

22ⁿ International Congress on Computer and Telecommunications Law

CASES OF FIRST IMPRESSION

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Oval Peg in Round Holes

In many technology case we are confronted with cases of “first impressions.”

We are required to make oval pegs fit into round holes or we create new holes.



Three Illustrative cases

AFP v. Google (the extent of copyright protection)

Viacom v. You Tube (DMCA massive infringement)

*Tiffany & Louis Vuitton & Lancome & Hermes v.
e-Bay (Trademark enforcement burdens-4 different cases-
US, France (2), Belgium)*



USA Laws

The USA has a few special statutes:

- *DMCA* for copyright protection for the ISP
- *Communication Decency Act* for defamation protection for ISP
- *Anticybersquatting Consumer Protection Act* to stop use of trademarks in URLs





v.



The larger question was: Is Google News a large scale copyright infringement.

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Serbia in coalition scramble after ambivalent vote
 Reuters - 1 hour ago
 By Ellie Tzortzi BELGRADE, May 12 (Reuters) - A coalition of pro-Western parties came first in Serbia's parliamentary election on Sunday but faced an immediate challenge from the national government.
[Pro-EU Parties May Win Serbian Elections, Early Results Show](#) Bloomberg
[EU welcomes election victory by Serbia's pro-Western bloc](#) International Herald Tribune
[Reuters UK](#) - [The Associated Press](#) - [Aljazeera.net](#) - [Monsters and Critics.com](#)
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Myanmar junta still blocking most cyclone aid
 International Herald Tribune - 6 hours ago
 YANGON, Myanmar. A trickle of aid shipments arrived in Myanmar on Sunday, more than a week after a massive cyclone smashed the country, but officials continued to bar major shipments.
[The World The Dangers of the Deltas](#) New York Times
[Aid Groups Warn Myanmar Toll Could Jump From Lack of Water](#) Wall Street Journal
[Washington Post](#) - [United Press International](#) - [Monsters and Critics.com](#) - [The Associated Press](#)
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Fierce Fighting Breaks Out East of Beirut
 New York Times - 1 hour ago
 By NADA BAKRI BEIRUT, Lebanon - Fierce clashes broke out on Sunday in the mountains east of Beirut between supporters of the Western-backed government and followers of Hezbollah.
[Fighting spreads east of Beirut](#) BBC News
[The News from Lebanon](#) Swampland
[Reuters](#) - [Los Angeles Times](#) - [The Associated Press](#) - [Bloomberg](#)
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Zimbabwe Likely to Delay Presidential Run-Off
 Voice of America - 5 hours ago
 By VOA News Zimbabwe's electoral commission says the run-off between President Robert Mugabe and challenger Morgan Tsvangirai will not be held within two weeks as required by law.
[Zimbabwe opposition seeks peacekeepers for run-off](#) Reuters
[Zimbabwe police arrest activists](#) BBC News
[Bloomberg](#) - [Times Online](#) - [Monsters and Critics.com](#) - [AllAfrica.com](#)
[all 1,968 news articles »](#)

Aid trickles into Burma, but toll 'could
 Times Online - 1 hour ago
 Relief deliveries into cyclone-hit Burma increased today but aid groups said supplies fell far short of the enormous need and that foreign experts were still barred from the country.
[David Miliband condemns 'malign' Burma cyclone handling](#) Telegraph.co.uk
[1.5m lives at risk over blocked aid](#) Irish Examiner
[BBC News](#) - [Voice of America](#) - [AHN](#) - [Monsters and Critics.com](#)
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US official: Too early to know Sadr City true success



v.



Issues:

Are headlines protectible?

Are reduced sized news photos protectible?

Are story leads protectible?

Are They unprotected short phrases?

Are the images covered by *Kelly v. Arriba*?

Are they only links?

Does Fair Use apply?



VIACOM

v.

You Tube
Broadcast Yourself

In order to balance rights of copyright owners and needs of ISP the Copyright Act was amended adding Section 512 - the DMCA.

The procedure provided for a notice requirement and a take down procedure.

Does it work with 150,000 infringements?

Does You Tube fit under safe harbor?



Five Cases - Five Opinions

- **Tiffany & Co. – Burden on Trademark Owner**

Tiffany v. eBay, No. 04 Civ. 4607 (SDNY July 14, 2008).

- **Louis Vuitton – Burden on eBay**

Louis Vuitton v. eBay, Commercial Court of Paris (June 30 2008), General Docket No. 2006077799.

- **Hermes - Burden on eBay**

Hermes v. eBay, Troyes High Court (June 4, 2008), Docket No.06/0264

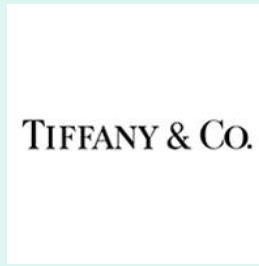
- **Lancôme – Burden on Trademark Owner**

Lancome v. eBay, Brussels Commercial Court (Aug.12 2008),Docket No. A/07/06032

- **Stokke – Burden on eBay**

Hanseatisches Oberlandesgericht, Case No. 3U 216 06 July 24, 2008





v.



The issues are trademark which are not covered under DMCA.
What obligations does a “market place” have versus the
trademark owner?

Does notice that up to 95% of Tiffany goods on change the
equation? 284,149 reports from 2003-06

Five different courts have ruled two different points of view-
two for three against

The issue is proactive verses reactive.

Specific Knowledge versus General Knowledge



New Frontier – Pure Virtual

- What if you never use a trademark in the real world?
- Second Life is a complete virtual world, shops, money, banks, activities, etc.
- SL is Linden Labs' trademark
- Minsky got a trademark for SLART for art sold in Second Life
- Cross suits pending

