



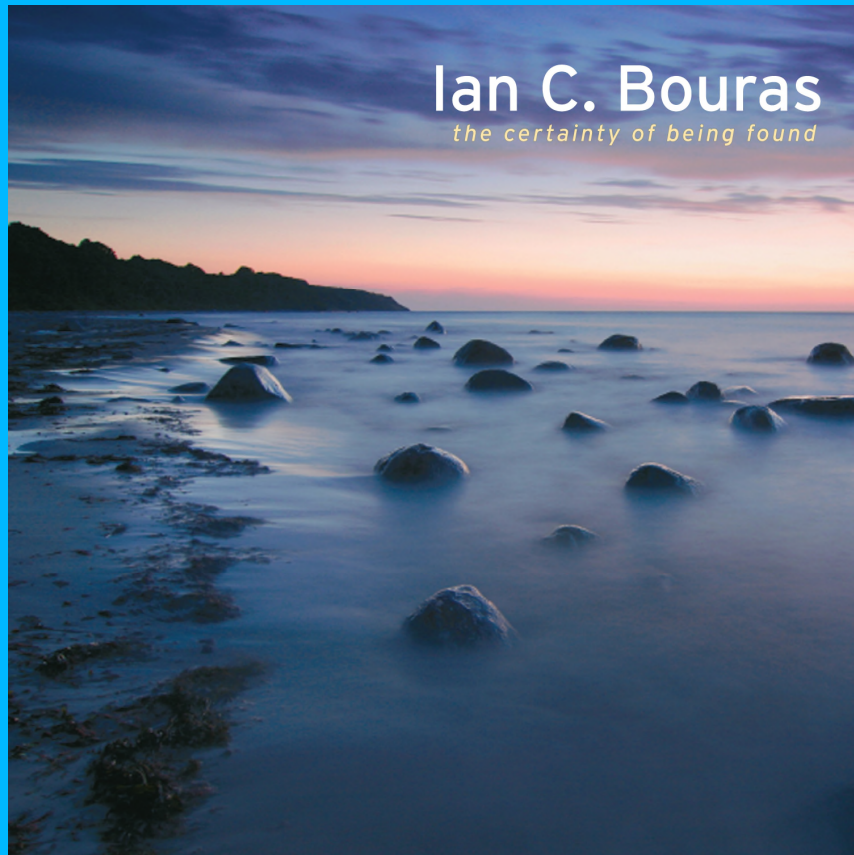
# CPTWG MEETING #120

July 21, 2010

*Legislative/Litigation Update*

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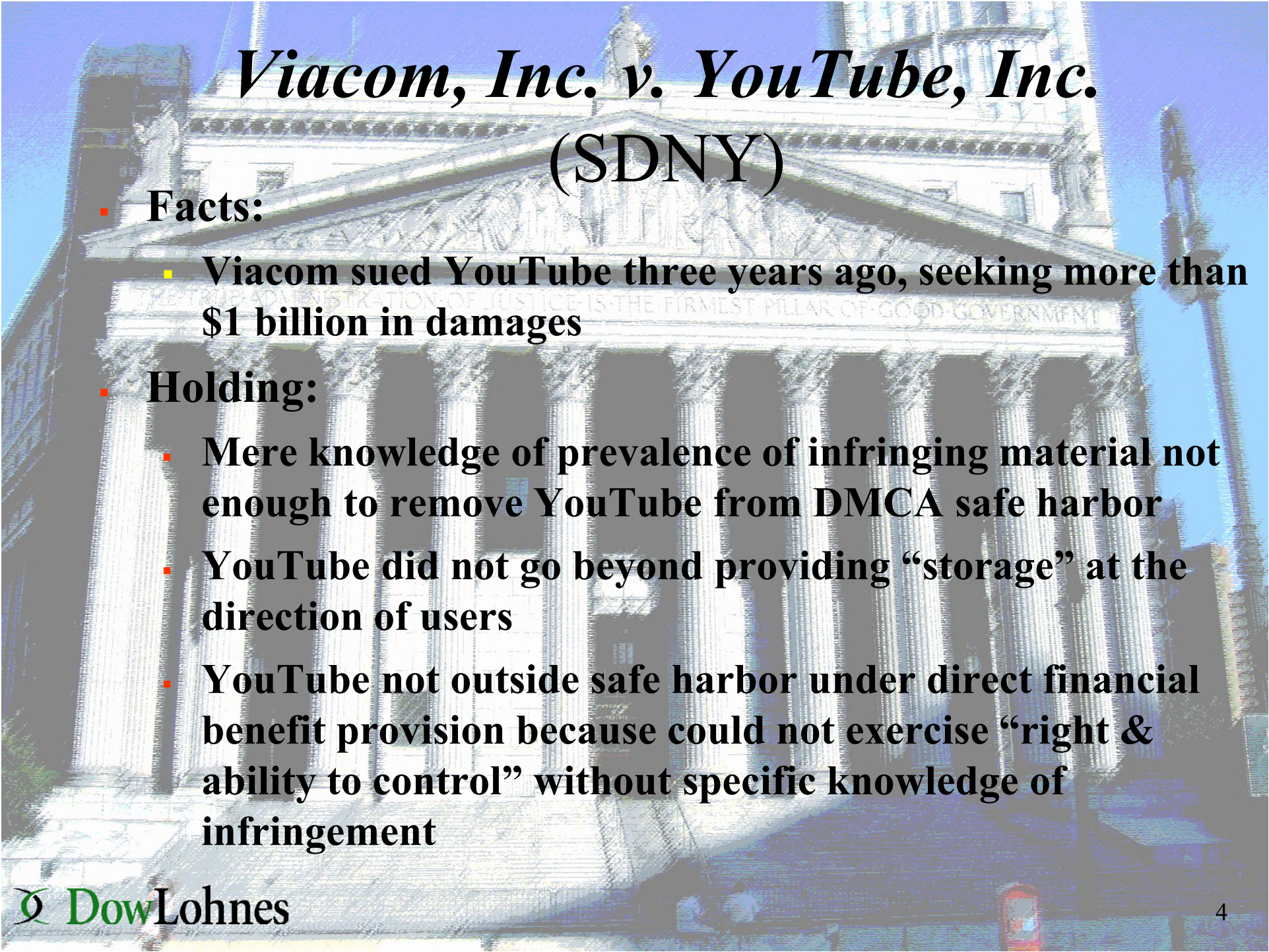




# Litigation

- *Viacom, Inc. v. YouTube, Inc.*
- *Arista Records, LLC v. Lime Group, LLC*
- *Golan v. Holder*
- *Sony v. Tenenbaum*
- *MGE UPS Systems Inc v. Power Protc Svc LLC*





# ***Viacom, Inc. v. YouTube, Inc.***

## **(SDNY)**

- **Facts:**

- Viacom sued YouTube three years ago, seeking more than \$1 billion in damages

- **Holding:**

- Mere knowledge of prevalence of infringing material not enough to remove YouTube from DMCA safe harbor
- YouTube did not go beyond providing “storage” at the direction of users
- YouTube not outside safe harbor under direct financial benefit provision because could not exercise “right & ability to control” without specific knowledge of infringement



# ***Arista Records v. Lime Group (SDNY)***

- **Facts: Record industry plaintiffs sued LimeWire, alleging P2P software developer secondarily liable for users' copyright infringement.**
- **Holding: LimeWire liable for inducement of copyright infringement**
  - **Factors**
  - **Knowledge**
  - **Designed**
  - **Failure to implement meaningful barriers**
- **LimeWire owner personally liable for same set of infringement claims.**





# ***Golan v. Holder (10<sup>th</sup> Cir.)***

- **Facts:**

- Group of plaintiffs that rely upon public domain works challenged constitutionality of Sect. 514 of Uruguay Round Agreements Act which reinstated copyright on certain public domain works.
- District Court: Statute violates First Amendment.

- **Holding:**

- Tenth Circuit: Reverses - statute does *not* violate First Amendment
- Law constitutional as government demonstrated substantial interest in protection US interest abroad



# *Sony v. Tenenbaum* (D. Mass.)

- **Facts:**

- RIAA sued Joel Tenenbaum for downloading and sharing 31 copyrighted files on a P2P network.
- July, 2009: jury finds that Tenenbaum willfully infringed plaintiff's copyrights; statutory damages of \$675,000 awarded (\$22,500/song)

- **Holding:**

- Court: Statutory damages award was “grossly excessive” and therefore unconstitutional.
- Damages award reduced by 90% to \$67,500 (\$2,250/song)



# **MGE UPS Systems v. Power Protc Svc (5<sup>th</sup> Cir)**

**However, MGE advocates too broad a definition of “access;” their interpretation would permit liability under § 1201(a) for accessing a work simply to view it or to use it within the purview of “fair use” permitted under the Copyright Act. Merely bypassing a technological protection that restricts a user from viewing or using a work is insufficient to trigger the DMCA’s anti-circumvention provision. The DMCA prohibits only forms of access that would violate or impinge on the protections that the Copyright Act otherwise affords copyright owners.**



# Administrative Action

- IP Czarina Releases Joint Strategic Plan for Enforcing IP Rights
- NTIA-PTO Online Copyright Symposium
- ICE Domain Seizures





# International

- ACTA Update
- “Three Strikes” Laws Update
  - Ireland
  - France
  - United Kingdom
- Italian Court: ISPs Not Responsible for Subscriber Infringement
- Australian Filtering Delayed