

# A Federal Court Rules that YouTube is Protected from Liability in a Copyright Infringement Suit

Gonzalo E. Mon

June 28, 2010

This week, a federal court in New York granted Google's motion for summary judgment in a landmark copyright infringement case that tested the boundaries of the Digital Millennium Copyright Act (the "DMCA"). In 2006, Viacom filed a \$1 billion lawsuit against Google, claiming that tens of thousands of videos on YouTube violated Viacom's copyrights and that Google should be liable for the infringement. Google moved for summary judgment, arguing that it was entitled to take advantage of the DMCA's safe harbor provisions. The DMCA essentially holds that a service provider may not be liable for copyright infringement by third parties. A service provider can lose this safe harbor, however, if it has "actual knowledge" that material is infringing or is "aware of facts or circumstances from which infringing activity is apparent" and, having such knowledge or awareness, does not act "expeditiously" to remove the material.

The record demonstrates that Google acted expeditiously to remove specific videos when Viacom notified Google that the videos were infringing. Viacom argued that Google was nevertheless not entitled to take advantage of the safe harbor because Google knew that infringing material was posted on YouTube. The court noted that the critical question was whether the phrases "actual knowledge" that material is infringing, and "facts or circumstances from which the infringing activity is apparent" mean a general awareness of infringement, or mean an actual knowledge of specifically identifiable infringement. The court determined that these phrases "describe knowledge of specific and identifiable infringements of particular individual items. Mere knowledge of the prevalence of such activity in general is not enough." If a service provider needs to conduct an investigation of facts and circumstances to determine whether material is infringing, those facts and circumstances alone do not constitute knowledge or awareness of infringement.

Although copyright holders may object to be burden of having to identify every instance of infringement on a third party site, companies that work with user-generated content will undoubtedly be happy that they can take advantage of the DMCA safe harbor without having to actively monitor their sites. Nevertheless, these companies must take steps to comply with the DMCA, including setting up a mechanism whereby copyright holder can notify them of infringement and, upon receiving notice of infringement, moving quickly to address the complaints.