

# Viacom to NY court: Scrap YouTube copyright ruling

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A lawyer for Viacom Inc. warned an appeals court panel Tuesday that there will be greater exploitation of copyright material on the Internet if the court lets YouTube get away with a business built on "rampant copyright infringement."

The lawyer, Paul Smith, told a three-judge panel of the 2nd U.S. Circuit Court of Appeals in Manhattan that a lower court judge was wrong to rule that Google Inc.'s popular [video service](#) was protected from [copyright infringement](#) claims.

"YouTube not only knew there was rampant copyright infringement on the site but welcomed it," Smith said. "These people made this kind of money on somebody else's property."

Google purchased YouTube for \$1.76 billion in 2006, comfortable that it was protected by the safe harbor provision of the 1998 [Digital Millennium Copyright Act](#). That provision shields a company from liability if they don't have actual knowledge of copyright infringement. Once notified, the company must eliminate the infringement quickly.

Google attorney Andrew Schapiro countered that YouTube follows the law and always has by taking down video when a copyright owner claims the video infringes its rights.

"There is no evidence, zero, of a single clip in this case that YouTube knew was infringing and failed to take down," he said.

Schapiro said Viacom's chief complaint seemed to be that Google was not screening for copyright violations in the manner Viacom preferred.

"We've done A, B, C and D and plaintiffs are saying, 'You should have done E and F,'" he said. "IF we did E and F, they would say, 'You should have done G and H.'"

The New York-based Viacom owns popular [cable channels](#) such as MTV, Comedy Central and Nickelodeon. In 2007, Viacom brought a \$1 billion lawsuit against Google, contending that YouTube was enabling unauthorized viewing of its programming from hits such as "The Daily Show with Jon Stewart."

[Google](#) is based in Mountain View, Calif. Viacom is joined in the action with The Football Association Premier League Limited and other plaintiffs.

An appeals ruling could be months away. Through their questions, the judges seemed to be relatively early in the process of deciding what they will do. Sometimes, they asked the most basic questions, such as what the litigants were asking them to do.

"I'm so out of it on these matters," Judge Jose A. Cabranes said when talking about one aspect of the YouTube service.

Since the purchase, YouTube has developed a software program that identifies copyright violations when videos are posted, so much of the litigation relates to whether Viacom should be compensated for what occurred before the program was put in place.

In issuing his ruling last year, Judge Louis L. Stanton noted that [Viacom](#) had spent several months accumulating about 100,000 videos violating its copyright and then sent a mass takedown notice on Feb. 2, 2007. The

judge said [YouTube](#) had removed virtually all of them by the next business day.

The appeals judges seemed open to the idea that some issue in the case might deserve to be heard by a jury, but they also expressed frustration that the possibilities were as limitless as the Internet itself.

Judge Roger Miner asked: "How in the world can damages be computed here?"

Cabranes demanded to know how much damages might be worth.

"The number could be quite large," Smith said.

But when Smith suggested that it could also be not so large, Miner shot back: "Maybe what you're really looking for is a license agreement."

Smith said a license agreement was possible.

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