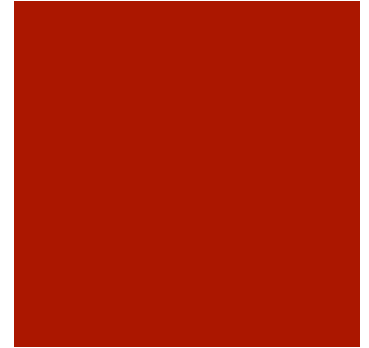


# IP Megasuit Could It Happen to You?

Stephen S. Wu – SL: “Legal Writer”  
Cooke Kobrick & Wu LLP  
Digital Law Conference  
September 23, 2009

# Agenda

- Case studies – comparison of YouTube and Second Life suits
- Elements of copyright and trademark infringement claims
- What can be done to reduce risk

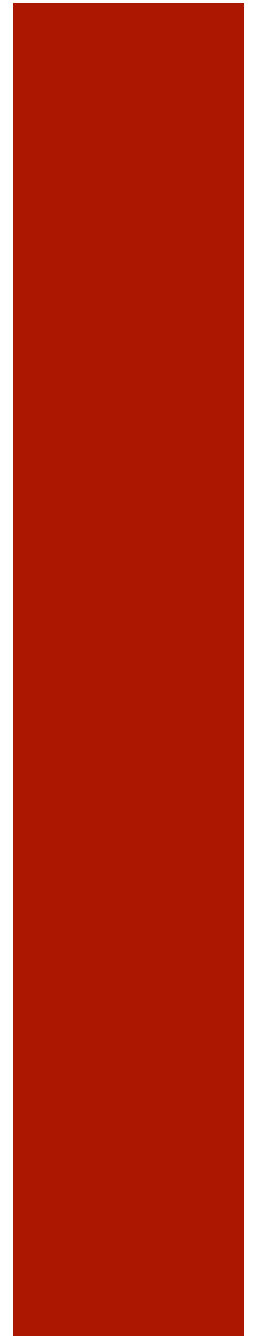


# After My Shopping Trip

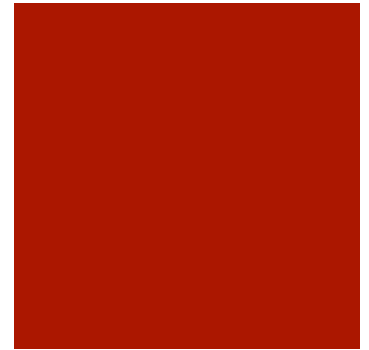


# Case Studies

Viacom v. YouTube and Google  
Eros v. Linden

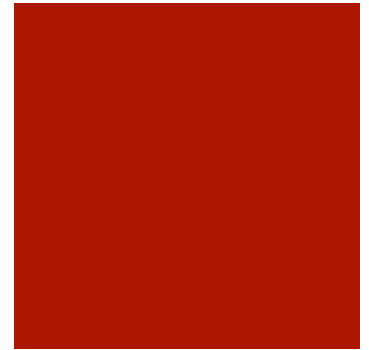


# The Big Picture



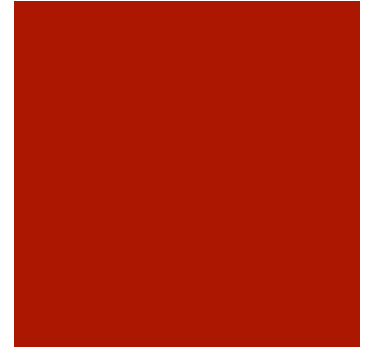
<b>Viacom v. Google Claims</b>	<b>Eros v. Linden Claims</b>
YouTube infringes copyright on a huge scale	Second Life is a market place for knockoffs and pirated software
Share user-generated video content	Allows creation of user generated content

# Technical Means of Copying



<b>Viacom v. Google Claims</b>	<b>Eros v. Linden Claims</b>
YouTube converts, hosts, and distributes videos to users	Servers host content and displays to users

# The Attraction



<b>Viacom v. Google Claims</b>	<b>Eros v. Linden Claims</b>
Search tags use plaintiffs trademark	SexGen trademark displayed in search results for Xstreet SL

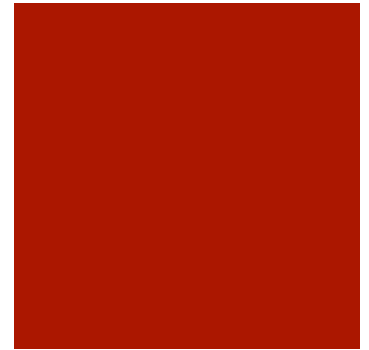
# Profiting From Infringement



<b>Viacom v. Google Claims</b>	<b>Eros v. Linden Claims</b>
Traffic drawn by YouTube infringement increases market share, revenues, and enterprise value	Pirates rent SL locations
	Pirates pay upload fee
	Linden makes 3.5% cut on currency exchange
	Linden operates Xstreet SL site that sells counterfeit products
	Linden obtains ad revenue
	Linden benefits from traffic, revenue, and business value

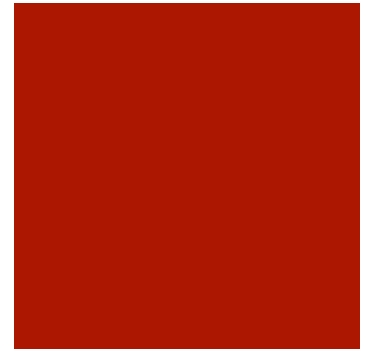


# Ability to Control



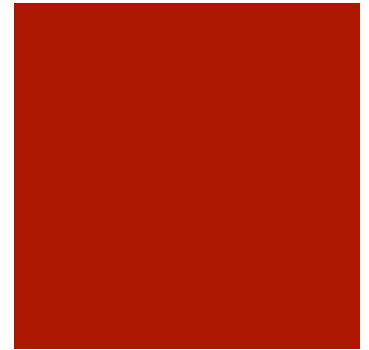
<b>Viacom v. Google Claims</b>	<b>Eros v. Linden Claims</b>
YouTube has operational control	Linden exercised control of Second Life and Xstreet SL
YouTube is able to take reasonable measures to stop infringement	Linden has the means to stop conduct
YouTube chooses not to stop infringement	Linden refuses to stop infringement

# Failure of Digital Rights Management



<b>Viacom v. Google Claims</b>	<b>Eros v. Linden Claims</b>
YouTube digital rights management is a failure	Third-party programs circumvent digital rights management
After notice, uploaded copies still remain	After notice, users create new account and re-upload

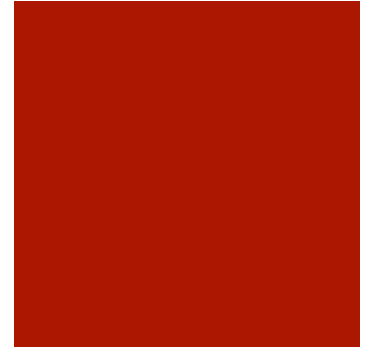
# Damages



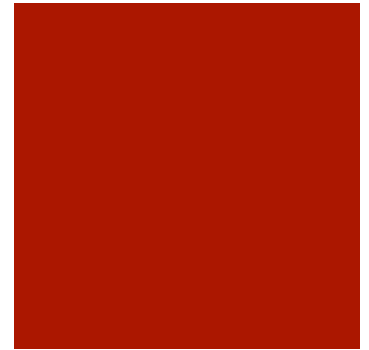
<b>Viacom v. Google Claims</b>	<b>Eros v. Linden Claims</b>
Pirated content competes with plaintiff's content	Knockoffs compete with plaintiff's products

# Eros Trademark Claims

- Plaintiffs claim direct infringement
- Claim Linden contributed to infringement of others
- Claim “vicarious” trademark liability



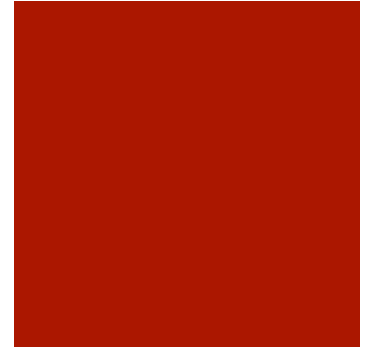
# Copyright Claims



<b>Viacom v. Google Claims</b>	<b>Eros v. Linden Claims</b>
Plaintiffs claim direct copyright infringement	Plaintiffs claim direct copyright infringement
Claim YouTube induced copyright infringement	Claim Linden contributed to copyright infringement
Claim “vicarious” copyright infringement	Claim “vicarious” copyright infringement

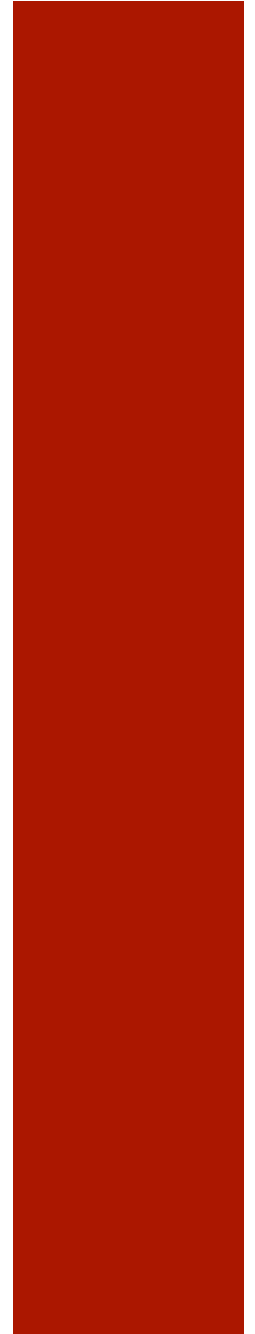
# Eros State Law Claims

- Unfair business practices
- False advertising
- Intentional interference with economic relations
- Negligent interference with economic relations

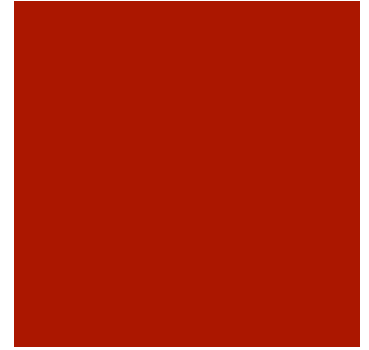


# Direct Infringement

Of Copyrights and Trademarks



# Direct Copyright Infringement

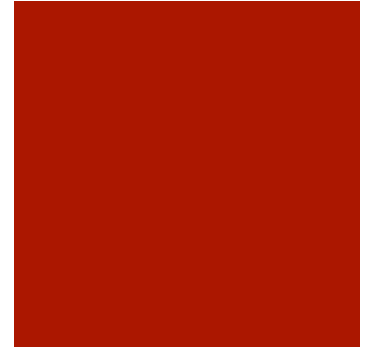


- Ownership of valid copyright
- Violation of one of the copyright exclusive rights
  - Reproduction
  - Creation of derivative works
  - Public performance
  - Public display



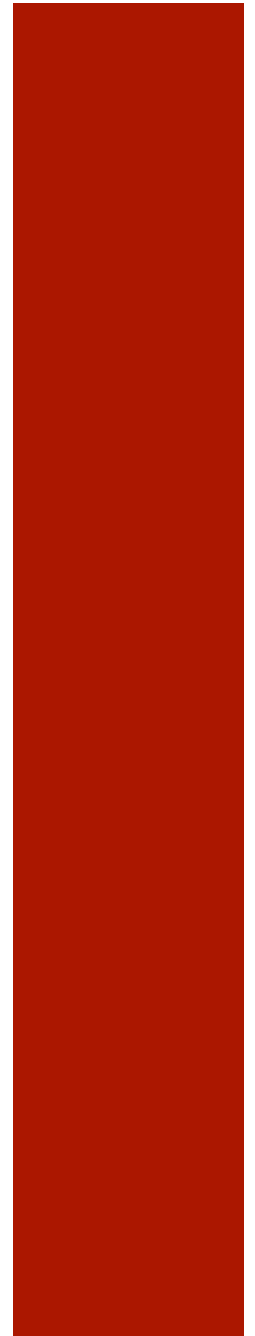
# Direct Trademark Infringement

- Ownership of valid trademark
- Likelihood of confusion from use of the mark

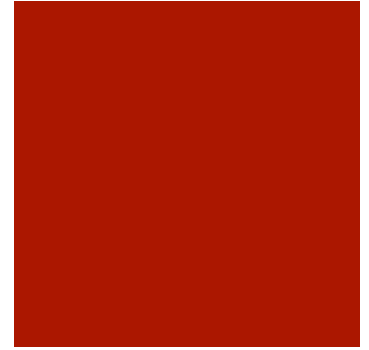


# Contributory Infringement

Of Copyrights and Trademarks



# Contributory Copyright Infringement



- Knowledge of another's infringement
- Either
  - Material contribution to infringement

or

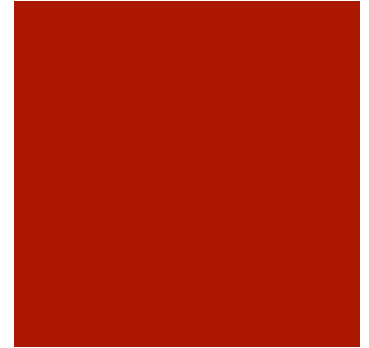
  - Inducement of infringement

# Contributory Trademark Infringement

- Intentionally inducing the primary infringer to infringe

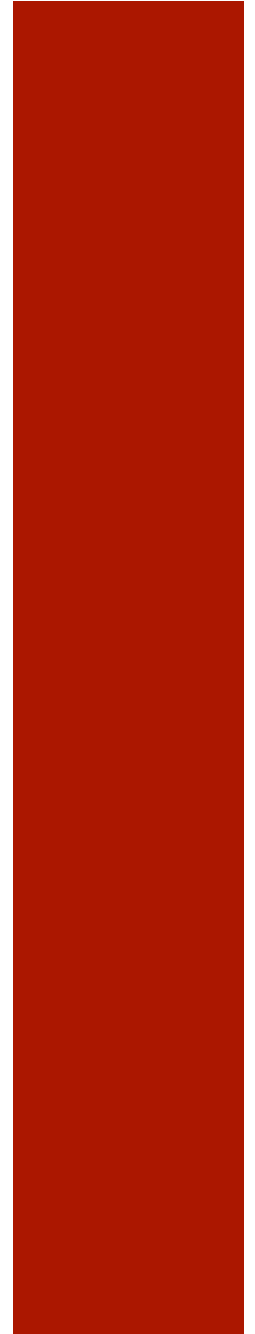
OR

- Continued to supply an infringing product with knowledge that the infringer is mislabeling

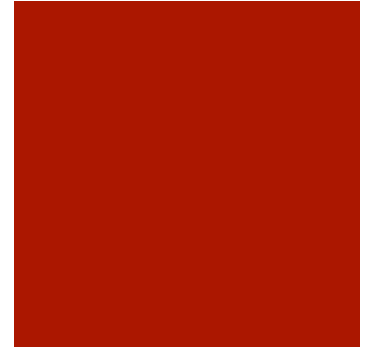


# Vicarious Infringement

Of Copyright and Trademarks

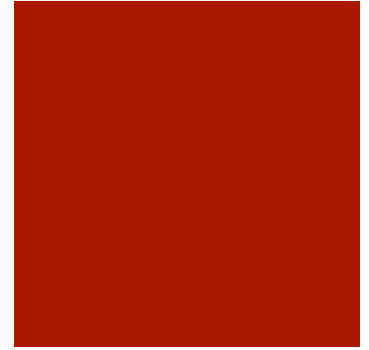


# Vicarious Copyright Infringement



- The right and ability to supervise the infringing content
- A direct financial interest in the infringing activity

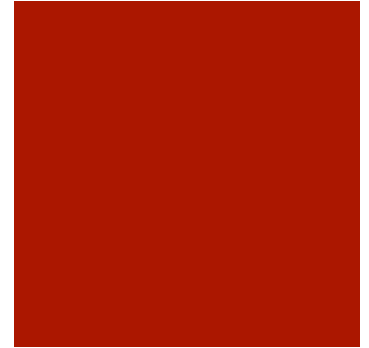
# Vicarious Trademark Infringement



- 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 (9<sup>th</sup> Cir. 2007)
- *Louis Vuitton Malletier, S.A. v. Akanoc Solution, Inc.*, 591 F. Supp. 2d 1098 (N.D. Cal. 2008)





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