

Not a stretch where I would come out on this, but it never ceases to amaze and amuse me how little understanding of the content business, or the business world in general that many in the blogosphere have.

Let me provide a simple scenario for you.

HBO. HBO charges a monthly fee to subscribers. If someone can watch an HBO show on Google Video or Youtube, even if its divided into 1,3 or 6 parts and re assembled into a playlist, they have far less incentive to subscribe or retain their subscription(s).

HBO in turn, syndicates those shows to cable networks. As an example, A&E paid a reported \$2.2 million dollars PER EPISODE of the Sopranos. If the content is available online, do you think maybe it might reduce the value to A&E and HBO of the Sopranos ? And thats before we even get to overseas syndication. Youtube and Google Video have a great deal of popularity overseas because in many cases US shows are not as readily available. Online international viewing reduces the international revenue opportunity.

Then of course there are DVD sales. Youtube downloads every video right to your PC. Google Video not only downloads to your PC, it provides the option to convert it into a PDA format including the Ipod.

So tell me why it makes good business sense for HBO to let users post the content they sell for a ton of money ?

Now some of those who are so self absorbed in net culture and have no idea how the real world works might think that all of this leads to more viewing and consumption. Maybe it does. Maybe for some shows, like those on broadcast TV, it really does help to have as much promotional video for the show, even to the point of full episodes available both on Youtube and Google Video. There are definitely situations where it could help a show gain viewers and increased sales of DVDs. All of which has nothing to do with whether Viacom or any content provider should let users upload video.

I have a secret for you. ITS EASY FOR END USERS TO UPLOAD video to Youtube and Google Video. ITS EASIER FOR THE CONTENT OWNER to do the same thing.

Viacom doesnt need John or Sally to upload video for them. They are more than capable of doing it themselves. If Viacom wants to put up snippets, scenes, mashups, mockups, quarter, half or full episodes of anything they own, there is nothing to stop them. Its their choice. If they are smart, they will fill every Gootube Server they can reach with their content in a manner that drives viewers back to Viacom properties. They will experiment with every option, including those that engage and involve their viewers, to see what works and what doesn't work and what makes them the most money. Why not ? Google is paying for all the bandwidth. And by the way, if the content owner uploads a ton of content and DOESNT do a deal first with Gootube, Gootube cant sell a nickels worth of advertising on the play pages.

And while they are experimenting , they should continue to sue the hell out of Google. Google blew it. They had no confidence in user generated content generating enough traffic to drive Youtube so they closed their eyes to the obvious. There is absolutely no value to a media company in letting users actually upload video. If they want to know what users want, they can create their own version of twitter that lets people tell them "what they want to watch right now" and respond to it.

My hope is that this lawsuit is not a negotiating ploy. I dont think it is. Why ? Because there is no downside to Viacom to run this one out to the end. If they win the suit, they make their Billion Dollars, which given this lawsuit could take years, could grow to 10s of Billions in damages if Gootube doesn't take any action to stop the ongoing infringing uploaders. If Viacom loses, they lose legal fees of course, but Google still has to negotiate to get their content. The only real hassle is that Viacom must continue to send takedown notices. Thats such an easy choice, 10mm in legal fees vs the potential for BILLIONS and BILLIONS of dollars. Its so easy, that I expect many suits to follow this one.

So who wins ? On the legal side, I wont pretend to be an IP lawyer, but I will invoke my blogger's right to speculate on some of the Safe Harbor Issues, so here goes.

On the issue of Red Flag Knowledge of Infringing content, thats an easy win for Viacom..."Mr Schmidt, have you used Youtube ? What have you looked up in your searches ? Google captures this information doesnt it ? Could you turn over your searches for the last 12 months...Oops. Who knew you loved Beavis and Butthead and won't miss the interviews on 106 and Park." Lucky for Eric, mini piratebays run amok on Gootube. People take ownership of shows and even genres and upload the same show(s) over and over , switching IDs when the previous ID is cancelled. They are there working just like piratebay and bit torrent trackers, switching IDs rather than having to change servers or URLs. Bottom line is that Gootube is a haven for pirates operating under Gootubes cloak of respectability. The sad part is Google Video in particular makes it easy for people who could never figure out bittorrent or even know what it is in the first place to download videos. [Here is where eps of Entourage of easily available.](#)

I cant imagine the powers that be at Google and Youtube havent used their own product and its features with infringing content.

Then there is the issue of what business are you in and removing repeat infringers. In previous cases, there was always a financial link between the "Service Provider/Host" and the uploader. Ebay knows their customers. Loopnet knows their customers. I happen to believe that its key that the "Service Provider" have a real business and infringing action by its users is as much a problem to the Provider as it is to the copyright owner. An ISP makes money with the monthly bill. Ebay makes money from transactions. A real estate hosting company makes money from listings. They all know exactly who their customers are and if one of them uploads infringing materials, they can actually identify the person and if they do it repetitively remove them. In either case, it doesn't change or impact their core business and it helps identify those who dont respect copyright and gives the content owner the option of taking action.

Gootube has no earthly idea who their users are. They make no effort to find out. So if someone wants to repetitively upload movies, shows, whatever, they just jump from user id to user id.

Finally, this last point goes to the heart of how poorly Gootube relates to copyright law in general. The DMCA Safe Harbors as they are written will not exist for very long. You can bet the same companies that spend tens of millions of dollars to extend copyrights to ridiculous extremes, or that want to push for truly ridiculous things like a Broadcast Flag, or the new Webcast Royalties, will spend whatever it takes to get the law changed to their liking. Just as they have done multiple times before. One thing is certain, our lawmakers and lobbyists are relatively cheap compared to the dollars at stake here.

Google may not know it, but they have already lost. They will lose this case if its fought to the end, and whatever moral victories they may be able to gain in a legal battle or settlement will be ripped from them when the DMCA is changed. Then they will still have to negotiate with copyright owners to get their content. The entertainment industry may not be great at many things, but getting copyright law changed to meet their expectations is one thing they are better than any one at.