

## IT'S ALL ABOUT YOUTUBE: HOW SOCIAL MEDIA CAN MAKE OR BREAK YOUR SUBROGATION ACTION

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We have all heard a story about some unfortunate lawyer who forgot to remind his client that 'what happens in Vegas stays on YouTube.' The legal community is becoming highly attuned to the crucial role that social media websites can play in civil litigation. Similarly, when it comes to subrogation cases involving property damage, it's important not to overlook the potential utility of these sites in advancing the claim. This Alert highlights some important ways in which YouTube can help to maximize your recoveries.

### 1. A Search Engine for Video Evidence

YouTube is the second largest search engine in the world. As of March 2010, 24 hours of video was being uploaded to YouTube every minute. To put this in perspective, consider that more video is uploaded to YouTube in 60 days than all three major news networks have created in 60 years.<sup>1</sup> What does this mean? If you have a property damage claim, stop for a minute and think about whether it was an event that was likely to warrant a gaper block. Was there a fire or an explosion? Did a massive wall of water sweep over the property? Consider that your insured or an observer may have pulled out his or her cell phone, recorded a video clip, and posted it on YouTube. Simply enter the loss date, location, and a one-word description into YouTube's search engine and you may discover valuable evidence that can provide crucial insights into the loss.

Although YouTube videos cannot be directly downloaded from the website, there are simple ways to preserve the evidence for use in litigation. YouTube videos are saved as a file format known as "flash video" format (.FLV). There are

many websites that will perform a free online conversion of a YouTube video to a downloadable file in a format that you can save on your hard drive, such as an MP4 video file. To locate these sites, simply enter the search terms "FLV to MP4" in a search engine. An example of one such site is <http://www.flvtomp4.net/>; simply paste the web address of the YouTube video that you wish to save and press "ok" to convert the file into a format that can be downloaded and saved.

### 2. Identifying Potential Witnesses

Social media websites can be a useful tool in identifying witnesses to a loss event. For example, beneath each YouTube video is an area in which both the uploader and viewers can post comments. This is where comments such as the following will often appear (we have redacted information relating to the identities of the commentators):

Cool man. I think it burned more than 7 hrs. I believe she blew around 4 am, and these pics were taken in the afternoon... Was a gooder tho, right beside the hiway like that. You live near there, or just workin in the valley? I was on one of the snubbing rigs near Rifle...

Cool, That truck that sits on I-70 in the back ground facing west, is mine. I was sitting there watching the blaze. This rig burned for nearly 7 hours that I'm aware of. Luckily no one was injured.

As illustrated above, in many cases, the comments are left by individuals who claim to have witnessed the loss. Clicking on the name associated with a posted comment will bring up the commentator's YouTube "channel," where it is possible to send messages to that person. Once a connection has been successfully made, you can request that the person voluntarily provide evidence with respect to the incident.

<sup>1</sup> <http://www.website-monitoring.com/blog/2010/05/17/youtube-facts-and-figures-history-statistics/>

Depending on the circumstances, it may be also possible to obtain a subpoena that will compel YouTube to identify the e-mail address and other information associated with the poster of the comment.

### 3. Identifying Trends to Support Product Defect Claims

You should consider mining social media websites in order to identify potential product defects. Consumers regularly will blog, post opinions, or tweet about products and brands. As a consequence, it is now becoming increasingly common for lawyers to cite to Internet allegations in filed complaints, incorporating consumer postings into legalbriefs as impressionistic evidence. Evidence of online consumer complaints can affect the question of whether a product is defective.

### Conclusion

The impact of social media in the courtroom cannot be ignored. It is influencing not just how we communicate, but how lawyers litigate. When it comes to the courtroom, the use of social media is not limited to personal injury and family litigation. Its usage in all manner of litigation, including commercial, property, and products liability claims is quickly growing. Courts and litigants across the country are increasingly discovering that evidence secured on social media websites can make or break their cases. As such, it's important for subrogation professionals to be aware of ways that social media can be used to add value to a subrogation action.