

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

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AMERICAN BUDDHA, an Oregon
Nonprofit corporation,

Plaintiff,

vs.

NO. 06-CV-3054-PA

THE CITY OF ASHLAND and THE
WASHINGTON POST COMPANY,

ORIGINAL

Defendants.

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DEPOSITION OF RICHARD K. HOLBO

FRIDAY, NOVEMBER 3, 2006

11:03 A.M.

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LAURA L. SMITH, RPR, OR CSR #97-0340, CA CSR #2731

Certified Court and Deposition Reporter
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1
2
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8 For the Defendant City of Ashland:

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14 For the Defendant (via telephone): The Washington
15 Post Company:

16 WILLIAMS & CONNOLLY
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21 Also present: Mrs. Tara Carreon
22 Mr. Michael W. Franell,
23 Ashland City Attorney
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EXHIBITS

(Nothing marked.)

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1 BE IT REMEMBERED, that on FRIDAY, NOVEMBER 3, 2006,
2 commencing at the hour of 11:03 A.M., at the office of the
3 City of Ashland Legal Department, 20 East Main Street,
4 Ashland, Oregon, before me, LAURA L. SMITH, a Certified
5 Shorthand Reporter in and for the states of Oregon and
6 California, there personally appeared:

7 RICHARD K. HOLBO,

8 a witness in the above-entitled action, called by the
9 plaintiff, who, being by me first duly sworn, was examined
10 and testified as follows:

11 EXAMINATION BY MR. CARREON

12 Q Have you been deposed before, Mr. Holbo?

13 A No.

14 Q Okay. So you have been to court before --

15 A Yes.

16 Q -- testified under oath?

17 A Yes.

18 Q Okay, same thing.

19 On August 2, 2006, you got an e-mail from Kathleen
20 Parker; correct?

21 A I don't believe so.

22 Q August 1.

23 A Yes.

24 Q Okay. Is this it here, Exhibit 2?

25 A Yes.

1 Q All right. And this says that, "A web site
2 registered through godaddy.com has doctored
3 my column mugshot to create a pornographic
4 image. It is both obscene and a copyright
5 infringement."

6 Did you ever see this image?

7 A Yes.

8 Q All right. And did you see that it had been
9 doctored?

10 A That would be an opinion.

11 Q Did you see anything that indicated to you that
12 Ms. Parker was telling you something true with regard to the
13 doctoring?

14 In other words, did she show you the first image
15 that was doctored, like an image of her?

16 A I looked on the Internet and found the picture of
17 her.

18 Q Okay. You found an independent picture of Kathleen
19 Parker?

20 A (Witness nods head.)

21 Q Correct?

22 A Uh-huh.

23 Q Is that a yes? They can't hear you --

24 A Yes.

25 Q -- on the other side of those keys, they don't hear

1 a thing.

2 So how did you find that picture of Kathleen Parker?

3 A I used Google.

4 Q Google Search?

5 A Yes.

6 Q Did you see there on Google image search the
7 allegedly doctored photo?

8 A Yes.

9 Q Is that where she showed you the doctored photo?

10 A She did not show me anything.

11 Q Did she send you a link to anywhere?

12 A She did not.

13 Q Did you in any way independently verify that
14 American-Buddha.com was in fact hosting the image she
15 claimed it was hosting?

16 A Yes.

17 Q How did you determine that?

18 A By -- well, not American Buddha; I used our tools
19 to correlate the MAC address of a modem registered to
20 InfoStructure to an IP address.

21 Q Okay. And so how did you do that?

22 A On our router, it keeps tables of Mac address to IP
23 address.

24 Q So you started with -- did you ever go to the
25 America Buddha web site?

1 A Yes.

2 Q Did you join as a member?

3 A No.

4 Q How did you get in?

5 A The image directory is not protected.

6 Q So you hacked the American-Buddha.com web site?

7 A Nope.

8 Q Did you notice that it is a membership-only web
9 site?

10 A The front page is.

11 Q Okay. And did you read the membership application?

12 A No.

13 Q Is it your habit to enter into web sites that have
14 membership requirements and just enter into them?

15 MS. O'KASEY: I object to the form of the question.

16 You can answer.

17 Q BY MR. CARREON: For example, have you ever gone
18 into the web site for, say, the Washington Post?

19 A No.

20 Q And have you ever searched to see if you could
21 maybe get around their membership page?

22 A No.

23 Q And why did you do it with respect to
24 American-Buddha.com?

25 MS. O'KASEY: I object to the form. He has already

1 Q BY MR. CARREON: Mr. Holbo, are we in agreement that
2 everything you did with respect to American-Buddha.com was
3 done in the course and scope of your employment?

4 MS. O'KASEY: I object to the form of the question.
5 You can answer.

6 THE WITNESS: Yes.

7 Q BY MR. CARREON: You did not at any time act on
8 your own behalf, fishing on your own hook, as we might say?

9 A No.

10 Q You bear no individual animus to
11 American-Buddha.com; correct?

12 A I bear no animus.

13 Q The activities you performed, what are -- which you
14 believe were proper -- were all performed in the service of
15 this policy right here, shown as Exhibit 1; correct?

16 MS. O'KASEY: I object to the form of the question.
17 You can answer.

18 THE WITNESS: Yes.

19 Q BY MR. CARREON: And if you are found to have
20 violated any laws whatsoever in the course of performing
21 this, you would -- if, for example, if you were sued as a
22 defendant, you would turn to the City of Ashland to request
23 that they defend you; correct?

24 MS. O'KASEY: I object to the form of the question.
25 Also, it calls for a legal conclusion.

1 Q BY MR. CARREON: And there is definitely -- I mean,
2 this is, like, theoretical, but if you were sued because of
3 what happened on August 1 and August 2, would you turn to
4 the city and say, well, please defend me?

5 MS. O'KASEY: I object to the form of the question.
6 It calls for a legal conclusion as well.

7 If you can answer, answer. If you don't know the
8 answer, tell him that.

9 THE WITNESS: I do not know.

10 Q BY MR. CARREON: You do not know what you would do
11 if you were sued?

12 A That is correct.

13 Q Okay. Well, why is that?

14 MS. O'KASEY: I object and instruct you not to
15 answer.

16 Counsel, this has nothing to do with this lawsuit.

17 MR. CARREON: It has everything to do with it,
18 Counsel, but don't use up my transcript. If you want to
19 chatter with me, let's go off the record and we can chatter
20 extensively.

21 MS. O'KASEY: I would like my objection on the
22 record, that's all. I'm entitled to it.

23 MR. CARREON: Let's try to keep them brief; they are
24 expensive to me.

25 MS. O'KASEY: You chose to bring the lawsuit,

1 Counsel, not the city of Ashland, so the expenses related to
2 that are a choice that you --

3 MR. CARREON: I'm going to bill you for every
4 frivolous word; okay?

5 MS. O'KASEY: If you would like to ask a question
6 relevant to the lawsuit, that would be good.

7 MR. CARREON: And I'm going to bill you for that
8 because that was definitely frivolous.

9 Q So how many phone calls did you have with Kathleen
10 Parker?

11 A I recall two.

12 Q And how long were those phone calls?

13 A A few minutes.

14 Q And what did she tell you?

15 A Um, the first phone call was transferred to me from
16 our utilities department to express the complaint and the
17 second phone call was to give her the status.

18 Q And so they forwarded the call to you -- I mean,
19 the electric department forwarded the call?

20 A Someone did, I don't recall.

21 Q And then you were talking with her?

22 A (Witness nods head.)

23 Q And then she said?

24 A Um, she said basically the same thing that is in
25 the e-mail.

1 Q She said?

2 A That there was a site that was copyright-infringing
3 a picture of hers.

4 Q And what else?

5 A That's all I recall of the conversation.

6 Q Absolutely everything?

7 A That's all I recall of the conversation.

8 Q Okay. Well, let's go ahead and take a look at
9 Exhibit 2 and see if that refreshes your recollection and
10 you might have anything to add to your recollection of her
11 phone call.

12 Go ahead, read it. That's what we do when we
13 refresh our recollection. We actually read the document
14 that is put in front of us, we think about it, we allow our
15 recollection to be refreshed, and then we say if it did, and
16 we say what we remembered, because it happens. So go ahead.

17 A Okay. This is basically what she said to me on the
18 phone.

19 Q All righty. So has your recollection been
20 refreshed in any way such that you would add to your answer?
21 Because there are things in here that you didn't tell me she
22 told you over the phone.

23 So I'd like you to add those to your answer: What
24 did she tell you over the phone?

25 A That there was a site that had stolen her picture,

1 put it on the Internet, that her children had come home and
2 she had seen -- she had had to look at it and explain to
3 them what was going on.

4 Q And you told her?

5 A To send me an e-mail -- or send an e-mail at
6 abuse@ashlandfiber.net and that we would see what we could
7 do.

8 Q See what we could do. What did you tell her you
9 could do?

10 A I said I would contact the ISP in question.

11 Q Uh-huh. And did you assure her that -- excuse me.
12 At that moment, did you see the image?

13 A No.

14 Q When did you first see the image?

15 A After she sent me the e-mail.

16 Q And how did you find it?

17 A I looked on Google.

18 Q You looked on Google, and Google is a web site that
19 is not hosted by Ashland Fiber Net; correct?

20 A That is correct.

21 Q You couldn't affect the image on Google; could you?

22 A No.

23 Q Because that's on Google, okay. So why were you
24 telling her that you would do something about an image that
25 you found on Google?

1 MS. O'KASEY: I object to the form of the question.
2 You can answer.

3 THE WITNESS: I followed a link from Google.

4 Q BY MR. CARREON: But she was complaining about the
5 image on Google; right?

6 A No.

7 Q No, she wasn't, so what image was she complaining
8 about?

9 A An image that is hosted on American Buddha.

10 Q But she didn't send you a link to that image?
11 Instead, you went to the one on Google.

12 Why did you go to the one on Google?

13 A Because I forgot how to spell Buddha.

14 Q Well, didn't you just read the e-mail she sent you
15 which spells it out?

16 A I did.

17 Q And you weren't able to copy it from the e-mail?

18 A (Witness shrugs shoulders.)

19 Q It says American-Buddha.com. All we need to add is
20 the www in front and we are rolling; right?

21 A Yup.

22 Q But your forgetfulness -- what has that got to do
23 with forgetting? She sent it to you; how many times do you
24 need to get an e-mail before you can read it?

25 MS. O'KASEY: I object to the form of the question,

1 argumentative.

2 You can answer.

3 THE WITNESS: I find it easy to use Google to look
4 things up.

5 Q BY MR. CARREON: And so what did you find there at
6 Google?

7 You found an image that was hosted at Google;
8 correct?

9 A No.

10 Q Oh, what did you find there?

11 A A link to a web site.

12 Q You found, in other words, the URL of a photograph
13 that has been hosted at Google?

14 A No.

15 Q What did you find?

16 A The link to American Buddha.

17 Q Okay. And then what did you do with that link?

18 A I clicked on it.

19 Q And what happened?

20 A The picture came up.

21 Q You mean the join page came up?

22 A No.

23 Q When you clicked on the image, what web site URL
24 was then displayed in the browser address?

25 A The image on American Buddha.

1 Q Okay. When you clicked on that image, it is your
2 contention that it took you directly to that image and not
3 to a page that says we have your page here, join now?

4 A Correct.

5 Q Okay. And it's your claim that that did not
6 involve any getting around the security protection at
7 American-Buddha.com that keeps it a web site? You just went
8 straight in there?

9 A I don't claim anything. I clicked on a link in
10 Google.

11 Q And it took you straight into American Buddha
12 without you having to join?

13 A Yes.

14 Q So when you said previously the image files are not
15 protected but you did know that it was a membership web
16 site, what did you mean there by the image files weren't
17 protected?

18 A This is a technical --

19 Q That's all right, it's a technical case. Lay it on
20 us.

21 A It would appear that when Google spiders your web
22 site, um, that the directory in which the images are stored
23 is accessible directly.

24 Q And you are referring to American-Buddha.com?

25 A I am referring to American-Buddha.com.

1 Q We are there. Okay. So you talked to Kathleen
2 Parker. Did she at any time threaten consequences --

3 A No.

4 Q -- against the City of Ashland --

5 A No.

6 Q Okay. -- in her first conversation or her second
7 conversation?

8 A Not that I recall.

9 Q Okay. Did she represent herself as being from the
10 Washington Post?

11 A No.

12 Q So when she sent the e-mail, she said I am Kathleen
13 Parker, a syndicated columnist with the Washington Post
14 writers group, was that the first time you had heard the
15 Washington Post name?

16 A No, she mentioned it on the telephone.

17 Q Okay. Did that mean anything to you?

18 A No.

19 MR. HARDY: I objection to form.

20 Q BY MR. CARREON: Did she appear to be representing
21 herself as acting on behalf of the Washington Post to you?

22 A No.

23 Q Is it your understanding that the Ashland Fiber Net
24 will take down material that is pornographic that is being
25 displayed through the Ashland Fiber Net?

1 MS. O'KASEY: I object to the form of the question.
2 You can answer.

3 THE WITNESS: No.

4 Q BY MR. CARREON: Is it your understanding that it
5 will turn off web sites that are alleged to be obscene by
6 some?

7 A No.

8 Q Is it your understanding that the Ashland Fiber Net
9 will cut off access to a web site that has
10 copyright-infringing material?

11 A Yes.

12 Q What do you know about copyright infringement?

13 A Very little.

14 Q Do you know who owns the copyright on a photograph
15 of, let's say, me?

16 A I have no idea.

17 Q Do you have any idea whether it is the person
18 photographed or the person that took the photograph?

19 A Nope.

20 Q And you clearly were not contacted by a
21 photographer?

22 MS. O'KASEY: In connection with this picture?

23 MR. CARREON: Correct, Counsel. Thank you, Counsel.

24 THE WITNESS: I don't know.

25 Q BY MR. CARREON: Ms. Harris (sic) claimed to have

1 been the subject of a photograph that had been doctored?

2 MR. HARDY: Objection to form.

3 THE WITNESS: Yes.

4 Q BY MR. CARREON: She did not claim to be the
5 photographer whose work had been doctored; did she?

6 A She did not.

7 Q Okay. However, you did not worry about these
8 matters at length because you have lawyers to help you;
9 correct?

10 MS. O'KASEY: I object and instruct you not to
11 answer if it requires an answer based on the attorney-client
12 privilege.

13 MR. CARREON: It sure doesn't.

14 Q You don't worry about it because you have lawyers
15 to rely on as reflected in Exhibit 5, and you forwarded her
16 e-mail to legal counsel; correct?

17 MS. O'KASEY: I object to the form of the question
18 and instruct you not to answer it to the extent it calls you
19 to reveal any discussions between you and the city attorney.

20 MR. CARREON: It clearly does not.

21 MS. O'KASEY: If it doesn't, you can answer based on
22 what you know outside of any conversations you had with the
23 city attorney.

24 THE WITNESS: That particular thought process did
25 not enter my mind.

1 Q BY MR. CARREON: You didn't think about whether you
2 knew anything about copyright infringement or not is what
3 you are saying?

4 You didn't think about it because it's not your job
5 to determine whether something is a copyright infringement
6 or not; right?

7 A It is not my job to determine whether something is
8 copyright infringement or not.

9 Q All right. Whose job is it?

10 MS. O'KASEY: I object to the form of the question.

11 If you know, you can answer, if it's anybody's.

12 THE WITNESS: I don't know.

13 Q BY MR. CARREON: Okay. So faced with the problem
14 that you had here -- because you have Exhibit 2 and you have
15 Exhibit 1; correct?

16 Now, you knew that Exhibit 2 presented a concern
17 because this is an e-mail from a lady who was alleging
18 copyright infringement; correct? You have to deal with
19 this; right?

20 A Yes.

21 Q That's part of your job?

22 A It is part of my job.

23 Q Okay, great. And the way you deal with it is
24 according to what is laid out in Exhibit 1; correct?

25 A Correct.

1 Q Okay. Now, you wrote Exhibit 1; right?

2 A That is correct.

3 Q And when did you write it?

4 A Um, on the 11th of August.

5 Q So that was nine days after the shutdown of the
6 American-Buddha.com modem; is that correct?

7 A That is correct.

8 Q Up until then, where had this AFN copyright
9 infringement process policy been recorded?

10 A Um, we had had various conversations about it with
11 our ISPs, and the policy had been used for the past number
12 of years.

13 Q Where was it recorded?

14 A It was not recorded.

15 Q Okay. So it was recorded in your brain; correct?

16 A Correct.

17 Q So that's why you wrote it down on paper?

18 A (Witness nods head.)

19 Q Is that correct?

20 A That is correct.

21 Q Was it recorded in anyone else's brain, to your
22 knowledge?

23 A Yes.

24 Q Whose?

25 A Jon Dowd at InfoStructure, and our ISP knew of it.

1 Q So you confirmed that your understanding was the
2 same as Jon Dowd's?

3 MS. O'KASEY: About what? I object to the form of
4 the question.

5 Q BY MR. CARREON: How about we start over?
6 When did you talk to Jon Dowd about the
7 infringement policy?

8 A At an ISP meeting sometime in August.

9 Q And was that August 1st, August 2nd, or --

10 A I do not recall.

11 Q Do you have a record of a meeting?

12 A I'm sure that there is a record of when that
13 meeting occurred.

14 Q And where would that record be?

15 A In our calendar.

16 Q Were there any documents exchanged at that time?

17 A This document was given to all the ISPs.

18 Q Okay. So now we have determined that it was
19 certainly after August 11; is that correct?

20 A Yes.

21 Q And so on what day prior to August 11th had you
22 discussed the matter of the copyright infringement policy
23 with any of the ISPs?

24 A We have discussed it at almost every ISP meeting
25 since the inception of Ashland Fiber Network.

1 Q But never recorded it?

2 A Correct.

3 Q Okay. And when you forwarded Exhibit 1 to legal
4 counsel -- let me find it -- oh, Counsel -- excuse me -- all
5 right.

6 According to Exhibit 5, why don't you just go ahead
7 and read the first line of this e-mail that is from you to
8 Kathleen Parker.

9 A "Received; I'll contact the ISP and our
10 legal department to see what we can do for
11 you."

12 Q So how did you contact the legal department?

13 A By telephone.

14 Q Whom did you call?

15 A I called the legal -- 2090 number.

16 Q Did you forward to the legal department the
17 Kathleen Parker e-mail?

18 A I do not recall.

19 Q And did you attempt to ascertain whether you had,
20 in preparation for this deposition? Did you --

21 A No.

22 Q Were you asked to review a document request?

23 A Yes.

24 Q Okay. And did you review it?

25 A Yes.

1 Q And notwithstanding having reviewed the document
2 request, you did not review your e-mails to determine
3 whether you had forwarded to Kathleen Parker Exhibit -- this
4 e-mail to the legal department?

5 You are looking at counsel as if she might have an
6 answer, but the question is to you, sir.

7 A It was my understanding that communications with
8 counsel were not a function of the request.

9 Q So in other words, you wouldn't produce a document
10 to the plaintiff in this case based on the advice of counsel
11 which reflected that you had actually forwarded the Kathleen
12 Parker Exhibit 2 e-mail to the legal department; is that
13 correct?

14 A Correct.

15 Q Does such a document exist, however? To produce it
16 or not, does such a document exist?

17 A I don't recall.

18 Q You don't remember whether you forwarded it at all?

19 A I believe I suggested to you that I had called the
20 legal department.

21 Q You told me you called the legal department. We
22 are still trying to find out whether you remember or whether
23 your memory is so poor that you do not remember whether you
24 forwarded the actual e-mail from Ms. Kathleen Parker to
25 counsel?

1 You will note that your counsel is not objecting to
2 this line of questioning on the grounds of it being
3 privileged; the reason being, that it's not.

4 Whether you forwarded it is not a privileged matter
5 and it's not necessary to, you know, do anything other than
6 answer the question.

7 A I do not recall.

8 Q Did you have any conversations with legal counsel
9 for the City of Ashland concerning this matter?

10 A Yes.

11 Q And when were those conversations?

12 A On the 2nd.

13 Q On the 2nd, not on the 1st?

14 A Correct.

15 Q And did you make any decisions about what to do
16 based on those communications?

17 MS. O'KASEY: I object and instruct you not to
18 answer. It calls for attorney-client privileged
19 information.

20 Q BY MR. CARREON: I take it you are going to follow
21 that instruction?

22 A Yes.

23 MS. O'KASEY: You need to answer audibly with a yes
24 or a no. He can't --

25 THE WITNESS: Yes.

1 MR. CARREON: Especially Mr. Hardy, he has no idea
2 what you are saying.

3 THE WITNESS: Okay.

4 Q BY MR. CARREON: So did you call Ms. Parker back?

5 A Yes.

6 Q And what did you tell her?

7 A I told her that the site was still on.

8 Q Did you relay to her anything that the attorneys or
9 the attorney had said to you? Did you tell her anything?

10 A No.

11 Q Did you say, the lawyer said this or the lawyer
12 said that?

13 A No. I said that there were lawyers involved.

14 Q And what did you tell her about what you were going
15 to do with response to her request?

16 A Nothing.

17 Q What did you tell her then?

18 You called her back and you said, hello, Ms.

19 Parker --

20 A -- there are lawyers involved.

21 Q And did she talk to the lawyer?

22 A I have no idea.

23 Q Did you give her a telephone number for a city
24 lawyer?

25 A I do not recall.

1 Q Did you give her an e-mail address for a city
2 lawyer?

3 A I don't believe so.

4 Q Did you assure her that anything was going to be
5 done?

6 A No.

7 Q When did you make that phone call?

8 A Somewhere around the 3rd or the 4th.

9 Q At that point, the modem had already been turned
10 off and turned back on?

11 A Correct.

12 Q And had she called you again?

13 A I believe so.

14 Q How many times did you call Kathleen Parker?

15 A I think I called her one time.

16 Q And that would have been on the 3rd or the 4th?

17 A Correct.

18 Q Did you call anybody at InfoStructure?

19 A Yes.

20 Q Who did you talk to?

21 A I spoke to Jon Dowd.

22 Q And what did you tell Jon?

23 A I referred him to the e-mail.

24 Q And is there a document of -- where you forwarded
25 it?

1 Is that forward produced here among -- I've got
2 three e-mails, and it looks like three would be the document
3 that you sent to Jon Dowd.

4 A That is correct.

5 Q Okay. So you did not forward, to InfoStructure,
6 Kathleen Parker's e-mail?

7 A I did not.

8 Q And you said, I have received a copyright
9 infringement claim against a business customer of yours.
10 This was on August 2, at 6:54 in the morning?

11 A That's correct.

12 Q At that point, had you spoken with legal counsel
13 for the city of Ashland?

14 A I do not believe I had.

15 Q Okay. So when you were saying that you had
16 received a copyright infringement claim, there was no legal
17 input on whether it was a proper copyright infringement
18 claim or anything?

19 A That's correct.

20 Q When you prepared this AFN copyright infringement
21 process document identified as Exhibit 1, did you consult
22 with attorneys in preparing it?

23 A No.

24 MS. O'KASEY: I object and instruct you not to
25 answer.

1 Q BY MR. CARREON: Do you know what the DMCA is?

2 A Yes.

3 Q What is it?

4 A It is the Digital Millennium Copyright Act.

5 Q And what does it proscribe with respect to ISPs and
6 copyright infringement?

7 A I am not completely sure.

8 Q So you have already distributed this document to
9 the ISPs, Exhibit 1?

10 A Yes.

11 Q They think that it's the rule from AFN with regard
12 to how these matters are going to be handled?

13 MS. O'KASEY: I object to the form of the question.
14 You can answer.

15 Q BY MR. CARREON: You have communicated to them that
16 this is how they shall handle matters?

17 A No. This is how we shall handle matters.

18 Q And is it your understanding that the DMCA has the
19 force of law in all 50 states and the city of Ashland?

20 A I don't know.

21 Q You do understand that that -- it's part of the
22 copyright law of the United States; correct?

23 A Okay.

24 Q No, no, please don't agree with me.

25 MS. O'KASEY: No, he's just asking if you know. If

1 you don't know --

2 THE WITNESS: I don't know.

3 Q BY MR. CARREON: And you don't know that the DMCA
4 proscribes a specific form for notices of copyright
5 infringement before an ISP could be required to remove or
6 disable content from the Internet in response to a copyright
7 infringement claim?

8 A I did not at the time.

9 Q Okay. Are you still unaware of the fact that the
10 DMCA requires that a notice of copyright infringement
11 requesting removal or disabilities of infringement content
12 must be under penalty of perjury?

13 MS. O'KASEY: I object to the form of the question.
14 You can answer.

15 THE WITNESS: Could you --

16 Q BY MR. CARREON: Are you still unaware --

17 A Could you rephrase the entire question or repeat
18 the entire question?

19 MR. CARREON: That's fine. Why don't you go ahead
20 and read it?

21 THE REPORTER: "QUESTION: Are you still
22 unaware of fact that the DMCA requires
23 that a notice of copyright infringement
24 requesting removal or disabilities of
25 infringement content must be under

1 penalty of perjury?"

2 THE WITNESS: Still, no.

3 Q BY MR. CARREON: You are now -- you now know that
4 Kathleen Parker's e-mail, Exhibit 2, is not an adequate
5 notice of copyright infringement under the DMCA?

6 A Yes.

7 Q Because why?

8 A It's not the appropriate format.

9 Q First, it's not under penalty of perjury; correct?

10 A I don't know.

11 Q Well, is it under penalty of perjury? Is there
12 anything in there, in Exhibit 2, that says, "Under penalty
13 of perjury, I swear such-and-such"?

14 A No.

15 Q Okay. Is there anything in there that says that,
16 "I am the holder of the copyright or am authorized to act as
17 the agent of the copyright holder"?

18 A No.

19 Q And is that a requirement under the DMCA, that it
20 say that?

21 A I believe it is.

22 Q Is it also a requirement of the DMCA that it
23 identify the image by providing the URL for the image?

24 A Actually, I believe it says the URL of the
25 material.

1 Q So you know that that is a requirement of the DMCA
2 and, of course, you can confirm for us that that doesn't
3 appear for us in Exhibit 2; correct?

4 A Correct.

5 Q So today, if you received an e-mail like Exhibit 2,
6 you would know right away that it is not in compliance with
7 a DMCA; correct?

8 A Correct.

9 Q And what would you do with that?

10 A It would depend.

11 Q Okay. Would you turn off a modem based upon this
12 document?

13 A No.

14 Q So you would not do what you did on August 2nd with
15 respect to American Buddha?

16 A That's not what I did on August 2nd.

17 Q What did you do on August 2?

18 On August 2, did you turn off the modem for
19 American-Buddha.com?

20 A Right.

21 Q And why did you do that?

22 A Because, in conversation with Mr. Dowd, he had said
23 that American Buddha was on a disconnect list.

24 Q On a disconnect list?

25 A Correct.

1 Q And what did that mean to you?

2 A That they were on a disconnect list.

3 Q Help me out here. What is a disconnect list?

4 A You'd have to ask Mr. Dowd.

5 Q Based on a statement that you did not understand,
6 you disconnected the modem?

7 A Based upon Mr. Dowd's assertion that we could turn
8 the modem off, I turned off the modem.

9 Q Have you changed your answer from disconnect list?

10 I mean, you know, we could put an assassination
11 list; maybe we could just go ahead and kill the people.

12 Is the list all that powerful, put on a disconnect
13 list, then you disconnect?

14 MS. O'KASEY: I object to the form of the question.

15 I think what he wants to know is: Why did you turn
16 the modem off?

17 MR. CARREON: I already asked that question and
18 somehow I didn't get an answer.

19 THE WITNESS: Because Mr. Dowd told me to.

20 Q BY MR. CARREON: Okay. And why was he telling you
21 that?

22 A You'd have to ask him.

23 Q Why were you talking to him?

24 A I was speaking to him about the copyright
25 infringement claim.

1 Q And he told you --

2 A -- the customer is on a disconnect list, turn them
3 off, and when he calls, I'll talk to them about both issues.

4 Q So he claimed there was another reason, an
5 independent ground; in other words, I can turn this off for
6 you, independently? Is that -- did you --

7 A I don't understand the question.

8 Q Let me put it this way: Is there anything in
9 Exhibit 1 which summarizes Ashland's copyright infringement
10 process that refers to a disconnect list?

11 A No.

12 Q Okay. The only reason you were talking to Jon Dowd
13 was because of the Kathleen Parker matter; correct?

14 A Correct.

15 Q Okay. So what you are telling me is that he said,
16 just turn it off and I'll talk to him?

17 A Correct.

18 Q Okay. And that is not how you would handle a
19 copyright infringement allegation in the future; correct?

20 A Correct.

21 Q In the future, what will you do?

22 A It would depend upon the case.

23 Q Suppose you receive a defective allegation like
24 Exhibit 2, what would your response be?

25 A We do not currently have a policy to deal with

1 this, so I don't know what the answer to that will be.

2 Q Okay. So suffice it to say that you'd do the same
3 thing you did; since you don't have a policy, it falls
4 outside of your purview to make these legal decisions, and
5 you'd do what is reflected that you did in Exhibit 5, you'd
6 forward the matter to legal counsel; correct?

7 A I will assume we will have a policy at some point
8 that deals with this that I will follow.

9 Q Okay. In the absence of that policy, in other
10 words, if you went back to your office and you found that,
11 today, when there still is no policy and you've got a
12 defective claim of copyright infringement, what will you do
13 if that is, in fact, the case? There is still no policy,
14 you've got another defective notice --

15 A Communicate back to the customer.

16 Q Okay. You are not going to contact legal counsel?

17 MS. O'KASEY: Well, all he is asking you to do is
18 speculate, okay, so --

19 THE WITNESS: Certainly, I'll contact legal counsel.

20 MS. O'KASEY: -- so speculate.

21 MR. CARREON: And Counsel, if that's the way you are
22 going to get questions answered, I'm going to have to say
23 that that is quite improper.

24 You just told the witness what to answer, ma'am.

25 That's quite improper.

1 MS. O'KASEY: It's speculative. You asked him to
2 speculate.

3 MR. CARREON: No, ma'am, it is not appropriate, it
4 is entirely inappropriate for you to tell him what to say in
5 a deposition, and you just did it.

6 MS. O'KASEY: Your comments are noted, Counsel;
7 thank you.

8 MR. CARREON: No, my comments are more than noted.

9 MS. O'KASEY: Would you like to continue with the
10 deposition?

11 MR. CARREON: I would like to, um, adjourn here for
12 a moment while I regain my composure.

13 MS. O'KASEY: Okay.

14 MR. CARREON: I'm shocked.

15 (Recess in proceedings.)

16 ---o0o---

17 Q BY MR. CARREON: I'm going to return to that
18 question. That question was: If you receive a defective
19 notice of copyright infringement, similar to Exhibit 2, one
20 that, for example, didn't identify the infringing material,
21 wasn't under penalty of perjury, and did not assert that it
22 was issued under the authority of the copyright holder, what
23 would you do?

24 A I don't know what I would do.

25 Q Now, Exhibit 3 shows us what you did at 6:54 a.m.,

1 the day after you received Exhibit 2. And that is your
2 summary e-mail to Jon Dowd or abuse@mind.net; correct?

3 A That's correct.

4 Q Now, notwithstanding that you don't know anything
5 about copyright law, you concluded that there was an
6 infringement; correct?

7 A I don't believe it says that.

8 Q Okay. But you did.

9 A No.

10 Q You concluded that Ms. Parker was right; didn't
11 you?

12 A No.

13 Q And you agreed to help her; correct?

14 A No.

15 Q You made a comparison between an image that you
16 thought was the Washington Post's property; correct?

17 A No.

18 Q You did make a comparison with an image; correct?

19 A I looked at the image.

20 Q Okay. You, first of all, for Ms. Parker, you found
21 the image at American-Buddha.com and you put the URL in this
22 Exhibit 3 e-mail; correct?

23 A Yes, I did.

24 Q All right. You looked at that image and you
25 searched and you found another image of Ms. Parker; correct?

1 A Correct.

2 Q You made a comparison of the two; correct?

3 A I saw that they were similar.

4 Q And you then wrote this paragraph that says the web
5 site is American-Buddha.com and the image at issue is, and
6 then there's the URL of the image, or any other
7 representation of Kathleen Parker that is based upon images
8 published by the Washington Post.

9 Now, why does it say that?

10 A I do not recall.

11 Q Well, you have got this same thought process
12 available to you, you can just kind of try and remember why.

13 A More than likely because I saw that in other things
14 we had received about copyright infringement.

15 Q What do you mean, other things you had received?

16 A I received numerous e-mails about copyright
17 infringement.

18 Q I understand. So -- and what does that have to do
19 with what you wrote here in the second paragraph of Exhibit
20 3?

21 A What it probably means is I cut and pasted from
22 another e-mail.

23 Q Okay. And does that absolve you of responsibility
24 for knowing what you say?

25 MS. O'KASEY: I object to the form of the question,

1 argumentative.

2 You can answer.

3 THE WITNESS: I will take responsibility for what I
4 wrote.

5 Q BY MR. CARREON: Okay, great. Well, then, we can
6 move right ahead to asking why you say that this image is
7 somehow related to other images published by the Washington
8 Post?

9 A My recollection at this point, I think, is that I
10 actually went to the Washington Post and found that image on
11 their web site.

12 Q And what did that mean to you?

13 A And I cut and pasted their copyright off the bottom
14 of their web page.

15 Q So you concluded that because they had the image,
16 -- excuse me -- the Washington Post had the image of
17 Kathleen Parker, that it was their property and that they
18 were the copyright owners?

19 A I made no assertions that anyone was the copyright
20 owner, that I'm aware of.

21 Q So how could there be copyright infringement if you
22 had no idea whether the image was copyrighted or not?

23 A My e-mail says I received an infringement claim.

24 Q Uh-huh. You didn't forward that, however; instead,
25 you amplified; correct? You added what was missing, you put

1 in the URL of the image and you attempted to come up with a
2 copyright holder. You filled in two of the blanks that are
3 necessary in a DMCA notice; didn't you?

4 A (Witness shrugs shoulders.)

5 Q You improved on Ms. Parker's infringement notice;
6 didn't you?

7 A No.

8 Q Well, you provided the URL. It was defective in
9 that regard, so you improved it in that regard; correct?

10 A At the time, I was not aware that it was defective.

11 Q Okay. But you -- in retrospect, you clearly did
12 improve it by deleting one defect; right?

13 A I wanted to make it easy for InfoStructure to find
14 the image.

15 Q You improved the notice; correct?

16 A Correct.

17 Q You also attempted to identify a copyright holder,
18 a matter that was not done by Ms. Parker; correct?

19 A Correct.

20 Q And that was the Washington Post; right?

21 A Correct.

22 Q All right. And finally, in the third paragraph,
23 you referred InfoStructure to the fact that -- how did you
24 put it here?

25 A "Please let me know as soon as possible

1 what the resolution to this issue is.

2 Copyright infringement is listed in AFN's
3 acceptable use policy and can result in
4 the service being turned off."

5 Q And what was the purpose of putting that in?

6 A I generally include that in most e-mails that have
7 to do with abuse.

8 Q And this is something that is already known to
9 Mr. Dowd, of course?

10 A Correct.

11 Q So --

12 A I didn't send this to Mr. Dowd.

13 Q You sent it to abuse@mind.net, and you ended up
14 discussing it with Mr. Dowd; thus, you know he received it?

15 A Correct.

16 Q And so you discussed the contents with him?

17 A Correct.

18 Q And so when you say, "Copyright infringement is
19 listed in AFN's acceptable use policy," that suggests that
20 there is infringement going on at this URL by the operator
21 of the American-Buddha.com web site; right?

22 MS. O'KASEY: I object to the form of the question.
23 You can answer.

24 Q BY MR. CARREON: Wouldn't you say it's a fair
25 inference to draw from your e-mail?

1 A It infers that a copyright infringement claim has
2 been made.

3 Q Okay. And so did Mr. Dowd call you back about
4 this? You requested an immediate response.

5 A No.

6 Q Who called you?

7 A No one.

8 Q You called him?

9 A I called him.

10 Q Okay. Because -- why did you call him?

11 A Because that is what we try to do in our policy.

12 Q All right. And what did you tell him?

13 Did you check and make sure he'd gotten your
14 e-mail?

15 A Yes, I did.

16 Q And then what did you tell him, in addition to what
17 was in the e-mail, in the phone call, to say more?

18 A I said that I had spoken to Kathleen Parker.

19 Q Okay.

20 A And that she was upset because her kids were
21 looking at the image on the Internet.

22 Q Okay. So her kids were upset about the copyright
23 infringement?

24 MS. O'KASEY: Object.

25 MR. HARDY: Objection to the form.

1 MS. O'KASEY: Objection to the form of the question.

2 Q BY MR. CARREON: Was that your understanding that
3 her children were upset that the Washington Post's copyright
4 had been infringed?

5 MR. HARDY: Objection to form.

6 THE WITNESS: No.

7 Q BY MR. CARREON: No. Her children were upset
8 because of the matters that you previously stated were
9 irrelevant; correct?

10 MS. O'KASEY: I object to the form of the question,
11 argumentative.

12 You can answer.

13 MR. HARDY: I also objection to the form.

14 THE WITNESS: I can't speak to why her children were
15 upset.

16 Q BY MR. CARREON: But I bet you would be willing to
17 wager, if it were a substantial wager, that they weren't
18 upset about copyright infringement; correct?

19 MS. O'KASEY: I object to the form of the question.

20 MR. HARDY: I objection to form.

21 MS. O'KASEY: You can answer.

22 MR. CARREON: Why don't you instruct him to
23 speculate on that, it worked last time. Maybe we can get an
24 answer this time.

25 MS. O'KASEY: I want to eliminate as many breaks,

1 so --

2 MR. CARREON: Good.

3 Q So it doesn't have anything to do with the fact
4 that her kids were upset, doesn't it, whether you turn off
5 modems? It doesn't have anything to do with children being
6 upset?

7 A That's correct.

8 Q So why were you telling Jon Dowd?

9 A We were having a conversation about the service.

10 Q Okay. Did you discuss whether he had any knowledge
11 of what constitutes copyright infringement?

12 A No.

13 Q Okay. So it is safe to say that in your
14 communication with Mr. Dowd, you had two people who know
15 apparently nothing about copyright infringement deciding
16 whether there is copyright infringement; is that correct?

17 MS. O'KASEY: I object to the form of the question.

18 You can answer.

19 THE WITNESS: No.

20 Q BY MR. CARREON: Well, was there anyone on the
21 phone at that time who knew anything about copyright
22 infringement?

23 A I can't speak to what Mr. Dowd knew. Obviously, I
24 don't know very much about copyright infringement.

25 Q And did he add anything to your knowledge? Did he

1 say, oh, well, this, that, or the other? Did he add
2 anything to your knowledge?

3 A No.

4 Q Okay. So whatever he knew, the exchange between
5 the two of you was not an informed one with respect to the
6 copyright infringement claim?

7 MS. O'KASEY: I object to the form of the question.
8 You can answer.

9 THE WITNESS: Could you rephrase that?

10 Q BY MR. CARREON: Neither of you really knew how to
11 determine whether there was copyright infringement going on.

12 A Correct.

13 Q Okay. But you made the decision, nevertheless?

14 MS. O'KASEY: I object to the form of the question.
15 You can answer.

16 Q BY MR. CARREON: The two of you made the decision;
17 correct?

18 A We made the decision to --

19 Q -- disable the modem.

20 A Yes.

21 Q And the reason for that was Kathleen Parker's call
22 and e-mail; correct?

23 A The reason for that was because Jon Dowd said that
24 the customer was on a disconnect list and that when the
25 customer called, he would talk to them about both issues.

1 Q What are the two issues?

2 A To the best of my knowledge, the customer being on
3 a disconnect list and the copyright infringement claim.

4 Q Okay. And you understand all the details of the
5 copyright infringement claim; correct?

6 MS. O'KASEY: I object to the form of the question.
7 You can answer.

8 Q BY MR. CARREON: At --

9 A I understand what I understand about the copyright
10 infringement claim.

11 Q And you understand, as you've testified, you had a
12 notice; correct?

13 A Correct.

14 Q It was defective but you were able to improve it;
15 correct?

16 MS. O'KASEY: I object to the form of the question,
17 it misstates prior testimony.

18 But you can answer.

19 THE WITNESS: I forwarded a claim to the ISP.

20 Q BY MR. CARREON: You also communicated with legal
21 counsel about it?

22 A Correct.

23 Q Okay. And you spoke with the person asserting the
24 claim at least twice on your initiative and at least twice
25 on her initiative; correct?

1 She called you at least twice, you called her back
2 at least twice; that was your testimony?

3 A Yeah, I don't know that I actually spoke to her
4 every time she called me.

5 Q So you have quite a body of knowledge there about
6 the copyright infringement claim.

7 Now tell me about your body of knowledge with
8 respect to the disconnect list.

9 A I have no knowledge of the disconnect list.

10 Q Then the motivating factor for turning off the
11 modem, was what the thing that you knew nothing about or the
12 thing that you knew a great deal about?

13 MS. O'KASEY: I object to the form of the question,
14 asked and answered.

15 I'll let you answer it one more time. You can
16 answer the question.

17 THE WITNESS: The motivating factor --

18 MS. O'KASEY: The mot- --

19 THE WITNESS: -- a discussion with Jon Dowd in
20 which he said, turn the modem off and he'll talk to them.

21 Q BY MR. CARREON: So would you effectively -- at
22 this point, you felt that you had passed the responsibility
23 on to Jon Dowd; correct?

24 A Correct.

25 Q You could -- whatever authority you had, you gave

1 it to Mr. Dowd; then having given it to him, he gave you
2 your directions, and those direction were what?

3 MS. O'KASEY: I object to the form of the question.

4 You can answer.

5 Asked and answered.

6 THE WITNESS: To disconnect the modem.

7 Q BY MR. CARREON: All right. Now, Mr. Dowd is not
8 your supervisor; correct?

9 A That is correct.

10 Q That would be Mr. Franel; correct?

11 A That is correct.

12 Q On any given day, you don't take directions from
13 Mr. Dowd; correct?

14 A We take directions from Mr. Dowd regularly.

15 Q You -- you take directions --

16 How often do you take calls that come in to his --
17 to your office and call Mr. Dowd and ask him to make the
18 decision for you?

19 A That process does not occur very often.

20 Q This was rather unique?

21 A This occurs regularly but it doesn't -- it is not
22 the majority of our interactions.

23 Q Where do you keep the records of how many other
24 times you have had to deal with DMCA problems?

25 A We don't keep them.

1 Q With regard to each telephone call you made -- you
2 folks own the Internet, but I don't know -- you own AFN, I
3 don't know if you own all of your telephone records. How
4 would we get documentary records to show all the calls that
5 you made to Ms. Parker, all the calls that you made to
6 Mr. Dowd, and all the calls that were made by Kathleen
7 Parker to you?

8 A We don't keep those records.

9 Q How would we get them if we needed them, for
10 national security?

11 A I have no idea.

12 Q No idea at all?

13 A No idea.

14 Q So your calls to Mr. Dowd are not going to appear
15 on any documentation that you are aware of?

16 A Not that I'm aware of.

17 Q They are not recorded anyplace, as far as you know?

18 A They are not recorded any place, as far as I know.

19 Q You don't record them anywhere in any working
20 notes? You don't keep working notes of what you are doing?

21 A I do not.

22 Q Okay. And as far as Ms. Parker, your testimony
23 now, under oath, is that you spoke with her how many times?

24 A I recall speaking with her two times.

25 Q Two times. And both of those times, she called

1 you?

2 A No.

3 Q One of those times she called you, one of those
4 times you called her?

5 A I believe one of those times I mentioned earlier,
6 she was transferred to me and one of those times, I called
7 her.

8 Q Okay. And did you give her Mr. Dowd's telephone
9 number or the phone number at InfoStructure?

10 A I don't recall.

11 Q Is there any tendency, in your recollection?

12 A My tendency is that I might have.

13 Q And why is that your tendency?

14 Did she ask for a number, someone else to call?

15 A It's my tendency, because I generally try to get
16 the person in touch with the ISP.

17 Q And when someone is alleging copyright
18 infringement?

19 A When someone is alleging abuse.

20 Q Okay. And did Mr. Dowd tell you whether he had
21 spoken with Kathleen Parker at any time?

22 A I don't recall.

23 Q Did you, at any time, speak with Kathleen Parker's
24 husband?

25 A No.

1 Q Did Jon Dowd tell you at any time that he had
2 spoken with Kathleen Parker's husband?

3 A I don't recall.

4 Q Any tendency to recall?

5 A No.

6 Q If I were to represent to you that Mr. Dowd had
7 stated that his only statement to you with response to this
8 matter was to do what you had to do, and that he did not
9 inform you of American-Buddha.com's modem being on a
10 disconnect list, what would your response to that be?

11 A That's not how I recall the conversation.

12 Q Generally speaking, you found Mr. Dowd to be an
13 honest person in your dealings with him; correct?

14 A I can't speak to that at all.

15 Q You would rely upon his statements on any given
16 day, you would actually take direction from him when
17 necessary; correct?

18 A We take direction from him as a customer of ours.

19 Q As a customer. He does not direct Ashland's
20 policies with regard to copyright infringement; correct?

21 A He directs Ashland's policies with regards to his
22 customers.

23 Q And is that something that it says in the current
24 -- in the agreement that we have here, marked as Exhibit 4,
25 that he shall direct AFN?

1 A I can't speak to that.

2 Q Where in the agreement does it say about acceptable
3 use policies?

4 A You would like me to read the agreement and find
5 it?

6 Q I'm assuming that you have a degree of familiarity
7 with the agreement.

8 Not to be difficult, let me just direct your
9 attention to this. That might also be relevant to your
10 answer.

11 A 7.1.

12 Q Okay. Thank you very much. Okay.

13 So under 7.1 of page three of Exhibit 4, it says:

14 "AFN may deny customer access to the
15 network and cease to provide all or part
16 of any services described in this agreement
17 without notice if customer, A, violates any
18 provision of applicable acceptable use
19 policies; B, engages in any conduct or
20 activity that AFN, in its sole discretion,
21 reasonably believes causes a risk that AFN
22 may be subjected to civil or criminal
23 litigation, charges, or damages; or C,
24 would cause AFN to be denied access or to
25 lose services by AFN's Internet provider."

1 So that is the Internet service policy that you
2 were citing to Mr. Dowd in Exhibit 3?

3 A No.

4 Q No. What were you referring to when you were
5 referring to acceptable uses in Exhibit 3?

6 A The acceptable use policy.

7 Q Which pertains to 7.1?

8 A 7.1, I believe, is where it's referenced in the
9 contract.

10 Q Okay. And what you are saying is, basically -- to
11 InfoStructure at this point -- is that they must respond to
12 this claim of copyright infringement or face having their
13 service turned off by AFN; correct?

14 A I hadn't thought of it that way.

15 Q But that's what it means?

16 A I do not know what it means.

17 Q Okay.

18 A I'd have to check with counsel on specifically what
19 that means.

20 Q Okay. With regard to acceptable use policies,
21 there are some, clearly; you found them in the contract.
22 You know that -- you would agree that InfoStructure's access
23 to the Internet can be terminated by AFN if there is a
24 failure to conform to acceptable use policies?

25 A Yes.

1 Q And acceptable use policies are referred to in
2 Exhibit 3; correct?

3 A Correct.

4 Q Those are the acceptable uses of InfoStructure;
5 InfoStructure is the one who has got to engage in acceptable
6 use?

7 A Our contract is with InfoStructure.

8 Q Correct, correct. And you weren't informing the
9 web site operator of American Buddha of anything, right, so
10 you are talking InfoStructure here, it is them that has to
11 adhere to acceptable uses?

12 A Correct.

13 Q So did Mr. Dowd acknowledge that the circumstances
14 that were represented by your Exhibit 3 e-mail posed some
15 risk that InfoStructure's own Internet access to AFN might
16 be impaired in some way?

17 A Not that I recall.

18 Q Do you have any idea how many web sites were hosted
19 through that modem that you turned off?

20 A I have no idea.

21 Q Do you think it has any relevance to the matter at
22 issue?

23 A Not for me.

24 Q Okay. And if InfoStructure had not responded to
25 this, you would have just turned off all of InfoStructure;

1 is that correct?

2 A That is not correct.

3 Q Because why?

4 A Because that is not how we have done it.

5 Q So you could -- if you turned off InfoStructure, of
6 course, you would turn off hundreds of households throughout
7 the city of Ashland; correct?

8 A That's correct.

9 Q And if you turned off one modem that is hosting 40
10 or 50 web sites, you turn off 40 or 50 web sites; correct?

11 A I turn off a modem.

12 Q And when you turn off a modem and it disables
13 access to a large number of web sites, then there is a
14 disruption to a large number of Internet viewers; correct?

15 A I can't speak to how many Internet viewers are
16 disrupted.

17 Q No, but let us assume that each web site has some
18 kind of an audience. You don't care -- you didn't care if
19 you turn off a lot of web sites or one?

20 You know, it's like there's one page here in a web
21 site, in one web site, okay, that you thought was
22 infringing. And in order to remedy that, you simply turned
23 off a modem without considering how many other web sites
24 were affected or how much e-mail service was affected, any
25 of that; correct?

1 MS. O'KASEY: I object to the form of the question.
2 You can answer.

3 THE WITNESS: I have actually never stated either of
4 those two things.

5 Q BY MR. CARREON: Right. You've -- what you've done
6 is claimed to be ignorant of copyright infringement, and
7 yet, to make decisions about copyright infringement, I
8 understand and I know that you have evaded your effort to
9 assume responsibility about this matter by off-leading it to
10 Mr. Dowd and InfoStructure; I'm aware of all that, I think
11 it's in the record.

12 However, the point is: Are you willing to accept
13 responsibility for turning off many web sites that are
14 hosted at a single modem on the basis of your decision to
15 take Mr. Dowd's advice?

16 MS. O'KASEY: I object to Counsel's narrative and I
17 object to the question based on form.

18 You can answer.

19 THE WITNESS: My job is to deal with individual
20 modems. It's not my concern nor my knowledge about what may
21 or may not be behind them.

22 Q BY MR. CARREON: So how many modems are servicing
23 InfoStructure?

24 A I can't give you an exact number. I suspect it's
25 around 2,000.

1 Q Okay. They are serviced through InfoStructure, but
2 InfoStructure has one pipe from AFN, correct, one big pipe?

3 A Negative.

4 Q How many pipes do they have, how many hookups do
5 they have?

6 A Roughly 2,000.

7 Q Okay. So each individual modem is hooked up
8 directly? Each subscriber has a modem issued?

9 A Each subscriber has a modem.

10 Q Okay.

11 A I do not know who issues the modem.

12 Q So if you were to say, I want to turn off all of
13 InfoStructure, I don't want InfoStructure to have any
14 access, or anyone that they are providing Internet service
15 to to have access, what would it take to do that?

16 Say you concluded that they've grossly abused the
17 acceptable use policy, it's time to terminate InfoStructure
18 and everyone that they are serving, how would you do that?

19 A I would disable all of their modems in our
20 activation system, which would write a file to our DHCP
21 server, which would, at the next time the modem asked for a
22 renewal, would not allow it to renew.

23 Q Okay. And would each one of those modems be an
24 individual modem located in an individual office or home
25 whose subscription service to the Internet happened to be

1 through InfoStructure; is that correct?

2 A That is correct.

3 Q So City of Ashland Fiber Net has direct control
4 over all of the modems that are servicing InfoStructure
5 customers?

6 A Yes.

7 Q InfoStructure does not have that control itself, it
8 does not have the power to turn off the modem?

9 A They do.

10 Q They do? So did you tell Mr. Dowd to go ahead and
11 turn it off himself?

12 A No.

13 Q Why not?

14 A Because that is not how we manage abuse issues at
15 the time.

16 Q Has that changed?

17 A Some of it has changed.

18 Q If the same -- how would it be handled today?

19 Say an absolutely proper, compliant DMCA notice
20 came through, you forwarded it to Mr. Dowd, to
21 InfoStructure, they determined, by talking with their
22 counsel, that it really was infringing, they performed
23 whatever duties they were required to under the DMCA and
24 they decided it was time to turn off the web site, what
25 would they do under the current --

1 A Since the time that this occurred and now, we have
2 upgraded our software so that he can now enter Mac addresses
3 in to have them disconnected hourly.

4 Q Okay. So he can put them in a queue?

5 A Correct.

6 Q And then he wouldn't have to talk to you at all?

7 A Correct.

8 Q And is that the understanding of how these things
9 are going to be handled in the future?

10 A I don't know.

11 Q Okay. And so that is not referenced in Exhibit 1?

12 A That's correct.

13 Q So perhaps an amendment will be coming out to this
14 policy?

15 A I don't know.

16 Q Well, Mr. Franel, Joe Franel, said there may be
17 some changes, so you might want to talk to him about it and
18 get the changes made.

19 Have you heard, at any time, from anyone, that
20 Kathleen Parker and/or her husband were calling
21 InfoStructure hourly with regard to this matter?

22 A No.

23 MR. CARREON: Okay. I pass the witness.

24 MS. O'KASEY: Kevin, do you have any questions?

25 MR. HARDY: I've got two. I don't know if you do,

1 Karen.

2 MS. O'KASEY: I don't, so go ahead.

3 MR. HARDY: Okay.

4 ---o0o---

5 EXAMINATION BY MR. HARDY

6 Q Mr. Holbo, I'm Kevin Hardy, I represent the
7 Washington Post. Just a couple questions.

8 Putting aside any communications you had with
9 Kathleen Parker, did you have any other contacts with anyone
10 from the Washington Post Company relating in any way to
11 American Buddha?

12 A No.

13 Q Do you know whether Kathleen Parker is or was at
14 any time an employee or agent of the Washington Post
15 Company?

16 A No.

17 MR. HARDY: I have no further questions.

18 MR. CARREON: And we can conclude.

19 (Deposition concluded at 12:28 p.m.)

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REPORTER'S CERTIFICATE

STATE OF OREGON)
) ss.
COUNTY OF JACKSON)

I, LAURA L. SMITH, a Certified Shorthand Reporter and Notary Public for the State of Oregon, do hereby certify:

That the witness, RICHARD K. HOLBO, was present at the time and place herein set forth and was by me sworn to testify as to the truth;

That the said proceedings were recorded stenographically by me and were thereafter transcribed under my direction via computer-assisted transcription;

That the foregoing transcript is a true record of the proceedings which then and there took place;

That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have affixed my seal and subscribed my name on January 11, 2007.

[Handwritten Signature]
LAURA L. SMITH, Notary Public
CSR NO. 97-0340

