

1 UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

2 -----

3 CALLWAVE COMMUNICATIONS,
4 LLC,

5 Plaintiff,

6 v. C.A. No. 12:1701-RGA

7 AT&T MOBILITY, LLC

8 and GOOGLE, INC.,

9 Defendants.

10 CALLWAVE COMMUNICATIONS,
11 LLC,

12 Plaintiff,

13 v. C.A No. 12-1704(RGA)

14 VERIZON COMMUNICATIONS, INC.,

15 CELLCO PARTNERSHIP d/b/a

16 VERIZON WIRELESS and GOOGLE INC.,

17 -----

18 CALLWAVE COMMUNICATIONS, LLC.

19 Plaintiff,

20 v. C.A. No. 12-1788(RGA)

21 AT&T MOBILITY, LLC, BLACKBERRY

22 LTD.and BLACKBERRY CORP.,

23 Defendants.

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DEPOSITION OF BERNARD ROUS
March 17, 2016

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28 PAGES 1 - 101

1 DEPOSITION OF BERNARD ROUS, a
2 Witness herein, taken by Defendant,
3 pursuant to Subpoena, at the offices of
4 Milbank Tweed Hadley & McCloy, LLP, 28
5 Liberty Street, New York, New York, on
6 March 17, 2016, at 3:05 p.m., before Debra
7 Stevens, a Certified Realtime and
8 Registered Professional Reporter and
9 Notary Public within and for the State of
10 New York.

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9 (Via teleconference)

10

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21 BY: JONATHAN FREEDMAN, ESQ.

22

23 ALSO PRESENT:

24 Jonathan Popham, Videographer

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Page 3

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E X A M I N A T I O N S

Witness	Page
B. Rous	
By Mr. Browand	9
By Ms. McCoy	73
By Mr. Browand	95

E X H I B I T S

Rous Exhibits	Description	Page
Exhibit 1	ACM Portal screen shot printout	7
Exhibit 2	Subpoena to Produce Documents and attachments	28
Exhibit 3	Subpoena to Testify and attachment	32
Exhibit 4	ACM Binder Facility document	36
Exhibit 5	ACM(BLACKBERRY) 1 ACM Binder Facility document,	38
Exhibit 6	ACM(BLACBERRY) 8 ACM Summary of Institutional Membership as of June 30, 1999	45
Exhibit 7	ACM Member Subscription Counts	49
Exhibit 8	ACM Binder Facility document,	52
Exhibit 9	ACM(BLACKBERRY) 2 Conference management system database screenshot	57

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7
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E X H I B I T S (continued)

Rous

Exhibits	Description	Page
Exhibit 10	Conference management system database screen shot, ACM(BLACKBERRY) 5	59
Exhibit 11	ACM Binder Facility document, ACM(BLACKBERRY) 3	66
Exhibit 12	Budget MobiCom98, document ACM(BLACKBERRY) 6	68
Exhibit 13	ACM conference management system document, ACM(BLACKBERRY) 7	69

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IT IS HEREBY STIPULATED AND
AGREED that all objections, except as to
the form of the questions, shall be
reserved to the time of the trial;

IT IS FURTHER STIPULATED AND
AGREED that the within examination may be
subscribed and sworn to before any notary
public with the same force and effect as
though subscribed and sworn to before this
court.

1 (Pre-marked for identification,
2 Rous Exhibit 1.)

3 THE VIDEOGRAPHER: We are now on
4 the record. Please note that the
5 microphones are sensitive and may pick
6 up whispering and private
7 conversations. Please turn off all
8 cell phones or place them away from
9 the microphones as they can interfere
10 with deposition audio. Recording will
11 continue until all parties agree to go
12 off the record.

13 My name is Jonathan Popham,
14 representing Veritext. The date today
15 is March 17, 2016, and the time is
16 approximately 3:06 p.m.

17 This deposition is being held at
18 Milbank, located at 28 Liberty Street,
19 New York, New York, and is being taken
20 by counsel for Defendant.

21 The caption of the case is
22 CallWave Communications LLC, v. AT&T
23 Mobility LLC and Google Incorporated
24 and Related Matters.

25 These cases are being held in

Page 7

1 United States District Court for the
2 District of Delaware, Civil Action
3 Number 12-1701(RGA). The name of the
4 witness is Bernard Rous.

5 At this time will the attorneys
6 present in the room and everyone
7 attending remotely, please, identify
8 themselves and the parties they
9 represent.

10 MR. BROWAND: Nathaniel Browand,
11 from Milbank Tweed Hadley & McCloy, on
12 behalf of Defendant Google Inc.

13 MR. FREEDMAN: Jonathan Freedman
14 of Paul Weiss, Rifkind, Wharton &
15 Garrison, representing Association for
16 Computing Machinery and the witness,
17 Bernard Rous.

18 MS. McCOY: This is Leah McCoy
19 from Pepper Hamilton, representing
20 CallWave Communications LLC,
21 Plaintiff.

22 THE VIDEOGRAPHER: Our court
23 reporter is Debby Stevens representing
24 Veritext. Please, swear in the
25 witness and we can proceed.

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Whereupon,

B E R N A R D R O U S,

having been first duly sworn/affirmed,
was examined and testified as follows:

EXAMINATION BY

MR. BROWAND:

Q. Good afternoon.

A. Hi.

Q. Will you state your full name
for the record?

A. Bernard Rous.

Q. Mr. Rous, is there any reason
why you cannot testify fully and
truthfully today?

A. No.

Q. I am going to try to ask clear
questions but if at any time you don't
understand one of my questions, will you
let me know?

A. Yes.

Q. If your counsel makes objection,
I would ask you to go ahead and answer the
question anyway. Do you understand that?

A. Yes.

Q. If you answer one of my

Page 9

1 questions, I am going to assume that you
2 understood it. Is that fair?

3 A. Yes.

4 Q. I understand you have had your
5 deposition taken before. Is that correct?

6 A. Yes.

7 Q. And about how many occasions has
8 that occurred?

9 A. Perhaps four or five.

10 Q. What were the nature of those
11 cases?

12 A. Could you be a little clearer
13 about the question?

14 Q. Well, first, were you testifying
15 on behalf of ACM?

16 A. Yes.

17 Q. And do you know, what was the
18 nature of the dispute that you were
19 testifying about in the underlying cases?

20 A. I don't know.

21 Q. Why were you asked to give
22 testimony in those cases?

23 A. To authenticate dates of
24 published material that ACM had published.

25 Q. When did you provide the

1 testimony in these four or five cases?

2 A. Over the last two years. Two...

3 Q. Do you know if any of these
4 cases involved patent infringement
5 matters?

6 A. I don't know. I assumed so but
7 I don't know.

8 Q. Have you ever testified about
9 the specific references that are the
10 subject of this deposition?

11 A. Not to my knowledge, no.

12 Q. What did you do to prepare for
13 this deposition?

14 A. I looked for the documents that
15 were asked for in the subpoena. I looked
16 for evidence about when they were
17 distributed publicly and who received them
18 and the numbers of people who would have
19 had access to them.

20 Q. So, when did you look for
21 documents responsive to the subpoena?

22 A. Are you asking me for a date?

23 Q. Roughly, if you know.

24 A. Maybe a month or two ago.

25 Q. When did you look for evidence

1 as to when these articles may have been
2 distributed?

3 A. At the same time.

4 Q. When did you look for the number
5 of people who may have received these
6 documents?

7 A. All at the same time.

8 Q. And have you done anything to
9 prepare for your deposition since that
10 time?

11 A. Yes. I reviewed notes that I
12 had made about -- reviewed the documents
13 that were produced and the notes that I
14 had made about it to refresh my mind.
15 It's been a while since I did the original
16 research.

17 Q. When did that activity take
18 place?

19 A. Yesterday and today.

20 Q. Who did you speak with about
21 this deposition?

22 MS. McCOY: Objection to form.

23 A. With the ACM attorney.

24 Q. And who is that?

25 A. John Freedman.

1 Q. Anybody besides outside counsel?

2 A. Could you clarify the question
3 for me?

4 Q. Sure. Did you speak with
5 anybody besides outside counsel in
6 connection with preparing for your
7 deposition?

8 MS. McCOY: Objection to form.

9 A. Yes, I did.

10 Q. Who did you speak with?

11 A. I talked to some people on staff
12 at ACM headquarters about where I might
13 find relevant documents.

14 Q. And what did they tell you?

15 A. They told me, in some cases,
16 that -- where to look, and in other cases
17 that such documents did not exist.

18 Q. Okay. Which documents did not
19 exist?

20 A. Specific label run information
21 that was sent to a printer at the time
22 these things were printed.

23 Q. And where did they tell you to
24 look?

25 A. There were some printed

1 statistics that are kept on file at
2 headquarters that contain membership
3 numbers at the time and subscription
4 numbers.

5 Q. And were those documents
6 produced?

7 A. Yes.

8 Q. Where did you know to look on
9 your own?

10 MS. McCOY: Objection to form.

11 A. Well, I looked for the documents
12 themselves in the digital library, which
13 has a lot of information about the dates
14 of publication.

15 Q. And was that information also
16 produced?

17 A. Yes.

18 Q. Did you review any other
19 documents besides those we have covered in
20 connection with your deposition, preparing
21 for your deposition today?

22 A. Yes, actually, I did. Since
23 some of these documents were presented at
24 conference events, we have a conference
25 management system, a database that records

Page 14

1 the number of registrants that attended an
2 event, and I looked in that database.

3 Q. And those documents concerning
4 the conference attendance and
5 registrations were produced?

6 A. Yes.

7 Q. Were there any other documents
8 you reviewed in connection with preparing
9 for your deposition today?

10 A. Well, I am not sure you would
11 call it a document, but I did look at some
12 data that is available through a
13 particular application that looks at some
14 of the data in the database behind the
15 digital library that is not displayed
16 within the digital library to a user.

17 MR. FREEDMAN: Can we go off the
18 record just one second?

19 MR. BROWAND: Sure.

20 THE VIDEOGRAPHER: Going off the
21 record at 3:16 p.m.

22 (Discussion held off the
23 record.)

24 THE VIDEOGRAPHER: Back on the
25 record at 3:16 p.m.

1 BY MR. BROWAND:

2 Q. So, Mr. Rous, you identified
3 some data that you looked at that was
4 available through a particular
5 application. Can you confirm for me that
6 the data that you looked at that is
7 available through this particular
8 application is apparent in the document
9 that has been marked Exhibit 1?

10 A. Yes.

11 MS. McCOY: Objection to the
12 form.

13 Q. Did you look at any other
14 documents in connection with preparing for
15 your deposition today?

16 A. No, not that I recall. No.

17 Q. When I refer to ACM today, will
18 you understand that I mean the Association
19 for Computing Machinery?

20 A. Yes.

21 Q. When I refer to CallWave today,
22 will you understand that I mean the
23 Plaintiff CallWave Communications LLC?

24 A. Okay.

25 Q. When I refer to Google today

Page 16

1 will you understand that I mean the
2 defendant Google Inc.?

3 A. Yes.

4 Q. Mr. Rous, who is your current
5 employer?

6 A. ACM.

7 Q. And what is ACM?

8 A. It's a not-for-profit scientific
9 and educational society for professionals
10 and researchers in computer science.

11 Q. What are some of ACM's
12 activities?

13 A. It runs a large publication
14 operation for -- essentially for research
15 in computer science and all its subfields.
16 It runs a conference, conferences, and it
17 organizes some educational activities,
18 including development of curricula for
19 higher education computer science.

20 Q. Can you explain the publication
21 operation generally?

22 A. I need a little more clarity on
23 that question.

24 Q. Sure. Does ACM publish only its
25 own publications?

1 A. Yes. We publish only our own
2 publications. We have had arrangements
3 with other publishers where we sometimes
4 will have a marketing and distribution
5 relationship. And in the digital age, we
6 have hosted some publications from other
7 publishers in our digital library.

8 Q. And does ACM continue to do
9 that?

10 A. Yes.

11 Q. What is your current position at
12 ACM?

13 A. I am the director of
14 publications.

15 Q. What are your responsibilities
16 as director of publications?

17 A. To direct the publishing
18 program, develop new titles, direct
19 operations and the deployment of new
20 technologies for publishing and to develop
21 the strategic directions for our
22 publishing platform, which is the ACM
23 Digital Library.

24 Q. Are you knowledgeable about the
25 publishing records at ACM?

1 A. Yes.

2 MS. McCOY: Objection to form.

3 Q. How did you become knowledgeable
4 about those records?

5 A. Experience.

6 Q. Let's go back and talk about
7 your experience. First let's discuss your
8 educational background. Do you have an
9 undergraduate degree?

10 A. Yes.

11 Q. Where did you obtain that
12 degree?

13 A. Brandeis University.

14 Q. When did you obtain that degree?

15 A. 1968.

16 Q. Have you had any educational
17 training beyond your undergraduate degree?

18 A. Yes.

19 Q. Where was that?

20 A. New School For Social Research
21 in New York.

22 Q. When did you attend the New
23 School?

24 A. Early 70's.

25 Q. And did you obtain a degree

1 there?

2 A. I got a Master's.

3 Q. When was that?

4 A. I don't remember the particular
5 year. It was around 1973.

6 Q. And what was the Master's degree
7 in?

8 A. Anthropology.

9 Q. Do you have any further
10 educational training?

11 A. Well, yes. I completed all my
12 course work for my doctorate there as
13 well. I never completed my dissertation.
14 And I have taken a significant number of
15 credits in computer science. I never got
16 a degree in it.

17 Q. Where did you take those
18 courses?

19 A. Fairleigh Dickinson.

20 Q. When was that approximately?

21 A. I have to say I don't remember.

22 Q. After you left the New School
23 what did you do next?

24 A. I worked at ACM. I got a job
25 there in 1978 while I was still working on

1 my dissertation. And I was employed
2 full-time in 1980, I have been there
3 since.

4 Q. What was your initial position
5 in ACM?

6 A. Bibliographic editor.

7 Q. What were your responsibilities?

8 A. We were even at that time
9 creating a bibliographic database of
10 computer science literature; that is,
11 indexing the publications in computer
12 science, whether they were published by
13 ACM or by others, other publishers, as
14 long as the subject matter was relevant to
15 our field.

16 Q. When did you start in that
17 position?

18 A. 1980.

19 Q. And how long were you in that
20 role?

21 A. A few years.

22 Q. What came next?

23 A. I became executive editor of one
24 of ACM's journals called "Computer
25 Reviews," which is a review journal. It

1 publishes reviews of the literature in the
2 field.

3 Q. How long were you in that role?

4 A. A number of years.

5 Q. After being executive editor,
6 what was next?

7 A. I became associate director of
8 publications.

9 Q. When did you take that position?

10 A. I don't remember the years but
11 if you want to catch up quickly, after I
12 was associate director I became deputy
13 director and then I became director of
14 publications about four years ago.

15 Q. Do you have people that
16 currently work under you?

17 A. Yes.

18 Q. About how many?

19 A. Six.

20 Q. What are their titles and
21 responsibilities?

22 A. So, there is a journals manager,
23 there is a manager of operations, there is
24 a copyright and permissions coordinator,
25 there is an administrative assistant,

1 there is a -- something -- I don't
2 remember the exact title but it is the
3 equivalent of sort of the bibliographic
4 processing and editing. And there is an
5 assistant journals manager.

6 Q. Okay.

7 A. Assistant editor.

8 Q. You mentioned it earlier, but
9 what is the ACM Digital Library?

10 A. It's composed of, I would say,
11 two parts if you want. It contains all of
12 ACM's publications in digital form going
13 back to the very beginning. It was
14 launched in 1997, and we did a large
15 digitization project that captured
16 everything that we had published going
17 back to 195 -- the 50's.

18 And it has a second component,
19 which is a bibliographic database and
20 discovery service for computing
21 literature, which contains several million
22 works from other publishers in the field.

23 Q. Can you obtain copies of those
24 works from other publishers through the
25 ACM Digital Library?

1 MS. McCOY: Objection to form.

2 A. Could you clarify a little bit,
3 when you say "you"?

4 Q. Sorry.

5 A. I don't quite understand the
6 question.

7 Q. First, who has access to the ACM
8 Digital Library?

9 MS. McCOY: Objection to form.

10 A. Okay. So, the entire world has
11 access to all of the bibliographic
12 information, both ours and that of other
13 publishers that we index. We provide that
14 service free to the world. It's a
15 discovery service.

16 The other part of it, which is
17 access to full text, is by subscription.
18 And there are about 3,000 libraries around
19 the world that subscribe, there are many
20 corporations that subscribe.

21 When I say 3,000 libraries, many
22 of them subscribe as consortia rather than
23 individually. Then there are about 30,000
24 or so individual members of ACM that also
25 subscribe to the digital library as a

Page 24

1 whole.

2 Q. So you sell subscriptions to the
3 ACM Digital Library separate from ACM
4 membership itself?

5 A. Yes.

6 Q. You said people that have a
7 subscription to the ACM Digital Library
8 can access the full text of the
9 publications?

10 A. Yes.

11 Q. Which publications?

12 A. All of the publications that ACM
13 has published, all of the publications
14 that ACM hosts, full text, and -- that's
15 what they are able to access with an ACM
16 subscription.

17 The larger bibliographic
18 database is linked to source. That is, if
19 there is another publisher -- take, for
20 example, Elsevier -- which produces
21 several hundred computer science journals
22 and we index them, along with that index
23 is a link to the full text that is served
24 from the Elsevier site.

25 And our subscribers may or may

1 not gain automatic access to those full
2 texts when they follow the links. It all
3 depends on what their institution access
4 rights are with regard to the Elsevier
5 platform. We provide a linking mechanism.

6 Q. So that depends on the original
7 publisher's permissions and rights
8 associated with what full text access
9 gives you?

10 MS. McCOY: Objection to form.

11 A. I guess that I would put it more
12 this way: That it depends on the various
13 subscription licenses that the
14 individual's institution has bought. So,
15 if they bought one to the ACM Digital
16 Library and one to Elsevier's digital
17 library, it is likely that they are passed
18 directly through if they are coming from
19 the same IP address.

20 Q. Okay. So it is more dependent
21 upon the license of the subscriber?

22 A. Yes.

23 MS. McCOY: Objection to form.

24 Q. Has this general arrangement of
25 access to bibliographic information and

1 full text information through the ACM
2 Digital Library been this way since the
3 launch of the ACM Digital Library?

4 MS. McCOY: Objection to form.

5 A. Not entirely. The linking
6 mechanisms were firmly established
7 starting about 2000. There were linking
8 capacities using simple URL's before then,
9 but I can't tell you how systematically
10 the literature was linked up.

11 But starting in 2000 there
12 was -- the publishing community cooperated
13 in developing a linking mechanism, a
14 cross-platform linking mechanism through
15 something called the DOI, which is a
16 digital object identifier. And it is a
17 persistent identifier that doesn't usually
18 break with attrition like most URL's will.

19 Q. How did the system operate prior
20 to 2000?

21 A. Mostly as discovery service
22 search, a search index, not necessarily
23 linked to source.

24 Q. Was any full text of articles
25 available prior to 2000?

1 A. Oh, just ACM's and the few
2 publications that we hosted.

3 (So marked for identification as
4 Rous Exhibit 2.)

5 Q. Mr. Rous, you have been handed a
6 document marked Exhibit 2 to this
7 deposition, the first page of which is
8 entitled "Subpoena to Produce Documents,
9 Information Or Objects Or Permit
10 Inspection of Premises in a Civil Action."

11 Do you see that?

12 A. Yes.

13 Q. Have you seen this document
14 before?

15 A. Yes.

16 Q. When did you first see it?

17 A. A month or two months ago, when
18 I got a copy of this at ACM.

19 Q. How did you receive a copy of
20 it?

21 A. It was handed to me. Somebody
22 placed a hard copy on my desk.

23 Q. From whom? Do you know?

24 A. It came from the -- I believe it
25 came from the chief operating officer of

Page 28

1 ACM.

2 Q. You see Exhibit 2 has Attachment
3 A a few pages back?

4 A. Yes.

5 Q. You see Attachment A includes
6 some requests for production that begin on
7 page 4?

8 A. Yes.

9 Q. Have you read these requests?

10 A. Yes.

11 Q. What actions were undertaken at
12 ACM to respond to these document requests?

13 A. I examined the publication data
14 that was available in the digital library
15 with regard to the date of publication. I
16 looked up the conference records to see.
17 And also, not just the dates but the venue
18 in which the article appeared.

19 And in determining that it was
20 at an ACM conference, I looked for the
21 information available about the number of
22 people who would have gotten it through
23 attendance at the conference.

24 I looked at subscription
25 numbers. I looked that up to see who else

Page 29

1 would have gotten copies of the volumes of
2 proceedings that contained the articles in
3 question.

4 Q. And these were the documents we
5 referred to earlier that have all been
6 produced by ACM?

7 A. Yes. Yes.

8 Q. Do you know if any documents
9 that you reviewed in connection with
10 responding to these requests -- strike
11 that.

12 Do you know whether any
13 documents that you identified in
14 connection with responding to these
15 requests have been withheld from
16 production by ACM?

17 MS. McCOY: Objection to form.

18 MR. FREEDMAN: Don't testify
19 about communications with me. Just
20 based on your personal knowledge.

21 A. Could you repeat that question?
22 I wasn't clear on it.

23 Q. Do you know whether any
24 documents you identified in connection
25 with responding to these requests have

1 been withheld from production by ACM?

2 MS. McCOY: Objection to form.

3 A. I am not exactly sure how to
4 answer that. I did come across a document
5 that was actually cited in one of these
6 documents that was asked for, which -- but
7 it wasn't -- the subpoena didn't call for
8 it. So, I noticed it. I looked at it but
9 I didn't produce it.

10 Q. Okay.

11 A. And it was an earlier version of
12 one of the works that was asked for here.

13 Q. You considered that it wasn't
14 encompassed by these requests?

15 MS. McCOY: Objection to form.

16 MR. FREEDMAN: Do you understand
17 the question?

18 THE WITNESS: Not entirely.

19 A. It wasn't one of the documents
20 that was asked for. I noted it in the
21 documents that were produced, where there
22 was information within the digital library
23 that -- the document that was asked for
24 was a later version of an earlier work
25 that had been published by ACM.

Page 31

1 Q. I understand.

2 Are you aware of any documents
3 responsive to this subpoena in ACM's
4 possession, custody or control that have
5 not been produced?

6 A. No.

7 MS. McCOY: Objection to form.

8 (So marked for identification as
9 Defendant's Exhibit 3.)

10 Q. Mr. Rous, you have been handed a
11 document marked Exhibit 3 to this
12 deposition, the first page of which is
13 entitled "Subpoena to Testify At a
14 Deposition in a Civil Action."

15 Do you see that?

16 A. Yes.

17 Q. Have you seen this document
18 before?

19 A. Yes.

20 Q. And did you see it at about the
21 same time that you saw Exhibit 2?

22 A. Yes, I believe so.

23 MS. McCOY: Objection to form.

24 Q. Exhibit 3 also includes an
25 Attachment A. Do you see that?

Page 32

1 A. Yes.

2 Q. Attachment A identifies topics
3 for deposition on pages 1 and 2. Do you
4 see that?

5 A. Yes.

6 Q. Have you read these topics for
7 deposition?

8 A. Yes.

9 Q. What is your understanding of
10 the information sought by these deposition
11 topics?

12 MS. McCOY: Objection to form.

13 A. I guess I am not really clear
14 what you are asking me.

15 MR. FREEDMAN: Can you rephrase?

16 MR. BROWAND: Sure.

17 Q. Do you understand that these
18 topics seek information about the
19 authenticity and publication of the
20 articles that are identified in the
21 topics?

22 A. Yes.

23 MS. McCOY: Objection to form.

24 Q. What is your understanding as to
25 why you were selected to provide testimony

1 in response to these topics?

2 MS. McCOY: Objection to form.

3 A. My knowledge of the publishing
4 process and distribution process that ACM
5 uses for its various types of
6 publications, my knowledge of the digital
7 library, my knowledge of bibliographic
8 information.

9 Q. Do you believe you are qualified
10 to provide testimony on these topics?

11 A. Yes.

12 MS. McCOY: Objection to form.

13 Q. Let's look at Exhibit A to this
14 deposition subpoena, which follows the
15 topics. You see Exhibit A is an article
16 by Henning Maass entitled "Location-Aware
17 Mobile Applications Based on Directory
18 Services" that was published in Mobile
19 Networks and Applications in 1998, and the
20 document bears Bates numbers 970PA_000547
21 through 563? Do you see that?

22 A. Yes.

23 Q. Can we refer to this exhibit as
24 the Maass article today?

25 A. Yes.

1 Q. Is the Maass article, as it
2 appears on page 970PA 000547 through 563 a
3 true, correct and authentic copy of the
4 original?

5 A. So -- yes, to the best of my
6 knowledge.

7 Q. And how do you know that it is
8 authentic?

9 MS. McCOY: Objection to form.

10 A. I examined a copy of it that we
11 have in the ACM Digital Library. I would
12 point out that this is not an ACM
13 publication.

14 Q. Does ACM maintain access to
15 copies of the Maass article at the ACM
16 Digital Library?

17 A. Yes.

18 MS. McCOY: Objection to form.

19 Q. How do you know that?

20 A. I looked for it.

21 Q. Is maintaining access to copies
22 of the Maass article a regular part of
23 ACM's business?

24 A. Yes, it is.

25 Q. Is providing copies of the Maass

1 article through the ACM Digital Library a
2 regular part of ACM's business?

3 A. Yes.

4 MS. McCOY: Objection to form.

5 (So marked for identification as
6 Defendant's Exhibit 4.)

7 Q. Mr. Rous, you have been handed a
8 document marked Exhibit 4, which bears
9 production number ACM (BLACKBERRY)
10 00000001. Have you seen this document
11 before?

12 A. Yes.

13 Q. And what is it?

14 A. It is a copy of the
15 bibliographic record of this article that
16 is in the ACM Digital Library that was
17 obtained through an application known as
18 the ACM Digital Library Binder Facility
19 and stored there for the purposes of
20 producing this document for this
21 deposition.

22 MR. BROWAND: Can we go off the
23 record a minute.

24 MR. FREEDMAN: Fine.

25 THE VIDEOGRAPHER: Off the

1 record at 3:45 p.m.

2 (Pause.)

3 THE VIDEOGRAPHER: Back on the
4 record at 3:46 p.m.

5 Q. In your last answer you said
6 "this article." Can you confirm that you
7 mean the Maass article?

8 A. The Maass article, yes.

9 MS. McCOY: Objection to form.

10 Q. Is Exhibit 4 a document that you
11 generated?

12 MS. McCOY: Objection to form.

13 A. Yes. Let's put it this way. I
14 used an application to capture this
15 information which contains the
16 bibliographic record which is in the
17 digital library and reflects the
18 bibliographic data of the publication
19 along with its abstract, which you can
20 also find in the previous exhibit.

21 Q. And so, does Exhibit 4 contain
22 information that is maintained as a
23 business record by ACM in the normal
24 course of business?

25 A. Yes.

Page 37

1 MS. McCOY: Objection to form.

2 Q. Based on this business record,
3 what is your understanding of the date on
4 which the Maass article was first
5 published?

6 MS. McCOY: Objection to form.

7 A. August 1998.

8 Q. Do you believe that this
9 information is correct?

10 A. To the best of my knowledge.

11 Q. Do you have any reason to
12 believe that it is not correct?

13 A. No.

14 (So marked for identification as
15 Defendant's Exhibit 5.)

16 Q. Mr. Rous, you have been handed a
17 document marked Exhibit 5 to this
18 deposition, which bears production number
19 ACM (BLACKBERRY) 00000008.

20 Have you seen this document
21 before?

22 A. Yes.

23 Q. And what is it?

24 A. It's again, using the same
25 application from the ACM Digital Library

1 to put into one file the three documents
2 that were asked for in the subpoena, or
3 just -- not the full documents but the
4 citation bibliographic records for them.

5 Q. So this document contains the
6 citation bibliographic records for the
7 three articles that are the subject of
8 this deposition. Correct?

9 A. Yes.

10 MS. McCOY: Objection to form.

11 Q. Who generated this document?

12 A. I did.

13 Q. Let's look at the paragraph
14 below the entry for the Maass article. Do
15 you see that?

16 A. Yes.

17 Q. What is the stated date of
18 publication of the Maass article?

19 A. August 1998.

20 Q. And if you look in the paragraph
21 below the bibliographic information there
22 is a further description of the article.

23 A. Yes.

24 Q. Do you see that?

25 A. Yes.

1 Q. And do you see there is a
2 publication date listed in that paragraph?

3 A. Yes.

4 Q. And what is that publication
5 date?

6 A. September 1997.

7 Q. I see that. I am actually
8 referring to further down where it states
9 "Publication date 1998-08-01." Do you see
10 that?

11 A. I am sorry. I am not following
12 where you are in this, on this page.

13 Q. Sure. It is about the third or
14 fourth line from the bottom.

15 A. Oh, yes, okay. I see it now.
16 Yes.

17 Q. That information, "Publication
18 date 1998-08-01," what does that mean?

19 A. August 1, 1998.

20 Q. Does that indicate that the
21 Maass article was published on August 1,
22 1998?

23 A. Yes, that's what it indicates.

24 Q. What is the origin of the
25 information in this paragraph?

1 MS. McCOY: Objection to form.

2 A. So, the original -- the origin
3 is the information supplied to us by the
4 publisher.

5 Q. Is this information maintained
6 as a business record of ACM?

7 A. Yes.

8 Q. And do you believe that the
9 information in this business record is the
10 best information available about the
11 publication of the Maass article that ACM
12 has?

13 A. Yes.

14 MS. McCOY: Objection to form.

15 Q. So according to ACM's business
16 records, the Maass article was published
17 on August 1, 1998. Correct?

18 A. Yes.

19 MS. McCOY: Objection to form.

20 Q. Now, separate from the Maass
21 article's first publication, have you been
22 able to determine the date by which the
23 Maass article was made available through
24 the ACM Digital Library?

25 MS. McCOY: Objection to form.

1 A. Yes.

2 Q. How did you figure out the date
3 on which the Maass article was made
4 available through the ACM Digital Library?

5 MS. McCOY: Objection to form.

6 A. When we load a publication into
7 the digital library, the database -- there
8 is an automatic date stamp that is placed
9 on the creation date of the record. And I
10 looked that date up for this article.

11 Q. And does Exhibit 1 to this
12 deposition show the automatic date stamp
13 that was placed on the creation date for
14 the record containing the publication of
15 the Maass article in the ACM Digital
16 Library?

17 MS. McCOY: Objection to form.

18 A. Yes.

19 Q. What is the date, that automatic
20 date stamp in Exhibit 1?

21 MS. McCOY: Objection to form.

22 A. February 8, 1999.

23 Q. So, is it your understanding
24 that the Maass article was made available
25 to subscribers of the ACM Digital Library

1 on February 8, 1999?

2 A. Yes.

3 MS. McCOY: Objection to form.

4 Q. So as of February 8, 1999,
5 anyone with a subscription to the ACM
6 Digital Library would have had access to a
7 copy of the Maass article?

8 MS. McCOY: Objection to form.

9 A. Yes.

10 Q. Based on ACM's regular business
11 practices at the time, how soon after
12 first publication of an article would it
13 typically have been made available through
14 the ACM Digital Library?

15 MS. McCOY: Objection to form.

16 A. Typically, it would be available
17 on the day of publication. This
18 particular article was not published by
19 ACM but by Baltzer, which was a publishing
20 company which I believe was bought by
21 Kluwer, which was subsequently acquired by
22 Springer.

23 As a hosted publication that we
24 did not produce, we are dependent on the
25 original publisher to ship us the

1 information for placing in the digital
2 library, which accounts for the delay here
3 between the publication date by the
4 original publisher and when we received it
5 and loaded it.

6 Q. And is the delay between
7 August 1, 1998, and February 8, 1999,
8 typical for a delay of hosted publications
9 at the time?

10 A. No, I would not say that.

11 MS. McCOY: Object to form.

12 THE WITNESS: I'm sorry.

13 A. No, I wouldn't say it's typical.
14 These arrangements with third parties are
15 variable and depend on a lot of factors.
16 So, I don't know whether there is a
17 typical delay that I could give you for
18 this.

19 Q. But do you find this delay in
20 this circumstance to be in sort of the
21 realm of possibilities given the efforts
22 to, you know, digitize and make available
23 and host third-party content?

24 A. Certainly, yes.

25 MS. McCOY: Objection to form.

1 Q. Do you believe the information
2 on Exhibit 1 is true and correct?

3 A. Yes.

4 Q. Why do you believe that?

5 MS. McCOY: Objection to form.

6 A. I have found our records to be
7 very well kept, accurate. A lot of
8 attention goes into ensuring that. As a
9 quality publisher, you don't want to
10 publish incorrect information.

11 Q. Is that true of all of ACM's
12 business records?

13 A. Yes.

14 (So marked for identification as
15 Defendant's Exhibit 6.)

16 Q. Mr. Rous, you have been handed a
17 document marked Exhibit 6 to this
18 deposition, which bears production number
19 ACM (BLACKBERRY) 00000011. Have you seen
20 this document before?

21 A. Yes.

22 Q. What is it?

23 A. It's a record of our
24 institutional members statistics from
25 June 1999.

1 Q. Is this a document maintained as
2 a business record by ACM in the ordinary
3 course of business?

4 A. Yes.

5 Q. And where is the document kept?

6 A. In a filing cabinet.

7 Q. It's maintained in hard copy?

8 A. This far back, it's maintained
9 in hard copy, yes.

10 Q. Down the first column there are
11 several row headings. Do you see that?

12 A. Yes.

13 Q. What do each of these row
14 headings on this document mean?

15 A. So, they are -- institutional
16 members had various packages of
17 publications that they could subscribe to.
18 The listing on the left, in the left
19 column, named those packages, both print,
20 the three above, and digital packages
21 below.

22 Q. So the first three packages are
23 print only memberships?

24 A. They are print packages, yes.

25 Q. The second three, the ones that

1 begin "Optical Digital Core Package,"
2 "Digital Master" and "Digital
3 Proceedings," those are digital
4 institutional subscriptions?

5 MR. FREEDMAN: You misspoke.

6 MS. McCOY: Object to form.

7 MR. FREEDMAN: It says
8 "optional." I think you said
9 "optical."

10 MR. BROWAND: Thank you.

11 Q. The first one reads "Optional
12 Digital Core Package"?

13 A. Yes.

14 Q. So as of February 8, 1999,
15 the -- if we look at the March 1999 column
16 and look at the rows for the digital
17 subscriptions, those would be -- added up,
18 those would be the total number of
19 institutional members that would have had
20 access to the Maass article. Is that
21 correct?

22 MS. McCOY: Objection to form.

23 A. No, I can't say that. I did not
24 produce these statistics for the purposes
25 of showing the distribution of the Maass

1 article.

2 Q. Okay.

3 A. And so I am not sure what the
4 relationship would be between ACM's
5 institutional members and access to the --
6 to this Maass article.

7 Q. But all of the members listed in
8 the digital rows would have had access to
9 the ACM Digital Library?

10 MS. McCOY: Objection to form.

11 A. Could you repeat that question?

12 Q. I will probably have to rephrase
13 it. Let me just do that.

14 All of the memberships
15 corresponding to the last three rows of
16 Exhibit 6 identify institutional members
17 who would have had access to the ACM
18 Digital Library?

19 MS. McCOY: Objection to form.

20 A. No, that is not correct. At the
21 time, the digital library was segmented,
22 and...

23 The various types of
24 publications you could obtain digital
25 subscriptions to, sections of the digital

1 library. And the Digital Proceedings
2 package, for example, would have nothing
3 to do with this article, which was not a
4 proceedings article but a journal article
5 produced by somebody else.

6 Those who subscribed -- I cannot
7 tell you whether or not ACM provided this
8 third-party publication in the Digital
9 Core package. I doubt it but I don't know
10 for sure.

11 Q. And what is the Digital Master
12 package? What access would be provided by
13 that package?

14 A. That package would include both
15 the Core, which were the ACM journals, and
16 the Proceedings, the ACM proceedings.

17 (So marked for identification as
18 Defendant's Exhibit 7).

19 Q. Mr. Rous, you have been handed a
20 document marked Exhibit 7 to this
21 deposition, which bears production number
22 ACM (BLACKBERRY) 00000012. Have you seen
23 this document before?

24 A. Yes.

25 Q. And what is it?

1 A. It's a record of our member
2 subscription counts from 1999.

3 Q. And are these for individuals
4 subscription counts?

5 A. Yes.

6 Q. So these subscription counts in
7 this exhibit are in addition to the
8 institutional membership counts in
9 Exhibit 6?

10 A. Yes.

11 MS. McCOY: Objection to form.

12 Q. If you don't mind, as we did
13 with Exhibit 6, could you identify for me
14 in this first row the meaning of the
15 different row headings? The first one is
16 "Ton" it looks like, T-O-N?

17 A. Yes. The first four are
18 particular ACM journals, title -- they are
19 acronyms for the title. "Transactions on
20 Networking," TON. "Transactions on
21 Programming Languages and Systems," TOPLS,
22 et cetera.

23 Q. The fifth row is a total of
24 those first four?

25 A. No. No. I only produced this

Page 50

1 page to give you the total. There are
2 perhaps another 30 titles that precede
3 these on previous pages of the statistics
4 that did not seem relevant.

5 Q. Those are further ACM
6 publications?

7 A. Yes.

8 Q. Below the total there is a row
9 headed "Digital Library"?

10 A. Yes.

11 Q. What does that mean?

12 A. Those are the ACM member
13 subscriptions to the ACM Digital Library.

14 Q. For each of the months?

15 A. For all of the contents of the
16 digital library for member subscriptions.
17 They were not separate packages.

18 Q. So would a member having the
19 digital library subscription have access
20 to all of the content in the ACM Digital
21 Library?

22 A. Yes.

23 Q. Including the Maass article?

24 A. Yes.

25 MS. McCOY: Objection to form.

1 Q. What is the difference between
2 FY 99 row and FY 98?

3 A. FY is our fiscal year. It runs
4 from July 1st through June 30th, which is
5 why this is always split across two
6 calendar years. We are looking at a
7 single fiscal year.

8 Q. So as of March 1999, there were
9 over 11,000 individuals who had access to
10 all of the contents of the ACM Digital
11 Library, including the Maass article.
12 Correct?

13 MS. McCOY: Objection to form.

14 A. That's correct, yes.

15 Q. Is Exhibit 7 a business record
16 of ACM?

17 A. Yes.

18 Q. Do you believe the information
19 on Exhibit 7 to be true and accurate?

20 A. Yes.

21 Q. Where is Exhibit 7 maintained?

22 A. In a filing cabinet at ACM
23 headquarters.

24 (So marked for identification as
25 Defendant's Exhibit 8.)

1 Q. Mr. Rous, you have been handed a
2 document marked Exhibit 8 to this
3 deposition, which bears production number
4 ACM (BLACKBERRY) 00000002. Do you see
5 that?

6 A. Yes.

7 Q. Have you seen this document
8 before?

9 A. Yes.

10 Q. And what is it?

11 A. It is a copy of the
12 bibliographic record for the article by
13 Spreitzer and Theimer from the ACM Digital
14 Library.

15 Q. Let's go back to Exhibit 3, the
16 deposition subpoena?

17 A. Okay.

18 Q. After the Maass article there is
19 Exhibit B. Exhibit B includes a copy of
20 the Spreitzer article by Mike Spreitzer
21 and Marvin Theimer entitled "Providing
22 Location Information in a Ubiquitous
23 Computing Environment" bearing Bates
24 numbers 970PA_000959 through 972.

25 Do you see that?

1 A. Yes.

2 Q. Is Exhibit 8 the ACM Digital
3 Library record of this article that
4 appears as Exhibit B to the deposition
5 subpoena?

6 MS. McCOY: Objection to form.

7 A. Yes.

8 Q. Looking at Exhibit B to the
9 deposition subpoena, can we agree to call
10 this article the Spreitzer article?

11 A. Okay.

12 Q. Is the Spreitzer article, as it
13 appears on these pages, a true and
14 authentic copy of the original?

15 A. Yes. To the best of my
16 knowledge, yes.

17 Q. How do you know that?

18 A. I downloaded a copy from the ACM
19 Digital Library and scanned through it and
20 it matched this.

21 Q. And this is a publication by
22 ACM. Correct?

23 A. Yes.

24 Q. And ACM published this article?

25 A. Yes.

1 MS. McCOY: Objection to form.

2 Q. Referring back to Exhibit 8,
3 what is the date of publication of the
4 Spreitzer article?

5 A. December 1993.

6 Q. Was publishing the Spreitzer
7 article a regular part of ACM's business?

8 A. Yes.

9 Q. Does ACM maintain and provide
10 access to copies of the Spreitzer article?

11 A. Yes.

12 MS. McCOY: Objection to form.

13 Q. And was providing access to
14 copies of the Spreitzer article a regular
15 part of ACM's business?

16 A. Yes.

17 Q. Let's go back to Exhibit 8. Do
18 you believe the information in this
19 business record stating that the Spreitzer
20 article was published by ACM in
21 December 1993 to be true and correct?

22 A. Yes.

23 Q. And have you been able to
24 determine the date by which the Spreitzer
25 article was made available through the ACM

1 Digital Library?

2 MS. McCOY: Objection to form.

3 A. I did not specifically look this
4 up. The digital library was launched in
5 July of 1997, and it included all of our
6 previous proceedings and journals which
7 had been digitized for the release of the
8 digital library. So back -- this was
9 published four or five years before the
10 launch of the digital library. But we had
11 digitized it, so, yes, it was available
12 then.

13 Q. Just to make this clear, your
14 expectation and understanding based on
15 ACM's business practice was that the
16 Spreitzer article was made available in
17 the ACM Digital Library in July 1997.
18 Correct?

19 A. Yes.

20 MS. McCOY: Objection to form.

21 Q. And all of the individual
22 subscribers to the ACM Digital Library
23 would have had access to the Spreitzer
24 article as of that date. Correct?

25 MS. McCOY: Objection to form.

1 A. That's a true statement, but
2 when we launched it in July of 1997 there
3 were no subscriptions at all. It was free
4 and open to the world for a period until
5 October. And it was only in October that
6 we made it available by subscription.

7 Q. When you say October, you mean
8 October of 1997?

9 A. Yes.

10 (So marked for identification as
11 Rous Exhibit 9.)

12 Q. Mr. Rous, you have been handed a
13 document marked Exhibit 9 to the
14 deposition, which bears production number
15 ACM (BLACKBERRY) 00000004. Do you see
16 that?

17 A. Yes.

18 Q. What is it?

19 A. This is a screen shot from our
20 conference management system database that
21 shows a record of the conference, the ACM
22 Symposium on Operating Systems Principals
23 and information about it, financial and
24 dates and attendance.

25 Q. Does this document contain data

1 that is maintained as a business record of
2 ACM?

3 A. Yes.

4 Q. Where is this data contained? I
5 think you said it is a conference
6 management system database?

7 A. Yes.

8 Q. And is it your understanding
9 that this was the symposium at which the
10 Spreitzer article was presented?

11 A. Yes.

12 MS. McCOY: Objection to form.

13 Q. Do you believe that the
14 information -- well, let me focus it down
15 on the attendance information. Do you
16 believe that the attendance information in
17 Exhibit 9 is true and correct?

18 MS. McCOY: Objection to form.

19 A. To the best of my knowledge,
20 yes.

21 Q. And so according to this
22 document, there were 300 attendees at the
23 14th ACM Symposium on Operating Systems
24 Principals in December 1993?

25 A. Yes.

1 MS. McCOY: Object to the form.

2 Q. How was the Spreitzer article
3 made available to conference attendees?

4 MS. McCOY: Objection to form.

5 A. So, in hard copy. Copies are
6 printed before the conference takes place
7 and shipped to the location so that when
8 the conference registrants and attendees
9 arrive they pick up their copy on the way
10 in.

11 Q. And that is part of ACM's
12 regular business practice?

13 A. Yes.

14 Q. And you expect that that
15 happened on this particular conference
16 occasion?

17 A. Yes.

18 Q. Do you have any reason to
19 suspect that copies of the Spreitzer
20 article were not made available to the 300
21 conference attendees?

22 A. No.

23 MS. McCOY: Sorry. Objection to
24 the form.

25 (So marked for identification as

1 Defendant's Exhibit 10.)

2 Q. Mr. Rous, you have been handed a
3 document marked Exhibit 10 to this
4 deposition, which bears production number
5 ACM (BLACKBERRY) 00000005. Do you see
6 that?

7 A. Yes.

8 Q. Have you seen this document
9 before?

10 A. Yes.

11 Q. What is it?

12 A. It is, like the previous one,
13 it's a snapshot -- sorry -- screen shot of
14 the data from our conference management
15 system about the ACM Symposium on
16 Operating Systems Principals.

17 Q. So this is a different business
18 record maintained by ACM concerning the
19 same symposium that was also identified in
20 Exhibit 9?

21 A. Yes.

22 MS. McCOY: Objection to form.

23 Q. Towards the bottom of the page
24 there is a label entitled "circulation
25 types/counts." Do you see that?

Page 60

1 A. Yes.

2 Q. What does the information below
3 that mean?

4 A. So, there are three different
5 counts given. The first one is the
6 conference, with the number of 450, which
7 means that 450 copies were printed and
8 shipped to the conference.

9 The second number, called single
10 copy, the number is 200. That is the
11 number of copies that were printed and
12 placed in our warehouse inventory for
13 single copy sales post conference.

14 The third number, distribution
15 of 6900 were the number of copies that
16 were printed for distribution to members
17 of the sponsoring special interest group
18 that sponsored the conference. And that
19 sponsoring special interest group is
20 called ACM SIGOPS.

21 I could elaborate a little bit
22 since this may not be clear. ACM has a
23 number of special interest groups,
24 currently about 36, that are in
25 subdisciplines of computer science. And

1 it was the practice that each special
2 interest group had its own newsletter that
3 went to the members of that specific
4 subset of ACM members who belonged to the
5 SIG, that SIG.

6 It was the practice to publish
7 the sponsored proceedings in a special
8 issue of the newsletter as well as in a
9 volume of proceedings so that the number
10 of members of SIGOPS who would be entitled
11 to receive the newsletter, the special
12 issue of the newsletter that contained
13 this article from the conference
14 proceedings is given in that number of
15 6900.

16 Q. So, the total of those three
17 numbers is 7,550 copies?

18 A. Yes.

19 Q. And my question is, copies of
20 what?

21 MS. McCOY: Objection to form.

22 A. Copies of the volume of
23 proceedings and that same set of articles
24 that was in the proceedings reissued with
25 a different cover, which was the

1 newsletter cover for the special issue.

2 So, it is essentially published
3 twice, once as a volume of proceedings and
4 once as a special issue of the newsletter
5 for that group.

6 Q. If we turn back to Exhibit 8?

7 A. Yes. Here it is.

8 Q. Those two publications, once as
9 the proceedings and once as the
10 newsletter --

11 A. Yes.

12 Q. -- appear in this digital
13 library record; correct?

14 A. That's correct. So that
15 Exhibit 8 that you are looking at is a --
16 speaks of the article by Spreitzer and it
17 says it's published in the Proceedings of
18 the Symposium on Operating Systems
19 Principals 1993 and in the newsletter of
20 ACM SIGOPS with the title of the
21 newsletter, Operating Systems Review.

22 Q. Am I correct that according to
23 ACM's business records, as of December
24 1993, 7,550 copies of the Spreitzer
25 article had been made available in either

1 the conference proceedings or in the
2 newsletter you just identified?

3 A. Yes.

4 Can I clarify that a little,
5 just to be clear?

6 Q. Sure.

7 A. That number you see there of
8 7,550 will be the copies produced and sent in
9 those different directions. Before, when
10 we were looking at another exhibit, you
11 saw conference attendance was 300. This
12 is the number of copies that were sent to
13 the conference.

14 They normally overprint. They
15 don't know how many people necessarily
16 will show up. There are some
17 registrations on site, so the number of
18 copies produced and sent to the conference
19 may not be the same as the number of
20 attendees who received a copy.

21 Q. Understood.

22 After the Spreitzer article in
23 Exhibit 3 there is an Exhibit C, which is
24 an article by Ulf Leonhardt and Jeff Magee
25 entitled "Multi-Sensor Location Tracking"

1 and it bears production numbers
2 970PA_000982 through 993.

3 Do you see that?

4 A. Yes.

5 Q. Can we refer to this article as
6 the Leonhardt article?

7 A. Okay.

8 Q. And is the Leonhardt article
9 bearing these production numbers a true,
10 correct and authentic copy of the
11 original?

12 A. Yes, to the best of my
13 knowledge.

14 Q. And how do you know that?

15 A. I looked for this article in the
16 ACM Digital Library and found it and
17 printed off a copy and compared it to
18 this. I didn't read it word for word but
19 I scanned through it and it is the same.

20 Q. And was ACM responsible for
21 publishing the Leonhardt article?

22 A. Yes.

23 Q. And did ACM in fact publish the
24 Leonhardt article?

25 A. Yes.

1 Q. And was publishing the Leonhardt
2 article as it appears on these pages a
3 regular part of ACM's business?

4 A. Yes.

5 Q. And does ACM maintain and
6 provide access to copies of the Leonhardt
7 article?

8 A. Yes.

9 Q. And is providing access to
10 copies of the Leonhardt article a regular
11 part of ACM's business?

12 A. Yes.

13 (So marked for identification as
14 Rous Exhibit 11.)

15 Q. Mr. Rous, you have been handed a
16 document marked Exhibit 11, which bears
17 production number ACM (BLACKBERRY)
18 00000003. Have you seen this document
19 before?

20 A. Yes.

21 Q. And what is it?

22 A. It is a copy of a bibliographic
23 record of this article from the ACM
24 Digital Library.

25 Q. Is this record maintained as a

1 business record by ACM in the normal
2 course of its business?

3 A. Yes.

4 Q. How was the document generated?

5 A. This Exhibit 11 was generated by
6 using an ACM application called the
7 Digital Library Binder Facility.

8 Q. Who generated it?

9 A. I did.

10 Q. Approximately when did you do
11 that?

12 A. About a month, six weeks ago.

13 Q. What is your understanding of
14 the date on which the Leonhardt article
15 was first made available to the public by
16 ACM?

17 MS. McCOY: Objection to form.

18 A. October 25, 1998.

19 Q. How do you know that?

20 A. It's ACM's practice to publish
21 proceedings on the first day of the
22 conference at which the papers are
23 presented.

24 Q. And October 25, 1998 was the
25 first day of the MobiCom 98 Fourth Annual

1 ACM International Conference on Mobile
2 Computing and Networking?

3 MS. McCOY: Objection to form.

4 A. Yes. I would say ACM slash
5 IEEE. It is a jointly sponsored
6 conference between ACM and IEEE, IEEE
7 being another association for -- actually,
8 I believe it is a trade association for
9 engineers.

10 (So marked for identification as
11 Rous Exhibit 12.)

12 Q. Mr. Rous, you have been handed a
13 document marked Exhibit 12 to this
14 deposition which bears production number
15 ACM (BLACKBERRY) 00000006. Have you seen
16 this document before?

17 A. Yes.

18 Q. And what is it?

19 A. It's a record from ACM's
20 conference management system describing
21 the income and expense and the date and
22 attendance at the MobiCom 1998
23 International Conference on Mobile
24 Computing.

25 Q. Is this a document maintained as

1 a business record by ACM in the normal
2 course of its business?

3 A. Yes.

4 Q. This document identifies a total
5 attendance at the MobiCom 98 conference of
6 354 attendees. Do you see that?

7 A. Yes.

8 Q. Do you believe that information
9 to be true and correct?

10 A. Yes.

11 (So marked for identification as
12 Defendant's Exhibit 13.)

13 Q. Mr. Rous, you have been handed a
14 document marked Exhibit 13 to this
15 deposition, which bears production number
16 ACM (BLACKBERRY) 0000007. Do you see
17 that?

18 A. Yes.

19 Q. And have you seen this document
20 before?

21 A. Yes.

22 Q. And what is it?

23 A. It is a screen shot of another
24 piece of information from ACM's conference
25 management system about the same

1 conference, the ACM/IEEE International
2 Conference on Mobile Computing and
3 Networking from 1998.

4 Q. Again, if you would, summarize
5 what the meaning of the information that
6 appears below "circulation types/counts"
7 is?

8 A. Yes. Okay. So, the first type
9 is conference. It means -- and the number
10 is 400. The count is 400, and that is the
11 number of copies that were printed and
12 shipped to this conference. The single
13 copy number of 75 is the number of copies
14 that were printed and put into our
15 warehouse for post conference sales.

16 And the MP MOBILE refers to a
17 program that was in place at this time
18 known as Member Plus for SIG Mobile, which
19 if you paid for the Member Plus SIG Mobile
20 program you got a copy of this
21 proceedings. And the number there is 400.

22 Q. And --

23 A. And that is the number produced.

24 Q. Is Exhibit 13 a document
25 maintained as a business record by ACM in

1 its normal course of business?

2 A. Yes.

3 Q. And according to this document
4 there were 875 copies of the conference
5 proceedings for the MobiCom 98 Fourth
6 Annual ACM/IEEE International Conference
7 On Mobile Computing and Networking.
8 Correct?

9 A. Yes.

10 MS. McCOY: Objection to form.

11 Q. And those conference proceedings
12 included, according to ACM's business
13 record, the Leonhardt article. Correct?

14 MS. McCOY: Objection to form.

15 A. Yes, that's correct.

16 Q. And so 875 copies would have
17 been made available to either the
18 attendees at the conference or put into
19 the warehouse or provided to the MP Mobile
20 subscribers as of October 25, 1998.
21 Correct?

22 MS. McCOY: Objection to form.

23 A. Yes.

24 Q. Those 875 copies, again,
25 included the Leonhardt article?

1 A. Yes.

2 MS. McCOY: Objection to form.

3 (Pause.)

4 THE WITNESS: May I offer a
5 point of clarification?

6 MR. BROWAND: Sure.

7 THE WITNESS: I am just
8 testifying about ACM's distribution of
9 this work. This was a joint
10 conference with the IEEE, and in our
11 joint arrangement we each had rights
12 to independently produce and
13 distribute the same work, my point
14 being I am only telling you about
15 ACM's distribution; I have nothing to
16 say about theirs. But there was
17 another source for this.

18 Q. So, ACM made the Leonhardt
19 article available to the public and IEEE
20 also made the Leonhardt article available
21 to the public?

22 A. That's correct, yes.

23 MS. McCOY: Objection to form.

24 Q. And so according to these
25 records, 875 copies of the Leonhardt

1 article were made available in the ways
2 that we have discussed as of October 25,
3 1998. Correct?

4 MS. McCOY: Objection to form.

5 A. Yes.

6 MR. BROWAND: Mr. Rous, thank
7 you for your time. I have no further
8 questions.

9 MS. McCOY: I do have some
10 questions. We have been going about
11 an hour and a half. How about we take
12 five minutes?

13 THE VIDEOGRAPHER: Going off the
14 record 4:46 p.m. This marks the end
15 of media 1.

16 (Recess.)

17 THE VIDEOGRAPHER: We are back
18 on the record at 4:54 p.m. This marks
19 the beginning of media 2.

20 EXAMINATION BY

21 MS. McCOY:

22 Q. Hello, Mr. Rous.

23 A. Hi.

24 Q. This is Leah McCoy from Pepper
25 Hamilton on behalf of CallWave, as I noted

Page 73

1 earlier. I just have a few questions for
2 you following up on Mr. Browand's
3 questioning.

4 You said the phrase a couple
5 times that certain documents were business
6 records of ACM. Can you tell me what you
7 mean by that?

8 A. Yes. These are the official
9 records where ACM records its business
10 information.

11 Q. And how do you know that?

12 A. I have worked at ACM for
13 35 years. I know how it's done.

14 Q. Okay. Let's turn specifically
15 to Exhibit 1. Do you have that in front
16 of you?

17 A. Yes.

18 Q. Did you create this document?

19 A. Yes, I took a snapshot --
20 sorry -- a screen shot of a -- of this
21 view of certain data that is held in our
22 database.

23 Q. Was this document produced in
24 the litigation?

25 MR. BROWAND: Objection to form.

1 A. I did not quite hear the
2 question. Can you repeat it?

3 MR. FREEDMAN: This is John
4 Freedman. I will respond to that. It
5 was produced at the start of the
6 deposition today in the litigation.

7 Q. Can you hear me?

8 A. Yes.

9 Q. When was this document created?

10 MR. BROWAND: Objection to form.

11 A. Yes.

12 Q. And why did you create this
13 document yesterday?

14 MR. BROWAND: Objection to form.

15 MR. FREEDMAN: You may answer.

16 A. Because -- because this article
17 was not published by ACM and there were
18 some records that I saw on the internet,
19 in internet searches, that seemed to
20 indicate that ACM actually had this
21 article in our digital library at the date
22 of publication, I looked into our database
23 to verify whether that was true or not.

24 That's why I looked it up. And
25 I found that in fact it was subsequent to

Page 75

1 the August 1st publication date that we
2 actually got a copy into the digital
3 library.

4 Q. Did anyone ask you to perform
5 that search?

6 MR. BROWAND: Objection to form.

7 MR. FREEDMAN: You can answer
8 yes or no.

9 A. Not directly, no. But --

10 Q. Did someone --

11 A. It was pointed out to me that
12 there was information on the Web, if you
13 performed a search, actually located in
14 the internet archive created by the Way
15 Back Machine, that seemed to indicate that
16 ACM had this earlier, and that made me
17 look -- and on my own I decided to
18 investigate to see whether that was true
19 because it seemed to be -- it didn't
20 quite -- I wasn't sure, so that is why I
21 looked it up.

22 Q. Who pointed that out to you?

23 MR. BROWAND: Objection to form.

24 MR. FREEDMAN: You may answer.

25 A. Counsel pointed it out. ACM's

Page 76

1 counsel, John Freedman, pointed it out to
2 me.

3 Q. Have you had any communications
4 with Google since the subpoena was sent to
5 you?

6 MR. BROWAND: Objection to form.

7 A. No.

8 Q. Have you had any communications
9 with counsel for Google, from Milbank?

10 A. No.

11 MR. BROWAND: Objection to form.

12 Q. Has your counsel had any
13 communications with Google?

14 MR. BROWAND: Objection to form.

15 MR. FREEDMAN: You may answer.

16 A. I really don't know.

17 Q. Do you know if your counsel has
18 had any communication with counsel for
19 Google?

20 MR. BROWAND: Objection to form.

21 A. I am sorry. I thought you had
22 just asked that question. Could you
23 distinguish the last two questions?

24 Q. Sure. I am distinguishing
25 between Google, the company and its

Page 77

1 employees, and outside counsel
2 representing Google.

3 You can answer whether you know
4 whether your counsel has had
5 communications with either employees for
6 Google or counsel representing Google.

7 A. Yes. I believe -- I think so,
8 yes.

9 MR. BROWAND: Objection to form.

10 Q. Sorry. Can you just clarify
11 your answer?

12 A. Yes. I think that ACM's counsel
13 did have communications with Google's
14 counsel, as far as I know.

15 Q. Do you know what those
16 communications consisted of?

17 A. No --

18 MR. FREEDMAN: I am cutting this
19 off. You can't go into my
20 communications with Mr. Rous.

21 MS. McCOY: Well, if you told
22 Mr. Rous what you discussed with
23 Google, those would not be
24 attorney-client communications.

25 MR. FREEDMAN: I don't

1 necessarily agree with that, but you
2 are not going to examine him about my
3 communications with him.

4 Q. Mr. Rous, were you ever provided
5 with a declaration?

6 MR. FREEDMAN: At any time?

7 MR. BROWAND: Objection to form.

8 MR. FREEDMAN: At any time in
9 any context?

10 MS. McCOY: In connection with
11 the subpoena.

12 A. I don't really know. I am not
13 sure I understand what the question is.

14 Q. Have you ever seen a document
15 that was titled "Declaration" that had a
16 space for you to sign at the bottom in
17 response to the subpoena?

18 MR. BROWAND: Objection to form.

19 A. I don't think so, no.

20 Q. Let me just backtrack a little
21 bit.

22 Let's look first at what I
23 believe has been marked Exhibit 3 to
24 Exhibit A. That is the Maass article. Do
25 you have that in front of you?

1 A. Exhibit 3 to -- Exhibit C?

2 Q. I am sorry. It is Exhibit A to
3 Exhibit 3. I got that backwards. It's
4 the Maass article.

5 A. Yes. I have it before me.

6 Q. It's got Bates number
7 970PA_00057.

8 A. 547. Yes.

9 Q. 547. Excuse me. Thank you.

10 THE VIDEOGRAPHER: Counsel, I
11 need to take a pause and go off the
12 record if I can.

13 MS. McCOY: Sure.

14 THE VIDEOGRAPHER: Off the
15 record at 5:04 p.m.

16 (Pause)

17 THE VIDEOGRAPHER: Back on the
18 record at 5:04 p.m.

19 Q. We are looking at the Maass
20 article which we have identified. Who
21 published this article?

22 A. Baltzer Science Publishers.

23 Q. Did ACM have anything to do with
24 publishing this article?

25 MR. BROWAND: Objection to form.

Page 80

1 A. No.

2 May I clarify that answer?

3 Q. Sure.

4 A. So, we are not the publishers,
5 the original publishers; Baltzer is. When
6 you say do we have anything to do with
7 publishing it, if by publishing it you
8 mean making it available, then the answer
9 is yes by virtue of an agreement that we
10 had with Baltzer, who was the publisher.

11 Q. Got it. Thank you.

12 So, you stated that the
13 publication date of this article, to the
14 best of your knowledge, was August 1,
15 1998. Does that date appear on Exhibit A
16 to Exhibit 3?

17 A. No.

18 Q. So where did you get that
19 information?

20 A. From the bibliographic record
21 for this article in the ACM Digital
22 Library.

23 Q. We already looked at that
24 bibliographic record. What exhibit was
25 that? That's Exhibit 5?

1 A. So, Exhibit 4 has that record.

2 Q. Oh, I see.

3 A. Also, Exhibit 1 has a look at a
4 part of that record in the database also.

5 Q. Okay.

6 A. Which distinguishes between the
7 date on which ACM created the record,
8 February 8, 1999, and the article
9 publication date of August 1, 1998, which
10 is the data that was given to us by the
11 publisher, Baltzer.

12 Q. Looking first at Exhibit 4,
13 where does the publication date appear on
14 Exhibit 4, ACM BLACKBERRY 1?

15 A. It states it's published in the
16 journal. It gives the journal title,
17 volume, issue number, and the date
18 August 1998.

19 Q. Was that information generated
20 by ACM?

21 MR. BROWAND: Objection to form.

22 A. If -- if you mean was this
23 record that you see in Exhibit 4 generated
24 by ACM, yes. If you are talking about the
25 data that is shown in this record, that is

1 data supplied to us by the publisher.

2 Q. Thank you for that
3 clarification. So, ACM put together this
4 record but the information in it did not
5 come from ACM?

6 A. Correct.

7 MR. BROWAND: Objection to form.

8 Q. Did you do anything to verify
9 this information?

10 MR. BROWAND: Objection to form.

11 MR. FREEDMAN: By you, do you
12 mean Mr. Rous personally?

13 MS. McCOY: I mean Mr. Rous
14 personally, prior to the deposition.

15 A. No.

16 Q. Looking at --

17 A. Excuse me. Are you talking
18 about, when you say prior to this
19 deposition, you mean in the course of
20 preparing for the deposition, or do you
21 mean back at the time --

22 Q. I do.

23 A. Oh, okay.

24 Q. I do. I'm sorry. That was
25 unclear. You're right.

1 I mean in preparation for the
2 deposition, did you do anything to verify
3 this information?

4 A. Well, I did. If you see the
5 record here, you will see there is a DOI
6 on the record, a digital object
7 identifier. That is actually a link which
8 takes you to the publisher site, which is
9 now Springer, by virtue of acquiring
10 Kluwer, that acquired Baltzer.

11 When you follow that -- I did
12 follow that link and I found this record
13 on the publisher's site there with the
14 date of publication. That was as much of
15 a verification as I did.

16 Q. And the date of publication
17 there, was it as it appears on Exhibit 4,
18 August 1998?

19 MR. BROWAND: Objection to form.

20 A. To the best of my recollection,
21 yes.

22 Q. Looking at, then, Exhibit 5, ACM
23 BLACKBERRY 8 -- am I right that is
24 Exhibit 5?

25 COURT REPORTER: Yes.

1 Q. Mr. Rous, confirm for me that
2 this page, while also generated by ACM,
3 the information again did not come from
4 ACM?

5 MR. BROWAND: Objection to form.

6 A. Yes. For the third item on that
7 Exhibit 5, correct.

8 Q. That information was supplied to
9 you by a third party?

10 A. Yes.

11 Q. Going back to when you were
12 talking about how you prepared for this,
13 you mentioned that staff had helped you
14 prepare, I believe. Can you tell me who
15 exactly that was?

16 MR. FREEDMAN: By prepare, do
17 you mean prepare for the deposition,
18 or assist him in obtaining documents?
19 Are you making a distinction?

20 MS. McCOY: I am recalling his
21 testimony that in order to prepare for
22 the documents for this deposition he
23 spoke to staff.

24 A. Okay. Yes. So I spoke with the
25 associate director of information systems

Page 85

1 to determine -- I asked him whether or not
2 there were any digital records maintained
3 in storage off site or available that
4 would have membership statistics numbers,
5 subscription numbers, label runs, dates
6 and numbers from these time periods for
7 the two ACM publications.

8 And he told me no and referred
9 me to the conference management system to
10 get what data I could there.

11 And I spoke with the manager of
12 membership and subscriptions to find out
13 where the particular member and
14 subscription statistics in hard copy,
15 where the filing cabinets were exactly. I
16 knew about them, and then I did the
17 research myself.

18 Q. Is that everyone?

19 A. Yes.

20 Q. I have a follow-up question now
21 about Exhibit 1. Sorry to go back and
22 forth. Do you have that in front of you?

23 A. Yes, I do.

24 Q. So, Exhibit 1, you testified
25 that it shows that on February 8, 1999,

1 this was made available to your
2 subscribers?

3 A. Yes.

4 Q. So this was a hosted
5 publication. Correct?

6 A. Correct.

7 Q. Not a document that was produced
8 by ACM?

9 A. Correct.

10 MR. BROWAND: Objection to form.

11 Q. Now I'd like to look at
12 Exhibit 6. That is Bates ACM (BLACKBERRY)
13 11.

14 A. Okay.

15 Q. I am sorry. I mean 7. That is
16 number 12. Sorry.

17 A. Exhibit 7?

18 Q. Exhibit 7, page 12. Yes.

19 A. Okay.

20 Q. I just want to confirm or
21 clarify your testimony about the
22 subscription digital library. I believe
23 that is the sixth topic heading on the
24 page, digital library?

25 A. Yes.

1 Q. What is the distinction between
2 FY 99 and FY 98?

3 A. Those are our two fiscal years.

4 Q. Okay. So FY 99 stands for
5 fiscal year 1999?

6 A. Yes.

7 Q. And FY 98, fiscal year 1998?

8 A. Yes.

9 Q. So the document I am looking at
10 has two numbers for July of 1998, one for
11 each; two for August of '99 and '98.
12 Right? Do you see what I am saying?
13 There are two numbers?

14 A. Yes. Yes.

15 Q. Then when you get to February
16 there is only one number and it is for FY
17 98.

18 A. That's correct.

19 Q. So as I am reading this, you do
20 not have a number for February 1999?

21 MR. BROWAND: Objection to form.

22 A. For -- that's correct.

23 Q. Looking at this document, there
24 is no subscription number for March of
25 1999?

1 MR. BROWAND: Objection to form.

2 A. That's correct.

3 Q. The same with April, May,
4 June of 1999. There are no numbers for
5 February through June of 1999?

6 MR. BROWAND: Objection to form.

7 A. That's correct. You will see
8 that the statistics are as of January 31,
9 1999.

10 Q. Thank you.

11 You said that this document was
12 maintained in a cabinet at ACM
13 headquarters?

14 A. Yes.

15 Q. And that -- did you testify that
16 a staff member helped you locate those
17 cabinets?

18 A. Yes.

19 Q. Is this a cabinet that many,
20 many staff members have had access to over
21 the last 16 years?

22 MR. BROWAND: Object to form.

23 A. I don't know the answer. I
24 don't know the answer to the -- I don't
25 know the answer to that question.

Page 89

1 Q. Okay. So you are testifying
2 that you don't know how many people have
3 had access to the cabinet where this
4 document was stored over the last
5 16 years?

6 MR. BROWAND: Objection to form,
7 Counsel.

8 A. Yes.

9 Q. Let's move on to Exhibit 8. I
10 believe that is page 2 of the ACM
11 BLACKBERRY production.

12 A. Yes, I have it.

13 Q. This document, you stated, was
14 published in December of 1993?

15 A. Yes.

16 Q. And that the digital library
17 itself wasn't launched until 1997?

18 A. Correct.

19 Q. And that you did not verify that
20 this document was made available upon
21 launch in 1997?

22 MR. BROWAND: Objection to form.

23 A. Yes.

24 Q. Looking then at Exhibit 10,
25 which is, I believe, the printing data for

1 that same article, ACM page 5?

2 A. Yes.

3 Q. The 7,550 number there at the
4 bottom, was that the number of copies
5 made?

6 A. Yes.

7 Q. Was that the number of people
8 who saw the article?

9 MR. BROWAND: Objection to form.

10 A. Highly unlikely. And I would
11 say -- I would say not.

12 Q. Do you have any information
13 about the number of people who saw that
14 article?

15 MR. BROWAND: Objection to form.

16 A. Yes. Well, some information,
17 yes. The number of attendees that was
18 given is lower than the number of copies
19 that were shipped to the conference. But
20 the attendees would each have gotten a
21 copy of the proceedings.

22 But I cannot tell you how many
23 of the attendees opened the volume of
24 proceedings and read every article, so I
25 can't answer that question.

Page 91

1 Q. Okay. Thank you. Let's look
2 quickly at Exhibit 13, ACM page 7.

3 A. Yes.

4 Q. I just wanted to clarify what
5 Mobile Plus Member meant or MP Mobile.

6 You said if you paid for Mobile
7 Plus you got a copy. Can you clarify what
8 you meant by that?

9 A. Yes. So, at that time ACM
10 made -- had a program or an offering which
11 was called a Member Plus package or a
12 Member Plus offering. So, you could -- as
13 opposed to getting a copy of the
14 proceedings as a member of the sponsoring
15 suborganization, sponsoring special
16 interest group, anyone who could -- who
17 was a member of ACM, could subscribe to a
18 Member Plus program where they would pay
19 extra to get a copy of specific titles
20 like the SIG sponsored -- SIG Mobile
21 sponsored conferences.

22 It was a program at the time. I
23 am not sure if we still have it and it
24 certainly didn't exist -- I am not sure
25 when it was instituted, but it didn't

Page 92

1 exist in '93, for example.

2 Q. Does this MP Mobile number here,
3 did that reflect the number of copies that
4 were made available if people wanted them?

5 MR. BROWAND: Objection to form.

6 A. It reflects the number of copies
7 that were produced for people who
8 subscribe to the Member Plus SIG Mobile
9 offering.

10 Q. Okay.

11 A. And that is -- and I would add
12 that that is probably not an estimate.
13 They really had to estimate conference
14 attendees and they overprinted generally,
15 so they wouldn't run out for on-site
16 registrations, which they couldn't
17 predict.

18 But with something like a
19 Membership Plus subscription program, they
20 knew how many people there were. And this
21 number, this count of copies produced for
22 them is probably much closer to the actual
23 number of subscribers.

24 Q. Do any of the documents produced
25 reflect the number of Mobile Plus

1 subscribers in October of 1999?

2 A. No.

3 MR. BROWAND: Objection to form.

4 MS. McCOY: Give me two seconds.

5 (Pause.)

6 Q. One quick follow-up question
7 about Exhibit 1. Do you have it in front
8 of you?

9 A. Yes.

10 Q. Looking at this document right
11 here, do you have any reason -- do you
12 have any evidence that anyone saw this
13 any -- excuse me. Let me start over.

14 Do you have any evidence that
15 anyone received copies of this article
16 prior to February 8, 1999?

17 MR. BROWAND: Objection to form.

18 A. Received from ACM prior to this
19 date?

20 Q. Yes.

21 A. No.

22 Q. Do you have evidence that people
23 received it from somewhere else prior to
24 1998 -- 1999, rather?

25 MR. BROWAND: Objection to form.

Page 94

1 A. Yes.

2 Q. What is that?

3 A. The publication date from the
4 publisher.

5 Q. Did you do anything to verify
6 that date?

7 MR. BROWAND: Objection to form.

8 A. Yes. I did mention that I went
9 to the publisher's site and looked at
10 their own -- their own dates, which were
11 August 1998.

12 MS. McCOY: Okay. No further
13 questions. Thank you very much for
14 your time.

15 THE WITNESS: You are welcome.

16 MR. FREEDMAN: Go ahead.

17 EXAMINATION BY

18 MR. BROWAND:

19 Q. Mr. Ruse, I would like to ask
20 you just a couple questions about
21 Exhibit 7. Let's look at the "Digital
22 Library" row.

23 A. Yes.

24 Q. For fiscal --

25 MS. McCOY: Sorry. Can you

Page 95

1 clarify what the Bates number on the
2 page is?

3 MR. BROWAND: It is 12.

4 MS. McCOY: Thank you.

5 Q. Do you see the row that is
6 labeled Fiscal Year 98?

7 A. Yes.

8 Q. And the numbers in that row
9 correspond to July 1998, August 1998,
10 September 1998, October, November,
11 December, January 1999, February 1999 -- I
12 am sorry.

13 Am I reading that correctly or
14 incorrectly?

15 A. Okay. So, it is confusing. So,
16 when you see, in the row labeled FY 98 --

17 MS. McCOY: I am sorry. Can I
18 just clarify where you are all
19 looking? Page 12 has many instances
20 of FY 98.

21 MR. BROWAND: We are talking
22 about under "Digital Library."

23 MS. McCOY: Got it. Thank you.

24 A. So, if you remember, our fiscal
25 year runs from July 1st through June 30th.

Page 96

1 This is the fiscal year. These are the
2 actual months, but the year is the fiscal
3 year. So, the digital library, you see
4 the zeros in July, August, September in
5 that row FY 98?

6 Q. Yes.

7 A. So that is when the digital
8 library was open and free to the world
9 with no subscribers, starting in October
10 of 1997, which is our fiscal '98. That is
11 when the subscriptions began. And this is
12 just showing the racheting up of
13 subscriptions to the digital library
14 during this period of fiscal -- going over
15 from fiscal 98 to fiscal 99.

16 Q. So, fiscal year 98 includes the
17 months from July 1997 --

18 A. Correct.

19 Q. -- to June 1998?

20 A. That is correct. Thank you.

21 Q. And fiscal year 1999, at least
22 the part of it that is shown on this
23 document, goes from July 1998 to
24 January 1999?

25 A. That's correct.

1 Q. And through this time period the
2 number of subscriptions to the digital
3 library is increasing in each month.
4 Correct?

5 A. That's correct.

6 Q. And so by March of 1999, is it
7 your understanding that the number of
8 individual subscriptions to the digital
9 library would have been more than the
10 27,049 that is identified for
11 January 1999?

12 A. That is correct. I know that.
13 I know that for a fact.

14 Q. And so in March of 1999 there
15 were more than 27,000 individuals that had
16 access to the Maass article that was made
17 available through the ACM Digital Library.
18 Correct?

19 MS. McCOY: Objection to form.

20 A. Yes. Correct.

21 MR. BROWAND: No further
22 questions.

23 MR. FREEDMAN: I have no
24 questions.

25 MS. McCOY: I am all set. Thank

1 you.

2 THE VIDEOGRAPHER: This
3 concludes today's testimony of Bernard
4 Rous. Going off the record at
5 5:33 p.m. This also concludes media
6 2.

7 COURT REPORTER: Ms. McCoy, your
8 transcript order?

9 MS. McCOY: We would like a
10 rough, please. There was no video,
11 was there?

12 COURT REPORTER: Yes, there was
13 video.

14 MS. McCOY: We would like
15 whatever Defendants order.

16 MR. FREEDMAN: We'd like to read
17 and sign, please.

18 [TIME NOTED: 5:34 p.m.]

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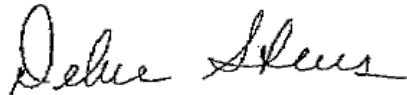
CERTIFICATION

I, DEBRA STEVENS, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 17th day of March, 2016.



DEBRA STEVENS, RPR-CRR

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I declare under penalty of perjury
under the laws that the foregoing is
true and correct.

Executed on _____, 20____,
at _____, _____.

BERNARD ROUS

&	14th 58:23	27,000 98:15	563 34:21 35:2
& 2:4 3:11,17 8:11 8:14	16 89:21 90:5	27,049 98:10	57 4:24
0	17 1:22 2:6 7:15	28 2:4 3:13 4:10 7:18	59 5:5
00000001 36:10	17th 100:17	3	5:04 80:15,18
00000002 53:4	195 23:17	3 4:12 5:8 32:9,11 32:24 53:15 64:23 79:23 80:1,3 81:16	5:33 99:5
00000003 66:18	1968 19:15	3,000 24:18,21	5:34 99:18
00000004 57:15	1973 20:5	30 4:19 51:2	6
00000005 60:5	1978 20:25	30,000 24:23	6 4:18 5:10 45:15,17 48:16 50:9,13 87:12
00000006 68:15	1980 21:2,18	300 58:22 59:20 64:11	66 5:7
00000008 38:19	1993 55:5,21 58:24 63:19,24 90:14	30th 52:4 96:25	68 5:9
00000011 45:19	1997 23:14 40:6 56:5,17 57:2,8	31 89:8	69 5:11
00000012 49:22	1998 34:19 38:7 39:19 40:19,22	32 4:12	6900 61:15 62:15
0000007 69:16	1998-08-01 40:9,18	35 74:13	7
000547 34:20 35:2	1999 4:19 42:22	354 69:6	7 4:9,20 5:12 49:18 49:20 52:15,19,21 87:15,17,18 92:2 95:21
00057 80:7	43:1,4 44:7 45:25	36 4:14 61:24	7,550 62:17 63:24 64:8 91:3
000959 53:24	47:14,15 50:2 52:8	38 4:16	70's 19:24
000982 65:2	82:8 86:25 88:5,20	3:05 2:6	73 4:4
02110-2736 3:7	88:25 89:4,5,9 94:1	3:06 7:16	75 70:13
1	94:16,24 96:11,11	3:16 15:21,25	8
1 1:25 4:9,15 7:2	97:19,23	3:45 37:1	8 4:17,22 42:22 43:1 43:4 44:7 47:14 52:25 53:2 54:2 55:2,17 63:6,15 82:8 84:23 86:25 90:9 94:16
16:9 33:3 40:19,21	1998-08-01 40:9,18	3:46 37:4	875 71:4,16,24 72:25
41:17 42:11,20 44:7	1999 4:19 42:22	4	9
45:2 73:15 74:15	43:1,4 44:7 45:25	4 4:14 29:7 36:6,8 37:10,21 82:1,12,14 82:23 84:17	9 4:3,24 57:11,13 58:17 60:20
81:14 82:3,9,14	47:14,15 50:2 52:8	400 70:10,10,21	93 93:1
86:21,24 94:7	82:8 86:25 88:5,20	45 4:18	95 4:4
10 5:5 60:1,3 90:24	88:25 89:4,5,9 94:1	450 61:6,7	970pa 34:20 35:2 53:24 65:2 80:7
10005-1413 3:14	94:16,24 96:11,11	49 4:20	972 53:24
10019-6064 3:20	97:21,24 98:6,11,14	4:46 73:14	98 52:2 67:25 69:5 71:5 88:2,7,11,17 96:6,16,20 97:5,10
101 1:25	19th 3:5	4:54 73:18	
11 5:7 66:14,16 67:5 87:13	1st 52:4 76:1 96:25	5	
11,000 52:9	2	5 4:16 5:6 38:15,17 81:25 84:22,24 85:7 91:1	
12 5:9 68:11,13 87:16,18 96:3,19	2 4:10,23 28:4,6 29:2 32:21 33:3 73:19 90:10 99:6	50's 23:17	
12-1701 8:3	20 101:5	52 4:22	
12-1704 1:12	200 61:10	547 80:8,9	
12-1788 1:17	2000 27:7,11,20,25		
125 3:6	2016 1:22 2:6 7:15 100:17		
1285 3:19	25 67:18,24 71:20 73:2		
12:1701 1:5			
13 5:11 69:12,14 70:24 92:2			

<p>97:15,16 99 52:2 88:2,4,11 97:15 993 65:2</p>	<p>65:23 66:5,17,23 67:1,6,16 68:1,4,6 68:15 69:1,16 70:1 70:25 71:6 72:18 74:6,9,12 75:17,20 76:16 80:23 81:21 82:7,14,20,24 83:3 83:5 84:22 85:2,4 86:7 87:8,12 89:12 90:10 91:1 92:2,9 92:17 94:18 98:17</p>	<p>americas 3:19 annual 67:25 71:6 answer 9:22,25 31:4 37:5 75:15 76:7,24 77:15 78:3,11 81:2 81:8 89:23,24,25 91:25 anthropology 20:8 anybody 13:1,5 anyway 9:23 apparent 16:8 appear 63:12 81:15 82:13 appearances 3:1 appeared 29:18 appears 35:2 54:4 54:13 66:2 70:6 84:17 application 15:13 16:5,8 36:17 37:14 38:25 67:6 applications 34:17 34:19 approximately 7:16 20:20 67:10 april 89:3 archive 76:14 arrangement 26:24 72:11 arrangements 18:2 44:14 arrive 59:9 article 29:18 34:15 34:24 35:1,15,22 36:1,15 37:6,7,8 38:4 39:14,18,22 40:21 41:11,16,23 42:3,10,15,24 43:7 43:12,18 47:20 48:1 48:6 49:3,4,4 51:23 52:11 53:12,18,20 54:3,10,10,12,24 55:4,7,10,14,20,25 56:16,24 58:10 59:2 59:20 62:13 63:16</p>	<p>63:25 64:22,24 65:5 65:6,8,15,21,24 66:2,7,10,23 67:14 71:13,25 72:19,20 73:1 75:16,21 79:24 80:4,20,21,24 81:13 81:21 82:8 91:1,8 91:14,24 94:15 98:16 article's 41:21 articles 12:1 27:24 30:2 33:20 39:7 62:23 asked 10:21 11:15 31:6,12,20,23 39:2 77:22 86:1 asking 11:22 33:14 assist 85:18 assistant 22:25 23:5 23:7 associate 22:7,12 85:25 associated 26:8 association 8:15 16:18 68:7,8 assume 10:1 assumed 11:6 at&t 1:6,17 7:22 attachment 4:13 29:2,5 32:25 33:2 attachments 4:11 attend 19:22 attendance 15:4 29:23 57:24 58:15 58:16 64:11 68:22 69:5 attended 15:1 attendeess 58:22 59:3,8,21 64:20 69:6 71:18 91:17,20 91:23 93:14 attending 8:7 attention 45:8 attorney 12:23 78:24</p>
a			
<p>able 25:15 41:22 55:23 abstract 37:19 access 11:19 24:7,11 24:17 25:8,15 26:1 26:3,8,25 35:14,21 43:6 47:20 48:5,8 48:17 49:12 51:19 52:9 55:10,13 56:23 66:6,9 89:20 90:3 98:16 accounts 44:2 accurate 45:7 52:19 acm 4:9,14,15,16,17 4:18,20,22,23 5:6,7 5:8,10,11,12 10:15 10:24 12:23 13:12 16:17 17:6,7,24 18:8,12,22,25 20:24 21:5,13 23:9,25 24:7,24 25:3,3,7,12 25:14,15 26:15 27:1 27:3 28:18 29:1,12 29:20 30:6,16 31:1 31:25 34:4 35:11,12 35:14,15 36:1,9,16 36:18 37:23 38:19 38:25 41:6,11,24 42:4,15,25 43:5,14 43:19 45:19 46:2 48:9,17 49:7,15,16 49:22 50:18 51:5,12 51:13,20 52:10,16 52:22 53:4,13 54:2 54:18,22,24 55:9,20 55:25 56:17,22 57:15,21 58:2,23 60:5,15,18 61:20,22 62:4 63:20 65:16,20</p>	<p>acm's 17:11 21:24 23:12 28:1 32:3 35:23 36:2 41:15 43:10 45:11 48:4 55:7,15 56:15 59:11 63:23 66:3,11 67:20 68:19 69:24 71:12 72:8,15 76:25 78:12</p>		
	<p>acquired 43:21 84:10 acquiring 84:9 acronyms 50:19 action 8:2 28:10 32:14 100:13 actions 29:11 activities 17:12,17 activity 12:17 actual 93:22 97:2 add 93:11 added 47:17 addition 50:7 address 26:19 administrative 22:25 affirmed 9:3 afternoon 9:7 age 18:5 ago 11:24 22:14 28:17 67:12 agree 7:11 54:9 79:1 agreed 6:3,8 agreement 81:9 ahead 9:22 95:16</p>		

<p>attorneys 3:4,12,18 8:5 attrition 27:18 audio 7:10 august 38:7 39:19 40:19,21 41:17 44:7 76:1 81:14 82:9,18 84:18 88:11 95:11 96:9 97:4 authentic 35:3,8 54:14 65:10 authenticate 10:23 authenticity 33:19 automatic 26:1 42:8 42:12,19 available 15:12 16:4 16:7 27:25 29:14,21 41:10,23 42:4,24 43:13,16 44:22 55:25 56:11,16 57:6 59:3,20 63:25 67:15 71:17 72:19,20 73:1 81:8 86:3 87:1 90:20 93:4 98:17 avenue 3:19 aware 32:2 34:16</p>	<p>bearing 53:23 65:9 bears 34:20 36:8 38:18 45:18 49:21 53:3 57:14 60:4 65:1 66:16 68:14 69:15 began 97:11 beginning 23:13 73:19 behalf 8:12 10:15 73:25 believe 28:24 32:22 34:9 38:8,12 41:8 43:20 45:1,4 52:18 55:18 58:13,16 68:8 69:8 78:7 79:23 85:14 87:22 90:10 90:25 belonged 62:4 bernard 1:21 2:1 8:4,17 9:11 99:3 101:12 best 35:5 38:10 41:10 54:15 58:19 65:12 81:14 84:20 beyond 19:17 bibliographic 21:6,9 23:3,19 24:11 25:17 26:25 34:7 36:15 37:16,18 39:4,6,21 53:12 66:22 81:20 81:24 binder 4:14,16,22 5:7 36:18 67:7 bit 24:2 61:21 79:21 blackberry 4:17 blackberry 1:17,18 4:15,23 5:6,8,10,12 36:9 38:19 45:19 49:22 53:4 57:15 60:5 66:17 68:15 69:16 82:14 84:23 87:12 90:11 blood 100:13</p>	<p>boston 3:7 bottom 40:14 60:23 79:16 91:4 bought 26:14,15 43:20 brandeis 19:13 break 27:18 browand 3:15 4:3,4 8:10,10 9:6 15:19 16:1 33:16 36:22 47:10 72:6 73:6 74:25 75:10,14 76:6 76:23 77:6,11,14,20 78:9 79:7,18 80:25 82:21 83:7,10 84:19 85:5 87:10 88:21 89:1,6,22 90:6,22 91:9,15 93:5 94:3 94:17,25 95:7,18 96:3,21 98:21 browand's 74:2 budget 5:9 business 35:23 36:2 37:23,24 38:2 41:6 41:9,15 43:10 45:12 46:2,3 52:15 55:7 55:15,19 56:15 58:1 59:12 60:17 63:23 66:3,11 67:1,2 69:1 69:2 70:25 71:1,12 74:5,9</p>	<p>callwave 1:2,9,15 7:22 8:20 16:21,23 73:25 capacities 27:8 caption 7:21 capture 37:14 captured 23:15 case 7:21 cases 7:25 10:11,19 10:22 11:1,4 13:15 13:16 catch 22:11 cell 7:8 cellco 1:13 certain 74:5,21 certainly 44:24 92:24 certification 100:1 certified 2:7 certify 100:5,11 cetera 50:22 chief 28:25 circulation 60:24 70:6 circumstance 44:20 citation 39:4,6 cited 31:5 civil 8:2 28:10 32:14 clarification 72:5 83:3 clarify 13:2 24:2 64:4 78:10 81:2 87:21 92:4,7 96:1 96:18 clarity 17:22 clear 9:16 30:22 33:13 56:13 61:22 64:5 clearer 10:12 client 78:24 closer 93:22 column 46:10,19 47:15 come 31:4 83:5 85:3</p>
b			
<p>b 1:13 4:3,6 5:2 9:2 53:19,19 54:4,8 back 15:24 19:6 23:13,17 29:3 37:3 46:8 53:15 55:2,17 56:8 63:6 73:17 76:15 80:17 83:21 85:11 86:21 background 19:8 backtrack 79:20 backwards 80:3 baltzer 43:19 80:22 81:5,10 82:11 84:10 based 30:20 34:17 38:2 43:10 56:14 bates 34:20 53:23 80:6 87:12 96:1</p>			
		c	
		<p>c 64:23 80:1 c.a 1:12 c.a. 1:5,17 cabinet 46:6 52:22 89:12,19 90:3 cabinets 86:15 89:17 calendar 52:6 call 15:11 31:7 54:9 called 21:24 27:15 61:9,20 67:6 92:11</p>	

[coming - defendants]

<p>coming 26:18 communication 77:18 communications 1:2 1:9,12,15 7:22 8:20 16:23 30:19 77:3,8 77:13 78:5,13,16,20 78:24 79:3 community 27:12 company 43:20 77:25 compared 65:17 completed 20:11,13 component 23:18 composed 23:10 computer 17:10,15 17:19 20:15 21:10 21:11,24 25:21 61:25 computing 8:16 16:19 23:20 53:23 68:2,24 70:2 71:7 concerning 15:3 60:18 concludes 99:3,5 conference 4:24 5:5 5:11 14:24,24 15:4 17:16 29:16,20,23 57:20,21 58:5 59:3 59:6,8,15,21 60:14 61:6,8,13,18 62:13 64:1,11,13,18 67:22 68:1,6,20,23 69:5 69:24 70:1,2,9,12 70:15 71:4,6,11,18 72:10 86:9 91:19 93:13 conferences 17:16 92:21 confirm 16:5 37:6 85:1 87:20 confusing 96:15 connection 13:6 14:20 15:8 16:14 30:9,14,24 79:10</p>	<p>considered 31:13 consisted 78:16 consortia 24:22 contain 14:2 37:21 57:25 contained 30:2 58:4 62:12 containing 42:14 contains 23:11,21 37:15 39:5 content 44:23 51:20 contents 51:15 52:10 context 79:9 continue 7:11 18:8 continued 5:2 control 32:4 conversations 7:7 cooperated 27:12 coordinator 22:24 copies 23:23 30:1 35:15,21,25 55:10 55:14 59:5,19 61:7 61:11,15 62:17,19 62:22 63:24 64:8,12 64:18 66:6,10 70:11 70:13 71:4,16,24 72:25 91:4,18 93:3 93:6,21 94:15 copy 28:18,19,22 35:3,10 36:14 43:7 46:7,9 53:11,19 54:14,18 59:5,9 61:10,13 64:20 65:10,17 66:22 70:13,20 76:2 86:14 91:21 92:7,13,19 copyright 22:24 core 47:1,12 49:9,15 corp 1:18 corporations 24:20 correct 10:5 35:3 38:9,12 39:8 41:17 45:2 47:21 48:20 52:12,14 54:22</p>	<p>55:21 56:18,24 58:17 63:13,14,22 65:10 69:9 71:8,13 71:15,21 72:22 73:3 83:6 85:7 87:5,6,9 88:18,22 89:2,7 90:18 97:18,20,25 98:4,5,12,18,20 101:3 correctly 96:13 correspond 96:9 corresponding 48:15 counsel 7:20 9:21 13:1,5 76:25 77:1,9 77:12,17,18 78:1,4 78:6,12,14 80:10 90:7 count 70:10 93:21 counts 4:21 50:2,4,6 50:8 60:25 61:5 70:6 couple 74:4 95:20 course 20:12 37:24 46:3 67:2 69:2 71:1 83:19 courses 20:18 court 1:1 6:12 8:1 8:22 84:25 99:7,12 cover 62:25 63:1 covered 14:19 create 74:18 75:12 created 75:9 76:14 82:7 creating 21:9 creation 42:9,13 credits 20:15 cross 27:14 crr 100:22 current 17:4 18:11 currently 22:16 61:24 curricula 17:18 custody 32:4</p>	<p>cutting 78:18</p> <hr/> <p style="text-align: center;">d</p> <hr/> <p>d 1:13 9:2 data 15:12,14 16:3,6 29:13 37:18 57:25 58:4 60:14 74:21 82:10,25 83:1 86:10 90:25 database 4:24 5:5 14:25 15:2,14 21:9 23:19 25:18 42:7 57:20 58:6 74:22 75:22 82:4 date 7:14 11:22 29:15 38:3 39:17 40:2,5,9,18 41:22 42:2,8,9,10,12,13,19 42:20 44:3 55:3,24 56:24 67:14 68:21 75:21 76:1 81:13,15 82:7,9,13,17 84:14 84:16 94:19 95:3,6 dates 10:23 14:13 29:17 57:24 86:5 95:10 day 43:17 67:21,25 100:17 debby 8:23 debra 2:6 100:3,22 december 55:5,21 58:24 63:23 90:14 96:11 decided 76:17 declaration 79:5,15 declare 101:1 defendant 2:2 3:12 7:20 8:12 17:2 defendant's 32:9 36:6 38:15 45:15 49:18 52:25 60:1 69:12 defendants 1:8,19 99:15</p>
---	---	---	--

<p>degree 19:9,12,14 19:17,25 20:6,16 delaware 1:1 8:2 delay 44:2,6,8,17,19 depend 44:15 dependent 26:20 43:24 depends 26:3,6,12 deployment 18:19 deposition 1:21 2:1 7:10,17 10:5 11:10 11:13 12:9,21 13:7 14:20,21 15:9 16:15 28:7 32:12,14 33:3 33:7,10 34:14 36:21 38:18 39:8 42:12 45:18 49:21 53:3,16 54:4,9 57:14 60:4 68:14 69:15 75:6 83:14,19,20 84:2 85:17,22 deputy 22:12 describing 68:20 description 4:7 5:4 39:22 desk 28:22 determine 41:22 55:24 86:1 determining 29:19 develop 18:18,20 developing 27:13 development 17:18 dickinson 20:19 difference 52:1 different 50:15 60:17 61:4 62:25 64:9 digital 14:12 15:15 15:16 18:5,7,23 23:9,12,25 24:8,25 25:3,7 26:15,16 27:2,3,16 29:14 31:22 34:6 35:11,16 36:1,16,18 37:17 38:25 41:24 42:4,7</p>	<p>42:15,25 43:6,14 44:1 46:20 47:1,2,2 47:3,12,16 48:8,9 48:18,21,24,25 49:1 49:8,11 51:9,13,16 51:19,20 52:10 53:13 54:2,19 56:1 56:4,8,10,17,22 63:12 65:16 66:24 67:7 75:21 76:2 81:21 84:6 86:2 87:22,24 90:16 95:21 96:22 97:3,7 97:13 98:2,8,17 digitization 23:15 digitize 44:22 digitized 56:7,11 direct 18:17,18 directions 18:21 64:9 directly 26:18 76:9 director 18:13,16 22:7,12,13,13 85:25 directory 34:17 discovery 23:20 24:15 27:21 discuss 19:7 discussed 73:2 78:22 discussion 15:22 displayed 15:15 dispute 10:18 dissertation 20:13 21:1 distinction 85:19 88:1 distinguish 77:23 distinguishes 82:6 distinguishing 77:24 distribute 72:13 distributed 11:17 12:2 distribution 18:4 34:4 47:25 61:14,16</p>	<p>72:8,15 district 1:1,1 8:1,2 doctorate 20:12 document 4:14,16 4:22 5:7,9,12 15:11 16:8 28:6,13 29:12 31:4,23 32:11,17 34:20 36:8,10,20 37:10 38:17,20 39:5 39:11 45:17,20 46:1 46:5,14 49:20,23 53:2,7 57:13,25 58:22 60:3,8 66:16 66:18 67:4 68:13,16 68:25 69:4,14,19 70:24 71:3 74:18,23 75:9,13 79:14 87:7 88:9,23 89:11 90:4 90:13,20 94:10 97:23 documents 4:11 11:14,21 12:6,12 13:13,17,18 14:5,11 14:19,23 15:3,7 16:14 28:8 30:4,8 30:13,24 31:6,19,21 32:2 39:1,3 74:5 85:18,22 93:24 doi 27:15 84:5 doubt 49:9 downloaded 54:18 duly 9:3 100:7</p>	<p>effect 6:10 efforts 44:21 either 63:25 71:17 78:5 elaborate 61:21 elsevier 25:20,24 26:4 elsevier's 26:16 employed 21:1 employees 78:1,5 employer 17:5 encompassed 31:14 engineers 68:9 ensuring 45:8 entire 24:10 entirely 27:5 31:18 entitled 28:8 32:13 34:16 53:21 60:24 62:10 64:25 entry 39:14 environment 53:23 equivalent 23:3 esq 3:8,15,21 essentially 17:14 63:2 established 27:6 estimate 93:12,13 et 50:22 event 15:2 events 14:24 evidence 11:16,25 94:12,14,22 exact 23:2 exactly 31:3 85:15 86:15 examination 6:8 9:5 73:20 95:17 examine 79:2 examined 9:4 29:13 35:10 example 25:20 49:2 93:1 excuse 80:9 83:17 94:13</p>
		<p>e</p>	
		<p>e 4:1,6 5:2 9:2 earlier 23:8 30:5 31:11,24 74:1 76:16 early 19:24 editing 23:4 editor 21:6,23 22:5 23:7 education 17:19 educational 17:9,17 19:8,16 20:10</p>	

<p>executed 101:5 executive 21:23 22:5 exhibit 4:9,10,12,14 4:16,18,20,22,24 5:5,7,9,11 7:2 16:9 28:4,6 29:2 32:9,11 32:21,24 34:13,15 34:23 36:6,8 37:10 37:20,21 38:15,17 42:11,20 45:2,15,17 48:16 49:18,20 50:7 50:9,13 52:15,19,21 52:25 53:2,15,19,19 54:2,4,8 55:2,17 57:11,13 58:17 60:1 60:3,20 63:6,15 64:10,23,23 66:14 66:16 67:5 68:11,13 69:12,14 70:24 74:15 79:23,24 80:1 80:1,2,3 81:15,16 81:24,25 82:1,3,12 82:14,23 84:17,22 84:24 85:7 86:21,24 87:12,17,18 90:9,24 92:2 94:7 95:21 exhibits 4:7 5:4 exist 13:17,19 92:24 93:1 expect 59:14 expectation 56:14 expense 68:21 experience 19:5,7 explain 17:20 extra 92:19</p>	<p>far 46:8 78:14 february 42:22 43:1 43:4 44:7 47:14 82:8 86:25 88:15,20 89:5 94:16 96:11 field 21:15 22:2 23:22 fifth 50:23 figure 42:2 file 14:1 39:1 filing 46:6 52:22 86:15 financial 57:23 find 13:13 37:20 44:19 86:12 fine 36:24 firmly 27:6 first 9:3 10:14 19:7 24:7 28:7,16 32:12 38:4 41:21 43:12 46:10,22 47:11 50:14,15,17,24 61:5 67:15,21,25 70:8 79:22 82:12 fiscal 52:3,7 88:3,5 88:7 95:24 96:6,24 97:1,2,10,14,15,15 97:16,21 five 10:9 11:1 56:9 73:12 floor 3:5 focus 58:14 follow 26:2 84:11,12 86:20 94:6 following 40:11 74:2 follows 9:4 34:14 force 6:10 foregoing 101:2 form 6:4 12:22 13:8 14:10 16:12 19:2 23:12 24:1,9 26:10 26:23 27:4 30:17 31:2,15 32:7,23 33:12,23 34:2,12 35:9,18 36:4 37:9</p>	<p>37:12 38:1,6 39:10 41:1,14,19,25 42:5 42:17,21 43:3,8,15 44:11,25 45:5 47:6 47:22 48:10,19 50:11 51:25 52:13 54:6 55:1,12 56:2 56:20,25 58:12,18 59:1,4,24 60:22 62:21 67:17 68:3 71:10,14,22 72:2,23 73:4 74:25 75:10,14 76:6,23 77:6,11,14 77:20 78:9 79:7,18 80:25 82:21 83:7,10 84:19 85:5 87:10 88:21 89:1,6,22 90:6,22 91:9,15 93:5 94:3,17,25 95:7 98:19 forth 86:22 100:7 found 45:6 65:16 75:25 84:12 four 10:9 11:1 22:14 50:17,24 56:9 fourth 40:14 67:25 71:5 free 24:14 57:3 97:8 freedman 3:21 8:13 8:13 12:25 15:17 30:18 31:16 33:15 36:24 47:5,7 75:3,4 75:15 76:7,24 77:1 77:15 78:18,25 79:6 79:8 83:11 85:16 95:16 98:23 99:16 front 74:15 79:25 86:22 94:7 full 9:9 21:2 24:17 25:8,14,23 26:1,8 27:1,24 39:3 fully 9:13 further 6:7 20:9 39:22 40:8 51:5 73:7 95:12 98:21</p>	<p>100:11 fy 52:2,2,3 88:2,2,4 88:7,16 96:16,20 97:5</p>
g			
<p>gain 26:1 garrison 3:17 8:15 general 26:24 generally 17:21 93:14 generated 37:11 39:11 67:4,5,8 82:19,23 85:2 getting 92:13 give 10:21 44:17 51:1 94:4 given 44:21 61:5 62:14 82:10 91:18 100:9 gives 26:9 82:16 go 7:11 9:22 15:17 19:6 36:22 53:15 55:17 78:19 80:11 86:21 95:16 goes 45:8 97:23 going 9:16 10:1 15:20 23:12,16 73:10,13 79:2 85:11 97:14 99:4 good 9:7 google 1:7,13 3:12 7:23 8:12 16:25 17:2 77:4,9,13,19 77:25 78:2,6,6,23 google's 78:13 gotten 29:22 30:1 91:20 group 61:17,19 62:2 63:5 92:16 groups 61:23 guess 26:11 33:13</p>			

h	identified 16:2 30:13,24 33:20 60:19 64:2 80:20 98:10 identifier 27:16,17 84:7 identifies 33:2 69:4 identify 8:7 48:16 50:13 ieee 68:5,6,6 70:1 71:6 72:10,19 include 49:14 included 56:5 71:12 71:25 includes 29:5 32:24 53:19 97:16 including 17:18 51:23 52:11 income 68:21 incorporated 7:23 incorrect 45:10 incorrectly 96:14 increasing 98:3 independently 72:12 index 24:13 25:22 25:22 27:22 indexing 21:11 indicate 40:20 75:20 76:15 indicates 40:23 individual 24:24 56:21 98:8 individual's 26:14 individually 24:23 individuals 50:3 52:9 98:15 information 13:20 14:13,15 24:12 26:25 27:1 28:9 29:21 31:22 33:10 33:18 34:8 37:15,22 38:9 39:21 40:17,25 41:3,5,9,10 44:1 45:1,10 52:18 53:22	55:18 57:23 58:14 58:15,16 61:2 69:8 69:24 70:5 74:10 76:12 81:19 82:19 83:4,9 84:3 85:3,8 85:25 91:12,16 infringement 11:4 initial 21:4 inspection 28:10 instances 96:19 instituted 92:25 institution 26:3,14 institutional 4:18 45:24 46:15 47:4,19 48:5,16 50:8 interest 61:17,19,23 62:2 92:16 interested 100:14 interfere 7:9 international 68:1 68:23 70:1 71:6 internet 75:18,19 76:14 inventory 61:12 investigate 76:18 involved 11:4 ip 26:19 issue 62:8,12 63:1,4 82:17 item 85:6	journals 21:24 22:22 23:5 25:21 49:15 50:18 56:6 july 52:4 56:5,17 57:2 88:10 96:9,25 97:4,17,23 june 4:19 45:25 52:4 89:4,5 96:25 97:19
		k	
		kept 14:1 45:7 46:5 kluwer 43:21 84:10 knew 86:16 93:20 know 9:19 10:17,20 11:3,6,7,23 14:8 28:23 30:8,12,23 35:7,19 44:16,22 49:9 54:17 64:15 65:14 67:19 74:11 74:13 77:16,17 78:3 78:14,15 79:12 89:23,24,25 90:2 98:12,13 knowledge 11:11 30:20 34:3,6,7 35:6 38:10 54:16 58:19 65:13 81:14 knowledgeable 18:24 19:3 known 36:17 70:18	
		l	
		label 13:20 60:24 86:5 labeled 96:6,16 languages 50:21 large 17:13 23:14 larger 25:17 launch 27:3 56:10 90:21 launched 23:14 56:4 57:2 90:17 laws 101:2 leah 3:8 8:18 73:24 left 20:22 46:18,18	
i	identification 7:1 28:3 32:8 36:5 38:14 45:14 49:17 52:24 57:10 59:25 66:13 68:10 69:11		
		j	
		january 89:8 96:11 97:24 98:11 jeff 64:24 job 20:24 john 12:25 75:3 77:1 joint 72:9,11 jointly 68:5 jonathan 3:21,24 7:13 8:13 journal 21:25 49:4 82:16,16	

[leonhardt - memberships]

<p>leonhardt 64:24 65:6,8,21,24 66:1,6 66:10 67:14 71:13 71:25 72:18,20,25 liberty 2:5 3:13 7:18 libraries 24:18,21 library 14:12 15:15 15:16 18:7,23 23:9 23:25 24:8,25 25:3 25:7 26:16,17 27:2 27:3 29:14 31:22 34:7 35:11,16 36:1 36:16,18 37:17 38:25 41:24 42:4,7 42:16,25 43:6,14 44:2 48:9,18,21 49:1 51:9,13,16,19 51:21 52:11 53:14 54:3,19 56:1,4,8,10 56:17,22 63:13 65:16 66:24 67:7 75:21 76:3 81:22 87:22,24 90:16 95:22 96:22 97:3,8 97:13 98:3,9,17 license 26:21 licenses 26:13 line 40:14 link 25:23 84:7,12 linked 25:18 27:10 27:23 linking 26:5 27:5,7 27:13,14 links 26:2 listed 40:2 48:7 listing 46:18 literature 21:10 22:1 23:21 27:10 litigation 74:24 75:6 little 10:12 17:22 24:2 61:21 64:4 79:20 llc 1:3,6,10,15,17 7:22,23 8:20 16:23</p>	<p>llp 2:4 3:3,11 load 42:6 loaded 44:5 locate 89:16 located 7:18 76:13 location 34:16 53:22 59:7 64:25 long 21:14,19 22:3 look 11:20,25 12:4 13:16,24 14:8 15:11 16:13 34:13 39:13 39:20 47:15,16 56:3 76:17 79:22 82:3 87:11 92:1 95:21 looked 11:14,15 14:11 15:2 16:3,6 29:16,20,24,25 31:8 35:20 42:10 65:15 75:22,24 76:21 81:23 95:9 looking 52:6 54:8 63:15 64:10 80:19 82:12 83:16 84:22 88:9,23 90:24 94:10 96:19 looks 15:13 50:16 lot 14:13 44:15 45:7 lower 91:18 ltd.and 1:18</p>	<p>magee 64:24 maintain 35:14 55:9 66:5 maintained 37:22 41:5 46:1,7,8 52:21 58:1 60:18 66:25 68:25 70:25 86:2 89:12 maintaining 35:21 making 81:8 85:19 management 4:24 5:5,11 14:25 57:20 58:6 60:14 68:20 69:25 86:9 manager 22:22,23 23:5 86:11 march 1:22 2:6 7:15 47:15 52:8 88:24 98:6,14 100:17 marked 7:1 16:9 28:3,6 32:8,11 36:5 36:8 38:14,17 45:14 45:17 49:17,20 52:24 53:2 57:10,13 59:25 60:3 66:13,16 68:10,13 69:11,14 79:23 marketing 18:4 marks 73:14,18 marriage 100:13 marvin 53:21 master 47:2 49:11 master's 20:2,6 matched 54:20 material 10:24 matter 21:14 100:15 matters 7:24 11:5 mccloy 2:4 3:11 8:11 mccoey 3:8 4:4 8:18 8:18 12:22 13:8 14:10 16:11 19:2 24:1,9 26:10,23 27:4 30:17 31:2,15 32:7,23 33:12,23</p>	<p>34:2,12 35:9,18 36:4 37:9,12 38:1,6 39:10 41:1,14,19,25 42:5,17,21 43:3,8 43:15 44:11,25 45:5 47:6,22 48:10,19 50:11 51:25 52:13 54:6 55:1,12 56:2 56:20,25 58:12,18 59:1,4,23 60:22 62:21 67:17 68:3 71:10,14,22 72:2,23 73:4,9,21,24 78:21 79:10 80:13 83:13 85:20 94:4 95:12,25 96:4,17,23 98:19,25 99:7,9,14 mean 16:18,22 17:1 37:7 40:18 46:14 51:11 57:7 61:3 74:7 81:8 82:22 83:12,13,19,21 84:1 85:17 87:15 meaning 50:14 70:5 means 61:7 70:9 meant 92:5,8 mechanism 26:5 27:13,14 mechanisms 27:6 media 73:15,19 99:5 member 4:20 50:1 51:12,16,18 70:18 70:19 86:13 89:16 92:5,11,12,14,17,18 93:8 members 24:24 45:24 46:16 47:19 48:5,7,16 61:16 62:3,4,10 89:20 membership 4:19 14:2 25:4 50:8 86:4 86:12 93:19 memberships 46:23 48:14</p>
	m		
	<p>m 4:1 ma 3:7 maass 34:16,24 35:1 35:15,22,25 37:7,8 38:4 39:14,18 40:21 41:11,16,20,23 42:3 42:15,24 43:7 47:20 47:25 48:6 51:23 52:11 53:18 79:24 80:4,19 98:16 machine 76:15 machinery 8:16 16:19</p>		

<p>mention 95:8 mentioned 23:8 85:13 microphones 7:5,9 mike 53:20 milbank 2:4 3:11 7:18 8:11 77:9 million 23:21 mind 12:14 50:12 minute 36:23 minutes 73:12 misspoke 47:5 mobicom 67:25 68:22 69:5 71:5 mobicom98 5:9 mobile 34:17,18 68:1,23 70:2,16,18 70:19 71:7,19 92:5 92:5,6,20 93:2,8,25 mobility 1:6,17 7:23 month 11:24 28:17 67:12 98:3 months 28:17 51:14 97:2,17 move 90:9 mp 70:16 71:19 92:5 93:2 multi 64:25</p>	<p>19:22 20:22 100:4 newsletter 62:2,8,11 62:12 63:1,4,10,19 63:21 64:2 normal 37:23 67:1 69:1 71:1 normally 64:14 notary 2:9 6:9 100:3 note 7:4 noted 31:20 73:25 99:18 notes 12:11,13 noticed 31:8 november 96:10 number 8:3 12:4 15:1 20:14 22:4 29:21 36:9 38:18 45:18 47:18 49:21 53:3 57:14 60:4 61:6,9,10,11,14,15 61:23 62:9,14 64:7 64:12,17,19 66:17 68:14 69:15 70:9,11 70:13,13,21,23 80:6 82:17 87:16 88:16 88:20,24 91:3,4,7 91:13,17,18 93:2,3 93:6,21,23,25 96:1 98:2,7 numbers 11:18 14:3 14:4 29:25 34:20 53:24 62:17 65:1,9 86:4,5,6 88:10,13 89:4 96:8 ny 3:20</p>	<p>31:2,15 32:7,23 33:12,23 34:2,12 35:9,18 36:4 37:9 37:12 38:1,6 39:10 41:1,14,19,25 42:5 42:17,21 43:3,8,15 44:25 45:5 47:22 48:10,19 50:11 51:25 52:13 54:6 55:1,12 56:2,20,25 58:12,18 59:4,23 60:22 62:21 67:17 68:3 71:10,14,22 72:2,23 73:4 74:25 75:10,14 76:6,23 77:6,11,14,20 78:9 79:7,18 80:25 82:21 83:7,10 84:19 85:5 87:10 88:21 89:1,6 90:6,22 91:9,15 93:5 94:3,17,25 95:7 98:19 objections 6:3 objects 28:9 obtain 19:11,14,25 23:23 48:24 obtained 36:17 obtaining 85:18 occasion 59:16 occasions 10:7 occurred 10:8 october 57:5,5,7,8 67:18,24 71:20 73:2 94:1 96:10 97:9 offer 72:4 offering 92:10,12 93:9 officer 28:25 offices 2:3 official 74:8 oh 28:1 40:15 82:2 83:23 okay 13:18 16:24 23:6 24:10 26:20 31:10 40:15 48:2</p>	<p>53:17 54:11 65:7 70:8 74:14 82:5 83:23 85:24 87:14 87:19 88:4 90:1 92:1 93:10 95:12 96:15 once 63:3,4,8,9 ones 46:25 open 57:4 97:8 opened 91:23 operate 27:19 operating 28:25 57:22 58:23 60:16 63:18,21 operation 17:14,21 operations 18:19 22:23 opposed 92:13 optical 47:1,9 optional 47:8,11 order 85:21 99:8,15 ordinary 46:2 organizes 17:17 origin 40:24 41:2 original 12:15 26:6 35:4 41:2 43:25 44:4 54:14 65:11 81:5 outcome 100:14 outside 13:1,5 78:1 overprint 64:14 overprinted 93:14</p>
n	o	p	
<p>n 4:1,1 9:2 50:16 name 7:13 8:3 9:9 named 46:19 nathaniel 3:15 8:10 nature 10:10,18 necessarily 27:22 64:15 79:1 need 17:22 80:11 networking 50:20 68:2 70:3 71:7 networks 34:19 never 20:13,15 new 2:5,5,10 3:14 3:14,20 7:19,19 18:18,19 19:20,21</p>	<p>o 4:1 9:2 50:16 object 27:16 44:11 47:6 59:1 84:6 89:22 objection 9:21 12:22 13:8 14:10 16:11 19:2 24:1,9 26:10 26:23 27:4 30:17</p>	<p>p.m. 2:6 7:16 15:21 15:25 37:1,4 73:14 73:18 80:15,18 99:5 99:18 package 47:1,12 49:2,9,12,13,14 92:11 packages 46:16,19 46:20,22,24 51:17 page 4:2,8 5:4 28:7 29:7 32:12 35:2</p>	

<p>40:12 51:1 60:23 85:2 87:18,24 90:10 91:1 92:2 96:2,19 pages 1:25 29:3 33:3 51:3 54:13 66:2 paid 70:19 92:6 papers 67:22 paragraph 39:13,20 40:2,25 part 24:16 35:22 36:2 55:7,15 59:11 66:3,11 82:4 97:22 particular 15:13 16:4,7 20:4 43:18 50:18 59:15 86:13 parties 7:11 8:8 44:14 100:12 partnership 1:13 parts 23:11 party 44:23 49:8 85:9 passed 26:17 patent 11:4 paul 3:17 8:14 pause 37:2 72:3 80:11,16 94:5 pay 92:18 penalty 101:1 people 11:18 12:5 13:11 22:15 25:6 29:22 64:15 90:2 91:7,13 93:4,7,20 94:22 pepper 3:3 8:19 73:24 perform 76:4 performed 76:13 period 57:4 97:14 98:1 periods 86:6 perjury 101:1 permissions 22:24 26:7 permit 28:9</p>	<p>persistent 27:17 personal 30:20 personally 83:12,14 phones 7:8 phrase 74:4 pick 7:5 59:9 piece 69:24 place 7:8 12:18 59:6 70:17 placed 28:22 42:8 42:13 61:12 placing 44:1 plaintiff 1:4,11,16 3:4 8:21 16:23 platform 18:22 26:5 27:14 please 7:4,7 8:7,24 99:10,17 plus 70:18,19 92:5,7 92:11,12,18 93:8,19 93:25 point 35:12 72:5,13 pointed 76:11,22,25 77:1 popham 3:24 7:13 portal 4:9 position 18:11 21:4 21:17 22:9 possession 32:4 possibilities 44:21 post 61:13 70:15 practice 56:15 59:12 62:1,6 67:20 practices 43:11 pre 7:1 precede 51:2 predict 93:17 premises 28:10 preparation 84:1 prepare 11:12 12:9 85:14,16,17,21 prepared 85:12 preparing 13:6 14:20 15:8 16:14 83:20</p>	<p>present 3:23 8:6 presented 14:23 58:10 67:23 previous 37:20 51:3 56:6 60:12 principals 57:22 58:24 60:16 63:19 print 46:19,23,24 printed 13:22,25 59:6 61:7,11,16 65:17 70:11,14 printer 13:21 printing 90:25 printout 4:9 prior 27:19,25 83:14 83:18 94:16,18,23 private 7:6 probably 48:12 93:12,22 proceed 8:25 proceedings 30:2 47:3 49:1,4,16,16 56:6 62:7,9,14,23 62:24 63:3,9,17 64:1 67:21 70:21 71:5,11 91:21,24 92:14 process 34:4,4 processing 23:4 produce 4:10 28:8 31:9 43:24 47:24 72:12 produced 12:13 14:6,16 15:5 30:6 31:21 32:5 49:5 50:25 64:8,18 70:23 74:23 75:5 87:7 93:7,21,24 produces 25:20 producing 36:20 production 29:6 30:16 31:1 36:9 38:18 45:18 49:21 53:3 57:14 60:4 65:1,9 66:17 68:14</p>	<p>69:15 90:11 professional 2:8 professionals 17:9 profit 17:8 program 18:18 70:17,20 92:10,18 92:22 93:19 programming 50:21 project 23:15 provide 10:25 24:13 26:5 33:25 34:10 55:9 66:6 provided 49:7,12 71:19 79:4 providing 35:25 53:21 55:13 66:9 public 2:9 6:10 67:15 72:19,21 100:3 publication 14:14 17:13,20 29:13,15 33:19 35:13 37:18 39:18 40:2,4,9,17 41:11,21 42:6,14 43:12,17,23 44:3 49:8 54:21 55:3 75:22 76:1 81:13 82:9,13 84:14,16 87:5 95:3 publications 17:25 18:2,6,14,16 21:11 22:8,14 23:12 25:9 25:11,12,13 28:2 34:6 44:8 46:17 48:24 51:6 63:8 86:7 publicly 11:17 publish 17:24 18:1 45:10 62:6 65:23 67:20 published 10:24,24 21:12 23:16 25:13 31:25 34:18 38:5 40:21 41:16 43:18 54:24 55:20 56:9</p>
---	---	---	---

<p>63:2,17 75:17 80:21 82:15 90:14 publisher 25:19 41:4 43:25 44:4 45:9 81:10 82:11 83:1 84:8 95:4 publisher's 26:7 84:13 95:9 publishers 18:3,7 21:13 23:22,24 24:13 80:22 81:4,5 publishes 22:1 publishing 18:17,20 18:22,25 27:12 34:3 43:19 55:6 65:21 66:1 80:24 81:7,7 purposes 36:19 47:24 pursuant 2:3 put 26:11 37:13 39:1 70:14 71:18 83:3</p>	<p>read 29:9 33:6 65:18 91:24 99:16 reading 88:19 96:13 reads 47:11 really 33:13 77:16 79:12 93:13 realm 44:21 realtime 2:7 reason 9:12 38:11 59:18 94:11 recall 16:16 recalling 85:20 receive 28:19 62:11 received 11:17 12:5 44:4 64:20 94:15,18 94:23 recess 73:16 recollection 84:20 record 7:4,12 9:10 15:18,21,23,25 36:15,23 37:1,4,16 37:23 38:2 41:6,9 42:9,14 45:23 46:2 50:1 52:15 53:12 54:3 55:19 57:21 58:1 60:18 63:13 66:23,25 67:1 68:19 69:1 70:25 71:13 73:14,18 80:12,15 80:18 81:20,24 82:1 82:4,7,23,25 83:4 84:5,6,12 99:4 100:9 recording 7:10 records 14:25 18:25 19:4 29:16 39:4,6 41:16 45:6,12 63:23 72:25 74:6,9,9 75:18 86:2 refer 16:17,21,25 34:23 65:5 references 11:9 referred 30:5 86:8 referring 40:8 55:2</p>	<p>refers 70:16 reflect 93:3,25 reflects 37:17 93:6 refresh 12:14 regard 26:4 29:15 registered 2:8 registrants 15:1 59:8 registrations 15:5 64:17 93:16 regular 35:22 36:2 43:10 55:7,14 59:12 66:3,10 reissued 62:24 related 7:24 100:12 relationship 18:5 48:4 release 56:7 relevant 13:13 21:14 51:4 remember 20:4,21 22:10 23:2 96:24 remotely 8:7 repeat 30:21 48:11 75:2 rephrase 33:15 48:12 reporter 2:8 8:23 84:25 99:7,12 represent 8:9 representing 7:14 8:15,19,23 78:2,6 requests 29:6,9,12 30:10,15,25 31:14 research 12:16 17:14 19:20 86:17 researchers 17:10 reserved 6:5 respond 29:12 75:4 responding 30:10 30:14,25 response 34:1 79:17 responsibilities 18:15 21:7 22:21</p>	<p>responsible 65:20 responsive 11:21 32:3 review 14:18 21:25 63:21 reviewed 12:11,12 15:8 30:9 reviews 21:25 22:1 rga 1:5,12,17 8:3 rifkind 3:17 8:14 right 83:25 84:23 88:12 94:10 rights 26:4,7 72:11 role 21:20 22:3 room 8:6 rough 99:10 roughly 11:23 rous 1:21 2:1 4:3,7 5:3 7:2 8:4,17 9:11 9:12 16:2 17:4 28:4 28:5 32:10 36:7 38:16 45:16 49:19 53:1 57:11,12 60:2 66:14,15 68:11,12 69:13 73:6,22 78:20 78:22 79:4 83:12,13 85:1 99:4 101:12 row 46:11,13 50:14 50:15,23 51:8 52:2 95:22 96:5,8,16 97:5 rows 47:16 48:8,15 rpr 100:22 run 13:20 93:15 runs 17:13,16 52:3 86:5 96:25 ruse 95:19</p>
q			
<p>qualified 34:9 quality 45:9 question 9:23 10:13 13:2 17:23 24:6 30:3,21 31:17 48:11 62:19 75:2 77:22 79:13 86:20 89:25 91:25 94:6 questioning 74:3 questions 6:4 9:17 9:18 10:1 73:8,10 74:1 77:23 95:13,20 98:22,24 quick 94:6 quickly 22:11 92:2 quite 24:5 75:1 76:20</p>			
r			
<p>r 9:2,2,2 racheting 97:12</p>			
			s
			<p>s 4:1,6 5:2 9:2 sales 61:13 70:15 saw 32:21 64:11 75:18 91:8,13 94:12 saying 88:12</p>

<p>says 47:7 63:17 scanned 54:19 65:19 school 19:20,23 20:22 science 17:10,15,19 20:15 21:10,12 25:21 61:25 80:22 scientific 17:8 screen 4:9 5:5 57:19 60:13 69:23 74:20 screenshot 4:25 search 27:22,22 76:5,13 searches 75:19 second 15:18 23:18 46:25 61:9 seconds 94:4 sections 48:25 see 28:11,16 29:2,5 29:16,25 32:15,20 32:25 33:4 34:15,21 39:15,24 40:1,7,9 40:15 46:11 53:4,25 57:15 60:5,25 64:7 65:3 69:6,16 76:18 82:2,23 84:4,5 88:12 89:7 96:5,16 97:3 seek 33:18 seen 28:13 32:17 36:10 38:20 45:19 49:22 53:7 60:8 66:18 68:15 69:19 79:14 segmented 48:21 selected 33:25 sell 25:2 sensitive 7:5 sensor 64:25 sent 13:21 64:8,12 64:18 77:4 separate 25:3 41:20 51:17 september 40:6 96:10 97:4</p>	<p>served 25:23 service 23:20 24:14 24:15 27:21 services 34:18 set 62:23 98:25 100:7,17 ship 43:25 shipped 59:7 61:8 70:12 91:19 shot 4:9 5:6 57:19 60:13 69:23 74:20 show 42:12 64:16 showing 47:25 97:12 shown 82:25 97:22 shows 57:21 86:25 sig 62:5,5 70:18,19 92:20,20 93:8 sign 79:16 99:17 signature 100:21 significant 20:14 sigops 61:20 62:10 63:20 simple 27:8 single 52:7 61:9,13 70:12 site 25:24 64:17 84:8 84:13 86:3 93:15 95:9 six 22:19 67:12 sixth 87:23 slash 68:4 snapshot 60:13 74:19 social 19:20 society 17:9 somebody 28:21 49:5 soon 43:11 sorry 24:4 40:11 44:12 59:23 60:13 74:20 77:21 78:10 80:2 83:24 86:21 87:15,16 95:25 96:12,17</p>	<p>sort 23:3 44:20 sought 33:10 source 25:18 27:23 72:17 space 79:16 speak 12:20 13:4,10 speaks 63:16 special 61:17,19,23 62:1,7,11 63:1,4 92:15 specific 11:9 13:20 62:3 92:19 specifically 56:3 74:14 split 52:5 spoke 85:23,24 86:11 sponsored 61:18 62:7 68:5 92:20,21 sponsoring 61:17,19 92:14,15 spreitzer 53:13,20 53:20 54:10,12 55:4 55:6,10,14,19,24 56:16,23 58:10 59:2 59:19 63:16,24 64:22 springer 43:22 84:9 staff 13:11 85:13,23 89:16,20 stamp 42:8,12,20 stands 88:4 start 21:16 75:5 94:13 starting 27:7,11 97:9 state 2:9 9:9 100:4 stated 39:17 81:12 90:13 statement 57:1 states 1:1 8:1 40:8 82:15 stating 55:19 statistics 14:1 45:24 47:24 51:3 86:4,14</p>	<p>89:8 stevens 2:7 8:23 100:3,22 stipulated 6:2,7 storage 86:3 stored 36:19 90:4 strategic 18:21 street 2:5 3:5,6,13 7:18 strike 30:10 subdisciplines 61:25 subfields 17:15 subject 11:10 21:14 39:7 suborganization 92:15 subpoena 2:3 4:10 4:12 11:15,21 28:8 31:7 32:3,13 34:14 39:2 53:16 54:5,9 77:4 79:11,17 subscribe 24:19,20 24:22,25 46:17 92:17 93:8 subscribed 6:9,11 49:6 subscriber 26:21 subscribers 25:25 42:25 56:22 71:20 87:2 93:23 94:1 97:9 subscription 4:20 14:3 24:17 25:7,16 26:13 29:24 43:5 50:2,4,6 51:19 57:6 86:5,14 87:22 88:24 93:19 subscriptions 25:2 47:4,17 48:25 51:13 51:16 57:3 86:12 97:11,13 98:2,8 subsequent 75:25 subsequently 43:21 subset 62:4</p>
---	--	---	---

<p>summarize 70:4 summary 4:18 supplied 41:3 83:1 85:8 sure 13:4 15:10,19 17:24 31:3 33:16 40:13 48:3 49:10 64:6 72:6 76:20 77:24 79:13 80:13 81:3 92:23,24 suspect 59:19 swear 8:24 sworn 6:9,11 9:3 100:7 symposium 57:22 58:9,23 60:15,19 63:18 system 4:24 5:5,11 14:25 27:19 57:20 58:6 60:15 68:20 69:25 86:9 systematically 27:9 systems 50:21 57:22 58:23 60:16 63:18 63:21 85:25</p>	<p>testified 9:4 11:8 86:24 testify 4:12 9:13 30:18 32:13 89:15 testifying 10:14,19 72:8 90:1 testimony 10:22 11:1 33:25 34:10 85:21 87:21 99:3 100:6,9 text 24:17 25:8,14 25:23 26:8 27:1,24 texts 26:2 thank 47:10 73:6 80:9 81:11 83:2 89:10 92:1 95:13 96:4,23 97:20 98:25 theimer 53:13,21 theirs 72:16 things 13:22 think 47:8 58:5 78:7 78:12 79:19 third 40:13 44:14,23 49:8 61:14 85:6,9 thought 77:21 three 39:1,7 46:20 46:22,25 48:15 61:4 62:16 time 6:5 7:15 8:5 9:17 12:3,7,10 13:21 14:3 21:2,8 32:21 43:11 44:9 48:21 70:17 73:7 79:6,8 83:21 86:6 92:9,22 95:14 98:1 99:18 times 74:5 title 23:2 50:18,19 63:20 82:16 titled 79:15 titles 18:18 22:20 51:2 92:19 today 7:14 9:14 12:19 14:21 15:9 16:15,17,21,25</p>	<p>34:24 75:6 today's 99:3 told 13:15 78:21 86:8 ton 50:16,20 topic 87:23 topics 33:2,6,11,18 33:21 34:1,10,15 topls 50:21 total 47:18 50:23 51:1,8 62:16 69:4 tower 3:5 tracking 64:25 trade 68:8 training 19:17 20:10 transactions 50:19 50:20 transcript 99:8 100:8 trial 6:5 true 35:3 45:2,11 52:19 54:13 55:21 57:1 58:17 65:9 69:9 75:23 76:18 100:8 101:3 truthfully 9:14 try 9:16 turn 7:7 63:6 74:14 tweed 2:4 3:11 8:11 twice 63:3 two 11:2,2,24 23:11 28:17 52:5 63:8 77:23 86:7 88:3,10 88:11,13 94:4 type 70:8 types 34:5 48:23 60:25 70:6 typical 44:8,13,17 typically 43:13,16</p>	<p>unclear 83:25 undergraduate 19:9 19:17 underlying 10:19 understand 9:18,23 10:4 16:18,22 17:1 24:5 31:16 32:1 33:17 79:13 understanding 33:9 33:24 38:3 42:23 56:14 58:8 67:13 98:7 understood 10:2 64:21 undertaken 29:11 united 1:1 8:1 university 19:13 url's 27:8,18 user 15:16 uses 34:5 usually 27:17</p>
<p>t</p>			<p>v</p>
<p>t 4:1,6 5:2 50:16 take 12:17 20:17 22:9 25:19 73:11 80:11 taken 2:2 7:19 10:5 20:14 takes 59:6 84:8 talk 19:6 talked 13:11 talking 82:24 83:17 85:12 96:21 technologies 18:20 teleconference 3:9 tell 13:14,23 27:9 49:7 74:6 85:14 91:22 telling 72:14</p>			<p>v 1:5,12,17 7:22 variable 44:15 various 26:12 34:5 46:16 48:23 venue 29:17 verification 84:15 verify 75:23 83:8 84:2 90:19 95:5 veritext 7:14 8:24 verizon 1:12,13 version 31:11,24 video 99:10,13 videographer 3:24 7:3 8:22 15:20,24 36:25 37:3 73:13,17 80:10,14,17 99:2 view 74:21 virtue 81:9 84:9 volume 62:9,22 63:3 82:17 91:23 volumes 30:1</p>
		<p>u</p>	
		<p>u 9:2 ubiquitous 53:22 ulf 64:24</p>	

[want - zeros]

w	yesterday 12:19 75:13
want 22:11 23:11 45:9 87:20	york 2:5,5,10 3:14 3:14,20 7:19,19 19:21 100:4
wanted 92:4 93:4	z
warehouse 61:12 70:15 71:19	zeros 97:4
way 26:12 27:2 37:13 59:9 76:14 100:14	
ways 73:1	
web 76:12	
weeks 67:12	
weiss 3:17 8:14	
welcome 95:15	
went 62:3 95:8	
wharton 3:17 8:14	
whereof 100:16	
whispering 7:6	
wireless 1:13	
withheld 30:15 31:1	
witness 2:2 3:18 4:2 8:4,16,25 31:18 44:12 72:4,7 95:15 100:6,10,16	
word 65:18,18	
work 20:12 22:16 31:24 72:9,13	
worked 20:24 74:12	
working 20:25	
works 23:22,24 31:12	
world 24:10,14,19 57:4 97:8	
x	
x 4:1,6 5:2	
y	
year 20:5 52:3,7 88:5,7 96:6,25 97:1 97:2,3,16,21	
years 11:2 21:21 22:4,10,14 52:6 56:9 74:13 88:3 89:21 90:5	