

Q&A On Privacy Implications of Discovery Order in YouTube Litigation

Why is Viacom suing Google/YouTube?

Viacom is suing Google and YouTube for rampant copyright infringement of Viacom's movies and TV shows on the YouTube.com website. Viacom's complaint alleges that Google and YouTube intentionally operate the site to profit from infringing video clips - including thousands of Viacom programs.

Google and YouTube claim that they are not responsible for the infringement and that their users should be held responsible for uploading the infringing clips. Google further claims that Viacom should sue the users instead of Google and YouTube. Viacom strongly disagrees with that position and believes that Google and YouTube should be held accountable for the massive infringement they intentionally perpetrate and from which they profit.

Why doesn't the DMCA protect Google? Should the DMCA be updated to allow this sort of innovation?

The DMCA has a number safeguards to protect online service providers, but none of those exemptions apply to YouTube's conduct. The DMCA does not online protect service providers who know about infringement; it does not protect parties who derive a financial benefit from infringement; and, it does not protect a self-described "media company" that attracts viewers by making third-party content available to the public without appropriate authorization. Under the DMCA, it is appropriate for a party who benefits from infringement to be responsible for preventing it. Under Google's view of the DMCA, Google would be permitted to make full use of all copyrights without any authorization, while shifting to copyright owners, large and small, the costs and obligations of preventing infringement. If Google's point of view were to prevail, it would threaten the very existence the U.S. motion picture industry, which in 2005 generated \$73.4 billion. Each year, motion picture piracy costs the U.S. economy \$20.5 billion and 141,000 jobs, according to a study by the Institute for Policy Innovation.

How long will this litigation last? What stage is it at now?

The litigation is in the fact development, or "discovery," stage, in which the parties exchange information and take deposition testimony under oath. No trial date has been set, but is expected in early 2009.

What did the court's most recent ruling address? What did the ruling say? Did the court order Google/YouTube to turn over personally-identifiable information?

The New York federal court presiding over Viacom's lawsuit ordered Google and YouTube to turn over a database that contains information about each time a video clip on YouTube is viewed.

YouTube and Google collect and use this information as part of their business plan to "monetize" the user base they have built up at least in part through infringement. Google has also acknowledged that it uses the data for a variety of purposes, including ad targeting and recommendation engines.

Viacom's lawyers sought access to this database in order to establish the extent to which video clips that infringe Viacom's copyrights draw users to YouTube.com. However, Viacom's outside lawyers will only use this information to develop evidence about user conduct and will not receive any personally-identifiable information regarding public users. Viacom - unlike Google and YouTube, which develop, maintain and use the database - is restricted by the court-issued protective order in how it can use this data and cannot use the data to sue individual YouTube users for infringement.

Will Viacom have access to personally-identifiable information?

No. Viacom has told Google and YouTube that it will accept the IP address and User ID data in "anonymized" form consistent with Viacom's needs to develop its case. Viacom and Google are working out the details of the arrangement.

What does the protective order say?

The court-issued protective order says that Viacom, its lawyers, and outside experts can only use information obtained in discovery solely for the purpose of this lawsuit. So, the information gathered in this case may not be used to sue public users. In addition, "highly confidential" information, such as the information addressed in the court's order, will not be made available to Viacom itself, only to its lawyers and outside experts. Violation of the protective order is punishable as contempt of court.

Is my IP address considered personally-identifiable information? Why does Google retain this information?

While some experts take different positions on this issue, most courts agree that an IP address by itself is not considered personally-identifiable information. As to why such information is retained on Google's servers, you will have to ask Google that question.