



they do, in fact, have footage of elephants would require thousands of man-hours, as well as significant monetary costs.

#### **Feld's Index Of Its Video Archive**

4. Given the nature of its entertainment products, including *Ringling Bros. and Barnum & Bailey Circus* and *Disney On Ice*, Feld deals extensively in video footage, and it has more than 10,000 videos in its archive. Generally, when a video is shot by or for Feld, whoever shoots that video makes use of the footage for their final purpose and then archives the footage in Feld's video archive. For example, if someone in the marketing department is preparing a video program to be sold at one of *Ringling Bros.*' shows, he or she would shoot whatever footage is necessary, edit it to create the video program, label the original footage, and turn it over to the video archive. There is no specific requirement governing the way that videos are named and the labeling is very general in description.

5. Feld does not maintain an index of its videos based on their content, only by title. As noted above, there is no specific requirement governing the contents of a video's title. Some titles reference the date and location that the footage was shot, such as "1996 Winter Quarters." Other titles reference a specific show (from which we can determine the year in which it was shot) and the portion of the show that is shown, such as "128th Clowns." Still other titles indicate only the purpose for which they were used, such as "Source Footage for 1998 Video Press Kit" or "1999 B-Roll Footage." Finally, some titles may reveal their contents.

6. In the vast majority of cases, there is no way to determine whether a particular video contains footage of elephants. For example, each year in November, one of *Ringling Bros.*' touring units goes to Tampa, Florida, for a period called Winter Quarters. During that time, the unit in Winter Quarters designs and rehearses a new show. Feld shoots an

extensive amount of video footage while it is in Winter Quarters, covering all aspects of the new show. Frequently, however, the videos are labeled only “Winter Quarters” and the edition that is shot (each year, one of Ringling’s touring companies begins a new edition -- thus, this year, one unit is in the second year of the 134th edition while another unit is in the first of the 135th edition). For example, there are currently 19 videos in Feld’s archive that are titled “Blue 128 Winter Quarters” or something substantially similar, without giving any indication of the contents of those videos. Videos shot at Winter Quarters might contain footage of elephants. However, they could just as easily contain footage of trapeze artists, clown, tigers, alpacas, or horses. There is no way to know without viewing all of the tapes. Other recurring examples on the index pose similar problems.

7. Last Spring, we made an effort to use the index of the video archive to determine how many videos might be implicated by plaintiffs’ request. Excluding titles that gave no suggestion that they contained footage of elephants, we compiled a list of more than 1,780 videos that could be implicated by plaintiffs’ request since 1996. For most of those videos, there was no way to determine whether or not they contained such footage without watching them.

8. The number of videos implicated by this request will go up significantly if we have to go back to 1994, as I understand the plaintiffs are requesting. Assuming that Feld archives approximately the same number of videos every year (which I believe to be a reasonable assumption), then increasing the scope of the request from 8 years to 10 years will increase the number of videos implicated by approximately 25%.

9. However, even the results of the search described above would not be a complete universe of the videos that might be responsive to plaintiffs’ request. Because we

cannot identify the contents of a video from its title, even videos whose titles appear to exclude them from plaintiffs' request could contain footage of elephants. For example, a video titled "128th Clowns" suggests that it contains footage of clowns performing during the 128th edition; however, it is entirely possible that a video of a performance of clowns could have elephants in the background, at the beginning, or at the end. There is no way to make this determination from Feld's index of videos.

10. Plaintiffs' request also asks us to identify all videos in which any person who "works with" elephants appears. Determining which individuals appear on a video is even more difficult than determining whether the video contains footage of elephants. For example, if a tape is made at Winter Quarters, even if the elephants do not appear, it is not possible to determine whether one of the elephant trainers or elephant handlers appears in the background.

11. In short, Feld's video index provides no useful way to locate the videos in its archive that respond to plaintiffs' request.

### **The Burden Of Reviewing Videos**

12. The only reliable way to determine whether most videos in Feld's archive contains footage of elephants is to watch the video. This is a very costly, time-intensive task.

13. Most of the videos in Feld's archive are not stored in standard VHS or DVD format. Rather, the majority of such videos are Beta, Beta-SP, or mini-DVs. More recently, many of the videos that we have received have been in a high-definition ("HD") format.

14. Feld owns only one beta deck with which to review many of these videos, and it has no machine through which to review footage shot in HD format.

15. Because the index to the archive does not include information about the length of a video, there is no way to know with certainty how long all of the footage is on all of

the tapes that are implicated by plaintiffs' requests. However, assuming that each video is, on average, approximately 35 minutes, reviewing all of the tapes that we identified last Spring as potentially responsive to plaintiffs' requests would require more than 1,038 man-hours of work.

16. The 1,038 man-hour estimate is likely on the low side, as footage on many tapes may run as long as an hour. As explained above, plaintiffs' request would require that we review many other videos in addition to the 1,780 that we located last Spring. In addition, since last May, Feld has added significantly more video footage to its archive. For example, a vendor recently finished shooting more than 38 hours of HD footage for use in a DVD that is still in production. Simply reviewing that footage would require a full week of work for one person.

17. Feld does not have personnel available to review these videos full time, or even to devote a significant portion of their time to the effort. Instead, in order to accomplish this task, Feld would have to hire at least one additional person, and likely more than that, possibly for as long as 26 weeks. The cost of such hiring would be approximately \$26,000.

18. Feld also does not have equipment available to review this footage. As noted above, it has only one Beta deck, and that deck is already used during the ordinary course of business. Thus, Feld would have to either rent or purchase additional decks in order to accomplish such a review. The cost of those rentals would be approximately \$42,520 (this is the cost to pay for time with an appropriate vendor while someone from Feld reviews the videos and determines what to copy).

19. Feld does not have the ability to review HD videos in-house. Rather, in order to review such videos, it must pay for time with a vendor that has the appropriate equipment, as well as the cost of an editor to run the equipment. Such rentals cost \$40/hour, and

there are approximately 130 such videos implicated by plaintiffs' request, each of which is approximately 40 minutes long. Thus, the total cost for such rentals would be \$3,467.

20. For all of the burden that Feld would be incurring, it is likely that the majority of responsive videos that it locates would have only snippets of elephant footage mixed in with significant amounts of footage that has nothing to do with elephants.

21. If plaintiffs insist on locating every video in which a person appears who has, at various times, handled, cared for, or trained an elephant – even if they are not doing so on the video – then the review process will be slowed dramatically, because we will have to pause the video to identify every person who appears in the background. Thus, the review process would occur in something less than real time to account for all of these pauses. Moreover, this will require that several people with knowledge of the visual appearance of all such persons who have, at various times, handled, cared for, or trained an elephant must be in attendance to view all of the footage to identify all such persons.

### **The Burden Of Copying Videos**

22. On top of the burden of reviewing the videos, there is a significant burden associated with copying them after the responsive videos have been identified.

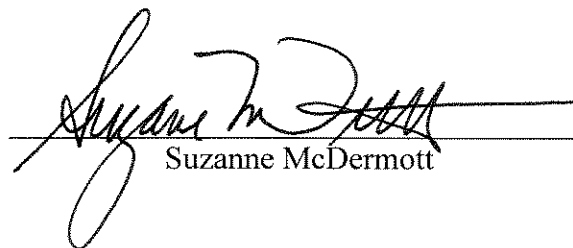
23. Feld has the capability to do some dubbing from its Beta deck to VHS, but it can only do so in real time, *i.e.*, with both videos running at their normal playing speed. Thus, if there are 500 hours of video that are responsive to plaintiffs' request, it would require an additional 500 hours to copy those tapes in-house. These videos are already being used at various times in the regular course of business.

24. As an alternative, Feld can send the tapes to a vendor to be copied. However, such a process would create a number of potential costs. First, Feld would have to pay

for the studio time necessary for a vendor to copy the tapes. Without knowing the precise number of tapes involved, I cannot accurately project the cost of such outsourcing. However, as an example, I understand that, this past Fall, the parties to this case discussed providing videos that were responsive to six specific categories, for which we identified approximately 150 videos that were responsive. I estimate that copying those 150 tapes alone would have required approximately three weeks of time at a vendor, at a total cost of \$6,750 (150 tapes at \$45 each).

25. In addition, if any of the responsive videos are on an HD recording, then those recordings must be sent to a vendor to be copied as well. Having HD recordings copied costs \$45 each, and we do not yet know how many such tapes will be responsive to plaintiffs' request.

Pursuant to 28 U.S.C. § 1746, I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

  
Suzanne McDermott

February 11, 2005