



Communication to the Public

Copyright in the Digital Age

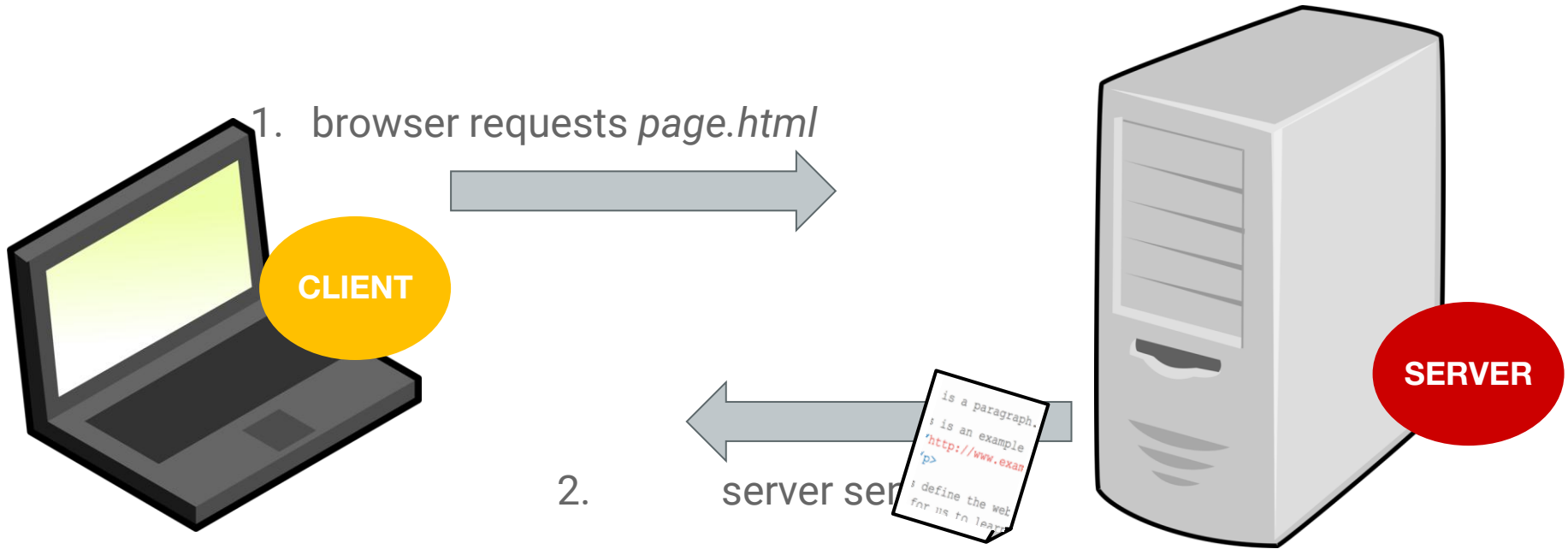
Erin Simon
April 2017

```
<p> This is a paragraph. </p>
```

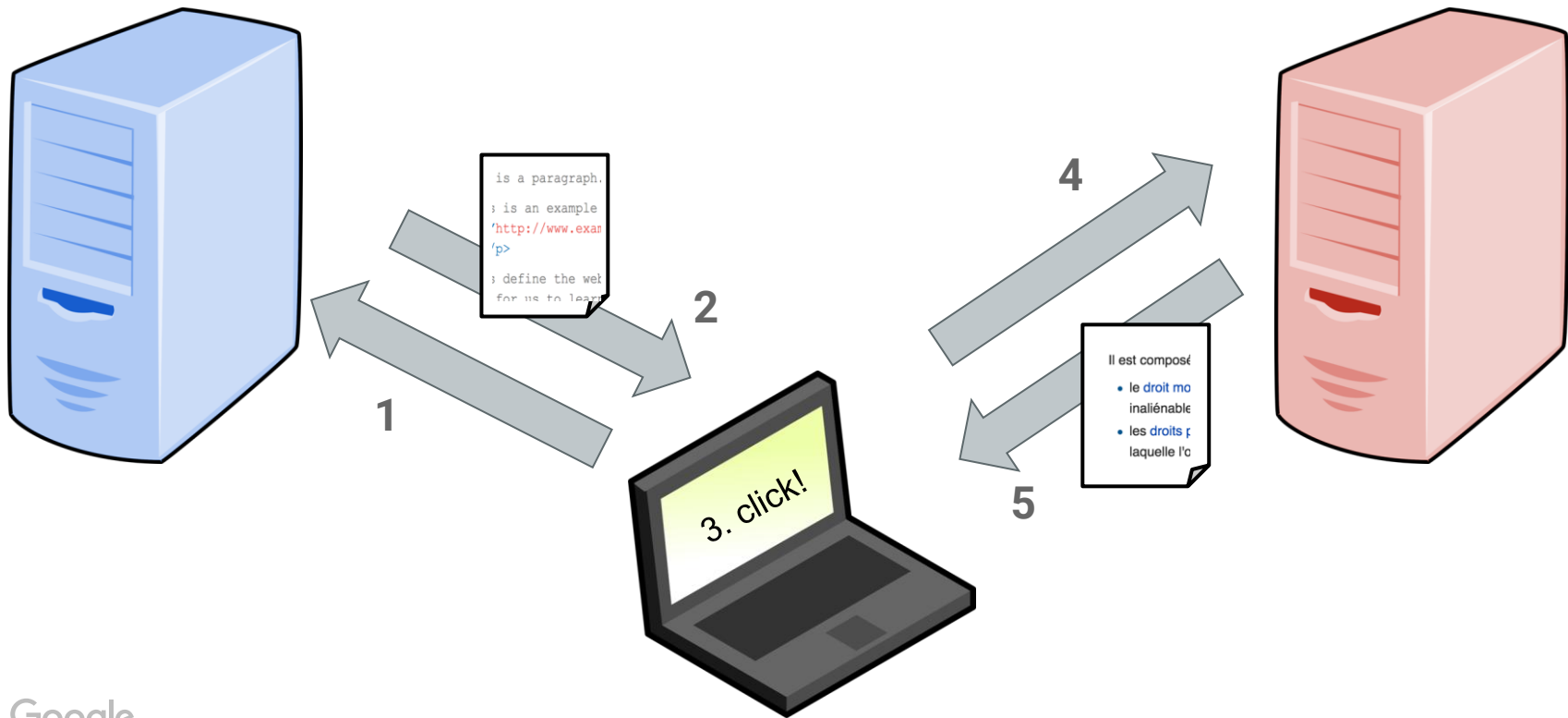
```
<p> This is an example of a paragraph with  
<a href="http://www.example.com">a link</a>  
in it. </p>
```

```
<p> Links define the web. They make it  
possible for us to learn and connect. But we  
can't control the contents of the third party  
pages we link to. </p>
```

When you “visit” a webpage, your browser makes a request and the server sends you the files



When you follow a link, you do the same thing





The person whose server hosts the infringing file is the infringer, because that person makes the work available to be copied



The Server Test

The person whose server hosts the infringing file is the infringer, because that person makes the work available to be copied




Vicarious infringement

- receives a direct financial benefit from infringement
- right and ability to control

Contributory infringement

- material contribution to infringement
- knowledge of infringement & specific intent to aid the infringement
- if product-based, product is not capable of substantial non-infringing uses

Inducement

- distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster
- 



secondary liability always requires:

1. an act of direct infringement by a third party
2. knowledge of the infringement by defendant



Under US law, a link is infringing if...

- Someone has used the link to infringe, *and*
- Defendant had knowledge of the infringement, *and*
- Defendant is culpable under the definition of a specific variety of secondary liability, *and*
- Defendant is not within the DMCA safe harbors



Linking is a communication

**the communication is infringing if
it is to a “new” public**

Under EU law, a link is infringing if...

- the public doesn't have access until Defendant's link, because it circumvents a technical access restriction
- the public already has access, but the copyright owner didn't authorize the access, **and**:
 - Defendant knew, **or**
 - Defendant didn't know, but operates for profit
- **and** Defendant is not within an ECD safe harbor?

Questions

- If a link is a communication, how does the “public” change depending on the *knowledge* of the link creator?
- Does the presumption kick in if: you are paid to post the specific link; if you receive revenue on the page; if you are a commercial entity; or in some other circumstance?
- When can the presumption be rebutted?
- Is a hosting platform liable for its users’ links?

How this plays out in practice

Rebecka Jonsson v. Les Editions de l'Avenir SA

L'HISTOIRE DU JOUR
Elle survit à un plongeon de 111 mètres dans les chutes Victoria
ATTUNDA TINGSRÄTT

Vu 30 fois | Le 10/01/2012 à 06:00 | Réagir

Ink. 2016 -06- 03
Akt..... FT 11052-15
Aktbil..... 50

Tags de l'article
FRANCE/MONDE

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LE PROGRES v. Årtenmärkning
↓



111 mètres au-dessus de l'abîme. Photo capture d'écran (översättning: skärmdump)

Erin Langworthy, une Australienne de 22 ans a survécu « par miracle » à un



Rebecka Jonsson v. Les Editions de l'Avenir SA

Rebecka Jonsson has denied that the film was published on YouTube with her consent. Under these circumstances it is l'Avenir that shall prove the opposite, or prove that the company in any case did not have and should not have had knowledge that that was the case.

l'Avenir has published the link in question on a news site and it is therefore, according to the district court, obvious that it was done for the purpose of carrying profit. l'Avenir is therefore subject to the presumption of full knowledge described above. l'Avenir has not been able to prove the opposite. Therefore, it shall be concluded that l'Avenir had knowledge about the film being published on YouTube without Rebecka Jonsson's consent and has therefore, by making it possible for visitors to watch the film by posting a link to YouTube, communicated the film to the public. l'Avenir has henceforth in this manner infringed Rebecka Jonsson's exclusive right.



Erin Langworthy Bungled Bungee - Bungee snaps over Zambezi River.mp4



pauljh1968's channel

Subscribe 96

374,221 views

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142 13

Uploaded on Jan 8, 2012
Bungee snaps over Zambezi River

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Autoplay



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Department of Foreign Affairs and Trade
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Go Find Yourself
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The TOP
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FOOTBALL Myth
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CROCODILE CATCHES

our VP Digital Media has the clip for you. fyi--In light of the fact that the goal is to make it look "hijacked" we won't blur the round number on the clock. Steve actually suggested we throw (if technically possible) visual time code on it to add to the "hijacked" effect.

Liaise with Steve on format, but he has the clip ready to go. We feel the length is appropriate to get the point across, but if you want to cut it shorter, we're cool with that too.

Thanks...this is going to be great!

SVP Sports and Specials
Spike TV

To Whom It May Concern:

We received the email below in response to 7 videos we have on YouTube for the MTV show – The Hills. We were hired by MTV to do online marketing around the show with a key tool being uploading and syndicating clips from each show via YouTube. We were authorized by MTV to use their videos on YouTube.

I called MTV to let them know about these emails and how someone contacted YouTube to say we are infringing on their copyright material.

I was assured that they would call their lawyers to let them know that we are legit and what we are doing has been authorized by MTV.

What do I need to provide or have MTV provide to settle this matter?

Viacom secretly uploaded own content to YouTube, then demanded take-down?

Chris Davies - Mar 19, 2010

Facebook Twitter Google+ Reddit

This is HILARIOUS

Can we get posted on YouTube asap? (from scott of course) NOT WITH A PARAMOUNT LOGO OR ASSOCIATION

Senior Vice President
Interactive Marketing
Paramount Pictures

The Web has more than

130,000,000,000,000

pages and growing