



# 2024 ANNUAL MEETING

## JUNE 9-11

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### *Detailed Agenda – Session 5*

## **LESSONS IN COLLABORATION: EXPLORING VOLUNTARY MEASURES TO ADDRESS PLATFORM LIABILITY**

*June 11, 2024 | 10:30 AM - 11:30 AM EDT*

This panel will provide an overview of the current status of platform liability, including the challenge for platforms to avail themselves of DMCA Safe Harbor while still monitoring user-generated content on their platform. Acknowledging the legal and practical challenges presented by potentially infringing user-generated content (particularly in light of the widespread use of generative AI, in which infringing content is not as easy to detect), this panel aims to bring together technologists, content owners, and platforms to explore voluntary measures for addressing this issue. We will talk about measures like YouTube’s ContentID, voluntary takedown processes, and other rights management solutions and how they may be adapted for different types of content.

### **Speakers:**

- Dave Axelgard (Epic Games)
- Brian Smith (Roblox)
- Theresa Weisenberger (BakerHostetler) - Moderator

### **Outline:**

- **Introduction to Platform Liability** (5 minutes)
  - Origins of secondary liability
    - *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984)
    - *MGM Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005)



- *Sony Music Entertainment v. Cox Communications*, No. 21-1168 (4th Cir. Feb. 20, 2024)
- Definition and scope of platform liability in the context of user-generated content.
- Overview of DMCA safe harbor provisions and their role in platform liability.
  
- **Challenges of Detecting Infringing Content** (7 minutes)
  - The complexity of identifying infringing content that is not identical to the original work.
  - Examples of such content: generative AI creations, song covers, derivative works.
  - Ziyang Yan & Zhao Hao, *Study on Copyright Infringement of Artificial Intelligence Paintings*, 28 *Journal of Education, Humanities and Social Sciences*, 816-822 (2023), available at <https://doi.org/10.54097/vacy2b08>
  - Adam Eric Berkowitz, *Algorithmic (In)Tolerance: Experimenting with Beethoven's Music on Social Media Platforms*, 6 *Transactions of the International Society for Music Information Retrieval*, 1-12 (2023), available at <https://doi.org/10.5334/tismir.148>
  
- **DMCA Safe Harbor Provisions** (15 minutes)
  - Detailed examination of the DMCA safe harbor criteria and limitations. Platforms may benefit from certain exemptions or limitations of liability if they meet certain conditions, such as:
    - acting as passive or neutral intermediaries that merely provide technical services or infrastructure, without any control or knowledge of the content.
    - adopting and implementing effective policies and measures to prevent, detect, and remove infringing content, such as terms of service, notice and takedown systems, content filtering, or user education.
    - cooperating with the right holders and the authorities to identify and sanction the infringers, and to provide information and evidence when requested.
    - respecting the rights and interests of the users, such as freedom of expression, privacy, or fair use.



- The balance between qualifying for DMCA safe harbor and moderating user-uploaded content. Some courts have found even automated content moderation impacts safe harbor eligibility.
  - *Mavrix Photo v. Livejournal*, 873 F.3d 1045 (9th Cir. 2017)
  - *CoStar Group, Inc. v. LoopNet, Inc.*, 373 F.3d 544 (4th Cir. 2004)
  - *VHT v. Zillow*, 918 F.3d 723 (9th Cir. 2019)
- Hunter McGhee, *Reinterpreting Repeat Infringement in the Digital Millenium Copyright Act*, 25 Vanderbilt Journal of Entertainment & Technology Law, 483-540 (2023).

- **Technical Solutions and Collaborative Efforts** (5 minutes)

One possible way to address the challenges of repeat infringement on social media platforms is to foster technical solutions and collaborative efforts between rights holders and service providers. These solutions and efforts can enhance the detection and removal of infringing content, reduce the burden on both parties, and promote a fair and balanced online environment.

- **Beyond Legal Safe Harbors: Technical Solutions** (8 minutes)

- The role of technology in identifying and managing infringing content.
- Discussion on YouTube's Content ID program as a case study.
- Aldo Hernandez-Suarez, Gabriel Sanchez-Perez, Linda Karina Toscano-Medina, Hector Manuel Perez-Meana, Jose Portillo-Portillo & Jesus Olivares-Mercado, *Methodological Approach for Identifying Websites with Infringing Content via Text Transformers and Dense Neural Networks*, 15 Future Internet 397 (2023), available at <https://doi.org/10.3390/fi15120397>

- **Collaborative Efforts Between Content and Platform Owners** (10 minutes)

- Examples of successful collaborations to address copyright infringement.
- Potential for new models of partnership beyond the legal framework.
- João Pedro Quintais, Giovanni De Gregorio & João C. Magalhães, *How platforms govern users' copyright-protected content:*

*Exploring the power of private ordering and its implications*, 48 Computer Law & Security Review (2023), available at <https://doi.org/10.1016/j.clsr.2023.105792>.

- **Conclusion and Future Outlook** (5 minutes)
  - Summarizing the key points discussed.
  - Looking ahead to the evolution of platform liability and content management.

**Q&A** (5 minutes)