Viacom and YouTube:
A Case of Copyright Infringement in Digital Media

By Norma Martin
University of Texas at Dallas
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Each day, each hour, each minute, and probably, each second, someone on earth is posting, watching, linking, or embedding a video to and/or from YouTube, the colossal online video-sharing website owned by Google, the digital media giant. Playing and/or uploading a video on YouTube is such an integral part of everyday life that few people noticed the end of the legal battle just days ago that maintains the website's core service: the sharing of videos.

Most, but certainly not all, of the videos shared on YouTube are based on music, movies, television programs and other forms entertainment protected by copyright. YouTube is what Aufderheide (2011) calls "the motherlode of copyright material circulating madly on social networking sites" (p. 275). In 2006, Google bought YouTube, and the next year Viacom, the owner of cable channels, movie studios, broadcast companies and several other media enterprises filed suit against YouTube for copyright infringement (Aufderheide, 2011; Kaufman, 2014).

In Viacom's lawsuit, the media conglomerate stated that its cable shows, such as *The Daily Show with Jon Stewart*, were on YouTube without permission and sought $1 billion in damages (Aufderheide, 2011; Kaufman, 2014). On behalf of YouTube, Google responded to Viacom's initial lawsuit, claiming that its video-sharing website did not curate, program or create any content because it was a service provider, thus protected from "secondary liability for copyright infringement under the Digital Millennium Copyright Act" (Aufderheide, 2011, p. 276).

But Viacom fired back at Google's claim by accusing YouTube of being a contributory of copyright infringement; that the video-sharing website's business model was based on piracy, similar to the now-defunct Napster, which lost a famous copyright infringement case against the music industry over music-file sharing (Aufderheide, 2011; Drahos & Braithwaite, 2003; Kaufman, 2014).

In March 2014, Viacom and YouTube settled their seven-year legal wrangling out of court, without any money changing hands (Kaufman, 2014). However, both the initial copyright dispute and the eventual settlement illustrates the ongoing concern with intellectual property laws in regards to the evolution of digital media. As Aufderheide (2011) explained, "the vast majority of sound and image material on Facebook and other social networking sites is third-party, copyrighted work" (p. 279). Even Kaufman (2014) noted that Viacom and YouTube in their joint statement to announce their legal settlement acknowledged the significant changes in the digital-media landscape have occurred in seven years. But did the corporate media powerhouses really bow to the pressures of time, or has something else reshaped their perceptions about intellectual property rights in the cut-throat world of the global knowledge economy?

Embedded within the Western version of intellectual property laws is the centuries-old concept of copyright, which was designed to protect the original works of authors and composers and other creators of artistic expression, materials and content (Drahos & Braithwaite, 2003). But in the knowledge economy, "the bulk of intellectual property rights are owned not by their initial creators but corporations that acquire intellectual property portfolios through a process of buying and selling, mergers and acquisitions" (Drahos & Braithwaite, 2003, p. 15). In fact, the world-wide trafficking of knowledge is "the source of profit in modern global markets" (Drahos & Braithwaite, 2003, p. 39).

In taking the discussion deeper, Drahos and Braithwaite (2003) offered that while the entertainment industry, specifically recording companies and film studios, "have been successful in their long-term strategy of expanding ownership rights and criminalizing the infringing use of information, it will not be possible to put everyone in jail. The number of Internet users is large and U.S. jails crowded" (p. 185). More significantly, the authors stated that digital-media users have grown accustomed to sharing copyrighted material in cyberspace and are reluctant to accept "the global moral narrative about the evils of piracy," especially if "the moral code is so transparently self-serving" (p. 185).

Drahos and Braithwaite (2003) illustrated their point further with another Napster case. When Metallica sued Naptser for copyright infringement, the rock band lost fans. "Street credibility becomes vanishingly small when you join those who wish to squeeze copyright royalties out of every sound byte" (Drahos & Braithwaite, 2003, p. 185).

In conjunction with observations by Aufderheide (2011) about the array of social networkers participating in online video sharing, Drahos and Braithwaite (2003) outlined the moral shifts about copyright infringement among within that ever-growing population. Since everyday people were changing their thinking on the matter, then one conclusion might be that the legal settlement in the Viacom-YouTube case is simply a reflection of a societal shift.

Even Drahos and Braithwaite (2003) noted that "corporate owners of intellectual property depend heavily on the public sector and the public domain, a dependence that suggests that society should be thinking about weaker and not stronger intellectual property rights" (Drahos & Braithwaite, 2003, p. 15).

However, the power-of-the-people conclusion in the Viacom-YouTube copyright case becomes unlikely for two reasons. One motive, as noted by Kaufman (2014), "Google has worked to address concerns of content owners like Viacom by creating a system that allows them to track their content when it is posted and then request it be taken down or run with ads" (para 4). In other words, Google created the digital tool to enable copyright owners (mostly corporations) to track what online users were doing with their copyrighted materials without those owners having to do much watch-dogging on their own, which they did not want to do because of the time-consuming effort, not to mention costs, involved in conducting such sleuthing endeavors (Aufderheide, 2011). The second motive in the unlikely power-to-the-people conclusion, also noted by Kaufman (2014), "in 2012, the two media giants signed a pact to allow YouTube to rent out hundreds of Paramount films" (para 4). In other words, Viacom, which owns Paramount,

opened one of the most extensive and oldest movie-studio catalogs in Hollywood to its longtime copyright-infringement adversary. What a turnabout.

Thus, Google created a user-tracking tool that Viacom as well as other copyright owners can use to generate take-down notices of purported violators of its copyrighted content whenever it decides to do such a thing, and YouTube is allowed to rent Paramount's movies to its massive video-sharing audience. The most pivotal, post-Napster copyright-infringement case is settled; no legal verdict rendered. Everybody wins. Well, not exactly.

The two motives, of course, are all about business-and-profit strategies in the knowledge economy, with intellectual property rights as the leveraging point, which Drahos and Braithwaite (2003) suggest is one of the main problems with how these laws are being used in the modern-day global economy. The authors suggest that giant corporations are using intellectual property laws to suppress creativity and intimidate the powerless, which was never the intent of copyright laws, in an effort to dominate the marketplace (Drahos & Braithwaite, 2003).

In truth, Viacom and YouTube via Google have the financial war chests to engage in a protracted legal battle with each other for seven long years, but what about the average YouTube user posting copyrighted material on the video-sharing website? That digital-media user doesn't own a backlist of popular movies as enticement or the ability to develop a tracking tool to silence copyright owners, thus that average person does not have any bargaining power at the copyright-infringement negotiating table, right? Actually, that conclusion is incorrect, maybe.

Aufderheide (2011) offers that "many bloggers, online video creators, vidders and the scholars who studied them feel strongly that they should be permitted to do what they like with copyrighted material because they are not making money from it" (p. 278). While making money is a significant point of copyright law; it is not the only one. For example, Drahos and Braithwaite (2003) explain that artistic integrity plays a role in copyright ownership, even though corporate holders are much less swayed by this concept than original creators (p. 176).

With this insight into digital-media users and creators, Aufderheide (2011) examined the use of online videos through the one exception, in the United States anyway, of copyright infringement: fair use. Journalists, especially commentators and critics, as well as other writers, artists, scholars, filmmakers, composers and so on have long used copyrighted materials via fair use in the generation of their work. As Aufderheide (2011) explained a core purpose of the U.S. copyright system is "to promote the republican idea of robust social discourse" (p. 287). Fair use helps to achieve that outcome.

However, Aufderheide (2011) stated that it is essential for modern-day digital users, specifically video-sharing creators, to understand the principles and limitations of fair use. For example, "remixers actually have the right to quote existing copyrighted work without licensing it, under the U.S. copyright doctrine of fair use" (Aufderheide, 2011, p. 276).

Whether digital-media users are creating remixes, mashups or music videos, Aufderheide (2011) stresses that they are recombining existing materials in the creation of new work. "In a study of

online video work incorporating copyrighted material," Aufderheide and her research partners identified a range "of ways that people are making new culture with existing culture" (p. 275).

Working with groups, such as the Center for Social Media and Washington College of Law's Program on Information Justice and Intellectual Property, Aufderheide (2011) help draft the six-point "Code of Best Practices in Fair Use for Online Video" (p. 276). As Aufderheide (2011) explained, "if people cannot exercise fair use, they cannot conduct the ordinary business of communication as evidenced in social networking practices today" (p. 277).

In a major post-Napster legal wrangle, Viacom and YouTube settled their dispute, instead of allowing for a court decision on whether online video sharing violated U.S. copyright law. While YouTube's popularity and massive reach among the global population of digital-media users increased substantially during the seven-year dispute, society's attitude about copyright infringement changed as well. The post-Napster generation is less likely to accept the moralistic imperative of copyright infringement arguments of global corporations, especially when the specific businesses doing the arguing are participating in sweet, lucrative deals with each other.

In addition, not all online videos with copyrighted materials within them, whether on YouTube or elsewhere, are examples of illegal infringements. Sometimes those shared digital mediums are legally protected under fair use, thus don't require prior permission from copyright owners. However, Aufderheide (2011) pointed out that Google's user-tracking bots cannot distinguish between fair use and infringement; they are automated tools (p. 277). But Aufderheide (2011) suggested one mainstay of journalism that demonstrates good faith in regards to honoring copyright and that "is to provide credit or attribution, where possible, to the owners of the material being used" (p. 284).

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