Bloomberg Businessweek
Available on the iPad

GIGAOM May 21, 2009, 8:35PM EST

Copyright Meets a New Foe: The Real-Time Web

The Digital Millennium Copyright Act may seem inadequate to address the issues that arise from the furious rate Internet users are sharing content

By Liz Gannes

Copyright law wasn't written with today's content consumption in mind. The way online video copyright functions is based on a reading of the 10-year-old Digital Millennium Copyright Act that equates video hosting sites with Internet service providers. That law provides a "safe harbor" for hosts who respond to copyright claims by taking down infringing content "expeditiously."

There doesn't seem to be widespread motivation to modernize that process. Viacom is suing YouTube for $1 billion, claiming YouTube should take more responsibility than the current reading of DMCA requires. But that case is plodding along in the courts. Meanwhile, Internet users are sharing and consuming content at a furious rate. And what's being called the "real-time Web" is even less equipped to deal with copyright infringement.

VIRALITY ON STEROIDS

Today, when someone twitters a link to a video or posts an embedded clip on Facebook, their network of friends will see it almost instantly. Ustream CEO John Ham says he's seen live video feeds go from zero to a million viewers faster than ever before after being shared on Facebook and Twitter. Those sites are quickly growing, accounting for major portions of traffic referrals all over the Web. And as they, and others like FriendFeed, move to a live-updating stream of user data, people will only find content more quickly.

If you're a copyright holder and you want to keep up with your pirated content flitting about the Web—well, good luck. The way the DMCA is set up means you're always chasing, and the real-time Web is racing faster than ever before. Analytics services are only just emerging that will tell you where your views are coming from on a semi-real-time basis.

That's especially true for live video streaming sites such as Ustream and Justin.tv. Justin.tv, in particular, has come under fire from sports leagues for hosting camcorded streams of live game broadcasts. The company says it takes down streams whenever it is asked to. But the reality is, often the moment has passed.

On the user side, the real-time Web means we can't possibly keep up with everything—some of us do have lives, after all—so the only time to reach us is the present. Twitmatic, a service by video recommendation company Ffwd, recently added real-time Twitter video search. That means you can search for what videos are being shared on Twitter about a particular topic at any time. Ffwd CEO Patrick Koppula told us this week that he has never once come upon a dead video on the service, referring to videos that are no longer available because a copyright holder has made the host take them down. If a video does get taken down, it's probably no longer relevant.

REAL-TIME VIDEO BLOODHOUNDS

So what can we be done? Today's leaders of the world understandably have a few things higher on their lists than copyright reform. In the private sector, copyright monitoring companies such as Vobile and Attributor record live TV broadcasts so they can track copies in real time. They're the reason why you probably didn't

see any pirated clips of the Beijing Olympics on YouTube. They're also working to perfect and sell services so rights holders can monetize unauthorized clips that go viral, turning those views into marketing and revenue. (Read our extended feature on this topic.) Adoption of such programs is moving a lot faster than the law. But it's not easy for people who start aligned as enemies to become friends. If sports leagues were to embrace Justin.tv as their viral marketing engine…well, that would be something.

Another live video company, Livestream (which until this week was called Mogulus), is trying to stand out from Justin.tv and Ustream by monitoring copyright more closely than DMCA requires. Livestream CEO Max Haot tells us his company has adopted aggressive copyright policies such as limiting new accounts to 50 concurrent viewers until they have been verified.

But one problem with tightening up on copyrighted content is the flip side of the DMCA. If you actively patrol new uploads, you're no longer seen as a blind ISP and could be held liable for copyright infringement. Letting a copyrighted upload through the cracks now becomes your responsibility, not the uploader's.

Last year, when Senator John McCain (R-Ariz.) was running for President, he ran full-speed ahead into these conflicts. Fox News and CBS got upset when he used small portions of their broadcasts in online campaign ads because they thought it could be seen as implied endorsement. They used the DMCA to block the ads on YouTube, and for a time it looked like McCain's anger at the 10- to 14-day DMCA appeal process might ignite a change in the law. Closely fought political battles, after all, move at the speed of real time as well. But alas, the world moved on, and the issue got dropped.

Provided by GigaOm—