

Tuesday, May 27, 2008

What will come of the Viacom v. YouTube suit?

Computer hard drive. (Image from Pacific Northwest Laboratory's website). Even my most well-heeled litigation clients set a ceiling on the money they are willing to spend for litigation fees and expenses. One thing that interests me in the pending *Viacom, et al. v. YouTube, et al.* (S.D.N.Y. 1:07-cv-02103) copyright infringement litigation is the higher quantum of litigation funds being spent by those litigants than by my litigation clients and the extent to which those funds are being spent wisely or not. Ordinarily, a huge publicly-traded corporation will hire a heavily-staffed law firm or team of lawyers to pursue its high-stakes civil litigation, in part out of anticipation that the opponent will do the same and in part because the selected law firm may already be doing a big chunk of the corporation's legal work. A critical challenge is for those corporations to justify the resulting huge litigation price tags to shareholders. Litigants hiring my law firm know that on the one hand my price tag will not need to cover huge overhead expenses, but that on the other hand if a big team of lawyers and assistants is needed, they either will need to look elsewhere or have me as part of a team of lawyers from more than one law firm. YouTube.com makes available not only the opportunity for subscribers to upload home videos to the Internet, but to upload pretty much any video to the Internet. YouTube apparently is diligent in removing video uploads when the owner of the copied material claims copyright infringement. However, YouTube apparently does not remove such videos before receiving a complaint. (On the flip side, it seems that YouTube has a more proactive system to prevent nudity from reaching web viewers, which makes one wonder whether YouTube has software to check for nudity or has someone checking each video before it can be uploaded, and the extent to which YouTube has the capacity to block copyrighted works more proactively, while it is clear that nudity is easier to spot on the screen than a copyright violation.) Last year, Viacom and co-plaintiffs sued YouTube for its involvement in having copyright-infringed works uploaded to YouTube. After various back-and-forth procedural moves, YouTube filed its Answer to the now-amended Complaint last Friday, which is over fourteen months after the lawsuit was filed. This blog entry is meant briefly to introduce this litigation and to provide some of the following links. So many millions of people and businesses download and upload at YouTube -- and set up their own webpages there -- that the results of this litigation might have a tremendous impact on them. Here are some links relevant to this *Viacom v. YouTube* lawsuit: - Here is the Associated Press's May 27, 2008, overview of the case. - Amended Complaint and 1800-page exhibit thereto, listing over 17,000 allegedly infringed copyrighted works that were uploaded to and available on YouTube. - Defendants' Answer to the Amended Complaint. - The case docket. - Larry Dignan at ZDNet has been covering this litigation since its inception. His views of the lawsuit are fully unvarnished: "Google [which now owns YouTube] stands for all that enables the Internet. Viacom is evil -- or at least misguided." A huge gap exists between evil and misguided, of course. Jon Katz ADDENDUM: In a related development, this website covers the *Football Association Premier League, Ltd., et al. v. YouTube, et al.* (S.D.N.Y. 07-civ.-3582) class action lawsuit that is listed as a related case to the foregoing *Viacom v. YouTube* lawsuit, and was filed two months thereafter. The two cases have some material overlap. Here are some of the key filings in the *Football Association* civil action: - The case docket; Amended Complaint; Answer to the Amended Complaint; and Order appointing interim class counsel.

Posted by Jon Katz in First Amendment at 00:00