



LESSONS I'M LEARNING FROM GOOGTUBE

by

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Last October, Internet powerhouse Google Inc. announced its acquisition of YouTube, Inc. the amazingly popular online video service. The price was a whopping \$1.65 billion in stock value, sparking a wave of press attention and questions. Legal pundits wondered how Google would deal with the litany of copyright issues raised about YouTube's service, which permits users to post video clips – including unauthorized content. Wall Street aficionados questioned whether YouTube, which still in its nascent stages, is worth the huge price tag. As for me, I prefer to spend my days – and the print space in this column – thinking about what Google's acquisition of YouTube will mean for the future of new media and content owners. So here are five lessons I've learned, and am still learning, from the new "GoogTube":

1. ***The Internet video revolution has arrived.*** Although Internet video distribution has been available for some time, there have been legitimate questions about how much consumers want to watch video on a computer screen. Indeed, Google has tried to launch its own video service, Google Video, with limited success. YouTube has proven that consumers do want Internet video -- at least in short form and in clips posted by other users. Its success and acquisition confirm that Internet video is here to stay and will be the immediate future of new media.

2. ***It's all about the user.*** "User-generated content" – and its acronym UGC – are hot new buzz words. YouTube and other online video services draw great popularity from the user-generated and user-posted clips available on their sites. Likewise, on social networking sites, such as MySpace and Facebook, users voraciously create and post content. Online role-playing games and environments increasingly permit consumers to create their own "avatar" characters and even have online alter egos (as in the popular "Second Life" community). Today's entertainment is far less about what content the media giants elect to provide consumers, and far more about what users want to create and share for themselves. Entertainment companies should capitalize on more vehicles (like YouTube) for users to shape personalized experiences.

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3. ***The Digital Millennium Copyright Act needs to be interpreted for modern times.***

Copyright owners are divided over services like YouTube. While UGC online services are a fantastic way to expose content and brands to consumers, they also result in frequent infringement of audiovisual clips, music recordings and other content. What's a copyright holder to do? Some rely on DMCA take-down notices, and online services such as YouTube typically honor such requests. But the DMCA take-down procedure requires copyright owners to constantly police the Internet to locate infringing content. With some copyright holders not wanting to bear that heavy burden, the lawsuits have begun. YouTube has been sued for posting a copyrighted video clip of the Reginald Denny beating (which it then promptly removed), and last October, Universal Music Group sued two UGC online services, grouper.com and bolt.com.

Such lawsuits will largely turn on the Digital Millennium Copyright Act and its "safe harbors" for online service providers. The DMCA was enacted in 1998, when Internet services were focused on email and Web browsing and were far less interactive than today. In the years since, Internet technologies have rapidly become far more interactive for users, and thus more capable of permitting, enabling and facilitating copyright infringement. What's more, there are increasing delivery platforms based on Internet protocol but which are not perceived as "traditional" Internet services – such as Internet Protocol Television (IPTV), Interactive television (ITV), and Voice over Internet Protocol (VoIP) technologies. Are services on those Internet-based platforms likewise entitled to DMCA safe harbor protection? Should more interactive UGC services be shielded from copyright infringement liability?

The courts have yet to fully address these questions. One alternative is for Congress to do so, but updating legislation is never easy and could bring more trouble than its worth. Whether it occurs in Congress or in the federal courts, the DMCA should be evaluated or updated to address whether -- and if so, to what extent -- its safe harbors shield interactive and "modern" Internet services. That will be important guidance needed to direct the future of new media.

4. ***Partnering is key.*** It will take years – and many appeals -- for lawsuits over Internet video services to better define copyright law for the digital age. Meanwhile, the business of new media is moving too quickly to wait. The YouTube story provides a powerful lesson: you may not succeed all alone in the lightning-fast new media universe. Success requires – at a minimum -- attractive content or user experience, a powerful distribution platform, and a significant user base. The GoogTube deal combines a popular destination featuring attractive content and good technology (YouTube), a powerful Internet platform and marketing partner (Google), and a large combined user population (YouTube + Google). It remains to be seen whether the combination will be financially profitable, but the ingredients for success are there.

For entertainment content owners, the lesson is to develop, obtain or partner with great Internet technology platforms. For technology providers, the lesson is to find sources of good content to attract users. And for both sets of players, the lesson is to do so quickly. This is already happening. While entertainment copyright holders are trying to develop their own Internet distribution vehicles (such as broadband channels), they have also begun to strike deals with Internet video services to distribute their works (under license) through new platforms.



5. ***Giving up some control is a good thing.*** Historically, entertainment companies held tight control to content, their crown jewels. But the ultimate lesson I'm learning from the GoogTube tale is that copyright owners should be prepared to give up some control. They will inevitably lose portions of copyright control in a UGC era. They will also cede a bit of power to Internet technology providers – such as Google – which copyright owners need to provide distribution for, and drive traffic to, their content. And they will give up some reign to consumers, who want their digital content “easy to use” and who resist too many restrictions from digital rights management technologies. Giving up some control is never easy. But in exchange, the entertainment powers may be rewarded with happier consumers, more lucrative business, and a robust new media world.

As for me, I will continue to watch with eager anticipation to see what develops from GoogTube and what other lessons we can learn for the future of entertainment.