

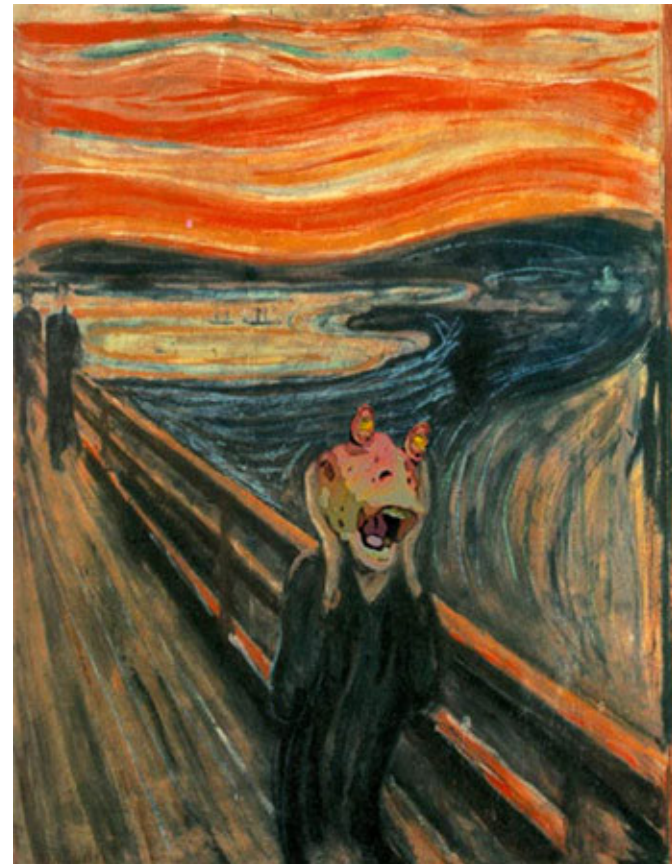
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# The Revolution of User Generated Content (UGC)

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## What is UGC?

- **User Generated Content**
  - Publicly available media content produced by end-users
- **Examples**
  - Blogs, online customer reviews, Star Wars fan films and mashups
- **Social networking and media platforms for UGC**
  - MySpace, Facebook, TiVo, MTV, Sundance Channel, IFC, Ning, Spout, Xanga, Bebo, Tagged, iGoogle, Netvibes, PageFlakes, Webwag
- **Video sites for UGC**
  - YouTube, MySpaceTV.com, Yahoo! Video, MSN Video, AOL Video, VideoEgg

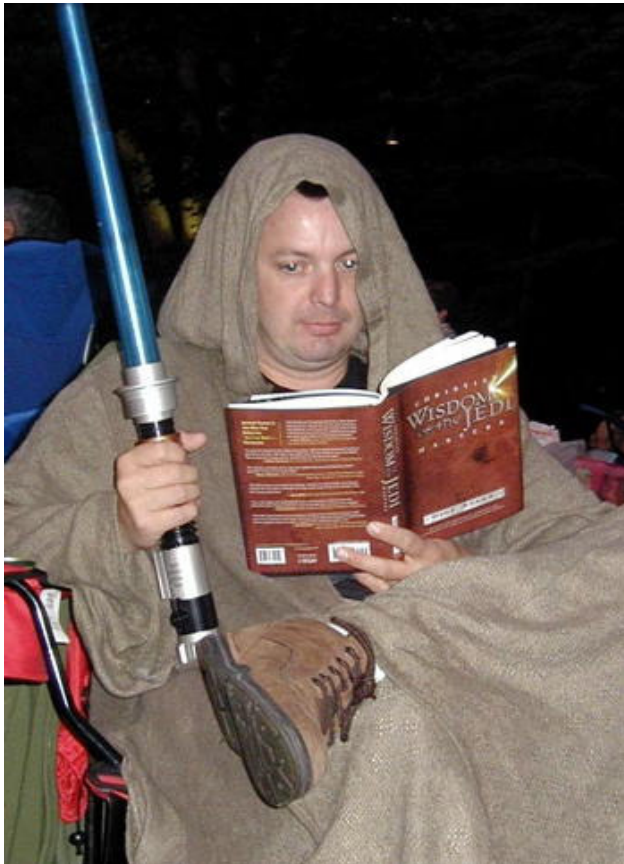


## Emerging Online Distribution Channels for UGC

- **Rapidly increasing market due to advances in technology and consumer acceptance**
  - **Netflix, iTunes, AppleTV, Amazon Unbox/Tivo, Blockbuster.com/Movielink, Greencine, IndieFlix, b-side, Grapeflix, Jaman, CinemaNow, IndiePix, Vuze, SuperIndieFilms, Brightcove, EZTakes, Video-on-Demand and digital rentals via Cable Companies**



## What are the Legal Issues Surrounding UGC?



- **International Copyright Infringement Concerns**
  - Are Internet Service Providers (ISPs) - including social networking sites, and sponsors or promoters of UGC contests – liable for copyright infringement or for actively inducing copyright infringement if the user’s content violates the rights of copyright holders?
- **Legal Protection for ISPs**
  - US Safe Harbor under the 1998 Digital Millennium Copyright Act (DMCA)

## DMCA UGC Safe Harbor, 17 USC § 512(c)

- **An ISP shall not be liable for storing infringing material at the direction of a user if the service provider**
  - **Does not have actual or apparent knowledge that the material is infringing**
  - **Does not receive a financial benefit directly attributable to the infringing activity in a situation where it has the right and ability to control such activity**
  - **Upon notification, acts expeditiously to remove or disable access to the infringing material**



## Eligibility Conditions



- **To be eligible for the safe harbor, the ISP must**
  - **adopt, reasonably implement, and inform subscribers and account holders of its policy of terminating the accounts of repeat copyright infringers, 17 USC § 512(i)**
  - **Designate an agent to receive notifications of claimed infringement and providing information concerning the designated agent to the Copyright Office, 17 USC § 512(c)**
  - **Accommodate and not interfere with technical measures copyright owners use to identify and protect works, 17 USC § 512(i)**

## Notification Requirements, 17 USC § 512(c)(3)

- **The complaining party must provide written communication to the designated agent of the ISP**
  - A physical or electronic signature of the person authorized to act on behalf of the copyright owner
  - Identification of the copyrighted work and the infringing material
  - A statement of good faith belief that use of the material is not authorized, that the information in the notification is accurate, and, under penalty of perjury, that the complaining party is authorized to act on behalf of the copyright owner





## Counter Notification Procedures, 17 USC § 512(g)



- ISPs not liable for good faith takedowns of allegedly infringing material
- ISP must promptly notify the subscriber of the takedown
- Subscriber can issue a counter notification stating that the material was taken down as a result of mistake or misidentification
- ISP must provide the complaining party with a copy of the counter notification and replace the material in not less than 10 days and not more than 14 days, unless the complaining party seeks a court order supporting the take down



## The Story So Far ...

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A long time ago in a galaxy far,  
far away...

- Courts have interpreted the DMCA as providing broad protection to ISPs
  - ISPs do not have to actively monitor their websites for infringing material
  - “The DMCA notification procedures place the burden of policing copyright infringement – identifying the potentially infringing material and adequately documenting infringement – squarely on the owners of the copyright.” *Perfect 10, Inc. v. CCBill, LLC*, 481 F.3d 751, 762 (9th Cir. 2007)

## A New Disturbance in the Force . . .

- **Viacom sues YouTube for *one billion dollars***
  - **Complaint filed in the Southern District of New York on March 13, 2007**
  - **Viacom is the parent company of Comedy Central, MTV, Nickelodeon, and movie studios like DreamWorks and Paramount**
  - **Viacom accuses YouTube of direct, contributory and vicarious copyright infringement related to the unauthorized display, performance and reproduction of Viacom videos, and inducement of copyright infringement by YouTube's users**



## Viacom Complaint: Massive Copyright Infringement

- **“Plaintiffs have identified more than 150,000 unauthorized clips . . . YouTube’s website purports to be a forum for users to share their own original ‘user generated’ video content. In reality, however, a vast amount of that content consists of infringing copies of Plaintiffs’ copyrighted works” ¶ 3**
- **“even after it receives a notice from a copyright owner, in many instances the very same infringing video remains on YouTube because it was uploaded by at least one other user” ¶ 6**
- **“YouTube has deliberately withheld the application of available copyright protection measures in order to coerce rights holders to grant it licenses on favorable terms” ¶ 7**
- **“YouTube . . . hinders Plaintiffs’ attempts to locate infringing videos . . . through . . . features like the ‘embed,’ ‘share,’ and ‘friends’ functions” ¶ 8**

## YouTube's Answer: The DMCA Protects Us

- **“Viacom’s complaint . . . challenges the careful balance established by Congress when it enacted the Digital Millennium Copyright Act. The DMCA balances the rights of copyright holders and the need to protect the internet as an important new form of communication. By seeking to make carriers and hosting providers liable for internet communications, Viacom’s complaint threatens the way hundreds of millions of people legitimately exchange information, news, entertainment, and political and artistic expression. Google and YouTube respect the importance of intellectual property rights, and not only comply with their safe harbor obligations under the DMCA, but go well above and beyond what the law requires” ¶ 1**



## Some Key Issues raised by *Viacom v. YouTube*

- YouTube has implemented the requirements of the DMCA
- Nevertheless, the case raises novel questions
  - Given the massive levels of infringement on YouTube, can YouTube claim that it was not “aware of facts or circumstances from which infringing activity is apparent”?
  - By allowing users to “embed” video clips in websites across the web, is YouTube actively inducing users to infringe copyrights?
  - Can YouTube successfully argue it does not receive a financial benefit directly attributable to infringing activity?
    - The test has been “whether the infringing activity constitutes a draw for subscribers” *Ellison v. Robertson*, 357 F.3d 1072, 1079 (9th Cir. 2004)
    - In *Perfect 10 v. Google*, however, the Central District of California suggested a more lenient test according to which Google financially benefited because its ad revenue increased every time infringing photos were viewed. 416 F. Supp. 2d 828, 857 (C.D. Cal. 2006). On appeal, the Ninth Circuit never reached the issue of how to interpret “financial benefit.”

## Deals between YouTube and Content Providers

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- **Well before the *Viacom* suit, YouTube started entered into licensing deals with major content providers**
  - **In September 2006, a deal with Warner Music Group**
    - YouTube uses special software to identify recordings used in videos posted by users and then offers Warner a percentage of the fee for advertising that runs alongside the clip. Alternatively, Warner can demand that YouTube remove the clip
  - **In October 2006, deals with Universal Music Group, Sony BMG Music Entertainment and CBS**
    - YouTube filters out unauthorized content owned by these companies
    - Authorized content can be posted on YouTube in exchange for a share of revenue from streaming advertising

## New Filtering Tool: YouTube Video Identification

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- **On October 15, 2007, YouTube launched in beta form its new content identification tool: YouTube Video Identification**
- **YouTube's Product Manager stated that the new technology "will help copyright holders identify their works on YouTube, and choose what they want done with their videos: whether to block, promote or even - if a copyright holder chooses to license their content to appear on the site - monetize their videos"**
  - **Copyright owners will provide YouTube with a copy of the content to be protected**
  - **YouTube will use that copy to create a set of "digital fingerprints" to identify copies of such content uploaded to the YouTube site**



## Principles for User Generated Content Services

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- **On October 18, 2007, internet and media industry leaders announced support for a set of Principles for User Generated Content Services**
  - **Viacom, Disney, Fox, CBS, NBC Universal, Microsoft and MySpace**
  - **But not Google or YouTube**
- **Some Key Principles**
  - **“UGC Services should use effective content identification technology (“Identification Technology”) with the goal of eliminating from their services all infringing user-uploaded audio and video content for which Copyright Owners have provided Reference Material”**
  - **Filtering Process: “If the Copyright Owner indicates in the applicable Reference Material that it wishes to block user-uploaded content that matches the reference data, the UGC Service should use the Identification Technology to block such matching content before that content would otherwise be made available on its service”**

## Should Companies Hosting or Disseminating UGC be more Proactive?



- The Viacom case, YouTube's new filtering tool, and the Principles for UGC Services suggest the industry may be shifting towards online content distributors playing a more proactive role in filtering out infringing UGC
- Catch-22 Problem: If companies monitor UGC, then they might lose the DMCA safe harbor protection because then they, not the users, have determined what can be posted

## LucasFilm's Approach



- Provide support for noncommercial use of its copyrighted content
  - For the last six years, fans have been encouraged to submit entries to the Star Wars Fan Film Awards
  - In 2007, Star Wars fans can mix their own video source material with scenes from the six Star Wars movies - made available at [starwars.com](http://starwars.com) - to create photo and video “mash ups”

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