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Subject: FW: Newsweek: Video Napster?

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Subject: Newsweek: Video Napster?



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Video Napster?

Only a year old, YouTube has already rocketed past Google and Yahoo to become No. 1 in Web video. But can it survive the fear of a copyright crunch?

WEB-EXCLUSIVE COMMENTARY

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March 1, 2006 - YouTube.com, one of the leading video sites on the Web, should present a disclaimer to its users: *may consume large chunks of otherwise productive time*. In a single, wasteful afternoon this week, I watched 10 minutes of highlights from NBC's "The Office" and nearly the entire pilot episode of the network's, "My Name is Earl"; I took a small tour of various curiosities, such as the surreal David Hasselhoff "Hooked on a Feeling" music video, and a brilliant lampoon of what iPod packaging would look like if Microsoft designed it. I laughed at a hilarious, decades-old Richard Pryor stand-up performance and groaned at some of the worst ads from the last Super Bowl, then concluded my binge with an entire episode of "The Simpsons"—the one where Homer adopts a monkey.

There are of two distinct categories of clips on YouTube: short movies like the Microsoft parody, produced by creative folks and voluntarily distributed free to the world, and the professional fare like the network shows, which TV viewers typically upload straight from their sets to the Net—without permission. The copyright-infringing video that sits on YouTube's servers sticks a big, fat finger into the eye of media companies, who no doubt want to sell this material in online video stores like Apple's iTunes.

It would be easy to call the venture-backed, San Mateo-based YouTube the Napster of video, an outlaw startup rocketing onto dotcom radar screens on the backs of rights-holders. But that's a designation that the year-old company desperately wants to avoid. YouTube is far friendlier to copyright owners than the peer-to-peer sharing pioneer, and offers to take any material off its servers when a rights-holder complains (as NBC did earlier this month, asking the company to remove the popular Saturday Night Live "Lazy Sunday" clip from its site.) YouTube execs point out that, unlike Napster, they control what's on their site and can boot users who are breaking the law. "This is not 1999. Those guys [Napster] were renegades. They thought no one could touch

them," says Kevin Donahue, YouTube's VP of marketing and programming. "We want to be in business with content owners, not in conflict."

Hollywood execs aren't reaching for the emergency telephones that connect them to their lawyers—at least not yet. A representative from the Motion Picture Association of America said that YouTube is generally "a good corporate citizen." Rick Cotton, general counsel for NBC Universal, said he felt the network was "getting good cooperation in taking down material" from YouTube. "Although there is a lot of material we have questions about, our sense is that they are engaged and recognizing that that they do have obligations."

YouTube is riding the online video wave like few other Internet firms. It gets more visitors a week than the video sections of either Yahoo or Google and the average user spends almost twice the amount of time there, according to Hitwise researcher Lee-Ann Prescott.

The seeds of YouTube's popularity stretch back to the origins of the company, and the founders' intention to make watching video on the Web as easy and infectious as possible. Former PayPal employees Chad Hurley, 29, and Steve Chen, 27, started the company in Hurley's garage after complaining about the clunky experience of watching video on the Net. Users often had to choose which media player they wanted to use, then download a bulky clip.

Chen, a programmer, used Adobe's flash development language to let users stream video clips inside their browser. Hurley, a user interface expert, designed ways to let users easily share the video they liked and put descriptive designations or "tags" on their favorite clips. Ingeniously, the founders decided to let users paste YouTube clips right into their own Web pages—a trick that led to exploding popularity of YouTube, especially on the site of another high-flying Web business, MySpace.

YouTube is still a young firm, and it shows. It has 21 employees and sparsely decorated, Ikea-infested digs above a pizzeria in downtown San Mateo. A rubber chicken hangs from the rafters, and a large stretch of empty carpet awaits new employees. Staffers keep long hours, and despite their promises to work with Hollywood, they are often outmaneuvered by their users. Earlier this week, for example, despite all the publicity and controversy around NBC's efforts to remove the SNL's "Lazy Sunday" from YouTube, a user had reposted the clip, which was nestled amid other user-created sequels and parodies. (An NBC spokesperson responded: "We'll continue to request that they take down material put up on the site without our permission.")

The company faces a conundrum when it comes to copyrighted material: its rapidly growing user base loves the wide-ranging video content, some of which may be infringing. YouTube can pull just enough off its servers to keep the lawyers at bay, or it can try to get media companies to contribute material for promotional purposes. The company has had a few successes so far; execs point to a grainy video of soccer star Ronaldhino trying out new sneakers, which was watched millions of times before YouTube learned that sneaker giant Nike had intentionally slipped it onto the site. Music labels such as Warner Records and EMI are also using YouTube to get more exposure for their music videos.

But when it comes to potentially infringing content, things get even trickier when YouTube starts trying to make real money—which it hopes to do later this year by selling its own ads on the site. That could aggravate its already shaky legal status. Its "beg for forgiveness" approach—taking copyrighted content off its site only when faced with a complaint—probably places them comfortably within the safe harbor provisions of 1998's Digital Millennium Copyright Act. But as Electronic Frontier Foundation attorney Fred von Lohmann points out, companies that benefit financially from infringement don't necessarily enjoy the same legal protections. "There's a real question whether an advertising-based business model creates extra risk" for a company like YouTube, von Lohmann says.

If nothing else, all the copyrighted content on YouTube—what one rival calls the "cloud of infringement"—actually puts the firm at a disadvantage in the rapidly evolving online video marketplace. Yahoo and Google can keep their video portions of their site ad-free and subsidize it with other parts of their business. YouTube doesn't have those deep pockets. And though its impressive traffic statistics should make it an attractive acquisition candidate to a number of new and old media firms, the possibility of lawsuits will probably keep potential suitors away for now.

To really turn its current winning streak into profits, YouTube will have to get serious about policing its network for copyrighted content while retaining much of the user-creativity that makes it such a fantastic place to waste an afternoon. Just like the video clips on the site itself, that's a story worth watching.

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