

# China Law Update

Posted at 3:27 PM on October 23, 2009 by Sheppard Mullin

## Hulu: The Successful Copyright Licensing Model

On Sept. 28, 2009, comScore released August 2009 online video visit statistics from the comScore Video Metrix service, showing that the online video visit volume exceeded 25 billion in August, the largest number ever recorded. Google accounted for more than 10 billion visits during the month, while Hulu nailed fourth place with 488 million.

Since there is a large difference in the statistics between Google and Hulu, one might turn up one's nose at Hulu. However, if we look closely, we find that Google has a great deal of experience in the internet, while Hulu just celebrated its 2nd birthday. Moreover, 99% of the videos viewed are from Youtube, which owns mainly UGC (User Generated Content) videos. In contrast, the videos Hulu provides are mainly legal copies of commercial videos. Youtube is in large-scale but loss-making, while Hulu is much smaller but profitable. As Economist described, Youtube proved that users would like to watch videos via the Internet, and Hulu proved that advertisers would like to pay for the online videos.

How could the newly established website raise so many concerns from the internet industry? The answer: A successful copyright licensing model.

### **Background: The overflow of online copyright infringement acts**

In recent years, the transition from simulation technology to digital technology, the expansion of the internet band width, the popularization of compression technology and the emergence of P2P technology have made copy and distribution activities more and more prevalent on the Internet. A lot of users unscrupulously download and distribute copyrighted music and movies. Until now, these activities have not been effectually regulated.

Both legislative and judicial authorities are trying to keep the balance between copyright protection and public interest protection in China and in the U.S. There are many rules and precedents regarding this issue. However, online copyright infringements has not been reduced. On the contrary, as technology advances, the problem of online copyright infringement is getting more and more serious.

### **Analysis: The Road to Success of Commercial Video Work**

Hulu is a website that offers free commercial-supported streaming video of TV shows and movies from NBC, Fox, ABC, Sony, Warner and many other networks and studios. Hulu

inserted advertisements, tailored according to users' tastes, into the videos. That is how Hulu makes profit.

We may understand the copyright licensing model of online commercial video work more clearly by looking at Lawrence Lessig's four-factor theory<sup>1</sup>[1], which includes Law, Architecture, Market and Norm. The advantage of Hulu Model is that it makes full use of "Market" to keep the balance between the interests of copyright owner, video websites and users. Users need to watch the advertisements during the broadcast of videos at intervals, similar to how they watch the advertisements on TV. Compared with paying copyright fees to copyright owners directly, watching advertisements is more acceptable for users. Meanwhile, video websites earn substantial commission from advertisers. Part of the commission is taken by copyright owners and the rest is kept by the video websites. Currently, the "Architecture" is ready for the copyright licensing model. The network service, the video technology, the computer equipment, digital right management technology, etc. could make it possible to achieve the goals of the Hulu Model. As for copyright owners, since the "Norm" has changed and the infringement problem has gotten more and more serious, they would like to choose the new model rather than the traditional one, which did not adapt the new cyber space. According to copyright laws, Hulu could have the copyright of commercial works by signing a copyright contract with copyright owners, and punishment would be imposed to the infringers according to "Law".

### **Extension: Chinese Hulu**

Hulu has been a big success in the U.S., and Chinese video websites have begun to copy this model. Heidou is the classic example.

Heidou is a new service on Sept. 17, 2008 provided by Tudou.com. Compared with UGC video service, Heidou has its own features such as High Definition, Hot Programs, Officially Authorized, etc. While Heidou was launched, it had more than 10 thousand authorized videos. The quantity is drastically increasing. At present, there are four ways Heidou and copyright owners cooperate: buyout, profit-sharing, minimum wage plus profit-sharing and cooperative promotion. This model splendidly keeps the balance between copyright protection and public interest protection. The profit that Heidou made is from the advertisement fee for the authorized videos. It is the same as Hulu.

### **Conclusion:**

In sum, this is how Hulu Model works: copyright owners put the authorized copyright content in the market and use architecture to restrict copyright infringement of digital works; users pay for the authorized videos by watching the advertisements; video websites earn substantial commission from advertisers, pay for the copyright fee and make profit from the whole procession. Hulu Model is proved to be the best online video copyright licensing model so far.

---

**Authored By:**

[Tony Shen](#)

86.21.2321.6035

[tshen@sheppardmullin.com](mailto:tshen@sheppardmullin.com)

---

2[1] *See* Lawrence Lessig, *Code: And Other Laws of Cyberspace, Version 2.0*, (New York: Basic Books, 2006).

---