

## Update on the Law

### Newsletter: Data Privacy/Data Breach and Technology Law April 2, 2009

**ALERT: Google's Trade Secrets Are Safe, But Privacy Issues Impact Copyright Infringement Lawsuits.**

In the ongoing saga of **Viacom Int'l Inc. v. YouTube, Inc.**, 87 U.S.P.Q2d 1170 (S.D.N.Y. 2008), there have been recent holdings that may impact your organization's trade secrets and privacy strategy. In this \$1 billion dollar copyright infringement lawsuit regarding the sharing of copyrighted videos on YouTube, Viacom recently moved to compel production of three types of evidence. They are:

1. The source code that provides the search functionality on YouTube, which is based on the same trade secret algorithms that Google employs.
2. The source code for YouTube's new "Video ID" program, which includes other trade secret algorithms that allow end users to upload media clips as well as to search YouTube to see if those media clips also appear in other videos.
3. The viewing logs for videos on YouTube. These viewing logs are huge, exceeding 12 terabytes of data, and shows the unique login ID of the viewer, the time the video was viewed, the IP address of the viewer, and identification information of the video watched.

In July 2008 the District Court in New York denied Viacom's request to compel the source code for search engine on YouTube and for the source code for the Video ID program, stating that the value of the trade secrets outweighed the value to Viacom's case (items #1 and #2 above). The Court also said that it would be very dangerous to place such trade secrets in the hands of an adversary such as Viacom.

As to #3 above, however, the Court granted Viacom's request to compel production of all the viewing logs, even though Google argued that providing such data would violate its customers' privacy. This means Google's YouTube customers personal information will be at risk and will be under the security of Viacom. Additionally, Google will incur huge costs in producing the 12 terabytes of data. The Court held that there is no other way to link login IDs to unique individuals and that customer privacy issues were slight in comparison to the value of the information to Viacom.

Viacom still has a long uphill climb in proving copyright infringement, but now privacy issues are in play in such litigation. To discuss this case and how it may impact your organization, please contact Todd Ruback at [Truback@newjerseylaw.net](mailto:Truback@newjerseylaw.net) or 908-757-7800 x196.