

First, i have nothing against youtube. I hope they do just fine. Whether they survive or not doesnt affect me one tiny bit.

As someone who worked hard AGAINST the DMCA and provided financial support for legal efforts against the [movie industry's effort to overturn the BetaMax ruling](#). Anyone who has read anything I have written, knows I think copy protection schemes are a waste of money and far too much money is wasted trying to police and implement copyright laws. This coming from someone who has a lot of money invested in content.

I wrote the first blog entry simply because I thought the discussion of how and why Youtube had achieved its level of traffic where others had not was interesting. As many different copyright discussions as I have had since 1995, the one constant was that big copyright owners want control. It was never a matter of if they would try to assert themselves to gain control of their content, it was always just a question of how and when.

Glven Youtube's meteoric rise, I thought it was an interesting question to ask, "Is there anything really unique about Youtube?". The answer was yes. They were the first site I had seen that had any traffic at all that was going to risk it all by saying that since users did the uploading and all they were doing is hosting the files, they [fell within safe harbor rulings of the DMCA](#). All of this sounds really really nice when its a couple people discussing it on their blogs or in the comments or at a conference. In reality, the user implications are damn scary.

This is from the DMCA

The safe harbor provisions permit a copyright owner to subpoena the identity of the individual allegedly responsible for the infringing activities. [512(h)] Such a subpoena is granted on the condition that the information about the individual's identity will only be used in relation to the protection of the intellectual property rights of the copyright owner. [512(h)(2)(C)]

Another section goes on say

The safe harbor provisions require the service provider to include in its copyright infringement policies a termination policy that results in individuals who repeatedly infringe copyrighted material being removed from the service provider networks. [512(i)(1)(A)] This termination policy must be made public in the terms of use that the service provider includes in its contracts or on its web site.

Thats right sports fans. If they know who you are, and you post something that doesnt belong to you, they might have to give you up.

And if you are the guy/girl that posts the NFL, Daily Show, Letterman highlights every night, and any of the owners of those items decide they dont want to be on youtube, then there is a good chance that your days on youtube are numbered.

Now I realize you can add any number of profiles, today. But thats the thing about having all these content owners come after youtube, at some point users get sick of getting kicked off, and of all the hassles that could be associated with dealing with youtube. One identity gets revealed and its front page news.

To some this might not be a big deal, but one of the great things of youtube is how easy it is. If it stops being easy, and the hassles go up. The value and breadth of content declines as do the number of users.

Now all this so far presumes that Youtube qualifies for the safe harbor act. Personally, and Im not a lawyer, I dont think they do. To qualify, as I read it. They arent allowed to change the original file they host in any way. Well Youtube re encodes the video into the FLV format. On top of that, it progressive DOWNLOADS the content to your hard drive (thereby saving a ton on bandwidth for replays). So these issues may be moot, but if they are Youtube is going to be in a heap of hurt.

But for the sake of example, lets go with Youtube being able to qualify for the DMCA Safe Harbor. Lets presume that there isnt going to be a rush to turn over user names and information or kick off anyone who has repetively uploaded any copyrighted materials that has received takedown notices.

The two things I dont think will ever change is that big media companies want to control where there is content is seen, and how their content is monetized. They have absolutely no problem suing to gain that control or sicking the MPAA or RIAA or both on anyone or thing that threatens that control

So rather than guess about Youtubes future, lets think about the implications if Youtube can go about doing their business as is. That anyone can upload anything they want and the worst that could happen is that the copyright owner sends a notice to Youtube that they own the copyright of a video and they want it removed, and then Youtube removes it.

So then what ? Does anyone really think that the big media companies will say "oh its ok, we like youtube..Lets just move on. " ?

Of course not. There wont just be one Youtube, there will be millions. Youtube limits the size of the uploaded video. But thats their choice, probably for cost and performance reasons. Youtube2 wont necessarily do that. So if its legal to upload 100mb of copyrighted materials, then it will be legal to upload 100gb of copyrighted material. Which means any movie, any anything. Convince everyone you know to upload every movie or video they ever bought to Youtube2 and then just offer the video from your blog. Or better yet, tell all your friends to upload those movies and videos on Youtube2, then go to your website and just use the html code to present all those movies. It will be a buffet of all the movies you can watch , and Youtube2 pays the cost of bandwidth and deals with all the takedown notices.

Now that will be a great business.

Now some might say that it wont work that way because YoutubeX will do a licensing deal for the video/movies. Dream on. Ask [Cablevision what happened](#) when they simply tried to move the DVR from the home to their central servers. Ask anyone who has tried to license a wide range of products how hard it is just to find all the people that own the rights to certain materials.

But wait, there is more. For the last 8 years the battle has been between copyright owners, the people who want to download that content for free. and the services that enable that function. What Youtube could go down in history for is extending the battle to the world of uploading to hosting services. Little Johnny can get sued by the RIAA or potentially the MPAA for making music or movies available from his hard drive. But if Johnny uploads that to a hosting service that is claiming the DMCA safe harbor, Johnny is in the clear.

Forget Youtube, a site could come along EverythingTube.com. Make it primarily for sharing independent artists music videos and user generated video content, a "bigger, better Youtube" if you will. Just offer an encoder that mixes mp3 audio with any video or any series of pictures Then create profiles like Beatleswhitealbum and upload the white album, etc, etc. If Youtube can do what its doing, why not EverythingTube ?

Move the risk from everybody's hard drive on to the copyright owners who would have to sort through tens of millions of profiles and videos to find out what belongs to them. It would be impossible to police. THink someone might get mad and try to change the DMCA ?

Bottom line is that ri

ght now everything seems really nice. One site with tons of traffic, tons of videos, tons of infringing and non infringing videos. A really cool library where you can find tons of stuff. All the excitement of discovery that we all felt when we first started using Napster.

The problem is that the web is a cockroach farm. There is never just one cockroach and there is never just one site that will compete in a certain area . There are many video hosting sites now and to come that will look at what youtube is doing and try to oneup them. In a copyright world where lawsuits are more prevalent than even Dwayne Wade free throws in the finals, the lawsuits will come.If the lawsuits dont work, then they will give the politicians in DC lots and lots of money to get the DMCA changed, again.

And one last time I will touch on the economics of streaming. Youtube streams to their user and allows the user to retain the file. But they are still streaming huge quantities of bandwidth. The thing about streamed media is that it doesnt get less expensive the more you stream. When you get into doing terabytes of streams per day, your cost per bit tends to go up as volume increases because of all the incremental overhead associated with delivery of that video. From servers to routers to people to software licenses to maintenance to backup and redundancy etc, etc. the costs ad up in a big way, Delivering video is a whole lot more expensive than delivery of text, but the CPMs for any advertising have to compete with people selling text based ads. Its going to be interesting to see how it all turns out.

I made a prediction, but that doesnt mean I dont like 'em