

Getting Your Client Off Youtube: Three Common-Sense Steps To Take Before Filing Suit



By: Aren Olson, Esq. of Anthony Ostlund

Uh oh—your client just forwarded you a YouTube video. And, they're in it! Your client didn't tell the uploader that it was alright to use his/her image, name, or personal data. But a video containing them all ended up online anyway. What do you do?

For lawyers, the gut reaction may be to file suit. Content posted to YouTube can be defamatory and can violate privacy rights. Thus, legal tools do exist to deal with the problem. For example, in a recent Minnesota case a resident accused a property management company of perjury, fraud, and other wrongs in numerous YouTube videos. Following, the property management company filed suit against the resident for defamation. After the property management company moved for summary judgment, the district court determined that the resident's YouTube videos were defamatory per se. As a result, the district court ordered the resident to remove the videos from his

YouTube channel.

While it is certainly possible to remove content posted to YouTube by filing suit, litigation may not always be the best way to deal with the problem. As an initial matter, litigation is both time-consuming and expensive. Consider that the case above took over two years to resolve, from the filing of the initial complaint to the conclusion of the resident's appeal. Further, litigation is a matter of public record. Thus, any litigation undertaken to remove content from YouTube may well put the public on notice that the content exists. Given these drawbacks, it may be worth your while to take a few common-sense steps before filing suit. This article proposes three.

1. Try contacting the uploader. A potential plaintiff can reach out to an uploader through YouTube's private messaging feature. To use YouTube's private messaging feature, the potential plaintiff will likely need to set up his/her own YouTube account. Contacting the uploader is smart for two reasons. First, YouTube requires the potential plaintiff to contact the uploader before it will take certain removal actions. And second, there is a reasonable chance that, when informed that the content he/she has uploaded is offensive, the uploader will remove it of his/her own accord.

2. Try submitting a privacy complaint. YouTube maintains privacy guidelines. Those privacy guidelines prevent uploaders from posting certain content that uniquely identifies another—i.e., contains the image of, name of, or personal data of another. A potential plaintiff can submit a privacy complaint

to YouTube in order to report a video that violates YouTube's privacy guidelines. YouTube will then communicate with the potential plaintiff directly about whether removal is proper. Submitting a privacy complaint is smart because it allows the potential plaintiff to ask for YouTube's assistance in removing a video without the need of a court order.

3. Finally, try sending a cease-and-desist letter. Uploaders—like many other internet bullies—act tough while hiding behind a computer screen. However, their attitude often changes when confronted with a cease-and-desist letter from a capable lawyer. Often the information necessary to send a cease and desist letter—such as the uploader's full name and email address—is available in the "About" section of the uploader's YouTube channel. Sending a cease and desist letter is smart because it allows the potential plaintiff to show the uploader that he/she is willing to elevate his/her concerns beyond YouTube's standard reporting mechanisms, while still keeping those concerns out of the public record.

Ultimately, whether any or all of these common-sense steps are appropriate in your case depends on its particular facts circumstances. But, hopefully, this guidance will make it easier to keep your client off of YouTube and yourself out of the courtroom.

Aren Olson is an associate at Anthony Ostlund Baer & Louwagie P.A. He regularly advises businesses and represents clients in all phases of the litigation process. He can be reached at aolson@anthonyostlund.com or (612) 349-6969.