

I wasn't going to write more about this topic. However, listening to Eric at the NBA Technology Conference got me thinking.

The prospects for the inevitable challenge coming for Google and Youtube's position that they are protected by the DMCA's safe harbors will be debated until a case goes to court. What is becoming more interesting is whether their decision to hide behind the DMCA safe harbors, and to let Youtube continue to do so as well will turn out to be a good business decision, or hurt them in the long run.

### **1. Do No Evil has become See No Evil.**

It's not well understood that Video Hosting Companies, like Google Video or Youtube have the OPTION of proactively getting confirmation that all video hosted on their sites is owned by the uploader, or saying they have no control and invoking the DMCA Safe Harbor Provisions.

In selecting to hide rather than be proactive, the door was opened to a never ending stream of press reports of companies claiming to be injured by end users uploading content they don't own and the lack of action on the part of Google to prevent it.

Wouldn't a Do No Evil approach have been to review uploaded videos to make sure that permissions are in place prior to hosting them ? Even if it means traffic would be negatively impacted ?

Google's HUGE problem here is that EVERYONE in the entire universe is content owner at some level. So the challenge isn't winning the first case, or some case to support their position behind the Safe Harbors. It's the fact that they have to win EVERY case, in every jurisdiction in the world. They have seen what happens with the Belgian courts. That is only the beginning. The tobacco companies thought they had a never ending win streak and were safe from judgements... until they weren't.

### **2. Safe Harbors mean no ad revenue around videos**

There has been a lot of discussion about how Google Video and Youtube can monetize the videos they host. Right now it's pretty much a moot question. Because Google has chosen to use the Safe Harbors provisions they can't monetize any videos they don't have licensing deals for. This is why you don't see ads on the pages of videos uploaded by the general public.

Which is exactly why Google is desperate to get licensing deals done with major media companies and to create an opt in licensing deals for uploads from the general public. Without them, despite the fact they are subsidizing the bandwidth of the world's user generated and even corporate video, (smart companies are creating private groups to host videos simply so Gootube covers the bandwidth bills) they have no revenue to cover that bandwidth cost.

Until they can get some material percentage of Google Video and Youtube licensed, which may NEVER happen, Gootube will be a losing proposition.

It also leads to the question of just what an Opt In Licensing Agreement look like ? Will it give Google eternal rights to the video ? Will they share 50pct, 80pct, 20 pct of revenues ? Will they limit how the videos are hosted on other sites ? What will Google get and what will they give ? How they handle these licenses will have a significant impact on how Google is perceived going forward.

### **3. Will Google Video Search truly be an internet wide search ?**

Right now Google Video searches itself and Youtube. That's it. If a video is anywhere else, according to Google Video Search, it doesn't exist. If Video continues to become such an intrinsic media type on the net, **how can Google continue to be a leader in search if they don't search other sites ?**

Will Youtube continue to only offer search for Youtube Videos or will it expand ?

Given that Youtube is the primary destination for people searching for video, if it doesn't offer search of non Google sites, will that hurt Google's position as the leader in search ?

Could they be content to be #1 in search for all things except Video ?

Will Google protect video hosted on Google Video and Youtube from spiders of other search engines ?

And if other sites are added to their index, doesn't that mean when a user comes to a Google Video Site and does a search, it will list all the results without prejudice? Won't doing so drive traffic away from Gootube sites and possibly change the balance of power in video content aggregation ?

Search is supposed to be agnostic of source isn't it ? If a video is listed in the Google Video index, it shouldn't matter where it's hosted. If video search traffic is referred the same as regular Google search, where is the incentive to do a licensing deal with Google Video or Youtube ? Particularly if you have your own advertising and media sales force. Why turn over sales to Google when you can get the traffic and keep control ?

To make matters worse, if Google Video Search decides to be the leader in video search and is agnostic as to host, then the arb falls into the hands of the content owner. The content owner, knowing he/she will get traffic from Google Video is in a much better position than he/she is today.

Today, traffic for your video stays on Youtube or Google Video. Sure the video gets seen, but all you have is MAYBE a marginal link to your website. If Google Video sends the user to your site, you OWN the visitor and the experience. You can put whatever kinds of ads you want, without limitation. Sure your salesforce may not be as good as Google's, but your exposure to the user is no longer limited to watching your video and earning money from the percentage of revenue from an ad Google may put in or around it. Now you can sell your products, sell ads, whatever you so desire. So the arb is no longer where Google can say " We sell ads better than you, do a deal with us" Now the arb is the content owner's total revenue from a visitor generated by Google vs a percentage of an ad sale and losing control of the company's video being hosted on Google Video or Youtube.

That's a huge, huge change in the favor of the content owner.

If visitors from search results are not enough, you can do what content owners are doing today. You can buy spots on Youtube for visibility, or you can buy key words on Google, Google video Search and elsewhere. By not doing a deal to have your content on Gootube, you are in a much stronger position, and you leave Google Video in a much more vulnerable position. If video you own is on their site without license, they can't sell ads around it, and you have the option of letting it stay there, or sending a takedown notice. All while Google pays the bandwidth bill and creates whatever level of visibility you may receive for that content. That's

not a strong position for Google to be in, which probably makes a lot of the major media companies happy.

Google has a challenge. Do they want to be #1 in Video Search, or #1 in Video Hosting. Its going to be impossible to be both.