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IP Megasuit Fact Sheet

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Viacom v. Google Claims	Eros v. Linden Claims	Notes
YouTube "willfully infringe[s] copyright on a huge scale" "brazenly exploiting the infringing potential of digital technology" First Amended Complaint Para. 1-2.	Second Life is a "vast virtual flea market in which users peddle knockoffs and pirated copies" of products. Complaint Para. 34. "[A]kin to the knockoff handbags and purses sold near Canal Street in New York City" Para. 53.	
Users share their own user generated video content. Para 3.	Second Life allows users to create user generated content.	
YouTube converts videos into special file formats, copies the videos, and distributes copies to users' computers. Para 4.	Linden servers host the content, and display the content to users.	
Search tags use Plaintiffs' trademarks. Para. 37.	SexGen used in the search results for XStreetSL "featured items." Para. 102.	
YouTube infringement draws traffic to the site, increasing market share, earning significant revenues, and increases its enterprise value. Para 5. Ad revenue. Para. 38.	Pirates must rent SL locations from Linden.	
	Pirates pay Linden an upload fee for bringing content in-world.	
	Linden makes a 3.5% cut from the LindeX currency exchange.	
	Linden operates the XStreetSL.com service, which sells counterfeit products.	
	Linden obtains ad revenue from in-world classified. Para. 36.	
	Linden benefits from the overall increase in traffic and commercial value of its business and property from the "draw" of infringement. Para. 41.	
YouTube has operational control over its website. Para. 31.	Linden "exercised direct control and monitoring of the Second Life platform and XStreetSL.com website. Para. 118.	
YouTube has the ability to take reasonable measures to stop infringement. Para. 41.	Linden Lab "has the technical means to simply and easily halt the alleged conduct." Para. 6.	
YouTube has chosen not to take reasonable precautions to stop infringement. Para 6.	Linden refuses to stop infringement "because it makes too much money from all the infringement." Para. 6.	

YouTube digital rights management is a failure. Para. 44, 47.	Third party programs, like CopyBot, BuilderBot, CryoLife, circumvent Lindens' digital rights management. Para. 28.	
After take-down notice, other uploaded copies remain and the content appears again later. Para 6.	After take-down, users "will simply create a new free account and re-upload the content." Para. 6.	
Pirated content directly competes with plaintiffs' content. Para 30. Result is lost revenue.	Knockoffs compete with plaintiffs' products. Plaintiffs lost sales revenue, lost business reputation, and consumer confusion.	
	Plaintiffs claim direct trademark infringement and false designation of origin by Linden.	
	Claim Linden contributed to copyright infringement of others.	
	Claim "vicarious" trademark liability (right to control and monitor, but failed to stop infringement).	
Plaintiffs claim direct copyright infringement (public performance, public display, reproduction, distribution)	Claim direct copyright infringement (public display and reproduction)	
Claim YouTube induced copyright infringement and contributed to the copyright infringement of others.	Claim Linden contributed to the copyright infringement of others.	
Claim "vicarious" copyright infringement (right and ability to supervise conduct but fails to stop infringement)	Claim "vicarious" copyright infringement.	
	State law unfair business practices, false advertising, and interference with economic relations claims.	

Direct infringement:
Copyright – (1) ownership of a valid copyright and (2) violation of one of the copyright exclusive rights.
Trademark – (1) ownership of a valid trademark, and (2) likelihood of confusion from use of the mark.

Contributory infringement:
Copyright – (1) knowledge of another's infringement and (2) either (a) material contribution to infringement or (b) inducement of the infringement.
Trademark – (1) intentionally inducing the primary infringer to infringe OR (2) continued to supply an infringing product with knowledge that the infringer is mislabeling the product.

Vicarious infringement:
Copyright – (1) the right and ability to supervise the infringing content and (2) a direct financial interest in the infringing activity.
Trademark – defendant and infringer had an apparent or actual partnership, have authority to bind one another or exercise joint ownership or control over the infringing product.

Bibliography:
Perfect 10, Inc. v. Visa Int'l Serv. Ass'n, 494 F.3d 788 (9th Cir. 2007).
Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc., 591 F. Supp. 2d 1098 (N.D. Cal. 2008).