Internet Piracy and Copyright Debates

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INTRODUCTION

Superman, the Marvel Comic superhero, has captured the imagination of another generation, guaranteeing a box office blockbuster and merchandising bonanza. However, even before the movie's release, Internet pirates are copying and releasing it over the Internet. Hundreds of thousands of these illegal copies are downloaded every day, from sites such as Morpheus and KaZaA. Each pirated copy is a lost sale and a copyright infringement of the creator's rights as it is created without the permission of the copyright owner. Piracy is not new to copyright industries; the problem arose with the invention of the printing press. Prior to the Internet though, piracy was generally controlled by finding the infringing producer and removing them from the distribution system by the use of copyright laws. The Internet gives previously unavailable speed and dissemination possibilities to pirates and an ability to escape detection by a "here today, gone tomorrow" ease of establishment and relocation, which means that removing the infringing items no longer removes the piracy. In the technology age anyone with a laptop can be a pirate. The speed and ease with which copying occurs in the digital age raises debate by ethicists, historians, and economists as to the appropriate level of copyright protection as a means of controlling piracy. The successful prosecution of an Internet piracy gang—known as "Drink or Die" (DoD) under criminal copyright laws—continues the debate on the appropriate copyright boundaries, as the use of criminal conspiracy law enabled extensions of jurisdiction to bring actions against pirates in foreign countries. This article will examine the debates and the relevance of the DoD case as a boundary of the fight against piracy.

DoD Pirates

The U.S. Department of Justice, Computer Crime and Intellectual Property Section (CCIPS) brought prosecutions resulting from a U.S. Customs Office three-year undercover operation to trace the DoD to their source rather than capture the end user. This action resulted in 16 prosecutions, with first-time offenders being imprisoned for up to 46 months (CCIPS, 2006). The jail terms surprised the "Drink or Die" pirates, as the individual pirates were law-abiding, ethical people in the real world (Lee, 2002). The economic effect of DoD's activities was valued at $US50 million (*USA v Griffith,* 2004).

The pirates were charged with being a criminal conspiracy to infringe copyright under *Copyright Act* 17 USC §506(a)(1) and *Copyright Felony Act (Amendment)* 18 USC § 2319(b)(1), with extradition proceedings in Australia of *USA v Griffith* (2004) to bring a major ring leader to trial in the United States. The magistrate refused the extradition request saying the protection of copyright was not considered the normal subject matter for extradition. The magistrate's decision led to an appeal to the Federal Court and Full Federal Court. Both courts confirmed that bringing the action as a criminal conspiratorial behavior captured the infringing conduct the moment the agreement to commit the crime occurred and continued to wherever the effects are felt, which is accepted criminal jurisprudence from the decisions of *Director of Public Prosecutions v Doot* (1973) and *Lipohar v The Queen* (1999-2000). This meant that a court in one country has jurisdiction to try a matter regardless of where the conspiracy was formed or where the participants resided, as held in *Liangsiriprasert v United States* (1991). *USA v Griffith* (2004) confirmed the extraterritorial effect of U.S. criminal copyright laws and fueled the debate on appropriate copyright protection.

The Debates

Moral and Ethical

Modern generations accept downloading of music and films as a norm of life, and view downloading as morally acceptable; as Litman (1997) observed, people "find it hard to believe that there's really a law

out there that says the stuff the copyright law says." The general public has an erroneous view that because Net access is cheap and easy, material on the Web is free to use and consume. The inexpensive nature and ease of copying has led Donaldson (2001) to pose a new social contract that could emerge from conduct on the Internet which will give rise to a core set of values allowing for a moral free zone in respect to some economic areas (downloading music, etc., for personal use), but ultimately concludes that business should set "hypernorm" boundaries to manage and regulate conduct on the Net. Meanwhile, Calkins (2002) states that Internet technologies are influencing our moral standards and that business ethicists should become more interested and involved in these issues.

Guadamuz (2002) describes a phenomenon where users of the Internet allow the free flow of ideas as the "new sharing ethic," but do not allow this sharing to transgress onto the free sharing of other people's works when such sharing is a copyright infringement. Guadamuz further acknowledges the control exerted by large multinational corporations over the distribution channels for movies, books, music, and software, but highlights that the Internet provides authors and musicians with the widest possible audiences to publish their work, although it may not provide an economic return.

Such comments cast the moral debate as an issue of freedom of access to information and knowledge, whereas copyright laws are used to protect commercial returns to publishers or creators. Barlow (2003) and Stallman, Gay, Lessig, and the Free Software Foundation (2002) are vocal critics of the power of the commercial world against creativity and the propriety nature of intellectual property laws preventing the free flow of information.

This debate highlights the moral and ethical divide as the individual vs. the corporation, but recognizes that the limit of ethical sharing is transgressed when the ownership laws of intellectual property rights such as copyright are crossed. Siponen and Vartiainen (2004) conducted a moral evaluation of unauthorized copying of software, using Kohlberg's (1981) theory of moral development, and concluded that the use of punishments and psychological means of manipulating people had been overvalued, and may violate the autonomy of the individual if used haphazardly (Siponen & Vartiainen, 2004). Their moral surveys in the area of software and illegal copying indicated that copying is divided into

reasoning and solution categories. Their discussion of the six stages of Kohlberg's theory when applied to Internet piracy means a solution will only occur when a moral judgment motivated by respect for the community, respect for social order or an individual's own conscience has been reached. A world without illegal copying of materials would then exist.

Utopian ethical ideals are unattainable as they conflict with the commercial reality of Internet piracy, which De George (1999) acknowledges means that the divide between moral and ethical conduct in controlling downloading from the Internet is a commercial divide that is impossible to enforce. De George (1999), when combined with Lessig's thesis that control of computer code is disenfranchising creators, led others such as Bowie (2005) to conclude that that copyright protection is warranted when it protects artistic creativity is moral, but is immoral when there is no payment made for the creativity.

Economic

Copyright laws are based on the proposition that creativity should obtain an economic return from the permission to copy the work. Shapiro and Varian (1998) noted, economically information is expensive to produce in the first copy but nearly costless in succeeding copies, and with advances in CD burning and download times, this is a reality with the Internet. Suing all end users who download pirate copies from an economic perspective is commercial suicide, as it ultimately alienates present and future customers and reduces sales. In addition the economic theory of deterrence was ineffective against Internet pirates as the transaction costs of enforcement were too high to create a substantial deterrence to pirates, as there was no fear of actual punishment (Cameron, 2002).

Cultural

The freedom to publish on the Internet generally comes without economic return, as no remuneration is obtained from releasing the material onto the Net, but discourses arising from the release enable the development of culture. Such cultural considerations have been the focus of Bowery's writing. Bowery (2005) believes this problem should be examined from a cultural analysis of law that strives to combat "common sense" understanding of law as formal and rule-bound.

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