

Client Advisory | July 2010

Court Finds YouTube Not Liable to Viacom for Copyright Infringement Because YouTube Complied with Requirements of Federal Safe Harbors

After three years of contentious litigation, the federal court hearing the dispute between Viacom and YouTube has dismissed almost all of Viacom's \$1 billion of claims. It determined that YouTube's compliance with copyright provisions applicable to Internet content hosts provides YouTube with complete immunity from any infringing conduct by its users.



John E. Ottaviani, Partner



Glenn G. Pudelka, Associate

Viacom International, Inc. v. YouTube, Inc., No. 07 Civ. 2103 (LLS) (S.D.N.Y. June 23, 2010). The decision is important for all entities that maintain websites hosting content submitted by third parties ("User Generated Content").

The decision represents a resounding endorsement of the scheme for immunity for Internet intermediaries under the Digital Millennium Copyright Act ("DMCA"). In the DMCA, Congress created five "safe harbors" for general activities of service providers on the Internet, where compliance with the statutory requirements immunizes the service provider from direct or secondary liability for copyright infringement. At issue in this particular case is the safe harbor for User Generated Content stored on the service provider's system at the user's direction (for example, content uploaded by a user to the service provider's system). 17 U.S.C Section 512(c) provides, in relevant part:

A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider—

A. (i) does not have actual knowledge that the material or an ac-

tivity using the material on the system or network is infringing; (ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or (iii) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

- B. does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and
- C. upon notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

Viacom's principal argument was that YouTube was not protected by the DMCA "safe harbor" provision because: YouTube had "actual knowledge" and was "aware of the facts and circumstances from which infringing activity [was] apparent," but failed to "act[] expeditiously" to stop it.

In rendering its decision on summary judgment in favor of YouTube, the court looked to Congress' intent when enacting the DMCA, as expressed in the Committee reports and other legislative history, and to precedent in other courts. The court found

that YouTube's general awareness that there are infringements on its website did not cause YouTube to lose its DMCA immunity. Rather, the court found that general knowledge that infringement is "ubiquitous" or widespread does not impose a duty on the service provider to monitor or search its service for infringements. The court stated "[I]f a service provider knows (from notice from the owner, or a 'red flag') of specific instances of infringement, the provider must promptly remove the infringing material. If not, the burden is on the owner to identify the infringement." The court also distinguished YouTube from

Grokster and other file sharing services that have been found to be liable for "inducing" infringing conduct, because those services did not qualify for the DMCA safe harbors.

The case illustrates the strong immunity from direct and secondary liability for copyright infringement provided by Congress for website activities that qualify for and adhere to the DMCA safe harbors. Website operators that host User Generated Content or host or link to any third-party content (even comments) should take advantage of this immunity and make sure that they have taken steps to qualify for the applicable safe harbors of the DMCA.

Website operators that host User Generated Content or host or link to any third-party content (even comments) should take advantage of this immunity and make sure that they have taken steps to qualify for the applicable safe harbors of the DMCA.

BOSTON MA | FT. LAUDERDALE FL | HARTFORD CT | MADISON NJ | NEW YORK NY | NEWPORT BEACH CA | PROVIDENCE RI
STAMFORD CT | WASHINGTON DC | WEST PALM BEACH FL | WILMINGTON DE | LONDON UK | HONG KONG (ASSOCIATED OFFICE)

This advisory is for guidance only and is not intended to be a substitute for specific legal advice. If you would like further information, please contact the Edwards Angell Palmer & Dodge LLP attorney responsible for your matters or one of the attorneys listed below:

John E. Ottaviani, Partner
Glenn G. Pudelka, Associate

401.276.6405
617.239.0371

jottaviani@eapdlaw.com
gpudelka@eapdlaw.com

This advisory is published by Edwards Angell Palmer & Dodge for the benefit of clients, friends and fellow professionals on matters of interest. The information contained herein is not to be construed as legal advice or opinion. We provide such advice or opinion only after being engaged to do so with respect to particular facts and circumstances. The Firm is not authorized under the U.K. Financial Services and Markets Act 2000 to offer UK investment services to clients. In certain circumstances, as members of the U.K. Law Society, we are able to provide these investment services if they are an incidental part of the professional services we have been engaged to provide.

Please note that your contact details, which may have been used to provide this bulletin to you, will be used for communications with you only. If you would prefer to discontinue receiving information from the Firm, or wish that we not contact you for any purpose other than to receive future issues of this bulletin, please contact us at contactus@eapdlaw.com.

© 2010 Edwards Angell Palmer & Dodge LLP a Delaware limited liability partnership including professional corporations and Edwards Angell Palmer & Dodge UK LLP a limited liability partnership registered in England (registered number OC333092) and regulated by the Solicitors Regulation Authority.

Disclosure required under U.S. Circular 230: Edwards Angell Palmer & Dodge LLP informs you that any tax advice contained in this communication, including any attachments, was not intended or written to be used, and cannot be used, for the purpose of avoiding federal tax related penalties, or promoting, marketing or recommending to another party any transaction or matter addressed herein.

ATTORNEY ADVERTISING: This publication may be considered "advertising material" under the rules of professional conduct governing attorneys in some states. The hiring of an attorney is an important decision that should not be based solely on advertisements. Prior results do not guarantee similar outcomes.

EDWARDS
ANGELL
PALMER &
DODGE

eapdlaw.com