

## Viacom sues You Tube for \$1 billion

By Amy E. Wong



When Google purchased the popular YouTube, many speculated about the legal ramifications. After all, YouTube, a video-sharing site, uses largely unlicensed content to building traffic and sell advertisements.

In a move that I've been anticipating, Viacom has just filed suit against YouTube and its parent company Google for showing 160,000 of its videos without permission, asserting that the site is "clearly illegal and is in obvious conflict with copyright laws."

Before we all start lamenting over Viacom's demise, we should take some to look at this lawsuit more closely. After all, the outcome of this case will certainly set precedence on future copyright laws.

### Team YouTube

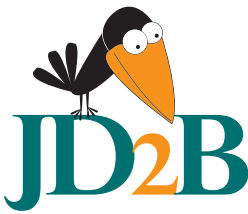
Yes, YouTube is similar to Napster, a blessed music-sharing system that was tragically hit with a storm of legal problems (Metallica...I love you, but really — "Grrr.") almost a decade ago. However, there is one main difference between YouTube and Napster, which is that YouTube is merely a platform for infringing content.

According to Section 512 (c) of the 1997 Online Copyright Liability Limitation Act, there is nothing wrong with websites that "host" user-generated content. As much as corporations may gnash their teeth over having their property splashed across the internet, they have no legal grounds to sue websites that host their material.

It is not the website itself that is doing wrong; it is the user who uploaded the content that is doing wrong. YouTube is not liable.

Tim Wu, law professor at Columbia University, argues the same in his enlightening [article](#), *Does YouTube Really Have Legal Problems?* He said, "If the Internet were [...] a red-light district, YouTube would best be imagined as the hotel, and Napster, well, the pimp. YouTube, like a

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hotel, provides space for people to do things, legal or not. It's not doing anything illegal itself, but its visitors may be."

However, also according to Section 512, YouTube might be held accountable for its user's postings if it is "aware of facts or circumstances from which infringing activity is apparent." It may also be sued for providing a search option. These two things combined, according to Wu, "might be enough to make trouble in the hands of a judge who really hates 'that whole Web 2.0 thing.'"

The million-dollar-question, I suppose, would be: Can Viacom prove that YouTube was aware about the infringing activity? Even more importantly, did YouTube take active measures to ensure its removal?

### **Team Viacom**

Justin Hughes, director of Benjamin N. Cardozo School of Law's Intellectual Property Law Program, said in this [article](#), "I think this is a problem for Google" and is not in the least bit surprised by the one-billion-dollar suit. He even contends that Google has an arrogant attitude towards intellectual property issues.

For instance, Google CEO Eric Schmidt said last week in a television interview, "The growth of YouTube, the growth of online, is so fundamental that these companies are going to be forced to work with and in the Internet."

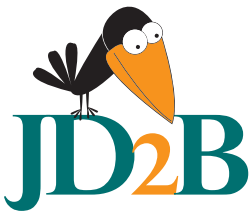
However, a month ago, Viacom and other media conglomerates tried to negotiate licensing deals with Google. Although Viacom's web traffic benefited from YouTube, the licensing deal fell through. In the end, the copyright holder, Viacom, requested that YouTube remove 100,000 of its clips.

YouTube was made aware of infringing content.

As long as YouTube removes the content in a timely matter, then it is safe from lawsuits.

However, even after YouTube removed its content, users were allowed to re-post illegal copies immediately, rendering the whole act futile. Media conglomerates have become a modern-day Sisyphus!

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Although YouTube did take action to remove infringing material, it's quite obvious that it was not aggressive enough in ensuring removal of illegal material. YouTube is too lenient on its users, perhaps, because it is not in their interest to punish the users that generate traffic and increase advertisement sales.

Other companies, News Corp. and Cuban, are forcing the company to identify people who illegally upload copyright material. This is a pretty good solution because it instills fear and holds users accountable for uploading infringing material. (I sure as hell wouldn't want to be caught and sued for posting illegal material!)

I don't know if Viacom is going to win the \$1 billion case. I don't know if YouTube will reach a settlement outside of court with Viacom.

I do know, however, that this is a serious problem. There are serious grievances that need to be addressed. There are laws protecting YouTube, but these laws are about a decade old. Technology has advanced at warped speed, and these laws need to be readdressed and restated to address current copyright issues.