

Exhibit H

<p style="text-align: center;">UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION</p> <p>THE APPLE IPOD ITUNES Lead Case No. ANTI-TRUST LITIGATION. C-05-00037-JW (HRL)</p> <p>-----</p> <p style="text-align: center;">VIDEOTAPED DEPOSITION OF STEVE JOBS VOLUME I</p> <p style="text-align: center;">April 12, 2011 10:03 a.m.</p> <p style="text-align: center;">1 Infinite Loop Cupertino, California</p> <p style="text-align: center;">HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY</p> <p style="text-align: center;">Ana M. Dub, RMR, CRR, CSR 7445</p>	<p style="text-align: center;">INDEX OF EXAMINATION</p> <p>WITNESS: STEVE JOBS EXAMINATION PAGE By Ms. Sweeney 7</p>
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<p style="text-align: center;">APPEARANCES OF COUNSEL</p> <p>For the Direct Purchaser Plaintiffs: ROBBINS GELLER RUDMAN & DOWD LLP BONNY E. SWEENEY, ESQ. ALEXANDRA S. BERNAY, ESQ. CARMEN A. MEDICI, ESQ. 655 West Broadway, Suite 1900 San Diego, California 92101 619.231.1058 bsweeney@rgrdlaw.com xanb@rgrdlaw.com cmedici@rgrdlaw.com</p> <p>For the Indirect Purchaser Plaintiffs: ZELDES & HAEGGQUIST, LLP AARON M. OLSEN, ESQ. 625 Broadway, Suite 905 San Diego, California 92101 619.342.8000 aaron@zhlaw.com</p> <p>For the Defendant Apple, Inc., and the Deponent: O'MELVENY & MYERS LLP GEORGE A. RILEY, ESQ. Two Embarcadero Center, 28th Floor San Francisco, California 94111-3823 415.984-8700 griley@omm.com</p> <p>Also Present: MATTHEW COPE, VIDEOGRAPHER</p>	<p style="text-align: center;">INDEX TO EXHIBITS</p> <table border="0"> <thead> <tr> <th style="text-align: left;">Exhibit</th> <th style="text-align: left;">Description</th> <th style="text-align: right;">Page</th> </tr> </thead> <tbody> <tr> <td>Exhibit 1</td> <td>E-mail Chain, Top E-mail Dated July 23, 2004 to Jeff Robbin from Eddy Cue, Production Nos. Apple_AIIA 00090405-07</td> <td style="text-align: right;">9</td> </tr> <tr> <td>Exhibit 2</td> <td>E-mail Dated July 24, 2004 to Eddy Cue, et al., from Katie Cotton, Production No. Apple_AIIA01384973</td> <td style="text-align: right;">14</td> </tr> <tr> <td>Exhibit 3</td> <td>E-mail Chain, Top E-mail Dated July 25, 2004 to Philip Schiller from Eddy Cue, Production Nos. Apple_AIIA 00090429-31</td> <td style="text-align: right;">14</td> </tr> <tr> <td>Exhibit 4</td> <td>E-mail Chain, Top E-mail Dated July 26, 2004 to Philip Schiller, et al., from Steve Jobs, Production Nos. Apple_AIIA 00093875-76</td> <td style="text-align: right;">25</td> </tr> <tr> <td>Exhibit 5</td> <td>E-mail Chain, Top E-mail Dated July 26, 2004 to Steve Jobs from Zach Horowitz, Production Nos. Apple_AIIA 01384975-76</td> <td style="text-align: right;">27</td> </tr> <tr> <td>Exhibit 6</td> <td>July 29, 2004 Press Release</td> <td style="text-align: right;">32</td> </tr> <tr> <td>Exhibit 7</td> <td>CNETNews.com Article</td> <td style="text-align: right;">28</td> </tr> <tr> <td>Exhibit 8</td> <td>The Wall Street Journal Article</td> <td style="text-align: right;">43</td> </tr> <tr> <td>Exhibit 9</td> <td>Chicago Tribune Binary Beat Column</td> <td style="text-align: right;">6</td> </tr> <tr> <td>Exhibit 10</td> <td>Redacted E-mail Chain, Top E-mail Dated August 17, 2004, Production Nos. Apple_AIIA 00920838-43</td> <td style="text-align: right;">52</td> </tr> </tbody> </table>	Exhibit	Description	Page	Exhibit 1	E-mail Chain, Top E-mail Dated July 23, 2004 to Jeff Robbin from Eddy Cue, Production Nos. Apple_AIIA 00090405-07	9	Exhibit 2	E-mail Dated July 24, 2004 to Eddy Cue, et al., from Katie Cotton, Production No. Apple_AIIA01384973	14	Exhibit 3	E-mail Chain, Top E-mail Dated July 25, 2004 to Philip Schiller from Eddy Cue, Production Nos. Apple_AIIA 00090429-31	14	Exhibit 4	E-mail Chain, Top E-mail Dated July 26, 2004 to Philip Schiller, et al., from Steve Jobs, Production Nos. Apple_AIIA 00093875-76	25	Exhibit 5	E-mail Chain, Top E-mail Dated July 26, 2004 to Steve Jobs from Zach Horowitz, Production Nos. Apple_AIIA 01384975-76	27	Exhibit 6	July 29, 2004 Press Release	32	Exhibit 7	CNETNews.com Article	28	Exhibit 8	The Wall Street Journal Article	43	Exhibit 9	Chicago Tribune Binary Beat Column	6	Exhibit 10	Redacted E-mail Chain, Top E-mail Dated August 17, 2004, Production Nos. Apple_AIIA 00920838-43	52
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1 indirect purchaser plaintiffs.
2 MR. RILEY: George Riley representing
3 Mr. Jobs and Apple.
4 THE VIDEOGRAPHER: And will we now swear
5 in the witness.
6 STEVE JOBS
7 sworn by the Certified Shorthand Reporter,
8 testified as follows:
9 EXAMINATION
10 BY MS. SWEENEY:
11 Q. Good morning, Mr. Jobs. I introduced
12 myself before we got on the record. And as you
13 know, this is a short deposition, just two hours.
14 But at any time if you want to take a break, just
15 let me know and we'll break.
16 A. Thanks.
17 Q. What's your current position at Apple?
18 A. I'm the CEO.
19 Q. And were you CEO during the entire year of
20 2004?
21 A. Yes.
22 Q. Okay. And do you have any understanding
23 of what this lawsuit is about that we're here for
24 today?
25 A. Not much.

1 DEPOSITION OF STEVE JOBS
2 April 12, 2011
3
4 PROCEEDINGS
5 (Whereupon, Deposition Exhibits 1
6 through 10 were pre-marked for
7 identification.)
8 THE VIDEOGRAPHER: Good morning. This is
9 Disk 1 in the videotaped deposition of Steve Jobs,
10 in the Apple iPod iTunes Antitrust Litigation.
11 This deposition is being held at Apple
12 headquarters, One Infinite Loop, Cupertino,
13 California. It's April 12th, 2011 at 10:03 A.M.
14 My name's Matt Cope. I'm the videographer
15 from Esquire in San Francisco. The court reporter
16 today is Ana Dub.
17 Counsel, will you please introduce
18 yourselves.
19 MS. SWEENEY: Bonny Sweeney, representing
20 the direct purchaser plaintiffs.
21 MS. BERNAY: Alexandra Bernay, also
22 representing the direct purchaser plaintiffs.
23 MR. MEDICI: Carmen Medici, also
24 representing the direct purchaser plaintiffs.
25 MR. OLSEN: Aaron Olsen representing the

1 Q. What's your understanding of the claims in
2 the case?
3 A. I don't know what the claims in the case
4 are.
5 Q. Okay. Are you familiar with a company
6 called RealNetworks?
7 A. Yeah.
8 Q. And do you recall in 2004 --
9 A. Do they still exist?
10 Q. As far as I know.
11 A. Okay.
12 Q. In some form.
13 Do you recall in 2004 when RealNetworks
14 developed a product called Harmony?
15 A. Not -- vaguely. I don't really remember
16 when it was, but I vaguely remember that they did,
17 yeah.
18 Q. Okay. And do you recall that that product
19 enabled customers of RealNetworks to purchase songs
20 from the RealNetworks store and play them directly
21 on an iPod?
22 A. I don't really remember that, but sure, it
23 might well have.
24 Q. Okay. What can you tell me that you
25 recall about Harmony?



9

1 A. I don't really have much of a recollection
 2 of Harmony.
 3 MS. SWEENEY: Okay. Well, we can show you
 4 some documents that might help refresh your
 5 recollection. In fact, why don't we do that right
 6 now.
 7 And, in fact, George, we've premarked some
 8 exhibits. Should we just pass them all out now?
 9 Whatever's easiest for you.
 10 MR. RILEY: Sure. Whatever works --
 11 MS. SWEENEY: Okay.
 12 MR. RILEY: -- for you.
 13 MS. SWEENEY: And we may not get through
 14 all these, but I thought it was easier to just
 15 pre-mark them.
 16 BY MS. SWEENEY:
 17 Q. Mr. Jobs, do you have all those exhibits
 18 in front of you?
 19 A. I have the ones you just gave me.
 20 Q. Okay. Can you turn, please, to the one
 21 that we have marked Jobs Exhibit 1.
 22 A. Jobs Exhibit 1. Yeah, I was reading that
 23 right now.
 24 Q. Okay. Do you need to take another minute
 25 to look through it?

10

1 A. No.
 2 Q. Okay. And this is a document that was
 3 produced by Apple, and it's a series of e-mails.
 4 The last e-mail, the one on the top left of the
 5 first page, is from Eddy Cue to Jeff Robbin, and
 6 it's discussing a draft press release by Apple
 7 responding to the Harmony product.
 8 Do you recall the discussions that took
 9 place at Apple between July 23rd and July 26th, 2004
 10 regarding Harmony?
 11 A. I don't, no.
 12 Q. Can you turn to the last page of
 13 Exhibit 1.
 14 A. Sure.
 15 Q. And the top of that page reads:
 16 "Describe the situation using
 17 Steve's analogy. 'Normally
 18 you're concerned that someone is
 19 going to break [into] your house
 20 to steal your stereo. In this
 21 case, it appears that someone is
 22 breaking into our house and
 23 setting up their own stereo --
 24 but they're still breaking in.'
 25 Did you make that analogy to describe the

11

1 RealNetworks' Harmony product?
 2 A. I don't remember. Sounds like I might
 3 have, based on this e-mail.
 4 Q. Okay. And at the bottom of that last
 5 page, again, of Exhibit 1, it says:
 6 "Eddy -- any word from the
 7 labels?"
 8 Eddy Cue is one of the persons at Apple
 9 who has been involved since the beginning of the
 10 contracts with the labels in the negotiations
 11 between Apple and the labels; is that correct?
 12 A. I don't know if he was involved at the
 13 very beginning, but he's been involved for a long
 14 time.
 15 Q. Okay. And you also have been very
 16 involved with those discussions; correct?
 17 A. Sure.
 18 Q. And do you recall in July of 2004
 19 discussing with Mr. Cue or anyone else at Apple the
 20 labels' reaction to RealNetworks' Harmony product?
 21 A. I don't remember any specific discussions,
 22 no.
 23 Q. Do you remember some general discussions?
 24 A. Not really. I mean, I -- I just don't
 25 have much of a memory of that whole time frame.

12

1 Q. If you could look at the first page of
 2 Exhibit 1. And, again, this is an e-mail from
 3 Mr. Cue, and he says:
 4 "I talked to Universal. They
 5 were aware of it. From their
 6 viewpoint, they are ok with it
 7 because they want
 8 interoperability."
 9 In 2004, were the labels pressing Apple to
 10 open up the iPod so that there was greater
 11 interoperability between the iPod and competing
 12 digital music stores?
 13 A. Well, I think from their point of view,
 14 they wanted everything to interoperate with
 15 everything else, but there were other points of view
 16 in the marketplace.
 17 It depended on what your point of view
 18 was. Depending on where you sat in the industry,
 19 you'd have a different point of view.
 20 Q. And what was your point of view as CEO of
 21 Apple?
 22 A. Well, I think, as best as I can recall, my
 23 point of view and I'd say Apple's point of view was,
 24 you know, we were the only big company involved in
 25 this stuff at that time, the one with the deepest



<p>13</p> <p>1 pockets.</p> <p>2 And we had pretty much black-and-white</p> <p>3 contracts with the labels that if people violated</p> <p>4 the digital rights management system on iTunes or on</p> <p>5 the iPod and they allowed music to be taken off of</p> <p>6 the iPod, as an example, and put on somebody else's</p> <p>7 computer, that that would be in clear violation of</p> <p>8 the licenses that we had with the labels, and they</p> <p>9 could cease giving us music at any time because of</p> <p>10 that.</p> <p>11 So I remember we were very concerned about</p> <p>12 that. And we went to great pains to make sure that</p> <p>13 people couldn't hack into our digital rights</p> <p>14 management system because if they could, we would</p> <p>15 get nasty e-mails from the labels threatening us</p> <p>16 to -- you know, that they were going to yank the</p> <p>17 license.</p> <p>18 Q. But because RealNetworks' Harmony product</p> <p>19 didn't strip DRM, the labels were okay with it;</p> <p>20 isn't that right?</p> <p>21 A. No, I don't remember that at all, no. I</p> <p>22 don't know whether it stripped the DRM off or not.</p> <p>23 I think it must have had to have stripped the DRM</p> <p>24 off. Not strip it off, but break it.</p> <p>25 Q. Let's --</p>	<p>15</p> <p>1 page of <u>Exhibit 2</u>, Mr. Cue says:</p> <p>2 "The labels are convinced</p> <p>3 that different formats are</p> <p>4 hurting their growth. They want</p> <p>5 us to license our DRM to Real.</p> <p>6 Since Real has assured them that</p> <p>7 they are putting the music in</p> <p>8 FairPlay, they are ok with it</p> <p>9 (that is until there is a</p> <p>10 problem). Real is actually</p> <p>11 saying they are playing a</p> <p>12 protected song on an authorized</p> <p>13 device for that protection</p> <p>14 scheme."</p> <p>15 So does that refresh your recollection</p> <p>16 that Real's Harmony product preserved the DRM and</p> <p>17 that the labels were okay with Harmony and, in fact,</p> <p>18 some of the labels issued public press releases</p> <p>19 applauding the Harmony product?</p> <p>20 A. Yeah, I don't remember that.</p> <p>21 And it doesn't say that the Real product</p> <p>22 doesn't break the DRM. It says that Real is saying</p> <p>23 that. It doesn't say that it's -- that we've tested</p> <p>24 it or it's true. But I'm sure we did and figured it</p> <p>25 out.</p>
<p>14</p> <p>1 A. I don't think there's any other way that</p> <p>2 something like that could work.</p> <p>3 Q. Well, let's take a look at <u>Exhibit 3</u>.</p> <p>4 A. Not 2?</p> <p>5 Q. We'll come back to 2.</p> <p>6 A. Okay.</p> <p>7 MR. RILEY: What is <u>Exhibit 3</u>?</p> <p>8 MS. SWEENEY: It's a series of e-mails.</p> <p>9 The most -- the last one in the string is from Eddy</p> <p>10 Cue to Philip Schiller and others, including</p> <p>11 Mr. Jobs, and it's dated July 25th, 2004.</p> <p>12 BY MS. SWEENEY:</p> <p>13 Q. Have you had a chance to look through</p> <p>14 that, Mr. Jobs?</p> <p>15 A. No, I'm just reading it now.</p> <p>16 (Witness reviews document.)</p> <p>17 THE WITNESS: Okay. I've read it.</p> <p>18 BY MS. SWEENEY:</p> <p>19 Q. And did you receive this e-mail from</p> <p>20 Mr. Cue on or about July 25th, 2004?</p> <p>21 A. I have no recollection of it, no.</p> <p>22 Q. Do you have any reason you didn't believe</p> <p>23 it -- you didn't receive it?</p> <p>24 A. No.</p> <p>25 Q. Okay. And in the top left of the first</p>	<p>16</p> <p>1 Q. Did you ever -- did Apple ever conclude</p> <p>2 that RealNetworks' Harmony product was stripping</p> <p>3 DRM?</p> <p>4 A. I don't really remember.</p> <p>5 Part of the issue, also, was that -- I</p> <p>6 recall something to the effect that we are con- --</p> <p>7 we were constantly upgrading iTunes and enhancing</p> <p>8 its DRM. And we -- you know, we assumed that future</p> <p>9 enhancements would break the RealNetworks scheme,</p> <p>10 whatever that was. So that would be a real problem</p> <p>11 for everybody.</p> <p>12 Q. Did Apple ever conclude that RealNetworks'</p> <p>13 Harmony product was illegal?</p> <p>14 A. I don't know.</p> <p>15 Q. Did Apple ever send a cease and desist</p> <p>16 letter to Real?</p> <p>17 A. I don't recall. I don't know.</p> <p>18 Q. Now, Apple has, in the past, sent cease</p> <p>19 and desist letters to persons who were known to have</p> <p>20 developed programs that stripped DRM from iTunes</p> <p>21 music; correct?</p> <p>22 MR. RILEY: Counsel, I think you're</p> <p>23 getting beyond the topics that the judge permitted.</p> <p>24 MS. SWEENEY: I understand. I'm not going</p> <p>25 to go too far down this line. Just get the answer</p>



<p>1 to this question and --</p> <p>2 MR. RILEY: And I don't think it's tied to</p> <p>3 the three topics that the judge permitted. Cease</p> <p>4 and desist letters to third parties?</p> <p>5 MS. SWEENEY: You've stated your</p> <p>6 objection. Thank you, Counsel.</p> <p>7 MR. RILEY: You don't have to answer that</p> <p>8 question, Steve, if you don't want to.</p> <p>9 THE WITNESS: Okay.</p> <p>10 MS. SWEENEY: Respectfully, you can</p> <p>11 object; and if I continue down roads that you think</p> <p>12 are beyond the scope, you can seek an order from the</p> <p>13 Court. But the only basis for instructing a witness</p> <p>14 not to answer is if there is an attorney-client</p> <p>15 privilege issue.</p> <p>16 MR. RILEY: I'm aware of that, but this is</p> <p>17 a different kind of deposition. The Court limited</p> <p>18 it to three narrow topics. I don't see how cease</p> <p>19 and desist letters to third parties fits into any of</p> <p>20 those three topics.</p> <p>21 MS. SWEENEY: Because it fits into -- if</p> <p>22 you'll recall, the judge said we're permitted to</p> <p>23 inquire about Apple's decisions related to</p> <p>24 RealNetworks' Harmony technology.</p> <p>25 And Apple did issue cease and desist</p>	17	<p>1 again?</p> <p>2 BY MS. SWEENEY:</p> <p>3 Q. Did Apple issue cease and desist letters</p> <p>4 against companies that developed technology that</p> <p>5 stripped DRM from iTunes songs?</p> <p>6 A. I don't -- in that time frame, I don't</p> <p>7 remember.</p> <p>8 Q. Now, do you know who Rob Glaser is?</p> <p>9 A. Well, I don't know him, but I know he was</p> <p>10 the CEO of RealNetworks for a while.</p> <p>11 Q. Did you ever meet Mr. Glaser?</p> <p>12 A. That's a good question.</p> <p>13 I probably did once or twice. I don't</p> <p>14 remember.</p> <p>15 Q. Did you ever talk to him on the phone?</p> <p>16 A. I might have. I just don't remember.</p> <p>17 Q. Now, looking at Exhibits 1, 2 --</p> <p>18 A. Do you want me to look at 2 now?</p> <p>19 Q. -- and 3, collectively, I think these are</p> <p>20 all exhibits pertaining to --</p> <p>21 A. Do you want me to look at 2? We haven't</p> <p>22 looked at 2 yet.</p> <p>23 Q. Oh. We haven't?</p> <p>24 A. No.</p> <p>25 MR. RILEY: No.</p>	19
<p>1 letters against other companies, but not against</p> <p>2 Real, and I want to establish that on the record.</p> <p>3 MR. RILEY: You've misstated what the</p> <p>4 judge permitted. Three topics.</p> <p>5 "The deposition shall be</p> <p>6 limited to the topics of (a) the</p> <p>7 July 26, 2004 RealNetworks</p> <p>8 announcement, (b) the July 29,</p> <p>9 2004 Apple announcement in</p> <p>10 response thereto, and (c)</p> <p>11 Apple's software updates in</p> <p>12 October 2004 that rendered the</p> <p>13 RealNetworks digital music files</p> <p>14 once again inoperable with</p> <p>15 iPods."</p> <p>16 Cease and desist orders -- letters to</p> <p>17 third parties don't fit into any of those three</p> <p>18 categories.</p> <p>19 MS. SWEENEY: We're using up a lot of the</p> <p>20 two hours, a lot of time on this question. It's</p> <p>21 just a simple yes-or-no question. Maybe Mr. Jobs</p> <p>22 doesn't even recall. Let him answer the question;</p> <p>23 we'll move on.</p> <p>24 MR. RILEY: Okay.</p> <p>25 THE WITNESS: What was the question,</p>	18	<p>1 BY MS. SWEENEY:</p> <p>2 Q. I'm sorry.</p> <p>3 A. You skipped over it. Do you want me to</p> <p>4 read it?</p> <p>5 Q. No, that's okay. I'm sorry. Let me ask a</p> <p>6 different question.</p> <p>7 A. Okay.</p> <p>8 Q. Okay. I'm sorry. Going back to</p> <p>9 Exhibit 3, now Mr. Cue says in the top of the</p> <p>10 left-hand side of the first page:</p> <p>11 "Also remember some labels at</p> <p>12 this point are also worried that</p> <p>13 we are getting to be too</p> <p>14 dominant."</p> <p>15 And is this something that you discussed</p> <p>16 at Apple around this time frame, that is, the</p> <p>17 labels' concern that Apple was becoming too</p> <p>18 dominant?</p> <p>19 A. I don't really remember. I mean, I</p> <p>20 remember there was such a time. I don't really know</p> <p>21 when it was. Probably spanned many years, but I</p> <p>22 don't really remember when.</p> <p>23 Q. But you do recall that at some time the</p> <p>24 labels expressed a concern that Apple was becoming</p> <p>25 too dominant?</p>	20



<p style="text-align: right;">21</p> <p>1 A. I don't remember -- I remember maybe 2 reading some press articles where they might say 3 that. They never said that to us. 4 Q. If you could turn to the second page of 5 <u>Exhibit 3</u>, about two-thirds of the way down the page 6 it says: 7 "In April, Apple chairman 8 Steve Jobs" -- 9 A. I'm sorry. <u>Exhibit 3</u>? 10 Q. Yeah. 11 A. Okay. On page what? 12 Q. Page 2. 13 A. Okay. Sorry. Yeah. Yeah. 14 Q. It's about two-thirds of the way down the 15 page. It says: 16 "In April, Apple chairman 17 Steve Jobs rebuffed Glaser's 18 request for a meeting to discuss 19 an alliance between the 20 companies" 21 Do you see that? 22 A. Mm-hmm. 23 Q. Did you rebuff a request from Mr. Glaser 24 in April of 2004 to license FairPlay to 25 RealNetworks?</p>	<p style="text-align: right;">23</p> <p>1 I object to this. This was a document 2 that was in front of Judge Lloyd. He said you could 3 not question about this issue. It's outside the 4 three topics. 5 MS. SWEENEY: Well, I disagree because it 6 goes to Apple's response to the July 26 announcement 7 by RealNetworks. 8 MR. RILEY: It's hard to see that. This 9 isn't part of a response. This is a letter that 10 occurred a couple of months before that time. 11 MS. SWEENEY: Yes, but it establishes the 12 background for the events that occurred between June 13 and October of 2004. 14 MR. RILEY: I will let you ask some 15 background about this as it relates to the previous 16 document, but I think this is clearly outside the 17 scope. 18 MS. SWEENEY: Your objection is noted. 19 BY MS. SWEENEY: 20 Q. Mr. Jobs, do you recall the question? Did 21 you receive this e-mail from Mr. Glaser? 22 A. I don't remember receiving it, but I might 23 have. 24 Q. Is that the e-mail that you use at Apple? 25 A. Yes, it is.</p>
<p style="text-align: right;">22</p> <p>1 A. I don't remember that. I might have. I 2 don't really remember. 3 Q. Do you recall discussions with Mr. Glaser 4 at any time during 2004? 5 A. I don't recall any specific discussions. 6 I'm sorry I don't remember more of this 7 for you, but there's been a lot of water under that 8 bridge in seven years. So . . . 9 MS. SWEENEY: I understand. I've been 10 reading these documents, so it's different. 11 (Whereupon, Deposition <u>Exhibit 11</u> was 12 marked for identification.) 13 BY MS. SWEENEY: 14 Q. Okay. I'm going to ask the court reporter 15 to hand you what's been marked as Jobs <u>Exhibit 11</u>. 16 A. Are you done with 3? 17 Q. Yes. 18 A. Thank you. 19 (Witness reviews document.) 20 THE WITNESS: Okay. I've read it. 21 BY MS. SWEENEY: 22 Q. Okay. Mr. Jobs, this is an e-mail from 23 Rob Glaser to you dated April 9th, 2004. Did you 24 receive this e-mail? 25 MR. RILEY: Hold on.</p>	<p style="text-align: right;">24</p> <p>1 Q. Is there any reason to believe you didn't 2 receive this e-mail? 3 A. I don't know. I just don't remember 4 receiving it. 5 Q. Did you respond to Mr. Glaser's request 6 that Apple license RealNetworks' access to FairPlay 7 on the iPod? 8 A. I don't remember doing so, no, because I 9 don't even remember this e-mail. 10 Q. Is it possible that you spoke with 11 Mr. Glaser about his proposal after he sent you this 12 e-mail on April 9, 2004? 13 A. It's possible. I don't remember doing so, 14 but it's possible. 15 Q. Do you recall Mr. Glaser telling you that 16 RealNetworks was working on a product that could 17 make its music interoperable with iPods? 18 A. I don't recall that, no. 19 Q. Is it possible that you had that 20 discussion? 21 MR. RILEY: Object to the form. 22 THE WITNESS: It's possible I had any 23 discussion. I just don't remember. 24 BY MS. SWEENEY: 25 Q. If you could look at the next to last</p>



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1 Q. Yes, please.
 2 A. Okay.
 3 (Witness reviews document.)
 4 BY MS. SWEENEY:
 5 Q. Have you had a chance to read that,
 6 Mr. Jobs?
 7 A. No. I'm still reading it.
 8 (Witness reviews document.)
 9 THE WITNESS: Okay.
 10 BY MS. SWEENEY:
 11 Q. All right. So first of all, the headline
 12 of Exhibit 7 says:
 13 "RealNetworks breaks Apple's
 14 hold on iPod."
 15 And then it says:
 16 "Rob Glaser and Steve Jobs
 17 have feuded before."
 18 Do you know what that's referring to, that
 19 you and Mr. Glaser feuded before?
 20 A. I don't, no.
 21 Q. And then you recall in a previous exhibit
 22 we were looking at, which is the e-mail
 23 correspondence between you and Mr. Horowitz, you
 24 were complaining about Larry's quote in a CNET
 25 article.

30

1 And halfway down the page -- excuse me.
 2 The second page of Exhibit 7, there is a quote from
 3 Larry Kenswil, president of Universal Music's eLabs
 4 division.
 5 Is that the Larry that you're referring to
 6 in the e-mail that's Exhibit 5?
 7 A. I don't know, but it might very well be.
 8 Q. Was Larry Kenswil someone that you dealt
 9 with at Universal in that time frame?
 10 A. Not really, no.
 11 Q. And in this statement attributed to
 12 Mr. Kenswil, he says:
 13 "Up to now, the world of
 14 downloads has been far too close
 15 to a world where the CD you buy
 16 in one store wouldn't play on
 17 the CD player you bought in
 18 another."
 19 And then he goes on to say:
 20 "We applaud RealNetworks'
 21 efforts to help correct this
 22 situation and appeal to all
 23 people and companies in this
 24 area to work toward a world of
 25 universal interoperability."

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1 Is this the statement that you described
 2 in your July 26 e-mail as terrible and in need of
 3 correction?
 4 A. I don't really remember. Could be. You
 5 mean the whole paragraph there?
 6 Q. Yes.
 7 A. Might be. I just don't remember.
 8 Q. Is there anything in that statement, that
 9 quote that I just read into the record, is there
 10 anything in that that's inaccurate?
 11 A. I have -- in which statement? Larry's
 12 statement?
 13 Q. Yes.
 14 A. Well, you have to ask him. It's his
 15 statement. I don't know if it's inaccurate or not.
 16 I don't know what he meant to say.
 17 Q. Can you look at the bottom of the second
 18 page of Exhibit 7. And it says:
 19 "Last January, RealNetworks
 20 also announced that it had
 21 figured out how to let its PC
 22 software play songs purchased
 23 from Apple's iTunes store and
 24 save them onto the iPod."
 25 Do you see that?

32

1 A. Mm-hmm.
 2 Q. Okay. And do you recall that
 3 announcement?
 4 A. I don't, no.
 5 Q. All right. Let's have a look at
 6 Exhibit 6. And I apologize for skipping around.
 7 A. That's okay.
 8 Q. That's the press release.
 9 (Witness reviews document.)
 10 THE WITNESS: Okay.
 11 BY MS. SWEENEY:
 12 Q. All right.
 13 A. Excuse me.
 14 Q. Exhibit 6 is -- appears to be a press
 15 release by Apple dated July 29th.
 16 Is that a press release that Apple issued
 17 on July 29th, 2004?
 18 A. I don't know. Looks like it, but I don't
 19 know.
 20 Q. Do you have any reason to believe it's not
 21 a press release that was issued by Apple?
 22 A. No.
 23 Q. Some of the other exhibits we were looking
 24 at discussed drafts of a press release pertaining to
 25 RealNetworks' Harmony product. Do you recall those



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1 documents?
 2 A. Yeah.
 3 Q. Okay. And --
 4 A. That you just showed me?
 5 Q. That's correct.
 6 A. Yes.
 7 Q. And does this statement on Exhibit 6
 8 represent the final version of those various draft
 9 iterations of the press release?
 10 A. It would appear to.
 11 Q. Okay. And looking at the text of the
 12 statement, it says:
 13 "We are stunned that
 14 RealNetworks has adopted the
 15 tactics and ethics of a hacker
 16 to break into the iPod"
 17 And then it goes on. And my first
 18 question is: What did you mean by "the tactics and
 19 ethics of a hacker"?
 20 A. I don't recall writing this, so I don't
 21 know. Maybe I wrote it, but -- I can guess at what
 22 the person that wrote it meant, if you'd like.
 23 Q. Is it a pejorative description, the
 24 tactics and ethics of a hacker?
 25 A. What do you mean by "pejorative"?

34

1 Q. Is it -- does it have negative
 2 connotations, in your view?
 3 A. Yeah.
 4 Q. And then it says:
 5 ". . . we are inves-" --
 6 A. But I'm sure some people would have the
 7 opposite view.
 8 Q. And then I'm reading, again, the second
 9 half of the first sentence.
 10 ". . . we are investigating the
 11 implications of their actions
 12 under the DMCA and other laws."
 13 And I already asked you some questions
 14 about this, so I'm not going to reask all those
 15 questions. But did you ever come to an
 16 understanding as to whether Real's release of
 17 Harmony violated the DMCA?
 18 A. I don't remember.
 19 Q. Okay. The second paragraph of the press
 20 release, which is in Exhibit 6, says:
 21 "We strongly caution Real and
 22 their customers that when we
 23 update our iPod software from
 24 time to time, it is highly
 25 likely that Real's Harmony

35

1 technology will cease to work
 2 with current and future iPods."
 3 Do you see that?
 4 A. Uh-huh.
 5 Q. And in fact, when Apple released its 4.7
 6 update in October of 2004, Harmony ceased working
 7 with at least some iPods; correct?
 8 A. I -- I think so, but I don't recall
 9 specifically.
 10 Q. And at the time that this press release
 11 was issued, that is, July 29, 2004, were you certain
 12 that updates to iPod software would cause Real's
 13 Harmony technology to cease to work with iPods?
 14 A. Well, I'm not an engineer, so I -- I
 15 probably wasn't qualified to make such a judgment.
 16 Q. Were engineers at Apple involved in the
 17 drafting of the press release?
 18 A. I don't remember.
 19 Q. Do you want to take a minute to go back
 20 and look at a couple of the exhibits we looked at
 21 before and see who some of the people were involved
 22 in the drafting? That would be Exhibit 3,
 23 Exhibit 1.
 24 A. So you want me to go back to these?
 25 Q. Yeah, just briefly. Just look at the

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1 names in the e-mails.
 2 A. So which ones?
 3 Q. How about Exhibit 3 and Exhibit 4?
 4 MR. RILEY: I think she's asking you to
 5 look at the recipients copied, the people copied to
 6 determine whether they include engineers.
 7 THE WITNESS: Yeah. I'm trying to find 3
 8 here. 3 and 4?
 9 BY MS. SWEENEY:
 10 Q. Yes, please.
 11 (Witness reviews document.)
 12 THE WITNESS: Well, I'm sorry. I read
 13 Exhibit 3 as not having much to do with the press
 14 release. So I don't know how that can illuminate
 15 this.
 16 BY MS. SWEENEY:
 17 Q. Okay. That's a good point. How about
 18 Exhibit 1?
 19 A. You said Exhibit 4 or 1?
 20 Q. How about Exhibits 1 and 4? And then, if
 21 you could just look at the to's and the cc's,
 22 et cetera.
 23 A. Okay. Exhibit 1 and 4.
 24 (Witness reviews documents.)
 25 THE WITNESS: Okay. Exhibit 1 doesn't



<p style="text-align: right;">37</p> <p>1 really have any engineers on it. And --</p> <p>2 MR. RILEY: I think she is referring to</p> <p>3 the entire list of recipients.</p> <p>4 THE WITNESS: Oh, I see. From Jeff</p> <p>5 Robbin. Huh? Yeah, Jeff's an engineer.</p> <p>6 BY MS. SWEENEY:</p> <p>7 Q. Okay.</p> <p>8 A. And I don't see any engineers copied on 4</p> <p>9 either. So I guess Jeff sent this out to people,</p> <p>10 and Eddy had sent it out.</p> <p>11 MR. RILEY: Greg Joswiak.</p> <p>12 THE WITNESS: Greg's not an engineer.</p> <p>13 MR. RILEY: Right. But he's copied on</p> <p>14 this.</p> <p>15 THE WITNESS: But he's not an engineer.</p> <p>16 BY MS. SWEENEY:</p> <p>17 Q. All right. So Mr. Robbin, who is an</p> <p>18 engineer, was involved in at least some of the</p> <p>19 discussions at Apple regarding the drafting of the</p> <p>20 press release; correct?</p> <p>21 A. Mm-hmm.</p> <p>22 Q. Okay. And the press release says that it</p> <p>23 is highly likely that Harmony will cease to work.</p> <p>24 If it was certain that Harmony would cease</p> <p>25 to work with iPods, wouldn't Apple have said that in</p>	<p style="text-align: right;">39</p> <p>1 Harmony product, RealNetworks responded with its own</p> <p>2 press release.</p> <p>3 Do you recall that public dialogue, as it</p> <p>4 were, between Apple and RealNetworks?</p> <p>5 A. I don't.</p> <p>6 Q. Okay. Did you speak with Mr. Glaser at</p> <p>7 any time after Apple issued its press release in</p> <p>8 July of 2004?</p> <p>9 A. I don't recall speaking to him.</p> <p>10 Q. Did you have discussions with engineers</p> <p>11 and others at Apple about closing the holes in</p> <p>12 software that enabled -- or that permitted</p> <p>13 RealNetworks to create interoperability through</p> <p>14 Harmony?</p> <p>15 MR. RILEY: Object to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: Well, if you're asking me</p> <p>18 did I have -- did I talk with engineers about the</p> <p>19 RealNetworks situation, I'm sure I probably did.</p> <p>20 BY MS. SWEENEY:</p> <p>21 Q. And what did -- what was the substance of</p> <p>22 those communications?</p> <p>23 A. I have no recollection of them.</p> <p>24 Q. Did you have any discussions -- did you</p> <p>25 make any public statements about the RealNetworks</p>
<p style="text-align: right;">38</p> <p>1 its press release?</p> <p>2 A. Well, "highly likely" is pretty strong.</p> <p>3 Q. But it's not certain?</p> <p>4 A. I don't know why certain words were chosen</p> <p>5 and others weren't. But "highly likely" is pretty</p> <p>6 strong.</p> <p>7 Q. Now, when we looked at the e-mails</p> <p>8 regarding the drafting of the press release</p> <p>9 pertaining to RealNetworks' Harmony product, there's</p> <p>10 a lot of e-mails going around over the weekend.</p> <p>11 July 26 was a Monday. And there's e-mails from, I</p> <p>12 think, July 24th and 25th.</p> <p>13 Is it common for you and others at Apple</p> <p>14 to work on press releases over the weekend?</p> <p>15 A. Well, Apple's a 24-by-7 company. So a lot</p> <p>16 of us work on things on the weekend.</p> <p>17 Q. Was there an unusual amount of activity</p> <p>18 surrounding the RealNetworks' Harmony announcement</p> <p>19 at Apple?</p> <p>20 A. Not that I recall, but I don't know all</p> <p>21 these press releases that were flying around. I</p> <p>22 probably wasn't copied on most of them, so I don't</p> <p>23 know, but I don't recall that being the case.</p> <p>24 Q. Now, after you -- after Apple issued its</p> <p>25 press release on July 29th about RealNetworks'</p>	<p style="text-align: right;">40</p> <p>1 Harmony product in or after July of 2004?</p> <p>2 A. I might have. I don't remember doing so,</p> <p>3 but -- I just don't remember.</p> <p>4 Q. Now, do you recall that Mr. Glaser</p> <p>5 telephoned you the week before the RealNetworks</p> <p>6 announcement of Harmony to let you know it was</p> <p>7 coming?</p> <p>8 A. I don't remember that, no.</p> <p>9 Q. Is -- do you recall ever speaking with</p> <p>10 Mr. Glaser by telephone?</p> <p>11 A. I don't.</p> <p>12 (Whereupon, Deposition Exhibit 12 was</p> <p>13 marked for identification.)</p> <p>14 THE WITNESS: Do you want me to read this?</p> <p>15 MS. SWEENEY: Yes, please.</p> <p>16 And for the record, this is an Apple</p> <p>17 document. It's an e-mail from Mr. Jobs to Katie</p> <p>18 Cotton, Jeff Robbin, and others regarding</p> <p>19 RealNetworks' statement, and it's dated July 29,</p> <p>20 2004.</p> <p>21 (Witness reviews document.)</p> <p>22 THE WITNESS: Okay. I've read it.</p> <p>23 BY MS. SWEENEY:</p> <p>24 Q. Okay. And this is the statement that</p> <p>25 RealNetworks issued in response to Apple's statement</p>



<p style="text-align: right;">45</p> <p>1 concerned, if it gets legal</p> <p>2 music into consumers' hands and</p> <p>3 makes it more flexible, we</p> <p>4 welcome it,' says Ted Cohen,</p> <p>5 senior vice president of digital</p> <p>6 development and distribution at</p> <p>7 EMI Music"</p> <p>8 Did you talk to Mr. Cohen of EMI Music</p> <p>9 about the RealNetworks announcement in 2004?</p> <p>10 A. No, not that I recall, no.</p> <p>11 Q. Okay. Do you know who Mr. Cohen is?</p> <p>12 A. I don't.</p> <p>13 Q. And then at the bottom of the page and</p> <p>14 carrying over to the top of page 3, the article</p> <p>15 says:</p> <p>16 "Even if RealNetworks is</p> <p>17 successful, it's unclear if the</p> <p>18 effort would harm or help Apple.</p> <p>19 The move could boost iPod sales</p> <p>20 by allowing users to buy songs</p> <p>21 from more sites."</p> <p>22 Do you agree with that?</p> <p>23 A. I don't know. We've never run that</p> <p>24 experiment.</p> <p>25 Q. Did you discuss that possibility at the</p>	<p style="text-align: right;">47</p> <p>1 guarantee. So we could get sued by all these</p> <p>2 people, you know?</p> <p>3 Q. By Real customers?</p> <p>4 A. Yeah.</p> <p>5 Q. You said that you were very concerned</p> <p>6 about non-compliance with music companies. In fact,</p> <p>7 you said, ". . . we were very scared of that."</p> <p>8 Did any of the labels ever threaten to</p> <p>9 withhold music because of the RealNetworks Harmony</p> <p>10 technology?</p> <p>11 A. Well, we got -- we got letters from time</p> <p>12 to time. I don't remember any specific ones. But</p> <p>13 we got letters from time to time from the music</p> <p>14 companies about a particular hack that had existed</p> <p>15 out there that just popped up, and they were very</p> <p>16 clear that they wanted it closed or they would</p> <p>17 revoke the license.</p> <p>18 Q. But that wasn't the labels' response to</p> <p>19 Harmony; correct?</p> <p>20 A. I don't know. I don't know if we got them</p> <p>21 on Harmony or not.</p> <p>22 The labels -- there's a lot of people at</p> <p>23 the labels, and they -- sometimes some of the people</p> <p>24 working there don't speak for the whole label, you</p> <p>25 know. You've got to be careful about that too.</p>
<p style="text-align: right;">46</p> <p>1 time, that is, back in 2004?</p> <p>2 A. Not that I recall. Might have.</p> <p>3 Q. And then the second paragraph says:</p> <p>4 "The more iPods they sell,</p> <p>5 the better off Apple will</p> <p>6 be"</p> <p>7 And you would agree with that; right?</p> <p>8 A. Sure.</p> <p>9 The thing that you have to keep in mind,</p> <p>10 though, is there are lots of hackers trying to hack</p> <p>11 into these things so that they can do things that</p> <p>12 would put us in non-compliance with the contracts we</p> <p>13 have with the music companies.</p> <p>14 And we were very scared of that. So we</p> <p>15 would constantly be revving iTunes and iPod</p> <p>16 software, closing any -- any holes that might be in</p> <p>17 it or any problems it might have. And so this was a</p> <p>18 moving target; and, you know, anybody trying to keep</p> <p>19 up with that moving target would probably have a</p> <p>20 hard time doing it.</p> <p>21 And so we were very concerned with, you</p> <p>22 know, somebody like Real promising customers that</p> <p>23 they would have compatibility when, in the future,</p> <p>24 they might not.</p> <p>25 And that's not something we could</p>	<p style="text-align: right;">48</p> <p>1 Q. Well, you recall the exhibits we looked at</p> <p>2 earlier today where there was an exchange between</p> <p>3 you and Mr. Horowitz at Universal. Do you recall</p> <p>4 that?</p> <p>5 A. Mm-hmm.</p> <p>6 Q. And you were upset because an executive at</p> <p>7 Universal had actually applauded Harmony; right?</p> <p>8 Mr. Larry Kenswil.</p> <p>9 A. Okay.</p> <p>10 Q. So you can't think of any instances, can</p> <p>11 you, where a label complained to Apple about</p> <p>12 RealNetworks' Harmony product?</p> <p>13 A. But it doesn't really matter because in</p> <p>14 fixing holes for DRM hacks, it might screw up the</p> <p>15 Real technology anyway, as collateral damage.</p> <p>16 Q. Did --</p> <p>17 A. One would have to be very careful about</p> <p>18 that. And since we didn't own the Real technology</p> <p>19 and probably didn't have access to it, that's not a</p> <p>20 burden we would want to take on.</p> <p>21 Q. And from time to time, there were DRM</p> <p>22 hacks. And that's the phrase that you used. And</p> <p>23 these are hacks that stripped DRM from iTunes music;</p> <p>24 correct?</p> <p>25 A. No. They would just find ways to get at</p>



<p>1 stuff that would put us in non-compliance with the 2 agreements.</p> <p>3 Q. And did any of the labels ever withhold 4 music because of a DRM hack?</p> <p>5 A. No, because we were very responsive in 6 fixing them.</p> <p>7 Q. Did any of the labels ever threaten to 8 withhold music from Apple because of a DRM hack?</p> <p>9 A. Yes.</p> <p>10 Q. Who?</p> <p>11 A. I don't know. I remember we would get 12 letters from time to time.</p> <p>13 Q. You would get letters asking you to fix 14 the holes or actually threatening to withhold music 15 from Apple?</p> <p>16 A. Well, they would say both. Fix the holes 17 or else. So . . .</p> <p>18 Q. But you can't remember which labels --</p> <p>19 A. I don't remember any --</p> <p>20 Q. -- sent such a letter?</p> <p>21 A. No.</p> <p>22 Q. And those would have been letters to you 23 or to Mr. Cue at Apple?</p> <p>24 A. I don't know who they would have sent them 25 to. There might have been some legal department</p>	<p>49</p> <p>1 "Now that people know you 2 can do this," says Forrester 3 Research analyst Josh Bernoff, 4 'a lot more people may try.' 5 Now, were you, at Apple, concerned that 6 others might try to copy what RealNetworks had done 7 with Harmony to make their digitally -- their 8 digital music songs directly playable on an iPod?</p> <p>9 A. I don't remember being concerned about 10 that, no.</p> <p>11 Q. After the RealNetworks episode with 12 Harmony in July of 2004, was there ever an instance 13 in which a company other than RealNetworks 14 successfully created interoperability between its 15 digital music store and Apple's iPods?</p> <p>16 MR. RILEY: Objection to the form of the 17 question.</p> <p>18 THE WITNESS: What should I do?</p> <p>19 MR. RILEY: You can answer the question.</p> <p>20 THE WITNESS: Oh, okay.</p> <p>21 I don't recall, but I would imagine so. 22 People have tried to hack iTunes for a long time, 23 and they're still trying.</p> <p>24 BY MS. SWEENEY: 25 Q. Would you describe Apple's response to the</p>
<p>1 or -- I don't -- they wouldn't have been to me, 2 but . . .</p> <p>3 Usually, there's contact people in the 4 contracts.</p> <p>5 Q. Do you know who Josh Bernoff is?</p> <p>6 A. I don't.</p> <p>7 Q. If you look at the third page of 8 <u>Exhibit 8</u>, this is still that article.</p> <p>9 A. Okay.</p> <p>10 Q. And it's the paragraph that starts 11 "RealNetworks' technology . . ." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And it says: 14 "RealNetworks' technology, 15 though, could undermine the hold 16 Apple has on its music 17 customers. Customers who 18 purchase music through the Real 19 Music Store -- which offers a 20 similar selection of songs at 21 nearly identical prices -- will 22 be able to switch tunes to other 23 devices, RealNetworks says." 24 And then it quotes Josh Bernoff, and it 25 says:</p>	<p>50</p> <p>1 RealNetworks Harmony announcement as strong or 2 vehement?</p> <p>3 A. No.</p> <p>4 Q. What about the early drafts of the press 5 release that you were involved in? Were those -- 6 many of those statements were ultimately edited out 7 of the final version of the press release. Was that 8 because they were too -- too angry-sounding?</p> <p>9 A. I don't remember, but they don't sound too 10 angry to me when I read them.</p> <p>11 Usually, a vehement -- I don't know about 12 the word "vehement," but a strong response from 13 Apple would be a lawsuit, as an example.</p> <p>14 Q. But Apple never sued RealNetworks?</p> <p>15 A. Not to my knowledge. I don't know if we 16 ever have. I don't think so.</p> <p>17 Are we done with this?</p> <p>18 Q. Yes, please. Can you have a look at 19 <u>Exhibit 10</u>.</p> <p>20 A. Sure.</p> <p>21 MS. SWEENEY: <u>Exhibit 10</u>, for the record, 22 is a multipage document produced by Apple with Bates 23 numbers ending in 920838. There's a lot of redacted 24 material, but part of it is an article by John 25 Borland of CNETNews.com.</p>
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>51</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>52</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



<p>1 (Witness reviews document.)</p> <p>2 THE WITNESS: Okay.</p> <p>3 BY MS. SWEENEY:</p> <p>4 Q. You've had a chance to read through</p> <p>5 Exhibit 10?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay. Did you ever see this article</p> <p>8 before?</p> <p>9 A. I don't recall seeing it.</p> <p>10 Q. And --</p> <p>11 A. Might have.</p> <p>12 Q. I can't tell whether you were a recipient</p> <p>13 of this e-mail or not because all the information is</p> <p>14 redacted. But if you could turn to the second page</p> <p>15 of the Exhibit 10, and it's an interview of</p> <p>16 Mr. Glaser about the Harmony project.</p> <p>17 And do you see there's a set of Q&As sort</p> <p>18 of halfway down the page? Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Okay. And the question is:</p> <p>21 "Has the Harmony project met</p> <p>22 your expectations?"</p> <p>23 And the answer is:</p> <p>24 "No, it has blown it away.</p> <p>25 We took the decision at the</p>	53	<p>1 A. It doesn't, no.</p> <p>2 Q. And then the interviewer asks, continuing</p> <p>3 on:</p> <p>4 "That was with the Microsoft</p> <p>5 technology and the streaming</p> <p>6 media servers?"</p> <p>7 He says:</p> <p>8 "Exactly."</p> <p>9 Do you recall the development by</p> <p>10 RealNetworks of the Microsoft -- the streaming media</p> <p>11 server work that it did?</p> <p>12 A. I don't, no.</p> <p>13 Q. Okay. In the middle of the next page --</p> <p>14 A. Okay.</p> <p>15 Q. -- it's questions and answers about the</p> <p>16 e-mail that Mr. Glaser sent to you in April of 2004.</p> <p>17 And the interviewer asks:</p> <p>18 "Can you explain, Mr. Glaser, why you sent</p> <p>19 that message to Mr. Jobs?"</p> <p>20 And then it goes on and he says:</p> <p>21 "And (we were asked), 'Now</p> <p>22 that he's told you . . . he</p> <p>23 won't do that, what will you</p> <p>24 do?'"</p> <p>25 Does that refresh your recollection about</p>	55
<p>1 beginning of the year to</p> <p>2 implement Harmony. It really</p> <p>3 went back to some things we were</p> <p>4 working on before, where we've</p> <p>5 had good experience with</p> <p>6 creating technology with</p> <p>7 interoperability in the past."</p> <p>8 So when Mr. Glaser sent that e-mail to you</p> <p>9 in April of 2004, that was several months after</p> <p>10 RealNetworks had decided to implement Harmony. Is</p> <p>11 that how you read that?</p> <p>12 MR. RILEY: I'm going to object to this --</p> <p>13 THE WITNESS: Well, you'll have to go ask</p> <p>14 him.</p> <p>15 MR. RILEY: Hold on.</p> <p>16 THE WITNESS: I don't know.</p> <p>17 MR. RILEY: Hold on just a minute, Steve.</p> <p>18 I'm going to object. This is completely</p> <p>19 outside the three topics that were permitted by the</p> <p>20 court order.</p> <p>21 BY MS. SWEENEY:</p> <p>22 Q. Did -- does this refresh your recollection</p> <p>23 about whether you and Mr. Glaser discussed the</p> <p>24 Harmony project sometime after he contacted you in</p> <p>25 April of 2004?</p>	54	<p>1 speaking with Mr. Glaser about his April 2004</p> <p>2 proposal?</p> <p>3 A. I'm sorry. It doesn't.</p> <p>4 Q. Did you leak that e-mail of April 2004</p> <p>5 from Mr. Glaser to The New York Times?</p> <p>6 A. I don't even remember the e-mail of 2004.</p> <p>7 I don't remember leaking any e-mail to The New York</p> <p>8 Times.</p> <p>9 Q. Okay.</p> <p>10 A. Ever in my life.</p> <p>11 Q. Okay.</p> <p>12 A. So . . .</p> <p>13 Q. It just says here:</p> <p>14 "In that exchange, Jobs</p> <p>15 leaked your request to the</p> <p>16 press."</p> <p>17 But you don't recall doing that?</p> <p>18 A. No. It's not what I generally do.</p> <p>19 MS. SWEENEY: Can we take a short break?</p> <p>20 MR. RILEY: Sure.</p> <p>21 THE VIDEOGRAPHER: Going off the record at</p> <p>22 11:27 A.M.</p> <p>23 (Recess taken.)</p> <p>24 THE VIDEOGRAPHER: This marks the start of</p> <p>25 Disk 2. Going back on the record at 11:45 A.M.</p>	56



<p>1 BY MS. SWEENEY:</p> <p>2 Q. Can you go back to <u>Exhibit 4</u>, please.</p> <p>3 A. Yeah.</p> <p>4 Q. And again, this is an e-mail from you to</p> <p>5 others at Apple dated July 26, 2004 regarding the</p> <p>6 draft press release about RealNetworks' Harmony.</p> <p>7 A. Mm-hmm.</p> <p>8 Q. And then we already discussed the first</p> <p>9 sentence in that e-mail. And the second one says:</p> <p>10 "I propose going with this:"</p> <p>11 And then below that in quotes you say:</p> <p>12 "We are stunned that Real has</p> <p>13 adopted the tactics and ethics</p> <p>14 of a hacker to break into the</p> <p>15 iPod, and we are investigating</p> <p>16 the implications of their</p> <p>17 actions under the DMCA and other</p> <p>18 laws."</p> <p>19 And it goes on. And is that the language</p> <p>20 that you proposed for the press release regarding</p> <p>21 Harmony?</p> <p>22 A. Well, I think it's a conglomeration of</p> <p>23 what I and other people have proposed or did</p> <p>24 propose, would be my guess. I mean, somebody might</p> <p>25 have -- else might have proposed it and I might have</p>	57	<p>1 Q. Do you remember discussions at Apple about</p> <p>2 whether 4.7 would disable Harmony?</p> <p>3 A. I'm sure they occurred, but I don't</p> <p>4 remember them.</p> <p>5 Q. Did you have discussions with -- or do you</p> <p>6 recall having any discussions with the press about</p> <p>7 the disabling by Harmony -- disabling by 4.7 of</p> <p>8 Harmony after it occurred in October 2004?</p> <p>9 A. I don't. Your -- one of the exhibits you</p> <p>10 handed me said that we were warning customers not to</p> <p>11 assume that -- you know, not to assume that it would</p> <p>12 continue to be compatible. That's all I really</p> <p>13 remember.</p> <p>14 MS. SWEENEY: Let's mark this one.</p> <p>15 (Whereupon, Deposition <u>Exhibit 13</u> was</p> <p>16 marked for identification.)</p> <p>17 MS. SWEENEY: For the record, the court</p> <p>18 reporter just handed you <u>Exhibit 13</u>, which is an</p> <p>19 e-mail from Katie Cotton to you and others at Apple</p> <p>20 dated April 7 -- excuse me -- April 27, 2004</p> <p>21 regarding "Final iTunes Speaking Points and Q&A."</p> <p>22 (Witness reviews document.)</p> <p>23 THE WITNESS: Okay. I finished reading</p> <p>24 it.</p> <p>25</p>	59
<p>1 been the one to just edit it. I don't know who</p> <p>2 proposed it. It's hard to --</p> <p>3 Q. But you did --</p> <p>4 A. -- hard to say.</p> <p>5 Q. -- agree that this was a possible press</p> <p>6 release that you could issue; correct?</p> <p>7 A. Well, I said I -- I say in this e-mail:</p> <p>8 "I propose going with this:"</p> <p>9 Q. Now, when did you first learn that --</p> <p>10 A. Are we done with this?</p> <p>11 Q. Yes.</p> <p>12 When did you learn -- when did you first</p> <p>13 learn that the redesign of FairPlay that culminated</p> <p>14 in iTunes 4.7 would disable Harmony?</p> <p>15 A. I don't recall.</p> <p>16 Q. Can you give me your best estimate.</p> <p>17 A. I don't have a clue.</p> <p>18 Q. Did you --</p> <p>19 A. I mean, just about every release of iTunes</p> <p>20 enhanced the DRM. So I probably would have just</p> <p>21 assumed that the next release would. But I don't</p> <p>22 remember at all.</p> <p>23 Q. Do you know all of the -- or strike that.</p> <p>24 What did 4.7 do?</p> <p>25 A. I have no idea. I don't remember.</p>	58	<p>1 BY MS. SWEENEY:</p> <p>2 Q. All right. And this is -- it says at the</p> <p>3 top of this e-mail:</p> <p>4 "Here are the final speaking</p> <p>5 points and Q&A for tomorrow."</p> <p>6 Do you recall some kind of speech that you</p> <p>7 gave on or about April 28, 2004 about iTunes?</p> <p>8 MR. RILEY: I'm going to -- hold on just a</p> <p>9 moment.</p> <p>10 I'm going to object. This is completely</p> <p>11 outside the scope. It's a document dated April 27,</p> <p>12 2004. It is in no way related to the three topics</p> <p>13 that Judge Lloyd permitted this deposition to</p> <p>14 inquire into.</p> <p>15 BY MS. SWEENEY:</p> <p>16 Q. Can you turn to the third page of this</p> <p>17 exhibit, please. At the top of that page, it's</p> <p>18 asking you about the proposal made by Mr. Glaser of</p> <p>19 RealNetworks to you; correct?</p> <p>20 MR. RILEY: Which page are we on, Bates</p> <p>21 stamp?</p> <p>22 MS. SWEENEY: The third page of</p> <p>23 <u>Exhibit 13</u>.</p> <p>24 MR. RILEY: Bates stamp 584?</p> <p>25 MS. SWEENEY: I'm sorry. Page 4.</p>	60



65

1 CERTIFICATE OF REPORTER
 2 I, ANA M. DUB, a Certified Shorthand
 3 Reporter, hereby certify that the witness in the
 4 foregoing deposition was by me duly sworn to tell
 5 the truth, the whole truth, and nothing but the
 6 truth in the within-entitled cause;
 7 That said deposition was taken down in
 8 shorthand by me, a disinterested person, at the time
 9 and place therein stated, and that the testimony of
 10 the said witness was thereafter reduced to
 11 typewriting, by computer, under my direction and
 12 supervision;
 13 That before completion of the deposition,
 14 review of the transcript [X] was [] was not
 15 requested. If requested, any changes made by the
 16 deponent (and provided to the reporter) during the
 17 period allowed are appended hereto.
 18 I further certify that I am not of counsel
 19 or attorney for either or any of the parties to the
 20 said deposition, nor in any way interested in the
 21 event of this cause, and that I am not related to
 22 any of the parties thereto.
 23 DATED: April 14, 2011.
 24 _____
 25 ANA M. DUB, RMR, CRR, CSR No. 7445

67

1 DEPOSITION ERRATA SHEET
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 21 _____
 22 Reason for change: _____
 23 _____
 24 SIGNATURE: _____ DATE: _____
 25 STEVE JOBS

66

1 DEPOSITION ERRATA SHEET
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 3
 4 Our Assignment No. 385054
 5 Case Caption: THE APPLE IPOD iTUNES
 6 ANTI-TRUST LITIGATION.
 7
 8 DECLARATION UNDER PENALTY OF PERJURY
 9 I declare under penalty of perjury
 10 that I have read the entire transcript of
 11 my Deposition taken in the captioned matter
 12 or the same has been read to me, and
 13 the same is true and accurate, save and
 14 except for changes and/or corrections, if
 15 any, as indicated by me on the DEPOSITION
 16 ERRATA SHEET hereof, with the understanding
 17 that I offer these changes as if still under
 18 oath.
 19 Signed on the _____ day of
 20 _____, 20____.
 21 _____
 22 _____
 23 STEVE JOBS
 24
 25

68

1 DEPOSITION ERRATA SHEET
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 24 SIGNATURE: _____ DATE: _____
 25 STEVE JOBS

