

YouTube Lawsuit Emerges In Grokster's Shadow

Wednesday, July 19, 2006 --- A potentially groundbreaking copyright case is taking shape in California, after popular online file-sharing service YouTube Inc. was sued by a news reporter who claims the copyright for his famous footage of the L.A. riots has been infringed.

The lawsuit, filed this week in the U.S. District Court for the Central District of California, is gaining attention as it prepares to test the boundaries of the 1998 Digital Millennium Copyright Act.

It's also poised to add new legal flavor to the U.S. Supreme Court's recent "Grokster" ruling, which gave guidance to courts for determining who exactly is liable when copyrights are infringed on file-sharing Web sites.

Plaintiff LA News Service, owned by independent reporter Robert Tur, failed to use the DMCA's "notice and takedown" procedure before filing the lawsuit, according to YouTube spokesperson Julie Supan.

"Instead, Mr. Tur chose to file a federal lawsuit asking a court to order the same removal," Supan said.

The provision YouTube is hoping eyeing is intended to give accused online service providers time to comply with copyright laws, and therefore encourage continued innovation in the industry.

Meanwhile, Tur argued in the complaint that YouTube doesn't qualify as an online service provider because of its focus on storing content. However, the DMCA's definition of an online service provider is fairly broad.

Tur was reportedly incensed that his footage of white truck driver Reginald Denny being beaten by black rioters during the 1992 L.A. riots was being uploaded and viewed by YouTube's users.

"If the plaintiff had given YouTube notice of the Reginald Denny beating video appearing on YouTube and demanded its removal, YouTube most certainly would have complied," said James D. Nguyen, an IP litigation partner at Foley & Lardner LLP's Los Angeles office.

YouTube, founded last year in San Mateo, Calif., removed Tur's video clips from its service after hearing of the lawsuit, according to YouTube spokesperson Julie Supan.

The company claims it goes to great lengths to collaborate with content owners to enforce copyright protection, and has clear terms and conditions

prohibiting illegal behavior.

“That, of course, is difficult to police against all users and alone is not enough to escape liability,” Nguyen said. “But YouTube appears to be taking many steps to avoid infringement problems.”

Experts believe the case could bring much-needed clarity to the contentious Grokster decision, which held that peer-to-peer file sharing companies were liable for copyright infringement if their technology was mostly geared toward enabling infringement.

The judge in the case is going to have to tackle some issues in the Grokster decision, which wasn't as crystal clear as many would have liked, according to Gregory A. Sebald, partner at Merchant & Gould PC's Minneapolis office.

“There has to be at least an element of intent that the technology they're providing will be used for infringement,” Sebald said. “Most of the material in the Grokster case suggested there was overwhelming infringement. I'm not sure that's the case here.”

Nguyen said that in addition to taking on issues of secondary liability, the case might also address fair use by questioning whether or not YouTube's use of the video clips is protected for equitable reasons.

YouTube will likely site a special provision in the DMCA that protects Internet hosting services.

Without such protection, online service providers would be exposed to numerous copyright infringement claims for any unauthorized content sent over their services and they may not stay in business.

“Assuming YouTube does not take acts which knock it out of the specific safe harbors, it has a strong chance of defending the copyright claim,” Nguyen said.

The case can easily be compared to another recently filed copyright infringement lawsuit between an Internet pornography Web site, IO Group Inc., and a video-sharing Web site owned by Veoh Networks Inc.

In that case, the film producer sued Veoh for allegedly copying its adult movies and hosting them on its own site for free viewing by users. IO said in the complaint that its content was used to entice users to sign up with Veoh and upload their own content.

The cases are hardly isolated. YouTube's business model is shared by more than 100 Web-based services that host videos on the Internet. Media bigwigs Google Inc., Yahoo Inc. and AOL have similar services.

And with videos limited to 10 minutes, YouTube and its competitors cater to what the Hollywood Reporter dubbed clip culture, not pirates. Widespread

copying of full-length movies, such as those shared on Bit Torrent, are more often targeted by copyright holders.

Tur, who also gained fame with his helicopter footage of the 1994 freeway chase of former football star O.J. Simpson, is claiming \$150,000 in damages.

The group is part of a growing phenomenon of online entertainment being shaped by users who contribute content. The site claims to stream 50 million videos per day and recently claimed to be one of the fastest-growing Web sites on the Internet.

"Copyright and new media technology junkies like myself have been waiting for a case like this to be filed against one of the user-generated content sites," Nguyen said. "It will have implications for this whole burgeoning area."

This isn't the first time Tur's video has been in court. In 1995, he sought damages from Visnews International, a joint venture of Reuters International Ltd., NBC and the BBC, over the alleged infringement of the video.

In May 2004 the U.S. Supreme Court refused to hear the case, which would have addressed whether a copyright holder can recover actual damages flowing from the unauthorized exploitation abroad of copyrighted work infringed in the U.S.

The second case is IO Group, Inc. v. Veoh Networks, Inc., case number 5:06-cv-03926, in the U.S. District Court for the Northern District of California, in San Jose.

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