Viacom files $1-billion suit over YouTube

Viacom Inc. is aiming to upend Google Inc.'s plan to change the way people watch TV and movies.

Viacom, which owns MTV Networks and Paramount Pictures, sued Google in federal court Tuesday, accusing the Internet company of "brazenly exploiting" the power of the Web to make easy money off Hollywood's hard work.

Google's YouTube video-sharing service has "deliberately chosen not to take reasonable precautions" to stop users from posting unauthorized clips of shows including "SpongeBob SquarePants" and "South Park" and movies such as "An Inconvenient Truth," the suit says. "YouTube profits handsomely from the presence of the infringing works on its site."

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Viacom isn't the only old-media company with that opinion. Several book publishers and news agencies have sued Google for alleged copyright infringement, though none has Viacom's deep pockets or fighting instincts.

Until recently, Viacom was one of several companies struggling to reach deals that would allow them to share in the YouTube advertising revenue that their shows generate. NBC Universal recently sent a letter warning that Google should better protect copyrighted material.

"Everybody recognizes litigation is not a particularly desirable business outcome," NBC Universal General Counsel Richard Cotton said in an interview before the Viacom suit was filed. "What you have is everybody going the last mile to try to find a constructive business solution. But I guess what I would say is this is the last mile."

Viacom's lawsuit, filed in U.S. District Court in New York, seeks at least $1 billion in damages for alleged copyright law violations. A Viacom spokesman called that "a very conservative estimate." Under copyright law, Viacom could win $150,000 per "willful" infringement, meaning that penalties on the more than 150,000 alleged violations would approach $23 billion.

Google attorney Glenn Brown said the company was confident about its case.

"Google has said its mission is to be able to provide quick access to all of the world's information," said Forrester Research analyst Josh Bernoff. "Much of the world's information is copyrighted. So unless there is a resolution to this question, they can't succeed."

It was clear Google was in for a fight when it bought YouTube in November for $1.6 billion. TV networks, movie studios and record labels were already complaining about the website's failure to block pirated videos.
YouTube launched in December 2005 with videos of a founder’s cat. People began to flock to the site’s karaoke bits and online confessions, then figured out that they could share and watch snippets from thousands of TV shows, music videos and movies. The site became perhaps the Web’s largest collection of buzz-worthy TV highlights.

The site’s traffic rocketed to more than 34 million U.S. visitors in February, up from 4 million a year earlier, according to Web research firm ComScore Networks. Networks and producers were happy to be along for the ride, until it became part of an emerging Internet behemoth.

"When YouTube was a fun start-up that wasn’t monetizing the content, I was fine with it," said Ben Silverman, executive producer behind such popular shows as "The Office" on NBC and "Ugly Betty" on ABC. "But the moment they sold themselves for $1.6 billion and became a service that was making money off other people’s content, the game changed."

Viacom contends that since YouTube has successfully screened pornography from the videos its users contribute, it should be able to police the site for copyrighted material. When Viacom asked Google to take action, "they kept saying, 'It's difficult,' “ Viacom spokesman Carl Folta said. “If it’s difficult, shut your site down until you get it right.”

At NBC, executives have struggled to decide how to deal with YouTube. A year ago, the "Lazy Sunday" skit — a satirical rap about cupcakes and the "Chronicles of Narnia" — found its way onto YouTube and reintroduced NBC’s "Saturday Night Live" franchise to millions of young viewers.

The leak triggered conflicting impulses within NBC. It wanted to use the emerging technology but couldn't let what it saw as copyright infringement go unchallenged.

NBC decided to play along with the online video start-up, if only to gauge YouTube’s promotional potential. Perhaps this online community attracted by videos of toilet-trained animals and skateboard antics could be harnessed to lure young viewers to professionally produced new shows such as "Heroes" or "The Office."

The video-sharing site reaped only $15 million in revenue for 2006 — roughly the same amount broadcast networks typically collect in advertising in one night. But TV executives resented that their shows had helped make multimillionaires of YouTube's young founders, Chad Hurley, Steve Chen and Jawed Karim.

They also feared that YouTube would disrupt their advertising business by becoming the gatekeeper between online viewers and TV programming.

NBC went full circle: from demanding the removal of "Lazy Sunday" and other NBC clips, to striking a broad promotional partnership, to once again considering legal action.

The company declined to comment Tuesday.

Legal analysts said the case would test the Digital Millennium Copyright Act, a 1998 law that shields Internet service providers from liability for material their users post online. To qualify for protection, service providers must remove unauthorized material when notified of its presence by copyright holders.

You Tube has long maintained that it is protected because it immediately removes copyrighted video when notified.

"We feel it’s a very clear law," said Glenn Brown, Google product counsel. "It makes clear that sites like YouTube basically enjoy this safe harbor, providing they make this removal process easy for content owners to make a choice about what they want to do with their content."

But Greg Gabriel, a Santa Monica entertainment lawyer, said YouTube was stretching the boundaries of the safe harbor provision, which was intended to protect Internet service providers who wouldn’t know that infringing materials were on a website unless notified.

"This is where YouTube is in trouble," he said. "You can't even log on to YouTube's Web page without seeing a half-dozen infringing clips."

The stakes are incredibly high in the fight, San Francisco intellectual property lawyer Annette Hurst said. The outcome could tilt the balance between allowing technology to flourish and protecting the creative community's interests.

"Google is probably the only company that could have bought YouTube," she said. "They had an already-existing business model not premised on infringement. And they were the only ones who could afford to take a risk."
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