

# THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

## When private concerns become public domain

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Federal judge Louis L. Stanton caused an uproar among privacy advocates last week when he issued an order in *Viacom v. YouTube Inc.*, 07 Civ. 2103, a closely watched case pending in the U.S. District Court for the Southern District of New York.

The lawsuit, in which Viacom is seeking \$1 billion from YouTube and Google for copyright infringement, is now in the discovery phase. The order related to Viacom's demand for, among other things, YouTube's source code and user records.

Using the data demanded, Viacom seeks to establish that YouTube unlawfully profited from the unauthorized viewing of Viacom's copyrighted works by reviewing the frequency with which its copyrighted videos were viewed compared to other video content on YouTube.

Judge Stanton denied the request for YouTube's proprietary source code, but ordered the production of "all data from the logging database concerning each time a YouTube video has been viewed on the YouTube Web site or through embedding on a third-party Web site," despite the fact Viacom could just as easily make its case in the absence of specific user data.

In other words, the court required the production of 12 terabytes of data containing, for every video ever watched on YouTube, the unique login ID of the YouTube user, the time the individual began to watch a video, the IP address of the person's computer and identification of the particular video being viewed.

Judge Stanton rejected YouTube's privacy concerns, grounded in the protections set forth in the Video Protection Privacy Act (VPPA), stating that "their privacy concerns are speculative."

The "[d]efendants do not refute that the 'login ID is an anonymous pseudonym that users create for themselves when they sign up with YouTube' which without more 'cannot identify specific individuals' (Pls.' Reply 44), and Google has elsewhere stated: 'We... are strong supporters of the idea that data protection laws should apply to any data that could identify you. The reality is though that in most cases, an IP address without additional information cannot,'" the judge wrote.

In doing so, the court arguably ignored the protections provided by the VPPA, concluding it was inapplicable despite the fact that the Act specifically prevents the production of "personally identifiable

information" by providers of "pre-recorded video cassette tapes or similar audio visual materials."

Pursuant to the VPPA, "personally identifiable information" includes "information identifying a person as having requested or obtained specific video material or services."

The VPPA prevents the disclosure of such information: "[I]n a civil proceeding [except] upon a showing of compelling need for the information that cannot be accommodated by any other means, if — (i) the consumer is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order; and (ii) the consumer is afforded the opportunity to appear and contest the claim of the person seeking the disclosure."

Many legal experts have speculated that by ignoring privacy concerns and the arguably applicable protections of the VPPA and ordering the disclosure of the viewing records of more than 4.1 billion videos, the court effectively set legal precedent allowing access to the vast amounts of data on user activity contained within the servers of Internet giants such as Google.

This is particularly alarming in light of the extremely personal and private nature of the information people seek online, much of which has little to do with prurient interests and includes issues related to mental health, physical health and substance abuse.

Other revealing information obtained online includes people's use of online dating, job search or debt relief services. People purchase potentially embarrassing products online, including prescription medications, personal care items and contraceptives.

Judge Stanton's order is unnecessarily broad, ignores existing laws enacted with privacy concerns in mind and opens the door to more expansive and invasive discovery requests in future lawsuits.

Internet use continues to increase exponentially and is drastically changing the ways in which the world operates. In light of rapid technological advancements, judges must appreciate the potentially broad effects of their rulings in a single case; their failure to do so will be to the detriment of the millions upon millions of Internet users throughout this nation.

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