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Google's intransigence triggered lawsuit

The media giant says it went to great expense to detail the posting of its products on YouTube.

By Thomas S. Mulligan and Claudia Eller, Times Staff Writers March 14, 2007

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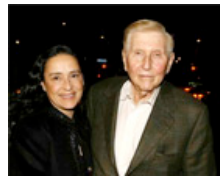
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- Viacom files \$1-billion suit over YouTube

Sumner Redstone, Viacom Inc.'s 83-year-old chairman, got the call Monday at the Four Seasons Resort Costa Rica telling him that the company he controls was declaring war on Internet giant Google Inc. after months of failed talks.

Vacationing with his wife Paula, Redstone was informed by Chief Executive Philippe Dauman that the media company would be suing Google the following day for more than \$1 billion.

Redstone was all for it — Viacom had failed for months to persuade Google to pay what it believed it was owed for allowing clips from its cable channels such as Nickelodeon, MTV and Comedy Central to be posted without permission on Google's popular YouTube website.

"Any company or any person who illegally misappropriates our product has to be stopped," Redstone said. "And this lawsuit is a way of stopping them."

The lawsuit, filed Tuesday in U.S. District Court in New York, culminated months of careful preparation by Viacom to build the most serious case Hollywood has brought yet against Silicon Valley over paying for TV shows and movies that Web technology has made so easy to copy and view.

The lawsuit also introduces Google unwittingly to the entertainment industry's hardball ways in which companies think nothing of going to court to settle differences. Viacom, and Redstone in particular, over the years has been among the industry's most tenacious companies in disputes.

Just last week, Google Chief Executive Eric Schmidt told an investment conference that he discovered being a player in the media industry means "you are sued to death." In a statement, the Mountain View, Calif.-based company said it was confident it "respected the legal rights of copyright holders and believes the courts will agree."

To lay the groundwork, Viacom hired workers and contractors to scour every corner of YouTube's site at a cost General Counsel Michael D. Fricklas put at "tens of thousands of dollars a month."

Using "crawler" software for its reconnaissance, BayTSP reviewed some 1.8 million videos for keywords such as "Beavis and Butthead" from Viacom's MTV, "SpongeBob SquarePants" from Nickelodeon and "Jon Stewart" from Comedy Central's "The Daily Show." More than 150,000 clips were identified as improper, which Viacom estimated had been viewed 1.6 billion times.

But Viacom didn't want to shoot and miss in filing its claim. So it had to painstakingly verify whether clips were improperly copied, might be considered fair use or were even relevant to its lawsuit.

For example, was a clip featuring comedian Jon Stewart in the title lifted from Comedy Central's "The Daily Show," or did it come from one of his outside appearances? Snippets of a video from MTV meshed with an amateur one could be considered fair use. And a clip with Comedy Central's "Stephen Colbert" in the title might simply be an amateur stand-up desperate for the attention of viewers.

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As a result, dozens of workers had to spend hours effectively being paid to watch YouTube.

"You'd see people walking around the building with their eyes glazed over," said Mark M. Ishikawa, chief executive of BayTSP, a Los Gatos, Calif., company Viacom hired. Shifts were limited to four hours.

Still another problem was separating which clips YouTube was authorized to use. Dauman kept all of Viacom's division heads, such as Paramount Pictures Chairman Brad Grey, in the loop, asking them to help identify what clips had been given to YouTube as promotions and which had been lifted.

Paramount Pictures, for example, allowed YouTube to show clips from upcoming movies such as the figure skating comedy "Blades of Glory," starring Will Farrell that opens this month. But it also found that its Oscar-winning Al Gore documentary "An Inconvenient Truth" and the film "Mean Girls" had been illegally posted.

Redstone himself didn't get personally involved, trusting the negotiations to Dauman, a lawyer who over the years handled personal legal matters for Redstone and his family.

According to people with knowledge of the talks, conversations with Google and YouTube lasted for months, which centered mostly on trying to forge a revenue-sharing relationship similar to a deal Viacom has with Joost, a fledgling service started by the founders of Internet phone service Skype.

Dauman believed that a deal similar to the Joost one would give Viacom needed control over its programs posted on YouTube. Dauman didn't want Viacom's materials displayed with the work of amateurs, believing it would turn off advertisers.

According to one high-level executive, YouTube was unwilling to put in the necessary filters that Viacom demanded to police its site unless Viacom agreed to its terms. In early February, the New York company telegraphed its intent to sue with a warning by demanding that YouTube remove more than 100,000 clips from its site.

In an interview, Dauman said he personally had discussions with Google senior executives, including Schmidt. But nothing came of it.

"If I'd thought we were making progress, we would not have taken the action we did," Dauman said.

Dauman said he and the company had been patient, and that there was no single straw that broke the camel's back.

"I would say there were somewhere in the neighborhood of 160,000 straws," Dauman said.

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