

# **Fighting Online Copyright Theft: A DGA View**

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# DGA Interests:

- We want to make movies, television shows, and all forms of audiovisual entertainment.
- Typically, our members are not copyright holders, but we have a contractual interest in strong copyright protections and enforcement.
- We have negotiated “residuals” payments that contribute to member salaries and our DGA pension plan.
- Copyright theft means concrete losses to members.



# Key Impacts of Copyright Theft for DGA Members:

- Economic loss +
- Impact on the market for audiovisual entertainment =
- The need to strengthen copyright enforcement



## Section 512 and Platform Accountability:

- Section 512 was not designed for today's internet and is not operating as intended.
- Bad court decisions have decreased the accountability of online service providers, including User Generated Content (UGC) sites.



# Section 512 and Platform Accountability:

## (c) INFORMATION RESIDING ON SYSTEMS OR NETWORKS AT DIRECTION OF USERS.—

(1) **IN GENERAL.**—A [service provider](#) shall not be liable for [monetary relief](#), or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the [service provider](#), if the [service provider](#)—

### (A)

- (i) does not have **actual knowledge** that the material or an activity using the material on the system or network is infringing;
- (ii) in the absence of such actual knowledge, **is not aware of facts or circumstances from which infringing activity is apparent**; or
- (iii) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

(B) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the [service provider](#) has the right and ability to control such activity; and

(C) upon notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.



## Early Example: *Viacom v. YouTube*, 676 F.3d 19 (2nd Cir. 2012)

**YouTube founder Steve Chen**, in challenging the recommendation of co-founder Chad Hurley that YouTube start to be “diligent about rejecting copyrighted . . . content” by removing an unlicensed CNN clip from its site, wrote:

“but we should just keep that stuff on the site. i really don't see what will happen. what? someone from cnn sees it? he happens to be someone with power? he happens to want to take it down right away. he gets in touch with cnn legal. 2 weeks later, we get a cease & desist letter. we take the video down.”



# Rights & Responsibilities Are Out of Balance:

Today, even “[k]nowledge of the prevalence of infringing activity, and welcoming it, does not itself forfeit the safe harbor” for OSPs. *Viacom v. YouTube*, 940 F. Supp. 2d 110, 118 (S.D.N.Y. 2013).

As the USCO Report noted:

“Such a narrow interpretation of red flag knowledge minimizes an OSP’s duty to act upon information of infringement and, in doing so, protects activities that Congress did not intend to protect.”



## Solutions Include:

- Greater accountability by UGC platforms—
  - Clarify knowledge requirements
  - Stay Down Requirements
  - Repeat Infringer Policies
  - Close the streaming loophole
- Do not export the flaws of the current Section 512 in U.S. trade agreements





# Thank You

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