Legal Implications of User Generated Content: YouTube, MySpace, Facebook

by:

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I. Introduction to User Generated Content (“UGC”)

Traditionally, media companies almost exclusively supported media-generated “packaged media.” However, because of the exponential growth in the public’s desire and ability to communicate through the internet and other modern media, publication of User Generated Content (“UGC”) (also known as Consumer Generated Media) has exploded. Many business and government entities, including the vast majority of traditional media companies, have developed frameworks to facilitate the distribution of content by end-users.

The most prominent web sites devoted to UGC are YouTube, MySpace, and Facebook. The most popular of these, MySpace, began in 2003 as a social-networking site where acquaintances could communicate through the internet. The site merely hosts UGC on its servers. Less than two years after it began, MySpace was acquired by NewsCorp for about $580 million. Launched in 2004 as an internet site primarily available to college students, Facebook, like MySpace, also became a popular forum for exchanging information, photos, video and other UGC. Facebook reportedly adds even more new users per day than MySpace. The youngest of these web sites is YouTube, which was purchased by Google for $1.65 billion in stock in October of 2006, a little more than a year after it started. By one estimate, over 65,000 videos are uploaded to YouTube every day and 100 million videos are viewed daily.

Although it presents great opportunities for both users and web site operators, UGC also inevitably raises a host of potentially-thorny legal questions concerning intellectual property rights, defamation and privacy rights. This brief paper focuses primarily on some of the IP issues relating to UGC.

II. Copyright Infringement

Copyright infringement is undoubtedly the biggest IP legal issue facing UGC providers. Three long-standing doctrines of copyright infringement are direct infringement, contributory infringement, and vicarious infringement.
A. Direct Infringement

To prevail under a theory of direct copyright infringement, a plaintiff must show that it owns the copyright in the work and that the defendant violated one or more of the plaintiff’s exclusive rights under the Copyright Act, namely:

1. reproduction of the work;
2. preparation of derivative works based on the work;
3. distribution of copies of the work;
4. public performance of literary, musical, dramatic, and choreographic works, pantomimes and motion pictures and other audio visual works;
5. public display of literary, musical, dramatic, and choreographic works, pantomimes and motion pictures and other audio visual works;

B. Contributory Infringement

Media companies have long battled over the extent of contributory infringement liability, going back to the battle over the use of VCRs. In Sony Corp. v. Universal City Studios, Inc., commonly known as the Betamax case, the Supreme Court held that the sale of a product with substantial non-infringing uses does not establish contributory infringement even where that product can also be used for infringing uses. However, in MGM Studios Inc. v. Grokster, Ltd., the Supreme Court refined Betamax, holding that contributory infringement may be established where a party distributes a product capable of both infringing and non-infringing uses with the clearly shown objective of promoting copyright infringement.

Thus, the elements of contributory infringement are:

1. the party has knowledge of the infringing activity, and

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2. the party induces or materially contributes to the infringing conduct of a direct infringer.  

C. Vicarious Infringement

Vicarious infringement is one of the most hotly debated UGC legal issues. A party may be held vicariously liable for another’s direct infringement if that party:

1. has the right and ability to supervise the direct infringer, and
2. has a direct financial interest in the infringing activity.

D. RecentlyFiled Copyright Cases

1. Viacom v. YouTube

On March 13, 2007, after licensing negotiations broke down, Viacom filed a $1 billion copyright infringement suit against YouTube and Google. Viacom alleges that, although “YouTube’s website purports to be a forum for users to share their own original ‘user generated’ video content . . . ,” the site promotes “rampant infringement” of others’ copyrights. Further, Viacom’s Complaint alleges, the widespread availability of such infringing content “is the cornerstone of [YouTube’s] business plan.” Viacom advances claims for direct, contributory, and vicarious copyright infringement, as well as “inducement of copyright infringement.” Currently, the case is in the discovery phase. It is noteworthy that after the lawsuit commenced YouTube implemented “audio fingerprinting” technology that allows it to identify audio portions of videos that may infringe another’s copyright. YouTube is reportedly close to implementing similar technology for video content.

2. UMG Recordings v. MySpace

Several months before Viacom initiated its lawsuit, Universal Music Group Recordings (“UMG”) sued MySpace for infringement, advancing similar claims and requesting damages close to $1 billion. UMG alleges that MySpace was guilty of copyright infringement by being a “willing partner” in the unauthorized uploading of video and music content owned by UMG. As a result of this conduct, UMG contends, MySpace is liable for direct, contributory, vicarious, and inducement copyright infringement as well as

10 Id. at 930. Some have commented that, in Grokster, the Supreme Court set forth a new theory of secondary infringement, “inducement of copyright infringement,” the elements of which are (1) an intent to induce infringement, even though no such inducement actually occurred, and (2) direct infringement. See id. at 936-37; 3 Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 12.04[A][4][b] (2006).

11 Id. at 930.

12 Viacom Intl, Inc. v. YouTube, Inc., et al., No. 06-02103 (S.D.N.Y.).

violations of the California Business and Professions code. Discovery is also ongoing in that suit.

E. The Digital Millennium Copyright Act

The Digital Millennium Copyright Act (“DMCA”) was enacted in 1998 to “protect the intellectual property rights of creative works available online in ways that promote the use of the Internet, both by content providers and users.”14 Title II of the DMCA, the Online Copyright Infringement Liability Limitation Act, created a new section, 17 U.S.C. § 512, entitled “Limitation on Liability Relating to Material Online.” This was a compromise between content owners (e.g., Sony, MGM, and Universal) and website operators who often were the unlicensed distributors of that content. This compromise gave content owners a mechanism to protect their copyrighted material through detailed “take down” provisions. “At the same time, it provides greater certainty to service providers concerning their legal exposure for infringements that may occur in the course of their activities.”15

The DMCA Safe Harbors

Section 512 creates four new limitations on liability for copyright infringement by an Internet/online service provider based on the following four categories of conduct by the ISP:

1. Transitory digital network communications – § 512(a), which applies to transmission and routing activities.

2. System Caching – § 512(b), which applies to temporary intermediate storage during transmission.

3. Information residing on systems at the direction of users – § 512(c), which applies to user-directed storage of material on a system. This is the safe harbor sought by UGC providers.

4. Information location tools – § 512(d), which applies to directories, indexes, references, pointers, and hypertext links including search engines.

“These safe harbors limit liability but ‘do not affect the question of ultimate liability under the various doctrines of direct, vicarious, and contributory liability,’ . . . and

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‘nothing in the language of § 512 indicates that the limitation on liability described therein is exclusive.’”\textsuperscript{16}

To qualify for the safe harbors in the DMCA, one must first qualify as a “service provider.” The definition of “service provider” under § 512(k)(1)(B) applies to the § 512(b)-(d) safe harbors.\textsuperscript{17} Under § 512(k)(1)(B), a “service provider” is “a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in [Section 512(k)(1)(A)].”\textsuperscript{18} UGC websites generally fall within this definition.

Under § 512(i), a “service provider” must meet two overall conditions:

1. Termination Policy

   The service provider must adopt and reasonably implement a termination policy for the accounts of subscribers who are repeat copyright infringers,\textsuperscript{19} and it must inform its subscribers and account holders of said policy; and

2. Accommodation of Standard Technical Measures

   a. The service provider must accommodate and not interfere with “standard technical measures,” which means “technical measures that are used by copyright owners to identify or protect copyrighted works and

      i. have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process;

      ii. are available to any person on reasonable and nondiscriminatory terms; and

      iii. do not impose substantial costs on service providers or substantial burdens on their systems or networks.”\textsuperscript{20}

The Ninth Circuit, in \textit{Perfect 10 II}, suggests that whether a service provider has interfered with “standard technical measures” is a question of fact.\textsuperscript{21} In that case,

\textsuperscript{16} \textit{Perfect 10, Inc. v. CCBill, LLC}, 488 F.3d 1102, 1108 (9th Cir. 2007) (“\textit{Perfect 10 II}”) (citations omitted).
\textsuperscript{17} 17 U.S.C. § 512(k)(1)(B).
\textsuperscript{18} Pursuant to Section 512(k)(1)(A), the term “service provider” as used in subsection Section 512(a) “means an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user’s choosing, without modification to the content of the material as sent or received.”
\textsuperscript{19} The Ninth Circuit has held that “a service provider ‘implements’ a policy if it has a working notification system, a procedure for dealing with DMCA-compliant notifications, and if it does not actively prevent copyright owners from collecting information needed to issue such notifications.” \textit{Perfect 10 II}, 488 F.3d at 1109 (“[A]n implementation is reasonable if, under ‘appropriate circumstances,’ the service provider terminates users who repeatedly or blatantly infringe copyright.”).
\textsuperscript{20} 17 U.S.C. § 512(j)(2).
Perfect 10, Inc. argued that the defendant “did not qualify for any safe harbor because it interfered with ‘standard technical measures’ by blocking Perfect 10’s access to [defendant] affiliated websites in order to prevent Perfect 10 from discovering whether those websites infringed Perfect 10 copyrights.”

The Ninth Circuit remanded the case to the district court because it was unable to determine on the record “whether accessing websites is a standard technical measure, which was ‘developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process.’” As one commentator writes, “these ‘standard technical measures’ are notoriously difficult to define in the wake of changing norms of technology and surveillance. The more consumer surveillance technologies alter the fabric of cyberspace, and expand to unmask and record the activities and identities of Internet subscribers, the more difficult it becomes to define and construct standard technical measures . . .”

In Viacom v. YouTube, Viacom asserts that YouTube failed to accommodate standard technical measures by implementing features that prevent copyright owners from finding infringing videos on the YouTube website. Viacom points out that YouTube allows its users to make hidden videos available to others through features like the “embed,” “share,” and “friends” functions.

The UGC Service Provider Safe Harbor – § 512(c)

UGC service providers typically invoke the protections of § 512(c). This subsection affords safe harbor from liability for copyright infringement “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.” To qualify for protection under § 512(c), a UGC provider must, in addition to satisfying the requirements discussed above, meet the eligibility requirements specified in § 512(c). The service provider:

1. must not have “actual knowledge” of infringing activity;
2. in the absence of “actual knowledge”, is not aware of facts or circumstances from which infringing activity is apparent;
3. upon obtaining actual knowledge or awareness, acts expeditiously to remove or disable access to the infringing material;
4. does not receive a “financial benefit directly attributable to the infringing activity”, where the service provider has the “right and ability to control” such activity;

21 Perfect 10 II, 488 F.3d at 1115 (“We are unable to determine on this record whether accessing websites is a standard technical measure, which was ‘developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process’”).

22 Id.

23 Id. (citation omitted).

5. upon proper notification of claimed infringement, responds expeditiously to remove or disable access to infringing materials;

6. has designated an agent to receive DMCA notices and has provided requisite contact information on its website and to the Copyright Office.

**Actual and Apparent Knowledge.** The DMCA generally does not require affirmative monitoring.\(^{25}\) Although affirmative monitoring may be required if such monitoring became a “standard technical measure,”\(^{26}\) such measures must be “developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process,” and there is little incentive for the service providers to develop such a broad consensus. Thus, it seems unlikely that the need for any affirmative monitoring will be necessary by UGC service providers.\(^{27}\) Once the UGC provider becomes aware of a “red flag,”\(^{28}\) it may lose liability protection if it fails to take appropriate action. To have apparent knowledge a service provider must have “turned a blind eye” to red flags of obvious infringement.\(^{29}\)

**Direct financial benefit.** The House Report\(^{30}\) on the DMCA states that the financial benefit standard is intended to codify and clarify the direct financial benefit element of vicarious liability as it has been interpreted in cases such as *Marohie-FL, Inc. v. National Association of Fire Equipment Distributors.*\(^{31}\) So, for example, the report provides that receiving a one-time set-up fee and flat periodic payments for service from a person engaging in infringing activities would not constitute receiving a “financial benefit directly attributable to the infringing activity.” Very importantly, however, the report states that a direct financial benefit would exist if one received

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\(^{25}\) “As stated in subsection (c)(1), a service provider need not monitor its service or affirmatively seek facts indicating infringing activity (except to the extent consistent with a standard technical measure complying with new subsection (h), in order to claim this limitation on liability (or, indeed any other limitation provided by the legislation).” H. Rep. No. 105-551 Pt. II, at 53; see H. Rep. 105-551 Pt. I, at 26 (“Once one becomes aware of such information, however, one may have an obligation to check further”).

\(^{26}\) Id.


\(^{28}\) The legislative history provides some guidance as to what constitutes a “red flag”: The “red flag” test has both a subjective and an objective element. In determining whether the service provider was aware of a “red flag,” the subjective awareness of the service provider of the facts or circumstances in question must be determined. However, in deciding whether those facts or circumstances constitute a “red flag” – in other words, whether infringing activity would have been apparent to a reasonable person operating under the same or similar circumstances – an objective standard should be used.


\(^{29}\) See *Corbis Corp. v. Amazon.com, Inc.*, 351 F. Supp. 2d 1090, 1108 (W.D. Wa. 2004); *Perfect 10 II*, 488 F.3d at 1114-15 (“[I]n order for a website to qualify as a ‘red flag’ of infringement, it would need to be apparent that the website instructed or enabled users to infringe another’s copyright”; the Ninth Circuit remanded on the issues of whether third-party notices made defendant aware that it provided services to repeat infringers, and if so, whether they responded appropriately).

\(^{30}\) H.R. Rep. 105-551(I).

\(^{31}\) 983 F.Supp. 1167, 1179 (N.D. Ill. 1997) (no direct financial benefit where defendant only received a one-time set up fee and recurring flat rate).
such fees where the value of the service lies in providing access to infringing material. So as one court put it, “the central question of the ‘direct financial benefit’ inquiry . . . is whether the infringing activity constitutes a draw for subscribers, not just an added benefit.” Viacom argues in its complaint that this is exactly what YouTube does: that YouTube facilitates access to a large amount of infringing material for free. Viacom argues that, in turn, this increases the site traffic for YouTube, which sells advertisements based on this increase in site traffic.

Right to Control. This term was intended to codify the second element of common-law vicarious liability. Courts have liberalized this requirement somewhat and required more than just the “mere ability to block access.”

Expeditious Removal. Current case law does not provide clear guidance as to what will satisfy this element. It is important to note, however, that Congress intended for the determination of an “expeditious” removal or disabling of access to infringing material on a case-by-case basis: “Because the factual circumstances and technical parameters may vary from case to case, it is not possible to identify a uniform time limit for expeditious action.”

Section 512(c) Notifications

As discussed above, one of the specific § 512(c) eligibility requirements is that the service provider must respond expeditiously to remove or disable access to infringing materials upon proper notification. If the notification is not proper, the service provider will not lose safe harbor protection for failing to respond to the improper notice.

Under the DMCA, in order to be proper a notification must:

1. be a written communication;

2. be provided to the designated agent of the service provider; and

3. include substantially the following:

32 See Ellison v. Robertson, 357 F.3d 1072, 1078-79 (9th Cir. 2004) (“Financial benefit exists where the availability of infringing material ‘acts as a ‘draw’ for customers’; and the draw need not be ‘substantial.’”) (citation omitted); Perfect 10 II, 488 F.3d at 1117 (The allegation that the defendant “hosts’ websites for a fee” is “insufficient to show that the infringing activity was ‘a draw’ as required by Ellison.”).

33 Perfect 10 II, 488 F.3d at 1117 (“[W]e hold that ‘direct financial benefit’ should be interpreted consistent with the similarly-worded common law standard for vicarious copyright liability.”; Ellison v. Robertson, 357 F.3d at 1078 (a vicariously liable copyright infringer “derive[s] a direct financial benefit from the infringement and ha[s] the right and ability to supervise the infringing activity”).

34 See, e.g., Hendrickson v. eBay, 165 F.Supp. 2d 1082, 1093 (C.D. Cal 2001) (ability to remove infringing material did not satisfy right and ability to control standard); Corbis Corp. v. Amazon.com, Inc., 351 F.Supp. 2d 1090, 1110 (W.D. Wa. 2004) (“Merely because Amazon could identify the zShops defendants and terminate their accounts does not mean they exercised the type of right and ability to control that would disqualify them from § 512(c) safe harbor”);


36 Perfect 10 II, 488 F.3d at 1113 (“Since Perfect 10 did not provide effective notice, knowledge of infringement may not be imputed to CCBill or CWIE based on Perfect 10’s communications.”).
a. physical or electronic signature of person authorized to act on behalf of the copyright owner;

b. identification of the copyrighted work claimed to have been infringed or, if multiple copyrighted works are on a single online site, a representative list of such works;

c. identification of the infringing material that is to be removed or disabled and information reasonably sufficient to permit the service provider to locate the material;

d. information sufficient for the service provider to locate the material;

e. information sufficient for the service provider to contact the complaining party;

f. a statement that the complaining party has a good faith belief that use of the material is not authorized by the copyright owner, its agent, or the law; and

g. a statement under penalty of perjury that notification is accurate and complaining party is authorized to act on behalf of the copyright owner.

In Perfect 10 II, the Ninth Circuit held that the statute “signals that substantial compliance means substantial compliance with all of § 512(c)(3)’s clauses, not just some of them.”\(^\text{37}\) Once proper notification is given, the service provider must move expeditiously to remove the infringing material.\(^\text{38}\)

**Misrepresentation Under Notice Process**

Section 512(f) makes liable any person who, under § 512, knowingly materially misrepresents that material or activity is infringing. This subsection also imposes liability for persons who knowingly materially misrepresent, through use of the counter-notification process, that content was removed or disabled by mistake or misidentification. Such persons are liable for any resulting damages, including costs and attorneys’ fees incurred by the alleged infringer, copyright owner, or service provider.

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\(^{37}\) Perfect 10 II, 488 F.3d at 1112 (“Compliance is not ‘substantial’ if the notice provided complies with only some of the requirements of § 512(c)(3)(A).”); see H. Rep. 105-551 Pt. II, at 56 (A communication substantially complies even if it contains technical errors such as misspellings or outdated information.).

\(^{38}\) Section 512(g) protects service providers from liability for disabling access to or removing material or activity in good faith based upon a claim that it is infringing or based upon facts or circumstances from which infringing activity is apparent, regardless of whether the material is ultimately determined to be infringing. But again, to be entitled to this protection, the service provider must comply with the notification procedures set forth in section 512(g). These are similar to the notification requirements of section 512(c).
In July, a YouTube user sued Universal Music Publishing Group (“Universal”) for misrepresentation under this section.\(^{39}\) The plaintiff, Stephanie Lenz, is a professional editor from Gallitzin, Pennsylvania. Earlier this year, Lenz posted a video from YouTube that showed her child dancing to a slightly audible Prince song playing in the background. Universal sent YouTube a takedown notice and the video was removed. Lenz then sent YouTube a counter-notice and the video was ultimately reposted to the website. Lenz sued Universal for misrepresentation under § 512(f). Ms. Lenz claims that use of the music was obviously “fair use” and therefore knowingly misrepresented that the posted content was infringing material. This case may give some guidance as to the meaning of “knowingly misrepresents.”\(^{39}\)

**F. Ownership Issues**

**Derivative Works**

A derivative work is a work that is based on or derived from one or more pre-existing works. Copyright protection covers derivative works if those works include “an original work of authorship.” Some examples include: translations, musical arrangements, and/or dramatizations. This copyright protection is limited, however. The protection only covers the aspects of the work that were changed.

To create a derivative work, the derivative creator must have permission from the original copyright owner. Therefore, UGC providers should incorporate this permission into their terms and conditions.

**Joint Ownership**

Oftentimes, the UGC material is not the sole product of the person posting the content. A “joint work” is created when it is prepared by two or more authors with the knowledge and intention at the time of creation that the contributions be merged into an “inseparable and independent parts of a unitary whole.”\(^{41}\)

Joint works create their own unique rights. These include:

1. The joint authors are treated as tenants in common.
2. Each author has an independent right to use or nonexclusively license use of the work.
3. The joint author can transfer his ownership to a third party but cannot transfer rights of any other joint owner.
4. Must account to other joint authors for profits.

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\(^{40}\) For another case alleging misrepresentation under section 512(f), see *Kopp v. Vivendi Universal Games*, No. 06-01767 (C.D. Cal. complaint filed March 23, 2006).

5. No joint author may make or authorize use of the work that would lead to destruction of the work.

Joint Ownership can be created after creation of the work. This can be accomplished through any of the following:

1. A transfer via assignment or license.
2. Inheritance.
3. Becoming subject to community property law.

UGC service providers should consider adding to their terms and conditions (or other license procedures) a representation from the person uploading the UGC that he or she is the sole owner of all of the IP rights in such content.

Below is one example, from MySpace’s terms and conditions, that addresses joint ownership issues:

You represent and warrant that: (i) you own the Content posted by you on or through the MySpace Services or otherwise have the right to grant the license set forth in this section, and (ii) the posting of your Content on or through the MySpace Services does not violate the privacy rights, publicity rights, copyrights, contract rights or any other rights of any person. You agree to pay for all royalties, fees, and any other monies owing any person by reason of any Content posted by you to or through the MySpace Services.

Transfer of a Copyrighted Work

For a transfer to be effective, the transfer must be in writing and signed by all of the owners of the copyright interest transferred. Also, to permit further transfer, express language implying the intent to permit assignment or transfer must be present, i.e. “this agreement shall be binding on heirs, successors, and assigns of the parties.” If any contrary language exists, any attempted transfer or assignment may be invalid. Accordingly, if a UGC service provider desires to obtain a valid transfer of UGC, the provider must take care to comply with the law applicable to the transfer of copyrights and include language allowing further transfer.

Nonexclusive Licenses

A written nonexclusive license signed by the owner of the rights prevails over a conflicting exclusive transfer if taken in good faith before the transfer. Thus, an exclusive transferee takes the transfer subject to any nonexclusive licenses. If a UGC service provider desires to obtain an exclusive license and complete control over the material, it should ensure that the copyright owner(s) have not given any nonexclusive licenses.
III. Defamation and Other Speaker Related Actions

Although most prominent, and possibly most costly, copyright issues are not the only legal issues relating to UGC. One need only peruse the latest headlines to hear about the many cases being filed against UGC service providers.

UGC websites allow users to essentially post whatever content they choose. Sometimes this content can be defamatory. The posting of allegedly defamatory information has prompted several lawsuits against UGC website providers. For example in Carafano v. Metrosplash, the plaintiff sued a UGC website operator for allegedly false content contained in a dating profile that was posted by an imposter.\(^4\) Ultimately, the case was dismissed based on immunity provided by the Communications Decency Act.

Communications Decency Act

The Communications Decency Act (“CDA”) provides tort immunity to internet service providers in certain circumstances. Section 230 of the Communications Decency Act, provides: “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”\(^4\) Thus, to qualify for section 230 immunity the defendant must meet the following:

1. The defendant must be a provider or user of an “interactive computer service.”

2. The cause of action must seek to treat the defendant as a “publisher or speaker” of information that is the subject of the lawsuit.

3. The information must have been provided by another “information content provider,” i.e., a third party.

Immunity under section 230 has been extended to more than defamation actions, including breach of contract, invasion of privacy, negligence, negligent misrepresentation, and more. In fact, a majority of federal circuits have interpreted the CDA to establish broad “federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.”\(^4\) This does not mean, however, that immunity will attach in all situations in which a UGC service provider posts UGC content on its website. The Ninth Circuit recently held, in Fair Housing Council of San Fernando Valley v. Roommates.com, that an online roommate matching service was not eligible for CDA immunity for user posted messages in response to profile building questions about

\(^{4}\) 339 F.3d 1119, 1120 (9th Cir. 2003).


\(^{4}\) Perfect 10 II, 488 F.3d at 1118 (citing Almeida v. Amazon.com, Inc., 456 F.3d 1316, 1321 (11th Cir. 2006) (quoting Zeran v. America Online, Inc., 129 F.3d 327, 331 (4th Cir. 1997); see also Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir. 2003) (citing Batzel v. Smith, 333 F.3d 1018, 1026-27 (9th Cir .2003)).
roommate preferences. This ruling surprised many who thought that the UGC service provider would fall within the immunity provisions of the CDA. The court ruled that in developing the roommate preference questionnaire, the website provider was responsible, in part, for the users’ comments and because of this was an “information content provider” and thus not eligible for CDA immunity.

The CDA will not provide immunity for the actual creator of the content – the blogger, the poster, etc.

The CDA has no effect on intellectual property law. In other words, the CDA does not provide immunity for violations of intellectual property law. However, Congress has not provided an express definition of “intellectual property law.” The Perfect 10 II court noted that because of the non-uniform nature of state intellectual property law, interpreting the CDA not to provide immunity to causes of action arising under state intellectual property law would be contrary to the congressional intent of “insulating the development of the internet from state law regimes.” Therefore, the Ninth Circuit held that, under the CDA, the term “intellectual property” means “federal intellectual property.” The law, in this regard, is not settled and should be researched carefully to see whether CDA immunity applies to a particular cause of action.

IV. Privacy and Right of Publicity

The posting of UGC content can also implicate privacy and publicity rights. For example, in a recent case filed in Dallas, Texas, a teenage girl’s parents sued Virgin Mobile and Creative Commons, Inc. (a non-profit company that licenses the sharing of flickr.com photos) for libel and invasion of privacy relating to the use of her picture in an ad campaign. The girl’s youth pastor took a picture of the girl at a church event and uploaded it to the flickr.com UGC site. Virgin Mobile allegedly took the photo from flickr.com, and used it in its advertising campaign. In the lawsuit, the plaintiff alleges that the unauthorized use of the photo has caused embarrassment and damages to the girl’s reputation.

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45 489 F.3d 921, 926 (9th Cir. 2007).
46 Id.
48 Perfect 10 II, 488 F.3d at 1118.
49 See id. at 11.
50 Chang v. Virgin Mobile USA, No. DC-07-11386 (Dallas Dist. Ct. originally filed September 19, 2007).
V. Practical Tips

A. For UGC Website Operators

1. Do everything possible to ensure that your business falls under the § 512(c) safe harbor provision. This means consultation with an attorney versed in this area of the law. This also means strict and prompt compliance with the notice and takedown procedures.

2. But rather than relying on the safe harbor, a safer approach may be to seek out licenses from content owners. YouTube, MySpace, and other UGC websites have recently begun utilizing this procedure.

3. Use click-wrap agreements rather than passive terms and conditions.

What is the difference? Click wrap agreements require the user to scroll through the terms and conditions and click an “accept” button. Whereas passive terms and conditions can just be language on the webpage or accessible via a link but where there is no requirement to click on the link for acceptance. Courts are more likely to enforce a click wrap agreement rather than passive terms and conditions.51

4. Think carefully about the contents of the click wrap agreements so as to ensure that all appropriate representations, warranties, and indemnities from submitting users are given. As an example of the largest UGC sites approach to terms and conditions, attached are the latest terms and conditions from YouTube and MySpace.

5. In order to make it more likely to fall within the § 512(c) safe harbor by not having a “direct financial benefit,” consider removing ads from areas of your website where UGC is posted.

   a. For example, when a YouTube user plays a video, one will notice that there are no advertisements that precede the video. Contrast this with a non-UGC video on a website such as ESPN.com. This was certainly a deliberate step taken to try to prevent a court from ruling that YouTube receives a “direct financial benefit” from the infringing material. It remains to be seen whether this will be sufficient or whether the presence of an ad on the same webpage as the UGC video will rise to the level of “direct financial benefit.”

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51 1 John W. Hazard, Jr., COPYRIGHT LAW IN BUSINESS AND PRACTICE § 6:30 (rev. ed.) (“With respect to click wrap licenses for downloaded software, a technical option that may greatly enhance enforceability of a license as to a particular licensee is if the affirmative action of assent (typically clicking on an ‘I agree’ icon) is recorded and attributed to information identifying the licensee, e.g., information transmitted pursuant to an online registration process.”).
6. Take a fresh look at your website to determine whether UGC content is present. Many websites that are not your “typical” UGC website still have some UGC content that could present legal issues for the service provider.

B. For Content Licensors

1. Devote resources to monitoring UGC websites for possible infringement.

2. Upon discovery of infringing activity, utilize take down provisions. Take care to comply with these take down provisions as provided for in § 512(c).

3. Because issuing a take down notice could result in liability for misrepresentation under § 512(f), carefully consider whether the material is infringing before issuing a take down notice.

4. So that fewer resources are used for monitoring these sites, consider approaching UGC service providers for licensing and revenue sharing possibilities.
17 U.S.C. § 512. Limitations on liability relating to material online

(a) Transitory Digital Network Communications. - 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 provider's transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if -

   (1) the transmission of the material was initiated by or at the direction of a person other than the service provider;

   (2) the transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the service provider;

   (3) the service provider does not select the recipients of the material except as an automatic response to the request of another person;

   (4) no copy of the material made by the service provider in the course of such intermediate or transient storage is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and

   (5) the material is transmitted through the system or network without modification of its content.

(b) System Caching. -

(1) Limitation on Liability. - 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 intermediate and temporary storage of material on a system or network controlled or operated by or for the service provider in a case in which -

   (A) the material is made available online by a person other than the service provider;

   (B) the material is transmitted from the person described in subparagraph (A) through the system or network to a person other than the person described in subparagraph (A) at the direction of that other person; and

   (C) the storage is carried out through an automatic technical process for the purpose of making the material available to users of the system or network who, after the material is transmitted as described in subparagraph (B), request access to the material from the person described in subparagraph (A), if the conditions set forth in paragraph (2) are met.

(2) Conditions. - The conditions referred to in paragraph (1) are that -
(A) the material described in paragraph (1) is transmitted to the subsequent users described in paragraph (1)(C) without modification to its content from the manner in which the material was transmitted from the person described in paragraph (1)(A);

(B) the service provider described in paragraph (1) complies with rules concerning the refreshing, reloading, or other updating of the material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available, except that this subparagraph applies only if those rules are not used by the person described in paragraph (1)(A) to prevent or unreasonably impair the intermediate storage to which this subsection applies;

(C) the service provider does not interfere with the ability of technology associated with the material to return to the person described in paragraph (1)(A) the information that would have been available to that person if the material had been obtained by the subsequent users described in paragraph (1)(C) directly from that person, except that this subparagraph applies only if that technology -

(i) does not significantly interfere with the performance of the provider's system or network or with the intermediate storage of the material;

(ii) is consistent with generally accepted industry standard communications protocols; and

(iii) does not extract information from the provider's system or network other than the information that would have been available to the person described in paragraph (1)(A) if the subsequent users had gained access to the material directly from that person;

(D) if the person described in paragraph (1)(A) has in effect a condition that a person must meet prior to having access to the material, such as a condition based on payment of a fee or provision of a password or other information, the service provider permits access to the stored material in significant part only to users of its system or network that have met those conditions and only in accordance with those conditions; and

(E) if the person described in paragraph (1)(A) makes that material available online without the authorization of the copyright owner of the material, the service provider responds expeditiously to remove, or disable access to, the material that is claimed to be infringing upon notification of claimed infringement as described in subsection (c)(3), except that this subparagraph applies only if -

(i) the material has previously been removed from the originating site or access to it has been disabled, or a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled; and

(ii) the party giving the notification includes in the notification a statement confirming that the material has been removed from the originating site or access to
it has been disabled or that a court has ordered that the material be removed from
the originating site or that access to the material on the originating site be disabled.

(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.

(2) DESIGNATED AGENT. - The limitations on liability established in this subsection apply
to a service provider only if the service provider has designated an agent to receive notifications
of claimed infringement described in paragraph (3), by making available through its service,
including on its website in a location accessible to the public, and by providing to the Copyright
Office, substantially the following information:

(A) the name, address, phone number, and electronic mail address of the agent.

(B) other contact information which the Register of Copyrights may deem
appropriate.

The Register of Copyrights shall maintain a current directory of agents available to the public for
inspection, including through the Internet, in both electronic and hard copy formats, and may
require payment of a fee by service providers to cover the costs of maintaining the directory.

(3) ELEMENTS OF NOTIFICATION. -

(A) To be effective under this subsection, a notification of claimed infringement
must be a written communication provided to the designated agent of a service provider
that includes substantially the following:
(i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.

(iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.

(iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.

(v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.

(vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(B)(i) Subject to clause (ii), a notification from a copyright owner or from a person authorized to act on behalf of the copyright owner that fails to comply substantially with the provisions of subparagraph (A) shall not be considered under paragraph (1)(A) in determining whether a service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent.

(ii) In a case in which the notification that is provided to the service provider's designated agent fails to comply substantially with all the provisions of subparagraph (A) but substantially complies with clauses (ii), (iii), and (iv) of subparagraph (A), clause (i) of this subparagraph applies only if the service provider promptly attempts to contact the person making the notification or takes other reasonable steps to assist in the receipt of notification that substantially complies with all the provisions of subparagraph (A).

(d) INFORMATION LOCATION TOOLS. - A service provider shall not be liable for monetary relief, or, except as provided in subsection (i), for injunctive or other equitable relief, for infringement of copyright by reason of the provider referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link, if the service provider -

(1)(A) does not have actual knowledge that the material or activity is infringing;
(B) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

(C) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

(2) 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

(3) upon notification of claimed infringement as described in subsection (c)(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, except that, for purposes of this paragraph, the information described in subsection (c)(3)(A)(iii) shall be identification of the reference or link, to material or activity claimed to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate that reference or link.

(e) LIMITATION ON LIABILITY OF NONPROFIT EDUCATIONAL INSTITUTIONS. - (1) When a public or other nonprofit institution of higher education is a service provider, and when a faculty member or graduate student who is an employee of such institution is performing a teaching or research function, for the purposes of subsections (a) and (b) such faculty member or graduate student shall be considered to be a person other than the institution, and for the purposes of subsections (c) and (d) such faculty member's or graduate student's knowledge or awareness of his or her infringing activities shall not be attributed to the institution, if -

(A) such faculty member's or graduate student's infringing activities do not involve the provision of online access to instructional materials that are or were required or recommended, within the preceding 3-year period, for a course taught at the institution by such faculty member or graduate student;

(B) the institution has not, within the preceding 3-year period, received more than 2 notifications described in subsection (c)(3) of claimed infringement by such faculty member or graduate student, and such notifications of claimed infringement were not actionable under subsection (f); and

(C) the institution provides to all users of its system or network informational materials that accurately describe, and promote compliance with, the laws of the United States relating to copyright.

(2) For the purposes of this subsection, the limitations on injunctive relief contained in subsections (j)(2) and (j)(3), but not those in (j)(1), shall apply.

(f) MISREPRESENTATIONS. - Any person who knowingly materially misrepresents under this section -

(1) that material or activity is infringing, or
(2) that material or activity was removed or disabled by mistake or misidentification, shall be liable for any damages, including costs and attorneys' fees, incurred by the alleged infringer, by any copyright owner or copyright owner's authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

(g) Replacement of Removed or Disabled Material and Limitation on Other Liability. -

(1) No liability for taking down generally. - Subject to paragraph (2), a service provider shall not be liable to any person for any claim based on the service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.

(2) Exception. - Paragraph (1) shall not apply with respect to material residing at the direction of a subscriber of the service provider on a system or network controlled or operated by or for the service provider that is removed, or to which access is disabled by the service provider, pursuant to a notice provided under subsection (c)(1)(C), unless the service provider -

(A) takes reasonable steps promptly to notify the subscriber that it has removed or disabled access to the material;

(B) upon receipt of a counter notification described in paragraph (3), promptly provides the person who provided the notification under subsection (c)(1)(C) with a copy of the counter notification, and informs that person that it will replace the removed material or cease disabling access to it in 10 business days; and

(C) replaces the removed material and ceases disabling access to it not less than 10, nor more than 14, business days following receipt of the counter notice, unless its designated agent first receives notice from the person who submitted the notification under subsection (c)(1)(C) that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the service provider's system or network.

(3) Contents of Counter Notification. - To be effective under this subsection, a counter notification must be a written communication provided to the service provider's designated agent that includes substantially the following:

(A) A physical or electronic signature of the subscriber.

(B) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.
(C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

(D) The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.

(4) LIMITATION ON OTHER LIABILITY. - A service provider's compliance with paragraph (2) shall not subject the service provider to liability for copyright infringement with respect to the material identified in the notice provided under subsection (c)(1)(C).

(h) SUBPOENA TO IDENTIFY INFRINGER. -

(1) REQUEST. - A copyright owner or a person authorized to act on the owner's behalf may request the clerk of any United States district court to issue a subpoena to a service provider for identification of an alleged infringer in accordance with this subsection.

(2) CONTENTS OF REQUEST - The request may be made by filing with the clerk -

(A) a copy of a notification described in subsection (c)(3)(A);

(B) a proposed subpoena; and

(C) a sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title.

(3) CONTENTS OF SUBPOENA. - The subpoena shall authorize and order the service provider receiving the notification and the subpoena to expeditiously disclose to the copyright owner or person authorized by the copyright owner information sufficient to identify the alleged infringer of the material described in the notification to the extent such information is available to the service provider.

(4) BASIS FOR GRANTING SUBPOENA. - If the notification filed satisfies the provisions of subsection (c)(3)(A), the proposed subpoena is in proper form, and the accompanying declaration is properly executed, the clerk shall expeditiously issue and sign the proposed subpoena and return it to the requester for delivery to the service provider.

(5) ACTIONS OF SERVICE PROVIDER RECEIVING SUBPOENA. - Upon receipt of the issued subpoena, either accompanying or subsequent to the receipt of a notification described in subsection (c)(3)(A), the service provider shall expeditiously disclose to the copyright owner or person authorized by the copyright owner the information required by the subpoena,
notwithstanding any other provision of law and regardless of whether the service provider responds to the notification.

(6) RULES APPLICABLE TO SUBPOENA. - Unless otherwise provided by this section or by applicable rules of the court, the procedure for issuance and delivery of the subpoena, and the remedies for noncompliance with the subpoena, shall be governed to the greatest extent practicable by those provisions of the Federal Rules of Civil Procedure governing the issuance, service, and enforcement of a subpoena *duces tecum*.

(i) CONDITIONS FOR ELIGIBILITY. -

(1) ACCOMMODATION OF TECHNOLOGY. - The limitations on liability established by this section shall apply to a service provider only if the service provider -

(A) has adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers; and

(B) accommodates and does not interfere with standard technical measures.

(2) DEFINITION. - As used in this subsection, the term "standard technical measures" means technical measures that are used by copyright owners to identify or protect copyrighted works and -

(A) have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process;

(B) are available to any person on reasonable and nondiscriminatory terms; and

(C) do not impose substantial costs on service providers or substantial burdens on their systems or networks.

(j) INJUNCTIONS. - The following rules shall apply in the case of any application for an injunction under section 502 against a service provider that is not subject to monetary remedies under this section:

(1) SCOPE OF RELIEF. - (A) With respect to conduct other than that which qualifies for the limitation on remedies set forth in subsection (a), the court may grant injunctive relief with respect to a service provider only in one or more of the following forms:

(i) An order restraining the service provider from providing access to infringing material or activity residing at a particular online site on the provider's system or network.

(ii) An order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is
engaging in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

(iii) Such other injunctive relief as the court may consider necessary to prevent or restrain infringement of copyrighted material specified in the order of the court at a particular online location, if such relief is the least burdensome to the service provider among the forms of relief comparably effective for that purpose.

(B) If the service provider qualifies for the limitation on remedies described in subsection (a), the court may only grant injunctive relief in one or both of the following forms:

   (i) An order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is using the provider's service to engage in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

   (ii) An order restraining the service provider from providing access, by taking reasonable steps specified in the order to block access, to a specific, identified, online location outside the United States.

(2) CONSIDERATIONS. - The court, in considering the relevant criteria for injunctive relief under applicable law, shall consider -

   (A) whether such an injunction, either alone or in combination with other such injunctions issued against the same service provider under this subsection, would significantly burden either the provider or the operation of the provider's system or network;

   (B) the magnitude of the harm likely to be suffered by the copyright owner in the digital network environment if steps are not taken to prevent or restrain the infringement;

   (C) whether implementation of such an injunction would be technically feasible and effective, and would not interfere with access to noninfringing material at other online locations; and

   (D) whether other less burdensome and comparably effective means of preventing or restraining access to the infringing material are available.

(3) NOTICE AND EX PARTE ORDERS. - Injunctive relief under this subsection shall be available only after notice to the service provider and an opportunity for the service provider to appear are provided, except for orders ensuring the preservation of evidence or other orders having no material adverse effect on the operation of the service provider's communications network.
(k) DEFINITIONS. -

(1) SERVICE PROVIDER. - (A) As used in subsection (a), the term "service provider" means an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.

(B) As used in this section, other than subsection (a), the term "service provider" means a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in subparagraph (A).

(2) MONETARY RELIEF. - As used in this section, the term "monetary relief" means damages, costs, attorneys' fees, and any other form of monetary payment.

(l) OTHER DEFENSES NOT AFFECTED. - The failure of a service provider's conduct to qualify for limitation of liability under this section shall not bear adversely upon the consideration of a defense by the service provider that the service provider's conduct is not infringing under this title or any other defense.

(m) PROTECTION OF PRIVACY. - Nothing in this section shall be construed to condition the applicability of subsections (a) through (d) on -

(1) a service provider monitoring its service or affirmatively seeking facts indicating infringing activity, except to the extent consistent with a standard technical measure complying with the provisions of subsection (i); or

(2) a service provider gaining access to, removing, or disabling access to material in cases in which such conduct is prohibited by law.

(n) CONSTRUCTION. - Subsections (a), (b), (c), and (d) describe separate and distinct functions for purposes of applying this section. Whether a service provider qualifies for the limitation on liability in any one of those subsections shall be based solely on the criteria in that subsection, and shall not affect a determination of whether that service provider qualifies for the limitations on liability under any other such subsection.
Terms & Conditions

MySpace.com Terms of Use Agreement

April 11, 2007

MySpace.com is a social networking service that allows Members to create unique personal profiles online in order to find and communicate with old and new friends. The services offered by MySpace.com ("MySpace.com" or "we") include the MySpace.com website (the "MySpace Website"), the MySpace.com Internet messaging service, and any other features, content, or applications offered from time to time by MySpace.com in connection with the MySpace Website (collectively, the "MySpace Services"). The MySpace Services are hosted in the U.S.

This Terms of Use Agreement ("Agreement") sets forth the legally binding terms for your use of the MySpace Services. By using the MySpace Services, you agree to be bound by this Agreement, whether you are a "Visitor" (which means that you simply browse the MySpace Website) or you are a "Member" (which means that you have registered with MySpace.com). The term "User" refers to a Visitor or a Member. You are only authorized to use the MySpace Services regardless of whether your access or use is intended if you agree to abide by all applicable laws and to this Agreement. Please read this Agreement carefully and save it. If you do not agree with it, you should leave the MySpace Website and discontinue use of the MySpace Services immediately. If you wish to become a Member, communicate with other Members and make use of the MySpace Services, you must read this Agreement and indicate your acceptance during the Registration process.

This Agreement includes MySpace.com's policy for acceptable use of the MySpace Services and Content posted on the MySpace Website, your rights, obligations and restrictions regarding your use of the MySpace Services and MySpace.com's Privacy Policy. In order to participate in certain MySpace Services, you may be notified that you are required to download software or content and/or agree to additional terms and conditions. Unless otherwise provided by the additional terms and conditions applicable to the MySpace Services in which you choose to participate, those additional terms are hereby incorporated into this Agreement. You may receive a copy of this Agreement by emailing us at: privacy@MySpace.com. Subject: Terms of Use Agreement.

MySpace.com may modify this Agreement from time to time and such modification shall be effective upon posting by MySpace.com on the MySpace Website. You agree to be bound to any changes to this Agreement when you use the MySpace Services after any such modification is posted. It is therefore important that you review this Agreement regularly to ensure you are updated as to any changes.

Please choose carefully the information you post on MySpace.com and that you provide to other Users. Your MySpace.com profile may not include the following items: telephone numbers, street addresses, last names, and any photographs containing nudity, or obscene, lewd, excessively violent, harassing, sexually explicit or otherwise objectionable subject matter. Despite this prohibition, information provided by other MySpace.com Members (for instance, in their Profile) may contain inaccurate, inappropriate, offensive or sexually explicit material, products or services, and MySpace.com assumes no responsibility or liability for this material. If you become aware of misuse of the MySpace Services by any person, please contact MySpace or click on the "Report Inappropriate Content" link at the bottom of any MySpace.com page.

MySpace.com reserves the right, in its sole discretion, to reject, refuse to post or remove any posting (including private messages) by you, or to restrict, suspend, or terminate your access to all or any part of the MySpace Services at any time, for any or no reason, with or without prior notice, and without liability. MySpace expressly reserves the right to remove your profile and/or restrict, suspend, or terminate your access to any part of MySpace Services if MySpace determines, in its
MySpace reserves the right, in its sole discretion, to reject, refuse to post or remove any posting (including private messages) by you, or to restrict, suspend, or terminate your access to all or any part of the MySpace Services at any time, for any or no reason, with or without prior notice, and without liability. MySpace expressly reserves the right to remove your profile and/or restrict, suspend, or terminate your access to any part of MySpace Services if MySpace determines, in its sole discretion, that you pose a threat to MySpace and/or its Users.

1. Eligibility. Use of and Membership in the MySpace Services is void where prohibited. By using the MySpace Services, you represent and warrant that (a) all registration information you submit is truthful and accurate, (b) you will maintain the accuracy of such information, (c) you are 14 years of age or older; and (d) your use of the MySpace Services does not violate any applicable law or regulation. Your profile may be deleted and your Membership may be terminated without warning, if we believe that you are under 14 years of age.

2. Term. This Agreement shall remain in full force and effect while you use the MySpace Services or are a Member. You may terminate your Membership at any time, for any reason, by following the instructions on the Member's Account Settings page. MySpace.com may terminate your Membership at any time, without warning. Even after Membership is terminated, this Agreement will remain in effect, including sections 5-17.

3. Fees. You acknowledge that MySpace.com reserves the right to change the MySpace Services and to change its fees from time to time in its discretion. If MySpace.com terminates your Membership because you have breached the Agreement, you shall not be entitled to the refund of any unused portion of subscription fees.

4. Password. When you sign up to become a Member, you will also be asked to choose a password. You are entirely responsible for maintaining the confidentiality of your password. You agree not to use the account, username, or password of another Member at any time or to disclose your password to any third party. You agree to notify MySpace.com immediately if you suspect any unauthorized use of your account or access to your password. You are solely responsible for any and all use of your account.

5. Non-commercial Use by Members. The MySpace Services are for the personal use of Members only and may not be used in connection with any commercial endeavors except those that are specifically endorsed or approved by MySpace.com. Illegal and/or unauthorized use of the MySpace Services, including collecting usernames and/or email addresses of Members by electronic or other means for the purpose of sending unsolicited email or unauthorized framing of or linking to the MySpace Website is prohibited. Commercial advertisements, affiliate links, and other forms of solicitation may be removed from Member profiles without notice and may result in termination of Membership privileges. Appropriate legal action will be taken for any illegal or unauthorized use of the MySpace Services.


   1. MySpace.com does not claim any ownership rights in the text, files, images, photos, video, sounds, musical works, works of authorship, or any other materials (collectively, “Content”) that you post to the MySpace Services. After posting your Content to the MySpace Services, you continue to retain all ownership rights in such Content, and you continue to have the right to use your Content in any way you choose. By displaying or publishing (“posting”) any Content on or through the MySpace Services, you hereby grant to MySpace.com a limited license to use, modify, publicly perform, publicly display, reproduce, and distribute such Content solely on and through the MySpace Services.

   Without this license, MySpace.com would be unable to provide the MySpace Services. For example, without the right to modify Member Content, MySpace.com would not be able to digitally compress music files that Members submit or otherwise format Content to satisfy technical requirements, and without the right to publicly perform Member Content, MySpace.com could not allow Users to listen to music posted by Members. The license you grant to MySpace.com is non-exclusive (meaning you are free to license your Content to anyone else in addition to MySpace.com), fully-paid and royalty-free (meaning that MySpace.com is not required to pay you for the use of the MySpace Services of the Content that you posted), sublicenseable (so that MySpace.com is able to use its affiliates and...
perform Member Content, MySpace.com could not allow Users to listen to music posted by Members. The license you grant to MySpace.com is non-exclusive (meaning you are free to license your Content to anyone else in addition to MySpace.com), fully-paid and royalty-free (meaning that MySpace.com is not required to pay you for the use on the MySpace Services of the Content that you post), sublicensable (so that MySpace.com is able to use its affiliates and subcontractors such as Internet content delivery networks to provide the MySpace Services), and worldwide (because the Internet and the MySpace Services are global in reach). This license will terminate at the time you remove your Content from the MySpace Services. The license does not grant MySpace.com the right to sell your Content, nor does the license grant MySpace.com the right to distribute your Content outside of the MySpace Services.

2. You represent and warrant that: (i) you own the Content posted by you on or through the MySpace Services or otherwise have the right to grant the license set forth in this section, and (ii) the posting of your Content on or through the MySpace Services does not violate the privacy rights, publicity rights, copyrights, contract rights or any other rights of any person. You agree to pay for all royalties, fees, and any other monies owing any person by reason of any Content posted by you to or through the MySpace Services.

3. The MySpace Services contain Content of MySpace.com ("MySpace.com Content"). MySpace.com Content is protected by copyright, trademark, patent, trade secret and other laws, and MySpace.com owns and retains all rights in the MySpace.com Content and the MySpace Services. MySpace.com hereby grants you a limited, revocable, nonexclusive license to reproduce and display the MySpace.com Content (excluding any software code) solely for your personal use in connection with viewing the MySpace Website and using the MySpace Services.

4. The MySpace Services contain Content of Users and other MySpace.com licensors. Except for Content posted by you, you may not copy, modify, translate, publish, broadcast, transmit, distribute, perform, display, or sell any Content appearing on or through the MySpace Services.

7. Content Potted.
   1. MySpace.com may delete any Content that, in the sole judgment of MySpace.com, violates this Agreement or which may be offensive, illegal or violate the rights, harm, or threaten the safety of any person. MySpace.com assumes no responsibility for monitoring the MySpace Services for inappropriate Content or conduct. If at any time MySpace.com chooses, in its sole discretion, to monitor the MySpace Services, MySpace.com nonetheless assumes no responsibility for the Content, no obligation to modify or remove any inappropriate Content, and no responsibility for the conduct of the User submitting any such Content.
   2. You are solely responsible for the Content that you post on or through any of the MySpace Services, and any material or information that you transmit to other Members and for your interactions with other Users. MySpace.com does not endorse and has no control over the Content. Content is not necessarily reviewed by MySpace.com prior to posting and does not necessarily reflect the opinions or policies of MySpace.com. MySpace.com makes no warranties, express or implied, as to the Content or to the accuracy and reliability of the Content or any material or information that you transmit to other Members.

8. Content/Activity Prohibited. The following is a partial list of the kind of Content that is illegal or prohibited to post on or through the MySpace Services. MySpace.com reserves the right to investigate and take appropriate legal action against anyone who, in MySpace.com’s sole discretion, violates this provision, including without limitation, removing the offending communication from the MySpace Services and terminating the Membership of such violators. Prohibited Content includes, but is not limited to Content that, in the sole discretion of MySpace.com:
   1. is patently offensive and promotes racism, bigotry, hatred or physical harm of any kind against any group or individual,
   2. harasses or advocates harassment of another person,
   3. exploites people in a sexual or violent manner.
such violation. Prohibited Content includes, but is not limited to Content that, in the sole
discretion of MySpace.com:
1. is patently offensive and promotes racism, bigotry, hatred or physical harm of any
   kind against any group or individual;
2. harasses or advocates harassment of another person;
3. exploits people in a sexual or violent manner;
4. contains nudity, violence, or offensive subject matter or contains a link to an adult
   website;
5. seeks personal information from anyone under 18;
6. provides any telephone numbers, street addresses, last names, URLs or email
   addresses;
7. promotes information that you know is false or misleading or promotes illegal activities
   or conduct that is abusive, threatening, obscene, defamatory or libelous;
8. promotes an illegal or unauthorized copy of another person’s copyrighted work, such
   as providing pirated computer programs or links to them, providing information to
   circumvent manufacture-installed copy-protect devices, or providing pirated music or
   links to pirated music files;
9. involves the transmission of “junk mail,” “chain letters,” or unsolicited mass mailing,
   instant messaging, “spamming,” or “spamming”;
10. contains restricted or password only access pages or hidden pages or images (those
    not linked to or from another accessible page);
11. forges or promotes any criminal activity or enterprise or provides instructional
    information about illegal activities including, but not limited to making or buying illegal
    weapons, violating someone’s privacy, or providing or creating computer viruses;
12. solicits passwords or personal identifying information for commercial or unlawful
    purposes from other Users;
13. involves commercial activities and/or sales without our prior written consent such as
    contests, sweepstakes, barters, advertising, or pyramid schemes;
14. includes a photograph of another person that you have posted without that person’s
    consent, or
15. for band and filmmaker profiles, uses sexually suggestive imagery or any other unfair,
    misleading or deceptive Content intended to draw traffic to the profile.

The following is a partial list of the kind of activity that is illegal or prohibited on the
MySpace Website and through your use of the MySpace Services. MySpace.com reserves
the right to investigate and take appropriate legal action against anyone who, in
MySpace.com’s sole discretion, violates this provision, including without limitation, reporting
you to law enforcement authorities. Prohibited activity includes, but is not limited to:

1. criminal or tortious activity, including child pornography, fraud, trafficking in obscene
   material, drug dealing, gambling, harassment, stalking, spamming, spamming, sending
   of viruses or other harmful files, copyright infringement, patent infringement, or theft of
   trade secrets;
2. advertising to, or solicitation of, any Member to buy or sell any products or services
   through the MySpace Services. You may not transmit any chain letters or junk email to
   other Members. It is also a violation of these rules to use any information obtained from
   the MySpace Services in order to contact, advertise to, solicit, or sell to any
   Member without their prior express consent. In order to protect our Members from
   such advertising or solicitation, MySpace.com reserves the right to restrict the number
   of emails which a Member may send to other Members in any 24-hour period to a
   number which MySpace.com deem appropriate in its sole discretion. If you breach
   this Agreement and send unsolicited bulk email, instant messages or other unsolicited
   communications of any kind through the MySpace Services, you acknowledge that
   you will have caused substantial harm to MySpace.com, but that the amount of such
   harm would be extremely difficult to ascertain. As a reasonable estimation of such
   harm, you agree to pay MySpace.com $50 for each such unsolicited email or other
   unsolicited communication you send through the MySpace Services;
3. covering or obscuring the banner advertisements on your personal profile page, or any
   MySpace.com page via HTML/CSS or any other means.

you will also waive any claim against MySpace.com due to such harm; and the amount of such
harm would be extremely difficult to ascertain. As a reasonable estimation of such
harm, you agree to pay MySpace.com $50 for each such unsolicited email or other
unsolicited communication you send through the MySpace Services;
3. covering or obscuring the banner advertisements on your personal profile page, or any
MySpace.com page via HTML/CSS or any other means;
4. any automated use of the system, such as using scripts to add friends or send
comments or messages;
5. interfering with, disrupting, or creating an undue burden on the MySpace Services or
the networks or services connected to the MySpace Services;
6. attempting to impersonate another Member or person;
7. for band profiles, copying the code for your MySpace Player and embedding it into
other profiles or asking other Members to embed it into their profiles;
8. using the account, username, or password of another Member at any time or
disclosing your password to any third party or permitting any third party to access
your account;
9. selling or otherwise transferring your profile;
10. using any information obtained from the MySpace Services in order to harass, abuse,
or harm another person;
11. displaying an advertisement on your profile, or accepting payment or anything of value
from a third person in exchange for your performing any commercial activity on or
through the MySpace Services on behalf of that person, such as placing commercial
content on your profile, posting blogs or bulletins with a commercial purpose,
selecting a profile with a commercial purpose as one of your "Top 8" friends, or
sending private messages with a commercial purpose, or
12. using the MySpace Services in a manner inconsistent with any and all applicable laws
and regulations.
9. Copyright Policy: You may not post, modify, distribute, or reproduce in any way any
copyrighted material, trademarks, or other proprietary information belonging to others
without obtaining the prior written consent of the owner of such proprietary rights. It is
the policy of MySpace.com to terminate Membership privileges of any Member who repeatedly
infringes the copyright rights of others upon receipt of proper notification to MySpace.com
by the copyright owner or the copyright owner's legal agent. Without limiting the foregoing, if
you believe that your work has been copied and posted on the MySpace Services in a way
that constitutes copyright infringement, please provide our Copyright Agent with the
following information: (i) an electronic or physical signature of the person authorized to act
on behalf of the owner of the copyright interest; (ii) a description of the copyrighted work
that you claim has been infringed; (iii) a description of where the material that you claim is
infringing is located on the MySpace Services; (iv) your address, telephone number, and
email address; (v) a written statement by you that you have a good faith belief that the
disputed use is not authorized by the copyright owner, its agent, or the law; (vi) a statement
by you, made under penalty of perjury, that the above information in your notice is accurate
and that you are the copyright owner or authorized to act on the copyright owner's behalf.
MySpace.com's Copyright Agent for notice of claims of copyright infringement can be
reached as follows: Copyright Agent, MySpace.com, Inc., 8391 Beverly Blvd., #349, Los
Angeles, CA 90048; Facsimile: (310) 969-7394, Attn: Copyright Agent; and email:
copyright@myspace.com
10. Member Disputes: You are solely responsible for your interactions with other
MySpace.com Members. MySpace.com reserves the right, but has no obligation, to monitor
disputes between you and other Members.
11. Privacy: Use of the MySpace Services is also governed by our Privacy Policy, which
is incorporated into this Agreement by this reference.
12. Disclaimers: MySpace.com is not responsible for any incorrect or inaccurate Content
posted on the MySpace Website or in connection with the MySpace Services, whether
taught by Users of the MySpace Services or by any of the equipment or programming
associated with or utilized in the MySpace Services. Profiles created and posted by
Members on the MySpace Website may contain links to other websites. MySpace.com is
not responsible for the Content, accuracy or opinions expressed on such websites, and such
websites are not investigated, monitored or checked for accuracy or completeness by
MySpace.com. Inclusion of any linked website on the MySpace Services does not imply
caused by Users of the MySpace Services or by any of the equipment or programming associated with or utilized in the MySpace Services. Profiles created and posted by
Members on the MySpace Website may contain links to other websites. MySpace.com is
not responsible for the Content, accuracy or opinions expressed on such websites, and such
websites are no way investigated, monitored or checked for accuracy or completeness by
MySpace.com. Inclusion of any linked website on the MySpace Services does not imply
approval or endorsement of the linked website by MySpace.com. When you access these
third-party sites, you do so at your own risk. MySpace.com takes no responsibility for third
party advertisements which are posted on the MySpace Website or through the MySpace
Services, nor does it take any responsibility for the goods or services provided by its
advertisers. MySpace.com is not responsible for the conduct, whether online or offline, of
any User of the MySpace Services. MySpace.com assumes no responsibility for any error,
omission, interruption, deletion, defect, delay in operation or transmission, communications
line failure, theft or destruction or unauthorized access to, or alteration of, any User or
Member communication. MySpace.com is not responsible for any problems or technical
malfunction of any telephone network or lines, computer online systems, servers or
providers, computer equipment, software, failure of any email or players due to technical
problems or traffic congestion on the Internet or on any of the MySpace Services or
combination thereof, including any injury or damage to Users or to any person's computer
related to or resulting from participation or downloading materials in connection with the
MySpace Services. Under no circumstances shall MySpace.com be responsible for any loss
or damage, including personal injury or death, resulting from use of the MySpace Services,
attendant at a MySpace.com event, from any Contest posted on or through the MySpace
Services, or from the conduct of any Users of the MySpace Services, whether online or
offline. The MySpace Services are provided "AS-IS" and as available and MySpace.com
clearly disclaims any warranty of fitness for a particular purpose or non-infringement.
MySpace.com cannot guarantee and does not promise any specific results from use of the
MySpace Services.

13. Limitation on Liability. IN NO EVENT SHALL MYSPACE.COM BE LIABLE TO
YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL,
EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING
LOST PROFIT DAMAGES ARISING FROM YOUR USE OF THE SERVICES,
EVEN IF MYSPACE.COM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH
DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY
CONTAINED HEREIN, MYSPACE.COM'S LIABILITY TO YOU FOR ANY CAUSE
WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT
ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO
MYSPACE.COM FOR THE MYSPACE SERVICES DURING THE TERM OF
MEMBERSHIP.

14. U.S. Export Controls. Software available in connection with the MySpace Services (the
"Software") is further subject to United States export controls. No Software may be
downloaded from the MySpace Services or otherwise exported or re-exported in violation
of U.S. export laws. Downloading or using the Software is at your sole risk.

15. Disputes. If there is any dispute about or involving the MySpace Services, you agree that
the dispute shall be governed by the laws of the State of California, USA, without regard
to conflict of law provisions and you agree to exclude personal jurisdiction and venue in the
state and federal courts of the United States located in the State of California, City of Los
Angeles. Either MySpace.com or you may demand that any dispute between MySpace.com
and you about or involving the MySpace Services must be settled by arbitration utilizing
the dispute resolution procedures of the American Arbitration Association (AAA) in Los
Angeles, California, USA, provided that the foregoing shall not prevent MySpace.com from
seeking injunctive relief in a court of competent jurisdiction.

16. Indemnity. You agree to indemnify and hold MySpace.com, its subsidiaries, and affiliates,
and their respective officers, agents, partners and employees, harmless from any loss,
liability, claim, or demand, including reasonable attorneys' fees, made by any third party due
to or arising out of your use of the MySpace Services in violation of this Agreement and/or
arising from a breach of this Agreement and/or any breach of your representations and
warranties set forth above and/or if any Content that you post on the MySpace Website or
through the MySpace Services causes MySpace.com to be liable to another.
problems or traffic congestion on the Internet or on any of the MySpace Services or combination thereof, including any injury or damage to Users or to any person’s computer related to or resulting from participation or downloading materials in connection with the MySpace Services. Under no circumstances shall MySpace.com be responsible for any loss or damage, including personal injury or death, resulting from use of the MySpace Services, attendance at a MySpace.com event, from any Content posted on or through the MySpace Services, or from the conduct of any Users of the MySpace Services, whether online or offline. The MySpace Services are provided “AS-IS” and as available and MySpace.com expressly disclaims any warranty of fitness for a particular purpose or non-infringement. MySpace.com cannot guarantee and does not promise any specific results from use of the MySpace Services.

13. Limitation on Liability. IN NO EVENT SHALL MYSPACE.COM BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT DAMAGES ARISING FROM YOUR USE OF THE SERVICES, EVEN IF MYSPACE.COM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, MYSPACE.COM’S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO MYSPACE.COM FOR THE MYSPACE SERVICES DURING THE TERM OF MEMBERSHIP.

14. U.S. Export Controls. Software available in connection with the MySpace Services (the “Software”) is further subject to United States export controls. No Software may be downloaded from the MySpace Services or otherwise exported or re-exported in violation of U.S. export laws. Downloading or using the Software is at your sole risk.

15. Disputes. If there is any dispute about or involving the MySpace Services, you agree that the dispute shall be governed by the laws of the State of California, USA, without regard to conflict of law provisions and you agree to exclusive personal jurisdiction and venue in the state and federal courts of the United States located in the State of California, City of Los Angeles. Either MySpace.com or you may demand that any dispute between MySpace.com and you about or involving the MySpace Services must be settled by arbitration utilizing the dispute resolution procedures of the American Arbitration Association (AAA) in Los Angeles, California, USA, provided that the foregoing shall not prevent MySpace.com from seeking injunctive relief in a court of competent jurisdiction.

16. Indemnity. You agree to indemnify and hold MySpace.com, its subsidiaries, and affiliates, and their respective officers, agents, partners and employees, harmless from any loss, liability, claim, or demand, including reasonable attorneys’ fees, made by any third party due to or arising out of your use of the MySpace Services in violation of this Agreement and/or arising from a breach of this Agreement and/or any breach of your representations and warranties set forth above and/or if any Content that you post on the MySpace Website or through the MySpace Services causes MySpace.com to be liable to another.

17. Other. This Agreement is accepted upon your use of the MySpace Website or any of the MySpace Services and is further affirmed by you becoming a Member. This Agreement constitutes the entire agreement between you and MySpace.com regarding the use of the MySpace Services. The failure of MySpace.com to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect. MySpace.com is a trademark of MySpace, Inc. This Agreement operates to the fullest extent permissible by law. If any provision of this Agreement is unlawful, void or unenforceable, that provision is deemed severable from this Agreement and does not affect the validity and enforceability of any remaining provisions.

Please contact us at Contact MySpace with any questions regarding this Agreement.

I HAVE READ THIS AGREEMENT AND AGREE TO ALL OF THE PROVISIONS CONTAINED ABOVE.
Terms of Use

1. Your Acceptance

A. By using and/or visiting this website (collectively, including all content available through the YouTube.com domain name, the "YouTube Website", or "Website"), you signify your agreement to (1) these terms and conditions (the "Terms of Service"), (2) YouTube's privacy notice, found at http://www.youtube.com/privacy and incorporated here by reference, and (3) YouTube's Community Guidelines, found at http://www.youtube.com/community_guidelines and also incorporated here by reference. If you do not agree to any of these terms, the YouTube privacy notice, or the Community Guidelines, please do not use the YouTube Website.

B. Although we may attempt to notify you when major changes are made to these Terms of Service, you should periodically review the most up-to-date version (http://www.youtube.com/legal). YouTube may, in its sole discretion, modify or revise these Terms of Service and policies at any time, and you agree to be bound by such modifications or revisions. Nothing in this Agreement shall be deemed to confer any third-party rights or benefits.

2. YouTube Website

A. These Terms of Service apply to all users of the YouTube Website, including users who are also contributors of video content, information, and other materials or services on the Website. The YouTube Website includes all aspects of YouTube, including but not limited to YouTube channels and the YouTube "Embeddable Player."

B. The YouTube Website may contain links to third-party websites that are not owned or controlled by YouTube. YouTube has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third-party websites. In addition, YouTube will not and cannot audit or edit the content of any third-party site. By using the Website, you expressly relieve YouTube from any and all liability arising from your use of any third-party website.

C. Accordingly, we encourage you to be aware when you leave the YouTube Website and to read the terms and conditions and privacy policy of each other website that you visit.

3. YouTube Accounts

A. In order to access some features of the Website, you will have to create a YouTube account. You may never use another person's account without permission. When creating your account, you must provide accurate and complete information. You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. You must notify YouTube immediately of any breach of security or unauthorized use of your account.

B. Although YouTube will not be liable for your losses caused by any unauthorized use of your account, you may be liable for the losses of YouTube or others due to such unauthorized use.

4. General Use of the Website -- Permissions and Restrictions

YouTube hereby grants you permission to access and use the Website as set forth in these Terms of Service, provided that:

A. You agree not to distribute in any medium any part of the Website, including but not limited to User Submissions (defined below), without YouTube's prior written authorization.

B. You agree not to alter or modify any part of the Website, including but not limited to YouTube's Embeddable Player or any of its related technologies.

C. You agree not to access User Submissions (defined below) or YouTube Content through any technology or means other than the video playback pages of the Website itself. The YouTube Embeddable Player, or other explicitly authorized means YouTube may designate.

D. You agree not to use the Website, including the YouTube Embeddable Player for any commercial use, without the prior written authorization of YouTube. Prohibited commercial uses include any of the following actions taken without YouTube's express approval:

- sale of access to the Website or its related services (such as the Embeddable Player) on another website;
- use of the Website or its related services (such as the Embeddable Player), for the primary purpose of gaining
- profit or commercial advantage by using the Website services.

E. You agree not to broadcast video content through any technology or means other than the video playback pages of the Website itself. The YouTube Embeddable Player, or other explicitly authorized means YouTube may designate.

F. You agree not to use the Website, including the YouTube Embeddable Player for any commercial use, without the prior written authorization of YouTube. Prohibited commercial uses include any of the following actions taken without YouTube's express approval:

- sale of access to the Website or its related services (such as the Embeddable Player) on another website;
- use of the Website or its related services (such as the Embeddable Player), for the primary purpose of gaining
- profit or commercial advantage by using the Website services.
D. You agree not to use the Website, including the YouTube Embeddable Player for any commercial use, without the prior written authorization of YouTube. Prohibited commercial uses include any of the following actions taken without YouTube’s express approval:

- sale of access to the Website or its related services (such as the Embeddable Player) on another website;
- use of the Website or its related services (such as the Embeddable Player), for the primary purpose of gaining advertising or subscription revenue;
- the sale of advertising, on the YouTube website or any third-party website, targeted to the content of specific User Submissions or YouTube content;
- and any use of the Website or its related services (such as the Embeddable Player) that YouTube finds, in its sole discretion, to use YouTube’s resources or User Submissions with the effect of competing with or displacing the market for YouTube, YouTube content, or its User Submissions. (For more information about prohibited commercial uses, see our FAQ.)

E. Prohibited commercial uses do not include:

- uploading an original video to YouTube, or maintaining an original channel on YouTube, to promote your business or artistic enterprise;
- using the Embeddable Player to show YouTube videos on an ad-enabled blog or website, provided the primary purpose of using the Embeddable Player is not to gain advertising revenue or compete with YouTube;
- any use that YouTube expressly authorizes in writing.

(For more information about what constitutes a prohibited commercial use, see our FAQ.)

F. If you use the YouTube Embeddable Player on your website, you must include a prominent link back to the YouTube website on the pages containing the Embeddable Player and you may not modify, build upon, or block any portion of the Embeddable Player in any way.

G. You agree not to use or launch any automated system, including without limitation, "bots," "spiders," or "offline readers," that accesses the Website in a manner that sends more request messages to the YouTube servers in a given period of time than a human can reasonably produce in the same period by using a conventional online web browser. Notwithstanding the foregoing, YouTube grants the operators of public search engines permission to use spiders to copy materials from the site for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials. YouTube reserves the right to revoke these exceptions either generally or in specific cases. You agree not to collect or harvest any personally identifiable information, including account names, from the Website, nor to use the communication systems provided by the Website (e.g., comments) for any commercial solicitation purposes. You agree not to solicit, for commercial purposes, any users of the Website with respect to their User Submissions.

H. You will otherwise comply with the terms and conditions of these Terms of Service, YouTube Community Guidelines, and all applicable local, national, and international laws and regulations.

I. YouTube reserves the right to discontinue any aspect of the YouTube Website at any time.

5. Your Use of Content on the Site

In addition to the general restrictions above, the following restrictions and conditions apply specifically to your use of content on the YouTube Website:

A. The content on the YouTube Website, except all User Submissions (as defined below), including without limitation, the text, software, scripts, graphics, photos, sounds, music, videos, interactive features and the like ("Content") and the trademarks, service marks and logos contained therein ("Marks"), are owned by or licensed to YouTube, subject to copyright and other intellectual property rights under the law. Content on the Website is provided to you AS IS for your information and personal use only and may not be downloaded, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever without the prior written consent of the respective owners. YouTube reserves all rights not expressly granted in and to the Website and the Content.

B. You may access User Submissions solely:

- for your information and personal use;
- as intended through the normal functionality of the YouTube Service; and
- for Streaming.

"Streaming" means a contemporaneous digital transmission of an audiovisual work via the Internet from the YouTube Service to a user device in such a manner that the data is intended for real-time viewing and not intended to be copied, stored, permanently downloaded, or redistributed by the user. Accessing User Videos for any purpose or in any manner other than Streaming is expressly prohibited. User Videos are made available "as is.”

C. User Comments are made available to you for your information and personal use solely as intended through the normal functionality of the YouTube Service. User Comments are made available "as is,” and may not be used, copied,
Streaming" means a contemporaneous digital transmission of an audiovisual work over the Internet from the YouTube Service to a user or a group of users. You acknowledge that the data is intended for real-time viewing and not intended to be copied, stored, permanently downloaded, or redistributed by the user. Accessing User Videos for any purpose or in any manner other than Streaming is expressly prohibited. User Videos are made available "as is.

C. User Comments are made available to you for your information and personal use solely as intended through the normal functionality of the YouTube Service. User Comments are made available "as is," and may not be used, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, downloaded, or otherwise exploited in any manner not intended by the normal functionality of the YouTube Service or otherwise as prohibited under this Agreement.

D. You may access YouTube Content, User Submissions and other content only as permitted under this Agreement. YouTube reserves all rights not expressly granted in and to the YouTube Content and the YouTube Service.

E. You agree not to engage in the use, copying, or distribution of any of the Content other than as expressly permitted herein, including any use, copying, or distribution of User Submissions of third parties obtained through the Website for any commercial purposes.

F. You agree not to circumvent, disable or otherwise interfere with security-related features of the YouTube Website or features that prevent or restrict use or copying of any Content or enforce limitations on use of the YouTube Website or the Content therein.

G. You understand that when using the YouTube Website, you will be exposed to User Submissions from a variety of sources, and that YouTube is not responsible for the accuracy, usefulness, safety, or intellectual property rights or relating to such User Submissions. You further understand and acknowledge that you may be exposed to User Submissions that are inaccurate, offensive, indecent, or objectionable, and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you may have against YouTube with respect thereto, and agree to indemnify and hold YouTube, its Owners/Operators, affiliates, and/or licensors, harmless to the fullest extent allowed by law regarding all matters related to your use of the site.

6. Your User Submissions and Conduct

A. As a YouTube account holder you may submit video content ("User Videos") and textual content ("User Comments"). User Videos and User Comments are collectively referred to as "User Submissions." You understand that whether or not such User Submissions are published, YouTube does not guarantee any confidentiality with respect to any User Submissions.

B. You shall be solely responsible for your own User Submissions and the consequences of posting or publishing them. In connection with User Submissions, you affirm, represent, and warrant that you own or have the necessary licenses, rights, consents, and permissions to use and authorize YouTube to use all patent, trademark, trade secret, copyright or other proprietary rights in and to any and all User Submissions to enable inclusion and use of the User Submissions in the manner contemplated by the Website and these Terms of Service.

C. For clarity, you retain all of your ownership rights in your User Submissions. However, by submitting User Submissions to YouTube, you hereby grant YouTube a worldwide, non-exclusive, royalty-free, sublicensable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the User Submissions in connection with the YouTube Website and YouTube's (and its successors' and assignees') business, including without limitation for promoting and distributing part or all of the YouTube Website and derivative works thereof in any media formats and through any media channels. You also hereby grant each user of the YouTube Website a non-exclusive license to access your User Submissions through the Website, and to use, reproduce, distribute, display and perform such User Submissions as permitted through the functionality of the Website and under these Terms of Service. The above licenses granted by you in User Videos terminate within a commercially reasonable time after you remove or delete your User Videos from the YouTube Service. You understand and agree, however, that YouTube may retain, but not display, distribute, or perform, server copies of User Submissions that have been removed or deleted. The above licenses granted by you in User Comments are perpetual and irrevocable.

D. In connection with User Submissions, you further agree that you will not submit material that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including any and all intellectual property rights, unless you are the owner of such rights or have permission from the rightful owner to post the material and to grant YouTube all of the license rights granted herein.

E. You agree that your conduct on the site will comply with the YouTube Community Guidelines, found at http://www.youtube.com/community_guidelines, which may be updated from time to time.

F. YouTube does not endorse any User Submission or any opinion, recommendation, or advice expressed therein, and YouTube expressly disclaims any and all liability in connection with User Submissions. YouTube does not permit copyright infringement activities and infringement of intellectual property rights on its Website, and YouTube will remove all Content and User Submissions if properly notified that such Content or User Submission infringes on another's intellectual property rights. YouTube reserves the right to remove Content and User Submissions without prior notice.

7. Account Termination Policy
7. Account Termination Policy

A. YouTube will terminate a User's access to its Website if, under appropriate circumstances, they are determined to be a repeat infringer.

B. YouTube reserves the right to decide whether Content or a User Submission is appropriate and complies with these Terms of Service for violations other than copyright infringement and violations of intellectual property law, such as, but not limited to, pornography, obscene or defamatory material, or excessive length. YouTube may remove such User Submissions and/or terminate a User's access for uploading such material in violation of these Terms of Service at any time, without prior notice and at its sole discretion.

8. Digital Millennium Copyright Act

A. If you are a copyright owner or an agent thereof and believe that any User Submission or other content infringes upon your copyright, you may submit a notification pursuant to the Digital Millennium Copyright Act (DMCA) by providing our Copyright Agent with the following information in writing (17 U.S.C. § 512(c)(3) for further detail):

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;
- Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in your notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

YouTube's designated Copyright Agent to receive notifications of claimed infringement is: Heather Gillette, 100 Cherry Ave., Second Floor, San Bruno, CA 94066, email: copyrightg@youtube.com, fax: 650-872-8513. For clarity, only DMCA notices should go to the Copyright Agent; any other feedback, comments, requests for technical support, and other communications should be directed to YouTube customer service through https://www.google.com/support/youtube. You acknowledge that if you fail to comply with all of the requirements of this Section 5(D), your DMCA notice may not be valid.

B. Counter Notice: If you believe that your User Submission that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the content in your User Submission, you may send a counter-notice containing the following information to the Copyright Agent:

- Your physical or electronic signature;
- Identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;
- A statement that you have a good faith belief that the content was removed or disabled as a result of mistake or a misidentification of the content; and
- Your name, address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of the federal court in San Francisco, California, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Copyright Agent, YouTube may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at YouTube's sole discretion.

9. Warranty Disclaimer

YOU AGREE THAT YOUR USE OF THE YOUTUBE WEBSITE SHALL BE AT YOUR SOLE RISK TO THE FULLEST EXTENT PERMITTED BY LAW. YOUTUBE, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE WEBSITE AND YOUR USE THEREOF. YOUTUBE MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THIS SITE'S CONTENT OR THE CONTENT OF ANY WEBSITE LINKED TO THIS SITE AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY ERRORS, MISTAKES OR INACCURACIES OF CONTENT OR PERSONAL INJURY OR PROPERTY DAMAGE OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR WEBSITE.
10. Limitation of Liability

In no event shall YouTube, its officers, directors, employees, or agents, be liable to you for any direct, indirect, incidental, special, punitive, or consequential damages whatsoever resulting from your access to and use of our website, (ii) any unauthorized access to or use of our secure servers and/or any and all personal information and/or financial information stored therein, (iii) any interruption or cessation of transmission to or from our website, (iv) any bugs, viruses, trojan horses, or the like which may be transmitted to or through our website by any third party, and/or (v) any errors or omissions in any content or for any loss or damage of any kind incurred as a result of the use of any content posted, emailed, transmitted, or otherwise made available via the YouTube website. YouTube does not warrant, endorse, guarantee, or assume responsibility for any product or service advertised or offered by a third party through the YouTube website or any hyperlinked website or featured in any banner or other advertising, and YouTube will not be a party to or in any way be responsible for monitoring any transaction between you and third-party providers of products or services. As with the purchase of a product or service through any medium or in any environment, you should use your best judgment and exercise caution where appropriate.

You specifically acknowledge that YouTube shall not be liable for user submissions or the defamatory, offensive, or illegal conduct of any third party and that the risk of harm or damage from the foregoing rests entirely with you.

The Website is controlled and offered by YouTube from its facilities in the United States of America. YouTube makes no representations that the YouTube Website is appropriate or available for use in other locations. Those who access or use the YouTube Website from other jurisdictions do so at their own volition and are responsible for compliance with local law.

11. Indemnity

You agree to defend, indemnify and hold harmless YouTube, its parent corporation, officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including attorneys' fees), arising from: (i) your use of and access to the YouTube Website, (ii) your violation of any of the Terms of Service, (iii) your violation of any third party's rights, including without limitation any copyright, patent, trade secret, or trademark right, or (iv) any claim that one of your User Submissions caused damage to a third party. This defense and indemnification obligation will survive these Terms of Service and your use of the YouTube Website.

12. Ability to Accept Terms of Service

You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully capable and competent to enter into the terms, conditions, obligations, representations, and warranties set forth in these Terms of Service, and to abide by and comply with these Terms of Service. In any case, you affirm that you are over the age of 13, as the YouTube Website is not intended for children under 13. If you are under 13 years of age, then please do not use the YouTube Website. There are lots of other great web sites for you. Talk to your parents about what sites are appropriate for you.

13. Assignment

These Terms of Service, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by YouTube without restriction.

14. General

You agree that: (i) the YouTube Website shall be deemed solely based in California, and (ii) the YouTube Website shall be
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14. General

You agree that: (i) the YouTube Website shall be deemed solely based in California, and (ii) the YouTube Website shall be deemed a passive website that does not give rise to personal jurisdiction over YouTube, either specific or general, in jurisdictions other than California. These Terms of Service shall be governed by the internal substantive laws of the State of California, without respect to its conflict of laws provisions. Any claim or dispute between you and YouTube that arises in whole or in part from the YouTube Website shall be decided exclusively by a court of competent jurisdiction located in San Mateo County, California. These Terms of Service, together with the Privacy Notice at http://www.youtube.com/privacy and any other legal notices published by YouTube on the Website, shall constitute the entire agreement between you and YouTube concerning the YouTube Website. If any provision of these Terms of Service is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms of Service, which shall remain in full force and effect. No waiver of any term of this these Terms of Service shall be deemed a further or continuing waiver of such term or any other term, and YouTube's failure to assert any right or provision under these Terms of Service shall not constitute a waiver of such right or provision. YouTube reserves the right to amend these Terms of Service at any time and without notice, and it is your responsibility to review these Terms of Service for any changes. Your use of the YouTube Website following any amendment of these Terms of Service will signify your assent to and acceptance of its revised terms. YOU AND YOUTUBE AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE YOUTUBE WEBSITE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.