VIACOM V. YOUTUBE: A DISPUTE OVER THE FUTURE OF DIGITAL MEDIA

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I. INTRODUCTION

Viacom International Inc., et al. v. YouTube Inc., et al[1] is slated to be a seminal legal dispute in defining the contours of service provider liability for copyright infringement by its users. Apart from a huge claim of US $ 1 billion in damages, the case is to determine Google-owned YouTube's liability for hosting protected video content that belongs to Viacom. However, it is important to note that the dispute goes much beyond the question of intermediary/service provider liability; the outcome in *Viacom* could chart the future course for the digital media industry. The transition from packaged media to customized viewing has been steady, and most subscribers of digital content have migrated to the shores of video-sharing platforms like YouTube. Consequently, these networks offer unmatched financial opportunities for the service provider and its parent company. At the same time, the massive user base and logistical problems in supervision make them 'litigation-laden landmines'[2]. Therefore, *Viacom* comes at a critical juncture when the digital media industry is up in arms against the gradual corrosion of their clientele.

This case comment attempts to analyse the legal intricacies involved in the dispute, specifically those concerning the safe harbour provisions enshrined in the Digital Millennium Copyright Act, 1998. Upon inspection of the several key areas in *Viacom*, the comment seeks to superimpose the probable legal outcome against the business and financial repercussions that may be had on the future of digital media.

II. CASE PARTICULARS: FACTS AND VIACOM COUNTS

Facts

On March 13, 2007, Viacom, the entertainment conglomerate that owns MTV and Nickelodeon, announced that it had instituted legal proceedings against Google and YouTube in the Southern District Court of New York. Alleging that over 160,000 unauthorized clips were placed on public display, and eventually viewed over 1.5 billion times, Viacom blamed

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1. Case Number - 1:2007cv02103 (sub judice).
2. Andrew Ross Sorkin and Jeff Leeds, *Music Companies Grab a Share of the YouTube Sale*, NEW YORK TIMES, Dec. 02, 2008, http://www.nytimes.com/2006/10/19/technology/19net.html.

YouTube for massive and brazen copyright infringement[3]. In addition to seeking a mammoth US$ 1 billion in damages, the plaint also sought an injunction to prevent further infringement of copyright.[4] Filed before Judge Louis L. Stanton under federal jurisdiction, the suit levels serious allegations against the business model and operation of YouTube, a hugely popular Video Service Provider (VSP).

Viacom maintains that legal recourse was necessary as YouTube continued to avoid taking any pro-active steps to curtail infringement. Arguing that the VSP's operation was based expressly on "building traffic and selling advertising"[5] off unlicensed content, the media giant claimed that the entire business model was in conflict with extant copyright laws. For its part, Google, which bought YouTube for US$ 1.65bn in 2006, has maintained that it was confident of having respected the legal rights of copyright holders. Emphasizing on the diverse opportunities offered by YouTube, Google also issued a media release, promising not to be hindered by these allegations in its consistent performance and development of the service.[6]

Both entities admitted to unsuccessful negotiations in the months that preceded the filing of complaint; more remarkable was Google CEO Eric Schmidt's statement on the lack of consensus. He said, "It's a business negotiation. We've been negotiating with them, and I'm sure at some point we'll negotiate with them some more."[7] While leaving room to speculate further on the real nature of this suit, it suffices to say that Google has no intention to discontinue YouTube's services or to comply with Viacom's expensive request. On the other hand, it is apparent that Viacom is distressed by the sudden emergence of a utility that has swept its clientele away in less than a year.

Proceedings have commenced in the Southern District Court and the case is currently in its discovery stage, where parties are required to adduce all relevant content. Discovery was due by December, 2008, and the full trial is slated to commence by late 2009.[8] During this phase, Viacom filed a series of requests before the Court to prompt Google's submission of various

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3. Viacom Inc., et al v. YouTube Inc., et al, Complaint for Declaratory and Injunctive Relief and Damages , ¶ 2.
4. *Ibid*, ¶ 10.
5. *Id*, ¶ 37.
6. *Viacom will sue YouTube for $1bn*, BBC News, Mar. 13, 2007, http://news.bbc.co.uk/2/hi/business/6446193.stm.
7. Fred Vogelstein, *As Google Challenges Viacom and Microsoft, Its CEO Feels Lucky*, Wired, Sept. 04, 2007, http://www.wired.com/techbiz/people/news/2007/04/mag_schmidt_qa.
8. Mark Sweney, *Google and Viacom Reach Deal over YouTube User Data*, Guardian UK, Jul. 15, 2008, http://www.guardian.co.uk/media/2008/jul/15/googlethemedia.digitalmedia.

critical documents. The requests offer invaluable insight into the true demands raised by Viacom; apart from its search and source codes for Video ID program, Viacom also wanted YouTube's advertising and video content schemas. While the Judge denied requests for these trade secrets of enormous commercial value[9], the very nature of the requests indicate that there exists a wrangle that goes beyond a formal legal dispute. In contrast, requests to produce the removed videos and video-related information in logging databases were ruled in favour of Viacom and Google now has to adduce 12 TB of pertinent user data.[10]

Counts raised by Viacom

The plaint institutes six counts of copyright abuse against Google and YouTube, comprising accusations of both direct and indirect infringement. The veracity and possible outcome of these allegations will be examined in the ensuing Part; nonetheless, no substantial analysis can take place unless key areas of conflict are identified.

Viacom maintains that YouTube is responsible for directly infringing copyrighted content by; *(1)* publicly performing videos on its site and other related websites;[11] *(2)* showing individual images of infringing video clips in response to searches for these videos;[12] and *(3)* making and otherwise authorizing copies of copyrighted videos into its database.[13]

The media monolith also claims that the actions of YouTube's users lead the VSP to breach of copyright. Apart from stating that YouTube has induced many users to upload and publicly display unauthorized clips,[14] Viacom also points out that the former has materially contributed to such infringing activity through its acquiescence.[15] Further, the plaint states that YouTube had express knowledge of the activities and has, more importantly, derived considerable financial benefit from the entire process.[16]

In response to the several counts raised by Viacom in its plaint, Google and YouTube have asserted that they are well-within legal realms to carry

9. Viacom International, Inc. et al v. Youtube, Inc. et al: Case Documents, Justia News, http://news.justia.com/cases/featured/new-york/nysdce/1:2007cv02103/302164/#20081212.
10. Cade Metz, *Judge grants Viacom 12 TB of YouTube user records*, The Register, Jul. 03, 2008, http://www.theregister.co.uk/2008/07/03/google_to_turn_over_youtube_database/. Subsequent to popular outcry, however, Viacom agreed to receive this data after private information had been masked. Issues concerning privacy have not been dealt with analytically in this comment.
11. Viacom Inc., et al v. YouTube Inc., et al, Complaint for Declaratory and Injunctive Relief and Damages , ¶¶ 47 – 51.
12. *Ibid*, ¶¶ 52 – 57.
13. *Id*, ¶¶ 58 – 63.
14. *Id*, ¶¶ 64 – 71.
15. *Id*, ¶¶ 72 – 80.
16. *Id*, ¶¶ 81 – 89.

on its VSP functions. Google's in-house counsel and representative attorneys maintain that it is difficult to place direct responsibility on YouTube. At the same time, they also feel that YouTube is protected by the 'safe harbour' provisions of the Digital Millennium Copyright Act, 1998[17], which exempt the service provider from indirect infringement.[18]

The next part of this case comment seeks to elaborate the legal affirmation and/or feasibility of Viacom's counts. Speculations relating to both direct and indirect infringement have been analysed; the latter in greater detail, however, as it concerns the immediate question of repercussions stemming from user-generated content. Such emphasis is perhaps justified, since the future of customized digital entertainment that relies on a heavy user base is really what this case is all about.

III. COPYRIGHT ISSUES ARISING FROM USER-GENERATED CONTENT (UGC)

YouTube is a video sharing platform which facilitates quick and easy uploading of videos, additionally allowing site visitors to comment on some of them[19] and was bought by Google in 2006 in a billion dollar deal due to its popularity.

The intention behind such acquisition was clear - to combine YouTube's diverse visitor base and Google's own expertise in online advertising technology, resulting in a forum that would eventually become the focal point of online video distribution.[20] A general wave of discontent against "packaged media"[21] and the Internet's exponentially surging popularity helped; YouTube users were now able to create, post and view videos customized to their preferences, style and even office schedules.

User-Generated Content (UGC) offers a number of opportunities to both VSPs and its clientele. However, it also raises a number of worrisome issues concerning intellectual property rights, privacy concerns and defamatory content. Copyright holders scarcely target individual users who upload unauthorized media clips; the difficulty in finding the exact person

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17. 17 USC §§ 512(c)-(d), (i)-(j).
18. Viacom Inc., et al v. YouTube Inc., et al, Defendants' Answer to First Amended Complaint and Demand for Jury Trial, ¶ 92.
19. Scott Woolley, *Raw and Random*, FORBES, Mar. 13, 2006, http://www.forbes.com/forbes/2006/0313/046.html.
20. Patrick Goldstein, The People's Republic of YouTube, L.A. TIMES, Oct. 17, 2006, http://articles.latimes.com/2006/oct/17/entertainment/et-goldstein17.
21. Stephen Jones, *Packaged Media*, RIP, http://www.nextfiftyyears.com/2006/08/packaged_media_rip_1.html.

and his/her inability to sustain legal damages being primary reasons. Instead, rights holders prefer to target the VSPs that host platforms wherein the infringing activity occurs. The lucrative benefits accrued from facilitating such data upload and the legal consequences that ensue make UGC a double-edged sword for service providers.

YouTube is one of many such facilitators in the digital entertainment market today.[22] Nonetheless, the VSP's rising popularity has subjected it to no less than five cases (including Viacom's) in less than a year of formal acquisition. Aggrieved plaintiffs in this regard include photojournalists,[23] sports regulatory organizations[24], music publishing companies[25] and even Government agencies[26]. Viacom is but the biggest and perhaps, the most significant entity to institute legal proceedings against YouTube.

Direct Infringement Claims

Having exposed the vulnerabilities faced by YouTube and other VSPs against litigious copyright holders, it must also be said that claims of direct infringement against the former are not usually tenable. While Viacom has accused YouTube of publicly displaying unauthorized content, there is no volitional act from the service provider in this regard. In the absence of such complicity, Courts have previously held that the actions of users clicking on a cached link to view unauthorized content cannot be cited as instances of direct infringement.[27] With regard to the second count on direct infringement, *Arriba Soft*[28] has made it clear that the use of thumbnail images in response to search queries for video clips is merely transformative and not infringing in nature. Moreover, the incidental creation of copies upon YouTube's database cannot, in isolation, impose liability on the VSP. Where a question of direct infringement on similar facts arose in *Netcom*[29], the Northern District Court of California was quick to note that it would not make sense to pin liability on operators and functionaries of the Internet.[30] Nonetheless, technological advances have changed the face of the Web completely, and the Southern District Court of New York may take exception to its preceding cases. The tenability of direct infringement claims is however, questionable.

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22. Other prominent service providers include Facebook, MySpace, Veoh Networks etc.
23. Tur v. YouTube, Inc., 6:2007-cv-06-4436.
24. The Football Association Premier League Ltd v. YouTube, Inc., 1:07-cv-03582-UA.
25. Cal IV Entertainment, LLC v. YouTube, Inc. et al, 3:2007cv00617.
26. New Jersey Turnpike Authority v. YouTube, Inc. et al, 2:2007cv02414.
27. Field v. Google, Inc., 412 F.Supp.2d 1106 (D. Nev. 2006).
28. Kelly v. Arriba Soft Corporation, 280 F.3d 934.
29. Religious Technology Centre v. Netcom, 923 F. Supp. 1231 (N.D. Cal. 1995).
30. *Ibid*, ¶ 1-g.

Liability through Secondary Infringement

The plaint also raises allegations of YouTube having indirectly infringed Viacom's rights through the actions of its website users. The question as to whether a VSP would be liable when its users upload copyrighted content still remains riddled with uncertainties. Viacom has alleged contributory and vicarious infringement on YouTube's part[31]; with regard to the former, Google and YouTube are accused of "enabling, inducing, facilitating and materially contributing" to each act of infringement.[32] Furthermore, the plaintiff believes that YouTube's actual and constructive knowledge of infringing activity should stand against any defence to contributory infringement. As regards vicarious copyright infringement, YouTube's right and ability to control user-generated content and subsequent accrual of direct financial benefit from infringing content have been highlighted to deduce liability.[33] YouTube, for its part, has answered these claims by seeking refuge to favourable provisions in the Digital Millennium Copyright Act, 1998.

If big entertainment corporations like Viacom, Universal or Sony BMG were to sue these service providers successfully, consequent damages could run into millions, if not billions of dollars.[34] Apart from putting VSPs out of business, the legal repercussions would ensure the untimely demise of customized digital media. The stakes are unquestionably high and *Viacom v. YouTube* will be a watershed in apportioning the liability of VSPs for its users' actions. The following segment (III-i) seeks to explicate the statutory backing behind YouTube's response; Part III-ii will analyze the approach of U.S to such a defence.

III. i. STATUTORY 'SAFE HARBOURS'

Google and YouTube have taken recourse to 'safe harbour' provisions enshrined in the applicable law, *viz.*, the Digital Millennium Copyright Act, 1998 (DMCA).[35] The safe harbours are provided in § 512 of the Act and contain eligibility norms and conditions to mitigate liability. Before delving into the nuances of § 512 (c), under which YouTube has sought to take recourse, it is pertinent to note the eligibility requirements for safe harbour

31. Viacom Inc., et al v. YouTube Inc., et al, Complaint for Declaratory and Injunctive Relief and Damages , Counts V, VI (¶¶ 72 – 89).
32. *Ibid*, ¶ 74.
33. *Id*, ¶ 85.
34. Trevor Cloak, *The Digital Titanic: The Sinking of YouTube.com in the DMCA's Safe Harbor*, 60 Vanderbilt Law Review 1561 (2007)
35. Digital Millennium Copyright Act, 17 U.S.C (1998) [hereinafter "DMCA"]; the DMCA's applicability has not been questioned in the present dispute.

protection.[36] In order to mitigate liability, a service provider must *(1)* adopt and implement a termination policy[37] to remove repeat infringers; and *(2)* accommodate and not interfere with 'standard technical measures'[38] used to protect copyright holders.

If these precautionary steps are in place, liability may be mitigated by resorting to any of the safe harbours enlisted from § 512 (a) to (d). In its answer filed before the Court on April 30, 2007, YouTube cites the protection offered by § 512 (c) to dismiss Viacom's claims.[39] Consequent to this provision, a service provider will not be liable for copyright infringement arising from material stored at the direction of its users, if it conforms to three main pre-requisites.

Firstly, a service provider's liability is mitigated if it is not aware of the existence of copyrighted content in its system or network. Such awareness is statutorily qualified to include actual knowledge of *(1)* the infringing material/activity[40] and; (2) the facts and circumstances from which such infringing activity is apparent.[41] The service provider must also act expeditiously to remove, or disable access to the copyrighted material.[42] *Secondly*, the service provider must not have received any financial benefit directly attributable to the infringing activity. However, such a stipulation is operational only when the service provider has the 'right and ability' to control such user-related acts.[43] *Thirdly*, the service provider must have an effective take-down policy which implements the immediate removal of infringing content.[44]

References to the aforementioned provisions have been made by both parties in their written submissions to the Court. Nonetheless, the absence of any definitive standard in statutory norms will result in heavy emphasis on judicial precedents in this regard; indeed, analysts have predicted that the trial sessions would be dominated by consistent reference to previously decided cases, primarily from the United States.[45]

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36. DMCA, § 512 (i).
37. Must be made known also.
38. Definition Clause; DMCA, §512 (i)(2).
39. Viacom Inc., et al v. YouTube Inc., et al, Defendants' Answer to First Amended Complaint and Demand for Jury Trial, ¶ 92.
40. DMCA, § 512 (c)(1)(A)(i).
41. *Ibid*, § 512 (c)(1)(A)(ii).
42. *Id*, § 512 (c)(1)(A)(iii).
43. *Id*, § 512 (c)(1)(B).
44. *Id*, § 512 (c)(1)(C).
45. Joseph Schleimer, *Protecting Copyrights at the "Backbone" Level of the Internet*, 15 UCLA Entertainment Law Review 139, 143 (2008).

III. ii. JUDICIAL EXPOSITION

The outcome of *Viacom v. YouTube* hinges on several yardsticks encapsulated in § 512 of the Digital Millennium Copyright Act, 1998; resolving these key areas of dispute mandate recourse to precedents settled within the United States.

YouTube's Termination Policy & Adoption of Standard Technical Measures

Viacom has sought to contest the very eligibility of YouTube to cite protection from the DMCA safe harbours. The plaint endeavours to indicate flaws in YouTube's termination policy and glaring deficiencies in its implementation. The *Aimster Copyright Litigation*[46] Court faced a similar situation and was called upon to determine Aimster's eligibility to qualify for the safe harbours[47] . The Illinois District Court found that a bare minimum policy of terminating repeat infringer accounts would be satisfactory as long as it is effectively implemented.[48] YouTube's Terms of Use clearly stipulate the removal of users who indulge in repeat infringement and closely resembles Aimster's policy in this regard.[49] Nonetheless, the VSP's problems are compounded by the fact that it does not prevent these users from creating a new account. While judicially expounded law requires minimum standards, this aspect might cast a shadow over the effective implementation of YouTube's termination policy, the very ground on which Aimster was denied safe harbour protection.[50]

Apart from criticizing YouTube's user-termination policy, Viacom also alleges that the former has failed to implement any "reasonable precautions" to protect copyrighted content[51] ; furthermore, the plaint also states that the VSP has implemented features that prevent copyright owners from finding infringing videos on its website.[52] Presently, there are no judicial or industry guidelines to determine the scope of the term 'standard technical measures'.[53] The continuing conflict of interest between copyright holders and service

46. In *re:* Aimster Copyright Litigation, 334 F.3d 643 (7th Cir. 2003).
47. Aimster was one of many Peer-to-peer (P2P) file-sharing services that appeared in Napster's wake. The network, which was later renamed to Madster, was shut down in December 2004, following a preliminary injunction by Court order.
48. In *re:* Aimster Copyright Litigation, 334 F.3d 643 (7th Cir. 2003), 658-59.
49. Terms of Use, http://in.youtube.com/t/terms, ¶ 7.
50. In *re:* Aimster Copyright Litigation, 334 F.3d 643, 659.
51. Viacom Inc., et al v. YouTube Inc., et al, Complaint for Declaratory and Injunctive Relief and Damages , ¶ 6.
52. *Ibid*, ¶ 8.
53. Trevor Cloak, *The Digital Titanic: The Sinking of YouTube.com in the DMCA's Safe Harbor*, 60 Vanderbilt Law Review 1583 (2007).

providers has hindered any broad consensus on developing these technical standards. Therefore, it is unlikely that the *Viacom* Court will look beyond threshold requirements to place responsibility on YouTube.

Actual and Apparent Knowledge of Infringing Activity

Viacom's suit maintains that the defendants had actual knowledge and clear notice of infringement, claiming the presence of unauthorized content to be obvious to "even the most casual visitor"[54] to YouTube's site. The plaint also points out that the website was filled with 'red flags' from which infringing activity was apparent. Viacom has substantiated this claim with examples of description terms and search tags from users that identify its copyrighted works.

§ 512 of the DMCA necessitate actual knowledge of infringing activity or awareness of facts and circumstances of the same. While it may be relatively easy to point fingers at YouTube for ignoring the user-description and search data, the scant case law in this regard seems to mandate a higher level of neglect. Courts have acknowledged the difficulties in identifying the infringing nature of user-generated content[55] and have modified the 'red flag' measure to mean blatantly obvious cases of infringement.[56] Nonetheless, service providers are required to identify such rights violation from looking at the user's activities, statements, or conduct that warrant infringement.[57] Such identification would be a question of facts in each case, and YouTube has to adduce evidence that negates any such leads from its users. On the other hand, the question of expeditious removal will probably tilt in favour of the VSP. YouTube's take-down policies are unquestionably efficient and most videos have been removed on identification.

Accrual of Direct Financial Benefit

Viacom has made consistent references to the financial benefits accrued to Google and YouTube from the uploading and viewing of copyrighted content.[58] Indeed, this is an aspect which many analysts consider problematic for VSPs[59], particularly those like YouTube which generate considerable advertising revenue through its services. The DMCA requires that the financial

54. Viacom Inc., et al v. YouTube Inc., et al, Complaint for Declaratory and Injunctive Relief and Damages , ¶ 36.
55. Perfect 10, Inc. v. CCBill LLC, 481 F.3d 751, 763 (9th Cir. 2007).
56. Jane C. Ginsburg, *Separating the Sony Sheep from the Grokster Goats: Reckoning the Future Business Plans of Copyright-dependent Technology Entrepreneurs*, 50 Arizona Law Review 577, 584 (2008).
57. Corbis Corporation v. Amazon.com, Inc., 351 F.Supp.2d 1090, 1104-05.
58. Viacom Inc., et al v. YouTube Inc., et al, Complaint for Declaratory and Injunctive Relief and Damages , ¶¶ 35, 37, 39.
59. Charles J. Biederman and Danny Andrews, *Applying Copyright Law to User-Generated Content*, Los Angeles Lawyer, May 31, 2008 at 12, 15.

benefit so received must be directly attributable to the infringing activity. While the advertising revenue obtained from viewing and uplink of protected videos might ordinarily seem to satisfy this criterion, Courts have differed in their interpretation of the same.

While the Ninth Circuit in *Ellison*[60] necessitated a mere casual link between the infringing activity and any financial benefit that the defendant reaps[61], the Fourth Circuit in *Costar Group*[62] stipulated that the copyrighted content must 'draw' the visitors to the VSP's site[63]. In other words, it would be necessary to prove that the presence of infringing videos made the YouTube site much more attractive to its website users.[64] Considering YouTube's popularity, the *Viacom* Court is likely to adopt this method as it is fallacious to be satisfied by the mere generation of revenue from any video, whether copyrighted or not. Therefore, comparison of user data relating to normal traffic and those to Viacom's copyrighted videos would prove crucial in this regard.

Right and Ability to Control

The 'direct financial benefit' would hold water only if YouTube's right and ability to control infringing content are established. Viacom's plaint makes an assertion to this effect, drawing analogies from YouTube's control of volatile and derogatory content.[65] However, U.S Courts have made it clear that such right and ability goes well beyond the power to block access on subsequent notification. The realm of control must also be distinguished by the nature of pre-emptive measures, presence of content filters and automated detection technology.[66] While YouTube has pointed the sheer logistical magnitude of a 'cleansing operation' and its helplessness in this regard, the Court may haul up the hugely popular VSP for not maintaining adequate control measures.

Other Important Factors and Case Law

On August 27, 2008, the Northern District Court of California in *Veoh Networks Inc.*[67], found that a video-sharing site which actively enforces its user policy, acts expeditiously to remove infringing material and seeks to

60. Ellison v. Robertson, 357 F.3d 1072 (9th Cir. 2004).
61. *Ibid*, 1079.
62. CoStar Group Inc. v. LoopNet Inc., 373 F.3d 544 (4th Cir. 2004).
63. *Ibid*, 548.
64. The test used in Costar Group had also found favour with the U.S. Congress House Report on the Digital Millennium Copyright Act, 1998.
65. Viacom Inc., et al v. YouTube Inc., et al, Complaint for Declaratory and Injunctive Relief and Damages , ¶¶ 38, 85.
66. Tur v. YouTube, Inc., 6:2007-cv-06-4436, *3.
67. IO Group, Inc. v. Veoh Networks, Inc., 5:2006cv03926.

prevent the same from being posted again qualifies for the safe harbor contained in § 512 (c) of the DMCA.[68] Veoh Inc., which operates on a platform identical to that of YouTube, is a video-sharing network that lets users upload digital media. IO Group, a producer and marketer of adult entertainment, had instituted a plaint before the California District Court against Veoh for hosting copyrighted content posted by the network users. In addition to raising the standard of determining the 'right and ability' to police its content, the Court also echoed current concerns of YouTube in prescreening videos and dismissed such claims as infeasible.[69] Further, the Court also stated that a 'reasonable' implementation of standard technical measures is sufficient to meet statutory requirements.[70] The judgment in *Veoh Networks Inc.* is widely expected to favour YouTube's claims and the *Viacom* Court may take the same factors into consideration while pronouncing the verdict.

Another important factor to be taken into account is that of inducement. The *Betamax* defense[71] and its subsequent interpretation in *Grokster*[72] both mandate that the digital service should have substantial non-infringing uses to be exempt from liability.[73] The *Grokster* Court noted further that the service must not be distributed with the object of promoting its use to circumvent copyright[74]; any complicity or refusal to provide effective anti-circumvention technology may be construed as inducement. However, it is unlikely that YouTube will be bogged down by the legacy of Groksters or Napsters, considering the immense potential it offers to legitimate digital media-sharing. As stated earlier, YouTube's extant technological measures and Terms of Use may be sufficient in warding off claims of inducement.

CONCLUDING ANALYSIS

The preceding segments of this case comment have sought to delineate the many issues that might play a critical role in deciding the outcome of *Viacom v. YouTube*. Considering the paucity of case law and interpretational

68. Eric Goldman, IO v. Veoh Comments – A Terrific 512(c) Defense-Side Win, http://blog.ericgoldman.org/archives/2008/09/io_v_veoh_comme.htm.
69. Richard Raysman and Peter Brown, *DMCA: A Safe Harbor for Video Sharing?*, New York Law Journal, Oct. 17, 2008, http://www.law.com/jsp/legaltechnology pubArticleLT.jsp?id=1202425323100.
70. *Ibid*. However, it is also pertinent to note that the judgment has not sought to define the term 'reasonable' in this context.
71. Sony Corp. of America. v. Universal City Studios, Inc., 464 U.S. 417 (1984).
72. Metro-Goldwyn-Mayer Studios, Inc. v. Grokster Ltd., 545 U.S. 913 (2005).
73. 464 U.S 417, 447-56.
74. 545 U.S. 913, 937.

work on the DMCA safe harbours, the Court is expected to factor in contemporary concerns relating to the viewing and transfer of digitized media.

Consequent to the filing of its plaint, Viacom joined CBS, Disney, Fox, Microsoft, MySpace, NBC/Universal, DailyMotion and Veoh in supporting the Principles for User-Generated Content Services.[75] Known popularly as the UGC Principles, these guidelines encourage the elimination of infringing content on service providers, attempting to accommodate fair use concerns simultaneously. The Principles seek to stress on the importance of adequate identification technology which would filter out unauthorized media.[76] The UGC Principles are broadly perceived to be a reactionary mechanism to the safe harbour arguments raised by service providers; entities like Viacom want a content-filtering standard cutting across the board, rather than an indigenous policy endorsed by YouTube.[77]

On the other hand, every key player in the digital media industry has woken up to the immense popularity of service providers delivering customized content. Viacom itself owns Atom and iFilm, both video-sharing sites that rely extensively on the DMCA take-down provisions. Many analysts have been vehement in their support. Notwithstanding the message this aspect sends across to the *Viacom* Court, it is clear that everyone wants a share in the digi-media pie and is not impressed with YouTube's dominance in the sphere.

Lawsuits against VSPs like YouTube may not be the best exercisable option for media giants. The Wall Street Journal believes that the real issue behind *Viacom* is not intellectual property, but consumer rebellion.[78] A victory for Viacom in this litigation may prove pyrrhic, since there is really no stopping the fast-spawning YouTubes of the Internet. True to the adage, many rights holders have realized that they cannot beat such service providers and are better off if they join the trail. Numerous content deals have been struck between various parties including YouTube[79] and the prize is enhanced protection for copyrighted content. The treatment might sound discriminatory to a Veoh or a Viacom, but until technology keeps up with the needs of copyright owners, it all boils down to the survival of the popular.

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75. The UGC Principles may be found at http://www.ugcprinciples.com/.
76. User-Generated Content Service Principles, (December 13, 2008) http://www.ugcprinciples.com/,¶ 3.
77. Erik Schmidt, *Google, Viacom, Content Filtering and § 512(i)*, http://www.techlawforum.net/internet-policy/net-law/google-viacom-content-filtering-512/.
78. Paul Kedrosky, *Viacom v. YouTube*, WALL STREET JOURNAL, Mar. 15, 2007 http://www.opinion journal.com/editorial/feature.html?id=110009788.
79. To date, YouTube has inked major content deals with CBS, Sony BMG Music Entertainment, Universal and BBC Networks.