED FOR THE PURPOSE OF

2   THE FACT THAT THE WITNESS RELIED ON IT, I DON'T HAVE A

3   PROBLEM.

4   MR. MCELVAIN: WE ARE ACTUALLY NOT

5   OFFERING IT FOR THE TRUTH OF THE MATTER. WE ARE

6   OFFERING IT TO DEMONSTRATE HOW PROFESSOR CRANOR RELIED

7   ON THE SOURCES THAT SHE RELIED ON.

8   MR. HANSEN: BASED ON THAT STATEMENT, I

9   HAVE NO OBJECTION TO THE EXHIBIT.

10   THE COURT: DEFENDANT'S EXHIBITS 62, 63,

11   64, 65, 66, 68, 70, 72, 74, 76, 78, 79, AND DEFENDANT'S

12   DEMONSTRATIVE EXHIBIT 9 ARE ALL RECEIVED INTO EVIDENCE.

13   (DEFENDANT'S EXHIBITS 62, 63, 64, 65, 66,

14   68, 70, 72, 74, 76, 78, 79 AND DEFENDANT'S DEMONSTRATIVE

15   EXHIBIT 9 ARE RECEIVED INTO EVIDENCE.)

16   THE COURT: THE COURT IS IN RECESS FOR 10

17   MINUTES.

18   (BREAK TAKEN.)

19   THE COURT: WELCOME BACK, EVERYBODY.

20   MR. MCELVAIN -- MR. HANSEN.

21   HAVE A SEAT, SIR.

22   THE WITNESS: THANK YOU.

23   MR. HANSEN: YOUR HONOR, I WILL HAVE ONE

24   EXHIBIT THAT I WILL USE WITH THIS WITNESS.

25   (PAUSE.)

1   THE COURT: MR. HANSEN, PROCEED.

2   MR. HANSEN: THANK YOU, YOUR HONOR.

3   CROSS EXAMINATION

4   BY MR. HANSEN:

5   Q.   GOOD AFTERNOON, DR. STARK.

6   A.   GOOD AFTERNOON.

7   Q.   I WANT TO START WITH THE SAME PLACE I STARTED IN

8   YOUR DEPOSITION. AND THAT IS TALKING ABOUT THE

9   INCIDENCE OF DOMESTIC UNBLOCKED SEXUALLY EXPLICIT SITES

10   IN THE VARIOUS DATABASES THAT YOU ANALYZED.

11   A.   OKAY.

12   Q.   ONE PLACE TO START WITH THAT WOULD BE TO GO TO

13   DEFENDANT'S EXHIBIT 65. IS THAT CORRECT? DEFENDANT'S

14   EXHIBIT 65. I'M GOING TO USE A LOT OF THE DEFENDANT'S

15   EXHIBITS.

16   A.   YES.

17   Q.   OKAY. AND IN THIS EXHIBIT YOU REPORT THAT THE

18   PERCENTAGE OF SEXUALLY EXPLICIT WEB PAGES THAT YOU FOUND

19   WITHIN THE GOOGLE INDEX DATABASE IS 1.1 PERCENT,

20   CORRECT?

21   A.   THAT'S CORRECT.

22   Q.   AND OF THOSE, 44.2 PERCENT WERE DOMESTIC,

23   CORRECT?

24   A.   YES.

25   Q.   SO IF WE MULTIPLIED THOSE TWO NUMBERS TOGETHER,

1   .011 TIMES .442, WE WOULD GET THE INCIDENCE OF SEXUALLY

2   EXPLICIT DOMESTIC WEBSITES, WOULD WE NOT?

3   A.   THAT WOULD BE AN ESTIMATE OF THAT, YES.

4   Q.   AND THEN IF WE WANTED TO DETERMINE OF THAT

5   PERCENTAGE, WHAT PERCENTAGE WERE UNBLOCKED BY, FOR

6   EXAMPLE, THE GOOGLE -- THE AOL FILTER, WE WOULD GO TO

7   DEFENDANT'S EXHIBIT 67, WOULD WE NOT?

8   A.   ONE MOMENT.

9   Q.   I GUESS 67 DID NOT GO IN. IT IS THE ONE WITH

10   THE NUMBER 68. SORRY.

11   A.   I HAVE 68.

12   Q.   WE WOULD TAKE THE NUMBER THAT WE GOT AFTER WE

13   MULTIPLIED .011 TIMES .442 AND WE WOULD MULTIPLY IT BY

14   .089. CORRECT?

15   A.   I'M NOT SURE WHAT THAT IS SUPPOSED TO ESTIMATE.

16   Q.   THE INCIDENCE OF DOMESTIC SITES THAT ARE

17   UNDERBLOCKED -- THE INCIDENCE OF SEXUALLY EXPLICIT

18   DOMESTIC SITES THAT ARE UNDERBLOCKED BY THE AOL FILTER.

19   A.   I DON'T AGREE.

20   Q.   WHY NOT?

21   A.   BECAUSE THIS TABLE, EXHIBIT 68, IS AN OVERALL

22   MEASURE OF UNDERBLOCKING FOR THESE INDEXES, NOT

23   SPECIFICALLY THE UNDERBLOCKING OF DOMESTIC ADULT SITES.

24   AND IT IS CERTAINLY WITHIN THE REALM OF POSSIBILITY THAT

25   FILTERS ARE MORE EFFECTIVE AGAINST DOMESTIC ADULT SITES

1   OR THAT THEY ARE LESS EFFECTIVE AGAINST DOMESTIC ADULT

2   WEBSITES THAN THEY ARE OVERALL.

3   THE COURT: DID YOU FINISH YOUR SENTENCE

4   THERE, LESS EFFECTIVE AGAINST --

5   THE WITNESS: DOMESTIC ADULT SITES THAN

6   THEY ARE OVERALL.

7   BY MR. HANSEN:

8   Q.   LET'S TRY IT A DIFFERENT WAY THEN. IF WE -- HOW

9   WOULD WE FIND OUT THE NUMBER THAT I'M TRYING TO FIND

10   OUT?

11   A.   IN ORDER TO GET AN ESTIMATE OF THE UNDERBLOCKING

12   RATE FOR DOMESTIC ADULT SITES, I WOULD NEED TO GO BACK

13   TO THE DATABASE AND CONSTRUCT A NEW QUERY.

14   Q.   DO YOU RECALL BEING DEPOSED ABOUT PRECISELY THIS

15   QUESTION?

16   A.   NOT PRECISELY, BUT GENERALLY.

17   Q.   COULD I ASK THAT THE DEPOSITION BE CALLED UP,

18   LINE 6 -- PAGE 6.

19   THE COURT: DATE OF THE DEPOSITION,

20   PLEASE.

21   MR. HANSEN: I'M SORRY, YOUR HONOR.

22   THE COURT: LOOK ON THE FRONT COVER.

23   MR. HANSEN: AUGUST 4, 2006.

24   BY MR. HANSEN:

25   Q.   WOULD YOU LOOK AT PAGE 6? IT SHOULD BE ON YOUR

1   SCREEN NOW. PAGE 6, LINE 21, THROUGH PAGE 7, LINE 19.

2   I WILL ASK MISS WOOD TO SCROLL IT DOWN SO YOU CAN READ

3   IT AS IT GOES THROUGH.

4   A.   CAN YOU MAKE IT A LITTLE LARGER FOR ME, PLEASE.

5   THE COURT: TOO SMALL TO READ. TOO FUZZY

6   FOR BOTH.

7   THE WITNESS: THIS IS NOT THE RIGHT SPOT.

8   THE COURT: EXCUSE ME, MR. HANSEN, YOU

9   WANT HIM TO READ IT TO HIMSELF OR OUT LOUD?

10   MR. HANSEN: I WANT TO MAKE SURE I HAVE

11   THE RIGHT SPOT. I DON'T YET HAVE THE RIGHT SPOT, I

12   THINK, IN THE DEPOSITION.

13   BY MR. HANSEN:

14   Q.   PAGE 6, LINE 21, OKAY. WOULD YOU START READING,

15   YES, TO YOURSELF, PAGE 6, LINE 21, AND READ THROUGH

16   UNTIL YOU GET TO PAGE 7, LINE 19.

17   A.   I ONLY HAVE LINES 21 THROUGH 25 IN FRONT OF ME.

18   Q.   HAVE YOU READ WHAT IS ON THE SCREEN SO FAR?

19   A.   YES, I HAVE.

20   THE COURT: THAT IS THE VERY NEXT PAGE,

21   SIR.

22   THE WITNESS: I HAVE READ THIS.

23   MR. HANSEN: GO TO THE NEXT.

24   THE COURT: CAN WE BLOW THIS UP AT ALL?

25   IT'S SMALLER THAN THE OTHER ONE. ARE YOU ABLE TO READ

1   IT, SIR?

2   THE WITNESS: I CAN READ IT. IT'S A BIT

3   FUZZY BUT --

4   OKAY.

5   BY MR. HANSEN:

6   Q.   OKAY. NOW, WHAT WE DID IN THAT PORTION OF THE

7   DEPOSITION WAS WE MULTIPLIED THE 1.1 PERCENT INCIDENCE

8   OF SEXUALLY EXPLICIT MATERIAL FOUND IN THE GOOGLE INDEX,

9   CORRECT?

10   A.   YES.

11   Q.   WE MULTIPLIED IT BY THE 8.9 PERCENT THAT WE WERE

12   JUST DISCUSSING THAT IS IN DEFENDANT'S EXHIBIT 68.

13   CORRECT?

14   A.   YES.

15   Q.   AND WE MULTIPLIED IT BY THE .4 -- THE 40 PERCENT

16   THAT IS IN DEFENDANT'S EXHIBIT 71. CORRECT?

17   A.   YES.

18   Q.   AND WE AGREED THAT, THEREFORE, THE INCIDENCE OF

19   DOMESTIC SEXUALLY EXPLICIT SITES THAT WERE NOT BLOCKED

20   BY THE GOOGLE INDEX WAS SOMEWHERE LESS THAN 1-10TH OF

21   ONE PERCENT. CORRECT?

22   A.   THAT SEEMS TO BE WHAT HAPPENED THERE. I SEEM TO

23   RECALL THAT WE CORRECTED SOME OF THE NUMBERS AT ONE

24   POINT. I DON'T RECALL WHETHER WE WENT BACK TO THIS

25   ISSUE BUT --

1 Q. IS WHAT WE DID IN THE DEPOSITION

2 METHODOLOGICALLY FLAWED?

3 A. I BELIEVE IT IS ACTUALLY.

4 Q. YOU DID NOT MENTION THAT IT WAS METHODOLOGICALLY

5 FLAWED AT THE TIME OF THE DEPOSITION?

6 A. NO. APPARENTLY I WAS NOT THINKING AS CLEARLY AS

7 I AM AT THE MOMENT.

8 Q. WHY IS IT -- LET'S START WITH THIS. YOU

9 CONCLUDED THAT 1.1 PERCENT OF THE ENTIRE GOOGLE INDEX IS

10 SEXUALLY EXPLICIT, RIGHT?

11 A. YES. THAT IS MY ESTIMATE.

12 Q. AND OF THAT, IS YOUR ESTIMATE THAT 44.2 PERCENT

13 IS DOMESTIC, CORRECT?

14 A. YES.

15 Q. SO IF WE MULTIPLY THE 1.1 AND 44.2 WE GET THE

16 PERCENTAGE THAT IS DOMESTIC SEXUALLY EXPLICIT?

17 A. YES.

18 Q. AND WHY IS IT THEN THAT MULTIPLYING THE 8.9 DOES

19 NOT YIELD THE NUMBER THAT IS DOMESTIC SEXUALLY EXPLICIT

20 AND UNBLOCKED BY GOOGLE?

21 A. THE 8.9 PERCENT APPLIES IN THE AGGREGATE TO THE

22 DOMESTIC AND THE FOREIGN ADULT MATERIALS. THERE'S NO

23 REASON TO BELIEVE THAT FILTERS ARE EQUALLY EFFECTIVE

24 AGAINST DOMESTIC AND FOREIGN. THE 8.9 IS AN AVERAGE

25 ACROSS THE DOMESTIC AND FOREIGN. IT'S NOT NECESSARILY

1   THE CASE THAT THE UNDERBLOCKING OF THE DOMESTIC ADULT

2   MATERIAL WOULD BE AT THE RATE OF 8.9 PERCENT AND THAT

3   THE UNDERBLOCKING OF THE FOREIGN WOULD BE AT THE RATE OF

4   8.9 PERCENT. IT'S AN AVERAGE OF THE TWO.

5   Q.   IT IS LIKELY THAT THE INCIDENCE OF DOMESTIC

6   UNBLOCKED -- UNDERBLOCKED SITES USING THE AOL FILTER

7   THAT ARE SEXUALLY EXPLICIT IS GOING TO BE LESS THAN 1

8   PERCENT, CORRECT?

9   IT HAS TO BE .011 TIMES .4 WHATEVER THAT

10 OTHER NUMBER WAS IS LESS THAN 1 PERCENT?

11 A.   IS LESS THAN 1 PERCENT ALREADY.

12 Q.   AND WE KNOW THAT AOL HAS SOME LEVEL OF

13 EFFECTIVENESS. RIGHT?

14 A.   YES.

15 Q.   SO WE ARE STILL GOING TO BE SUBSTANTIALLY LESS

16 THAN 1 PERCENT, WHATEVER THE EXACT NUMBER IS. CORRECT?

17 A.   YES, WE ARE GOING TO BE LESS THAN 1 PERCENT.

18 Q.   AND THE SAME WOULD BE TRUE IF WE LOOK AT THE

19 QUERY ANALYSIS. THE INCIDENCE OF UNDERBLOCKED DOMESTIC

20 SITES IF AOL WERE RUNNING WOULD STILL BE SUBSTANTIALLY

21 LESS THAN 1 PERCENT. CORRECT?

22 A.   I WOULD NEED TO REFRESH MY MEMORY ON THE EXACT

23 FIGURES, BUT I SEEM TO RECALL THAT WE GOT SOMETHING LIKE

24 1.7 PERCENT AS THE ESTIMATE OF THE PREVALENCE OF ADULT

25 MATERIAL AMONG THE RANDOM QUERY RESULTS, AND THEN AN

1   ESTIMATED FRACTION THAT IS DOMESTIC THAT IS A BIT HIGHER

2   THAN 40 PERCENT. IT'S OVER 50 PERCENT, IS IT NOT?

3   Q.   I THINK YOU ARE REFERRING TO A STATISTIC ON

4   DEFENDANT'S EXHIBIT 65.

5   A.   YEAH, 88 PERCENT. I'M SORRY. SO IT'S A RATHER

6   LARGER PERCENTAGE.

7   Q.   SO ROUGHLY 1 PERCENT OF THE URLS RETURNED AS A

8   RESULT OF THE SEARCH QUERY ANALYSES WOULD BE DOMESTIC

9   SEXUALLY EXPLICIT SITES, CORRECT?

10   A.   IT LOOKS LIKE A BIT OVER 1 PERCENT, BUT ON THAT

11   ORDER, YES.

12   Q.   AND IF WE LOOK AT DEFENDANT'S EXHIBIT 74, WE SEE

13   THAT IF THE AOL MATURE TEEN PRODUCT IS RUNNING, IT IS

14   94 -- 93.8 PERCENT SUCCESSFUL WHEN MEASURE OF

15   UNDERBLOCKING, CORRECT?

16   A.   WHAT? WE ARE LOOKING AT 74?

17   Q.   DEFENDANT'S EXHIBIT 74. THIS IS THE QUERY

18   ANALYSIS. CORRECT?

19   A.   OKAY. DO YOU MEAN 93.8?

20   Q.   I MEAN 93.8. YOU ARE RIGHT. YOU ARE RIGHT.

21   A.   OKAY. AGAIN, THAT IS AN AVERAGE OF ITS

22   EFFECTIVENESS OVER FOREIGN AND DOMESTIC ADULT MATERIAL.

23   Q.   BUT WE CAN BE QUITE CONFIDENT WITH THOSE THREE

24   NUMBERS THAT THE INCIDENCE OF DOMESTIC UNDERBLOCK SITES

25   IF AOL IS RUNNING THAT ARE SEXUALLY EXPLICIT IS

1   SUBSTANTIALLY LESS THAN 1 PERCENT. RIGHT?

2   A.   I AM REASONABLY CONFIDENT THAT IF WE WERE TO

3   CALCULATE THE ACTUAL ESTIMATE, IT WOULD COME OUT BELOW 1

4   PERCENT. HOWEVER, I DON'T KNOW IT WITHOUT DOING THE

5   CALCULATION.

6   Q.   HOW WOULD YOU DO THE CALCULATION FROM YOUR

7   DATASET?

8   A.   AS I DESCRIBED, I WOULD LOOK AT THE

9   UNDERBLOCKING RATE JUST FOR THE DOMESTIC ADULT PAGES

10   RATHER THAN TAKING A MIXTURE OF THE UNDERBLOCKING RATE

11   FOR BOTH DOMESTIC AND FOREIGN.

12   Q.   DIDN'T YOU DO THAT? ISN'T THAT WHAT EXHIBIT 71

13   IS?

14   A.   71.

15   Q.   YOU MAY HAVE 72. 71 AND 72 ARE IDENTICAL. 71

16   HAS NUMBERS. 72 HAS THE NAMES OF THE PRODUCTS.

17   A.   OKAY. 71 ANSWERS A SLIGHTLY DIFFERENT QUESTION

18   FROM THAT. IT IS OF THE MATERIAL THAT ISN'T BLOCKED,

19   WHAT FRACTION IS DOMESTIC? THAT IS NOT WHAT FRACTION OF

20   THE DOMESTIC MATERIAL ISN'T BLOCKED.

21   Q.   SIMILARLY, IF WE USE THE WORDTRACKER DATABASE,

22   WE WOULD STILL GET AN INCIDENCE OF SEXUALLY EXPLICIT

23   UNDERBLOCKED SITES WITH THE GOOGLE -- WITH THE AOL

24   PRODUCT RUNNING THAT WOULD BE SUBSTANTIALLY LESS THAN 1

25   PERCENT; WOULD IT NOT?

1   A.   AGAIN, I DON'T KNOW THAT THAT IS THE CASE.

2   THERE IS RATHER A LARGER FRACTION OF ADULT MATERIAL IN

3   THE WORDTRACKER SEARCH RESULTS THAN THERE IS FOR THE

4   OTHERS.

5   Q.   AND EQUALLY AOL IS MORE EFFECTIVE THERE AS WELL,

6   RIGHT?

7   A.   AOL IS MORE EFFECTIVE ON THAT SET BUT, AGAIN, I

8   DON'T KNOW HOW THAT EFFECTIVENESS BREAKS DOWN FOR

9   FOREIGN VERSUS DOMESTIC MATERIAL.

10   Q.   YOU REFER THROUGHOUT YOUR REPORT TO WEBSITES.

11   THAT IS AN ERROR, RIGHT? YOU SHOULD HAVE BEEN REFERRING

12   TO WEB PAGES?

13   A.   WE HAVE BEEN USING THE TERM WEB PAGES TO MEAN

14   WHAT I MEANT BY WEBSITES IN THAT DOCUMENT. I DON'T KNOW

15   THAT I WOULD CALL IT AN ERROR. BUT I THINK WE NOW HAVE

16   A COMMON TERMINOLOGY THAT BOTH SIDES OF THIS ISSUE ARE

17   SHARING. I WOULD NOW CALL THEM WEB PAGES.

18   Q.   THE UNIT OF ANALYSIS YOU USED WAS PAGES, NOT

19   SITES?

20   A.   THAT'S CORRECT.

21   Q.   AND I BELIEVE YOU SAID THAT'S BECAUSE THAT'S THE

22   UNIT OF ANALYSIS FOR THE WEB?

23   A.   I THINK IT IS THE UNIT OF CONTENT FOR THE WEB.

24   IT IS WHAT WEB BROWSERS DISPLAY. IT IS WHAT FILTERS

25   BLOCK.

1   Q.   NOW, YOU CRITICIZED DR. ZOOK FOR TAKING A SAMPLE

2   OF CONVENIENCE, IF I UNDERSTOOD CORRECTLY. IS THAT

3   RIGHT?

4   A.   YES.

5   Q.   AND THE GOOGLE AND MSN SAMPLES THAT YOU UTILIZED

6   CAN BE DESCRIBED AS SAMPLES OF CONVENIENCE OF THE ENTIRE

7   WEB, CAN THEY NOT?

8   A.   YES.

9   Q.   NOW, WITH RESPECT TO THE PAGES THAT ARE

10   CATEGORIZED 5F, OR SEXUALLY EXPLICIT, BY MR. MEWETT, YOU

11   PLAYED NO ROLE IN DECIDING HOW TO CATEGORIZE SITES, IS

12   THAT CORRECT?

13   A.   I PARTICIPATED IN SOME -- THAT IS NOT CORRECT.

14   Q.   YOU DID NOT DO ANY OF THE CATEGORIZING?

15   A.   NO, I DID NOT.

16   Q.   OKAY. AND DID YOU HELP DEFINE WHAT WAS GOING TO

17   BE A 5F AND WHAT WAS GOING TO BE A 1A?

18   A.   NO, I DID NOT. I PARTICIPATED IN SOME

19   CONVERSATIONS THAT LED TO THE CATEGORIZATION.

20   Q.   AND YOU DON'T PURPORT TO SUGGEST THAT THE 5F'S

21   ARE LEGALLY OBSCENE UNDER U.S. LAW, DO YOU?

22   A.   I HAVE NO OPINION.

23   Q.   SIMILARLY, YOU HAVE NO OPINION AS TO WHETHER THE

24   5F'S ARE HARMFUL TO MINORS UNDER U.S. LAW. CORRECT?

25   A.   I HAVE NO OPINION.

1   Q.   OKAY.   THERE WERE DUPLICATES IN THE DATABASES,

2   WERE THERE NOT?

3   A.   YES.

4   Q.   SO THAT SOMETIMES THE EXACT SAME WEB PAGE WOULD

5   APPEAR TWICE?

6   A.   YES.

7   Q.   AND SOMETIMES MULTIPLE PAGES WOULD APPEAR FROM A

8   SINGLE DOMAIN?

9   A.   YES.

10   Q.   YOU DID NOT CALCULATE HOW OFTEN DUPLICATES

11   EXIST?

12   A.   NO, I DID NOT.

13   Q.   SO YOU DON'T KNOW OF THE 1,350 ROUGHLY 5F'S WHAT

14   NUMBER ARE UNIQUE?

15   A.   NO, I DON'T.

16   Q.   NOW, IF YOU WOULD LOOK AT DEFENDANT'S EXHIBIT

17   72. THIS IS THE TABLE WE WERE LOOKING AT A MINUTE AGO

18   THAT IS ESTIMATED DOMESTIC UNDERBLOCKING?

19   A.   YES.

20   Q.   THIS FIRST NUMBER REFLECTS THAT IF THE AOL

21   PRODUCT IS RUNNING, AS AGAINST THE URLS THAT WERE

22   PRODUCED FROM THE GOOGLE DATABASE, YOU ESTIMATED 40

23   PERCENT DOMESTIC UNDERBLOCKING.   CORRECT?

24   A.   OF THOSE SITES THAT ARE NOT BLOCKED -- OF THOSE

25   ADULT SITES THAT ARE NOT BLOCKED, ROUGHLY 40 PERCENT ARE

1   DOMESTIC.

2   Q.   WHAT ARE THE RAW NUMBERS THAT GO INTO THAT 40

3   PERCENT?

4   A.   I WOULDN'T KNOW OFF THE TOP OF MY HEAD.

5   Q.   COULD WE TAKE A LOOK AT YOUR DEPOSITION, PAGE

6   54, LINE 24.

7   AND AGAIN, I NEED YOU TO SCROLL ALL OF

8   THE WAY TO PAGE 55, LINE 21. SO WE ARE GOING TO NEED

9   YOU TO READ ROUGHLY A PAGE OF THE DEPOSITION.

10   GIVE US THE NEXT SECTION.

11   CAN YOU READ THAT VERSION?

12   A.   YES, I CAN READ THIS. OKAY.

13   Q.   WE GET TO LINE 21, WE FIND THAT THE NUMERATOR IS

14   4 AND THE DENOMINATOR IS 10?

15   A.   THAT'S CORRECT.

16   Q.   SO THIS 40 PERCENT IS BASED ON 10 WEB PAGES?

17   A.   YES, IT IS.

18   Q.   OKAY. AND WE DID THE SAME THING IN YOUR

19   DEPOSITION FOR THE -- FOR THE MSN DATABASE NUMBER, WHICH

20   IS THE 40.6 PERCENT, DIDN'T WE?

21   I CAN SHOW IT TO YOU.

22   A.   I'M WILLING TO TAKE YOUR WORD FOR IT.

23   Q.   DO YOU KNOW WHAT THE RAW NUMBERS WERE FOR THIS

24   40.6 PERCENT?

25   A.   I DON'T RECALL OFFHAND.

1   Q.   LET'S LOOK AT YOUR DEPOSITION, PAGE 84, LINE 21.

2   WE ARE GOING TO SCROLL THROUGH TO PAGE 85, LINE 4.

3   A.   OKAY.

4   Q.   OKAY.

5   SO WHAT ARE THE RAW NUMBERS THAT WENT

6   INTO THE 40.6 PERCENT?

7   A.   13 IN THE NUMERATOR AND 32 IN THE DENOMINATOR.

8   Q.   SO THERE WERE 13 PAGES -- OF THE SEXUALLY

9   EXPLICIT PAGES IN THE MSN INDEX THAT FILTERS DID NOT

10   BLOCK, 13 WERE DOMESTIC?

11   A.   YES.

12   Q.   AND 4 IN THE GOOGLE INDEX WERE DOMESTIC?

13   A.   YES.

14   Q.   SO THIS FIRST ROW OF THE TABLE REPRESENTS 17 WEB

15   PAGES. CORRECT? 13 PLUS 4?

16   A.   I THINK IT REPRESENTS 10 PLUS 32.

17   Q.   IT REPRESENTS BOTH YOUR SET OF NUMBERS AND MY

18   SET OF NUMBERS. YOU JUST QUOTED THE DENOMINATOR, AND I

19   JUST QUOTED THE NUMERATOR. CORRECT?

20   A.   THAT MANY WEBSITES ENTERED INTO CALCULATING

21   THOSE FIGURES.

22   Q.   IF AOL WERE RUNNING, AND WE DID THE SAME THING

23   YOU DID FOR THE GOOGLE AND THE MSN ANALYSES, THE NUMBER

24   OF UNDERBLOCKED DOMESTIC PAGES WE WOULD GET WOULD BE 17?

25   A.   THAT WAS APPARENTLY THE NUMBER OF UNDERBLOCKED

 1   PAGES THAT CAME THROUGH WHEN THIS TEST WAS RUN.

 2   ACTUALLY THAT IS NOT -- I HONESTLY DON'T

 3   RECALL NOW WHETHER THESE NUMBERS ALREADY INCLUDE THE

 4   WEIGHTS OR DON'T INCLUDE THE WEIGHTS. THINGS ARE A

 5   LITTLE BIT MORE COMPLICATED THAN REPRESENTING THEM

 6   TODAY.

 7   Q.   LOOK BACK AT DEFENDANT'S EXHIBIT 65 AGAIN, IF

 8   YOU WOULD.

 9   A.   WE ARE TALKING ABOUT THE INDEX, AREN'T WE? SO

10   THERE ARE NO WEIGHTS.

11   Q.   RIGHT. SO THE NUMBERS THAT WE WERE DISCUSSING

12   ARE SOLID?

13   A.   TO THE BEST OF MY ABILITY TO RECONSTRUCT THE

14   PICTURE AT THE MOMENT, YES.

15   Q.   OKAY.

16   LOOK AGAIN THEN BACK AT DEFENDANT'S

17   EXHIBIT 65.

18   A.   65, YES.

19   Q.   NOW, YOU TESTIFIED THAT YOU READ DR. ZOOK'S

20   TESTIMONY ABOUT THE PERCENTAGE OF OVERSEAS SEXUALLY

21   EXPLICIT SITES. CORRECT?

22   A.   YES.

23   Q.   AND HE ESTIMATED SOMETHING IN THE VICINITY OF 50

24   PERCENT OF ALL SITES THAT WERE SEXUALLY EXPLICIT WERE

25   OVERSEAS. RIGHT?

1   A.   YES.

2   Q.   AND IF WE LOOK AT THE SECOND ROW OF DEFENDANT'S

3   EXHIBIT 65, YOU ESTIMATE THAT ROUGHLY 50 PERCENT OF ALL

4   SEXUALLY EXPLICIT SITES ARE OVERSEAS. RIGHT?

5   A.   THAT'S CORRECT.

6   Q.   OKAY. BY THE WAY, YOU HAVE A WEBSITE YOURSELF?

7   A.   YES.

8   Q.   DO YOU HAVE MULTIPLE WEBSITES YOURSELF?

9   A.   YES.

10   Q.   WHERE ARE YOUR WEBSITES HOSTED?

11   A.   ONE OF THEM IS HOSTED IN BERKELEY, CALIFORNIA.

12   I HONESTLY DON'T KNOW WHERE THE OTHER ONE IS HOSTED.

13   Q.   NOW, I NEXT WOULD LIKE YOU TO LOOK AT

14   DEFENDANT'S EXHIBIT 79. THIS IS THE SO-CALLED FOREIGN

15   FREE WEB PAGES WITH COMMERCIAL TIES TO THE U.S.

16   CORRECT?

17   A.   I'M SORRY. I'M STILL RETURNING THE OTHER

18   DOCUMENTS TO THEIR FOLDERS.

19   79?

20   Q.   YES.

21   A.   YES, I HAVE IT.

22   Q.   THE RAW NUMBERS THAT WENT INTO THIS 90.3

23   PERCENT, WHAT ARE THEY?

24   A.   I DON'T KNOW OFF THE TOP OF MY HEAD.

25   Q.   LET'S TAKE A LOOK AT YOUR DEPOSITION, PAGE 207,

1   LINES 4 THROUGH 5.

2   A.   OKAY.

3   Q.   SO THIS 90.3 PERCENT IS BASED ON A FIGURE THAT

4   IS 28 DIVIDED BY 31?

5   A.   YES.

6   Q.   NOW, I WOULD LIKE TO SHOW -- I HAVE PLACED IN

7   FRONT OF YOU WHAT HAS BEEN MARKED AS PLAINTIFFS' EXHIBIT

8   260.

9   DO YOU RECOGNIZE THAT DOCUMENT?

10   A.   YES.

11   Q.   WHAT IS IT?

12   A.   IT IS MY REBUTTAL REPORT DATED 1ST AUGUST, 2006.

13   Q.   I DON'T THINK SO. I THINK IT IS YOUR

14   SUPPLEMENTAL REPORT.

15   A.   SUPPLEMENTAL REBUTTAL REPORT, SORRY.

16   Q.   THIS IS SOMETHING YOU WROTE?

17   A.   YES.

18   Q.   AND IT'S ACCURATE, SO FAR AS YOU KNOW?

19   A.   SO FAR AS I KNOW, YES.

20   Q.   AND THIS CONTAINS TABLES VERY SIMILAR TO THE

21   ONES THAT ARE IN THE DEFENDANT'S EXHIBIT THAT YOU TALKED

22   ABOUT WITH DEFENSE COUNSEL AND SOME YOU TALKED ABOUT

23   WITH ME. CORRECT?

24   A.   YES.

25   Q.   SO LOOK, FOR EXAMPLE, AT PAGE 3 OF PLAINTIFFS'

1   EXHIBIT 260.

2   A.   OKAY.

3   Q.   THAT IS COMPARABLE TO A DEFENDANT EXHIBIT?

4   A.   SHOULD BE.

5   Q.   AND SPECIFICALLY IT'S COMPARABLE TO DEFENDANT

6   EXHIBIT 68?

7   A.   YES, IT SHOULD BE.

8   Q.   THE ONLY REAL DIFFERENCE IS THAT YOU ADDED TWO

9   ADDITIONAL PRODUCTS TO THIS LIST, CORRECT?

10   A.   YES.

11   Q.   THEY ARE LISTED IN THE REPORT ON PAGE 3 OF

12   PLAINTIFFS' EXHIBIT 260 AS 10 AND 11. WHAT IS THE

13   PRODUCT THAT IS LISTED AS 10? I THINK IT IS IDENTIFIED

14   IN FOOTNOTE 5 ON THAT PAGE.

15   A.   10 IS 8E6.

16   Q.   THE PRODUCT THAT IS IDENTIFIED AS NUMBER 11 IS

17   WHAT PRODUCT?

18   A.   SAFEEYES.

19   Q.   NOW, UTILIZING THIS TABLE, HOW MANY OF THE --

20   AND LOOKING AT THE UNDERBLOCKING RATES FOR GOOGLE, THE

21   GOOGLE DATABASE, HOW MANY OF THE FILTERS PERFORM AT THE

22   LEVEL OF 85 PERCENT OR BETTER?

23   A.   YOU MEAN UNDERBLOCKING RATES OF 15 PERCENT OR

24   LESS?

25   Q.   CORRECT.

1   A.   I COUNT THREE.

2   Q.   AND HOW MANY PERFORMED AT A RATE OF 80 PERCENT

3   OR BETTER OR TO USE IT YOUR WAY, ONLY FAILED 20 PERCENT

4   OR LESS?

5   A.   I COUNT 8.

6   Q.   AND WITH RESPECT TO THE MSN DATABASE, HOW MANY

7   DID 90 PERCENT OR BETTER?

8   A.   I COUNT 1 THAT HAD AN UNDERBLOCKING RATE OF LESS

9   THAN 10 PERCENT.

10   Q.   AND HOW MANY DID 85 PERCENT OR BETTER?

11   A.   I STILL ONLY COUNT 1.

12   Q.   LOOKING AT THE NEXT PAGE, WHICH IS 004, THIS IS

13   THE 95 PERCENT CONFIDENCE LEVEL PAGE, CORRECT?

14   A.   YES.

15   Q.   SO IT'S THE EXACT SAME STATISTIC THAT YOU ARE

16   REPORTING ON 003. BUT THIS IS THE ONE THAT YOUR

17   CONFIDENCE UP TO 95 PERCENT CONFIDENCE LEVEL, RIGHT?

18   A.   NO. IT HAS A DIFFERENT INTERPRETATION.

19   Q.   THEN EXPLAIN WHAT THE DIFFERENT INTERPRETATION

20   IS.

21   A.   WHAT IS ON PAGE 3 IS MY BEST ESTIMATE OF THE

22   RATES OF UNDERBLOCKING AND OVERBLOCKING. IT IS AN

23   UNBIASED ESTIMATE. WHAT'S ON PAGE 4 IS A LOWER

24   CONFIDENCE LEVEL. IT'S A LOWER LIMIT. SO IT'S NOT AN

25   ESTIMATE. IT'S A WAY OF QUANTIFYING THE UNCERTAINTY

1   THAT COMES FROM THE RANDOM SAMPLING.

2   Q.   AS YOU SAY IN THE DESCRIPTION OF THE -- WELL,

3   READ THE FOR ILLUSTRATION SENTENCE THAT IS AT THE BOTTOM

4   OF THAT TABLE.

5   A.   FOR ILLUSTRATION, AT 95 PERCENT CONFIDENCE,

6   FILTER 2B FAILS TO BLOCK AT LEAST 12.8 PERCENT OF THE

7   SEXUALLY EXPLICIT WEB PAGES IN THE GOOGLE INDEX.

8   Q.   IF WE LOOK BACK ON THE PRIOR PAGE, FILTER 2B WAS

9   AT 17.7 PERCENT. CORRECT?

10   A.   THE ESTIMATED RATE OF UNDERBLOCKING IS 17.7

11   PERCENT. A CONSERVATIVE LOWER 95 PERCENT CONFIDENCE

12   LIMIT IS WHATEVER WE JUST SAID, 12.8 PERCENT.

13   I'M SORRY -- 2B -- WE ARE LOOKING AT THE

14   WRONG ENTRY. I'M SORRY. WE ARE LOOKING AT WHICH?

15   Q.   I'M ASKING A VERY SIMPLE QUESTION.

16   A.   I KNOW. I'M JUST --

17   Q.   IT GOT MORE COMPLICATED THAN WE NEED TO.

18   A.   I'M GETTING LOST BETWEEN TABLES HERE. I'M

19   SORRY.

20   Q.   THE NUMBERS IN TABLE 2 ARE LOWER THAN THE TABLES

21   IN TABLE 1; ARE THEY NOT?

22   A.   THEY HAVE TO BE. THEY ARE CONFIDENCE LIMITS.

23   Q.   THAT IS ALL I WAS ASKING.

24   NOW, IF YOU WOULD LOOK AT TABLE 4 IN

25   PLAINTIFFS' EXHIBIT 260.

1   A.   TABLE 4?

2   Q.   TABLE 4.

3   THE COURT: YOU WERE JUST LOOKING AT IT.

4   THE WITNESS: THAT WAS PAGE 4, I THINK,

5   YOUR HONOR.

6   THE COURT: SORRY. I GOT IT MIXED UP,

7   TOO.

8   BY MR. HANSEN:

9   Q.   REMIND US AGAIN WHAT TABLE 4 IS.

10   A.   THESE ARE ESTIMATES OF THE UNDERBLOCKING AND

11   OVERBLOCKING OF THE FILTERS APPLIED TO THE RESULTS OF

12   THE RANDOMLY SELECTED AOL, MSN AND YAHOO QUERIES.

13   Q.   AND IF WE LOOK AT THE SECOND COLUMN, THE ONE

14   LABELLED, UNDERBLOCKING FOR RESULTS, IT'S ACCURATE TO

15   SAY THAT THREE OF THE FILTERS DO 90 PERCENT OR BETTER.

16   CORRECT?

17   A.   YES, I AGREE WITH YOUR COUNT.

18   Q.   IT'S ACCURATE TO SAY THAT EIGHT DO 85 PERCENT OR

19   BETTER. CORRECT?

20   A.   I COUNT SIX.

21   Q.   OKAY. SIX.

22   LOOK THEN AT TABLE 6. AND REMIND US

23   AGAIN WHAT THIS TABLE REPRESENTS.

24   A.   THESE ARE THE UNDERBLOCKING RATES FOR THE WEB

25   PAGES THAT RESULTED FROM RUNNING THE WORDTRACKER QUERIES

1   AND ESTIMATED OVERBLOCKING RATES FOR THE RESULTS OF

2   THOSE QUERIES.

3   Q.   THE WORDTRACKER QUERIES ARE THE MOST POPULAR

4   QUERIES THAT PEOPLE USE?

5   A.   ACCORDING TO WORDTRACKER.

6   Q.   AND COLUMN 2 REPRESENTS THE UNDERBLOCKING WEB

7   PAGE STATISTICS FOR THE MOST POPULAR SEARCHES. CORRECT?

8   A.   YES.

9   Q.   AND HOW MANY OF THE PRODUCTS DO 95 PERCENT OR

10 BETTER ON THIS DATABASE?

11 A.   I COUNT 10 PRODUCTS THAT HAD UNDERBLOCKING

12 RATINGS OF 5 PERCENT OR LESS.

13 Q.   ALL OF THEM DO AT LEAST 87 PERCENT EFFECTIVE.

14 CORRECT?

15 A.   YES. I MEAN EFFECTIVE -- YOU MEAN

16 UNDERBLOCKING?

17 Q.   EFFECTIVE ON AN UNDERBLOCKING MEASURE. THAT IS

18 WHAT I MEAN.

19 A.   YES.

20 Q.   HOW MUCH HAVE YOU BEEN PAID THUS FAR FOR THE

21 WORK YOU HAVE DONE? ACTUALLY, HOW MUCH HAVE YOU ACCRUED

22 AS YET?

23 A.   I DON'T KNOW.

24 Q.   YOU ESTIMATED AT THE TIME OF YOUR DEPOSITION IT

25 WAS SEVERAL HUNDRED THOUSAND DOLLARS. IS THAT CORRECT?

 1   A.   THAT SOUNDS ABOUT RIGHT OVER THE COURSE OF SEVEN

 2   YEARS.

 3   Q.   SEVEN YEARS ON THIS CASE?

 4   A.   (SHAKING HEAD YES.)

 5   MR. HANSEN: ALL RIGHT. THANK YOU. I

 6   HAVE NO MORE QUESTIONS, YOUR HONOR.

 7   THE COURT: ANY REDIRECT?

 8   MR. MCELVAIN: YES, YOUR HONOR.

 9   REDIRECT EXAMINATION

10   BY MR. MCELVAIN:

11   Q.   IT HAS BEEN A LONG ROAD, HASN'T IT, DR. STARK?

12   A.   IT HAS.

13   Q.   MR. HANSEN ASKED YOU TO PERFORM CERTAIN

14   CALCULATIONS THAT IF I FOLLOWED IT CORRECTLY WERE

15   DIRECTED TOWARD THE GOAL OF GETTING TO PERCENTAGES THAT

16   WERE AT 1 PERCENT OR BELOW 1 PERCENT. DO YOU RECALL

17   THAT DISCUSSION YOU HAD WITH HIM?

18   A.   YES, I DO.

19   Q.   DO YOU BELIEVE THAT THIS TRANSLATES INTO A

20   STATISTIC THAT WOULD RESULT IN 99 PERCENT OF ALL MINORS

21   NOT ACCESSING ADULT MATERIAL?

22   A.   NO.

23   Q.   WHY DO YOU NOT BELIEVE THAT?

24   A.   EVEN IF THE INCIDENCE OF DOMESTIC ADULT SITES

25   THAT ARE NOT BLOCKED BY FILTERS IS EXTREMELY LOW, THERE

1   ARE MANY CHILDREN BROWSING THE WEB A LOT OF THE TIME.

2   THERE ARE, I THINK, ESTIMATES IN EXCESS OF TEN MILLION

3   CHILDREN ONLINE. THIS IS LIKE THE LOTTERY. ANY

4   INDIVIDUAL TICKET HAS A MINUTE CHANCE OF WINNING. AND

5   YET SOMEBODY WINS ALMOST EVERY WEEK. SO THE PROBABILITY

6   THAT AT LEAST ONE CHILD IS EXPOSED AT LEAST ONCE OR THAT

7   MANY CHILDREN ARE EXPOSED, YOU REALLY HAVE TO TAKE INTO

8   ACCOUNT HOW MANY CHILDREN THERE ARE ONLINE.

9   Q.   SO IF I COULD PERFORM SOME CALCULATIONS TO GET

10   DOWN TO SOME ESTIMATE OF HOW LIKELY IT IS THAT ANY ONE

11   CHILD ACCESSES AN ADULT SITE WITH RESPECT TO ANY ONE WEB

12   PAGE THAT HE OR SHE SEES AT ANY ONE GIVEN TIME, WOULD

13   THAT BE A MEANINGFUL WAY TO LOOK AT THE STATISTICAL

14   PROBLEM?

15   A.   IT'S THE ANSWER TO SOME QUESTION BUT I DON'T

16   THINK IT'S THE ANSWER TO THE QUESTION HOW OFTEN CHILDREN

17   ARE EXPOSED TO MATERIALS LIKE THIS.

18   Q.   AND YOU WERE ASKED WHETHER THE DATASETS YOU USED

19   COULD BE DESCRIBED AS SAMPLES OF CONVENIENCE. DO YOU

20   RECALL THAT?

21   A.   I WAS ASKED WHETHER THE GOOGLE AND MSN INDEXES

22   COULD BE DESCRIBED AS SAMPLES OF CONVENIENCE.

23   Q.   DO YOU BELIEVE THEY COULD BE DESCRIBED AS

24   SAMPLES OF CONFIDENCE IN THE SAME MANNER THAT PROFESSOR

25   ZOOK'S DATABASE COULD BE DESCRIBED AS A SAMPLE OF

1   CONVENIENCE?

2   A.   I THINK THE SITUATION IS RATHER DIFFERENT. THE

3   ISSUE WITH THE SAMPLE OF CONVENIENCE IS WHETHER ONE CAN

4   EXTRAPOLATE BEYOND THE SAMPLE TO SOME LARGER UNIVERSE.

5   IN THIS CASE, THE INDEXES ARE THE UNIVERSE, AND I'M

6   EXTRAPOLATING FROM A RANDOM SAMPLE OF THE INDEXES TO THE

7   INDEXES. I'M NOT EXTRAPOLATING FROM THE INDEXES TO SOME

8   LARGER UNIVERSE.

9   Q.   AND HOW LARGE ARE THOSE INDEXES?

10   A.   THAT IS PROPRIETARY TO THE SEARCH PROVIDERS BUT

11   TENS OF BILLIONS OF PAGES.

12   Q.   DO YOU BELIEVE THAT IS A MEANINGFUL DATASET TO

13   USE FOR THE PURPOSES OF THE STUDY THAT YOU PERFORMED?

14   A.   I THINK IT IS A MEANINGFUL POPULATION OF WEB

15   PAGES BECAUSE IT COMPRISES THE WEB PAGES THAT ARE MOST

16   EASILY AND MOST OFTEN ACCESSED. IT'S THE INDEXABLE --

17   OR IN THIS CASE, INDEXED WEB.

18   THE COURT: EXCUSE ME FOR INTERRUPTING.

19   DID YOU SAY, AND IF YOU DID, PLEASE REPEAT IT. WHAT IS

20   THE TENS OF BILLIONS?

21   THE WITNESS: THERE ARE TENS OF BILLIONS

22   OF WEB PAGES IN THE GOOGLE INDEX AND PRESUMABLY IN MSN'S

23   INDEX. WE DREW RANDOM SAMPLES FROM THOSE TENS OF

24   BILLIONS. ONE COULD THINK OF THOSE TENS OF BILLIONS

25   THEMSELVES AS BEING A SAMPLE OF CONVENIENCE FROM THE

1   ENTIRE WEB INCLUDING THE DEEP WEB, BUT THAT WOULD ONLY

2   BE IF ONE WERE TRYING TO EXTRAPOLATE TO THE ENTIRE WEB

3   INCLUDING THE DEEP WEB.

4   THE COURT: ALL I ASKED FOR WAS --

5   THE WITNESS: I'M SORRY.

6   THE COURT: THANK YOU.

7   BY MR. MCELVAIN:

8   Q.   YOU WERE ASKED WHETHER YOU KNEW IF THERE WERE

9   WEB PAGES THAT WERE DUPLICATES IN THE DATASETS.

10   A.   YES.

11   Q.   THAT WERE COMPILED.

12   FOR YOUR PURPOSES, DOES IT MATTER HOW

13   MANY WEB PAGES WERE UNIQUE IN THE DATASET?

14   A.   NO. THE DUPLICATES, IF THEY COME UP AS THE

15   RESULT OF QUERIES, THEY CORRESPOND TO -- EACH TIME IT

16   COMES UP, IT'S A POSSIBILITY FOR EXPOSURE. IT'S THE MIX

17   OF THINGS THAT COME UP AS QUERIES ARE EXECUTED.

18   Q.   YOU WERE ALSO ASKED SOME QUESTIONS REGARDING

19   NUMBERS OF WEB PAGES AND NUMBERED AROUND -- THE DOZENS

20   THAT WERE FORMING THE BASIS OF SOME OF YOUR

21   CALCULATIONS. IN YOUR JUDGMENT AS A STATISTICIAN, CAN

22   YOU RELIABLY MAKE SOME INFERENCES FROM THOSE SMALL

23   NUMBERS OF WEB PAGES THAT YOU USED FOR PARTICULAR

24   CALCULATIONS IN YOUR STUDY?

25   A.   YES. I WILL TRY TO GIVE YOU AN EXAMPLE.

1   SUPPOSE I'M INTERESTED -- SUPPOSE I HAVE

2   A COIN THAT MIGHT NOT BE A FAIR COIN. AND I WOULD LIKE

3   TO FIGURE OUT WHETHER IT HAS -- I WOULD LIKE TO FIGURE

4   OUT WHETHER IT IS FAIR. AND I TOSS THE COIN 10 TIMES.

5   AND IT COMES OUT HEADS NINE TIMES OUT OF TEN. I CAN BE

6   FAIRLY CONFIDENT THAT IT IS NOT A FAIR COIN DESPITE THE

7   FACT THAT I ONLY TOSSED IT 10 TIMES. THESE SMALL

8   SAMPLES ARE ANALOGOUS TO THAT.

9   Q.   WITH RESPECT TO THE PARTICULAR CALCULATIONS THAT

10   YOU PERFORMED IN YOUR REPORT, IN YOUR JUDGMENT AS A

11   STATISTICIAN, WAS IT APPROPRIATE TO USE SAMPLE SIZES,

12   NUMBERS OF WEB PAGES OF THE SIZES THAT YOU DISCUSSED

13   WITH MR. HANSEN?

14   A.   I DON'T REALLY THINK THERE IS A QUESTION OF

15   APPROPRIATENESS. WE COLLECTED THE DATA. WE WORKED THE

16   DATA WE WERE ABLE TO COLLECT. THERE WERE UNCERTAINTIES

17   ASSOCIATED WITH THE ESTIMATES. I QUANTIFIED MANY OF

18   THOSE UNCERTAINTIES. THE REST CAN BE QUANTIFIED.

19   MR. HANSEN: I NEED TO GET AN EXHIBIT.

20   MAY I RETURN TO COUNSEL TABLE?

21   BY MR. HANSEN:

22   Q.   YOU WERE ASKED TO COMPARE PROFESSOR ZOOK'S

23   ESTIMATES OF HOW MANY ADULT SITES ARE OVERSEAS WITH YOUR

24   OWN ESTIMATES OF HOW MANY ADULT SITES ARE OVERSEAS?

25   A.   YES.

1   Q.   AND COULD I DIRECT YOUR ATTENTION TO DEFENDANT'S

2   EXHIBIT 65.

3   A.   OKAY.

4   Q.   DO YOU FIND THAT THERE WERE A GREATER PERCENTAGE

5   OF ADULT WEB PAGES THAT WERE DOMESTIC IN THE DATASETS

6   THAT YOU USED FOR WEB PAGES THAT WERE RETURNED FROM

7   QUERIES?

8   A.   YES.

9   Q.   AND HOW MUCH GREATER WAS THAT?

10   A.   QUITE A BIT. THE DIFFERENCE BETWEEN -- ON THE

11   ORDER OF 50 PERCENT AND ON THE ORDER OF 90 PERCENT.

12   Q.   AND YOU WERE ASKED SOME QUESTIONS ABOUT YOUR USE

13   OF THE ESTIMATES IN SOME OF THE TABLES AND CONFIDENCE

14   LIMITS IN THE OTHER TABLES. WHAT DO THE ESTIMATES THAT

15   YOU REPORTED REPRESENT?

16   A.   THEY REPRESENT MY BEST GUESS.

17   Q.   WHAT DO THE CONFIDENCE LIMITS REPRESENT?

18   A.   THEY ARE DESIGNED TO BE UNDERESTIMATES, SO THAT

19   THERE IS 95 PERCENT CONFIDENCE THAT THAT NUMBER IS AN

20   UNDERESTIMATE AS OPPOSED TO BEING A VALUE THAT WOULD BE

21   RIGHT ON AVERAGE.

22   Q.   SO IF I -- FOR ANY ONE OF THOSE STATISTICS THAT

23   YOU REPORTED IN YOUR STUDY, IF I ASKED YOU TO STATE IN

24   YOUR BEST JUDGMENT WHAT THE PARTICULAR STATISTIC WAS

25   THAT YOU REPORTED, WOULD YOU REFER ME TO THE ESTIMATE OR

1   WOULD YOU REFER ME TO THE CONFIDENCE LIMIT?

2   A.   I WOULD REFER YOU TO THE ESTIMATE.

3   Q.   MR. HANSEN ASKED YOU TO RUN THROUGH A NUMBER OF

4   CALCULATIONS OF HOW MANY OF THE FILTERS PERFORMED AT 85

5   PERCENT OR 90 PERCENT OR BETTER OR WHAT HAVE YOU WITH

6   RESPECT TO SOME OF YOUR CHARTS.

7   A.   YES.

8   Q.   AND DID HE ONLY ASK YOU TO RUN THROUGH THE

9   UNDERBLOCKING NUMBERS?

10   A.   YES.

11   Q.   AND DO YOU BELIEVE THAT YOU CONSIDER THE

12   UNDERBLOCKING NUMBERS ALONE?

13   A.   NO. AS I ANSWERED PREVIOUSLY, I THINK THAT ONE

14   NEEDS TO CONSIDER THE OVERBLOCKING AS WELL AS THE

15   UNDERBLOCKING. IF ALL YOU WERE CONCERNED ABOUT WAS

16   UNDERBLOCKING, YOU COULD JUST DISCONNECT THE COMPUTER

17   FROM THE INTERNET.

18   Q.   WHAT WOULD THE EFFECT BE OF DISCONNECTING THE

19   COMPUTER FROM THE INTERNET?

20   A.   THERE WOULD BE NO UNDERBLOCKING AT ALL, HOWEVER,

21   THE OVERBLOCKING WOULD BE RATHER SEVERE.

22   MR. MCELVAIN: MAY I HAVE A MOMENT TO

23   CONFER WITH COUNSEL, YOUR HONOR?

24   THE COURT: CERTAINLY.

25   MR. MCELVAIN: NO FURTHER QUESTIONS, YOUR

1   HONOR.

2   THE COURT: ANY NECESSARY RECROSS?

3   MR. HANSEN: NO, YOUR HONOR, EXCEPT I

4   OMITTED TO MOVE IN PLAINTIFFS' EXHIBIT 260 DURING THE

5   CROSS EXAMINATION. I WOULD LIKE TO NOW MOVE IN

6   PLAINTIFFS' EXHIBIT 260.

7   MR. MCELVAIN: NO OBJECTION.

8   THE COURT: IDENTIFY IT FOR THE RECORD.

9   MR. HANSEN: IT IS LABELLED, SUPPLEMENTAL

10   REBUTTAL EXPERT REPORT OF PHILIP B. STARK, DATED AUGUST

11   1, 2006. IT'S EIGHT PAGES LONG.

12   THE COURT: PLAINTIFFS' EXHIBIT 260 IS

13   RECEIVED INTO EVIDENCE.

14   (PLAINTIFF'S EXHIBIT 260 RECEIVED INTO

15   EVIDENCE.)

16   THE COURT: PROFESSOR, YOU ARE EXCUSED

17   FROM THE STAND.

18   THE WITNESS: THANK YOU VERY MUCH, YOUR

19   HONOR.

20   LEAVE YOUR PAPERS THERE, UNLESS THEY

21   BELONG TO YOU.

22   THE WITNESS: THEY DO NOT.

23   (WITNESS EXCUSED.)

24   THE COURT: MR. GOMEZ, THE NEXT EVIDENCE

25   FOR THE DEFENSE.

1   MR. GOMEZ: DEFENDANT CALLS STEVEN NEALE

2   AS A WITNESS FOR THE DEFENDANT.

3   THE COURT: WATCH YOUR STEP GETTING UP,

4   AROUND THE WALL THERE. AND REMAIN STANDING TO TAKE THE

5   OATH, PLEASE.

6   STEPHEN NEALE, DEFENSE WITNESS, AFFIRMS.

7   THE CLERK: STATE AND SPELL YOUR FULL

8   NAME FOR THE RECORD, PLEASE.

9   THE WITNESS: STEPHEN NEALE,

10 S-T-E-P-H-E-N, N-E-A-L-E.

11   MR. GOMEZ: YOUR HONOR, I HAVE EXHIBITS

12 FOR THE COURT AND FOR THE DEFENDANT. IF I MAY APPROACH

13 THE COURT?

14   THE COURT: YES.

15   LET ME HAVE A MINUTE TO MOVE THE LAST SET

16 OUT OF THE WAY.

17   MR. GOMEZ: IF I MAY APPROACH THE

18 WITNESS, YOUR HONOR.

19   THE COURT: SURE.

20   PROCEED.

21   MR. GOMEZ: YES, YOUR HONOR.

22   DIRECT EXAMINATION

23 BY MR. GOMEZ:

24 Q.   DR. NEALE, WOULD YOU GIVE YOUR FULL NAME AGAIN?

25 A.   STEPHEN NEALE.

1   Q.   AND WHERE ARE YOU CURRENTLY EMPLOYED?

2   A.   RUTGERS UNIVERSITY.

3   Q.   AND WHAT POSITION DO YOU HOLD THERE?

4   A.   I'M A PROFESSOR -- FULL PROFESSOR OF PHILOSOPHY

5   IN THE FACULTY OF ARTS AND SCIENCES.

6   Q.   I DIRECT YOUR ATTENTION TO DEFENDANT'S EXHIBIT

7   60. YOU SHOULD HAVE IT IN YOUR FOLDER NEXT TO YOU.

8   A.   OKAY.

9   Q.   WHAT IS THAT DOCUMENT?

10   A.   IT'S MY CURRICULUM VITAE.

11   Q.   IS THAT AN ACCURATE AND COMPLETE DOCUMENT OF

12   YOUR CURRICULUM VITAE?

13   A.   YES, IT IS.

14   Q.   AND WHAT IS YOUR RANK OR TITLE AT RUTGERS

15   UNIVERSITY?

16   A.   I'M A FULL PROFESSOR IN THE FACULTY OF ARTS AND

17   SCIENCES.

18   Q.   AND HOW LONG HAVE YOU BEEN A FULL-TIME PROFESSOR

19   AT RUTGERS?

20   A.   FOR EIGHT YEARS NOW.

21   Q.   AND DID YOU ARRIVE AT RUTGERS -- WHEN DID YOU

22   FIRST BEGIN YOUR EMPLOYMENT AT RUTGERS?

23   A.   I BELIEVE IT WAS 1998 AND, YES, I ARRIVED AS A

24   FULL PROFESSOR, STARTED TEACHING THERE IN '99.

25   Q.   WHERE WERE YOU EMPLOYED BEFORE RUTGERS?

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1    A.      I WAS EMPLOYED AT THE UNIVERSITY OF CALIFORNIA,

2    BERKELEY.  I WAS A FULL PROFESSOR THERE, TOO, WHEN I

3    LEFT.  I STARTED OUT AS AN ASSISTANT PROFESSOR THERE,

4    WENT UP THROUGH THE RANKS, ASSOCIATE PROFESSOR WITH

5    TENURE.  AND THEN FINALLY FULL PROFESSOR.  I WAS THE

6    CHAIR OF THE LOGIC AND METHODOLOGY OF SCIENCE PROGRAM

7    THERE FOR A WHILE, TOO.

8    Q.      AND BEFORE THE UNIVERSITY OF CALIFORNIA AT

9    BERKELEY, WERE YOU EMPLOYED IN ANY POSITION, IN A

10   TEACHING POSITION?

11   A.      YES.  MY FIRST JOB OUT OF GRADUATE SCHOOL WAS AT

12   PRINCETON UNIVERSITY.  I WAS AN ASSISTANT PROFESSOR

13   THERE OF PHILOSOPHY IN THE DEPARTMENT OF PHILOSOPHY AND

14   THE PROGRAM IN LINGUISTICS.  AND FOR A WHILE I HELD A

15   CHAIR CONCURRENTLY WITH THE BERKELEY POSITION, THE CHAIR

16   IN PHILOSOPHY AT THE UNIVERSITY OF LONDON.

17   Q.      AND WHAT ARE YOUR DUTIES AS A FULL PROFESSOR AT

18   RUTGERS?

19   A.      THEY ARE SPLIT BETWEEN RESEARCH AND TEACHING --

20   TEACHING ESSENTIALLY.  SO I TEACH THREE OR FOUR COURSES

21   A YEAR.  I ADVISE GRADUATE STUDENTS ON THEIR

22   DISSERTATION WORK.  I SIT ON VARIOUS COMMITTEES WITHIN

23   THE UNIVERSITY AND WITHIN THE DEPARTMENT.  FOR EXAMPLE,

24   I'M ON THE PROMOTIONS AND TENURE COMMITTEE FOR THE

25   UNIVERSITY AT THE MOMENT.
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1   Q.   AND WHAT, IF ANY, COURSES DO YOU TEACH AT THE

2   GRADUATE LEVEL?

3   A.   AT THE GRADUATE LEVEL, I TEACH COURSES IN

4   PHILOSOPHY OF LANGUAGE, LINGUISTICS -- ESSENTIALLY

5   COURSES IN THE PHILOSOPHY DEPARTMENT AND SOMETIMES IN

6   THE LINGUISTICS DEPARTMENT.

7   Q.   ARE YOU ASSOCIATED WITH ANY OTHER UNITS IN THE

8   UNIVERSITY BESIDES THE DEPARTMENT OF PHILOSOPHY AND

9   LINGUISTICS?

10   A.   YES. I'M AFFILIATED WITH THE CENTER FOR

11   COGNITIVE SCIENCE. THAT IS A CENTER THAT HAS LINGUISTS,

12   PHILOSOPHERS, PSYCHOLOGISTS, MATHEMATICIANS, LOGICIANS,

13   NEUROSCIENTISTS, WHO ARE WORKING ON VERY SIMILAR ISSUES

14   THAT DEAL WITH COGNITION, LANGUAGE AND INFORMATION.

15   Q.   NOW, ARE THERE ANY INDIVIDUALS WHO ARE WORKING

16   IN THIS CENTER FOR COGNITIVE SCIENCE THAT HAVE ANY

17   EXPERTISE OR WORK IN CONNECTION WITH COMPUTERS?

18   A.   YES. I DON'T KNOW IF I SAID COMPUTER SCIENTISTS

19   BUT CERTAINLY COMPUTER SCIENTISTS ARE PART OF THE

20   COGNITIVE SCIENCE CROWD THERE. CERTAINLY INCLUDES

21   COMPUTER SCIENTISTS AS WELL AS MATHEMATICIANS,

22   LOGICIANS, PSYCHOLOGISTS, LINGUISTS, PHILOSOPHERS.

23   Q.   ARE THERE NATIONAL OR INTERNATIONAL RANKINGS OF

24   RUTGERS UNIVERSITY IN THE FIELDS IN WHICH YOU WORK?

25   A.   YES, THERE ARE. THE MOST COMPREHENSIVE RANKING

1   IS PRODUCED BY A PROFESSOR OF LAW AND PHILOSOPHY AT THE

2   UNIVERSITY OF TEXAS, AUSTIN, AND PUBLISHED BY BASIL

3   BLACKWELL, PUBLISHER IN OXFORD EVERY YEAR. I BELIEVE

4   THE LATEST ONE APPEARED A FEW DAYS AGO. AND RUTGERS

5   APPEARS CONSISTENTLY IN THE TOP TWO OR THREE, ALONG WITH

6   OUR NEIGHBORS, N.Y.U. AND PRINCETON AS THE THREE TOP

7   DEPARTMENTS OVERALL IN THE WORLD. AND IN MY OWN

8   PARTICULAR FIELDS, PHILOSOPHY OF LANGUAGE, LINGUISTICS

9   PHILOSOPHY OF MIND, COGNITIVE, SCIENCE, WE ARE ALWAYS

10   EITHER FIRST OR JOINT FIRST IN THESE RANKINGS,

11   CONSISTENTLY.

12   Q.   DR. NEALE, WHERE DID YOU RECEIVE YOUR GRADUATE

13   TRAINING?

14   A.   I STARTED OUT AT MIT IN THE DEPARTMENT OF

15   LINGUISTICS AND PHILOSOPHY. AND THEN I MOVED TO

16   STANFORD TO THE DEPARTMENT OF LINGUISTICS AND THE CENTER

17   FOR THE STUDY OF LANGUAGE AND INFORMATION. AND I GOT MY

18   PH.D. FROM STANFORD IN PHILOSOPHY. AND THESIS ON

19   LINGUISTIC SEMANTICS AND THE PHILOSOPHY OF LANGUAGE.

20   Q.   NOW, YOU MENTIONED THE CENTER FOR THE STUDY OF

21   LANGUAGE AND INFORMATION AT STANFORD. WHAT IS THAT?

22   A.   WELL, LANGUAGE AND INFORMATION ARE BOTH CENTRAL

23   TO COGNITION AND COMPUTING. AND THE MISSION, THE

24   OVERALL MISSION, IS TO MAKE SENSE OF THE FACT THAT

25   AGENTS, WHETHER WE ARE TALKING ABOUT BIOLOGICAL AGENTS

 1   LIKE OURSELVES, OR ARTIFICIAL AGENTS, LIKE COMPUTERS OR

 2   ROBOTS, HOW THEY ACTUALLY COPE WITH INFORMATION. BY

 3   WHICH I MEAN, HOW THEY ACQUIRE IT, REPRESENT IT, PROCESS

 4   IT, MODIFY IT, AND TRANSMIT IT. AND THE ROLE OF

 5   LANGUAGE IN ALL OF THESE PROCESSES IS SORT OF DRIVING A

 6   LOT OF THE WORK. HOW LANGUAGE IS ACTUALLY USED IN

 7   THIS -- IN ALL OF THESE -- ALL OF THESE PROCESSES THAT

 8   INVOLVE INFORMATION. I MEAN, THAT IS MORE OR LESS THE

 9   MISSION STATEMENT OF CSLI AND OTHER PLACES THAT WORK

10   SIMILAR -- DO SIMILAR RESEARCH.

11   Q.   NOW, YOU MENTIONED OTHER PLACES. ARE THERE

12   OTHER CENTERS WITH SIMILAR MISSIONS?

13   A.   YES. I MENTIONED THE CENTER FOR COGNITIVE

14   SCIENCE AT RUTGERS. THERE IS LOT OF OVERLAP WITH WORK

15   THERE. LIKE CSLI AT STANFORD, IT'S LINGUISTS,

16   PHILOSOPHERS, PSYCHOLOGISTS, COMPUTER SCIENTISTS,

17   MATHEMATICIANS, LOGICIANS, ANYBODY WORKING ON LANGUAGE

18   INFORMATION WHERE THE RESEARCH IS OVERLAPPING MASSIVELY

19   THESE DAYS. THE WORK TENDS TO TRANSCEND THE TRADITIONAL

20   DISCIPLINARY BOUNDARIES.

21   THERE IS A CENTER FOR -- A INSTITUTE FOR

22   LANGUAGE LOGIC AND INFORMATION IN AMSTERDAM, COGNITIVE

23   SCIENCE PROGRAM IN BERKELEY. THE GROUP, LOGIC AND

24   METHODOLOGY AT BERKELEY, THE COGNITIVE SCIENCE LAB AT

25   MIT. THEY ARE ALL WORKING ON MORE OR LESS THE SAME

1   ISSUES INVOLVING COGNITION, COMPUTATION, INFORMATION,

2   LANGUAGE.

3   Q.   NOW, WHEN YOU SAID LANGUAGE, AGAIN, DO YOU MEAN

4   HUMAN LANGUAGES, LIKE ENGLISH OR SPANISH?

5   A.   YES, BUT IT'S BROADER. I MEAN, THE WORK IS

6   FOCUSED ON LANGUAGE IN GENERAL, SO THERE ARE, THERE ARE,

7   AS YOU SAY NATURAL HUMAN LANGUAGE. WE USUALLY CALL THEM

8   NATURAL LANGUAGES, LIKE ENGLISH, SPANISH, ICELANDIC,

9   SWAHILI, I WILL STOP. AND FORMAL LANGUAGES, WHICH ARE

10   LANGUAGES WHICH HUMANS HAVE DESIGNED RATHER THAN JUST

11   ACQUIRED BY GROWING UP IN A LINGUISTIC COMMUNITY. AND

12   WE ACQUIRE OUR NATURAL LANGUAGE JUST BY GROWING UP IN A

13   LINGUISTIC COMMUNITY AND JOINING IN.

14   BUT WE ALSO CONSTRUCT ARTIFICIAL

15   LANGUAGES FOR VARIOUS PURPOSES. IN MATHEMATICAL LOGIC,

16   WE CONSTRUCT FORMAL LANGUAGES ALL THE TIME, FOR DOING

17   LOGICAL DEDUCTION AND VARIOUS OTHER THINGS. IN

18   LINGUISTICS, WE CONSTRUCT ARTIFICIAL LANGUAGES, TOO.

19   AND OUR COMPUTING LANGUAGES, PROGRAMMING LANGUAGES,

20   WHICH ARE ARTIFICIALLY CONSTRUCTED LANGUAGES. AND THESE

21   FORMAL LANGUAGES AND NATURAL LANGUAGES HAVE SOME

22   PROPERTIES IN COMMON, SOME DIFFERENCES. AND THEY TEND

23   TO BE MASSIVELY SIMPLIFIED COMPARED WITH NATURAL

24   LANGUAGES WHICH WE ACQUIRE FOR -- BECAUSE NATURAL

25   LANGUAGE IS SO VERY, VERY HARD TO UNDERSTAND.

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 1   Q.      DO YOU HAVE ANY PERSONAL KNOWLEDGE OR

 2   FAMILIARITY WITH ARTIFICIAL LANGUAGE INVOLVING, LET'S

 3   SAY, COMPUTERS?

 4   A.      YEAH.  I HAD TO DO A BIT OF PROGRAMMING WITH

 5   LANGUAGES LIKE LISP, L-I-S-P, AND PROLOG, P-R-O-L-O-G.

 6   MANY, MANY YEARS AGO, I HAD TO LEARN SOME VERY SIMPLE

 7   COMPUTER LANGUAGES, LIKE BASIC, A LANGUAGE CALLED BASIC.

 8               AND THEN THERE ARE LANGUAGES WHICH ARE

 9   FORMAL LANGUAGES AGAIN, THAT I USED IN THE PUBLISHING --

10   IN PUBLISHING.  SO, FOR INSTANCE, THIS -- THE LANGUAGE

11   TEX, T, SMALL E, LARGE X, WHICH IS A -- WHICH IS A

12   MARKUP LANGUAGE, A PROCEDURAL MARKUP LANGUAGE.  AND THEN

13   THE ONE THAT PEOPLE WERE USING, I SUPPOSE, A LOT UNTIL

14   QUITE RECENTLY, HTML, HYPERTEXT MARKUP LANGUAGE, FOR

15   CREATING WEB PAGES AND SO ON.

16               THESE MARKUP LANGUAGES ARE ALSO RATHER

17   LIKE COMPUTER LANGUAGES.  IN SOME RESPECTS, THEY ARE

18   NOT.

19   Q.      DO YOU HAVE ANY PERSONAL KNOWLEDGE OR

20   INVOLVEMENT WITH A HYPERTEXT MARKUP LANGUAGE INVOLVING

21   WEB PAGES?

22   A.      OH, YEAH.  I USED TO DESIGN SOME WEB PAGES

23   MYSELF MANY YEARS AGO, USING HTML.

24   Q.      ARE THERE STANDARD WAYS OF CLASSIFYING NATURAL

25   LANGUAGES AND FORMAL LANGUAGES?
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1   A.   YES, THE SAME BASIC HIERARCHY IS USED. NOAM

2   CHOMSKY, N-O-A-M, CHOMSKY, A LINGUIST FROM MIT,

3   MASSACHUSETTS INSTITUTE OF TECHNOLOGY, HE DEVELOPED A

4   HIERARCHY, A MATHEMATICAL HIERARCHY OF LANGUAGES, AND

5   COMPUTER LANGUAGES AND OTHER FORMAL LANGUAGES WHICH CAN

6   BE DEFINED, CAN BE CLASSIFIED MATHEMATICALLY BY WHERE

7   THEY STAND IN THE CHOMSKY HIERARCHY. AND THERE ARE

8   VARIOUS DEBATES ABOUT WHERE NATURAL LANGUAGES FALL,

9   HUMAN LANGUAGES FALL ON THE CHOMSKY HIERARCHY, WHICH OF

10   COURSE CHOMSKY HIMSELF HAS BEEN VERY SIGNIFICANT IN

11   INVESTIGATING.

12   Q.   YOU HAD MENTIONED PREVIOUSLY THE CENTER FOR THE

13   STUDY OF LANGUAGE AND INFORMATION AT STANFORD. IS THERE

14   ANY SORT OF FORMAL RELATIONSHIP BETWEEN THAT CENTER, THE

15   LOGIC AND METHODOLOGY PROGRAM AT BERKELEY, WHICH I

16   BELIEVE YOU MENTIONED, AND THE CENTER FOR COGNITIVE

17   SCIENCE AT RUTGERS?

18   A.   THERE IS NO FORMAL RELATION. THE RELATION IS

19   REALLY IN THE RESEARCH THAT IS DONE AND IN THE PEOPLE.

20   PEOPLE DO POP BACKWARDS AND FORWARDS BETWEEN THESE

21   PLACES PERIODICALLY. I SOMETIMES POP BACK TO STANFORD

22   SOMETIMES, AND THE STANFORD PEOPLE COME TO RUTGERS. BUT

23   THE OVERLAP AND RESEARCH IS REALLY WHAT BINDS THESE

24   CENTERS TOGETHER, OR THE COMPETITION BETWEEN THEM

25   SOMETIMES.

1   Q.   ARE RESEARCHERS IN THE SCIENCE OF LANGUAGE AND

2   INFORMATION MOSTLY LINGUISTS?

3   A.   NO. IF MOST MEANS MORE THAN HALF, THEN THE

4   ANSWER IS NO. MANY OF THEM ARE. MANY OF THEM ARE

5   PHILOSOPHERS, MANY ARE PSYCHOLOGISTS, COMPUTER

6   SCIENTISTS, MATHEMATICIANS AND SO ON. SO IT'S NOT TRUE

7   THAT MOST ARE.

8   Q.   WHAT ABOUT WITH RESPECT TO THE TRAINING OR

9   BACKGROUND OF RESEARCHERS, DO -- IF YOU ARE NOT A

10 LINGUIST, DO THEY HAVE ANY TRAINING OR BACKGROUND, TO

11 YOUR KNOWLEDGE, OF LOGIC AND PHILOSOPHY?

12 A.   SIR, WHICH PEOPLE? I DID NOT --

13 Q.   RESEARCHERS THAT ARE TRAINED IN AS -- THAT ARE

14 NOT LINGUISTS AT THESE CENTERS, DO THEY HAVE ANY

15 BACKGROUND WITH RESPECT TO THE SCIENCE OF LANGUAGE AND

16 INFORMATION, LOGIC AND PHILOSOPHY?

17 A.   YES, THEY WOULD BE COMPLETELY STUMPED IF THEY

18 DIDN'T HAVE BASIC KNOWLEDGE OF LOGIC. I MEAN, IT WOULD

19 BE PRETTY -- SINCE THE FIRST ORDER LOGIC IS THE LINGUA

20 FRANCA OF DEALING WITH FORMAL MATTERS. EVERYBODY NEEDS

21 TO HAVE A BASIC KNOWLEDGE OF THAT. ALL THE GRADUATE

22 STUDENTS, EVEN THE UNDERGRADUATES IN PHILOSOPHY AND

23 LINGUISTICS HAVE A BASIC KNOWLEDGE OF BASIC LOGIC, YES.

24 Q.   ARE THERE PEOPLE OTHER THAN ACADEMICS DOING

25 RESEARCH IN THE SCIENCE OF LANGUAGE AND INFORMATION?

1   A.   YES, THERE ARE. WHEN I WAS AT STANFORD, AT THE

2   CENTER FOR STUDY OF LANGUAGE AND INFORMATION, THERE WERE

3   PEOPLE FROM HEWLETT-PACKARD AND SRI AND OTHER

4   ORGANIZATIONS WHOSE PEOPLE CAME ALONG AND WORKED AT

5   CSLI. AND THERE ARE PEOPLE, COMPUTER SCIENTISTS, WHO

6   JUST WORK IN THE COMPUTER INDUSTRY, WHO WORK ON MANY OF

7   THE SAME ISSUES, AND WORK FOR COMPUTER COMPANIES. THERE

8   ARE PEOPLE WHO ARE EMPLOYED BY BOTH. I MEAN, GEOFFREY

9   NUNBERG, WHO WAS A LINGUISTIC AT STANFORD WHEN I WAS

10   THERE. HE WAS EMPLOYED BY STANFORD UNIVERSITY AND ALSO

11   BY XEROX PARC, P-A-R-C, THE PALO ALTO RESEARCH CENTER.

12   HE WAS ESSENTIALLY A LINGUIST UP THERE WHO HAD AN

13   AFFILIATION WITH THE LINGUISTICS DEPARTMENT.

14   MR. WIZNER: YOUR HONOR, I'M NOT CLEAR ON

15   WHAT THE ACTIVITIES OF OTHER PEOPLE HAVE TO DO WITH

16   PROFESSOR NEALE'S QUALIFICATIONS IN THIS CASE, AND I

17   THINK THAT IS WHAT WE ARE DISCUSSING.

18   THE COURT: THE QUESTION WAS ASKED

19   WITHOUT OBJECTION. ARE THERE OTHERS THAT WORK IN THIS

20   FIELD OTHER THAN ACADEMIA. NO OBJECTION TO THAT

21   QUESTION SO HE WAS ANSWERING IT. OVERRULED.

22   MR. GOMEZ: THANK YOU, YOUR HONOR.

23   BY MR. GOMEZ:

24   Q.   WHAT ARE SOME OF THE PROJECTS THAT ARE WORKED ON

25   IN THE SCIENCE OF LANGUAGE AND INFORMATION?

1   A.   WELL, THERE ARE WHAT WE MIGHT CALL PURE

2   PROJECTS, LIKE TRYING TO UNDERSTAND THE PHONOLOGY, THE

3   SOUND SYSTEMS OF ORDINARY HUMAN LANGUAGES, THE SYNTAX,

4   THE GRAMMATICAL STRUCTURES OF ORDINARY HUMAN LANGUAGES,

5   LIKE ENGLISH, AND THE SEMANTICS, THE WAY MEANINGS ARE

6   COMBINED. MEANINGS OF WORDS ARE COMBINED TO GET

7   MEANINGS OF SENTENCES AND SO ON. SO PHONOLOGY, SYNTAX

8   AND SEMANTICS. THEY ARE THE SORT OF BASICS OF

9   GENERATIVE LINGUISTICS. SO A LOT OF RESEARCH IS JUST

10 DONE IN THE PURE LEVEL.

11   THERE ARE PEOPLE WHO WANT TO WORK ON

12 COMPUTER LANGUAGES, IMPROVING COMPUTER LANGUAGES AND SO

13 ON. SO THERE ARE PEOPLE WHO WORK ON SOMETIMES AS WELL

14 IN THE COMPUTATION FIELD, SPEECH RECOGNITION SOFTWARE,

15 MACHINE AIDED TRANSLATION. THESE SORTS OF ISSUES.

16   THERE ARE PEOPLE WHO WORK IN A MORE

17 MATHEMATICAL VEIN ON THE SORT OF MATHEMATICAL OR FORMAL

18 POWER OF THESE VARIOUS LANGUAGES. AND THE IMPLICATIONS

19 OF WORKING WITH LANGUAGES OF HIGHER POWER, AS IT WERE,

20 MATHEMATICALLY. A LOT OF PEOPLE WORK ON THAT.

21   AND THEN THERE IS THE ISSUES THAT I'M

22 MOST INTERESTED IN. THAT IS WHAT IS SOMETIMES CALLED

23 THE PROBLEM OF CONTENT, HOW IT IS THAT WE MANAGE TO

24 ACTUALLY GET CONTENT FROM SPEECH OR TEXT THAT WE

25 ENCOUNTER. AND THE ROLE OF CONTEXT, BACKGROUND

1   INFORMATION, BACKGROUND SKILLS, LOCALIZED CONTEXTUAL

2   INFORMATION, GENERAL OR LOCAL NORMS OF INTERPRETATION.

3   THE WAY ALL THESE SORTS OF THINGS BEAR ON THE ISSUE OF

4   WORKING OUT THE CONTENT OF WHAT SOMEBODY IS ACTUALLY

5   SAYING ON A GIVEN OCCASION. IT'S A HUGE PROBLEM THAT

6   WE -- I HAVE BEEN WORKING ON FOR OVER 20 YEARS.

7   WHAT ELSE? SOME PEOPLE WILL GO INTO

8   CLINICAL WORK ON APHASIA, THE STUDY OF SPEECH DISORDERS.

9   THAT IS NOT SOMETHING THAT I HAVE DONE.

10   Q.   IS THE RESEARCH THAT IS CONDUCTED IN THE SCIENCE

11   OF LANGUAGE AND INFORMATION PURELY THEORETICAL, OR DOES

12   IT HAVE PRACTICAL APPLICATIONS?

13   A.   GOING BACK TO THE THINGS I JUST MENTIONED, SOME

14   OF THEM ARE PURELY THEORETICAL. THAT IS TRUE. BUT

15   THERE ARE PRACTICAL APPLICATIONS. I MENTIONED ALREADY

16   THE CASE THAT PEOPLE WHO MIGHT WANT TO GO INTO CLINICAL

17   RESEARCH, STUDYING SPEECH DISORDERS, APHASIA. IT'S NOT

18   SOMETHING I HAVE DONE, BUT THAT IS ONE SORT OF PRACTICAL

19   APPLICATION.

20   THE COMPUTER INDUSTRY IS WHERE MANY

21   PEOPLE APPLY THEMSELVES AFTERWARDS. BECAUSE THEY ARE

22   TRYING TO IMPROVE PROGRAMMING LANGUAGES. THEY ARE

23   TRYING TO DEAL WITH ISSUES IN ARTIFICIAL INTELLIGENCE OR

24   ROBOTICS, AND SO ON. SO THOSE ARE THE MAJOR PRACTICAL

25   APPLICATIONS, I WOULD SAY.

1   Q.   AND, AGAIN, DR. NEALE, WHAT IS YOUR PRIMARY AREA

2   OF RESEARCH IN THE SCIENCE OF LANGUAGE AND INFORMATION?

3   A.   IT'S WHAT I CALL, WHAT MANY CALL, THE PROBLEM OF

4   CONTENT. THE PROBLEM OF INFORMATION CONTENT. WE

5   ENCOUNTER WORDS ALL DAY LONG IN SPEECH OR IN WRITING.

6   AND IT'S QUITE EXTRAORDINARY, WHEN YOU GET UNDER THE

7   HOOD, AS IT WERE, TO REALIZE JUST HOW MUCH INFORMATION

8   WE ACTUALLY EXTRACT FROM THE USE OF THE LANGUAGES TO

9   REPRESENT INFORMATION OR TO TRANSMIT INFORMATION.

10   ESSENTIALLY, WHAT LANGUAGE WEARS ON ITS SLEEVE, THE

11   CONTENT THAT LANGUAGE WEARS ON ITS SLEEVE RADICALLY

12   UNDERDETERMINES OR UNDERSPECIFIES THE CONTENTS THAT

13   PEOPLE ARE REPRESENTING OR TRANSMITTING IN USING

14   LANGUAGE ON GIVEN OCCASIONS. AND THE PROBLEM IS EVERY

15   YEAR WE REALIZE THE GAP BETWEEN THE INFORMATION THAT IS

16   CONVEYED BY THE WORDS THEMSELVES AND THE INFORMATION

17   THAT PEOPLE ARE ACTUALLY COMMUNICATING, REPRESENTING OR

18   CONVEYING WITH THE WORDS IS GREATER AND GREATER AND

19   GREATER THAN WE PREVIOUSLY REALIZED.

20   Q.   YOU HAVE LISTED A NUMBER OF PUBLICATIONS IN YOUR

21   CURRICULUM VITAE. ARE THESE PEER-REVIEWED?

22   A.   YES, ALMOST ALL OF THEM.

23   Q.   CAN YOU GIVE US -- I BELIEVE THAT IS DEFENDANT'S

24   EXHIBIT 60. CAN YOU GIVE US SOME EXAMPLES OF

25   PUBLICATIONS ON RESEARCH, ON THE PROBLEM OF INFORMATION

1   CONTENT THAT YOU HAVE WRITTEN?

2   A.   YEAH. THAT IS GOING TO BE A LONG LIST. SO

3   SOMEBODY MAY CUT ME OFF AT A CERTAIN POINT, I IMAGINE.

4   CERTAINLY MY BOOK DESCRIPTIONS, A LARGE

5   PART OF THE MIT PRESS BOOK FROM 1990, A LARGE COMPONENT

6   OF THAT DEALS WITH THE PROBLEM OF INFORMATION CONTENT.

7   Q.   I DIRECT YOUR ATTENTION TO DEFENDANT'S EXHIBIT

8   60, PAGE 4, ON PUBLICATIONS. IT HAS BOOKS IN PRINT. DO

9   THOSE INVOLVE YOUR AREA -- A PEER-REVIEWED AREA?

10   A.   IT'S THE SECOND BOOK I WAS TALKING ABOUT,

11   DESCRIPTIONS, 1990.

12   AND THEN THERE'S A MUCH EXPANDED EDITION

13   WHICH IS COMING OUT QUITE SOON. THAT IS ALSO LISTED, I

14   BELIEVE, A FEW LINES LATER.

15   SO ON THE BOOK FRONT -- THEN I'M DOING A

16   COLLECTION OF PAPERS ON THIS GENERAL TOPIC FOR OXFORD

17   UNIVERSITY PRESS. THAT IS AT THE BOTTOM OF THE PAGE.

18   AND I THINK THERE ARE ARTICLES LISTED ON THE NEXT PAGE.

19   Q.   THAT WOULD BE DEFENDANT'S EXHIBIT 60, PAGE 5?

20   A.   YES.

21   Q.   ARE ANY OF THOSE ARTICLES PEER-REVIEWED OR?

22   A.   YES.

23   Q.   ARE ANY OF THOSE IN YOUR AREA OF -- YOUR FOCUS

24   IN TERMS OF AREA OF RESEARCH, SCIENCE OF INFORMATION?

25   A.   YEAH. ON LOCATION IS ONE ABOUT THE PROBLEM OF

1   IDENTIFYING THE -- ESSENTIALLY THE LOCATION THAT GETS

2   INTO THE INFORMATION CONTENT. I MEAN A SIMPLE EXAMPLE,

3   SOMEBODY SAYS IT IS RAINING. THE LOCATION IS PART OF

4   THE INFORMATION CONTENT NORMALLY THAT THEY ARE TRYING TO

5   CONVEY. SO IT'S TURNS OUT TO BE MUCH MORE COMPLICATED

6   THAN YOU THINK. SO THERE IS AN EXAMPLE.

7   PRAGMATISM AND BINDING, WHICH IS TWO

8   ARTICLES BELOW THAT. THAT IS ABOUT THE GENERAL ISSUE.

9   PRAGMATISM IS A SORT OF THEORY ABOUT THE GENERAL

10   UNDERDETERMINATION OR UNDERSPECIFICATION OF INFORMATION

11   CONTENT BY THE LANGUAGE USED TO CONVEY THAT CONTENT.

12   THIS, THAT AND THE OTHER IS A LONG PAPER ON THE GENERAL

13   TOPIC OF HOW WE CONVEY INFORMATION USING THE LITTLE WORD

14   THE, THE DEFINITE ARTICLE, WHICH YOU CAN MAKE A CAREER

15   OF APPARENTLY BECAUSE I HAVE WRITTEN A BOOK ON IT AND A

16   LONG PAPER NOW.

17   IMPLICATURE AND COLORING, FURTHER AT THE

18   BOTTOM. THAT IS ABOUT TYPES OF IMPLICIT MEANING THAT

19   PEOPLE MANAGE TO CONVEY, USING LANGUAGE THAT IS NOT

20   REPRESENTED IN THE WORDS THEY USE.

21   Q.   COULD YOU GIVE AN EXAMPLE OF WHAT YOU MEAN IN

22   THAT? WOULD THAT INVOLVE A TEXT ON A DOCUMENT?

23   A.   YEAH, HERE IS AN EXAMPLE. SUPPOSE -- IT'S A

24   VERY FAMOUS EXAMPLE IN PHILOSOPHY. I WRITE A LETTER OF

25   RECOMMENDATION FOR A STUDENT WHO WANTS TO, SAY, GO TO

1   GRAD SCHOOL AT STANFORD. AND I SAY: DEAR SIRS:

2   MR. SMITH HAS EXCELLENT HANDWRITING AND HE IS ALWAYS

3   VERY PUNCTUAL. YOURS SINCERELY, STEPHEN NEALE.

4   I LEAVE IT AT THAT. WELL, I HAVE ONLY

5   SAID GOOD THINGS ABOUT HIM, THAT HE WAS PUNCTUAL AND

6   THAT HE HAD NICE HANDWRITING. BUT IT'S CLEAR THAT

7   PEOPLE WHO READ THIS LETTER WHO KNOW ME IN THE

8   PHILOSOPHY DEPARTMENT OR LINGUISTICS DEPARTMENT AT

9   STANFORD WILL THINK NEALE THINKS THE GUY IS NO GOOD,

10   NEALE THINKS WE SHOULD NOT ACCEPT THE GUY. I DON'T SAY

11   ANYTHING ABOUT THAT IN THE TEXT ITSELF, BUT CLEARLY

12   THERE ARE CERTAIN EXPECTATIONS THAT GO ALONG WITH A

13   LETTER LIKE THAT.

14   THE MESSAGE I'M TRYING TO GET ACROSS GOES

15   WAY BEYOND WHAT YOU GET FROM THE WORDS THEMSELVES. ALL

16   SORTS OF INFERENCE AND CONTEXT AND BACKGROUND KNOWLEDGE

17   ABOUT THE WAY HUMANS OPERATE. THE NORM OF WHAT'S

18   EXPECTED OF PEOPLE IN COMMUNICATIVE SETTINGS. ALL THOSE

19   THINGS FACTOR INTO ACTUALLY RETRIEVING THE INFORMATION

20   CONTENT THAT SOMEBODY IS TRYING TO GET -- TRYING TO

21   CONVEY. SORRY.

22   Q.   NOW, ARE THERE OTHER ARTICLES IN TERMS OF PEER

23   REVIEW THAT YOU MAY WANT TO IDENTIFY IN TERMS OF YOUR

24   PARTICULAR AREA OF EXPERTISE, BACKGROUND, IN TERMS OF

25   RESEARCH, I MEAN.

1   A.   WELL, COLORING AND COMPOSITION IS ANOTHER ONE ON

2   THIS ISSUE OF IMPLICITLY CONVEYED IMPLICIT MEANING.

3   GRAIN AND CONTENT IS ON WHAT WE CALL THE FINENESS OF THE

4   GRAIN OF THE CONTENT, HOW RICH THE INFORMATION CONTENT

5   ACTUALLY IS.

6   Q.   AND THESE ARE IN DEFENDANT'S EXHIBIT 60, PAGE 6?

7   A.   YES. THEY ARE THE ONES ABOVE -- THE GRAIN AND

8   COLOR IS ABOVE THE THREE THAT ARE IN YELLOW.

9   THE COURT: MR. GOMEZ, WHY DON'T WE

10   FINISH QUALIFYING THE WITNESS AND THEN WE WILL END OUR

11   DAY.

12   MR. GOMEZ: YES, YOUR HONOR.

13   BY MR. GOMEZ:

14   Q.   HAVE YOU SERVED ON EDITORIAL BOARDS OR PEER

15   REVIEW JOURNALS IN YOUR FIELD, DOCTOR?

16   A.   YES, I HAVE. AND I BELIEVE THAT THEY ARE ALSO

17   SOMEWHERE ON MY CURRICULUM VITAE. YES.

18   Q.   AND HAVE YOU TAUGHT ANY COURSES?

19   A.   SORRY.

20   Q.   HAVE YOU TAUGHT ANY COURSES OR RESULTS OF THE

21   RESEARCH THAT YOU HAVE DESCRIBED, THAT YOU HAVE BEEN

22   TALKING ABOUT, IN TERMS OF YOUR BOOKS OR YOUR ARTICLES,

23   THAT HAVE BEEN PEER REVIEWED?

24   A.   SURE. I TEACH THESE TOPICS AT THE GRADUATE

25   LEVEL CONSISTENTLY.

1   Q.   HAVE YOU RECEIVED ANY AWARDS RELATING TO YOUR

2   SCHOLARLY WORK IN THIS AREA AND ARE THEY IDENTIFIED IN

3   YOUR CURRICULUM VITAE?

4   A.   THEY ARE. I WAS A GUGGENHEIM FELLOW IN 2002,

5   2003. I HAVE BEEN A FELLOW OF THE NATIONAL ENDOWMENT

6   FOR THE HUMANITIES IN '97, '98. I HAVE BEEN A

7   PRESIDENT'S FELLOW -- PRESIDENT'S RESEARCH FELLOW AT THE

8   UNIVERSITY OF CALIFORNIA, '94, '95, A ROCKEFELLER

9   FELLOW, BELLAGIO IN 1995. I HAVE HAD VARIOUS OTHER

10 MINOR AWARDS, FELLOWSHIPS, SCHOLARSHIPS AND THE LIKE.

11   MR. GOMEZ: THE DEFENDANT MOVES TO

12 QUALIFY DR. NEALE AS AN EXPERT ON INFORMATION CONTENT ON

13 THE THEORETICAL BASES OF LINGUISTIC CLASSIFICATION AND

14 THE CLASSIFICATION OF TEXT DOCUMENTS FOR CONTENT.

15   IN ADDITION, THE DEFENDANT MOVES DR.

16 NEALE AS AN EXPERT ABOUT THE THEORETICAL OR INHERENT

17 LIMITS OF INTERNET FILTERING SOFTWARE AS A MECHANISM TO

18 BLOCK ACCESS TO TYPES OF CONTENT ON THE WORLDWIDE WEB TO

19 THE EXTENT THAT SUCH SOFTWARE RELIES ON TEXT-BASED

20 CLASSIFICATION.

21   THE COURT: ANY OBJECTION?

22   MR. WIZNER: YOUR HONOR, PLAINTIFFS HAVE

23 NO OBJECTION TO PROFESSOR NEALE TESTIFYING AS AN EXPERT

24 ON LINGUISTICS OR PHILOSOPHY OF LANGUAGE WHERE HE IS

25 QUITE OBVIOUSLY AN EXPERT.

1   PLAINTIFFS DO OBJECT TO PROFESSOR NEALE

2   OFFERING ANY EXPERT TESTIMONY ABOUT HOW FILTERS DO OR DO

3   NOT OPERATE OR ANYTHING RELATED TO THE WORLDWIDE WEB.

4   IF PROFESSOR NEALE IS GOING TO TESTIFY

5   THAT, ASSUMING THAT FILTERS WORK A CERTAIN WAY, AND

6   ASSUMING THAT THE WEB IS STRUCTURED A CERTAIN WAY, THESE

7   ARE THE LINGUISTIC CONSEQUENCES OF A VAST SET OF

8   CIRCUMSTANCES, THEN WE HAVE NO OBJECTION. BUT PROFESSOR

9   NEALE DOES NOT PURPORT TO BE AN EXPERT ON FILTERING

10   TECHNOLOGY OR INDEED ON ANYTHING ELSE RELATED TO

11   FILTERS, DOES NOT PURPORT TO BE AN EXPERT ON THE

12   WORLDWIDE WEB, HAS SPECIFICALLY DISCLAIMED THAT HE IS AN

13   EXPERT IN THOSE AREAS DURING HIS DEPOSITION AND SHOULD

14   NOT BE PERMITTED TO PROVIDE EXPERT TESTIMONY IN THOSE

15   AREAS.

16   THE COURT: HOW DO YOU READ THAT, MR.

17   GOMEZ?

18   MR. GOMEZ: WELL, YOUR HONOR, IT'S

19   OBVIOUS THAT DR. NEALE IS AN EXPERT IN TERMS OF TEXT

20   CLASSIFICATION. WE'VE HEARD NUMEROUS WITNESSES, BOTH

21   FOR THE PLAINTIFF AND THE DEFENDANT, DESCRIBING TEXT AS

22   PART AND PARCEL OF WEB PAGES AND PART AND PARCEL OF WHAT

23   INTERNET FILTERING PRODUCTS ACTUALLY DO. AND WE

24   SPECIFICALLY ARE LIMITING HIS TESTIMONY, AS I STATED AT

25   THE END, TO TYPES OF CONTENT ON THE WORLDWIDE WEB AND

1   INTERNET CONTENT FILTERING TO THE EXTENT THAT SUCH

2   SOFTWARE RELIES ON TEXT-BASED CLASSIFICATION.

3   FRANKLY, IT DOES NOT MATTER WHETHER THE

4   TEXT IS CHISELED INTO A ROCK OR IT'S ON AN ELECTRONIC

5   FORMAT OR IT'S ON A PAGE. IT'S TEXT CLASSIFICATION

6   IS -- THERE IS NOTHING INHERENTLY PARTICULAR OR PECULIAR

7   TO TEXT THAT IS ON A WEB PAGE AS OPPOSED TO TEXT THAT IS

8   ON A DOCUMENT, YOUR HONOR.

9   THE COURT: I DON'T KNOW WHAT YOU MEAN BY

10   TEXT CLASSIFICATION.

11   THE WITNESS SPEAKS SLIGHTLY DIFFERENTLY

12   ABOUT THAT SUBJECT. IF THERE IS A METHOD OF

13   CLASSIFICATION THAT IS ACCEPTED IN PROFESSOR NEALE'S

14   PROFESSION THEN WE WILL FIND OUT ABOUT THAT.

15   MR. GOMEZ: YES, YOUR HONOR.

16   THE COURT: I WILL ACCEPT THE OPINIONS OF

17   DR. NEALE IN THE AREAS AS DESCRIBED BY DEFENSE COUNSEL,

18   WHICH I DON'T WANT TO REREAD. AND CAUTION THE

19   PLAINTIFFS' COUNSEL TO OBJECT TO ANYTHING YOU THINK IS

20   OUTSIDE OF HIS EXPERTISE, OR WHICH REQUIRES LAYING OF A

21   FOUNDATION.

22   MR. GOMEZ: YES, YOUR HONOR. THANK YOU,

23   YOUR HONOR.

24   THE COURT: WE WILL RECESS FOR THE

25   EVENING AND BEGIN TOMORROW MORNING AT 9:30. COUNSEL ARE

1   EXCUSED. WE ARE OFF THE RECORD.

2   DR. NEALE, YOU ARE EXCUSED.

3   (WITNESS EXCUSED.)

4   THE COURT: WE ARE BACK ON THE RECORD.

5   COUNSEL ARE NOT EXCUSED. I TAKE IT ALL BACK. WE HAVE

6   TO HAVE A PROPER END TO OUR DAY.

7   I DON'T REMEMBER EVERYTHING WE SAID AT

8   4:30 YESTERDAY, BUT YOU DID TALK ABOUT OTHER WITNESSES.

9   MR. GOMEZ: YOUR HONOR, THE DEFENDANT FOR

10   TOMORROW IS OF COURSE INTENDING TO CONTINUE WITH THE

11   TESTIMONY OF DR. STEPHEN NEALE.

12   THE DEFENDANT ALSO WOULD BE SEEKING TO

13   PRESENT MR. KNOPPER AND, I BELIEVE, JOHN DANCU. WE

14   BELIEVE THAT SHOULD TAKE THE ENTIRE DAY. IF IT DOESN'T,

15   WE -- WELL, WE BELIEVE THAT SHOULD TAKE THE ENTIRE DAY,

16   YOUR HONOR.

17   MR. HANSEN: EXHIBITS.

18   MR. GOMEZ: EXHIBITS, I BELIEVE WE HAVE

19   -- MR. KNOPPER IS DEFENDANT'S EXHIBIT -- HOLD ON ONE

20   SECOND.

21   THE COURT: YOU WENT THROUGH THEM

22   YESTERDAY. I DON'T KNOW IF THEY ARE THE SAME OR NOT.

23   MR. GOMEZ: EXCUSE ME, YOUR HONOR.

24   DEFENDANT'S EXHIBIT 107. AND THERE ARE

25   REPLACEMENTS FOR DEFENDANT'S EXHIBIT 107.

1   THE COURT: WHAT DOES THAT MEAN,

2   REPLACEMENTS?

3   MR. GOMEZ: IT'S BASICALLY A CORRECTED

4   COPY OF THE EXHIBIT. IT HAD SOME PAGES THAT WERE

5   INADVERTENTLY NOT INCLUDED.

6   WE ALSO, WITH MR. DANCU, WOULD BE SEEKING

7   TO HAVE DEFENDANT'S EXHIBIT 109 AND DEFENDANT'S EXHIBIT

8   464.

9   MR. HANSEN: REPEAT THAT.

10   MR. GOMEZ: DEFENDANT'S EXHIBIT FOR MR.

11   DANCU, DEFENDANT'S EXHIBIT 109, AND DEFENDANT'S EXHIBIT

12   464.

13   THE COURT: DR. NEALE'S EXPERT REPORT IS

14   DEFENDANT'S EXHIBIT 59, IS THAT CORRECT?

15   MR. GOMEZ: YES, YOUR HONOR. THE

16   EXHIBITS WITH DR. NEALE ARE DEFENDANT'S EXHIBIT -- HIS

17   EXPERT REPORT IS DEFENDANT'S EXHIBIT 60, I BELIEVE.

18   HOLD ON, YOUR HONOR. EXCUSE ME. IT'S

19   DEFENDANT'S EXHIBIT 59. YOU ARE CORRECT, YOUR HONOR.

20   HIS CURRICULUM VITAE, I BELIEVE, IS

21   DEFENDANT'S EXHIBIT 60.

22   WE WOULD ALSO HAVE DEFENDANT'S EXHIBIT

23   61, AND WE HAVE DEMONSTRATIVE EXHIBITS 4 THROUGH 8.

24   THE COURT: YOU SHOWED THOSE TO THE OTHER

25   SIDE?

1   MR. GOMEZ: YES, YOUR HONOR.

2   THE COURT: DO YOU HAVE COPIES OF THOSE

3 FOR ME ALSO?

4   MR. GOMEZ: WE HAVE PROVIDED COPIES TO

5 YOU. YES, YOUR HONOR.

6   THE COURT: DR. NEALE, DID DR. NEALE

7 WRITE MORE THAN ONE REPORT?

8   MR. GOMEZ: NO, YOUR HONOR.

9   MR. HARRIS: YOUR HONOR, ON DEFENDANT'S

10 EXHIBIT 107, WHICH WAS THE EXHIBIT THAT THEY ARE

11 REPLACING, WE ARE GOING TO MAKE REFERENCE TO THE

12 ORIGINAL VERSION OF IT AS WELL. SO I DON'T KNOW IF IT

13 MAKES SENSE TO RE- NUMBER THE REPLACEMENT WITH SOME

14 OTHER NUMBER OR, IF NOT, WE CAN IDENTIFY THE ORIGINAL

15 VERSION AS A PLAINTIFFS' EXHIBIT. BUT I DON'T WANT THE

16 COURT TO BE CONFUSED. THEY ARE REALLY TWO DIFFERENT

17 DOCUMENTS.

18   THE COURT: SINCE THE DEFENDANTS PRODUCED

19 IT, WE WILL CALL IT DEFENDANT 107. THE REPLACEMENT

20 REPORT WILL BE 107 A.

21   MR. GOMEZ: YES, YOUR HONOR.

22   THE COURT: MARK ALL YOUR RECORDS

23 ACCORDINGLY.

24   MR. GOMEZ: YES, YOUR HONOR.

25   THE COURT: OTHERWISE IT'S GOING TO BE

1   MORE CONFUSING.

2   MR. HARRIS: YOUR HONOR, THERE IS ALSO AN

3   ISSUE ON MR. DANCU'S TESTIMONY, A CONFIDENTIALITY ISSUE

4   THAT WE RAISED WITH PLAINTIFF -- WITH THE DEFENDANT

5   YESTERDAY. YESTERDAY THE DEFENDANT INFORMED US THAT

6   THEY WERE GOING TO CALL MR. DANCU AS A WITNESS TOMORROW,

7   THURSDAY. HE IS THE CEO OF A COMPANY, IDOLOGY, THAT

8   OFFERS A DATA VERIFICATION SERVICE. HE HAS BEEN

9   DEPOSED. AT HIS DEPOSITION, HE ASSERTED CONFIDENTIALITY

10   OVER CERTAIN TOPICS, SUCH AS HOW MUCH THE SERVICE COSTS,

11   WHAT THE DATABASES THEY USE ARE, AND WHAT PROBLEMS THERE

12   ARE WITH THE DATABASES. AND HE ALSO ASSERTED

13   CONFIDENTIALITY OVER CERTAIN OF THE DEPOSITION EXHIBITS.

14   WHEN WE LEARNED THIS YESTERDAY WE RAISED WITH DEFENDANTS

15   THAT WE EXPECTED, DEPENDING ON WHAT TESTIMONY HE GIVES,

16   THAT WE MAY GO INTO SIMILAR TOPICS AND WE MAY USE SOME

17   OF THOSE EXHIBITS.

18   WE DON'T KNOW FOR SURE UNTIL WE HEAR WHAT

19   HE TESTIFIES BUT WE WANTED TO RAISE THAT ISSUE AND WE

20   WANTED TO ASK WHETHER MR. DANCU WAS WAIVING

21   CONFIDENTIALITY OVER THOSE EXHIBITS, AND WHETHER HE

22   WOULD BE ASSERTING CONFIDENTIALITY ON THE WITNESS STAND

23   IF WE INQUIRED INTO SIMILAR TOPICS. THIS MORNING

24   DEFENDANT GOT BACK TO US AND INFORMED US THAT MR. DANCU

25   IS NOT WAIVING CONFIDENTIALITY. THEY ALSO SUGGESTED

1 THAT WE SHOULD SEND A LETTER TO MR. DANCU INFORMING HIM

2 THAT WE MAY BE GOING INTO CONFIDENTIAL AREAS. WE DON'T

3 BELIEVE THIS IS A PRACTICAL PROCESS TO GO THROUGH FOR

4 CROSS EXAMINATION PURPOSES FOR A FEW REASONS. ONE IS

5 THAT HE IS DEFENDANT'S WITNESS, NOT OURS. WE DO NOT

6 KNOW WHAT HE IS GOING TO TESTIFY TO AND CANNOT

7 ANTICIPATE WHAT WILL BE USED ON CROSS EXAMINATION UNTIL

8 WE HEAR HIS TESTIMONY.

9   IF WE WERE TO SEND HIM A LETTER, THERE IS

10 NOTHING WE COULD SAY IN A LETTER OTHER THAN TO SAY WE

11 MAY BE COVERING THE SAME TOPICS THAT WERE IN YOUR

12 DEPOSITION AND WE MIGHT BE USING THE SAME EXHIBITS,

13 DEPENDING ON WHAT YOU SAY ON THE WITNESS STAND.

14   THE COURT: THAT IS AT LEAST LIMITING.

15   MR. HARRIS: THE OTHER PROBLEM WITH SUCH

16 A LETTER IS THAT THE DEFENDANT DID NOT GIVE US

17 SUFFICIENT TIME TO PROVIDE MR. DANCU WITH FIVE DAYS

18 NOTICE. THEY INFORMED US YESTERDAY THEY WILL BE CALLING

19 HIM THURSDAY, TOMORROW. CLEARLY THERE IS NOT ENOUGH

20 TIME TO INFORM HIM OF THIS. WE ALSO DON'T THINK THAT

21 THE PURPOSE OF SUCH A LETTER MATCHES THE SITUATION WHERE

22 A WITNESS IS VOLUNTARILY TESTIFYING. HE IS THE CEO OF A

23 COMPANY THAT STANDS TO PROFIT FROM HIS PRODUCT, FROM HIS

24 SERVICE BEING USED IF COPA WERE TO GO INTO EFFECT AND

25 HE HAS DECIDED TO TESTIFY. HE IS WELL AWARE --

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1                    THE COURT:  HAS HE BEEN SUBPOENAED, BY

2    THE WAY, OR COMING VOLUNTARILY?

3                    MR. GOMEZ:  HE IS -- THIS WITNESS IS

4    APPEARING VOLUNTARILY, YOUR HONOR.

5                    MR. HARRIS:  HE IS AWARE OF THE

6    CONFIDENTIALITY AGREEMENT.  HE IS AWARE OF THE

7    CONFIDENTIALITY ISSUES.

8                    THE COURT:  ONE THING IS BASIC.  IT'S NOT

9    LIKE THE 5TH AMENDMENT.  WHEN HE GETS ON THE STAND,

10   NOTHING IS CONFIDENTIAL, AS FAR AS I'M CONCERNED, UNLESS

11   IT HAS BEEN PREPARED FOR IN ADVANCE.

12                   MR. HARRIS:  SO I THINK THERE ARE TWO

13   ISSUES.  ONE IS HIS TESTIMONY, AND IF HE WILL BE

14   REFUSING TO ANSWER ANY QUESTIONS, BASED ON SOME

15   CONFIDENTIALITY.  ANOTHER ISSUE IS THE DOCUMENTS

16   THEMSELVES, WHICH WERE PRODUCED AND HE HAS DESIGNATED AS

17   CONFIDENTIAL AND HAS NOT YET AGREED TO WAIVE.

18                   THE COURT:  DOES HE HAVE COUNSEL NOW TO

19   YOUR KNOWLEDGE, MR. GOMEZ?

20                   MR. GOMEZ:  NO, YOUR HONOR.  WHEN

21   PLAINTIFFS ARE FINISHED, WE WOULD LIKE TO RESPOND, YOUR

22   HONOR.

23                   THE COURT:  SURE.

24                   IT'S A KNOTTY PROBLEM.  LET'S SEE WHAT

25   MR. GOMEZ MAY HAVE AS A POSSIBLE SOLUTION.
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1   MR. GOMEZ: YES, YOUR HONOR. MR. BEANE,

2   WHO WILL BE HANDLING THE DIRECT TESTIMONY OF MR. DANCU,

3   WILL ADDRESS THE PLAINTIFFS' OBJECTIONS.

4   MR. BEANE: AS MR. HARRIS INDICATED, MR.

5   DANCU WAS DEPOSED BACK IN FEBRUARY. AND HE WAS

6   DISCLOSED IN MARCH IN RESPONSE TO AN INTERROGATORY AS --

7   OR HIS COMPANY, RATHER, WAS DISCLOSED AS ONE WHICH WOULD

8   PROVIDE AN EFFECTIVE AFFIRMATIVE DEFENSE UNDER COPA.

9   WHEN WE FILED OUR PRETRIAL ORDER, HE WAS LISTED AS A

10   WITNESS AT THAT TIME. I BELIEVE THAT DATE WAS OCTOBER

11   3RD.

12   THE COURT: AS A WITNESS FOR THE

13   DEFENDANT?

14   MR. BEANE: YES, A WITNESS FOR THE

15   DEFENDANT.

16   ON OCTOBER 12TH, PLAINTIFFS SENT A LETTER

17   TO MR. DANCU RELATING TO CERTAIN CONFIDENTIALITY ISSUES.

18   THEY IDENTIFIED CERTAIN PORTIONS OF THE DEPOSITION

19   TRANSCRIPT, AND THEY IDENTIFIED THREE DIFFERENT EXHIBITS

20   TO THE DEPOSITION TRANSCRIPT THAT THEY INTENDED TO USE

21   DURING HIS TESTIMONY.

22   SO HE HAS BEEN LISTED SINCE THEN, AND

23   THEY HAVE HAD THE OPPORTUNITY TO ADDRESS ANY

24   CONFIDENTIALITY ISSUES THAT THEY HAVE WAY BEFORE THIS

25   TIME.

1   SO FRANKLY, IT IS OUR POSITION THAT THE

2   CONFIDENTIALITY ISSUES WITH RESPECT TO THESE EXHIBITS,

3   THAT IS A THIRD-PARTY ISSUE THAT RESIDES WITH MR. DANCU.

4   I WILL SAY, FOR OUR PART, THE DEFENDANT

5   WILL NOT BE INTRODUCING ANY OF THESE EXHIBITS INTO

6   EVIDENCE.

7   WITH RESPECT TO THEIR --

8   THE COURT: 107 IS AN EXHIBIT. WHAT IS

9   THAT?

10   MR. BEANE: NEITHER OF THE EXHIBITS THAT

11   WE LISTED FOR MR. DANCU WERE EXHIBITS TO THE DEPOSITION.

12   THE COURT: I'M SORRY, 109 AND 464.

13   MR. BEANE: RIGHT. SO WE WILL NOT BE

14   INTRODUCING ANY TESTIMONY FROM THE DEPOSITION OR

15   EXHIBITS FROM THE DEPOSITION.

16   NOW, I THINK THERE IS ONE ISSUE THAT IS

17   SOMEWHAT SEPARATE AND THAT IS THE USE OF THE DEPOSITION

18   TRANSCRIPT FOR IMPEACHMENT PURPOSES. I RAISED THIS

19   ISSUE WITH MR. DANCU TODAY AND I EXPLAINED THAT IF HE

20   TESTIFIED ABOUT A TOPIC THAT THEY WOULD HAVE THE

21   OPPORTUNITY TO CROSS EXAMINE HIM. AND IF THEY FELT THAT

22   HE HAD SAID SOMETHING CONTRADICTORY IN HIS DEPOSITION

23   TRANSCRIPT THAT BY TALKING ABOUT IT DURING THE DIRECT

24   EXAMINATION, HE WOULD BE IMPLIEDLY WAIVING THE

25   CONFIDENTIALITY. SO OF COURSE WE WOULD HAVE NO

1   OBJECTION TO THE USE OF THE DEPOSITION TRANSCRIPT FOR

2   THAT PURPOSE.

3   BUT THE THIRD-PARTY CONFIDENTIALITY

4   ISSUE, WHICH THEY DID HAVE THE OPPORTUNITY TO ADDRESS

5   WITH HIM, AND DID ADDRESS WITH RESPECT TO A LIMITED

6   NUMBER OF DOCUMENTS, IT'S OUR VIEW THAT THAT IS PASSED

7   AND WE WOULD OBJECT TO THE USE OF ANY EXHIBITS FOR THAT

8   PURPOSE BECAUSE THE PROTECTIVE ORDER CLEARLY REQUIRES

9   FIVE DAYS' NOTICE.

10   MR. HARRIS: YOUR HONOR, JUST --

11   THE COURT: HAS NOTICE BEEN GIVEN, JUST A

12   LETTER OF SOME WEEKS AGO?

13   MR. HARRIS: IF I MAY CLARIFY, THE LETTER

14   WAS PROVIDED BECAUSE WE WERE INTENDING OR MIGHT USE

15   THOSE DOCUMENTS IN OUR CASE IN CHIEF. THEY WERE NOT TO

16   BE USED FOR CROSS EXAMINATION PURPOSES. IN FACT,

17   CERTAIN OF THOSE DOCUMENTS WERE DOCUMENTS THAT WERE

18   RELIED ON BY OUR EXPERTS AND THAT IS WHY WE IDENTIFIED

19   THEM FOR USE IN OUR CASE IN CHIEF. THERE WAS NOT ANY

20   INTENT TO IDENTIFY DOCUMENTS TO BE USED IN CROSS

21   EXAMINATION.

22   THE COURT: WHAT IS THE GIST OF YOUR

23   LETTER TO MR. DANCU OF A FEW WEEKS AGO?

24   MR. HARRIS: IT IDENTIFIED THREE

25   DOCUMENTS THAT MIGHT BE USED IN OUR CASE IN CHIEF, AND A

1   CERTAIN PORTION OF HIS DEPOSITION TRANSCRIPT, AND HE DID

2   NOT RESPOND, AND THEREFORE HAS WAIVED CONFIDENTIALITY

3   OVER THOSE DOCUMENTS.

4   IF I UNDERSTOOD DEFENSE COUNSEL

5   CORRECTLY, IT SOUNDS LIKE THERE IS NO LONGER AN ISSUE OF

6   THE USE OF THE DEPOSITION TRANSCRIPT. IT'S ONLY AN

7   ISSUE OF WHETHER WE WILL BE ABLE TO USE CERTAIN

8   CONFIDENTIAL EXHIBITS ON CROSS EXAMINATION.

9   THE COURT: WHAT CONCERNS ME IS, I ASSUME

10   THAT THERE IS AN AGREEMENT BETWEEN MR. DANCU AND WHOEVER

11   TOOK HIS DEPOSITION AT LEAST AND MAYBE BOTH PARTIES, TO

12   GIVE HIM THE PROTECTION OF THE PROTECTION ORDER, LIKE

13   ALL THE OTHER WITNESSES WHO TESTIFIED WITH PROPRIETARY

14   ISSUES. THERE IS SUCH AN AGREEMENT, ISN'T THERE, WITH

15   MR. DANCU?

16   MR. HARRIS: THERE IS, YOUR HONOR. IF A

17   PARTY INTENDS TO OFFER INTO EVIDENCE CONFIDENTIAL

18   INFORMATION AS THE TERM IS DEFINED, YOU ARE REQUIRED TO

19   GIVE THAT PARTY FIVE DAYS NOTICE. WE DO NOT INTEND AND

20   HAVE NOT INTENDED TO OFFER ANY EVIDENCE FROM MR. DANCU

21   OTHER THAN THE DOCUMENTS THAT WE IDENTIFIED. THE ONLY

22   REASON THESE ADDITIONAL DOCUMENTS WOULD COME IN IS IF

23   PLAINTIFFS -- I'M SORRY, IF DEFENDANT PUTS HIM ON THE

24   STAND AND ELICITS TESTIMONY FOR WHICH WE NEED TO RESPOND

25   BY USING SUCH A DOCUMENT.

1   THE COURT: MR. BEANE.

2   MR. BEANE: YOUR HONOR, IT'S OUR POSITION

3   THAT THEY HAVE HAD THESE EXHIBITS SINCE FEBRUARY OR

4   MARCH, AND THEY HAVE KNOWN THAT HE WAS GOING TO TESTIFY

5   SINCE OCTOBER 3RD. AND HAD A PRETTY STRONG CLUE IN

6   MARCH WHEN WE DISCLOSED HIM AS SOMEBODY WHO PROVIDES AN

7   EFFECTIVE AGE VERIFICATION SERVICE.

8   THE COURT: I REMEMBER THE DISCOVERY

9   INTERROGATORY.

10   MR. BEANE: SO IN FAIRNESS TO MR. DANCU,

11   I THINK THAT IT IS UNFAIR TO SURPRISE HIM WITH A SECOND

12   LETTER ON THE EVE OF HIS TESTIMONY, WHEN HE DOESN'T HAVE

13   THE TIME PERIOD TO CONSULT WITH HIS BUSINESS PARTNERS OR

14   COUNSEL ABOUT THE CONFIDENTIALITY.

15   THE COURT: I'M NOT RECOMMENDING ANY

16   LETTER. MR. DANCU IS GOING TO TESTIFY. YOU ARE GOING

17   TO PUT HIM ON THE STAND, HE IS GOING TO CROSS EXAMINE

18   HIM. YOU ARE AWARE OF SOME OF THE CONFIDENTIALITY

19   ISSUES. YOU CAN ASK, FOR INSTANCE, A QUESTION OF HIM,

20   DIDN'T YOU TALK ABOUT THIS KIND OF DEVICE AT YOUR

21   DEPOSITION, AT PAGE 260. YES. AND YOU JUST DON'T PUT

22   THE NAME OF IT IN, OR YOU TRY TO AVOID THE CONFIDENTIAL

23   MATERIAL AND STILL GET AN EFFECTIVE CROSS EXAMINATION.

24   THAT IS THE ONLY THING THAT I WOULD RECOMMEND.

25   MR. HARRIS: THE ONLY OTHER ALTERNATIVE I

1   COULD SUGGEST, YOUR HONOR, IS THAT IF DEFENSE COUNSEL

2   WOULD GIVE US FIVE DAYS' NOTICE WHEN THEY INTEND TO CALL

3   A WITNESS WHO HAS ASSERTED CONFIDENTIALITY, WE COULD

4   PROVIDE A LETTER IN ACCORD WITH THE CONFIDENTIALITY

5   AGREEMENT. BUT THEY HAVE NOT DONE SO IN THIS ONE

6   INSTANCE. SO, PERHAPS FOR FUTURE WITNESSES, WHERE THERE

7   HAVE BEEN CONFIDENTIALITY ASSERTIONS RAISED, THEY COULD

8   TELL US THE TIMING WHEN THAT WITNESS WILL APPEAR.

9   THE COURT: LET'S DEAL WITH DANCU. HE IS

10   GOING TO COME ON NOW TOMORROW, OR MONDAY, OR WHENEVER

11   IT'S TIME. AND I DON'T THINK, MY HIPSHOT ON THIS

12   CONFIDENTIALITY AGREEMENT, IS IT DOES NOT COVER THE

13   ISSUE OF CROSS EXAMINATION. IT'S VERY GENERAL. AND

14   WHILE THE INTENT OF THE PARTIES IS CLEAR TO PROTECT THE

15   INFORMATION, IT JUST IS NOT SPECIFIC ENOUGH TO COVER THE

16   EXIGENCY OF A PROPONENT OF THE WITNESS NOT OFFERING ANY

17   CONFIDENTIAL MATERIAL, PROPERLY AND CORRECTLY GIVING

18   FULL FORCE TO THE PROTECTIVE ORDER. AND THEN THE CROSS

19   EXAMINER HAS A DUTY TO HIS CLIENT TO FAIRLY CROSS

20   EXAMINE THE WITNESS AND CONFRONT HIM WITH MATERIALS THAT

21   ARE INCONSISTENT WITH HIS DIRECT IF THAT MIGHT COME UP.

22   MY ADMONITION IS THAT FOR THIS WITNESS

23   THAT CROSS EXAMINATION BE TAILORED TO AVOID THE PROBLEM

24   AS BEST AS POSSIBLE.

25   AND IF THE WITNESS HAS A PROBLEM WITH

1   THAT, THE COURT WILL TRY TO SOLVE IT FOR HIM. FOR RIGHT

2   NOW, THAT IS ALL I CAN SUGGEST. HE IS, I ASSUME, A

3   SERIOUS, EXPERIENCED BUSINESSMAN. IF HE HAD -- I HAVE

4   NOT LOOKED TO SEE WHETHER THERE IS GOOD CAUSE FOR THIS

5   AT ALL. THAT IS THE OTHER THING. I DON'T KNOW WHAT THE

6   INFORMATION IS, SO HE DOES NOT GET THE PROTECTION OF A

7   PROTECTION ORDER IF THERE IS NO GOOD CAUSE, IF IT DOES

8   NOT FALL UNDER THE AREAS PROSCRIBED BY THE AGREEMENT. I

9   HAVE NEVER DONE THAT. WE HOPE THAT ALL GOES AWAY BY

10 SOME DEFT SKILL ON THE PART OF EVERYBODY. BUT IF IT

11 DOES NOT, I WILL DO IT RIGHT. I WILL GO TO SIDE BAR AND

12 SOLVE IT. IT MAY INCLUDE THE RULING THAT IT IS IN OR

13 OUTSIDE OF THE SCOPE OF THE AGREEMENT, AFTER I FIND OUT

14 WHAT IT IS ALL ABOUT. I DON'T THINK IT IS WORTH WORKING

15 ON IT NOW. IF I CAN BE FLEXIBLE, YOU ALL HAVE TO BE

16 FLEXIBLE.

17   MR. GOMEZ: YES, YOUR HONOR.

18   MR. HARRIS: WE WILL DO OUR BEST.

19   THE COURT: DO YOU HAVE OTHER WITNESS

20 THAT MIGHT HAVE THAT SAME PROBLEM OR A SIMILAR PROBLEM?

21   MR. BEANE: THERE IS ONE ADDITIONAL

22 WITNESS WHO WAS ALSO DEPOSED AND WE WILL BE PROFFERING

23 AS A FACT WITNESS, MISS PATTIE DILLON. SHE ALSO HAS

24 ASSERTED CONFIDENTIALITY OVER SOME DOCUMENTS BUT, AS

25 WITH MR. DANCU, SHE DID RECEIVE A LETTER WHERE THE

1   PLAINTIFFS LISTED CERTAIN DOCUMENTS AND TESTIMONY THAT

2   THEY INTENDED TO PROFFER AND IT'S MY UNDERSTANDING THAT

3   THE TIME PERIOD FOR THEM TO OBJECT HAS PASSED.

4   THE COURT: IS THAT CORRECT?

5   MR. HARRIS: I BELIEVE SHE DID ASSERT

6   CONFIDENTIALITY. I DON'T REMEMBER BECAUSE I HAVE NOT

7   YET LOOKED AT HER DOCUMENT TO SEE WHETHER WE SENT A

8   LETTER. BUT, AGAIN, IT WOULD HAVE BEEN TO USE HER

9   DOCUMENTS IN OUR CASE IN CHIEF. IF THERE ARE FIVE DAYS

10   REMAINING BEFORE THE PLAINTIFF -- THE DEFENDANT INTENDS

11   TO CALL HER, WE CAN CERTAINLY SEND A LETTER LETTING HER

12   KNOW, AS SHE PROBABLY KNOWS, THAT THERE ARE

13   CONFIDENTIALITY ISSUES WITH HER TESTIMONY.

14   MR. GOMEZ: YOUR HONOR --

15   THE COURT: WHEN MIGHT SHE TESTIFY?

16   MR. GOMEZ: SHE MAY TESTIFY NEXT

17   WEDNESDAY. WEDNESDAY OR THURSDAY. YOUR HONOR, I THINK

18   THERE IS ONE --

19   THE COURT: BY THE WAY, EXCUSE ME FOR

20   JUST A MINUTE. I WANT TO MAKE IT CLEAR THAT WHETHER A

21   DOCUMENT IS GOING TO BE USED IN A CASE-IN-CHIEF OR IN

22   CROSS EXAMINATION, VIS-A-VIS THE DEPONENT WHO IS

23   ASSERTING CONFIDENTIALITY, IS IRRELEVANT. IT'S THE

24   NOTICE THAT THE DOCUMENT IS GOING TO BE USED AND MAY

25   BECOME PUBLIC IS THE PURPOSE OF THE NOTICE PROVISION.

1   SO IF YOU'RE PROTECTED BY YOUR LETTER THAT YOU HAVE

2   ALREADY SENT, AND YOU WILL DECIDE THAT AFTER YOU LOOK AT

3   IT, THEN I'M GOING TO TELL YOU RIGHT NOW, I'M GOING TO

4   ENFORCE THE FIVE-DAY RULE IF -- NO MATTER WHETHER IT WAS

5   FOR DIRECT OR CROSS. IT DOES NOT MAKE ANY DIFFERENCE TO

6   THE SUBSTANCE OF THE PURPOSE FOR THE CONFIDENTIALITY

7   AGREEMENT.

8   BUT IF YOU WANT TO SEND HER A LETTER AND

9   YOU THINK SHE IS COMING IN NEXT WEEK, YOU CAN SEND IT

10   PROMPTLY.

11   MR. GOMEZ, I'M SORRY.

12   MR. GOMEZ: NO, YOUR HONOR. YOU HAVE

13   ACTUALLY RAISED THE POINT THAT I WAS GOING TO RAISE.

14   AND WHAT I -- THE DEFENDANT STRENUOUSLY OBJECTS TO THE

15   PLAINTIFFS' ATTEMPT TO CREATE SOME KIND OF NEW RULE

16   HERE. THE OCTOBER 3RD NOTIFICATION OF THE WITNESSES WAS

17   A TRIGGER FOR BOTH SIDES TO KNOW WHAT THEY WERE TO DO,

18   IF THERE WAS -- IN TERMS OF OBJECTIONS, IN TERMS OF

19   CONFIDENTIALITY. THEY WERE WELL AWARE -- THEY DEPOSED

20   THESE INDIVIDUALS. THEY WERE WELL AWARE THEY WERE UNDER

21   A CONFIDENTIALITY AGREEMENT. IT'S THIS NEW RULE THAT

22   DOES NOT EXIST THAT THE PLAINTIFFS' COUNSEL IS NOW

23   TRYING TO CREATE OUT OF PURE WHOLE CLOTH IS REALLY, THEY

24   HAVE THE NOTICE, THEY HAD THE OPPORTUNITY, WE ARE TRYING

25   TO -- WE WILL WORK WITH THEM. BUT I DON'T WANT IT LEFT

1   ON THE RECORD THAT THE DEFENDANT IS AGREEING AT ALL WITH

2   THE, YOU KNOW, THE STATEMENT MADE BY PLAINTIFFS'

3   COUNSEL.

4   THE COURT: THERE IS NO NEW RULE. NOW

5   YOU KNOW YOU HAVE MORE THAN FIVE DAYS WITH THAT WITNESS

6   YOU DO WHATEVER YOU THINK IS PROPER. IF THE OTHER

7   LETTER IS NOT COMPREHENSIVE ENOUGH, SEND HER A SECOND

8   LETTER. NO LIMIT ON HOW MANY LETTERS YOU CAN SEND. THE

9   COURT IS WELL AWARE FROM EXPERIENCE, AND NOBODY IN THE

10   ROOM WOULD THINK OTHERWISE, PEOPLE CLAIM CONFIDENTIALITY

11   ON EVERYTHING FROM SOUP TO NUTS WHEN THEY ARE DEPOSED.

12   WHEN THE CHIPS FALL DOWN, OR COME DOWN TO THE BOTTOM,

13   THEY WAIVE IT OR THEY DON'T CARE ABOUT IT, BECAUSE IT

14   WAS 10 YEARS AGO. BUT THEY ASSERT THE CONFIDENTIALITY

15   OUT OF PROTECTIVE MECHANISM AND THEN IT MAY NOT BE

16   IMPORTANT TO THEM. IT MAY NOT BE IMPORTANT. THEY MAY

17   KEEP ASSERTING IT UNTIL THEY ARE ON THE WITNESS STAND.

18   AND I SAY, DO YOU REALLY HAVE TO ASSERT THAT? I CAN'T

19   FIGURE OUT WHAT THE BUSINESS PURPOSE IS. AND THEN THEY

20   SAY, WELL, ALL RIGHT. SO WHO KNOWS. PROTECTIVE ORDERS

21   ARE LIKE A SPONGE. THEY SOAK UP EVERYTHING UNTIL THE

22   CHIPS ARE DOWN. AND WHEN THEY ARE DOWN WE WILL SEE WHAT

23   HAPPENS.

24   BY THE WAY, I DO AGREE WITH MR. GOMEZ

25   THAT WHATEVER YOU HAVE TO DO WITH WITNESSES THAT WERE

1   DISCLOSED BEFORE OR LASTLY OCTOBER 3RD, YOU HAVE TO DO.

2   MR. HARRIS: YES, YOUR HONOR.

3   THE COURT: YOU KNOW THE RULES.

4   MR. HARRIS: WE WILL DO OUR BEST AND TRY

5   TO AVOID ANY ISSUES WITH MR. DANCU TOMORROW AS WELL.

6   WE DO HAVE ANOTHER ISSUE THAT WE WANTED

7   TO RAISE THIS AFTERNOON CONCERNING THE TESTIMONY OF MR.

8   SLOANE, WHO YESTERDAY THE DEFENDANT GAVE US HIS OFFER OF

9   PROOF OF MR. SLOANE. MR. SLOANE IS THE --

10   THE COURT: HOW DO YOU SPELL HIS LAST

11 NAME?

12   MR. HARRIS: S-L-O-A-N-E. HE IS THE

13 REBUTTAL FACT WITNESS TO TALK ABOUT PREPAID CARDS. SO

14 WE JUST RECEIVED HIS OFFER OF PROOF YESTERDAY, AND WE

15 JUST FINISHED HIS ONE-HOUR INTERVIEW A FEW MINUTES AGO.

16 AND AS WE INFORMED DEFENDANT THIS MORNING, BASED ON THE

17 OFFER OF PROOF, WE WOULD LIKE TO RENEW OUR MOTION TO

18 EXCLUDE HIS TESTIMONY AS IT IS ESSENTIALLY OPINION

19 EVIDENCE.

20   IF I MAY APPROACH THE BENCH AND PROVIDE A

21 COPY OF THE OFFER OF PROOF TO YOUR HONOR?

22   THE COURT: OKAY.

23   WHAT TROUBLES ME IS, I'M NOT REACHING ANY

24 CONCLUSION, BUT THE PROCEDURAL RULE OF THE CASE IS, THAT

25 IF THERE IS GOING TO BE OPINION TESTIMONY FROM A

1   LAYPERSON IT HAS TO BE DISCLOSED BY A CERTAIN DATE. I

2   DON'T KNOW WHETHER THIS WAS OR NOT.

3   MR. HARRIS: YES, YOUR HONOR. THIS

4   WITNESS HAS BEEN IDENTIFIED AS A FACT WITNESS, WAS NOT

5   IDENTIFIED AS AN EXPERT, AND WAS NOT IDENTIFIED AS LAY

6   OPINION TESTIMONY EITHER. AND SO THE ONLY WAY IN WHICH

7   THIS WITNESS COULD TESTIFY WOULD BE TO PROVIDE A FACT

8   TESTIMONY BASED ON HIS FIRSTHAND KNOWLEDGE. AND WE

9   BELIEVE, IF YOU LOOK AT THE ITEMS TO WHICH HE IS GOING

10   TO TESTIFY, IT IS CLEAR THAT SUCH TESTIMONY HAS TO BE

11   OPINION TESTIMONY, WHETHER LAY OR EXPERT, BUT IT CANNOT

12   BE FACT TESTIMONY.

13   THE COURT: WHEN DO YOU THINK HE IS GOING

14   TO BE TESTIFYING, DO YOU KNOW?

15   MR. HARRIS: HE IS SUPPOSED TO TESTIFY ON

16   MONDAY. AND THE REASON WE ARE RAISING IT TODAY IS JUST

17   FOR THE CONVENIENCE OF THE WITNESS. IF HE IS GOING TO

18   BE EXCLUDED, RATHER THAN HAVE HIM COME DOWN AND TURNED

19   AWAY, WE THOUGHT IT WOULD BE BETTER TO RAISE THAT WITH

20   YOUR HONOR.

21   THE COURT: I HAVE TO HAVE A HEARING. I

22   HAVE TO HAVE ALL THE MATERIALS THAT YOU JUST REFERRED

23   TO. I HAVE TO HEAR FROM THE OTHER SIDE SO WE HAVE TO

24   GET IT DONE SOMEHOW. I WOULD RATHER HAVE SOMETHING, I'D

25   RATHER DO IT TOMORROW AND YOU CAN PREPARE -- EACH

1   PREPARE A LETTER, POSITION PAPER ON IT, AND GIVE IT TO

2   ME BY NOON BREAK TOMORROW. WE WILL SOLVE IT TOMORROW

3   AFTERNOON.

4   MR. HARRIS: YES, YOUR HONOR.

5   THE COURT: I HAVE TO HAVE ALL THE

6   MATERIALS. YOU SAY THAT IF I LOOK AT THEM, I WILL KNOW

7   THAT IT'S GOING TO BE AN OPINION. I HAVE TO HAVE THOSE.

8   DO EACH OF YOU KNOW THE OTHER'S POSITION WELL ENOUGH TO

9   SUBMIT A SIMULTANEOUS LETTER BRIEF ON THE SUBJECT? I

10   DON'T WANT TO GO THROUGH THE -- MR. GOMEZ, WELL, YOU ARE

11   THE MOVING PARTY. YOU WANT TO SUPPRESS HIS TESTIMONY.

12   LET ME HAVE YOURS BY 9:30 AND MR. GOMEZ BY 12:30.

13   MR. HARRIS: I DON'T BELIEVE THERE ARE

14   ANY SURPRISES. WE ALREADY MOVED ON THIS ISSUE BEFORE TO

15   EXCLUDE HIS TESTIMONY, AND THERE WAS SOME DISCUSSION OF

16   IT AT A PRIOR CONFERENCE. SO I DON'T THINK THERE IS ANY

17   SURPRISES ABOUT WHAT OUR POSITION WAS.

18   THE COURT: I DON'T REMEMBER IT BUT.

19   MR. GOMEZ: I WOULD PREFER IF THE

20   PLAINTIFFS WOULD SUBMIT THEIR RESPONSE BY 9:30. THE

21   DEFENDANT WILL DO SO BY 12:30. IF THAT IS WHAT THE

22   COURT -- WHICH THE COURT HAD JUST SUGGESTED.

23   THE COURT: I DID NOT SUGGEST IT. I SAID

24   IT WAS NOT NECESSARY. I SAID IF EVERYBODY KNOWS, IF

25   IT'S AN OLD HAT ISSUE, THEN WE WILL NOT TAKE THAT

1   TROUBLE. WE WILL SORT OUT ANY DIFFERENCES WHEN WE HAVE

2   THE HEARING. I WANT THEM SIMULTANEOUSLY DONE BY THE

3   NOON RECESS TOMORROW. HANDED UP TO THE COURT HERE. YOU

4   DON'T REMEMBER WHAT CONFERENCE IT WAS WHERE WE DISCUSSED

5   IT BEFORE? WAS IT THE FINAL PRETRIAL CONFERENCE?

6   MR. HARRIS: I BELIEVE IT WAS THE FINAL

7   PRETRIAL CONFERENCE.

8   THE COURT: I HAVE A TRANSCRIPT OF THAT

9   AND I CAN GO DIG IT OUT.

10   MR. HARRIS: I BELIEVE IT WAS THE SECOND

11   THURSDAY CONFERENCE WE HAD, THE FINAL PRETRIAL

12   CONFERENCE.

13   THE COURT: THE FIRST THURSDAY WAS A

14   CLEANUP. THE SECOND ONE WAS A FORMAL FINAL PRETRIAL

15   CONFERENCE.

16   MR. HARRIS: AND OUR INITIAL OBJECTIONS

17   ARE DOCUMENT NUMBER 329.

18   THE COURT: YOU HAVE COPIES OF THAT?

19   MR. HARRIS: YES.

20   THE COURT: THAT IS WHAT WE WILL DO WITH

21   THAT.

22   WHERE DOES MR. SLOANE RESIDE OR HAVE HIS

23   BUSINESS?

24   MR. GOMEZ: I BELIEVE IT'S NEW YORK, YOUR

25   HONOR.

1   THE COURT: I JUST WANT TO KNOW HOW MUCH

2   PROBLEM HE MAY HAVE.

3   MR. GOMEZ: YES, YOUR HONOR.

4   THE COURT: IT'S NOT THE DOMINANT THING

5   IN OUR WORK, BUT IT MIGHT BE SOMETHING TO WORRY ABOUT.

6   OKAY. IN THE MEANTIME, I WILL DIG OUT THE FINAL

7   PRETRIAL CONFERENCE TRANSCRIPT, AND YOU CAN REFER TO IT.

8   YOU HAVE THE TRANSCRIPT, TOO, IF YOU WANT TO USE IT. I

9   DON'T WANT TO REHASH THINGS WE HAVE BEEN THROUGH ONCE

10   BEFORE, BUT THIS LOOKS LIKE IT MIGHT BE A MORE EXPANSIVE

11   VERSION OF WHAT WE DID BEFORE.

12   OKAY. ANYTHING ELSE WE NEED RIGHT NOW?

13   MR. GOMEZ: I DON'T BELIEVE SO, YOUR

14   HONOR.

15   MR. HARRIS: NO, YOUR HONOR.

16   THE COURT: THANKS FOR YOUR COOPERATION.

17   WE ARE FINISHED FOR THE DAY.

18   COUNSEL ARE EXCUSED AND WE ARE OFF THE

19   RECORD.

20   (COURT ADJOURNED AT 5:05 P.M.)

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16

17              I CERTIFY THAT THE FOREGOING IS A CORRECT

18    TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE

19    ABOVE-ENTITLED MATTER.

20

21

22

23

24    DATE                  OFFICIAL COURT REPORTER

25
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