



Can You Post a Deposition to YouTube?

By Christopher Hopkins, Chair, Law Practice Technology Committee

Can you recall a deposition where your “gotcha” question sent an adverse witness into a tailspin or your clever questioning cracked the case? A lot can happen in depositions and portions are showing up on YouTube. Online mass communication has not only connected us via personal and professional social networking, it also gives lawyers a podium to speak to a broader audience. As with all matters involving the collision of law and technology, the simple proposition of uploading a 5-minute video to YouTube results in ethical questions – but it appears the practice is growing. This article will discuss the simplicity of posting a video deposition and outline some of the potential issues of the “YouTube deposition.”

According to a June 2010 Association of Corporate Counsel article, the practice of uploading deposition videos to YouTube is “widespread” as evidenced by 2,700 hits for the search term, “deposition.” Three months later, that number increased ten percent which suggests that the practice of uploading deposition videos is gaining traction (but may not exactly be “widespread”). Still, there are nearly 3,000 deposition snippets on YouTube. Most of the video depositions available on YouTube fall into the categories of (1) depositions of public or corporate figures, (2) mis-steps and outbursts, and (3) how-to-instruction.

Technology to Upload A Deposition

YouTube only accepts videos which are less than 15-minutes long (unless you are a “director”) so the initial questions are (1) how to convert the deposition from DVD to workable video and (2) how to edit the workable video to the sections (“snippets”) you wish to publish. On the PC, there is a number of video conversion software to rip DVD video into MP4 video format (the video-version of the music MP3 file): CloneDVDMobile, Xilisoft, and Easy DVD Ripper. Windows Movie Maker is a solid editing software tool. For the Mac, iMovie will handle both the DVD-to-MP4 conversion and editing steps. Easier still, you might ask the videographer to provide you with both DVD and MP4 versions as well as cut the excerpts for you. Finally, once the video is on YouTube, you can still make some final edits. See <http://bit.ly/9VEIr6>

Once you have a “bite size” video snippet of your deposition, you need to create an account on YouTube and upload the video. Consider whether you want the account in your name or the firm’s name. Pay attention, however, to the video title and search descriptions to garner maximum attention (e.g., use the word, “deposition”). If you create more than one video, YouTube places them all onto your “channel” where your library will exist. If users like one of your videos, this makes it easier to find your other submissions.

Is a YouTube Deposition an Advertisement?

In February 2010, the Florida Bar Standing Committee on Advertising issued its “Guidelines for Video Sharing Sites” which references YouTube by name but never mentions

uploading depositions. Instead, as the Committee is tasked, the guidelines were directed towards discussing how and whether Rules 4-7.2, 4-7.4, and 4-7.6 apply to video sharing in general. The brief guidelines indicate that videos “used to promote the lawyer or law firm’s practice are subject to the lawyer advertising rules.” Along these lines, “invitations to view or link to the lawyer’s [advertisement] video sent on an unsolicited basis are direct violations...” Again, this appears to relate only to “advertisement” videos with no specific statement that deposition excerpts, or even instruction how-to videos, are advertisements. See <http://bit.ly/cgDtYX> To date, there is no authority holding that a video deposition snippet is an “advertisement” any more than, say, this article.

Issues to Consider Before Uploading Depositions

Is your case still in dispute? In 2008, a Texas lawyer uploaded a deposition to YouTube where a car dealership president was explaining that a specific charge was a “fee” and not a “kickback.” The dealership convinced the court that the deposition snippet should be removed from YouTube since litigation was ongoing and the uploading was harassing, annoying, and embarrassing. Moreover, they argued that the short snippet was misleading since it took a few answers of out context. See <http://bit.ly/dseFmm> The timing of your upload to YouTube and the context given in the video are important considerations.

A deposition is not a public event so a preliminary step, prior to uploading a deposition video to the Internet, would be to file the transcript and video with the clerk as a public record. In pre-YouTube federal court opinions examining whether the public has access to filed records, some courts have used a one-step process (Has-it-been-filed-with-the-court?) whereas other courts have held that the public has a right to inspect filed materials only if the court relied upon them to determine a party’s substantive legal rights. See <http://bit.ly/crgGyH> Regardless, it appears that filing the transcript and video seems like the threshold step before uploading to YouTube.

Finally, there are issues of personal privacy such as alcohol/drug use, mental health, and HIPAA protections as well as business confidentiality such as trade secrets and practices to potentially avoid. Moreover, some court reporters and/or videographers may claim ownership to the transcript and video. See <http://bit.ly/cR0aw5>

Conclusion

Despite the foregoing concerns and pitfalls, there are a number of non-advertising, non-harassing purposes for publishing portions of video depositions. Lawyers who choose to use YouTube, however, need to be aware of the developing nature of the practice guidelines and rules.

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