**Copyright: Fixing a broken system**

**By Josh Roush**

**Introduction**

Copyright law exists in our society to ensure that creators have the right to own, control, and profit from their work. For years these laws have more or less effectively protected all forms of media, art, music, film etc., but with the dawn of the internet and the digital age it became much easier for people to illegally copy an authors’ work and sell it themselves for profit. This change of events has led to declining profits to the media producing industry. Some say that this new form of “piracy” will in fact kill these industries while others claim that this is merely a symptom of a process that is either outdated or perhaps has even been flawed from the beginning.

There are several schools of thought on how to update current copyright laws. Theories have been tossed back and forth and everything from piracy crackdowns to rewriting the current laws has been discussed. Some groups say that the current statures prevent us from preserving our cultural heritage, while some others want to see the complete abolishment of the idea of copyright. Some even suggest that pirating may actually be helping the entertainment industry. In this paper I will outline the history of copyright law, the current standing laws of copyright, speak about the effectiveness of the current laws, detail what critics have to say, and finally explain how the clarification and relaxation of some of these laws while providing authors with more control over their product could very well save the entertainment industry.

**A quick synapses of US copyright law**

There have been many copyright laws enacted since the initial “Copyright Act of 1790” established the ability of the author to have the “sole right and liberty of printing, reprinting, publishing, and vending” their material. Many of the enacted acts since then have done little more than change the life span of how long the copyright can exist and therefore are nonessential material for this paper. Therefore I will only cover the biggest changes to these laws and then explain what the current stipulations are.

There are two different forms in which media may be owned. The first is the traditional copyright where a sole owner, or group of owners, has the exclusive right to profit from their product. Under this no one may directly reproduce, or publicly showcase their work (except for fair use which will be covered in a bit) without either consent or payment. The only exception of this is with music. Under current laws no one may do these previously stated things with your recording, however, they are allowed to re-record your material for their own productions by acquiring a “compulsory license”. In essence, this license pays the songwriter a fee in order to allow you the ability to re-produce their work.

The current copyright lifespan for property created by individuals (those not being created by a corporation) lasts until 70 years after the death of the author if the property was created prior to 1978. The current lifespan for property created by corporations (such as films, TV shows, etc.) is 120 years after the production of, or 95 years after the release of the property, whichever one of these comes first. However, if the material was produced prior to 1923, it is covered by previously existing laws and falls under “public domain”.

If someone fails to or decides not to copyright the work that they produce, then it is categorized as “public domain”. This is where the public at large owns it and has the ability to use the material in anyway. They may watch/listen to it, or even reproduce or rearrange the product as they see fit without paying anyone for it. This even extends to things produced by our government. For example: any recording in the United States by a military band that has been recorded, or any law that has written here falls under public domain. The idea being that this government is owned by the people, therefore its productions are too, and we can have free reign of use free of copyright. With all of this discussion of ownership however, someone may use snippets of someone else’s copyrighted material through “fair use”.

Fair use stipulates that someone may use bits and pieces of a copyrighted product if, as George H. Pike puts it, if “the material be used for a specific beneficial purpose such as research, teaching, criticism, or comment”. For example, this is how news shows can show snippets of movies or TV shows when talking about them, and not have to pay to use them. The idea behind fair use is that it would be impossible in our society to properly explain subjects without having the ability to be at least partially exposed to them. Fair use also covers teachers. Anyone who is using a media product for an academic reason and makes no profit for it may use said media for free. They have the ability to showcase, copy, and present it in a way that they see fit. However, using something for “educational purposes” or a “beneficial purpose” are very far reaching and unclear terms.

**Essential moments in the history of media piracy.**

Prior to 1964 music piracy was essentially a nonissue, and on the occasion that it became one, it was easy to track down and punish the source. During this time the LP was the only publicly available format of music consumption as the technology needed to make a copy of it was incredibly expensive. This changed for the music industry with the dawn of the cassette tape. This new invention allowed users to not only have a more convenient and portable way in which to transport their music, but allowed the copy preexisting music. This problem for the music industry eventually led to their campaign claiming that “Home taping is killing music, and it’s illegal.” Unfortunately for their plight, this was but the first step of the music industry dealing with “piracy”.

In 1970 the film industry underwent a similar event. The invention of the video cassette recorder allowed users to purchase and conveniently view movies at their own home (this was only previously able to be done by buying your own print and projector). One of the features advertised was the ability for users to copy preexisting tapes. Organizations such as the Motion Picture Association of America viewed this as incredibly detrimental to their represented film libraries as well as their pocketbooks and publicly spoke out against it at length. Universal Studios even went as far as to sue the producers of the first VCR, Sony, in a case that went all the way to the supreme-court.

It’s no secret that with the invention of the internet came a massive pirating surge. Although certainly not the first or only, the sharing network Napster quickly came under fire for allowing it’s users to transfer each other files, and therefore bootlegged media. Napster was in its origination a “Peer to Peer” program, or a P2P. The powers that be in the entertainment industry made this software an example by a lengthy legislative process that inevitably shut it down. However, for most of the world this did little more than awaken them to the existence of P2P programs. With the fall of Napster as a P2P (it would later re-surface as a legitimate mp3 retailer) came the rise of countless other user-made software that did the same thing including Kazaa, Soulseek, and LimeWire.

**The entertainment industries reaction**

The entertainment industry is waging a war on these so called “pirates”. One thing that they have tried as of late is the act of “watermarking” their products. A watermark is essentially an invisible trail that they can use to trace the origin of the product, the idea being you can trace the stolen material back to the initial source. Watermarking cannot be seen, it is written into the binary coding of digital movies and music. One example of an organization using this method is The Academy of Motion Picture Arts and Science. They produce copies of DVDs while the movie is still in theaters so that their members may screen the picture and vote on whether they deem it award worthy. With the watermark in place, when the disc gets distributed they can trace down a certain group of members, if not an individual, who originated this “leak”. This had proven relatively effective in the discovery of the source of pirated material, but has done little to nothing to stop it.

Another implemented move was the invention of Digital Rights Management, otherwise known as DRM, is a sort of “lock” on the product. These digital locks are pieces of software encoded into the product in an effort to not allow it to be copied. This was heavily instituted by companies such as Apple for their software program “ITunes” as they would not allow songs to be played on anything other than the program-user who initially purchased the MP3.

In what seems to be one last desperate move, the film industry has mounted a “guilt campaign”. This is showcased at the beginning of some movies seen at theaters and on DVD. It is basically a commercial, and in it, they equate the stealing of media to the theft of cars, money and other physical goods. The premise being that even though you may steal a song, you would not thieve from someone physically. This is meant to illicit a guilt response in the viewer. This is much the same type of campaign as mentioned earlier with the “Home Taping Is Killing Music”. However, according to Barry Fox nearly all of these steps have been gigantic flaws by the entertainment industry.

**The actual result of their reaction**

With the decline of revenue resulting from piracy, studios are sinking millions of dollars into this “war on piracy”. This means that an industry that is suffering monetary losses is spending millions of dollars in attempting to curb losing money. Unfortunately this has not been effective according to Barry Fox. He contends that the “digital lock” of DRM is a huge misstep. His argument is that as soon as a product comes on the market with some type of DRM, the hacking community quickly bands together and is quick to create a “key”. In this, DRM has proven to be little more than an easily avoided roadblock for pirates, and has done little more than confuse the average consumer as to how they can make a backup copy of what they have bought. As he points out “innocent customers are frustrated while professional criminals carry on as usual.”

Although he does not argue that piracy is nonthreatening to these industries, Lawrence Lessig maintains that the steps taken thus far have done little more than effectively making themselves appear as bullies. He argues that grouping together the theft of cars, grand theft larceny, organized piracy for profit and other major forms of illegal behavior under the same banner as illegal downloading has a terrible effect on our society and our children. In his book “Remix” he argues that labeling our children as felons because they download music illegally, regardless if the statement is technically true by US law, is harmful to a child maturing within that system. There are gradients of breaking the law, equating the theft of an album over the internet with that of a stolen car does little more than make the accuser look as if they are purposely trying to use scare tactics.

**Just a few problems with current laws**

In recent years, many people have come to criticize fair use in multiple ways. The most often voiced issue with it lies within the definition of the word itself. As I previously mentioned, the terms defining its use are very vague. For example, Pike points out in his article “Abolishing Fair Use”, the only way to define the terms of fair use when it is called into question is through the judicial system. Here is his verbatim example: “In one case, an author created a satire of the O.J. Simpson murder case using a Dr. Seuss rhythm: "One knife, two knife, red knife, dead wife." The estate of the real Dr. Seuss, Theodor Geisel, sued for copyright infringement. The new authors lost their fair use defense because the court found that the new work copied but did not comment on the original.” This is an instance in which the flaws of fair use are showcased, when the only way to define whether something qualifies as legally allowed *because* there are not absolutely clear stipulations, then there is clearly a problem with the law in the first place.

Few would argue that preserving our culture for historical sake is not essential to our society’s future. After all, what better way is there to peer into the lives of people in today and yester-year than to examine the media that was popularly consumed at the time. To do exactly this is the job of the archivalist, and boy are they upset. Under current law, it is illegal for them to copy material to store if the product was made post-1923 (as previously mentioned). In a digital age where systems of multiple terabytes can much more effectively and efficiently store material than categorizing and alphabetizing in a warehouse, this is a silly law only impeding the preservation of our history. Tim Brooks outlines this problem in his essay “COPYRIGHT AND HISTORICAL SOUND RECORDINGS: RECENT EFFORTS TO CHANGE U.S. LAW”. In it he argues that not only are we risking losing much of our cultural heritage, there is much of it that has already been lost due to these laws being in place.

The uber-strict enforcement of copyright has come into a head on collision with the digital age. One project known as “Virtual Harlem” is an amazing example of this. As Steve Jones writes in his essay “When Virtual and Real Worlds Collide” which describes the legal woes of the project, “Virtual Harlem” was created by Bryan Carter at the University of Missouri. Although still being designed, this project will attempt to realistically re-create in Virtual Reality the landscape, architecture, look and feel of 1920’s Harlem. Unfortunately, in order to do so, it must deal with the fact that some of the architectural blueprints are copyrighted material. Furthermore, signs for products such as “Coca-cola” used to adorn nearly every shop front, this means that for projects such as this one, although this is a non-profit venture, must secure many copyrights from many sources. This legal work, money, and time needed for projects such as this to become successful cannot be overstated. Requiring projects such as this that are in no-way going to interfere with the sales of a product by re-using its image or likeness is only impeding our advancements made as a society.

**Potential resolutions**

Clarify the existing laws. Instead of wasting public funds in court battles over what constitutes fair use, simply clarify to the best availability the definition of the term. There will still from time to time be excessive court cases over fair use, however this would drastically change the amount and severity of them. The term “academic use” is far too vague. Even at the school that I attend, California State University of Fullerton, the library refuses to carry burned DVD’s of movies that are covered in the curriculum despite having the legal right to do so. When even a public funded education system is frightened at the potential ramifications of being taken to court over something fully allowed within their rights due to the fact that it could be interpreted differently and have to be challenged through a lengthy and money consuming process, there is an underlying problem not being addressed.

Change the laws. If someone does not directly stand to monetarily gain from the copying or usage of a product, then allow them to do so. This would be a huge theoretical step to take, and would unarguably take away certain rights from copyright holders, but I argue that it would only stand to benefit us for the greater good. We as a society should always be working to preserve what we have, and be trying to better our future. No one loses when a copy of a product is “stolen” in order to attempt to save it for our society’s future. No one loses when a copyright is infringed upon in order to educate someone about it. This absurd notion that the exposure to a product would do any less than promote said product is extremely flawed. “Coca-cola” only stands to gain if their image is showcased on a building and a movie studio only stands to gain if their film is so highly regarded that people want to insure its survival for future generations.

Turn the problem into a solution. In their essay “Profiting from Being Pirated by ‘Pirating’ the Pirates” Sana El Harbi and Gilles Grolleau detail how many companies have done exactly this. They argue that pirating is less about getting the item for free, and more of a show of what consumers are demanding. Online you can download illegal “hacks” for videogames which insert differing scenarios, bonus content, or many other limitless options. This has become so prevalent that there is an entire subculture obsessed with doing exactly this. What many companies are now doing is incorporating these hacks into their videogames, fulfilling the demand, and producing a much better product by drawing from this “wide pool of free talent” that hacking is providing. As they also point out, other companies have been doing this for years, one example being the cell phone company Nokia. They launched their luxury phone line “Virtu” due to companies overseas buying their phones and essentially “bedazzling” them with diamonds and rubies. When they saw the massive amounts of money being made by these companies, they in turn followed suit and made a massive amount of money. In similar logic, Lawrence Lessig points out in his book “Remix” that much (but not nearly all) of the illegal downloading of media today is not due to wanting it for free, but more for the freedom that downloading the file offers in terms of easy transportation and wide availability.

Exchange the idea of copyright with the creative commons license. Creative Commons is a non-profit group who specialize in dealing out free legal paperwork to anyone who wishes to preserve the rights of their material. In it an artist chooses which rights they wish to preserve, and which they would like to waive. Say that you want to completely protect your work just as a copyright would. This would allow exactly that. Say you wish to waive the fee if someone wishes to cover your work, you’re covered. Say that you wish to waive all rights to compensation for people using your work and only wish to spread the word about your creation, it does that too. With this notion of giving the artist more control over their own work, and what can be done with it, you are freeing up not only the exchange of ideas, but also the exposure to your product, thus resulting in the bottom line: the money.

**Conclusion**

Illegal downloading is indeed hurting many areas of the entertainment industry. However the entertainment industry is not helping themselves by waging an expensive war that is merely vilifying and punishing the consumers of their products. We as a people will always need a system in which to reserve the right to profit from the things that we produce, otherwise there is less reward in doing so. However, with the invention of the internet, many of these laws are out of date, and the entire system needs an overhaul. If we were to only change a few laws, implement a few more, recognize some pirating as demand, and not resort to meaningless ways of punishing violators we could ensure not only the rights of creators, but the betterment of our society.