

UK Legislation and File Sharing

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Figure 1: Lord Mandelson and the Digital Britain Bill (Online)

Abstract

The problem of file sharing is widespread across the world , with creative industries seeking to put an end to the illegal sharing of their content. The issue facing industries is trying to recover their lost revenue – but this cannot be done without government intervention. The vast number of people who violate c urrent legislation poses a significant problem for the government to try and resolve. This article explains the history of how file sharing changed the internet, and analyses the feasibility of potential measures and legislation implementation that the UK government are undertaking.

Declaration

I declare that the work presented in this essay is my own and that it has not been submitted for assessment on any other module .

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There is little denying that the way we use the internet on a daily basis has transformed our lives. The fact that we can communicate, learn and explore the wonders of the World Wide Web with just a few mouse clicks has made this remarkable technology an embedded part of our day to day doings. Yet, our thirst for digital content, varying from music and movies, to games and applications, has resulted in an enormous upsurge in the illegal sharing of these protected works through this internet technology. The authors of copyrighted material have expressed their concern that their revenue from these works has been significantly impacted as a result. While the effect of the file sharing activity upon these authors of copyrighted material is not entirely conclusive, the British government are attempting to introduce effective policies to try and uphold the copyright law, and protect authors of shared content from further growth in Peer-to-Peer (P2P) file sharing. In this article, I will investigate the situation of file sharing in the UK, and also analyse how persistent sharers may expect to be prosecuted under the Copyright, Designs and Patents Act 1988, as well as other legislation, in the future.

The earliest form of file sharing gained popularity in 1998. Released under the name Napster, and developed by Shawn Fanning (an American university student at the time), the service offered users P2P music sharing. The term 'Peer-to-Peer' refers to the way in which content is exchanged. Napster operated a system where the user's computer program connects to a central host (i.e. the Napster servers). The user could choose what song they wanted to download by searching for it in the application. The Napster server would scan through its entire index of all songs under the search criteria and initiate the transfer between the user and a remote Napster peer. The sharing was sustained by the requirement that every user of the software would be required to upload their music collection to other peers. This type of sharing is known as a centralised P2P network, that is, that Napster only provided the matchmaking of peers through access to a main server, but not hosting the music files themselves. In "February [2001], Napster's file sharing system and Web Site attracted 17 million users in the US" (Ingram, 2001) alone, but just a few months later, the Recording Industry Association of America (RIAA) filed a lawsuit against the company, and it was forced to shut down due to a court injunction.

The legacy that Napster left behind was enormous. Many more P2P websites launched in the early 2000s as a result, the most prominent being eDonkey, Kazaa,

and LimeWire. However, a new generation of P2P file sharing was beginning taking hold amongst users. The development of the BitTorrent protocol improved the availability, integrity, and ease of access of shared content. Being a decentralised network, BitTorrent relies on every user having a piece of the file to be downloaded and sharing those pieces amongst each other until everyone has the complete download. Each user downloads a client onto their computer, and for each shared file they wish to download, they must first download a small file called a “torrent” that communicates with a “tracker”. The tracker finds other users who have parts of the file, and then “seeds” (uploads) them to the user’s client, which assembles these file fragments together. Unlike the original protocol Napster used, BitTorrent allows simultaneous download of the shared file from other users in possession on the file, meaning transfer speeds are greatly improved compared to Napster.

The explosion in the number of people using these methods of file sharing over the past decade have caused the British government to attempt to pass legislation in curbing its use. But research undertaken by the Strategic Advisory Board for Intellectual Property Policy found that “at least seven million people” (Telegraph, 2009) illegally download content. To perhaps demonstrate this fact, a website named the “iTunes Registry” was launched to store usage statistics of 5 600 users who volunteered to upload their information. Research for a blog on the internet (Appendix II) found that on average, 64% of the songs that users had in their collection were never played, so it wouldn’t make a great deal of sense for users to pay for music that they wouldn’t listen to. This leads us to believe that it is likely that a significant amount of music that users listen to is obtained illegally from the internet. However, this source may not be entirely reliable in the sense that the users who had to upload their statistics had to extract their own music collection details from within the iTunes software, and this may not represent another band of iTunes user (such as those who are far less technically capable of uploading their statistics). Additionally, the research may also not be representative of British usage patterns and it could skew the findings to slightly over exaggerate the point, but nevertheless, it is part of broader evidence of the scale of P2P file sharing, and how the government are restricted in how they can prosecute such a massive number of file sharers. I was intrigued by my research at this point to find that so many people commit online piracy, so I decided to conduct an interview to one of my acquaintances. I found that

the she accurately summarised what I thought about why so many people share content when she said “If given the choice, why would I buy something when I can get it for free?” (Appendix I).

Creative Industries affected by the act of file sharing claim that they have lost many millions of pounds in lost revenue from retail sales. In America, the RIAA (Recording Industry Association of America, the same association that shut down Napster) says that “sales have been hard” (BBC News, 2003) and European research finds that “these creative industries suffer devastating economic losses” (Hunt, 2010) as a result of the problem. To put the concerns of the music industry in to some form of context, the International Chamber of Commerce claims that a “quarter of a million” jobs in the UK “could be lost by 2015” (Hunt, 2010) because of online piracy. Furthermore, the study found that some 10 billion Euros of lost revenue were lost in 2008 alone, though some of the figures presented can be misleading. The report seems to assume that the illegal downloads made by consumers are equivalent to the same amount of downloads through legitimate sales. This clearly can’t be the case, considering research mentioned earlier regarding iTunes statistics suggested that 64% of illegally downloaded music files aren’t listened to. So while the ‘10 billion Euros’ figure applies to pirated content in general and not just the music industry, it is likely that the financial and job loss figures are not completely accurate. Nonetheless, it appears that the creative industries have been impacted severely enough to have taken to extensive legal action to hundreds of file sharers under the Copyright Act in the past 5 years or so.

On the other side of the file sharing debacle, there has been research conducted that finds that the negative effect of file sharing on industry has in fact been significantly over-exaggerated. Indeed, the music industry firm The Leading Question found that file sharers typically spend “four and a half time more on paid-for music downloads than average fans” (BBC News, 2005). This evidence, along with other studies, appears to show that the act of illegally sharing music may not be entirely negatively affecting sales in the music industry – and the same research may apply to the film industry too, since many movies are also available on P2P networks. Though again, the research conducted isn’t necessarily indicative of the situation, due to the research having been conducted on “music fans” (BBC News, 2005) and not on the average file sharing user. But in the past couple of years, it seems that the illegal

sharing of music in particular has fallen substantially. A study conducted by Music Ally found that the sharing of music files was down 5% between December 2007 and January 2009, and in the same period, sharing had dropped 16% by 14 to 18 year olds. Whilst these are encouraging statistics, this drop may not be representative of other types of content shared, because over 2008 and 2009, significant changes in the music industry. For example, in an effort to combat file sharing, many websites started to offer individual music tracks at just a few pence, and scaled back marketing of relatively expensive albums. This has resulted in more fans buying single track downloads than obtaining them illegally (The Leading Question, n.d.).

So while the creative industries claim that file sharing is severely affecting their profitability, in actual fact the damage – although somewhat significant – is unlikely to have major widespread economic consequences. But what is the role of the government in file sharing, and what legislation can they impose to try and curtail this activity?

In UK law, the illegal sharing of copyrighted content is prosecutable under the Copyright, Designs and Patents act 1988. The purpose of copyright is to ensure that the author of the content benefits from his or her efforts, and it restricts what other people other than the copyright owner may do with the content. Almost any creative endeavour can now be protected by the original author under the copyright act. Any material, such as photographs, video games, television programmes and software can be copyrighted. As soon as material is protected, people can't exploit the work without the permission of the copyright owner, and this includes making a copy or an adaptation of work; issuing copies of the material to other people; or "performing, showing, or playing the work in public or broadcasting it" (Ayres, 1999).

In the context of the internet, it's a common misconception is that the internet is a "Copyright free Zone" (Ayres, 1999). The main reason this has come about is due to the ease of access to protected works. Consider Google, for instance. It's the world's most popular website and internet search engine (Alexa 2010). It's "Image Search" service indexes billions of pictures from across the internet, and presents these images to the user and allowing the user to copy the image at their free will. While the webpage does mention that images may be subject to copyright, the average computer user is very unlikely to pay much attention to this, considering there is no

explanation to what the word “Copyright” actually means. This is precisely the core of the problem. Be it copying images from Google or Peer-to-Peer file sharing, lack of awareness of both the copyright legislation, and the consequences of infringement of the act, is the main problem that needs to be addressed by the government .

It would be difficult for the private sector publishers to cope with file sharing and recover their lost revenue with no government intervention. The surge in people using the internet has been a catalyst in the escalating rate of copyright infringement. The World Wide Web can be seen as an enormous network of international information communication, so it’s difficult for content publishers to enforce their rights due to varying national laws affecting different websites. Although their rights to protect their content still exist, I feel it isn’t feasible for these publishers to take legal action against infringers simply because there are so many individuals sharing content. There is no one culprit in this issue, and in my opinion, even taking legal action against ten thousand individuals for copyright violation would not deter people from continuing to break the law.

The Copyright Law in the UK has not changed since 1991. In recent years, it had become apparent that additional legislation was required to take into account the problems of copyright violations on the internet. Lord Mandelson, the government’s business secretary, has led the implementation of new legislation to try and combat persistent file sharers in recognition of this dilemma facing the creative industries. Now known as the Digital Economy Bill, it will be introduced to attempt and reduce illegal file sharing by “70%” (BBC News, 2010) within 12 months of its introduction on June 12th 2010. The bill is centralised around requiring Internet Service Providers (ISP’s) to take more of a responsibility in taking action against file sharers. The government will require ISPs to issue offenders with numerous letters, and “if this proves insufficient, they could be prevented from going online by the internet service provider” (Khan, 2009). The other fundamental part of the bill states that the government reserve the right to restrict any website for access by the British public that they see fit.

Many ISPs are frustrated with the new bill. They mention that the costs of writing letters and reducing connections between 10,000 and 40,000 subscribers could “cost consumers up to £500m” (Fiveash, 2009), and clearly they themselves would see

their profit margins shrink noticeably. Along with ISP's, other firms such as Google Inc. question the need for restricting access to websites when users will inevitably find ways around the restrictions before long anyway. Indeed, many ISPs have written to the government to express their major concern about the bill, and one ISP, TalkTalk, has refused to comply with the bill completely, and actively campaigning across the internet for individuals, businesses and other ISPs to reject the bill. A group of ISPs will formally challenge the new government about the bill after the forthcoming general election.

Although there has been considerable scrutiny over the government's plans for the new bill, there are those in favour of the plan. Specifically, the music industry are cautiously optimistic that the Digital Economy bill will build upon progress already being made in reducing music piracy amongst youngsters, by acting as an effective deterrent away from current methods of P2P sharing. They feel as though the creative industries will now "blossom" (cmumusicnews, 2010) now that the music industry can reinvest their additional revenue into developing new digital content. Whilst I do not believe the industry will "blossom", and that much of the additional revenue will go to reinvestment, I think it will go some way in repairing the damage incurred by the music industry over the past decade.

But the Digital Economy bill may be beneficial for more than just the music industry. In fact, it may actually be significantly advantageous to every file sharer. To the average file sharer, the first concern they would typically have is the risk of getting caught. The second would be risk of malware infecting their computers. Malware is unwanted and unnecessary software running on a victim's machine that impairs their data's confidentiality, integrity and availability (such as a virus or spyware). The most common transfer of malware is through file sharing, and by deterring people from sharing their content, the government are also reducing the threat posed on people's computers from computer misuse.

Online piracy has been the subject of much controversy of late, and whatever legislative measures the government may take, if any, there will always be considerable opposition to their action. I believe that the creative industries are searching for a magic bullet solution to their record sales woes in an attempt to entirely stop file sharing. This bullet does not exist. The only way this will be achieved

is to stop producing the content entirely, and clearly this will never happen. A vast number of file sharers are not aware that they are breaking the law. Wouldn't reaching out to these people be more effective than introducing ineffective and arguably unethical regulations?

By definition, the internet is not a medium which can be regulated with ease. It's an interconnected network with no central governing body. As long as the physical links between computer nodes exist, the capacity for file sharing exists with it. The best way forward for the government is to retract their current plans to disconnect file sharers because of the practicality of implementation. Going down the route of censoring the internet may prove effective in deterring the casual file sharer, but no matter which path the government takes, people will find a workaround in order to continue file sharing. Not only this, but restricting the internet in Britain to a China-style extent would bring up serious questions about the ethics of internet censorship.

My evaluation of the situation to the government would be this: If their aim is to enforce protection of creative material through the Digital Economy bill, Copyright act, or whichever other legislation, then it's a very poor use of public and private resources. It simply will not work to the desired level. If their aim is to continually spread awareness about how file sharing infringes copyright legislation through sustained advertising to the public, then I shall support them wholeheartedly.

Appendices

Appendix I: Interview with University of Warwick Student (who wishes to remain anonymous)

Q. Do you share music, movies, games or software from your computer?

A. Yes I do, perhaps twice a week, I share music and movies and games. Sometimes I seed stuff. I have to contribute by doing my responsibility to upload to keep the file sharing going.

Q. How did you find out about file sharing, and when did you start sharing your content?

A. Basically it was about 4 or 5 years ago and my mate showed me how I can get all this stuff for free. My internet was bad then but now I can get lots of things quickly, so I use it more.

Q. Are you aware that file sharing is illegal?

A. Yes I am aware. The original CDs are quite expensive and it's convenient to download. You can get original prints of movies. If given the choice, why would I buy something when I can get it for free?

Q. If so, does this deter you from downloading content? How would you feel if the government started to adopt more stringent punishments for file sharers ?

A. I'll probably not do it from my own home if the government were start putting people in jail and charge them lots for file sharing, but I will do it on a public hotspot since I know then I can't get caught there. I think something to do with one IP address meaning you can't get found out.

Q. Do you think the government can do anything to reduce file sharing, or do you think it can't be prevented? If you think it can be prevented, what measures do you think they should take?

A. I think it's not preventable; the reason being that content these days is quite expensive. There will always be one way or another to share content. That's how society works.

It's only because of the lobbying from all these big music labels and industries that they are pressurising the government into introducing laws. These recording artists such as Sony make enough money as it is. They don't need anymore, and they're being silly if they are causing such a fuss about file sharing.

There are too many people file sharing these days to do much about it. It's not like they're going to throw us all in jail tomorrow, is it?

Appendix II: Statistics gathered from uploaded iTunes Information

Average collection size	3,542 Songs
Average plays	5568
Average number of songs purchased from iTunes	72
Users with less than 100 songs	7%
Active songs (80% of plays)	23%
Largest Collection	50,458
Songs never played	64%
Manually Rated songs	17.00%

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