

YouTube:

Copyright Law and Internet Videos

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Origins of YouTube

- “YouTube was founded in February 2005 from a garage [by Chad Hurley, Steven Chen, and Jawed Karim] in Menlo Park, and development began immediately. We started a public preview in May of last year and officially launched the company and service in December 2005. YouTube has already grown to serve more than 100 million video views per day and is receiving more than 65,000 video uploads daily.”

What is YouTube?

- With YouTube, people can:
 - Upload, tag and share videos worldwide
 - Browse millions of original videos uploaded by community members
 - Find, join and create video groups to connect with people who have similar interests
 - Customize the experience by subscribing to member videos, saving favorites, and creating playlists
 - Integrate YouTube videos on websites using video embeds or APIs

What is YouTube?

- Make videos public or private—users can elect to broadcast their videos publicly or share them privately with friends and family upon upload
- YouTube is building a community that is highly motivated to watch and share videos. The service is free for everyone.

Popular YouTube Web-sites

- Geriatric 1927
- <http://www.youtube.com/profile?user=geriatric1927>
- LonelyGirl15
- <http://www.youtube.com/profile?user=lonelygirl15>
- Free Hugs Campaign
- <http://www.youtube.com/watch?v=vr3xRRJd4d4>

Times Invention of the Year 2006

- YouTube's creators had stumbled onto the intersection of three revolutions. First, the revolution in video production made possible by cheap camcorders and easy-to-use video software. Second, the social revolution that pundits and analysts have dubbed Web 2.0. It's exemplified by sites like MySpace, Wikipedia, Flickr and Digg—hybrids that are useful Web tools but also thriving communities where people create and share information together.

Times Invention of the Year 2006

- The third revolution is a cultural one. Consumers are impatient with the mainstream media. The idea of a top-down culture, in which talking heads spoon-feed passive spectators ideas about what's happening in the world, is over. People want unfiltered video from Iraq, Lebanon and Darfur—not from journalists who visit there but from soldiers who fight there and people who live and die there.

Google Acquisition of YouTube

- In November 2006, Google Inc. acquired YouTube for \$US 1.65 billion in shares. The search engine has maintained a reserve of \$US200 million in escrow to ward off potential copyright litigation.

Google Acquisition of YouTube

- Eric Schmidt, CEO of Google: “YouTube and Google will together provide innovative and exciting services for our users that will add a new dimension to on-line media entertainment. We look forward to working with content creators and owners large and small to harness the power of the internet to promote, distribute and monetize their content.”

Copyright Issues

- Secondary Infringement
 - "One who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties." (Grokster)
- Safe Harbors (s 512 of the US Copyright Act)
- Fair Use (s 107 of the US Copyright Act)

YouTube's Response

- Copyright Policy ('Respect Copyright') and Action against Repeat Offenders
- Community Guidelines
- Ten-Minute Clip Limit
- Content Identification Architecture
- Content Partners (eg Warner Brothers)
- Revenue-Sharing

Structure

- I. Countdown: Viacom v YouTube Inc.
- II. Meet the Simpsons: Twentieth Century Fox v YouTube Inc.
- III. Chopper Bob: Robert Tur and the Los Angeles News Service v YouTube Inc.
- IV. Where the Bloody Hell Are You? Australian Tourism v Downwind Media

I. Countdown:
Viacom v YouTube Inc. (2007)

Steven Chen

- “What we really want to do is in six to 12 months, maybe 18 months, to have every music video ever created up on YouTube. We're trying to bring in as much of this content as we can on to the site.”
- August 2006

Viacom

- In January 2007, Viacom demanded that YouTube remove all content from its networks, including MTV, Comedy Central, Nickelodeon, VH1, CMT, Spike TV and BET, an estimated 100,000 clips total, after licensing discussions broke down.

Michael Fricklas, General Counsel for Viacom

- “YouTube is selling advertising in competition with us, using our own content. This is not a fair business model—for a \$120 billion corporation to appropriate material for their own profit.”

Viacom statement (2007)

- After months of ongoing discussions with YouTube and Google, it has become clear that YouTube is unwilling to come to a fair market agreement that would make Viacom content available to YouTube users. Filtering tools promised repeatedly by YouTube and Google have not been put in place, and they continue to host and stream vast amounts of unauthorized video.

Viacom statement (2007)

- YouTube and Google retain all of the revenue generated from this practice, without extending fair compensation to the people who have expended all of the effort and cost to create it. The recent addition of YouTube-served content to Google Video Search simply compounds this issue. Virtually every other distributor has acknowledged the fair value of entertainment content and has taken deliberate steps to concluding agreements with content providers.

Viacom statement (2007)

- We have great respect for and loyalty to our audiences. We host more than 130 authorized web sites where millions of fans visit and interact with our content. Our internet portfolio has more visitors than any other entertainment company and we are always seeking distribution relationships to ensure that any of our products and services are easily accessible on every platform.

Viacom statement (2007)

- Our hope is that YouTube and Google will support a fair and authorized distribution model that allows consumers to continue to enjoy our very popular content now and in the future.

YouTube Statement (2007)

- We take copyright issues very seriously. We prohibit users from uploading infringing material, and we cooperate with all copyright holders to identify and promptly remove infringing content as soon as we are officially notified. It's unfortunate that Viacom will no longer benefit from YouTube's passionate audience, which has helped to promote many of Viacom's shows. We have received a DMCA takedown request from Viacom, and we will comply with their request.

Electronic Frontier Foundation

- **Unfairly Caught in Viacom's Dragnet? Let Us Know!**
- February 08, 2007
- As an RIAA spokesperson famously put it when asked about the spectacle of file-sharing lawsuits against innocent grandparents, "when you go fishing with a driftnet, sometimes you catch a dolphin."

Electronic Frontier Foundation

- Among the 100,000 videos targeted for takedowns was a home movie shot in a BBQ joint, a film trailer by a documentarian, and a music video about karaoke in Singapore. None of these contained anything owned by Viacom. For its part, Viacom has admitted to "no more than" 60 mistakes, so far. Yet each mistake impacts free speech, both of the author of the video and of the viewing public.

Electronic Frontier Foundation

- If they are making these kinds of blatant mistakes, who can tell how many fair uses of Viacom content they also targeted in their 100,000 takedowns? Hundreds? Thousands? If Viacom made a clear mistake and your clip contains no content from Viacom-owned copyrighted works, sending a simple DMCA counter-notice to YouTube may be enough to do the job. But if you're attempting to make a fair use of Viacom's works, it may make more sense to go to court to assert your rights.

Mika Salmi, MTV Networks

President of Global Digital Media

- "We need to open up our websites and content both for consumers and other companies. The move is part of a strategy to bring Viacom's websites up to 'Web 2.0' standards. Part of that is allowing people to take our content and embed it and make your own things out of it, whatever they want."
- 13 February 2007

II. Meet the Simpsons:
Twentieth Century Fox v
YouTube Inc. (2007)

Rupert Murdoch

- "If you look at it [YouTube] carefully it's not a community site. It's an experience and it can be quite hypnotic. But how do you monetise it? If you interrupt the flow of videos with commercials the users will be over to us [MySpace] or somewhere else pretty quickly."

Television

- In 2007, 20th Century Fox has issued YouTube with a subpoena under s 512 (h) of the *Digital Millennium Copyright Act* 1998 (US) after twelve episodes of *The Simpsons* and four episodes of the TV Series, “24” appeared on the popular video site. The subpoena was filed on 18 January in the US District Court for the Northern District of California.

Television

- YouTube has been asked to provide the identity of the user who posted 12 episodes of *The Simpsons* and the first episode of the new season of *24*. The episode of *24* appeared before the programme was even shown on television.
- 20th Century Fox has already sued YouTube for the names of its users after the video site hosted pre-release footage of *Family Guy*.

Jane Sunderland, VP, Content Protection, Twentieth Century Fox Film Corporation

- “The unauthorized distribution of the Works by the Subscriber is an infringement of Fox’s copyrights, and has caused irreparable harm to Fox’s valuable rights in the Works, in particular with respect to the 2007 season premiere of ‘24’. Fox intends to take immediate action to halt this illegal distribution of the Works.”

III. Chopper Bob:
*Robert Tur and the Los
Angeles News Service v
YouTube Inc. (2006)*

News

- The Los Angeles News Service is a news agency established by helicopter pilot/reporter Robert Tur and photographer/reporter Marika Gerrard. The service records newsworthy events on videotape and licenses television stations and networks to use all or segments of the unedited footage in edited broadcast news stories. The service's 100,000 hour tape library includes a number of famous events – such as the Los Angeles riots, the OJ Simpson police chase, North Hollywood shoot-outs, and the Los Angeles earthquake.

News

- In 2006, the Los Angeles News Service and Robert Tur filed an action against YouTube in a United States District Court for the Central District of California (Case No. CV 06-4436-GAF (FMOx), alleging copyright infringement in a number of famous videos, including the LA riots, and the OJ Simpson police chase.

News

- “Over the past two decades, Plaintiff’s works have been infringed numerous times by various media companies. Plaintiff has had to expend millions of dollars to protect his copyright interests. In so doing, he has helped the copyright owners of newsworthy works generally in successfully litigating ‘limitations’ to the assertion of ‘fair use’ as an excuse for pirating his copyrights.”

News

- *Los Angeles News Service v. Reuters Television Intern. (USA) Ltd.* 340 F.3d 926 C.A.9 (Cal.), 2003
- *Los Angeles News Service v. CBS Broadcasting, Inc.* 305 F.3d 924 C.A.9 (Cal.), 2002. Sep 16, 2002
- *Los Angeles News Service v. Conus Communications Co. Ltd.*, 969 F.Supp. 579 (C.D.Cal.1997).
- *Los Angeles News Service v. KCAL-TV Channel 9* 108 F.3d 1119 C.A.9 (Cal.), 1997.

News

- *Los Angeles News Service v. Tullo* 973 F.2d 791 C.A.9 (Cal.),1992.
- *Los Angeles News Service v. Audio Video Reporting Services* Not Reported in F.Supp., 1990 WL 456577 C.D.Cal.,1990.

News

- While substantial use of YouTube's website was and is made by users uploading their own homemade videos,... it was becoming clear to its principals that its users were sharing more than just their own videos, and that membership stretched far beyond just circles of friends. For example, consumers viewed millions of times, copyrighted material from television markets.

News

- Like Grokster – and Napster before it – YouTube directs its market development to the youthful user base familiar with sharing digitized audiovisual media, including copyrighted recordings, films and video... YouTube explicitly courts the ‘new clip culture,’ describing itself as ‘the leading video entertainment destination on the Internet.’...

News

- YouTube.com is not merely Grokster redux. For unlike the peer-to-peer file sharing systems at issue in the Grokster case, YouTube provides the computer servers and ‘world-class data centers’ which allow users to upload video clips directly to YouTube’s servers. From there, they can be publicly viewed and copied through downloading by any user of the Internet, at no charge to either the uploader or the downloader.

News

- YouTube also allows video embedding, which lets users insert a YouTube video into 'blogs, or other Websites where anyone can watch them.' Thus, unlike the peer-to-peer file-sharing model, YouTube's business model allows it to have actual knowledge of what particular copyrightable files are being distributed, played, and copied through its services.

News

- YouTube lawyers, Zahavah Levine, has responded that the lawsuit is without merit: "YouTube is a service provider that complies with all the provisions of the (DMCA). (YouTube) is entitled to the full protections of the safe-harbor provisions of the DMCA. We pride ourselves on our outstanding record of working in close cooperation with copyright holders to promptly remove from our site any unauthorized material."

News

- Tur's attorney, Francis Pizzulli, has responded that YouTube fails to qualify under the safe harbor provision because the company has profited directly from Tur's footage, because YouTube has sold advertisements that appear alongside some of the copyright-infringing clips.

IV. Where the Bloody
Hell Are You?

*Australia Tourism v
Downwind Media (2006)*

Parody and Satire

- Dan Ilic produced a parody of the advertisement changing the jingle to "Where the f***** hell are you?" and inserting negative images of Australian life. The video was viewed about 30,000 times on video website youtube.com.
- Where the Bloody Hell Are You? Spoof.
- <http://www.youtube.com/watch?v=411ueiat2s>
Y

Parody and Satire

- Tourism Australia complained that the parody as "mean spirited and humourless".
- A spokesman observed: "We find it in poor taste. It's just not funny."
- Mr Ilic removed it from his website, Downwind Media, after complaints from Tourism Australia.

Dan Ilic

- Their lawyers said the music was infringing their copyright, but they were just trying to find a way to get it off the site. We replied saying we had commissioned an independent track with a different tune and tempo, but they said because it sounded similar it infringed copyright. I think it's ridiculous

Dan Ilic

- In their opinion the musical score that Downwind Media used was a direct copy of the score that TA used in their television commercial. Infact we commissioned our own song that is different in tune and tempo. The only similarity we could see was the lyric used, the word “Da”, so we have acknowledged their request.

Dan Ilic

- However, all is not lost. We have remade and re-mixed the song to be less like TA's song. As a result we have four new special edition versions for you to download.
- A “Do” version.
- A “La” Version.
- A “Whistle” Version.
- A Remix by Fatt Dex feat. Crazy Bunyip

Conclusion

http://www.youtube.com/watch?v=OAd_vpsufRU