



المعهد القومي للملكية الفكرية
The National Institute of Intellectual Property
Helwan University, Egypt

المجلة العلمية للملكية الفكرية وإدارة الابتكار

دورية نصف سنوية محكمة يصدرها

المعهد القومي للملكية الفكرية

جامعة حلوان

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يوليو ٢٠٢٠

الهدف من المجلة:

تهدف المجلة العلمية للملكية الفكرية وإدارة الابتكار إلى نشر البحوث والدراسات النظرية والتطبيقية في مجال الملكية الفكرية بشقيها الصناعي والأدبي والفني وعلاقتها بإدارة الابتكار والتنمية المستدامة من كافة النواحي القانونية والاقتصادية والادارية والعلمية والأدبية والفنية.

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- تعبر كافة الدراسات والبحوث والمقالات عن رأى مؤلفيها ويأتي ترتيبها بالمجلة وفقا لإعتبارات فنية لا علاقة لها بالقيمة العلمية لأى منها.
- تنشر المقالات غير المحكمة (أوراق العمل) فى زاوية خاصة فى المجلة.
- تنشر المجلة مراجعات وعروض الكتب الجديدة والدوريات.
- تنشر المجلة التقارير والبحوث والدراسات الملقاه فى مؤتمرات ومنتديات علمية والنشاطات الأكاديمية فى مجال تخصصها دونما تحكيم فى أعداد خاصة من المجلة.
- يمكن الاقتباس من بعض مواد المجلة بشرط الاشارة إلى المصدر.
- تنشر المجلة الأوراق البحثية للطلاب المسجلين لدرجتى الماجستير والدكتوراه.
- تصدر المجلة محكمة ودورية نصف سنوية.

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- تقبل المجلة كافة البحوث والدراسات التطبيقية والأكاديمية فى مجال حقوق الملكية الفكرية بكافة جوانبها القانونية والتقنية والاقتصادية والادارية والاجتماعية والثقافية والفنية.
- تقبل البحوث باللغات (العربية والانجليزية والفرنسية).
- تنشر المجلة ملخصات الرسائل العلمية الجديدة، وتعامل معاملة أوراق العمل.
- يجب أن يلتزم الباحث بعدم إرسال بحثه إلى جهة أخرى حتى يأتيه رد المجلة.
- يجب أن يلتزم الباحث بإتباع الأسس العلمية السليمة فى بحثه.
- يجب أن يرسل الباحث بحثه إلى المجلة من ثلاثة نسخ مطبوعة، وملخص باللغة العربية أو الانجليزية أو الفرنسية، فى حدود ٨ - ١٢ سطر، ويجب أن تكون الرسوم البيانية والإيضاحية مطبوعة وواضحة، بالإضافة إلى نسخة إلكترونية Soft Copy، ونوع الخط Romanes Times New ١٤ للعربى، و١٢ للانجليزي على B5 (ورق نصف ثمانيات) على البريد الالكتروني: ymgad@niip.edi.eg
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- فى حالة قبول البحث للنشر، يلتزم الباحث بتعديله ليتناسب مع مقترحات المحكمين، وأسلوب النشر بالمجلة.

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جامعة حلوان - ٤ شارع كمال الدين صلاح - أمام السفارة الأمريكية بالقاهرة - جاردن سيتي

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Infringement of copyright over YouTube

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ABSTRACT

It is clear that the subject of the study did not receive sufficient research by explanation and analysis the research problem will address the main question of "how to confront the legal infringement of literary and artistic property in the storage and retrieval of works in the time and place determined by the recipient."

In this study, we aim to prove that by putting laws and regulations to govern infringement on Youtube in Egypt, there will be a more organized and well-practiced structure of protection literary and artistic property form piracy on digital copyright on Youtube leading to the enhancement of the copyright on YouTube in Egypt as a whole. Also, authors and copyright holder will be more realistic, and copyright holder will learn to use rules copyright on Youtube to benefit their intellectual works and enjoyment of their financial and moral rights, also protect their rights from using without obtaining a license from the copyright holder or a legal exception.

For this reason copyright holders seek to bring civil proceeding against service

Providers as they play an active role in encouraging and facilitating copyright

Violations and resultant monetary damage by third parties on their network.

Chapter 1

Research hypothesis & methodology

1.1 Introduction:

As much as modern technologies and means of communication have facilitated and helped disseminate comprehensive knowledge, they brought with them a lot of problems, the most prominent of which was the opportunity to violate and infringe the intellectual property rights through the circulation of intellectual works across the Internet on a large scale.

Not only works that are created outside the scope of this network, but also it included violation of creative works that take place in the framework of this network as cases of abuse on the software in general, we find a lot of electronic websites trading intellectual and literary or artistic work and without reference to its authors and with no legal action which these authors can take to prevent such violations and protect their rights.

Despite the efforts of jurists and specialists to limit this phenomenon, there is no up till now , specific mechanism to prevent such violations, which made the creator freedom to contract to publish or distribute his work and the enjoyment of his financial and moral rights gradually disappear in the light of the robbery and repeated violation on those intellectual works .. These are the robbery and infringement, carried out every moment on the Internet without censorship, which causes financial and moral damage to authors, creators and other persons who have rights to such works and creative products. Violation of the financial rights or moral rights of the author or both may also be committed by impersonating the author, leading to the seizure, by the imposter, of all or some of the rights Involved in the work.

And infringement in its simplest form is a violation of the rights of others and infringement of copyright means the commercial exploitation of the protected work by any means without obtaining a license from the copyright holder or a legal exception .It may be infringement of full copies of the work or part thereof and may be infringement through the Modification of the work in any one of the methods of modulation. The methods of infringement on the copyright are several and widespread, such as: copying by various means,

distribution and registration on cassettes or CD-ROMs or the like.¹

And the distribution of counterfeited copies or replicas is made illegally and they are sold as copies of the original and thus deceiving the public or so sold next to other goods in a way that does not make the buyer know that they are mimics. Illegal and counterfeit copies can be distributed through the Internet that became an easy and safe Way to distribute and trade the copied replicated works in which robbery of the exclusive financial rights of their original authors is committed illegally.

There are two main ways through which the world can protect digital products:

1. *Legal-logic protection*: It is based on warning before use and punishment after abuse of this use
2. *Technical protection*: It is prevalent in Europe and the countries of the third world and it depends on the development of technical obstacles to prevent or hamper the abuse of use such as protection through electronic keys or passwords, but so far attention has not been paid to the methods of legal confrontation to the infringement on the literary and artistic property and in storing and retrieving works.

1.2 Research Problem

This study aims to answer the following questions:

- How common is digital copyright in Egypt?
- To what extent is the application of laws necessary in the success of copyright on Youtube?
- What is the legal frame that countries put to regulate infringement on

¹ Amr Shoukry Helmi(2013),THE ENFORCEMENT OF DIGITAL COPYRIGHT IN EGYPT: THE ROLE AND LIABILITY OF INTERNET SERVICE PROVIDERS

Youtube?

- What legal rules can Egypt apply to its digital copyright laws to legally regulate copyright on Youtube?

1.3 Importance of the study:

1- By putting laws and regulations to govern copyright on Youtube in Egypt, there will be a more organized and well-practiced structure of copyright on Youtube leading to the enhancement of the digital copyright in Egypt as a whole.

2- Copyright will be more realistic, and copyright holder will learn to use rules of copyright on Youtube to benefit their intellectual works and enjoyment of their financial and moral rights without infringement of their works on Youtube and protect their rights.

1.4 Hypothesis of this Study:

The main hypothesis of this study is stated in the following points; The application of legal rules and regulations in the Egyptian Law guarding copyright on Youtube may lead to:

- The prevention of infringement of digital copyright on Youtube for copyright holder for enjoyment of their financial and moral rights that protect their rights.
- The protection of the copyright holder from infringement on Youtube and protect their exclusive online rights for their works.
- Avoiding infringement on intellectual works.
- Putting the conditions comply with copyright requirements and any applicable licenses.

1.5 The Aims of the Study

This study aims to discuss the following scenarios and reach the appropriate set of laws that need to be implemented to regulate and fix the following issues:

- 1- Clarify The Role Of Youtube In The Protection Of Copyright.
- 2- Clarify Youtube's Legal Responsibilities.
- 3- Explanation of the Legitimate Use of the Digital Ownership Work on Youtube.
- 4- The Protection Of The Digital Work Should Be Covered By Temporary Protection By Urgent Measures.
- 5- Access to Civil Litigation Procedures for the Protection of Digital Works via Youtube

1.6 Methodology

To answer the proposedre search questions,the following approaches are used:

- **Deductive approach:**To Study The Current Conditions Of Policies Of Infringement Through Youtube .

In deductive approach: How To Put The Possibility

To Face The infringement On the Literary and Artistic Property.

Chapter 2

Youtube Introduction

- Whenever you want to display your content or watch others' contents Youtube is your first direction, but do you think it is safe to display your content and it becomes available for the others when I display my videos or pictures on Youtube who is responsible about the infringements of the content? To what extent the liability of the Youtube let's discuss that but after define the meaning of Youtube.

Definition and brief history:

-Youtube is A website that allows its users to upload video recordings for free, watch them via live stream (rather than download), share, comment, and more.

-Chad Hurley, Steve Chen, and Jawed Karim—created the service in February 2005. Google bought the site in November 2006 for US\$1.65 billion; and it Youtube has become one Google's' subsidiaries.

-Youtube allows content creators to display their content in return for displaying advertisements, which provides for the creator the returns.

Youtube launched in 2005 as a website where users could "easily upload and share video clips ... across the Internet." ' 6 In November,2006, Youtube was purchased by Google in a \$1.65 billion stock-for stock deal. ¹

¹ Kurt Hunt, *Copyright and YouTube: Pirate's Playground or Fair Use Forum?*, 14 MICH. TELECOMM. & TECH. L. REV. 197 (2007).

Now, more than 72 million monthly visitors view more than 100 million videos per day." To share clips, users from all over the world create free accounts and upload digital video files, which must be smaller than 100MB and less than 10 minutes long, to the Youtube website.'

Video files created by users on camcorders, cellphones, and other video capture devices are then converted by Youtube to allow them to play in Youtube's Flash media player.

' The content is either displayed on Youtube.com or "embedded" on other websites and can be viewed by anyone with internet access regardless of whether they have a Youtube account.

' Although Youtube does not allow viewers to download content,² there are several

Unauthorized utilities and workarounds that allow Youtube videos to be

Downloaded and stored offline.

"Three types of content can be found on Youtube.

(1) "Original content "is either specifically made for or primarily distributed via Youtube.

Examples include short cartoons, personal reflections, 25 custom content from major copyright owners, and home videos.

(2) "Derivative content "is derived from non-trivial alterations to preexisting works. This category includes mashups, 28 videos of people lip-synching to famous songs, and parodies of popular works.

(3) "Clip content" refers to relatively unaltered clips of preexisting works from around the world, such as Saturday Night Live sketches, TV show theme songs, classic TV

shows, news broadcasts, music videos, movie trailers, and more. Videos are organized **by** category, easily searchable, and can be marked **by** users as "favorites" to make them easy to find again. Featured videos, selected **by** Youtube editors, are prominently displayed on the front page of the "Videos" section. Users can also subscribe to a specific up loader's "channel" in order to have that up loader's content linked to from a single page on Youtube.

Not surprisingly, Youtube has not gone unnoticed **by** large copyright owners. In October, **2006**, Youtube deleted nearly **30,000** videos at the demand of the Japanese Society for Rights of Authors, Composers, and Publishers.³² Also in October, 2006, it removed almost every clip showing cable network Comedy Central's content.³ In February, **2007**, it deleted approximately **100,000** videos in response to a takedown demand from Viacom, owner of MTV, BET, and other media outlets.

Although Youtube provides numerous warnings to users about not infringing copyrights and complies with properly submitted takedown requests, some copyright owners claim not enough is being done. In July, **2006**, Youtube was sued **by** videographer Robert Tur for the unauthorized performance of his footage of the **O.J.** Simpson car chase and the beating of Reginald Denny during the **L.A.** riots. The company was also sued **by** Viacom in February, **2007**, for allegedly hosting and displaying "more than **150,000** unauthorized clips ... that had been viewed an astounding **1.5** billion times." **By** fall **2007**, six complaints had been

filed against Youtube, including a class action suit involving several plaintiffs. Not all copyright owners see themselves at odds with Youtube. The website has signed licensing deals with media giants like CBS, NBC, Universal Music Group, BMG Music Entertainment, and Warner Music Group.

While the exact ratio of authorized content to unauthorized content is hotly debated (and Youtube refuses to discuss statistics), there is no question that a great deal of Youtube content is non-infringing. All original content is, by definition, non-infringing, but even a great deal of derivative and clip content is authorized. The CBS channel on Youtube,

for example, regularly uploads clips of its shows for all Youtube users to view. Within two months of its launch, more than 35,000 users had subscribed to the channel, and the official clips had been viewed more than 30 million times. CBS reported a corresponding increase in the ratings of its "Late Show with David Letterman" and "Late Show with Craig

Ferguson."¹⁰ While CBS and other content owners have come to an uneasy truce

with Youtube, there remains concerns about the public's use of the website as a place to upload videos which make use of preexisting works. It is the unauthorized derivative and clip content that is challenged as infringing, and that is the focus of this Note.¹

Community Policy

-Youtube has a set of community guidelines aimed to reduce abuse of the site's features. Generally prohibited material includes sexually explicit content, videos of animal abuse, shock videos, content uploaded without

¹ Kurt Hunt, *Copyright and YouTube: Pirate's Playground or Fair Use Forum?*, 14 MICH. TELECOMM. & TECH. L. REV. 197 (2007).

the copyright holder's consent, hate speech, spam, and predatory behavior. Despite the guidelines, Youtube has faced criticism from news sources for content in violation of these guidelines.¹

Youtube service provider

-Whenever the content creator upload a video on the site and Youtube has no hand in the video and no liable for any infringement and also does not provide any financial support for the creator it is called service provider.

-However, when Google (Youtube) provide financial support for the contents' creators or guide them to act according to their direction this called content provider which means Youtube is responsible about the infringement of copyrights.

-Since Youtube is a stage for hosting videos and any member can break Youtube's law that's true when Youtube considers Service provider as long as Youtube does not provide financial support for uploading video but for view Ads.

Youtube's Liability

-But that does not mean Youtube is irresponsible about the copyrights' infringements on the site, for instance in Metro-Goldwyn-Mayer Studios Inc. v. Grokster Ltd it is ruled that by The U.S supreme court (Youtube still runs the risk of being exposed to "secondary liability" for copyright infringement,), which means Youtube still liable when there is any kind of infringement on its website but liability is not the major but the second liability and it removes by removing offending videos upon request of the copyright holder(i.e. for example, NBC's recent request for removal of Saturday Night Live clips).

-Accordingly, Youtube is no liable for the breach on its

¹ <https://www.Youtube.com/static?template=terms>

website as long as Google intervene and removed it, but Youtube still liable for the breach if it refuse to remove but still liable to remove the case law here is In *Viacom International Inc. v. Youtube, Inc.*

-In February 2007, Viacom sent upwards of 100,000 Digital Millennium Copyright Act takedown notices to the video-sharing site Youtube.

-On March 13, 2007, Viacom filed a US\$1 billion legal claim (*Viacom International Inc. v. Youtube, Inc.*) against Google and Youtube alleging massive copyright infringement, alleging that users frequently uploaded copyrighted material to Youtube enough to cause a hit in revenue for Viacom and a gain in advertisement revenue for Youtube. Almost 160,000 unauthorized clips of Viacom's programming were made available on Youtube and that these clips had collectively been viewed more than 1.5 billion times.

-In July 2008, District Judge Louis Stanton ruled that Youtube was required to hand over data detailing the viewing habits of every user who had ever watched videos on the site. Judge Stanton rejected Viacom's request for Youtube to hand over the source code of its search engine system, saying that the code was a trade secret. Google and Viacom later agreed to allow Google to anonymize all the data before handing it over to Viacom.

-On June 23, 2010, Judge Stanton ruled in Google's favor in a motion for summary judgment, holding that Google was protected by provisions of the Digital Millennium Copyright Act, (US Intellectual Property Protection Act), before the settlement between Google and Viacom, the court obliged Google to remove

Viacom's videos this result not because Youtube ¹

Users' Liabilities

Under the terms of service, YouTube users are responsible for all content placed on the site, indemnifying the host from any liability. Consequently, users have recently reported receipt of cease and desist letters from copyright holders, where the user has placed a video on YouTube. One user who posted highlights from NFL games received a third party notice from the NFL advising of the infringement and possible legal action; the video was quickly removed by the YouTube staff. Clearly, third party legal letters to YouTube users will cause users to think twice before posting copyright protected work.

The liability of Youtube toward states

Is Youtube as a multinational cooperation has a legal personality and international obligations?

-The large majority of international legal scholars hold that multinational cooperation MNCs do not possess international legal personality. It is argued that they have not been granted rights or obligations under international law

-Since Youtube considers multinational cooperation (MNC), it does not enjoy international legal personality, but

¹ <https://law.justia.com/cases/federal/appellate-courts/ca9/12-57302/12-57302-2015-05-18.html> nhmvnmn.,/m v vloflk,bg;/,nm,k'zsfkderylrrtyyukiomm.,

considers domestic firm subject to the domestic law of the host state.

-However, that does not mean MNCs have no international obligations, because they have, like the obligations for non-violation of human rights that by multilateral treaties like UN Charter, The European Court of Human Rights.¹

States' Obligations toward Youtube

-Under the (GATT) General Agreement on Tariffs and Trade which is concluded by 166 states provides that according to Most Favorite Nation (MFN) every state should treat all the other with no discrimination.²

-Since the United States had signed this convention, all the other states are obliged for non-discrimination between Youtube and all the other companies that work in the same field when the same circumstances satisfied.

-By National Agreement (NT) all state should not discriminate between national good and foreign good, accordingly it is prohibited to any state to deal with Youtube less than its domestic good.

-In Brief, Youtube considers a multinational national cooperation one of the Googles' subsidiaries like any other firm subject to domestic law of the host state, which means it is applicable when state prevent the availability of the Youtube in the host state by component authority, that's happened in Egypt in

¹https://www.researchgate.net/publication/272241501_Multinational_Corporations_in_International_Law/link/5c863854458515831f9b4d50/download

² <https://www.wipo.int/>

2013 when there are videos contradict with the policy of the host state

- **Another examples for Youtube's boycott,**

-Brazil: A court in Brazil banned Youtube on January 6, 2007 for 3 days after the release of a high-profile film by the well-known Brazilian broadcaster Daniela Sicarelli (former fiancée of footballer Ronaldo).

-Iran: Youtube was banned in Iran on December 3, 2006, after it was deemed "immoral".

-Saudi Arabia: Youtube is prohibited in Saudi Arabia, but movies intended for adults (18 years or older) are available.

How Youtube works?

First: - you uploaded a video. Add a title and description. Make sure they're accurate including searchable keywords.

◇If they're relevant and keep them short and sweet. Next choose or upload a thumbnail, these are really important because they're like mini marketing poster for your video and not everyone is going to read your title. But, how does it all work?

What makes some videos take off?

- Well, Youtube uses an algorithm that helps each viewer find what they want to watch.

- If people watch and enjoy your videos, the algorithm will recommend them to others it looks at all sorts of factors but most of all watch time.

- Watch time is the amount of time that a viewer has watched one of your videos. So, the longer the longer they watch the better and the more of your videos they watch.

- The more likely your channel and videos will be recommended for their viewers. Along the way people start subscribing because they like your videos.

But, what are subscribers?

- They're viewers who click the "subscribe" button on your channel which typically means they want to see more of your content and potentially get notified even time you put something new. Subscribers are really important to your success on Youtube because they tend to spend more time watching your channel, then viewers who aren't subscribed.

- Once you have 1000 subscribers and few hours of watch time in the past 12 months you can apply for the Youtube partner programmer. That's how you can start making some ad revenue for your channel. And who doesn't want to work for themselves create cool videos for their community and get paid for it?¹

¹ <https://www.Youtube.com>

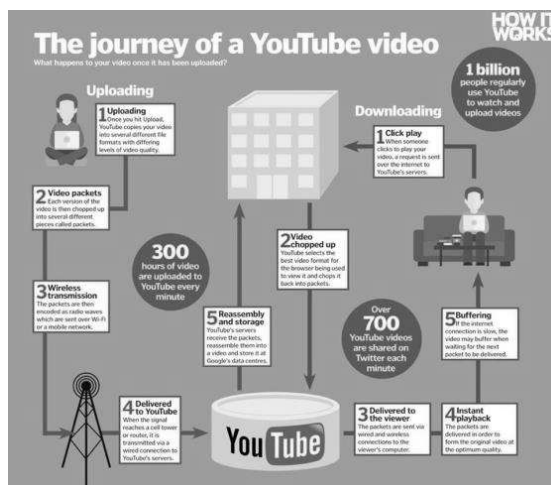


Figure no. (1)

(Copyright permission)

How do I get permission to use someone else's content in my video?

◇ If you want to include copyright-protected material in your video.

◇ You'll generally need to get permission first.

- Youtube cannot grant rights and we can't help you find the people who might be able to grant them to you.

- This is something you'll have to research and handle on your own or with the assistance of a lawyer.

- Be very careful in accepting purely verbal or "Hand shake" deals and also note when it comes to music "getting permission from an artist might not be enough".

In some cases, artists hand over the right to their labels and they can't give permission even if they tell you they can. They also

might need permission from songwriters or permission for any samples that they've used in the recycling.

Though we can't help you directly Youtube's audio library is a great way to find background music or sound effect that are free for you to use.

Just because you purchase content doesn't mean you own the rights to upload it to Youtube

- Even if you give the copyright owner credit posting videos with content you purchased still might violate copyright law. ¹

“For example”

Purchasing a movie from the Google play store doesn't give you the rights to use it in your video. If what you recorded includes someone else's copyrighted content whether it's live concert footage or doing a cover of a song somebody else wrote you would still need to get permission from the appropriate copyright owners.

◇ When a copyright owner reaches out to us about a video that infringes their copyright we respond quickly to combine with copyright law.

If there are other videos on Youtube that look similar to the one we removed we're either not aware of it or we don't have reason to believe they're infringing.

◇ Sometimes, a copyright owner authorizes some of their works to appear on our site but not all. ◇ And other times, similar

¹ <https://www.Youtube.com/>

videos are owned by different copyright owners and while one may grant us permission, the other one doesn't.

-For us to remove content, we have to be contacted by the copyright owner or an authorized representative.

-This whole process is dictated by the digital millennium copyright act (DMCA).

-Youtube also has content ID, an automated copyright management system.

-It exists in parallel to the copyright takedown process and allows copyright owners to manage their content at scale on Youtube.

-Videos that are uploaded to Youtube are scanned against a database of files that have been submitted to us by those copyright owners with access to content ID.

-Copyright owners get to decide what happens when content ID in a video matches a reference file they've provided.

"Academics and media executives" estimate 30-70% of Youtube's content consists of unauthorized material like sound recordings, and TV and movie clips.¹

¹ g. Id. 1. Holson, supra note 1, <http://www.vidmeter.com/i/vidmeter-copyright-report.pdf>.

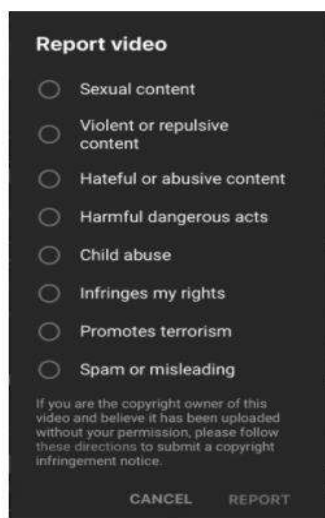


Figure no.(2)

Chapter 3 Procedures for dealing with unauthorized content.

There Are Different Policies And Guidelines In Youtube

***Community Guidelines.**

***Copyright.**

***Youtube Partner Program (YPP).**

***Advertiser – Friendly Guidelines.**

In this research will discuss the policy of copyright and we will exclude the rest of polices because copyright related to infringements of literary and artistic property rights via Youtube.

The Youtube copyright policy, there are two ways to get a copyright claim or a copyright strike on Youtube.

Copyright law

The content

The content which features on video sharing websites can generally be classified into

Three broad categories:

- original creations – such as home videos, original short movies and music;

- transformative derivatives – such as mashups or remixes of original content which have been altered in some way to form something new and creative and

- Copied or ‘ripped’ content – such as clips of original content which have been reproduced without any element of transformation?¹

-the first way is through content ID and

- The second way is through a manual claim.

- **the first way Content ID** , is an automated copyright – management system For copyright owners content ID automatically finds video that use their material and lets them claim it, instead of submitting a copyright takedown.²

¹ <http://eprints.qut.edu.au/?fbclid=IwAR3mhT--nk9gsEQpKM-nl16DIF1iBcKsNfKVGhssGBq5XXKne4xPN4q8lUI>

² <https://www.Youtube.com>

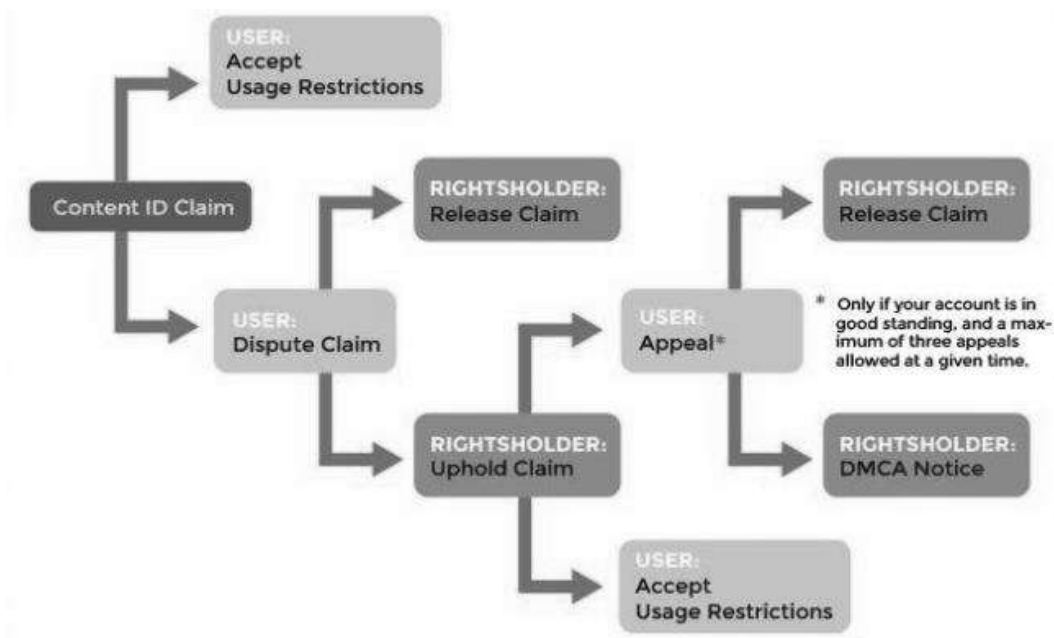


Figure no. (3)

So even through content ID has a lot to do with copyright. “A content ID claim is not the same as a copyright takedown notice”. In exchange for not issuing takedown, which would result in copyright strikes.

- Right holders can use content ID claims on videos to do one of three things:

- 1 -track the videos performance but leave the video on the site.

- 2- Block it on a country – by country basics, or most often, option

- 3- Choose to monetize the video by placing ads on it.

“Any content ID claim including a block is not accompanied by a copyright strike while a copyright takedown is”. Also note

that, unlike copyright. There's no limit to the number of content ID claims you're allowed to get and they don't impact your channel or access to features.

If you receive a content ID claim that you believe is in correct.

- The first step would be to dispute it some examples of valid reasons to dispute a claim include:

- a-If you have permission or license to use the claimed content.

- b-If you believe that the content falls under fair-use.

- c-If the video is your original content.

“After you dispute a content ID claim”

Claimant will be notified and they're have 30 days to respond.

- They can choose to release the claim,

- uphold the claim do nothing and let the claim expire or takedown your video with a copyright takedown request.

- If you're monetizing a video that received content ID claim and dispute the claim. We'll typically hold the revenue that the video is making and pay the appropriate party one the dispute is resolved.

- If your dispute is rejected and you feel the content ID claim was mistakenly upheld by the copyright owner "Your next step would be to appeal their decision".

After an appeal, the copyright owner will have the following options.

After appeal claimants can :

-to release the claim, to let the claim expire or If they still believe their claim is valid they'll be required to request the immediate or scheduled takedown of your video with a copyright takedown notice?

- If they do request the takedown of your video this would result in a copyright strike for your channel. (A takedown will result in a copyright strike).

- If after all these steps, you still believe that you have the rights to the content. You can submit a counter notification.

"A counter notification "is a legal request for Youtube to reinstate the video that was removed for alleged a copyright infringement.

You can only pursue a counter notification when a video that you uploaded was disabled due to a mistake or misidentification of the content.

- If it is complete and valid Youtube will forward it to the claimant,

" Fair – use" is another valid reason to submit a counter notification.

- From there, the claimant has 10 business days to provide us with evidence.

- That they have initiated a court action to keep the content down. “Claimant must initiate court action to keep the content down”.

-This time period is a requirement of copyright law so we appreciate your patience. If the claimant doesn’t choose to pursue court action within the 10 business days, your video will be reinstated.

After content ID claim, claimants can:

- Block.
- Monetize.
- Track the videos.

Which means even if a video contains copyrighted material it still might stay live on Youtube because it’s already been claimed ID, and that’s it for copyright permissions.

-what is Youtube doing about all these manual content ID claims for short snippets of content?

-We know some of you are seeing an increased number of manual content ID claims on very short matches.

-We know this can also effect monetization and who’s receiving the revenue being made from the video.

To address this we’re now requiring claimants to add timestamps to these claims so we know exactly which piece of your

video is being claimed.

-So that when you remove the manually claimed content from your video, the claim is automatically released.

-This will also restore monetization to your video if you were previously monetizing. • So where can you see these new changes?

-You'll want to check out the video copyright info page in Youtube studio you can access the page by clicking on "view copyright claim details" from the video list.

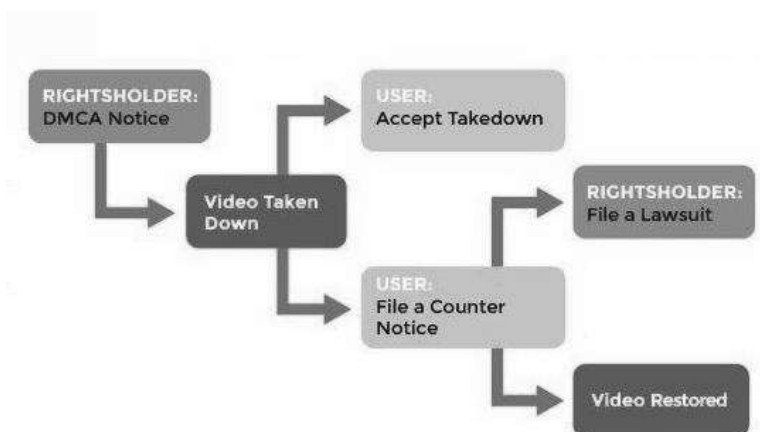


Figure no.(4)

Cases

Tur v Youtube Inc¹

In the first case to be brought against a video sharing website, in July Robert Tur, a journalist and helicopter pilot filed an action against Youtube in a Californian court alleging copyright infringement

¹ O'Brien, Damien and Fitzgerald, Brian (2006) Digital copyright law in a YouTube world. *Internet Law Bulletin* 9(6 & 7):pp. 71-74.

in his works which were uploaded to Youtube. Tur the copyright owner of numerous famous videos including the beating of Reginald Denny in the 1992 Los Angeles riots, the OJ Simpson police chase and the North Hollywood shootout claims that Youtube is violating the United States Supreme Court decision in *MGM v Grokster*,. Tur’s lawyer’s claim that Youtube is not merely a ‘Grokster redux’ as Youtube, unlike peer to peer networks is a centralized service which provides the computer servers and data facilities that enable users to upload copyrighted material. However, the merits of these claims would appear to be questionable under United States copyright law, given the somewhat broader operation of the equivalent United States ‘safe harbor’ provisions.

Viacom Int’l, Inc. v. Youtube¹

Brief Fact Summary. Viacom International, Inc. (Viacom) and other copyright holders (collectively, “plaintiffs”) (Plaintiff) alleged direct and secondary copyright infringement based on the public performance, display, and reproduction of about 79,000 audiovisual “clips” shown on the Youtube (Defendant) website, an online video sharing service. The plaintiffs (Plaintiff) argued that Youtube (Defendant) was not entitled to safe harbor protection under the Digital Millennium Copyright Act (DMCA) for airing the clips because, as plaintiffs (Plaintiff) claimed, Youtube (Defendant) was aware or chose a blind eye to the fat that these clips did indeed infringe on the plaintiffs’ (Plaintiff) copyrights.

Synopsis of Rule of Law. (1) The § 512 safe harbor of the

¹ <https://law.justia.com/cases/federal/appellate-courts/ca9/12-57302/12-57302-2015-05-18.html>
nhmvnmn./m v vloflk,bg;/,nm,k'zsfkderylrrtyyukiommm..

Digital Millennium Copyright Act (DMCA) requires knowledge or awareness of specific infringing activity. (2) The common law willful blindness doctrine may be used to show knowledge or awareness of specific instances of infringement under the DMCA. (3) A service provider has the “right and ability to control” infringing activity under & sect ; 512(c)(1)(B) of the DMCA whether or not an item-specific knowledge of infringing activity exists.

the district court concluded that the “actual knowledge” or “aware[ness] of facts or circumstances” that would disqualify an online service provider from safe harbor protection under § 512(c)(1)(A) refer to “knowledge of specific and identifiable infringements.” The district court also held that item-specific knowledge of infringing activity is required for a service provider to have the “right and ability to control” infringing activity under § 512(c)(1)(B). The court of appeals granted review.

Held. (Carbranes, J.) (1) Yes. The § 512 safe harbor of the Digital Millennium Copyright Act (DMCA) requires knowledge or awareness of specific infringing activity. This conclusion is compelled by the text of the statute, as the basic operation of § 512(c) requires knowledge or awareness of specific infringing activity. Under § 512(c)(1)(A), knowledge or awareness on its own does not disqualify the service provider. Rather, under § 512(c)(1)(A)(iii), the provider that gains knowledge or awareness of infringing activity retains safe-harbor protection if it “acts expeditiously to remove, or disable access to, the material.”

Note:

- The difference between actual and red flag knowledge is

therefore not between specific and generalized knowledge, but rather between an objective and subjective standard. The actual knowledge provision turns on whether the provider actually or “subjectively” knew of specific infringement, whereas the red flag provision turns on whether the provider was subjectively aware of facts that would have made the specific infringement “objectively” obvious to a reasonable person.

-In this case, the court held that item-specific knowledge of infringing activity is not required for a service provider to have control over infringing activity, whereas the Ninth Circuit, in UMG Recordings, Inc. v. Shelter Capital Partners LLC, 667 F.3d 1022, 1041 (9th Cir. 2011), held that until the service provider becomes aware of specific unauthorized material, it cannot exercise its power or authority over the specific infringing item, and that, in practical terms, it does not have the kind of ability to control infringing activity the statute contemplates. The Supreme Court may want to resolve this split among the circuits.

Analysis

The Youtube website permits users to “upload” and view video clips free of charge. Before uploading a video to Youtube a user is required to register and create an account with the website. The registration process requires the user to accept Terms of Use agreement, which provides, that the user “will not submit material that is copyrighted ... unless [he is] the owner of such rights or ha[s] permission from their rightful owner to post the material and to grant Youtube all of the license rights granted herein.” During the upload process, Defendant makes one or more exact duplicates of the video in its original file format.

a process known as “transcoding.” The transcoding process ensures that Defendant videos are available for viewing by most users upon request. Youtube (Defendant) allows users to gain access to video content by “streaming” the video to the user’s computer in response to a playback request, and it uses a computer algorithm to identify clips that are “related” to a video the user watches and display links to the “related” clips. Youtube claimed safe harbor protection under § 512 of the Digital Millennium Copyright Act (DMCA).

The DMCA made several safe harbors for service providers who transmit potentially infringing material over their networks. To qualify for any of these, a service provider is required to meet several threshold criteria, including that the provider actually meets the definition of being a service provider; that the provider has adopted and reasonably implemented certain policies; and that the provider can accommodate “standard technical measures” that copyright owners use to identify or protect copyrighted works.

Beyond the threshold criteria, a service provider must satisfy the requirements of a particular safe harbor. Here, the safe harbor at issue was § 512(c),

The district court determined that Youtube (Defendant) came within the § 512 safe harbor, primarily as it had insufficient notice of the particular infringements in suit as required by the statute. The district court held that the replication, transmittal, and display of videos on Youtube (Defendant) constituted activity by reason of the storage at the direction of a user” within the meaning of § 512(c)(1).

In construing § 512 the district court concluded that the “actual knowledge” or “aware [ness] of facts or circumstances” that would disqualify an online service provider from safe harbor protection under § 512(c)(1)(A) refer to “knowledge of specific and identifiable infringements.” The district court also held that item-specific knowledge of infringing activity is required for a service provider to have the “right and ability to control” infringing activity under § 512(c)(1)(B). The court of appeals granted review.,

(3) Does a service provider have the “right and ability to control” infringing activity under § 512(c)(1)(B) of the DMCA whether or not an item-specific knowledge of infringing activity exists?

No. A service provider has the “right and ability to control” infringing activity under § 512(c)(1)(B) of the DMCA whether or not an item-specific knowledge of infringing activity exists. Section 512(c)(1)(B), the so-called “control and benefit” provision, provides that an eligible service provider must “not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control the activity requires item-specific knowledge requirement into § 512(c)(1)(B) renders the control provision a duplicate of § 512(c)(1)(A)

Any service provider that has item-specific knowledge of infringing activity and so obtains financial benefit would already be excluded from the safe harbor under § 512(c)(1)(A) for having specific knowledge of infringing material and failing to effect expeditious removal. Because statutory interpretations that render language super that the control provision codifies the common law doctrine of vicarious copyright liability.

Note: This DMCA case is important because it will likely be looked to as precedent in the future. The court addressed many points of DMCA law, which points out the many factors a service provider must meet under the DMCA to qualify for safe harbor protection under § 512. This aspect of the DMCA has been criticized as a deficiency of structure, because even if a service provider meets all but one of these many factors, the provider will not be entitled to safe harbor protection. Therefore, there has been a call for Congress to streamline the act. Here,

Therefore, if Youtube (Defendant) loses safe harbor protection on remand, its liability will be for both direct and secondary copyright infringement.

Recommendations

-To promote awareness of copyright and related rights in the digital environment of authors and Internet users on Youtube.

-To activate legal protection of intellectual property rights in the digital environment (Youtube) and to enact an Arab law that guarantees such protection in the digital environment.

-Finding legal responsibility for Internet service providers.

-To determine applicable law and jurisdiction in copyright disputes and the rights adjacent to them in Youtube.

-To activate the role of contracts in the preservation and protection of intellectual property rights in Youtube.

-Criminalization of electronic copies of the Youtube.

Conclusion

Youtube, the most popular video sharing website on the internet It should also be noted that video sharing websites, like Youtube may be liable for direct

infringement for communicating a ‘television broadcast’ or ‘cinematograph film’ to the public through the online streaming of videos.

Once it has been established that the exclusive rights of the copyright owner have been infringed, where an original author or creator’s copyright work has been uploaded to a video sharing website, like Youtube the issue of moral rights will need to be considered. An analysis of the content which is available on Youtube reveals that in many cases questions about the infringement of an author or creator’s moral rights will arise. This will be particularly relevant where an author or creator’s original work is not attributed, where the person submitting the video claims attribution in the work as if it were their

own and where a video is subjected to derogatory treatment which could be interpreted to demean the author or creator’s reputation.

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