

CPTWG MEETING

#122

January 11, 2011

Legislative/Litigation Update

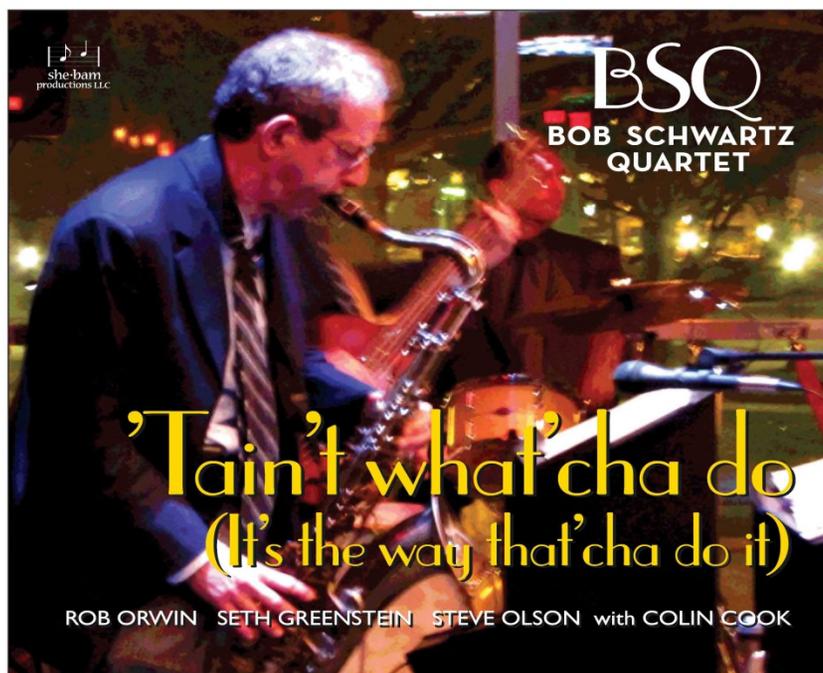
Jim Burger

jburger@dowlohn.com

BSQ

BOB SCHWARTZ QUARTET

proudly presents music from



The Bob Schwartz Quartet (BSQ), which performs at major Washington social venues and local jazz spots, returns to CES. This year, BSQ will be playing music from its new album, **'TAIN'T WHAT 'CHA DO**.

'TAIN'T WHAT 'CHA DO celebrates the music of the Basie, Ellington, and Lunceford bands, and the lost or less appreciated works of our major songwriters of the golden age.

'TAIN'T WHAT 'CHA DO by the **BSQ** will be available worldwide on CD Baby, iTunes, AmazonMP3, and many other services. Come by, get on the mailing list, and say hello to the BSQ –

Bob Schwartz - tenor sax and flutes

Rob Orwin - piano

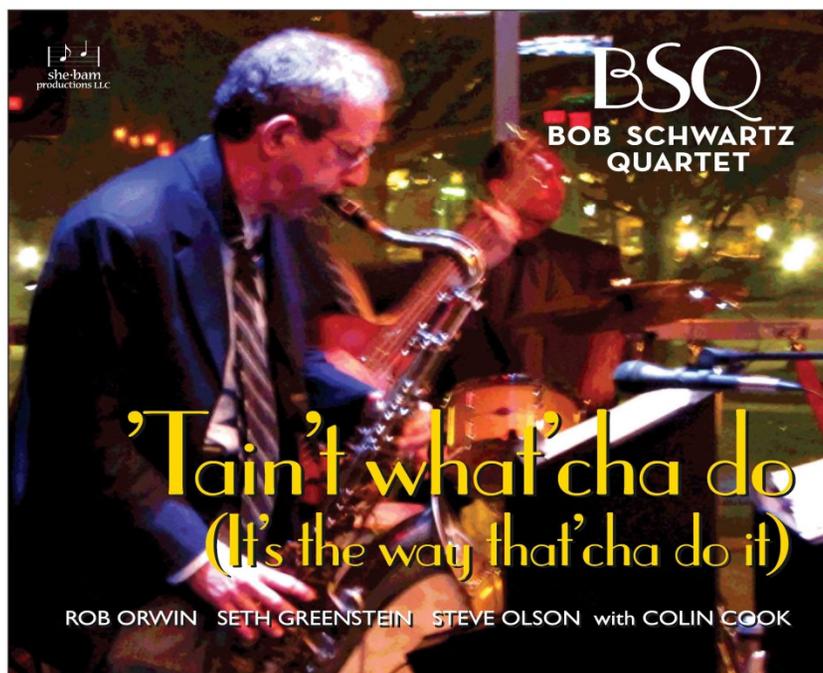
Seth Greenstein - bass

Steve Olson - drums

BSQ

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Litigation

- *EMI v. Mp3Tunes*
- *MDY Industries v. Blizzard Entertainment*
- **Three First Sale Cases**
- **Two Video Re-transmission Cases**
- *Viacom v. YouTube*



EMI v. MP3tunes (SDNY)

- **EMI Music filed suit against MP3tunes three years ago, alleging that MP3tunes' cloud-based storage system constitutes copyright infringement.**
- **MP3tunes has sought summary judgment, arguing:**
 - **DMCA Safe Harbor protection; and**
 - **No public performance of the underlying work.**
- **Decision expected soon.**

MDY Industries v. Blizzard Entertainment

(9th Cir.)

Facts:

- MDY developed a software program (a “bot”) that allowed individuals to play Blizzard’s “World of Warcraft” computer game on “auto-pilot.”
- Blizzard sued MDY, alleging it circumvented Blizzard’s software controls which were intended to detect and prevent operation of “bots.”

Holding:

- Violation of DMCA anti-circumvention provisions & contract terms.
- No nexus to copyright infringement required for violation of DMCA anti-circumvention provisions
 - Split with Federal Circuit. May need to be resolved by SCOTUS.

A Trio of Ninth Circuit “First Sale” Decisions

Vernor v. Autodesk,
MDY v. Blizzard, and
UMG Recordings v. Augusto

- *Vernor v. Autodesk*
 - Software distributed with shrink-wrap license, not subject to first sale doctrine.
- *MDY v. Blizzard*
 - Computer game software with restrictive terms is licensed not sold (and accordingly not subject to first sale doctrine.)
- *UMG Recordings v. Augusto*
 - Promotional CDs with restrictive labels are not licensed and thus subject to first sale doctrine.

Video Retransmission Cases

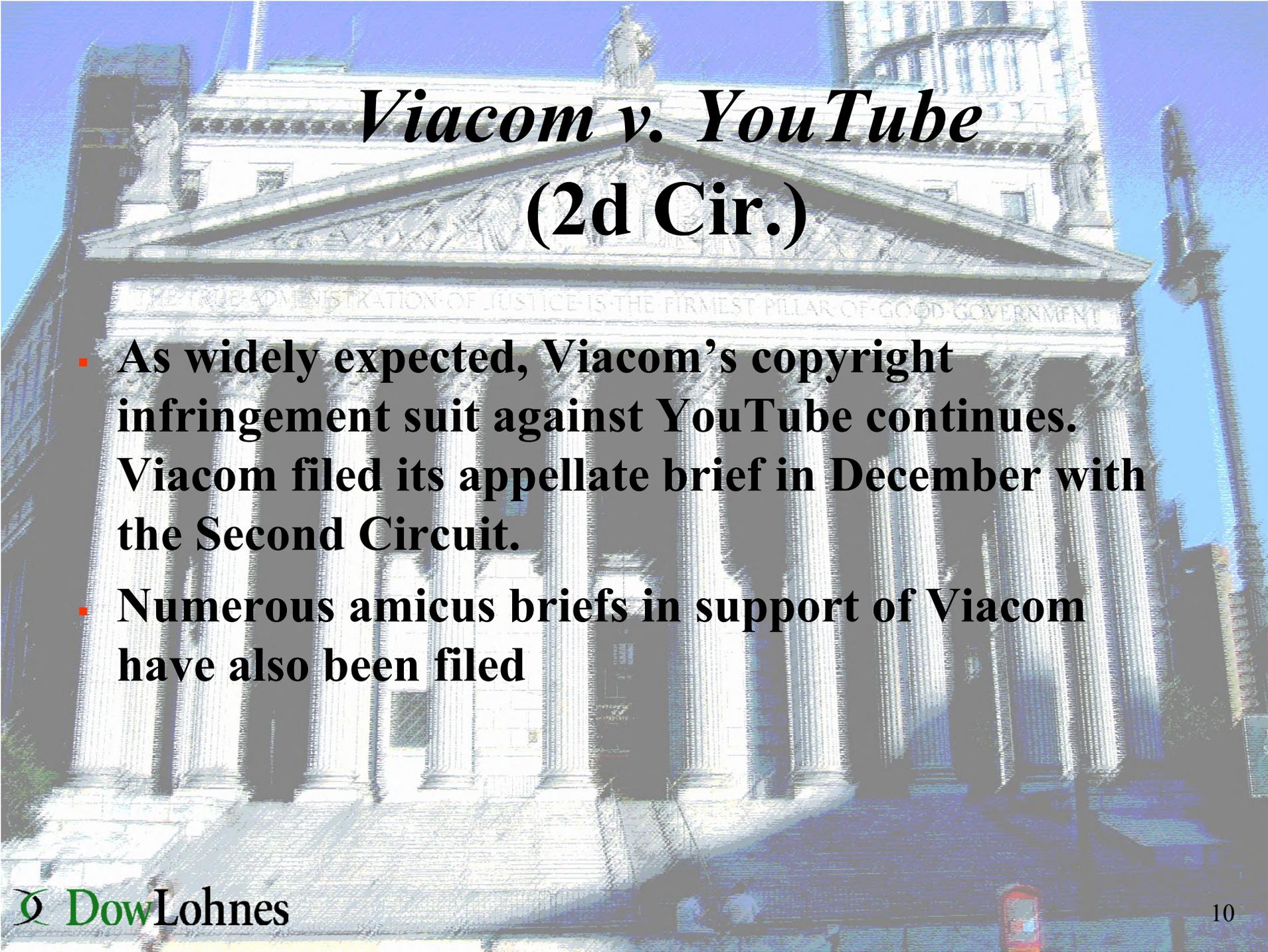
CBS et al. v. FilmOn.com

(SDNY)

WPIX et al. v. Ivi, Inc.

(SDNY)

- Broadcasters have filed separate copyright infringement suits in federal court against two online video streaming services – FilmOn and ivi.
- FilmOn and ivi rebroadcast live over-the-air broadcasts via online streaming.
 - Both companies allege they have the right to stream the content under a compulsory license.
- Temporary injunction granted against FilmOn.



Viacom v. YouTube (2d Cir.)

- **As widely expected, Viacom's copyright infringement suit against YouTube continues. Viacom filed its appellate brief in December with the Second Circuit.**
- **Numerous amicus briefs in support of Viacom have also been filed**

Administrative Action

A photograph of the White House in Washington, D.C. The building is white with a prominent portico supported by columns. An American flag flies on a tall pole in front of the building. In the foreground, there is a green lawn, a flower bed with red flowers, and a fountain spraying water.

- **FCC Approves Net-Neutrality Rules**
- **Maria Pallante Appointed Acting Register of Copyrights Appointed**



Legislative Developments

- **“Combating Online Infringement and Counterfeits Act” (“COICA”) Update**



International

- ACTA Update
- UK Copyright Law Review
- Singapore: Internet DVR Legal
- European Union: “New Renaissance”
- France: HADOPI
- Germany: *RapidShare*
- India: Anticircumvention
- Japan: Toshiba Wins Unpaid Levy Case Re: DVD Recorders