

A DECADE of

THE DMCA

By aicra

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PREFACE

Introduction

So you want to know more about the impact of DMCA? Great! Today, cease and desist order cases are often mentioned in the mainstream media news. Many cases have gone to court. There is a controversy over the law and the balance between copyright holders/owners and customers/users.

This book covers the past decade of the DMCA. The book hopefully includes insight into the different areas of the DMCA and significant cases over the past 10 years. The book describes the social aspect of the DMCA and the impact of the DMCA. The DMCA has impacted our society, but also has impacted the lives of the people who received Cease and Desist notices. Some cases in the Cease and Desist Cases portion of the book will describe basic facts of the case/situation as an introduction, what happened when the recipient received a notification, how they felt, what their reaction was, and what they did after receiving the notification. There is some information with regard to the different areas of the law and discussion of some of the controversy surrounding the DMCA.

For the past 10 years, since the DMCA was passed I have followed events relevant to the act. In 2000, I enrolled in a course at Harvard's Berkman Center for Internet and Society: Intellectual Property in Cyberspace. As a student in that course, I was invited to "Signal or Noise: The future of music on the net". There, I met and had lunch with, John Gilmore, founder of the Electronic Frontier Foundation (EFF). Since that chance meeting, I became more involved in DMCA matters. In 2002, I was a committee member for the Free Software Foundation's Digital Speech Project and an intern. I drafted a DMCA FAQ for the EFF's DMCA blog in 2003, working with Daniel Orr. The material for this DMCA book started with that FAQ. The FAQ gave me some insight into relevant information for people who are unfamiliar with the DMCA.

For the past few years, I have contacted different people involved in DMCA cases I found interesting. These include:

Walmart Parody

Star Wars Leet Speak Video

Olympics blog takedown

RIAA/Usher case (although he claims he still doesn't know that it was the Usher MP3 that triggered a Cease and Desist)

Additionally, in the course of the research for this book, I have been introduced to the world of Anonymous (Project Chanology). This is an amazingly fun group and I agree with Matthew "PokeAnon" Danziger in his statement "... I would love more activism to try to integrate an element of enjoyment." This is definitely the most fun group of activists I have yet to encounter. They really do have a lot of fun!

During the past decade, I attended several protests, court hearings, and rallies regarding the DMCA. I included some of my photos from these events as well as images from various sources. My Master's applied project topic was the Technology, Education, and Copyright Harmonization Act of 2002. I recently spoke at the Last Hope Conference in NYC, sponsored by 2600.

What is the purpose of this book? This book was written to present information regarding the DMCA.

As a technical writer, I have written several user manuals. Those manuals do include instructions and relevant information. This book is not a user guide to the DMCA. This book does not go into detail regarding fair use. This book is NOT a legal reference but a book documenting DMCA events with some background information about a law topic. Nothing in this book is to be considered legal advice. In fact, the author is not a lawyer (IANAL). This book gives some background on the different sections of the DMCA.

The past decade had its ups and downs. Today many people know about the DMCA. Today, people at least know the cases relevant to the DMCA such as Napster. Years ago, I had to go into a long tirade about the DMCA. I really thought no one would ever know about the DMCA. But thanks to a lot of DMCA cases, many people now know about the DMCA. This book has been

10 years in the making. There were so many relevant cases, I could spend another 10 years writing about them all.

The first section of this book includes some background information related to copyright. There are some DMCA related experiences listed in this book. Some of these examples are well known, while other examples are not well known or did not make it to the mainstream media. The decision on what to include in the book regarding DMCA related examples was challenging. As there were an abundance of DMCA related notifications over the past decade, the selections were based on impact on individuals, impact on society, and impact on business.

For example, there are many more cases where parodies received notification. After creating a parody of Online Tonight, I received a notification. However, this notification did not meet the requirements of the DMCA and the content was not removed or disabled by the host. As a matter of fact, I never received any notice from the host, NetFirms, whatsoever. Since I did receive a copy of the notification from the complainant, I did feel the stress and fear that comes with receiving a DMCA notification. I knew my piece was fair use, but would a judge see it as such? There is nothing regarding parodies entered into the DMCA yet there is other copyright law that does cover fair use.

In addition to the notification, I did receive a phone call requesting an on the spot interview with David Lawrence. After the interview was completed, I received an offer to write a piece for them regarding copyright. This offer was declined.

After receiving a notification myself and having also experienced my book (I did own the electronic rights) being removed from my website by Geocities, I was intrigued by how the DMCA affects other individuals. I attempted to contact several people who had received notifications or that were involved in cases where DMCA notifications were filed.

The book aims to document some firsthand accounts and experiences with the DMCA. There are some questions listed at the end of several of the examples.

There is a section regarding protests related to the DMCA. These protests include DeCSS, Dmitry, and Anonymous. Toward the end of the book I include some photos of protests, activism and related information.

Keep in mind that many of the summaries of the DMCA that include actual text taken from the DMCA are not included in this edition. There is another pocketbook available with summaries of the DMCA. The goal of those summaries is to give the average person a better understanding of the different sections of the DMCA. There are some exemptions that were added included in the text. These exemptions were taken from the Library of Congress website. Again, I am not a lawyer. In fact, my interpretation could be misinterpreted. For more information about the DMCA, review the law itself, rather than rely on the summaries. Should you need to legal counsel, find a lawyer. Preferably, try to find a lawyer who understands law and technology.

ARIZONA STATE UNIVERSITY and STUDENTS USING THE NETWORK

This one particular case is my story. In this case, I received notice from the school to attend a copyright “course”.

As a graduate student at Arizona State University, I was using my laptop in the library. The library was open 24 hours and I was conducting some research with regard to copyright law and history. Previously, I had started to install some peer to peer software. However, the software was never used, not active and there were no songs, movies, or copyrighted materials on this laptop.

The network at ASU apparently scanned my computer and discovered P2P software on the laptop. There were no viruses and the computer was not compromised to my knowledge. The only thing I did have on there was the P2P software. As a matter of fact, I believe that software failed full installation. At any rate, the P2P software was never used, never connected to another network or computer, and there was no infringing materials on the laptop. A few days later, I received the following email in my ASU email account.

Your computer has been identified as experiencing a problem that may be in violation of an ASU policy and that may be causing problems for the campus community. This email is to inform you that this situation has been referred to Student Life-Judicial Affairs, and if you reside on campus, to Residential Life.

Your **computer access** to the computer identified as experiencing a problem **has been shut off**. You can access computer services at any computer lab on campus or via another computer. Your computer access to the identified problem computer will be reconnected once you attend the mandatory meeting described below. Additionally, failure to take the required steps to address the identified problem may result in your continued loss of computing privileges.

Due to this situation, **YOU ARE REQUIRED TO ATTEND A **MANDATORY** MEETING** with staff from Student Life-Judicial Affairs. Please select the day and time from the options below that best fits your availability. **YOU ARE REQUIRED TO ATTEND THIS MEETING WITHIN 2 WEEKS OF THIS NOTICE.** Please be advised that failure to attend this meeting may result in ****LOSS OF COMPUTING PRIVILEGES** as well as other disciplinary action which may include suspension, or expulsion from the university.** As a first step in addressing this situation, the information below offers resources for assistance and guidance with this situation.

NOTE: Student Life-Judicial Affairs reserves the right to shut down student access or to continue denial of student access to any computer or to a student's computing privileges, if the identified problem warrants such action.

SOME COMMON REASONS THAT ACCESS WAS SUSPENDED:

- Infection of virus and propagation
- Compromised machine due to hacking
- Copyright infringement

DATES, TIMES, & LOCATIONS FOR STUDENT LIFE-JUDICIAL AFFAIRS MEETINGS:

<http://www.asu.edu/studentaffairs/studentlife/judicial/calendar.htm>

(Bold emphasis added)

When fair use does not come in to play, then we have a serious issue.

As a student, researcher or instructor, how can you convince the IT or legal staff that there is no liability with your materials because of fair use?

While I can understand that universities were under pressure from the MPAA and RIAA, I had several problems with this notification.

The notice was sent via email. There was nothing that came to me snail mail or by phone. I have had times where I did not check my ASU email regularly. What if a student missed this email somehow? Since the session was mandatory, the student would then be suspended or expelled?!

I felt violated that ASU had scanned my computer.

The meeting was at the main campus and it was mandatory for me to attend the main campus session when the campus I was attending, now called the Polytechnic campus, was about 40 miles away.

My access was disabled and I was not given any opportunity to defend myself to get access back immediately.

The word propagation is not the correct spelling.

I did drive about 40 miles to the main campus for this session. I was no longer interested in ever logging into their network but I was curious as to what was going on and I really did want to confront my “accusers”.

We sat in the session which did not last very long at all and the presenter discussed copyright infringement. At the end of the session, a law student and I barraged the woman with questions and retorted to the information she presented.

We did state that we did not violate any laws. She informed us that the school had received pressure from the MPAA and RIAA and the school was working to comply with them by holding these sessions on copyright.

The other problem with this session on copyright was that we simply needed to sit through a presentation to get our access back. There was no admission of guilt or mandatory removal of any infringing materials.

The one question I had was if I had not attended the meeting and I had been expelled, could I have sued the school for interfering to my right to an education? Most likely their copyright and other policies may have protected them from such a lawsuit. However, I was extremely offended that the school would threaten students with expulsion or suspension due to missing an email about a virus, compromised machine, or alleged copyright infringement.

In many cases in the past decade fair use was little or no consideration. In some of the more recent cases, fair use has been a consideration, which is somewhat of a relief to those who wish to create parodies and conduct research. However, there is no guarantee that any future cases that clearly fall under fair use will be seen as such by the courts.

The examples in the book are not my DMCA story, but the story of Americans (and others) impacted by the DMCA. These are their stories, their experiences and some of their suggestions.

DISCLAIMER:

The author is not a lawyer. This author is very slightly experienced and has almost no knowledge in the field of Computer Law. This in no way is to be construed as legal advice or any legal opinion. The information found in this book is as accurate as the author's experience and research allows. Any errata or questions should be sent directly to aicra@dmcamovie.com. These issues will be addressed and where necessary will be updated in future editions.

Chapter 1
UNDERSTANDING COPYRIGHT
AND THE DMCA

This chapter contains information about copyright and presents steps for understanding copyright. What is copyright? What is the history of copyright?

What Is Copyright?

According to the Library of Congress (2004), copyright is protection for "original works of authorship fixed in a tangible medium of expression. Copyright covers both published and unpublished works." Copyright law is directed to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries (Heller, 2005). The Copyright Act in the United States was previously known as the Act for the Encouragement of Learning (Greene, 2005).

According to Capone (1999), traditionally, these were works in a tangible medium. Some works protected by copyright includes music, drama, pantomimes, literary works, images, sculpture, movies, and architecture (Moore, 2001). According to Helm (1997), copyright owners maintain the right to reproduce, distribute, publicly perform works, and create derivatives from the original work.

Categories of materials currently protected under copyright as outlined by the Library of Congress (2004) include works of literature, music, drama, pantomimes, choreography pictorial, graphic and sculpture, motion picture and other audiovisual works, sound recordings and architectural works. Musical works that are protected under copyright includes the notes and lyrics as well as the actual musical recording (Hinduja, 2006).

Who Owns Copyright?

The creator, the joint creators, employer or agency could be the owner. A work is considered protected under copyright as soon as it is fixed in a tangible form. In a work-for-hire situation, the employer usually owns the completed work. Ownership may fall to the author if the terms are stated in the contract for that work. The exception for faculty of institutions of higher education was widely accepted while there is still some controversy in the ownership of scholarly materials. Works created by staff and administration do not usually fall under the exception. Distance learning materials ownership is generally dictated by university policy (McSherry, 2001). Whether the author is acting as an employee or is acting as an independent party plays an

important role in ownership of the copyright. Ownership of the copyright to that work differs from ownership of the work. This is similar the difference in owning the copyright of the content of a book to owning a purchased copy of the book. Facts or data is not copyrighted and are considered public domain. Any written materials based on those facts can be copyrighted and owned.

Public Domain

Public domain materials vary in different countries. For the purposes of this document, public domain in the United States is defined. According to Lindsey (2003), copyright law is not applied to public domain materials. These public domain materials are free to use and download by any party. No permission is needed and no penalties for use occur when using public domain materials. Government documents are not covered by copyright. Since these documents are not covered by copyright, they are also considered public domain materials.

Orphan works

There are copyrighted works, where after diligent research, the owner of a copyright is unavailable. In these cases, permission is sought but cannot be acquired due to questions as to who owns the copyright to the work. In Carlson's (2005) article regarding orphan works, Peter Hirtle of Cornell University libraries made a statement regarding copyright as an "impediment" to arts and sciences rather than advancing them. Orphan works is a matter that the copyright office has addressed recently by accepting comments, reply comments, holding public roundtables. A full report regarding orphan works was created (Library of Congress, n.d.) and testimony was presented to the Congressional Committee on March 8, 2006, regarding the issue of orphan works.

Limitations on Exclusive Rights: Fair Use

Fair use doctrine became effective on January 1, 1978. Fair use doctrine is found in chapter 1, section 107 of Title 17 of U.S. Code (Association for Educational Communications and Technology, 1977). In order to have consideration under fair use doctrine, the work must be created for research or scholarship and satisfy all four of requirements.

FOUR FACORS OF FAIR USE

Fair use is a general class of exemptions. The freedom to access and present materials enables discussion and research. The Copyright Act (1976), Limitation on Exclusive Rights or fair use doctrine, details four factors of fair use. To qualify as fair use, the four factors are taken into consideration. The use cannot damage the market for the copyright owner, the portion of work used is taken into consideration as well as purpose of the work. Fair use doctrine allows people to use a work without the permission of the owner or owner's representative for commentaries, criticism, news, and scholarship. Fair use is important as it allows references to copyrighted material(s) during discussion or research. Sometimes fair use is confused with specific exemptions or legitimate uses. There are legal uses of copyrighted material. Specific exemptions exist in the TEACH Act which differs from fair use.

GFDL and Commons

Some other works are made free to users by means of granting permission to use. At times these works indicate credit must be given or that credit is not necessary. Other free works may include those works found on the Internet that indicate permission is granted. Certain licenses are available to give express permission. One such license is the GNU Free Documentation License (GFDL). Prior to March 2006, there was some controversy within the GNU/Linux community as to the validity of the GFDL. In March 2006, Debian found the GFDL to be conditionally free within their guidelines, as long as no modifications to the license were made. Sites such as Wikipedia use the GFDL to allow the content to be available to users. Some users opt to use the Creative Commons licenses. According to a CNET article by Tom Merrick (2005), since current copyright law automatically grants copyright, licenses such as the ones available through the Creative Commons, are used to allow permission. According to Merrick's (2005) article, there were 53 million works linked to the Creative Commons licenses site.

Origins of Copyright

In 1421, the first recorded patent was issued in the Florentine Republic. The design was for shallow-draft boats. Today, the Digital Millennium Copyright Act includes a section on vessel hull designs. In 1486, the first recorded copyright for the work, *Decades rerum Venetarum* was

issued. Marc Antonion Sabellico maintained control for the printing and distribution of this work (Miller, 1979).

In 1534, King Henry VIII implemented censorship by means of licensing. In this move, the king gave an exclusive monopoly to one printing company as long as they censored anything that was negative about royalty. Printed materials opposing the royals were censored. Anyone who printed materials offensive to the Crown was punished. A proclamation was declared in 1538, informing the citizens that mere possession of offensive printed materials was punishable (Greene, 2005).

Printers did not engage in competing with fellow printers. Materials that were printed by one shop could not be printed by another. There was no official law in place to restrict these copy rights. However, the practice to respect another printer's work became so prevalent that a printer could sue for copy rights. In these cases, the authors were of little consequence. The fight was between the printers. In the sixteenth century, German speaking nations granted privileges to authors (Miller, 1979). According to Greene (2005), the 1586 Star Chamber decree required printers to submit works for examination prior to printing. The 1637 revision required licensing of works and inclusion of the name of the author. The Licensing Act of 1643 required that new printed materials be registered by printers and the consent of owners entered. By 1647, the requirement for registration came with a penalty for failing to license a printed work. The penalty included fines and a jail term. In 1649, additional penalties were entered into the act for unlicensed works as well as ownership of a copy of offensive works. The Licensing Act lapsed in 1695 and works were not regulated as previously.

The statute of Queen Anne.

Gantz and Rochester (2005) inform readers that in 1710, the statute of Queen Anne was put into law in England. Protection was given to the author and proprietor with regards to copying of the work. The terms of the copy rights were 14 years, with a 14 year extension if the author was still living.

United States Copyright Act

The first Copyright Act in the United States was the Copyright Act of 1790 (Junger, 2001). However, in 1672, an order was issued by the Massachusetts Bay Colony Court of Elections limiting printers to the copies that were paid for by the owner of the work. If the printer reprinted the materials and sold these without the owner's authorization, a penalty would be charged. The penalty was the reimbursement to the copyright owner of the entire printing job (Miller, 1979). According to American Library Association, National Council of Teachers of English, & National Education Association of the United States (1977), revisions to the Copyright Act occurred in 1831, 1879, and 1909. In 1976, due to technological advancement, the copyright act was revised further. This revision contained provisions to protect teachers, researchers, and librarians. With this new law in place, teachers and researchers could access information. Further, the revisions to the law included copyright protection for works upon creation, whether they were published or not. The 1976 revisions to the Copyright Act also extended copyright for 50 years after the death of the author and 75 years after the publication for anonymous works. Prior to this revision, the copyright term was 28 years after the first publication with a renewal term of 28 years allowed. Registration of copyrighted works was no longer a requirement.

World Intellectual Property Organization (WIPO)

In the 1970s the international organization to handle these matters became the World Intellectual Property Organization (WIPO). According to the WIPO general information website (n.d.), the WIPO became an agency of the United Nations (UN) in 1974. The charge of the WIPO was to manage intellectual property matters of UN members. (WIPO, 2004)

The WIPO became an agency of the United Nations with the charge of handling what many refer to as intellectual property issues. More specifically, the WIPO was to handle copyright, trademark and patent issues. The World Intellectual Property Organization (WIPO) was originally in charge of administering international treaties (WIPO, 2004). When the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty were adopted, many countries amended their own copyright laws to comply with the treaties (Boune).

Paris Convention for the Protection of Industrial Property

World Intellectual Property Organization (WIPO) Handbook on Intellectual Property (2004) contains information relevant to the Paris convention. In the late 1800s, difficulty in registering patents and other industrial property in more than one country arose due to differences in laws. Patent owners in one country found difficulty registering the patents in a timely manner that would protect the invention. Trade between countries demanded a resolution to these types of issues. An international exhibition for inventors was held in Vienna, in 1873, but few inventors participated due to concerns over protection of their inventions. This paved the way for an International Congress of Industrial Property to be held in Paris in 1878. The French government drafted a document relevant to protecting industrial property. In 1883, the document was approved by Belgium, Brazil, El Salvador, France, Guatemala, Italy, Portugal, Serbia, Spain, Switzerland, and the Netherlands. Great Britain, Tunisia, and Ecuador joined the union as well. The thirty articles of this treaty include provisions for countries included in the union with regards to the protection of industrial property matters. Included in the articles are specific guidelines for protection of industrial property for the countries included in the union. Revisions to the Paris Convention came in 1900, 1911, and 1967. The provisions of the Paris Convention included basic rights, the right of priority, patents, trademarks, and administration. The first section granted equal protection to citizens of one country in another country that was a member of the union with regards to industrial property. This section protected against discrimination. The right of priority considered the first application of an industrial property in all member countries. As long as an application was presented in one country and was first, that property was considered. Patents were considered an independent entity. Expired or rejected patents in one country would not influence the patent process in another country. Trademarks, Service Marks, Collective Marks, industrial designs are also covered (WIPO, 2004).

Berne Convention for the Protection of Literary and Artistic Works

In the 1800s, international copyright treaties existed. In 1886, the Berne Convention for the Protection of Literary and Artistic Works convened to assist members with adopting a comprehensive international protection of art, writing, music such as drawings, painting, sculptures, songs, musicals, poems, novels and plays. In 1893, the Paris Convention and the Berne Convention merged to form the United International Bureaux for the Protection of

Intellectual Property (WIPO, 2004). According to Arizona State University Law Professor, Dennis Karjala (1988), to fulfill the requirement to become a Berne member, the United States introduced three bills to amend copyright law. In 1988, the United States became a member of the Berne Convention.

Current Copyright

The American Association of Law Libraries, the American Library Association, et al. (2003) stated in comments submitted regarding provisions on copyright in the Free Trade Areas of Americas Agreement, that the current copyright legislation goes a little further than what is required by the WIPO treaties. Another controversial issue regarding current copyright law is how current copyright laws and other laws work with each other. The two current copyright laws, the Digital Millennium Copyright Act and the Technology, Education, and Copyright Harmonization Act may collide with regard to bypassing encryption or copy protection (Foster, 2003). According to the Library of Congress Copyright Office (2005), in 2004, the Copyright Royalty and Distribution Reform Act of 2004, the Individuals with Disabilities Education Improvement Act of 2004 Section 306 amends section 121 of the Copyright Law, and the Intellectual Property Protection and Courts Amendments Act of 2004 were passed. The Copyright Royalty and Distribution Reform Act pertains to the appointment of judges. The Individuals with Disabilities Education Improvement Act relates to elementary and secondary schools. The Intellectual Property Protection and Courts Amendments Act is relevant to counterfeiting labels. According to the Library of Congress Copyright Law site (2005), the Family Entertainment and Copyright Act was passed in 2005 and is relevant to motion pictures, making illegal copies for commercial distribution. This act includes an exemption to skipping audio or video content in motion pictures. The National Film Preservation Foundation Reauthorization Act of 2005 is included in this Act.

Landes and Posner (2004) provide an examination of the number of words in intellectual property statutes included over the years. In 1946, the copyright statute contained 11, 550 words. This almost doubled by 1975 with 22,310 words. In 1976, the copyright statute contained 61, 600 words. By the year 2000, there were 124, 320 words in the copyright statute. The amount of words in the copyright statute increased at a greater rate than trademark or patent statutes.

Digital Millennium Copyright Act (DMCA)

The DMCA was signed by President Clinton on October 28, 1998. The DMCA prohibitions did not take effect until two years after the date of enactment, October 28, 2000. Certain cases that went to court between October 28, 1998 and October 28, 2000 that were copyright cases were not necessarily Digital Millennium Copyright Act (1998) cases. Anyone in violation of the DMCA could receive criminal penalties (Travis, 2000). The range of people who could be affected by the DMCA was large (Zabarov, 2002). The DMCA could be used in many cases from copyright infringement on a website to bypassing encryption in copyrighted software (Taylor, 2001).

The DMCA states that users can research copyrighted materials, and current copyright law has a fair use clause, but it is not clear (McCullagh, 2002). DMCA aims to protect access control measures or policies and technologies used to limit the users' uses of content to those uses that the producers choose. Copyright Act, (1976) Ownership of copyright as distinct from ownership of material object, defines the difference between copyright ownership and material ownership.

For example, when a consumer purchases a DVD from the store, the DVD case is the consumer's property to hold and view but the content is controlled. The physical DVD belongs to the customer to view and use, however the content is controlled. Another example, would be a membership card that indicates that the card can be taken from a holder at any time, although the card is given to the holder to use. Copyright law today works similarly in that it restricts how to use the DVD even though the DVD is paid for by the user or organization. Today, not only is the content controlled by copyright, but the customer doesn't have the rights to use the container either? The DMCA has important implications for campuses. While some campuses have received DMCA complaints, these may not be valid (McCullagh, 2003). In some cases the DMCA complaint may be valid in that the school is not adhering to the TEACH requirements. According to the US Copyright Office (2000), section 104 of the DMCA required the Assistant Secretary of Commerce for Communications and Information and the Register of Copyrights to submit a report for Congress on the effects of the DMCA with regards to certain topics of electronic commerce that involved sections on the limitations on exclusive rights of computer

programs and music. The DMCA specifically states that analog works cannot be digitized without permission (Talab, 1999). However, the Technology, Education and Copyright Harmonization Act (2002), allows limited digitization of analog works, so long as there is no digital version available.

Technology, Education and Copyright Harmonization (TEACH) Act

The Technology, Education and Copyright Harmonization (TEACH) Act was signed into law by President Bush on November 2, 2002 to revise sections 110(2) and 112 of U.S. Copyright Law (Slaughter and Rhoades, 2004). TEACH permits educators to perform most works. 110(2) only allowed transmission in classrooms. However, this law recognizes distance education at any location. According to Crews (n.d.), TEACH allows educators more range than was allowed by 110(2).

The TEACH Act is explicitly designed to allow various uses of materials with the benefit of immunity from infringement as long as there is compliance to the act (Price, n.d.). Educational material such as handouts and articles and works used as the main content of a course such as videos and literature are considered. Works used to supplement class materials are also covered (University of Southern California Library, 2004). Educators may perform works but there are limitations. The question as to what constitutes a reasonable portion of the work is answered by Lipinski (2005), through his reference to the TEACH Conference Committee Report. Lipinski (2005) informs users that according to the Conference Report, the nature of the market and educational purposes should both be taken into consideration when determining what is considered a reasonable portion of work can be performed.

The importance of and concern regarding the TEACH Act comes from looking at how students learn and use materials in traditional classrooms. In traditional classroom environments, requirements differ from the use of materials for distance education. The TEACH Act outlines those requirements for distance learning (American Library Association, n.d.).

Allowing expanded use enables instructors to integrate outside materials as necessary, providing current, fresh, and relevant media to students. For example, political science courses require students to review news articles from various newspapers. It is unlikely that students will be

interested in paying for or can afford to subscribe to every single source. While some schools may already subscribe to these sources, some students may not know or be aware of the availability of these journals or know how to use the electronic journals provided by the university. An instructor may post PDF versions of the articles on the course website for students to access. To receive the immunity to distribute a PDF of the content, colleges need only comply with the requirements in the TEACH Act (2002).

According to the TEACH Act of 2002, copyright content owned by others can be stored and copies may be kept. Analog works may be digitized in order to supply the student the work only if the work is not available in digital format.

The TEACH Act only relates to accredited non-profit institutions of learning. This includes elementary and secondary schools and those post secondary institutions that have accreditation by the Council on Higher Education Accreditation or US Dept of Education.

Requirements include a copyright policy maintained by the institution, copyright information, notice to students about the distribution of the materials, and the material must be used for enrolled students. Access is to be limited to those students enrolled in the courses. The information technology department must place access restrictions to the course content (Bruwelheide, n.d.).

Teachers may now display performances of non-dramatic music works, dramatic works, in limited portions and any work that is an amount similar to what would be displayed in a traditional classroom, according to the TEACH Act, Section 13301: Educational Use Copyright Exemption.

Display or performance of commercial training works are excluded from permission under the TEACH Act. Also excluded are performances of work not lawfully made and acquired if the institution has reason to believe those items were not lawfully made and acquired.

The materials must play an integral part of the course. According to TEACH Act (2002), Section 112 of Title 17 is amended to include analog materials may be converted to digital when there is no digital version available or is secured from access.

What is the controversy over the DMCA? and Why were people protesting?

Many people believe that the DMCA is broad in scope, overreaching and may have similar, overriding, not overriding, or conflict with regard to previous laws and doctrine. Some DMCA related issues and conflicts include:

Audio Recording

The previous ability to record cassettes and music for personal use.

Fair Use Doctrine

Fair use did not seem to be a valid reason for parody, commentary, or research in the digital era.

Antitrust law/Sherman Act

Monopolies

Patent law

Restricting circumvention applies patent like protection to copyrighted works.

Jurisdiction

Location of the user vs. location of the host vs. location of the complainant.

Fair competition

DMCA seemed to restrict fair trade and competition.

First Amendment

Free speech was squelched and attempts at censorship successful in some cases.

First Sale Doctrine in commerce

The right to sell something you previously purchased, such as software as opposed to selling a book.

DRM

Digital Rights Management or copy control.

DMCA HISTORY

The 1st draft

In December of 1996, the WIPO addressed digital and copyright issues in a new treaty. The treaty was not to impose unreasonable restrictions on home recording by the customer. – HRRC

<http://www2.ari.net/hrrc/html/chronology.html>

In May of 1997, the PTO drafted proposals that went beyond the terms of the WIPO treaty. One proposal would restrict fair use and place restrictions on hardware for users.

In Feb 1998, HR2281 was voted on. Rep Boucher presented an amendment to remove PCs from the bill. This amendment lost by a 11-2 decision.

In April 1998, the Full House Judiciary Committee passed HR 2281.

In May 1998, HR 2281 referred to House Commerce Committee for consideration.

On June 5, 1998, the House Commerce Telecommunications Subcommittee holds hearings on HR 2281.

Around June 19, 1998, the subcommittee made changes for improvement and recommends in favor of this to the Full Commerce Committee.

In July 1998, the Full House Commerce Committee approves of the changes made by the subcommittee to HR 2281. The Full House Commerce Committee, added a “fair use” amendment. This was then sent to the House of Representatives.

In Aug 1998, the House of Representatives passed HR2281.

In Sept 1998, the House/Senate Conference committee begins negotiations regarding HR2281. The bill was finally completed to include some benefits for retailers, consumers, libraries, and schools.

In October 1998, The Digital Millennium Copyright Act (HR2281), was approved by the Senate and House. President Clinton signed the DMCA into law.

From the 1996 Copyright Treaty

“Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.”

In light of this statement, then, if the technological measure is effective, that is one point. Perhaps a list of definitions would be appropriate here.

Adequate legal protection and effective legal remedies against the circumvention of **effective** technological measures...

Would the technological measure be effective if I can bypass it with a keystroke? Is the measure effective if it's rot13 (which a 6 year old can crack)? Does it mean placed into effect or does it mean works effectively? One might hope this would mean that the author, or owner would have effective technological measures implemented at their own cost and trouble if they want to keep their work secure. With music, movies, programs and games, there is a lot of money to be made. Some argue that the cost of production is high.

Theaters still draw in crowds, but there is speculation in the decrease in attendance. Some other contributing factors may include availability of movies legally online and through DVD purchases or rentals.

The first point is that a work does not need to be good to be copyrighted, it only needs to be set in a fixed or tangible medium. The Library of Congress report indicates we, the general public, are fortunate to have movies to watch. Are we? Aside from entertainment to clear the mind of current reality, an escape, comedy relief, and perhaps for some - a learning experience, what good are movies? What about the quality of the feature?

If someone created a documentary about the LOC that would only play on a Linux box and the LOC wanted to view it in another format and we said, too bad, you have to now get a Linux box and pay me, would that be ethically acceptable? Hypothetically speaking, what if the LOC did not have government approval to use Linux computers? Now what? They had the same opportunity to view the media as anyone else. There are plenty of medium around for them to choose from. In 2003, IBM did announce that the LOC would run Linux (Shankland, 2003).

DMCA was Partially enacted. When were certain parts enacted?

The DMCA was signed by President Clinton on October 28, 1998. The criminal provisions were not put into account until two years after that date, October 28, 2000. Certain cases that went to court between October 28, 1998 and October 28, 2000 that were copyright cases were not DMCA cases. One such case was that of CP4Break, better known as for the CPHack software. This was software that written that broke open censorware and listed the sites that were blocked. This case was not actually tried under the DMCA but under previous copyright law. Criminal penalties could not be sought until October 28, 2000 passed.

One of the requirements of enacting the DMCA so quickly through the legislature was that there needed to be reports filed and public comment taken into account. Section 104 of the DMCA required the Assistant Secretary of Commerce for Communications and Information and the Register of Copyrights to submit a report for Congress on the effects of the DMCA with regards to certain topics of electronic commerce that involved sections on the limitations on exclusive

rights of computer programs (where copies of copyrighted materials are okay and in what situations --see section 117) and music (copies are not okay, to the extent there is a commercial advantage involved -- see section 109).

History of the Controversy

So where did the controversy begin? Some say it began with 2600 v. MPAA. The MPAA went to court against 2600 for hyperlinking to DeCSS, a program that allowed GNU/Linux users to watch DVDs.

Money

The bottom line is not always ethics, but so often, the bottom line is money. Money is imperative for companies to earn. A profit is the goal. Movies are made to make money. This is a business. Music is made for the movie. Sometimes the movie doesn't do so well, but the soundtrack makes the companies money. The magazines owned by the company putting out the movie, markets the movie. Writers and reviewers are sometimes bribed to sway reviews. Or are the writers real reviewers? There were several fake reviewer stories that came to light. Theater is different. While there may still be a monetary gain, and the show is passive, plays at least work to obtain a wide presence. There is something to be said for those actors who take to the stage, memorize their lines, exaggerate expressions to create an atmosphere that informs, enlightens, and entertains. When someone watches a movie, often the person will view the entertainment and advertising within the film.

Ethics

What about ethics? Most applicable to the DMCA is descriptive ethics. A balance between copyright owner and copyright user is not met. What is good? What is right? What is wrong? Different people have different moral standards.

The United States Constitution guarantees freedom of speech. The 1st amendment describes the right to speak freely. The opportunity for free speech is one of the fundamental values and foundation this country was built upon. When other laws or ordinances conflict with the law, there erupts confusion and ethical dilemma.

A hypothetical example may be an ordinance in a town that states you may park anywhere in the city without fines or fear of towing between the hours of 5PM and 7AM. After enacting this ordinance, the town population increases and the new town manager and council realize that an ordinance needs to be enacted to restrict public parking. This new hypothetical ordinance states that you may not park on Main Street or any one way street at all. Residents accustomed to parking freely are confused and some become upset.

There was an “anti-piracy” campaign regarding stealing and “piracy”. This advertisement begins with a person on a computer and the words appear while depicting the action: “You wouldn’t steal a car” “You wouldn’t steal a handbag” “You wouldn’t steal a television” “You wouldn’t steal a movie” “Downloading pirated films is stealing”.

To attempt to equivocate downloading a movie to grand theft auto is a bit on the extreme side. The advertisement seems an attempt to use logic and moral pressure in an attempt to sway the viewer from downloading a movie.

Many amusing satirical editions are found at YouTube. Several of these state the inability to skip past the advertisement. One parody – “*U.K. Anti-Piracy Advert - Parody of this annoying trailer!*” includes the text, “Next time, I’ll buy a pirate DVD. At least this bloody trailer won’t be on it.”

Politics

What about politics? There are politics involved. There were rumors of several politicians that easily gave in to lobbyists for the entertainment industry.

Now that many people in the general population are familiar with the DMCA, the following information provides a little insight into the various areas.

So where did the controversy begin? Programmers were among the first to feel the pressures and restrictions to the DMCA. These were the people who were working on keeping information free and sharing findings to promote the arts and the sciences.

Educators, students, artists, and some of the general population began to feel the negative impact of the DMCA almost immediately. Students were using Napster in 1999 to share music. There were few ad banners or advertisements present on sites. There were portals and bulletin boards. Few sites required a login or membership, much less a fee. Many large businesses did not have websites. There were still many telnet servers around. Students and others were accustomed to sharing their ideas, information, and pictures. One contributing factor may be the radio and cassette tapes. In the 1980s, you could create a cassette tape to make a music mix. This was common. People recorded music from the radio and from LP players or record players. The music could also be recorded from tape to tape. These tapes were often shared or played at parties. So, why couldn't we do the same thing computer to computer? Or CD to CD? That is a reasonable question.

The AHRA, or audio home recording act, gives immunity from lawsuits to users who are copying or recording for non commercial purposes on a device specially intended to record audio. However, a computer is NOT a **device specifically designed to store or record audio**. Of course, someone can specifically design their computer for that purpose. Soundbyting.com, a former active RIAA site, apparently replied in an email, the following information to "Clarify the Legality of Home Audio Recording" to minidisc.org:

"As long as the copying is done for non commercial use, the AHRA gives consumers immunity from suit for all analog music copying, and for digital music copying with AHRA covered devices."

Also, allegedly written by soundbyting rep:

"It is important to note that the AHRA does not say that such copying is lawful; it simply provides an immunity from suit."

Well, if users are immune from lawsuits, then, why did the RIAA sue or threaten to sue people downloading music?

While the RIAA has stated they will stop lawsuits they are working with ISPs (Wired, 2008).

There were many reasons people protested or speak out against the DMCA. The DMCA placed restrictions on free speech, research, discovery, invention, and sharing information. The DMCA was used for censorship and patent like protection.

Technology

Technology is the result of adapting to current conditions using available resources and products. The ability of human beings to adapt to their current condition in an effort to create a better situation for the dominant culture using the materials available to them is an integral part of technology. Technologies can be created by using previous technology, making use of past technology to create innovation in the present or for the future. Some technologies created in the past include the field of weapons, information architecture, electronics, communication, transportation, and art.

The following chapter summarizes some of the cases involving the DMCA.

Chapter 2

DMCA notifications

The following section includes a few cases where the DMCA was invoked. The following chapter does include some issues that went to court and some issues that did not. The fact of the matter is that while in the beginning there were few DMCA notifications, the DMCA was later used on a much larger scale. Not all of the following cases are mentioned in mainstream media, are court cases, but are relevant as to the impact of the DMCA. Categorizing the cases was challenging. Note that several cases fall under more than one category.

DeCSS

Issue:	DeCSS
Focus on:	Software freedom, movies
DMCA relevance:	1201, reverse engineering, bypass encryption, general copyright infringement
Start Date:	December 1999

Summary:

On December 28, 1999, a “Complaint for Injunctive Relief for Misappropriation of Trade Secrets” was filed in California against several individuals by the DVDCCA.

On January 14, 2000, 2600CT received a complaint and summons regarding making DeCSS publicly available.

Defendants were:

2600, a literary magazine, posted DeCSS on their website and there were some mirrors. Several suits were filed

2600CT – the Connecticut chapter of 2600

72 Individuals and websites. The complaint claimed CSS as a Trade Secret

Jon Johanssen, who was involved in creating DeCSS.

What is DeCSS?

DeCSS is software used to decrypt CSS or Content-Scrambling System. CSS is encryption and attempt to prevent movies from being copied in a digital format.

An excellent timeline of events is listed on IP Justice.

<http://ipjustice.org/wp/cyberlaw/>

What is the DVDCCA?

The DVDCCA is the DVD Copy Control Association. This organization is not for profit and “trade association and the sole licensing entity for Digital Video Disc (“DVD”) technology”, according to the complaint.

Some of the challenges:

- The court doesn't have jurisdiction
- Wrong parties, procedural problems
- DeCSS doesn't circumvent
- DeCSS is within one of the exceptions
- 1201 is unconstitutional

Key outcomes:

- Jon Johanssen** – Cleared of charges in January 2003
- 2600** lost, appealed, lost and decided not to go to the Supreme court
- Protests
- Many Mirrors – Social dissent
- Positive outcome! People aware of the DMCA

DVC-CCA sues dozens who live outside CA.

Claimed defendants misappropriated trade secrets by publishing DeCSS.

California Supreme Court

Bunner

DVD CCA summarily dismissed its claims after the California Supreme Court ruled that computer programs could be preliminarily restrained from publication only in very narrow circumstances.

The California Court of Appeals ruled that those circumstances were not met in Mr.

Bunner's case because the program was not a trade secret at the time it was published, but instead was widely available around the world.

The preliminary injunction was reversed.

Pavlovich – resident of Texas

Jurisdiction rules for internet cases

DVD CCA went to U.S. Supreme Court review of the decision

Rejected

From 2600:

“ People the world over know all about the DMCA and are committed to overturning it. The amount of education that has occurred in the last two and a half years is simply phenomenal. There are many other combatants now in the fight and we have never been more convinced that we will ultimately prevail.”

May 1, 2001 – 2600 Appeals

On May 1st, 2001, the 2nd Circuit Court of Appeals in New York- the Federal Building at Foley Square was filled with spectators. Eric Corely, a.k.a. Emmanuel Goldstein, sat in the row in front of Declan Mccullagh (noted digital journalist).

The courtroom was packed. It was standing room only. A lawyer-type, an older gentleman with gray hair, motioned for Corely to go to the hall. After a few moments in the hallway, Corely and his representative returned.

More people began to arrive in the courtroom. There were at least two people wearing the Copyleft T-shirt which includes the css_scramble code on the back. The three judges on the panel were Judge Jon O. Newman and Judge José A. Cabranes, Circuit Judges, and Judge Alvin Thompson, District Judge.

Kathleen Sullivan, noted Constitutional scholar and Dean of Stanford Law School, spoke on behalf of the defendants, 2600. Sullivan began the oral arguments with statements about section 1201a of the DMCA. She mentioned that questions have arisen as to the Constitution and First Amendment.

Kathleen Sullivan:

The DMCA prohibits the dissemination of the device that controls access.

She indicated that the DMCA protects against access, *not* use.

1201 doesn't prohibit DVDs from being copied.

1202 1201 a2 is not about copyright infringement, but against access

An example she gave was that of a blueprint for a copy machine. There are innocent uses for that type of information. There are also innocent uses for DeCSS. Sullivan indicated that this statute doesn't prevent piracy; it stops innocent users who paid for a DVD. If someone was colorblind, that person could not alter the screen, a student cannot use snippets for a digital report. This Act inhibits Fair Use, which is not infringement.

Judge Newman:

Can we make fair use in the most technological way?

Kathleen Sullivan:

Users are locked into Ancient Analog Fair Use...

Propriety holder ---> Digital

Users ---> Analog

There is a shift of the bargain. There are advantages for the creator. Also, researchers cannot post encryption findings. We have seen this most recently in the SDMI "incident," where a professor did not discuss his findings due to pressures of the RIAA and the fear of the consequences because of the apparent DMCA violation involved.

Kathleen Sullivan:

Code is speech in the form of expressive content.

In previous cases such as *Junger v. Daley* and *Bernstein v. US Department of Justice*, code was found to be speech. Those previous cases were not discussed in court this day.

Judge's Response:

Judge Lewis A. Kaplan (who previously made a decision in this case) stated the DeCSS code was more functional than speech. Judge Kaplan stated functionality overrides speech content.

Judge Newman:

Are there alternatives to stop piracy?

Kathleen Sullivan:

That is the burden of the Government Vacate injunction.

Judge Newman:

This will set a precedence. Would it satisfy you if we modify the injunction to make it clear that this is for this case only?

Kathleen Sullivan:

It would satisfy me if you vacate the injunction.

The courtroom erupted with laughter.

Kathleen Sullivan:

We need to narrow liability. Magazines should be able to provide information. There are easier ways to steal movies.

She spoke of DivX and DeCSS. She then excused herself for taking more than her allotted 20 minutes of time and sat down.

The Other Side

Attorney Daniel Alter, assistant U.S. attorney, compared DeCSS to software designed to break navigational systems or fire alarm systems. The judges didn't seem to buy into that.

Charles Sims, a lawyer for the MPAA, stated that the DMCA is Congress' attempt to correct a flawed law. A movie can be copied and sent worldwide if measures aren't taken to prevent this. According to Sims, Congress tried to delay the concern of the providers. We will allow a provision to allow digital providing. DMCA was a carrot so more speech can be available. According to the MPAA lawyer, they are not required to release their product to the public.

With the changing of the tides in the world because of the Internet we have seen many "middlemen" go. You can directly purchase your car insurance online without having to pay a fee to an agent. You can book airline tickets or hotel reservations directly with the use of the Internet. Many middle jobs are gone. Music and entertainment is beginning to take on a new form. Many people do agree that the MPAA is not doing any favors by making their media available for a cost, both in dollars and sense.

We have the technology to make music, movies, animation and books. We do not *need* to rely on *their* products alone.

Judge Thompson:

Once it's on the Internet, what's the purpose of the injunction? How could the injunction get it off the Internet?

This point is valid and also seems to indicate the challenge of restricting online materials.

Judge Thompson:

Can you prosecute the list giver of obscene sites?

Charles Sims:

Yes, and no. It depends on the situation.

Kathleen Sullivan was given a few minutes to speak after three lawyers from the MPAA had spoken. In her final statements, she gave the example of a crowbar; in the hands of a mechanic, a crowbar has different uses than if it were in the hands of a thief.

Both sides were given until May 10th to submit a statement of ten pages or less to the court.

After the court was dismissed, John Gilmore of the EFF spoke with several attendees.

Although there were no demonstrators at the appeal, as there were at the trial, there was a protest demonstrated.

“Honk for Free Speech” was a cause that many 2600 members participated in. People were encouraged to honk their horns if they believe in Free Speech. Honking was heard at the courthouse.

In Washington, D.C. a single man protested outside of the Supreme court building.

In Philadelphia, PA a techno version the Star Spangled Banner was played for one performance only by Pajama Crisis in honor of this appeal. If we were to win the appeal a special song "Hope for the Future" will be released. If we lost, there would be no "Hope for the Future".



Figure 2.1: First DMCA protest – Washington D.C. March 2000

(Courtesy Peter Teuben)

The DMCA does not specifically state that ISPs are liable for links that point to sites outside of the host's server. The following excerpt comes from the NY court opinion in August 2000.

“Potentially more troublesome might be links to pages that offer a good deal of content other than DeCSS but that offer a hyperlink for downloading, or transferring to a page for downloading, DeCSS. If one assumed, for the purposes of argument, that the *Los Angeles Times* web site somewhere contained the DeCSS code, it would be wrong to say that anyone who linked to the *Los Angeles Times* web site, regardless of purpose or the manner in which the link was described, thereby offered, provided or otherwise trafficked in DeCSS merely because DeCSS happened to be available on a site to which one linked. But that is not this case.

Defendants urged others to post DeCSS in an effort to disseminate DeCSS and to inform defendants that they were doing so. Defendants then linked their site to those “mirror” sites, after first checking to ensure that the mirror sites in fact were posting DeCSS or something that looked like it, and proclaimed on their own site that DeCSS could be had by clicking on the hyperlinks on defendants' site. By doing so, they offered, provided or otherwise trafficked in DeCSS, and they continue to do so to this day.”

Accordingly, in several DMCA notifications regarding linking to DeCSS during the court proceedings timeframe, the MPAA representative states that :

“...District Court for the Southern District of New York granted a Preliminary Injunction prohibiting the Internet posting or other provision of DeCSS, having found that DeCSS was a prohibited circumvention device within the meaning of ?1201(a)(2) and that the offering, providing or trafficking of DeCSS on the Internet violated 1201(a)(2). “

Yes, the court granted a preliminary injunction on linking to DeCSS filed the by the Plaintiff. However, these are the words from the preliminary injunction filed and written by the Plaintiff's representative.

On November 28, 2001, the Second Circuit Court of Appeals upheld the decision and permanent injunction of the Southern District of New York in that offering, providing, or trafficking any device designed to circumvent CSS is a violation of the DMCA.

It was the plaintiff's application for preliminary injunction that requested there be no linking to DeCSS.

Later, in a notification to Google by Scientology requesting removal of links to allegedly infringing materials (not DeCSS), reference was made to this case within the notification by a Scientology representative.

Questions

When was DeCSS identified as infringing material?

What sections are relevant to this case?

What sections would you use to defend this case?

How do you think others might use this case to justify a removal of a link in a notification?

Do you think that Section 1201(c)(4) “Other Rights, Etc., Not Affected” is relevant here?

Could this be used as a defense?

DMITRY SKLYAROV



Figure 2.2: Dmitry Sklyarov

Dmitry Sklyarov Russian Programmer finishing a speech at a rally for his benefit in San Francisco. August 29, 2001.

Case: Dmitry Sklyarov – Elcomsoft v. Adobe

Focus on: Encryption

DMCA relevance: 1201 and general copyright **infringement**

Start Date: June 2001

Summary:

A Russian cryptographer leaves DEFCON 9 after presenting how to crack the Adobe e-book format. Dmitry Sklyarov, Russian cryptographer was arrested by FBI officials on his way to McCarran Airport in Las Vegas, NV. For several days, people in the community were unaware of his whereabouts. There was some discussion on the Berkman Center's dvd-discuss forum regarding Dmitry and his whereabouts.

At that time, Dmitry had a family in Russia, a 3 month old child and another small child. Dmitry was a graduate candidate and only 27 years old.

Dmitry was located in Northtown at the North Las Vegas Detention Center.

Accordingly, phone calls were made to Rep. Boucher twice on July 20 and to Adobe. A representative on July 20 informed us that “according to Adobe”, the arrest was a Federal matter, nothing to do with Adobe. Adobe had no press release to offer, however they did offer the FBI PR contact information.

July 23, 2001 protests were globally initiated. During the planning process, Adobe agreed to meet with the EFF. The EFF announced that according to Adobe, the protests would interfere with the planned meeting. Dmitry was transferred to Oklahoma City Federal Transfer Center. Many protests erupted all across the nation and internationally.

What was Dmitry's “Crime”?

The company Dmitry worked for in Russia developed software that made e-books readable for Linux, the blind and others. The DMCA was used in this case.

Section 1201 states that you cannot distribute a product or device which circumvents encryption.

160 people marched in San Francisco on July 31, to protest the DMCA.

Sites emerged:

<http://www.boycottadobe.com>

<http://www.freesklyarov.org>

<http://www.anti-dmca.org>

Old sites emerged with protest and action:

<http://www.cryptome.org>

<http://www.dmcasucks.org>

<http://www.eff.org>

<http://www.lemuria.org>

<http://www.dibona.org> - online petition.

August 6, 2001, Dmitry was let out on bail pending hearing date August 23.

Result of DMCA Case:

Dmitry was freed in December 2001.

More information regarding his agreement can be found in the U.S. Department of Justice document found at:

<http://www.usdoj.gov/criminal/cybercrime/sklyarovAgree.htm>

In December 2002, Elcomsoft was acquitted by a federal jury in San Jose. One argument was that they did not intend to violate the DMCA.

See the following chapter for more information regarding the Dmitry protest and fundraiser.

UNIVERSITY OF NEW MEXICO and PUNGENT DeCSS

In 2002, Nathan Wallwork had a copy of DeCSS on his personal space. At that time, University of NM was hosting his personal space. He had DNS records pointing to that system.

In his case, he did not receive a Cease and Desist personally. According to Nathan, he wasn't contacted at all, even though his email address was readily available on the web site, and his name/address/phone were available in the whois records.

He heard about it from the system administrator of the machine. She was instructed to remove his context when the C&D was sent to security@unm.edu.

UNM was pretty nice about it, but said they weren't going to fight it, since he didn't work there anymore, and wasn't a student.

He sates:

“I'd been meaning to move my domain anyway (and been lazy about it), so this wasn't much of a problem.”

Nathan responded that he believed his site was within the bounds of fair use for multiple reasons.

Here are his reasons why:

“First off, I'm guessing at what they might have been complaining about, since they didn't specify which page(s)/file(s) they had a problem with. I'm guessing it was the copy of decss121b.zip, but part of the point is that I shouldn't have to guess. Their letter simply ask that the entire domain be removed.

At the time, DVDs couldn't be played on Linux systems. The software simply wasn't available, and decss was the first step to getting there.

For all their bluster about copyright infringement, they missed the point completely. This wasn't about copying the encoded bit stream (which could be done without decoding it), but about decoding the bit stream for playback (as all DVD players must do). This meant that reverse-engineering and interoperability were both in play.

The C&D letters came across as ill-considered attempts to bully people with a flimsy legal position.”

Nathan did locate a copy of the notification. He states that he:

“actually had to track down a copy. I was able to get someone in UNM's CIRT department to forward a copy of the email.”

With regard to a counter notification he wrote:

“I wasn't aware of the details of a counter notification at the time, so I have no idea if it fit the criteria. My intent was to inform them that I was the proper contact, that they should communicate directly with me in the future, and to state that I disputed their claim. I borrowed much of the language from their C&D letter.”

Nathan moved the content to a different server, which he stated he had been meaning to do anyway. The same content remained available at the same URL, with no downtime. He stated that he never heard back from them. He was urged to take the content off of the UNM servers in a timely fashion, but it was fully under his control. He placed a copy on another server, changed the DNS settings, and waited a few days for DNS propagation before he took the content off the UNM servers.

He concludes with this:

“I think UNM was really more interested in having me move the content because I had a .org name pointing at one of their servers. They had a policy against that, and the C&D letter had

brought my site to their attention. My impression was that UNM was very dismissive of the C&D letter.”

For more information about this case, visit:

<http://www.pungent.org/>

Questions

Does the posting of decss121b.zip fall under fair use?

Why or why not?

Take a look at the DMCA notification on Chilling Effects.

Do you think this notification is valid?

According to Nathan, he did not receive a notification after he moved the site. What are some possible reasons for this?

VIDEO

YOUTUBE

In December 2005, YouTube emerged. YouTube is now widely used for business and personal purposes. Videos are uploaded to YouTube and are available for public view. There is also an option to keep videos private. In November 2006, Google purchased YouTube. Currently, there is a notice on YouTube when users upload video stating the policy on uploading without permission unless the work is original. YouTube does have a Copyright Tips page and Community Guidelines available to “help you determine whether your video infringes someone else’s copyright”.

Upon further examination of the Copyright Tips section on Fair Use, the site does not give any specific information relevant to fair use but does include links to more information. Users are advised to seek legal advice before using “even a small portion of copyright materials in your video”.

From YouTube’s Copyright Tips page General Copyright Inquiries: Using some copyrighted content, retrieved August 2009:

“It’s possible that you may be permitted to include small excerpts from copyrighted material in your video if what you intend to use is insubstantial or is incidentally included, or where the intended use you have for the copyrighted material falls within an exception or limitation to copyright under the law in your country.

We can’t give you advice on either of these topics, and if you do plan to use even a small portion of copyright material in your video we’d strongly advise you to take legal advice first.”

There were several interesting cases regarding notifications and YouTube. One such case was that of Christopher Knight in 2007. His blog is located at:

<http://theknightshift.blogspot.com/2007/08/viacom-hits-me-with-copyright.html>

According to his blog, he was running as a candidate for the Rockingham County Board of Education. He produced 3 commercials that ran on local television. One of these commercials was spotlighted on VH1's Web Junk 2.0. According to Christopher, he never received any request for use of his materials. He then posted a clip from the show to YouTube and received a notice that his material had been removed or access disabled as a result of a notification from Viacom. One day short of 14 days the content was restored at YouTube. In the blog post, Christopher Knight does thank Fred Von Lohmann of the EFF for his assistance.

RICHTER SCALES VIDEO

Matt Hempey created a video for the band “Richter Scales”. His blog for December 11, 2007 informs the readers that the video, “Here Comes Another Bubble”, was removed from YouTube due to a DMCA notification. The blog is located at :

<http://www.richterscales.com/blog/2007/12/dmca-takedown-of-here-comes-another.php>

The blog further explains that:

“we don't know who filed the takedown or why they did so without first talking to us, but we would like to talk about what it would take for you to cancel your request.”

According to Chilling Effects post about a week later by Wendy Seltzer, the person objecting to the video was a photographer, Lane Hartwell. Hartwell apparently objected to the use of one of her photographs. More information can be found at:

<http://www.chillingeffects.org/weather.cgi?WeatherID=602>

Matt responded in an email on May 6, 2008 that:

“ Yes, we did receive a DMCA takedown notice on YouTube. They pulled the video a little under a week after we posted it. We decided not to file a counter-takedown notice and simply posted an alternate version.”

In this case, a new/alternate version was created. That particular morning, Matt did find out that the video won a Webby Award for Best Viral video.

Questions

Is this video a parody? Why or why not?

Why do you think YouTube would disable access to a video that could be covered under fair use?

Would YouTube be liable under the copyright act for not disabling access to a parody?

In this case, Matt did mention in his blog that giving credit is a good point and that he planned on crediting every photographer wherever possible. Is this legally necessary? Why or why not?

LENZ V. UNIVERSAL

As discussed in the Fandom section, Prince's representatives did go after several fan sites. One notable case relevant to the DMCA and Prince occurred on YouTube. Stephanie Lenz filmed her sons dancing around to the Prince song, "Let's go Crazy". She posted the video to YouTube. Universal filed a notification with YouTube and the content was removed.

At issue here seems to be the burden of proof with regards to whether something is considered fair use or not fair use.

According to Universal, "copyright owners cannot be required to evaluate the question of fair use". According to Lenz, "fair use doctrine itself is an express component of copyright law". There were numerous instances where fair use was not considered prior to notifications sent out by copyright owners. One notable case mentioned in this book is that of Matt Soccio and the "usher.mp3".

According to the order denying motion to dismiss, in the Lenz case, filed on August 20, 2008, the court stated that according to notification procedures:

"... (v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.

(vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

17 U.S.C. § 512(c)(3)(A) (emphasis added). Here, the parties do not dispute that Lenz used copyrighted material in her video or that Universal is the true owner of Prince's copyrighted music. Thus the question in this case is whether 17 U.S.C. § 512(c)(3)(A)(v) requires a copyright owner to consider the fair use doctrine in formulating a good faith belief that "use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law."

Universal:

According to the order, Universal contended that:

“copyright owners cannot be required to evaluate the question of fair use prior to sending a takedown notice because fair use is merely an *excused* infringement of a copyright rather than a use *authorized* by the copyright owner or by law.

Universal emphasizes that Section 512(c)(3)(A) does not even mention fair use, let alone require a good faith belief that a given use of copyrighted material is not fair use. Universal also contends that even if a copyright owner were required by the DMCA to evaluate fair use with respect to allegedly infringing material, any such duty would arise only *after* a copyright owner receives a counternotice and considers filing suit. *See* 17 U.S.C. § 512(g)(2)(C).”

One statement to ponder in the above statement by Universal is: “copyright owners cannot be required to evaluate the question of fair use prior to sending a takedown notice...”

If copyright owners are not responsible to evaluate fair use, and ISPs are not responsible to evaluate fair use or the validity of a claim, then that leaves the user in a terrible position.

Lenz:

According to the order:

“Lenz argues that fair use *is* an authorized use of copyrighted material, noting that the fair use doctrine itself is an express component of copyright law. Indeed, Section 107 of the Copyright Act of 1976 provides that “[n]otwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work . . . is not an infringement of copyright.” 17 U.S.C. § 107.

Lenz asserts in essence that copyright owners cannot represent in good faith that material infringes a copyright without considering all authorized uses of the material, including fair use.

Ultimately, the court decided that fair use is authorized by law.

According to the order,

“Here, the Court concludes that the plain meaning of “authorized by law” is unambiguous. An activity or behavior “authorized by law” is one permitted by law or not contrary to law. Though Congress did not expressly mention the fair use doctrine in the DMCA, the Copyright Act provides explicitly that “the fair use of a copyrighted work . . . is not an infringement of copyright.” 17 U.S.C. § 107.

The court did therefore conclude that “fair use is a lawful use of copyright”.

Questions

What are the four factors of fair use?

What are some examples of fair use?

If copyright owners were to ignore the issue of fair use and send a notification, could that be considered misrepresentation?

If a copyright owner sent a notification and the material is found to be non-infringing, and then the owner sends another notification for the same materials, could this be considered misrepresentation?

Professor Wendy Seltzer and the NFL

In February 2007, Professor Seltzer uploaded a video to YouTube. She describes the incident on her blog which is located at:

<http://wendy.seltzer.org/blog/dmca-nfl>

According to the blog, she:

“snipped the copyright warning out of the weekend’s Super Bowl broadcast as an example for my copyright class of how far copyright claimants exaggerate their rights.”

Five days later, she received a DMCA notification.

After filing a counter notification, the video was restored at 14 days. However, this is not where this case ends. After the material was removed and then restored, Professor Seltzer received another notification on March 18, 2007.

Her previous counter notification apparently included information relevant to the clip being used for educational purposes.

Professor Seltzer’s blog seems to indicate that the proper procedure after counter notification would be to proceed with 512 (g)(2) and for the NFL to get a court order to restrain alleged infringement.

She goes on to state not only did the NFL not file for an order but may have violated 512 (f). She states in the blog that:

“Sending a second notification that fails to acknowledge the fair use claims instead puts NFL into the 512(f)(1) category of “knowingly materially misrepresent[ing] ... that material or activity is infringing.”

The material was restored in 12 business days after she “re-sent” the counter-notification.

According to her site, the content was up 17 days and down 38 days not counting any technical issues related to access.

In this blog Professor Seltzer does mention copyright bots. What are copyright bots? Copyright bots are bots that search the internet for copyrighted material and potential violations.

In an Amicus Brief filed in the RIAA v. Verizon case in September 2002, the U.S. Internet Service Provider Association discusses these **bots**. In this amicus, Exhibit 3 indicates a book report for a Harry Potter book as infringement. A notification was sent to UUNET Technologies from Mediaforce DMCA Enforcement Center in December 2001, claiming that the user infringed on Warner's rights. The notification included a request to not only disable access but to terminate any and all accounts that the individual had through the service provider.

The amicus also states:

“The abuses identified by Verizon are not hypothesized; they are already the daily experience of Internet Service Providers, or ISPs, who find themselves responding to hundreds of dragnet orders under 512 (c) every month – orders that are plainly generated by “bots” and incorporated without even cursory review into sworn statements by RIAA, MPAA, and their members or representatives.”

VIACOM AND YOUTUBE

In March 2007, Viacom - Country Music TV, Paramount, Black Entertainment, Comedy partners - all collectively as Viacom, began action on YouTube for direct, contributory, and vicarious copyright infringement. This included inducing copyright infringement.

The Viacom complaint can be found at:

<http://www.freedom-to-tinker.com/doc/2007/viacom-complaint.pdf>

The case was taken to the US district court in the Southern District of NY. This also contained a class action suit filed in May for discovery purposes. The lawsuit against YouTube is said to be \$1 billion dollars.

Privacy is certainly a concern for users of YouTube.

Viacom's "Statement on the Confidentiality of YouTube data" can be found at:

<http://www.viacom.com/news/Pages/ViacomStatementonYouTubeData.aspx>

The following information is relevant to the order. The order does include the Football Association Premier League Limited, et al. in this class action.

The order can be found at:

http://beckermanlegal.com/Documents/viacom_youtube_080702DecisionDiscoveryRulings.pdf

In June 2008, an Ars Technica article reported that Viacom asked for source code for the search functions that power Google and Youtube. According to this article, Viacom also requested:

"the source code for YouTube's new "Video ID" program, a complete set of every video ever removed from the site, databases containing information on every video ever hosted at YouTube, and a copy of every private video. The judge has now ruled, saying no, no, yes, yes, and no. Even with the limited discovery, some poor drone at YouTube can now look forward to weeks of copying information onto Viacom-provided hard drives."

According to this article, the purpose for requesting the source code for Google was that Viacom may be looking for:

"evidence that Google/YouTube purposefully modified their algorithms to give preference to infringing work on YouTube, work that would apparently be more attractive to site visitors than videos of a two-year old snorting peas up his nose."

That is quite an accusation. Could Google search return results that point users to their YouTube content?

That request was denied based on the fact that the code is a "vital asset" and the algorithms are a trade secret.

The Video ID system code request was also denied. According to the Ars article, the ruling was:

"The notion that examination of the source code might suggest how to make a better method of infringement is speculative."

With regard to the information regarding removed videos, Viacom was granted this request.

The logging database contains about 12TB of information that includes logging information regarding each YouTube video watched. The database does include usernames and IP addresses for watched videos. This request was granted.

With regard to private videos, Viacom's request was denied. The apparent reason for requesting private videos was that Viacom wants to show that private accounts host infringed material. However, privacy falls under the Electronic Communications Privacy Act, and the request was denied.

<http://arstechnica.com/tech-policy/news/2008/07/viacom-wont-get-googles-source-code-will-get-12tb-of-youtube-data.ars>

In the end, YouTube does have the safe harbor provisions in place. Requesting videos that were removed, only shows that YouTube does comply with the DMCA.

According to a Media Post article, in August 2008, the Veoh case was dismissed. In this case, Veoh was taken to court by Io. Io claimed that Veoh could have:

"done more to police its site, but Veoh countered that they were protected by the Digital Millennium Copyright Act's safe harbor provisions."

The Media Post article containing more information is found at:

http://www.mediapost.com/publications/index.cfm?fa=Articles.showArticle&art_aid=89529

YouTube has a history of removing content upon DMCA notification. Many notifications are found at Chilling Effects. This could be taken into consideration as part of YouTube's compliance with the DMCA and continued limitation on liability or safe harbor.

According to the Media Post article, the judge stated that the DMCA:

"does not require companies to screen user-submitted content in advance. 'Plaintiff's suggestion that Veoh must be required to reduce or limit its business operations is contrary to one of the stated goals of the DMCA,' he wrote. 'The DMCA was intended to facilitate the growth of electronic commerce, not squelch it.'"

In this article, a statement from Viacom is posted. In this statement Viacom states that YouTube is

"... a business built on infringement that has failed to take reasonable measures to respect the rights of creators and content owners. Google and YouTube have engaged in massive copyright infringement -- conduct that is not protected by any law, including the DMCA."

Videos on YouTube

Anyone who peruses YouTube or uses YouTube is well aware of the notice to users about uploading content, and knows there is a lot more available on YouTube than "infringed" materials.

If Viacom is planning on trying to use a P2P related defence, this will not work as that these are two entirely separate technologies and issues. YouTube does not require users to install applications to their local computers. YouTube users actually upload content to YouTube that YouTube can control or remove.

There are videos of graduations, families, friends on outings, vacations, and other items that are in no way infringing. While there are some materials that are allegedly infringing, YouTube does seem to remove any infringing materials upon request.

This is in complete compliance with the DMCA.

In accordance to the DMCA, YouTube removes the clips after receiving takedown notices. In some cases, YouTube may have received a counter notification from a user.

If for example, Viacom requests removal of a video, YouTube complies, YouTube receives a counter notification, and Viacom does not initiate a court action or injunction against the use, then Viacom really does not seem to have leg to stand on.

The statement does seem to indicate that Viacom is attempting to allege that YouTube is encouraging users to upload copyrighted materials. This clearly is not the case.

YouTube has complied with the DMCA, includes information regarding uploading original content, and cannot be held liable based on the DMCA.

The following should be taken into consideration:

YouTube does include information regarding uploading only original content

YouTube does have a flagging system to report any violations.

Unintended Uses

Another DMCA Analogy

In the case of the development of a product, the inventor or manufacturer might need to take into considerations unintended consequences. A hammer manufacturer produces hammers to be used for building and repair. In the hands of a criminal this could be used as a murder weapon.

Responsibility of Copyright Owner After Removal of a Video

After the notification, removal, and counter notification process, Viacom would need to initiate court action against the person who uploaded the video in order to keep the video off of YouTube. In order to do this, Viacom must need the user's information. That process, could be time consuming and costly for Viacom.

Viacom does own a great deal of content. This content is Viacom's responsibility. Any copyright holder or owner must take on the responsibility of either taking action to protect that copyright or not. Going after YouTube would be like going after a hardware store for selling a hammer that was used in a murder.

According to a statement made in the Ars article, an assistant law professor stated that one of the allegations Viacom made against YouTube is that YouTube does not have copyright infringement detection tools in place.

Can we reasonably expect YouTube or Google to detect copyrighted materials or engage in matters of law that might result in liability? What if they were wrong in detection? Is there liability in that?

Again, copyright protection is the burden of the copyright owner – to make a request regarding infringing materials according to the procedures set in the DMCA. In the Lenz case, clearly the content was fair use. However, Lenz did receive a notification and removal of content. In Wendy Seltzer's video for her course, her content was fair use. However, her content also received notifications.

One concern regarding the release of information, including IP addresses and usernames is that the privacy of users would be compromised.

Groklaw does have an interesting piece posted regarding this privacy issue.

<http://www.groklaw.net/articlebasic.php?story=20080709044510241>

There is a site called YouTomb that has a compilation of videos that were taken down from YouTube for alleged copyright violations. This site is located at:

<http://youtomb.mit.edu/>

FIRST SALE DOCTRINE

MICROSOFT V. ZAMOS

David Zamos was accused of illegally reselling his student copies of Windows XP and Microsoft Office on eBay. According to Zamos these were still shrinkwrapped. He countersued.

According to Zamos' press release found at:

<http://www.free-press-release.com/news/200502/1109281629.html>

Zamos' attempts to return the software to both the bookstore and Microsoft were denied. At that point, Zamos listed the items for sale on eBay. One of the auctions was cancelled. He relisted the item and sold the products. Afterward, Zamos was sued under the DMCA.

Since Zamos had not opened the software, he never agreed to the End User License Agreement (EULA). The case was dismissed without prejudice due to talks of a settlement. According to several news sources and a statement by Zamos, part of the settlement included non-disclosure (Watling, 2005).

SHOPPING

FATWALLET

What is Fatwallet?

Fatwallet is a website that includes forums with deals and sales information. In November 2002, Fatwallet received notification to remove sales information from the site from the following companies:

Walmart

Kmart

Jo-Ann Stores

Target

Best Buy

Staples

OfficeMax

According to the post by Tim Storm on November 20, 2002, Fatwallet did “make the business decision to comply with the DMCA notifications (Fatwallet, 2002).

<http://www.fatwallet.com/forums/fatwallet/126042>

“While we believe that sale prices are facts and can not be copyrighted, We have made the business decision to comply with the dmca notifications.”

Wal-mart went further to file for a subpoena in the U.S. District Court of Northern Illinois. The subpoena is dated November 21, 2002 by the clerk. The subpoena commands that Tim Storm produce the following information by noon November 27, 2002:

Information sufficient to identify the alleged infringer who posted the material described in the notification attached hereto, including for example that person's name, address, telephone number, and email address.

A letter was sent to Wal-mart legal representatives from Megan Gray, representing Mr. Storm. According to a follow up letter after a phone conversation between Gray and Wal-mart, Wal-mart was still undecided whether to proceed with the subpoena and Gray was following procedures by contacting Wal-mart legal before filing the Motion to Quash.

According to Berkeley's Samuelson Law, Technology, and Public Policy Clinic, Fatwallet was "victorious". On December 5, 2002, the article, "FatWallet Victorious in Challenge to Abusive DMCA Claims" appeared at:

http://www.law.berkeley.edu/samuelsonclinic/intellectual_property/copyright/dmca/199

The article did state that Wal-Mart withdrew the subpoena.

A few interesting quotes regarding using the DMCA are included in this article. According to the article:

"Megan E. Gray, co-counsel for FatWallet, was not surprised by Wal-Mart's decision. "You have to call their bluff. Too often people will assert copyright protection when it is clear none exists, just to fall under the broad reach of the DMCA. It is why abuses of the DMCA are so common." "

The article further quotes co-counsel Deirdre K. Mulligan who was director of UC Berkeley School of Law's Samuelson Law, Technology & Public Policy Clinic at that time. Deirdre was quoted as stating:

"When the DMCA passed, many were concerned that the takedown provisions were heavily tilted against speakers—by merely claiming copyright, any individual or business can silence speech. While this case caught the public's attention, there are certainly other instances of speakers being wrongfully silenced under the DMCA."

According to the law clinic welcome page, the clinic was established in January 2001. The founder is Professor Pamela Samuelson. The welcome page is located at :

<http://www.law.berkeley.edu/samuelsonclinic/welcome>

Professor Samuelson completed a paper in 2009, titled “Unbundling Fair Uses”. This paper offers relevant information about fair use today.

Questions

Are sales items copyrighted?

Why is the DMCA invoked and how is this relevant in this case?

Speculate what other laws might be used to stop the sales information from being available on Fatwallet.

What are the possible reasons other laws were not used in this case?

STOTLLMIRE AND COUPONS.COM

In the Stottlemire case with Coupons.com, Mr. Stottlemire merely informed users how to delete files that were installed on the computer in the registry. Now, these files indicated whether the user printed the coupons already or not. While this may not be someone's social security number or address, is this personal information?

This may be a stretch, but a possibility. The information could be used to determine how many users wanted to use the certain products based on the selections for printing. According to the May 2008 Coupons' Memorandum of Points and Authorities in Opposition to Defendant Stottlemire's Motion to Dismiss, 1201 (a) , Coupons claimed that they had alleged facts, if proved would establish a violation of 1201(a).

In November 2008, the case was dropped. Apparently, a settlement agreement was entered. However, Coupons.com attempted to reopen the case, stating breach of the non disclosure contract. The case was not reopened. According to the a Wired article, the judge stated,

"Coupons claimed it suffered reputational harm as a result of defendant's 'victory' statements"

The article also states that the judge indicated that harm to reputation that Coupons suffered was not a consequence of a breach (Kravets, 2009).

Question

Could 1201 (i) be used in this case?

EDUCATION

UPS and CUSTOMS

Seized Serial Cable for the Dreamcast



Figure 2.3: Sega Dreamcast

Public Domain image released by Asim18

In February 2002, a serial cable, used for the Dreamcast was stopped from entering the United States.

Colin McMillen was apparently working in the lab at the University of Minnesota, and intended to write a scheduler for the Dreamcast and some games.

According to his website, <http://colinm.org/dmca>, he ordered the cable from lik-sang in Hong Kong. He needed the serial cable to connect to the serial port. Dreamcast had made an adapter in the past but this adapter was no longer manufactured.

UPS held up the item. He was informed that the package was denied entry due to the DMCA. The item was then to be returned to sender.

Collins site states that in his opinion, this is "a clear example of the DMCA being used to suppress an academic pursuit. This is clearly fair use, and no more of a "circumvention device" than any other serial cable you could buy at the local Radio Shack."

He included a statement regarding the Custom's office list of restrictions regarding copyright, in that the only items subject to seizure and forfeiture are those that are piratical of a registered copyright.

Questions

What can a researcher or educator do in such a situation?

Later, exemptions were added regarding obsolete computer programs and video games. The obsolete programs and video games was renewed for another exemption with additional verbiage. These exemptions will need to be renewed in 2009 or others may find themselves in a situation similar to Collin McMillen.

Do you think Collin is entitled to a refund?

Speculate if this were to happen today, with the exemption in place, how someone might convince UPS or customs that this is not a violation of the DMCA. According to Collin's website there is a protest or appeal process that can be done within 90 days.

Within 90 days after the date of liquidation or other decision, an importer or consignee may protest the decision and receive an administrative review. The protest is filed with the port director whose decision is being protested. At the time the initial protest is filed, the importer or consignee must make a request for further review if one is desired. Review of the port director's decision by the Customs Service Center or Headquarters is then automatic. Notice of the denial of all or part of the protest will be mailed to the person filing the protest or to his agent. Any person whose protest has been denied may contest the denial by filing a civil action in the United States Court of International Trade.

Is it really feasible to wait on a project while awaiting a decision from Customs?

Is a serial cable worth filing a civil action in the court of International Trade?

Do you think today, someone could successfully purchase the item internationally without any challenges?

CHAMBERLAIN V. SKYLINK

Chamberlain: Plaintiff

Skylink: Defendant

DMCA Relevance: 1201 a

The Chamberlain Group, a garage door opener manufacturer, sued Skylink, one of their competitors.

Skylink sold a universal opener that worked with products that Chamberlain sold. Chamberlain claimed that since Skylink produced a universal door opener, Skylink products violated the DMCA due to the fact that Skylink's door opener could get through Chamberlain doors digital security measures.

Below is a little information about the technology with regard to garage door openers. There is a transmitter (the remote) and a receiver. The key in the garage door opener has a unique relationship with the transmitter. There is a specific serial number and a secret key. Therefore, companies can maintain protected property. This is a protection that enables these companies to maintain a monopoly for the garage door openers and this seemingly protects one company (like Chamberlain) from cloning by other companies or potential competitors (like Skylink). If a garage door opener could be cloned, this could also be seen as a flaw or weakness in the "secret, proprietary" key. This could have the potential to concern users or owners of a specific garage opener. Think about the reliability and credibility issues surrounding a garage door that can be opened by anyone.

It is fairly simple to create a "universal" door opener that works with roaming codes. One would simply need to connect the garage door opener to a computer, using a USB cable. Simply splicing the USB cable and connecting the wires to the board inside a door opener, making sure that the correct wires are attached to contact points for the antenna, power, ground, and signal, will allow the opener to be connected to a computer. Once connected to a computer, various

tracking code software, readily available online, can be used. Of course, in this example, an older garage door opener can be used that sends out only one signal at a time.

In any case, in order to create a clone, one would likely need the key or handshake with the receiver. Since the key in the products are protected and likely needed some sort of decrypting, or at least wasn't publicly available information, Skylink was sued by Chamberlain.

In this case, the Federal Appeals Court decided that Skylink products are legal. This is mainly because consumers have a right to interact with purchases. A consumer should not be restricted by companies they purchase products from because the company is essentially holding the consumer at bay by allowing no other competitor product to work with the device.

Chamberlain's products use a program that implements rolling codes. This is where the anti-circumvention came into play. If the program is copyrighted, and since the DMCA prevents circumvention of a technological measure that effectively controls access to a copyrighted work, Chamberlain most likely believed they had a case.

Decision: No DMCA Violation.

Questions

Why do you think the company, Skylink, was not found in violation?

How do customers affect this case?

Is there something specific to this particular case that could be used in future cases?

LEXMARK TONER V. STATIC CONTROL

Case: Lexmark Toner V. Static Control

Focus on: Smartek chips

DMCA relevance: 1201 and general copyright infringement

Start Date: January 2003

Lexmark filed a suit against Static Control components. Lexmark used the DMCA by stating Static Control sold Smartek chips. Circumvent technology restricts access to a copyrighted work.

The chip in question basically allows the remanufactured cartridges to work with the printers.

Lexmark's request was to order Static Control to deliver all chips to be destroyed, as well as, cease and desist in the sale of these chips.

Lexmark further alleged that the chips contained “unauthorized copies of the copyrighted Toner Loading Programs.”

Result of DMCA Case: Dismissed 2004

Result of Patent case

End date: In June 2007, a jury found:

“Static Control proved by a preponderance of the evidence that Lexmark has unreasonably restrained competition within the relevant market by exercising market power”.

MUSIC

The RIAA has been a point of controversy due to the notifications and actions taken against people using free P2P or other methods to download music for personal, non-commercial use.

The following text is found at the RIAA website under “Who we are”. The text is found at <http://www.riaa.com/aboutus.php>

“The **Recording Industry Association of America (RIAA)** is the trade group that represents the U.S. recording industry. Its mission is to foster a business and legal climate that supports and promotes our members' creative and financial vitality. Its members are the record companies that comprise the most vibrant national music industry in the world. RIAA members create, manufacture and/or distribute approximately 85% of all legitimate sound recordings produced and sold in the United States.”

In December 2008, several news reports stated that the RIAA would no longer sue the music fans. At first glance this seems promising. However, a Wired magazine author confirmed that the RIAA will still pursue file sharers.

According to an article from Wired Magazine, the RIAA has sued over 35,000 people for “sharing music since 2003”. According to this article “RIAA to Stop Suing Music Fans, Cut Them Off Instead”, the RIAA

“has reached agreements with several ISPs to cut off subscribers’ internet connection if they ignore warnings to stop filesharing. Wired. Com has confirmed” (Wired, 2008).

According to the article, RIAA will:

- Seek out music sharing – by conducting P2P searches

- Email the ISP about the activity

- The ISP will forward the RIAA email or warn the user that sharing music is not allowed.

- If the user does not stop sharing, then more warnings will be sent.

- The ISP will “slow their connection”.

If the user continues to share, the subscriber will lose the internet connection.

That is really hitting where it hurts. But will it work? The fact is, if the subscriber signs a Terms of Service with the ISP, then the subscriber could be at a loss if the service is terminated.

What about liability for the ISP? Would the ISP be liable? If the alleged material is not a violation, then the ISP could face liability if the terms of the DMCA are not met.

For example, if the alleged sharing is from a band member to other members and the copyright is not violated, and service is terminated, the ISP could be liable for damages.

The ISP may state the dropped service is due to a violation of the terms of service and not any filesharing or DMCA violation. This has happened in multiple cases with different service providers.

In 2001, an author places her book on her Geocities website. She owned all electronic rights and had the right to place the content there. A letter was received by Geocities. A few days later, another email was received from Geocities.

The author ignored the emails, because she knew that she owned the content and since it was her content, she saw no reason to respond.

The account was then closed by Geocities. After several email and phone conversations, this author was told that she violated the terms of service since she did not respond to the original emails within 2 days because they assumed the user contact information was not up-to-date. This was the justification for the closed account. She was informed there was no way to reinstate the account or content.

Terms of Service can be used as a justification in termination of service. Where is justice in all of this?

Take into consideration a customer who signed the terms of service (ToS) prior to this provision to slow down the connection. The users would need to know that there was an edit to the terms of service. Ideally, the users would need to have the new terms and agree to sign the new terms of service. However, many ToS include a flat clause for termination or cancellation of services, such as "... reserves the right to cancel Service for any reason without prior notice."

If there is a contract involved with the ISP service and subscriber for a certain time frame, it would seem appropriate to allow users to terminate the contract if they do not want to agree to the new terms. This would allow users a chance to sign up with another ISP that does not have an agreement with the RIAA without facing a financial penalty.

A cooperative effort with the RIAA could result in service providers losing customers and profit. Working with ISPs seems to be a procedure that would work for the RIAA but the consequences to the ISPs involved could be catastrophic.

The law states the responsibilities of the ISP and the terms of the DMCA could offer protection from these types of tactics.

Questions

How could programmers or manufacturers use the AHRA to create a legitimate tool or hardware for file sharing?

Are ISPs liable if they do not follow the DMCA?

What potential consequences can these ISPs face if they are working with the RIAA?

What are the potential consequences for the RIAA?

The follow issues briefly cover some of the cases involving the RIAA.

Other RIAA cases

USENET: Not allowed to use safe harbor as a defense

<http://arstechnica.com/tech-policy/news/2009/07/judge-throws-book-at-usenetcom-in-riaa-lawsuit.ars>

SANTANGELO: Patti Santangelo v. the RIAA <http://www.p2pnet.net/story/20963>

TENNENBAUM: Joel Tennebaum. In 2005 his parents received a letter regarding copyright infringement. Joel states that there was a 1-800 number for settlements. They wanted 3000 dollars. He also states he attempted to pay by sending 500 dollars which was returned. There was some discussion of whether he would qualify for financial hardship.

In this case, if the settlement amount was 3000 and Joel tried to send in 500, this may seem an admission of guilt. However, does it not also seem as though he attempted to pay a reasonable amount for the songs. After all, 30 songs would not cost 500 dollars.

<http://joelfightsback.com/2009/07/how-it-feels-to-be-sued-for-45m/>

<http://joelfightsback.com/2009/08/faqs-what-did-you-do-why-so-much-and-what-now/>

Beckerman Legal contains a compilation of cases with relevant documents: *Index of Litigation Documents Referred to in*

"Recording Industry vs. The People". This site is located at

<http://beckermanlegal.com/pdf/?file=/Documents.htm>

Subpoena

CHARTER and the RIAA

The RIAA requested subpoenas from the clerk of the District Court for the Eastern District of Missouri under 512 (h) to Charter Communications for the identities of persons believed to be infringing copyright in 2003.

The district court issued these subpoenas.

October 3, 2003

Charter made a motion to quash, but was denied.

November 17, 2003

The hearing was held November 17, 2003 and Charter was ordered to disclose identities by November 21, 2003 for 150 users and by December 1, 2003, for an additional 50-70 subscribers.

November 20, 2003

Charter filed a notice of appeal and a motion to stay. The court declined to act on the motion.

November 21, 2003

Charter filed an emergency motion to stay order. This was denied. Charter submitted the names and addresses to the RIAA. The appeal is what caused this decision to be reversed in January 2005.

The court noted that it has never determined “whether music downloaded from P2P systems violates a copyright owner's rights or is fair use.”

Charter contended that the “court erred in enforcing the subpoenas” because 512(h) applies to ISPs “engaged in storing copyrighted material” and not ISPs who are used for transmission, a judicial subpoena must also be a part of a case (there was no case), and the action violated the “privacy protections for cable subscribers in the Communications Act of 1934” 47 USC 551(c)(1). Charter also contended that 512 (h) violated the First Amendment rights of users.

Charter made the point: Since the material did not reside on Charter's servers, how could they locate and remove the allegedly infringing materials? And a cable operator cannot comply with the DMCA without violating the Cable Act!

The courts agreed with Charter that according to the DMCA, before the subpoena can be issued, the ISP must be able to locate and remove allegedly infringing materials.

The ISP cannot remove or disable materials on another person's computer.

The RIAA could not comply with the notification requirement to identify the material that was to be removed or disabled. This court case also rejected the broad based term of Service Provider. This decision was made after the United States Appeals District of Columbia Circuit Court Verizon case.

More information and the full reversed decision can be currently found at:
<http://www.ca8.uscourts.gov/opndir/05/01/033802P.pdf>

Many people are familiar with the Napster case. This case was notable in that the case brought attention to the DMCA. In December 1999, A&M RECORDS, INC., et al. filed suit against Napster, Inc., in Northern California. At that time, Napster was a free P2P that was very popular. Once Napster hit the mainstream, many different Amicus Briefs were filed.

Napster attempted to use fair use and the AHRA – Audio Home Recording Act. However, one brief indicated that Napster was not using any device or media found under Section 1008 (AHRA). Napster was court ordered to shutdown services until they could stop copyrighted works from being traded (Costello, 2002).

Napster went bankrupt and was purchased by Roxio. At present, Best Buy owns Napster.

VERIZON V. RIAA

According to the Verizon website's press kit area, relevant to the RIAA v. Verizon Internet Services case "It's About Privacy - Not Piracy"

July 24, 2002

The RIAA sent a subpoena to Verizon for information that did not reside on Verizon servers. The RIAA demanded that Verizon give the identity of a user that had alleged copyrighted materials on the user's own computer, not on a Verizon computer.

Verizon did not release the name of the user as the subpoena was not valid. The RIAA sued Verizon.

According to their press statement, while Verizon does not condone copyright infringement, the decision of the subpoena enforcement jeopardizes privacy of users.

"This decision distorts the carefully balanced compromise between copyright owners, service providers and Internet users in Section 512 of the Digital Millennium Copyright Act. Verizon is opposing this to protect the privacy rights of the vast majority of consumers who are NOT engaged in illegal activity."

The press statement can be found at :

<http://newscenter.verizon.com/kit/riaa/vz.html>

The case raised due process and privacy concerns. Verizon was simply a conduit. File sharing is not entered into the DMCA. The RIAA has other avenues to obtain identity of a user by filing a "John Doe" suit.

Jan. 21, 2003

The RIAA won in U.S. District Court. Judge Bates presided.

Jan. 30, 2003

Verizon filed an appeal in the U.S. Court of Appeals.

February 4, 2003

RIAA served second subpoena on Verizon seeking name of another Verizon Online customer.

February 27, 2003

RIAA deadline to file comments on Verizon's request for stay.

February 11, 2003

Verizon filed reply comments on RIAA's comments.

February 13, 2003

Oral arguments

February 20, 2003

Verizon filed a motion to quash a second subpoena from the RIAA. Both cases were consolidated.

April 24, 2003

Verizon filed a stay of the District Court decision pending the appeal.

June 4, 2003

Stay denied.

September 16, 2003

U.S. Court of Appeals for the District of Columbia Circuit – case argued.

December 19, 2003

U.S. Court of Appeals for the District of Columbia Circuit – case decided.

They agreed with Verizon's interpretation of the statute and reversed the orders of the district court, which was enforcement of the subpoenas.

According to the DMCA, the subpoena can only be granted or valid so long as there is a notification submitted. Of course Verizon could not remove items that were not on their server.

MATT SOCCIO – PENN STATE and the RIAA USHER (?)

Penn State Received Notification from the RIAA in mid May 2003. The RIAA sent a copyright notification to Penn State in the department of astronomy and astrophysics. The notification stated that the department was hosting copyrighted material on one of the FTP sites. Matt Soccio, had worked for almost 6 years, all in the Astronomy & Astrophysics Dept.

In mid May 2003, he received the message forwarded from the Penn State security office regarding the supposed DMCA notification. The security office handled these notices at that time. This message included the full Cease and Desist notice. No one informed Matt what materials were supposed to be removed. The notice, according to Matt, was supposed to be an official 512a notice but did not specify what material was offending.

Matt states that he is still not sure, as of August 2005, that Professor Usher's content was what initialized this.

In Matt's own words:

“Since it was never stated in the notice what caused the red flag for RIAA, and we had several media files that were not in violation, we never actually knew if it was /pub/usher or some /pub/randomuser/*.mp3.

I don't know how the Usher reference came into this. I had never heard of Usher before this, so I would have never made the connection.”

This was considered a priority issue. The policy for copyright was immediately edited and users were notified that the Astronomy Department did not have the resources to get involved with copyright violations.

In Matt's own words:

“When I received the notice, I immediately found all of the music/movie media files on our web & ftp servers. None of it appeared to be in violation, so I was pretty sure from the word go that it was a mistake.

It wasn't until I got home that night and actually read the DMCA and did a little more in depth research that I realized this was a blunder on the part of RIAA. I understand that copyright protection is an issue, especially on college campuses, but the DMCA fails when it puts enforcement in the hands of the copyright owner instead of central governing/judicial body. RIAA's carelessness in cases like this is a pretty solid reason why there needs to be some form of impartial intervention before the notices are sent off.”

Matt Soccio was not surprised to hear of other cases where files were not in violation but notifications sent out. Matt said that the RIAA's PR person told him that a temp made a mistake.

Matt eloquently stated:

“If all that is between random scans of the internet and a DMCA notice is a temp, there are bound to be mistakes. RIAA assured me that they were adding additional checks to ensure that this didn't happen again, but I still think that there are serious problems with how the DMCA allows copyright laws to be enforced. I would image there are quite a few cases that didn't get media attention.”

(Matt Soccio, Personal Email, 2005).

ARCHIVES

Since archives do have an exemption, discovery of whether archives received notifications or not and what their policies were regarding the DMCA, seemed relevant.

INTERNET ARCHIVE

The Internet Archive is a non-profit organization that archives public materials from the Internet. The archive now includes archives in various mediums including software, webpages, and audio.

The Internet Archive has received DMCA notifications from different sources including Universal and Scientology.

In 2005, the office manager at Internet Archive answered some questions via email about the DMCA.

Question

Do you receive any more DMCA notices than you posted to Chilling Effects?

Internet Archive

We use Chilling Effects to report third-party requests. Any other requests from site owners who name drop the DMCA are not sent through there.

Question

Do you receive any more DMCA notices than you posted to Chilling Effects?

Internet Archive:

We do not get DMCA notices that often; its hard to estimate the volume.

Question

Do any of them really "stick out in the mind"? Very persistent, etc.

Internet Archive

Any of the "persistent" requests get sent through Chilling Effects.

Question

You do qualify under the archive exemption of the DMCA?

Internet Archive

We have a software exemption from the DMCA to preserve vintage software.

Question

If so, do you inform those notifying you of such and how?

Internet Archive

Software preservation policies are still being ironed out.

Question

How long has your archive been active?

Internet Archive

The Internet Archive has been operating since 1996.

Question

Can you recall when you received your first DMCA notification?

Internet Archive

I have only worked here for 2 years; so unfortunately I was not around for the very first DMCA request.

In September 2002, Dave Touretzky sent a letter to the Internet Archive regarding the site SlatkinFraud.com. According to the letter, Scientology representatives “asserted ownership” of materials available through the archive. A copy of the letter can be found at:
<http://www.politechbot.com/p-04021.html>

The site was one of the websites that was blocked from the Internet Archive and remains blocked to this day.

Touretzky’s letter represents the owners of SlatkinFraud.com and states that they were left “puzzled and disturbed by the recent explanation provided by archive.org for our site's omission.”

He states in this letter that he understands that the Wayback Machine does not want to “unwittingly contribute to copyright infringement” and continues with “we are distressed by the way in which the removal of our site was conducted, and the lack of feedback that we received from archive.org when we questioned this decision earlier this year.”

According to the letter, the user of the Wayback Machine who tried to access SlatkinFraud.com in the archives were provided with a message that claimed the site owners requested they not be in the archive.

Touretzky stated that this was not true and the owners would like to be a part of the archive.

He further states that archive.org maintainers seem to have made no effort to inform the owners of the sites blocked about the complaints.

Tourtezky states that:

“This is clearly not an acceptable system for determining what sites or material should be archived by the Wayback Machine, since it does not adhere to one of the main provisions of the Digital Millennium Copyright Act: the counter-notification process.”

Since there was no mention whether the complaints were DMCA related, Touretzky states that information about the complaint would be helpful to site owners.

“...it would assist us in determining whether a complaint is justified, and remove any infringing material on our own volition.”

Tourtezky requested that if archive.org decided to continue blocking the SlatkinFraud website, they should “refrain from suggesting this was at the request of the site owner, and instead, explain its own concerns over potential infringement.”

Touretzky makes a valid point in his final statement to archive.org regarding the selection of sites to be archived as potentially affecting history.

“Finally, given the enormity of the Internet Archive project, and the benefits that it has provided, and, we hope, will continue to provide to the online community, it is essential for the Library maintainers to be open and transparent about the methodology used in selecting sites to be archived. Removing sites from the archive in a clandestine fashion, as dictated by the current policy, will only lead to increased concern that the Archive itself is rewriting the Internet history that it seeks to chronicle.”

“... It is doubtful that these supporters would want to see this ambitious initiative tainted by the suggestion that the integrity of the archive itself has been corrupted by those who would misuse copyright and trademark laws to censor views with which they disagree. The risk of such silent, selective

discrimination against protected speech is great; the power to prevent such abuses by making all information related to such attempts to discriminate will always be greater.”

A notification was received by archive.org with regard to a movie called U-571. While archive.org did have some movies with 571 in the link, these links did not go to the movie U-571, according to a letter by the digital librarian to UNIVERSAL STUDIOS, INC. Archive.org also maintains itself as an archive and according to the DMCA, archives have an exemption. Regardless, according to this notification, there was no movie U-571. The notification can be found at:

<http://www.chillingeffects.org/responses/notice.cgi?NoticeID=597>

In March 2003, the Internet Archive did respond to a notification from Universal Studios with regard to a notification received in late February. The counter notification states that the archive hosted a collection of public domain films. Universal’s notification apparently called for the removal of the movie U-571, a movie about submarines. The files Universal stated as violations were not Universal movies but were public domain films.

The counter notification points out the following files were considered a violation by Universal:

20571a, 20571b:

<http://www.archive.org/movies/details-db.php?collection=prelinger&collectionid=20571a>

According to the counter-notification, this was a film about teenage driving and safety produced in 1956 by Sid Davis Productions.

19571:

<http://www.archive.org/movies/details-db.php?collection=prelinger&collectionid=19571>

This film apparently was about a home economics course and was produced by Hartley Productions.

The counter-notification does state:

“Could it be that you have only matched the "571" in the filename, which is clearly uncopyrightable (and not even the entire title of your motion picture), without looking at the content of the files before sending this notice?”

The section regarding Wendy Seltzer and the NFL does contain some information regarding “copyright bots”. It is possible that this notification was the result of a bot.

Questions

Can removal of information from an archive compromise the integrity of the archive?

What protections do archives have with regard to archiving copyrighted information?

What are the potential consequences of restrictive speech with regard to archives?

Could Universal’s notification be considered a violation of the DMCA? Explain.

THE MAIL ARCHIVE

The Mail Archive was contacted with regard to notifications and the DMCA. The Mail Archive is actually two people Jeff Breidenbach and Jeff Marshall. Jeff Breidenbach started the site back in '98. Jeff Marshall joined up with him around the beginning of 2004 to help him run the archive.

Regarding the DMCA, Jeff Marshall responds to an inquiry about DMCA notifications.

“On the DMCA - we didn't used to acknowledge it or have a DMCA agent. We get a fair number of emailed requests to take down messages or to edit the content. Our policy is homebrewed, but simple: no (unless we come across the very rare case where someone is in physical danger due to a message). We don't edit or remove messages. However, after a spate of elevated threats from a few individuals last year, we talked with Wendy Seltzer at the EFF and she gave us some good advice. We ended up registering a DMCA agent (me) in order to cover ourselves a bit more. We've only elevated a few threats to the "send us a DMCA takedown notice" level, and have complied in several cases. Wendy pointed out that we could still evaluate on a case-by-case basis even if we receive DMCA takedown threats.”

Jeff does point out that the takedowns are posted to Chilling Effects to make them available to the public. He states that the policy of the Mail Archive remains:

“...that we will fight against takedown requests as best we can because we believe that it is fundamentally opposed to the point of an archive. We spend a great deal more time than we need to defending our policy to angry people that want to take back messages they posted to

public mailing lists, but we feel it is important to the quality of the archive we maintain. The other major mailing list archiving services (GMane.org and MARC) do not share our policy, and they will remove content when people send them an email. The guys that run those services are really good people and we talk to them now and again, but they just have a different view on this point.”

DIEBOLD



Figure 2.4: C. Scott Ananian

Received a notification re: Diebold while he was a graduate student at MIT

In the fall of 2003, Diebold sent DMCA notifications to several recipients, including MIT and UC Berkeley. The material in question was posting or linking to an email that indicated flaws in the Diebold e-voting.

The Open Policy Group and some students at Swarthmore: Smith and Pavlosky, were assisted by the EFF and Stanford Cyberlaw Clinic in suing Diebold.

The MIT student, C. Scott Ananian, received a notification on October 28, 2003. He submitted his own counter-notification on November 2, according to his blog and a presentation “talk.pdf” entitled “Diebold: In Their Own Words” located at:

<http://cscott.net/Activism/Diebold/>

He provides some sound advice regarding notifications located at:

<http://cscott.net/Activism/Diebold/advice.html>.

You can find his “contemporaneous thoughts on diebold, the c&d, and skylarov” at :

<http://cananian.livejournal.com/tag/diebold> <http://cananian.livejournal.com/tag/free+sklyarov>

Here are some responses from Scott regarding the Diebold notification.

Question

What was your relationship with MIT at the time Diebold sent the notification? October 28, 2003

Scott

I was a graduate student in the PhD program at the time I received the C&D. It wasn't sent to me, I got a copy from MIT when they notified me.

Question

Did you file a counter notification?

Scott

I filed a counter notification: <http://cananian.livejournal.com/25782.html>

Question

I saw that Diebold withdrew their notification to Open Policy and UC Berkeley but I did not see a withdrawal in your case.

Did they send a withdrawal notice to you or MIT?

Scott

<http://cananian.livejournal.com/29903.html> indicates that I believed Diebold's C&D withdrawal applied to me. I may have been mistaken (I can't access the original document any more). I did not receive a withdrawal notice, MIT would have received it in any case. I can check with them if you like.

Question

Do you think your site content was within the bounds of fair use?

Why? or Why not?

Scott

I believe my use was within the bounds of fair uses. My best contemporaneous defense was <http://cananian.livejournal.com/24520.html>

Question

Do you have any suggestions or advice to others who might get a C&D?

Scott

My contemporaneous advice to others was: <http://cscott.net/Activism/Diebold/advice.html>

I'd add further that, in this case I wrote posts directly linking the to materials in the documents
after I received my C&D -- it would have been wiser if I'd done that as soon as I posted the memos, to make clear that my purpose was "criticism, comment, news reporting, ... or research".

In the U.S. District Court for the Northern District of California, San Jose division, in an order granting in part and denying in part cross motions for summary judgment, Diebold was found to be in violation of section 512(f).

The court concluded there should have been a "likelihood of success" before making any claim of copyright infringement. The court stated that a party is liable if they "knowingly" and "materially" misrepresent a claim of copyright infringement and that in this case, Diebold knowingly and materially misrepresented in this case.

Per the document:

"Plaintiffs argue that Diebold "knowingly materially misrepresented" that publication of the email archive constituted copyright infringement and thus is liable for damages pursuant to 17 U.S.C. § 512(f). The parties dispute the meaning of the phrase "knowingly materially misrepresents."

The court did conclude that Diebold did not violate 512(f) unless sending the notifications was "frivolous".

The court does address the issue of Diebold knowing and materially misrepresenting. The court did conclude that the portions of the archive were clearly fair use. An email relevant to possible defects was not copyright protected and the result of the claim was to prevent free publication of the content.

The court concluded the following:

“No reasonable copyright holder could have believed that the portions of the email archive discussing possible technical problems with Diebold's voting machines were protected by copyright, and there is no genuine issue of fact that knew—and indeed that it specifically intended—that its letters to OPG and Swarthmore would result in prevention of publication of that content. The misrepresentations were material in that they resulted in removal of the content from websites and the initiation of the present lawsuit.”

The court does state that the fact that Diebold never brought any suits is a clear indication that Diebold was using the DMCA “as a sword to suppress publication of embarrassing content rather than as a shield to protect its intellectual property.”

Diebold sent a withdrawal notification to UC Berkeley ISP and the ISP for Open Policy.

Years after the Diebold decision, the Mail Archive did receive a Cease and Desist order from “Basic Research”. This notification was dated on August 24, 2007, and can be found at Chilling Effects:

<http://www.chillingeffects.org/protest/notice.cgi?NoticeID=14936>

The request is for removal of the page where: cypherpunks@minder.net/msg 70391 resides.

According to the notification, the site had “derogatory” remarks about the company and owners. According to the representative, a final judgment and permanent injunction was issued from the US District Court in Texas. No further information regarding the contents of this post can be found online.

INFORMATION LOCATION TOOL

DIGG

Digg receives numerous requests to remove material. In one such removal request, a link to a music download was requested. The item name and web address is still showing on Digg but there is a highlighted area that states:

[This item has been removed pursuant to a demand received by Digg.]

The underlined portion leads to the notification located at Chilling Effects.

There was one situation where a user, requested Digg to remove a link to a copy of his book.

Apparently, the link to the site he wanted blocked was:

<http://ebooksee.blogspot.com/2008/11/managing-online-forums-download.html>

Since Digg points to the notification, and the notification is available on Chilling Effects, the public can obtain what link was originally blocked. In this case, the link pointed to a blog. The odd thing is that no notification can be found from to Blogger using several different search terms at Chilling Effects. The only notification found is to Digg, regarding the link.

Questions

What else could the copyright owner have done to stop the alleged illegal downloading of his book?

What possible reasons would Patrick go after the link to the download book?

Could his notification to Digg be considered misrepresentation?

Why or why not.

DRM

**BMG MUSIC, SUNNCOMM
SHIFT KEY (Halderman)**



Figure 2.5: Circumvention device?

Sunncomm was hired to develop copy protection to be used on music CDs. The specifications were met by Sunncomm. However, a student at Princeton soon discovered that holding the shift key down would not allow the autorun.

Perhaps there is a portion of society that regularly accepts installation of foreign software on their computers, however, the user controls each package on their machine.

Halderman's full analysis of the Copy Prevention system is located at:

<http://www.cse.umich.edu/~jhalderm/pub/cd3/>

In an article by Katie Dean of Wired Magazine, Fred von Lohmann was quoted as making this statement about the state of research:

"The Digital Millennium Copyright Act, though intended to stop digital piracy, is being used to squelch legitimate research," said Fred von Lohmann, senior staff attorney with the Electronic Frontier Foundation. "If no one is allowed to examine and discuss the strengths and weaknesses of these technologies, then these technologies will not improve."

The article can be found at:

<http://www.wired.com/entertainment/music/news/2003/10/60780>

In the past, other schemes were used to defeat or sidestep DRM.

Sony XCP – A piece of opaque tape or black magic marker

Blu Ray - muslix64 tool

Other CDs and iTunes – Multiple software

MS-DRM2 – Beale Screamer “Freeme”

Beale Screamer

In most cases a message can be found at the beginning of any great work. Likewise, on October 19, newswires all over the globe announced that the Microsoft copy protection scheme had been cracked. October 18, was the actual date the utility was distributed. Various newswires have also reported that MS would try to silence Beale Screamer.

Years ago people could use code and program without hassles by corporations or government. Of course, that is different today. Unfortunately, these are the extremes one must go to in order to make a point or distribute wares.

More information about Beale Screamer, including the code can be found at:

<http://cryptome.org/beale-sci-crypt.htm>

DRM

Atmel, a microcontroller company, released an application note called, “Secure Your Embedded Devices”. The document can be found at:

www.atmel.com/dyn/resources/prod_documents/doc6528.pdf

This document includes information about DRM. In fact, section 3 is devoted to the topic of DRM. The introduction of the application note states that:

“High-tech goods counterfeiting, multimedia content copying, and identity theft are all major concerns today. The proven cryptographic protocols implemented in Atmel’s tamper-resistant microcontrollers offer a powerful turnkey solution to fight these threats. This paper presents

examples of efficient and cost effective IP protection applications utilizing secure chips in various embedded systems.”

The document concludes with the statement that some of their products can “successfully protect a broad range of applications against these threats among others. Typically, the extra cost of a security chip remains negligible compared to the derived benefits. With their embedded firmware, AT98SC microcontrollers allow an even easier implementation of secured embedded systems.”

Consider also other possibilities such as a probing needle and a microcontroller. Could this one day be considered a circumvention device? With some microcontrollers, such as some produced by Microchip Technology, users do have access to data memory while in programming mode. Therefore, a probing needle would not even be necessary if a company were to use these chips and attempt copy protection.

Defective By Design is a campaign of the Free Software Foundation. The group works to eliminate DRM. In 2006, several groups across the nation flashmobbed Apple stores protesting DRM. These protesters were dressed in neon Hazmat suits.



Figure 2.6: Crossroads

Some Rights Reserved: Publicly available at Flickr. Original by id.

<http://www.flickr.com/photos/idlir/864143/> The graphic was edited by Mike Vroegop and Joshua Bonnain.

There are stickers available such as the Kinata's "OPEN". In 2009, Don Marti suggested a DRM-Free label. Acceptance by distributors would give an immediate choice for consumers wishing to purchase DRM Free products. Don Marti's post can be found at:

<http://zgp.org/~dmarti/freedom/petitioning-the-wrong-people/>

CENSORSHIP

To suppress free speech is to suppress the human experience.

Communication comes in many forms – speech, non verbal, and written. Restricting verbal communication and written communication for self serving purposes or with the intent to hide discovery of a vulnerability or flaw could be considered a matter of ethics. The First Amendment of the Constitution guarantees free speech. People have the freedom to speak or express themselves, despite what someone else may think, believe, or say.

SDMI CHALLENGE

On September 6, 2000, SDMI challenged the community to hack SDMI. There was a \$10,000 reward offered.

On September 18, 2000, EFF called for a boycott of the “HackSDMI Challenge”. This can be found at:

http://w2.eff.org/IP/Audio/SDMI/?f=20000918_eff_hacksdmi_boycott.html

Almost a week earlier, Don Marti, then technical editor for Linux Journal wrote an article about boycotting the challenge. This article can be found at:

<http://www.linuxjournal.com/article/5223>

On April 9, 2001, a representative for the RIAA contacted Professor Felten regarding the possibility of Felten sharing the research results regarding watermark schemes at a conference. The letter includes information regarding the terms of the “click through” agreement and that disclosure is not permitted. The letter ends with mentioning that if the information is shared Professor Felten and his research team could be “subject to actions under the Digital Millennium Copyright Act...”.

According to a copy of the click through agreement found at

<http://www.cs.princeton.edu/sip/sdmi/clickthru.pdf>, the agreement states that if a contestant wishes to receive compensation, then there will be a separate agreement assigning intellectual property rights.

“Compensation of \$10,000 will be divided among the persons who submit a successful unique attack on any individual technology during the duration of the SDMI Public Challenge. In exchange for such compensation, all information you submit, and any intellectual property in such information (including source code and other executables) will become the property of the SDMI Foundation and/or the proponent of that technology. In order to receive compensation, you will be required to enter into a separate agreement, by which you will assign your rights in such intellectual property. The agreement will provide that (1) you will not be permitted to disclose any information about the details of the attack to any other party, (2) you represent and warrant that the idea for the attack is yours alone and that the attack was not devised by someone else, and (3) you authorize us to disclose that you submitted a successful challenge. If you are a minor, it will be necessary for you and your parent or guardian to sign this document, and any compensation will be paid to your parent or guardian.”

At the end of the agreement is this statement:

“By releasing encoded digital music samples for attack and other digital files, the SDMI Foundation and the technology proponents are *only* providing permission, under U.S. or other applicable law, to attack those particular samples and files during the duration of this SDMI Public Challenge. No permission is granted to attack or make any other use of content protected by SDMI outside of this SDMI Public Challenge. In addition, neither the SDMI Foundation, copyright owners nor the proponent of the technology being attacked, waive any rights that it or they may have under any applicable law including, without limitation, the U.S. Digital Millennium Copyright Act, for any acts not expressly authorized by this Agreement. Moreover, no permission is granted to attack content encoded with any technology proponent outside of this SDMI Public Challenge. You are prohibited from reproducing, modifying, distributing, performing or making any other use of the samples other than as specifically authorized by this Agreement. A list of persons who have submitted successful attacks and received compensation therefor will be provided if you mail a self-addressed, stamped envelope to the SDMI Secretariat,

c/o SAIC at 10260 Campus Point Drive, San Diego, California 92121 USA. We are not responsible for lost, incomplete or misdirected submissions. This offer is void where prohibited.”

So, there is some information regarding attacking content outside of the challenge “...or making any other use of the samples other than as specifically authorized” by the agreement.

The EFF Frequently Asked Questions regarding the Felten case does comment on the use of click through agreements and the application of contract law with regard to copyright. The FAQs can be found at:

http://w2.eff.org/IP/DMCA/Felten_v_RIAA/faq_felten.html

“By attempting to substitute copyright law with contract law, these "agreements" offer no chance for terms to be negotiated, and the concept of fair use is often obliterated. The continued use of these licenses may end up having a profound affect on the way the public is allowed to use copyrighted materials.”

Questions

Does the professor have any rights based on the Factors of Fair Use?

Can these results be considered research?

What exemptions to the DMCA might apply?

What is the impact on free speech when results, legally obtained, are restricted based on a click through agreement?

What other laws might be applicable here?

In what other ways have click through agreements substitute copyright law with contract law?

Does the click through agreement hold any ground here?

HDCP - Neils Ferguson

Niels Ferguson, a cryptographer, wrote a paper “detailing security weaknesses in the HDCP content protection scheme”. HDCP is an acronym for High-bandwidth Digital Content Protection. This system encrypts video. It is copy control at the bus level that was developed by Intel. According to Ferguson, it is flawed. In August 2001, he wrote:

“I have decided to censor myself and not publish this paper for fear of prosecution and/or liability under the US DMCA law.”

He refused to publish his results for fear of the DMCA. His essay and FAQ are located at the **HDCP paper** - <http://www.macfergus.com/niels/dmca/faq.html>

Here we see one of the first well known cases of self censorship due to fear of the DMCA.

In this case, how does copyright encourage or promote the arts and sciences?

CENSORSHIP

RELIGION

In the previous chapter, the history of copyright was discussed. Since copyright law is derived from censorship, what does copyright law do? The question here is Does Copyright Still Censor? Think of some examples where copyright law may be used to censor information.

Peter Junger, professor at Case Western University and plaintiff in *Junger V. Daley* was an active participant in Harvard's Berkman Center for Internet and Society's Openlaw dvd-discuss. In 2001, Peter Junger wrote the following regarding religion and copyright:

“If there is ever a case where the speech is functional it would seem that that would have to be the case of authoritative religious texts, at least to the members of the religion. And functionality cannot be protected under the copyright law according to Section 102(b) of the Copyright Act and the teaching of *Baker v. Selden*. And it would also seem that religious works where the text is considered sacrosanct must be works where the merger doctrine applies: one simply cannot separate the functionality from the text.

This case is a little odd though in that the copyright holder is denying the religious validity of the text that is being suppressed under the copyright laws.

In the Scientology cases, however, the Scientologists assertion of judicially enjoined infringement seems to be a judicial admission that their texts are non-functional.

Oh dear. . . I seem to have come up with a strong argument as to why most of Microsoft's code is copyrightable. Cognizable”

LDS

In 2001, Cryptome (John Young), received notification from his provider, Verio, that he needed to remove content on his site “HoMormon.html”. Apparently this information was regarding therapy for homosexuality and the LDS church.

In this case, Mr. Young did receive the actual notification. The notification seems valid. He did have the opportunity to remove the content and was given a deadline by Verio.

On his website, Cryptome states:

“We've responded to two DMCA notices from Verio, this is the second (see first: <http://cryptome.org/dvd-hoy-reply.htm>). And we use the cases as fuel for the controversial info-protection racket. If the plan works, the removed doc will get even more attention now. I suspect the Mormons want more attention for their homosexual therapy, it could have been one of them who sent it to us. The document is widely available, and it was not just on Cryptome. Its withdrawal will likely promote it. “

This point is valid. As a matter of fact, if the LDS representative did not send a notification, there would be no attention to this particular document and event.

Questions

Why would a church want to keep their policies private?

Do they have a right to keep this information private?

What could potentially happen if the policies are open?

Many corporations keep methods and standards proprietary from anyone outside of the company.

There are non disclosure agreement contracts signed by employees and contractors. Is this standard different with regards to a religious organization? Defend your answer.

SCIENTOLOGY

Scientology representatives have sent out several notifications over the past decade. One of the first DMCA notifications was to eBay regarding the sales of e-meters. More information can be found at: <http://yro.slashdot.org/yro/00/04/27/1712248.shtml?tid=153>

Another notable notification was to Slashdot due to a user posting the Fishman Affidavit. Slashdot responded by removing the content. More information can be found at: <http://slashdot.org/yro/01/03/16/1256226.shtml>

After the 2000 NY Court opinion regarding the injunction on DeCSS, Scientology used the court's opinion as a basis for justification of removal of links to what they claim is copyrighted content.

In a notification by RTC, regarding the removal of a link to content, they stated:

“17 U.S.C. 512(d). See also, Universal City Studios, Inc. v. Reimerdes, 111 F.Supp.2d 294 (S.D.N.Y. 2000), where the court held that posting hyperlinks to other web sites that were in violation of the DMCA, itself violated the DMCA.”

The opinion is regarding an injunction to DeCSS and does not seem to explicitly declare or substantiate this statement.

While this opinion may seem relevant to the person reading the notification, inclusion of the information seems to lend as evidence of fact, information from the DeCSS case, to be used for the intent of removing the link to content. This could actually contravene with the First Amendment, but that does not seem to stop the person who filed the complaint from using this case as a basis or justification for removal of a link. In fact, the opinion of the NY court does state:

“Similarly, the regulation of the linking at issue here is “unrelated to the suppression of free expression” for the same reason as the regulation of the posting.”

The last paragraph of the opinion states:

“Given the peculiar characteristics of computer programs for circumventing encryption and other access control measures, the DMCA as applied to posting and linking here does not contravene the First Amendment.”

It would seem that Scientology documents are not items that circumvent encryption. There are no injunctions regarding these materials in particular, and there is no evidence provided that the use on the other site is infringement. The use could be considered “fair”. It may not be, but this burden rests upon the person sending the notification. Using the NY case seems to be misrepresenting the decision about linking.

In the case with Scientology and Google links in 2002, Scientology sent several notifications to Google with a request to remove links. The third notification can be found at:

<http://www.chillingeffects.org/dmca512/notice.cgi?NoticeID=253>

The notification was sent via email regarding home.kvalito.no

According to the notification, the representative for RTC confirms that Google is a “service provider directory that links users to an online location.” The representative further states that according to the terms of service , “Google also prohibits the use of its service to link to web sites which contain infringing material.”

In fact, 512(d) does include restrictions on linking to infringement. There is nothing specifically mentioned about whether this is limited to within the host’s server or outside of the hosting.

Again, in the DeCSS case mentioned by the representative here, there was an injunction. There is no evidence from this notification that the requested removal of this link is actually pointing to infringing materials. The only evidence that the link is pointing to infringing materials is the claim by the person filing the notification. The material may be allegedly infringing. The material may not be an infringement at all in that this could be a link to commentary or criticism that falls under fair use.

While the representative does provide proof of copyright ownership to the works in question, fair use may prove the materials are not an infringement at all. Therefore, if the materials are allegedly infringing and not actually infringing, there should be no liability to the ISP.

The burden of proof lies with the representative submitting the notification. However, many ISPs are cautious and concerned with potential liability and it may be simpler to disable access or remove the links. The removal can last 10-14 days if a counter notification is filed.

In accordance with the DMCA, Google could have requested more information regarding the validity that the links pointed to actual infringement.

Questions

With regards to linking, how does this affect a search engine?

If you were the DMCA agent for Google at that time, what do you think you would do?

Do you think that search engines should fall under liability?

How do you feel about linking to a website that contains potentially infringing materials?

What precautions would you take if you were to use the factors of fair use with regard to copyrighted materials?

What could people wanting to link to your “fair use” site do to offset any allegations or threats of removal of the link?

If a counter-notification is filed and that the link points to a non infringing use, is there any consequence to the host?

What is the impact on the person that has material removed or access disabled due to a DMCA notification?

Is there any relevance to due process with regard to the DMCA?

PARODY

WAL-MART Parody

In 2005, Dan Papasian, a 20 year old college student at Carnegie Mellon, created a website as a parody, for a class project. Below is a screenshot of one of the pages of his website parody.

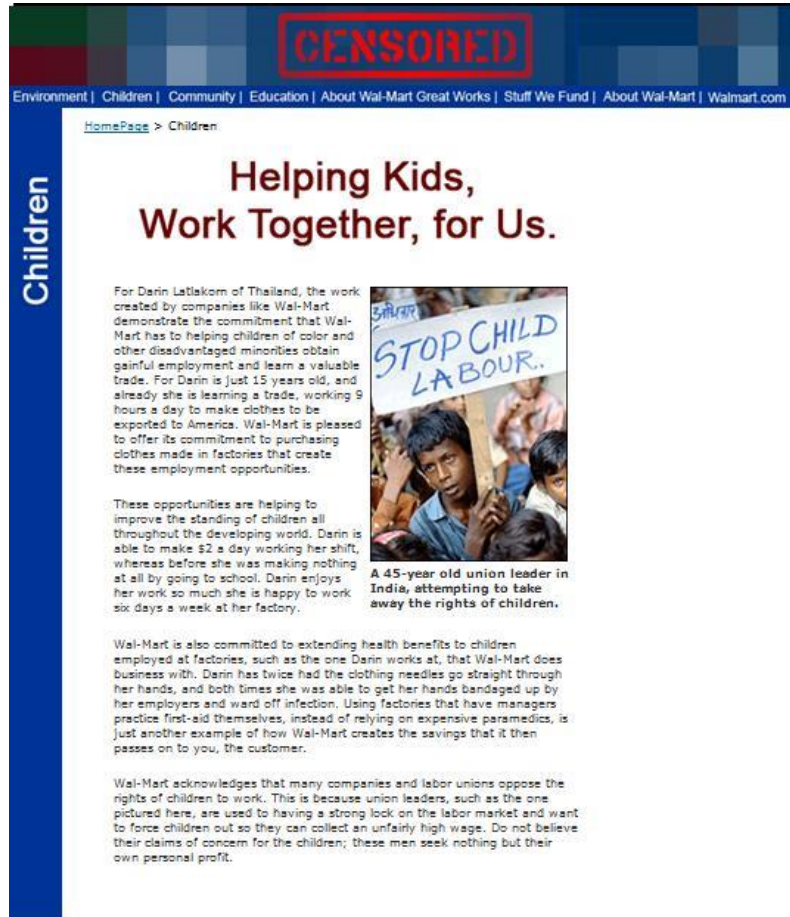


Figure 2.7: Walmart Foundation Parody created by Dan Papasian

Wal-mart's representative sent a notification requesting immediate disabling of access to the entire website: Walmart-Foundation.org.

Dan responded to several questions regarding the Wal-mart parody site he created. Dan stated, "Yeah, it is ridiculous, and I too was scared for a few days. It was only the immense support and reassurance of public interest lawyers and unions that calmed me down."

He continued, “I think the site was certainly within the bounds of fair use. Copyright law was never intended to stop people from making a new work based on an earlier work- and in my case, the site was a clear parody. It wouldn't be legal if I used The Wal-Mart Foundation's website as a model for a website for my own charity, but to make social and political commentary on the Wal-Mart Foundation is speech, and in my opinion, protected speech.

Trademark law is a bit trickier, but because I didn't engage in any commerce and didn't make any money off of the site, the case wouldn't have been easy to prove. The website was done for a class project on the use of the media to make social and political activism, and I found out from my teacher that the people hosting the site received a cease and desist.”

When asked whether he had filed a counter notification, Dan responded, “I haven't made a counter notification.”

“My best advice is to publicize the cease and desist as much as possible. Even if you decide the best thing to do is to comply, public support and attention can never hurt.”

Dan responded that he believed a template for counter notifications could be useful.

(Dan Papasian, personal interview July 7, 2005)

Note: Wal-mart is currently objecting to a Toronto based union site regarding trademark infringement.

Questions

Could this site be considered a parody?

What steps could Dan have taken to get his website access back online?

What could Wal-Mart have done with regard to trademark rather than copyright law to prevent access to this site?

Speculate why Wal-Mart would use copyright law rather than trademark law with regards to this parody site.

FANDOM

Fan sites are set up by fans for fans and for their personal enjoyment and entertainment. Fans gather in online chat, ICQ, IRC, alts and elsewhere online to discuss the object of their fandom. Fansites online are popular, however, many of the people holding the copyright and trademarks are not pleased. While these sites would have given exposure to the artist (or company), and may have built good will, instead those holding the rights to the property not only desire to maintain control of the rights but are well within their legal rights to maintain their trademark and copyrights.

Copyright law in the United States was intended for the advancement of the arts and sciences and so that people would produce content and copyright was not intended to limit use of works, it was in place to encourage creation of works. Copyright was intended to encourage people to create works, not to reward people for being artists. While it is beneficial to receive monetary gain for works, there are other rewards for a class of works, which might include self satisfaction, improvement the richness of the community access to content, admiration by peers and future career possibilities.

In the case of fansites, the content is being contained and creativity is stifled by those who own the copyrights. When someone is creating a derivative work, they are making a statement about the original work. Allowing derivative works to be created allows people to communicate.

These intellectual properties the companies hold are unavailable for fans to use either in the digital world or in real time without permission from the companies that own the trademark or copyrights. Those fans who wish to use graphics, artwork, movies, audio and other items online require permission from the trademark or copyright holder in order to present their works of fandom. In some cases, fans have been legally pursued by companies for posting fan sites relating to characters in books and other multimedia creative works or derivative works.

While some derivative works fall under the scope of fair use, many fans might not realize or care that they are in violation of intellectual property laws. They simply want to show their

admiration for the product and create community around it. Some want to take their own ideas and incorporate that into existing content. It's creativity.

Fans

Fans are the bread and butter of the business. However, when fans place materials on websites, even in admiration, copyright holders will act. Fans, will react or act as well. In 1998, operators of fan sites for the artist currently known as Prince, fan site operators letters from his attorney to cease placing Prince related materials on the website. Users on alt.music.prince began to rant about these actions. According to the article, the fans turned on the object of their admiration and changed the site focus to one of anger and contempt (Frankel, 1998).

In the case of the privacy in our own homes, we can say or write what we please about a topic or engage in fandom by creating new ways to present the work. For example, a fan may make a collage of graphics and post this on a cork board. However, one must view the internet as a sector that is not private, at all. When one places things online, it can be copied, printed, and archived. These items can be used as evidence in the future. While there is some anonymity online, there are ways to trace back IP addresses and locate individuals. When an individual cannot be located, the content will be removed by the host, if contacted by the copyright holder, if there is no one to give a counter notification (Tushnet, 1997).

What content holders say

It is apparent through the actions of the content holders what their position is as far as pursuing copyright violations. More research into this area could be conducted for future research.

Activists

In August of 2001, working in conjunction with the Electronic Frontier Foundation, Harvard's Berkman Center, Stanford University, Boalt Hall's Samuelson Law, Technology and Public Policy Clinic along with other law school clinics, the Chilling Effects prototype project emerged with Wendy Seltzer at its helm. Wendy Seltzer made a name in moderating the DeCSS dvd-discuss and worked with computer programmers and legal people on assisting in the MPAA v.

2600 case. Chilling Effects is a cease and desist clearing house, where they accept, archive and publish cease and desist letters. This site has a fan fiction section. There are cease and desist letters from Star Wars to Scooby Doo (Chilling, 2003).

On one hand, as information has grown more valuable, copyright and trademark law has become increasingly restrictive. At the same time, there has been, in the words of MIT media studies professor Henry Jenkins, an

"explosion of grassroots, participatory culture, a new high-tech folkway that not only draws on pop culture but appropriates from it more easily than ever before, and disseminates itself on a wider scale" (Walker, 2000).

When Tripod sent a script through its system to eliminate fansites, "Just Say No to Tripod", a protest to the deletions emerged (Amy, 2001). Although some sites were brought back, this protest site maintained the stand that Tripod was targeting any fan site on their system (Angela 2001). The archives of this site can be found online at http://web.archive.org/web/20010602023438rn_1/cerulia.net/tripod/.

What website host says

In one case, a webmaster for a Star Wars fansite describes his experiences chatting with other Star Wars fan site web operators in ICQ. LucasFilm is nefarious for sending out cease and desist letters (Philips, 1999).

The internet and world wide web offer users a variety of opportunities to express themselves and communicate ideas through websites, online discussion forum, newsgroups, internet relay chat, other chat devices and e-mail. Enabling users to use these services provided by webmasters or facilitators of chat (better known as moderators) using electronic resources assists users who want to collaborate, communicate in the virtual world. This offers users a free, effective manner for entertainment and expression available 24 hours a day. Where a program, show, music or movie is only played at a certain time at the discretion of the broadcaster, online users can view materials anytime they are able to access it. Fans can create interactive media, and interact with each other as well. Duality is somewhat common in online culture. Users have aliases and are known by those particular aliases or "nicks", also called usernames. One person can have an

unlimited amount of usernames, and travel to many different discussion boards, chat rooms and even get email for those particular names. In some cases, duality exists in fandom. In the virtual world, users are semi anonymous. Where in the physical world someone might feel inhibited in expressing their true admiration for say, a particular music group because of some stigma or stereotype attached to that, online, the person is free to enjoy the music and express themselves without fear of retribution or much criticism. People who enjoy this music can gather together and enjoy each other's company while discussing the topic regarding the music or performers.

As early as 1997, fans for the Simpson began to receive cease and desist letters from Twentieth Century Fox (Chilling, 1997). Using laws such as the Digital Millennium Copyright Act, the copyright owner had the power to contact the host to have the content removed. The ISP or host is not held liable for any violations as long as they comply with the request of the copyright holder. There are certain restrictions as to the complaint sent to the host, in that the files need to be specifically named and such and the user or webmaster has a chance to counter notify in cases where they may feel they are using materials in a fair use manner. Other fan sites that received cease and desist letters included a Harry Potter site, "Restricted Section" (Chilling, 2002).

The following example includes information regarding a Leet Speak trailer of the Lucasfilm "Star Wars, Return of the Sith". While the intent for its creation may or may not be considered an act of fandom, this is a derivative of the Trailer released by Lucasfilm. Lucasfilm responded by filing a cease and desist notification.

STAR WARS LEET SPEEK TRAILER

In 2005, Marc Nuar created a 1337 Speak trailer of Lucasfilm's *Star Wars – Return of the Sith*. He received a C&D from LucasFilm in April 2005. The trailer included footage from the original trailer and Marc's Leet Speak "translation".

In an email communication, Marc stated that he received the C&D via e-mail from Lucasfilm and a copy from his webhosting service when they suspended his account. In this case, the actual notification was sent to the user.

Marc stated that he did learn quite a lot about the DMCA after receiving the Cease and Desist notification.

"Between that and the just as subjective legal topics of Fair Use, it seems that lawyers are the only protection for both copyright holders and for those who create 'derivative works.'"

According to Marc, he did not make any official conter-notification. What he did do was tell his hosting company that he would remove all questionable material so that he could be guaranteed as little downtime as possible for his webspace. He also sent an e-mail response to Lucasfilm, but never heard back from them.



Figure 2.8: Phacemelter – Marc Nuar: Leet Speak Trailer

His suggestion to others who receive a C&D :

“...the internet is a big place. A huge place. For every site that is shut down, a dozen more can pop up hosting the same material. Also, keep in mind that there are still places (ie. China.. hint, hint) who do not adhere to international copyright law. Material hosted there cannot be threatened.”

He did state that a template counter notification would be nice, although he is not sure that fighting is really the best option for most people.

“Complete compliance with a C&D removes you from harm's way while not preventing the questionable materials to be spread through other means.”

Marc does have some information on a website regarding this notification. In this particular case, Marc translated the original notification to 133t.

The following is a sample of the translation found at Marc's website.

Original:

From: Lucasfilm Ltd.

To: Marc

Re: Unauthorized Use of STAR WARS Copyrights and Trademarks on website:

http://nuar.lunarpages.com/video/SW_mirrors.htm

Translation:

From: Clan Luc@ss

To: m4r(

Re: Stop haXXing our trailer or we will tell the mods on you!

The entire translation can be found at:

<http://nuar.lunarpages.com/>

BLOG

Blogs are one way people can document their experiences and share their journal like entries with the world. Some blogs include entertainment reviews. Other blogs describe news events or list grocery deals. Blogging is a popular pastime.

COREY FUNT, Blogger, and IFPI Noah and the Whale: First day of Spring Link

Even in light of the Lenz case, other notifications and removals for content that could be considered fair use, occurred after this decision. Corey posted a review and link to the song "First Day of Spring". According to Corey's blog post and Facebook comment, the song is available as a free download on the band's website.

"I'm a university student in biochemistry and that makes time a resource that is really precious. So when I've taken the time, to write 3 essays on the band and attend a show (which, was during my final exam period) its just a piss off. MP3 blogs, make little to no money and serve solely to promote mainly indie artists. As I mentioned I heard about Noah and the Whale through a MP3 blog.

I'm sure the band has nothing to do with it personally and I don't take it personally. But, people need to be more sensitive and instead. Do as the disclaimer asks and know

"Disclaimer: These songs are up for listening/promotional purposes only. If you're an artist or label who wants a the song taken down or have any other inquiries, please write directly to the site owner and we will happily oblige."

But, I do take offense that someone associated with the band didn't have the courtesy to simply email me before going all "DANGER! DANGER! DANGER!" on me and calling the FUZZ. "

I mean it took time to repost that article and redo the formatting and rewrite the missing sections.

They need to learn that none of us do this for any other reason than our love of music and we all simply want to support indie artists.”

The letter from Blogger seems to be the standard template used. Corey was informed that they were “...in the process of removing from our servers the links that allegedly infringe upon the copyrights of others.”

In the notice from Blogger posted on Corey’s site, the DMCA notification was received by International Federation of the Phonographic Industry (IFPI) and the record companies it represents.

Now, according to the DMCA and the Lenz order, fair use needs to be considered. In this case, the free song download was available through the artist. While Corey may not have originally linked or pointed to the artist’s site for the free download, it should be noted that the download is freely available. Corey did edit the contents of his blog and pointed to the download at the artist’s site after he received notification.

Corey’s Blog: http://musicbirdscheerios.blogspot.com/2009/07/brainless-removal-of-content-no-respect_03.html

BLOG

WRESTLING with the DMCA

Virginia Hoge had an interesting run in with the DMCA.

Virginia was concerned when she received an email from Google, telling her that she received a C&D for an article she placed on her blog. The C&D can be found at Chilling Effects.

<http://www.chillingeffects.org/notice.cgi?sID=7715>.

Here are the interesting facts in her case.

She took the article from San Jose Mercury news. Perhaps an affiliate?

In the Notification, NYTimes rep made an error about what exactly was the offending content.

So, it does seem that this was an invalid notification. However, this could be open to interpretation.

Basically NYTimes representative stated Virginia pulled the story from the Times. The claim was about the story titled “Heavy on Emotions”. This is a mistake in the notification.

The NYTimes article - Heavy on Emotions is about a weight lifter, not a wrestler. Therefore, their notification was not valid.

<http://www.nytimes.com/2008/08/20/sports/olympics/20weightlifting.html>

Virginia’s blog and article was from the San Jose Mercury news — who took the NYTimes article about the immigrant wrestler.

http://www.mercurynews.com/ci_10252622?IADID=Search-www.mercurynews.com-www.mercurynews.com

It's a BLOG. Is it commentary?

This is just another case of an ordinary person who has felt fear and censored due to a DMCA notification. She did not know who the Service Provider Copyright Agent was. She did not know anything about counter notifying. She did not know who to contact. She is still up and running. She removed the content and placed a link on the blog.

Virginia stated that she really “knew nothing of Fair Use, but I always include the link where the article came from, and almost always the name of the author and paper and date.”

She did state that this notification “has been really stressful”.

In her letter to Blogger, she stated that she was investigating a group of reporters. She stated she was sure it was not NYTimes that filed the complaint.

She sent another email to Google about her removal of the article.

After sending several emails she requested a response. “Hello, Blogger, I really need to hear from you. I want to comply my blog. I also know I have a vicious enemy(s) from the political writing I do there. This email was, of course, of concern to me and I want to resolve it! If there is someone else I should be writing to, let me know”.

She did receive a response from Blogger Help on August 26, 2008. In this letter, she is told that Blogger was notified that the content in her blog allegedly infringes on “the copyright of others” according to the DMCA.

There is simply a link to the same link listed in the Cease and Desist order.

She was then told that the notice received by Blogger, minus personally identifying information, “will be posted online by a service called Chilling Effects”.

The email includes a link to her C&D notification. The letter states that Blogger does this in accordance with the DMCA.

Virginia was also informed in this email that Chilling Effects may take up to several weeks to post the notice online at the link provided. The email further offers a link to educause.edu for more information about the DMCA. This email ends by giving a link “for the process that

Blogger requires in order to make a DMCA complaint". At that point, the email goes on to ask Virginia to remove the allegedly infringing content in 3 days or they will be forced to remove the posts in question.

Blogger states: "If we do not do so, we would be subject to a claim of copyright infringement, regardless of its merits."

Virginia was then informed in this same email that the content can be reinstated upon receipt of a counter notification. The email includes a link for more information about counter notifications. The email ends with information informing her that "repeated violations" to the terms of service may result in more action. The email also informs her that if she has legal questions about the notification, she should "retain your own legal counsel".

About one year later, Virginia received a DMCA notice regarding removal of artwork on her site. According to Virginia, this artwork was her original artwork and the person who filed the notification had created a derivative of the work. She was informed by Blogger that the artwork would not be restored, but she was free to restore the removed content herself.

"I can absolutely confirm that Blogger removed the image and not me. Its still not there!! they took down the whole post with the image too."

Virginia further stated:

"The thing they did, by removing the post, is when I do re-post the drawing, it won't be in the sequence on my blog where it belonged!! not to mention, they removed an original for a tampered-with stolen fraud.

She then filed a notification against the person who claimed her artwork and according to Virginia,

"And then, they rejected my request to have the fraud removed, I think partly because my original had been removed!!"

A DMCA request being rejected? According to Virginia, yes.

BLOGGER INFO

To contact the DMCA agent for Blogger, the contact information as of 2008- according to the Library of Congress site is listed here:

Google Inc.

Shantal Rands Poovala - Agent designated to receive notification of infringement

Consumer Products Legal Support

1600 Ampitheater parkway, Mountain View, CA 94043

650-253-0000

Fax: 650-618-1806

DMCA-agent@google.com

This information was received in August 2008 by the copyright office and scanned in Sept. 2008. This is the most current agent information located at the LOC.

Remember, there are elements of notification that must be met. The specific item allegedly infringing must be indicated.

Questions

Can a blog be considered commentary?

Should fair use be considered in this case?

There seems to be an error in the notification. Should the ISP work with the person who filed the notification to maintain no liability?

The email Virginia received informed her to remove the content as that Blogger would “be subject to a claim of copyright infringement, regardless of its merits.” Is this true? Why or why not? Defend your argument.

Does the DMCA specifically state that the user must be “promptly notified” about removal or disabling of access?

Does the user have a legal right to review the notification?

What are the implications in not providing a user with a prompt copy of the actual notification?

SOFTWARE

COREAVC

On May 1, 2008, Alan Nisota, received an email from Google that they had removed his project. Alan was in the middle of writing a patch for a new release when he received this notice.

Below is some background on the project and Alan's words about the issue received via personal email about a week after the "incident".

CoreAVC is a project by CoreCodec that implements an H264/AVC video decoder in software. This is the video format used by most Blu-Ray and HD-DVD movies, and is commonly referred to as MPEG4 (though MPEG4 spans a wide range, and this is the hardest of the formats to deal with). CoreAVC is by far the fastest software decoder for this content available, allowing many machines to play High-Def content that would otherwise be unable to.

coreavc-for-linux started as a set of patches to mplayer to support the initial CoreAVC release (0.0.4) so I could use it in Linux. mplayer has a stripped-down version of wine (well it was forked a long time ago) that allows it to load Windows DLLs into Linux for audio/video decoding.

The patches I wrote weren't too complicated at that time, mostly implementing a few new 'Windows' functions so the codec would work, and adding hacks to support the CoreAVC initialization. Just about the time I finished, CoreCodec released version 1.0 which was the first official release. They sell it on their web-site for ~\$15. Updating my original patch proved to be quite a bit of work, because they had added anti-piracy code, and registration-code. This required a bit more patching, along with a new tool to edit mplayer's 'registry' so that I could add my registration information. I posted my patch to the mplayer list with some benchmarks, and mentioned it on Doom9 where BetaBoy (I believe he is the CEO of CoreCodec) said (paraphrasing) that this was a useless effort and that CoreCodec would have a Linux release soon (this was ~April 2006)

That's how things stayed for a while, with me going off working on other stuff.

Eventually CoreCodec released version 1.2, and later version 1.3. Each of these required more work on my part, in many cases running through a debugger, and stepping through assembly language to see why things weren't working. I also wrote a wrapper codec that allowed me to

watch Windows communicate with CoreAVC to see what inputs/outputs to expect. I occasionally mentioned my project on Doom9, and BetaBoy always said the Linux version was right around the corner.

Around spring 2007, I started trying to get mplayer to accept my patches into their code base. I spent a lot of time splitting the patches up and cleaning out all (well almost all) of the hacks. In the end I had 12 or 13 patches which I submitted several times (in different variations) to the mplayer mailing list. In the end I got 1 or 2 of the most trivial patches included, but they just weren't interested.

So I started the coreavc-for-linux project on google-code (there's a release announcement on the mplayer archives somewhere). The project includes the Windows DLL loader code from mplayer with my patches applied, a script to patch it into mplayer, a patch for xine (another Linux media player), and a patch to use the code in MythTV. I soon found a need to use the CoreAVC codec on 64-bit linux, and so I wrote a little server application 'dshowserver' which would interface the 32bit CoreAVC codec with 64-bit Linux software.

After updating the project to support CoreAVC 1.5 (August 2007), I had a working solution and moved on to other things for 9 months or so.

Then last week (week of April 27 2008), A friend emailed me that CoreAVC 1.7.0 had been released and would I mind updating my patch for it. I was about half-way done when I got a mail from Google (May 1) saying that they had to take my project down due to a DMCA take-down request from CoreCodec (I hadn't yet updated the page with any 1.7. information, so this was just coincidental timing I think). The DMCA notice core complaint was:

Infringing Materials Hosted on and/or Linked To From the Site. The Site hosts and/or contains one or more links to CoreAVC, which contains CoreCodec's copyrighted Software. We have directly verified by downloading the file from the Site provided by Google Inc. that the file does include CoreCodec's copyrighted Software.

I was very surprised at this, as I had been very prominent about recommending the purchase of CoreAVC, since I believe it is well worth the \$15, and had worked hard to ensure that the legally-purchased version worked properly with my patches. Furthermore, I had never linked to or hosted any CoreAVC binaries. The code hosted at the coreavc-for-linux site was all either from mplayer, licensed under the GPL and distributed appropriately, or code that I wrote myself.

Google was actually very helpful in the matter, advising me of all my rights, hosting the notice on chillingeffects.org and allowing me to verify the contents of the site before disabling access to it. I was able to confirm that neither I nor anyone else had placed links to or copies of CoreAVC on the coreavc-for-linux site before it was removed. Google recommended that I file a counter-claim, but for personal reasons I decided not to go down that avenue. I figured that was the end of coreavc-for-linux.

I posted a few messages on a private bulletin-board where I knew some users of coreavc-for-linux hang out about what had happened, and recommended that they complain to CoreCodec about it (most of these folks purchased CoreAVC specifically to use in Linux), and went off to continue working on the 1.7.0 fixes (for my own use).

On Saturday (May 3) I got an e-mail pointing me at a thread at CoreCodec's forum:

<http://www.corecodec.com/forums/index.php?topic=981.0>

indicating that CoreCodec may be willing to negotiate with me. I contacted BetaBoy, and he said he thought we could resolve the issue and that he would get back to me once he'd discussed it with other folks at CoreCodec.

On Sunday (May 4), Slashdot posted a story about the DMCA take-down (I was not involved in that at all). Not long after, I got a mail back from BetaBoy indicating their grievances, and a way forward. Basically they had 2 complaints:

- 1) The use of their trademark 'CoreAVC' in my project (I fully admit that this wasn't very smart on my part, and that the trademark is theirs, but this had nothing to do with the DMCA)
- 2) That I had done reverse-engineering in violation of the DMCA

I will note that (a) this is not what their take-down notice claimed, instead specifically mentioning hosting/linking of copyrighted software, and (b) it is my understanding of the DMCA that reverse-engineering for the purposes of interoperability are permitted. The only code I released was code allowing the CoreAVC decoder to function as it does in Windows when used on Linux, and none of the code I wrote was specific to CoreAVC (It was all adding Windows functionality that CoreAVC needed). I will note as a caveat that there is a single line of code in my coreavc-for-linux (that I am aware of) which is specifically tailored to CoreAVC and allows

the DLL-compressor they use to function properly, but this line does not include any CoreCodec copyright.

In any case, CoreCodec and I resolved the situation by me making a formal request (without admitting any wrong doing) to CoreCodec for permission to reverse-engineer their software for coreavc-for-linux, and for permission to use the 'coreavc-for-linux' name for my project. They granted this request, and rescinded the DMCA take-down. Google put the site back up, and I uploaded the necessary fixes to get CoreAVC 1.7.0 working in Linux.

Aside from a few posts on a private message-board, and a single post in the above mentioned thread where I mention that coreavc-for-linux would soon be back with 1.7.0 support, I made no public notice of the situation, and did not initiate contact with CoreCodec until they had opened the door to getting the project back online. I believe it was the vocal users who brought about the reversal of the DMCA notice. I don't have any statistics, but I'd be surprised if there are more than 50 users all-told of coreavc-for-linux, so this really is a lot of attention for such a niche project.

Alan's incident ended nicely with this particular company. He was able to continue work on the coreavc-for-linux and the company maintained goodwill with the public. However, keep in mind that the company originally did file a notification that took the project down in the first place. In the future, it would be nice to see companies approach, attempt to negotiate and work with people prior to submitting notifications.

Here are some responses to a few questions and comments presented to Alan.

Question

Google hosted the DMCA complaint to Chillingeffects?

Alan

Yes, Google hosted it to chilling effects directly (actually, I don't know if they ever did because of how quickly things happened, but they said they were going to)

Question

Did Google send a copy to you as well? (just to confirm)

Alan

Yes, they sent me a copy too. they really were very gracious about the whole thing.

Question

Did Google ask you if you wanted the complaint hosted before putting it there?

Alan

Nope, they just told me they were sending it there along with the copy they sent me.

Question

In your decision to not take the direction of counter notification, what were some of the contributing factors that led to that decision?

Alan

I really can't discuss this much. However, it was based in part with opening myself to potential litigation which I have no interest in being a part of. This just wasn't worth the risk to me or my family.

Question

As far as the reverse engineering, what are your thoughts or suggestions to other programmers working with GNU Linux projects or starting projects that might want to create applications that work with Linux but are unavailable? Since your situation worked out for the best, I'd like to see more of that!!

Alan

Any reverse-engineering done on US soil opens a developer up for a lawsuit regardless of the validity of the claim. Developers should be aware of this when deciding how to proceed. Some projects have very strict rules about this (Wine for instance allows no disassemblers to be used whatsoever, though they are in a different arena than what I was doing). If I were more familiar

with programming in Windows, I could have accomplished everything I did using black-box methods which would have put me on firmer ground with regards to my techniques.

Question

For a while, you were in contact with the core codec people. They were saying that a GNU Linux app was coming... though as we know... that takes a while... if ever... because of support issues and lack of knowledge by the companies. First of all, they might have only one guy who could possibly port it, hiring more guys costs money. Also, I think some companies believe if they create an app for GNU Linux then they have to release the code. I don't think they understand the GPL and that if they use GPL code, then YES, they need to release it...

Alan

This doesn't really apply to CoreCodec. They have released many open-source codecs in the past, and are well aware of the rules. They already have a Linux client (though this is probably somewhat recent) but are only licensing it, and aren't selling it Retail. they probably do have a very small development team though, and likely can't staff a linux version along with the additional support load, but that is pure speculation on my part.

Alan did state that he did not know if he was at liberty to discuss the precise terms of the agreement.

“Note that there is an open-source project (ffh264) which provides much of the functionality of CoreAVC, but it cannot handle all video types that CoreAVC can, and is nowhere near as fast, and so did not meet my needs. I don't know enough about coding video codecs to be able to improve their code, so I took on a task I thought I could handle instead. I don't think there is any chance that CoreCodec would have given me permission up front. They WERE aware of the project from the beginning, but were (from my view) dismissive of the whole thing. My personal opinion is that for a small company that cares about its users (like CoreCodec) the pressure from their paying-users gave them a change of heart.”

Question

... gave me some good advice once when he said "It's better to get what you need done and apologize later..."

Alan

I don't know if this is true in today's world. You need to be prepared to fight if you do that, and honestly, I wasn't prepared to fight. The DMCA has a blessing in that once the notice is served, if it is followed, the developer is (or at least so far as I know has been so far) protected from further action. Losing your project can be a small price to pay.

Question

I don't wonder though, if companies would be open to giving permission for reverse engineering.

Alan

Extremely unlikely in general. CoreCodec likely does not want their Intellectual Property reverse engineered. CoreAVC is very innovative, and it is their money-maker. The work I did was only with regards to the interface, and had nothing to do with the 'interesting' parts of CoreAVC. Had I been trying to reverse engineer their codec to make ffh264 better, I'm sure the results would have been very different.

As it is, CoreCodec behaved honorably after the 1st volley, and I still recommend their product to anyone who is interested in HD video.

RTMPDUMP

In May 2009, Adobe sent a takedown notice to Sourceforge regarding the rtmpdump project. Sourceforge complied. What is interesting about this notification is that in the notification, Adobe states that the “rtmpdump utility hosted on Sourceforge.net (see URL below) can be used **to download copyrighted works.**”

Adobe further provides a list of works on channel4.com. However, Adobe does not own the rights to the copyrighted works listed on Channel4 and Sourceforge does not own channel4.

According to the notification, rtmpdump is the infringing material.

“Utility that can be used to download copyrighted work.”

What are some other utilities or programs that can be used to download a copyrighted work?
Are projects for programs used for legitimate downloading going to soon be affected by this?

Luke L. (lkcl) made some very interesting comments regarding the Adobe/Sourceforge takedown notice in his Advogato journal found at:

<http://www.advogato.org/person/lkcl/diary.html?start=611>

First he notes that RTMPE is simply:

“nothing more than an obfuscation attempt using no passwords and no secure encryption keys of any kind. Diffie-Hellman is utilised, but in a way that is subject to standard man-in-the-middle attacks; what Adobe calls "encryption" keys are nothing more than publicly-available "magic constants".”

He also goes on to mention that the rtmpy.com developer requested removal of his projects “in protest at Sourceforge's compliance with the illegal use of a DMCA take-down notice.”

One more interesting thing to note about this takedown is that after hearing about this takedown, a spec was written and according to lkcl, two teams of free software projects are implementing RTMPE.

Does the DMCA restrict the progression of the arts and sciences? It would seem that publicity from DMCA takedowns have had some positive outcomes. There is no doubt that the DMCA has influenced projects and can be a key to public exposure.

GAMES

BLIZZARD

BnetD

BnetD is an open source program that allowed users to play Blizzard games. The servers were not on Blizzard's Battle.net servers. The alleged DMCA violation was anti-circumvention and reverse engineering. In this case, BnetD lost.

<http://www.eff.org/cases/blizzard-v-bnetd>

Private Servers

In December 2008, a DMCA notification was sent to Softlayer regarding several private servers hosting WoW. At first, there was some speculation regarding the validity of the notification. There was no penalty of perjury statement included in this particular notification.

The notification can be found at: cyberxzt.com/misc/downloads/Dec3LtrtoSoftlayer.pdf

AniWoW placed a statement on the 4th of December on their site regarding the server being closed. In this particular notification situation several servers were the target. Some forum posts included the possible target servers as: AniWoW, burning WoW, Chaos Crusade, Toxic-WoW, WoWfusion, WoWGasm, and WoWscape. The forum chatter pointed to the possibility that only servers that accepted donations were affected.

Glider

In this case, the Glider bot was found to be a violation of the DMCA as a circumvention device.

What is Glider?

Glider is a third party bot that allows users to play automatically while they are busy doing other things.

How does it work?

According to the Glider FAQs found at:

<http://www.mmoglider.com/FAQ.aspx>

“Glider works a lot like a regular player. It looks at your health, mana, energy, etc. It moves the mouse around and pushes keys on the keyboard. You tell it about your character, where you want to kill things, and what to kill. Then it kills for you, automatically. You can do something else, like eat dinner or go to a movie, and when you return, you'll have a lot more experience and loot.”

According to an article in Information Week online, located at:

http://www.informationweek.com/news/personal_tech/virtualworlds/showArticle.jhtml?articleID=209100284

“Blizzard would typically pursue a breach of contract claim against EULA violators, but in this case it sued for secondary copyright infringement and contract interference under the theory that loading a copy of WoW into a computer's memory represents copyright infringement.”

The judge did side with Blizzard.

From Chilling Effects FAQs: (<http://www.chillingeffects.org/anticircumvention/faq.cgi>)

Question: What does circumvention mean?

Answer: Circumvention, according to Section 1201(a)(3)(A), means "to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner." While the full scope of activities and practices that would fall under this definition has not yet been examined by the courts, any act of undoing a "lock" or "block" in a digital system may well be considered circumvention.

Evading does not seem to be included in this definition. Avoid may apply with regards to evading detection. However, is the bot intentionally avoiding the detection, or is the technological measure not effective in detecting the particular bot? If it is the latter, then the

burden seems to fall on Blizzard. If their technological measure is not up-to-date, this is not intentional avoidance.

While it does seem that Glider is a violation of the terms of service, this does not seem like a circumvention device, regardless of the judgment. As a matter of fact, since Warden allegedly scans and searches a user's memory, hard drive, window titles, etc. using a detection scheme, this could actually be a measure that contains the capability of collecting personal information. The specifics of what constitutes personal information is vague, from what I have seen. There is no definition in this section regarding what is constituted as personally identifying information.

It would seem to someone unfamiliar with technology that Warden does "effectively control access to a work" in that once Warden scans the drive and memory to detect any bots, which would ultimately result in disabling the access to the server by being banned, perhaps permanently. Of course, this is a stretch. If the bot is simply a terms of service violation, call it that.

The bot does not work around Warden. The bot does not circumvent Warden. Therefore, how can Glider be considered a circumvention device?

In fact, the FAQ does state that the bot works with the legitimate copies of WoW. Apparently, the judge determined that "MDY violated the DMCA when it evaded warden's checks."

<http://arstechnica.com/gaming/news/2009/01/judges-ruling-that-wow-bot-violates-dmca-is-troubling.ars>

How can evading a tool that scans the hard drive for bots be considered a device that effectively circumvents access control?

The result may well be denial of services due to a breach of the terms of service. However, evading discovery of a TOS breach does not a circumvention device make.

Perhaps my familiarity with this case and this scenario is not entirely fully founded. However, based on the information regarding this case that I have seen so far, in no way is Glider a

circumvention device. Yes, it is a tool that allows users to automatically play games unattended. Yes, the detection technology in Warden does not discover this bot. However, unless there is some explicit way this bot is circumventing technology that controls “access” to the work, I fail to see how this judgment can stand.

Yet Another DMCA Analogy

Let’s take for example a professor who needs to grade papers weekly. This professor creates a tool for grammar checking that includes comments and a script to send the electronic assignments through a grammar checking program, ultimately resulting in a paper with comments regarding the grammar.

While the professor is supposed to grade these papers for grammar, the fact is, running the script is a more efficient way of handling grammatical errors and leaving comments. The professor can do other things while the system is running the papers through the grammar checking tool.

Of course, the professor does not want to be caught as per his contract, his job is to grade the papers. The school uses VPN and randomly checks the professor’s computer. So, the professor sets this system up on a different computer, transferring the files from his computer to his laptop. The script is run on the laptop and the graded papers are then transferred to the school computer.

He is evading discovery of a breach of contract, not circumventing a technological measure that controls access to a work. The breach could ultimately result in loss of his job or in this bot case, breach of TOS and banning. However, evading detection is not circumvention.

Additionally, it is possible that circumvention could be permitted. If Warden (as per the judgment) is considered a technological measure, then considering the fact that Warden can search and scan information on a user’s computer and return results regarding any detected bots, would this not be a measure that “contains the capability of collecting or disseminating

personally identifying information reflecting the online activities of a natural person who seeks to gain access to the work protected”?

Does the act of “circumvention” or evading not have the “sole effect of identifying and disabling the capability and has no other effect on the ability of a person to gain access to any work?”

If this is a circumvention device and the device is evading, would that not be considered an act of disabling the capability. If Warden cannot detect the device, then, could that not be considered “disabling”?

One important factor would be whether or not Blizzard did provide “conspicuous notice of such collection or dissemination to such person, and without providing such person with the capability to prevent or restrict such collection or dissemination”. Can users stop Warden if they want. Do users have the capability to prevent or restrict the results or collection returned from the warden scan/search?

And... is not the act of “circumvention” or evading carried out solely for the purpose of preventing the collection or dissemination of personally identifying information about a natural person who seeks to gain access to the work protected, and is not in violation of any other law.” While the bot may be considered a breach of contract, the bot does not seem to violate any other law.

Questions

Does it matter that the software is in memory?

Does Blizzard’s Warden return results from a scan of a system?

Does Blizzard keep this information as a record. This may not be necessary to prove consideration as collecting personally identifying information (such as keeping a list of the files it scans or searches).

Were users informed that the software would scan their systems?

Were users informed that the software has the capability of collecting information?

SECOND LIFE

In 2006, Second Life was a popular virtual environment. Large companies were setting up stores in Second Life. In this environment users could visit areas of interest, make money by creating outfits, accessories, and other items.

Linden Research does include a DMCA page on their website. According to the FAQs, Linden accepts mail and fax notifications.

One interesting FAQ was with regard to signing the notifications.

From the FAQs located at:

<http://secondlife.com/corporate/dmca.php>

Can I sign notifications and counter-notifications with my Second Life avatar name?

We will not accept notices that are not signed by a real legal person. The DMCA process is a real-world process with real-world ramifications.

On August 19, 2008 “Fresh Baked Goods” received a DMCA notification related to the necklaces sold on Second Life. The first blog post regarding this issue is located at:

<http://slfreshbakedgoods.blogspot.com/2008/08/dmca-filed-against-fbg-we-need-your.html>

The blog states that the user was:

“absolutely shocked to find a **DMCA Notification from Linden Labs** that someone has claimed that the ~*FBG*~ Jelly Tots Necklaces, in all metals and color palettes, are copies of their work.”

This user was informed that there was a deadline of 2 days to respond by:

“removing the items from sale, and that if I wished I could counter-file to the DMCA stating that under no circumstances did we knowingly infringe on anyone’s copyright. If we did not act within that time Linden Labs would remove our items if they still were for sale, and we might possibly face penalties such as having our accounts inactivated.”

The user states that the experience is “no longer fun” and that “the accusation of theft (which is what the DMCA is saying in my mind) is hurtful and ungrounded...”

From the blog:

“We do not do this for profit, we profit minimally if at all, we do this as a way of fully participating in the Second Life community, by trying our hand at something beyond our normal skill set, by being part of something together. We never wanted to be famous, we don’t really socialize outside of our small group, and we simply wanted to have some fun.

This experience is no longer fun...”

The user further describes the feeling of being “bullied”.

From the blog:

“It feels like we are being bullied. Someone is saying, “we are going to accuse you of this awful thing, and give you 2 days to take down your hard work”. We feel that if we don’t counter-file, we look guilty for not responding, and we can no longer sell our items. We feel if we do counter-file, we are putting our privacy and families at risk, and nothing in this world is worth that, certainly no \$100L necklace.”

A counter notification was filed.

Linden Labs did respond in an email to the user. The user posted the results on the blog at:

<http://slfreshbakedgoods.blogspot.com/2008/09/sweet-justice.html>

According to this blog post, Linden Labs refused to provide the original documents regarding the DMCA notification. The response quotes the terms of service and the policies at Linden Research.

On September 10, 2008, the items were restored.

Below is the response from Linden Research regarding acquiring the notification. This is posted at the user's blog on the "sweet-justice.html page.

"Thank you for contacting us. To answer your question:

Linden Lab will not provide the additional information you request without proper legal process.

For more information, please refer to paragraph 6.1 of our Terms of Service at:

<http://secondlife.com/corporate/tos.php> and our Privacy Policy at:

<http://secondlife.com/corporate/privacy.php>."

Questions

What can the user or owners do to obtain a copy of the notification?

The DMCA does not require the original notification be sent to the recipient but notice be given when access is disabled or content removed.

Should recipients have the "right to face the accuser"?

How is privacy used in this type of case?

What are the potential consequences of keeping a notification private?

GAMING

GAMESPY VULNERABILITIES

In November 2003, Luigi Auriemma received a cease and desist notification from Gamespy. Gamespy has been around for almost as long as the DMCA. In 2002, Gamespy signed a technology agreement with Disney. In 2004, LucasArts signed an agreement with Gamespy. Luigi Auriemma wrote about some vulnerabilities in Gamespy software and listed the information on his site in Italy. Gamespy representatives sent a cease and desist for a list of “proof-of-concepts and documents” he wrote about “vulnerabilities I have found in the Gamespy software and reported to them months before as I do for any bug I find.”

He was sent the cease and desist for reporting bugs and he did include a tool for the error.

Luigi answered a few questions regarding this notification. A copy of the notification can be found at:

<http://aluigi.altervista.org/misc/75395-1.pdf>

Question

Who sent you the C&D?

Luigi

The lawyer was Colbern C. Stuart III of Paul Hastings.

The client represented instead was GameSpy Industries, it has almost the monopoly of the online gaming.

Question

What was the reason they stated?

Luigi

Violation of intellectual properties, illegal access to Gamespy servers, creation/marketing/distribution of software which circumvents protections and publishing of step-by-step instructions for doing that. As already said it's all written at the beginning of the C&D. Anyway seems they have used a fixed and generic template because all the accusations have no relationship with the stuff they requested to remove.

Question

Was the C&D within the requirements stated by the DMCA?

Luigi

They talked specifically about DMCA, CFAA (computer fraud and abuse act), the Lanham Act and trademark abuse in this order in the part of the C&D where they listed the amount of money they wanted from me.

Question

Do you think your site content was within the bounds of fair use? Why?

Luigi

My website contains all the researches I made, they are completely technical and open including all the source code of the programs I write. I don't trust in secrets so in a perfect world this is what each person should do to protect himself.

Question

When you received the notification, how was it delivered?

Luigi

e-mail.

Question

Did you make a counter notification?

Luigi

Today was the first time I heard about this thing so I have searched on Internet... so no, I have not used it.

Question

Do you have any suggestions or advice to others who might get a C&D?

Luigi

C&D is only a menace in a mafia style that probably gives problems or troubles only to who lives in USA where exist those absurd laws like the DMCA (I live in Italy).

So if who receives a C&D the best choice is to send it to the anti-dmca websites that collect all these documents, and then forget the thing if he lives outside USA.

Question

Do you think a template counter notification to be

included in the book, would be useful to others who receive C&Ds?

Luigi

Yes it seems useful but I don't know the percentage of ISPs that will consider it. If the ISP is not serious it will consider only the C&D received for first.

Question

What was the final outcome?

Luigi

In a first moment I removed the listed documents and programs from my website but they returned online after 2 or 3 months. I no longer heard about Gamespy except some months after the facts when one of their developers contacted me after I released a new advisory about a new and wide security bug and moreover about some code hidden in the Gamespy software.

He said that if I wanted I could contact him for any new bug in that specific part of the Gamespy software so I could fix it. If you talk about "money" outcome oh no no I have absolutely spent nothing and have never replied "legally" to them and to their defamations.

This is not the first and is likely not the last we will hear of people reporting vulnerabilities that received negative response and action.

Currently, there is an exemption regarding vulnerabilities for the purpose of correcting security flaws but only applies to audio recordings and audiovisual works.

EDELMAN, ACLU, AND N2H2

Harvard researcher Benjamin Edelman filed a lawsuit against N2H2, the publishers of Bess. Bess is censorware and prevents users from going to certain sites.

The issue at hand was that the complete list of blocked sites is not available to the public. In order to access the information or list of blocked sites, could be a violation of the DMCA. Edelman went to court, represented by the ACLU, in order to get the right to use Bess to extract the list of blocked sites.

In this case, the court granted the defendants motion to dismiss.

The motion to dismiss is based on the following issues:

Edelman was not facing any actions by N2H2 because he had not yet attempted to use Bess to obtain the list. The motion further describes the possibility of trade secret and goes into the amount of money N2H2 had spent in compiling a database.

The motion to dismiss was granted in April 2003. In 2003, an exemption to the DMCA, that covers censorware, was approved.

http://cyber.law.harvard.edu/archived_content/people/edelman/edelman-v-n2h2/

Questions

Do you believe censorware works?

Why is being able to view what sites are censored important when installing censorware?

Why do you think this case was not tried under the DMCA?

Find a censoware application.

Does this censorware list the blocked sites? If yes, do you believe this list is accurate and up-to-date?

Are there any sites that were blocked that are not on the list?

Other Notifications

Even after the Lenz decision, companies are pursuing and filing notifications without first considering fair use.

False Flagging

In early 2009, there were many reports of false flagging on YouTube and other sites. Whether or not these claims are legitimate, they seem legitimate. Further research to resolve the matter may include contacting the originator of the claim. While some service providers include the information regarding the person making the complaint, other recipients were not given that information.

In order to determine whether a claim is valid or invalid, the host could be required to contact the person on the complaint and verify the information is correct and true.

Those who file false DMCA claims should realize there is a section for misrepresentation. If a false claim is filed and the service provider disables access or removes content due to misrepresentation, the DMCA does cover the victim of the false flag.

Locating the actual false flagger can be challenging for an end user. However, with proper representation this may be done by tracing the email to the original source.

Another bizarre case of DMCA notifications was directed to a printer.

Printer and Wireless Access Points receive notifications

Here is a link to the university page regarding the research and results. There is an FAQ and a paper written regarding the study.

<http://dmca.cs.washington.edu/>

Professor Arvind Krishnamurthy at the University of Washington explains in an email what prompted this study:

“We were prompted to do this study because they received a number of erroneous DMCA complaints from an earlier study, for which we were studying the BitTorrent network in order to understand how to build a better p2p system. since we kept receiving DMCA notices even though we weren't uploading/downloading any content, we decided to investigate this a bit further, and hence this study.”

The study includes information about the printer receiving 9 notifications and a wireless access point receiving 4.

Chapter 3

ACTIVISM and DMCA RELATED ISSUES

The first DMCA Protest

March 28, 2000

The arrival time was 9am. The protest lasted only a few short hours.

As more people arrived at the protest location, the signs for the protest were being created. The protesters joked about putting “The DMCA Sucks!” on one of the signs. Neimi suggested we not use that. Someone came up with “Copyright or Copywrong”. One gentleman placed “Let me watch the movie I bought” on his sign. He had purchased a DVD and could not watch it on his DVD player due to region issues. One sign was simple, the DMCA with a circle and slash. The rest of the protest day consisted of walking around, meeting people and passing out information. Not many people knew what the DMCA was. A group of student photographers took pictures of the protesters.

There were no mainstream media present, unless you count Declan McCullagh from Wired and Deborah Durham-Vichr of LinuxToday. Timothy Lord from Slashdot was there. He was briefly ostracized for wearing a Disney related tie.

As the day wound down, Neimi gave some closing words and the protesters exchanged contact information to keep in touch. They discussed the possibility of creating a website for people interested in more information regarding the DMCA and possible future protests.

That is where the idea for the website, DMCAsucks.org emerged.

DMCASucks.com was already taken, by 2600. They certainly had that one right.

The DMCASucks.org protest site was maintained for several years until the site was retired after the Dmitry Sklyarov events. There were other sites that were active at that time and DMCASucks.org had served its purpose – to inform the public about the DMCA.

March 2000 – Washington D.C.



Figure 3.1 First Protest in Washington D.C.

Tim Lord (Slashdot author) speaks with David Niemi and the Professor”
(Courtesy of Peter Teuben)



Figure 3.2: Protesters in front of the Library of Congress.

(Peter Teuben)

New Yorkers for Fair Use

NYFU is an organization that follows and takes action on different fair use related items. This organization has followed many cases and on July 17, 2000, held a protest against the DMCA.

More information can be found at their website: <http://www.nyfairuse.org/>



Figure 3.3. New Yorkers for Fair Use Protest - July 2000 With Richard Stallman (FSF)

(Courtesy of B. Donahue)

Note: The protesters are wearing Copyleft T-Shirts with DeCSS on the back



(photo courtesy of B. Donahue)



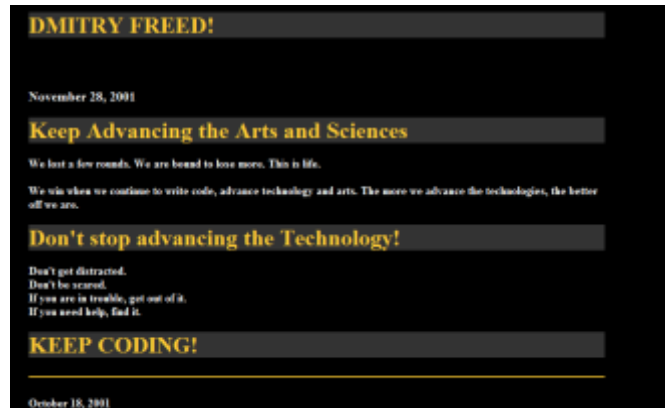
NYFU protest



New Yorkers for Fair Use - July 2000 (*B. Donahue*)

Note: Large graphic of Jon Johansen in front of protesters

The DMCA Sucks Protest Site



Screenshot of the DMCASucks (Dec. 2001) website

The DMCA Sucks protest site began in March 2000. This was the first site to post information regarding DMCA related issues and protests. The first campaign the site promoted was the OpenDVD campaign. Basically, there was a link to that site and campaign. The protest site included current events and was mainly textual.

Another campaign on this site included Boycotting AOL.

The site listed reasons for leaving AOL and listed alternative, free ISPs.

A comment form was added.

Subsequently, Dmitry Sklyarov was arrested.

Archived News – DMCASucks.org - July 18, 2001

Although there has been lots of news about Dmitry, as of last evening he was not in the Clark County Detention Center. He is being held without bail somewhere in Las Vegas. His crime: programming. Copyright law was supposed to be for the progression of the arts and sciences. If we restrict programmers from developing technology based on existent software or technologies such as Adobe acrobat, etc. aren't we limiting the progression of the arts and sciences? I would venture this to be so.

Free Dmitry Protests

The Free Sklyarov site emerged. This site listed information about the case, protests time, location, and contact information for each city. More and more cities joined in the Free Sklyarov protests.

Ultimately, Dmitry was located at the North Las Vegas detention center. He was moved to Oklahoma and then to California. Dmitry did receive one letter in holding. That letter contained comments from people in the community regarding the DMCA and a letter of hope.

Help was rallied from all over. There was some chatter in IRC regarding the arrest. People were willing to help. In the freenode IRC, one user, “Kraken”, created a banner on the spot upon request, using GIMP.



Banner created by Kraken – 2001

Used as the logo for the campaign

`irc.freenode.com #slashdot`

This banner was used during the campaign to free Dmitry. During the protest rally, on August 29, 2001, RMS sat in the press room and worked on informing people about using the *.doc format. He was using Debian at that time. He discussed at length GNU/Linux, copyright, and proprietary software.

The attendees included Don Marti, Bradley Kuhn, Richard Stallman, Larry Lessig, Dmitry Sklyarov. Russian media was there taking interviews.

Dmitry spoke at the Protest Rally in San Francisco in 2001 and was rushed out of the building. He did not meet with attendees and he apologized for not being able to sit and speak.

The next day, Dmitry was in court in San Jose. There was a Russian interpreter in the courtroom just in case. This was a very short exchange. The plea was “not guilty”. Dmitry and his representatives left the building. There was mainstream media waiting on him outside. Many of

them had missed his exit from the courthouse and rushed to try and catch up with him. It was interesting that within about a year's time tides had turned from "What is the DMCA?" to mainstream media picking up DMCA news. There was enough time to drive from San Jose to San Francisco to the protest.

At the protest in San Francisco, Don Marti, Seth, RMS, Bruce Perens, Russian media and many others gathered to march to the courthouse. This march was much larger than the first protest by a large scale.

As the protesters marched, they picked up a few extra protesters along the way.

They chanted:

"What do we want" "Free Dmitry"

"When do we want it" "Now"

One protester responded "Yesterday". Several other protesters laughed. During the march the protesters even discussed going for Chinese food later.

At the end of the march, Bruce Perens and Richard Stallman sat together on a high wall and discussed free software, open source and copyright.

Bruce Perens remarked, "I want to show that people that do business with free software also value freedom."



Protest – Austin, Texas 2001

Protesters with signage (*Courtesy of "The Ministry of Truth"*)



Many users did Boycott Adobe ("*The Ministry of Truth* ")

A few protesters braved the Arizona heat outside the Sandra Day O'Connor Federal building

Protests were held weekly. By the time the protest moved to the PHX library location, over 25 protesters were in attendance.



Gerald Thurman (in EFF shirt), Rares Marian (dvd-discuss) and Zack Wilbur (Coding is not a Crime)

(Photo Courtesy of Gerald Thurman)

In Boston, a “Funeral for Fair Use” was held during a Dmitry protest held on July 23, 2001. The following images are courtesy of Peter Teichman. There was a coffin and a funeral procession.



Coffin for “Fair Use” (*Courtesy of Peter Teichman*)



Making Picket Signs (*Peter Teichman*)

Boston – July 23 2001



Boston Protest (*Peter Teichman*)



Free Dmitry: Boston - July 2001 (*Peter Teichman*)



The “illegal devices” attached to the picket signs are floppy disks (*Peter Teichman*)



Boston – July 2001 (*Peter Teichman*)



C. Scott Ananian addresses the Boston crowd (*Peter Teichman*)

SKLYAROV FUNDRAISING PARTY

August 29, 2001

A fundraising party was held in San Francisco prior to the court date and protest in August 2001. Present were Richard Stallman, Bradley Kuhn, Don Marti, Cindy Cohn, Larry Lessig and Dmitry Sklyarov.

Over 300 people attended this party. There was a canvas for expression. Many people wrote on this canvas. A portion of the canvas that states: Reading is right, not a feature can be found at the Internet Archive at:

<http://web.archive.org/web/20011217223839/www.allseer.com/dmitryfundraisingparty/>

Dmitry, Larry Lessig, and RMS spoke to the partygoers. After the speeches were done, Lessig and RMS fielded questions from attendees in the Press Room.

In the back of the press room, Russian media was interviewing partygoers.



Richard Stallman
Free Software Foundation
San Francisco
August 2001

“We're here to try to help a person, a person that evil system is trying to crush. But why is it trying to crush him? He was just a handy victim. He was the victim that came to hand.”



Larry Lessig
San Francisco
August 2001

“This is the beginning of a revolution that changes everything.”



Dmitry Sklyarov
Russian Programmer
San Francisco
August 2001

“I hope that with help of everybody from this room we will do all things that we must do and we will beat them finally”.

The following day, protesters rallied in San Francisco.



Protesters approach the Moscone Center

San Francisco - August 2001



Don Marti folding the flag at the close of the march

Defective by Design Protests

Defective by Design opposes DRM. Supporters have held protests and flashmobs at several locations. In the past protests were held at the BBC and Apple Stores. The images below are from a protest of the Pirates of the Caribbean at Boston Commons. These photos were located on Flickr. These and other images by Mecredis are available on Flickr through the CC license under the terms of attribution. Image use but no endorsement is given by Mecredis.



Eliminate DRM “hard hat” (Photo attribution: *Mecredis*)



Group Photo (*Mecredis*)



Protect Freedom (*Mecredis*)



Protester holds up Eliminate DRM Signage (*Mecredis*)



Elimate DRM suit (*Mecredis*)

ANONYMOUS

“It has come to the attention of Anonymous that there are a number of you out there who do not clearly understand what we are or why we have undertaken our present course of action.

Contrary to the assumptions of the media, Anonymous is not simply ‘a group of super hackers’.

Anonymous is a collective of individuals united by an awareness that someone must do the right thing, that someone must bring light to the darkness, that someone must open the eyes of a public that has slumbered for far too long. Among our numbers you will find individuals from all walks of life - lawyers, parents, IT professionals, members of law enforcement, college students, veterinary technicians and more.

Anonymous is everyone and everywhere. We have no leaders, no single entity directing us - only the collective outrage of individuals, guiding our hand in the current efforts to bring awareness.”

– A Call to Action Video aired January 27, 2008.

“We are Chanologists. We are not exactly Anonymous. Anonymous is a huge umbrella and we are only a really small fraction. The reason we all came together in the beginning was simply internet censorship.”

- Spoken by a Chanologist during a University Lecture

What is Anonymous?

Anonymous. The term origins, according to the dictionary at reference.com, date back somewhere around 1595-1605. As an adjective, anonymous is:

Without name acknowledged – such as an author or contributor

Of unknown name

Lacking individuality, unique character, or distinction

Anonymous is an idea that spans generations. On the internet, Anonymous has been around for years. Anonymous is really a collection of people on the internet who started out as old school irc, USENET, etc. who perform certain tasks, anonymously. Some played pranks on websites,

some posted information anonymously, and some traded information in the media. Anonymous has existed and is not really included in this battle. While the concept of being anonymous holds, what the world knows as anonymous is really disconnected from anonymous. Members of anonymous participate in Project Chanology. However, there is a distinction between Chanologists and Anonymous as a whole, if you want to get into semantics.

Anonymous is not a traditional group or organization as there are no leaders and there are no followers. What is done is done by consensus. Individuals decide by individual choice whether or not to carry out tasks.

What is 2ch or 2channel?

2channel is the imageboard created in 1999 by Hiroyuki. 2chan has over 500 active boards. Some members participate in distributed computing. In the past, there were several distributed computing challenges or contests available. On a side note, not affiliated with 2ch, the EFF's Deep Cracker won one of these types of contests back in 1998.

<http://www.networkworld.com/news/1999/0120cracked.html>

In 2ch, everything is done anonymously and by individual choice. Posts are moved to a lower position to keep old and posts not interesting from the main thread, ultimately removing the need to sift through posts to get to the information a user wants. There is a limit of 1000 posts maximum for a thread. At that time, a new thread is opened to keep the discussion moving. The only restriction on posting is spamming/flooding and posts that could result in legal action.

711Chan

In 711chan, a message calling for a DDOS was posted in January, and people started talking about Chanology. The Chanology talk was later restricted to /xenu/ and banned from /b/ and /i/. At that point 420chan merged joined with 711chan. The new mods perma-banned (permanently banned) everyone in /xenu/. One of the creators of 711chan stepped in and returned /xenu/. However, people had already found freeboards and went to 4chan. In a few weeks /xenu/ was deleted from 711chan. Chanology is now

4Chan

In 2003, 4chan, based on 2 channel, emerged. The imageboard on 4chan was a place to meet. This was an anime board. In the past, members raided each other for fun. This has been done for over a decade on other medium as well. Anyone familiar with AOL, may remember people raiding chat rooms. This was usually done for “shits and giggles”. In 4chan, there were a few mini raids in communities. People in 4chan were getting riled up for raiding. The tensions were high and many were observing and waiting. Then the Tom Cruise video leak happened. This is the video that changed the direction of the raids. According to one Chanologist, when Scientology “bullied the video off”, certain Anonymous members moved to action.

At that point, on /b/ threads appeared commenting on “Let’s go get Scientology”.

There is no real way to know why. Was Scientology a random target? For fun? Nationwide joke? According to one Chanologist,

“A lot of people thought, ‘maybe I should do it’. There were some rumors about mods bumping these posts but no one knows. No one expected it to get this big and it didn’t happen all at once.”

“Aside from Scientology being a deserving target was people who were internet savvy in the free culture who were familiar with Scientology”.

When Scientology came to the attention of some these users, due to the Tom Cruise video that was released, then attempted to be pulled from the internet, these Anons went to these pranks. This included DDOSing Scientology’s website, taking it offline. Other pranks include ordering pizza and calling Scientology. Some of these videos are still available through YouTube.

If Scientology left it alone, they may have been fine, according to one source. Instead, according to a few Chanologists and video available on YouTube, some Scientologists allegedly accuse Chanologists as being part of the impending “Markabian empire”, paid \$8 an hour (or 50 pounds), by the psychiatry industry, and racist/anti-gay.

“In the beginning, it was really a matter of how the other guy responds. They fell into it.”

According to Chanologists, Scientology didn’t see this coming. The internet was not around in Hubbard’s day. These Chanologists believe that Scientologists are not good with the internet on average which they state is ironic, as Scientology allegedly pitches themselves as a high tech religion.

Anonymous started the DDOS attacks – These were huge coordinated events.

Why did they do it?

In an article in OpEdNews, found at:

<http://www.opednews.com/articles/2/DDoS-Hacker-Responds-To-Sc-by-Kate-Noelle-081023-596.html>, the author states:

“According to 4Chan & Dmitriy Guzner, the DDOS was a response to Scientology's false DMCA (Digital Millennium Copyright Act) attacks against the internet for the fair use of a video with Tom Cruise convincing members to donate money.”

How did they do it?

On January 17th, Scientology.org was taken down.

There were some announcements on various message and image boards regarding a scheduled takedown - “...going to try and take down the Scientology website” on January 18, 2008, the scheduled day. The message post at one particular board reads:

“at 6:00 EST 4chan and all the other chans and going to try and take down the scientology website using gigaloader
more info here:

<http://img.4chan.org/b/res/51313902.html#q51313902>

so /*name removed*/ think they can all do it?"

Some people were spectators who wanted to see if it could be done. Others utilized Gigaloader, a website that stress tested sites.

There were literally people who were counting down the minutes until the "event". A temporary board was created at invisionboard regarding the matter. According to another message board, there was a little jump of the gun. Some users started gigaloading before the 6PM start time. The excitement still mounted as users watched on to observe the sites going down. Countdown messages until the very time of the event were posted. People were praising this action. Some users were planning to fax (black pages, ascii cat, bare ass). As the gigaloading began, there was a post stating that gigaloader.com had reached the maximum bandwidth limit. Within a few posts, an offline Gigaloader link was posted. A little while later, irc messages came in that Gigaloader was back up.

There were some people who could still reach the websites. Posts exclaimed, "...keep attacking!". At that point, a link to the http flooder was posted on one board. Someone posted this,

"Everyone use the HTTP flooder, it's crazy easy to use.

If we get maybe 50 people to use HTTP flooder, the site will crash."

Another poster wrote this:

"WE NEED /b/ackup!"

At that point, the site being down was confirmed by a screenshot of a ping attempt. This was verified by another user who posted a screenshot of an attempted ping.

In an update at 50 minutes into the scheduled "takedown", Gigaloader was down, Scientology.com and .org were also down.

Some posts reported still being able to get on the site. However, this could have been due to cookies and cache.

In addition to Gigaloader, JMeter was used with a *.jmx file. In this particular *.jmx file, the code for ns1 and ns2 for the .org included this string property:

```
<stringProp name="TCPSampler.request">HELLO SCIENTOLOGY. WE ARE ANONYMOUS.</stringProp>
```

Closer examination of the code indicates that not only were the .org and .net included, but sites in France, Europe, Seattle, London, Birmingham, the UK site, and narconon.org, were also included.

On January 19, the site was still down. According the Project Chanology timeline section at Encyclopedia Dramatica, the Dianetics hotline was down and was “rickrolled”. Rickrolling is directing people to ultimately end up at a song by Rick Astley, “never going to give you up”. There was a huge rickrolling on April 1st on YouTube. Also, Rick himself rickrolled people during the Macy’s day parade in November 2008.

On January 21, 2008, the message to Scientology was released. Anonymous posted a video “A Message to Scientology”. The video stated:

“We are anonymous. Over the years we have been watching you, your campaigns of misinformation, your suppression of dissent and your litigious nature. All of these things have caught our eye. With the leakage of your latest propaganda video into mainstream circulation, the extent of your malign influence over those who have come to trust you as leaders has been made clear to us. Anonymous has therefore decided that your organization should be destroyed.

For the good of your followers, for the good of mankind, and for our own enjoyment, we shall proceed to expel you from the Internet, and systematically dismantle the COs in its present form.”

On January, 23rd, the following notice was found on Digg:

“Gigaloader will be going temporarily offline due to its use in Scientology attack. The Scientology website is now back up and running, and will likely be added to the gigaloader blacklist of sites not accessed by gigaloader.”

The gigaloader site is no longer available for use in stress tests.

According to one chanologist, the 1st flood that came in was people who were now going to actually do things to continue.

Meanwhile, Scientology moved their servers to Prolexic. You cannot DDOS Prolexic, according to the Chanologist. This happened around January 21. The raids continued.

During that point the chan boards – shifted to a knowledgeable approach, yet still under the banner of anonymous. People were growing in understanding. One reason for the change from pranks (black faxes, pizza orders, etc.) to protests was Mark Bunker. The timing was good. On January 27, 2008, Mark Bunker (Wise Beard Man) created a message to Anonymous. This can be found at:

<http://xenutv.wordpress.com/2008/01/27/my-message-to-anonymous/>

It was around this time the transition from anonymous to chanology happened. There was a huge shift.

IRC Exodus

According to one chanologist, on January 29, 2008, the people who hosted the IRC servers, concerned about potential involvement with these acts, stated they did not want any impending trouble.

“There were about 3000-4000 people on the server.” Stated the chanologist, “we got notice that was like, Look... now we are getting calls from the FBI. You gotta get off.”

Partyvan is the main Xenu/COS server. Users were booted off and rooms were locked so they couldn't organize anything CoSPlay related or DDOS. According to this chanologist, for their own survival, they had to stop DDOSing. So, the DDOSing stopped. The chanologist stated that they lost a percentage of people who were there for just raiding. They did go to some free forums that eventually kicked them off. There was a difficult centralization issue. Within a few hours after negotiations, they were back on partyvan but no DDOSing.

The rooms reopened within a few hours. They started getting state rooms opened and continued to raid, just no DDOS planning. At the same time, Wise Beard Man's advice, to get into legitimate ways to oppose Scientology, apparently made a difference.

There are some mods and structure still, but no leaders. Some forums were slow to get on the side but did come over after the switch, when there would be a protest.

IRL Protests

On January 26, an email was posted regarding a raid in Harlem for January 27 at 3PM. This was located at Gawker.com. The page can be found at:

<http://gawker.com/349398/hacker-kids-to-protest-scientology-in-harlem-this-afternoon>

The text of the email states:

We will raid the CoS in Harlem tomorrow at 3PM.

Wear a mask of your choosing.

Bring a boombox.

Rickroll them into submission.

We will make headlinez LOL.

A video regarding an Orlando protest was posted on YouTube on January 27, 2008. This protest shows drivers honking their horns. The video also shows a gentleman in an orange shirt taking pictures of the protesters. According to the video, the gentleman in the orange shirt kicked them out the building.

On January 27, 2008, another video message was posted on YouTube, "A Call to Action". In this video, the narrator informs the audience that there will be a protest on February 10th. The narrator states:

"Arm yourself with knowledge"

and

“Anonymous invites you to take up the banner of free speech, of human rights, of family and freedom.”

On February 10, 2008, approximately 7000 protesters worldwide were reported to be in attendance. This can be found on several different websites online. In March, chanologists explained they had the largest numbers ever, with at least 800 in LA and 800 in London. The New York numbers were somewhere between 300 and 500. According to a NY Anon, it was “hard to count them ...”. However, there was confirmation that they broke 400.

Permits and Remaining Anonymous

In NYC, there is no need for a permit to protest. For the Feb 10th protest there was no permit, but the NYCLU was involved in working with community affairs, etc.

When filing a permit, a name must be entered into the documentation. This created a challenge for anyone wishing to maintain anonymity. There was some speculation that in Austin and Connecticut, the permits were not obtained until the last minute.

After a few protests, the planning smoothed out. Some areas still need permits for each event. In NYC, the only permit needed was uptown for sound. There was police notification prior to protests.

According to chanologists, London had a difficult time obtaining the February permit due to big area, lots of terraces due to the potential risk to city property that could be damaged.

As time went on, some of these protests “petered out”. However, they kept a good balance. One chanologist stated to the effect of:

“ we do it with the cause in mind. Some Anons showed up in Feb/March because that was the thing to do...”

SIGNAGE

The signs were created on site at the protests, for the most part. Some of the more printshop quality ones get reused. There were some reports of Scientologists coming out and taking pictures of the protests for their intelligence agency. There are several videos on YouTube

confirming picture taking. One protester is an ex-scientologist who used to work for the office of special affairs for Scientology.

According to one chanologist, “This started off as a DMCA issue but as people became more educated, tech savvy latch on to something and learn immediately. Became more other issues.”

(Personal Skype interview, 2009).

CHALLENGES

During a university lecture, several chanologists spoke about their efforts and Project Chanology. One presenter discussed the challenges, both internal and external.

One internal challenge is that “people spend a lot of time bickering about what it is and what it is not.

Chanologist v. Old School Anon

These two groups are people who are anonymous and people who are chanologist.

“Long time anons sometimes get upset that chanologists are turning anonymous into a vehicle for social change”

There are some posts that refer to Chanologists as moralfags. On the other side, chanologists may be upset that old time anons for claiming roots of trolling and Lulz.

People come to raids with different agendas

1. Outraged by COS
2. Good time

“Sometimes toes get stepped on. Some people leave.

11 months in there isn’t really a big issue with this. There were a lot of people who left because they didn’t get their moral goals met or their lulz met.”

“The nature of anonymous, fluid... do as much work as you want.”

Sometimes people want merit for their work and this could ultimately lead some people to want to take a leadership position. However, there are no leaders in Anonymous. This is “a cardinal sin of anonymous.”

The Anonymous “model” works to their advantage, they believe. The belief is that in using this particular structure, if one of them falls, it’s really not an issue. For individual projects, leadership is accepted. However, with a lack of leadership there is a challenge in getting out information. One way they overcome that is by making information viral and getting it out so it is not really an issue.

External Challenges

With regard to external tensions and challenges, there is always “a lack of trust with anons unless you are with them for a while.” Chanologists state that sometimes there are plants in the crowd. They state that these plants are obvious because they are “overly sensitive to our laughing...”.

“We know each other, trust each other more. If someone new joins, there is some trust issue. That person is an outsider for a little bit.”

As far as pressure directly from the Church of Scientology, the presenter states that it is nothing to the extent of Paula Cooper.

In NYC, masks are not permitted. According to the presenter, the Office of Special Affairs of Scientology has taken pictures and followed people.

“People are out there every day and not identified. We take fairly simple precautions.”

“Retaliation is hilarious. They have cent C&Ds with 0 legal grounding. Leveling charges against us that are baseless and unprovable. We consult with lawyers, police and they agree.”

“Ultimately, the anonymous mindset and the structure of anonymous is what ensures our victory. We look at this battle between Scientology against anonymous as a game while they look at it as a war.

We’re fighting against an organization, and they are fighting against an idea. And that’s a fight they can’t win.”

SUCCESS OF ANONYMOUS

Another presenter discussed the success of Project Chanology. She stated that everything is comprised of one of 3 things.

Members

Money

Credibility

Since there are constant protests, people wonder why. They believe these efforts will encourage people to stay away from the building. The presenter stated that even if these people want to go in, they are not let in after speaking with the protesters.

Another technique is to use money. According to the presenter, the switch to Prolexic servers cost money. Paying lawyers, PIs, and other cost money. It costs money to prepare a C&D. Apparently, there is a big screen located outside of the org. The presenter reiterated that this costs money.

The NYC protesters are regularly interviewed in Village Voice. As far as credibility is concerned, Anonymous is open about their actions and speaks freely with the press. A full article appeared in Maxim, and other magazines do report about the protests.

The presenter did state that they do stop people from going into the org. In some cases, they redirect people who are coming out of the org to the internet. The presenter stated that they have received messages from members who have left the church.

The presenter concludes with information regarding media coverage and feeding the news.

Some questions were asked by students regarding Project Chanology.

Question

How come some put identity out there and some don't.

Chanologists Response

“Some identify ourselves because we have received some letters already. One presenter described how he was ‘outed’ in March. He stated that it was ‘kind of a relief not to wear that Groucho Marx mask’.

Protesters use different techniques. Some wear a moustache, hats, sunglasses, and/or fake makeup. In one case, a protester showed up wearing a kimono.

Question

Have they stopped the extra legal harassment?

Response

Presenters suggested that Scientologists haven’t dropped a C&D lately. The University lecture was held in December 2008. Someone did mention this, “what they have done is come right to your face...”

There is a video available on YouTube demanding a Chanologist remove the mask. According to the Chanologist, at one raid, a person proclaimed that he was the new leader of Anonymous. According to the statement, this person started harassing people and physically pushed. He tried to get into the pin where the protesters were. A video, available on YouTube documents this event. The Chanologists called for officer assistance. In this video, the Chanologists informed police that this person was telling Chanologists to break windows.

Several presenters did discuss what they liked about Project Chanology and the culture.

“I like the culture. I think the movement is more important. We work together. That’s the part I find most interesting.”

“For me it’s clearly more about the culture.”

Question

You talk about how peaceful the protests are. Do things get out of hand?

Response

One protester described how someone was shoved into a taxi by a “goon” that never showed up again. In this case, “Aspen” was walking in front of doors to go to the other side. Security pushed him into a taxi.

Question

What about the people involved in Chanology?

Response

There was some discussion of Mudkips – people under 14.

The average protester is late teen. “Many of us have jobs/school/husbands/wives.” As far as attending goes, this depends on the person.

Question

How important is face to face?

Response

“We can trust each other so much. Trust is an issue. Just like anything else.”

“We all came together as strangers.”

Question

What happens if you accomplish your goals?

Response

They did discuss this and decided to party once a month. “It’s a long fight.” “We’re free speech activists”

“You aren’t going to have revisions until people are out there. There are also letter writing campaigns.” The presenters discussed their collaboration with other states and countries. In terms of projects, there is a collaboration. “Obviously we stick in our city for the most part but ask each other for advice.”

In discussion of the first video – “Message to Scientology”, the presenters stated that one person worked on the text for that video. The next video – “A Call to Action” was done by the same person, who apparently then left.

A more recent video was done by another 3 people. “No one knows who it is. Don’t admit to making it. There’s no, I need credit for this... I do it because I wanna do it.”

The video channel is apparently worked on by a few people.

On the Why We Protest forum, there are some questions for new users. The first question is:

Q. Why Scientology and not other problems in the world?

A. Scientology has a distinct policy to limit free speech on the Internet; this got on our nerves.

These FAQs for newcomers is located at:

<http://forums.whyweprotest.net/303-whats-all-about/new-have-questions-check-here-first-faq-16472/>

Historically, Scientology has sent out numerous DMCA notifications to Google, YouTube, and others. In 1994, there is reports of an attempted removal of information from alt.religion.scientology. As early as 1999, xenu.net received a takedown for trademark. There is currently a disclaimer at the bottom of the page at Xenu.net (Operation Clambake) regarding trademark. In early 2001, Scientology sent a notification for removal of a comment that contained “text copyrighted by the Church of Scientology”. According to CmdrTaco, “They have since followed the DMCA and demanded that we remove the comment.”

The Slashdot account can be found here:

<http://yro.slashdot.org/article.pl?sid=01/03/16/1256226>

CmdrTaco further states in this post, that this was the first time a comment was removed due to content.

“This is the first time since we instituted our moderation system that a comment has had to be removed because of its content, and believe me nobody is more broken hearted about it than me. It's a bad precedent, and a blow for the freedom of speech that we all share in this forum. But this simply doesn't look like a case we can win. Our lawyers tell us that it appears to be a violation of Copyright law, and under the terms of the DMCA, we must remove it. Else we risk legal action that would at best be expensive, and potentially cause Slashdot to go down temporarily or even permanently. At the worst, court orders could jeopardize your privacy, and we would be helpless to stop it.”

CmdrTaco goes on to explain that the same content is available on many places on the web.

In 2002, Scientology demanded links removed from Google. Google complied.

While the motive behind Anonymous is not specifically DMCA related, according to the FAQ question, the focus on Scientology is due to:

“Scientology has a distinct policy to limit free speech on the Internet; this got on our nerves.”

Indeed the evidence that supports this statement may be found in the numerous attempts by Scientology to silence critics using the DMCA and copyright as a sword and shield.

Another example occurred on September 30, 2005. The Truth About Scientology received a notification. The following page describes the events:

<http://www.truthaboutscientology.com/dmca.html>

“In her complaint, she claims that these pages - which consist of uncopyrightable raw data, lists of the names of individuals who have completed Scientology services - infringe her clients' copyright.”

A counter notification was filed.

The site states that all files were restored because Scientology did not file a lawsuit within the 14 day time period.

One interesting notification included in this book is a notification about a link removal to Google, where the original source of that link is still active. If the claim was legitimate, why is the source still available?

While the Anonymous collective does not directly protest the DMCA, the collective efforts range from protests of Scientology in front of their headquarters to black faxes.

According to an EFF News update, found at:

<http://www.eff.org/deeplinks/2008/09/massive-takedown-anti-scientology-videos-youtube>

On September 25 2008, YouTube received 4000 DMCA takedown notifications from the American Rights Counsel LLC. Counter notifications and emails to YouTube were sent by uploaders. According to the News Update:

“Over a period of twelve hours, between this Thursday night and Friday morning, American Rights Counsel LLC sent out over 4000 DMCA takedown notices to YouTube, all making copyright infringement claims against videos with content critical of the Church of Scientology.”

According to chat on boards and reports from WikiNews and other sources, there was no way to find “American Rights Counsel”. There is no record of any actual notification that was sent that can be found on the internet. There was some chatter on boards about this. One user stated that 7 emails were received within minutes regarding videos on YouTube. The user stated that the notices stated a 3rd party complaint was received.

Many of the videos were restored due to the fact that the people who uploaded these were the actual copyright holders.

Legal Actions

In Clearwater, Florida, Scientology attempted to get an order of protection against Anonymous. The order was denied on March 12. Included in this injunction are several exhibits that were apparently included to show the need for the injunction against “repeated violence”.

Some of the items include:

“ A dozen eggs were thrown at the Church of Scientology in Boston”

“A dead cat was dumped by the door of the Phoenix Church of Scientology where Anonymous flyers had previously been posted”

and

“On January 24, 2008, the words “Closed due to Aliens” and a face with a high collar were spray-painted on a Church of Scientology in Perth, Australia.”

There were many other accounts listed that could seem to have some validity to them, claiming broken windows and doors and phone calls or web postings that could seem a threat. Online discussion mentioned the possibility of manufacture of these items. Despite listing these items, the order was denied.

The protests held by Anonymous have been peaceful protests. Anonymous holds global protests and there are other smaller protests at other times.

A peaceful protest was held at the opening of a Broadway Show that Katie Holmes was acting in. These protesters wear the “V for Vendetta” masks or other items such as bandanas, to conceal their identity, thus remaining “anonymous”. In New York City, there is an ordinance restricting the use of masks. There are some images below that show the protesters in New York City wearing the masks backward. The following images are from NYC, DC, and Hamburg.

Anonymous

New York City

February 10, 2008

Photos Courtesy: Jeremiah Bird



Masked Anon (*Courtesy Jeremiah Bird*)



Anon with Flyers (*Jeremiah Bird*)



Anons with Signage (*Jeremiah Bird*)



New York – February 10, 2008 (*Jeremiah Bird*)



Masked Protesters (*Jeremiah Bird*)



Police Backup (*Jeremiah Bird*)

New York City

March 2008

Courtesy: Jeremiah Bird



Precession of Chanologists (*Courtesy Jeremiah Bird*)



Outside of the COS (*Jeremiah Bird*)



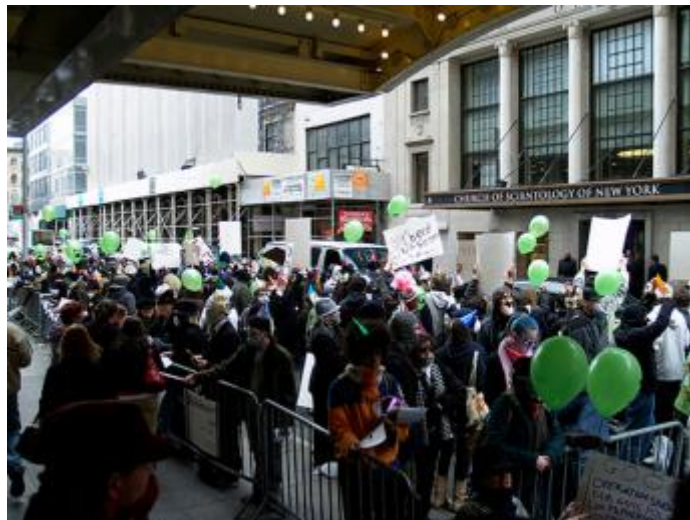
Gathering at the Meeting location (*Jeremiah Bird*)



In the pen (*Jeremiah Bird*)

New York

March 2008



A different angle of the pen (*Jeremiah Bird*)



NYC – March 2008 (*Jeremiah Bird*)



Sethdood? (*Jeremiah Bird*)

March 2008 – NYC Protest

Courtesy: Matthew “PokeAnon” Danziger



Banner (Courtesy Matthew “PokeAnon” Danziger)



March 2008: Tax the Cult signage (Matthew “PokeAnon” Danziger)



March 2008 with signage (Matthew "PokeAnon" Danziger)



New York – "Group" shot (Matthew "PokeAnon" Danziger)



Backward Mask in midtown Manhattan – NYC (*Matthew “PokeAnon” Danziger*)

WASHINGTON D.C. July 2008

Courtesy: Matthew “Pokeanon” Danziger



Washington D.C. – July 2008 (*Matthew “PokeAnon” Danziger*)



Wise Beard Man (*Matthew “PokeAnon” Danziger*)



9000 Anon March – Washington D.C. July 2008

(Matthew “PokeAnon” Danziger)



(Matthew “PokeAnon” Danziger)

Operation: 300 - Hamburg, Germany: August 2008

Photos Courtesy liekmudkip



Group Photo (*Courtesy liekmudkip*)



Here, Take a Flyer! (*Courtesy liekmudkip*)



Hamburg Operation 300 (*liekmudkip*)



August 2008 (*Courtesy liekmudkip*)

NYC 2008

Courtesy: Jeremiah Bird

You Found the Card!



The card! *(Courtesy Jeremiah Bird)*

September 18, 2008

Prior to the protest of the Katie Holmes opening on Broadway, September 18, 2008, the protesters arrived at Bryant Park. At the park, what seemed to be some Scientologists were handing out leaflets and passing around information revealing the identities of a few members of Anonymous. Several of these alleged Scientologists started to follow the protesters to Broadway. The police did step in as one person following the protesters began to scream and become unruly. At the protest one gentleman attempted to get into the pin. Officers assisted in this situation, as well. These videos can be found at AnonNation on YouTube.



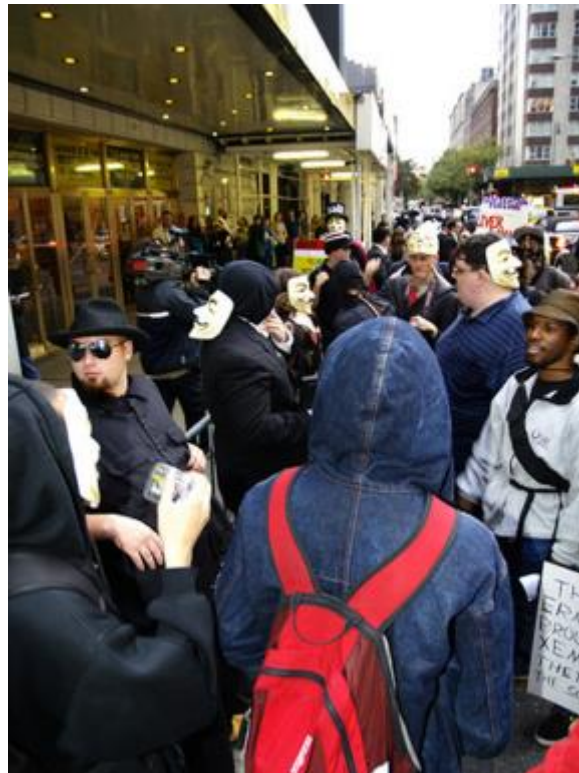
PokeAnon (*Courtesy Jeremiah Bird*)



A couple of protesters (*Jeremiah Bird*)



Holy Freedom, Batman! (*Jeremiah Bird*)



Several backward masks (*Jeremiah Bird*)

Lisa McPherson Memorial

Courtesy: Jeremiah Bird



December 2008 (*Courtesy Jeremiah Bird*)

NEW YORK July 2009

There is an interesting connection with the “pool closed” theme. Back in July 2006, the Habbo Raid happened. Habbo is a social networking site. Basically, the mods there were accused of being racist, among other things, so Anonymous members raided the hotel. This happened again in 2007 and 2008. In 2007, the raid was successful in closing the pool, hotel and crashing the hotel.



Pool's Closed!

(Courtesy: NYC Anonymous)

NEW YORK August 2009



Study Tech image (*Courtesy of Chimera*)



Cult Arrow (*NY City Anonymous*)

Conclusion

The DMCA has survived 10 years as law. The ethics of copyright seem to come up in conversation and writing quite a bit. Is copying theft? Computers copy, this is a core function of a computer. The information in this book covered some background information about copyright, some copyright related cases and information regarding activism and culture. The ethics question remains. A balance between the rights of the copyright holder and the rights of users has not been fully met. 10 years has passed since the DMCA was enacted. While repeal of the DMCA does not seem to be reasonable at this juncture, informing the public about fair use is essential. For example, with regards to the TEACH act, wherein certain requirements are not met to comply with TEACH, fair use does come in to play.

The same should hold true with the DMCA. Fair use must be considered. Exemptions to the DMCA must be considered. Abuse of the DMCA must be stopped. There are still many unanswered questions and scenarios regarding fair use and the DMCA. Would filming yourself reading a textbook, with the pages of the book on video, be considered fair use?

The information and knowledge about this copyright legislation may turn out to assist in creating future amendments to copyright law. Until then, arm yourselves with the knowledge of the DMCA and fair use. No one should be suppressed from making commentary or parody. Free speech is a right and a privilege.

For more information about the DMCA sections, there is a summary from the Library of Congress located at:

<http://www.copyright.gov/legislation/dmca.pdf>

To view the full text of the DMCA, visit:

http://w2.eff.org/IP/DMCA/hr2281_dmca_law_19981020_pl105-304.html

Appendix A: DMCA Notifications and Counter Notifications

In August 2009, Blogger (Google) made a Web Form for notifications available. This web form is available at:

http://www.google.com/support/blogger/bin/request.py?contact_type=blogger_dmca_infringement

However, while Google offers a notification form, there was **no counter notification form** available.

Since Google does not provide a counter notification form, this could slow down a counter notification and content restoration.

A counter notification can be generated by using:

<http://www.chillingeffects.org/dmca/counter512.pdf>

Since there is no web form, and Google does not generally accept email notifications or counter notifications, the counter notifications will need to be submitted by fax or snail mail.

The one exception is if a prior agreement is made to send the counter notification by email, according to the Google site.

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Works Cited

American Association of Law Libraries (AALL), the American Library Association (ALA), the Association of Research Libraries (ARL) and the Special Libraries Association (SLA). (2003). *Supplemental Comments of the American Association of Law Libraries, the American Library Association, the Association of Research Libraries and the Special Libraries Association on the Second Draft Consolidated Texts of the Free Trade Area of the Americas Agreement* [filed with U.S. Trade Representative, Feb. 28, 2003]. Retrieved March 24, 2005, from

<http://www.ala.org/ala/washoff/WOissues/copyrightb/intlcopyright/FTAASupCom.pdf>

American Library Association, National Council of Teachers of English, & National Education Association of the United States. (1977). *The new copyright law: Questions teachers & librarians ask*. Washington: Nea.

American Library Association. (n.d.). *Distance Learning and the TEACH Act*. Retrieved April 13, 2005, from

http://www.ala.org/Template.cfm?Section=Distance_Education_and_the_TEACH_Act&Template=/ContentManagement/ContentDisplay.cfm&ContentID=25939

Amy (2001). Fanfic Sites Wiped Out In Tripod. Retrieved June 30, 2005, from

http://www.trektoday.com/news/200301_05.shtml

Angela (2001). Just Say No to Tripod. Retrieved June 30, 2005, from

http://web.archive.org/web/20010602023438rn_1/cerulia.net/tripod/.

Association for Educational Communications and Technology. (1977). *Copyright and educational media : A guide to fair use and permissions procedures*. Washington: Association for Educational Communications and Technology.

Bruwelheide, J. (n.d.) *Intellectual Property and Copyright Resources: TEACH Act Highlights and Resources*. Retrieved April 14, 2005 from <http://www2.nea.org/he/abouthe/teachact.html>

Carlson, S. (2005). Whose Work Is It, Anyway? *The Chronicle of Higher Education*. Retrieved March 13, 2006, from <http://chronicle.com/prm/weekly/v51/i47/47a03301.htm>

Center for Social Media (2007). *The Cost of Copyright Confusion for Media Literacy*.

Retrieved March 22, 2008, from

http://www.centerforsocialmedia.org/files/pdf/Final_CSM_copyright_report.pdf

Chilling Effects (n.d.). Frequently Asked Questions (and Answers) about DMCA Safe Harbor. Retrieved August 27, 2009, from <http://www.chillingeffects.org/dmca512/faq.cgi>

Chilling Effects (1997). Retrieved June 29, 2005 from <http://www.chillingeffects.org/piracy/notice.cgi?NoticeID=93>

Chilling Effects (2002). Harry Potter in the RestrictedSection. Retrieved June 29, 2005 from <http://www.chillingeffects.org/fanfic/notice.cgi?NoticeID=522>

Chilling Effects. (2003). Retrieved June 30, 2005, from <http://www.chillingeffects.org/fanfic/notice.cgi?NoticeID=669>

Copyright Act of 1976 § 107, 17 U.S.C. (1976).

Copyright Act of 1976 § 202, 17 U.S.C. (1976).

Copyright Management Center. (2004). *Copyright and Distance Education*. Retrieved March 28, 2006, from http://www.copyright.iupui.edu/dist_learning.htm

Costello, S. (2002). IDG News Services. PC World. Court Orders Napster to Stay Shut. Retrieved August 10, 2009 from http://www.pcworld.com/article/91144/court_orders_napster_to_stay_shut.html

Crews, K. (n.d.). *New Copyright Law for Distance Education: The Meaning and Importance of the TEACH Act*. Retrieved July 6, 2004, from http://www.ala.org/Template.cfm?Section=Distance_Education_and_the_TEACH_Act&Template=/ContentManagement/ContentDisplay.cfm&ContentID=25939

Digital Millennium Copyright Act of 1998 § 1201, 17 U.S.C. (1998).

Einhorn, M. A. (2004). *Media, technology, and copyright : Integrating law and economics*. Cheltenham, UK ; Northampton, MA: E. Elgar.

Foster, A. (2003). College Media Group Cautions That 2 Copyright Laws Could Collide. *The Chronicle of Higher Education*. Retrieved February 2, 2005, from <http://chronicle.com/free/2003/03/2003031801t.htm>

Frankel, D. (1998). Prince: Purple Pain to Net Fans. E! Online News. Retrieved June 30, 2005, from <http://www.eonline.com/News/Items/0,1,2757,00.html>

Gantz, J., & Rochester, J. B. (2005). *Pirates of the digital millennium : How the intellectual property wars damage our personal freedoms, our jobs, and the world economy*. Upper Saddle River, NJ ; London: Prentice Hall/Financial Times.

Gasaway, L. (n.d.). Impasse: Distance Learning and Copyright. Retrieved April 15, 2005, from <http://moritzlaw.osu.edu/lawjournal/gasaway.htm>

Greene, J. (2005). *The trouble with ownership : Literary property and authorial liability in england, 1660-1730*. Philadelphia: University of Pennsylvania Press.

Helm, V. M. (1986). *What educators should know about copyright*. Bloomington, Ind.: Phi Delta Kappa Educational Foundation.

Hinduja, S. (2006). *Music piracy and crime theory*. New York: LFB Scholarly Pub. LLC.

Junger, P. (2001). *Circumnavigating the Anti-Circumvention Provisions of the DMCA*. Retrieved July 20, 2003, from <http://samsara.law.cwru.edu/dmca/qart.pdf>

Karjala, D. (1988). *United States Adherence to the Berne Convention and Copyright Protection of Information-Based Technologies*. Retrieved March 28, 2006, from

<http://homepages.law.asu.edu/~dkarjala/Articles/JurimetricsWinter1988.html>

Landes, W. M., & Posner, R. A. (2004). *The political economy of intellectual property law*. Washington, D.C.: AEI-Brookings Joint Center for Regulatory Studies.

Library of Congress. Copyright Office. (2005). *Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code*. Retrieved March 28, 2006, from <http://www.copyright.gov/title17/>

Library of Congress. Copyright Office. (n.d.). *Copyright in General*. Retrieved March 28, 2006, from <http://www.copyright.gov/help/faq/faq-general.html#what>

Library of Congress. Copyright Office. (n.d.). *Orphan Works*. Retrieved March 13, 2006, from <http://www.copyright.gov/orphan/>

Library of Congress. Copyright Office (2000). *Rulemaking on Exemptions from Prohibition on Circumvention of Technological Measures that Control Access to Copyrighted Works*. Retrieved February 2, 2005, from <http://www.copyright.gov/1201/anticirc.html>

Library of Congress. Copyright Office. (2004). *Copyright basics, circular 1, revised January 2004*. S.l.

Lindsey, M. (2003). *Copyright law on campus*. Pullman, Wash.: Washington State University Press.

Lipinski, T. A. (2005). *Copyright law and the distance education classroom*. Lanham, Md.: The Scarecrow Press.

McCullagh, D. (2003). RIAA apologizes for threatening letter. *News.com*. Retrieved August 4, 2004, from http://news.com.com/2100-1025_3-1001095.html

McCullagh, D. (2002). Debunking DMCA myths. *News.com*. Retrieved August 4, 2004, from <http://news.com.com/2010-12-950229.html>

McSherry, C. (2001). *Who owns academic work? : Battling for control of intellectual property*. Cambridge, Mass. ; London: Harvard University Press.

Merrick, T. (2005). Does Creative Commons free your content? *CNET.com*. Retrieved March 29, 2006, from http://reviews.cnet.com/4520-3000_7-6357305-1.html

Miller, J. K. (1979). *Applying the new copyright law : A guide for educators and librarians*. Chicago: American Library Association.

Moore, A. D. (2001). *Intellectual property & information control : Philosophic foundations and contemporary issues*. New Brunswick, N.J.: Transaction Publishers.

Philips, D. (1999). The 500-pound Wookie. Retrieved June 30, 2005, from http://www.ehostation.com/features/lfl_wookiee.htm

Price, Samuel (n.d). Educational Use of Copyrighted Materials:An Overview. Retrieved April 14, 2005 from <http://www2.bc.edu/~pricesa/>

Slaughter, S., & Rhoades, G. (2004). *Academic capitalism and the new economy : Markets, state, and higher education*. Baltimore: Johns Hopkins University Press.

Talab, R. S. (1999). *Commonsense copyright : A guide for educators and librarians* (2nd ed.). Jefferson, N.C.: McFarland & Co.

Taylor, R. W. (2006). *Digital crime and digital terrorism*. Upper Saddle River, N.J.: Pearson/Prentice Hall.

Technology, Education, and Copyright Harmonization Act of 2002 § 13301, 17 U.S.C.

Technology, Education, and Copyright Harmonization Act of 2002 § 110, 17 U.S.C.

Technology, Education, and Copyright Harmonization Act of 2002 § 112, 17 U.S.C.

Tushnet, R. (1997). Loyola of Los Angeles Entertainment Law Journal, Vol. 15. Legal Fictions: Copyright, Fan Fiction, and a New Common Law. Retrieved June 30, 2005, from <http://www.schrag.info/tushnet/law/fanficarticle.html>

University of Pittsburgh Library, PITT. (n.d.) *Copyright Information*. Retrieved March 21, 2008 from <http://www.library.pitt.edu/guides/copyright/>

University of Southern California Library, USC. (2004). *Copyright and Fair Use Information*. Retrieved April 15, 2005, from <http://www.sc.edu/beaufort/library/pages/liblink/copyright.shtml>

Van Buskirk, E. (2008). *RIAA to Stop Suing Music Fans, Cut Them Off Instead*. Wired.com. Retrieved August 15, 2009 from <http://www.wired.com/epicenter/2008/12/riaa-says-it-pl/>

Watling, M. (2005). Microsoft, student drop lawsuits, decline to discuss settlement. Kentnews.net. Retrieved on August 15, 2009, from <http://media.www.kentnewsnet.com/media/storage/paper867/news/2005/03/14/News/Microsoft.Student.Drop.Lawsuits.Decline.To.Discuss.Settlement-1516447.shtml>

WIPO. (2004). *WIPO Handbook on Intellectual Property*. Retrieved March 28, 2006, from <http://www.wipo.int/about-ip/en/iprm/pdf/ch5.pdf#paris>

WIPO. (n.d.). *WIPO General Information*. Retrieved July 2, 2004, from <http://www.wipo.int/about-wipo/en/>

Walker, J (2000). Copy Catfight. Retrieved June 30, 2005, from <http://reason.com/0003/fe.jw.copy.shtml>

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