25th Annual Entertainment Law Issue

Los Angeles Lawyer

May 2009 /$4

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BY JAMES D. NGUYEN

Drafting Content Licensing Provisions for Evolving Media

NEW MEDIA NOW is well established in the entertainment, media, and information industries, as technology platforms for distributing content to consumers continue to evolve. The old media—print publications, analog television and radio, and theatrical motion picture distribution—still account for a broad audience and substantial revenue. But new media systems are gaining rapidly. As one court described in a recent case involving Internet music royalties, "In just over a decade, the Internet has grown from its relatively obscure roots to become a major information and entertainment medium that rivals television and radio. It has transformed our culture in innumerable ways, changing how we shop, how we watch television and movies, and how we listen to music."[1] While the Internet remains the most widely used new media platform, consumers increasingly have adopted personal digital assistants, mobile devices, digital video recorders, video game consoles, Internet Protocol Television (IPTV), Interactive television (ITV), Voice over Internet Protocol (VoIP) distribution, and other media. Because new media is no longer new, perhaps a better term is "evolving media."

In any medium—old or new—content is still king, so deals that include evolving media bear similarities to traditional agreements for content. However, new media deals also require new contract provisions and a fresh look at time-honored clauses. The key terms of evolving media agreements, from both sides of a negotiation, are 1) the content rights that are licensed, 2) the definition of media platform rights, 3) revenue provisions, 4) content protection and geofiltering, and 5) marketing provisions.

The foregoing provisions should be considered in the context of several different issues. First, while there are many kinds of evolving media contracts, the most common is an agreement that provides license rights for content owners to distribute or otherwise exploit their content or programming on another company's technology platform.

Second, "content" or "programming" typically encompasses the gamut of entertainment and information works, including audio and video programming, text, games, news, information, and even entire entertainment applications. Third, "service providers" usually refer to the entities that own the technology platforms that distribute the content and that need to enter into deals with rights holders. These parties sometimes also are referred to as technology platforms or content carriers. For example, Joost, Hulu, and Veoh Networks all are service providers that host online video services, and they need agreements with film studios, television networks, and other rights holders to build a library of content for their Internet sites. Fourth, although many contract provisions have been developed from deals for Internet platforms (because that is the evolving media arena on which content is now most commonly exploited), provisions that come from Internet contracts may also apply to other technology environments.

Arguably, the most important legal provision in new media contracts is the scope of media platforms for which rights to exploit content are granted.

Content Rights

As an initial matter, the parties to a contract need to agree on what content will be provided for exploitation on the technology platform. Although this is largely a business decision, the practitioner must make sure the contract includes provisions that adequately address:

• The volume of content that the content owner must provide to the service provider.

• The frequency upon which new content must be provided to the service provider to refresh the offerings.

• Whether content provided to the service provider may be rested for a period of time, then reused to meet the content delivery obligations.

Once these basic issues are addressed, the contract should address the usage rights granted from the content owner to the technology platform. The U.S. Copyright Act grants copyright owners certain exclusive rights that may be licensed to third parties, including: to reproduce the work, prepare derivative works, distribute copies, and publicly perform and display the work. For sound recordings, another right is to perform the work publicly by means of a digital audio transmission.[2] For evolving media, courts already have recognized that the Internet is a separate medium that requires a separate license to use content, and content owners have the right to sell and license their products on the Internet and other new media just as they do in television, print, or other "old" media.[3]

Especially when rights are granted exclusively to a service provider, content owners must first evaluate which of those rights they wish to license. On the other side of the table, content carriers need to determine which rights they must have to perform their intended functions.

The following sample provision covers these issues:

Licensor hereby grants Service Provider and its Affiliates a

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nonexclusive right during the Term, to distribute, use, reproduce, publicly display, adapt, publicly perform, market, store, transmit, Sublicense and promote the Content on or through the Service Provider Network regardless of transmission speed (dial-up, DSL, cable, wireless, etc.) or type of device (PC, PDA, mobile phone, etc.) as Service Provider may determine in its sole discretion. Service Provider shall have no right to transcode or otherwise customize the Content for distribution through television broadcast or cable television. In addition to the rights set forth elsewhere in this Agreement, Service Provider shall have the right to syndicate the Content, itself or through its Affiliates or designated agents.

The practitioner should consider different issues for each of these rights.

Public display and public performance rights are granted in the sample provision above and generally are required for a service provider to exploit content. For technologies permitting only personal viewing or listening, there may be some argument that the licensee does not need public display or performance rights. But it is risky for a content carrier to obtain usage rights without the public display and public performance rights, so most agreements will grant those rights.

The right to reproduce content is necessary for deals for the licensee to: 1) create copies of programming product (deals to replicate DVDs or other home video), 2) provide content for download by users (via the Internet, mobile, or other delivery methods), and 3) otherwise store or replicate content. The content owner does not always grant reproduction rights. For example, a film owner may use another company to distribute copies of DVDs or BDs (Blu-Ray discs) but not to manufacture or "press" the discs. In that situation, the content owner may simply want to sell to the receiving party the individual DVD or BD units (and the receiving party will resell those units to retailers). The content owner may not need to license rights to reproduce the copyrighted work. This arrangement also includes other formats for home, personal, or mobile entertainment, including the Universal Media Disc (UMD), which has been used for programming distributed on the Sony Playstation Portable (PSP) and other devices. Another example is streaming of audio or video content on the Internet. While there is some dispute, streaming may not require the technology system to reproduce the audio or video content. Content owners may resist any contract clause that licenses the right to reproduce or copy the content if only streaming rights are given.

Although the Copyright Act does not define "distribution," the grant of distribution rights in evolving media contracts usually is not controversial. Content carriers need the right to distribute a work, irrespective of the technology used. What constitutes distribution of a work is less clear in peer-to-peer file sharing networks, and in particular with music files, because the Copyright Act has slightly different provisions for phonorecords.[4] Distribution rights should be granted when the technology platform provides copies of entertainment programming to the user (e.g., for download through Internet or wireless means). However, just as with the reproduction right, streaming technologies raise an interesting issue: When the licensee is merely streaming content, it is less clear whether distribution rights are needed, but it is naturally safer for the service provider to obtain those rights.

One often overlooked negotiating point is whether the party with the technology platform will be granted the right to sublicense its rights to third parties and perhaps even to subsidiary or affiliate entities. The sublicensing rule prohibits an intellectual property licensee from sublicensing its licensed rights without express permission from the licensor.[5]

The grant of sublicense rights often is critical for service providers because of syndication networks. On the Web, many Internet portals collect print, audio, video, and other material from many sources and then syndicate that content to other Web site locations—often known as Internet affiliates. For example, many Web services want rights to provide content on their Web sites and through distribution partners such as Facebook or Apple's iPhone service. To do so, the service provider will want an agreement that grants rights to sublicense the content. On the other hand, content owners often wish to tightly control their programming and may not want their works to appear in syndication networks as the result of a single license. Content providers should therefore consider withholding sublicense rights if they want to strike multiple deals with other outlets.

The technology platform often will want rights to modify the licensed material or to create derivative works. In traditional media deals, content owners often resist these demands, but in evolving media they have a harder time doing so. Service providers often require content to be delivered in digital files and be subject to change by technical means in order to be compatible with the service provider's systems or to improve the user experience. For the Internet, digital video files are often transcoded into the Flash format to create better viewing experiences.[6] If a content owner wants its programming watched on an Internet video site, it may need to permit the content carrier to make modifications—at least to transcode files to a format that the carrier prefers. The content owner need not provide unfettered rights to create modifications or derivative works. Instead, it could limit the service provider to altering content for the sole purpose of format changes and not give away the right to make changes to the substance. In certain instances, the programming rights holder may wish to block transcoding for specific purposes. The sample provision makes clear that an Internet service provider shall "have no right to transcode or otherwise customize the Content for distribution through television broadcast or cable television." This precautionary provision makes clear that the service provider can distribute video programs via the Internet but cannot transcode the files for distribution on broadcast or cable television.

Media Platform Rights

Arguably, the most important legal provision in new media contracts is the scope of media platforms for which rights to exploit content are granted. This is a critical negotiating point because of the speed at which communication technologies are evolving. A service provider will naturally prefer to obtain rights according to standard older provisions, namely, "in any and all media now known or hereafter developed—including, but not limited to, Internet services and Web sites...print, digital, online, wireless, broadcast, cable and satellite television, radio, audio, and audiovisual media." With the proliferation of new technologies, however, an ever-growing list of example media platforms are included in the all-encompassing phrase "any and all media." A more up-to-date phrase regarding media platforms may read:

> In any and all media now or hereafter known—including but not limited to any form of television (such as broadcast, cable, satellite, subscription, close-circuit, pay-per-view, wireless, mobile device, Internet or online means of distributing audiovisual content); radio or audio media (such as broadcast, satellite or Internet radio); Video-on-Demand; podcasting and other forms of digital downloading; theatrical motion pictures; home entertainment and home video; DVD; High Definition DVD (e.g., HD-DVD and Blu-Ray formats); video cassette; Universal Media Disc ("UMD"); CD-Rom, DVD-Rom or other hard digital storage devices now known or hereafter devised or like media); Internet, online and Web-based means to distribute audiovisual content; digital media.

It is increasingly rare for content owners to grant these unrestricted rights, especially in deals in which they also grant exclusivity. Each current or future media platform is another bucket of rights to grant and is potentially a separate revenue stream. Programming rights holders will thus want to grant as narrow media rights as possible, hoping to hold onto other media rights (whether known or not) to grant to other business partners in the future. As contracts move away from granting "any and all media rights," negotiating parties should more carefully define each media platform.

For example, the terms "Internet" or "online" in contracts may no longer be sufficient because there now are many communication systems based upon Internet protocol. In addition to "traditional" Web sites, the Web also now hosts broadband television, including MTV's Overdrive or ESPN 360. In addition, digital downloading sites such as the Apple iTunes store, Internet streaming, interactive television (ITV), Internet Protocol Television (IPTV), and live Webcasts can all be found online. Each of these media systems uses Internet protocol to deliver material. No doubt newer technologies will come that also use Internet protocol.

For each delivery method using Internet protocol, rights holders may seek to grant rights to a different business partner. The content rights holder may grant streaming rights to one Web portal, downloading rights to a second, and broadband TV rights to a third. When a contract provides "Internet" or "online" rights, however, the question arises as to whether they include the right to Internet streaming and downloading. Does that also give the service provider the right to put a video program on its broadband television network that is available over the Internet? Using the generic terms "Internet" or "online" to define media rights may create ambiguity, which may be good for the service provider but not for the content owner.

A better practice, especially for the programming licensor that wishes to grant the narrowest rights possible, is to describe in a contract the specific technological means of delivery that are granted and those that are withheld. For example, rather than a general reference to online delivery, the contract should specify that video content "may only be streamed for viewing through a media player available at Internet Web sites, but may not be distributed for user downloading over the Internet." On the other hand, if a service provider wants to obtain the broadest Internet rights, it may seek a provision granting that the content is "[f]or use on the Internet; any Internet Web site, portal, community or location operated by Licensee or its designees; any Internet-based application or medium and/or any means for delivery of data or content using Internet-protocol existing now or created in the future."

Similarly, the term "television," by itself, may be inadequate for a contract. At its inception, television content was delivered only through broadcast airwaves. Now, TV programming is available through cable and satellite systems. It can be available for free, by subscription, for a pay-per-view fee, and as video on demand (VOD). In addition, the Internet has television, with traditional TV networks hosting broadband television destinations. Some programming now is available only through broadband channels. For example, during the 2008 Summer Olympics from Beijing, NBC provided coverage of certain sports only through its broadband site. The next big frontier is mobile television for mobile phones, PDAs, and other wireless devices.

Since television now takes many forms of distribution, use of the term "television" without specific delineated forms of distribution may result in unintended consequences. If a program owner gives television rights to a technology platform, that entity could later try to claim it has rights to distribute the programming via a broadband TV channel or through a mobile TV network. A better approach is a more detailed explanation of which TV rights are granted: "[t]elevision in both standard and high definition and by any and all means of technology of transmitting a video signal and related audio signal: whether via broadcast, satellite or cable television, including without limitation, direct broadcast satellite, subscription television, multi-point distribution systems, multiple multi-point distribution systems, satellite master antennae television systems, open video systems, direct to home television, television receive-only, closed circuit television."

However, this provision does not specify Internet protocol or wireless forms of television delivery. Nor does it distinguish between free or subscription services, and pay-per-view or video on demand systems—which often merit separation in a contract. However, the sample language offers a menu of television media rights from which the parties and their counsel can choose what best suits the needs of their particular deal.

Home Entertainment Products

With the days of the videocassette tape coming to an end and the DVD market still evolving, the meaning of "home video" or "home entertainment" products has also become more complicated. For example, downloading a music file, TV program, or film for viewing at home may qualify as "home video" or "home entertainment" without the sale of a physical product such as a cassette or DVD. Even with physical products, home audio and video are not really confined to the home. Formats for portable media devices (such as the Sony Playstation Portable) may be included in a list of home entertainment products. To encompass this expanding and slippery category, the following provision defines videograms as something more specific than "home video" products: "'[v]ideograms,' which for purposes hereof shall mean: videocassettes, videodiscs, videotape, DVD, High-Definition DVD (e.g., 'HD-DVD' and 'Blu-Ray'), Universal Media Disc ('UMD'), CD-ROM, DVD-ROM or other hard carrier devices now known or hereafter devised and designed to embody one or more audiovisual pictures or portions thereof and to be used in conjunction with a personal reproduction, player or viewing apparatus which causes a visual image (whether or not synchronized with sound) to be seen on a screen, display or device, e.g., a television receiver or, computer display or similar device, all for home use and falling within the definition of 'home video' as that term is generally understood in the industry."

Alternatively, the practitioner may write a provision that incorporates Internet distribution of a "home entertainment" product (audio and video):

> "Audio and Video Products" or "Products" are all of Company's Compact-Discs, Cassettes, Digital Compact Cassettes, Minidiscs, Digital Versatile Discs (DVDs), VHS or other Videos or any other mass-marketable device containing prerecorded music and/or visual images by which sound and/or visual images may be disseminated now or in the future, including but not limited to sales via DEMD. "DEMD" means any transmission to the consumer, whether sound alone, sound coupled with an image, or sound coupled with data, in any form, analog or digital, now known or later developed (including, but not limited to, "cybercasts," "webcasts," "streaming audio," "streaming audio/video," "digital downloads," direct broadcast satellite, point-to-multipoint satellite, multipoint distribution service, point-to-point distribution service, cable system, telephone system, broadcast station, and any other forms of transmission now known or hereafter devised) whether or not such transmission is made on-demand or near on-demand, whether or not a direct or indirect charge is made to receive the transmission and whether or not such transmission results in a specifically identifiable reproduction by or for any transmission recipient.

As this example shows, the attorney who writes a contract for an evolving media deal can think creatively about its precise terms rather than relying on standard examples from contracts for old media.

Payment

Although an evolving media agreement may employ some new terms, many old rules still apply. For example, just as with older media contracts, the key item will be how the content owner and technology platform are paid. As one court recognized in the context of online music, two main revenue models have emerged for Web sites offering content: 1) the subscription model, in which users receive access to content offerings for a recurring (usually monthly) fee, and 2) the advertising model, in which Internet companies generate revenues through various forms of advertising, including display advertising, rich media advertising, and sponsorships.[7] In truth, there are more business models, including fees paid by users for each download, and brand integration forms of the advertising model.

One common approach involves the video content licensor sharing in advertising revenue earned by the service provider from ads served with the programming. A contract clause for this approach may read:

> Service Provider shall retain *x* percent of the Revenues generated from ads served by Service Provider in connection with the Licensed Content and remit the balance of the Revenues to Content Owner within sixty days after the end of each calendar quarter. For the purposes hereof, "Revenues" shall mean all gross revenues and other compensation generated from ads served by Service Provider in connection with the Licensed Content, less (i) agency commissions actually paid to unaffiliated, third party advertising agencies, which shall not exceed a total of *x* percent of the gross revenues; (ii) music publishing public performance rights royalties and music publishing public performance rights license fees for the musical compositions in the Licensed Content actually paid to Broadcast Music, Inc. (BMI), the American Society of Composers, Authors and Publishers (ASCAP), The Society of European Stage Authors and Composers (SESAC), and any other public performance rights society having jurisdiction in the Territory, which shall not exceed a total of *x* percent of the gross revenues.

Typically, service providers draft these provisions and place them in form agreements. Content owners may wish to negotiate certain points related to the definition of the advertising revenues to be split. First, certain advertisers may pay the service provider a flat sponsorship or brand integration amount for a time rather than a fee per spot with each piece of programming (and which can then be tied to specific content). If that is the case, content owners may want to push for a pro rata portion (allocable to their programming) of sponsorship or brand integration dollars received by the service provider to be included in the revenues to be split. On the other hand, service providers may resist including sponsorship or brand integration dollars, which can be hard to allocate to a particular content owner's programming.

Second, content owners may request that all forms of consideration—monetary or not—received by the technology platform are included in the revenue pot. For example, the content owner may ask for the following provision: "Revenues shall include monetary payments for advertising, as well as portions of payments received by Service Provider from advertisers for sponsorships and/or other forms of compensation that are allocable to the Licensed Content."

Third, there may be a negotiation concerning certain deductions prior to the revenue split, such as commissions and distribution fees and expenses. If commission deductions are permitted, a key question will be whether the service provider can deduct a commission for the work of its internal staff to sell ads, or whether it can deduct commissions only from outside, third-party advertising agencies it uses. In the sample provision above, only third-party commissions are deducted. Some service providers also may seek to deduct a distribution fee from the gross dollars before revenue is split, but content owners likely will want to resist, or at least reduce, any distribution fee.

Finally, content owners will want some reasonable audit rights. They should ask the technology platform to provide written statements that support the calculation for each periodic payment of revenue share.

Geofiltering

Content owners often use digital rights management (DRM) to protect their content from unauthorized distribution and copying. Service providers may be expected to "wrap" content licensed to them in DRM applications. In addition, programming licensors often want to grant content rights for only certain geographic areas, such as the United States. But on the world wide Web, content made available on a U.S. Web site usually can be accessed anywhere. Geofiltering software identifies the geographical location of an Internet user by tracing the user's Internet protocol (IP) address.[8] Typically, new media contracts require the Internet service provider to implement geofiltering systems to prevent content from being accessed outside the licensed territory.

For the content licensor, it is important either to require "then-current" or "then-customary" DRM and geofiltering methods, or to require periodic review and revision of whatever systems are prescribed by the contract. As DRM and geofiltering technologies improve with time, these requirements will ensure that the content licensor receives the benefit of technology as it improves. For the technology platform, it will not want to agree to use the best DRM and geofiltering systems available at any given time but will instead prefer to use what is acceptable or customary in the industry. The following provision combines requirements for DRM and geofiltering: "Service Provider will use then-industry standard content protection/digital rights management and geofiltering technologies (including, at a minimum, Internet Protocol address geo-location and time zone check ('sniff') of the computer from which an end user's request for video programming originates) for the Internet streaming and transmission of video programming to limit unauthorized display and distribution of the Licensed Content."

If this clause is too restrictive for the service provider, the following clause is less specific and merely requires current "industry standard" DRM and geofiltering technology: "Content Owner authorizes Service Provider to wrap the Licensed Content in such digital rights management as is used by Service Provider from time to time during the Term. Service Provider's digital rights management and geo-targeting technology shall be of a quality and standard equal to or higher than standards currently accepted as industry standard in the audiovisual industry with respect to the distribution of comparable entertainment content over the Internet."

Marketing

Rights management provisions that are more accurate than what was typical during the days of analog media are not the only concern for attorneys who arrange agreements for evolving media. One reason why content owners enter into evolving media contracts is to promote their brand on the Internet and other evolving media environments. Likewise, service providers often want to acquire top-class programming to leverage the brand power of content owners. To meet these symbiotic needs, new media contracts often impose cross-promotional marketing expectations on the parties. The technology platform may want the content owner to promote its arrangement in "offline" marketing, including through print advertisements in a newspaper or magazine or through commercials on broadcast television or radio.

A contract also may require both sides to allot a certain amount of online banner ads on a Web site to promote the collaboration.

Both contracting parties may want links to their Web sites to appear on the other party's sites. A linking provision is helpful to avoid any disputes about whether either party was permitted to link to each other's sites (although legal claims arising out of unauthorized linking to a party's Web site have been hard to enforce). An example of a provision granting the content owner rights to have links to its Web site placed on the service provider's site is:

> Provided that Licensor complies with all material terms of this Agreement, Licensor shall have the right to provide to Service Provider promotional links that shall be placed by Service Provider on its web site(s), provided such promotions link to other Licensor content or sites ('Linked Site'). Such links may not be sold as advertising by Licensor or link to any third party sites, content and/or commerce. In the event that the Linked Site contains any advertisement(s), link(s) or pointer(s) for any other interactive service or contains any offensive material as determined by Service Provider, Service Provider may in its sole discretion remove any links to the Linked Site from the Service Provider Network. Licensor shall manage the Linked Site in accordance with Service Provider's operating standards for linked sites set forth in an exhibit to the contract or elsewhere.

The parties and their counsel should try to define the marketing obligations specifically rather than settling for a provision that vaguely requires each party to cross-promote the other. At the very least, a contract should specify the minimum obligations that will satisfy performance—either in terms of number of advertisements or advertising value.

Cross-promotion is not the only marketing consideration. Perhaps the most powerful aspect of evolving media systems is their ability to obtain data about users and their interests. Armed with valuable data, content owners, services providers, and advertisers can target their product offerings and promotional messages to individual users. The parties and their counsel should carefully consider:

- What user data should be collected (if at all) and whether it should include personally identifiable information (PII) or just aggregate data.
- Who will collect the data.
- Who has the responsibility to comply with the gamut of privacy law obligations (although parties may not be able to contract away the obligations that various privacy laws impose upon them).
- Who owns the data.
- Whether the nonowning party also gets

the right to keep and use the data.

User information triggers a host of privacy concerns, so it is often advisable to consult counsel who specialize in privacy law regarding contract provisions related to user data.

The evolving media landscape presents new negotiation and drafting challenges for companies and their attorneys, who must stay on top of technology developments, copyright law developments, and revenue models. The magic of evolving media is that it will continue its evolution in unforeseen directions. But no matter what technical wizardry comes next, content—and with it, the well-negotiated content deal—will still remain king. ■

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[1] United States v. American Soc'y of Composers, Authors & Publishers, 559 F. Supp. 2d 332, 334-35 (S.D. N.Y. 2008).

[2] *See* 17 U.S.C. §106. This article assumes that the content being licensed to the service provider is copyrightable. However, certain types of material—such as data or information services—may not be copyrightable, and the analysis to reach license terms for such material may need to differ.

[3] *See* Bruce v. Weekly World News, Inc., 150 F. Supp. 2d 313, 321 (D. Mass. 2001) (cited in Morris Commc'ns Corp. v. PGA Tour, Inc., 235 F. Supp. 2d 1269, 1282, n.24 (M.D. Fla. 2002) (noting that the PGA Tour has the right to sell or license its products on the Internet in the same way it sells its rights to TV broadcasting stations).

[4] In the recording industry's battle against online piracy of song files, there has been controversy about whether the exclusive right of record labels to distribute recordings is violated when an Internet user merely "makes available" song files on the user's computer for access via peer-to-peer networks. *See* Marc E. Mayer, *Distributive Principles,* LOS ANGELES LAWYER, May 2009, at 35. Courts have reached differing conclusions on this point. *Compare* Atlantic Recording Corp. v. Serrano, 2007 U.S. Dist. LEXIS 95203, at *6-10 (S.D. Cal. Dec. 28, 2007) (finding that making music files available over a P2P network violates distribution right) *with* Elektra Entm't Group, Inc. v. Barker, 551 F. Supp. 2d 234, 239-45 (S.D. N.Y. 2008); London-Sire Records, Inc. v. Doe, 542 F. Supp. 2d 153 (D. Mass. 2008).

[5] *See* Miller v. Glenn Miller Prods., 454 F. 3d 975 (9th Cir. 2006) (incorporating district court decision at 318 F. Supp. 2d 923 (citing Gardner v. Nike, Inc., 279 F. 3d 774 (9th Cir. 2002))); Everex Sys. v. Cadtrak Corp., 89 F. 3d 673, 679 (9th Cir. 1996).

[6] *See, e.g.,* IO Group, Inc. v. Veoh Networks, Inc., 2008 U.S. Dist. LEXIS 65915, at *9-16 (N.D. Cal. Aug. 27, 2008). The *Veoh* decision is the first to rule on whether a Web service for user-posted video content qualified for safe harbor under the Digital Millennium Copyright Act. The *Veoh* online service transcoded video files uploaded by users into Flash format. In his ruling, the magistrate judge noted that transcoding into Flash format made the videos more easily viewable on the Internet with common media players and did not alter the content for purposes of DMCA safe harbor analysis. *Id.* at *33-39.

[7] *See* United States v. American Soc'y of Composers, Authors & Publishers, 559 F. Supp. 2d 332, 337 (S.D. N.Y. 2008).

[8] *See* Marc H. Greenberg, *A Return to Lilliput: The* Licra v. Yahoo! *Case and the Regulation of Online Content in the World Market,* 18 BERKELEY TECH. L.J. 1191, 1215 (2003) (discussing the debate over viability, to avoid legal liability, of geolocation filtering software to block Internet sites from being available in certain countries).