

EXHIBIT BB

Case No. 1:14-cv-00857-TSC-DAR

1 UNITED STATES DISTRICT COURT
2 for the
3 DISTRICT OF COLUMBIA
4 AMERICAN EDUCATIONAL)
5 RESEARCH ASSOC., INC.,)
6 et al.)
7 Plaintiffs)
8) Civil Action No.:
9 v.) 1:14-cv-00857-TSC
10)
11 PUBLIC.RESOURCE.ORG, INC.,)
12 Defendant.)
13)

14 San Francisco, California

15 Tuesday, December 2, 2014

16 Videotaped deposition of CHRISTOPHER BUTLER,
17 a witness herein, called for examination by counsel
18 for Plaintiffs in the above-entitled matter, the
19 witness having been by me first duly sworn, taken
20 at the offices of Harvey Siskind, LLP, Four
21 Embarcadero Center, 39th Floor, San Francisco,
22 California at 9:10 a.m., on Tuesday, December 2,
23 2014, and the proceedings being taken down by
24 Stenotype by CINDY TUGAW, RPR, CSR and transcribed
25 under her direction.

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2

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25 ALSO PRESENT: Sean McGrath, Video Operator

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25 ---o0o---

1 VIDEO OPERATOR: Good morning. We're on
2 the video record, ladies and gentlemen, at 9:10
3 a.m. I am Sean McGrath from Alderson Court
4 Reporting in Washington, DC. The phone number is
5 (202) 289-2260.

6 This is a matter pending before the United
7 States District Court for the District of Columbia,
8 in the case captioned, American Educational
9 Research Association, Incorporated, et al., versus
10 Public.Resource.Org, Inc., Case No.
11 1:14-cv-00857-TSC.

12 This is the beginning of disk 1, volume 1
13 of the deposition of Chris Butler on December 2nd,
14 2014. We're located at Four Embarcadero Center,
15 San Francisco, California. This is taken on behalf
16 of the plaintiffs.

17 Counsel, would you please identify
18 yourselves, starting with the questioning attorney.

19 MR. HUDIS: Jonathan Hudis, representing
20 plaintiffs.

21 MS.LU: Kathleen Lu, Fenwick & West, for
22 defendant Public Resource.

23 MS. AHMAD: Stephanie Ahmad, Greenberg
24 Traurig, for non-party Internet Archive.

25 VIDEO OPERATOR: Will the court reporter

1 please swear in the witness and then you can
2 proceed.

3 CHRISTOPHER BUTLER,
4 being first duly affirmed by the Certified
5 Shorthand Reporter to tell the truth, the whole
6 truth, and nothing but the truth, testified as
7 follows:

8 EXAMINATION BY MR. HUDIS

9 MR. HUDIS:

10 Q. Sir, if I could have your full name and
11 address for the record.

12 A. Christopher Scott Butler. And my address
13 is 152 Caine Avenue, Caine is spelled C-a-i-n-e, in
14 San Francisco, California 94112.

15 Q. Mr. Butler, have you been deposed before?

16 A. Yes.

17 Q. In what kinds of matters?

18 A. In matters relating to archived records of
19 websites that Internet Archive has preserved and
20 maintained on its site. I was deposed as a third
21 party.

22 Q. And how many such times have you been
23 deposed in that capacity?

24 A. If I remember correctly, it's five times.

25 Q. Other than those five times being deposed

1 in the nature of what you just described, have you
2 been deposed at all in any other cases?

3 A. Yes, yes. I've been deposed in the case
4 Davydiuk, D-a-v-y-d-i-u-k, versus Internet Archive
5 and Internet Archive Canada relating to a copyright
6 infringement case against Internet Archive.

7 Q. Did that relate to the posting of certain
8 materials on Internet Archive's website?

9 A. It did.

10 Q. Have you told me all the types of matters
11 in which you've been deposed before?

12 A. Yes.

13 Q. So altogether about six times?

14 A. Yes.

15 Q. Since you've been deposed before,
16 Mr. Butler, I'll make my rules of the road brief.

17 Do you understand that if any question I
18 pose to you is unclear to you or you didn't hear
19 it, you can ask me to repeat or rephrase it?

20 A. Yes.

21 Q. Do you understand that all of your answers
22 to my questions have to be verbal?

23 A. Yes.

24 Q. Do you understand that if you would like
25 to take a break during the deposition, you may do

1 so?

2 A. Yes.

3 Q. The only exception is if I have a question
4 pending, you must answer the question before you
5 take the break or speak with your attorney.

6 A. Yes.

7 Q. Is there any reason, such as you're taking
8 medication, illness, any other reason why you can't
9 testify completely, accurately and truthfully
10 today?

11 A. No.

12 (Plaintiffs' Exhibit 1 marked for
13 identification.)

14 MR. HUDIS:

15 Q. Mr. Butler, I will now show you what's
16 been marked as Exhibit 1, and it is a subpoena to
17 testify at a deposition.

18 Have you seen this subpoena before?

19 A. Yes.

20 Q. When for the first time did you see the
21 subpoena in front of you?

22 A. I saw the subpoena when it was served to
23 Internet Archive in late October.

24 Q. If you could turn to the fourth and fifth
25 pages, there is a list of deposition topics.

1 What, if anything, did you do to prepare
2 to testify on the topics listed on the fourth and
3 fifth pages of the deposition subpoena of
4 Exhibit 1?

5 MS. LU: Just to be clear for the record,
6 since the pages aren't numbered, we're talking
7 about the page starting with Exhibit A?

8 MR. HUDIS: Exhibit A to deposition
9 Exhibit 1, correct. Thank you.

10 THE WITNESS: To prepare for the
11 deposition, I, upon receipt of the subpoena,
12 immediately identified and spoke with the staff who
13 may have had communication with Public Resource or
14 the standard organizations. I asked them to not
15 delete any of their e-mail and to search for
16 strings relating to these organizations and the
17 standards document specified and to alert me if
18 they found any matches for -- for those strings.

19 I also spoke with my attorneys at
20 Greenberg Traurig.

21 MR. HUDIS:

22 Q. Other than speaking with your attorneys,
23 who did you speak with at Internet Archive?

24 A. I spoke with Brewster Kahle,

25 Q. Spell his last name.

1 A. B-r-e-w-s-t-e-r, K-a-h-l-e.

2 Q. And who is he?

3 A. He's a founder of Internet Archive.

4 Q. And what was the nature of that
5 discussion?

6 A. It was to alert him of the subpoena, and
7 also the scope of the subpoena, and to ask him to
8 search his e-mail.

9 Q. Did he search his e-mail?

10 A. Yes.

11 Q. What did he find?

12 A. He did not find any correspondence with
13 these organizations relating to the standards.

14 Q. When you say the organizations, there's
15 three plaintiffs in this lawsuit. And I'll say,
16 just so we have a working definition, I'll say
17 their full names, and then I will say their
18 acronyms.

19 So the first plaintiff is American
20 Educational Research Association, Inc., they're
21 known as AERA; the American Psychological
22 Association, Inc., they're known as APA; and the
23 National Council on Measurement in Education, Inc.,
24 and they're known as NCME.

25 Do we understand each other?

1 A. That's right.

2 Q. So after speaking with Mr. Kahle, he did
3 not find any correspondence exchanged with any of
4 AERA, APA or NCME?

5 A. Correct.

6 Q. Did he find any correspondence exchanged
7 with Public.Resource.Org, Inc., which we will refer
8 to as Public Resource?

9 A. Yes.

10 Q. What did he find?

11 A. He found e-mails between himself and Carl
12 Malamud.

13 Q. All right. Have those e-mails been
14 produced to us?

15 A. No.

16 Q. Okay. And why is that?

17 A. Those e-mails did not mention and did not
18 have any relation to the 1999 standards.

19 Q. Okay. So we understand the 1999
20 standards, I actually have the book with me, and
21 I'll read the title into the record. It's the
22 Standards for Educational and Psychological
23 Testing, bearing a copyright of 1999.

24 Do you understand, Mr. Butler, that we
25 will refer to that book as the 1999 standards

1 during this deposition?

2 A. Yes, I do.

3 MS. LU: Are we entering that as an
4 exhibit?

5 MR. HUDIS: No, no.

6 Q. So all the e-mails that Mr. Kahle
7 exchanged with Mr. Malamud did not mention the
8 1999 standards?

9 A. Correct.

10 Q. Did they mention any of the plaintiffs in
11 this lawsuit?

12 A. No.

13 Q. Do you remember what those e-mails had to
14 do with?

15 MS. LU: Objection, relevance.

16 THE WITNESS: There were many e-mails
17 relating to -- to a broad number of topics. I
18 don't remember any specific offhand.

19 MR. HUDIS:

20 Q. Did any of those e-mails, to the best of
21 your recollection, have to do generally with
22 uploading by Public Resource standards or codes to
23 Internet Archive's website?

24 MS. AHMAD: Objection --

25 MS. LU: Objection, vague and ambiguous.

1 I'm sorry.

2 MS. AHMAD: Objection, outside the scope
3 of the deposition topics.

4 THE WITNESS: No, we did not find any
5 e-mails that related to the uploading of standards.

6 MR. HUDIS:

7 Q. Did you speak to anyone else, Mr. Butler,
8 to prepare for this deposition other than Mr. Kahle
9 or your counsel?

10 MS. LU: Objection, misstates prior
11 testimony.

12 MR. HUDIS: Okay.

13 Q. Did you speak to anyone else to prepare
14 for your deposition today?

15 A. I spoke with Alexis Rossi who's our
16 director of collections.

17 Q. And how do you spell Rossi?

18 A. R-o-s-s-i.

19 Q. And what was the nature of that
20 conversation or conversations?

21 A. I asked her to search her e-mail account
22 for any communication responsive to the subpoena.

23 Q. Did she find any?

24 A. No.

25 Q. Did you speak with anyone else to prepare

1 for this deposition?

2 A. No.

3 Q. So, other than your counsel, the total
4 number of people that you spoke with to prepare for
5 your deposition were Mr. Kahle and Ms. Rossi?

6 A. Correct.

7 Q. To prepare for your deposition, did you
8 speak with anyone at Public Resource?

9 A. No.

10 Q. To prepare for you deposition, did you
11 speak with anyone who is part of Public Resource's
12 legal team? Law firms?

13 A. We spoke with Corynne McSherry from the
14 Electronic Frontier Foundation to --

15 Q. And what was -- all right. Go ahead.

16 A. And alerted her of the fact that we had
17 received the subpoena.

18 Q. And did you discuss anything else with
19 Ms. McSherry?

20 MS. LU: I'm going to --

21 MS. AHMAD: I want to object on the basis
22 of privilege.

23 MR. HUDIS: Privilege between whom?

24 MS. LU: If I understand this correctly,
25 and I think you probably know this better than I

1 do, I believe that there -- the communication
2 between Mr. Butler and Corynne McSherry is the
3 subject of privilege.

4 MR. HUDIS: On what grounds? How is it --
5 how is it privileged?

6 MS. LU: I think it's attorney-client.

7 MS. AHMAD: It's attorney-client
8 privileged.

9 MR. HUDIS:

10 Q. So you're saying Corynne McSherry and EFF
11 are Internet Archive's attorneys?

12 A. That's correct.

13 Q. For what purpose? Because you're being
14 represented today, and for the purposes of the
15 subpoena, by Greenberg Traurig, so --

16 MS. LU: I think that what EFF has
17 represented Internet Archive on itself is a subject
18 of privilege unless it's a public matter, and I
19 know there are some public matters. But I don't
20 know off the top of my head what they are.

21 MS. AHMAD: Right. So Greenberg Traurig
22 is representing Internet Archive for the purpose of
23 the subpoena, but prior to that, Internet Archive
24 was represented by -- or still are, but the
25 communications between them are privileged.

1 MS. LU: My understanding is that EFF has
2 represented Internet Archive on occasion through
3 the years, though I don't know the specifics of
4 which matters, and I don't know which matters are
5 public.

6 MR. HUDIS: Okay. So let's confine
7 ourselves to your preparation for this deposition
8 and the deposition subpoena.

9 Q. Other than alerting Ms. McSherry about the
10 fact that Internet Archive received plaintiffs'
11 subpoena, did you have any other discussions with
12 Ms. McSherry to prepare for this deposition?

13 A. No.

14 MR. HUDIS: Mark this one.

15 (Plaintiffs' Exhibit 2 marked for
16 identification.)

17 MR. HUDIS: Just for the record, the
18 deposition subpoena has been marked already as
19 Exhibit 1, and the document subpoena addressed to
20 Internet Archive has just been marked as Exhibit 2.

21 Q. Mr. Butler, I now show you what's been
22 marked as deposition Exhibit 2 and ask if you've
23 seen this document before.

24 A. Yes.

25 Q. When for the first time did you see the

1 document subpoena of Exhibit 2?

2 A. When it was served to Internet Archive in
3 late October.

4 Q. What, if anything, did you do to assist
5 Internet Archive in complying with the document
6 subpoena as to the categories of materials listed
7 on the fifth and sixth pages of the subpoena?

8 And so we're clear, for the record, that
9 would be the fifth and sixth pages of the subpoena
10 which is -- and the document demand starts on the
11 second page of Exhibit A to Exhibit 2.

12 So I'll repeat the question, Mr. Butler.

13 What, if anything, did you do to assist
14 Internet Archive in complying with the document
15 subpoena?

16 A. I asked Mr. Kahle and Ms. Rossi to search
17 their e-mail accounts, as I mentioned.

18 Q. Uh-huh.

19 A. I searched my own e-mail account. I
20 searched our general incoming e-mail account,
21 info@archive.org. And I also searched an e-mail
22 account that's used to correspond with -- with
23 folks who have sent e-mails to info@archive.org to
24 which e-mails may be passed along called
25 info@reply@archive.org.

1 I also searched physical files when we
2 have all of our physical records relating to
3 take-down requests.

4 Q. Let's take your search areas one at a
5 time.

6 In complying with the subpoena, did you
7 find anything in your own e-mail store?

8 A. Yes, I did.

9 Q. And what did you find?

10 A. I found an e-mail from Carl Malamud
11 relating to the 1999 standards.

12 Q. Was this just one e-mail or many e-mails?

13 A. It was one e-mail.

14 Q. Do you remember the nature of that e-mail?

15 A. It -- it addressed the 1999 standards. I
16 don't recall the exact content of the e-mail.

17 Q. And in searching the e-mail box
18 info@archive.org, did you find any responsive
19 documents?

20 A. No.

21 Q. When you searched the mailbox
22 info@archive.org, did you find any documents?

23 A. No.

24 Q. When you searched your physical files, did
25 you find any documents?

1 A. No.

2 Q. Besides these e-mails boxes and your
3 physical files, did you conduct any other searches
4 to comply with the document subpoena?

5 A. No.

6 Q. Do you remember what documents were
7 collected for production?

8 A. Yes, the -- the e-mail that I had received
9 from Carl Malamud --

10 Q. Uh-huh.

11 A. -- found in my own e-mail account.

12 Q. Uh-huh.

13 A. We also supplied documents from our site,
14 archive.org.

15 Q. Uh-huh.

16 A. One document was called the item history
17 for the 1999 standards.

18 Q. Uh-huh.

19 A. It lists all of the technical tasks
20 submitted and logged for the item. And we also
21 submitted detailed technical logs for each
22 individual task.

23 Q. Uh-huh. So that was -- so that was also
24 part of your search? You searched for these logs?

25 A. That's correct. Yes.

1 Q. What else did you search for?

2 A. We also searched for the number of -- for
3 our record of downloads for the item.

4 Q. And what do you mean by "downloads"?

5 A. Downloads in the context of our site,
6 meaning a count of the number of unique
7 IP addresses -- allow me to start over.

8 A count of the number of accesses of the
9 item's pages by an IP address where multiple
10 accesses from the same IP address in a day as
11 defined by UTC time are counted as only one
12 download.

13 Q. When you say "IP address," that's Internet
14 protocol address?

15 A. Correct.

16 Q. And what do you mean by "access"?

17 A. I mean that there was an HTTP request for
18 the -- for one of the item's pages that was
19 fulfilled by archive.org.

20 Q. So I have to ask this again, Mr. Butler,
21 because I do not want to put words in your mouth.

22 When you say you have a count of the
23 number of downloads, if you were explaining that to
24 me who has much less knowledge of Internet parlance
25 than you ever do, what does that mean? What does

1 that count of downloads mean?

2 A. The count of downloads means --

3 MS. LU: Objection, argumentative.

4 MR. HUDIS: Okay.

5 Q. You may answer.

6 A. As I understand it, the count of downloads
7 means any time that a computer with a unique
8 IP address or a server or any -- it could be an
9 automated program, it could be a crawler from
10 Google, and we actually understand that a great
11 many of the hits that we record are very likely
12 from automated programs, not from individuals.

13 So it would -- it would count requests
14 submitted from those IP addresses that were then
15 served by Internet Archive where we returned the --
16 the file information that they requested in a given
17 URL. And it would also count individual accesses,
18 individual requests that were fulfilled from
19 individuals using computers as well.

20 We don't have a way to determine
21 whether -- which -- we don't have a way to
22 determine what percentage of the download count
23 that we obtained for this item would have been
24 submitted by an automated program or an individual.

25 Q. In the context of download, does that mean

1 call up a web page to view or to take material on a
2 web page and copy it onto another computer?

3 A. It could be either one. So there are
4 texts files that might be displayed in a browser,
5 PDF files that might be displayed in a browser but
6 are not necessarily downloaded by the browser to
7 the default folder on the local machine.

8 Q. So your download count does not
9 distinguish between a mere view versus a copying of
10 material onto another computer?

11 MS. LU: Objection, vague and ambiguous.

12 MR. HUDIS:

13 Q. Do you understand the question? I can
14 rephrase if you wish.

15 A. If you would, please.

16 Q. Sure. So the download count, does it
17 distinguish between the merely viewing a web page
18 versus taking the content on the web page and
19 count -- and copying it to another computer?

20 MS. LU: Objection, vague and ambiguous.

21 MR. HUDIS:

22 Q. Do you understand the question?

23 A. No, I'm not certain there -- there may be
24 browser cache or --

25 Q. Uh-huh.

1 A. -- recording of a file for temporary
2 purposes versus downloading of a file to someone's
3 hard drive for -- for use until it's actively
4 deleted.

5 Q. So you have no way of determining whether
6 it's a cache copy or taking a file from one place
7 to another copy? I'm purposely not using the term
8 "download."

9 MS. LU: Objection, vague and ambiguous.

10 MR. HUDIS: Right, right.

11 Q. So please distinguish for me the follow --
12 what terms you would use for the following things.

13 I see something on a website and all I
14 want to do is see it. What do you call that?

15 A. Viewing a page.

16 Q. Viewing. Okay.

17 I see something on a website and I want to
18 make a copy of it from where I see it on the
19 website to the hard drive on my computer. What do
20 you call that?

21 MS. LU: Objection, vague and ambiguous.

22 MR. HUDIS:

23 Q. I see a file located on a web page and I
24 want to make a copy of it and put it on my hard
25 drive. What do you call that?

1 MS. LU: Objection, vague and ambiguous.

2 MR. HUDIS:

3 Q. You may answer.

4 A. So as I understand, the term "download"
5 can be used the multiple ways.

6 Q. Right.

7 A. And so in -- in some user's mind, the
8 process you described could be defined as
9 downloading.

10 Q. Uh-huh.

11 A. However, our -- our recorded number which
12 we formally refer to as a download count does not
13 distinguish between viewing and downloading in this
14 instance for specific file -- for certain file
15 types.

16 MR. HUDIS: Off the record.

17 VIDEO OPERATOR: Just a second. The time
18 is 9:37 a.m., and we are off the record.

19 (Discussion off the record.)

20 (Plaintiffs' Exhibit 3 marked for
21 identification.)

22 VIDEO OPERATOR: The time is 9:39 a.m.,
23 and we are on the record.

24 MR. HUDIS:

25 Q. Mr. Butler, have you described for me all

1 of the ways that Internet Archive searched and
2 collected documents to comply with the document
3 subpoena on Exhibit 2?

4 A. Yes.

5 Q. Mr. Butler, I now show you what has been
6 marked as deposition Exhibit 3.

7 Do you recognize at the bottom of the page
8 your own line biography?

9 A. Yes.

10 Q. And it says here you have twin degrees in
11 Environmental Science and Film Studies.

12 A. That's correct.

13 Q. Are those Bachelor's or Master's degrees?

14 A. Bachelor's degrees.

15 Q. What's the highest level of your
16 education?

17 A. Bachelor's degree.

18 Q. In these two -- in these two subject
19 matters on your bio?

20 A. Yes.

21 Q. When did you receive these degrees?

22 A. 2002.

23 Q. And did you have a double major?

24 A. Yes.

25 Q. Did you have a minor?

1 A. No.

2 Q. Did you have a concentration while in
3 school?

4 A. Within Environmental Science, I had a
5 concentration in Social Sciences.

6 Q. Do you have any other degrees or
7 certificates from formal study?

8 A. No.

9 Q. What, if any, background do you have in
10 computer programming, either by education or work
11 history?

12 A. I have none via formal education. Through
13 my work at Internet Archive, I have worked around
14 programmers and developers.

15 Q. What do you mean by "work around"?

16 A. I've worked as part of the Internet
17 Archive team in the same office space with
18 programmers and developers. I have worked with
19 them on various questions of user support and
20 issues of taking material down when appropriate.

21 Q. When you say "taking down," you mean from
22 Internet Archive's website?

23 A. Correct.

24 Q. Have you done any computer programming
25 yourself?

1 A. No.

2 Q. Have you taken any courses whatsoever on
3 computer programming?

4 A. No.

5 Q. Have you taken -- scratch the question.
6 Have you received informal training from
7 anyone at Internet Archive in computer programming?

8 A. I've received informal explanations from
9 time to time, various types of codes, mostly
10 related to HTML, or JavaScript, a composition of
11 web pages. I've also received some informal
12 instruction about submitting a query from a command
13 line interface.

14 MR. HUDIS: Could you repeat his answer.
15 Submitting a query from --

16 (Record read by Reporter.)

17 MR. HUDIS:

18 Q. So these informal explanations, would that
19 qualify you to program in either HTML, Java or web
20 page composition?

21 A. No.

22 Q. Now, when you say submitting a query to a
23 command line interface, where do you do that?

24 A. I -- in these instances, I did that from
25 the Mac Terminal application.

1 Q. And that's at Internet Archive?

2 A. That's on a Mac computer located at
3 Internet Archive.

4 Q. And it's hooked into Internet Archive's
5 computer systems?

6 A. Yes.

7 Q. And do you know what software is used to
8 submit that query command?

9 MS. LU: Objection, vague and ambiguous.

10 MR. HUDIS:

11 Q. How do you submit a query command line?

12 MS. LU: Objection, vague and ambiguous.

13 MR. HUDIS:

14 Q. You may answer.

15 A. The command was dictated to me by -- by
16 the engineer.

17 MS. LU: And objection also, relevance.

18 MR. HUDIS:

19 Q. An Internet Archive engineer?

20 A. Correct.

21 Q. Did you use -- did you get such dictation
22 to run the searches to comply with plaintiffs'
23 document subpoena?

24 A. Yes, in order to search for our records of
25 the download count, one of the Internet Archive

1 engineers dictated the query to me so I could
2 search for it as he sat next to me.

3 Q. Who was the engineer?

4 A. His name was Ralph Muehlen.

5 Q. Spell his last name.

6 A. M-u-e-h-l-e-n.

7 Q. And do you -- when you were entering this
8 command into the Mac Terminal, do you know what
9 software you were using?

10 A. I was using a Mac operating system.

11 Q. Any particular software on the Mac
12 operating system?

13 A. Within the Mac operating system, I was
14 using the application Terminal. Terminal is the
15 name of the application.

16 Q. And so with Terminal, in this instance,
17 dictated by Mr. Muehlen, you entered in a command
18 and it gave you back information?

19 A. That's correct.

20 Q. Mr. Butler, when did you first become
21 employed by Internet Archive?

22 A. In February of 2009.

23 Q. What was your position then?

24 A. Office manager.

25 Q. Is that the position you still hold today?

1 A. Yes.

2 Q. What are your duties and responsibilities
3 at Internet Archive as an office manager?

4 A. Some of them are clerical and relate to
5 office functions and managing our team of
6 administrative assistants.

7 Q. To do what?

8 A. To -- to perform reception duties,
9 inventory duties, purchasing duties, office
10 maintenance duties.

11 Q. What other responsibilities do you have as
12 office manager at Internet Archive?

13 A. I am primary point of contact for
14 take-down requests and requests for information
15 from law enforcement and attorneys.

16 Q. And when you say you're the point of
17 contact for take-down requests, is that a request
18 to take down material from Internet Archive's
19 website?

20 A. That's correct.

21 Q. What do you do?

22 A. I receive the take-down request, review
23 it. If it meets our basic criteria for -- for
24 something that should be taken down, I will process
25 that and take down the material. And if -- and

1 follow up with any necessary communication
2 thereafter.

3 Q. And so if a take-down request meets
4 certain criteria, what criteria would that be?

5 MS. LU: Objection as to relevance.

6 MR. HUDIS:

7 Q. You may answer.

8 A. Sure. I hadn't understood that the scope
9 of the subpoena would include this information.
10 but there can be take-down requests on -- on
11 various grounds, so the criteria would be specific
12 to -- to sometimes even the particular case, but
13 the most basic example is a complaint of -- of
14 copyright infringement brought to our attention on
15 the site.

16 And we would ask for a take-down notice
17 with the standard information requested as outlined
18 in the Digital Millennium Copyright Act. And if it
19 meets that criteria, we will typically take down
20 the item, notify both the uploading party and the
21 requesting party.

22 Q. And what about your being the point of
23 contact for information requests from attorneys?

24 MS. LU: Objection as to relevance.

25 MR. HUDIS:

1 Q. You may answer.

2 A. The most common example of that is an
3 attorney who is interested in using archived
4 material from our web archive in one of their cases
5 and would like to have those records authenticated
6 by Internet Archive.

7 Q. And as point of contact, you were also
8 part of Internet Archive's compliance with document
9 subpoenas such as the one we served on Internet
10 Archive?

11 A. That's correct.

12 Q. Have you told me all of your
13 responsibilities as office manager for Internet
14 Archive?

15 A. Yes.

16 MR. HUDIS: Off the record.

17 VIDEO OPERATOR: The time is 9:51 a.m.,
18 and we are off the record.

19 (Discussion off the record.)

20 VIDEO OPERATOR: The time is 9:52 a.m.,
21 and we are on the record.

22 (Plaintiffs' Exhibit 4 marked for
23 identification.)

24 MR. HUDIS:

25 Q. Mr. Butler, what is the Internet Archive?

1 A. Internet Archive is a nonprofit
2 organization. We are attempting to maintain a
3 digital library online at our website, archive.org.
4 We preserve many types of media and make much of
5 that media available in digital format via our
6 website, archive.org, and also openlibrary.org.

7 Q. Mr. Butler, do you recognize what I now
8 have marked as deposition Exhibit 4 as a portion of
9 Internet Archive's website?

10 A. Yes.

11 Q. And it's the About page?

12 A. Yes.

13 Q. And the first paragraph up at the top
14 right beneath "About the Internet Archive," it
15 says, "The Internet Archive is a 501(c) non-profit
16 that was founded to build an Internet library. Its
17 purposes include offering permanent access for
18 researchers, historians, scholars, people with
19 disabilities, and the general public to historical
20 collections that exist in digital format.

21 Do you see that?

22 A. Yes.

23 Q. Is that an accurate description of
24 Internet Archive's mission and business?

25 A. Yes.

1 Q. And it says below that, in the end of the
2 second paragraph, "the Internet Archive includes
3 text, audio, moving pictures" -- "moving images,
4 and software as well as archived web pages in our
5 collections."

6 Do you see that?

7 A. Yes.

8 Q. And that's a part of the business of
9 Internet Archive?

10 A. Yes.

11 Q. All right. If you would go to Page 5 of 5
12 of Exhibit 4, please. It's the last page of the
13 exhibit.

14 Do you see the descriptive text under
15 where it says, "Storage"?

16 A. Yes.

17 Q. And it says, "Storing the Archive's
18 collections involves parsing, indexing, and
19 physically encoding the data. With the Internet
20 collections growing at exponential rates, this task
21 poses an ongoing challenge."

22 Is this part of the business of Internet
23 Archive storage as it's described here?

24 A. Yes.

25 Q. And then immediately below that, there is

1 a descriptive text under the title, "Preservation,"
2 do you see that?

3 A. Yes.

4 Q. And it says there, "Preservation is the
5 ongoing test of permanently protecting stored
6 resources from damage or destruction. The main
7 issues are guarding against the consequences of
8 accidents and data degradation and maintaining the
9 accessibility of data as formats become obsolete."

10 Is that part of the mission and business
11 of Internet Archive?

12 A. Yes.

13 Q. Mr. Butler, what is an Internet library?

14 A. From our standpoint, as I understand
15 Internet library, it would be an organization that
16 offers library services, including access to -- to
17 the types of resources on Internet Archive texts,
18 movies, audio, software, information and artwork
19 and literature and scientific data. It makes it
20 available for the public benefit.

21 Q. Have you completely described what you
22 believe to be an Internet library?

23 A. That's -- that's my definition in a
24 nutshell.

25 Q. At the Internet Archive, what is a

1 collection?

2 A. A collection is roughly defined as a set
3 of posted items. An item would be defined as a
4 page beginning with archive.org/details and ending
5 in an identifier. It would be assigned a media
6 type such as text, movie, audio. Multiple files
7 could be uploaded to that page. It would be
8 assigned a title. And perhaps other metadata
9 submitted by the uploader of the item.

10 A collection would be a list of items that
11 is associated with a separate landing page, its own
12 summary page where a visitor could -- can see
13 summary information about that list of items. It's
14 often organized around a theme.

15 Some of the functions of a collection
16 include being able to search within just that list
17 of items, being able to sort those items, for
18 example, sorting them by title, alphabetically or
19 by author.

20 A collection is generally set up for any
21 archive.com user who contacts Internet Archive.
22 And generally we ask that they have uploaded
23 50 items to the site already that we can then form
24 into a collection and assign a collection page.

25 Q. Have you described the entirety of what

1 you believe is a collection?

2 MS. LU: Objection, argumentative.

3 MR. HUDIS:

4 Q. Did you leave anything out?

5 A. I don't think of anything offhand.

6 Q. How does Internet Archive build an
7 Internet library?

8 A. Through multiple ways. Our web archive is
9 collected both by Internet Archive and by outside
10 organizations that donate data to Internet Archive.

11 Q. Let's take that separately.

12 A. Okay.

13 Q. What part of building Internet Archive's
14 library is done by Internet Archive itself?

15 A. Much of the web archive is -- is crawled
16 and collected by Internet Archive directly.

17 Q. So that we have a good record, what do you
18 mean by "crawled and collected"?

19 A. I mean that automated programs operated by
20 Internet Archive visit web pages and store web
21 files that are transmitted to Internet Archive by
22 the web servers that they visit. That information
23 is then processed in such a way that it's rendered
24 searchable and browseable by visitors to the
25 website.

1 Q. And the searchable and browseable
2 functions, that's done by Internet Archive's web
3 engineers?

4 A. Correct.

5 Q. And I believe the other way you said that
6 Internet Archive builds Internet library is by
7 donations of content by outside organizations?

8 A. Correct.

9 Q. How does that work?

10 A. So in the instance of the web archive
11 organizations, the biggest one of which is Alexa
12 Internet, who regularly perform web crawling, would
13 donate bulk data of historical web files to
14 Internet Archive to be incorporated into the
15 Wayback Machine.

16 Q. And are there other organizations that
17 donate content to the Internet Archive?

18 MS. LU: Objection, misstates prior
19 testimony.

20 MR. HUDIS:

21 Q. Are there any other organizations that
22 donate content to the Internet Archive?

23 A. Yes. So private individuals and
24 institutions may establish a user account with
25 archive.org and post material in the movies, texts,

1 audio and software collections.

2 Q. How many individuals or organizations have
3 established user accounts for uploading purposes to
4 Internet Archive? Tens, hundreds, thousands, tens
5 of thousands?

6 A. At a minimum, thousands, perhaps tens of
7 thousands, perhaps hundreds of thousands.

8 MS. LU: I'll object that this is outside
9 the scope of the deposition topics.

10 MR. HUDIS: I would disagree, Counsel.

11 Q. You may go. Are you finished with your
12 answer?

13 A. I am.

14 Q. Have you described all the ways that
15 Internet Archive builds its collections or builds
16 its libraries, to be correct?

17 A. Internet Archive may also digitize text
18 materials or other materials.

19 Q. Is this printed text materials?

20 A. Yes.

21 Q. You may go on.

22 A. Yes. Typically, those are supplied by
23 libraries and state agencies.

24 Q. So the three ways that Internet Archive
25 can build a library is Internet Archive's own

1 crawling and archiving, donations by outside
2 organizations, and digitization of text materials
3 donated by libraries and state agencies, correct?

4 MS. LU: Objection, misstates prior
5 testimony.

6 MR. HUDIS: I disagree.

7 Q. Go on. You may answer.

8 A. I would also add that private individuals
9 can digitize materials themselves and upload them
10 to our service.

11 Q. Have you told me all the different ways
12 that Internet Archive can build its libraries?

13 A. Again, I think that's -- that's a fair
14 nutshell description. I don't think of anything
15 specific to add.

16 Q. So we have some definitions of terms, what
17 does it mean to post content to a website?

18 MS. LU: Objection to the extent it calls
19 for expert testimony.

20 MR. HUDIS:

21 Q. Do you understand the question?

22 A. Yes. In the basic sense, I understand it
23 to -- to be something that an individual or an
24 automated program does to -- to transmit content to
25 a website.

1 Q. Is that otherwise known as uploading?

2 A. I think that the two terms are used
3 interchangeably a lot.

4 MS. AHMAD: Can we take a break?

5 MR. HUDIS: Yes.

6 VIDEO OPERATOR: The time is 10:04 a.m.,
7 and we are off the record.

8 (Brief recess.)

9 VIDEO OPERATOR: The time is 10:11 a.m.,
10 and we are on the record.

11 MR. HUDIS:

12 Q. Mr. Butler, just so we have a frame of
13 reference, individuals not employed by Internet
14 Archive are allowed to post content to Internet
15 Archive's website?

16 A. That's correct.

17 Q. And I believe we discussed people who have
18 such posting or uploading access could be anywhere
19 in the thousands to hundreds of thousands?

20 A. Correct.

21 Q. And why are these nonemployee individuals
22 allowed to post content to Internet Archive's
23 website?

24 MS. AHMAD: Objection, outside the scope
25 of the deposition topics.

1 MR. HUDIS:

2 Q. You may answer.

3 A. One of the reasons why is to enable
4 sharing of information and to -- to expand the
5 amount of materials that's available for public use
6 and sharing at archive.org.

7 MR. HUDIS: Off the record.

8 VIDEO OPERATOR: The time is 10:12 a.m.,
9 and we are off the record.

10 (Discussion off the record.)

11 (Plaintiffs' Exhibit 5 marked for
12 identification.)

13 VIDEO OPERATOR: The time is 10:13 a.m.
14 We are on the record.

15 MR. HUDIS: We've now marked as Exhibit 5
16 a document which says at the top, "Terms of Use
17 10 March 2001," bearing production numbers IA-AERA
18 38 through 40.

19 Counsel for Internet Archive, can you
20 stipulate this is a business record of your client?

21 MS. AHMAD: Yes.

22 MR. HUDIS: Any objections, Ms. Lu?

23 MS. LU: No objection.

24 MR. HUDIS:

25 Q. Mr. Butler, do you recognize this document

1 of Exhibit 5?

2 A. Yes.

3 Q. What is it?

4 A. This is the Internet Archive's terms of
5 use.

6 Q. And to what activity associated with
7 Internet Archive are these terms of use applied?

8 MS. LU: Objection, vague and ambiguous.

9 MR. HUDIS:

10 Q. You may answer if you understand the
11 question.

12 A. Use of the website both by individuals who
13 establish an account and also by users who visit
14 the website without establishing an account.

15 Q. So if I understand your answer, and if I'm
16 wrong, correct me, if I'm an individual or an
17 outside organization, not employed with Internet
18 Archive, who wants to post content to Internet
19 Archive's website, I would have to comply with
20 these terms of use, is that correct?

21 A. Yes.

22 MS. LU: Objection, misstates prior
23 testimony.

24 MR. HUDIS:

25 Q. You may answer.

1 A. Yes, any -- any individual or institution
2 who -- who uses Internet Archive's website as a
3 visitor agrees to these terms of use.

4 MR. HUDIS:

5 Q. Did you participate in writing these terms
6 of use?

7 A. No.

8 Q. Who participated in writing these terms of
9 use?

10 MS. LU: Objection, lack of personal
11 knowledge.

12 MR. HUDIS:

13 Q. If you know.

14 A. I don't know.

15 Q. And the date of these terms of use says
16 10 March, 2001. Do you see that?

17 A. Yes.

18 Q. To the best of your knowledge, are these
19 terms of use still in effect today?

20 A. Yes.

21 Q. Were these terms of use, to the best of
22 your knowledge, in effect between 2012 and 2014?

23 A. Yes.

24 Q. Must individuals not employed with
25 Internet Archive or outside organizations agree to

1 these terms of use of Exhibit 5 before they're
2 allowed to post content to Internet Archive's
3 website?

4 A. Yes.

5 Q. Why?

6 MS. LU: Objection, lack of personal
7 knowledge.

8 MR. HUDIS:

9 Q. If you know.

10 A. I'm not the one who made that decision,
11 and I -- I haven't spoken to those who did to --
12 and, therefore, wouldn't -- wouldn't know exactly
13 why that determination was made.

14 Q. How are nonemployee individuals and
15 outside companies or organizations made to comply
16 with these terms of use before they're allowed to
17 post content?

18 Is it a click-wrap? Is it a shrink-wrap?
19 What is it?

20 MS. LU: Objection, vague and ambiguous
21 and compound.

22 MR. HUDIS: All right. I will reask the
23 question.

24 Q. In what form are nonemployee individuals
25 or outside companies mandated to comply with these

1 terms of use before they're allowed to post content
2 to Internet Archive's website?

3 MS. LU: Objection, vague and ambiguous.

4 MR. HUDIS:

5 Q. You may answer.

6 A. Upon signing up for an account, an
7 individual is presented with a check box that
8 indicates that they've read and agreed to these
9 terms of use.

10 Q. And they have to click on that before they
11 can go on to post?

12 MS. LU: Vague and ambiguous.

13 MR. HUDIS:

14 Q. You may answer.

15 A. That is correct.

16 Q. What type of oversight, if any, does
17 Internet Archive have over these outside
18 nonemployee individuals who publish content to
19 Internet Archive's website?

20 MS. LU: Objection --

21 MS. AHMAD: Objection, vague and
22 ambiguous.

23 MS. LU: And argumentative.

24 MR. HUDIS: Okay.

25 Q. When an outside individual or company

1 publishes content to Internet Archive's website, do
2 you monitor the content before it's posted?

3 MS. LU: Objection, assumes facts not in
4 evidence.

5 MR. HUDIS:

6 Q. You may answer.

7 MS. LU: Vague and ambiguous.

8 THE WITNESS: A general user account's
9 posts are not reviewed prior to their -- their
10 being posted and automatically processed by the
11 archive.org website.

12 MR. HUDIS:

13 Q. Is the content reviewed by Internet
14 Archive after posting?

15 A. The content is not reviewed unless it's
16 brought to our specific attention.

17 Q. By whom?

18 A. It may be brought to our attention by any
19 number of individuals. It could be somebody who
20 e-mailed us to our info@archive.org e-mail address.
21 It could be somebody who called about the -- the
22 material. Typically, it's a user of the website.
23 Occasionally, it may be someone who has a complaint
24 about the material.

25 Q. Does Internet Archive have a policy, if

1 any, about monitoring outside uploaded content to
2 its website?

3 MS. LU: Objection, vague and ambiguous.

4 MR. HUDIS:

5 Q. You may answer.

6 A. I'm not aware of any policy.

7 Q. What is the process by which a nonemployee
8 individual would post content onto Internet
9 Archive's website?

10 MS. LU: Objection, lacks personal
11 knowledge.

12 THE WITNESS: Generally, their user
13 account would be used to -- to upload material.
14 They would have an opportunity to submit files and
15 metadata pertaining to those files to be posted on
16 one of our standard details pages.

17 MR. HUDIS:

18 Q. And before they start the process of
19 uploading to a details page, they have to log in?

20 A. That's correct.

21 Q. And they have a user name and password?

22 A. That's correct.

23 Q. And that would have to be authenticated by
24 Internet Archive before they could proceed with the
25 upload?

1 A. Yes.

2 Q. When the material -- once the material is
3 uploaded, is there any formatting of the material
4 done in order for it to reside on Internet
5 Archive's website?

6 MS. LU: Objection, vague and ambiguous.

7 MR. HUDIS:

8 Q. You may answer.

9 A. Can you define "formatting"?

10 Q. Yes. To put it in a form such that it can
11 be viewed on Internet Archive's website.

12 MS. LU: Objection, vague and ambiguous.

13 THE WITNESS: Certain file types may
14 automatically trigger the system to create
15 derivative file formats. For instance, a text
16 document may be supplied in a PDF format, and the
17 system may automatically generate other formats of
18 that text, including an EPUB file. E-P-U-B is the
19 spelling. A format called DjVu. D-j-V-u-is the
20 file extension. Also, a plain text file.

21 MR. HUDIS:

22 Q. And is that formatting done automatically
23 by Internet Archive's computer systems?

24 A. It is.

25 Q. So that we have a basic working definition

1 so I don't have to completely define this over and
2 over again, I'm going to refer to a submitter as an
3 outside, nonemployee person or organization. Okay?

4 A. Okay.

5 Q. All right. Does Internet Archive process
6 documents after they are posted by a submitter?

7 MS. LU: Objection, vague and ambiguous.

8 MR. HUDIS:

9 Q. You may answer.

10 A. If creating derivative file formats and
11 arranging the item -- the submitted files so that
12 they may be viewed on a web page along with the
13 submitted metadata is considered processing, those
14 are things that the Internet Archive's website
15 performs.

16 Q. You just anticipated my next question.

17 And that process is done automatically?

18 A. That's correct.

19 Q. So we have a working definition, what is a
20 URL?

21 A. A URL is the address that corresponds to a
22 web page. It may correspond to a web page.

23 Technically it, as I understand it, it generally
24 corresponds to a location on a web server.

25 Q. Does Internet Archive control the URL name

1 and location structure of materials posted to its
2 website by submitters?

3 MS. LU: Objection, vague and ambiguous.

4 THE WITNESS: Can you reread the question,
5 please?

6 MR. HUDIS:

7 Q. Does Internet Archive control the URL name
8 or location structure of materials posted to
9 Internet Archive's website by submitters?

10 MS. LU: Objection, lack of personal
11 knowledge.

12 MS. AHMAD: Objection, vague as to
13 "control."

14 MR. HUDIS: Q. I'll give you an example
15 of what I mean.

16 In our subpoena of Exhibit 1, deposition
17 subpoena, Exhibit A-1 to deposition Exhibit 1, has
18 a URL associated with the posting of the
19 1999 standards to Internet Archive's website and it
20 reads as follows --

21 MS. LU: What page are you on, Jonathan?

22 I'm afraid this might be a little
23 confusing for the record.

24 MR. HUDIS: And I will read the URL into
25 the record: <https://archive.org/details/gov.law>.

1 aera.standards.1999."

2 Q. Mr. Butler, when the material posted to
3 Internet Archive's website on Exhibit A-1 of
4 deposition Exhibit 1 was put there, who created the
5 name of this URL at the bottom left-hand corner?

6 MS. LU: Objection, vague and ambiguous
7 and lack of personal knowledge.

8 THE WITNESS: The prefix
9 "archive.org/details" is the default URL prefix
10 assigned by the archive.org website. The following
11 text is what we call the identifier. That is
12 something that is submitted by the submitter.

13 MR. HUDIS:

14 Q. Mr. Butler, to the best of your knowledge,
15 what is Public.Resource.Org, Inc., which I will
16 refer to for the rest of this deposition as Public
17 Resource?

18 MS. LU: Objection, lack of personal
19 knowledge.

20 MR. HUDIS:

21 Q. You may answer to the extent you know.

22 A. What I know about Public.Resource.Org is
23 that it makes available government documents to the
24 public, and that's part of its mission.

25 Q. And how do you know about Public Resource?

1 A. I know about Public.Resource.Org through
2 their posting of material on archive.org.

3 Q. That's the other name of Internet
4 Archive's website?

5 A. That's correct.

6 Q. What else, if anything, do you know about
7 Public Resource?

8 MS. AHMAD: Objection, vague and
9 ambiguous.

10 MR. HUDIS:

11 Q. Other than its posting of what you call
12 government documents on internetarchive.org's
13 website, what else, if anything, do you know about
14 Public Resource?

15 A. I believe that that -- that generally
16 covers what I know about Public Resource.

17 Q. Do you know Carl Malamud?

18 A. Yes.

19 Q. How do you know him?

20 A. I've met him on brief occasion when he was
21 at Internet Archive.

22 Q. And why did Carl Malamud visit Internet
23 Archive?

24 MS. LU: Objection, lack of personal
25 knowledge.

1 THE WITNESS: The instance when I met him,
2 he was speaking at a public function that Internet
3 Archive was hosting. It was a memorial service for
4 Aaron Swartz.

5 MR. HUDIS:

6 Q. Who was Aaron Swartz?

7 MS. LU: Objection, relevance.

8 THE WITNESS: Aaron Swartz was a public
9 figure and former employee of Internet Archive.

10 MR. HUDIS:

11 Q. Other than speaking at this memorial
12 function, do you remember any other times that
13 Mr. Malamud visited Internet Archive when you were
14 present?

15 A. Yes. Perhaps a total of four or five
16 times.

17 Q. What were the purpose of those visits?

18 A. I don't know.

19 Q. Did he make any speeches other than the
20 one at the memorial service?

21 MS. LU: Objection, lack of personal
22 knowledge.

23 THE WITNESS: I'm not aware of any.

24 MR. HUDIS:

25 Q. Do you know what the nature of his

1 meetings at Internet Archive was those other four
2 or five times?

3 A. No.

4 Q. What else do you know about Mr. Malamud?

5 MS. AHMAD: Objection, outside the scope
6 of the deposition topics.

7 MR. HUDIS:

8 Q. You may answer.

9 A. I know he's involved with Public Resource.

10 Q. That was my next question.

11 What, if anything, do you know about
12 Mr. Malamud's relationship to Public Resource?

13 A. As I understand it, he -- he's very
14 central at Public Resource. I don't know his exact
15 title and responsibilities at the organization.

16 Q. Is that the extent of your knowledge of
17 the relationship between Mr. Malamud and Public
18 Resource?

19 A. Yes.

20 Q. Is Public Resource allowed to post content
21 to Internet Archive's website?

22 A. Yes.

23 Q. Is Carl Malamud allowed to post content
24 into Internet Archive's website?

25 A. Yes.

1 MS. LU: Objection, vague and ambiguous.

2 MR. HUDIS:

3 Q. When was Public Resource given access to
4 publish content to Internet Archive's website?

5 MS. LU: Vague and ambiguous.

6 THE WITNESS: I don't know.

7 MR. HUDIS:

8 Q. When was Carl Malamud given access to post
9 content to Internet Archive's website?

10 MS. LU: Lack of personal knowledge, vague
11 and ambiguous.

12 MR. HUDIS:

13 Q. You may answer.

14 A. I don't know.

15 Q. Is there a formal agreement between
16 Internet Archive and Public Resource that
17 memorializes, if there is one, posting rights to
18 the Internet Archive website?

19 MS. LU: Objection, lack of personal
20 knowledge, assumes facts not in evidence.

21 MR. HUDIS:

22 Q. You may answer.

23 A. If a -- if a user account was set up
24 through the -- through the site and our terms of
25 use were agreed to, then our terms of use would

1 fall under that description. I'm not aware of any
2 other agreements.

3 Q. Do you know whether the terms of use were
4 agreed to by Public Resource or Carl Malamud or
5 both?

6 MS. LU: Objection, lack of personal
7 knowledge, assumes facts not in evidence.

8 MR. HUDIS:

9 Q. You may answer if you know.

10 A. I don't know.

11 Q. Other than the terms of use of Exhibit 5,
12 you said there was no formal agreement between
13 Public Resource or Carl Malamud and Internet
14 Archive for posting rights.

15 Was there any informal agreement?

16 MS. LU: Objection, misstates prior
17 testimony.

18 MR. HUDIS:

19 Q. You may answer.

20 A. Can you define "posting rights"?

21 Q. Permission to upload content to Internet
22 Archive's website.

23 A. I'm not aware of any.

24 MR. HUDIS: Off the record.

25 VIDEO OPERATOR: The time is 10:33 a.m.

1 We are off the record.

2 (Discussion off the record.)

3 (Plaintiffs' Exhibit 6 marked for
4 identification.)

5 VIDEO OPERATOR: The time is 10:41 a.m.

6 We are on the record.

7 Mr. HUDIS: I've now marked as Exhibit 6 a
8 web page with different views which I will discuss
9 with the witness in a moment. It's a total of
10 eight pages.

11 Q. Mr. Butler, what we did -- it's on the
12 date stamped up in the upper left-hand corner,
13 March 14, 2014.

14 The way that we understand the material
15 which we call the 1999 standards was uploaded to
16 Internet Archive's website. The material in this
17 frame here, showing the witness, has the ability so
18 that electronically you read it like a book.

19 So we took a first shot of the web page
20 with the first page of the '99 standards, and then
21 the second page which is the front cover of the
22 '99 standards, and then we took another shot,
23 screenshot, of the inside cover and copyright page,
24 and then finally the table of contents.

25 Do you see that?

1 A. Yes.

2 Q. So these are, in fact, different shots of
3 the same page with different turns, electronically,
4 of the book.

5 Do you understand that?

6 A. I understand.

7 Q. Okay. So --

8 MS. AHMAD: Yes. So you should answer
9 questions about this exhibit assuming that that
10 description is accurate.

11 THE WITNESS: I understand.

12 MR. HUDIS:

13 Q. Mr. Butler, do you recognize Exhibit 6 as
14 a web page from Internet Archive's website that
15 existed at one time?

16 MS. LU: Objection, lack of personal
17 knowledge.

18 THE WITNESS: This has the layout of an
19 Internet Archive details page. I recognize it as
20 the layout and design of an Internet Archive
21 details page.

22 MR. HUDIS:

23 Q. Do you know what material is posted on
24 this web page of Exhibit 6?

25 MS. LU: Objection, lack of personal

1 knowledge.

2 THE WITNESS: I see a title for the
3 material.

4 MR. HUDIS:

5 Q. What title is that?

6 A. The title is "AERA: Standard for
7 Educational and Psychological Testing," and then
8 there's a date in parentheses following that,
9 "1999."

10 Q. According to this exhibit, the bottom of
11 the second page, who posted the 1999 standards to
12 this web page?

13 MS. LU: Objection, lack of personal
14 knowledge.

15 THE WITNESS: On the -- on the second
16 page, I see a metadata tag entitled, "Credits" that
17 reads "Uploaded by Public.Resource.Org."

18 As I understand the function of our
19 website, the submitter would have submitted that
20 tag and the text displayed beside it, reading
21 "Uploaded by Public.Resource.Org."

22 MR. HUDIS: Counsel, can you stipulate
23 that Exhibit 6 is a business record of Internet
24 Archive that existed at one time, at least on
25 March 14th, 2014?

1 MS. AHMAD: No, I can't.

2 MR. HUDIS:

3 Q. On the second page of Exhibit 6, it says,
4 "Identifier-access."

5 Do you see that?

6 A. Yes.

7 Q. Based upon your knowledge of an Internet
8 Archive details page, who created this identifier
9 access string?

10 MS. LU: Objection, vague and ambiguous,
11 lack of personal knowledge.

12 MR. HUDIS:

13 Q. You may answer.

14 A. I don't know. I don't know whether a
15 submitter would have created that or whether the
16 Internet Archive's automated processes created it.

17 Q. To the best of your knowledge it's one or
18 the other?

19 MS. LU: Objection, lack of personal
20 knowledge.

21 THE WITNESS: To the best of my knowledge,
22 it would either have been performed by Internet
23 Archive's automated processes or an account holder
24 with requisite permission to edit this item's
25 metadata.

1 MR. HUDIS:

2 Q. To the best of your knowledge, if you
3 could look on Page 1, beneath the -- beneath the
4 frame containing the 1999 standards, who wrote the
5 text under where it says, "Description"?

6 MS. LU: Objection, lack of personal
7 knowledge.

8 THE WITNESS: The service requires a
9 description to be provided by the submitter at the
10 time of upload. That information may subsequently
11 be edited by an account that has permissions to do
12 so.

13 MR. HUDIS:

14 Q. And in this context, that account would
15 have been by Public.Resource.Org?

16 MS. LU: Objection, lack of personal
17 knowledge and argumentative.

18 THE WITNESS: Sorry, could you repeat the
19 question, please?

20 MR. HUDIS:

21 Q. Yes, yes.

22 Is it correct to say that the text on this
23 web page of Exhibit 6, beneath the frame containing
24 the 1999 standards, was provided by the submitter?

25 MS. LU: Objection, lack of personal

1 knowledge, vague and ambiguous.

2 THE WITNESS: In the instance of the item
3 with this identifier, our records show that the
4 description was provided by the submitter.

5 MR. HUDIS:

6 Q. Who was the submitter, to the best of your
7 knowledge, looking at this exhibit?

8 MS. LU: Objection, lack of personal
9 knowledge, vague and ambiguous.

10 THE WITNESS: Our records list an account,
11 a user account, as the submitter for this -- for
12 the item with this identifier.

13 MR. HUDIS:

14 Q. And do you know whose account that is?

15 MS. LU: Objection, lack of personal
16 knowledge, vague and ambiguous.

17 THE WITNESS: The -- I know that the user
18 account is associated with an e-mail address which
19 is carl@media.org.

20 MR. HUDIS:

21 Q. Do you know whether carl@media.org is Carl
22 Malamud's e-mail address?

23 MS. LU: Objection, lack of personal
24 knowledge.

25 THE WITNESS: I recognize that e-mail

1 address as Carl Malamud's e-mail address.

2 MR. HUDIS:

3 Q. At the bottom of Page 1 of Exhibit 6, it
4 says, "Downloaded 1,113 times."

5 What does that downloaded number reflect?

6 MS. LU: Objection, lack of personal
7 knowledge.

8 THE WITNESS: That number, the -- the
9 downloaded number?

10 MR. HUDIS:

11 Q. Yes.

12 A. Is the same as the download account to
13 which we referred earlier today.

14 MR. HUDIS: Off the record.

15 VIDEO OPERATOR: The time is 10:50 a.m.,
16 and we are off the record.

17 (Discussion off the record.)

18 (Plaintiffs' Exhibit 7 marked for
19 identification.)

20 VIDEO OPERATOR: The time is 10:52 a.m.,
21 and we are on the record.

22 MR. HUDIS:

23 Q. I've marked as deposition Exhibit 7 a
24 document that is a single page entitled, "Item
25 History for gov.law.aera.standards.1999."

1 MS. LU: Can you say that again?

2 MR. HUDIS: Okay, I'll do it again.

3 MS. LU: Jonathan, if you could repeat the
4 Bates number on that.

5 MR. HUDIS: Sure. I'll do both.

6 It's a document that's named at the top,
7 "Item History for gov.law.aera.standards.1999."
8 Bears production number IA-AERA-036.

9 Q. Mr. Butler, I'll show you again what's
10 been marked as Exhibit 2 which is the document
11 subpoena. Please look at items 1 through 4 for a
12 minute.

13 A. Okay.

14 Q. Thank you, Mr. Butler.

15 In order to comply with the document
16 subpoena, or Exhibit 2, who at Internet Archive
17 searched your company's records to determine how
18 the 1999 standards were posted to the Internet
19 Archive's website?

20 MS. LU: Objection, assumes facts not in
21 evidence and argumentative.

22 MR. HUDIS:

23 Q. You may answer.

24 A. Would you read that for me, please?

25 Q. Sure. In order to comply with our

1 document subpoena of Exhibit 2, you've read items 1
2 through 4.

3 Who at Internet Archive searched your
4 company's records to determine how the
5 1999 standards were posted to your company's
6 website?

7 A. I did.

8 Q. Mr. Butler, I now show you Exhibit 7 and
9 ask you if you recognize the document.

10 A. Yes.

11 Q. What is it?

12 A. This document is a history showing a
13 summary of all of the technical tasks submitted for
14 the item with the identifier gov.law.aera.
15 standards.1999.

16 Q. And how is the results of that search in
17 any way related to the content of Exhibit 6?

18 MS. LU: Objection, lack of personal
19 knowledge.

20 THE WITNESS: This is Exhibit 6?

21 MR. HUDIS: Yes.

22 MS. LU: Let the record reflect the
23 witness was pointing to what I believe is Page 2 of
24 8 of Exhibit 6.

25 MR. HUDIS: Yes. It's my copy.

1 THE WITNESS: And would you repeat
2 question, please?

3 MR. HUDIS:

4 Q. Yes. And I will state it a different way.

5 Is Exhibit 7 the results of a search to
6 determine who posted the content on the web page of
7 Exhibit 6?

8 MS. LU: Objection, lack of personal
9 knowledge.

10 THE WITNESS: The Exhibit 7 is a result of
11 a search to determine who posted the item
12 associated with the URL listed on the printout for
13 Exhibit 6.

14 MR. HUDIS:

15 Q. And what was the results of that search?

16 MS. LU: Objection, vague and ambiguous.

17 THE WITNESS: One document located was
18 the -- the item history that is Exhibit 7.

19 MR. HUDIS: Counsel for Internet Archive,
20 can you stipulate that Exhibit 7 is a business
21 record of Internet Archive?

22 MS. AHMAD: Yes.

23 MS. LU: No objection.

24 MR. HUDIS: No objection, okay.

25 Q. And you performed the search, the results

1 of which are reflected as Exhibit 7?

2 A. Yes, I -- I clicked the link to get to
3 this history page.

4 MR. HUDIS: Off the record.

5 VIDEO OPERATOR: The time is 10:57 a.m.,
6 and we are off the record.

7 (Discussion off the record.)

8 (Plaintiffs' Exhibit 8 marked for
9 identification.)

10 VIDEO OPERATOR: The time is 10:59 a.m.,
11 and we are on the record.

12 MR. HUDIS: I now mark as Exhibit 8 a
13 multipage document bearing the production numbers
14 IA-AERA 5 through 34.

15 MS. LU: And I'll just state for the
16 record that it appears to me that this is actually
17 several documents that were produced consecutively
18 and now are entered as one exhibit together. Is
19 that --

20 MR. HUDIS: That is correct, Counsel.

21 Q. Mr. Butler, do you recognize the
22 collection of documents now marked as Exhibit 8?

23 A. Yes.

24 Q. What are they?

25 A. These documents are the logs for -- for

1 the tasks that are summarized in the item history.
2 They represent the technical tasks submitted for
3 the item with identifier gov.law.aera.standards
4 .1999.

5 Q. Is it correct to say that the search
6 summary of Exhibit 7 resulted in retrieval of the
7 logs of Exhibit 8?

8 MS. LU: Objection, vague and ambiguous.

9 THE WITNESS: I was able to access the
10 logs of Exhibit 8 through hyperlinks that were
11 available on the page for Exhibit 7.

12 MR. HUDIS: Counsel, can you stipulate
13 that Exhibit 8 is a collection of the business
14 records of Internet Archive?

15 MS. AHMAD: Yes.

16 MR. HUDIS: Any objection, Counsel?

17 MS. LU: No objection.

18 MR. HUDIS:

19 Q. Mr. Butler, how does -- how long does
20 Internet Archive maintain logs of the type shown in
21 Exhibit 8?

22 MS. LU: Objection, lack of personal
23 knowledge.

24 THE WITNESS: As a general practice, these
25 logs are not deleted unless the item itself is

1 deleted.

2 MR. HUDIS:

3 Q. And when you say "the item itself," what
4 do you mean?

5 MS. LU: Objection, vague and ambiguous.

6 MR. HUDIS:

7 Q. Do you mean the item of Exhibit 6?

8 MS. LU: Objection, vague and ambiguous,
9 argumentative.

10 THE WITNESS: By "item," I mean the -- the
11 collection of files and metadata that are posted
12 associated with a URL archive.org/details/ the
13 identifier.

14 MR. HUDIS:

15 Q. And you were able to retrieve these logs
16 of Exhibit 8 associated with the identifier
17 gov.law.aera.standards.1999?

18 A. That's correct.

19 Q. So the item has not yet been deleted from
20 Internet Archive's website?

21 MS. LU: Objection, vague and ambiguous.

22 MR. HUDIS:

23 Q. You may answer.

24 A. That's correct.

25 Q. From where did you gather the logs of

1 Exhibit 8?

2 A. The logs of Exhibit 8 were gathered from
3 Internet Archive's servers that serve the site
4 archive.org.

5 Q. Who at Internet Archive maintains those
6 servers?

7 MS. LU: Objection, lack of personal
8 knowledge.

9 MR. HUDIS:

10 Q. If you know.

11 A. Internet Archive's engineers maintain
12 those servers.

13 Q. Who has access to those servers?

14 MS. LU: Objection, lack of personal
15 knowledge.

16 THE WITNESS: Internet Archive's
17 engineers.

18 MR. HUDIS:

19 Q. Internet engineers?

20 MS. LU: Objection.

21 MR. HUDIS:

22 Q. What type of engineers have access to
23 these servers?

24 MS. LU: Objection, lack of personal
25 knowledge, and vague and ambiguous.

1 MR. HUDIS:

2 Q. You may answer.

3 A. Internet Archive's Petabox team is the
4 name of the team.

5 Q. Could you spell Petabox?

6 A. Yes. P-e-t-a-b-o-x.

7 Q. And who comprises Internet Archive's
8 Petabox team?

9 A. Several engineers who work with data
10 clusters, physical hardware and also support the --
11 the back end of Internet Archive, of the
12 archive.org website.

13 Q. So, generally, the Petabox team is
14 comprised of computer hardware and software
15 engineers?

16 A. That's correct.

17 Q. What tool was used to extract these logs
18 of Exhibit 8?

19 MS. LU: Objection, lack of personal
20 knowledge.

21 THE WITNESS: I obtained these records
22 through the web browser Firefox.

23 MR. HUDIS:

24 Q. And through the Firefox web browser, did
25 you use the Mac Terminal application?

1 MS. LU: Objection, incomprehensible.
2 Misstates prior testimony. Facts not in evidence.

3 MR. HUDIS:

4 Q. Besides the Firefox web browser, what
5 other tools, if any, did you use to procure the
6 logs of Exhibit 8?

7 MS. LU: Objection, lack of personal
8 knowledge.

9 THE WITNESS: The -- I used the Firefox
10 web browser with the site archive.org to -- to
11 obtain these -- these records from archive.org's
12 records of the task history of the item.

13 MR. HUDIS:

14 Q. And the task history is Exhibit 7?

15 A. Yes, the -- the summary is Exhibit 7 and
16 then the specific tasks are Exhibit 8.

17 Q. Now, in Exhibit 7, it says, "submitter
18 carl@media.org."

19 You associate that -- that e-mail address
20 with Carl Malamud?

21 A. Yes.

22 Q. Looking at the logs of Exhibit 8, at the
23 top of each grouping of pages, first grouping is
24 three pages, the second grouping is thirteen pages,
25 the third grouping is two pages, the fourth

1 grouping is three pages, the fifth grouping is two
2 pages, the sixth grouping is five pages, and the
3 final grouping is two pages.

4 Each one of them has a task ID at the
5 upper left-hand corner. Do you see that?

6 A. Yes.

7 Q. How did you determine which tasks to
8 search for?

9 MS. LU: Objection, misstates prior
10 testimony.

11 THE WITNESS: I obtained the task -- the
12 task logs by selecting the hyperlink for each task
13 under "task id" on Exhibit 7.

14 MR. HUDIS:

15 Q. Now, each of these documents of Exhibit 8
16 includes a line that states, "submitter
17 carl@media.org."

18 This is the e-mail associated with Carl
19 Malamud?

20 A. Yes.

21 Q. And Mr. Malamud has access to Internet
22 Archive's system by a user name and password?

23 MS. LU: Objection, lack of personal
24 knowledge.

25 THE WITNESS: Yes, I understand this

1 account to be associated with Carl Malamud.

2 MR. HUDIS:

3 Q. And he accesses Internet Archive's systems
4 for upload purposes by a user name and password?

5 MS. LU: Objection, lack of personal
6 knowledge, calls for speculation.

7 THE WITNESS: Would you say the question
8 one more time, please?

9 MR. HUDIS: Yes.

10 Q. How does Mr. Malamud gain access to
11 Internet Archive's systems to submit a post?

12 MS. LU: Objection, lack of personal
13 knowledge, calls for speculation.

14 THE WITNESS: In the instance of this
15 item, it would be through the use of -- this item
16 was submitted through the user account associated
17 with carl@media.org and was used by submission
18 of -- and gained access by submission of the e-mail
19 address and log-in credentials.

20 Q. What are log-in credentials?

21 A. Log-in credential would be an e-mail
22 address and password.

23 Q. Did Internet Archive monitor the materials
24 posted to its servers as reflected by these logs of
25 Exhibit 8?

1 MS. LU: Objection, vague and ambiguous,
2 lack of personal knowledge.

3 MR. HUDIS:

4 Q. You may answer.

5 A. One more time, please.

6 Q. Yes. Did Internet Archive monitor the
7 materials posted to its servers as reflected by
8 these logs of Exhibit 8?

9 A. To the best of my knowledge, no person
10 working on behalf of Internet Archive monitored --
11 personally reviewed the processes at work for each
12 one of these tasks.

13 Q. And after the material was posted, did
14 Internet Archive exercise any quality control of
15 the materials once submitted?

16 MS. LU: Objection, lack of personal
17 knowledge. And vague and ambiguous.

18 THE WITNESS: To the best of my knowledge,
19 no.

20 MR. HUDIS:

21 Q. And according to Exhibit 8, when did you
22 search for these logs?

23 A. According to Exhibit 8, the search was
24 performed on October 30th, 2014 at 9:40:49 Pacific
25 time.

1 Q. Thank you for a precise answer.

2 A. You're welcome.

3 Q. What are the dates of these logs?

4 MS. LU: Objection, vague and ambiguous.

5 MR. HUDIS: All right.

6 Q. Can you tell from Exhibit 8 the dates of
7 these logs on Exhibit 8?

8 MS. LU: Objection, vague and ambiguous.

9 MR. HUDIS: Okay.

10 Q. Do you want to go through them one at a
11 time?

12 A. There's a -- there's a line at the
13 beginning of each log that reads, "Task started at"
14 that has a record -- has Internet Archive's record
15 of the time of submission for each task.

16 Q. And then at the end of each log is there a
17 time of finish?

18 A. Yes.

19 Q. So, the first task, 107010707, what time
20 was this task started?

21 MS. LU: Objection, lack of personal
22 knowledge.

23 THE WITNESS: The task log states the task
24 was started on May 26, 2012 at 11:48 a.m. Pacific
25 time.

1 MR. HUDIS:

2 Q. Let's go to task No. 107010788. That's on
3 Page -- production Page 8.

4 What time was this task started?

5 MS. LU: Objection, lack of personal
6 knowledge.

7 THE WITNESS: I can only state that our
8 record -- our record states that the task was
9 started at the same date, May 26th, 2012, at
10 11:48 a.m. Pacific time.

11 MR. HUDIS:

12 Q. And if we go to production Page 21 of
13 Exhibit 8, when was task 107019567 started?

14 MS. LU: Objection, lack of personal
15 knowledge.

16 THE WITNESS: Again, I only have the
17 record created by our system. That record states
18 the task was started at -- on the same date,
19 May 26th, 2012, at, let's see, 1:07 Pacific time.
20 1:07 p.m.

21 MR. HUDIS:

22 Q. And if you could turn to page --
23 production Page 23 of Exhibit 8, what time was task
24 107034141 started?

25 MS. LU: Objection, lack of personal

1 knowledge.

2 THE WITNESS: The task log reads that the
3 task started on the same date, May 26th, 2012, at
4 4:46 p.m. Pacific time.

5 MR. HUDIS:

6 Q. Mr. Butler, please turn to Page 26 of
7 Exhibit 8.

8 What time was task 107040689 started?

9 MS. LU: Objection, lack of personal
10 knowledge.

11 THE WITNESS: The task log states that the
12 task was started on May 27th, 2012, at 6:43 p.m.
13 Pacific time.

14 MR. HUDIS:

15 Q. Mr. Butler, please turn to Page 28 of
16 Exhibit 8.

17 Task No. 107040792, according to your
18 records, when did this task start?

19 MS. LU: Objection, lack of personal
20 knowledge.

21 THE WITNESS: The task log reads that the
22 task started on May 27th, 2012 at 6:43 p.m. Pacific
23 time.

24 MR. HUDIS:

25 Q. Mr. Butler, please turn to Page 33 of

1 Exhibit 8.

2 What time did Task ID 107040809 start?

3 MS. LU: Objection, lack of personal
4 knowledge.

5 THE WITNESS: The task log reads that the
6 task started at -- on May 27th, 2012 at 6:44 p.m.
7 Pacific time.

8 MS. AHMAD: Let's take a break.

9 MR. HUDIS: Yes.

10 VIDEO OPERATOR: This marks the end of
11 volume 1, disk 1 in the deposition of Chris Butler.
12 the time is 11:16 a.m. We're off the record.

13 (Brief recess.)

14 VIDEO OPERATOR: This marks the beginning
15 of volume 1, disk 2 in the deposition of Chris
16 Butler. The time is 11:24 a.m., and we are on the
17 record.

18 MR. HUDIS:

19 Q. Mr. Butler, each of these logs of
20 Exhibit 8 reflects a process of content submission
21 by Mr. Malamud or somebody using his credentials?

22 MS. LU: Objection, lack of personal
23 knowledge, and misstates prior testimony.

24 MR. HUDIS:

25 Q. You may answer.

1 A. What was the question again, please?

2 MR. HUDIS:

3 Q. Yes. Do the logs of Exhibit 8 reflect the
4 activity of submitting content to Internet
5 Archive's website by Carl Malamud or somebody using
6 his log-in credentials?

7 MS. LU: Objection, lack of personal
8 knowledge, assumes facts not in evidence.

9 THE WITNESS: The -- these records --

10 MR. HUDIS: Of Exhibit 8.

11 THE WITNESS: -- of Exhibit 8 reflect the
12 tasks submitted for -- for this item.

13 MR. HUDIS:

14 Q. What item is that?

15 A. The item is gov.law.aera.standards.1999.

16 Q. Uh-huh.

17 A. The record of the submitter in -- in these
18 logs is the account associated with the e-mail
19 address carl@media.org.

20 Q. Which you associate with Carl Malamud?

21 MS. LU: Objection, misstates prior
22 testimony.

23 THE WITNESS: I associate the e-mail
24 address carl@media.org with Carl Malamud.

25 MR. HUDIS:

1 Q. And each of these logs reflect processes
2 that were performed on May 26th and May 27th of
3 2012?

4 MS. LU: Objection, lack of personal
5 knowledge.

6 THE WITNESS: The question one more time,
7 please.

8 MR. HUDIS: Yes.

9 Q. Each of these logs reflects processes that
10 were performed on May 26th and May 27th, 2012?

11 A. The logs list the dates that these were
12 performed as May 27th -- May 26th and May 27th of
13 2012.

14 Q. Each of these documents of Exhibit 8 is a
15 log that resulted from a command being run on
16 Internet Archive's web servers?

17 MS. LU: Objection, lack of personal
18 knowledge.

19 THE WITNESS: The question one more time,
20 please.

21 MR. HUDIS: Yes.

22 Q. Each of these documents of Exhibit 8 is a
23 log that resulted from a command being run on
24 Internet Archive's servers?

25 MS. LU: And also add, vague and ambiguous

1 objection.

2 THE WITNESS: This is the Internet
3 Archive's log of the -- of the tasks submitted,
4 including commands submitted to Internet Archive's
5 website for the identifier previously mentioned.

6 MR. HUDIS:

7 Q. And each of these logs has a command line
8 that is reflected by the line [cmd] right arrow, do
9 you see that?

10 MS. LU: Counsel, sorry, where are you,
11 on which page of which --

12 MR. HUDIS: According to Page 5 of
13 Exhibit 8, the command line.

14 MS. LU: I think, for the record, you're
15 talking about [cmd] two equal signs and then
16 greater than symbol?

17 MR. HUDIS: Yes, which I define as right
18 arrow.

19 Q. Do you see that?

20 A. Yes.

21 Q. And if you go back to Exhibit 7, the
22 different commands that were performed starting
23 from the bottom are archive.php, derive.php,
24 bup.php, again twice archive.php, derive.php and
25 bup.php.

1 Do you see that?

2 A. Yes.

3 Q. And we will leave for later the last one
4 at the top, says, "make_dark." We'll leave that
5 for later.

6 Each of these commands has a "php" file
7 extension. Do you know what a "php" is?

8 MS. LU: Objection, lack of personal
9 knowledge.

10 THE WITNESS: I don't know what "php"
11 stands for. It's an extension that I've seen
12 associated with -- with web pages.

13 MR. HUDIS:

14 Q. Is it a scripting language, to the best of
15 your knowledge?

16 MS. LU: Objection, lack of personal
17 knowledge.

18 THE WITNESS: I don't know.

19 MR. HUDIS:

20 Q. Do you know where the php files are
21 stored?

22 MS. LU: Objection, lack of personal
23 knowledge, vague and ambiguous.

24 THE WITNESS: No.

25 MR. HUDIS:

1 Q. Do you know who wrote the php scripts?

2 MS. LU: Objection, lack of personal
3 knowledge.

4 THE WITNESS: No.

5 MR. HUDIS:

6 Q. Do you know if the php file extensions
7 were Carl Malamud's scripts?

8 MS. LU: Objection, lack of personal
9 knowledge, and vague and ambiguous.

10 THE WITNESS: I know that -- that these
11 commands that you see listed in the command
12 column --

13 MR. HUDIS: The witness is pointing --

14 THE WITNESS: -- on Exhibit 7 and also
15 listed by the bracketed command tag by the right
16 arrow previously mentioned are generic commands
17 that are associated with many, many items. They
18 are very common commands and functions of the
19 archive.org website.

20 MR. HUDIS:

21 Q. Looking at Exhibit 7, you see there is a
22 column that says "args," do you see that?

23 A. Yes.

24 Q. Do you know whether that stands for
25 arguments?

1 MS. LU: Objection, lack of personal
2 knowledge.

3 THE WITNESS: No.

4 MR. HUDIS:

5 Q. Do you know what arguments were supplied
6 for each of the commands for each of these logs so
7 that -- so that the process described in the log
8 would run?

9 MS. LU: Objection, lack of personal
10 knowledge, and vague and ambiguous.

11 THE WITNESS: There are records of -- of
12 information associated with the term "args" in
13 each -- in each task log.

14 MR. HUDIS:

15 Q. So, for example, looking at Exhibit 7,
16 does the submission of the argument
17 "done=delsrc&from_url=ry" -- excuse me, "rsyn..."
18 enable archive.php to run?

19 MS. LU: Objection, lack of personal
20 knowledge.

21 THE WITNESS: I don't know that that's
22 what enables archive.php to run.

23 MR. HUDIS:

24 Q. Looking at Exhibit 7, do you know what
25 each of these commands do?

1 MS. LU: Objection, lack of personal
2 knowledge, and vague and ambiguous.

3 THE WITNESS: I have a general
4 understanding of the function of each of these
5 commands.

6 MR. HUDIS:

7 Q. What does the archive.php command do?

8 A. Archive.php is associated with the
9 submission of files or information by a user to be
10 incorporated into the item and displayed, made
11 available with that item.

12 Q. Do you know why the archive.php command
13 was run three times?

14 MS. LU: Objection, lack of personal
15 knowledge. And objection, assumes facts not in
16 evidence.

17 THE WITNESS: Generally, the first
18 archive.php is associated with the submission of --
19 of a -- a file relating to a work that is a text or
20 movie or audio recording. It also contains
21 metadata that needs to be submitted with the
22 initiating task for an item.

23 Subsequent archive.php commands may
24 correspond to the submission of further files --
25 excuse me, further files for information to be

1 incorporated with the item.

2 MR. HUDIS:

3 Q. Do you know what the derive.php file does?

4 MS. LU: Objection, lack of personal
5 knowledge.

6 THE WITNESS: Derive.php is associated
7 with the creation of derivative file formats that
8 the archive.org website automatically generates
9 from the original file and -- and presents on the
10 item -- on the item's details page.

11 MR. HUDIS:

12 Q. On the website?

13 A. On archive.org.

14 Q. What does the bup.php command do?

15 MS. LU: Objection, lack of personal
16 knowledge.

17 THE WITNESS: "Bup" is associated with
18 creation of a backup of -- of the files, of the
19 item's files, as Internet Archive uses two copies,
20 creates and maintains two copies of a file in case
21 one server has issue that prevent those files from
22 being available.

23 MR. HUDIS:

24 Q. Do you know why the backup.php command was
25 run twice?

1 MS. LU: Objection, lack of personal
2 knowledge. And assumes facts not in evidence.

3 THE WITNESS: The backup.php command is
4 typically run after a change is made to an item,
5 and it is the updating of the backup copy.

6 MR. HUDIS:

7 Q. Mr. Butler, all of the logs produced by
8 Internet Archive which are now reflected in
9 Exhibit A have the identifier gov.law.area
10 .standards.1999. What is this?

11 MS. LU: Objection, lack of personal
12 knowledge, and misdescribes the documents.

13 THE WITNESS: The question is asking what
14 the identifier is?

15 MR. HUDIS:

16 Q. Yes.

17 A. The identifier is a string of characters
18 that is submitted with an item by the submitter
19 that is unique to the item and then is incorporated
20 into the URL for the public page for the item.

21 MR. HUDIS:

22 Q. And that in this instance is reflected in
23 Exhibit 6?

24 MS. LU: Objection, vague and ambiguous.

25 THE WITNESS: The same identifier listed

1 for the tasks on Exhibit 8 appears in the URL at
2 the bottom of the printouts for Exhibit 6.

3 MR. HUDIS:

4 Q. So if Mr. Malamud was the submitter in
5 this case, was it Mr. Malamud who named this
6 particular identifier "gov.law.aera.standards
7 .1999"?

8 MS. LU: Objection, lack of personal
9 knowledge, calls for speculation.

10 THE WITNESS: The records of the task log
11 state that the identifier submitted for this item
12 by the submitter is gov.law.aera.standards.1999.

13 MR. HUDIS:

14 Q. In each of the logs of Exhibit 8, there is
15 a line that says, "server."

16 Do you see that?

17 A. I see a line that begins with "server."

18 Q. All right. And then it follows with
19 "ia600500.us.archive.org."

20 What is this identifier?

21 MS. LU: Objection.

22 MR. HUDIS: Next to -- sorry, next to
23 "server"?

24 MS. LU: Objection, lack of personal
25 knowledge, vague and ambiguous.

1 THE WITNESS: The string of characters
2 next to "server" is the location of a server
3 maintained by Internet Archive that has a server
4 name of "ia600500."

5 MR. HUDIS:

6 Q. Do you know what is stored on this
7 particular server? The one you just named,
8 "ia600500"?

9 MS. LU: Objection, lack of personal
10 knowledge and misstates prior testimony.

11 THE WITNESS: Generally, servers
12 referenced in task logs store information posted to
13 archive.org's website.

14 MR. HUDIS:

15 Q. And if you notice, the server name for
16 task 107010707 is different from the server of the
17 task 107010788.

18 Do you see that?

19 MS. LU: Objection, vague and ambiguous.

20 THE WITNESS: Yes, I see a different
21 server name for these two tasks.

22 MR. HUDIS:

23 Q. What's -- if you know, what is the
24 difference between the server from the task
25 107010707 and the server of task 107010788?

1 MS. LU: Objection, lack of personal
2 knowledge, assumes facts not in evidence.

3 THE WITNESS: I don't know of a
4 substantial difference between these two servers.

5 MR. HUDIS:

6 Q. So if I were to go through the rest of the
7 logs of Exhibit 8 and there were different named
8 servers, you would not know the difference from one
9 server to the next?

10 MS. LU: Objection, assumes facts not in
11 evidence.

12 THE WITNESS: Correct.

13 MR. HUDIS:

14 Q. Mr. Butler, let's go back to Exhibit 6,
15 and that's the 1999 standards posted to Internet
16 Archive's website.

17 MS. LU: Objection, misstates prior
18 testimony.

19 MR. HUDIS:

20 Q. Do the logs of Exhibit 8 reflect Carl
21 Malamud or someone with his log-on credentials
22 posting the 1999 standards to Internet Archive's
23 website?

24 MS. LU: Objection, lack of personal
25 knowledge, calls for speculation, and misstates

1 prior testimony. And argumentative.

2 THE WITNESS: The logs in Exhibit 8 have a
3 recorded submitter of carl@media.org for the item
4 with the identifier gov.law.aera.standards.1999.
5 This is the same identifier that is listed at the
6 bottom of the printout for Exhibit 6.

7 MR. HUDIS:

8 Q. When the 1999 standards were posted to
9 Internet Archive's website in May of 2012, were any
10 other materials posted with them?

11 MS. LU: Objection, lack of personal
12 knowledge and relevance.

13 THE WITNESS: Can you define "materials"?

14 MR. HUDIS:

15 Q. Metadata.

16 A. The -- the task log indicates that a file
17 named "aera.standards.1999.pdf_meta.text" was
18 submitted. It also indicates that a file named
19 "gov.law.aera.standards.1999_meta.xml" was created.
20 Typically, these are associated with the submission
21 of metadata from a submitter.

22 Q. For what purpose?

23 MS. LU: Objection, lack of personal
24 knowledge, calls for speculation.

25 THE WITNESS: Generally, the -- the

1 metadata is submitted to archive.org and displayed.
2 Sometimes it has -- it has informational value for
3 the item. An example would be the submission of a
4 title for an item or an author.

5 MR. HUDIS:

6 Q. So, for example, on Exhibit 6, it says,
7 "Author: American Educational Research
8 Association."

9 Is that the type of metadata you were
10 talking about?

11 MS. LU: Objection, lack of personal
12 knowledge.

13 THE WITNESS: Yes, that would be an
14 example of metadata that would typically be
15 submitted by a submitter to be -- to be displayed,
16 along with a posted item.

17 MR. HUDIS:

18 Q. Did any Internet Archive employees have
19 any participation in posting the 1999 standards or
20 associated metadata to Internet Archive's website?

21 A. One more time, please.

22 Q. Sure. Did any Internet Archive employees
23 have any participation in posting the
24 1999 standards or associated metadata to Internet
25 Archive's website?

1 A. To the lack [sic] of my knowledge, no
2 Internet Archive employee directly participated in
3 the posting of this item to archive.org.

4 Q. What involvement, if any, did Internet
5 Archive have in the posting of the 1999 standards
6 or associated metadata to Internet Archive's
7 website?

8 MS. LU: Objection, vague and ambiguous.

9 THE WITNESS: The Internet Archive
10 website, according to this task log, appears to
11 have run standard automated processes responsive to
12 commands submitted by a submitter.

13 MR. HUDIS:

14 Q. Once posted by Mr. Malamud, where on
15 Internet Archive's website could the 1999 standards
16 be found? I'm talking about the URL.

17 MS. LU: Objection, assumes facts not in
18 evidence.

19 THE WITNESS: The -- the URL associated
20 with this identifier would be archive.org/details/
21 gov.law.aera.standards.1999.

22 MR. HUDIS:

23 Q. Was the uploaded metadata also posted to
24 this same URL?

25 MS. LU: Objection, lack of personal

1 knowledge.

2 THE WITNESS: It seems that a metadata
3 file was created and associated with the item. I
4 don't see any signs of -- of error in that process
5 from looking at these logs.

6 MR. HUDIS: So let's go through each one
7 of the logs one at time.

8 Q. What is happening -- this is in
9 Exhibit 8 -- in the log of task 107010707?

10 MS. LU: Objection, lack personal
11 knowledge, and vague and ambiguous. It calls for a
12 narrative.

13 THE WITNESS: Can you be more specific --

14 MR. HUDIS: Yes.

15 THE WITNESS: -- with the question?

16 MR. HUDIS:

17 Q. What function is being recorded by the log
18 of 107010707?

19 MS. LU: Same objections.

20 THE WITNESS: The log is associated with
21 an archive.php command which I understand to relate
22 to the submission of files and/or metadata.

23 MR. HUDIS:

24 Q. Now, you see below the definition of the
25 task, it says, "Getting file(s) from," and it gives

1 you a very long URL which starts with "rsync."

2 Do you see that?

3 A. Sorry, this is near the bottom of the
4 first page?

5 Q. Yes.

6 MR. HUDIS: May I point to the witness,
7 Counsel?

8 MS. AHMAD: Yes.

9 MR. HUDIS:

10 Q. So you see "Getting file(s)" and "Getting
11 file(s)"?

12 MS. LU: Objection, lack of personal
13 knowledge.

14 THE WITNESS: I see -- I see where the log
15 says, "Getting file(s)."

16 MR. HUDIS:

17 Q. Now, is that the URL from which the
18 document was uploaded?

19 MS. LU: Objection, lack of personal
20 knowledge.

21 THE WITNESS: This is a URL associated
22 with a submission of information to archive.org for
23 posting with the item.

24 MR. HUDIS:

25 Q. And the item, the first item is

1 1,825 bytes, do you see that?

2 MS. LU: Objection, lack of personal
3 knowledge.

4 THE WITNESS: I see a line that it states
5 that 1,825 bytes received.

6 MR. HUDIS:

7 Q. And the second "Getting file" then results
8 in a receipt of --

9 A. I see a line that states that 1,000,493 --
10 excuse me -- 14,934,120 bytes received.

11 Q. Does the log say received from where?

12 MS. LU: Objection, lack of personal
13 knowledge.

14 THE WITNESS: The notes indicating the --
15 or stating the receipts of this amount of
16 information directly -- directly follow tasks
17 stating that files are being retrieved from the
18 long URL following the term "rsync."

19 MR. HUDIS:

20 Q. Could you please turn to Page --
21 production Page 6 of Exhibit 8, the next page.

22 Now, you see towards the middle, it says,
23 "Now synchronizing item to the backup server."

24 Do you see that?

25 A. Yes.

1 Q. At how many locations are the
2 1999 standards stored within Internet Archive, if
3 know?

4 MS. LU: Objection, lack of personal
5 knowledge, assumes facts not in evidence.

6 THE WITNESS: Generally, items submitted
7 to archive.org are stored on two different servers.

8 MR. HUDIS:

9 Q. For what purpose?

10 MS. LU: Objection, lack of personal
11 knowledge.

12 THE WITNESS: As -- as I had stated
13 earlier, Internet Archive uses paired storage in
14 the instance that one server becomes inaccessible.

15 MR. HUDIS:

16 Q. Now, lower down on the same page,
17 production Page 6 of Exhibit 8, it says, "Deleting
18 from hd.www37," et cetera, et cetera,
19 "us.archive.org."

20 Why are these files being deleted?

21 MS. LU: Objection, lack of personal
22 knowledge, and assumes facts not in evidence.

23 THE WITNESS: I don't know exactly what
24 files are being deleted pursuant to this line.

25 MR. HUDIS: Let's turn to production

1 Page 8 of Exhibit 8. And we're now on the 13-page
2 task with the ID 107010788.

3 Q. What task is this log reflecting?

4 MS. AHMAD: Objection, lack of personal
5 knowledge.

6 THE WITNESS: This log is associated with
7 task No. 107010788. This task ID is associated
8 with a derive.php command both in the task log and
9 in the item history.

10 MR. HUDIS:

11 Q. And what function is being performed
12 according to this log which has a derive.php
13 command?

14 MS. LU: Objection, lack of personal
15 knowledge, assumes facts not in evidence.

16 THE WITNESS: Derive.php is associated
17 with the automated creation of derivative file
18 formats by the archive.org website.

19 MR. HUDIS:

20 Q. Do you know what the BookOp module does?

21 MS. LU: Objection, lack of personal
22 knowledge.

23 THE WITNESS: No, I don't know what that
24 specific -- I don't know what the BookOp module
25 does.

1 MR. HUDIS: Could we turn to production
2 Page 10 of Exhibit 8.

3 Q. Do you see towards the top of the page, it
4 says, "Heuristic Resolution Analysis"?

5 A. Yes.

6 Q. And underneath it, it says, "number of
7 pages in PDF: 211"?

8 A. Yes.

9 Q. Is this the PDF file corresponding to the
10 uploaded 1999 standards?

11 MS. LU: Objection, lack of personal
12 knowledge.

13 THE WITNESS: This task appears to be
14 being performed on a file named "aera.standards
15 .1999.pdf." The initial task for this item with
16 task No. 107010707 states that this file was
17 submitted to the item by the submitter.

18 MR. HUDIS:

19 Q. And my question from Page 10, Exhibit 8,
20 task 107010788 is, what was the size of that PDF
21 file?

22 MS. LU: Objection, lack of personal
23 knowledge.

24 THE WITNESS: The task history has a
25 reading that says that the PDF file has 211 pages.

1 MR. HUDIS:

2 Q. And if you could turn to Page 11 --
3 production Page 11 of Exhibit 8, do you know what
4 is happening where it says formatting gifs?

5 MS. LU: Objection, lack of personal
6 knowledge.

7 THE WITNESS: As clarification, the log
8 states "forming gifs."

9 MR. HUDIS: Thank you, "forming gifs."
10 Thank you.

11 THE WITNESS: This appears to be the
12 generation of random images taken from a submitted
13 text which are then displayed alongside the item.
14 This is a standard process performed for texts that
15 are posted to archive.org.

16 MR. HUDIS:

17 Q. Do you know what the AnimatedGIFT --
18 excuse me, the AnimatedGIF, G-I-F, module does?

19 MS. LU: Objection, lack of personal
20 knowledge.

21 THE WITNESS: AnimatedGIF module creates
22 random images from a submitted text to be displayed
23 alongside a posted text to archive.org.

24 MR. HUDIS:

25 Q. And what is the function of these random

1 images?

2 MS. LU: Objection, lack of personal
3 knowledge.

4 THE WITNESS: The random images, as I
5 understand it, are generated to -- to provide an
6 example of pages that may exist in a text.

7 MR. HUDIS:

8 Q. And do you know what the AbbyXML module
9 does?

10 MS. LU: Objection, lack of personal
11 knowledge.

12 THE WITNESS: As I understand it, the
13 AbbyXML module plays a role in generating a text
14 file, a plain text file, of a submitted text.

15 MR. HUDIS:

16 Q. Mr. Butler, could you turn to Page 13 of
17 Exhibit 8. At the bottom, it says, DjvuXML module.
18 Do you know what this module does?

19 MS. LU: Objection, lack of personal
20 knowledge.

21 THE WITNESS: As I understand it, this
22 module creates a derivative of the initially
23 submitted text in a -- that functions with a
24 special reader called a DjVu reader or deja vu
25 reader.

1 MR. HUDIS:

2 Q. Do you know what a DjVu reader does?

3 MS. LU: Objection, lack of personal
4 knowledge.

5 THE WITNESS: The extent of my knowledge
6 is that a -- a reader will display a -- a DjVu text
7 for -- for display for a user.

8 MR. HUDIS:

9 Q. On a website?

10 MS. LU: Objection, lack of personal
11 knowledge.

12 THE WITNESS: I'm afraid I don't recall if
13 it's used within a browser or if it's -- if it is
14 used as a stand-alone application.

15 MR. HUDIS:

16 Q. Looking at Exhibit 6, the top third of the
17 page, the 1999 standards were within a framed
18 document which I told you basically turns the
19 pages.

20 Do you know what kind of reader this is?

21 MS. LU: Objection, lack of personal
22 knowledge, and assumes facts not in evidence.

23 THE WITNESS: Yes, this is the Internet
24 Archive's BookReader application.

25 MR. HUDIS:

1 Q. And is that created by the DjVu module or
2 the BookOp module, or do you not know?

3 MS. LU: Objection, lack of personal knowledge
4 and compound.

5 THE WITNESS: I know that it's not created
6 by the DjVu module. I don't know whether are not
7 the BookOp module plays a role in that.

8 MR. HUDIS:

9 Q. Do you know what the EPUB module does?

10 MS. LU: Objection, lack of personal
11 knowledge.

12 THE WITNESS: Generally, the EPUB module
13 creates another derivative format that is a -- a
14 .epub file, e-p-u-b.

15 MR. HUDIS:

16 Q. And what does that do?

17 MS. LU: Objection, lack of personal
18 knowledge. Vague and ambiguous.

19 MS. AHMAD: For the record, we're on
20 Page 14 now?

21 MR. HUDIS: Page 15 -- excuse me. Yes, we
22 are on Page 14 of Exhibit 8. Thank you.

23 THE WITNESS: I'm sorry, the question was?

24 MR. HUDIS: Yes.

25 Q. Do you know what the EPUB file does once

1 created by the EPUB module?

2 A. An EPUB file is a file format that is
3 associated with an electronic text and must be read
4 by software that's specifically designed to display
5 an EPUB file.

6 Q. Do you know what TOC module does? This is
7 on Page 15 of Exhibit 8.

8 MS. LU: Objection, lack of personal
9 knowledge.

10 THE WITNESS: No.

11 MR. HUDIS:

12 Q. Do you know what a scandataXML module
13 does?

14 MS. LU: Objection, lack of personal
15 knowledge.

16 THE WITNESS: No.

17 MR. HUDIS:

18 Q. Do you know what a PDF module does? And
19 that's on page 16 of Exhibit 8.

20 MS. LU: Objection, lack of personal
21 knowledge.

22 THE WITNESS: PDF module creates a
23 derivative file of an initial file. It may create
24 a black and white PDF that's smaller in size than
25 any initial PDF that had been submitted.

1 MR. HUDIS:

2 Q. Do you know what a HackPDF does?

3 MS. LU: Objection, lack of personal
4 knowledge.

5 THE WITNESS: No.

6 MR. HUDIS: Excuse me, HackPDF module.

7 Q. And the answer is no?

8 A. No.

9 Q. Could you turn to Page -- production
10 Page 20 of Exhibit 8. This is the last page of
11 task 107010788.

12 Do you know why each of these files on
13 Page 20 of Exhibit 8 are being autocleaned?

14 MS. LU: Objection, lack of personal
15 knowledge, and assumes facts not in evidence.

16 THE WITNESS: No, I don't know.

17 MR. HUDIS:

18 Q. Could you go to the next task, please,
19 production Page 21 of Exhibit 8. This is now
20 starting task 107019567. And being performed here,
21 according to this log, is the backup command?

22 MS. LU: Objection, lack of personal
23 knowledge, assumes facts not in evidence.

24 THE WITNESS: The command associated with
25 this task is bup.php, which I understand to be

1 associated with the creation of a backup of an
2 item.

3 MR. HUDIS:

4 Q. And the back -- and the item being backed
5 up is gov.law.aera.standards.1999?

6 A. The identifier listed on this task in this
7 task history is that identifier.

8 Q. And this was, as we discussed before,
9 placing the item on a backup server to make sure,
10 if one server is not accessible, another server
11 could be accessible at Internet Archive?

12 MS. LU: Objection, lack of personal
13 knowledge, and assumes facts not in evidence.

14 THE WITNESS: That is the operation that's
15 associated with the bup.php command.

16 MR. HUDIS:

17 Q. Could we go to Page 23 of Exhibit 8. This
18 is now starting the task 107034141.

19 What task is being performed here?

20 MS. LU: Objection, lack of personal
21 knowledge.

22 THE WITNESS: The command associated
23 listed on this task log is archive.php which is
24 associated with the submission of files or metadata
25 for an item.

1 MR. HUDIS:

2 Q. So this was the submission of metadata in
3 this task?

4 MS. LU: Objection, lack of personal
5 knowledge.

6 THE WITNESS: The task -- the task log
7 states that it was an archive -- states that it was
8 an archive.php command which is associated with the
9 submission of -- of metadata or files.

10 MR. HUDIS:

11 Q. Could you turn to Page -- production
12 Page 24 of Exhibit 8. And there are warning
13 messages at the bottom of this page. It says
14 "Warning: Possible DNS Spoofing Detected!"
15 "Warning: Remote Host Identification has Changed!"
16 It is possible that someone is doing something
17 nasty!"

18 Do you know what the purpose of these
19 warnings are?

20 MS. LU: Objection, lack of personal
21 knowledge.

22 THE WITNESS: No, I don't.

23 MR. HUDIS:

24 Q. Please turn to production Page 26 of
25 Exhibit 8. This is now starting task

1 No. 107040689.

2 And is this another archive.php command
3 being performed here?

4 MS. LU: Objection, lack of personal
5 knowledge.

6 THE WITNESS: The command associated -- or
7 the command listed on this task log is a command
8 archive.php.

9 MR. HUDIS:

10 Q. Do you know what function is being
11 performed in this task?

12 MS. LU: Objection, lack of personal
13 knowledge.

14 THE WITNESS: Archive.php, again, is
15 associated with the submission of files or metadata
16 for an item.

17 MR. HUDIS:

18 Q. And, again, the item is gov.law.aera
19 .standards.1999?

20 A. The identifier listed in these task logs
21 is that identifier.

22 Q. And, again, we see on Page 27 of Exhibit 8
23 the same warnings. And you don't know what those
24 warnings are about?

25 A. That's correct.

1 Q. Could we please turn to Page 28 of
2 Exhibit 8. This starts task 107040792.

3 And the derive.php command is being
4 performed here?

5 MS. LU: Objection, lack of personal
6 knowledge.

7 THE WITNESS: The command listed on this
8 task log for this task is derive.php.

9 MR. HUDIS:

10 Q. In this specific log, do you know what is
11 happening here?

12 MS. LU: Objection, lack of personal
13 knowledge, vague and ambiguous.

14 THE WITNESS: Generally, a -- an
15 archive.php task may trigger a derive task to
16 update the derivative files after any change has
17 been made to the initially submitted metadata or
18 file.

19 MR. HUDIS:

20 Q. Could we turn to Page 31 of Exhibit 8.

21 At the bottom of that page, do you know
22 why the files are being autocleaned?

23 MS. LU: Objection, lack of personal
24 knowledge, assumes facts not in evidence.

25 THE WITNESS: No.

1 MR. HUDIS:

2 Q. Could we turn now to Page 33 of Exhibit 8.
3 This is the final task and it is identified with
4 107040809.

5 Do you know what task is being performed
6 here, bup.php?

7 MS. LU: Objection, lack of personal
8 knowledge.

9 THE WITNESS: The command listed on this
10 task log is bup.php. This is associated with the
11 creation of a backup file -- backup copies of the
12 file for the item.

13 MR. HUDIS:

14 Q. And the item being backed up here is
15 gov.law.aera.standards.1999?

16 MS. LU: Objection, lack of personal
17 knowledge, assumes facts not in evidence.

18 THE WITNESS: That is the identifier that
19 is listed on this task log.

20 MR. HUDIS:

21 Q. And this is a backup task log?

22 MS. LU: Objection, lack of personal
23 knowledge, assumes facts not in evidence, and
24 argumentative.

25 THE WITNESS: The command listed for this

1 task log is bup.php which is a backup task.

2 MR. HUDIS: Off the record.

3 VIDEO OPERATOR: The time 12:12 p.m. We
4 are off the record.

5 (Brief recess.)

6 (Plaintiffs' Exhibit 9 marked for
7 identification.)

8 VIDEO OPERATOR: The time is 12:20 p.m.,
9 and we are on the record.

10 MR. HUDIS:

11 Q. Mr. Butler, I'd like you to refer back to
12 Exhibit 7. And you see at the very top, there's a
13 command that says, "make_dark.php."

14 Do you see that?

15 A. Yes.

16 Q. What does the make_dark command do?

17 MS. LU: Objection, lack of personal
18 knowledge.

19 THE WITNESS: Make_dark takes down files
20 from public access.

21 MR. HUDIS:

22 Q. I'd like you to now look at what has been
23 marked as Exhibit 9.

24 What is this one-page exhibit?

25 A. This exhibit is a log for a task

1 associated with the item with identifier
2 gov.law.aera.standards.1999.

3 Q. And what is the command being run as
4 reflected in this log of Exhibit 9 which bears task
5 ID 315793300?

6 A. The command listed in this task log is
7 make_dark.php.

8 Q. When we looked at the commands and tasks
9 of Exhibit 8, you saw that the commands were being
10 run on multiple servers, correct?

11 MS. LU: Objection, lack of personal
12 knowledge, and assumes facts not in evidence.

13 THE WITNESS: I saw that there were
14 different server addresses listed in -- throughout
15 the task -- throughout the various tasks associated
16 with this item.

17 MR. HUDIS:

18 Q. And the task of Exhibit 9, 315793300, on
19 how many servers was this task run?

20 MS. LU: Objection, lack of personal
21 knowledge, assumes facts not in evidence, vague and
22 ambiguous.

23 MR. HUDIS:

24 Q. According to this tag, there is one server
25 identified. Do you see it?

1 MS. LU: Objection, lack of personal
2 knowledge, assumes facts not in evidence, and
3 argumentative.

4 MR. HUDIS:

5 Q. And you see that the server is ia600500?

6 MS. LU: Objection, vague and ambiguous.

7 MR. HUDIS:

8 Q. You may answer.

9 A. I see that an address for a server is
10 listed in this task log with the server name of
11 ia600500.

12 Q. Do you see any other servers listed on
13 this log of Exhibit 9?

14 A. I see a listing associated with a backup
15 server near the bottom with server address
16 ia700500.us.archive.org.

17 Q. So do you know if the make_dark command
18 was being run, according this log, on one server or
19 two?

20 MS. LU: Objection, lack of personal
21 knowledge, and vague and ambiguous. And assumes
22 facts not in evidence.

23 THE WITNESS: The item -- the task log
24 states that the item is being synchronized to the
25 backup server. I would associate that with the --

1 with the performing of the changes made to the
2 primary server also being made to the backup
3 server.

4 MR. HUDIS:

5 Q. Based upon your reading of Exhibit 8,
6 which were the upload logs, do you know on how many
7 servers the item gov.law.aera.standards.1999 were
8 uploaded to, within Internet Archive?

9 MS. LU: Objection, lack of personal
10 knowledge, misstates prior testimony, assumes facts
11 not in evidence, and vague and ambiguous.

12 THE WITNESS: I don't know for certain how
13 many servers this may have -- the files and
14 metadata may have resided on. I know generally
15 archive.org items reside on a primary server and a
16 backup server at any given time.

17 MR. HUDIS:

18 Q. And, according to the make_dark command of
19 Exhibit 9, task 315793300, the make_dark command
20 was associated with server ia600500 and
21 synchronized to server ia700500, is that correct?

22 MS. LU: Objection, lack of personal
23 knowledge.

24 THE WITNESS: The -- the task log states
25 that the servers upon which this command was

1 performed are server named ia600500 and backup
2 server named ia700500.

3 MR. HUDIS:

4 Q. Even though the make_dark command was
5 performed on these two servers, could Internet
6 Archive's employees still access the 1999 standards
7 on those two servers?

8 MS. LU: Objection, lack of personal
9 knowledge, and assumes facts not in evidence.

10 THE WITNESS: I know that, via the
11 archive.org interface, the standards are not
12 accessible to -- to Internet Archive employees and
13 the public. I don't know for certain if there
14 would be a way to -- to access the standards via
15 another method.

16 MR. HUDIS:

17 Q. After the make_dark command was performed,
18 is the file still located on Internet Archive's
19 primary and backup servers? And that's -- that's
20 the file identified by gov.law.aera .standards
21 .1999.

22 MS. LU: Objection, lack of personal
23 knowledge.

24 THE WITNESS: I don't know with respect to
25 this particular item. Generally speaking, an item

1 that has been made dark still resides on the
2 servers.

3 MR. HUDIS:

4 Q. If you notice within Exhibit 9, this task
5 315793300, there is a comment.

6 Do you see that?

7 MR. HUDIS: Counsel, permission to point
8 to the witness?

9 MS. AHMAD: Yes.

10 THE WITNESS: I see a -- a comment tag
11 listed in the -- the task log.

12 MR. HUDIS:

13 Q. And what does the comment say after the
14 tag?

15 A. Comment says, "pending outcome of
16 litigation."

17 Q. Do you know who wrote that comment?

18 MS. LU: Objection, lack of personal
19 knowledge.

20 THE WITNESS: The comment is associated
21 with a submitter carl@media.org.

22 MR. HUDIS:

23 Q. Do you know whether counsel was involved
24 in the writing of this comment on this task of
25 Exhibit 9?

1 MS. LU: Objection, lack of personal
2 knowledge, and vague and ambiguous as to "counsel."

3 THE WITNESS: No, I don't know.

4 MR. HUDIS:

5 Q. Do you know whether inserting a comment of
6 this type, "pending outcome of litigation," is a --
7 sorry, is an approved technique for making content
8 dark from an Internet Archive server?

9 MS. LU: Objection, lack of personal
10 knowledge.

11 MR. HUDIS: Sure.

12 MS. LU: And vague and ambiguous.

13 MR. HUDIS: All right. I'll reask the
14 question.

15 Q. Is inserting a comment of this type,
16 "pending outcome of litigation," an approved
17 technique for removing content from an Internet
18 Archive server?

19 MS. LU: Objection, vague and ambiguous,
20 assumes facts not in evidence, and lack of personal
21 knowledge.

22 MR. HUDIS:

23 Q. Do you understand the question?

24 A. I'll say that the -- a submission of a
25 comment is something that can be done and is not

1 atypical when an item is made dark.

2 Q. Is not typical or is not atypical?

3 A. Is not atypical. Is fairly commonly done.

4 Q. Thank you for the clarification.

5 MR. HUDIS: Counsel, can we stipulate that
6 Exhibit 9 is a business record of Internet Archive?

7 MS. AHMAD: Yes, we can.

8 MR. HUDIS: Any objection, Counsel?

9 MS. LU: No objection.

10 MR. HUDIS:

11 Q. So looking again at Exhibit 7 and 9, the
12 search associated with gov.law.aera.standards.1999
13 is reflected in Exhibit 7 and includes the
14 make_dark command, correct?

15 MS. LU: Objection, vague and ambiguous.

16 THE WITNESS: The -- the records of the
17 task history lists a command of make_dark.php for
18 task ID 315793300. This is also the task ID that's
19 listed for the final task or the task at the top of
20 the list on the item history page, Exhibit 7.

21 MR. HUDIS: In the last answer the witness
22 gave, let the record reflect that he was referring
23 to Exhibits 9 and 7.

24 Off the record.

25 VIDEO OPERATOR: The time is 12:33 p.m.

1 and we are off the record.

2 (Discussion off the record.)

3 (Plaintiffs' Exhibit 10 marked for
4 identification.)

5 VIDEO OPERATOR: The time is 12:34 and we
6 are on the record.

7 MR. HUDIS:

8 Q. Mr. Butler, I now put in front of you a
9 document marked as Exhibit 10. It's a one-page
10 document. And it says at the top, "Internet
11 Archive Error," and it's dated June 30, 2014.

12 I'd like you to compare the URL printed on
13 Exhibit 6 and the URL printed on Exhibit 10.

14 Are they the same?

15 A. Yes, they are the same.

16 Q. Now, you notice on Exhibit 6, content is
17 there?

18 MS. LU: Objection, vague and ambiguous.

19 MR. HUDIS:

20 Q. Is there content shown on Exhibit 6 at the
21 URL shown at the bottom?

22 MS. LU: Objection, vague and ambiguous.

23 THE WITNESS: Exhibit 6 shows the standard
24 design and layout for an archive.org details page
25 for a text item.

1 MR. HUDIS:

2 Q. And the text item is gov.law.aera
3 .standards.1999?

4 MS. LU: Objection, lack of personal
5 knowledge.

6 THE WITNESS: That is the identifier
7 listed in the URL at the bottom of the printout for
8 Exhibit 6.

9 MR. HUDIS:

10 Q. And it's also listed in the identifier
11 access on Page 2 of Exhibit 6?

12 A. That identifier is also listed under the
13 identifier access listing on Exhibit 6.

14 Q. Now, if you notice in Exhibit 10, the
15 content is gone.

16 MS. LU: Objection, vague and ambiguous,
17 argumentative.

18 THE WITNESS: On Exhibit 10, I see the
19 standard placeholder message that indicates an item
20 is not available.

21 MR. HUDIS:

22 Q. So my question, if Exhibit 6 was printed
23 on March 14, 2014, and Exhibit 10 was printed on
24 June 30, 2014, and they both have the same URL,
25 what happened between March and June such that the

1 content on Exhibit 6 was there and then the content
2 in Exhibit 10 is gone?

3 MS. LU: Objection --

4 MR. HUDIS:

5 Q. Replaced by the placeholder?

6 MS. LU: Objection, assumes facts not in
7 evidence, and calls for speculation.

8 THE WITNESS: Typically, when the
9 placeholder message is displayed on a page that
10 previously displayed a live item, it is an
11 indication that the item has been taken down.

12 MR. HUDIS:

13 Q. And is that the result of a make_dark
14 command?

15 MS. LU: Objection, lack of personal
16 knowledge.

17 THE WITNESS: It can be the result of a
18 make_dark command. Uh -- it can be the result of a
19 make_dark command.

20 MR. HUDIS:

21 Q. Do you know whether the change of the live
22 content of Exhibit 6 and then the placeholder that
23 says this item is not available of Exhibit 10
24 resulted from the make_dark command shown in log
25 315793300 of Exhibit 9?

1 MS. LU: Objection, vague and ambiguous,
2 assumes facts not in evidence and lack of personal
3 knowledge.

4 THE WITNESS: I can state that this is the
5 message and this is how I would expect the page to
6 appear following the submission of a make_dark
7 command for a live item.

8 MR. HUDIS: Note that the witness is
9 pointing to Exhibit 10.

10 Q. On Exhibit 10, who, if you know, inserted
11 the language "The item is not available due to
12 issues with the item's content"?

13 MS. AHMAD: Objection, outside the scope
14 of the deposition topics.

15 MR. HUDIS: I would disagree with that.

16 MS. LU: And lack of personal knowledge.

17 MR. HUDIS: I would disagree with that,
18 Counsel. Public Resource's counsel can assert her
19 objections.

20 So I'll reask the question subject to all
21 objections.

22 Q. Do you know who inserted the language in
23 Exhibit 10, "The item is not available due to
24 issues with the item's content"?

25 THE WITNESS: This is a placeholder

1 message that was determined years ago. I don't
2 know who drafted that message and selected it.
3 It's the general message that is displayed on an
4 item's page after a make_dark command has been
5 submitted for that item.

6 MR. HUDIS: Off the record.

7 VIDEO OPERATOR: The time is 12:41 p.m.
8 and we are off the record.

9 (Discussion off the record.)

10 (Plaintiffs' Exhibit 11 marked for
11 identification.)

12 VIDEO OPERATOR: The time is 12:42 p.m.,
13 and we are on the record.

14 MR. HUDIS:

15 Q. Mr. Butler, once content is taken down
16 from an Internet Archive web page from public
17 access, can your company still track the number of
18 visits to that page while the content was still
19 there?

20 MS. LU: Objection, vague and ambiguous.

21 THE WITNESS: The record that we have
22 is -- is called a download count and relates to the
23 number of visits to -- to pages with files for the
24 item. So it's our -- it's our best record of the
25 number of HTTP requests from -- from an IP address

1 where multiple visits from the same IP address in
2 the same day have been counted as one download.

3 MR. HUDIS:

4 Q. Mr. Butler, have you ever heard of the
5 term "hit count"?

6 A. Yes.

7 Q. What does "hit count" refer to?

8 A. Hit count --

9 MS. LU: Objection to the extent it calls
10 for expert testimony.

11 MR. HUDIS:

12 Q. You may answer.

13 A. Hit count, as I understand it, relates to
14 the amount of visits to a given web page.

15 Q. So we've talked about today a number of
16 views, a number of downloads, correct, to a web
17 page?

18 A. Yes.

19 MS. LU: Objection, misstates prior
20 testimony.

21 MR. HUDIS:

22 Q. You may answer.

23 A. We've talked about the definition of our
24 download count number and discussed a little bit
25 how that relates to downloading and viewing.

1 MR. HUDIS:

2 Q. So your company defines download count.
3 Does the download count distinguish between an
4 Internet user's view of a page versus capturing and
5 copying content to go to another computer?

6 MS. LU: Objection, vague and ambiguous.

7 THE WITNESS: The download count does not
8 distinguish between, for example, a visit to a web
9 page without, for instance, saving that file
10 through the -- a browser's downloader or selecting
11 files' save-as from the browser.

12 MR. HUDIS:

13 Q. Does Internet Archive's download count
14 distinguish between visits from human beings over
15 the Internet versus Internet crawling robots, or
16 bots, or uploaders, or internal visits from
17 Internet Archive processes or staff?

18 MS. LU: Objection, vague and ambiguous.

19 THE WITNESS: No. The download count does
20 not distinguish between all of those different
21 types of access.

22 MR. HUDIS:

23 Q. For the purposes of my next question, I
24 need your definition of what an IP address is.

25 A. Okay.

1 Q. What is an IP address?

2 MS. LU: Objection, to the extent it calls
3 for expert testimony.

4 THE WITNESS: What I know about an
5 IP address is that it is a unique number associated
6 with a computer that is connected to a network.

7 MR. HUDIS:

8 Q. Does Internet Archive's download count
9 include or exclude multiple visits from the same
10 IP address during a given day?

11 MS. LU: Objection, vague and ambiguous.

12 THE WITNESS: During a day, as defined by
13 UTC time, Internet Archive's systems are designed
14 to log multiple visits from the same IP -- count,
15 excuse me, count multiple visits from the same
16 IP address as only one download.

17 MR. HUDIS:

18 Q. Does Internet Archive maintain any records
19 or other information that would enable it to be
20 more specific about what is included or excluded
21 from a download count?

22 MS. LU: Objection, vague and ambiguous.

23 THE WITNESS: Can you read the question
24 again, please?

25 MR. HUDIS: Yes.

1 Q. Does Internet Archive maintain any records
2 or other information that would enable it to be
3 more specific about what is included or excluded
4 from a download count?

5 MS. LU: Same objection.

6 THE WITNESS: I'm not aware of any further
7 information that we would be able to supply.

8 MR. HUDIS:

9 Q. How does Internet Archive obtain the
10 download count of a specific web page after the
11 uploaded content is removed?

12 MS. LU: Objection, lack of personal
13 knowledge, assumes facts not in evidence. Counsel,
14 if you want to ask him about how someone retrieved
15 this Exhibit 11, then I would not object to that.

16 MR. HUDIS:

17 Q. All right. I'm going to ask you
18 specifically about Exhibit 11. I'd like to know
19 generally how the information was obtained.

20 We've established that a make_dark command
21 was run for the content of the 1999 standards in
22 June of 2014, correct?

23 MS. LU: Objection, misstates prior
24 testimony, lack of personal knowledge.

25 MR. HUDIS:

1 Q. When was this make_dark command of
2 Exhibit 9 run?

3 A. The date listed on the task log for this
4 task which has a command listed of make_dark.php is
5 June 11th, 2014.

6 Q. I've now marked as Exhibit 11 a one-page
7 document that's in front of you.

8 What is the date of this document?

9 A. The date of Exhibit 11 is November 25th,
10 2014.

11 Q. What is this document?

12 A. This document is a screen capture of the
13 Mac Terminal application. The Terminal was used by
14 myself to submit a query to archive.org's systems
15 to obtain archive.org's records for the download
16 count for the item with identifier gov.law.aera
17 .standards.1999.

18 Q. The make_dark command of Exhibit 9
19 associated with that identifier was run in June of
20 2014, correct?

21 A. The task log lists that date -- the task
22 log associated with the make_dark command lists
23 that date.

24 Q. And the same identifier you got at a
25 download -- a set of download information on

1 November 25th, 2014, according to Exhibit 11,
2 correct?

3 MS. LU: Objection, vague and ambiguous.

4 THE WITNESS: Sorry, one more time,
5 please.

6 MR. HUDIS: Yes.

7 Q. We established that make_dark command for
8 gov.law.aera.standards.1999 was run in June of
9 2014, correct?

10 MS. LU: Objection, lack of personal
11 knowledge.

12 THE WITNESS: The task logs list that
13 date.

14 MR. HUDIS:

15 Q. So you got download information for the
16 same identifier on November 25th, 2014, correct?

17 MS. LU: Objection, vague and ambiguous.

18 THE WITNESS: I ran a query for Internet
19 Archive's download count for that same identifier.

20 MR. HUDIS:

21 Q. So I now ask the same question that I
22 asked before.

23 How does Internet Archive obtain a
24 download count for a specific Internet Archive web
25 page after the uploaded content has been removed?

1 MS. LU: Objection, lack of personal
2 knowledge, misstates prior testimony, and assumes
3 facts not in evidence, and vague and ambiguous.

4 THE WITNESS: A SQL query can be run on
5 Internet Archive's system to obtain a metadata
6 value that has been associated with this item and
7 generated by archive.org.

8 MR. HUDIS:

9 Q. And the item again is gov.law.aera
10 .standards.1999?

11 A. That's correct.

12 Q. And according to your search and the
13 results that came back on Exhibit 11, how many
14 downloads are reflected for this item while live
15 content was up on the web page associated with
16 gov.law.aera.standards.1999?

17 MS. LU: Objection, vague and ambiguous,
18 assumes facts not in evidence, lack of personal
19 knowledge.

20 THE WITNESS: The download count of record
21 from the archive.org system for the identifier that
22 you read is 1,290.

23 MR. HUDIS: Counsel, will you stipulate
24 that Exhibit 11 is a business record of Internet
25 Archive?

1 MS. AHMAD: Yes.

2 MR. HUDIS: Any objections?

3 MS. LU: No objections.

4 (Plaintiffs' Exhibit 12 marked for
5 identification.)

6 MR. HUDIS: I'm going to have to make a
7 quick copy.

8 VIDEO OPERATOR: Do you want to go off?

9 MR. HUDIS: Yes, please.

10 VIDEO OPERATOR: The time is 12:54 p.m.,
11 and we're off the record.

12 (Brief recess.)

13 VIDEO OPERATOR: The time is 12:58 p.m.,
14 and we're on the record.

15 MR. HUDIS:

16 Q. Mr. Butler, all of my following questions
17 are all relative to the 1999 standards.

18 Do we understand each other for purposes
19 of these questions?

20 A. Yes.

21 Q. Between May of 2012 and June of 2014, have
22 you ever communicated with Carl Malamud?

23 A. I have received e-mail from Carl Malamud.

24 Q. So that was my next question.

25 Mr. Malamud initiated the communication?

1 A. Yes.

2 Q. And how did he make that contact? By
3 e-mail?

4 A. Yes.

5 Q. Besides that one e-mail, on the subject of
6 the 1999 standards, did you have any other exchange
7 of communications with Mr. Malamud?

8 MS. LU: Objection, relevance.

9 MR. HUDIS:

10 Q. You may answer.

11 A. No.

12 Q. Are you aware of anyone else from Internet
13 Archive communicating with Mr. Malamud regarding
14 the 1999 standards between May of 2012 and June of
15 2014?

16 A. No.

17 Q. Do you remember the purpose of
18 Mr. Malamud's communication with you regarding the
19 1999 standards?

20 MS. LU: Objection, vague and ambiguous.

21 MR. HUDIS:

22 Q. You may answer.

23 A. Mr. Malamud sent me an e-mail with an
24 attachment relating to a take-down request that he
25 had received relating to the standards.

1 Q. I now place in front of you what has been
2 marked as Exhibit 12 and ask if you recognize the
3 collection of documents.

4 For the record, Exhibit 12 bears
5 production numbers IA-AERA 1 through 4.

6 A. Yes, I recognize these documents.

7 Q. Was Exhibit 12 produced to us in response
8 to our document subpoena?

9 A. Yes.

10 Q. And copied on this e-mail is Brewster
11 Kahle, and you said he is the founder of Internet
12 Archive?

13 MS. LU: Objection, lack of personal
14 knowledge and compound.

15 MR. HUDIS: All right. Let's take them
16 one at a time.

17 Q. Is Mr. Kahle copied on the e-mail from
18 Mr. Malamud to you dated December 19th, 2013?

19 A. Brewster Kahle's name is listed by the
20 cc field.

21 Q. And who is Mr. Kahle?

22 A. Mr. Kahle is the founder of Internet
23 Archive.

24 Q. And do you know what the initials "SDO"
25 means?

1 A. No.

2 Q. Did you ever ask Mr. Malamud what "SDO"
3 means?

4 A. No.

5 Q. Are you familiar with the term "standards
6 organization"?

7 A. Yes.

8 Q. Is SDO an acronym for standards
9 organization?

10 MS. LU: Objection, lack of personal
11 knowledge.

12 THE WITNESS: It seems to me that it is.
13 I don't know for certain.

14 MR. HUDIS:

15 Q. Do you know why Mr. Malamud sent you this
16 e-mail of Exhibit 12?

17 MS. LU: Objection, lack of personal
18 knowledge.

19 THE WITNESS: I know that Mr. Malamud sent
20 me this e-mail with the take-down requests he'd
21 received and his response to the -- to the
22 take-down request, and that it was pertinent to --
23 to something posted on archive.org.

24 MR. HUDIS:

25 Q. Just so we're clear, the e-mail that

1 Mr. Malamud sent to you on December 19th, 2013, did
2 it relate to a take-down request of material on
3 Public Resource's website or on Internet Archive's
4 website?

5 MS. LU: Objection, lack of personal
6 knowledge.

7 THE WITNESS: As I read the e-mail that
8 was forwarded by Carl from aera.net, I see only a
9 listing relating to the website law.resource.org.

10 MR. HUDIS:

11 Q. That's not a website maintained by
12 Internet Archive, is it?

13 A. It's not.

14 Q. Has Mr. Malamud sent you e-mails similar
15 to the one in Exhibit 12 before?

16 MS. LU: Objection as to relevance.

17 THE WITNESS: Can you define "similar."

18 MR. HUDIS: Yes.

19 Q. Complaints by other standards
20 organizations to take down posted material.

21 A. Yes.

22 Q. How many times?

23 A. Approximately, five or six.

24 Q. Since December 19th, 2013, has Mr. Malamud
25 sent you similar e-mails to the one in Exhibit 12?

1 MS. LU: Objection, vague and ambiguous,
2 and relevance.

3 THE WITNESS: Would you repeat the
4 question, please?

5 MR. HUDIS: Yes.

6 Q. Since December 2013, has Mr. Malamud sent
7 you e-mails similar to the one shown in Exhibit 12?

8 MS. LU: Same objection.

9 THE WITNESS: I don't recall if
10 Mr. Malamud has sent us an e-mail since that date
11 relating to take-down requests from standard
12 organizations.

13 MR. HUDIS:

14 Q. Did you, Mr. Butler, discuss the posting
15 of the 1999 standards to Internet Archive's website
16 at any time after you received this letter of
17 Exhibit 12?

18 MS. LU: Objection, vague and ambiguous.

19 THE WITNESS: The question again was --

20 MR. HUDIS: Yes.

21 Could you repeat the question?

22 (Record read by Reporter.)

23 MR. HUDIS: With Mr. Malamud.

24 THE WITNESS: We only notified -- Internet
25 Archive only notified Mr. Malamud that we had

1 received the subpoena issued to us for this case.

2 MR. HUDIS:

3 Q. So you had a conversation with Mr. Malamud
4 that you received my client's subpoena?

5 MS. LU: Objection, assumes facts not in
6 evidence and misstates prior testimony.

7 THE WITNESS: A phone conversation
8 occurred with Mr. Malamud to advise him that we had
9 received the subpoena.

10 MR. HUDIS:

11 Q. What did he say to you during that phone
12 conversation?

13 A. He -- he said that he -- he understood and
14 that he -- that he hoped it wouldn't be a big
15 burden for Internet Archive.

16 Q. Have you told me the entirety of that
17 conversation between you and Mr. Malamud?

18 A. I've told you the -- the entirety of the
19 substance of the communication.

20 Q. Did you leave out any details?

21 A. No.

22 Q. Since receiving this e-mail of Exhibit 12
23 from Mr. Malamud, did you discuss with him
24 disabling public access of the 1999 standards from
25 Internet Archive's website?

1 A. No.

2 Q. Other than Exhibit 12, has Internet
3 Archive exchanged any other correspondence with
4 Mr. Malamud or Public Resource regarding the
5 posting of the 1999 standards to Internet Archive's
6 website or the disabling of public access to the
7 1999 standards on Internet Archive's website?

8 A. I can say Internet Archive performed a
9 search and discussed with those members of Internet
10 Archive's staff we understood may have communicated
11 with Mr. Malamud upon receiving the -- the
12 subpoenas, and that we did not delete any
13 information after having received that subpoena,
14 and performed a search of the e-mail accounts and
15 the physical files.

16 And this e-mail received from Mr. Malamud
17 is the only record of communication that was found
18 from that search.

19 Q. And that's the e-mail of Exhibit 12?

20 A. That's right.

21 Q. Does Internet Archive maintain any phone
22 logs of its conversations with the outside public?

23 A. Our phone system -- our phone system may
24 have that. I don't know.

25 Q. Well, other than the fact that the call

1 was made, I'm talking about the substance of the
2 call.

3 Does Internet Archive maintain any call
4 logs of the substance of calls it has with outside
5 individuals or companies?

6 A. No.

7 MR. HUDIS: That's all I have for this
8 witness. I do keep the deposition open as a result
9 of the deposition subpoena. And unless we can come
10 to some understanding with Public Resource's
11 counsel, we may need to have a second deposition of
12 Internet Archive.

13 MS. LU: And I'll object that we had
14 discussed the subpoena -- stipulation as to certain
15 matters before this deposition took place, and
16 counsel for plaintiffs withdrew that stipulation in
17 favor of this deposition today. And we would
18 object to any re- -- any second deposition of
19 Internet Archive.

20 MR. HUDIS: My recollection is that while
21 I did have conversations with Internet Archive's
22 counsel, I have had no such conversations with
23 Public Resource's counsel on the nature of this
24 deposition or what it might have contained by way
25 of stipulation.

1 THE REPORTER: Do you want a copy of the
2 deposition?

3 MS. LU: I think we'll probably discuss
4 that off the record afterwards.

5 Counsel, do you want to reserve 30 days to
6 make any corrections?

7 MS. AHMAD: Sure. Yes.

8 MS. LU: So 30 days after the witness has
9 an opportunity to review the transcript.

10 VIDEO OPERATOR: Is that it?

11 MR. HUDIS: Yes.

12 VIDEO OPERATOR: This marks the end of
13 volume 1, disk 2 and for the day, at least,
14 concludes the deposition of Chris Butler. The time
15 is 1:10 p.m. and we are off the record.

16 (Whereupon, the deposition
17 adjourned at 1:10 o'clock p.m.)

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CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

Signature of Deponent

I hereby certify that the individual representing himself/herself to be the above-named individual, appeared before me this _____ day of _____, 2014, and executed the above certificate in my presence.

NOTARY PUBLIC IN AND FOR

County Name

MY COMMISSION EXPIRES:

1 STATE OF CALIFORNIA)
)
2 COUNTY OF SAN FRANCISCO)

3 I, CINDY TUGAW, a Certified Shorthand
4 Reporter of the State of California, duly
5 authorized to administer oaths pursuant to Section
6 8211 of the California Code of Civil Procedure, do
7 hereby certify that

8 CHRISTOPHER BUTLER,
9 the witness in the foregoing deposition, was by me
10 duly sworn to testify the truth, the whole truth
11 and nothing but the truth in the within-entitled
12 cause; that said testimony of said witness was
13 reported by me, a disinterested person, and was
14 thereafter transcribed under my direction into
15 typewriting and is a true and correct transcription
16 of said proceedings.

17 I further certify that I am not of counsel
18 or attorney for either or any of the parties in the
19 foregoing deposition and caption named, nor in any
20 way interested in the outcome of the cause named in
21 said caption.

22 Dated the 12th day of December, 2014.

23

24

25


CINDY TUGAW

CSR NO. 4805