Copyright still matters

Viacom's message to Google: Copyright holders' rights don't dissolve in the age of the Internet.

March 15, 2007

IT'S BEING BILLED AS A smackdown between new media and old, as the latest battle in California's civil war between northern technology and southern content. But Viacom Inc.'s $1-billion copyright-infringement suit against Google Inc. also involves a tension between innovation and property rights that is as old as the Constitution — and the rights of property owners are clear.

Viacom and Google, which bought YouTube last year, could still settle their differences out of court. Viacom may be exaggerating the damage to its interests posed by the posting on YouTube of copyrighted material ranging from "SpongeBob SquarePants" to "The Daily Show." And it's possible that online exposure actually improves the ratings for TV shows — a proposition that was once accepted by NBC Universal, which moved from complaining about YouTube to welcoming its streaming of "Saturday Night Live" skits.

But Viacom is free to decide that the trade-off isn't adequate and to seek a remedy from the courts. And if Viacom or YouTube doesn't like the outcome, either company is free to lobby Congress to reset the balance between the two competing values spelled out in the Constitution: promoting "the progress of science and useful arts" and protecting the rights of "authors and inventors."

Congress' last attempt to strike such a balance resulted in the Digital Millennium Copyright Act of 1998. That law reaffirms the rights of copyright holders but also limits the legal liability of online service providers if they are unaware that others are posting copyrighted material and if they move promptly to remove it when the copyright holder complains.

Like any law, the 1998 act is open to interpretation, and the courts will have the final say. YouTube's lawyers can argue that it is entitled to the law's "safe harbor" against lawsuits if it responds to individual complaints about the posting of copyrighted material. Viacom can counter that YouTube has what lawyers call "constructive notice" that SpongeBob and his pals are popping up on the video-sharing site alongside all those family pets and lip-synching teenagers. Besides, Viacom argues, if YouTube can remove pornography from videos posted by the public, it should be able to screen out copyrighted material.

Some Internet romantics view this kind of litigation as typical of lumbering, old-economy behemoths. Incapable of innovation and suspicious of technology, content conglomerates such as Viacom respond by filing lawsuits. But like the "useful arts" mentioned in the Constitution, the programs owned by Viacom and other entertainment companies cost money to produce. Companies have the right to protect that investment — even in the age of YouTube.

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