

**CANADIAN
HUMAN RIGHTS
TRIBUNAL**



**TRIBUNAL CANADIEN
DES DROITS
DE LA PERSONNE**

BETWEEN/ENTRE:

RICHARD WARMAN

Complainant

le plaignant

and/et

CANADIAN HUMAN RIGHTS COMMISSION

Commission

la Commission

and/et

MARC LEMIRE

Respondent

l'intimé

and/et

ATTORNEY GENERAL OF CANADA;
CANADIAN ASSOCIATION FOR FREE EXPRESSION;
CANADIAN FREE SPEECH LEAGUE;
CANADIAN JEWISH CONGRESS;
FRIENDS OF SIMON WIESENTHAL CENTER
FOR HOLOCAUST STUDIES;
LEAGUE OF HUMAN RIGHTS OF B'NAI BRITH

Interested Parties

les parties intéressées

BEFORE/DEVANT:

ATHANASIOS D. HADJIS

CHAIRPERSON/
PRÉSIDENT

LINE JOYAL

REGISTRY OFFICER/
L'AGENTE DU GREFFE

FILE NO./N^o CAUSE:

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CANADIAN HUMAN RIGHTS TRIBUNAL/
TRIBUNAL CANADIEN DES DROITS DE LA PERSONNE

HEARING HELD AT THE DAYS INN, 1677 WILSON AVENUE, TORONTO,
ONTARIO, ON WEDNESDAY, FEBRUARY 7, 2007 AT 10:04 A.M. LOCAL TIME

CASE FOR HEARING

IN THE MATTER of the complaint filed by Richard Warman dated November 23rd, 2003 pursuant to section 13(1) of Canadian Human Rights Act against Marc Lemire. The complainant alleges that the respondent has engaged in a discriminatory practice on the grounds of religion, sexual orientation, race, colour and national or ethnic origin in a matter related to the usage of telecommunication undertakings.

APPEARANCES/COMPARUTIONS

| | |
|------------------|--|
| Richard Warman | On his own behalf |
| Giacomo Vigna | For the Canadian Human Rights Commission |
| Barbara Kulaszka | For the Respondent |
| Simon Fothergill | For the Attorney General of Canada |
| Paul Fromm | For the Canadian Association for Free Expression |

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Toronto, Ontario

--- Upon resuming on Wednesday, February 7, 2007
at 10:04 a.m.

THE CHAIRPERSON: Ms Kulaszka?

MS KULASZKA: I wondered if the
Tribunal could just give me leave to make further
submissions on Mr. Warman's motion to quash the
subpoena to Rogers?

THE CHAIRPERSON: No.

Here's my ruling: At the opening of
this hearing, Ms Kulaszka asked and obtained from the
Tribunal a subpoena summoning a representative of
Rogers Communications to testify at the hearing into
Mr. Warman's complaint.

Ms Kulaszka indicated that the
evidence to be adduced through this witness would help
establish that the complainant had made a posting on
the FreedomSite message board on September 5th, 2003,
containing discriminatory material.

Mr. Warman has now made a motion to
quash the subpoena, and requesting that the respondent
be prevented from leading any evidence through a Rogers
representative, Mr. Klatt, or any other witness, I
presume, in regard to this posting.

Mr. Warman points out that neither he

1 nor the Canadian Human Rights Commission entered the
2 posting in question into evidence at this hearing, and
3 that it forms no part of the case of either of the
4 parties.

5 Interestingly, however, Mr. Warman
6 advised the Tribunal prior to the hearing, that he
7 would personally be relying on the entirety of the
8 Freedomsite message board, a position that was also
9 shared by the Commission.

10 At the hearing, the Canadian Human
11 Rights Commission opted to enter into evidence only a
12 portion of the messages, which amounted to perhaps a
13 half or so of the total. The September 5th, 2003
14 posting was not among those that were entered into
15 evidence.

16 During his cross-examination,
17 Mr. Warman denied having posted this message. He also
18 denied having ever registered the pseudonym related to
19 this posting on the Freedomsite message board, nor
20 having ever used the e-mail address associated with
21 this posting. Mr. Warman contends that the questions
22 put to him in regard to this posting were unrelated to
23 the facts in issue in this case, and went solely to his
24 credibility.

25 Referring to Sopinka's "The Law of

1 Evidence in Canada", Mr. Warman points out that in such
2 cases, the cross-examiner is bound by the answers given
3 by the witness. They cannot be contradicted through
4 efforts to call further evidence in response.

5 Ms Kulaszka contends, for her part,
6 that this is a mischaracterization of her questioning
7 regarding the message board posting; that it is not
8 intended to challenge Mr. Warman's credibility.

9 To begin with, until the hearing,
10 Mr. Warman and the Commission had held out that all
11 pages on the FreedomSite message board were in breach
12 of section 13 of the Act, which would have included the
13 September 5th, 2003 message. I'm mindful of
14 Mr. Vigna's contention that the Commission adopted this
15 position as a defensive tactic of sorts, to ensure that
16 all options would be left open to it, to bring all the
17 necessary evidence from the FreedomSite website to the
18 attention of the Tribunal.

19 Nevertheless, the Commission and the
20 complainant made their declaration pursuant to a direct
21 order from the Tribunal to specify exactly which
22 messages they allege constituted discriminatory
23 practice.

24 Ms Kulaszka now argues that the last
25 minute refinement of Mr. Warman -- by Mr. Warman and

1 the Commission of their positions, which has the result
2 of excluding from their evidence a discriminatory
3 message that she contends was placed on the
4 respondent's website by the complainant himself,
5 constitutes an abuse of process.

6 She also alleges that in a larger
7 sense, establishing whether Mr. Warman, a human rights
8 complainant, managed to post a discriminatory message
9 on the respondent's website, is relevant to the
10 constitutional defence that she has raised. She
11 contends that the possibility that a complainant can
12 himself post a discriminatory message on a web page, on
13 the basis of which its webmaster may be held liable
14 under Section 13, brings into question the
15 constitutional validity of this provision.

16 In a similar vein, this type of
17 posting, it is argued, constitutes an attempt to
18 "entrap" or induce others to
19 make similar postings on the
20 web, which would also have some
21 bearing on the constitutional
22 validity of the provision.

23 I'm mindful that the respondent
24 may -- may be able to establish these points from the
25 existing record. Mr. Warman has acknowledged having

1 posted other pseudonyms on both the Stormfront and --
2 sorry, having posted under pseudonyms on both the
3 Stormfront and VNN message boards. Nevertheless, Ms
4 Kulaszka insists that there can be no better evidence
5 to support her above-mentioned defences, than through
6 the evidence that relates directly to the message board
7 that is at the heart of the complaint, the FreedomSite
8 message board.

9 I'm prepared to accept Ms Kulaszka's
10 submission. However, my decision to allow this
11 evidence is subject to certain very clear conditions.

12 First, she's not to use this line of
13 questioning as an attack on the character of the
14 complainant. As she has herself argued, what is at
15 issue here are the broader effects of section 13 and
16 its application.

17 Second, she has indicated that she
18 intends to lead evidence from Rogers Communications by
19 way of an affidavit. I will not allow this. Mr. Vigna
20 has stated explicitly that he wishes to be afforded the
21 opportunity to cross-examine the Rogers witness. His
22 request is justified. For these reasons, the
23 complainant's motion is dismissed.

24 You can proceed with your witness, Ms
25 Kulaszka.

1 MS KULASZKA: Thank you. We had
2 received an affidavit from Rogers, from one of their
3 technical people, so I will be contacting Rogers and
4 indicating to that person that he will be required to
5 attend.

6 THE CHAIRPERSON: That's right. What
7 have you handed up?

8 MR. VIGNA: Mr. Chair, I would like a
9 copy of the affidavit.

10 THE CHAIRPERSON: Will you be using
11 it at the hearing? I mean, it's a -- it's a relevant
12 document.

13 MS KULASZKA: We won't be using it at
14 the hearing, no.

15 THE CHAIRPERSON: But it's now become
16 a relevant document, so it should be disclosed.

17 MS KULASZKA: I can give you what
18 Rogers gave us. The legal department failed to attach
19 the exhibit and so we attached -- we had contacted the
20 legal department to ask them to send it up to us.
21 Whether they just misplaced it, I don't know. But I
22 can give my friends what I have, a signed affidavit
23 minus the exhibit.

24 MR. VIGNA: What's the exhibit that
25 was there?

1 MS KULASZKA: The exhibit was an
2 e-mail. I'll to have make copies.

3 MR. VIGNA: I can wait for it, but I
4 just would like to get everything that's relevant.

5 THE CHAIRPERSON: At the first break?

6 MS KULASZKA: Unless Mr. Vigna wants
7 me to make copies now. I don't know if there is
8 facilities here.

9 THE CHAIRPERSON: Do you want to have
10 a copy right now, Mr. Vigna?

11 MR. VIGNA: We can wait at the break.

12 THE CHAIRPERSON: Okay. Mr. Warman?

13 MR. KLATT: If we can just review the
14 document, and then she can make the copies at the
15 break.

16 THE CHAIRPERSON: That's a good idea.
17 I'm just passing it over to look -- so it can be viewed
18 by him.

19 MR. VIGNA: There's also the
20 documents we asked from Mr. Klatt regarding the source
21 of the WHOIS. We still haven't received that.

22 THE CHAIRPERSON: Okay, WHOIS.

23 MR. VIGNA: And the other documents
24 that --

25 THE CHAIRPERSON: Ms Kulaszka? Was

1 it an undertaking?

2 MS KULASZKA: I don't think he -- I
3 don't think he's got any documents. He's going to
4 describe exactly what you do.

5 THE CHAIRPERSON: Can you remind me
6 what it was exactly, Mr. Vigna?

7 MR. VIGNA: There was a -- there was
8 a creation of a document from WHOIS and the source of
9 that -- of that. We had mentioned that. It was in
10 relation to one of the exhibits that we had provided.

11 MS KULASZKA: Mr. Klatt simply went
12 on-line and registered it. I don't -- it's --

13 THE CHAIRPERSON: Oh, yes. It was
14 the one that was registered with -- by the name of
15 Mr. Warman, right? Okay.

16 MS KULASZKA: Yes, so --

17 THE CHAIRPERSON: Is there
18 anything --

19 MS KULASZKA: I don't think
20 there's --- there's nothing to produce documentwise.

21 THE CHAIRPERSON: Are there any
22 documents, other than what we have --

23 MS KULASZKA: No.

24 THE CHAIRPERSON: -- in the record?

25 MS KULASZKA: No.

1 THE CHAIRPERSON: Ms Kulaszka, I want
2 to advise you of something. I failed to mention this
3 at the end of my ruling.

4 As it appears quite clear in our
5 discussions yesterday, I'm aware of where this evidence
6 can go. I've indicated it in my ruling. Much of that
7 material that supports those propositions is already in
8 the record. I want you to proceed expeditiously
9 through this evidence, because it contributes this
10 much, but I don't want it to extend that much to the
11 case.

12 MS KULASZKA: No, it --

13 THE CHAIRPERSON: To use the term
14 Mr. -- Mr. Warman has used, the evidence that you
15 intend to introduce is sufficiently relevant to the
16 case that it be introduced, but it doesn't warrant
17 taking up a huge amount of time from this -- from this
18 case. So -- and I don't want to get caught up in any
19 of those collateral issues. I've indicated to you
20 where I see the relevance to this file, and you should
21 stick to that.

22 MS KULASZKA: I understand.

23 THE CHAIRPERSON: You've given me
24 your word for how the evidence is going to proceed this
25 week then. I'm going to hold you to it.

1 Yes?

2 MR. WARMAN: Sorry, just in the
3 interests of this issue, I can state right now that
4 paragraph 3 of the material that has been provided to
5 me, of the affidavit states that,

6 "The network security department
7 has conducted a search to
8 retrieve the customer account
9 information relating to the IP
10 address for the date listed, and
11 we found that the information is
12 no longer available. The length
13 of time has surpassed the
14 retention period of our laws."

15 THE CHAIRPERSON: Okay.

16 MR. WARMAN: Just so that the
17 Tribunal is aware.

18 THE CHAIRPERSON: Look, you know
19 what, on the affidavit -- look, I'm not going to hold
20 that the complainant and -- the complainant and the
21 Commission to their previous statement about the
22 affidavit.

23 If you, for instance, feel that the
24 affidavit is evidence alone that you would like to
25 introduce for whatever reason, that somehow supports

1 your position, you may go ahead and do so, and then I
2 will not oblige Ms Kulaszka to bring the Rogers
3 representative. I leave it to your discretion.

4 But you indicated to me yesterday,
5 Mr. Vigna, that you wanted to cross-examine this
6 witness. I think it's a -- it's an important piece of
7 evidence, and consequently, I have the discretion under
8 the Act to allow evidence with -- by affidavit. I
9 don't think it's appropriate in this case, unless the
10 parties consent.

11 So if you -- if you wish to simply
12 enter that -- that document into evidence, go ahead and
13 do so. And we won't have to require the Rogers
14 representatives to testify.

15 MR. VIGNA: I'll have to think it
16 over.

17 THE CHAIRPERSON: Yes, think about
18 it.

19 MS KULASZKA: And the problem is,
20 there's the -- the exhibit is missing, and so it's an
21 incomplete document. But hopefully, we'll be able to
22 get it today. I would like to call Bernard Klatt.

23 THE CHAIRPERSON: Okay.

24 AFFIRMED: BERNARD KLATT

25 EXAMINATION-IN-CHIEF BY MS KULASZKA

1 MS KULASZKA: I'm going to tender
2 Mr. Klatt as an expert in the Internet and computers,
3 and this would include functions associated with
4 running an Internet service provider business.

5 THE CHAIRPERSON: Including functions
6 associated with --

7 MS KULASZKA: With being an Internet
8 service provider.

9 THE CHAIRPERSON: With being an
10 Internet service provider?

11 MS KULASZKA: Mr. Klatt, could you
12 tell me about your education? Did you go to the B.C.
13 Institute of Technology?

14 MR. KLATT: Yes, I graduated from
15 BCIT in 1973, I believe.

16 MS KULASZKA: I've got your CV.
17 It's --

18 MR. KLATT: Oh, sorry. Yes, well,
19 1973 was -- yes. Trying to remember whether I started
20 or ended BCIT in '71. I think it was -- yes, I think I
21 graduated in '71.

22 MS KULASZKA: And could you tell me
23 what courses you took?

24 MR. KLATT: A telecommunications
25 specialty, involving various types of communication

1 circuits, microwave, lease lines, data circuits, et
2 cetera.

3 MS KULASZKA: And when you left
4 there, where did you go?

5 MR. KLATT: I secured employment with
6 Digital Equipment of Canada, as a field service
7 technician.

8 MS KULASZKA: And who was Digital
9 Equipment of Canada? Was this a large company?

10 MR. KLATT: It was the Canadian
11 subsidiary of Digital Equipment Corporation, based out
12 of Maynard, Massachusetts.

13 MS KULASZKA: And starting in 1975,
14 did you go on to another job?

15 MR. KLATT: I was promoted to the
16 position of DISTRICT TECHNICAL SUPPORT REP for the
17 Western Canada region.

18 MS KULASZKA: And what work was
19 involved in that position?

20 MR. KLATT: Doing troubleshooting and
21 repairs, maintenance and installation of many
22 computer-based systems.

23 MS KULASZKA: And starting in 1977,
24 did you start another position?

25 MR. KLATT: Yes, I was promoted to a

1 position of regional tech support representative based
2 in -- near Ottawa, where I did more advanced
3 troubleshooting support for field technicians on
4 digital equipment on many computer systems.

5 MS KULASZKA: And did you make a move
6 in 1979?

7 MR. KLATT: I had the -- then I had
8 the opportunity to relocate to Digital Equipment's
9 Western Region Headquarters, based out of Santa Clara,
10 California, where I performed technical support work,
11 on-site troubleshooting for a variety of Digital
12 Equipment communications systems at that location.

13 MS KULASZKA: And did you work for
14 fairly large corporations at that time?

15 MR. KLATT: The nature of my work
16 involved going on-site to various organizations, like
17 defense contractors, large corporations, Fortune 100
18 companies, and troubleshooting advanced problems that
19 the local technicians had encountered difficulties
20 with.

21 MS KULASZKA: And did you work with
22 something called ARPAnet?

23 MR. KLATT: Yes, in the later 1970s
24 and early 1980s, I had the opportunity to work with
25 the -- at that time known as Advanced Research Projects

1 Agencies Network, and also the early ethernet networks
2 that were being jointly developed by Digital Intel and
3 Xerox Corporation.

4 MS KULASZKA: And can you describe
5 what they -- they are?

6 MR. KLATT: The -- ARPAnet is funded
7 by the U.S. Defense Advanced Research Projects Agency,
8 and it was primarily comprised of universities, U.S.
9 military installations and a few select large
10 contractors, such as Digital Equipment.

11 MS KULASZKA: And ethernet, could you
12 describe that?

13 MR. KLATT: It was an emerging form
14 of high speed data networking, based on technology and
15 algorithms, commonly known as carrier sense multiple
16 access collision detection algorithms.

17 MS KULASZKA: Were these precursors
18 to the Internet?

19 MR. KLATT: Yes, in -- in many ways,
20 the ethernet still is a large component of portions of
21 the -- of the Internet.

22 MS KULASZKA: In 1981, did you change
23 positions?

24 MR. KLATT: Yes, I secured employment
25 with a subsidiary of General Electric out of -- known

1 as Calma, which specialized in design and sale of
2 higher end computer-aided design and computer-aided
3 manufacturing systems.

4 MS KULASZKA: What did that work
5 involve?

6 MR. KLATT: Part of the work there
7 was similar in nature to what I did at Digital
8 Equipment, where I was involved in -- in
9 troubleshooting and support of the many computer based
10 CAD/CAM systems, and troubleshooting problems that were
11 encountered by field technicians during the
12 installation and set-up of -- of the systems at new
13 customer sites.

14 And another part of my work involved
15 working for the research and development group at
16 Calma, with the network known as HYPERchannel, which
17 was based on a high-speed broadband coax data network.
18 In some ways, similar to ethernet, but a proprietary
19 format that did not gain market acceptance.

20 MS KULASZKA: And were you sent
21 around the world to perform this work?

22 MR. KLATT: Yes, I was doing work for
23 Calma, installing and troubleshooting systems for
24 international clients based in South Korea, Japan and
25 Taiwan.

1 MS KULASZKA: And in 1985, did you
2 move to another corporation?

3 MR. KLATT: Yes, I secured employment
4 with a subsidiary of Phillips Corporation, called
5 Signetics Corporation, which specialized in design and
6 manufacture of integrated circuit components.

7 MS KULASZKA: And what -- what kind
8 of work did you do?

9 MR. KLATT: At Phillips Signetics, my
10 work primarily involved installing and troubleshooting
11 and supporting the corporate in-house data
12 communications network throughout the various locations
13 in U.S. primarily, and the satellite links to offshore
14 locations in Korea, Japan and Taiwan.

15 MS KULASZKA: And in 1988, did you
16 leave to start your own business?

17 MR. KLATT: Yes, I then started a
18 business called Fairview Technology Centre.

19 MS KULASZKA: And did you become an
20 Internet service provider?

21 MR. KLATT: Yes, in 1994/95 time
22 frame, it became available as an option to provide
23 Internet service, and so I added that component to our
24 business at that point.

25 MS KULASZKA: And what kind of

1 customer base did you have?

2 MR. KLATT: We had a fairly large
3 number of dial-up subscribers, which was the
4 predominant mode of communication on the Internet at
5 that point in time. We also had clients from the
6 school district, newspaper, municipal governments,
7 quite a few businesses, as well as the dial-ups --
8 individual subscribers.

9 MS KULASZKA: As part of your duties
10 as an ISP, did you have cause to analyze log files?

11 MR. KLATT: Yes, and -- as an
12 Internet service provider, we also provided web hosting
13 services, and part of the nature of the web hosting
14 business is that we have, on occasion, the need to
15 analyze web logs, as well as customer access logs.

16 MS KULASZKA: Were you ever consulted
17 by police or any other government agency, with respect
18 to log files?

19 MR. KLATT: On -- on occasion yes, we
20 were.

21 MS KULASZKA: Did you have cause to
22 register domain names, as part of your business?

23 MR. KLATT: Yes, we were involved in
24 registering domain names for a variety of customers and
25 clients.

1 MS KULASZKA: Did you subsequently
2 move up to cable modems?

3 MR. KLATT: Yes, in 19 -- I think it
4 was May of 1995, we successfully initiated the first
5 residential Internet service over cable network, in
6 conjunction with a local cable company in Canada.

7 MS KULASZKA: In 1998, was the ISP
8 portion of your business sold?

9 MR. KLATT: Yes, it was. Part of the
10 subscriber base went to another company who specialized
11 in dial-up access customers, and part of it was
12 acquired by the cable company that then retained my
13 services for the following year to manage the cable
14 subscriber base for them.

15 MS KULASZKA: And today, what is your
16 primary business?

17 MR. KLATT: Fairview Technology
18 Centre does network computer sales, consulting and
19 Internet consulting for our clientele base.

20 THE CHAIRPERSON: For what base? I'm
21 sorry.

22 THE WITNESS: Our customer and
23 clientele base.

24 MS KULASZKA: And have you given
25 testimony in previous hearings before the Canadian

1 Human Rights Tribunal?

2 MR. KLATT: Yes, I was a qualified
3 expert witness in the CHRC versus Ernst Zundel, and the
4 Glenn Bahr in Western Canada For Us Human Rights
5 Tribunal case.

6 MS KULASZKA: Did you -- have you
7 taught courses on the Internet?

8 MR. KLATT: Yes, I had occasion to
9 teach Internet Usage and Introduction to Internet
10 courses for Okanagan College.

11 MS KULASZKA: Yes, if you could just
12 say -- tell the Tribunal what certifications you have.

13 MR. KLATT: I've acquired
14 industry-recognized certifications described as; A+,
15 Network+, I-Net+, and Server+ from an organization
16 known as CompTIA.

17 MS KULASZKA: Thank you. If you
18 could answer any questions from my friend.

19 THE CHAIRPERSON: Yes, just -- what's
20 CompTIA? Can you describe it a little?

21 MR. KLATT: Yes, industry trade
22 association that -- its primarily purpose is to certify
23 a degree of competence in technical aspects, primarily
24 due to -- with computer service and maintenance.

25 THE CHAIRPERSON: Is it based in

1 Canada or --

2 MR. KLATT: It has operations in
3 Canada, but it's primarily based in the United States.

4 MS KULASZKA: Just to assist the
5 Tribunal, attached to Mr. Klatt's CV at that back, are
6 the rulings in the Zundel and the Bahr case, concerning
7 his expertise.

8 THE CHAIRPERSON: I notice that in
9 the CV portion of this document, the witness -- well,
10 it's noted that it's the "British Columbia Human Rights
11 Commission", an expert witness. But I see the case is
12 "Glenn Bahr and Western Canada", that was the Canadian
13 Human Rights Tribunal, was it not?

14 MS KULASZKA: Yes, that is a mistake.
15 It should be just CHRC.

16 THE CHAIRPERSON: CHRC was the -- was
17 the complainant, and accepted by CHRT in both cases,
18 right? So I'm looking at the excerpt from Zundel. And
19 the other one -- Mr. Vigna?

20 MR. VIGNA: Good morning, Mr. Klatt.
21 Your studies in terms of the computers and Internet, I
22 understand, was at the British Columbia Institute of
23 Technology in 1971?

24 MR. KLATT: That's correct.

25 MR. VIGNA: And that was a two-year

1 program?

2 MR. KLATT: Right.

3 MR. VIGNA: Is that a college?

4 MR. KLATT: It's not described as a
5 college. It's referred to as a technology institute at
6 that time.

7 MR. VIGNA: And I -- my
8 understanding, you didn't do any university studies
9 in -- other than the -- what's mentioned in 1971?

10 MR. KLATT: I took a few night school
11 courses at Stanford University in California. But no,
12 they weren't formal university courses, no.

13 MR. VIGNA: Okay. And in 1973 -- in
14 1971, when you studied telecommunications and -- is it
15 correct to say that at that time, the Internet was not
16 advanced or wasn't in existence -- or was it just
17 ARPAnet that was existing at that time?

18 MR. KLATT: In 1971, there was --
19 there was no -- practically no -- nothing that would be
20 recognized as Internet.

21 MR. VIGNA: Okay. And at the time,
22 in terms of the era of computers, how would you compare
23 it to today, in terms of advancement?

24 For example, in those days, in terms
25 of computer-friendly access compared to today, where

1 you can just click, click, click? Before you had to do
2 F1, F2, F3, with different formulas. Can you compare a
3 bit the -- the difference in terms of the era of then
4 and the era of today?

5 MR. KLATT: In 1971 -- early 1970s,
6 there was no readily available interactive computer
7 technology like we see today. We did -- we did have
8 interactivity through a teletype keyboard and a
9 printout on paper, which is similar to what we see
10 today with -- with TelNet and certain types of message
11 board form type usage, that type of technology existed.
12 But in terms of the graphical user interface, no, that
13 was not readily available at that time.

14 MR. VIGNA: So is it correct to say
15 that there is a significant difference between the era
16 of the 1970s, to perhaps after 1995?

17 MR. KLATT: Yes, it's qualitatively
18 different in -- in some aspects, but underlying
19 technology forms the basis for what we now use.

20 MR. VIGNA: When was there a major
21 like, breakthrough in terms of the -- what we know
22 today as the modern Internet, is it 1990, or '95? When
23 would be the key?

24 MR. KLATT: One of the significant
25 change points would be the early 1990s or -- I believe

1 in that time frame was when the commercial aspect of
2 the Internet became available, up until the early --
3 the late 1980s or 1990s, the Internet or ARPAnet was
4 primarily exclusively reserved for use by the military
5 and defense contractors in large universities. It
6 wasn't generally available for use by commercial
7 enterprises.

8 Another significant aspect -- change
9 came about in approximately the mid -- I guess, before
10 that. It's hard to determine exactly when, but
11 typically early 1990's, when the World Wide Web started
12 to become available. That provided a much more
13 user-friendly method of accessing information, instead
14 of text only.

15 MR. VIGNA: In your resume, it says,
16 "1973, Digital Equipment of Canada, Position: Field
17 Service Technician". In what province was that?

18 MR. KLATT: That was based in
19 Vancouver area, British Columbia.

20 MR. VIGNA: And you were -- that was
21 a company?

22 MR. KLATT: Yes.

23 MR. VIGNA: You were an employee
24 there, as a Field Service Technician?

25 MR. KLATT: Correct.

1 MR. VIGNA: How come it doesn't say
2 it -- until what year? It says only 1973. You were
3 there for how long?

4 MR. KLATT: Approximately two years.

5 MR. VIGNA: And then "District
6 Technical Support Representative for Western Canada".
7 That's another job you -- you went onto?

8 MR. KLATT: That's correct.

9 MR. VIGNA: And that's where exactly,
10 which location?

11 MR. KLATT: I worked in Winnipeg,
12 Regina and Calgary, Alberta.

13 MR. VIGNA: For that same company?

14 MR. KLATT: Correct.

15 MR. VIGNA: What was the name of the
16 company?

17 MR. KLATT: Digital Equipment of
18 Canada.

19 MR. VIGNA: Oh, it was a different
20 position but with the same company?

21 MR. KLATT: Correct.

22 MR. VIGNA: And "Regional Technical
23 Support Representative, based in Kanata, 1977-1979",
24 was that for the same company or was it another
25 company?

1 MR. KLATT: That was also Digital
2 Equipment of Canada.

3 MR. VIGNA: And this is -- in the
4 Ottawa region from '77, that was for about two years?

5 MR. KLATT: Right.

6 MR. VIGNA: It was the same position
7 you had previously in Western Canada, in Winnipeg, I
8 suspect?

9 MR. KLATT: It was --

10 MR. VIGNA: Similar?

11 MR. KLATT: -- similar, except that
12 it required more advanced qualifications and a greater
13 degree of expertise.

14 MR. VIGNA: And then in '79, you went
15 to the United States?

16 MR. KLATT: That's correct.

17 MR. VIGNA: That was another company,
18 or was it the same company, Digital Equipment
19 Corporation, in the United States?

20 MR. KLATT: Digital Equipment
21 Corporation was the parent company of Digital Equipment
22 of Canada Limited.

23 MR. VIGNA: And you were there for
24 about three years?

25 MR. KLATT: Yes, I was.

1 MR. VIGNA: And the job you did there
2 was -- would I be correct to say it was somewhat
3 similar, with certain variations, or what was the
4 difference, if any?

5 MR. KLATT: The difference -- some of
6 the differences were; it was newer technology, and the
7 nature of the clientele base was substantially
8 different for a large number of the customers that I
9 worked for.

10 MR. VIGNA: When you say "worked with
11 a range of products, including PDF8, PDF12, PDF15,
12 PDF11 product lines". In lay terms, what would that
13 mean?

14 THE CHAIRPERSON: It's PDP.

15 MR. VIGNA: PDP, sorry.

16 MR. KLATT: Those were the many
17 computer model designations that Digital Equipment
18 assigned to their various product lines.

19 MR. VIGNA: And ethernet, what's
20 that?

21 THE CHAIRPERSON: Ethernet.

22 MR. VIGNA: Ethernet,
23 E-T-H-E-R-N-E-T.

24 MR. KLATT: Yes. As I described
25 earlier, it was high speed data transmission system

1 developed by Digital Intel and Xerox using carrier
2 sense multiple access collision detection algorithm.
3 It's still in use today.

4 MR. VIGNA: How does that compare to
5 Internet? How does ARPAnet, ethernet and Internet --
6 how do you distinguish all those?

7 MR. KLATT: ARPAnet is the forerunner
8 of what became known as the Internet. One of the
9 differences between ARPAnet and Internet was the
10 restriction as to who could use ARPAnet. As I
11 mentioned earlier, it was essentially a closed group of
12 users, and part of the reason it was a fairly limited
13 user base is at the time, it was very expensive to set
14 up a node on the ARPAnet, and nowadays, it's quite
15 inexpensive to get a computer that will work on
16 Internet.

17 MR. VIGNA: From 1971 to 1985, you
18 mention "Research and Development of high speed
19 broadband coaxial and data networking of CAD/CAM
20 systems".

21 When I see the word "broadband", I
22 see -- as a lay person, I relate it more to the more
23 modern technology regarding long distance on computer
24 broadband.

25 How does that relate -- relate to

1 what you mentioned in our resume, in the -- 1981 to
2 1985?

3 MR. KLATT: It is related in that it
4 is similar to what we see today, as -- we know as the
5 cable TV distribution networks. For example, Shaw and
6 Rogers both maintain fairly extensive broadband
7 networks that they've, in the last few years, adapted
8 to use for data networking. This -- the company,
9 Calma, was using relatively small scale broadband coax
10 data networks, typically within an enterprise or
11 business, for data networking. They could also use it
12 for video distribution, but it was primarily for high
13 speed data distribution and communication between
14 various computer installations within a facility.

15 MR. VIGNA: But isn't broadband more
16 of a newer technology that exists today or it's --

17 MR. KLATT: It's --

18 MR. VIGNA: -- or are you saying that
19 the broadband at the time was a rudimentary version of
20 what we see today?

21 MR. KLATT: It was in some ways the
22 forerunner of what Rogers and Shaw and other cable
23 modem Internet service providers are using today.

24 MR. VIGNA: Fairview is a company you
25 started yourself?

1 MR. KLATT: That's correct.

2 MS KULASZKA: And it's a company that
3 you started in Oliver, B.C.?

4 MR. KLATT: Right.

5 MR. VIGNA: And can you give us a
6 more -- you're working there since 1988 to present.
7 Can you tell us a bit more about how you came about to
8 creating this company, what this company deals with,
9 and how many employees there are, et cetera, et cetera?

10 MR. KLATT: The company has two
11 employees, as described -- we or I -- PC dealer/
12 reseller, network, value added reseller. We do
13 computer network installations for a variety of
14 businesses and municipal government installations in
15 our area. We -- we sell a wide variety of
16 communication-related equipment and computer and
17 networking components.

18 MR. VIGNA: You started the company
19 in 1988?

20 MR. KLATT: That's correct.

21 MR. VIGNA: And in 1988, you were two
22 employees in this company?

23 MR. KLATT: Right.

24 MR. VIGNA: And you were one of the
25 employees, I suspect, or --

1 MR. KLATT: Yes.

2 MR. VIGNA: And did you have a --
3 like, an actual store, or was it from home-based? Or
4 what kind of a company was it?

5 MR. KLATT: It's a -- we have a
6 location that we maintain the inventory and office at,
7 but I do most of my work for businesses and clientele
8 base on-site.

9 MR. VIGNA: And in 1988, when you
10 opened this company, it was in Oliver, with another
11 individual. Who was the other individual?

12 MR. KLATT: The other individual is
13 my wife.

14 MR. VIGNA: Your clients at the time
15 would include the ones you mentioned in your resume
16 there, local school district. Just tell us a bit
17 what -- who were your clients?

18 MR. KLATT: Some of the clients that
19 we have would be Oliver -- Oliver newspaper, Osoyoos
20 Newspaper, Oliver High School, Oliver Town Hall,
21 Osoyoos Town Hall. We did work for RCMP office, we did
22 work for Canada Customs, did work for a variety of
23 manufacturing businesses, other businesses on Main
24 Street in both Oliver and Osoyoos. We did work for
25 businesses in Penticton, B.C., further up the valley.

1 MR. VIGNA: What else?

2 MR. KLATT: We did work for
3 businesses in other surrounding communities.

4 MR. VIGNA: I would like you to refer
5 to the green binder, which is underneath the black
6 binder.

7 THE CHAIRPERSON: HR 3?

8 MR. VIGNA: HR 3-C.

9 THE CHAIRPERSON: Tab C. Which page,
10 Mr. Vigna?

11 MR. VIGNA: The middle of the page,
12 where it's "History of Freedomsite". Perhaps I can
13 help the witness.

14 THE CHAIRPERSON: Yes, perhaps go to
15 the witness and show it to him, because there are no
16 page numbers here.

17 MR. VIGNA: I would like you to look
18 at the "History of Freedomsite", Mr. Klatt, and look at
19 the timeline. Do you see your company being mentioned
20 somewhere in this website?

21 MR. KLATT: Yes, there's a mention
22 approximately in the middle of the page.

23 MR. VIGNA: And that's in 1956 --
24 1996?

25 MR. KLATT: June 28th.

1 MR. VIGNA: And that's -- that's
2 right underneath "FTCnet.com". What is that?

3 MR. KLATT: That's the name of our --
4 that's the domain name that Fairview Technology Centre
5 uses.

6 MR. VIGNA: So I asked you earlier
7 about your clients, and you didn't seem to mention the
8 Freedomsite. This was one of your clients?

9 MR. KLATT: Not as the part of the
10 business that was running prior to 1995, no.

11 MR. VIGNA: What about 1996?

12 MR. KLATT: Yes, Freedomsite was one
13 of our web hosting clients.

14 MR. VIGNA: And it was until what
15 time your web hosting client?

16 MR. KLATT: Good question. I don't
17 think I have a accurate date as to when they -- they
18 located their web hosting content elsewhere. Might
19 have been later 1996, possibly.

20 MR. VIGNA: And how did you come to
21 get a contract with the Freedomsite?

22 MR. KLATT: I believe Marc Lemire
23 contacted me about the possibility of hosting his
24 website through our services.

25 MR. VIGNA: And Marc Lemire was at

1 the time in Ontario -- Toronto, the Ontario region?

2 MR. KLATT: That's my understanding.

3 MR. VIGNA: How did he hear about
4 your company in B.C., Oliver?

5 MR. KLATT: I'm not sure.

6 MR. VIGNA: Did you -- were you
7 curious? How did you get a call there? How was he --
8 how did he know about you?

9 MR. KLATT: I think it probably best
10 to ask Marc -- Mr. Lemire how -- how he came to learn
11 about me.

12 MR. VIGNA: But the first time you
13 got a call regarding this client, was it Marc Lemire
14 that called you?

15 MR. KLATT: What was the -- how is
16 the question again?

17 MR. VIGNA: The first time you got
18 FreedomSite as a client, was it Marc Lemire that called
19 you as a client, as -- on the -- on behalf of
20 FreedomSite?

21 MR. KLATT: Yes, that would be
22 correct.

23 MR. VIGNA: And in the discussion you
24 had with Mr. Lemire at that time of obtaining the
25 contract, was it -- was it asked by you, how did you

1 hear about me? Like, usually, when you are in
2 business, you always want to know how your company is
3 known to your clientele. What would you have asked at
4 that time, in that regard?

5 MR. KLATT: I don't -- I don't think
6 we asked those type of questions.

7 MR. VIGNA: But you were a -- an
8 Internet provider, and you get clients come up to you.
9 You're not curious to know how they've heard of you, or
10 if you're -- if you're effective in your -- if you're
11 effective in your marketing strategy, how did you --
12 how did -- what was your understanding that Marc Lemire
13 had heard about you?

14 MR. KLATT: I -- I don't have any
15 recollection of how he came to be aware of our -- our
16 service.

17 MR. VIGNA: The website Mr. Lemire
18 was asking for you to be -- to host, did he describe to
19 you what kind of website he wanted to host?

20 MR. KLATT: I don't recall if there
21 was any discussion as to the nature or content.

22 MR. VIGNA: But you, as a businessman
23 and hosting company, web hosting, do you ask your
24 clients what is -- what kind of sites that they want to
25 post on your web hosting area?

1 MR. KLATT: No, I -- as I recall,
2 our only criteria was that the content be legal in
3 Canada.

4 MR. VIGNA: So what did you do in
5 order to ensure yourself of that?

6 MR. KLATT: It was the client's
7 responsibility to be responsible for the material that
8 they post.

9 MR. VIGNA: And you didn't ask any
10 questions, as a web hoster, regarding some type of
11 information regarding the web -- the website they want
12 to post?

13 MR. KLATT: No, I don't recall any
14 discussion in that area.

15 MR. VIGNA: And do you recall the
16 fact that at some point -- you mentioned earlier you
17 testified on two cases? You mentioned Zundel, I
18 believe, and Bahr. Correct?

19 MR. KLATT: Right.

20 MR. VIGNA: You sure about that?

21 MR. KLATT: Yes, I was there.

22 MR. VIGNA: What about -- what about
23 Schnell versus Machiavelli & Associates Emprize --
24 Emprize (ph)?

25 MR. KLATT: At that hearing, I was

1 not called as an expert witness.

2 MR. VIGNA: You were not called as an
3 expert witness?

4 MR. KLATT: Correct.

5 MR. VIGNA: Well, were you -- were
6 you called as a witness?

7 MR. KLATT: Yes, as a fact witness, a
8 fact witness.

9 MR. VIGNA: And is that why you
10 didn't mention the -- this case?

11 MR. KLATT: It's not directly
12 relevant to my purpose for being here today.

13 MR. VIGNA: But you mentioned that
14 you were involved in two cases, as an -- as a witness
15 and --

16 MR. KLATT: As an expert witness,
17 yes.

18 MR. VIGNA: I would like to -- you to
19 refer to the case, I'll -- I'll bring it to you. It's
20 the -- Mr. Chair, the case book, I have it -- I think I
21 provided you a case book. It's volume 1, tab 8.

22 THE CHAIRPERSON: I don't have tab 8.

23 (DISCUSSION OFF THE RECORD)

24 MR. VIGNA: Okay, I'd referred you to
25 page 34, in tab 8.

1 First of all, you can read it for
2 yourself, Mr. Klatt, and then I'll ask you some
3 questions.

4 MR. KLATT: I've read page 34.

5 MR. VIGNA: Read until perhaps the
6 end of 35, and just the first -- first sentence on 36.

7 THE CHAIRPERSON: Which paragraph?

8 MR. VIGNA: 131, page 34.

9 THE CHAIRPERSON: Just 131?

10 MR. VIGNA: Until --

11 THE CHAIRPERSON: Until the end of
12 it?

13 MR. VIGNA: Until paragraph 138.

14 THE CHAIRPERSON: Okay, great.

15 MR. VIGNA: It's two pages and one
16 sentence.

17 MR. KLATT: Yes.

18 MR. VIGNA: In this case, you were
19 called by an organization called CAFE -- CAFE?

20 MR. KLATT: Correct.

21 MR. VIGNA: That's the Canadian
22 Association For Freedom of Expression, I believe?

23 MR. KLATT: Right.

24 MR. VIGNA: And it's an organization
25 that's directed by Mr. Paul Fromm?

1 MR. KLATT: That's -- that's correct.

2 MR. VIGNA: And how did you come
3 about to being called by this organization, in this
4 case, Schnell?

5 MR. KLATT: Could you rephrase the
6 question, or reword --

7 MR. VIGNA: Okay, how -- how did CAFE
8 know about you to call you on the Schnell case?

9 MR. KLATT: I believe I had been in
10 contact with Mr. Fromm prior to that time frame.

11 MR. VIGNA: Mr. Fromm is from
12 Toronto?

13 MR. KLATT: Right.

14 MR. VIGNA: You're from B.C., Oliver?

15 MR. KLATT: Correct.

16 MS KULASZKA: At that time also?

17 MR. KLATT: Yes.

18 MR. VIGNA: So you wouldn't normally
19 interact in the city or in the province with Mr. Fromm?

20 MR. KLATT: No, he's not a local
21 member of our community.

22 MR. VIGNA: Okay, so how -- how did
23 you know about him, as part of what organization, as
24 part of what involvement, as part of what implication?

25 MR. KLATT: I've had a long-standing

1 interest in freedom of expression and -- especially as
2 it relates to the Internet. I'm a member of Electronic
3 Frontier Organization. There's a -- at that time,
4 there was a group active in -- I think it was based out
5 of a university here in Ontario.

6 And Paul Fromm, myself and a number
7 of other people were active participants on that
8 Electronic Frontier discussion group. We may have come
9 in contact through that, we may have come in contact
10 through other means, I'm not sure. But I think that is
11 a likely route of how we might have made contact.

12 MR. VIGNA: But Internet is something
13 I would say, technical, that's a tool of communication,
14 correct?

15 MR. KLATT: True.

16 MR. VIGNA: Now, the -- the concept
17 of freedom of expression, that's more of a political
18 concept, legal concept?

19 MR. KLATT: It -- it touches on those
20 aspects.

21 MR. VIGNA: Okay. So your interest
22 in -- through the issue of freedom of expression in
23 connection with the Internet, how did that come about?
24 How -- what group did you involve yourself with in
25 terms of you being -- ultimately being called by CAFE

1 in the Schnell case? It's not too clear in terms of
2 this group that you say you networked -- networked
3 with, in order to be known and being called in a case
4 in -- the Schnell case.

5 MR. KLATT: I, at some point, became
6 aware of -- of Paul Fromm's work through his Canadian
7 Association of Freedom of Expression group, and we may
8 have gotten in contact somewhere in that time period.

9 MR. VIGNA: Mr. Fromm was not
10 necessarily in the Internet business, as you were,
11 correct?

12 MR. KLATT: True.

13 MR. VIGNA: And Mr. Fromm was more
14 into the concept of freedom of expression, like you
15 say, and political or ideological aspect of freedom of
16 expression; is that correct?

17 MR. KLATT: True. But I believe
18 somewhere in that time frame before the Schnell case,
19 CAFE organization had much of their material, or at
20 least some of their material, present on the -- on the
21 Internet, in the form of their web page.

22 MR. VIGNA: Was CAFE one of your
23 clients?

24 MR. KLATT: Not directly, no.

25 MR. VIGNA: What do you mean by that,

1 "not directly"?

2 MR. KLATT: I believe it's -- some of
3 their material was hosted on the Freedomsite -- was
4 then -- the Freedomsite content hosted at Fairview
5 Technology Centre's web server.

6 MR. VIGNA: So CAFE and Freedomsite
7 and yourself, there was some kind of interaction
8 between all three of you?

9 MR. KLATT: I -- I became aware of
10 CAFE website content through Marc Lemire's content that
11 was hosted on our server, yes.

12 MR. VIGNA: Okay, and in this case,
13 Schnell, you say you -- you were called, not as an
14 expert. You were called as a fact witness, right?
15 And you are saying that's why you didn't mention this
16 case earlier in your testimony, regarding your
17 qualification; is that correct?

18 MR. KLATT: I couldn't -- I'm not
19 ashamed of being a fact witness, but it didn't seem
20 specifically -- to go with my qualifications, to be an
21 expert witness.

22 MR. VIGNA: The Schnell case took
23 place -- when you testified on this case, where was it,
24 in which city?

25 MR. KLATT: It was in Vancouver, B.C.

1 MR. VIGNA: You were being called as
2 a fact witness by this organization called CAFE. Were
3 you paid to come and testify, or were you -- was your
4 service -- what kind of fact witness did you come and
5 testify on? What -- obviously, you were not called as
6 an expert, so were your services, were they retained as
7 a witness?

8 MR. KLATT: No, I was -- was not paid
9 any remuneration for providing my testimony evidence in
10 that case.

11 MR. VIGNA: Were you paid -- are your
12 services retained for a fee in this present case?

13 MR. KLATT: No, I'm not paid a fee to
14 be here.

15 MR. VIGNA: So you're coming here as
16 an expert witness, and you're not paid any fees
17 whatsoever?

18 MR. KLATT: That's correct.

19 MR. VIGNA: In the first paragraph,
20 in Schnell 131, there is talk in that paragraph about
21 how you recounted your experiences as you became
22 characterized as a hate mongerer, and a supporter of
23 website hate messages, the consequence of this was that
24 you were shunned in this community and suffered
25 economically.

1 Can you elaborate on what that means,
2 what's being said there.

3 MR. KLATT: I'm not really sure
4 who -- who authored this document. But I guess that's
5 the characterization that the author of this document
6 chose to --

7 MR. VIGNA: Now, in Oliver, you were
8 involved in a controversy at one point, where basically
9 your company was being alleged to host certain
10 website -- websites that were controversial, and there
11 was an intervention by the mayor, as well as perhaps
12 the province; is that correct?

13 MR. KLATT: No, I think -- well,
14 it's -- we may get to it, it's on page 35 but --

15 MR. VIGNA: Correct, so what -- what
16 do --

17 MR. KLATT: And we're at 132 --
18 paragraph 132, presently?

19 MR. VIGNA: Okay, so I'll -- it
20 doesn't really matter, the paragraph. I'm --

21 MR. KLATT: Okay.

22 MR. VIGNA: -- not following a
23 specific order. But in terms of your business in
24 Oliver in the time frame that's being mentioned in the
25 case here, is it correct to say that you were in --

1 your company was involved in a controversy regarding
2 certain of your clients?

3 MR. KLATT: Yes, an organization
4 based in Toronto chose to initiate a publicity
5 campaign, attempting to remove material that they
6 disagreed with. They couldn't provide any legal basis
7 for doing so, but they chose to go to the media to try
8 to create pressure to have material they objected to
9 removed.

10 MR. VIGNA: And what material was
11 being objected to?

12 MR. KLATT: Well, they had a long
13 list of things they didn't like. I don't recall --
14 there was a -- there was a number of the websites that
15 were web hosting clients.

16 MR. VIGNA: Such as?

17 MR. KLATT: I think there was some
18 skinhead web pages, there was some -- some of the
19 content on Mr. Lemire's web page. They chose to
20 characterize it differently than I did. They seemed to
21 think there was 13 websites, when in fact Mr. Lemire's
22 website reviewed as -- as a single website. But the
23 complainants chose to characterize it as a dozen or 13
24 websites to -- for their own purposes.

25 MR. VIGNA: But other than the media,

1 there was also the Mayor of Oliver and the Attorney
2 General of the province that sort of -- that brought
3 this to your attention; is that correct?

4 MR. KLATT: Well, the way I recall
5 it, the mayor only expressed an interest after being
6 pressured by the lobbying groups out of -- based out of
7 Toronto. Nobody local initiated any complaint
8 regarding it, complaints initiated from the other side
9 of the country. The Attorney General only got involved
10 after he was lobbied by the pressure groups, based out
11 of Toronto.

12 MR. VIGNA: And what did you do, as a
13 result of this pressure or intervention? Did you give
14 up on these clients, or you kept them anyways?

15 MR. KLATT: I wrote a letter to the
16 Attorney General, offering my cooperation and
17 assistance, if he had any concerns regarding any of the
18 content. And --

19 MR. VIGNA: But as a
20 businessperson --

21 MR. KLATT: -- yet the only response
22 I got back from the Attorney General was that they
23 advised me they would not make any determination on it
24 at that point, and to seek -- seek legal counsel, if I
25 had questions in that area.

1 MS KULASZKA: But as a
2 businessperson, considering this controversy which --
3 and from my understanding, and you correct me if I'm
4 wrong, in reading the -- at least the first paragraph,
5 131, had an impact on your clientele base, correct?

6 MR. KLATT: Yes, the -- some of the
7 clientele base were pressured to withdraw their --
8 their services.

9 MS KULASZKA: And you as a
10 businessperson that -- obviously, as any business, your
11 objective is to make profit, to make money, correct?

12 MR. KLATT: That -- that is a
13 concern, yes.

14 MS KULASZKA: Okay. So considering
15 the impact, business impact, economic impact, what do
16 you do in terms to -- alleviate the fact that you're
17 losing business because of certain controversial
18 websites?

19 MR. KLATT: I tried to ask them what
20 specific areas of concern they had. But they -- I
21 don't recall they ever mentioned anything in specific,
22 other than general mailing of website clients that they
23 didn't like.

24 MR. VIGNA: Is it correct to say that
25 because of the fact that you believe in freedom of

1 expression, you said you have -- you had involvement
2 with Mr. Fromm and CAFE -- from a philosophical level,
3 you feel that there should not be any restrictions on
4 what websites could host on your company?

5 MR. KLATT: Well, as I mentioned
6 earlier, the only criteria I expressed to potential web
7 hosting clients was that the material be legal in
8 Canada.

9 MS KULASZKA: Okay. When you say the
10 legal -- the material be legal in Canada, other than
11 this general cautionary remark, do you actually make
12 the caution -- caution more explicit, in terms of what
13 could be, or not considered illegal in Canada?

14 MR. KLATT: No, that's not an area I
15 have any particular expertise in, and I wouldn't hold
16 myself out as being someone that could make those type
17 of determinations.

18 MS KULASZKA: So in light of that, do
19 you consult a lawyer to say, listen, I'm having
20 problems here with certain content that someone admits,
21 a certain clientele, certain websites, as a
22 controversy?

23 Do you undertake any steps to try to
24 make sure that there's no legal -- legal liability?

25 MR. KLATT: I believe that somewhere

1 in that time frame, I did contact a noted attorney that
2 does have expertise in those type of questions,
3 Mr. Douglas Christie.

4 MS KULASZKA: Mr. Douglas Christie is
5 also somebody who's in the network of CAFE and Paul
6 Fromm, and all that. How did you get to know him?

7 MR. KLATT: He is -- he's reasonably
8 well known as an advocate for freedom of expression.
9 He's -- he's involved in the production of a news --
10 newsletter that relates to freedom of expression
11 topics, and he has an organization that promotes
12 freedom of expression as well.

13 MR. VIGNA: When you mention the
14 lobby groups in Toronto, is that in relation to
15 paragraph 133, and in the section --

16 MR. KLATT: The -- the Wiesenthal
17 Centre was one of the lobbying groups. As I recall,
18 the Canadian Jewish Congress directly contacted the
19 town of Oliver, the mayor or administration at the town
20 of Oliver. I believe the B'Nai Brith was -- was
21 involved. I think one of their lawyers met with Telus
22 management in an attempt to pressure Telus into
23 illegally cutting off our service.

24 MR. VIGNA: And when you were
25 informed about the fact -- for example, in paragraph

1 133, you get a letter from Mr. Sol Littman, correct,
2 from the Simon Wiesenthal Centre in Toronto?

3 MR. KLATT: The letter arrived after
4 the publicity had been ongoing in the media for
5 approximately a week.

6 MR. VIGNA: Okay, and you're -- and
7 you're alerted -- you're being told, at least, that the
8 content of the some of the websites of your clients
9 contains hate messages supporting white supremacist,
10 anti-Semitic, Holocaust denial, and anti-visible
11 minority immigration positions?

12 MR. KLATT: Well, I -- like I said
13 earlier, I don't have expertise to make determinations
14 as to what is legal or illegal in Canada, in terms of
15 content.

16 MR. VIGNA: Okay, but --

17 MR. KLATT: And it seems pretty
18 apparent that Mr. Littman doesn't either. So his
19 characterizations hold very little weight with me.

20 MR. VIGNA: Why would you say that?

21 MR. KLATT: He has no expertise in
22 determining legality of content.

23 MR. VIGNA: But you are alerted to
24 this potential problematic content on the website. A
25 letter is sent to you, and the letter mentions the hate

1 messages which support white supremacist, anti-Semitic,
2 Holocaust denial. Aren't you concerned at that point
3 that perhaps there's a problem?

4 MR. KLATT: I believe I encouraged
5 him to contact the authors of the material that he had
6 an issue with.

7 MR. VIGNA: But you were not totally
8 removed from the situation, because you were the web
9 hoster, no?

10 MR. KLATT: That's correct, we did
11 host the websites that contained the material.

12 MR. VIGNA: So you can't just dismiss
13 it and say, "Contact the authors, I have nothing to do
14 with it"?

15 MR. KLATT: Well, that is essentially
16 our position.

17 THE CHAIRPERSON: Mr. Vigna --

18 MR. VIGNA: I'll move on.

19 THE CHAIRPERSON: -- in the context
20 here of establishing his expertise --

21 MR. VIGNA: Sure, I'll move on.

22 THE CHAIRPERSON: I've let you go a
23 long way on this. If it's going to go to the
24 credibility of the witness, we'll deal with that in due
25 course. The question is, is he qualified to be an

1 expert.

2 MR. VIGNA: Fine, Mr. Chair. I'll
3 just ask a few other questions, and I'll move on.

4 MR. KLATT: One -- one additional
5 note on page 35, I believe, paragraph 136. The
6 characterization there, I believe, is incorrect.
7 There's an allegation that the Attorney General
8 investigated Fairview's business activities, and
9 there's a claim that the criminal investigation was
10 suspended.

11 I was -- I've seen no indication that
12 that statement is correct. I don't know that there
13 ever was a criminal investigation. I would take issue
14 with the characterization in paragraph 136.

15 MR. VIGNA: Is it correct to say that
16 your knowledge of computers and Internet is not one of
17 a forensic computer analyst? There's a distinction to
18 be made.

19 MR. KLATT: And what distinction do
20 you -- do you make?

21 MR. VIGNA: Well, somebody who is a
22 forensic analyst will be actually taking computer,
23 doing an analysis, and being able to have some kind of
24 scientific analysis. Yours is more of a technical type
25 of knowledge. Do you -- you don't dispute that?

1 MR. KLATT: Technical knowledge is
2 required to do forensic analysis. Some degree of
3 forensic analysis is required often to do file
4 recovery, data recovery from hard drive content that
5 our clients bring to us on occasion.

6 MR. VIGNA: But you don't portray
7 yourself as a computer forensic analyst?

8 MR. KLATT: That's not my job title,
9 no.

10 MR. VIGNA: That's not your studies
11 also, correct?

12 MR. KLATT: But I do have some
13 ability --

14 MR. VIGNA: I'm not trying to dispute
15 your knowledge in the computer area, but in terms --
16 for example, if you compare it to police computer
17 forensic analyst, you wouldn't consider yourself at the
18 same level, correct?

19 MR. KLATT: I don't have access to
20 some of the forensic investigation tools that they use
21 that -- that's correct.

22 MR. VIGNA: In the Zundel case, which
23 is found at tab 5.

24 THE CHAIRPERSON: Sorry?

25 MR. VIGNA: The Zundel case, tab 5.

1 THE CHAIRPERSON: Five.

2 MR. VIGNA: You mention you testified
3 in that case. In that case, was it as an expert.

4 MR. KLATT: Yes, that is correct.

5 MR. VIGNA: Okay. You have it in
6 front of you?

7 MR. KLATT: Tab 5?

8 MR. VIGNA: Of the volume 1. All
9 right. I just want to refer you to page 33, paragraph
10 102. Could you read it for yourself?

11 MR. KLATT: Yes.

12 MR. VIGNA: It's correct to say
13 what -- in the -- in this case, you were called as an
14 expert witness, as well as Mr. Angus was called as an
15 expert witness, correct?

16 MR. KLATT: Yes, Mr. Angus was there
17 as well.

18 MR. VIGNA: And it's correct to say
19 that your evidence didn't have much determination in
20 the final outcome, in terms of relying in -- on the
21 expert evidence that you provided versus the expert
22 evidence that Mr. Angus provided?

23 MR. KLATT: The weighting seemed to
24 be hinging on my admission that I had not read a series
25 of dictionary definitions. I don't recall if Mr. Angus

1 admitted to reading the same dictionary definitions
2 either. But that was the determination that may have
3 made the difference, whether or not somebody had read
4 some dictionary definitions. I notice there is no
5 refutation of any of the expert opinion that I
6 provided.

7 MR. VIGNA: On another issue,
8 Mr. Klatt, you admit to being a participant with
9 Mr. Fromm, outside a synagogue in Victoria on October
10 26th, 2003, to protest a certain event that was taking
11 place there?

12 MR. KLATT: Yes, I was there at that
13 time.

14 MR. VIGNA: And what was the protest
15 all about?

16 MR. KLATT: I believe my actions
17 there were consistent with anybody's concern for
18 freedom of expression in Canada, and expression on the
19 Internet.

20 As I understood, the topic was to
21 relate to the -- the topic of Internet censorship of
22 particular topic areas that that group had an interest
23 in suppressing.

24 MR. VIGNA: Why was it outside a -- a
25 synagogue?

1 MR. KLATT: That's where they chose
2 to hold a meeting. It was not a religious day, it was
3 not a religious group. That was the venue that they
4 chose to hold that meeting at.

5 MR. VIGNA: I don't have any further
6 questions.

7 THE CHAIRPERSON: Mr. Warman, do you?
8 Okay, do you wish to re-examine on these points, Ms
9 Kulaszka?

10 MR. FOTHERGILL: Just so that we do
11 get in the practice, now that we're dealing with
12 constitutional issues of --

13 THE CHAIRPERSON: I wasn't sure we
14 are dealing with the constitutional issues here but --

15 MR. FOTHERGILL: My understanding,
16 and I stand to be corrected by Ms Kulaszka, is that
17 Mr. Klatt has been called as an expert witness to
18 address some aspects of the merits of the complaint,
19 and also some aspects of the constitutionality.

20 THE CHAIRPERSON: Fine.

21 MR. FOTHERGILL: But rather than ask
22 questions at this time, I will have some submissions
23 and perhaps you'll want to hear from me later.

24 THE CHAIRPERSON: Oh, submissions.
25 On the expertise?

1 MR. FOTHERGILL: Yes.

2 THE CHAIRPERSON: Okay.

3 MS KULASZKA: Mr. Klatt, in the
4 controversy in Oliver, did you set out your position in
5 a letter to the Attorney General of B.C.

6 MR. KLATT: Yes, I did.

7 MS KULASZKA: What did you state?

8 MR. KLATT: I don't have the letter
9 in front of me, but the essential message I wanted to
10 convey was that if there was an area that the Attorney
11 General had a concern or issue with, any of the
12 content, I was willing and able to meet with him to
13 provide any remedies, or address any areas of concerns
14 that they might have.

15 MS KULASZKA: So your position was
16 that ISPs shouldn't be responsible, and that police
17 authorities should be the ones who determine what's --
18 police and judicial authorities should be the ones to
19 determine what is legal and illegal? Is that -- was
20 that your position?

21 MR. KLATT: That still is my
22 position. It seems entirely logical and reasonable to
23 me.

24 MS KULASZKA: And did you offer to
25 work with police, and give them all cooperation?

1 MR. KLATT: Yes, I did.

2 MS KULASZKA: I'm sorry, your
3 position there was -- an ISP was a common carrier?

4 MR. KLATT: In the aspect of web
5 hosting, it should be treated as -- as common carriers
6 and with -- there should be no liability attached to
7 the web hosting provider for material that can be
8 changed and uploaded without prior notice or review.
9 The -- a web hosting client can modify or change or
10 upload new content without notifying the web hosting
11 provider, so there is no chance for prior review,
12 unlike a book publisher.

13 MS KULASZKA: Was this one -- one of
14 the first controversies concerning the liability or the
15 role of ISPs for material on the web?

16 MR. KLATT: I believe it's the first
17 in Canada.

18 MS KULASZKA: And is this an issue
19 with Internet service providers, is -- that they talk
20 about?

21 MR. KLATT: It has generated ongoing
22 discussion in both U.S., Canada and other countries in
23 subsequent years.

24 MS KULASZKA: In the Zundel case,
25 looking at page 33, I believe the -- the Tribunal at

1 this point is talking about evidence concerning the
2 definition that should be given to telephonics in the
3 legislation; is that correct?

4 MR. KLATT: Yes, that was an area of
5 discussion.

6 MS KULASZKA: Because at that time,
7 the section was restricted to telephones and telephonic
8 communications, correct?

9 MR. KLATT: That's my recollection,
10 yes.

11 MS KULASZKA: Do you know if any ISPs
12 reviewed the content of a website before allows --
13 allowing users to sign up?

14 MR. KLATT: Be relatively unusual.
15 I'm -- I'm not aware of any that have a policy of doing
16 that.

17 MS KULASZKA: So what you did was not
18 unusual?

19 MR. KLATT: Correct.

20 MS KULASZKA: Thank you. I have no
21 further questions.

22 THE CHAIRPERSON: Okay, thank you.
23 Would you like to make submissions on his expertise,
24 other than -- than the evidence that you've led?

25 MS KULASZKA: I would just make the

1 submission that Mr. Klatt clearly has the technical
2 expertise to give evidence and provide opinions which
3 would be very useful to the Tribunal in -- in this
4 case. He has worked extensively, right from the
5 beginning, with the Internet. He was an ISP, and
6 continues today to have a computer business.

7 THE CHAIRPERSON: Mr. Vigna? Oh,
8 Mr. Fromm? I'm sorry.

9 MR. FROMM: My only submission, in
10 addition to what Ms Kulaszka said, and I entirely adopt
11 her -- her submissions, is that Mr. Klatt's
12 knowledge -- and this, I think is very relevant,
13 particularly to the constitutional question -- remains
14 current. He's a current practitioner and technician,
15 and as I know, I think he's pretty -- pretty
16 knowledgeable.

17 But the -- the world of computer
18 communications and the Internet is constantly changing.
19 I think the fact he's -- he continues to be active in
20 this field puts him in a position to offer information
21 that may be of assistance to yourself.

22 THE CHAIRPERSON: Well, I'm not sure
23 he's active in the field on -- at least on the evidence
24 I've heard, in the field of Internet service provision.

25 I understand he's involved with

1 computers and installations and so on, but I'm not sure
2 I heard any evidence that he is -- remains an ISP at
3 this point, or an -- an operator of an ISP business.

4 MS KULASZKA: No, he is no longer an
5 ISP. He had a business where he had both dial-up and
6 cable modem, and he did that for a number of years.
7 Perhaps he could just expand on that.

8 THE CHAIRPERSON: Well, I've -- I've
9 heard the evidence on that and it -- I saw the time
10 line. It ended at a certain period of time, and it was
11 sold to another company, right?

12 MS KULASZKA: He sold it but he
13 continues to --

14 THE CHAIRPERSON: Have a consultancy
15 for a couple of years thereafter.

16 MS KULASZKA: Correct. And even
17 today, he works on consulting for Internet access and
18 troubleshooting.

19 THE CHAIRPERSON: I don't have any
20 evidence but -- Mr. Vigna?

21 MR. VIGNA: I don't have any specific
22 comments, other than that he's -- his knowledge is
23 particular to certain technical aspects of the Internet
24 and computers, but to that extent --

25 THE CHAIRPERSON: Well, he's not

1 being proffered as more than -- of an expert than what
2 you've just said, "expert in the Internet computers,
3 including functions associated with being an Internet
4 service provider".

5 MR. VIGNA: To that extent, I don't
6 have a difficulty.

7 THE CHAIRPERSON: Okay.
8 Mr. Fothergill? I don't see Mr. Warman indicating
9 anything.

10 MR. FOTHERGILL: Thank you. I think
11 that this case presents more than the usual challenge
12 when qualifying an expert witness. As I'm sure you are
13 aware, the test of expertise is actually quite low.
14 You then -- any level of expertise beyond that of the
15 ordinary layperson, and on the face of the CV and --
16 and his -- the questions that were asked in chief, it
17 certainly appears that he has a level of expertise that
18 transcends that of the ordinary person.

19 So in the normal course, I would not
20 be addressing you at all, except to say that he appears
21 to be sufficiently well qualified to offer the Tribunal
22 some sort of expertise. But I would draw the
23 Tribunal's attention in this particular case to the --
24 the Zundel case that was cited during the questioning
25 by Mr. Vigna.

1 THE CHAIRPERSON: Yes. Should I look
2 at it?

3 MR. FOTHERGILL: If you wouldn't
4 mind, yes. Page 33.

5 THE CHAIRPERSON: Yes.

6 MR. FOTHERGILL: Mr. Vigna pointed
7 the witness to paragraph 103 and -- and following. And
8 in the middle of paragraph 103, we read:

9 "The evidence of Mr. Bernard
10 Klatt was of very limited
11 assistance to us. Mr. Klatt
12 demonstrated an extremely
13 shallow foundation of knowledge
14 in his area of expertise during
15 the course of his testimony."

16 And of course, the witness addressed
17 that with reference to dictionary definitions, that,
18 with respect to the witness, I -- I think the finding
19 is -- is broader than that. And I would just ask you
20 to consider whether he has provided anything to you
21 today that would cause you to come to a different
22 conclusion.

23 But the next point that I -- I think
24 ought to be drawn to your attention is what appears in
25 paragraph 104, which raises an unusual issue for an

1 expert witness. And that is whether the witness might
2 in fact be disqualified because of undue partisanship.
3 So in paragraph 104 on page 34, we read:

4 "During cross-examination,
5 Mr. Klatt was frequently
6 argumentative, evasive, and
7 unable to answer elementary
8 questions in his field. Most
9 troubling to the Tribunal was
10 the extent to which this witness
11 responded as an advocate for the
12 respondent, and not as an
13 objective independent expert."

14 And I would submit to you, based on
15 what you've been told about Mr. Klatt's involvement
16 with certain types of controversial websites, there is
17 a very real question about whether his personal
18 involvement or personal partisanship towards some of
19 the parties involved in this proceeding, might actually
20 be sufficiently great for the Tribunal to reject him as
21 an expert, as a reliable expert.

22 I appreciate that you may prefer to
23 deal with that in the course of testimony, but what is
24 unusual here is that there are prior judicial
25 determinations, that in fact, he is sufficiently

1 partisan, that very little, if any, weight can be
2 placed on his testimony, in, I would submit, a subject
3 matter similar to the one that we're dealing with
4 today.

5 And the final point I -- I would like
6 to make is -- emerges from the Schnell decision at tab
7 8 of Mr. Vigna's book. And that has to do with the
8 relevance of at least some of his proposed testimony to
9 the constitutional issue. And if I can refer you to
10 tab 8 of the book, the Schnell decision at page 35.

11 You and the witness were asked to
12 read the entire section that begins on 34, beginning
13 with the constitutionality of section 13(1) of the Act.
14 I would draw your attention to Tribunal member Grant
15 Sinclair's statements at paragraph 137 and following.
16 "I have detailed this evidence" -- and this is the
17 evidence of Mr. Klatt on Fairview's business
18 activities:

19 "I have detailed this evidence
20 because of CAFE's argument that
21 the mere accusation of promoting
22 hate messages, whether valid or
23 not, can have a chilling effect
24 and serious consequences on the
25 alleged promoter, even though

1 there have been no complaints
2 filed under any human rights
3 legislation, or any charge
4 brought under any criminal
5 legislation."

6 Paragraph 138,

7 "But I have difficulty
8 understanding the relevance of
9 this evidence to the question of
10 the constitutionality of Section
11 13(1) of the Act. Mr. Klatt was
12 not the subject of the complaint
13 under Section 13(1) or charged
14 under Section 319 of the
15 Criminal Code. The source of
16 his problem appears to be the
17 various actors, who in his
18 account, objected to the account
19 on some of" -- sorry --
20 "objected to the content on some
21 of the websites which Fairview
22 hosted, and who caused others to
23 take the action as they did.
24 What is missing is evidence
25 showing a nexus between Section

1 13(1) and Mr. Klatt's problems.
2 Accordingly, I cannot give any
3 weight to his testimony, as it
4 relates to the constitutionality
5 of Section 13(1)."

6 So even if you are inclined to hear
7 his evidence, despite the various provisos I've
8 identified, I would object to him being asked to
9 testify about his experiences with Fairview Technology
10 Centre, insofar as this is said to relate to the
11 constitutional issue.

12 THE CHAIRPERSON: All right. Well,
13 we -- we're not there yet, and I -- I gather he's not
14 being tendered as a fact witness, as was the case here.
15 Or is he being tendered as a fact witness? I don't
16 know.

17 MS KULASZKA: No, he's not being
18 tendered --

19 THE CHAIRPERSON: Only as an expert
20 witness, with regard to that expert report that we've
21 seen?

22 MS KULASZKA: Correct, plus the WHOIS
23 matter and the Anne Cools matter, and that's it.

24 THE CHAIRPERSON: And that's it.
25 Okay, so to that extent -- as for the other issue,

1 Mr. Fothergill, I'm more inclined to be mindful of that
2 consideration in -- in dealing with the weight to be
3 assigned to his evidence, rather than to preclude him
4 from being able to testify.

5 You know, I have Mohan in front of
6 me, the decision of the Supreme Court. And it -- the
7 criterion that it puts with regard to the expert, is
8 that he would be a properly qualified expert. I think
9 he has the qualifications, based on the evidence that
10 I've heard, as Mr. Vigna's acknowledged.

11 So to that extent, I will accept him
12 as an expert, for the purposes being tendered by Ms
13 Kulaszka, which was -- I'll repeat it for the record --
14 "Expert in the Internet and computers, including the
15 functions associated with being an Internet service
16 provider."

17 MS KULASZKA: Mr. Klatt, do you have
18 your binder of materials? I believe this has been
19 filed as R-2.

20 MR. KLATT: Yes, I do.

21 MS KULASZKA: If you turn to tab 1,
22 is this your expert report, which was prepared for this
23 hearing?

24 MR. KLATT: Yes, it is.

25 THE CHAIRPERSON: R-2, right?

1 THE REGISTRAR: R-2.
2 (DISCUSSION OFF THE RECORD)
3 THE CHAIRPERSON: Tab 1?
4 MS KULASZKA: It's tab 1, and the
5 witness has recognized it as his expert report which
6 has been -- which was previously filed.
7 THE CHAIRPERSON: It was previously
8 filed, Mr. Vigna? This was disclosed to you?
9 MR. VIGNA: Yeah, it was disclosed --
10 disclosed to me.
11 THE CHAIRPERSON: Yes. Go ahead, Ms
12 Kulaszka?
13 MS KULASZKA: We're going to go
14 through the WHOIS material first. Mr. Klatt, do you
15 have the large binder, R-1?
16 MR. KLATT: I'm not sure if I do.
17 MS KULASZKA: Can you make sure he
18 gets a copy?
19 THE CHAIRPERSON: Did you not provide
20 a copy for the witness, Ms Kulaszka, earlier?
21 MS KULASZKA: We don't have a copy --
22 I'll have to copy one but --
23 MR. VIGNA: Yes, that's fine. I
24 thought he just picked it up.
25 THE CHAIRPERSON: No, he does not.

1 And I don't want one that's been marked. Okay. There
2 has to be one copy always provided for the witness
3 stand, of any exhibit that you guys produce.

4 THE REGISTRAR: I think the problem
5 is because Mr. Warman was the witness and he may have
6 used his. I don't know, or maybe one wasn't provided
7 so --

8 THE CHAIRPERSON: So please put that
9 there, provided it's all clean. All of it, right, all
10 of it's clean? Okay. Tab?

11 MS KULASZKA: It's tab 20. Do you
12 see a document before you, a WHOIS search result for
13 ihatethehaters.com?

14 MR. KLATT: Yes, I recognize that
15 document.

16 MS KULASZKA: And can you describe
17 how that document came to be?

18 MR. KLATT: Yes. I was provided with
19 some information to create a registration for the
20 domain name "ihatethehaters.com".

21 MS KULASZKA: And who provided you
22 that -- with that information?

23 MR. KLATT: Marc Lemire gave me
24 some -- information to use for filling in the various
25 forms of requested information, when a domain name was

1 registered.

2 MS KULASZKA: And can you point out
3 that information on -- on the document?

4 MR. KLATT: Yes. The process of
5 registering a domain name requests information to be
6 supplied for registrant name, an address, cities, state
7 or -- and location. It also requests information for
8 administrative contact, technical contact.

9 MS KULASZKA: And the -- the name and
10 addresses and other information we see here, was that
11 provided to you by Marc Lemire?

12 MR. KLATT: Yes, it was.

13 MS KULASZKA: And what did he request
14 that you do with it?

15 MR. KLATT: Use -- use that
16 information to create a domain registration for the
17 domain name referred to, ihatethehaters.com.

18 MS KULASZKA: And could you describe
19 in detail exactly what you did to create this document,
20 or to register the -- that domain name?

21 MR. KLATT: Right. I went to the
22 godaddy.com website and logged in, and did a request
23 for the domain name "ihatethehaters.com", which showed
24 as being available. I then entered the supplied
25 information in the appropriate data fields, and

1 completed the transaction without -- without any
2 difficulty. I then used the godaddy.com WHOIS
3 function, and did a look-up on the domain name
4 ihatethehaters.com, and printed the resulting
5 information that was displayed, that we see here.

6 MS KULASZKA: What is godaddy.com?

7 MR. KLATT: It's a U.S. based, high
8 volume, widely used domain registration service, as
9 well as hosting -- web hosting service as well as --
10 and a number of other web and Internet related
11 functions.

12 MS KULASZKA: And why did you go to
13 Go Daddy?

14 MR. KLATT: I chose that one because
15 it was inexpensive to use for this exercise.

16 MS KULASZKA: And how long did it
17 take to register this domain name?

18 MR. KLATT: I would estimate less
19 than five minutes.

20 MS KULASZKA: Did it verify any of
21 the information you provided?

22 MR. KLATT: No, there is no
23 verification of any of the -- of the form data
24 regarding the domain name registration.

25 MS KULASZKA: Did it verify that the

1 name was available?

2 MR. KLATT: Yes, it did initially
3 indicate that that domain name had not been
4 previously -- or not currently registered to any other
5 registrant.

6 MS KULASZKA: And did you have to pay
7 for this?

8 MR. KLATT: Of the --

9 MS KULASZKA: For registering the
10 domain name.

11 MR. KLATT: Yes, for registering the
12 domain name, there is a charge associated with it. But
13 to determine whether or not the domain name is
14 available, there is no charge.

15 MS KULASZKA: And when did -- how
16 long did it take for this information to appear on Go
17 Daddy, after you registered the domain name?

18 MR. KLATT: I believe it was
19 available almost essentially immediately.

20 MS KULASZKA: And then you printed it
21 off?

22 MR. KLATT: Correct.

23 MS KULASZKA: I would like to produce
24 that document.

25 THE CHAIRPERSON: Yes. What document

1 is that? There's a two-page tab here, yes. Okay.

2 MS KULASZKA: I notice at the top,
3 it -- it states:

4 "The data contained in
5 godaddy.com Inc's WHOIS
6 database, while believed by the
7 company to be reliable, is
8 provided 'as is' with no
9 guarantee or warranties
10 regarding its accuracy."

11 Do you see that?

12 MR. KLATT: Yes, that's the
13 information contained at the top of the WHOIS
14 information retrieval.

15 MS KULASZKA: When you do a WHOIS
16 search, what is the only thing that is really
17 verifiable?

18 MR. KLATT: If the WHOIS result
19 indicates that the domain name is not currently
20 registered, it means that it is available for someone
21 to register it. If it shows it is registered, it means
22 that it's not available for someone else to register
23 it.

24 MS KULASZKA: And in your
25 understanding, does it prove who actually owns the

1 website or uploads content to it?

2 MR. KLATT: No, as -- as noted in the
3 disclaimer at the top of the information,

4 "Go Daddy makes no claims as to
5 the accuracy of the
6 information."

7 MS KULASZKA: Now, have you
8 registered domain names as part of your business for
9 clients?

10 MR. KLATT: Yes, I have.

11 MS KULASZKA: Why do you do that?

12 MR. KLATT: To obtain the use of a
13 domain name for the -- the purposes that the client
14 wishes to avail themselves of it.

15 MS KULASZKA: So many people just
16 don't know how to do this?

17 MR. KLATT: That's true. And it has
18 become more easier to do so, with the transition from
19 an e-mail-based domain registration to a web-based
20 domain registration process.

21 MS KULASZKA: If you could turn to
22 page -- or to tab 21. This is a WHOIS search result
23 for warmanbooksonline.com. Do you recognize this
24 document?

25 MR. KLATT: Yes, I do.

1 MS KULASZKA: Can you tell me how it
2 was created?

3 MR. KLATT: I watched Marc Lemire
4 create this -- this domain.

5 MS KULASZKA: And what did he do?

6 MR. KLATT: Essentially what I
7 described. He logged into Go Daddy, entered the
8 information shown here, and successfully completed the
9 registration transaction, and did a WHOIS request on
10 the recently registered domain name, and proceeded to
11 obtain this printout.

12 MS KULASZKA: And you saw the
13 document printed?

14 MR. KLATT: Yes, I did.

15 MS KULASZKA: I would like to produce
16 that document.

17 THE CHAIRPERSON: Yes.

18 MS KULASZKA: If we could turn to tab
19 22. I just want to ask, with respect to -- to tab 21,
20 how long did that process take? Did you watch the
21 whole process?

22 MR. KLATT: Yes. Approximately -- I
23 would -- I would estimate no more than five minutes.

24 MS KULASZKA: Okay, turning to tab
25 22, do you recognize this document? It's entitled,

1 "JR's Rare Books and Commentary".

2 MR. KLATT: Right.

3 MS KULASZKA: And what is the URL on
4 the bottom?

5 MR. KLATT: It's shown as
6 <http://www.warmanbooksonline.com/>

7 MS KULASZKA: Can you explain how
8 this URL came about?

9 MR. KLATT: Well, the URL came about
10 through the recently completed domain name
11 registration, but the -- I believe you are asking how
12 did the content get on this -- on this page, in the
13 form we see.

14 MS KULASZKA: Correct.

15 MR. KLATT: Domain forwarding was --
16 is an option that Go Daddy service providers, and the
17 warmanbooksonline domain was configured to forward to
18 the JRBooksOnline domain.

19 MS KULASZKA: Could anybody do that?

20 MR. KLATT: It's not difficult to do.

21 MS KULASZKA: And what -- what does
22 it mean to -- could you explain what it means to
23 "domain forward"?

24 MR. KLATT: What it essentially does
25 is create a pointer record that redirects requests for

1 access -- information or access requests that are
2 directed to Warmanbooksonline to the actual serving
3 domain, JRBooksOnline.

4 MS KULASZKA: Does this show there is
5 no relation between domain name and content?

6 MR. KLATT: That -- that's correct.

7 THE CHAIRPERSON: Ms Kulaszka, a
8 couple of times today, you've used some leading
9 questions. That was one of them. So it doesn't serve
10 your interest to put the answer right into the
11 witness's mouth.

12 MS KULASZKA: And can you explain --

13 THE CHAIRPERSON: Mr. Warman --
14 Mr. Vigna, you had another objection?

15 MR. VIGNA: I'm just -- Mr. Chair,
16 it's not too clear to me that Mr. Klatt is directly
17 related to this document and --

18 THE CHAIRPERSON: Has what?

19 MR. VIGNA: Has a direct link to this
20 document, or that he has knowledge of this document.
21 In order to produce it.

22 MS KULASZKA: Did you go on-line and
23 find this document?

24 MR. KLATT: I watched Marc Lemire
25 create the document.

1 MS KULASZKA: So he went to the URL
2 shown at the bottom of the page?

3 MR. KLATT: Yes.

4 MS KULASZKA: And then what happened?

5 MR. KLATT: This is what showed up on
6 the screen that we were then able to print out.

7 MS KULASZKA: And you saw it on the
8 screen?

9 MR. KLATT: Yes, I did.

10 MS KULASZKA: You saw it printed out?

11 MR. KLATT: Right.

12 MS KULASZKA: I would like to produce
13 this document.

14 THE CHAIRPERSON: It's been
15 sufficiently identified. Right.

16 Just so I understand something,
17 Mr. Klatt, once you're redirected, the -- the URL at
18 the bottom of the sheet never changes? It always
19 remains the original URL, even though you're looking at
20 the material of the -- the site to which one is
21 redirected?

22 MR. KLATT: The way domain name
23 redirection works is that a variety -- or a number of
24 domain names can be forwarded to another domain name.
25 For example, ibm.com may be the primary domain that IBM

1 chooses to use, but they could also have registered
2 domain names that are associated with various marketing
3 campaigns, and those additional domain names, even
4 though they may not say ibm.com, can be redirected to
5 point to the domain name ibm.com, which is a fairly
6 common or standard usage of domain name redirection.

7 THE CHAIRPERSON: We've all
8 experienced redirection, but it seems to me I've --
9 I'm -- just wondering what's -- at the bottom of the --
10 of one screen or at the bottom of the printout, does
11 one continue to see the site from which you originally
12 began your -- your venture?

13 MR. KLATT: Well, if -- if you click
14 on the link that's on the -- like, for example, as what
15 we see here, assuming there is a -- clickable links,
16 URLs on that page, if you click on those --

17 THE CHAIRPERSON: Yes.

18 MR. KLATT: -- then the URL at the
19 bottom of the page will change to reflect the -- the
20 contents.

21 THE CHAIRPERSON: So it's only the
22 original redirection that one -- where one continues to
23 see the -- the original URL?

24 MR. KLATT: That's correct.

25 THE CHAIRPERSON: And then once you

1 are in there, if you click further, then it's -- you
2 will no longer --

3 MR. KLATT: The URL will reflect
4 the --

5 THE CHAIRPERSON: It will reflect the
6 URLs of what -- the link that you've clicked --

7 MR. KLATT: Correct.

8 THE CHAIRPERSON: -- leads to the
9 URLs? Okay.

10 MS KULASZKA: If someone wants to
11 correct a -- a registration, what process do they
12 follow?

13 MR. KLATT: If it's to their own
14 registration, they can log in and -- and change their
15 own registration information easily. If somebody is
16 unclear or -- or has a complaint about domain name
17 registration of another domain that they are interested
18 in, there's a -- a typical complaint form available on
19 various domain name registry services that allows the
20 person to identify the domain name in question that
21 they -- that they want clarification on, and request
22 the verification.

23 MS KULASZKA: If you could look at
24 tab 16 of your materials, that would be R-2. And it
25 would be page 3.

1 THE CHAIRPERSON: I'm sorry, R-2? I
2 missed the tab, I'm sorry.

3 MS KULASZKA: It's tab 16, page 3.
4 Can you describe what this is?

5 MR. KLATT: Yes, this is an example
6 of a domain name form for requesting updated or
7 complaining about invalid WHOIS data for a domain name
8 registrar, where the complainant would -- requester
9 would enter their name and -- and e-mail address, and
10 particulars regarding the type of information sought.

11 MS KULASZKA: And in this particular
12 case, who does it go to?

13 MR. KLATT: It would go to
14 godaddy.com's registrar services.

15 MS KULASZKA: Maybe you could go back
16 to page 1 and 2, and just describe this document in
17 total. Is 1, 2 and 3 -- are they all together?

18 MR. KLATT: Pages 1 and 2 are WHOIS
19 report retrieved through godaddy.com's WHOIS service
20 for the domain name, jrbooksonline.com. And page 3 is
21 the form that they -- that godaddy.com provides for
22 requesting or expressing concern regarding WHOIS data
23 that may be invalid or incomplete.

24 MS KULASZKA: And if you turn to page
25 4, can you tell me what this document is?

1 MR. KLATT: This is a similar
2 document, to report WHOIS -- problems with the WHOIS
3 data from another registrar, internic.net.

4 MS KULASZKA: And is it the same type
5 of process?

6 MR. KLATT: Correct.

7 MS KULASZKA: Maybe we could take a
8 break now. I see it's five to 12:00.

9 THE CHAIRPERSON: Okay. Have we
10 produced pages 1 through 4?

11 MS KULASZKA: No, we haven't. I was
12 just going to say, could I produce pages 1 through 4 of
13 tab 16?

14 THE CHAIRPERSON: The remaining
15 material is not part of that same package, is that it?

16 MS KULASZKA: Maybe we could come
17 back to it.

18 THE CHAIRPERSON: Okay. So for the
19 time being, we'll just produce pages 1, 2, 3, 4 --
20 well, just to be clear. Did you print these documents
21 off, Mr. Klatt?

22 MR. KLATT: Yes.

23 THE CHAIRPERSON: Okay. I'm sorry,
24 yes.

25 MR. WARMAN: Just a housekeeping

1 matter before we leave. I may have to leave early
2 today, so I may not be here after the break. And I
3 just wanted to inform the Tribunal that in terms of
4 tomorrow and subsequent dates, I'll be taking my
5 attendance on a day-by-day basis. Just to be --

6 THE CHAIRPERSON: Okay. And if there
7 is any issues that you wish that be brought to the
8 attention of the Tribunal, I've asked you to work with
9 Mr. Vigna and then provide that information to us.

10 MR. WARMAN: I will.

11 --- Recessed at 11:58 a.m.

12 --- Resumed at 1:31 p.m.

13 THE CHAIRPERSON: Mr. Fromm?

14 MR. FROMM: A matter that arose just
15 before we broke for lunch.

16 Mr. Warman indicated he wouldn't be
17 here this afternoon, and he would be here on perhaps an
18 occasional basis for the rest of the hearings. At
19 least that's what I understood him to say.

20 A similar situation arose in Schnell
21 versus Mishka (ph), and for two days running the
22 complainant, Mr. Schnell, was not present.

23 I raised the matter to Member
24 Sinclair and Member Sinclair asked the Commission
25 counsel, Ms. Rusmicot (ph) why the complainant was not

1 there. She said she didn't know. And Member Sinclair
2 said that it was necessary, as he'd launched the
3 complaint, to be there for the remainder of the
4 proceedings, and indeed he was.

5 I know you expressed some concern and
6 in Warman versus Jessica Beaumont and Mr. Warman was
7 not there the final day of the proceedings for final
8 submissions.

9 Now, he's the man who initiated all
10 of this, that put the taxpayers of this country to
11 considerable expense, particularly Mr. Lemire.

12 Mr. Lemire is just starting off his
13 work career, he's going to take the better part of a
14 month off for these hearings. He has to be here.

15 It seems to me, considering the
16 ruling of Member Sinclair -- and unfortunately I don't
17 have it in front of me -- that the complainant should
18 be required to be here. I can understand if he's ill,
19 perhaps an afternoon for some urgent business. But he
20 announced -- if I understand him correctly this
21 morning -- that he'll be here on a day-by-day basis. I
22 just don't believe that's acceptable.

23 He's the person who set this entire
24 process in motion. I believe, sir, he ought to be
25 here. And consistent with Member Sinclair's ruling, I

1 invite you to make a similar ruling.

2 THE CHAIRPERSON: I'm not familiar
3 with Member Sinclair's ruling on that point. Maybe I
4 can inquire into it and I'll look it.

5 My initial reaction -- I have had no
6 difficulty in the past dealing with these types of
7 situations. Again, I note Mr. Kulbashian is in the
8 room. I recall the first days that his hearing began,
9 the first day he was not available and his father was
10 there in his behalf. You know, I thought it was -- it
11 could pose a problem, but I allowed it to occur and we
12 were able to proceed on that basis.

13 My concern in that other file you
14 brought up where you were present, Mr. Fromm, was that
15 we were into argument. I found that problematic, that
16 we were unable to get the complete story, and I've
17 raised my concerns at the time.

18 At this point, I'm not necessarily --
19 his evidence is complete. Mr. Fromm, his evidence is
20 complete. I don't think he'll be called back to the
21 stand. Not overly concerned.

22 I'll leave it to you. If you can
23 bring me something that I could look at, if you are
24 saying there was something previous, I'm not closing my
25 mind to it at this point. He asked himself to be

1 excused for this afternoon. That much I know. He's
2 not here right now, for the record.

3 I don't need him to proceed through
4 the evidence. I see your point, but I've given these
5 types of exceptions in the past to all sides, to all
6 participants. Except the Commission. But even they
7 don't show up at some of the hearings nowadays.

8 So, yes, it's an interesting point.
9 The Commission, in a good portion of other human rights
10 complaints other than section 13, does not appear.

11 MR. FROMM: I'll undertake to try to
12 get more documentation. I suspect it's in the
13 transcript and I'm going to have to look. I don't
14 think it's in the Member Sinclair's final ruling.

15 THE CHAIRPERSON: I appreciate your
16 comment. But, you know, the human rights process is
17 more than just a complainant. The Commission has a
18 role to play, too.

19 If no one was sitting at that table,
20 that would raise a different issue. It's not unusual
21 for the Commission to take the lead, if you will, in
22 human rights complaints. And the respondent can be
23 there. The respondent can choose not to be there, too,
24 when represented by counsel.

25 As I indicate, Mr. Kulbashian himself

1 wasn't represented by legal counsel. He was
2 represented by his parents. And we were able to
3 proceed nonetheless.

4 I'm open if you want to making any
5 further comments on that later, Mr. Fromm.

6 So, can we continue with the witness.

7 MS KULASZKA: Mr. Klatt, do you have
8 R-2 in front of you? That's the small binder with your
9 evidence? Can you turn to tab 4, page 19?

10 MR. KLATT: Yes.

11 MS KULASZKA: It's tab 4, R-2. So
12 tab 4, page 19.

13 THE CHAIRPERSON: Yes, I have that.

14 MS KULASZKA: Mr. Klatt, do you
15 recognize that document?

16 MR. KLATT: Yes, I do.

17 MS KULASZKA: What is it?

18 MR. KLATT: It's a printout from the
19 ICANN organization's home page.

20 MS KULASZKA: What is ICANN?

21 MR. KLATT: It's the Internet
22 Corporation for Assigned Names and Numbers. And it's
23 an internationally recognized organization that's
24 responsible for managing IP address space allocations,
25 protocol-type identifiers. They refer to it as top

1 level domain name systems, including the country code
2 and global domain name identifiers such as -- dot com
3 would be a global identifier and dot ca would be a
4 country, a specific code identifier.

5 MS KULASZKA: And can you describe
6 what ICANN's role is?

7 MR. KLATT: One of its functions is
8 to maintain operational stability of the Internet as a
9 whole, and it represents various global Internet
10 communities and develops policies through a consensus
11 space process.

12 MS KULASZKA: Did you print that
13 document out?

14 MR. KLATT: Yes, I did.

15 MS KULASZKA: Can I produce that
16 document? It will be page 19 and 20.

17 THE CHAIRPERSON: Okay.

18 MS KULASZKA: If we go back to tab
19 16, I think we were discussing this before lunch, and
20 look at page 4. Does this document refer to ICANN?

21 MR. KLATT: Yes, it does. It directs
22 users to -- choose to use this form that information
23 submitted here goes to ICANN, accredited registrars
24 regarding WHOIS queries, information queries.

25 The relationship between domain name

1 registrars and ICANN is that in order for a company to
2 perform Internet domain name registrations they have to
3 be approved or accredited through the ICANN
4 organization.

5 ICANN took over the functions of what
6 was performed by Network Solutions Internet operations
7 when it became open to public competition between
8 domain name registrations, providers.

9 MS KULASZKA: If you could turn to
10 tab 4.

11 MR. VIGNA: Tab 16, has it been
12 produced?

13 THE CHAIRPERSON: So far only pages 1
14 through 4. Correct?

15 THE REGISTRAR: Yes.

16 MS KULASZKA: I had better produce
17 that document then.

18 THE CHAIRPERSON: The one we just saw
19 was produced. Page 4 was produced.

20 MS KULASZKA: Then that's fine.
21 That's what we've referred to. Yes, it's been produced
22 then?

23 THE CHAIRPERSON: Yes.

24 MS KULASZKA: Okay. Mr. Klatt, can
25 you turn to tab 4?

1 MR. KLATT: Okay.

2 MS KULASZKA: There's a document that
3 goes from pages 1 to 18. What is this document?

4 MR. KLATT: It's entitled "Brief
5 History of the Internet", apparently written by a
6 number of the people that were involved in the early
7 development of the ARPANET and Internet technical and
8 software aspects of it.

9 MS KULASZKA: Where does this
10 document appear?

11 MR. KLATT: It's on the website of
12 the Internet Society or ISOT.org

13 MS KULASZKA: Who are they?

14 MR. KLATT: They are an organization
15 that concerns themselves with standards and practices
16 on the Internet; they administer the set of standards
17 known as RFCs or requests for comments, which define
18 the state of the -- the current state of the various
19 standards that make up the operational characteristics
20 of the large part of the Internet.

21 MS KULASZKA: Why did you include
22 this article in your materials?

23 MR. KLATT: It's useful to again an
24 understanding of how the Internet came about and, as
25 such, its authoritative source of this type of

1 information.

2 MS KULASZKA: Do you want to just
3 briefly review the article, or does it speak for
4 itself?

5 MR. KLATT: It's largely speaks for
6 itself. But in terms of my own involvement, I can
7 speak to some aspects of it.

8 I first became aware of ARPANET
9 approximately 1972 or '73, but it was at that time when
10 they viewed as the domain of relatively prestigious
11 educational institutes or well-financed corporations
12 and certain select government-funded R&D centres and
13 military sites. And later on in this document it
14 describes the development of some of the Internet
15 protocols.

16 And on page 7, also labelled 7 of 18,
17 it mentions the introduction and development of the --
18 various types of computer systems.

19 For example, in the third paragraph
20 from the top it mentions "TOPS 20", which is an
21 operating system that ran on Digital equipment,
22 computer systems.

23 And the next paragraph down where it
24 mentions "widespread development of LANS", the ethernet
25 technology was developed jointly with Xerox Digital

1 Equipment and Intel Corporation at that time frame.

2 Later on it mentions the types of
3 protocols -- yes, on page 9, second paragraph. It
4 mentions DECNET, D-E-C-N-E-T. That was a proprietary
5 protocol developed by Digital Equipment Corporation,
6 and it was used to connect various Digital equipment
7 computer systems together and also provided gateway
8 connections onto the ARPANET. And I had occasion to
9 work with some of the DECNET installations for various
10 customer sites that use that protocol that connected to
11 the ARPANET.

12 MS KULASZKA: What changed the
13 Internet from being mainly the domain of large
14 corporations in the military defence contractors into a
15 broad public medium of exchange of information?

16 MR. KLATT: One of the significant
17 aspects was the lowering of the cost of the computing
18 element in the early 1970s. In order to access the
19 Internet they had devices known as TIP, or Terminal
20 Interface Processor, which consisted of several
21 equipment racks or banks of fairly expensive equipment,
22 several hundred thousand dollars' worth, which, in 1970
23 dollars, was a significant outlay of funds.

24 Another component was the INP, or
25 interface message processor. And that was also a

1 rather expensive component of providing access to the
2 ARPANET. The average house price probably was less
3 than the price of this type of device.

4 So in the later 1970s and early '80s
5 the price of computers that could form those functions
6 was drastically reduced by the wide scale introduction
7 and production of integrated -- low-cost integrated
8 circuits.

9 MS KULASZKA: On the other side, was
10 there any software that made the information more
11 accessible?

12 MR. KLATT: In conjunction with
13 lowering the cost of the hardware, the ease of use was
14 substantially enhanced by the introduction of the --
15 initially, the most useful application was e-mail, and
16 that resulted in a lot more people finding value in
17 using the ARPANET because the e-mail was very useful
18 application because it greatly facilitated the exchange
19 of information in a much quicker time frame than
20 sending faxes or posting a mail letter through the post
21 office system.

22 Later on in the development of the
23 commercial Internet, the worldwide web became available
24 for the work of Tim Burners Lee, the university or
25 research facility in Switzerland, and with the

1 development of the World Wide Web, made available easy
2 access to a wide range of types of information. Not
3 just text information, but graphical information in the
4 form of pictures or moving pictures or audio files or
5 specialized document formats such as PDF or scanned-in
6 image formats.

7 All these normal incompatible message
8 formats were much more easily exchanged amongst users
9 and interested parties.

10 MS KULASZKA: Can you describe how
11 the world -- "WWW" was made possible? Is it software
12 or a protocol?

13 MR. KLATT: The World Wide Web relies
14 on both, software and protocol. The protocol being
15 known as HTTP, hypertext transfer protocol, and the
16 software aspect of it is commonly referred to as the
17 hypertext markup language, referred to as HTML, which
18 is the format that is used for creating most web page
19 documents.

20 MS KULASZKA: If you look at tab 5,
21 is that a document in that form?

22 MR. KLATT: Yes, the document
23 entitled "collins37.html" is an example of a web
24 document and it's referred to as source code that shows
25 is actual HTML coding, not the user's visual

1 representation of that page.

2 THE CHAIRPERSON: Ms Kulaszka, the
3 previous document, do you want it produced?

4 MS KULASZKA: I just want to ask him
5 one more question about it. I just want to ask him
6 what a document looked like that was in HTML.

7 THE CHAIRPERSON: It was HTML source
8 code?

9 MS KULASZKA: It's the source code,
10 tab 5.

11 Now, this is the code but what does
12 it look like on the computer screen?

13 MR. KLATT: Once the HTML code is
14 received by the client's PC, another piece of software
15 application, referred to as Internet browser or web
16 browser, will interpret the HTML coding and render it
17 in a visual format according to the specifications that
18 meet the HTTP markup language.

19 MS KULASZKA: Do you recognize tab 5?

20 MR. KLATT: Yes, that's the source
21 code printout of the collins37.html document.

22 MS KULASZKA: And you printed that
23 out?

24 MR. KLATT: Right.

25 MS KULASZKA: I would like to produce

1 that document.

2 THE CHAIRPERSON: And the previous
3 one? That's what I was interrupting you for, tab 4.

4 MS KULASZKA: Yes, and I would like
5 to produce the previous one as well. We've only --
6 we've looked at pages 1 to 20.

7 THE CHAIRPERSON: I see, it's broken
8 up into several sections. We've already looked at 19.

9 MS KULASZKA: So this would be pages
10 1 to 18 of tab 4.

11 THE CHAIRPERSON: 1 to 18. 19 and 20
12 have been produced. The remainder has not, for the
13 time being.

14 MS KULASZKA: If you could look at
15 just page 1 of the Brief History of the Internet and
16 the introduction of the first paragraph. It states
17 that:

18 "The Internet has revolutionized
19 the computer and communications
20 role like nothing before. The
21 invention of the telegraph,
22 telephone, radio and computers
23 set the stage for this
24 unprecedented integration of
25 capabilities. The Internet is

1 at once a worldwide broadcasting
2 capability, a mechanism for
3 information, dissemination and a
4 medium for collaboration and
5 interaction between individuals
6 and their computers without
7 regard for geographic location."

8 Would you agree with that description
9 of the Internet?

10 MR. KLATT: Yes, that's a good
11 description. I would also possibly add the word
12 "distribution" in addition to broadcasting, although it
13 essentially means very similar.

14 In my view, the Internet is more of a
15 distribution facility than a broadcasting facility,
16 although broadcasting in one sense of the word is
17 certainly appropriate.

18 MS KULASZKA: If we can turn to page
19 21 of the same tab, 4. Can you tell me what this
20 document is?

21 MR. KLATT: Printout of the
22 information at the internetworldstats.com website
23 concerning Internet usage in Canada.

24 MS KULASZKA: What does it indicate?

25 MR. KLATT: It lists data for the

1 years 2000, 2003 and 2005 and it indicates an
2 increasing -- or substantially increasing percentage of
3 the population is using the Internet.

4 MS KULASZKA: And you printed this
5 out?

6 MR. KLATT: Yes, I did.

7 MS KULASZKA: I would like to produce
8 that page 21 of tab 4.

9 THE CHAIRPERSON: Yes. Does it have
10 anything -- just page 21. Okay.

11 MS KULASZKA: I see. It continues
12 on.

13 THE CHAIRPERSON: I see it says page
14 1 of 5, 2 of 5.

15 MS KULASZKA: Maybe we'll just go
16 onto page 22. This is a document is entitled
17 "Broadband and Consumer E-commerce in Canada, December
18 2004 Review".

19 Can you just tell the Tribunal what
20 this document is?

21 MR. KLATT: Yes, it's describing the
22 recent history of the types of Internet access and the
23 percentage of Canadians or Canadian households that
24 have access to various types of Internet access in
25 Canada, in showing the increase in not only number of

1 people using it but the increase in availability of the
2 higher speed Internet access, such as ADSL and cable TV
3 access in addition to the traditional dial-up, lower
4 speed access.

5 THE CHAIRPERSON: So you wish now to
6 have --

7 MS KULASZKA: The entire document
8 produced. So it will be from pages 21 to 25.

9 THE CHAIRPERSON: Okay.

10 MS KULASZKA: Next document and the
11 last one in this tab, page 26, "The World Fact Book".
12 Can you describe this?

13 MR. KLATT: This is a printout from
14 what's commonly referred to as the CIA Fact Book
15 maintained by the U.S. government. And it shows a
16 ranking of relative order of countries in terms of how
17 many people are using the Internet in the year 2005.
18 And Canada is ranked at number 14 with almost 21
19 million.

20 MS KULASZKA: Is this the CIA which
21 is referred to on page 21 on this Internet World Stats?
22 At the bottom they show years, and I notice over on
23 the -- for example at 2005 over on the right-hand
24 column it says "CIA". Is that where they are getting
25 their --

1 MR. KLATT: I believe so, because the
2 first one for the year 2000 apparently comes from a
3 different source. ITU would typically refer to the
4 International Telecommunications Union based out of
5 Switzerland.

6 THE CHAIRPERSON: It appears quite
7 clear to me, going back to page 26, these are raw
8 numbers. 20,900,000 users in Canada of the Internet,
9 is what it's saying.

10 MR. KLATT: Yes.

11 THE CHAIRPERSON: So percentagewise,
12 it's --

13 MR. KLATT: Significant number.

14 THE CHAIRPERSON: Significant amount.

15 MS KULASZKA: You recognize this
16 document and printed it out?

17 MR. KLATT: Yes, I do.

18 MS KULASZKA: Can I produce that
19 document, pages 26 and 27.

20 THE CHAIRPERSON: Yes. It says pages
21 1 -- page 2 of 8. Is the rest -- would the rest have
22 been more countries afterwards?

23 MR. KLATT: Yes, it continued on. I
24 think there's like 130 countries or so. There's
25 additional data that showed -- primarily to show where

1 Canada ranks in the list.

2 THE CHAIRPERSON: Okay. It's
3 produced, Ms Kulaszka. With this, the entire tab has
4 been produced. Tab 4.

5 MS KULASZKA: If we could turn to tab
6 6. Can you explain what this document is. It's called
7 JAVA Boutique.

8 MR. KLATT: Yes, I recognize this
9 document. It's from a website,
10 JAVAboutique.internet.com. This website specializes in
11 the topic of JAVA.

12 JAVA is a programming language
13 developed by Zundel Microsystems, that's optimized for
14 creating interactive applications on web pages.

15 Some of the typical or early uses are
16 for -- indicating what they call mouse-over effects.
17 If you place your pointer over top of the clickable or
18 selectable item, it would change colour or change
19 shape. That can be implemented using the JAVA
20 language.

21 It can also be used for creating a
22 variety of other web page tools called JAVA applets,
23 and these applets can be referenced or called from
24 other web pages without having to recreate the same
25 code on each page.

1 So JAVA does make web page creation
2 and functionality substantially more easier for
3 programmers to develop interesting and useful
4 applications.

5 The pages here describe some of the
6 types of JAVA applets that are available. One that you
7 may have encountered occasionally is the one shown at
8 the bottom of page 2. Quite a few financial or
9 stock-related sites will employ a JAVA applet that will
10 show current stock market or financial data in real
11 time. That can be accomplished through using a JAVA
12 applet.

13 At the top of that section there's a
14 mention of a world clock. Any type of clock
15 application can show real time information. And that's
16 a good example because you can actually see what it
17 looks like, a second hand advancing around the face of
18 a clock. That is another example of the JAVA applet.

19 MS KULASZKA: You can download this
20 to your computer?

21 MR. KLATT: Yes, that is intent of
22 the coding of these JAVA applets.

23 MS KULASZKA: Just to go back to tab
24 1, your expert report. On the first page, paragraph 3
25 you talk about some of the most used application

1 protocols in the Internet protocol suite. Is JAVA one
2 of these or this is something else?

3 MR. KLATT: What we are seeing here
4 on point 3 of page 1 are protocols. JAVA in itself is
5 a programming language and not a protocol, so it would
6 not be part of this list.

7 MS KULASZKA: What is protocol? This
8 list that you have, what would these protocols do?

9 MR. KLATT: Protocols, the
10 specification of how information is transmitted from
11 one point to another. More common ones that are in use
12 are, of course, HTTP for transferring web page content.

13 Another one is POP3 for retrieving
14 e-mails and SMTP, for when the e-mail is sent.

15 HTTPS, the "S" referring to secure or
16 encrypted web page for entering the -- working with
17 sensitive financial data such as accessing banking
18 information or on-line transactions, pages that use
19 HTTPS can provide a secure link for transmitting
20 sensitive or secure information.

21 FTP is still in use. That's an
22 efficient protocol for transferring large file sizes.

23 SSL is another relatively lighter
24 used protocol.

25 MS KULASZKA: What is IP, the top

1 one? Internet protocol?

2 MR. KLATT: Internet protocol is one
3 of the earliest protocols developed. It didn't have
4 any significant error correction or error checking or
5 means for re-transmitting dropped or missed packets,
6 and that type of functionality was added, TCP protocol.

7 The IP and TCP protocols essentially
8 form the basis for ARPANET and Internet usage.

9 MS KULASZKA: Have you described what
10 an Internet protocol address is in paragraph 5 of your
11 report on the next page?

12 MR. KLATT: Yes, an IP address is
13 important in Internet usage because it is the unique
14 address that specifies either a source or destination
15 for packets that transit the Internet. And the
16 Internet address is made up of -- at least represented
17 as four dotted decimal digits.

18 The first part of the address
19 typically is an indication of the type of -- the size
20 or class of a network that it originates from or is
21 destined to.

22 MS KULASZKA: If we could go back
23 to -- could we go back to tab 6 to JAVA -- I think we
24 did that. It goes to -- maybe we'll go through the
25 whole tab before producing it.

1 You recognize the document and
2 printed off? I'm talking about tab 6, pages 1 to 4.

3 MR. KLATT: Yes, that's a document I
4 saw and printed out.

5 MS KULASZKA: If we could go onto
6 page 5. ARPANET. It appears to be from cineplex.com.
7 Can you tell the Tribunal why you included this
8 document here?

9 MR. KLATT: This document is a good
10 example, I feel, for the type of audio or visual
11 content that's available from various websites. This
12 cineplex.com makes available various movie trailers for
13 various new release video and movie productions.

14 MS KULASZKA: What kind of software
15 would they use to do this?

16 MR. KLATT: It's presented on an HTML
17 formatted web page, the actual content can be delivered
18 using file format such as ADI or Real Media or a
19 variety of other formats.

20 But the -- Windows media player
21 format is another commonly used to -- representing
22 audio visual information. And that's mentioned at the
23 note near the top where it says:

24 "Links may require appropriate
25 media players to view or may

1 link to external websites".

2 And when they are saying they need
3 appropriate media players, that indicates that the
4 ability to view the content is not necessarily
5 currently resident on the client's machine. They may
6 have to acquire the actual player application to view
7 the content.

8 MS KULASZKA: That goes from page 5
9 to 6. Did you print that document off? You recognize
10 it and you printed it off?

11 MR. KLATT: Yes, I do.

12 MS KULASZKA: If we can go to page 7.
13 What is this document?

14 MR. KLATT: This is a printout from a
15 web page from real.com. Real.com is one of the larger
16 Internet companies that specialize in audio visual
17 content. Initially their focus was on audio content,
18 although they have now expanded to include video
19 capabilities as well.

20 They make available free and advanced
21 players that are available for a cost for playing
22 audio and video content encoded in their format.

23 MS KULASZKA: What other players
24 would there be for music or audio?

25 MR. KLATT: Another popular audio

1 player format is winap, which is another audio format.
2 MP3 is another format that has a wide usage base.

3 MS KULASZKA: And you recognize that
4 document and you printed it off?

5 MR. KLATT: Yes.

6 MS KULASZKA: If we could turn to
7 page 9. This deals with QuickTime. What is QuickTime?

8 MR. KLATT: QuickTime is a product
9 from Apple computer. It's actually a family or group
10 of products primarily used for encoding and playing
11 back video content. The player is available as a free
12 download, but to produce and encode video content users
13 can purchase the QuickTime encoder from Apple to create
14 content in this format.

15 MS KULASZKA: To put up on a website?

16 MR. KLATT: Yes, it can be
17 distributed through the web or peer-to-peer file
18 sharing programs.

19 MS KULASZKA: Are you familiar with a
20 website called YouTube?

21 MR. KLATT: Yes.

22 MS KULASZKA: What is YouTube?

23 MR. KLATT: YouTube is probably the
24 largest collection of user-submitted video clips that
25 are available on-line.

1 MS KULASZKA: Do you know what kind
2 of software is used so people can view the video clips?

3 MR. KLATT: I know it doesn't require
4 QuickTime. Not a hundred percent sure, but I believe
5 it's a Flash Player.

6 MS KULASZKA: You printed off page 9
7 and 10 and you recognize that document?

8 MR. KLATT: Yes, I do.

9 MS KULASZKA: If I can produce all
10 the documents at tab 6.

11 THE CHAIRPERSON: Yes.

12 MS KULASZKA: Mr. Klatt, if you could
13 turn to tab 7. If you could just go through this tab
14 and describe the documents and what they are.

15 MR. KLATT: Yes. We see on page 1 is
16 the home page for the Government of Canada website,
17 available in both English and French as user-selectable
18 choices from those click boxes at the bottom of the
19 page.

20 Page 2 is a listing where a user can
21 access or choose to select which department or
22 organization or agency they are interested in
23 additional information from. And the underlined
24 portions indicate selections that a user can click on
25 to take them to additional information regarding that

1 desired selection.

2 I didn't click on or include
3 printouts from sub-choices but -- seen here that this
4 list is comprehensive of a wide number of the
5 representative departments and agencies from the
6 Canadian government website.

7 MS KULASZKA: And that goes from
8 pages 1 to 4, correct?

9 MR. KLATT: Right.

10 MS KULASZKA: And to page 5 it
11 states, "Province of British Columbia" at the top.
12 What is this?

13 MR. KLATT: This is the printout of
14 the B.C. government home page, showing the available
15 content at that date, such as information on Premier
16 Campbell's recent announcements, information on their
17 budget, links to various departments in the B.C.
18 government such as the legislative assembly, various
19 ministries and/or governmental departments.

20 MS KULASZKA: That continues onto
21 page 6?

22 MR. KLATT: Yes.

23 MS KULASZKA: On page 7, this is the
24 Government of Newfoundland and Labrador?

25 MR. KLATT: Right. We see a similar

1 web page that the Government of Newfoundland maintains
2 on their home page. It has links to government,
3 current news releases, tourism department and other
4 departments and agencies of the Newfoundland and
5 Labrador Department.

6 MS KULASZKA: And page 8.

7 MR. KLATT: Is the home page of the
8 Northwest Territories government website containing
9 links to areas of interest that they maintain and
10 provide information on, such as current news, contract
11 opportunities, road and ferry conditions and
12 availability.

13 MS KULASZKA: Page 9?

14 MR. KLATT: Is the web page for the
15 Nova Scotia government on that date, with links to
16 various sub pages that contain information as shown
17 there.

18 MS KULASZKA: That goes over on page
19 10, correct?

20 MR. KLATT: Uh-huh.

21 MS KULASZKA: And page 11?

22 MR. KLATT: It's the printout of the
23 Ontario Provincial Government website on that date,
24 that URL.

25 MS KULASZKA: Are all these links

1 that you can click on and obtain further information?

2 MR. KLATT: Yes. The left-hand
3 column indicates some of the major categories for
4 additional information can be retrieved.

5 MS KULASZKA: And that goes over to
6 page 12 as well, correct?

7 MR. KLATT: Yes, it does, with
8 another two columns of selectable information topics
9 available there.

10 THE CHAIRPERSON: That federal
11 government lacks any creativity or color. It's the
12 most boring of any of these pages.

13 MS KULASZKA: It really is, isn't it?

14 THE CHAIRPERSON: I also notice
15 you've omitted my home province of Quebec.

16 MR. KLATT: It was not intentional.

17 MS KULASZKA: If we can turn to page
18 13.

19 MR. KLATT: This is the Premier of
20 Ontario's web page where it makes available a video
21 commentary on some of the headlines that were current
22 at that time, also links to the Premier's priorities
23 that he had on there at that time and various other
24 categories of interest, such as driver licence, birth
25 certificates and other provincial government services.

1 MS KULASZKA: On page 13 there's a
2 box that says, "Your Thoughts. Share your views,
3 opinions and questions". Did you check that out?

4 MR. KLATT: I did click on that and
5 what it brings up is a web page where a person can
6 enter essentially queries in terms of submitting a
7 request for information or having somebody at the
8 provincial government possibly look into an issue that
9 is of interest to one of their constituents.

10 MS KULASZKA: And on page 14?

11 MR. KLATT: We see the home page for
12 Prince Edward Island's website. It links on items of
13 interest, such as business, tourism, immigration, state
14 of their economy.

15 MS KULASZKA: And what is page 15 and
16 16?

17 MR. KLATT: Those two pages are a
18 link from the Ontario legislature with links to Hansard
19 content of the debates that were carried on in the
20 House.

21 MS KULASZKA: And page 17?

22 MR. KLATT: Page 17 is the start of
23 the comprehensive list of municipal home pages of
24 various communities and cities and towns throughout
25 Ontario.

1 MS KULASZKA: That goes over to page
2 18 and 19?

3 MR. KLATT: Right. Each of those
4 underlined municipalities or cities or towns links to
5 the home page that contains content or maintained by
6 that individual entity.

7 MS KULASZKA: Why did you include
8 this material for the Tribunal?

9 MR. KLATT: It goes to show the
10 comprehensiveness of the type of information that's
11 available and the availability and ease of access.

12 MS KULASZKA: Now, do you recognize
13 all the documents we've gone through in this tab and
14 you've printed them out?

15 MR. KLATT: Yes, I do.

16 MS KULASZKA: Can I produce those
17 documents?

18 THE CHAIRPERSON: Yes.

19 MS KULASZKA: We turn to tab 8,
20 headed up "Canadian Universities", at the very top.
21 Can you tell me what this is?

22 MR. KLATT: University of Waterloo
23 maintained this web page which contains a compilation
24 of links to universities and educational entities
25 throughout Canada. It's a handy resource for easy

1 reference to have access to the home pages and websites
2 for various educational organizations in Canada.

3 MS KULASZKA: So if you click on any
4 of these links it takes you directly to the college or
5 university's home page?

6 MR. KLATT: That's correct.

7 MS KULASZKA: And this goes from page
8 1, I believe, to 7?

9 MR. KLATT: Yes.

10 MS KULASZKA: And on page 8, can you
11 tell us what this is?

12 MR. KLATT: On page 8 is a web page
13 that lists a large number of on-line accessible
14 journals, primarily academic, but covering a wide
15 variety of topics and areas of interest.

16 MS KULASZKA: What does it say just
17 below -- it says, "Currently available journals" then
18 zero to 9, A, B, C. What does it state just below that?

19 MR. KLATT: Which page are you
20 referring to?

21 MS KULASZKA: Page 8. Says,
22 "Currently available journals", "Complete title list",
23 and there's just a little paragraph below that. What
24 does it say?

25 MR. KLATT: The following list

1 includes all titles available through the collections
2 in the JSTOR Archive. There's a total of 606 titles,
3 not including previous titles. The Currently Available
4 Journals page includes a title list for each
5 collection.

6 MS KULASZKA: Does this go over to
7 page 21?

8 MR. KLATT: Yes, it does.

9 MS KULASZKA: Okay. The documents in
10 this tab, you recognize them and printed them off.

11 MR. KLATT: Yes, I did do this print
12 out.

13 MS KULASZKA: Can I produce those
14 documents?

15 THE CHAIRPERSON: Yes.

16 MR. FOTHERGILL: Mr. Hadjis, if I
17 might say something. We seem to be going through a
18 number of tabs here that simply show the extent of
19 information available on the Internet, and I can
20 understand that would be relevant to the constitutional
21 issue. It's certainly not contentious. I don't
22 think -- expert testimony on and I'm sure the Tribunal,
23 like any other reasonably educated entity in Canadian
24 society, is perfectly well aware of the extent and
25 usefulness of the Internet.

1 So if it assists Ms Kulaszka at all,
2 just glancing ahead at tab 8, tab 9, tab 10, 11, which
3 is the web pages of all of the intervenors and parties,
4 probably through until 12, don't pose any particular
5 difficulty from the Attorney General's perspective.
6 It's something, frankly, I think you could --

7 THE CHAIRPERSON: Mr. Vigna, do you
8 agree?

9 MR. VIGNA: I agree on most. I just
10 want to perhaps --

11 THE CHAIRPERSON: Take your moment.

12 Ms Kulaszka, I don't think it's very
13 controversial. Do you mind if we proceed? It will
14 allow us to go faster.

15 MS KULASZKA: I would like to ask him
16 about tab 10. But if there's no objections from the
17 Commission then I would just produce tab 9.

18 THE CHAIRPERSON: Yeah. 9.
19 Newspapers, okay. Yes, I have the same familiarity
20 that you referred to, Mr. Fothergill, I have. From
21 what I gather, far in excess of what Mr. Vigna has.

22 MR. VIGNA: I don't have --

23 THE CHAIRPERSON: I don't think we
24 got that far. We were only talking about up to 13 or
25 was it up to 12? Did you include 14, Mr. Fothergill,

1 in your list?

2 MR. FOTHERGILL: I didn't actually.
3 I agree that 14 will probably be --

4 THE CHAIRPERSON: Oh, no, 14 is
5 something different.

6 MR. FOTHERGILL: I certainly went as
7 far as 12 for the statistics, the household use. All
8 quite uncontroversial.

9 VBulletin on tab 13, I'm not familiar
10 with. There's a more interesting discussion --

11 THE CHAIRPERSON: I'll take one quick
12 look and -- hang on.

13 MS KULASZKA: Should we just produce
14 tab 9?

15 THE CHAIRPERSON: Tab 9 can be
16 produced, and tab 10 appears to be an MP.

17 MS KULASZKA: I just wanted ask --

18 THE CHAIRPERSON: I'll get back to
19 that. I'll just go through that quickly.

20 MS KULASZKA: And tab 11 is a
21 selection of the home pages of everybody involved in
22 this hearing.

23 THE CHAIRPERSON: That I think
24 everyone can concede. I'll say tab 11 is produced.

25 Mr. Vigna, you can always ask

1 questions on any of these. For the purposes of
2 production is --

3 MS KULASZKA: So just produce tab 11?

4 THE CHAIRPERSON: Let's produce tab
5 11, and tab 12 are from Statistics Canada. I recognize
6 the style. Tab 12 is what?

7 Now, let's go to tab -- 13 I would
8 like you to turn to, Ms Kulaszka. We'll need some
9 identification of that. And you wanted to pose some
10 questions regarding tab 12, which I think I can produce
11 as well.

12 It appears to be excerpts from --
13 wait, there's more than one person involved. I'll just
14 do the MP's website. That looks like an obvious type
15 of website. But you can ask your questions.

16 MS KULASZKA: I can just regard it as
17 produced?

18 THE CHAIRPERSON: Yes.

19 MS KULASZKA: Mr. Klatt, this is tab
20 10, just for reference, Carolyn Bennett MP. What is
21 this an example of?

22 MR. KLATT: This web page from
23 Carolyn Bennett's website is good example of what's
24 referred to as a web log, or blog, where individuals
25 can post commentary or -- without much difficulty in

1 formatting it. It usually relates to current topics or
2 recent incidents that may be of interest to their
3 perceived readership base.

4 MS KULASZKA: Is this a popular means
5 of web publishing?

6 MR. KLATT: Apparently it is.
7 There's a very large and growing number of web logs in
8 existence.

9 MS KULASZKA: If we could move
10 onto --

11 THE CHAIRPERSON: Page 4 is another
12 blog? Another web log?

13 MS KULASZKA: Yes. Carolyn Bennett's
14 web log goes over to page 3, correct?

15 MR. KLATT: Right.

16 MS KULASZKA: Could you tell us what
17 starts at page 4? That's blog --

18 MR. KLATT: Page 4 is from
19 blogscanada.ca's website. This website specializes in
20 information regarding the topic of web logs in Canada.
21 It has a directory of blogs that are available that
22 specialize in Canadian blog listings.

23 Two-thirds of the way down the page
24 it mentions that they have a directory of over 10,000
25 Canadian blog listings.

1 THE CHAIRPERSON: It's a website
2 dedicated to putting together and making accessible all
3 blogs to Canadians from one source.

4 MR. KLATT: Correct. They do a
5 pretty good job of indexing and making available this
6 type of information instead of having to search for it
7 through other more difficult means.

8 THE CHAIRPERSON: And page 7 is a
9 similar type of thing working through Google?

10 MR. KLATT: Page 7 is describing, or
11 is a printout from Google's blog search facility where
12 if a person is interested in recent blog commentary
13 regarding a particular topic, they can put in the
14 search terms they think might be relevant. And this
15 will retrieve information from blogs only, not news
16 sites, not web pages but from -- not general web pages
17 but web logs, content.

18 THE CHAIRPERSON: So it works similar
19 to Google in that it goes into the content of what's
20 been written but only on blogs?

21 MR. KLATT: On the subset of blogs
22 only.

23 THE CHAIRPERSON: I understand. You
24 printed this off as well?

25 MR. KLATT: Yes.

1 MS KULASZKA: Could we produce that
2 entire tab?

3 THE CHAIRPERSON: Yes.

4 MS KULASZKA: Turn to tab 11. I
5 think we've agreed to produce that.

6 THE CHAIRPERSON: Yes, tab 11 is
7 produced. And tab 12, I said earlier, is a typical
8 Statistics Canada page on the Internet, right?

9 MS KULASZKA: Okay. If we look at
10 the statistics at tab 12, could you go through that,
11 Mr. Klatt? The first page is from StatsCan.

12 MR. KLATT: Yes. This table that's
13 presented describes the Internet use rates by location
14 and location of access and age of head of household for
15 Canada. It shows that in the earlier part of the
16 decade the usage was substantially less than it is
17 currently, or later on in the decade. And that these
18 statistics are only available in this form through the
19 year 2003.

20 MS KULASZKA: And on page 2?

21 MR. KLATT: Is a breakdown in the
22 form of a table describing the type of use, and we can
23 also see from that table how the type of usage has
24 changed somewhat over the most recent years that are
25 listed there.

1 For example, in 1999 obtaining and
2 downloading music was less than 8 percent, the reason
3 why Internet was used; whereas 2003 it was over 20
4 percent, which shows the increasing net usage.

5 General browsing had a substantial
6 increase from 1999 through 2000. That remained
7 relatively steady through 2001, 2003.

8 MS KULASZKA: How about chat groups?

9 MR. KLATT: Chat groups had a
10 substantial increase from 1999 to 2000 and smaller
11 increase in the remaining years.

12 MS KULASZKA: And viewing the news.

13 MR. KLATT: That also shows
14 increasing trends from the years 2000 through 2003.

15 MS KULASZKA: Now, over on page 3,
16 can you describe what this is?

17 MR. KLATT: This is another printout
18 of information obtained from the StatsCan website
19 describing Internet usage by Canadians up through the
20 year 2005.

21 MS KULASZKA: So this is a more
22 updated version?

23 MR. KLATT: Yes. It's in a different
24 format than what the earlier information was presented.

25 MS KULASZKA: If you could go over to

1 page 7 there's a table there, "Reasons for adult users
2 to go on-line during 2005". Could you just review
3 that?

4 MR. KLATT: Yes. The information
5 here indicates that the reasons given for why people
6 use the Internet, 91 percent of them indicate e-mail is
7 the reason why they would use Internet.

8 Another popular reason is to obtain
9 weather or road conditions. Approximately two-thirds
10 of the people say that is the reason why they use the
11 Internet.

12 For example, 38 percent say they use
13 the Internet to chat or use an instant messenger type
14 service; 37 percent to obtain music.

15 MS KULASZKA: So it's obvious the
16 Internet is used for a wide variety of functions,
17 correct?

18 MR. KLATT: Yes, there's a whole --
19 quite a range of information topics, reasons, rationale
20 why people use the Internet.

21 MS KULASZKA: I think that's it. Is
22 this produced? I think that's been produced.

23 THE CHAIRPERSON: I think it is.

24 MS KULASZKA: We'll go on to 13.

25 THE CHAIRPERSON: That's not been

1 produced.

2 MS KULASZKA: Could you tell the
3 Tribunal what this document is.

4 MR. KLATT: It's a printout of the
5 vBulletin website that produces and markets software
6 for on-line chat forums -- well, on-line message forums
7 or discussion forums. It's one of the more popular
8 types of message forum application packages that are
9 available.

10 MS KULASZKA: So if you had a website
11 you would buy the software and you could put up the
12 message board?

13 MR. KLATT: Yes. That would be its
14 main uses where webmasters or web hosting clients that
15 want to provide the ability to use a discussion forum.
16 This is an application software package that does
17 provide that capability.

18 MS KULASZKA: Okay, on page 3. Could
19 you tell me why that is here, 3 and 4?

20 MR. KLATT: Page 3 and 4 are examples
21 of postings from the FreedomSite chat message forum on
22 that date.

23 MR. VIGNA: Mr. Chair, I don't have
24 an objection, but I would just would like to know the
25 source of page 3 and 4. It seems to be a different

1 type of document in the connection with the witness.

2 MS KULASZKA: This was provided to
3 Mr. Klatt. It was on the Freedom site. It was an
4 example. It's their disclosure, the bottom.

5 THE CHAIRPERSON: At the bottom right
6 corner, "WA", a Commission document.

7 MS KULASZKA: Commission document.

8 Could you describe what this software
9 does? What does it allow people to do on the Internet,
10 the vBulletin?

11 MR. KLATT: This type of chat forum
12 or web -- discussion forum software allows the creation
13 of user identities, or user ID's, and the ability to
14 organize and present and allow for posting of
15 information that individual users -- that create the
16 user ID's choose to upload or put on the various
17 discussion topic forums that are contained on the
18 website.

19 For example, typical discussion forum
20 websites have a variety of discussion topics, and the
21 intent is that if a user has an interest in a
22 particular topic area they will choose that subtopic to
23 post their comments or create a new discussion topic in
24 that -- in that particular area.

25 This software is based on a database

1 system and it provides for easy access and retrieval.
2 And one of the most useful features is it provides
3 ability to have an index for easy searching, like key
4 words. Sometimes it's handy to do a key word search
5 before a user posts to see whether someone else has
6 already posted that information relating to that topic
7 to avoid duplication, potentially.

8 MS KULASZKA: And what is called a
9 thread within a message board?

10 MR. KLATT: A message thread is
11 typically the collection of posts that are subsequent
12 to initial forum topic posting, and the replies and
13 replies to replies that are accumulated underneath any
14 given particular message topic that's posted.

15 MS KULASZKA: Are these very popular
16 on the Internet?

17 MR. KLATT: Yes, there's a web
18 discussion forums, bulletin board type forums for just
19 about any topic a person is interested in.

20 MS KULASZKA: How does this relate to
21 something like Yahoo groups? You know how you can join
22 groups.

23 MR. KLATT: It's very similar to
24 Yahoo groups in that a person would identify or search
25 out a discussion forum or Yahoo group discussion forum

1 on a particular topic of interest to them. And usually
2 in order to have full use of it, a person would have to
3 create an ID or log-in with a user ID.

4 Some of them choose to make available
5 the reading of previous posts without creating a user
6 identification. Some of them also require creating --
7 registering and creating an identity even before the
8 ability to read or search the contents is made
9 available.

10 THE CHAIRPERSON: Is this particular
11 page 3 and 4 created with the vBulletin? Can you tell
12 by looking at a discussion forum if it's made by one
13 software or another?

14 MR. KLATT: The vBulletin software
15 can be customized for a variety of different what we
16 call skins or user-interface styles, so it's not all
17 that obvious.

18 THE CHAIRPERSON: It's just that it
19 is a software that creates a typical discussion forum
20 like the one that we see here.

21 MR. KLATT: Correct.

22 MS KULASZKA: So you can choose a
23 type of -- you say a skin. What is a "skin"?

24 MR. KLATT: A skin is a collection of
25 graphical styling elements to create a particular look

1 for a website to distinguish it from another one. For
2 example, a colour scheme or the shape of various
3 components of the web forum can be customized.

4 MS KULASZKA: And you buy that
5 separately?

6 MR. KLATT: I believe the software
7 provides that ability as part of the package.

8 MS KULASZKA: Pages 1 and 2, do you
9 recognize that document and did you print it out?

10 MR. KLATT: Yes, a printout from the
11 vBulletin home page or website.

12 MS KULASZKA: I would like to produce
13 that.

14 And the next 3 and 4 are simply the
15 disclosure documents of the Commission.

16 THE CHAIRPERSON: Isn't this an
17 existing exhibit or not?

18 MS KULASZKA: Pardon?

19 THE CHAIRPERSON: Was it part of an
20 existing exhibit?

21 MS KULASZKA: Yes, it's one of the
22 posts that's included in the case of the Commission.

23 THE CHAIRPERSON: In HR-2.

24 MS KULASZKA: In HR-2.

25 THE CHAIRPERSON: I'll just consider

1 it all produced.

2 MS KULASZKA: Okay. We'll get to tab
3 14, the heading is, "FS Announce: CBC Filters Prevent
4 Mention of Jews".

5 Can you describe what this document
6 is? It goes from pages 1 to 3.

7 MR. KLATT: Yes. This is a message
8 that was posted to the FreedomSite mailing list and
9 it's also -- yes, it's also -- looks like it's posted
10 on the message forum as well, describing the challenges
11 that CBC's website encountered with unmoderated or
12 non-pre-screened user commentary being posted on the
13 CBC website.

14 MS KULASZKA: So CBC had
15 difficulties?

16 MR. KLATT: Yes. As described -- CBC
17 website provided the ability for viewers and listeners
18 to go to their website and enter comments regarding
19 various news stories or items that CBC had run coverage
20 on, and this is describing the difficulties that they
21 were having in terms of maintaining the type or level
22 of acceptable content on the CBC discussion forum.

23 MS KULASZKA: Turn to page 4. What
24 is Cyber Patrol?

25 MR. KLATT: Cyber Patrol is a

1 software application product produced with the intent
2 of allowing the parents, school administrators or
3 employers to control and monitor the type of Internet
4 content that students or children or employees have
5 access to through the systems -- through any system
6 that Cyber Patrol is installed on.

7 MS KULASZKA: So you buy the software
8 and put it on your own personal computer?

9 MR. KLATT: Yes. The software would
10 be required to be installed on each PC that this type
11 of functionality is desired on.

12 MS KULASZKA: Have you ever installed
13 this on anybody's computer?

14 MR. KLATT: I haven't used this
15 particular product, but I've -- installed and worked
16 with the next product called Net Nanny.

17 MS KULASZKA: Is that page 6?

18 MR. KLATT: Yes.

19 MS KULASZKA: Describe Net Nanny.

20 MR. KLATT: It's a competitor product
21 to Cyber Patrol, slightly less expensive so it is more
22 popular with the parents, I believe. And it doesn't
23 have quite the range of features that Cyber Patrol
24 does. But its primary purpose and reason is to
25 restrict access to a range of category -- content

1 categories that can be selected by the person that has
2 the administrator password to configure Net Nanny on
3 the PC that it's installed on.

4 MS KULASZKA: How does it work? Does
5 Net Nanny choose what is blocked or does the parent?

6 MR. KLATT: I would describe it as an
7 a combination. Net Nanny apparently employees people
8 that will categorize web page content into various
9 categories and they make these category lists available
10 to their users that buy and install the Net Nanny
11 software on the individual PCs.

12 And during the set up and
13 configuration of the Net Nanny software, typically a
14 parent would checkmark, select what categories, content
15 they want to make available, such as violence or sexual
16 content, what they refer to as hate material. Those
17 are some of the categories I recall seeing.

18 MS KULASZKA: In your own business,
19 is this widely used by parents from what you've seen?

20 MR. KLATT: I've had very few
21 requests for it and I've done even fewer installs of
22 it.

23 MS KULASZKA: On page 7, headed up
24 "AOL". Can you describe what this page is?

25 MR. KLATT: America Online is one of

1 the larger Internet access provider companies. They
2 started out offering a service that was somewhat --
3 could be viewed as competition to the Internet. But at
4 some point they realized that they were much better off
5 by making their network part of the Internet. So
6 nowadays AOL users are typically considered as part of
7 the Internet because they have Internet routable e-mail
8 address and AOL is primarily accessed now through
9 Internet instead of their own private network that they
10 used to maintain.

11 And they also provide the software
12 features to address the concerns of primarily parents
13 to restrict access to various types of content for
14 children.

15 MS KULASZKA: This is also downloaded
16 onto your personal computer?

17 MR. KLATT: An AOL user has
18 additional software installed on their computer that a
19 regular Internet user would not have on their machine.
20 So it's part of the additional software that comes with
21 an AOL subscription package.

22 MS KULASZKA: Turning to page 8.
23 What is this document?

24 MR. KLATT: What we're seeing on page
25 8 is the printout from the freedomsite.org web page

1 where they indicate that FreedomSite is listed with
2 these various types of Internet content filtering
3 software packages such as Cyber Patrol, Net Nanny,
4 Cyber Sitter, Surf Watch, et cetera.

5 MS KULASZKA: It says:

6 "To protect free speech on the
7 Internet the Freedom-Site is
8 voluntarily 'patrolled' and
9 by..."

10 What does that mean?

11 MR. KLATT: It means that someone has
12 looked at the content of freedomSite.org and added it
13 to one or more categories that these products maintain
14 a blocking list for.

15 MS KULASZKA: What does the bottom
16 paragraph in that section state?

17 MR. KLATT: Written there is:

18 "While we do not consider the
19 FreedomSite to be obscene in any
20 way, we do feel parents of
21 children under the age of 16
22 should have an active say in how
23 their children use the Internet
24 and what sites they view."

25 MS KULASZKA: So because of this

1 registration, parents do have the ability to block the
2 FreedomSite?

3 MR. KLATT: That is correct.

4 MS KULASZKA: Turning to page 9.
5 This is "CBC News Analysis and Viewpoint". Can you
6 describe what this document is? I think it goes from
7 page 9 to right to page 18.

8 MR. KLATT: The part of the CBC
9 website what they refer to as their Viewpoint portion
10 where people are allowed to submit comments on their
11 current news topics that have been reported or covered
12 on the CBC media, and it concludes a sample or
13 selection of various individuals' postings that were
14 present on the CBC website at that date and time.

15 MS KULASZKA: If you go to page 18
16 what is this box at the end? It says, "Send us your
17 comments".

18 MR. KLATT: That information at the
19 bottom of page 18 is how the previous comments were
20 submitted and posted to the CBC website where a user
21 can enter their name and e-mail address and the a
22 location and whatever commentary or comments or
23 observations that they choose to submit.

24 MS KULASZKA: And there's a
25 disclaimer at the bottom?

1 MR. KLATT: Yes. Where as written:
2 "CBC reserves the right to edit
3 submissions and participants
4 acknowledge CBC has the right to
5 reproduce, broadcast and
6 publicize comments or any part
7 thereof in any manner
8 whatsoever. CBC News Online
9 will post as many submissions as
10 possible but will not guarantee
11 that every contribution will be
12 published."

13 MS KULASZKA: Do a lot of news sites
14 have this facility today where you can comment?

15 MR. KLATT: I've seen this type of
16 user or viewer feedback mechanism available for quite a
17 number. But I've also seen where some websites and
18 news organizations have taken measures to make it more
19 difficult or restrict the ability to make comments.
20 Some of them restrict it to subscribers only. Some of
21 them no longer allow anonymous commentary.

22 MS KULASZKA: So you would have to
23 give an e-mail?

24 MR. KLATT: Right. And they also
25 indicate that the source IP address is being logged.

1 MS KULASZKA: So they will tell you
2 that before you submit it so you know that.

3 MR. KLATT: Yes.

4 MS KULASZKA: How is this type of
5 function different from a message board?

6 MR. KLATT: In many ways it's not
7 substantially different in that anybody can choose to
8 post whatever commentary they wish. The part that is
9 perhaps different than a regular web log is that it
10 does not allow users to start a new topic. The topics
11 for discussion are created and started by whoever
12 maintains the CBC website.

13 MS KULASZKA: Do you know what kind
14 of software would run this kind of commentary?

15 MR. KLATT: Would be a specialized
16 web forum software that's integrated with the overall
17 production of the web page itself. It would not likely
18 be something like vBulletin.

19 MS KULASZKA: If you turn to page 19
20 and 20, it's, "Saanich Police Aim for Safeguards After
21 Spam Attack". Can you describe what this article is
22 about?

23 MR. KLATT: This is a posting from
24 canada.com news source describing the write-up from the
25 Victoria Times columnist newspaper.

1 They apparently interviewed the
2 Saanich Police Department regarding the challenges they
3 were having with their web page and the facility that
4 allowed viewers to post comments or post information
5 because the recent postings contained information that
6 were somewhat questionable. And this raised concerns
7 as to whether or not they needed to remove that
8 facility, remove that capability.

9 But they indicated that the local
10 community did find the ability to provide information
11 to the police department through a web discussion forum
12 quite useful and helpful, so they were reluctant to do
13 so.

14 They apparently have three people in
15 the department that are now tasked to manually review
16 and approve postings that are attempted to be made to
17 this web page.

18 MS KULASZKA: Going back to the CBC
19 News Comment page. Were a lot of these postings what
20 would be considered racist? Let me give you an example
21 on page 11.

22 MR. KLATT: Many of the type of
23 postings here would not look out of place on other
24 discussion forums such as Stormfront or VNN.
25 Mr. Warman might characterize some of them as

1 problematic.

2 MS KULASZKA: Can we produce these
3 documents? Did you print these documents off and do
4 you recognize them?

5 MR. KLATT: Yes, I do recognize them
6 and I did print them.

7 MS KULASZKA: Can I produce those
8 documents?

9 THE CHAIRPERSON: Yes.

10 MS KULASZKA: I just want to go back
11 to the Sannich document, page 19 and 20. It's
12 stated -- the fourth paragraph up it states:

13 "The site is checked several
14 times a day by three different
15 people in department, Price
16 said."

17 Is that unusual?

18 MR. KLATT: It is unusual because
19 very few web discussion forums could afford to maintain
20 a web log or discussion forum that required
21 round-the-clock staffing to maintain the flow of web
22 comments that are submitted.

23 Often web forums are -- discussion
24 forums are maintained and set up by organizations or
25 people with very limited means, and to have people on

1 staff with the ability and expertise that is apparently
2 available at the police department to determine what
3 postings are appropriate to let through, would be quite
4 rare and expensive to obtain otherwise.

5 MS KULASZKA: Could you turn to tab
6 15. This is heading "Vonage". Could you tell me what
7 this is?

8 MR. KLATT: This is a printout from
9 what I refer to as Vonage's -- or Vonage home page
10 where they describe promoting their voice over Internet
11 protocol and telephony services.

12 MS KULASZKA: What is "voice over
13 Internet"?

14 MR. KLATT: The ability to encode
15 what typically would be described as telephone
16 communication. And instead of sending it over a
17 circuit switch network, sending it over the packet
18 switched Internet network.

19 MS KULASZKA: Is this becoming
20 increasingly popular?

21 MR. KLATT: Yes, it is. There's a
22 number of companies that are formed to take advantage
23 of this type of technology and the cost savings that it
24 can provide to end users in reduced long distance voice
25 communication.

1 MS KULASZKA: Is this a fairly recent
2 development?

3 MR. KLATT: Relatively recent. It's
4 only come available in any significant amount with the
5 introduction and widespread use of high-speed Internet
6 access such as ADSL or cable modem usage. It's
7 relatively difficult to use voice-over IP with a dial
8 up connection.

9 MS KULASZKA: That goes over to page
10 2, and I see it states, "Vonage crosses the 1.5 million
11 line mark", which you would agree was what you were
12 saying was it's becoming increasingly popular, correct?

13 MR. KLATT: Correct.

14 MS KULASZKA: If you can turn to page
15 3 and describe this document and its relevance.

16 MR. KLATT: Yes. This is showing
17 Bell Canada is also trying to compete with the newly
18 formed companies, such as Vonage, to maintain a
19 competitive product offering. And essentially a press
20 release or a news release indicating that Bell Canada
21 is also working to provide voice-over IP services as a
22 competitive reaction to the marketplace.

23 MS KULASZKA: And page 5, CBC News.
24 Can you describe this document.

25 MR. KLATT: Yes, page -- CBC News

1 item reproduced there, is a description of what
2 voice-over IP is in more detail and what kind equipment
3 is used, indication of the cost savings and indication
4 of how it is currently regulated and some discussion
5 regarding whether or not the voice-over Internet
6 protocol is considered secure.

7 MS KULASZKA: Going back to page 3,
8 "Voice-Over Internet Protocol Top Priority For Bell".

9 The fourth paragraph down it states:

10 "Bell Canada's overall objective
11 is to migrate 100 percent of its
12 traffic including all of its
13 voice traffic onto a national IP
14 backbone network within three
15 years."

16 Do you see that?

17 MR. KLATT: Yes, I do.

18 MS KULASZKA: What has allowed this
19 is the fact that the speed of the Internet is
20 increasing; is this correct?

21 MR. KLATT: What I read from that is
22 Bell Canada's stated objective to phase away or phase
23 out their existing of circuit-switched equipment in
24 favor of going to IP-based packet switch network
25 equipment. What they are seeing is much lower cost of

1 Internet to switching equipment. For example, even
2 though Cisco routers and switches are still relatively
3 expensive, they are a lot less expensive than buying
4 the low volume production telephone specialized
5 switches from companies like Nortel, Mitel, switches
6 ESS number 5 or DSS or DSM 100-type switching system.

7 Those are produced in much smaller
8 volumes. For what they accomplish or what they do in
9 terms of functionality, are much more expensive for
10 Bell Canada to install and maintain. And they are
11 also -- the old circuit switch technology is much more
12 restrictive in terms of what features they can offer.

13 MR. FOTHERGILL: Mr. Hadjis?

14 THE CHAIRPERSON: Yes?

15 MR. FOTHERGILL: Interesting though
16 this is, I'm having some difficulty understanding how
17 this relates either to the merits of the complaint or
18 to the constitutional issue. I'm wondering if Ms
19 Kulaszka perhaps enlighten us.

20 THE CHAIRPERSON: Perhaps. Ms
21 Kulaszka? It is interesting, unquestionably so.

22 MS KULASZKA: It's just preparing the
23 groundwork for explaining what the Internet is, how
24 it's used, its importance.

25 THE CHAIRPERSON: Perhaps we can get

1 some acknowledgements on that, Ms Kulaszka. The time
2 is ticking and you have other witnesses. I don't want
3 us to fall behind. I mean, I certainly am familiar
4 with VoIP. I think we all are.

5 MS KULASZKA: If we could just
6 produce all those documents at tab 15. They deal with
7 voice-over Internet.

8 THE CHAIRPERSON: Yes. Produced.

9 MR. VIGNA: Out of caution, I'm not
10 objecting in any way. But I would like to reserve my
11 right to object on the relevance on the pleadings if
12 there is any issue at that point in time. I just point
13 I'm not objecting.

14 THE CHAIRPERSON: We all learned
15 something.

16 Yeah, we can move onto this material,
17 Ms Kulaszka. The Internet has evolved to the point
18 it's part of everyone's lives. It's getting to the
19 point where it's kind of like explaining how telephones
20 work in many ways.

21 MS KULASZKA: Now, pages -- in tab 16
22 pages 5 to 13. If I could just consult with my client
23 a moment?

24 THE CHAIRPERSON: That, I don't know
25 where it is.

1 MS KULASZKA: This is no longer
2 relevant. It was in response to something the
3 Commission had alleged before.

4 THE CHAIRPERSON: Would you like me
5 to remove it?

6 MS KULASZKA: Yes, to remove pages 5
7 to the end of the tab.

8 Turning to tab 17. I wonder if I can
9 have a break, just a ten-minute break.

10 THE CHAIRPERSON: Okay.

11 --- Recessed at 3:06 p.m.

12 --- Resumed at 3:22.p.m.

13 THE CHAIRPERSON: Perhaps I'm being
14 unfair in my treatment of your abilities with the
15 computer. So I'll try to refrain from those little
16 comments I've made about your abilities with the
17 computer.

18 MR. VIGNA: That's okay.

19 THE CHAIRPERSON: We have joked about
20 this in the past.

21 MR. VIGNA: I don't take it personal
22 at all.

23 MS KULASZKA: Mr. Klatt, you can go
24 to your expert report, paragraph 43. You describe
25 there that the FreedomSite is running Apache website

1 server software. Could you describe that?

2 MR. KLATT: Yes. That is better
3 described on the web page printout at tab 17 from the
4 website apache.org where they describe their HTTP
5 server project software application known as Apache web
6 server.

7 It's the most widely used web server
8 software on the Internet that serves up web page
9 content. It's fully compliant with the HTTP
10 specifications and protocol and it's been updated and
11 improved a number of times.

12 MS KULASZKA: Did you run these pages
13 off?

14 MR. KLATT: Yes, I did.

15 MS KULASZKA: I would like to produce
16 tab 17.

17 THE CHAIRPERSON: It's from the
18 Apache website?

19 MS KULASZKA: Apache website.

20 Now, does this software produce web
21 files?

22 MR. KLATT: Yes, it does produce web
23 files in the common log format that is pretty much
24 industry standard.

25 MS KULASZKA: And what is that?

1 MR. KLATT: The common log format
2 specification describes how log files are formatted.

3 MS KULASZKA: What types of things
4 does it show?

5 MR. KLATT: For example, IP address,
6 the requesting site contains information such as the
7 status code, the type of browser, the date and time
8 that the information was accessed and optionally other
9 details that may be configured to record.

10 MS KULASZKA: Okay. I think in your
11 expert report you described -- yeah, you did -- in
12 paragraph 5. Does paragraph 5 set out what an IP
13 address is of your expert report? It's on page 2 of
14 tab 1.

15 MR. KLATT: Yes, in paragraph 5 and 6
16 we describe, or I describe IP address characteristics.

17 MS KULASZKA: And do you have
18 anything to add or does that pretty well set it out?

19 MR. KLATT: The description I provide
20 in 5 and 6 is accurate in terms of describing what an
21 IP address is and how it's formed.

22 MS KULASZKA: Is it common on the
23 computer, an IP address?

24 MR. KLATT: Any computer that
25 functions on the Internet will have a unique IP

1 address.

2 THE CHAIRPERSON: Does any computer
3 will have an unique IP address?

4 MR. KLATT: Any computer that is
5 functioning on the Internet. If it's not on the
6 Internet, it may or may not require an IP address.

7 THE CHAIRPERSON: But if it's on the
8 Internet -- I just wanted to understand. If there are
9 two computers running off one modem that is operating
10 within a location, do they each have their own IP
11 addresses as well?

12 MR. KLATT: Yes, they do. But in
13 that case if there's two computers working off of one
14 high speed connection, such as a cable modem or ADSL,
15 that would typically imply that there is a gateway
16 router between the actual routable part of the Internet
17 and the local area network where the two computers are
18 connected.

19 MS KULASZKA: Can you look at tab --

20 THE CHAIRPERSON: So there are two IP
21 addresses or one?

22 MR. KLATT: Well, there's only one IP
23 address that gets sent out on the Internet. One of the
24 functions of the router is that it translates the
25 internal IP address that's used on the local area

1 network to the externally routable IP address that's
2 used on the rest of the Internet.

3 MS KULASZKA: If you turn to tab 17,
4 back to the Apache home page. If you look at page 4,
5 can you describe what section 10.2.1 is? It's on page
6 4, the middle of the page.

7 MR. KLATT: Yes. This section 10 --

8 THE CHAIRPERSON: Sorry, I missed the
9 tab number.

10 MS KULASZKA: It's tab 17 with the
11 Apache HTTP Server Project, page 4, in the middle of
12 the page there.

13 THE CHAIRPERSON: The highlighted
14 section?

15 MS KULASZKA: Yeah.

16 MR. KLATT: This is what is referred
17 to as RFC2616, which is the HTTP version 1.1
18 specification or the HTTP protocol. And the section 10
19 describes the status codes and specifically 10.2.1
20 describes what a status code 200, the assigned meaning
21 for that particular status code.

22 In general, it indicates that the
23 request was successful and the requesting entity did
24 receive the information that was requested and was made
25 available through the Apache web server successfully.

1 MS KULASZKA: What do each of those
2 terms mean?

3 MR. KLATT: Well, for purposes of
4 understanding what the web log information is telling
5 us, the status code 200 indicates a successful
6 completion of that request and the various components
7 of it, which is entity corresponding to requested
8 resource sent in the response. There can be some other
9 header information such as post or trace or head. But
10 the status code 200 is the most significant part of
11 that.

12 MS KULASZKA: Now, if you could turn
13 to page 6 it states, "404 not found". Could you
14 explain what that means?

15 MR. KLATT: It's the status code 404.
16 Many Internet users have encountered this type of
17 message presented in a typical web page format that is
18 often accompanied with some additional explanatory
19 information to the effect that the requested
20 information no longer exists at that address. It could
21 also be inferred that is an invalid address, or the
22 content is no longer there, it's been moved elsewhere.

23 Sometimes the messages are
24 accompanied with suggestions to contact the webmaster
25 to update their links or to search for the content on

1 another search tool that may be made available.

2 But "404" always indicates the
3 requested information is no longer there, or not found.

4 MS KULASZKA: Has that been produced,
5 tab 17?

6 THE CHAIRPERSON: I think so, yes.

7 MS KULASZKA: Does a log file note
8 every successful access to a website?

9 MR. KLATT: Not only all successful
10 ones, but all unsuccessful ones as well.

11 MS KULASZKA: In your expert report,
12 paragraph 46, this concerns a web page, Collins 37.

13 THE CHAIRPERSON: What page? What
14 paragraph?

15 MS KULASZKA: It's paragraph 46 of
16 the expert report, it's on page 8.

17 For the purposes of the Tribunal, the
18 document that's been referred to is the Collins Column,
19 reproduced in HR-2 at tab 18. It's not numbered. Let
20 me just number 1, 2, 3 -- it's the 4 pages in dated
21 April 4th, 2001.

22 Mr. Klatt, do you have that as well?

23 MR. KLATT: Yes, I do.

24 THE CHAIRPERSON: Is that the black
25 and white version of it?

1 MS KULASZKA: Yes, the black and
2 white version.

3 THE CHAIRPERSON: As opposed to the
4 colour one.

5 MS KULASZKA: It's called, "The
6 Sinister Attacks Now Taking Place". It's the first --

7 THE CHAIRPERSON: Yes, okay.

8 MS KULASZKA: Mr. Klatt, what does it
9 show at the top? What is that at the top,
10 freedomsite.org collins37.HTML?

11 MR. KLATT: Looking at --

12 MS KULASZKA: I don't know if you've
13 got the right page.

14 MR. KLATT: The black and white?

15 MS KULASZKA: Right. Right at the
16 top on the right.

17 MR. KLATT: It's top of the page, we
18 see the URL for that -- where that document was
19 retrieved from.

20 MS KULASZKA: On paragraph -- back to
21 your expert report -- paragraph 46 on page 8 of your
22 expert report. Now, you were dealing with the log file
23 for that particular web page?

24 MR. KLATT: That's correct.

25 MS KULASZKA: What did you find?

1 MR. KLATT: Reviewing the log file,
2 the actual log file itself, a portion of it shown on
3 page 11 of tab 17, for purposes of getting a better
4 idea of what relates to that particular document we use
5 a tool --

6 MS KULASZKA: I think you mean tab
7 18?

8 MR. KLATT: Yes, tab 18. Use a tool
9 called a 123 Log Analyzer. The application called 123
10 Log Analyzer help us or helps me understand what
11 information is contained in the log file in a more
12 useful format.

13 For example: It shows the number of
14 visits on a daily or a basis spread over a range of
15 time. That would be very difficult to keep in mind if
16 a person just viewed the raw log file in its text form.

17 It also accumulates accounts of
18 various statistics such a hits, visitor's unique IPs,
19 page views, amount of bandwidth used.

20 Results of the 123 Log Analyzer
21 indicate that if it was attempted to be accessed a
22 total of 793 times, but of those 793 times, 185 of them
23 were unsuccessful due to the page being no longer
24 existent.

25 MS KULASZKA: How do you know that?

1 MR. KLATT: Because of the status
2 code 404 that we see shown -- if we look at page 11
3 approximately half way down, we can see the reference
4 to approximately the middle of the page you'll see
5 "collins37.html HTTP/1.1 200 36043". The 200 is the
6 status code indicating that that document was
7 successfully retrieved.

8 And two lines below we see the
9 similar information with "collins37" and a "404" status
10 code, which indicates the document no longer exists or
11 has been removed.

12 MS KULASZKA: What date was it
13 removed?

14 MR. KLATT: The log files indicate
15 that it was no longer accessible after the 28th of
16 August 2005.

17 MS KULASZKA: Back to paragraph 46.
18 What else does this show?

19 MR. KLATT: Shows a breakdown in
20 terms of who accessed that particular web page and from
21 which locations. For example, 694 of the 793 were from
22 the United States, 22 from Canadians, and of those 22
23 only 20 were unique visitors.

24 MS KULASZKA: What's a unique
25 visitor?

1 MR. KLATT: One that didn't duplicate
2 the request.

3 And it also indicates that 58 of
4 those accesses were from search engines. Typically, a
5 search engine will engage in what's called crawling the
6 web or spidering the web, and those type of accesses
7 don't really indicate that it's been viewed by the
8 person. It just indicates that that content has been
9 accessed and added to a search engines own cache of web
10 content that it then uses for indexing purposes in
11 response to user queries in the future.

12 MS KULASZKA: What time frame does
13 this apply to?

14 MR. KLATT: 2nd of January, 2003
15 through the end of December 2005.

16 MS KULASZKA: If you could just go
17 through page 9 of tab 18, just describe what this is
18 showing.

19 MR. KLATT: Titled "Web Access Errors
20 Report". Yes. What we are seeing there is an
21 additional collection of statistics relating to this
22 document from the 123 Log Analyzer output where it's
23 showing the type of 404 errors and the reasons for it.
24 The "no refer", a 403-type error code, counts for the
25 majority of it.

1 MS KULASZKA: And below, is this a
2 graph? It's hard to tell. Top geographic regions,
3 most active countries. Is this a bar graph?

4 MR. KLATT: Yes. It's representative
5 of the location of requests that come in to the
6 FreedomSite web server for this particular document.
7 The majority of the hits are accesses for this document
8 originally from the United States. And the next
9 largest category amounting to 2.7 percent come from
10 Canada.

11 Those are a graphical representation
12 of the numerical statistics previously mentioned.

13 MS KULASZKA: Then below it gives a
14 different kind of representation, different figures.

15 MR. KLATT: Yes. The graph is
16 representative of those figures below.

17 MS KULASZKA: If we could move onto
18 paragraph 48 of your expert report. This is the log
19 file for web page "strom1.HTML". And I'll just get
20 that -- that is also part of the Commission's case. We
21 didn't produce tab 19. Can you produce this document
22 and run it off?

23 MR. KLATT: Yes, I did.

24 MS KULASZKA: If I can produce that
25 document.

1 MR. VIGNA: Mr. Chair, regarding tab
2 18 and 19, I wasn't too clear from this witness how he
3 obtained these documents.

4 THE CHAIRPERSON: Tab 18 or 19?

5 MR. VIGNA: Both.

6 THE CHAIRPERSON: 18 I thought was
7 just a printout from this Apache website.

8 MR. VIGNA: But who?

9 MS KULASZKA: Oh, it would be page
10 18, sorry. I'm referring to 18, the Collins37.

11 THE CHAIRPERSON: Page or tab.

12 MR. VIGNA: Tab. Tab 18 where it
13 says "Collins report". Tab 18 and 19 seem to be
14 similar documents from different sources.

15 THE CHAIRPERSON: Tab 18?

16 MR. VIGNA: Yes.

17 THE CHAIRPERSON: Tab 28 I understood
18 to be sort of a printout from apache.org website. I
19 asked that question earlier.

20 MR. VIGNA: Did he just print it?

21 THE CHAIRPERSON: I'm looking at the
22 wrong thing. I apologize, my error. I apologize.

23 MS KULASZKA: Mr. Klatt, just explain
24 how you get this document?

25 MR. KLATT: The 123 Log Analyzer

1 printouts?

2 MS KULASZKA: Yes.

3 MR. KLATT: Oh. I ran the 123 Log
4 Analyzer and the output goes to a local file in the HTM
5 format. That's why you see the -- what looks like the
6 location where you URL would be. It says, "File
7 C:stats" and the remaining information.

8 "C:" refers to the local hard
9 drive and it's a locally
10 produced file from the 123 Log
11 Analyzer program itself.

12 MS KULASZKA: I guess that clears it
13 up.

14 MR. VIGNA: I'll reserve my --

15 THE REPORTER: Excuse me, I didn't
16 get that?

17 THE CHAIRPERSON: He'll reserve his
18 questions for cross-examination.

19 MS KULASZKA: Could I produce that
20 document?

21 THE CHAIRPERSON: Yes. Tab 18.

22 MS KULASZKA: Going onto -- yes, I
23 think I said that -- to paragraph 48 of your expert
24 report and that deals with web page "strom1.HTML".

25 And just for the record and for the

1 Tribunal, that's found in HR-2, the binder, and it's
2 tab 10. It's the AIDS Secret article.

3 Mr. Klatt, maybe you could just have
4 a look at that. It's tab 10. Do you see it, the AIDS
5 Secret article?

6 MR. KLATT: Yes, I have that.

7 MS KULASZKA: If you look at the
8 bottom, can you read the URL down there?

9 MR. KLATT: Indicates
10 "HTTP://www.freedomsite.org/column/strom1.HTML".

11 MS KULASZKA: Did you do an analysis
12 of the log file for that page?

13 MR. KLATT: Yes, I also used 123 Log
14 Analyzer to process the logs related to that
15 strom1.HTML document.

16 MS KULASZKA: If you look at
17 paragraph 48 of your report, what did you find?

18 MR. KLATT: It was accessed a total
19 of 927 times during the 2nd of January through the end
20 of December and of those 927 times --

21 MS KULASZKA: You'll have to say the
22 year.

23 MR. KLATT: Sorry. Between the 2nd
24 of January 2003 through 31 -- December 31, 2005.

25 Of those 927 attempted accesses, 472

1 were unsuccessful due to the page being no longer
2 existent. And of those 927, 71 were from the search
3 engine spidering or web crawling operations and did not
4 represent accesses from individuals typically.

5 Of the 927 accesses, 799 of them were
6 from -- originated from the United States, and of the
7 19 accesses by Canadians, only 8 were representative of
8 unique visitors.

9 MS KULASZKA: Paragraph 49 you state
10 the log file shows it was removed on April 9th 2004,
11 correct?

12 MR. KLATT: That's correct.

13 MS KULASZKA: If you could just show
14 us that on tab 19.

15 MR. KLATT: Yes. Also page 11 of tab
16 19. A little more than half way down you see the
17 reference to a line containing, strom1.HTML. You'll
18 see status code 200 as the second element from the end
19 of the line.

20 On the 8th of April is the last date
21 and time where we received the status code 200.

22 Starting on the 9th of April, we see
23 that document in the access but returning as status
24 code 404.

25 MS KULASZKA: Which means?

1 MR. KLATT: The document has been
2 removed and is no longer available.

3 MS KULASZKA: What's the date again?

4 MR. KLATT: April 9 of 2004.

5 MS KULASZKA: Now, this is the same
6 type of report on page 10. There's a graph and it's
7 the same type of graph as the previously analysis?
8 It's just a graph of who's accessing it?

9 MR. KLATT: Yes, it is. Once again,
10 we see that majority of the accesses are from the
11 United States.

12 MS KULASZKA: Below that it's just
13 the numerical representation.

14 MR. KLATT: That's correct.

15 MS KULASZKA: Is there anything else
16 you want to show us here in this analysis?

17 MR. KLATT: I think the comments and
18 expert report are consistent with what we went over
19 with the previous similar document.

20 MS KULASZKA: Okay. Going onto
21 paragraph 50 of the expert report.

22 This deals with the log file for the
23 web page Vox Populi 03.HTML, and for the Tribunal this
24 is the document relied upon by the Commission and
25 produced by at tab 19 of HR-2. It's not right at the

1 beginning, it's three pages in. You got that,
2 Mr. Klatt?

3 MR. KLATT: Yes, I do.

4 MS KULASZKA: And if you could read
5 the URL at the top of the page.

6 MR. KLATT: Shows as each:

7 "HTTP://www.freedomsite.org/colu
8 mn/vox _ populi03. HTML".

9 MS KULASZKA: Okay, on page 50 I
10 think you dealt with this file. Could you tell us, did
11 you run an analysis this web page?

12 MR. KLATT: Yes, I used the
13 application 123 Log Analyzer to produce a report shown
14 at tab 20 showing the number of hits and the statistics
15 that we -- I derived from that analysis of the Vox
16 Populi 03 document.

17 MS KULASZKA: What time period did
18 this concern?

19 MR. KLATT: Covered the time frame
20 January 1, 2003 to December 31, 2005.

21 MS KULASZKA: Could you just run
22 through what it showed?

23 MR. KLATT: Yes. The recovered
24 statistics indicate it was accessed a total of 2,236
25 times.

1 Of those, 355 were unsuccessful due
2 to the page not being present. 730 of the total -- 731
3 of the total were due to a search engine that was
4 spidering or crawling, and at least 650 of the visits
5 came from search engines using search term "Karla
6 Homolka".

7 And of the 2,236, 1830 were from --
8 originated from the United States and 91 of the 92
9 accesses of Canadians were unique.

10 MS KULASZKA: So a very large number
11 of visits came through search engines. They were
12 looking for the term "Karla Homolka"?

13 MR. KLATT: That's correct.

14 MS KULASZKA: And was that term found
15 in the article?

16 MR. KLATT: Yes, it was, but it did
17 not seem to be particularly relevant in terms of actual
18 content involving the Karla Homolka case.

19 THE CHAIRPERSON: So I understand.
20 When those 650 visitors that come from search engines,
21 are those the ones where the search has yielded this
22 page as a result alone, or is it where it has yielded
23 this result for the users of the search engine and then
24 the user has clicked to access the page.

25 MR. KLATT: It a term I would as a

1 referred page. The "refer" being a web page generated
2 by a search engine in response a user query for the
3 term "Karla Homalka".

4 THE CHAIRPERSON: So it does not
5 necessarily mean thereafter someone clicked on the
6 search result and entered the web page.

7 MR. KLATT: Yeah.

8 THE CHAIRPERSON: Oh, it does.

9 MR. KLATT: The way that would come
10 about is the user would enter the term Karla Homolka in
11 a search engine such as Google. Google would then
12 produce a list of -- typically the top 10 and this --

13 THE CHAIRPERSON: Is this likely
14 somewhat lower because of the relevance of the term you
15 said.

16 MR. KLATT: It may or may not have
17 been. It may have been in the 10 to 20 range possibly.
18 Anyway, Google ranked it fairly high in terms of this
19 search term, or whatever algorithm Google uses for
20 ranking page. Not surprisingly people clicked on it.

21 THE CHAIRPERSON: So that 650
22 indicates a click, not necessarily a full review of the
23 documents.

24 MR. KLATT: Correct.

25 MS KULASZKA: Someone clicked, seen

1 it and left?

2 MR. KLATT: Correct.

3 MS KULASZKA: If you could look at
4 tab 20, this is the analysis did you on that page,
5 correct?

6 MR. KLATT: Yes, it is.

7 MS KULASZKA: If you could look at
8 page 7. At the bottom it says, "Top search phrases and
9 key words." Perhaps you could go through that and just
10 explain to the Tribunal what is going on here.

11 THE CHAIRPERSON: Page 7 of?

12 MS KULASZKA: Page 7 of tab 20, which
13 is the log file analysis of that particular page.

14 MR. KLATT: What we see on page 7 is
15 the more detailed explanation as to why there was 650
16 visitors from search engines. And what we are seeing
17 here is the breakdown of unique search terms that were
18 used.

19 For example, the search phrase, most
20 common one was "Karla Homolka". That accounted for
21 466.

22 The next most popular one was Karla
23 Homolka pictures. We'll concede that of those search
24 terms, all of them contained the phrase "Karla
25 Homolka". Some of them are more descriptive than

1 others in terms of narrowing down what they were
2 specifically looking for.

3 This Vox Populi document, somewhere
4 in it HTTP contained the phrase "Karla Homolka", and
5 when Google or Yahoo or an MSN-type search engine,
6 spider or bot -- retrieved the content of that web
7 page, it was ranked as being relevant to that type of a
8 query.

9 MS KULASZKA: Can you tell what
10 ranking it was given?

11 MR. KLATT: I guess if you had access
12 to the database at that time you could reconstruct it.
13 But the ranking that you would get now would not
14 necessarily be indicative of the ranking that would
15 have been in place at that time.

16 THE CHAIRPERSON: What we're seeing
17 here is of those times that it was picked up by search
18 engine, the vast majority of searchers had just punched
19 in the name of "Karla Homolka"?

20 MR. KLATT: Correct.

21 MS KULASZKA: If we could go to page
22 12. These -- this is the log file. If you can just
23 point out the day on which it was taken down, how can
24 you tell?

25 MR. KLATT: About a third of the way

1 from the top we see a line referencing the Vox Populi
2 03 document with the status code 200 at the section
3 element from the end. And the date below it 28th of
4 August, 2005.

5 We see the same Vox Populi 03
6 document referenced again, or attempted to be accessed
7 again, but this time we are turning a status code 404,
8 which indicates that the document was removed sometime
9 on the 28th of August, 2005.

10 MS KULASZKA: Just going back to page
11 10. We have the same kind of graph again. If you
12 could just go over that.

13 MR. KLATT: The graph on page 10 is a
14 visual representation of the data arranged by country
15 of access for request to this document, once again
16 showing that originating source is from United States
17 make up the majority.

18 MS KULASZKA: Now, if we just look at
19 the Commission's documents, the one we had been looking
20 at with the URL at the top doesn't show it. We'd have
21 to go to the version that's just ahead of it at tab 19.

22 But if we look on page 2, the third
23 paragraph starting "Ontarions must be enjoying --" do
24 you see the term "Karla Homolka" there? It's the
25 Commission's binder HR-2.

1 MR. KLATT: The larger binder?

2 MS KULASZKA: Right. Just flip back
3 about three pages. You'll see a coloured version of
4 the same. If you look at the second page, third
5 paragraph it starts, "Ontarions must also be enjoying."
6 If you look at the paragraph, do you see the words
7 "Karla Homolka"?

8 MR. KLATT: Yes, we do.

9 MS KULASZKA: So that's what it's
10 picking up?

11 MR. KLATT: Apparently so, because
12 that seems to be -- a quick review. Seems to be the
13 only occurrence of that phrase in this document.

14 MS KULASZKA: If I could produce tab
15 19 and 20.

16 THE CHAIRPERSON: Mm-mmm.

17 MS KULASZKA: Final question for tabs
18 18 and 19 and 20, the back of each of these tabs you've
19 produced a log file. Can you tell me where you got
20 those log files?

21 MR. KLATT: This log file was
22 obtained from the data available off the -- that was
23 made available from Mr. Lemire to me on the Freedom site
24 web page. What we did is we set up a remote desktop
25 that allowed me to access the log files remotely.

1 MS KULASZKA: So you saw these
2 electronically as well in a printed version?

3 MR. KLATT: Yes.

4 MS KULASZKA: Going onto paragraph
5 56. Just going to 53, paragraph 53. That's where you
6 discuss ICANN and -- as well as paragraph 54, 55. Do
7 you have anything to add to that to your expert
8 testimony or what you've said already about it?

9 MR. KLATT: The statements I make in
10 the expert report I believe are sufficient for
11 understanding what ICANN is and what it does.

12 MS KULASZKA: We've gone over it,
13 correct?

14 MR. KLATT: Yes. The key thing to
15 keep in mind regarding ICANN is that it administers a
16 domain registration of companies that want to perform
17 that service. They are the authoritative body that
18 governs domain name registrations and activity relating
19 to that aspect.

20 MS KULASZKA: So if you want to
21 complain about an invalid or incorrect WHOIS
22 registration, who do you go to?

23 MR. KLATT: If the particular
24 registrar for a domain name is not known -- for
25 example, if you don't know that the registrar for a

1 website is, for example, Go Daddy or Open SRS or any
2 other registrars, you can always go to the Internet
3 website that has the complaint form that we saw
4 earlier.

5 MS KULASZKA: And that goes to ICANN?

6 MR. KLATT: It then gets forwarded to
7 ICANN who then forwards it onto the appropriate domain
8 registrar.

9 THE CHAIRPERSON: Your first
10 recourse, if you will, or option is to speak directly
11 to the registrar, but if that registrar is unclear or
12 you are not familiar with it, you can go up to ICANN?

13 MR. KLATT: Yes, because typically
14 you can get a pretty good idea who hosts the website by
15 doing a trace route. But if the trace route
16 information is unclear or the WHOIS information is not
17 sufficiently accurate, you can always go to the
18 Internet registration who then forwards it through to
19 ICANN procedure.

20 MS KULASZKA: Okay. Paragraph 56
21 Google's search engine. We've done -- there it is.

22 I would like to look at tab 21.
23 That's the Google products. Can you describe just
24 describe this page and the kind of products Google
25 makes available?

1 MR. KLATT: Yes, it's described as
2 Google products, but in terms of general users that
3 access this page, you could also think of it as
4 specialized Google search tools.

5 For example, if you are looking for
6 information on a particular book or author, you might
7 choose to use the book search, the third one down from
8 the top on the left-hand column, instead of using the
9 general Google web search.

10 If you had an interest in particular
11 recent news story, you might choose to use the Google
12 news search, which is the fourth or fifth one up from
13 the bottom on the left column. That is often more
14 productive in terms of finding recent news stories than
15 using the general Google web search shown on the main
16 home page. It may not have been indexed in the main
17 archive yet. And likewise, some of the other
18 specialized searches are more appropriate to locate
19 content.

20 MS KULASZKA: Okay. You did a number
21 of Google searches and a few are also reproduced in our
22 binder. Maybe we could just go through them now and
23 produce them.

24 Looking at page 3 of 21. This is a
25 Google web search. Can you just describe what this is,

1 and maybe describe what a Google search shows.

2 MR. KLATT: What we see on this
3 printout is results of a typical Google search using a
4 search term shown, and it's showing the first --
5 returns the first 10 of approximately 1.3 million
6 results that may be applicable in this type of a
7 search.

8 MS KULASZKA: Just turning to page 7.
9 Does this show the various elements of what a Google
10 search returns?

11 MR. KLATT: Yes. The documentation
12 on page 7 is the explanation for various components of
13 a Google search result page. And, as mentioned in the
14 second paragraph according to the ranking algorithm,
15 the first item is considered the most relevant match.
16 And, likewise, the second element -- or second link
17 returned is next most relevant.

18 MS KULASZKA: Okay. Going back to
19 page 3. Just for the first one, could you just
20 describe the elements of the search that comes back.
21 Just page 3, the first -- the ranking number one.

22 MR. KLATT: The most relevant return
23 on that is the one entitled, "Re Human Rights
24 Censorship Conflict". It's from a site in Germany
25 apparently. But it references the Human Rights

1 Commission website and shows the URL of the result, the
2 approximate size of the text on that document, whether
3 or not it's cached.

4 MS KULASZKA: What does "cached"
5 mean?

6 MR. KLATT: Whether or not Google has
7 a copy of it in its database, and a link that a person
8 can click on to find similar pages that relate to that
9 topic.

10 MS KULASZKA: And going onto page 5.
11 This is another search.

12 MR. KLATT: This is example of a
13 search result. If a person would select the similar
14 pages choice on a previous web search result. And
15 that's indicated by the words showing "related:".

16 MS KULASZKA: Do you know how they do
17 this or --

18 MR. KLATT: We have general ideas,
19 but the actual algorithm itself is a very closely
20 guarded secret internal to Google. And they do admit,
21 and it is known they do change their algorithm from
22 time to time.

23 So, often they will change their
24 ranking algorithm to attempt to defeat a search engine
25 optimization spammers who will attempt to spoof the

1 algorithm by loading a web page with lots of key words
2 that they think will help get them a higher rank on the
3 search engine results.

4 There's companies and businesses that
5 specialize in trying to get a company's web page
6 returned in the top 10 for various types of key words.

7 THE CHAIRPERSON: Like the version of
8 the Colonel's secret recipe.

9 MS KULASZKA: If we could just -- and
10 you recognize these documents and you printed them off,
11 correct?

12 MR. KLATT: Yes, I did.

13 MS KULASZKA: Can I produce that tab?
14 That's tab 21.

15 Turning to the following tab, 22.
16 This is just under Google search. Did you do this
17 search and did you print it off? It goes from pages 1
18 to 2.

19 MR. KLATT: Yes, the search term
20 there was "ocean" and, in quotes, "Canadian dummy". I
21 recognize that document.

22 MS KULASZKA: Going over to the next
23 page. In this case the results start from 51 to 60.
24 Do you recognize this page?

25 MR. KLATT: Yes. That's the one I

1 did regarding the search term, "See employment folk in
2 Canada".

3 MS KULASZKA: And going over to page
4 5, this is "Discover Vancouver". Do you recognize this
5 page? Did you print it off? It goes over to page 7.

6 MR. KLATT: Yes, that's one of their
7 results I found that contained that information.

8 THE CHAIRPERSON: Which information?

9 MR. KLATT: Regarding the "see
10 employment folk Canada" search term.

11 MS KULASZKA: This is in relation to
12 tab 16 of HR-2. If you could just looking at that,
13 Mr. Klatt.

14 MR. KLATT: Right.

15 MS KULASZKA: That's the Stormfront
16 posting, the Canadian Immigrant Poem, correct?

17 MR. KLATT: Appears to be, yes.

18 MS KULASZKA: While we're here on the
19 stormfront.org page, could you look at the URL on that
20 page and explain what it means.

21 MR. KLATT: Bottom of page we see
22 "http://www.the-cloak.com/Cloaked/+cfgequals40/" --
23 then we see the actual URL of the Stormfront website,
24 "http://www.stormfront.org/forum/show
25 thread.php?sequalsc6c3..." and the three dots indicate

1 that we do not have the full remainder of the URL to be
2 able to be printed on the page. But it's an indication
3 of a forum sub category.

4 The first part of the URL is of
5 interest indicating that this was retrieved using what
6 is referred to as an IP cloaking service provided by
7 thecloak.com, and the cloak.com website. The very
8 first list -- it lists a variety of reasons why one
9 might want to use that service. The very first one is
10 to hide a person's identity from the site that you are
11 accessing.

12 So, whoever accessed this document
13 felt some need or inclination to prevent their true
14 identity from being identified.

15 MS KULASZKA: And you dealt with this
16 in your expert report, paragraph 63; is that correct?

17 MR. KLATT: Yes, I mentioned that the
18 Canadian Immigrant Poem was obtained from Stormfront's
19 website.

20 MS KULASZKA: But it doesn't show
21 Stormfront.

22 MR. KLATT: No, the actual content of
23 that particular message apparently had been deleted at
24 some point.

25 MS KULASZKA: Do you know how this

1 cloaking Anonymizer software works?

2 MR. KLATT: Essentially what it does
3 is acts as a proxy where requests for a website are
4 directed through a third party instead of directly from
5 the requester to the source. Instead of accessing the
6 source directly the client sends it request to a third
7 party which then acts on behalf of the requester to
8 request the information from the originating source,
9 and then it forwards it back to the requesting site,
10 thereby masking the true source of the request.

11 MS KULASZKA: Can they change the
12 content at all?

13 THE CHAIRPERSON: Can who change the
14 content?

15 MS KULASZKA: The Anonymizer
16 software, does it change the content?

17 MR. KLATT: Not to my knowledge, but
18 it's technically possible that it could. But to my
19 knowledge, it probably doesn't.

20 MS KULASZKA: Do you know what
21 software is available that you could post on-line
22 anonymously?

23 MR. KLATT: There's a service, I
24 believe, called The Anonymizer. There's one possible
25 method for doing that type of activity.

1 MS KULASZKA: We'll go back to tab
2 22.

3 I think we dealt with Discover
4 Vancouver.com. This is on page 7. If you go on to
5 page 8. This is Country Living. Do you recognize this
6 page?

7 MR. KLATT: Yes, the Country Living
8 website also contained a copy of that immigrant poem.

9 MS KULASZKA: It appears to have a
10 type of comment section. Would this be the same kind
11 of software that CBC used?

12 MR. KLATT: Unlikely because
13 countrylife.com doesn't appear to be funded to the
14 extent that CBC would, but it does provide the ability
15 to post comments though.

16 MS KULASZKA: So there's various
17 levels of software that would allow this type of thing.

18 MR. KLATT: We can see it's formatted
19 differently and the information shown is in a different
20 form.

21 MS KULASZKA: Do you recognize that
22 document?

23 MR. KLATT: Yes, I do.

24 MS KULASZKA: Just going back to page
25 10, 11, 12. Looking these entries over, do they show a

1 type of conversation going on about this poem?

2 MR. KLATT: Yes. We see a variety of
3 comments being made, some essentially agreeing with the
4 sentiment, others taking issue with previous comments.
5 There's a range of commentary associated with that
6 posting.

7 MS KULASZKA: You recognize that
8 document? You printed it off?

9 MR. KLATT: Yes, I did.

10 MS KULASZKA: Can I produce the
11 documents at that tab?

12 THE CHAIRPERSON: Yes.

13 MS KULASZKA: We'll go on to tab 23,
14 another Google search. Just to make it quicker. These
15 were a series of Google searches. You did black
16 jokes -- turning to page 3, lawyer jokes; page 5,
17 ethnic jokes, page 6, blond jokes; 8 was white jokes;
18 went on to page 10, gay jokes; page 12 French jokes; 14
19 is Jewish jokes; 16 was nigger jokes; 18 racist jokes;
20 20 was Asian jokes; 22 was a search Holocaust Iran; 24
21 Holocaust Zundel; 26 Holocaust revisionism.

22 Did you look through those and do you
23 recognize those documents?

24 MR. KLATT: Yes, I do.

25 MS KULASZKA: Did you print them off?

1 MR. KLATT: Right, yes.

2 MS KULASZKA: Could I produce those?

3 THE CHAIRPERSON: Yes.

4 MS KULASZKA: From your knowledge
5 just looking at page 1, it says results 1 to 10 of
6 about 133,000 for black jokes. Can you just -- do you
7 have knowledge of what that means? Page 1 of that tab.

8 MR. KLATT: Google's cache contains
9 approximately 133,000 stored web pages where the search
10 term black jokes appears somewhere in the content.
11 Whether or not the actual website contains black jokes
12 is not necessarily the case, but the term "black jokes"
13 is contained on the page somewhere.

14 THE CHAIRPERSON: And to follow that
15 logic, something I believe I asked earlier. If the
16 hyphens were not placed around the word "black jokes",
17 two words black jokes, the search engine would have
18 searched for any sites with the words "black" and
19 "jokes" in them, whether together or apart, correct?

20 MR. KLATT: Yes.

21 THE CHAIRPERSON: So it may yield a
22 larger number, but again it would not necessarily be --
23 have anything to do with black jokes in the sense of
24 what we see perhaps on the first or second selection?

25 MR. KLATT: Without using the quotes

1 around the two words together, the relevance of the
2 returned results would probably be likely less than
3 what the user was looking for, or had in mind.

4 MS KULASZKA: So looking at that
5 first page, most of the sites do seem to be joke sites.
6 Do you agree?

7 MR. KLATT: Yes, that would be an
8 accurate characterization.

9 MS KULASZKA: Now, at tab 24 you
10 included a document from Bell, page 1 to 2. Could you
11 explain what this is?

12 MR. KLATT: This is a page from Bell
13 Canada advertising their various Internet access
14 offerings, the type of speed they provide and the
15 features it includes and what type of performance,
16 expectations a user would get.

17 MS KULASZKA: So from your knowledge
18 of this business, the type of material that can now be
19 downloaded and the speeds which it can be downloaded
20 have just exploded, have they?

21 MR. KLATT: Yes, they are much more
22 readily available than what they were 10 years ago.

23 MS KULASZKA: And looking down some
24 of the key features. "Free 5-megabyte personal web
25 space." What is that?

1 MR. KLATT: That is a fairly common
2 or standard feature included with many web access
3 services, including the service that we provided at one
4 time. What it allows is the subscriber to upload and
5 post material of their choice on the Bell Canada web
6 servers that were then made available to anybody else
7 in the world to access through the web.

8 MS KULASZKA: Going onto page 2.
9 What kind of security services are included?

10 MR. KLATT: Including junk mail
11 filtering, suppression of POP UP advertising, e-mail
12 anti-virus scanning, parental control capability and
13 what they refer to as a form filler which can be used
14 to automatically fill out on-line forms without having
15 to manually do the information each time.

16 MS KULASZKA: Now, the free parental
17 controls, are they the same as Net Nanny?

18 MR. KLATT: They would be similar
19 capability or functions, but not to the extent that Net
20 Nanny would provide as a stand alone product.

21 MS KULASZKA: Going onto the next
22 page, page 3. "CAP". Could you explain what "CAP" is?

23 MR. KLATT: I refer to it as CAIP,
24 but it refers to the Canadian Association of Internet
25 Providers, which historically been made up of Internet

1 provider associations such as the B.C. Internet
2 Association and other provincial Internet provider
3 associations across Canada, and the larger telephone
4 companies such as Telus and Sasktel and Bell Canada,
5 and umbrella groups such Stentor.

6 I think it seems to be their primary
7 purpose is to provide -- present a unified voice when
8 dealing with government regulation issues, and for
9 attempting to set policy on how various aspects of
10 Internet in Canada should be implemented.

11 MS KULASZKA: And from your
12 experience, is this an area still in flux?

13 MR. KLATT: It appears to be still
14 ongoing. There's still active issues regarding how to
15 deal with regulating access to certain content.

16 MS KULASZKA: And whether ISP's
17 should be responsible. This is an ongoing issue.

18 MR. KLATT: Correct.

19 MS KULASZKA: Do you recognize those
20 documents at tab 24 and did you print them out?

21 MR. KLATT: Yes, I did.

22 MS KULASZKA: I would like to produce
23 those documents.

24 THE CHAIRPERSON: Yes, but with a
25 small proviso. It appears, as I mentioned earlier, as

1 occurs often, the right side appears a little bit cut
2 off.

3 MS KULASZKA: Yes. I see what you
4 mean.

5 THE CHAIRPERSON: Maybe at some point
6 you could run off and get -- I don't think much is cut
7 off, but just in case we refer to the content of this
8 document.

9 MS KULASZKA: I'll have a look at it.
10 I wonder if we can break for today.

11 THE CHAIRPERSON: It's been a long
12 day. Yes, but how are we on the timing?

13 MS KULASZKA: We're doing very well.

14 THE CHAIRPERSON: Are we really?

15 MS KULASZKA: We are.

16 THE CHAIRPERSON: Keep in mind,
17 Mr. Vigna has assembled an arsenal of cross-examining
18 questions. So it may delay us in terms of finishing
19 with this witness. How will leave you with the rest of
20 the witnesses?

21 MS KULASZKA: We're fine. Right on
22 track.

23 THE CHAIRPERSON: Really, that's
24 great. So, again, on that assurance, Ms Kulaszka,
25 we'll break again until tomorrow morning.

1 Mr. Vigna, anything?

2 MR. VIGNA: No.

3 THE CHAIRPERSON: Okay.

4 --- Adjourned at 4:45 p.m.

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16 I hereby certify the foregoing to be
17 the Canadian Human Rights Tribunal
18 hearing taken before me to the best
19 of my skill and ability on the 7th
20 day of February, 2007.

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Sandra Brereton

Certified Shorthand Reporter

Registered Professional Reporter