

I first saw this posted on the Pho List. A media related list that I have participated in for years with lots of smart people with great insights. The posting, as you will read is fascinating and was originally posted anonymously. I emailed the list asking for permission to post it on my blog. In response, the “anonymous author”, who I respect and trust.

I cant say this has been fact checked. It hasnt. I cant say its 100 pct accurate, I dont know. But it rings true, and as I said, I trust the source

- > I'm an experienced veteran in the digital media business and thought
- > I'd share my version of events that happened at Youtube. Some of this
- > is based on talks with people involved and some is speculation based
- > on my experience working in the industry, negotiating settlements and
- > battling in court.
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- > In the months preceding the sale of YouTube the complaints from
- > copyright owners began to mount at a ferocious pace. Small content
- > owners and big were lodging official takedown notices only to see
- > their works almost immediately reappear. These issues had to be
- > disclosed to the suitors who were sniffing around like Google but
- > Yahoo was deep in the process as well. (News Corp inquired but since
- > Myspace knew they were a big source of Youtube's traffic they quickly
- > choked on the 9 digit price tag.) While the search giants had serious
- > interest, the suitors kept stumbling over the potential enormous
- > copyright infringement claims that were mounting.
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- > Youtube knew they had an issue and had offered a straight revenue
- > share deal if the complainants would call off the dogs and give them
- > time. The media companies quickly rejected this path for two reasons.
- > First off Youtube wasn't making any money and was fuzzy about how they
- > would generate revenue in the future. But more important the media
- > companies view is that there was a mountain of past infringement that
- > Youtube had engaged in and built their business on and they felt they
- > deserved some of this accumulated value. And who could blame them. In
- > spite of the media “user generated” puff pieces it was clear to all
- > involved that they generated that content by hooking up their TV tuner
- > cards to their PCs.
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- > It didn't take a team of Harvard trained investment bankers to come up
- > with the obvious solution and that is to set aside a portion of the
- > buyout offer to deal with copyright issues. It's not uncommon in
- > transactions to have holdbacks to deal with liabilities and Youtube
- > knew they had a big one. So the parties (including venture capital
- > firm Sequoia Capital) agreed to earmark a portion of the purchase
- > price to pay for settlements and/or hire attorneys to fight claims.
- > Nearly 500 million of the 1.65 billion purchase price is not being
- > disbursed to shareholders but instead held in escrow.
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- > While this seemed good on paper Google attorneys were still
- > uncomfortable with the enormous possible legal claims and speculated
- > that maybe even 500 million may not be enough – remember were talking
- > about hundreds of thousands of possible copyright infringements.
- > Youtube attorneys emphasized the DMCA safe harbor provisions and
- > pointed to the 3 full timers dedicated to dealing with takedown
- > notices, but couldn't get G comfortable. Google wasn't worried about
- > the small guys, but the big guys were a significant impediment to a
- > sale. They could swing settlement numbers widely in one direction or
- > another. So the decision was made to negotiate settlements with some
- > of the largest music and film companies. If they could get to a good
- > place with these companies they could get confidence from attorneys
- > and the ever important “fairness opinion” from the bankers involved
- > that this was a sane purchase.
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- > Armed with this kitty of money Youtube approached the media companies
- > with an open checkbook to buy peace. The media companies smelled a
- > transaction when Youtube radically changed their initial ‘revenue
- > sharing’ offer to one laden with cash. But even they didn't predict
- > Google would pay such an exorbitant amount for Youtube so when Youtube
- > started talking in multiples of tens of millions of dollars the media
- > companies believed this to be fair and would lock in a nice Q3/Q4.
- > [Note to self: Buy calls on media companies just prior to Q3/Q4
- > earnings calls.] The major labels got wind that their counterparts

> were in heated discussions so they used a now common trick a “most  
> favored nation” clause to assure that if a comparable company  
> negotiated a better deal that they would also receive that benefit.  
> It's a clever ploy to avoid anti-trust issues and gives them the  
> benefit of securing the best negotiating company. They negotiated  
> about 50 million for each major media company to be paid from the  
> Google buyout monies.

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> The media companies had their typical challenges. Specifically, how to  
> get money from Youtube without being required to give any to the  
> talent (musicians and actors)? If monies were received as part of a  
> license to Youtube then they would contractually obligated to share a  
> substantial portion of the proceeds with others. For example most  
> record label contracts call for artists to get 50% of all license  
> deals. It was decided the media companies would receive an equity  
> position as an investor in Youtube which Google would buy from them.  
> This shelters all the up front monies from any royalty demands by  
> allowing them to classify it as gains from an investment position. A  
> few savvy agents might complain about receiving nothing and get a  
> token amount, but most will be unaware of what transpired.

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> Since everyone was reaching into Google's wallet, the big G wants to  
> make sure the Youtube purchase was a wise one. Youtube's value is  
> predicated on it's traffic and market leadership which Google needs to  
> keep. If they simply agreed to remove all unauthorized content and  
> saddle the user experience with ads Youtube would quickly be a  
> skeleton of its prior self. Users would quickly move to competing  
> sites. The media companies had 50 million reasons to want to help.  
> Google needed a two pronged strategy which you see unfolding now.

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> The first request was a simple one and that was an agreement to look  
> the other way for the next 6 months or so while copyright infringement  
> continues to flourish. This standstill is cloaked in language about  
> building tools to help manage the content and track royalties, some of  
> which is true but also G knows that every day they can operate in the  
> shadows of copyright law is another day that Youtube can grow. It  
> should be noted that Google video is a capable Youtube competitor with  
> the ONE big difference being a much more sincere effort to not post  
> unauthorized works – and Google fully appreciates what a difference  
> that makes. So you can continue to find movie clips, tv show segments  
> and just about every music video on Youtube today.

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> The second request was to pile some lawsuits on competitors to slow  
> them down and lock in Youtube's position. As Google looked at it they  
> bought a 6 month exclusive on widespread v  
ideo copyright infringement.

> Universal obliged and sued two capable Youtube clones Bolt and  
> Grouper. This has several effects. First, it puts enormous pressure on  
> all the other video sites to clamp down on the laissez-faire content  
> posting that is prevalent. If Google is agreeing to remove  
> unauthorized content they want the rest of the industry doing the same  
> thing. Secondly it shuts off the flow of venture capital investments  
> into video firms. Without capital these firms can't build the data  
> centers and pay for the bandwidth required for these upside down  
> businesses.

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> There are some interesting chapters yet to unfold. One is how much of  
> this will become public. Google is required by the SEC to disclose  
> material financial developments at their company. Working in Google's  
> advantage is their enormous market capitalization and revenues will  
> give them considerable leeway to claim that a 50 million transaction  
> is not significant to their business. If the other video sites have  
> the wherewithal to put up a legal fight any decent attorney will  
> demand access to Youtube acquisition documents. Expect a claim of  
> collusion between Google and the media companies as a defense  
> strategy.

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> Infringement lawsuits will be served on Youtube and the new proud  
> parent Google in the coming months. Google will respond with two

> paths: an expensive legal fight or a quick and easy settlement with  
> most choosing the latter. Are there any larger copyright holders such  
> as music publishers, movie studios, or unlicensed record label EMI  
> that put up a fight rather than accepting the check? We'll have to  
> watch and find out.  
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