Copyright Alert

Viacom v. YouTube/Google: Judge Swats Billion-Dollar Copyright Lawsuit; Viacom to Appeal Summary Judgment Ruling

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A federal district court granted summary judgment to YouTube and Google yesterday, holding that a safe harbor of the Digital Millennium Copyright Act (DMCA) protected the video-upload giants against billion-dollar claims brought by Viacom International and other content holders. The information storage safe harbor of 17 U.S.C. § 512(c) bars liability for money damages for infringing matter uploaded by end-users, and the district court held that the defendants met its requirements. *Viacom International Inc. v. YouTube, Inc. and Google, Inc.*, No. 07 Civ. 2103, No. 07 Civ. 3582 (S.D.N.Y. June 23, 2010) (LLS). Viacom immediately announced that it would appeal the ruling.

Key Holdings

- General awareness by website operators that user-uploaded infringements are widespread and common is insufficient to bar eligibility for the safe harbor. For an online service provider to be ineligible by reason of having actual or constructive knowledge of infringement, the service provider must have knowledge of specific and identifiable infringements of particular individual items protected by copyright.

- "General knowledge that infringement is 'ubiquitous' does not impose a duty on the service provider to monitor or search its service for infringements."

- The safe harbor for information storage also encompasses and protects against liability for the replication, transmittal and display of videos that have been uploaded and stored at the behest of users. Providing means of facilitating user access to material on the website does not cost the service provider the safe harbor.

- The DMCA provides that to be eligible for the safe harbor, an online service provider cannot receive a financial benefit directly attributable to the infringing activity, in a case in which the provider has the right and ability to control the activity. The "right and ability to control" requires knowledge of the activity, which must be item-specific: "[T]he provider must know of the particular case before he can control it," and "need not monitor or seek out facts indicating [infringing] activity."

- To be eligible for the safe harbor, a service provider need only take down specific clips identified in DMCA notices, not other clips which infringe the same works.

The district court observed that Viacom's submissions were sufficient for a jury to find that the defendants "not only were generally aware of, but welcomed, copyright-infringing material being placed on their website. Such material was attractive to users, whose increased usage enhanced defendants' income from advertisements …." Nonetheless, District Judge Stanton held YouTube and Google entitled to the safe harbor.

"To let knowledge of a generalized practice of infringement in the industry, or of a proclivity of users to post infringing materials, impose responsibility on service providers to discover which of their users' postings infringe a copyright would contravene the structure and operation of the DMCA."

Although YouTube subsequently adopted automated filtering technologies in order to inhibit the posting of some infringing matter, the case involved claims preceding its use of such technology. The district court's ruling does not require filtering in order for an online service provider to be eligible for the DMCA safe harbors.

The complete text of the decision is available at http://static.googleusercontent.com/external_content/untrusted_dlcp/www.google.com/en/us/press/pdf/msj_decision.pdf

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