

Attorneys**Partner**

- Robert J. deBrauwere

Partner Robert deBrauwere Speaks to Information Week About Viacom Appeal of YouTube Copyright Ruling

Partner Robert deBrauwere, a member of Pryor Cashman's Intellectual Property Group, was interviewed by *Information Week* for its August 16, 2010 article "Viacom Appeals YouTube Copyright Ruling."

deBrauwere told *Information Week* that Viacom may challenge the judge's interpretation of the law or consideration of the facts. "The critical issue for the Court was whether 'actual knowledge' of infringement or awareness of 'red flags' from which 'infringing activity is apparent' is limited to actual or constructive knowledge that infringing activity exists (even if pervasive) or 'actual or constructive knowledge of specific and identifiable infringements of individual items.'"

According to the article, Viacom is arguing YouTube failed to do enough to meet its content policing obligations and should therefore be disallowed DMCA Safe Harbor protection. deBrauwere observed that Judge Stanton's decision consists of lengthy citations of the DMCA and legislative history, but provides less detail addressing facts and their application to the law. "The interesting thing is the decision doesn't contain a lot of analysis," said deBrauwere. "It's really a very brief and cursory discussion."

deBrauwere suggests that Viacom has a shot at winning on appeal because part of the DMCA hasn't fully been considered in some cases. "It appears on some level that this 512(c)(1)(a) 'red flags' provision of the DMCA has been given short shrift in some of the opinions to the benefit of some of the ISPs," he said.

To read the article, please [click here](#).