

Santa Clara University

Designing Optimal Safe Harbors & Immunities

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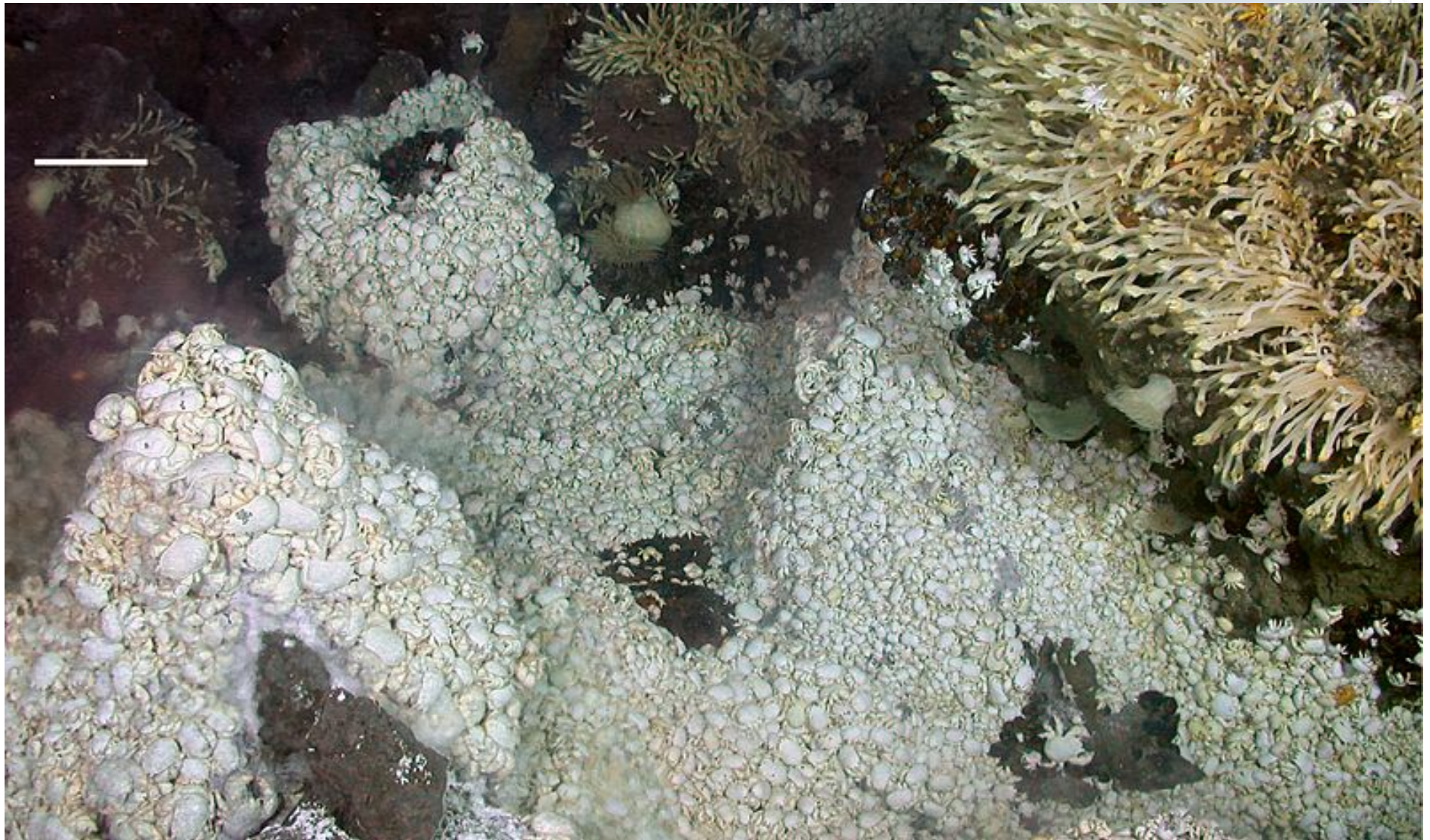
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Inspiration



Why Safe Harbors and Immunities Matter (1)

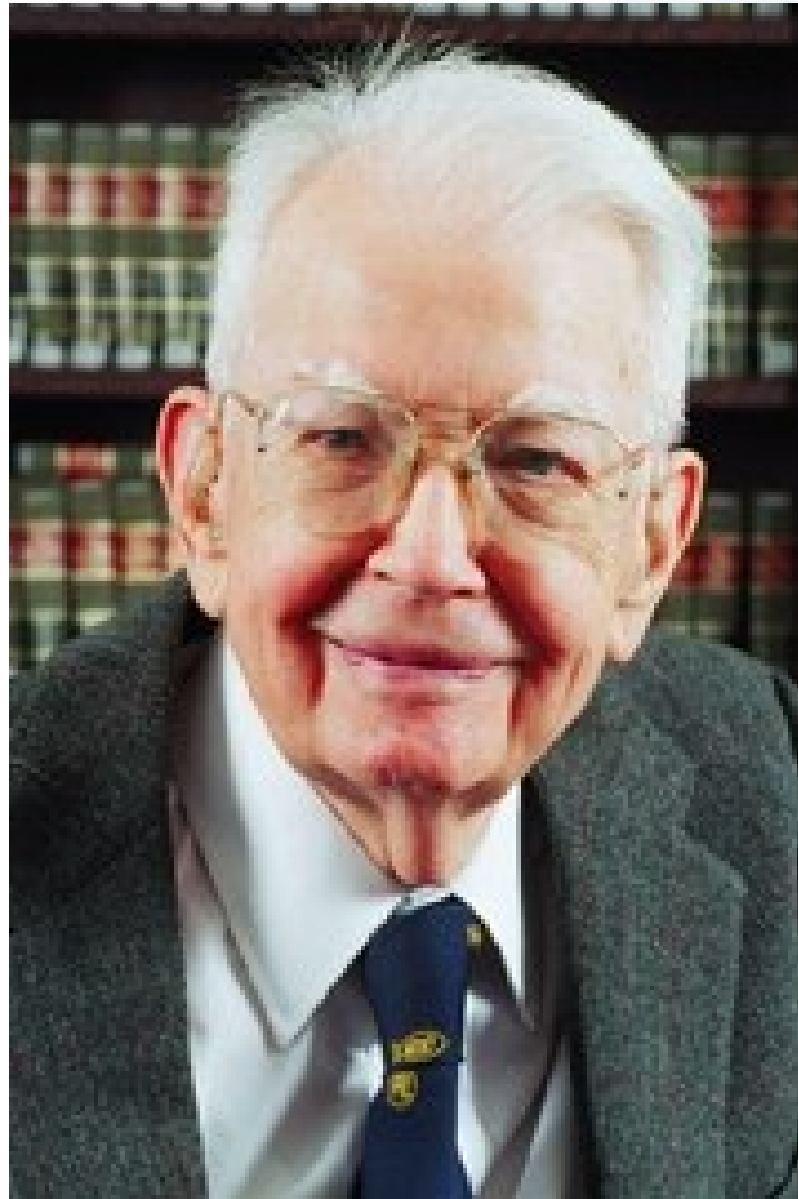


Source: https://en.wikipedia.org/wiki/File:Dense_mass_of_anomuran_crab_Kiwa_around_deep-sea_hydrothermal_vent.jpg

Why Safe Harbors and Immunities Matter (2)

$$\text{SCL} : R_{i,t} - R_f = \alpha_i + \beta_i (R_{M,t} - R_f) + \epsilon_{i,t}$$

Why Safe Harbors and Immunities Matter (3)



Designing Effective Safe Harbors/Immunities



- Minimal Formalities/Prerequisites
- Brevity
- Global Preemption
- No Weasel-Words
- Specifically Described Scientist
- Quick Resolution
- Sanctions for Bogus Claims

Case Study #1: 47 USC 230

- Formalities/Prerequisites = none
- Brevity = 26 words in key operative provision (843 total)
- Preemption = everything but federal crimes, IP, ECPA
- Weasel-Words = 230(c)(2) refers to “good faith”
- Scierter = irrelevant
- Resolution = typically motion to dismiss
 - Roommates.com II: “If you don’t encourage illegal content, or design your website to require users to input illegal content, you will be immune”
 - Roommates.com III: Roommates.com never dealt with illegal content
- Sanctions = when combined with anti-SLAPP

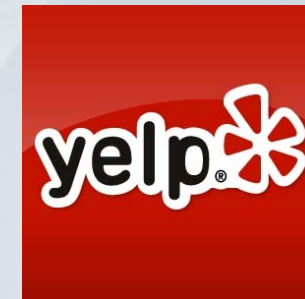
Section 230 Results



Top Sites in United States 
The top 500 sites in United States. 

- 1 Google**
google.com
Enables users to search the world's information, including webpages, images, and videos. Offers... [More](#)
★★★★★ [Search Analytics](#) ▶ [Audience](#) ▶
- 2 Facebook**
facebook.com
A social utility that connects people, to keep up with friends, upload photos, share links and ... [More](#)
★★★★★ [Search Analytics](#) ▶ [Audience](#) ▶
- 3 YouTube**
youtube.com
YouTube is a way to get your videos to the people who matter to you. Upload, tag and share your... [More](#)
★★★★★ [Search Analytics](#) ▶ [Audience](#) ▶
- 4 Yahoo!**
yahoo.com
A major internet portal and service provider offering search results, customizable content, cha... [More](#)
★★★★★ [Search Analytics](#) ▶ [Audience](#) ▶
- 5 Amazon.com**
amazon.com
Amazon.com seeks to be Earth's most customer-centric company, where customers can find and disc... [More](#)
★★★★★ [Search Analytics](#) ▶ [Audience](#) ▶
- 6 Wikipedia**
wikipedia.org
A free encyclopedia built collaboratively using wiki software. (Creative Commons Attribution-Sh... [More](#)
★★★★★ [Search Analytics](#) ▶ [Audience](#) ▶
- 7 eBay**
ebay.com

craigslist





Case Study #2: DMCA

- Formalities/Prerequisites = extensive
- Brevity = 4,104 words
- Preemption = only federal copyright
 - UMG v. Grooveshark: common law copyrights not covered
- Weasel-Words/Scienter = actual knowledge + “red flags” + willful blindness + inducement
- Resolution = summary judgment or more
- Sanctions = negligible

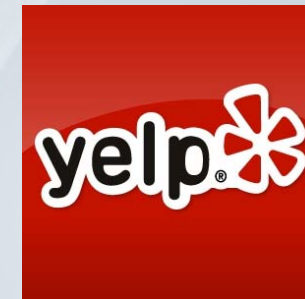
Section 512 Results (1)



Top Sites in United States 
The top 500 sites in United States. 

- 1 Google**
google.com
Enables users to search the world's information, including webpages, images, and videos. Offers... More
★★★★★ Search Analytics ▶ Audience ▶
- 2 Facebook**
facebook.com
A social utility that connects people, to keep up with friends, upload photos, share links and ... More
★★★★★ Search Analytics ▶ Audience ▶
- 3 YouTube**
youtube.com
YouTube is a way to get your videos to the people who matter to you. Upload, tag and share your... More
★★★★★ Search Analytics ▶ Audience ▶
- 4 Yahoo!**
yahoo.com
A major internet portal and service provider offering search results, customizable content, cha... More
★★★★★ Search Analytics ▶ Audience ▶
- 5 Amazon.com**
amazon.com
Amazon.com seeks to be Earth's most customer-centric company, where customers can find and disc... More
★★★★★ Search Analytics ▶ Audience ▶
- 6 Wikipedia**
wikipedia.org
A free encyclopedia built collaboratively using wiki software. (Creative Commons Attribution-Sh... More
★★★★★ Search Analytics ▶ Audience ▶
- 7 eBay**
ebay.com

craigslist



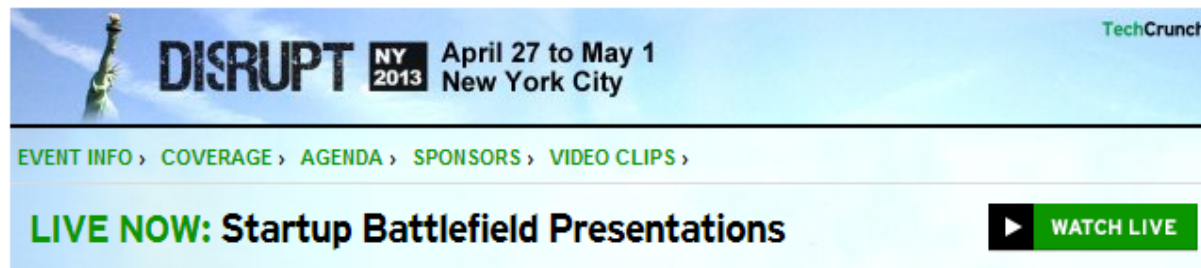
Section 512 Results (2)



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Google Spent \$100 Million Defending Against Viacom's \$1 Billion Lawsuit



ERICK SCHONFELD 

Thursday, July 15th, 2010

0 Comments

How much did Google spend to fend off Viacom's \$1 billion copyright lawsuit? On today's [earnings call](#), CFO Patrick Pichette revealed that Google's legal bills for the case amounted to \$100 million, and that was before it went to trial.



Section 512 Results (3)

Eric Goldman

Technology & Marketing Law Blog

« [Infringing Download Without Further Infringement Only Supports Lost License Fee--Real View v. 20-20](#) | [Main](#) | [Another Set of Parties Duel Over Social Media Contacts -- Eagle v. Sawabeh](#) »

December 27, 2011

“Veoh is legal,
but Veoh is dead”

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decisive and clear (well, as clear as the 9th Circuit gets...) opinion interpreting the crucial 512(c) safe harbor. This opinion is so comparatively lucid that I plan to substitute it into [my Internet Law reader](#) next Fall as a replacement for the [Jo v. Veoh](#) and [Viacom v. YouTube](#) district court rulings.

But also make no mistake: this case reminds us why we need to strike a fair balance between rightsowners and technology providers, or else our system *will* break down. This case's real result is that Veoh is legal, but Veoh is dead—killed by rightsowner lawfare that bled it dry. Meanwhile, rightsowners wrongly assessed the legality of Veoh, but the worst consequence they suffered was overpaying their lawyers. Indeed, UMG isn't liable under 17 USC 512(f) for sending bogus takedown notices *because they never sent any notices at all.*, nor is UMG liable for Veoh's attorneys' fees. UMG's decision-makers walk away from this car crash, muttering under their



Limitations

- Safe harbors/immunities make winners
-and losers...
- and create new incumbents