

## **New/Old Media Strains Show in Viacom's Google/YouTube Lawsuit**

**Andrew Frank, Mike McGuire**

Viacom International is betting on the value of its content to YouTube's audience as it threatens the new-media enabler with a lawsuit in the latest clash over copyright control in consumer-generated media sites.

## NEWS ANALYSIS

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### Event

On 13 March 2007, Viacom International, producer of such cable TV staples as "South Park," "SpongeBob SquarePants" and "The Daily Show," filed a \$1 billion copyright infringement suit against YouTube and its parent, Google. Viacom claims that YouTube and Google benefit from the advertising revenue generated by the huge amount of traffic YouTube enjoys due in large part to the copyrighted material shown on the site.

### Analysis

This lawsuit is the latest example of the clash of old-media businesses and digital-media upstarts. More than 30 million users visit YouTube every month in search of videos. Some of what they seek is consumer-generated, but there are also clips of copyrighted material captured and posted by consumers. Rights holders are increasingly streaming content from their own sites; some are licensing content to new content-delivery services such as Bittorrent.com, and almost all of them sell downloadable content on iTunes.

This market condition has led to some speculation that this lawsuit is principally a negotiating tactic to compel better terms from YouTube. Gartner believes this view is too limited, and that there is a matter of principle at stake here. Viacom alleges not only that its stolen content has contributed to YouTube's remarkable success, but that YouTube and Google "actively engage in, promote and induce this infringement." This language deliberately recalls the MGM v. Grokster U.S. Supreme Court decision of 2005, which established "inducement" as a decisive test of secondary infringement liability. This suggests Viacom is positioning its action not only to recover damages, but to reinforce the viability of the inducement theory for copyright holders. Google and YouTube are relying on exemptions in U.S. copyright law that protect online service providers.

Google insists that YouTube is already going above and beyond legal requirements to address piracy concerns. However, by taking this action, we believe that Viacom is taking at face value the apparent media-market naiveté of YouTube and Google to gain leverage. In particular, comments from Chad Hurley, CEO of YouTube — suggesting, for example copyright protection services might be reserved for licensors — have undermined Google's credibility, regardless of its efforts.

Viacom clearly is betting on the value of its content to YouTube's audience and wants to see more good-faith effort from YouTube. But this move also carries risks. Unlike participants in previous Internet copyright infringement actions, Viacom is acting alone. Many of its competitors have struck deals with YouTube. If YouTube can continue to deal with other major media interests, make progress in addressing copyright, and continue to grow and improve monetization, Viacom could find itself on the outside with a costly victory.

### RECOMMENDATIONS

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- **Technology vendors and consumer-generated content sites:** Move more quickly to create robust copyright detection systems that go beyond Audible Magic's audio-based solution.
- **Media companies:** Balance your need to enforce copyrights and receive immediate compensation with the need to work with innovators to develop significant new distribution opportunities. Online video is still a relatively immature market, and a "zero

tolerance" policy — that does not distinguish between process mishaps and flagrant violations — could damage long-term prospects for media companies in the emerging consumer-controlled environment.

## **RECOMMENDED READING**

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- "Google Will Face Challenges in Wake of YouTube Acquisition" — Google's purchase of YouTube presents it with an opportunity to enter the lucrative video brand advertising market — if it can first clear copyright hurdles. **By Andrew Frank and Allen Weiner**
- "Online Video Communities Embrace Web 2.0 to Capture Eyeballs" — Video communities like vSocial and Revver offer lessons in the impact of Web 2.0 on the media market. **By Allen Weiner**

(You may need to sign in or be a Gartner client to access the documents referenced in this First Take.)

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