

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

YOUT, LLC,
Plaintiff,

v.

RECORDING INDUSTRY
ASSOCIATION OF AMERICA, INC., and
DOE RECORD COMPANIES 1-10,
Defendants.

No. 3:20-cv-1602 (SRU)

RULING ON DEFENDANT’S MOTION TO DISMISS

Yout LLC (“Yout”) filed this four-count suit against The Recording Industry Association of America, Inc. (the “RIAA”) and Doe Record Companies 1-10, seeking a declaratory judgment that Yout’s software, which allows users to download audio, video, and audio/video files from major streaming websites, does not violate section 1201 of the Digital Millennium Copyright Act (“DMCA”). Yout seeks damages in connection with the DMCA, a common law business disparagement claim, and a common law defamation claim for claimed misrepresentations made by the RIAA alleging that Yout infringed unidentified RIAA members’ copyrights.

The RIAA moves to dismiss Yout’s complaint for failure to state a claim under Rule 12(b)(6), primarily arguing that the facts pled by Yout establish that the software at issue circumvents an effective technological measure in violation of section 1201 as a matter of law. Under the same reasoning, the RIAA avers that it made no misrepresentations about Yout’s software in its circumvention notices. Additionally, the RIAA alleges that Yout does not have a plausible claim for damages under section 512(f) because the DMCA does not penalize a misrepresentation of circumvention.

For the reasons that follow, I **grant** the RIAA’s motion to dismiss Yout’s declaratory judgment claim, section 512(f) claim, and common law defamation claims.

I. Background

A. Factual Allegations¹

Plaintiff Yout is a Connecticut limited liability company that has its principal place of business in Hartford, Connecticut. Second Amended Complaint (“SAC”), Doc. No. 45, at 1 ¶ 2.

Defendant RIAA is a trade organization incorporated under New York law and headquartered in Washington, D.C. *Id.* at 1 ¶ 3. The RIAA represents various record companies, including defendants Doe Record Companies 1-10.² *Id.* at 2 ¶ 4. Collectively, the RIAA and Doe Record Companies 1-10 are “Defendants.”

1. *Yout*

The Internet contains diverse types of content, some of which may be accessed via a unique hyperlink, a uniform resource locator (commonly referred to as “URL” or “web address”), that directs computing devices to content on the Internet. *Id.* 4 ¶¶ 25-26. Access to some internet content is limited by a paywall or protective technologies such as encryption, content scrambling, or ciphers. *Id.* at 4 ¶¶ 27-32.

Yout created and operates a service by which a user can enter a URL linked to internet content, in specific formats, to create a personal copy of the content on the user’s device. *Id.* at 5 ¶ 34. The content accessed by Yout is not behind a paywall, encrypted, or subject to a cipher. *Id.* at 4 ¶¶ 27-32. It is publicly accessible. *Id.* at 4 ¶ 33.

2. *The Yout Service*

On the domain yout.com, a user may insert a URL and choose to create a local copy of the content in a specific format, such as an MP3 audio file or an MP4 video file. *Id.* at 5-6 ¶¶ 36-

¹ The facts are drawn from the second amended complaint, and for purposes of the present motion, I assume them to be true and draw all reasonable inferences in Yout’s favor. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

² The true names of Doe Record Companies 1-10 are unknown to Yout. *See SAC*, Doc. No. 45, at 2 ¶ 5 n.2. Yout intends to seek leave to amend its complaint once the true names and capacities of the companies are ascertained. *Id.*

39, 43. As a result, a user can listen to or watch the locally-stored copy when he or she is not connected to the internet, such as during a long flight, without visiting the website where the original content resides. *Id.* at 6 ¶¶ 43-44, 7 ¶ 52. Yout describes its service by explaining that users may “time shift” the content.³ *Id.* at 7 ¶ 46, 23 ¶ 103, 25 ¶ 121.

The content recorded by Yout users is never saved or retained by Yout’s platform or servers. *Id.* at 5 ¶ 35, 7 ¶ 47.

a. YouTube

One of the platforms on which a Yout user may obtain a local copy of a file, and the platform at the heart of this dispute, is YouTube. *Id.* at 8 ¶ 55. YouTube content plays on any HTTP user agent, including a web browser or user-side software, with a Javascript interpreter.⁴ *Id.* at 8 ¶¶ 57-58, 22-23 ¶¶ 98-99. When a HTTP user agent encounters YouTube’s “signature mechanism,” it reads and interprets the JavaScript program sent by YouTube, derives a “signature value,” and sends that value back to YouTube to initiate the video stream. *Id.* at 22 ¶ 98. YouTube content is not encrypted, *i.e.*, under a “digital rights management” regime, nor subject to a “secret key,” like a DVD. *Id.* at 8 ¶¶ 57-60.

Following a series of steps, a user may download a YouTube video and/or audio file directly in the Chrome browser. *Id.* at 10-18 ¶¶ 63-77. For example, a user may utilize the Chrome browser’s Developer Tools menu to view the YouTube “Request URL,” a lengthy web

³ To the extent that Yout analogizes its service to recording a television program on a VHS tape, Yout appears to intend to push the boundaries of existing anti-circumvention law by drawing a parallel to well-settled anti-infringement law. SAC, Doc. No. 45, at 24 ¶ 107; *see Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 446 (1984) (holding that time shifting—making a personal copy of a television program to watch at a later time—did not constitute copyright infringement). But this case concerns alleged violations of the DMCA rather than copyright infringement, so the analogy-by-implication to anti-infringement law is inapposite.

⁴ HyperText Transfer Protocol is a “standard application-level protocol used for exchanging files on the World Wide Web. . . . Web browsers are HTTP clients that send file requests to Web servers, which in turn handle the requests via an HTTP service.” *HTTP*, Encyc. Britannica, <https://www.britannica.com/technology/HTTP>. A “user agent” is a “client program that is used to access servers on a network, typically the Internet.” *Encyclopedia: User Agent*, PC Mag., <https://www.pcmag.com/encyclopedia/term/user-agent>.

address containing the text “range=” followed by a sequence of numbers that can be modified to begin at zero and end at a much larger number. *Id.* at 12-13 ¶¶ 68-70. Using the Chrome browser’s Developer Tools menu, the user may identify the largest file on the YouTube player page, which the Second Amended Complaint implies is the downloadable video file. *Id.* at 11 ¶ 67. If the user copies and pastes the YouTube “Request URL” for the video file into a new browser window or tab, then modifies the sequence of numbers in the “Request URL” to begin at zero, then a full-size video (without sound) will appear. *Id.* In addition to the video, a three-dot menu containing a “Download” option will also appear. *Id.* at 15 ¶¶ 71-72. By selecting the Download option, the user can save a local copy of the video file (without audio) to his or her computer. *Id.*

The user may also download the audio file for the video by returning to the Developer Tools menu; identifying the file with the shortest “Request URL” among the large files; then repeating the copy, paste, and modify-the-number-sequence process. *Id.* at 16 ¶ 73. As a result, the user may download, separately, a video file and an audio file. Of note, the Second Amended Complaint provides no instructions regarding how a user can download an audio/video file to save a local copy of a video with its audio.

The internet contains numerous articles and videos explaining how to download YouTube video and audio files using the aforementioned procedure. *Id.* at 17-19 ¶¶ 75-78.

b. The Yout Service

The Yout platform enables a user to complete the process of manually downloading files directly from YouTube in a “cleaner and easier format” and “fewer steps” by “automat[ing]” the process described above. *Id.* at 8 ¶ 56, 20 ¶ 79, 21 ¶ 91, 23 ¶ 102.

A Yout user enters a link to the video. *Id.* at 5 ¶ 34. The same as any browser or other user-side software, Yout reads and interprets a JavaScript program sent by YouTube, deriving a signature value, which it then sends back to YouTube to initiate the video stream. *Id.* at 22 ¶ 98. To record video or audio from a particular YouTube video, Yout utilizes a configured version of the youtube-dl tool with ffmpeg. *Id.* at 23 ¶ 100 n.5.⁵

The mechanism used by Yout’s platform does not require any password, key, or other secret knowledge to access a YouTube video. *Id.* at 23 ¶¶ 99-100. Rather, YouTube provides the means of accessing its videos to anyone who requests them. *Id.* at 23 ¶ 100. Any digital mechanism designed as anti-circumvention technology, such as “digital rights management,” can stop Yout users from recording and saving the content. *Id.* at 22 ¶ 94.

3. *The RIAA Notices*

On October 25, 2019, the RIAA, on behalf of Doe Record Companies 1–10, sent a notice to Google with the intent to cause Google to delist Yout’s software platform from searches.⁶ *Id.* at 20 ¶ 83. The October 25, 2019 notice stated:

To our knowledge, the URLs provide access to a service (and/or software) that circumvents YouTube’s rolling cipher, a technical protection measure, that protects our members’ works on YouTube from unauthorized copying/downloading.

⁵ “[Y]outube-dl is a command-line utility for streaming and downloading user-uploaded videos from various websites, including YouTube. . . . [Y]outube-dl stands in place of a Web browser and performs a similar function with respect to user-uploaded videos.” Mitchell Stoltz, *EFF letter to GitHub on youtube-dl Takedown*, ELECTRONIC FRONTIER FOUNDATION (Nov. 15, 2020), <https://www.eff.org/document/eff-letter-github-youtube-dl-takedown> [hereinafter “EFF Letter”]. The Court takes judicial notice of the letter, which is expressly referenced in the SAC. See SAC, Doc. No. 45, at 23 ¶ 100 n.5; *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152 (2d Cir. 2002) (authorizing taking judicial notice of a document incorporated in the complaint by reference).

⁶ Yout in its amended complaint alternatively refers to the various notices sent by the RIAA to Google as anti-circumvention notices and DMCA notices. Compare SAC, Doc. No. 45, at 20 ¶ 83 (“RIAA, on behalf of Doe Record companies 1-10, sent an anti-circumvention notice. . . .”), with *id.* at 20 ¶ 85 (“RIAA, on behalf of Doe Record Companies 1-10, sent a second DMCA notice). Yout’s assertion in its complaint that the RIAA’s notices were sent “under 17 U.S.C. § 512(c)(3)” and thus constitute a DMCA notice is a conclusory legal allegation rather than a factual allegation and accordingly does not need to be taken as true. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

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