THE RESPONSIBILITY OF INTERMEDIARIES

Dr Nicolas Suzor (n.suzor@qut.edu.au)
QUT Digital Media Research Centre
http://qut.edu.au/research/dmrc/
http://nic.suzor.net/
Over the last decade, strategy has shifted. There is now a sustained global effort to require general purpose intermediaries to exercise control over their networks. This is a big shift for common law countries: it decouples responsibility from liability.
GRADUATED RESPONSE

Obligations on general purpose internet service providers to enforce warnings and penalties for copyright infringement
GRADUATED RESPONSE

Achieved through litigation in Ireland
By statute in France, New Zealand, South Korea
By industry agreement in United States and Australia
EFFECTIVENESS OF GRADUATED RESPONSE IS DISPUTED
Copyright Cases Filed in U.S. District Courts

A MOVE BACK TOWARDS LITIGATION

Year | Case Filings
--- | ---
2001 | 2049
2002 | 2439
2003 | 2111
2004 | 2653
2005 | 4595
2006 | 5488
2007 | 5074
2008 | 3346
2009 | 2780
2010 | 1984
Rightsholders increasingly seek to require Internet Service Providers to disclose contact details of subscribers alleged to have infringed copyright.

For major rightsholders, this is primarily educative. For some rightsholders, this is designed to raise revenue.
A global effort to require ISPs to block access to websites that facilitate infringement.

Derived primarily from UK experience.

(Effectiveness is also highly disputed.)
Price discrimination and market segmentation is becoming increasingly difficult.

The most recent set of complaints seek to prohibit the promotion of VPNs and DNS-forwarders to enable parallel importation

Several NZ ISPs are currently being threatened. Meanwhile, the Australian Government and others have recommended that consumers make greater use of circumvention technologies.
All this fits into a broader trend:

Right to be forgotten
‘Follow the money’
Cyberbullying and quicker responses to hate speech
Increased control over algorithms
Classification and blocking
“In the nearly twenty years since Congress enacted the DMCA, courts have stepped in to fill perceived gaps in the statutory framework, often interpreting provisions in ways that some believe run counter to the very balance that the DMCA sought to achieve.

Accordingly, the Office believes a formal and comprehensive study—to consider what is working and what is not, along with potential legislative improvements—is advisable to assess the Section 512 system and ensure that it is properly calibrated for the internet as we know it today.

Maria Pallante, US Registrar of Copyrights
http://judiciary.house.gov/index.cfm/hearings?ID=FE596B62-4638-400C-973E-CDC7761A074A
CIVIL SOCIETY GROUPS ARE FIGHTING OVER INTERMEDIARY LIABILITY

Intermediaries should be shielded by law from liability for third-party content
GREATER CONTROL OVER LINKING

Censoring links breaks the Internet.

Speak out at SaveTheLink.org
End violence: Women's rights and safety online

From impunity to justice: Improving corporate policies to end technology-related violence against women

AT THE SAME TIME, PRESSURE ON INTERMEDIARIES TO REGULATE IS INCREASING
Content ID

YouTube AudioID & YouTube VideoID

Block, Monetize, or Track Viewing Metrics — It's Automated, and It's Free

Overview

YouTube has created an advanced set of copyright policies and content management tools to give rights holders control of their content. YouTube provides content management solutions for rights holders of all sizes across the world, and provides tools to cater to the specific needs of various rights owners.

Commercial partnerships

Use of YouTube's copyright tools is free, and does not require any commercial partnership with YouTube. Content partners who would like to monetize their content can apply to join our YouTube Partner Program.

It's up to you.

How does Content ID work?

Rights holders deliver YouTube reference files (audio-only or video) of content they own, metadata describing that content, and:

- Identify user uploaded videos comprised entirely or partially of their content, and
- Choose, in advance, what they want to happen when those videos are found. Make money from them. Get stats on them. Or block them from YouTube altogether.

It's up to you.

Frequently asked questions

Creative Commons

Further resources

TECHNOLOGICAL SOLUTIONS
AND SOCIO-TECHNICAL SOLUTIONS
This is a moment of very significant change.

Rightsholder lobbies are aligned (somewhat) with increasing demands from civil society groups for greater responsibility (e.g. WAM!, APC, RTBF)

At the same time, telecommunications lobbies (somewhat) are aligned with strengthening demands civil society groups to resist public regulation (e.g. APC’s Internet Rights Charter, Manila Principles, Web We Want, Ranking Digital Rights, etc etc)

Dr Nicolas Suzor (n.suzor@qut.edu.au)
QUT Digital Media Research Centre: http://qut.edu.au/research/dmrc/