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Viacom Sues Google Over Video Clips on Its Sharing Web Site

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SAN FRANCISCO, March 13 — Since it bought YouTube last October, [Google](#) has been chasing deals that would give it the right to put mainstream video programming on the site. Just a few weeks ago, Google's chief executive, Eric E. Schmidt, seemed confident that this courtship of old-line media companies would prove fruitful.

"These things take time," Mr. Schmidt said in an interview. "There is lots and lots of talking and we have not hit any walls."

Now Google has hit a wall.

[Viacom](#), the parent company of MTV, Nickelodeon and Comedy Central, filed a wide-ranging lawsuit against Google on Tuesday, accusing it of "massive copyright infringement." Viacom said it was seeking more than \$1 billion in damages and an injunction prohibiting Google and YouTube from committing further infringement.

Citing the \$1.65 billion that Google paid for YouTube, the complaint said that "YouTube deliberately built up a library of infringing works to draw traffic to the YouTube site, enabling it to gain a commanding market share, earn significant revenues and increase its enterprise value." The complaint was filed in United States District Court in New York.

Google said it was still reviewing the lawsuit but repeated past assertions that copyright law shields it from liability for clips posted by its users.

The lawsuit is the clearest sign yet of the tension between Google and major media companies. With its acquisition of YouTube, Google had high hopes of becoming a central distribution point for online video, dominating the field just as [Apple's](#) iTunes Store leads the market for digital music.

Google plans to combine YouTube's vast audience with its own mastery of online advertising technology to create a lucrative business whose revenue it will share with large media companies and other content creators.

Those hopes hinge on its ability to strike deals with content owners that will allow it not only to gain rights to programming, but also to insulate itself from any liability for past copyright violations on YouTube.

Google has succeeded in signing licensing deals with smaller content providers and limited agreements with

larger ones, like the BBC and the National Basketball Association. But broad agreements with the major networks and Hollywood studios have proved elusive.

As the negotiations have dragged on, major media companies, including the [News Corporation](#) and NBC Universal, have grown increasingly frustrated over the proliferation of copyrighted video on YouTube. Some have been in on-and-off discussions to create their own Web site to compete with YouTube. But most continue to talk with Google in an attempt to find a way to be compensated for their material.

Viacom, which last month demanded that YouTube remove more than 100,000 clips of its programming from the site, has been the most vocal Google critic by far.

In an interview, Viacom's chief executive, Philippe P. Dauman, declined to say whether Viacom and Google executives had met in recent weeks, but he said the companies had had contacts over the Viacom clips that keep showing up on YouTube.

"Every day we have to scour the entirety of what is available on YouTube, so we have to look for our stuff," Mr. Dauman said. "It is very difficult for us and places an enormous burden on us."

Viacom, which owns popular programs like "The Daily Show With Jon Stewart" and "South Park," said that clips of its programming had been viewed "an astounding 1.5 billion times" on YouTube.

Google would not discuss any negotiations with Viacom or other media companies. It reaffirmed its stance that so-called safe harbor provisions in copyright law protected it from liability. Those provisions generally protect Web sites that contain copyrighted content uploaded by users, as long as the sites promptly remove it when asked to do so.

"We are confident that YouTube meets and exceeds its legal responsibilities" under copyright law, said Alexander Macgillivray, Google's associate general counsel for products and intellectual property.

Google shares fell \$11.72, or 2.6 percent, to \$443.03 on Tuesday as the wider market slumped. Viacom's Class B shares fell 9 cents to \$39.48.

Viacom's decision to sue YouTube did not surprise many analysts and media experts, who saw it as a new salvo in Viacom's battle to be paid for its material. Several cited the music industry's history with the [Napster](#) file-sharing service as a cautionary tale for copyright owners.

"In the early 1990s music companies let Web companies build business models on the back of their copyright," said Michael Nathanson, an analyst at Sanford C. Bernstein & Company. "I think the video industry is being more aggressive for the right reasons, to protect the future value of those assets."

But legal experts were split on the merits of the case.

"YouTube and Google obviously face an enormous risk from this lawsuit," said Annette L. Hurst, a partner at the Heller Ehrman law firm in San Francisco. "But it is not obvious, based on the current state of the law,

who should win based on the facts we have seen so far.”

Ms. Hurst, who represented Napster’s founder, Shawn Fanning, in that company’s litigation with the music industry, said the suit offered little evidence to support some Viacom claims.

“The complaint is very light on any facts that would suggest that YouTube in fact encouraged people to infringe copyrights,” Ms. Hurst said. The lawsuit discusses the failure by YouTube to use filtering technology, “but it doesn’t identify a technology that could be used,” she said.

But Joseph M. Potenza, a partner at Banner & Witcoff in Washington, said Viacom had a case, judging from “the amount of material and the financial benefit that Google is getting.” Under copyright law, Google might have a defense if it was not told about the copyrighted material, or if it did not benefit financially from it. But neither defense applies in this case, Mr. Potenza said.

Executives at other television networks, who spoke on condition of anonymity because they did not want to be quoted on the record about the litigation, said they remained torn between the promotional power of YouTube, which they appreciate and even seek out in some cases, and the knowledge that YouTube’s audience and revenue are built at least partially on their content.

But the companies are also questioning more intently why Google is not using filtering technology.

NBC’s corporate counsel, Richard Cotton, sent a six-page letter to Google last week, noting pointedly that YouTube was continuing to carry unauthorized clips from the network, some executives who have seen the letter said. Mr. Cotton threatened a suit if, among other things, Google failed to deploy filtering technology, these executives said.

Mr. Macgillivray, the Google lawyer, said the company was working to fine-tune filtering technologies, which he said cannot automatically tell whether a clip is authorized or whether it is allowed under “fair use” provisions of copyright law.

Miguel Helft reported from San Francisco, and Geraldine Fabrikant from New York. Bill Carter contributed reporting from New York.

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