



For Immediate Release

May 7, 2010

**WLF URGES COURT TO CLARIFY SCOPE OF
COPYRIGHT SAFE HARBOR FOR
INFRINGEMENT CASES**
(Viacom Int'l, Inc. v. YouTube, Inc.)

The Washington Legal Foundation (WLF) recently filed a brief in the U.S. District Court for the Southern District of New York urging it to reject an interpretation of a federal law that would effectively grant blanket immunity to website operators who tolerate and profit from copyright infringement. The important copyright case, *Viacom International, Inc. v. YouTube, Inc.*, centers on whether YouTube qualifies for a safe harbor created by the Digital Millennium Copyright Act of 1998 (DMCA). If YouTube's enterprise falls within the DMCA's safe harbor protection, YouTube would be immune from monetary damages resulting from its facilitation of copyright infringement. In its brief, WLF argued that, contrary to the position advanced by YouTube, Congress intended the DMCA to establish a regime of shared responsibility on the part of both copyright owners *and* Internet service providers to police infringement and rigorously enforce intellectual property rights.

“This is an important copyright case that is sure to have nationwide implications for copyright holders, recording artists, and content producers,” said WLF Senior Litigator Cory Andrews. “Congress enacted the DMCA to protect the intellectual property rights of copyright owners and to limit the liability of certain innocent service providers, not to eliminate altogether a service provider's liability for tolerating copyright infringement.”

WLF's brief was drafted with the *pro bono* assistance of Russell Frackman and Paul Montclare with the law firm Mitchell Silberberg & Knupp LLP.

Copyright laws protect owners of the copyrighted work from having their music or films downloaded without paying their owner a royalty fee. With the exploding growth of the Internet and related technological advances, methods have been developed to make copyright piracy easier. YouTube encourages and facilitates the uploading of videos from Internet users to the YouTube website, including copyrighted videos owned by Viacom and others. YouTube then displays these videos or offers them to the public for free download. YouTube profits from this conduct by selling advertisements on the web pages that display the copyrighted videos. The more popular a video, the more users who visit the YouTube website, and the more money YouTube collects in advertising revenues.

Specifically, WLF's brief argued that the DMCA was never intended to encourage service providers to exploit the existence of the statute's safe harbors by designing businesses based on an ability to avoid liability while improperly profiting from copyrighted content. Because YouTube's operations are very different from the kinds of passive, innocent service provider conduct that was before Congress when it enacted the DMCA, WLF urged the court to carefully consider the intent and purpose of Congress in passing the statute. Although Congress could not fully anticipate the technological changes that would later confront the courts, the legislative history of the DMCA reveals that Congress was concerned by the dangers posed by large-scale infringement of copyrighted works over the Internet.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending free enterprise, individual rights, and a limited and accountable government. Among other things, WLF works to protect the rights of property owners, including owners of intellectual property.

* * *

For further information, contact WLF Senior Litigator Cory Andrews, (202) 588-0302.
A copy of WLF's brief is posted on its web site, www.wlf.org.