

Rights holders should learn to stop worrying and love their users

Google made headlines in October when it announced a deal to buy this year's web phenomenon, YouTube, for US\$1.65 billion. The so-called GooTube match has provoked no shortage of opinions – from worries that YouTube is selling out to speculation that Google's purchase may include a stack of copyright lawsuits.

Since launching in 2005, YouTube, which allows users to upload and share videos, has attracted a huge audience – over 100 million clips are viewed every day. With its proven – and so far unparalleled – record of turning eyeballs into revenue, Google plans to take advantage of this fanbase by selling targeted advertising. However, the sticking point is the nature of the videos posted on YouTube: while much content is user-generated, there is no shortage of copyright content, much of which is posted without permission. Commentators are sceptical that the conditions that allowed a penniless start-up to sail close to the wind will apply to a fully paid-up member of the Google empire.

As a user-driven success with, until now, little financial backing, YouTube has often been compared to Napster, the original file-sharing network. Like Napster, YouTube is all about the users: it provides a platform for users to meet, interact and share the latest cool thing – in Napster's case MP3s, in YouTube's online video clips. Also, like Napster, YouTube has stirred copyright controversy. However, there the similarities end. YouTube has a clear take-down policy and has already identified users that post infringing material: while it may not be as vigilant as some rights owners would like, YouTube has been doing its best to stay on the right side of the law.

Despite this, predictions abound that rights holders who had not bothered to take action against the site for hosting infringing content will be lining up to file lawsuits now that YouTube has serious money behind it. YouTube has been doing its best to head off trouble. In September, it signed a deal to distribute Warner's library of music videos; on the very day that the Google deal was announced, YouTube unveiled similar agreements with Universal Music Group and Sony BMG Music Entertainment. As further proof that it wants to play nicely with the other kids, YouTube has also taken down nearly 30,000 video files as a result of a complaint from the Japanese Society for Rights of Authors, Composers and Publishers.

No stranger to copyright controversy, Google has set aside a war chest of over US\$200 million to deal with any further suits arising from the deal. However, its willingness to take a chance in lawsuit-infested waters is further proof, to some, of Google's questionable allegiance in the great copyright crusade.

Over the last few years several lawsuits have taken issue with Google's practice of displaying search results that contain an extract of copyright content without permission – or, perhaps more accurately, of making money when rights holders are still struggling to commercialise their content online. In September, a Belgian court found against Google News for posting headlines and extracts of articles published by members of the newspaper group CopiePresse. Interestingly it appears that CopiePresse did not want its articles excluded from Google's searches – there are simple mechanisms available to

stop search-engine robots crawling pages – rather it wanted Google to ask permission first and then negotiate a deal.

Two outstanding lawsuits against Google Book Search, which would make books digitally searchable by scanning them (see *IAM* issue 15, page 4), are based on a similar principle. The publishing industry wants Google to ask permission before scanning books; Google argues that scanning is fair use and that having to obtain prior permission would make the project impossible.

In all these cases there is a clear commercial argument that such a possessive attitude by rights holders benefits no one. These cases also illustrate a fundamental divide in the way that online businesses think about their users.

Ever since the recording industry started filing lawsuits against individuals in 2003, eyebrows have been raised over the wisdom of suing one's own customers. Yet the lawsuits continue as the industry looks for ever more stringent ways to exert control over content. So far these have ranged from over-zealous digital rights management, which can restrict fair uses (eg, private copying), to educational campaigns: the Recording Industry Association of America's much derided 2006 "back to school" inaccurately claimed that that the fair-use exception does not apply to home recordings.

However, user-driven services such as YouTube are demonstrating that this heavy-handed attitude is not the only way to make digital content pay. By letting anyone become part of the process, these services have already secured an enviable base of users. So far, the missing link has been how to generate

revenue from them, but if anyone can do it, Google has to be odds-on favourite.

This is not to portray the search giant as a misty-eyed romantic – it is a hard-headed commercial venture and a stock market success. However, from the start Google has encouraged a dialogue between the company and its users, treating them as allies rather than as a threat.

It is time for rights holders to ask themselves just what they are hoping to achieve. Lawsuits against GooTube may result in some attractive settlements, but they will not help rights holders see a commercial return from their online content. Do the makers of TV shows that appear on YouTube seriously believe that their ratings will fall if choice clips are posted, forwarded, shared and discussed among hundreds of users? Such coverage used to be an advertiser's dream – now apparently tapping an audience of new viewers is financially damaging.

Google is playing a long game and YouTube is part of that strategy. The recording industry may have won *MGM v Grokster*, but it is still a long way from seeing a decent financial return from its online content. By contrast, independent artists and music labels have profited from the digital revolution: making content freely available online has resulted not only in increased fanbases, but also higher sales.

The tide is turning. Rights holders need to loosen the strictures surrounding online content and relax the neurotic insistence on obtaining permission for any and all use. Google's position as a market leader is, at least partly, due to its attitude towards its users. It is time for other internet businesses to follow suit.