

Malaysia needs a 'safe harbor' law
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User-generated content or "UGC" is one of the hot Internet buzzwords in recent years. Many of the most popular services on the Internet today - blogs, social media, video sharing, photo sharing - consist of content that's generated by ordinary folks.

It's UGC that's caused content on the Internet to blossom but there are two core problems with it.

The first is that sometimes copyrighted material gets uploaded.

The second - which is more of a concern here in Malaysia than in places like the US - is that sometimes the content can be deemed to be seditious.

Two recent court decisions in the US has made the murky issue of copyright protection, in the age of the Internet, less murky.

Last month, YouTube won a court case against Viacom which had instituted a billion-dollar lawsuit against it for copyright violation. US District Judge Louis Stanton ruled that YouTube had complied with the safe harbor provisions of the US Digital Millennium Copyright Act.

Stanton agreed that a jury could find that YouTube's founders "not only were generally aware of, but welcomed, copyright-infringing material being placed on their website." However, he ruled that a mere "general awareness" of infringing content doesn't constitute a violation of the law.

Lime Wire liable

The other major ruling pertaining to online copyright violation happened in May when US District Judge Kimba Wood ruled in favor of the Recording Industry Association of America and found Lime Wire, a popular file-sharing service, liable for copyright infringement.

On the surface it would seem like the two judges have very differing views on the same issue. Superficially, the cases certainly seem similar but there is a crucial difference. While YouTube genuinely has many non-infringement uses for its service, Lime Wire is primarily used to share copyrighted songs.

No doubt, if you go to YouTube, you would be able to find lots of copyrighted material. But alongside such material is a whole bunch of home-made videos. In contrast, the stuff on Lime Wire is overwhelmingly copyrighted material.

Stanton noted that although YouTube founders welcomed copyrighted material, every time YouTube was alerted of pirated material, it took down the video. Wood, meanwhile, found that Lime Wire managers not only welcomed copyrighted material but actually encouraged people to use their site for sharing such material.

Stanton rightly noted that YouTube has done a host of things that helps to curb piracy. For example, its clips are limited to 10 minutes, making it impossible to load whole movies. Flagged material was quickly taken down. And YouTube has even implemented a technology to detect copyrighted material. Lime Wire has done nothing of the kind.

One of the harsh realities of the Internet age is that it's hard to keep copyrighted material off the Web. This doesn't mean that copyright holders do not have any recourse. Even in the YouTube case, which went against the copyright holder, the judge is not saying that Viacom cannot do anything to protect its content. What he is saying is that the burden is on Viacom to notify YouTube of copyright violations.

The notion that a Web company is not liable for copyrighted content posted by users, but is required to remove such material once it's flagged by the copyright owner, is a good standard.

Some of the Web's biggest brands - Facebook, Blogger and Flickr amongst others - would not have survived had they been required at the start-up stage to constantly police their site for copyrighted material.

Relevant victory

This victory is particular relevant to Web companies in the US dealing with UGC. It's less relevant here in Malaysia as very few local brands deal with UGC. We don't really have local versions of YouTube or Blogger.com or Facebook, for example.

What's more relevant in the Malaysian context would be a 'safe harbor' law relating to seditious content. In the US, free speech is considered a fundamental right and almost nothing is considered seditious there. Here, it's a different story.

We've seen bloggers get sued and even investigated by the police for content that readers posted in the commentary section of their blogs. If we were to apply a safe harbor law to such cases, as long as the blogger does not encourage seditious comments and agrees to take down content that's been flagged as seditious, he or she would not be liable for such comments.

I think most right-minded people would agree that's the logical approach, and I've even been told by a very senior person at the MCMC that in practice, this is the policy. But we don't yet have such a law in the books. Isn't it time we have it in black and white?

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