



Episode 810: VidAngel Filters Movies for Families — So They're Being Sued

Guest: Neal Harmon

WOODS: Well, I'm a big fan of your work, man. This is really great what you're doing. And there's a lot to talk about here. I just joined; I just signed up for VidAngel the other night. We've already watched two movies. It's very interesting what you're doing. I used to subscribe to a service called Clean Films, where they would actually send you the DVDs in the mail.

HARMON: Right.

WOODS: They had already done their own editing of it, and it was a one-size-fits-all kind of edit, and you would get it and send it back. First of all, I don't want to get into the legal issues until later. Talk about exactly what your product does.

HARMON: Sure. So VidAngel allows families to watch filtered popular movies and TV shows through their favorite devices, through the iPad, the Roku, Apple TV — all the modern streaming devices.

WOODS: All right, so I pick a movie, and I find out all the different sorts of things that might be objectionable or might be unsuitable for a young person, whatever it is. And then I actually get to decide, I can sort of micromanage the kinds of edits that will be made. If I'm not worried about language, I won't touch that part. If I'm not worried about violence, I won't touch that part.

HARMON: Yeah, I'll give you a good example. The movie *The Martian*, we turned on the filters for male nudity and for the F word, and then we watched that movie with all of our children, from the youngest to the oldest. It's a great movie. The storyline's interesting, and even our three-year-old loved the film. So that was an experience we could have together as a family because of VidAngel.

WOODS: Yeah, that's really great. It really is a great — It's an amazing thing. Now, there's an unusual aspect to it in the sellback process. Explain how that works.

HARMON: Yeah. We'll use the *Martian* example. Let's say I want to watch *The Martian* filtered, so I buy the movie on VidAngel for \$20. I own it, so I can legally set my filters and watch the movie. And then if I love the movie I can keep it, or if I don't, I sell it back to VidAngel for \$19 of VidAngel store credit. It has to be sold back within the first 24 hours. In the second 24 hours it will be \$18, etc. And then I no longer own

the movie and can't view it again without purchasing it. So yeah, that's the way the model works.

WOODS: Now, why does it work that way? Why isn't it just, you rent it for \$1 a day or something? Why is it a sellback?

HARMON: There's legal precedent that we were concerned about, and we were trying to stay as close to the provisions of the Family Movie Act and the copyright law as possible. And so when you own an item, it changes the nature of the performance back to you. When you own it and you're setting the filters, then our position is that's a private performance of the work.

WOODS: All right, I assumed there was a legal reason that you were doing it that way. So my view of this situation I assume is yours, that if this thing is my private property I can do whatever I want to it. If I wanted to take a sledgehammer to it I could. If I want to scrape it up, if I want to use it as a coaster I can do anything I want to alter it. So if I happen to alter it in order to suppress certain parts of it, well, isn't that something I'm allowed to do with my own property? That would seem to me to be unanswerable.

Now, by the way, let me anticipate an objection, because some people could come back and say, "Well, Woods, how would you feel if people took your books and then altered them and enjoyed them?" And my answer would be, "Go ahead. Do whatever you want to my books. Cut them into pieces. Make snowflakes out of them. I don't care. Just buy the book; do whatever you want." But people would say, "But, but — Your artistic integrity would be undermined." But everybody would know it's been altered. They would know that, and I would be perfectly fine with that.

HARMON: Yeah, that's the — I think the average American understands it from your and my perspective, but there is this group of very passionate artists, and they're very powerful people inside of Hollywood who feels the opposite. Their position is: either choose to watch the work as I intended for you to watch it, or just don't watch it at all.

WOODS: Yeah, that seems to be the approach. So therefore when you went into this — How long have you had this service?

HARMON: 2013 is when we started.

WOODS: Okay, when did you get into legal trouble?

HARMON: So the studios sued us in June of 2015.

WOODS: Okay, so you had two relatively good years.

HARMON: Yeah — I mean, well, we had a hard road. So the very first year we started the company because we saw a way to do it. We were asking ourselves in 2012 as brothers, "How come there's no way to stream and filter a movie today?" And so we started researching it. And then in 2013, Google launched a little device called the

Chromecast. We got really excited, because it had an SDK, and we could develop a piece of software that sat on the Chromecast, and then as a Google Play movie came through the Chromecast onto your television we could filter it, and we got this working. We raised capital, we launched a company, and then a month after that, Google launched the Chromecast, and they removed all of the technology that made the filtering possible, much to our dismay.

And that was the first in a long line of attempts at trying to make a filtering service available, between asking — We met with Google Play after that to see if we could partner with them, since they have licensing from the studios. And then as soon as they started talking to the studios, they discovered they couldn't do it without the permission. The studios refused to give permission.

And then our current model we developed with a very respected Hollywood lawyer, who said that if we sell a work to someone and they set filters, then the Family Movie Act would indemnify us from copyright lawsuits. And then we also wrote the studios to tell them about the service a year before they sued us and asked for feedback and asked if they had any qualms with how we were interpreting the Family Movie Act, and they didn't get back to us or ask for any changes, and then sued us in June of this — 2016. I said 2015 earlier. So 2016 is when they sued us.

WOODS: When you say "the studios," what does that mean?

HARMON: I should clarify. That's Disney, Warner Brothers, Lucasfilm, and 20th Century Fox. So only three of the six major studios that are part of the MPA are party to the lawsuit. And I do not know why. In traditional lawsuits where the studios — because the studios' position is that we're being pirates, that the filtering is just a show to get around copyright law. It's baloney, and they know it's baloney, because we've told them that we've purchased a license at regular pricing, but they won't sell it. So for some reason three of the major six have decided not to sue us. We're glad for that.

WOODS: So what is the nature of the suit? Are they basically telling you you have to shut down, or are they suing you for damages so they want money? What do they want?

HARMON: They want us shut down. They've asked for a preliminary injunction, and the judge has actually granted a preliminary injunction as of December 12th of this year, and we immediately responded with a motion to stay the injunction, and we also appealed to the ninth circuit. And so then we had a hearing just Monday on our antitrust counterclaim. We countersued the studios, saying you guys are trying to prevent there from being a filtering market and from there being competition from people who want to filter, and so you're violating antitrust laws.

WOODS: All right. Well, what happens next, and what's the timeline? Do you have any way of knowing? You're just sort of in Limbo?

HARMON: So the judge told us on Monday that he would rule within seven days on the antitrust lawsuit, on whether we're able to continue with that lawsuit. The studios have asked him to refuse the lawsuit. And he's also considering right now our motion

to stay the injunction. As soon as we hear back from him, if he refuses our motion to stay the injunction, we'll be required to pull down all the plaintiffs' titles. We'll immediately file with the ninth circuit for a stay during the appeal process, and we're hopeful that with fresh set of eyes that the ninth circuit will look well upon this. Now, we're encouraged that the judge is currently considering our motion to stay rather than just outright denying it, so we're encouraged that VidAngel will still be operating while we find the merits of the case.

WOODS: Well, this has got to be pretty nerve-racking. You poured enormous energy into this in developing the technology behind it, and now they could pull the rug completely out from underneath you.

HARMON: Not this time, Tom. So we raised money with our customers. In fact, the studios sued us two weeks after the announcement that we were interested in raising money from our customers conspicuously, and I think they hoped that they could stop us from getting traction or getting the funding to defend ourselves. And instead I think it strengthens people's resolve to fight this battle, and we raised \$10 million right in the midst of the lawsuit to fight this all the way to the Supreme Court, and that's what we intend to do. So we're not going to roll over.

WOODS: Wait a minute. You raised how much money?

HARMON: \$10 million.

WOODS: Did you have any idea you were going to raise anything like that amazing number?

HARMON: We asked for 5. That's what our lawyers were saying: for us to fight this all the way to the Supreme Court we needed 5 million. So we asked for 5, but the interest was so strong that we had to start turning people away at 10, and we had to shut it down.

WOODS: I'm speechless at that. That's amazing.

HARMON: It's really a testament to how — Here's the other thing, Tom. To understand the passion and how badly people want the studios to play ball with this or for the law — to force their hand, we had 40,000 people — before we finished the SEC filing to be able to raise this money, we had 40,000 people voluntarily donate money to the litigation with nothing in return. We had someone in Florida, a former football player and his family started a petition; it's SaveFiltering.com. It now has almost 100,000 signatures on it. We asked for letters to the court and got tens of thousands of letters sent into us, and then we had dozens of religious and government organizations who signed declarations on our behalf in the lawsuit. So the support for this and the groundswell has been overwhelming, and it's really given me the energy and the passion that I need to fight on these people's behalves, because like you said, this would be very nerve-racking, but every time that my nerves get to me I think about all of the people that we're fighting for, and it just seems worth the fight.

WOODS: All right, I want to ask you — and by the way, I know there's some work going on in the background in your office. Just like in the background, occasionally if people have super duper hi-fi setup, they can hear some of my kids running around once in a while when I'm not in my proper studio environment. But anyway, I want to ask about your background. You've only been doing this since 2013. What did you stop doing to start doing this?

HARMON: Immediately prior to VidAngel I started a company with my brother and with Dr. Bob Wagstaff. It was called Orabrush. It was a tongue cleaner that helped get rid of bad breath. And we marketed it on YouTube and social media and took it from zero sales to global distribution in Walmart, Walgreens, Boots, Japan in a very short period of time. We sold our stock in that company and left in 2013, and we started VidAngel for our own families because we wanted the product, and then we also started an advertising agency to pay the bills. And the agency, much to my dismay, is called HarmonBrothers.com, and that's an interesting story in and of itself. We had our very first deal, had to have an entity to receive it. We were on the state website the night before we received the wire saying, "What are we going to call this agency?" And we just said, "Well, let's just put in a placeholder, Harmon Brothers for now." And then the ad campaign that we started became so successful, and now we're stuck with the name.

WOODS: All right, fair enough, fair enough. Now, what is the most useful thing — given that you're turning away donations at this point, what's the most useful thing the average person can do to help you? Obviously they should go over and register for VidAngel and start using it. Is there anything else we can do?

HARMON: Yes, you can write your senators or congressmen to make them aware of what Hollywood is trying to do. And this would necessitate some background. You used Clean Films. Clean Films was shut down for copyright infringement, along with about a dozen other companies. And at the time, these companies, one company in particular, reached out to the studios and asked for a deal, a business solution. And the studios refused to give them a business solution, and so Congress stepped in and passed a law in 2005 — it was signed into law by President Bush — that provided a system that if you followed this system then you could enjoy filtered content without having the explicit permission of the studios, because the Congress knew they'd never give consent. Well, in that law there's a transmission clause, and the transmission portion is the portion under which we operate, and I think it would be helpful for people's congressmen to know that what the studios lost in 2005 on older technology they're trying to win through the courts on newer technology. The studios would love that that law becomes obsolete and is relegated to just the DVD age.

WOODS: All right, so we've got that. Presumably also just alerting people to your situation. Has there been any reaction in the media, any write-ups about your situation and the case?

HARMON: (laughing) Well, the media has been very quiet since June. We've had a few write-ups from *Variety* and a few other sources and then from friendly sources, but interestingly when the injunction was granted on December 12th, suddenly everybody in the media was covering it. So we'd love for people to share VidAngel, to defend VidAngel, to use VidAngel, and we actually just licensed our very first title

from someone who's actually willing to license content for filtering, and we've launched a new website called VidAngelStudios.com, and if you're interested in licensing content to us or if you're a comedian, a standup comedian and would like to get involved we're doing standup shows, and we're going to be broadcasting them with a tipping system. There's some pretty exciting stuff. So go to VidAngelStudios.com if you want to get involved.

WOODS: All right, I'm going to link to that too, VidAngelStudios.com. Wow, it sounds like they messed with the wrong guy. It's very interesting. I've come across a lot of people who have been in not precisely your situation but seemingly overwhelmed, who have just buckled under, and you are throwing absolutely everything you have at this, and apparently you have a huge army of supporters and a lot of dough — of course you're up against a lot of dough. But this is a really tremendous story here. I sure hope you succeed for the justice of it, and I hope you succeed purely selfishly because I like your service.

HARMON: (laughing) I do too; I do too. Our own children are like, "We don't want VidAngel to go away."

WOODS: And the thing is, when I used to defend Clean Films, and I even had some libertarians lecturing me on why I shouldn't be defending them, and I thought that's perverse. It's my physical property. I can do whatever I want to it.

HARMON: Right.

WOODS: And as I say, the analogy with my books doesn't work, because in the case of VidAngel's movies, everybody knows they've been altered. If people were to buy my book, temporarily alter it, and then — why would I possibly care about that? I just want the royalty, you know? I don't care.

HARMON: No kidding. No kidding. And this is what's interesting about this, is where true liberty exists every audience can be served. So the family who wants to watch a movie exactly as the director intended, they're happy. The family who wants to filter their movie in their home, they can do it on their own, and they're happy. The family who wants to refuse the movie because of the content that's in it, they're happy as well. All parties are best served by there being liberty, and so I really do hope that we come out on top on this.

WOODS: Now by the way, don't some of these studios sell edited versions of these movies to countries like in the Middle East or somewhere all over the world?

HARMON: Yeah, the difference there is they see an immediate upfront big check and their directors get to have the ultimate sign off. When a family makes the choices in their own home, the directors don't get the ultimate sign off, and this is about control.

WOODS: Ah, got it. Got it. Okay. Well, we're going to link to everything. Is there still any purpose in signing the petition that you mentioned?

HARMON: Absolutely, yes, SaveFiltering.com. That will be — Every voice matters there.

WOODS: All right, so we're putting that up, VidAngelStudios.com, and then VidAngel.com is the site itself. All that will be at TomWoods.com/810. Well, best of luck, Neal. Give them heck over there. Keep on fighting, and we're — well, speaking for myself I can say we're all behind you.

HARMON: Thank you, Tom.