Online piracy: As a mere host, YouTube is protected from liability

Viacom's online piracy suit charging that YouTube tolerates copyright infringement was correctly decided. For the Internet to work, YouTube can't be required to police its network for bootlegs.

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Entertainment companies have asked the courts repeatedly for help in coping with online piracy, but the results have been decidedly mixed. Although judges have come down hard on numerous file-sharing networks and search engines that specialize in bootlegs, they've ruled in favor of several websites whose content is generated by users, even if it wasn't authorized by the copyright holders. The latest may be the most significant: Last week, a district judge in New York dismissed claims by Viacom and others that Google's YouTube had built its business by turning a blind eye to widespread copyright infringements. The ruling, which Viacom plans to appeal, reaffirmed the crucial principle that online companies should be held responsible for what they do, not what others do with their services.

As Judge Louis L. Stanton explained, Congress recognized that the Internet couldn't function if broadband providers, search engines and hosting services were held liable for every unauthorized copy made on their networks. The Digital Millennium Copyright Act of 1998 protected those companies from liability as long as they acted quickly to remove any infringing material identified by copyright holders.

Viacom argued that YouTube didn't qualify for this protection because infringements were common and central to the company's fortunes. Echoing earlier rulings, however, Stanton held that the law doesn't require YouTube to police its network for bootlegged videos. Instead, it only has to remove the items singled out by copyright holders. That's sensible — copyright owners are far better positioned to know whether a clip was used legally or not. In fact, many of the clips cited in the original lawsuit weren't infringing. At least 100 had been posted by marketers employed by Viacom.

Some analysts assert that the ruling increases the burden on entertainment companies, but it really just rebuffs another effort to shift copyright holders' responsibilities onto the middlemen who have opened new distribution pathways online. Those efforts are understandable, given how quickly works can spread around the world, and how many sites can become unauthorized sources. But speedy, low-cost distribution is one of...
the great advantages of the Internet, not a flaw. Many entertainment companies have come to accept that reality, striking deals with YouTube and others to generate revenue from the material that fans post online. Meanwhile, YouTube and its competitors are adding filtering technologies that enable this monetization, as well as giving copyright holders more say over what gets posted. That kind of cooperation in the marketplace is a more effective response to online piracy than years of futile litigation.

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