

You register a domain name. Pay your money for the domain. Set it up to be hosted somewhere. Its your domain. You decide what is to go on the website. But are you the "Master of Your Domain" ?

[As with Seinfeld](#), there is a contest going on right now in the videohosting world between the forces of temptation; In this case, the temptation of allowing others to post any and all content, copyrighted or not, on your domain, ala Youtube; and the forces of copyright law, taking complete control of your domain and only allowing content that has been reviewed and approved, ala [Revver.com](#).

Put another way, Youtube puts up a notice to all of those who post to its domain...."Please dont do it. We are telling you not to do it. If someone catches you doing it, you will be embarrassed and they will have the right to come after you. But, wink wink, we all can have a good time in the meantime. Flog away at copyright laws".

Youtube lawyers are saying that as long as their users are ignoring copyright law, its not Youtube's fault. Youtube lawyers do not feel that Youtube is the master of their own domain. But thats ok because the DMCA laws say that if you give up control of your own domain, you dont have to worry about copyright laws.

Revver on the other hand has chosen to be a master of its own domain. It will post no video it doesnt approve. It is a master of its own domain.

The importance of being the "Master of Your Domain" is soon to become not only a Seinfeld reference, but a legal one as well.

Youtube hides behind the DMCA Safe Harbor Laws, in particular this part:

(c) Information Residing on Systems or Networks At Direction of Users.- (1) In general.- A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider-

(A)

(i) does not have actual knowledge that the material or an activity using the material on the system or network is infringing;

(ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

(iii) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

(B) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

(C) upon notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

First of all, having followed the negotiations for the Safe Harbor Provisions when they were happening, I can assure you that based on the discussions then, videohosting sites that shared files publicly were not considered "service providers". Service Providers were defined as companies like ISPs that hosted files they knew nothing about, that the users had full discretion over, and did not reside on a website owned by the ISPS (which would give the ISP discretion on how the files were delivered ie Flash/progressive download, as opposed to the user defining how and to where.). So the fact that videohosting sites are not Service Providers could exclude them from Safe Harbor Provisions by definition. But that takes the fun out of this blog post, so lets be like Google and pretend its not an issue.

Like the contest in Seinfeld, Google and Youtube think that if the users tell them they didnt do it, then it must be true, they didnt do it. They want to ignore all evidence to the contrary. Kind of like what 12 year old boys hope their moms do when they do laundry... to continue the Seinfeld reference.)

The way i read the Safe Harbor Provisions, the part that says:

(ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent;

is the Youtube killer. If you get a takedown notice from one source for 29,543 videos, you are aware of facts or circumstances from which infringing activity is apparent.

If you are Google, you can easily set up a search like [this](#), which is basically using their features <site:youtube.com "This video has been removed" > to see that you are getting so many takedown notices per day, that maybe there is quite a bit of infringing going on.

Then there is the "Does Not Receive Financial Benefit directly attributable to the infringing activity". Well when you look at the links for content taken down, glance up at the banner ad on the page. Thats financial benefit.

Now Google of course will and can argue all day long that they didnt know about any given video and the fact that it was infringing. They will argue on a per video basis. They didnt know. If someone knows and they tell Google or Youtube, they take it down. All within the letter of the law.

Whats interesting in the meantime before we get to the big lawsuit that will come, is that in anecdotal testing, obviously infringing videos that were uploaded to Google were rejected as not being eligible to be uploaded. The same video uploaded to Youtube, had no problem being uploaded and hosted. This was in the past several days.

It looks like Google is hedging their bet on the Safe Harbor Provisions despite saying otherwise on their conference call.

Whether they are or not, my bet is that when the Safe Harbor Provisions are tested in court, and they will be, the decision will come down to this. **If you own a domain name, you are responsible for it and everything copyright related that is posted and happens on it. You MUST be the master of your own domain. If you are not able to be, you will be liable to any infringing acts on the domains you own.**

Thats what I think the courts will decide.

Does this make Youtube the Kramer of videohosting sites ??