

**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<sup>o</sup> CAUSE:**

T1073/5405

**VOLUME:**

9

**LOCATION/ENDROIT:**

TORONTO, ONTARIO

**DATE:**

2007/02/08

**PAGES:**

1597 - 1794

StenoTran

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

HEARING HELD AT THE DAYS INN, 1677 WILSON AVENUE, TORONTO,  
ONTARIO, ON THURSDAY, FEBRUARY 8, 2007 AT 10:02 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

TABLE OF CONTENTS / TABLES DES MATIÈRES

	PAGE
PREVIOUSLY AFFIRMED: BERNARD KLATT	1597
Examination-in-chief by Ms Kulaszka (cont'd)	1597
Cross-examination by Mr. Vigna	1668

LIST OF EXHIBITS / PIÈCES JUSTICATIVES

NO.	DESCRIPTION	PAGE
HR-6	Complaint Response To Responding Motion dated August 28, 2006	1740

1 Toronto, Ontario

2 --- Upon resuming on Thursday, February 8, 2007

3 at 10:02 a.m.

4 MR. VIGNA: I would just like to  
5 remind my friend if I can have a copy of the affidavit  
6 of Rogers that we mentioned yesterday, before I can  
7 start the cross-examination?

8 THE CHAIRPERSON: Ms Kulaszka?

9 MS KULASZKA: In the first break I'll  
10 try and get a copy of it.

11 MR. VIGNA: No problem.

12 THE CHAIRPERSON: Just a moment,  
13 please.

14 PREVIOUSLY AFFIRMED: BERNARD KLATT

15 EXAMINATION-IN-CHIEF BY MS KULASZKA (cont'd)

16 MS KULASZKA: I wonder if I could get  
17 Bernard Klatt's CV filed or produced.

18 THE CHAIRPERSON: Right. I was  
19 informed it's been placed already in my binder in -- is  
20 it R-1 or R-2?

21 THE REGISTRAR: R-2.

22 MS KULASZKA: I believe it's R-2, and  
23 tab 25 was empty.

24 THE CHAIRPERSON: Okay, it's  
25 produced.

1                   Mr. Vigna, Mr. Fothergill, you've  
2 inserted his CV at tab 25 of R-2? Mr. Fromm?

3                   MR. FOTHERGILL: I'm not sure if I  
4 have a copy of the CV.

5                   THE CHAIRPERSON: Were you never  
6 provided with a copy of the CV?

7                   MR. FOTHERGILL: That I'm aware of,  
8 no.

9                   THE CHAIRPERSON: Maybe that's  
10 something that could also be acquired at the break.

11                   MS KULASZKA: I'll try and provide  
12 that at the break as well.

13                   MR. FOTHERGILL: I'm sorry, I'm  
14 wrong, I have it here.

15                   THE CHAIRPERSON: So please insert it  
16 at tab 25 at the end of R-2.

17                   MS KULASZKA: Mr. Klatt, could you  
18 look at R-1, the large black binder in front of you?  
19 We'll just prove some documents first.

20                   At tab 17, the first page is titled,  
21 "Hollis Catalog". Could you tell me what this is?

22                   MR. KLATT: It's a listing of the  
23 entry for the publication "International Jew" from the  
24 Harvard University catalog entry, from their website.

25                   MS KULASZKA: You recognize that?

1           You printed it off?

2                           MR. KLATT:   Yes.  I've seen this  
3           document before, yes.

4                           MS KULASZKA:  And you printed it  
5           off --

6                           MR. KLATT:  Right.

7                           MS KULASZKA:  Could I produce that?

8                           THE CHAIRPERSON:  Yes.

9                           MS KULASZKA:  On page 2 it's a  
10          document headed, "University of Toronto Library  
11          Catalog".  Could you tell me what this document is?

12                           MR. KLATT:  It's another listing for  
13          the Henry Ford publication "International Jew",  
14          obtained from the Toronto Library website, which I  
15          printed off.

16                           MS KULASZKA:  Can I produce that?

17                           THE CHAIRPERSON:  Yes.

18                           MS KULASZKA:  Could you turn to the  
19          next page, Toronto Public Library Catalog, right at the  
20          top.  What is this document?

21                           MR. KLATT:  Another listing for  
22          publication "The International Jew", apparently  
23          available through the Toronto Public Library.

24                           MS KULASZKA:  Do you recognize this  
25          document and did you print it off?

1 MR. KLATT: Yes, I did, and have.

2 MS KULASZKA: Could I produce this  
3 document?

4 THE CHAIRPERSON: Yes.

5 MS KULASZKA: If you turn to tab 18,  
6 there's a few documents here. Can you just -- can you  
7 deal with the first one, two, three, four documents,  
8 and describe what these are? The first four pages,  
9 sorry. It's titled, "chapters.indigo.ca".

10 MR. KLATT: Yes. This is the listing  
11 for David Duke's "My Awakening" that's made available  
12 through the chapters.indigo.ca website. And this  
13 sequence of printouts is documenting the steps involved  
14 in ordering the book "My Awakening" through their  
15 on-line website.

16 MS KULASZKA: On the first page what  
17 did you do? Did you click anything?

18 MR. KLATT: Yes, we -- yes, I  
19 followed the steps that would be used to order the book  
20 and the order process was continued to the point where  
21 the next step would require entering of financial  
22 information.

23 It gets to the point where --  
24 complete the information that would show a shipping  
25 destination and the next step is where you pay for the

1 product.

2 MS KULASZKA: And you didn't go to  
3 that step?

4 MR. KLATT: No, I didn't choose to  
5 give them any money.

6 MS KULASZKA: Maybe you could repeat  
7 that.

8 MR. KLATT: I didn't complete the  
9 financial part of the transaction.

10 MS KULASZKA: So you recognize this  
11 document and printed it out?

12 MR. KLATT: Yes, I did.

13 MS KULASZKA: Could I produce that?

14 THE CHAIRPERSON: Yes.

15 MS KULASZKA: The following the next  
16 document, the heading, "Amazon.com". It goes on for  
17 one page. Could you describe what that page is?

18 MR. KLATT: This is another website  
19 offering the David Duke book "My Awakening" through  
20 amazon.com's website.

21 MS KULASZKA: And you recognize that  
22 document?

23 MR. KLATT: Yes, I do.

24 MS KULASZKA: Could I have that  
25 produced?

1 THE CHAIRPERSON: Yes.

2 MS KULASZKA: The next page. Could  
3 you describe this document? Right at the top it says,  
4 "Buy.com".

5 MR. KLATT: Yes. The buy.com  
6 printout page is another source on the Internet for  
7 obtaining a hard copy of David Duke's "My Awakening".

8 MS KULASZKA: And you recognize this?

9 MR. KLATT: Yes, I printed this as  
10 well.

11 MS KULASZKA: Could I have that  
12 produced?

13 THE CHAIRPERSON: Yes.

14 MS KULASZKA: Next page is Barnes &  
15 Noble. Could you identify this page?

16 MR. KLATT: Yes. Barnes & Noble  
17 website also offers for sale the David Duke "My  
18 Awakening" book.

19 MS KULASZKA: You recognize this  
20 document and did you print it?

21 MR. KLATT: Yes, I do and I did print  
22 it.

23 MS KULASZKA: Could I produce that  
24 document?

25 THE CHAIRPERSON: Yes.

1 MS KULASZKA: The next page at the  
2 very top it says, "AbeBooks". Could you identify this  
3 document?

4 MR. KLATT: Yes. This is  
5 "abebooks.com", book seller, also makes available "My  
6 Awakening" book from David Duke.

7 MS KULASZKA: So you recognize this  
8 document and did you print it out?

9 MR. KLATT: Yes, I did.

10 MS KULASZKA: Could I produce that  
11 document?

12 THE CHAIRPERSON: Yes.

13 Go back to the front of the tab. So  
14 the first page at the bottom right corner we see  
15 "31/01/2007", which I gather is the 31st of January,  
16 2007. Is that when you printed it?

17 MR. KLATT: Yes, that's when I  
18 accessed and printed that page, correct.

19 THE CHAIRPERSON: The following page  
20 says, "2/5/2007". So that would be February 5th?

21 MR. KLATT: Right.

22 THE CHAIRPERSON: And the page that  
23 follows. Then there's another with one that says,  
24 "2/6/2007". Is that February 6th, 2007?

25 MR. KLATT: Yes.

1 THE CHAIRPERSON: The one that  
2 follows from amazon.com, "31/01/2007"?

3 MR. KLATT: Correct.

4 THE CHAIRPERSON: The same date  
5 appears on the next page. Now, on Barnes & Noble I see  
6 in very small writing what appears to be the date. Is  
7 that the date, at the end of the URL?

8 MR. KLATT: Yes, January 31.

9 THE CHAIRPERSON: On this final one,  
10 is there a date anywhere? AbeBooks

11 MR. KLATT: Yes, on the bottom right  
12 corner. Another January 31.

13 THE CHAIRPERSON: Bottom right  
14 corner?

15 MR. KLATT: Abebooks.com has a  
16 January 31, 2007. If you are working on a photocopy  
17 perhaps it didn't --

18 THE CHAIRPERSON: I don't see it on  
19 the photocopy, or whatever it is I have here. But on  
20 your original copy?

21 MR. KLATT: Yes.

22 THE CHAIRPERSON: It appears on the  
23 bottom right corner. So is that when you did it,  
24 January 31st, 2001?

25 MR. KLATT: Correct.

1 THE CHAIRPERSON: I've noted the date  
2 now. If counsel wanted to look at the original  
3 document to see the date, they can do it.

4 So all these print-offs and  
5 photocopies were done basically in the last couple of  
6 weeks, from the 31st of January?

7 MR. KLATT: Yes.

8 MS KULASZKA: Just a housekeeping  
9 matter. I wonder if I could go to tab 19. This is a  
10 disclosure document from the Commission. I wonder if  
11 they would consent to have that being produced.

12 THE CHAIRPERSON: I have it as having  
13 been produced.

14 MS KULASZKA: Oh, okay.

15 Mr. Klatt, would you go to tab 3 of  
16 the same volume, R-1. And the last page, could you  
17 describe what that is.

18 MR. KLATT: Yes. What we see there  
19 is a printout of the FreedomSite discussion form  
20 Conference list.

21 MS KULASZKA: What would this be?

22 MR. KLATT: This would be the --

23 MR. VIGNA: Which tab?

24 MS KULASZKA: Tab 3, it's the last  
25 page.

1 MR. KLATT: Essentially the first  
2 page of the web discussion board, or the log-in page.

3 MS KULASZKA: How did you see this?

4 MR. KLATT: I set up a remote desktop  
5 connection from my system to Mr. Lemire's. It's a  
6 facility provided in all versions of -- all copies of  
7 Windows XP Professional. It's used for this type of  
8 activity where a person can be at one location and use  
9 and work with a computer at a different location.

10 MS KULASZKA: What were you given  
11 access to?

12 MR. KLATT: The FreedomSite chat or  
13 discussion board.

14 MS KULASZKA: Does this page state  
15 near -- just past the middle:

16 "Our rules are simple. Keep  
17 discussions civil. Post only to  
18 appropriate conferences. Do not  
19 advocate or suggest any activity  
20 which is illegal under Canadian  
21 law."

22 MR. KLATT: Yes, that warning I saw  
23 and it shows there.

24 MS KULASZKA: There is another  
25 sentence. It says:

1 "If you have any complaints or  
2 to report issues please e-mail  
3 Freedomsite web board admin."

4 Those words also appear.

5 MR. KLATT: Yes, that's correct.

6 MS KULASZKA: Is "Freedomsite web  
7 board admin," it's underlined, is that a link?

8 MR. KLATT: Yes, that's a clickable  
9 link that brings up another page where you can contact  
10 the site administrator.

11 MS KULASZKA: So you recognize this  
12 page and you printed it off?

13 MR. KLATT: Yes, I do.

14 MS KULASZKA: Can I produce that  
15 page?

16 THE CHAIRPERSON: Yes.

17 MS KULASZKA: Now, if you could go  
18 back to page 1 of the same tab. This is a post  
19 entitled, "Cools don't belong in our Senate."

20 Were you asked to give an opinion  
21 regarding this post?

22 THE CHAIRPERSON: What page?

23 MS KULASZKA: Page 1 of tab 3.

24 MR. KLATT: Yes, I was able to view  
25 this document through the remote desktop connection

1 from my system to Mr. Lemire's web board through  
2 Windows XP remote desktop.

3 MS KULASZKA: Is this the same  
4 document?

5 MR. KLATT: To my recollection, it  
6 is.

7 MS KULASZKA: Were you given a  
8 printout at well?

9 MR. KLATT: I was able to make a  
10 printout, yes.

11 THE CHAIRPERSON: Has that been  
12 produced?

13 MS KULASZKA: He also produced it in  
14 his own materials, but maybe we should produce it here.  
15 Can I produce it?

16 THE CHAIRPERSON: It's been  
17 identified, yes.

18 MS KULASZKA: Mr. Klatt, if you could  
19 go to the binder, R-2. Can you go to tab 2.? Do you  
20 recognize this document?

21 MR. KLATT: Yes, it's my affidavit.

22 MS KULASZKA: Were you asked to  
23 prepare this affidavit?

24 MR. KLATT: Yes, I was.

25 MS KULASZKA: Were you given certain

1 terms by Mr. Lemire to prepare this affidavit?

2 MR. KLATT: Yes, I was given access  
3 to the log files and other disclosure documents and  
4 material.

5 MS KULASZKA: What opinion were you  
6 asked to give in this affidavit?

7 MR. KLATT: Regarding which aspect?

8 MS KULASZKA: Regarding the Ann Cools  
9 posting.

10 MR. KLATT: From my review and  
11 analysis, the log file evidence and the other  
12 information available from the postings that were  
13 provided, it's my contention and belief that the Ann  
14 Cools document was undoubtedly produced by the same  
15 person using an IP address that produced the other  
16 messages in evidence on the FreedomSite web board  
17 which -- balance of probabilities strongly indicates  
18 Mr. Warman as being the author of that posting.

19 MS KULASZKA: If we can go through  
20 the evidence.

21 MR. VIGNA: Mr. Chair, just for the  
22 record -- I'm not objecting at this point, but I will  
23 object on argument for the relevance of this series of  
24 evidence. Just for the record.

25 MS KULASZKA: If you can turn to tab

1 3.

2 Could I produce tab 2?

3 THE CHAIRPERSON: Yes. Document  
4 which, for the record, had also been filed earlier with  
5 the Tribunal in the context of a motion by the  
6 respondent to dismiss the complaint. I think it was  
7 that motion. In any event, this affidavit had been  
8 filed earlier.

9 MS KULASZKA: There's a separate tab  
10 but -- there's a tab 3 but actually that really  
11 shouldn't be in there because the following pages are  
12 the exhibits to his affidavit.

13 Mr. Klatt, if you could turn to page  
14 3. Do you recognize these pages?

15 MR. VIGNA: Mr. Chair, before that I  
16 just have a procedural question. The affidavit and the  
17 motion is part of the record in evidence already, so I  
18 just wanted to make sure --

19 THE CHAIRPERSON: I don't know if  
20 it's part of the record. Motions that are filed prior  
21 to a hearing commencing are not really in evidence per  
22 say. I mean, it's part of the material that's made  
23 available to the Tribunal to be knowledgeable about,  
24 but do we actually produce that motion as an exhibit?

25 MR. VIGNA: I have it in any event.

1 Mr. Warman mentioned it at one point and he referred to  
2 it. He took it for granted that it was part of the  
3 record. But I have a copy of it.

4 THE CHAIRPERSON: I think it might be  
5 more prudent to file as an exhibit. You have to  
6 understand, we don't have a docket as a court does when  
7 it deals with material that is filed prior to the  
8 hearing commencing. There is a file that is held by  
9 the Tribunal, but not quite a docket.

10 So you have to then introduce into  
11 evidence stuff that you want before the Tribunal  
12 formally. I'm just saying for the record, I have  
13 viewed it, being the Member who is administering the  
14 case in the case management process.

15 MR. VIGNA: I have copies of it.  
16 Maybe in cross-examination I'll introduce it in  
17 relation to this affidavit.

18 THE CHAIRPERSON: That's fine.

19 MS KULASZKA: I wonder if it would be  
20 easier just to remove the tab 3 so that the entire  
21 affidavit is together.

22 THE CHAIRPERSON: Well, it's there  
23 now. I don't think it complicates things to have it in  
24 a separate tab. We'll just identify it as well.  
25 There's no issue, having to remove it and having a get

1 in the tabs. I don't have a problem with that.

2 MS KULASZKA: Could we just produce  
3 tab 3 then?

4 THE CHAIRPERSON: Right. Everyone  
5 understands? These were the exhibits that were  
6 attached to the motion -- sorry, to the affidavit.

7 MS KULASZKA: Mr. Klatt, if you could  
8 look at tab 3. These are the exhibits attached to your  
9 affidavit. Were these documents provided to you by  
10 Mr. Lemire?

11 MR. KLATT: Yes, and also printouts  
12 from the log file data that I had copies of as well.

13 MS KULASZKA: Now, the last page,  
14 what is that?

15 MR. KLATT: Printout from the Arin  
16 WHOIS Database Search identifying the IP address,  
17 66.185.84.204 as being assigned to the Rogers Cable  
18 Incorporated.

19 MS KULASZKA: We'll go back to your  
20 affidavit. If you could look at paragraph 22. You  
21 state:

22 "In his complaint against  
23 Mr. Lemire, Mr. Warman stated  
24 that he visited the  
25 freedomsite.org message board on

1 November 11th, 15th and 23rd,  
2 2003. I analyzed the  
3 freedomsite.org logs for these  
4 dates to identify Mr. Warman's  
5 IP address, Internet service  
6 provider, ISP and other  
7 identifying markers such as  
8 browser, type and computer  
9 operating system. I also  
10 analyzed user accounts for  
11 similarities. I was provided  
12 access to the relevant log files  
13 of the freedomsite.org message  
14 board to the complaint of  
15 Richard Warman, documents  
16 disclosed by the Commission in  
17 this case and transcripts of  
18 previous cases involving  
19 Mr. Warman."

20 Are those the exhibits that are found  
21 at tab 3?

22 MR. KLATT: Yes, Exhibit 3 (sic)  
23 contains those exhibits, yes.

24 MS KULASZKA: Now, turning to  
25 paragraph 24. If you could turn to HR-2. Do you have

1 that in front of you? I believe it's the large binder.

2 MR. KLATT: Yes, I do.

3 MS KULASZKA: It's HR-2, tab 20. Do  
4 you have that?

5 MR. KLATT: Yes.

6 MS KULASZKA: Document entitled  
7 "Conferences".

8 MR. KLATT: Correct.

9 MS KULASZKA: Can you tell me what  
10 the URL of that page is?

11 MR. KLATT:  
12 "[Http://chat.freedomsite.org:8080/~Freedom/expand?19](http://chat.freedomsite.org:8080/~Freedom/expand?19)"

13 MS KULASZKA: And what is the date on  
14 that document?

15 MR. KLATT: November 11, 2003.

16 MS KULASZKA: And what does that  
17 mean?

18 MR. KLATT: That was the date this  
19 document was printed.

20 MS KULASZKA: Now, if you could go  
21 back to your materials, tab 3 at page 15. Now,  
22 referring to the 15 at the bottom of the page in a  
23 square block.

24 MR. KLATT: Right.

25 MS KULASZKA: What is this page?

1 MR. KLATT: This is a portion of the  
2 FreedomSite chat board log file.

3 MS KULASZKA: Do you see the URL you  
4 just read?

5 MR. KLATT: Identifying number that's  
6 most easily -- is the "580,19", I believe.

7 MS KULASZKA: I think you have to  
8 give us an idea of where it is. I wonder if I could  
9 assist you by giving you a magnifying glass.

10 MR. KLATT: That would be near the  
11 top of the page, the area where the two double lines  
12 are. Sorry, I've been looking at the area -- this is  
13 page 19?

14 MS KULASZKA: Page 15.

15 MR. KLATT: 15, okay. If you are  
16 able to see it better than I can.

17 MS KULASZKA: I'll read it. It ends  
18 off "freedom/expand?19".

19 MR. KLATT: Yes, I believe that's  
20 what I'm seeing here at the top of the printout between  
21 the double marked lines.

22 MS KULASZKA: I'll read it again,  
23 "http://chat.freedomSite.org:8080/ --" I don't know  
24 what that mark is.

25 MR. KLATT: It's referred to as a

1 tilde.

2 MS KULASZKA: "-- freedom/expand?19"

3 MR. KLATT: Yes, I see that.

4 MS KULASZKA: Can you tell me where  
5 it is in the page?

6 MR. KLATT: Near the top.

7 THE CHAIRPERSON: It's done  
8 repeatedly. It goes almost two-thirds down, that we  
9 see that URL.

10 MS KULASZKA: What information do you  
11 get from the logs concerning this entry?

12 MR. KLATT: One of the most  
13 significant items is the IP address, the requesting --  
14 the requester for that content.

15 MS KULASZKA: What is the IP address?

16 MR. KLATT: 66.185.84.204.

17 MS KULASZKA: What does the IP  
18 address signify?

19 MR. KLATT: It's the unique  
20 identifier number as I described earlier in the  
21 affidavit. The IP address uniquely identifies the  
22 computer on the Internet that's making that request.

23 MS KULASZKA: And what else does the  
24 entry in the log file tell you?

25 MR. KLATT: It shows the date and the

1 time and -- the zero 500 is the time offset from  
2 Greenwich mean time, which, for the zero 500, indicates  
3 Eastern standard time.

4 It was a "GET" function. The status  
5 code 200 indicates it was successful. The last number  
6 is an indication of the bytes that were transferred,  
7 and the actual request is between the quote marks.  
8 That is the request that was sent from the client PC to  
9 the web board server. The browser type is identified,  
10 and the operating system is identified as well.

11 MS KULASZKA: What's the operating  
12 system?

13 MR. KLATT: Windows '98. And the  
14 browser type is Mozilla 4, compatible MSIE6:0.

15 MS KULASZKA: Does this mean that  
16 whatever a person goes on a website can basically be  
17 tracked through the log files?

18 MR. KLATT: Yes. In the web server,  
19 the Apache web server maintains and creates a  
20 single-line entry in the common log file for every  
21 access, successful or unsuccessful, that it receives.

22 MS KULASZKA: What user account was  
23 this person using?

24 MR. KLATT: Right after the IP  
25 address and the identification chatfreedom.org, we see

1 the word "guest". This is the user name that was used  
2 to access that information.

3 MS KULASZKA: Okay. If you can turn  
4 to page 25 of your affidavit, or page 6 of your  
5 affidavit. It's paragraph 25.

6 My client informs me we're still on  
7 paragraph 24. So we'll go back to paragraph 24,  
8 Mr. Klatt.

9 There's a second URL, HTTP  
10 chatfreedomsite. Could you turn to tab 20, page 5 of  
11 HR-2. So that's tab 20 of HR-2 is, page 5. Can you  
12 read the URL at the bottom?

13 MR. KLATT: This is the page starting  
14 the near the top, "Nordic goddess"?

15 MS KULASZKA: No, it should be  
16 "Jewish jokes". Tab 20 of HR-2.

17 MR. KLATT: I think I'm working out  
18 of HR-2. HR-2, tab 20.

19 MS KULASZKA: It's page 5.

20 MR. KLATT: I have a lot of page 1's.

21 THE CHAIRPERSON: It's the fifth page  
22 in. We've marked them separately. Yours does not seem  
23 to have been marked.

24 MS KULASZKA: If you count in five  
25 pages?

1 MR. KLATT: Oh, yes, okay, I found  
2 that page.

3 THE CHAIRPERSON: It says at the top,  
4 "Read topic starting at message #195."

5 MR. KLATT: Correct.

6 MS KULASZKA: If you could read the  
7 URL at the bottom.

8 MR. KLATT: Yes.

9 "Http://chat.freedomsite.org:8080/~freedom/read?195,19"

10 MS KULASZKA: And the date?

11 MR. KLATT: November 11, 2003.

12 MS KULASZKA: What does that date  
13 mean?

14 MR. KLATT: That was the date this  
15 document was accessed and printed.

16 MS KULASZKA: If you could turn to  
17 your materials, tab 3, to page 15. Do you find that  
18 URL in those logs?

19 MR. KLATT: We're on page 15 again?

20 MS KULASZKA: It's the one that ends  
21 "195,19".

22 MR. KLATT: Right. This is the  
23 portion that has the "expand?19".

24 MS KULASZKA: And where is it?

25 MR. KLATT: Near the top between

1 the -- pretty much this whole page -- sorry, yes.  
2 Starting half-way down the page you see the "195,19"  
3 show up.

4 THE CHAIRPERSON: I see that.

5 MS KULASZKA: It's just half-way  
6 down?

7 MR. KLATT: Well, wrong spot I got  
8 here --

9 THE CHAIRPERSON: Third of the way  
10 down is the line that just precedes the "195,19"? Does  
11 the previous line just above it end with the number  
12 "3137" on the right side?

13 MR. KLATT: Yes.

14 THE CHAIRPERSON: Yes?

15 MR. KLATT: I see the line ending  
16 "3137", but it may not be unique.

17 THE CHAIRPERSON: No, I understand.  
18 Are you drawing my attention to the line just  
19 underneath that one? Is that where the "195,19"  
20 begins?

21 MR. KLATT: Yes, I see a "195,19" on  
22 the next line, correct.

23 MS KULASZKA: Can you tell me what  
24 information you can obtain from the log file from that  
25 entry?

1 MR. KLATT: Likewise, it shows the  
2 requesting PC's IP address that originated the request  
3 to the chat.freedomsite.org web server using the user  
4 name "guest" and the date of November 11, 2003.  
5 Approximately the time frame between 21:34. And at the  
6 bottom of the page we see 21:47, and that's the time  
7 period this information was retrieved.

8 The individual items are shown for  
9 each line. We also see that all these are "GET"  
10 requests, and the status code of 200 indicates it was  
11 successful.

12 The last set of digits indicates the  
13 file size of that particular transfer.

14 MS KULASZKA: Can you identify the IP  
15 address? Read it out.

16 MR. KLATT: Yes, the IP address is  
17 "66.185.84.204".

18 MS KULASZKA: And what browser was  
19 used?

20 MR. KLATT: Mozilla 4 compatible  
21 MSIE6.0 from a Windows '98 operating system.

22 THE CHAIRPERSON: Can I ask you a  
23 question on this? I seem to see the same sort of GET  
24 request numerous times, is that correct, at least 10,  
25 15 times thereafter?

1 MR. KLATT: Right.

2 THE CHAIRPERSON: Does that mean --  
3 on the right side I see one page with that "195.119"  
4 that's been printed off.

5 Does this suggest that someone kept  
6 accessing the same page over and over and over.

7 MR. KLATT: Not necessarily. It's --  
8 a portion of the discussion thread and additional  
9 messages can be easily retrieved by hitting the "next"  
10 or clicking on a link that brings up the next message.

11 So if we look at the time stamps, we  
12 get a better idea that some documents may have been  
13 looked at for a bit longer than others and we see a  
14 more time gap between some of them. Some are only a  
15 few seconds between.

16 THE CHAIRPERSON: I think I  
17 understand. I've seen these threads sometimes go on  
18 for numerous pages. They will give you only five at a  
19 time or 10 at a time.

20 MR. KLATT: Correct.

21 THE CHAIRPERSON: But why do I not  
22 see a different number each time one would have clicked  
23 to get to the next group of five? Why does  
24 everything -- aside from the number of bytes that have  
25 been transferred, I don't see any difference other than

1 the time from one entry to the next. Is that normal?

2 Is that how it works?

3 MR. KLATT: What we are seeing, I  
4 believe, the thread identifier is the "195,19".

5 THE CHAIRPERSON: It only identifies  
6 the thread.

7 MR. KLATT: Right. And each  
8 additional message is another request, it looks like.

9 MS KULASZKA: Okay, if you can turn  
10 to your affidavit again, page 6, paragraph 25. If you  
11 could look at the large black binder, HR-2, tab 12. So  
12 that would be tab 12, page 1.

13 MR. KLATT: 24 is a document  
14 entitled, "New Hate Laws".

15 MS KULASZKA: That's right. If you  
16 could read the URL at the bottom.

17 MR. KLATT:  
18 "[Http://chat.freedomsite.org:8080/read?2627,3e](http://chat.freedomsite.org:8080/read?2627,3e)".

19 MS KULASZKA: And the date?

20 MR. KLATT: November 15, 2003.

21 MS KULASZKA: Okay. If you could  
22 turn back to the log files at tab 3, page 16. Does  
23 that URL appear on that page?

24 MR. KLATT: Yes, it's the first  
25 marked area between the double marks, three-quarters of

1 the way down the page. Once again, we see it's from  
2 the IP address 66.185.84.204. This time logged in with  
3 the user name of Lucy, November 15, 2003, 13:57.

4 And the URL requested is the one  
5 shown on the document identified "New Hate Laws". The  
6 browser type is Mozilla 4 compatible MSIE6.0 with a  
7 Windows '98 operating system identification.

8 MS KULASZKA: We could turn to page 6  
9 of your affidavit, it would be paragraph 26 at the  
10 bottom.

11 In the large black binder has HR-2.  
12 If you could turn to tab 12 page 7 titled "Residence  
13 Schools". Do you see that? Tab 12 in the large black  
14 binder. It's seven pages in, so you might have to  
15 count.

16 MR. KLATT: Yes, I have that.  
17 "Residence Schools".

18 MS KULASZKA: It's a posting,  
19 "Residence Schools". Do you see that?

20 MR. KLATT: Yes.

21 MS KULASZKA: Could you read the URL  
22 at the bottom?

23 MR. KLATT:  
24 "Http://chat.freedomsite.org:8080/read?2624,22e".

25 MS KULASZKA: And the date?

1 MR. KLATT: November 15, 2003.

2 MS KULASZKA: If you could go back to  
3 your exhibit, to your affidavit, it would be tab 3,  
4 page 16.

5 MR. KLATT: We see that as the log  
6 entry very near the bottom of the page, second set of  
7 marks.

8 MS KULASZKA: What does that log  
9 entry tell you?

10 MR. KLATT: That document is  
11 retrieved a user requesting it from IP address  
12 66.185.84.204 logged in with a user ID of "Lucy", 15th  
13 November, 2003, 13:58.

14 The URL is identified on the  
15 "Residence Schools" document. The browser type is  
16 Mozilla 4 compatible MSIE6, Windows '98 operating  
17 system.

18 MS KULASZKA: If you could turn to  
19 HR-2, the large black binder again. If you can look at  
20 tab 21, page 1. It's a posting, "Toronto Star Health  
21 Alert". Do you see that?

22 MR. KLATT: Yes, I do.

23 MS KULASZKA: If you could read the  
24 URL at the bottom of that document.

25 MR. KLATT:

1 "Http://chat.freedomsite.org:8080/read?2646,5e".

2 MS KULASZKA: And the date?

3 MR. KLATT: Of November 15, 2003.

4 MS KULASZKA: If you could turn to  
5 your exhibits, to your affidavit, at tab 3, page 17.  
6 Do you see that URL on that page?

7 MR. KLATT: I see it referenced near  
8 the bottom of the page, near the -- at the double  
9 marked area. It's showing it was accessed from IP  
10 address 66.185.84.204 from a user logged in using the  
11 user name of "Lucy" on 15 November, 2003, at 13:30.

12 URL requested from the requesting  
13 client it was shown, Toronto Star HF Health Alert  
14 document, same Mozilla 4 compatible browser, a Windows  
15 '98 operating system.

16 MS KULASZKA: If you could go back to  
17 large black binder, HR-2, and go to tab 22. These are  
18 search results for "craig" and "harrison". Do you see  
19 that?

20 MR. KLATT: Yes.

21 MS KULASZKA: What does the URL at  
22 the bottom of that page?

23 MR. KLATT:

24 "Http://chat.freedomsite.org:8080/~Freedom/search".

25 MS KULASZKA: And the date?

1 MR. KLATT: November 23, 2003.

2 MS KULASZKA: If you could return to  
3 the exhibits to your affidavit at tab 3, page 19. Does  
4 that URL appear on that page?

5 MR. KLATT: Yes.

6 MS KULASZKA: Actually, it's pages 18  
7 and 19. Do you see it there on either one of those two  
8 pages?

9 MR. KLATT: Yes. We see the Craig  
10 Harrison search identified in the logs at the -- on  
11 page 19 of the first set of double marks, just past  
12 half way.

13 We see the IP address 66.185.84.204.  
14 This time logged in as "guest" on 23 November, 2003 at  
15 11:23.

16 And we see the requested strings sent  
17 to the server and the quote marks containing the search  
18 term. The string equals "craig" and "harrison"  
19 identified there with the same Mozilla 4 compatible and  
20 Windows '98 operating system identifiers.

21 MS KULASZKA: Did you identify the IP  
22 address?

23 MR. KLATT: Yes, 66.185.84.204.

24 MS KULASZKA: He signed in as a  
25 guest, is that what it shows?

1 MR. KLATT: Right.

2 MS KULASZKA: If you could go to page  
3 18 of the logs. Does that show a different search?

4 MR. KLATT: The primary difference is  
5 the date and time, and it also shows logged in as user  
6 Lucy on this one.

7 MS KULASZKA: What are you looking  
8 at, page 18?

9 MR. KLATT: Bottom of page 18 the  
10 double marked area.

11 MS KULASZKA: What do those logs show  
12 you?

13 MR. KLATT: The search string "craig"  
14 and "harrison" that was requested, a user logged in as  
15 Lucy from IP address 66.185.84.204, this time on  
16 November 15, 2003, at 13:19, with the same Mozilla 4  
17 browser and Windows '98 operating system.

18 MS KULASZKA: If you could go back to  
19 the large black binder -- we'll use the complaint in  
20 your exhibits.

21 If you could turn to tab 3 of your  
22 exhibits, page 7. Second paragraph starts off, "A  
23 search of the FreedomSite message board." Does  
24 Mr. Warman refer to e-mail address in that paragraph?

25 MR. KLATT: Yes. It indicates he did

1 a search of the FreedomSite message board for the  
2 e-mail address Susen@sympatico.ca.

3 MS KULASZKA: Could you turn to tab  
4 3, page 19. Do you see any reference to that e-mail in  
5 the log files?

6 MR. KLATT: Yes, we do. At the  
7 bottom of the page looks like the very last entry we  
8 see a logged in user "guest", from IP 66.185.84.204 on  
9 November 23 at 11:25, doing a search -- search string  
10 susen@sympatico.ca, with a Mozilla 4 compatible  
11 browser, Windows '98 operating system.

12 MS KULASZKA: Did you notice anything  
13 in your review of the log files for those three days?

14 MR. KLATT: The three dates of  
15 November 11, '15 and 23?

16 MS KULASZKA: Correct.

17 MR. KLATT: Some of the times are  
18 logged in with user name Lucy, some were logged in as  
19 "guest". They are all -- the ones of interest are all  
20 from the same IP address, 66.185.84.204.

21 MS KULASZKA: Did you do a search of  
22 the IP address?

23 MR. KLATT: Yes, on the date in  
24 question I believe that IP address is the only IP  
25 address that accessed the message board on that.

1 MS KULASZKA: Is there any means of  
2 determining who the ISP is of an IP address?

3 MR. KLATT: Yes. The IP addresses  
4 are assigned in blocks or groups of IP addresses to  
5 different organizations and entities that have need of  
6 direct Internet connection.

7 Typically Internet service providers,  
8 large corporations, do a request for a block of IP  
9 addresses for their use, and these are sometimes  
10 sub-delegated to re-sellers. For example, a large  
11 telephone company that has a number of Internet service  
12 providers as customers will delegate blocks of IP  
13 addresses to their clients for re-use.

14 And in this case of Rogers as an  
15 Internet service provider, has a fairly large group of  
16 IP addresses that they use, and each IP address is  
17 contained within a block of addresses that are  
18 identified in the Arin registry, that we see at the  
19 last page of tab 3.

20 This address of interest,  
21 66.185.84.204, is contained in the range of address  
22 that Rogers Cable Incorporated has exclusive use of.

23 MS KULASZKA: Who is Arin?

24 MR. KLATT: Arin is the authoritative  
25 entity that determines the allocation and distribution

1 of IP addresses on the Internet.

2 MS KULASZKA: And you did this  
3 search?

4 MR. KLATT: Yes, I did.

5 MS KULASZKA: We'll have to go back  
6 to HR-2, tab 3. This is the Ann Cools posting.

7 THE CHAIRPERSON: HR-2 -- R-1, I  
8 think.

9 MS KULASZKA: Right. Tab 3 of R-1.  
10 This is the posting you previously identified.

11 MR. KLATT: Yes, I recall seeing it.

12 MS KULASZKA: And what day was this  
13 message posted?

14 MR. KLATT: September 5, 2003.

15 MS KULASZKA: What time?

16 MR. KLATT: 19:55, or just before 8  
17 o'clock in the evening.

18 MS KULASZKA: What conference?

19 MR. KLATT: Canadian Heritage  
20 Alliance Conference.

21 MS KULASZKA: What was the user ID?

22 MR. KLATT: User ID of "90sAREover".

23 MS KULASZKA: Did the post contain  
24 the word "nigger"?

25 MR. KLATT: Yes, it does.

1 MS KULASZKA: If you could turn back  
2 to your own materials, tab 3, page 21. Would you  
3 describe the postings on these pages?

4 MR. KLATT: What we see on 21 is  
5 according to the log file and approximately in the  
6 middle of the page we see the IP address 66.185.84.204;  
7 user name "90sAREover"; 5th of September, 2003.

8 MS KULASZKA: Is a time given?

9 MR. KLATT: Yeah. The one I'm  
10 looking for is the 19:55:37, just -- magnifying glass  
11 gets me a little disoriented in terms of positioning  
12 here.

13 Just above the middle we see a log  
14 entry with the word "post" and that's an indication of  
15 the user requesting a post function to post that  
16 message.

17 THE CHAIRPERSON: I have to find  
18 that. Oh, post, yes. I saw the word "post".

19 MR. KLATT: There's a lot of "GET"s,  
20 but there's an initial post. And then shortly below  
21 that we see another "post" entry, and this one has the  
22 subject title showing, "Ann Cools don't belong in our  
23 Senate."

24 Once again, that's from the --  
25 identified from the IP address 66.185.84.204.

1                   Trying to find the -- it was a prompt  
2                   for a spelling check verification. I'm just trying to  
3                   spot where that is. The system, as I recall, prompted  
4                   the user to verify the spelling or -- whether or not  
5                   they wanted to use an unrecognized word.

6                   THE CHAIRPERSON: What is that?

7                   MR. KLATT: I seem to recall seeing  
8                   that in the logs here. Just before the initial post we  
9                   see the word "spell". There was a spell check request.

10                  THE CHAIRPERSON: Spell?

11                  MR. KLATT: There's two posts  
12                  approximately in the middle of the page. The one just  
13                  above the first post you'll see a URL that has  
14                  "GET/~freedom/spell". That's an indication of a spell  
15                  check prompt.

16                  MS KULASZKA: Who is the user who  
17                  posted this?

18                  MR. KLATT: We see that that's the  
19                  user ID "90sAREover".

20                  MS KULASZKA: Do the logs show other  
21                  information?

22                  MR. KLATT: Yes. We see --

23                  THE CHAIRPERSON: Sorry?

24                  MS KULASZKA: Did the logs show other  
25                  information, such as the browser? Could you review

1           that.

2                           MR. KLATT:  Yes.  The logs show  
3           successful posting with status code 200, and we see  
4           browser type identified as Mozilla 4.0 compatible  
5           MSIE6, Windows '98, and Rogers High Speed Internet.

6                           THE CHAIRPERSON:  I noticed that  
7           myself, sir.  In none of the other ones did I see  
8           "Rogers High Speed Internet" written.

9                           MR. KLATT:  Yes.  The best  
10          explanation I've been able to determine from that is  
11          that this posting was -- this activity was done in  
12          September of 2003.

13                          The other postings of interest were  
14          done in November.  And apparently to the best of my  
15          ability to determine the reason for the difference is  
16          that Rogers High Speed Internet R113 refers to a  
17          firmware version on what we refer to as a SONET network  
18          node controller, or could be considered as a router and  
19          if Rogers fiberoptic or SONET network.  And the best  
20          explanation is that the R113 is a firmware version  
21          number identifier.

22                          And between September and November it  
23          appears there was a firmware change such that a later  
24          version of the firmware, or a different version of the  
25          firmware, no longer shows that identifier code.

1 MS KULASZKA: What is the basis for  
2 having that opinion?

3 MR. KLATT: I did research on the  
4 Internet on that string, and what I see is a reference  
5 to a Cisco product, I believe it's called a CXC 15660,  
6 as I recall, something in that type of a model number.  
7 That number makes reference to this firmware release  
8 with exactly that string, R1 1.3, in conjunction with a  
9 number of other firmware versions from Cisco for that  
10 product.

11 THE CHAIRPERSON: Why wouldn't that  
12 have appeared before? How do you know the previous  
13 ones of November 11th, 15th -- actually subsequent  
14 ones, November 11, '15 and so on, were not dial-up?

15 MR. KLATT: Rogers doesn't offer  
16 dial-up service. Rogers is a cable modem Internet  
17 service provider.

18 THE CHAIRPERSON: So they never  
19 offered dial-up. So it had to be high speed only?

20 MR. KLATT: That's my understanding.  
21 I've never heard of Rogers Cable dial-up service  
22 offering.

23 MS KULASZKA: That IP address, is it  
24 assigned to Rogers on a permanent basis?

25 MR. KLATT: In essence, yes. It's

1 possible that before Rogers needed the use of a large  
2 block of IP address spaces, it might have been assigned  
3 to some other organization that was determined that  
4 they no longer needed that block of addresses.

5 In the time period that Rogers has  
6 been using their Internet service, that IP address most  
7 likely would have been in use. Typically they're  
8 assigned for long durations.

9 THE CHAIRPERSON: Can I ask you  
10 another question, sir?

11 MR. KLATT: Hm-hmm.

12 THE CHAIRPERSON: I'm looking at  
13 these postings at page 21 and I think the word "post"  
14 appeared three times. "Post", and then the "GET" with  
15 the "spell check" and "post" and "post" again. Those  
16 are all with the number ending in "204".

17 Immediately thereafter "90sAREover",  
18 there's another activity. There's a "GET" four seconds  
19 later and I see a different number assigned.  
20 "66.185.84.200". How does that get explained?

21 MR. KLATT: That one is interesting.  
22 The 200 I believe indicates possible web caching  
23 through Rogers service. We can see they are all  
24 associated with the same activity.

25 So the conclusion is that it's

1           originating from the same user but it's perhaps an  
2           indication that it's coming from a Rogers caching  
3           server instead of directly from a 204IP.

4                        THE CHAIRPERSON:  It goes back to 204  
5           then back to 200 again?

6                        MR. KLATT:  Right.

7                        THE CHAIRPERSON:  It does it all the  
8           time down here?

9                        MR. KLATT:  Yeah.  We see the  
10          changing IP address in a couple of places.

11                       MS KULASZKA:  Do the 200 numbers, are  
12          they loading images?

13                       THE CHAIRPERSON:  Are they what?

14                       MS KULASZKA:  Loading images.

15                       MR. VIGNA:  It's a little bit  
16          suggestive.

17                       THE CHAIRPERSON:  I'm not sure what  
18          the question means.  Are they loading images?

19                       MR. KLATT:  If we look at the log  
20          entries that have a 66.185.84.200, the identifying --  
21          yes, at the bottom or near the bottom of the section of  
22          interest, the ones that have 200.  If we look at the  
23          actual URL in cases we see there, we see things like  
24          "kindofblue/nuback.GIF".  And GIF is an indication of a  
25          graphic image file format.  So it's loading portions of

1 image files which are commonly items that would be  
2 stored on a web caching server.

3 Rogers, very likely, has implemented  
4 a web caching server to reduce their bandwidth to  
5 provide better service to their customers.

6 THE CHAIRPERSON: I don't understand.  
7 If the IP address is assigned to the computer and  
8 I'm -- I've got my number, and I'm sending my message  
9 in, I want this. And Rogers, in order to speed things  
10 up for me, has a cache of the standard image of cbc.ca  
11 and sends that to me, why does my number change?

12 MR. KLATT: It's not entirely  
13 clear -- I don't have in-depth knowledge of internals  
14 of Rogers web caching services or how they have --  
15 implement that part of their technology, but that's the  
16 best explanation I can offer for why we see the last  
17 digit of the IP address changing.

18 But it is clear from the logs that  
19 it's all associated with the same function of what the  
20 user is performing.

21 THE CHAIRPERSON: There's something  
22 else. The range of Rogers -- now Rogers offers cable  
23 service where in Canada?

24 MR. KLATT: I know in Ontario and  
25 British Columbia for sure, and possibly other areas as

1 well.

2 THE CHAIRPERSON: At this time?

3 MR. KLATT: Yes.

4 THE CHAIRPERSON: So the net range  
5 that I see the back of the Arin WHOIS Database Search,  
6 66.185.80.0, and then it goes up point 95, point 25.  
7 We see the last numbers change. If this is meant to be  
8 like a raw figure --

9 MR. KLATT: The net range that we're  
10 seeing?

11 THE CHAIRPERSON: 80,000 or something  
12 like that. Or am I -- 800, if I were to use that  
13 number in my mind, to 95,000.

14 MR. KLATT: If we look at the third  
15 group. The first two groups, the 66 is the same, 185  
16 is the same. The 80 is what you call a Class C  
17 identifier range, and the 95 is a Class C. So  
18 essentially they have 15 blocks of Class C addresses.

19 THE CHAIRPERSON: Are Class C's  
20 divided up in some way, like geographically?

21 MR. KLATT: They can be allocated.  
22 Well, this one is allocated to Rogers Toronto, which  
23 uses -- they may very well have another Arin block of  
24 addresses that sign for other Rogers locations.

25 MS KULASZKA: So definitely is going

1 to Toronto and might be going national and just Ontario  
2 is what you are saying?

3 MR. KLATT: Yeah. And that group of  
4 15 Class C's, each Class C is 256 addresses. So I  
5 would expect they would have multiple blocks, multiple  
6 Arin assignments. This Arin result here I'm sure does  
7 not -- the full extent of all IP addresses that Rogers  
8 Cable makes use of.

9 THE CHAIRPERSON: I see. Because you  
10 searched via that number, it gave you where it fell in  
11 the range.

12 MR. KLATT: Right.

13 THE CHAIRPERSON: So Rogers may have  
14 more?

15 MR. KLATT: Very likely does.

16 THE CHAIRPERSON: But there's no  
17 indication here of any geographic location, right?

18 MR. KLATT: No, does not.

19 THE CHAIRPERSON: So it could be just  
20 as well in Windsor or in Ottawa or Cornwall.

21 MR. KLATT: Assuming Rogers  
22 offered --

23 THE CHAIRPERSON: I'm assuming it's  
24 all of Ontario, or Sudbury.

25 MS KULASZKA: Now, you had a cable

1 modem ISP business, did you not?

2 MR. KLATT: Yes, we did. We were the  
3 initial implementers of residential cable modem  
4 Internet access service for some of our subscriber  
5 base. And what we found was that the IP addresses  
6 rarely change. In fact, the only time an IP address  
7 would typically change in a DHCP server environment,  
8 which we are using -- because if the network interface,  
9 what they call Media Access Control or MAC address  
10 change, which typically only occurs when a different  
11 computer is plugged in or the network card -- if it's a  
12 replaceable network card might have been changed.

13 MS KULASZKA: Is it different if the  
14 access to the Internet is to dial-up?

15 MR. KLATT: The dial-up, the IP  
16 address typically changes each time a dial-up  
17 connection is made. Would be relatively unusual to get  
18 the same IP address twice on a dial-up connection. And  
19 in our experience, we find cable modem users often keep  
20 the same IP address for --

21 THE CHAIRPERSON: For which modem  
22 users?

23 MR. KLATT: Cable modem users. It's  
24 not unusual to have the same IP address for several  
25 months or even longer.

1 MS KULASZKA: So this doesn't vary on  
2 whether you turn your computer on or after because the  
3 modem is itself always plugged in?

4 MR. KLATT: The modem is usually  
5 plugged in all the time. But even if the modem was  
6 turned off, it's the same MAC address from the user's  
7 PC unless the user changed his PC or changed his  
8 network card.

9 MS KULASZKA: Could you explain what  
10 a MAC address is?

11 MR. KLATT: A MAC address is the  
12 unique hardware identifier number that's composed of  
13 several fields. The initial part of the field is a  
14 manufacturer identifier that assigned to each  
15 manufacturer that makes products that use the ethernet  
16 type of interface. And the remaining portions of the  
17 digits are used to uniquely identify that particular  
18 device itself.

19 Example: If a manufacturer produces  
20 a run of a thousand network adapter cards, each network  
21 adapter card would have a different MAC address.  
22 Typically they would be sequentially implemented during  
23 the manufacturing process.

24 And this MAC address is used to  
25 associate an IP address with a unique MAC address

1 during what they call address resolution protocol, when  
2 a device attaches to the Internet or a network.

3 THE CHAIRPERSON: So each computer,  
4 or I should say each network adapter card that's inside  
5 the computers, or external, whatever, has one  
6 designated what's called a serial number, but you call  
7 it the -- is it the MAC address?

8 MR. KLATT: You could think of it as  
9 a hardware serial number.

10 THE CHAIRPERSON: And that will  
11 always remain the same for that card?

12 MR. KLATT: Correct.

13 THE CHAIRPERSON: So what happens, if  
14 I can you correctly, the cable ISP will -- may assign  
15 an IP address to that computer --

16 MR. KLATT: Based on the MAC address.

17 MS KULASZKA: -- based on the MAC  
18 address, and then the computer may turn off -- the  
19 modem may be turned off, but when that computer comes  
20 and says, here I am, MAC address 1234567, the Internet  
21 service provider will recognize that number and say,  
22 well, I already assigned this IP address to this user,  
23 I'll just give it back to them.

24 MR. KLATT: That's it. You have a  
25 good grasp of that concept. I'm impressed.

1 THE CHAIRPERSON: Okay. So what  
2 happens -- is it after a duration that a certain period  
3 of time that an ISP would re-assign -- would re-assign  
4 that IP address if the person no longer has access? Or  
5 do they keep that IP address on reserve for that  
6 network card indefinitely?

7 MR. KLATT: It's somewhat -- it could  
8 get a bit complex to explain, and we don't have access  
9 to all the operational details that Rogers uses. But  
10 typically with a cable modem Internet service provider  
11 they have what they call a device that does -- referred  
12 to as DHCP -- handles -- DHCP request essentially is  
13 when the computer turns on or connects to Internet. It  
14 says, hi, I'm here, give me an IP address that I can  
15 use. And it's based on the hardware MAC address that  
16 gets sent out.

17 The DHCP server says, this is the IP  
18 address that I want you to use for this, and this is  
19 your duration. It's expected to be used for --  
20 typically half or three-quarters of the way through the  
21 duration of what they call lease or reserve time, the  
22 client PC, if it's turned on, will send our a request  
23 to renew that IP address, and is granted. And that  
24 renews the IP address for another term at the time.

25 If the IP address is not requested to

1 be renewed, eventually what they would call the lease  
2 time for that IP address has expires, and that IP  
3 address is then released to the pool of addresses that  
4 are available for new requests. But the odds or time  
5 frame of when that newly-released IP address will be  
6 made available depends on a number of factors: How  
7 large the pool is and how active the requests are for  
8 new IP addresses.

9 A typical -- it would be hard to  
10 estimate in a Rogers environment what kind of activity  
11 level we would see in that area. But in many cases  
12 it's not unusual to have the same IP address for cable  
13 modem subscribers for months on end.

14 MS KULASZKA: Did you do any research  
15 into Rogers about how long their customers might keep  
16 an IP address?

17 MR. KLATT: I did do some Internet  
18 searches and I did come across references various user  
19 postings from Rogers user group forums. And from what  
20 I recall -- like I said, it's not unusual for cable  
21 modem users to keep the same IP addresses for many  
22 months.

23 MS KULASZKA: If you can turn to  
24 pages 23 and 24 of your exhibit to your affidavit,  
25 that's tab 3. IP address.

1 THE CHAIRPERSON: Did you mention a  
2 page?

3 MS KULASZKA: Start with 23. Can you  
4 identify this page?

5 MR. KLATT: This is a printout of the  
6 user ID on the FreedomSite message board for the user  
7 ID "Lucy". And the next page for the user ID  
8 "90sAREover".

9 MS KULASZKA: How did you obtain  
10 access to these user profiles?

11 MR. KLATT: I went through the remote  
12 desktop connection to Mr. Lemire's system.

13 MS KULASZKA: Did you prepare a  
14 document for use by the Tribunal entitled "Matching  
15 Characteristics".

16 MR. KLATT: Yes, I did.

17 MS KULASZKA: Did you do a  
18 characterization of the two user profiles?

19 MR. KLATT: Yes, I did.

20 MS KULASZKA: What did you find?

21 MR. KLATT: There's a lot of  
22 similarities and identical characteristics between the  
23 two accounts. For example, both accounts were created  
24 using -- refer to as anonymous e-mail accounts on  
25 Yahoo.ca, and a Hotmail.com.

1                   The optional user ID that many of the  
2 users did choose to fill out was not supplied in both  
3 cases.

4                   MS KULASZKA:   Such as?

5                   MR. KLATT:   The location or home page  
6 information that a number of users did choose to  
7 provide.  The accounts were used for very short  
8 duration and seemed to be created or used only for a  
9 single purpose.

10                  MS KULASZKA:  I've handed you a  
11 document entitled "Matching Characteristics".  Did you  
12 prepare this document?

13                  MR. KLATT:  Yes, I did.  It shows  
14 information that is verified by Richard Warman in the  
15 first column.  And the second column is the associate  
16 information obtained regarding the Ann Cools posting.

17                  MS KULASZKA:  Could you go through  
18 this document?

19                  MR. KLATT:  We see they both  
20 originate from the same IP address for the same  
21 Internet service provider, Rogers Cable; the same  
22 Windows '98 operating system; identical web browser,  
23 Mozilla 4 compatible MSIE60; a user ID as mentioned  
24 created with a Yahoo.ca account on one and a Hotmail  
25 anonymous account another.

1                   Both were used on a relatively  
2           obscure limited-interest message board, logged into  
3           once or twice for a very short duration in both cases.  
4           Neither one supplied any optional information and they  
5           seemed to be for basically a single purpose. Both  
6           accounts were created and used within -- looks like a  
7           couple months' time frame.

8                   MS KULASZKA: In your opinion, what  
9           receives the heaviest weight?

10                   MR. KLATT: It would be my expert  
11           opinion that both accounts were originated and used  
12           from the same user. And I tried to think of an  
13           explanation that would be a counter or alternative  
14           explanation. You would have to imagine that there was  
15           some other user that had the identical IP address for  
16           the same operating system on Rogers Cable modem  
17           service, using the same browser that had an interest in  
18           the same relatively obscure message board and chose to  
19           use it for a very short period of time, and the odds of  
20           that happening seemed to be incredibly small. So on  
21           the balance of probability I would conclude that the  
22           same user was involved with both sets of activity.

23                   MS KULASZKA: Looking at these  
24           comparisons, it states that browser is Mozilla 4.0  
25           compatible MSIE6.0. Is MSIE6 standard on a Windows

1 '98?

2 MR. KLATT: No, it's not. It's not  
3 the default operating system browser that's supplied  
4 with Windows '98, so it would be something that a user  
5 would have to do on their own to upgrade it to that  
6 version.

7 MR. VIGNA: What do you base that  
8 opinion on?

9 MR. KLATT: The fact that Windows '98  
10 ships with the Internet Explorer, version 5.

11 MS KULASZKA: What does MSIE mean?

12 MR. KLATT: Stands for Microsoft  
13 Internet Explorer, the designation for their web  
14 browser product.

15 THE CHAIRPERSON: However, people  
16 could easily upgrade, right? I think I've done it a  
17 few times when I had a Windows '98 machine. I went  
18 from 4 to 5 then to 6.

19 MR. KLATT: That's true. It is not  
20 difficult to do.

21 THE CHAIRPERSON: We've been told,  
22 "newer version available", click here and boom, it  
23 upgrades.

24 MR. KLATT: If they have that feature  
25 enabled, yes.

1 MS KULASZKA: I would like to have  
2 that document "Matching Characteristics" produced.

3 THE CHAIRPERSON: I'll try to find a  
4 spot for it. I notice you have some extra tabs in R-1.  
5 Do you want to put it there, just for simplicity?

6 MS KULASZKA: Just at the back of 25.  
7 The CV of Bernard Klatt just went in 25.

8 THE CHAIRPERSON: No, it went in 25  
9 of -- this document, while this witness has dealt with  
10 it, it deals was broader issues. I don't have any  
11 difficulty putting it at the back of R-1.

12 MS KULASZKA: Which tab?

13 THE CHAIRPERSON: 25. 25 of R-1.  
14 All right?

15 MS KULASZKA: Are your conclusions  
16 regarding the Ann Cools post set out in your affidavit,  
17 paragraph 61 to 71? If you could look at that, tab  
18 3 -- or tab 2, sorry. Tab 2 at pages 12 and 13.

19 MR. KLATT: Yes, conclusions that I  
20 draw from the review of the log files and available  
21 information to me.

22 MS KULASZKA: Did you prepare some  
23 further documents?

24 THE REGISTRAR: You are going to have  
25 to go through them because I don't have the same pages.

1 MS KULASZKA: The first page appears  
2 to be.

3 THE CHAIRPERSON: I don't have any of  
4 the pages.

5 MS KULASZKA: First page appears to  
6 be screen shots of web pages, CBC, Globe & Mail --

7 MR. VIGNA: Mr. Chair, there's been a  
8 series of documents that have been provided to me only  
9 this morning, and I didn't object so far, but now I'm  
10 being given five pages which I haven't had a chance to  
11 read because they were just at the beginning of the  
12 testimony. There may be a problem. There may not be a  
13 problem.

14 But I'm not in a position not to  
15 object at this point. I haven't had a chance even to  
16 look at them.

17 MS KULASZKA: I think the points that  
18 will be illustrated by these documents are actually --  
19 they are quite simple. They are just illustrative of  
20 certain points. What they are screen shots of three  
21 home pages and then showing the HTML format just for  
22 those pages, just to show what appears on a screen and  
23 what the actual coding is.

24 THE CHAIRPERSON: Didn't we already  
25 see something like that before?

1 MS KULASZKA: Yes, but this is to --  
2 this is in support of a further argument just to show  
3 that -- to put information on the web no matter who  
4 puts the information on basically the same software and  
5 the same protocols are being used.

6 MR. VIGNA: I'll object. I haven't  
7 had a chance to verify anything. I'm being shown  
8 documents at the last minute. The respondent has  
9 constantly complained about late disclosure. To a  
10 certain extent I'm willing to be lenient. But they  
11 have been given to me at the very last moment, and I  
12 haven't had a chance --

13 THE CHAIRPERSON: Another point here.  
14 Ms Kulaszka, we have ongoing duties to disclose,  
15 admittedly, on newly-arising material. This doesn't  
16 strike me as something that's newly arising. This  
17 seems to be in support of what Mr. Klatt was scheduled  
18 to testify about from when he prepared his report  
19 months ago.

20 So it's taken Mr. Vigna by surprise.  
21 I can understand. I won't make any comments again  
22 about his abilities with computers. But I can  
23 understand how this material -- he may want to consult  
24 with someone before agreeing to anything, before  
25 agreeing to not object. He's objecting.

1 MS KULASZKA: Could we have a  
2 five-minute break? Maybe I'll talk to Mr. Vigna just  
3 to show him exactly what -- a very simple point.

4 THE CHAIRPERSON: We can have a  
5 five-minute break.

6 MS KULASZKA: Thank you.

7 --- Recessed at 11:37 a.m.

8 --- Resumed at 11:45 a.m.

9 MR. VIGNA: I've spoken with my  
10 colleague. I don't have any problems, having given me  
11 the explanation she has, with the documents that have  
12 been given to me.

13 But with the proviso that it's just  
14 for the feel and look and if there is anything that  
15 comes up that relates particularly to the documents  
16 where there is more of a text-type of information, I  
17 have the chance to rebut. But from what my colleague  
18 has told me, I don't think that is going to be the  
19 case.

20 THE CHAIRPERSON: Okay.

21 MS KULASZKA: Mr. Klatt, can you look  
22 at -- these have been filed after tab 25.

23 THE CHAIRPERSON: These? They have  
24 not been put anywhere yet.

25 MS KULASZKA: Oh, okay. I had just

1 stuck them in there. We'll go over them first.

2 You produced a document that appears  
3 to have pictures of three websites. Could you describe  
4 that document?

5 MR. KLATT: Yes. What it is is  
6 captured screen shots of the first screen of the home  
7 page of globeandmail.com, freedomsite.org and cbc.ca  
8 websites.

9 MS KULASZKA: When did you do this?

10 MR. KLATT: Last night.

11 MS KULASZKA: Is this just -- what is  
12 a screen shot?

13 MR. KLATT: It's just a capture of  
14 the visual image representation when the home page is  
15 brought up using the web browser.

16 MS KULASZKA: The next page is headed  
17 "Freedomsite Home Page HTML Format". Can you describe  
18 what this is?

19 MR. KLATT: What this is is -- this  
20 is obtained by clicking on the "view" button and  
21 underneath the "view" drop down menu is a choice to  
22 "select source". And what that refers to is the source  
23 code, the actual HTML that creates the visual  
24 representation that we see for the respective web page.

25 MS KULASZKA: On the first page?

1 MR. KLATT: Correct.

2 MS KULASZKA: Next page it states,  
3 it's headed, "CBC Home Page HTML Format." And what is  
4 this.

5 MR. KLATT: Likewise, we see a  
6 listing of the portion of the source code for the CBC  
7 home page and HTML format.

8 MS KULASZKA: Is this the format of  
9 the screen shot that we see on the first page?

10 MR. KLATT: Correct.

11 MS KULASZKA: And on the next page  
12 states, "Globe & Mail Home Page HTML Format." Could  
13 you describe this document?

14 MR. KLATT: Likewise, this was  
15 produced doing -- clicking on "view" and then selecting  
16 "source" which displays the source code for the current  
17 page that is being displayed on the screen.

18 MS KULASZKA: If you did this for any  
19 website, no matter whether it was the FreedomSite over  
20 a blog or CBC, would they all show HTML code?

21 MR. KLATT: Yes, they do.

22 MS KULASZKA: And that's the coding  
23 language, correct?

24 MR. KLATT: Correct, for -- all web  
25 pages have HTML coding in order to produce the visual

1 representation that the web browser presents to the  
2 user.

3 MS KULASZKA: Now, if you go to the  
4 last page it appears to be two screen shots. Could you  
5 describe this page?

6 MR. KLATT: Yes. What this is, is  
7 again two screen shots, one at the top of  
8 freedomsite.org and the lower one of jrbooksonline.com.

9 What this shows is the visual  
10 presentation of the two different websites are  
11 significantly different in some aspects.

12 MS KULASZKA: Could you describe  
13 those aspects?

14 MR. KLATT: In the Freedomsite case  
15 we see the use of what I refer to as a composited  
16 banner image across the top. For example, the words  
17 "the Freedomsite" is a different image from the images  
18 that we see to the right of that. But yet it is put  
19 together as a single -- appears to be a single graphic  
20 image across the top.

21 It could also be done that way too,  
22 but in this case they are made up of individual images.  
23 The left-hand column under "contents", and it's hard to  
24 represent on a screen capture, but each of the items  
25 home page through site map, underneath the "contents"

1 list, I have "JAVA script" enabled feature where a  
2 highlight shows up where the user positions their mouse  
3 pointer over them.

4 And we also see the use of a  
5 right-hand column format. And the other distinguishing  
6 characteristic of the FreedomSite as opposed to JR  
7 Books, it's not readily apparent from the visual  
8 display but the FreedomSite uses what's referred to as  
9 a cascading style sheet which controls how the visual  
10 information is presented.

11 MS KULASZKA: What is JR Rare Books?  
12 How is the presentation?

13 MR. KLATT: It's much significantly  
14 more rudimentary or simple in terms of the stylistic  
15 elements that are used in presenting the information.

16 It's a relatively long home page,  
17 which indicates somewhat less sophistication, because  
18 good coding practices for home pages generally do not  
19 recommend an excessively long or lengthy initial home  
20 page.

21 JR Books one is relatively long and  
22 its rather straightforward layout. The graphic image  
23 positioning is simpler in terms of how their position  
24 is used. It's got large blocks of text and a single  
25 wallpaper image for the background of the whole page.

1 THE CHAIRPERSON: Ms Kulaszka, back  
2 up for a second.

3 MS KULASZKA: I want to produce those  
4 documents.

5 THE CHAIRPERSON: Yes, except I had a  
6 black and white and a colour version of those three  
7 screen shots. Do I need both?

8 MS KULASZKA: I know Mr. Vigna got a  
9 colour version.

10 THE CHAIRPERSON: And a black and  
11 white.

12 MR. KLATT: Colour ink cartridge ran  
13 out part way through.

14 THE CHAIRPERSON: No, no, all I want  
15 to know is you provided me with the same thing in black  
16 and white and colour. Do I keep both in my binder?

17 MS KULASZKA: Yes, I would keep both.

18 THE CHAIRPERSON: Certain redundancy  
19 there.

20 MS KULASZKA: Unless --

21 THE CHAIRPERSON: No.

22 MS KULASZKA: So if we could produce  
23 those documents.

24 THE CHAIRPERSON: Yes. Now, where  
25 could we put them?

1 THE REGISTRAR: In tab 26.

2 THE CHAIRPERSON: Could put them in  
3 tab 26 of R-1, the big binder, the first binder.

4 MS KULASZKA: We have 25. What's at  
5 25?

6 THE REGISTRAR: Put the Matching --

7 THE CHAIRPERSON: Matching  
8 Characteristics went into 25 of R-1. Mr. Klatt's  
9 binder, we placed his CV as R-2. I would place the CV  
10 at tab 25. So tab 25s are filled in both cases. So  
11 you have an extra tab 26 at the back of R-2. We can  
12 put it there -- of R-1, I'm sorry, of R-1. Tab 26,  
13 R-1. And it's produced.

14 MS KULASZKA: Mr. Klatt, did you try  
15 and e-mail Richard Warman at the Canadian Human Rights  
16 Commission?

17 MR. KLATT: Yes, I did send test  
18 e-mails to a couple of user accounts.

19 MS KULASZKA: What e-mail did you  
20 send it to? Have you got those documents in front of  
21 you?

22 MR. KLATT: Not right another hand.

23 MS KULASZKA: If you could go through  
24 this series of documents. I believe there's three  
25 pages.

1 MR. KLATT: Yes. Which one do you  
2 want to refer to first?

3 MS KULASZKA: If we could start with  
4 mail.com.

5 MR. KLATT: I sent an e-mail to  
6 e-mail address richard.warman.@chrc-ccdp.ca.

7 MS KULASZKA: Where did you get that  
8 e-mail?

9 MR. VIGNA: I would like to know the  
10 relevance this document. I might not have an objection  
11 but I would like to know the relevance.

12 MS KULASZKA: Well, the relevance was  
13 I asked Mr. Warman if he worked at the Commission, and  
14 as I recall he refused to answer.

15 Mr. Klatt did a test of the e-mail  
16 following the same format as other employees at the  
17 Commission, and his evidence will show that he has an  
18 activated e-mail account.

19 MR. VIGNA: Mr. Chair, I think that's  
20 totally irrelevant and even if he worked there -- it's  
21 not the case, but what's the relevance? If we see here  
22 page 2, there's Eddie Taylor, 2007.

23 MS KULASZKA: Yes. The evidence  
24 would show Eddie Taylor, also he was a counsel at the  
25 Commission. His old e-mail no longer works.

1 THE CHAIRPERSON: His old e-mail  
2 what?

3 MS KULASZKA: No longer works. It  
4 does not work.

5 MR. VIGNA: The fact that an e-mail  
6 works or not doesn't prove anything. It's irrelevant,  
7 anyways....

8 THE CHAIRPERSON: We don't -- my  
9 concern on that is it's confusing the issues a bit.  
10 Because the important time was the time frame when he  
11 did this monitoring. That's what's in evidence. I  
12 think he conceded that point. I believe he said that  
13 at that period he was with the Commission, did he not?

14 MR. VIGNA: That's what I recall.

15 THE CHAIRPERSON: Why are we beating  
16 the same thing?

17 MR. VIGNA: It's a collateral issue  
18 totally, and I object to the submission.

19 THE CHAIRPERSON: Especially if it  
20 was done today.

21 MS KULASZKA: When did you do this,  
22 Mr. Klatt?

23 MR. KLATT: It was done February 4th.

24 THE CHAIRPERSON: I mean, in the  
25 relative. Not today.

1                   MR. KLATT: Within the last couple  
2 days. It appears to indicate he still has an active  
3 e-mail account at the Commission.

4                   THE CHAIRPERSON: Where does that  
5 take us? He's not doing any investigations now and  
6 that's not at issue in front of me right now.

7                   MS KULASZKA: He consistently refuses  
8 to give a simple answer to whether he works at the  
9 Commission.

10                  THE CHAIRPERSON: I know. Everybody  
11 likes asking him that question. He consistently  
12 confuses. Where does that get me? Because then the  
13 issue only seems to be, from the way you are bringing  
14 it up, is his credibility.

15                  And we have the authorities that  
16 Mr. Warman presented to us with regard to your other  
17 motion the other day that says you have to live with  
18 his answer when it comes to credibility.

19                  His answer is he doesn't work --  
20 well, his answer --

21                  MS KULASZKA: No, he doesn't answer.

22                  THE CHAIRPERSON: He doesn't answer  
23 at all.

24                  MR. VIGNA: But whenever the case is,  
25 Mr. Chair, the objective of this document is to attack

1 his credibility at a time frame that's totally  
2 irrelevant to the complaint on a totally collateral  
3 issue.

4 THE CHAIRPERSON: I don't know if it  
5 proves anything. You know what? He didn't answer the  
6 question. That's true also.

7 What was in the principles laid out  
8 in the authorities given to me in his motion, I don't  
9 know if they have any bearing given that he never even  
10 answered the question.

11 On the other hand, I don't see what  
12 the relevance is, Ms Kulaszka. You have his answer  
13 with regard to the important period, which is when all  
14 this stuff was going on. What does it matter whether  
15 this Commission maintains his website or not today?

16 MR. KLATT: It's not the website.

17 THE CHAIRPERSON: Sorry, the e-mail  
18 address. In a way, the real issue is what was the  
19 relevance of the first question in the first place.

20 MS KULASZKA: Well, if he's working  
21 for the Commission it goes further to the  
22 constitutional issue because it means he is working for  
23 the Commission. He can say he --

24 THE CHAIRPERSON: But he was. He  
25 was.

1 MS KULASZKA: And he continues today.

2 THE CHAIRPERSON: Why does that make  
3 a difference?

4 MS KULASZKA: Because he's --

5 THE CHAIRPERSON: I don't have that  
6 in front of me. Look, we all know the players here  
7 have a history. It's in the past, and it goes in the  
8 future. I'm not going to confuse the issues by letting  
9 that get in the way of what I'm dealing with here.

10 I'm dealing with a complaint,  
11 2003/2004. That's the period I believe, 2003 I should  
12 say, November 2003.

13 So that's what I have to be focused  
14 on. And even your constitutional arguments relate to  
15 that. So let's not mix things up. I'm not going to  
16 allow this to be an access-to-information tool for  
17 parties on either side.

18 MS KULASZKA: I wonder if we could  
19 break for lunch and I'll just discuss if there is  
20 anything further I need to ask Mr. Klatt. If not, that  
21 will be the end of the examination-in-chief.

22 THE CHAIRPERSON: All right. How are  
23 we doing on this, Ms Kulaszka, timewise? You said half  
24 an hour. Anyways. Hopefully -- you have three other  
25 witnesses lined up for this week, did you not?

1 MS KULASZKA: But two would be very  
2 short.

3 THE CHAIRPERSON: Okay. Look, we'll  
4 examine other possibilities. I still have hope that  
5 even if we do run long here or there with the -- aside  
6 from the experts we'll be hearing in the other two  
7 weeks, there still will be a few days left over. I  
8 told you I'm going to be very flexible on setting down  
9 witnesses if it enables us to get through all of this.

10 MS KULASZKA: I think the last week  
11 would be very short because the two experts wanted to  
12 be gone within a day.

13 THE CHAIRPERSON: That's why I'm  
14 still comfortable in the way the case is proceeding.  
15 So we'll take our lunch break, then.  
16 Is that what you would like, Ms Kulaszka?

17 MS KULASZKA: Yes.

18 THE CHAIRPERSON: Mr. Vigna, how long  
19 do you think you'll be with this witness, and you  
20 Mr. Fothergill?

21 MR. VIGNA: I have to go through the  
22 two reports. It's going to take a little while, but I  
23 should be finished by today, maybe early tomorrow  
24 morning.

25 THE CHAIRPERSON: So should we come

1 back a little earlier?

2 MR. VIGNA: 1:15?

3 THE CHAIRPERSON: 1:15?

4 MS KULASZKA: It's fine with me.

5 --- Recessed at 12:15 p.m.

6 --- Resumed at 1:16 p.m.

7 THE CHAIRPERSON: Ms Kulaszka?

8 MS KULASZKA: Mr. Klatt, I just have  
9 a couple questions. If you could just go to the big  
10 black binder, R-1, and tab 3, page 9.

11 I just want you to describe what this  
12 page is for the Tribunal.

13 MR. KLATT: This is the log-in page  
14 for the FreedomSite web board.

15 MS KULASZKA: What did you have to do  
16 to access the web board?

17 MR. KLATT: Web board access is  
18 available through two methods: Either the user chooses  
19 to click on the "guest" button. If that is their  
20 choice they are limited to "read only" access or they  
21 can create a new user identity and log in using their  
22 created user name and password.

23 MS KULASZKA: As a result of this,  
24 did it have a -- log-in necessity, did it have any  
25 effect on such search engines as Google?

1 MR. KLATT: Yes, search engines send  
2 out what they call robot reads of various websites that  
3 they want to index the content of, and the web crawlers  
4 or indexing process does not log into -- attempt to log  
5 into content that requires a user name or password or a  
6 user-initiated action such as simulating a mouse click  
7 on an icon. So search engines would not access the  
8 content in this type of a web board.

9 MS KULASZKA: If you turn to the next  
10 page, just state what this is.

11 MR. KLATT: This is the information  
12 that comes up when a user would select to create a new  
13 user account. The mandatory fields indicated with the  
14 black dot to the right of the log-in name -- first  
15 name, last name, e-mail address fields.

16 MS KULASZKA: Are the rest of the  
17 fields not mandatory? They don't have a dot beside  
18 them.

19 MR. KLATT: Considered optional  
20 information that some users may choose to provide.

21 MS KULASZKA: Is this the information  
22 that creates the user profile that we looked at earlier  
23 for Lucy?

24 MR. KLATT: Yes, it is.

25 THE CHAIRPERSON: Could I just ask

1           you a question on that previous comment you made? You  
2           mean to say that the Google browser would not be able  
3           to -- would not crawl into message boards where the  
4           people who had placed the messages had to have a user  
5           identification?

6                       MR. KLATT: If the web board is  
7           accessible through a direct URL access, may be able to.  
8           But the content that's accessible only through a  
9           user-initiated mouse click or requiring a user name and  
10          password would not be simulated or accessed by a Google  
11          web crawler.

12                      MS KULASZKA: Those are my questions.  
13          If you would answer the questions of my friend.

14          CROSS-EXAMINATION BY MR. VIGNA

15                      MR. VIGNA: Mr. Klatt, you prepared  
16          the report in tab 1 that you have before you in front  
17          of you.

18                      THE CHAIRPERSON: R-2.

19                      MR. VIGNA: I just note there is no  
20          date on when the report was prepared. Do you know when  
21          you prepared this report?

22                      MR. KLATT: It was prepared over a  
23          time period as it went through several revisions and  
24          work on it. As I recall when it was finally completed,  
25          I believe it was summer of last year approximately it

1 was completed.

2 MR. VIGNA: 2006?

3 MR. KLATT: Right.

4 MR. VIGNA: I note on tab 2 there's  
5 an affidavit, but it's almost in the format of a  
6 similar report. That was in August 2006?

7 MR. KLATT: Right.

8 MR. VIGNA: Was it after or before  
9 the first report?

10 MR. KLATT: I don't recall exactly.

11 MR. VIGNA: What came first,  
12 basically?

13 MR. KLATT: I think we worked -- I  
14 think I worked on both of them.

15 MR. VIGNA: In terms of you coming  
16 about preparing these two reports, can you explain in  
17 what circumstances you were called to have prepared  
18 these reports?

19 MR. KLATT: I was contacted by Marc  
20 Lemire's counsel, Barbara Kulaszka, regarding the  
21 availability of myself in preparing this report.

22 MR. VIGNA: What documents were you  
23 provided with in terms of the preparing the report?

24 MR. KLATT: I received a CD-ROM  
25 containing files from the FreedomSite, and I was also

1 provided remote access through the Windows XP remote  
2 desktop connection to the FreedomSite systems.

3 MR. VIGNA: Remote access was for  
4 what particular aspect of the website?

5 MR. KLATT: For accessing the log  
6 files and the website itself, material that was  
7 available.

8 MS KULASZKA: That was sent to you by  
9 Mr. Marc Lemire?

10 MR. KLATT: No, the remote desktop is  
11 a facility that is used through Windows XP to establish  
12 a connection from one computer to another computer.

13 MR. VIGNA: So how did that operation  
14 take place?

15 MR. KLATT: Was provided a user name  
16 and password to connect to the remote system at Marc  
17 Lemire's location.

18 MR. VIGNA: And this was in the  
19 summer of 2006?

20 MR. KLATT: Was done on more than one  
21 occasion.

22 MS KULASZKA: But more or less on  
23 what time frame would you say would be about --  
24 considering that your affidavit is dated August 22nd, I  
25 believe, 2006, around what season or what time frame,

1 without being specific in terms of a month of a day?  
2 Would it be correct to say it would have been the  
3 months prior to August of 2006?

4 MR. KLATT: I accessed it on a number  
5 of occasions.

6 MR. VIGNA: But my question is, would  
7 it be correct to say that the material and the access  
8 to the log was prior to August 2006, a few months  
9 before?

10 MR. KLATT: I'm pretty confident I  
11 did access it before that time period, yes, and I  
12 believe I accessed it after that time period as well.

13 MR. VIGNA: Okay. I'll just go  
14 quickly on your first tab, first report.

15 You mention in paragraph 3 a bunch of  
16 Internet protocol. There's IP, ITCP, UDP, PPC, what  
17 are all those, in a nutshell? It's the first page of  
18 your report, tab 1, paragraph 3.

19 THE CHAIRPERSON: Mr. Vigna, he has  
20 testified on those points.

21 MR. VIGNA: Just to get a better  
22 understanding. I'm not abusing -- I'll move on.

23 THE CHAIRPERSON: He took some time  
24 on testifying on each of those things. I took notes on  
25 them. Go ahead, ask your question.

1                   MR. WARMAN: All except for the last  
2 item is a list of application protocols, various types  
3 that are in use for various applications and functions  
4 on the Internet.

5                   MR. VIGNA: To be brief, when we say  
6 Internet protocol and when we say IP address, what is  
7 the link to be made?

8                   MR. KLATT: Internet protocol refers  
9 to a method of transferring information; the same  
10 initials IP -- IP in terms of IP address refer to  
11 Internet protocol address, the four groupings of digits  
12 that uniquely identify a source or destination address  
13 on the Internet.

14                  MS KULASZKA: Paragraph 4 you talk  
15 about Internet radio. That's not traditional radio.  
16 It's like, for example, the radio show of Mr. Paul  
17 Fromm that takes place at midnight at night, correct?  
18 It's on the Internet. It's not traditional radio.

19                  MR. KLATT: Correct, it's not  
20 broadcast through radio waves.

21                  THE CHAIRPERSON: The references was  
22 to what, Mr. Vigna?

23                  MR. VIGNA: Paragraph 4 they talk  
24 about Internet radio.

25                  THE CHAIRPERSON: I see.

1 MR. VIGNA: To give an example, you  
2 are familiar with the radio show of Mr. Paul Fromm at  
3 midnight?

4 MR. KLATT: Yes, I've heard that one.

5 MR. VIGNA: That's on Stormfront.

6 MR. KLATT: Can be accessed through  
7 Stormfront, but whether it originates from there, I  
8 don't believe so.

9 MR. VIGNA: But it can be accessed at  
10 least from Stormfront?

11 MR. KLATT: Correct.

12 MR. VIGNA: Can you explain to us the  
13 concept of routers?

14 MR. KLATT: Internet router is a  
15 device that is used to route Internet packets from one  
16 location to another on the Internet based on the header  
17 and address information fields of the packets that have  
18 been transferred. It maintains a table of source and  
19 destination addresses and the router provides the  
20 function of connecting one network to another.

21 MR. VIGNA: Do you agree routers can  
22 assign different IPs at different moments in time?

23 MR. KLATT: Router typically doesn't  
24 assign IP addresses.

25 MR. VIGNA: What does it do? Is it a

1 common device to assign different -- or use different  
2 IPs?

3 MR. KLATT: Yes. It is a device used  
4 to route information that is based on IP addresses  
5 contained in the packets that are being routed.

6 MR. VIGNA: In paragraph 6, just for  
7 technical information, you mention routers, bridges,  
8 hubs, switches and gateways. Can you just give us a  
9 simple explanation what's the difference between each  
10 one.

11 THE CHAIRPERSON: I just want to make  
12 sure I followed you. Paragraph 6, you said --

13 MR. VIGNA: 7. Sorry.

14 MR. KLATT: Routers are devices, as I  
15 mentioned, to route information, traffic on the  
16 Internet. They range anywhere from low cost, widely  
17 distributed consumer routers that are probably less  
18 than a hundred dollars in most cases, to multi-tens of  
19 thousand dollar routers used by telecommunication firms  
20 that require high performance, and there's a whole  
21 range of router products with different features in  
22 between.

23 Bridges perform the function of  
24 bridging two networks at a lower level than a router  
25 does.

1                   A hub is a device that is used to  
2 connect two portions of ethernet, segment together or  
3 connect PC's ethernet network.

4                   Switch is a more advanced version of  
5 a hub in that it does not replicate packets through all  
6 the port connections on it like a hub does.

7                   A gateway is a device used for  
8 typically inter-connecting two dissimilar types of  
9 networks. For example, between an Internet and IBM  
10 network. Uses a different protocol.

11                  MR. VIGNA: On paragraph 8, if we  
12 take it in conjunction with your testimony in the  
13 various documents you refer to, you agree that Canada,  
14 in terms of Internet usage, particularly in  
15 percentagewise, is one of the countries that has a very  
16 high use of Internet?

17                  MR. KLATT: Yes, relatively so,  
18 correct.

19                  MR. VIGNA: On a technical point,  
20 paragraph 10, applet. What is an applet?

21                  MR. KLATT: In the context of JAVA  
22 and the JAVA programming language, an applet is a  
23 portion of source code typically that a programmer  
24 familiar with a JAVA language would use to create a  
25 particular function using the JAVA programming

1 elements.

2 MR. VIGNA: It's associated with  
3 JAVA?

4 MR. KLATT: Correct.

5 MR. VIGNA: Just paragraph 15 you  
6 mention blogs. How does blogs compare to message  
7 boards or chats or forums?

8 MR. KLATT: Blogs are a more specific  
9 type of web content in that it's typically designed to  
10 be easily updated quite often on a daily basis, whereas  
11 websites are not as readily or not usually as updated  
12 as dynamic a fashion as a web log is.

13 In most cases web logs are designed  
14 primarily for ease of use and presentation of  
15 particular type of information, usually in most cases  
16 text and not so heavy on the graphics and other types  
17 of media.

18 MR. VIGNA: And e-mails and posting  
19 and threads, how would you distinguish the two?

20 MR. KLATT: Web logs are often --  
21 don't have the -- web logs as compared to e-mail.  
22 E-mail goes through a different form of transmitting  
23 information than a web log would. Web log is another  
24 web page accessed through a web browser, whereas e-mail  
25 is typically sent using an e-mail client and viewed

1 with a similar e-mail -- at the receiver's end.

2 MR. VIGNA: Paragraph 33 you mention  
3 which follows at the following page, dial-up or DSL  
4 access. What's the difference?

5 THE CHAIRPERSON: Paragraph 23?

6 MR. VIGNA: Paragraph 23 of the same  
7 report but on the second page it continues.

8 MR. KLATT: Significant difference  
9 between dial-up access and DSL or ADSL. Access is the  
10 speed at which the information is transferred. Dial-up  
11 connections over a typical residential phone line are  
12 limited to the datawrite, typically does not exceed  
13 somewhere in the upper 50 or mid-50 kilobyte per second  
14 transfer rate. They're sometimes referred to as 56K,  
15 although it's very rare to see a connect rate that  
16 exceeds 54 kilobyte per second.

17 With DSL or ADSL, that service is  
18 also provisioned over -- or can be provisioned over a  
19 residential telephone circuit but it uses a different  
20 type of signaling method and not in the audio band  
21 frequencies that dial-up modems use.

22 The ADSL circuits are capable of data  
23 transfer rates, typically from, at the very low end, be  
24 unusual to see anything lower than about 300 kilobyte  
25 per second on up to several megabytes per second at the

1 higher end.

2 MR. VIGNA: In simple language,  
3 dial-up takes long and DSL is quick, is high speed.

4 MR. KLATT: That's a good summary,  
5 yes.

6 MR. VIGNA: And dial-up would  
7 normally be, what, a telephone plug, if I understand  
8 correctly?

9 MR. KLATT: Yes, dial-up modem does  
10 connect through the residential telephone connection.

11 MR. VIGNA: And DSL, is that with  
12 cable, like Rogers Cable or Shaw Cable or Videotron?

13 MR. KLATT: Yes, the ADSL circuits  
14 through Bell Canada also plug into the same type of  
15 residential phone jack.

16 THE CHAIRPERSON: So the DSL or ADSL,  
17 the terms are inter-changeable.

18 MR. KLATT: There's a variety of  
19 different DSL services. There's what I refer to ADSL  
20 which stands for a synchronist digital subscriber line.  
21 There's also SDSL, stands for synchronist digital  
22 subscriber line. There's also HDSL -- but the most  
23 commonly deployed form of DSL access is ADSL.

24 THE CHAIRPERSON: So the technology  
25 or the method, whether one is using the telephone

1 system or a cable company's cable, coaxial cable  
2 network is the same. In both cases you would refer to  
3 it as a DSL or a variation on a DSL for both?

4 MR. KLATT: Not for cable company  
5 services. Those use a substantially different type of  
6 modulation method for putting the information on a  
7 cable network.

8 THE CHAIRPERSON: So the DSL --  
9 that's the point of my question. The DSL that's being  
10 referred to here in paragraph 24 is referring to the  
11 type of service that's provided to the telephone line  
12 network.

13 MR. KLATT: Correct.

14 THE CHAIRPERSON: Fiberoptic network.

15 MR. KLATT: Yes.

16 MR. VIGNA: And the remote access to  
17 Internet, would that be DSL only or -- obviously it  
18 wouldn't be dial-up, if I understand. If it would be a  
19 remote, like say you are going to a cafe and you bring  
20 your laptop with no wire attached.

21 MR. KLATT: If you are thinking of  
22 wireless access, that is done through -- what's  
23 referred to as 80211 protocol types. Most common ones  
24 there are A211, 80211B, 80211G, 80211A is used in some  
25 areas. 80211N is the emerging standard.

1 MR. VIGNA: But it would not be  
2 dial-up?

3 MR. KLATT: No, it would not.

4 MR. VIGNA: It would be fairly quick.

5 MR. KLATT: It can be, although the  
6 supported data rates on 80211 wireless range from 1  
7 megabyte or even half megabyte on up.

8 MR. VIGNA: But you'll agree --

9 MR. KLATT: Typically faster than  
10 dial-up.

11 MR. VIGNA: You give an example in  
12 paragraph 24 of a typical example of web hosting  
13 businesses is Vario. That's a company like Shaw,  
14 Rogers or Primus. Would that be the same thing?

15 MR. KLATT: I would not compare Vario  
16 with Rogers or --

17 MR. VIGNA: In terms of they're  
18 smaller, you mean?

19 MR. KLATT: No, Rogers is not  
20 typically referred to as a web hosting company, whereas  
21 Vario, its primarily business model and reason for  
22 being is in the west hosting business, is my  
23 understanding.

24 MR. VIGNA: In terms of the major  
25 Internet service providers in Canada, you would agree

1           that the most common ones are Rogers, Bell Sympatico,  
2           Primus, Shaw, Videotron. Those are the your most  
3           popular Internet service providers.

4                       MR. KLATT: Yes. They probably have  
5           the majority of the Internet access in eastern Canada.  
6           Telus and the -- Telus Group of Companies has a  
7           significant share of the market in western Canada.

8                       MS KULASZKA: Just for information,  
9           paragraph 25 at the last sentence:

10                               "Information can be available in  
11                               real time as well as stored and  
12                               made available upon request at a  
13                               later time."

14                               What does that mean?

15                               MR. KLATT: This is in reference  
16           to --

17                               THE CHAIRPERSON: What paragraph?

18                               MR. VIGNA: 25 of tab 1, the last  
19           sentence.

20                               THE CHAIRPERSON: Yes?

21                               MR. VIGNA: Reference to real time as  
22           well as stored. Can you just give us --

23                               MR. KLATT: The reference there is in  
24           the context of, for example, an audio broadcast or a  
25           video presentation.

1                   An audio broadcast or video  
2           presentation can be transferred through the Internet to  
3           viewers or listeners in real time using the appropriate  
4           software protocols and application programs as well as  
5           simultaneously can be captured and coded and stored as  
6           a file that can be retrieved, if requested, in future  
7           at the a later date.

8                   MR. VIGNA: Real time. Would that be  
9           mean live?

10                  MR. KLATT: Very close to live.  
11           There is a very small delay transit time due to the  
12           transit time through the Internet. But essentially  
13           it's very close to real time.

14                  MR. VIGNA: In the following  
15           paragraph, 26, you mention about the second sentence:

16                                "Web chat forums like defunct  
17                                Freedomsite forum allow viewers  
18                                to interact with other website  
19                                visitors".

20                                That statement, what enables you to  
21           make that statement? What factual basis allows you to  
22           make that statement?

23                  MR. KLATT: This statement:

24                                "Web chat forums like the  
25                                defunct Freedomsite forum

1                   allowed viewers to interact with  
2                   other website visitors"?

3                   MS KULASZKA: "Particularly like the  
4 defunct FreedomSite forum."

5                   How do you know it's defunct?

6                   MR. KLATT: It's no longer  
7 accessible.

8                   MR. VIGNA: You went to it at a  
9 certain point in time?

10                  MR. KLATT: Yes, I did.

11                  MR. VIGNA: When it was accessible,  
12 did you go on it also?

13                  MR. KLATT: Yes, I was able to test  
14 it out.

15                  MR. VIGNA: So at the time that it  
16 existed, for example, between 1995, you were the web  
17 hosting company, I believe, with FTCnet, correct?

18                  MR. KLATT: Yes. But the FreedomSite  
19 chat or web board at no time was resident on our  
20 service. It was a feature that was added at a later  
21 date.

22                  MR. VIGNA: And you went on it?

23                  MR. KLATT: Yes, I did.

24                  MS KULASZKA: You were a participant  
25 on the chat forum?

1                   MR. KLATT: I'm trying to recall if I  
2 used it -- I think the only use I made of it was to  
3 log-in and view some messages. I don't recall actually  
4 posting anything. I perhaps posted a test message, but  
5 not what I would consider a user of the forum on a  
6 regular basis.

7                   MR. VIGNA: As mentioned in your  
8 testimony in-chief when you -- at the last question  
9 from Ms Kulaszka, you showed us the tab -- you don't  
10 need to refer to it, but where it said simply, the  
11 options in order to participate in that web forum were  
12 either as a guest where I guess you could only read?

13                   MR. KLATT: Correct. If the guest  
14 log-in option is chosen, a read access was granted.

15                   MR. VIGNA: But you can't post or  
16 participate in any form in terms of the content?

17                   MR. KLATT: That's correct.

18                   MR. VIGNA: In order to participate  
19 you actually have to register a name and a password?

20                   MR. KLATT: That's true.

21                   MR. VIGNA: Which is not verified.  
22 It's on a voluntary basis?

23                   MR. KLATT: In a sense there is some  
24 degree of verification in the sense that in order to  
25 log-in after the user account is created, the user has

1 to successfully receive back the password supplied and  
2 generated by the web board. So if you want to consider  
3 that as verification of a valid e-mail address, that  
4 exists.

5 MR. VIGNA: It's a minimal  
6 verification like you would do at Hotmail or Yahoo,  
7 basically. You would get a return mail. Is that what  
8 you're saying?

9 MR. KLATT: Yes.

10 MR. VIGNA: It's very minimal in  
11 terms of verification.

12 MR. KLATT: It does verify that that  
13 user ID is associated with a valid e-mail address.

14 THE CHAIRPERSON: Does it mean that a  
15 person who gives a false e-mail address would not then  
16 be able to gain access?

17 MR. KLATT: Yes. If a user entered a  
18 garbage e-mail address, the web board system would send  
19 the generated password to whatever garbage e-mail  
20 address the user entered, but it would not allow them  
21 access to the system because they wouldn't know what  
22 the password was.

23 THE CHAIRPERSON: So the password  
24 would not be provided by the user when registering, and  
25 then use it thereafter. The user would have to provide

1 the information and make the request, and the only way  
2 that the user would gain access ultimately to the  
3 message board would be with the --

4 MR. KLATT: Retrieval of the initial  
5 password.

6 THE CHAIRPERSON: That is supplied by  
7 message board operator.

8 MR. KLATT: Yeah. The board does  
9 then allow the user, once the user has retrieved this  
10 initially-supplied password, to re-assign a password  
11 that they prefer.

12 MR. VIGNA: However, if the e-mail  
13 that's given -- other than the fact that it exists, if  
14 the mail itself contains information which is  
15 fictitious when the e-mail was registered, it doesn't  
16 necessarily mean that the information given for the  
17 e-mail is correct. All it does basically is verifies  
18 that there's a live and existing e-mail account. Is  
19 that what you are saying?

20 MR. KLATT: If we refer to the --

21 MR. VIGNA: I'll rephrase my  
22 question. If you put an e-mail in, right, what the  
23 system does is it verified that it's an actual live  
24 existing e-mail.

25 MR. KLATT: What the system does is

1 sends a generated password to that e-mail address with  
2 instructions indicating that the user can use that  
3 supplied e-mail address for their initial first log-in  
4 using that associated log-in name that the user  
5 selected.

6 MR. VIGNA: So I put  
7 yahoo.bklatt@yahoo.com and it's myself that does that,  
8 it's not Mr. Klatt.

9 MR. KLATT: Correct.

10 MS KULASZKA: As long as that e-mail  
11 exists, even though the information I provided is  
12 fictitious, the operation will succeed in accessing the  
13 FreedomSite.

14 MR. KLATT: No, not really. If --  
15 for example, if I understand the scenario you're  
16 describing, if you entered an address that you don't  
17 have access to, the system will indeed --

18 MR. VIGNA: That's not what I mean.  
19 If I go on the Yahoo -- you know Yahoo search?

20 MR. KLATT: Yeah.

21 MR. VIGNA: I can open an account.

22 MR. KLATT: Hm-hmm.

23 MR. VIGNA: I can put -- I can create  
24 my own Yahoo name and I can put whatever information I  
25 want in respect to the creation of the account?

1 MR. KLATT: Right.

2 MR. VIGNA: And then I'll have a live  
3 Yahoo e-mail, correct?

4 MR. KLATT: Yes.

5 MR. VIGNA: So if I take that Yahoo  
6 that I created, fictitiously, like you created the  
7 certain tabs that you mentioned there with the  
8 warmanjronline, the fact that it's a live e-mail that  
9 exists will not enable me to enter the Freedom site,  
10 correct?

11 MR. KLATT: On the assumption that  
12 you do receive the supplied password that the system  
13 sends, yes.

14 MR. VIGNA: Paragraph 39 of your  
15 report, page 7. You're there?

16 MR. KLATT: Right.

17 MR. VIGNA: Says:

18 "The domain jrbooksonline.com is  
19 registered Jonathan Richardson.  
20 The results from godaddy.com  
21 show the actual register for  
22 this domain..."

23 and then it goes on.

24 You'll agree with me that's a fairly  
25 categorical statement you make there. You don't say

1           potentially can be registered. You say "is registered  
2           to Jonathan Richardson".

3                           The question is very simple,  
4           Mr. Klatt. I'm asking you if the statement is  
5           categorical or you're putting a qualification on the  
6           statement?

7                           MR. KLATT: That's what I wrote  
8           there, yes.

9                           MR. VIGNA: Now, I refer you to tab  
10          7-G of the black binder. It's not that one, it's the  
11          other one, the Commission HR-2.

12                          In relation to that statement -- you  
13          can keep on going there, but in terms of that  
14          statement --

15                          MR. KLATT: Which tab are we looking  
16          for?

17                          MR. VIGNA: 7-G.

18                          MR. KLATT: I see a tab 7. There's a  
19          G tab. I found that.

20                          MR. VIGNA: Your statement that you  
21          make in your report in paragraph 39, you're able to  
22          make it based on information that you obtained about  
23          the same time that you create the report or sometime  
24          earlier in view of creating the report, correct?

25                          MR. KLATT: Yes, I accessed the WHOIS

1 information for JRBooksOnline at that time.

2 MR. VIGNA: So you can't really say  
3 for sure what's the situation before that?

4 MR. KLATT: No, the information can  
5 be changed relatively quickly.

6 MR. VIGNA: The information can be  
7 changed relatively quickly. I refer you to tab 8.

8 THE CHAIRPERSON: Of?

9 MR. VIGNA: The same binder.

10 MR. KLATT: Tab 8 of HR-2?

11 THE CHAIRPERSON: Yes, sir.

12 MR. VIGNA: Yeah.

13 MR. KLATT: Yes.

14 MR. VIGNA: It's in evidence. Tab 9  
15 is the same thing, and it's in evidence.

16 THE CHAIRPERSON: 8 not in evidence.

17 MR. VIGNA: I would like to put it  
18 also but 9 -- we've already put 9 which is similar.

19 THE CHAIRPERSON: Would we rather  
20 work with 9?

21 MR. VIGNA: I would like to put both  
22 because they are two different points in time.

23 THE CHAIRPERSON: We'll have to --

24 MR. VIGNA: We'll start with 9. Can  
25 you look at 9?

1 MS KULASZKA: Can Mr. Vigna show what  
2 dates they are?

3 MR. VIGNA: Bottom, November 18th,  
4 2003.

5 THE CHAIRPERSON: And the other is  
6 July 27, 2004. Let's go -- let's let Mr. Vigna proceed  
7 one at a time. Tab 9 has been produced. Go ahead,  
8 Mr. Vigna.

9 MR. VIGNA: Can you look at tab 9,  
10 Mr. Klatt?

11 MR. KLATT: Yes, that's the January  
12 27.

13 MR. VIGNA: The registrant that's  
14 there is Marc Lemire.

15 THE CHAIRPERSON: Sorry, you said  
16 January 27?

17 MR. VIGNA: No, tab 9.

18 THE CHAIRPERSON: One more over.

19 MR. KLATT: November 18.

20 MR. VIGNA: You see that one? Look  
21 at it.

22 MR. KLATT: Uh-huh.

23 THE CHAIRPERSON: Is there a  
24 question?

25 MR. VIGNA: When you did your

1 analysis to find out who was the registrant for  
2 Jonathan Richardson, were you provided with this  
3 document?

4 THE CHAIRPERSON: Who is the  
5 registrant for Jonathan Richardson or for  
6 JRBooksOnline.

7 MR. VIGNA: For JRBooksOnline, you  
8 were asked to find out who the registrant is.

9 MR. KLATT: Yes.

10 MR. VIGNA: Were you provided with  
11 the document on tab 9?

12 MR. KLATT: No, I don't recall  
13 seeing -- provide a document in this form, no.

14 MR. VIGNA: You see the name that's  
15 in tab 9? It's right in front of you.

16 MR. KLATT: Which name are you  
17 looking at?

18 MS KULASZKA: Marc Lemire, tab 9. You  
19 see it?

20 MR. KLATT: Yes.

21 MR. VIGNA: That's based on a WHOIS  
22 search, right?

23 MR. KLATT: That's correct.

24 MR. VIGNA: Based on a similar type  
25 of search you did in order for you to determine it was

1 Jonathan Richardson that you did on godaddy.com,  
2 correct?

3 MR. KLATT: The WHOIS search is  
4 similar, correct.

5 MR. VIGNA: That one is on Network  
6 Solutions, the other one is on Go Daddy. They are two  
7 basic tools for the same purpose, correct?

8 MR. KLATT: That's their function.

9 MR. VIGNA: Tab 9, was it provided to  
10 you?

11 MS KULASZKA: This is not  
12 JRBooksOnline, it's freedomsite.org.

13 THE CHAIRPERSON: I'm aware of that.  
14 I noticed that.

15 MR. VIGNA: Go to tab M.

16 THE CHAIRPERSON: Tab M?. 7-M, back  
17 a bit, Mr. Klatt, to tab 7-M.

18 MS KULASZKA: Is that "M"?

19 THE CHAIRPERSON: "M" as in Montreal.  
20 Right, Mr. Vigna? Mr. Vigna?

21 MR. VIGNA: G, sorry.

22 THE CHAIRPERSON: G?

23 MR. VIGNA: Yes. The information  
24 that you find in tab G, it's not from Go Daddy it's  
25 from Network Solutions.

1 MR. KLATT: Yes, that appears to be  
2 the case.

3 MR. VIGNA: Did you verify the  
4 telephone number and the fax of those two inscriptions?

5 MR. KLATT: No, I did not phone  
6 either of the numbers.

7 MR. VIGNA: And did you -- the one  
8 you did on Go Daddy, did it indicate the telephone  
9 number and the fax number?

10 MR. KLATT: I have to refer to it to  
11 verify.

12 MR. VIGNA: Was this document given  
13 to you?

14 MR. KLATT: I was asked to do a Whiz  
15 search on JRBooksOnline at some point.

16 MR. VIGNA: This document which  
17 contains more information was provided to you.

18 MR. KLATT: I don't recall what  
19 specific documentation was provided regarding  
20 JRBooksOnline other than I was requested to do a WHOIS  
21 look-up on JRBooksOnline at some point.

22 MR. VIGNA: Go to tab 17 then. You  
23 have tab 17?

24 MR. KLATT: Yes.

25 MR. VIGNA: Was this document

1 provided to you?

2 MR. KLATT: I believe I saw this one.  
3 At least I don't recall seeing --

4 MR. VIGNA: If you look at it, it's a  
5 WHOIS type of search for JRBooksOnline, correct?

6 MR. KLATT: Apparently done through a  
7 checkdomain.com site.

8 MS KULASZKA: At the bottom it's  
9 stated, "11/10/'04", correct?

10 MR. KLATT: That's the date shown.

11 MR. VIGNA: If you look at the person  
12 that is associated with JRBooksOnline, it's Marc  
13 Lemire. It's not Jonathan Richardson, correct?

14 MR. KLATT: On that date that's what  
15 we see.

16 MR. VIGNA: But when you make your  
17 statement in paragraph 39, you don't make any  
18 qualifications regarding the fact that Jonathan  
19 Richardson was at a certain date or that you did other  
20 analysis or you verified the information regarding  
21 Jonathan Richardson, correct?

22 MR. KLATT: No, I did not attempt to  
23 verify the WHOIS information supplied for  
24 JRBooksOnline.

25 MR. VIGNA: But yet you come to a

1 very definite conclusion, when you say the  
2 JRBooksOnline is registered to Jonathan Richardson.

3 MR. KLATT: Yes. In the context of  
4 the results shown from the Go Daddy WHOIS query.

5 MR. VIGNA: If you would have had  
6 this document, which is at tab 17, as well as verifying  
7 the information for Jonathan Richardson, particularly  
8 when you look at the telephone number you'll agree with  
9 me it seems somewhat suspicious in the sense that if  
10 you look at the telephone number (407)555-1212, and  
11 then fax (123)123-1234 --

12 THE CHAIRPERSON: Remind me which tab  
13 the Go Daddy search was on? The one you just referred  
14 to?

15 MR. VIGNA: Tab 7-G.

16 THE CHAIRPERSON: Thank you. Go  
17 Daddy search.

18 MR. VIGNA: That one is Network  
19 Solutions.

20 THE CHAIRPERSON: Okay.

21 MR. VIGNA: Do you agree when I look  
22 at the telephone number and fax number it kind of  
23 strikes at the face value that there's something odd  
24 about that kind of numerical choice of numbers,  
25 (123)123-1234 for a fax number?

1                   MR. KLATT: Yes, those are probably  
2                   indicating non-functioning numbers.

3                   MR. VIGNA: Then you would agree with  
4                   me that the next logical step would be perhaps to  
5                   verify what exactly is the veracity of that information  
6                   on the registrant, which is at tab 7-G, correct? You  
7                   saw it before you, the tab. Would you not agree with  
8                   me?

9                   MR. KLATT: In the context of a  
10                  statement at paragraph 39, it was in reference to the  
11                  results obtained from the Go Daddy WHOIS search.

12                  MR. VIGNA: So the information you  
13                  had at the time was limited, but if you would have had  
14                  all this information you would agree perhaps your  
15                  conclusion that it's -- Jonathan Richardson stated in  
16                  such a categorical way as you did in paragraph 39 would  
17                  not be as categorical.

18                  MR. KLATT: As I indicated in my  
19                  testimony recently, the WHOIS data is not to be relied  
20                  upon.

21                  MR. VIGNA: So what you are saying  
22                  is -- Jonathan Richardson, in itself, because you based  
23                  yourself on his, it's not sufficiently reliable?

24                  MR. KLATT: What I was trying to show  
25                  in 39 was the results from the Go Daddy WHOIS search

1 result.

2 MR. VIGNA: I'll briefly go --  
3 continue on the same issue. If you look at the next  
4 tab, H --

5 MS KULASZKA: I just want to point  
6 out that the domain -- in paragraph 39, the domain  
7 JRBooksOnline is registered by Jonathan but it doesn't  
8 state that. It says "registered to".

9 MR. VIGNA: You're saying that the  
10 domain JRBooksOnline is registered to Jonathan  
11 Richardson in your paragraph 39, correct?

12 MR. KLATT: Yes.

13 MR. VIGNA: Based on the documents as  
14 shown, would you still make the same statement in such  
15 a categorical manner?

16 MR. KLATT: My recollection is at the  
17 time I did the Go Daddy WHOIS search for JRBooksOnline,  
18 that is the information that was returned.

19 MR. VIGNA: But that's because you  
20 didn't have the other information, correct?

21 MR. KLATT: I would have probably  
22 made a different statement if I would have saw  
23 different information.

24 MR. VIGNA: Paragraph 43 you talk  
25 about:

1 "Apache is a completely passive  
2 server application which waits  
3 for HTTP requests from client's  
4 web browsers and then returns to  
5 the requester the content."

6 Can you just explain what that is in  
7 simple language? "Completely passive server".

8 MR. KLATT: It's a software  
9 application that runs continuously on the web server  
10 waiting for HTTP-formatted request to be received by  
11 it. It does not initiate an outgoing connection or  
12 send unsolicited data out on its own without a  
13 preceding request.

14 THE CHAIRPERSON: What would be an  
15 example of a type of application that would be  
16 proactive rather than passive. Does it exist?

17 MR. KLATT: Could have an application  
18 that runs to determine uptime connectivity of a  
19 remote -- for example, a common application is a  
20 service that runs to determine uptime availability to  
21 inform a person, for example a technical person, if  
22 their website is no longer responding.

23 You can have a process that initiates  
24 periodic requests to a web server and as long as a  
25 request is received back in whatever, say, 3 seconds,

1 the process remains satisfied that the web server is  
2 still responding adequately. If the request is not  
3 received back, the monitoring service could send an  
4 alert to indicate that the web server may be no longer  
5 functioning.

6 MR. VIGNA: Paragraph 49 of your  
7 report you say that on April 9, 2004, there was -- it  
8 was removed. And that's in relation to I believe  
9 HR-10.

10 THE CHAIRPERSON: That "Strom1.HTML"  
11 was removed.

12 MR. VIGNA: I just would like you to  
13 verify that in relation to HR-10.

14 THE CHAIRPERSON: HR-10? HR-2, tab  
15 10 you mean?

16 MR. VIGNA: Correct.

17 MR. KLATT: Yes, we see the document  
18 "Strom1.HTML" referenced.

19 MR. VIGNA: Is that the document you  
20 are referring to in paragraph 49?

21 MR. KLATT: Correct.

22 MR. VIGNA: So you're saying at the  
23 point in time when you verified it, it wasn't there.  
24 But you'll agree you can't tell before that because  
25 based on HR-10 on the 15th of November, 2003 it was

1           there.

2                           MR. KLATT: My analysis was based on  
3           the access to the log files from the server.

4                           MR. VIGNA: In August 2006? In the  
5           period summer of 2006?

6                           MR. KLATT: Approximately, yes.

7                           MR. VIGNA: And you also looked at  
8           the complaint form, correct? In your analysis you  
9           looked at a complaint form which you'll find in the  
10          HR-1 in the same binder at the beginning. Or you have  
11          it in your binder, actually.

12                           MS KULASZKA: Tab 3, I believe, page  
13          3.

14                           MR. VIGNA: Thanks. You looked, as  
15          part of your analysis, at the complaint form, correct?

16                           MR. KLATT: Yes, I've seen that  
17          document.

18                           MR. VIGNA: And the date that the  
19          complaint form was November 23rd, 2003?

20                           MR. KLATT: Right.

21                           MR. VIGNA: Now, in that complaint  
22          form it said that the article "AIDS Secret" was on the  
23          website, at least at that point in time where it was  
24          verified by the complainant, correct? That's in page  
25          6, second last paragraph.

1 MR. KLATT: Yes. The complaint  
2 references the "Strom1.HTML" document there.

3 MR. VIGNA: In your paragraph 49 you  
4 don't specify it was there at some point in time. You  
5 just say that it was removed at this point in time,  
6 correct?

7 MR. KLATT: That's what the log file  
8 analysis shows I had access to.

9 MR. VIGNA: In paragraph 62 of the  
10 report, which you can cross-reference with tab 16 of  
11 the HR-2.

12 MS KULASZKA: What paragraph are we  
13 on?

14 MR. VIGNA: Paragraph 62.

15 THE CHAIRPERSON: 62.

16 MR. VIGNA: Tab 16.

17 THE CHAIRPERSON: Tab 16 in your book  
18 and paragraph 62 in the report.

19 MR. VIGNA: Correct.

20 Mr. Klatt, on the date that's  
21 indicated on tab 16, the poem, 09/02/'04.

22 MR. KLATT: This is in --

23 MR. VIGNA: The other binder, I  
24 believe.

25 MS KULASZKA: Okay.

1 MR. VIGNA: That's it. This document  
2 in HR-16 --

3 THE CHAIRPERSON: No, tab 16.

4 MR. VIGNA: Tab 16, HR-2. Do you see  
5 it?

6 MR. KLATT: Yes.

7 MR. VIGNA: That's the poem.

8 MR. KLATT: Hm-hmm.

9 MS KULASZKA: The link between  
10 paragraph 62 of the report and the tab in question,  
11 you'll agree it doesn't relate to the same time in  
12 terms of when you made the verification. Tab 16 you'll  
13 see "09/02/'04".

14 MR. KLATT: Right.

15 MS KULASZKA: But your verification,  
16 in light of preparing your report, was not done in the  
17 same period of time, correct?

18 MR. KLATT: It was done in 2006.

19 MR. VIGNA: And you're saying in 2006  
20 the poem wasn't there any more?

21 MR. KLATT: I didn't search using the  
22 thecloak.com. I just used a search feature available  
23 through Stormfront.

24 MS KULASZKA: But if you look at the  
25 poem in tab 16 --

1 MR. KLATT: Right.

2 MR. VIGNA: Look at the heading  
3 Stormfront. You're familiar with Stormfront, correct?

4 MR. KLATT: I've seen it, yes.

5 MR. VIGNA: That's the logo of  
6 Stormfront?

7 MR. KLATT: Appears to be.

8 MR. VIGNA: Underneath you have a  
9 picture of Marc Lemire. You know who it is, right?

10 MR. KLATT: Right.

11 MR. VIGNA: The name Marc Lemire?

12 MR. KLATT: That's what's shown.

13 MR. VIGNA: So your statement in  
14 paragraph 62 of your report doesn't relate necessarily  
15 to a verification of this type of information that you  
16 find in tab 16 at the same point in time, correct?

17 MR. KLATT: Well, Stormfront does  
18 archive message posts and the database that was  
19 available for searching did not include that content.

20 MR. VIGNA: You didn't find this  
21 content in the Stormfront?

22 MR. KLATT: Not when I did the  
23 search.

24 MS KULASZKA: But the search was done  
25 in 2006?

1 MR. KLATT: Correct.

2 THE CHAIRPERSON: Did I understand  
3 you correctly that the search engine found on the  
4 Stormfront website does not go into the archive  
5 messages?

6 MR. KLATT: It does maintain an  
7 archive but I'm not --

8 THE CHAIRPERSON: So the search  
9 engine that you utilized at the time when -- that you  
10 referred to in your report would have gone into the  
11 archived component of the website?

12 MR. KLATT: Yes.

13 MR. VIGNA: Archives are optional on  
14 websites? Not all websites have archives?

15 MR. KLATT: By archives I'm referring  
16 to the accumulated collection of postings.

17 MR. VIGNA: But they don't always  
18 stay there, the postings. Some stay, some don't.

19 MR. KLATT: That's true.

20 THE CHAIRPERSON: May I ask you a  
21 question, because of what Mr. Vigna just asked?

22 On message boards -- and I don't know  
23 if you want to be specific on these ones you've used,  
24 Stormfront or, more particularly, Mr. Lemire's  
25 Freedomsite.

1                   Can a person remove his own posting,  
2                   or is that exclusively within the control of the  
3                   message board operator or the webmaster?

4                   MR. KLATT: Most message boards I  
5                   believe do allow the ability, the user that posted the  
6                   message, to delete it.

7                   THE CHAIRPERSON: Do you know how  
8                   it's done? Is it readily apparent on a typical message  
9                   board page?

10                  MR. KLATT: One of the available  
11                  options to the user is to delete it, delete one of  
12                  their own messages.

13                  THE CHAIRPERSON: And that appears  
14                  right there when the message is posted or is it more  
15                  complicated?

16                  Let me be more specific. You visited  
17                  the FreedomSite message board that had been stored on  
18                  Mr. Lemire's website through your remote access. Do  
19                  you recall how the process would have been done?

20                  MR. KLATT: Yes. There is an option  
21                  to delete a posting that the user has created.

22                  MR. VIGNA: I'll refer you to tab 2  
23                  of your report, Mr. Klatt. Tab 2 of the binder is in  
24                  relation to you, your affidavit.

25                  Paragraph 6 regarding your membership

1 in the Electrical and Electronic Engineers Association,  
2 from '71 to 1990. Do you know why were you no longer a  
3 member of that association afterwards?

4 MR. KLATT: The nature of the triple  
5 EA association is to do with the type of work that I  
6 was doing at the time. It was relevant. But when I  
7 changed the nature of my work it no longer seemed to be  
8 as relevant as before.

9 For example, when I worked at GE  
10 Calma I worked in the R&D division and the I triple E  
11 of materials was considerably more relevant than when I  
12 was doing other types of work at a later date. So I  
13 chose to not renew my membership there.

14 MR. VIGNA: And you've had an  
15 interest in the Internet since an early period of time,  
16 I believe it's since the 1970s if I'm not mistaken?

17 MR. KLATT: Correct.

18 MR. VIGNA: And you still do today,  
19 right.

20 MR. KLATT: That is part of our work  
21 that we do, yes.

22 MR. VIGNA: In paragraph 7, how come  
23 you are no longer a member of the B.C. Internet  
24 Association?

25 MR. KLATT: That association is

1 primarily for those corporations and individuals that  
2 maintain a Internet service provider business.

3 MR. VIGNA: Your business is -- why  
4 were you there at one point and not there any more?

5 MR. KLATT: From 1995 through 1998 I  
6 had an active Internet service provider business.

7 MR. VIGNA: Which was Fairview?

8 MR. KLATT: It was part of the  
9 Fairview Technology Centre. That ISP part of the  
10 business was sold in 1998, I believe. So I chose not  
11 to renew membership.

12 MR. VIGNA: Paragraph 13, the  
13 following page where it says "Dynamic Content". Can  
14 you tell what you mean by that content and the whole  
15 sentence?

16 MR. KLATT: What I'm referring to  
17 there in reference to the FreedomSite message board as  
18 dynamic content that can be changed by registered  
19 visitors to the message board, is that any registered  
20 visitor could create and post new content by entering a  
21 new message and they could also edit or revise or  
22 delete previously posted messages that they had  
23 entered. So in that context -- dynamic refers to the  
24 ability to be changed at will.

25 MR. VIGNA: That's not the case for a

1 guest though, right?

2 MR. KLATT: No, a guest was  
3 restricted to constitution viewing material that was  
4 already there.

5 MS KULASZKA: So it's dynamic for  
6 people that register new and user, that fill out the  
7 form basically?

8 MR. KLATT: Correct.

9 MR. VIGNA: In terms of this  
10 affidavit, it was prepared in what context? Can you  
11 tell me what circumstances you were called to prepare  
12 this affidavit?

13 MR. KLATT: Mr. Lemire's counsel  
14 advised me that this was a request in the context of a  
15 section 13(1), Human Rights Tribunal Hearing.

16 MR. VIGNA: Were you told it was in  
17 relation for a motion to add the complainant as a  
18 respondent?

19 MR. KLATT: Yes, there was the  
20 request to add Richard Warman as a respondent.

21 MR. VIGNA: So you were asked and in  
22 the course of adding Mr. Richard Warman as a respondent  
23 to prepare an affidavit which would be able to support  
24 the motion in question, correct?

25 MR. KLATT: Yes, that's correct.

1                   MR. VIGNA:  And when the name Richard  
2                   Warman was mentioned to you, it wasn't a name  
3                   unfamiliar to you.  You were familiar with the name  
4                   Richard Warman, correct?

5                   MR. KLATT:  Yes, I'm aware of who he  
6                   is.

7                   MR. VIGNA:  And how did you know  
8                   about Mr. Richard Warman when you were asked to prepare  
9                   this affidavit?

10                  MR. KLATT:  I receive informational  
11                  e-mails from Canadian Free Speech League, CAFE  
12                  organization, other media accounts, as well as  
13                  information I find on various websites regarding  
14                  Mr. Warman.

15                  MR. VIGNA:  CAFE, Free Speech League,  
16                  that's the organization of Mr. Christie or Mr. Fromm?

17                  MR. KLATT:  CAFE is Mr. Paul Fromm  
18                  and Canadian Free Speech League is Douglas Christie.

19                  MR. VIGNA:  And this is sort of news  
20                  that's provided by the Internet?  What is that  
21                  information you receive?

22                  MR. KLATT:  I received information on  
23                  both of those organizations via both e-mail and print  
24                  material.

25                  MR. VIGNA:  You're a member of those

1 organizations?

2 MR. KLATT: Yes. I would consider  
3 that I am, yes.

4 MR. VIGNA: What information in the  
5 course of these -- your subscriptions to these  
6 organizations do you receive regarding Mr. Richard  
7 Warman?

8 MR. KLATT: I would characterize it  
9 as documenting or commenting on his activities relating  
10 to his attempts to suppress or shut down websites,  
11 conveying material that he takes objection to.

12 MR. VIGNA: Then am I correct in  
13 saying you don't necessarily agree with the views of  
14 Mr. Richard Warman, nor does CAFE or Canadian League  
15 for Free Speech League, correct?

16 MR. KLATT: Seems to be a fair  
17 characterization.

18 MR. VIGNA: You would agree also that  
19 the nature of the information that's provided regarding  
20 Mr. Richard Warman by CAFE and Canadian Free Speech  
21 League is not very sympathetic or -- it's hostile, I  
22 would say, to the views of Mr. Warman, correct?

23 MR. KLATT: There are some commentary  
24 that is considered critical of his activities in that  
25 area, yes.

1 MR. VIGNA: So going back to your  
2 report on tab 2. You were asked to prepare an  
3 affidavit to support a motion to add Mr. Warman as a  
4 respondent. This work is asked of you by Mr. Lemire  
5 or --

6 MR. KLATT: I was contacted by both  
7 Mr. Lemire and his counsel.

8 MR. VIGNA: So when they call you  
9 they say, we would like you to prepare an affidavit to  
10 support a motion to add Mr. Warman as a respondent.  
11 And at that time you were very familiar with  
12 Mr. Warman, who he is, correct?

13 MR. KLATT: Yes, I know who he is.

14 MR. VIGNA: And Mr. Lemire, you would  
15 agree with me, is not somebody that shared the views of  
16 Mr. Warman?

17 MR. KLATT: They may agree on some  
18 points. I'm pretty sure they disagree on many points  
19 as well.

20 MR. VIGNA: So paragraph 19, 20 and  
21 so on, with the heading, "What is an IP address?" You  
22 basically explained there -- you tried to provide a  
23 definition for what is an IP address, correct?

24 MR. KLATT: Yes, it shows what an IP  
25 address is and how it's used.

1                   MR. VIGNA: Now, in this definition  
2                   that you provide in your affidavit, would you agree  
3                   it's not necessarily a very elaborate definition. You  
4                   could elaborate more on the definition and make certain  
5                   nuances regarding what an IP address is?

6                   MR. KLATT: IP address is relatively  
7                   a simple concept in many ways. There's not too many  
8                   aspects that lend itself to nuances or supposition  
9                   regarding it.

10                  MR. VIGNA: If I were to suggest to  
11                  you some IP addresses are dynamic while others are  
12                  static, would you agree with that?

13                  MR. KLATT: (No response).

14                  MR. VIGNA: The question is simple,  
15                  Mr. Klatt.

16                  MR. KLATT: Not entirely. The  
17                  knowledge of an IP address does not convey whether it  
18                  is a static or dynamic.

19                  MR. VIGNA: Do you agree there's  
20                  static IP address and dynamic IP addresses?

21                  MR. KLATT: That is an indication of  
22                  two methods of how they are assigned, but the IP  
23                  address itself does not indicate whether it's dynamic  
24                  or static.

25                  MR. VIGNA: The question I'm asking

1           you:  There is an important distinction, you agree,  
2           between dynamic IP address and static IP addresses.  
3           It's a very simple concept, Mr. Klatt.

4                         MR. KLATT:  True.

5                         MR. VIGNA:  Now, in your definition,  
6           where do we find that nuance or that specification?

7                         MR. KLATT:  I don't recall addressing  
8           specific the dynamic ISP assignments.

9                         MR. VIGNA:  I suggest to you that a  
10          static IP address is permanently assigned to a  
11          customer, whereas a dynamic IP address is assigned to a  
12          customer at one point and the same IP address can be  
13          assigned to another customer at another point in time.

14                        MR. KLATT:  Even a static IP address  
15          is not permanent in the sense that it can never change.

16                        MR. VIGNA:  I understand that,  
17          Mr. Klatt, but nevertheless there's an important  
18          distinction to be made.  For somebody who is involved  
19          in the Internet field, you would agree that there is an  
20          important distinction between a permanent IP address  
21          and a dynamic IP address?  What I meant by permanent --  
22          static permanent IP address.

23                        MR. KLATT:  Yes, that indicates how  
24          the IP address is assigned.

25                        MR. VIGNA:  Static IP address, would

1           it be correct to say that they are more used for big  
2           organizations such as universities, businesses,  
3           whereas -- corporate clients -- whereas dynamic IP  
4           addresses are more common for the ordinary individual  
5           customer?

6                           MR. KLATT:    In some sense --

7                           MR. VIGNA:   Generally speaking.

8                           MR. KLATT:    In general terms,  
9           individuals can arrange for static addresses,  
10          businesses can have dynamically-assigned IP address.

11                          MR. VIGNA:    But generally speaking,  
12          you would agree with me that individuals dealing the  
13          Internet, subscribing to Internet at home that doesn't  
14          necessarily have a business involving the use of  
15          Internet.

16                          THE CHAIRPERSON:  Consumers.

17                          MR. VIGNA:    Ordinary consumers,  
18          people like myself perhaps, that's very limited in  
19          Internet knowledge, would use the dynamic type of IP  
20          address because the provider that I would be dealing  
21          with, normally speaking -- Rogers, Shaw, whatever --  
22          would involve a dynamic IP address.

23                          MR. KLATT:    In many cases that would  
24          be correct.

25                          MR. VIGNA:    Now, when you are doing

1           your analysis on tab 2 based on the information you are  
2           provided with, you're trying to figure out from the  
3           start whether Mr. Richard Warman can be added as a  
4           respondent and you are told whether a certain posting  
5           is associated with it, correct?

6                       MR. KLATT: I was supplied  
7           information relating to the Ann Cools' post and I was  
8           able to verify that by reviewing and analyzing the log  
9           data information.

10                      MR. VIGNA: So from the very start  
11           you won't get a posting and say, try to figure out who  
12           this posting is all about. You're told, here's the  
13           posting and see if this is linked with Richard Warman,  
14           correct?

15                      MR. KLATT: I don't recall it being  
16           phrased exactly like that.

17                      MR. VIGNA: Was something in that  
18           line?

19                      MR. KLATT: I looked at the log file  
20           information associated with Ann Cools' post.

21                      MR. VIGNA: Mr. Klatt, at the time  
22           you were asked for this work, there was already a  
23           suspicion who this could possibly be, by Marc Lemire  
24           who had asked you to undertake this work, correct?

25                      MR. KLATT: Yes, we did have

1 information that seemed to indicate that was the case.

2 MR. VIGNA: And you had a suspicion  
3 it was Mr. Richard Warman from the start?

4 MR. KLATT: That was the information  
5 I had.

6 MR. VIGNA: Now, when you undertake  
7 your analysis, if you look through your report, your  
8 affidavit, you'll agree with me you don't have much  
9 information because it's difficult for you to think  
10 that, on the Internet usage of Mr. Warman, correct?

11 MS KULASZKA: That's misleading the  
12 witness. He says he was given the complaint. It  
13 wasn't general Internet information.

14 THE CHAIRPERSON: No, no, that's the  
15 question for cross-examination. Go ahead.

16 MR. VIGNA: Mr. Klatt, you agree with  
17 me that you don't have personal knowledge or  
18 information regarding the Internet usage of Mr. Warman,  
19 correct?

20 MR. KLATT: Not in a general sense I  
21 don't have access to his Internet usage history.

22 MR. VIGNA: Nor do you have any  
23 communications with him. All you had was basically  
24 what was provided to you by Mr. Lemire, correct?

25 MR. KLATT: That's essentially

1 correct.

2 MR. VIGNA: Now, when you undertake  
3 this task of trying to figure out if Mr. Warman is  
4 associated with the posting Ann Cools, you agree with  
5 me it's important to consider every element that can  
6 actually make you come to a very conclusive conclusion,  
7 correct?

8 MR. KLATT: I did consider a variety  
9 of possibilities.

10 MR. VIGNA: But if you look even at  
11 your document, Matching Characteristics, right, which  
12 we put in tab 25 --

13 THE CHAIRPERSON: 25 or 26 -- 25 of  
14 R-1.

15 MR. VIGNA: Basically what we have  
16 there, before going through your whole report, is  
17 basically the different elements that you put together  
18 to form an opinion, correct?

19 MR. KLATT: That is essentially my  
20 attempt at creating a readily understandable summary of  
21 the characteristics that I looked at.

22 MR. VIGNA: You did say in  
23 examination-in-chief that you did not have knowledge of  
24 Rogers the way they operate, the way they assign IP  
25 numbers -- IP addresses rather, correct?

1                   MR. KLATT: We do know that Rogers  
2 does use what they refer to as DHCP dynamic address  
3 assignment system, which is common amongst nearly all  
4 cable Internet service providers.

5                   MR. VIGNA: In contrast to static you  
6 mean?

7                   MR. KLATT: Right.

8                   MS KULASZKA: Right off the bat you  
9 know dynamic would not necessarily be always the same  
10 permanent number that's assigned to a customer because  
11 there's a certain number of limited IP address numbers.  
12 There's a block of numbers, correct?

13                  MR. KLATT: Correct.

14                  MR. VIGNA: So because there are so  
15 many clients, Internet providers such as Rogers or Shaw  
16 or whatever, doesn't necessarily have to assign  
17 different IP address to different customers at  
18 different points in time. They can't just assign the  
19 same IP address to the same customer all the time,  
20 correct?

21                  MR. KLATT: No. One of the primary  
22 reasons for using dynamically assigned address system  
23 is to facilitate efficient installation and set up of  
24 new user accounts, because if the ISP, such as Rogers,  
25 chose to use static address assignment, it would be

1 substantially more time consuming and cumbersome to set  
2 up new user accounts.

3 MR. VIGNA: So what you are saying  
4 basically, they have to use dynamic IP address because  
5 it's cheaper?

6 MR. KLATT: No, it's not so much the  
7 address itself is cheaper. It's a more efficient way  
8 of dealing with connecting new equipment to their --  
9 new subscribers to their network.

10 MR. VIGNA: The question I'm asking  
11 you, Mr. Klatt, is an IP address, X, can be one day  
12 associated to one customer and the same IP address, X,  
13 associated to another customer another day or even  
14 later on in the day in a different time zone even in  
15 the country or in the world, correct?

16 MR. KLATT: No, that's not how the  
17 system works.

18 MR. VIGNA: I'll rephrase the  
19 question. The IP address, dynamic in contrast to  
20 static, you'll agree that it's not always the same IP  
21 address that's associated to an account or to a  
22 customer?

23 MR. KLATT: In the context of a  
24 Rogers cable, cable modem subscriber, the IP address is  
25 matched up with hardware MAC address.

1                   MR. VIGNA: My question is not that.  
2           An IP address, okay, which has a number 66.185.84.204  
3           for example, right, you agree with Rogers, which uses  
4           dynamic, they can't always use the same IP address for  
5           the same customer because they are limited. My  
6           question is fairly simple, Mr. Klatt.

7                   MR. KLATT: That's true, the address  
8           is not statically assigned, but the cable ISPs use what  
9           they call static DHCP, meaning in a static DHCP  
10          assigned environment, the IP address doesn't change  
11          unless the hardware MAC address changes.

12                   MS KULASZKA: Mr. Klatt, in paragraph  
13          20 where you define IP, you say:

14                                "It's just like a street address  
15                                or a phone number, uniquely  
16                                identifies a building or  
17                                telephone."

18                                Do you see that?

19                                MR. KLATT: Yes, it is.

20                   MR. VIGNA: What if you qualify,  
21          that, though, with the qualification that contrary to a  
22          civic address on a building, and even there -- IP  
23          addresses associated to an individual, will vary much  
24          more than a civic address where a person will live  
25          there for a certain point of time.

1 MR. KLATT: I'm not quite following.

2 MR. VIGNA: I'll rephrase my  
3 question. Address -- 152 Carlton. That's the address  
4 for FreedomSite.

5 MR. KLATT: Okay.

6 MR. VIGNA: And you're aware it's  
7 been that address for quite a while now.

8 MR. KLATT: I'm not sure how long  
9 it's been there.

10 MR. VIGNA: When it was one of your  
11 clients, I believe it was the same address. It's been  
12 there for a year least.

13 MR. KLATT: Okay.

14 MR. VIGNA: You can't say with an IP  
15 address on a dynamic system such as Rogers, you can  
16 associate it for such a long period of time because it  
17 changes.

18 MR. KLATT: I believe it would not be  
19 unusual to find an IP address that -- on a Rogers cable  
20 modem subscriber that hasn't changed for a year.

21 MR. VIGNA: So it would change.

22 MR. KLATT: I'm saying it's not  
23 unusual it would have a same address for a year.

24 MR. VIGNA: If I look again at your  
25 Matching Characteristics, because basically in a

1 nutshell what you are doing is taking different  
2 elements. The first one is the IP address; the second  
3 one is Rogers cable. You'll agree they have a lot of  
4 clients in Canada. It's not a small company.

5 MR. KLATT: True, but the address in  
6 question is assigned to Rogers Toronto, not Rogers  
7 Vancouver.

8 MR. VIGNA: But Toronto is still a  
9 big city.

10 MR. KLATT: Correct.

11 MR. VIGNA: Windows '98, that's  
12 fairly common. Half of the planet uses that, correct?

13 MR. KLATT: In that time frame, 2003?  
14 There was a number of other operating systems that were  
15 more recent, such as Windows ME, Windows 2000, Windows  
16 XP. I would expect that a large number of people would  
17 have, by that point in time, upgrade to a newer  
18 operating system.

19 MR. VIGNA: Windows '98, would you  
20 say it's used by millions of people?

21 MR. KLATT: In 2003?

22 MR. VIGNA: Yes.

23 MR. KLATT: Yes, they probably still  
24 have several million users using it.

25 MS KULASZKA: Now, Mozilla, browser

1 Mozilla, if I understand correctly from your  
2 testimony -- correct me if I don't -- you said that's  
3 not the standard browser that comes with Windows '98?  
4 Is that what you said?

5 MR. KLATT: No, what I'm referring to  
6 is the Microsoft Internet Explorer version 1996 is not  
7 supplied with Windows '98.

8 MR. VIGNA: But it's common practice  
9 that people upgrade their computers, correct?

10 MR. KLATT: They can do so.

11 MR. VIGNA: Because the standard is  
12 very basic and it's not necessarily the most advanced  
13 the manufacturer will give you, correct?

14 MR. KLATT: That's the user's choice  
15 to upgrade if they choose to do so.

16 MR. VIGNA: Browser, it's a user's  
17 choice but it's common practice. You agree or not?

18 MR. KLATT: I wouldn't know what  
19 Richard Warman's practice would be.

20 MR. VIGNA: Forget about Richard  
21 Warman, I'm talking about generally speaking.

22 THE CHAIRPERSON: I'm not sure I  
23 understand that last question, Mr. Vigna.

24 MR. VIGNA: I said in terms of the  
25 upgrading Windows '98, there was a question at one

1 point at the end of this morning where Ms Kulaszka  
2 asked about upgrading the standard Windows '98.

3 MR. KLATT: Yes.

4 MR. VIGNA: And I believe also in  
5 relation to another question from --

6 THE CHAIRPERSON: From myself, yes.

7 MR. VIGNA: That you did confirm that  
8 upgrades are pretty frequent and it's not something  
9 unusual?

10 MR. KLATT: It's true that the  
11 upgrades are available, but the Windows '98 Internet  
12 Explorer version 6 is one of the largest upgrades  
13 available and a number of users choose not to do that.

14 MR. VIGNA: But you're in the  
15 business of computers. It's not something that is odd.

16 MR. KLATT: I'll agree that I imagine  
17 a certain percentage of users do choose to take the  
18 upgrade.

19 MR. VIGNA: Now, when you go to the  
20 next -- where it says Mozilla 4?

21 MR. KLATT: Correct.

22 MR. VIGNA: You'll agree that is a  
23 fairly common browser.

24 MR. KLATT: Well, that's an  
25 indication of a browser compatibility.

1 MR. VIGNA: It's not a very  
2 exceptional browser. It's one of the browsers, I  
3 believe -- correct me if I'm wrong -- that is pretty  
4 good in preventing viruses.

5 MR. KLATT: Well, in the context of a  
6 browser identification, it's used to identify  
7 compatibility with a particular browser set of  
8 functionality.

9 MR. VIGNA: I'll ask a simple  
10 question regarding the browser, Mozilla. It's not --  
11 they are not in limited amounts. Half of the planet or  
12 millions of people use Mozilla?

13 THE CHAIRPERSON: Doesn't Internet  
14 Explorer piggyback on Mozilla somehow? Is that how it  
15 works?

16 MR. KLATT: No. Mozilla is the name  
17 of a web browser product that was originally created by  
18 a different company.

19 THE CHAIRPERSON: Early in the  
20 evolution of the Internet. Then -- because it was  
21 there other browsers had to be compatible with that in  
22 order to expand their usage?

23 MR. KLATT: Right. The Mozilla 4.0  
24 compatible designation indicates what set of  
25 functionality is implemented by the browser in

1 question. And the specific version of the browser is  
2 the last part, the MSIE 6.0.

3 THE CHAIRPERSON: So MSIE 4, 5, would  
4 have also been Mozilla -- is the term used compatible  
5 here?

6 MR. KLATT: Mozilla 4 compatibility  
7 may not have been available for Internet Explorer  
8 version 3, but I believe Internet Explorer version 5  
9 for sure would have had Mozilla 4 compatibility. The  
10 earlier versions may not have.

11 THE CHAIRPERSON: So what's more  
12 specific here -- because Mozilla is more generally --  
13 Mozilla compatibility is quite prevalent and broad.

14 So the narrowing here in terms of the  
15 matching characteristics for you, is that MSIE 6.0,  
16 Internet Explorer 6.0 is being used by this user.

17 MR. KLATT: That's correct.

18 MR. VIGNA: Now, MSIE 6.0, it's not  
19 in a very few quantities. It's fairly widespread?

20 MR. KLATT: No, in 2003 it was  
21 considered relatively new release at that point.

22 MR. VIGNA: Though it was new, it  
23 wasn't something that only few limited people would  
24 have. Something that was available to the public.

25 MR. KLATT: True, it was available

1 for download.

2 MS KULASZKA: When you go to the ID  
3 Lucy, and then you compare it to 90sAREover, you  
4 compare both IDs. Is it my understanding the only  
5 similarity you find between both is that basically they  
6 are anonymous.

7 MR. KLATT: That's the significant  
8 characteristic there.

9 MR. VIGNA: And these are very two  
10 common e-mails, Yahoo and Hotmail. What do you call  
11 them, e-mail services?

12 MR. KLATT: Web-based e-mail  
13 services.

14 MR. VIGNA: You can access them  
15 practically everywhere.

16 MR. KLATT: Correct, because they are  
17 web-based.

18 MR. VIGNA: And they are very, very  
19 easy to register.

20 MR. KLATT: Yes, not difficult to set  
21 up an account on either system.

22 MR. VIGNA: They are worldwide known.

23 MR. KLATT: Because they are  
24 accessible through the web.

25 MR. VIGNA: You don't need to be at

1           your own computer. You can get it just about anywhere,  
2           library, CAFE, anywhere?

3                       MR. KLATT: As long as you have  
4           access to the web.

5                       MR. VIGNA: And you'll agree with me  
6           because of that, or at least in part because of that,  
7           it's not uncommon that people go and register on such  
8           e-mail web-based in an anonymous fashion.

9                       MR. KLATT: That's true.

10                      MR. VIGNA: Then you say setting,  
11           using anonymous account. I guess that's in reference  
12           to idea above.

13                      MR. KLATT: Right.

14                      MR. VIGNA: An obscure message  
15           limited interest board.

16                      MR. KLATT: In reference to the  
17           Freedomsite chat board.

18                      MR. VIGNA: What do you mean?  
19           Because it was on the Freedomsite chat board?

20                      MR. KLATT: Well, I'm referring to  
21           the Freedomsite message board as a relatively obscure  
22           limited interest discussion forum.

23                      MR. VIGNA: It's a limited interest  
24           perhaps, but you would not say it's something that is  
25           not accessible to the public at large. It's on the web

1 after all, correct?

2 MR. KLATT: It was accessible but  
3 from my recollection in reviewing the log files, it did  
4 not seem to have very heavy usage.

5 MR. VIGNA: When you say that, what  
6 do you mean by "heavy usage"? We've seen hits like  
7 over a thousand.

8 MR. KLATT: Yes, we see -- don't  
9 confuse web accesses with the log file information  
10 relating to the discussion forum.

11 MR. VIGNA: How many people would,  
12 from your information, access on the discussion forums.

13 MR. KLATT: My best recollection is  
14 that there probably wasn't more than probably total of  
15 about a couple hundred user IDs that were ever  
16 registered on the FreedomSite discussion board.

17 THE CHAIRPERSON: Could you repeat  
18 your answer?

19 Ma'am, if you are going to make  
20 noise, would you please outside. Only at those times.  
21 It's hard to hear.

22 Can you repeat your answer?

23 MR. KLATT: From my recollection of  
24 reviewing the FreedomSite discussion forum, my best  
25 recollection is that there was approximately a couple

1           hundred user accounts that were ever created on that  
2           forum.

3                         MR. VIGNA:  These people that would  
4           know about it, I guess they would be people within a  
5           certain community?

6                         MR. KLATT:  Like you say, it was  
7           accessible on the web so that's hard to say where the  
8           user base would be drawn from.

9                         THE CHAIRPERSON:  We're approaching  
10          3:00 p.m.  Can you stop?  I know you are in the middle.

11                        MR. VIGNA:  No problem.

12                        THE CHAIRPERSON:  We'll take our  
13          afternoon break.  15 minutes.

14          --- Recessed at 2:55 p.m.

15          --- Resumed at 3:15 p.m.

16                        THE CHAIRPERSON:  Yes, Mr. Vigna?

17                        MR. VIGNA:  Mr. Klatt, in computer  
18          language do you know what text files means?

19                        MR. KLATT:  I believe I do.

20                        MR. VIGNA:  Text files is something  
21          that you can change, right, you can modify?

22                        MR. KLATT:  Depends if you have  
23          access to them.

24                        MR. VIGNA:  But they are not  
25          permanently encrypted.  They can be changed?

1 MR. KLATT: Text files can be  
2 encrypted.  
3 MR. VIGNA: But they can also be  
4 modified.  
5 MR. KLATT: Just about any file can  
6 be modified.  
7 MR. VIGNA: In paragraph 24 --  
8 THE CHAIRPERSON: Of?  
9 MR. VIGNA: Always the affidavit.  
10 THE CHAIRPERSON: Tab 2. Go ahead.  
11 Sorry, 22.  
12 MR. VIGNA: It says:  
13 "I was provided access to the  
14 relevant log files of the  
15 FreedomSite message board to the  
16 complainant of Richard Warman,  
17 documents disclosed by the  
18 Commission in this case and to  
19 transcripts previous cases  
20 involving Mr. Warman."  
21 So these were basically the documents  
22 with which you worked in order to prepare this  
23 affidavit; is that correct?  
24 MR. KLATT: Right.  
25 MR. VIGNA: Now, you're trying to

1 determine whether a posting intended to -- mentioning  
2 Ann Cools, which is the posting on paragraph 34, is  
3 connected to Mr. Richard Warman in your analysis,  
4 right, with the documents you have, right? Correct?

5 MR. KLATT: True.

6 MS KULASZKA: Just as a detail, when  
7 you look at this posting here, after the "@" symbol  
8 there's a comma. Usually there is no commas in Hotmail  
9 accounts. Do you know why that would be the case?  
10 Paragraph 34 of the affidavit.

11 THE CHAIRPERSON: Okay.

12 MR. VIGNA: Paragraph 34 is from --  
13 then there's "90sAREover@hotmail.com". You'll see  
14 right after the "@" there's a comma. Do you see that?

15 MR. KLATT: Right.

16 MR. VIGNA: That's not common for a  
17 Hotmail account to have a comma before Hotmail.

18 MR. KLATT: No, it appears to  
19 indicate a typo in preparation of the document.

20 MR. VIGNA: That would be like a text  
21 file?

22 MR. KLATT: It also doesn't show the  
23 underscores on the either side of "M" in "robmsimpson".

24 MR. VIGNA: So what would be your  
25 suspicion at that point?

1 MR. KLATT: Document was prepared,  
2 there was typing errors made.

3 MR. VIGNA: Now, you have to do an  
4 analysis which you want to make as subjective as  
5 possible, correct?

6 MR. KLATT: I try to be as accurate  
7 as possible, yes.

8 MS KULASZKA: Accurate and objective  
9 also, correct? You don't want to be objective?

10 MR. KLATT: If I'm accurate it should  
11 be objective.

12 MR. VIGNA: Now, in order to come to  
13 an objective conclusion, you'll agree with me that the  
14 more elements you have, the more variables you  
15 consider, the more objective your conclusion can be,  
16 correct?

17 MR. KLATT: Additional information is  
18 often helpful.

19 MR. VIGNA: Particularly that  
20 ultimately, you'll agree with me, that in order to know  
21 the IP address associated to an individual you need to  
22 know that from the Internet provider and in that case  
23 this would be Rogers, correct?

24 MR. KLATT: That's one way of  
25 determining it.

1 MR. VIGNA: It's one way that's  
2 fairly the most accurate, I would submit to you, but  
3 you don't have that information, correct?

4 MR. KLATT: I don't have access to  
5 Rogers Cable logs from that time period.

6 MR. VIGNA: And if you would have, it  
7 would have been an advantage, correct?

8 MR. KLATT: It would be of interest.

9 MR. VIGNA: So in order to alleviate  
10 that missing element, it would be important to consider  
11 other elements that can make you come to a better  
12 informed conclusion, correct?

13 THE CHAIRPERSON: Mr. Vigna, I didn't  
14 understand that last question.

15 MR. VIGNA: Since you don't have the  
16 information from Rogers regarding the identity of IP  
17 address in question, the 66.185.84.204, which would  
18 have been the most important information that you could  
19 have obtained, if it was possible, correct. It's  
20 important for you to get other information that could  
21 compensate for that lack of very important and quite  
22 definite information. Agreed?

23 MR. KLATT: Additional information  
24 would be of use and interest, yes.

25 MR. VIGNA: But if you would have got

1 the information from Rogers it would have been fairly  
2 conclusive, or at least much more reliable.

3 MR. KLATT: Indicative of the records  
4 they have on file regarding that time frame for that  
5 user IP.

6 MR. VIGNA: They have the ultimate  
7 information, you'll agree, because it's their client  
8 and they have the information on clients.

9 MR. KLATT: It doesn't mean that the  
10 information associated with that IP address can't be  
11 obtained elsewhere.

12 MR. VIGNA: But if you would have  
13 that information it would be much more easy to  
14 determine. You don't have to go elsewhere. Do you  
15 agree on that?

16 MR. KLATT: I agree it would be  
17 helpful to be able to refer to the Rogers logs if they  
18 were available.

19 MR. VIGNA: So in terms of trying to  
20 find out the identity, it's important for you to get  
21 the most information possible. And when you write this  
22 report you didn't have diversion of Mr. Warman,  
23 correct?

24 MR. KLATT: No.

25 MR. VIGNA: After you wrote this

1 affidavit, which is this --

2 MS KULASZKA: Could I just get the  
3 question again, the last one? Did not have the what  
4 of Mr. Warman?

5 THE CHAIRPERSON: Mr. Warman's  
6 version of the facts. Go ahead.

7 MR. VIGNA: Affidavit of tab 2, you  
8 didn't have the version Mr. Warman regarding the  
9 posting of Ann Cools, correct?

10 MR. KLATT: No, I did not contact him  
11 regarding that.

12 MR. VIGNA: You knew that this  
13 affidavit was for the purpose of supporting a motion,  
14 correct? You said that earlier.

15 MR. KLATT: I hadn't seen the motion.

16 MR. VIGNA: But you knew it was for a  
17 motion?

18 MR. KLATT: I knew it was regarding  
19 section 13(1) involving Marc Lemire.

20 MR. VIGNA: I would like to show you  
21 the response to the motion which accompanied your  
22 affidavit.

23 Mr. Chair, I would like to put this  
24 in evidence. It was part of the record and the witness  
25 testified to making reference to the affidavit as well

1 as the motion.

2 THE CHAIRPERSON: Yes, I recall  
3 having seen this, just as I recall having seen the  
4 motion of Ms Kulaszka and the affidavit that this  
5 witness had prepared at the time. So I don't think  
6 it's a problem. It was received by the Tribunal at the  
7 time, dealt with in my prior ruling.

8 MS KULASZKA: I'm just wondering why  
9 this wasn't put in reply evidence when Mr. Warman was  
10 cross-examined. I did cross-examine him on whether he  
11 made that posting and Mr. Vigna had an opportunity at  
12 that time to put it in.

13 THE CHAIRPERSON: Yes, but Ms  
14 Kulaszka, you hadn't lead the evidence at that time  
15 with regard to --

16 MS KULASZKA: I meant in reply  
17 evidence.

18 THE CHAIRPERSON: Pardon?

19 MS KULASZKA: I meant in reply. Once  
20 I had finished cross-examining Mr. Warman, Mr. Vigna  
21 had the opportunity to reply cross-examination, could  
22 have put reply evidence in.

23 THE CHAIRPERSON: I see what you are  
24 saying. At the same time, I hadn't even ruled whether  
25 you could even enter this area at that point. You

1 recall that I made my only ruling only yesterday about  
2 your ability to get into the Cools e-mail. So I'm not  
3 going to be that formal and restrictive in that sense.

4 Mr. Fromm?

5 MR. FROMM: I'm wondering if I could  
6 have a copy of that document?

7 THE CHAIRPERSON: You didn't have one  
8 from the summertime? Do you have an extra copy? It's  
9 the same one we all received in the summertime. It's  
10 the one we already received.

11 Mr. Vigna, were all these pages at  
12 that time back included at the time?

13 MR. VIGNA: They were exhibits.

14 THE CHAIRPERSON: They were exhibits  
15 to the affidavit. I think it's the one we all received  
16 in the summertime. If there's an extra copy, could you  
17 pass it off --

18 MR. VIGNA: I don't have an extra  
19 copy but I can make one.

20 THE CHAIRPERSON: Do you have an  
21 extra copy, sir?

22 MR. FOTHERGILL: It's not extra. I'm  
23 prepared to let Mr. Fromm peruse it, if I can have it  
24 back. It doesn't relate to the constitutional issues  
25 so I certainly don't need it now.

1 MR. VIGNA: So it's an exhibit?

2 THE CHAIRPERSON: Yes, but it doesn't  
3 have three rings so --

4 MR. VIGNA: It could be separate.

5 THE CHAIRPERSON: Separate exhibit.

6 THE REGISTRAR: The motion entitled,  
7 "Complaint Response To Responding Motion" dated August  
8 28, 2006 will be filed as Commission Exhibit HR-6.

9 EXHIBIT NO. HR-6: Complaint  
10 Response To Responding Motion  
11 dated August 28, 2006

12 MR. VIGNA: Mr. Klatt, I would like  
13 you to just flip through the document to familiarize  
14 yourself with the document and I'll ask you questions.

15 I just would like you to go to the  
16 part where it says "affidavit". The next page.

17 Before I go on the questions on the  
18 document: After producing the affidavit in the format  
19 that we've seen in tab 2 that you've produced in terms  
20 of trying to find out the identity of 'AR',  
21 "90sAREover" and the Ann Cools' posting, were you  
22 provided with this document to give you a different  
23 perspective, or at least to analyze the version of  
24 Mr. Warman or, if you want, this other elements that  
25 were missing in your report?

1                   MR. KLATT:  Actually, I don't recall  
2                   seeing this actual document until very recently, like  
3                   earlier today.  But I did get a verbal information from  
4                   Mr. Lemire indicating that Mr. Warman had filed a --  
5                   would term it a rebuttal document making his assertions  
6                   that we see here.

7                   MR. VIGNA:  So what did he tell you  
8                   verbally?

9                   MR. KLATT:  To the best of my  
10                  recollection, he indicated that Mr. Warman seemed to  
11                  rely heavily on the idea that his cable service used  
12                  dynamic IP address assignments.

13                  MR. VIGNA:  You were made aware of  
14                  that, right?  Can you tell us where in your affidavit  
15                  or testimony you mention about that before, being the  
16                  questioned about it, or you didn't mention anything  
17                  about it.

18                  MR. KLATT:  I don't recall any  
19                  specific mention at this point.

20                  MR. VIGNA:  You agree with me it  
21                  would have been important to mention the issue of  
22                  dynamic versus static, particularly when you are  
23                  alerted to that fact.

24                  MR. KLATT:  I didn't hear about or  
25                  receive information regarding this rebuttal document

1           until --

2                           MR. VIGNA:   But you were told about  
3           it.

4                           MR. KLATT:   Not until after the  
5           initial report -- or initial affidavit was filed.

6                           MR. VIGNA:   Mr. Klatt, in order to  
7           provide an objective, accurate analysis, in order to  
8           avoid tunnel vision, in order -- do you know what  
9           tunnel vision is?

10                          MR. KLATT:   I believe I do.

11                          MR. VIGNA:   Where you have a suspect  
12           and you sort of undertake your investigation while  
13           trying to identify that suspect.  Would you not agree  
14           to avoid and protect yourself from tunnel vision, it  
15           would be important to consider all elements in order to  
16           come to the truth, or at least to the most reliable  
17           conclusion.  And that would have been to take a look at  
18           least at this response in a sworn statement by  
19           Mr. Warman.

20                          MR. KLATT:   I mentioned I received a  
21           verbal indication regarding this document sometime last  
22           year.  I don't recall seeing a printed copy until  
23           earlier today.  But the information that I see in the  
24           document and that was relayed to me verbally does not  
25           cause me to change my conclusions regarding the author

1 of the post in question.

2 MR. VIGNA: So the time you're told  
3 there's a dynamic and static you don't think it's  
4 important to mention that in your report, or your  
5 affidavit?

6 MR. KLATT: No, and I can explain the  
7 rationale for that.

8 MR. VIGNA: You explained earlier  
9 that static is permanent or quasi-permanent and dynamic  
10 is different association. Don't you think it's at  
11 least important to define those key elements of an IP  
12 address?

13 MS KULASZKA: Just to be fair to the  
14 witness, is he referring to his testimony here or --

15 MR. VIGNA: Both.

16 THE CHAIRPERSON: Or. I heard "or"  
17 and then you said "both".

18 MR. VIGNA: The report and the  
19 testimony, and the affidavit.

20 MS KULASZKA: Well, Mr. Warman's  
21 response is made in response to the affidavit.

22 MR. VIGNA: Mr. Chair, what is the  
23 objection?

24 MS KULASZKA: The objection is that  
25 Mr. Klatt makes his affidavit and this is Mr. Warman's

1 response to the motion where the affidavit was filed in  
2 support, so --

3 THE CHAIRPERSON: So he can't  
4 possibly have addressed it -- your question said both  
5 just now in answer to her question. I said how could  
6 it possibly have been in the report when the affidavit  
7 came later.

8 MR. VIGNA: For sure. But when the  
9 affidavit came later, did you do an amended report or a  
10 supplemental report to consider this additional  
11 information that you did not have in your possession  
12 when you first did you report?

13 MR. KLATT: No, I did not do a  
14 supplemental report because the information that I  
15 understood that --

16 MR. VIGNA: Yet you hadn't even seen  
17 the affidavit.

18 THE CHAIRPERSON: Let him finish the  
19 answer, please.

20 MR. KLATT: But even from what I had  
21 seen earlier today and what I see now, I don't see any  
22 reason to address any additional concerns regarding the  
23 issue of a static versus dynamic IP address concept  
24 because it's well known that in a kilo-modem subscriber  
25 base, even though the DHCP server is used, it's often

1 referred to as a static DHCP assignment in that the IP  
2 address assigned doesn't change unless there's a change  
3 in the network interface card.

4 MR. VIGNA: Unless there's a change  
5 in the Internet interface card. But that, in itself,  
6 is a change, Mr. Klatt. You cannot say that there's no  
7 difference between static IP address and dynamic IP  
8 address.

9 MR. KLATT: No, I agree there is a  
10 difference in how the addresses are assigned. My  
11 experience with cable modem subscribers and from what I  
12 see on other discussion forums, it's not unusual to  
13 have the same dynamically-assigned IP address for many  
14 months.

15 MR. VIGNA: Mr. Klatt, you said  
16 yourself that you are not familiar with Rogers in terms  
17 of how they assign their IPs. So right off the bat,  
18 Mr. Klatt, you'll agree that there's a piece of the  
19 puzzle that you are not capable of obtaining.  
20 Consequently, it's important, you agree, that you try  
21 to obtain every piece of element you can to compensate  
22 for that important piece of information.

23 MR. KLATT: Additional information is  
24 always useful, but it's relatively common knowledge  
25 that IP addresses don't change often with cable modem

1 subscribers.

2 MR. VIGNA: In terms of the logs you  
3 obtained, you mentioned earlier -- I refer you to tab  
4 3, page 15.

5 THE CHAIRPERSON: Can I ask a  
6 question while you look for that?

7 You indicate to me that it's common  
8 for IP addresses to stay for months with one subscriber  
9 in these types of cable systems. Why does it come to  
10 an end at a certain point? If the person still has his  
11 computer connected to the same jack coming out of the  
12 wall and he just turns it on every night and does his  
13 e-mail and closes it, why will it stop at some point?

14 MR. KLATT: A couple scenarios come  
15 to mind where it could be brought about. If the user  
16 hasn't used their system for an extended period of time  
17 the address may become what they call expired. When a  
18 dynamic IP address is assigned it's given what's  
19 referred to as a lease term or a lease time, and --

20 THE CHAIRPERSON: How much is a lease  
21 time normally? Do you know what it is for Rogers?

22 MR. KLATT: I've seen numbers that  
23 indicate a one week period is not unusual.

24 THE CHAIRPERSON: With respect to --

25 MR. KLATT: IP address assignment

1 from Rogers Cable system, one week is a number I've  
2 seen.

3 THE CHAIRPERSON: As long as one  
4 week.

5 MR. KLATT: And what that means is if  
6 the address has not shown any activity in the period of  
7 a week. That address is then released to the DHCP  
8 server's pool of available addresses to be reassigned.

9 It doesn't mean that, if, for example  
10 on the eighth day if the PC that had that previous IP  
11 address, and requested it may very well get the same IP  
12 address again, if it hasn't been reallocated somewhere  
13 else in the meantime. And the amount of reallocation  
14 activity would determine how many new subscribers they  
15 are adding, et cetera, and how large the reserve of  
16 unused IP addresses are that's available.

17 THE CHAIRPERSON: Okay. So if I  
18 understand you correctly, then, if a person does not  
19 use his computer, goes away on a trip or vacation for  
20 two weeks or something and comes back it's very likely,  
21 although all he did was turn off his computer like he  
22 did every night, he'll come back -- he or she will not  
23 know it, but a new IP address may have been assigned to  
24 him as a result.

25 MR. KLATT: That is certainly a

1 possibility.

2 THE CHAIRPERSON: You say it all  
3 depends upon the degree to which use is increasing.  
4 This period in question, 2003/2004 ws when we began to  
5 see increased usage of broadband connections, is it  
6 not.

7 MR. KLATT: True.

8 THE CHAIRPERSON: I seem to remember  
9 going broadband around that time at my home.

10 MR. VIGNA: On the same topic, you'll  
11 agree that IP address and dynamic is shared by various  
12 customers.

13 MR. KLATT: An IP address isn't  
14 shared.

15 MR. VIGNA: The number at different  
16 points in time.

17 MR. KLATT: Yes. It's possible the  
18 same IP address can be used by different users at a  
19 different time period.

20 MR. VIGNA: If you look at tab 3,  
21 page 15, the logs.

22 THE CHAIRPERSON: Tab?

23 MR. VIGNA: Tab 3.

24 THE CHAIRPERSON: What page?

25 MR. VIGNA: Page 15.

1                   As a general question, if you look at  
2                   the different pages of the logs there in terms of the  
3                   visual, if I can put it to you that way, you'll agree  
4                   that this is what we call text file, correct?

5                   MR. KLATT: Yes, it's in a format  
6                   considered as a text file.

7                   MR. VIGNA: And this is what you are  
8                   provided in order to do an analysis, correct?

9                   MR. KLATT: Yes, I had access to that  
10                  file.

11                  MR. VIGNA: You had access to this  
12                  file in the year about 2006, if not the summer at least  
13                  close to that period, correct?

14                  MR. KLATT: I accessed the file on  
15                  more than one occasion.

16                  MR. VIGNA: No, no, I'm asking you if  
17                  you look at the logs, most of time period it's 2003 or  
18                  2004.

19                  MR. KLATT: That's shown, yes.

20                  MR. VIGNA: When you do your analysis,  
21                  it's much later than that, it's at least around the  
22                  period of time when you prepare your affidavit in  
23                  connection to this analysis, correct?

24                  MR. KLATT: Right.

25                  MR. VIGNA: Now, in order to assure

1           yourself of the intactness, the authenticity of the  
2           document, you are basically relying on the fact  
3           Mr. Lemire provided you exactly the logs and the logs  
4           have not been modified, correct?

5                           MR. KLATT: I would work on that  
6           basis.

7                           MR. VIGNA: But there is also the  
8           possibility that because it's text file that it can be  
9           modified?

10                          MR. KLATT: I've not had any  
11           indication that they were.

12                          MR. VIGNA: But there's that  
13           possibility?

14                          MR. KLATT: Theoretical.

15                          MR. VIGNA: On page 16, just as a  
16           clarification. I think it's connected -- first of all,  
17           you see the marks on the logs?

18                          MR. KLATT: Vertical marks on the  
19           side?

20                          MR. VIGNA: Those weren't done by  
21           yourself, correct? They were presented to you this  
22           way.

23                          MR. KLATT: Correct.

24                          MR. VIGNA: So you're focusing your  
25           attention on the marked areas that are provided you to

1 for your analysis, provided to you by Marc Lemire,  
2 correct?

3 MR. KLATT: Yes.

4 MR. VIGNA: And if you look at the  
5 first -- at page 16 there. I think we referred to tab  
6 12.

7 THE CHAIRPERSON: You want me also to  
8 pull up tab 12 of HR-2?

9 MR. VIGNA: I believe so. I'm not  
10 sure it's the right one.

11 MR. KLATT: It refers to the URL  
12 ending in "2627,3".

13 MR. VIGNA: Tab 12.

14 THE CHAIRPERSON: That's the one,  
15 Mr. Vigna. That's what I've underlined also, tab 12,  
16 "2627,3e".

17 MR. VIGNA: Can you explain why  
18 there's no "3e" in the logs? The "e" is missing.

19 MR. KLATT: It's not just this case.  
20 We will see the "e" absent in the log file and other  
21 case where we see --

22 MR. VIGNA: The one after that is  
23 also missing.

24 MR. KLATT: Right. I think in all  
25 the case I looked at, the "e" that is shown in the URL

1 printed at the bottom of the page does not show in the  
2 log. I attribute that to the way the log file is  
3 generated based on the fact this is an expanded thread  
4 or message thread topic.

5 MR. VIGNA: But why wouldn't it show  
6 as is like everything else?

7 MR. KLATT: That's the way the  
8 software generates the log file when it's retrieving an  
9 expanded message topic, is my understanding. It's  
10 pretty clear from the information and logs that we have  
11 available that is the document that matches the log  
12 entry.

13 MR. VIGNA: Now, I see at the bottom  
14 of the pages, not the boxed number but the number that  
15 I would suspect the actual number 9, and so on, then it  
16 goes to 21, 19, 18, 39, 40. You see the numbers at the  
17 bottom?

18 MR. KLATT: Right.

19 MR. VIGNA: Would those be the  
20 numbers from in the log?

21 MR. KLATT: No, this is a page  
22 numbering that was produced when it was printed out.

23 MR. VIGNA: Just to be clear, the  
24 numbers at the top are the numbers disclosure to the  
25 Commission. These logs were all disclosed to the

1 Commission.

2 THE CHAIRPERSON: I think what  
3 Mr. Vigna is referring to is the typed numbers, bottom  
4 right corner. Is that what you are referring to?

5 MR. VIGNA: Yeah, the 9 that's not in  
6 the box.

7 THE CHAIRPERSON: Sorry, the 9?

8 MR. VIGNA: Like, the first one.

9 THE CHAIRPERSON: You see, Ms  
10 Kulaszka? At page 15, for our purposes, to the right  
11 of it is a typed little "9".

12 MS KULASZKA: Oh, yes, now I see it.

13 MR. VIGNA: Then if you turn it goes  
14 to 21. You see that, Mr. Klatt?

15 MR. KLATT: Yes.

16 MR. VIGNA: Then the next page goes  
17 to 19.

18 MR. KLATT: Correct.

19 MR. VIGNA: Then it goes to 18, then  
20 it goes to 44, then it goes to 39, 40?

21 MS KULASZKA: Yes, that's just the  
22 point I would like to make: That these logs, in their  
23 entirety, even though there is pages missing here, were  
24 disclosed to the Commission, so they did have those  
25 logs.

1                   For the purposes of this affidavit,  
2           Mr. Klatt only used certain logs because the logs go on  
3           literally for a very long time, 200 pages.

4                   MR. VIGNA: I have a question in  
5           relation to that.

6                   Mr. Klatt, when you do your analysis,  
7           you basically look at the -- there's 200 pages of logs.  
8           You basically focus on where the highlighted parts,  
9           which you haven't done in terms to determine certain  
10          elements, correct?

11                  MR. KLATT: When I access the logs  
12          on-line, I looked at the information on the screen as  
13          well.

14                  MR. VIGNA: But you didn't do the  
15          actual markings on the logs?

16                  MR. KLATT: No, I did not do  
17          printouts at my location of the log files.

18                  MR. VIGNA: Mr. Klatt, do you  
19          remember testifying at the Glenn Bahr hearing? You  
20          mentioned that in your testimony in-chief.

21                  MR. KLATT: Which aspect?

22                  MR. VIGNA: That you were testifying  
23          in that hearing?

24                  MR. KLATT: Yes, I was at the Glenn  
25          Bahr hearing, correct?

1                   MR. VIGNA: You remember that one of  
2 the aspects of your testimony was that e-mails account  
3 can be hacked?

4                   MR. KLATT: Yes, that can occur.

5                   MR. VIGNA: And at the time you  
6 mentioned that it wasn't something -- I believe if I'm  
7 not mistaken -- something that happened when people  
8 have a fairly good knowledge of the Internet or they  
9 can actually go on the Internet and find out how that  
10 can be done, correct?

11                  MR. KLATT: It's true e-mail accounts  
12 have been compromised.

13                  MR. VIGNA: Are you aware of  
14 something called AWR?

15                  MR. KLATT: What does AWR refer to in  
16 this context?

17                  MR. VIGNA: Spyware.

18                  MR. KLATT: Oh, spyware. Spyware can  
19 you used to collect or obtain by surreptitious means  
20 information such as log-in names or passwords.

21                  MR. VIGNA: So the Internet is not  
22 very safe, I would suspect.

23                  MR. KLATT: There are some hazards.

24                  MR. VIGNA: And just like e-mails can  
25 be hacked, you'll agree that it can be the case with IP

1 address also.

2 MR. KLATT: I'm not sure how you mean  
3 hacking an IP address.

4 MR. VIGNA: Well, what do you mean?

5 MR. KLATT: I don't use that term.

6 MR. VIGNA: What term do you use?  
7 You can use spyware to get an IP address.

8 MR. KLATT: Perhaps there is spyware  
9 that can be used to obtain an IP address, that's  
10 possible.

11 MR. VIGNA: And in order to, in your  
12 analysis, consider that possibility, what consideration  
13 did you make, did you take into account?

14 MR. KLATT: I'm trying to visualize  
15 how you imagine spyware would affect the analysis that  
16 we are seeing here.

17 MR. VIGNA: I'm asking the question.  
18 The IP addresses, you recognize they can be hacked or  
19 they --

20 THE CHAIRPERSON: I don't know what  
21 the word hacked means in that sense. We hear it  
22 colloquially but I need something more specific.

23 MR. VIGNA: Duplicated or falsified  
24 or modified, reproduced.

25 THE CHAIRPERSON: Reproduce an IP

1 address?

2 MR. VIGNA: Or modify it. I'm asking  
3 the question: Can it be done with spyware?

4 MR. KLATT: You would have to give me  
5 a bit more detail to work with. I'm not quite  
6 understanding what you're asking.

7 MR. VIGNA: I'm asking whether, with  
8 spyware you can actually replicate an IP address?

9 MR. KLATT: I have no knowledge of  
10 that capability.

11 MR. VIGNA: The use of spyware, what  
12 can you use that for?

13 MR. KLATT: Spyware is a pretty broad  
14 term covering a range of software that can be used for  
15 a variety of, generally considered for nefarious  
16 purposes.

17 MR. VIGNA: Such as?

18 MR. KLATT: Obtaining information  
19 regarding a type of accesses that a person does to  
20 websites. For example, a common use of spyware that I  
21 read about is websites trying to determine where a user  
22 spends their time or comes from in terms of marketing.  
23 Point of view, they try to obtain additional  
24 information that spyware installed on a person's PC  
25 will then report back to a third party web page that

1 the user of an infected -- spyware infected PC visits.  
2 That's one of the spyware that I've read about.

3 Spyware can also be used to attempt  
4 to capture user names and password information when a  
5 user goes to log in to a site, possibly.

6 MR. VIGNA: What else?

7 MR. KLATT: I haven't -- I can't  
8 think of anything else specific in mind unless you have  
9 an example you want me to comment on.

10 MR. VIGNA: I'm asking you if you can  
11 simply replicate an IP address.

12 MR. KLATT: If you are asking if  
13 spyware can duplicate an IP address

14 MR. VIGNA: Spyware or some other  
15 way.

16 MR. KLATT: That's a pretty broad and  
17 general question. Do you have something specific in  
18 mind?

19 MR. VIGNA: Can you reproduce a same  
20 IP address?

21 THE CHAIRPERSON: Produce it where,  
22 Mr. Vigna. I really don't understand. My  
23 understanding from an IP address, from what I heard  
24 earlier, is the ISP assigns a numerical identification  
25 called an IP address to the client user. The person

1 tries to access the Internet. I see the witness  
2 nodding. How does a replication occur in that context?

3 MR. VIGNA: Perhaps replication isn't  
4 in the best word. In the logs, can somebody modify the  
5 IP address, since it's text?

6 MR. KLATT: It's theoretically  
7 possible. Any file can be modified if a person has  
8 access to it.

9 MR. VIGNA: I refer you to 26-B,  
10 petition.

11 THE CHAIRPERSON: Sorry, 26-B of  
12 which exhibit?

13 MR. VIGNA: HR-2. Do you see it?

14 MR. KLATT: I have the on-line  
15 petition, yes.

16 MR. VIGNA: You are familiar with  
17 this petition?

18 MR. KLATT: I seem to recall seeing  
19 it sometime in the past.

20 MR. VIGNA: You recall this petition  
21 being on the CAFE Freedom of Speech on-line website.

22 MR. KLATT: I don't recall specific  
23 where it was, but that's what shows on the  
24 identification at the bottom of the page.

25 MR. VIGNA: And you added a comment

1 on this petition?

2 MR. KLATT: I believe I did.

3 MR. VIGNA: I refer you to the page  
4 13 of 16.

5 MR. KLATT: Right.

6 MR. VIGNA: That's yourself, Bernard  
7 Klatt.

8 MR. KLATT: Right.

9 MR. VIGNA: What do you express in  
10 that paragraph?

11 MR. KLATT: Essentially expressing  
12 opposition to proposed legislation in the form of Bill  
13 C-36.

14 MR. VIGNA: What did Bill C-36 deal  
15 with?

16 MR. KLATT: I don't recall what the  
17 text of it was in any great detail at this point.

18 MR. VIGNA: Maybe you can refresh  
19 your memory by reading the paragraph in the first page.

20 MR. KLATT: Apparently Bill C-36  
21 included wording to expand the groups that would be --  
22 would be included the section 13(1) type  
23 investigations.

24 MR. VIGNA: And on that point do you  
25 agree with Mr. Lemire's position which I find at

1 page --

2 THE CHAIRPERSON: Page 11?

3 MR. VIGNA: -- 11.

4 MR. KLATT: That's Mr. Lemire's  
5 opinion as stated there, I believe.

6 MR. VIGNA: Other than the way it's  
7 stated, do you agree with the opinion stated by  
8 Mr. Lemire?

9 MR. KLATT: My opinion as relates to  
10 Bill C-36 was I was opposed to it.

11 MR. VIGNA:

12 "Given the history of certain  
13 well-financed religio-ethnic  
14 special interest pressure groups  
15 with direct access to highest  
16 levels of government, this is  
17 not an unreasonable concern."

18 Page 13. Posting which relates to  
19 you, Mr. Klatt.

20 MR. KLATT: I see that.

21 MR. VIGNA: When you refer to  
22 religio- ethnic special interest pressure groups --

23 MS KULASZKA: I object. This isn't  
24 on Mr. Klatt's expertise or what he's giving evidence  
25 on. This is his political opinions.

1 THE CHAIRPERSON: I think it goes to  
2 his credibility, Ms Kulaszka. Mr. Vigna has already  
3 asked questions relating to his views and how they may  
4 have influenced his opinions. I think that's where  
5 it's going. Go ahead.

6 MR. VIGNA: So can you tell us,  
7 Mr. Klatt, when you make that statement what are you  
8 referring to when you talk about religio-ethnic special  
9 interest pressure groups.

10 MR. KLATT: Essentially as stated  
11 there.

12 MR. VIGNA: Yeah, "but as stated  
13 there", what do you mean by "stated there"? What's  
14 your religio-ethnic special interest group you are  
15 referring to? You're obviously thinking of something,  
16 Mr. Klatt.

17 MR. KLATT: As I stated, the ones  
18 that are well financed and the ones that have direct  
19 access to highest levels of government.

20 MR. VIGNA: Well, Mr. Klatt, I'm not  
21 making the statement, you are. Can you give us an  
22 understanding what you wrote.

23 MR. KLATT: I wrote what you see  
24 there on that petition.

25 MR. VIGNA: And WHOIS "...the

1 religio-ethnic special interest pressure groups with  
2 the direct access to highest levels of government.  
3 This is not an unreasonable concern"? Can you simply  
4 answer a question in relation to a comment that you  
5 made yourself in a petition?

6 MR. KLATT: I believe the words I  
7 wrote speak for themselves.

8 THE CHAIRPERSON: You are not  
9 specific on which groups you are mentioning. Do you  
10 have a certain religio-ethnic special interest groups  
11 in mind?

12 MR. KLATT: I think I would include  
13 Simon Wiesenthal Centre, Canadian Jewish Congress,  
14 B'Nai Brith. Those are the ones I can think of at the  
15 moment. There may be others.

16 MR. VIGNA: Basically the three  
17 groups you mentioned were groups that are of Jewish  
18 faith? That's a pretty simple --

19 THE CHAIRPERSON: That I can take  
20 notice of, Mr. Vigna. The groups that are intervenors  
21 in this file. They're also, as I recall, the groups  
22 that were involved in the dispute that arose regarding  
23 your company, Fairview. Are those the three groups or  
24 were two of those groups involved?

25 MR. KLATT: I believe all three were

1 involved.

2 MR. VIGNA: And these groups that you  
3 are mentioning are also groups that CAFE, FreedomSite,  
4 Stormfront are traditionally opposed to, correct,  
5 Mr. Klatt?

6 MR. KLATT: I wouldn't necessarily  
7 group CAFE and Stormfront in the same category, or the  
8 same group.

9 MR. VIGNA: Mr. Lemire shares your  
10 concerns, correct?

11 MR. KLATT: Which concerns?

12 MR. VIGNA: About the statement you  
13 make:

14 "Given the history of certain  
15 well-financed religio-ethnic  
16 special interest pressure groups  
17 which are defined with the right  
18 access to highest levels of  
19 government. This is not an  
20 unreasonable concern."

21 MS KULASZKA: That's not a fair  
22 question.

23 THE CHAIRPERSON: Meaning?

24 MS KULASZKA: He's asking about  
25 Mr. Lemire's opinions.

1 THE CHAIRPERSON: Thank you.

2 How can he know what Mr. Lemire's  
3 opinion --

4 MR. VIGNA: If you notice they know  
5 each other. They are on the same petition. They've  
6 expressed --

7 THE CHAIRPERSON: That speaks for  
8 itself. The petition speaks for itself.

9 MR. VIGNA: I won't further be labour  
10 the point.

11 You're familiar with the Zundel  
12 series of decisions?

13 MR. KLATT: Not in detail other than  
14 my involvement as expert witness for a small portion of  
15 it.

16 MR. VIGNA: You were involved with  
17 the political protest in favor of Mr. Zundel?

18 MR. KLATT: I don't believe I was  
19 ever involved in any protests.

20 MR. VIGNA: Not protests, but  
21 support, if you want.

22 MR. KLATT: Yes, I did appear as an  
23 expert witness on his behalf at the Tribunal hearings  
24 in Toronto.

25 MR. VIGNA: What about the event at

1 the synagogue in October which I mentioned to you the  
2 other day? What was that all about?

3 MR. KLATT: As I recall, Richard  
4 Warman was scheduled to speak there on a topic that  
5 implied that they were interested in promoting or  
6 lobbying for additional controls on Internet  
7 expression.

8 MR. VIGNA: And you were aware  
9 Mr. Warman was there?

10 MR. KLATT: That was my  
11 understanding, that he would be there and he would be a  
12 speaker there.

13 MR. VIGNA: So you have some  
14 animosity or some hostility towards the views  
15 Mr. Warman, am I correct?

16 MR. KLATT: I'm opposed to additional  
17 restrictions on Internet freedom of expression, yes.

18 MR. VIGNA: In tab -- the green  
19 binder.

20 THE CHAIRPERSON: HR-3.

21 MR. VIGNA: Correct. If you look  
22 through the tab as a whole, Mr. Klatt, can you tell me  
23 if you are familiar with the contents?

24 MR. KLATT: Which tab?

25 MR. VIGNA: I suggest this is the

1 contents of the FreedomSite, if you look at each tab  
2 from A to F.

3 MR. KLATT: I agree it does appear to  
4 be FreedomSite material.

5 MR. VIGNA: Material you are familiar  
6 with?

7 MR. KLATT: I must admit I have  
8 not --

9 MR. VIGNA: You've looked at it a  
10 certain point in time?

11 MR. KLATT: Some of it I've seen.

12 MS KULASZKA: I don't believe  
13 Mr. Klatt has seen this binder before now.

14 THE CHAIRPERSON: I thought him to  
15 mean the FreedomSite as in on the Internet.

16 MR. VIGNA: The contents.

17 THE CHAIRPERSON: Let's be more  
18 specific. The documents themselves, have you seen them  
19 before? The paper documents.

20 MR. KLATT: No, I've not seen this  
21 collection of documents.

22 THE CHAIRPERSON: But you've been to  
23 the FreedomSite. That's the part you are familiar  
24 with?

25 MR. KLATT: I have on occasion looked

1 at various materials on the FreedomSite.

2 THE CHAIRPERSON: So you were able to  
3 see, start looking at the first page, to be the home  
4 page. You are familiar with that appearance?

5 MR. KLATT: Yes, that's a  
6 representation of the FreedomSite home page that I have  
7 seen.

8 MR. VIGNA: That picture, is there  
9 anybody you recognize in there? On the left-hand side  
10 do you recognize Mr. Fromm?

11 THE CHAIRPERSON: Mr. Fromm, you have  
12 looked better at other times. Left corner here?

13 MR. VIGNA: Tab A.

14 MR. KLATT: The larger centre  
15 picture.

16 MS KULASZKA: Which tab is it?

17 MR. VIGNA: Tab A.

18 THE CHAIRPERSON: Could be Mr. Fromm,  
19 but I think I've seen better pictures of him.

20 MR. VIGNA: Small picture. But do  
21 you recognize if it's Mr. Fromm, maybe with the  
22 magnifying glass.

23 THE CHAIRPERSON: Next to the "deport  
24 illegals".

25 MR. VIGNA: Do you see it?

1 MR. KLATT: Between "Freedomsite" and  
2 the words "CPN".

3 MR. VIGNA: I'll just point to it.  
4 (Indicating).

5 MR. KLATT: Oh, over here. Not that  
6 very well could be Mr. Fromm.

7 MR. VIGNA: About the picture in the  
8 middle, anybody you know?

9 MR. KLATT: I think I recognize  
10 Douglas Collins in the centre.

11 MR. VIGNA: The next page is Mr. Marc  
12 Lemire?

13 MR. KLATT: Appears to be.

14 MR. VIGNA: If you follow page 6.  
15 It's not a picture there but talks about this case.

16 MR. KLATT: Okay.

17 MR. VIGNA: And page 9.

18 THE CHAIRPERSON: You are working  
19 with the numbers in the bottom corner?

20 MR. VIGNA: Top. The "Newest Files  
21 on the Freedomsite" is the title.

22 MR. KLATT: I have that.

23 MR. VIGNA: Where it says "message  
24 board", do you see that at the side?

25 THE CHAIRPERSON: I'm sorry,

1 Mr. Vigna, I'm not with you.

2 MR. KLATT: Yes.

3 MR. VIGNA: It's a square and it  
4 says, "Home Organizations." "Newest files on the  
5 Freedomsite."

6 THE CHAIRPERSON: Are you still on  
7 the front page?

8 MR. VIGNA: Tab A. Not on the front  
9 page though. I moved to page 9 of tab A.

10 THE CHAIRPERSON: I don't think you  
11 numbered them.

12 MR. VIGNA: Title "Newest Files on  
13 the Freedomsite".

14 THE CHAIRPERSON: "Newest Files on  
15 the Freedomsite".

16 MR. VIGNA: It says there "message  
17 board". Do you see that?

18 MR. KLATT: I see that.

19 MR. VIGNA: Is that where the logs  
20 relate to, the postings are in the message board?

21 MR. KLATT: I believe that would be  
22 where the message board would have been accessed  
23 through that link.

24 MR. VIGNA: The second page, the page  
25 after actually, there's a symbol there, "Immigration

1 Hurts Her Future", and there's two little girls I  
2 believe. You've seen this symbol before?

3 MR. KLATT: I believe I have.

4 MR. VIGNA: What do you understand  
5 from that?

6 MS KULASZKA: Well, I object. Again,  
7 he's going through files. Mr. Klatt hasn't even seen  
8 this binder before.

9 MR. VIGNA: Mr. Chair, he hasn't seen  
10 the binder. He's seen the contents on the Freedom site.  
11 If I have to put the website and the Internet, I'll do  
12 it. It's going to be the same thing.

13 MS KULASZKA: Maybe you should ask if  
14 he's seen it before.

15 THE CHAIRPERSON: He had say he had  
16 seen it before.

17 MS KULASZKA: He asked about the  
18 front page.

19 THE CHAIRPERSON: No, no, he said,  
20 have you ever seen the logo, "Immigration Hurts Her  
21 Future" and the witness said yes.

22 Mr. Fromm?

23 MR. FROMM: Mr. Klatt is not being  
24 tendered as an expert on immigration. He's not  
25 testifying about this. He didn't -- there no evidence

1 he posted it. He hasn't commented it on. It's not  
2 part of his evidence whether immigration hurts her  
3 future or not. This doesn't seem like a fair question.

4 THE CHAIRPERSON: Where are you going  
5 with this?

6 MR. VIGNA: It's a question of  
7 credibility in terms of the objectivity of the witness  
8 in terms of --

9 MR. FROMM: He didn't post it. What  
10 does it matter what his view are immigration?

11 THE CHAIRPERSON: I'll work on the  
12 assumption that you just bring it to his attention to  
13 go somewhere else with it, or are you not?

14 MR. VIGNA: I am, but I'll move on so  
15 that --

16 THE CHAIRPERSON: Get to your point  
17 then.

18 MR. VIGNA: Page 13 there's pictures.  
19 Wolfgang Droege -- I don't know how it's pronounced --  
20 Memorial. The page you are on, Mr. Klatt, there's a  
21 picture of an individual, Wolfgang Droege. Do you see  
22 that?

23 MR. KLATT: Yes, I see that.

24 MR. VIGNA: You recognize the  
25 individual?

1 MR. KLATT: I've seen his picture  
2 before.

3 MR. VIGNA: You know who he is?

4 MR. KLATT: Not in any specific  
5 detail.

6 MR. VIGNA: But you've heard of him?

7 MR. KLATT: Yes, I have heard have  
8 him.

9 MR. VIGNA: What have you heard?

10 MR. KLATT: He was active with  
11 Heritage Front, I believe.

12 MR. VIGNA: Heritage Front. Move  
13 onto tab B. You see the logo "Heritage Front"?

14 MR. KLATT: Second paragraph down?

15 MR. VIGNA: Exactly. You are  
16 familiar with that organization?

17 MR. KLATT: Not really.

18 MR. VIGNA: Well, you mentioned that  
19 you made the association. What do you know about  
20 organization?

21 MS KULASZKA: This type of evidence  
22 is of no use to the Tribunal. Mr. Klatt barely knows  
23 Mr. Droege. He's heard he's active --

24 THE CHAIRPERSON: Now you're  
25 testifying. I don't know how much he knows him. But

1 the point is --

2 MS KULASZKA: He's not an expert.

3 MR. VIGNA: I'll get to the point  
4 then.

5 THE CHAIRPERSON: I'm assuming  
6 Mr. Vigna will get to the point at some point. And  
7 you've made these preliminary points. Get to your  
8 question.

9 MR. VIGNA: Do you have, Mr. Chair,  
10 the Zundel decision?

11 THE CHAIRPERSON: The Zundel  
12 decision?

13 MR. VIGNA: The one that's on safety  
14 security.

15 THE CHAIRPERSON: Judge Blais'  
16 decision?

17 MR. VIGNA: Correct. I don't know if  
18 there's a copy for...

19 I would like to refer you to  
20 paragraph 29. Can you read that for yourself and I'll  
21 ask you some questions.

22 THE CHAIRPERSON: Paragraph 29?

23 MR. VIGNA: Correct, Mr. Chair.

24 So in paragraph 29 there's mention of  
25 a series of individuals, including yourself, Wolfgang

1 Droege, which you see in the picture, Marc Lemire. You  
2 recognize that?

3 MR. KLATT: I recognize my name there  
4 and a few of the other names.

5 MR. VIGNA: You recognize that there  
6 has been an association made with all these  
7 individuals?

8 MR. KLATT: Yes, and I'm quite  
9 surprised that my name would be mentioned as one of the  
10 reasons why Ernst Zundel could be deported from Canada.

11 MR. VIGNA: There's mention of a  
12 series of people that knew one other, including you and  
13 Marc Lemire.

14 MR. KLATT: Yes. I see my name and  
15 Marc Lemire's name there, yes.

16 MR. VIGNA: You know Marc Lemire  
17 since a long time?

18 MS KULASZKA: I think Mr. Vigna has  
19 misrepresented what it says. It talks about "these  
20 contacts". He's talking about Mr. Zundel as contacts.  
21 Doesn't say all these people know each other.  
22 Mr. Zundel had contacts with, and then it lists all  
23 these people. So that was a complete misrepresentation  
24 of what it says.

25 THE CHAIRPERSON: Yes. Let's be

1 specific, Mr. Vigna.

2 MR. VIGNA: Mr. Klatt, it says in  
3 paragraph 29 that all these people had contacts with  
4 Mr. Zundel, including yourself and Marc Lemire. Do you  
5 recognize that?

6 MR. KLATT: I see my name and Marc  
7 Lemire mentioned there as well as some others.

8 MR. VIGNA: Do you know any of these  
9 people?

10 MR. KLATT: I know Marc Lemire.

11 MR. VIGNA: You know Zundel?

12 MR. KLATT: I have met him.

13 MR. VIGNA: You shared his views?

14 MR. KLATT: You have to be a little  
15 bit more specific.

16 MS KULASZKA: He's well known in the  
17 media and he had some views that had some legal  
18 consequences for him for which I believe he was  
19 supporting his legal cause. Would that be correct?

20 MR. KLATT: I'm just trying to recall  
21 the details, the allegations in the Human Rights  
22 Tribunal case against him. I believe it was related to  
23 the website that has many of these views posted in the  
24 U.S. Is that the context of it?

25 MR. VIGNA: The context was in the

1 course of the certain proceedings before the Canadian  
2 Human Rights Tribunal you were, I believe, supporting  
3 his claim to freedom of speech, which was a view that  
4 you adhered to also correct?

5 MS KULASZKA: Mr. Klatt was called as  
6 an expert in the Internet and he gave evidence about  
7 the meaning of telephonic, which was the issue. There  
8 was no evidence called as to the truth of anything  
9 before that Tribunal.

10 MR. VIGNA: I'm asking a question  
11 regarding whether he shared the views of Mr. Zundel  
12 well known in the media. And the answer could be yes  
13 or no or I don't for this reason.

14 MR. KLATT: I'm not sure which what  
15 views you are wanting me to agree or disagree with.

16 MR. VIGNA: Well, Mr. Zundel has been  
17 determined to be a Holocaust denier.

18 MR. KLATT: I'm not sure that that's  
19 been determined. I see that characterization, but I  
20 don't know that that's been a factual determination.

21 MR. VIGNA: You say that's not a  
22 factual determination that's been by the courts in  
23 Canada?

24 MR. KLATT: From my conversations  
25 that I recall with him, he does not deny "Holocaust".

1 MR. VIGNA: Does he believe in the  
2 white supremacy movement of Canada.

3 MS KULASZKA: Now we're into the  
4 opinions of Mr. Zundel.

5 THE CHAIRPERSON: Mr. Vigna, it seems  
6 to me you are going far, far away. Look, I think  
7 you've established something here, Mr. Vigna. You've  
8 established that this witness has a relationship with  
9 the respondent. You know each other right, right?

10 MR. KLATT: I've had occasion to  
11 communicate with Mr. Lemire since late 1995 on various  
12 occasions.

13 MR. VIGNA: I won't be much longer,  
14 but I want to verify a few things.

15 MS KULASZKA: I just want to state  
16 for the record that this whole line of questioning was  
17 harassment of someone who was willing to come and  
18 testify as an expert and they're just harassed because  
19 of possible opinions, possible associations. This  
20 is --

21 MR. VIGNA: Mr. Chair, we're in  
22 cross-examination.

23 THE CHAIRPERSON: Ms Kulaszka, Ms  
24 Kulaszka, that's not necessary.

25 Look, it's cross-examination, Ms

1           Kulaszka, and the allegation -- it's not necessary that  
2           Mr. Vigna go to such -- the extent that he has, I'll  
3           agree with you. But the point is, it's fair game to  
4           question an expert witness about whether he has views  
5           that may, in some way, influence his opinion that he  
6           draws.

7                                It goes to the credibility of that  
8           witness. It's fair game for you to do the same thing  
9           with any of the witnesses that the complainant may  
10          call. This line of questioning was extensively taken.  
11          Again, I always cite Mr. Kulbashian, WHOIS in room  
12          again, with regard to Dr. Francis Henry during that  
13          hearing as well. Fair game. Go on.

14                           MR. VIGNA: Paragraph 41 of the same  
15          decision, Mr. Klatt.

16                           THE CHAIRPERSON: I'm sorry,  
17          paragraph?

18                           MR. VIGNA: 41.

19                           THE CHAIRPERSON: Of?

20                           MR. VIGNA: The same decision.

21                           THE CHAIRPERSON: I just want to read  
22          it again. I read it too quickly.

23                           MR. VIGNA: 41 is in connection of  
24          yourself. Do you see that?

25                           MR. KLATT: Yes, if this is an

1 example of the type of logic and thinking rulings that  
2 we can expect from somebody like Mr. Blais, I'm very  
3 disappointed in his on abilities because he's making  
4 assertions and statements that I know to be factually  
5 incorrect.

6 MR. VIGNA: So you are saying that  
7 Mr. Blais from the Federal Court --

8 THE CHAIRPERSON: Justice Blais.

9 MR. VIGNA: -- Justice Blais came to  
10 a wrong conclusion on your association with Mr. Zundel  
11 for which he exported -- deport Mr. Zundel out of the  
12 country?

13 MR. KLATT: In paragraph 41, whoever  
14 wrote this document, I don't know --

15 MR. VIGNA: This is a court decision  
16 from --

17 MR. KLATT: I understand it's a court  
18 decision, but whoever wrote it it's got Mr. Blais' name  
19 at the top. Whoever wrote it writes:

20 "It's not a good idea to post on  
21 the Internet a practical guide  
22 Ayrin revolution which includes  
23 chapters on -- activities and  
24 why would he qualify Bernard  
25 Klatt, the man responsible for

1                                   posting this guide, as a general  
2                                   person."

3                                   That is a hundred percent false  
4                                   assertion on whoever wrote this. At no time was I  
5                                   responsible for posting whatever guide he's referring  
6                                   to there.

7                                   MR. VIGNA: What guide is he  
8                                   referring to?

9                                   MR. KLATT: I'm not sure what guide  
10                                  he's referring to, because I have never posted anything  
11                                  that would match that description. I believe -- I can  
12                                  surmise what he's referring to is some information that  
13                                  could correspond to allegations made by the Wiesenthal  
14                                  Centre, Canadian Jewish Congress, B'Nai Brith regarding  
15                                  some of the clients we had on the FTCnet hosting  
16                                  service at one point. I believe some of those clients  
17                                  had some of their material investigated in Europe. But  
18                                  to make the assertion I'm responsible for posting such  
19                                  material is a hundred percent false.

20                                  MR. VIGNA: But this material was on  
21                                  the -- they were capable of posting this because of  
22                                  your concurrence, you providing the service, correct?

23                                  MR. KLATT: I'm not really sure  
24                                  exactly what he's referring to, but that's just my  
25                                  supposition or surmising of where this type of

1 allegation could be manufactured from. He doesn't  
2 indicate what specific guide he's referring to or where  
3 the guide was posted other than he claims that I posted  
4 it.

5 MR. VIGNA: There's obviously a  
6 connection that's being made here between yourself,  
7 Mr. Zundel and a certain other people.

8 MR. KLATT: Just to go back to this  
9 41. If, in fact, I had posted such material I would  
10 think someone would become aware of it by now. This is  
11 the first time I've seen this allegation contained in  
12 paragraph 41.

13 THE CHAIRPERSON: Mr. Vigna, I'm not  
14 sure I, quite frankly, understand paragraph 41 the way  
15 it's drafted. I think you made your point. But,  
16 frankly, don't pursue this any further because --  
17 unless there is some context to it, the whole decision  
18 has to be read. I don't quite know what it means.

19 MR. VIGNA: I'll finish on 52 and  
20 I'll move on.

21 Paragraph 52. You read that,  
22 Mr. Klatt? That's your company, Fairview Technology  
23 Centre?

24 MR. KLATT: Correct.

25 MR. VIGNA: And it says it offered

1 access to at least 12 white supremacy and hate groups?

2 MR. KLATT: That's somebody's  
3 characterization.

4 MR. VIGNA: It's a determination from  
5 the Federal Court.

6 MR. KLATT: I don't really see that  
7 that's the case. I believe that's a repeated assertion  
8 that happened to be included here. I don't recall any  
9 court case making such a ruling that those were, in  
10 fact, white supremacy or hate groups.

11 MR. VIGNA: They all talk about the  
12 Heritage Front which you looked at earlier and you said  
13 you weren't aware of the Heritage Front.

14 MR. KLATT: Yes, I have heard of  
15 Heritage Front.

16 MR. VIGNA: They make a link between  
17 you and the Heritage Front as a provider.

18 MR. KLATT: They could also easily  
19 make a link between BCTel, because BCTel provided the  
20 communication circuits that allowed them to-

21 MR. VIGNA: Were they one of your  
22 clients?

23 MR. KLATT: No, they were not.

24 MR. VIGNA: Did you provide a  
25 service?

1 MR. KLATT: No, I did not.

2 MR. VIGNA: So you are saying what's  
3 being said here is not true?

4 MR. KLATT: If we are looking at a  
5 legal document, the actual wording that's written there  
6 is incorrect. I did not have Heritage Front as a  
7 client.

8 MR. VIGNA: And you had 12 white  
9 supremacy and hate groups as your clients?

10 MR. KLATT: Your question again?

11 MR. VIGNA: There's mention of you  
12 having 12 white supremacy groups and hate groups as  
13 your clients. You are denying that?

14 MR. KLATT: I believe that's a  
15 characterization that was first concocted by Sol  
16 Littman.

17 MR. VIGNA: So that's in relation to  
18 the events in Oliver where the mayor intervened and  
19 there was a controversy as a result of all this,  
20 correct?

21 MR. KLATT: Well, in terms of what's  
22 written here on 52, I believe it's my recollection Sol  
23 Littman chose to categorize one of the websites as 12  
24 or -- 10 or 12 websites because it had mention of a  
25 variety of different groups on it. And I don't recall

1           that any of them specifically determined judicially to  
2           be hate groups or any other characterization.

3                         THE CHAIRPERSON: All right.

4           Mr. Vigna, I know where your going with this, and --

5                         MR. VIGNA: I'll move on.

6                         THE CHAIRPERSON: I understand your  
7           responses. You disagree with the characterization of  
8           these groups. Mr. Vigna has a different point of view.  
9           Do you deny these 12 groups, whether they are  
10          characterized as such or not, were hosted by Fairview  
11          TC?

12                        MR. KLATT: There weren't 12 groups.  
13          It was only one client.

14                        THE CHAIRPERSON: One client. I  
15          think you mentioned that earlier in your evidence. One  
16          client that had 12 --

17                        MR. KLATT: What they claim as 12  
18          groups.

19                        THE CHAIRPERSON: You were hosting  
20          these subgroups, let's call them, on your server -- on  
21          your -- not even on your ISP. I should say on your web  
22          hosting service.

23                        MR. KLATT: I'm not sure how the  
24          number 12 is derived. If Sol Littman chooses to call  
25          it 12 --

1 THE CHAIRPERSON: You were the host  
2 of those groups?

3 MR. KLATT: However many there were.

4 THE CHAIRPERSON: I'll leave the rest  
5 to argument, Mr. Vigna.

6 MR. VIGNA: Do you know the practice,  
7 Mr. Klatt, of spoofing?

8 MR. KLATT: You would have to give me  
9 some context.

10 MR. VIGNA: In the computer language  
11 when you say "spoof". What does it mean? You're a  
12 computer expert. It's not a word that's uncommon. The  
13 word spoof -- how would you define the word "spoof"?

14 MR. KLATT: It can be used in the  
15 context of e-mail spoofing.

16 MR. VIGNA: Yeah. If I recall you  
17 mentioned it yourself in the Bahr case.

18 MR. KLATT: I can't recall  
19 specifically what the context --

20 MR. VIGNA: What does the word  
21 "spoof" mean in Internet lingo.

22 MR. KLATT: It can indicate that an  
23 e-mail that purports to be from a particular individual  
24 may in fact be from someone else.

25 MR. VIGNA: I'm just reviewing my

1 notes, Mr. Chair. I just would like to refer you to  
2 tab 26 in the HR-2.

3 THE CHAIRPERSON: 26, which letter?

4 MR. VIGNA: C. I'll go quickly.

5 So C, D, E, Mr. Klatt. You agree  
6 that this deals with yourself in terms of the  
7 controversy that had arisen in Oliver as a result of  
8 these groups which you don't want to characterize as  
9 white supremacist but which involved certain clients.

10 MR. KLATT: The information at tab C  
11 appears to be a collection of news articles.

12 MR. VIGNA: They deal with the  
13 controversy in Oliver, where you live, regarding the  
14 clients you had?

15 MR. KLATT: There was no controversy  
16 until the Toronto groups decided to manufacture one.

17 MR. VIGNA: Did they deal with the  
18 issue of what happened?

19 MR. KLATT: Yes, these are news  
20 accounts.

21 MR. VIGNA: They relate to the events  
22 that were there.

23 MR. KLATT: In addition to the  
24 newspaper items, there's a letter to the MP, Anne  
25 McLellan.

1 MR. VIGNA: Tab C.

2 MR. KLATT: Right. And there's a  
3 news release from the Attorney General's office.

4 MR. VIGNA: That was in connection  
5 with your company Fairview, correct?

6 MR. KLATT: No, it doesn't  
7 specifically mention --

8 MR. VIGNA: Read the whole context of  
9 the article. You agree it deals with the --  
10 particularly in the last paragraph, C. But then  
11 there's other ones later on.

12 MR. KLATT: The Attorney General's  
13 office is careful not to mention my name or the company  
14 in their press release.

15 MR. VIGNA: I'll move on, Mr. Chair.  
16 Just a clarification in tab 16 of  
17 your binder, Mr. Klatt, where you mention about  
18 JRBooksOnline and Go Daddy.

19 THE CHAIRPERSON: R-2?

20 MR. VIGNA: Yeah.

21 THE CHAIRPERSON: Yes?

22 MR. VIGNA: You mention in  
23 JRBooksOnline the domain name is JRBooksOnline. It  
24 says, "Registered Go Daddy", registered through Go  
25 Daddy, but the domain name is jrbooksonline.com. It's

1 not through -- the domain name is wasn't Go Daddy, it  
2 was JRBooksOnline, correct?

3 MR. KLATT: It indicates the  
4 registrar for that domain name is the service known as  
5 godaddy.com.

6 MR. VIGNA: By the domain name, what  
7 is it?

8 MR. KLATT: The domain name in  
9 question, I believe you are referring to  
10 jrbooksonline.com.

11 MR. VIGNA: That's different than Go  
12 Daddy.

13 MR. KLATT: Correct.

14 MR. VIGNA: So when you talk about  
15 the disclaimer that's there, would that apply for  
16 JRBooksOnline or would it apply just for Go Daddy?

17 MR. KLATT: As the disclaimer states,  
18 the information provided is what godaddy.com has on  
19 file for that domain name registration.

20 MR. VIGNA: You agree that it's  
21 possible for you to have two different servers to use  
22 JRBooksOnline as well as FreedomSite. Doesn't  
23 necessarily need to use the same server.

24 MR. KLATT: I'm not sure how your  
25 wording the question again.

1                   MR. VIGNA: In terms of the servers  
2 that you need to use, you don't need to use the same  
3 server for FreedomSite and for JRBooksOnline. It's  
4 quite possible that you use two different servers.

5                   THE CHAIRPERSON: Two websites can  
6 use two different servers, right?

7                   MR. VIGNA: That's my question.

8                   MR. KLATT: Yes. You can have a  
9 website that uses multiple servers.

10                  THE CHAIRPERSON: No, one website  
11 using multiple servers is what your answer was. But  
12 his question is, can you have two different websites  
13 using two different servers. There must be a lot of  
14 servers out there.

15                  MR. KLATT: There's many web servers,  
16 many websites.

17                  THE CHAIRPERSON: Just so I'm clear.  
18 We used the term server just now, but earlier when we  
19 used the term web hosting service, are we essentially  
20 talking about the same thing?

21                  MR. KLATT: That would be correct.

22                  MR. VIGNA: Mr. Klatt, in terms of  
23 you preparing the expert report and the affidavit, did  
24 Mr. Lemire express to you any reluctance to testify on  
25 the same subject matter to you?

1 MR. KLATT: Not that I recall.

2 MR. VIGNA: Did he say he would be  
3 willing to testify?

4 MR. KLATT: No, he didn't indicate  
5 one way or the other whether he was planning to  
6 testify.

7 MR. VIGNA: Finally, Mr. Klatt, in  
8 preparing these expert reports, your cognizant of the  
9 fact that you had a certain relationship, to say the  
10 least, with Marc Lemire and other individuals that had  
11 certain views on what you call freedom of expression.

12 In order to preserve a certain  
13 objectivity, what did you do in order to make sure that  
14 you would not be contaminated in your analysis and be  
15 influenced by tunnel vision and not looking at all the  
16 elements, including the most important element, Rogers  
17 and getting information from them?

18 MR. KLATT: I --

19 MR. VIGNA: I'll rephrase my  
20 question.

21 This is my last question. You agree,  
22 Mr. Klatt, that from the very start Marc Lemire tells  
23 you, here's a posting from 90sAREover, I suspect it's  
24 Richard Warman and I would like you to look into it.  
25 Correct?

1 MR. KLATT: That would -- the  
2 question was asked somewhat like that, I presume.

3 MR. VIGNA: And finally, you did say  
4 today in examination-in-chief that at one point you  
5 didn't have too much knowledge about the cache and at  
6 the same time how Rogers assigns IP addresses, correct?

7 MR. KLATT: I don't know the specific  
8 operational details of the equipment that they are  
9 using, that's true.

10 MR. VIGNA: You don't have  
11 information about how they operate in terms of the  
12 assignment -- that was your own testimony, Mr. Klatt,  
13 correct?

14 MR. KLATT: We do have information  
15 regarding what range of IP addresses is use is public  
16 knowledge that they use, what's commonly referred to as  
17 static DHCP address assignment. Those characteristics  
18 of the Rogers Cable service are known.

19 MR. VIGNA: But you don't have any  
20 information for you having contacting Rogers yourself.

21 MR. KLATT: No, I have not personally  
22 contacted Rogers.

23 MR. VIGNA: You're not paid for this  
24 testimony that you are providing to the court, correct?

25 MR. KLATT: I have received some

1 compensation for travel expenses.

2 MR. VIGNA: But you are not making  
3 any money as a part of your job or professional  
4 services?

5 MR. KLATT: No, I've had part of my  
6 travel expenses compensated.

7 MR. VIGNA: No further questions.

8 THE CHAIRPERSON: Mr. Fothergill, you  
9 had indicated you wanted to ask some questions in  
10 cross-examination?

11 MR. FOTHERGILL: This is on the  
12 assumption he was going to be addressing the expanded  
13 section 13 challenge about unintended consequences,  
14 which he hasn't done. So I have no questions for  
15 Mr. Klatt.

16 MS KULASZKA: I wonder if I can have  
17 five minutes and then we could finish it up.

18 THE CHAIRPERSON: We'll take a  
19 five-minute break.

20 (DISCUSSION OFF THE RECORD)

21 MS KULASZKA: Let's do it tomorrow  
22 then.

23 THE CHAIRPERSON: Should we start  
24 earlier? No? Off the record then.

25 --- Adjourned at 4.55 p.m.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I hereby certify the foregoing to be  
the Canadian Human Rights Tribunal  
hearing taken before me to the best  
of my skill and ability on the 8th  
day of February, 2007.

---

Sandra Brereton  
Certified Shorthand Reporter  
Registered Professional Reporter