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LAST WEEK, I joined a team of attorneys suing Google over the YouTube video-sharing website it owns. The decision to join the fight was a tough one for me because, like many people, I am excited by the promise of user-generated video. I like the idea of a website that helps aspiring producers and amateur filmmakers distribute their work to the public. That said, YouTube has been, throughout its existence, a haven for copyright infringement.

The problem is that users upload excerpts of copyrighted movies and television programs without authorization, and then YouTube happily distributes that contraband to the public. And Google, knowing all this and benefiting from the attention the unauthorized videos bring, has refused to take even simple steps that would reduce the infringement without meaningfully interfering with the service's legitimate use. That is what led me to join Viacom's legal team.

The legal nuances of the suit will soon enter popular discussions. Lawyers on both sides will cite the Digital Millennium Copyright Act and argue about the extent to which its provisions provide a "safe harbor" for YouTube's service. They will parse copyright case law and debate such legal doctrines as "contributory infringement" and the defense of "fair use." Before the forest becomes lost in those trees, however, it's important to make three basic points.

First, copyright law plays a crucial role in protecting the rights of artists and others who develop and distribute creative work—but it must do so while making room for technological innovation. Modern video and audio technologies make it possible for every basement to become a recording studio and every street corner a movie backdrop. These creative works need an audience. Sites such as Google's YouTube and Microsoft's Soapbox are obvious and natural means to that end, and copyright law must find a way to let them flourish.

Yes, some people will slip unlicensed content into the mix, uploading a clip from "Mean Girls" or offering as their own pirated footage of Homer Simpson or Jon Stewart. But the law cannot condemn an entire technology merely because on occasion it will be abused. Copyright law must draw a balance. It must improve technologies without banning them; it must set penalties to discourage willful infringement without destroying incentives to pursue even borderline technologies. Copyright courts, in short, must wield scalpels, not axes.

With that as a given, however, courts must also take into account the second point: Providers of a new technology will often be tempted to attract a customer base by allowing copyright infringement. What better way to draw users to your new video website than to offer, at no charge, clips that users already want to see? To counteract this, the law must demand reasonable precautions both at the design and operational stages of a technology.

Exercising care is not a Herculean task. YouTube, for instance, has enormous information about what search terms its users enter and what tags posters submit when they turn in a new video. That information could be combined with public data about characters, names and movie titles to easily identify videos that might need to be reviewed by a copyright lawyer or run through an automated system that compares suspicious clips to known copyrighted work. Perfection is not required. Cost-effective filtering technologies are.

Finally, bad intent on the part of providers must be mercilessly punished. By necessity, copyright rules in new-technology settings are flexible and imprecise. They allow creators of new technologies to experiment with design and implementation. They excuse small, innocent mistakes. But that flexibility cannot be entrusted to people or companies that knowingly exploit loopholes. This is why the last big copyright fight—the music industry's case against Grokster—proved so simple. The question of exactly which precautions the law should demand of Grokster and related services was a difficult one. The question of whether Grokster's ill-motivated founders should be allowed to play any role in establishing those rules, by contrast, turned out to be embarrassingly straightforward.

Admittedly, even guided by these three touchstones, copyright law will struggle mightily when it comes to defining the permissible legal contours of the YouTube service. Recently, for instance, YouTube introduced a feature that allows users to limit the audience for their videos to pre-approved friends. That might be an appealing feature to the extent that it allows Grandma to share her vacation videos with the family without showing them to the whole world. But it poses a challenge for copyright holders who obviously cannot monitor videos they cannot even see.

This reinforces the importance of the three touchstones. Copyright holders cannot be armed with too powerful a legal remedy because even a well-meaning technologist might on occasion innocently misstep. At the same time, those who own and operate a new technology must feel constant pressure to account for the copyright implications of their decisions. And, above all, copyright law can

welcome only those with pure motives. Those who abuse the law's caution have no claim for its mercy.

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