

In the Matter Of:

Certain Fitness Devices

MARK MITCHELL

December 02, 2021



1 UNITED STATES INTERNATIONAL TRADE COMMISSION
2 Washington, D.C.

3

Before the Honorable David P. Shaw
Administrative Law Judge

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5

In the Matter of: Inv. No. 337-TA-1265

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CERTAIN FITNESS DEVICES,
STREAMING COMPONENTS THEREOF,
AND SYSTEMS CONTAINING SAME

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REMOTE RULE 30(b)(6)

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VIDEOTAPED DEPOSITION OF

11

BYU BROADCASTING

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DESIGNEE MARK MITCHELL

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THURSDAY, DECEMBER 2, 2021

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Reported by: Amy L. Larson, RPR
Job No. 2021-821668

M. MITCHELL

December 2, 2021

10:06 a.m. PST

Remote videotaped deposition of MARK MITCHELL,
pursuant to Subpoena, before Amy L. Larson, a
Registered Professional Reporter and Notary Public.

M. MITCHELL

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M. MITCHELL

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M. MITCHELL

P R O C E E D I N G S

THE VIDEOGRAPHER: We are on the record on December 2, 2021, at approximately 10:06 a.m. Pacific Time for the remote video deposition of Mr. Mark Mitchell In the Matter of Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same.

My name is Valerie Beltran, and I am the videographer. All present will be noted on the stenographic record.

Will the court reporter please swear in the witness.

THE COURT REPORTER: I just have a short read-on before we swear in the witness.

Due to the COVID-19 pandemic, I will be reporting this proceeding remotely. In lieu of an oath administered in person, the witness will verbally declare his testimony in this matter is under penalty of perjury.

Do all parties stipulate to the validity of the remote swearing and that it will be admissible in the courtroom as if it had been taken following Rule 30 of the

1 M. MITCHELL

2 Federal Rules of Civil Procedures and the
3 state's rules where the case is pending?

4 MR. ROSENBERG: Yes --

5 THE WITNESS: Yes --

6 MR. ROSENBERG: -- for Peloton.

7 MR. DHANANI: Yes for DISH.

8 MR. ANDERSEN: Yes for BYU.

9 MS. TERRELL: Yes for lululemon
10 and MIRROR.

11 MR. GROSS: Yes for iFit.

12 MR. RAUH: Yes for the Commission
13 of Investigative Staff.

14 THE COURT REPORTER: Mr. Mitchell,
15 do you affirm under the penalties of perjury
16 the testimony you're about to give will be
17 the truth?

18 THE WITNESS: Yes.

19 THE COURT REPORTER: Thank you.
20 You may begin.

21
22 EXAMINATION

23 BY MR. ROSENBERG:

24 Q. Okay. Good morning, Mr. Mitchell. My name,
25 again, is Stuart Rosenberg. I am counsel for

M. MITCHELL

Peloton, one of the Respondents in the investigation.

Have you ever been deposed before?

A. No, I have not.

Q. Okay. So we'll just go over the ground rules really briefly, and feel free to ask me questions if you don't understand them.

So I'm going to ask you a series of questions today. After each of the questions I ask, either Mr. Andersen or the other attorneys may object to the question. But because there's no judge here to resolve the objection, the way this works is if you understood the question and are able to answer it, please go ahead and answer, and then the judge will deal with the objections later.

Do you understand that?

A. Yes, I understand.

Q. And the only exception to that is if your counsel, Mr. Andersen, instructs you not to answer for grounds of privilege, then we can deal with that. But I'm not planning to ask anything that would get anywhere close to

1 M. MITCHELL

2 that today, so hopefully that won't be an
3 issue.

4 And you understand you are under
5 oath today like you would be in a courtroom?

6 A. Yes, I understand.

7 Q. Is there any reason you can't provide
8 accurate testimony today? For example, are
9 you under the influence of a medication that
10 would affect your judgment?

11 A. No.

12 Q. Great. And then like we discussed before we
13 went on the record, any time you need a
14 break, just let us know. We -- we -- we'll
15 try not to take a break while a question is
16 pending. But, you know, in between that and
17 the next question, we can take a break any
18 time you need one.

19 So with that in mind, let me start
20 by asking you, can you describe briefly your
21 educational background for us?

22 A. Yes. I have a bachelor's degree from BYU
23 in information systems --

24 THE COURT REPORTER: I'm sorry,
25 Mr. Mitchell, I'm unable to hear you.

1 M. MITCHELL

2 THE WITNESS: Oh, sorry.

3 MR. ANDERSEN: Speak up.

4 THE WITNESS: Okay. I have a
5 bachelor's degree from Brigham Young
6 University through the School of Business
7 with an emphasis in information systems.

8 THE COURT REPORTER: I'm sorry,
9 the audio isn't much better. Mr. Rosenberg,
10 are you -- can we just pause for a moment?

11 MR. ROSENBERG: Sure.

12 MR. ANDERSEN: Are you able to
13 hear us, Stuart and Ali?

14 THE VIDEOGRAPHER: Should we go
15 off the record?

16 MR. ROSENBERG: Let's go off the
17 record to fix it.

18 THE VIDEOGRAPHER: Okay. The time
19 is 10:10 a.m., and we're going off the
20 record.

21 (Recess.)

22 THE VIDEOGRAPHER: The time is
23 10:12 a.m., and we're back on the record.

24 BY MR. ROSENBERG:

25 Q. So Mr. Mitchell, you mentioned the bachelor's

1 M. MITCHELL

2 degree from BYU. Can you tell us when you
3 earned that degree?

4 A. It was in April of 2003 that I graduated.

5 Q. And do you have any other formal degrees?

6 A. No.

7 Q. Okay. And remind us, what was the subject
8 matter of your degree?

9 A. Information systems.

10 Q. And did you then go to work when you
11 graduated?

12 A. Yes, I did. I worked at BYU Broadcasting --
13 or broadcast services, I guess it was
14 referred to at that time, since then. So
15 starting in April -- or May of 2003.

16 Q. Have you worked anywhere else since
17 graduating or only at BYU?

18 A. No, I've been at BYU Broadcasting the whole
19 time.

20 Q. And what's your current title at BYU?

21 A. So my current title is -- gosh, what is it?
22 I'm the manager of business intelligence at
23 BYU Broadcasting.

24 Q. And can you tell us, you know, in a sentence
25 or two, what your general responsibilities

1 M. MITCHELL

2 are in that job?

3 A. Yes. Well, currently, we gather all of
4 the analytics and things like that for
5 BYU Broadcasting on all of our television and
6 radio properties.

7 Q. So if you started after graduating in '03, I
8 take it you were employed by BYU Broadcasting
9 in the fall of 2005?

10 A. Yes, I was.

11 Q. Do you recall what kind of work you were
12 doing for BYU Broadcasting at that time?

13 A. Yes. I was the web master for
14 broadcasting -- or for BYU Broadcasting at
15 that time for the web properties.

16 Q. Okay. Great. And if you could now look at
17 Exhibit 1.

18 (Exhibit 1 marked.)

19 BY MR. ROSENBERG:

20 Q. And just tell me if it's easier, I can share
21 it on my screen. Would you rather have me
22 share it or you have a copy in front of you?

23 MR. ANDERSEN: We've got it here.

24 THE WITNESS: Yeah, we see it.

25 MR. ROSENBERG: Okay. Great. I

1 M. MITCHELL

2 just need to figure out where my mouse is.

3 There we go.

4 BY MR. ROSENBERG:

5 Q. So I'll represent to you this is a copy
6 of the subpoena that was served to
7 BYU Broadcasting in the investigation.

8 Have you seen this before?

9 A. Yes, I have.

10 Q. Okay. And if you look at -- scroll down to
11 Attachment B in the subpoena, which starts at
12 page 15 or so, do you see a series of
13 deposition topics, 1 through 14?

14 A. Yes.

15 Q. And do you understand that you've been
16 designated by BYU Broadcasting as the
17 corporate witness on these topics?

18 A. Yes, I understand.

19 Q. Okay. And are you prepared to testify as to
20 BYU Broadcasting's knowledge to the extent it
21 has any on these topics today?

22 A. Yes, I am.

23 Q. Okay. Great.

24 And so the first topic, I won't go
25 through all of these in detail, but we will

1 M. MITCHELL

2 do the first one, the broadcasting of the
3 October 2005 general conference and/or the
4 December 2005 Christmas devotional over the
5 internet live in 2005.

6 Do you have an understanding of what
7 the general conference is in the context of
8 the LDS church?

9 A. Yes, I do.

10 Q. Can you tell us what, briefly, the general
11 conference is?

12 A. Yes. It's a -- a general conference is a
13 semiannual broadcast put on by the Church of
14 Jesus Christ Latter-day Saints --

15 THE COURT REPORTER: I'm sorry to
16 interrupt, but I can't hear the witness clear
17 enough or loud enough.

18 MR. ANDERSEN: Amy, is there any
19 way you could turn your volume up, because
20 this is the best we can do.

21 THE COURT REPORTER: I have my
22 volume up as much as I can, and I can hear
23 everybody else clearly and loud enough. I
24 just -- it's just cutting out, I'm not able
25 to get every single word. Sometimes cell

1 M. MITCHELL

2 phone audio is better. I don't know if you
3 want to try that.

4 MR. ROSENBERG: Can we go off the
5 record to fix this?

6 MR. ANDERSEN: Yeah.

7 THE VIDEOGRAPHER: Okay. Then the
8 time 10:16 a.m. and we're going off the
9 record.

10 (Recess.)

11 THE VIDEOGRAPHER: The time is
12 10:18 a.m., and we're back on the record.

13 BY MR. ROSENBERG:

14 Q. So let me ask the last question again.

15 Can you tell us briefly what the
16 general conference is?

17 A. Yes. The general conference is a semiannual
18 broadcast put on by the Church of Jesus
19 Christ of Latter-day Saints where leaders of
20 the church give 15 to 20-minute talks to the
21 general population of the church.

22 Q. And do you recall there being a general
23 conference in October of 2005?

24 A. Yes.

25 Q. And you were working at BYU Broadcasting at

1 M. MITCHELL

2 that time?

3 A. Yes, I was.

4 Q. Do you happen to remember when in
5 October 2005 the general conference happened?

6 A. I believe it was October 1st and 2nd, so the
7 first Saturday and Sunday of October.

8 Q. And if you look briefly at Exhibit 2.

9 (Exhibit 2 marked.)

10 BY MR. ROSENBERG:

11 Q. Which is a document I will represent I
12 printed from the web this morning from the
13 church website.

14 Do you see that it says, "Saturday
15 Morning, October 1st, 2005, General Session,"
16 on the first page?

17 A. Yes.

18 Q. And is that consistent with your recollection
19 of when the general conference happened?

20 A. Yes.

21 Q. Okay. Great.

22 And did BYU Broadcasting broadcast
23 the October 2005 general conference on the
24 BYU TV channel?

25 A. Yes, we did.

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Q. And did you also broadcast the October 2005
general conference over the internet?

A. Yes, we did.

Q. And did you do that live as the general
conference was happening in October 2005?

A. Yes.

Q. Were you personally involved in any aspect of
that internet broadcast?

A. Yes, I was.

Q. Can you explain to us what your involvement
was?

A. Yes. We had -- we had Windows Media streams
that we would use to stream live over -- over
the internet, and we used a -- this was the
first time we had done it, a stream from
Move Networks. It was just listed on -- it
was a third-party stream. It was on just a
link to it from our streaming page on
byutv.org.

Q. So if we can now pull up Exhibit 3, which is
a one page document with the Bates number
BYU 1.

(Exhibit 3 marked.)

BY MR. ROSENBERG:

M. MITCHELL

Q. Do you recognize what's pictured on Exhibit 3?

A. Yes, I do.

Q. Can you tell us what that is?

A. Yes. This was the byutv.org streaming page with all the options for -- for internet streams during -- or for BYU TV.

Q. And are you familiar with the Wayback Machine and the Internet Archive?

A. Yes, I am.

Q. Okay. And so do you see in the URL at the top of the page after the word "web" and the slash, there are a series of numbers that starts 20051001?

A. Yes.

Q. And do you understand that to be a reflection of the fact that this web page was archived on October 1st, 2005?

A. Yes, I do.

Q. And do you see a link on the page that says, "High speed streams, Move Networks"?

A. Yes.

Q. And am I correct that a member of the general public, on October 1st, 2005, could click on

1 M. MITCHELL

2 that link to access a live stream over the
3 internet of the general conference?

4 A. Yes, that is correct.

5 Q. Do you happen to remember any of the other
6 people at BYU Broadcasting who were involved
7 in working with Move Networks on doing this
8 live stream in October 2005?

9 A. Just specific names you're looking for?

10 Q. The names of people who were involved
11 specifically in the Move Networks part as
12 opposed to the -- the Windows Media part.

13 A. Okay. Chris Twitty, John -- who is our
14 managing director --

15 THE COURT REPORTER: I'm sorry,
16 can you repeat that?

17 THE WITNESS: John Reim, R-E-I-M.
18 I'm not sure on any other people who were
19 specifically involved with that.

20 BY MR. ROSENBERG:

21 Q. Do you remember what Mr. Twitty's role was
22 with respect to working with Move Networks?

23 A. He was -- he was the one who worked with them
24 on originally setting up the -- the
25 connection with them. So he was my boss.

M. MITCHELL

Q. And then the other person you mentioned,
Mr. Reim, do you remember what his role was
with respect to Move Networks?

A. I'm sure he was in the discussions with
Chris.

Q. Do you have a recollection of what would
happen when a person, you know, from the
general public clicked on the link that says,
"Move Networks," here, during the general
conference in October 2005?

A. Somewhat. It would take you to a web page
on -- a Move Networks web page. So not on
anything that we hosted, but something that
Move Networks hosted with a video player on
it for people to watch the stream.

Q. Do you remember what that viewer looked like,
any aspect of what the controls looked like?

A. I -- no, not specifically.

Q. And do you have any understanding of what
that viewer was doing under the hood to
display the general conference?

A. Not as far as the technology is concerned at
that time.

Q. Do you recall any password or -- or

1 M. MITCHELL

2 protection being used to limit who was able
3 to watch the general conference live stream
4 through the Move Networks viewer in October
5 of 2005?

6 A. No, I don't believe there was.

7 Q. Do you know anything about the -- the video
8 file formats that were used to transmit the
9 live broadcast using the Move viewer?

10 A. As of that date, no, I did not know anything
11 about the technology.

12 Q. Was there a later date when you -- when you
13 did learn something about what video formats
14 were used with the Move viewer?

15 A. Yes. We worked with Move for several years,
16 and I was involved through all of that, so I
17 learned a little bit more about their
18 technology as we worked with them. That
19 original conference, it was essentially just
20 a link on our site.

21 Q. Okay. Well, I think we'll look at some of
22 the later information in a -- in a minute.

23 So if we can pull up now Exhibit 4.
24 It'll look familiar.

25 (Exhibit 4 marked.)

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BY MR. ROSENBERG:

Q. So Exhibit 4 is a single-page document with the Bates number RESP-PA06261. And I'll represent to you I printed this from the Wayback Machine a few days ago.

And if you look at the URL at the top, do you see that the -- the date part of it now starts 20051102?

A. Yes, I see that --

Q. And --

MR. DHANANI: Counsel, has this -- have these documents been produced to us? And if so, when?

MR. ROSENBERG: Yes, I believe so this morning.

MR. DHANANI: Okay.

BY MR. ROSENBERG:

Q. So Mr. Mitchell, is the -- the numbering here 20051102, do you understand that to reflect that this is an archive of the BYU streaming page as of November 2nd, 2005?

A. Yes.

Q. And do you see the same link or the same graphic we saw in the October 1st, 2005,

M. MITCHELL

page that says, "High speed streams,
Move Networks"?

A. Yes.

Q. And is it your understanding that as of
November 2nd, 2005, a member of the public
could use that link to watch a live stream of
whatever was playing on the BYU TV channel at
that time?

MR. DHANANI: Objection. Hang on
one second.

Objection; vague, and it calls for
speculation.

And could you read that question
back one more time specifically.

THE COURT REPORTER: One moment,
please.

(Last question read by the
court reporter.)

MR. DHANANI: Yeah, objection,
calls for speculation, and vague as to
whatever was playing on the BYU TV channel at
that time.

BY MR. ROSENBERG:

Q. So, Mr. Mitchell, are you able to answer the

M. MITCHELL

question?

A. Well, I guess, yes, the Move Networks stream played whatever we aired on the -- our BYU TV channel. So I can't speak to the specifics of what aired on -- on November 2nd of 2005, but that channel did exist at that time, yes.

Q. So am I correct that -- I'm sorry to interrupt. Are you done answering that question?

A. Yes.

Q. Okay. So am I correct that whatever was playing on the BYU TV channel on November 2nd, 2005, a member of the general public could watch that streaming it over the internet by using the Move Networks viewer that's linked here on Exhibit 4?

MR. DHANANI: Objection; calls for speculation.

MR. ANDERSEN: You can answer.

THE WITNESS: Yes, I believe so.

BY MR. ROSENBERG:

Q. Okay. Can we turn to Exhibit 5.

(Exhibit 5 marked.)

BY MR. ROSENBERG:

M. MITCHELL

Q. So Exhibit 5 is a now two-page document bearing the Bates numbers RESP-PA06263 through 06264. And I'll represent, like the last exhibit, I printed this from the Wayback Machine this week.

So, Mr. Mitchell, if you look at the top at the URL, now you'll see it starts the -- the numbers part starts 20051208. Do you understand that to reflect that this is an archive of the BYU streaming page on December 8th, 2005?

A. Yes.

Q. Okay. And does this look generally like what you recall the BYU streaming page looking like at that time?

A. Yes, it does.

Q. Okay. And do you see a link that says -- or a graphic that says, "Tune in now," where one of the options is, "Powered by Move Networks"?

A. Yes, I do.

Q. And is it your understanding that whatever was playing on the BYU TV channel on December 8th, 2005, a person in the general public could watch that over the internet by

1 M. MITCHELL

2 clicking on the link here to Move Networks on
3 the BYU streaming page?

4 A. Yes.

5 Q. And so putting together the last three
6 exhibits, we've seen this page in -- on
7 October 1st, November 2nd and December 8th,
8 2005. Is it your understanding that that
9 link to the Move Networks player was up on
10 the BYU streaming page throughout that time?

11 MR. DHANANI: Objection; calls for
12 speculation.

13 MR. ANDERSEN: You can answer.

14 THE WITNESS: Yes, that is my
15 remembering.

16 BY MR. ROSENBERG:

17 Q. So that at any point in the fall of 2005, or
18 at least between October 1st, 2005, and
19 December 8th, 2005, a person in the general
20 public was able to watch BYU TV over the
21 internet by using the Move Networks viewer
22 linked on this page?

23 MR. DHANANI: Objection; calls for
24 speculation.

25 THE WITNESS: Yes.

M. MITCHELL

BY MR. ROSENBERG:

Q. So if we can now go to Exhibit 6, which is a two-page document, or two pages, at least, produced by BYU Broadcasting with the Bates numbers BYU 12 through 13.

(Exhibit 6 marked.)

BY MR. ROSENBERG:

Q. Mr. Mitchell, do you recognize what's pictured on Exhibit 6?

A. Yes, I do.

Q. Can you tell us what that is?

A. That -- it's a plaque that is hanging in the BYU Broadcasting building on Brigham Young University campus.

Q. And what is commemorated in the plaque shown at BYU 12 through 13?

A. This is talking about using Move Networks to stream BYU TV in 2005.

Q. And let me try to read into the record what's the text printed there, and I'll ask you if I've read that correctly. And I apologize for making you read something that's small, but I want to make sure the text is -- is in the record here.

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2 So, quote, "BYU TV launches live
3 stream using Move Networks' adaptive bitrate
4 technology, essentially making BYU TV the
5 first television network to stream its signal
6 uninterrupted and free of charge 24/7 on the
7 internet," close quote.

8 Did I read that correctly?

9 A. Yes.

10 Q. And is that accurate, to your understanding,
11 with respect to what happened at BYU TV in
12 2005?

13 A. Yes, that is accurate.

14 Q. Do you have an understanding of what the
15 words "adaptive bitrate" refer to in this
16 plaque?

17 A. Yes, I do.

18 Q. Can you explain that?

19 A. Adaptive bitrate, as compared to a constant
20 bitrate stream, so an adaptive bitrate stream
21 allows the stream to adjust based on network
22 conditions. For example, if you have network
23 congestion, an adaptive stream will -- will
24 jump down to a lower quality bitrate to
25 prevent the stream from buffering as opposed

M. MITCHELL

to just stopping and buffering.

Q. And the streaming that was done using the Move Networks viewer that we looked at the links for in the previous exhibits in 2005, was that adaptive bitrate streaming?

A. Yes.

Q. So we talked about the general conference in October 2005 being broadcast live as it happened.

Are you aware of any other events, church events where BYU Broadcasting broadcast the event over the internet through the Move Networks viewer live as the event was happening?

A. I'm aware of the Christmas devotional broadcast, which happened in December of that year.

Q. So if we can pull up Exhibit 7, which is a two-page document with the Bates numbers RESP-PA06270 through 71.

(Exhibit 7 marked.)

BY MR. ROSENBERG:

Q. I'll represent that I printed this from the Wayback Machine this week.

1 M. MITCHELL

2 Do you recognize, Mr. Mitchell, the
3 web page on Exhibit 7?

4 A. Yes, I do.

5 Q. Can you tell us what -- what that is?

6 A. Yes. This was our Top Programs page on
7 byutv.org just showing various programs that
8 air on BYU TV.

9 Q. And if you look at the numbers part of the
10 URL at the top, do you see where it says,
11 "20051206"?

12 A. Yes, I do.

13 Q. And does that indicate to you that this is an
14 archive of the Top Programs page as it
15 existed on December 6th, 2005?

16 A. Yes.

17 Q. And if you go to the second page of the
18 document, do you see a section titled, "First
19 Presidency Christmas Devotional"?

20 A. Yes, I see that.

21 Q. And do you see where it lists days and times
22 that that devotional was aired on BYU TV?

23 A. Yes.

24 Q. And the first time listed there is Sunday,
25 December 4th at 6:00 p.m., and then it says,

M. MITCHELL

"Live," next to that.

Do you see that?

A. Yes.

Q. Does that indicate to you that the Christmas devotional was aired on BYU TV on December 4th, 2005, live as it was happening?

A. Yes.

Q. And was it, likewise, broadcast on the internet using the Move Networks viewer live as it was happening on December 4th, 2005?

A. Yes.

Q. And is it BYU's understanding that a member of the general public could watch the Christmas devotional live over the internet on December 4th, 2005, by using the Move Networks viewer that was linked to from the BYU website?

MR. DHANANI: Objection; calls for speculation.

MR. ANDERSEN: You can answer.

THE WITNESS: Yes, in the times that it was airing on the live stream, yes.

BY MR. ROSENBERG:

Q. Okay. So we can jump ahead to Exhibit 10.

1 M. MITCHELL

2 (Exhibit 10 marked.)

3 BY MR. ROSENBERG:

4 Q. So Exhibit 10 is a two-page document with the
5 Bates numbers RESP-PA06266 through 67. And
6 I'll represent I printed this from the
7 Wayback Machine this week.

8 Mr. Mitchell, do you recognize this
9 as another archived version of the
10 byutv.org/streaming web page?

11 A. Yes.

12 Q. And if you look at the date part of the URL
13 at the top, do you see that it starts,
14 "20060112"?

15 A. Yes, I see that.

16 Q. Does that indicate to you that this is an
17 archive of the BYU TV streaming page as it
18 existed on January 12th, 2006?

19 A. Yes.

20 Q. And is this document consistent with your
21 recollection of what the streaming page
22 looked like at that time?

23 A. Yes.

24 Q. So do you see that this page still has the
25 same graphic we saw from the December version

M. MITCHELL

that says, "Tune in now," and the text,
"Powered by Move Networks"?

A. Yes.

Q. And is it your recollection that a member of
the general public could, as of January 12th,
2006, watch whatever was being broadcast on
the BYU TV channel over the internet by using
the Move Networks viewer linked here?

A. Yes.

Q. And so to the extent BYU TV was carrying
certain events live in January of 2006, a
person interested in watching that live would
have been able to do so using the
Move Networks viewer linked here?

MR. DHANANI: Objection; calls for
speculation.

MR. ANDERSEN: You can answer.

THE WITNESS: Yes.

BY MR. ROSENBERG:

Q. And now if we can move ahead to Exhibit 11.

(Exhibit 11 marked.)

BY MR. ROSENBERG:

Q. So Exhibit 11 is a two-page -- or three-page
document with the Bates numbers RESP-PA06272

M. MITCHELL

through 74. And I'll represent I printed
this from the Wayback Machine this week.

Mr. Mitchell, do you recognize this
as another version of the Top Programs page
from the BYU website you worked on?

A. Yes.

Q. And if you look at the date in the URL, do
you see that it starts 20060110?

A. Yes.

Q. And does that indicate to you that this is an
archive of the Top Programs page as it
existed on January 10th, 2006?

A. (Inaudible.)

THE COURT REPORTER: I'm sorry, if
there was an answer, I didn't hear it.

THE WITNESS: Oh, yes.

BY MR. ROSENBERG:

Q. Sorry, Mr. Mitchell, yeah, we didn't get the
answer. Sorry for the radio silence there.
Okay. Thank you.

So if you look down towards the
bottom of the first page, do you see a
section there that says, "BYU Women's
Basketball"?

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A. Yes.

Q. And do you see it says, quote, "Join us for
dazzling sporting events and watch the Lady
Cougars battle against the Rebels and the
Rams," close quote?

A. Yes.

Q. And it lists one of those basketball games
occurring on January 11th at 7:00 p.m.; is
that right?

A. Yes, that's correct.

Q. And it says that game was carried live on
BYU TV; is that right?

A. Yes.

Q. So a person who wanted to watch the BYU
versus UNLV basketball game live on
January 11th, 2006, could have done so, to
your knowledge, by using the Move Networks
viewer linked to on the BYU website?

MR. DHANANI: Objection; calls for
speculation.

MR. ANDERSEN: You can answer.

THE WITNESS: Yes.

BY MR. ROSENBERG:

Q. And -- and put another way, BYU, in

M. MITCHELL

conjunction with Move Networks, did a live
stream broadcast over the internet using the
Move Networks technology of the BYU versus
UNLV women's basketball game on January 11th,
2006, correct?

MR. DHANANI: Objection; calls for
speculation.

MR. ANDERSEN: You can answer.

THE WITNESS: Yes.

BY MR. ROSENBERG:

Q. And then, likewise, there's another
basketball game there listed on January 28th
at 2:00 p.m., CSU versus BYU. To your
understanding, did BYU broadcast that game
live over the internet using the
Move Networks technology?

A. Yes.

Q. Okay. We can now go to Exhibit 12.

(Exhibit 12 marked.)

BY MR. ROSENBERG:

Q. Exhibit 12 is a two-page document bearing
Bates numbers RESP-PA06268 through 69. And
I'll represent I printed this from the
Wayback Machine this week.

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Mr. Mitchell, do you recognize this
as another archived version of the
byutv.org/streaming page?

A. Yes.

Q. And if you look up at the top at the date
part of the URL, do you see that it starts,
"20060207"?

A. Yes.

Q. And does that indicate to you that this is an
archive of the BYU TV streaming page as it
existed on February 7th, 2006?

A. Yes.

Q. And is the exhibit here, Exhibit 12,
consistent with your recollection of what the
streaming page looked like in February of
2006?

A. Yes.

Q. And do you see that it has that same graphic
that says, "Tune in now," and the -- and the
text, "Powered by Move Networks"?

A. Yes.

Q. And is it BYU's understanding that as of
February 7th, 2006, a member of the general
public could watch the BYU TV channel,

1 M. MITCHELL

2 whatever was being broadcast on that channel
3 at that time, over the internet by using the
4 Move Networks viewer linked here?

5 MR. DHANANI: Objection; calls for
6 speculation.

7 MR. ANDERSEN: You can answer.

8 THE WITNESS: Yes.

9 BY MR. ROSENBERG:

10 Q. Or put another way, did BYU broadcast over
11 the internet on February 6th -- February 7th,
12 2006, a TV channel using the Move Networks
13 technology?

14 A. Yes, we did.

15 Q. And do you see lower down on the page under
16 the text, "Option 1," there's a bullet with a
17 hyperlink and the text, quote, "Click here to
18 stream with Move Networks"?

19 A. Yes, I see that.

20 Q. And is it your understanding that if a person
21 clicked on that link on February 7th, 2006,
22 it would take them to the Move Networks
23 viewer for watching the adaptive bitrate
24 stream of the BYU TV station?

25 A. Yes.

1 M. MITCHELL

2 Q. Okay. So we can now go to Exhibit 13, which
3 is a two-page document with Bates numbers
4 RESP-PA06275 through 06276.

5 (Exhibit 13 marked.)

6 BY MR. ROSENBERG:

7 Q. I will represent I printed this from the
8 Wayback Machine this week. And the URL shows
9 up at the bottom of the page here. I think I
10 may have just printed this from a different
11 browser.

12 Do you see the numbers part of the
13 URL starts, "20060205"?

14 A. Yes, I see that.

15 Q. And does this indicate to you that this is an
16 archive of the web page as of February 5th,
17 2006?

18 A. Yes.

19 Q. And if you look up at the very top left of
20 the page, the first page, do you see the
21 text, "BYU-TV live powered by Move Networks"?

22 A. Yes, I see that.

23 Q. And then you see that the first orange text
24 here says, "FAQ"?

25 A. Yes.

1 M. MITCHELL

2 Q. Are you familiar with F -- with what the
3 abbreviation FAQ stands for in the context of
4 the internet?

5 A. Yes, I am.

6 Q. Can you tell me what your understanding is?

7 A. Yes. It's frequently asked questions.

8 Q. Okay. And if you then scroll to the second
9 page, you'll see a subject matter --
10 withdrawn.

11 On the second page you see a
12 heading, "General questions"?

13 A. Uh-huh.

14 Q. And the first question is, "Who created the
15 BYU TV enhanced video player"?

16 A. Yes.

17 Q. And then the answer to that question is,
18 "BYU TV enhanced video player was created by
19 Move Networks in conjunction with BYU TV."

20 Do you see that?

21 A. Yes.

22 Q. Is it your recollection that Move Networks
23 did in fact create an enhanced video player
24 in conjunction with BYU TV in 2005 and into
25 early 2006?

1 M. MITCHELL

2 A. Yes.

3 MR. DHANANI: Objection;
4 incomplete -- incomplete and vague as to the
5 time period.

6 BY MR. ROSENBERG:

7 Q. So let me back up a little bit. I'll
8 represent to you, Mr. Mitchell, that the way
9 that I found this page was I clicked on the
10 link that we looked at in the prior exhibit,
11 Exhibit 12, that said, "Click here to stream
12 with Move Networks," and then on the
13 resulting page I clicked on a link that said,
14 "FAQ," and it took me here.

15 Have you ever seen this FAQ before?

16 A. Yes, I have.

17 Q. And is it consistent with your recollection
18 of how the Move Networks player for BYU TV
19 worked in February -- or on or around
20 February 5th, 2006?

21 MR. DHANANI: Objection;
22 foundation, lack of personal knowledge and
23 calls for speculation.

24 MR. ANDERSEN: You can answer.

25 THE WITNESS: Are you -- can I get

1 M. MITCHELL

2 a clarification question? Are you referring
3 to that specific question there of who
4 created the BYU TV enhanced video player or
5 the whole FAQ in general?

6 BY MR. ROSENBERG:

7 Q. So let me -- let me ask about some specifics,
8 and then I'll back up and ask about the whole
9 thing.

10 So if you look at the first page --
11 so, actually, let's -- let's go down -- let's
12 look at the actual URL again at the bottom of
13 the first page.

14 Do you see the part that says,
15 "XLONHCLD"?

16 A. Yes, I do.

17 Q. Do you have an understanding of what XLON or
18 XLON refers to in this context?

19 A. I know that that was a domain that the
20 Move Networks player used. I don't
21 know --

22 Q. And --

23 A. -- XLON or its history though.

24 Q. Fair enough.

25 So if we go back to general question

1 M. MITCHELL

2 section, and we talked about the first
3 section there, who created the player, now I
4 want to ask you about the second question.
5 The second question there is, "What is the
6 BYU TV enhanced video player technology?"

7 Can you read that -- well, let me
8 read it into the record and then I'll ask you
9 about it. So the answer to that question is,
10 quote, "The BYU TV enhanced video player
11 software is powered by Quantum Media
12 technology from Move Networks," close quote.

13 So for that first sentence of the
14 answer, is that consistent with BYU's
15 understanding of what the BYU TV enhanced
16 video player software was?

17 MR. DHANANI: Objection; vague.

18 MR. ANDERSEN: You can answer if
19 you know.

20 THE WITNESS: The term Quantum
21 Media technology was not anything that I am
22 familiar with. But I -- or it was done by
23 Move Networks, I know that.

24 BY MR. ROSENBERG:

25 Q. The next sentence there says, "Quantum Media

1 M. MITCHELL

2 technology enhances all aspects of the
3 viewing experience, including audio and video
4 quality, and also enables powerful features
5 like time shifting and video sharing."

6 So as of February 5th, 2006, do you
7 have any recollection one way or the other
8 whether that description of the Move Networks
9 software is accurate?

10 MR. DHANANI: Objection;
11 foundation and calls for speculation.

12 MR. ANDERSEN: You can answer if
13 you know.

14 THE WITNESS: I don't remember.

15 BY MR. ROSENBERG:

16 Q. Do you have any reason -- so more generally,
17 do you have any reason to think that any of
18 the description in this FAQ of the
19 Move Networks player for BYU TV is
20 inaccurate?

21 MR. DHANANI: Objection; calls for
22 speculation.

23 MR. ANDERSEN: You can answer.

24 THE WITNESS: I'm not sure.

25 BY MR. ROSENBERG:

M. MITCHELL

Q. If you look at the first page, the third question there says, "What is the navigation panel below the viewing window?"

Do you see that?

A. Give us one second.

Q. Sure.

MR. ANDERSEN: Where was it?

THE WITNESS: Which -- navigation panel, that one?

MR. ROSENBERG: Right. Yeah --

THE WITNESS: Yes.

MR. ROSENBERG: -- what is the navigation panel?

BY MR. ROSENBERG:

Q. So do you -- do you have any recollection yourself of -- of seeing a navigation panel in connection with the Move Networks viewer for BYU TV?

MR. DHANANI: Objection; vague as to time frame.

MR. ANDERSEN: Stuart, could you clarify when you're talking about?

MR. ROSENBERG: Sure.

BY MR. ROSENBERG:

M. MITCHELL

Q. So at any time before February 9th, 2006, do you -- do you have a recollection of a navigation panel for the Move Networks viewer for BYU TV?

A. I do not recall.

Q. And if you look in that paragraph, there's a sentence that starts with the bold text, quote, "Go live." And it says, "Go live always returns you to the current live broadcast."

Do you see that sentence?

A. Yes.

Q. Sitting here today, based on what you remember and what BYU has been able to find in response to the subpoena, do you have any reason to dispute, to deny that as of February 5th, 2006, there was a go-live button to return you to the current live broadcast in the Move Networks viewer for BYU TV?

A. I don't remember specifically.

Q. Do you -- do you have any information that contradicts that statement?

A. No, I do not.

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Q. Okay. Do you ever remember at any other point in time seeing a navigation panel in connection with the Move Networks viewer for BYU TV?

A. Yes, I do.

Q. Okay. Do you have a recollection of when you first saw it?

A. Not specifically, no.

Q. Do you remember, regardless of when you saw it, what it looked like?

A. Not super specific. I remember basic things about it being kind of a scrub bar with -- with a few buttons like the plus 10 or go forward or go live buttons. I do remember -- recall those being in it at some point.

MR. ROSENBERG: Okay. I want to switch gears. I think I may be done with exhibits. I just have a few more -- I'm sorry, there's -- there's one more, but I think this might be a good time to take a break since we've been going about an hour. Does that work for everybody else?

THE WITNESS: Yes.

MR. ANDERSEN: That works.

1 M. MITCHELL

2 MR. ROSENBERG: Okay. So can we
3 take a 10-minute break and come back at about
4 5 after the hour?

5 THE VIDEOGRAPHER: Okay. The time
6 is 10:56 a.m., and we're going off the
7 record.

8 (Recess.)

9 THE VIDEOGRAPHER: The time is
10 11:07 a.m., and we're back on the record.

11 BY MR. ROSENBERG:

12 Q. Welcome back, Mr. Mitchell. So I want to
13 turn away from exhibits for a moment and ask
14 you about some other names of people who we
15 believe may have worked at BYU Broadcasting
16 in the fall 2005, early 2006 time frame, and
17 just ask you if you remember them and
18 remember them having any involvement in
19 streaming with respect to the Move viewer at
20 that time.

21 So does the name Kyle Klegg ring a
22 bell?

23 A. No.

24 Q. Okay. How about Justin Dow, D-O-W?

25 A. No.

M. MITCHELL

Q. Aaron Southerland?

A. No.

Q. Eric Archibald?

A. No.

Q. Scott Torrie, T-O-R-R-I-E?

A. No.

Q. Catherine Langford?

A. Yes.

Q. Okay. Do you remember whether Ms. Langford was involved in any aspect of the internet streaming of BYU TV circa late 2005 or early 2006?

A. I don't know. I can tell you what she did or as far as her general job, but I don't know if she was involved with Move.

Q. Can you tell us briefly what her job responsibilities were?

A. Yeah. She was the one who produced copy, so like all of the descriptions and things for our shows and stuff like that, she was our -- our copyright.

Q. Including the copy that would go into the web pages talking about what was coming up on the -- on the channel?

51

M. MITCHELL

A. Yes.

Q. Okay. How about Kurt Hostetler?

A. No.

Q. Anna Butler?

A. I do remember Anna.

Q. Do you remember what her job responsibilities
were around 2005 or 2006?A. I believe she worked in our underwriting
department.Q. So nothing to do with the technology involved
in the streaming?

A. Not that I know of.

Q. Nick Denney, D-E-N-N-E-Y?

A. Yes, I believe he was a student at that time.

Q. Do you remember him having any -- I'm sorry,
go ahead.A. I was just going to say he was an IT support
student, so just help people with computer
problems.Q. Do you recall him being involved in working
with Move Networks at all?

A. Not that I know of.

Q. Jeff Kohler, K-O-H-L-E-R?

A. No.

M. MITCHELL

Q. John Reim I think we've already talked about.

Davindo Hyer or Hyer, H-Y-E-R?

A. No.

Q. Bryan, B-R-Y-A-N, Mangum, M-A-N-G-U-M?

A. Yes, I do remember Bryan.

Q. Do you remember what his responsibilities
were at BYU TV?

A. His title, I believe, was -- oh, gosh, what
was his title? He was in charge of graphics
for the on-air station.

Q. Do you remember him being involved at all in
the internet side of things in the web pages
or streaming of BYU TV?

A. If he was, it would have been later on,
definitely after February of 2006.

Q. Okay. Ron Schwendiman,
S-C-H-W-E-N-D-I-M-A-N?

A. I remember the name. I don't know
specifically what he did.

Q. And then the last one I have is Chris Twitty,
who you mentioned already.

Do you remember, just over the
course of the last hour and a half talking
about this stuff, any other names of people

1 M. MITCHELL

2 who were involved on the BYU side of the
3 relationship with Move Networks?

4 A. Not that I can think of.

5 Q. Do you happen to remember the names of any of
6 the folks on the Move Networks side of the
7 relationship?

8 A. From that specific time period?

9 Q. Right.

10 A. No, I don't.

11 Q. Did you interact at any time with Drew Major
12 from Move Networks?

13 A. Not prior to February of 2006.

14 Q. How about with Mark Hurst?

15 A. That name sounds kind of familiar, but I
16 don't remember any interaction with him.

17 Q. Dave Brueck, B-R-U-E-C-K?

18 A. I do know Dave Brueck. I don't believe we
19 had any interaction prior to that time
20 though.

21 Q. John Edwards?

22 A. Yeah, I do know John. Again, I don't know
23 that I knew him prior to that time though.

24 Q. Greg Smith?

25 A. That doesn't sound familiar.

M. MITCHELL

Q. Robert Bryson?

A. I remember the name, but not any specific interaction with him.

Q. Do you recall, other than your own personal interactions, what any of those Move Networks folks were doing with respect to BYU before February of 2006?

A. I couldn't say specifically what they did.

Q. Okay. Do you know if Move Networks ever charged BYU for providing the live streaming services?

A. I don't know.

Q. Do you know if there's someone at BYU who would know that?

A. Chris Twitty would probably be the one that I would ask.

Q. And he is no longer at BYU; is that right?

A. That's correct.

Q. Okay. We're getting close here.

I have, actually, one more exhibit, which is Exhibit 14. And it's a document produced by BYU with Bates numbers BYU 14 through 27 titled, "Program Acquisition Management and Distribution Agreement." And

M. MITCHELL

I'll note it's designated confidential at the top.

(Exhibit 14 marked.)

BY MR. ROSENBERG:

Q. I just wanted to ask you to understand where this document came from in BYU's files.

Have you seen this document before, Mr. Mitchell?

A. Not before right now.

Q. Okay. Do you -- do you understand that BYU produced this document in response to the subpoena?

A. Yes.

Q. And do you have an understanding of -- of where in BYU's files the document came from?

A. As I understand it, it came from the legal -- or the general counsel's office.

Q. Okay. Do you understand that this morning BYU produced a few additional documents Bates-numbered BYU 28, 29 and 30, that are web server logs?

A. I am aware of the logs, yes.

Q. Okay. They're -- they're all big files. And since they have Bates numbers, I don't think

1 M. MITCHELL

2 we need to put them in as exhibits. I just
3 wanted to get your understanding of what they
4 are.

5 Can you tell me what your
6 understanding is of what those web logs
7 Bates-numbered BYU 28, 29 and 30 are?

8 A. Yes. They are the IIS, which is the
9 Microsoft web server, the server logs for
10 three days, the 29th of -- or, yeah,
11 September 29th, the 30th of September and
12 October 1st for byutv.org and --

13 MR. ANDERSEN: Of what year, Mark?

14 THE WITNESS: Of 2005. Sorry.

15 BY MR. ROSENBERG:

16 Q. So for example, in BYU 30, I'll represent
17 towards the top of that document it shows the
18 date 2005-10-01. Is it your understanding
19 that's the server log for byu.org on
20 October 1st, 2005?

21 A. Yes, in Mountain Standard -- or Mountain
22 time.

23 Q. Going back to the Move Networks player and
24 the adaptive bitrate streaming, do you ever
25 recall, not necessarily limited to before

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February of '06, but do you ever recall what the various bitrates were at which the Move Networks stream of BYU TV was provided?

A. It was probably told to me at one point. I don't recall what they were.

Q. And then with respect to the live broadcast that we talked about earlier for the October 2005 general conference, the December 2005 Christmas devotional, the basketball games in 2006, do you recall whether there was a delay of a few seconds or more between the actual events in question taking place and the live streaming of them?

A. Yes, there would have been latency, just latency delays in getting the signal to the encoder.

Q. Do you know what that delay was, how many seconds?

A. I do not know.

Q. And that actually reminds me, if we can look back at one of the exhibits, I think I forgot to ask you about men's volleyball. So if we could turn back to Exhibit 11, which was the Top Programs page from January 10th, 2006.

1 M. MITCHELL

2 Do you recall we looked at the first
3 page of this exhibit that shows BYU women's
4 basketball games being carried live?

5 A. We're not --

6 MR. ANDERSEN: Give us just a
7 second.

8 THE WITNESS: Yeah, we're trying
9 to open it.

10 MR. ROSENBERG: Take your time.
11 Sorry to go backwards.

12 MR. ANDERSEN: Okay, we're at
13 Exhibit 11.

14 BY MR. ROSENBERG:

15 Q. So you recall we looked at the women's
16 basketball part of this. Can you now take a
17 look at the second page of Exhibit 11? Do
18 you see a section entitled, "BYU Men's
19 Volleyball"?

20 A. Yes, I do.

21 Q. And do you see two volleyball games in
22 January of 2006 listed there as being carried
23 live on BYU TV?

24 A. Yes.

25 Q. And were those games, likewise, live streamed

1 M. MITCHELL

2 over the internet using the Move Networks
3 adaptive bitrate technology in January 2006?

4 A. To the best of my knowledge, yes.

5 Q. Okay. So a final few questions.

6 Other than the documents that BYU
7 has produced in response to the subpoena, are
8 you aware of any other documents at
9 BYU Broadcasting that would show the -- how
10 the live streaming of content using the
11 Move Networks viewer worked before
12 February 9th, 2006?

13 A. Not that I'm aware of.

14 MR. ROSENBERG: Okay. So I have
15 no further questions at this time subject to
16 any follow up I may need if other folks do.
17 But subject to that, I have no further
18 questions.

19 MR. DHANANI: Do other Respondents
20 have questions at this point?

21 MS. TERRELL: No questions from
22 lululemon or MIRROR.

23 MR. GROSS: No questions for
24 iFIT -- iFIT.

25 MR. DHANANI: OUII investigative

1 M. MITCHELL

2 attorney, I'm fine taking my questions now or
3 if you prefer to ask if you have any.

4 MR. RAUH: Go ahead, Ali. Thank
5 you.

6 MR. DHANANI: Okay. Can we take
7 just a short break? Just ten minutes is
8 fine. And I'll get my notes and we'll start
9 right back up.

10 MR. ANDERSEN: Ali, would it be
11 okay if we do a 20-minute break? We're right
12 at our lunchtime and our -- our witness is
13 diabetic, so --

14 MR. DHANANI: Absolutely.

15 THE VIDEOGRAPHER: Okay. Let's go
16 off the record. The time is 11:21 a.m., and
17 we're going off the record.

18 (Recess.)

19 THE VIDEOGRAPHER: The time is
20 11:49 a.m., and we're back on the record.

21
22 EXAMINATION

23 BY MR. DHANANI:

24 Q. Good afternoon, Mr. Mitchell. My name is
25 Ali Dhanani. I'm counsel for Complainant

1 M. MITCHELL

2 DISH. And I just have a few follow-up
3 questions for you from your questioning this
4 morning.

5 A. Okay.

6 Q. Do you understand you're still under oath?

7 A. Yes.

8 Q. Okay. Great. Thank you.

9 So in your testimony earlier, you
10 had identified that BYU worked with
11 Move Networks for a few years on using the
12 Move media player to transmit the live
13 content to its users.

14 Do you remember that?

15 A. Yes.

16 Q. What was -- was there ongoing development
17 going on at Move Networks that Move Networks
18 was providing to BYU TV?

19 MR. ANDERSEN: Objection; calls
20 for speculation.

21 You can answer.

22 THE WITNESS: Oh, okay.

23 Yes, they were -- I know they were
24 developing things. I don't know -- I was not
25 involved specifically in their -- their

1 M. MITCHELL

2 engineering process for how they were
3 developing things, if that --

4 BY MR. DHANANI:

5 Q. Was there -- were there modifications or
6 enhancements being made throughout the time
7 period that -- for the Move player that BYU
8 was using during that time?

9 A. Yes.

10 MR. ANDERSEN: Same objection.
11 Sorry. But you can answer.

12 THE WITNESS: Yes, we did -- there
13 were definitely enhancements and improvements
14 over time, not -- in general, I guess, not
15 specifically.

16 BY MR. DHANANI:

17 Q. Sure. And I'm going to have you turn back to
18 some of the exhibits that you were shown
19 earlier.

20 Specifically, could you pull
21 Exhibit 1 back up?

22 A. Okay.

23 Q. One of the topics, if you scroll down to
24 page -- it's PDF page 16.

25 A. Okay.

M. MITCHELL

Q. One of the topics concerned, "BYU's knowledge of virtual timelines, playlist files or other files that define playlists in the context of software used for live broadcasting or rebroadcasting over the internet for a user to view or viewing live broadcasting or rebroadcasting over the internet."

Today you were shown some archive.org documents about BYU Television. Do you recall those from this morning?

A. Yes, I do.

Q. Okay. So from the -- I also pulled up similar web.archives.org documents, and I wanted to share some of those with you. So I'm going to drop an exhibit into the chat. Let me know when you have it.

MR. ROSENBERG: So, Counsel, I'll object to the introduction of any exhibits as being beyond the scope of my direct exam. DISH did not issue its own subpoena to BYU. I'd rather not interrupt all your questions. Can we agree that I have a standing objection to new exhibits as being beyond the scope?

MR. DHANANI: Well, Counsel, you

1 M. MITCHELL

2 had exhibits for a few days and you just
3 produced those to us this morning. So these
4 are directly responsive to the topics you've
5 raised, including the documents you've used.
6 In fact, they link to the documents you've
7 used in the deposition.

8 But I do understand that you have an
9 objection, and I have no problem with your
10 maintaining a standing objection so long as
11 you understand that we disagree on the
12 objection.

13 MR. ROSENBERG: I understand you
14 disagree. I'm not interested in arguing the
15 objection, just trying to streamline the depo
16 for the witness.

17 MR. DHANANI: I appreciate that.
18 Thank you.

19 (Exhibit 15 marked.)

20 BY MR. DHANANI:

21 Q. Mr. Mitchell, do you have Exhibit 15 open?

22 A. Yes, we do.

23 Q. Great. So as you had testified earlier,
24 you're familiar with the Wayback Machine?

25 A. Yes.

1 M. MITCHELL

2 Q. So this is a document that I printed from the
3 Wayback Machine today from byu.tv.

4 Do you see that?

5 A. Yes.

6 Q. Earlier there were documents you were shown
7 that had byutv.org versus byu.tv. What's
8 the -- the relationship between the two?

9 A. So both domains are owned by
10 BYU Broadcasting. At this time, byu.tv, at
11 some point around this time was used as a
12 CNAME to the Move Networks technology.

13 Q. What do you mean a CNAME?

14 A. CNAME is a DNS forward, a DNS redirect. So
15 in the DNS -- I create a DNS record, a CNAME
16 record that points byu.tv to the
17 Move Networks page. So it was essentially
18 just a forward.

19 Q. So going to the byu.tv would have taken a
20 user to the Move Networks page to stream
21 BYU Television?

22 A. Yes, that's correct.

23 Q. And as you can see, the URL here states 2006,
24 March 22nd. Do you understand -- I'm sorry.
25 Let me rephrase that.

1 M. MITCHELL

2 As you can see, the URL states,

3 "20060322." Do you understand that to mean
4 March 22nd, 2006?

5 A. Yes, I do.

6 Q. And is that -- and did BYU Television, as you
7 said, was this page available for users to
8 access in or around March 22nd, 2006?

9 MR. ROSENBERG: I'll object as
10 beyond the scope.

11 MR. ANDERSEN: You can answer.

12 THE WITNESS: Yes, BYU Television
13 did use Move Networks at that time.

14 BY MR. DHANANI:

15 Q. And would this page have been used as part of
16 the platform to allow users to stream
17 BYU Television content live over the
18 internet?

19 MR. ROSENBERG: Objection to
20 scope.

21 MR. ANDERSEN: You can answer.

22 THE WITNESS: Yes.

23 BY MR. DHANANI:

24 Q. Okay. Are you familiar with the -- so I'm
25 going to put one more exhibit in the chat.

1 M. MITCHELL

2 Let me know whenever you have that open.

3 (Exhibit 16 marked.)

4 THE WITNESS: Okay, we see it.

5 BY MR. DHANANI:

6 Q. So this is what came up once you right click
7 and click, "Inspect," on the Exhibit 15 for
8 the BYU TV page that we were just looking at
9 for March 22nd, 2006.

10 Are you familiar with using the
11 right click and then clicking, "Inspect," to
12 see what the underlying code is for that
13 page?

14 A. Yes, I am.

15 Q. And if you could take a look about midway
16 through. And what I'll do, if you prefer, I
17 can put this in the screen here as well. Let
18 me do that, if it's helpful.

19 MR. ANDERSEN: Can you see that?

20 THE WITNESS: Can you make it a
21 little bigger?

22 MR. DHANANI: Of course.

23 Is that any better?

24 THE WITNESS: Yes.

25 BY MR. DHANANI:

M. MITCHELL

Q. Okay. And as you can see at the bottom,
there's a file archived, and it mentions that
the file was archived at 06:14:09 on
March 22nd, 2006.

Do you see that?

A. Yes.

Q. And is that the same date of the
Exhibit 16 -- I'm sorry, Exhibit 15,
March 22nd, 2006, that we just looked at for
BYU Television?

A. Yes, I believe it was March 22nd.

Q. And I'm scrolling up here. You'll see
there's a reference here to QVT right in the
middle of the page where it has, "Script
type, text, Javascript, SRC, Xlon, HCLD,
Xlontech.net," followed at the end by a,
"QVT.js."

Do you see that?

MR. ANDERSEN: Object to scope.

THE WITNESS: Yes.

BY MR. DHANANI:

Q. Great. And if you look further down, there
are files that start with the DIV style
background URL. And --

M. MITCHELL

A. Yes.

Q. -- underneath there's four different files,
and part of the broadcast -- part of the URL
for each of those is, "QMPlive.xlontech.net/
byutv/stream," followed by a series of
numbers.

Do you see those?

A. Yes, I do.

Q. And do you see the .qvt extensions for those
as well?

MR. ROSENBERG: Object to scope.

MR. ANDERSEN: You can answer.

THE WITNESS: Yes, I do.

BY MR. DHANANI:

Q. And does that inform you as to when, at least
by -- whether at least by March 22nd, 2006,
quantum virtual timelines were used for BYU?

MR. ROSENBERG: Objection; scope
and foundation.

THE WITNESS: I can answer?

MR. ANDERSEN: You can answer if
you know.

THE WITNESS: Can you repeat the
question?

M. MITCHELL

BY MR. DHANANI:

Q. Sure. The .qvt extension for quantum virtual timelines there, does that inform you as to whether by March 22nd, 2006, the quantum virtual timeline technology was available for BYU Broadcasting?

MR. ROSENBERG: Objection; scope and foundation.

MR. ANDERSEN: You can answer.

THE WITNESS: Yeah, if it's in the code, then -- then, yes, I would agree with that.

BY MR. DHANANI:

Q. Okay. I'm going to drop -- I'm going to stop the share there, and I'm also going to drop the next exhibit into the chat.

MR. DHANANI: Please mark this as Exhibit 17.

(Exhibit 17 marked.)

BY MR. DHANANI:

Q. And just let me know whenever you have that open.

A. Okay, we see it.

Q. And I'll represent this is a document I

M. MITCHELL

printed based on some of the -- printed from
the Wayback Machine this morning off the
byu.tv site. As you can see, the URL states
20060219.

Do you understand that to mean
February 19th, 2006?

A. Yes, I do.

Q. And was the byu.tv available as a DNS
forwarding to the Move streaming player as of
February of 2006?

MR. ROSENBERG: Objection --

BY MR. DHANANI:

Q. As of February 19th, 2006?

MR. ROSENBERG: Objection to
scope.

MR. ANDERSEN: You can answer.

THE WITNESS: To the best of my
knowledge, yes.

BY MR. DHANANI:

Q. And are you familiar with the -- this page at
all? I know the images haven't -- weren't
able to be archived on the archive.org site
for the byu.tv.

A. Yes, I understand is this is the -- the

1 M. MITCHELL

2 Move Networks player page.

3 Q. And this would have taken a user to the
4 Move Networks player; is that right?

5 A. The player was a part of this page.

6 Q. Thank you.

7 Okay. I'm going to drop into the
8 chat what's been marked as Exhibit 18.

9 (Exhibit 18 marked.)

10 BY MR. DHANANI:

11 Q. Just let me know when you have that up.

12 A. Okay, we see it.

13 Q. This is another source document, Exhibit 18,
14 that I printed from the Wayback Machine,
15 which is from the -- representing the code
16 from the page that we just looked at from
17 Exhibit 17.

18 Can you look at the bottom and just
19 read the date for the file part type there
20 for reference?

21 MR. ROSENBERG: Objection; scope.

22 THE WITNESS: Okay, yes. The --
23 the HTML comment says, "File archived on
24 10:43:30 of February 5th, 2006."

25 BY MR. DHANANI:

M. MITCHELL

Q. Okay. And then also look a little bit further down where it has, "File archived on," at the bottom. There's a -- there's two dates in there. There's normally like a frame for Move and then an actual archive date at the very bottom where it has, "File archived on."

A. Would you prefer -- do you want me to read the whole HTML comment?

Q. No, no, no, just the reference to February 19th, 2006.

A. Okay. It says --

MR. ROSENBERG: Object to form and scope.

Sorry. Go ahead.

THE WITNESS: The text says, "File archives on 5:30:32, February 19th, 2006, and retrieved from the Internet Archive on 16:59:42, December 2nd, 2021."

BY MR. DHANANI:

Q. So does this indicate the code behind this page as of February 19th, 2006?

MR. ROSENBERG: Objection; scope.

MR. ANDERSEN: You can answer.

1 M. MITCHELL

2 THE WITNESS: Yes.

3 BY MR. DHANANI:

4 Q. Okay. And we've done a search for this to
5 search for QVTs. And could you see the
6 result at the top there?

7 A. Yes.

8 MR. ROSENBERG: Objection to form
9 and scope. Sorry.

10 MR. DHANANI: Sure.

11 BY MR. DHANANI:

12 Q. And you can take your time to review
13 Exhibit 18 as well.

14 Do you see any references to QVT
15 available on the page that directs to the
16 Move player as of February 19th, 2006?

17 MR. ROSENBERG: Objection to form
18 and scope.

19 THE WITNESS: Can I answer?

20 MR. ANDERSEN: Give him just a
21 minute to review.

22 MR. DHANANI: Sure.

23 THE WITNESS: Not in I -- not in
24 what's visible. There's some JavaScript code
25 that is not extended out. I can't speak to

M. MITCHELL

that.

BY MR. DHANANI:

Q. Sure. In the code that's visible to you, you don't see any reference to QVTs available on BYU TV as of February 19th, 2006?

MR. ROSENBERG: Objection to form and scope.

THE WITNESS: No.

BY MR. DHANANI:

Q. Do you -- do you know when, other than the documents we've looked at, do you have any other knowledge of when QVTs, quantum virtual timelines or playlists, were available for use for BYU?

A. Not specific timelines, no.

Q. And, generally, what are you aware of?

A. Yes, we did use QVT timelines for archived content with --

Q. And do you know as to what time frame you did that?

A. No, I can't speak specifically to that.

Q. At least based on the documents you've looked at, it looks like the QVT functionality wasn't available for BYU as of February 19th,

M. MITCHELL

2006, right?

MR. ROSENBERG: Objection to form
and scope.

MR. ANDERSEN: You can answer.

THE WITNESS: Yes, I -- I would
agree with that.

BY MR. DHANANI:

Q. And later we saw Exhibits 15 and 16 from
March of 2006 where you did see QVT
references on the pages there; is that right?

MR. ROSENBERG: Objection to
scope.

MR. ANDERSEN: You can answer.

THE WITNESS: Yes, that's correct.

BY MR. DHANANI:

Q. Okay. Let's take a look at Exhibit 19. Or
if I could just have the court reporter mark
Exhibit 19.

(Exhibit 19 marked.)

BY MR. DHANANI:

Q. This is another page that we -- that I
printed this morning from the archive.org
site. And there's a reference date at the
top of August 22nd, 2006.

1 M. MITCHELL

2 Do you see that?

3 MR. ROSENBERG: Objection; scope.

4 And just to repeat, so I don't do this over
5 and over again, we object to documents that
6 are new exhibits and after the date range of
7 the investigation I was asking about.

8 MR. DHANANI: Sure. And I'll just
9 respond again that we weren't provided any
10 exhibits in advance of this deposition
11 despite them being available to Respondents,
12 and these are just rebuttal exhibits to the
13 issues raised by the subpoena and the topics
14 listed in the subpoena. But we understand
15 and note your objection.

16 THE WITNESS: Was there -- I --
17 was there a question? Sorry.

18 BY MR. DHANANI:

19 Q. Sure. I'll repeat my question.

20 Do you see the date on Exhibit 19 as
21 August 26th, 2006?

22 A. August 22nd, 2006.

23 Q. Yes. My apologies. August 22nd, 2006.

24 A. Yes.

25 Q. What is this BYU Television page? Are you

M. MITCHELL

familiar with it?

A. This is the -- again, the Move Networks player.

Do you have the URL here?

Q. Not for this one in particular. I'm sure it's there, it just got cutoff the page.

A. Okay. I -- I mean, I'm almost certain that this is the Move Networks player page that either byu.tv would have forwarded to or that you could have gotten to through movenetworks.com/byutv or whatever the URL was for that.

Q. And I'm going to do the same thing for Exhibit 20, which is the inspect source for the Exhibit 19 that we just looked at for BYU Television.

(Exhibit 20 marked.)

BY MR. DHANANI:

Q. Just let me know when you have it up. And I am sharing this one in the chat given the --

A. We -- we are looking at it.

Q. Okay. And I'll do a search for QVT. Let me know if it comes up highlighted on your screen.

1 M. MITCHELL

2 MR. ROSENBERG: Objection; scope.

3 THE WITNESS: Yes, I see it.

4 BY MR. DHANANI:

5 Q. As of August 22nd, 2006, the code for the
6 page representing BYU Television's redirect
7 to Move player had several references to
8 QVTs; is that right?

9 MR. ROSENBERG: Objection to
10 scope.

11 THE WITNESS: Can you scroll to
12 the bottom? We didn't look at the time stamp
13 on this one.

14 BY MR. DHANANI:

15 Q. Of course. Sorry. Let me put in a
16 replacement exhibit on that, because the
17 bottom got cutoff on that one. So I'm going
18 to stop the share on that one. I'm going to
19 put in a replacement for Exhibit 20, and I'll
20 pull it up and share it.

21 (Exhibit 20 remarked.)

22 BY MR. DHANANI:

23 Q. Let me know when you have it.

24 A. We have it.

25 Q. And can you look at the -- the -- it's

1 M. MITCHELL

2 basically near the very bottom where it has,
3 "File archived on August 22nd, 2006."

4 Do you see that?

5 A. Yes, I do.

6 Q. And do you understand or is the August 22nd,
7 2006, date there the same date as the
8 August 22nd, 2006, date that we looked at for
9 Exhibit 19 for the BYU TV page?

10 A. Yes, it is.

11 MR. ROSENBERG: Objection to
12 scope.

13 BY MR. DHANANI:

14 Q. And I'll represent I pulled this up by doing
15 the same view, "Inspect source," and this is
16 what came up.

17 So at least as of August 2006, do
18 you see references to QVT in the source page
19 that redirected to the Move player?

20 MR. ROSENBERG: Objection to
21 scope.

22 MR. ANDERSEN: You can answer.

23 THE WITNESS: Yes, I do.

24 BY MR. DHANANI:

25 Q. Now, how long did -- I mean, is -- does --

M. MITCHELL

sort of how long did that -- did the -- did
Move Networks provide BYU Television with a
service to stream its content over the
internet?

A. I can't speak specifically to that --

Q. Okay.

A. -- apart from that it started in October 1st
of 2005.

Q. You just don't know when it ended, right?

A. That's correct.

Q. Did it -- do you know if it went on for --
through 2008 or 2009, or would it have been
earlier?

A. I -- pure speculation on my part, but I'm
pretty sure it was at least to that point,
2009.

Q. There was another document produced by BYU.
I'm going to drop it into the chat in just a
moment.

(Exhibit 21 marked.)

BY MR. DHANANI:

Q. This is a document produced to us as BYU 2
through BYU 10, and it's a Y Magazine
article.

1 M. MITCHELL

2 Have you seen this article before?

3 A. I don't know if I have.

4 Q. Okay.

5 A. Yes, I believe I have seen this before.

6 Q. Okay. Could I have you turn to -- it's
7 page 4 where it has, "Now Streaming."

8 A. Okay.

9 Q. Do you remember -- you said you may have seen
10 this before. Do you recall what context you
11 saw it?

12 A. It was recently.

13 Q. Okay. Got it.

14 There's a reference underneath, "Now
15 Streaming," where it mentions, "Through
16 bleeding-edge technology pioneered by alumni
17 John Edwards and R. Drew Major, a founder of
18 Novell, both channels are available to anyone
19 with an internet connection anywhere in the
20 world. BYU Television and BYU Television
21 International are the only TV channels on the
22 web that stream nonstop, day in and day out,
23 with a reach that spans the globe."

24 Do you -- sort of, what was your
25 recollection for the sentiment at BYU for

M. MITCHELL

having its television channel be made
available publicly over the internet 24 hours
a day and 7 days a week?

A. What was the sentiment?

Q. Yeah. What was the internal reaction to
having that technology available at that time
frame?

A. I guess I can only speak to my own. It was
exciting.

Q. Was there any other technology that you were
familiar with that similarly streamed a
television channel over the internet 24 hours
a day?

MR. ROSENBERG: Objection; vague

as to time.

BY MR. DHANANI:

Q. At the same time around the 2005 to 2008 or 9
time period.

A. Not that I --

MR. ROSENBERG: Objection; vague.

THE COURT REPORTER: I'm sorry,
can you repeat the objection, please.

MR. ROSENBERG: Objection; vague.

THE COURT REPORTER: And the

M. MITCHELL

answer?

THE WITNESS: Not that I recall.

BY MR. DHANANI:

Q. And look at the second paragraph, and look at the end of it. There's some quotes there where it says, "They are thinking about it, dreaming about it, but BYU Television is doing it. The day is now, the technology is here."

A. Sorry, we're trying to find where you're at.

Q. Sure. It's the third paragraph, last sentence?

A. Of the, "Now Streaming," section?

Q. Yes.

A. Okay. Can you --

Q. Sure. Were you proud of that achieve for BYU Television in partnership with Move Networks for delivering television over the internet to its users?

A. Me personally?

Q. Yes.

A. Yes, I was.

Q. If you go a little bit further down, in the fourth paragraph it mentions, "Priced out,

1 M. MITCHELL

2 streaming both channels would cost BYU an
3 estimated \$1 million annually. BYU
4 Broadcasting, however, receives the service
5 from Move Networks free of charge."

6 Does that refresh your recollection
7 at all on the question you were asked earlier
8 on whether Move Networks paid for the -- I'm
9 sorry, whether BYU TV paid for the
10 technology?

11 A. I don't recall -- I was never involved on the
12 business side of the relationship, so I don't
13 have any recollection of the costs of
14 anything.

15 Q. Sure. At least this article suggests that
16 Move Networks gave it to BYU TV for free,
17 right?

18 MR. ROSENBERG: Objection;
19 foundation.

20 THE WITNESS: That's correct.

21 BY MR. DHANANI:

22 Q. It goes on to say, "As Move's first client,
23 BYU landed a contract that was mutually
24 beneficial. BYU received free server space
25 equipment and tech services, and in return,

M. MITCHELL

Move Networks got content they could
experiment with."

Was it -- what was your
understanding as to the experimental use that
Move Networks was making of BYU TV's content?

MR. ROSENBERG: Objection to form.

MR. ANDERSEN: You can answer.

THE WITNESS: So my understanding
of the agreement was we would provide -- or
we, as in BYU Broadcasting, would provide the
streaming network for the -- the content and
we would in return receive Move's services.

BY MR. DHANANI:

Q. Were you aware at that time that this was
Move's first viable example of what their web
technology could do? Were you aware of that
at the time?

A. Yes, I do remember hearing that.

Q. Were you aware of the -- the -- the
experimental nature that -- was that ever
discussed with you at all, sort of the
experimental nature of the broadcast here?

MR. ROSENBERG: Objection to form,
mischaracterizes the evidence.

1 M. MITCHELL

2 THE WITNESS: Can you repeat the

3 question?

4 BY MR. DHANANI:

5 Q. Sure. Did anyone ever express to you
6 anything about Move Networks wanting to
7 experiment to deliver internet broadcast
8 BYU Television?

9 A. Not to me personally.

10 Q. Was there more to that answer? Did they --

11 A. It would be pure speculation on my part. I
12 wasn't -- I was, essentially, the technical
13 person, so I wasn't involved in the meetings
14 with the Move employees and -- for those
15 discussions.

16 Q. Had BYU Television ever previously attempted,
17 prior to partnering with Move, to stream its
18 content over the internet 24 hours a day,
19 7 days a week?

20 A. Yes.

21 Q. And did that -- what technology was used to
22 do that?

23 A. We used a Windows Media stream, a constant
24 bitrate Windows Media stream, which was the
25 other option on the other exhibits that we

M. MITCHELL

saw.

Q. And you mentioned adaptive bitrate stream for Move Networks. The other stream was not an adaptive bitrate capable stream, right?

A. That's correct.

Q. Did you get any feedback in terms of -- were you sort of the -- was there any feedback received from users on how the Move Networks stream worked, that you were aware of?

A. Not that came directly to me. I remember hearing of people being excited about it.

Q. What did you hear?

A. Just that they enjoyed the stream, the quality of it.

Q. One of the things that people enjoyed was the quality of the Move Networks stream?

MR. ROSENBERG: Objection to form.

THE WITNESS: Yes, that's correct.

BY MR. DHANANI:

Q. And was it your understanding that Move was delivering that -- that quality stream using its adaptive bitrate technology?

A. Yes, that is my understanding.

Q. Can you open up Exhibit 6 again. It's one of

M. MITCHELL

the exhibits used in your earlier
questioning.

A. Okay.

Q. So this was a plaque that BYU had put up on
launching the live stream with Move Networks'
adaptive bitrate technology, right?

A. Yes.

Q. Was it a momentous occasion for BYU TV to be
able to offer its worldwide audience internet
television?

MR. ROSENBERG: Objection to form.

THE WITNESS: Yes, it was.

BY MR. DHANANI:

Q. It was important enough to commemorate it in
a plaque, right?

A. Yes, that's correct.

Q. And on Exhibit 6, it also mentions, "BYU TV
launches live stream using Move Networks'
adaptive bitrate technology."

Do you see that?

A. Yes, I do.

Q. Did you have any understanding at the time of
whether that adaptive bitrate technology was
proprietary to Move Networks?

M. MITCHELL

A. Not specifically, no.

Q. Did you come later to find out that
Move Networks had patents on the technology?

MR. ROSENBERG: Objection to
scope.

MR. ANDERSEN: You can answer if
you know.

THE WITNESS: I don't know
specifically. I don't know much about the
patents.

BY MR. DHANANI:

Q. Do you view the partnership between
Move Networks and BYU TV to deliver BYU TV's
content a successful relationship?

A. Yes, I do.

Q. Did you yourself view the BYU TV stream at
that time?

MR. ROSENBERG: Objection; vague
as to time.

BY MR. DHANANI:

Q. Sure. And I'll start with the -- the 2005,
2006 time frame.

A. Yes, I personally did use that stream.

Q. Did it work for you, if you recall?

M. MITCHELL

A. Yes, it did.

Q. Do you recall the quality of the stream at all?

A. Yes. It was -- it was definitely better than our Windows Media stream by leaps and bounds.

Q. You've been at BYU for a long time, right?

A. I guess it depends on your definition of long time. But, yes, I have been here for almost 20 years, so...

Q. And in that time, was Move's technology -- let me rephrase that.

And during that -- I'll withdraw that one.

Let's take a look at -- I'll try to find it here. Hang on. It looks like it was Exhibit 10. Actually, no, not Exhibit 10, I'm sorry. Pages are getting cutoff for me here.

Here it is. Okay. It's Exhibit 5.

A. Okay.

Q. And you mentioned in Exhibit 5 under, "Option 1," where, "BYU Television has partnered with Move Networks to bring a high quality stream to a much larger audience than

M. MITCHELL

previously possible."

What -- who would have prepared this
web page?

A. The HTML for the page or the copy for the
page?

Q. The text.

A. The text, oh, I can't speak specifically to
that. I don't remember specifically who
wrote the text for it.

Q. Okay. You'll see a reference at the bottom
to -- on, "Option 2," where it says,
"This stream variable bitrate stream."

Do you know what that means?

A. Let me review it real quick. So the very --
sorry, can you repeat the question?

Q. Sure. Do you have an understanding of what
the variable bitrate stream technology is?

A. Yes.

Q. What is that?

A. Variable bitrate stream means that you have
more than one bitrate encoded in a stream so
that the -- the browser can adjust between
them as network conditions allow.

Q. And you previously described adaptive bitrate

M. MITCHELL

streaming.

Do you remember that?

A. Uh-huh.

Q. Do you understand there to be a difference
between those two, if you know?

A. No, I don't believe so.

Q. Okay. You were also shown an exhibit, it was
Exhibit 14, which had to do with PanAmSat.
Were you familiar at all with PanAmSat? Did
PanAmSat -- I'm sorry, go ahead.

A. No, I was not familiar with this.

Q. Do you know whether PanAmSat was involved
between how Move and BYU TV were delivering
BYU TV's content?

A. No, I don't know anything about that
agreement.

MR. DHANANI: Okay. Can we take
just a short break, or ten-minute break,
whatever you prefer? I may be wrapping up
here.

MR. ANDERSEN: That would be
great.

THE VIDEOGRAPHER: Okay.

MR. ANDERSEN: Five minutes?

1 M. MITCHELL

2 MR. DHANANI: Five or 10, whatever
3 the -- whatever you prefer, Mr. Mitchell.

4 THE WITNESS: Five is fine.

5 MR. DHANANI: Sure.

6 THE VIDEOGRAPHER: Okay. The time
7 is 12:34 p.m., and we're going off the
8 record.

9 (Recess.)

10 THE VIDEOGRAPHER: The time is
11 12:42 p.m., and we're back on the record.

12 MR. DHANANI: Mr. Mitchell, thank
13 you for your time. I don't have any further
14 questions at this time.

15 MR. ANDERSEN: Ali, Mr. Mitchell
16 wanted to correct one thing that he
17 previously said. Is now a good time?

18 MR. DHANANI: Please.

19 MR. ANDERSEN: Go ahead.

20 THE WITNESS: Okay. I just wanted
21 to clarify the difference between a variable
22 bitrate stream and an adaptive bitrate
23 stream.

24 So variable bitrate streams are at
25 the time that you connect to the stream, it

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2 will pick what you can adjust based on
3 network conditions at the time. It will not
4 jump between steps, though, like an adaptive
5 stream where it can constantly be adjusting
6 on -- or, you know, adjusting to the network
7 conditions while you're streaming.

8 MR. DHANANI: Okay.

9 BY MR. DHANANI:

10 Q. Just to follow up from that, the Windows
11 Media player stream that was a variable
12 bitrate stream would, not be able to adjust
13 to bandwidth conditions as the video was
14 playing?

15 A. That is correct.

16 Q. But the Move Networks stream would be able to
17 adjust to bandwidth conditions?

18 A. Yes, that's correct.

19 Q. Okay. Thank you for that clarification.

20 MR. DHANANI: I don't have
21 anything further.

22 MR. ROSENBERG: Aaron, did the
23 staff have questions?

24 MR. RAUH: Yes, just a few
25 questions.

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EXAMINATION

BY MR. RAUH:

Q. Mr. Mitchell, my name is Aaron Rauh. I'm with the Office of Unfair Import Investigations at the U.S. International Trade Commission. I have a few questions for you today.

In your testimony a few moments ago, you testified about improvement and enhancements over time regarding Move Networks' streaming technology.

Do you remember that?

A. Yes.

Q. Did Move Networks make BYU TV aware of any particular improvements or enhancements made over its time?

A. Are you asking about a specific request or just in general?

Q. I guess I'm looking are you just -- is BYU TV just generally aware that Move -- Move Networks' streaming technology was improved and enhanced over time, or did Move Networks make BYU TV aware of any specific or

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2 particular enhancements and improvements over
3 time?

4 A. Oh, gosh, this is speculation on my part, but
5 I'm sure they probably did let us know. I
6 don't know if they let me know specifically,
7 since it was on their website. They didn't
8 have to let us know if they made changes to
9 it. But, yes, it did change over time as
10 they would add new features.

11 Q. Do you recall any particular improvement or
12 enhancement made to Move Networks' streaming
13 technology?

14 A. Oh, gosh. Not specifically other than just,
15 you know, adding additional features like --
16 specific buttons --

17 THE COURT REPORTER: I'm sorry,
18 there was some computer interruption. Can
19 you repeat those last two words?

20 THE WITNESS: Can you repeat what
21 you have?

22 (Last answer read by the
23 court reporter.)

24 THE WITNESS: Oh, okay. I
25 don't -- nothing specific other than the fact

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2 that they did -- or they added different
3 features as time went on, you know, things
4 like the button to skip forward, you know,
5 just enhancements to the player interface.

6 BY MR. RAUH:

7 Q. Okay. I see. So you recall some
8 enhancements to the player interface.
9 Anything else that you recall in terms of
10 improvements or enhancements?

11 A. Not specifically.

12 Q. Did -- apologies if I asked this a couple of
13 moments ago.

14 Did Move Networks formally
15 communicate improvements, that it was making
16 improvements and enhancements to BYU TV?

17 A. I -- gosh. I'm sure they did. I don't
18 remember specific instances where they did,
19 and I don't know if it would have been to me
20 anyways, but they probably would have let
21 someone at BYU Broadcasting, possibly
22 Chris Twitty know, as they were making
23 specific changes.

24 Q. You mentioned Chris Twitty. Would they have
25 let anybody else at BYU TV know, to your

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knowledge?

A. I don't know.

Q. Do you know who from Move Networks would have been making these communications about the improvements and enhancements to Move Networks' technology?

A. I don't know. In the specific time window that we're talking about, February --

Q. Right.

A. -- 2006 back? No, I don't know.

Q. Do you recall interactions with anyone from Move Networks during the time frame that's been discussed today?

A. From October 1st of 2005 through that February time frame, I don't recall any specific interactions with them other than, you know, possibly an email here or there, you know, just telling us where to send the link to.

Q. I have a couple of questions about that first streaming event of the general conference in 2005.

A. Okay.

Q. Do you recall when Move Networks and

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2 BYU TV first discussed using Move Networks'
3 streaming technology to stream the general
4 conference?

5 A. I don't recall that. I was not involved in
6 those discussions. I was --

7 Q. You were not involved in those discussions --
8 sorry. Go ahead.

9 A. I don't know, to be honest. I'm fairly
10 certain that Chris Twitty would have been
11 there. I was brought in later as a technical
12 resource.

13 Q. I see. I believe you testified earlier that
14 Chris Twitty is no longer with BYU TV; is
15 that correct?

16 A. Yes, that's correct.

17 Q. Do you know where he is now?

18 A. Yes. I believe he works for the Church of
19 Jesus Christ of Latter-day Saints.

20 Q. Do you know when he left BYU TV?

21 A. Not specifically, no.

22 Q. Okay. A couple final questions. I don't
23 think anyone's asked this of you yet.

24 There is a -- what is called an
25 evidentiary hearing or trial scheduled in

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2 this investigation in early March. If asked,
3 would you voluntarily appear at that hearing
4 either in person in Washington, D.C., or via
5 video conference?

6 A. I guess. If needed, yes, I could be
7 available for that.

8 Q. Okay.

9 MR. RAUH: I don't have any more
10 questions. Thank you for your time.

11 MR. ROSENBERG: And nothing
12 further from me, but, Mr. Mitchell, thanks
13 very much for your time.

14 THE VIDEOGRAPHER: Will there be
15 any redirect?

16 MR. ROSENBERG: No -- well, I
17 guess that's up to David. Anything for BYU?

18 MR. ANDERSEN: No.

19 MR. DHANANI: And I do have a
20 follow up before we close from the
21 questioning from Mr. Rauh.

22 Mr. Mitchell, just let me know when
23 you're ready.

24 THE WITNESS: Okay, I'm ready.

25 MR. DHANANI: Sure.

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2
3 FURTHER EXAMINATION

4 BY MR. DHANANI:

5 Q. Were the playlist or quantum virtual
6 timelines one of the improvements or
7 enhancements to what Move was providing for
8 BYU?

9 MR. ROSENBERG: Objection to form.

10 MR. ANDERSEN: You can answer.

11 THE WITNESS: I do remember
12 discussions about QVT files specifically, and
13 that was added.

14 BY MR. DHANANI:

15 Q. And it was not one of the original features
16 used to stream the October or the December
17 conference, correct?

18 A. Not that I recall.

19 MR. ROSENBERG: Object to form.

20 THE WITNESS: Sorry. Not that I
21 recall.

22 MR. DHANANI: Thank you.

23 MR. RAUH: And if I can, just a
24 follow-up question off Mr. Dhanani's
25 question.

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2
3 FURTHER EXAMINATION

4 BY MR. RAUH:

5 Q. You said you recalled QVT files being added
6 at some point after the October live stream
7 in 2005; is that right?

8 A. At some point in the Move Networks
9 engagement, yes.

10 Q. What is the basis of your recollection?

11 A. We used them to link to specific content
12 assets, you know, to -- to create
13 video-on-demand resources for our audience to
14 consume.

15 Q. Do you have an idea as to when the QVT file
16 functionality was added?

17 A. I don't recall.

18 Q. Are there any documents or other sources that
19 you could consult to run that down?

20 A. I don't know. I -- not that I have unless --
21 unless they're available on archive.org.

22 Q. So there's nowhere within BYU TV that you
23 would look for an answer?

24 A. No.

25 Q. Okay. Thank you.

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2 MR. ROSENBERG: I actually have
3 one follow up, which hopefully will be the
4 last thing from me, just in response to that
5 last question from Mr. Rauh.

6
7 FURTHER EXAMINATION

8 BY MR. ROSENBERG:

9 Q. If, Mr. Mitchell, you can look again at
10 Exhibit 13. And I'm asking this because you
11 just mentioned on-demand being one of the
12 features that was added.

13 If you can look at the first page of
14 Exhibit 13, do you see the question in
15 orange, "What is the on-demand button"?

16 A. Yes.

17 Q. Can I ask you to read that? You don't have
18 to read it out loud, but read that section in
19 the Q&A there and then let us know if that is
20 the feature you had in mind when you said
21 that was added.

22 MR. DHANANI: And I'm just going
23 to object, calls for speculation, foundation,
24 and incomplete hypothetical.

25 THE WITNESS: Should I answer?

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2 MR. ANDERSEN: You can answer.

3 THE WITNESS: Okay. I do recall
4 those features being in the player, the
5 ability to kind of look forward and backwards
6 in the schedule to be able to select specific
7 events and be able to send clips to people.

8 What I was referring to was more
9 archival of having a specific QVT URL that we
10 would save for a specific asset to allow, you
11 know, and pull up within our archive to be
12 able to allow people to go back and watch
13 content on-demand.

14 BY MR. ROSENBERG:

15 Q. So is it your recollection that the on-demand
16 feature that's described here in Exhibit 13
17 was included in the player before the
18 specific use of QVT to do archiving that you
19 just discussed?

20 A. Possibly a -- it's speculation on my part. I
21 don't know -- I don't know about the
22 underlying technology but --

23 MR. DHANANI: Objection; calls for
24 speculation then.

25 BY MR. ROSENBERG:

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2 Q. Okay. Last question about this. Sitting
3 here today, do you have any reason to dispute
4 that the description here of the on-demand
5 button in Exhibit 13 describes a
6 functionality of the Move player for BYU TV
7 as of February 5th, 2006?

8 MR. DHANANI: Objection; calls for
9 speculation --

10 MR. ANDERSEN: You can answer.

11 MR. DHANANI: -- and vague as to
12 time.

13 THE WITNESS: I am not certain,
14 no. I -- I do remember it being in there, I
15 just don't know when.

16 MR. ROSENBERG: Okay. No further
17 questions.

18 THE VIDEOGRAPHER: Okay. Are
19 there any more questions?

20 MR. DHANANI: Nothing for me.

21 THE VIDEOGRAPHER: No? Okay.
22 Then the time is 12:55 p.m., and that
23 concludes today's deposition. Thank you,
24 everyone.

25 (Deposition concluded 12:55 p.m.)

DEPOSITION CORRECTION SHEET

TITLE: In the Matter of: Certain Fitness
Devices, Streaming Components Thereof, and
Systems Containing Same
WITNESS: Mark Mitchell

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3 I, Mark Mitchell, have read this
4 deposition transcript and acknowledge
5 herein its accuracy except as noted:
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8 _____
Witness Signature
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REPORTER'S CERTIFICATE

Be it known that I took the foregoing
remote videotaped deposition of Mark Mitchell, on
December 2, 2021;

That I was then and there a Registered
Professional Reporter and a Notary Public,
and that by virtue thereof, I was duly authorized to
administer an oath;

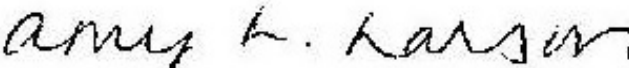
That the witness was by me first duly sworn
to testify to the truth, the whole truth and nothing
but the truth relative to said cause;

That the foregoing transcript is a true and
correct transcript of my stenographic notes in
said matter;

That the witness reserved the right to read
and sign the transcript;

That I am not related to any of the parties
hereto, nor interested in the outcome of the action;

WITNESS MY HAND AND SEAL this 2nd day of
December, 2021.



Amy L. Larson, RPR
My Commission Expires 01/31/25

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