

# Santa Clara University

## Hot Topics in Internet Law

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# Perennials—Keyword Advertising

- Four pending suits against Google (Jurin, Rosetta Stone, CYBERSitter, Home Décor Center)
- Habush v. Cannon in Wisconsin Supreme Court
- STK v. Backrack (TTAB May 21, 2012): no policing duty over competitive keyword advertising
- Franklyn & Hyman, Trademarks as Keywords: Much Ado About Something?
  - “although a majority of consumers use trademarks to search for the trademarked product only, sizeable minorities use trademarks to search for the trademarked product along with similar competing products sold by other companies”
  - “the actual probability of diversion turns out to be quite modest...the task of differentiating diversion from ordinary search behavior is going to be challenging”

# Perennials—Marketplace Liability

- Tre Milano v. Amazon.com (Cal. App. Ct. August 22, 2012)
  - Amazon not liable for merchants' counterfeit sales despite receiving NOCIs
  - Lesson for Manufacturers
    - Verify your NOCIs
  - Lessons for Marketplaces
    - Reject unreasonable TM owner demands
    - Earn consumer trust



# Perennials—Web Host Liability

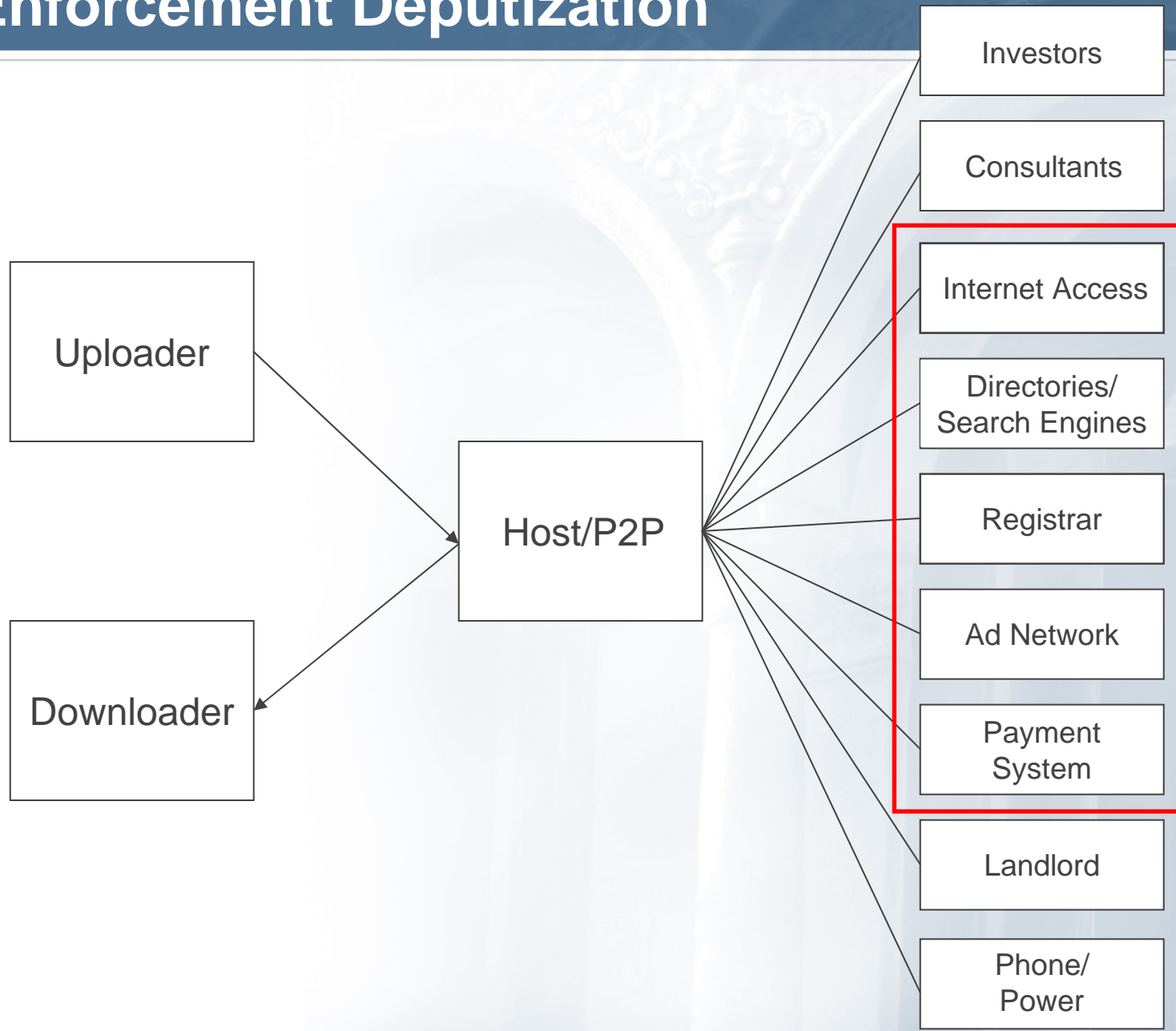
- **Flava Works v. Gunter (7th Cir. Aug. 2, 2012)**
  - Viewing embedded video isn't direct infringement, so linking site isn't contributorily liable irrespective of 17 USC 512(d)
  - Sideloading is direct infringement
- **David v. CBS (C.D. Cal. July 13, 2012)**
  - Distributing P2P software could be inducement even if no secondary liability

The screenshot displays the myVidster website. At the top, the logo "myVidster" is accompanied by the tagline "collect the videos you love" and navigation links for "collect", "share", and "explore". A search bar is visible on the right. Below the header, a brief description states: "myVidster is a social video bookmarking service that lets you collect, share and search your videos. You can also explore video collections from other users using myVidster." Three main sections are highlighted: "Collect" (your favorite videos from any website, social network or blog), "Share" (and discuss your video collection with friends and the world), and "Explore" (and follow your friends and other user's video collections). A green banner indicates "See what these users are collecting now" with links for "New", "Popular", "Shuffle", and "Recent". A list of video collections follows, including: 1. "Queen of Versailles' and her fall" (Channel: Breaking News Collection: CNN, Posted 1 minute ago); 2. "Video: A post-conventions newspllosion" (Channel: The Rachel Maddow Show Collection: MSNBC, Posted 2 minutes ago); 3. "Video: Pres. Obama Leading Polls in 3 Battleground States" (Channel: CNBC Collection: MSNBC, Posted 2 minutes ago); 4. "Fashion: Backstage Pass" (Channel: Breaking News Collection: CNN, Posted 4 minutes ago); 5. "myVidster Android App Update: New Features" (Sponsored AD by myVidster - Collect the videos you love). On the right side, there is a section for "Create your own video collection!" with a "Add to Chrome" button, and a large advertisement for "Mmmm... BACON BURGER" with the text "VISIT CHILISTOGO.COM". Below that, "Featured Collections" lists "Fark Videos", "Hulu", "The Daily Show", "Popscreen", and "CNN". "Power User Collections" lists "Springhill Group" and "WILA\_TV".

# Odds 'n' Ends

- **Copyright as “Right to Forget”**
  - Monge v. Maya Magazine (9th Cir. Aug. 14, 2012)
  - Scott v. WorldStarHipHop (SDNY May 3, 2012)
- **Latest Anti-Consumer Review Technique**
  - Renter shall not “discuss or disclose the occupancy of the subject property with any entity not bound by the terms of this agreement without the expressed written authorization of the homeowner and the property agent representing the homeowner”
- **Initial Interest Confusion is Dying**
- **Battles Over Social Media Accounts**
- **Idea/Expression Dichotomy in Apps (cf. EA v. Zynga)**
- **Cleaning Up after Trademark Injunctions**

# Enforcement Deputization



# Post-SOPA Battlegrounds

- DOJ criminal prosecution (ex: Megaupload)
- ICE domain name seizures (ex: Dajaz1 and Rojadirecta)
- International trade agreements (ex: ACTA, TPP)
- Ex parte TROs purportedly binding non-litigants
- “Voluntary” initiatives. Ex:
  - “Graduated response”/Center for Copyright Information
  - ANA/4As + blacklist
  - Verisign’s proposed “anti-abuse” policy
  - Google’s algorithmic downgrade and customized auto-complete
- ***SOPA WILL HAPPEN WITHOUT ANY LEGISLATION***