

Viacom v. YouTube: In Defendants' Own Words

The Evidence: The YouTube Founders

- YouTube's mission was to build up viewership for a quick sale
 - "...concentrate all our efforts in building up our numbers as aggressively as we can through whatever tactics, however evil." (Chen) SUF 85
 - "at what point do we tell them our dirty little secret, which is that we actually just want to sell out quickly" SUF 50
- YouTube was well aware of obvious infringement on its site
 - "You can find truckloads of copyrighted content..." (Chen) SUF 60
 - "Steal it! . . . We have to keep in mind that we need to attract traffic. How much traffic will we get from personal videos?" SUF 44
- In fact, a YouTube co-founder was a serial uploader
 - "We're going to have a tough time defending that we're not liable . . . when one of the co-founders is blatantly stealing content from other sites and trying to get everyone to see it." SUF 40
- YouTube relied on copyrighted content to increase site traffic – and made stymied copyright enforcement efforts to meet that goal
 - "If you remove the potential copyright infringements...site traffic and virality will drop to maybe 20% of what it is." SUF 55
 - "But we should just keep that stuff on the site. I really don't see what will happen. What? Someone from CNN sees it? He happens to be someone with power? He happens to want to take it down right away. He get in touch with cnn legal. 2 weeks later, we get a cease & desist letter. We take the video down" (Chen) SUF 47
- YouTube understood the consequences of its actions
 - "Save your meal money for some lawsuits!" (Hurley) SUF 38

The Evidence: Google

- Google did not want to be like YouTube – at first . . .
 - "I think we should beat YouTube . . . – but not at all costs. [They are] a video Grokster." (Eun to Schmidt, pre-deal) SUF 158,159
- Google executives debated whether to adopt pro-infringement model
 - "...is changing policy [to] profit from illegal downloads how we want to conduct business? Is this Googley?" (quoting Google founder Brin) SUF 162
- Google instead decided to "Be Evil" in its purchase of YouTube and in its subsequent operation of the site
 - "It crosses the threshold of Don't be Evil to facilitate distribution of other people's intellectual property..." Google Video manager SUF 164
 - "a trend we see is that people upload copyrighted videos to their private videos . . . And then invite large numbers of people to view the video which bypasses our copyright restrictions" SUF 199
- Google limited the application of content protection to those who agreed to a license

- “Audio fingerprinting system whereby the content partner can send ‘reference fingerprints’ to Audible Magic’s database “are now live as well and are only offered to partners who enter into a revenue deal with us” (David Eun, February 15, 2007) SUF 216
- “Pressure premium content providers to change their model towards free . . . Threaten a change in copyright policy” and “use threat to get deal sign-up.” SUF 161