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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE ANDRÉ BIROTTE JR., U.S. DISTRICT JUDGE

DISNEY ENTERPRISES, INC., ET)
AL.,)
)
 PLAINTIFFS,)
)
 vs.) No. CV 16-4109-AB
)
 VIDANGEL, INC.,)
)
 DEFENDANT.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, JUNE 12, 2019

8:45 A.M.

LOS ANGELES, CALIFORNIA

Day 2 of Jury Trial, Pages 265 through 330, inclusive

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I N D E XJUNE 12, 2019

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1 LOS ANGELES, CALIFORNIA; WEDNESDAY, JUNE 12, 2019

2 8:45 A.M.

3 - - -

4 (The following was heard in open court in the presence
5 of the jury:)

6 THE CLERK: Calling CV-16-4109-AB, Disney
7 Enterprises, Inc., et al., versus VidAngel, Inc., jury trial
8 Day 2.

9 Counsel, please step forward and state your
10 appearances.

11 MS. YOUNG: Blanca Young for the plaintiffs.

12 MR. KLAUS: Kelly Klaus for the plaintiffs.

13 MS. EHLER: Rose Ehler for the plaintiffs.

14 MR. EISENHUT: Mark Eisenhut for VidAngel.

15 MR. BROOKS: Samuel Brooks for VidAngel.

16 MR. PHILPOT: J. Morgan Philpot for VidAngel.

17 THE COURT: Good afternoon to you all.

18 Good afternoon, ladies and gentlemen of the jury.
19 Hope you had a good evening. We're ready to resume with our
20 trial today.

21 Disney, you may call your next witness.

22 MS. YOUNG: Plaintiffs call Professor
23 William Barnett.

24

25

1 WILLIAM BARNETT,

2 having been first duly sworn,

3 testified as follows:

4 THE CLERK: Do you solemnly swear that the
5 testimony you shall give in the cause now before this Court
6 shall be the truth, the whole truth, and nothing but the
7 truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Please be seated. Please
10 state and spell your name for the record.

11 THE WITNESS: I am William Barnett, W-i-l-l-i-a-m,
12 B-a-r-n-e-t-t.

13 THE COURT: All right, Counsel, you may proceed.

14 MS. YOUNG: Good afternoon.

15 DIRECT EXAMINATION

16 BY MS. YOUNG

17 Q Good afternoon, Professor Barnett.

18 A Good afternoon.

19 Q Where are you currently employed?

20 A I am a professor at the Stanford Graduate School of
21 Business. I have been since 1991.

22 Q And what is the focus of your academic research?

23 A I study the growth and failure of companies.

24 Q Have you published research on that subject?

25 A Yes. All my research -- all my published research is

1 on that topic.

2 Q And can you please give the jury some examples of
3 courses that you teach at Stanford.

4 A Well, I teach our main strategy course, focused on
5 growing companies to the MBA students. I teach our
6 entrepreneurship course for the students who want to create
7 companies and grow them and a variety of other courses like
8 those.

9 Q Do you teach any executive education programs?

10 A I teach in all of our executive education programs, and
11 I direct the Stanford executive program, which is our main
12 program.

13 Q And who are your students in those programs?

14 A Those are executives, typically senior executives, who
15 are growing companies, creating companies, and wanting their
16 companies to succeed.

17 Q You also have experience advising companies.

18 A Yes, I do.

19 Q Can you please describe that at a high level.

20 A Yes. I encounter companies in doing case studies.
21 Often they approach me for consulting arrangements where I
22 work with the CEOs of those companies to help them to grow
23 and create value.

24 Q And have you sat on boards of directors?

25 A Yes.

1 Q You also advise your students?

2 A Yes. Often the students come in often to create
3 businesses or to join a growing company that they want to
4 see succeed.

5 Q Have you advised start-up companies?

6 A Yes.

7 Q Do you have experience working with venture
8 capitalists?

9 A Yes, considerable amount of experience.

10 Q Can you describe it briefly.

11 A So I have taught courses, together with venture
12 capitalists for decades. I often meet with venture
13 capitalists who, themselves, need advice for their
14 companies.

15 Q And is business ethics part of the curriculum that you
16 teach at Stanford?

17 A Yes, very much so. We have a specialized course, but
18 as well, all of our courses have an ethical component and in
19 particular my courses always look at the ethical aspect of
20 business.

21 Q Are you being compensated for your work in this case?

22 A Yes, I am.

23 Q And what is your rate?

24 A My customary consulting rate of \$1,000 an hour.

25 Q And does your compensation depend in any way on the

1 opinions you are offering here today or the outcome of this
2 trial?

3 A No.

4 MS. YOUNG: Your Honor, we would proffer
5 Professor William Barnett in the expert in the field of
6 business strategy.

7 THE COURT: Any objection?

8 MR. BROOKS: None other than were previously
9 raised.

10 THE COURT: Objection is noted but overruled. He
11 will be so designated.

12 BY MS. YOUNG:

13 Q Professor Barnett, have you prepared any slides to help
14 illustrate your testimony today?

15 A Yes, I have.

16 Q What was your assignment in this case?

17 A Well, number one, to analyze VidAngel's business model,
18 which is their strategy; and then, number two, to analyze
19 who stood to profit and to lose as a result of that business
20 model.

21 Q And did you reach any opinions on those subjects?

22 A I did, several.

23 Q And do you have a slide to summarize those opinions?

24 A Yes. Number 1, VidAngel failed to create sufficient
25 value with its filtering models to drive customer growth.

1 And, Number 2, VidAngel responded to this failure
2 by changing its business to offer unauthorized streams of
3 premium content without the customary licensing restrictions
4 and at below market prize.

5 Number 3, VidAngel grew rapidly because of its low
6 price and wide content selection, not because of filtering.

7 Number 4, VidAngel grew for the benefit of itself
8 and its investors and content creators lost as a result.

9 And Number 5, VidAngel followed an unethical,
10 illegitimate business model that carried with it known
11 risks.

12 Q You mentioned a business model. What is that?

13 A That's the approach a company takes to create and then
14 capture value.

15 Q How does that happen? Do you have a slide that
16 illustrates that?

17 A Yes. In fact, especially for start-up companies this
18 happens through a discovery process. A lot of times, when
19 we see successful businesses, we might think it was all
20 planned in advance, but, in fact, much more, typically,
21 there is a process, and it begins when the entrepreneur
22 proposes an initial approach to the business and goes into a
23 step where the entrepreneur tries that business model in the
24 market as you see on your screen, Step 2.

25 At that point, you get to the most important step,

1 which is where we see the market response to that initial
2 business model, and we measure that.

3 This is the point where everybody is looking to
4 see whether or not the company has product market fit.
5 That's the point where a lot of folks will say, are the dogs
6 eating the dog food? We just want to see if it's working.

7 And then that leads, then, to the fourth step,
8 which is based on that market response. The entrepreneur
9 and his or her team learns from that market response,
10 adjusts accordingly, and goes back through the process over
11 and over.

12 Q When you say the dogs are eating the dog food, how can
13 you tell?

14 A Well, you know, when you talk to people in a company,
15 you know when the dogs are eating the dog food because they
16 are paying for the product or service that you offer.

17 I found that when you talk to people, you ask them
18 if the dogs are eating the dog food, they either say yes,
19 because it's obvious that people are paying for it or they
20 say a lot of other words which means no.

21 Q Did you analyze VidAngel's business model?

22 A I did.

23 Q What did you do in order to analyze their business
24 model?

25 A I looked at a variety of documents, at the documents

1 that had been given by top management to the board, at
2 statements that were made as part of the legal action by the
3 leadership of the company and its investors.

4 Q You mentioned the board. Can you briefly describe what
5 that is.

6 A Yes. So all companies have a board -- most companies
7 have a board of directors, and, typically, the board of
8 directors is -- that's the group of people whose job it
9 is -- they have an obligation to make sure that the
10 leadership of the company is doing everything they can to
11 make the company valuable for purposes of its investors and
12 employees.

13 Q Does management have any duties toward the board of
14 directors when it's communicating with them?

15 A Very much so. They must reveal information in full to
16 the board of directors.

17 Q Have you prepared a timeline to illustrate how VidAngel
18 went through the process of developing a business model?

19 A Yes. And you can see it on that board there, as well
20 as on your screen.

21 Q Where did you get the information that's on this
22 timeline?

23 A This comes from a variety of different exhibits that
24 are cited here at the bottom of the exhibit.

25 Q And do those include board presentations?

1 A Yes, they do.

2 Q Now, can you orient us here. What are we looking at
3 here on the X axis and the Y axis?

4 A That's right. So the vertical axis, the alignment's
5 going up and down. That's the number of users of the
6 VidAngel service. And across the bottom, that's time.

7 So as -- if you see the line is relatively flat,
8 that indicates no real appreciable growth. When you see the
9 line is steep, that means there is growth.

10 Q Let's start at the beginning.

11 What was the business model initially?

12 A So in that early period that you see from late 2013
13 into 2014, that's the period where VidAngel has a plug-in
14 service, which is a subscription service for filtering where
15 you would pay as a user and then you would have the ability
16 to filter content that you would separately purchase from
17 YouTube -- or purchase from Google Play or get from YouTube
18 and would you put it through the filter.

19 Q Was the business growing under that model?

20 A Well, no. As you can see from that early period, there
21 is a relatively flat line, and that's an indication that you
22 do not have product market fit.

23 Q Let's take a look at Exhibit 160, please. So what is
24 this document?

25 A Well, this would be the front page of a board book.

1 This is the set of documents that the leadership of a
2 company gives the board of directors to prepare for one of
3 its regular board meetings. This would be the one from
4 July 11th of 2014.

5 Q Let's look at page 5, please.

6 So there is a box here that says "Acquisition,"
7 and can you please explain what that means and what these
8 different metrics are here.

9 A You will see a lot going on in this table. The point
10 here is, if you look at for all time, and that's the way
11 they put it here, from August 1st, 2013 through -- for this
12 document, July 6th, 2014, Acquisitions refers to the
13 customers who have come on and are paying for the service.
14 And so the visitors are those who visited the Website.

15 The New Trial Accounts, which is a much smaller
16 number, those are people who have gone in and agreed to a
17 trial account. And so that's a very small conversion rate,
18 especially given the amount of ad spending. This is an
19 indication to me, if I were to look at this, that we do not
20 have product market fit.

21 Furthermore, as you go down and you look at
22 Attrition, so those are the folks who went on to the service
23 and opened up an account but then left. Those are very high
24 percentages. So very few are going in, especially given the
25 amount of ads spent and very many are leaving. This is a

1 company that has not discovered product market fit.

2 Q Going back real quick to the timeline, there is a bit
3 of a blip that comes right before October of 2014. What is
4 that?

5 A Yeah. So this is a period where there was a giveaway
6 in the service. Now, if you give your service away for
7 nothing, people will go ahead and adopt it. Now, typically,
8 giveaways you can tell because they typically fall off.
9 That's not an indication of product market fit.

10 And separately, if you look at the revenues, they
11 stay flat during that period. Once again, users go, up
12 revenues don't. That's indicative of a giveaway. Giveaway
13 does not indicate product market fit.

14 Q Did VidAngel do any market research to figure out what
15 it would take to get people to pay for its service?

16 A Yes, they did.

17 Q Let's take a look at Exhibit 220. So this is an
18 August 8th, 2014 memo from Focus on the Family, talking
19 about VidAngel user testing. This is about a month after
20 that board presentation we just looked at?

21 A Uh-huh.

22 Q Let's please turn to page 2. And they discuss users'
23 requirements for choosing to pay for this type of service.
24 What did they find here?

25 A And this is often done when you are struggling, you are

1 not finding product market, often you will then go and look
2 at user requirements.

3 Number 1, they find that a wide selection of
4 content is what the users want. You can see Number 2, users
5 want this at low cost.

6 You put all that together, you get to their third
7 conclusion, which is the, sort of, price and the service
8 would need to be such that it would replace Netflix.

9 And they go on and talk about some other things,
10 including the fact that some folks just would not pay for
11 the filtering service.

12 So this is a set of conclusions that's looking at
13 the fact that people want a wide selection of low-cost video
14 content as opposed to filtering.

15 Q Have you seen any other documents addressing why the
16 early filtering service did not --

17 A Yes, I have.

18 Q Let's take a look at Exhibit 105. So this is an e-mail
19 from the David Quinto to Joseph Shapiro. It copies
20 Neal Harmon, dated October 2nd, 2014.

21 What does Mr. Quinto say here about the editing
22 function?

23 A If you look in the second sentence -- I will just go
24 ahead and read it.

25 (Reading:) That VidAngel has

1 determined that the editing function by itself
2 does not have a market.

3 And that is the same conclusion I would have
4 reached looking at the same information they knew about by
5 that point.

6 Q Let's go back to our timeline. What did VidAngel do in
7 response to the failure of its early filtering model?

8 A Well, if you remember from that diagram I showed
9 earlier, with an entrepreneur, you will go in and you will
10 see whether you have product market fit, and, based on that
11 feedback from the market, you then go and try something
12 else.

13 And people sometimes use this word "pivot" to talk
14 about that. You hear it talked about all the time. That's
15 precisely what goes on here.

16 VidAngel's leadership made a decision to pivot to
17 a new business.

18 Q And, ultimately, what did they do with that pivot?

19 A Well, the idea for the new business is what in this
20 proceeding is being talked about as the disc-based model,
21 where they buy a DVD and they rip the content from it and
22 then put it out and stream it.

23 Q And when was that model publicly launched?

24 A Well, now when you make plans to do a pivot like this,
25 you can't do it right away. So you have got them back there

1 making the plans.

2 If you see on the diagram in 2014 in October, it's
3 going to take a while. They have to have the -- you have to
4 prepare the Website and really just do the thing you are
5 planning to do.

6 And so that actually gets launched, as you see
7 from the diagram, out in August of 2015 with the fullness of
8 the model, that \$1.00 price for premium content in October
9 of 2015.

10 Q And have you seen VidAngel documents explaining why it
11 chose that \$1.00 price?

12 A Yes, I have.

13 Q Let's take a look at Exhibit 119, please.

14 So this says, "Alta Ventures Investment Committee
15 Minutes," and what is Alta Ventures here?

16 A That's a venture capital firm.

17 Q And the date here is November 23rd, 2015.

18 A Yes.

19 Q About a month after that price drop?

20 A That's right.

21 Q And these are Minutes of an Investment Committee
22 meeting. What is that?

23 A So the group of the partners who head the venture
24 capital firm will typically comprise an investment
25 committee, and that's the group -- very important. That

1 Investment Committee decides how to invest the funds of all
2 the limited partners who have trusted them to do this.

3 So these committee meetings are very important and
4 Minutes are the record of what happened at their meeting.

5 Q Let's go and look down at some of the bullet points of
6 this meeting.

7 So there is an eighth bullet point. And it
8 says -- let me go up to the very top. "Diego asked for
9 clarification on the legal strategy of the company," and
10 then it says, "Neal Harmon, the CEO of VidAngel, joined the
11 call and explained the legal strategy in detail."

12 Is that uncommon for a CEO to join a call with the
13 venture capitalists?

14 A No. It's very common for this to occur.

15 Q Now, skipping a bullet, going to the next one, "Diego
16 asked why VidAngel offers a lower price than most of their
17 competitors when they are providing a value-added service."

18 Why ask this kind of question?

19 A Well, now you remember earlier I said that companies
20 try to create and capture value. So this word "value" keeps
21 getting used.

22 If you are creating value, people are typically
23 willing to pay for it. The venture capitalists -- so Diego
24 is coming from that perspective -- they want to know if
25 there's value being created by the company.

1 So rightly he is concerned that they are coming
2 with a \$1.00 price for this premium content, yet they are
3 claiming that they have a value-added service. So he is
4 sensing something that there is something not right there,
5 and he wants to understand why they would do it.

6 Q What is Mr. Harmon's response as recorded in these
7 Minutes?

8 A You can see underneath -- I will just go ahead and read
9 that.

10 MR. BROOKS: I would just object that it's
11 hearsay.

12 THE COURT: The document's in evidence; correct?

13 MR. BROOKS: Right. But the statements by
14 Mr. Harmon would be hearsay upon hearsay. And so, even if
15 the exhibit is admitted, I think that those statements
16 should not be offered for their truth.

17 THE COURT: Why don't you have the witness talk
18 about what's in the document. Let's move that way, please.

19 BY MS. YOUNG:

20 Q So what do you see in the document about what it says
21 in response to Diego's question?

22 A In fact, there is a lot of substance to this response.
23 If you see it says --

24 (Reading:) VidAngel wants to enter
25 the market with a disruptive pricing strategy

1 to attract users from other streaming
2 services. If the company can gain critical
3 mass, then it opens up many possibilities for
4 the company.

5 This is very important because it's clear that
6 Mr. Harmon is wanting to grow the company using the \$1.00
7 price by attracting people. Obviously, \$1.00 is a lot less
8 than what it typically costs to get premium content.

9 And so this issue of critical mass is important
10 because, if you can be large as a company in terms of a lot
11 of users, it makes you powerful.

12 Q And above that it says, "Diego asked if more people
13 joined the platform who don't use the service does it
14 diminish the legal standing," and then what does this
15 document record after that?

16 MR. BROOKS: Objection. Hearsay to the extent
17 that this is being offered for its truth.

18 THE COURT: The objection is noted but overruled.

19 THE WITNESS: So you see here, now the response to
20 that is Mr. Harmon responds that "It could possibly hurt the
21 legal strategy if not a large percentage of the people are
22 using filters."

23 The key here that he is focusing in on is getting
24 more traffic on the site as being positive because it gives
25 VidAngel more leverage to negotiate with the studios.

1 So this makes it apparent to me that, I think like
2 anyone looking at a model like this, you would know that you
3 have to have permission to use this content, and he's
4 clearly aware of that, but he is also aware that, if he can
5 get enough users, it's going to give him leverage, which is
6 something that is commonly understood among start-up
7 companies.

8 BY MS. YOUNG:

9 Q Now, did VidAngel announce and advertise its new price
10 point?

11 A Yes, they did.

12 Q Let's take a look at Exhibit 184.

13 So what is this that we are looking at here?

14 A Well, I guess the most obvious thing is we are looking
15 at a dollar. And that's the thing that comes screaming out.
16 But it's -- you get premium content, all movies and TV shows
17 for a dollar.

18 Q And then down at the bottom, it says here is a summary
19 of our recent shenanigans. What's the first shenanigan?

20 A All SD movies, \$1.00 with sellback.

21 Q Let's go back to the timeline again. So what happened
22 to VidAngel's growth after it started offering premium
23 content for a dollar?

24 A Well, as you can see, there is a dramatic change at
25 that point. And I can tell you in the world of

1 entrepreneurship and venture capital, a plot like this is
2 everybody's dream.

3 People refer to it as a hockey stick growth like
4 this because the flat part is where you don't have product
5 market fit, and the steep part is where the growth rate has
6 taken off. And that happens right at that point when
7 they're offering this premium content for a buck.

8 Q You mentioned this shows product market fit. What is
9 the product that's being offered to consumers here?

10 A So remember, the point of a business is to create and
11 capture value. So in this case it's -- it's a little bit
12 different. There is product market fit. There is value
13 that's being given to the customers for a buck, but that
14 value was created by the studios.

15 This company took the that product, which is
16 incredibly valuable, and then they're giving it away for a
17 dollar. So the value is created by the studios, but the
18 \$1.00 is going to this company.

19 Q Are there VidAngel documents that show this kind of
20 growth?

21 A Yes.

22 Q Let's take a look at Exhibit 26, please.

23 This is an investor intro from November 2015 just
24 after the price drop. And why do companies create investor
25 intros like this?

1 A Investor introductions are very important because this
2 is where they are going to people in order to raise money
3 from them. So this is their -- would be a set of documents
4 or slides that would tell things about the company that an
5 investor would want to know before he or she chooses to
6 invest.

7 Q Let's take a look at page 16 of this document.

8 And what is VidAngel telling potential investors
9 about its growth?

10 A Well, you can see here that they're showing that hockey
11 stick growth with the -- now, on the vertical axis here on
12 your screen. This is the number of weekly purchases.

13 And then the horizontal axis, that is during 2015,
14 and you can see out there in October with the little blue
15 arrow's Website update and pricing. That's that moment with
16 the \$1.00 pricing, and that's the point of inflection.

17 So if you are an investor, that's what you want to
18 see because you know that the value of a company depends on
19 whether it has product market fit, which is signaled by
20 getting that kind of growth.

21 Q Did VidAngel show similar charts to its board of
22 directors?

23 A Yes, it did.

24 Q Let's take a look at Exhibit 163.

25 This is a board meeting presentation for

1 March 4th, 2016, a few months later. Let's take a look at
2 page 5, please. What are we seeing here?

3 A So now the vertical axis shows what's known as the
4 number of monthly active users. So they care about the
5 number of users who are actually using the service on a
6 per-month basis, and then across the bottom you see the
7 months of that year in 2015. And then --

8 Q If we go to the next slide, please. Let me move on.

9 So you mentioned creating and capturing value.
10 Did you analyze how that was happening in the disc-based
11 business model?

12 A Yes. So, you know, normally in a business when you
13 think about creating and capturing value, it's something --
14 you have to do something that is of value for your
15 customers -- that's the creating value -- and the capturing
16 value is where they pay for it and you get paid for that.

17 It's a little more complicated when it comes to
18 video content, though, and so I prepared an illustration.

19 Q Let's take a look at that. This is Slide 4, I believe.

20 A Is this my clicker? I am never very good at AV stuff.
21 Okay. There we are.

22 Q Walk us through the --

23 A Take a look at this. So over on the left you have see
24 the studios, and they create content. That's the creation
25 of value that everybody likes so much. Now, way over on the

1 right, that's us. I guess we're watching "Finding Dory" in
2 this one. So that's us enjoying that value that was
3 created. But.

4 The thing is the studios don't come straight to us
5 for us to enjoy the value, obviously. They go through what
6 people like to call distribution channels, and so in the
7 middle you see those -- some examples of typical
8 distribution channels -- Netflix and Amazon Prime and so
9 forth.

10 Now, take a look at those gray arrows and the
11 handshakes. When the studios create value, they make an
12 agreement with the distributors, and they hand that value
13 over to the distributors based on an agreement because they
14 want to make sure that they're going to get -- be able to
15 capture some of that value back for their investors and
16 employees and so forth.

17 And in the turn, that distribution channel makes
18 an agreement with you and I when we subscribe to those
19 services or rent a video, and that's what that handshake is,
20 and that's what that gray arrow is.

21 Down on the bottom, the green -- so the value has
22 come to us, and we're enjoying those movies. The green is
23 now us going ahead and paying the distribution service.

24 Now, what's interesting here is the payment we
25 make to the distribution service includes the value of the

1 distributors provided, the convenience and so forth, which
2 is a small part of the total value because in turn then
3 we're also giving them the payment that ultimately should go
4 to the studios because they created the -- that value, and
5 that's what that second green arrow is.

6 And you put all this together, and this is how the
7 industry works. This is what everybody is so excited about.
8 We all get to watch the content, and we have people who
9 create that content, and they get to capture -- they create
10 that value, and they get to capture some of that value for
11 their investors and employees.

12 Q What happened with VidAngel?

13 A Well, they insert themselves in the middle of this.

14 Q Do you have a slide --

15 A That's me again. There we go. So they buy the DVD,
16 rip the content off of it with no agreement with the
17 studios, they turn around and make an agreement with their
18 users and, of course, their users, they're just customers --
19 they don't know what's going on in the background of
20 everything, who turn around -- and so they -- the users get
21 all the full value of watching this premium content, and all
22 they pay back is the one buck to VidAngel, and it stops
23 there because there is no agreement between VidAngel and the
24 content creator.

25 So what you have got is a company that is taking

1 the value that someone else created and then selling it to
2 you and I for a buck.

3 Q Let me ask you about the discs that VidAngel bought in
4 order to do this. We have heard there were 72,000 discs of
5 the plaintiffs' movies that they bought. Why isn't that
6 returning value?

7 A Well, here let me go back to this earlier -- I think
8 this goes backwards. That's okay. We can just remind you
9 of the -- there it is. Yes. So now look.

10 This agreement that the studios are making with
11 the distributor, that first gray arrow, there are many
12 different ways that they distribute their content. So
13 sometimes on DVD for individual use sometimes for streaming.

14 And the economics of one distribution approach is
15 very different from the economics of another.

16 And so, in particular, when you and I buy a DVD,
17 the economics of that is very different than the economics
18 of streaming, and that's why the content creators reach
19 different agreements with different people.

20 With a DVD, we might watch it once or maybe twice.
21 With streaming, a copy, potentially, could be streamed
22 millions of times and, therefore, when the studios are
23 making these agreements, they price very differently because
24 the economics are very different for the different
25 approaches to distribution.

1 VidAngel comes in and decides that it likes the
2 economics of DVD purchases. Now, that's not their choice to
3 make because they didn't create the content, but they want
4 to enjoy the economics of streaming while only paying for
5 the economics of DVD purchases.

6 Q You pointed out that what's missing from this slide
7 here is the handshake going back to the movie studios. Have
8 you seen any VidAngel documents discussing a license with
9 the studios?

10 A Yes.

11 Q Let's take a look at Exhibit 22.

12 So at the top this is an e-mail from Paul Ahlstrom
13 at Alta Ventures to -- sorry. It's an e-mail from Neal
14 Harmon to Paul Ahlstrom at Alta Ventures answering some
15 questions from my partners. Who is Paul Ahlstrom at Alta
16 Ventures?

17 A So that's a venture capitalist.

18 Q And Neal Harmon is answering questions that looks like
19 some of his partners raised?

20 A That's right.

21 Q So what is he saying here about DVDs?

22 A So the -- he's trying to explain the approach, and he
23 says, "Even though VidAngel is using a license that comes
24 with a disc purchase, VidAngel is not a disc service.
25 VidAngel is a streaming service," and he goes on to describe

1 it, which was the point I was trying to make there.

2 Q And then he says at the bottom, "In the future, we plan
3 to negotiate licenses for content directly with Hollywood as
4 Netflix did."

5 What do you interpret him to be saying there?

6 A Well, you know, you don't really need a business expert
7 to know that, if you are going to distribute valuable video
8 content made by the studios, you need to have an agreement.
9 That's common sense but. And so --

10 MR. BROOKS: Objection. Apparently, that was not
11 expert opinion. It should be struck as lay opinion.

12 THE WITNESS: All right.

13 THE COURT: Stricken. Go ahead.

14 THE WITNESS: Also, as an expert, I can say --

15 THE COURT: Hold on. She'll ask the questions,
16 and then you can answer them.

17 THE WITNESS: Okay. Sorry, Your Honor.

18 BY MS. YOUNG:

19 Q Based on your expertise in business, how do you
20 interpret a statement like, "In the future, we plan to
21 negotiate licenses for content directly with Hollywood as
22 Netflix did"? Why would a business person say that to one
23 of his investors?

24 A It's clear that Mr. Harmon also knew that licenses need
25 to be negotiated, and so he is talking about the fact that

1 he would do it directly with Hollywood as Netflix did.

2 Now, I should say I know the Netflix story well
3 from the beginning. They never -- Netflix never offered
4 content without a license to do so. But --

5 Q Let's take a look at Exhibit 117, please. This is
6 another investor intro from October 17th, 2015.

7 And let's take a look at page 23 of this document.
8 Why discuss your World Class Legal Team in a presentation to
9 investors?

10 A Well, of course, you always do want to have legal
11 advice.

12 MR. BROOKS: Objection. Calls for speculation.

13 THE COURT: Can you rephrase the question,
14 Counsel.

15 BY MS. YOUNG:

16 Q Based on your expertise in the business world and
17 working with investors --

18 MR. BROOKS: Go ahead. I am just getting ready.

19 MS. YOUNG: Mind if I finish?

20 Q Why do investor presentations discuss things like
21 having a World Class Legal Team?

22 MR. BROOKS: Same objection.

23 THE COURT: Overruled.

24 THE WITNESS: If you are starting a business and
25 you expect that you are doing something that's going to get

1 you in legal trouble, you would make a big deal out of your
2 legal team.

3 BY MS. YOUNG:

4 Q Let's take a look at --

5 MR. BROOKS: Objection. Move to strike. That's
6 all based on speculation.

7 THE COURT: Overruled.

8 BY MS. YOUNG:

9 Q Let's take a look at page 25 of this document, "The
10 Ask." What is "The Ask" here?

11 A What this means -- remember, they're looking to raise
12 money in a document like this, and so you are explaining to
13 your investors how much you want and what you are going to
14 use it for.

15 Q And what's the third thing they -- they're telling
16 their investors they need it for?

17 A As you can see, they want a million of the money that
18 they are raising to defend themselves in court.

19 Q Now, this investor presentation we saw from the first
20 title slide was done in October of 2015. VidAngel wasn't
21 sued until June of 2016; is that right?

22 A That's my understanding.

23 Q So, again, if you haven't been sued in a lawsuit yet,
24 why ask investors for money to support a legal defense?

25 A Well, they have pivoted to the model where they are

1 ripping content off of DVDs and giving it away for a dollar
2 already. So they know about the need for a license. So
3 they are getting ready for what will come.

4 MR. BROOKS: Move to strike. Calls for legal
5 conclusion and what was offered was a legal opinion.

6 THE COURT: Overruled.

7 BY MS. YOUNG:

8 Q I want to now ask you about the market that VidAngel
9 was targeting with the disc-based version of its service.

10 How did VidAngel describe its target market to
11 investors?

12 A Well, as very broad, and I think we have some
13 illustrations.

14 Q Let's look at Exhibit 26, please. This is that
15 investor intro from November 2015. Let's look at page 11.

16 How is it describing the market here?

17 A I want to first mention something as I go into this.

18 When you want to see how much a company is worth,
19 it's tough with these growing companies because they're not
20 as big as they want to be yet.

21 The single best predictor of the value of a
22 company is the size of the potential market, and the
23 investors will know this.

24 So then now with that as background, if you look
25 here, they are emphasizing that Redbox at the time of this

1 chart or Exhibit had -- we're looking at a billion dollars.

2 Netflix had over \$6 billion in sales, anticipating
3 that streaming would surge to 17 billion by 2018 -- of
4 course, this is a historical document. So they are looking
5 forward to that.

6 That streaming revenues is expected to overtake
7 physical discs.

8 And the last two points then says that VidAngel's
9 model will make that jump to streaming and VidAngel's
10 audience will provide another Netflix-like distribution
11 opportunity.

12 So it's emphasizing to its potential investors
13 this is going to be a very big, very valuable company.

14 Q Now, did VidAngel also discuss filtering in its
15 presentations to investors?

16 A Yes, it did.

17 Q Does that explain the market that it was targeting?

18 A No.

19 Q Have you reviewed some of the VidAngel's advertising?

20 A Yes, I have.

21 Q And did the advertising tell you anything about the
22 market that VidAngel was targeting?

23 A Yes, quite a bit.

24 Q Let's take a look at the next slide, please.

25 Are these examples of VidAngel's advertising?

1 A You see here, you have got Exhibit 170, 172, 173, 174.
2 In these exhibits they're emphasizing their \$1.00 price
3 compared to, say, \$3.00 on iTunes or -- for high-definition,
4 they have got the \$2.00 compared to Amazon, Google Play,
5 iTunes, and so forth.

6 So it's a price point. They're saying, look.
7 This is -- you can get a low -- \$1.00 or \$2.00 for HD price.
8 And also when you look at the movie selection, this is a
9 wide variety of premium content.

10 Q Have you seen examples of VidAngel comparing its movie
11 selection to other services?

12 A Oh, yes.

13 Q Take a look at the next slide, please.

14 A So this is especially interesting. 169, 175, 176, 180
15 and 181, looking across those, because here it's emphasizing
16 that it is offering video content that's not even available
17 yet on Netflix, which I think, as we all know but just to
18 remind you, sometimes you have to wait to get certain
19 content.

20 But since VidAngel didn't make an agreement with
21 the studios, they're able to distribute it before anyone
22 else and for a dollar.

23 Q Have you looked at the selection of movies and TV shows
24 that were available on VidAngel?

25 A Yes.

1 Q Is that limited to family friendly content?

2 A No.

3 Q Let's take a look at your next slide.

4 A Well, I don't really want to describe the content in
5 each of these but -- so "Game of Thrones," for example, is
6 not family friendly, at least not in my family, and a
7 variety of others here that are all clearly not family
8 friendly.

9 Q Let's take a look at another VidAngel document,
10 Exhibit 140. So this is an exploratory research report done
11 for VidAngel in June 2016.

12 And just, sort of, looking back at our timeline
13 and what's happening with the company at this point in time,
14 why do an exploratory research report like this?

15 A So if you look back at that chart again -- remember
16 they take off and they're growing.

17 Well, one of the things that happens once you are
18 starting that kind of growth and now you are looking forward
19 to being a very big company, you want to understand
20 precisely what pleases your customer because you are going
21 to take this money you raised from investors and you are
22 going to double down on that. That's how you build a
23 company.

24 So they have done what you would expect at that
25 point, and they've done a research report to find out what

1 they should do to continue this growth.

2 Q Let's look at page 39 here. What are the key takeaways
3 that this research found?

4 A Well, price is the core strength, according to this.
5 Filters resonate with the parents and the values audience
6 and the broad appeal.

7 And then the challenges are interesting as well,
8 we should probably turn to, because they note that the
9 filters appeal is limited.

10 Q Let's take a look at the next page about their
11 recommendation. What do they recommend here?

12 A Well, based on those findings, they're saying to the
13 company, double down on that \$1.00 pricing, make that the
14 focus, and then, Number 2, the huge library of hits. That's
15 a wide variety of premium content. They talk about ease of
16 use.

17 And then the fourth conclusion is interesting.
18 They say the filters are going to resonate with the values
19 audience but they don't want the company to make that the
20 top message. They're saying you make the \$1.00 and the huge
21 library are the top message in order to grow.

22 Q From what you have seen of VidAngel's advertising, do
23 they follow these recommendations?

24 A To the letter.

25 Q Did you look at what customers told VidAngel about why

1 they use the service?

2 A Yes.

3 Q Let's take a look at Exhibit 373. And we've picked out
4 some examples to use, but have you seen similar comments to
5 this?

6 A Yes, I have.

7 Q What does Geoff Jacks --

8 A You can see here, he's saying you've got a great
9 service. He's fascinated by the business model. "I do not
10 mind filtering some obscure component if it means this level
11 of selection for \$1 a shot."

12 Q What about Exhibit 375?

13 A Thomas, here, is very excited to go home tonight and
14 watch "Civil War," and he points out he likes to use
15 VidAngel even when he doesn't need filtering because it's
16 cheaper than Amazon.

17 Q So as an expert in business strategy, what does
18 VidAngel's target market tell you about its objectives?

19 A Well, their target market is the fullness of the market
20 for video content, which is a massive market.

21 And when you are serving that market, your
22 objective is to grow to be extremely big and extremely
23 valuable.

24 Q Have you looked at VidAngel's financial statements?

25 A Yes, I have.

1 Q Let's take a look at Exhibit 205. And this shows
2 VidAngel's profit and loss, and I want to ask you about the
3 course it runs from 2013 to 2016.

4 What does this show?

5 A What you are looking at here is -- so there's a lot of
6 numbers, but I think what you key in on is on the bottom
7 there, it's -- to clarify for you, it's just the income.

8 So you start in 2013 and 2014, where these numbers
9 are quite low for a business -- 8,000 and 19,000.

10 2015, now remember that's when they make the pivot
11 in the last part of 2015. The income sky rockets because of
12 the media sales revenue up there, which is their new model,
13 to over \$400,000.

14 And for 2016, this company skyrockets to an income
15 of over \$8 million. And sometimes it's kind of hard to get
16 your head around a million. It's a thousand thousands.
17 That's a lot of money.

18 Q Have you looked at VidAngel's projections about what's
19 going to happen to its business once it adopted this
20 disc-based model?

21 A Yes, I did.

22 Q Let's take a look at Exhibit 26. That is that investor
23 intro once again, and let's look at page 19.

24 So here are some projections. Tell us what we are
25 seeing?

1 A Projections are really important to an entrepreneurial
2 company because they're just growing. They want to raise
3 money based on how valuable they're going to be, not on
4 exactly the amount of money they are making for now.

5 And so, as you can see, so what they -- as they're
6 looking forward, one way to look at this is, because there
7 are a lot of numbers, is just look down at the cash balance,
8 the bottom line down there.

9 So while in 2015 -- 2016, they had little over
10 4 million in the bank, over 7 million cash balance, meaning
11 that's the balance they actually have.

12 They're forecasting then, that going out
13 in 2017 -- remember, what they're doing, they're taking that
14 growth and saying, look at this. If we're going to keep
15 growing like that, we'll have a cash balance of over
16 \$60 million in 2017; and they're forecasting by in 2018,
17 having nearly over \$400 million. So that's almost a half a
18 billion dollars.

19 So this is a company that is looking at being
20 really, really valuable. These are some executives who are
21 very excited. They're looking at becoming very, very rich.

22 Q I want to call your attention to the marketing cost
23 line. Can we look at that? What company did VidAngel use
24 as its advertising agency?

25 A Now, my understanding is their marketing organization

1 is the Harmon Brothers Marketing organization.

2 Q Based on the financial statements that you have seen,
3 did VidAngel have significant marketing costs other than
4 what it was paying to the Harmon Brothers?

5 A Not that I saw.

6 Q And do you know if Neal Harmon and Jeff Harmon are a
7 part of the Harmon Brothers Marketing Company?

8 A That's my understanding.

9 Q Do you know if VidAngel had another ad agency?

10 A My understanding is they did not.

11 Q So what are these marketing projections mean for Harmon
12 Brothers, assuming that VidAngel would continue to use them?

13 A Well, as you can see going forward, they're going to
14 become very big by their projections; so their marketing
15 costs will go up.

16 And so as you get out, this would be payments to
17 the Harmon Brothers of over 17 million in 2017 to that
18 agency, of over 80 million in 2018.

19 Q Did VidAngel's growth affect the company's valuation?

20 A Absolutely.

21 Q So what is a valuation?

22 A Well, so when you -- when you value an entrepreneurial
23 company, it's based on -- you do that based on what its
24 growth looks like as well as the potential market that it's
25 moving into because it's all about the future of the

1 company.

2 Q Let's take a look at Exhibit 29. Can we zoom in here.

3 So this is an e-mail from Warren Osborn to Neal
4 Harmon dated April 25th, 2016. Do you know who Warren
5 Osborn is?

6 A Yes. That would be an investor --

7 Q And he is -- what is he saying here about the company's
8 valuation?

9 A Well, so I will go ahead and read it. "With increased
10 growth since November and the scale of revenue this high, I
11 believe VidAngel valuation metric should be considerably
12 higher than it was last year." And I would agree with him.
13 "Scale with high growth rates is the biggest determinant of
14 valuation," so as we were saying before. And he talks about
15 "AirBnB and Uber, Snapchat, Pinterest, Zenefits and other
16 Unicorns as well as other non-unicorns."

17 I should clarify a unicorn is a company that has,
18 because of growth, been valued at over a billion dollars.

19 Now, down here on the bottom, what you see is
20 these numbers. These are known as multiples. So you
21 typically in this world of venture capital, you think of how
22 much money is coming in in terms of revenue, and then you
23 multiply it by a multiple. For a fast growth company, it
24 might be ten times -- or they say 10X or 12 times or 14X as
25 he does here.

1 And depending on the multiple you use and when you
2 look at the revenue, you get very high valuations of
3 90 million, 105 million. And depending on when you do it,
4 you can value this company at a very high number.

5 Q What are they valuing at here?

6 A Here it's at over 100 million by one calculation, over
7 90 million by another calculation.

8 Q Who stood to benefit from this business model?

9 A Well, the investors and the management team and anyone
10 else holding equity in VidAngel would make a lot of money.

11 Q What about people with stock options?

12 A Yes. With stock options, you choose to exercise those
13 options which basically just means you get to claim some of
14 this valuation. So you would make a lot of money.

15 Q What about Harmon Brothers, the ad agency?

16 A Well, they also would make money because of the
17 increases in payments to that advertising agency.

18 Q And who stood to lose as a result of this business
19 model?

20 A Well, the -- primarily, it's going to be the people who
21 created the value that -- that's generating all this
22 excitement. That's the studios.

23 Q What about the consumers? Did they lose anything by
24 this?

25 A Well, it's interesting, because in the short run as a

1 consumer, you and I might feel good about being able to get
2 a movie for a dollar.

3 But the problem is the reason why we get these
4 movies and the way that -- that we understand the way
5 industries work, if you think about that diagram I had up,
6 the content creators -- people create all these movies we
7 like do it because there is an incentive to do it.

8 They can pay the many people in the industry, and
9 they can pay their investors. If we are not paying them for
10 the value they create, they won't create value.

11 And so in the long run the consumers would lose
12 because the studios wouldn't have an incentive to invest in
13 additional content.

14 Q Now, let's go back to the timeline, if we may.

15 What ultimately happened with this disc-based
16 service we have been talking about?

17 A Well, my understanding is that by court order it was
18 shut down in December of 2016.

19 Q And if the Court hadn't shut it down, what do you think
20 would have happened with its growth?

21 MR. BROOKS: Objection. Calls for speculation.

22 THE COURT: Overruled.

23 THE WITNESS: Well, there is absolutely no reason
24 to think this would not have continued. They were aware of
25 what was going on, and they were raising money to continue

1 to build the company, which would have led to just
2 increasing growth.

3 BY MS. YOUNG:

4 Q Did you look at what happened to VidAngel's business
5 model after the Court shut it down?

6 A Yes, I did.

7 Q Let's take a look at the next timeline slide, please,
8 Slide 10.

9 So where does the additional information we're
10 seeing here come from?

11 A So this came from VidAngel documents.

12 Q Okay. And what kind of business model was VidAngel --
13 or did VidAngel start operating after the disc-based service
14 stopped?

15 A My understanding is that then later they went back to a
16 subscription-based filtering service.

17 Q People were paying specifically for the filter?

18 A That's right.

19 Q And then were they getting the content from somewhere
20 else?

21 A That's right. They were -- my understanding is this
22 they would acquire the content elsewhere.

23 Q And are the dogs eating the dog food?

24 A Well, once again, remember, you look at the slopes of
25 these lines. That's how you tell whether the dogs are

1 eating the dog food. If you look at that, it's flat and, in
2 fact, a little bit going down, which tells me once again
3 that the -- just like in the early period, we're not seeing
4 the dogs eating the dog food when it comes to the
5 paid-for-filtering service.

6 Q Now, if Neal Harmon had come to you for advice about
7 launching VidAngel's disc-based model, what would you have
8 told him?

9 A I do this all the time. People come to me for advice
10 like this all the time, and I have to say, the moment that I
11 understood that you were intending to rip content from a DVD
12 without the studio's legal agreement and stream it to
13 people, I would have ended the conversation.

14 You think about it. When I advise businesses, one
15 of the things I try to tell the entrepreneur is you are
16 going to hire people, and they're going to depend on you.
17 You're going to raise money from investors, and they're
18 going to depend on you. And when you cross a line like
19 this, you are going to put a lot of people at risk.

20 MS. YOUNG: Thank you. I have nothing further.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION

23 BY MR. BROOKS:

24 Q Mr. Barnett, are you a lawyer?

25 A I am not.

1 Q And so if someone came to your office and asked you,
2 "This business that I am contemplating, is it legal," you
3 wouldn't be able to give them any advice on that, would you?

4 A Not as a lawyer.

5 Q And if someone came to you and said, "I have this
6 business idea, I have run it by a lawyer," they said, "It
7 looks good," would you have the conversation with them?

8 A I would have the conversation, but I would not allow
9 myself to not think about the legitimacy of the business
10 model. Good business advice requires a consideration of
11 whether a business model is legitimate.

12 Q Investors would normally do that same, sort of, thing
13 before they invest millions of dollars in a business; right?

14 A Yeah, absolutely.

15 Q And VidAngel was able to attract investors; correct?

16 A It did.

17 Q Do you have any reason to believe that those investors
18 would not have looked at the legal ramifications of this
19 business and satisfied themselves that it was a legitimate
20 business?

21 A You know, I am sure they did. I have talked to
22 investors for decades, and I can tell you that investors --

23 MR. BROOKS: I am going to move to strike.

24 Q Just -- we have very limited time, Mr. Barnett. I am
25 going to ask pointed questions and ask for short answers.

1 THE COURT: All right. Go ahead and ask your next
2 question.

3 BY MR. BROOKS:

4 Q You had a slide up earlier that showed how value was
5 given from the studios to distributors to users, then the
6 users paid the distributors and distributors paid the
7 studios; right?

8 A Yeah. It's given by a legal agreement.

9 Q Okay. So in the slide that you prepared with respect
10 to VidAngel, you left out the step where the studios sold
11 DVDs and had agreements with places like Walmart, Target,
12 Best Buy and where places like Walmart, Target, and Best Buy
13 had agreements with VidAngel, and that money flowed back to
14 the studios. You left that out, didn't you?

15 A Given that VidAngel was a streaming service --

16 MR. BROOKS: Your Honor, move to strike.

17 THE WITNESS: I just want to be complete in my
18 answer, Your Honor. I'm sorry.

19 THE COURT: Let him answer the question and then
20 make the motion.

21 MR. BROOKS: We just have very limited time.

22 THE COURT: I am aware of that. You ask the
23 question. If he answers it in a way that you disagree, you
24 make the objection, and I will rule on it.

25 THE WITNESS: And I want to apologize. I do want

1 to cooperate. I just want to be accurate with my -- I don't
2 often make that oath. So --

3 THE COURT: Let him ask the question, and then you
4 can try to answer.

5 BY MR. BROOKS:

6 Q My question was just very simple.

7 You didn't have a slide showing that transaction,
8 did you? It's just --

9 A You are right. I did not because it's a streaming
10 service, and that's the nature of the legal agreement that
11 it would need to make. That's why --

12 MR. BROOKS: Your Honor, move to strike after "I
13 did not."

14 THE COURT: All right. It's stricken.

15 Next question.

16 BY MR. BROOKS:

17 Q You talked about whether dogs are eating the dog food.
18 You recall that. If the dogs are not eating the dog food,
19 the goal of the company is to figure out why; correct?

20 A That's correct.

21 Q That's not always straightforward what the answer is;
22 right?

23 A No, that's right.

24 Q With dog food, it might be there is an ingredient
25 missing that would make it -- some of the dogs would like?

1 A That's right.

2 Q It might be that you had a hard time getting the dog
3 food to the market and the dogs couldn't go shop for it?

4 A You know, in my experience, the dogs eat the dog food
5 even if it's not convenient, and most of the successful
6 entrepreneurial companies that grow, you will see grow
7 despite the fact that it's hard to get to the dog food.

8 Q And so if there is an ingredient missing, though, the
9 dogs aren't going to eat it; correct?

10 A Yeah. If you are not making good dog food, they're not
11 going to eat it. Sorry I brought up the dog thing, but
12 anyway that's fine.

13 Q VidAngel recognized that filtering just by itself
14 didn't have a large market; right?

15 A That's correct.

16 Q But they recognized that there would potentially be a
17 large market for filtering as a feature of a service where
18 you could stream content; correct?

19 A Well, as long as you were buying for it a buck.

20 Q So your opinion is that there would have been no market
21 for content streaming with filtering as a feature unless it
22 was a dollar?

23 A Well, we saw the experiment was run, and the moment
24 that the company offered that content for a buck, it took
25 off.

1 Q So you do not have an opinion that, if the company had
2 offered it for \$3.00 or \$4.00, you haven't seen that data?

3 A Well, I don't know that the company offered it for
4 \$4.00. So I don't know that there would be data to be seen.

5 Q So there is no data on that. You have no idea whether
6 there was a market for streaming content with filtering as a
7 feature where it was comparable in price to other services?

8 A I suppose, if that hypothetical were to ever happen,
9 then that would be data, and, since it didn't happen, I
10 couldn't have looked at data.

11 Q And as far as you know, the studios have never agreed
12 to let a company like Google or Amazon or iTunes to offer
13 filtering as a feature; right?

14 A Not yet, although I have to say Google doesn't get
15 pushed around. If there were a technology out there that
16 Google thought they could make money on -- I know Google,
17 and they would reach agreements with the studios if they
18 wanted to do that.

19 Q Did you speak to Google about this case?

20 A I did not.

21 Q So were you made aware that Google actually reached out
22 to VidAngel in November of 2014 to explore a partnership
23 with them?

24 A I have looked at a lot of documents. I seem to
25 remember something like that. If -- maybe if you want to

1 pull them up, we could look at them again.

2 Q You are not aware of that?

3 A I seem to recall something like that, but I would want
4 to see the document to make sure I am being accurate.

5 Q You weren't made aware of the reasons that Google gave
6 to VidAngel for why a partnership wasn't going to work?

7 A I don't remember them off the top of my head.

8 Q So you wouldn't remember that -- or you wouldn't be
9 aware that Google told VidAngel that their contracts would
10 not allow them to do filtering?

11 A It wouldn't surprise me if they would have made that
12 point.

13 Q And you are not aware of whether Google told VidAngel
14 that they couldn't afford to risk their relationship with
15 the studios in light of the opposition by studios and
16 directors to filtering?

17 A Well, I mean, it's -- I'm not quite sure -- could you
18 repeat that question. It was a complicated sounding
19 question. So I want to make sure I am accurate.

20 Q Let me back up a little bit.

21 So if a contract prevented Google from offering
22 filtering as a feature, a new contract potentially could
23 offer filtering as a feature; right?

24 A Well, right. That's why when I say when Google sees
25 something it --

1 MR. BROOKS: Your Honor --

2 THE WITNESS: I just wanted to answer your
3 question.

4 THE COURT: He has a job to do. So we need to
5 just get concise answers. Counsel from the other side, if
6 they want to have follow-up, they'll ask further questions.
7 So.

8 Go ahead, Mr. Brooks.

9 BY MR. BROOKS:

10 Q So assuming contracts can be amended, you are not aware
11 of whether Google told VidAngel that they couldn't afford to
12 risk their relationships with the studios in light of
13 opposition from the studios and directors to filtering. You
14 are not aware of that?

15 A I do remember seeing documents of some kind on this,
16 but I would have to see the documents to make sure I am
17 correct in the way I am answering your question.

18 Q I want to look at some of the exhibits that you were
19 shown. Before we look at an exhibit, I think you testified
20 that, if you bought a DVD, you would only watch it once or
21 twice, but, if you streaming content, you might watch it
22 more, you could watch it forever?

23 A Well, no. What I was saying is -- that was not what I
24 said. If I could repeat what I said, I will make sure this
25 was accurate.

1 What I said was a physical DVD is purchased
2 because the nature of it is you watch it once or twice.
3 With streaming content, when content is streamed, a given
4 digitized content can be streamed potentially millions of
5 times.

6 So it's not about what I would watch. I
7 certainly -- even "Finding Dory," I would not watch millions
8 of times.

9 Q You are aware that DVDs, once you purchase a copy, you
10 can resell a copy; right? You can resell that copy that you
11 purchased, without having to pay the copyright owner again?

12 A Yeah. But I don't think I could rip the content and
13 stream it.

14 Q My question though was just you can resell your copy?

15 A I imagine you could. It's not something I have ever
16 thought about doing.

17 Q If you can turn to Exhibit 140 and go to page 35.

18 A Okay. I am there.

19 Q What was the thing that -- what was the main barrier to
20 users using VidAngel, according are to this slide?

21 A Let me see what it is I am looking at here. I want to
22 make sure I understand what I am looking at here. This
23 looks like -- this is that exploratory research report, I
24 think, dated June of 2016. And this page 35 says, "1 in 4
25 felt the cost to own was more than expected."

1 Q And 25 percent of users disliked the \$20 to buy in the
2 concept; right?

3 A That's right. That's what it says.

4 Q So when you talk about VidAngel selling videos to
5 consumers for a buck, that's not entirely accurate --
6 right? -- they sold it for \$20?

7 A Well, but with the buyback, it's a buck. That's why
8 they had that picture of the dollar on the press release.

9 Q So the answer is they sold it for \$20; right? Unless
10 the consumer decided to sell it back, they bought a disc for
11 \$20; right?

12 A Under those conditions that you have stipulated, that's
13 correct.

14 Q And that was a barrier to customers using VidAngel, the
15 \$20 upfront?

16 A Well, to 1/4th -- so it's actually to -- it says --
17 just to be accurate, this says 25 percent of the people --
18 looked at -- looked at in this study disliked the \$20 to buy
19 in the concept.

20 Q Have you ever rented a video that you wished you had
21 bought?

22 A Well, this is just -- I find that once I --

23 Q That could be a yes or no, sir.

24 A I always regret buying them because then the kids don't
25 want to watch them. For some reason, once you own it, they

1 don't want to watch it. You asked my preferences.

2 Q Have you ever rented a movie that you wished you had
3 bought because you loved it so much you thought you would
4 watch it again?

5 A "Butch Cassidy and the Sundance Kid" is awesome. So
6 yes.

7 Q And VidAngel allowed users to buy a movie, and, if they
8 liked it, they could keep it, and, if they didn't want to,
9 they could sell it back and only have lost a dollar or two,
10 depending on how long they kept it; right?

11 A I think that's correct. But I don't think that's
12 responsible for the hockey stick growth. I think that's
13 because of one buck.

14 Q So you talked a little bit about creating value versus
15 capturing value; right?

16 A That's correct.

17 Q So that aspect of VidAngel is value that it created for
18 its consumers; right?

19 A I'm -- the value being created here was created by the
20 studios.

21 Q Some of the value was created by the studios and other
22 value was created by VidAngel; right?

23 A If the studios hadn't made this content, we wouldn't be
24 meeting here today. This value was created by the studios.

25 There is a small amount of additional value

1 created by distribution channels in distributing the
2 content, but it is nothing compared to the value that comes
3 from the content creation.

4 Q The content creation is worth nothing if you don't have
5 a way to watch it; right? You can't enjoy it if you don't
6 have a way to watch it; right? That could just be a yes or
7 no.

8 A That's true. But I want to -- I have to emphasize that
9 value creation means how unique is that contribution. There
10 are many different ways to distribute; whereas content
11 creation is extremely unique.

12 THE COURT: Hold on, sir.

13 I'm sorry, Counsel.

14 MR. BROOKS: Move to strike as nonresponsive.

15 THE COURT: The entire answer?

16 MR. BROOKS: No. Just after the first part of the
17 answer. The first part of the answer was responsive and
18 then he continued.

19 THE COURT: Stricken.

20 Next question, please.

21 BY MR. BROOKS:

22 Q Other streaming services create value in the sense that
23 they give the user a place to find content they want to
24 watch; right?

25 A That's correct.

1 Q They give users an experience where they can watch it
2 on their home on a TV; right?

3 A That's correct.

4 Q They give users experience where they can watch it
5 potentially on a device that they like; for example, a
6 smartphone or a tablet?

7 A That's correct.

8 Q They create value by giving users an attractive
9 interface where it's easy to navigate; right?

10 A You know, it's -- a lot of people think the interface
11 is important. I'm not sure there is evidence on that.
12 There is a lot of debate in the industry as how much is like
13 Netflix and how much is the user interface. I think the
14 jury is still out on that, but in general that's correct.

15 Q And VidAngel created value in the same way that those
16 other companies create value for their customers; right?

17 A Well, it did it very differently because you can't
18 pretend that they're not also ripping content off of the DVD
19 and giving it away for a dollar.

20 It's impossible for me to think about anything
21 about this company without realizing that fact.

22 Q So you formed all of your opinions based on your
23 understanding that what VidAngel was doing was illegal;
24 right?

25 A I based my opinions on looking for evidence of what it

1 took to get evidence that the dogs are eating the dog food
2 and that happened at the moment of the \$1.00 pricing, which
3 is why I am focusing on that as opposed to other aspects.

4 MR. BROOKS: Move to strike as nonresponsive.

5 THE COURT: Stricken.

6 BY MR. BROOKS:

7 Q My question, sir, is: When you were forming your
8 opinions, you did that with the assumption that what
9 VidAngel was doing was unlawful?

10 A It's hard for me to -- you are putting words in my
11 mouth, how did I form my opinions --

12 Q I am just asking if you assumed that what they did was
13 unlawful from the beginning. That was your assumption?

14 A I was aware from the first time I started analyzing the
15 documents that VidAngel did not have an agreement and legal
16 permission to do what they were doing. And so, yes, I did
17 know that.

18 Q Okay. And you understand, though, that VidAngel
19 believed that what it was doing was lawful?

20 MS. YOUNG: Objection. Calls for speculation.

21 THE COURT: Overruled.

22 THE WITNESS: It's not my understanding that they
23 believed it was lawful. It was my understanding they
24 believed, if they could grow big enough, they might be able
25 to start doing something that was lawful.

1 BY MR. BROOKS:

2 Q So you are assuming that VidAngel from the very
3 beginning believed that what they were doing was unlawful?

4 A No. In the very beginning, they were --

5 Q Again, let me --

6 A No. In the very beginning, they weren't ripping --

7 Q I'm talking about the disc-based service.

8 When they decided to do the disc-based service,
9 you're assuming that they believed all along that that was
10 unlawful?

11 A I didn't need to make that assumption. I could see
12 from the documents that the leadership was aware of the fact
13 that they were going to get in legal trouble for ripping the
14 content off those DVDs and streaming it.

15 So I did not have to assume it. I could see it in
16 the documents.

17 Q When you say they were going to get in legal trouble,
18 what you mean is they were going to get sued by the studios;
19 right?

20 A They were anticipating that as I saw what they were
21 talking about in the documents.

22 Q Just because a person gets sued doesn't mean they are
23 doing something illegal; right?

24 A No, right. That's correct.

25 Q But you are assuming that VidAngel, not only knew they

1 were going to be sued, but they believed they were going to
2 lose?

3 A Well, I don't know if they -- I think they believed
4 they might be able to win despite what they were doing if
5 they could get big enough to be powerful. And that -- and I
6 think we went over those documents.

7 Q You are assuming that they did not believe that they
8 would win on the merits even though they had a legal opinion
9 from an attorney who was very competent?

10 MS. YOUNG: Your Honor, I am going to object that
11 it lacks foundation. It's also been asked and answered a
12 number of times.

13 THE COURT: Overruled.

14 THE WITNESS: Could you repeat that question.

15 BY MR. BROOKS:

16 Q Your assumption, then, was that they believed all along
17 that they were going to lose on the merits of their legal
18 argument even though an attorney had told them that they
19 were going to win?

20 A I from looking at the documents could see they knew
21 they were running a real risk.

22 Q Being a disrupter is not the same thing as being
23 illegal; right?

24 A The definition of a disruption is entering a market
25 with a new logic to a business.

1 So Netflix was disruptive to Blockbuster.

2 Dropping the price below market value in order to
3 attract business is not what it means to be a disrupter by
4 the definition of that term as we use it in business
5 studies.

6 Q I appreciate --

7 A I am just trying to be accurate.

8 Q That was not my question.

9 Being a disrupter is not necessarily illegal. You
10 mentioned Netflix. Netflix was a disrupter, and, as far as
11 you know, it was not doing something illegal; right?

12 A I know that Netflix always had reached agreements with
13 the studios before it had distributed content.

14 MR. BROOKS: Your Honor, move to strike.

15 THE COURT: Let me see if I can help.

16 His question was specifically whether or not being
17 a disrupter is not necessarily illegal. That's the
18 question.

19 THE WITNESS: That's true.

20 THE COURT: Okay.

21 Next question.

22 BY MR. BROOKS:

23 Q And if someone came to you with a proposition that you
24 thought sounded legally dicey, you wouldn't advise them to
25 just go ask a lawyer and make sure that they're above board

1 before they start it?

2 A If a potential entrepreneur came to me and told me they
3 were going to rip content from DVDs and stream it --

4 MR. BROOKS: Your Honor, move to strike.

5 THE COURT: Let me see if I can try to help again.
6 His question is specifically, if an investor came to you
7 with some proposition that that investor thought was legally
8 dicey, would you advise them to go speak to a lawyer?

9 THE WITNESS: Well, if I thought it was legally
10 dicey, Your Honor, I would tell them to stop right there. I
11 have learned over the years that you can find somebody who
12 will try to justify something if they can find a
13 billion-dollar valuation. So I have learned to go with my
14 own sense when it comes to these things.

15 BY MR. BROOKS:

16 Q So your own sense is to never try something risky even
17 if it is legal. You should just shy away from anything that
18 might be a good idea if there is any question about --

19 A That is not what I said, sir. My sense is that you
20 need to use judgment. And I could explain the judgment here
21 but then I would talk about ripping content from DVDs and
22 streaming it, which in my judgment --

23 THE COURT: Stop there. Next question.

24 BY MR. BROOKS:

25 Q It's not irresponsible to get advice from a lawyer

1 regarding a new business plan, is it?

2 A You, of course, should get advice from a lawyer.

3 Q In your experience should entrepreneurs second-guess
4 the advice of their lawyers?

5 A Entrepreneurs should not merely rely on the advice of
6 their lawyer. They must also use judgment.

7 Q And if in their judgment the advice of their lawyer
8 appeared to be legitimate, they would be justified in
9 following that advice; right?

10 A I think so.

11 MR. BROOKS: Thank you.

12 THE COURT: All right. Any further redirect?

13 MS. YOUNG: None, Your Honor.

14 THE COURT: All right. May this witness be
15 excused? All right.

16 Thank you, sir. You may step down.

17 THE WITNESS: Thank you.

18 THE COURT: You may call your next witness.

19 MS. YOUNG: Your Honor, next we would like to play
20 some deposition clips from the deposition of Jarom McDonald.

21 THE COURT: All right. You may proceed.

22 Ladies and gentlemen, you are going to hear some
23 videotaped testimony. This testimony was taken from a prior
24 proceeding. The person was sworn -- was sworn under oath
25 before they gave their responses. You are to treat that

1 deposition testimony as if the witness were here in person.

2 MS. YOUNG: And I have been advised by Mr. Jay
3 that the audio might not be on.

4 THE COURT: Okay. Can you try playing it again?
5 Why don't we play it so I can see what the story is with the
6 volume because I heard something.

7 You mean, the sound that I heard was just from
8 your computer only?

9 MR. BROOKS: It's not going over to the court
10 system.

11 THE COURT: Play it one more time.

12 MS. YOUNG: If we put a microphone next to it.

13 THE COURT: The next alternative might be to
14 connect it to either -- I thought the computer was connected
15 to the lectern or to -- why don't we do this.

16 Ladies and gentlemen, let's take our afternoon
17 recess at this time. Let's take 15 minutes.

18 Please do not form or express any opinion.

19 Please do not form or express any opinion about
20 the matter until the case is finally submitted to you.
21 Don't talk with anyone about the case, don't allow anyone to
22 talk to you about the case and do not conduct any research
23 of any kind on any subject matter connected with this case.
24 Let's have you come back at about ten after 3:00.
25 Hopefully we'll get this issue resolved. Thank you.

1 (The following was heard in open court outside the
2 presence of the jury:)

3 THE COURT: Let's take a brief recess. We'll see
4 if we can get someone from IT up here to try to resolve this
5 issue, and let's come back at ten after 3:00.

6 THE CLERK: All rise. This Court is in recess.

7 (Proceedings concluded at 2:56 P.M.)

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: June 12, 2019.

/S/ CHIA MEI JUI _____

Chia Mei Jui, CSR No. 3287

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