

Internet Copyright Laws and Digital Industries

Nigel Mc Kelvey¹, Matthew Clifton¹, Clara Quigley¹, Kevin Curran^{*2}

¹Computing Department, Letterkenny Institute of Technology, Donegal, Ireland

²University of Ulster, School of Computing and Intelligent Systems, Derry, Northern Ireland

^{*2}kj.curran@ulster.ac.uk

Abstract- Internet usage has grown at an almost astronomical rate with penetration (per percentage population) rates hitting figures near 80% in certain regions. Africa alone has seen Internet usage growth rates in excess of 2,500% from 2000 to 2011 (Miniwatts, 2011). With such an increase in the user base, coupled with major advances in Internet technologies, it is hardly surprising that 'cyber' crimes have increased proportionately (Savvas, 2011). Internet Protocol technologies such as peer-to-peer (P2P) and Torrent have 'paved the way' to allow the Internet to become a 'virtual shop' – a dodgy market stall is probably a better analogy - where anything (and everything) is freely available is you dig down deep enough. With these new distributed technologies and the increased availability of fast broadband connections, start-up companies such as Napster, along with more 'seedier' organisations such as The Pirate Bay, rose from the technological fire to become leaders of the new file-sharing generation (Sydell, 2011). With the current legal framework for regulating copyright infringement and protecting Intellectual Property (IP) being gravely outdated, this paper will examine at the case surrounding Napster and debates whether current Internet copyright laws can be updated to protect digital industries without stifling the underlying freedoms of Internet usage.

Keywords- *Online Copyright; Internet Copyright Law; Online Law; Cyber Law; Intellectual Property; Digital Industries*

I. INTRODUCTION

There are many benefits of a global information society. The Internet allows humankind the right to express their opinions and feelings on any topic they wish to discuss. The main method of doing this is in personal blogs and forums/chat rooms. Over the last few years the number of blogs has increased immensely (in 2006 there were over 50 million Internet blogs). Anyone from housewives to political leaders can post their own blogs on the Internet. Other Internet users have unrestricted access to the majority of these blogs. Many blogs are widely read and influence readers across the globe. The Internet allows people to explore values and traditions that were unknown to them. They can learn about different cultures, traditions all from the comfort of their own home. It provides people with a new sense of freedom and openness. People can share their problems with others that have experienced or are experiencing similar difficulties. The anonymity of many services on the Internet allows users to share these things without fear of repercussions or judgments against them. The Internet allows people to access information rapidly at literally the click of a few buttons. We can find out what's going on in other parts of the globe, research different topics, find inspiration and if wanted immerse ourselves in a different world (e.g. World of Warcraft). The Internet makes it much more difficult to keep incidents/news secret. Live news feeds from normal people at the sites of different news scenarios allow us a firsthand view and idea of what is really happening across the globe. These feeds can even be used to solve crimes and identify criminals. Services such as Facebook and Twitter allow us to see what is going on in the lives of people close to us and when it happens. These applications allow people to get their daily dose of social updates. The Internet has also brought about a completely new method of socializing and interacting with other people.

However, such freedom of information and anonymity can also have serious disadvantages and dangers associated with them. The freedom that the Internet allows people has also brought about the misuse of its capabilities. The Internet is a feeding ground for criminal groups around the world. Examples of crimes that the Internet fuels are identity crime, drug trafficking, social blackmail and child pornography. The Internet is open to everyone, including children. The vast array of information both appropriate and inappropriate is accessible to child users. Children's minds are vulnerable and easily corrupted or manipulated. The accessing of negative content on the Internet can greatly affect a child's mind and decisions they will make in the future. Parents and teachers cannot always protect children from the Internet. The fast increase in mobile web users means children can access the Internet easily from outside their homes and schools.

Unlike other broadcasting channels, the Internet is not regulated. Therefore, any content whatsoever, appropriate or not, true or false can be distributed via the Internet and accessed by others all over the world. The misuse of the Internet for these purposes can destroy innocent lives, fuel anger and ultimately result in violent protests, radical opinions being spread amongst other things. The vast array of violence, sex and corruption available via the Internet has meant these activities are easily accessible to its users. People are becoming desensitized to these acts. Therefore, the level of violence and blood thirst in us has heightened. There has been an increase in more extreme and violent crimes being committed across the globe. It is the opinion of some people that the Internet helps fuel this. What people were shocked and disturbed by a decade ago wouldn't cause some of us to flinch nowadays.

Nowadays every man and his dog is a part-time blogger. Information overload is commonplace. This increase in bloggers with reduced quality of writing has resulted in the reduction of high-quality, fact-based editorial pieces. It has come to the

point where high profile editorial writing is a dying art. Businesses like the Wall Street Journal and the New York Times have suffered greatly at the hands of bloggers to the extent that they are struggling to evolve their business model to keep up with changes in how we get information. Internet socializing has forever altered our means of communication with each other. People now would rather text, email, or tweet instead of having face-to-face or spoken communication. Words can express a great level of detail, however, communication is not only restricted to words but also includes body language, micro expressions and tone of voice. The lack of face-to-face communication has resulted in younger generations lacking the skills to successfully conduct and interpret person to person interactions.

II. THE NEED FOR REGULATION OF THE INTERNET

It is necessary that some policies need to be introduced to help protect people from the many harms that the Internet can pose when misused. There should be a global mechanism to regulate illegal content on the Internet. Currently, the laws for regulating content come under each country's individual laws. However, this means there is fragmentation from one country to the next. Currently in the United States and Russia there are very little laws regulating Internet content, so much of the illegal content on the Internet is being hosted there. The introduction of a global policy on this means that the individuals or groups posting the illegal content have nowhere to hide. Examples of organizations already performing this filtering in the UK is the Internet Watch Foundation. More and more Internet service providers are blocking illegal URLs (Eircom in Ireland). However, many of these are directed more to blocking sites which infringe on copyright laws, such as Pirate Bay and other download sites. Internet service providers would be better off blocking known sources of illegal content. Enterprise companies need to introduce social media policies to reduce the leaking of confidential information and industry secrets via the web. For example Apple employees are not permitted to post blogs on the web. We need users of the Internet to be vigilant against inappropriate and illegal uses of the Internet. Users should feel that they can report such content to appropriate bodies that can report these misuses and prompt legal actions.

Implementing these policies on the Internet is difficult because of the nature of the Internet itself. By regulating Internet content it can be argued that you are preventing the evolution of the Internet. It is said that some take down policies that sites implement to protect themselves from legal action are overly harsh. There is no easy way to implement regulations as people benefiting from the illegal uses of the Internet are always going to claim injustice. The Internet, however, has already evolved to the stage where something needs to be done to protect its users. It is our responsibility to ensure that the Internet provides an enjoyable experience for all its users and illegal uses are no longer tolerated.

III. NAPSTER AND THE LAW

Napster, in its original format is long shutdown and buried beneath the fallout of legal challenges, it did not stop Shawn Fanning finding fame along the way, becoming a presenter on MTV and being featured on the cover of Time magazine (Time, 2011). The Pirate Bay, whilst ultimately suffering similar legal challenges and shutdowns as Napster, was initially established by an anti-copyright organisation called *Piratbyran* (The Piracy Bureau) that were a pro-piracy group. This initial pro-illegal stance separates them from Napster, and for this reason, they will be excluded from this paper. The concept of distributed files being transferred over the Internet was already possible before Napster went live in June 1999 by using applications such as Hotwire and discussion systems like USENET. Napster, in itself, did not bring anything radically new to the technology of distributed file sharing, but what it did do was package it in a user-friendly interface and target a single market; music. Napster's user-friendliness and automation was what made it such a success. User's computers could be automatically scanned to catalogue correctly formatted MP3 files for inclusion within the Napster library. Other users could then access this global library of music tracks and request their retrieval directly from the originators computer system.

Shawn and John Fanning envisaged Napster would be the ideal place for music enthusiasts to search for long lost recordings of their favourite artists, share previous unreleased content such as concert recordings (bootlegs) and download digital copies of material they already owned on formats such as vinyl and cassette tape free of charge. To the majority of users this 'format-shifting', whilst being illegal and an infringement of copyright laws, was seen as acceptable, if not, justifiable. Aside from the 'enthusiasts', the majority of other users (at its height it had in excess of 50 million) saw Napster as a free way to obtain any music they wanted totally free of charge. With the sheer number of users and tracks available to download it was only a matter of time before the Napster bubble burst and the copyright infringement lawsuits became equally famous. Metallica was the first artist to file a copyright infringement lawsuit against Napster for circulating their yet to be released demo track 'I Disappear' (Wikipedia, 2011c). This was shortly followed by Madonna and Dr. Dre and culminated in legal proceedings; *A&M RECORDS, Inc. v. NAPSTER, INC.*, 2000 (Indiana University, 2001).

Ultimately, the Ninth Circuit Court of Appeals upheld the complaint and found that Napster had in fact infringed copyright laws. Following on from this verdict Napster did attempt to block access to copyrighted materials in a vain effort to continue its service, but failed in this due to the vast quantity of data files. Napster terminated its online presence in July 2001 and subsequently filed for bankruptcy. Current Internet Regulatory laws that protect both IP and Copyright, although not particularly old (US, UK and Ireland all fall circa 2000-2004), are not in line with recent technological advances and fall short of aiding, and protecting, digital industries. With distribution models moving further and further away from physical media (i.e. CD-ROM and hard packaging) and more and more toward digital distribution, businesses require increased protection against

copyright infringement. That is to say, scaling up laws in their current state could lead to more barriers being placed in front of consumers. Green Party Leader Eamon Ryan recently commented saying, "As online revenues overtake conventional sales, those countries which have the more sophisticated policy approach to the Internet are likely to be the ones where creative industries flourish" (Green Party, 2011). It is not just the business world and consumers that are being let down by the current legislations, other public services such as libraries are suffering equally.

Current laws on 'format-shifting' are preventing libraries within the UK from creating digital copies of ancient works, which is quite literally causing important books and manuscripts to turn to dust. Whilst there is an obvious disparity between what most people would class as acceptable copying/archiving (i.e. libraries) and 'wholesale' downloading and blatant copyright theft (i.e. Napster), the overall legal framework needs to address these difference more accurately and sensibly. The UK government recently commissioned a review of current legislation and Professor Ian Hargreaves proposes, "Government should firmly resist over regulation of activities which do not prejudice the central objective of copyright, namely the provision of incentives to creators. Government should deliver copyright exceptions at national level to realise all the opportunities within the EU framework, including format shifting, parody, non-commercial research, and library archiving." (Hargreaves, 2011). When Metallica and Dr. Dre et al pursued Napster with copyright infringement lawsuits they obviously did not agree with these statements. Reversely, artists such as Radiohead came out in support of Napster – the millions of illegal downloads drove up their profile and secured them number 1 in the billboard chart. When looking at ethical theories such as Kantianism, Rule Utilitarian and Social Contract Theory it is hard to conclude under what circumstance it would be justified to illegally download copyrighted materials. From a Kantianism perspective it would be unethical for someone to download an illegal track as they would have to take into consideration the copyright ownership of the creator. Kantianism states that it is unethical to abuse someone else's position for your own gains as that person has the right to be valued themselves (i.e. the copyright holder owns that copyright). The same goes for Rule Utilitarianism and Social Contract Theory. With the current legal frameworks in place to protect creative ownership there are no situations in which it could be deemed morally acceptable to download music illegally.

IV. DIGITAL RIGHTS MANAGEMENT (DRM)

Digital rights management (DRM) technologies are aimed at increasing the kinds and scope of control that a rights-holder can assert over their intellectual property. As a result of the Digital Millennium Copyright Act's (DMCA) ban on the circumvention of DRM technologies used to control copyrightable works, DRM restrictions are now backed up by the law. In essence, copyright owners now have the ability to write their own intellectual property rules in computer code, knowing that the DMCA will back their actions.

Content Scrambling System (CSS) is used on DVDs to restrict extraction of data from DVDs. This was backed by the DVD forum and they restricted hardware manufacturers from including features that would enable the overriding of CSS. By doing this the DVD forum was indirectly controlling the use of DVD media. Advanced Access Content System (AACCS) is a DRM system for HD and Blu-Ray Discs developed by the AACCS licensing administrator. This again restricted access to content stored on the discs in order to prevent copying of the discs. Another area where DRM technology is used to restrict the use of audio and video is on iTunes using Apple's FairPlay DRM System. This restricted the files to a limited number of devices. Apple has made music and video at higher purchase prices that allow copying to a greater number of devices. The advantages of DRM technologies are mostly aimed towards the copyright holders. There are limited advantages to the consumer, as ultimately DRM is restricting the consumers and how they use software, music or video that they have purchased with their own money. It can be argued that the use of DRM provides secure and safe products to the customers that are playable in different environments, but even those environments are restricted.

The main disadvantages of DRM are that they can restrict the use of products purchased by a customer. It can be argued that DRM can prevent the advancement of technical products. DRM systems can require a customer's personal information such as credit card numbers, names, and addresses. Users should have more control over how their personal information is used and DRM prevents them from using products because they are unwilling to provide such detail which is restrictive. DRM software can also log use by their consumers. Again, many feel that this is invasion of a customer's privacy. One of the big disadvantages is that before using products with DRM a customer has to sign-up to a whole assortment of agreements with a lot of small prints. These are often lengthy, confusing and pretty much irritating. Customers become slaves to demands of the companies employing DRM solutions (Abie, 2007). DRM impedes on fair-use for consumers. In 1976, Universal City Studios and the Walt Disney Company sued Sony, seeking to have the Betamax VCR written off as it can be used for piracy. In their view, there were virtually no non-infringing uses of the VCR, since home taping of television was thought to violate the copyright owner's rights. However, a court disagreed; ruling that home taping of television programs for later viewing constituted a fair use. In this case programs were being watched on publically aired television and users were taping them. If companies like Universal and Disney were attempting to implement DRM technologies to prevent the recording of publically aired television it would violate fair-use policies since they are receiving fees from the television companies to broadcast them to large audiences who pay fees to the television companies.

The Internet has led to new technologies and services developing that have led to court needing to evolve fair use policies. For example, questions were raised over Ditto.com, a search engine by which catalogues, photographs and other images can be

found on the Internet. Prior court decisions regarding fair use were unclear. A court eventually concluded that the reproduction of images involved in this activity should be considered a fair use. If DRM technologies had blocked these unauthorized experiments from arising in the first place, the opportunity to further develop the fair use rules would never have occurred. The public would never have had the benefit of these new technological capabilities, or would only have received them if copyright owners could be persuaded to let them. If copyright owners always got their way it would greatly impede the evolution of new technologies with true benefits. DRM technologies pose a threat to the future of fair use. If fair use is to continue to evolve, DRM technologies must accommodate the ambiguity of fair use. Unless the public has the opportunity to experiment with new technologies, courts will not have the opportunity to test them against fair use policies. If innovators and consumers are barred from experimenting without copyright owner permission, fair use will become increasingly irrelevant. The Broadcast Protection Discussion Group (BPDG) is drafting standards for mandatory DRM systems for digital broadcast television (DTV). While these systems attempt to preserve recording of public television as defined by the Sony Betamax decision, they will probably fail to protect the full range of future fair uses that will be made possible by DTV. What those fair uses might be is difficult to imagine before they are questioned, just as recording was difficult to imagine in the before VCRs, DVD and hard-drives. Unless DRM technologies make room for future fair uses, fair use will have lost much of its ability to protect the public's side of the copyright bargain. After all, how useful is a right to record public television in a world where all broadcasts are digitally protected by DRM technologies?

The free software movement aims to provide free software that is free from the restrictions of licenses and user agreements that have become common in DRM and IP and thus promote technical innovation. Since DRM implements so many restrictions it is inevitable that such campaigns will arise to counteract them. With the event of these movements, copyright holders are going to have to find new ways to make profits from their products. The Internet has changed the way we do business and businesses must evolve in order to stay with the times. I say instead of focusing on limiting customers, companies must work to invite customers back. Apple and Napster have shown that profits can still be made from providing audio and video via the Internet. Apple has also shown that you can make profits from selling software applications using its mobile app store as long as your products are reasonably priced. It is up to other providers to show that their products are worth purchasing. At the end of the day, why would you purchase software/products that restrict your use of them, when you can easily get legal alternatives for free or reduced costs? Many customers out there have high morals and are willing to pay for products when they know that they get the returns their money deserves.

V. CONCLUSION

As we have seen, the issues surrounding illegal file-sharing and copyright infringement are wide spread and touch upon both legal frameworks, which need to be addressed to bring current laws into line with technology, and education to make people understand the ethical implications of their actions. Professor Ian Hargreaves' commissioned review of intellectual property and growth makes some positive recommendations on how to help protect UK digital industries whilst overhauling current copyright laws to aid archiving, non-commercial research and 'format-shifting' (Hargreaves, 2011). These alone are long overdue and welcome amendments. Protection of International IP interests is also being addressed, both within the EU, and further a field with emerging economies such as India and China (Hargreaves, 2011). Ireland is also studying Professor Ian Hargreaves' findings and I expect there will be a similar set of amendments here too.

Another option would be to follow the 'fair use' route the US is taking, although from Professor Hargreaves' review, he raises legal implications of adopting such a policy in Europe (Hargreaves, 2011). In April 2010, the UK government passed the Digital Economy Bill that allows closure of website that is believed to be aiding the passing of copyright infringed materials, in addition to bringing in the controversial 'three-strikes' policies. This new policy basically means if an Internet user is suspected of illegal file-sharing, he or she will receive numerous warning before having their connections terminated (Sandoval, 2011). Pro-Internet groups are calling this a violation of privacy and are against any kind of user monitoring. France recently passed a similar bill.

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