

Perfect 10 tests copyright law

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Perfect 10, an online and print-based adult-entertainment company, is testing the limits of copyright-infringement liability in a series of lawsuits against Internet search engines Google and Amazon's A9 that are in preliminary stages.

Norm Zada, the founder and chief executive officer of Perfect 10, in Beverly Hills, Calif., said Google and Amazon rely on the unauthorized display of copyrighted material under the guise of providing a search function as part of their business model.

"I claim that what they've done is to display misappropriated intellectual property," Zada told United Press International. "They are displaying at least 3,000 of our best pictures for free."

Zada -- a former professor at Stanford University and other schools and a former researcher at IBM -- argues that Google makes money when consumers search for pictures of Perfect 10 models and then click on displayed thumbnails or Web-site links to pages that use Google's AdSense advertising program. "Google is not a search engine anymore," Zada said. "They are a commercial enterprise. They are listing pages first that are advertising with Google."

Perfect 10's court filing states that the greater the content available through search engines, the more viewers they attract and the more advertising revenues they earn. The document claims that Google should be held responsible for direct, contributory and vicarious copyright infringement.

Jason Schultz, a staff attorney with the Electronic Frontier Foundation in San Francisco, a member-supported digital civil-liberties organization, said the case suggests a wider struggle over copyright-infringement liability on the Internet, but thinks it will be dismissed in response to an early motion by Google.

He noted that Russell Frackman, counsel to the record labels in the MGM vs. Grokster suit, also is representing Perfect 10. "Frackman believes that

everyone should be held responsible for policing content infringement on the Internet, or whoever has the deepest pockets should," Schultz told UPI. "The copyright maximalists hate intermediaries -- search engines, ISPs and anyone else with whom they don't have a direct licensing agreement."

Zada said he regards Google as the largest direct infringer of his company's material.

"Why should we go after people in Hungary or Russia that don't even register domains under real names?" he asked. "Google is commercially taking advantage of us at a level far greater than these little guys."

To prove Google had knowledge of the infringing material, Perfect 10's filing cites 34 cease-and-desist requests sent under the Digital Millennium Copyright Act for both individual pages and Web sites where Perfect 10 claims infringing material is pervasive. Zada said although Google may have removed links to certain infringing images, he considers the search-engine giant lax in complying with the DMCA. "There are still 1,000 URLs that we have given them that haven't been altered at all," he said.

The DMCA safe-harbor provision is designed to allow content owners to request the removal of infringing material and to limit the liability of Internet service providers if they comply.

Zada said he thinks his case is stronger than the U.S. Supreme Court's recent MGM vs. Grokster ruling. "We think our case is stronger than Grokster because it didn't store infringing material on its servers -- Google does," Zada said.

"We believe the lawsuit is without merit and we will defend against it vigorously," Steve Langdon, a Google spokesman, told UPI in an e-mail.

Robert Atkinson, vice president and director of the Technology and New Economy Project at the

Public Policy Institute, a Washington think tank, said he disagrees the two cases are similar. "There are fairly clear-cut cases where the business model is selling infringing content, like Grokster, which claimed it wasn't covered by the DMCA," Atkinson told UPI. "It seems to me that Google should be covered by the provisions of the DMCA."

In a previous case by Perfect 10, against Cybernet Ventures, owners of the Adult Check age-verification service, a district court granted an injunction in favor of Perfect 10. The court found Cybernet profited from non-compliance with the DMCA. The case was settled out of court.

Schultz said he sees a difference between the current case and the one against Cybernet Ventures. "This one is a little further out there," he said. "Cybernet Ventures failed to comply with the DMCA standards. The reason Perfect 10 won there was because Cybernet Ventures was sloppy."

Google has built its business around the law, Schultz noted. "Perfect 10 is just upset because they don't like the DMCA."

Zada disagreed, saying he thinks Google cannot use the DMCA safe-harbor provision to limit its liability.

"The DMCA does not protect direct infringers," said Zada. "It protects ISPs, who have no reason to believe their clients are infringing."

Zada also said even if Google is not considered a direct infringer, the DMCA provision offers limited liability only if a service provider stops repeat infringers after receiving multiple cease-and-desist requests. He said Perfect 10 has sent multiple requests to Google and it has not complied.

Julie Cohen, a professor at Georgetown University Law School in Washington, said the DMCA is not designed to turn service providers into content monitors. "The statute doesn't give content owners carte blanche to say, 'take down all this information,'" she told UPI. "It is very site specific."

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